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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

Tuesday, July 13, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

COPY

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Official Reporters

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FOR INTERVIEW

1 LOS ANGELES, CALIFORNIA, TUESDAY, JULY 13, 1971

2 9:35 A.M.

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

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

8 And all of the jurors are in the jury box plus the
9 proposed alternates.

10 And I believe the People were just about to voir
11 dire.

12 MR. KATZ: Yes, your Honor.

13 THE COURT: Go right ahead.

14
15 ETHEL J. MCINTYRE

16 BY MR. KATZ:

17 Q I believe it was Mrs. McIntyre. I am over here,
18 Mrs. McIntyre.

19 THE COURT: Why don't you step over here.

20 MR. KATZ: Thank you, your Honor.

21 Q Now, that makes it easy for both of us, Mrs.
22 McIntyre.

23 I understand you were a schoolteacher, is that
24 correct?

25 A Right.

26 Q Can you tell me where you taught?

27 A I taught in Osaka University, in Japan for 25
28 years.

1 Q Oh, my. That is quite impressive. Was this on a
2 college level course?

3 A Yes.

4 Q I take it that over that 25 years then you had an
5 opportunity to deal with youth in general, is that correct?

6 A Young men.

7 Q Yes. Young men.

8 In that connection I am sure that you grew quite
9 attached to the responsiveness of young men and their ability
10 to learn and to accept knowledge and to apply it, and their
11 eagerness with which to take that knowledge and go out and
12 pursue meaningful careers, is that correct?

13 A I certainly did.

14 Q All right.

15 Now, in that connection, you understand that this
16 is a trial to determine a man's guilt or innocence, you
17 understand that?

18 A Surely.

19 Q Now, are you able to see Mr. Grogan from over there?

20 A Yes, I am.

21 Q I think you will agree with me that he is a young
22 man, too, isn't that right?

23 A That's right.

24 Q If his honor should instruct you at the guilt phase
25 of this trial that you should not suffer yourself to be
26 influenced by any sympathy you may have for the defendant, would
27 you unhesitatingly follow that instruction?

28 A I certainly would.

The 2

1 Q All right.

2 So what that means, basically, is simply that you
3 are to judge this case based upon the merits of the evidence,
4 how you evaluate the evidence; and if the evidence creates in
5 your mind an abiding conviction to a moral certainty of the
6 truth of the charge, then despite whatever sympathy you may
7 have for Mr. Grogan you are dutybound to vote guilty.

8 You understand that?

9 A Yes, I do.

10 Q I take it, then, you have no quarrel with that
11 application of the rule of law; is that correct?

12 A That's right.

13 Q I am sure that you found as a teacher in the class-
14 room that you had to lay certain ground rules so that you could
15 get on with the curriculum; isn't that right?

16 A That's right.

17 Q And teach it appropriately?

18 A That's right.

19 Q And I think you realize by parity of reasoning here
20 in the courtroom, we also have sort of guidelines, certain
21 rules which permit us to move on and develop a case, both from
22 the defense standpoint and the People's standpoint.

23 Do you understand that?

24 A Yes, I do.

25 Q And one of the rules here that we require of all
26 jurors to adhere to is that, namely, in the guilt phase of the
27 trial the verdict must reflect an impartial determination of
28 the evidence, uninfluenced by sympathy for the defendant or by

1 passion or prejudice against him.

2 You understand that?

3 A Yes, I do.

4 Q I take it that you understand that in the courtroom
5 we are interested in one thing, and that is the ascertainment
6 of the truth; is that right?

7 A Yes.

8 Q I take it as a well-educated young lady and a
9 thinking person, you have given some thought to capital punish-
10 ment; isn't that right?

11 A Yes, I have.

12 Q And have you read any literature concerning capital
13 punishment?

14 A Years ago, I did.

15 Q And have you formed any fixed opinions in regard
16 to capital punishment?

17 A At present, not.

18 Q Are you opposed to capital punishment, in general?

19 A No, I am not.

20 Q Do you feel that under certain circumstances capital
21 punishment is appropriate?

22 A Under certain circumstances, yes.

23 Q In other words, what you are saying is that you
24 would have to hear the evidence in this case, to determine
25 what the proper penalty in this case would be, if that issue
26 is, in fact, submitted to you; is that correct?

27 A That's correct.

28 Q Now, we talked about the very difficult function of

1 an alternate juror, perhaps it is more difficult than being
2 a regular member of the panel because you are going to be asked
3 to do two things; one, you have to pay full attention to all
4 of the evidence just as the regular jurors do, but you also
5 have to keep in mind that, well, "Maybe I won't have to make
6 that final judgment and, therefore, I won't pay quite as close
7 attention to the evidence."

8 I take it that you understand that there is a
9 possibility and this is why we are choosing three alternates,
10 that someone may be excused for some valid reason and,
11 accordingly, you may be called to fill that vacancy and make
12 that final judgment.

13 Isn't that correct?

14 A That is true.

15 Q So we would want you, if selected as an alternate,
16 in performance of your obligations and duties to pay full and
17 complete attention and give us your undivided attention to all
18 of the issues in this case.

19 Will you do that?

20 A I certainly would.

21 Q And you do appreciate the distinction, do you not,
22 between saying, "Well, I believe that capital punishment is
23 appropriate in some circumstances, but let somebody else vote
24 the death penalty," on the one hand and, on the other hand,
25 saying, "My gosh, they are asking me to personally participate
26 in a death penalty verdict."

27 You understand in the latter situation becoming
28 more meaningfully involved; isn't that right?

1 A Yes.

2 Q You heard my questions of the other prospective
3 members of the jury panel in regards to whether or not they
4 could personally participate in a death penalty verdict, did
5 you not?

6 A Yes.

7 Q And you certainly understand by now the principle
8 that it takes 12 unanimous votes in order to secure a death
9 penalty in this case; isn't that right?

10 A Yes.

11 Q So, in a very real sense, you would agree with me,
12 would you not, that you are sitting as a jury of one as to the
13 proper penalty in this case if that penalty is submitted to
14 you; isn't that right?

15 A That's correct.

16 Q And you certainly can't say, "Well, 11 others on the
17 panel voted for death, I might as well go along with them, it
18 is their responsibility, not mine."

19 You understand you can't do that?

20 A Yes.

21 Q And if you were to vote for the death penalty along
22 with 11 others there would be a return of a death penalty
23 verdict and you would have to live with that judgment for the
24 rest of your life; isn't that right?

25 A That is true.

26 Q And now going on to the situation that I have posed
27 to the other prospective members of the panel; namely, you have
28 heard all of the evidence in the guilt phase and the jury has

1 returned a verdict of murder in the first degree and that is
2 based upon evidence that creates in all the jurors' minds
3 an abiding conviction to a moral certainty of the truth of the
4 charge.

5 Now you are in the penalty phase and, perhaps,
6 you have heard additional evidence, maybe in mitigation of the
7 offense, perhaps in aggravation of the offense, perhaps evidence
8 showing background and history of the defendant, what kind of
9 human being he is in the context of society and his relationship
10 to society as a constructive human being.

11 Now, after considering all of this evidence you
12 are back in the jury room and 11 jurors have cast their ballots
13 for death; you, yourself, in your sole and absolute discretion
14 believe this case warrants capital punishment.

15 How would you vote?

16 A If it warranted capital punishment, I would vote
17 for it.

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Q All right.

And you appreciate the fact, Mrs. McIntyre, that the law will give you no guideposts by which to determine which penalty is the proper penalty upon the return of a first degree murder verdict, you understand that?

A Yes.

Q So in other words, the only criterion you are going to use will be based upon your conscience and your heart and your good common sense and your judgment in determining what penalty should be meted out in this case, isn't that right?

A That's right.

Q Now, can you envision, without telling me such circumstances, circumstances in which you, yourself, could personally participate in a death penalty verdict? Can you envision those in your mind?

A I believe I could.

Q All right.

I daresay that would be an awfully difficult task for you to perform, isn't that correct?

A It would be, but I believe I can.

Q All right.

In other words, if in your conscience and your sole and absolute discretion this case warranted the death penalty you would have the courage to vote that conscience and to come back in the seat where you are sitting and tell the court in full view of the defendant that Mr. Grogan is sentenced to death, is that correct?

MR. WEEDMAN: Excuse me, your Honor.

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1 I object to counsel's use of the word "courage."
2 I think that throws a gauntlet down somewhat. I don't think
3 that is properly here, the word courage.

4 MR. KATZ: Courage of one's conscience, your Honor. The
5 integrity to vote one's conscience. I don't think a gauntlet
6 is being thrown to indicate it doesn't take courage to vote
7 that kind of a verdict.

8 MR. WEEDMAN: I object to counsel's making that kind of
9 a comment and move that the jury be instructed to disregard it.

10 THE COURT: Well, give me the question, please.

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

13 "In other words, if in your conscience
14 and your sole and absolute discretion this
15 case warranted the death penalty you would
16 have the courage to vote that conscience and
17 to come back in the seat where you are sitting
18 and tell the court in full view of the defendant
19 that Mr. Grogan is sentenced to death, is that
20 correct?"

21 THE COURT: Well, the last part should go out in my
22 opinion.

23 Read the question again, please.

24 (The record was read by the reporter
25 as follows:

26 "0 In other words, if in your
27 conscience and your sole and absolute
28 discretion this case warranted the death

3-3

1 penalty" --

2 THE COURT: Put a period right there for a minute.

3 There should be an injection there to the effect
4 "this case in your judgment, the People's case, or the People
5 have established, that in your judgment the People have
6 established a case to a moral certainty and beyond a reasonable
7 doubt, and in parallel or in connection with the law as the
8 court has read it to you."

9 Now, try the rest of the question if you will.
10 The balance.

11 What I am getting at Mr. Katz --

12 MR. KATZ: Yes, your Honor.

13 THE COURT: -- is the fact coming back into court, facing
14 people is immaterial. The question is "Can you, in good
15 conscience, if the People have sustained a case to a moral
16 certainty and beyond a reasonable doubt and laced up or
17 paralleled, or in connection, in accordance with the law as
18 stated to you, you make a finding of guilty" -- that's fine.
19 That's solid.

20 The question of coming back into court, would she
21 be embarrassed or disturbed, is immaterial. It is what she
22 does in the jury room. That is what I am getting at.

23 MR. KATZ: Your Honor, I accept very respectfully --

24 THE COURT: If you can remodel it, you can get your
25 question in there.

26 MR. KATZ: My only point was this, your Honor, obviously
27 the jury panel is required to return to the courtroom and
28 in full view of the defendant they must be polled, and each

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1 one must say "This is my verdict."

2 THE COURT: Yes, but the rest is surplusage.

3 MR. KATZ: Yes, I will rephrase it.

4 THE COURT: You are adding little flowers, or surplusage
5 to it. You can get your point in and leave out the surplusage.

6 MR. KATZ: Yes. Thank you.

7 THE COURT: All right.

8 Q BY MR. KATZ: Mrs. McIntyre, I will come back over
9 here if I may.

10 Excuse me, your Honor, if my back is towards you at
11 this time.

12 THE COURT: It is all right.

13 Q BY MR. KATZ: You understand that assuming you vote
14 a verdict of death you would be required to come back to this
15 courtroom, and you would have to indicate, along with the
16 foreman, what your verdict is. You would be polled.

17 For example, if it was one of death, "Is this your
18 verdict?" You have to say yes, individually, "That is my
19 verdict."

20 That would be done so in full view of the defendant.

21 Now, there are some people who feel that this in
22 and of itself would be such a traumatic experience that they
23 would be unwilling to vote the death penalty, even though in
24 their own heart and in their mind and their conscience they
25 felt that was the proper verdict.

26 You understand what I am saying?

27 A Yes.

3A.

Q What I am asking you now is let's assume after hearing all the evidence in this case, again I think his Honor is very correct in injecting the following observation: it assumes you have already returned a verdict of murder in the first degree based upon evidence which creates in your mind an abiding conviction to a moral certainty of the truth of the charge. You have heard perhaps some additional evidence. You have now considered all of the evidence in this case. You have heard argument of counsel. You are back in the jury room.

You feel in your own sole and absolute discretion this case warrants the death penalty. Could you vote the death penalty?

A Yes.

Q Do you think if you were sitting or standing, as the case may be, as the prosecutor in this case and you wanted to have 12 jurors who can impartially determine the penalty in this case, if that issue is submitted to the jury, would you be willing to have 12 jurors in your present frame of mind?

A Yes.

Q And do you believe, ma'am, that it is impossible to hide or secrete a body so it can never be found?

MR. WEEDMAN: That is asking the witness to prejudge the evidence in some respects. I will object to that, your Honor.

MR. KATZ: If your Honor please --

THE COURT: Read the question, please.

(The record was read by the reporter as follows)

1 "Q And do you believe, ma'am, that
2 it is impossible to hide or secrete a body
3 so it can never be found?"

4 THE COURT: I think it is immaterial. The question is
5 what is the testimony, what will the testimony in this case
6 produce, not what she believes. What her beliefs are, are
7 only based on past factual structures or circumstances. The
8 question is what is going to be produced in this trial.

9 MR. KATZ: I think it is a fair assessment. I will reframe
10 it.

11 THE COURT: Thank you very much.

12 MR. KATZ: I appreciate the court's observation.

13 THE COURT: Thank you very much.

14 Q BY MR. KATZ: Mrs. McIntyre, you understand in
15 this case as his Honor told you at the outset the People will
16 not attempt to produce the body or any parts thereof, any photo-
17 graphs of the body, any eyewitness to the killing or any eye-
18 witness to having observed the body in death; do you understand
19 that?
20

21 A Yes.

22 Q The People will attempt to prove the defendant's
23 guilt beyond a reasonable doubt and to a moral certainty based
24 wholly upon circumstantial evidence; do you understand that?

25 A Yes.

26 Q Now, assuming for a moment that we prove the defen-
27 dant's guilt to your satisfaction as required by law, namely,
28 proof beyond a reasonable doubt and to a moral certainty based
 wholly upon circumstantial evidence, would you refuse to vote

1 guilty because we did not produce an eyewitness to the
2 killing or indeed the body or any parts thereof?

3 A No.

4 Q All right.

5 I take it you would not require the People to
6 produce the body or any parts thereof or an eyewitness to the
7 killing before voting guilty if we proved our case beyond a
8 reasonable doubt and to a moral certainty based upon circum-
9 stantial evidence; is that correct?

10 A Yes.

11 MR. WEEDMAN: Excuse me, your Honor. I will object to the
12 question on the ground that again it is asking this prospective
13 juror to prejudge the evidence.

14 THE COURT: Well, now, let's have the statement.

15 MR. WEEDMAN: If I may add, then, your Honor, for the
16 record as ground for the objection it seems to be saying to
17 the juror that merely because the People don't produce a body,
18 that that is sufficient showing. And of course obviously it
19 wouldn't be.

20 THE COURT: I see.

21 Now, let me have the question.

22 (The question was read by the reporter
23 as follows:

24 "Q I take it you would not require the
25 People to produce the body or any parts thereof
26 or an eyewitness to the killing before voting
27 guilty if we proved our case beyond a reasonable
28 doubt and to a moral certainty based upon

1 circumstantial evidence, is that correct?"

2 THE COURT: It is a proper question. The answer may
3 stand.

4-1

1 Q BY MR. KATZ: And your answer is no, you would not;
2 is that correct?

3 A That's right.

4 Q And do you have any quarrel with the rule of law
5 which permits a man to be convicted of murder in the first
6 degree based only on circumstantial evidence?

7 A No.

8 Q I notice that you gave it a lot of thought. Is
9 there any doubt in your mind that you would be willing to apply
10 the instructions of circumstantial evidence which his Honor
11 will give you at the conclusion of the case to the facts as
12 you find them to be?

13 A If the circumstantial evidence were effectual, I
14 could; I could vote yes.

15 Q All right, Mrs. McIntyre.

16 Did you hear my example that I gave concerning the
17 little boy and the cookie?

18 A Yes.

19 Q Did you feel it was a reasonable inference the
20 mother drew, based on the circumstances before her that the
21 child had taken the cookie without permission?

22 A I thought it was reasonable, but still it was
23 possible that the sister had taken the cookie and given it to
24 the little boy.

25 Q Now, you notice in my hypo there was nothing to
26 indicate other than the statement of --

27 A Yes.

28 Q -- Johnny that he saw his sister take the cookie?

29 A Yes.

4-2

1 Q And you noticed further in my hypo that the
2 circumstances upon which the mother acted consisted of the
3 following: there were cookie crumbs along the face and mouth,
4 there was jelly that was used in the making of the cookies, the
5 baking of the cookies, and it was around his fingertips and
6 underneath his fingernails, there were more cookie crumbs; and
7 I want to add another fact with respect to the little girl.
8 The little girl had nothing in her hands, no cookie crumbs,
9 no remnants of jelly, nothing at all in her mouth; she was just
10 as clean and bright as could be, and we have this situation
11 where Johnny says, "I didn't take the cookie, Jane took it,
12 my sister."

13 Now, do you think it is an unreasonable inference
14 under those circumstances to say that Johnny took the cookie?

15 A No, it is not unreasonable.

16 Q All right.

17 Do you feel there is a reasonable inference from
18 those facts to say that Jane took the cookie?

19 A A reasonable inference?

20 Q Yes, a reasonable inference.

21 A A reasonable inference.

22 Q Do you believe that?

23 A I believe it is.

24 Q Do you believe that any time somebody says, "I saw
25 somebody do something," that that automatically dignifies it so
26 that you are obliged to accept it?

27 A No, not necessarily.

28 Q Do you understand that you, as a trier of fact,

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1 will be the sole and exclusive judge of what the evidence in
2 the case is? Do you understand that?

3 A Yes.

4 Q All right; so that when a witness gets right here on
5 the witness stand and testifies you are not obliged to accept
6 that testimony unless it meets with the objective evidence that
7 you are able to subject it to in your fair and impartial
8 evaluation of all the evidence in this case; isn't that right?

9 A That's right.

10 Q And you will have to weigh the credibility, that's
11 part of your decision-making process; you will have to weigh
12 the credibility of each and every witness who takes the stand;
13 is that right?

14 A Yes.

15 Q You will have to determine whether or not the
16 witnesses are telling the truth, whether by reason of their
17 testimony and by reason of the physical evidence presented in
18 the case the People have proven their case; is that right?

19 A That is correct.

20 Q Now, for example, if the defendant takes the stand
21 and he testifies, "I didn't do it," you understand your obliga-
22 tion beyond merely saying, "Well, he said, 'I didn't do it,'" ^{Ques}
23 you have to evaluate his testimony in the light of the objective
24 evidence, don't you?

25 A Yes.

26 Q And I am sure that you would want to assess his
27 credibility by the same standards in determining what weight,
28 if any, to give his testimony as you would any witness who takes

1 the stand; isn't that right?

2 A That's correct.

3 Q So you are going to look beyond the mere statement
4 of some witness who said, "I saw somebody do something"; isn't
5 that right?

6 A Yes.

7 Q You would want to weigh that evidence in light of
8 all the objective evidence; is that correct?

9 A Yes.

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

11 Pass for cause.

12 THE COURT: Pass for cause?

13 MR. KATZ: Yes.

14 THE COURT: Now, let's see, gentlemen --

15 MR. KATZ: Defense.

16 THE COURT: Defendant?

17 MR. WEEDMAN: I have the People.

18 THE CLERK: I have the People.

19 MR. KATZ: Thank and excuse Mrs. McIntyre.

20 THE COURT: I believe you are excused. Thank you very
21 much.

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The 4a

1 THE CLERK: Being called as prospective alternate juror
2 No. 3, please, Stanley G. Collins, C-o-l-l-i-n-s.

3
4 STANLEY G. COLLINS

5 BY THE COURT:

6 Q Now, have you heard everything I have said to the
7 jurors since you were sent in with the last grouping of jurors
8 from the assembly room?

9 A Yes, sir.

10 Q Did you hear 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 accepted,
14 sworn to try this case in the capacity of an alternate juror;
15 then during the course of the trial, for some reason, under the
16 power of the court, I have placed you in the jury box in lieu
17 of one of the jurors there so you then become a full-fledged
18 juror.

19 Now, let's assume the case is tried and you go to
20 the jury room to decide the case. Now, the first thing, the
21 jury could make a finding of guilty or not guilty. If they find
22 the defendant not guilty the case is fully concluded; and if
23 they find the defendant guilty, then they set the degree, second
24 degree murder or first degree murder.

25 If the jury makes a finding of second degree murder,
26 there is no further action by the jury, they are excused.

27 If the jury makes a finding of first degree murder,
28 then the court holds a penalty hearing and at the conclusion of

1 the penalty hearing, again, the jury goes back into the jury
2 room and decides on penalty, either the death penalty or life
3 imprisonment.

4 Now, let's say you are in the jury room deciding
5 on penalty, either the death penalty or life imprisonment and
6 I will ask you this question: at that time would you auto-
7 matically vote against the imposition of the death penalty
8 without regard to any evidence that might be developed at the
9 trial of this case?

10 A No, sir.

11 Q Now, I will ask you if you feel that you could be
12 absolutely fair and impartial to both the People and the
13 defendant if you are accepted as a juror in this case?

