

Jury Selection in Death Penalty Cases

1

Proof beyond a
reasonable doubt is proof
that leaves you with an
abiding conviction that
the charge is true ...

2

*A juror's job in a trial
is to*

3

***It is appropriate to
educate jurors on:***

1. Difficult legal concepts

(People v. Balderas (1985) 41 Cal.3d 144)

***2. Hypotheticals to explain
difficult concepts***

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- *Aider and Abettor*
- *Circumstantial Evidence*
- *Making Calculated Decisions (length of time)*
- *Testifying Informants*
- *Self Defense*
- *Following the Law*

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3. *Broad, general statements agreeing to set aside one's biases are inadequate.
("Can you be fair and judge the evidence in an unbiased manner?")*

(People v. Williams (1981) 29 Cal.3d 392)

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4. Air out your dirty laundry!

(Don't hide the weaknesses in your case, i.e. witnesses with faulty memories, testifying informants, jail-house snitches, criminal backgrounds, plea deals, etc.)

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Main Goals of General Jury Selection

Establish Credibility

Listen More Than You Speak

Select Jurors who possess Intelligence, Common Sense and an Appropriate Ego in relation to their Intelligence and Common Sense

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No matter how persuasive you are, you're not going to change a juror's belief system or biases in the few minutes you have with them. Attempting to do so is a waste of time.

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I.C.E.

Intelligence

Common Sense (Sophistication)

Ego

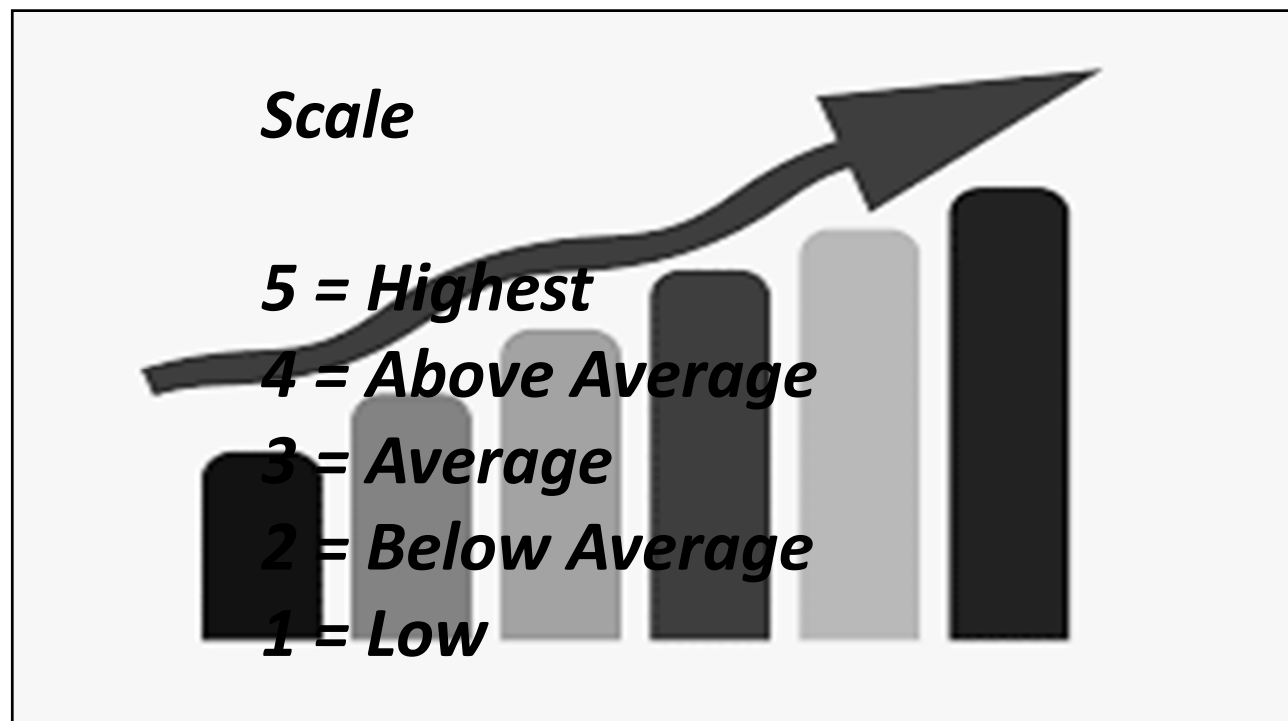
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Intelligence = Smart (Education/Training)

