

88DA0269

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 9 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 9 OF 101
(PAGES 942 TO 1150, INCLUSIVE)

COPY

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
WEDNESDAY, NOVEMBER 19, 1986
VOLUME 9
(PAGES 942 - 1150, INCLUSIVE)

APPEARANCES:
FOR THE PEOPLE: IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401
FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
AND
RICHARD C. CHIER, ESQ.
10920 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024
ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
OFFICIAL REPORTERS

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 19, 1986; 10:10 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: IT WILL BE STIPULATED THAT THE DEFENDANT
6 IS PRESENT AND COUNSEL ARE PRESENT. YOU HAVE MR. ARCE PRESENT,
7 TOO?

8 MR. WAPNER: YES.

9 THE COURT: ALL RIGHT. WOULD YOU HAVE HIM SWORN, PLEASE?
10 YOU HAVE NOT BEEN PREVIOUSLY SWORN, HAVE YOU?

11 THE WITNESS: NO.
12

13 RAYMOND ARCE,
14 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED
15 AS FOLLOWS:

16 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
17 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT,
18 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
19 SO HELP YOU GOD?

20 THE WITNESS: I DO.

21 THE CLERK: PLEASE BE SEATED THERE. STATE YOUR NAME
22 FOR THE RECORD, PLEASE.

23 THE WITNESS: RAYMOND ARCE, A-R-C-E.

24 THE COURT: I BELIEVE THIS IS A DEFENSE MOTION.

25 MR. BARENS: MR. CHIER WILL PROCEED.

26 MR. CHIER: MAY I HAVE PERMISSION TO REMAIN IN MY SEAT?
27 I HAVE A MIGRAINE HEADACHE.

28 THE COURT: YES.

EXAMINATION

1
2 BY MR. CHIER:

3 Q GOOD MORNING, MR. ARCE. WOULD YOU STATE FOR
4 THE RECORD, YOUR BUSINESS OR OCCUPATION?

5 A YES. I AM THE DIRECTOR OF JUROR SERVICES FOR
6 LOS ANGELES SUPERIOR COURT.

7 Q AND IN THAT CAPACITY, WHAT ARE YOUR RESPONSIBILITIES
8 WITH RESPECT TO THE JURY SYSTEM OF LOS ANGELES?

9 A I AM RESPONSIBLE FOR THE DAY TO DAY MANAGEMENT
10 OF THE SYSTEM, INCLUDING THE SELECTION QUALIFICATIONS,
11 ASSIGNMENT, PAYMENT OF PERSONS WHO SERVED AS JURORS AS WELL
12 AS HANDLING PUBLIC RELATIONS FOR THE COURT IN CONNECTION
13 WITH JURY SERVICES.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2-1
1 Q IS IT THEREFORE YOUR PRIMARY RESPONSIBILITY FOR
2 PROVIDING JURORS FOR THE MUNICIPAL AND SUPERIOR COURTHOUSES
3 IN THE COUNTY OF LOS ANGELES?

4 A THAT IS CORRECT.

5 Q DO YOU HAVE A POOL OR A BASE OF PERSONS FROM
6 WHICH YOU SUMMON THESE JURORS?

7 A THERE IS A POOL OF QUALIFIED PROSPECTIVE JURORS
8 FROM WHICH JURORS ARE SUMMONED.

9 ULTIMATELY, THE POOL, IF YOU WILL, IS MADE UP
10 OF PERSONS WHO HOLD EITHER A CALIFORNIA DRIVER'S LICENSE,
11 INCLUDING PERSONS WHO ARE ISSUED IDENTIFICATION CARDS BY THE
12 DEPARTMENT OF MOTOR VEHICLES, OR WHO ARE VOTERS IN THE COUNTY
13 OF LOS ANGELES.

14 Q LET'S GO TO THE MOST FUNDAMENTAL LEVEL, THAT WOULD
15 BE THE BASE OF PERSONS.

16 A THAT IS CORRECT. IN OTHER WORDS, THE NAME THAT
17 WE OBTAIN -- THE NAMES THAT WE USE FOR JURY SELECTION, ARE FROM
18 THOSE TWO SOURCES.

19 Q THAT IS THE VOTER REGISTRATION LISTS?

20 A THAT'S CORRECT.

21 Q AND THE DMV LISTS, INCLUDING I.D. CARDS AND
22 OPERATOR'S LICENSES?

23 A THAT'S CORRECT.

24 Q THEN HOW OFTEN DO YOU, LIKE, UPDATE THESE LISTS?

25 A WELL, WE DON'T UPDATE THE LISTS. THE LISTS ARE
26 UPDATED BY THE CUSTODIANS OF THE LIST, THAT IS THE DEPARTMENT
27 OF MOTOR VEHICLES AND THE REGISTRAR OF VOTERS.

28 Q DO YOU RENT THESE FROM THEM OR LEASE THEM OR DO

1 YOU HAVE JUST SOME SORT OF AN ACCOMMODATION WORKED OUT WHEREBY
2 YOU USE THEM WHEN YOU NEED THEM?

3 A WITH RESPECT TO THE DEPARTMENT OF MOTOR VEHICLES,
4 THEY ARE OBLIGATED BY STATE STATUTE TO PROVIDE US THE LIST
5 AT LEAST ONCE ANNUALLY. WE GET IT TWICE A YEAR FROM THE
6 DEPARTMENT OF MOTOR VEHICLES.

7 AND WITH RESPECT TO THE VOTERS' LIST WE HAVE AN
8 AGREEMENT WORKED OUT WITH THE REGISTRAR OF VOTERS THAT WE --
9 WE ORDER THE LIST ON AN AS NEEDED BASIS.

10 Q SO THERE ARE TWO SEPARATE AND DISCRETE BASES FROM
11 WHICH YOU DRAW THESE PEOPLE TO SERVE AS JURORS?

12 A THERE ARE TWO LISTS FROM WHICH WE DRAW, YES.

13 Q ARE THESE INTEGRATED LISTS OR NON-INTEGRATED?

14 A WELL, IN THE SENSE THAT THERE ARE TWO SEPARATE
15 AGENCIES, THEY ARE NOT INTEGRATED.

16 IN THE SENSE THAT WE USE THEM IN DEVELOPING WHAT
17 WE CALL OUR MASTER FILE FOR A PARTICULAR PERIOD OF TIME, THEY
18 ARE INTEGRATED.

19 Q ALL RIGHT. HOW DO YOU THEN BEGIN THE PROCESS
20 OF SUMMONING PERSONS TO SERVE ON JURY DUTY, GIVEN THE
21 EXISTENCE OF THESE LISTS?

22 A ALL RIGHT, IF I MAY WALK YOU THROUGH THE SYSTEM
23 JUST VERY BRIEFLY?

24 Q YES, PLEASE.

25 A THERE ARE APPROXIMATELY FOUR PLUS MILLION NAMES
26 ON THESE TWO SOURCE LISTS. OUR ESTIMATES ARE THAT USING THESE
27 TWO SOURCE LISTS, WE COVER FROM 85 TO 98 PERCENT OF THOSE
28 PRESUMABLY JURY ELIGIBLE.

1 Q JUST TO INTERRUPT YOU FOR A MOMENT. JURY
2 ELIGIBLE AT THE PRESENT TIME INCLUDES WHAT? WHAT ARE THE
3 JURY ELIGIBLE PERSONS?

4 A UNDER CALIFORNIA STATUTE, PERSONS WHO ARE 18 YEARS
5 OF AGE OR OLDER; CITIZENS OF THE UNITED STATES; RESIDENTS
6 OF LOS ANGELES COUNTY WHO HAVE THE ABILITY TO UNDERSTAND
7 ENGLISH, SUFFICIENT KNOWLEDGE OF THE ENGLISH LANGUAGE; THOSE
8 WHO HAVE NOT BEEN CONVICTED OF A FELONY; HOWEVER, IF THEY
9 HAVE BEEN CONVICTED THEIR RIGHTS MUST HAVE BEEN RESTORED BY
10 PARDON FROM THE GOVERNOR. AND THOSE WHO HAVE NOT SERVED WITHIN
11 THE IMMEDIATELY PRECEDING 12 MONTHS AS A JUROR.

12 THERE IS A FURTHER EXCLUSION AND THAT IS -- OR
13 THE STATUTORY PROVISION THAT EXEMPTS PERSONS WHO ARE CURRENTLY
14 SERVING ON A GRAND JURY.

15 Q SO WOULD YOU CONTINUE WALKING US THROUGH THE
16 SYSTEM THEN.

17 A YES.

18 WE RANDOMLY SELECT FROM THE SOURCE LIST BETWEEN
19 800,000 AND A MILLION NAMES ON AN ANNUAL BASIS.

20 THE LIST PRIOR TO THE SELECTION -- AND THE SELECTION
21 IS MADE RANDOMLY BY COMPUTER. THE COMPUTER WILL HAVE BEEN
22 PROGRAMMED SO THAT PEOPLE WHO HAVE SERVED IN THE IMMEDIATELY
23 PRECEDING PERIOD WILL NOT BE CONTACTED AGAIN.

24
25
26
27
28

5-1
1 Q THE PERIOD BEING A TWO-YEAR PERIOD?

2 A A TWO-YEAR PERIOD, 12 MONTHS BY STATUTE AND TWO
3 YEARS BY COURT POLICY.

4 Q AND HOW LONG HAS THAT BEEN THE POLICY OF THE COURT?

5 A THE EXACT TIME FRAME ESCAPES ME. IT HAS BEEN
6 PROMULGATED SINCE AT LEAST 1981. IT WAS IN EFFECT PRIOR TO
7 THAT TIME.

8 Q MAY I INTERRUPT YOU JUST ONE MORE TIME, TO ASK
9 YOU WHETHER OR NOT YOU HAVE EVER DONE STUDIES TO DETERMINE
10 WHAT PERCENTAGE OF THE JUROR ELIGIBLE PERSONS ARE INCLUDED
11 IN THE VOTER REGISTRATION AND DMV LISTS? DO YOU UNDERSTAND
12 THE QUESTION?

13 A YES I DO. THE ANSWER TO YOUR QUESTION IS, WE
14 HAVE NOT DONE THE STUDIES THAT YOU ARE MAKING REFERENCE TO.
15 WE HAVE MADE ESTIMATES.

16 AND OUR ESTIMATES ARE, THAT USING THOSE TWO SOURCES,
17 WE COVER BETWEEN 85 AND 98 PERCENT OF THOSE THAT ARE ELIGIBLE.

18 Q SO IT IS YOUR EDUCATED GUESSTIMATE, AS IT WERE,
19 THAT THE PERSONS WHO ARE ELIGIBLE, OTHERWISE ELIGIBLE TO SERVE
20 AS JURORS, WHO ARE NOT ON EITHER LIST FOR SOME REASON OR
21 ANOTHER, IS A MAXIMUM OF WHAT? 12 PERCENT?

22 A IT WOULD BE 15 PERCENT OR LESS.

23 Q OKAY. AND HAVE YOU EVER ESTIMATED DEMOGRAPHICALLY
24 OR ETHNICALLY, WHO THESE PEOPLE ARE THAT DON'T SHOW UP ON
25 THESE PARTICULAR LISTS?

26 A NO. WHAT WE HAVE DONE, IS THAT WE HAVE TAKEN
27 A LOOK AT IT THE OTHER WAY.

28 THERE ARE TWO ASPECTS TO THE QUESTION THAT YOU

1 ARE ASKING. NUMBER ONE IS, HOW INCLUSIVE IS THE LIST THAT
2 YOU ARE USING?

3 AS I HAVE INDICATED, OUR ESTIMATES ARE THAT IT
4 INCLUDES BETWEEN 85 PERCENT TO A HIGHER PERCENTAGE.

5 THE OTHER SIDE OF IT IS, WHAT IS THE BALANCE OF
6 THE LIST? IN OTHER WORDS, ARE COGNIZABLE GROUPS BALANCED
7 ON THAT LIST IN THE SAME SENSE THAT THEY WOULD BE IN THE
8 TARGET POPULATION? THAT IS BASED ON WHO SHOWS UP AND SERVES
9 AS JURORS.

10 WE COME TO THE CONCLUSION THAT THE LIST IS
11 BALANCED TO THE EXTENT THAT FOR EXAMPLE, IN THE PRESUMABLY
12 JURY ELIGIBLE POPULATION, 11.4 PERCENT OF ADULTS ARE MEMBERS
13 OF THE BLACK RACE. AND WE GET A REPRESENTATION OF 13 PERCENT,
14 ON A COUNTY-WIDE BASIS. SIMILARLY --

15 Q YOU GET 13 PERCENT BLACK, YOU SAY?

16 A YES.

17 Q ALL RIGHT.

18 A SIMILARLY, FEMALES ACCORDING TO THE 1981 CENSUS,
19 MAKE UP APPROXIMATELY 52 PERCENT OF THE JURY ELIGIBLE PERSONS.
20 WE GET A REPRESENTATION OF APPROXIMATELY 50 PERCENT OF OUR
21 JURORS, COUNTY-WIDE.

22 WE GO DOWN THESE CATEGORIES AND WE FIND THAT WITH
23 THE EXCEPTION OF HISPANICS, IN WHICH THE FIGURES, THE TARGET
24 FIGURES ARE NOT VERY CLEAR, THAT WITH THE EXCEPTION OF
25 HISPANICS, THE JURY SYSTEM APPEARS TO BRING IN JURORS THAT
26 ARE BALANCED COUNTY-WIDE.

27 Q BRING IN? YOU MEAN TO BRING INTO -- THAT RESPOND
28 TO THE SUMMONS? IS THAT CORRECT?

1 A THAT'S RIGHT, WHO ACTUALLY SERVE.

2 Q WE STILL HAVE NOT REACHED THE POINT OF WHO GOES
3 OUT IN WHAT PROPORTIONS?

4 A THAT'S CORRECT.

5 Q ALL RIGHT. LET'S THEN, CONTINUE WALKING THROUGH
6 THE SYSTEM. YOU SEND OUT AN INITIAL LETTER OR NOTICE OF SOME
7 KIND, IS THAT CORRECT?

8 A YES WE DO.

9 Q TO THE JURY ELIGIBLE PEOPLE FROM THE LISTS?

10 A WE SEND OUT WHAT WE CALL THE PROSPECTIVE JUROR
11 AFFIDAVIT QUESTIONNAIRE TO THE PEOPLE WHO HAVE BEEN RANDOMLY
12 SELECTED BY COMPUTER FOR THAT YEAR.

13 SO IF THERE ARE 800,000 NAMES, THOSE PEOPLE WILL
14 GET A QUESTIONNAIRE SOMETIME DURING THE COURSE OF THE YEAR.

15 Q DID YOU BRING A COPY OF THAT WITH YOU, SIR, BY
16 ANY CHANCE?

17 A NO I DID NOT.

18 Q ALL RIGHT. I HAVE SOME DOCUMENTS HERE.

19 MR. ARCE, LET ME SHOW YOU A DOCUMENT WHICH WE'LL
20 MARK AS SOON AS WE HAVE DETERMINED WHAT THEY ARE. THIS IS
21 A DOCUMENT WITH THE SUPERIOR COURT RETURN ADDRESS ON IT.

22 A THAT'S CORRECT.

23 Q IS THIS THE COVER SHEET OF THE ORIGINAL SUMMONS
24 THAT GOES TO THE JURY ELIGIBLE PEOPLE?

25 A YES. THIS IS A COPY OF THE MAIL-OUT ENVELOPE
26 THAT WE USE FOR THE PROSPECTIVE JUROR AFFIDAVIT.

27 Q THAT WOULD BE THE FIRST CONTACT THE PROSPECTIVE
28 JUROR WOULD HAVE WITH YOUR OFFICE?

1 A YES.

2 MR. CHIER: LET'S MARK THIS DEFENDANT'S C. IS THAT
3 THE NEXT IN ORDER? I BELIEVE IT IS. THAT WILL BE
4 DEFENDANT'S C.

5 THE COURT: FOR PURPOSES OF THIS MOTION, IF YOU WANT
6 TO, YOU CAN START ALL OVER AGAIN. THAT WILL BE ARCE MOTION
7 DEFENDANT'S A.

8 MR. CHIER: ALL RIGHT. THIS WOULD BE ARCE A.

9 Q ALL RIGHT. SO THIS IS A PART OF IT ALSO. THIS
10 IS THE SECOND PAGE I AM SHOWING TO YOU?

11 A YES IT IS.

12 MR. CHIER: AND WE'LL MAKE THIS A-1, DEFENDANT'S A-1.

13 Q AND THIS PAGE IS A PART OF IT?

14 A YES IT IS.

15 MR. CHIER: I WILL MAKE THAT A-2.

16 Q AND HOW ABOUT THIS PAGE?

17 A YES. THAT IS A PART OF THE LETTER.

18 Q OF THE INITIAL AFFIDAVIT QUESTIONNAIRE?

19 A A-3.

20 Q AND HOW ABOUT THIS LAST?

21 A THAT IS ALSO A PART OF IT. THAT IS THE BACK SIDE
22 OF WHAT YOU HAVE MARKED AS A-3.

23 MR. CHIER: OKAY. THESE WILL BE COLLECTIVELY A THROUGH
24 A-4.

25 Q DO YOU NEED TO REFER TO THOSE, SIR?

26 A I DON'T BELIEVE SO.

27 Q ALL RIGHT. NOW, WITHOUT THE COURT -- ESSENTIALLY,
28 WHAT THESE ARE, ARE THE FIRST CONTACT THE JURORS HAVE FROM

1 YOUR OFFICE?

2 A YES. IT IS A PROSPECTIVE JUROR AFFIDAVIT
3 QUESTIONNAIRE WHICH ESSENTIALLY INFORMS THE PROSPECTIVE JUROR,
4 THE PERSON WHOSE NAME HAS BEEN RANDOMLY SELECTED, THAT HE
5 OR SHE HAS BEEN SO SELECTED AND THAT THEY ARE TO COMPLETE
6 THE FORM AND RETURN IT TO US WITHIN 10 DAYS.

