

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

EXHIBIT
88 DA 269

FEB 24 1988

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.)
)
 JOE HUNT, AKA JOSEPH HUNT,)
 AKA JOSEPH HENRY GAMSKY,)
)
 DEFENDANT-APPELLANT.)

SUPERIOR COURT
NO. A-090435

OCT 0 8 1987

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE LAURENCE J. RITTENBAND, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP
STATE ATTORNEY GENERAL
3580 WILSHIRE BOULEVARD
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LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 7 OF 101
(PAGES 644 TO 762, INCLUSIVE)

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ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435)

JOE HUNT, AKA JOSEPH HENRY GAMSKY,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

MONDAY, NOVEMBER 17, 1986

VOLUME 7

(PAGES 644 TO 762, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401

FOR THE DEFENDANT:

ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067

AND

RICHARD C. CHIER, ESQ.
10920 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024

ROSEMARIE GOODBODY, CSR NO. 932
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MONDAY, NOVEMBER 17, 1986 VOLUME 7 PAGES 644 TO 762
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PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 644

1 SANTA MONICA, CALIFORNIA; MONDAY, NOVEMBER 17, 1986; 10:10 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE)
4

5 THE COURT: ALL RIGHT, HUNT.

6 THERE IS A QUESTION OF WHETHER OR NOT WE SHOULD
7 ATTEMPT TO GET MORE JURORS NOW OR PROCEED WITH THE JURORS
8 WHICH WE HAVE NOW.

9 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

10 THE COURT: MR. BARENS?

11 MR. BARENS: GOOD MORNING, YOUR HONOR. YOUR HONOR,
12 THE DEFENSE WOULD PREFER TO HAVE THE FULL PANEL TO PROCEED
13 FROM. OTHERWISE, WE ARE GOING TO BE REAL CHOPPY IN TRYING
14 TO GET THIS JOB DONE WITH ANY CONSISTENCY.

15 MY RECOLLECTION WAS FROM THURSDAY, YOUR HONOR,
16 THAT YOUR HONOR PROPOSED TO GO THROUGH THE JURORS WE HAD
17 AVAILABLE AT THIS TIME AND THEN AT SOME POINT IN TIME
18 INTEGRATE IN NEW JURORS, IF I UNDERSTOOD YOU CORRECTLY.

19 THE COURT: WELL, WE DON'T KNOW AT THIS POINT HOW
20 MANY JURORS WILL SURVIVE THE WITHERSPOON AND IF THERE IS
21 A SUFFICIENT NUMBER OF THEM, WE CAN PROCEED. IF THERE
22 ARE NOT A SUFFICIENT NUMBER OF THEM, THEN WE HAVE TO RECRUIT
23 MORE JURORS AND THEN WE ARE GOING TO HAVE TO GO THROUGH THE
24 SAME PROCEDURE WE HAVE BEEN GOING THROUGH, NAMELY, EXCUSING
25 THOSE FOR HARDSHIP AND THEN WITHERSPOON THE REST OF THEM.

26 MR. BARENS: DOES YOUR HONOR HAVE A SENSE OF HOW MANY
27 WE HAVE TODAY?

28 THE COURT: SEVENTY, AS I UNDERSTOOD IT.

1 THE CLERK: YES, 70.

2 MR. CHIER: WE NEED SAFELY ABOUT 90.

3 MR. BARENS: NINETY WAS THE NUMBER WE THOUGHT WE SAFELY
4 NEEDED.

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1 THE COURT: SHALL WE HAVE ANOTHER 60 COME IN AND THEN
2 FIND OUT? I MEAN, OUT OF THAT 60, WE COULD FIND OUT WHICH
3 ARE HARDSHIP CASES.

4 MR. BARENS: I THINK SO.

5 MR. CHIER: YES, YOUR HONOR.

6 MR. BARENS: SO WE HAVE A COHESIVE FEEL FOR WHO WE ARE
7 GOING TO BE DEALING WITH.

8 MR. CHIER: WE HAVE A PANEL, RATHER THAN A LITTLE BIT
9 OF THIS ONE AND A LITTLE BIT OF THAT ONE. SOMETIMES THEY GET
10 INSTRUCTED DIFFERENTLY, NOT DELIBERATELY, BUT INADVERTENTLY.

11 MR. WAPNER: NO OBJECTION TO THE PROCEDURE THAT COUNSEL
12 IS SUGGESTING, IF THAT IS WHAT THE COURT WANTS TO DO. IT DOES
13 MAKE SOME SENSE. I MEAN, YOU HAVE TO GET ANOTHER GROUP IN
14 HERE TO TRY AND SEE HOW MANY WE CAN GET OUT OF THAT GROUP.

15 MR. CHIER: HOW MANY WERE SALVAGED ON FRIDAY?

16 MR. BARENS: OF THE 23 WE HAD THURSDAY, I THINK WE KEPT
17 ONE OR TWO, PERHAPS.

18 MR. WAPNER: I THINK WE HAD 25 THAT WE EXAMINED AND
19 EXCUSED 23, WAS MY RECOLLECTION.

20 MR. BARENS: I WOULD TENTATIVELY AGREE WITH THAT.

21 THE COURT: ARE THEY HOLDING SOME JURORS?

22 THE CLERK: THEY HAVE 120. WE HAVE FIRST OPTION ON ALL
23 OF THEM.

24 THE COURT: LET'S HAVE ALL 120 COMING IN. IS THAT ALL
25 RIGHT?

26 HOW ABOUT THE OTHER 70? WEDNESDAY?

27 MR. BARENS: YES, YOUR HONOR.

28 THE COURT: IS THAT ALL RIGHT. WEDNESDAY?

1 MR. WAPNER: WELL, WHY NOT TOMORROW? I THINK THAT WE
2 CAN PROBABLY GET THROUGH 120 --

3 MR. CHIER: TOMORROW AFTERNOON?

4 MR. WAPNER: WELL, WE HAVE ARCE COMING IN ON WEDNESDAY
5 MORNING.

6 SO IF YOU WANT TO DO IT --

7 THE COURT: ARE WE GOING THROUGH WITH THE ARCE?

8 MR. BARENS: MR. CHIER WILL BE PROCEEDING WITH THAT,
9 YOUR HONOR.

10 THE COURT: I ASKED YOU.

11 MR. BARENS: YES, YOUR HONOR. WE SHALL.

12 MR. WAPNER: HOW LONG DID IT TAKE US TO GET THROUGH THE
13 FIRST GROUP?

14 MR. BARENS: IT TOOK US I BELIEVE, TWO AND A HALF DAYS
15 TO DO 120 PEOPLE, I BELIEVE OR PERHAPS THREE AND A HALF DAYS
16 IS MORE ACCURATE, YOUR HONOR.

17 THE COURT: WELL, WE WILL GET THE 120 IN. WE COULD SEND
18 A LOT OF THEM OUT, IF THEY TELL US -- FIRST, WE WILL FIND OUT
19 FROM THE 120, HOW MANY OF THOSE WILL STAY.

20 IF FOR EXAMPLE, THERE ARE 40 WHO WILL STAY, THEN
21 WE HAVE GOT IT MADE. THEY CAN BE INCORPORATED INTO THE 70
22 THAT WE HAVE. THEN WE CAN PROCEED WITH WITHERSPOON.

23 MR. BARENS: I SEE, YOUR HONOR. IT MAKES SENSE TO ME
24 IF THAT BE THE CASE.

25 THE COURT: ALL WE NEED I THINK AT THE LOWEST, IS ANOTHER
26 30. SO IT WOULD BE 100 THAT WILL BE THERE.

27 SO WE CAN PROCEED THEN WITH ALL OF THEM.

28 MR. WAPNER: I THINK IT IS FINE. THE ONLY POSSIBLE

1 PROBLEM IS THAT OF THE FIRST GROUP THAT WE HAD, SOME SAID THEY
2 COULD STAY FOR THE THREE MONTHS AND WERE EXCUSED AND TOLD TO
3 COME BACK.

4 WHEN THEY CAME BACK, ALL OF A SUDDEN, 25 OF THEM
5 NOW SAID THAT THEY WERE GOING TO BE EXCUSED. SO --

6 THE COURT: WELL, I WILL TRY TO MAKE IT WITH SOME
7 CERTAINTY WITH THEM. I WILL TRY TO MAKE SURE THAT THEY CAN
8 STAY FOR THAT PERIOD OF TIME AND THEY WON'T HAVE ANY PROBLEM
9 WITH THEIR EMPLOYMENT AND NO MEDICAL OR SOCIAL PROBLEM.

10 IF WE GET OUT OF THE 120, 40 THAT COULD STAY,
11 THEN WE DON'T HAVE TO EVEN HAVE THE HARDSHIP WITH ANY OF THE
12 OTHERS. YOU CAN SEND THEM OFF.

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1 MR. WAPNER: THAT IS FINE.

2 THE COURT: IS THAT ALL RIGHT?

3 MR. BARENS: AS LONG AS AGAIN, YOUR HONOR GIVES WHATEVER
4 CAVEATS THE COURT CAN TO MAKE SURE THAT THE 40 WE HAVE GOT,
5 ARE THE 40 WE HAVE GOT.

6 THE COURT: YES, YES, THAT IS WHAT I AM GOING TO TELL
7 THEM.

8 MR. BARENS: I THINK A THIRD OF THOSE, THE LAST TIME
9 THEY ENDED UP HAVING SECOND THOUGHTS.

10 THE COURT: MAYBE THEY DIDN'T QUITE UNDERSTAND. THEY
11 THOUGHT THEY MIGHT GET THEIR EMPLOYERS TO GO ALONG WITH THEM.

12 LET ME TELL THEM CATEGORICALLY, I WILL TELL THEM
13 "IF YOU CAN STAY FOR THE THREE MONTHS, WE WANT YOU," AND THEN
14 I THINK WE WILL HAVE A SUFFICIENT POOL.

15 MR. BARENS: COULD I BE EXCUSED FOR TEN MINUTES?

16 THE COURT: YES, SURELY.

17 I'LL TELL YOU WHAT WE'LL DO, WE WILL HAVE THE WHOLE
18 BUNCH IN AT 10:30. CERTAINLY BY 10:30 WE WILL HAVE THEM ALL
19 IN HERE AND BY THAT TIME WE WILL HAVE FINISHED WITH WHATEVER
20 OTHER CALENDAR MATTERS WE HAVE.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 (RECESS.)

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1 THE COURT: ALL RIGHT. SWEAR THE PROSPECTIVE JURORS.

2 THE CLERK: IF ALL OF THE PROSPECTIVE JURORS WOULD PLEASE
3 STAND TO BE SWORN. RAISE YOUR RIGHT HANDS, PLEASE.

4 EACH OF YOU DO SOLEMNLY SWEAR THAT YOU WILL WELL
5 AND TRULY ANSWER SUCH QUESTIONS THAT MAY BE ASKED OF YOU,
6 TOUCHING UPON YOUR QUALIFICATIONS TO ACT AS TRIAL JURORS IN
7 THE CAUSE NOW PENDING BEFORE THIS COURT, SO HELP YOU GOD?

8 THE PROSPECTIVE JURORS: I DO.

9 THE CLERK: THANK YOU.

10 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE ARE
11 ABOUT TO TRY A VERY SERIOUS FELONY. IT IS ANTICIPATED THAT
12 THE CASE WILL TAKE THREE MONTHS TO TRY, EXCEPT THAT DURING
13 DECEMBER 24TH THROUGH THE REST OF THE MONTH AND INTO JANUARY
14 2ND, WE WILL NOT HAVE ANY SESSIONS OF THE COURT, SO THAT THE
15 CHRISTMAS AND NEW YEAR HOLIDAYS MAY BE ENJOYED BY YOU WITHOUT
16 YOUR HAVING TO COME BACK TO COURT, IF YOU ARE SELECTED AS A
17 JUROR.

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5- 1 MY FIRST QUESTION TO YOU IS -- WE WOULD LIKE VERY
2 MUCH IF YOU WOULD ANSWER THE QUESTION IN THE AFFIRMATIVE THAT
3 YOU WOULD STAY FOR THAT PARTICULAR PERIOD, BUT I KNOW THAT
4 MANY OF YOU, BECAUSE OF YOUR EMPLOYMENT OR FOR MEDICAL OR
5 OTHER REASONS, IT MIGHT BE A HARDSHIP FOR YOU TO SERVE AS A
6 JUROR FOR THAT PERIOD OF TIME. SO WHAT I AM ASKING NOW IS
7 A SHOW OF HANDS OF THOSE WHO FEEL THAT BECAUSE OF ECONOMIC,
8 HARDSHIP OR ANY MEDICAL, SERIOUS MEDICAL PROBLEMS, YOU CANNOT
9 STAY FOR THAT PARTICULAR PERIOD OF TIME. ANY OF YOU?

10 (SHOW OF HANDS.)

11 THE COURT: NOW LET ME SEE HOW MANY CAN STAY.

12 THE BAILIFF: RAISE YOUR HANDS NICE AND HIGH SO I CAN
13 COUNT.

14 27.

15 THE COURT: HOW MANY?

16 THE BAILIFF: 27.

17 THE COURT: WILL YOU APPROACH THE BENCH A MINUTE, PLEASE?

18 (WHEREUPON, THE FOLLOWING PROCEEDINGS

19 WERE HELD AT THE BENCH:)

20 THE COURT: THAT GIVES US ABOUT 97.

21 MR. WAPNER: THAT'S --

22 THE COURT: I BELIEVE THAT IS ENOUGH.

23 MR. WAPNER: I THINK THAT NUMBER IS ENOUGH AS LONG AS
24 THESE 27 ARE A FIRM 27.

25 THE COURT: WELL, I HAVE ASKED THEM WHETHER THEY CAN
26 STAY FOR THAT PERIOD AND ALL OF THEM SAID YES.

27 IS THERE ANYTHING MORE YOU WANT ME TO ASK THEM?

28 MR. BARENS: YOU MIGHT INQUIRE IF ANY OF THEM ARE

5-: 1 ANSWERING YES BECAUSE THEY WISH TO LATER CONFIRM WITH THEIR
2 EMPLOYER AND THAT THEY NEED TO BE CONFIRMED NOW.

3 (COURT ADDRESSING AUDIENCE:)

4 THE COURT: ALL RIGHT, THOSE OF YOU WHO HAVE INDICATED
5 THAT YOU CAN STAY FOR THAT PARTICULAR PERIOD OF TIME, THAT
6 DOESN'T DEPEND UPON YOUR EMPLOYER'S APPROVAL. I ASSUME THAT
7 YOUR EMPLOYER, IF YOU ARE EMPLOYED, WILL APPROVE OF YOUR
8 STAYING FOR THAT PERIOD OF TIME. DOES ANYBODY HAVE ANY
9 DISAGREEMENT WITH THAT?

10 A JUROR: I AM NOT SURE. I WOULD HAVE TO CHECK ON THAT.

11 THE COURT: ALL RIGHT, DO THAT, WILL YOU?

12 A JUROR: I WOULD ALSO HAVE TO CHECK.

13 A JUROR: I DO, TOO.

14 MR. BARENS: THERE YOU GO.

15 A JUROR: CLARIFICATION, YOU SAID IT WOULD BE A HOLIDAY
16 FOR CHRISTMAS BUT YOU DIDN'T SAY ANYTHING ABOUT THANKSGIVING.

17 THE COURT: THANKSGIVING IS ALSO A HOLIDAY. YOU WON'T
18 BE REQUIRED TO BE HERE DURING THAT PERIOD.

19 MR. BARENS: YOU MIGHT INDICATE THAT INCLUDES THURSDAY
20 AND FRIDAY OF THANKSGIVING WEEK.

21 THE COURT: OH, YES, OF COURSE. I THINK IT IS A HOLIDAY
22 ANYWAY. IT IS A COURT HOLIDAY. THE FRIDAYS AFTER THANKSGIVING
23 IS ALSO A COURT HOLIDAY SO THAT YOU WON'T BE EXPECTED TO
24 APPEAR AT THAT PARTICULAR TIME.

25 (FOLLOWING PROCEEDINGS CONTINUED AT

26 THE BENCH:)

27 THE COURT: WHAT ABOUT IT, YOU THINK THERE ARE FIVE OR
28 SIX OF THEM?

1 MR. BARENS: YES, YOUR HONOR.

2 THE COURT: I THINK WHAT I WILL DO IS EXCUSE THOSE WHO
3 FOR HARDSHIP OR MEDICAL REASONS WISH TO BE EXCUSED, AND THEN
4 LET THE REST OF THEM STAY HERE.

5 MR. BARENS: YES, YOUR HONOR.

6 THE COURT: THEN I WILL ASK THE OTHERS TO CALL THEIR
7 EMPLOYERS AND FIND OUT IF THE EMPLOYERS WILL PERMIT THEM TO
8 STAY FOR THAT PERIOD OF TIME. I DON'T THINK THERE ARE THAT
9 MANY OF THEM ANYHOW.

10 MR. WAPNER: THAT IS FINE.

11 THE COURT: ALL RIGHT?

12 MR. BARENS: THANK YOU, YOUR HONOR.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD IN
2 OPEN COURT:)

3 THE COURT: ALL RIGHT. SO WHAT I WILL DO THEN, IS TO
4 EXCUSE ALL OF THOSE OF YOU WHO FEEL THAT YOU CANNOT STAY FOR
5 THE THREE MONTHS THIS CASE WILL TAKE TO TRY.

6 I WILL ASK YOU TO GO BACK TO THE JURY ASSEMBLY
7 ROOM FOR FURTHER ASSIGNMENT IN OTHER CASES. THANK YOU VERY
8 MUCH FOR BEING HERE.

9 THE OTHERS OF YOU WILL REMAIN. ALL OF THOSE WHO
10 HAVE INDICATED THAT YOU COULD STAY FOR THAT PERIOD, INCLUDING
11 THOSE WHO HAVE TO CALL THEIR EMPLOYERS, YOU ALSO STAY IF YOU
12 WILL, PLEASE.

13 THE BAILIFF: BEFORE YOU GO BACK TO THE JURY ASSEMBLY
14 ROOM, YOU HAVE TO PICK UP YOUR TICKET. I HAVE LAST NAMES
15 BEGINNING WITH A THROUGH K.

16 THE CLERK HAS THE END OF THE ALPHABET.

17 (RECESS.)

6A 18 THE COURT: LET ME HAVE A SHOW OF HANDS AGAIN OF THOSE
19 WHO HAVE TO CALL THEIR EMPLOYERS.

20 (THERE WAS A SHOW OF HANDS.)

21 THE COURT: ALL RIGHT. WHAT DO YOU SUGGEST WE DO?

22 MR. WAPNER: WE SHOULD APPROACH THE BENCH.

23 THE COURT: YES.

24 (THE FOLLOWING PROCEEDINGS WERE HELD AT
25 THE BENCH:)

26 THE COURT: SHALL WE TAKE A RECESS TO GIVE THEM THE
27 OPPORTUNITY OF DOING IT? SHALL WE HAVE ALL OF THE OTHER
28 JURORS COME IN?

5-2

1 MR. WAPNER: I WOULD SUGGEST THAT WHAT WE DO, IS THAT
2 WE GIVE THEM TILL 1:30 OR 1:45 TO DO THIS AND WE TAKE THE
3 REMAINING TIME THIS MORNING, TO TRY AND FIGURE OUT A SCHEDULE
4 OF APPOINTMENTS FOR THE REST OF THE JURORS.

5 THE COURT: THEN AT 1:30, WE'LL DO THE HARDSHIP WITH
6 THESE FIVE OR SIX PEOPLE AND FIND OUT HOW MANY OF THEM CAN
7 STAY.

8 MR. WAPNER: THEN YOU CAN READ TO THE PANEL THAT WE HAVE
9 LEFT, THE EXPLANATION OF THE CASE AND THE EXPLANATION OF
10 WITHERSPOON AND GIVE THEM -- GIVE THEM THEIR ASSIGNMENTS SO
11 THAT WE CAN COME BACK.

12 WHAT WE CAN DO IS, WE CAN MAKE THE DECISION AS
13 TO WHEN WE ARE GOING TO SCHEDULE THEM. WE CAN GIVE THE LIST
14 TO THE WOMAN IN THE JURY ROOM. WE CAN TELL THEM TO GO INTO
15 THE JURY ROOM TO GET THEIR ASSIGNMENT AS TO WHEN TO RETURN.

16 MR. BARENS: AS I UNDERSTAND IT, WE WILL ACTUALLY NOT
17 DO OUR VOIR DIRE TODAY, BUT TOMORROW MORNING? BY THEN WE WILL
18 FINISH THESE ACTIVITIES?

19 MR. WAPNER: NO. WE COULD START IT THIS AFTERNOON.

20 THE COURT: NO, THIS AFTERNOON. I WANT TO TELL THEM
21 WHAT THE CASE IS ALL ABOUT. I WANT TO TELL THEM ALSO ABOUT
22 WITHERSPOON, THE NECESSITY OF HAVING THEM ALL INTERROGATED
23 WITH RESPECT TO THEIR BELIEFS.

24 MR. BARENS: YOU WILL REMEMBER THAT PARAGRAPH THAT I
25 GAVE YOU IN CHAMBERS?

26 THE COURT: YES. THAT IS INCORPORATED WITH WHAT I HAVE.

27 MR. BARENS: THAT WAS FROM JUDGE REVEL.

28 THE COURT: YES.

29 MR. BARENS: THANK YOU.

7- 1 (WHEREUPON, THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT:)

3 THE COURT: THE COURT HAS MATTERS TO TAKE UP WITH COUNSEL
4 BETWEEN NOW AND THE ADJOURNMENT HOUR WHEN WE RECESS AT
5 12 O'CLOCK, SO WHAT I WILL ASK YOU ALL TO DO IS TO COME BACK
6 TO THIS COURT AT 1:45 THIS AFTERNOON.

7 THERE ARE ABOUT 70 OTHER JURORS WHO WILL BE
8 JOINING YOU AND THEN I WILL GENERALLY TELL ALL OF YOU WHAT
9 THE NATURE OF THE CASE IS THAT WE ARE ABOUT TO TRY AND GIVE
10 YOU INSTRUCTIONS AS TO WHAT COURSE WE ARE GOING TO TAKE FROM
11 HEREON.

12 HOWEVER, THOSE OF YOU WHO SUGGESTED THAT YOU HAVE
13 TO TALK TO YOUR EMPLOYERS, I WOULD APPRECIATE IT VERY MUCH
14 IF YOU WOULD DO IT BETWEEN NOW AND 1:30 WHEN YOU COME BACK
15 THIS AFTERNOON AT 1:30, AND TELL ME WHICH OF YOU FEEL YOU WOULD
16 STAY AND WHICH OF YOU CANNOT STAY AND THEN I WILL QUESTION
17 YOU FURTHER ABOUT THAT.

18 SO I WILL EXCUSE YOU NOW UNTIL 1:30 THIS AFTERNOON.
19 YOU BE BACK HERE AT THAT PARTICULAR TIME. THANK YOU.

20 A JUROR: 1:45 OR 1:30?

21 THE COURT: WELL, 1:30, I THINK, IF YOU WILL, PLEASE.

22 (WHEREUPON, THE PROSPECTIVE JURORS LEFT
23 THE COURTROOM.)

24 THE COURT: I HAVE GOT TO QUESTION HARDSHIP CASES.

25 MR. WAPNER: RIGHT.

26 THE COURT: WHAT ABOUT THE OTHER 70 JURORS, SHOULD I
27 HAVE THEM COME IN HERE? I WILL TELL THEM TO COME BACK AT
28 1:45, THOSE OF THE 70. TELL THEM TO COME BACK HERE AND THEN

1 WE WILL GIVE THEM FURTHER INSTRUCTIONS AS TO WHEN WE ARE ABOUT
2 TO BEGIN.

3 MR. WAPNER: I THINK WHAT WE SHOULD DO, BEFORE WE BRING
4 THEM ALL IN, IS TO BRING BACK THE FIVE OR SEVEN THAT ARE
5 CLAIMING POSSIBLE HARDSHIP.

6 THE COURT: YES, ALL RIGHT.

7 LET'S COME INTO CHAMBERS THEN. YOU WANT TO
8 DISCUSS THAT, DON'T YOU?

9 MR. WAPNER: YES.

10 MAYBE WHAT WE SHOULD DO BEFORE THAT IS TO TALK
11 TO THE CLERK. WHY DON'T WE COME INTO CHAMBERS IN ABOUT FIVE
12 MINUTES AND GIVE US A CHANCE TO CONFER WITH THE CLERK AND SEE
13 WHO WE HAVE AND WE CAN DIVIDE IT UP.

14 THE COURT: YOU CAN DO THAT AFTER YOU CONFER. WE DON'T
15 HAVE TO DO THAT NOW.

16 THE CLERK: I WILL TYPE UP A NEW LIST OF 27 AND THEN
17 WE CAN WORK FROM THAT.

18 THE COURT: ALL RIGHT, CROSS OUT THOSE WHO HAVE BEEN
19 EXCUSED.

20 THE CLERK: WELL, I WILL INTEGRATE IT WITH THE OTHER
21 PEOPLE THAT ARE COMING TODAY.

22 THE COURT: I DON'T THINK YOU NEED ANY MORE TIME. SHE
23 HAS TOLD YOU ALREADY WHAT WE ARE GOING TO DO.

24 ALL RIGHT, COME ON INTO CHAMBERS.

25 THE CLERK: THERE WILL BE 99 PLUS YOU TOLD ONE OTHER
26 WOMAN TO COME BACK TOMORROW BECAUSE SHE COULDN'T COME TODAY.
27 SHE IS BARBARA RAINE.

28 MR. BARENS: THE ACTRESS FROM BEVERLY HILLS, YOUR HONOR,

7-3
1 REMEMBER?

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
3 HELD IN CHAMBERS:)

4 MR. WAPNER: WE HAVE NOW SOMEWHERE BETWEEN 90 AND A
5 HUNDRED JURORS. WE DON'T KNOW EXACTLY HOW MANY WE ARE GOING
6 TO HAVE BECAUSE --

7 THE COURT: WELL, WE HAVE A MINIMUM OF 90.

8 MR. WAPNER: AND I WAS DISCUSSING WITH COUNSEL EARLIER
9 THIS MORNING ABOUT THEIR ESTIMATES OF APPROXIMATELY HOW LONG
10 IT WILL TAKE TO QUESTION EACH JUROR ON THE HOVEY-WITHERSPOON
11 AND THE PUBLICITY ASPECTS OF THIS CASE AND MR. CHIER TOLD ME
12 THAT HE THOUGHT IT WOULD BE APPROXIMATELY 20 MINUTES; IS THAT
13 A FAIR STATEMENT?

14 THE COURT: EACH ONE OF THEM?

15 MR. CHIER: YES.

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1 MR. WAPNER: AND IF IT TAKES 20 MINUTES TO DO EACH
2 JUROR AND WE DO THREE AN HOUR AND WE HAVE FOUR HOURS OF COURT
3 TIME, WE ARE GOING TO DO TWELVE A DAY.

4 MR. CHIER: SOME MIGHT GO FASTER AND SOME MIGHT GO A
5 LITTLE LONGER. BUT THE AVERAGE I FIGURED WOULD BE ABOUT THAT.

6 THE COURT: HOW LONG DID IT TAKE US IN PITTMAN?

7 MR. WAPNER; WELL, I THINK IT WENT MUCH MORE QUICKLY,
8 ACTUALLY IN THE OTHER TRIALS.

9 BUT I ANTICIPATE THAT THIS IS GOING TO BE A MUCH
10 MORE LENGTHY PROCEDURE BECAUSE I HAVE A FEELING THAT COUNSEL
11 IN THIS CASE ARE GOING TO HAVE A LOT MORE QUESTIONS TO ASK,
12 THAN COUNSEL IN THAT CASE.

