SUPREME COURT OF THE UNITED STATES

No. 91–5118

DERRICK MORGAN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

[June 15, 1992]

JUSTICE WHITE delivered the opinion of the Court.

We decide here whether, during *voir dire* for a capital offense, a state trial court may, consistent with the Due Process Clause of the Fourteenth Amendment, refuse inquiry into whether a potential juror would automatically impose the death penalty upon conviction of the defendant.

The trial of a capital offense in Illinois is conducted in two phases. The defendant must first be convicted of first-degree murder, as defined in Ill. Rev. Stat., ch. 38, ¶9–1(a) (Supp. 1990). Illinois law uses the same jury that decided guilt to determine whether the death penalty shall be imposed,[1] and upon conviction, a separate sentencing hearing commences to determine the existence of aggravating and mitigating factors. ¶9–1(d)(1). To be eligible for the death penalty, the jury must find unanimously, ¶9–1(g), and beyond a reasonable doubt, ¶9–1(f), that the defendant was at least 18 years old at the time of the murder, and that at least 1 of 10 enumerated aggravating

[1]The defendant may, however, elect to waive sentencing by the jury. Ill. Rev. Stat., ch. 38, ¶9–1(d)(3) (Supp. 1990). The procedure and standards that guide a sentencing judge, ¶9–1(h), are identical to those that guide a jury, ¶9–1(g).

factors exists. ¶9–1(b). See, *e. g.*, ¶9–1(b)(5) (murder for hire or by contract); ¶9–1(b)(10) (premeditated murder by preconceived plan). If the jury finds none of the statutory aggravating factors to exist, the defendant is sentenced to a term of imprisonment. ¶9–1(g). ``If there is a unanimous finding by the jury that one or more of the factors set forth in subsection (b) exist, the jury shall consider aggravating and mitigating factors as instructed by the court and shall determine whether the sentence of death shall be imposed.'' *Ibid.* As part of this balance, the jury is instructed to consider mitigating factors existing in the case, five of which are enumerated, but which are not exclusive. ¶9–1(c). The State may also present evidence of relevant aggravating factors beyond those enumerated by statute. *Ibid.* ``If the jury determines unanimously that there are no mitigating factors sufficient to preclude the imposition of the death sentence, the court shall sentence the defendant to death.'' ¶9–1(g).

Petitioner Derrick Morgan was convicted in Cook County, Illinois, of first-degree murder and sentenced to death. The evidence at trial amply proved that petitioner was hired to kill a narcotics dealer apparently competing with the El Rukns, one of Chicago's violent inner-city gangs. For $4,000, petitioner lured the dealer, who was a friend, into an abandoned apartment and shot him in the head six times. Upon consideration of factors in aggravation and mitigation, the jury sentenced him to death.

Three separate venires were required to be called before the jury was finally chosen. In accordance with Illinois law, the trial court, rather than the attorneys, conducted *voir dire*. *People* v. *Gacy*, 103 Ill. 2d 1, 36–37, 468 N. E. 2d 1171, 1184–1185 (1984). The State, having elected to pursue capital punishment, requested inquiry permitted by *Witherspoon* v. *Illinois*, 391 U. S. 510 (1968), to

determine whether any potential juror would in all instances refuse to impose the death penalty upon conviction of the offense. Accordingly, the trial court, over opposition from the defense, questioned each venire whether any member had moral or religious principles so strong that he or she could not impose the death penalty ``regardless of the facts.'' App. 9, 78, 90. Seventeen potential jurors were excused when they expressed substantial doubts about their ability to follow Illinois law in deciding whether to impose a sentence of death. *Id.*, at 9–22, 79–83, 90–94. All of the jurors eventually empaneled were also questioned individually under *Witherspoon*, each receiving and responding in the negative to this question or a slight variation: ``Would you automatically vote against the death penalty no matter what the facts of the case were?'' *Id.*, at 33; see *id.*, at 36, 41, 48, 55, 59, 64, 69, 76, 88, 97, 103.