14 A I don't know whether I answered that other one
15 right, but I do not believe in the death penalty at all.

16 Q Well --

17 A And never will.

18 Q I am trying to see, to get that in a minute --

19 A I thought you did it by the prior question.

20 Q Let me get the yes or no.

21 Would you automatically vote against the death
22 penalty?

23 A Yes, sir.

24 Q The answer is you would vote automatically against
25 the death penalty?

26 A Yes, sir.

27 Q I am not criticizing you, I am trying to get it
28 straight.

1 That's correct?

2 A That's correct.

3 Q Now, I will ask you this question, which sustains
4 your thinking; is there any question in your mind at all that
5 you would consistently vote against the death penalty no
6 matter what the testimony --

7 A Yes, sir.

8 Q -- or evidence produced?

9 A Yes.

10 THE COURT: Now may I excuse this gentleman, juror 3?

11 MR. KATZ: Yes, your Honor.

12 THE COURT: Wait a minute. I want to see what the defendant
13 says.

14 MR. WEEDMAN: I am sorry, I was conferring with my client;
15 forgive me.

16 THE COURT: The juror has said that --

17 MR. WEEDMAN: In that connection I will stipulate; yes,
18 indeed, your Honor, you may excuse him.

19 THE COURT: May I excuse him?

20 MR. KATZ: Yes, your Honor.

21 MR. WEEDMAN: Yes, your Honor.

22 THE COURT: I will excuse you, and I make a finding that
23 under the Witherapoon case as well as the sections of the
24 Penal Code, Section 1073 and 4, cause has been sustained and
25 the juror properly excused -- sections 2 and 8 of the
26 respective sections.

27 All right, call another juror.

28 THE CLERK: Mrs. Marion W. Kintner, K-i-n-t-n-e-r.

MARION W. KINTNER

BY THE COURT:

Q Now, lady, have you heard everything I have said since you came with the last complement or grouping of jurors from the assembly room?

A Yes, I have.

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

A Yes, sir, I have.

Q Let's assume you are selected as an alternate juror and during the course of the trial you are made a regular juror and that after the trial of the case you, with the other 11 jurors, go to the jury room to decide the question of guilty or not guilty.

Now, at that time the jury could make a finding of not guilty and that would conclude the case entirely. The jury could make a finding of guilty and set the degree which must be either second degree murder or first degree murder. If the jury sets the degree of second degree murder there is no further duty from the jury.

If the jury sets a degree as guilty of murder first degree, then there is a penalty hearing held and after the penalty hearing the jury goes back into the jury room and makes a finding on penalty, either the death penalty or life imprisonment.

Now, let's assume you are voting on the question of penalty at that time. I will ask you this question: at that time would you automatically vote against the imposition

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

3 A No.

4 Q All right.

5 Now I will ask you this question, could you be
6 fair -- could you and would you be fair, absolutely fair
7 and impartial in trying this case as a juror?

8 What is your answer to that?

9 A I think so.

10 Q Do you know of any reason at all that might arise
11 during the trial of this case that could upset you or disturb
12 you so that you could not be fair and absolutely impartial
13 between the People and the defendant and keep your mind
14 an even basis, with an open mind?

15 A No, sir, I do not.

16 THE COURT: Thank you.

17 Now the defendant may inquire.

18 MR. WEEDMAN: Thank you, your Honor.

19 Q Mrs. Kintner, are you employed?

20 A Yes, I am.

21 Q And may I ask where?

22 A I work for Pacific Telephone Company.

23 Q And is there a Mr. Kintner?

24 A No more.

25 Q It is anticipated this trial may last another
26 couple of months; would that cause you any personal hardship,
27 Mrs. Kintner?

28 A No, sir.

1 Q With respect to the death penalty, if following
2 due deliberation by the jurors and you are certainly convinced
3 beyond a reasonable doubt and to a moral certainty that my
4 client has committed murder of the first degree, do you feel
5 in the penalty phase that you would automatically impose the
6 death penalty without regard to other evidence in the case?

7 A No, sir.

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1 Q How do you feel about the death penalty, do you
2 have a preference for it or do you feel neutral about it, or
3 what?

4 A Well, I don't have a preference for it, naturally.

5 Q All right.

6 Well, I stated that rather awkwardly. Usually it
7 is cast in terms of either opposing the death penalty or favor-
8 ing the death penalty.

9 Do you have any feelings in terms of those words?

10 A There could be circumstances when it might be
11 necessary.

12 Q In other words, you feel that in an appropriate
13 case you could join with your fellow jurors in imposing the
14 death penalty; that is, in fairness to the People's position
15 here?

16 A Yes.

17 Q And if you don't feel the case is appropriate for
18 the death penalty, then, obviously, you are not going to vote
19 for the death penalty?

20 A That's right.

21 Q Do you have any friends or relatives in law
22 enforcement?

23 A No, I don't.

24 Q Is there anything about the testimony of police
25 officers that you think deserves some special consideration
26 merely because they are police officers?

27 A No, sir.

28 Q You understand that during the course of this

4b-2 1 trial it will be the function of myself as well as Mr. Katz to
2 cross-examine witnesses who are produced by the other side.

3 A Yes.

4 Q And will you not, as a good juror, will you not
5 merely accept whatever you hear from the stand uncritically --
6 in other words, will you realize that -- will you realize that
7 you really should not accept a statement from the witness stand
8 merely because someone says it, without some critical analysis?

9 A That's right.

10 Q Will you be prepared to do that?

11 A I would.

12 Q Would you also particularly wait until you hear
13 cross-examination of a witness before you even begin to decide--

14 A I would.

15 Q -- if that witness is, number one, telling the
16 truth and, number two, if the story is really material and
17 relevant, and so on here?

18 A Yes, sir, I will.

19 Q Do you feel that merely because my client has been
20 charged with such a terrible crime and because the prosecutor
21 is asking for the death penalty that somehow he is more apt to
22 be guilty than not guilty?

23 A No, sir, I do not.

24 Q So, as you sit there now, you, like the other jurors,
25 are going to wait until you hear the evidence?

26 A That's right.

27 Q I take it if the People have a case, fine; if they
28 don't have a case -- that is to say, if they don't convince you

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1 to a moral certainty and beyond a reasonable doubt -- I take
2 it you will unhesitatingly acquit my client?

3 A That's right.

4 Q And that, I take it, is true despite the fact that
5 the evidence may show that my client was at one time associated
6 with or a member of the so-called Charles Manson family?

7 A That's right.

8 Q You are not going to use that to prejudice you
9 against my client in connection with this case, are you?

10 A No, sir.

11 MR. WEEDMAN: Pass for cause.

12 Thank you, ma'am.

13 THE COURT: Thank you.

14 People?

15 BY MR. KATZ:

16 Q Mrs. Kintner, have you, yourself, asked yourself
17 the question whether or not you could personally participate
18 in a death penalty verdict?

19 A Yes, I have.

20 Q How did you answer that?

21 A That I could if I felt it was the right thing to
22 do and the evidence warranted.

23 Q That's all we can ask of any juror, isn't it?

24 A I think so.

25 Q In other words, all we want, and I say this on
26 behalf of Mr. Weedman and myself, though sometimes we kid about
27 it, will be jurors who can be open and fair as to all of the
28 issues with which we will be confronted during the course of

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1 the trial; isn't that fair enough?

2 A That's right.

3 Q And if you were in my position as a prosecutor in
4 this case and assuming that there was a return of a first
5 degree murder verdict and you wanted jurors who had a complete
6 and open mind as to a proper penalty in this case, would you
7 want 12 jurors of your same frame of mind?

8 A I would hope so.

9 Q In other words, you are not precommitted at this
10 time in favor of life on the one hand or death on the other
11 hand as you sit here now; is that right?

12 A I am not.

13 Q You heard my discussion concerning circumstantial
14 evidence, did you not?

15 A Yes.

16 Q Now, there are some people that feel, "My gosh, the
17 People are asking for a conviction based upon circumstantial
18 evidence."

19 Is that your kind of thinking?

20 A Would you restate, please?

5

5-1 1 Q Therefore, some people are concerned with the fact
2 that the People are asking for a conviction based wholly on
3 circumstantial evidence. Does that bother you or disturb you?
4 Are you that kind of person?

5 A No.

6 Q All right.

7 I take it you recognize that you draw inferences
8 from facts that are proven to you in your everyday life, isn't
9 that correct?

10 A That's right.

11 Q You make some decisions that are made and based
12 upon evidence which is presented to you, isn't that right?

13 A That's right.

14 Q I take it that you would not hesitate in this case
15 to draw reasonable inferences -- I underscore reasonable
16 inferences -- from facts which are proven to you, is that
17 right?

18 A That's right.

19 Q And would you, if convinced beyond a reasonable
20 doubt and to a moral certainty based wholly on circumstantial
21 evidence, vote guilty despite the fact we did not produce a
22 body or an eyewitness to the killing?

23 A Yes.

24 Q All right.

25 I take it then you would not require the People to
26 produce an eyewitness to the killing or the body or any parts
27 thereof, or an eyewitness to having observed the body in death
28 so long as -- and I underscore this -- so long as we prove by

1 circumstantial evidence the guilt of the defendant which is in
2 law an abiding conviction to a moral certainty of the truth of
3 the charge; is that correct?

4 A That's correct.

5 Q I take it you have no quarrel with the law which
6 permits a man to be convicted of first degree murder based
7 wholly upon circumstantial evidence, is that correct?

8 A That's correct.

9 Q And does it offend your sense of morals or justice
10 to know that a man could indeed be sentenced to death based
11 wholly upon circumstantial evidence?

12 A No.

13 Q All right.

14 And I take it that as you sit here now you have an
15 open mind and you will not judge the cover of Mr. Grogan but
16 rather you will judge him by the inner guts or workings as
17 shown by the evidence in this case, is that correct?

18 A That is right.

19 Q Any reason why you couldn't be fair and impartial
20 to both sides?

21 A I don't believe so.

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

23 Pass for cause.

24 THE COURT: Pass for cause?

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

26 THE COURT: All right.

27 Now, let's see where we are, gentlemen.

28 (Short pause.)

1 MR. WEEDMAN: We will thank and excuse Mrs. York.

2 THE COURT: All right.

3 THE CLERK: Mrs. Anna R. Manz, M-a-n-z.

4
5 ANNA R. MANZ

6 BY THE COURT:

7 Q Now, lady, you came in with the last assortment of
8 jurors, did you not?

9 A Yes, sir.

10 Q Have you heard everything I have said since you
11 have been in the courtroom?

12 A Yes.

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

15 A Yes.

16 Q Now, let's assume you are selected as an alternate
17 juror, during the course of the trial that you are placed or
18 made a regular juror. The case is tried and the case goes to
19 the jury for decision.

20
21 Now, at that time you with the other jurors would
22 bring in a verdict of either guilty or not guilty. If you
23 bring in a verdict of not guilty the case is fully concluded.

24 If you bring, the jury brings in a verdict of
25 guilty then they must set the degree, first degree or second
26 degree murder.

27 If the jury sets the degree guilty second degree
28 murder then there is no further action by the jury.

If the jury sets the degree first degree murder

1 then there is a penalty hearing held and at the expiration of
2 the penalty hearing the jury goes back into the jury room and
3 determines the question of penalty, either life imprisonment
4 or the death penalty.

5 That is up to the jury. Now, let's assume that you
6 are deciding the question of penalty. I will ask you this
7 question. At that time would you automatically vote against
8 the imposition of the death penalty without regard to any evi-
9 dence that might be developed at the trial of this case?

10 A Yes, sir.

11 Q The answer is yes?

12 A Yes.

13 Q And I will ask you this. Is there any question at
14 all in your mind that you would vote automatically against the
15 death penalty, no matter what the testimony or evidence was?

16 A No.

17 THE COURT: May I excuse this juror, gentlemen?

18 MR. KATZ: Yes, your Honor.

19 MR. WEEDMAN: Yes, your Honor.

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

21 And I make a finding that cause exists for the
22 excusing of the juror under sections 1073 and 4 of the Penal
23 code and the Witherspoon case.

24 Now, gentlemen, where are we here?

25 MR. WEEDMAN: I wonder if we might approach the bench.

26 THE COURT: Yes, certainly. Step up.

27 (Conference in chambers with both counsel
28 and the defendant present not reported.)

(The following proceedings were had
in open court:)

THE COURT: Now, let me say we are back in the courtroom,
ladies and gentlemen.

We are short of jurors, as you can see. And this
gentleman who is left, being the last juror here, the law says
that in picking jurors the names will be put in the box and
the clerk shakes the box and pulls out a name.

So you don't know who you are pulling out. That is
to say, it is taken at random from the box, and when you get
to the last juror there is no assortment of jurors left. You
take the gentleman.

And he may be a very fine man. I am not saying
that. I am just saying what the law says. There is no
assortment. There is no abstracting of the name from the
culmination of jurors.

So I am going to call for some more jurors, and
this gentleman's name will be put right back with the rest of
them.

We will take a short recess and proceed in a few
minutes.

Now, remember, do not talk about, do not discuss
the case or come to any opinion or conclusion.

We will recess and proceed in a few minutes. Thank
you.

(Recess.)

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1 THE COURT: All right, gentlemen, let's see where we
2 are.

3 Calling the case of People against Steve Grogan,
4 the defendant is here; counsel for defendant is here; People's
5 counsel is here; all jurors are in the jury box, plus two
6 alternates.

7 Now, if you will, please, swear these new jurors
8 to answer the questions.

9 THE CLERK: Would the new prospective jurors stand and
10 raise your right hands to be sworn.

11 (The prospective jury panel was sworn.)

12 THE COURT: All right, now we will call a juror.

13 THE CLERK: Being called as prospective alternate juror
14 No. 2 --

15 MR. WEEDMAN: Excuse me, your Honor; before that is done,
16 may we please approach the bench with the reporter, your Honor.

17 THE COURT: Do you want the reporter?

18 MR. WEEDMAN: Yes, please.

19 (The following proceedings were held
20 in chambers, both counsel and the
21 defendant present:)

22 THE COURT: Now we are in chambers; defendant is here,
23 counsel are here.

24 Go ahead, gentlemen.

25 MR. WEEDMAN: Your Honor, just during the break Mrs. Emanuel,
26 who is juror No. 6, spoke to Mr. Katz. It was an unsolicited
27 remark on her part to Mr. Katz --

28 THE COURT: During this recess we just had?

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1 MR. WEEDMAN: Yes, just perhaps not two minutes ago;
2 and I overheard her say to Mr. Katz, and again I want to
3 emphasize that this was not solicited by Mr. Katz at all --

4 THE COURT: Yes.

5 MR. WEEDMAN: He wasn't even looking at her and she
6 tried to engage him in conversation; but I overheard Mrs.
7 Emanuel say, "Do you know Maurice Oppenheim?"

8 She said something to the effect that, "I learned
9 he is out here now and he went to school with my son."

10 Now, Maurice Oppenheim, to the best of my
11 knowledge, is a member of the district attorney's --

12 THE COURT: He is a deputy district attorney; he has
13 a wife that is in there --

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

15 THE COURT: I think that's correct.

16 MR. WEEDMAN: This being the case, I think Mrs. Emanuel
17 has misled us with respect to our questioning with respect
18 to whether, inadvertently or otherwise, with respect to friends
19 or relatives in law enforcement.

20 She indicated, of course, that she had a boy who
21 was on, I believe, the Pittsburgh Police Department, but
22 she didn't go beyond that point so certainly the question was
23 asked of her and she had to give it some thought.

24 I respectfully submit that we -- and I do now
25 make the request -- that we reopen the examination of
26 Mrs. Emanuel for cause in this case, your Honor.

27 MR. KATZ: Well, your Honor, I would wholeheartedly object.

28 First of all, there was no question that was

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1 directly designed to elicit the kind of response Mr. Weedman
2 apparently contemplates; that is, namely, that she knew
3 somebody in the district attorney's office, because it is not
4 clear to the lay person that, first of all, people who are
5 associated with the district attorney's office are, indeed,
6 members of a law enforcement agency.

7 Secondly, the comment that Mr. Weedman referred
8 to by Mrs. Emanuel was substantially correct; but I will add
9 an additional observation; she said, "I didn't know that he
10 was with the district attorney's office," indicating that
11 she had apparently no knowledge that Mr. Oppenheim was with
12 the district attorney's office, apparently, at the time of
13 the questioning; and that is probably why it was not brought
14 up, assuming she understood the question to encompass members
15 of the district attorney's office as being part of law enforce-
16 ment people.

17 In any event, I think that there is no basis
18 for a challenge for cause here and I think that to reopen
19 this issue at this time would do nothing but to unduly
20 embarrass and harass this juror and I would be most whole-
21 heartedly opposed to that, your Honor.

22 I think she indicated she could be fair and
23 impartial and I think your Honor was satisfied with regard
24 to the questioning in regard to cause.

25 MR. WEEDMAN: Your Honor, I agree that we don't have
26 a record for cause; that is why I am suggesting on the basis
27 of what I have heard and what Mr. Katz substantiated, we
28 be permitted to reopen for cause as far as Mrs. Emanuel is

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1 concerned. I regret the necessity --

2 THE COURT: I am inclined to rule against you.

3 I tell you, I think -- I don't think there is a
4 for cause.

5 You see, I am not demeaning your concern at all,
6 either, Mr. Weedman; but for the court to attempt to refine
7 a situation down, "Do you know this?" or "Do you know that
8 or have you heard of this man or heard of that?" it leads
9 to an endless ramification that almost anything that can come
10 up.

11 For instance, I have it a great deal where a juror
12 will be on a jury right out here and will make the statement --
13 I don't know just how it brings it up, but it has happened --
14 a juror will say, "Yes, I know the deputy district attorney
15 so and so, Mr. so and so"; it happens all the time.

16 When finally the information -- when the juror is
17 interrogated or asked, why, it will appear that that juror
18 was on a jury or even in the back of the room and that
19 particular district attorney was trying a case.

20 It doesn't necessarily -- I don't think it
21 necessarily at all goes to the prejudice. She was very
22 cautiously interviewed by both counsel on the question of
23 for cause.

24 I am inclined to deny the request.

7-1

1 MR. WEEDMAN: Well, your Honor, I just want to make it
2 clear that Mrs. Emanuel indicated that her boy, her son, went
3 to school with Maurice Oppenheim.

4 Now, that to me is a substantial indication of a
5 close relationship between Mr. Oppenheim and Mrs. Emanuel's
6 family.

7 I asked her the question quite pointedly with
8 respect to friends and relatives in law enforcement and she
9 answered the question by indicating that her son was a police
10 officer out of state.

11 That we are concerned about friends in the district
12 attorney's office should be clear from our questioning of Mrs.
13 Emanuel. You might recall Mrs. Thale was a sister-in-law to
14 Mel Thale in the district attorney's office, and indeed your
15 Honor saw fit to excuse her for cause because of that familial
16 relationship.

17 I feel it is such a vital matter. Mr. Katz just
18 a moment ago said that this juror, Mrs. Emanuel, seemed to
19 indicate that she didn't know that Mr. Oppenheim was in the
20 district attorney's office. Now, that was not my understanding
21 of her remark, casual as it was, to Mr. Katz. Why would she be
22 talking to Mr. Katz about Maurice Oppenheim unless she had
23 some reason to believe that Mr. Oppenheim was in the district
24 attorney's office?

25 There would be no reason for her to direct such
26 remarks to Mr. Katz.

27 MR. KATZ: As a matter of fact, Mr. Weedman, you recall
28 she said in the very statement that she made to me that she

1 didn't know that Mr. Oppenheim had moved to California. So I
2 think that in itself is self-explanatory.

3 Again, Mr. Weedman was very kind when he indicated
4 that I did not --

5 THE COURT: I am not in any way ruling or granting the
6 request. I pose a possible question which might or might not
7 be a solution to this problem.

8 Once the jury is sworn to try the case I am very
9 disturbed about reopening that basic jury.

10 MR. WEEDMAN: So am I, your Honor.

11 THE COURT: Wait a minute.

12 MR. WEEDMAN: I am sorry, your Honor.

13 THE COURT: I talk so slowly, and I think slowly as I go
14 along here.

15 MR. WEEDMAN: I am sorry, your Honor.

16 THE COURT: I am very hesitant to reopening the jury and
17 go back into for cause. It could be a very dangerous thing for
18 the trial court to do.

19 I am allowed great latitude under the Penal Code
20 once the jury is sworn, impaneled to try a case. The code
21 section says where the trial court feels that for -- would you
22 hand me the Penal Code, Frank.

23 THE CLERK: Surely.

24 THE COURT: Here it is.

25 THE CLERK: All right.

26 THE COURT: Now, 1089 of the Penal Code -- and speaking of
27 the alternate jurors and the powers of the court, it states
28 before, which would be right now because the jury has been sworn--

1 "Or after the final submission of the
2 case to the jury the juror dies or becomes ill
3 or" --

4 and here is what I am getting at --

5 "upon other good cause shown to the court is
6 found to be unable to perform his duty the
7 court may order him to be discharged and draw
8 the name of an alternate who shall then take
9 his place."

10 Now, my thinking is this. I think the power is
11 there for the court to just excuse this lady at this time and
12 draw one of our alternates.

13 MR. KATZ: Well, your Honor, may I be heard on this?

14 THE COURT: Yes.

15 MR. KATZ: I am deeply disturbed about it now. It was
16 one thing to excuse Mrs. Thale on the grounds that, though I
17 strenuously opposed such excusal, that she was related to
18 Mr. Thale through her sister-in-law and that Mr. Thale indeed
19 was a brother-in-law.

20 But in this case where there is no cause shown for
21 the court to do this, would be to totally disrupt the selection
22 of the jury and the process of selecting the jury and the
23 exercising of the peremptories that were predicated upon the
24 composition as it changed from time to time.

25 I think it would be to deny the People a fair trial
26 at this point and I would strenuously oppose this.

27 Now, if your Honor in exercising your broad
28 discretion wishes to question this juror out of the presence of

1 the other prospective members of the panel, including the other
2 11 who have been sworn, to ascertain in your own mind, the
3 court's own mind, that whatever relationship she has with
4 Mrs. Oppenheim is such that she could nevertheless be fair and
5 impartial in evaluating the evidence in this case or on the
6 other hand could not be fair and impartial because of such
7 relationship, I have no objection.

8 But there is an insufficient record, and I think the
9 court would be monumentally unfair to the People at this time.

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Tks 7a

1 THE COURT: Well, first of all there is a great deal in
2 what you say. However, the moment I start questioning or
3 interrogating this juror about this matter, problems are
4 immediately and automatically built up there by the fact that
5 continued interrogation is given to this woman.

