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FILED

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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 09 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
ROOM 800
LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 8 OF 101
(PAGES 763 TO 941, INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
OFFICIAL REPORTERS

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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

TUESDAY, NOVEMBER 18, 1986

VOLUME 8

(PAGES 763 TO 941, 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

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ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
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TUESDAY, NOVEMBER 18, 1986 VOLUME 8 PAGES 763 TO 941

A.M. 763

P.M. 809

PROCEEDINGS

HEARING RE EXCLUSION OF THE PRESS 763

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 775

1 SANTA MONICA, CALIFORNIA; TUESDAY, NOVEMBER 18, 1986; 10:40 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD
6 IN OPEN COURT WITH THE PRESENCE OF
7 STEPHEN G. CONTOPULOS, ESQ., OF THE
8 FIRM OF DONOVAN, LEISURE, NEWTON & IRVINE,
9 ON BEHALF OF COOKE MEDIA GROUP INCORPORATED,
10 PUBLISHER OF THE DAILY NEWS:)

11 THE COURT: PEOPLE VERSUS HUNT.

12 MR. BARENS: GOOD MORNING, YOUR HONOR. THE DEFENSE WOULD
13 LIKE ABOUT TEN MINUTES. WE HAVE BEEN EXCHANGING PAPERS WITH
14 COUNSEL FOR THE PRESS AND WITH THE PEOPLE AND I HAVE NOT HAD
15 AN OPPORTUNITY TO READ COUNSEL'S MOTION.

16 I ALSO SUBMITTED A DOCUMENT --

17 THE COURT: YES, I HAVE READ IT.

18 MR. BARENS: -- I WOULD LIKE YOUR HONOR TO READ THIS
19 MORNING.

20 THE COURT: YOU WANT TEN MINUTES, DO YOU?

21 MR. BARENS: YES, IF YOU WOULD, PLEASE.

22 (RECESS.)

23 THE COURT: ALL RIGHT, THE COURT WILL CONSIDER AT THIS
24 TIME THE MOTION OF THE DEFENDANT TO BAR -- CLOSE THE COURTROOM
25 TO ANY MEDIA OR ANY MEMBERS OF THE PUBLIC.

26 I THINK LAST NIGHT YOUR COLLEAGUE, MR. CHIER, MADE
27 A CATEGORICAL STATEMENT THAT HE HAD AUTHORITY THAT IT IS
28 MANDATORY UPON THE COURT TO BAR ANY MEMBERS OF THE PRESS FROM

1 HEARING THE VOIR DIRE UNDER THE HOVEY CASE. I READ YOUR
2 MEMORANDUM AND THERE IS NOTHING IN THERE TO INDICATE SUCH AN
3 AUTHORITY EXISTS.

4 I WILL HEAR FROM YOU.

5 MR. BARENS: ALL RIGHT, YOUR HONOR, I MIGHT RESPECTFULLY
6 DISAGREE. I DON'T RECALL THE WORD "MANDATORY."

7 THE COURT: IT WAS "MANDATORY." I ASKED HIM WHAT
8 AUTHORITY HE HAD FOR BARRING THEM AND HE SAYS THERE IS NO
9 CHOICE BUT THE COURT HAS TO DO IT.

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1 MR. BARENS: AGAIN, I WILL STAND CORRECTED, IF THAT BE
2 THE CASE. I DON'T HAVE A RECOLLECTION. BUT NONETHELESS, WE
3 SUBMITTED --

4 THE COURT: AND BASED UPON THAT, I EXCLUDED A MEMBER
5 OF THE PRESS BECAUSE OF THE STATEMENT MADE BY YOUR CO-COUNSEL.

6 MR. BARENS: AS WE HAVE INDICATED THIS MORNING, DEFENSE
7 IN THIS INSTANCE, SEEKS TO BAR THE PRESS SOLELY FROM THE
8 PORTION OF THE TRIAL INVOLVING -- NOT THE TRIAL, BUT THE
9 PORTION OF THE JURY EXAMINATION INVOLVING THE HOVEY VOIR
10 DIRE.

11 IN YOUR HONOR, EVERY INSTANCE INVOLVING THE ISSUES
12 ATTENDANT, IT IS A BALANCING QUESTION. THE COURT HAS TO
13 EXERCISE THE COURT'S DISCRETION.

14 THE COURT: I HAVE TO MAKE FINDINGS THAT IT IS FOR THE
15 BEST INTEREST OF THE DEFENDANT IN THIS PARTICULAR CASE, THAT
16 IT IS OF OVERRIDING IMPORTANCE THAT THE PRESS BE BARRED.

17 MR. BARENS: THAT'S CORRECT, YOUR HONOR. BASED ON THE
18 CASE THAT WE CITE TO YOUR HONOR, THE PRESS ENTERPRISE CASE
19 WHICH IS THE SAME CASE I BELIEVE COUNSEL, IN OPPOSITION, WILL
20 BE REFERRING TO THIS MORNING, WE BELIEVE THAT THAT CASE CLEARLY
21 SHOWS THAT YOUR HONOR HAS THE DISCRETION TO MAKE FINDINGS THAT
22 FOR PURPOSES OF ASSURING A FAIR TRIAL FOR THE DEFENDANT IN
23 THIS OR ANY OTHER ANALOGOUS INSTANCE, THAT THE PRESS CAN BE
24 BARRED.

25 (MR. CHIER ENTERS THE COURTROOM.)

26 THE COURT: WHAT FINDING SHOULD I MAKE IN THIS PARTICULAR
27 CASE IN VIEW OF THE FACT THAT IN THE PAST, UP UNTIL THIS DATE,
28 THERE HAS BEEN CONSIDERABLE PUBLICITY IN THIS CASE, ENGENDERED

1 LARGELY BY INTERVIEWS THAT YOU HAD GIVEN TO THE PRESS AND
2 STATEMENTS MADE BY YOU.

3 MR. BARENS: YOUR HONOR, I BELIEVE THAT WE ARE HERE
4 TALKING ABOUT THE CONSENTS OF THESE JURORS. I BELIEVE THAT
5 THE JURORS HAVE A RIGHT TO PRIVACY UNDER THE CALIFORNIA
6 CONSTITUTION, WHICH WE POINT OUT HERE. I BELIEVE THE PRESENCE
7 OF THE PUBLIC OR THE PRESS DURING PERIODS OF TIME WHEN THE
8 JURORS ARE BEING INQUIRED INTO AS TO THEIR RELIGIOUS BELIEFS,
9 THEIR PHILOSOPHY AND THEIR BELIEF ON THE DEATH PENALTY IN
10 GENERAL, THAT THE PEOPLE --

11 THE COURT: WHERE DID YOU GET THE IDEA THAT THESE
12 QUESTIONS ARE PERTINENT IN HOVEY, THEIR RELIGIOUS IDEAS?

13 MR. CHIER: THOSE ARE PERMISSIBLE QUESTIONS THAT --

14 THE COURT: WILL YOU -- I WILL TELL YOU TO SHUT UP.
15 I AM NOT LISTENING TO YOU. I WANT YOU NOT TO INTERFERE WHEN
16 COUNSEL IS ADDRESSING THE COURT.

17 YOU WILL HAVE YOUR OPPORTUNITY LATER ON, IF I GIVE
18 IT TO YOU. YOU SIT DOWN.

19 MR. CHIER: I AM TO SHUT UP, YOUR HONOR?

20 THE COURT: WILL YOU SIT DOWN?

21 MR. BARENS: YOUR HONOR, TRYING TO MOVE AHEAD HERE, I
22 BELIEVE THAT INQUIRING INTO RELIGIOUS BELIEFS AND ORIENTATIONS
23 OF THE PROSPECTIVE JURORS ARE PERMISSIBLE IN THE HOVEY
24 EXAMINATION.

25 THERE IS CERTAINLY AMPLE PRECEDENT FOR THAT, YOUR
26 HONOR. HOWEVER, THAT ONLY AMOUNTS TO ONE OF THE THREE AREAS
27 OF CONCERN I HAVE THAT THE PRESENCE OF THE PRESS OR THE PUBLIC
28 DURING HOVEY VOIR DIRE WOULD HAVE A CHILLING EFFECT ON THE

1 PROSPECTIVE JURORS IN THE CANDOR OF THEIR RESPONSE, PARTICULARLY
2 KNOWING AS THEY WOULD, THAT THEIR RESPONSES AND THEIR NAMES
3 COULD BE PRINTED.

4 THE COURT: WELL, LET ME INTERRUPT YOU. YOU SUBMITTED
5 TO ME A LIST OF QUESTIONS WHICH WOULD BE ASKED OF JURORS ON
6 THE VOIR DIRE, THE GENERAL VOIR DIRE AFTER WE HAD DISPENSED
7 WITH HOVEY.

8 ONE OF THE THINGS YOU WANTED TO INQUIRE INTO WAS
9 ALSO THE AMOUNT OF MONEY THAT THEY MAKE, RELIGIOUS
10 AFFILIATION, THEIR POLITICAL AFFILIATION AND HOW THEY VOTED
11 IN OTHER CASES AND EVERYTHING ELSE, WHICH GOES DEEPLY INTO
12 THE PERSONAL LIVES AND THEIR PRIVACY.

13 MR. BARENS: YOUR HONOR, THAT WAS ASKED TO BE DONE ON
14 THE GENERAL VOIR DIRE AND NOT NOW.

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1 MR. BARENS: AND THE DEFENSE WAS WILLING TO ABIDE BY
2 YOUR HONOR'S DECISION, WITHOUT OBJECTION, THAT CERTAIN OF THOSE
3 QUESTIONS WERE INAPPROPRIATE.

4 THE COURT: WELL, I WON'T PERMIT YOU TO INQUIRE AS TO
5 THE RELIGIOUS BELIEFS OF ANY -- UNLESS THEY HAVE A
6 PHILOSOPHICAL BELIEF AGAINST THE DEATH PENALTY--I WOULDN'T
7 PERMIT THAT TO BE DONE ON THE HOVEY QUESTION.

8 MR. BARENS: YES, THAT IS THE AREA I AM DISCUSSING THAT
9 WE WOULD BE INQUIRING INTO. OBVIOUSLY, MUCH OF THE OPPOSITION
10 OR FAVORING OF THE DEATH PENALTY ISSUE IS ATTRIBUTABLE TO A
11 THEOLOGICAL ORIENTATION ANALOGOUS TO AN EYE FOR AN EYE, WHICH
12 CERTAINLY HAS ITS GENESIS IN THEOLOGY.

13 YOUR HONOR, AGAIN, WE ARE TRYING TO PROTECT
14 MR. HUNT'S INTERESTS IN A FAIR TRIAL.

15 WE ARE NOT ASKING THAT THE PRESS BE EXCLUDED FROM
16 ANYTHING OTHER THAN THE HOVEY VOIR DIRE IN THIS TRIAL.

17 YOUR HONOR, WE FELT THAT THERE WERE CERTAIN --
18 IF THE COURT WAS GOING TO RULE AGAINST THE DEFENDANT IN THIS
19 INSTANCE, THERE WERE CERTAIN INHIBITIONS THE COURT DOES HAVE
20 DISCRETION TO IMPOSE, WHICH WE SUGGESTED AT THE END OF OUR
21 MOTION.

22 CERTAINLY, THE COURT COULD INQUIRE OF THE JURORS
23 THEMSELVES WHETHER OR NOT THEY WANTED TO SURRENDER THEIR
24 RIGHT TO PRIVACY AS CONSTITUTIONALLY PROTECTED IN THIS
25 INSTANCE, AND AT THE VERY LEAST, A PROPHYLACTIC MEASURE WOULD
26 INVOLVE A PROHIBITION FROM THE PRESS DISCLOSING THE NAME OF
27 THE PROSPECTIVE JUROR OR THEIR RESPONSES WITHOUT THE
28 UNEQUIVOCAL CONSENT BY THE PROSPECTIVE JUROR.

1 AGAIN, YOUR HONOR, I THINK THERE ARE TWO ISSUES
2 BEFORE THE COURT: ONE, THE INTERESTS OF A FAIR TRIAL FOR
3 MR. HUNT.

4 AND TWO, THE CONSTITUTIONALLY PROTECTED ISSUE OF
5 PRIVACY FOR THE PROTECTION OF THE JUROR. THE JURORS, TOO,
6 YOUR HONOR, HAVE THEIR RIGHTS.

7 THE COURT: LET'S NOT TALK ABOUT THE JURORS. WE ARE
8 TALKING NOW ABOUT THE RIGHTS OF THE DEFENDANT. YOU FORGET
9 ABOUT THE JURORS, I WILL TAKE CARE OF THEM.

10 I WANT YOU TO ADDRESS YOURSELF TO THE QUESTION
11 AS TO HOW, IF PERMITTING THE MEDIA TO BE PRESENT DURING THE
12 HOVEY QUESTIONING, IS GOING TO BE PREJUDICIAL TO THE
13 DEFENDANT. FORGET ABOUT THE JURORS.

14 MR. BARENS: TWO RESPONSES, YOUR HONOR: NUMBER ONE,
15 I BELIEVE, AS I INDICATED, IT WOULD HAVE A CHILLING EFFECT
16 ON THE JURORS.

17 AND NUMBER TWO, YOUR HONOR, AS DEFENSE COUNSEL,
18 I DON'T THINK I CAN ACTUALLY FORGET ABOUT THE JURORS AND THE
19 PROSPECTIVE JUROR'S ORIENTATION IN THIS MATTER. I BELIEVE
20 THAT I CAN ASSERT THEIR RIGHT TO PRIVACY AS A PART OF THE
21 OVERALL CONTEXT OF WHAT WE ARE DEALING WITH HERE AND THAT
22 CANNOT BE DISREGARDED BY THE DEFENSE AND, CERTAINLY, IS NOT
23 BEING DISREGARDED BY THE COURT.

24 THE COURT: ALL RIGHT, I WILL HEAR FROM COUNSEL,
25 MR. CONTOPULOS.

26 MR. CONTOPULOS: GOOD MORNING. STEVE CONTOPULOS FOR
27 THE DAILY NEWS.

28 THIS IS NOT A UNIQUE CASE. THIS IS NOT A CASE

1 OF FIRST IMPRESSION. THE RIVERSIDE PRESS CASE THAT WE BROUGHT
2 TO THE COURT'S ATTENTION WAS SPECIFICALLY ON THE ISSUE OF
3 DEATH QUALIFICATIONS. THERE IS NOTHING IN THIS PARTICULAR
4 CASE THAT MAKES IT UNIQUE.

5 THE SAME ARGUMENT ABOUT THE CANDOR OF THE
6 JURORS WAS MADE IN THE UKIAH DAILY JOURNAL CASE THAT WE
7 SUBMITTED TO THE COURT. AGAIN, THAT CASE WAS SPECIFICALLY
8 VOIR DIRE ON DEATH QUALIFICATION.

9 WE SUBMIT TO THE COURT THAT THIS ISSUE HAS BEEN
10 DETERMINED; THAT THE COURT HAS GUIDELINES FROM THE UNITED STATES
11 SUPREME COURT AND BY THE CALIFORNIA SUPREME COURT THAT IN FACT
12 THERE IS A PRESUMPTION OF OPENNESS OF THIS TRIAL AND VOIR DIRE
13 IS PART OF THAT.

14 THERE MUST BE SPECIFIC FINDINGS OF SUBSTANTIAL
15 PROBABILITY OF DENIAL OF THE RIGHT TO A FAIR TRIAL. THERE
16 HAS TO BE A FINDING AS AN ALTERNATIVE THAT IN FACT CLOSURE
17 WILL ACHIEVE THE ENDS OF A FAIR TRIAL AND NOTHING OF THAT HAS
18 OCCURRED HERE.

19 THE COURT: AND NOTHING AS TO THOSE POINTS RELATING TO
20 THAT HAS BEEN SUBMITTED BY COUNSEL, WHICH IS VERY ABLE COUNSEL,
21 BY THE WAY, TO THE EFFECT THAT WE HAVE TO PRESERVE THE RIGHTS
22 OF PRIVACY OF THE PROSPECTIVE JURORS.

23 MR. CONTOPULOS: IN FACT, IN THE RIVERSIDE CASE THAT
24 WAS MENTIONED BY THE COURT, IN THAT CASE IT WAS A RAPE CASE
25 AND THE COURT SAID THAT IT IS A CONSIDERATION OF THE RIGHT
26 OF PRIVACY BUT THAT ALONE DOES NOT MEAN THAT YOU THEREFORE
27 FORECLOSE THE RIGHT OF THE PUBLIC TO ATTEND THE TRIAL. SO
28 THE MERE SPECTOR OF THE RIGHT OF PRIVACY IS NOT THE ISSUE.

1 THE ISSUE BECOMES WHETHER THERE IS A DENIAL OF
2 THAT RIGHT OF PRIVACY, WHETHER IN FACT THESE AREAS OF
3 INQUIRY WHICH, I SUBMIT, ARE AREAS OF INQUIRY DURING ANY
4 DEATH PENALTY QUALIFICATION, IS SOMEHOW UNIQUE AND NEITHER
5 THE RIVERSIDE PRESS CASE, WHICH WENT TO DEATH QUALIFICATION
6 AND THE UKIAH CASE, WHICH WAS A DEATH QUALIFICATION CASE, IN
7 ANY WAY FIND THAT THE VOIR DIRE ON DEATH QUALIFICATION SHOULD
8 BE ANYTHING OTHER THAN OPEN TO THE PUBLIC, WHICH IS OUR
9 POSITION.

10 AND WE THINK THERE IS AMPLE PRECEDENT FOR THIS.

11 THE COURT: ANYTHING ELSE?

12 MR. BARENS: WITHIN THAT PRECEDENT, I THINK COUNSEL WOULD
13 LIKE THE COURT TO BELIEVE THAT THERE IS SOMETHING THAT
14 MANDATES THE COURT'S DECISION IN THIS AREA. RATHER, I BELIEVE
15 THE CASES QUITE CLEARLY MAKE IT A MATTER OF DISCRETION FOR
16 YOUR HONOR IN EACH AND EVERY CASE TO BE DECIDED ON AN
17 INDIVIDUALIZED BASIS, BALANCING THE INTERESTS OF THE DEFENDANT
18 AND THE PRIVACY INTERESTS OF THE JURORS. THE PRESS-ENTERPRISE
19 CASE CERTAINLY PROVIDES YOUR HONOR WITH DISCRETION IN MAKING
20 THIS RULING.

21 THE DEFENSE IN THIS INSTANCE AGAIN IS URGING THE
22 COURT IN TERMS OF INSURING A FAIR TRIAL FOR MR. HUNT THAT IN
23 THIS INSTANCE, IN THE LIMITED AREA OF HOVEY VOIR DIRE, TO
24 EXERCISE THAT DISCRETION THAT THE COURT CLEARLY HAS IN THE
25 INTERESTS OF A FAIR TRIAL AND IN THE INTERESTS OF PROTECTING
26 THE PRIVACY OF THESE JURORS.

27 MR. WAPNER: MAY I BE HEARD, YOUR HONOR, BRIEFLY?

28 THE COURT: YES, I WANTED TO CALL ON YOU ANYWAY.

1 MR. WAPNER; FIRST OF ALL, THE POLICY OF THE DISTRICT
2 ATTORNEY'S OFFICE IS THAT THE TRIAL SHOULD BE OPEN AND PUBLIC
3 AND THE PRESS SHOULD HAVE ACCESS TO ALL PHASES OF CRIMINAL
4 TRIALS, AND I AGREE WITH MR. CONTOPULOS IN THIS INSTANCE THAT
5 THIS IS NOT ANY DIFFERENT THAN ANY OTHER CASE IN THAT REGARD.

6 SECOND OF ALL, I DON'T THINK THAT COUNSEL HAS
7 DEMONSTRATED -- COUNSEL FOR THE DEFENSE HAS DEMONSTRATED HOW
8 THIS IN ANY WAY PREJUDICES THE DEFENDANT'S RIGHTS TO HAVE
9 MEMBERS OF THE PRESS HERE.

10 THIRD OF ALL, MY CONCERN, MY ONLY REAL CONCERN
11 WAS THE HOVEY ISSUE AND I AM SATISFIED IN READING THE BRIEF
12 SUBMITTED BY THE DAILY NEWS THAT THE UKIAH CASE ANSWERS THAT
13 CONCERN.

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1 FOURTH OF ALL, IS THAT I THINK ANY CONCERN THERE
2 COULD BE THAT SOMEHOW, HOVEY IS GOING TO BE VIOLATED BECAUSE
3 ONE JUROR MIGHT READ IN THE PAPER WHAT SOME OTHER JUROR HAS
4 SAID. IT CAN BE CURED BY SIMPLY INSTRUCTING EACH JUROR AS
5 THEY LEAVE, NOT TO READ ANY ACCOUNTS IN THE PRESS WHATSOEVER
6 THAT MAY BE WRITTEN ABOUT THE CASE. THAT WILL CURE NOT ONLY
7 THE HOVEY PROBLEM, BUT IN ANY EVENT, SHOULD BE DONE, TO KEEP
8 THEM FROM BEING EXPOSED TO ANY PUBLICITY ABOUT THE CASE SO
9 IF THEY ARE CHOSEN AS JURORS, THEY WILL DECIDE THE CASE ONLY
10 ON THE FACTS THEY HEAR IN THE COURTROOM AND NOT WHAT THEY
11 READ IN THE NEWSPAPER.

12 AND LASTLY, ALTHOUGH IT IS NOT ESPECIALLY PERTINENT
13 BECAUSE MOSTLY WE ARE TALKING ABOUT RIGHT NOW, THE PRINT
14 MEDIA, IT SHOULD BE CLEAR THAT THE COURT RULES SET OUT THAT
15 THERE CAN BE NO RECORDING OR PHOTOGRAPHING OF ANY OF THE
16 JURY SELECTION. THAT IS IN 980 OF THE RULES OF COURT.

17 SO THAT TO THE EXTENT THAT THIS MOTION GOES TO
18 LEAVING THE PROCEEDINGS OPEN AND THAT THE PRESS CAN COVER,
19 I HAVE NO OBJECTION.

20 IN THE EVENT THAT WE GET ANY CAMERAS OR TAPE
21 RECORDERS IN THE COURTROOM, THE COURT RULES SPECIFICALLY
22 PROHIBIT THE PHOTOGRAPHING OR RECORDING IN ANY WAY, OF THE
23 JURY SELECTION PROCESS.

24 THE COURT: ALL RIGHT. THE MOTION OF THE DEFENDANT TO
25 CLOSE THE PROCEEDINGS ON THE HOVEY HEARING TO THE PRESS, WILL
26 BE DENIED.

27 MR. BARENS: YOUR HONOR, THANK YOU. WOULD YOUR HONOR
28 BE INCLINED TO GIVE ANY INHIBITIONS AS REQUESTED AND PERMITTED

1 BY THE CASES CITED, THAT THE NAMES OF PROSPECTIVE JURORS AND
2 THEIR RESPONSES ON THE DEATH PENALTY ISSUES, NOT BE PRINTED
3 OR PUBLISHED WITHOUT THEIR PERMISSION?

4 THE COURT: DO YOU WANT ME TO MAKE THE RULING OF THAT
5 KIND, MR. CONTOPULOS? THAT WOULD BE LIMITED.

6 MR. CONTOPULOS: THE LAW IS PRETTY CLEAR ON PRIOR
7 RESTRAINT. THAT IS EXACTLY WHAT COUNSEL IS ASKING YOU TO DO,
8 IS RESTRICT WHAT CAN GO INTO THE NEWSPAPER BEFORE IT OCCURS.

9 THE COURT: I WILL NOT DO THAT.

10 MR. CONTOPULOS: YOUR HONOR, CAN I HAVE ONE CLARIFICATION?
11 I UNDERSTAND THAT YESTERDAY THERE WAS A PORTION OF THE
12 PROCEEDINGS THAT WAS CLOSED. AND I WONDER IF WE MIGHT HAVE
13 ACCESS TO THE TRANSCRIPT OF THE PORTION THAT WAS CLOSED?

14 THE COURT: YES, YOU CAN.

15 MR. CONTOPULOS: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MR.
17 CONTOPULOS FOR YOUR ASSISTANCE IN THIS MATTER.

18 MR. CONTOPULOS: THANK YOU, YOUR HONOR.

19 THE COURT: WE'LL PROCEED NOW. IS THAT ALSO INCLUDING
20 THE MEMBERS OF THE PUBLIC? DOES IT INCLUDE MEMBERS OF THE
21 PUBLIC THAT WOULD ALSO HAVE A RIGHT TO BE PRESENT, WOULD THEY
22 NOT?

23 MR. WAPNER: ABSOLUTELY.

24 THE COURT: ALL RIGHT. WE WILL PROCEED NOW, WITH THE
25 JURY.

26 WE HAVE A TRANSCRIPT OF THE INTERROGATION OF THE
27 JURORS THAT HAVE BEEN HEARD UP TO THIS TIME, IF YOU WOULD LIKE
28 TO LOOK AT IT.

1 MR. CONTOPULOS: HOW SOON CAN WE GET AHOLD OF THAT?

2 THE COURT: THE CLERK WILL MAKE IT AVAILABLE TO YOU.

3 (MR. CONTOPULOS EXITS THE COURTROOM.)

4 (PROSPECTIVE JUROR DORRIS SMITH ENTERS

5 THE COURTROOM.)

6 THE COURT: MISS SMITH, I UNDERSTAND THAT YOU COMMUNICATED
7 WITH YOUR EMPLOYER AND THEY WILL NOT PAY YOU?

8 MISS SMITH: ONLY FOR UP TO 30 DAYS.

9 THE COURT: JUST 30 DAYS?

10 MISS SMITH: YES.

11 MR. BARENS: NO OBJECTION.

12 THE COURT: ALL RIGHT. YOU WILL BE EXCUSED. THANK YOU
13 VERY MUCH.

14 (PROSPECTIVE JUROR DORRIS SMITH EXITS
15 THE COURTROOM.)

16 THE COURT: CALL IN THE NEXT JUROR.

17 (PROSPECTIVE JUROR BLEVINS ENTERS THE
18 COURTROOM.)

19 THE COURT: MISS BLEVINS, I WILL ASK A NUMBER OF
20 QUESTIONS. PLEASE LISTEN TO THEM CAREFULLY AND ANSWER YES
21 OR NO, WITHOUT ANY FURTHER STATEMENT, IF YOU CAN. IF THE
22 QUESTION IS UNCLEAR, PLEASE ASK THAT IT BE REPEATED.

23 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
24 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
25 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

26 MISS BLEVINS: NO.

27 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
28 THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER, EVEN

1 WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY OF
2 MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

3 MISS BLEVINS: NO.

4 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
5 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
6 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES
7 ALLEGED IN THIS CASE? I TOLD YOU THAT IF THE JURY FINDS THE
8 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, THEN THERE
9 IS A SECOND PHASE THAT THEY GO INTO. THAT IS TO DETERMINE
10 THE SPECIAL CIRCUMSTANCES.

11 THE SPECIAL CIRCUMSTANCES IS WHETHER OR NOT THAT
12 MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY. THAT IS
13 THE SPECIAL CIRCUMSTANCES.

14 ALL RIGHT?

15 MISS BLEVINS: UH-HUH.

16 THE COURT: I WILL READ IT AGAIN TO YOU.

17 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
18 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
19 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES
20 ALLEGED IN THIS CASE?

21 MISS BLEVINS: NO.

22 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING
23 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
24 IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
25 WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY
26 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
27 TRIAL?

28 MISS BLEVINS: NO.

1 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING
2 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
3 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT
4 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL
5 CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
6 AT THE PENALTY PHASE OF THE TRIAL?

7 MISS BLEVINS: NO.

8 THE COURT: DO YOU UNDERSTAND THAT THE ISSUE OF THE DEATH
9 PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND THAT THESE
10 QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU REACH
11 THAT PHASE OF THE TRIAL?

12 MISS BLEVINS: YES.

13 THE COURT: NO, HAVE YOU READ ANYTHING AT ALL ABOUT THIS
14 CASE IN THE NEWSPAPERS OR ANY OTHER MEDIA?

15 MISS BLEVINS: NO.

16 THE COURT: DOES ANYTHING LIKE THE BILLIONAIRE BOYS
17 CLUB OR ANYTHING LIKE THAT RING A BELL IN YOUR MIND?

18 MISS BLEVINS: NO.

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1 THE COURT: DO YOU UNDERSTAND OF COURSE, THAT FROM NOW
2 ON, YOU ARE NOT UNDER ANY CIRCUMSTANCES, TO READ ANY ACCOUNTING
3 OF THIS CASE IN THE NEWSPAPER OR LISTEN TO ANY BROADCASTS
4 EITHER ON THE RADIO OR BY TELEVISION? DO YOU UNDERSTAND THAT?

5 MISS BLEVINS: YES.

6 THE COURT: ALL RIGHT.

7 MR. BARENS: THANK YOU. MISS BLEVINS, DO YOU UNDERSTAND
8 THAT THERE IS NO CRIME IN CALIFORNIA WHEREIN THE DEATH
9 PENALTY IS MANDATED OR ABSOLUTELY NECESSARY? DO YOU UNDER-
10 STAND WHAT I MEAN?

11 MISS BLEVINS: I AM THINKING ABOUT YOUR QUESTION, WHETHER
12 I UNDERSTAND WHAT THE LAW SAYS.

13 MR. BARENS: YES, MA'AM?

14 THE COURT: WHAT HE SAYS, IS, IS THERE ANYTHING THAT
15 YOU KNOW ABOUT IN THE LAW -- THE LAW DOES NOT SAY THAT A JURY
16 MUST FIND THE DEATH PENALTY IN ANY KIND OF CASE.

17 MISS BLEVINS: ALL RIGHT, THEN. I UNDERSTAND. YES.

18 MR. BARENS: THEREFORE, YOU WOULD UNDERSTAND THAT IN
19 THE EVENT WE WOULD EVER GET TO A PENALTY PHASE IN THIS TRIAL,
20 THAT WOULD BE A DECISION THAT YOU, AS JURORS, WOULD MAKE AFTER
21 YOU HAD FIRST HAD A FINDING OF GUILT? DO YOU UNDERSTAND THAT
22 IDEA?

23 MISS BLEVINS: YES.

24 MR. BARENS: SO, AS HIS HONOR HAS POINTED OUT, THERE
25 COULD BE TWO PHASES TO THE TRIAL, A GUILT PHASE AND A PENALTY
26 PHASE?

27 MISS BLEVINS: YES.

28 MR. BARENS: YOU REALIZE THAT WE MAY NEVER GET TO THE

1 PENALTY PHASE, BUT RATHER, AS A MATTER OF LAW, SINCE THE PEOPLE
2 OF THE STATE OF CALIFORNIA HAVE ASKED FOR THE DEATH PENALTY,
3 BEFORE WE CAN GET INTO A TRIAL OF THE GUILT OR INNOCENCE, WE
4 FIRST HAVE TO ASK YOU ABOUT THE DEATH PENALTY IDEAS. DO YOU
5 UNDERSTAND?

6 MISS BLEVINS: YES.

7 MR. BARENS: AND YOU DON'T FEEL BECAUSE WE ARE TALKING
8 ABOUT THAT, DO YOU, THAT THERE IS ANY GREATER LIKELIHOOD TO
9 BELIEVE MY CLIENT DID ANYTHING WRONG OR IS GUILTY OF ANYTHING,
10 DO YOU?

11 MISS BLEVINS: NO.
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1 THE COURT: BECAUSE YOU HAVE NOT HEARD ANY EVIDENCE SO
2 FAR.

3 MISS BLEVINS: RIGHT.

4 THE COURT: HE IS PRESUMED TO BE INNOCENT ALL THROUGHOUT
5 THE TRIAL, ALL THROUGHOUT THE DELIBERATIONS OF THE JURORS IN
6 THE JURY ROOM.

7 MISS BLEVINS: YES.

8 MR. BARENS: HOW DO YOU FEEL ABOUT THE DEATH PENALTY
9 AS A GENERAL CONCEPT?

10 MISS BLEVINS: ALL I KNOW IS THAT IT IS ON THE BOOKS
11 AS A LAW AND IT IS A FEASIBLE AND LEGAL PROCEDURE.

12 MR. BARENS: DO YOU THINK IT IS A GOOD LAW?

13 MISS BLEVINS: I DON'T KNOW WHETHER THE TERM WOULD BE
14 "GOOD".

15 I BELIEVE THAT IF IT IS ON THE LAW BOOKS, THAT
16 IT IS ONE THAT IS ACCESSIBLE AS A LAW TO BE USED. DOES THAT
17 TELL YOU WHAT YOU WANT TO KNOW?

18 MR. BARENS: TO A POINT, MA'AM. COULD YOU TELL ME ANY
19 INSTANCES IN YOUR OWN MIND, WHEN YOU THINK THE DEATH PENALTY
20 IS AN APPROPRIATE REMEDY FOR CONDUCT?

21 MISS BLEVINS: I AM NOT REALLY PREPARED TO ANSWER THAT.

22 MR. BARENS: CAN YOU THINK OF ANY INSTANCES WHEN THE
23 DEATH PENALTY WOULD NOT BE A GOOD IDEA?

24 MISS BLEVINS: I THINK WITH THAT EVIDENCE, I CAN'T ANSWER
25 THOSE QUESTIONS.

26 MR. BARENS: OKAY. IF YOU WERE IN A TRIAL AND DURING
27 THE GUILT PHASE, THAT FIRST PHASE HIS HONOR HAS TALKED ABOUT,
28 IT WAS ESTABLISHED BEYOND A REASONABLE DOUBT THAT A MURDER

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1 HAD OCCURRED AND IT WAS IN COLD BLOOD AND IT WAS DURING THE
2 COMMISSION OF A ROBBERY, WOULD YOU THEN UNDER THOSE
3 CIRCUMSTANCES, ALWAYS GIVE THE DEATH PENALTY?

4 MISS BLEVINS: NO.

5 MR. BARENS: COULD YOU TELL ME WHAT MIGHT INFLUENCE YOU
6 NOT TO GIVE THE DEATH PENALTY?

7 MISS BLEVINS: NO, I CAN'T TELL YOU AN ANSWER TO THAT.

8 THE COURT: WELL, LET ME TELL YOU WHAT THE LAW PROVIDES
9 ON THE PENALTY PHASE.

10 IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE
11 FIRST DEGREE AND THERE ARE SPECIAL CIRCUMSTANCES, LIKE DURING
12 THE COURSE OF A ROBBERY OR MAYHEM OR SOMETHING LIKE THAT, THEN
13 THE JURY CONSIDERS IN THE PENALTY PHASE, MITIGATING
14 CIRCUMSTANCES, EVERYTHING THAT IS FAVORABLE TO THE DEFENDANT
15 OR AGGRAVATING CIRCUMSTANCES, EVERYTHING IN HIS LIFE WHICH
16 AGGRAVATES HIS CONDUCT.

17 NOW, ALL OF THOSE FACTORS TO BE CONSIDERED ARE
18 MITIGATING AND AGGRAVATING CIRCUMSTANCES.

19 YOU WILL HEAR ALL OF THAT FIRST, BEFORE YOU MAKE
20 UP YOUR MIND WHETHER IT SHOULD BE LIFE IMPRISONMENT WITHOUT
21 POSSIBILITY OF PAROLE OR THE DEATH PENALTY.

22 MISS BLEVINS: UH-HUH.

23 THE COURT: DO YOU UNDERSTAND THAT?

24 MISS BLEVINS: I UNDERSTAND THAT.

25 THE COURT: ALL RIGHT. THAT WILL ONLY HAPPEN IF IT GOES
26 TO THAT POINT.

27 MISS BLEVINS: I UNDERSTAND WHAT YOU ARE SAYING. BUT
28 I CANNOT TELL YOU WHAT I WILL DO, IN ALL HONESTY. I CANNOT

1 TELL YOU WHAT I WILL DO UNTIL I HAVE HEARD THE CIRCUMSTANCES.

2 MR. BARENS: COULD YOU TELL ME SOME IDEA ABOUT WHAT YOU
3 WOULD TAKE INTO CONSIDERATION IN DECIDING WHAT YOU WOULD DO?

4 THE COURT: WELL, I DON'T THINK THAT THAT IS WHAT THE
5 LAW SAYS. SHE HAS A RIGHT TO TAKE INTO CONSIDERATION NOT WHAT
6 SHE, HERSELF, WOULD.

7 SHE WILL BE GIVEN INSTRUCTIONS ON THAT PARTICULAR
8 SUBJECT.

9 MR. BARENS: I UNDERSTAND, YOUR HONOR. I WAS INQUIRING
10 TO SEE IF SHE HAD ANY PERSONAL ATTITUDES THAT WOULD INFLUENCE
11 FACTORS THAT SHE WOULD TAKE INTO CONSIDERATION OR NOT.

12 THE COURT: DO YOU HAVE ANY PERSONAL ATTITUDES ABOUT
13 IT WHICH WOULD INFLUENCE YOU?

14 MISS BLEVINS: RIGHT NOW, I DON'T HAVE ANY. I AM OPEN
15 TO WHATEVER COMES.

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1 MR. BARENS: DO YOU BELIEVE IN THE CONCEPT OF AN EYE
2 FOR AN EYE?

3 MISS BLEVINS: I THINK IN A SENSE, SOME SENSE I DO IN
4 SOME CASES.

5 MR. BARENS: COULD YOU TELL ME IN WHICH CASES YOU ARE
6 REFERRING TO?

7 MISS BLEVINS: NO, I COULDN'T DEFINE THEM.

8 MR. BARENS: I REALLY NEED YOU TO. THIS IS THE TIME
9 WHEN WE HAVE TO INQUIRE INTO THOSE TYPES OF BELIEF SYSTEMS.

10 MISS BLEVINS: I UNDERSTAND YOU AND I HOPE YOU UNDERSTAND
11 ME.

12 MR. BARENS: I WANT TO, MISS BLEVINS.

13 MISS BLEVINS: OKAY.

14 MR. BARENS: COULD YOU TRY TO GIVE ME SOME INSIGHT INTO
15 WHICH INSTANCES YOU WOULD BELIEVE AN EYE FOR AN EYE WAS
16 APPROPRIATE?

17 MISS BLEVINS: I THINK IN DELIBERATE, INTENTIONAL HARM;
18 DOES THAT EXPLAIN WHAT YOU ARE ASKING FOR?

19 THE COURT: WELL, NOW THE LAW DOESN'T SAY THAT. YOU
20 CAN DELIBERATELY, INTENTIONALLY KILL SOMEBODY AND THAT DOESN'T
21 MEAN THAT THE DEATH PENALTY WOULD BE INVOLVED.

22 THE LAW IS THAT WHERE THERE ARE SPECIAL
23 CIRCUMSTANCES IN CONNECTION WITH THE KILLING, THE DEATH PENALTY
24 OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE COMES
25 INTO PLAY; DO YOU UNDERSTAND?

26 MISS BLEVINS: UH-HUH.

27 THE COURT: LIKE IN THIS PARTICULAR CASE, IT IS ALLEGED
28 THAT THIS KILLING TOOK PLACE, MURDER IN THE FIRST DEGREE,

5-2 1 TOOK PLACE DURING THE COURSE OF A ROBBERY, YOU UNDERSTAND?

2 MISS BLEVINS: UH-HUH.

3 THE COURT: THAT IS THE SPECIAL CIRCUMSTANCE, WHICH THEN
4 MAKES THE DEATH PENALTY A QUESTION IN THE CASE AS TO WHETHER
5 IT SHOULD OR SHOULDN'T BE IMPOSED; DO YOU UNDERSTAND?