After seven members of the first venire had been questioned, including three who eventually became jurors, petitioner's counsel requested the trial court to ask all prospective jurors the following question: ``If you found Derrick Morgan guilty, would you automatically vote to impose the death penalty no matter what the facts are?'' *Id.*, at 44. The trial court refused this request, stating that it had ``asked the question in a different vein substantially in that nature.'' *Ibid.*

Prior to the *voir dire* of the three venires, the trial court had explained in general terms the dictates of Illinois procedure in capital trials, as outlined above. See *id.*, at 24, 77–78, 90. During *voir dire*, the trial court received from 9 of the 12 jurors empaneled an affirmative response to variations of this question: ``Would you follow my instructions on the law, even though you may not agree?'' *Id.*, at 30; see *id.*, at 38, 43, 49, 56, 60, 64, 69, 107. However, the trial court did not ask three of the jurors this question in any way. See *id.*, at 73–77, 83–89, 94–100. Every juror

eventually empaneled was asked generally whether each could be fair and impartial.[2] Each juror responded appropriately to at least one of these questions, or a variation: (1) ``Do you know of any reason why you cannot be fair and impartial?'' *Id.*, at 33; see *id.*, at 41, 49, 64, 68, 75, 88, 99; (2) ``Do you feel you can give both sides a fair trial?'' *Id.*, at 70; see *id.*, at 35, 38, 43, 49, 56, 61, 65, 77, 100, 110. When empaneled, each member of the jury further swore an oath to ``well and truly try the issues joined herein and true deliverance make between the People of the State of Illinois and the defendant at the bar and a true verdict render according to the law and the evidence.'' 1 Tr. 601–602; see *id.*, at 264, 370, 429, 507, 544, 575–576.

On appeal, the Illinois Supreme Court affirmed petitioner's conviction and death sentence, rejecting petitioner's claim that, pursuant to *Ross* v. *Oklahoma*, 487 U. S. 81 (1988), *voir dire* must include the ``life qualifying'' or ``reverse-*Witherspoon*'' question upon request. The Illinois Supreme Court concluded that nothing requires a trial court to question potential jurors so as to identify and exclude any who would

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[2]Such questioning led to the removal for cause of one prospective juror, following this exchange:

``Q Would you follow my instructions on the law in the case even though you might not agree?

``A Yes.

``Q Do you know any reason why you cannot give this defendant a fair trial?

``A I would have no problem during the trial. If it came—I had a friend's parents murdered twelve years ago before capital punishment. I would give a fair trial. If he is found guilty, I would want him hung.

``Q You couldn't be fair and impartial throughout the proceedings?

``A No.

``Q You are excused.'' App. 72–73.

vote for the death penalty in every case after conviction for a capital offense. 142 Ill. 2d 410, 470, 568 N. E. 2d 755, 778 (1991).[3] That Court also found no violation of *Ross*, concluding instead that petitioner's jury ``was selected from a fair cross-section of the community, each juror swore to uphold the law regardless of his or her personal feelings, and no juror expressed any views that would call his or her impartiality into question.'' *Ibid.*

We granted certiorari because of the considerable dis-agreement among state courts of last resort on the question at issue in this case.[4] 502 U. S. ___

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[3]The Illinois Supreme Court has subsequently emphasized that decision in this case was not meant ``to imply that the `reverse-*Witherspoon*' question is inappropriate. Indeed, given the type of scrutiny capital cases receive on review, one would think trial courts would go out of their way to afford a defendant every possible safeguard. The `reverse-*Witherspoon*' question may not be the only means of ensuring defendant an impartial jury, but it is certainly the most direct. The best way to ensure that a prospective juror would not automatically vote for the death penalty is to ask.'' *People* v. *Jackson*, 145 Ill. 2d 43, 110, 582 N. E. 2d 125, 156 (1991). See also *State* v. *Atkins*, 303 S. C. 214, 222–223, 399 S. E. 2d 760, 765 (1990).

[4]Delaware and South Carolina agree with Illinois that the ``reverse-*Witherspoon*'' inquiry is unnecessary so long as, by questions and oath, each juror swears to be fair and impartial and to follow the law. See *Riley* v. *State*, 585 A. 2d 719, 725–726 (Del. 1990), cert. denied, 501 U. S. ___ (1991); *State* v. *Hyman*, 276 S. C. 559, 563, 281 S. E. 2d 209, 211–212 (1981), cert. denied, 458 U. S. 1122 (1982). Missouri appears to be of this view as well. *State* v. *McMillin*, 783 S. W. 2d 82, 94 (Mo.), cert. denied, 498 U. S. ___ (1990). California, Georgia, Louisiana, New Jersey, North

(1991). We now reverse the judgment of the Illinois Supreme Court.