Common Sense = Life Experiences, logical, sophistication about life in general

Ego = Must bear a reasonable relationship to intelligence and common sense

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***You generally want Intelligent jurors
with a high degree of Common Sense***

***Ego is trickier – A highly intelligent
person can be expected to possess a
substantial ego ... Listen to your
juror's responses***

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<i>2-3-5 =</i>	<i>Desirable</i>	<i>Undesirable</i>
<i>5-4-3 =</i>	<i>Desirable</i>	<i>Undesirable</i>
<i>4-5-4 =</i>	<i>Desirable</i>	<i>Undesirable</i>
<i>4-3-4 =</i>	<i>Desirable</i>	<i>Undesirable</i>
<i>3-3-3 =</i>	<i>Desirable</i>	<i>Undesirable</i>

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***Desirable = Flat or falling curve
With the E in proper balance
with I and C***

***Undesirable = Rising curve
identifies a juror whose E
exceeds his or her I and C***

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*Why Common Sense
(sophistication) is key:*

*An unsophisticated person can be
easily misled*

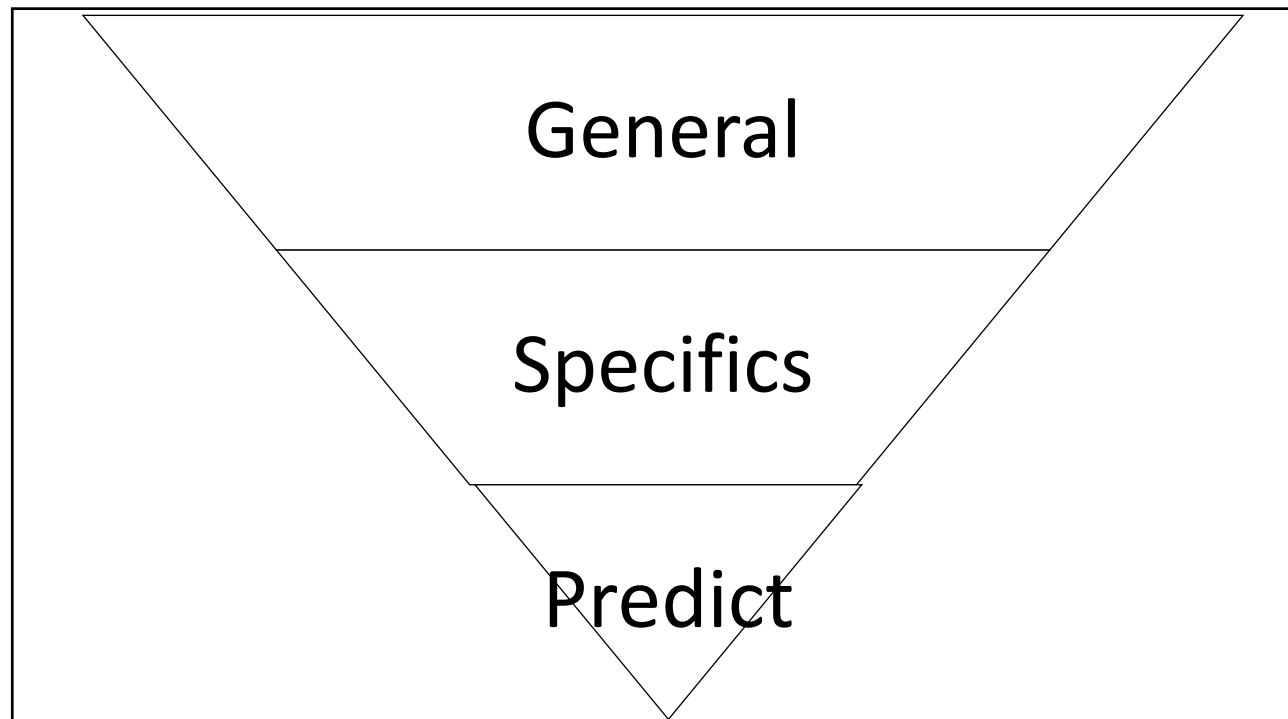
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I – look for signs of intelligence – job, schooling, position, life experiences, well-read, travels ...