7 THE FORM IS DESIGNED TO ELICIT INFORMATION SO
8 THAT WE CAN DETERMINE WHETHER THE INDIVIDUAL MEETS THE
9 STATUTORY PROVISIONS FOR COMPETENCY, WHETHER THE PERSON MIGHT
10 FALL UNDER ONE OF THE THREE CATEGORIES OF EXEMPT PERSONS FROM
11 JURY SERVICE OR WHETHER THE PERSON MAY HAVE REASONS TO BE
12 EXCUSED FROM JURY SERVICE FOR UNDUE HARDSHIP UNDER SECTION 200
13 AND 201(A) OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

4-1

1 Q ARE THE GROUNDS FOR BEING EXCUSED LISTED ON THE
2 QUESTIONNAIRE?

3 A THERE IS REFERENCE TO IT.
4 THERE IS NOT A TOTAL ENUMERATION OF ALL OF THE
5 GROUNDS.

6 Q ALL RIGHT. AND THESE ARE SENT OUT WITH FREQUENCY
7 FROM YOUR OFFICE?

8 A THEY ARE SENT OUT WEEKLY.
9 THE MAILING RATE VARIES BETWEEN 17,000 TO 50,000
10 PER WEEK.

11 Q WHEN YOU SAY THESE ARE RANDOMLY SELECTED, HOW IS
12 IT THAT THEY ARE RANDOMLY SELECTED IN YOUR VIEW, SIR?

13 A HOW IS IT THEY ARE RANDOMLY SELECTED?

14 Q YES.

15 HOW DO YOU INSURE THAT THEY ARE RANDOMLY SELECTED?

16 A WELL, THE WAY WE HAVE INSURED THAT THEY ARE RANDOMLY
17 SELECTED IS, FIRST OF ALL, BY VERIFYING WITH RESPECT TO ANY
18 PATTERN THAT MAY BE APPARENT WHEN THE LISTS ARE ACTUALLY
19 PREPARED.

20 BUT MORE IMPORTANTLY, I BELEIVE IT WAS IN 1983,
21 WE CONTRACTED WITH A STATISTICIAN TO LOOK AT THE JURY SELECTION
22 COMPUTER PROGRAM WE WERE THEN USING. THE COMPUTER PROGRAM
23 HAD BEEN DEVELOPED BY RAND CORPORATION AND IT WAS WHAT IS KNOWN
24 IN THE DATA PROCESSING PROFESSION AS A RANDOM NUMBER GENERATOR.

25 WE HAD RECEIVED SOME COMPLAINTS FROM CITIZENS WITH
26 RESPECT TO THEIR VIEW AS TO WHETHER IT WAS RANDOM OR NOT. AND
27 SO ON THE BASIS OF THOSE COMPLAINTS, WE HIRED A STATISTICIAN.

28 THE STATISTICIAN SAID "THERE IS NOTHING WRONG WITH

1 THE RANDOM NUMBER PROGRAM OTHER THAN THE MATHEMATICAL TECHNIQUE
2 THAT UNDERLIES IT IS NOW SOMEWHAT OBSOLETE."

3 AND HE RECOMMENDED THE USE OF A NUMBER GENERATOR,
4 WHICH WE ADOPTED AND IMPLEMENTED.

5 SO ON THE BASIS OF THE VIEW OF AN OUTSIDE
6 CONSULTANT WHO LOOKED AT THE NUMBER GENERATOR USED BY THE
7 COMPUTER, WE WERE SATISFIED THAT THE ALGORITHM THAT THE
8 COMPUTER USES RESULTS IN A RANDOM NUMBER.

9 THEN BY VERIFICATION, BY SORTING THE LIST WHEN
10 IT FIRST COMES OFF THE COMPUTER, TO SEE WHETHER THERE IS ANY
11 DISCERNABLE PATTERN, EITHER NAMES BEING ALPHABETICALLY -- AN
12 ALPHABETICAL PATTERN BEING DISCERNED OR A GEOGRAPHIC PATTERN
13 OR IN A PATTERN IN THE SENSE OF ADDRESSES, WE SIGHT-VERIFY
14 THAT LIST.

15 OBVIOUSLY, WE CAN'T SIGHT-VERIFY ALL OF THAT BUT
16 WE DO TAKE A RANDOM SAMPLINGS OF IT.

17 Q SO IN ORDER TO INSURE THE CONTINUING RANDOMNESS
18 OF IT --

19 A YES, TO INSURE THAT IT IS RANDOM WHEN THE INITIAL
20 SELECTION IS MADE.

21 Q IS THERE A DUPLICATION AS A RESULT OF THE TWO
22 JURY ELIGIBLE LISTS NOT BEING INTEGRATED SO IF SOMEBODY IS
23 ON A VOTER REGISTRATION LIST AND ON THE DMV LIST THAT THEY
24 MIGHT BE SUMMONED TWICE WITHIN A PERIOD THAT IS BEYOND YOUR
25 POLICY?

26 A YES, THERE IS THAT POSSIBILITY OF SOME DUPLICATION
27 AND OUR REASON FOR THE PROCESSING SYSTEM THAT WE USE BEING
28 IN PLACE IS TO ATTEMPT TO ELIMINATE THE DUPLICATES.

4-3

1 SOME YEARS AGO, THERE WAS A MONOGRAPH THAT WAS
2 PUBLISHED BY OPERATION RESEARCHERS IN WHICH THEY SUGGESTED
3 SEVERAL WAYS OF MERGING SEVERAL LISTS OF NAMES WHERE THERE
4 WAS DUPLICATION. WE EMPLOY ONE OF THOSE LISTS -- ONE OF THOSE
5 TECHNIQUES, RATHER, IN WHICH WE DO NOT MERGE THE LISTS, SO
6 WE DO NOT HAVE THE PROBLEM OF HAVING TO TRY TO MATCH COMPUTER
7 FILES THAT ARE DISSIMILAR -- THAT MAY BE DISSIMILAR -- BUT
8 WE DO MATCH THE NAMES THAT ARE RANDOMLY SELECTED FROM ONE OF
9 THE LISTS TO THE ENTIRE SET OF THE OTHER LIST.

10 LET ME GIVE YOU AN EXAMPLE: LET'S ASSUME THAT
11 WE SELECT 600,000 NAMES FROM A LIST OF VOTERS. THOSE NAMES
12 ARE GOING TO BE USED IN OUR PROCESSING FOR THAT UPCOMING
13 PERIOD. LET'S ASSUME THAT WE SIMILARLY SELECT 600,000 NAMES
14 FROM THE LIST OF DRIVERS; THAT LIST OF 600,000 DRIVERS WILL
15 BE MATCHED TO THE ENTIRE LIST OF THE VOTERS, INCLUDING THE
16 NAMES OF THOSE THAT WERE SELECTED FOR THE PURPOSE OF JURY
17 SELECTION.

18 ANY DUPLICATES, ANY APPARENT DUPLICATES ARE
19 ELIMINATED SO THAT A PERSON HAS ONLY ONE CHANCE OF BEING
20 SELECTED AS A JUROR. IN OTHER WORDS, WE ELIMINATE THE ONE
21 NAME.

22 Q I SEE.

23 A THE RESIDUALS THAT ARE LEFT OVER FROM THE DRIVER'S
24 LIST WILL THEN BE ADDED TO THE LIST OF VOTERS THAT WERE
25 INITIALLY SELECTED.

26 Q WHAT IS THE NOMENCLATURE FOR THIS INITIAL -- IS
27 IT A QUESTIONNAIRE-TYPE?

28 A YES, IT IS A QUESTIONNAIRE, AN AFFIDAVIT-QUESTIONNAIRE.

1 Q WITH A SELF-CONTAINED TYPE OF RETURN --

2 A THAT IS CORRECT.

3 Q -- ENVELOPE?

4 A YES, IT IS A QUESTIONNAIRE THAT COULD BE --

5 Q CALLED THE INITIAL JUROR QUESTIONNAIRE?

6 A YES.

7 Q IS THAT SENT OUT FROM A CENTRAL LOCATION?

8 A YES.

9 Q AND YOUR MAILING VARIES BETWEEN TWELVE AND FORTY
10 THOUSAND?

11 A NO. IT IS BETWEEN SEVENTEEN AND FIFTY THOUSAND
12 A WEEK.

13 Q SO THIS DEPENDS UPON YOUR OVERALL COUNTY-WIDE
14 NEEDS?

15 A THAT'S CORRECT.

16 Q HOW DO YOU DETERMINE WHAT THE COUNTY-WIDE NEEDS
17 ARE FROM DAY TO DAY OR MAILING TO MAILING?

18 A WELL, IT IS DONE, FIRST OF ALL, ON AN ANNUAL BASIS.
19 THERE IS A UNIT WITHIN THE SUPERIOR COURT WHOSE
20 FUNCTION IT IS TO MAKE ESTIMATES BASED ON PREVIOUS CASE
21 FILINGS AND CURRENT CASE FILINGS, IN OTHER WORDS, YOU TREND,
22 YOU DEVELOP A TREND LINE IN TERMS OF WHAT THE CIVIL CASE
23 FILINGS ARE GOING TO BE IN SUPERIOR COURT AND WHAT THE CRIMINAL
24 CASE FILINGS ARE GOING TO BE AND BASE IT ON THOSE TRENDS, WE
25 MAKE THE ESTIMATE AS TO THE NUMBER OF JURORS WE ARE GOING TO
26 NEED AND WE ALSO PICK UP THE ESTIMATES FROM THE MUNICIPAL
27 COURT.

28 Q ALL RIGHT, WHEN THE QUESTIONNAIRE GOES OUT, DOES

1 IT INDICATE THAT THERE IS ANY KIND OF PENALTY UPON FAILURE TO
2 RETURN IT?

3 A THERE IS AN INFERENCE, FIRST OF ALL. THERE IS
4 A STATEMENT THAT THE QUESTIONNAIRE HAS TO BE RETURNED WITHIN
5 TEN DAYS AND THERE IS AN INFERENCE THAT THE JUROR MAY BE
6 SUBJECT TO SOME FURTHER PROCESS, YES.

7 Q IT IS MORE OF A SUGGESTION RATHER THAN A REAL
8 THREAT, I TAKE IT?

9 A THAT'S CORRECT.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Q IS THERE ANY KIND OF ENFORCEMENT PROCEDURE THAT
2 IS EVER UTILIZED OR IS IT STRICTLY VOLUNTARY WITH THE
3 PROSPECTIVE JUROR TO RETURN IT AND TO FILL IT OUT AND TO
4 RETURN IT?

5 A WELL, WITH RESPECT TO YOUR FIRST QUESTION, IS THERE
6 ANY FOLLOW-UP, THE ANSWER IS NO.

7 Q SO THEN IT REALLY COMES DOWN TO THE RESPONSE BEING
8 WHOLLY VOLUNTARY, ABSENT ANY KIND OF ENFORCEMENT PROCEDURE;
9 IS THAT CORRECT, SIR?

10 A THAT IS ESSENTIALLY, YES, CORRECT.

11 THE COURT: PARDON ME. IS THERE ANY FOLLOW-UP, IF YOU
12 DON'T HEAR FROM THEM?

13 THE WITNESS: NO, YOUR HONOR, THERE IS NO FOLLOW-UP.

14 THE COURT: ON THE QUESTIONNAIRE?

15 THE WITNESS: ON THE QUESTIONNAIRE.

16 THE COURT: AND NO KIND OF PROSECUTION OF ANY KIND IF
17 THEY DON'T SHOW UP?

18 THE WITNESS: NO, YOUR HONOR.

19 THE COURT: IF THEY DON'T RETURN THE QUESTIONNAIRE?

20 THE WITNESS: AT THE PRESENT TIME THERE IS NO --

21 THE COURT: IN OTHER WORDS, IF A PROSPECTIVE JUROR, A
22 CITIZEN GETS A NOTICE TO COME AND APPEAR AND ANSWER THE
23 QUESTIONNAIRE, IF HE DOES NOTHING ABOUT IT YOU DO NOTHING
24 ABOUT IT?

25 THE WITNESS: YES, YOUR HONOR.

26 LET ME MAKE SURE WE ARE CORRECT ON OUR TERMS.

27 THERE IS NO FOLLOW-UP ON A PERSON WHO FAILS TO
28 RETURN THE QUESTIONNAIRE.

1 HOWEVER, IF A PERSON FAILS TO FOLLOW-UP -- I MEAN
2 FAIL TO SHOW UP WHEN SUMMONED, ACTUALLY SUMMONED, THERE IS
3 A FOLLOW-UP.

4 THE COURT: YES, I SEE. THAT IS AFTER THEY RETURN THE
5 QUESTIONNAIRE?

6 THE WITNESS: YES.

7 THE COURT: AND THEY ARE PUT ON THE LIST?

8 THE WITNESS: YES.

9 THE COURT: FOR POSSIBLE JURY SERVICE?

10 THE WITNESS: YES, SIR.

11 THE COURT: ALL RIGHT, AFTER THE JUROR RETURNS THE
12 QUESTIONNAIRE, I GUESS IT IS PROCESSED AND SORTED IN SOME WAY?

13 THE WITNESS: YES, THERE IS PROCESSING, YES.

14 Q BY MR. CHIER: AND IS THAT THE NEXT THING THAT
15 HAPPENS TO THE QUESTIONNAIRE WHEN IT IS RETURNED TO YOU?

16 A YES, AFTER IT IS RETURNED TO US AND WE HAVE STAMPED
17 IT, OBVIOUSLY IT IS OPENED, SORTED AND INSPECT THE QUESTION-
18 NAIRE FOR COMPLETENESS FOR ANSWERS GIVEN, AND MAKE THE
19 DETERMINATION WHETHER THE PERSON IS QUALIFIED FOR JURY SERVICE,
20 WHETHER THE REASONS HAVE BEEN STATED WHICH COMPLY WITH OUR
21 GUIDELINES OR THE GUIDELINES PUBLISHED BY THE JUDICIAL COUNSEL.

22 IF THE PERSON HAS REQUESTED TO BE EXCUSED,
23 IN OTHER WORDS, ARE THERE SUFFICIENT GROUNDS FOR EXCUSE.

24 Q IS THERE A PLACE ON THE FORM WHERE THEY REQUEST
25 TO BE EXCUSED AND STATE THEIR GROUNDS?

26 A YES.

27 Q THIS IS INITIALLY A REQUEST TO BE EXCUSED WITHOUT,
28 AS FAR AS YOUR NOTIFICATION IS CONCERNED, WITHOUT A FULL

1 ARTICULATION OF THE GROUNDS THAT YOU RECOGNIZE FOR EXCUSE;
2 IS THAT CORRECT?

3 IN OTHER WORDS, THEY WILL WRITE SOMETHING WHICH
4 MAY OR MAY NOT MEET YOUR CRITERIA FOR EXCUSE?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. AND THE CRITERIA FOR EXCUSE ON THAT
7 EVALUATION OF THE INITIAL RESPONSE IS PRIMARILY WHAT, MEDICAL
8 HARDSHIP?

9 A WELL, THERE ARE A NUMBER OF REASONS THAT PEOPLE,
10 YOU KNOW, MAY STATE. MEDICAL HARDSHIP, FINANCIAL HARDSHIP,
11 CARE OF DEPENDENTS, TRANSPORTATION, FULL-TIME STUDENTS. A
12 NUMBER THAT WE TYPICALLY SEE.

13 THE MAJOR ONES THAT WE SEE ARE MEDICAL, FINANCIAL
14 AND CARE OF DEPENDENTS.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-1
1 Q IS THE REASON THAT THERE APPEAR TO BE A PAUCITY
2 OR REAL ABSENCE OR A MINORITY OF PERSONS BETWEEN -- LIKE PERSONS
3 SAY, 18 AND 21, IS BECAUSE OF THE FULL-TIME STUDENT EXCUSE
4 FOR INSTANCE?

5 A THAT IS A REASON. IT IS NOT ONE OF THE MAJOR
6 ONES. MANY PEOPLE ARE ALSO AT THIS STAGE, IN A CAREER
7 DEVELOPMENT PROCESS. THEY MAY NOT BE FULL-TIME STUDENTS.
8 THEY MAY BE IN A TRADE OR A PROFESSION THAT DOES NOT REQUIRE
9 A FORMAL EDUCATION. THEY MAY BE EMPLOYED AND EMPLOYED IN
10 THE TYPE OF OCCUPATION THAT DOES NOT REIMBURSE FOR JURY SERVICE.
11 SO THERE ARE A NUMBER OF FACTORS.

12 Q AND WHAT IS CONSIDERED A FINANCIAL HARDSHIP?
13 LET ME RESTATE THE QUESTION.

14 IN ORDER TO CLAIM FINANCIAL HARDSHIP AT THE TIME
15 THEY RETURN THE INITIAL QUESTIONNAIRE, MR. ARCE, DO THEY NEED
16 TO MERELY CHECK A BOX OR TO GIVE A SENTENCE OR TWO IN SUPPORT
17 OF THEIR CLAIM IN THAT REGARD? HOW DO THEY MAKE THAT CLAIM?

18 A WELL, THEY CAN MAKE IT IN A NUMBER OF WAYS. THERE
19 ARE TWO BOXES PROVIDED THAT MAY BE USED, AT LEAST TO TRIGGER
20 SOME SORT OF AN INDICATION THAT THEY ARE GOING TO REQUEST
21 TO BE EXCUSED FOR FINANCIAL REASONS.