We have emphasized previously that there is not ``any one right way for a State to set up its capital sentencing scheme,'' *Spaziano* v. *Florida*, 468 U. S. 447, 464 (1984) (citations omitted), and that no State is constitutionally required by the Sixth Amendment or otherwise to provide for jury determination of whether the death penalty shall be imposed on a capital defendant. *Ibid.* Illinois has chosen, however, to delegate to the jury this task in the penalty phase of capital trials in addition to its duty to determine

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Carolina, Utah, and Virginia disagree, see *People* v. *Bittaker*, 48 Cal. 3d 1046, 1083–1084, 774 P. 2d 659, 679 (1989); *Skipper* v. *State*, 257 Ga. 802, 806–807, 364 S. E. 2d 835, 839 (1988); *State* v. *Henry*, 196 La. 217, 232–234, 198 So. 910, 914–916 (1940); *State* v. *Williams*, 113 N. J. 393, 415–417, 550 A. 2d 1172, 1182–1184 (1988); *State* v. *Rogers*, 316 N. C. 203, 216–218, 341 S. E. 2d 713, 722 (1986); *State* v. *Norton*, 675 P. 2d 577, 588–589 (Utah 1983), cert. denied, 466 U. S. 942 (1984); *Patterson* v. *Commonwealth*, 222 Va. 653, 657–660, 283 S. E. 2d 212, 214–216 (1981), as apparently do Arkansas, Florida, and Kentucky. See *Pickens* v. *State*, 292 Ark. 362, 366–367, 730 S. W. 2d 230, 233–234, cert. denied, 484 U. S. 917 (1987); *Gore* v. *State*, 475 So. 2d 1205, 1206–1208 (Fla. 1985), cert. denied, 475 U. S. 1031 (1986); *Morris* v. *Commonwealth*, 766 S. W. 2d 58, 60 (Ky. 1989). Lower courts in Alabama also follow this latter view. See *Bracewell* v. *State*, 506 So. 2d 354, 358 (Ala. Crim. App. 1986); cf. *Henderson* v. *State*, 583 So. 2d 276, 283–284 (Ala. Crim. App. 1990) (no ``plain error'' in trial court's failure *sua sponte* to ``life qualify'' the prospective jurors), aff'd, 583 So. 2d 305 (1991).

guilt or innocence of the underlying crime. The issue, therefore, is whether petitioner is entitled to relief under the Due Process Clause of the Fourteenth Amendment. We conclude that he is, and in the course of doing so we deal with four issues: whether a jury provided to a capital defendant at the sentencing phase must be impartial; whether such defendant is entitled to challenge for cause and have removed on the ground of bias a prospective juror who will automatically vote for the death penalty irrespective of the facts or the trial court's instructions of law; whether on *voir dire* the court must, on defendant's request, inquire into the prospective jurors' views on capital punishment; and whether the *voir dire* in this case was constitutionally sufficient.

Duncan v. *Louisiana*, 391 U. S. 145 (1968), held that the Fourteenth Amendment guaranteed a right of jury trial in all state criminal cases which, were they tried in a federal court, would come within the Sixth Amendment's guarantee of trial by jury. Prior to this decision applying the Sixth Amendment's jury trial provision to the States, we recognized in *Irvin* v. *Dowd*, 366 U. S. 717 (1961), and in *Turner* v. *Louisiana*, 379 U. S. 466 (1965), that the Fourteenth Amendment's Due Process Clause itself independently required the impartiality of any jury empaneled to try a cause:

> ``Although this Court has said that the Fourteenth Amendment does not demand the use of jury trials in a State's criminal procedure, *Fay* v. *New York*, 332 U. S. 261 [1947]; *Palko* v. *Connecticut*, 302 U. S. 319 [1937], every State has constitutionally provided trial by jury. See Columbia University Legislative Drafting Research Fund, Index Digest of State Constitutions, 578–579 (1959). In essence, the right to jury trial

> guarantees to the criminally accused a fair trial by a panel of impartial, `indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. *In re Oliver*, 333 U. S. 257 [1948]; *Tumey* v. *Ohio*, 273 U. S. 510 [1927]. `A fair trial in a fair tribunal is a basic requirement of due process.' *In re Murchison*, 349 U. S. 133, 136 [1955]. In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as `indifferent as he stands unsworne.' Co. Litt. 155b. His verdict must be based upon the evidence developed at the trial. Cf. *Thompson* v. *City of Louisville*, 362 U. S. 199 [1960]. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in 1 Burr's Trial 416 (1807). `The theory of the law is that a juror who has formed an opinion cannot be impartial.' *Reynolds* v. *United States*, 98 U. S. 145, 155 [1879].'' *Irvin* v. *Dowd*, *supra*, at 721–722 (footnote omitted).