C – look for jurors with the ability to perceive, understand and judge things shared by nearly all people

E – is the juror's self-importance warranted?

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Jury Questionnaires –

1. Get the judge to give you the random list
2. Request not to re-randomize the list every time changes occur like removing jurors for cause or stip
3. Use Questionnaires to set up the juror selection table
4. Grading your jurors
5. Prediction table helps in selection of death qualified jurors and allows you to see how defense will stack their favorable jurors.

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<u>JUROR NUMBER</u>	
<u>JUROR NAME (Last, First – please print)</u>	
THE PEOPLE OF THE STATE OF CALIFORNIA, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 10px 0;">v.</div> JEFFREE BUETTNER and GLEN JONES, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	CASE NO. RIF 104023
<u>JUROR QUESTIONNAIRE</u>	
<p>You have been sworn as a prospective juror in this case and are instructed by the court to answer this questionnaire. You must fill out the questionnaire with no assistance from any other person. Please write legibly and use a BLACK INK PEN to answer the questions.</p> <p>You must sign your questionnaire at the bottom of this page. Your answers will have the weight of a statement given to the court under PENALTY OF PERJURY.</p>	

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Jury Selection People v. Jeff Buettner – RIF 104023					Jury Selection People v. Jeff Buettner – RIF 104023				
No.	Name	Comments	ICE	Grade	No.	Name	Comments	ICE	Grade
1	W, Linda	<ul style="list-style-type: none"> 62 year old white female 4 adult children Retired – Ray Co Tax Collector Watches the View, Oprah, Dr. Phil Defense – why do they defend these guys? 0 jury duty #27 Daughter victim of date rape and 211 #54 Scared of gangs #56 Drugs – personal responsibility #77 on DP #86 / 87 Yes on (Def. Upbringing and Victim Impact) 	4-4-4	A	16	K, Chas	<ul style="list-style-type: none"> 34 year old Hispanic/White female UC Davis – no degree Unemployed – worked at research company Ellen, The View, Stephanie Miller Show 0 jury duty #27 Victim of commercial 211 #56 Drugs – 50/50 on environment v. free choice #77 - 7 on DP #86 / 87 Yes on DU and VI 	2-3-3	B+
2	V, Burton	<ul style="list-style-type: none"> 52 year old Filipino male 3 female daughters 24-26 BA in Theology Has criminal justice background Medical Board Investigator 0 jury duty Works with law enforcement and AG #56 Drugs – others at fault #77 9 on DP #86 / 87 Yes on DU and VI 	4-4-3	A	17	P, Carmen	<ul style="list-style-type: none"> 40 year old Spanish female 18 year old son Customer care service / Cable TV & Internet Oprah Jury on Mist – verdict #29 Stepson in prison on gang related crime #52 Tony Pastoriza – committed Gang crime – felt justice was done #56 Drugs – 50/50 on others v. choice #77 - 6 on DP #86 / 87 Yes on DU and VI 	2-3-2	B+
4	T, Cassandra	<ul style="list-style-type: none"> 30 year old black female 2 year old daughter Attended some community college Instruction Assistant Special Ed Oprah, Dr. Phil, Tyra Banks 0 jury duty #27 Cousin murdered in Long Beach #29 Visited family member in prison – sad #52 Gangs need to feel like they belong #56 Drugs – places emphasis on environment vs. personal responsibility #77 - 5 on DP #86 / 87 Sympathetic on DU / No Symp. for VI 	2-3-3	C	18	A, Susan	<ul style="list-style-type: none"> 48 year old white female 15 year old daughter / 21 and 23 sons MA in Admin Services Teaches 7th grade algebra Oprah Jury on 187 – verdict #51 Nothing positive about gangs #56 Did not fill out drug responsibility #77 - 4 on DP – “leaning toward LWOP” #86 / 87 Yes on DU and VI 	3-3-3	C
					21	S, Christopher	<ul style="list-style-type: none"> 38 year old black male 18 year old daughter / 3 sons under 17 Maintenance splicer for telephone lines USMC – Okinawa 0 jury duty #52 Gangs are because of bad home life #56 Drugs – Peer Pressure #77 - 5 on DP #86 / 87 No on DU and VI 	3-4-4	B-

