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23 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

24 CENTRAL DIVISION

25 PEOPLE OF THE STATE OF CALIFORNIA,

26 Plaintiff,

27 vs.

28 DOUGLAS R. STANKEWITZ,

Defendant

Case No.: CF78227015

**MOTION FOR RELIEF UNDER PENAL  
CODE SECTION 745(a)(1) and (a)(2) of the  
CALIFORNIA RACIAL JUSTICE ACT  
(CRJA)**

TO THE HONORABLE ARLAN L. HARRELL, JUDGE, SUPERIOR COURT FOR THE  
COUNTY OF FRESNO AND TO THE DISTRICT ATTORNEY FOR THE COUNTY OF  
FRESNO:

MOTION FOR RELIEF UNDER PENAL CODE SECTION 745(A)(1) AND (A)(2) OF THE CALIFORNIA  
RACIAL JUSTICE ACT (CRJA) - 1

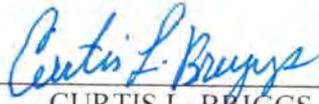
1 Defendant DOUGLAS R. STANKEWITZ, through counsel, hereby moves for a prima  
2 facie finding of racial bias under the California Racial Justice Act (CRJA), Penal Code Section  
3 745(a)(1) and (a)(2). Defendant was discriminated against based on his Monache Native  
4 American race during his second trial in 1983 by both his defense lawyer, Hugh Goodwin, and  
5 the Deputy District Attorney (DDA) who tried the case, Warren Robinson. Mr. Stankewitz  
6 moves for an evidentiary hearing on the issue of whether the CRJA has been violated. This  
7 motion is based on this notice, the accompanying memorandum of points and authorities,  
8 attached declarations and exhibits, and arguments made by his attorneys.

9 Dated: March 22, 2025

Respectfully Submitted,

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11 PETER JONES  
12 CURTIS BRIGGS  
13 MARSHALL D. HAMMONS

14 Attorneys For Defendant  
15 DOUGLAS RAY STANKEWITZ

16  
17 By   
18 CURTIS L. BRIGGS

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1  
2 **I. ARGUMENT SUMMARY**

3 Douglas R. Stankewitz, a Monache Native American man, was racially discriminated  
4 against during his second trial in 1983, in violation of the California Racial Justice Act. He now  
5 requests an evidentiary hearing on the issue.  
6

7 His case involves 1) the prosecution using a peremptory challenge to excuse the only  
8 known Native American juror during jury selection; and 2) his defense lawyer and the Deputy  
9 District Attorney eliciting testimony and making argument using derogatory descriptions of  
10 Indian reservation life to the jury. Mr. Stankewitz now relies on the recently enacted Racial  
11 Justice Act for relief.  
12

13 **II. SPECIFIC REQUEST**

- 14 1. An order that Mr. Stankewitz has made a prima facie showing of one or more  
15 violations of the CJRA (Pen. Code Sect. 745(a)(1) and (a)(2).  
16 2. The setting of an evidentiary hearing to establish violations of the CRJA. (Pen. Code  
17 Sect. 745(c).  
18

19 **III. PROCEDURAL HISTORY**

20 The defendant here was originally charged with first degree murder with special  
21 circumstances, gun enhancement, robbery and kidnapping. He was convicted of all the crimes  
22 charged and given the death penalty in 1983. The crime had racial overtones. Petitioner is  
23 Monache Native American, the victim, Ms. Graybeal, was Caucasian.  
24

25 **IV. FACTS**

26 **A. The Only Native American Juror Was Eliminated in the Second Trial – A**  
27 **Death Penalty Trial**

1 In defendant's 1983 trial, the prosecution used a peremptory challenge to remove the only  
2 known Native American juror, Rosemary Moreno. Ms. Moreno, Panel 33, number 157, was  
3 asked hardship *voir dire*, Hovey *voir dire* and general *voir dire* questions. The transcript of her  
4 *voir dire* refers to question numbers.<sup>1</sup> These question numbers refer to the questions on the juror  
5 questionnaires. The answers to these questions give counsel information regarding the juror's  
6 race and ethnic background, experience with law enforcement and position on subjects related to  
7 the crimes that are the subject of the prosecution. The juror questionnaires in this case have been  
8 lost and are no longer available. Therefore, we cannot match up her answers to specific questions  
9 asked.<sup>2</sup>

10  
11  
12 Prospective juror Rosemary Moreno stated that she was Indian.<sup>3</sup> There may have been  
13 other prospective jurors who were Native American but we do not know because we do not have  
14 the juror questionnaires.<sup>4</sup> During *voir dire*, Ms. Moreno also stated that she worked for Indian  
15 counsel. The prosecution specifically asked her whether she would tend to favor Petitioner,  
16 because he is Indian. (See Exhibit 14a, *supra* at page 2684) She answered "No, why should I?  
17 Because he is a human being like everybody else."

18  
19 The Fresno District Attorney has previously stated that their file content prior to 2017 has  
20 been lost. Therefore, it is unknown whether jury selection notes exist.<sup>5</sup> As documented by the  
21

---

22  
23  
24 <sup>1</sup> Exhibit 30a/Habeas Exh 14a – Rosemary Moreno voir dire transcripts.

25 <sup>2</sup> Exhibit 30b/Habeas Exh 14b Fresno SC letter stating that questionnaires have been lost.

26 <sup>3</sup> In this case, 'Indian' was used in place of 'Native American', as was used by many people in 1983.

27 <sup>4</sup> Exhibit 30b/Exhibit 14b, *supra*.

28 <sup>5</sup> The loss of the DA's file of all documents prior to 2017, admitted to by their office, is not completely true. During the habeas evidentiary hearing in January 2024, a review of the DA's boxes uncovered documents from prior to 2017. The court conducted an in-camera review of the boxes, but no juror notes were turned over to the defense. The court did not issue an order to show cause for Habeas Claim 14 – THE PROSECUTION ELIMINATED THE ONLY NATIVE AMERICAN JUROR IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE SIXTH MOTION FOR RELIEF UNDER PENAL CODE SECTION 745(A)(1) AND (A)(2) OF THE CALIFORNIA RACIAL JUSTICE ACT (CRJA) - 5

1 census chart below, Native Americans are a very small percentage of the population in Fresno  
 2 County.<sup>6</sup>

3  
 4 **RACE/ETHNIC POPULATION**  
 5 **FRESNO COUNTY**  
 6 **1970 - 2010**

Race/Ethnicity	1970		1980		1990		2000		2010	
	Population	Percent Share								
White	268,418	65.0%	316,895	61.6%	338,595	50.7%	317,522	39.7%	331,144	33.7%
Hispanic	104,177	25.2%	150,790	29.3%	236,634	35.5%	351,636	44.0%	492,449	50.1%
Black	20,370	4.9%	24,557	4.8%	31,311	4.7%	40,291	5.0%	46,797	4.8%
Asian	20,088	4.9%	22,379	4.3%	54,110	8.1%	63,029	7.9%	92,099	9.4%
Pacific Islander							682	0.1%	802	0.1%
Other					6,840	1.0%	26,247	3.3%	20,187	2.1%
Total Non-White	144,635	35.0%	197,726	38.4%	328,895	49.3%	481,885	60.3%	652,334	66.3%
Total Population	413,053	100.0%	514,621	100.0%	667,490	100.0%	799,407	100.0%	983,478	100.0%

14 Sources: 1970-2000, U.S. Census  
 15 2010, State of California Department of Finance

16  
 17 Starting with the Other percentage of less than 1 – 3.3%,<sup>7</sup> given the limited sources for  
 18 prospective jurors, the number of Native Americans who are called to jury duty is far less.

19 Prospective jurors are generally contacted using voter registration rolls. Native Americans living  
 20 on the reservation and in poverty in 1983, may not have been registered to vote. One way to  
 21

22  
 23  
 24  
 25 AMENDMENT TO AN IMPARTIAL JURY AND HIS RIGHT TO DUE PROCESS AND EQUAL  
 26 PROTECTION UNDER THE FOURTEENTH AMENDMENT. Query: Did the court decide that the juror notes  
 should not be turned over because the jury selection issue was not the subject of the evidentiary hearing?

26 <sup>6</sup> In this census chart from 1970 – 2010, Native Americans are counted in the “Other” category, along with other  
 27 races.

27 <sup>7</sup> For a more detailed discussion of Fresno discrimination against Native Americans, see defendant’s Motion for  
 28 Relevant Data, Section VI, filed with this Court.

1 determine whether there was racial discrimination is to look at jurors who were struck and not  
2 struck, including whether similarly situated jurors were removed for cause and a juror of the  
3 same race was removed using a peremptory challenge.

4  
5 In this case, there were several jurors who, like Rosemary Moreno, knew members of  
6 Defendant's family. In this case, a survey of 233 of the prospective jurors shows that of the four  
7 who said that they knew the Stankewitz family, three were removed for cause and only one,  
8 Rosemary Moreno, was challenged with a peremptory.<sup>8</sup>

9  
10 **B. Mr. Stankewitz's Defense Lawyer Elicited Damning Discriminatory**  
11 **Testimony Regarding Reservation Life during the Second Trial – A Death**  
12 **Penalty Case - penalty phase. The testimony was then reinforced to the jury**  
13 **by both the defense and the prosecution during their closing arguments.**

14 During the second trial penalty phase, defense counsel called only four witnesses. One  
15 witness was Theresa Montgomery. Prior to her testimony, defense counsel gave a brief statement  
16 where he stated that he was going to call Mrs. Montgomery to give background on Indian  
17 reservations and what the defendant was exposed to. (T2 Vol. V RT 1038). Mrs. Montgomery's  
18 testimony included negative characterizations of reservation life for young people, stating that  
19 they were into drugs and alcohol. (T2 Vol. V RT 1044, ln. 8 – 13) Further that due to youth  
20 involvement in drugs and alcohol, they drop out of school and just do nothing. (T2 Vol. V RT  
21 1045, ln. 2 – 7) She also testified that the drug and alcohol situation on the reservation led to  
22 destruction in their lives. (T2 Vol. V RT 1046, ln. 12 – 1047, ln. 3) She went on to describe how  
23 drugs and alcohol abuse led to suicide on the reservation. (T2 Vol. V RT 1048, ln. 19 – 21)

24  
25  
26  
27  
28 <sup>8</sup> Exhibit 30c/Habeas Exh 14d Jury chart.

1           During the closing argument in the penalty phase, referring to Mrs. Montgomery's  
2 testimony, defense counsel stated that the defendant was raised on an Indian reservation. Casting  
3 negative aspersions, he told the jury "if you're going to be really honest, I think you would have  
4 to conclude that being raised on a reservation is certainly drastically different than the way you  
5 were raised and in the way that we would want people generally to be raised". (T2 Vol. V RT  
6 1114, ln. 20 - 24) He also said "[s]he mentioned about the extent to which alcohol and drugs just  
7 permeate the whole reservation. And that from what she said, it could easily be concluded that  
8 this is the atmosphere in which those people who live on a reservation are raised". (T2 Vol. V RT  
9 1114, ln. 25 – 1115, ln. 3) He portrayed reservation kids as being raised without morals. (T2 Vol.  
10 V RT 1115, ln. 10 – 1116, ln. 1)

13           The DDA repeated defense counsel's statements from Mrs. Montgomery about how  
14 "drugs and alcohol pervaded Indian reservations locally". (T2 Vol. V RT 1124, ln. 8-10) He  
15 further stated "It's really insulting to Mr. Stankewitz and maybe to Indians on reservations to  
16 suggest that they can't be law abiding". (T2 Vol. V RT 1124, ln. 26 – 1125, ln. 2)

18           The result of the prosecution succeeding in getting the death penalty against Mr.  
19 Stankewitz has meant that he has faced 5 execution dates, was housed in solitary confinement on  
20 Death Row, which constitutes a form of torture,<sup>9</sup> for 46 years and was subjected to the cruelty  
21 and deprivation of prison life.

## 22           **V.    LAW**

### 23           **A. THE CALIFORNIA RACIAL JUSTICE ACT**

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27  
28 <sup>9</sup> See [A Death Before Dying: Solitary Confinement on Death Row](#), ACLU, July, 2013  
MOTION FOR RELIEF UNDER PENAL CODE SECTION 745(A)(1) AND (A)(2) OF THE CALIFORNIA  
RACIAL JUSTICE ACT (CRJA) - 8

1                   **1. The CRJA's purpose: to root out racial discrimination**

2                   The California Racial Justice Act was passed to make it easier to prove racial  
3 discrimination in a criminal case. *Young v. Superior Court of Solano County* (2022) 79  
4 Cal.App.5th 138, 150. This goal is reflected in CRJA's textual directive: the District Attorney  
5 shall not seek a criminal conviction based on race.<sup>10</sup>

6  
7                   CRJA's purpose is important.<sup>11</sup> Lawmakers saw the law as necessary given inadequate  
8 constitutional protections from racism and unintentional bias in the trial court.<sup>12</sup> The goal was  
9 clear: to reduce the impossibly high burden imposed by federal case law on people seeking relief  
10 from racism.<sup>13</sup> Towards this end, the CRJA revitalizes race-based claims in California by  
11 eliminating a key hurdle: proof of discriminatory intent is **not** required.<sup>14</sup> Said differently, law  
12 enforcement practices that result in racial bias are illegal irrespective of intent.<sup>15</sup>

13  
14                   This new approach is a sea-change. Historically, race-based claims were a dead letter  
15 under federal law.<sup>16</sup> This is because the defendant was required to show "purposeful"  
16 discrimination.<sup>17</sup> This meant racial bias claims failed absent proof that the decisionmaker, in the  
17 defendant's case, the DA, defense lawyer, a police officer, or a witness-intended  
18 to *specifically* discriminate against the defendant because of his race.<sup>18</sup> Proving intent in this

19  
20  
21  
22 <sup>10</sup> Pen. Code, §745(a).

23 <sup>11</sup> The legislative findings behind the CRJA are to be given "considerable weight" in interpreting the Act's  
provisions. (*Young, supra*, 19 Cal.App.5th at 157.)

24 <sup>12</sup> *Id.* at p. 149-150.