In *Turner* v. *Louisiana*, we relied on this passage to delineate ``the nature of the jury trial which the Fourteenth Amendment commands when trial by jury is what the State has purported to accord.'' 379 U. S., at 471. In short, as reflected in the passage above, due process alone has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment. *Id.*, at 472, and n. 10; cf. *Groppi* v. *Wisconsin*, 400 U. S. 505, 508–511 (1971).

Thus it is that our decisions dealing with capital sentencing juries and presenting issues most analogous to that which we decide here today, *e. g.*, *Witherspoon* v. *Illinois*, 391 U. S., at 518; *Adams* v.

Texas, 448 U. S. 38, 40 (1980); *Wainwright* v. *Witt*, 469 U. S. 412, 423 (1985); *Ross* v. *Oklahoma*, 487 U. S. 81, 85 (1988), have relied on the strictures dictated by the Sixth *and* Fourteenth Amendments to ensure the impartiality of any jury that will undertake capital sentencing. See also *Turner* v. *Mur-ray*, 476 U. S. 28, 36, and n. 9 (1986) (WHITE, J., plurality opinion).

Witt held that ``the proper standard for determining when a prospective juror may be excused for cause because of his or her views on capital punishment . . . is whether the juror's views would `prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.''' 469 U. S., at 424 (quoting *Adams* v. *Texas*, 448 U. S. 38, 45 (1980)). Under this standard, it is clear from *Witt* and *Adams*, the progeny of *Witherspoon*, that a juror who in no case would vote for capital punishment, regardless of his or her instructions, is not an impartial juror and must be removed for cause.

Thereafter, in *Ross* v. *Oklahoma*, *supra*, a state trial court refused to remove for cause a juror who declared he would vote to impose death automatically if the jury found the defendant guilty. That juror, however, was removed by the defendant's use of a peremptory challenge, and for that reason the death sentence could be affirmed. But in the course of reaching this result, we announced our considered view that because the Constitution guarantees a defendant on trial for his life the right to an impartial jury, 487 U. S., at 85, the trial court's failure to remove the juror for cause was constitutional error under the standard enunciated in *Witt*. We emphasized that ``[h]ad [this juror] sat on the jury that ultimately sentenced petitioner to death, and had petitioner properly preserved his right to

challenge the trial court's failure to remove [the juror] for cause, the sentence would have to be overturned.'' 487 U. S., at 85 (citing *Adams*, *supra*).

We reiterate this view today. A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do. Indeed, because such a juror has already formed an opinion on the merits, the presence or absence of either aggravating or mitigating circumstances is entirely irrelevant to such a juror. Therefore, based on the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment, a capital defendant may challenge for cause any prospective juror who maintains such views. If even one such juror is empaneled and the death sentence is imposed, the State is disentitled to execute the sentence.

Illinois, in fact, raises no challenge to the foregoing precepts, but argues instead that the trial court, in its discretion, may refuse direct inquiry into this matter, so long as its other questioning purports to assure the defendant a fair and impartial jury able to follow the law. It is true that ``[*v*]*oir dire* `is conducted under the supervision of the court, and a great deal must, of necessity, be left to its sound discretion.''' *Ristaino* v. *Ross*, 424 U. S. 589, 594 (1976) (quoting *Connors* v. *United States*, 158 U. S. 408, 413 (1895). The Constitution, after all, does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury. Even so, part of the guaranty of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors. *Dennis* v. *United States*, 339 U. S. 162, 171–172 (1950); *Morford* v. *United States*, 339 U. S. 258, 259 (1950). ``*Voir dire* plays a critical function in assuring the criminal defendant that his [constitutional] right to an

impartial jury will be honored. Without an adequate *voir dire* the trial judge's responsibil-
ity to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.'' *Rosales-Lopez* v. *United States*, 451 U. S. 182, 188 (1981) (WHITE, J., plurality opinion). Hence, ``[t]he exercise of [the trial court's] discretion, and the restriction upon inquiries at the request of counsel, [are] subject to the essential demands of fairness.'' *Aldridge* v. *United States*, 283 U. S. 308, 310 (1931).[5]