13 MR. BARENS: AGAIN, IT IS HARD. WE DON'T COMPARE OUR-
14 SELVES AT ALL WITH MR. YOUNG AND HIS STATED PREPARATION IN
15 THOSE PROCEEDINGS.

16 THE COURT: WELL, IT WOULD BE AN INSULT TO YOU TO COMPARE
17 YOU WITH THEM.

18 MR. BARENS: I THINK IT WOULD BE.

19 THE COURT: IT WOULD BE AN INSTANCE OF THAT SAYING ABOUT
20 COMPARISONS ARE ODIIOUS. IT WOULD APPLY IN THIS PARTICULAR
21 CASE.

22 MR. BARENS: THANK YOU, YOUR HONOR. SO, I CONCUR THAT
23 20 MINUTES IS APPROPRIATE.

24 I THINK WHAT MR. WAPNER IS LEADING TO, YOUR HONOR,
25 IS A CONCEPT THAT WE RETAIN TEN OR TWELVE PEOPLE A DAY.
26 PERHAPS WE SHOULD RETAIN 12 TO BE ON THE SAFE SIDE IN CASE
27 THERE ARE SOME THAT JUST SUMMARILY COME IN AND ARE SO ADAMANT
28 IN THEIR POSITIONS THAT IN FIVE MINUTES, THEY ARE GONE, FOR

8-2
1 CAUSE.

2 THE COURT: I THINK THAT'S A GOOD IDEA.

3 MR. BARENS: SO, WE SHOULD COORDINATE WITH THE CLERK,
4 I PRESUME, STARTING ALPHABETICALLY AND DIVIDING THEM IN
5 TWELFTHS.

6 MR. WAPNER: OR MAYBE IF WE DO SOME THIS AFTERNOON, IF
7 WE START AT 1:45, WE WILL START WITH HOVEY.

8 I THINK THAT YOU WILL HAVE THE WHOLE, LONG
9 EXPLANATION AND THAT WE MIGHT START TODAY AT 2:15 OR 2:20.

10 THE COURT: YES. ALL RIGHT.

11 MR. WAPNER: IF WE GO TODAY FROM 2:30 TO 4:30, WE --
12 WOULD WE HAVE A BREAK? I AM TRYING TO FIGURE OUT HOW MANY
13 WE SHOULD SCHEDULE FOR TODAY.

14 MR. BARENS: PERHAPS WE WILL BE LEARNING AS WE ARE GOING
15 ALONG TODAY. WE SHOULD PERHAPS ONLY DO FOUR BECAUSE IT IS
16 SOMEWHAT MORE PONDER SOME, UNTIL WE GET A RHYTHM TO THIS AND
17 WE GET GOING.

18 HOW DOES YOUR HONOR FEEL ABOUT HAVING FOUR FOR
19 THIS AFTERNOON?

20 THE COURT: FOUR I THINK, MAY BE INDICATED.

21 MR. WAPNER: THAT'S ALL RIGHT WITH ME. SO WE CAN TAKE
22 THE FIRST FOUR FOR TODAY THEN DIVIDE UP THE REMAINING GROUP
23 INTO GROUPS OF TWELVE AND GIVE THEM -- WE'LL HAVE ALSO THE
24 QUESTION OF WHAT WE ARE GOING TO DO WEDNESDAY.

25 MR. ARCE IS COMING ON WEDNESDAY MORNING. SO
26 PERHAPS WE SHOULD HAVE --

27 THE COURT: WELL, HE WON'T TAKE ALL MORNING.

28 MR. WAPNER: WELL, HE MAY TAKE THE WHOLE MORNING. IT

1 IS CONCEIVABLE TO ME THAT IT COULD TAKE INTO THE AFTERNOON.

2 BUT I THINK AT LEAST, THAT WE SHOULD NOT SCHEDULE
3 JURORS FOR IT WEDNESDAY MORNING. DO YOU HAVE AN ESTIMATE,
4 COUNSEL?

5 THE COURT: HOW LONG DO YOU ANTICIPATE FOR MR. ARCE?

6 MR. CHIER: IT IS HARD TO SAY, JUDGE. IT WOULD PROBABLY
7 BE TWO OR THREE HOURS, IS MY ESTIMATE.

8 IT REQUIRES GETTING ON THE RECORD HOW THE JURORS
9 ARE SELECTED IN THE FIRST PLACE AND THEN ONCE THEY ARE
10 SELECTED AS JURORS, HOW THEY GET TO THIS COURTHOUSE, PLUS,
11 OVERLAID ON THAT ARE THE PARTICULAR DEMOGRAPHICS AND THE CHANGE
12 IN THE SYSTEM FROM THE OLD SYSTEM TO THE NEW, SO-CALLED
13 "BULL'S EYE SYSTEM."

14 THE COURT: ALL RIGHT. WE'LL FIGURE ON TWO HOURS, THEN.

15 MR. CHIER: AT THE VERY MINIMUM, YOUR HONOR.

16 THE COURT: THAT WILL BE A MAXIMUM.

17 MR. CHIER: THAT IS THE MAXIMUM?

18 THE COURT: YES.

19 MR. WAPNER: IN ANY EVENT, SHOULD WE SCHEDULE MAYBE SIX
20 JURORS THEN FOR WEDNESDAY AFTERNOON?

21 THE COURT: YES.

22 MR. BARENS: THAT IS A GOOD IDEA.

23 THE COURT: VERY GOOD. ALL RIGHT. I WILL SEE YOU ALL
24 BACK HERE AT 1:30. ANYTHING ELSE?

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1 MR. CHIER: YES, ONE OTHER MATTER. IT SEEMED IN LIGHT
2 OF THE AMOUNT AND NATURE OF PUBLICITY THAT HAS COME OUT, IT
3 MIGHT BE IN THE INTEREST OF JUDICIAL ECONOMY TO DO THE PUBLICITY
4 VOIR DIRE AHEAD OF HOVEY, FOR THE REASON AND IN THE SENSE --

5 THE COURT: YOU MEAN WHEN EACH, INDIVIDUAL JUROR COMES
6 IN?

7 MR. CHIER: YES.

8 THE COURT: I INTEND TO DO THAT. I WILL ASK THEM
9 WHETHER OR NOT THEY HAVE HEARD ANYTHING ABOUT THE CASE.

10 MR. CHIER: IS YOUR HONOR GOING TO ALLOW COUNSEL TO
11 PARTICIPATE IN THE PUBLICITY VOIR DIRE?

12 THE COURT: I SUPPOSE I HAVE NO CHOICE.

13 MR. CHIER: THAT WAS MY FEELING. BUT I DIDN'T CERTAINLY
14 HAVE THE --

15 THE COURT: I WILL ASK THEM WHETHER THEY HAVE READ OR
16 HEARD ANYTHING ABOUT THE CASE.

17 MR. BARENS: YOUR HONOR, ONE OTHER MATTER I WANT TO GET
18 CLARIFICATION ON. IT IS MY UNDERSTANDING AND BELIEF THAT
19 YOU WILL BE DOING EACH JUROR ON THE HOVEY PUBLICITY MATTER
20 INDIVIDUALLY, THAT THEY WILL BE THE ONLY JUROR IN THE COURTROOM
21 DURING THAT EXERCISE --

22 THE COURT: I DON'T KNOW WHETHER IT WOULD BE IN THE
23 COURTROOM OR NOT AND WHETHER OR NOT WE WILL HAVE THEM HERE.
24 DIDN'T WE DO IT HERE LAST TIME?

25 MR. WAPNER: NO. WE DO IT IN THE COURTROOM. I WOULD
26 RESPECTFULLY REQUEST IT BE DONE IN THE COURTROOM.

27 THE COURT: ALL RIGHT.

28 MR. BARENS: IRRESPECTIVE OF WHETHER IT IS HERE OR IN

8A- 1 THE COURTROOM YOUR HONOR, THE POINT I AM MAKING IS THAT I
2 WOULD LIKE EACH JUROR TO PROCEED WITHOUT OTHER JURORS BEING
3 PRESENT.

4 THE COURT: NO QUESTION ABOUT IT.

5 MR. CHIER: OR PUBLIC BEING PRESENT EITHER.

6 THE COURT: AS A MATTER OF FACT, HASN'T THE SUPREME
7 COURT SAID THAT?

8 MR. BARENS: ABSOLUTELY. THAT IS OUT IN PUBLIC, AS WELL.

9 THE COURT: YES. YOU MEAN THE PRESS?

10 MR. CHIER: YES.

11 THE COURT: ALL RIGHT, FINE. THAT IS AGREEABLE.

12 MR. BARENS: THANK YOU.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER: NO OBJECTION.

15 (AT 11:40 A.M. A RECESS WAS TAKEN
16 UNTIL 1:30 P.M. OF THE SAME DAY.)
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1 SANTA MONCA, CALIFORNIA; MONDAY, NOVEMBER 17, 1986; 1:57 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

6 THE RECORD WILL INDICATE THE PRESENCE OF THE
7 DEFENDANT AND COUNSEL.

8 THIS MORNING THERE WERE A NUMBER OF YOU WHO SAID
9 THAT THEY WOULD CHECK WITH THEIR EMPLOYERS TO FIND OUT WHETHER
10 OR NOT THEY CAN REMAIN AS JURORS IN THIS CASE FOR THE PERIOD
11 OF TIME I HAVE INDICATED.

12 NOW WILL YOU PLEASE RAISE YOUR HANDS AND GIVE ME
13 YOUR NAMES, PLEASE?

14 YOUR NAME?

15 MR. GRAHAM: FRANCIS GRAHAM.

16 THE COURT: GRAHAM?

17 MR. GRAHAM: YES.

18 THE COURT: PARDON ME.

19 (PAUSE IN PROCEEDINGS.)

20 THE COURT: YES, FRANCIS GRAHAM.

21 ALL RIGHT, ANY OTHERS? YES?

22 MISS SMITH: DORRIS SMITH.

23 THE COURT: SMITH?

24 MISS SMITH: YES.

25 MISS CIBELLO: JOANNE CIBELLO.

26 THE COURT: HOW DO YOU SPELL THAT?

27 MISS CIBELLO: C-I-B-E-L-L-O.

28 THE COURT: C-I-B--

1 MISS CIBELLO: C-I-B-E-L-L-O.

2 THE CLERK: IT IS C AS IN CAT, YOUR HONOR.

3 MR. WAPNER: THE 13TH NAME ON THE LIST.

4 THE COURT: OH, YES, I SEE IT, CIBELLO.

5 ANY OTHERS?

6 MISS FRANK: MARCIA FRANK.

7 THE COURT: MISS FRANK, THANK YOU.

8 MR. GARCIA: MAURO GARCIA.

9 THE COURT: GARCIA?

10 MR. GARCIA: YES.

11 THE COURT: THANK YOU.

12 HAVE I GOT EVERYBODY?

13 YES, THAT LADY?

14 MISS HEIMAN: NAOMI HEIMAN, H-E-I-M-A-N.

15 THE COURT: YES.

16 ANYBODY ELSE?

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1 THOSE OF YOU WHO HAVE TOLD ME THAT YOU HAVE
2 COMMUNICATED WITH YOUR EMPLOYERS, WHICH OF YOU NONETHELESS,
3 WANT TO BE EXCUSED?

4 (THERE WAS A SHOW OF HANDS.)

5 THE COURT: ALL RIGHT. I THINK WHAT WE BETTER DO IS,
6 GO INTO CHAMBERS. IF YOU WILL ALL FORGIVE US, I JUST WANT
7 TO ASK A FEW QUESTIONS OF EACH ONE OF THE JURORS WHO SAID THAT
8 THEY WANTED TO BE EXCUSED.

9 I WILL JUST PUT IT ON THE RECORD. WE WILL DO THAT
10 IN CHAMBERS. THEN, THE REST OF YOU CAN STAY WHERE YOU ARE.
11 DON'T MOVE. DON'T GO AWAY.

12 ALL RIGHT. WE'LL TAKE THEM ONE AT A TIME. THE
13 FIRST ONE IS CIBELLO.

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN
15 CHAMBERS:)

16 THE COURT: WHAT IS YOUR NAME? I THOUGHT I ASKED FOR
17 MISS CIBELLO? WHAT IS YOUR NAME?

18 MISS CIBELLO: JOANNE CIBELLO.

19 THE COURT: I SEE. WHERE DO YOU LIVE?

20 MISS CIBELLO: MANHATTAN BEACH.

21 THE COURT: YOU HAVE INDICATED THAT YOU HAVE TALKED TO
22 YOUR EMPLOYER. WHAT IS THE NAME OF YOUR EMPLOYEE?

23 MISS CIBELLO: TRW.

24 THE COURT: AND THEY TOLD YOU WHAT?

25 MISS CIBELLO: SEE, I FIRST CALLED PERSONNEL. THEY
26 SAID THAT WE ARE ALLOWED ONLY UP TO 22 DAYS. AND THEN OVER
27 AND ABOVE THAT, I HAD TO GET TWO VICE PRESIDENTS' SIGNATURES
28 FOR APPROVAL.

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1 SO I CALLED THEIR OFFICES AND THEY SAID DEFINITELY
2 NOT.

3 THE COURT: ALL RIGHT.

4 MR. BARENS: NO OBJECTION.

5 THE COURT: ALL RIGHT. THANK YOU. YOU WILL BE EXCUSED.

6 MISS CIBELLO: THANK YOU VERY MUCH.

7 THE COURT: YOU CAN GO BACK TO THE JURY ASSEMBLY ROOM.
8 YOU CAN BE ELIGIBLE FOR SOME OTHER CASE WHICH WON'T TAKE AS
9 LONG.

10 (PROSPECTIVE JUROR CIBELLO EXITS CHAMBERS.)

11 THE CLERK: THIS IS MISS MARCIA FRANK.

12 (PROSPECTIVE JUROR FRANK ENTERS CHAMBERS.)

13 THE COURT: MISS FRANK?

14 MISS FRANK: MISS.

15 THE COURT: WHERE DO YOU LIVE?

16 MISS FRANK: SANTA MONICA.

17 THE COURT: YOU HAVE INDICATED THAT YOU WANT TO BE
18 EXCUSED. YOU HAVE TALKED TO YOUR EMPLOYER?

19 MISS FRANK: YES.

20 THE COURT: WHO DO YOU WORK FOR?

21 MISS FRANK: L.A. COUNTY PROBATION DEPARTMENT.

22 THE COURT: WELL, YOU ARE PERMITTED TO STAY AS LONG AS
23 THE JURY IS IN SESSION, AREN'T YOU?

24 MISS FRANK: I AM NOT QUITE SURE.

25 THE COURT: WHAT DID THEY SAY?

26 MISS FRANK: THEY SAID THEY NEEDED ME AT THE OFFICE.

27 THE COURT: DO YOU THINK YOUR JOB WOULD BE IN JEOPARDY
28 IF YOU WOULD STAY OUT THREE MONTHS?

1 MISS FRANK: I DON'T THINK SO. THEY SAID THEY NEEDED
2 ME THERE.

3 THE COURT: BUT, YOU WILL GET PAID, WON'T YOU?

4 MISS FRANK: YES.

5 THE COURT: WELL, I THINK THAT I CAN'T EXCUSE YOU. YOU
6 WILL HAVE TO STAY AMONG THE JURORS. THANK YOU.

7 MR. CHIER: COULD I INQUIRE? ARE YOU A PROBATION OFFICER?

8 MISS FRANK: YES.

9 THE COURT: DO YOU THINK THERE WILL BE A CHALLENGE
10 ANYWAY?

11 MR. BARENS: QUITE SO.

12 THE COURT: DO YOU AGREE THAT WE MAY EXCUSE HER?

13 MR. WAPNER: I HAVE NO OBJECTION.

14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
15 BE EXCUSED.

16 (PROSPECTIVE JUROR FRANK EXITS CHAMBERS.)
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1 THE CLERK: THIS IS MR. GARCIA.

2 THE COURT: WHERE DO YOU LIVE, MR. GARCIA?

3 MR. GARCIA: WESTCHESTER.

4 THE COURT: YOU WANT TO BE EXCUSED, YOUR EMPLOYER WON'T
5 PAY FOR JURY SERVICE THIS LONG; IS THAT RIGHT?

6 MR. GARCIA: YES, YES.

7 THE COURT: WHO DO YOU WORK FOR?

8 MR. GARCIA: UCLA.

9 THE COURT: IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

10 MR. GARCIA: LEAD STEAM ENGINEER.

11 THE COURT: AND THEY WON'T PAY YOU FOR THE THREE-MONTH
12 PERIOD?

13 MR. GARCIA: THEY WON'T DO THAT.

14 I WAS HOPING THEY WOULD.

15 THE COURT: YES, I AM SORRY THAT THEY DON'T BECAUSE WE
16 WOULD LIKE TO HAVE YOU.

17 MR. GARCIA: YES.

18 THE COURT: THANK YOU VERY MUCH. YOU WILL BE EXCUSED.

19 MR. GARCIA: YOU ARE WELCOME.

20 THE COURT: YOU GO TO THE JURY ASSEMBLY ROOM AND TELL
21 THE CLERK YOU ARE ELIGIBLE TO STAY FOR THE 20 DAYS OR WHATEVER
22 PERIOD YOU ARE EXCUSED FROM WORK FOR.

23 (PROSPECTIVE JUROR GARCIA EXITED
24 CHAMBERS.)

25 (PROSPECTIVE JUROR GRAHAM ENTERED
26 CHAMBERS.)

27 THE CLERK: THIS IS FRANCIS GRAHAM.

28 THE COURT: MR. GRAHAM?

1 MR. GRAHAM: YES.

2 THE COURT: WHERE DO YOU LIVE, MR. GRAHAM?

3 MR. GRAHAM: HERMOSA BEACH.

4 THE COURT: YOU INDICATED YOU TALKED TO YOUR EMPLOYER?

5 MR. GRAHAM: YES, I DID.

6 THE COURT: WHO DO YOU WORK FOR?

7 MR. GRAHAM: TRW CORPORATION.

8 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. WE WILL
9 EXCUSE YOU.

10 MR. GRAHAM: THANK YOU.

11 THE COURT: YOU GO TO THE JURY ASSEMBLY ROOM AND TELL
12 THEM YOU ARE ELIGIBLE FOR LESS THAN THE THREE-MONTH PERIOD.

13 MR. GRAHAM: OKAY.

14 (PROSPECTIVE JUROR GRAHAM EXITED
15 CHAMBERS.)

16 (PROSPECTIVE JUROR HEIMAN ENTERED
17 CHAMBERS.)

18 THE CLERK: THIS IS NAOMI HEIMAN.

19 MISS HEIMAN: HI.

20 THE COURT: MISS HEIMAN, WHERE DO YOU LIVE?

21 MISS HEIMAN: WHERE DO I LIVE? WOODBINE STREET, 10732.

22 THE COURT: WHERE IS THAT?

23 MISS HEIMAN: WEST LOS ANGELES, PALMS.

24 THE COURT: ALL RIGHT. I UNDERSTAND YOU HAVE TALKED
25 TO YOUR EMPLOYER ABOUT STAYING HERE?

26 MISS HEIMAN: YES.

27 HE GAVE ME A LETTER.

28 THE COURT: WHAT DO THEY SAY?

1 MISS HEIMAN: IT SAYS HE WOULD NOT PAY ME FOR THREE MONTHS
2 OF JURY DUTY.

3 THE COURT: HOW LONG WILL THEY PAY YOU FOR?

4 MISS HEIMAN: WHATEVER, TEN DAYS OR FOR THREE WEEKS.

5 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU ARE
6 EXCUSED.

7 MISS HEIMAN: DO YOU NEED THE LETTER?

8 THE COURT: I DON'T NEED IT.

9 YOU GO BACK TO THE JURY ASSEMBLY ROOM AND TELL
10 THEM YOU WILL STAY FOR THE TEN DAYS OR THREE WEEKS, ALL RIGHT?

11 MISS HEIMAN: THANK YOU.

12 THE COURT: BUT THAT YOU ARE EXCUSED FROM THIS CASE.

13 MISS HEIMAN: YES, ALL RIGHT.

14 (PROSPECTIVE JUROR HEIMAN EXITED
15 CHAMBERS.)

16 (PROSPECTIVE JUROR SMITH ENTERED
17 CHAMBERS.)

18 THE CLERK: THIS IS DELORES SMITH.

19 MISS SMITH: DORRIS SMITH.

20 THE CLERK: DORRIS SMITH.

21 HAVE A SEAT, PLEASE, MISS SMITH.

22 THE COURT: MISS SMITH, IS IT?

23 MISS SMITH: YES.

24 THE COURT: MISS SMITH, WHERE DO YOU LIVE?

25 MISS SMITH: EXCUSE ME?

26 THE COURT: WHERE DO YOU LIVE?

27 MISS SMITH: REDONDO BEACH.

28 THE COURT: YOU HAVE TALKED TO YOUR EMPLOYER ABOUT

1 STAYING AS A JUROR ON THIS CASE?

2 MISS SMITH: YES. I WENT THERE. I WORK AT CONTINENTAL
3 AIRLINES AND NOBODY WAS THERE BECAUSE THEY WERE ALL OUT TO
4 LUNCH.

5 ONE PERSON TOLD ME THAT IT WAS 30 DAYS THAT I GOT
6 PAID AND SOMEBODY ELSE SAID THAT IT WAS UNLIMITED.

7 THE COURT: UNLIMITED?

8 MISS SMITH: YES.

9 SO I AM NOT EXACTLY SURE AT THIS TIME, YOU KNOW,
10 WHICH ONE -- WHICH IT WOULD BE BECAUSE NOBODY WAS THERE.

11 THE COURT: WELL, WHEN CAN YOU FIND OUT?

12 MISS SMITH: I COULD FIND OUT TOMORROW MORNING.

13 THE COURT: TOMORROW MORNING? WELL, WHY DON'T YOU STAY
14 WITH THE OTHER JURORS AND THEN COME BACK TOMORROW MORNING.
15 YOU FIND OUT AND YOU COME BACK AND TELL US AT THAT TIME, ALL
16 RIGHT?

17 MISS SMITH: OKAY.

18 THE COURT: IT MAY BE THAT YOU CAN STAY FOR THREE MONTHS,
19 ALL RIGHT?

20 MISS SMITH: OKAY.

21 THE COURT: YOU STAY WITH THE REST OF THE JURORS AND
22 WE WILL BE OUT IN JUST A MINUTE.

23 MISS SMITH: OKAY. THANK YOU.

24 (PROSPECTIVE JUROR SMITH EXITED

25 CHAMBERS:)

26 THE COURT: ALL RIGHT, I THINK THAT IS ABOUT THE END
27 OF IT, ISN'T IT?

28 MR. WAPNER: YES.

1 THE COURT: THAT IS ALL?

2 (PROSPECTIVE JUROR ADAMS ENTERED
3 CHAMBERS.)

4 THE CLERK: THERE IS ONE MORE. THIS IS JOANN ADAMS AND
5 SHE WORKS FOR TRW AND THEY ONLY PAY 22 DAYS.

6 THE COURT: HELLO.

7 MISS ADAMS: HI. I FOUND OUT DURING THE LUNCH BREAK
8 THAT TRW ONLY PAYS FOR 22 DAYS.

9 MY HUSBAND IS OUT OF WORK AT THE TIME SO --

10 THE COURT: SO IF THEY DON'T PAY THAT WOULD BE A
11 HARDHSHIP ON YOU?

12 MISS ADAMS: YES, AT THIS TIME, YES.

13 THE COURT: WHERE DO YOU LIVE?

14 MISS ADAMS: IN REDONDO BEACH.

15 THE COURT: YOUR NAME IS ADAMS, IS IT?

16 MISS ADAMS: ADAMS.

17 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

18 MISS ADAMS: THANK YOU.

19 THE COURT: YOU WILL BE EXCUSED.

20 YOU CAN TELL THE CLERK IN THE JURY ASSEMBLY ROOM
21 THAT YOU ARE ELIGIBLE FOR LESS THAN 22 DAYS OR TEN DAYS,
22 HOWEVER MUCH IT IS THAT YOU WILL BE PAID FOR.

23 MISS ADAMS: THANK YOU.

24 (PROSPECTIVE JUROR ADAMS EXITED
25 CHAMBERS.)

26 MR. CHIER: IS THAT IT?

27 THE COURT: I THINK THAT IS THE END OF IT.

28 MR. WAPNER: YES.

1 THE COURT: ALL RIGHT, WE WILL ALL GO BACK.

2 ANYTHING FURTHER?

3 MR. WAPNER: NO.

4 MR. CHIER: YES.

5 THE COURT: ANYTHING FURTHER?

6 THE CLERK: IRVING GOLDSTEIN WOULD LIKE TO SPEAK TO YOU,
7 YOUR HONOR.

8 THE COURT: WHO IS IRVING GOLDSTEIN?

9 THE CLERK: OFF THE RECORD -- HE IS THE ONE LAST WEEK
10 WHO WANTED VERY, VERY MUCH TO GET OFF. HE WANTS TO COME IN
11 AND TALK TO YOU.

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1 (PROSPECTIVE JUROR GOLDSTEIN ENTERS
2 CHAMBERS.)

3 THE COURT: ALL RIGHT. MR. GOLDSTEIN, DID WE ASK YOU
4 WHERE YOU LIVED BY THE WAY?

5 MR. GOLDSTEIN: I LIVE IN BEVERLY HILLS.

6 THE COURT: ALL RIGHT. ANYTHING ELSE THAT YOU WANT TO
7 ADD TO WHAT YOU TOLD US THE LAST TIME?

8 MR. GOLDSTEIN: WELL, I WAS THINKING IT OVER. I FEEL
9 THAT THIS IS CAUSING ME PRESSURE. I AM GETTING DIZZY RIGHT
10 NOW FROM BEING SO -- I DON'T FEEL COMFORTABLE IN HERE. AND
11 THIS IS CAUSING ME TO --

12 THE COURT: DO YOU FEEL UNCOMFORTABLE IN HERE OR OUT
13 THERE?

14 MR. GOLDSTEIN: NO. I AM NOT COMFORTABLE BECAUSE I
15 FEEL THAT IF I HAVE TO MAKE A DECISION ON SOME OTHER PERSON,
16 THAT I KNOW NOTHING ABOUT AND -- I CAN'T MAKE JUDGMENTS ON
17 THAT. I CAN'T DECIDE THAT --

18 THE COURT: DO YOU THINK YOUR HEALTH WOULD SUFFER?

19 MR. GOLDSTEIN: I THINK IT WOULD.

20 MR. BARENS: NO OBJECTION.

21 MR. GOLDSTEIN: I AM GETTING PRESSURE RIGHT NOW ON MY --
22 I AM GETTING DIZZY AND I --

23 THE COURT: ALL RIGHT, MR. GOLDSTEIN. GOOD-BYE. WE
24 DON'T WANT YOU. THANK YOU VERY MUCH.

25 (PROSPECTIVE JUROR GOLDSTEIN EXITS
26 CHAMBERS.)

27 THE COURT: IS THAT THE KIND OF JUROR YOU WANT?

28 MR. CHIER: ABSOLUTELY. YOU KNOW THAT.

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1 MR. WAPNER: FOR THE RECORD, THE PEOPLE DIDN'T HAVE ANY
2 OBJECTION TO THIS JUROR BEING EXCUSED EITHER.

3 THE COURT: ALL RIGHT. LET'S GO OUTSIDE.

4 MR. CHIER: THERE ARE SOME PRESS PEOPLE THAT ARE CAMPED
5 OUT THERE.

6 THE COURT: WHERE?

7 MR. CHIER: WHERE THE --

8 MR. BARENS: SITTING RIGHT NEXT TO THE BAILIFF'S DESK,
9 YOUR HONOR.

10 THE COURT: DO YOU WANT ME TO THROW THEM OUT?

11 MR. CHIER: YES, YOUR HONOR. DURING THIS PART OF THE
12 PROCEEDINGS, THE DEFENDANT IS ENTITLED TO A TOTALLY SANITIZED
13 SETTING.