25 <sup>13</sup> *Id.* at p. 150 [California intends to "depart from the discriminatory purpose paradigm in federal equal protection  
law"].

26 <sup>14</sup> Pen. Code, §745(c)(2) ["the defendant does not need to prove intentional [discrimination]"].

27 <sup>15</sup> *Young, supra*, 79 Cal.App.5th at 165 [The CRJA "revitalizes the venerable principle... that we must offer a  
remedy where a facially neutral law is applied with discriminatory effect"].

28 <sup>16</sup> *Young, supra*, at 149-150.

<sup>17</sup> *McCleskey v. Kemp* (1987) 481 U.S. 279, 292.

<sup>18</sup> *Ibid.*

1 context, however, proved almost impossible.<sup>19 20</sup> As a result, federal law tolerated discrimination  
2 as the inevitable result of governmental discretion.<sup>21</sup>

3 Here's an example of how this pre-CRJA system worked.<sup>22</sup> Georgia has a death penalty  
4 statute.<sup>23</sup> That statute is facially neutral; by its terms, it applies to all Georgians regardless of  
5 race. But, in *effect*, the statute results in a disparate outcome: black defendants are more likely to  
6 be sentenced to death than white defendants.<sup>24</sup> Reliable statistical data proves this.<sup>25</sup> Said  
7 differently, the Georgia DA's exercise of discretion in who to seek the death penalty against is  
8 resulting in racially skewed outcomes: black defendants are more likely than similarly situated  
9 white defendants to be sentenced to death. Armed with your statistical data, you allege the DA  
10 has violated federal equal protection law.

11  
12  
13 You lose. Despite statistical evidence race has infected Georgia's administration of the  
14 death penalty, you can't prove "purposeful" discrimination-that the DA intended to discriminate  
15 against you because of race.<sup>26</sup> Your statistical proof of racially disparate results isn't

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16  
17  
18  
19  
20 <sup>19</sup> *McCleskey, supra*, 481 U.S. p. 297.

21 <sup>20</sup> Under federal law, "purposeful discrimination" means more than just "intent as volition or even "intent as  
22 awareness of consequences." Rather, the defendant must prove that the decisionmaker in *his* case "selected or  
23 reaffirmed a particular course of action at least in part because of, not merely in spite of, its racial  
24 consequences. (*McCleskey, supra*, 481 U.S. at 298.) This showing, of course, is almost impossible to make. (*See*  
25 *Young, supra*, at 150.)

26 <sup>21</sup> *Young, supra*, 79 Cal.App.5th at 150.

27 <sup>22</sup> The hypothetical is cited by the California legislature. (*Young, supra*, 79 Cal.App.5th at 150.) In  
28 fact, *McCleskey* is called out by name as "the prime example that existing judicial precedent... accepts racial  
disparities in our criminal justice system as inevitable." (*Ibid.*) The case is therefore important; it's holding was the  
impetus behind lawmakers' intent to model the CRJA against "the discriminatory purpose paradigm in federal equal  
protection law" by eliminating the intent requirement required under federal law. (*Ibid.*)

<sup>23</sup> *Id.* at p. 151.

<sup>24</sup> *McCleskey, supra*, 481 U.S. at 291.

<sup>25</sup> *Id.* at 289.

<sup>26</sup> *Id.* at 297.

1 enough.<sup>27</sup> To add insult to injury, the discriminatory results complained of are also  
2 unchallengeable on policy grounds: "prosecutorial discretion" must be protected at almost all  
3 costs.<sup>28</sup>

4  
5 This pre-CRJA paradigm is distilled into the well-known principle: to state a claim for  
6 racial discrimination under federal constitutional law, the defendant must show both  
7 (1) purposeful discrimination and (2) discriminatory impact.<sup>29</sup> Specifically, a facially neutral  
8 law whose application results in differential treatment does not offend the constitution, absent a  
9 showing of discriminatory intent.<sup>30</sup>

10  
11 **a. California sets a new course on racism.** <sup>31</sup>

12 The CRJA is aimed at *implicit* bias, which the legislature found is pervasive throughout  
13 every stage of the criminal justice system:

14  
15 Even though racial bias is widely acknowledged as intolerable in  
16 our criminal justice system, it nevertheless persists because courts  
17 generally only address racial bias in its most extreme and blatant  
18 forms. Implicit bias, although often unintentional and unconscious,  
19 may inject racism and unfairness into proceedings similar to  
20 intentional bias.<sup>32</sup>

21  
22 **2. Conduct that establishes a CRJA violation**

23  
24 By its terms, the CRJA prohibits the government from seeking or obtaining a criminal

25  
26 <sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Washington v. Davis*, 426 U.S. 229, 241 (1976).

<sup>30</sup> *McCleskey*, *supra*, at 292.

<sup>31</sup> *Young*, *supra*, at 165 [the CRJA "revitalizes the venerable principle... that we must offer a remedy where a facially neutral law is applied with discriminatory effect" Pen. Code § 745(c)(2) ["the defendant does not need to prove intentional discrimination].

<sup>32</sup> AB 2542, § 2, subd. (c).

1 conviction based on race.<sup>33</sup> Relevant here, three types of conduct prove a violation: (1) someone  
2 involved in the defendant's case "exhibits bias or animus" towards the defendant because of his  
3 race; (2) during the defendant's trial, in court and during the proceedings, someone involved in  
4 the case uses "racially discriminatory language about the defendant's race" or otherwise "exhibits  
5 bias or animus" towards him or, (3) the defendant was charged with a more serious offense than  
6 defendants of other races.<sup>34</sup> We address each in turn.

8 **a. "Exhibiting racial bias" towards the defendant during any stage of the**  
9 **criminal process -745(a)(1)**

10 The CRJA is violated when "the judge, an attorney in the case, a law enforcement  
11 officer involved in the case, an expert witness, or juror exhibit racial bias or animus towards the  
12 defendant because of the defendant's race."<sup>35</sup> There are three notable features about an "exhibited  
13 bias" claim under (a)(1).

14 First, every stage of the criminal process can be challenged.<sup>36</sup> Racism exhibited by a  
15 government actor during the pre-complaint investigation, during the defendant's arrest, at the  
16 charging stage, during pretrial proceedings, and at trial, is prohibited.<sup>37</sup> "Exhibited bias"  
17 challenges are therefore expansive: they apply to out of court conduct, outside the context of  
18 formal proceedings, without any qualification as to time, place, or manner.<sup>38</sup>

---

23 <sup>33</sup> Pen. Code, §745(a). The prohibition in full reads: "*The state shall not seek or obtain a criminal conviction or seek,*  
24 *obtain, or impose a sentence on the basis of race, ethnicity, or national origin*" (Pen. Code Sect. §745(a).) Because  
25 there is not yet a final judgment in this case, CRJA's post-judgment framework is not implicated here; Mr.  
26 Stankewitz therefore omits those provisions for clarity. (*See* Pen. Code, §745(4)(A), (B) [Habeas relief under  
27 CRJA; *see* Pen. Code § 1473.7 [motion to vacate]).

26 <sup>34</sup> Pen. Code, §745(1)-(4)(A).

27 <sup>35</sup> Pen. Code, §745(a)(1).

28 <sup>36</sup> *Young, supra*, at 164.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid*; *Young, supra*, at 166.

1 Second, the racial bias exhibited need not be intentional.<sup>39</sup> The clause therefore covers  
2 implicit, unintentional bias directed at the defendant by a government actor involved in the  
3 case.<sup>40</sup> The CRJA prohibition of even unintentional racism is not meant to punish the prosecutor,  
4 but to remedy harm to the defendant and the criminal system.<sup>41</sup>

5  
6 Third, the CRJA applies to jury selection. The process of jury selection in general is  
7 covered by the CRJA, because it is universally recognized to be a “critical stage” in a criminal  
8 prosecution. *Gomez v. United States*, 490 U.S. 858, 873 (1989). The CRJA applies broadly to  
9 eliminate racist practices, as the legislature intended:

10  
11 The Legislature enacted the CRJA with the express intent "to  
12 eliminate racial bias from California’s criminal justice system" and  
13 "to ensure that race plays no role at all in seeking or obtaining  
14 convictions or in sentencing." (Assem. Bill No. 2542 (2019-2022  
15 Reg. Sess.) § 2 (Assem. Bill 2542) (Stats. 2020, ch. 317, § 2, subd.  
16 (i), pp. 3707-3708; see *Young v. Superior Court of Solano County*  
17 (2022) 79 Cal.App.5th 138, 149-150, 294 Cal.Rptr.3d 513.) Its  
18 goal is "to provide remedies that will eliminate racially  
19 discriminatory practices in the criminal justice system, *in addition*  
20 *to intentional discrimination.*" (Assem. Bill 2542, § 2 subd. (j).)

21  
22 *Mosby v. Super. Ct. of Riverside Cty.*, 95 Cal. App. 5th 106, 123 (2024) (emphasis added). There  
23 is no language in the CRJA or in any case of which Mr. Stankewitz is aware, asserting that the  
24 statute is confined to limiting acts aimed at the defendant, regardless of an act’s effects on the  
25 defendant.

26  
27 <sup>39</sup> Pen. Code, §745(c)(2); *Young, supra*, at 149 [recognizing "unintentional and unconscious bias as remediable  
28 under the CRJA]; *Id.* at 165 [the CRJA expressly eliminates "any requirement of showing discriminatory purpose"].  
<sup>40</sup>Implicit racial bias manifests when "a negative implicit association attached to a certain race influences an  
individual’s behavior toward members of that race regardless of that individual’s conscious intent" (John Tyler  
Clemons, *Blind Injustice: The Supreme Court, Implicit Racial Bias, and the Racial Disparity in the Criminal Justice*  
*System*, (2014) 51 Am. Crim. L. Rev. 689, 693.) In passing the CRJA, the legislature specifically sought to remedy  
implicit bias. (*Young, supra*, at 149.)

<sup>41</sup> *Id.* at 149.

1 An effort to limit the reach of the CRJA would allow a judge or prosecutor to present or  
2 approve of a racist witness, or to exclude for racist reasons a witness favorable to the defendant.  
3 It would allow a prosecutor to argue in a racist manner that a witness should be believed or not  
4 believed for racist reasons. See, e.g., *McFarland v. Smith*, 611 F.2d 414, 416-417 (2nd Cir. 1979)  
5 where the court held that it was error to argue that Black police officer should be believed  
6 because she was the same race as defendant.  
7

8 Given the text and history of the CRJA, it should be read to include jury selection. Not to  
9 do so would allow admitted racism to flourish. Mr. Stankewitz is not aware of any cases that  
10 interpret the CRJA in this manner or hold that admittedly racist practices that concern a  
11 prospective juror, or witness, or anyone other than the defendant are perfectly acceptable, even if  
12 the undisputed goal of a challenged racist act is to remove the liberty or life of the defendant.  
13

14 Fourth, law enforcement discretion can be challenged under an "exhibited bias"  
15 claim.<sup>42</sup> Racial bias exhibited by police at arrest, for example, may be reflected in "downstream  
16 decisions" by the DA concerning whom to charge.<sup>43</sup> Both decisions, classic examples of  
17 discretionary decision-making, are subject to CRJA scrutiny.<sup>44</sup> The CRJA authorizes challenges  
18 to each granular decision made during a criminal case to ascertain whether racial factors played a  
19 role.<sup>45</sup>  
20

21 In sum, the CRJA should not be limited due to arbitrary distinctions that not only cannot  
22  
23

---

24  
25 <sup>42</sup> *Young, supra* at 165.

26 <sup>43</sup> *Ibid.*

27 <sup>44</sup> *Ibid; Id.* at 161-162.

28 <sup>45</sup>*Ibid*; Because prosecutorial decisions "necessarily involve both judgmental and factual decisions that vary from case to case," *McCleskey, supra*, at p. 313 fn. 37, there is a risk that those decisions are based on the irrelevant factor of race. (*Id* at p. 316.) The CRJA lets defendant's gauge this risk.

1 be found in the statute but are aimed at undermining the statute by limiting its reach. The CRJA  
2 is described both by its own language of intent and in all the case law that has discussed it as  
3 seeking to eliminate any role of race from all aspects of the criminal justice system. Any other  
4 interpretation would preserve substantial enclaves of acknowledged racism within the system.  
5 This was not the Legislature's intent and should not be the law's effect.  
6

7       There is nothing in the operative language of the statute or in declarations of legislative  
8 intent that shows the slightest desire on the Legislature's part to enable or permit or endorse  
9 racist jury selection. In fact, the Legislature specifically cited *Batson's*<sup>46</sup> failure to eliminate  
10 racist jury selection as an impetus for enacting the CRJA. Stats. 2020, ch. 317, § 2, subd. (c).  
11

12       The CRJA allows claims against race-based decisions that are not addressed by *Batson*,  
13 which was concerned only with explicit acts of bias, and requires evidence of subjective racist  
14 intent, or purposeful discrimination. A showing of racist effects is not sufficient under *Batson*.<sup>47</sup>  
15

16       *Batson*, like *McCleskey v. Kemp*<sup>48</sup>, which was decided within months of *Batson*,  
17 concerned itself only with explicit acts of bias. The *McCleskey* decision, along with *Batson*, was  
18 specifically cited by the Legislature as a motivating force for the passage of the CRJA:

19               Existing precedent also accepts racial disparities in our criminal  
20 justice system as inevitable. Most famously, in 1987, the United  
21 States Supreme Court found that there was "a discrepancy that  
22 appears to correlate with race" in death penalty cases in Georgia,  
23 but the court would not intervene without proof of a discriminatory

24 <sup>46</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986)

25 <sup>47</sup> Like the CRJA, the covenants against racism to which the United States subscribes in international law do not  
26 tolerate acceptance of racism, even when evidence of a racist purpose is not available. Article 1 of the International  
27 Convention on the Elimination of Forms of Racial Discrimination defines "racial discrimination" as:  
28 Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which  
has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of  
human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.  
General Recommendation No. 14: Definition of discrimination (Art. 1, par. 1) 03/22/1993, emphasis added.