- 1 -

- 3 -

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2	V, Burton	<ul style="list-style-type: none"> 52 year old Filipino male 3 female daughters 24-26 BA in Theology Has criminal justice background Medical Board Investigator 0 jury duty Works with law enforcement and AG #56 Drugs – others at fault #77 9 on DP #86 / 87 Yes on DU and VI 	4-4-3	A
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5	T, Lynette	<ul style="list-style-type: none"> ● <u>63</u> year old white female ● <u>2</u> adult children ● <u>BA</u> in Foreign Language / MA Admin ● <u>Curriculum</u> coach / Alternative Schools ● <u>Rush Limbaugh</u> / <u>Hugh Hewitt</u> ● <u>Juror</u> in 664/187 – verdict ● <u># 27</u> Victim of ID theft ● <u>#51</u> Doesn't like gangs ● <u>#56</u> Drugs – Environment + Personal Choice ● <u>5</u> on DP ● <u># 86/ 87</u> Would consider DU and VI 	4-4-4	B

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23	S, Divina	<ul style="list-style-type: none"> ● <u>46</u> year old Filipino female ● <u>21</u> and <u>18</u> year old daughters / son <u>17</u> ● <u>CSU DH</u> – no degree accounting ● <u>Supervisor</u> payroll staff ● <u>Juror</u> on DUI – verdict ● <u>#56</u> Drugs – Environment ● <u>#77</u> - 3 on DP ● <u>#80</u> “don't want to have to decide someone's fate” ● <u># 86 / 87</u> Yes on DU / Maybe on VI 	2-2-2	C

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People v. Lewis Gray — RIF 127539

A = 53

B = 20

C = 25

No.	Name	Comments	ICE	Grade
1	V. Ovey, Hebert	4-4-4	B	
2	Wolsky, Teagan Sue	4-3-3	B	
3	Olson, Joshua	4-5-4	A	
4	Kirk, Theresa	4-5-3	A	
5	Ronnnow, Lawrence	3-4-3	A	
6	Jacobo, Abelardo	3-3-3	A	
8	Ferguson, Jocelyn	4-4-4	A	
9	Farrell, Taylor	3-3-3	A	
11	Balbuena, Mary	3-3-3	B	
12	Kiser, Laura	3-4-4	B+	
14	Gear, Jeffrey	4-5-5	A+	
15	DaCosta, Ashley	2-3-3	B-	
17	Cheatham, Richard	3-5-3	A	
18	Herman, Marcy	4-2-3	B-	
19	Aguay, David	3-3-3	A	
20	Hellerud, Brenda	4-4-3	A	
22	Shaw, Kristofer	3-3-3	B+	
23	Wroten, Edward	3-3-3	A	
24	Ernst, Frederick	3-3-3	B+	
25	Taylor, Latoya	3-3-3	B	
26	Sloan, Michael	2-4-3	B	
27	Decastro, Dennis	3-3-3	A	
29	Shanabarger, Sean	4-3-3	A-/B+	
30	Castro, David	3-3-3	A	
31	Reynolds, Kevin	5-5-4	A+	
32	Hwang, Hyun	3-4-3	B-	
33	Hersev, Vonice	5-5-5	A	
35	Prillwitz, Tanya	3-4-4	A	
37	Siyan, Sonia	5-5-4	A+	
38	Young, Ian	4-4-3	A	
39	Vielma, David	4-4-3	A	
41	Davis, Donald	4-3-3	A	
42	Green, Nina	3-4-3	A	
43	Nasse, Rebecca	3-2-2	B-/C+	
46	Martinez, Katy	2-2-2	C	
47	Lansang, Tara	4-5-4	A+	
48	Perez, Denise	2-2-2	C	
49	Herrera, Steve	3-2-4	C	
52	Berry, Kathleen	3-4-3	B+	
55	Munoz, Christopher	3-4-3	B+	
56	Ferrando, Leonardo	5-5-4	A+	