14 THE COURT: ALL RIGHT. I WILL INDICATE THAT COUNSEL
15 HAVE ASKED -- DO YOU WANT THEM OUT?

16 MR. WAPNER: I DON'T HAVE ANY OBJECTION ONE WAY OR THE
17 OTHER.

18 THE COURT: ALL RIGHT. I WILL TELL THEM THAT COUNSEL
19 REQUESTED IT. I WILL SAY THAT COUNSEL REQUESTED NO COVERAGE
20 AND THEY BE EXCUSED. THANK YOU.

21 (THE FOLLOWING PROCEEDINGS WERE HELD IN
22 OPEN COURT:)

23 THE COURT: COUNSEL HAS REQUESTED THAT ALL MEMBERS OF
24 THE PRESS BE EXCUSED AT THIS TIME. ANY OF YOU MEMBERS OF THE
25 PRESS, COUNSEL INSISTS UPON YOUR BEING EXCUSED UNTIL WE
26 ACTUALLY HAVE THE SELECTION OF THE JURY. ALL PROCEEDINGS ARE
27 NOW CONFIDENTIAL.

28 A VOICE: YOU ARE CLOSING THE COURTROOM?

1 THE COURT: I JUST WANT TO AVOID ANY ERROR. THEY OBJECT
2 TO IT.

3 I HAVE NO CHOICE ABOUT IT.

4 A VOICE: WILL YOU GIVE US AN OPPORTUNITY TO CHALLENGE
5 THAT?

6 THE COURT: YES, OF COURSE. NOT NOW, THOUGH.

7 (MEMBERS OF THE PRESS EXIT THE COURTROOM.)

8 THE COURT: AT LONG LAST, LADIES AND GENTLEMEN, I AM
9 GOING TO TELL YOU WHAT THIS CASE IS ALL ABOUT. AND THEN I
10 AM GOING TO MAKE SOME FURTHER REMARKS WHICH YOU SHOULD PAY
11 VERY STRICT ATTENTION TO. NOW, I AM GOING TO SUMMARIZE THE
12 NATURE OF THE CASE WE ARE ABOUT TO TRY SO YOU WILL HAVE A
13 GENERAL IDEA OF THE NATURE OF THE CHARGES AGAINST THE
14 DEFENDANT AND BE IN A POSITION INTELLIGENTLY TO ANSWER ALL
15 QUESTIONS WHICH MAY BE ASKED OF YOU, TOUCHING UPON YOUR
16 QUALIFICATIONS TO ACT AS TRIAL JURORS IN THE CASE.

17 NOW, THIS IS AS I HAVE INDICATED TO YOU, IS A
18 CRIMINAL ACTION BROUGHT BY THE PEOPLE OF THE STATE OF CALIFORNIA
19 AGAINST JOE HUNT, H-U-N-T.

20 NOW, THE INFORMATION OR THE CHARGES AGAINST THE
21 DEFENDANT ARE AS FOLLOWS: IT IS ALLEGED THAT THE DEFENDANT,
22 JOE HUNT, BETWEEN JUNE 6, 1984 AND ON OR ABOUT THE 7TH DAY
23 OF JUNE, 1984, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
24 DID WILLFULLY AND UNLAWFULLY AND WITH MALICE AFORETHOUGHT,
25 MURDER RONALD GEORGE LEVIN, A HUMAN BEING.

26 AND IT IS FURTHER ALLEGED THAT THE MURDER OF
27 RONALD GEORGE LEVIN WAS COMMITTED BY THE DEFENDANT, JOE HUNT,
28 WHILE THE DEFENDANT WAS ENGAGED IN THE COMMISSION OF A ROBBERY,

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1 IN VIOLATION OF PENAL CODE SECTION 211 AND ALSO WITHIN THE
2 MEANING OF PENAL CODE SECTION 190.2(A) AND (17).

3 IN THIS CASE, IT IS ALLEGED THAT THAT MURDER WAS
4 COMMITTED AS I INDICATED TO YOU, DURING THE COURSE OF A
5 ROBBERY. AND THAT WOULD PRESENT THE COMMISSION OF A MURDER
6 DURING A ROBBERY WHICH MAY CALL FOR THE DEATH PENALTY.

7 AND THE DEATH PENALTY IS BEING REQUESTED BY THE
8 DISTRICT ATTORNEY. AND THERE IS A SECOND COUNT OR CAUSE OF
9 ACTION AGAINST THE DEFENDANT WHICH ACCUSES HIM OF THE CRIME
10 OF ROBBERY, IN VIOLATION OF SECTION 211 OF THE PENAL CODE,
11 A FELONY.

12 IT ALLEGES ALSO BETWEEN THOSE TWO DATES WHICH I
13 MENTIONED, JUNE 6TH AND JUNE 7TH, THAT THE DEFENDANT DID
14 UNLAWFULLY AND BY MEANS OF FORCE AND FEAR, TAKE PERSONAL
15 PROPERTY FROM THE PERSON, POSSESSION AND IMMEDIATE PRESENCE
16 OF RONALD GEORGE LEVIN.

17 TO THIS CHARGE OR CHARGES, THE DEFENDANT HAS
18 PLEADED NOT GUILTY AND HAS ASKED FOR A JURY TRIAL. THIS IS
19 THE DAY FIXED FOR THE TRIAL.

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1 NOW IN THIS CASE, THE PEOPLE ARE REPRESENTED BY
2 THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY, BY MR. FRED
3 WAPNER, THE DISTRICT ATTORNEY WHO WILL PRESENT THE CASE ON
4 BEHALF OF THE PEOPLE.

5 WOULD YOU RISE, PLEASE, AND MAKE YOURSELF SEEN
6 A LITTLE BIT?

7 (WHEREUPON, MR. WAPNER STANDS.)

8 THE COURT: ALL RIGHT, THANK YOU.

9 THE DEFENDANT JOE HUNT WILL NOW RISE AND BE
10 IDENTIFIED.

11 (DEFENDANT STANDS.)

12 THE COURT: ALL RIGHT, THANK YOU. YOU MAY BE SEATED.

13 HE IS REPRESENTED BY MR. ARTHUR BARENS, B-A-R-E-N-S,
14 WHO HAS NOW RISEN AND BEEN IDENTIFIED.

15 (MR. BARENS STANDS.)

16 THE COURT: AND MR. RICHARD CHIER, C-H-I-E-R, WHO WILL
17 ALSO REPRESENT THE DEFENDANT IN THIS CASE.

18 (MR. CHIER STANDS.)

19 THE COURT: IN A CHARGE OF MURDER UNDER SPECIAL
20 CIRCUMSTANCES, THAT SPECIAL CIRCUMSTANCE, I HAVE INDICATED
21 TO YOU, IS WHEN IT IS COMMITTED DURING THE COURSE OF A ROBBERY.
22 THAT QUALIFIES THE CASE AS ONE FOR DEATH OR FOR LIFE
23 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

24 NOW LET ME MAKE SOME ADDITIONAL REMARKS ABOUT THAT.

25 WHAT I AM GOING TO DO AT THIS POINT IS TO EXPLAIN
26 TO YOU THE PROCEDURES WHICH WE HAVE IN CALIFORNIA FOR HANDLING
27 A CASE OF THIS TYPE AND THEN, I WANT TO MAKE SOME INQUIRY AS
28 TO YOUR PERSONAL VIEWS AS TO THEM.

13 ^
1 AT THE OUTSET OF THIS TRIAL, THE COURT HAS NO WAY
2 OF KNOWING WHETHER OR NOT WE WILL GO THROUGH WITH ALL OF THESE
3 PROCEDURES BUT SINCE THERE IS A POSSIBILITY AND THERE IS THAT
4 POSSIBILITY -- AND I UNDERLINE "POSSIBILITY" -- LET ME EXPLAIN
5 THE PROCEDURES TO YOU:

6 THE FIRST QUESTION THE JURY WILL BE CALLED UPON
7 TO DECIDE IS THE QUESTION OF THE INNOCENCE OR GUILT OF THE
8 DEFENDANT OF THE CHARGE OF MURDER.

9 NOW, WE HAVE HERE IN CALIFORNIA TWO DEGREES OF
10 MURDER AND THOSE DEFINITIONS WILL BE GIVEN TO YOU WHEN THE
11 JURY IS INSTRUCTED ON THE LAW. BUT FOR NOW, YOU SHOULD KNOW
12 THAT THERE IS MURDER IN THE FIRST DEGREE AND MURDER IN THE
13 SECOND DEGREE.

14 IN THE EVENT, AND ONLY IN THE EVENT THAT THE JURY
15 FINDS THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, AND
16 THAT FINDING MUST BE BEYOND A REASONABLE DOUBT, THEN THE JURY
17 IN THAT SAME PROCEEDINGS WILL BE ASKED TO DETERMINE THE TRUTH
18 OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED.

19 I TOLD YOU THAT THE SPECIAL CIRCUMSTANCE ALLEGED
20 IN THIS CASE WHICH QUALIFIES IT FOR THE DEATH PENALTY IS THAT
21 THE MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

22 IN THE EVENT AND ONLY IN THE EVENT THAT THE JURY
23 FINDS THE SPECIAL CIRCUMSTANCE ALLEGED TO BE TRUE, NAMELY,
24 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEN
25 THE LAW PROVIDES THAT THE SAME JURY IN ANOTHER PHASE OF THAT
26 TRIAL SHALL DECIDE WHAT THE PUNISHMENT FOR THE DEFENDANT SHALL
27 BE.

28 NOW, IN THE EVENT THAT WE GET INTO THAT PHASE OF

1 THE TRIAL, THAT IS, THAT ONE, THE JURY HAS FOUND BEYOND A
2 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF MURDER IN
3 THE FIRST DEGREE AND, TWO, THAT THE SPECIAL CIRCUMSTANCE
4 ALLEGED IS FOUND TO BE TRUE, THEN THE JURY MUST DECIDE WHETHER
5 THE PUNISHMENT SHOULD BE DEATH OR LIFE IMPRISONMENT WITHOUT
6 THE POSSIBILITY OF PAROLE.

7 THE COURT IS, THEREFORE, REQUIRED TO ASCERTAIN
8 IF THERE IS ANY PROSPECTIVE JUROR WHO ENTERTAINS SUCH A
9 CONSCIENTIOUS OPINION REGARDING THE DEATH PENALTY THAT WOULD
10 PRECLUDE HIS OR HER FINDING THE DEFENDANT GUILTY OF MURDER
11 IN THE FIRST DEGREE IF THE EVIDENCE JUSTIFIES SUCH A FINDING
12 AND WOULD OR WOULD NOT PRECLUDE ITS FINDING AS TO THE SPECIAL
13 CIRCUMSTANCE ALLEGED IF THE EVIDENCE SHOULD JUSTIFY SUCH A
14 FINDING OR -- AND/OR IF THAT JUROR BECAUSE OF HIS CONSCIENTIOUS
15 OBJECTION TO THE DEATH PENALTY UNDER NO CIRCUMSTANCES WOULD
16 VOTE FOR A VERDICT OF DEATH, OR THE CONVERSE OF THAT, THAT
17 IS, DO WE HAVE ANY PROSPECTIVE JUROR WHO HAS SUCH A
18 CONSCIENTIOUS OPINION REGARDING THE TWO POSSIBLE VERDICTS THAT
19 HE WOULD AUTOMATICALLY AND IN EVERY CASE VOTE FOR A VERDICT
20 OF DEATH AND UNDER NO CIRCUMSTANCES VOTE FOR A VERDICT OF
21 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

22 NOW, THE TWO QUESTIONS WHICH I AM GOING TO ASK
23 EACH JUROR HAVE ALREADY BEEN INDICATED TO YOU.

24 IN ADDITION, THERE WILL BE OTHERS.

25 NOW, WHAT I HAVE TO DO IS TO QUESTION, WITH THE
26 ASSISTANCE OF COUNSEL, EACH JUROR SEPARATELY. THE LAW
27 PROVIDES FOR IT. NOT IN THE PRESENCE OF OTHER JURORS. AND
28 THE REASON FOR THAT IS, THAT A JUROR COULD POSSIBLY BE

1 PREJUDICED BY HEARING THE ANSWERS WHICH ARE GIVEN TO THE
2 QUESTIONS ASKED OF THE OTHER JURORS, SO FOR THAT REASON WE
3 HAVE TO SINGULARLY QUESTION EACH SEPARATE JUROR TO DETERMINE
4 THEIR ATTITUDE TOWARDS THE DEATH PENALTY AND THE OTHER
5 QUESTIONS WHICH I HAVE POSED.

6 NOW WHEN I HAVE FINISHED WITH THAT JUROR, WE WILL
7 THEN ASK ANOTHER JUROR TO STEP IN. AND THEY ARE IN
8 ALPHABETICAL ORDER. SO I WILL ASK ALL OF YOU TO WAIT OUTSIDE
9 AND THE FIRST JUROR THAT I AM GOING TO QUESTION IN THIS
10 PARTICULAR MATTER IS --

11 WHAT I INTEND TO DO IS, INSTEAD OF HAVING YOU WAIT
12 ALL THIS TIME, WHAT I AM GOING TO DO IS JUST ASK EIGHT OF YOU
13 TO REMAIN FOR THE BALANCE OF THE AFTERNOON AND EXCUSE THE
14 REST OF YOU UNTIL TOMORROW MORNING. ALL OF YOU EXCEPT THOSE
15 EIGHT, WHO I AM GOING TO QUESTION THIS AFTERNOON, WILL COME
16 BACK AND BE IN THE JURY ASSEMBLY ROOM. THAT IS THE BETTER
17 WAY OF DOING IT THAN CALLING THEM ONE AT A TIME AFTER THAT.

18 MR. BARENS: I BELIEVE, YOUR HONOR, WE WERE GOING TO
19 SEGREGATE 12 FOR TOMORROW.

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1 THE COURT: TWELVE TOMMORROW?

2 MR. BARENS: RIGHT, TO AVOID ANY INCONVENIENCE.

3 THE COURT: WHAT WE WILL DO THEN, IS THIS -- WHAT WE
4 WILL DO IS TO JUST RESERVE SIX FOR THIS AFTERNOON. THERE WILL
5 BE SIX FOR THIS AFTERNOON AND THE COURT WILL READ OFF THE NAMES
6 OF ANY OTHER JURORS IN ALPHABETICAL ORDER.

7 WAS IT EIGHT OR TWELVE?

8 MR. BARENS: TWELVE.

9 THE COURT: TWELVE OTHER JURORS WILL COME BACK HERE
10 TOMORROW.

11 AND WHAT WE EXPECT TO DO, IS TO TAKE 12 EVERY DAY,
12 EACH DAY, EXCLUDING FRIDAY. SO THOSE OF YOU WHOSE NAMES ARE
13 DOWN AT THE BOTTOM OF THE LIST, LIKE Z AND R AND S AND T AND
14 SO FORTH, MIGHT NOT BE HEARD FOR A FEW DAYS. MAYBE IT WILL
15 BE BETTER IF THE JURY CLERK WAS TO CALL THEM.

16 MS. WAPNER: MAY WE APPROACH THE BENCH BRIEFLY?

17 THE COURT: YES.

18 (THE FOLLOWING PROCEEDINGS WERE HELD AT
19 THE BENCH:)

20 MR. BARENS: YOUR HONOR, I RECOLLECT INDICATING FOUR
21 FOR TODAY, YOUR HONOR.

22 MR. WAPNER: I BELIEVE THAT IS WHAT WE AGREED TO, ALSO.
23 THE NUMBERS AREN'T AS IMPORTANT TO ME AS THAT WE TELL THEM
24 THAT THEY SHOULD, EXCEPT FOR THE PEOPLE WHO ARE GOING TO STAY
25 TODAY, THEY SHOULD GO TO THE JURY ASSEMBLY ROOM AND THAT THE
26 JURY CLERK WILL GIVE THEM A DATE TO RETURN HERE AND WE CAN
27 HAVE YOUR CLERK --

28 THE COURT: HOW ARE THEY GOING TO KNOW UNLESS I TELL

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1 THEM? IF I TELL THEM, I CAN ALSO TELL THESE PEOPLE, TOO.
2 SHE HAS A BETTER IDEA.

3 THE CLERK: I CAN TAKE THEM OVER IN THE JURY ROOM WHILE
4 YOU ARE INTERVIEWING THE FIRST ONE. I WILL TELL THEM ALL AND
5 WORK IT OUT.

6 MR. WAPNER: OKAY.

7 THE COURT: TWELVE AT A TIME?

8 MR. WAPNER: ALTHOUGH WE DID AGREE THAT WE WOULD HAVE
9 SIX OR EIGHT FOR WEDNESDAY BECAUSE WE ARE GOING TO HAVE MR.
10 ARCE HERE WEDNESDAY MORNING.

11 THE COURT: WE WILL HAVE EIGHT WEDNESDAY.

12 THE CLERK: OKAY.

13 MR. BARENS: COULD YOUR HONOR READ THIS PARAGRAPH TO
14 THEM THAT I REQUESTED?

15 THE COURT: I WILL ASK THEM INDIVIDUALLY IN CHAMBERS --
16 I MEAN, INDIVIDUALLY OUT HERE, AS PART OF THE JURY VOIR DIRE.

17 MR. BARENS: YOUR HONOR, ONLY BECAUSE IT IS POSSIBLE
18 THAT THEY MAY BE --

19 THE COURT: WELL, I WILL GIVE IT TO THEM, ANYWAY.

20 MR. BARENS: OBVIOUSLY, THE JURORS ARE ALL GOING TO BE
21 TALKING TO EACH OTHER PART OF THE TIME THAT WE INTERVIEW THEM
22 INDIVIDUALLY.

23 I WOULD APPRECIATE IT IF YOU WOULD READ IT TO THEM
24 COLLECTIVELY.

25 THE COURT: I DON'T KNOW WHY I WOULD DO IT INDIVIDUALLY.
26 I WILL DO IT WHEN I BRING THEM --

27 MR. BARENS: AS AN ABUNDANCE OF CAUTION, I WOULD LIKE
28 BOTH --

1 THE COURT: GO INTO CHAMBERS, WOULD YOU? THERE IS A
2 PAGE OF A TRANSCRIPT. YOU WILL FIND IT UNDERLINED. WOULD
3 YOU BRING IT OUT?

4 THE CLERK: IS THAT THE PITTMAN TRANSCRIPT?

5 THE COURT: NO. IT IS ON THE DESK SEPARATELY.

6 MR. WAPNER: MAY I BE HEARD JUST BRIEFLY? IF YOU ARE
7 GOING TO READ THEM THAT OTHER PORTION, WHICH IS FINE WITH ME,
8 THERE WAS ANOTHER PART OF THE INTRODUCTION THAT I THINK YOU
9 SHOULD LEAVE OFF, WHICH IS THE PART ABOUT TELLING THEM ABOUT
10 THE DIFFERENT PHASES AND NOT DURING THE DETERMINATION OF THE
11 GUILT STAGE --

12 THE COURT: ALL I DID WAS READ WHAT EXACTLY HAPPENED
13 IN THE PITTMAN CASE.

14 MR. WAPNER: I KNOW THAT. BUT YOU READ A CERTAIN THING
15 IN CHAMBERS THAT I BELIEVE WAS FROM THE SCRIPT, IF YOU WILL,
16 THAT MR. HIRSCH HAD SUBMITTED --

17 THE COURT: YES. I READ EVERYTHING ELSE. DO YOU WANT
18 TO TAKE A LOOK AT IT? TELL ME WHAT ELSE YOU WANT ME TO READ?

19 (THERE WAS A BRIEF PAUSE.)

20 THE COURT: I WAS READING FROM THE PITTMAN CASE. I JUST
21 TOLD THE JURORS --

22 MR. WAPNER: IT IS MY RECOLLECTION. MAY I HAVE A MOMENT,
23 WITH COUNSEL?

24 (THERE WAS A BRIEF PAUSE.)

25 MR. WAPNER: YOUR HONOR, I HAVE DISCUSSED WITH COUNSEL
26 AS TO THE SCRIPT THAT YOU READ TO US IN CHAMBERS THAT MR.
27 HIRSCH SUBMITTED.

28 I WOULD ASK YOU TO START READING AT THE BOTTOM,

1 THE BOTTOM PARAGRAPH ON PAGE 3 AND CONTINUE THROUGH THE BALANCE
2 OF THE SCRIPT.

3 THE COURT: I WILL COVER THAT, TOO.

4 MR. BARENS: NO. I WOULD LIKE THAT DONE SEPARATELY
5 BECAUSE THE SCRIPT DOES NOT HAVE THAT RED, UNDERLINED PORTION.

6 THE COURT: I WON'T DO IT EXACTLY THAT WAY. WHY SHOULD
7 I? I HAVE BEEN GIVING IT TO THEM THIS WAY.

8 MR. BARENS: BUT YOUR HONOR --

9 THE COURT: I DON'T KNOW WHAT YOU SAID. I HAVE GOT MY
10 OWN WAY OF DOING --

11 MR. BARENS: I UNDERSTAND THAT --

12 THE COURT: I WILL INCORPORATE IN SUBSTANCE, WHAT I HAVE
13 ALREADY SAID. THERE IS NOTHING FURTHER IN THERE THAT I HAVE
14 NOT SAID.

15 WHAT IS IT THAT YOU WANT ME TO SAY FURTHER?

16 MR. BARENS: YOUR HONOR, THERE IS AN EMPHASIS IN THIS
17 LANGUAGE THAT THERE HAS NOT BEEN ANY EVIDENCE OF ANY TRIAL
18 AND THAT WE DIDN'T KNOW THAT THERE IS ANY --

19 THE COURT: RIGHT HERE. LET ME REPEAT THAT THERE IS
20 NO WAY OF KNOWING WHETHER OR NOT YOU WILL EVER BE CALLED
21 UPON TO MAKE THAT DETERMINATION AND SO ON AND SO FORTH. IT
22 IS ALL IN HERE.

23 I WILL SAY IT AGAIN TO THE JURY, IF YOU WANT ME
24 TO.

25 MR. BARENS: I AM HOPEFUL THEN, THAT YOUR HONOR WOULD
26 READ THIS TO THEM AT LEAST INDIVIDUALLY AND --

27 THE COURT: I WILL DO THAT INDIVIDUALLY.

28 MR. BARENS: I WOULD APPRECIATE IT IF --

1 THE COURT: AND THAT IS WHAT I WANTED TO DO WITH THAT.

2 MR. CHIER: ONE OTHER MATTER, YOUR HONOR. THAT IS, THE
3 JURORS ARE TO BE ADMONISHED THAT THEY ARE NOT TO DISCUSS
4 ANYTHING WITH ANYONE AND WITH THE PRESS, YOUR HONOR, WHO ARE
5 WAITING OUT IN THE HALLWAY LIKE VULTURES.

6 MR. BARENS: THANK YOU.

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 IN OPEN COURT:)

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1 THE COURT: NOW, LET ME REPEAT THAT I HAVE NO WAY OF
2 KNOWING AS WE START THIS TRIAL, WHETHER OR NOT YOU WILL EVER
3 BE CALLED UPON TO MAKE THE DETERMINATION AS TO THE
4 PUNISHMENT.

5 OF COURSE, THAT WILL DEPEND UPON YOUR FINDINGS
6 FIRST ON THE CHARGE OF MURDER AND SECOND, AS TO THE TRUTHFULNESS
7 OR FALSITY OF THE SPECIAL CIRCUMSTANCES ALLEGED, NAMELY, THAT
8 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

9 NOW, IN ARRIVING AT YOUR VERDICTS IN THIS CASE,
10 ULTIMATELY, THOSE WHO WILL BE CALLED UPON AND SWORN IN AS
11 JURORS -- NOW, THE GUILT OR INNOCENCE OF THE DEFENDANT IN
12 ARRIVING AT YOUR VERDICTS IN THIS CASE, AS TO THE GUILT OR
13 INNOCENCE OF THE DEFENDANT, THE SUBJECT OF PENALTY OR
14 PUNISHMENT IS NOT TO BE DISCUSSED AND IS NOT TO BE CONSIDERED
15 BY THE JURY. THAT IS A MATTER THAT YOU MUST NOT IN ANY WAY
16 BE AFFECTED BY, DURING THE COURSE OF THE GUILT PHASE OF THE
17 TRIAL.

18 NOW, I ALSO WANTED TO ADMONISH YOU THAT EVEN
19 THOUGH NO JURY HAS BEEN SELECTED, THAT YOU ARE NOT TO TALK
20 WITH ANY THIRD PERSONS ON ANY SUBJECT CONNECTED WITH THIS
21 CASE IN ANY WAY AND NOT TALK ABOUT THE CASE WITH ANY MEMBERS
22 OF THE PRESS, IF ANY OF THEM ATTEMPT TO TALK TO YOU ABOUT IT.

23 NOW, HAVE WE GOT THE LIST PREPARED?

24 THE CLERK: YES.

25 THE COURT: ALL RIGHT. NOW, THE FOLLOWING JURORS WILL
26 REMAIN. THAT IS MS. AGSAOAY.

27 MS. AGSAOAY: AGSAOAY?

28 THE COURT: ALL RIGHT. MR. -- THAT IS MS. GERALDINE

1 ANDERSON, JOHN W. BERSINGER, RUTH BLEVINS, JUDITH L. BORNE
2 AND LORI A. BRANNON AND PHYLLIS O. BRYANTPURVEY.
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15 1 NOW TOMORROW -- I WILL TELL YOU WHAT, THE REMAINING
2 JURORS, EXCEPT THOSE WHOSE NAMES I HAVE CALLED OUT, WILL GO
3 TO THE JURY ASSEMBLY ROOM AND THE CLERK OF THIS COURT WILL
4 TELL YOU WHEN TO REPORT FOR FURTHER DUTY IN THIS PARTICULAR
5 CASE.

6 MR. WAPNER: YOUR HONOR, BEFORE THEY DO THAT, I THOUGHT
7 WE HAD DISCUSSED AT THE BENCH, THERE WAS ONE REMAINING
8 PARAGRAPH THAT YOU WERE GOING TO READ TO THE JURORS. IT
9 STARTS "IN ARRIVING AT YOUR VERDICTS ABOUT THE TRUTH OR
10 FALSITY OF THE SPECIAL CIRCUMSTANCE".

11 THE COURT: ALL RIGHT, I WILL GIVE YOU THIS FURTHER
12 INSTRUCTION: IN ARRIVING AT YOUR VERDICT IN THIS CASE AS TO
13 THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED,
14 SHOULD YOU ARRIVE AT THAT POINT, THE SUBJECT OF PENALTY OR
15 PUNISHMENT IS NOT TO BE DISCUSSED AND IS NOT TO BE CONSIDERED
16 BY THE JURY, AS THAT IS NOT A MATTER BEFORE THE JURY DURING
17 THAT PHASE OF THE TRIAL.

18 IT IS ONLY IN THE EVENT THAT THE DEFENDANT IS
19 FOUND GUILTY OF MURDER IN THE FIRST DEGREE AND THE JURY FINDS
20 THAT THE SPECIAL CIRCUMSTANCE ALLEGED IN THE INFORMATION IS
21 TRUE THAT THEY WOULD GO INTO THE PENALTY PHASE THAT I HAVE
22 DESCRIBED. IN THAT PHASE OF THE TRIAL, AND SHOULD WE GET THERE,
23 EVIDENCE MAY BE PRESENTED BY BOTH SIDES AS TO ANY MATTER
24 RELEVANT TO AGGRAVATION, MITIGATION AND SENTENCE BUT THERE
25 IS NO POINT IN GOING INTO THAT ANY FURTHER AT THIS TIME.