<sup>48</sup> 481 U.S. 279, 295-99, 312 (1987)

1 purpose, concluding that we must simply accept these disparities as  
2 “an inevitable part of our criminal justice system” (*McCleskey v.*  
3 *Kemp*, 481 U.S. 279, 295-99, 312 (1987)). In dissent, one Justice  
described this as “a fear of too much justice” (*Id.* at p. 339  
(Brennan, J., dissenting)).

4 Any ambiguities in the legislative history are resolved by the legislature’s statement of  
5 intent:

6 (g) Current law, as interpreted by the courts, stands in sharp  
7 contrast to this Legislature’s commitment to “ameliorate bias-  
8 based injustice  
9 in the courtroom” subdivision (b) of Section 1 of Chapter 418 of  
10 the Statutes of 2019 (Assembly Bill 242). The Legislature has  
11 acknowledged that all persons possess implicit biases (*Id.* at  
12 Section 1(a)(1)), that these biases impact the criminal justice  
13 system (*Id.* at Section (1)(a)(5)), and that negative implicit biases  
14 tend to disfavor people of color (*Id.* at Section (1)(a)(3)-(4)). In  
15 California in 2020, we can no longer accept racial discrimination  
and racial disparities as inevitable in our criminal justice system  
and we must act to make clear that this discrimination and these  
disparities are illegal and will not be tolerated in California, both  
prospectively and retroactively.

16 Legislative Intent, section 2 of the Racial Justice Act of 2020, Assembly Bill No. 2542; section  
17 745 of the California Penal Code.

18 This legislative purpose would be undermined if the CRJA were interpreted to apply only  
19 to acts limited to the defendant and not allowed to reach acts done by others with the goal of  
20 achieving the defendant’s conviction or a harsher sentence; and if jury selection, by any standard  
21 a critical stage of a prosecution, were found to be outside the CRJA’s reach.

22 In sum, (a)(1) challenges address "racial bias" directed at the defendant by specific actors  
23 in the criminal legal system. "[R]acial bias" includes unintentional, implicit bias.<sup>49</sup> Finally, (a)(1)  
24

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25  
26  
27  
28 <sup>49</sup> Penal Code Sect. 745(h)(4).

1 claims call for challenges to discretionary decision-making.

2 **b. "Exhibiting racial bias" towards the defendant with a focus on racially**  
3 **discriminatory language used at trial - 745(a)(2)**

4 The second type of conduct that violates the CRJA involves the use of discriminatory  
5 language.<sup>50</sup> The question is whether a government actor "used racially discriminatory language"  
6 or otherwise exhibited racial bias towards the defendant, whether or not intentional.<sup>51</sup> The  
7 language must be used "during the defendant's trial, in court and during the proceedings."<sup>52</sup>  
8

9 The CRJA says two things about "racially discriminatory language." First, the phrase is  
10 defined: language that "to an objective observer, explicitly or implicitly appeals to racial bias,  
11 including, but not limited to, racially charged or racially coded language, language that compares  
12 the defendant to an animal, or that language that references the defendant's physical appearance,  
13 culture, ethnicity, or national origin."<sup>53</sup> Second, we're given a hint at how to spot it: "evidence  
14 that particular words or images are used exclusively or disproportionately in cases where the  
15 defendant is of a specific race...is relevant to determining whether language is discriminatory."<sup>54</sup>  
16

17 There is one exception to CRJA's prohibition on racial language: no violation occurs if  
18 the speaker is describing language used by another that is relevant to the case.<sup>55</sup> The exception is  
19

---

22  
23 <sup>50</sup>The full text reads: "During the defendant's trial, in court and during the proceedings, the judge, an attorney in the  
24 case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory  
25 language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the  
26 defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph  
27 does not apply if the person speaking is relating language used by another that is relevant to the case or if the person  
28 speaking is giving a racially neutral and unbiased physical description of the suspect." (Pen. Code § 745(a)(2).

<sup>51</sup> Pen. Code, §745(a)(2).

<sup>52</sup> *Ibid.*

<sup>53</sup> Pen. Code, §745(h)(4).

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

1 therefore narrow: the secondhand description must have a tendency in reason to prove or  
2 disprove a disputed fact of consequence in the action.<sup>56</sup> This exception does not apply here.

3  
4 **c. Claims of racially disparate treatment in charging, conviction and/or  
sentencing in Fresno County- 745(a)(3)<sup>57</sup>**

5 The last type of violation concerns race-based differential treatment.<sup>58</sup> The defendant  
6 must show a significant disparity in charging or convictions relative to defendants of another  
7 race.<sup>59</sup> Proof the disparity was intentional is not required.<sup>60</sup>

8  
9 Showing defendants of other races were treated more leniently requires proof that  
10 (1) the defendant was charged more severely than similarly situated defendants of other races;  
11 and (2) the prosecution more frequently sought or obtained more severe convictions or penalties  
12 against individuals of the defendant's race than against other similarly situated individuals in  
13 Fresno County.<sup>61</sup> If the defendant meets this burden, a violation is established unless the  
14 prosecutor offers race-neutral reasons for the charging disparity.<sup>62</sup>

15  
16 Several key concepts relating to (a)(3) claims are defined in the CRJA: "more frequently  
17 sought or obtained" means that the totality of the evidence "demonstrates a significant difference  
18 in seeking or obtaining convictions... comparing individuals who have engaged in similar  
19

20  
21  
22 <sup>56</sup> (Evid. Code, §210)

23 <sup>57</sup> Mr. Stankewitz's 745(a)(3) claim is a subject of his Motion for Relevant Data Pursuant to Penal Code Section  
745(d), also filed with this Court.

24 <sup>58</sup> *Young, supra*, at 155; §745(c)(2).

25 <sup>59</sup> *Young, supra*, at 162; The full text reads: "the defendant was charged or convicted of a more serious offense than  
26 defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly  
situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more  
serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the  
convictions were sought or obtained." (Pen. Code, §745(a)(3)).

27 <sup>60</sup> §745(c)(2).

28 <sup>61</sup> Pen. Code § 745(a)(3).

<sup>62</sup> *Young, supra*, at 167; Pen. Code § 745(h)(1).

1 conduct and are similarly situated."<sup>63</sup> Defendants are considered "similarly situated" if factors  
2 that are "relevant in charging and sentencing" are similar.<sup>64</sup> The comparator need not, however,  
3 be identical to the defendant.

4  
5 In sum, (a)(3) challenges allege that similarly situated non-Native American defendants  
6 in Fresno County who have engaged in similar conduct as that alleged against the defendant  
7 were treated more favorably. Such claims involve statistical data and expert testimony.<sup>65</sup> Proof  
8 of discriminatory intent or motive is not required.<sup>66</sup> And the burden of asserting race-neutral  
9 justifications for charging disparities rests with the prosecution.<sup>67</sup>

### 10 **3. CRJA Motion Procedure**

11  
12 The CRJA contains "escalating burdens of proof": the more a defendant asks for, the  
13 more he must prove.<sup>68</sup> Under this framework, the strength of the evidence increases as the  
14 defendant progresses through the statutory scheme.<sup>69</sup> Here's an illustration of how the CRJA's  
15 burden-shifting scheme works:

16  
17

If the defendant shows:	He is entitled to:
good cause (§745(d).)	Discovery

18  
19  
20

21  
22  
23  
24 <sup>63</sup> Penal Code §745(h)(1).

25 <sup>64</sup> Penal Code §745(h)(6).

26 <sup>65</sup> Penal Code §745(c)(1).

27 <sup>66</sup> Penal Code §745(c)(2).

28 <sup>67</sup> Penal Code §745(h)(1). The CRJA allows for discovery in aid of an (a)(3) claim. Pen. Code, §745(d). Any request for discovery in this case is noticed in a separate motion filed with this Court. *Young, supra*, at 157.

<sup>68</sup> *Young, supra*, at 138.

<sup>69</sup>*Ibid.*

Prima facie violation (§745(h)(2).)	Trial court hearing
Proof of a violation by preponderance of evidence (§745(e).)	A remedy specific to the violation

CRJA challenges have three stages: the prima facie stage, the evidentiary hearing, and the awarding of a remedy. Each are addressed below.

**a. The prima facie stage**

CRJA challenges are made by motion in the trial court.<sup>70</sup> Once the motion is brought, the prima facie test applies: the defendant must produce facts that, if true, establish a substantial likelihood that a CRJA violation has occurred.<sup>71</sup> "Substantial likelihood," means anything more than "a mere possibility" but less than "more likely than not."<sup>72</sup>

The defendant's burden at the prima facie stage is minimal. *See Heard v. Lockheed Missiles & Space Co.* (1996) 44 Cal.App.4th 1735, 1751 ["The burden of proving a prima facie case of disparate treatment is not onerous"]; (*see Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 197 [amount of evidence that must be produced to satisfy prima facie case is "very little"].) The point of the prima facie stage is to stop defendants from moving forward without a factual basis.

---

<sup>70</sup> *Young, supra*, at 148; §745(b).

<sup>71</sup> Penal Code §745(h)(2).

<sup>72</sup> *Ibid.*

1 Read plainly, the CRJA requires the defendant to present facts sufficient to substantiate a  
2 violation before proceeding to a hearing.<sup>73</sup> This showing does not, however, require proof that a  
3 violation is more likely than not.<sup>74</sup>

4  
5 **b. The evidentiary hearing**

6 Once a prima facie showing is made, the court must hold a hearing<sup>75</sup> At the hearing,  
7 evidence may be presented by either party and the court can appoint an independent expert.<sup>76</sup>  
8 Hearsay that the court finds "trustworthy and reliable," as well as statistical and aggregate data,  
9 are admissible for the purpose of establishing a CRJA violation.<sup>77</sup> The defendant must prove a  
10 CRJA violation by a preponderance of the evidence.<sup>78</sup> Proof of intentional discrimination is not  
11 required.<sup>79</sup>

12  
13 **c. Remedies for a CRJA violation**

14 Once a violation is proven, the defendant is entitled to relief "specific to the violation"  
15 contained in a statutory list.<sup>80</sup> These remedies can be broken into two groups.

16 The first group remedies misconduct arising from trial. The court can declare a mistrial or  
17  
18  
19  
20

21  
22 <sup>73</sup> Penal Code §745(h)(2).

23 <sup>74</sup> *Ibid.*

24 <sup>75</sup> Penal Code §745(c); *Young, supra*, at 148.

25 <sup>76</sup> Penal Code §745(c)(1).

26 <sup>77</sup> CRJA's statutory hearsay exception also applies to the prima facie stage. §745(c)(I). violation" contained in a  
27 statutory list. (§745(e).) These remedies can be broken into two groups. The first group remedies misconduct arising  
28 from trial. The court can declare a mistrial or discharge the jury and empanel a new jury. §745(e)(1)(A)-(B). The  
second group concerns charging reduction: the court can (1) dismiss enhancements, special circumstances or special  
allegations, or (2) reduce one or more of the charges. (§745(e)(1)(C). Outside of these statutory remedies, the court  
can invoke existing remedies under state or federal law. §745(B)(4).

<sup>78</sup> (§745(c)(2)

<sup>79</sup> *Ibid.*

<sup>80</sup> Penal Code §745(e).

1 discharge the jury and empanel a new jury.<sup>81</sup> The second group concerns charging reduction: the  
2 court can (1) dismiss enhancements, special circumstances or special allegations, or (2) reduce  
3 one or more of the charges.<sup>82</sup> Outside of these statutory remedies, the court can invoke existing  
4 remedies under state or federal law.<sup>83</sup>

## 6 **VI. ARGUMENT**

### 7 **A. The Fresno District Attorney exhibited racial bias against Mr. Stankewitz when** 8 **it excused the only prospective Indian juror in violation of 745(a)(1)<sup>84</sup>**

9 The prosecutor removed the only prospective Indian juror from Mr. Stankewitz's jury for  
10 racist reasons. This act is not excluded from the reach of the CRJA simply because the  
11 prospective jurors were not the defendant himself – the person who was affected by these racist  
12 acts. In this case, the most reasonable interpretation of the statute is to hold that it applies to all  
13 instances of racism that occurred during Mr. Stankewitz's trial.

15 The CRJA's ban on decisions based on race that have a deleterious effect on a defendant,  
16 even if they are not explicitly racist, applies here. The fact that the prosecution used a  
17 peremptory challenge to exclude Ms. Moreno because she was a Native American could have  
18 been racist. One important factor is whether the prosecution intended to use challenges to  
19 eliminate jurors of the same race as the defendant. This has been proven in other cases by using  
20 notes taken by the prosecutor.<sup>85</sup> The discovery order granted to the defense in this case, which is  
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22  
23  
24  
25  
26 <sup>81</sup> Penal Code §745(e)(1)(A)-(B).

27 <sup>82</sup> Penal Code §745(e)(1)(C).

28 <sup>83</sup> Penal Code §745(B)(4).

<sup>84</sup> Mr. Stankewitz has requested juror notes in his Motion for Relevant Data under the RJA filed with this Court.

<sup>85</sup> The Discovery Order was issued in 1978. (T1 CR Vol. I CT 116)

1 still in effect, includes DA file notes. The District Attorney has previously stated that their file  
2 content prior to 2017 has been lost. Therefore, it is unknown whether jury selection notes exist.<sup>86</sup>

3  
4 In a capital case, one criterion in determining whether a juror of the same race was  
5 excused for potentially racially discriminatory reasons is to look at how s/he answered death  
6 penalty related questions. If the prospective juror answered the death penalty questions the same  
7 as other jurors, but was still removed using a peremptory challenge, then it raises racial basis as a  
8 possible reason. In this case, throughout numerous death penalty related questions by the  
9 attorneys and the court, Ms. Moreno stated that she would be able to vote for the death penalty.