22 ONE IS THE QUESTION WHETHER THE EMPLOYER
23 REIMBURSES THE EMPLOYEE FOR JURY SERVICE. THAT IS ONE BOX.

24 THERE IS ANOTHER BOX THAT ASKS -- THE PERSON ASKS
25 TO BE EXCUSED FOR FINANCIAL HARDSHIP AND THEN THEY HAVE TO
26 ENUMERATE WHAT THAT IS.

27 SO THE MERE FACT THAT THEY MAY HAVE CHECKED ONE
28 OR BOTH BOXES ON THE FORM, WILL NOT RESULT IN THEIR BEING

5-2
1 EXCUSED AT THAT TIME.

2 Q THE FINAL ARBITER OF WHETHER YOU ARE GOING TO
3 PRELIMINARILY EXCUSE THEM IS THE HANDWRITTEN RESPONSE TO THE
4 HARDSHIP?

5 A THE HANDWRITTEN OR ATTACHED TYPEWRITTEN OR THE
6 LETTER FROM THE EMPLOYER OR SOMEONE ELSE.

7 Q BUT THE FULLER EXPLICATION, RATHER THAN JUST THE
8 BOX CHECKED OFF?

9 A THAT'S CORRECT.

10 Q AND WHAT GUIDELINES OR CRITERIA DO YOU USE TO
11 ALLOW OR DISALLOW A CLAIM OF FINANCIAL HARDSHIP?

12 A OUR POLICY, THE POLICY OF THE COURT AND THE
13 INSTRUCTIONS WE GIVE TO OUR STAFF, INCLUDE THE FOLLOWING:
14 THE PROSPECTIVE JUROR WILL BEAR AN EXTREMELY FINANCIAL
15 BURDEN.

16 IN DETERMINING WHETHER TO EXCUSE A PROSPECTIVE
17 JUROR, CONSIDERATION SHOULD BE GIVEN TO -- AND THEN THERE
18 ARE SEVERAL ITEMS ENUMERATED.

19 Q WOULD YOU JUST FOR THE RECORD, IDENTIFY THE
20 DOCUMENT THAT YOU ARE READING FROM?

21 A YES. I AM READING FROM THE SUPERIOR COURT JURY
22 SERVICE POLICY. THIS IS THE REVISED VERSION, REVISED AS OF
23 JULY, 1985.

24 Q THAT IS NOT DISTRIBUTED TO THE PROSPECTIVE JURORS,
25 I TAKE IT?

26 A NO IT IS NOT.

27 Q IT IS AN INTERNAL MEMORANDUM?

28 A YES. IT IS AN INTERNAL SET OF POLICIES.

5-7
1 Q ALL RIGHT. CONTINUE.

2 A THE SOURCES OF THE PROSPECTIVE JUROR'S HOUSEHOLD
3 INCOME AND SECONDLY, THE AVAILABILITY AND EXTENT OF INCOME
4 REIMBURSEMENT. THIRDLY, THERE IS THE EXPECTED LENGTH OF
5 SERVICE. FOUR, WHETHER SERVICE CAN REASONABLY BE EXPECTED
6 TO COMPROMISE THAT PERSON'S ABILITY TO SUPPORT HIMSELF OR
7 HERSELF OR HIS OR HER DEPENDENTS OR TO SO DISRUPT THE
8 ECONOMIC STABILITY OF ANY INDIVIDUAL AS TO BE AGAINST THE
9 INTEREST OF JUSTICE.

10 ESSENTIALLY WHAT THE STATEMENT REQUIRES, IS A
11 STATEMENT FROM THE JUROR SAYING THAT IF THE SERVICE GOES
12 BEYOND SUCH AND SUCH A PERIOD OR IF I AM REQUIRED TO SERVE
13 AT ALL, THEN I WILL BE REQUIRED TO EITHER LIQUIDATE ASSETS
14 OR TO DECLARE BANKRUPTCY.

15 Q I SEE. DID YOU HAVE A NUMBER OF DIFFERENT INCOME
16 EARNING GROUPS IN THERE? IS THAT RIGHT, BETWEEN LIKE \$1 AND
17 \$10,000 AND \$10,000 AND \$50,000?

18 A I AM NOT SURE I UNDERSTAND THE QUESTION.

19 Q IS THERE A SPECIFIC DOLLAR AMOUNT OR IS IT ALL
20 KIND OF BASICALLY A CASE-BY-CASE CONSIDERATION?

21 A NO. IT IS A CASE-BY-CASE CONSIDERATION.

22 Q WHEN YOU ARE DETERMINING WHETHER OR NOT THEY ARE
23 GOING TO BE EXCUSED FOR FINANCIAL HARDSHIP ON THE BASIS OF
24 THE REQUEST, DO YOU HAVE AVAILABLE TO YOU INFORMATION
25 CONCERNING THEIR INCOME, THE HOUSEHOLD INCOME?

26 A NO. WE MAY REQUEST IT, BUT THAT IS NOT NECESSARY.

27 Q BUT IT IS JUST MADE ON THE BASIS OF THEIR
28 STATEMENT THAT THEY MAKE REQUESTING TO BE EXCUSED?

-4
1 A YES.

2 Q ALL RIGHT. AND WHAT IS THE PAY FOR JURY SERVICE
3 IN LOS ANGELES COUNTY?

4 A AT THE PRESENT TIME, THE PAY THAT HAS BEEN
5 AUTHORIZED BY THE BOARD OF SUPERVISORS IS \$10 A DAY.

6 Q AND HOW LONG HAS THAT BEEN THE AUTHORIZED PAY
7 FOR JURY SERVICE?

8 A SINCE JANUARY OF 1985.

9 Q AND PRIOR TO THAT, HOW MUCH WAS IT?

10 A \$5.

11 Q AND THERE IS MILEAGE, IN ADDITION TO PAY?

12 A THAT'S CORRECT.

13 Q CONSISTING OF WHAT?

14 A FIFTEEN CENTS A MILE ONE WAY.

15 Q NOW, WOULD YOU HAPPEN TO KNOW WHAT THE PAY IS
16 FOR JURY SERVICE SAY, IN THE FEDERAL SYSTEM?

17 A I AM GENERALLY FAMILIAR THAT IT IS \$30 A DAY UNLESS
18 YOU RESIDE MORE THAN -- I BELIEVE IT IS 75 MILES FROM THE
19 COURT LOCATION, IN WHICH CASE IT IS HIGHER.

20 Q HAS YOUR OFFICE CONDUCTED ANY STUDIES TO DETERMINE
21 WHETHER OR NOT THERE ARE PEOPLE WHO SEEK AND OBTAIN HARDSHIP
22 EXCUSE, THAT WOULD NOT REQUEST IT IF THE PAY WERE HIGHER?

23 A NO WE HAVE NOT.

24 Q ALL RIGHT. YOU HAVE NOT DONE ANY STUDIES? HAVE
25 YOU HAD ANY COMMUNICATIONS FROM PEOPLE IN THAT REGARD?

26 A NO WE HAVE NOT.

27 Q ALL RIGHT. NOW, WHEN THESE QUESTIONNAIRES ARE
28 RETURNED AND THEN PROCESSED AND YOU ELIMINATE THEM, WHAT

1 PERCENTAGE OF THEM ON A HARDSHIP BASIS -- WHAT IS THE
2 PERCENTAGE ON A HARDSHIP BASIS, AS A RULE? I HAVE A DOCUMENT
3 HERE. MR. ARCE, DO YOU SEE THIS DOCUMENT AND THE TRIANGLE
4 HERE?

5 A YES. I CAN SEE IT. I CAN'T READ THE DATE ON
6 IT.

7 Q DOES THIS GIVE A BREAKDOWN OF WHAT HAPPENS TO
8 THE QUESTIONNAIRES WHEN THEY ARE RETURNED FOR THE FIRST TIME?

9 ALL RIGHT. I HAVE A DOCUMENT HERE. MAY I ASK
10 YOU WHAT THIS IS, SIR?

11 A YES. THAT IS A GRAPHIC THAT ILLUSTRATES AN ACCOUNT
12 FOR THE PROSPECTIVE JURORS AFFIDAVIT QUESTIONNAIRES FOR
13 DISMISSAL FOR THE YEAR 1984/85, AT WHICH TIME WE SELECTED
14 AND ATTEMPTED TO CONTACT A TOTAL OF 953,167 INDIVIDUALS.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

5A-1
1 Q IS THIS THE LAST FISCAL YEAR FOR WHICH YOU DID
2 A COMPLETE ANALYSIS SUCH AS THIS?

3 A YES.

4 Q JUST FOR THE RECORD, SO WE CAN GET AN IDEA OF
5 WHAT HIS FIGURES ARE, OF THE TOTAL OF 953,167 PROSPECTIVE
6 JUROR AFFIDAVITS MAILED, WHAT WAS THE RETURN FIGURE?

7 A THERE WERE RETURNED 652,628.

8 Q REPRESENTING WHAT PERCENTAGE OF THE ONES MAILED
9 OUT?

10 A 68.5.

11 Q AND WAS THERE A PORTION OF THOSE THAT WERE
12 UNDELIVERABLE?

13 A NO. NOT A PORTION OF THOSE.

14 Q SORRY. WAS THERE A PORTION OF THE ONES MAILED
15 OUT? EXCUSE ME. I MISSPOKE MYSELF.

16 A YES. 11.5 PERCENT OR 109,349 WERE UNDELIVERABLES.

17 Q AND DOES THIS FIGURE -- LET ME ASK YOU THIS. HAVE
18 YOU DONE SIMILAR ANALYSES FOR FISCAL YEARS PRIOR TO '84/'85?

19 A YES.

20 Q IS THE FIGURE OF 11.5 PERCENT FOR UNDELIVERABLE,
21 RELATIVELY CONSTANT?

22 A NO.

23 Q HOW DOES IT COMPARE WITH PREVIOUS YEARS?

24 A FOR FISCAL '84/'85, IT IS LOWER THAN IT HAD BEEN
25 PREVIOUS YEARS.

26 Q REFLECTING SOME SORT OF IMPROVEMENT -- WHAT DOES
27 IT REFLECT, IF ANYTHING?

28 A IT REFLECTS THE FACT THAT FOR FISCAL '84/'85,

5A-2
1 WE USED THE LIST OF VOTERS AS THE PRIMARY, SUPPLEMENTED WITH
2 THE DRIVERS, AS OPPOSED TO PRIOR YEARS WHEN WE USED THE NAMES
3 SELECTED FROM THE DRIVER'S LIST SUPPLEMENTED WITH VOTERS.

4 Q ALL RIGHT.

5 A IF I MAY EXPLAIN, THE REASON FOR THAT IS THAT
6 THE DEPARTMENT OF MOTOR VEHICLES IN ITS KEEPING OF ITS FILES,
7 IS NOT CURRENT. IT DOES NOT KEEP UP WITH NAME AND ADDRESS
8 CHANGES, IF YOU WILL.

9 Q ALL RIGHT. AND OF THE 953,167 SENT OUT, HOW MANY
10 WERE NOT RETURNED AT ALL?

11 A 20.1 PERCENT OR 191,109.

6 FO
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Q HOW DOES THAT FIGURE FOR THAT CATEGORY COMPARE
2 WITH NON-RETURNS FOR PRIOR YEARS?

3 A GENERALLY, IT IS ALSO LOWER.

4 Q IT IS LOWER? AND TO WHAT DO YOU ATTRIBUTE THAT,
5 SIR?

6 A AGAIN, THE FACT THAT THE REGISTRAR-RECORDER OF
7 LOS ANGELES HAS BETTER ADDRESSES THAN DOES THE DEPARTMENT OF
8 MOTOR VEHICLES.

9 Q ALL RIGHT. SO THEN THAT LEAVES 652,628 THAT
10 ACTUALLY COME BACK TO YOU, CORRECT; I MEAN THAT COME BACK TO
11 YOU FILLED OUT?

12 A THAT'S CORRECT.

13 Q SO THEN OF THAT NUMBER OF QUESTIONNAIRES, WHAT
14 DO YOUR FIGURES REFLECT WERE EXCUSED FOR ONE REASON OR
15 ANOTHER?

16 A WE EXCUSED -- WE EXCUSED 416,460, WHICH IS
17 43.7 PERCENT OF THE TOTAL NUMBER MAILED.

18 Q THAT IS WHAT PERCENT?

19 A 43.7.

20 Q THAT WERE EXCUSED FOR THREE BASIC REASONS?

21 A WELL, THE THREE -- WHAT YOU ARE CITING AS THREE
22 REASONS ARE THREE CATEGORIES WHICH ARE FURTHER ENUMERATED
23 ON THE NEXT PAGE.

24 Q OKAY. THE NEXT PAGE WOULD BE A BREAKDOWN OF
25 PERSONS EXCUSED BY CATEGORY?

26 A THAT IS CORRECT.

27 MR. CHIER: I AM GOING TO MARK THESE TWO DOCUMENTS AS
28 B AND B-1, YOUR HONOR.

1 THE COURT: ALL RIGHT, THAT WILL BE MARKED AS B AND B-1.

2 THE FIRST ONE IS A INSTEAD OF 1 AND THAT
3 WILL BE MARKED AS B AND B-1.

4 Q BY MR. CHIER: COULD YOU THEN SUMMARIZE FOR US,
5 MR. ARCE, WHAT THE BREAKDOWN IS OF THOSE 416,460 PERSONS
6 EXCUSED?

7 A OKAY. THERE WERE 34,889 PERSONS EXCUSED WHO WERE
8 NON-CITIZENS.

9 THERE WERE 34,791 WHO WERE EXCUSED BECAUSE THEY
10 WERE NON-RESIDENTS.

11 THERE WERE 10,655 WHO WERE EXCUSED FOR INSUFFICIENT
12 ENGLISH.

13 THERE WERE 2,919 WHO WERE EXCUSED BECAUSE THEY
14 HAD BEEN CONVICTED OF A FELONY AND THEIR RIGHTS NOT RESTORED.

15 THERE WERE 9,058 WHO HAD A CLAIM OF PRIOR JURY
16 SERVICE, WHICH WAS VERIFIED.

17 AND THERE WERE 8,374 WHO WERE EXCUSED FOR OTHER
18 REASONS, OTHER REASONS WHICH WOULD NOT MAKE THEM COMPETENT.
19 PRIMARILY, THESE ARE NOTIFICATIONS THAT WE GET FROM EITHER
20 THE REGISTRAR OF VOTERS OR THE HEALTH DEPARTMENT THAT THE
21 PERSON HAS PASSED AWAY, OR FROM SOMEONE IN THE FAMILY.

22 Q ALL RIGHT. NOW LET ME ASK YOU A QUESTION AT THIS
23 POINT: ARE THE QUESTIONNAIRES THAT ARE RETURNED BY THE
24 JURORS DONE UNDER PENALTY OF PERJURY?

25 A YES.

26 Q NOW, IN CATEGORY 2, YOU HAVE PERSONS EXCUSED OR
27 EXCEPTED UNDER CCP SECTION; IS THAT CORRECT?

28 A YES.

1 Q SECTIONS 200, 201A AND 202.5 OF THE CCP?

2 A YES.

3 Q THE 200 SECTION OF THE CCP PROVIDES EXCUSE FOR
4 WHAT CIRCUMSTANCES?

5 A THAT IS THE BROAD ENABLING LEGISLATION AND IF I
6 MAY QUOTE:

7 "THE COURT SHALL EXCUSE A PERSON FROM
8 JURY SERVICE UPON FINDING THAT THE JURY SERVICE
9 WOULD ENTAIL UNDUE HARDSHIP ON THE PERSON OR THE
10 PUBLIC SERVED BY THE PERSON." UNQUOTE.

11 THAT IS SECTION 200.

12 Q THAT IS YOUR GENERAL, YOUR ALL-PURPOSE DISCRETIONARY
13 SECTION, RIGHT?

14 A THAT IS THE PROVISION THAT AUTHORIZES THE COURT
15 AND THE JURY COMMISSIONER TO EXCUSE FOR UNDUE HARDSHIP, YES.

16 Q ALL RIGHT, IS THE LARGEST PERCENTAGE OF THOSE
17 PERSONS EXCUSED UNDER THESE SECTIONS FOR FINANCIAL REASONS?

18 A YES.

19 Q AND THAT REPRESENTS 13.2 PERCENT OF PERSONS WHO
20 ARE NOT PRELIMINARILY DISQUALIFIED?

21 A NO.

22 THE 13.2 PERCENT --

23 Q I AM SORRY. IS THAT THE PERCENTAGE OF THE NUMBERS
24 MAILED OUT, IS THAT RIGHT?

25 A THAT'S CORRECT.

26 MR. CHIER: I AM SORRY.

27 THEN I'LL OFFER THIS AS DEFENDANT'S B AND B-1,
28 YOUR HONOR.

1 THE COURT: YES, IT WILL BE SO MARKED B AND B-1.

2 Q BY MR. CHIER: ALL RIGHT, MR. ARCE, THEN ONCE YOU
3 HAVE GONE THROUGH ALL OF THE POSSIBLE EXCUSES OR EXEMPTIONS
4 OF THE RETURNED QUESTIONNAIRES FOR AT LEAST THE PERIOD OF
5 1984-1985, WHAT WERE YOU LEFT WITH AS A NUMBER OF AVAILABLE
6 JURORS TO SERVE ON JURY DUTY?

7 A 227,475.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q TWO HUNDRED TWENTY-FOUR?

2 A 227,475.

3 MR. WAPNER: THAT IS 227,475?

4 THE WITNESS: THAT IS CORRECT.

5 Q BY MR. CHIER: REPRESENTING WHAT PERCENTAGE OF
6 THE INITIAL MAILER -- OF THE TOTAL NUMBER OF MAILINGS?

7 A 23.9.

8 Q SO THAT IS WHAT IS LEFT, RIGHT?

9 A YES.

10 Q IS THAT THE PEOPLE THAT ACTUALLY SHOW UP FOR JURY
11 SERVICE OR IS THERE FURTHER ATTRITION?

12 A NO.

13 THERE WOULD BE FURTHER ATTRITION.

14 Q IS IT APPROPRIATE AT THIS TIME TO FOLLOW THAT
15 NUMBER -- FIND OUT WHAT HAPPENS TO THOSE PEOPLE?

16 A IT IS YOUR PLEASURE, COUNSEL.

17 Q OF THESE 227,000, MORE OR LESS, JURORS THAT ARE
18 AT LEAST PRELIMINARILY ELIGIBLE FOR JURY SERVICE THAT ARE
19 FILTERED OUT OF THE FULL MAILING, WHAT HAPPENS WITH RESPECT
20 TO GET THEM CLOSER TO THE COURTHOUSES?