26 ALL RIGHT?

27 MR. WAPNER: THANK YOU.

28 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. ALL OF YOU,

15-2
1 EXCEPT THE EIGHT WHOSE NAMES I HAVE READ OUT, GO INTO THE JURY
2 ASSEMBLY ROOM FOR FURTHER INSTRUCTIONS.

3 (WHEREUPON, THE OTHER PROSPECTIVE JURORS
4 LEAVE THE COURTROOM.)

5 THE COURT: APPROACH THE BENCH AGAIN, PLEASE.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS
7 WERE HELD AT THE BENCH:)

8 THE COURT: WE HAVE HOW MANY HERE?

9 MR. WAPNER: SIX.

10 MR. BARENS: WAIT A MINUTE. THERE IS THE WOMAN IN RED.

11 MR. WAPNER: THAT IS SEVEN.

12 MR. BARENS: LET ME LOOK AT THE LIST, IF YOU WOULD, YOUR
13 HONOR.

14 I BELIEVE YOUR HONOR MAY HAVE ONLY MENTIONED SEVEN
15 NAMES.

16 THE COURT: HOW MANY HAVE YOU GOT THERE?

17 THE BAILIFF: SEVEN.

18 MR. CHIER: I WORKED OUT SEVEN, YOUR HONOR.

19 THE BAILIFF: SEVEN, JUDGE.

20 THE COURT: THAT IS RIGHT, THERE ARE ONLY SEVEN.
21 I THINK WE WILL COVER THAT.

22 NOW THE ONLY DIFFICULTY IS, YOU WANT THEM IN OPEN
23 COURT. WHAT AM I GOING TO DO WITH THE OTHERS?

24 THE BAILIFF: WE CAN HAVE THEM SIT OUT ON THE BENCH
25 OUTSIDE.

26 MR. WAPNER: IN THE HALLWAY, THAT IS FINE.

27 THE BAILIFF: THAT IS WHAT DIANE AND I DECIDED, WE WILL
28 KEEP THEM OUTSIDE.

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1 THE COURT: HAVE THEM OUTSIDE IN ALPHABETICAL ORDER.

2 MR. CHIER: WE HAVE NO OBJECTION TO DOING IT IN CHAMBERS.

3 MR. WAPNER: I HAVE STRENUOUS OBJECTIONS TO DOING IT
4 IN CHAMBERS AND I HAVE ALSO DISCUSSED IT WITH THE COURT
5 REPORTERS AND IT MAKES IT MUCH MORE DIFFICULT ON THEM.

6 THE COURT: DOES IT?

7 THE COURT REPORTER: YES.

8 THE COURT: DO YOU WANT THE GIRLFRIEND STAYING HERE?

9 MR. BARENS: I DON'T MIND THAT, YOUR HONOR.

10 MR. WAPNER: I WOULD PREFER THAT SHE NOT BE HERE.

11 THE COURT: NO, I THINK SHE HAD BETTER NOT BE. JUST
12 TELL HER TO WAIT OUTSIDE.

13 MR. BARENS: ALL RIGHT.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS
15 WERE HELD IN OPEN COURT:)

16 THE COURT: ALL RIGHT, MRS. AGSAOAY?

17 MISS AGSAOAY: YES.

18 THE COURT: IS THAT HOW YOU PRONOUNCE IT?

19 MISS AGSAOAY: YES.

20 THE COURT: WILL YOU COME FORWARD, PLEASE?

21 IS THAT HOW YOU PRONOUNCE IT?

22 MISS AGSAOAY: YES.

23 THE COURT: WILL YOU COME FORWARD, PLEASE.

24 (PROSPECTIVE JUROR BEATRICE AGSAOAY
25 TAKES THE WITNESS STAND.)

26 THE COURT: MISS AGSAOAY, I WOULD LIKE YOU TO ANSWER
27 THE FOLLOWING QUESTIONS YES OR NO WITHOUT ANY FURTHER STATEMENT.

28 IF THE QUESTION IS UNCLEAR, PLEASE ASK THAT IT

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1 BE REPEATED BUT DO NOT GO BEYOND ANSWERING THE QUESTION YES
2 OR NO. ALL RIGHT?

3 MISS AGSAOAY: YES.

4 THE COURT: FIRST, IF THE PEOPLE PROVE BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST
6 DEGREE, WOULD YOU REFUSE TO VOTE FOR SUCH A VERDICT BECAUSE
7 OF YOUR CONSCIENTIOUS OPINION CONCERNING THE DEATH PENALTY,
8 KNOWING THAT TO DO SO WOULD OBLIGATE THE JURY TO GET INTO A
9 SECOND OR POSSIBLY -- INTO A SECOND PHASE OF THE TRIAL? IN
10 OTHER WORDS, REGARDLESS OF THE EVIDENCE AND BECAUSE OF YOUR
11 CONSCIENTIOUS OBJECTIONS TO THE DEATH PENALTY, IF YOU HAVE
12 ANY, WOULD YOU IN EVERY CASE AUTOMATICALLY VOTE FOR SOMETHING
13 OTHER THAN MURDER IN THE FIRST DEGREE BECAUSE YOU KNOW THAT
14 SUCH A VERDICT WOULD END THE DEATH PENALTY QUESTION ONCE AND
15 FOR ALL?

16 MISS AGSAOAY: NO.

17 THE COURT: ALL RIGHT, SECOND, IF THE PEOPLE PROVE
18 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF
19 MURDER IN THE FIRST DEGREE AND PROVE BEYOND A REASONABLE
20 DOUBT THE TRUTHFULNESS OF THE SPECIAL CIRCUMSTANCE ALLEGED,
21 NAMELY, THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,
22 WOULD YOU REFUSE TO VOTE FOR A VERDICT OF THE TRUTHFULNESS
23 OF THE SPECIAL CIRCUMSTANCE BECAUSE OF YOUR CONSCIENTIOUS
24 OPINION CONCERNING THE DEATH PENALTY AND KNOWING THAT TO DO
25 SO WOULD OBLIGATE THE JURY TO GET INTO THE PENALTY PHASE?
26 IN OTHER WORDS, REGARDLESS OF THE EVIDENCE THAT MIGHT BE
27 PRODUCED DURING THE COURSE OF THIS TRIAL AND BECAUSE OF YOUR
28 CONSCIENTIOUS OBJECTIONS TO THE DEATH PENALTY, WOULD YOU IN

1 EVERY CASE AUTOMATICALLY VOTE FOR A VERDICT OF UNTRUE AS TO
2 THE SPECIAL CIRCUMSTANCE ALLEGED BECAUSE YOU KNOW THAT SUCH
3 A VERDICT WOULD END THE DEATH PENALTY QUESTION THEN AND THERE?

4 MR. CHIER: I DON'T THINK SHE UNDERSTANDS THE QUESTION,
5 YOUR HONOR.

6 THE COURT: HOW DO YOU KNOW?

7 MR. CHIER: SHE WAS LOOKING PUZZLED, YOUR HONOR.

8 THE COURT: DON'T YOU MAKE ANY REMARKS NOW. JUST LET
9 ME DO THE QUESTIONING, IF YOU WILL, AND DON'T INTERPRET HER
10 MIND.

11 MISS AGSAOAY: PLEASE REPEAT.

12 THE COURT: YES, I WILL.

13 NOW, IF THE PEOPLE PROVE BEYOND A REASONABLE DOUBT
14 THAT THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE
15 AND THEY ALSO PROVE BEYOND A REASONABLE DOUBT THE TRUTHFULNESS
16 OF THE SPECIAL CIRCUMSTANCE, NAMELY, THAT THE MURDER WAS
17 COMMITTED DURING THE COURSE OF A ROBBERY, WOULD YOU REFUSE
18 TO VOTE FOR A VERDICT OF THE TRUTHFULNESS OF THE SPECIAL
19 CIRCUMSTANCE, NAMELY, THAT IT WAS COMMITTED DURING THE COURSE
20 OF A ROBBERY BECAUSE OF YOUR CONSCIENTIOUS OPINION CONCERNING
21 THE DEATH PENALTY AND KNOWING THAT IF YOU WERE TO VOTE
22 AFFIRMATIVELY, WOULD YOU VOTE FOR THE VERDICT OF MURDER IN
23 THE FIRST DEGREE, KNOWING IT WOULD OBLIGATE THE JURY TO GET
24 INTO THE PENALTY PHASE? IN OTHER WORDS, REGARDLESS OF THE
25 EVIDENCE THAT MIGHT BE PRODUCED DURING THE COURSE OF THIS
26 TRIAL AND BECAUSE OF YOUR CONSCIENTIOUS OBJECTIONS TO THE
27 DEATH PENALTY, WOULD YOU IN EVERY CASE AUTOMATICALLY VOTE FOR
28 A VERDICT OF UNTRUE AS TO THE SPECIAL CIRCUMSTANCE ALLEGED

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BECAUSE YOU KNOW THAT SUCH A VERDICT WOULD END THE DEATH
PENALTY QUESTION THEN AND THERE?

MISS AGSAOAY: NO.

THE COURT: YOU UNDERSTAND, DON'T YOU?

MISS AGSAOAY: YES.

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1 THE COURT: THIRD, DO YOU ENTERTAIN SUCH CONSCIENTIOUS
2 OPINIONS CONCERNING THE DEATH PENALTY, THAT REGARDLESS OF THE
3 EVIDENCE THAT MIGHT BE DEVELOPED DURING THAT PHASE OF THE TRIAL,
4 SHOULD WE GET THERE, WOULD YOU AUTOMATICALLY AND ABSOLUTELY
5 REFUSE TO VOTE FOR SUCH A PENALTY IN ANY CASE?

6 MRS. AGSAOAY: NO.

7 THE COURT: IN OTHER WORDS, REGARDLESS OF THE EVIDENCE
8 AND BECAUSE OF YOUR CONSCIENTIOUS OBJECTION TO THE DEATH
9 PENALTY, WOULD YOU IN EVERY CASE, AUTOMATICALLY VOTE FOR LIFE
10 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AND NEVER VOTE FOR
11 THE VERDICT OF DEATH?

12 MRS. AGSAOAY: REPEAT THAT.

13 THE COURT: I WILL REPEAT IT. ALL RIGHT.

14 DO YOU ENTERTAIN SUCH CONSCIENTIOUS OPINIONS
15 CONCERNING THE DEATH PENALTY, THAT REGARDLESS OF THE EVIDENCE
16 THAT MIGHT BE DEVELOPED DURING THAT PHASE OF THE TRIAL IN
17 OTHER WORDS, THE DEATH PENALTY PHASE, SHOULD WE GET THERE,
18 WOULD YOU AUTOMATICALLY AND ABSOLUTELY REFUSE TO VOTE FOR
19 SUCH A PENALTY IN ANY CASE?

20 NOW, IN OTHER WORDS, REGARDLESS OF THE EVIDENCE,
21 BECAUSE OF YOUR CONSCIENTIOUS OBJECTION TO THE DEATH PENALTY,
22 WOULD YOU IN EVERY CASE, AUTOMATICALLY VOTE FOR LIFE
23 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND NEVER FOR
24 A VERDICT OF DEATH?

25 MRS. AGSAOAY: NO.

26 THE COURT: FOURTH AND FINALLY, DO YOU ENTERTAIN SUCH
27 A CONSCIENTIOUS OPINION CONCERNING THE DEATH PENALTY, THAT
28 SHOULD WE GET INTO THAT PHASE OF THE TRIAL, WOULD YOU

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1 AUTOMATICALLY, IN EVERY CASE, VOTE FOR A VERDICT OF DEATH AND
2 UNDER NO CIRCUMSTANCES, VOTE FOR A VERDICT OF LIFE IMPRISON-
3 MENT WITHOUT THE POSSIBILITY OF PAROLE?

4 IN OTHER WORDS, IF YOU WERE TO FIND -- IF YOU WERE
5 TO FIND THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE
6 AND IN CONSIDERING THE MATTER OF THE SPECIAL CIRCUMSTANCES,
7 YOU WOULD NOT VOTE -- I WILL WITHDRAW THAT.

8 WE'LL START AGAIN. LET ME SEE IF I CAN'T CLEAR
9 IT UP FOR YOU. DO YOU ENTERTAIN SUCH CONSCIENTIOUS OPINION
10 CONCERNING THE DEATH PENALTY, THAT SHOULD WE GET INTO THAT
11 PHASE OF THE TRIAL, WOULD YOU AUTOMATICALLY, IN EVERY CASE,
12 VOTE FOR A VERDICT OF DEATH AND UNDER NO CIRCUMSTANCES, VOTE
13 FOR A VERDICT OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF
14 PAROLE?

15 MRS. AGSAOAY: YES.

16 THE COURT: WELL, ON THE PENALTY PHASE, YOU UNDERSTAND,
17 MRS. AGSAOAY, WE DETERMINE WHETHER OR NOT, IF YOU FIND HIM
18 GUILTY OF MURDER IN THE FIRST DEGREE, YOU FIND SPECIAL
19 CIRCUMSTANCES, THEN UNDER THE PENALTY PHASE, YOU ARE REQUIRED
20 TO FIND WHETHER OR NOT HE IS GUILTY -- WHETHER OR NOT THE
21 DEATH PENALTY SHOULD BE POSED OR LIFE IMPRISONMENT WITHOUT
22 POSSIBILITY OF PAROLE.

23 WOULD YOU, WITHOUT ANYTHING FURTHER, ALWAYS VOTE
24 FOR THE DEATH PENALTY AND NOT VOTE FOR LIFE IMPRISONMENT
25 WITHOUT THE POSSIBILITY OF PAROLE OR WOULD YOU BE GUIDED BY
26 MY INSTRUCTIONS ON THE SUBJECT OF BOTH OF THEM?

27 MEANING OF COURSE, IF YOU FIND THE DEFENDANT GUILTY
28 OF MURDER IN THE FIRST DEGREE AND FIND THE SPECIAL CIRCUMSTANCES

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1 TO BE TRUE -- FORGET THAT.

2 MERELY BECAUSE YOU FIND THE DEFENDANT GUILTY OF
3 MURDER IN THE FIRST DEGREE, WOULD YOU AUTOMATICALLY AND IN
4 EVERY CASE, VOTE FOR -- ON THE PENALTY PHASE -- VOTE FOR DEATH,
5 RATHER THAN -- AND UNDER NO CIRCUMSTANCES VOTE FOR A VERDICT
6 OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

7 YOU UNDERSTAND THAT THERE WOULD BE A SECOND PHASE,
8 IF YOU FIND THE DEFENDANT GUILTY OF MURDER IN THE FIRST
9 DEGREE? DO YOU UNDERSTAND THAT?

10 THEN YOU ARE TO DETERMINE, SHOULD IT BE IMPRISON-
11 MENT OR SHOULD YOU DETERMINE WHETHER IT SHOULD BE DEATH --
12 ARE YOUR OPINIONS SUCH ON THE MATTER OF THE DEATH PENALTY,
13 THAT YOU WILL NEVER VOTE FOR LIFE IMPRISONMENT WITHOUT POSSI-
14 BILITY OF PAROLE AND ALWAYS VOTE FOR DEATH?

15 MRS. AGSAOAY: CAN I ASK A QUESTION? CAN I TRY TO SAY
16 WHAT YOU JUST TOLD ME?

17 THE COURT: YES. YOU CAN PARAPHRASE.

18 MRS. AGSAOAY: OKAY. AS FAR AS I MEAN -- RIGHT. THERE
19 IS ONE, WHICH IS THE DEATH PENALTY?

20 THE COURT: YES.

21 MRS. AGSAOAY: THE OTHER ONE, THAT IS LIFE IMPRISONMENT
22 WITHOUT POSSIBILITY OF PAROLE?

23 THE COURT: YES. NOW, IF YOU FOUND THE DEFENDANT GUILTY
24 OF MURDER IN THE FIRST DEGREE, YOU WOULD HAVE TO DETERMINE
25 ONE OF THE TWO OF THEM.

26 MRS. AGSAOAY: YES.

27 THE COURT: NOW, WOULD YOU ALWAYS VOTE FOR THE DEATH
28 PENALTY, IRRESPECTIVE OF ANYTHING, NOT VOTE FOR LIFE

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1 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE?

2 MRS. AGSAOAY: IT DEPENDS UPON WHAT THE CIRCUMSTANCES
3 ARE.

4 THE COURT: ALL RIGHT. SO THAT YOU WOULD -- YOUR MIND
5 IS NOT MADE UP AT THIS POINT, WHERE AUTOMATICALLY YOU WOULD
6 VOTE FOR THE DEATH PENALTY, WHATEVER MIGHT HAPPEN?

7 MRS. AGSAOAY: NO. IT IS WHICHEVER THE CIRCUMSTANCES
8 ARE, EVEN THOUGH YOU HAVE TWO CHOICES.

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1 THE COURT: RIGHT. WOULD YOU AUTOMATICALLY VOTE FOR
2 DEATH OR WOULD YOU JUST LISTEN TO ALL THE TESTIMONY?

3 MRS. AGSAOAY: I WOULD LISTEN. I WOULD LISTEN.

4 THE COURT: TO ALL OF THE EVIDENCE IN AGGRAVATION AND
5 MITIGATION?

6 MRS. AGSAOAY: YES. WHAT IS THE ANSWER TO THAT THEN?
7 WHAT DID I SAY, THEN? DO I SAY YES OR DO I SAY NO?

8 THE COURT: WHAT I AM TALKING ABOUT IS, WOULD YOU LISTEN?
9 IN OTHER WORDS, YOU SAY NO, THAT YOU WOULDN'T AUTOMATICALLY
10 VOTE FOR THE DEATH PENALTY, IS THAT CORRECT?

11 MRS. AGSAOAY: NO.

12 THE COURT: ALL RIGHT. COINCIDENTALLY, IN WHAT I TOLD
13 YOU SO FAR, DOES THIS BRING BACK THE NAME OF THE DEFENDANT?
14 DID THAT BRING BACK ANYTHING YOU MIGHT HAVE READ ABOUT THIS
15 CASE IN THE NEWSPAPER?

16 MRS. AGSAOAY: NO. I KNOW NOTHING.

17 THE COURT: THERE HAS BEEN SOME PUBLICITY ABOUT IT. I
18 WONDERED WHETHER OR NOT YOU HEARD ANYTHING.

19 MRS. AGSAOAY: I HAVE NOT READ IT. I DON'T KNOW THE
20 NAMES. THE NAMES DO NOT SOUND FAMILIAR.

21 THE COURT: YOU HAVE NOT READ ANYTHING IN ANY NEWSPAPER
22 OR ANY MAGAZINE?

23 MRS. AGSAOAY: NO. I DO NOT READ THE MAGAZINES. I READ
24 THE NEWSPAPER. BUT I DON'T REMEMBER WHAT THAT WAS.

25 THE COURT: THE NAME JOE HUNT --

26 MRS. AGASOAY: NO.

27 THE COURT: THE PHRASE "BILLIONAIRE BOYS CLUB" MEANS
28 NOTHING TO YOU?

1 MRS. AGSAOAY: NO.

2 THE COURT: YOU HAVE NOT READ ABOUT THAT?

3 MRS. AGASOAY: NO.

4 THE COURT: ALL RIGHT. LET ME ALSO ADMONISH YOU, THAT
5 IF THIS CASE IS EVER ON THE RADIO OR NEWSPAPERS OR TELEVISION,
6 THAT YOU NOT READ ANYTHING OR HEAR ANYTHING ABOUT IT.

7 MRS. AGASOAY: YES.

8 THE COURT: ALL RIGHT. MR. BARENS?

9 MR. BARENS: THANK YOU. MAY I APPROACH?

10 THE COURT: YES. YOU CAN DO IT FROM THERE.

11 MR. BARENS: ALL RIGHT, YOUR HONOR.

12 IT IS MS. AGASOAY?

13 MRS. AGASOAY: AGASOAY.

14 MR. BARENS: AGASOAY. AND PLEASE FORGIVE ME IF I MAKE
15 THAT MISTAKE AGAIN, IF YOU WOULD.

16 MS. AGASOAY, DO YOU UNDERSTAND THAT WE ARE NOT
17 SURE AT ALL WHETHER WE ARE EVER GOING TO GET THIS TRIAL TO
18 AN EXECUTION OF THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY
19 OF PAROLE? BUT RATHER, BECAUSE THE PEOPLE OF THE STATE OF
20 CALIFORNIA HAVE ASKED FOR THE DEATH PENALTY, WE HAVE TO GO
21 THROUGH THE INQUIRY. DO YOU UNDERSTAND THAT?

22 MRS. AGASOAY: YES.

23 MR. BARENS: DO YOU UNDERSTAND THAT MY CLIENT, JOE HUNT,
24 HAS A PRESUMPTION OF INNOCENCE?

25 MRS. AGASOAY: YES, I DO.

26 MR. BARENS: DO YOU UNDERSTAND THAT THAT IS A FUNDAMENTAL
27 PRINCIPLE OF AMERICAN JURISPRUDENCE, OR OUR LEGAL SYSTEM, THAT
28 ALL DEFENDANTS ARE PRESUMED INNOCENT UNTIL PROVEN GUILTY

1 BEYOND A REASONABLE DOUBT?

2 MRS. AGASOAY: YES.

3 THE COURT: WAIT A MINUTE. PLEASE APPROACH THE BENCH.

4 (THE FOLLOWING PROCEEDINGS WERE HELD

5 AT THE BENCH:)

6 THE COURT: I THINK THOSE QUESTIONS ARE APPROPRIATE AT
7 THE TIME OF THE GENERAL VOIR DIRE. THE JURORS CAN BE ASKED
8 THAT AFTER THEY HAVE BEEN QUALIFIED. I DON'T THINK IT HAS
9 ANYTHING TO DO WITH THE LIMITED QUESTIONS WHICH ARE BEFORE
10 US NOW.

11 MR. BARENS: YOUR HONOR --

12 THE COURT: THE PRESUMPTION OF INNOCENCE AND THE
13 REST OF IT COMES LATER. IT HAS NOTHING TO DO WITH THE CRITICAL
14 QUESTION OF --

15 MR. BARENS: I THINK IT IS IMPERATIVE THAT WE ARE
16 DISCUSSING THE PENALTY PHRASE AND I MAKE IT PERFECTLY CLEAR
17 TO THE --

18 THE COURT: WHAT YOU HAVE ALREADY MADE CLEAR IS THAT
19 IF THEY COME TO THAT, IT IS ONLY IF THEY FIND HIM GUILTY OF
20 MURDER IN THE FIRST DEGREE.

21 MR. BARENS: YOUR HONOR, MY STATEMENT ONLY TAKES LESS
22 THAN 30 SECONDS TO ASK AND BE CONFIRMED. I SUBMIT IT IS
23 APPROPRIATE FOR THE DEFENSE TO ASK THAT.

24 THE COURT: WHAT ARE YOU GOING TO DO, ASK EVERY, SINGLE
25 ONE OF THEM WHETHER OR NOT THEY BELIEVE IN THE PRESUMPTION
26 OF INNOCENCE AND THE BURDEN OF PROOF AND SO ON AND SO FORTH?

27 MR. BARENS: NO. I WAS ONLY --

28 THE COURT: WHAT HAS THAT GOT TO DO WITH THE QUESTIONS

1 BEFORE US?

2 MR. BARENS: BECAUSE WE ARE TALKING ABOUT A PENALTY
3 PHASE QUESTION AND THE BEST WAY TO CONFIRM THAT THEY UNDER-
4 STAND THAT WE MAY NEVER GET TO THAT IS TO RECONFIRM --

5 THE COURT: I HAVE ALREADY TOLD THEM THAT THEY HAVE TO
6 ESTABLISH THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
7 DOUBT.

8 MR. BARENS: THROUGHOUT THE HOVEY VOIR DIRE, THE VOIR
9 DIRE THAT I AM FAMILIAR WITH, THE QUESTION OF THE PRESUMPTION
10 OF INNOCENCE HAS ALWAYS BEEN STATED.

11 THE COURT: ALL RIGHT. GO ON. BUT DON'T EXTEND IT
12 BEYOND THE LIMITED PURPOSE FOR WHICH IT IS INTENDED.

13 MR. BARENS: I WILL NOT.

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN
15 OPEN COURT:)

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1 MR. BARENS: MRS. AGSAOAY, YOU INDICATED IN RESPONSE
2 TO HIS HONOR'S QUESTIONS EARLIER THAT YOU WOULD BE OPEN-MINDED,
3 WAS IT, WHEN IT CAME TO DECIDING WHETHER A DEFENDANT WOULD
4 GET LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE OR THE
5 DEATH PENALTY?

6 MISS AGSAOAY: YES, I HAVE.

7 MR. BARENS: I BELIEVE YOU USED THE EXPRESSION "IT WOULD
8 DEPEND UPON THE CIRCUMSTANCES"?

9 MISS AGSAOAY: YES.

10 MR. BARENS: COULD YOU PLEASE TELL US WHAT
11 CIRCUMSTANCES WOULD MAKE YOU VOTE IN FAVOR OF LIFE WITHOUT
12 THE POSSIBILITY OF PAROLE AS OPPOSED TO THE DEATH PENALTY?

13 MISS AGSAOAY: WELL, FOR EXAMPLE, SAY I AM ON A JURY
14 NOW AND WE HAVE VOTED GUILTY, AS YOU SAY, A PERSON IS GUILTY --
15 I SUPPOSE WE HAVE ALREADY VOTED GUILTY, THEN THE PENALTY WOULD
16 BE EITHER DEATH OR --

17 THE COURT: LIFE IMPRISONMENT.

18 MISS AGSAOAY: LIFE IMPRISONMENT. THEN WOULDN'T YOU
19 BE TALKING TO US IN THE PENALTY PHASE?

20 MR. BARENS: OF COURSE.

21 MISS AGSAOAY: SO WHEN YOU DO THAT, THEN YOU WILL, I
22 WILL -- WE WILL BE LISTENING MORE TO --

23 YOU KNOW, RIGHT NOW AT THAT POINT, THEN WE WILL
24 BE TALKING ABOUT WHETHER IT IS GOING TO BE DEATH OR WHETHER
25 IT IS GOING TO BE --

26 MR. BARENS: YES.

27 MISS AGSAOAY: -- DEATH. THEREFORE, WITH ALL OF THE
28 THINGS THAT YOU WILL BE TALKING TO US AND SO WILL THE

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1 GENTLEMAN THERE (JUROR INDICATING) THAT I COULD BE MAKING
2 A DECISION AT THAT TIME. IS THAT CLEAR?

3 MR. BARENS: THAT IS CORRECT.

4 MR. WAPNER: YOUR HONOR, EXCUSE ME FOR ONE SECOND.
5 COULD THE RECORD REFLECT THAT WHEN SHE SAID "THE GENTLEMAN
6 THERE," SHE POINTED IN MY DIRECTION?

7 THE COURT: ALL RIGHT.

8 MR. BARENS: THAT IS CORRECT.

9 WHAT I AM ASKING YOU, DURING YOUR DECISIONS ON
10 THOSE TYPES OF ISSUES --

11 MISS AGSAOAY: YES.

12 MR. BARENS: -- COULD YOU TELL ME WHAT FACTORS OR
13 CRITERIA IN YOUR MIND MIGHT MAKE YOU FAVOR VOTING FOR LIFE
14 IMPRISONMENT AS OPPOSED TO VOTING FOR THE DEATH PENALTY?