10 (T2 Vol. V RT 2685 - 2691)

11  
12 **B. Derogatory Penalty Phase testimony used by Defense Counsel and the DDA  
13 Regarding Indian reservation life was totally racist and likely influenced the  
14 jurors to give Mr. Stankewitz the death penalty and was a violation of  
15 745(a)(2).**

16 It hardly seems a stretch to say that testimony and closing arguments which describe  
17 Indian reservations in derogatory terms – saying that the young people are using drugs and  
18 alcohol and are school dropouts sitting around the reservation – would cause an all-white jury to  
19 send a 19-year-old or 24-year-old Indian man to be executed. Both the testimony and closing  
20 arguments by defense counsel were racist and highly damaging. The damage was compounded  
21

22  
23  
24 <sup>86</sup> The loss of the DA’s file of all documents prior to 2017, admitted to by their office, is not completely true. During  
25 the habeas evidentiary hearing in January 2024, a review of the DA’s boxes uncovered documents from prior to  
26 2017. The court conducted an in-camera review of the boxes but no juror notes were turned over to the defense. The  
27 court did not issue an order to show cause for habeas Claim 14 – THE PROSECUTION ELIMINATED THE  
28 ONLY NATIVE AMERICAN JUROR IN VIOLATION OF PETITIONER’S RIGHTS UNDER THE SIXTH  
AMENDMENT TO AN IMPARTIAL JURY AND HIS RIGHT TO DUE PROCESS AND EQUAL  
PROTECTION UNDER THE FOURTEENTH AMENDMENT. Query: Did the court decide that the juror notes  
should not be turned over because the jury selection issue was not the subject of the evidentiary hearing?)

1 when the DDA referred to Indian reservations in his closing argument. In this case, it wasn't just  
2 a derogatory word, as anticipated by the statute, it was multiple derogatory sentences. The  
3 combined effect gave the jury an easy guilt free reason to give Mr. Stankewitz the death penalty.  
4

5 It is likely that most jurors had never been to an Indian reservation. Given what they were  
6 taught in school and the movies, they likely feared Indians<sup>87</sup> and would likely have feared the  
7 experience of going to a reservation. The testimony and closing argument likely stoked those  
8 fears. Had Ms. Moreno, an Indian, been on the jury during the second trial penalty phase when  
9 there was derogatory testimony and attorneys' arguments regarding Indian reservation life, she  
10 could have provided context about the testimony and arguments from counsel.  
11

12 Using negative descriptions of reservations also fit the defense attorney's focus on God  
13 as a savior for Mr. Stankewitz. The defense attorney was known throughout the legal community  
14 for his focus of Christianity as a tool for converting and redeeming his clients. He so stated in a  
15 1995 declaration.<sup>88</sup>  
16

17 The consequence of being sentenced to death has impacted Mr. Stankewitz's entire adult  
18 life. After being convicted twice of murder 1 with special circumstances, Mr. Stankewitz has had  
19 five Judgments of Death entered against him. He has had five scheduled execution dates. He was  
20 confined to death row, the equivalent of solitary confinement, for 46 years. He has been  
21 subjected to the cruel prison environment for 47 years.  
22

## 23 **VII. CONCLUSION**

24  
25  
26

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27 <sup>87</sup> Fresno discrimination is discussed in Mr. Stankewitz's Motion for Relevant Data under RJA 745(d) filed with this  
Court at Section VI., filed with this Court.

28 <sup>88</sup> Exhibit 30d/Habeas Exh 9a, 1995 Declaration of Hugh Goodwin.

1           The goal of the CRJA is to root out racial discrimination irrespective of intent. In this  
2 case, the Fresno County District Attorney's Office exhibited racial bias against Mr. Stankewitz  
3 by excluding the only prospective Indian juror by using a peremptory challenge. Racial bias was  
4 also exhibited by Mr. Stankewitz's second trial defense attorney when he elicited derogatory  
5 testimony regarding Indian reservation life and used it in closing argument. Racial bias was  
6 further exhibited when the DDA referenced the same derogatory descriptions of Indian  
7 reservation life in his closing argument. Mr. Stankewitz now seeks to prove a violation by a  
8 preponderance of the evidence at an evidentiary hearing.  
9

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27 //

1 PROOF OF SERVICE

2  
3 The undersigned declares:

4 I am a citizen of the United States. My business address is P. O. Box 7225, Cotati, CA  
5 94931. I am over the age of eighteen years and not a party to the within action.

6 On the date set forth below, I served the foregoing document(s) described as

7 **MOTION FOR RELIEF UNDER RJA 745 (a)(1) and (a)(2)**

8 On all interested parties in this action as follows:

9 Elana Aron Smith  
10 Office of the District Attorney  
11 Fresno, CA 93721  
[Earon@Fresnocountyca.gov](mailto:Earon@Fresnocountyca.gov)

Honorable Arlan L. Harrell  
Teresa VanZuyen, Clerk  
[Dept62@fresno.courts.ca.gov](mailto:Dept62@fresno.courts.ca.gov)

12 Mail  Overnight mail  Personal service  Fax

13  By Email or Electronic Filing/Service) CCP Sect. 1010.6 and California Rules of  
14 Court, Rule 2.251. Based upon a Court Order, Local Rules of Court, or an agreement of the  
15 parties to accept service by e-mail or electronic transmission, I caused the documents to be sent  
16 to the person(s) listed above on the parties listed above who are signed up for electronic service.  
17 I did not receive, within a reasonable time after the transmission, any electronic message or  
18 other indication that the transmission was unsuccessful.

19 I declare under penalty of perjury that the foregoing is true and correct, and that this  
20 declaration is executed on March 22, 2025, at Sebastopol, California.

21   
22 /Alexandra Cock

ROSEMARY MORENO TRANSCRIPTS  
(HABEAS EXHIBIT 14a) **EXHIBIT 30a**

1 MR. GOODWIN: I have no further questions of Mr.  
2 Lemon.

3 THE COURT: Mr. Robinson?

4 MR. ROBINSON: I don't have any questions.

5 THE COURT: All right. Mr. Lemon, if you would just  
6 step down and just wait outside the courtroom.

7 We are going to need you to come back -- before you  
8 go, Mr. Lemon, I am going to ask you to come back Tuesday  
9 morning at 9:30 for further proceedings in this matter.

10 I am going to ask you not to read anything in the  
11 paper about it, not to discuss it with anyone, not to  
12 listen to it on T.V. or listen to the radio to anything  
13 about it. And I'm not suggesting that there's going to  
14 be anything, but if there is, leave the room or shut it  
15 off.

16 You understand that we want 12 people that get the  
17 evidence from this courtroom and not from the media, who  
18 is often not very accurate, as you may know.

19 MR. LEMON: Yeah. Okay.

20 THE COURT: Let the record show that neither counsel  
21 wished to challenge this juror. Is that the sign I got?

22 MR. GOODWIN: Yes.

23 MR. ROBINSON: Yes.

24 THE CLERK: Panel 33, number 157, Rosemary Moreno.

25 ROSEMARY MORENO,

26 QUESTIONING BY THE COURT:

1 Q Would you state your name, please?

2 A Rosemary Moreno.

3 Q All right. Miss Moreno, I am going to ask you  
4 some questions, and then the attorneys may want to ask  
5 you some questions when I finish.

6 Have you or any member of your immediate family  
7 or any close friend ever been the victim of any type  
8 of assaultive crime? By "assaultive crime," it's one  
9 where there was a personal confrontation with somebody  
10 and where they were, say, beaten up or threatened with  
11 a weapon or raped or anything of this type.

12 A No.

13 Q To the best of your knowledge, have you or  
14 any member of your immediate family or any close friend  
15 ever been charged with a crime of any kind?

16 A No.

17 Q And have you heard or read anything about this  
18 case before coming to court as a juror?

19 A I heard about it but I haven't read anything.

20 Q Okay. When did you hear something about it?

21 A This summer.

22 Q This summer. And where did you hear something  
23 about it?

24 A At work.

25 Q Okay. Was it somebody at work?

26 A Yeah. Well, I work as a teacher's aide, and one

1 of the little boys, the talk was he was related. But  
2 that's all that I heard.

3 Q Okay. And who did you hear that from?

4 A From the coordinator.

5 Q Okay. Can you explain to me what they said?

6 A He said, "Oh, you know that little boy?"

7 I said, "Yes."

8 He says, "Well, did you know he was related?"

9 I said, "I don't know."

10 Q Related to who?

11 A To Mr. Stankewitz.

12 Q Okay.

13 A I said, "Yeah." I said, "I didn't know that,"

14 and I said, "Well, I don't know what actually happened,"

15 which he didn't say anything else.

16 Q Okay. I take it that when the coordinator  
17 talked to you that the name Stankewitz had a meaning to  
18 you at that time; is that correct?

19 A Yeah. I had known something, you know.

20 Q Okay. What did you know about the name Stankewitz,  
21 or what had you heard?

22 A Oh, just that he was an indian man that was  
23 sent up to death row for doing, you know, the crimes. But  
24 I hadn't heard anything, you know -- I -- it's the first  
25 time I heard it. That's what he had said to me. I said  
26 I didn't know.

1 Q Okay. Who was it that said to you -- what  
2 was it that the person said to you that --

3 A He just said, you know, the little boy was  
4 just related.

5 Q The coordinator at school said the little boy  
6 was related to somebody by the name of Stankewitz; is  
7 that correct?

8 A Yeah.

9 Q You at that time already knew the name Stankewitz,  
10 that he had been, you say, sent up to death row.

11 A Yes. That's what he was telling me that he  
12 was.

13 Q That's what I'm asking. Did the same person  
14 that told you that the little boy was related, did that  
15 same person tell you about --

16 A Yeah. He was telling me.

17 Q Well, before that day, did the name Stankewitz  
18 mean anything to you or had you heard anything about it  
19 before?

20 A No.

21 Q You hadn't.

22 A No.

23 Q Did this person tell you anything about the  
24 facts of the case or anything about what happened or  
25 who supposedly did what to whom or anything?

26 A Huh-uh. He didn't say -- he just said that was,

1 that's what he was up there for, but he didn't go into --  
2 I don't know if he knew himself. But that's all he  
3 said..

4 And, you know, I didn't go and find out what this  
5 man did and what had happened. I just left it at that.

6 Q Okay. What made you think they were talking  
7 about this man here that's in court?

8 A Because that's who they said he was.

9 Q Stankewitz?

10 A Yeah. And when I came in, they had said it  
11 was the Stankewitz case, and that's when I remembered  
12 in my mind we had been talking about that.

13 Q Okay. Fine. You understand if you are  
14 selected as a juror, it would be your duty to decide  
15 the facts of this case based on the evidence presented  
16 here during the trial. You understand that.

17 A Yes.

18 Q And that, therefore, anything that you hear  
19 or read outside of the trial, you know, cannot be considered  
20 by you as evidence.

21 A Yes. I have to keep an open mind.

22 Q Yes. Let me ask you this: Do you feel that  
23 you could put out of your mind what this person told  
24 you about this case and decide this case based on the  
25 evidence presented here, or do you think that you wouldn't  
26 be able to put that out of your mind and decide the

1 case?

2 A I could put it out of my mind. It's just to  
3 hear the name. It just, you know, it popped in my  
4 mind. But I could have an open mind and go through the  
5 case and hear everybody and decide. It wouldn't bother  
6 me.

7 I wouldn't put it to where I have to think about  
8 it all the time, you know. It's just something that  
9 I have to do.

10 THE COURT: Okay. Mr. Goodwin, you may inquire.

11 QUESTIONING BY MR. GOODWIN:

12 Q Miss Moreno, the problem I am having is that  
13 I'm wondering whether or not all the conversation you  
14 had with whoever this individual was, whether or not  
15 you told us all of it.

16 A Well, see, I work for an Indian counsel. That's  
17 why it had been brought up because, you know, that's  
18 why he said that he was an Indian man that was sent up.  
19 But after that we did not discuss anything.

20 Q Who is he that brought it up?

21 A He was my coordinator.

22 Q What's his name?

23 A Stan Rodriguez.

24 Q Stan Rodriguez. Where was it Stan Rodriguez  
25 brought this information to your attention?

26 A We were at school with the kids.

1 Q Were you in the cafeteria?

2 A In the classroom.

3 Q With students?

4 A Yes.

5 Q How was it that you got to talking about  
6 Stankewitz?

7 A Well, see, I had never worked -- this was the  
8 first year the little boy was brought in.

9 Q What little boy is this?

10 A Fabian Stankewitz.

11 Q Okay. So some boy named Fabian Stankewitz was  
12 brought into your classroom?

13 A Yeah. He was brought into the program this  
14 year. And it's a genuine program we have for the kids,  
15 and we work with these kids during the summer.

16 And while they are dancing and everything, we  
17 were talking, and he was, you know, talking about the  
18 little boy.

19 Q He was talking about Fabian?

20 A Yes.

21 Q What did he say about Fabian?

22 A He said, "Do you know that --" you know, "Fabian's  
23 uncle is the guy that's set up in death row? He's an  
24 Indian man."

25 I said, "I didn't know that. I don't know who the  
26 guy is."

1 He says, well, that's what he had did.

2 Q What's what who had did?

3 A He said that Mr. Stankewitz was set up for a  
4 murder and I said, well, I didn't know that's what he  
5 had did. And that's all we had talked about.

6 And, you know, we just went on and the little boy,  
7 you know, we tutored him. They danced. We got along  
8 real good.

9 Q All right. Now, do you recall approximately  
10 when that was?

11 A Probably about three, three and a half weeks  
12 ago.

13 Q Is school out now?

14 A Yes. The program ended recently.

15 Q But the program was still in operation when this  
16 conversation was had; is that right?

17 A Yes.

18 Q And you knew, did you not, that the only way  
19 you can get to death row is to have been convicted of  
20 a crime and sent up there.

21 A Yeah. See, I didn't know nothing about this  
22 case, you know. So I had thought, well, maybe, you know,  
23 it had already gone through. And that's why here I was  
24 and here the case came. It just popped in my head.

25 Q You mean you thought he was on death row?

26 A Yeah. I took it as that. He was -- because I

1 hadn't heard anything.

2 Q And then you were called for jury service.

3 A Yeah.

4 Q And then you hear the name Stankewitz when?

5 A When the judge said that was the case that  
6 we were going to be --

7 Q When was that? Do you remember?

8 A Monday.

9 Q This past Monday.

10 A Monday.

11 THE COURT: For the record, I believe it was -- that's  
12 right. It was Monday. Excuse me. That's the first time  
13 you had come here.