6 MISS BLEVINS: YES, YES.

7 THE COURT: MERELY A DELIBERATE KILLING DOESN'T
8 NECESSARILY MEAN THERE SHOULD BE A DEATH PENALTY.

9 GO AHEAD.

10 MR. BARENS: THANK YOU.

11 HAVING THIS DISCUSSION WITH HIS HONOR, I AM ASKING
12 YOU NOW IF YOU HAD A CASE WHERE AN INTENTIONAL KILLING HAD
13 OCCURRED AND, LET'S SAY, IT WAS A KILLING DURING A ROBBERY,
14 WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY THERE?

15 MISS BLEVINS: DO YOU WANT A YES OR NO ANSWER TO THAT?

16 MR. BARENS: YES, MA'AM, IF YOU CAN.

17 MISS BLEVINS: OR AN EXPLAINED ANSWER?

18 MR. BARENS: I WOULD LIKE A YES OR NO FIRST, IF YOU
19 WOULD.

20 THE COURT: I DON'T THINK THAT IS A PROPER QUESTION:
21 WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THERE
22 WAS A DELIBERATE KILLING?

23 I TOLD HER THAT THE DEATH PENALTY --

24 MISS BLEVINS: I WOULDN'T AUTOMATICALLY.

25 THE COURT: -- THAT THE DEATH PENALTY WAS NOT APPLICABLE
26 IN A CASE OF THAT KIND.

27 MISS BLEVINS: I WOULDN'T AUTOMATICALLY DO ANYTHING
28 AUTOMATICALLY.

1 MR. BARENS: YOUR HONOR, MY POINT BEING WHEN YOUR HONOR
2 QUESTIONS A PROSPECTIVE JUROR AND INSTRUCTS THE JUROR, YOU GET
3 ONE RESPONSE.

4 WHAT I AM LOOKING FOR IS AN UNAIDED RESPONSE, IF
5 WE COULD, YOUR HONOR.

6 THE COURT: I AM NOT AIDING THE WITNESS (SIC). I AM
7 JUST CLARIFYING IT FOR HER.

8 MR. CHIER: YOUR HONOR IS LEADING THE WITNESS (SIC).

9 THE COURT: WILL YOU STAY OUT OF THIS? HE IS NOW
10 CONDUCTING THIS. I DON'T WANT TO HAVE THE TWO OF YOU.

11 MR. CHIER: I WISH FOR THE RECORD TO INDICATE --

12 THE COURT: I DON'T WANT TO HEAR FROM YOU. PUT HIM DOWN.

13 MR. CHIER: YOUR HONOR, I HAVE A RIGHT TO SPEAK IN THIS
14 COURTROOM.

15 THE COURT: WILL YOU PUT HIM DOWN?

16 MR. CHIER: YOUR HONOR, I WISH TO BE HEARD.

17 THE COURT: I DON'T WANT TO HEAR YOU. HE KNOWS WHAT
18 HE IS DOING.

19 MR. CHIER: I HAVE A RIGHT TO SPEAK IN THIS COURTROOM.

20 THE COURT: I DON'T WANT TO HEAR FROM BOTH OF YOU AT
21 THE SAME TIME.

22 MR. CHIER: I WANT TO SPEAK WHEN I WISH TO. I AM ENTITLED
23 TO SPEAK.

24 THE COURT: SIT DOWN. THAT IS AN ORDER.

25 MR. BARENS: NOW MRS. BLEVINS, DO YOU FEEL YOURSELF TO
26 BE AN OPEN-MINDED PERSON?

27 MISS BLEVINS: YES.

28 MR. BARENS: AND DO YOU FEEL YOU WOULD LISTEN TO ALL

1 POINTS FROM BOTH SIDES BEFORE MAKING A DECISION, ESPECIALLY
2 ON THE DEATH PENALTY?

3 MISS BLEVINS: YES.

4 MR. BARENS: DO YOU REMEMBER AN ELECTION WE HAD IN
5 CALIFORNIA A FEW YEARS AGO WHERE THERE WAS A VOTE TAKEN?

6 MISS BLEVINS: WHETHER OR NOT THERE SHOULD BE THE DEATH
7 PENALTY IN CALIFORNIA?

8 YES.

9 MR. BARNES: DID YOU VOTE IN THAT ELECTION?

10 MISS BLEVINS: YES.

11 MR. BARENS: DO YOU REMEMBER HOW YOU VOTED ON WHETHER
12 OR NOT WE SHOULD HAVE --

13 MISS BLEVINS: YES.

14 MR. BARENS: IF YOU WOULD JUST LET ME ASK MY QUESTION
15 FIRST, IT IS GOING TO MAKE IT EASIER FOR THE REPORTER TO GET
16 THIS DOWN, OKAY?

17 MISS BLEVINS: YES.

18 MR. BARENS: DO YOU REMEMBER HOW YOU VOTED?

19 MISS BLEVINS: YES.

20 MR. BARENS: AND YOU VOTED YES?

21 MISS BLEVINS: I DON'T THINK THAT IS ANYTHING I HAVE
22 TO PUT ON THE PUBLIC RECORD, IS IT?

23 MR. BARENS: I BELIEVE I AM ENTITLED -- AND I DON'T MEAN
24 TO PRY, MRS. BLEVINS, BUT BECAUSE OF THE SERIOUSNESS OF WHAT
25 WE ARE DOING HERE AND ARE GOING TO BE DOING HERE, I KIND OF
26 NEED TO KNOW WHAT YOUR ORIENTATION IS ABOUT THE DEATH PENALTY,
27 MA'AM.

28 MISS BLEVINS: YES.

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1 MR. BARENS: COULD YOU TELL ME WHY YOU VOTED YES?

2 MISS BLEVINS: BECAUSE I THINK IF THERE ARE CIRCUMSTANCES
3 THAT THE LAW SAYS, THAT IS DESIGNED FOR AND SAYS THAT THE
4 DEATH PENALTY IS THE PROPER PENALTY, THEN WE NEED TO HAVE THE
5 OPTION.

6 MR. BARENS: AND WHAT I NEED TO KNOW TODAY ARE NOT THE
7 CIRCUMSTANCES THE LAW IMPOSES BUT WHAT YOUR BELIEFS ARE AS
8 FAR AS WHAT IS APPROPRIATE, COULD YOU TELL ME WHAT
9 CIRCUMSTANCES YOU THINK COULD BE EXISTENT THAT WOULD MAKE YOU
10 WANT SOMEONE TO GET THE DEATH PENALTY?

11 MISS BLEVINS: I THINK MY TERMINOLOGY OF VICIOUS CRIMES
12 MIGHT PROPERLY BE TREATED WITH THE DEATH PENALTY WHICH ARE --
13 HOW DO I SAY IT -- VICIOUS CRIMES, PEOPLE THAT DO THAT, MORE
14 THAN JUST AN ACCIDENTAL DEATH OF A RESULT OF SOMETHING.

15 MR. BARENS: WE WOULDN'T BE HERE, MRS. BLEVINS, ON AN
16 ACCIDENTAL DEATH.

17 MISS BLEVINS: I KNOW.

18 MR. BARENS: THEY DON'T CALL THAT FIRST DEGREE MURDER.

19 MISS BLEVINS: I KNOW.

20 MR. BARENS: WHAT WE ARE HERE DISCUSSING WITH YOU IS
21 HOW YOU WOULD VOTE IN THE INSTANCE OF FIRST DEGREE MURDER,
22 KNOWING YOU HAVE A CHOICE BETWEEN LIFE AND DEATH; DO YOU
23 UNDERSTAND THAT YOUR OTHER CHOICE IS WHAT IS CALLED LIFE
24 WITHOUT THE POSSIBILITY OF PAROLE?

25 MISS BLEVINS: UH-HUH.

26 MR. BARENS: DO YOU ALSO UNDERSTAND THAT UNDER THE
27 STANDARD OF THE LAW IN CALIFORNIA TODAY THAT LIFE WITHOUT THE
28 POSSIBILITY OF PAROLE MEANS THAT THAT DEFENDANT WILL NEVER

-6
1 GET OUT OF JAIL DURING HIS LIFETIME?

2 MISS BLEVINS: UH-HUH.

3 MR. BARENS: DO YOU BELIEVE THAT?

4 MISS BLEVINS: DO I BELIEVE IN THE LAW?
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1 MR. BARENS: NOW DO YOU BELIEVE THAT WHEN THE JUDGE SAYS
2 LIFE WITHOUT THE POSSIBILITY OF PAROLE THAT IT ACTUALLY MEANS
3 THAT OR DO YOU BELIEVE THAT MAYBE THERE IS A CHANCE THE GUY
4 IS GOING TO GET OUT LATER?

5 MISS BLEVINS: I MIGHT HAVE SOME HESITATION ON TAKING
6 IT HOOK, LINE AND SINKER.

7 MR. BARENS: DO YOU THINK THAT WOULD MAKE YOU HESITATE
8 BEFORE YOU GIVE SOMEONE A FINDING OF LIFE WITHOUT THE
9 POSSIBILITY OF PAROLE?

10 MISS BLEVINS: I THINK ANY OF THIS IS GOING TO GIVE ME
11 A LOT TO THINK ABOUT.

12 MR. BARENS: WHAT I NEED TO KNOW --

13 MISS BLEVINS: AND I CAN'T TELL YOU AT THIS POINT WHAT
14 I AM GOING TO DO, IN EFFECT. THAT IS MY HONEST ANSWER TO YOU.

15 MR. BARENS: COULD YOU TELL ME IF YOU WOULD BE LESS LIKELY
16 TO VOTE FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE BECAUSE
17 YOU THOUGHT THAT THE DEFENDANT MIGHT GET OUT?

18 (PAUSE.)

19 MISS BLEVINS: MAYBE.

20 MR. BARENS: MAYBE?

21 MISS BLEVINS: I MIGHT. I MAY CHANGE ALL OF THAT WHEN
22 I GET --

23 MR. WAPNER: EXCUSE ME. I DIDN'T GET THAT ANSWER.
24 I DON'T THINK THE REPORTER DID.

25 MISS BLEVINS: I SAID I MIGHT. I SAID I MAY CHANGE ALL
26 OF THESE ANSWERS WHEN I HAVE A LITTLE MORE TIME TO THINK ABOUT
27 THESE QUESTIONS.

28 MR. BARENS: TO WHICH I RESPONDED, YOU ARE ENTITLED.

1 IN MAKING A DECISION AS TO WHETHER A DEFENDANT
2 SHOULD DIE IN THE GAS CHAMBER OR HAVE LIFE WITHOUT THE
3 POSSIBILITY OF PAROLE, I BELIEVE HIS HONOR INDICATED YOU MIGHT
4 HAVE TO CONSIDER THE DEFENDANT'S AGE, PRIOR CRIMINAL BACKGROUND,
5 PRIOR ACTS OF VIOLENCE; WOULD YOU TAKE ALL OF THAT INTO
6 ACCOUNT?

7 MISS BLEVINS: CERTAINLY.

8 MR. BARENS: DO YOU HAVE A PREFERENCE, AS YOU SIT HERE
9 TODAY, WHEN YOU CONSIDER SOMEONE THAT YOU BELIEVE HAD
10 COMMITTED AN INTENTIONAL MURDER DURING THE COMMISSION OF A
11 ROBBERY, DO YOU HAVE A PREFERENCE AS TO WHETHER THAT PERSON
12 SHOULD GET THE DEATH PENALTY OR LIFE WITHOUT THE POSSIBILITY
13 OF PAROLE?

14 MISS BLEVINS: DO I HAVE A PREFERENCE? DO I HAVE A
15 PREFERENCE? PROBABLY NO.

16 MR. BARENS: DO YOU FEEL AS FAR AS YOU ARE CONCERNED,
17 TODAY AT LEAST, IN ANSWERING ME TODAY, YOU WOULD LISTEN
18 TO ALL OF THE EVIDENCE BEFORE YOU MADE A DECISION?

19 MISS BLEVINS: THAT, YES.

20 MR. BARENS: WOULD YOU LISTEN TO MORE THAN JUST THE
21 EVIDENCE OF THE CIRCUMSTANCES OF THE CRIME; WOULD YOU WANT
22 TO LISTEN TO ALL OF THE EVIDENCE ABOUT THE DEFENDANT AND ABOUT
23 THE VICTIM?

24 MISS BLEVINS: YES.

25 MR. BARENS: AND ALL OF THAT WOULD PLAY INTO YOUR
26 DECISION?

27 MISS BLEVINS: YES.

28 MR. BARENS: IF WE HAD A CLOSE CASE IN YOUR MIND, A CASE

1 WHERE THERE WAS A REAL CLOSE ISSUE BETWEEN INNOCENCE AND GUILT,
2 WOULD YOU BE LIKELY TO VOTE GUILTY, KNOWING THAT, "WELL, LATER
3 IN THE PENALTY PHASE I WILL GIVE THE DEFENDANT LIFE WITHOUT
4 THE POSSIBILITY OF PAROLE AND IN MAKING THAT CONCESSION, I
5 WON'T GIVE HIM THE DEATH PENALTY," WOULD THAT HAPPEN IN YOUR
6 MIND?

7 MISS BLEVINS: NO, I DON'T THINK SO.

8 MR. BARENS: WOULD YOU BE ABLE TO SEGREGATE THE TWO
9 PHASES OF THE TRIAL ENTIRELY WHEN YOU WERE DECIDING INNOCENCE
10 OR GUILT, THE PENALTY WOULD HAVE NO BEARING ON YOUR THINKING?

11 MISS BLEVINS: I THINK SO.

12 MR. BARENS: AND ONCE AGAIN, YOU REALIZE THAT ALTHOUGH
13 I HAVE DISCUSSED THESE ISSUES WITH YOU AND TALKED TO YOU ABOUT
14 PREMEDITATED MURDER AND TALKED TO YOU ABOUT ROBBERY, THAT
15 DOESN'T GIVE YOU ANY IMPRESSION IN YOUR MIND THAT YOU ARE
16 ULTIMATELY GOING TO BELIEVE, BECAUSE WE HAVE DISCUSSED THAT,
17 THAT JOE HUNT HAS DONE ANY OF THAT?

18 MISS BLEVINS: NO.

19 MR. BARENS: I THANK YOU.

20 THE COURT: ALL RIGHT, MR. WAPNER.

21 MR. WAPNER: THANK YOU, YOUR HONOR.

22 MRS. BLEVINS, I WANT TO COME AT THIS MAYBE FROM
23 A LITTLE BIT OF A DIFFERENT ANGLE.

24 IS THERE ANYTHING IN YOUR BACKGROUND, RELIGIOUS,
25 PHILOSOPHICAL OR OTHERWISE THAT WOULD PREVENT YOU FROM VOTING
26 FOR THE DEATH PENALTY IF YOU THOUGHT IT WAS WARRANTED IN THIS
27 CASE?

28 MISS BLEVINS: NO.

1 MR. WAPNER: ON THE OTHER HAND, THE FLIP SIDE OF THAT
2 COIN, IS THERE ANYTHING IN YOUR BACKGROUND THAT WOULD MAKE
3 YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY REGARDLESS OF
4 THE EVIDENCE IN THIS CASE?

5 MISS BLEVINS: NO.
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1 MR. WAPNER: IN RESPONSE TO A QUESTION THAT MR. BARENS
2 ASKED YOU ABOUT NOT CONSIDERING PENALTY DURING THE GUILT
3 PHASE OF THE TRIAL, I WANT TO FOLLOW UP ON THAT A LITTLE BIT.
4 DID YOU UNDERSTAND THE JUDGE YESTERDAY, WHEN HE WAS EXPLAINING
5 TO YOU ABOUT THE DIFFERENT POSSIBLE PHASES OF THIS TRIAL?

6 A I THOUGHT SO, YES.

7 Q OKAY. SO WHAT WE HAVE BEEN TALKING ABOUT, IS THE
8 FIRST PHASE OR THE GUILT PHASE, WHERE THE JURORS ARE CALLED
9 UPON TO MAKE A DETERMINATION AS TO WHETHER OR NOT THE
10 DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER AND WHETHER THE
11 SPECIAL CIRCUMSTANCES ARE TRUE OR NOT TRUE. DO YOU UNDERSTAND
12 THAT?

13 MISS BLEVINS: YES.

14 MR. WAPNER: OKAY. AND THAT PHASE OF THE TRIAL, THE
15 JUDGE IS GOING TO TELL YOU, BEFORE YOU GO OUT TO DELIBERATE,
16 THAT YOU CANNOT CONSIDER PENALTY OR PUNISHMENT. DO YOU
17 UNDERSTAND THAT?

18 MISS BLEVINS: YES.

19 MR. WAPNER: AND DO YOU UNDERSTAND THAT MEANS WHEN YOU
20 ARE DECIDING WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY,
21 YOU CAN'T THINK ABOUT POSSIBLE PUNISHMENTS HE IS GOING TO GET
22 IF YOU FIND HIM GUILTY?

23 MISS BLEVINS: I UNDERSTAND.

24 MR. WAPNER: OKAY. THE WHOLE REASON BEHIND THAT
25 OBVIOUSLY, IS THAT YOU WANT TO MAKE YOUR DECISION BASED ON
26 THE FACTS AND THE LAW AND NOT WELL, GEE, IF I FIND HIM GUILTY,
27 HE MIGHT GO TO JAIL OR MIGHT BE EXECUTED.

28 DO YOU UNDERSTAND THAT YOU HAVE TO PUT THOSE

1 CONSIDERATIONS OUT OF YOUR MIND IN MAKING YOUR DETERMINATION
2 OF GUILTY OR NOT GUILTY?

3 MISS BLEVINS: YES.

4 MR. WAPNER: OKAY. CAN YOU DO THAT?

5 MISS BLEVINS: YES.

6 MR. WAPNER: OKAY. AND THE SAME IS TRUE OBVIOUSLY, OF
7 YOUR DETERMINATION OF WHETHER THE SPECIAL CIRCUMSTANCES ARE
8 TRUE? THAT IS, WHETHER OR NOT THE MURDER WAS COMMITTED DURING
9 THE COURSE OF A ROBBERY, DEPENDS UPON THE EVIDENCE AND THE
10 LAW, NOT ON WHAT PUNISHMENT THE DEFENDANT MIGHT GET IF YOU
11 MAKE THAT DECISION. DO YOU UNDERSTAND THAT?

12 MISS BLEVINS: YES.

13 MR. WAPNER: YOU COULD DO THAT?

14 MISS BLEVINS: YES.

15 MR. WAPNER: OKAY. THEN, IF AND ONLY IF YOU HAVE
16 DECIDED THAT THE DEFENDANT IS GUILTY OF FIRST DEGREE MURDER
17 AND THAT THE SPECIAL CIRCUMSTANCES ARE TRUE, DO YOU GET TO
18 THAT PHASE WE CALL THE PENALTY PHASE. DO YOU UNDERSTAND THAT?

19 MISS BLEVINS: YES.

20 MR. WAPNER: THE MOST IMPORTANT THING I THINK FOR YOU
21 TO UNDERSTAND ABOUT THE PENALTY PHASE, IS THAT WHEN YOU GET
22 TO THAT PART OF THE CASE, THE DECISION -- WELL, LET ME BACK
23 UP A LITTLE BIT.

24 WHEN YOU GET TO THAT PART OF THE CASE, YOU WILL
25 HEAR OTHER EVIDENCE FROM THE PROSECUTION AND FROM THE DEFENSE,
26 EITHER IN AGGRAVATION OR MITIGATION. YOU WILL HEAR ARGUMENTS
27 OF THE LAWYERS AND THEN YOU WILL BE ASKED TO GO BACK WITH THE
28 OTHER 11 JURORS AND MAKE A DECISION.

1 AND THE JUDGE WILL GIVE YOU SOME GUIDELINES THAT
2 YOU CAN CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES.

3 BUT THE MOST IMPORTANT THING IS, THAT IT HAS TO
4 BE YOUR INDIVIDUAL DECISION. IN OTHER WORDS, YOU CAN'T JUST
5 SIT THERE AND SAY OKAY, THE REST OF YOU II WILL DECIDE AND
6 I WILL GO ALONG WITH THE GROUP. DO YOU UNDERSTAND THAT?

7 MISS BLEVINS: YES.

8 MR. WAPNER: DO YOU THINK THAT THAT IS A DECISION YOU
9 ARE CAPABLE OF MAKING?

10 MISS BLEVINS: I HOPE SO. BUT I HAVE TO SAY YES OR NO,
11 DON'T I?

12 MR. WAPNER: WELL, YOU KNOW, WE DON'T MEAN TO BE PUSHY.
13 BUT ON THE OTHER HAND, THIS IS OUR ONLY CHANCE TO QUESTION
14 YOU.

15 I APPRECIATE THE FACT THAT WE JUST SPRUNG IT ON
16 YOU THIS MORNING. BUT OBVIOUSLY, IF YOU CAN'T MAKE THAT
17 DECISION, THEN THIS IS GOING TO BE YOUR ONLY OPPORTUNITY TO
18 TELL US THAT.

19 YOU WERE GOING TO BE CALLED ON TO MAKE AN INDIVIDUAL
20 DECISION AS TO WHETHER OR NOT THE DEFENDANT SHOULD SPEND THE
21 REST OF HIS LIFE IN PRISON OR WHETHER HE SHOULD GET THE DEATH
22 PENALTY, ASSUMING THAT YOU HAVE ALREADY FOUND HIM GUILTY.

23 AND IT IS GOING -- IT PROBABLY, OBVIOUSLY -- YOU
24 WILL KNOW A LOT MORE ABOUT THE CASE THAN YOU KNOW NOW. I AM
25 NOT ASKING YOU TO JUDGE THE FACTS OF THE CASE.

26 ALL I AM ASKING YOU IS, REGARDLESS OF THE PARTICULAR
27 FACTS, DO YOU -- DO YOU THINK THAT YOU ARE CAPABLE OF
28 PERSONALLY MAKING A DECISION AS TO WHETHER OR NOT THIS DEFENDANT

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1 SHOULD GET LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE OR
2 WHETHER HE SHOULD GET THE DEATH PENALTY?

3 MISS BLEVINS: YES.

4 MR. WAPNER: DO YOU THINK AS YOU SIT THERE NOW, THAT
5 IT WOULD BE MORE DIFFICULT FOR YOU TO IMPOSE THE DEATH
6 PENALTY THAN LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE?

7 MISS BLEVINS: YES.

8 MR. WAPNER: NEVERTHELESS, DO YOU THINK YOU COULD DO
9 IT IN AN APPROPRIATE CASE?

10 MISS BLEVINS: YES.
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1 MR. WAPNER: DO YOU THINK IT WOULD BE MORE DIFFICULT --
2 LET ME REPHRASE THAT. THE STANDARD THAT THE COURT WILL GIVE
3 YOU, WHEN YOU ARE DECIDING THE GUILT OR INNOCENCE, IS THAT
4 THE CASE HAS TO BE PROVED BEYOND A REASONABLE DOUBT. DO YOU
5 THINK THAT YOU WOULD HOLD THE PROSECUTION TO A STANDARD HIGHER THAN
6 THAT, KNOWING THAT AT SOME POSSIBLE PHASE DOWN THE LINE, YOU
7 MIGHT BE CALLED UPON TO MAKE A DECISION ON THE DEATH PENALTY?

8 MISS BLEVINS: COULD YOU RESTATE THAT? YOU GAVE SOME
9 QUALIFICATIONS THERE.

10 MR. WAPNER: OKAY. DURING THE GUILT PHASE OF THE TRIAL
11 WHERE YOU WILL BE CALLED UPON TO MAKE A DETERMINATION --

12 THE COURT: ASK THAT QUESTION ON THE GENERAL VOIR DIRE.
13 IT IS NOT APPLICABLE IN THIS PARTICULAR INSTANCE.

14 THIS IS A RESTRICTED HEARING ON THE HOVEY
15 QUESTIONS. I WILL SUSTAIN MY OWN OBJECTION TO IT.

16 LET'S GO ON TO SOMETHING ELSE.

17 MR. WAPNER: WELL, I AM TRYING TO FIND OUT WHETHER SHE
18 WOULD HOLD THE PROSECUTION TO A HIGHER STANDARD BECAUSE IF
19 SHE CANNOT GIVE THE PEOPLE A FAIR TRIAL IN THE GUILT PHASE,
20 BECAUSE OF HER FEELINGS ABOUT THE DEATH PENALTY --

21 THE COURT: I JUST MADE A RULING ON THE QUESTION YOU
22 ASKED. YOU CAN ASK SOMETHING ELSE NOW ALONG THE LINES YOU
23 HAVE JUST OBJECTED.

24 Q BY MR. WAPNER: LET ME APPROACH IT THIS WAY. THE
25 STANDARD OF PROOF FOR PROVING A CRIMINAL DEFENDANT GUILTY OR
26 NOT GUILTY IS THE SAME IN ALL CRIMINAL CASES WHETHER THEY ARE
27 DEATH PENALTY CASES OR OTHER CASES. DO YOU UNDERSTAND THAT?

28 MISS BLEVINS: YES.

B-2

1 MR. WAPNER: AND BECAUSE THIS IS A DEATH PENALTY CASE,
2 DO YOU THINK THAT YOU WOULD TAKE IT UPON YOURSELF TO IMPOSE
3 A HIGHER STANDARD ON THE PROSECUTION, KNOWING THAT YOU MIGHT
4 HAVE TO BE -- YOU MIGHT BE CALLED UPON TO DECIDE THE ISSUE
5 OF LIFE IMPRISONMENT OR DEATH AT SOME LATER TIME?

6 MISS BLEVINS: NO.

7 MR. WAPNER: OTHER THAN MAKING A DECISION WHEN YOU WENT
8 TO THE BALLOT BOX SEVERAL YEARS AGO ON THE ISSUE OF THE DEATH
9 PENALTY, HAD YOU GIVEN THIS MUCH THOUGHT BEFORE YOU CAME TO
10 COURT TODAY?

11 MISS BLEVINS: JUST A LITTLE, SINCE WE KNEW IT WAS --
12 SINCE YESTERDAY.

13 MR. WAPNER: OKAY. AND DID YOU, SINCE YOU HAVE BEEN
14 THINKING ABOUT THIS SINCE YESTERDAY -- HAS ANYTHING OCCURRED
15 TO YOU THAT MAKES YOU THINK THAT YOU COULD NOT SIT ON THIS
16 KIND OF A CASE?

17 MISS BLEVINS: I WOULD RATHER NOT.

18 MR. WAPNER: WHY IS THAT?

19 MISS BLEVINS: BECAUSE I THINK IT IS A VERY RESPONSIBLE
20 POSITION AND IT IS A BIG DECISION.

21 THE COURT: ARE YOU WILLING TO MAKE THAT DECISION, IF
22 YOU ARE SELECTED AS A JUROR? IS THAT RIGHT?

23 MISS BLEVINS: I WOULD HAVE TO.

24 THE COURT: ANYTHING FURTHER?

25 MR. WAPNER: HAVE YOU EVER SAT ON ANY KIND OF A SERIOUS
26 CASE BEFORE AS A JUROR?

27 MISS BLEVINS: NO.

28 MR. WAPNER: IF YOU WERE CALLED UPON TO MAKE A DECISION

1 ON THE ISSUE OF THE DEATH PENALTY, ARE YOU GOING TO BE GUIDED
2 BY ANYTHING OTHER THAN THE EVIDENCE THAT IS PRESENTED IN THE
3 PENALTY PHASE AND THE LAW THAT THE JUDGE GIVES YOU TO APPLY
4 TO IT?

5 MISS BLEVINS: NO, OTHER THAN MY OWN INSTINCT, MY OWN
6 PERSON.

7 MR. WAPNER: OKAY. THANK YOU. I HAVE NOTHING FURTHER.
8 I PASS FOR CAUSE, YOUR HONOR.

9 MR. BARENS: COULD WE APPROACH THE BENCH, YOUR HONOR?

10 THE COURT: YES.

11 (THE FOLLOWING PROCEEDINGS WERE HELD AT
12 THE BENCH:)

13 MR. BARENS: YOUR HONOR, AS I ANTICIPATE, YOU AND I MIGHT
14 DISAGREE FROM TIME TO TIME ON CAUSE. I DID NOT WANT TO BURN
15 OFF A JUROR THAT I MAY CHALLENGE FOR CAUSE IN FRONT OF THE
16 JUROR.

17 COULD YOU PLEASE ADOPT A POLICY, IF I HAVE A
18 CHALLENGE OF A JUROR, OF ASKING THE JUROR TO STEP OUTSIDE AND
19 ALLOWING US TO DISCUSS THE CHALLENGE, BEFORE --

20 THE COURT: SURE.

21 MR. BARENS: I WOULD APPRECIATE IT IF YOU WOULD DO THAT
22 NOW.

23 (THE FOLLOWING PROCEEDINGS WERE HELD IN
24 OPEN COURT:)

25 THE COURT: ALL RIGHT. MISS BLEVINS, WOULD YOU JUST --
26 WE HAVE HAD SOME DISCUSSION. WOULD YOU MIND GOING OUTSIDE
27 FOR A MOMENT?

28 MISS BLEVINS: SURE.

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(PROSPECTIVE JUROR BLEVINS LEAVES THE
COURTROOM.)

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

3 THE COURT: THE RECORD WILL INDICATE THAT MRS. BLEVINS
4 HAS LEFT THE COURTROOM.

5 MR. BARENS: YOUR HONOR, THE DEFENSE WOULD CHALLENGE
6 MRS. BLEVINS FOR CAUSE ON TWO BASES, ONE, SHE CLEARLY INDICATED
7 AN OVERRIDING CONCERN THAT SHE DID NOT BELIEVE THAT LIFE
8 WITHOUT THE POSSIBILITY OF PAROLE REALLY MEANS THAT, AND I
9 CAN UNDERSTAND HER ORIENTATION IN THAT REGARD HISTORICALLY
10 AND I BELIEVE THAT CLEARLY WOULD INHIBIT HER FROM ACTUALLY
11 VOTING FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

12 THE OTHER THING THAT VERY MUCH CONCERNED ME, YOUR
13 HONOR, WAS HER RELUCTANCE OR INABILITY TO CANDIDLY DISCUSS
14 HER VIEWPOINT ON MANY OF THE QUESTIONS ASKED BOTH BY MYSELF
15 AND MR. WAPNER. I SUBMIT THAT IF MISS BLEVINS WERE ON TRIAL
16 FOR HER LIFE AND PROSPECTIVE JURORS WERE TO SAY TO HER COUNSEL,
17 "I CAN'T GIVE YOU AN ANSWER TO THAT QUESTION" OR "I DON'T KNOW
18 WHAT I WOULD DO" OR "I DON'T EVEN KNOW WHAT I THINK ABOUT THAT,"
19 THAT WOULD HARDLY BE A SATISFACTORY ANSWER WERE HER LIFE IN
20 THE BALANCE.

21 I SUBMIT THAT THIS JUROR SHOULD BE REMOVED FOR
22 CAUSE, YOUR HONOR.

23 MR. WAPNER: YOUR HONOR, I DON'T THINK THAT IT IS
24 UNMISTAKABLY CLEARLY THAT SHE WOULD EITHER AUTOMATICALLY VOTE
25 FOR OR AGAINST THE DEATH PENALTY AND I THINK THAT IS THE
26 STANDARD IN THIS CASE.

27 SHE APPEARED TO ME TO BE A VERY SERIOUS AND
28 CONTEMPLATIVE PERSON. SHE, CONTRARY TO WHAT COUNSEL HAS

1 STATED, SEEMED TO ME TO BE A PERSON WHO, ALTHOUGH SHE COULD
2 VOTE FOR EITHER OF THE POSSIBLE PENALTIES, SAID THAT SHE MIGHT
3 HAVE MORE DIFFICULTY VOTING FOR THE DEATH PENALTY BECAUSE IT
4 WAS SO SERIOUS. BUT IN ANY EVENT, SHE DID NOT MAKE IT
5 UNMISTAKABLY CLEAR THAT SHE WOULD AUTOMATICALLY VOTE ONE WAY
6 OR THE OTHER AND, THEREFORE, THE WITHERSPOON STANDARD HAS NOT
7 BEEN MET.

8 THE COURT: I DON'T BELIEVE THAT THIS PROSPECTIVE JUROR
9 SHOULD BE CHALLENGED FOR CAUSE. THERE DOESN'T EXIST ANY
10 REASON WHY SHE SHOULD.

11 BRING HER BACK, PLEASE.

12 (PROSPECTIVE JUROR BLEVINS ENTERED
13 THE COURTROOM.)

14 THE COURT: MISS BLEVINS, WE HAVE YOUR TELEPHONE NUMBER,
15 HAVEN'T WE?

16 THE CLERK: WE HAVE ALL OF THE PHONE NUMBERS, JUDGE.

17 THE COURT: IT IS ANTICIPATED THAT ABOUT DECEMBER 2ND
18 WE WILL BE FINISHED WITH INTERROGATING ALL OF THE JURORS IN
19 CONNECTION WITH EXACTLY THE SAME THINGS YOU HAVE BEEN ASKED.
20 WHAT I AM GOING TO ASK YOU TO DO IS TO COME BACK ON DECEMBER
21 2ND, UNLESS YOU ARE NOTIFIED OTHERWISE, YOU COME TO THE JURY
22 ASSEMBLY ROOM AT 10:30 ON DECEMBER 2ND, ALL RIGHT? BY THAT
23 TIME WE WILL HAVE FINISHED ASKING ALL OF THESE QUESTIONS, THE
24 SAME QUESTIONS WE HAVE BEEN ASKING YOU.

25 MISS BLEVINS: ALL RIGHT.

26 THE COURT: ASKING THE 80 OR MORE THAT WE HAVE LEFT.

27 MISS BLEVINS: OKAY, DECEMBER 2ND?

28 THE COURT: YES, DECEMBER 2ND.

1 MISS BLEVINS: WHAT TIME?

2 THE COURT: AT 10:30.

3 MISS BLEVINS: 10:30.

4 THE COURT: IN THE JURY ASSEMBLY ROOM, ALL RIGHT?

5 MISS BLEVINS: OKAY.

6 THE COURT: ALL RIGHT, THANK YOU.

7 MISS BLEVINS: I AM TO LEAVE NOW?

8 THE COURT: YOU ARE TO LEAVE NOW, YES.

9 DON'T DISCUSS, MISS BLEVINS, DON'T DISCUSS WITH
10 ANYBODY ELSE WHAT TRANSPIRED.

11 (JUROR BLEVINS LEAVES THE COURTROOM.)

12 (PROSPECTIVE JUROR BORNE ENTERED
13 THE COURTROOM.)

14 THE BAILIFF: THIS IS MISS BORNE.

15 THE COURT: IS THAT MISS OR MRS.?

16 MRS. BORNE: MRS.

17 THE COURT: ALL RIGHT, MRS. BORNE, I AM GOING TO ASK
18 YOU A NUMBER OF QUESTIONS. I WANT YOU TO LISTEN VERY
19 CAREFULLY AND JUST ANSWER THE QUESTIONS YES OR NO, BECAUSE
20 THEY CALL FOR A YES OR NO ANSWER.

21 IN THE EVENT, HOWEVER, THAT YOU DON'T UNDERSTAND
22 IT OR HAVEN'T HEARD IT OR IT IS UNCLEAR, I WILL REPEAT IT
23 TO YOU, IF YOU WILL SO INDICATE, ALL RIGHT?

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7A-1

1 THE FIRST QUESTION I AM GOING TO ASK YOU IS:
2 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
3 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
4 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

5 MRS. BORNE: NO, I DON'T.

6 THE COURT: SECONDLY:

7 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
8 THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER, EVEN
9 WHEN THE PROSECUTION ONLY -- IF THE PROSECUTION ONLY PROVES
10 THE DEFENDANT GUILTY OF MURDER IN THE SECOND DEGREE OR
11 MANSLAUGHTER?

12 MRS. BORNE: NO, I DON'T.

13 THE COURT: THIRD:

14 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
15 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
16 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES
17 ALLEGED IN THIS CASE?

18 NOW, THE SPECIAL CIRCUMSTANCE, AS I HAVE INDICATED
19 TO ALL OF THE JURORS, IS THAT IF A MURDER IS COMMITTED AND
20 IT IS MURDER IN THE FIRST DEGREE, IF IT IS COMMITTED DURING
21 THE COURSE OF A ROBBERY, THAT IS A SPECIAL CIRCUMSTANCE WHICH
22 CALLS FOR, IF FOUND, EITHER LIFE IMPRISONMENT WITHOUT THE
23 POSSIBILITY OF PAROLE OR THE DEATH PENALTY.

24 MRS. BORNE: RIGHT.

25 THE COURT: MY QUESTION IS: DO YOU HAVE ANY OPINION
26 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
27 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY TO THE
28 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

7A-2

1 MRS. BORNE: NO.

2 THE COURT: OKAY, NOW FOURTHLY: DO YOU HAVE SUCH AN
3 OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
4 AUTOMATICALLY VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY OF
5 MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL
6 CIRCUMSTANCE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
7 AT THE PENALTY PHASE OF THE TRIAL?

8 MRS. BORNE: NO.

9 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
10 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
11 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AFTER A VERDICT
12 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF
13 SPECIAL CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY BE
14 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

15 MRS. BORNE: COULD YOU JUST REPEAT?

16 THE COURT: LET ME EXPLAIN IT FIRST: IF THE JURY FINDS
17 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND FINDS
18 THE SPECIAL CIRCUMSTANCE, NAMELY, THAT IT WAS COMMITTED DURING
19 THE COURSE OF THE ROBBERY, THEN THERE IS A SECOND PHASE WHICH
20 IS THE PENALTY PHASE WHERE THE JURY, ON HEARING A LOT OF OTHER
21 EVIDENCE IN CONNECTION WITH MITIGATING OR AGGRAVATING
22 CIRCUMSTANCES -- MITIGATING CIRCUMSTANCES IN FAVOR OF THE
23 DEFENDANT, HIS BACKGROUND AND SO ON AND SO FORTH AND
24 AGGRAVATING CIRCUMSTANCES, OTHER THINGS THAT HE MIGHT HAVE
25 DONE THAT WERE BAD AND SO FORTH -- THEN THE JURY DETERMINES
26 ONE OF TWO THINGS: EITHER LIFE IMPRISONMENT WITHOU THE
27 POSSIBILITY OF PAROLE OR THE DEATH PENALTY, DO YOU UNDERSTAND
28 THAT?

1 MRS. BORNE: UH-HUH.

2 THE COURT: NOW, THE QUESTION IS: DO YOU HAVE SUCH AN
3 OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
4 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT --

5 MRS. BORNE: NO.

6 THE COURT: -- WITHOUT POSSIBILITY OF PAROLE?

7 YOU WOULD LISTEN TO ALL OF THE TESTIMONY FIRST;
8 IS THAT CORRECT?

9 (WHEREUPON, PROSPECTIVE JUROR BORNE NODS
10 HER HEAD UP AND DOWN.)

11 THE COURT: AND LASTLY: DO YOU UNDERSTAND THAT THE ISSUE
12 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND
13 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
14 YOU REACH THAT PHASE OF THE TRIAL?

15 MRS. BORNE: YES.

16 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
17 CASE OR HEARD ANYTHING OR DISCUSSED ANYTHING?

18 MRS. BORNE: NO. -- EXCUSE ME. I DIDN'T KNOW A THING
19 ABOUT IT UNTIL I HAPPENED TO GET TIME MAGAZINE.

20 THE COURT: I SEE. THEN YOU READ TIME MAGAZINE, THAT
21 IS THE SOURCE WHICH YOU READ; THAT IS YOUR ONLY SOURCE, IS
22 THAT CORRECT?

23 MRS. BORNE: YES, ABSOLUTELY.
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1 THE COURT: CAN YOU SAY FROM WHAT YOU READ THAT YOU
2 FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE OF THIS DEFENDANT?