6 You are starting to build up monuments, the moment
7 I interrogate this woman or anybody does. The question is
8 do I have the right?

9 If I have the right to do that, why fight a
10 mountain if you can move the mountain to one side or go around
11 the mountain? If I have the right then we are just fighting
12 shadows again because I can move right around that. There is
13 the point.

14 MR. KATZ: Your Honor, I appreciate your concern for
15 moving this trial ahead but at what a price? The price is
16 that the People themselves have very cautiously chosen the
17 12 members of the panel who they believe can be fair and
18 impartial on all issues. We are in a position now after
19 exercising some 17 peremptories to say we have our jury.

20 We want that jury, and we want Mrs. Emanuel. And
21 I think for you to take away that juror at this time would
22 be to deny us due process of law. I mean this respectfully,
23 believe me, I am not saying this disrespectfully, your Honor.

24 I just think if your Honor has any question in
25 your mind, you also have the power to permit Mr. Weedman
26 and indeed yourself could ask some limited questions in this
27 area.

28 THE COURT: I don't know. I am disturbed about

7a-2

1 interrogating this juror at this time. This is one of the
2 things I don't want to do.

3 You see, you can start to partialize, to create
4 prejudices and opinionate the juror the moment, after a juror
5 is sworn, you bring her in here and start to reinterrogate
6 her about her feelings or prerogatives or impartiality.
7 This is where your trouble starts.

8 If the court is going to move now is the time
9 to move, or don't move.

10 MR. KATZ: May I then ask your Honor, really when you
11 analyze this, there is nothing here that indicates a challenge
12 for cause, your Honor. I think you are merely sidestepping it
13 and moving the trial on because you have the ability to fill
14 that vacancy with alternates. I think that is not meeting
15 the issue head on. I think it has to be met head on.

16 Is there sufficient cause at this time to warrant
17 the excusal of that juror?

18 While the court has the inherent power, the court
19 should not abuse that power. I mean this respectfully. You
20 can't abuse it.

21 There has to be a basis for it. There has to be
22 cause for it. The People have relied on the fact that we were
23 able to secure a fair and impartial jury, and I am sure the
24 defendant has also relied on it. I think it is unfair, based
25 on the very skimpy record to say that this juror should be
26 excused at this time. I think the People would be denied a
27 fair trial.

28 MR. WEEDMAN: Your Honor, the very objection that Mr. Katz

But it is a matter of vital concern to my client.

UNRECORDED

The 7b

1 MR. KATZ: Your Honor is certainly aware of the fact
2 we have over 400 deputies in this office. As I said before,
3 I don't even know 70 percent of the deputies in this office.

4 As I indicated, we are the largest prosecution
5 agency in the world. It is a highly impersonal, indifferent
6 office in that regard. There is very little camaraderie
7 among the various members of the office as such except
8 within those immediate branches in which we find ourselves
9 working together.

10 I certainly don't work with Maury Oppenheim.
11 I know him to say hello to him. I don't exchange views with
12 him on the law, nor do I discuss any cases with Mrs.
13 Oppenheim, who is assigned to our appellate department which
14 is completely apart from the facility located at the Hall
15 of Justice. They are located downtown.

16 Again, your Honor, I just feel there is insuffi-
17 cient basis for excusing this juror for cause. I say there
18 is such ambiguity in the questioning and in the responses
19 thereto that one could conclude, A, that she did not believe
20 that any member of the district attorney's office is part of
21 a law enforcement agency and, too, that if she did there is
22 nothing to indicate that at the time that the question was
23 asked of her, that she knew that Maury Oppenheim was indeed
24 a member of the district attorney's office.

25 Because as she indicated in the unilateral,
26 unsolicited statement to me that she didn't know that Maury
27 Oppenheim had moved to California and joined the district
28 attorney's office here.

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1 MR. WEEDMAN: Well, of course, that statement from her,
2 of course, is ambiguous because it could equally mean --

3 THE COURT: I don't honestly think it goes to prejudice.
4 My thinking was to obviate the problems that can be obviated,
5 that's my thinking; not necessarily to fight, to hit the stone
6 wall and start pounding, but to step around.

7 But, I don't concede, I don't think, I actually
8 don't think there is a for cause in there.

9 MR. WEEDMAN: Your Honor, I agree with you --

10 THE COURT: To be honest about it.

11 It is a question of what can be done to obviate or
12 get away from a problem, to fight a problem if it can be
13 avoided. That's where we are better off; that's the thing.

14 MR. WEEDMAN: Your Honor, even though I began this matter
15 by indicating that we wanted to reopen and examine her for
16 cause, in line of your Honor's remarks I would respectfully
17 withdraw that particular request because I see now, as you have
18 indicated, what great problems that would cause and I would
19 now respectfully move that the court merely excuse her for
20 cause shown so as to sidestep a multitude of problems in the
21 proper selection of this jury, merely to put someone else in
22 the box and we'll have no complaint about it.

23 MR. KATZ: Indeed, if your Honor were to do that, there
24 being insufficient cause --

25 THE COURT: I am going to deny your request.

26 Now, theoretically we should have three alternates
27 to fill in there.

28 I deny your request, not necessarily with prejudice;

8-2

1 but I deny it at this time. I do think, and I could operate
2 under the code section as indicated if I think it is necessary,
3 I just honestly don't think there is a prejudice shown by the
4 juror.

5 On the other hand, I am disturbed about the problem
6 of the talking -- you are exonerated, Mr. Katz, from any
7 problems here.

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

9 THE COURT: I am not tying you in on my comments of the
10 juror. You are an innocent person here, let's get that
11 straight.

12 I don't think it indicates a prejudice, "Do you know
13 Mr. Oppenheim?"

14 It is an innocuous, innocent question that could
15 come -- not necessarily to prejudice one way -- you have got so
16 many D.A.'s there now, I think two or three hundred, I just
17 don't think it could show a prejudice.

18 But I am going to deny your request, without
19 prejudice, to a renewal; continue as we are and get our three
20 alternate jurors. That's as far as I will go at this time.

21 MR. WEEDMAN: Your Honor, then may, just for the record,
22 your Honor --

23 THE COURT: Yes, you make any objection you want.

24 MR. WEEDMAN: On behalf of my client -- it is such a
25 serious matter -- may I say this, and with all due respect,
26 certainly --

27 THE COURT: Go ahead.

28 MR. WEEDMAN: I would respectfully, your Honor, move for

1 a mistrial at this time on the ground that the juror, Mrs.
2 Emanuel, juror No. 6, who is presently sworn, failed to answer
3 counsel's question relative to friends and relations in law
4 enforcement, completely to the prejudice and loss of the
5 defendant; and that not to take appropriate steps to rectify
6 this at this time is a denial of due process to the defendant,
7 your Honor, and I believe that the jury, this entire panel, now,
8 should be discharged.

9 That is, a motion for a mistrial granted and jury
10 selection started anew.

11 THE COURT: Well, that motion I deny.

12 MR. WEEDMAN: Yes, your Honor.

13 THE COURT: And I want to make it clear, I want you and
14 the People to feel free at any time at all to come in these
15 chambers and make your objections and fully and completely.
16 There is no pressure on you, you have a right to do it, I want
17 you to do it; but I do deny your motion.

18 The excusing of the juror, I deny, but without
19 prejudice to renew.

20 I don't want to falsely encourage you that I am
21 going to do it, but it is denied without any prejudice. That
22 is the step we will take at this time.

23 MR. KATZ: Thank you, your Honor.

24 MR. WEEDMAN: Well, your Honor, it does place a burden on
25 me to renew the motion, for the record.

26 MR. KATZ: I will stipulate it is continuing.

27 THE COURT: I don't want to make it with prejudice --

28 MR. WEEDMAN: Could we stipulate it is a continuing --

1 THE COURT: -- but I do deny it at this time.

2 MR. KATZ: I will stipulate that Mr. Weedman's motion is
3 a continuing one throughout the trial.

4 THE COURT: All right.

5 MR. KATZ: Okay, Mr. Weedman?

6 MR. WEEDMAN: Yes, I appreciate that; that will save the
7 necessity for me bringing it up --

8 THE COURT: Constantly.

9 MR. WEEDMAN: -- constantly, just to protect the record.

10 THE COURT: Let's take that stipulation just to give you
11 protection.

12 MR. KATZ: I so stipulate, your Honor.

13 THE COURT: All right. Let's go ahead.

14 MR. WEEDMAN: Your Honor, just one thing further, in
15 spite of what I said a moment ago and in connection with my
16 motion, I left it rather vague to the kind of remedy that might
17 be utilized by the court in view of what I consider to be a
18 problem with respect to Mrs. Emanuel.

19 So, for the record, may I then renew my motion that
20 Mrs. Emanuel be reexamined for cause by the defendant, for the
21 grounds previously stated, that she has indicated to Mr. Katz
22 that her son went to school with one Maurice Oppenheim, a
23 member of the staff of the district attorney's office, your
24 Honor?

25 THE COURT: That, I deny.

26 That is denied; but I am not ruling out the
27 possibility of a transfer -- I don't want to falsely encourage
28 you, but I would hold open there is a possibility, and treat

1 it only as a possibility, I might, for cause, at a later time,
2 if I feel I am fully justified, I might -- or might not; I
3 rather weigh that I would not excuse her and pull in an
4 alternate -- that's why I say your stipulation protects you
5 there and covers you on that.

6 MR. WEEDMAN: Thank you, your Honor, and thank you,
7 Mr. Katz.

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(The following proceedings were had
in open court:)

THE COURT: All right, let's see where we are here,
gentlemen.

Now, People against Grogan, the defendant is
present here; both counsel are here, all jurors in the jury
box, plus the two alternates.

We will call another juror.

THE CLERK: Being called as prospective alternate juror
No. 2, please, Alvin G. Glover, G-l-o-v-e-r.

THE COURT: Now, ladies and gentlemen, and the new
alternate juror here, you are new to this courtroom here
and I am going to attempt to bring you up to date as to
the status of this case, the parties, some of the principles
involved, advise you of the nature of the charge that is
here for decision or will be for decision by the jury that
has been picked -- these 12 ladies and gentlemen are the
jurors in this case. We are in the process of picking the
alternate jurors.

So, when I talk to you, Mr. Juror, I am also
talking to all of these -- 1, 2, 3, 4, 5, about 10 or 11
people in the back -- all listen carefully, if you will.

This is a criminal case. It is a case of People
of the State of California versus Steve Grogan.

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

Thank you, you can be seated.

Is there anybody in the jury box -- anybody --

8a-2

1 excuse me, I am back here to this gentleman.

2
3 ALVIN G. GLOVER

4 BY THE COURT:

5 Q Do you know Mr. Grogan?

6 A No, I don't.

7 Q Now, Mr. Grogan is represented in this case by
8 Mr. Charles Weedman, this gentleman right here.

9 Thank you.

10 The People are being represented by the deputy
11 district attorney, Mr. Katz, this gentleman right here.

12 Thank you.

13 Do you know either of these two folks, Mr. Katz
14 or Mr. Weedman?

15 A No, I don't.

16 Q Now, the defendant is charged with the commission
17 of a crime through an indictment by the Grand Jury, and I will
18 read the charge that has been filed against the defendant:

19 "The said Steve Grogan is accused by
20 the Grand Jury of the County of Los Angeles,
21 State of California, by this indictment of
22 the crime of murder in violation of Section
23 187, Penal Code of California, a felony,
24 committed prior to the finding of this
25 indictment and as follows, that between the
26 16th day of August, 1969 and the 1st day of
27 September 1969, at and in the County of Los
28 Angeles, State of California, the said Steve

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1 Grogan did wilfully, unlawfully and
2 feloniously and with malice aforethought
3 murder one Donald Jerome (Shorty) Shea,
4 a human being."

5 Now, that is the charge that has been filed against
6 the defendant and on that charge the defendant was, on the
7 indictment by the Grand Jury, it was filed in superior court
8 and defendant thereafter appeared with counsel, was duly
9 arraigned, entered a plea of not guilty and the case
10 automatically -- automatically, on the entering of the plea
11 of not guilty -- the case automatically goes to the jury
12 for trial; and that's where we are just getting ready to try
13 the case.

14 We have picked the jury to the extent that the
15 regular jurors have been selected, as I have said, these
16 12 folks here; they are sworn to try this case, they are
17 the jurors that will try the case unless some unfortunate
18 situation happens, they are the jurors.

19 You, gentlemen, if you are selected will be
20 selected to take the place of any regular juror, if some
21 mishap occurs.

22 Now, there are certain principles I want to advise
23 you of and ask you some questions pertaining thereto. Let's
24 start in in this fashion.

25 Any defendant, which, of course, includes this
26 defendant, is always presumed to be innocent of any kind of
27 a crime, of any kind, until such a time as the People may
28 prove that defendant guilty as charged.

1 At all times, even without a criminal charge
2 being filed, a citizen, a resident, a person that lives in
3 the United States is presumed to be innocent of any kind of
4 a crime. Right now as I sit here and as you sit in the jury
5 chair, these folks in the courtroom, all of us are presumed
6 to be innocent of any kind of a crime at all. The defendant
7 right here is presumed to be innocent of any crime.

8 The fact that a complaint or an information or
9 an indictment has been filed against a person and that he
10 may have been arrested and brought in to be tried on criminal
11 charges doesn't change the situation at all; he is still
12 presumed to be innocent.

13 Is that clear, do you follow me along up to that
14 point?

15 A Yes, sir.

16 Q So any person who is arrested, the presumption
17 of innocence doesn't change at all; the man is still presumed
18 to be innocent and when he is brought in before a courtroom
19 or a jury to be tried, as we are now, he is presumed to
20 be innocent and that presumption of innocence continues until
21 such a time as the criminal case is tried, the case goes
22 to the jury; he is still presumed to be innocent, the jury
23 goes into the jury room to debate or discuss the question,
24 is the man guilty or not guilty, and he is still presumed
25 to be innocent. That presumption of innocence carries until
26 such a time as the jury may -- because the jury may not --
27 the jury may find him guilty.

28 If the jury never does find him guilty, why, the

1 presumption of innocence just keeps carrying on; he's not
2 guilty and that's the end of it and the jury votes not guilty.
3 The presumption never changes.

4 On the other hand, if the jury votes guilty,
5 then the presumption stops, dead, and the man is found guilty.

6 Now, that is probably one of our very basic
7 principles of criminal law in the United States.

8 Is that much clear to you?

9 A Oh, yes.

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1 Q Now, the next step is this, what do the People
2 have to do?

3 Now, I am speaking of the People, now, what do the
4 People have to do to prove the defendant guilty; and the
5 answer is that the People must establish such proof from the
6 witness stand right here or from evidence -- pictures,
7 documents, instruments, physical objects in evidence --
8 they must produce such evidence to the jury which proves
9 or establishes guilty, the law says, to a moral certainty
10 and beyond a reasonable doubt.

11 That is what the People have to do; they have
12 to prove that, they have to establish that, that's their job,
13 their duty.

14 The People have to establish that, and the defen-
15 dant has no part or no parcel of that, he is not concerned
16 with that in the sense that the proving of the case is all
17 the burden of the People, because he is protected by what
18 is called, as I have just stated, the presumption of innocence.
19 He doesn't have to lend a hand at all in any way; he's free
20 from everything.

21 It is the duty, the position of the People to
22 establish a defendant guilty to a moral certainty, beyond a
23 reasonable doubt, and during the time they are attempting
24 to prove that -- I say, if they can, maybe they can't -- the
25 presumption of innocence is right there.

26 That's clear to you?

27 A Yes.

28 Q Now, you say, the next question, who is it who

1 decides the question of whether or not the People have
2 proved the defendant guilty beyond a reasonable doubt; who
3 makes that decision?

4 It is the jury. The jury makes that decision;
5 they make that decision.

6 After the case is all tried the court sends the
7 jury into the jury room, the jury makes up their minds, the
8 big question, have the People proven the defendant guilty to
9 a moral certainty and beyond a reasonable doubt? That is
10 the number one question, and if the jurors say yes, they
11 have proven the defendant guilty to a moral certainty, beyond
12 a reasonable doubt, the voting of guilty they follows the
13 finding. The People have so proven the defendant.

14 Do you see?

15 A Yes.
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Q The juror would then say guilty. But on the other hand if the jury says no, the People haven't proven the defendant guilty to a moral certainty or beyond a reasonable doubt, they haven't proven that, the juror should vote not guilty.

You see, it all hinges on that, have the People met that burden of proof? It isn't sufficient for, for instance, for a juror to say, "Well, there is a little bit of proof, or there is some proof."

The People have proven the defendant guilty. There is some proof. That isn't enough. The law says there is a burden on the People, a position of the People, is to prove the defendant guilty beyond a reasonable doubt. You see,

So that's the position, that is what the jury does.

One of the things they do. They have to make up their mind and make a decision whether the People have met that proof or have not met that proof.

Some juror may say yes, they have met that proof and would vote guilty. Another juror says they have not met the proof and would vote not guilty.

That is why the jury has to discuss the situation in the jury room. I don't go in there. Nobody goes in. They are locked in the jury room there. The sheriff holds the key there.

And they debate it, discuss it back and forth there. A juror has a right to change his opinion, too, after talking with the rest of the jurors.

Some juror may say, "I am not -- I feel pretty

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1 firmly, you have got to talk. You have got to show me more
2 facts," talking to the other juror. You have got to show me
3 more than that. What other reason have you got to show this
4 or this or this? That is why the jury has the discussion in
5 there.

6 It takes all 12 of the jurors to vote guilty or
7 bring in a conviction of guilty. It takes all 12 of the jurors
8 to vote not guilty, or bring in a finding of not guilty.

9 You see?

10 A Yes.

11 Q I am drifting a little away because the field of
12 law is so profound I could stand here and talk for three days
13 and not touch it. But I am just trying to hit the high spots,
14 and I find I drift a little further than I should.

15 Now, in this case there are three or four situations
16 that will arise and I am going to read the law to you on these
17 problems.

18 In a criminal case in which a murder is charged --
19 and that is what we have right here -- murder. In most all
20 criminal cases charging murder, almost all, the People in
21 attempting or in putting on their case will bring on evidence
22 or testimony to show that the person that is charged with having
23 been murdered is a dead or deceased person. There will be
24 physical or visual evidence of the man charged with being dead,
25 of the fact that he is dead.

26 Now, I will try to restate that in a little more
27 simple fashion. I will maybe over-literalize it, overplay it,
28 but I have got to get the points over.

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1 Theoretically somebody would take the stand and
2 say in substance "John Smith is charged with being deceased,
3 in the indictment. John Smith" -- for instance in this case
4 Shorty Shea is charged with being murdered. But I will just
5 leave him out of it. I am talking generally.

6 John Smith is charged with being deceased and
7 murdered. Now, what I am trying to bring out is testimony in
8 almost all murder cases will be where a witness takes the
9 stand and in substance says to you "I knew John Smith. The
10 man that is now charged with being dead or murdered. I knew
11 him. I saw him. I saw that man dead. When I saw him he was
12 dead. The dead man was John Smith."

13 In other words, there is a tie-in between the man
14 that was alive and charged with being killed, with the man that
15 is killed. You have got the same person there, you see what I
16 mean?

17 A Yes.

18 Q Somebody says, "I saw the man alive. I saw him
19 dead."

20 I am just overplaying it to try to clarify it.
21 The dead man was the live man, and there is the dead man. He
22 was dead and I saw him dead, such and such a date. And he was
23 dead. And I saw that body dead.

24 That is what I want to get over to you. And there
25 may be photographs or pictures. The man on the stand will say,
26 "This is John Smith. I recognize him. There is John Smith. I
27 saw John Smith. I even took the picture of John Smith."

28 He may say or may not say that. So that is called

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1 the dead body that is produced. Now, in this case there will
2 be no proof, there will be no testimony, that is what I want
3 to put in. No visual, direct testimony, no one will get on
4 the stand and say, "I saw Shorty Shea dead or deceased. I saw
5 the dead body of Shorty Shea."

6 Nobody will say that. Is that clear to you?
7 Nobody is going to get on here and say "I saw Shorty Shea and
8 he was dead." Won't be any testimony to that effect.

9 There will be no testimony concerning the dead
10 body. The body, literally the dead body of Shea won't be here.
11 Won't be testimony to that effect. The People will attempt,
12 or their position will be to prove the death, the criminal
13 death of Shorty Shea by what is known as circumstantial
14 evidence, not by visual evidence.

15 Do you follow me up to that point?

16 A I don't know.

17 Q Wait a minute. I won't go too fast for you. Just
18 don't worry now, I will take it easy here.

19 The People will not attempt to show that Shorty
20 Shea was dead by somebody getting on the stand and saying,
21 "I saw Shea and he was dead." That testimony will not be here.
22 The People will attempt to prove that Shorty Shea was dead, but
23 by other means.

24 Is that clear to you?

25 A Yes.

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Q And the means the People will use is what is called circumstantial evidence. Now, I am going to read to you what the law says is circumstantial evidence. I am going to read it to you.

Now, first I am going to step back. I am going too fast. I am going to read to you what the law says about the corpus delicti. That means -- corpus generally means body. Delicti is Latin for dead. Dead body.

Now, here is what the law says:

"The term corpus delicti as used in these instructions" -- concerning murder -- "does not mean the production of the body or any part thereof, of the alleged deceased. Every crime, whether it be burglary, robbery, or any other offense requires the proof of a corpus delicti. The term corpus delicti means the proof of the essential elements of the particular crime with which a defendant may be charged. The corpus delicti of murder consists of two," t-w-o, "elements. No. 1, proof of the death of the alleged deceased. No. 2, proof that the death of the alleged deceased was caused by some criminal agency, criminal means. Either or both of these two" t-w-o, "essential elements which constitute the corpus delicti of the crime of murder need not be proved by direct evidence but may be proved circumstantially or inferentially.