14 MISS MORENO: Yes.

15 MR. GOODWIN: Q When the judge said Stankewitz,  
16 all of this comes to mind?

17 A Yeah. Just the little boy came to my, you  
18 know, what the coordinator was telling me. And I said,  
19 well, you know, I thought it had already gone through.  
20 I didn't know, you know, that he had not gone through  
21 court because I didn't hear anything.

22 Q Well, didn't you figure he must have gone  
23 through something if he was up on death row?

24 A I didn't concentrate on it. I just let it go.  
25 I wasn't worried about it. I just went on, you know,  
26 with what I was doing.

1 Q What about now?

2 A Now? There's nothing to think about. That's  
3 what I said. I have got to listen to what happened now.

4 Now I know that it didn't go through, that this  
5 trial, that there's a trial coming up and I have to hear,  
6 I can't say what he did or didn't do. Obviously, you  
7 know, what was said to me, I took it that it had already  
8 gone through, but it didn't. You know what I'm saying?

9 Q I understand what you're saying. You are saying  
10 now that --

11 A Now realizing that this is happening now, I --

12 Q What do you think happened if he's up on death  
13 row?

14 A I don't know what happens up on death row.  
15 You see, I didn't know.

16 Q Do you know how a person would get to death  
17 row?

18 A If he's convicted, I guess.

19 Q Okay.

20 A That's what I had thought that he had already  
21 been through the court and been convicted, you know. But  
22 now he's here and his trial is going. Obviously he hasn't  
23 been. So maybe what I heard was wrong. I didn't dwell  
24 on it. I just let it go.

25 Q Suppose it had gone through and he had been  
26 sent to death row.

1           A     And he's here again?

2           Q     And you see him here now. Do you have any  
3 way that you figure out he would be here now?

4           A     Because they did not have evidence or something.  
5 I don't know.

6           Q     Wouldn't -- wouldn't you think that this would  
7 be a second trial?

8           A     Yeah. If he had been, you know -- if I had  
9 known he had been already convicted once and it was a  
10 second trial, but I don't know. Is this the first time  
11 the man has gone through? I don't know.

12          Q     Your information about his being on death row  
13 and all of that is correct, see.

14          A     Oh. See, now that I'm here, I thought, well,  
15 maybe the information that was told to me was wrong.

16          Q     Suppose -- now that you know what the situation  
17 is and you put all that together that you heard, as you  
18 sit here at this time, His Honor asked you and you are  
19 the only one who knows that's the reason we are asking  
20 questions, we don't know the answers but for the answers  
21 that you give us as long as it indicates your true feelings  
22 in response to what we are asking.

23                 His Honor asked you if you would be able to block  
24 out, to set aside, to not consider the things that you  
25 have heard and the things that you have figured out that  
26 resulted from what you heard. If you were selected as a

1 juror in this case, could you set all of that aside and  
2 consider absolutely nothing except the evidence that  
3 you hear in this case?

4 A Now that I realize what's happening, you know,  
5 I could say that I could set aside and --

6 Q You could what?

7 A I could set, you know, what I've heard and  
8 what people have said. I could set that aside because  
9 I really don't know what this case -- I don't know the  
10 actual facts. And I could listen to the facts and not  
11 keep everything else out. And then, you know, decide.  
12 But, you know, I just -- I wouldn't dwell on it, you  
13 know.

14 Q Would it make any difference to you that  
15 apparently a jury in the past has heard the evidence  
16 and apparently convicted him because that's the only  
17 way he could get on death row? Would that have any bearing  
18 on your decision deciding the case?

19 A No. Because, you know, he didn't go through  
20 the first time. Maybe there is more to it, you know,  
21 what they did the first time.

22 Q You mentioned "maybe there's more to it."

23 A I don't know. I haven't heard this case. Maybe,  
24 you know, there's something else that hasn't been brought  
25 up, you know. Why hasn't he just -- why did they call  
26 a second case? I don't know.

1 Q Well, what I'm really asking you is that you  
2 won't -- one of the things that you won't engage in is  
3 to try to figure out the difference between --

4 A The first one --

5 Q -- the trial that you are going to listen to  
6 and whatever it was that happened in the past. Just as  
7 you said, you don't know what happened back there except  
8 you know the results of it.

9 A Yeah.

10 Q And if that would bother you or affect your  
11 deliberations in any way, then, you know, that's what  
12 we would like to know.

13 A It won't bother me because, like I said, I  
14 don't know what happened. My concern wouldn't go back  
15 and find out. It would just be listening to what the  
16 man did or didn't do and what was to come out of it. And  
17 then decide then. But to go back, and, you know, look  
18 into the case personally --

19 Q Okay. You understand that as a juror you would  
20 listen to what happens in this courtroom and you are  
21 not an investigator. You are not supposed to go out and  
22 find out anything.

23 A I know that. Why would I want to do that? It  
24 would be the decision of the jurors that are picked.

25 Q So that, again, and it's always repetitious, that  
26 you could set aside everything you have heard in the past

1 about Mr. Stankewitz and judge this case solely on the  
2 basis of what you hear here in the courtroom.

3 A Yes, I can do that.

4 MR. GOODWIN: I have no further questions.

5 THE COURT: Mr. Robinson, any questions?

6 MR. ROBINSON: Yes.

7 QUESTIONING BY MR. ROBINSON:

8 Q Miss Moreno, the fact that you know a nephew  
9 of the defendant, would that make a difference?

10 A No. It wouldn't make -- because I don't know  
11 how close he is to -- that's why I brought it up because  
12 I didn't know if you would want me to be on this. Maybe --  
13 I thought maybe you thought it would be wrong.

14 But I just work -- my main concern with the boy  
15 was just to make sure academically he was able to do  
16 his work. But as for any relationship, you know, that  
17 was within his family. I don't go into their lives like  
18 that. That's just set aside.

19 Q What about the fact you were working for an  
20 Indian counsel and the defendant is indian? Would that  
21 make a difference to you?

22 A No. Because I am indian and I am not prejudiced.

23 Q Would you tend to favor the defendant because  
24 he is indian?

25 A No. Why should I? Because he is just a human  
26 being like everybody else.

1 Q Is there anything based on what we have been  
2 discussing, namely what you have heard about the case,  
3 that makes you think you should not sit as a juror in  
4 this case?

5 A No. Because, you know, I don't know the facts  
6 or anything, you know. I couldn't, you know, say, well,  
7 I couldn't judge on the man.

8 MR. ROBINSON: I don't have any further questions.

9 MR. GOODWIN: I have no other questions.

10 FURTHER QUESTIONING BY THE COURT:

11 Q All right. I'm going to ask you some questions  
12 now, Miss Moreno, concerning your duties as a juror. And  
13 you understand, as I mentioned earlier, that you may be  
14 called upon to determine what the penalty should be if  
15 the defendant is found guilty of first degree murder and  
16 if the special circumstances are found to be true, and  
17 if one of them or both of them are, in which event the  
18 jury would then be called upon to determine, after an  
19 appropriate proceeding and further instructions on the  
20 law, if the penalty shall be death or life in prison without  
21 the possibility of parole. Do you understand that?

22 A Yes.

23 Q I must, therefore, ask you questions about  
24 your attitude or state of mind concerning the death penalty.  
25 And let me emphasize that I don't know whether the jury  
26 will ever get to that phase of the trial, but I must ask

1 these questions because that possibility exists.

2 First I would like to ask you a couple of questions  
3 about your duties during the guilt phase of the trial.

4 If the People prove beyond a reasonable doubt that  
5 the defendant is guilty of murder in the first degree,  
6 would you refuse to vote for such a verdict because of  
7 any conscientious opinion you may have concerning the death  
8 penalty knowing that to vote for such a verdict may  
9 obligate the jury to get into the penalty phase of the  
10 trial?

11 A No, I wouldn't.

12 Q All right. If the People prove beyond a  
13 reasonable doubt that the defendant is guilty of murder  
14 in the first degree and prove beyond a reasonable doubt  
15 the truthfulness of one or more of the special circum-  
16 stances alleged, would you refuse to vote for a verdict  
17 of the truthfulness of the special circumstance because  
18 of any conscientious opinion you may have concerning the  
19 death penalty and knowing that to do so would obligate  
20 the jury to get into that penalty phase?

21 A No, I wouldn't.

22 Q All right. Next question. Do you hold any  
23 conscientious opinions concerning the death penalty  
24 that, regardless of the evidence that might be developed  
25 during the penalty phase of the trial, should we get  
26 there, that you would automatically and absolutely refuse

1 to vote for the death penalty in any case?

2 ~~In other words, regardless of the evidence and because~~  
3 of any conscientious objection to the death penalty that  
4 you might have, would you in every case automatically vote  
5 for life in prison without the possibility of parole  
6 and never vote for a verdict of death?

7 A No, I wouldn't.

8 Q Do you hold any conscientious opinion concerning  
9 the death penalty that, should we get into the penalty  
10 phase of the trial, you would automatically in every  
11 case vote for a verdict of death and under no circumstances  
12 vote for a verdict of life in prison without the possibility  
13 of parole?

14 A No.

15 Q So you would base your decision, if you are  
16 selected as a juror in this case, on the evidence that's  
17 presented during the trial and the law as given to you  
18 by the Court despite any opinions you might hold concerning  
19 the death penalty; is that correct?

20 A Yes.

21 Q All right. I want to go over a couple of things  
22 with you.

23 You understand that before there would ever be a  
24 penalty phase of the trial, it would mean that you and  
25 11 other jurors have decided beyond a reasonable doubt  
26 that the defendant was guilty of first degree murder, and

1 you and 11 other jurors would have to have found beyond  
2 a reasonable doubt that one or both of these special  
3 circumstances were true, that is that he committed the  
4 murder during a robbery or that he committed the murder  
5 during the kidnapping. And that only after those two  
6 findings had been made, that he was guilty of first  
7 degree murder and that one or both of the special circum-  
8 stances were true, then and only then would there be a  
9 penalty phase of the trial. Do you understand that?

10 A Yes.

11 Q And it's not -- in California it's not the  
12 law that every person that's convicted of first degree  
13 murder has a penalty trial where the death penalty could  
14 be imposed. You understand.

15 It's only those first degree murders that are  
16 committed in a certain way or under certain circumstances,  
17 and those things are called special circumstances. And  
18 those have been -- two of those have been alleged here  
19 in this case. You understand that.

20 A Yes.

21 Q And even where there's a conviction of  
22 first degree murder and a finding that there's a special  
23 circumstance that's true, it does not mean that one penalty  
24 or the other is automatic. It means there is a penalty  
25 phase of the trial at which then the jury must decide  
26 whether the penalty should be life in prison without the

1 possibility of parole or should be the death penalty.

2 You understand that.

3 A Yes.

4 Q During the penalty phase of the trial, evidence  
5 may be presented to the jury concerning matters in  
6 aggravation or mitigation, things you may properly  
7 consider in deciding what the penalty should be. These  
8 may be things that have nothing to do with the crimes  
9 that have been charged. You understand that.

10 A Yes.

11 Q And after the evidence part of the penalty  
12 phase is over with, then the lawyers have an opportunity  
13 to present arguments to the jury as to what they feel  
14 the case shows. Then the Court would instruct the  
15 jury on the law that applies during the penalty phase.

16 Then the jurors would retire to the jury room and  
17 start talking about the case. Then and only then should  
18 you decide which of the two penalties to select. Do  
19 you understand that?

20 A Yes.

21 Q Because if you did it any sooner, you wouldn't  
22 have all the benefit of the evidence that may be presented  
23 during the penalty phase. You wouldn't have the benefit  
24 of the arguments of the lawyers or the Court's instructions  
25 or the benefit of talking with your fellow jurors about  
26 it. You understand that.

1 A Yes.

2 Q Do you feel that you could keep an open mind  
3 until the end of the penalty phase before deciding what  
4 the penalty should be?

5 A Yes, I do.

6 Q That just because you had found the defendant  
7 guilty of murder in the first degree and had found a  
8 special circumstance true, you wouldn't automatically  
9 choose one penalty or the other.

10 A Oh, no.

11 Q Is that correct?

12 A Yes.

13 Q You would wait until the end of the penalty  
14 phase before you decided what the proper penalty would  
15 be.

16 A Yes.

17 Q All right. I would like to ask you a couple  
18 more questions along the same line. It may sound like  
19 I am repeating myself, but listen to the questions.

20 I want you to assume now for the purpose of these  
21 questions only that the People prove that the defendant  
22 is guilty of first degree murder beyond a reasonable  
23 doubt, and I want you to further assume that the People  
24 present evidence that proves beyond a reasonable doubt  
25 that the murder of Theresa Graybeal was personally  
26 committed by the defendant during the commission or

1 attempted commission of a robbery.

2 Would you in every case regardless of the evidence  
3 that might be presented regarding aggravation or mitigation  
4 in the penalty phase of the trial, would you automatically  
5 vote for a verdict of death?

6 A No.

7 Q Again, assuming that the jury finds the  
8 defendant guilty of murder in the first degree, for the  
9 purpose of this question only, and further assuming  
10 that the People present evidence sufficient to prove  
11 beyond a reasonable doubt that the murder of Theresa  
12 Graybeal was personally committed by the defendant during  
13 the commission or attempted commission of a kidnapping,  
14 which is the other special circumstance, would you in  
15 every case regardless of the evidence that might be  
16 produced in aggravation or mitigation in the penalty  
17 phase of the trial, would you automatically vote for a  
18 verdict of death?

19 A No.

20 THE COURT: All right. Thank you, Miss Moreno.

21 Mr. Goodwin?

22 MR. GOODWIN: I have no questions.

23 THE COURT: Mr. Robinson, you may question.

24 FURTHER QUESTIONING BY MR. ROBINSON:

25 Q Miss Moreno, do you feel there should be a  
26 death penalty law in California?

1 A Yes, I do feel there should be.

2 Q So you personally favor the death penalty; is  
3 that correct?

4 A Certain cases. Not all of them. Everybody  
5 shouldn't go to the death penalty. Only if it's proven  
6 it's done, you know, and they all agree to it, you know.