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31	Reynolds, Kevin	5-5-4	A+
32	Hwang, Hyun	3-4-3	B-
33	Hersev, Vonice	5-5-5	A
35	Prillwitz, Tanya	3-4-4	A
37	Siyan, Sonia	5-5-4	A+
38	Young, Ian	4-4-3	A
39	Vielma, David	4-4-3	A
41	Davis, Donald	4-3-3	A
42	Green, Nina	3-4-3	A
43	Nasse, Rebecca	3-2-2	B-/C+
46	Martinez, Katy	2-2-2	C
47	Lansang, Tara	4-5-4	A+
48	Perez, Denise	2-2-2	C
49	Herrera, Steve	3-2-4	C
52	Berry, Kathleen	3-4-3	B+
55	Munoz, Christopher	3-4-3	B+
56	Ferrando, Leonardo	5-5-4	A+

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Main Goals of Selecting a Death Qualified Jury

Excusing all non-death qualified jurors

Removing jurors for cause – death is not an option for them as a verdict – cannot set aside their strong beliefs temporarily

Expose juror's bias toward life without parole

A death qualified juror is usually a guilt qualified juror

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Jury Selection – Witherspoon/Witt

Error requires automatic penalty phase reversal: “[T]he erroneous excusal of a prospective juror for cause based on that person’s views concerning the death penalty automatically compels the reversal of the penalty phase without any inquiry as to whether the error actually prejudiced defendant’s penalty determination. (*People v. Buenrostro* (2018) 6 Cal.5th 367, 417–418, citing *Gray v. Mississippi* (1987) 481 U.S. 648, 659–667.) Does not compel reversal of guilt phase verdict. (*People v. Tate* (2010) 49 Cal.4th 635, 666–667.)

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Jury Selection – Witherspoon/Witt

Witherspoon/Witt standard:

Cannot systematically remove all potential jurors who are morally opposed to the death penalty. “[A] man who opposes the death penalty, no less than one who favors it, can make the discretionary judgment entrusted to him by the State and can thus obey the oath he takes as a juror. (*Witherspoon v. Illinois* (1968) 391 U.S. 510, 519-520.)

Proper Standard = juror’s views would “**prevent or substantially impair the performance of his duties** as a juror in accordance with his instructions and his oath.” (*Wainwright v. Witt* (1985) 469 U.S. 412, 414, 424.)

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Jury Selection – Witherspoon/Witt

Inquiry Must be Sufficient: “Before granting a challenge for cause, the ‘court must have sufficient information regarding the prospective juror’s state of mind to permit a **reliable determination** as to whether the juror’s views would “ ‘prevent or substantially impair’ ” ’ performance as a capital juror. [Citation.] Trial courts must therefore make ‘a **conscientious attempt** to determine a prospective juror’s views regarding capital punishment to ensure that any juror excused from jury service meets the constitutional standard.’ ” (*People v. Buenrostro* (2018) 6 Cal.5th 367, 412.)

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Jury Selection – Witherspoon/Witt

Can base dismissal for cause on questionnaire, BUT be careful. Juror must make clear that he or she is unwilling to set aside beliefs and follow the law.

“[A] prospective juror may be discharged for cause solely on the basis of written questionnaire responses only if it is ‘**clear**’ from those responses that the juror is unable or unwilling to temporarily set aside the juror’s beliefs and follow the law. [Citations.] Where a prospective juror’s written responses are ambiguous with respect to the individual’s willingness or ability to follow the court’s instructions in a potential penalty phase, the record does not support a challenge for cause.” (*People v. Buenrostro* (2018) 6 Cal.5th 367, 412–413; see also *People v. Wilson* (2008) 44 Cal. 4th 758, 786.)