3 MRS. BORNE: NO.

4 THE COURT: YOU HAVE GOT AN OPEN MIND COMPLETELY, HAVE
5 YOU NOT?

6 (WHEREUPON, PROSPECTIVE JUROR BORNE
7 NODS HER HEAD UP AND DOWN.)

8 THE COURT: AND YOU WILL KEEP IT UNTIL THE CASE IS
9 FINALLY PRESENTED TO YOU AND YOU DISCUSS IT IN THE JURY ROOM
10 WITH THE OTHER JURORS; IS THAT RIGHT?

11 MRS. BORNE: CORRECT.

12 THE COURT: WHATEVER YOU MIGHT HAVE READ, YOU CAN PUT
13 IT COMPLETELY OUT OF YOUR MIND BECAUSE IT MAY OR MAY NOT BE
14 TRUE, WHAT YOU HAVE READ, AND THEREFORE YOU CAN BE GUIDED ONLY
15 BY THE EVIDENCE AS IT IS PRESENTED IN THIS CASE; ISN'T THAT
16 RIGHT?

17 MRS. BORNE: YES.

18 THE COURT: ALL RIGHT.

19 MR. BARENS: I WILL DEFER TO MR. CHIER IN THIS
20 INSTANCE, YOUR HONOR.

21 MR. CHIER: MISS, IS IT MISS?

22 MRS. BORNE: MRS.

23 MR. CHIER: MRS. BORNE, DO YOU SUBSCRIBE TO TIME
24 MAGAZINE, MA'AM?

25 MRS. BORNE: NO.

26 MR. CHIER: DO YOU BUY IT OFF THE NEWSSTAND?

27 MRS. BORNE: YES.

28 MR. CHIER: AND DO YOU BUY IT MORE OR LESS REGULARLY?

B-2

1 THE COURT: PARDON ME. I ANTICIPATE THIS WILL TAKE AT
2 LEAST THROUGH 12 O'CLOCK AND WE HAVE TWO OTHER MATTERS THAT
3 I HAVE GOT TO DISPOSE OF, SO WOULD YOU MIND COMING BACK THIS
4 AFTERNOON, MRS. BORNE, AT 1:45?

5 (WHEREUPON, PROSPECTIVE JUROR BORNE
6 NODS HER HEAD UP AND DOWN.)

7 THE COURT: ALL RIGHT, 1:45, MRS. BORNE.

8 MR. BARENS: YOUR HONOR, IT IS POSSIBLE THAT I MIGHT
9 NOT BE HERE THIS AFTERNOON AND MR. HUNT WOULD PERMIT THAT,
10 ALTHOUGH I MIGHT WELL BE HERE.

11 (DEFENDANT HUNT NODS HIS HEAD UP AND
12 DOWN.)

13 (AT 11:45 A.M. A RECESS WAS TAKEN
14 UNTIL 1:45 P.M. OF THE SAME DAY.)
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1 SANTA MONICA, CALIFORNIA; TUESDAY, NOVEMBER 18, 1986; 1:55 P.M.

2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS HERETOFORE NOTED.)

4
5 THE COURT: ALL RIGHT. DIDN'T WE HAVE SOMEBODY HERE
6 ON THE STAND?

7 MR. BARENS: YES, YOUR HONOR. I BLEIEVE IT IS MISS
8 BORNE.

9 THE COURT: BORNE? INCIDENTALLY, IN HOVEY AT PAGE
10 80, THE FOOTNOTE --

11 (PROSPECTIVE JUROR BORNE ENTERS THE
12 COURTROOM.)

13 THE COURT: WELL, I WILL READ IT TO YOU LATER. ALL
14 RIGHT.

15 MR. CHIER: MS. BORNE, I REPRESENT MR. HUNT, THE
16 DEFENDANT IN THIS CASE. AND I AM GOING TO ASK YOU SOME
17 QUESTIONS IN A FEW MINUTES WHICH IN SOME INSTANCES, MAY SEEM
18 SOMEWHAT PERSONAL.

19 AND I WANT YOU TO UNDERSTAND WHY YOU ARE HERE AND
20 WHY I AM HERE AND WHAT WE ARE DOING HERE.

21 WHAT WE ARE DOING HERE ESSENTIALLY, IS TRYING TO
22 FIND OUT IF YOU HAVE SUCH STRONG FEELINGS FOR OR AGAINST THE
23 DEATH PENALTY, THAT YOU WOULD VOTE AUTOMATICALLY FOR DEATH
24 OR FOR GUILT OR AUTOMATICALLY AGAINST -- AUTOMATICALLY NOT
25 GUILTY AND AUTOMATICALLY FOR LIFE, IF YOU WERE SELECTED AS
26 A JUROR IN THIS CASE.

27 AND SO, THE QUESTIONS THAT THE JUDGE ASKED YOU
28 WERE BASICALLY TO FIND OUT IF YOU HAD REALLY STRONG FEELINGS

1 ONE WAY OR THE OTHER ABOUT THE DEATH PENALTY.

2 BUT BEFORE WE GET TO THAT ISSUE, I WANTED TO PICK
3 UP WHERE WE LEFT OFF ON THE TIME MAGAZINE ISSUE AND TO REMIND
4 YOU THAT MR. HUNT, THE DEFENDANT IN THIS CASE, IS BEING CHARGED
5 WITH A CRIME THAT CALLS FOR THE DEATH PENALTY.

6 THE COURT: I HAVE ALREADY INDICATED THAT TO HER. WILL
7 YOU PLEASE GET TO THE QUESTIONS? WE DON'T NEED ALL OF THIS
8 SUMMARY AT THE MOMENT.

9 JUST GO AHEAD AND ASK HER ANY QUESTIONS YOU THINK
10 ARE PERTINENT.

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1 MR. CHIER: MRS. BORNE, YOU INDICATED THAT YOU ARE NOT
2 A SUBSCRIBER TO TIME MAGAZINE.

3 MS. BORNE: THAT'S CORRECT.

4 MR. CHIER: AND AS WE LEFT THE MATTER AT THE NOON RECESS
5 I HAD ASKED YOU WITH WHAT REGULARITY DO YOU READ THE MAGAZINE
6 AND WHAT IS YOUR ANSWER?

7 MS. BORNE: PERIODICALLY.

8 MR. CHIER: PERIODICALLY.

9 MS. BORNE: CAN I REPHRASE THAT? I AM SORRY.

10 MR. CHIER: SURE.

11 MS. BORNE: WE SUBSCRIBED FOR MANY, MANY, MANY YEARS
12 UNTIL VERY RECENTLY.

13 MR. CHIER: OKAY.

14 MS. BORNE: AND WE JUST STOPPED OUR SUBSCRIPTION.

15 MR. CHIER: WHAT AREA DO YOU LIVE -- DO YOU LIVE IN THE
16 SANTA MONICA AREA?

17 MS. BORNE: MARINA DEL REY.

18 MR. CHIER: OKAY. DO YOU SUBSCRIBE TO ANY NEWS
19 PUBLICATIONS ON A REGULAR BASIS?

20 MS. BORNE: YES.

21 MR. CHIER: NEWSPAPERS?

22 MS. BORNE: NO.

23 MR. CHIER: MAGAZINES?

24 MS. BORNE: YES.

25 MR. CHIER: WHICH MAGAZINES DO YOU SUBSCRIBE TO?

26 MS. BORNE: U.S. NEWS AND WORLD REPORT.

27 MR. CHIER: AND?

28 MS. BORNE: LADIES' MAGAZINES.

1 MR. CHIER: OKAY.

2 MS. BORNE: HOME DECORATING MAGAZINES.

3 MR. CHIER: OKAY. HOW ABOUT NEWS TYPE MAGAZINES LIKE
4 NEWS WEEK --

5 THE COURT: THAT WILL COME IN PROPERLY ON A GENERAL VOIR
6 DIRE. I JUST WANT YOU TO RESTRICT YOUR QUESTIONS TO THOSE
7 WHICH HAVE TO DO WITH WITHERSPOON. LET'S GET TO IT.

8 MR. CHIER: YOUR HONOR --

9 THE COURT: DON'T ARGUE WITH ME. LET'S GET TO THOSE
10 QUESTIONS.

11 MR. CHIER: I UNDERSTAND THAT THE PUBLICITY WAS GOING
12 TO GO ALONG WITH IT.

13 THE COURT: WELL, JUST ASK HER IF SHE HAS READ ABOUT
14 IT. THAT IS AS FAR AS YOU CAN GO. DON'T ASK HER WHAT
15 MAGAZINES SHE READS AND WHAT THE CONTENTS OF THE MAGAZINE IS,
16 EXCEPT IF THESE MAGAZINES CONTAINED ARTICLES ABOUT THIS CASE.

17 MR. CHIER: COULD I ASK YOU, MRS. BORNE, DID YOU PICK
18 UP THE ISSUE OF TIME MAGAZINE BECAUSE SOMEBODY MENTIONED TO
19 YOU THERE MIGHT BE A STORY IN THERE --

20 MS. BORNE: YES.

21 MR. CHIER: -- CONCERNING A CASE THAT WAS GOING TO BE
22 TRIED IN SANTA MONICA?

23 MS. BORNE: YES.

24 MR. CHIER: SO IT WAS OUT OF CURIOSITY, AS MUCH AS
25 ANYTHING --

26 MS. BORNE: YES.

27 MR. CHIER: -- THAT YOU PICKED IT UP?

28 I ASSUME THAT YOU READ THE ARTICLE?

1 MS. BORNE: HALF AND HALF.

2 MR. CHIER: HALF AND HALF?

3 DID YOU READ THE FIRST HALF BUT NOT THE SECOND
4 HALF?

5 MS. BORNE: YES.

6 MR. CHIER: DID YOU THINK THAT THERE WAS SOMETHING WRONG
7 IN WHAT YOU WERE DOING?

8 MS. BORNE: YES, BASICALLY, YES.

9 MR. CHIER: DID YOU THINK IT MIGHT DISQUALIFY YOU AS
10 A JUROR IN THIS CASE IF YOU WERE TO CONTINUE READING THE
11 ARTICLE?

12 MS. BORNE: NO.

13 I JUST PERSONALLY DIDN'T WANT TO KNOW ANY MORE.

14 MR. CHIER: HAVE YOU HEARD OTHER PEOPLE, EITHER IN YOUR
15 FAMILY OR YOUR FRIENDS, DISCUSSING THAT PARTICULAR ARTICLE?

16 MS. BORNE: NO.

17 MR. CHIER: HAVE YOU HEARD PEOPLE DISCUSSING THE CASE?

18 MS. BORNE: NO.

19 MR. CHIER: DO YOU FEEL THAT AS A RESULT OF READING AS
20 MUCH AS YOU DID IN THAT ARTICLE THAT YOU HAVE LEARNED ABOUT
21 THINGS WHICH MAY OR MAY NOT EVEN BE RECEIVED IN EVIDENCE, BE
22 ADMISSIBLE IN EVIDENCE IN THIS CASE?

23 DO YOU REMEMBER WHAT YOU READ?

24 LET ME WITHDRAW THAT QUESTION.

25 MS. BORNE: YES, BECAUSE I DIDN'T READ THE WHOLE ARTICLE.

26 MR. CHIER: OKAY, COULD YOU SUMMARIZE FOR US WHAT YOU
27 REMEMBER ABOUT THE ARTICLE OR THE PORTION OF IT THAT YOU READ?

28 MS. BORNE: YES.

1 MR. HUNT IS 27 YEARS OLD AND HE ENJOYED SKIING.
2 THERE WAS SOMETHING ABOUT GOING TO ASPEN, HAVING PARTIES AND
3 HE WAS INVOLVED IN SECURITIES AND I JUST KIND OF SKIMMED THROUGH
4 IT AND REALLY DON'T RECALL TOO MUCH MORE.

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1 MR. CHIER: DID YOU TAKE THE MAGAZINE HOME AFTER YOU
2 BOUGHT IT?

3 MS. BORNE: NO.

4 MR. CHIER: DID YOU READ IT AT WORK?

5 MS. BORNE: NO.

6 MR. CHIER: WHERE DID YOU READ IT?

7 MS. BORNE: BOOKSTORE.

8 MR. CHIER: I SEE. DID YOU ACTUALLY BUY IT OR JUST
9 SORT OF THUMB THROUGH IT ON THE NEWSSTAND?

10 MS. BORNE: IN THE NEWSSTAND. I NEED TO REPHRASE THAT.
11 THIS MORNING, I WAS TOTALLY NERVOUS. I DID NOT BUY THAT
12 MAGAZINE.

13 MR. CHIER: OKAY. ALL RIGHT. AND CAN I ASK YOU THIS.
14 WHEN YOU SAY SOMEBODY MENTIONED THAT THERE MIGHT BE A STORY
15 IN THERE THAT WOULD HAVE SOME RELATIONSHIP TO A TRIAL THAT
16 WAS GOING TO BE HELD HERE IN SANTA MONICA, WAS THAT ANOTHER
17 PROSPECTIVE JUROR IN THIS CASE, MRS. BORNE?

18 MS. BORNE: YES. IT COULD HAVE BEEN.

19 MR. CHIER: OKAY.

20 MS. BORNE: IT WAS HERE.

21 MR. CHIER: HERE IN THE COURTHOUSE?

22 MS. BORNE: UH-HUH.

23 MR. CHIER: ALL RIGHT.

24 MR. WAPNER: IS THAT YES?

25 MS. BORNE: YES. EXCUSE ME.

26 MR. CHIER: NOW, LET ME ASK YOU THIS. DO YOU WANT
27 TO BE A JUROR ON THIS CASE?

28 THE COURT: WHAT DO YOU MEAN, "DOES SHE WANT TO"? WOULD

0-2
1 YOU BE WILLING TO SERVE IF YOU ARE SELECTED?

2 MS. BORNE: YES.

3 MR. CHIER: WOULD YOU LIKE TO SERVE ON THIS PARTICULAR
4 CASE AS A JUROR?

5 MS. BORNE: YES.

6 MR. CHIER: AND UNDERSTANDING THAT IT IS A CASE WHERE
7 THE DEATH PENALTY IS BEING REQUESTED BY THE PEOPLE, IS IT
8 STILL YOUR DESIRE TO SERVE ON THIS JURY?

9 MS. BORNE: YES.

10 MR. CHIER: DO YOU HAVE A POSITION ABOUT THE DEATH
11 PENALTY?

12 THE COURT: I HAVE ASKED THE SIX QUESTIONS WHICH HAVE
13 BEEN PROPOUNDED TO HER. SHE MADE ANSWERS TO THOSE. YOU
14 ARE ASKING THE SAME QUESTIONS.

15 MR. CHIER: NO I AM NOT.

16 THE COURT: YES YOU ARE. NOW, GET ON TO SOMETHING
17 ELSE.

18 MR. CHIER: I AM ASKING HER WHAT HER ATTITUDE IS.

19 THE COURT: I ASKED THOSE QUESTIONS. DO YOU WANT ME
20 TO REREAD THEM TO HER AGAIN?

21 MR. CHIER: NO. THEY DON'T MEAN ANYTHING TO ME.

22 THE COURT: THEN, YOU BETTER GO OUT AND LEARN ABOUT
23 IT FIRST BEFORE YOU ASK FURTHER QUESTIONS.

24 YOU ARE THE ONES WHO SUBMITTED QUESTIONS FOR
25 ME TO ASK.

26 MR. CHIER: I DON'T THINK THEY MEAN ANYTHING TO THE
27 JURORS IN THAT CONTEXT AND --

28 THE COURT: WELL, I DON'T CARE WHAT YOU THINK THEY

-3
1 MEAN. YOU ASK QUESTIONS WHICH ARE PERTINENT.

2 FOLLOW MR. BARENS' LEAD AND ASK THE QUESTIONS
3 THE WAY HE DID. WE'LL GET SOMEWHERE.

4 MR. CHIER: DO YOU BELIEVE IN THE DEATH PENALTY?

5 THE COURT: PARDON ME? DO YOU BELIEVE IN THE DEATH
6 PENALTY?

7 MS. BORNE: YES I DO.

8 MR. CHIER: AND DO YOU BELIEVE -- DO YOU HAVE A BELIEF
9 AS TO WHEN IT IS APPROPRIATE TO INVOKE THE DEATH PENALTY
10 AND/OR WHEN THE DEATH PENALTY IS PARTICULARLY APPROPRIATE?
11 WHEN DO YOU THINK THE DEATH PENALTY IS PARTICULARLY APPROPRIATE?

12 MS. BORNE: WHEN SOMEONE IS PROVEN GUILTY.

13 MR. CHIER: OF WHAT?

14 MS. BORNE: OF WHAT THE TRIAL IS STANDING -- WHAT THEY
15 ARE STANDING FOR, WITHOUT TOTAL PROOF.

16 MR. CHIER: DO YOU BELIEVE THAT IN ALMOST EVERY CASE
17 WHERE IT IS PROVEN THAT A PERSON COMMITTED A MURDER IN THE
18 FIRST DEGREE, THAT THE DEATH PENALTY IS APPROPRIATE?

19 MS. BORNE: NO.

20 MR. CHIER: NOW IF A PERSON IS PROVED GUILTY OF MURDER
21 IN THE FIRST DEGREE, THAT MEANS THAT THERE IS NO SELF-DEFENSE
22 INVOLVED. THERE IS NO HEAT OF PASSION. IT MEANS THAT IT
23 WAS FOR THE MOST PART, A PREMEDITATED ACT.

24 DO YOU UNDERSTAND THAT?

25 MS. BORNE: YES.

26 MR. CHIER: ALL RIGHT. NOW, IS IT YOUR BELIEF THAT
27 THE DEATH PENALTY IS NOT APPROPRIATE IN CASES WHERE ANOTHER
28 PERSON IS KILLED BY A DEFENDANT, IF THERE IS SOME ELEMENT

1 OF SELF-DEFENSE OR HEAT OF PASSION? DO YOU UNDERSTAND MY
2 QUESTION?

3 MS. BORNE: WOULD YOU JUST REPEAT IT, PLEASE?

4 MR. CHIER: LET ME SEE IF I CAN REPHRASE IT.

5 MS. BORNE: YES.

6 MR. CHIER: HAVE YOU EVER READ A STORY IN THE NEWSPAPER
7 WHERE IT REPORTED A CRIMINAL ACT OF SOME KIND OR ANOTHER,
8 A VIOLENT ACT?

9 MS. BORNE: YES.

10 MR. CHIER: AND YOU SAID TO YOURSELF, THAT PERSON OUGHT
11 TO GET THE DEATH PENALTY?

12 MS. BORNE: YES.

13 MR. CHIER: HAVE YOU EVER SAID THAT?

14 MS. BORNE: YES.

15 MR. CHIER: WHAT TYPES OF CASES CAUSE YOU TO REACT
16 THAT WAY WHEN READING ABOUT THEM IN THE PAPER?

17 MS. BORNE: THE NIGHT STALKER.

18 MR. CHIER: THE NIGHT STALKER? OKAY.

19 DO YOU SUBSCRIBE TO OR BELONG TO ANY GROUP OR
20 ORGANIZATION WHICH AS AN ORGANIZATION, HAS A POLICY FOR OR
21 AGAINST THE DEATH PENALTY?

22 MS. BORNE: NO I DON'T.

23 MR. CHIER: DO YOU FEEL, MS. BORNE, THAT THE FACT THAT
24 THE DEATH PENALTY IS BEING ASKED FOR IN THIS CASE, WOULD
25 CAUSE YOU TO BE MORE INCLINED TO VOTE GUILTY ON THE ISSUE
26 OF GUILT OR INNOCENCE BEFORE EVEN REACHING --

27 MS. BORNE: ABSOLUTELY NOT.

28 MR. CHIER: ALL RIGHT. DO YOU UNDERSTAND THAT THE

1 ALTERNATIVE TO DEATH IN THIS CASE, IS LIFE WITHOUT POSSIBILITY
2 OF PAROLE? THAT IS THE ALTERNATIVE.

3 MS. BORNE: YES.

4 MR. CHIER: ALL RIGHT. DO YOU HAVE ANY BELIEF OR
5 SUSPICION AS TO WHETHER OR NOT DEATH (SIC) WITHOUT POSSIBILITY
6 OF PAROLE ACTUALLY MEANS WITHOUT POSSIBILITY OF PAROLE OR
7 DO YOU HAVE A LINGERING DOUBT AS TO WHETHER OR NOT THAT PERSON
8 MIGHT GET OUT AT SOME FUTURE DATE IF THAT WERE THE PENALTY?

9 MS. BORNE: I WOULD BELIEVE THAT WOULD BE THE PENALTY
10 AS STATED IN THE BEGINNING.

11 MR. CHIER: AS STATED?

12 MS. BORNE: AS STATED.

13 MR. CHIER: WITHOUT POSSIBILITY OF PAROLE?

14 MS. BORNE: (THERE WAS NO AUDIBLE RESPONSE.)

15 MR. WAPNER: EXCUSE ME. IS THAT YES?

16 MS. BORNE: YES.

17 MR. WAPNER: YOUR HONOR, MAYBE SO THE WITNESS IS CLEAR
18 ON WHY WE ARE INTERRUPTING HER, IF YOU COULD JUST INSTRUCT
19 HER TO ANSWER OUT LOUD SO THE REPORTER CAN TAKE IT DOWN?

20 THE COURT: YES. DO THAT.

21 MS. BORNE: THANK YOU.

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1 MR. CHIER: DID YOU VOTE FOR THE DEATH PENALTY, MRS.
2 BORNE?

3 MS. BORNE: YES.

4 THE COURT: WAIT A MINUTE NOW.

5 MR. CHIER: PARDON ME, YOUR HONOR?

6 THE COURT: YOU MEAN WHEN IT WAS ON THE BALLOT, IS THAT
7 WHAT YOU ARE ASKING?

8 MR. CHIER: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. CHIER: AND DID YOU READ ANY OF THE LEGISLATIVE
11 MATERIALS THAT WENT ALONG WITH THAT PARTICULAR ISSUE ON THE
12 BALLOT TO SEE IN WHICH CASES THE DEATH PENALTY WOULD BE
13 APPLICABLE AND WHICH CASES IT WOULDN'T OR, ON THE OTHER HAND,
14 DID YOU THINK IT WAS JUST A GOOD IDEA TO HAVE A DEATH PENALTY
15 AS OPPOSED TO NOT HAVING ONE?

16 MS. BORNE: I THOUGHT IT WAS A GOOD IDEA.

17 MR. CHIER: TO HAVE A DEATH PENALTY?

18 MS. BORNE: YES, AS OPPOSED TO NOT HAVING ONE.

19 MR. CHIER: DID YOU THINK IT WAS A GOOD IDEA TO HAVE
20 THE DEATH PENALTY BECAUSE YOU WERE CONCERNED WITH THE AMOUNT
21 OF VIOLENT CRIME THAT WAS --

22 MS. BORNE: YES.

23 MR. CHIER: -- TAKING PLACE?

24 MS. BORNE: YES.

25 MR. CHIER: AND DID YOU THINK IT WAS A GOOD IDEA TO HAVE
26 THE DEATH PENALTY BECAUSE OF THE AMOUNT OF STREET CRIME THAT
27 YOU WERE READING ABOUT AND SEEING ON TELEVISION?

28 MS. BORNE: YES.

1 MR. CHIER: OKAY. AND IT IS ALLEGED IN THIS CASE THAT
2 JOE HUNT KILLED A PERSON BY THE NAME OF RON LEVIN IN THE
3 COURSE OF A ROBBERY.

4 IF, AFTER HEARING THE EVIDENCE IN THIS CASE, YOU
5 AND THE REST OF YOUR FELLOW JURORS CAN COME TO A UNANIMOUS
6 DECISION AND FIND THAT MR. HUNT IS GUILTY OF THE FIRST DEGREE
7 MURDER OF MR. LEVIN, WOULD YOU AT THAT POINT, WITHOUT HEARING
8 ANY ADDITIONAL EVIDENCE ABOUT MR. HUNT, BE MORE OR LESS --
9 WOULD YOU BE INCLINED TO VOTE IN FAVOR OF THE DEATH PENALTY
10 IF YOU WERE TO DELIBERATE ON THE PENALTY AT THAT MOMENT?

11 THE COURT: YOU MEAN IF SHE FELT THE SPECIAL CIRCUMSTANCE
12 TO BE TRUE?

13 MR. CHIER: YES.

14 THE COURT: THAT THAT MURDER WAS COMMITTED IN THE COURSE
15 OF A ROBBERY?

16 MR. CHIER: YES.

17 THE COURT: ALL RIGHT. ASSUMING THAT YOU FOUND THAT
18 HE HAD COMMITTED THIS MURDER AND THAT IT WAS IN COURSE OF A
19 ROBBERY, AND THEN THERE WOULD BE THE SPECIAL CIRCUMSTANCE --
20 WELL, THEN THE NEXT PHASE IS THE PENALTY PHASE, YOU UNDERSTAND
21 THAT, DON'T YOU?

22 MS. BORNE: YES.

23 THE COURT: NOW WHAT IS YOUR QUESTION ON THAT?

24 MR. CHIER: WOULD YOU --

25 MS. BORNE: EXCUSE ME. THE QUESTION WAS WOULD I BE --

26 MR. CHIER: WOULD YOU FEEL THAT AT THAT POINT IN TIME,
27 HAVING NOW FOUND THAT THE MURDER OCCURRED --

28 MS. BORNE: YES.

1 MR. CHIER: -- THAT THE SPECIAL CIRCUMSTANCES ARE TRUE
2 THAT IT OCCURRED IN THE COURSE OF A ROBBERY, WOULD YOU AT THAT
3 POINT BE MORE INCLINED TO VOTE FOR THE DEATH PENALTY THAN LIFE
4 WITHOUT THE POSSIBILITY OF PAROLE?

5 THE COURT: WAIT A MINUTE. THAT IS AN UNFAIR QUESTION.

6 IF YOU WERE TO FIND HIM GUILTY OF MURDER IN THE
7 FIRST DEGREE AND YOU FIND THE SPECIAL CIRCUMSTANCE TRUE,
8 NAMELY, THAT IT WAS COMMITTED IN THE COURSE OF A ROBBERY, THEN
9 WE HAVE THE SECOND PHASE AND THAT IS THE PENALTY.

10 MR. CHIER: THE PENALTY PHASE, YES.

11 THE COURT: THE PENALTY PHASE, AND DURING THE PENALTY
12 PHASE OF THE CASE A LOT OF EVIDENCE CAN BE SUBMITTED ON BOTH
13 SIDES IN MITIGATION OF THE DEFENSE, IN OTHER WORDS, HIS
14 CHARACTER, HIS BACKGROUND AND EVERYTHING THAT MAY BE
15 CONSIDERED IN MITIGATION OR IN AGGRAVATION, ANY OTHER OFFENSES
16 HE MAY HAVE COMMITTED; DO YOU UNDERSTAND?

17 MS. BORNE: YES.

18 THE COURT: AND YOU WILL WAIT UNTIL YOU HEAR ALL OF THAT
19 TESTIMONY BEFORE YOU MAKE UP YOUR MIND AS TO WHETHER YOU CAN
20 SAY --

21 MS. BORNE: ABSOLUTELY, YES.

22 THE COURT: -- "I WILL PUT HIM TO DEATH IN THE GAS
23 CHAMBER?"

24 MR. CHIER: SO YOU BELIEVE THAT THERE CAN BE FACTORS
25 THAT WOULD MITIGATE AGAINST THE DEATH PENALTY, EVEN THOUGH
26 A PERSON COMMITTED A MURDER?

27 MS. BORNE: YES.

28 MR. CHIER: WHAT TYPE OF FACTORS WOULD YOU THINK MIGHT

1 MITIGATE AGAINST THE DEATH PENALTY IN YOUR MIND, I MEAN AS
2 FAR AS YOUR PERSONAL BELIEFS ARE CONCERNED?

3 MS. BORNE: IN MY PERSONAL BELIEFS WOULD BE THE
4 CIRCUMSTANCES AROUND THE WHOLE CASE, WHAT WOULD PROBABLY COME
5 OUT IN COURT, THE REASONS, BEING UNDER WHAT CIRCUMSTANCES.

6 MR. CHIER: ALL RIGHT. WOULD YOU FEEL THAT THE AGE OF
7 THE DEFENDANT MIGHT HAVE ANY BEARING ON IT?

8 MS. BORNE: NO.

9 THE COURT: YOU MUST CONSIDER ALL OF THE CIRCUMSTANCES,
10 HIS AGE, HIS BACKGROUND, HIS EDUCATION AND HIS PRIOR RECORD,
11 MODE OF LIVING AND EVERYTHING ELSE. YOU HAVE TO CONSIDER
12 EVERYTHING THAT MIGHT BE BROUGHT UP IN THE TRIAL, THOSE WHICH
13 ARE FAVORABLE TO HIM AND ALSO ALL OF THE THINGS THAT ARE
14 UNFAVORABLE TO HIM. YOU WILL BE LISTENING TO ALL OF THAT AND
15 THEN YOU WILL MAKE UP YOUR MIND; ISN'T THAT WHAT YOU ARE
16 GOING TO DO?

17 MS. BORNE: ABSOLUTELY.

18 THE COURT: ALL RIGHT.

19 MR. CHIER: WOULD YOU CONSIDER WHETHER THE PERSON HAD
20 ANY PRIOR CRIMINAL BACKGROUND THAT MIGHT HAVE ANY BEARING ON
21 WHETHER HE LIVED OR DIED, ASSUMING THAT YOU FIND HIM GUILTY
22 AS CHARGED?

23 MS. BORNE: YES.

24 MR. CHIER: WOULD YOU CONSIDER WHETHER OR NOT THE
25 DEFENDANT FELT MORALLY JUSTIFIED TO SOME EXTENT, WOULD YOU
26 CONSIDER THAT AS A FACTOR IN MITIGATION?

27 MS. BORNE: I BELIEVE ALL FACTORS ARE TAKEN INTO
28 CONSIDERATION.

1 MR. CHIER: AFTER A CONSIDERATION OF ALL OF THE FACTORS
2 IN MITIGATION AND IN AGGRAVATION, THAT IS, ALL OF THE BAD
3 THINGS AND ALL OF THE GOOD THINGS, WHAT IT REALLY COMES DOWN
4 TO AS TO WHETHER A PERSON SHOULD LIVE OR DIE, MRS. BORNE, THE
5 BOTTOM LINE, WHAT DO YOU THINK REALLY MATTERS?

6 MS. BORNE: OH, ON THE FACTS, THE TRUE FACTS THAT WE
7 HAVE BEEN ABLE TO OBTAIN AS FACTS, YOU KNOW, AS TRUE.

8 MR. CHIER: RIGHT, WE ARE ASSUMING THAT THE FACTS --

9 MS. BORNE: OH --

10 MR. CHIER: -- SURROUNDING THE OFFENSE --

11 MS. BORNE: ARE CORRECT, YES.

12 MR. CHIER: -- ASSUMING THOSE FACTS ARE FOUND BY THE
13 JURY TO BE TRUE, DO YOU BELIEVE IF THE JURY HAS FOUND ALL OF
14 THE FACTS TO BE TRUE AS ALLEGED BY THE DISTRICT ATTORNEY, THAT
15 THE PERSON SHOULD DIE?

16 MR. WAPNER: YOUR HONOR, I OBJECT TO THAT. IT IS
17 ACTUALLY ASKING HER TO PRE-JUDGE THE EVIDENCE.

18 THE COURT: I AM WAITING FOR AN OBJECTION ON YOUR PART.
19 I DON'T WANT TO MAKE THEM ALL MYSELF.

20 MR. WAPNER: SHE DOESN'T KNOW WHAT ALL OF THE FACTS ARE.
21 I DON'T THINK IT IS POSSIBLE FOR HER TO KNOW THE ANSWER TO
22 THAT QUESTION.

23 THE COURT: I WILL SUSTAIN THAT OBJECTION.
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2 -
1 MR. CHIER: HAVE YOU EVER KNOWN -- HOW LONG HAVE YOU
2 KNOWN THAT YOU WERE GOING TO BE A PROSPECTIVE JUROR IN THE
3 DEATH PENALTY CASE, MRS. --

4 THE COURT: WHAT DIFFERENCE DOES THAT MAKE?

5 MR. CHIER: WELL, IT IS JUST A PRELIMINARY QUESTION.

6 THE COURT: I WILL SUSTAIN THE OBJECTION ON THE COURT'S
7 OWN MOTION.

8 THERE CAN ONLY BE A LIMITED INQUIRY WITH RESPECT
9 TO IT AT THIS TIME. IT IS ONLY WHEN THE JURORS ARE IN THE
10 BOX AND FOR GENERAL VOIR DIRE THAT YOU CAN ASK A NUMBER OF
11 THESE QUESTIONS.

12 BUT THIS IS STRICTLY LIMITED TO THEIR ATTITUDES
13 TOWARD THE DEATH PENALTY. THAT IS ALL.

14 MR. CHIER: I JUST WANTED TO ASK MRS. BORNE IF SHE
15 HAD HAD AN OPPORTUNITY LAST WEEK OR SOMETIME TO THINK ABOUT
16 HER ATTITUDE TOWARD THE DEATH PENALTY AND --

17 THE COURT: I WILL SUSTAIN THE OBJECTION TO THAT. LET'S
18 GO ON, WILL YOU?

19 MR. CHIER: HAVE YOU DISCUSSED YOUR ATTITUDE WITH OTHER
20 PEOPLE, MRS. BORNE?

21 MS. BORNE: MY HUSBAND.

22 THE COURT: WELL, YOU UNDERSTAND MRS. BORNE, THAT IF
23 YOU ARE SELECTED AS A JUROR IN THIS CASE AND YOU ARE SWORN,
24 THEN YOU ARE NOT SUPPOSED TO TALK TO ANYBODY ABOUT ANYTHING
25 ABOUT THE CASE. DO YOU KNOW THAT? DON'T YOU?

26 MS. BORNE: YES.

27 THE COURT: IT IS ALL RIGHT FOR YOU TO DISCUSS IT WITH
28 YOUR HUSBAND.

2-2
1 MR. CHIER: WAS YOUR HUSBAND AWARE OF THE ARTICLE IN
2 TIME MAGAZINE?

3 THE COURT: WHAT DIFFERENCE DOES THAT MAKE? I WILL
4 SUSTAIN THE OBJECTION. LET'S GET ON, PLEASE.

5 MR. CHIER: DID YOU AND YOUR HUSBAND DISCUSS THE ARTICLE
6 IN TIME MAGAZINE, MRS. BORNE?

7 MS. BORNE: NO.

8 MR. CHIER: DO YOU KNOW WHETHER YOUR HUSBAND SUBSCRIBES
9 TO NEWSWEEK MAGAZINE --

10 THE COURT: YOU DON'T HAVE TO ANSWER THAT QUESTION.
11 WHAT IS THE NEXT QUESTION? DID YOU SEE ANY ARTICLE IN
12 NEWSWEEK ABOUT THIS CASE?

13 MS. BORNE: SORRY?

14 THE COURT: DID YOU SEE ANY ARTICLE IN NEWSWEEK ABOUT
15 THE CASE?

16 MS. BORNE: NO.

17 THE COURT: LET'S GET ON.

18 MR. CHIER: MAY I HAVE A MOMENT, YOUR HONOR?

19 THE COURT: SURELY.

20 (THERE WAS A BRIEF PAUSE.)

21 MR. CHIER: CAN YOU TELL ME PLEASE, MRS. BORNE, WITHOUT
22 HAVING ANY INSTRUCTIONS FROM THE COURT AND NOT HEARING
23 ANYTHING, ANY FACTS ABOUT THE CASE OTHER THAN WHAT YOU MIGHT
24 KNOW FROM THE TIME MAGAZINE ARTICLE, BUT JUST YOUR OWN PERSONAL
25 FEELINGS AT THIS TIME, WHETHER IT WOULD BE APPROPRIATE TO
26 SENTENCE SOMEBODY TO LIFE WITHOUT POSSIBILITY OF PAROLE AND
27 WHEN IT WOULD BE APPROPRIATE TO SENTENCE SOMEBODY TO DEATH?

28 MS. BORNE: SORRY? PAROLE AND --

1 MR. CHIER: WHAT WOULD MAKE THE DIFFERENCE IN YOUR
2 MIND, AS TO WHETHER SOMEBODY WAS TO GET LIFE WITHOUT
3 POSSIBILITY OF PAROLE OR THE DEATH PENALTY, MRS. BORNE?

4 MS. BORNE: THAT'S A VERY HARD QUESTION TO ANSWER.

5 MR. CHIER: I UNDERSTAND THAT.

6 THE COURT: YOU DON'T HAVE TO ANSWER IT, IF THAT IS
7 YOUR BEST ANSWER.

8 LET'S GO ON TO SOMETHING ELSE.

9 MR. CHIER: ARE YOU WILLING TO ANSWER THAT QUESTION,
10 MRS. BORNE?

11 THE COURT: SHE SAYS IT IS A HARD QUESTION TO ANSWER.

12 MR. CHIER: WELL, IT DOESN'T MEAN THAT SHE IS UNWILLING.

13 THE COURT: IF IT IS A HARD QUESTION TO ANSWER, SHE
14 DOESN'T KNOW HOW. LET'S GET ON.

15 MR. CHIER: EVEN HARD QUESTIONS CAN BE ANSWERED.

16 MS. BORNE: I WOULD RATHER NOT ANSWER THAT WITHOUT
17 HAVING SOME FACTS TO GO WITH. I JUST --

18 MR. CHIER: WELL, DO YOU HAVE ANY GUT FEELINGS ABOUT
19 WHEN THE DEATH PENALTY SHOULD BE RETURNED AND WHEN LIFE
20 IMPRISONMENT IS APPROPRIATE? HOW DO YOU EMOTIONALLY --

21 MS. BORNE: EMOTIONALLY, I BELIEVE PERHAPS THAT --
22 TO MAKE IT THE QUICKEST WAY, IF SOMEBODY JUST UNMERCIFULLY
23 KILLS PEOPLE AT RANDOM ON THE STREET OR DURING A PHYSICAL
24 ATTACK OR A RAPE ATTACK, GETTING LIFE WITHOUT PAROLE WOULD
25 BE PERHAPS FOR SOMEBODY MENTALLY INCOMPETENT WHO IS COMMITTING
26 CRIMES AND --

27 THE COURT: A SERIAL MURDERER? BUT IN ANY EVENT,
28 MRS. BORNE, IN THE LONG RUN, YOU WILL BE GUIDED BY THE COURT'S

2-4
1 INSTRUCTIONS? WOULD YOU NOT?

2 MS. BORNE: YES.

3 THE COURT: AS TO WHAT IS TO BE TAKEN INTO CONSIDERATION
4 BEFORE YOU DETERMINE WHETHER OR NOT HE IS GUILTY OF FIRST
5 DEGREE MURDER OR WHETHER THERE IS SPECIAL CIRCUMSTANCES AND
6 WHETHER OR NOT THERE ARE ANY MITIGATING OR AGGRAVATING
7 CIRCUMSTANCES IN CONNECTION WITH IT? IS THAT RIGHT?

8 MS. BORNE: YES.

9 THE COURT: GO AHEAD.

10 MR. CHIER: WE ALL ASSUME THAT YOU WOULD FOLLOW THE
11 INSTRUCTIONS, IF SELECTED AS A JUROR, MRS. BORNE.

12 WHAT I AM REALLY INQUIRING ABOUT, IS YOUR
13 EMOTIONALITY TOWARDS THE DEATH PENALTY WHICH IS DIFFERENT
14 FROM YOUR FOLLOWING THE INSTRUCTIONS.

15 IF I UNDERSTAND CORRECTLY THEN, YOU FEEL THAT
16 THE DEATH PENALTY IS MORE APPROPRIATE IN CASES OF SERIAL
17 MURDER, RANDOM MURDERERS, SENSELESS KILLINGS AND THAT TYPE
18 OF THING?