7 Q Okay. After the evidence is in and the judge  
8 instructs the jury, the members of the jury deliberate  
9 or discuss the case together. Would you have any problem  
10 with listening to the other jurors and taking into  
11 account what they have to say about the case?

12 A No, I wouldn't.

13 Q So you wouldn't adopt a position and then not  
14 change it no matter what the others might say; is that  
15 right?

16 A Yeah.

17 Q Now, there are some people who in theory favor  
18 the death penalty, but if they were a juror they couldn't  
19 actually return a death penalty verdict because they  
20 would feel sorry for the defendant in court.

21 Would you actually be able to return a verdict of  
22 -- for the death penalty if you thought it was warranted?

23 A If I thought it was, yes.

24 Q Some people believe the death penalty should  
25 only be used for extreme murder cases such as mass murder.  
26 Do you believe that?

1           A     Yes, I do. That's when I think it should  
2 be used.

3           Q     In mass murders and no other cases?

4           A     Well, maybe in a few other cases. But, you  
5 know, first of all mass cases.

6           Q     Well, in this case, there is only one person  
7 killed. Would you say because of that you would never  
8 vote for the death penalty in this case?

9           A     No, I wouldn't.

10          MR. ROBINSON: I have no further questions.

11          MR. GOODWIN: I have no further questions.

12          THE COURT: Mrs. Moreno, you may step outside,  
13 if you would, please.

14                   (Thereupon Miss Moreno leaves the  
15 courtroom.)

16          THE COURT: Either counsel wish to challenge this  
17 juror?

18          MR. GOODWIN: No, Your Honor.

19          MR. ROBINSON: No.

20          THE COURT: This is, I think, the first juror  
21 that we have had that is aware, that I am aware of, that  
22 there was a death penalty imposed at a prior time. I  
23 don't believe we had any other ones that haven't been  
24 excused that are aware of this. She did state that she  
25 could set this aside and -- I just wanted to point that  
26 out.

1 THE COURT: It's the defendant's challenge.

2 MR. GOODWIN: The defendant would excuse Mrs.  
3 Tsubota.

4 THE COURT: Mrs. Tsubota, you are excused. Thank  
5 you.

6 THE CLERK: Panel 33, number 157, Rosemary Moreno.

7 THE COURT: Mrs. Moreno, have you sat on a jury  
8 before?

9 MRS. MORENO: No, I haven't.

10 THE COURT: And are you acquainted with anyone  
11 that's been mentioned as a possible witness, or the defen-  
12 dant or either of the attorneys in this matter?

13 MRS. MORENO: No, I'm not.

14 THE COURT: Do you have any acquaintances or relatives  
15 engaged in law enforcement?

16 MRS. MORENO: I have an uncle that's a retired  
17 sheriff member for 10 years, and I have a close uncle  
18 that's a CSO officer.

19 THE COURT: CSO officer? What is that?

20 MRS. MORENO: Community Service Officer.

21 THE COURT: Do you feel this would have any effect  
22 on your ability to be a fair and impartial juror?

23 MRS. MORENO: No, I don't.

24 THE COURT: Your relationship or acquaintance there  
25 wouldn't cause you to have any preconceived ideas about  
26 the testimony of law enforcement officers, would it?

1 MRS. MORENO: No.

2 THE COURT: Any other friends or relatives involved  
3 in law enforcement?

4 MRS. MORENO: No.

5 THE COURT: The sheriff that's retired, was he  
6 a sheriff here in Fresno?

7 MRS. MORENO: Yes.

8 THE COURT: What was his name?

9 MRS. MORENO: Andrew Moreno.

10 THE COURT: Okay. If I asked you the questions I  
11 have been asking the other prospective jurors, other  
12 than the personal questions, is there any material way  
13 your answers would be different than their answers?

14 MRS. MORENO: No.

15 THE COURT: Could you give us the personal information  
16 I have asked of the other jurors?

17 MRS. MORENO: My name is Rosemary Moreno. I'm  
18 married. I have a little boy that's two. I am a teacher's  
19 aide. My husband is a chauffeur for the limousine service,  
20 and he works for Shell Service Station.

21 THE COURT: Okay. Do you know of any reason at  
22 all why you couldn't be a fair and impartial juror to  
23 both sides in this case?

24 MRS. MORENO: No, I don't.

25 THE COURT: All right. Mr. Goodwin, you may inquire.

26 MR. GOODWIN: I have no questions of Mrs. Moreno,

1 Your Honor.

2 THE COURT: Mr. Robinson?

3 MR. ROBINSON: No questions, Your Honor.

4 THE COURT: All right. It's the People's challenge.

5 MR. ROBINSON: Yes, Your Honor. The People would  
6 ask the Court to thank and excuse Mrs. Moreno.

7 THE COURT: You are excused, Mrs. Moreno.

8 THE CLERK: Panel 29, number 45, Bob Crane.

9 THE COURT: Mr. Crane, have you had any prior jury  
10 service?

11 MR. CRANE: No, I haven't.

12 THE COURT: Are you acquainted with anyone that's  
13 been mentioned as a possible witness or the defendant  
14 or the attorneys here?

15 MR. CRANE: No.

16 THE COURT: Do you have any friends or -- close  
17 friends or relatives engaged in law enforcement?

18 MR. CRANE: My grandfather was a sheriff, a deputy,  
19 but he is retired now. It wasn't in Fresno.

20 THE COURT: It wasn't in Fresno. Did he ever discuss  
21 his cases with you?

22 MR. CRANE: Not to any length. The funny ones.

23 THE COURT: Okay. Do you feel that relationship  
24 would have any effect on your ability to be a fair and  
25 impartial juror in this case?

26 MR. CRANE: No, I do not.

FRESNO SUPERIOR COURT LETTER RE  
JUROR QUESTIONNAIRES (HABEAS EXHIBIT  
14b) **EXHIBIT 30b**



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**Superior Court of California  
County of Fresno**

May 15, 2020

Alexandra Cock  
2171 Francisco Blvd. E., Suite D  
San Rafael, CA 94901

**Re: Request for Records**

Dear Ms. Cock:

The Court is in receipt of your letter dated May 6, 2020, requesting jury questionnaires for individuals summoned for and subjected to oral examination during *voir dire* in the second trial of Defendant Douglas Ray Stankewitz.

A review of the court files and records has been conducted and no records have been located responsive to your request. Accordingly, the no questionnaires will not be provided in response to your request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeannie D. Goshgarian", is written over a horizontal line.

**Jeannie D. Goshgarian**  
Managing Research Attorney

JURY CHART (HABEAS EXHIBIT 14d)  
**EXHIBIT 30c**

LAST NAME	FIRST NAME	HARDSHIP VOIR DIRE	# PAGES OF QUESTIONS	NOTES	DEATH PENALTY VOIR DIRE	# PAGES OF QUESTIONS	NOTES	GENERAL VOIR DIRE	# PAGES OF QUESTIONS	NOTES	DISPOSITION/NOTES
Armey	Rutter				x	10	Ok with death; vague recollection of case; Def challenge for cause denied	x		Note 3135;	DISMISSED - DEFENSE
Askins	Kathy	x		Job; court declines	x	13	Ok with death; no challenges	x		Note 3111; Father was Patrolman Los Banos	SEATED
Atchley	Louis				x	3	Biased over previous trial and "fluke" allow 2nd trial; stip for cause				DISMISSED - CAUSE
Babcock	Gayle				x	13	Ok with death; no challenges	x		Note 3043	DISMISSED - DEFENSE
Bacon	Linda	x		Honeymoon							DISMISSED - HARDSHIP
Badiali	Karri				x	6	Knows previous trial; might assume guilt; Def challenge for cause				DISMISSED - CAUSE
Baker	Raymond J.	x		CPA w/ partner; can't afford; court declines	x	11	Knows case; assumes guilt and retrial because of technicality; stip to excuse				DISMISSED - CAUSE
Baker	Hughie W.	x		Job; court declines	x	20	Ok with death; no challenges	x		Note 3126;	DISMISSED - PROSECUTION
Banning	Patrickia				x	14	Reluctant ok with death; no challenges	x		Note 3307; husband former homicide investigator for San Diego County; stip to excuse	DISMISSED - CAUSE
Barrera	Joseph				x	4	Probation Officer; knows witness; familiar with Stankewitz family; Def challenge for cause; Prosec agrees				DISMISSED - CAUSE
Bassett	Willard				x	15	Ok with death; no challenges	x		Note 3049; Prosecution challenge for cause	DISMISSED - CAUSE
Bathauer	Ronald	x		Financial							DISMISSED - HARDSHIP
Bedoian	Grace				x	22	Knows people with criminal histories; ok with death; looking for job; no challenges	x		Note 3151;	DISMISSED - DEFENSE
Bellando	Nattalino	x		Medical							DISMISSED - HARDSHIP
Benke	Brenda	x		Financial							DISMISSED - HARDSHIP
Bennetts	Stanley	x		Medical							DISMISSED - HARDSHIP
Benson	Kimberly				x	22	Knew about the case; advocate for death; Def challenge for cause denied	x		Note 3297;	DISMISSED - DEFENSE
Billigmeier	Walter				x	12	Ok with death; no challenges	x		Note 3065; asks for medical hardship; court declines	DISMISSED - PROSECUTION
Bishop	Clare	x		New job							DISMISSED - HARDSHIP

Blake	Mary Jane	x		Nurse, childcare issues; more info and report back	x	5	Knows case; friend corrections officer though Def guilty; stip to excuse					DISMISSED - CAUSE
Boeck	Susan	x		Job; court declines	x	5	Knows case; heard about Stankewitz family; neighbor cop; unfavorable things heard about Def; refer to Note 1940 for more details; Def challenge for cause					DISMISSED - CAUSE
Boeck	William	x		Job; court declines	x	8	Knows case and Stankewitz family history; Def challenge for cause; Prosec agrees					DISMISSED - CAUSE
Bohigian	Joanne				x	14	Excused for cause (no to death)					DISMISSED - CAUSE
Bowen	Inez	x		Traveling; court declines	x	17	Read all media accounts of case; Def challenge for cause					DISMISSED - CAUSE
Breckeridge	Joyce				x	26	Knows Stankewitz; kids went to school w/ him; Def challenge for cause					DISMISSED - CAUSE
Bredon	Betty				x	17	Ok with death; no challenge	x		Note 3124; no challenge for cause		DISMISSED - PROSECUTION
Bridges	Leora	x		Work and childcare; court declines	x	14	Heard about case; assumes guilt - can't be fair; stip to excuse					DISMISSED - CAUSE
Bridges	Sherrie				x	2	Has new job; needs hardship excuse					DISMISSED - HARDSHIP
Brock	Barbara H.	x		Caretaker for elderly mother								DISMISSED - HARDSHIP
Brockway	Jane				x	23	Advocate death; Def needs to prove innocent; Def challenge for cause					DISMISSED - CAUSE
Brown	Henry	x		School Admin - Court declines	x	11	Advocate death; Def challenge for cause					DISMISSED - CAUSE
Bulgara	Juan	x		School schedule								DISMISSED - HARDSHIP
Burns	Charles W.				x	34	Advocate death; Def challenge for cause					DISMISSED - CAUSE
Bustamonte	Raul				x	20	Wouldn't vote for death but can't say for sure; no challenges	x		Note 3046;		DISMISSED - PROSECUTION
Cabrera	Carlos				x	12	Against death; Def challenge for cause					DISMISSED - PROSECUTION
Cairns	Donna	x		Financial								DISMISSED - HARDSHIP
Carella	Vic				x	19	Ok with death; Def challenge for cause denied - thinks juror confused	x		Note 3300; deceased brother was in Fresno Sheriff's Dept		DISMISSED - DEFENSE

Carlson	Blair	x			X	13	Ok with death; no challenges; want excuse for hardship - job interview - declined	x		Note 3247; Father-in-law worked Sheriff Alameda - deceased; Juvie court bailiff; Stip to dismiss for hardship	DISMISSED - HARDSHIP
Chakmak	Shirley				x	20	Against death; Prosec challenge for cause				DISMISSED - CAUSE
Clark	Bernadette	x		Financial							DISMISSED - HARDSHIP
Clements	Beverly	x		Job/Financial							DISMISSED - HARDSHIP
Close	Nathaniel	x		Job, previous bad jury experience							DISMISSED - HARDSHIP
Cobb	Lawrence	x		Financial							DISMISSED - HARDSHIP
Comfort	Rosemary				x	3	Followed case in paper; biased against Def; Def challenge for cause				DISMISSED - CAUSE
Corich	Lynn	x		Financial, FPD dispatcher							DISMISSED - HARDSHIP
Cotta	Linda				x	12	Worked in DA; knew Ardaiz; now at Ct of Appeal secretary Justice Andreen; Def challenge for cause for work with DA denied	x		Note 3063; letter from Cotta; difficulty in office with replacement; Def stip to excuse; Prosec will not; court excuse	DISMISSED - HARDSHIP
Cramer	Veydon				x	13	Ok with death; no challenges	x		Note 3037;	DISMISSED - PROSECUTION
Crane	Robert L.	x		Court declines	x	20	Knew about case; ok with death; Def challenge for cause denied	x		Note 3264;	DISMISSED - DEFENSE
Cucuk	Barbara				x	13	Retrial for technicality; assumes guilt; stip to excuse				DISMISSED - CAUSE
Cummings	Kandyce	x		Income reduction; court declines	x	22	Against death; Prosec challenge for cause				DISMISSED - CAUSE
Dallition	George				x	18	Ok with death				SEATED
Davison	Jo Anne				x	30	Ok with death			Note 3046	SEATED
De Ranian	Nelson				x	15	Ok with death; no challenges	x		Note 3364	ALTERNATE
Densmore	Jo				x	17	Mother murdered when she was 2; Def challenge for cause denied				EXCUSED - PANEL SELECTED
Derian	Albert				x	18	Against death; Prosec challenge for cause				DISMISSED - PROSECUTION
Dhuyvetter	Diana							x		Note 2912	SEATED
Dickie	Paul C.	x		Student, Medical							DISMISSED - HARDSHIP
Dicus	Sharon				x	12	Ok with death; no challenges	X		Note 3045, 3083	DISMISSED - DEFENSE
Ehresman	Darren				x	22	Death in every murder case; Def challenge for cause				DISMISSED CAUSE