15 MISS AGSAOAY: WELL, IT WILL DEPEND UPON HOW SERIOUS
16 THE CRIME WAS.

17 I MEAN IF -- I DON'T KNOW WHAT IT WAS, IF IT WAS
18 PREMEDITATED OR WHETHER IT WAS ACCIDENTALLY THE GUN WENT OFF
19 OR WHAT, I DON'T KNOW AND IT IS -- YOU KNOW, I THINK WHAT WE
20 WOULD BE DOING IS, IF WE ARE TO DECIDE THE PERSON IS GUILTY
21 AND THEN YOU WILL THEN, MORE OR LESS, TELL US OR TRY TO
22 INFLUENCE US WHETHER THIS ONE OR THE OTHER ONE WOULD BE
23 TAKEN SO THIS IS MY --

24 THE COURT: LET ME CLEAR IT UP. MAYBE YOU DIDN'T
25 UNDERSTAND ME CORRECTLY.

26 I SAID THAT WHEN WE COME TO THE PENALTY PHASE,
27 EACH SIDE WOULD HAVE A RIGHT TO INTRODUCE ANY EVIDENCE IN
28 MITIGATION, THAT MEANS TO LESSEN THE OFFENSE, OR AGGRAVATING,

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1 SOME THINGS HE DID WHICH AGGRAVATED THE OFFENSE. ALL OF THESE
2 SURROUNDING CIRCUMSTANCES, YOU WILL HAVE TIME TO CONSIDER THAT.
3 YOU WILL CONSIDER ALL OF THOSE CIRCUMSTANCES IN MITIGATION --

4 MISS AGSAOAY: YES.

5 THE COURT: -- AND IN AGGRAVATION BEFORE YOU CAN MAKE
6 UP YOUR MIND WHICH.

7 MISS AGSAOAY: YES, I WOULD.

8 THE COURT: ALL RIGHT, GO AHEAD.

9 MR. BARENS: DO YOU BELIEVE IF THERE WAS A SITUATION
10 WHERE IT HAD BEEN PROVEN TO YOUR MIND THAT THE DEFENDANT
11 KILLED SOMEONE AND THAT IT WAS A PREMEDITATED ACT ON THE
12 DEFENDANT'S PART, GIVEN THOSE CIRCUMSTANCES, WOULD YOU ALWAYS
13 VOTE FOR THE DEATH PENALTY?

14 MISS AGSAOAY: YES OR NO?

15 MR. BARENS: YES OR NO.

16 MISS AGSAOAY: NOT NECESSARILY.

17 MR. BARENS: YES OR NO, MA'AM.

18 MR. WAPNER: I DON'T KNOW THAT SHE IS NECESSARILY
19 REQUIRED TO ANSWER THE QUESTION YES OR NO.

20 MR. BARENS: I AM ASKING IF YOU ARE ABLE TO ANSWER ME,
21 MA'AM, IN THOSE TERMS.

22 THE COURT: YOU WOULD LISTEN TO ALL OF THE TESTIMONY,
23 WOULD YOU NOT --

24 MISS AGSAOAY: YES, I WILL.

25 THE COURT: -- IN ORDER TO DETERMINE WHETHER THE
26 DEFENDANT COMMITTED A MURDER AND IF HE COMMITTED THE MURDER,
27 WHETHER IT WAS MURDER OF THE FIRST DEGREE OR SECOND DEGREE,
28 THAT IS ONE PHASE OF THE TRIAL, YOU UNDERSTAND THAT?

1 MISS AGSAOAY: YES, THAT'S WHAT I UNDERSTAND.

2 THE COURT: NOW THE SECOND PHASE COMES LATER.

3 MISS AGSAOAY: YES, WHICH IS THE PENALTY.

4 THE COURT: THAT'S RIGHT, THE PENALTY PHASE.

5 MISS AGSAOAY: NOW IT IS IN THE PENALTY PHASE THAT WE
6 ARE NOW TALKING ABOUT?

7 MR. BARENS: YES, MA'AM.

8 THE COURT: MAYBE I DIDN'T MAKE MYSELF CLEAR.

9 YOU UNDERSTAND THAT NOT ONLY MUST YOU DETERMINE
10 WHETHER OR NOT IT IS MURDER IN THE FIRST DEGREE BEFORE YOU
11 CONSIDER THE PENALTY --

12 MISS AGSAOAY: THAT'S RIGHT.

13 THE COURT: -- YOU MUST NOT ONLY CONSIDER THE MURDER
14 IN THE FIRST DEGREE FINDING, BUT YOU MUST ALSO CONSIDER THE
15 SPECIAL CIRCUMSTANCE, WHETHER OR NOT IT WAS COMMITTED DURING
16 THE COURSE OF A ROBBERY AND ONLY IF YOU FIND THE SPECIAL
17 CIRCUMSTANCE TO BE TRUE, THAT IT WAS COMMITTED DURING THE
18 COURSE OF A ROBBERY, IF YOU FIND HIM GUILTY OF MURDER IN THE
19 FIRST DEGREE, THAT YOU WILL THEN CONSIDER THE SPECIAL
20 CIRCUMSTANCE WHETHER IT IS TRUE OR UNTRUE; DO YOU UNDERSTAND
21 THAT?

22 MISS AGSAOAY: YES.
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1 THE COURT: IN OTHER WORDS, FIRST YOU DECIDE WHETHER
2 OR NOT IT IS MURDER IN THE FIRST DEGREE, ALL RIGHT?

3 MISS AGSAOAY: YES, RIGHT, THAT IS THE FIRST PHASE.

4 THE COURT: IF YOU FIND IT IS MURDER IN THE FIRST DEGREE,
5 THEN YOU HAVE TO DETERMINE WHETHER OR NOT IT WAS COMMITTED
6 DURING THE COURSE OF A ROBBERY. YOU SEE THAT IS A SPECIAL
7 CIRCUMSTANCE. IF YOU DO THAT, IF YOU FIND IT TO BE TRUE, THAT
8 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEN COMES
9 THE SECOND PHASE, NAMELY, THE PENALTY PHASE; DO YOU UNDERSTAND
10 THAT?

11 MISS AGSAOAY: YES, I UNDERSTAND.

12 THE COURT: ALL RIGHT. AND YOU ARE WILLING TO DO THAT,
13 ARE YOU?

14 MISS AGSAOAY: I AM WILLING TO DO THAT, YES.

15 THE COURT: ALL RIGHT.

16 MR. BARENS: NOW, WHAT I WAS ASKING YOU SPECIFICALLY
17 WAS: NOW WE ARE IN THE PENALTY PHASE, IF IT HAD ALREADY BEEN
18 ESTABLISHED TO YOU THAT IT WAS MURDER IN THE FIRST DEGREE AND
19 THAT THE SPECIAL CIRCUMSTANCES WERE TRUE, THAT IS, THAT THE
20 MURDER OCCURRED DURING THE COMMISSION OF A ROBBERY, IF THOSE
21 TWO THINGS HAD BEEN PROVEN TO YOU, WOULD YOU VOTE ALWAYS FOR
22 THE DEATH PENALTY?

23 MISS AGSAOAY: I DON'T KNOW, NOT AT THIS POINT, I CAN'T.

24 MR. BARENS: THAT IS A GOOD ANSWER.

25 MISS AGSAOAY: I CAN'T AT THIS TIME.

26 MR. BARENS: YOU DON'T KNOW UNTIL YOU HAVE HEARD ALL
27 OF THE THINGS --

28 MISS AGSAOAY: YES.

1 MR. BARENS: -- ABOUT THE DEFENDANT?

2 WOULD THINGS ABOUT THE ALLEGED VICTIM INFLUENCE
3 YOUR DECISION?

4 MISS AGSAOAY: THINGS ABOUT THE ALLEGED VICTIM?

5 MR. BARENS: THE CHARACTER OF THE MAN WHO WAS ALLEGEDLY
6 KILLED, WOULD THINGS ABOUT HIS CHARACTER INFLUENCE YOU IN
7 DETERMINING WHETHER THE DEFENDANT SHOULD GET THE DEATH PENALTY?

8 MISS AGSAOAY: I DON'T KNOW EITHER.

9 THE COURT: DO YOU CONCUR IN THAT?

10 MR. WAPNER: CONCUR IN THAT, YOUR HONOR?

11 THE COURT: THAT THE PENALTY PHASE INCLUDES THE
12 CHARACTER OF THE DECEASED.

13 MR. WAPNER: DO I CONCUR IN THAT? I DON'T KNOW WHETHER
14 IT WOULD BE ADMISSIBLE EVIDENCE. IT IS A QUESTION OF WHETHER
15 IT GOES TO AGGRAVATION OR MITIGATION AND I DOUBT THAT THAT
16 PROBABLY WILL BUT --

17 MR. BARENS: IF I MIGHT, YOUR HONOR.

18 THE COURT: I DON'T THINK IT IS A PROPER QUESTION AT
19 THIS TIME.

20 MR. CHIER: EXCUSE ME, PLEASE.

21 THE COURT: LISTEN, YOU SIT DOWN. I HAVE GOT HIM.
22 MR. BARENS IS NOW QUESTIONING THE JUROR. I DON'T WANT TO HAVE
23 BOTH OF YOU.

24 MR. CHIER: IT IS A POINT OF LAW, YOUR HONOR.

25 THE COURT: A POINT OF LAW, YOU TALK TO YOUR CO-COUNSEL
26 AND HAVE HIM MAKE THE POINT.

27 MR. CHIER: YOUR HONOR, ARE YOU SAYING I HAVE NO
28 STANDING TO SPEAK IN THIS COURT?

1 THE COURT: YES, YOU DO BUT WE CAN'T HAVE TWO AT THE
2 SAME TIME. ONLY ONE AT A TIME.

3 MR. CHIER: I WISH LEAVE OF THE COURT TO ADDRESS THE
4 COURT REGARDING --

5 THE COURT: NOT IN FRONT OF THE JUROR.

6 MR. CHIER: OUTSIDE OF THE HEARING OF THE JUROR.

7 THE COURT: GO AHEAD AND FINISH YOUR QUESTION.

8 MR. BARENS: YOUR HONOR, I DO WANT TO STATE THAT I DO
9 BELIEVE IT IS A PROPER INQUIRY. IT GOES TO THE TOTALITY OF
10 THE CIRCUMSTANCES AND I BELIEVE IT DOES GO TO MITIGATION.
11 UNDER THE 190 SECTION, YOUR HONOR, THERE WERE A FEW ISSUES
12 THAT CAME UP IN THE LIVESAY HEARING AND I BELIEVE THAT IT
13 WAS POINTS 10 AND 12 IN THE CRITERIA, WHICH I BELIEVE ALLOW
14 US TO INTRODUCE EVIDENCE CONCERNING THE CHARACTER OF THE
15 VICTIM.

16 BE THAT AS IT MAY, I AM NOT GOING TO GO INTO THAT
17 FURTHER NOW.

18 THE COURT: ALL RIGHT. YOU WILL CONSIDER ALL OF THE
19 CIRCUMSTANCES WHICH WILL BE BROUGHT UP ON THE PENALTY PHASE
20 OF THE CASE, THE SECOND PHASE, EVERYTHING WHICH THE COURT
21 PERMITS TO BE ASKED AND BROUGHT UP, YOU WILL CONSIDER ALL OF
22 THOSE FACTS AND CIRCUMSTANCES, WON'T YOU, BEFORE YOU MAKE UP
23 YOUR MIND AS TO THE PENALTY?

24 MISS AGSAOAY: YES, I WILL.

25 MR. BARENS: HOW DO YOU FEEL IN GENERAL ABOUT THE DEATH
26 PENALTY?

27 MISS ABSOAY: IF THE PERSON IS JUDGED GUILTY IN THE
28 FIRST DEGREE AND THE PENALTY IS DEATH, DEFINITELY DEATH, THEN

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1 I WILL GO ALONG WITH THAT.

2 IF THE VERDICT IS GUILTY IN THE FIRST DEGREE AND
3 THE CIRCUMSTANCES, HEARING ALL OF THE CIRCUMSTANCES, THAT THE
4 LIFE IMPRISONMENT WITHOUT ANY PAROLE IS THE SOLUTION, THE ANSWER,
5 I WILL GO ALONG WITH THAT. I WILL GO ALONG WITH THAT.

6 MR. BARENS: DO YOU UNDERSTAND THAT IN CALIFORNIA WE
7 DON'T HAVE ANY CRIMES THAT ABSOLUTELY MAKE THE DEATH PENALTY
8 MANDATORY BUT, RATHER, IT IS A DECISION MADE BY YOURSELF AS
9 JURORS?

10 THE LAW DOESN'T MAKE THE DEATH PENALTY MANDATORY.
11 THE JURY DECIDES WHETHER OR NOT THE DEFENDANT SHOULD HAVE THE
12 DEATH PENALTY; DO YOU UNDERSTAND THAT?

13 MISS AGSAOAY: YES, I DO.

14 MR. BARENS: AND WHEN YOU USED THE EXPRESSION A MOMENT
15 AGO IN REFERRING TO LIFE WITHOUT THE POSSIBILITY OF PAROLE,
16 "THAT THE SOLUTION IS THE POSSIBILITY OF IMPRISONMENT WITHOUT
17 THE POSSIBILITY OF PAROLE," WHAT DO YOU MEAN BY THAT?

18 MISS AGSAOAY: THAT MEANS THAT BECAUSE, SAY, WE THE JURY
19 DID NOT VOTE -- SAID, ALL RIGHT, LET'S NOT GIVE HIM THE DEATH
20 PENALTY, LET'S GIVE HIM THE OTHER ONE, THE OTHER SOLUTION.

21 MR. BARENS: LIFE?

22 MISS AGSAOAY: MY FEELING IS THIS: IF IT SAYS LIFE
23 IMPRISONMENT WITHOUT ANY POSSIBLE PAROLE, THAT IS WHAT I MEAN,
24 NO POSSIBLE PAROLE. IN OTHER WORDS, IT IS GOING TO BE LIFE
25 IMPRISONMENT AND NO PAROLE IN TEN, FIFTEEN YEARS.

26 THE COURT: OR AT ANY TIME?

27 MISS AGSAOAY: THE REST OF HIS LIFE.

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1 MR. BARENS: RIGHT.

2 MRS. AGSAOAY: AND THAT IS MY INTERPRETATION OF WHAT IT
3 MEANS.

4 MR. BARENS: AND THAT IS, I BELIVE WHAT YOUR HONOR TOLD
5 YOU, IS THAT LIFE WITHOUT POSSIBILITY OF PAROLE MEANS EXACTLY
6 THAT, THAT THERE WILL BE NO PAROLE?

7 MRS. AGSAOAY: THAT'S RIGHT.

8 MR. BARENS: HOW DO YOU FEEL ABOUT THE CONCEPT OF AN
9 EYE FOR AN EYE?

10 MRS. AGSAOAY: OH. I GIVE YOU A BLACK EYE AND YOU GIVE
11 ME ONE?

12 MR. BARENS: OR A LIFE FOR A LIFE?

13 MRS. AGASOAY: OR A LIFE FOR A LIFE? THAT DEPENDS UPON
14 WHAT THE CIRCUMSTANCES ARE AND WHAT YOU TWO GENTLEMEN COME
15 OUT AND TRY TO CONVINC ME.

16 MR. WAPNER: AGAIN INDICATING MR. BARENS AND MYSELF,
17 YOUR HONOR.

18 THE COURT: YES.

19 MRS. AGASOAY: SORRY.

20 MR. BARENS: DO YOU HONESTLY BELIEVE THAT IF YOU FOUND
21 THAT MURDER IN THE FIRST DEGREE HAD BEEN COMMITTED BEYOND A
22 REASONABLE DOUBT AND THAT THE SPECIAL CIRCUMSTANCES ARE TRUE,
23 THAT IT WOULD BE POSSIBLE DURING THE PENALTY PHASE FOR MYSELF,
24 AS THE DEFENSE LAWYER, TO SHOW YOU INFORMATION THAT WOULD MAKE
25 YOU BELIEVE THE DEATH PENALTY WAS NOT APPROPRIATE?

26 MRS. AGASOAY: YES. YOU CAN SHOW IT TO ME. YOU CAN,
27 AS LONG AS YOU TRY TO CONVINC ME.

28 MR. BARENS: DO YOU THINK THAT IT WOULD BE AS EASY TO

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1 CONVINCED YOU THAT LIFE WITHOUT POSSIBILITY OF PAROLE IS
2 APPROPRIATE, AS IT WOULD BE TO CONVINCED YOU THAT THE DEATH
3 PENALTY WAS THE ONLY SOLUTION?

4 MRS. AGSAOAY: WHICHEVER YOU ARE GOING TO CONVINCED ME.

5 MR. BARENS: DO YOU THINK ONE WAY WOULD BE EASIER THAN
6 THE OTHER? DO YOU HAVE A DEFINITE FEELING ABOUT THAT?

7 MRS. AGSAOAY: THAT, NO. I THINK BOTH WOULD BE DIFFICULT.

8 MR. BARENS: AS YOU SIT HERE TODAY, DO YOU HAVE A BIAS
9 TOWARD ONE OR THE OTHER IN GENERAL, TOWARD EITHER THE DEATH
10 PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE?

11 MRS. AGSAOAY: NO, I DON'T.

12 MR. BARENS: YOU HAVE NO PRECONCEIVED IDEAS ABOUT THAT?

13 MRS. AGSAOAY: NO.

14 MR. BARENS: DO YOU HAVE ANY ATTITUDES ABOUT THE --
15 I WILL WITHDRAW THAT, YOUR HONOR.

16 IF THE CASE WAS CLOSE IN YOUR FINDING WHETHER THERE
17 WAS GUILT OR INNOCENCE DURING THE GUILT PHASE OF THE TRIAL,
18 DO YOU THINK THAT YOU MIGHT BE TEMPTED TO VOTE FOR GUILT,
19 KNOWING IN YOUR MIND, THAT YOU WOULD BE VOTING FOR LIFE WITHOUT
20 POSSIBILITY OF PAROLE, ANYHOW, AS SORT OF A COMPROMISE?

21 MRS. AGSAOAY: WOULD YOU REPEAT THAT, PLEASE?

22 MR. BARENS: SURE. IF THIS WAS A CLOSE CASE AND TOWARD
23 THE END OF THE CASE, IT WAS GETTING CLOSE TO MAKING A DECISION
24 AS TO WHETHER MY CLIENT WAS QUILTY OR INNOCENT, WOULD YOU BE
25 TEMPTED TO VOTE FOR GUILTY BECAUSE YOU FOUND IN YOUR OWN MIND
26 WELL, AS A COMPROMISE DURING THE PENALTY PHASE, I WILL VOTE
27 FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE INSTEAD
28 OF THE DEATH PENALTY?

1 MRS. AGSAOAY: NO.

2 MR. BARENS: YOU WOULD DECIDE THE TWO ELEMENTS SEPARATELY?

3 MRS. AGSAOAY: YES.

4 MR. BARENS: DO YOU FEEL THAT YOUR MIND IS TRULY OPEN
5 ABOUT LIFE WITHOUT POSSIBILITY OF PAROLE, AS OPPOSED TO THE
6 DEATH PENALTY? ARE YOU OPEN-MINDED ON THOSE TWO?

7 MRS. AGSAOAY: I AM OPEN-MINDED ON BOTH OF THEM.

8 MR. BARENS: AND YOU WOULD VOTE EITHER WAY DEPENDING
9 ON THE CIRCUMSTANCES?

10 MRS. AGSAOAY: YES.

11 MR. BARENS: IF I WERE TO TELL YOU, FOR INSTANCE, THAT
12 THE DEFENDANT HAD NOT COMMITTED ANY PRIOR CRIMES --

13 MR. WAPNER: OBJECTION. ASKING THE WITNESS TO PREJUDGE
14 THE EVIDENCE IN THIS CASE.

15 THE COURT: SUSTAINED.

16 MR. BARENS: JUST A MOMENT, YOUR HONOR.

17 (BRIEF PAUSE.)

18 MR. WAPNER: MAY I ASK THAT COUNSEL BE ADMONISHED NOT
19 TO REPEAT THAT QUESTION TO THE OTHER JURORS?

20 THE COURT: I WILL TELL HIM.

21 MR. BARENS: IN CONSIDERING WHETHER TO GIVE LIFE OR
22 DEATH, WOULD YOU CONSIDER THE DEFENDANT'S AGE?

23 MRS. AGSAOAY: NO.

24 MR. BARENS: WOULD YOU CONSIDER WHETHER HE HAD A PRIOR
25 RECORD OR NOT?

26 MRS. AGSAOAY: NO.

27 MR. BARENS: WHAT WOULD YOU CONSIDER IN DETERMINING LIFE
28 OR DEATH, JUST THE CIRCUMSTANCES OF THE CRIME?

1 MRS. AGSAOAY: YES, THE CIRCUMSTANCES OF THIS PARTICULAR
2 CRIME THAT HE DID, IF THERE IS ONE.

3 MR. BARENS: I SEE.

4 THE COURT: IN OTHER WORDS, YOU NEED TO LISTEN FIRST?
5 YOU WILL BE GUIDED BY WHAT THE COURT SAYS THE CIRCUMSTANCES
6 WERE THAT YOU WOULD TAKE INTO CONSIDERATION?

7 MRS. AGSAOAY: YES.

8 THE COURT: THE BACKGROUND, THE EDUCATION AND EVERYTHING
9 ELSE ABOUT THE DEFENDANT? YOU WOULD CONSIDER ALL OF THE
10 CIRCUMSTANCES WHICH THE COURT TELLS YOU YOU MAY HAVE A RIGHT
11 TO DO; IS THAT RIGHT? EVERYTHING?

12 MRS. AGSAOAY: YES.

13 THE COURT: ALL RIGHT.

14 MR. BARENS: THEREFORE, I THINK WHAT THE JUDGE IS SAYING
15 TO YOU MA'AM, IS THAT IF THE COURT INSTRUCTED YOU THAT YOU
16 SHOULD CONSIDER THE DEFENDANT'S AGE OR LACK OF A PRIOR RECORD,
17 IF THAT BE THE CASE, THAT YOU WOULD DO SO?

18 MRS. AGSAOAY: IF THE JUDGE SO INSTRUCTS, YES.

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1 MR. BARENS: AND IF THE JUDGE TOLD YOU THAT THOSE SORTS
2 OF CONSIDERATIONS SHOULD MAKE A DIFFERENCE IN WHETHER HE LIVES
3 OR DIES, YOU WOULD CONSIDER THOSE THINGS IN MAKING YOUR
4 DECISION?

5 MISS AGSAOAY: IF THE JUDGE SAYS SO.

6 MR. BARENS: CAN YOU THINK OF SITUATIONS WHICH YOU COULD
7 TELL ME ABOUT, WHERE YOU DON'T THINK THE DEATH PENALTY IS
8 APPROPRIATE?

9 MISS AGSAOAY: SELF-DEFENSE.

10 MR. BARENS: ANY OTHERS?

11 MISS AGSAOAY: IS INAPPROPRIATE?

12 MR. BARENS: THAT'S CORRECT.

13 MISS AGSAOAY: SELF-DEFENSE. WHEN SOMEBODY IS DEATHLY
14 ILL, I WOULD PULL THE PLUG.

15 MR. BARENS: EUTHANASIA OR MERCY KILLING, YOU ARE THINKING
16 ABOUT?

17 MISS AGSAOAY: YES, MERCY KILLING. TO ME, THAT'S --

18 MR. BARENS: WOULD YOU IN EVERY OTHER CASE, EXCEPT FOR
19 THOSE TWO THAT YOU HAVE GIVEN, VOTE FOR THE DEATH PENALTY?

20 MISS AGSAOAY: I DON'T KNOW. I HAVE NOT THOUGHT OF THE
21 DEATH PENALTY UNTIL RIGHT HERE IN THIS COURT. I NEVER THOUGHT
22 ABOUT THAT.

23 MR. BARENS: ALL RIGHT. BUT YOU CAN'T THINK OF ANY OTHER
24 EXAMPLES RIGHT NOW?

25 MISS AGSAOAY: NOT AT THIS MOMENT.

26 MR. BARENS: COULD YOU GIVE ME THE REVERSE OF THAT?
27 WELL, ALL RIGHT. NOTHING FURTHER AT THIS MOMENT.

28 THE COURT: ALL RIGHT.

8B-2

1 MR. WAPNER: GOOD AFTERNOON, MISS AGSAOAY.

2 I WANT TO ASK YOU FIRST OF ALL, IT SEEMS TO ME
3 THAT YOU HAVE A PRETTY GOOD UNDERSTANDING OF THE DIFFERENT
4 PHASES THAT WE ARE GOING TO GO THROUGH. DID YOU UNDERSTAND
5 THE JUDGE, WHEN HE WAS EXPLAINING TO YOU THAT IN THE FIRST
6 PHASE, WHICH IS WHAT WE CALL THE GUILT PHASE WHEN YOU ARE
7 TRYING TO MAKE A DECISION AS TO WHETHER OR NOT THE PERSON IS
8 GUILTY OF MURDER AND IF SO, WHETHER IT IS MURDER IN THE FIRST
9 DEGREE? DID YOU UNDERSTAND THAT WHEN YOU ARE MAKING THAT
10 DECISION, YOU DON'T THINK ABOUT THE POSSIBLE PENALTIES OR
11 PUNISHMENTS?

12 MISS AGSAOAY: YES. I UNDERSTAND THAT.

13 MR. WAPNER: OKAY. AND COULD YOU, IF THE JUDGE TELLS
14 YOU THAT THAT IS THE LAW, COULD YOU FOLLOW THAT INSTRUCTION?

15 MISS AGSAOAY: IF THE JUDGE SO TELLS US THAT THAT IS
16 THE LAW, THEN WE NEED TO FOLLOW IT, YES.

17 MR. WAPNER: SO WHAT I AM GETTING IT IS, IF YOU ARE IN
18 THE JURY ROOM WITH THE OTHER JURORS AND YOU ARE TRYING TO MAKE
19 A DECISIONON WHETHER OR NOT THE PERSON IS GUILTY OF MURDER,
20 CAN YOU PUT OUT OF YOUR MIND THE FACT THAT IF YOU FIND HIM
21 GUILTY, YOU MIGHT HAVE TO DECIDE WHETHER HE SHOULD LIVE OR
22 WHETHER HE SHOULD DIE?

23 MISS AGSAOAY: WHAT I WILL BE THINKING AT THAT MOMENT --
24 IS THAT THE FIRST PHASE?

25 MR. WAPNER: OKAY. WHAT I WAS --

26 MISS AGSAOAY: IN OTHER WORDS, THERE IS NOTHING BEYOND
27 THERE. FIRST, WE WILL HAVE TO DECIDE WHETHER IT IS GUILT OR
28 NOT. WE ARE NOT -- I AM -- AS FAR AS I AM CONCERNED, I AM

18P-7
1 NOT GOING TO BE THINKING BEYOND THAT.

2 BECAUSE THAT FIRST PHASE WHICH IS YOUR GUILT
3 PHASE, IS THE BIG DECISION TO MAKE. ALL OF OUR DECISIONS MUST
4 BE MADE ON THE EVIDENCE THAT WE HAVE. I CANNOT BE THINKING
5 ON WHAT IS AFTERWARDS.

6 MR. WAPNER: THANK YOU. WHEN YOU GET -- IF YOU GET TO
7 THE PENALTY PHASE OF THE TRIAL, THERE WILL BE IN ALL
8 LIKELIHOOD, EVIDENCE PUT ON BY BOTH SIDES.

9 IN OTHER WORDS, NOT JUST THE LAWYERS WILL TALK
10 TO YOU BUT WE'LL PROBABLY CALL WITNESSES WHO WILL GIVE YOU
11 MORE EVIDENCE IN THE CASE IN EITHER AGGRAVATION OR MITIGATION
12 OF THE POSSIBLE SENTENCE.

13 AND AFTER THAT, THE LAWYERS WILL ARGUE TO YOU AGAIN
14 AS TO WHETHER OR NOT WE FEEL THAT IT SHOULD -- YOU SHOULD
15 RETURN A VERDICT OF DEATH OR LIFE IMPRISONMENT WITHOUT
16 POSSIBILITY OF PAROLE.