21 A ALL RIGHT, IF YOU WILL NOTE ON THAT GRAPHIC THAT
22 I BELIEVE YOU HAVE MARKED DEFENDANT'S B --

23 Q YES.

24 A -- YOU WILL SEE THAT OF THE 227,475, WE ACTUALLY
25 SUMMONED 165,107. WE DIDN'T USE ALL OF THE QUALIFIED POOL.

26 Q ALL RIGHT.

27 A OKAY?

28 Q IS THAT BECAUSE YOU DIDN'T HAVE NEED AT THAT TIME

1 TO SUMMON ALL OF THEM?

2 A THERE WERE TWO REASONS.

3 FIRST OF ALL, WHAT WE CALL -- FIRST OF ALL, WHAT
4 WE CALL THE YIELD WAS MUCH BETTER, SINCE WE USE THE LIST OF
5 VOTERS, AS I INDICATED PREVIOUSLY, AS A PRIMARY FILE TO WHICH
6 WE ADDED THE NAMES FROM THE DRIVER'S LIST, WE GOT MORE THAN
7 WE ANTICIPATED FOR THAT YEAR, OKAY, SO WE DIDN'T NEED THE
8 WHOLE 227,000.

9 Q WHAT DID YOU DO WITH THOSE?

10 A WE MOVE THOSE ASIDE AND WE BEGIN A NEW YEAR.
11 WE DON'T USE THOSE NAMES AT ALL.

12 Q THEY ARE LIKE FISH, YOU THROW THEM BACK?

13 A THAT'S RIGHT, THAT'S RIGHT.

14 WE DO NOT CARRY THEM OVER.

15 Q SO THEY ARE NOT PUT IN A HOLD THING SO YOU NOW
16 HAVE THESE PEOPLE THAT HAVE BEEN SCREENED, YOU JUST DO THE
17 SCREENING THING ALL OVER AGAIN?

18 A THAT IS CORRECT.

19 Q IS THERE ANY REASON WHY YOU DO THAT?

20 A YES. BECAUSE SOME OF THOSE PEOPLE WILL HAVE COME
21 INTO THE FILE EARLY IN THE YEAR AND WE FIND THAT SOME OF
22 THESE -- SOME OF THESE PEOPLE WILL TEND TO COME FROM SPARSELY
23 POPULATED AREAS, THE RURAL, AS OPPOSED TO THE METROPOLITAN
24 AREA OF THE COUNTY. FOR EXAMPLE, THEY WILL TEND TO COME
25 FROM THE ANTELOPE VALLEY, FROM THE POMONA VALLEY, FROM MALIBU
26 AND SOME FROM THE PALOS VERDES PENINSULA, IN WHICH CASE THE
27 DEMAND FOR JURORS IS NOT AS GREAT AS IT IS FOR AREAS WITHIN
28 THE CENTRAL BASIN, IF YOU WILL.

1 Q I GUESS WE WILL GET IN JUST A SHORT WHILE TO THE
2 DISTANCE FROM THE COURTHOUSE CONSIDERATIONS.

3 BUT FOR THE TIME BEING, I WOULD LIKE TO KNOW
4 WHEN YOU THEN DECIDE UPON THE NUMBER OF PRELIMINARY ELIGIBLE
5 JURORS THAT YOU HAVE AVAILABLE AND AFTER DISCARDING THOSE THAT
6 WE HAVE DISCUSSED, WHAT DO YOU DO TO GET THE ONES THAT YOU
7 NEED INTO SERVICE?

8 A IF I MAY CLEAR UP TWO THINGS THAT MAY BE A
9 MISCONCEPTION.

10 FIRST OF ALL, THIS IS AN ONGOING PROCESS. JUST
11 AS I INDICATED, WE MAIL BETWEEN SEVENTEEN AND FIFTY THOUSAND
12 OF THESE QUESTIONNAIRES PER WEEK. WE SIMILARLY GET BACK IN
13 THE INPUT, LIKE THE NUMBERS I DON'T HAVE AT MY FINGERTIPS RIGHT
14 NOW, BUT WE GET THE QUESTIONNAIRES AND IT IS A CONTINUOUS
15 PROCESS, SO ANY OF THE PEOPLE THAT ARE NOT USED AT THE END
16 OF THE YEAR, THEIR NAMES WILL BE DELETED, IF YOU WILL, FROM
17 THE FILE AT THAT POINT.

18 IT IS NOT A DELETION, AS YOU SEEM TO DESCRIBE AT
19 THE MOMENT, OKAY. IT IS THE RESIDUAL AT THE END OF THE YEAR
20 THAT IS LEFT THAT IS NOT USED, OKAY?

21
22
23
24
25
26
27
28

1 Q OKAY. BUT THOSE ARE LIKE FISH THAT ARE THROWN
2 BACK IN THE WATER, THAT ARE AVAILABLE TO BE HOOKED AGAIN?

3 A YES, EXCEPT THAT THEY ARE THROWN BACK IF YOU WILL,
4 AT THE END OF THE YEAR, WHEREAS THEY MAY HAVE BEEN QUALIFIED
5 EARLY IN THE YEAR.

6 MR. WAPNER: EXCUSE ME. CAN THE RECORD REFLECT THAT
7 MR. BARENS IS NOT PRESENT? HE LEFT THE COURTROOM FOR WHATEVER
8 REASON. HE HAS NOT BEEN HERE FOR THE LAST COUPLE OF MINUTES.

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: THANK YOU.

11 Q BY MR. CHIER: SO AFTER YOU WINNOWED OUT THE NUMBER
12 OF PERSONS WHO FIT YOUR NEEDS, BASED ON YOUR STATISTICS, HOW
13 DID YOU GET THOSE PEOPLE TO THE NEXT STAGE OF THIS PROSPECTIVE
14 JURY SERVICE?

15 A ALL RIGHT. LET ME SEE IF I CAN DESCRIBE THAT
16 TO YOU. THIS IS THE PHASE CALLED THE ASSIGNMENT OR THE
17 ALLOCATION PHASE.

18 Q WOULD IT BE HELPFUL TO BACK UP AND GO THROUGH
19 WHAT THE COURTHOUSE STRUCTURE IS?

20 A IT MAY. THERE ARE A NUMBER OF DIFFERENT LOCATIONS
21 WHERE JURORS ARE REQUIRED. THERE ARE A TOTAL OF 33 COURT
22 LOCATIONS THROUGHOUT THE COUNTY WHERE WE REGULARLY HAVE JURORS.
23 32 OF THOSE 33 COURT LOCATIONS REQUIRE THAT WE SUMMON THE
24 JURORS FROM THE POOL OF THE AVAILABLE JURORS AT THAT TIME,
25 32 OUT OF THE 33.

26 THE 33RD ONE, CALABASAS, GETS A COMPLEMENT OF
27 JURORS OUT OF THE VAN NUYS POOL.

28 OKAY, SO IMAGINE IF YOU WILL, OF THOSE PERSONS,

7A-2
1 EVERYONE THAT HAS BEEN QUALIFIED, AS OF A CERTAIN DATE AS
2 AVAILABLE TO THE COMPUTER FOR THE PROCESS OF ASSIGNMENT OR
3 ALLOCATION AND NOT EACH OF THESE COURTS OF THOSE 33 COURTS
4 REQUIRES JURORS EVERY WEEK.

5 THE CENTRAL DISTRICT, SANTA MONICA, TORRANCE AND
6 THE MAJOR SUPERIOR COURT DISTRICTS DO REQUIRE A FRESH SUPPLY
7 OF JURORS ON A WEEKLY BASIS. SOME OF THE MUNICIPAL COURTS
8 REQUIRE JURORS ONCE EVERY FOUR WEEKS AND SOME ONCE EVERY TWO
9 WEEKS.

10 SO THE SCHEDULE FOR SUMMONING JURORS TO THE VARIOUS
11 COURTS VARIES DEPENDING UPON JURY CALENDARS AND THE NUMBER
12 OF AVAILABLE JUDICIAL OFFICERS AND SO FORTH.

13 Q MAY I INTERRUPT YOU FOR ONE MOMENT TO ASK YOU
14 A QUESTION. THE QUESTIONNAIRES COME BACK TO YOU. ARE THEY
15 ANALYZED DEMOGRAPHICALLY OR ETHNICALLY? IS THERE ANY
16 ETHNICITY OR ARE THEY SELF-IDENTIFYING, AS FAR AS
17 DEMOGRAPHICS IN ANY WAY?

18 A NO. THERE IS NO QUESTION ON THERE AND IT IS NOT
19 PERMITTED UNDER CURRENT CALIFORNIA STATUTES FOR US TO ASK
20 ANY QUESTIONS WITH RESPECT TO RACE OR ETHNICITY ON THAT FORM.

21 Q ALL RIGHT. THAT IS A STUDY WHICH IS DONE ON A
22 VOLUNTARY BASIS, WHEN AND IF THE ELIGIBLE JUROR SHOWS UP AT
23 A PARTICULAR COURTHOUSE?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. WOULD YOU CONTINUE?

26 THE COURT: I DON'T KNOW WHAT THAT MEANS, "A VOLUNTARY
27 BASIS".

28 THE WITNESS: WHEN A PANEL APPEARS, LET'S SAY HERE IN

A-3
1 SANTA MONICA ON A MONDAY, THE PERSONS WHO APPEAR ARE GIVEN
2 THE JURY PROFILE FORM.

3 (MR. BARENS RE-ENTERS THE COURTROOM.)

4 THE WITNESS: AND THEY ARE ASKED TO COMPLETE IT. THERE
5 IS A STRONG URGING, INASMUCH AS THERE IS NO REQUIREMENT THAT
6 THEY DO COMPLETE IT.

7 WE FIND TYPICALLY THAT, 98 TO 99 PERCENT OF THE
8 PEOPLE WILL COMPLETE IT. THERE ARE SOME WHO REFUSE TO COMPLETE
9 SUCH A FORM OR TO COMPLETE CERTAIN OF THE QUESTIONS ASKED
10 ON THE FORM.

11 THE COURT: I SEE.

12 MR. WAPNER: YOUR HONOR, THE RECORD SHOULD REFLECT THAT
13 MR. BARENS HAS RETURNED.

14 THE COURT: YES. MR. BARENS IS BACK.

15 MR. WAPNER: THANK YOU.

16 THE COURT: YOU WANTED HIM TO BE EXCUSED, MR. WAPNER,
17 BEFORE HE LEAVES?

18 MR. WAPNER: NO. I JUST WANTED --

19 THE COURT: CAN HE LEAVE ANY TIME HE WANTS?

20 MR. WAPNER: NO. I WANTED TO MAKE A RECORD.

21 MR. BARENS: NO DISRESPECT INTENDED.

22 THE COURT: MR. WAPNER MENTIONED THE FACT THAT YOU WEREN'T
23 HERE.

24 MR. BARENS: THANK YOU.

25 Q BY MR. CHIER: ALL RIGHT. NOW, WE HAVE THE
26 AVAILABLE JURORS ON HOLD, SO TO SPEAK, WAITING FOR ASSIGNMENT
27 TO A PARTICULAR COURTHOUSE. IS THAT THE NEXT STEP?

28 A YES. PICTURE IF YOU WILL, THE DEMONSTRATION THAT

A-
1 YOU USED IN STATISTICS CLASSES, OF A FISHBOWL CONTAINING ALL
2 OF THOSE JURORS. ALL OF THESE PEOPLE HAVE BEEN QUALIFIED
3 AND THEY ARE AVAILABLE AT THAT POINT.

4 Q RIGHT.

5 A THAT NUMBER IS GOING TO BE ON A WEEKLY BASIS,
6 BETWEEN TWENTY AND FORTY THOUSAND, THAT THE COMPUTER HAS
7 AVAILABLE TO IT.

8 Q IT VARIES THAT MUCH?

9 A YES IT DOES.

B FO
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

B-1
1 Q WHAT ARE THE FACTORS THAT AFFECT THAT, CAUSE THAT
2 VARIANCE? THAT IS A SUBSTANTIAL VARIANCE.

3 A YES. FACTORS WHICH AFFECT IT ARE THE NEEDS THAT
4 THE VARIOUS COURTS MAY HAVE. FOR EXAMPLE, IT IS NOT UNUSUAL
5 IN SOME OF THE DEATH PENALTY CASES FOR US TO HAVE TO ORDER
6 OVER AND ABOVE WHAT WE PROJECTED.

7 STAFFING ABSENCES HAVE AN EFFECT ON THE RATE AT
8 WHICH THE POOL IS REPLENISHED.

9 Q STAFFING IN YOUR OFFICE?

10 A IN OUR OFFICE, YES. THOSE FACTORS IF YOU WILL,
11 THE DEMAND FOR JURORS AND OUR ABILITY TO REPLENISH THE SUPPLY
12 ARE AFFECTED BY ABSENCE FACTORS, DEMAND FACTORS AND SO FORTH.

13 Q SO, THERE IS PRETTY CLOSE TOLERANCES THERE?
14 ONE PERSON CAN AFFECT -- ONE PERSON ABSENT FROM YOUR OFFICE
15 CAN AFFECT THE JUROR AVAILABILITY?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. SO, YOU HAVE THIS FISH BOWL IF YOU
18 WILL, OF PEOPLE THAT ARE AVAILABLE VARYING YOU KNOW IN VOLUME,
19 AS MUCH AS 50 PERCENT; IS THAT RIGHT?

20 A THAT'S CORRECT.

21 Q AND THEN, YOU HAVE ON THE OTHER HAND, 32 ESSENTIALLY,
22 COURTHOUSES THAT HAVE VARYING JUROR NEEDS, RIGHT?

23 A THAT'S CORRECT.

24 Q NOW, DOES THE JURY COMMISSIONER'S OFFICE MAINTAIN
25 DEMOGRAPHIC STATISTICS ON A COUNTY-WIDE BASIS? DO YOU DO
26 ANY DEMOGRAPHIC -- DO YOU KNOW FOR EXAMPLE, ON A COUNTY-WIDE
27 BASIS, WHAT PERCENTAGE OF THE COUNTY IS BLACK AND HISPANIC?

28 A WE KNOW FROM THE CENSUS BUREAU FINDINGS, ACCORDING

1 TO THE 1980 CENSUS.

2 Q ALL RIGHT: ARE THESE STATISTICS -- WHAT DO WE
3 CALL THEM? DEMOGRAPHICS?

4 A YES, DEMOGRAPHIC STATISTICS.

5 Q ARE THE DEMOGRAPHIC STATISTICS, IS THAT YOUR SOLE
6 SOURCE OF DEMOGRAPHIC INFORMATION, THE U.S. CENSUS FIGURES?

7 A IN TERMS OF WHAT HAS BEEN CALLED THE TARGETS,
8 THEY ARE SUPPOSED TO BE, YES. THAT IS THE ONLY SOURCE THAT
9 THERE IS.

10 Q ARE THESE DEMOGRAPHICS FURTHER BROKEN DOWN INTO
11 JUDICIAL DISTRICTS SUCH AS THE WEST DISTRICT, SO YOU KNOW
12 WHAT THE DEMOGRAPHIC STATISTICS ARE FOR EACH DISTRICT?

13 A YES. THE CENSUS BUREAU MAKES AVAILABLE TO AGENCIES,
14 GOVERNMENT AGENCIES AND OTHER INTERESTED PARTIES, COMPUTER
15 TAPES OF THE DATA THAT WAS COMPILED IN CONNECTION WITH THE
16 1980 CENSUS.

17 WE TAKE THOSE TAPES AND SORT THEM, IF YOU WILL,
18 AGGREGATE THEM BY VARIOUS BOUNDARIES, INCLUDING JUDICIAL
19 DISTRICTS.

20 Q OKAY. NOW, WHAT DOES THE WEST DISTRICT ENCOMPASS
21 GEOGRAPHICALLY?

22 A I DON'T KNOW THE ANSWER TO THAT AT THIS TIME.
23 IN THE RULES, THE LOCAL RULES, THERE IS A MAP THAT INDICATES
24 THE BOUNDARIES OF THE WEST JUDICIAL DISTRICT.

25 Q WITHOUT BEING YOU KNOW, EXACT, WHAT ARE THE GENERAL
26 BOUNDARIES, DO YOU KNOW?

27 A I COULD NOT ANSWER THAT QUESTION.

28 THE COURT: I THINK IT STARTS NORTH FROM LA CIENEGA

B-3

1 BOULEVARD. IT IS LA CIENEGA TO THE OCEAN AND NORTH, I THINK
2 IT INCLUDES MALIBU. IT IS SOMEWHERE AROUND THERE. GO AHEAD.
3 GIVE US YOUR BEST RECOLLECTION.

4 THE WITNESS: YOUR HONOR, I REALLY CANNOT RECALL THE
5 BOUNDARIES, THE SPECIFIC BOUNDARIES IN TERMS OF STREETS.

6 I CAN MAKE REFERENCE TO THE DAILY JOURNAL RULES
7 OF COURT, LOCAL RULES HERE. THERE IS A MAP IN THERE AND A
8 DESCRIPTION OF THE BOUNDARIES.