The adequacy of *voir dire* is not easily the subject of appellate review, *Rosales-Lopez, supra*, at 188, but we have not hesitated, particularly in capital cases, to find that certain inquiries must be made to effectuate constitutional protections. See, *e. g.*, *Turner* v. *Murray, supra*, at 36–37; *Ham* v. *South Carolina*, 409 U. S. 524, 526–527 (1973). Our holding in *Ham*, for instance, was as follows:

> ``Since one of the purposes of the Due Process Clause of the Fourteenth Amendment is to insure these `essential demands of fairness,' *e. g.*, *Lisenba* v. *California*, 314 U. S. 219, 236 (1941), and since a principal purpose of the adoption of the Fourteenth Amendment was to prohibit the States from invidiously discriminating on the basis of race, *Slaughter-House Cases*, 16 Wall. 36, 81 (1873), we think that the Fourteenth Amendment required the judge in this case to interrogate the jurors upon the subject of racial prejudice. South Carolina law permits challenges for cause, and authorizes the trial judge to conduct *voir dire* examination of potential jurors.

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[5]See *Mu'Min* v. *Virginia*, 500 U. S. ___, ___ (slip op. 9) (1991): ``To be constitutionally compelled . . . it is not enough that such questions might be helpful. Rather, the trial court's failure to ask these questions must render the defendant's trial fundamentally unfair.''

> The State having created this statutory framework for the selection of juries, the essential fairness required by the Due Process Clause of the Fourteenth Amendment requires that under the facts shown by this record the petitioner be permitted to have the jurors interrogated on the issue of racial bias.'' 409 U. S., at 526–527.

We have also come to recognize that the principles first propounded in *Witherspoon* v. *Illinois*, 391 U. S. 510 (1968), the reverse of which are at issue here, demand inquiry into whether the views of prospective jurors on the death penalty would disqualify them from sitting.[6] At its inception, *Witherspoon* conferred

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[6]Illinois argues that, because of the changed structure in death penalty jurisprudence since *Furman* v. *Georgia*, 408 U. S. 238 (1972), *With-erspoon* principles should no longer guide this area. But analogous arguments have been previously raised and rejected. *Adams* v. *Texas*, 448 U. S. 38, 45–47 (1980). When considering the Texas death penalty scheme in light of *Witherspoon*, we stated: ``[J]urors in Texas must determine whether the evidence presented by the State convinces them beyond reasonable doubt that each of the three questions put to them must be answered in the affirmative. In doing so, they must consider both aggravating and mitigating circumstances, whether appearing in the evidence presented at the trial on guilt or innocence or during the sentencing proceedings. Jurors will characteristically know that affirmative answers to the questions will result in the automatic im-position of the death penalty, and each of the jurors whose exclusion is challenged by petitioner was so informed. In essence, Texas juries must be allowed to consider `on the basis of all relevant evidence not only why a death sentence should be imposed, but also why it should not be im-posed.' *Jurek* v. *Texas*, 428 U. S.

no ``right'' on a State, but was in reality a limitation of a State's making unlimited challenges for cause to exclude those jurors who ``might hesitate'' to return a verdict imposing death. *Id.*, at 512–513; see *Adams* v. *Texas*, 448 U. S., at 47–49. Upon con-sideration of the jury in *Witherspoon*, drawn as it was from a venire from which the State struck any juror expressing qualms about the death penalty, we found it ``self-evident that, in its role as arbiter of the punishment to be imposed, this jury fell woefully short of that impartiality to which the petitioner was entitled under the Sixth and Fourteenth Amendments.'' 391 U. S., at 518. To preserve this impartiality, *Witherspoon* constrained the State's exercise of challenges for cause:

> ``[A] State may not entrust the determination of whether a man should live or die to a tribunal organized to return a verdict of death. Specifically, we hold that a sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction. No defendant can constitutionally be put to death at the hands of a

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262, 271 (1976) (opinion of Stewart, Powell, and STEVENS, JJ.). This process is not an exact science, and the jurors under the Texas bifurcated procedure unavoidably exercise a range of judgment and discretion while remaining true to their instructions and their oaths.'' *Adams, supra*, at 46 (citation omitted). The balancing approach chosen by Illinois vests considerably more discretion in the jurors considering the death penalty, and, with stronger reason, *With-erspoon*'s general principles apply. Cf. *Turner* v. *Murray*, 476 U. S. 28, 34–35 (1986) (WHITE, J., plurality opinion).