19 MS. BORNE: THAT TYPE OF THING. I AM NOT THAT FAMILIAR
20 WITH THE TYPES OF KILLINGS.

21 MR. CHIER: I UNDERSTAND. BUT CERTAINLY, YOU KNOW
22 WHEN YOU READ THE NEWSPAPERS OR SEE THE NEWS, WE ALL HAVE
23 REACTIONS.

24 MS. BORNE: YES. THAT IS MY --

25 MR. CHIER: ABOUT THE TYPE OF PERSON THAT IS ARRESTED
26 AND IF TRUE, THEN WE FEEL THAT IN CERTAIN CASES, THE PEOPLE
27 OUGHT TO DIE?

28 MS. BORNE: RIGHT.

1 MR. CHIER: I MEAN, WE ARE ALL HUMAN. I AM SURE YOU
2 HAVE HAD THOSE EXPERIENCES AS WELL AS I.

3 AND DO YOU FEEL THAT YOU WOULD BE ABLE TO RETURN,
4 IF YOU FOUND THE DEFENDANT -- THIS ALL ASSUMES THAT YOU FIND
5 THE DEFENDANT GUILTY. DO YOU UNDERSTAND?

6 IF YOU FIND THE DEFENDANT NOT GUILTY, THEN OF
7 COURSE, THE PROBLEM IS ENDED AT THAT POINT. SO ALL OF THAT
8 ASSUMES THAT THE DEFENDANT IS FOUND GUILTY AS CHARGED AND
9 THAT THE SPECIAL CIRCUMSTANCES ARE TRUE.

10 DO YOU FEEL THAT -- I HAVE NO FURTHER QUESTIONS,
11 YOUR HONOR. I PASS FOR CAUSE AT THIS POINT.

12 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS?

13 MR. WAPNER: YES, BRIEFLY.

14 MRS BORNE, AFTER YOU READ WHATEVER PORTION OF
15 THE TIME MAGAZINE ARTICLE THAT YOU READ, DID YOU FORM ANY
16 OPINIONS ABOUT THIS CASE?

17 MS. BORNE: NO. I CERTAINLY DID NOT.

18 MR. WAPNER: OKAY.

19 MS. BORNE: MAY I JUST SAY THAT TO ME, IT IS A ONE
20 PERSON VIEWPOINT OF WHATEVER YOU READ.

21 THE COURT: THAT IS ALL WE ARE INTERESTED IN, JUST
22 YOUR POINT OF VIEW.

23 MR. WAPNER: YOU ARE TALKING ABOUT THE PERSON THAT
24 THE ARTICLE REFLECTS THE POINT OF VIEW -- OF THE PERSON WHO
25 WROTE IT? IS THAT RIGHT?

26 MS. BORNE: YES.

27 MR. WAPNER: OKAY. AND OTHER THAN WHAT YOU MAY HAVE
28 READ IN THAT ARTICLE, HAVE YOU HEARD ANYTHING ELSE ABOUT

1 THE CASE?

2 MS. BORNE: JUST MUMBLINGS WHEN --

3 THE COURT: EXCEPT WHAT I INDICATED TO YOU WHEN ALL
4 OF THE JURORS WERE TOGETHER AND WE TOLD YOU WHAT THE CASE
5 WAS ALL ABOUT?

6 MS. BORNE: I HAVE NOT HEARD IT ON THE NEWS OR --

7 THE COURT: ALL RIGHT.

8 MR. WAPNER: YOU WERE SAYING ABOUT MUMBLING --

9 MS. BORNE: ON THE FIRST DAY WE WERE CALLED THAT I
10 REPORTED TO JURY DUTY, SOMEBODY MENTIONED THAT IT WAS A BIG
11 CASE COMING UP.

12 MR. WAPNER: OKAY. YOU SAID THAT YOU WOULD LIKE TO
13 SERVE ON THIS CASE. WHY IS THAT?

14 THE COURT: THAT HAS NOTHING TO DO WITH WITHERSPOON.
15 I WILL SUSTAIN THE OBJECTION.

16 MR. CHIER: YOUR HONOR, MAY I BE HEARD WITH RESPECT
17 TO THAT?

18 THE COURT: NO.

19 MR. CHIER: I REQUEST PERMISSION TO BE HEARD.

20 THE COURT: AFTER THE JUROR IS GONE, I WILL LET YOU
21 MAKE YOUR OBJECTION FOR THE RECORD.

22 MR. WAPNER: YOUR HONOR, I ASSUME THAT THE COURT IS
23 STATING THAT THAT IS A QUESTION THAT IS MORE APPROPRIATE
24 AFTER --

25 THE COURT: APPROPRIATELY ASKED ON THE GENERAL VOIR
26 DIRE.

27 MR. WAPNER: ON THE GENERAL VOIR DIRE. THANK YOU.

28 DID YOU UNDERSTAND WHAT THE JUDGE WAS EXPLAINING

1 TO YOU? I BELIEVE IT WAS YESTERDAY, ABOUT THE DIFFERENT
2 PHASES OF THE TRIAL OR DO YOU UNDERSTAND NOW?

3 MS. BORNE: BETTER.

4 MR. WAPNER: OKAY. THE GUILT PHASE OF THE TRIAL WHERE
5 YOU MAKE A DETERMINATION AS TO WHETHER OR NOT THE DEFENDANT
6 IS GUILTY OR NOT GUILTY OF THE MURDER AND WHETHER OR NOT
7 THE SPECIAL CIRCUMSTANCES ARE TRUE, IS A DECISION THAT YOU
8 MAKE WITHOUT REGARD TO THE POSSIBLE PUNISHMENT. DO YOU
9 UNDERSTAND THAT?

10 MS. BORNE: OKAY. NO. THANK YOU. THAT CLEARS THAT
11 UP.

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1 MR. WAPNER: OKAY. WHAT THAT MEANS IS, THAT IF YOU
2 ARE CHOSEN TO SERVE AS A JUROR IN THIS CASE AND YOU SIT AND
3 LISTEN TO ALL OF THE EVIDENCE AND THEN THE JUDGE TELLS YOU --
4 GIVES YOU THE INSTRUCTIONS ON THE LAW AND HE TELLS YOU TO
5 GO INTO THE JURY ROOM, ONE OF THE THINGS HE IS GOING TO TELL
6 YOU IS THAT WHEN YOU MAKE A DECISION ABOUT WHETHER OR NOT
7 THE DEFENDANT COMMITTED THIS CRIME, YOU HAVE TO MAKE THAT
8 DECISION WITHOUT ANYTHING ABOUT WHAT MIGHT HAPPEN TO THE
9 DEFENDANT IF YOU FIND HIM GUILTY.

10 DO YOU UNDERSTAND THAT?

11 MS. BORNE: YES I DO.

12 MR. WAPNER: AND IF THE JUDGE TELLS YOU THAT, CAN YOU
13 FOLLOW THAT INSTRUCTION?

14 MS. BORNE: YES I CAN.

15 MR. WAPNER: DOES THAT MAKE SENSE TO YOU?

16 MS. BORNE: YES.

17 MR. WAPNER: IN OTHER WORDS, WHAT HE IS BASICALLY TELLING
18 YOU IS, THAT IN THE TRIAL TO DECIDE WHETHER THE DEFENDANT
19 DID THIS CRIME OR WHETHER HE DIDN'T, YOU ARE NOT SUPPOSED
20 TO THINK ABOUT WHAT MIGHT HAPPEN TO HIM AT SOME POINT LATER
21 ON. DO YOU UNDERSTAND THAT?

22 MS. BORNE: YES I DO.

23 MR. WAPNER: OKAY. YOU KNOW NOW WHAT -- AND YOU OF
24 COURSE WILL KNOW IF YOU ARE SITTING AS A JUROR IN THE GUILT
25 PHASE OF THE TRIAL, THAT SHOULD THE DEFENDANT BE CONVICTED,
26 YOU ARE GOING TO BE CALLED UPON TO DECIDE THE QUESTION OF
27 WHETHER HE SHOULD GET LIFE IN PRISON WITHOUT THE POSSIBILITY
28 OF PAROLE OR THE DEATH PENALTY. RIGHT? YOU KNOW THAT?

1 THAT IS IN YOUR MIND, AT LEAST THAT THAT MIGHT HAPPEN? RIGHT?

2 MS. BORNE: THAT MIGHT HAPPEN.

3 MR. WAPNER: KNOWING THAT THAT MIGHT HAPPEN, WOULD
4 YOU REQUIRE ME -- WOULD YOU REQUIRE THE PEOPLE TO MEET A
5 HIGHER STANDARD OF PROOF THAN YOU WOULD REQUIRE IN SOME OTHER
6 CASE?

7 MR. BARENS: OBJECTION, YOUR HONOR.

8 THE COURT: SORRY. WOULD YOU READ THE QUESTION BACK?

9 MR. WAPNER: MAYBE I CAN REPHRASE IT BECAUSE I THINK
10 IT IS THE OPPOSITE SIDE OF THE COIN OF A QUESTION THAT
11 MR. CHIER ASKED.

12 THE COURT: ALL RIGHT.

13 MR. WAPNER: I THINK MR. CHIER ASKED YOU WHETHER OR
14 NOT YOU WOULD BE MORE LIKELY TO CONVICT THE DEFENDANT IN
15 THIS CASE BECAUSE OF THE POSSIBILITY THAT THERE IS A DEATH
16 PENALTY INVOLVED. DO YOU REMEMBER HIM ASKING YOU QUESTIONS
17 SOMETHING LIKE THAT?

18 MS. BORNE: SOMETHING LIKE THAT.

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1 MR. WAPNER: WHAT I WANT TO KNOW IS, WOULD YOU BE MORE
2 LIKELY TO ACQUIT THE DEFENDANT IN THIS CASE BECAUSE THE
3 POSSIBILITY EXISTS THAT THERE IS A DEATH PENALTY QUESTION DOWN
4 THE ROAD?

5 MS. BORNE: NO, SIR.

6 MR. WAPNER: OKAY. DO YOU UNDERSTAND THAT IF YOU SHOULD
7 GET TO THE PENALTY PHASE OF THIS TRIAL AND YOU WERE REQUIRED
8 TO DELIBERATE ON WHETHER OR NOT THE PENALTY, DEATH OR LIFE
9 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, THAT THAT
10 DECISION WOULD HAVE TO BE MADE INDIVIDUALLY BY YOU AS WELL
11 AS INDIVIDUALLY BY 11 OTHER PEOPLE?

12 MS. BORNE: YES.

13 MR. WAPNER: ARE YOU CAPABLE OF MAKING THAT DECISION?

14 MS. BORNE: YES.

15 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT THAT?

16 MS. BORNE: NO.

17 MR. WAPNER: THANK YOU. PASS FOR CAUSE, YOUR HONOR.

18 THE COURT: ALL RIGHT, PASS FOR CAUSE?

19 MR. BARENS: PASS FOR CAUSE, YOUR HONOR.

20 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, MRS. BORNE.
21 YOU KNOW WHAT WE ARE GOING TO DO IS GO THROUGH THIS WHOLE
22 PROCEDURE THAT WE HAVE GONE THROUGH WITH YOU AND ALL OF THE
23 OTHER PROSPECTIVE JURORS WHO HAVE BEEN SUMMONED IN THIS CASE
24 AND THAT WILL TAKE SOME TIME, OBVIOUSLY. YOU SEE HOW LONG
25 IT HAS TAKEN WITH YOU. SO WHAT WE WILL DO IS TO ASK YOU TO
26 COME BACK -- WHAT IS IT, NOVEMBER 2ND?

27 MR. BARENS: DECEMBER, YOUR HONOR.

28 THE COURT: I AM SORRY. DECEMBER 2ND, COME BACK ON

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1 DECEMBER 2ND. GO TO THE JURY ASSEMBLY ROOM AND YOU BE THERE
2 AT 10:30. DECEMBER 2ND, MAKE A NOTE OF THAT, AT 10:30.

3 IF THERE IS ANY CHANGE OF ANY KIND, WE WILL
4 CALL YOU. WE HAVE GOT YOUR TELEPHONE NUMBER.

5 INCIDENTALLY, DON'T TALK TO ANYBODY ABOUT WHAT
6 HAS HAPPENED HERE.

7 MS. BORNE: OH, NO, I WON'T.

8 MR. WAPNER: IN THIS CONNECTION, ALTHOUGH OBVIOUSLY THE
9 JUROR IS PRETTY WELL AWARE, WOULD YOU CAUTION HER, AS WELL
10 AS THE OTHER JURORS, NOT TO READ ANYTHING OR TO LISTEN TO
11 ANYTHING HAVING TO DO WITH THIS CASE?

12 MS. BORNE: OH, NO, I WOULD NOT. I HAVE BEEN ON A JURY
13 BEFORE.

14 THE COURT: ALL RIGHT. YOU HAVE BEEN ON A JURY BEFORE?

15 MS. BORNE: YES.

16 THE COURT: YOU ARE ADMONISHED NOT TO TALK TO ANYBODY
17 ABOUT THIS CASE OR TO READ ANYTHING ABOUT IT OR LISTEN TO
18 ANYTHING ABOUT IT.

19 (WHEREUPON, PROSPECTIVE BORNE EXISTS THE
20 COURTROOM.)

21 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE
22 HELD WITHOUT THE PRESENCE AND HEARING OF
23 ANY PROSPECTIVE JUROR:)

24 MR. BARENS: WE HAD THE MATTER OF THAT ONE QUESTION,
25 YOUR HONOR.

26 THE COURT: YES, GO AHEAD.

27 MR. CHIER: YOUR HONOR, I BELIEVE MR. WAPNER'S QUESTION
28 WAS APPROPRIATE.

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1 THE COURT: HOLD IT ONE MINUTE, PAT.

2 THE BAILIFF: YES, YOUR HONOR.

3 MR. CHIER: THE QUESTIONS AS TO WHETHER A
4 PARTICULAR JUROR, KNOWING THAT THIS IS A DEATH PENALTY CASE,
5 WANTS TO OR IS ANXIOUS TO SERVE ON THIS JURY, I THINK THAT
6 IS HIGHLY PROBATIVE AND HIGHLY RELEVANT AND I THINK COUNSEL
7 SHOULD BE ABLE TO INQUIRE. IT LEADS IN A SHORT PERIOD OF TIME,
8 LOGICALLY, TO FOLLOW-UP QUESTIONS AS TO WHETHER THEY THINK
9 THE DEATH PENALTY IS NOT USED SELDOM ENOUGH, WHETHER THIS IS
10 A CRUSADER TYPE OF JUROR AND IT LEADS ULTIMATELY IN SHORT
11 ORDER TO REVELATIONS CONCERNING THAT PERSON'S ATTITUDE TOWARDS
12 THE DEATH PENALTY.

13 THE COURT: I AM NOT GOING TO LIMIT THAT QUESTION OR
14 ANY QUESTIONS AT THE TIME OF THE GENERAL VOIR DIRE OF THE
15 JURY, THAT CAN BE ASKED AT THAT TIME. YOU CAN MAKE UP YOUR
16 MIND AS TO WHETHER OR NOT YOU WANT THAT PARTICULAR JUROR OR
17 NOT AT THAT TIME.

18 ALL THIS IS TO DO IS TO DETERMINE WHETHER OR NOT
19 THIS IS A DEATH-QUALIFIED JUROR AND THIS IS ALL I AM GOING
20 TO DO AND I AM REFERRING TO THE HOVEY CASE AT PAGE 80,
21 FOOTNOTE 136:

22 "THIS COURT DOES NOT PRESCRIBE ANY
23 PARTICULAR FORM IN WHICH TO FRAME QUESTIONS TRIAL
24 COUNSEL OR THE COURT MAY ASK ABOUT ATTITUDES
25 TOWARD THE DEATH PENALTY. HOWEVER, THEY ARE
26 CAUTIONED TO AVOID ANY QUESTIONS WHICH MAY
27 SUGGEST THAT A PARTICULAR ATTITUDE TOWARD THE
28 DEATH PENALTY IS 'DISFAVORED.' ALSO, WHEN

1 QUESTIONS ARE POSED CONCERNING OPPOSITION TO
2 CAPITAL PUNISHMENT, TRIAL COUNSEL AND THE COURT
3 WOULD BE WELL-ADVISED TO STRIVE FOR BREVITY --
4 AND TO PHRASE THE QUESTIONS 'IN THE TERMS WITHERSPOON
5 SO UNMISTAKABLY SUGGESTS.'

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1 BREVITY IS NOT ONLY THE SOUL OF WIT BUT IS ALSO
2 THE SOUL OF INTERROGATION IN CONNECTION WITH WITHERSPOON.
3 ALL RIGHT?

4 (WHEREUPON, PROSPECTIVE JUROR BRANNON
5 ENTERS THE COURTROOM.)
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1 THE COURT: LET ME SEE, YOUR NAME IS BRANNON, IS IT?

2 MS. BRANNON: YES, SIR.

3 THE COURT: IS THAT MISS OR MRS.?

4 MS. BRANNON: BRANNON, YES.

5 THE COURT: MISS BRANNON?

6 MS. BRANNON: LORI BRANNON, YES, MISS.

7 THE COURT: MISS BRANNON, I AM GOING TO ASK YOU A
8 NUMBER OF QUESTIONS. I WANT YOU TO LISTEN CAREFULLY TO THE
9 QUESTIONS AND ANSWER THEM EITHER YES OR NO. IF YOU DON'T
10 UNDERSTAND OR WANT TO HAVE IT REREAD, I WILL READ IT TO YOU,
11 ALL RIGHT?

12 MS. BRANNON: SURE.

13 THE COURT: SO YOU LISTEN CAREFULLY.

14 ONE.

15 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
16 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
17 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

18 MS. BRANNON: NO.

19 THE COURT: TWO:

20 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
21 THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER, EVEN
22 WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY OF MURDER
23 IN THE SECOND DEGREE OR ANY OTHER KIND OR MANSLAUGHTER?

24 MS. BRANNON: NO.

25 THE COURT: THREE:

26 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
27 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING
28 THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN

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1 THIS CASE?

2 LET ME REPHRASE THAT QUESTION BY THE FOLLOWING:
3 YOU HEARD, I TOLD YOU THAT IF THERE IS A VERDICT FOUND OF
4 MURDER IN THE FIRST DEGREE BY THE JURY SELECTED IN THIS CASE,
5 THEY THEN WILL HAVE TO DETERMINE WHETHER OR NOT THAT MURDER
6 WAS COMMITTED IN THE COURSE OF A ROBBERY. NOW, COMMITTED IN
7 THE COURSE OF A ROBBERY IS WHAT IS KNOWN AS A SPECIAL
8 CIRCUMSTANCE WHICH, IF FOUND TO BE TRUE, QUALIFIES THE CASE
9 FOR EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
10 OR THE GAS CHAMBER OR DEATH; DO YOU UNDERSTAND?

11 MS. BRANNON: UH-HUH.

12 THE COURT: SO LET ME ASK THE QUESTION TO YOU AGAIN.

13 MS. BRANNON: OKAY.

14 THE COURT: DO YOU HAVE AN OPINION REGARDING THE DEATH
15 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
16 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
17 CIRCUMSTANCE ALLEGED IN THIS CASE?

18 MS. BRANNON: NO.

19 THE COURT: ALL RIGHT, THREE -- FOUR:

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

25 MS. BRANNON: OKAY. THAT, I DON'T UNDERSTAND.

26 THE COURT: ALL RIGHT. IF THE JURY IN THIS CASE FINDS
27 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND FINDS
28 THAT THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY,

1 THEN WE HAVE A SECOND PHASE OF THE TRIAL WITH THE SAME JURY.
2 THAT SECOND PHASE OF THE TRIAL IS KNOWN AS THE PENALTY PHASE.
3 THEN THE JURY WILL HAVE TO DETERMINE ONE OF TWO THINGS:
4 EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
5 OR DEATH.

6 MS. BRANNON: OKAY.

7 THE COURT: NOW, SO THE QUESTION IS, IS YOUR OPINION
8 CONCERNING THE DEATH PENALTY SUCH THAT YOU AUTOMATICALLY WOULD
9 VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY OF MURDER IN THE
10 FIRST DEGREE AND THE FINDING OF SPECIAL CIRCUMSTANCE,
11 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
12 PHASE OF THE TRIAL?

13 MS. BRANNON: NO.

14 THE COURT: ALL RIGHT, NEXT:

15 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
16 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
17 WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT OF GUILTY OF
18 MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE
19 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
20 PHASE OF THE TRIAL?

21 MS. BRANNON: NO.

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

5 MS. BRANNON: YES.

6 THE COURT: ALL RIGHT. HAVE YOU HEARD ABOUT THIS CASE
7 AT ALL, OTHER THAN WHAT I HAVE TOLD YOU ABOUT IN THIS COURT,
8 HAVE YOU READ ABOUT IT ANYWHERE?

9 MS. BRANNON: JUST YESTERDAY WAS THE FIRST NOTIFICATION.

10 THE COURT: WHEN YOU WERE IN COURT AND WHEN I GAVE YOU
11 AN IDEA AS TO WHAT THE CASE IS ALL ABOUT?

12 MS. BRANNON: YES.

13 THE COURT: YOU HAVEN'T READ ABOUT IT IN A NEWSPAPER
14 OR SEEN IT ON TELEVISION OR ANYTHING?

15 MS. BRANNON: NO.

16 THE COURT: YOU HAVEN'T DISCUSSED THIS WITH ANY THIRD
17 PARTY?

18 MS. BRANNON: NO.

19 THERE WAS DISCUSSION OUT IN THE HALLWAYS BUT --

20 THE COURT: YOU WOULDN'T PERMIT THAT --

21 MS. BRANNON: NO, I WOULD NOT.

22 THE COURT: -- TO INFLUENCE YOU IN ANY WAY?

23 MS. BRANNON: NO, I WOULD NOT.

24 THAT WAS THE OPINION OF SOMEONE ELSE.

25 THE COURT: I SEE, ALL RIGHT.

26 MR. BARENS: THANK YOU, YOUR HONOR.

27 MISS BRANNON, JUST PICKING UP WITH THE JUDGE'S
28 LAST QUESTION. YOU UNDERSTAND WHAT WE ARE DOING NOW? SINCE

1 THE PEOPLE OF THE STATE OF CALIFORNIA HAVE ASKED THAT MY CLIENT
2 GET THE DEATH PENALTY, WE HAVE TO ASK YOU SOME QUESTIONS ABOUT
3 YOUR POINT OF VIEW ON THE DEATH PENALTY BUT BECAUSE WE ARE
4 DISCUSSING THE DEATH PENALTY NOW, I TRUST THERE IS NOTHING
5 ABOUT THAT THAT MAKES YOU THINK THAT MY CLIENT IS GUILTY OF
6 MURDER OR ANYTHING ELSE OR HAS DONE ANYTHING WRONG.

7 MS. BRANNON: NOT AT ALL.

8 MR. BARENS: AND YOU WOULDN'T MAKE ANY DECISIONS LIKE
9 THAT UNTIL YOU HAVE HEARD EVIDENCE ON THOSE QUESTIONS, WOULD
10 YOU?

11 MS. BRANNON: THAT'S RIGHT.

12 MR. BARENS: NOW, DO YOU HAVE AN ATTITUDE ABOUT THE DEATH
13 PENALTY AS FAR AS A GENERAL CONCEPT?

14 MS. BRANNON: IT IS A FORM OF JUSTICE.

15 NO, I HAVE REALLY NO OPINION.

16 I DO SUPPORT THE SYSTEM, ALTHOUGH I HAVEN'T REALLY
17 THOUGHT IN DEPTH ABOUT IT, YOU KNOW, A LOT.

18 MR. BARENS: DO YOU THINK THERE ARE INSTANCES WHERE A
19 DEFENDANT IN A CRIMINAL MATTER SHOULD GET THE DEATH PENALTY?

20 MS. BRANNON: YES, I DO.

21 MR. BARENS: COULD YOU TELL ME IF ANY INSTANCES COME
22 TO YOUR MIND OR FACT SITUATIONS THAT WOULD JUSTIFY THE DEATH
23 PENALTY FOR YOU?

24 MS. BRANNON: PERHAPS A TYPE OF SERIAL KILLER, THAT TYPE
25 OF THING.

26 MR. BARENS: IF DURING THIS TRIAL YOU CAME TO A
27 CONCLUSION --

28 THE COURT: PARDON ME. YOU ARE NOT GOING TO LIMIT YOUR

1 IDEA AS TO WHETHER THE DEATH PENALTY SHOULD BE IMPOSED ONLY
2 IF THE FACTS IN THE CASE CORRESPOND TO THIS SERIAL KILLING
3 CONCEPT, ARE YOU?

4 MS. BRANNON: I DIDN'T UNDERSTAND THAT. I AM SORRY.

5 THE COURT: ARE YOU GOING TO --

6 MS. BRANNON: OKAY, I DO UNDERSTAND YOU.

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1 MR. BARENS: NOW MISS BRANNON, YOU UNDERSTAND THAT
2 YOU HAVE A CHOICE AS A JUROR, WERE YOU TO GET TO A PENALTY
3 PHASE IN THIS CASE, BETWEEN LIFE AND DEATH? LIFE BEING LIFE
4 WITHOUT POSSIBILITY OF PAROLE? YOU UNDERSTAND IT?

5 MS. BRANNON: YES. IT WAS EXPLAINED TO ME YESTERDAY.

6 MR. BARENS: AND DO YOU BELIEVE THAT LIFE WITHOUT
7 POSSIBILITY OF PAROLE MEANS THAT THE DEFENDANT WILL NOT GET
8 OUT OF JAIL FOR THE REST OF HIS LIFE?

9 MS. BRANNON: YES.

10 MR. BARENS: AND YOU DON'T HAVE ANY LINGERING DOUBT.
11 THAT EVEN THOUGH WE TELL YOU THAT, THAT SOMEHOW OR ANOTHER,
12 THE DEFENDANT MIGHT BE LET OUT?

13 MS. BRANNON: I KNOW THAT, UH-HUH.

14 MR. BARENS: YOU KNOW WHAT? SORRY?

15 MS. BRANNON: WELL, MAYBE I MISUNDERSTOOD YOUR QUESTION.
16 I AM SAYING YES, THERE ALWAYS ARE CHANCES OF PAROLE, AS I
17 HAVE HEARD IN OTHER CASES.

18 SO I KNOW THAT IF SOMEONE IS SENTENCED TO LIFE
19 WITHOUT POSSIBILITY OF PAROLE, THAT THERE ARE CHANCES. UH-HUH.

20 MR. BARENS: SO, IF HIS HONOR TELLS YOU THAT WHEN WE
21 SAY IT IN THIS COURTROOM, LIFE WITHOUT POSSIBILITY OF PAROLE,
22 IT MEANS JUST THAT? NO PAROLE. WOULD YOU BELIEVE THAT?

23 MS. BRANNON: YES.

24 MR. BARENS: YOU WOULDN'T HAVE ANY DOUBTS IN THE BACK
25 OF YOUR MIND, THINKING THAT EVEN THOUGH HIS HONOR HAD TOLD
26 YOU THAT, THAT THERE WAS SOME WAY THAT CIRCUMSTANCES COULD
27 DEVELOP WHERE THE DEFENDANT WOULD BE RELEASED?

28 MS. BRANNON: I AM SURE THERE COULD BE, SURE.

4A-2
1 MR. BARENS: DO YOU THINK THERE COULD BE?

2 MS. BRANNON: YES, SURE.

3 MR. BARENS: WOULD THAT INFLUENCE YOU IN DETERMINING
4 WHETHER OR NOT YOU SHOULD VOTE FOR THE DEATH PENALTY OR LIFE
5 WITHOUT POSSIBILITY OF PAROLE?

6 MS. BRANNON: NO.

7 MR. BARENS: IT WOULD NOT?

8 MS. BRANNON: IT WOULD NOT.

9 MR. BARENS: THEREFORE, YOU WOULD BE AS OPEN-MINDED
10 IN YOUR VOTE FOR LIFE OR DEATH, EVEN THOUGH YOU HAVE SOME
11 SUSPICION THAT PAROLE IS ALWAYS POSSIBLE, EVEN THOUGH WE
12 ALL TELL YOU IT ISN'T?

13 MS. BRANNON: YES.

14 MR. BARENS: DID YOU VOTE IN FAVOR OF THE DEATH PENALTY
15 A COUPLE OF YEARS AGO WHEN IT WAS ON THE BALLOT, HERE IN
16 CALIFORNIA?

17 MS. BRANNON: YES I DID.

18 MR. BARENS: COULD YOU TELL ME WHY YOU VOTED YES?

19 MS. BRANNON: I DO BELIEVE IN CAPITAL PUNISHMENT.
20 I BELIEVE THAT IF SOMEONE IS FOUND GUILTY OF THE CRIME THAT
21 IS CONSIDERED FOR THAT TYPE OF SENTENCING, THAT THEY SHOULD
22 BE PUT TO DEATH IN THAT CIRCUMSTANCE.

23 MR. BARENS: NOW, I AM TRYING TO FIND OUT WHAT THE
24 CIRCUMSTANCES ARE THAT WE ARE TALKING OF.

25 MS. BRANNON: WELL, ANY CIRCUMSTANCE THAT QUALIFIES
26 THEM FOR THE DEATH PENALTY.

27 MR. BARENS: SUPPOSING YOU HAD A PREMEDITATED MURDER
28 WHERE YOU CONCLUDED IT WAS A MURDER IN THE FIRST DEGREE THAT

14A-3
1 HAD OCCURRED AS A RESULT OF PREMEDITATION AND THAT IT OCCURRED
2 DURING THE COMMISSION OF A ROBBERY CONSTITUTING SPECIAL
3 CIRCUMSTANCES, WOULD YOU IN THAT INSTANCE, ALWAYS VOTE THAT
4 THE DEFENDANT BE PUT TO DEATH?

5 MS. BRANNON: NO.

6 MR. BARENS: COULD YOU TELL ME WHEN YOU WOULD NOT VOTE
7 THAT THE DEFENDANT --

8 MS. BRANNON: I REALLY COULDN'T. I COULDN'T ANSWER
9 THAT. I WOULDN'T KNOW HOW TO ANSWER THAT QUESTION.

10 MR. BARENS: BUT YOU ARE SAYING THAT IT COULD HAPPEN?
11 YOU COULD?

12 MS. BRANNON: SURE.

13 MR. BARENS: WOULD YOU, IF HIS HONOR TOLD YOU TO CONSIDER
14 THE AGE OF THE DEFENDANT, WOULD THAT MAKE A DIFFERENCE IN
15 YOUR VOTE?

16 MS. BRANNON: NO.

17 MR. BARENS: IT WOULD NOT?

18 THE COURT: WHEN THE COURT TELLS YOU THAT YOU MAY CONSIDER
19 IT, YOU WILL LISTEN TO THE JUDGE?

20 MS. BRANNON: RIGHT. YES.

21 THE COURT: THERE ARE A LOT OF THINGS YOU CAN CONSIDER
22 IN FAVOR OF THE DEFENDANT, A LOT OF THINGS YOU CAN CONSIDER
23 AGAINST HIM, ALSO.

24 BUT THOSE THINGS YOU HAVE TO CONSIDER ARE ALL
25 TAKEN TOGETHER AND THEN YOU MAKE UP YOUR MIND. DO YOU UNDER-
26 STAND THAT?

27 MS. BRANNON: YES. I DO.

28 MR. BARENS: SO IF I TOLD YOU THAT YOU HAD TO CONSIDER

4A-4
1 THINGS OTHER THAN JUST CIRCUMSTANCES OF THE CRIME, PERHAPS
2 THE AGE OF THE DEFENDANT AND PRIOR CRIMINAL RECORD AND LACK
3 THEREOF IN DETERMINING WHETHER HE LIVED OR DIED, WOULD YOU
4 HONESTLY CONSIDER THOSE FACTORS?

5 MS. BRANNON: YES I WOULD.

6 MR. BARENS: YOU WOULDN'T BE SO OVERWHELMED BY THE
7 CIRCUMSTANCES OF THE CRIME THAT YOU WOULD PUT EVERYTHING
8 ELSE OUT OF YOUR MIND, IRRESPECTIVE OF WHAT HIS HONOR TOLD
9 YOU?

10 MS. BRANNON: YES I COULD.

11 MR. BARENS: DO YOU CONSIDER YOURSELF AN OPEN-MINDED
12 PERSON?

13 MS. BRANNON: YES. I AM.

14 MR. BARENS: NOW, IN A CLOSE CASE, SAY WE HAD A CLOSE
15 DECISION IN YOUR MIND, ON THE GUILT OR INNOCENCE, WOULD YOU
16 BE TEMPTED TO VOTE GUILTY, THINKING IN YOUR MIND, WELL, I
17 WILL GIVE THE DEFENDANT LIFE WITHOUT POSSIBILITY OF PAROLE?
18 I WON'T GIVE HIM THE DEATH PENALTY, SO I WILL VOTE GUILTY.
19 I WILL COMPROMISE ON THE OTHER END.

20 MS. BRANNON: NO.

21 MR. BARENS: YOU WOULDN'T THINK THAT, WOULD YOU?

22 MS. BRANNON: NO.

23 MR. BARENS: IN THINKING ABOUT A FIRST DEGREE MURDER
24 WITH PREMEDITATION AND PERHAPS SHOOTING AND IT WAS DONE DURING
25 THE COURSE OF A ROBBERY, AS WE JUST TALKED ABOUT THOSE, THAT
26 CONSTELLATION OF CONCEPTS, DO YOU HAVE A BIAS AS YOU SIT
27 HERE NOW OR A PREFERENCE AS TO WHAT SHOULD HAPPEN TO THE
28 DEFENDANT IN THAT TYPE OF SETTING?

4A-5 1 MS. BRANNON: NO.

2 MR. BARENS: YOU WOULD WAIT UNTIL ALL OF THE EVIDENCE
3 ABOUT THAT DEFENDANT WAS IN BEFORE YOU WOULD MAKE A DECISION?

4 MS. BRANNON: YES I WOULD.

5 MR. BARENS: LASTLY, YOU MENTIONED EARLY-ON THAT THERE
6 HAD BEEN SOME DISCUSSION IN THE HALL I PRESUME, AMONGST
7 YOURSELF AND OTHER JURORS CONCERNING THIS CASE?

8 MS. BRANNON: NOT MYSELF, NO.

9 MR. BARENS: YOU OVERHEARD THOSE DISCUSSIONS?

10 MS. BRANNON: UH-HUH.

11 MR. BARENS: DO YOU RECALL WHAT YOU OVERHEARD?

12 MS. BRANNON: JUST THAT THE GUY WHO --

13 THE COURT: WHAT?

14 MS. BRANNON: JUST THAT THE FELLOW IN THE ROOM WHO
15 WAS ACCUSED OF MURDER -- AND THOSE TYPES OF STATEMENTS.

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4P-1
1 MR. BARENS: DO YOU UNDERSTAND THAT FUNDAMENTAL TO
2 OUR LEGAL SYSTEM IN THIS COUNTRY FOR 600 YEARS OF ANGLO-
3 SAXON JURISPRUDENCE, IS THAT AN ACCUSATION AGAINST A DEFENDANT
4 DOESN'T MEAN ANYTHING?

5 MS. BRANNON: UH-HUH.

6 MR. BARENS: THAT IS WHAT THE GOVERNMENT PROVES AGAINST
7 YOU?

8 MS. BRANNON: UH-HUH.

9 MR. BARENS: DO YOU UNDERSTAND THAT ANYBODY CAN BE
10 ACCUSED?

11 MS. BRANNON: IT IS SOMEONE'S OPINION, RIGHT.

12 MR. BARENS: PASS FOR CAUSE.

13 THE COURT: RIGHT. MR. WAPNER, DO YOU HAVE ANY
14 QUESTIONS?

15 MR. WAPNER: JUST BRIEFLY. THANK YOU.

16 MS. BRANNON, WHEN YOU HEARD DISCUSSIONS IN THE
17 HALLWAY THAT THAT IS THE PERSON, ARE YOU TALKING ABOUT SOMEBODY
18 SEEING THE DEFENDANT IN THE HALLWAY AND POINTING HIM OUT?

19 MS. BRANNON: THEY WERE LOOKING THROUGH THE DOOR. I
20 DON'T KNOW WHO THEY WERE SPEAKING OF.

21 MR. WAPNER: OKAY. AND HAVE YOU READ ANYTHING ABOUT
22 THE CASE?

23 MS. BRANNON: NO I HAVE NOT.

24 MR. WAPNER: HAVE YOU DISCUSSED IT WITH ANYBODY OR
25 FORMED ANY OPINIONS ABOUT IT?

26 MS. BRANNON: NO I HAVE NOT.

27 MR. WAPNER: WHEN MR. BARENS WAS ASKING YOU QUESTIONS
28 ABOUT PREMEDITATED ROBBERY/MURDERS, YOU UNDERSTAND THAT THERE

1 CAN BE LOTS OF DIFFERENT FACTUAL SCENARIOS THAT MIGHT FIT
2 INTO THAT?

3 MS. BRANNON: UH-HUH.

4 THE COURT: DOES THAT MEAN YES?

5 MS. BRANNON: YES.

6 MR. WAPNER: IS THAT YES?

7 MS. BRANNON: YES.

8 MR. WAPNER: OKAY. SO, ARE YOU WILLING TO LISTEN TO
9 THE PARTICULAR FACTS OF THIS CASE AND MAKE A DECISION ON
10 WHETHER OR NOT THE DEATH PENALTY SHOULD BE IMPOSED, BASED
11 PARTLY ON WHAT THE FACTS ARE IN THIS CASE?

12 MS. BRANNON: PARTIALLY? I DIDN'T UNDERSTAND.

13 MR. WAPNER: OKAY. I WILL EXPLAIN IT AGAIN.

14 WILL YOU MAKE YOUR DECISION ON WHETHER OR NOT
15 TO IMPOSE THE DEATH PENALTY IN THIS CASE, BASED ON THE FACTS
16 IN THIS CASE, WITHOUT COMPARING IT TO THE FACTS IN SOME OTHER
17 CASE?

18 MS. BRANNON: NO, I WON'T.

19 MR. WAPNER: OKAY. CAN YOU EXPLAIN THAT TO ME?

20 MS. BRANNON: I THINK THAT -- WAIT. I SHOULD HAVE
21 SAID YES. IT WOULD JUST BE THE FACTS IN THIS CASE THAT I
22 WOULD JUDGE MY OPINION ON, NOT ANOTHER CASE. IS THAT WHAT
23 YOU ARE ASKING?

24 MR. WAPNER: THAT IS BASICALLY WHAT I AM ASKING YOU.

25 MS. BRANNON: OKAY.

26 MR. WAPNER: SO WHEN THE JUDGE WAS ASKING YOU ABOUT
27 SERIAL KILLERS, YOU HEARD THAT WHEN THE JUDGE READ YOU THE
28 CHARGES IN THIS CASE, THAT THE DEFENDANT IN THIS CASE IS

1 ONLY CHARGED WITH KILLING ONE PERSON?

2 MS. BRANNON: RIGHT.

3 MR. WAPNER: OKAY. CAN YOU IN THAT CIRCUMSTANCE --
4 NOW, I AM ASKING YOU ABOUT THIS PARTICULAR CASE, WHERE THE
5 DEFENDANT IS CHARGED WITH KILLING ONE PERSON, IS IT POSSIBLE
6 FOR YOU TO BRING BACK A VERDICT OF DEATH?