9 THE COURT: ALL RIGHT. IS THE JOURNAL DOWN THERE?
10 WE'LL SEE IF WE CAN'T GET A JOURNAL.

11 THE WITNESS: THANK YOU.

12 Q BY MR. CHIER: NOW, YOU HAVE DEMOGRAPHIC
13 STATISTICS -- SHOULD I CONTINUE, YOUR HONOR?

14 THE COURT: HOLD ON FOR JUST A SECOND, IF YOU WILL.

15 (BRIEF PAUSE.)

16 THE COURT: MR. CHIER, DO YOU WANT TO FINISH THE QUESTION?

17 MR. CHIER: LET ME SEE. ALL RIGHT.

18 Q NOW, WE HAVE THE FISH BOWL IF YOU WILL, AVAILABLE
19 JURORS ON ONE HAND AND ON THE OTHER, WE HAVE 32 COURTS
20 REQUIRING JURORS TO BE SERVICED.

21 HOW DO YOU ASSIGN OR ALLOCATE THESE PEOPLE FROM
22 THE FISH BOWL TO THE COURTS? I WOULD LIKE YOU TO FIRST TELL
23 US HOW YOU DO IT GENERALLY. AND THEN WE'LL LATER ON GET INTO
24 THE SPECIFICS OF THE WEST DISTRICT.

25 A YES. I SHOULD POINT OUT TWO THINGS. FIRST OF
26 ALL, AT THIS POINT, THERE HAS BEEN NO WINNOWING OUT, AS YOU
27 INDICATED PREVIOUSLY.

28 EVERYBODY IN THAT FISH BOWL IS EVERYBODY WHO HAS

B-4
1 BEEN QUALIFIED AS OF THAT DATE. THERE HAS BEEN NO WINNOWING
2 OUT, NO THROWING BACK OF A FISH, AS YOU DESCRIBED IT EARLIER.

3 SECONDLY, NOT EACH ONE OF THESE 32 COURTS AS I
4 PREVIOUSLY DESCRIBED, ARE GOING TO BE CALLING JURORS EVERY
5 WEEK. SO THAT WE ARE TYPICALLY LOOKING AT SOMEWHERE BETWEEN
6 10 AND 20 COURTS THAT ARE CALLING ON A WEEKLY BASIS. THAT
7 NUMBER OF COURTS, MAY GO UP, DEPENDING UPON THE NEEDS AS THE
8 COURT SEES THE NEED DEVELOPING.

9 ALL RIGHT. GENERALLY, WHAT HAPPENS IS THIS, THERE
10 IS A COMPUTER PROGRAM IN BETWEEN THE COURTS, AS YOU DESCRIBED
11 IT AND THE FISH BOWL. THE COMPUTER PROGRAM RANDOMLY SELECTS
12 A NAME FROM THAT FISH BOWL.

FO
13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q IS THIS THE TARGET PROGRAM.

2 A NO, SO FAR AS THIS PROGRAM -- PROGRAM, IT'S WHAT
3 YOU CALL THE BULL'S EYE.

4 Q BULL'S EYE?

5 A YES, THE BULL'S EYE COMPUTER PROGRAM REACHES DOWN
6 INTO THIS POOL, IF YOU WILL, RANDOMLY SELECTS A NAME AND SAYS
7 OF THESE COURTS THAT ARE OPEN, WHICH IS THE CLOSEST COURT?

8 NOW, IT MAY BE THAT THE CLOSEST COURT IN ACTUAL
9 DISTANCE IS, LET'S SAY, SANTA MONICA BUT SANTA MONICA DOES
10 NOT REQUIRE JURORS FOR THE TIME THAT WE ARE FILLING, WILL NOT
11 REQUIRE JURORS THE SECOND WEEK OF DECEMBER, WHICH IS THE PERIOD
12 WE ARE FILLING FOR, SO THAT JUROR WILL NOT BE ASSIGNED TO
13 SANTA MONICA.

14 AND THIS HAS BEEN A MISCONCEPTION APPARENTLY IN
15 THE PAST.

16 THE JUROR WILL NOT BE ASSIGNED TO SANTA MONICA.
17 THAT JUROR IS GOING TO BE ASSIGNED TO THE NEXT CLOSEST COURT
18 AND THAT NEXT CLOSEST COURT MAY BE IN ANTELOPE VALLEY.

19 Q IS THERE A LIMIT TO WHICH THE JUROR IS REQUIRED
20 TO TRAVEL TO SERVE AS A JUROR?

21 A YES, STATUTORILY, SECTION 203 OF THE CODE OF CIVIL
22 PROCEDURE READS IN PART AS FOLLOWS:

23 "IN COUNTIES WITH MORE THAN ONE COURT
24 LOCATION, THE RULES SHALL REASONABLY MINIMIZE
25 THE DISTANCE TRAVELED BY JURORS."

26 THAT APPLIES TO ALL COUNTIES.

27 CONTINUING:

28 "IN ADDITION, IN THE COUNTY OF

1 LOS ANGELES NO JUROR SHALL BE REQUIRED TO SERVE
2 AT A DISTANCE GREATER THAN 20 MILES FROM HIS OR
3 HER RESIDENCE."

4 SO WE CAN SUMMON THEM TO A COURT THAT IS MORE THAN
5 20 MILES BUT WE CANNOT MAKE THEM SERVE AT A COURT THAT IS
6 MORE THAN 20 MILES.

7 Q DO THEY KNOW THAT AT THE TIME THEY ARE SUMMONED
8 OR IS THIS SOMETHING LIKE WITNESS FEES, ONLY THOSE WHO KNOW
9 GET THEM, IN OTHER WORDS, WHEN A PERSON IS SUMMONED, LET'S
10 SAY WHEN A PERSON LIVES IN BEVERLY HILLS AND THEY ARE SUMMONED
11 TO SERVE IN LONG BEACH, COULD THAT HAPPEN CONCEIVABLY --

12 A YES.

13 Q -- IN YOUR PROGRAM?

14 A YES, IT COULD.

15 Q WHAT STATISTICS OR TABLES DO YOU USE FOR MEASURING
16 THE DISTANCE FROM WHERE THE JUROR LIVES TO WHERE THE COURT-
17 HOUSE IS LOCATED?

18 A THE COMPUTER PROGRAM HAS AVAILABLE TO IT WHAT ARE
19 KNOWN AS DISTANCE TABLES. THE TABLES WERE ORIGINALLY DEVELOPED
20 OR BORROWED FROM THE COUNTY'S COMMUTER COMPUTER CAR POOL
21 PROGRAM AND INITIALLY, THEY WERE BORROWED FROM THAT. SINCE
22 THAT TIME, THEY HAVE BEEN REFINED, IF YOU WILL, BY US IN AN
23 ATTEMPT TO GET ACTUAL TRAVELING DISTANCE FROM THE CENTROID
24 OF THE CENSUS TRACT TO WHERE THE PERSON LIVES TO THE COURTHOUSE
25 TO THE CENTROID OF THE CENSUS TRACT TO WHERE THE PERSON LIVES.

26 Q SO HOW DOES THAT DIFFER STATISTICALLY, THE FIGURE THAT
27 YOU ARE USING FROM THE COMPUTER, HOW DOES THAT DIFFER FROM THE
28 ACTUAL DISTANCE BETWEEN THE COURTHOUSE AND WHERE THE JUROR LIVES.

1 A I AM SORRY. WOULD YOU REPEAT THE QUESTION?

2 Q YES.

3 WHAT I AM TRYING TO FIND OUT, THAT IS AN AVERAGING
4 TECHNIQUE THAT YOU USE?

5 A NO, NO.

6 THESE ARE DRIVING DISTANCES EITHER AS REPORTED
7 BY JURORS, WHICH WE HAVE VERIFIED AND UPDATED THE TABLE THAT
8 WE USED.

9 Q THE MILEAGE CLAIMS, YOU MEAN?

10 A THE MILEAGE CLAIMS OR DISTANCES DRIVEN BY OUR
11 STAFF WHERE WE HAD SOME DOUBT AND UPDATED THE TABLES.

12 Q SO IF A PERSON, LET'S SAY, SUMMONED TO A COURTHOUSE
13 MORE THAN 20 MILES FROM HIS OR HER PLACE OF RESIDENCE, THERE
14 ARE TWO THINGS THAT CAN HAPPEN, AS I UNDERSTAND IT: A, THEY
15 CAN JUST GO THERE AND SHOW UP IF THEY ARE ACTUALLY ALLOCATED
16 TO THAT COURTHOUSE OR, B, THEY CAN CALL AND COMPLAIN AND SAY
17 IT IS TOO FAR, IN WHICH CASE IF IT IS MORE THAN 20 MILES YOU --

18 A WE THROW THEM BACK IN THE FISH BOWL.

19

20

21

22

23

24

25

26

27

28

1 Q THEY GO BACK IN THERE?

2 A YES.

3 BUT THEY WILL NOT BE ASSIGNED TO THE COURT THAT
4 THEY WERE INITIALLY SUMMONED TO.

5 Q BUT THEY GO BACK INTO THE READY RESERVE AS OPPOSED
6 TO BACK INTO THE OCEAN THEN?

7 A THAT'S CORRECT.

8 Q OKAY, DO YOU HAVE AVAILABLE TO YOU DEMOGRAPHIC
9 INFORMATION ON A DISTRICT BY DISTRICT BASIS?

10 A YES. YOU MEAN FROM THE 1980 CENSUS FIGURES?

11 Q YES.

12 A THAT IS RIGHT.

13 Q DO YOU ALSO HAVE AVAILABLE TO YOU DEMOGRAPHIC
14 INFORMATION AS A RESULT OF THESE QUESTIONNAIRES THAT ARE FILLED
15 OUT WHEN THE PEOPLE ACTUALLY SHOW UP AT THE COURTHOUSES?

16 A YES, GENERALLY.

17 Q HAS THERE BEEN A CHANGE IN THE MANNER IN WHICH
18 JURORS ARE ASSIGNED TO THE WEST DISTRICT, SAY, TO THIS COURT-
19 HOUSE BEFORE AND AFTER THE PEOPLE V. WILLIAMS CASE?

20 A YES.

21 Q COULD YOU TELL WHAT THE CHANGE HAS BEEN LIKE, WHAT
22 IT WAS AND WHAT IT CHANGED TO AND WHAT IT IS NOW?

23 A YES.

24 PRIOR TO THE DECISION IN PEOPLE V. WILLIAMS, THE
25 METHOD FOR ALLOCATING JURORS TO THIS COURT WAS AS I HAVE
26 DESCRIBED.

27 WITH THE WILLIAMS DECISION, ESSENTIALLY, WHAT WE
28 DID WAS TO PROGRAM THE COMPUTER SO THAT IN SUPPLYING JURORS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR SANTA MONICA, SANTA MONICA WOULD NOT BE COMPETING WITH THE OTHER COURTS AROUND SANTA MONICA, WITHIN 20 MILES OF SANTA MONICA FOR THE POOL OF JURORS THAT OTHERWISE THERE WOULD BE COMPETITION FOR.

Q LIKE THE CENTRAL DISTRICT, FOR EXAMPLE?

A YES, THE CENTRAL DISTRICT.

ESSENTIALLY, WHAT WE DID WAS TO PROGRAM THE COMPUTER SO THAT NEITHER THE CENTRAL DISTRICT NOR COMPTON OR INGLEWOOD NOR TORRANCE OR SOME OF THOSE OTHER COURTS THAT COMPETE WITH THE SAME COGNIZABLE GROUP WOULD BE IN THE RUN WHEN WE MADE THE RUN.

A=1
1 Q THIS WAS BEFORE WILLIAMS?

2 A NO. THIS WAS AFTER WILLIAMS.

3 AS A RESULT OF AN ORDER THAT WAS SIGNED BY JUDGE
4 THOMAS, WHO WAS THEN ACTING SUPERVISING JUDGE WHILE JUDGE
5 CHOATE WAS GONE, JUDGE THOMAS ORDERED US TO USE THE SO-CALLED
6 WILLIAMS SYSTEM IN ALLOCATING JURORS TO THIS COURTHOUSE.
7 THAT ORDER HAS SUBSEQUENTLY BEEN RESCINDED.

8 Q BECAUSE OF THE PENDENCY OF A HEARING IN THE
9 SUPREME COURT?

10 A THAT IS CORRECT.

11 Q SO NOW WE ARE BACK TO PRE-WILLIAMS METHODS; IS
12 THAT CORRECT?

13 A THAT'S CORRECT.

14 Q THAT WORKS ESSENTIALLY HOW IN GETTING JURORS FROM
15 THE FISH BOWL TO THE COURTHOUSE?

16 A AS I PREVIOUSLY DESCRIBED, YOU SEE, THE ONLY
17 DIFFERENCE IS THIS: WHEN THE COMPUTER GOES INTO THE FISH
18 BOWL, UNDER THE PRE-WILLIAMS, IF YOU WILL, IT SAYS OF THE
19 COURTS THAT ARE AVAILABLE, WHICH IS THE CLOSEST COURT? AND
20 IT ASSIGNS THE JUROR TO THAT COURT.

21 UNDER THE SO-CALLED WILLIAMS DECISION, THE COMPUTER
22 GOES IN THE FISH BOWL AND SAYS, THIS JUROR GOES TO SANTA MONICA
23 IRRESPECTIVE OF WHAT OTHER COURTS ARE PRESENT.

24 Q ALL RIGHT. SO YOU GET A TRUER RANDOM SELECTION
25 UNDER THE WILLIAMS METHOD; IS THAT CORRECT?

26 A WELL, I DON'T AGREE WITH THAT STATEMENT.

27 Q WELL, THERE ARE JURORS FROM A GENERAL POOL AS
28 OPPOSED TO A SEGREGATED MASS OF JURORS THAT ARE ALLOCATED

A-2
1 ONLY TO THIS COURT?

2 A THAT IS NOT TRUE.

3 REMEMBER, THE DEFINITION OF RANDOM SELECTION IS
4 THAT EVERY PERSON IN WHATEVER UNIVERSE YOU ARE CONSIDERING
5 HAS AN EQUAL CHANCE OF BEING SELECTED.

6 THE COMPUTER RANDOMLY SELECTS A PERSON AND ASSIGNS
7 THAT JUROR TO THE CLOSEST COURT, NOT NECESSARILY -- AGAIN,
8 I WANT TO BE VERY CAREFUL INDISTINGUISHING -- NOT NECESSARILY
9 THE CLOSEST COURTHOUSE IN ACTUAL DISTANCE BUT THE CLOSEST
10 COURT THAT IS OPEN.

11 ALL THAT HAS HAPPENED IS UNDER THE WILLIAMS
12 DECISION, WE REMOVE THE COMPETITION THAT PREVAILS UNDER THE
13 SYSTEM WE USE AND THAT IS ALL.

14 Q DEMOGRAPHICALLY, WHAT IS THE WEST DISTRICT
15 COMPOSED OF ON THE BASIS OF THE MOST RECENT CENSUS FIGURES?

16 THE WITNESS: YOUR HONOR, MAY I HAVE A DRINK OF WATER?

17 THE COURT: OF COURSE. STAY WHERE YOU ARE. WE WILL
18 GET IT FOR YOU.

19 THE WITNESS: ACCORDING TO THE 1980 CENSUS INFORMATION
20 FOR THE WEST SUPERIOR COURT JUDICIAL DISTRICT, AS DETERMINED
21 BY THE BOUNDARIES THAT WE HAVE MADE REFERENCE TO, ALTHOUGH
22 NOT ADEQUATELY -- THESE ARE ON THE COMPUTER TAPE -- THE
23 PERCENTAGE OF WHITE OR CAUCASIAN NON-HISPANIC IN THIS DISTRICT
24 IS 78.4 PERCENT.

25 THE PERCENTAGE OF BLACKS, 5.6 PERCENT.

26 THE PERCENTAGE OF HISPANICS, AND THIS INCLUDES
27 PERSONS WHO ARE NOT CITIZENS AND ALSO INCLUDES PERSONS --
28 THERE MAY BE AN OVERLAP HERE OF PERSONS WHO DO NOT HAVE A

A-3
1 SUFFICIENT KNOWLEDGE OF THE ENGLISH LANGUAGE -- ARE 9.6
2 PERCENT.

3 AND OTHER PERSONS, 6.4 PERCENT.

4 Q HISPANIC AND OTHER PERSONS?

5 A NO.

6 HISPANIC WAS 9.6 PERCENT.

7 OTHERS, 6.4 PERCENT.

8 Q ALL RIGHT. HAVE YOU DONE ANY STATISTICAL ANALYSES
9 WHICH REFLECT THE DEMOGRAPHICS OF THE PEOPLE WHO ACTUALLY
10 SHOW UP IN SANTA MONICA, FOR EXAMPLE, FOR JURY SERVICE?

11 A YES, WE HAVE DONE SURVEYS HERE.

9 FO
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Q AND WHAT IS THE MOST RECENT SURVEY YOU HAVE DONE
2 HERE?

3 A THE MOST RECENT SURVEY WE CONDUCTED, WAS OF THE
4 PANEL THAT APPEARED AT THIS LOCATION, HERE IN SANTA MONICA
5 ON NOVEMBER THE 17TH AND ALSO, OF THE 91 PERSONS THAT REMAINED
6 IN THE DEPARTMENT C FOR THIS CASE AS OF NOVEMBER THE 14TH
7 AND A PORTION OF OTHER JURORS THAT WERE SENT HERE.

8 I SHOULD POINT OUT THAT WE SENT DEPARTMENT C A
9 TOTAL OF 249 PROSPECTIVE JURORS. WE WERE ABLE TO SURVEY 162
10 OF THAT 249, INCLUDING OUT OF THE REMAINING 91 AS OF FRIDAY,
11 NOVEMBER 14.

12 Q WHEN YOU SAY THAT YOU WERE ABLE TO, YOU WERE ABLE
13 TO GET THAT MANY PEOPLE TOGETHER TO DISTRIBUTE QUESTIONNAIRES
14 TO?