1 It is not necessary in order to establish
2 the corpus delicti for murder that the body or
3 any part thereof, of the alleged deceased, be
4 produced as such nor that any witness be produced
5 who has seen or found the body or any part thereof,
6 of the alleged deceased person in death."

7 Now, do you think you followed that or not?

8 A I think I got a little bit of it.

9 Q I will try to only give you the basic elements
10 of it which say -- and I will try to read from it:

11 "Proof does not mean that the body be
12 produced" -- so you can see it -- "or that
13 a witness be produced who has seen or found
14 the body."

15 You follow me there?

16 A Right.

17 Q The witness would get on the stand, take the oath
18 and say "I saw John Smith. John Smith was dead. I saw him dead."

19 That is not necessary. This is up to the jury to
20 pass on. It may be proved or it may not be proved by circum-
21 stantial evidence which I will now read to you, what is
22 circumstantial evidence.

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1 Now, here is what the law says is circumstantial
2 evidence, first of all:

3 "The testimony of a witness, a writing
4 or a material object or anything presented to
5 the senses offered to prove the existence or
6 the nonexistence of a fact is either direct
7 evidence or circumstantial evidence."

8 Now, that's just what I've been telling you; that
9 is to say, direct evidence is something a person sees, "I saw
10 an automobile, the automobile was a green automobile." That
11 is direct.

12 The other kind of evidence is circumstantial
13 evidence. Now, I will try to break it down more for you. Direct
14 evidence means evidence that directly proves a fact, "I saw
15 an auto; it was an auto," that is direct evidence.

16 I will read it again:

17 "Direct evidence means evidence that
18 directly proves a fact without an inference
19 and which in itself, if true, conclusively
20 establishes that fact."

21 It is for the jury, however, to determine whether
22 the fact is established; you get back again to the jury finds
23 on the facts.

24 Now, circumstantial evidence means evidence that
25 proves a fact from which an inference of the existence of
26 another fact may be drawn.

27 Do you see?

28 A Yes.

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1 Q "An inference is a deduction of fact
2 that may logically and reasonably be drawn
3 from another fact or a group of facts
4 established by the evidence. It is not
5 necessary that facts be proved by direct
6 evidence. They may be proved also by
7 circumstantial evidence or by a combination
8 of both direct evidence and circumstantial
9 evidence. Both direct evidence and
10 circumstantial evidence are acceptable as
11 a means of proof. Neither" --
12 that is to say, neither direct evidence nor circumstantial
13 evidence -- "is entitled to any greater weight than the other."

14 Now, here is another instruction I am going to
15 read to you on circumstantial evidence, which reads as follows:

16 "You" --
17 that is the jury --
18 "are not permitted to find the defendant
19 guilty of the crime charged against him
20 based on circumstantial evidence, unless
21 the proved circumstances are not only
22 consistent with the theory that the
23 defendant is guilty of the crime but cannot
24 be reconciled with any other rational
25 conclusion and each fact which is essential
26 to complete a set of circumstances necessary
27 to establish the defendant's guilt has been
28 proved beyond a reasonable doubt."

10-3

1 Also,

2 "If the evidence is susceptible of two,"
3 t-w-o,

4 "two reasonable interpretations, one interpre-
5 tation which points to the defendant's guilt
6 and the other interpretation" --

7 I should read it with the word "reasonable."

8 I am going to reread it just to clarify it:

9 "If the evidence is susceptible of two
10 reasonable interpretations, one reasonable
11 interpretation which points to the defendant's
12 guilt and the other reasonable interpretation
13 that points to his innocence, then it is your
14 duty to adopt that reasonable interpretation
15 which points to the defendant's innocence and
16 reject the other reasonable interpretation which
17 points to his guilt."

18 That contemplates a balanced situation where the
19 jury could reasonably conclude guilt or reasonably could
20 conclude innocence, but both reasonable interpretations must
21 balance; then the jury directs itself to innocence.

22 But, if one outweighs the other, that is another
23 situation; do you follow me there?

24 A Yes, sir.

25 Q The pointing to the innocence is where the two
26 reasonable interpretations are balanced; then the jury goes
27 "innocence," you see.

28 A Yes, sir.

1 Q If the guilty outweighs the innocent interpretation,
2 then it is for the jury to be directed otherwise.

3 Do you follow me there?

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4 A Yes.

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Q And whichever pathway the jury should take from that interpretation, remember this, as I have just -- this is from the instruction:

"Each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt has been proved beyond a reasonable doubt" -- in other words, if the jury should take a reasonable interpretation that bends to the People, the jury still must say, "All right, if we take that interpretation the jury must be convinced to a moral certainty and beyond a reasonable doubt."

In other words, no matter what interpretation you take the jury must make that ultimate finding, the People have proven the defendant guilty to a moral certainty and beyond a reasonable doubt, no matter what interpretation you take directed toward the People.

That is the ultimate burden of the People, you see?

A Yes.

Q In other words, that is the gross ultimate reasoning that has to be arrived at by the jury to bring in a conviction of guilty, "We, the jury, feel that the People have proven the defendant guilty to a moral certainty and beyond a reasonable doubt; we vote guilty."

They must ultimately, that standard must be met. Do you follow me on this?

A Yes, sir.

Q As I talk along here, I am only giving you the law, what the law says. I know nothing more about the case than you

1 do as you sit there, or these folks, except as we have talked
2 about the law -- but not about the facts; I don't know anything
3 about these facts. It comes in to me as a stranger. I don't
4 know anything about it, any more than you do or the jury does,
5 it is nothing.

6 Now, what I am giving you is the law, it is not
7 an analysis of facts. I don't know anything about the facts
8 and I want to make it further clear, as a judge I have
9 absolutely no right to talk about the facts; I don't decide
10 the facts. I am not allowed to or do I ever attempt to
11 suggest what the jury should do to find on the facts.
12 I make no attempt to do that, I don't want to do it.

13 You, the jury, pass on the facts. You make your
14 conclusions. A witness testifies, the jury says, or the
15 individual juror, as they discuss, "I think the man is telling
16 the truth" -- "I don't think the man is telling the truth,
17 I think John Smith is giving a good version, I believe him" --
18 "I don't believe him." Those things are for the jury. You
19 decide the facts, I do not decide the facts.

20 And the fact that I sustain an objection -- the
21 People or the defendant may make an objection -- a question
22 is asked; one of the lawyers makes an objection; I rule on
23 the objection. I say "Objection sustained" -- in effect I
24 say to the witness "Objection sustained, don't answer the
25 question."

26 That doesn't mean I am trying to find the facts
27 or make suggestions as to what the answer might be. I don't
28 know what he is going to say. All I know is the question isn't

1 proper or I don't think it is and that's the reason I make
2 the ruling I do; see?

3 A Yes.

4 Q I say to counsel, "Revamp the question a little
5 bit, change your question around the way you are wording it,"
6 and many times counsel will agree with me and sometimes counsel
7 will say, "No, I want the question to stand that way"; and I
8 make a final ruling and we pass to the next question.

9 So, the fact that I sustain objections or overrule
10 them, I am not trying in any way to get into the case in the
11 sense of trying to decide facts, make suggestions here. I
12 have no right to do it, don't knowingly do it; I have no inten-
13 tion of doing it and any ruling I make is not intended to
14 suggest what the jury thinks about the facts.

15 Do you understand that?

16 A Yes.

17 Q I have drifted away again.

18 Now, let me give you one more statement of the law,
19 again. Here is what the law says on the presumption of
20 innocence, and this is a repeat of what I have said to you,
21 but I think I should read it:

22 "A defendant in a criminal action is
23 presumed to be innocent until the contrary is
24 proven and in case of a reasonable doubt
25 whether he is guilty is satisfactorily shown
26 he is entitled to an acquittal. This presumption
27 places upon the State the burden of proving him
28 guilty beyond a reasonable doubt. Reasonable

1 doubt is defined as follows, it is not a
2 mere possible doubt because everything
3 relating to human affairs and depending
4 on moral evidence is open to some possible
5 or imaginary doubt. It is that state of the
6 case which, after the entire comparison and
7 consideration of all the evidence leaves the
8 minds of the jurors in that condition that
9 they cannot say they feel an abiding conviction
10 to a moral certainty of the truth of the charge."

11 That is a statement of and what is known as the
12 doctrine of reasonable doubt, or a statement of reasonable
13 doubt.

14 The jury must be satisfied beyond a reasonable
15 doubt to bring in a verdict of guilty; is that clear to you
16 there?

17 A Yes.

18 Q Now, I have one or two more thoughts here.

19 Now, Mr. Juror, let's assume -- back up again --
20 in this case the People will ask the jury for a conviction
21 as charged and they will also ask the jury to set the degree
22 of guilty of murder and they will ask the jury to make a
23 fixing of first degree murder. They also will ask for what
24 is commonly known as the death penalty as punishment.

25 Now, in connection with those principles and
26 those statements I have made, let me ask a hypothetical
27 question of you: let's suppose that you are selected as an
28 alternate juror over here and then let's suppose that for some

1 reason one of these jurors, the court excuses one of the
2 jurors for good cause; then let's suppose that the court puts
3 you in to take the place of the juror excused.

4 Now, you are what we will call a full-fledged
5 juror. Now, let's say that we go ahead and finish up the trial
6 of the case, because you were listening to it as we go along,
7 then let's suppose you go to the jury room with all of the
8 jurors; the first thing that you will do when you get there
9 as far as the voting is concerned is vote guilty or not guilty.

10 You will have discussions among yourselves but
11 bypassing that, you must make a finding of guilty or not guilty.

12 Now, at that point if the jury says not guilty,
13 then that concludes the case entirely and the case is entirely
14 through and over with, there is no more lawsuit.

15 That's clear to you?

16 A Yes.

17 Q On the other hand, if the jury says "guilty, we
18 find the defendant guilty," then the jury must find the degree;
19 they make a finding of guilty, let us say, guilty of murder,
20 then the jury makes a finding of degree, "We find it to be
21 second degree murder," or "We find this to be first degree
22 murder."

23 Is that clear to you?

24 A Yes, sir.

1-1

1 Q Now, if the jury says, "We find this to be second
2 degree murder," then that's the end of the case. There is
3 no more trial as far as the jury is concerned. They are
4 excused. They made a finding of second degree murder, their
5 duties are concluded and they are excused. That is clear.

6 But if the jury makes a finding of first degree
7 murder then the court holds a penalty hearing right after
8 your finding, after the jury's finding, a penalty hearing.
9 And after the penalty hearing the jury goes back into the jury
10 room to decide on penalty, what is the penalty.

11 And that follows from the fact that the jury has
12 made a finding of murder first degree. Do you follow that?

13 A Yes.

14 Q So now the jury under a finding of first degree
15 murder, now the jury must make a finding of penalty which must
16 be one of two penalties, either the death penalty or life
17 imprisonment.

18 Do you follow me there?

19 A (Nodding head affirmatively.)

20 THE COURT: All right.

21 Q Now, let's say that you are right in that jury room
22 voting on the question of the death penalty or life imprisonment.
23 You are voting on it.

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

28 Now, give me, if you will, a yes or no answer to

11-2

1 that question.

2 A I would vote against, is that what you asked?

3 Q Now, try -- you understand the question?

4 A I would vote against, yes.

5 Q All right.

6 Let me just try it again.

7 A All right.

8 Q Would you automatically vote against the death
9 penalty, or would you consider it, discuss it and you might
10 vote for it, or you might not, depending on your convictions
11 now, or would you automatically say, "I will not vote for the
12 death penalty regardless of what the testimony is, I won't vote
13 for the death penalty"?

14 Now, would that be your position?

15 A That would be my position.

16 Q You would not vote for the death penalty?

17 A That's correct.

18 Q I am trying to get a clear record on it.

19 A Yes.

20 Q I am not trying to -- I am not complaining, I am
21 just trying to get it straight.

22 A Right.

23 Q All right.

24 No matter what the testimony is you would not vote
25 for the death penalty?

26 A I cannot vote for the death penalty.

27 THE COURT: Thank you very much.

28 I am not criticizing you or your convictions. That

11-3

1 is not my business. I just must get a clear statement because
2 I don't have an arbitrary right to excuse or not excuse jurors.

3 Now, gentlemen, may I excuse this man?

4 MR. KATZ: Yes, your Honor.

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

6 THE COURT: I will excuse you and thank you very much for
7 your time.

8 MR. WEEDMAN: Thank you.

9 THE COURT: Thank you.

10 Now, we will call another juror and I make a finding
11 that under section 1073 and 1074, for cause has been shown
12 under subdivisions 2 and 8.

13 THE CLERK: Thomas N. McArdle, M-c A-r-d-l-e.

14
15 THOMAS N. MCARDLE

16 BY THE COURT:

17 Q Now, you have heard everything I have said, haven't
18 you, Mr. Juror?

19 A Yes.

20 Q We will bring you right up to date. Let's assume
21 you are selected as an alternate, that in the course of the
22 trial you succeed to a full-fledged or permanent position as
23 a juror. The case is tried.

24 You go to the jury room, the jury can bring in a
25 verdict of not guilty. The jury could bring in a verdict of
26 guilty. If the finding is second degree murder, the jury is
27 excused. The jury having completed their duties.

28 If the jury brings in a finding of first degree

11-4

1 murder the penalty hearing is held. After the penalty hearing
2 the jury goes back to the jury room to determine the penalty,
3 the death penalty or life imprisonment.

4 Now, I will ask you this question. If you will put
5 yourself at that position, you are voting on penalty, at that
6 time would you automatically vote against the imposition of the
7 death penalty without regard to any evidence that might be
8 developed at the trial of this case?

9 A Yes.

10 Q The answer is yes. You would automatically vote
11 against the death penalty, is that correct?

12 A Yes.

13 Q All right. Is there any question in your mind that
14 you would automatically vote against the death penalty no matter
15 what evidence was produced?

16 A No.

17 THE COURT: Thank you.

18 May I excuse this gentleman?

19 MR. KATZ: Yes, your Honor.

20 MR. WEEDMAN: Yes, your Honor.

21 THE COURT: Thank you very much.

22 MR. KATZ: Will the court make a finding.

23 THE COURT: Oh, yes, indeed.

24 MR. KATZ: Thank you, your Honor.

25 THE COURT: I find that for cause exists under section
26 1073 and 4 of the Penal Code, subdivisions 2 and 8.

27 THE CLERK: Mrs. E. Louise Polk, P-o-l-k.
28

11-5

E. LOUISE POLK

BY THE COURT:

Q Now, lady, have you heard everything I have said here?

A Yes, I have.

Q I have been talking quite a while.

Let's assume you are selected as an alternate. During the course of the trial you are placed in or made a permanent juror. Let's assume the case is tried and you go to the jury room to decide the case.

Now, if the jury makes a finding of not guilty the case is all concluded.

If the jury makes a finding of guilty as charged and makes a finding of murder second degree, the jury is excused. There are no further duties.

If the jury makes a finding of guilty murder first degree then a penalty hearing is held, and after the penalty hearing is held the jury goes to the jury room to decide penalty. Now, I will ask you to assume that you are in there voting on penalty. The penalty must be either the death penalty or life imprisonment.

Now, I will ask you this question. At that time when you are voting on that penalty, one of the two, 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 Yes, I would.

Q The answer is yes?

11-6

1 A Yes.

2 Q Is there any question at all in your mind that you
3 would automatically vote against the imposition of the death
4 penalty?

5 A No, I would automatically vote against it.

6 THE COURT: Thank you, lady.

7 Now, may I excuse this lady?

8 MR. KATZ: Yes, your Honor.

9 MR. WEEDMAN: Excuse me, your Honor. I wonder if I might
10 have just one or two questions of Mrs. Polk?

11 THE COURT: All right.

12 BY MR. WEEDMAN:

13 Q Mrs. Polk, with respect to your answer that you
14 would automatically vote against the death penalty, do you
15 understand that the law does not give you any guidelines with
16 respect to which penalty you are supposed to vote for? In other
17 words, it is perfectly all right to go into the jury room
18 opposed to capital punishment, but in fairness to the People
19 the law requires that you merely be willing to sit down and
20 deliberate the matter, and that you be willing in this case to
21 consider the imposition of the death penalty.

22 A I wouldn't.

11a

11a-1

1 Q But the law doesn't tell you that you have to
2 impose the death penalty. Do you understand that with respect
3 to your answer?

4 A Yes. I mean but the thing is that I wouldn't
5 impose the death penalty.

6 Q No matter what?

7 A Regardless of the crime, yes.

8 MR. WEEDMAN: Thank you very much.

9 I agree, your Honor. She may be excused.

10 THE COURT: Thank you very much. I make a finding under
11 section 1073 and 4, subdivisions 2 and 8.

12 You are excused.

13 Call another juror, Mr. Clerk.

14 THE CLERK: Semon Kasporoff, K-a-s-p-o-r-o-f-f,

15 MR. KATZ: Will you spell the first name, please.

16 THE CLERK: First name spelled S-e-m-o-n.

17
18 SEMON KASPOROFF

19 BY THE COURT:

20 Q Now, Mr. Juror, have you heard everything I have
21 said here?

22 A Yes, sir, I have.

23 Q Let's assume you are selected first as an alternate
24 juror, then during the course of the trial you succeed in as
25 a regular juror. The case is tried. You go to the jury room
26 to decide the case. First a question of guilty or not guilty.

27 If the jury finds the defendant not guilty the case
28 is completed entirely. If the jury makes a finding of guilty as

11a-2 1 charged then the jury must make a finding of either first
2 degree murder or second degree murder. If the jury makes a
3 finding of second degree murder then the jury is excused
4 because no further proceedings are had.

5 But on the other hand, if the jury finds first
6 degree murder then the jury must find on penalty and a penalty
7 hearing is held. The jury goes back to the jury room to vote
8 on the question of penalty, either the death penalty or life
9 imprisonment.

10 Now, let's assume you are in the jury room about to
11 vote on the question of the death penalty or life imprisonment.
12 I will ask you this question.

13 At that time would you automatically vote against
14 the imposition of the death penalty without regard to any
15 evidence that might be developed in the trial of this case?

16 A Sir, I feel that I think I would have to regard
17 the evidence --

18 Q You would not automatically vote?

19 A No, I would not automatically.

20 Q You would not automatically vote?

21 A Vote one way or the other.

22 Q Against the death penalty, that is a correct
23 statement?

24 A Yes, sir.

25 Q In other words, you would consider the evidence,
26 consider the law, debate it and then cast your conviction, is
27 that about the way?

28 A I feel that I would weigh out the evidence first.

11a-3

Q All right.

Do you feel if you tried this case that you could be fair and impartial as a juror to both the People and the defendant in the case?

A Yes, I would, sir.

Q Do you know of any facts that might arise during the trial that could disturb you or upset you so that you couldn't have a free and clear mind while you are a juror in the case?

A At this time, no, sir.

THE COURT: Thank you.

Defendant may inquire.

BY MR. WEEDMAN:

Q Mr. Kasporoff, may I ask you what you do for a living, sir?

A I operate a machine shop. I am self-employed.

Q Do you have any friends or relatives in law enforcement?

A I have some, yes.

Q Would you tell us about those, please.

A Well, I am acquainted in many areas of the law enforcement as well as in the legislature and other areas.

Q Well, do you have friends, for example, in the Los Angeles Police Department?

A Yes.

Q Do you have friends in the county sheriff's department?

A Yes.

1 Q Do you have any friends in the district attorney's
2 office?

3 A Yes.

4 Q Okay. Do you feel that those apparently numerous
5 friends in law enforcement would have a tendency, that fact,
6 rather, would have a tendency so to influence your judgment
7 with respect to gauging testimony here in this trial, coming
8 from police officers?

9 A Sir, I have thought that over and I see that I --
10 it would not enter at all.

11 Q Have you had any prior criminal jury experience?

12 A No, sir.

13 Q You have never, I take it, perhaps you have never
14 been faced with a problem of trying to figure out whether or
15 not a given witness is telling the truth or not?

16 A I think I would weigh out the evidence as it was
17 presented, sir.

18 Q All right.

19 Between someone who might be characterized as a
20 hippie, if that word has meaning for you, and someone who is,
21 say, a member of the Los Angeles Police Department, do you
22 think that between the two sources of testimony that you would
23 tend more to believe the police officer merely because he is
24 a police officer?

25 A No, sir.

26 MR. KATZ: Excuse me, your Honor. I am going to object
27 at this time. Since it is asking this juror to prejudge the
28 evidence, because it calls for a comparison.

1 THE COURT: Well, now, wait.

2 Read the question, please.

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

5 "Q Between someone who might be
6 characterized as a hippie, if that word has
7 meaning for you, and someone who is, say, a
8 member of the Los Angeles Police Department,
9 do you think that between the two sources of
10 testimony that you would tend more to believe
11 the police officer merely because he is a
12 police officer?"

13 MR. KATZ: Your Honor, I think --

14 THE COURT: The last part of the question is proper. This
15 is a proper part: "Would you believe a police officer? Would
16 you give more weight to a police officer because he is a police
17 officer?"

18 That is correct.

19 MR. KATZ: I have no objection to that.

20 THE COURT: The injection of contrast, however, enters
21 into an element of uncertainty there. It is speculative. I
22 would sustain the question the way it is framed.

23 If you can reframe it, you may get to your point.

24 MR. WEEDMAN: All right. I will try. Thank you, your
25 Honor.

26 Q Mr. Kasperoff, don't you really believe that having
27 apparently so many friends on the police department, the
28 sheriff's department and the district attorney's office, don't

1 you think that is going to make you tend to give a little more
2 weight to testimony that may come in here from police officers?