7 MS. BRANNON: YES I COULD.

8 MR. WAPNER: OKAY. DO YOU UNDERSTAND THAT IF THE TRIAL
9 GETS TO THAT POINT AND THAT YOU ARE SITTING AND LISTENING
10 TO THE PENALTY PHASE AND DELIBERATING ON THE PENALTY PHASE,
11 THAT YOU HAVE TO MAKE AN INDIVIDUAL DECISION THAT THE DEATH
12 PENALTY SHOULD BE IMPOSED?

13 MS. BRANNON: TO JUSTIFY MY ANSWER? I UNDERSTAND THAT,
14 UH-HUH.

15 MR. WAPNER: OKAY. SO WHAT I AM SAYING IS, IF YOU
16 ARE CHOSEN AS A JUROR IN THIS CASE AND YOU GO INTO THE JURY
17 ROOM AND THE JURY HAS TO DECIDE THE QUESTION OF GUILT OR
18 INNOCENCE -- SORRY, THE QUESTION OF DEATH OR LIFE WITHOUT
19 POSSIBILITY OF PAROLE, THAT THE ENTIRE JURY HAS TO MAKE THAT
20 DECISION BUT THE JUDGE IS GOING TO TELL YOU THAT EACH,
21 INDIVIDUAL JUROR HAS TO EXPRESS THEIR OWN OPINION?

22 IN OTHER WORDS, YOU HAVE TO COME TO YOUR OWN DECISION
23 IN YOUR OWN MIND. DO YOU UNDERSTAND THAT?

24 MS. BRANNON: YES I DO.

25 MR. WAPNER: YOU COULD DO THAT?

26 MS. BRANNON: YES I CAN.

27 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

28 THE COURT: DO YOU PASS FOR CAUSE?

1 THE COURT: DO YOU PASS FOR CAUSE?

2 MR. BARENS: I PASS FOR CAUSE, YOUR HONOR.

3 THE COURT: ALL RIGHT. AS YOU KNOW MISS BRANNON, WE
4 ARE IN THE PROCESS NOW OF ASKING QUESTIONS OF ALL OF THE
5 JURORS THAT HAVE BEEN ASKED OF YOU. THAT WILL TAKE SOME
6 TIME, OBVIOUSLY, AS YOU CAN SEE HOW LONG IT HAS TAKEN WITH
7 YOU.

8 MS. BRANNON: YES.

9 THE COURT: SO, WHAT I WOULD ASK YOU TO DO IS TO COME
10 BACK TO THE JURY ASSEMBLY ROOM ON DECEMBER 2ND. BY THAT
11 TIME, WE WILL HAVE GONE THROUGH THE JURORS. COME BACK AT
12 10:30, OKAY?

13 AND IN THE MEANTIME, YOU ARE NOT TO READ ANYTHING
14 ABOUT THE CASE OR DISCUSS IT WITH ANYBODY. DON'T LISTEN
15 TO THE RADIO OR ANYTHING.

16 MS. BRANNON: SURE. I UNDERSTAND.

17 THE COURT: OKAY. THANK YOU. YOU WILL BE EXCUSED.

18 MS. BRANNON: YOU ARE WELCOME. THANK YOU.

19 THE COURT: THE JURY ASSEMBLY ROOM AT 10:30 ON
20 DECEMBER 2ND.

21 MS. BRANNON: OKAY. THANK YOU.

22 THE COURT: WE HAVE YOUR TELEPHONE NUMBER. IF IT IS
23 CHANGED, WE WILL LET YOU KNOW.

24 MS. BRANNON: OKAY. RIGHT. THANK YOU.

25 THE COURT: THANK YOU.

26 (PROSPECTIVE JUROR BRANNON EXITED
27 THE COURTROOM.)

28 MR. BARENS: YOUR HONOR, I DO HAVE A POINT FOR THE

1 RECORD.

2 YOUR HONOR, LET ME DISCUSS WITH THE COURT A
3 CONCERN THAT I HAVE.

4 YOUR HONOR, WHEN I AM SPEAKING TO A JUROR OR
5 MR. WAPNER IS AND YOUR HONOR SAYS TO THE JUROR, "IF I WERE
6 TO TELL YOU THAT YOU HAD TO CONSIDER THE DEFENDANT'S AGE
7 AND PRIOR CRIMINAL BACKGROUND," YOUR HONOR IS OBVIOUSLY THE
8 AUTHORITY FIGURE IN THE COURTROOM AND THEY INEVITABLY ARE
9 GOING TO SAY YES TO YOU.

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1 THE COURT: WELL, WHAT ELSE DO YOU EXPECT THEM TO SAY,
2 NO?

3 MR. BARENS: YES.

4 THE COURT: IT IS A FACT ALSO THAT IN THE PENALTY PHASE
5 YOU HAVE THE RIGHT TO SHOW THESE FACTORS.

6 MR. BARENS: ABSOLUTELY, YOUR HONOR.

7 THE COURT: WHAT IS WRONG WITH THAT?

8 MR. BARENS: THE PROBLEM I HAVE, YOUR HONOR, IS THAT
9 NO MATTER HOW THAT PERSON REALLY THINKS, INVARIABLY THEY ARE
10 NEVER GOING TO SAY NO TO YOU. BUT THEY WOULD SAY NO TO ME
11 AND THEY WOULD SAY NO TO MR. WAPNER.

12 AND WHAT WE HAVE HAPPENING HERE, IF YOUR HONOR
13 WOULD PERMIT ME TO FIRST INQUIRE OF THE WITNESS -- THE JUROR,
14 "WOULD YOU CONSIDER AGE AND PRIOR CRIMINAL BACKGROUND?"

15 THE COURT: THEY DON'T KNOW THE LAW. THEY DON'T KNOW
16 WHETHER THEY OUGHT TO CONSIDER IT. SOMEBODY, WITHOUT KNOWING
17 IT IS PROPER, WILL SAY "NO, I WOULD'T CONSIDER THAT."

18 THE JUDGE HAS TO TELL THEM THEY MUST CONSIDER IT
19 AND THEN THEY WILL.

20 MR. BARENS: WHAT I AM SEARCHING FOR, YOUR HONOR, I AM
21 SEARCHING FOR THEIR ATTITUDE TO DELIBERATING THOSE CONSIDER-
22 ATIONS, TO BEGIN WITH.

23 THE COURT: WHY DON'T YOU ASK THEM: YOU WILL HEAR AT
24 THE PENALTY PHASE THAT THE AGE OF THE DEFENDANT, SO ON, ARE
25 MATTERS YOU COULD PROPERLY CONSIDER, AND WOULD YOU FOLLOW THAT?
26 ASK THEM IN THAT WAY. THAT WILL BE PERFECTLY ALL RIGHT.

27 MR. BARENS: COULD I HAVE THE OPPORTUNITY TO INQUIRE
28 ON THAT, IF I AM DO SO, YOUR HONOR, PRIOR TO YOUR HONOR ASKING

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1 THE QUESTION?

2 THE COURT: IF YOU ASK IT THAT WAY, THERE WOULDN'T BE
3 ANY OCCASION FOR MY ASKING IT THEN.

4 MR. BARENS: I THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT, LET'S HAVE THE NEXT ONE NOW.

6 (PROSPECTIVE JUROR BRYANTPURVEY ENTERS
7 THE COURTROOM.)

8 THE COURT: YOUR NAME IS BRYANTPURVEY, IS THAT TWO NAMES,
9 YOUR SINGLE NAME AND YOUR MARRIED NAME, IS THAT THE IDEA?

10 (PROSPECTIVE JUROR BRYANTPURVEY NODS
11 HER HEAD UP AND DOWN.)

12 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
13 I WANT YOU TO LISTEN TO THEM VERY CAREFULLY, I AM SURE THAT
14 YOU WILL. JUST ANSWER THE QUESTIONS YES OR NO. IF IT IS
15 UNCLEAR TO YOU, ASK ME TO REPEAT IT AND I WILL DO THAT.

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

19 MS. BRYANTPURVEY: NO.

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

24 MS. BRYANTPURVEY: NO.

25 THE COURT: BEFORE I ASK YOU THE NEXT QUESTION, I THINK
26 YOU WILL REMEMBER THAT I TOLD THE ENTIRE PANEL WHEN THEY WERE
27 IN HERE THAT THERE ARE AT LEAST TWO PHASES OF A MURDER TRIAL
28 WHERE THE DEATH PENALTY IS ASKED FOR BY THE DISTRICT ATTORNEY.

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1 IF THE JURY IN THIS CASE FINDS THE DEFENDANT GUILTY OF MURDER
2 IN THE FIRST DEGREE, THEY THEN HAVE TO DETERMINE WHETHER OR
3 NOT THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY, YOU
4 HAVE TO MAKE A FINDING OF THAT.

5 NOW, THE FINDING THAT THE MURDER WAS COMMITTED
6 IN THE COURSE OF A ROBBERY IS KNOWN AS A SPECIAL CIRCUMSTANCE;
7 DO YOU UNDERSTAND?

8 (MS. BRYANTPURVEY NODS HER HEAD UP AND
9 DOWN.)

10 THE COURT: THEN THEY HAVE TO FIND WHETHER OR NOT IT
11 WAS IN THE COURSE OF A ROBBERY, WHICH IS KNOWN AS A SPECIAL
12 CIRCUMSTANCE.

13 ALL RIGHT, I WILL ASK THE QUESTION: DO YOU HAVE
14 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
15 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
16 OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

17 MS. BRYANTPURVEY: NO.

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1 THE COURT: NEXT: DO YOU HAVE SUCH AN OPINION CONCERNING
2 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
3 IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
4 WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY EVIDENCE
5 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

6 MS. BRYANTPURVEY: COULD YOU REPATE THAT, PLEASE?

7 THE COURT: YES.

8 I TOLD YOU THERE ARE TWO PHASES IN MURDER IN THE
9 FIRST DEGREE WITH SPECIAL CIRCUMSTANCES, IF THEY FIND THEM,
10 THEN YOU HAVE ANOTHER TRIAL WHICH IS THE PENALTY PHASE WHERE
11 YOU DETERMINE WHETHER OR NOT IT SHOULD BE DEATH OR LIFE
12 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE: DO YOU UNDER-
13 STAND?

14 MS. BRYANTPURVEY: UH-HUH.

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

21 MS. BRYANTPURVEY: NO.

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

28 MS. BRYANTPURVEY: NO.

1 THE COURT: ALL RIGHT, DO YOU UNDERSTAND THAT THE ISSUE
2 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE --

3 MS. BRYANTPURVEY: YES.

4 THE COURT: -- AND THAT THESE QUESTIONS HAVE BEEN ASKED
5 ONLY IN THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

6 MS. BRYANTPURVEY: YES.

7 THE COURT: ALL RIGHT, DO YOU KNOW ANYTHING AT ALL ABOUT
8 THIS CASE, OTHER THAN WHAT I TOLD YOU HERE IN COURT AT THE
9 TIME I HAD ALL OF THE OTHER JURORS HERE?

10 MS. BRYANTPURVEY: NO.

11 THE COURT: YOU NEVER READ ANYTHING ABOUT IT?

12 MS. BRYANTPURVEY: NO.

13 THE COURT: YOU NEVER HEARD ANY DISCUSSION BY ANYBODY
14 ABOUT IT?

15 MS. BRYANTPURVEY: YES, SOME DISCUSSION.

16 THE COURT: WHAT HAVE YOU HEARD?

17 MS. BRYANTPURVEY: THAT IT WAS IN THE PAPERS, IN THE
18 TIMES.

19 THE COURT: SOMEBODY SAID IT WAS IN THE TIMES?

20 MS. BRYANTPURVEY: UH-HUH.

21 THE COURT: THE L.A. TIMES?

22 MS. BRYANTPURVEY: I AM NOT EVEN SURE WHICH TIMES.

23 THE COURT: DID ANYBODY EXPRESS ANY THOUGHT ABOUT THIS,
24 OTHER THAN THE FACT THAT IT WAS IN THE NEWSPAPER?

25 MS. BRYANTPURVEY: NO.

26 THE COURT: ALL RIGHT. YOU WON'T BE INFLUENCED BY ANY-
27 BODY IN CONNECTION WITH THAT, WOULD YOU? WOULD YOU BE
28 INFLUENCED BY ANYTHING ANYBODY SAID OR ANYTHING YOU HEARD OR

1 YOU WERE TOLD ABOUT THIS OR WHAT YOU OVERHEARD?

2 MS. BRYANTPURVEY: I HADN'T HEARD. I CAN'T SAY IF I
3 WOULD HAVE BECAUSE I HAVEN'T HEARD ANYTHING.

4 THE COURT: ALL RIGHT. THE FACT THAT YOU HEARD IT WAS
5 IN THE PAPERS, THAT WOULDN'T IN ANY WAY AFFECT YOU?

6 MS. BRYANTPURVEY: OH, NO.

7 THE COURT: ALL RIGHT.

8 MR. BARENS: THE DEFENSE PASSES FOR CAUSE, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: MS. BRYANTPURVEY, DID YOU UNDERSTAND WHAT
11 THE JUDGE TOLD YOU YESTERDAY ABOUT THE DIFFERENT PHASES OF
12 THE TRIAL?

13 MS. BRYANTPURVEY: YES.

14 MR. WAPNER: OKAY. IF YOU ARE ON THIS JURY AND IF YOU
15 GET TO THE PENALTY PHASE OF THE TRIAL, YOU ARE GOING TO BE
16 CALLED UPON, ALONG WITH 11 OTHER PEOPLE, TO MAKE A DECISION
17 ON WHETHER OR NOT THE DEATH PENALTY SHOULD BE IMPOSED; DO YOU
18 UNDERSTAND THAT?

19 MS. BRYANTPURVEY: YES.

20 MR. WAPNER: YOU UNDERSTAND THAT THAT IS A DECISION YOU
21 HAVE TO COME TO IN YOUR OWN INDIVIDUAL DECISION ABOUT THAT;
22 DO YOU UNDERSTAND THAT?

23 MS. BRYANTPURVEY: YES.

24 MR. WAPNER: DO YOU THINK YOU CAN DO THAT?

25 MS. BRYANTPURVEY: I AM NOT SURE.

26 THE COURT: HOW DO YOU MEAN YOU ARE NOT SURE?

27 MS. BRYANTPURVEY: I WOULD HAVE TO HEAR THE --

28 THE COURT: YES, SURE, YOU HAVE TO HEAR ALL OF THE

1 EVIDENCE, IS THAT WHAT YOU MEAN?

2 MS. BRYANTPURVEY: YEAH.

3 MR. WAPNER: WELL, WHAT I AM ASKING IS, PUTTING ASIDE
4 FOR THE MOMENT WHAT THE EVIDENCE IS, ARE YOU THE KIND OF PERSON
5 WHO IS CAPABLE OF LISTENING TO THE EVIDENCE AND THEN SAYING,
6 BASED ON THE EVIDENCE, WHATEVER IT IS, THAT "I THINK THAT THE
7 PENALTY SHOULD BE DEATH?"

8 MR. BARENS: OBJECTION, YOUR HONOR, AS TO THE WAY IT
9 IS FRAMED, YOUR HONOR.

10 THE COURT: I WILL SUSTAIN THE OBJECTION.

11 MR. WAPNER: DO YOU THINK THAT YOU ARE THE KIND OF PERSON
12 WHO COULD LISTEN TO THE EVIDENCE AND REGARDLESS OF WHAT THE
13 EVIDENCE IS RENDER A DECISION THAT THE DEATH PENALTY SHOULD
14 BE IMPOSED IN THIS CASE?

15 MR. BARENS: OBJECTION. HOW COULD SHE MAKE A
16 DETERMINATION REGARDLESS OF THE EVIDENCE?

17 THE COURT: I WILL SUSTAIN THE OBJECTION.

18 MR. WAPNER: WHAT I AM TRYING TO ASK YOU, MRS.
19 BRYANTPURVEY, IS: COULD YOU VOTE FOR A VERDICT OF DEATH?

20 MS. BRYANTPURVEY: I THINK I COULD, YES.

21 MR. WAPNER: YOU SEEM TO HAVE SOME RESERVATIONS ABOUT
22 IT, CAN YOU TELL ME ABOUT THAT?

23 MS. BRYANTPURVEY: THE RESERVATIONS ARE BECAUSE ON THE
24 EVIDENCE, I JUST CAN'T SAY I WOULD SAY DEATH RIGHT OFF, IF
25 I DON'T KNOW --

26 MR. WAPNER: NO, I GUESS I AM NOT BEING CLEAR.

27 LET ME TRY AND ASK YOU THE QUESTION MORE CLEARLY,
28 BECAUSE I AM NOT TRYING TO ASK YOU TO GUESS ABOUT WHAT THE

1 EVIDENCE IS, THAT IS NOT WHAT I AM GETTING AT.

2 LET'S ASSUME THAT YOU SIT ON THE CASE AND YOU HEAR
3 ALL OF THE EVIDENCE ON WHAT WE CALL THE GUILT PHASE AND YOU
4 GO INTO THE JURY ROOM WITH THE OTHER JURORS AND YOU DECIDE,
5 ALONG WITH THE OTHER JURORS, THAT A MURDER HAS BEEN COMMITTED,
6 THAT IT IS MURDER IN THE FIRST DEGREE AND THAT IT WAS
7 COMMITTED DURING THE COURSE OF A ROBBERY; DO YOU UNDERSTAND
8 ME SO FAR?

9 MS. BRYANTPURVEY: YES.

10 MR. WAPNER: OKAY, AND IF YOU MAKE THAT DECISION ON THE
11 GUILT PHASE, THEN WHAT HAPPENS IS YOU COME BACK INTO COURT,
12 YOU LISTEN TO MORE EVIDENCE, EVIDENCE PRESENTED BY THE
13 PROSECUTION AND THE DEFENSE IN AGGRAVATION OR IN MITIGATION
14 AND THEN YOU HEAR THE LAWYERS TALK TO YOU AGAIN AND THEN YOU
15 GO BACK TO THE JURY ROOM AND THEN YOU ARE ASKED TO MAKE AN
16 INDIVIDUAL DECISION ALONG WITH 11 OTHER PEOPLE WHO HAVE TO
17 MAKE INDIVIDUAL DECISIONS AS TO WHAT THE APPROPRIATE PUNISHMENT
18 SHOULD BE; DO YOU UNDERSTAND?

19 (WHEREUPON, MS. BRYANTPURVEY NODS HER
20 HEAD UP AND DOWN.)

21 MR. WAPNER: YOU HAVE TO ANSWER OUT LOUD.

22 MS. BRYANTPURVEY: YES.
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1 MR. WAPNER: AND YOU ARE GOING TO BE PRESENTED WITH
2 TWO CHOICES. THAT IS, YOU WILL HAVE THE CHOICE OF EITHER
3 IMPOSING THE DEATH PENALTY OR IMPOSING LIFE WITHOUT POSSIBILITY
4 OF PAROLE. DO YOU UNDERSTAND THAT?

5 MS. BRYANTPURVEY: YES.

6 MR. WAPNER: AFTER YOU HAVE LISTENED TO ALL OF THE
7 EVIDENCE ON THE GUILT PHASE AND ON THE PENALTY PHASE, IF
8 THE EVIDENCE IN YOUR MIND WARRANTS IT, ARE YOU THE TYPE OF
9 PERSON WHO IS CAPABLE OF VOTING THAT THE APPROPRIATE
10 PUNISHMENT SHOULD BE THE DEATH PENALTY?

11 MS. BRYANTPURVEY: YES.

12 MR. WAPNER: IF THE EVIDENCE WARRANTS IT, ARE YOU THE
13 KIND OF PERSON WHO COULD SAY AT THE APPROPRIATE TIME, THAT
14 THE APPROPRIATE PUNISHMENT SHOULD BE LIFE WITHOUT POSSIBILITY
15 OF PAROLE?

16 MS. BRYANTPURVEY: YES.

17 MR. WAPNER: MAY I HAVE A MOMENT?

18 THE COURT: YES.

19 MR. WAPNER: BEFORE YOU WERE PRESENTED WITH THIS QUESTION
20 BY THE JUDGE YESTERDAY, HAD YOU GIVEN ANY THOUGHT TO THE
21 DEATH PENALTY, ONE WAY OR THE OTHER?

22 MS. BRYANTPURVEY: NO I HAD NOT.

23 MR. WAPNER: DO YOU RECALL THE ISSUE OF WHETHER OR
24 NOT WE SHOULD HAVE A DEATH PENALTY IN CALIFORNIA BEING ON
25 THE BALLOT A FEW YEARS AGO?

26 MS. BRYANTPURVEY: I REMEMBER IT BEING DISCUSSED YES.
27 I REMEMBER IT BEING ON THE BALLOT.

28 BUT I DON'T REMEMBER IF I VOTED FOR IT OR NOT.

6A-2
1 MR. WAPNER: OKAY. THANK YOU. DO YOU HAVE ANY OPINIONS
2 ABOUT THE DEATH PENALTY ONE WAY OR ANOTHER THAT YOU THINK
3 MIGHT AFFECT YOU IN THIS CASE GENERALLY IN FAVOR OR GENERALLY
4 AGAINST IT?

5 MS. BRYANTPURVEY: I REALLY HAVE NO SPECIFIC OPINION
6 ABOUT THE DEATH PENALTY.

7 MR. WAPNER: DO YOU HAVE ANY RELIGIOUS OR PHILOSOPHICAL
8 OR MORAL CONVICTIONS AGAINST THE DEATH PENALTY?

9 MS. BRYANTPURVEY: I CAN'T SAY I DO, NO.

10 MR. WAPNER: THANK YOU. PASS FOR CAUSE.

11 MR. BARENS: THE DEFENSE PASSES FOR CAUSE.

12 THE COURT: ALL RIGHT. MISS BRYANTPURVEY, YOU WILL
13 CONSTITUTE ONE OF THE JURORS WHO MIGHT BE CALLED IN THIS
14 CASE ON OUR JURY. AS YOU SEE, WE HAVE A LOT OF OTHER JURORS
15 TO INTERVIEW. IT TAKES SOME TIME, AS YOU NOTICE.

16 WE ANTICIPATE ALL OF THE QUESTIONING FOR ALL
17 OF THE JURORS MIGHT GO AS LONG AS DECEMBER 2ND.

18 SO WHAT I WILL ASK YOU TO DO -- IT MIGHT BE
19 CONCLUDED BY THAT TIME. WE'LL ASK YOU TO COME BACK TO THE
20 JURY ASSEMBLY ROOM ON DECEMBER 2ND AT 9 A.M. -- NO. THAT
21 WILL BE AT 10:30 A.M.

22 MEANTIME, DON'T TALK TO ANYBODY AT ALL ABOUT
23 WHAT HAPPENED HERE AND THE QUESTIONS ASKED OF YOU AND SO
24 ON AND SO FORTH.

25 ALL RIGHT? WE WILL SEE YOU BACK HERE AT THAT
26 TIME. IF BY ANY CHANCE THAT TIME OR DATE WILL BE DELAYED
27 OR CHANGED IN ANY WAY, WE'LL GET IN TOUCH WITH YOU BY
28 TELEPHONE. WE HAVE YOUR TELEPHONE NUMBER.

1 MS. BRYANTPURVEY: OKAY.

2 THE COURT: THANK YOU.

3 MR. WAPNER: SHOULD WE CAUTION HER NOT TO READ OR LISTEN
4 TO ANYTHING?

5 THE COURT: YES. DON'T READ ANYTHING AT ALL ABOUT
6 THE CASE. IF YOU SEE A NEWSPAPER, DON'T READ THE ARTICLE.

7 IF IT IS TELEVISION, TURN IT OFF. TURN TO SOME
8 OTHER STATION.

9 MS. BRYANTPURVEY: OKAY.

10 (PROSPECTIVE JUROR BRYANTPURVEY

11 EXITED THE COURTROOM.)

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1 (PROSPECTIVE JUROR BETTY BURNS ENTERED
2 THE COURTROOM.)

3 THE COURT: MISS BURNS, I AM GOING TO ASK YOU A SERIES
4 OF QUESTIONS. I WANT YOU TO LISTEN VERY CAREFULLY TO THEM.
5 AND I WILL ASK YOU TO ANSWER THOSE QUESTIONS YES OR NO. AND
6 IF THEY ARE UNCLEAR AND YOU DON'T UNDERSTAND, ASK ME TO REPEAT
7 IT AND I WILL DO SO. ALL RIGHT?

8 MS. BURNS: YES.

9 THE COURT: MY FIRST QUESTIONS TO YOU IS:

10 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
11 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
12 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

13 MS. BURNS: NO I DON'T.

14 THE COURT: SECOND:

15 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
16 THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER, EVEN
17 WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY OF
18 MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

19 AGAIN, DO YOU HAVE ANY OPINION REGARDING THE
20 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
21 MURDER, EVEN WHEN THE PROSECUTION ONLY PROVED THE DEFENDANT
22 GUILTY OF MURDER IN THE SECOND DEGREE?

23 MS. BURNS: NO.

24 THE COURT: NOW, BEFORE I ASK THE NEXT QUESTION, YOU
25 HAVE HEARD WHEN I EXPLAINED THE CASE TO THE PROSPECTIVE JURORS
26 THE OTHER DAY, I TOLD THEM THAT THE CHARGE AGAINST THE
27 DEFENDANT IS MURDER IN THE FIRST DEGREE AND THAT A MURDER
28 WAS COMMITTED DURING THE COURSE OF A ROBBERY AND THAT THE

1 JURY HAS TO DETERMINE FIRST, IF THERE WAS A MURDER IN THE
2 FIRST DEGREE AND IF THERE WAS A MURDER IN THE FIRST DEGREE,
3 WHETHER OR NOT THAT WAS COMMITTED IN THE COURSE OF A ROBBERY.

4 COMMITTED IN THE COURSE OF A ROBBERY QUALIFIES
5 THE CASE FOR THE DEATH PENALTY AND ALSO LIFE WITHOUT POSSIBILITY
6 OF PAROLE. AND A MURDER HAVING BEEN COMMITTED IN THE COURSE
7 OF A ROBBERY -- IN THE COURSE OF A ROBBERY ARE WHAT IS KNOWN
8 AS SPECIAL CIRCUMSTANCES.

9 THE JURY DETERMINES FIRST IF IT IS MURDER IN
10 THE FIRST DEGREE AND IF THEY DETERMINE THAT, THEN THEY
11 DETERMINE WHETHER OR NOT THE SPECIAL CIRCUMSTANCE WAS PRESENT,
12 NAMELY, IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

13 DO YOU UNDERSTAND THAT?

14 MS. BURNS: YES.

15 THE COURT: NOW, MY QUESTION TO YOU IS, DO YOU HAVE
16 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
17 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
18 OR FALSITY OF THE SPECIAL CIRCUMSTANCES ALLEGED IN THIS CASE?

19 MS. BURNS: NO.

20 THE COURT: NEXT, DO YOU HAVE SUCH AN OPINION CONCERNING
21 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
22 THE DEATH PENALTY AFTER A VERDICT OF GUILTY OF MURDER IN
23 THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCES,
24 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
25 PHASE OF THE TRIAL?

26 MS. BURNS: NO.

27 THE COURT: YOU UNDERSTAND THAT IF YOU FIND HIM GUILTY
28 OF MURDER IN THE FIRST DEGREE AND IT WAS COMMITTED IN THE

1 COURSE OF A ROBBERY, WE THEN HAVE A SECOND PHASE, THE SO-
2 CALLED PENALTY PHASE? THAT IS WHERE YOU DETERMINE SHOULD
3 IT BE LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE OR
4 DEATH. DO YOU UNDERSTAND THAT?

5 MS. BURNS: YES.

6 THE COURT: ALL RIGHT. NOW NEXT, DO YOU HAVE SUCH
7 AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
8 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE
9 AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE WITH
10 A FINDING OF SPECIAL CIRCUMSTANCES, REGARDLESS OF ANY
11 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
12 TRIAL?

13 MS. BURNS: NO.

14 THE COURT: ALL RIGHT. NOW, YOU DO UNDERSTAND, DON'T
15 YOU, THAT THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT OCCUR
16 IN THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY
17 IN THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

18 CORRECT?

19 MS. BURNS: YES.

20 THE COURT: OKAY. NOW, HAVE YOU READ OR HEARD ANYTHING
21 ON THE RADIO OR TELEVISION OR SEEN ANYTHING ABOUT THIS CASE?

22 MS. BURNS: NO I HAVE NOT.

23 THE COURT: HAVE YOU HEARD ANY DISCUSSION FOR EXAMPLE,
24 IN THE JURY ROOM OR OUTSIDE THE JURY ROOM OF ANYBODY TALKING
25 ABOUT ANYTHING HAVING TO DO WITH THIS CASE?

26 MS. BURNS: NO. I HEARD ONCE OR TWICE, SOMEBODY START
27 TO AND I SAID, "DON'T."

28 THE COURT: VERY GOOD. AND THAT IS THE PROPER ATTITUDE.

1 IT WILL BE THE SAME ATTITUDE THAT YOU SHOULD HAVE AFTER YOU
2 GET THROUGH WITH THIS QUESTIONING.

3 DON'T DISCUSS IT WITH ANYBODY AND DON'T READ
4 ANYTHING ABOUT IT.

5 MS. BURNS: UH-HUH.

6 THE COURT: ALL RIGHT.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 MRS. BURNS, JUST PICKING UP WHERE THE JUDGE LET
9 OFF, YOU UNDERSTAND THAT EVEN THOUGH WE ARE HERE TALKING
10 ABOUT YOUR VIEWS ON THE DEATH PENALTY, WE ARE DOING THAT
11 BECAUSE THE PEOPLE OF THE STATE OF CALIFORNIA IN THIS CASE
12 HAVE ASKED FOR THE DEATH PENALTY. BUT YOU UNDERSTAND THAT
13 WE HAVE TO GO THROUGH THIS EXERCISE TO FIND OUT YOUR VIEWS
14 ON IT. BUT THAT DOESN'T MAKE YOU THINK MR. HUNT HAS DONE
15 ANYTHING WRONG, DOES IT?

16 MS. BURNS: NO.

17 MR. BARENS: SO YOU WOULD NOT MAKE ANY DECISION ABOUT
18 THAT, WOULD YOU, UNTIL AFTER YOU HAD HEARD THE EVIDENCE?

19 MS. BURNS: NO.

20 MR. BARENS: HOW DO YOU FEEL ABOUT THE DEATH PENALTY
21 AS A GENERAL PROPOSITION?

22 MS. BURNS: WELL, IT IS DIFFICULT TO SAY. I WOULD
23 THINK, DEPENDING UPON THE CIRCUMSTANCES, HOW HEINOUS A CRIME
24 IT MIGHT BE --

25 MR. BARENS: WHEN YOU SAY DEPENDING UPON THE
26 CIRCUMSTANCES, WOULD YOU CONSIDER MORE THAN JUST THE
27 CIRCUMSTANCES OF THE CRIME?

28 MS. BURNS: WELL, I DON'T KNOW WHAT YOU MEAN BY THE

1 "CIRCUMSTANCES".

2 MR. BARENS: WELL, LET'S SAY HIS HONOR TOLD YOU IN
3 AN INSTRUCTION, THAT IN MAKING YOUR DECISION ON WHETHER MY
4 CLIENT LIVED OR DIED, IF WE EVER GOT TO THAT, THAT YOU HAD
5 TO CONSIDER HIS AGE OR HIS LACK OF CRIMINAL BACKGROUND, IF
6 THAT BE THE CASE OR CIRCUMSTANCES ABOUT HIS BELIEF OF BEING
7 MORALLY JUSTIFIED IN HIS ACTIONS, WOULD YOU CONSIDER ALL
8 OF THAT OR WOULD YOU JUST CONSIDER THE CIRCUMSTANCES OF THE
9 CRIME?

10 MS. BURNS: WELL, I THINK EVERYTHING HAS TO BE TAKEN
11 INTO CONSIDERATION.

12 MR. BARENS: SO YOU COULD CONSIDER THE TOTALITY ABOUT
13 THE DEFENDANT, AS WELL?

14 MS. BURNS: YES.

15 MR. BARENS: DO YOU UNDERSTAND THAT AS A JUROR, IF
16 WE EVER GET TO THE PENALTY PHASE, YOU HAVE TWO CHOICES,
17 DEATH IN THE GAS CHAMBER OR LIFE WITHOUT POSSIBILITY OF
18 PAROLE?

19 THE COURT: BEFORE WE GET TO IT, YOU SAY?

20 MR. BARENS: I SAID IF WE EVER GET TO THAT, YOUR HONOR.

21 THE COURT: OKAY. YOU MEAN WHEN YOU GET TO IT? IS
22 THAT WHAT YOU MEAN?

23 MR. BARENS: NOT WHEN YOU GET TO IT, YOUR HONOR.

24 THE COURT: YOU MEAN IF THERE IS A --

25 MR. BARENS: IF WE GET TO IT, YOUR HONOR.

26 THE COURT: IF THERE IS A FINDING OF MURDER IN THE
27 FIRST DEGREE AND A FINDING OF SPECIAL CIRCUMSTANCES, THEN
28 YOU GET TO THE SECOND PHASE. IS THAT WHAT YOU MEAN?

1 MR. BARENS: YES. I BELIEVE YOUR HONOR MIGHT WISH
2 TO WITHDRAW THE WORD "WHEN" FOR THE JUROR'S BENEFIT.

3 THE COURT: WHEN AND IF.

4 MR. BARENS: WELL, WHEN WILL NOT BE DETERMINED, YOU
5 UNDERSTAND, MRS. BURNS, UNLESS YOU AS A JUROR, BELIEVE IN
6 YOUR HEART THAT BEYOND A REASONABLE DOUBT, GUILT WAS FIRST
7 ESTABLISHED. YOU UNDERSTAND THAT, DON'T YOU?

8 MS. BURNS: YES. I UNDERSTAND THAT.

9 MR. BARENS: NOW, I MENTIONED TO YOU THE TWO CHOICES
10 THAT YOU HAVE. DO YOU UNDERSTAND THAT LIFE WITHOUT POSSIBILITY
11 OF PAROLE REALLY MEANS THAT, THAT THE DEFENDANT WOULD SERVE
12 THE REST OF HIS LIFE IN JAIL WITHOUT THE POSSIBILITY OF
13 PAROLE? DO YOU HONESTLY HAVE ANY LINGERING DOUBT, EVEN THOUGH
14 THE JUDGE MIGHT TELL YOU THAT, THE DEFENDANT MIGHT BE NONE-
15 THELESS PAROLED?

16 MS. BURNS: WELL, SOMETIMES YOU READ IN THE NEWSPAPERS
17 THAT CIRCUMSTANCES CHANGE AFTER.

18 MR. BARENS: BUT IF HIS HONOR TOLD YOU THAT THAT IS
19 THE LAW IN CALIFORNIA, THAT IF SPECIAL CIRCUMSTANCES ARE
20 PROVED ALONG WITH THE FIRST DEGREE MURDER, IT MEANS LITERALLY
21 THAT, LIFE WITHOUT POSSIBILITY OF PAROLE? WOULD YOU BELIEVE
22 THAT?

23 MS. BURNS: IF HE TELLS ME THAT, I WOULD BELIEVE HIM.
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1 THE COURT: THANK YOU.

2 MR. BARENS: I WOULD TOO, MA'AM.

3 NOW, DO YOU RECALL WHEN THE ISSUE OF WHETHER OR
4 NOT WE SHOULD HAVE THE DEATH PENALTY IN CALIFORNIA WENT ON
5 THE BALLOT; DID YOU VOTE IN THAT ELECTION?

6 MS. BURNS: YES, I DO.

7 MR. BARENS: DO YOU RECALL HOW YOU VOTED ON THAT ISSUE?

8 MS. BURNS: YES, I DO.

9 MR. BARENS: HOW DID YOU VOTE?

10 MS. BURNS: I VOTED FOR IT.

11 MR. BARENS: DO YOU KNOW WHY YOU VOTED FOR THAT; WAS
12 THERE SOMETHING ON YOUR MIND?

13 MS. BURNS: WELL, I THINK THERE ARE CIRCUMSTANCES WHEN
14 PEOPLE SHOULD BE PUNISHED FOR THEIR WRONGDOING.

15 MR. BARENS: COULD YOU TRY TO INDICATE SOME OF THOSE
16 CIRCUMSTANCES TO ME?

17 MS. BURNS: WELL, SOME OF THE CASES --

18 THE COURT: WAIT, WAIT. I WON'T PERMIT THAT QUESTION
19 BECAUSE THAT MIGHT SEEM TO LIMIT HER ONLY TO ONLY THOSE
20 PARTICULAR CASES--

21 MR. BARENS: OH, NO.

22 THE COURT: -- AND NOT TO WHAT MIGHT BE PRESENT IN THIS
23 CASE. DON'T ASK THAT QUESTION.

24 MR. BARENS: IN THE EVENT YOU HEARD A CASE WHERE A
25 PREMEDITATED MURDER TOOK PLACE DURING THE COURSE OF A ROBBERY
26 AND SOMEONE WAS SHOT TO DEATH, WOULD YOU BELIEVE THAT THAT
27 DEFENDANT SHOULD BE GIVEN THE DEATH PENALTY?

28 THE COURT: WAIT A MINUTE NOW. THERE IS A PENALTY PHASE

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1 OF IT WHERE MITIGATING AND AGGRAVATING CIRCUMSTANCES ARE TO
2 BE FIRST ADDUCED IN THE TRIAL BEFORE THAT CONCLUSION CAN BE
3 REACHED.

4 MR. BARENS: I AM ASKING, YOUR HONOR, AS A BIAS OR
5 PREFERENCE IN A CONCEPTUAL STAGE, HOW THE JUROR WOULD FEEL
6 ABOUT THAT, WOULD THERE BE A PREDISPOSITION IS WHAT I AM
7 LOOKING FOR, YOUR HONOR.

8 THE COURT: YOU MEAN WOULD SHE AUTOMATICALLY VOTE FOR
9 THE DEATH PENALTY WITHOUT LISTENING TO ANY TESTIMONY WITH
10 RESPECT TO MITIGATING OR AGGRAVATING CIRCUMSTANCES, IS THAT
11 WHAT YOU ARE ASKING?

12 MR. BARENS: RESPECTFULLY, I WAS ATTEMPTING TO ASK THAT
13 QUESTION WITHOUT USING THE WORD "AUTOMATICALLY".

14 MS. BURNS: I WOULD NOT VOTE AUTOMATICALLY FOR A DEATH
15 PENALTY BECAUSE I WOULD HAVE TO KNOW THE COMPLETE CIRCUMSTANCES
16 OF THE WHOLE TRIAL. I COULDN'T JUST --

17 MR. BARENS: INCLUDING THE CIRCUMSTANCES ABOUT THE
18 DEFENDANT AS A PERSON?

19 MS. BURNS: YES.

20 MR. BARENS: DO YOU CONSIDER YOURSELF AN OPEN-MINDED
21 PERSON?

22 MS. BURNS: I THINK SO.

23 MR. BARENS: DO YOU BELIEVE IN THE CONCEPT OF AN EYE
24 FOR AN EYE?

25 MS. BURNS: NOT REALLY.

26 MR. BARENS: PASS FOR CAUSE, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 MR. WAPNER: MAY I HAVE JUST A MOMENT, PLEASE?

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1 MRS. BURNS, DID YOU UNDERSTAND THE JUDGE YESTERDAY
2 WHEN HE WAS EXPLAINING TO YOU ABOUT THE DIFFERENT PHASES OF
3 THE TRIAL THAT WE ARE GOING TO HAVE?

4 MS. BURNS: YES, I BELIEVE SO.

5 MR. WAPNER: OKAY, THE FIRST PART OF THE TRIAL IS
6 CONCERNED WITH GUILT, WHETHER THE DEFENDANT IS GUILTY OR WHETHER
7 HE IS NOT GUILTY; DO YOU UNDERSTAND THAT?