> tribunal so selected.'' *Id.*, at 520–523 (footnotes omitted); see also *Lockhart* v. *McCree*, 476 U. S. 162, 179–180 (1986).

Witherspoon limited a State's power broadly to exclude jurors hesitant in their ability to sentence a defendant to death, but nothing in that decision questioned ``the power of a State to execute a defendant sentenced to death by a jury from which the only veniremen who were in fact excluded for cause were those who made unmistakably clear . . . that they would *automatically* vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them . . . .'' 391 U. S., at 522, n. 21 (emphasis in original); see also *id.*, at 513–514.

In *Wainwright* v. *Witt*, 469 U. S. 412 (1985), we revisited footnote 21 of *Witherspoon*, and held affirmatively that ``the State may exclude from capital sentencing juries that `class' of veniremen whose views would prevent or substantially impair the performance of their duties in accordance with their instructions or their oaths.'' 469 U. S., at 424, n. 5; see also *Lockett* v. *Ohio*, 438 U. S. 586, 595–596 (1978). Indeed, in *Lockhart* v. *McCree* we thereafter spoke in terms of ```*Witherspoon*-excludables''' whose removal for cause ``serves the State's entirely proper interest in obtaining a single jury that could impartially decide all of the issues in [a capital] case.'' 476 U. S., at 180. From *Witt*, moreover, it was but a very short step to observe as well in *Lockhart:*

> ``[T]he State may challenge for cause prospective jurors whose opposition to the death penalty is so strong that it would prevent them from impartially determining a capital defendant's guilt or innocence. *Ipso facto*, the State must be given the opportunity to identify such prospective jurors by questioning them at *voir dire* about their views of the death penalty.'' 476 U. S., at 170, n. 7.

This passage in *Lockhart* expanded but briefly upon what we had already recognized in *Witt*: ``As with any other trial situation where an adversary wishes to exclude a juror because of bias, then, it is the adversary seeking exclusion who must demonstrate, *through questioning*, that the potential juror lacks impartiality. It is then the trial judge's duty to determine whether the challenge is proper.'' 469 U. S., at 423 (citation omitted; emphasis added).

We deal here with petitioner's ability to exercise intelligently his complementary challenge for cause against those biased persons on the venire who as jurors would unwaveringly impose death after a finding of guilt. Were *voir dire* not available to lay bare the foundation of petitioner's challenge for cause against those prospective jurors who would *always* impose death following conviction, his right not to be tried by such jurors would be rendered as nugatory and meaningless as the State's right, in the absence of questioning, to strike those who would *never* do so.[7]

The only issue remaining is whether the questions propounded by the trial court were sufficient to satisfy petitioner's right to make inquiry. As noted

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[7] As the Fifth Circuit has observed *obiter dictum*: ``All veniremen are potentially biased. The process of voir dire is designed to cull from the venire persons who demonstrate that they cannot be fair to *either* side of the case. Clearly, the extremes must be eliminated—*i. e.*, those who, in spite of the evidence, would automatically vote to convict or impose the death penalty or automatically vote to acquit or impose a life sentence.'' *Smith* v. *Balkcom*, 660 F. 2d 573, 578 (1981), modified, 671 F. 2d 858, cert. denied, 459 U. S. 882 (1982) (emphasis in original).

above, Illinois suggests that general fairness and ``follow the law'' questions, of the like employed by the trial court here, are enough to detect those in the venire who automatically would vote for the death penalty.[8] The State's own request for questioning under *Witherspoon* and *Witt* of course belies this argument. *Witherspoon* and its succeeding cases would be in large measure superfluous were this Court convinced that such general inquiries could detect those jurors with views preventing or substantially impairing their duties in accordance with their instructions and oath. But such jurors—whether they be unalterably in favor of or opposed to the death penalty in every case—by definition are ones who cannot perform their duties in accordance with law, their protestations to the contrary notwithstanding.