3 A I don't think so, sir.

4 Q Okay. Has your experience with any of these
5 persons in law enforcement been such that you might, rather,
6 that you have concluded that sometimes officers may be mistaken
7 with respect to --

8 MR. KATZ: Excuse me, your Honor. I am going to object
9 to the question in its form as argumentative.

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

11 THE COURT: All right. Thank you.

12 Q BY MR. WEEDMAN: Have you had any experiences, and
13 you can answer this yes or no, which particularly makes you
14 feel that you would not give undue weight to testimony of
15 police officers merely because they are police officers?

16 A I think, sir, I think that I would give as much
17 weight on the evidence presented from either side.

18 Q In other words, you will consider not just the
19 fact that it is a police officer testifying?

20 A No, sir.

21 Q But also the internal, perhaps, consistency, the
22 manner of speaking, interest in the case, a whole raft of
23 things?

24 A Yes.

25 Q I take it as you sit there now you have no idea
26 whose testimony you are going to accept and whose testimony you
27 are going to reject?

28 A That's correct, sir.

The 12

Q You are going to wait until you hear all of the evidence in this case --

A Yes, sir.

Q -- I presume, before you even begin to make up your mind about it?

A That's right.

Q It is estimated, Mr. Kasporoff, that this trial will last perhaps another two months, another eight weeks.

Would that cause you any personal hardship if you have to stay here as a juror?

A Well, I could answer that both ways, sir, yes and no.

Q Well, it sort of has to be a personal statement from you.

A What must be done, I can do.

Q In other words, do you think there is anything in your own life that would, because of the length of the trial, detract from your giving both sides your full attention and consideration of the evidence?

A I think I could fulfill the duty, sir.

Q So there isn't anything about the length of the trial that is going to interfere with your performance as a juror here.

Mr. Kasporoff, you understand that if you are selected you will be selected as an alternate juror here.

A I realize that, sir.

Q And that you will be obligated to listen very closely to all of the evidence; will you be able to do that,

12-2

1 though it may occur to you that you may never actually
2 participate in the deliberation of the jury.

3 A That, I can't pass a judgment on right now, sir.

4 Q All right.

5 But as far as you know, as you sit there now,
6 that is not going to cause you any trouble?

7 A Yes.

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

10 A Only what I have read in the newspapers, sir.

11 Q You are aware, perhaps, of the Tate-La Bianca case,
12 the murder case?

13 A Only what I have read in the papers, sir.

14 Q That probably is the most any of us know about it;
15 but in that regard have you formed any opinion with regard to
16 the Manson family?

17 A No, sir.

18 Q If the evidence in this case should show that my
19 client, Mr. Grogan, was at one time associated with Charles
20 Manson and other so-called members of the so-called Manson
21 family, do you feel that you would be so prejudiced because of
22 that that you couldn't give my client a fair trial?

23 A I have not shown prejudice in the other cases, no.

24 Q As you sit there now, do you feel that merely because
25 my client has been charged and brought to trial that somehow
26 he must be guilty and that this is just a kind of formality
27 that we are going through here before we send him off?

28 A I have not formulated no opinion on that at all, no,

12-3

1 sir.

2 Q Surely.

3 So far as your state of mind goes at this time,
4 would it be fair to say that you don't know if it is going to
5 be guilty or not guilty?

6 A I have no way of knowing, sir.

7 Q And if you are not satisfied to a moral certainty,
8 beyond a reasonable doubt that my client is guilty, I take it
9 that you would acquit him if you were in the jury box?

10 A If it was that way at that time, yes.

11 Q Do you have any quarrel with the rule of law which
12 places the burden on the People, on the prosecution, to prove
13 a case?

14 A No, I have no quarrel with that, sir.

15 Q Do you have any quarrel with the other side of that
16 law which makes it clear that there is no burden on my client
17 to prove his innocence?

18 A As it was explained by the court, I have no quarrel
19 with that, either, sir.

20 Q So you would be able to work within the framework
21 of those kinds of rather stringent rules?

22 A I feel that I can, sir.

23 MR. WEEDMAN: Thank you.

24 "Pass for cause, your Honor."

25 THE COURT: Gentlemen, it is up to 12 o'clock.

26 MR. KATZ: Yes, your Honor.

27 THE COURT: Now, ladies and gentlemen of the jury, if you
28 will listen carefully, we will go over to 2 o'clock.

12-4

1 Do not discuss this case or anything about the
2 case in any way at all with anybody; don't talk to the district
3 attorney, don't talk to the defense counsel, don't talk to any
4 witnesses, don't talk to anybody at all; don't talk to me,
5 I am not trying to be personal at all, for goodness sakes,
6 but don't discuss it with anybody, defense or People or
7 anybody or the clerk, the bailiff, anybody.

8 Do not come to any opinion or conclusion.

9 As far as this case is concerned, keep your mouth --
10 I don't mean closed -- just don't talk about it or come to
11 any opinion or conclusion.

12 If you will kindly return at 2 o'clock we will
13 proceed.

14 Thank you.

15 (A recess was taken until 2 p.m.
16 of the same day.)

13

The 13

LOS ANGELES, CALIFORNIA, TUESDAY, JULY 13, 1971

2 P.M.

- - - -

(The following proceedings were had
in chambers, both counsel and the
defendant being present:)

THE COURT: Go ahead, gentlemen.

MR. KATZ: Yes. I requested the very brief conference with
your Honor.

I discussed the problem about Mrs. Emanuel with
Mr. Stovitz, who is the head of the Trial Division in the
District Attorney's office. And I related substantially what
had transpired this morning.

And he indicated to me that first of all Mr. Oppen-
heim is no longer a member of the office. He has not been with
the office for some time because he now is part of the Penal
Code Revision Committee and as such tendered his resignation
at the office.

So I think the record should at least reflect that
representation at this time.

Further I can only convey, again, my discussion with
Mr. Stovitz concerning the situation and his only suggestion,
your Honor -- and please understand this is in good faith --

THE COURT: Oh, yes.

MR. KATZ: I am not trying to step upon your Honor's
prerogative because you have the discretion in this case, and
it is obvious -- but perhaps the court would entertain
Mr. Weedman's latter motion --

1 THE COURT: Mistrial?

2 MR. KATZ: No, latter motion with respect to examining
3 Mrs. Emanuel by reason of the new events that are now known
4 to Mr. Weedman.

5 And certainly the People wouldn't oppose that.
6 We think that might be a reasonable measure, and I don't think
7 it would consume too much time and certainly we have no objec-
8 tion to that.

9 THE COURT: I am inclined not to do that. I am very
10 hesitant to open up a situation that more or less has been
11 sealed.

12 The jurors have been sworn to try the case, and
13 I am hesitant to open up a situation there. If there were
14 not a thorough examination in there, that is one thing, but
15 I don't think anybody can say that.

16 We have been -- I have no criticism -- spending
17 much time picking these jurors, which is only right. I am not
18 criticizing it.

19 But to open up and go back into this after the
20 juror has been sworn to try the case, I am very disturbed about
21 questions of jeopardy, I guess is probably the way you might
22 put it.

23 There has been nobody put on the stand to testify,
24 but the jury has been sworn, and I am rather inclined to deny
25 the request, I have denied defendant's request. I haven't
26 fully foreclosed it out, but I have at this time denied it.

27 And I don't want to open that. I am hesitant to
28 open up this case and start to requir one of these jurors.

1 Very hesitant.

2 MR. KATZ: I do appreciate your Honor's position. We
3 are only indicating we would support Mr. Weedman in his request
4 to be permitted to additionally inquire of Mrs. Emanuel in
5 regards to whatever association she has with Mr. Oppenheim and
6 whether or not that prior association would in any way affect
7 her ability to be fair and impartial.

8 Now, I went back this afternoon and reread her
9 entire examination both by the court and by counsel, and I was
10 satisfied that the record was replete with unequivocal state-
11 ments that she could be fair and impartial to both sides, but
12 I will submit that, your Honor, I thought I was dutybound at
13 least to disclose Mr. Oppenheim was not a member of our office
14 and is with the Penal Code Revision Committee and has resigned
15 from our office.

14

The 14

1 MR. WEEDMAN: Your Honor, I, for the record, spoke with
2 Mr. Sam Mayerson, who is also a senior member of the district
3 attorney's office --

4 THE COURT: Yes.

5 MR. WEEDMAN: -- and he told me that -- he told me, as
6 Mr. Katz is indicating that --

7 MR. KATZ: "Oppenheim"?

8 MR. WEEDMAN: -- Maurice Oppenheim is with the Penal
9 Code Law Revision staff.

10 Mr. Mayerson was under the impression, however,
11 that he had merely taken a leave of absence from the district
12 attorney's office rather than resigning a rather advanced grade
13 in the county offices; so I don't know if he still is considered
14 a member of the district attorney's staff or not.

15 THE COURT: I am advised of this situation that you say
16 she did make these statements; I am not arguing that point.
17 I think they are of a very highly technical nature.

18 I don't think, in view of the extensive examination
19 that was made of this witness, that she could be prejudiced
20 in the matter; I don't think so.

21 I am very hesitant to attempt to go back in here
22 and open this case up and start -- you see, the court, you have
23 got a million problems here.

24 If I go ahead from a practical standpoint, say,
25 "All right, go ahead, we will bring her in here and both sides
26 immediately start in under stipulation" -- we'd have to have
27 all manner of stipulations to protect the People and the
28 defendant in an attempt to break into this swearing of the panel

1 that is impaneled to try the case. There is a problem in itself,
2 before you go any further.

3 I don't mean to be disparaging, counsel start
4 on both sides, a long series of questions going right into
5 this woman for cause, and you see you have opened up a situation
6 that the court is dutybound the first time any juror does
7 anything that may lead to the least bit of thinking, "Here's
8 a question, this juror said this, she has indicated friendship
9 someplace, she has said, 'Good morning' to somebody" -- I
10 don't want to overplay my hand, either, but there is some
11 acknowledgment of the greeting or something or other.

12 I hardly ever enter a courtroom but what some
13 juror says, "Good morning, judge," "I don't know, and the
14 question is if you open this case for one why not open it for
15 another?"

16 You have got to hold the barrier here someplace
17 along the line here. I would rather say that it is my honest
18 feeling that she is not a prejudiced juror. I think she is
19 honest. I think if she feels the defendant is not guilty she
20 will say so, the same way I would say so -- I am not a juror --
21 or for the People, but I don't think she is; I just don't think
22 she is prejudiced.

23 I am inclined at this point to deny, as I will
24 repeat, to deny the motion. I would only say that I would deny
25 it without prejudice in the sense -- I will be frank, I don't
26 expect to grant it; I am not going to try to mislead you in
27 the matter, but I rather feel that my terminology be "without
28 prejudice," but I am inclined to say the ruling is pretty final.

1 I'd rather put it in that fashion.

2 MR. WEEDMAN: I can state, too, and perhaps I should have
3 added this for the record, I can state that it is very, very
4 likely that I would have exercised a peremptory --

5 THE COURT: Yes.

6 MR. WEEDMAN: -- against her, had I known of her apparent
7 friendship -- at least, using the term loosely -- friendship
8 with Maurice Oppenheim at the time.

9 I certainly was anxious that Mrs. Thale be excused
10 because of her, of course, familial connection with the
11 district attorney's office.

12 Mrs. Emanuel who is a close case in my thinking,
13 in any event, because of the fact that her son is a police
14 officer; the fact that he is out of State and I --

15 THE COURT: Well, the question --

16 MR. WEEDMAN: -- therefore felt that we could use her
17 as a juror; but had I known about what I believe now to be the
18 Maurice Oppenheim association, I would have changed her.

19 THE COURT: Now, will you give me your question again that
20 you are complaining about, your question to her was, "Do
21 you know of any law enforcement officers?" Was that your
22 question?

23 MR. WEEDMAN: I haven't read that material since I had
24 her on voir dire, your Honor.

14a-1

1 THE COURT: You see, you have got a debatable situation,
2 whether a district attorney is law enforcement or whether the
3 judge is law enforcement or whether -- honestly, I would
4 hesitate as a judge or layman -- make me a layman -- whether
5 a district attorney is law enforcement or not. He is an
6 officer of the people; so is the judge, but as a judge I don't
7 consider myself necessarily a law enforcement.

8 I do enforce the law in a sense but anybody does,
9 the Penal Code says anybody sees a crime being committed, in
10 substance, it is your duty to step right in and stop it. So,
11 you see, you have got a wide latitude in there. I would say
12 to the question, if we have got to debate it, within reason,
13 when you say, "Do you know any law enforcement officer?" if
14 that was your question, to a layman or to a professional man
15 I would say would almost mean like a sheriff, a deputy sheriff,
16 a policeman, somebody that is actively in a policeman's
17 capacity in some fashion or other.

18 I wouldn't deny you say, does it mean a member of
19 the Army or does it mean a member of the State Guard, I'd say
20 no; and yet they put them right in riots and everything else,
21 so in a sense they are enforcement.

22 It is a very broad question. I would go along with
23 it if she said she appears she knows a policeman or deputy
24 sheriff; I'd say yes, definitely, you have got a very strong
25 point there; but I don't know, honestly, if you can qualify --
26 any more than a public defender.

27 You have got the same thing there; if she had said,
28 asked the question of Mr. Katz, "Do you know the public defender,

14a-21 Charles Maple?" I mention him because he was with me so many
2 years -- "Do you know Mr. Maple, because he's a public
3 defender?"

4 Well, yes or no, you have got the same thing there;
5 he is just as much a law enforcement officer as a district
6 attorney, you see.

7 I am very hesitant to say that she necessarily
8 answered you erroneously to start with, even assuming she said
9 that. I don't deny your statement at all; I am conceding
10 everything you say is correct, I am not going back of your
11 statement.

12 I am debating whether the for cause flows from it,
13 because I am --

14 MR. WEEDMAN: I am also concerned about the fact that
15 she would feel it all right to speak to Mr. Katz about someone
16 who might well be a mutual acquaintance. I think that that
17 certainly was unfortunate on her part and Mr. Katz, of course,
18 was helpless to do anything about it since he was just merely
19 sitting there and she apparently began talking at him.

15

15-1

1 THE COURT: Well, suppose you change the structure from
2 Oppenheim, suppose she would say to Mr. Katz "Have you seen
3 our friend, Judge Smith?"

4 Now, you have got the same situation there.

5 MR. WEEDMAN: Well, your Honor, I would submit that it
6 is not quite the same because I really have always regarded
7 the district attorney's office as responsible for the
8 prosecution of criminal offenses -- prosecution of defendants
9 for criminal offenses. And Mr. Katz is, himself, of course,
10 a member of the district attorney's office obviously, and here
11 we have a juror who is inquiring about, at least for purposes
12 of this record at this point, someone who is a member of the
13 district attorney's office.

14 I think it is unfortunate for my client's position
15 that we now have to go forward with such a juror in the box.
16 I agree with your Honor that further examination of the juror
17 might well do more harm than good but I really must say that
18 I feel that something has got to be done, and I felt that your
19 Honor's first thought was a very good one, and that is you
20 simply exercise your discretion in the matter and on stipulation
21 from the defendant, since the People certainly, it seems to me,
22 are not going to be concerned about defense error, that on
23 stipulation from the defendant that she merely be excused and
24 somebody else put in her place.

25 MR. KATZ: Your Honor, again I didn't mean to reopen
26 this entire issue. I just felt that I should complete the
27 record by stating the information that I had learned this
28 afternoon, namely, that Mr. Oppenheim is not a member of our

1 office and has resigned from the office and is working for the
2 Penal Code Revision Committee.

3 That was my purpose basically for coming in, and
4 I appreciate your Honor's concern and your arguments. And I
5 will submit it on that. Thank you, your Honor.

6 MR. WEEDMAN: Well, of course, the record is such, your
7 Honor, that it appears that this lady may well be under the
8 impression that Oppenheim is still with the district attorney's
9 office. I have no idea now, you see. I have no idea.

10 MR. KATZ: As your Honor pointed out it has absolutely
11 nothing whatsoever to do with her ability to be fair and
12 impartial. I think the record again, with respect to the
13 answer to the questions propounded to her, indicate manifestly
14 that she can be fair and impartial with respect to her ability
15 to weigh the evidence.

16 THE COURT: Well, I am inclined to deny the request and
17 order the trial to proceed.

18 MR. KATZ: Thank you, your Honor.

19 MR. WEEDMAN: Very well, your Honor.

20 THE COURT: I again say I am not doing it with prejudice
21 to a renewal, but I do not want to either superimpose it with
22 this thinking that it is subject to being granted. I am simply
23 saying you may make your motion, but in all probability I won't
24 change my mind.

25 MR. WEEDMAN: Very well, your Honor.

26 THE COURT: I will be that candid.

27 THE DEFENDANT: Your Honor, at this time I would like to
28 make a motion under 987.A of the Penal Code to dismiss appointed

1 counsel due to a conflict of interest and a conflict of court
2 tactics.

3 THE COURT: Your lawyer, Mr. Weedman?

4 THE DEFENDANT: That's right.

5 THE COURT: Well, the motion is denied. Motion denied.

6 All right. Let's go ahead, gentlemen.

7 (The following proceedings were had
8 in open court:)

9 THE COURT: Now, gentlemen, let's see where we are.

10 MR. KATZ: I think we were with Mr. Kasporoff.

11 THE COURT: People against Grogan. Defendant is here,
12 both counsel are here, the jury is in the jury box.

13 The regular jurors that have been sworn plus the
14 three alternates are here.

15 I believe the People were about to examine.

16 MR. KATZ: Yes, your Honor.

17 THE COURT: All right. You may proceed.

18
19
20 SEMON KASPOROFF

21 BY MR. KATZ:

22 Q Is that Mr. Kasporoff?

23 A Yes, sir.

24 Q I will move around here so we can have a talk with
25 one another.

26 You have heard his Honor state that indeed at the
27 outset when you first came into the courtroom, that the People
28 do not intend to present evidence of a body, that is any remains
or parts thereof, or an eyewitness to the killing, or any

1 eyewitness to having observed the body in death; you understand
2 that?

3 A Yes, I understand.

4 Q Now, in that connection the People intend to rely
5 upon wholly circumstantial evidence to establish the
6 defendant's guilt, do you appreciate that?

7 A I appreciate that.

8 Q Is it fair to say that if you had a state of mind
9 at this time in which you would be unwilling to consider fully
10 and fairly circumstantial evidence, then the People could not
11 get a fair trial?

12 A Yes, I understand.

13 Q All right.

14 So all we ask of you, sir, is that you have an open
15 mind with respect to considering circumstantial evidence as a
16 proper means of proof, you understand that?

17 A Yes, sir.

18 Q You understood his Honor's instruction in connection
19 with circumstantial evidence wherein he stated that direct
20 evidence and circumstantial evidence are both acceptable in the
21 eyes of the law and are equal means or measures of proof, you
22 understand that?

23 A Yes.

24 Q Now, let me ask you this: if you were convinced
25 beyond a reasonable doubt and to a moral certainty, based upon
26 circumstantial evidence, that the defendant committed murder
27 in the first degree, would you, nevertheless, withhold voting
28 murder in the first degree solely because the People failed to

1 produce an eyewitness to the killing?

2 A Again it would be based on the evidence. If I
3 was convinced, I think I would.

4 Q All right.

5 You think you would what?

6 A Agree to your statement that --

7 Q All right.

8 Mr. Kasporoff, I am not trying to trap you at all.
9 So let me just backtrack for one moment if you will.

10 With respect to circumstantial evidence our measure
11 of proof is no greater or no less than in any other case. We
12 always have to prove our case beyond a reasonable doubt and to
13 a moral certainty. You understand that?

14 A Yes.

15 Q Now, the law contemplates that because of the
16 nature of many crimes, for example, because they are not
17 committed in public or before witnesses, that the People can
18 resort to proof which is known as indirect evidence or
19 circumstantial evidence; you appreciate that?

20 A Yes.

21 Q Now, in that connection if the People sustain their
22 burden of proof which creates in your mind by the evidence in
23 this case an abiding conviction to a moral certainty of the
24 truth of the charge, we are entitled to a conviction, is that
25 fair enough?

26 A Yes.

27 Q All right.

28 So, in other words, you are not going to require

1 merely because this case rests wholly upon circumstantial
2 evidence, the People to sustain any greater proof than that
3 which is already required in law, namely, proof beyond all
4 doubt, excluding all possibility of error, will you?

5 A Right.

6 Q All right.

7 You will not, I take it?

8 A Right.

15a

The 15a 1

Q All right.

2

Now, do you understand again what I am saying.

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There will be no proof of a body; there will be no eyewitness to the killing, there will be no eyewitness to having seen the body in death. Nevertheless, is it your state of mind that you will consider fully and fairly circumstantial evidence in this case and if in your sole and absolute discretion as a juror it creates in your mind an abiding conviction to a moral certainty of the truth of the charge, I take it you will vote guilty; is that correct?

11

A Yes.

12

Q All right.

13

14

15

16

Now, do you have any quarrel with the rule of law which permits a man to be convicted of murder in the first degree based wholly upon circumstantial evidence, sir? Does that offend your sense of morals or fair play?

17

18

19

20

A Well, there again I can't prejudge, and tell what the evidence will bring. But I, if it proves that it would be, the evidence proves it is so, overwhelmingly, I would agree.

21

22

23

24

Q I think that is a very good answer. What you are really saying is something which is assumed in my question. That is the evidence always has to meet our burden of proof, that is proof beyond a reasonable doubt and to a moral certainty; is that correct?

25

A That is right.

26

27

28

Q What I am saying is assuming we meet that burden of proof, do you nevertheless have a quarrel with the law which permits a person to be convicted of murder in the first degree

Sta 2

1 based wholly upon circumstantial evidences?