15 A YES.

16 Q THIS IS A STRICTLY VOLUNTARY THING ON THEIR PART,
17 ISN'T IT?

18 A WELL, WITH RESPECT TO THE JURORS THAT WERE SENT
19 TO THIS DEPARTMENT, WE PHRASED IT A LITTLE BIT MORE STRONGLY.
20 SO IT IS VOLUNTARY BUT IT WAS PHRASED MORE TO ELICIT
21 COOPERATION FROM THE JURORS.

22 Q ALL RIGHT. AND COULD YOU GIVE US THE RESULTS
23 OF THE STATISTICAL SURVEY YOU DID WITH RESPECT TO THOSE 162?

24 A YES. WITH RESPECT TO THE 162, THERE WERE 131
25 WHITE, NON-HISPANICS. THAT IS 80.9 PERCENT; 17 SELF-IDENTIFIED
26 PERSONS OF BLACK RACE, 10.5 PERCENT; 2 HISPANICS, 1.2 PERCENT;
27 12 PERSONS WHO IDENTIFIED THEMSELVES AS BEING A MEMBER OF
28 SOME OTHER RACIAL OR ETHNIC GROUP, FOR A TOTAL OF 7.4 PERCENT.

1 Q OKAY. NOW, DOES THE CHANGE IN THE SYSTEM WHEREBY
2 THE WEST DISTRICT NO LONGER COMPETES WITH OTHER COURTHOUSES
3 HAVING LARGE JURY REQUIREMENTS, DOES THAT MEAN THAT THE JURORS
4 THAT COME TO THIS COURTHOUSE DO NOT COME FROM THE CENTRAL
5 DISTRICT, FOR EXAMPLE, FOR THE MOST PART?

6 A I AM NOT SURE I UNDERSTAND THE QUESTION.

7 Q IN QUESTIONING SOME OF THE PROSPECTIVE JURORS
8 IN THIS CASE, IT APPEARED THAT THE JURORS CAME FROM AREAS
9 OTHER THAN THE CENTRAL DISTRICT OF LOS ANGELES, MORE SUBURBAN
10 AREAS SUCH AS WESTCHESTER, FOR EXAMPLE, OR MARINA DEL REY,
11 VENICE, SANTA MONICA AND THEN THE NEWEST VALLEY AREA, WHICH
12 I GUESS IS WHAT IS CALLED ENCINO?

13 A YES, ENCINO/WOODLAND HILLS.

14 Q CANOGA PARK?

15 A YES.

16 Q ARE THESE ALL DEEMED TO BE AREAS WITHIN WHAT?
17 IS IT A 10 OR 11-MILE AREA OF THE COURTHOUSE?

18 A NO THEY ARE NOT. I DON'T KNOW WHERE THIS IDEA
19 THAT WE ARE ONLY DRAWING FROM 10 OR 11 MILES HAS COME FROM.

20 TESTIMONY THAT I HAVE PREVIOUSLY GIVEN IS AS
21 FOLLOWS: WHEN YOU TAKE THE JURORS THAT SERVE ON A COUNTY-WIDE
22 BASIS, THE AVERAGE MILEAGE THAT IS DRIVEN BY JURORS IS BETWEEN
23 10 AND 11 MILES.

24 BUT, LET ME GIVE YOU AN EXAMPLE. LET'S ASSUME
25 THAT WE HAVE TWO JURORS THAT SERVE AT THIS COURT AND ONE LIVES
26 ACROSS THE STREET IN THE RAND BUILDING. THEREFORE, YOU KNOW,
27 CLAIMS NO MILEAGE AND IS ENTITLED TO NO MILEAGE AT ALL.

28 WE HAVE ANOTHER PERSON THAT LIVES IN SOUTH CENTRAL

1 LOS ANGELES, 20 MILES AWAY. THE AVERAGE MILES IS GOING TO
2 BE 10 MILES.

3 IN FACT, ONE DIDN'T DRIVE AT ALL AND THE OTHER
4 ONE DROVE 20 MILES. SO THERE IS A REAL MISTAKE THAT HAS BEEN
5 MADE WITH RESPECT TO CONSTRUING THE FACT THAT ON THE AVERAGE,
6 PEOPLE DRIVE SOME 10 OR 11 MILES.

7 THE MISTAKE IS THAT AN AVERAGE TAKES INTO
8 CONSIDERATION THE EXTREMES. YOU ARE GOING TO HAVE A CERTAIN
9 NUMBER OF PEOPLE THAT ARE DRIVING OVER 20 MILES TO GET TO
10 A COURT AND ON THE OTHER HAND, YOU ARE GOING TO HAVE SOME
11 PEOPLE THAT LIVE VERY CLOSE.

12 Q IS THERE AN EXPLANATION OR A REASON THAT YOU CAN
13 ARTICULATE, WHY IT WOULD APPEAR THAT THERE ARE VERY FEW IF
14 ANY, JURORS RESPONDING TO THIS COURTHOUSE THAT COME FROM THE
15 CENTRAL DISTANCE?

16 MR. WAPNER: WELL, I OBJECT TO THAT AS ASSUMING A FACT
17 IN THE QUESTION, THAT IS NOT IN EVIDENCE SO FAR AT THE HEARING.

18 THE COURT: I WILL SUSTAIN THE OBJECTION.

19 Q BY MR. CHIER: HAVE YOU DONE ANY SURVEYS OR
20 STATISTICAL ANALYSES ABOUT -- CONCERNING WHERE THE JURORS --
21 WHAT COMMUNITIES THE JURORS COME FROM THAT REPORT FOR JURY
22 DUTY HERE IN SANTA MONICA?

23 A NO. WE HAVE NOT DONE A STUDY PER SE. BUT ON
24 THE BASIS OF LOOKING AT THE LIST OF JURORS -- ON THE BASIS
25 OF LOOKING AT THE TWO LISTS, YOU CAN DETERMINE THE CITIES
26 THAT ARE TYPICALLY REPRESENTED OR THE COMMUNITIES THAT ARE
27 TYPICALLY REPRESENTED OR THE AREAS THAT ARE TYPICALLY
28 REPRESENTED.

1 YOU CAN LOOK AT THE LIST OF PEOPLE WHO ARE PAID
2 FOR JURY SERVICE OR ALTERNATIVELY, YOU CAN LOOK AT THE ENTIRE
3 LIST OF PEOPLE THAT WERE SUMMONED FOR JURY SERVICE AT THIS
4 COURT.

5 THERE ARE TWO WAYS IN WHICH YOU CAN DO IT. I
6 HAVE BROUGHT WITH ME WHAT WE CALL THE IMPANELMENT LISTING
7 FOR NOVEMBER THE 3RD OR THE 10TH, I HAVE WITH ME. A PART
8 OF THAT GROUP WAS SENT TO THIS COURT IN CONJUNCTION WITH THIS
9 CASE.

10 AND I ALSO HAVE PAYROLL LISTINGS FOR THE LATTER
11 PART OF OCTOBER, WHICH SEEMS TO INDICATE THAT THERE IS A GOOD
12 SCATTERING, A GOOD GEOGRAPHICAL REPRESENTATION AND
13 CONSIDERATION OF COMMUNITIES AROUND THIS COURT, CANOGA PARK,
14 WOODLAND HILLS, RESEDA, VAN NUYS, INGLEWOOD, TORRANCE,
15 PORTIONS OF LOS ANGELES ZIP CODES 90011 -- 90011 I AM NOT
16 SURE THAT I GAVE THE COMPLETE ONE ON THE FIRST ONE. IT IS
17 90001, IT SHOULD BE. THEN IT IS 90011, 90044, 46, 48 ARE
18 JUST SOME THAT I HAVE SPOTTED IN LOOKING AT THE LIST OF PEOPLE
19 THAT HAVE BEEN PAID FOR JURY SERVICE AT THIS COURT.

20 SO, FROM MY PERSPECTIVE AND IN MY OPINION, THERE
21 IS A GOOD DISPERSION, GOOD REPRESENTATION WITH RESPECT TO
22 PEOPLE BEING SUMMONED TO THIS COURT.

23 FURTHER, I HAVE SOME COMPUTER GRAPHICS I CAN SHOW
24 YOU THAT INDICATE WHERE THE PEOPLE GENERALLY COME FROM THAT
25 ARE BEING SUMMONED TO THIS COURT.

26 Q I WOULD LIKE TO SEE THOSE. BUT BEFORE WE GET
27 TO THOSE, CAN I ASK YOU WHETHER YOU HAVE DONE, WHEN YOU HAVE
28 SURVEYED THE PERSONS WHO ACTUALLY SHOW UP HERE IN THE

1 SANTA MONICA COURTHOUSE, IN TERMS OF THEIR AGE AND INCOME
2 GROUP, EARNINGS?

3 A YES. THE QUESTIONNAIRE THAT WE USE, THE SURVEY
4 FORM WE USE, DOES -- INCLUDES QUESTIONS WITH RESPECT TO ANNUAL
5 FAMILY INCOME, THE AGE OF THE PERSON RESPONDING, THEIR
6 EDUCATION AND THEIR OCCUPATION.

7 IN ADDITION, THERE ARE QUESTIONS OF ETHNICITY,
8 SEX, MARITAL STATUS.

9 Q DO YOU FIND MR. ARCE, THAT THE FIGURES WITH
10 RESPECT TO EDUCATION, INCOME AND ETHNICITY ARE SKEWED IN THE
11 WEST DISTRICT, COMPARED TO THOSE ON A COUNTY-WIDE --

12 A NO. THAT IS NOT WHAT I FIND. GENERALLY, I FIND
13 THAT JURORS TEND TO BE BETTER EDUCATED.

14 Q IN SANTA MONICA?

15 A NO, AS A GENERAL RULE, THAT YOU KNOW, WHEN
16 COMPARED TO THE 1980 CENSUS FIGURES, THAT JURORS TEND TO BE
17 BETTER EDUCATED, TO MAKE MORE MONEY THAN THE FIGURES PUBLISHED
18 BY THE CENSUS BUREAU AS THE NORM, IF YOU WILL.

19

20

21

22

23

24

25

26

27

28

1 Q SO THAT YOU HAVE A RICHER AND MORE EDUCATED PERSON
2 SHOWING UP FOR JURY SERVICE THAN IS REPRESENTED BY THE
3 DEMOGRAPHICS OF THE COUNTY AS A WHOLE?

4 A THAT'S CORRECT.

5 Q IS THIS 20-MILE FIGURE, AN ARTIFICIAL NUMBER IN
6 ANY SENSE?

7 A WELL, ONLY IN THE SENSE THAT THERE HAVE BEEN SOME
8 HEARINGS LIKE THIS, IN WHICH IT SEEMS THAT THE DIRECTION HAS
9 BEEN THAT THE 20 MILES DESCRIBES A JUDICIAL DISTRICT OR
10 DESCRIBES A DISTRICT, FOR PURPOSES OF JURY SELECTION.

11 AND AS I PREVIOUSLY READ FROM SECTION OF 203 OF
12 THE CODE OF CIVIL PROCEDURE, THE 20 MILES IS INTENDED TO
13 DELIMIT THE DISTANCE THAT A JUROR MAY BE REQUIRED OR THE
14 POINT AT WHICH A JUROR CAN SAY I DON'T WISH TO TRAVEL TO THAT
15 COURTHOUSE BECAUSE OF THE DISTANCE FACTOR.

16 IT IS A FURTHER RULE OF EXCUSE FOR US TO EXCUSE
17 JURORS FROM SERVING AT A PARTICULAR COURT, NOT FROM JURY
18 SERVICE ALTOGETHER.

19 Q WELL, IT IS ARTIFICIAL IN TWO SENSES. FIRST, IT
20 IS NOT REALLY 20 MILES? IT IS ACTUALLY 20 DRIVING MILES,
21 RIGHT?

22 A I AM NOT SURE WITH RESPECT TO THAT STATEMENT, SIR.

23 Q YOU AGREED WITH THAT STATEMENT ON OCTOBER 23RD,
24 1986 IN ANOTHER PROCEEDINGS IN THE SAN FERNANDO VALLEY, DID
25 YOU NOT?

26 A LET'S ASSUME THAT WE CLARIFY IT. THE CONTEXT IN
27 THAT HEARING, WAS THAT FOR PURPOSES OF JURY ASSIGNMENT, WE
28 SHOULD USE 20 MILES AS THE CROW FLIES.

1 OUR POSITION IS AND HAS BEEN, WE SHOULD USE 20
2 MILES AS THE JUROR DRIVES. THERE IS NO CLEAR DIRECTION IN
3 THE LAW AS TO WHETHER WE SHOULD USE 20 MILES AS THE CROW FLIES
4 OR 20 MILES AS A JUROR DRIVES. AND --

5 Q WELL --

6 MR. WAPNER: EXCUSE ME. I DON'T THINK HE FINISHED.

7 MR. CHIER: SORRY.

8 THE WITNESS: THERE IS A PROVISION IN THE CALIFORNIA
9 CODE OF CIVIL PROCEDURE THAT CLEARLY INDICATES THAT WE SHOULD
10 ONLY PAY JURORS FOR ACTUAL MILES DRIVEN.

11 THAT IS SECTION 196 OF THE CALIFORNIA CODE OF
12 CIVIL PROCEDURE THAT READS IN PART:

13 "UNLESS A HIGHER RATE OF MILEAGE IS
14 OTHERWISE PROVIDED BY STATUTE OR BY COUNTY OR
15 CITY AND COUNTY ORDINANCE, TRIAL JURORS IN THE
16 SUPERIOR, MUNICIPAL AND JUSTICE COURTS SHALL BE
17 REIMBURSED FOR MILEAGE AT THE RATE OF FIFTEEN
18 CENTS PER MILE FOR EACH MILE ACTUALLY ..."

19 AND I EMPHASIZE THAT PART --

20 "ACTUALLY TRAVELED FROM ATTENDING
21 AS A JUROR AND GOING HOME."

22 SO OUR POSITION, BASED ON THAT PROVISION, IS
23 THAT WHAT IS INTENDED, IS THAT THE 20 MILES BE AS A JUROR
24 CLAIMS OR AS A JUROR DRIVES.

25
26
27
28

1 Q WELL, LET ME ASK YOU: IF ON OCTOBER 23RD, YOU
2 WERE ASKED THE FOLLOWING QUESTIONS AND MADE THE FOLLOWING
3 ANSWERS --

4 MR. WAPNER: DO YOU HAVE A PAGE NUMBER, COUNSEL?

5 MR. CHIER: YES, PAGE 951.

6 "Q SO IN L.A. COUNTY, YOU HAVE THE
7 20 MILES AS BEING ARTIFICIAL IN TWO SENSES,
8 ONE, IN THAT IT IS NOT REALLY 20 MILES. IT
9 HAS NOW BECOME 20 DRIVING MILES; IS THAT
10 CORRECT?

11 "A YES."

12 WERE YOU ASKED THAT QUESTION AND DID YOU MAKE THAT
13 ANSWER?

14 A YES, THAT IS CORRECT.

15 Q STILL READING:

16 "Q AND SECOND OF ALL, IT IS ONLY
17 SOMETHING THAT OCCURS IF A JUROR KNOWS ENOUGH
18 TO CALL UP AND COMPLAIN THEY DON'T WANT TO
19 TRAVEL AS FAR AS THEY MAY BE REQUIRED; IS
20 THAT CORRECT?

21 "A THAT IS CORRECT."

22 YOU GAVE THAT ANSWER?

23 A YES, YES.

24 Q SO THE DIFFERENCE BETWEEN 20 MILES, LET'S SAY,
25 BY THE CROW FLIES AND 20 MILES IN THE SENSE OF YOUR ARTIFICIAL
26 20 MILES CAN SKEW SIGNIFICANTLY THE DEMOGRAPHICS OF THE
27 PERSONS REPORTING FOR JURY SERVICE IN A PARTICULAR COURTHOUSE;
28 ISN'T THAT CORRECT?

1 A YES.

2 Q NOW, ISN'T IT TRUE THAT LESS THAN TEN PERCENT OF
3 THE JURORS COME FROM AN AREA OF MORE THAN 20 MILES?

4 A ACCORDING TO THE FIGURES THAT WE USED IN SAN
5 FERNANDO, DEVELOPED FOR SAN FERNANDO, I THINK GENERALLY APPLY,
6 THAT IS CORRECT.

7 Q YOU HAVE TESTIFIED EARLIER IN ANOTHER HEARING,
8 SIR, THAT THE AVERAGE WAS 11 MILES; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q NOW, CAN YOU TELL ABOUT THE STATISTICS, THE
11 IMPANELMENT STATISTICS THAT YOU HAVE REFERRED TO JUST A FEW
12 MINUTES AGO?

13 A YES, THE REFERENCE WAS TO THE IMPANELMENT LISTING
14 FOR NOVEMBER THE 3RD -- AND I WANT TO CORRECT SOMETHING AND
15 MAKE SURE THAT THERE IS NO MISUNDERSTANDING.

16 WE DIDN'T DO A STUDY.

17 WHAT I INDICATED IS I MADE A COPY OF THAT
18 IMPANELMENT LIST AND THESE ARE THE PEOPLE THAT WERE SUMMONED
19 TO APPEAR HERE ON NOVEMBER 3RD AND IN GOING DOWN THIS LIST,
20 I DETERMINED THAT THE REPRESENTATION OF COMMUNITIES, INCLUDING
21 ZIP CODES FROM LOS ANGELES, SEEMED TO BE WELL DISBURSED.