17 AND THEN AFTER THAT, YOU AND THE OTHER JURORS,
18 IF YOU ARE SELECTED, WILL HAVE TO MAKE A DECISION AS TO THE
19 POSSIBLE PENALTY. YOU UNDERSTAND THAT?

20 MISS AGSAOAY: YES I DO.

21 MR. WAPNER: AND IN ARRIVING AT THAT DECISION, DO I
22 UNDERSTAND THAT IT IS GOING TO BE YOUR INDIVIDUAL DECISION?

23 MISS AGSAOAY: YES.

24 MR. WAPNER: AND IS THAT A DECISION YOU THINK YOU ARE
25 CAPABLE OF MAKING?

26 MISS AGSAOAY: I THINK SO.

27 MR. WAPNER: DO YOU EVER REMEMBER GIVING ANY THOUGHT
28 TO THE DEATH PENALTY BEFORE YOU CAME INTO THIS COURTROOM?

1 MISS AGSAOAY: WHEN WE VOTED -- YOU MEAN HERE? NO.
2 ONLY WHEN WE HAD -- WHEN IT CAME TO THE VOTE, THE STATE
3 ELECTIONS.

4 MR. WAPNER: YES. OKAY AND A FEW YEARS BACK, THE DEATH
5 PENALTY -- THERE WAS A DEATH PENALTY INITIATIVE ON THE BALLOT?

6 MISS AGSAOAY: YES.

7 MR. WAPNER: DO YOU REMEMBER VOTING IN THAT ELECTION?

8 MISS AGSAOAY: YES I DID.

9 MR. WAPNER: ALL RIGHT. AND DO YOU REMEMBER HOW YOU
10 VOTED?

11 MISS AGSAOAY: YES I DO.

12 MR. WAPNER: HOW AS THAT?

13 MISS AGSAOAY: I VOTED FOR IT.

14 MR. WAPNER: THAT WE SHOULD HAVE THE DEATH PENALTY?

15 MISS AGSAOAY: THAT WE SHOULD HAVE THE DEATH PENALTY.

16 MR. WAPNER: AND DO YOU KNOW IF YOU EVER HAD A DIFFERENT
17 OPINION AT SOME TIME BEFORE THAT ELECTION OR HAVE YOU ALWAYS
18 FELT PRETTY MUCH THE SAME WAY?

19 MISS AGSAOAY: DID I FEEL DIFFERENTLY BEFORE THE
20 ELECTION?

21 MR. WAPNER: I GUESS WHAT I AM TRYING TO GET AT IS, DID
22 YOUR OPINION CHANGE AT SOME TIME? IN OTHER WORDS, AT THE TIME
23 THAT YOU WERE CALLED UPON TO VOTE, IT WAS YOUR OPINION THAT
24 WE SHOULD HAVE THE DEATH PENALTY IN CALIFORNIA?

25 MISS AGSAOAY: YES.

26 MR. WAPNER: AND WHAT I AM ASKING YOU IS, MAYBE A YEAR
27 OR SO BEFORE THAT, DID YOU STILL FEEL THE SAME WAY OR DID YOU
28 AT SOME POINT, FEEL DIFFERENTLY?

1 MISS AGSAOAY: CIRCUMSTANCES WILL DEPEND. I VOTED FOR
2 THE DEATH PENALTY BECAUSE MY FEELING -- CAN I SAY THAT?

3 THE COURT: SURE.

4 MISS AGSAOAY: BECAUSE MY FEELING IS THAT IF THERE WAS
5 NO DEATH PENALTY, THAT EVERYTHING WILL GO AWRY.

6 SO AT LEAST, THERE IS SOME KIND OF A LAW. AND
7 YET, WE CAN DECIDE ONE WAY OR THE OTHER. I THINK THAT THIS
8 IS WHAT IS HAPPENING HERE. I MEAN, HERE IN CALIFORNIA.

9 EVEN THOUGH THERE IS A DEATH PENALTY, YET, THERE
10 ARE CIRCUMSTANCES THAT MAKES ONE CHANGE. THE CIRCUMSTANCES --
11 NOT BECAUSE WE GET THE DEATH PENALTY AND THAT IS THE DEATH
12 PENALTY, AS YOU SAY.

13 WE WILL GIVE, YOU KNOW -- IF WE REACH THAT PHASE
14 THERE, YOU WILL BRING US EVIDENCE OR ARGUMENTS OR SOMETHING.
15 SO THEREFORE, THEN MY DECISION AT THE TIME -- SORRY. JUST
16 BECAUSE I VOTED FOR THE DEATH PENALTY, THAT DOESN'T MEAN THAT
17 THAT IS THAT AND THERE IS NO GREY SECTION THERE.

18 MR. CHIER: NO WHAT?

19 MISS AGSAOAY: NO GREY SECTION, YOU KNOW, MEANING THAT
20 AT THAT TIME, THIS IS MY DECISION.

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9-1

1 MR. WAPNER: SO WHAT YOU ARE SAYING IS THAT JUST BECAUSE
2 WE HAVE A LAW IN CALIFORNIA THAT PERMITS THE JURY TO IMPOSE
3 THE DEATH PENALTY, THAT IN THIS PARTICULAR CASE YOU WOULD
4 LISTEN TO ALL OF THE EVIDENCE ON BOTH SIDES IN MAKING YOUR
5 DECISION AS TO WHETHER TO IMPOSE THE DEATH PENALTY OR NOT?

6 MRS. AGSAOAY: YES.

7 MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.

8 THE COURT: ALL RIGHT.

9 MR. BARENS: AM I PERMITTED, YOUR HONOR?

10 THE COURT: PARDON?

11 MR. BARENS: AM I PERMITTED?

12 THE COURT: DO YOU WANT TO ASK FURTHER QUESTIONS?

13 MR. BARENS: VERY BRIEFLY, YOUR HONOR.

14 THE COURT: GO AHEAD.

15 MR. BARENS: MA'AM, IN THE INSTANCE OF A COLD-BLOODED
16 MURDER, IF THAT WERE PROVEN, COLD-BLOODED, PREMEDITATED MURDER
17 AND IT WAS FOR A ROBBERY, DURING A ROBBERY, WOULDN'T YOU FEEL
18 THAT THAT DEFENDANT SHOULD ALWAYS GET THE DEATH PENALTY?

19 MRS. AGSAOAY: AGAIN, PREMEDITATED, KNOWING THAT -- I
20 MEAN EVEN A BURGLARY, I MEAN KNOWING AFTER THE BURGLARY
21 THAT THAT PERSON WAS GOING TO BE KILLED, THAT IS PREMEDITATION?

22 MR. BARENS; YES.

23 MRS. AGSAOAY: THAT THE DEATH PENALTY -- IN OTHER WORDS,
24 NOT HEARING ANYTHING ELSE, THAT IS ALL I HEAR?

25 MR. BARENS: YES, MA'AM.

26 MRS. AGSAOAY: THEN I WILL GO FOR THE DEATH PENALTY
27 BECAUSE THAT IS ALL IT IS IF YOU DON'T GIVE ME ANYTHING ELSE
28 AFTER THAT, YOU KNOW.

1 THE COURT: WHAT ABOUT THE PENALTY PHASE, IN THE PENALTY
2 PHASE IF THERE ARE AGGRAVATING CIRCUMSTANCES AND MITIGATING
3 CIRCUMSTANCES WHICH WOULD MITIGATE AGAINST THE DEATH PENALTY,
4 WOULD YOU CONSIDER THAT?

5 MRS. AGSAOAY: THAT IS WHY I SAID, IF I DON'T HEAR ANY-
6 THING ELSE, THAT IS ALL WE ARE SAYING.

7 THE COURT: IF YOU DIDN'T HEAR ANY MITIGATING
8 CIRCUMSTANCES?

9 MRS. AGSAOAY: IF I HEAR NOTHING ELSE, NOTHING ELSE
10 EXCEPT FOR THIS COLD-BLOODED MURDER AND YOU DON'T GIVE ME
11 ANYTHING ELSE, THEN IT IS THE DEATH PENALTY TO ME, NOT EVEN
12 LIFE IMPRISONMENT, BECAUSE THAT IS ALL YOU ARE TELLING ME.

13 MR. BARENS: WHEN YOU VOTED FOR THE DEATH PENALTY, DID
14 YOU HAVE IN MIND AS YOU WERE MAKING THAT VOTE ANY CIRCUMSTANCES
15 UNDER WHICH THE DEATH PENALTY SHOULD BE APPLIED IN CALIFORNIA?

16 MRS. AGSAOAY: NO -- ANY CIRCUMSTANCES, YOU MEAN ANY
17 EXPERIENCE OR ANYTHING I HAVE READ, NO.

18 MR. BARENS: NO.

19 I AM ASKING YOU, WHEN YOU CAST THE VOTE IN FAVOR
20 OF THE DEATH PENALTY, DID YOU HAVE IN MIND ANY SITUATIONS UNDER
21 WHICH THE DEATH PENALTY SHOULD BE USED?

22 MRS. AGSAOAY: NO.

23 MY FEELING WAS THIS AT THE TIME THE WAY I VOTED
24 AT THAT TIME WAS THIS: IF THE PERSON WAS FOUND GUILTY AND
25 THE DEATH PENALTY WAS IMPOSED UPON THAT PERSON AND THEY SAID,
26 "NOW THE SENTENCE IS THE DEATH PENALTY," I SAID THEN THAT IS
27 WHAT THE PERSON SHOULD GET.

28 WELL, I DIDN'T KNOW. I HAVE NEVER BEEN TO A CASE

1 LIKE THIS WHERE THERE ARE TWO THINGS. I DIDN'T KNOW. I MEAN
2 I -- ALL I HAVE READ WAS IN THE PAPER WAS THE VERDICT OF NOT
3 GUILTY AND DEATH.

4 MR. BARENS: AND KNOWING THERE IS ANOTHER POSSIBILITY,
5 THAT BEING LIFE WITHOUT THE POSSIBILITY OF PAROLE, WOULD YOU
6 GIVE THAT SERIOUS CONSIDERATION?

7 MRS. AGSAOAY: YES, I WOULD, TOO.

8 I DIDN'T KNOW THAT UNTIL TODAY THAT WE HAVE TWO
9 CHOICES.

10 MR. BARENS: SO HAVING THAT SECOND CHOICE, TO YOU MEANS
11 YOU WOULD USE THAT SECOND CHOICE IF YOU FOUND IT WAS JUSTIFIABLE?

12 MRS. AGSAOAY: CORRECT, YES.

13 THE COURT: WOULD YOU APPROACH THE BENCH, PLEASE,
14 GENTLEMEN?

15 (WHEREUPON, THE FOLLOWING PROCEEDINGS
16 WERE HELD AT THE BENCH:)

17 THE COURT: I HAVE TO MAKE A DECISION WHETHER SHE
18 QUALIFIES FOR THE JURY; ISN'T THAT TRUE?

19 MR. BARENS: THAT IS CORRECT.

20 THE COURT: NOW WHEN I MAKE SUCH A DECISION, WHAT I WILL
21 DO IS TO --

22 MR. WAPNER: YOUR HONOR, WITH ALL DUE RESPECT --

23 THE COURT: WITH RESPECT TO WHAT?

24 MR. WAPNER: I DON'T THINK YOU HAVE TO MAKE THE DECISION
25 UNLESS THERE IS A CHALLENGE.

26 IF THERE IS A CHALLENGE FOR CAUSE, THEN YOU HAVE
27 TO MAKE THE DECISION BUT IF EVERYBODY PASSES FOR CAUSE, YOU
28 DON'T.

1 THE COURT: YES, I ASSUME THEY ARE GOING TO ARGUE THAT
2 SHE IS DISQUALIFIED FROM ACTING AS A JUROR BECAUSE OF HER
3 ATTITUDE TOWARDS THE DEATH PENALTY.

4 MR. WAPNER: THAT MAY BE TRUE. IF THAT IS THE CASE,
5 THEN YOU WILL HAVE TO MAKE THE DECISION.

6 BUT IF IT IS NOT THE CASE, YOU DON'T HAVE TO MAKE
7 THE DECISION, THAT IS WHAT I AM SAYING.

8 MR. BARENS: THE DEFENSE ABSOLUTELY CHALLENGES HER FOR
9 CAUSE. IT IS INHERENT, YOUR HONOR, THAT IN CERTAIN INSTANCES
10 WHERE YOUR HONOR, RESPECTFULLY, REHABILITATED THE WITNESS
11 (SIC) AND SAID TO HER "WELL --"

12 THE COURT: WELL, ALL RIGHT, I AM GOING TO MAKE THE
13 DECISION IN THIS CASE THAT SHE QUALIFIES.

14 WHAT I WILL DO IN EACH CASE WHERE I FIND HE OR
15 SHE QUALIFIES OR DOESN'T QUALIFY -- IF SHE DOES QUALIFY, THE
16 PROCEDURE I THINK SHOULD BE -- THERE IS NO SENSE OF THEM
17 WAITING AROUND ALL OF THE TIME, WE WILL GET THE TELEPHONE
18 NUMBER AND TELL THEM TO REPORT BACK HERE.

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1 MR. CHIER: EXCUSE ME. WE HAVEN'T DONE THE PUBLICITY
2 VOIR DIRE, YOUR HONOR.

3 THE COURT: I CERTAINLY DID. I ASKED HER WHETHER SHE
4 HAD READ OR HEARD ANYTING AT ALL ABOUT THE CASE AND SHE SAID
5 NO.

6 MR. CHIER: I SUBMIT THAT IS INADEQUATE, YOUR HONOR.

7 THE COURT: IT IS ADEQUATE FOR ME.

8 MR. BARENS: YOUR HONOR, SO I CAN HAVE A FEEL FOR YOUR
9 HONOR'S SENSIBILITIES ABOUT THIS, I FOUND, YOUR HONOR, THAT
10 THE ONLY TIME THE JUROR GAVE ACCEPTABLE ANSWERS WAS WHEN YOUR
11 HONOR ASKED HER OR SAID TO HER "WELL, ISN'T IT TRUE THAT YOU
12 WOULD VOTE EITHER WAY, THAT YOU WOULD LISTEN TO ALL OF THE
13 INSTRUCTIONS I GAVE YOU OR YOU WOULD LISTEN TO ALL THE
14 EVIDENCE BEFORE YOU MADE A DECISION." SHE SEEMED TO BE
15 RESPONDING TO WHAT SHE THOUGHT YOUR HONOR WANTED HER TO AND
16 IT WAS ONLY WHEN YOUR HONOR ASKED THOSE QUESTIONS DID SHE GIVE
17 ANY RESPONSES THAT WOULD QUALIFY HER FOR JURY SERVICE.

18 THE COURT: DO YOU HAVE ANY THOUGHT ON THE SUBJECT?

19 MR. WAPNER: I THINK THAT IT IS VERY CLEAR THAT THIS
20 JUROR IS WILLING TO LISTEN TO BOTH SIDES OF THE CASE, TO MAKE
21 A DECISION AS TO THE GUILT OR INNOCENCE WITHOUT RESPECT TO
22 THE PENALTY AND TO MAKE A DECISION ON LIFE OR DEATH, TAKING
23 INTO CONSIDERATION THE AGGRAVATING AND MITIGATING FACTORS;
24 THAT SHE MADE IT VERY CLEAR THAT SHE WOULD NOT ALWAYS VOTE
25 FOR THE DEATH PENALTY AND SHE WOULD NOT ALWAYS VOTE FOR LIFE
26 WITHOUT THE POSSIIBLITY OF PAROLE.

27 THE COURT: THAT IS MY IMPRESSION; ALSO.

28 AS I SAID, I AM GOING TO ACCEPT HER.

1 SHALL WE HAVE HER GIVE HER TELEPHONE NUMBER TO
2 THE CLERK? HOW ARE WE GOING TO NOTIFY THESE PEOPLE TO COME
3 HERE?

4 MR. WAPNER: LET ME HAVE A MOMENT WITH THE CLERK, BECAUSE
5 SHE MIGHT HAVE SOME SENSE OF EXACTLY HOW LONG IT IS GOING TO
6 BE, HOW MANY DAYS.

7 THE COURT: AT THE RATE WE ARE GOING, I THINK IT WILL
8 BE SIX MONTHS BEFORE WE PICK THE JURY.

9 MR. WAPNER: MAYBE WE SHOULD JUST -- MAY I HAVE A MOMENT
10 WITH THE CLERK?

11 MR. CHIER: MAY I HAVE A MOMENT JUST TO SAY SOMETHING
12 ON THE RECORD?

13 MR. WAPNER: OKAY.

14 MR. CHIER: YOUR HONOR, WITH ALL DUE RESPECT TO MY
15 COLLEAGUE, MR. HIRSCH, I MUST OBJECT RESPECTFULLY TO THE
16 UNINTELLIGIBILITY OF THE ELOCUTION THAT IS GIVEN TO THESE
17 JURORS. THE QUESTIONS IN MY JUDGMENT ARE UNINTELLIGIBLE.

18 THE JUROR EXPRESSED PUZZLEMENT AT THE CONCLUSION,
19 AFTER THE READING OF EACH OF THOSE QUESTIONS AND I WOULD
20 SUBMIT IT, YOUR HONOR.

21 THE COURT: WHERE ARE THE QUESTIONS THAT YOU PROPOSED,
22 LET'S TAKE A LOOK AT THAT?

23 MR. CHIER: THEY ARE RIGHT IN THE FILE.

24 THE COURT: LET ME TAKE A LOOK AT IT.

25 MR. WAPNER: MAY I SUGGEST SOMETHING, WHICH IS, THAT
26 BEFORE WE GO ON WITH THE NEXT JUROR THAT WE MAKE A DECISION
27 ON WHAT TO DO WITH THIS JUROR AND THEN WE CAN HAVE A
28 DISCUSSION OF THE PROPOSED QUESTIONS. THAT DOESN'T HAVE TO

1 BE AT THE BENCH. WE CAN JUST DO IT IN OPEN COURT. IT WILL
2 PROBABLY BE A LOT EASIER FOR EVERYONE SO WE DON'T HAVE TO
3 WHISPER.

4 MR. BARENS: I JUST WANT FOR THE RECORD TO CONCUR WITH
5 MR. CHIER'S COMMENT THAT THE JUROR DID SEEM CONFUSED IN EACH
6 INSTANCE, YOUR HONOR, MARKEDLY SO.

7 MR. CHIER: AND THE QUESTIONS WHICH HAVE TO BE RESTATED
8 AND WITH THE USE OF "IN OTHER WORDS," AUTOMATICALLY ARE
9 SUSPICIOUS.

10 THESE QUESTIONS OF MINE ARE NEUTRAL AND MUCH MORE
11 DIRECT.

12 THE COURT: DO YOU AGREE THAT THESE QUESTIONS SHOULD
13 BE ASKED?

14 MR. WAPNER: WELL, MY FEELING IS THAT WE CAN ASK THEM
15 ACTUALLY TWO QUESTIONS WHICH ARE VERY SIMPLE WHICH ARE: ARE
16 YOUR FEELINGS ABOUT THE DEATH PENALTY SUCH THAT YOU WOULD NEVER
17 UNDER ANY CIRCUMSTANCES BRING BACK A VERDICT OF DEATH?

18 THAT IS ONE.

19 THE COURT: ALL RIGHT.

20 MR. WAPNER: AND TWO: CONVERSELY, ARE YOUR FEELINGS
21 ABOUT THE DEATH PENALTY SUCH THAT IN EVERY CASE IN WHICH THE
22 DEFENDANT IS FOUND GUILTY OF FIRST DEGREE MURDER AND THE
23 SPECIAL CIRCUMSTANCES ARE FOUND TRUE, YOU WOULD ALWAYS
24 AUTOMATICALLY VOTE FOR DEATH REGARDLESS OF THE CIRCUMSTANCES?

25 MR. CHIER: IS THAT FOR THE ELOCUTION BY THE COURT?

26 MR. WAPNER: YES.

27 I THINK IF WE WANT TO ASK THEM OTHER QUESTIONS
28 ABOUT HOW THEY WOULD VOTE ON IT --

1 THE COURT: BUT THERE ARE MORE THAN TWO QUESTIONS YOU
2 HAVE TO ASK.

3 MR. CHIER: WE ARE TALKING ABOUT THE JUDGE'S ORIGINATING
4 QUESTIONS, YOUR HONOR.

5 THE COURT: YES, THAT IS WHAT I AM TALKING ABOUT.

6 MR. WAPNER: WELL, IF YOU WANT TO GO ON TO ASK THEM
7 OTHER QUESTIONS ABOUT HOW THEY WOULD VOTE ON THE SPECIAL
8 CIRCUMSTANCES AND ON THE GUILT PHASE --

9 MR. CHIER: DOWN TO THE LAST QUESTION WHICH MAY BE
10 OBJECTIONABLE THERE, JUDGE, BUT THE FIRST FOUR OR FIVE ARE
11 QUITE INCISIVE.

12 THE COURT: I HAVE NO OBJECTION ASKING THOSE.

13 MR. CHIER: THANK YOU, YOUR HONOR.

14 MR. WAPNER: MAY I BE HEARD AS TO THAT?

15 THE COURT: NOT SIX. IT WOULD BE THE FOUR.
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1 THE COURT: I WILL ASK THE FIRST FIVE QUESTIONS.

2 MR. WAPNER: I HAVE IT.

3 THE COURT: I THINK THEY ARE SIMPLER THAN THE ONES I
4 HAVE ASKED.

5 MR. BARENS: WE CAN EXCUSE THIS JUROR.

6 THE COURT: YES. GIVE US YOUR TELEPHONE NUMBER WHERE
7 YOU CAN BE REACHED?

8 MISS AGSAOAY: YES.

9 THE COURT: WE WILL ADVISE YOU ON THURSDAY, WHAT FURTHER
10 THINGS WE SHOULD NEED YOU TO PERFORM. GIVE US YOUR NAME AND
11 YOUR --

12 MISS AGSAOAY: THE NUMBER IS 397-3535.

13 THE COURT: 3558?

14 THE CLERK: YOU CAN --

15 MISS AGSAOAY: THAT'S MY HOME. SHALL I GO TO WORK?

16 THE COURT: YOU CAN GO TO WORK.

17 MISS AGSAOAY: MY BUSINESS NUMBER? AREA CODE 714,
18 730-7414. IT IS TUSTIN HIGH SCHOOL.

19 THE CLERK: THANK YOU.

20 THE COURT: THANK YOU. YOU TEACH THERE, DO YOU?

21 MISS AGSAOAY: YES.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
23 BE HEARING FROM US.

24 MISS AGSAOAY: I AM NOT TO REPORT UNTIL I HEAR FROM YOU?

25 THE COURT: THAT'S RIGHT.

26 MISS AGSAOAY: ALL RIGHT.

27 THE COURT: THANK YOU.

28 (PROSPECTIVE JUROR AGSAOAY EXITED THE COURTROOM.)

0A-2
1 MR. WAPNER: SINCE WE ARE NOW CHANGING SLIGHTLY THE
2 FORMAT, I WANT TO ASK COUNSEL WHETHER HE WILL STIPULATE THAT
3 WE NEED NOT ASK THESE FIVE QUESTIONS OF MRS. AGSAOAY.

4 MR. BARENS: WE STIPULATE.

5 THE COURT: ALL RIGHT. THANK YOU. I WILL ASK THESE
6 QUESTIONS.

7 MR. CHIER: THE SIXTH QUESTION IS THE ONE THAT YOU
8 AGREED TO ASK ANYWAY.

9 THE BARENS: THE SIXTH QUESTION I BELIEVE YOU AGREED
10 TO ASK, YOUR HONOR. IT WAS IN MY OTHER --

11 MR. CHIER: FROM THE MARSHA REVEL --

12 MR. BARENS: MARSHA REVEL'S --

13 THE COURT: I WILL ASK THAT, TOO. ALL RIGHT. THANK
14 YOU. THERE IS NO OBJECTION TO IT.

15 SIX IS ALL RIGHT, ISN'T IT?

16 MR. BARENS: YOUR HONOR, I MIGHT NOTE THAT THE ONLY TWO
17 TIMES THAT JUROR SAID THAT SHE WOULDN'T VOTE FOR THE DEATH
18 PENALTY WERE A DEFENSE VERDICT, WHICH IS SELF-DEFENSE OR
19 EUTHANASIA.

20 THE COURT: WELL, HOW CAN YOU KNOW --

21 MR. BARENS: I SAID THAT HALF IN JEST.

22 THE COURT: HOW CAN ANYBODY CONCEIVABLY SAY IN WHICH
23 CASES THEY WOULD OR WOULDN'T.

24 MR. BARENS: I WILL BET THAT YOU ARE GOING TO FIND THAT
25 SOME OF THEM HAVE PRETTY DEFINITE IDEAS ON IT.

26 THE COURT: WELL, I DON'T THINK THE QUESTION MEANS ONE
27 THING -- MEANS ANYTHING ONE WAY OR THE OTHER.

28 INCIDENTALLY, THIS FELLOW FROM THE PRESS IS VERY

A--
1 AGGITATED. HE THINKS HE HAS AN ABSOLUTE RIGHT TO BE PRESENT
2 AT ALL TIMES. WHAT IS YOUR AUTHORITY FOR THE FACT THAT HE
3 CAN'T BE?

4 MR. CHIER: JUST A MOMENT. I WILL GET IT. IT IS IN
5 THE BENCH BOOK.

6 MR. BARENS: IT IS BACK THERE.

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 IN OPEN COURT:)

9 THE COURT: DID YOU FIND OUT THE AUTHORITY?

10 MR. CHIER: I DIDN'T BRING MINE.

11 THE COURT: ANY AUTHORITY THAT YOU SAY YOU HAVE DURING
12 THIS PHASE OF THE CASE, IN WHICH THE JURORS ARE INTERROGATED
13 AS TO THEIR BELIEFS AS TO THE DEATH PENALTY, THE IMPOSITION
14 OF THE DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT POSSIBILITY
15 OF PAROLE, THAT NOBODY FROM THE PRESS IS PERMITTED TO BE
16 PRESENT --

17 MR. CHIER: IT IS MY UNDERSTANDING AND RECOLLECTION THAT
18 READING THE BENCH BOOK IN CONJUNCTION WITH HOVEY --

19 THE COURT: WELL, I HAVE THE BENCH BOOK. FIND IT FOR
20 ME.

21 MR. CHIER: IT IS RIGHT THERE, JUDGE. I THINK IT IS --
22 ALL RIGHT.

23 IT SAYS THAT IN THE HOVEY VOIR DIRE CONCERNING
24 THEIR ATTITUDES ABOUT LIFE OR DEATH, IT IS SO PERSONAL THAT
25 THEY ARE ENTITLED TO HAVE THIS EXAMINATION CONDUCTED IN UTTER
26 PRIVACY WITHOUT THE PRESS BEING THERE TO HEAR IT.

27 THE COURT: FIND IT.

28 MR. BARENS: I MIGHT ALSO SUBMIT YOUR HONOR, THAT IT

1 IS A MATTER OF FAIR PLAY IN THE INTEREST OF JUSTICE, A JUROR
2 MIGHT BE VERY SENSITIVE TO HAVING SOME REPORTER FOR A
3 PUBLICATION SITTING THERE.

4 THE COURT: THEY WON'T KNOW WHETHER THEY ARE REPORTERS
5 OR WHERE THEY COME FROM.

6 MR. BARENS: WELL, IS IT FAIR TO LET THEM --

7 THE COURT: I DON'T KNOW. YOU HAVE GOT ALL OF THE
8 FIRST AMENDMENT AND THE REST OF THOSE AMENDMENTS ABOUT AN
9 OPEN PRESS.