2 A No.

3 Q All right.

4 Now, are you able to view the defendant here at
5 this time?

6 A Yes.

7 Q All right.

8 Now, if his Honor instructs you that during the
9 guilt phase of this trial you are dutybound to weigh impartially
10 the evidence and to render a verdict based upon a fair and
11 deliberate and impartial assessment of the evidence, uninfluenced
12 by any sympathy you may have for the defendant, would you follow
13 that instruction?

14 A Yes.

15 Q I take it you would not accord to this defendant,
16 that is, give to Mr. Grogan any benefit which you would not
17 give to any other person who finds himself in this same situa-
18 tion; is that correct?

19 A That's correct.

20 Q So that you subscribe to the tenet that all people
21 should be treated equally under the laws; is that correct?

22 A I do.

23 Q Whether he is old or young or infirm or what have
24 you, if that person committed a crime in the eyes of the law
25 and the People have met the burden of proof, you would vote
26 guilty; is that correct?

27 A Yes.

28 Q Have you given some thought to the death penalty prior

15a-3

1 to being called for jury service?

2 A No, sir.

3 Q And do you have any strong feelings one way or
4 another with respect to capital punishment?

5 A No, sir.

6 Q Have you asked yourself the question whether or
7 not you could personally participate in the death penalty
8 verdict?

9 A Yes, I have.

10 Q Do you recognize the distinction between believing
11 in the abstract capital punishment is all right on the one
12 hand, but having to personally participate in a death penalty
13 verdict on the other hand; do you see the distinction between
14 the two?

15 A Yes, I do.

16 Q Do you realize in the latter situation this is a
17 pretty difficult and arduous task, is it not?

18 A Yes, it is.

19 Q If we reach that phase of the case known as the
20 penalty hearing which necessitates the return of a first degree
21 murder verdict, you would be required, if you became part of
22 the regular panel, to determine whether or not another human
23 being should live or die; isn't that correct?

24 A Yes.

25 Q Some people don't like to make not only those kinds
26 of decisions but any kind of decision in which it affects
27 another person; you appreciate that?

28 A Yes, I do.

11a-4

1 Q Are you the kind of person who would rather --
2 and I am not suggesting you are, sir, but for purposes of
3 my question are you the kind of person who would rather dodge
4 making difficult decisions because they can affect another
5 person's life, or would you meet that issue squarely if
6 called upon to make that kind of decision?

7 A I would meet the issue squarely.

8 Q All right.

9 If you were asked to determine whether or not Mr.
10 Grogan should live or die and 11 other jurors, after hearing
11 all of the evidence in the case and finding him guilty based
12 upon evidence which created in their minds an abiding conviction
13 to a moral certainty of the charge, and 11 jurors then
14 cast their ballot for death and you were now asked to vote
15 death or life and in your sole and absolute discretion, in
16 your heart and your mind and your conscience you felt this
17 case warranted the death penalty, how would you vote?

18 A If I at that time, if that decision -- with every-
19 thing involved, the evidence producing properly -- I would
20 vote accordingly.

21 Q All right. Now, you understand that without 12
22 votes for death there can be no return of a death penalty
23 verdict?

24 A I realize that.

25 Q So in other words, if 11 people in the panel said
26 this is a death penalty case and have cast their ballot for
27 death, but you withheld a vote for death penalty, that means
28 there could be no return of a death penalty verdict; isn't that

15a-5

1 right?

2 A That's right.

3 Q Then it reasonably follows that if you don't vote
4 for the death penalty as we said before, therefore, there can
5 be no death penalty, and in a sense you are sitting as a juror
6 of one, aren't you, because if you vote for the death penalty
7 then you have to blame yourself, isn't that right?

8 A If I felt that the evidence didn't prove so I
9 would vote accordingly, sir.

10 Q I'm not asking that at this point. What I want you
11 to realize is the enormity of the responsibility with which
12 you are confronted if selected as a juror and asked to determine
13 whether another human being shall live or die. In that connec-
14 tion if you are part of the regular panel and 11 people vote
15 for death, it still takes your vote in order for the death
16 penalty to issue in this court, do you understand that?

17 A I understand that.

15b

15b

1 Q So you can't blame 11 other persons and say, "Well,
2 I went along with them." You have to accept the individual
3 responsibility for sentencing Mr. Grogan to death, do you
4 understand that?

5 A Yes.

6 Q All right.

7 Now, what I am saying in that sense, you are sitting
8 as a jury of one, aren't you? Because without your vote
9 Mr. Grogan can't be sentenced to death or life, isn't that
10 right?

11 A That is a prejudgment --

12 Q I am not asking you to precommit yourself. What
13 I am asking you to do, what I am asking, if you can, acknowledge
14 the fact that without your vote there is no death penalty in
15 this case, you understand?

16 A Yes.

17 Q Aren't you sitting as a jury of one, sir, in
18 connection with that issue?

19 A I assume so.

20 Q All right.

21 That's a pretty big responsibility, isn't it, sir?

22 A Yes.

23 Q If you believed after a consideration of all of the
24 evidence in your heart and in your mind and your conscience
25 this case warranted the death penalty could you vote the death
26 penalty?

27 A If I felt that the evidence was so, I would, yes.

28 Q All right.

1 Now, it has been alleged that between the dates
2 August 16, 1969 and September 1st, 1969 Mr. Shea met his
3 death.

4 Now, the People are not obliged to prove the exact
5 time and place of death. We are only required to prove
6 consistent with the charge in the indictment that Mr. Shea met
7 his death between those dates, do you understand that?

8 I can't hear you.

9 A I don't get -- comprehend the full question that
10 you are asking.

11 Q All right.

12 If the People prove beyond a reasonable doubt and
13 to a moral certainty that Mr. Grogan murdered Mr. Shea between
14 the dates alleged in the indictment, namely, August 16, 1969
15 and September 1st, 1969 would you nevertheless refuse to vote
16 guilty solely because we did not establish the exact time and
17 the exact date of the death?

18 A No, I don't think so.

19 Q All right.

20 Do you understand that the law does not require the
21 People to prove the exact time and date of death?

22 A As it was explained by the court I understand that,
23 sir.

24 Q All right.

25 So in other words, if his Honor so instructs you,
26 you will unhesitatingly follow his instructions at the
27 conclusion of the case, is that correct?

28 A Yes, sir.

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

3 A No reason at all.

4 MR. KATZ: Thank you, sir.

5 Pass for cause.
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EX-101
CLERK & BUREAU
FEB 21 1964
U.S. DISTRICT COURT

16-1

1 THE COURT: Which attorney's peremptory now, gentlemen;
2 where are we now, gentlemen?

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

4 THE COURT: How do we stand?

5 THE CLERK: It is the People's challenge.

6 MR. KATZ: Accept the alternates.

7 THE COURT: Let me get it straight -- People's peremptory?

8 THE CLERK: People's peremptory.

9 MR. KATZ: I accept the alternates.

10 THE COURT: How about defendant?

11 MR. WEEDMAN: Yes, your Honor; we would thank and excuse
12 Mr. Kasperoff.

13 THE CLERK: Being called as prospective alternate juror
14 No. 2, please, Mrs. Ozie L. Smith; first name is spelled
15 O-z-i-e.
16

17 OZIE L. SMITH

18 BY THE COURT:

19 Q Now, lady, have you heard everything that I have
20 said since you came in here with the rest of the jurors?

21 A Yes, I have.

22 Q Let's assume you are selected as an alternate juror
23 and during the course of the trial the court gives you the place
24 of one of the regular jurors so that you become a regular juror,
25 and let's assume the case is all tried and you go to the jury
26 room to decide the question of guilty or not guilty.
27

28 Now, at that time the jury could make a finding of
not guilty and that would complete the case entirely, there is

1 nothing left to be done. The jury could make a finding of
2 guilty, murder, "We find the defendant guilty of murder"; then
3 the jury must make a finding of degree, first degree murder or
4 second degree murder.

5 If the jury makes a finding of second degree murder,
6 then the jury is excused. At that point there is nothing more for
7 the jury to do.

8 However, if the jury makes a finding of first
9 degree murder, then the court holds a penalty hearing and at
10 the conclusion of the penalty hearing the jury goes back to the
11 jury room to determine penalty, the punishment, which must be
12 either the death penalty or life imprisonment.

13 Now, let's suppose you were in the jury room voting
14 on the question of penalty, either the death penalty or life
15 imprisonment, then I will ask you this question: at that time
16 would you automatically vote against the imposition of the
17 death penalty without regard to any evidence that might be
18 developed at the trial of this action?

19 A Yes, I would, your Honor.

20 Q The answer is "No."

21 MR. KATZ: The answer is "Yes," your Honor.

22 MRS. SMITH: Yes, I would.

23 Q BY THE COURT: The answer is "Yes"?

24 A Yes.

25 Q All right.

26 Now, I will re-ask the question in this fashion:
27 Is there any question at all in your mind that you would not
28 vote for the death penalty, no matter what the evidence is,

1 you would not vote for the death penalty; is that correct?

2 A Yes, that's correct.

3 MR. KATZ: I will stipulate.

4 THE COURT: Can I excuse this lady?

5 MR. WEEDMAN: So stipulated, your Honor.

6 THE COURT: All right, you are excused.

7 MR. KATZ: Would your Honor make a finding?

8 THE COURT: The clerk, call another juror.

9 MR. KATZ: Excuse me, your Honor, would you make a finding?

10 May we have a finding, your Honor, under --

11 THE COURT: Did you want to question?

12 MR. KATZ: No, just a finding under 1073.

13 THE COURT: Yes, indeed; I found for cause exists under
14 section 1073 and 74, subdivisions 2 and 8 of the Penal Code.

15 Thank you; I slipped on that.

16 THE CLERK: Richard T. Coyne, Jr.; C-o-y-n-e, and there
17 is a Jr.

18
19
20 RICHARD T. COYNE, JR.

21 BY THE COURT:

22 Q Now, Mr. Juror, have you heard everything I have
23 said to the other jurors since you came in the last time with
24 these new jurors?

25 A Yes, I have.

26 Q Let's suppose that you are selected as an alternate
27 juror; during the course of trial you are placed in and made one
28 of the regular jurors and, let us suppose the case has been
tried, you go to the jury room to vote on the question of

1 guilty or not guilty.

2 At that time the jury could make a finding of not
3 guilty, which concludes the case entirely. The jury could make
4 a finding of guilty as charged and then the jury would fix the
5 degree, first degree murder or second degree murder.

6 If the the jury makes a finding of second degree
7 murder there is nothing left to be done for the jury, the
8 case is concluded as far as the jury is concerned.

9 If the jury makes a finding of first degree murder,
10 then there must be held a penalty hearing for the purpose of
11 determining, the jury determining what the penalty would be.
12 At the conclusion of the penalty hearing the jury would go
13 back and vote on penalty, which would be either the death
14 penalty or life imprisonment.

15 Now, if you are on the jury and you are down to the
16 situation or position of voting on penalty, I will ask you this
17 question: at that time would you automatically vote against the
18 imposition of the death penalty without regard to any evidence
19 that might be developed at the trial of this case?

20 A Yes, I would.

21 Q The answer is "Yes," you would?

22 Is there any question in your mind? Is that an
23 absolute, firm conviction in your mind?

24 A Yes, I do not believe in the death penalty.

25 Q I will repeat it.

26 A All right.

27 Q You absolutely would not vote for the death penalty,
28 no matter what the circumstances are; that is clear?

A Right.

THE COURT: Thank you.

May I excuse this gentleman?

MR. KATZ: Yes, your Honor.

MR. WEEDMAN: If I might just, a couple of questions?

THE COURT: Go ahead.

16a

The 16a

Q BY MR. WEEDMAN: Is that Mr. Coyne?

A Coyne.

Q Mr. Coyne, in answering Judge Call's questions with respect to the death penalty, do you understand that the is entitled defendant to have persons in the jury room during the penalty phase who may well be opposed in principle to capital punishment?

Do you understand that?

A It makes no difference about what I feel.

Q I am sorry?

A I mean, that does not affect what I feel.

Q In other words, you don't feel, in fairness to the People, that you could even participate in any -- in any case?

A No, I think the question was would I vote for the death penalty. I would not vote for the death penalty.

Q Well, let me ask the question like this, would you under -- well, let me try again.

By way of a preface, this trial, if it goes to a penalty phase, will be in two parts, as Judge Call has pointed out, the first called the guilt phase; if there is a finding of first degree murder then it goes into the second phase.

If it goes to the penalty phase, presumably evidence will be presented by both sides. Following that evidence then, of course, the jury retires and-- instructions -- the jury then retires and they now deliberate the penalty; so the question to you, Mr. Coyne, is whether you would then, you see, automatically vote against the death penalty, irrespective of any evidence that might be produced either during the guilt

16a-2

1 phase and during the penalty phase.

2 A I would vote against the death penalty.

3 Q In other words, you can't conceive of any case
4 in which you would even consider imposing the death penalty?

5 A (Shaking head negatively.)

6 MR. WEEDMAN: Thank you, Mr. Coyne.

7 MR. KATZ: Your Honor, may the record reflect a negative
8 response by the alternate

9 THE COURT: I am prepared to rule.

10 MR. COYNE: I am sorry. I said "No."

11 MR. KATZ: Thank you, sir.

12 MR. COYNE: I said "No," to it.

13 THE COURT: Submitted?

14 MR. KATZ: Yes, your Honor. Submitted.

15 THE COURT: I will excuse the juror.

16 You are excused, sir.

17 I make a finding under 1073 and 4, subdivision 2
18 and 8 of the Penal Code.

19 Call another juror.

20 THE CLERK: George E. Welty, W-e-l-t-y.

21
22 GEORGE E. WELTY

23 BY THE COURT:

24 Q Now, have you heard everything I have said to the
25 new grouping of jurors that came in with you?

26 A Yes, your Honor.

27 Q Let's suppose you are accepted as an alternate
28 juror, later on the court makes you a permanent, regular juror,

16a-3

1 the case is tried, you go to the jury room to decide the case
2 as guilty or not guilty.

3 At that time the jury could make a finding of not
4 guilty and that would conclude the matter entirely. The jury
5 could make a finding of guilty as charged and set the degree,
6 the degree being either first degree murder or second degree
7 murder.

8 If the finding is second degree murder there is no
9 further duty from the jury. If the finding is first degree
10 murder the court then holds a subsequent penalty hearing and
11 after the penalty hearing is held the jury goes back into the
12 jury room and decides on penalty, which must be either the
13 death penalty or life imprisonment.

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

19 A I would.

20 Q The answer is you would; is that correct?

21 A Yes, that is right.

22 Q Are you positive and definite in that statement,
23 that you absolutely would vote for the death penalty no matter
24 what the testimony might or evidence might produce?

25 MR. KLEIN: Excuse me, your Honor. I think you misspoke
26 yourself; I think you said "vote for the death penalty."

27 THE COURT: I am sorry.

28 I appreciate the correction.

16a-4

1 MR. KATZ: Yes, your Honor.

2 THE COURT: Would you read it back and get -- I would
3 like the juror's answer to my basic question, as to whether
4 he would actually --

5 MR. KATZ: It was the way you reframed the question,
6 your Honor; that was the problem.

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

9 "Q Are you positive and definite in
10 that statement that you absolutely would vote
11 for the death penalty no matter what the
12 testimony" --)

13 THE COURT: Let me put it again -- you are absolutely
14 right, I put a double --

15 Q Do I understand that you would not vote for the
16 death penalty no matter what the testimony or evidence is?

17 A That is correct.

18 Q You would not vote for the death penalty?

19 A I would not vote for the death penalty.

20 Q No matter what the testimony is or evidence is.

21 A In this case.

22 THE COURT: Do you desire to inquire any further?

23 MR. KATZ: No, your Honor.

24 MR. NEEDMAN: I submit it, your Honor.

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

16b

The 16b

THE CLERK: John S. Abson, A-b-s-o-n.

JOHN S. ABSON

BY THE COURT:

Q Now, Mr. Juror, you came in with the last quota of jurors; isn't that correct?

A Right.

Q And did you hear everything I said to the other jurors?

A Yes, I did.

Q Let's assume you have been selected as an alternate juror and that during the course of the trial the court places you in and makes a full-fledged, regular juror.

Now, let's suppose the case is tried and you go to the jury room to vote guilty or not guilty. At that time if the jury votes not guilty the case is concluded and over with.

If the jury votes guilty as charged, then the jury must fix the degree of the guilt, either murder first degree or murder second degree. If the jury makes a finding of murder second degree, there is nothing more for the jury to do, the case is concluded as far as the jury is concerned.

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

Now, if you will put yourself in the jury room voting on the question of penalty at that time, I will ask you

16b-2

1 this question: you are now about to vote on the penalty;
2 at that time would you automatically vote against the
3 imposition of the death penalty without regard to any evidence
4 that might be developed at the trial of this case?

5 A No.

6 Q The answer is "No"; thank you.

7 Now, I will ask you, do you feel that you could be
8 fair and impartial if you are selected as a juror in this case?

9 A Yes.

10 Q Do you know of anything that might come up during
11 the trial that would disturb you or upset you so that you
12 could not be fair and impartial in trying this case as a juror?

13 A No.

14 THE COURT: Thank you.

15 Defendant may inquire for cause.

16 I pass for cause.

17 Q BY MR. WEEDMAN: Is that Mr. Abson?

18 A Mr. Abson.

19 Q Mr. Abson, may I ask you, sir, what you do for a
20 living?

21 A Metal fabrication for McDonnell-Douglas Aircraft.

22 Q Is there anything about the projected length of
23 this trial -- we are estimating ten weeks beyond today -- that
24 will cause you any personal hardship?

25 A It would cause me a hardship; I don't know how
26 personal it would be.

27 Q Would you care to tell us what that might be?

28 A Well, I am only supposed to be here for 30 calendar

1 days.

2 Q What would the consequence be of your being here,
3 let's say, for another, well --

4 A I only get \$5 a day; that's not enough to support
5 my family.

6 Q Are you telling us that your employer will not pay
7 you beyond that 30-day period?

8 A Correct.

9 Q Are you the sole support of your family?

10 A Yes, I am.

11 Q Are you asking to be excused, Mr. Abson, on that
12 basis?

13 A Yes.

14 Q Would the fact perhaps of going on beyond that
15 30-day period with only \$5 a day for you and your family, would
16 that, do you feel, detract in any way from your giving your,
17 perhaps, full attention to the evidence in this trial?

18 In other words, do you think it might interfere
19 with your functioning most efficiently as a juror?

20 A It would affect my livelihood, not my position as
21 a juror.

22 Q Well, I asked the question -- the thrust of my
23 question, of course, reflects that a great many people, knowing
24 that they didn't have any ordinary income coming in for a
25 period of time might start to worry about that; and that, in
26 turn, might interfere with their performance as a juror;
27 so my question to you, Mr. Abson, is whether or not you think
28 that would be true in your case or not.

1 A Well, I wouldn't like to stay over 30 days.

2 Q Pardon?

3 A I wouldn't like to stay over 30 days.

4 Q Well, I hate to ask this, it is a rather technical
5 question, it is necessary in this kind of situation; but do
6 you feel that if you are forced to stay over that 30-day period
7 that you could give us your full and undivided attention,
8 bearing in mind that you are going to lose some income,
9 apparently, in the process?

10 A I don't think so.

11 Q You don't think you could give us your full and
12 undivided attention; is that your answer?

13 A Yes.

14 MR. WEEDMAN: Your Honor, I would respectfully urge a
15 challenge for cause as far as Mr. Abson is concerned.

16 MR. KATZ: I had already indicated to Mr. Weedman that I
17 would indicate that there is a hardship there.

18 THE COURT: You agree?

19 MR. KATZ: Yes, I offered the stipulation before.

20 THE COURT: You agree?

21 MR. KATZ: Yes, your Honor, I agree.

22 THE COURT: All right, I will accept the cause.

23 Thank you very much, sir.

24 THE CLERK: Mrs. Jessie W. Berkemeier, B-e-r-k-a-m-e-i-e-r.

25 MR. KATZ: Spell it again, please.

26 THE CLERK: Yes, sir; it is B-e-r-k-e-m-e-i-e-r.

27

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17-1

JESSIE W. BERKEMEIER

BY THE COURT:

Q Now, lady, have you heard everything I said to the jurors since you came in the courtroom?

A Yes, sir, I have.

Q All right,

Let's say that you are selected as a juror in this case, as an alternate juror in this case; then during the course of the trial you are made a regular juror some reason or other, some problem arises.

The case is tried, you go to the jury room to decide the case, guilty or not guilty. Now, at that time, you understand, the jury could make a finding of not guilty, in which case the matter is all concluded. The jury could make a finding of guilty as charged and then the jury must set the degree, first degree or second degree murder.

If the jury makes a finding of second degree then again there is no further action from the jury. The case is stopped right at that proceeding.

However, if the jury makes a finding of first degree murder then the court holds a penalty hearing and after the penalty hearing the jury goes back to the jury room and decides on penalty, the penalty being either the death penalty or life imprisonment.

Now, if you will put yourself in the position where you would be voting on penalty, either the death penalty or life imprisonment, I will ask you this question: at that time would you automatically vote against the imposition of the

17-2 1 death penalty without regard to any evidence that might be
2 developed at the trial of this action?

3 A Yes, I would.

4 Q The answer is yes or no?

5 A Yes.

6 Q Yes. That's your answer. Is there any question in
7 your mind about that answer?

8 A Well, I don't think so. I don't think I -- I
9 don't believe in the death penalty.

10 Q All right.

11 Now, I am re-asking it again.

12 A Okay.

13 Q Your answer is that you would automatically vote
14 against the death penalty regardless of what the testimony or
15 evidence was, is that correct?