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[8]Almost in passing the State also suggests that the ``reverse-*Witherspoon*'' inquiry is inapposite because of a putative ``quantitative difference.'' Illinois requires a unanimous verdict in favor of imposing death, see *supra*, at 1–2, thus any one juror can nullify the imposition of the death penalty. ``Persons automatically for the death penalty would not carry the same weight,'' Illinois argues, ``because persons automatically for the death penalty would still need to persuade the remaining eleven jurors to vote *for* the death penalty.'' Brief for Respondent 27. The dissent chooses to champion this argument, *post*, at 11, although it is clearly foreclosed by *Ross* v. *Oklahoma*, 487 U. S. 81, 85 (1988), where we held that even one such juror on the panel would be one too many. See *supra*, at 8–9. In any event, the measure of a jury is taken by reference to the impartiality of each, individual juror. Illinois has chosen to provide a capital defendant 12 jurors to decide his fate, and each of these jurors must stand equally impartial in his or her ability to follow the law.

As to general questions of fairness and impartiality, such jurors could in all truth and candor respond affirmatively, personally confident that such dogmatic views are fair and impartial, while leaving the specific concern unprobed. More importantly, however, the belief that death should be imposed *ipso facto* upon conviction of a capital offense reflects directly on that individual's inability to follow the law. See *supra*, at 9. Any juror who would impose death regardless of the facts and circumstances of conviction cannot follow the dictates of law. See *Turner*, 476 U. S., at 34–35 (WHITE, J., plurality opinion). It may be that a juror could, in good conscience, swear to uphold the law and yet be unaware that maintaining such dogmatic beliefs about the death penalty would prevent him or her from doing so.[9] A defendant on

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[9]That certain prospective jurors maintain such inconsistent beliefs—that they can follow the law, but that they will always vote to impose death for conviction of a capital offense—has been demonstrated, even in this case. See n. 2, *supra*. Indeed, in *Wainwright* v. *Witt*, we set forth the following exchange, highlighting this inconsistency in beliefs in regards to *Witherspoon*:

``THE COURT: Wait a minute, ma'am. I haven't made up my mind yet. Just have a seat. Let me ask you these things. Do you have any prefixed ideas about this case at all?

``[A]: Not at all.

``THE COURT: Will you follow the law that I give you?

``[A]: I could do that.

``THE COURT: What I am concerned about is that you indicated that you have a state of mind that might make you be unable to follow the law of this State.

``[A]: I could not bring back a death penalty.

``THE COURT: Step down.'' 469 U. S., at 432, n. 12.

trial for his life must be permitted on *voir dire* to ascertain whether his prospective jurors function under such misconception. The risk that such jurors may have been empaneled in this case and ``infected petitioner's capital sentencing [is] unacceptable in light of the ease with which that risk could have been minimized.'' *Id.*, at 36 (footnote omitted). Petitioner was entitled, upon his request, to inquiry discerning those jurors who, even prior to the State's case-in-chief, had predetermined the terminating issue of his trial, that being whether to impose the death penalty.

JUSTICE SCALIA, in dissent, insists that Illinois is entitled to try a death penalty case with 1 or even 12 jurors who upon inquiry announce that they would automatically vote to impose the death penalty if the defendant is found guilty of a capital offense, no matter what the so-called mitigating factors, whether statutory or nonstatutory, might be. *Post*, at 2–7. But such jurors obviously deem mitigating evidence to be irrelevant to their decision to impose the death penalty: they not only refuse to give such evidence any weight but are also plainly saying that mitigating evidence is not worth their consideration and that they will not consider it. While JUSTICE SCALIA's jaundiced view of our decision today may best be explained by his rejection of the line of cases tracing from *Woodson* v. *North Carolina*, 428 U. S. 280 (1976), and *Lockett* v. *Ohio*, 438 U. S. 586 (1978), and developing the nature and role of mitigating evidence in the trial of capital offenses, see *Walton* v. *Arizona*, 497 U. S. 639, 669–673 (1990) (SCALIA, J., concurring in part and concurring in judgment); *Payne* v. *Tennessee*, 501 U. S. ___, ___ (1991) (slip op., at 1) (SCALIA, J., concurring); *Sochor* v. *Florida*, *ante,* at ___ (SCALIA, J., concurring in part and dissenting in part), it is a view long rejected by this Court. More important

to our purposes here, however, his view finds no support in either the statutory or decisional law of Illinois because that law is consistent with the requirements concerning mitigating evidence described in this Court's cases. See *Turner* v. *Murray*, *supra*, at 34–35 (WHITE, J., plurality opinion).