Enos	Nina				x	19	Ok with death; knows about previous case; Def challenge for cause; granted only because Prosec agreed					DISMISSED - CAUSE
Evanski	Ethel				x	19	Advocate death; heard about the case; can't be fair; stip to challenge for cause					DISMISSED - CAUSE
Firestine	Robert Kevin				x	16	Ok with death; no challenges	x		Note 3066 - Def challenge for cause		DISMISSED - CAUSE
Foreman	M. L.				x	28	Advocate for death; Def challenge for cause - denied					DISMISSED - DEFENSE
Franklin	Thomas				x	10	Reluctantly ok with death; no challenges	x		Note 3047;		DISMISSED - PROSECUTION
Fredricks	Mark	x		Financial								DISMISSED - HARDSHIP
Frierson	Verdine				x	17	Against death; Prosec challenge for cause					DISMISSED - CAUSE
Fries	Natalie				x	11	Ok with death; no challenges	x		Note 3047 - Goodwin asks about Def's race - doesn't matter		DISMISSED - DEFENSE
Games	Mina				x	14	Ok with death; no challenges	x		Note 3279		DISMISSED - PROSECUTION
Garcia	Marie Edna	x		Getting married, travel								DISMISSED - HARDSHIP
Garcia	Phillip				x	14	Ok with death; no challenges					EXCUSED - PANEL SELECTED
Garza	Estella				x	19	Ok with death; no challenges			Note 2957 - asks to be excused for medical reasons; stipulated		DISMISSED - HARDSHIP
Gearns	Karen				x	33	Confusing answers on death; Def challenge for cause					DISMISSED - CAUSE
Gillenwaters	Amelia S.				x	19	Sister shot and killed in Fresno; Def challenge for cause					DISMISSED - CAUSE
Glissman	Rudy				x	27	Def challenge for cause - apply death auto for murder - denied; possible hardship			Agreement Def would use peremp if seated due to hardship. Clarified for record at Note 3394		DISMISSED - DEFENSE
Golding	Karol				x	12	Ok with death; no challenges	x		Note 3252 - knows "numerous police officers		SEATED
Gong	Peggy	x		Job; court declines	x		Excused at Def request over Prosec objection					DISMISSED - HARDSHIP
Good	Kathryn	x		Vacation								DISMISSED - HARDSHIP
Goodwin	Frank C.				x	22	Ok with death; no challenges	x		Note 3137; knows Goodwin - client;		DISMISSED - PROSECUTION
Gottfried	Patricia				x	18	Strong advocate for death; Def challenge for cause denied	x		Note 3063; Note from er unable to pay wages;		DISMISSED - HARDSHIP

Graham	Cathy	x	Student registered for classes; used to work for Sheriff during arrest; girlfriend of Lt. Getty; court declines	X	14	Ok with death; Def challenge for cause because association with Sheriff denied	x	Note 3051; knows Sheriff's deputies; met Lean, but no significant contact;	DISMISSED - DEFENSE
Halemeir	Doria			x	12	Murder should get death; Goodwin challenges			DISMISSED - CAUSE
Hawkins	Cynthia	x	Job; court declines	X	8	Ok with death; knows Goodwin; no challenges	x	Note 3217	DISMISSED - PROSECUTION
Haygood	Willie	x	Job						DISMISSED - HARDSHIP
Hedrick	Lois			x	9	Ok with death; no challenges	x	Note 3121; brothers in law enforcement;	DISMISSED - DEFENSE
Helmick	Karen			x	20	Ok with death; followed newspaper accts of case; Def challenge for cause; prosecution willing to stip; court denies	x	Note 3142; relatives in law	DISMISSED - DEFENSE
Herbert	Debora	x	Job						HARDSHIP - DISMISSED
Hernandez	Carmen			x	19	Ok with death; no challenge	X	Note 3063; called w/ family emergency; not excused; assumes will be hearing back	EXCUSED - PANEL SELECTED
Hicks	Becky			x	36	Advocate death; confused by questions; Def challenge for cause denied	x	Note 3318;	DISMISSED - DEFENSE
Hiles	David C.			x	27	Strong death advocate; Def challenges for cause			DISMISSED - CAUSE
Hill	Gloria	x	Emotional issue with family member history causes stress						DISMISSED - HARDSHIP
Hill	Cannon	x	Job; financial; court declines; asked to check pay w/ er and return	x	22	Prefer LWP but ok with death; no challenges	x	Note 3231; knows cops in FPD and Clovis PD;	DISMISSED - PROSECUTION
Hodges	Evangeline			x	XX	Friend was criminologist on this case; talked about it; James Tarver Sheriff's photographer; Def challenge for cause; Prosec objects			DISMISSED - CAUSE
Hodges	David J.	x	Subpoena to testify in another case; court declines	x		Produces Dr's note; coronary condition; excused			DISMISSED - HARDSHIP
Humphrey	Jamie	x	Financial						DISMISSED - HARDSHIP

Hunt	John	x		Job; court declines	x	31	Strong advocate for death; Def challenge for cause denied	x		Note 3117; relatives in law enforcement	DISMISSED - DEFENSE
Hurley	Jack	x		Financial							DISMISSED - HARDSHIP
Hutchinson	Rebecca L.				x	14	Knows about case; heard Def made threats against jurors; Def challenge for cause				DISMISSED - CAUSE
Inman	Ruth				x	23	Ok with death; no challenges				EXCUSED - PANEL SELECTED
Jenkins	Mary Jane	x		Hypoglycemic; court declines	X	14	Followed first trial; Def challenge for cause; Prosec agrees				DISMISSED - CAUSE
Jimenez	Julia				x	13	Ok with death; no challenges	x		Note 3121;	DISMISSED - PROSECUTION
Johnson	Terese				x	14	Experiences with crime; aunt murdered in Fresno; strong advocate for death; Def challenge for cause				DISMISSED - CAUSE
Johnson	Eric	x		Student							DISMISSED - HARDSHIP
Josey	Glenda				x	14	Ok with death; no challenges	x		Note 3046;	DISMISSED - DEFENSE
Keosheyen	Ronald	x		Lose OT; vacation plans; court declines	x	17	Ok with death; no challenges	x		Note 3312	SEATED
Kliewer	Charles				x	12	Works Sheriff's Dept at jail; stip to excuse				DISMISSED - CAUSE
Kloppenburg	Betty				x	27	Strong advocate for death; Def challenge for cause				DISMISSED - CAUSE
Kral	Linda	x		Vacation							DISMISSED - HARDSHIP
Kramp	Janet K.	x		Job							DISMISSED - HARDSHIP
Kusunkoki	Denise	x		Self-employed; court declines	X	12	Knows case; could be biased; stip to excuse				DISMISSED - CAUSE
Larkin	Steven				x	31	Knows about case from news; might be biased against Def; Stip to excuse;				DISMISSED - CAUSE
Lawless	Marjorie				x	25	No to death penalty under any circumstances				DISMISSED - CAUSE
Lee	Laura				x	14	Strong advocate for death; Def challenge for cause denied	x		Note 3162 - tries to hardship- job offer; note 3213	DISMISSED - DEFENSE
Lemon	Gregory				x	14	Ok with death; no challenges	x		Note 3296;	DISMISSED - DEFENSE
Leon	Maria				x	9	Against death; Prosec challenge for cause				DISMISSED - CAUSE
Longenecker-Cheung	Kerry	x		Job							DISMISSED - HARDSHIP
Macris	Nicholas	x		Financial							DISMISSED - HARDSHIP
Malone	Gregory				x	10	Ok with death; no challenges				EXCUSED - PANEL SELECTED

Marin	Dennis	x	Channel 24 cameraman - knows case; court declines	x	4	Involvement in reporting/broadcast of story; stip to excuse					DISMISSED - CAUSE
Maroot	Paul	x	Financial								DISMISSED - HARDSHIP
Martin	Susan	x	Job								DISMISSED - HARDSHIP
Martin	Raymond			x	18	Ok with death - no challenge					EXCUSED - PANEL SELECTED
Martinez	Julia	x	Work and transportation; court declines	x	16	Has difficulty with English; stip to excuse					DISMISSED - CAUSE
Martinez	Arthur	x	Job								DISMISSED - HARDSHIP
Martino	Santo	x	Medical								DISMISSED - HARDSHIP
Mathison	Ellen	x	Financial								DISMISSED - HARDSHIP
McBride	Harvey Allen			x	12	Undecided about death; no challenges					EXCUSED - PANEL SELECTED
McCarley	Linda			x	16	Inclined toward death if murder; Def challenge for cause					DISMISSED - CAUSE
McClelland	J. Archie			x	17	Okay with Death			Note 3225		DISMISSED - PROSECUTION
McCrokle	Donald	x	Financial								DISMISSED - HARDSHIP
McDermott	Thomas J.			x	17	Knows prior case; ok with death; Def challenge for cause denied; Prosec express concern too; under advisement; note 1888 stip to cause					DISMISSED - CAUSE
McDonald	Susan	x	Job								DISMISSED - HARDSHIP
McGahan	Jerry B.	x		X	6	Against death; Prosec challenge for cause					DISMISSED - CAUSE
McLelland	William	x	Job								DISMISSED - HARDSHIP
McManners	Jeanne			x	11	Stip to excuse - cant be faire					DISMISSED - CAUSE
Meeks	Raymond			x	3	Going out of town for son's graduation					DISMISSED - HARDSHIP
Melzler	Karen			x	6	Against death; Prosec challenge for cause					DISMISSED - PROSECUTION
Miller	Maxine			x	12	Ok with death; no challenges	x		Note 3271;		SEATED
Minic	Robin			x	15	Ok with death; no challenges	x		Note 3273;		DISMISSED - PROSECUTION
Moffett	Hubert			x	23	Ok with death; no challenges					EXCUSED - PANEL SELECTED
Monahan	Raymond D.	x	Financial								DISMISSED - HARDSHIP
Montoya	Irene	x	Financial								DISMISSED - HARDSHIP

Moreno	Rosemary				x	24	Works for "Indian Counsel"; teacher's aide; little boy related to Def; told about case because "Indian" man involved; She is Indiana; Court points out juror aware death penalty imposed prior; no challenges; Def point that this juror is only "peer" on panel	x		Note 3262; Uncle retired Fresno Sheriff's Dept; close uncle is community service officer;	DISMISSED - PROSECUTION
Newcomb	Neil	x		Teacher; court declines	X	5	Know case well; assumes guilt; knew Def had problems with law; Def challenge for cause				DISMISSED - CAUSE
Nichols	Annamae				x	13	Employed by Family Support Div of DA; ok with death; Def challenge for cause because of DA denied	x		Note 3333;	DISMISSED - DEFENSE
Nickel	Paul	x		Job							DISMISSED - HARDSHIP
Noack	Malcomb				x	9	Death advocate; heard about prior trial; Def challenge for cause				DISMISSED - DEFENSE
Nunez	Peter A.				x	25	Knew about case; ok with death; Def challenge for cause denied	x		Note 3244;	DISMISSED - DEFENSE
Nunez	John	x		Financial							DISMISSED - HARDSHIP
O'Banion	James C. (Carl)	x		Job							DISMISSED - HARDSHIP
O'Bryan	Edna	x		Financial							DISMISSED - HARDSHIP
Ortiz	Robert				x	23	Ok with death; Def challenge for cause denied	x		Note 3321;	SEATED
Ostos	Margaret	x		Financial							DISMISSED - HARDSHIP
Owen	Evelyn				x	X	Ok with death; no challenges	x		Note 3265; Prosec challenge for cause	DISMISSED - CAUSE
Papenhausen	Helen	X		Despite numerous reasons for hardship Ct will not excuse	x	26	Upset about length of trial. Lean toward death; Def challenge for cause				DISMISSED - CAUSE
Park	David	x		Job							DISMISSED - HARDSHIP
Patchin	Beatrice	x		Job							DISMISSED - HARDSHIP
Patton	Lue	x		Job							DISMISSED - HARDSHIP
Penner	Hilda	x		Job							DISMISSED - HARDSHIP
Perry	Rochelle	x		Pregnancy							DISMISSED - HARDSHIP
Petersen	Pamela	x		Financial							DISMISSED - HARDSHIP
Piedrafita	Debra	x		Studen							DISMISSED - HARDSHIP

Pierson	Jean				x	13	Against death; requested to research religious implications and come back; returned ok with death	x		Note 3359;	DISMISSED - PROSECUTION
Pilibos	Alexander	x		Farmer							DISMISSED - HARDSHIP
Popp	Ethel				x	30	Lengthy questioning on death; ok with death; son is cop; no challenges				EXCUSED - PANEL SELECTED
Powell	Shelley				x	19	Ok with death; no challenges				EXCUSED - PANEL SELECTED
Przybyla	Timothy	x		Student							DISMISSED - HARDSHIP
Rachal	Blanch				x	23	Def Chal for cause denied	x		Note	DIMISSED - DEFENSE
Rainey	Dolores				x	10	Ok with death; no challenges	x		Note 3293	DISMISSED - DEFENSE
Ramirez	Xavier	x		Student							DISMISSED - HARDSHIP
Ramos	Mary				x	13	Ok with death; bad experience with DA; no challenges	x		Note 3147	DISMISSED - CAUSE
Ransom	Catherine	x		Financial							DISMISSED - HARDSHIP
Reyes	Jackie	x		Financial							DISMISSED - HARDSHIP
Richards	Nancy				x	14	Ok with death - may need hardship excuse	x		Note 1070 - won't be paid for time in jury duty	DISMISSED - HARDSHIP
Ridenour	John	x		Caretaker							DISMISSED - HARDSHIP
Ridgeway	Michael				x	13	Ok with death; no challenges	x		Note 3048; not impartial if gun used; Def challenge for cause	DISMISSED - CAUSE
Riley	Mae				x	12	Ok with death; no challenges	x		Note 3276;	DISMISSED - DEFENSE
Ripley	Barbara				x	28	Okay with death; Def challenge for cause denied	x		Note 3342;	DISMISSED - DEFENSE
Roberts	Carol				x	18	Knows case well; worked at Worsley Juvie School; knows Def's brother was there; Def challenge for cause				DISMISSED - CAUSE
Rodriguez	Brenda	x		Student							DISMISSED - HARDSHIP
Rohde	Rosalyn				x	3	Husband works for Clovis PD; believes Def is guilty; stip to excuse				DISMISSED - CAUSE
Ronquillo	Edward C.				x	14	Ok with death; no challenges	x		Note 3334; knows lots in law enforcement incl Rodriguez; doesn't like Goodwin as Judge previous; Def challenge for cause	DISMISSED - CAUSE
Rueda	Ralph	x			X	5	Against death; Prosec challenge for cause				DISMISSED - CAUSE