16 A Yes.

17 THE COURT: Do you desire to inquire, gentlemen?

18 MR. KATZ: No, your Honor.

19 THE COURT: Defendant?

20 MR. WEEDMAN: No, thank you, your Honor.

21 THE COURT: I will excuse you.

22 Thank you, lady.

23 And I would find that cause exists under section
24 1073 and 4, subdivisions 2 and 8 of the Penal Code.

25 THE CLERK: Felix G. Walker, W-a-l-k-e-r.

26 MR. WALKER: That's Q.

27 THE CLERK: It is G on here, sir. Shall I change it.
28 Thank you.

17-3

FELIX Q. WALKER

BY THE COURT:

Q Now, we will start again. You have heard everything I have said to the jurors since you came in?

A Yes, sir.

Q Let's assume you are sworn in as an alternate juror. Later on during the trial you are made a regular juror and let's assume the case is tried and you go to the jury room to decide the question of guilty or not guilty.

Now, at that time the jury can make a finding of not guilty and that would conclude the case. The jury could make a finding of guilty and then the jury must set the degree.

If the jury sets the degree as second degree murder there is no further duty from the jury. If the jury sets the degree at second degree murder there is no further duty from the jury. If the jury sets the degree at first degree murder then the court must hold a subsequent penalty hearing and after the penalty hearing the jury goes back to the jury room and passes or determines the question of penalty which must be either the death penalty or life imprisonment.

Now, if you will put yourself in the position of voting on the question of the death penalty or life imprisonment I will ask you this question: at that time would you automatically vote against the imposition of the death penalty without regard to any evidence that might be developed in the trial of this case?

A Yes, I would.

Q The answer is "Yes," you would, that's correct?

1 A That's correct.

2 Q Is there any question in your mind, you are
3 positive, you would vote at all times against the imposition
4 of the death penalty, that's correct?

5 A That's correct.

6 THE COURT: May I excuse this gentleman?

7 MR. KATZ: Yes, your Honor.

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

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

10 Under 1073 and 4, subdivision 2 and 8.

11 I think we are out of jurors, Mr. Clerk.

12 THE CLERK: We are, sir.

13 MR. KATZ: Your Honor, I think we only have one
14 remaining.

15 THE COURT: We will take a short recess. Do not discuss
16 the case, folks, or come to any opinion or conclusion.

17 We will proceed in a few minutes. Thank you.

18 (Recess.)

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THE COURT: Now, gentlemen, let's proceed.

I am calling the case of People against Steve Grogan. The defendant is here, defense counsel is here, and the People's counsel is here.

The jurors are all in the jury box, and the alternates are there.

Now, first of all, Mr. Clerk, would you swear the alternates, the new alternates to answer questions, please.

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

(The prospective alternate jurors were sworn.)

(The prospective alternate jurors indicated in the affirmative.)

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

THE COURT: Now, you can call one.

THE CLERK: Being called as prospective alternate juror No. 2, please, Mrs. Florence Ulman, U-l-m-a-n.

Would you step forward, please. Would you take the chair nearest the flag, please.

MRS. FLORENCE ULMAN

BY THE COURT:

Q Now, lady, I am going to talk to you and advise you of the status of this case we are about to try. We have picked the jury for this case. We are picking three alternates. These two ladies here are proposed alternates. They haven't been sworn in yet.

I am going through the entire case and as I go

17a-2

1 through this matter, I wish that all of you folks in the
2 back of the courtroom would please listen very carefully
3 because I have quite a number of things to say. And in the
4 event this lady is excused, why, one of you folks would be
5 called to take her place for examination.

6 I want, please, everyone to listen carefully as I
7 talk here.

8 Now, to start off, this is a criminal case. The
9 name of the case is the People of the State of California
10 against the defendant Steve Grogan.

11 Now, Mr. Grogan, would you stand up so all these
12 folks can see you, please.

13 (Defendant stands.)

14 THE COURT: Thank you. This is Mr. Grogan.

15 Q Do you know Mr. Grogan?

16 A No, sir.

17 Q All right.

18 Now, Mr. Weedman is the attorney for Mr. Grogan.

19 (Mr. Weedman stands.)

20 THE COURT: Thank you. Now, Mr. Katz is the attorney for
21 the People. The deputy district attorney.

22 (Mr. Katz stands.)

23 THE COURT: Thank you.

24 Q Do you know either of these two lawyers?

25 A No, I don't.

26 Q All right.

27 Now, I will read the charge that's been filed by
28 the People against the defendant. It is in the form of an

1 indictment. It reads as follows:

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

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Now, when those charges in the indictment were filed the defendant was brought before the court, advised of his right, appeared with counsel and a plea of not guilty was entered; and under the law the moment that any defendant enters a plea of not guilty he is immediately entitled to a trial by jury. That automatically is part or comes as part of the procedure in the rights of any defendant to have a jury trial the moment that he pleads not guilty; and to cull the matter down to the present time, we are now in the process of picking the jury.

Now, we have picked the jury to try the case; that's these 12 folks that are seated in the jury box, and we are in the process of picking three alternates, which could be called under certain conditions to take the place of one of the jurors in certain situations.

If certain situations should develop, some serious illness or matters of that kind, the court could excuse the juror and substitute in one of the alternate jurors.

Now, in this case I will acquaint you with several basic criminal doctrines or principles of criminal law so that you will know some of the basic principles with which you must be guided in the trial of this case.

In any criminal action, any kind of a criminal action, the defendant -- not just this defendant -- any defendant in any criminal case is presumed to be innocent of the crime charged against him and whether you are charged with a crime or not you are presumed to be innocent, you, seated there, are presumed to be innocent of any crime; I am presumed

1 to be innocent of any crime and everybody else in this court-
2 room right now is presumed to be innocent of any crime.

3 You are presumed to be innocent; you are never
4 presumed to be guilty of anything.

5 Do you follow that basic statement?

6 A Yes, sir.

7 Q And that principle does not change when a criminal
8 complaint is filed against a person, or what the law calls an
9 information or indictment is filed. I am using the word
10 "complaint" because it simplifies it in the mind of the layman
11 somewhat, but when a criminal charge is filed, nothing changes,
12 you are still presumed to be innocent just before the charge
13 is filed.

14 Do you follow that?

15 A Yes, sir.

16 Q That presumption of innocence still follows, so
17 Mr. Grogan, seated here, is presumed to be innocent of anything.
18 He always was presumed to be innocent of any crime; he still
19 is as he is seated here, and that presumption may never be
20 changed, or it could be changed if the jury would go out and
21 make a finding of guilty, the presumption would change then --
22 the presumption doesn't change, it ceases and the finding of
23 the jury takes over.

24 If the jury finds guilty, then he is guilty and
25 the presumption vanishes. Until that time the defendant is
26 presumed to be innocent.

27 That is clear to you?

28 A Yes.

1 Q The burden of the People is to prove the defendant
2 guilty beyond a reasonable doubt, if they can do that. That
3 is their burden, their problem; that is their duty.

4 Now, to do so, the People must prove the defendant
5 guilty to a moral certainty and beyond a reasonable doubt.
6 That is their obligation. If they can do so, then the burden --
7 the presumption of innocence has never been overcome, the
8 defendant is presumed to be innocent -- if the jury should find,
9 should conclude that the People have proven the defendant guilty
10 to a moral certainty and beyond a reasonable doubt, then the
11 People have met the burden of proof.

12 Do you follow me up to that point?

13 A Yes, sir.

14 Q Now, in this case in which the defendant is
15 charged with murder, in most of the cases -- substantially all,
16 but not all of the cases in which the People charge a defendant
17 with murder, during the course of the trial the People in their
18 case will have testimony, what is called direct testimony, of
19 what is commonly referred to as the corpus delicti, meaning
20 corpus, the body; delicti, is dead, meaning dead body. I
21 will define that more definitely in a minute.

22 It would be direct testimony, and I spelled it out
23 during the course of the examination to try to simplify it in
24 the mind of the layman as much as possible, by literalizing it
25 to you, by saying that in most all cases involving murder,
26 for instance, a witness would get on the stand and say, in
27 substance, "I knew John Smith" -- we'll use the fictitious
28 name of John Smith -- "I knew John Smith when he was alive.

1 I saw the body of John Smith when he was dead. He was dead;
2 I saw the body dead. I saw John Smith dead."

3 In other words, there is a direct testimony from the
4 eye of the witness that he saw a man dead and that man is the
5 man that is accused of being murdered, for instance.

6 Do you follow me there?

7 A Yes, sir.

8 Q There is proof of the dead body by somebody who
9 saw him dead. That is direct evidence.

10 Now, in this case there will be no direct
11 testimony of the dead body of Shorty Shea. The People will
12 rely on what is called circumstantial evidence to prove the
13 death or that Shorty Shea was killed by a criminal agency.
14 It won't be an eyewitness. There will be no direct proof of
15 the dead body, but the People are relying on circumstantial
16 evidence to prove that Shorty Shea is deceased.

17 Now, I am going to read to you a definition of
18 corpus delicti insofar as it applies to a criminal case, and
19 it is a definition of instruction of law, is better; I will
20 read it to you again, as many times as may be necessary.

21 I am going to read it to you now so you will have
22 it in your mind with respect to questions that may be asked
23 of you.

24 Now, here's what the law says.
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1 "The term corpus delicti as used
2 in these instructions concerning murder
3 does not mean the production of the body
4 or any part thereof, of the alleged
5 deceased. Every crime whether it is
6 burglary, robbery or any other offense,
7 requires the proof of a corpus delicti.
8 The term corpus delicti means the proof
9 of the essential elements of the particular
10 crime with which a defendant may be charged.
11 The corpus delicti of murder consists of
12 two" that's t-w-o -- "two elements. No. 1,
13 proof of the death of the alleged deceased.
14 No. 2, proof that the death of the alleged
15 deceased was caused by some criminal agency.
16 Either or both of these two essential elements
17 which constitute the corpus delicti of the
18 crime of murder need not be proved by direct
19 evidence but may be proved circumstantially
20 or inferentially. It is not necessary in
21 order to establish the corpus delicti for
22 murder that the body or any parts thereof
23 of the alleged deceased person be produced,
24 as such, nor that any witness be produced
25 who has seen or found the body or any part
26 thereof of the alleged deceased in death."

27 Q Now, I am repeating. The People will not have
28 direct testimony, do you understand what I am saying there?

19-2

1 Nobody will get on the stand and say "I saw Shea, Shorty
2 Shea dead." You understand that?

3 A Yes, sir.

4 Q But they will rely on circumstantial evidence
5 in their burden to prove their case beyond a reasonable doubt.
6 Now, you will say what is the difference between direct
7 evidence and circumstantial evidence? You may ask that. You
8 may go through your mind.

9 I am going to read to you the difference and here
10 is the way the law describes it:

11 "The testimony of a witness or all things
12 presented to the senses offered to prove the
13 existence or the nonexistence of a fact is
14 either direct evidence or circumstantial evidence.
15 Direct evidence means evidence that directly
16 proves a fact."

17 And I stop there to say for instance a witness
18 on the stand who is sworn to tell the truth will say, "I saw
19 a house. That house was painted green."

20 Now, this is direct testimony "I saw a green house."
21 That is direct testimony. Do you understand?

22 A Yes.

23 Q All right.

24 "Direct testimony means evidence that
25 directly proves a fact" -- like I have indicated --
26 "without an inference and which in itself is
27 true" -- if you believe that witness that says "I saw a
28 green house" --

19-3

1 "that conclusively establishes that
2 fact."

3 Now, that's direct evidence.

4 "Circumstantial evidence means evidence
5 that proves a fact from which an inference of
6 the existence of another fact may be drawn.
7 An inference is a deduction of fact that may
8 logically and reasonably be drawn from another
9 fact or group of facts established by the
10 evidence. It is not necessary that facts be
11 proved by direct evidence. They may be proved
12 also by circumstantial evidence or by a
13 combination of direct evidence and circumstan-
14 tial evidence. Both direct evidence and circum-
15 stantial evidence are acceptable as a means
16 of proof. Neither is entitled to any greater
17 weight than the other."

18 And at that point I will stop to say that whether
19 the testimony is direct evidence or circumstantial evidence
20 the jury must be convinced, the jury must be convinced that
21 the evidence establishes the People's case, if it does, to
22 a moral certainty and beyond a reasonable doubt. That must
23 be the level or the standard of proof, whether the circumstan-
24 tial evidence -- the jury must say, "All right, this is
25 circumstantial evidence."

26 And then they must draw the final conclusion that
27 to vote conviction they must be satisfied that circumstantial
28 evidence or the direct evidence proves the defendant guilty to

1 a moral certainty and beyond a reasonable doubt.

2 Q Whether it is direct, whether it is circumstantial,
3 it has to meet that quantity or quantum of proof. That is
4 clear to you?

5 A (Nodding head affirmatively.)

6 Q And if the jury is not satisfied of that fact
7 they cannot vote guilty. They must vote not guilty. Is that
8 clear?

9 A Yes, sir.

10 Q To vote guilty the jury must say -- or whatever,
11 the jury or jurors must say I -- or we -- "We feel that the
12 People have met that burden of proof. They've proven the
13 defendant guilty to a moral certainty and beyond a reasonable
14 doubt."

15 If they can't meet that standard or that amount
16 of proof the jury doesn't feel that has been met, the jury
17 must vote not guilty. If the jury finds the People have
18 sustained that burden of proof, then the voting is that of
19 guilty.

20 But the finding of fact is for the jury. You can't
21 vote guilty to anybody until the People have sustained that
22 burden of proof. If they do not sustain it, the voting is not
23 guilty. If they sustain it and meet that, then the voting
24 is guilty.

25 The voting is automatic once that fact is established.
26 Is that clear to you?

27 A Yes, sir.

28 Q And a jury can never vote or bring in a verdict of

1 conviction, the jury can never vote or bring in a conviction
2 until all 12 members of the jury, every one of the jurors
3 are in unison on the verdict of guilty. Nor can they vote,
4 nor can they make a finding of not guilty until all 12 members
5 of the jury vote not guilty. Is that clear to you?

6 A Yes, sir.

7 Q Do you know of any reason why you could not be
8 fair and impartial if you are selected to try this case as
9 a juror, act as an alternate juror or that you should be
10 placed in as a -- let me withdraw that.

11 I will take this other question first. It would
12 probably be better sequence,

13 I am going to ask you to assume that you have
14 been selected as an alternate juror and that after that you
15 are placed in the jury box as a regular juror and the case
16 has been tried, and you have gone to the jury room to vote
17 guilty or not guilty.

18 And I am going to ask you -- now, let me say at
19 that point the jury could say "We find the defendant not
20 guilty" and that concludes the case.

21 On the other hand if the jury votes guilty "We
22 the jury find the defendant guilty of the crime of murder"
23 the jury then must make a finding of degree. "We find the
24 murder to be first degree murder or second degree murder."

25 Is that clear to you? Am I going too fast?

26 A You are telling me --

27 Q Let's try again.

28 A No, you are telling me things I am learning.

Q Let's take it easy. I have got a lot of time.

A Right.

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1 Q Let's say you are accepted as an alternate juror.
2 Somebody gets very sick in the jury and I excuse them, and I
3 put you in as a regular juror. Do you follow that?

4 A Yes, sir.

5 Q Assume that, I am asking you to assume that.
6 So now you would be a regular juror, wouldn't you?

7 A Yes, sir.

8 Q All right.

9 Now, we finish the trial of the case and I send
10 you all to the jury room to decide this case, guilty or not
11 guilty. That is what you decide now. Do you follow that?

12 A Yes, sir.

13 Q All right.

14 Now, at that point the jury could all vote not
15 guilty. Do you follow me there?

16 A Yes, sir.

17 Q That's the end of it. The case is over with.
18 The jury could vote guilty of murder. Is that
19 clear?
20

21 A Yes, sir.

22 Q If the jury votes guilty of murder, the jury must
23 then fix, f-i-x, -- then fix the degree of murder, first degree
24 murder or second degree murder. Is that clear?

25 A Yes, sir.

26 Q The jury does that. You understand that?

27 A Yes, sir.

28 Q All right.

If the jury fixes the degree second degree murder

19a-2

1 then there is nothing more for the jury to do. The jury is
2 excused. Is that clear?

3 A Yes, sir.

4 Q All right.

5 You can go home. You understand.

6 Now, if the jury fixes the degree murder first
7 degree, then there is a penalty hearing held by the court right
8 here. We have a penalty hearing.

9 After the penalty hearing you and the rest of the
10 jury go back to the jury room to decide what is the penalty,
11 is that clear?

12 A Yes, sir.

13 Q Now, the penalty at that point must be either the
14 death penalty or life imprisonment. Is that clear?

15 A Yes, sir.

16 Q And you the jury decide that. You understand that?

17 A Yes, sir.

18 Q Now, let's assume you are voting on the question
19 of penalty. You are voting the death penalty or life imprison-
20 ment. Let's assume that you are voting on that.

21 I am going to ask you this question: at that time
22 would you automatically vote against the imposition of the
23 death penalty without regard to any evidence that might be
24 developed in the trial of this case?

25 A Would you repeat that, please.

26 Q Yes. Do you want me to repeat it?

27 A Yes.

28 Q All right.

19a-3

1 You are voting on the question of penalty. Are
2 you clear up to that point?

3 A Yes.

4 Q And you have to decide on one of the two penalties.
5 You either would have to decide on the question of the death
6 penalty or life imprisonment. One of those two. Is that clear
7 to you?

8 A Yes, sir.

9 Q All right.

10 You are going to vote now. Now, I am asking you
11 about the death penalty and here is the question again.

12 Would you automatically vote against imposing the
13 death penalty, would you just vote against it without regard
14 to any testimony or any evidence in the case, would you simply
15 vote "I am against the death penalty, I am against the death
16 penalty, I am against the death penalty" -- now, is that the
17 way you would vote or not?

18 A Yes, sir.

19 Q All right.

20 Now, I will repeat it so we can get it straight.
21 You definitely would vote against the death penalty no matter
22 what the testimony or evidence was, is that correct?

23 A Yes, sir.

24 Q There is no question about that?

25 A No, sir.

26 THE COURT: Thank you very much.

27 Now, gentlemen, may I excuse this lady?

28 MR. KATZ: Yes, your Honor.

19a-4

1 MR. NEEDMAN: Yes, your Honor. Thank you.

2 THE COURT: All right.

3 I will excuse you. Thank you.

4 And I find cause exists under sections 1073 and 4,
5 subdivisions 2 and 8 of the Penal Code.

6 Thank you.

7 THE CLERK: Miss Linda J. Yarnell, Y-a-r-n-e-l-l.

8
9 LINDA J. YARNELL

10 BY THE COURT:

11 Q Now, have you heard, lady, everything I have said
12 since you have been sent up to the courtroom here?

13 A Yes.

20

20-1

1 Q I am going to ask you to assume that you have been
2 accepted as an alternate juror and we start to try the case
3 and during the trial one of these jurors becomes very sick or
4 something serious happens to one of them and you are taken
5 from the alternate juror, made a regular juror.

6 Do you follow me there?

7 A Mm-hmm.

8 Q I am going to ask you to assume we go on and try
9 the case and finish it, you go to the jury room.

10 Now, when you are at the jury room to vote guilty
11 or not guilty, the jury could vote not guilty.

12 Is that clear?

13 A Yes.

14 Q That is the end of the case. The jury could vote
15 guilty and if the jury votes guilty, then the jury must fix the
16 degree of the crime, murder first degree or murder second
17 degree.

18 Is that clear?

19 A Yes.

20 Q If the jury votes murder second degree, that
21 concludes all of the duties of the jury and they are excused
22 right there.

23 If the jury votes murder first degree, then there
24 is a penalty hearing held and after the penalty hearing the
25 jury goes back in that jury room to vote on the question of
26 what is the penalty.

27 Is that clear?

28 A Mm-hmm.

1 Q The jury must make a finding on penalty of either
2 the death penalty or life imprisonment.

3 Is that clear?

4 A Yes.

5 Q Now, you are voting on penalty now; let's assume
6 that, and you are in the jury room voting on penalty, either
7 life imprisonment or death penalty, you are voting on it.

8 I am going to ask you this question: at that time
9 would you automatically vote against the death penalty, no
10 matter what testimony or evidence was produced in the trial?

11 A No.

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

13 A Right.

14 Q Do you feel you could be fair and impartial in this
15 case if you are selected as a juror?

16 A Yes.

17 Q Do you know of anything that might arise during the
18 course of the trial that could upset you or annoy you, that
19 could disturb you so that your mind would not be free and clear
20 to decide this case?

21 A No.

22 THE COURT: Thank you.

23 Defendant may inquire.

24 MR. NEEDMAN: Thank you, your Honor.

25 Q Was it Miss Yarnell?

26 A Yes.

27 Q Miss Yarnell, are you employed?

28 A Yes, I am.

1 Q May I ask what you do?

2 A I am a secretary for Marshall McLennon, they are
3 insurance brokers.

4 Q With respect to the matter of the death penalty,
5 Miss Yarnell, do you feel, and bear in mind that we have to
6 talk about this death penalty business now because this is
7 the only opportunity we have to select a jury; you understand
8 that merely because we are talking about it doesn't mean that
9 we are necessarily going to get to the penalty?

10 A Yes.

11 Q Now, with respect to a penalty phase, if this case
12 should ever get that far, do you feel that following a first
13 degree murder conviction you would automatically impose the
14 death penalty without regard to other evidence in the case?

15 A No.

16 Q So you are telling us, then, that you would wait
17 until you hear all of the evidence in this case before you
18 would even begin to consider what might be an appropriate
19 penalty?

20 A Yes.

21 Q Do you understand that the legislature and the law
22 in California does not express any preference --

23 A Yes.

24 Q -- one penalty as against the other, that it is a
25 matter that is totally within the discretion of each individual
26 juror?

27 A Yes.

28 Q Miss Yarnell, have you had previous criminal jury

1 experience?

2 A One case, on this tour of duty.

3 Q And what kind of a matter was that?

4 A You mean what kind of criminal case?

5 Q I am sorry; what was the charge in that case?

6 A Burglary; attempted burglary.

7 Q I take it that with respect to whatever you may have
8 learned in that matter, Miss Yarnell, you wouldn't apply it to
9 this case?