8 MS. BURNS: YES.

9 MR. WAPNER: AND DURING THAT PART OF THE TRIAL, AS THE
10 JUDGE TOLD YOU YESTERDAY, YOU CAN'T CONSIDER THE POSSIBLE
11 PUNISHMENT; DO YOU UNDERSTAND THAT?

12 (WHEREUPON, MS. BURNS NODS HER HEAD UP
13 AND DOWN.)

14 MR. WAPNER: YOU HAVE TO ANSWER OUT LOUD SO SHE CAN WRITE
15 IT DOWN.

16 MS. BURNS: OH, YES.

17 MR. WAPNER: THANK YOU.

18 IF HE TELLS YOU THAT YOU CAN'T CONSIDER PUNISHMENT
19 DURING THE FIRST PHASE OF A TRIAL, WILL YOU FOLLOW THOSE
20 INSTRUCTIONS?

21 MS. BURNS: YES.

22 MR. WAPNER: OKAY, YOU KNOW NOW, BECAUSE WE ARE TALKING
23 ABOUT IT, THAT THERE IS A POSSIBILITY THAT SOMEWHERE DOWN THE
24 LINE YOU MIGHT BE CALLED ON TO DETERMINE THE QUESTION OF THE
25 POSSIBLE PENALTY, RIGHT?

26 MS. BURNS: YES.

27 MR. WAPNER: BUT HE IS GOING TO TELL YOU THAT YOU HAVE
28 GOT TO PUT THAT OUT OF YOUR MIND IN DETERMINING GUILT OR

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1 INNOCENCE; DO YOU UNDERSTAND THAT?

2 MS. BURNS: YES.

3 MR. WAPNER: OKAY, THEN IF THE DEFENDANT IS FOUND GUILTY
4 OF MURDER IN THE FIRST DEGREE AND IF THE JURY DETERMINES THAT
5 THAT IS A MURDER THAT HAPPENED DURING THE COURSE OF A ROBBERY,
6 ONLY THEN DO YOU GET TO THAT QUESTION OF WHETHER OR NOT THE
7 PUNISHMENT SHOULD BE DEATH OR LIFE IMPRISONMENT WITHOUT
8 THE POSSIBILITY OF PAROLE; DO YOU UNDERSTAND THAT?

9 MS. BURNS: YES.
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1 THE COURT: THAT IS EXACTLY WHAT I TOLD HER BEFORE. YOU
2 DON'T HAVE TO REPEAT IT.

3 MR. WAPNER: WELL, THANK YOU, YOUR HONOR.

4 DO YOU UNDERSTAND THAT IF YOU DELIBERATE ON THE
5 PENALTY PHASE, THAT YOU ARE GOING TO BE CALLED ON TO RENDER
6 AN INDIVIDUAL DECISION AS TO WHETHER OR NOT THE DEATH PENALTY
7 SHOULD BE IMPOSED?

8 MS. BURNS: YES, I THINK SO.

9 MR. WAPNER: OKAY. WHEN I SAY "INDIVIDUAL," IT IS NOT
10 COMING DOWN TO A JURY OF ONE PERSON. IT IS GOING TO BE
11 TWELVE PEOPLE, BUT THE JUDGE TELLS YOU THAT DURING THE TRIAL,
12 THAT WHEN YOU DECIDE A CASE, YOU CAN'T JUST LET THE OTHER
13 PEOPLE DECIDE WHAT THEY WANT AND YOU SAY, "OKAY, I WILL GO
14 ALONG WITH IT" YOU HAVE TO RENDER YOUR INDIVIDUAL OPINION.

15 MS. BURNS: YES, OF COURSE.

16 MR. WAPNER: AND IF THE JUDGE TELLS YOU THAT YOU HAVE
17 TO MAKE UP YOUR INDIVIDUAL MIND, YOU ARE GOING TO FOLLOW
18 THAT?

19 MS. BURNS: CERTAINLY.

20 MR. WAPNER: THE POINT OF ASKING YOU ALL OF THAT, OR
21 TELLING YOU THIS, IS BECAUSE I WANT YOU TO UNDERSTAND IF YOU
22 GET TO THAT POINT OF THE TRIAL WHERE THE PENALTY IS BEING
23 CONSIDERED, YOU ARE GOING TO HAVE TO MAKE UP YOUR OWN MIND
24 AS TO WHETHER OR NOT YOU THINK THE PENALTY SHOULD BE DEATH
25 OR SHOULD BE LIFE IMPRISONMENT WIHTOUT THE POSSIBILITY OF
26 PAROLE; IF THAT IS THE CASE, DO YOU THINK YOU COULD MAKE THAT
27 DECISION?

28 MS. BURNS: YES.

7A-2

1 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT THAT?

2 MS. BURNS: NO.

3 MR. WAPNER: DO YOU HAVE ANY RELIGIOUS OR MORAL OR
4 PHILOSOPHICAL OPINIONS AGAINST THE DEATH PENALTY?

5 MS. BURNS: NO.

6 MR. WAPNER: JUST TO CLARIFY SOMETHING MR. BARENS WAS
7 ASKING YOU ABOUT: YOU UNDERSTAND THAT THERE ARE MURDERS IN
8 THE COURSE OF ROBBERIES AND THEN THERE ARE MURDERS IN THE
9 COURSE OF ROBBERIES. IN OTHER WORDS, THE FACTS IN ANY
10 PARTICULAR ROBBERY-MURDER COULD BE A LOT DIFFERENT.

11 MS. BURNS: YES.

12 MR. WAPNER: SO FOR EXAMPLE, YOU COULD HAVE A ROBBERY-
13 MURDER WHERE ONE WINO WENT UP TO THE OTHER ONE ON THE STREET
14 WITH A KNIFE AND WANTED TO ROB HIM OF HIS BOTTLE OF WINE AND
15 ENDED UP STICKING HIM WITH A KNIFE AND THE GUY ENDED UP DEAD,
16 WHICH MIGHT BE ON ONE END OF THE SPECTRUM, AND THE OTHER END
17 OF THE SPECTRUM, YOU MIGHT HAVE --

18 MR. BARENS: I AM GOING TO OBJECT TO THAT HYPOTHETICAL
19 TOTALLY. THERE IS A SUGGESTION IN THE FIRST INSTANCE THAT
20 THE WINO WAS HIMSELF UNDER THE INFLUENCE OF SOMETHING OF SOME
21 KIND AND I DON'T LIKE THAT.

22 THE COURT: I WILL SUSTAIN THE OBJECTION.

23 MR. WAPNER: MRS. BURNS, DID YOU UNDERSTAND THE POINT
24 I WAS TRYING TO GET?

25 MS. BURNS: YES, THAT'S RIGHT.

26 MR. WAPNER: THAT THE FACTS OF ANY PARTICULAR ROBBERY-
27 MURDER MAY VARY GREATLY.

28 MS. BURNS: YES.

1 MR. WAPNER: YOU ARE WILLING TO TRY THIS CASE AND THE
2 POSSIBLE PUNISHMENT IN THIS CASE BASED UPON THE FACTS IN THIS
3 CASE?

4 MS. BURNS: YES.

5 MR. WAPNER: ALL RIGHT. I HAVE NOTHING FURTHER.

6 PASS FOR CAUSE.

7 MR. BARENS: PASS FOR CAUSE.

8 THE COURT: THANK YOU VERY MUCH, MRS. BURNS. WE HAVE
9 TO GO THROUGH THIS WHOLE PROCESS WITH ALL OF THE PROSPECTIVE
10 JURORS. YOU CAN SEE HOW LONG THAT WILL TAKE.

11 MS. BURNS: YES.

12 THE COURT: WE HAVE 80 OR 90 OR WHATEVER NUMBER WE HAVE.
13 IT IS ANTICIPATED WE MIGHT FINISH ABOUT DECEMBER 2ND SO WHAT
14 I WILL ASK YOU TO DO IS TO COME BACK TO THE JURY ASSEMBLY ROOM
15 ON DECEMBER 2ND, 10:30 A.M.

16 IF BY ANY CHANCE WE ARE NOT COMPLETED BY THAT TIME,
17 WE WILL GIVE YOU A CALL. WE HAVE GOT YOUR NUMBER.

18 IN THE MEANTIME, DON'T TALK TO ANYBODY ABOUT THIS.

19 MS. BURNS: NO.

20 THE COURT: OR IF THERE IS ANYTHING ON THE RADIO OR
21 TELEVISION OR NEWSPAPERS ABOUT THIS CASE, DON'T READ IT OR
22 LISTEN TO IT, ALL RIGHT?

23 MS. BURNS: FINE.

24 THE COURT: THANKS VERY MUCH.

25 DON'T TALK TO ANYBODY ABOUT IT EITHER.

26 MR. BARENS: YOUR HONOR, WOULD YOU CARE FOR A RECESS?

27 WITH THE COURT'S PERMISSION, I WOULD ASK TO BE
28 EXCUSED FOR THE BALANCE OF THE SESSION THIS AFTERNOON TODAY.

1 THANK YOU, YOUR HONOR.

2 MR. HUNT AGREES WITH THAT.

3 THE DEFENDANT: YES.

4 THE COURT: ALL RIGHT, I WILL EXCUSE YOU RELUCTANTLY.

5 MR. BARENS: THANK YOU. WE WOULD BEGIN AT 10:30

6 TOMORROW MORNING?

7 THE COURT: YES.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 (RECESS.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD IN
2 OPEN COURT WITHOUT THE PRESENCE OF
3 MR. BARENS:)

4 THE COURT: THIS IS THE MATTER OF THE PEOPLE VERSUS
5 HUNT. THE DEFENDANT IS PRESENT WITH COUNSEL.

6 (PROSPECTIVE JUROR CAMIRE ENTERED THE
7 COURTROOM.)

8 THE COURT: YOUR NAME IS CAMIRE?

9 MS. CAMIRE: MISS CAMIRE.

10 THE COURT: ALL RIGHT. THAT IS MISS?

11 MS. CAMIRE: MISS.

12 THE COURT: MISS CAMIRE, I AM GOING TO ASK YOU A SERIES
13 OF QUESTIONS. I WANT YOU TO LISTEN TO THEM VERY CAREFULLY.
14 THEN ANSWER THOSE QUESTIONS YES OR NO. AND IF THE QUESTION
15 IS UNCLEAR, ASK ME TO REPEAT IT AND I WILL.

16 MS. CAMIRE: OKAY.

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

20 MS. CAMIRE: DID YOU SAY PARTIAL OR IMPARTIAL?

21 THE COURT: IMPARTIAL.

22 MS. CAMIRE: THANK YOU.

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

26 MS. CAMIRE: YES.

27 THE COURT: WHAT IS THAT OPINION?

28 MS. CAMIRE: I DON'T BELIEVE IN THE DEATH PENALTY.

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1 THE COURT: AND UNDER NO CIRCUMSTANCES WOULD YOU EVER
2 VOTE FOR THE DEATH PENALTY?

3 MS. CAMIRE: NO. I NEVER WOULD.

4 THE COURT: ALL RIGHT.

5 MR. CHIER: MAY I INQUIRE, YOUR HONOR?

6 THE COURT: ANYTHING MORE THAN THAT THAT YOU WANT TO
7 FIND OUT?

8 MR. CHIER: YES.

9 THE COURT: GO AHEAD THEN.

10 MR. CHIER: MISS CAMIRE, THE QUESTIONS I AM ABOUT TO
11 ASK YOU, THERE IS NO RIGHT OR WRONG ANSWER OR NO FAIR OR
12 UNFAIR ANSWER. WHAT WE ARE DOING, IS LOOKING FOR JURORS --

13 THE COURT: WOULD YOU ASK THE QUESTION, PLEASE. DON'T
14 MAKE ANY SPEECHES. ASK THE QUESTION THAT YOU WANT TO ASK
15 DIRECTLY.

16 MR. CHIER: I NEED SOME --

17 THE COURT: YOU DON'T NEED ANY INTRODUCTIONS. JUST
18 ASK THE QUESTION.

19 MR. CHIER: WELL, MY QUESTION DOES, JUDGE --

20 THE COURT: NO. I WANT YOU TO ASK A DIRECT QUESTION.

21 MR. CHIER: MS. CAMIRE, IS IT MY UNDERSTANDING THAT
22 YOU ARE SO OPPOSED TO THE DEATH PENALTY, THAT YOU WOULD BE
23 UNABLE TO RETURN A VERDICT OF DEATH, AS OPPOSED TO LIFE
24 WITHOUT POSSIBILITY OF PAROLE IN ANY POSSIBLE SITUATION?

25 MS. CAMIRE: I FEEL THAT I COULD NEVER RETURN A DECISION
26 THAT SOMEONE SHOULD BE PUT TO DEATH FOR A CRIME.

27 MR. CHIER: AND THAT THERE ARE NO CIRCUMSTANCES UNDER
28 WHICH YOU WOULD FEEL THAT YOU COULD -- HAVE YOU EVER REACTED

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1 TO A NEWS ARTICLE OR A TELEVISION NEWS STORY BY SAYING THAT
2 THE PERSON OUGHT TO BE PUT TO DEATH, FOR EXAMPLE?

3 MS. CAMIRE: NO I HAVE NOT.

4 MR. CHIER: SO THAT IN RESPONSE TO HIS HONOR'S QUESTION,
5 YOU ARE SO OPPOSED TO THE DEATH PENALTY THAT IT WOULD PREVENT
6 YOU FROM BEING AN IMPARTIAL JUROR IN THIS CASE BECAUSE YOU
7 WOULD TEND TO VOTE NOT GUILTY IN ORDER TO NOT HAVE TO IMPOSE
8 THE DEATH PENALTY?

9 MS. CAMIRE: IF THE DECISION OF THE OTHER JURORS WERE
10 TO SAY THAT THAT IS THE ONLY ALTERNATIVE, WAS THE DEATH PENALTY,
11 I MAY SAY THAT TO JUST --

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1 THE COURT: WELL, WOULD YOU BE INFLUENCED BY WHAT OTHER
2 PEOPLE DO?

3 MR. CHIER: YOUR HONOR, SHE HASN'T FINISHED HER ANSWER.

4 THE COURT: WOULD YOU BE QUIET?

5 MR. CHIER: SHE HASN'T FINISHED HER ANSWER.

6 THE COURT: YES, SHE HAS.

7 WOULD YOU, BECAUSE THE OTHER JURORS ARE VOTING
8 FOR THE DEATH PENALTY, WOULD YOU VOTE FOR THE DEATH PENALTY
9 BECAUSE THE OTHER JURORS ARE VOTING FOR THE DEATH PENALTY,
10 WOULD YOU VOTE FOR THE DEATH PENALTY BECAUSE OF THAT REASON?

11 MS. CAMIRE: NO, I WOULD NOT.

12 THE COURT: WHAT WERE YOU GOING TO SAY TO US?

13 MS. CAMIRE: I WAS SAYING IF THE OTHER JURORS SAID THAT
14 THAT IS THE ONLY ALTERNATIVE, THE ONLY DECISION THAT THEY COULD
15 COME TO, THAT I WOULD NOT GO THROUGH WITH IT.

16 IF I FELT THE PERSON WERE GUILTY AND THEY SAID
17 IT IS, YOU KNOW, THE DEATH PENALTY OR A VERDICT OF NOT GUILTY,
18 I WOULD TEND TO GO MORE FOR THE NOT GUILTY BECAUSE I FEEL THAT
19 NO CRIME WOULD BE WORTHY OF PUTTING SOMEONE TO DEATH.

20 THE COURT: I SEE. NO MATTER, UNDER ALL CIRCUMSTANCES
21 IF THE DEATH PENALTY WERE A POSSIBILITY, YOU WOULD NEVER VOTE
22 FOR THE DEATH PENALTY; IS THAT RIGHT?

23 MS. CAMIRE: I WOULD NEVER VOTE FOR IT.

24 THE COURT: YOU WOULDN'T EVEN VOTE THE DEFENDANT GUILTY
25 IF IT MEANT IT MIGHT ENTAIL THE DEATH PENALTY, WOULD YOU?

26 MS. CAMIRE: --

27 THE COURT: IN OTHER WORDS --

28 MS. CAMIRE: IF IT DID NOT ENTAIL THE DEATH PENALTY AND

1 I FELT THAT THE PERSON WERE GUILTY, THEN I WOULD, I COULD SAY
2 GUILTY IF I WERE SURE THAT HE WOULD NOT BE PUT TO DEATH.

3 MR. CHIER: LET ME ASK YOU THIS, MISS CAMIRE: YOU KNOW
4 THE ISSUE OF GUILT OR INNOCENCE IS SEPARATE FROM THE ISSUE
5 OF PENALTY; DO YOU UNDERSTAND THAT?

6 (NO AUDIBLE REPLY .)

7 MR. CHIER: IN A MURDER CASE, DO YOU UNDERSTAND THAT
8 THERE ARE TWO PHASES TO THIS CASE?

9 MS. CAMIRE: UH-HUH.

10 MR. WAPNER: EXCUSE ME. IS THAT YES?

11 MS. CAMIRE: YES. EXCUSE ME.

12 MR. CHIER: THE FIRST PHASE IS A DETERMINATION AS TO
13 WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER
14 IN THE FIRST DEGREE.

15 MS. CAMIRE: I UNDERSTAND THAT.

16 MR. CHIER: IF YOU REACH THE DECISION THAT HE IS GUILTY
17 OF MURDER IN THE FIRST DEGREE AND THAT THE MURDER OCCURRED
18 IN THE COURSE OF A ROBBERY, THEN IT IS NECESSARY TO HAVE A
19 PENALTY PHASE.

20 MS. CAMIRE: UH-HUH.

21 MR. CHIER: WHAT I WOULD LIKE TO KNOW IS: ARE YOU SO
22 OPPOSED TO THE DEATH PENALTY THAT EVEN THOUGH THIS IS A DEATH
23 PENALTY CASE, AS TO THE GUILT OR INNOCENCE PHASE YOU WOULD
24 AUTOMATICALLY VOTE NOT GUILTY BECAUSE THERE WAS A POSSIBLE
25 DEATH PENALTY DOWN THE ROAD SOMEWHERE?

26 DO YOU UNDERSTAND MY QUESTION?

27 MS. CAMIRE: YES, I UNDERSTAND THE QUESTION COMPLETELY.

28 I DON'T FEEL THAT I COULD SERVE WITH -- IT IS

1 AGAINST MY CONSCIENCE TO BE IN A POSITION TO DECIDE SOMEONE'S
2 POSSIBLE DEATH.

3 DID I ANSWER CLEARLY ENOUGH?

4 MR. CHIER: YES, YOU DID.

5 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU MAY
6 GO TO THE JURY ASSEMBLY ROOM AND TELL THEM YOU ARE AVAILABLE
7 FOR SOME OTHER TRIAL.

8 MS. CAMIRE: THANK YOU.

9 THE COURT: YOU ARE EXCUSED FROM THIS TRIAL.

10 THE COURT FINDS THAT THERE IS CAUSE FOR EXCUSING
11 THIS JUROR IN THIS CASE.

12 THANK YOU VERY MUCH FOR YOUR --

13 MS. CAMIRE: YOU ARE WELCOME.

14 THE COURT: -- THANK YOU VERY MUCH FOR YOUR FRANKNESS,
15 MISS CAMIRE.

16 MR. WAPNER: YOUR HONOR, IT IS LIKE CLOSING THE BARN
17 DOOR AFTER THE HORSE IS ALREADY OUT, BUT SO THE RECORD IS CLEAR
18 THERE IS A CHALLENGE OF THIS JUROR FOR CAUSE.

19 THE COURT: YES. I DON'T HAVE TO WAIT FOR THE CHALLENGE,
20 DO I?

21 (PROSPECTIVE JUROR CAMPBELL ENTERS THE
22 COURTROOM.)

23 THE CLERK: THIS IS MARK CAMPBELL.

24 THE COURT: ALL RIGHT. MR. CAMPBELL, IS THAT IT?

25 MR. CAMPBELL: YES, SIR.

26 THE COURT: MR. CAMPBELL, I AM GOING TO ASK YOU A SERIES
27 OF QUESTIONS AND YOUR ANSWERS TO THOSE QUESTIONS WILL BE YES
28 OR NO.

1 IF YOU DON'T UNDERSTAND ANY OF THE QUESTIONS, ASK
2 ME TO REPEAT THEM AND I WILL BE VERY HAPPY TO DO THAT, ALL
3 RIGHT?

4 MR. CAMPBELL: OKAY.

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1 THE COURT: THE FIRST QUESTION: DO YOU HAVE ANY OPINION
2 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
3 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
4 DEFENDANT?

5 MR. CAMPBELL: NO.

6 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
7 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER,
8 EVEN IF THE PROSECUTION HAS NOT PROVED THE DEFENDANT GUILTY
9 OF MURDER IN THE FIRST DEGREE?

10 MR. CAMPBELL: NO, SIR.

11 THE COURT: BEFORE I ASK YOU THE THIRD QUESTION, YOU
12 WERE HERE, OF COURSE, WITH THE OTHER JURORS WHEN I TOLD THEM
13 THAT IN THIS CASE THE PROSECUTION HAD ASKED FOR THE DEATH
14 PENALTY AND THAT THERE ARE VARIOUS PHASES OF THE TRIAL.

15 THE FIRST PHASE IS TO DETERMINE FIRST WHETHER THE
16 DEFENDANT IS GUILTY OR NOT GUILTY OF FIRST DEGREE MURDER AND
17 IF HE IS GUILTY OF FIRST DEGREE MURDER, THEN THEY ARE TO
18 DETERMINE WHAT WE CALL THE SPECIAL CIRCUMSTANCES. THE SPECIAL
19 CIRCUMSTANCES ARE THAT THE MURDER WAS COMMITTED IN THE COURSE
20 OF A ROBBERY.

21 MR. CAMPBELL: YES, SIR.

22 THE COURT: NOW THIS IS MY QUESTION -- THEN THE JURY,
23 OF COURSE, SAYS TRUE OR NOT TRUE ON THE VERDICT FORMS THAT
24 WILL BE PRESENTED TO YOU.

25 MY QUESTION IS: DO YOU HAVE ANY OPINION REGARDING
26 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
27 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
28 CIRCUMSTANCE ALLEGED IN THIS CASE?

1 MR. CAMPBELL: NO, SIR.

2 THE COURT: NEXT: DO YOU HAVE SUCH AN OPINION CONCERNING
3 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
4 IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
5 WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY EVIDENCE
6 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

7 MR. CAMPBELL: NO, SIR.

8 THE COURT: LASTLY, OR FIVE, RATHER: DO YOU HAVE SUCH
9 AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
10 VOTE FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AFTER
11 A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING
12 OF SPECIAL CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY
13 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

14 MR. CAMPBELL: NO, SIR.

15 THE COURT: AND LASTLY: DO YOU UNDERSTAND THAT THE ISSUE
16 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND
17 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
18 YOU REACH THAT PHASE OF THE TRIAL?

19 MR. CAMPBELL: YES, SIR.

20 THE COURT: ALL RIGHT, YOU MAY INQUIRE.

21 MR. CHIER: MR. CAMPBELL, ARE YOU --

22 THE COURT: EXCUSE ME. THIS GENTLEMAN IS MR. CHIER,
23 HE REPRESENTS THE DEFENDANT, HE IS ONE OF HIS ATTORNEYS.

24 MR. CAMPBELL: YES, SIR.

25 MR. CHIER: ARE YOU IN FAVOR OF THE DEATH PENALTY?

26 MR. CAMPBELL: UNDER THE PROPER CIRCUMSTANCES, YES.

27 MR. CHIER: LET ME ASK YOU HOW YOU WOULD ANSWER THE
28 FOLLOWING QUESTION: I AM A PERSON WHO IS STRONGLY IN FAVOR

1 OF THE DEATH PENALTY, MILDLY IN FAVOR OF THE DEATH PENALTY,
2 NOT IN FAVOR OF THE DEATH PENALTY OR I HAVE NO OPINION.

3 MR. CAMPBELL: I WOULD SAY UNDER THE PROPER CIRCUMSTANCES,
4 I AM STRONGLY IN FAVOR OF THE DEATH PENALTY.

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1 MR. CHIER: ALL RIGHT. AND DO YOU UNDERSTAND THAT
2 THERE IS NO RIGHT OR WRONG ANSWER?

3 MR. CAMPBELL: YES, SIR.

4 MR. CHIER: I AM SIMPLY SEEKING TO FIND OUT IF YOU
5 HAVE ANY NOTION AT THIS TIME AS YOU SIT THERE, AS TO WHAT
6 WOULD BE THE APPROPRIATE CIRCUMSTANCES FOR THE IMPOSITION
7 OF THE DEATH PENALTY.

8 MR. CAMPBELL: NOT OFFHAND, SIR. JUST THAT I KNOW
9 I AM IN FAVOR OF IT. I KNOW THAT UNDER THE RIGHT CIRCUMSTANCES,
10 I WOULD ASSUME MYSELF, IF THE FACTS SHOWED THAT ACCORDING
11 TO THE RULES THAT WERE GIVEN AS A JUROR, I WOULD VOTE FOR
12 IT.

13 THE COURT: I DID TELL YOU OF COURSE, THAT THERE ARE
14 TWO PHASES, THE GUILT PHASE AND THEN THERE IS A PENALTY PHASE?

15 MR. CAMPBELL: YES, SIR.

16 THE COURT: AFTER THE JURY FINDS, IF THEY DO, THAT
17 HE IS GUILTY OF MURDER IN THE FIRST DEGREE WITH SPECIAL
18 CIRCUMSTANCES, THEN YOU ARE TO DETERMINE THE PENALTY PHASE.

19 THERE IS A NEW TRIAL, IN EFFECT, REALLY. THERE
20 IS A NEW TRIAL AS TO THE MITIGATING CIRCUMSTANCES AND THE
21 THINGS WHICH ARE IN FAVOR OF THE DEFENDANT AND THE
22 AGGRAVATING CIRCUMSTANCES, THE FACTS WHICH ARE UNFAVORABLE
23 TO THE DEFENDANT.

24 ALL OF THOSE WOULD BE BROUGHT OUT AT THE PENALTY
25 PHASE OF THE TRIAL. AND YOU ARE TO LISTEN TO ALL OF THEM.
26 THEN YOU ARE TO MAKE YOUR DETERMINATION WHETHER IT IS LIFE
27 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY.
28 YOU UNDERSTAND THAT?

1 MR. CAMPBELL: YES, SIR.

2 THE COURT: YOU HAVE TO WAIT UNTIL ALL OF THE FACTS
3 HAVE BEEN ADDUCED IN THE PENALTY PHASE BEFORE YOU MAKE UP
4 YOUR MIND. ALL RIGHT?

5 MR. CAMPBELL: YES, SIR.

6 THE COURT: ALL RIGHT.

7 MR. CHIER: HAVE YOU READ OR HEARD ANYTHING ABOUT THIS
8 CASE, MR. CAMPBELL?

9 MR. CAMPBELL: NO, SIR.

10 THE COURT: I MEANT TO ASK HIM THAT. I AM SORRY.
11 I DIDN'T DO THAT.

12 MR. CHIER: DO YOU SUBSCRIBE TO THE LOS ANGELES TIMES?

13 MR. CAMPBELL: NO, SIR.

14 MR. CHIER: WHAT IS THE NEWSPAPER THAT YOU SUBSCRIBE
15 TO, SIR?

16 MR. CAMPBELL: I DO NOT SUBSCRIBE TO ONE. I READ OFTEN,
17 THE VALLEY NEWS.

18 MR. CHIER: WHICH ONE?

19 MR. CAMPBELL: THE VALLEY NEWS.

20 MR. CHIER: THE VALLEY NEWS?

21 MR. CAMPBELL: YES.

22 MR. CHIER: AND DO YOU LIVE IN THE VALLEY AREA?

23 MR. CAMPBELL: YES, SIR, THE VAN NUYS AREA, SIR.

24 MR. CHIER: AND DO YOU EVER READ NEWSWEEK OR TIME ON
25 A REGULAR BASIS?

26 MR. CAMPBELL: NO, SIR, NOT ON A REGULAR BASIS.

27 MR. CHIER: HAVE YOU HEARD ANY OF THE OTHER JURORS
28 DISCUSSING THIS CASE AT ALL?

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1 MR. CAMPBELL: NO, SIR, NOT IN ANY DETAIL, JUST TO
2 THE FACT THAT IT INVOLVES A ROBBERY/MURDER. NO DETAILS.

3 MR. CHIER: AND WHAT IS YOUR UNDERSTANDING OF LIFE
4 WITHOUT POSSIBILITY OF PAROLE? DO YOU UNDERSTAND THAT TO
5 BE RIGID, WITHOUT POSSIBILITY OF PAROLE?

6 MR. CAMPBELL: NO, SIR. I UNDERSTAND THAT THERE IS
7 PAROLE.

8 THE COURT: SOMETIMES THERE MAY BE PAROLE, BUT IN A
9 CASE OF THIS KIND WHERE THERE IS THE DEATH PENALTY, ONLY
10 TWO POSSIBLE VERDICTS, PAROLE WITHOUT THE POSSIBILITY OF --
11 I MEAN LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

12 LIFE WITHOUT THE POSSIBILITY OF PAROLE, THAT
13 IS WHAT THE JURY WILL HAVE TO DECIDE OR DEATH. GO AHEAD.

14 MR. CHIER: WOULD THE COURT ALLOW ME FOLLOW-UP QUESTIONS
15 WITH THE JURORS?

16 THE COURT: JUST IN CASE YOU DON'T KNOW HOW, I AM ASKING
17 IT. GO AHEAD.

18 MR. CHIER: HAS ANYTHING THE COURT HAS JUST SAID BIASED
19 YOU OR CAUSED YOU TO BELIEVE THAT HE IS BIASED AGAINST ME,
20 MR. CAMPBELL?

21 MR. CAMPBELL: NO, SIR.

22 THE COURT: DON'T ANSWER THAT QUESTION.

23 GO AHEAD, ASK PROPER QUESTIONS, WILL YOU?

24 MR. CHIER: MR. CAMPBELL, IS IT YOUR UNDERSTANDING
25 PRIOR TO COMING HERE TODAY, THAT LIFE WITHOUT POSSIBILITY
26 OF PAROLE, IS NOT THAT AT ALL, BUT THAT THERE IS A POSSIBILITY
27 OF PAROLE IN EVERY CASE?

28 MR. CAMPBELL: I DON'T UNDERSTAND THE QUESTION EXACTLY.

1 MR. CHIER: THE TERM "LIFE WITHOUT POSSIBILITY OF
2 PAROLE" --

3 MR. CAMPBELL: YES, SIR.

4 MR. CHIER: I UNDERSTAND THAT PRIOR TO THE JUDGE'S
5 QUESTIONS OF YOU, THAT YOU UNDERSTOOD THAT TO MEAN THERE
6 WAS SOME POSSIBILITY OF PAROLE IN SOME CASES?

7 MR. CAMPBELL: NO, SIR. I PROBABLY MISUNDERSTOOD THE
8 JUDGE. I BELIEVE THAT MEANS WITHOUT THE POSSIBILITY OF PAROLE.

9 MR. CHIER: ALL RIGHT. AND DO YOU FEEL THAT THERE
10 ARE CERTAIN TYPES OF CASES THAT ARE GENERALLY SPEAKING, MORE
11 DESERVING OF THE DEATH PENALTY THAN OTHERS?

12 MR. CAMPBELL: YES, SIR.

13 MR. CHIER: COULD YOU TELL ME WHAT TYPES OF CASES YOU
14 FEEL ARE MORE APPROPRIATELY FITTED FOR THE DEATH PENALTY?

15 MR. CAMPBELL: I WOULD SAY PREMEDITATED, VIOLENT CRIMES.

16 MR. CHIER: WHEN YOU SAY "VIOLENT" DO YOU MEAN -- WHAT
17 DO YOU MEAN BY THAT, SIR?

18 MR. CAMPBELL: I WOULD SAY OFFHAND, CRIMES INVOLVING
19 MUTILATION OR CRIMES THAT WERE VERY BLOODY.

20 MR. CHIER: TORTURE?

21 MR. CAMPBELL: SAVAGE TYPES OF CRIMES, YES, SIR.

22 MR. CHIER: WOULD YOU BE MORE INCLINED IN A CASE, IF
23 YOU WERE SITTING ON A JURY, WHICH JURY FOUND THE DEFENDANT
24 GUILTY OF A PREMEDITATED, DELIBERATE MURDER, COMMITTED IN
25 THE COURSE OF A ROBBERY, WOULD YOU FEEL IN THAT CASE, THAT
26 NOTHING ABOUT THE PERSON'S LIFE WOULD MAKE MUCH DIFFERENCE
27 AND THAT HE SHOULD PROBABLY GET THE DEATH PENALTY?

28 THE COURT: WELL, I AM GOING TO INSTRUCT THE JURY AT

1 THE CONCLUSION OF THE CASE, IF THE JURY FINDS MURDER OF THE
2 FIRST DEGREE WITH SPECIAL CIRCUMSTANCES ON THE PENALTY PHASE,
3 THAT THERE ARE WHAT IS KNOWN AS MITIGATING CIRCUMSTANCES,
4 WHICH THEY HAVE A RIGHT TO PROVE, WHICH WOULD BE IN FAVOR
5 OF THE DEFENDANT AND AGGRAVATING CIRCUMSTANCES WHICH WOULD
6 BE AGAINST HIM. NOW, IF I WERE TO TELL YOU THAT THE AGE
7 OF THE DEFENDANT AND HIS BACKGROUND AND EVERYTHING ELSE MAY
8 BE CONSIDERED IN MITIGATION, WILL YOU FOLLOW THAT, WILL YOU
9 NOT?

10 MR. CAMPBELL: YES, SIR. I WOULD CONSIDER EVERYTHING.

11 MR. CHIER: COULD I HAVE THE QUESTION THAT I ASKED
12 READ BACK, MISS REPORTER, PLEASE?

13 (THE RECORD WAS READ BY THE REPORTER.)
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1 MR. CAMPBELL: NO, SIR. I FEEL THAT IT WOULD MAKE
2 A DIFFERENCE.

3 MR. CHIER: WHAT SORT OF THINGS DO YOU THINK WOULD
4 MAKE A DIFFERENCE?

5 MR. CAMPBELL: PERHAPS, OFFHAND, I MIGHT --

6 MR. CHIER: TO YOU?

7 MR. CAMPBELL: I MIGHT CONSIDER FAMILY SITUATION,
8 ECONOMIC HARDSHIP. PERHAPS THAT MAY HAVE CONTRIBUTED TO
9 THIS PERSON'S FRAME OF MIND OR SOMETHING AT THE TIME.

10 IT WOULD BE THE EMOTIONAL MOTIVATION AND THE
11 THINGS THAT WERE APPARENT AS TO WHAT BROUGHT HIM TO THAT
12 PARTICULAR INCIDENT.

13 MR. CHIER: ALL RIGHT. I HAVE NO FURTHER QUESTIONS
14 OF THIS WITNESS. I PASS FOR CAUSE.

15 THE COURT: ALL RIGHT. ANY QUESTIONS?

16 MR. WAPNER: JUST BRIEFLY.

17 MR. CAMPBELL, DID YOU READ ANY ARTICLES IN THE
18 NEWSPAPER IN THE VALLEY NEWS AT ANY TIME ABOUT SOMETHING
19 CALLED THE BILLIONAIRE BOYS CLUB? DO YOU EVER RECALL ANYTHING
20 ABOUT THAT?

21 MR. CAMPBELL: NO, SIR.

22 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

23 THE COURT: ALL RIGHT.

24 MR. CAMPBELL: YOUR HONOR, MAY I SAY SOMETHING THAT
25 WAS NOT DISCUSSED? BUT I THINK IT IS RELEVANT. I AM A
26 RESERVE DEPUTY SHERIFF FOR LOS ANGELES COUNTY.

27 I HAVE BEEN FOR ABOUT FIVE YEARS. I ACTIVELY
28 WORK PATROL FUNCTIONS.

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1 THE COURT: ON THE GENERAL VOIR DIRE, IF YOU ARE
2 SELECTED AND YOU ARE IN THE BOX, THAT QUESTION WILL BE ASKED
3 OF YOU. ALL RIGHT?

4 THAT WILL BE EVALUATED BY COUNSEL. WE ARE IN
5 THE PROCESS OF, AS YOU SEE, ASKING ALL OF THE PROSPECTIVE
6 JURORS QUESTIONS THAT HAVE BEEN ASKED OF YOU. THAT WILL
7 TAKE CONSIDERABLE TIME, AS YOU SEE YOURS TOOK SOME TIME,
8 TOO.

9 BEFORE WE GET THROUGH THE ENTIRE LIST, IT WILL
10 PROBABLY NOT BE BEFORE DECEMBER 2ND. I WILL ASK YOU TO COME
11 BACK TO THE JURY ASSEMBLY ROOM ON DECEMBER 2ND.

12 IF IT IS GOING TO BE LATER THAN THAT, THEN WE
13 HAVE YOUR TELEPHONE NUMBER. WE WILL CALL YOU.

14 COME BACK AT 10:30 IN THE JURY ASSEMBLY ROOM.

15 AND IN THE MEANTIME, YOU ARE NOT TO TALK TO
16 ANYBODY ABOUT THIS CASE NOR HAVE ANY QUESTIONS ASKED OF YOU
17 NOR READ ANYTHING ABOUT THE CASE THAT WE ARE HERE ON. THANK
18 YOU.

19 THAT WILL BE DECEMBER 2ND IN THE JURY ASSEMBLY
20 ROOM AT 10:30.

21 (PROSPECTIVE JUROR CAMPBELL EXITED
22 THE COURTROOM.)

23 THE COURT: I HEARD NO CHALLENGE FOR CAUSE. THAT IS,
24 FROM EITHER SIDE.

25 MR. CHIER: NOT AT THIS TIME.

26 MR. WAPNER: THE PEOPLE PASS FOR CAUSE.

27 THE COURT: ALL RIGHT.

28 (PROSPECTIVE JUROR CLEMENTS ENTERED THE COURTROOM.)

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1 THE COURT: IS THAT MISS CLEMENTS?

2 MS. CLEMENTS: YES.

3 THE COURT: MISS CLEMENTS, I AM GOING TO ASK YOU A
4 SERIES OF QUESTIONS. I WANT YOU TO ANSWER EACH ONE OF THE
5 QUESTIONS YES OR NO. IF ANY OF THE QUESTIONS IS UNCLEAR,
6 ASK ME TO REPEAT IT. I WILL BE VERY HAPPY TO DO SO.

7 MS. CLEMENTS: ALL RIGHT.

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

11 MS. CLEMENTS: NO.

12 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
13 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER,
14 EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY
15 OF MURDER IN THE SECOND DEGREE OR SOME LESSER OFFENSE.

16 MS. CLEMENTS: NO.

17 THE COURT: NOW, BEFORE I ASK YOU THE THIRD QUESTION,
18 YOU OF COURSE, WERE HERE AT THE TIME I OUTLINED THE NATURE
19 OF THE CASE.

20 THIS IS A MURDER CASE, AS YOU KNOW. THIS IS
21 A CASE IN WHICH THE DISTRICT ATTORNEY IS ASKING FOR THE DEATH
22 PENALTY. AND IF THE JURY FINDS THE DEFENDANT GUILTY OF
23 MURDER IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT AND
24 THEY HAVE TO DETERMINE WHETHER OR NOT THAT MURDER WAS
25 COMMITTED DURING THE COURSE OF A ROBBERY, THAT WILL BE A
26 FINDING WHICH THEY WILL HAVE TO MAKE.

27 AND THAT IS KNOWN AS A SPECIAL CIRCUMSTANCE
28 FINDING OF WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE

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1 OF A ROBBERY. DO YOU UNDERSTAND THAT?