10 IS THERE ANY REASON WHY IT SHOULDN'T BE?

11 MR. CHIER: IT MAY BE IN THE DESK BOOK.

12 THE COURT: SURE. GO AHEAD.

13 MR. BARENS: I THINK THERE IS SOME SENSITIVITY THAT WE
14 HAVE TO HAVE ABOUT WHAT IS FAIR TO THE PROSPECTIVE JUROR, JUST
15 OUT OF A SENSE OF FAIRNESS. THE COURT HAS IN ITS DISCRETION --

16 THE COURT: WELL, THE RULE IS GENERALLY THAT HE IS
17 ACCORDED AN OPEN PROCEEDING. THE PRESS IS ENTITLED TO BE
18 PRESENT. THAT IS, UNLESS THERE IS A SPECIFIC REASON WHY THEY
19 SHOULD NOT BE.

20 NOW, I HAVE TO GIVE HIM A SPECIFIC REASON, IF THERE
21 IS A CASE OR A RULE. THEY MIGHT THINK THAT IT IS JUST
22 ARBITRARY.

23 MR. BARENS: ALL RIGHT. YOUR HONOR, I AM CONFIDENT THAT
24 MR. CHIER WILL LOCATE THAT.

25 THE COURT: IF HE FINDS IT, I CAN TELL HIM THAT THIS
26 IS WHAT IT SAYS AND THAT IS WHY YOU ARE EXCLUDED.

27 MR. BARENS: IF WE COULD JUST HAVE A MOMENT, YOUR HONOR?

28 THE COURT: MEANTIME, IS HE OUT THERE?

20A-5

1 THE BAILIFF: YES.

2 THE COURT: ALL RIGHT. HAVE HIM COME IN IN THE MEANTIME.
3 DO YOU KNOW OF ANY RULE, MR. WAPNER?

4 MR. WAPNER: I RECALL READING SOMETHING ABOUT THIS,
5 YOUR HONOR. BUT I REALLY DON'T KNOW WHAT THE RULE MAY BE.
6 WHAT WE CAN DO, SINCE IT IS NOW 3:30, IS JUST DEFER THE
7 RULING UNTIL TOMORROW MORNING AND TRY TO GET THROUGH AS MANY
8 OF THE JURORS AS WE HAVE HERE TODAY, AS WE CAN.

9 THE COURT: THEN I WILL TELL HIM WHEN HE COMES IN THAT
10 WE'LL DEFER MAKING A RULING UNTIL TOMORROW.

11 MR. BARENS: THAT THE PRESS WOULD BE EXCLUDED THIS
12 AFTERNOON?

13 THE COURT: YES.

14 MR. BARENS: I APPRECIATE THAT, YOUR HONOR.
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1 (MR. OSTROFF ENTERS THE COURTROOM.)

2 THE COURT: COUNSEL IS RESEARCHING THE QUESTION AS TO
3 WHETHER OR NOT YOU ARE, DURING THIS PHASE OF THE PROCEEDINGS
4 WHEN THE JURORS ARE INTERROGATED WITH RESPECT TO THE HOVEY
5 RULE, WHETHER OR NOT THEIR ATTITUDES TOWARD THE DEATH PENALTY
6 AND SO FORTH -- COUNSEL HAVE INDICATED THAT THERE IS SOME RULE
7 OR RULING THAT THE PRESS SHOULD NOT BE PRESENT. I WANT TO
8 GET THIS RULING FIRST.

9 IF THERE IS ANY SUCH RULING, I WILL HAVE NO CHOICE
10 BUT TO SAY YOU CAN'T BE IN HERE.

11 IF THERE IS NO SUCH RULING, I WILL SAY THAT YOU
12 HAVE A RIGHT TO BE HERE.

13 MR. OSTROFF: REGARDLESS, WE WOULD LIKE A HEARING
14 TOMORROW AT 9 O'CLOCK WITH OUR COUNSEL, TO ARGUE WHY WE
15 SHOULD NOT HAVE BEEN EXCLUDED TODAY AND TO ARGUE FOR
16 IMMEDIATE TRANSCRIPTS OF WHAT WE MISSED.

17 THE COURT: WE HAD ONE JUROR. THE SAME THING WILL BE
18 REPEATED WITH THE OTHER JURORS, SO YOU ARE MISSING NOTHING.

19 MR. OSTROFF: SO, JUST TO MAKE SURE, THIS IS --

20 THE COURT: YOU WON'T BE MISSING ANYTHING. IT IS THE
21 SAME QUESTIONS THAT WILL BE ASKED.

22 THE SAME QUESTIONS WILL BE HAD.

23 MR. OSTROFF: I WOULD ASK YOU TO GRANT US THAT HEARING.

24 THE COURT: SURELY.

25 MR. BARENS: YOUR HONOR, IT IS NOT A CONVENIENT TIME
26 FOR THE DEFENDANT, TOMORROW MORNING AT 9 O'CLOCK.

27 WE HAVE INDICATED THAT WE WOULD START AT 10:30.
28 I HAVE MADE COMMITMENTS.

1 THE COURT: SO IT WILL BE 10:30. ALL RIGHT?

2 MR. OSTROFF: THAT'S FINE. 10:30 IS FINE.

3 MR. BARENS: I WILL REPRESENT TO THE COURT THAT I HAVE
4 ANOTHER APPEARANCE.

5 THE COURT: IF THERE IS NO SUCH RULING, YOU ARE GOING
6 TO BE HERE. IF THERE IS SUCH A RULE, I WOULD LIKE TO KNOW
7 WHAT IT IS.

8 THE COURT REPORTER: PLEASE STATE YOUR NAME FOR THE
9 RECORD.

10 MR. OSTROFF: RON OSTROFF, O-S-T-R-O-F-F. I AM A
11 REPORTER FOR THE DAILY NEWS.

12 MR. CHIER: YOUR HONOR, THE SECTION IN THE BOOK IS NOT
13 UPDATED.

14 THE COURT REPORTER: PLEASE SPEAK UP.

15 THE COURT: YES. SPEAK UP.

16 MR. CHIER: THIS IS A STATEMENT OF POLICY ISSUED BY THE
17 BOARD OF GOVERNORS OF THE STATE BAR IN 1971 --

18 THE COURT: WHAT DOES THE STATE BAR HAVE TO DO WITH
19 THIS PROCEEDING?

20 MR. CHIER: WELL, THAT'S --

21 THE COURT: WHAT DOES IT SAY?

22 MR. CHIER: IT SAYS A WHOLE BUNCH OF THINGS, JUDGE.

23 THE COURT: WELL, ARE ANY OF THEM APPLICABLE HERE TO
24 THIS CASE?

25 MR. CHIER: WELL, IT SAYS THAT THE FAR RANGING GUIDELINES
26 SPELL OUT THE PROPOSITION THAT IT IS RECOGNIZED THAT FREEDOM
27 OF THE PRESS AND THE RIGHT TO A FAIR TRIAL AS GUARANTEED BY
28 THE FIRST AND SIXTH AMENDMENTS TO THE CONSTITUTION OF THE

1 UNITED STATES SOMETIMES APPEAR TO BE IN CONFLICT.

2 IT POINTS OUT THAT IF THE PRINCIPLES OF FREE PRESS
3 AND FREE TRIAL ARE APPLIED INTELLIGENTLY AND IN GOOD FAITH,
4 SOCIETY WILL NOT BE DEPRIVED OF EITHER. IT JUST SPEAKS IN --

5 THE COURT: WHAT DOES IT SAY ABOUT THIS PARTICULAR
6 QUESTION? YOU SAID THERE WAS A RULE THAT SAYS THAT THE PRESS
7 SHOULD NOT BE ADMITTED DURING THE COURSE OF THE VOIR DIRE
8 OF THE PROSPECTIVE JURORS ON THE HOVEY QUESTION.

9 MR. CHIER: THIS BOOK HAS NOT BEEN UPDATED TO CONTAIN
10 THAT STUFF. THAT IS IN THE WEST PAPERBACK PUBLICATION.
11 SORRY.

12 MR. BARENS: WELL AGAIN, IF YOU WILL DELAY THE RULING
13 UNTIL TOMORROW MORNING, AT LEAST THE DEFENSE WILL HAVE AMPLE
14 OPPORTUNITY TO SEE IF THERE ARE ANY PRECEDENTS TO WHICH WE
15 CAN DIRECT THE COURT, THAT WOULD BE OF ASSISTANCE IN A RULING.
16 AND I AGREE YOUR HONOR, THAT THERE IS SUCH OR THERE ISN'T
17 SUCH.

18 THE COURT: WELL IN THE MEANTIME, IT HAS NOT BEEN
19 DEMONSTRATED TO ME THAT IT WAS A -- THERE WAS A CATEGORICAL
20 STATEMENT MADE BY YOUR CO-COUNSEL, MR. CHIER, THAT THERE WAS
21 A RULE WHICH SAYS THAT THEY SHOULD BE EXCLUDED.

22 MR. BARENS: YOUR HONOR, EARLIER, YESTERDAY, I HAD A
23 DISCUSSION WITH MR. CHIER ON THIS TOPIC. HE HAS DONE
24 RESEARCH. IT IS AVAILABLE.

25 I WAS ADVISED AT THAT TIME THAT HE BELIEVED THERE
26 WAS ADEQUATE GROUNDS IN THE JUDGE'S BENCH BOOK, WHEN COMBINED
27 WITH AN OVERALL RULING OF HOVEY, THAT WOULD SUPPORT THE
28 PROPOSITION THAT SIMPLY, THE PRESS BE EXCLUDED DURING HOVEY

1 PROCEEDINGS.

2 I ASKED YOUR HONOR, OUT OF AN ABUNDANCE OF CAUTION
3 AT THIS POINT, TO DELAY THAT UNTIL WE HAVE AN OPPORTUNITY TO
4 PRESENT THE MATERIALS.

5 THE COURT: I DON'T WANT ANY ERROR. I DON'T WANT TO
6 HAVE ANY ALLEGED PREJUDICE IN THIS PARTICULAR CASE FOR ANY
7 REASON.

8 AND SO FOR THAT REASON, I WILL ERR ON THE SIDE
9 OF CAUTION.

10 MR. BARENS: AGAIN, YOUR HONOR, THE DEFENSE DOES NOT
11 WISH TO RESTRICT IN ANY WAY, THE RIGHT OF A FREE PRESS AND
12 FREE EXPRESSION IN THIS COURTROOM.

13 BUT RATHER, OUT OF AN ABUNDANCE OF CAUTION IN MY
14 RESPONSIBILITIES AS DEFENSE COUNSEL, I PURSUE THE MATTER.

15 THE COURT: YOU HAVE A RIGHT TO DO SO.

16 MR. BARENS: THANK YOU.

17 THE COURT: I TOLD YOU THAT YOU FIND ME THE AUTHORITY
18 BY TOMORROW MORNING.

19 MR. BARENS: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. I WILL MAKE A RULING AT THAT
21 TIME.

22 MR. OSTROFF: I AM GETTING THROWN OUT AGAIN?

23 THE COURT: WELL, I TELL YOU THAT WE HAVE CLOSE TO
24 100 THAT WE ARE GOING TO GO THROUGH THE SAME WAY.

25 MR. OSTROFF: I REALIZE IT IS THE PRINCIPLE OF THE THING
26 AND WE --

27 THE COURT: I UNDERSTAND IT IS THE PRINCIPLE. I WANT
28 TO DETERMINE WHETHER IT EXISTS OR NOT.

1 MR. OSTROFF: I AGREE WITH YOU, YOUR HONOR. BUT, WELL --

2 MR. BARENS: THE DEFENSE WOULD BE PLEASED TO NOT CALL
3 ANOTHER JUROR UNTIL A RULING ON THIS, IF YOU WOULD LIKE, AT
4 10:30 TOMORROW, OUT OF AN ABUNDANCE OF CAUTION FOR THE RIGHTS
5 OF THE PRESS TO AN OPEN HEARING.

6 THE COURT: WELL, AS I TOLD YOU, WE ARE GOING ON WITH
7 A REPETITION OF THE SAME THING FOR EACH ONE OF THE JURORS.
8 IF YOU MISSED ONE, IT WOULDN'T MAKE ANY DIFFERENCE.

9 SO, LET'S SAVE TIME. WE WILL GO AHEAD WITH THE
10 INTERROGATION.

11 MR. OSTROFF: JUST FOR THE RECORD, EVEN THOUGH THEY MAY
12 BE REPEATED QUESTIONS, IF ONE OF THE JURORS DOES MAKE THE PANEL,
13 IT DOES MAKE A DIFFERENCE TO US.

14 THE COURT: WHAT?

15 MR. OSTROFF: IF A JUROR DOES MAKE IT INTO THE BOX, IT
16 DOES MAKE A DIFFERENCE TO US THAT WE ARE EXCLUDED FROM ANY
17 PART OF IT. BUT I JUST WANTED YOU TO KNOW THAT.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MR. OSTROFF: THANK YOU VERY MUCH. I WILL REPORT IT
20 TO OUR COUNSEL. HE WILL BE HERE AT 10:30 TOMORROW MORNING.

21 THE COURT: YES. GO AHEAD. SO NO TIME IS WASTED, IF
22 THERE IS ANYTHING IMPORTANT THAT TRANSPIRES WHICH I THINK THE
23 PRESS SHOULD KNOW ABOUT, WE'LL SEE THAT YOU GET IT.

24 MR. OSTROFF: THANK YOU VERY MUCH.

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1 THE COURT: ALL RIGHT, THANK YOU.

2 (WHEREUPON, PROSPECTIVE JUROR GERALDINE
3 ANDERSON ENTERS COURTROOM AND SITS AT
4 THE WITNESS BOX.)

5 THE COURT: IS THAT MISS ANDERSON?

6 MRS. ANDERSON: YES.

7 THE COURT: MISS ANDERSON?

8 MRS. ANDERSON: MRS.

9 THE COURT: MRS. ANDERSON?

10 MRS. ANDERSON: UH-HUH.

11 THE COURT: ALL RIGHT, I AM GOING TO ASK YOU A NUMBER
12 OF QUESTIONS. PLEASE LISTEN TO THEM VERY CAREFULLY AND ANSWER
13 YES OR NO WITHOUT ANYTHING FURTHER, WITHOUT ANY FURTHER
14 STATEMENT.

15 IF THE QUESTION IS UNCLEAR, PLEASE ASK THAT IT
16 BE REPEATED, ALL RIGHT?

17 MRS. ANDERSON: YES.

18 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
19 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
20 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

21 MRS. ANDERSON: NO.

22 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
23 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
24 MURDER EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT
25 GUILTY OF MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

26 MRS. ANDERSON: NO.

27 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
28 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL

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1 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
2 CIRCUMSTANCE ALLEGED IN THIS CASE?

3 LET ME TELL YOU WHAT THE SPECIAL CIRCUMSTANCE IS.
4 AS I TOLD YOU, YOU ARE TO DECIDE WHETHER THE DEFENDANT IS
5 GUILTY OR NOT GUILTY OF FIRST DEGREE MURDER OR GUILTY OF
6 MURDER IN THE FIRST DEGREE. IF YOU FIND HE IS GUILTY OF MURDER
7 IN THE FIRST DEGREE, THEN YOU WILL BE CALLED UPON TO DETERMINE
8 THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE. IN THIS
9 CASE, THE SPECIAL CIRCUMSTANCE IS THAT THE ALLEGED MURDER WAS
10 COMMITTED DURING THE COURSE OF A ROBBERY.

11 SO LET ME READ IT TO YOU AGAIN: DO YOU HAVE ANY
12 OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU
13 FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH OR
14 FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

15 MS. ANDERSON: NO.

16 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
17 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE IT
18 AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE WITH
19 A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY EVIDENCE
20 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

21 MS. ANDERSON: NO.

22 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
23 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
24 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AFTER A VERDICT
25 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF
26 SPECIAL CIRCUMSTANCES, REGARDLESS OF ANY EVIDENCE THAT MAY
27 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

28 MS. ANDERSON: NO.

1 THE COURT: DO YOU UNDERSTAND THAT THE ISSUE OF THE
2 DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE AND THAT THESE
3 QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU REACH
4 THAT PHASE OF THE TRIAL?

5 MRS. ANDERSON: YES.

6 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
7 CASE?

8 MRS. ANDERSON: NO.

9 THE COURT: HAVE YOU READ ANYTHING AT ALL IN THE PAPERS
10 ABOUT THE BILLIONAIRE BOYS CLUB OR ANYTHING LIKE THAT?

11 MRS. ANDERSON: NO.

12 THE COURT: IT DOESN'T RING A BELL IN YOUR MIND THAT
13 THE NAME OF THE DEFENDANT IS JOE HUNT OR THAT THERE IS ANY
14 GROUP THAT HE WAS ASSOCIATED WITH OF ANY KIND?

15 MRS. ANDERSON: NO.

16 MR. BARENS: I DEFER TO MR. CHIER IN THIS INSTANCE, YOUR
17 HONOR.

18 THE COURT: YES.

19 MR. CHIER: GOOD AFTERNOON, MRS. -- IS IT MRS. ANDERSON?

20 MRS. ANDERSON: MRS. ANDERSON.

21 THE COURT: LET'S DISPENSE WITH ANY SALUTATIONS, ALL
22 RIGHT?

23 MR. CHIER: YES, YOUR HONOR.

24 COULD I ASK YOU SOME QUESTIONS, MRS. ANDERSON,
25 ABOUT SOME POSSIBLE PRETRIAL PUBLICITY.

26 DO YOU SUBSCRIBE TO THE LOS ANGELES TIMES?

27 MRS. ANDERSON: NO.

28 MR. CHIER: DO YOU READ ANY MAGAZINES ON A REGULAR BASIS?

1 MRS. ANDERSON: NO.

2 MR. CHIER: DO YOU WATCH TELEVISION NEWS?

3 MRS. ANDERSON: SOMETIMES.

4 MR. CHIER: DO YOU HAVE ANY PARTICULAR CHANNELS THAT
5 YOU WATCH MORE THAN OTHERS?

6 MRS. ANDERSON: CHANNEL 7.

7 MR. CHIER: AND HAVE YOU HEARD OR SEEN ANYTHING ON
8 CHANNEL 7 IN THE LAST TWO WEEKS CONCERNING A CASE THAT WAS
9 GOING TO BE TRIED IN SANTA MONICA?

10 MRS. ANDERSON: NO.

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1 MR. CHIER: HAVE YOU HEARD OTHER JURORS IN THE COURT-
2 HOUSE DISCUSSING OR SPECULATING WHAT THIS CASE MIGHT BE
3 ABOUT THAT THE JURY WAS BEING CALLED FOR?

4 MRS. ANDERSON: NO.

5 MR. CHIER: HAVE YOU HEARD THE NAME JIM PITTMAN BEFORE?

6 MRS. ANDERSON: NO.

7 MR. CHIER: JOE HUNT?

8 MRS. ANDERSON: NO.

9 MR. CHIER: RON LEVIN?

10 MRS. ANDERSON: NO.

11 MR. CHIER: YOU BELIEVE THAT THE DEATH PENALTY IS AN
12 APPROPRIATE PUNISHMENT UNDER CERTAIN CIRCUMSTANCES?

13 THE COURT: DO YOU UNDERSTAND THE QUESTION?

14 MRS. ANDERSON: NO, I DON'T UNDERSTAND THE QUESTION.

15 MR. CHIER: ALL RIGHT. DO YOU BELIEVE THAT -- WELL,
16 HOW DO YOU FEEL ABOUT THE DEATH PENALTY, MRS. ANDERSON?

17 MRS. ANDERSON: WELL, I FEEL THAT THE DEATH PENALTY, I
18 GUESS IF THE LAW WAS PASSED FOR THE DEATH PENALTY, MAYBE THERE
19 WOULD BE LESS CRIME.

20 MR. CHIER: SO ARE YOU GENERALLY --

21 THE COURT: PARDON ME JUST A MINUTE.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: I AM SORRY. GO AHEAD.

24 MR. CHIER: YOU KNOW THAT WE HAVE A DEATH PENALTY IN
25 THIS STATE, MRS. ANDERSON?

26 MRS. ANDERSON: UH-HUH.

27 MR. CHIER: AND THAT IN THIS CASE THE PEOPLE ARE ASKING
28 FOR THE DEATH PENALTY?

1 MRS. ANDERSON: YES.

2 MR. CHIER: AND THE PEOPLE ALLEGE THAT OUR CLIENT, MR.
3 HUNT, MURDERED ANOTHER HUMAN BEING NAMED RONALD LEVIN AND THAT
4 THE MURDER WAS PERMITTED IN THE COMMISSION OF THE ROBBERY OF
5 MR. LEVIN.

6 NOW IF AFTER HEARING ALL OF THE EVIDENCE IN THIS
7 CASE, YOU FIND MR. HUNT GUILTY OF MURDER BEYOND A REASONABLE
8 DOUBT, THAT WOULD THEN REQUIRE THE JURY --

9 THE COURT: MURDER IN THE FIRST DEGREE, YOU MEAN?

10 MR. CHIER: FIRST DEGREE -- I AM SORRY -- THAT WOULD
11 REQUIRE THE JURY TO THEN GO INTO A SECOND PHASE TO DETERMINE
12 THE PENALTY.

13 NOW, THE PENALTY IN THIS CASE, IF YOU FOUND MR.
14 HUNT GUILTY OF MURDER OF THE FIRST DEGREE BEYOND A REASONABLE
15 DOUBT WOULD BE EITHER LIFE WITHOUT THE POSSIBILITY OF PAROLE,
16 WHICH MEANS THAT, OR DEATH, IF AFTER HEARING ALL OF THE
17 EVIDENCE BY BOTH SIDES ON THE ISSUE OF WHETHER MR. HUNT SHOULD
18 LIVE OR DIE AS DISTINGUISHED FROM WHETHER HE IS GUILTY OR NOT
19 GUILTY, COULD YOU UNDER THE APPROPRIATE CIRCUMSTANCES VOTE
20 TO RETURN THE DEATH PENALTY AGAINST MR. HUNT?

21 MS. ANDERSON: I THINK IT WOULD DEPEND UPON THE SEVERENESS
22 OF THE WITNESS. I MEAN, YOU KNOW, WHAT THEY WOULD --

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24 MR. CHIER: LET ME SEE IF I CAN EXPLAIN IT TO YOU THIS
25 WAY, MRS. ANDERSON. IF THE COURT, THAT IS HIS HONOR --

26 MRS. ANDERSON: YES.

27 MR. CHIER: -- WERE TO INSTRUCT YOU ABOUT ALL OF THE
28 THINGS THAT YOU COULD CONSIDER, SUCH AS THE AGE OF THE DEFENDANT,

1 IF HE WAS YOUNG OR OLD, THE SOPHISTICATION OF THE CRIME, THE
2 PRIOR RECORD OF MR. HUNT, IF ANY, AND YOU WERE TO ADD UP ALL
3 OF THOSE THINGS AND THE JUDGE SAID TO YOU, "ADD UP ALL OF
4 THOSE THINGS AND IF YOU FIND THE BAD THINGS OUTWEIGH THE GOOD
5 THINGS, YOU SHOULD RETURN A VERDICT OF DEATH," COULD YOU DO
6 THAT?

7 MRS. ANDERSON: IT WOULD BE HARD.

8 MR. CHIER: EVEN THOUGH IT MIGHT BE DIFFICULT, COULD
9 YOU DO IT IF YOU TOOK THE OATH?

10 THE WITNESS: IF THAT WAS THE CASE, YES I GUESS I COULD.

11 MR. CHIER: ALL RIGHT, I WILL PASS FOR CAUSE, YOUR
12 HONOR.

13 THE COURT: MR. WAPNER: MRS. ANDERSON, YOU UNDERSTAND
14 THAT WE ARE NOT ASKING YOU TO JUST IN YOUR MIND TO THINK ABOUT
15 WHETHER YOU COULD BUT ACTUALLY IN THIS CASE, IF YOU WERE A
16 JUROR, COULD YOU, IF THE EVIDENCE PROVED THE DEFENDANT GUILTY
17 OF FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT AND THAT THE
18 SPECIAL CIRCUMSTANCES WERE TRUE BEYOND A REASONABLE DOUBT AND
19 AFTER HEARING THE EVIDENCE IN THE PENALTY PHASE, COULD YOU
20 AS AN INDIVIDUAL MAKE A DECISION THAT THE DEATH PENALTY SHOULD
21 BE IMPOSED IN THIS CASE?

22 MRS. ANDERSON: I DON'T THINK SO, NO, I DON'T THINK SO.

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1 MR. WAPNER: ARE YOU SAYING THAT REGARDLESS OF THE
2 EVIDENCE THAT WAS INTRODUCED IN THE PENALTY PHASE, THAT YOU
3 COULDN'T BRING YOURSELF TO VOTE FOR A VERDICT OF DEATH?

4 MISS ANDERSON: NO. WHAT I AM SAYING IS, I FEEL THAT
5 IF YOU KNOW -- LIKE IF, YOU KNOW, SOMETHING IS HAPPENING --
6 MAYBE IF I SEE SOMETHING ON TV AND THEY SAY THAT SOMEONE HAS
7 ABUSED A KID OR SOMETHING AND I SAY GEE, THAT GUY NEEDS TO
8 DIE OR WHATEVER.

9 BUT I THINK IF I AM REALLY FACE TO FACE WITH IT,
10 WHERE IT IS A DECISION I WOULD PERSONALLY, YOU KNOW, BE A PART
11 OF, I DON'T THINK THAT I COULD DO IT. NO.

12 THE COURT: IS THERE SOME QUESTION IN YOUR MIND WHETHER
13 YOU COULD DO THIS OR ARE YOU SURE THAT YOU CANNOT?

14 MISS ANDERSON: NO. THERE IS NO QUESTION IN MY MIND.
15 I COULD NOT DO IT. NO.

16 MR. WAPNER: NO FURTHER QUESTIONS.

17 MR. CHIER: MISS ANDERSON, I WANT TO ASK YOU A COUPLE
18 OF QUESTIONS HERE, FOR THE PURPOSE OF DISCUSSION.

19 AND DO YOU SEE THE TELEVISION NEWS SOMETIMES, RIGHT?

20 MISS ANDERSON: SOMETIMES.

21 MR. CHIER: AND YOU HAVE HEARD OF THE RICHARD RAMIRIZ,
22 NIGHT STALKER CASE?

23 MISS ANDERSON: YES.

24 MR. CHIER: NOW, THIS IS NOT THE NIGHT STALKER CASE.
25 THIS IS NOT RICHARD RAMIRIZ.

26 MISS ANDERSON: RIGHT.

27 MR. CHIER: BUT, ASSUMING ALL OF THE THINGS THAT YOU
28 HEARD ON TELEVISION ABOUT MR. RAMIRIZ WERE TRUE --

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1 THE COURT: WELL, I THOUGHT THE RULE IS THAT YOU CAN'T
2 TAKE ANY OTHER CASES AND SAY, WHAT WOULD YOU DO, SUPPOSE IT
3 WAS HITLER WHO WAS ON TRIAL OR YOU KNOW, WOULD YOU GIVE THE
4 DEATH PENALTY UNDER THOSE CIRCUMSTANCES.

5 YOU ARE NOT PERMITTED TO DO THAT.

6 MR. WAPNER: THAT'S CORRECT. THERE WOULD BE AN OBJECTION
7 ON THAT QUESTION.

8 THE COURT: I WILL SUSTAIN THE OBJECTION.

9 MR. WAPNER: FOR THE RECORD, YOUR HONOR, THE AUTHORITY
10 IS PEOPLE V. FIELDS, 35 CAL.3D, 329.

11 THE COURT: ALL RIGHT.

12 MR. CHIER: WELL, WHAT WE ARE DOING HERE MRS. ANDERSON,
13 IS TRYING TO FIND OUT IF YOU ARE SO -- IF YOU AND THE OTHER
14 PROSPECTIVE JURORS ARE SO OPPOSED TO THE DEATH PENALTY, THAT
15 THEY COULDN'T IMPOSE THE DEATH PENALTY IN ANY CASE, UNDER ANY
16 CIRCUMSTANCES. THAT IS WHAT WE ARE DOING HERE TODAY.