22 THERE ARE GOING TO BE SOME COMMUNITIES APPEARING
23 MORE FREQUENTLY THAN OTHERS.

24 BUT TO SAY THAT I DID A STUDY, I DON'T WANT TO
25 MISREPRESENT THAT.

26 NOW, FOR EXAMPLE, ON THE FIRST PAGE THE FOLLOWING
27 COMMUNITIES ARE REPRESENTED: SANTA MONICA. HERMOSA BEACH.
28 VAN NUYS. WOODLAND HILLS. MALIBU. LAWDALE. LOS ANGELES

1 90025. PACIFIC PALISADES. REDONDO BEACH. LOS ANGELES 90034.
2 CULVER CITY. LOS ANGELES 90066.

3 Q WHERE IS THAT 90066?

4 A YES.

5 90066, WHERE IS IT?

6 Q DO YOU KNOW, I MEAN?

7 A NO, I DON'T KNOW GENERALLY, NO.

8 Q ALL RIGHT.

9 A MARINA DEL REY. CALABASAS. CANOGA PARK. TORRANCE.
10 VENICE. SEPULVEDA. TARZANA. LOS ANGELES 66 AGAIN.

11 BUT I SHOULD POINT OUT THAT LOS ANGELES 66, AS
12 WELL AS SANTA MONICA AND SOME OF THE OTHER COMMUNITIES APPEAR
13 MORE THAN ONCE.

14 I AM JUST MAKING REFERENCE --

15 Q RIGHT.

16 NOW MAY I ASK YOU A QUESTION AT THIS POINT, SIR?

17 A YES.

18 Q ISN'T IT TRUE, BASED ON YOUR KNOWLEDGE OF THE
19 COUNTY-WIDE DEMOGRAPHICS, THAT THE COMMUNITIES WHICH YOU HAVE
20 JUST RUN THROUGH, SUCH AS CULVER CITY, TORRANCE, REDONDO BEACH,
21 PACIFIC PALISADES, CANOGA PARK, THESE ARE COMMUNITIES WHICH
22 ARE UNDER-REPRESENTED IN TERMS OF BLACK AND HISPANIC POPULATION
23 COMPARED TO THE COUNTY DEMOGRAPHICS FOR THE SAME ETHNIC GROUPS;
24 ISN'T THAT CORRECT?

25 A I HAVE NOT DONE A STUDY OF THE SPECIFIC CITIES,
26 JUST AS I HAVE NOT DONE A STUDY OF THE LOS ANGELES ZIP CODES
27 THAT I MENTIONED.

28 Q IS IT A FACT, SIR, THAT BASED ON THE SURVEYS THAT

1 YOU HAVE CONDUCTED WITH RESPECT TO THE JURORS THAT ACTUALLY
2 SHOW UP FOR IMPANELMENT HERE AT THE SANTA MONICA COURTHOUSE
3 THAT AT LEAST WITH RESPECT TO THE ETHNIC MINORITIES, SUCH AS
4 BLACK AND HISPANIC, THEY ARE WEALTHIER AND MORE EDUCATED THAN
5 THE AVERAGE BLACK JUROR ELIGIBLE IN, LET'S SAY, THE CENTRAL
6 DISTRICT OR ON A COUNTY-WIDE BASIS?

7 A I HAVE NOT MADE COMPARISONS WITH BLACKS APPEARING
8 HERE VERSUS BLACKS APPEARING IN THE CENTRAL DISTRICT.

9 I THINK --

10 Q THOSE STATISTICS ARE AVAILABLE?

11 THE COURT: LET HIM FINISH, WILL YOU PLEASE?

12 MR. CHIER: I AM SORRY.

13 THE WITNESS: THE STATISTICS ARE AVAILABLE.

14 I WOULD GENERALLY SAY, BASED ON THE STUDIES THAT
15 WE HAVE DONE, THAT A BLACK PERSON APPEARING HERE WOULD TEND
16 TO BE SOMEWHAT WEALTHIER THAN THE NORM, ACCORDING TO THE
17 1980 CENSUS, AND WOULD TEND TO BE BETTER EDUCATED, YES.

18 Q BY MR. CHIER: ALL RIGHT. WOULD YOU CONTINUE THEN
19 WITH YOUR EVALUATION OF THE SURVEYS CONDUCTED WITH RESPECT
20 TO THE JURORS HERE ON THE 17TH AND THE 14TH OF NOVEMBER.

21 A I AM SORRY, MR. CHIER. WHAT IS YOUR QUESTION?
22
23
24
25
26
27
28

10A-7
1 Q HAD YOU CONCLUDED YOUR EVALUATION BASED ON THOSE
2 SURVEYS THAT YOU TOOK OF THE JURORS?

3 WHAT IS THE INFORMATION YOU GLEANED FROM THE SURVEYS
4 THAT YOU TOOK OF THOSE?

5 A WELL, ON THE BASIS OF THE INFORMATION WE TOOK
6 HERE WITH RESPECT TO THE JURORS THAT WERE SURVEYED FROM THE
7 GROUP THAT WAS INITIALLY SENT HERE, MY CONCLUSION WOULD BE
8 THAT YOU HAVE A GOODLY NUMBER OF BLACKS. YOU HAVE 13.2 PERCENT
9 BLACKS REMAINING, WHICH IS HIGHER THAN THE PERCENTAGE OF BLACKS
10 IN THE JUDICIAL DISTRICT THAT WE HAVE PREVIOUSLY INDICATED,
11 AND IT IS HIGHER THAN THE COUNTY-WIDE FIGURE.

12 Q 13.2 PERCENT REMAINING AFTER HARDSHIP AND WHAT
13 HAVE YOU?

14 A YES.

15 Q THOSE ARE AVAILABLE FOR IMPANELMENT, IN OTHER
16 WORDS?

17 A AVAILABLE FOR THE NEXT FACET OF THE IMPANELMENT,
18 YES.

19 THAT WITH RESPECT TO AT LEAST 162 THAT WE WERE
20 ABLE TO SURVEY, THERE WERE 10.5 PERCENT BLACK, IN WHICH CASE
21 THE NUMBER IS HIGHER THAN THE DISTRICT AND STATISTICALLY NOT
22 SIGNIFICANT WITH RESPECT TO DISPARITY WHEN YOU COMPARE IT
23 TO THE COUNTY-WIDE FIGURE OF 11.4. IT IS A DIFFERENCE OF
24 .9 PERCENT OF ABSOLUTE DISPARITY, WHICH MEANS ESSENTIALLY
25 NO DISPARITY AT ALL, NO STATISTICALLY SIGNIFICANT DISPARITY.

26 WITH RESPECT TO HISPANICS, THERE IS A DISPARITY.
27 YOU KNOW, THERE IS A DISPARITY THAT I CAN'T ACCOUNT FOR AT
28 THIS POINT WHY THERE IS A DISPARITY.

0A-2

1 WITH RESPECT TO OTHERS, THAT IS, PERSONS OTHER
2 THAN WHITE, OTHER THAN HISPANIC, OTHER THAN BLACK, THE PANEL
3 THAT INITIALLY WERE SENT HERE WAS OVER-REPRESENTED AS COMPARED
4 TO THE DISTRICT FIGURE AND WELL IN LINE.

5 Q I AM SORRY. WAS THAT WITH RESPECT TO WHITE?

6 A PARDON ME?

7 Q THAT LAST FIGURE WAS WITH RESPECT TO WHAT?

8 THE COURT: TO THE DISTRICT FIGURE.

9 THE WITNESS: THE DISTRICT FIGURE.

10 Q BY MR. CHIER: WHAT GROUP, THOUGH?

11 A FOR THE OTHER GROUP.

12 I WOULD ALSO CONCLUDE THAT WITH RESPECT TO THE
13 DISTRIBUTION OF THE AGE DISTRIBUTION OF THE 162 PEOPLE THAT
14 WE WERE ABLE TO SURVEY, THAT EACH AND EVERY ONE OF THE AGE
15 CATEGORY WAS REPRESENTED IN A GROUP.

16 YOU HAD AT LEAST ONE PERSON THAT WAS BETWEEN 18
17 AND 20 YEARS AND APPARENTLY THAT PERSON IS STILL IN THE PANEL
18 THAT WAS AVAILABLE TO THE COURT AS OF NOVEMBER THE 14TH.

19 31 PERSONS WERE BETWEEN THE AGE GROUPS OF 21 TO
20 30, OF WHICH 18 REMAINED.

21 Q OF WHICH HOW MANY REMAIN?

22 A 18.

23 31 PERSONS BETWEEN THE AGES OF 31 AND 40, OF WHICH
24 9 REMAIN.

25 36 PERSONS BETWEEN THE AGES OF 41 AND 50, OF WHICH
26 23 REMAIN.

27 Q HOW MANY WAS THE ORIGINAL?

28 A 36.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Q THERE WERE ORIGINALLY 36 AND 23 REMAIN?

A YES.

32 PERSONS BETWEEN THE AGE OF 51 AND 60, OF WHICH
18 REMAINED.

Q HOW MANY WERE THE BASE FIGURE?

A 32.

10A

1 FO

1A-1

1 Q 32 AND THEN 18?

2 A YES. THE NEXT GROUP IS 61 TO 70. THERE WERE
3 25 ORIGINALLY AND 17 REMAINED. AND YOU HAD 71 PLUS. THAT
4 IS, THAT WOULD BE IN THE ORIGINAL PANEL AND 5 REMAINED.

5 SO FROM THE POINT OF VIEW OF AGE, THE AGE
6 CATEGORIES ARE EACH REPRESENTED. EACH IS REPRESENTED AS TO
7 EDUCATION AND THE ONLY GROUP THAT WAS NOT REPRESENTED ON THE
8 GROUP THAT WAS INITIALLY SENT, WERE PERSONS WHO HAD LESS THAN
9 A HIGH SCHOOL EDUCATION, WHO HAD ONLY HAD AN ELEMENTARY
10 EDUCATION. BUT ALL OTHER GROUPS ARE REPRESENTED.

11 Q THERE ARE NO PERSONS FROM A LESS THAN HIGH SCHOOL
12 EDUCATION?

13 A THERE WERE NO PERSONS THAT WERE SENT TO THIS
14 COURTROOM, OF THE 162 PEOPLE, WHO HAD LESS THAN A 12TH GRADE
15 EDUCATION.

16 Q NOW, HOW DOES THAT COMPARE TO THE STATISTICS ON
17 THE SAME CATEGORY WITH THE CENTRAL DISTRICT, FOR EXAMPLE?

18 A I DON'T KNOW.

19 Q ON A COUNTY-WIDE BASIS?

20 A WELL, I DON'T THINK I HAVE THAT INFORMATION WITH
21 ME. LET ME JUST DOUBLE CHECK THAT ON A COUNTY-WIDE BASIS.

22 NO, I DO NOT HAVE THAT WITH ME.

23 Q DO YOU HAVE A -- WHAT IS YOUR BEST RECOLLECTION
24 AS TO WHAT THE FIGURE WOULD BE ON A COUNTY-WIDE BASIS?

25 A I WOULD HAVE TO GUESS, HAZARD A GUESS.

26 Q HOW DID THIS HAPPEN, IN YOUR JUDGMENT?

27 A HOW DID WHAT HAPPEN?

28 A HOW DID IT HAPPEN THAT THERE WERE ZERO PERSONS

1A-2
1 REPRESENTING A CATEGORY OF LESS THAN HIGH SCHOOL EDUCATION?

2 A I CAN'T ANSWER THAT.

3 IN THE WEST JUDICIAL DISTRICT, THERE ARE 77,884
4 OR 15.9 PERCENT OF PEOPLE WITHIN THE WEST JUDICIAL DISTRICT
5 THAT HAVE ONLY AN ELEMENTARY SCHOOL EDUCATION.

6 NONE APPEARED IN THE PANEL OF THE 162 PEOPLE THAT
7 WERE SENT TO THIS COURTROOM. HOW DID THAT HAPPEN? PRESUMABLY,
8 NONE WERE SUMMONED OR PRESUMABLY SOME WERE SUMMONED AND AS
9 MUCH AS WE FIND A CORRELATION BETWEEN EDUCATION AND THE TYPE
10 OF EMPLOYMENT, MY ASSUMPTION WOULD BE THAT THEY WORKED IN
11 THE TYPES OF OCCUPATIONS OR THE TYPE OF A JOB THAT THE
12 EMPLOYER DOES NOT REIMBURSE FOR JURY SERVICE AND IT IS PROBABLY
13 THEIR ONLY SOURCE OF INCOME.

14 Q THAT PERSONS WITH LESS THAN A HIGH SCHOOL EDUCATION
15 WOULD BE A DISTINCT, COGNIZABLE GROUP, WOULD THEY NOT,
16 MR. ARCE?

17 A I DON'T KNOW.

18 Q ALL RIGHT. AND YOU HAVE FIGURES CONCERNING THE
19 INCOME GROUPS REPRESENTED OF THOSE 162 PEOPLE THAT WERE
20 SURVEYED?

21 A YES.

22 Q COULD YOU TELL US HOW THOSE BROKE DOWN?

23 A YES. THE ONLY CATEGORY -- AND THERE ARE 17
24 CATEGORIES. THE ONLY CATEGORY NOT REPRESENTED IN THE ORIGINAL
25 GROUP OF 162, WAS THE LESS THAN 2500 ANNUAL INCOME. ALL OTHER
26 CATEGORIES WERE REPRESENTED.

27 Q LESS THAN \$2500, NOT REPRESENTED?

28 A THAT'S CORRECT.

1 Q HOW DOES THAT COMPARE TO THE DISTRICT FIGURES
2 THAT YOU HAVE AVAILABLE TO YOU?

3 A IN THE DISTRICT, THERE ARE 3,482 PERSONS WHO,
4 ACCORDING TO THE 1980 CENSUS HAD A FAMILY YEARLY INCOME OF
5 LESS THAN \$2500. THAT IS 2.5 PERCENT.

6 Q 2.5 PERCENT?

7 A YES.

8 Q ALL RIGHT. AND THE NEXT HIGHEST INCOME GROUP
9 STARTING FROM THE BOTTOM, IS WHAT?

10 A WELL, THE NEXT INCOME GROUP IS \$2500 TO \$4,999
11 PER YEAR.

12 Q ALL RIGHT. AND COULD YOU GIVE US SIR, FIRST OF
13 ALL, THE NUMBER THAT YOU POLLED ON THE TWO SURVEYS, THE
14 162?

15 A YES. THERE WAS ONE PERSON THAT WE SENT IN THAT
16 GROUP THAT INDICATED THAT WAS HER FAMILY INCOME, ANNUAL
17 FAMILY INCOME.

18

19

20

21

22

23

24

25

26

27

28

1B-1

1 Q ONE PERSON?

2 A YES. THAT PERSON IS STILL ON THE PANEL OF 91.

3 Q AND THAT COMPARES TO DISTRICT FIGURES OF WHAT?

4 A 2.2 PERCENT.

5 Q AND WHAT PERCENTAGE IS THAT OF THE 162? WHAT
6 PERCENT IS THAT?

7 A .6 PERCENT AND 1.1 PERCENT OF THE REMAINING.

8 Q OKAY. NOW, HOW ABOUT THE NEXT INCOME GROUP?

9 A \$5,000 TO 7,499.

10 Q AND OF THE 162?

11 A THREE OR 1.9 PERCENT. AND THE REMAINING AS OF
12 NOVEMBER 14TH IS 1. THAT WORKS OUT TO BE 1.1 PERCENT. THAT
13 COMPARES TO 4 PERCENT IN THE DISTRICT.

14 Q THEN THE NEXT GROUP?

15 A OKAY. THE NEXT GROUP IS \$7,500 TO 9,999. ONE
16 WAS IN THE GROUP OF 162. THAT IS .6 PERCENT. THERE IS ONE
17 REMAINING AND THAT IS 1.1 PERCENT. AND IN THE DISTRICT, IT
18 IS 4.9 PERCENT.

19 Q IS THAT CONSIDERED -- YOU SAID THE .94 PERCENT
20 WAS CONSIDERED NO VARIANCE AT ALL. IS THIS CONSIDERED A
21 VARIANCE?

22 A YOU MEAN THE DIFFERENCE BETWEEN THE 1.1 AND THE
23 4.9?

24 Q THE DIFFERENTIAL?

25 A YES. WELL, THE VARIANCE IS GOING TO BE 3.8
26 PERCENT ABSOLUTE DISPARITY OR COMPARATIVE DISPARITY WOULD BE
27 SIGNIFICANT, THESE NUMBERS.

28 Q ALL RIGHT. THE NEXT INCOME GROUP?

1 A THE NEXT INCOME GROUP IS \$10,000 TO \$12,499.

2 MR. WAPNER: \$10,000 TO WHAT?

3 THE WITNESS: \$12,499. THERE WERE 11 INCLUDED IN THE
4 GROUP OF 162. THAT IS 6.8 PERCENT AND SEVEN REMAINING WHICH
5 IS 7.8 PERCENT.

6 IN THE DISTRICT, THERE ARE 5.8 PERCENT. SO THIS
7 GROUP IS OVER-REPRESENTED ON YOUR PANEL.

8 Q BY MR. CHIER: BY WHAT?

9 A BY 2 PERCENT.

10 Q PARDON ME?

11 A BY AN ABSOLUTE DISPARITY OF 2 PERCENT.

12 Q ALL RIGHT. AND NEXT INCOME GROUP, SIR?

13 A THE NEXT INCOME GROUP IS \$12,500 TO \$14,999,
14 FIVE ON THE PANEL. THAT IS 3.1 PERCENT.

15 AND REMAINING IN DEPARTMENT C IS, AS OF NOVEMBER
16 14, ONE OR 1.1 PERCENT AND IN THE DISTRICT, THERE ARE 5.7
17 PERCENT.