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The jury determines the penalty by weighing factors in aggravation and mitigation, which will be defined at the appropriate time. There is a wide spectrum of possible evidence that you may be asked to consider if this case should go into a penalty phase. We cannot, of course, tell you now what that evidence will be. Nor, can you be expected to tell us the weight, if any, that you might give particular evidence.

66. On a scale of 1-10, with 10 being strongly in favor of the death penalty, 5 having no opinion, and 1 being strongly against the death penalty, how would you rate yourself?

(Circle a number)

strongly against		no opinion		strongly in favor
1 (2) 3	4	5	6 7 8	9 10

67. Is there a particular reason why you feel as you do about the death penalty?

☒ Yes ☐ No

If yes, please explain: DNA technology has reversed 100 or so convictions per year freeing innocent individuals. If they are dead it does no good, you can't take it back.

68. If you are **against** the death penalty, would you automatically vote for life without parole without regard to any of the evidence that might be presented in this case?

☐ Yes ☒ No

Please explain: evidence dictates my decision.

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73. It is important that you have the ability to approach this case with an open mind and a willingness to fairly consider whatever evidence is presented as opposed to having such strongly held opinions that you would be unable to fairly consider all the evidence presented during the possible penalty phase. There are no circumstances under which the court instructs a jury that they must return a verdict of death. No matter what the evidence shows, the jury is always given the option in a penalty phase of choosing life in prison without the possibility of parole.

Assuming the defendant was convicted of intentional murder and the special circumstances of lying in wait, murdering a witness, intentional murder while engaged in the commission of a kidnapping and killing for a gang purpose, would you:

- a. ____ No matter what the evidence was, **ALWAYS** vote for the death penalty.
- b. ____ No matter what the evidence was, **ALWAYS** vote for life in prison without possibility of parole.
- c. ____ I would consider all of the evidence and the jury instructions as provided by the court and impose the penalty I personally feel is appropriate.

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78. If the trial reached a penalty phase, would you be willing to consider evidence relating to the defendant's upbringing, family background, experiences, etc. in determining whether to impose the death penalty or life in prison without the possibility of parole?

Please explain: Yes, but regardless of the upbringing, background, experiences everyone has an individual choice to make. Everyone makes their choice, good or bad and consequences result.

79. If the trial reached a penalty phase, would you be willing to consider how this crime has affected the victim's relatives/friends (victim impact evidence) in determining whether to impose the death penalty or life in prison without the possibility of parole?

Please explain: I would consider it but I would imagine they are destroyed emotionally, physically and mentally. Every trial I have read about is the same!

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Hypothetical Question at Heart of Issue

Before I ask you the next set of questions, I need you to search your conscience, your religious beliefs, your moral beliefs, your intellect and consider whether based on what you've been asked here today, based on the questionnaire you've filled out, taking into account what you've heard and seen here in court, do you believe that you can take part in our system of justice that outlines a process that may result in the death of a real live human being? This is not just a legal exercise – you must believe that whatever sentence you decide to render at the end will be carried out – death or LWOP.

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Hypothetical Questions at Heart of Issue

Assume that you have found a defendant guilty of murder and the special circumstances found true beyond a reasonable doubt. You then proceed to the penalty phase and after a careful and thoughtful deliberation you, individually, believe that the aggravating factors and circumstances so substantially outweigh the mitigating factors and circumstances such that the death penalty is an appropriate punishment. Can you vote to put a person to death?

Can you participate in a process that may result in taking the life of a human being?

Is the death penalty a reasonable option for you if selected as a juror? Conversely, is life without parole a reasonable option for you as a punishment if you find that the aggravating factors and circumstances do not so substantially outweigh the mitigating factors and circumstances?

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Please refer to video titled,
"James Jordan" at this time.

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Questions?

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