17 MY QUESTION TO YOU IS, WHETHER UNDER THE
18 APPROPRIATE CIRCUMSTANCES, UNDER CIRCUMSTANCES WHERE YOU
19 THOUGHT THE CONDUCT OF THE DEFENDANT WAS SO BAD AND THAT HIS
20 CRIME WAS SO OFFENSIVE TO YOU, WHETHER UNDER THOSE
21 CIRCUMSTANCES, YOU COULD WITHIN THE GUIDELINES THAT WOULD COME
22 FROM THE COURT, RETURN A VERDICT OF DEATH.

23 MISS ANDERSON: NO. I DON'T THINK SO.

24 MR. CHIER: UNDER NO CIRCUMSTANCES WOULD YOU BE ABLE
25 TO DO IT?

26 MISS ANDERSON: NO.

27 MR. CHIER: NEVER, EVER?

28 MISS ANDERSON: I DON'T THINK SO, NO.

2A-3
1 MR. CHIER: WELL, I MUST THANK YOU FOR YOUR HONESTY AND
2 CANDOR, MISS ANDERSON.

3 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
4 MISS ANDERSON.

5 YOU GO BACK TO THE JURY ASSEMBLY ROOM. TELL THEM
6 THAT YOU HAVE BEEN EXCUSED FROM JURY DUTY IN THIS CASE.

7 MISS ANDERSON: THANK YOU.

8 (PROSPECTIVE JUROR ANDERSON EXITED
9 THE COURTROOM.)

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1 MR. WAPNER: FOR THE RECORD, THE PEOPLE CHALLENGE
2 MISS ANDERSON FOR CAUSE.

3 THE COURT: THE CHALLENGE WILL BE ACCEPTED. THE COURT
4 WILL EXCUSE HER FOR CAUSE. TELL HER SHE CAN GO TO THE JURY
5 ASSEMBLY ROOM. GET THE THIRD ONE.

6 MR. WAPNER: COULD I ASK FOR JUST A STATEMENT FROM
7 COUNSEL ON THE RECORD, AS TO WHETHER THEY ARE OPPOSED OR NOT
8 TO THAT?

9 MR. BARENS: UNDER THOSE CIRCUMSTANCES, THE DEFENSE
10 ACCEPTS THE CHALLENGE, YOUR HONOR.

11 WITH MR. HUNT'S PERMISSION, COULD I BE EXCUSED
12 FROM WHAT I BELIEVE WILL BE THE LAST JUROR OF THE DAY?

13 THE COURT: WE ONLY HAVE ONE MORE.

14 MR. BARENS: I KNOW, BUT I --

15 THE COURT: ALL RIGHT. YOU WILL BE EXCUSED.

16 MR. BARENS: MR. HUNT?

17 THE DEFENDANT: (THE DEFENDANT NODS HEAD UP AND DOWN.)

18 THE COURT: BEFORE YOU GO --

19 MR. BARENS: I WILL STAY, IF YOU ARE CONCLUDING WITH
20 ONE MORE FOR TODAY. I WILL STAY.

21 THE COURT: YES. NOW, THAT LEAVES HOW MANY MORE?

22 THE CLERK: THAT IS FIVE MORE, YOUR HONOR.

23 THE COURT: WELL, ASK THEM TO COME BACK HERE TOMORROW
24 MORNING, TUESDAY AT 10:30.

25 MR. BARENS: THERE SHOULDN'T BE FOUR MORE?

26 THE COURT: HOW MANY HAVE YOU GOT? FOUR MORE?
27 THAT'S RIGHT.

28 MR. CHIER: WE HAVE THAT PRESS BUSINESS AT 10:30.

2B-2
1 MR. BARENS: THAT'S RIGHT. IT WOULD BE FOUR AFTER THE
2 ONE COMING IN AT THE MOMENT, YOUR HONOR. EXCUSE ME.

3 THE CLERK: I AM COUNTING THE TICKETS, YOUR HONOR.
4 I HAVE FIVE.

5 MR. BARENS: INCLUDING THE ONE COMING IN, THAT'S
6 CORRECT.

7 THE CLERK: NO.

8 MR. BARENS: NO MATTER. LET'S PROCEED WITH THE JUROR.

9 THE BAILIFF: DO YOU WANT THE NEXT ONE IN? DO YOU WANT
10 THE OTHER ONE EXCUSED?

11 THE COURT: IT IS ONLY TWO THAT WE HAVE HAD SO FAR.
12 BERSINGER IS THE THIRD ONE. THAT'S RIGHT.

13 THE CLERK: SHALL WE EXCUSE EVERYBODY ELSE UNTIL
14 TOMORROW MORNING?

15 THE COURT: YES. TELL THEM 10:35 TOMORROW MORNING.

16 PROBABLY SHE DIDN'T UNDERSTAND MY QUESTION WHEN
17 SHE SAID NO, THAT SHE WOULD NOT UNDER ANY CIRCUMSTANCES, NOT
18 VOTE FOR THE DEATH PENALTY.

19 MR. WAPNER: APPARENTLY NOT.

20 MR. CHIER: WHAT WAS THE OBJECTION ABOUT THE --

21 THE COURT: YES. IT WAS AN OBJECTION.

22 MR. CHIER: WHAT WAS THE OBJECTION?

23 THE COURT: OBJECTION WAS MADE. HE CITED AUTHORITY.

24 (PROSPECTIVE JUROR JOHN BERSINGER
25 ENTERED THE COURTROOM.)

26 THE COURT: MR. BERSINGER?

27 MR. BERSINGER: YES.

28 THE COURT: ALL RIGHT, MR. BERSINGER, I AM GOING TO ASK

1 YOU A NUMBER OF QUESTIONS. OF COURSE, YOU WILL LISTEN
2 CAREFULLY TO THE QUESTIONS. YOU WILL ANSWER THEM WITHOUT ANY
3 FURTHER STATEMENT.

4 IF A QUESTION IS UNCLEAR, ASK ME TO REPEAT IT OR
5 EXPLAIN IT.

6 ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING THE
7 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
8 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

9 MR. BERSINGER: NO.

10 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
11 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER,
12 EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY
13 OF MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

14 MR. BERSINGER: I THINK I UNDERSTAND THAT QUESTION. BUT
15 IT WOULD BE HARD FOR ME TO ANSWER YES OR NO.

16 COULD I HEAR IT AGAIN?

17 THE COURT: SURELY. DO YOU HAVE ANY OPINION REGARDING
18 THE DEATH PENALTY, THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
19 MURDER IF THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY
20 OF MURDER IN THE SECOND DEGREE?

21 MR. BERSINGER: NO.

22 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
23 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
24 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
25 CIRCUMSTANCES ALLEGED IN THIS CASE? LET ME FIRST ADD THAT
26 I TOLD YOU THAT THE SPECIAL CIRCUMSTANCE IN THIS CASE WHICH
27 QUALIFIES IT FOR LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE
28 OR THE DEATH PENALTY, IS THAT THE ALLEGED MURDER WAS COMMITTED

1 IN THE COURSE OF A ROBBERY.

2 THAT QUALIFIES IT BECAUSE IT WAS COMMITTED IN THE
3 COURSE OF A ROBBERY. NOW AGAIN, DO YOU HAVE ANY OPINION
4 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
5 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
6 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

7 MR. BERSINGER: NO.

8 THE COURT: NOW, DO YOU HAVE SUCH AN OPINION CONCERNING
9 THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE TO
10 IMPOSE IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST
11 DEGREE, WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS
12 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
13 AFTER A TRIAL?

14 MR. BERSINGER: NO.

15 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
16 DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
17 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE AFTER A VERDICT
18 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF
19 SPECIAL CIRCUMSTANCES, REGARDLESS OF ANY EVIDENCE THAT MAY
20 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

21 MR. BERSINGER: NO.

22 THE COURT: LASTLY, DO YOU UNDERSTAND THAT THE ISSUE
23 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE AND
24 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
25 YOU REACH THAT PHASE OF THE TRIAL?

26 MR. BERSINGER: YES. I UNDERSTAND.

27 THE COURT: ALL RIGHT.

28 MR. BARENS: MR. BERSINGER, DO YOU UNDERSTAND THAT MY

1 CLIENT, JOE HUNT, HAS A PRESUMPTION OF INNOCENCE, EVEN THOUGH
2 WE ARE DISCUSSING THIS ISSUE OF THE DEATH PENALTY NOW?

3 MR. BERSINGER: YES I DO.

4 MR. BARENS: AND THAT WE MAY NEVER GET TO THIS? BUT,
5 BECAUSE THE PEOPLE OF THE STATE OF CALIFORNIA HAVE ASKED FOR
6 THE DEATH PENALTY, EVEN THOUGH THERE HAS BEEN NO TRIAL YET,
7 WE HAVE TO INQUIRE INTO THIS RIGHT NOW? DO YOU UNDERSTAND?

8 MR. BERSINGER: I UNDERSTAND.

9 MR. BARENS: IF MURDER IN THE FIRST DEGREE WERE PROVEN
10 BEYOND A REASONABLE DOUBT AND THE SPECIAL CIRCUMSTANCES AS
11 DESCRIBED BY HIS HONOR WERE ALSO PROVEN TO BE TRUE, WOULD IT
12 BE POSSIBLE FOR MYSELF AS A DEFENSE LAWYER, TO TELL YOU THINGS
13 ABOUT THE DEFENDANT THAT COULD GET YOU TO VOTE FOR LIFE
14 WITHOUT POSSIBILITY OF PAROLE, INSTEAD OF THE DEATH PENALTY?

15 MR. BERSINGER: YES, PROVIDING THAT IT DID NOT CONFLICT
16 WITH OUR INSTRUCTIONS REGARDING THE LAW.

17 THE COURT: WELL, YOU UNDERSTAND THAT IN THE PENALTY
18 PHASE, WHICH IS THE SECOND PHASE, IF THE JURY REACHES A
19 VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE, THAT YOU
20 CONSIDER THE PENALTY OF LIFE WITHOUT POSSIBILITY OF PAROLE
21 OR THE GAS CHAMBER -- THAT IN THAT PARTICULAR PHASE OF THE
22 TRIAL, THERE WILL BE EITHER MITIGATING CIRCUMSTANCES TO SHOW
23 THAT THE DEFENDANT SHOULD NOT GET THE DEATH PENALTY OR
24 AGGRAVATING CIRCUMSTANCES? IN OTHER WORDS, BACKGROUND AND
25 EVERYTHING ELSE, WHICH WOULD SHOW THAT HE SHOULD? YOU WILL
26 CONSIDER THOSE MITIGATING AND AGGRAVATING CIRCUMSTANCES BEFORE
27 YOU MAKE UP YOUR MIND, IS THAT CORRECT?

28 MR. BERSINGER: YES, SIR.

1 THE COURT: ALL RIGHT.

2 MR. BERSINGER: SIR, HOW DO YOU FEEL ABOUT THE DEATH
3 PENALTY AS A GENERAL CONCEPT?

4 MR. BERSINGER: WELL, AS A GENERAL CONCEPT, I FIND IT
5 DISTRESSING, MUCH MORE SO WHEN YOU ARE BROUGHT FACE TO FACE
6 WITH IT, AS YOU ARE WHEN YOU ARE CALLED FOR JURY DUTY THAN
7 WHEN YOU ARE JUST THINKING ABOUT IT AS AN ABSTRACT IDEA.

8 OF COURSE, I THINK THAT IT SHOULD ONLY BE
9 UTILIZED IN VERY EXTREME CIRCUMSTANCES.

10 MR. BARENS: IF THE JUDGE INSTRUCTED YOU, EVEN IN
11 EXTREME CIRCUMSTANCES, THAT AS A PART OF YOUR DELIBERATION,
12 YOU SHOULD CONSIDER THE AGE OF THE DEFENDANT OR WHETHER OR
13 NOT THE DEFENDANT HAD A PRIOR RECORD, WOULD YOU CONSIDER THOSE
14 THINGS IN COMING TO YOUR CONCLUSION AS TO WHETHER OR NOT THE
15 DEFENDANT SHOULD LIVE OR DIE?

16 MR. BERSINGER: THAT'S A DIFFICULT QUESTION.
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1 THE COURT: YOU WILL CONSIDER ALL OF THE CIRCUMSTANCES
2 WHICH THE COURT PERMITS INTO EVIDENCE ON THE PENALTY PHASE
3 OF THE TRIAL, WOULD YOU NOT, INCLUDING THE AGE OF THE
4 DEFENDANT, HIS BACKGROUND AND THE LACK OF ANY RECORD, AND SO
5 ON AND SO FORTH, WHICH ARE CIRCUMSTANCES TO BE CONSIDERED IN
6 MITIGATION, IN OTHER WORDS, NOT TO IMPOSE THE DEATH PENALTY,
7 YOU WOULD LISTEN TO ALL THAT?

8 MR. BERSINGER: WELL, I WOULD LISTEN TO IT BUT I AM NOT
9 SURE I WOULD BE TOO INFLUENCED, IF I UNDERSTAND THE QUESTION.

10 I THINK IT WOULD BE JUST AS SERIOUS FOR A YOUNGER
11 PERSON TO COMMIT THE CRIME AS FOR AN OLDER PERSON TO COMMIT
12 IT.

13 MR. BARENS: INDEED.

14 AND IF YOU HEARD THAT THERE HAD BEEN A COLD-BLOODED
15 MURDER AND A ROBBERY WAS THE PURPOSE OF IT, YOU COULD VOTE
16 FOR THE DEATH PENALTY, COULDN'T YOU?

17 MR. BERSINGER: I THINK, YES.

18 MR. BARENS: PASS FOR CAUSE, YOUR HONOR.

19 THE COURT: PASS FOR CAUSE?

20 MR. BARENS: THE PUBLICITY, I THINK, I BELIEVE YOUR HONOR
21 FAILED TO INQUIRE. I WILL DO SO BRIEFLY, IF THE COURT WILL
22 PERMIT?

23 THE COURT: GO AHEAD, SURE.

24 MR. BARENS: SIR, HAVE YOU READ OR HEARD ANYTHING ABOUT
25 EITHER JOE HUNT OR AN ORGANIZATION HE MIGHT HAVE BEEN INVOLVED
26 WITH CALLED THE BIOLLIONAIRE BOYS CLUB, PRIOR TO YOUR COMING
27 HERE?

28 MR. BERSINGER: IN ANTICIPATION OF THAT QUESTION, I

1 REPORTED FOR JURY DUTY A WEEK AGO LAST WEDNESDAY. AS I RECALL,
2 WHEN I GOT HOME THAT EVENING AFTER HAVING BEEN TOLD THAT THE
3 JURY SELECTION PROCESS WAS FOR A LONG AND IMPORTANT TRIAL,
4 THERE WAS A MAJOR ARTICLE ABOUT IT IN OUR LOCAL PAPER, THE
5 EVENING OUTLOOK, AND HAVING SERVED ON A SIMILAR TRIAL EARLIER,
6 I APPRECIATED THE FACT WE WEREN'T SUPPOSED TO READ THESE
7 THINGS SO I SAW THE JUDGE'S PICTURE AND I SAW THE PICTURE --

8 THE COURT: OF THE DEFENDANT?

9 MR. BERSINGER: I BELIEVE OF THE DEFENDANT.

10 BUT I MADE IT A POINT NOT TO READ THE ARTICLE.

11 THE COURT: AND YOU SAW THE ATTORNEY'S PICTURE, TOO?

12 MR. BERSINGER: YES, YES.

13 BUT IT WAS A LARGE ARTICLE.

14 PERHAPS YOU SAW IT.

15 THE COURT: YOU WOULDN'T PERMIT WHATEVER YOU READ IN
16 THERE TO INFLUENCE YOU IF YOU WERE SELECTED AS A JUROR IN THIS
17 CASE?

18 MR. BERSINGER: I DIDN'T READ ANYTHING BUT THE HEADLINE.

19 MR. BARENS: DO YOU REMEMBER WHAT THAT HEADLINE SAID?

20 MR. BERSINGER: I SEEM TO REMEMBER THE NAME OF THE
21 DEFENDANT BEING IN THE HEADLINE AND IT HAD SOMETHING TO DO
22 WITH A FINANCIAL SCAM.

23 I COULDN'T REMEMBER EXACTLY WHAT IT WAS.

24 MR. BARENS: BECAUSE YOU SAW THAT IN THE NEWSPAPER, WOULD
25 IT MAKE YOU ANY MORE LIKELY TO BELIEVE THAT MY CLIENT HAD
26 COMMITTED ANY CRIME WHATSOEVER?

27 MR. BERSINGER: NO.

28 MR. BARENS: THAT WOULDN'T INFLUENCE YOU AND YOU COULD

1 ASSURE MYSELF AND THE JUDGE THAT YOU COULD COME HERE TOTALLY
2 OPEN-MINDED AND FAIR-MINDED?

3 MR. BERSINGER: YES, BECAUSE AS I SAY, I DIDN'T READ
4 THE ARTICLE.

5 I DON'T KNOW WHAT THE SUBSTANCE OF THE ARTICLE
6 WAS.

7 MR. BARENS: AND YOU REALIZE THAT IRRESPECTIVE OF ANYTHING
8 SAID IN NEWSPAPERS THE DEFENDANT HAS A PRESUMPTION OF
9 INNOCENCE UNDER OUR SYSTEM?

10 A YES.

11 THE COURT: IS THIS THE ONE YOU HAD REFERENCE TO?

12 (COURT POINTING.)

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1 MR. BERSINGER: YES, AND IT WAS OUR THIRD -- I SAW
2 YOUR PICTURE ON THE THIRD PAGE, AS I RECALL IT.

3 THE COURT: IS THIS THE ONE?

4 MR. BERSINGER: YES. IN FACT, I DIDN'T EVEN SEE IT
5 ON THE FIRST PAGE. I SAW IT ON THE THIRD PAGE.

6 MR. BARENS: THE DEFENSE HASN'T SEEN THAT AT ALL, YOUR
7 HONOR. IF I MIGHT APPROACH YOUR HONOR, JUST TO SEE THAT
8 QUICKLY BEFORE PASSING THE JUROR.

9 THE COURT: DIDN'T YOU SEE THAT?

10 MR. BARENS: I DIDN'T SEE THAT, YOUR HONOR.

11 THE COURT: ALL RIGHT. AT ANY RATE, DID YOU READ THE
12 ENTIRE ARTICLE?

13 MR. BERSINGER: I DIDN'T READ ANY OF THE ARTICLE.

14 I READ THE HEADLINE AND I READ THE CAPTION UNDER
15 YOUR PICTURE.

16 MR. BARENS: I WOULD PASS FOR CAUSE.

17 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
18 AND MR. BARENS.)

19 THE COURT: WHATEVER WAS SAID IN THAT NEWSPAPER, YOU
20 HAVEN'T MADE UP YOUR MIND ONE WAY OR THE OTHER?

21 MR. BERSINGER: NO, NO, NOT AT ALL. I WASN'T --

22 MR. BARENS: WE WOULD AGAIN PASS FOR CAUSE, YOUR HONOR.

23 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS?

24 MR. WAPNER: YES. THANK YOU, YOUR HONOR.

25 MR. BERSINGER, HAVE YOU SERVED ON ANOTHER JURY
26 THAT INVOLVED THE QUESTION OF THE DEATH PENALTY?

27 MR. BERSINGER: YES.

28 MR. WAPNER: AND DID THAT JURY ACTUALLY DELIBERATE ON

1 THE ISSUE OF WHETHER OR NOT TO IMPOSE THE DEATH PENALTY OR
2 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

3 MR. BERSINGER: I WAS AN ALTERNATE JUROR DURING THE
4 PENALTY PHASE OF A MURDER TRIAL WITH SPECIAL CIRCUMSTANCES ABOUT
5 TWO AND A HALF YEARS AGO.

6 MR. WAPNER: SO YOU WERE NOT ACTUALLY CALLED UPON TO
7 MAKE THE DECISION?

8 MR. BERSINGER: NO.

9 MR. WAPNER: IF YOU ARE CHOSEN AS A REGULAR MEMBER OF
10 THIS JURY, DO YOU THINK THAT YOU ARE CAPABLE OF MAKING THE
11 DECISION ON THE QUESTION OF THE PENALTY IN THIS CASE?

12 MR. BERSINGER: I THINK SO.

13 MR. WAPNER: DO YOU THINK THAT IF THE JUDGE TELLS YOU
14 TO CONSIDER THE AGGRAVATING FACTORS AND THE MITIGATING FACTORS
15 AND THEN TELLS YOU THAT IT IS UP TO YOU, ALONG WITH THE OTHER
16 11 JURORS, TO MAKE YOUR OWN INDEPENDENT DECISION AS TO WHETHER
17 OR NOT THE DEATH PENALTY SHOULD BE IMPOSED, CAN YOU DO THAT?

18 MR. BERSINGER: I THINK I COULD, YES.

19 MR. WAPNER: CAN YOU VOTE FOR THE IMPOSITION OF THE DEATH
20 PENALTY IN THIS CASE IF YOU THINK THE FACTS WARRANT IT?

21 MR. BERSINGER: YES.

22 MR. WAPNER: IS YOUR FRAME OF MIND NOW, WITHOUT KNOWING
23 THE FACTS OF THIS CASE, THAT IT WOULD BE MORE DIFFICULT FOR YOU
24 TO VOTE FOR A VERDICT OF DEATH AS OPPOSED TO LIFE IMPRISON-
25 MENT WITHOUT THE POSSIBILITY OF PAROLE?

26 MR. BERSINGER: I FEEL IT WOULD ALWAYS BE A LITTLE MORE
27 DIFFICULT TO VOTE FOR THE DEATH PENALTY BECAUSE OF THE
28 IRREVERSIBILITY OF IT BUT, HOPEFULLY, I WOULD BE GOVER.

3-6
1 THE EVIDENCE THAT WAS PRESENTED.

2 MR. WAPNER: I DON'T MEAN TO SOUND TOO MUCH LIKE A
3 LAWYER BUT "HOPEFULLY" IS NOT GOING TO BE GOOD ENOUGH FOR
4 THESE PURPOSES.

5 BUT IT IS REALLY A QUESTION -- AND UNFORTUNATELY
6 NOW IS THE ONLY TIME WE ARE GOING TO BE ABLE TO ASK THESE
7 QUESTIONS.

8 MR. BERSINGER: I UNDERSTAND. I UNDERSTAND. THAT WAS
9 A POORLY CHOSEN WORD.

10 MR. WAPNER: WHAT I AM ASKING YOU IS WHETHER YOU ARE
11 CAPABLE OF DOING IT, IF YOU CAN PUT YOURSELF IN THE SITUATION
12 WHERE YOU ARE ON THE JURY, YOU HAVE HEARD THE TRIAL, YOU HAVE
13 MADE THE DECISION THAT THE DEFENDANT IS GUILTY OF THE CRIME
14 OF MURDER IN THE FIRST DEGREE AND THAT THE SPECIAL CIRCUM-
15 STANCES ARE TRUE AND YOU HAVE HEARD THE PENALTY PHASE EVIDENCE
16 AND NOW YOU ARE DECIDING THE QUESTION OF LIFE IN PRISON
17 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH, CAN YOU VOTE FOR
18 THE IMPOSITION OF THE DEATH PENALTY IF IT IS WARRANTED UNDER
19 THE FACTS OF THIS CASE?

20 MR. BERSINGER: YES.

21 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT THAT
22 AT ALL?

23 MR. BERSINGER: AS I SIT HERE AND HEARD YOUR QUESTION,
24 I WOULD SAY NO, I HAVE NO RESERVATIONS.

25 MR. WAPNER: OKAY. AS FAR AS THE GUILT PHASE OF THE
26 TRIAL IS CONCERNED, DID YOU UNDERSTAND THE JUDGE'S STATEMENT
27 WHEN HE READ IT AS YOU WERE ALL ASSEMBLED HERE, THAT WHEN YOU
28 ARE DECIDING THE ISSUE OF GUILT OR INNOCENCE THAT YOU DON'T

1 CONSIDER THE QUESTION OF PENALTY; DO YOU UNDERSTAND THAT?

2 MR. BERSINGER: YES, I UNDERSTAND THAT.

3 MR. WAPNER: SO THAT MEANS IN DECIDING WHETHER OR NOT
4 THE DEFENDANT IS GUILTY OF FIRST DEGREE MURDER AND WHETHER
5 OR NOT THE SPECIAL CIRCUMSTANCES ARE TRUE, YOU CAN'T THINK
6 ABOUT WHAT MIGHT HAPPEN AT SOME PHASE OF THE TRIAL DOWN THE
7 ROAD; DO YOU UNDERSTAND THAT?

8 MR. BERSINGER: YES, I UNDERSTAND THAT.

9 MR. WAPNER: BESIDE THE EVENING OUTLOOK ARTICLE, HAVE
10 YOU HEARD ANYTHING ABOUT THIS PARTICULAR CASE?

11 MR. BERSINGER: NO.

12 MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER: I PASS FOR CAUSE, YOUR HONOR.

15 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. THE COURT
16 FINDS MR. BERSINGER QUALIFIES AS A JUROR IN THE CASE.

17 MR. BERSINGER, WOULD YOU GIVE YOUR TELEPHONE
18 NUMBER TO THE CLERK?

19 MR. WAPNER: YOUR HONOR --

20 THE COURT: WHAT?

21 MR. WAPNER: I JUST DON'T THINK THAT SHOULD BE DONE ON
22 THE RECORD. HE CAN PROBABLY DO IT AFTER HE HAS ADJOURNED,
23 SO HIS HOME PHONE NUMBER AND WORK PHONE NUMBER ARE NOT PART
24 OF THE RECORD IN THE CASE.

25 THE COURT: WE ARE GIVING IT TO THE CLERK TO GET IN
26 TOUCH WITH HIM.

27 THE CLERK: I HAVE ACCESS TO ALL OF THEIR PHONE NUMBERS,
28 YES.

1 THE COURT: YOU HAVE IT ANYWAY?

2 THE CLERK: YES.

3 THE COURT: THANK YOU VERY MUCH. YOU WILL HEAR FROM
4 THE CLERK AS TO WHEN YOU WILL BE BACK AGAIN.

5 MR. BERSINGER: THANK YOU.

6 THE COURT: THANK YOU VERY MUCH, MR. BERSINGER.

7 (PROSPECTIVE JUROR BERSINGER EXITS THE
8 COURTROOM.)

9 THE COURT: DO YOU WANT TO BORROW THIS?

10 MR. BARENS: NO. THAT IS QUITE ALL RIGHT.

11 MR. WAPNER: YOUR HONOR, I THINK FOR THE RECORD THAT
12 IN THE EVENT WE GET SOMEONE ELSE LIKE MR. BERSINGER, OR
13 ANYONE ELSE WHO MAY HAVE READ THE ARTICLE, IT IS NOT ADVISABLE
14 TO SHOW THAT TO THEM. IF HE HASN'T ALREADY SEEN ANYTHNG,
15 IT IS PROBABLY NOT ADVISABLE TO SHOW IT TO HIM IN THE EVENT
16 WHAT HE SEES MIGHT IN SOME WAY PREJUDICE HIM.

17 THE COURT: YOU MEAN I SHOULDN'T BE SHOWING IT TO HIM,
18 IS THAT THE IDEA?

19 MR. WAPNER: I THINK IT IS ADVISABLE NOT TO.

20 THE COURT: I WILL DO WHATEVER I WANT TO ABOUT THAT.

21 MR. WAPNER: ALL RIGHT.

22 MR. BARENS: THANK YOU, YOUR HONOR.

23 (AT 4:15 P.M. AN ADJOURNMENT WAS TAKEN
24 UNTIL TUESDAY, NOVEMBER 18, 1986 AT
25 10:30 A.M.)
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28