Ruiz	Esther				x	3	Borther is Modesto cop indirectly involved; Def challenge for cause					DISMISSED - CAUSE
Ruiz	Lisa Michelle				x	26	Ok with death; no challenges					EXCUSED - PANEL SELECTED
Sabroe	Gerald	x		Medical								DISMISSED - HARDSHIP
Saito	Leo				x	17	Ok with death; excused for cause- Note 302					DISMISSED - CAUSE
Salazar	Virginia	x		Changed her mind; no hardship	X	18	Can't understand proceedings very well; stip to excuse					DISMISSED - CAUSE
Saldivar	Michael M.	x		Medical- possible surgery; court declines	x	30	Knows Goodwin; ok with death; Def challenge for cause denied; Prosec agrees to stip if McDermott excused	X		Note 3259		DISMISSED - CAUSE
Sandoval	Gilbert				x	15	Okay with death ; no challenges					EXCUSED - PANEL SELECTED
Sandrik	Jack				x	12	Ok with death; no challenges					ALTERNATE
Scaramella	Eugene				x	22	Okay with death ; no challenges					EXCUSED - PANEL SELECTED
Schaad	Rosemary				x	25	Advocate death; Def challenge for cause					DISMISSED - CAUSE
Schlotthauer	Marilyn				x	12	Ok with death; no challenges	x		Note 3323; works IRS; nephew Fresno PD		SEATED
Schultz	Julie				x	13	Ok with death; no challenges	x		Note 3330; student and would have to drop out; stip to excuse for hardship		DISMISSED - HARDSHIP
Scott	Marcia				x	28	Daughter raped; brother in trouble; Def challenge denied	X		Note 3367;		DISMISSED - PROSECUTION
Senke	Henry	x		Job								DISMISSED - HARDSHIP
Setty	Evangeline				x	17	Ok with death - no challenges					ALTERNATE
Seward	Alyce	x		Family								DISMISSED - HARDSHIP
Shakeri	Nancy	x		Job								DISMISSED - HARDSHIP
Sharolow	Bonnie	x		Studen								DISMISSED - HARDSHIP
Shelton	James				x	11	Ok with death; no challenges	x		Note 3292		SEATED
Slade	Wesley				x	8	Against death; Prosecu challenge for cause					DISMISSED - CAUSE
Smith	Marilyn				x	25	Ok with death; no challenges	X		Note 3303; Brother-in-law FPD; neighbor retired Sheriff Dept.		DISMISSED - DEFENSE
Smith	Lawrence	x		Job, Subpoena for another case								DISMISSED - HARDSHIP
Snyder	Glenn				x	12	Ok with death; no challenges	x		Note 3353;		DISMISSED - DEFENSE
Solis	Kathleen A.				x	61	Ok with death; no challenges; long because victim of crime	x		Note 3340		DISMISSED - DEFENSE

Stafford	Susan				x	17	Ok with Death	x	Note 3371; brother works at Nevada State Prison; may know witnesses through business; Def challenge for cause; prosec objects	DISMISSED - CAUSE
Stones	Arleen				x	28	Correctional Officer at Fresno Jail; contact escorting Def; Def challenge for cause			DISMISSED - DEFENSE
Strunk	Elizabeth				x	20	Excused w/o obj hardship due to 4 hour drive			DISMISSED - HARDSHIP
Sweet	Sandra Louise	x		Financial						DISMISSED - HARDSHIP
Tate	Willie Jr.				x	14	Reluctant ok with death; no challenges	x	Note 3242;	DISMISSED - PROSECUTION
Tomasian	Gloria Ruth				x	13	Ok with death; no challenges			ALTERNATE
Toquillas	Connie	x		Not excused	X	11	Nervous and unsure; stip to excuse			DISMISSED - CAUSE
Trujillo	Gloria	x		Financial						DISMISSED - HARDSHIP
Tsubota	Chizuko				x	17	Ok with death; no challenges	x	Note 3256	DISMISSED - DEFENSE
Velasco	Arthur				x	14	Ok with death; no challenges	x	Note 3384; doesn't believe in grant of immunity for testimony-unfair; Prosec challenge for cause	DISMISSED - CAUSE
Venable	Jane				x	22	Crime in family but not involved; ok with death; no challenges	x	Note 3311; no in depth questioning; no challenges for cause	SEATED
Waite	Rolland	x		Financial						DISMISSED - HARDSHIP
Walton	Erma				x	15	Ok with death reluctantly	x	Note 3308	DISMISSED - PROSECUTION
Waters	Collette				x	18	Advocate death automatic w/ murder; Def challenges			DISMISSED - CAUSE
Waterson	Barbara	x		Financial						DISMISSED - HARDSHIP
Webb	Lewis				x	44	Strong advocate for death; confused by multiple questions; Def challenge for cause			DISMISSED - CAUSE
Westmoreland	Loretta	x			X	18	In favor of death; Def challenge for cause denied	x	Note 3285	DISMISSED - DEFENSE
Whisnant	Sherrie	x		Student						DISMISSED - HARDSHIP
White	Rosemary	x		Medical - asked to check with doctor and come back	X	7	Guilt from previous trial would influence; Def challenge for cause			DISMISSED - CAUSE
White	Ylanda				x	13	Ok with death; no challenges	x	Note 3320;	DISMISSED - PROSECUTION
Whitehill	Sheryl				x	16	Ok with death; no challenges			EXCUSED - PANEL SELECTED
Whitford	Jean				x	31	Ok with death; no challenges	x	Note 3334;	DISMISSED - PROSECUTION
Williams	Judith	x								

Wilson	Catherine				x	23		x	Note 3284		DISMISSED - CAUSE	
Windham	Ray	x		Financial							DISMISSED - HARDSHIP	
Woodward	David				x	16	Ok with death; no challenges	x	Note 3042;		SEATED	

HUGH GOODWIN 1995 DECLARATION  
(HABEAS EXHIBIT 9a) **EXHIBIT 30d**

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DECLARATION OF HUGH W. GOODWIN

I, HUGH W. GOODWIN, under penalty of perjury, say:

1. I am an attorney licensed to practice in the State of California and I represented petitioner Douglas Ray Stankewitz in his 1983 retrial in Fresno County Superior Court for murder with special circumstances and other offenses in Case No. 255015-5.

2. I did not hire an investigator in this case, either at guilt phase or at penalty phase, and had no tactical reason for my failure to do so.

3. I did not interview members of Mr. Stankewitz's family to determine what they could contribute at the penalty phase.

4. I failed to interview Mr. Stankewitz's school teachers, his foster parents, psychiatrists, psychologists and anyone else who had examined him during his childhood and youth, and other persons familiar with his background. I did not visit his family home in Auberry. Consequently, I was unfamiliar with the hardship and abuse to which he had been subjected.

5. I did not consult with his prior attorneys, either from the trial or from the appeal, or obtain from them their files from the prior trial.

6. I did not have a psychiatric or psychological evaluation of Mr. Stankewitz made, and did not have a tactical reason for my failure to do so.

7. I did not investigate Mr. Stankewitz's history of mental disability and mental illness. As a result, I was unaware that he had a long history of mental disability and mental illness,

1 starting at least with his placement in Napa State Hospital at age  
2 six. In particular, I was unaware that he had repeatedly been  
3 diagnosed as suffering from paranoia, schizoaffective disorder,  
4 possible epilepsy, fetal alcohol syndrome, and other mental  
5 illnesses and disabilities. I also did not investigate and was  
6 consequently unaware of Mr. Stankewitz's long history of drug and  
7 alcohol abuse, or the fact that his drug and alcohol abuse were  
8 continuing at the time I represented him.

9 8. I did not interview or consult with the mental health  
10 experts who had been involved in Mr. Stankewitz's first trial.

11 9. When I was appointed, I knew that Mr. Stankewitz, in  
12 his then mental state, would not accept any attorney who intended  
13 to raise mental defenses or issues as to his mental competency. I  
14 was also aware that the trial judge who would appoint me was  
15 anxious to go forward with the merits of the case rather than  
16 engaging in further litigation of competency. Under these  
17 circumstances I accepted the appointment without knowing whether  
18 Mr. Stankewitz was in fact mentally competent or whether there were  
19 viable defenses other than mental defenses.

20 10. In my opinion Mr. Stankewitz was not mentally  
21 competent when I represented him during the pretrial and trial  
22 proceedings. His behavior at the time I represented him was  
23 erratic and bizarre. I do not believe he was capable of  
24 understanding the legal issues in his case, and in particular the  
25 concept of *mens rea* as an element of the offense and the importance  
26 of mitigating evidence at the penalty phase. I do not believe he  
27 was capable of understanding that a person who had diminished

1 capacity, or is insane or unconscious at the time of the offense  
2 could be found innocent and acquitted or found guilty of a lesser  
3 included offense. If I had known of his long history of mental  
4 illness and substance abuse, I would have refused to take Mr.  
5 Stankewitz's wish for an exclusively "whodunit" defense at face  
6 value, and would have insisted upon investigating and probably  
7 presenting mental defenses such as diminished capacity, insanity,  
8 voluntary intoxication and unconsciousness. I also would have  
9 insisted upon investigating and actively pursuing a determination  
10 of incompetence, and upon investigating and presenting evidence in  
11 mitigation.

12 11. I did not obtain any written records related to Mr.  
13 Stankewitz's background or the background of members of his family,  
14 and in particular did not obtain his school records, the records of  
15 his hospitalization at Napa State Hospital, his medical records, or  
16 any records from California Department of Corrections or the Fresno  
17 County Jail. I also failed to obtain similar records with respect  
18 to any member of his family.

19 12. I did not have a tactical reason for failing to  
20 object to the prosecutor's argument to the jury that Billy Bob  
21 Brown, the government's only percipient witness, was not an  
22 accomplice, was not armed during the episode for which Mr.  
23 Stankewitz was on trial, and played no culpable role in the  
24 Graybeal kidnapping.

25 13. I did not have a tactical reason for not requesting  
26 an instruction that the alleged oral admissions by Mr. Stankewitz  
27 that were offered against him at guilt phase and at penalty phase

were to be viewed with caution.

14. I did not have a tactical reason for failing to object to the admission of the writings that were found in Mr. Stankewitz's cell and admitted against him at trial.

15. I did not have a tactical reason for failing to obtain and offer a stipulation that the car in which Mr. Stankewitz was riding that was impounded by the police was not stolen.

16. I did not have a tactical reason for failure to investigate or present evidence of Billy Brown's history as a "snitch."

17. I did not have a tactical reason for my failure to object to the admission of Mr. Stankewitz's statement as to why he attacked inmate Hogan in an incident at San Quentin State Prison presented by the prosecution at the penalty phase.

18. I did not investigate the veracity of the testimony presented against Mr. Stankewitz concerning the car chase in which Mr. Stankewitz allegedly participated in 1973, and had no tactical reason for that failure.

19. It is my recollection that I met Mr. Stankewitz as a result of prior representation of other members of his family, in particular Johnny Stankewitz.

20. At the time of trial I was of course aware that Mr. Stankewitz was a Native American. I did not research or consider the possibility of a motion for a change of venue out of Fresno County based on the pervasive prejudice against Native Americans in the county, or on the basis of my reputation as a judge who had been criticized for bringing religion into the courtroom. I had

1 business interests, church involvement, and other cases in Fresno  
2 County and the San Joaquin Valley which would have made it very  
3 difficult for me to try the Stankewitz case in another county; I do  
4 not recall discussing these concerns with Mr. Stankewitz, but they  
5 may are likely to have affected my decision not to seek a change of  
6 venue. I in any event did not have a strategic or tactical reason  
7 for not considering or researching a change of venue motion.

21. I did not have a tactical reason for failing to  
8 request an instruction on the lesser included offense of violation  
9 of Vehicle Code Section 10851, based upon the evidence that Mr.  
10 Stankewitz did not want to take the victim's automobile permanently  
11 but simply to take it temporarily and then return it to her.

22. I did not have a tactical reason for not objecting  
12 to the prosecutor's peremptory challenge of the only identified  
13 Native American prospective juror at a time earlier than the motion  
14 for a new trial.

23. I had no tactical reason for failing to voir dire  
15 the jurors on whether their knowledge of my reputation would affect  
16 the seriousness with which they took the presentation I made on Mr.  
17 Stankewitz's behalf at the penalty phase.

24. I have never believed in the separation of church  
18 and state, as I made clear when I was a judge. I recognize that  
19 this is a controversial view which is not widely shared. When I  
20 presented the testimony of a Deputy District Attorney and the  
21 Fresno County Jail chaplain that they believed people could be  
22 transformed by the power of God if they let God into their lives,  
23 I knew that it was likely that on cross-examination they would

1 state that there was no evidence that Mr. Stankewitz would let God  
2 into his life. Nonetheless, I believed that by presenting this  
3 testimony, God's will would be done, and accordingly I did so.

4 25. Based upon my normal practice, my billing records  
5 for this case would accurately reflect all the time I spent in  
6 preparing for the trial.

7 I declare under penalty of perjury that the foregoing is true  
8 and correct.

9 Executed in Fresno County, California, on this the 15 of  
10 November, 1995.

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14 Hugh Wesley Goodwin  
15 HUGH W. GOODWIN  
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