2 MS. CLEMENTS: YES.

3 THE COURT: SO THIS QUESTION IS, 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
6 THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

7 MS. CLEMENTS: NO.

8 THE COURT: ALL RIGHT. NEXT, DO YOU HAVE SUCH AN OPINION
9 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
10 VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY OF MURDER IN
11 THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE,
12 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
13 PHASE OF THE TRIAL?

14 MS. CLEMENTS: WOULD YOU MIND SAYING THAT AGAIN?

15 THE COURT: YES. ALL RIGHT. YOU KNOW THAT THE FIRST
16 TRIAL -- THE FIRST PHASE OF THE TRIAL IS THE GUILT PHASE
17 WHERE YOU DETERMINE WHETHER OR NOT HE IS GUILTY OR NOT GUILTY?

18 MS. CLEMENTS: YES.

19 THE COURT: AND IF SO, YOU DETERMINE WHETHER IT WAS
20 COMMITTED IN THE COURSE OF A ROBBERY.

21 MS. CLEMENTS: RIGHT.

22 THE COURT: NOW, IF THE JURY FINDS YES, THAT IT WAS
23 MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY, THEN
24 THERE IS A SECOND PHASE WHERE THE SAME JURY DETERMINES WHAT
25 THE PENALTY SHOULD BE, SHOULD IT BE LIFE WITHOUT THE
26 POSSIBILITY OF PAROLE OR SHOULD IT BE DEATH.

27 MS. CLEMENTS: UH-HUH.

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1 THE COURT: NOW YOU REMEMBER THAT ON THE FIRST PHASE
2 OF THIS, THE JURY MAKES THE DETERMINATION WHETHER OR NOT THERE
3 ARE ANY SPECIAL CIRCUMSTANCES IF THEY FIND IT TO BE MURDER
4 IN THE FIRST DEGREE; DO YOU UNDERSTAND THAT?

5 MS. CLEMENTS: YES.

6 THE COURT: NOW DO YOU HAVE SUCH AN OPINION CONCERNING
7 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
8 IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
9 WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY
10 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
11 TRIAL, WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY?

12 MS. CLEMENTS: NO.

13 THE COURT: ALL RIGHT, DO YOU HAVE SUCH AN OPINION CONCERNING
14 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
15 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT
16 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL
17 CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
18 AT THE PENALTY PHASE OF THE TRIAL?

19 MS. CLEMENTS: NO.

20 THE COURT: AND LASTLY: DO YOU UNDERSTAND THAT THE ISSUE
21 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND
22 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
23 YOU REACH THAT PHASE OF THE TRIAL?

24 MS. CLEMENTS: YES.

25 THE COURT: ALL RIGHT, HAVE YOU READ ANYTHING AT ALL,
26 DO YOU KNOW ANYTHING AT ALL ABOUT THIS CASE EXCEPT WHAT I TOLD
27 YOU IN OPEN COURT?

28 MS. CLEMENTS: I SAW MY -- MY PANEL WAS CALLED TWO WEEKS

1 AGO AND I DID SEE SOME TELEVISION CAMERAS BECAUSE I THOUGHT
2 THEN THAT I WAS ON ANOTHER JURY.

3 THE COURT: YOU MEAN YOU SAW THE CAMERAS HERE?

4 MS. CLEMENTS: YES.

5 THE COURT: BUT YOU DIDN'T KNOW ANYTHING ABOUT THE CASE?

6 MS. CLEMENTS: NO, I REALLY HAVEN'T.

7 THE COURT: DID YOU KNOW IT WAS A MURDER CASE?

8 MS. CLEMENTS: NO.

9 THE COURT: DID YOU KNOW ANYTHING ELSE ABOUT IT EXCEPT
10 FOR THE FACT IT WAS A MURDER CASE?

11 MS. CLEMENTS: NO.

12 THE COURT: DID YOU TALK TO ANYBODY ABOUT IT AT ALL?

13 MS. CLEMENTS: ONLY THAT APPARENTLY EVERYBODY SAID,
14 "OH, THAT MUST BE THE CASE THAT WAS IN THE NEWSPAPER
15 YESTERDAY" AND I SAID, "OH, I DIDN'T READ IT. THE TRASH MAN
16 PICKED IT UP."

17 BY THAT TIME, I FOUND OUT I WAS GOING TO BE ON
18 THE PANEL.

19 THE COURT: YOU UNDERSTAND, OF COURSE, THAT IF YOU ARE
20 SELECTED AS A JUROR THAT DURING THE COURSE OF THE TRIAL YOU
21 ARE NOT TO TALK TO ANYBODY ABOUT ANY ASPECTS OF THIS CASE.

22 MS. CLEMENTS: NO.

23 THE COURT: YOU ARE NOT TO TALK ABOUT ANY ASPECT OF IT,
24 ALL RIGHT?

25 MS. CLEMENTS: NO.

26 MR. CHIER: MY NAME IS RICHARD CHIER, MRS. CLEMENTS.

27 IS IT MRS.?

28 MS. CLEMENTS: YES.

1 MR. CHIER: I AM ONE OF MR. HUNT'S ATTORNEYS.

2 I WOULD LIKE TO FIRST QUESTION YOU A LITTLE BIT
3 ABOUT THIS PUBLICITY ASPECT AND ASK YOU IF YOU -- YOU SAW SOME
4 TELEVISION CAMERAS IN THE HALLWAY?

5 MS. CLEMENTS: I WAS ON A CASE DOWN THE HALL AND I SAW
6 THE EQUIPMENT THERE AND THEN I LATER SAW SOME SEVERAL SHOTS
7 OF THE HALLWAY ON THE 6:00 O'CLOCK NEWS THAT NIGHT.

8 MR. CHIER: DID YOU HEAR ANY OF THE COMMENTARY, THE
9 NARRATIVE THAT ACCOMPANIED IT?

10 MS. CLEMENTS: THERE WAS PRACTICALLY NO COMMENTARY ON
11 THE PROGRAM THAT I SAW. I COULDN'T -- I REMEMBER LOOKING AT
12 IT AND THINKING, "WELL, I DON'T KNOW MUCH MORE THAN I DID WHEN
13 I TURNED IT ON."

14 MR. CHIER: DID YOU HEAR GOSSIP AMONG THE OTHER JURORS
15 THAT THERE WAS A MURDER CASE ABOUT TO COMMENCE?

16 MS. CLEMENTS: JUST THERE HAD BEEN A HUGE -- I WAS THERE
17 WHEN THEY CALLED THE FIRST PANEL.

18 THE COURT: DID YOU HEAR THE OTHER JURORS, THE PROSPECTIVE
19 JURORS DISCUSSING THE CONTENTS OF THAT ARTICLE?

20 MS. CLEMENTS: NO. JUST THAT THERE HAD BEEN ONE THE
21 PREVIOUS DAY.

22 MR. CHIER: DO YOU REMEMBER WHAT PAPER THE ARTICLE HAD
23 APPEARED IN?

24 MS. CLEMENTS: OH, IT WAS IN THE TIMES.

25 MR. CHIER: AND YOU ARE A SUBSCRIBER TO THE TIMES?

26 MS. CLEMENTS: YES.

27 MR. CHIER: ARE YOU A SUBSCRIBER OF THE TIME MAGAZINE?

28 MS. CLEMENTS: NO.

1 MR. CHIER: NEWSWEEK?

2 MS. CLEMENTS: NO.

3 MR. CHIER: WHAT CONCLUSIONS DID YOU DRAW, IF ANY, WHEN
4 YOU SAW THERE WAS MEDIA ATTENTION ATTRACTED BY THIS CASE?

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1 THE COURT: A CONCLUSION AS TO WHAT, AS TO THE GUILT
2 OR INNOCENCE OF THE DEFENDANT?

3 MR. CHIER: AMONG OTHER THINGS, YOUR HONOR.

4 THE COURT: BY MERELY SEEING CAMERAS OUTSIDE?

5 MR. CHIER: I AM TRYING TO FIND OUT WHAT WAS SUGGESTED
6 TO THE PROSPECTIVE JUROR BY THE FACT THAT THERE WAS MEDIA
7 ATTENTION.

8 THE COURT: DOES THAT MEAN ANYTHING TO YOU?

9 MS. CLEMENTS: NOT REALLY, NO.

10 I AM SORRY. I DON'T REALLY KNOW WHAT YOU WISH
11 ME TO ANSWER.

12 I ASSUMED IT WAS AN IMPORTANT CASE BECAUSE THE
13 LAST TIME I WAS A JUROR, I MANAGED TO SERVE MY TERM WITHOUT
14 ANY CAMERAS IN THE HALL.

15 MR. CHIER: WHEN YOU SAY "IMPORTANT CASE," WHAT DO
16 YOU MEAN BY IMPORTANT CASE, MISS CLEMENTS?

17 MS. CLEMENTS: PUBLICITY ATTRACTED.

18 MR. CHIER: ARE YOU IN FAVOR OF THE DEATH PENALTY?

19 MS. CLEMENTS: YES.

20 MR. CHIER: ARE YOU A PERSON WHO COULD BE CHARACTERIZED
21 AS STRONGLY IN FAVOR OF THE DEATH PENALTY?

22 MS. CLEMENTS: IF IT IS MERITED, YES.

23 MR. CHIER: ALL RIGHT.

24 DID YOU VOTE FOR THE DEATH PENALTY WHEN IT WAS
25 ON THE BALLOT?

26 MS. CLEMENTS: I DID.

27 MR. CHIER: AND DID YOU READ THE LEGISLATIVE MATERIAL
28 WHICH ACCOMPANIED THE BALLOT WHICH DESCRIBED THE CIRCUMSTANCES

1 UNDER WHICH THE DEATH PENALTY WOULD BE CHARGEABLE -- UNDER
2 THE CIRCUMSTANCES IT WOULD BE CHARGEABLE?

3 DO YOU UNDERSTAND MY QUESTION?

4 MS. CLEMENTS: NOT QUITE.

5 MR. CHIER: DID YOU VOTE FOR THE DEATH PENALTY BECAUSE
6 YOU THOUGHT IT WOULD BE A GOOD IDEA TO HAVE A DEATH PENALTY
7 BECAUSE THERE WAS A LOT OF VIOLENT CRIME AND IT SEEMED LIKE
8 A GOOD ANSWER?

9 MS. CLEMENTS: I VOTED FOR IT BECAUSE I FELT IT IS
10 A DETERRENT.

11 I READ THE MATERIAL BUT I COULDN'T REQUOTE IT
12 AT THIS PARTICULAR TIME.

13 MR. CHIER: ALL RIGHT, I AM NOT GOING TO ASK YOU TO
14 DO THAT.

15 ACTUALLY, THESE ARE ATTITUDINAL QUESTIONS THAT
16 I AM ASKING, WHETHER YOU NOTED AT THAT TIME WHETHER THERE
17 WERE ANY PARTICULAR CIRCUMSTANCES WHERE THE DEATH PENALTY
18 WOULD BE CHARGEABLE OR YOU JUST THOUGHT IT WAS A GOOD THING
19 TO HAVE A DEATH PENALTY BECAUSE IT WAS A DETERRENT?

20 MS. CLEMENTS: YES, I THINK IT IS.

21 MR. CHIER: TO WHAT TYPES OF CRIME?

22 MS. CLEMENTS: TO VIOLENT MURDER.

23 MR. CHIER: IN YOUR MIND IS THERE A DIFFERENCE BETWEEN
24 A VIOLENT MURDER AND SOME OTHER KIND OF MURDER?

25 MS. CLEMENTS: NO. I THINK ALL MURDER IS VIOLENT.

26 I CHOSE THAT POORLY. I AM SORRY.

27 MR. CHIER: YOU CHOSE THAT WORD DELIBERATELY?

28 MS. CLEMENTS: POORLY.

1 I THINK ALL MURDER IS VIOLENT.

2 MR. CHIER: AND DO YOU BELIEVE THAT ALL VIOLENT MURDERERS
3 SHOULD RECEIVE THE DEATH PENALTY?

4 THE COURT: WELL, WAIT A MINUTE NOW.

5 YOU WILL FOLLOW THE LAW IN THIS CASE AS THE COURT
6 WILL GIVE IT TO YOU?

7 MS. CLEMENTS: YES, I EXPECT TO.

8 THE COURT: WILL YOU NOT?

9 MS. CLEMENTS: I AM SORRY. I DON'T MEAN TO BE
10 EVADING THIS.

11 THE COURT: MERELY BECAUSE THERE IS A MURDER AND IT
12 MAY BE EVEN MURDER IN THE FIRST DEGREE, UNDER THE LAW IT
13 DOESN'T NECESSARILY MEAN THE DEATH PENALTY WOULD BE ASKED
14 OR CAN BE IMPOSED UPON HIM.

15 THE DEATH PENALTY CAN BE IMPOSED ONLY IN CERTAIN,
16 WHAT WE CALL SPECIAL CIRCUMSTANCES ATTENDING A MURDER, LIKE
17 IN THIS PARTICULAR CASE WHERE IT IS ALLEGED THAT THE MURDER
18 WAS COMMITTED DURING THE COURSE OF A ROBBERY.

19 AMONG OTHER KINDS OF CRIMES, IF A MURDER IS
20 COMMITTED IN THE COURSE OF CERTAIN CRIMES LIKE MAYHEM OR
21 RAPE OR SOMETHING LIKE THAT, THEN IT QUALIFIES FOR THE DEATH
22 PENALTY BUT NOT EVERY MURDER IS DEATH QUALIFIED.

23 MS. CLEMENTS: I UNDERSTAND.

24 THE COURT: DO YOU UNDERSTAND?

25 MS. CLEMENTS: I UNDERSTAND.

26 THE COURT: AND YOU WILL BE GUIDED BY WHAT THE LAW
27 IS ON THE SUBJECT?

28 MS. CLEMENTS: YES.

1 THE COURT: AND THE LAW IN THIS CASE IS IF A MURDER
2 HAS BEEN COMMITTED IN THE FIRST DEGREE DURING THE COURSE
3 OF A ROBBERY, THAT QUALIFIES FOR EITHER LIFE IMPRISONMENT
4 OR DEATH.

5 MS. CLEMENTS: I UNDERSTAND.

6 THE COURT: DO YOU UNDERSTAND?

7 ALL RIGHT, NOW YOU MAY ASK. NOW SHE UNDERSTANDS
8 IT, YOU CAN ASK YOUR NEXT QUESTION.

9 MR. CHIER: DID YOU NOT UNDERSTAND MY QUESTION,
10 MRS. CLEMENTS, THAT I ASKED YOU?

11 THE COURT: WILL YOU REPEAT THE QUESTION?

12 MS. CLEMENTS: I THOUGHT I ANSWERED IT.

13 WOULD YOU ASK IT AGAIN AND I WILL TRY TO REPEAT,
14 TO ANSWER YOU BETTER.

15 MR. CHIER: YOU SAID THAT YOU THOUGHT THAT ALL MURDER
16 WAS VIOLENT.

17 MS. CLEMENTS: I FEEL THAT THE DEFINITION OF MURDER
18 IS A VIOLENT DEATH.

19 MR. CHIER: AND THAT IF THE LAW PROVIDES THAT THERE
20 MAY BE A DEATH PENALTY FOR FIRST DEGREE MURDER COMMITTED
21 IN THE COURSE OF A ROBBERY, THE DEATH PENALTY IS THE ONLY
22 APPROPRIATE PENALTY FOR SUCH AN ACT, CORRECT?

23 THE COURT: WAIT A MINUTE.

24 MS. CLEMENTS: I --

25 THE COURT: IT COULD BE LIFE IMPRISONMENT WITHOUT THE
26 POSSIBILITY OF PAROLE.

27 MR. CHIER: YOUR HONOR --

28 THE COURT: WHY DON'T YOU STATE THE LAW CORRECTLY?

1 MR. CHIER: I AM NOT STATING THE LAW THAT THE
2 COURT --

3 WILL YOU STOP LECTURING THE JURORS WHILE I AM
4 TRYING TO INTERROGATE THEM ABOUT THEIR ATTITUDES?

5 THE COURT: I WILL DEAL WITH YOU AFTERWARD. GO AHEAD.

6 MS. CLEMENTS: I AM SORRY. I AM SORRY.

7 THE COURT: IS HE CONFUSING YOU?

8 MS. CLEMENTS: YES.

9 I AM SORRY. I WAS TRYING TO ANSWER YOUR QUESTION.
10 WHAT IS IT YOU WISH ME TO SAY?

11 I DO FEEL THAT FIRST DEGREE MURDER THAT IS
12 PUNISHABLE BY THE DEATH PENALTY MAY BE PUNISHED BY THE DEATH
13 PENALTY, YES, I APPROVE OF THAT.

14 MR. CHIER: DO YOU FEEL THERE ARE ANY EXTENUATING
15 CIRCUMSTANCES?

16 MS. CLEMENTS: THE CASES OF WHICH I AM THINKING, THERE
17 WERE NO EXTENUATING CIRCUMSTANCES.

18 I AM SURE THERE ARE OCCASIONALLY AND MANY TIMES,
19 BUT I DON'T KNOW. I HAVEN'T BEEN ON MANY -- ON ANY MURDER
20 JURIES.

21 THE COURT: MRS. CLEMENTS, IN THIS PARTICULAR CASE
22 IF YOU ARE A JUROR, WE POINTED OUT THERE ARE TWO PHASES. FIRST,
23 THERE IS TO DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY
24 OR NOT GUILTY AND AT THE SAME TIME WHETHER OR NOT THERE WAS
25 SPECIAL CIRCUMSTANCES AND IF THAT IS DETERMINED BY THE JURY,
26 THEN THERE IS THE SECOND PHASE AFTER THAT WHERE THE SAME
27 JURY WILL BE CALLED UPON TO DETERMINE WHETHER OR NOT THE
28 PENALTY SHOULD BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY

1 OF PAROLE OR DEATH.

2 MS. CLEMENTS: UH-HUH.

3 THE COURT: AND IN THAT PARTICULAR TRIAL, WHICH IS
4 A SEPARATE TRIAL WITH THE SAME JURY, THERE WILL BE EVIDENCE
5 IN WHAT WE CALL MITIGATION, MITIGATING CIRCUMSTANCES --

6 MS. CLEMENTS: YES.

7 THE COURT: -- FACTORS WHICH ARE FAVORABLE TO THE
8 DEFENDANT OF ANY KIND, ALL RIGHT?

9 MS. CLEMENTS: YES.

10 THE COURT: AND THEN THERE WILL BE FACTORS IN
11 AGGRAVATION OF THE DEFENDANT, AGAINST HIM.

12 NOW YOU WILL LISTEN TO ALL OF THAT AND THEN YOU
13 WILL HAVE TO MAKE UP YOUR MIND WHETHER OR NOT IT SHOULD BE
14 EITHER OF THOSE TWO PENALTIES, LIFE IMPRISONMENT WITHOUT
15 THE POSSIBILITY OF PAROLE OR DEATH, AND WILL YOU BE WILLING
16 TO DO THAT?

17 MS. CLEMENTS: YES.

18 THE COURT: THEN YOU WILL MAKE UP YOUR MIND AFTER YOU
19 HAVE HEARD ALL OF THE EVIDENCE WHETHER IT SHALL BE DEATH
20 OR LIFE IMPRISONMENT; IS THAT CORRECT?

21 MS. CLEMENTS: I WOULD LIKE TO ASK ONE QUESTION. I
22 AM NOT THAT FAMILIAR WITH THE PENALTIES. DOES CALIFORNIA
23 HAVE A LAW OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
24 PAROLE?

25 THE COURT: THAT IS CORRECT, WITHOUT THE POSSIBILITY
26 OF PAROLE. IN A DEATH CASE, IT IS ONE OF THE TWO, IT IS
27 EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
28 OR DEATH.

1 MS. CLEMENTS: UH-HUH.
2 THE COURT: THAT IS THE LAW IN CALIFORNIA.
3 GO AHEAD.

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1 THE COURT: GO AHEAD.

2 MR. CHIER: AT THE TIME THAT YOU VOTED FOR THE DEATH
3 PENALTY, DID YOU KNOW THAT THE ALTERNATIVE TO THE DEATH PENALTY
4 WAS LIFE WITHOUT POSSIBILITY OF PAROLE?

5 MS. CLEMENTS: I AM SURE I DID. I WOULD STILL HAVE
6 VOTED FOR IT.

7 MR. CHIER: WHAT TYPE OF FACTS WOULD YOU CONSIDER WOULD
8 BE IN MITIGATION OF A FIRST DEGREE MURDER COMMITTED IN THE
9 COURSE OF A ROBBERY?

10 MS. CLEMENTS: I AM SORRY. I COULDN'T -- YOU MEAN THAT
11 I WOULD EXCUSE? I COULDN'T GIVE AN EXAMPLE. IT WOULD DEPEND
12 UPON THE PROVOCATION, I WOULD IMAGINE OR THE CIRCUMSTANCES.

13 MR. CHIER: CAN YOU THINK OF ANY SITUATION WHICH A
14 MURDER OCCURS IN THE COURSE OF A ROBBERY, WHERE THERE WOULD
15 BE EXTENUATING CIRCUMSTANCES MILITATING AGAINST THE DEATH
16 PENALTY?

17 MS. CLEMENTS: I SUPPOSE IF THERE WAS A ROBBERY WITHOUT
18 THE INTENT TO KILL, I WOULD GO FOR THE LIFE IMPRISONMENT.

19 MR. CHIER: ALL RIGHT. SUPPOSE THAT THERE WERE INTENT
20 TO KILL? CAN YOU THINK OF ANY CIRCUMSTANCES WHICH WOULD
21 MILITATE AGAINST THE DEATH PENALTY IN SUCH A CASE?

22 MS. CLEMENTS: I CAN'T AT THIS MINUTE. BUT I HAVE NOT
23 BEEN PRESENTED WITH ANY POSSIBILITIES.

24 MR. CHIER: AS YOU SIT THERE NOW, COULD YOU CONCEIVE
25 OF A SITUATION WHICH WOULD --

26 THE COURT: HOW COULD SHE POSSIBLY INVENT SITUATIONS
27 UNLESS THEY WERE PRESENTED TO HER? THEN SHE WOULD CONSIDER
28 THEM. THAT IS A SILLY QUESTION. I WILL SUSTAIN IT.

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1 MS. CLEMENTS: SORRY? THANK YOU.

2 MR. CHIER: IS IT YOUR IMPRESSION THAT THERE ARE SOME
3 CRIMES IN THE STATE OF CALIFORNIA, FOR WHICH THE DEATH
4 PENALTY IS MANDATORY?

5 MS. CLEMENTS: WELL, I THINK ON THE BOOKS, THERE ARE.
6 BUT I REALIZE THEY HAVE NOT BEEN APPLIED IN MANY, MANY YEARS.
7 SO I DON'T THINK THEY ARE MANDATORY.

8 MR. CHIER: IS IT YOUR IMPRESSION THAT A SENTENCE OF
9 LIFE WITHOUT POSSIBILITY OF PAROLE IS SOMETHING MORE THAN
10 THAT? THAT THERE IS ALWAYS SOME POSSIBILITY OF PAROLE?

11 MS. CLEMENTS: THAT IS MY IMPRESSION.

12 THE COURT: SUPPOSE I TELL YOU THAT THERE IS A SENTENCE --

13 MS. CLEMENTS: SORRY. I DIDN'T MEAN TO SAY THAT I
14 DIDN'T BELIEVE YOU.

15 THE COURT: SUPPOSE YOU ARE TOLD THAT THERE IS NO
16 POSSIBILITY OF PAROLE AND THAT THIS IS THE LAW AND IF ANYBODY
17 IS SENTENCED -- THE JURY MAKES A FINDING THAT IT SHOULD
18 BE -- SENTENCE SHALL BE LIFE WITHOUT POSSIBILITY OF PAROLE,
19 YOU WILL ACCEPT THAT AS BEING TRUE?

20 MS. CLEMENTS: YES, I WILL.

21 THE COURT: NO POSSIBILITY OF PAROLE?

22 MS. CLEMENTS: UH-HUH.

23 THE COURT: IS THAT CORRECT?

24 MS. CLEMENTS: UH-HUH.

25 MR. CHIER: I HAVE A MOTION TO MAKE OUT OF THE PRESENCE
26 OF THE JUROR.

27 THE COURT: HAVE YOU FINISHED WITH HER?

28 MR. CHIER: NO.

1 THE COURT: WELL, FINISH WITH HER FIRST.

2 MR. CHIER: I CANNOT, WITHOUT MAKING A MOTION.

3 THE COURT: I WANT YOU TO FINISH WITH HER. ASK HER ANY
4 OTHER QUESTIONS THAT YOU WANT TO ASK HER.

5 MR. CHIER: I AM NOT ABLE TO, YOUR HONOR.

6 THE COURT: WELL, ANY FURTHER QUESTIONS?

7 MR. CHIER: I AM NOT ABLE TO ASK ANY FURTHER QUESTIONS
8 AT THIS TIME.

9 THE COURT: FINE. ANY QUESTIONS, MR. WAPNER?

10 MR. WAPNER: YES. THANK YOU.

11 DID YOU UNDERSTAND THE JUDGE WHEN HE EXPLAINED
12 TO YOU ABOUT THE DIFFERENT PHASES OF THE TRIAL?

13 MS. CLEMENTS: I THINK SO.

14 MR. WAPNER: OKAY. NOW, SO THE FIRST -- WHAT WE HAVE
15 BEEN CALLING THE FIRST PHASE, IS THE GUILT PHASE WHERE YOU
16 DETERMINE WHETHER OR NOT THERE WAS A MURDER AND WHETHER OR
17 NOT THIS DEFENDANT --

18 THE COURT: I HAVE EXPLAINED ALL OF THAT, MR. WAPNER.

19 MR. WAPNER: ALL RIGHT. I WILL GO ON TO OTHER PORTIONS,
20 YOUR HONOR.

21 DO YOU UNDERSTAND THAT IF YOU GET TO THE PENALTY
22 PHASE IN THIS CASE, YOU ARE GOING TO BE CALLED UPON TO MAKE
23 AN INDIVIDUAL DECISION AS TO WHAT PENALTY SHOULD BE IMPOSED?

24 MS. CLEMENTS: AS A MEMBER OF THE JURY, YES.

25 MR. WAPNER: OKAY. WHEN I SAY "INDIVIDUAL" DECISION,
26 I AM INCLUDING AS A MEMBER OF THE JURY I AM NOT SAYING THAT
27 THEY ARE GOING TO DISMISS THE OTHER 11 AND YOU ARE GOING TO
28 HAVE TO DO IT YOURSELF. BUT THE JUDGE WILL INSTRUCT YOU THAT

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1 AS THE JURY DELIBERATES, EACH INDIVIDUAL JUROR HAS TO RENDER
2 HIS OR HER OWN OPINION.

3 MS. CLEMENTS: I KNOW THAT.

4 MR. WAPNER: OKAY. YOU HAVE SERVED ON JURIES BEFORE?

5 MS. CLEMENTS: YES.

6 MR. WAPNER: ALL RIGHT.

7 MS. CLEMENTS: MUNICIPAL.

8 MR. WAPNER: IN THAT REGARD, IN TERMS OF RENDERING YOUR
9 OWN, INDIVIDUAL OPINION, THE INSTRUCTIONS ARE GOING TO BE
10 PROBABLY VERY SIMILAR TO THE ONES THAT YOU GOT IN THE MUNICIPAL
11 COURT.

12 CAN YOU MAKE A DECISION IN THIS CASE ABOUT WHAT
13 PENALTY TO IMPOSE, BASED ON THE FACTS AND CIRCUMSTANCES OF
14 THIS CASE?

15 MS. CLEMENTS: DIDN'T YOU SAY BASED ON THE EVIDENCE AND
16 THE FACTS AND CIRCUMSTANCES?

17 MR. WAPNER: YES.

18 MS. CLEMENTS: WHY, OF COURSE.

19 MR. WAPNER: OKAY. WHAT I AM GETTING AT IS, INSTEAD
20 OF -- WELL, LET ME TRY TO REPHRASE IT.

21 I AM TRYING TO GIVE YOU THE OPPOSITE SIDE OF THE
22 COIN MR. CHIER WAS ASKING YOU ABOUT. DO YOU THINK THAT THE
23 DEATH PENALTY SHOULD BE IMPOSED IN EVERY CASE OF ROBBERY/MURDER,
24 REGARDLESS OF WHAT THE FACTS ARE?

25 MS. CLEMENTS: I HATE TO SAY YES, BECAUSE THERE COULD
26 ALWAYS BE EXTENUATING CIRCUMSTANCES.

27 I CANNOT MAKE YOU UP A CASE AND SAY YES, I WOULD
28 EXCUSE HIM IF THIS AND THIS AND THIS.

1 MR. WAPNER: LET ME MAYBE, GIVE YOU SOME EXAMPLES SO
2 THAT I CAN EXPLAIN TO YOU WHAT I AM TRYING TO GET AT.

3 WHAT I AM TRYING TO GET TO YOU, IS THAT THERE MIGHT
4 BE A POSSIBILITY THAT ONE CASE OF ROBBERY/MURDER MIGHT HAVE
5 SUBSTANTIALLY DIFFERENT FACTS THAN ANOTHER ONE.

6 SO FOR EXAMPLE, SOMEBODY -- LET'S JUST POSIT THIS
7 HYPOTHETICAL. SOMEBODY ON SKID ROW APPROACHES ANOTHER GUY
8 ON SKID ROW WITH A KNIFE AND SAYS, "GIVE ME THAT BOTTLE OF
9 WINE," AND THE GUY SAYS, "NO. I AM NOT GIVING YOU THAT BOTTLE."

10 HE THEN THREATENS HIM WITH THE KNIFE. THE GUY
11 WON'T GIVE HIM THE BOTTLE OF WINE. THE GUY STICKS HIM WITH
12 THE KNIFE AND TAKES THE BOTTLE OF WINE AND THE GUY DIES.

13 THE COURT: I PREVIOUSLY SUSTAINED AN OBJECTION TO THAT
14 QUESTION, HAD I NOT?

15 MR. WAPNER: WELL, I WAS TRYING TO CLARIFY IT TO --
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1 THE COURT: THERE IS NOTHING TO -- NOTHING THAT IS ANY
2 DIFFERENT THAN WHAT WE SAID BEFORE.

3 MR. WAPNER: ALL RIGHT. PERHAPS WE CAN USE --

4 THE COURT: MR. -- WHAT WAS HIS NAME AGAIN? THE
5 GENTLEMAN ASSOCIATED WITH YOU? MR. BARENS WAS HERE AT THE
6 TIME. I SUSTAINED THE OBJECTION TO THAT QUESTION.

7 MR. WAPNER: WELL, THE OBJECTION WAS BASED ON SOME
8 FEELING THAT I MIGHT BE SUGGESTING THAT THEY WERE INTOXICATED,
9 WHICH I ATTEMPTED TO WITHDRAW FROM THE HYPOTHETICAL.

10 THE COURT: I DON'T THINK THE HYPOTHETICAL IS RELEVANT.

11 MR. WAPNER: OKAY. MS. CLEMENTS, IF YOU LISTENED TO
12 THE FACTS IN THE CASE ON THE GUILT PHASE OF THE CASE AND YOU
13 MAKE A DETERMINATION THAT THE DEFENDANT IS GUILTY OF MURDER
14 AND YOU MAKE A DETERMINATION THAT THE SPECIAL CIRCUMSTANCES
15 ARE TRUE, WHICH IN THIS CASE MEANS THAT YOU WILL HAVE DECIDED
16 THE MURDER OCCURRED DURING THE COURSE OF A ROBBERY, AT THAT
17 POINT, YOU WILL GET TO THE PENALTY PHASE.

18 ARE YOU WILLING THEN, TO LISTEN TO THE EVIDENCE
19 THAT IS PRESENTED IN THE PENALTY PHASE AND WAIT UNTIL YOU HEAR
20 THAT EVIDENCE AND MAKE UP YOUR OWN MIND ABOUT WHAT PENALTY
21 YOU SHOULD IMPOSE?

22 MS. CLEMENTS: OF COURSE.

23 MR. WAPNER: OKAY.

24 THE COURT: I ALREADY ASKED THOSE TWO QUESTIONS.

25 MR. WAPNER: YOU DID. WHAT I WAS TRYING TO GET AT IS,
26 IF YOU MAKE A DETERMINATION THAT THERE WAS A MURDER IN THE
27 COURSE OF A ROBBERY IN THIS CASE, IS YOUR MIND THEN GOING TO
28 BE CLOSED TO THE POSSIBILITY THAT YOU COULD PICK SOME PENALTY

1 OTHER THAN DEATH? DO YOU SEE WHAT I AM GETTING AT, OR NOT?

2 THE COURT: I DON'T UNDERSTAND THE QUESTION EITHER.

3 MS. CLEMENTS: I FEEL VERY STUPID. I DON'T SEE HOW I
4 CAN ANSWER THAT WITHOUT HAVING HEARD THE EVIDENCE, THAT
5 PRESUMABLY WILL BE COMING IN.

6 MR. WAPNER: OKAY. YOU HAVE SAID BEFORE THAT THERE MAY
7 BE A CASE OF A ROBBERY/MURDER WHERE YOU WOULDN'T IMPOSE THE
8 DEATH PENALTY. IS THAT WHAT YOU SAID?

9 MS. CLEMENTS: I THINK ANY CIRCUMSTANCES CAN BE
10 EXTENUATING. BUT I WAS NOT APPLYING IT TO THIS. YOU ARE,
11 ARE YOU NOT?

12 MR. WAPNER: WHAT I AM TRYING TO SAY -- WHAT I AM TRYING
13 TO DO IS APPLY YOUR PREVIOUS STATEMENT TO THIS PARTICULAR CASE.

14 WHAT I AM TRYING TO GET AT IS, WHETHER OR NOT,
15 ONCE YOU FOUND THE DEFENDANT GUILTY OF MURDER AND THE SPECIAL
16 CIRCUMSTANCES ARE TRUE, WILL YOU HAVE CLOSED YOUR MIND AS TO
17 THE POSSIBLE PENALTY OR ARE YOU WILLING TO LISTEN TO THE FACTS
18 THAT MIGHT BE PRESENTED IN AGGRAVATION AND THE FACTS IN
19 MITIGATION AND THEN DECIDE WHETHER OR NOT THE DEFENDANT IN
20 THIS CASE, SHOULD GET LIFE WITHOUT POSSIBILITY OF PAROLE OR
21 SHOULD GET THE DEATH PENALTY?

22 MS. CLEMENTS: I DON'T THINK I OR ANY JUROR WOULD MAKE
23 A DECISION UNTIL THEY HAD HEARD ABSOLUTELY ALL THE EVIDENCE.

24 MR. WAPNER: OKAY. THANK YOU. NOTHING ELSE.

25 THE COURT: ALL RIGHT. ANY QUESTIONS?

26 MR. CHIER: I HAVE SOME QUESTIONS, YES.

27 THE COURT: GO AHEAD.

28 MR. CHIER: WHAT I AM SENSING FROM YOU, MISS CLEMENTS,

1 IS THAT YOU HAVE SUCH STRONG FEELINGS AGAINST THE FIRST DEGREE,
2 DELIBERATE MURDER, THAT IT WOULD WEIGH HEAVILY ON YOUR MIND
3 IN A PENALTY PHASE AND THAT IT WOULD BE DIFFICULT FOR YOU TO
4 CHOOSE A PENALTY OTHER THAN DEATH. ISN'T THAT WHAT YOU ARE
5 SAYING, MISS CLEMENTS?

6 MISS CLEMENTS: NO. I DON'T THINK I DID SAY THAT. I
7 SAID I BELIEVED IN THE DEATH PENALTY IF I FEEL THE CIRCUMSTANCES
8 MERIT IT.

9 MR. CHIER: RIGHT. BUT WITHOUT GOING INTO THE EVIDENCE
10 IN THIS CASE, AT THIS PARTICULAR JUNCTURE AND JUST TALKING
11 ABOUT THE ATTITUDES, VISCERAL ATTITUDES, IS YOUR ATTITUDE THAT
12 IT WOULD BE -- IS IT YOUR BELIEF IT WOULD BE VERY DIFFICULT
13 FOR THERE TO BE SHOWN TO YOU CIRCUMSTANCES WHICH WOULD MITIGATE
14 AGAINST THE DEATH PENALTY, IF YOU FOUND THE PERSON GUILTY OF
15 DELIBERATE, FIRST DEGREE MURDER IN THE COURSE OF A ROBBERY?

16 MS. CLEMENTS: I WOULDN'T SAY THAT I WOULD -- YOU ARE
17 IMPLYING THAT I WOULD APPLY THE DEATH SENTENCE IN EVERY CASE.
18 THAT IS NOT TRUE.

19 THE COURT: I ASKED THAT IN QUESTION NUMBER 4. DO YOU
20 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU
21 WOULD AUTOMATICALLY VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY
22 OF MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE,
23 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
24 PHASE OF THE TRIAL?

25 MS. CLEMENTS: NO.

26 THE COURT: ISN'T THAT TRUE?

27 MS. CLEMENTS: YES.

28 THE COURT: THAT WAS ALREADY ANSWERED.

1 MR. CHIER: I AM NOT TALKING ABOUT AUTOMATICALLY --

2 THE COURT: LET'S GO ON TO SOMETHING ELSE, PLEASE.

3 MR. CHIER: DO YOU FEEL THAT YOU WOULD BE MORE

4 DEATH-PRONE THAN LIFE IMPRISONMENT-PRONE?

5 MS. CLEMENTS: I AM SORRY. I COULDN'T ANSWER THAT.

6 I MEAN, IT WOULD DEPEND UPON WHAT WAS PRESENTED

7 IN THE CASE. THIS IS PURPORTEDLY GOING TO BE A THREE-MONTH

8 CASE. I COULDN'T GIVVE YOU AN ANSWER TO THAT NOW.

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1 MR. CHIER: WELL, IF THE COURT TOLD YOU ALL OF THE
2 THINGS TO BE CONSIDERED IN MITIGATION AND AGGRAVATION, WOULD
3 YOU CONSIDER THE AGE OF THE DEFENDANT AS A FACTOR IN MITIGATION?

4 THE COURT: SUPPOSE THE COURT TOLD YOU THAT YOU MAY
5 CONSIDER THAT, WOULD YOU CONSIDER THE AGE OF THE DEFENDANT
6 AND HIS BACKGROUND IF THE COURT TOLD YOU THAT YOU MAY CONSIDER
7 THAT IN MITIGATION?

8 MS. CLEMENTS: I DON'T THINK I WOULD. I AM SORRY.

9 THE COURT: YOU WOULDN'T FOLLOW THE LAW?

10 MS. CLEMENTS: IF THAT IS THE LAW --

11 THE COURT: IF I TOLD YOU THAT YOU MAY CONSIDER IT.

12 MS. CLEMENTS: IF YOU TOLD ME.

13 THE COURT: YES, THAT YOU MAY CONSIDER IT.

14 MS. CLEMENTS: I WOULD HONOR YOUR REQUEST.

15 THE COURT: YES, I AM SURE YOU WOULD.

16 MR. CHIER: IF THE COURT TOLD YOU YOU COULD BUT YOU
17 WOULDN'T HAVE TO CONSIDER THE AGE OF THE DEFENDANT, THAT
18 IT WAS STRICTLY UP TO YOU, WOULD YOU CONSIDER THE DEFENDANT'S
19 YOUTH AS A FACTOR IN MITIGATION?

20 MS. CLEMENTS: HOW OLD IS THE DEFENDANT?

21 MR. CHIER: 27.

22 MS. CLEMENTS: I WOULD BE GUIDED BY THE JUDGE'S
23 DIRECTIONS.

24 MR. CHIER: WELL, THE JUDGES DIRECTIONS WOULD ONLY --

25 THE COURT: I SAID YOU MAY CONSIDER THAT AND YOU WILL
26 ACCEPT THAT, WILL YOU?

27 MS. CLEMENTS: YES.

28 THE COURT: LET'S GET ON.

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1 MR. CHIER: THAT DOESN'T ANSWER THE QUESTION.