The Illinois death penalty statute provides that ``[t]he court shall consider, or shall instruct the jury to consider any aggravating and any mitigating factors which are relevant to the imposition of the death penalty,'' Ill. Rev. Stat., ch. 38, ¶9–1(c) (Supp. 1990), and lists certain mitigating factors that the legislature must have deemed relevant to such imposition. *Ibid.*[10] The statute explicitly directs the procedure controlling this jury deliberation:

> ``If there is a unanimous finding by the jury that one or more of the factors [enumerated in aggravation] exist, the jury shall consider aggravating and mitigating factors as instructed by the court and shall determine whether the sentence of death shall be imposed. If the jury

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[10]Ill. Rev. Stat., ch. 38, ¶9–1(c) (Supp. 1990), provides:
``Mitigating factors may include but need not be limited to the following:
``(1) the defendant has no significant history of prior criminal activity;
``(2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution;
``(3) the murdered individual was a participant in the defendant's homicidal conduct or consented to the homicidal act;
``(4) the defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm;
``(5) the defendant was not personally present during commission of the act or acts causing death.''

> determines unanimously that there are no mitigating factors sufficient to preclude the imposition of the death sentence, the court shall sentence the defendant to death.'' ¶9–1(g).

In accord with this statutory procedure, the trial judge in this case instructed the jury:

> ``In deciding whether the Defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.
>
> . . . . .
>
> ``If you unanimously find, from your consideration of all the evidence, that there are no mitigating factors sufficient to preclude imposition of the death sentence, then you should sign the verdict requiring the Court sentence the Defendant to death.'' App. 122–123.

Any juror who states that he or she will automatically vote for the death penalty without regard to the mitigating evidence is announcing an intention not to follow the instructions to consider the mitigating evidence and to decide if it is *sufficient* to preclude imposition of the death penalty. Any contrary reading of this instruction, or more importantly, the controlling statute, renders the term ``sufficient'' meaningless. The statute plainly indicates that a lesser sentence is available in every case where mitigating evidence exists; thus any juror who would invariably impose the death penalty upon conviction cannot be said to have reached this decision based on all the evidence. While JUSTICE SCALIA chooses to argue that such a ``merciless juror'' is not a ``lawless'' one, *post*, at 11–12, he is in error, for such a juror will not give mitigating evidence the consideration that the statute contemplates. Indeed, the Illinois Supreme Court recognizes that jurors are not impartial if they would automatically vote for the death penalty, and that questioning in the manner

petitioner requests is a direct and helpful means of protecting a defendant's right to an impartial jury. See n. 3, *supra*. The State has not suggested otherwise in this Court.

Surely if in a particular Illinois case the judge, who imposes sentence should the defendant waive his right to jury sentencing under the statute, see n. 1, *supra*, was to announce that, to him or her, mitigating evidence is beside the point and that he or she intends to impose the death penalty without regard to the nature or extent of mitigating evidence if the defendant is found guilty of a capital offense, that judge is refusing in advance to follow the statutory direction to consider that evidence and should disqualify himself or herself. Any juror to whom mitigating factors are likewise irrelevant should be disqualified for cause, for that juror has formed an opinion concerning the merits of the case without basis in the evidence developed at trial. Accordingly, the defendant in this case was entitled to have the inquiry made that he proposed to the trial judge.

Because the ``inadequacy of *voir dire*'' leads us to doubt that petitioner was sentenced to death by a jury empaneled in compliance with the Fourteenth Amendment, his sen-tence cannot stand.[11] *Turner* v. *Murray, supra,* at 37. Ac-cordingly, the judgment of the Illinois Supreme Court affirming petitioner's death sentence is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

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[11]Our decision today has no bearing on the validity of petitioner's conviction. *Witherspoon*, 391 U. S., at 523, n. 21.