10 A No, sir.

11 Q I take it with prior jury experience you have no
12 quarrel with the burden being on the People to prove my client
13 guilty?

14 A No.

15 Q And if the People do not meet their burden of
16 proof, then, obviously, you would acquit my client; isn't that
17 so?

18 A Yes.

19 Q Do you feel, Miss Yarnell, that merely because my
20 client has been brought to trial here, that that is some
21 evidence of his guilt and that you can sort of start with an
22 assumption that, well, he's probably guilty, so all we have to
23 do now is just kind of get a little evidence in here and then
24 we'll just go out and convict him?

25 A No.

26 Q You are going to wait and see what the evidence is;
27 right?

28 A Yes.

1 Q With respect to this matter of circumstantial
2 evidence, it has been indicated that the prosecution's case
3 rests substantially upon circumstantial evidence.

4 A Yes.

5 Q Do you feel, since we have been discussing this
6 circumstantial evidence matter -- at least, Judge Call has
7 been -- that you would be able to utilize circumstantial
8 evidence here as a juror?

9 A Yes.

10 Q Do you understand that merely because we have been
11 talking about circumstantial evidence doesn't necessarily mean
12 that it is -- that a circumstantial evidence case has already
13 been made out?

14 You may well, you understand, reject the People's
15 argument --

16 A Yes.

17 Q -- based on circumstantial evidence?

18 Okay. It has been indicated that the People are not
19 going to be able to produce a body of the person whom they claim
20 is dead, they are not going to be able to produce any direct
21 evidence of an alleged death of the alleged victim, Shorty Shea;
22 but would you, Miss Yarnell, expect the defendant to have Shorty
23 Shea walk through those doors back there before you would acquit
24 my client?

25 A No.

The 20a

1 Q Okay.

2 In other words, you are saying that you might
3 well acquit my client and still none of us would know where
4 Mr. Shea has gone?

5 A That's right.

6 Q Have you any friends or relatives that are
7 involved in law enforcement, Miss Yarnell?

8 A No, I don't.

9 Q Any friends, acquaintances, on the staff of the
10 district attorney's office here?

11 A No.

12 Q Or any other prosecuting agency?

13 A No.

14 Q Is there anything about the testimony of the police
15 officers that makes you feel, just offhand, that you have to
16 give it some special credence merely because it is a police
17 officer testifying?

18 A No.

19 Q I take it you would judge the testimony of the
20 police officer just like you would judge anyone else's testimony?

21 A That's right.

22 Q Their interest in the case, their manner of testi-
23 fying, the consistency with which the testimony is given,
24 et cetera, et cetera, et cetera.

25 A Yes.

26 Q You would use that kind of thinking on all witnesses,
27 wouldn't you?

28 A Yes.

20a-2

1 Q Since you have had previous criminal jury
2 experience, I am sure you understand that both the People and
3 the defendant are entitled to the individual opinion of each
4 juror, that it is not somehow a collective majority vote that
5 decide the verdict in the case?

6 A Yes.

7 Q And if you should -- if it should be necessary for
8 you to join the group that has been deliberating, as a regular
9 juror, supposing following that it was an 11 to 1 vote and
10 you were the one, would you change your mind merely because
11 you were the one?

12 A No.

13 Q Would you change your mind merely to somehow get
14 along with the other jurors?

15 A No.

16 Q Should the evidence develop that my client has a
17 lifestyle with which you may disapprove, would that fact, alone,
18 leave you to convict my client?

19 A No.

20 Q In other words, you wouldn't convict my client
21 merely because he lives in a way that you don't like?

22 A That's right.

23 Q I take it you wouldn't convict my client or, as a
24 matter of fact, arrive at any decision in this case based
25 merely upon his appearance?

26 A No, I wouldn't.

27 Q Have you formed any opinion based on anything
28 that you may have read or heard or seen with respect to the

20a-3

1 Manson family, the Charles Manson family?

2 A No, I haven't.

3 Q In that connection, should the evidence here
4 reveal that my client was at one time associated with Charles
5 Manson, would that fact, alone, tend to prejudice you against
6 my client's position in this trial?

7 A No.

8 Q Bearing in mind that it is clear that my client
9 had nothing whatever to do with any other matters, that the
10 only thing we are concerned about is this case right here?

11 A That's right.

12 Q Finally, we anticipate, as I pointed out over
13 and over to the other jurors, that the People are going to
14 produce probably a vast many more witnesses, numerically, than
15 the defense will.

16 Would that fact, alone, tend to make you feel that
17 the People have somehow proven my client guilty just because
18 they have got so many witnesses?

19 A No.

20 Q And you understand, finally, Miss Yarnell, that you
21 are free to reject the testimony of a witness if you just
22 cannot -- cannot accept it to an abiding certainty in your
23 mind?

24 A Yes.

25 Q That you don't have to buy it?

26 A Mm-hmm.

27 MR. WEEDMAN: Thank you, we will pass for cause.

28 THE COURT: People.

1 Q BY MR. KATZ: Miss Yarnell, it is anticipated
2 that this case may take eight to ten weeks in the course of
3 trial.

4 Do you think that this length of time would work
5 a hardship on you in connection with your employment?

6 A I believe it would.

7 Q Are you paid for only a certain period of time?

8 A For one month.

9 Q And have you already served some portion of that
10 time?

11 A Two weeks.

12 Q So, in other words, you would only be paid for
13 another two weeks; is that correct?

14 A That's correct.

15 Q Are you the sole support of yourself?

16 A Yes, I am.

17 Q Do you support anybody else?

18 A No, I don't.

19 Q And do you think if this case lasted another six
20 to eight or possibly ten weeks this might work a hardship on
21 you financially?

22 A I would have to ask them, but I think it would.

23 Q All right.

24 Assuming that you were required to serve six to
25 eight weeks additionally without pay, do you think this might
26 so burden your thinking that you could not give us the benefit
27 of your undivided attention in this case?

28 A Yes.

1 Q In other words, what you are saying is you would
2 be worried about, and very naturally so, about your financial
3 situation so that you could not give us the benefit of your
4 undivided attention; is that correct?

5 A That's correct.

6 Q Under these circumstances, would you rather be
7 excused?

8 A I would.

9 MR. KATZ: Thank you.

10 I challenge for cause. I think there is a hardship
11 here, your Honor. I think it is quite evident.

12 THE COURT: Is there a challenge for cause in there by the
13 defendant, or a stipulation?

14 MR. WEEDMAN: I understood that the People were challenging
15 here, your Honor.

16 THE COURT: Do you go along with the challenge or not?

17 MR. WEEDMAN: May we approach the bench.

18 (The following proceedings were had
19 in chambers with both counsel and
20 the defendant present:)

21 THE COURT: We are in chambers with counsel.

22 Let me have the last question there, and the
23 answer of the juror.

24 (The record was read by the reporter
25 as follows:

26 "Q Under these circumstances would
27 you rather be excused?

28 "A I would.")

1 MR. KATZ: There was a question before that.

2 (The record was read by the reporter
3 as follows:

4 "Q Assuming that you were required to
5 serve six to eight weeks additionally without
6 pay, do you think this might so burden your
7 thinking that you could not give us the benefit
8 of your undivided attention in this case?

9 "A Yes.")

10 THE COURT: What about the defendant?

11 MR. WEEDMAN: Your Honor, I will submit the matter. I
12 will not agree that she may be excused, your Honor.

13 THE COURT: Well, I had doubt, too, whether it goes for
14 cause. I have doubt.

15 This woman has told me she could be fair and
16 impartial and I have a very serious doubt she should go for
17 cause there. I asked her --

18 MR. KATZ: Your Honor --

19 THE COURT: -- is there any reason she could figure why
20 she couldn't be fair and impartial during the length of the
21 trial.

22 MR. KATZ: Your Honor, that is a tough question because
23 the jury doesn't know how to respond to that.

24 I think it is now proper for the court to go back
25 at this point and take the bull by the horns and just ask her,
26 in view of this situation in which you find yourself, namely,
27 the requirement to serve perhaps six to eight weeks without
28 pay, would this cause you to be incapable of giving both sides

1 a fair and impartial judgment and determination based on the
2 evidence in this case?

3 I think that's proper; and if the court can elicit
4 an affirmative response, then I think we have cause and I
5 think the questioning now requires the type of further question-
6 ing by the court and I would invite your Honor's help in this
7 area.

8 I think it is proper for your Honor to inquire,
9 but, I mean, you can't ask a person to live on \$3 a day for six
10 to eight weeks. This is incredible and, indeed, I think --

21

21-1

1 THE COURT: Well, of course, you see the trouble is you
2 are picking a jury. You can have jurors, anyone could exempt
3 himself. You could go through a list of 500 jurors and you
4 couldn't get one. You would have to take somebody who is
5 almost on retirement, but you pass that qualification and you
6 want to simmer it right down.

7 MR. KATZ: Well, your Honor, I think you will recall most
8 if not all of the jurors indicated they would not suffer
9 financial hardship. Those who remain on the panel at this
10 time, by reason of their service in a protracted trial.

11 Now, certainly counsel and I joined in many joint
12 stipulations excusing people who indicated that they were the
13 sole support of the family, that they had no other sources of
14 income and they would only receive the minimal money of \$5 per
15 day. I think it is unreasonable to require a person --

16 THE COURT: I am inclined, unless there is a stipulation
17 on it for cause, not to excuse. I have talked to her. You
18 have talked to her.

19 Is there a stipulation or not? If not, I am --

20 MR. WEEDMAN: No, I respectfully cannot stipulate, your
21 Honor.

22 THE COURT: Well, I won't grant a for cause. If you have
23 a peremptory, I don't know.

24 MR. KATZ: I am going to ask some additional questions.
25 I think I can develop cause.

26 THE COURT: I will deny the request.

27 MR. WEEDMAN: In the event counsel develops more along
28 this line, I would appreciate it if counsel and your Honor, of

21-2

1 course, didn't make me out to be a villian by making me stand
2 up in the courtroom to say I will not excuse her.

3 MR. KATZ: I am sorry, Mr. Weedman. I felt under the
4 circumstances you would have joined.

5 MR. WEEDMAN: So if you have a challenge maybe we could
6 approach the bench again.

7 MR. KATZ: I will be happy to approach the bench.

8 THE COURT: All right.

9 (The following proceedings were had
10 in open court;)

11 THE COURT: Did you want to examine any further?

12 MR. KATZ: Yes, please, your Honor.

13 THE COURT: All right.

14 BY MR. KATZ:

15 Q Miss Yarnell, you understand that if selected as a
16 juror both counsel would require your undivided attention in
17 impartially weighing the facts in this case, you understand
18 that?

19 A Uh-huh.

20 Q Now, in that connection do you think that if you
21 were required to serve some six or eight weeks without pay,
22 that that would affect your ability to impartially weigh the
23 facts in this case because of your worry about your financial
24 problems?

25 A Yes.

26 Q All right.

27 Are you telling the court that you could not be
28 fair and impartial to both sides because of the extraneous

21-3

1 influences, i.e., having to serve without pay?

2 A Well, I could be fair and impartial but I would be
3 worried about my own problems so you might not always have my
4 undivided attention.

5 THE COURT: Wait a minute. Give me that full answer,
6 Mr. Reporter.

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

9 "A No, I could be fair and impartial
10 but I would be worried about my own problems
11 so you might not always have my undivided
12 attention.")

13 THE COURT: All right. Go ahead.

14 Q BY MR. KATZ: I am not sure I understand you.

15 You realize in order to properly evaluate the
16 evidence in this case you have to give us the benefit of your
17 undivided attention to see and hear and view everything that
18 unfolds during the course of the trial; you appreciate that?

19 A Uh-huh.

20 Q If you do not hear something or you did not see
21 something because you are thinking of other things, then we
22 cannot get the benefit of your undivided attention to
23 impartially evaluate the evidence, to assess the weight of the
24 evidence, do you understand that?

25 A Yeah.

26 Q If selected as a juror you are the sole and
27 exclusive judge of what the facts are in this case, isn't that
28 correct?

1 A Yes.

2 Q Now, bearing that in mind, do you think the
3 considerations with regard to financial worries would be such
4 as to render you incapable of fully and fairly evaluating all
5 of the evidence that would unfold during the course of this
6 trial?

7 A Yes, I do.

8 Q All right.

9 Is it fair to say that on that basis you could not
10 be fair and impartial to both sides?

11 A Yes.

12 MR. KATZ: All right.

13 Your Honor, again respectfully I challenge this
14 juror for cause under 1073 subsection 2 of the Penal Code. She
15 has indicated she could not be fair and impartial to both sides.

16 THE COURT: Well, motion denied. Denied.

17 MR. KATZ: All right.

18 Your Honor, I have no further questions.

19 I will exercise my peremptory. Thank you.

20 THE COURT: All right.

21 Now, are there any peremptories?

22 MR. KATZ: Yes. I just exercised my peremptory against
23 Miss Yarnell.

24 THE COURT: All right. Thank you.

25 Thank you, you are excused, lady.

26 THE CLERK: John Sweden, Jr. Spelled S-w-e-d-e-n.
27
28

JOHN SWEDEN, JR.

BY THE COURT:

Q Now, Mr. Juror, have you heard everything that I have said to all of the jurors in the courtroom since you came in here a while ago?

A Yes, I have, your Honor.

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21a

Q Now, let's assume that you have been selected as an alternate juror. During the course of the trial, for some reason, the court places you in there as one of the regular jurors and we proceed to finish the trial. And let's assume you go to the jury room to decide on the question of guilty or not guilty.

The jury could make a finding of not guilty, and that would conclude the case. The jury could make a finding of guilty as charged, and if the jury does that then they must find on the degree, first degree murder or second degree murder.

Now, are you clear procedurally up to that point?

A Yes, your Honor.

Q All right.

If the jury finds second degree murder there is nothing more for the jury to do. If the jury makes a finding of first degree murder then there is a penalty hearing held.

After the penalty hearing then -- sheriff -- wait till I get through here.

MR. KATZ: I am sorry, your Honor. Yes, sir.

Q BY THE COURT: After the penalty hearing the jury then goes back to the jury room and makes a finding on penalty, either the death penalty or life imprisonment.

Is that clear?

A Correct.

Q Now, if you will put yourself up to the position where you are voting on penalty, the death penalty or life imprisonment, I will ask you this question: at that time

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

4 A No, your Honor.

5 Q The answer is no?

6 A Right.

7 Q All right.

8 Now, do you know of any reason that you could not
9 be fair and impartial if you are selected as a juror to try
10 this case?

11 A None whatsoever.

12 Q Do you know of any factual situation, anything that
13 could happen or occur during the trial of the case that would
14 so distract you or upset you that you could not be fair and
15 impartial as a juror in the trial of this case?

16 A No, your Honor.

17 THE COURT: Thank you.

18 Defendant may inquire.

19 MR. WEEDMAN: Thank you, your Honor.

20 Q Mr. -- is your name pronounced Sweden?

21 A Sweden. Just like the country.

22 Q Mr. Sweden, may I ask what you do for a living?

23 A I work for Max Factor Cosmetics. A machine
24 repairman servicing the machines.

25 Q Are you married?

26 A No, I am not.

27 Q Have you had any prior criminal jury experience,
28 Mr. Sweden?

1 A No, I haven't.

2 Q Okay. With respect to the estimated length of
3 this trial, about 10 weeks, would that cause you any personal
4 hardship, Mr. Sweden?

5 A None personally. Now, I would have to find out if
6 my employer would agree to paying me after next week. If he
7 would then there would be no problems.

8 Q And if he wouldn't?

9 A Then it would present a little problem because I
10 do have certain bills and responsibilities that I would have to
11 pay.

12 Q So with respect to any matters of a personal
13 hardship you really couldn't answer the question today, you
14 would have to check with your employer first?

15 A Right.

16 Q All right.

17 But apart from that then I take it this would not
18 be a personal hardship for you?

19 A No, it wouldn't.

20 Q If you had to sit for this length of time? Okay.

21 Do you have any friends or relatives who are in law
22 enforcement?

23 A My stepbrother has a friend who is with the Highway
24 Patrol. I have only seen him once. I have never spoken to him.

25 Q Okay. Well, that rather tenuous relationship
26 certainly couldn't affect your judgment with respect to this
27 case?

28 A No, it wouldn't.

1 Q Certainly. Nor would it affect your judgment
2 with respect to testimony if there is any testimony here,
3 coming from police officers?

4 A Right.

5 Q Okay.

6 Mr. Sweden, with respect to anything you may have
7 read or heard or seen in regard to Charles Manson and the
8 Manson family, have you formed any opinion?

9 A No, your Honor.

10 Q Okay. I have been elevated. Thank you.

11 Mr. Sweden, if the evidence should show here that
12 my client was associated with Charles Manson would you be
13 prejudiced against my client?

14 In other words, do you feel that you couldn't give
15 him a fair trial on that basis alone?

16 A No. I would have to hear all the evidence.

17 Q Well, after having heard all of the evidence
18 supposing you determine it is a very close case, you are having
19 a hard time making up your mind.

20 Do you think the fact that my client was associated
21 with Charles Manson, standing alone, would influence your
22 judgment then?

23 A No, it wouldn't.

The 22

Q In other words, you are not going to convict my client for something that somebody else did in a matter which doesn't concern my client at all?

A Correct.

Q And we can be safe in that, can we, Mr. Sweden --

A Yes.

Q -- if you begin deliberating in this matter?

A Yes.

Q As you sit there now, Mr. Sweden, do you have any preference for the death penalty as versus, say, life imprisonment?

A No.

Q Are you one of those people who, perhaps, feels that the death penalty isn't used enough in this country?

A Well, I feel that when the final decision is reached, then I would have to determine whether he is guilty or not; and then determine the type of crime that was committed and by that determine what the penalty should be.

Q In other words, you were going to wait until you find out the circumstances surrounding the crime?

A Right.

Q If there is a crime committed, of course?

A Right.

Q And then whatever other evidence may be introduced relative to the penalty, you'd want to hear all of that, wouldn't you?

A Yes.

Q So you don't feel that you are automatically going

22-2

1 to do anything in this case; you are --

2 A Correct.

3 Q -- going to wait and hear.

4 Some jurors, Mr. Sweden, regretfully, have the
5 idea that if they make a mistake -- that is to say, if they
6 arrive at an erroneous conclusion of facts -- that somehow,
7 magically, somehow, some higher court is going to correct that
8 so that they really don't have to worry too much about their
9 deliberation.

10 You don't share that feeling, do you, Mr. Sweden?

11 A No, I don't.

12 Q You do understand if you begin deliberating as a
13 juror here that this is where the buck stops, right here,
14 and this is where it is going to have to be decided; and,
15 heaven help us, we hope it will be decided correctly; but this
16 is the place to do it, in any event, you appreciate that,
17 don't you?

18 A Yes.

19 Q And you are willing to accept that kind of responsi-
20 bility?

21 A Yes.

22 Q Responsibility to the People, of course; and, likewise,
23 have the responsibility to a man here who is accused of murder.

24 A Correct.

25 Q I take it that the mere fact my client is here is
26 no evidence in your mind that he is somehow guilty?

27 A No, it isn't.

28 Q So that, if suddenly -- it is a rather silly question --

1 but let's suppose the People didn't put on any evidence
2 at this point; naturally, you'd have to acquit my client,
3 isn't that so?

4 A Correct.

5 Q If the People do put on evidence, however, and
6 you are not convinced to a moral certainty and beyond a
7 reasonable doubt that my client committed a crime, then I
8 take it you are simply going to acquit him?

9 A Correct.

10 Q All right, sir.

11 With respect to the problem of circumstantial
12 evidence, it appears that the People's case will rest substan-
13 tially upon circumstantial evidence. They allege that a man
14 is dead; they have alleged that the same man was murdered;
15 they have no direct evidence of this, apparently.

16 Are you satisfied, if the law directed you to
17 utilize circumstantial evidence in a certain way, that you'll
18 be able to do so?

19 A Yes.

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22A.

1 Q If Judge Call instructs you that there are
2 certain restrictions with respect to the use of circumstantial
3 evidence, will you likewise assiduously apply those restric-
4 tions?

5 A Yes, I would.

6 Q And I take it, finally, Mr. Sweden, that in such
7 a case merely because the People draw certain conclusions or
8 arguably, at least -- that is to say, they argue certain
9 conclusions from the evidence -- doesn't necessarily mean that
10 you have to adopt those conclusions, don't you agree?

11 A Correct.

12 Q In other words, you are going to draw your own
13 conclusions as a juror in this case and not be a partisan
14 either for the People or a partisan for the defendant.

15 Fair enough?

16 A That is correct.

17 Q So I take it in that connection you wouldn't expect
18 the defendant to produce Shorty Shea through these back doors?

19 A No.

20 Q Before you would acquit my client?

21 A No.

22 MR. KATZ: Excuse me, your Honor; I am going to object
23 as speculative and argumentative.

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

25 (The record was read by the reporter
26 as follows:

27 "Q So I take it in that connection
28 you wouldn't expect the defendant to produce

1 Shorty Shea through these back doors --

2 "A No.

3 "Q -- Before you would acquit my
4 client?

5 "A No.")

6 THE COURT: It probably calls for speculation.

7 MR. KATZ: And prejudging the evidence.

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

10 I think we are up a little after 4 o'clock. Let's
11 recess, ladies and gentlemen, until tomorrow.

12 Now, ladies and gentlemen, let me caution you,
13 please, before you go, do not discuss this case at all amongst
14 yourselves or with anybody at all or form any opinion or conclu-
15 sion about the case; and kindly return promptly at 9:30 and
16 we will go right ahead.

17 Thank you very much.

18 (At 4 p.m., an adjournment was taken
19 until 9:30 a.m. of the following day,
20 Wednesday, July 14, 1971.)
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