2 THE COURT: SHE ANSWERED THE QUESTION.

3 MS. CLEMENTS: I THINK THEN -- I THINK THE DEFENDANT
4 IS RESPONSIBLE FOR WHAT HE HAS DONE.

5 MR. WAPNER: OBJECTION. I THINK HE IS ASKING THE JUROR
6 TO PREJUDGE THE EVIDENCE IN THIS CASE AS TO WHAT SHE WOULD
7 OR WOULD NOT DO.

8 THE COURT: THAT IS WHY I SUSTAINED THE OBJECTION.
9 THAT IS ONE OF THE FACTORS SHE SHOULD CONSIDER, NOT WHETHER
10 SHE WOULD NOT CONSIDER IT.

11 MR. CHIER: THE INSTRUCTION IS SHE CAN CONSIDER IT,
12 NOT THAT SHE HAS TO.

13 THE COURT: THAT SHE CAN CONSIDER IT, THAT IS WHAT
14 I TOLD HER.

15 MR. CHIER: NOT THAT SHE HAS TO, YOUR HONOR.

16 WOULD YOU CONSIDER WHETHER OR NOT A DEFENDANT
17 HAD ANY CRIMINAL BACKGROUND AS A FACTOR IN --

18 THE COURT: IF I TOLD YOU THAT THAT WAS ONE OF THE
19 FACTORS IN MITIGATION THAT YOU MAY CONSIDER IF YOU WANT TO,
20 WOULD YOU CONSIDER THAT, WOULD YOU?

21 MS. CLEMENTS: YES.

22 MR. CHIER: DO YOU THINK IT WOULD MAKE A DIFFERENCE
23 TO YOU WHETHER HE WAS YOUNG OR OLD?

24 THE COURT: YOU ARE ASKING HER TO MAKE A DETERMINATION
25 AT THIS TIME. I AGREE WITH THE DISTRICT ATTORNEY. I WILL
26 SUSTAIN THE OBJECTION.

27 MR. CHIER: I HAVE A CHALLENGE, YOUR HONOR.

28 THE COURT: WHAT?

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1 MR. CHIER: I HAVE A CHALLENGE.

2 THE COURT: ALL RIGHT. YOU HAVE ANY CHALLENGE?

3 MR. WAPNER: I WOULD PASS THIS JUROR FOR CAUSE.

4 I GUESS WE CAN HEAR THIS OUT OF HER PRESENCE.

5 THE COURT: I WILL MAKE A DETERMINATION NOW.

6 MR. WAPNER: WELL, YOUR HONOR --

7 THE COURT: WOULD YOU LET ME MAKE MY DETERMINATIONS
8 WITHOUT YOUR INPUT IN IT? I DON'T NEED IT NOW.

9 IF THERE IS ANYTHING TO PUT ON THE RECORD, WE
10 WILL HAVE IT ON THE RECORD AFTER SHE LEAVES.

11 MR. CHIER: THANK YOU.

12 MS. CLEMENTS: SHALL I LEAVE?

13 THE COURT: NOT YET.

14 MS. CLEMENTS: ALL RIGHT.

15 THE COURT: YOU UNDERSTAND THAT WE ARE GOING THROUGH
16 THIS RITUAL WITH YOU AND WITH ALL OF THE OTHER PROSPECTIVE
17 JURORS.

18 MS. CLEMENTS: I DO.

19 THE COURT: YOU UNDERSTAND IT WILL TAKE SOME TIME?

20 MS. CLEMENTS: I UNDERSTAND.

21 THE COURT: YOU NOTICE HOW LONG IT HAS TAKEN WITH YOU.

22 IT IS ANTICIPATED WE WILL BE FINISHED WITH THIS
23 PROCESS OF INTERROGATING THE PROSPECTIVE JURORS BY ABOUT
24 DECEMBER 2ND, SO WHAT I WILL ASK YOU TO DO IS TO COME BACK
25 TO THE JURY ASSEMBLY ROOM ON DECEMBER 2ND. IF IT IS GOING
26 TO BE LATER THAN THAT, AND WE DON'T FINISH AS WE ANTICIPATED
27 ON DECEMBER 2ND, WE HAVE YOUR TELEPHONE NUMBER AND WE WILL
28 CALL YOU AND TELL YOU WHEN TO COME BACK, ALL RIGHT?

3-04
1 MS. CLEMENTS: UH-HUH.

2 THE COURT: IN THE MEANTIME, YOU ARE NOT TO TALK TO
3 ANYBODY ABOUT THE CASE OR YOU ARE NOT TO READ ANYTHING ABOUT
4 IT IF THERE IS ANYTHING TO BE READ OR TO LISTEN TO ANYTHING
5 ON THE RADIO OR SEE ANYTHING ON TELEVISION.

6 AND DO NOT DISCUSS IT WITH ANYBODY, ALL RIGHT?

7 MS. CLEMENTS: VERY WELL.

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

9 MR. WAPNER: YOUR HONOR, BEFORE MRS. CLEMENTS LEAVES
10 THE BUILDING FOR THE DAY, COULD WE HAVE THE BAILIFF ASK HER
11 TO WAIT OUT IN THE HALLWAY?

12 THE BAILIFF: YES.

13 THE COURT: ALL RIGHT, YOU DO THAT.

14 (PROSPECTIVE JUROR CLEMENTS EXITED THE
15 COURTROOM.)

16 THE COURT: ALL RIGHT, I WILL HEAR FROM YOU, MR. CHIER.

17 FIRST, AND BY THE WAY, LET ME ADMONISH YOU.
18 I DON'T WANT YOU ASKING QUESTIONS OF ANY OF THESE PROSPECTIVE
19 JURORS AS TO WHETHER OR NOT THEY THINK I AM PREJUDICED AGAINST
20 YOU; DO YOU UNDERSTAND THAT?

21 MR. CHIER: I CAN UNDERSTAND THAT.

22 THE COURT: IF YOU HAVE ANYTHING TO STATE ON THE RECORD,
23 YOU STATE IT ON THE RECORD AND NOT IN FRONT OF THE JURORS.
24 DON'T ASK QUESTIONS OF THAT KIND. IT IS HIGHLY IMPROPER
25 AND PREJUDICIAL AND DON'T YOU EVER DO IT AGAIN. NOW I AM
26 WARNING YOU: DON'T YOU EVER DO IT AGAIN. IT IS IMPROPER.

27 MR. CHIER: YOUR HONOR, I THINK YOUR CONDUCT TOWARD
28 ME --

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THE COURT: IT IS CONTEMNATIOUS AND IT IS CONTEMPTABLE
AND I DON'T WANT YOU TO DO IT.

MR. CHIER: I THINK YOUR CONDUCT TOWARDS ME HAS BEEN --

THE COURT: ANYTHING I HAVE DONE WITH RESPECT TO YOU
IS SOMETHING YOU HAVE RICHLY DESERVED.

I DON'T WANT YOU TO DO ANYTHING LIKE THE THINGS
YOU DID AGAIN.

MR. CHIER: I AM DEFENDING AN INNOCENT MAN HERE.

THE COURT: I DON'T WANT TO HEAR ANY SPEECHES FROM
YOU IN THAT CONNECTION.

I AM JUST MAKING A WARNING TO YOU TO JUST ASK
PROPER QUESTIONS. IF I OBJECT TO IT AND I DON'T THINK YOU
SHOULD ASK A QUESTION, LET IT REST AT THAT. DON'T ASK A
JUROR WHETHER OR NOT HE OR SHE THINKS I AM PREJUDICED AGAINST
YOU.

A-1
1 MR. CHIER: I WANT TO SAY THAT IN FRONT OF THE ONE
2 JUROR, YOU TREATED ME WITH ABUSE. YOU THREATENED TO HAVE
3 ME ARRESTED. YOU TOLD ME TO SHUT UP.

4 THE COURT: LISTEN, I HAVE TOLD YOU SOMETHING OUTSIDE
5 OF THE PRESENCE OF THE JUROR. NOW GO AHEAD. WHAT IS IT
6 YOU WANT TO SAY?

7 MR. CHIER: I WOULD LIKE TO MAKE A RECORD WITHOUT BEING
8 INTERRUPTED, YOUR HONOR.

9 THE COURT: MAKE A RECORD, GO AHEAD.

10 MR. CHIER: I WOULD LIKE TO SAY THAT EVERY SINGLE JUROR
11 THAT I HAVE VOIR DIRED ON THE ISSUE OF THE DEATH PENALTY,
12 YOUR HONOR HAS INTERRUPTED IN THE MIDDLE OF MY QUESTIONS.
13 YOU HAVE LED THE JURORS. YOU HAVE INSTRUCTED THE JURORS.

14 THE COURT: THAT IS A MATTER OF RECORD. YOU DON'T
15 HAVE TO MAKE IT FOR THE RECORD, IT IS ALREADY IN THERE.

16 MR. CHIER: I AM REQUESTING THAT YOUR HONOR NOT DO
17 THAT ANY MORE.

18 THE COURT: ALL RIGHT, YOU ARE REQUESTING IT, I WILL
19 HONOR YOUR REQUEST IF IT IS JUSTIFIED.

20 MR. CHIER: THIS WOMAN HERE IS CLEARLY --

21 THE COURT: LET'S NOT ARGUE ANY FURTHER ABOUT IT.

22 WHAT HAVE YOU GOT WITH RESPECT TO A CHALLENGE
23 FOR CAUSE AS TO THIS WOMAN?

24 MR. CHIER: THIS WOMAN IS CLEARLY BIASED FOR CAUSE.
25 SHE IS CHALLENGEABLE FOR CAUSE. EVERY TIME THAT I ATTEMPTED
26 TO ESTABLISH HER BIAS AND HER EXCLUDABILITY, YOUR HONOR
27 LECTURED HER ON THE LAW AND SOUGHT FROM HER A COMMITMENT
28 TO FOLLOW THE LAW, WHICH UNDER THE CIRCUMSTANCES NO JUROR

1 IN THEIR RIGHT MIND WOULD EVER TELL YOUR HONOR THAT THEY
2 WOULDN'T FOLLOW THE LAW AND IT WAS IMPOSSIBLE FOR ME TO FOLLOW
3 UP OBVIOUS LEADS THAT WERE POINTING TOWARD HER BIAS IN FAVOR
4 OF THE DEATH PRONENESS, YOUR HONOR.

5 THE COURT: ALL RIGHT, YOU HAVE MADE YOUR RECORD AGAIN.

6 ALL RIGHT, YOUR CHALLENGE IS REJECTED. I FIND
7 THAT THE PROSPECTIVE JUROR IS QUALIFIED AND COMPETENT TO
8 ACT AS A TRIAL JUROR IN THIS CASE.

9 MR. CHIER: THIS IS THE TIME FOR THE COUNSEL TO VOIR
10 DIRE THE JURORS, NOT FOR THE COURT TO INSTRUCT THE JURY OR
11 TO EDUCATE THEM CONCERNING THE LAW.

12 THE COURT: I AM POINTING OUT TO YOU AGAIN THAT THE
13 SUPREME COURT HOLDS THAT THERE IS NOT UNLIMITED POWER TO
14 ASK QUESTIONS.

15 IT ONLY HAS TO DO WITH THEIR ATTITUDE TOWARDS
16 THE DEATH PENALTY.

17 MR. CHIER: AND THAT IS WHAT I AM TRYING TO FIND OUT.

18 THE COURT: YOU HAVEN'T.

19 YOU HAVE TO WAIT UNTIL THERE IS GENERAL VOIR
20 DIRE IF SHE IS ACCEPTED AND YOU CAN ASK QUESTIONS OF THAT
21 KIND THEN, YOU DO THAT AT A LATER TIME.

22 YOU DON'T HAVE UNLIMITED POWER.

23 MR. CHIER: MY QUESTIONS WENT ONLY --

24 THE COURT: THIS IS NOT SOMETHING THAT IS UNLIMITED
25 AND YOU CAN GO INTO ANY KIND OF QUESTIONS YOU WANT.

26 MR. CHIER: MY QUESTIONS ARE ONLY LIMITED TO THEIR
27 DEATH PRONENESS.

28 THE COURT: THEY ARE NOT. THAT IS WHY I HAVE INTERRUPTED

1 YOU.

2 IT IS A VERY SERIOUS THING, I DON'T KNOW WHETHER
3 YOU ARE DELIBERATELY TRYING TO PROVOKE ME AND GOAD ME INTO
4 SOME KIND OF ERROR IN THIS CASE BUT I AM NOT GOING TO STAND
5 FOR IT, I AM TELLING YOU THAT RIGHT NOW.

6 YOU ASK THE QUESTIONS THE WAY YOU ARE SUPPOSED
7 TO. I DON'T DO IT WITH YOUR COLLEAGUE.

8 MR. CHIER: NO, YOU DON'T, YOUR HONOR.

9 THE COURT: HE KNOWS HOW TO ASK A QUESTION.

10 MR. CHIER: I FEEL THE WAY YOU HAVE TREATED ME IN THIS
11 CASE --

12 THE COURT: THEN YOU CAN WITHDRAW FROM IT IF YOU DON'T
13 WANT TO STAY IN THE CASE.

14 MR. CHIER: ON THE CONTRARY, YOUR HONOR, I THINK YOU
15 ARE SO BIASED TO ME THAT IT IS YOU THAT SHOULD WITHDRAW FROM
16 THE CASE.

17 THE COURT: I AM NOT BIASED TOWARDS YOU OR ANYTHING.

18 I AM JUST BIASED TO THE MOTIONS THAT YOU MAKE,
19 WHICH ARE COMPLETELY UNFOUNDED AND EVERYTHING ELSE.

20 MR. CHIER: I THINK IT IS YOU THAT SHOULD WITHDRAW
21 FROM THE CASE.

22 YOU TOLD ME TO SHUT UP AND I HAD NO STANDING.

23 THE COURT: I WANT YOU TO SHUT UP BECAUSE THIS IS
24 EXACTLY WHAT YOU ARE DOING, YOU ARE DELIBERATELY TRYING TO
25 GOAD THE COURT INTO MAKING SOME KIND OF ERROR AND I WANT
26 YOU TO STOP IT.

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1 WHAT IS IT YOU HAVE TO SAY?

2 MR. WAPNER: ONLY AS TO THE CHALLENGE FOR CAUSE, I DON'T
3 BELIEVE THIS JUROR IS CHALLENGABLE FOR CAUSE BECAUSE I DON'T
4 BELIEVE THAT SHE STATED AN UNMISTAKABLE BELIEF THAT SHE WOULD
5 AUTOMATICALLY VOTE EITHER FOR DEATH OR FOR LIFE IMPRISONMENT
6 AND A MERE BIAS OR TENDENCY ONE WAY OR THE OTHER IS NOT
7 ENOUGH.

8 YOU ARE ALWAYS GOING TO GET JURORS WHO HAVE SOME
9 IDEAS ONE WAY OR THE OTHER BUT THIS JUROR CLEARLY DEMONSTRATED
10 SHE IS WILLING TO LISTEN TO ALL OF THE FACTS IN THE CASE AND
11 MAKE A DECISION BASED ON THE FACTS IN THIS CASE.

12 THE COURT: ALL RIGHT, COUNSEL HEARD THAT AND I THINK
13 YOU ARE ABSOLUTELY CORRECT ABOUT THAT. I DON'T THINK THERE
14 IS ANY BASIS FOR CHALLENGE FOR CAUSE TO THIS JUROR OR ANY
15 OTHER BASIS FOR CHALLENGE FOR CAUSE TO BE MADE.

16 THE BAILIFF: ARE WE SUPPOSED TO GET THROUGH TODAY?
17 WHAT DO YOU WANT ME TO DO?

18 THE COURT: LET'S TAKE ONE MORE AND I HOPE IT IS SHORT.

19 THE BAILIFF: SHOULD I TELL THE OTHERS TO COME BACK
20 TOMORROW?

21 THE COURT: YES, TELL THEM TO COME BACK TOMORROW AFTER-
22 NOON -- WAIT A MINUTE. WE HAVE A MOTION TOMORROW.

23 THE BAILIFF: WE ONLY HAVE SIX JURORS COMING BACK
24 TOMORROW AFTERNOON. WE DON'T HAVE ANY COMING IN THE MORNING.
25 DO YOU WANT ME TO TELL THEM TO COME BACK TOMORROW AFTERNOON?

26 MR. WAPNER: YES, YES.

27 THE COURT: YES, TOMORROW AFTERNOON. TELL THEM TO BE
28 HERE AT 1:45.

1 WE WILL JUST TAKE ONE MORE.

2 THE BAILLIFF: 1:45?

3 THE COURT: YES, PLEASE.

4 THE BAILLIFF: JUDGE, AS FAR AS MISS CLEMENTS IS CONCERNED,
5 DO YOU WANT HER TO BE BACK DECEMBER 2ND AT WHAT TIME?

6 THE COURT: DECEMBER 2ND AT 10:30 IN THE MORNING IN
7 THE JURY ASSEMBLY ROOM ON DECEMBER 2ND, UNLESS SHE IS CALLED
8 OTHERWISE.
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1 (PROSPECTIVE JUROR CLEWS ENTERS THE
2 COURTROOM.)

3 THE CLERK: STATE YOUR NAME FOR THE RECORD. HAVE A SEAT,
4 PLEASE.

5 MR. CLEWS: RONALD CLEWS.

6 THE COURT: MR. CLEWS, I AM GOING TO ASK YOU A SERIES
7 OF QUESTIONS AND THE ANSWERS SHOULD BE YES OR NO. IF IT IS
8 UNCLEAR TO YOU, ASK ME TO REPEAT IT TO YOU AND I WILL BE
9 VERY HAPPY TO DO SO.

10 MR. CLEWS: YES, SIR. OKAY.

11 THE COURT: THE FIRST QUESTION I AM GOING TO ASK YOU
12 IS AS FOLLOWS: DO YOU HAVE ANY OPINION REGARDING THE DEATH
13 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
14 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

15 MR. CLEWS: NO.

16 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH
17 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER,
18 EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT GUILTY
19 OF MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

20 MR. CLEWS: I AM NOT SURE I UNDERSTAND THE QUESTION.

21 THE COURT: ALL RIGHT.

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

26 MR. CLEWS: COULD YOU DO IT AGAIN, PLEASE?

27 THE COURT: I WILL DO IT AGAIN. NOW, DO YOU HAVE ANY
28 OPINION REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO

1 VOTE FOR FIRST DEGREE MURDER, EVEN IF THE PEOPLE DO NOT PROVE
2 FIRST DEGREE MURDER?

3 MR. CLEWS: NO.

4 THE COURT: NOW, BEFORE I ASK YOU THE THIRD QUESTION,
5 I THINK THAT YOU HAVE HEARD WHEN I VOIR DIRED THE ENTIRE
6 PANEL, I TOLD THEM ABOUT THE NATURE OF THE CASE?

7 MR. CLEWS: YES.

8 THE COURT: I TOLD THEM THAT THIS IS A MURDER CASE WHERE
9 THE DEATH PENALTY HAS BEEN ASKED BY THE PEOPLE AND THAT IF
10 THE JURY FINDS THE DEFENDANT GUILTY OF MURDER IN THE FIRST
11 DEGREE, THEN WE ARE TO MAKE A SPECIAL FINDING, ANOTHER FINDING
12 AS TO WHETHER OR NOT THAT MURDER WAS COMMITTED DURING THE
13 COURSE OF A ROBBERY.

14 NOW, IF THE MURDER IS COMMITTED DURING THE COURSE
15 OF A ROBBERY WITH SPECIAL CIRCUMSTANCES, THEY HAVE GOT TO MAKE
16 A SEPARATE FINDING AS TO WHETHER OR NOT IT WAS COMMITTED --
17 IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE, WHETHER
18 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. DO YOU
19 UNDERSTAND THAT?

20 MR. CLEWS: YES.

21 THE COURT: ALL RIGHT. AND SO THE JURY, IF THEY FIND
22 HIM GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY ARE TO
23 DETERMINE WHETHER IT IS TRUE OR FALSE THAT IT WAS COMMITTED
24 AS A SPECIAL CIRCUMSTANCE, DURING THE COURSE OF A ROBBERY.
25 ALL RIGHT. SO, THE THIRD QUESTION IS: DO YOU HAVE ANY OPINION
26 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
27 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
28 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

1 MR. CLEWS: NO.

2 THE COURT: OKAY. NOW, THE NEXT QUESTION IS: DO YOU
3 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU
4 WOULD AUTOMATICALLY VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY
5 OF MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE,
6 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
7 PHASE OF THE TRIAL?

8 MR. CLEWS: NO.

9 THE COURT: DO YOU UNDERSTAND THAT IF YOU FIND THE
10 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND YOU MAKE
11 A FINDING THAT IT WAS DURING THE COURSE OF A ROBBERY, THEN
12 WE HAVE A SECOND PHASE OF THE TRIAL WITH THE SAME JURY ON OTHER
13 EVIDENCE THAT MAY BE PRESENTED TO YOU? YOU ARE TO DETERMINE
14 AFTER ALL OF THE EVIDENCE IS PRESENTED, WHETHER OR NOT IT IS
15 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND
16 THAT?

17 MR. CLEWS: YES, SIR.

18 THE COURT: THAT IS THE PENALTY PHASE OF THE CASE. NOW,
19 THIS QUESTION HAS TO DO WITH THE PENALTY PHASE.

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

25 MR. CLEWS: NO.

26 THE COURT: AND FIFTH, DO YOU HAVE SUCH AN OPINION CONCERNING
27 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
28 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT

1 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL
2 CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
3 AT THE PENALTY PHASE OF THE TRIAL?

4 MR. CLEWS: NO.

5 THE COURT: DO YOU UNDERSTAND THAT THE PENALTY PHASE
6 OF THIS TRIAL IS A SEPARATE TRIAL? THERE WILL BE OTHER FACTS
7 WHICH WILL BE INTRODUCED AND THOSE FACTS ARE DESIGNED TO SHOW
8 EITHER EXTENUATING CIRCUMSTANCES IN FAVOR OF THE DEFENDANT
9 OR MITIGATING CIRCUMSTANCES OR CIRCUMSTANCES AGGRAVATING THE
10 NATURE OF THE OFFENSE AND SO FORTH, BACKGROUND AND EVERYTHING
11 ELSE. DO YOU UNDERSTAND THAT?

12 MR. CLEWS: YES, SIR.
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1 THE COURT: ALL RIGHT. NOW, DO YOU HAVE SUCH AN OPINION
2 CONCERNING THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY
3 VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
4 AFTER A VERDICT OF MURDER IN THE FIRST DEGREE WITH SPECIAL
5 CIRCUMSTANCES, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
6 IN THE PENALTY PHASE OF THE TRIAL?

7 MR. CLEWS: NO.

8 THE COURT: YOU WOULD LISTEN TO THE PENALTY PHASE
9 EVIDENCE AND THEN MAKE UP YOUR OWN MIND?

10 MR. CLEWS: YES, SIR.

11 THE COURT: ALL RIGHT. NOW, YOU UNDERSTAND THAT OF
12 COURSE, THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT OCCUR
13 IN THIS CASE AND THAT THE QUESTIONS HAVE BEEN ASKED ONLY IN
14 THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL? DO YOU
15 UNDERSTAND THAT?

16 MR. CLEWS: I UNDERSTAND THAT, YES, SIR.

17 THE COURT: ALL RIGHT.

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1 MR. CHIER: MR. CLEWS, COULD I ASK YOU SIR -- MY NAME
2 IS CHIER. I REPRESENT JOE HUNT, HERE. I WOULD LIKE TO KNOW,
3 SIR, IF YOU HAVE HEARD OR SEEN ANYTHING CONCERNING THIS CASE
4 PRIOR TO READING THE TIMES ARTICLE? THE SUNDAY TIMES ARTICLE?

5 MR. CLEWS: PARDON ME?

6 MR. CHIER: IN THE LOS ANGELES SUNDAY TIMES?

7 MR. CLEWS: I DON'T REMEMBER IF IT WAS THE SUNDAY TIMES.

8 MR. CHIER: IT WAS ON THE FRONT PAGE OF THE METRO
9 SECTION?

10 MR. CLEWS: I DON'T REMEMBER THAT. I JUST REMEMBER
11 SEEING IT IN THE PAPER. I DON'T REMEMBER WHICH DAY IT WAS.

12 MR. CHIER: DO YOU REMEMBER READING THE ENTIRE ARTICLE?

13 MR. CLEWS: PRETTY MUCH, I THINK I DID. YEAH.

14 MR. CHIER: AS A RESULT OF HAVING READ THAT ARTICLE,
15 DID YOU FORM ANY OPINION AS TO THE PROBABLE GUILT OR INNOCENCE
16 OF THE DEFENDANT?

17 MR. CLEWS: NO, SIR.

18 MR. CHIER: HAVE YOU SEEN TIME MAGAZINE?

19 MR. CLEWS: NO.

20 MR. CHIER: DO YOU SUBSCRIBE TO TIME MAGAZINE?

21 MR. CLEWS: NO.

22 MR. CHIER: DO YOU SUBSCRIBE TO ANY MAGAZINES?

23 MR. CLEWS: ATLANTIC.

24 MR. CHIER: ALL RIGHT. DID YOU READ THE ENTIRE ARTICLE
25 IN THE L.A. TIMES?

26 MR. CLEWS: I THINK I DID, YEAH.

27 MR. CHIER: DID YOU HEAR THE ARTICLE BEING DISCUSSED
28 AMONG OTHER JURORS IN THE ASSEMBLY ROOM?

4B-2
1 MR. CLEWS: NO.

2 MR. CHIER: DID YOU FEEL AS A RESULT OF THE ARTICLE
3 IN THE LOS ANGELES TIMES, THE DEFENDANT WAS PROBABLY NOT
4 GUILTY?

5 THE COURT: HE SAID HE DIDN'T FORM ANY OPINION AFTER
6 READING THE ARTICLE. THAT MEANS NOT GUILTY OR GUILTY. IS
7 THAT TRUE?

8 MR. CLEWS: I AGREE WITH THAT, YES.

9 MR. CHIER: YOU FORMED NO OPINION WHATSOEVER?

10 MR. CLEWS: RIGHT.

11 MR. CHIER: LET ME PASS THAT FOR JUST A MOMENT. AND
12 I WILL ASK YOU WHETHER YOU ARE A PERSON IN FAVOR OF THE DEATH
13 PENALTY, SIR.

14 MR. CLEWS: WHEN APPROPRIATE, YES.

15 MR. CHIER: ALL RIGHT. AND WHEN IS IT APPROPRIATE --
16 AS FAR AS THE QUESTIONS I AM ASKING NOW, THEY ARE OF AN
17 ATTITUDINAL TYPE.

18 MR. CLEWS: RIGHT.

19 MR. CHIER: NOT CONCERNING YOUR KNOWLEDGE OF THE LAW.
20 I AM SIMPLY SEEKING OUT YOUR FEELINGS, YOUR VISCERAL,
21 ATTITUDINAL FEELINGS TOWARD THE DEATH PENALTY AS THEY MIGHT
22 BEAR UPON YOUR QUALIFICATIONS AS A JUROR IN THIS CASE.

23 MR. CLEWS: I UNDERSTAND.

24 MR. CHIER: DO YOU HAVE SOME GENERAL, PRECONCEIVED
25 NOTION ABOUT WHEN THE DEATH PENALTY IS APPROPRIATE GENERALLY
26 SPEAKING?

27 MR. CLEWS: YES.

28 MR. CHIER: COULD YOU ARTICULATE IT FOR US, PLEASE,

24B-3
1 TO THE BEST OF YOUR ABILITY? I UNDERSTAND THAT IT IS HARD.

2 MR. CLEWS: WELL, WHEN SOMEBODY TAKES ANOTHER PERSON'S
3 LIFE.

4 MR. CHIER: IF I CAN ASSIST, IN CASES OF FIRST DEGREE,
5 PREMEDITATED, DELIBERATE MURDER, WOULD YOU SAY THAT THE DEATH
6 PENALTY WAS PROBABLY APPROPRIATE?

7 MR. CLEWS: YES.

8 MR. CHIER: DO YOU BELIEVE THAT IN SUCH CASES, WHERE
9 A PERSON COMMITS A DELIBERATE --

10 THE COURT: I THINK IT IS IMPORTANT THAT THE PROSPECTIVE
11 JUROR KNOWS THE CALIFORNIA LEGISLATURE CAN PRESCRIBE THOSE
12 CASES IN WHICH THE DEATH PENALTY WILL BE IMPOSED.

13 AND UNLESS A MURDER FALLS WITHIN THOSE PRESCRIBED
14 STANDARDS, IT IS NOT A DEATH PENALTY CASE. YOU UNDERSTAND
15 THAT?

16 MR. CLEWS: YES, SIR.

17 THE COURT: NOW, THE LEGISLATURE HAS PRESCRIBED THAT
18 WHERE THERE IS A MURDER, DELIBERATE OR NOT, THAT DOESN'T
19 AUTOMATICALLY QUALIFY IT FOR THE DEATH PENALTY. IT HAS GOT
20 TO BE COMMITTED IN CERTAIN TYPES OF CRIMES, AMONG WHICH IS
21 A MURDER COMMITTED IN THE COURSE OF A ROBBERY OR MAYHEM OR
22 RAPE OR TORTURE OR THOSE KINDS OF CRIMES.

23 YOU WILL FOLLOW THE LAW THAT THE COURT GIVES
24 TO YOU?

25 MR. CLEWS: YES, SIR.

26 THE COURT: AND THAT DOESN'T NECESSARILY MEAN THAT
27 EVERY SINGLE MURDER IS A DEATH PENALTY?

28 MR. CLEWS: I UNDERSTAND.

4B-4
1 THE COURT: ALL RIGHT. YOU WILL FOLLOW THE LAW, WON'T
2 YOU?

3 MR. CLEWS: YES, SIR.

4 THE COURT: ALL RIGHT.

5 MR. CHIER: WOULD IT BE DIFFICULT FOR YOU, MR. CLEWS,
6 TO FIND MITIGATION IN A CASE WHERE YOU HAD PREVIOUSLY FOUND
7 THAT A MURDER HAD BEEN COMMITTED IN THE FIRST DEGREE IN THE
8 COURSE OF A ROBBERY?

9 MR. CLEWS: I THINK IT IS A SERIOUS BUSINESS AND WOULD
10 HAVE TO CONSIDER EVERYTHING.

11 MR. CHIER: WELL, WHAT I AM SAYING IS, DO YOU HAVE
12 ANY KIND OF A BIAS FOR -- AT GROUND ZERO, ARE YOU MORE BIASED
13 TOWARD THE DEATH PENALTY THAN SAY, LIFE IMPRISONMENT IN A
14 CASE OF A MURDER, A FIRST DEGREE MURDER?

15 MR. CLEWS: I WOULD HAVE TO -- IT WOULD BE A QUESTION
16 OF THE CASE ITSELF, I THINK.

17 I CAN'T SAY AHEAD OF TIME THAT I AM LEANING ONE
18 WAY OR ANOTHER.

19 MR. CHIER: COULD YOU, IF YOU THOUGHT THAT THE EVIDENCE
20 WARRANTED IT, RETURN A VERDICT OF LIFE WITHOUT POSSIBILITY
21 OF PAROLE, IF YOU FOUND THAT THERE WERE EXTENUATING
22 CIRCUMSTANCES OR MITIGATION?

23 MR. CLEWS: I BELIEVE IN MITIGATING CIRCUMSTANCES.

24 MR. CHIER: AND WHAT IS IT THAT YOU WOULD CONSIDER
25 A TYPE OF MITIGATION, WITHOUT REFERENCE TO WHAT IS CONSIDERED
26 LEGAL MITIGATION? BUT WHAT TYPES OF SITUATIONS WOULD YOU
27 CONSIDER?

28 THE COURT: WELL, THEY ARE INFINITE. HE CAN'T TELL

4B-5
1 YOU ALL OF THOSE THINGS THAT YOU ARE ASKING HIM FOR.

2 MR. CHIER: I AM ASKING HIM FOR ANY --

3 THE COURT: FORGET THAT, WILL YOU?

4 ALL OF THOSE WHICH THE COURT PERMITS YOU TO
5 CONSIDER, YOU WILL CONSIDER, ISN'T THAT TRUE?

6 MR. CLEWS: YES, SIR.

7 THE COURT: ALL RIGHT. AND ALL OF THE AGGRAVATING
8 CIRCUMSTANCES, YOU WILL ALSO CONSIDER, WOULD YOU NOT?

9 MR. CLEWS: YES, SIR.

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1 MR. CHIER: WOULD YOU CONSIDER AGE AS A MITIGATING
2 CIRCUMSTANCE?

3 THE COURT: IF THE COURT TELLS YOU THAT THAT MAY BE
4 CONSIDERED, WOULD YOU CONSIDER IT?

5 MR. CLEWS: YES, SIR.

6 MR. CHIER: DO YOU THINK IT IS A MITIGATING CIRCUMSTANCE?

7 MR. WAPNER: OBJECTION. HE IS ASKING HIM TO PREJUDGE
8 THE EVIDENCE.

9 MR. CLEWS: I WOULD HAVE NO IDEA.

10 THE COURT: I WILL SUSTAIN THE OBJECTION.

11 MR. CHIER: DO YOU THINK LACK OF PRIOR CRIMINAL RECORD
12 IS A FACTOR IN MITIGATION?

13 THE COURT: SUPPOSE THE COURT INSTRUCTS YOU THAT THAT
14 IS A MITIGATING CIRCUMSTANCE, WOULD YOU ACCEPT THAT?

15 MR. CLEWS: YES, SIR.

16 THE COURT: AND CONSIDER IT?

17 MR. CLEWS: YES, SIR.

18 THE COURT: ALL RIGHT.

19 MR. CHIER: IF THE COURT INSTRUCTED YOU, YOU COULD
20 CONSIDER IT BUT YOU DIDN'T HAVE TO, WHAT IS YOUR PRESENT
21 ATTITUDE TOWARD WHETHER OR NOT AGE IS A --

22 THE COURT: IF I AM TELLING HIM THAT HE CAN CONSIDER
23 IT, WHAT DO YOU MEAN HE DOESN'T HAVE TO?

24 THAT IS A MATTER THAT HE MAY CONSIDER.

25 MR. CHIER: HE HAS DISCRETION TO CONSIDER IT AND I
26 WANT TO KNOW --

27 THE COURT: THAT IS WHAT I SAID, YOU DON'T HAVE TO
28 GO ANY FURTHER.

25-1
1 MR. CHIER: WELL, MR. CLEWS, WHEN YOU READ THE ARTICLE
2 IN THE LOS ANGELES TIMES, WHAT DO YOU REMEMBER ABOUT THE
3 ARTICLE IN THE TIMES?

4 MR. CLEWS: OH, I REMEMBER A FEW THINGS. I REMEMBER
5 THAT THERE WAS NO BODY.

6 MR. CHIER: YES?

7 MR. CLEWS: AND I REMEMBER THAT MR. HUNT WAS INTO
8 FINANCE.

9 MR. CHIER: DO YOU REMEMBER ANY REFERENCES TO SAN
10 MATEO, CALIFORNIA?

11 MR. CLEWS: NO, I DON'T.

12 OH, AND I REMEMBER THE VICTIM'S NAME.

13 MR. CHIER: YES?

14 MR. CLEWS: IS RONALD LEVIN.

15 MR. CHIER: HAD YOU EVER HEARD OF RONALD LEVIN PRIOR
16 TO --

17 MR. CLEWS: NO, NO.

18 MR. CHIER: -- PRIOR TO THE APPEARANCE OF THAT ARTICLE?

19 MR. CLEWS: NO.

20 THE COURT: YOU HEARD ME IN COURT MENTION THE NAME
21 OF THE VICTIM, DIDN'T YOU?

22 MR. CLEWS: OH, THAT IS TRUE, THAT REMINDED ME.

23 THE COURT: IS THAT RIGHT?

24 MR. CLEWS: PLUS RONALD IS MY SAME NAME, YOU SEE, THAT
25 IS ME.

26 MR. CHIER: PASS THIS GENTLEMAN FOR CAUSE, YOUR HONOR.

27 THE COURT: ALL RIGHT, PASS FOR CAUSE.

28 DO YOU HAVE ANY QUESTIONS?

25-3
1 MR. WAPNER: JUST BRIEFLY -- NO. I WILL PASS FOR CAUSE,
2 YOUR HONOR.

3 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, MR. CLEWS.
4 YOU SEE WE ARE DOWN TO C'S NOW, WE HAVE TO GO THROUGH Z,
5 YOU SEE. WE ARE IN THE PROCESS NOW OF ASKING ALL OF THE
6 PROSPECTIVE JURORS WHO ARE ON THE LIST --

7 MR. CLEWS: YES.

8 THE COURT: -- THE SAME QUESTIONS WE HAVE BEEN ASKING
9 YOU. AND YOU SEE HOW LONG IT TAKES. WE EXPECT OR ANTICIPATE
10 THAT THIS INTERROGATION PROCESS WILL TAKE UNTIL ABOUT
11 DECEMBER 2ND.

12 MR. CLEWS: YES, SIR.

13 THE COURT: WHAT I WILL ASK YOU TO DO IS TO COME BACK
14 ON DECEMBER 2ND TO THE JURY ASSEMBLY ROOM AT 10:30 IN THE
15 MORNING AND IF IT LASTS ANY LONGER THAN THAT, WE WILL CALL
16 YOU AND LET YOU KNOW WHEN YOU CAN COME BACK.

17 AT ANY RATE, DECEMBER 2ND --

18 MR. CLEWS: I UNDERSTAND.

19 THE COURT: -- IN THE JURY ASSEMBLY ROOM AT 10:30 IN
20 THE MORNING.

21 AND DON'T TALK TO ANYBODY ABOUT THE CASE.

22 MR. CLEWS: ALL RIGHT.

23 THE COURT: IN FACT, DON'T TALK ABOUT ANY QUESTIONS
24 WE HAVE ASKED.

25 MR. WAPNER: AND NOT TO READ ANYTHING.

26 THE COURT: YES, OF COURSE, NOT TO READ ANYTHING FURTHER.

27 MR. CLEWS: OKAY, OKAY.

28 THE COURT: AND YOU ARE NOT TO LISTEN TO THE RADIO

1 OR TELEVISION.

2 (PROSPECTIVE JUROR CLEWS EXITED THE
3 COURTROOM.)

4 THE COURT: WHAT TIME IS THE HEARING TOMORROW?

5 MR. WAPNER: I THOUGHT WE HAD SCHEDULED IT FOR 10:00.

6 THE COURT: 10 O'CLOCK? WE WILL ASK THE CLERK.

7 THE CLERK: I BELIEVE IT WAS 10:30.

8 THE COURT: NO, IT WAS 10 O'CLOCK.

9 THE CLERK: I HAVE MY LIST HERE.

10 THE COURT: AT ANY RATE, YOU ARE HAVING HIM HERE AT
11 10:00, ARE YOU?

12 MR. WAPNER: I THINK HE WILL BE HERE EARLIER THAN THAT
13 TO TALK TO ME BUT WHATEVER TIME THE COURT WANTS.

14 THE COURT: ALL RIGHT, MAKE IT AT 10 O'CLOCK.

15 THE CLERK: I FOUND IT. IT IS 10 O'CLOCK.

16 (AT 4:45 P.M. AN ADJOURNMENT WAS TAKEN
17 UNTIL WEDNESDAY, NOVEMBER 19, 1986, AT
18 10 A.M.)

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