18 Q OKAY. AND THE NEXT GROUP?

19 A THE NEXT GROUP IS \$15,000 TO \$17,499. THERE FIVE
20 IN THE PANEL OF 162. THAT IS 3.1 PERCENT AND TWO REMAINING.

21 THAT IS 2.2 PERCENT AND IN THE DISTRICT, IT IS
22 A TOTAL OF --

23 Q WELL, THE PERCENTAGE REMAINING IS WHAT?

24 A 2.2.

25 Q 2.2?

26 A YES.

27 Q AND THE DISTRICT FIGURES FOR THE SAME GROUP?

28 A 5.7.

1 Q THE NEXT?

2 A THE NEXT GROUP IS \$17,500 TO \$19,999.

3 Q IT IS WHAT?

4 A \$19,999, TWO IN THE PANEL, 1.2 PERCENT.

5 THERE ARE TWO REMAINING, FOR 2.2 PERCENT.

6 Q DISTRICT WIDE?

7 A 5.3 PERCENT.

8 Q 5.3?

9 A YES.

10 Q AND THE NEXT CATEGORY, SIR?

11 A \$20,000 TO \$22,499. IN THE PANEL, 13 OR 8.1

12 PERCENT.

13 REMAINING, SEVEN FOR A 7.8 PERCENT FIGURE.

14 Q AND DISTRICT WIDE?

15 A 5.7.

16 Q OKAY. NOW, THE NEXT INCOME GROUP, SIR?

17 A \$22,500 TO \$24,999. THERE WERE 13 SENT ON THE

18 PANEL AND THAT IS 8.1 PERCENT.

19 THERE WERE EIGHT REMAINING. THAT PERCENTAGE IS

20 8.9.

21 Q 8.9 PERCENT OF THE REMAINING?

22 A YES.

23 Q AND THE DISTRICT WIDE FIGURE IS WHAT?

24 A 4.6 PERCENT.

25 Q ALL RIGHT. AND THE NEXT INCOME GROUP, SIR?

26 A \$25,000 TO \$27,499.

27

28

12-1
1 Q THAT IS 25 TO 28 BASICALLY?

2 A YES.

3 Q 25 TO 28?

4 A YES.

5 IN THE PANEL, 8 SENT, WHICH IS 4.9 PERCENT.

6 7 REMAINING AND THAT PERCENTAGE IS 7.8.

7 Q AND THE DISTRICT FIGURE?

8 A 5.1 PERCENT.

9 Q NOW, THE NEXT GROUP?

10 A OKAY, THE NEXT GROUP IS 27,500 TO 29,999: 3 ON
11 THE PANEL, 1.9 PERCENT. 1 REMAINING. THAT IS 1.1 PERCENT.
12 IN THE DISTRICT, 4.2 PERCENT.

13 Q OF THE 1 REMAINING IS WHAT PERCENT?

14 A 1.1.

15 Q IN THE DISTRICT?

16 A 4.2.

17 Q NOW, HOW HIGH DO THESE INCOME FIGURES GO UP?

18 A \$75,000 OR MORE.

19 Q OKAY. CAN YOU JUST THEN PROCEED TO JUST GO THROUGH
20 THEM STARTING WITH THE ONE AFTER THE 29,999.

21 A THE NEXT GROUP, 30,000 TO 34,999. 15 WERE IN
22 THE GROUP INITIALLY, THAT IS 9.3 PERCENT. 10 REMAINING, THAT
23 IS 11.1 PERCENT. 7.8 PERCENT IN THE DISTRICT.

24 THE NEXT GROUP, \$35,000 TO 39,999: 13 IN THE
25 GROUP INITIALLY, 8.1. 6 REMAINING, THAT IS 6.7. 6.5 IN THE
26 DISTRICT.

27 NEXT CATEGORY IS \$40,000 TO \$49,999: 23 IN THE
28 PANEL INITIALLY, 14.3 PERCENT.

2-2
1 Q 14 WHAT?

2 A 14.3 PERCENT. 14 REMAINING, THAT IS 15.6 PERCENT.

3 Q IN THE DISTRICT?

4 A IN THE DISTRICT, 8.9 PERCENT.

5 THE NEXT GROUP, \$50,000 TO \$74,999: 25 IN THE
6 ORIGINAL GROUP, 15.5 PERCENT. 11 REMAINING, THAT IS 12.2
7 PERCENT. AND IN THE DISTRICT IS 11.2 PERCENT.

8 Q 11.2 IN THE DISTRICT. WHAT IS THE FIGURE JUST
9 BEFORE THAT, THE PERCENTAGE REMAINING?

10 A 12.2.

11 Q SO THERE IS AN ABSOLUTE DISPARITY OF 1 PERCENT
12 THERE?

13 A THAT'S CORRECT.

14 Q AND THEN WE GO TO SEVENTY-FIVE TO SEVENTY-NINE?

15 A NOW THE NEXT GROUP IS \$75,000 OR MORE, THAT IS
16 THE LAST CATEGORY.

17 Q SEVENTY FIVE PLUS?

18 A YES.

19 IN THE ORIGINAL GROUP, 20 AND THAT IS 12.4 PERCENT.
20 REMAINING, 11, 12.2 PERCENT. IN THE DISTRICT, 10.5 PERCENT.

21 Q 10.5 PERCENT?

22 A YES.

23 Q NOW, DO YOU HAVE FIGURES OF THESE INCOME GROUPS
24 ON A COUNTY-WIDE BASIS?

25 A YES. HOWEVER, I DIDN'T BRING THEM WITH ME.

26 MR. CHIER: I HAVE SOME DOCUMENTS HERE. JUST TO SAVE
27 A LITTLE TIME, COULD I ASK YOU TO LOOK THROUGH THESE AND SEE
28 IF MAYBE THEY HAPPEN TO BE -- WAIT A MINUTE. MAY I HAVE JUST

1 A MOMENT?
2 THE COURT: YES. IN THE MEANTIME, WE WILL JUST TAKE
3 THESE OTHER MATTERS.

4 (OTHER COURT MATTERS.)

5 THE COURT: ALL RIGHT, WE WILL RESUME.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MR. CHIER: MAY I HAVE JUST A MOMENT HERE, YOUR HONOR?

2 THE COURT: YES.

3 (PAUSE IN PROCEEDINGS.)

4 THE COURT: PARDON ME, MR. CHIER. HOW MUCH LONGER WILL
5 YOU BE WITH MR. ARCE?

6 MR. CHIER: PROBABLY ABOUT 20 OR 25 MINUTES AT THE MOST,
7 YOUR HONOR.

8 THE COURT: ALL RIGHT, IF IT IS NO MORE THAN THAT, WE
9 CAN CONTINUE. WILL THAT BE ALL RIGHT WITH YOU?

10 THE WITNESS: THAT IS FINE, SIR.

11 MR. WAPNER: THERE IS PROBABLY GOING TO BE SOME CROSS-
12 EXAMINATION, I DON'T KNOW EXACTLY HOW LENGTHY IT IS GOING
13 TO BE BUT IF WE ARE GOING TO GO FOR --

14 MAY I HAVE JUST A MOMENT?

15 (UNREPORTED COLLOQUY BETWEEN MR. WAPNER
16 AND THE WITNESS.)

17 MR. CHIER: YOUR HONOR, I HAVE ATTEMPTED TO CUT THIS
18 DOWN AS MUCH AS I COULD.

19 THE COURT: I AM SURE YOU DID. TRY TO CUT IT DOWN SOME
20 MORE IF YOU CAN AND WE WILL FINISH UP WITH HIM THIS MORNING.

21 MR. CHIER: THIS OTHER HEARING TOOK AN ENTIRE DAY AND
22 A HALF IN SAN FERNANDO.

23 THE COURT: I KNOW. I REQUEST OF YOU TO OBSERVE MY
24 ADMONITION TO TRY TO CUT IT DOWN TO TWO HOURS OR TWO HOURS
25 AND A HALF OR WE CAN COME BACK AT 1:30 AND THEN I THINK WE
26 CAN FINISH IN TIME TO START WITH THE PROSPECTIVE JURORS.

27 MR. WAPNER: YOUR HONOR, THE PROBLEM IS THAT MR. ARCE
28 HAS A MEETING DOWNTOWN AT 2 O'CLOCK.

1 THE COURT: ALL RIGHT, LET'S GO ON WITH AS MUCH AS WE
2 CAN. LET'S FINISH IT UP IF YOU CAN, IF YOU WILL, PLEASE,
3 MR. CHIER.

4 MR. CHIER: ALL RIGHT.

5 THE COURT: TRY TO TELESCOPE IT, IF YOU CAN.

6 Q BY MR. CHIER: AND YOU FIND WITH RESPECT TO THE
7 NUMBERS CRUNCH THAT YOU HAVE WORKED OUT IN THIS CASE THAT
8 THERE ARE SOME SIGNIFICANT DISPARITIES; IS THAT CORRECT?

9 A YES, THERE ARE DISPARITIES, SOME DISPARITIES.

10 Q THERE ARE A COUPLE OF WHAT I WOULD CALL SUBSTANTIAL
11 DISPARITIES?

12 A YES, GIVEN THE NUMBERS THERE ARE DISPARITIES.

13 Q IS THERE A PROCEDURE THAT WHEN THESE DISPARITIES
14 COME TO YOUR ATTENTION, YOU FIND THAT THERE IS AN UNDER OR
15 OVER REPRESENTATION TO A SIGNIFICANT DEGREE, IS THERE SOME
16 PROCEDURE THAT YOU HAVE THAT ENABLES YOU TO CORRECT THIS?

17 A GENERALLY THE ANSWER TO THAT IS NO.

18 LET ME EXPLAIN.

19
20
21
22
23
24
25
26
27
28

3-1

1 SURE. STATUTES REQUIRE RANDOM SELECTION OF THE
2 POOL OF PROSPECTIVE JURORS. THAT IS AT ALL THREE OF THE
3 PHASES WHERE A JUROR IS NUMBER ONE, SELECTED AND NUMBER TWO,
4 ASSIGNED, SENT TO A COURTROOM AND WITHIN THE COURTROOM.

5 SO THE FOUR PHASES WHEREAS JURY SELECTION IF YOU
6 WILL, THE STATUTES REQUIRE RANDOM SELECTION AND SO THAT WHEN
7 WE FIND THAT THERE ARE DISCREPANCIES, IT IS GENERALLY ON A
8 COUNTY-WIDE BASIS WHEN WE TAKE ACTION.

9 LET ME GIVE YOU AN EXAMPLE THERE. IN A CHALLENGE
10 IN COMPTON SOME YEARS AGO, IT WAS DETERMINED THAT THE
11 ALLOCATION PROCEDURE AT THAT TIME WAS RESULTING IN SOME
12 ABERRATIONS. THAT IS WHY WE WENT TO THE BULL'S EYE.

13 BUT THE PROCESS WAS A RATHER DELIBERATE ONE OF
14 STUDYING WHAT THE PROBLEM WAS, WHAT WAS CAUSING THE PROBLEM
15 AND TAKING THE ACTIONS THAT WE DEEMED TO BE CORRECTIVE ACTIONS.

16 Q COULD I INTERRUPT FOR A MOMENT, SIR?

17 A SURE.

18 Q WHEN YOU REFERRED TO THE INTRODUCTION OF THE BULL'S
19 EYE SYSTEM IN RESPONSE TO SOME ABERRANT SITUATIONS IN THE
20 COMPTON DISTRICT, WAS THE ABERRANT SITUATION AN UNUSUALLY HIGH
21 NUMBER OF ACQUITTALS ON THE CRIMINAL SIDE AND PLAINTIFFS'
22 VERDICTS ON THE CIVIL SIDE?

23 A NO, SIR.

24 Q WHAT WAS THE ABERRATION?

25 A THE ABERRATION WAS THAT DEPENDING ON WHEN COMPTON
26 RECEIVED ITS ALLOCATION OF JURORS VIS A VIS THE CENTRAL
27 DISTRICT, THAT THE POOL OF QUALIFIED PROSPECTIVE BLACK JURORS,
28 THAT IS JURORS FROM THE SOUTH CENTRAL AREA OF THE COUNTY, MIGHT

1 BE ALL TAKEN BY THE CENTRAL DISTRICT AND THEREFORE, THE JURORS
2 REMAINING FOR COMPTON WERE PREDOMINENTLY FROM THE LONG BEACH,
3 CERRITOS, SOUTH BAY AREA.

4 SO THERE WAS, UNLIKE THE FIGURES THAT WE HAVE
5 DISCUSSED HERE --

6 Q PALOS VERDES?

7 A PALOS VERDES. UNLIKE THE DISTRIBUTION WHICH WE
8 HAVE DISCUSSED HERE, WHICH SEEMS TO BE GEOGRAPHICALLY WELL
9 DISTRIBUTED, THERE WAS A VERY DEFINITE, CRESCENT, GEOGRAPHICAL
10 CRESCENT STARTING WITH THE CERRITOS AREA, ALL OF THE WAY ACROSS
11 TO THE PALOS VERDES PENINSULA FROM WHICH JURORS WERE GOING
12 TO COMPTON AND THE AREA IMMEDIATELY AROUND COMPTON DID NOT
13 HAVE ANY JURORS.

14 SIMILARLY, FOR THE OTHER COURTS THAT WERE AFFECTED
15 BY THE CENTRAL DISTRICT, SUCH AS EAST LOS ANGELES MUNICIPAL
16 COURT, SUCH AS PASADENA, SUCH AS THIS COURT, SUCH AS BEVERLY
17 HILLS, WEST LOS ANGELES AND SO FORTH, THE NUMBER OF COURTS
18 WERE AFFECTED BECAUSE THE CENTRAL DISTRICT USES A GREAT NUMBER
19 OF JURORS.

20 SO THAT WAS THE ABERRANT SITUATION. IT WAS A
21 VERY DISCERNABLE PATTERN, WHEREAS WHAT WE HAVE DESCRIBED AS
22 A RESULT OF THE BULL'S EYE, IN OUR VIEW, HAS NOT BEEN A
23 PATTERN SUCH AS WE EXPERIENCED BEFORE.

24 Q WELL, IF I CAN UNDERSTAND THIS, PART OF THE BULL'S
25 EYE -- BULL'S EYE IS THE NAME OF THE PROGRAM THAT YOU SELECTED
26 OUT OF A NUMBER OF EIGHT OR SO THAT YOU AUDITIONED OR MADE
27 PRESENTATIONS, CORRECT?

28 A BULL'S EYE WAS THE PROGRAM OUT OF SEVERAL, AS YOU

1 HAVE DESCRIBED THAT THE NATIONAL CENTER FOR STATE COURTS
2 PRESENTED AS ALTERNATIVES TO THE SYSTEM THAT WE WERE THEN
3 USING FOR ASSIGNMENT OF JURORS.

4 Q THE SYSTEM YOU WERE THEN USING TOOK THE FISH BOWL
5 WE HAVE BEEN TALKING ABOUT AND JUST DISTRIBUTED THEM ON A
6 FIRST-COME, FIRST-SERVED BASIS, IS THAT CORRECT?

7 A YES, THAT'S CORRECT, DISTRIBUTED ON A FIRST-COME,
8 FIRST-SERVED BASIS, EVERYBODY WITHIN THE GRASP OF THE 20 MILES,
9 IF YOU WILL.

10 Q AND WHAT DID THE BULL'S EYE PROGRAM DO TO CHANGE
11 THE MANNER OF ALLOCATION OF JURORS TO THE SPECIFIC COURTS?
12 CAN YOU ARTICULATE THAT?

13 A YES. I BELIEVE SO. UNDER THE SYSTEM PRIOR TO
14 BULL'S EYE, THE FOCUS WAS ON THE COURT.

15 IT WAS THE COURT THAT WAS RANDOMLY SELECTED AND
16 THEN JURORS ASSIGNED TO IT.

17 UNDER THE BULL'S EYE, THE FOCUS IS ON THE PERSON,
18 THE PROSPECTIVE JUROR.

19 THE COMPUTER RANDOMLY SELECTS A NAME AND ASSIGNS
20 IT TO A COURT. UNDER THE PREVIOUS SYSTEM, IT WAS THE COURT
21 THAT WAS THE FOCUS.

22 THE COURT WAS, IF YOU WILL, RANDOMLY SELECTED OR
23 PUT IN A RANDOM ORDER AND EVERYONE WITHIN 20 MILES IN THAT
24 FISH BOWL WAS AVAILABLE TO THAT COURT. AND THIS RESULTED IN --

25 Q AN IMBALANCE?

26 A YES, IN SIGNIFICANT IMBALANCE, NOT IMBALANCE AS
27 WE ARE SEEING HERE.

28 AGAIN, I SHOULD POINT OUT THAT THE SYSTEM IS ON

1 A COUNTY-WIDE BASIS. WHEN YOU LOOK AT THAT, THERE ARE ENOUGH
2 BLACKS. THERE ARE ENOUGH HISPANICS.

3 THE DISPARITY WITH HISPANICS IS ARGUABLE. BUT
4 THE PROBLEM IS ONE OF DISTRIBUTION, WHEN YOU HAVE A MANDATE
5 THAT YOU DO THE DISTRIBUTION ON A RANDOM BASIS. THAT IS THE
6 PROBLEM.

7 IT IS NOT THAT THERE AREN'T ENOUGH BLACKS. IT
8 IS THE PROBLEM OF HOW YOU DISTRIBUTE THEM WITHOUT GOING IN
9 AND IDENTIFYING THE PERSON AS BLACK AND SAYING THAT YOU GO
10 TO THIS DISTRICT AND THEN THE NEXT BLACK PERSON GOES TO THIS
11 DISTRICT AND SO FORTH.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3B

3B-1
1 Q WHICH BASICALLY CUTS AGAINST THE RANDOMNESS, THE
2 WHOLE IDEA OF RANDOMNESS WHEN YOU START MAKING SPECIFIC
3 ASSIGNMENTS?

4 A THAT'S CORRECT.

5 Q HAVE THERE BEEN ANY STUDIES DONE BY YOUR OFFICE
6 OR OTHER INTERESTED AGENCIES, COMPARING THE ALLOCATION OF
7 MINORITIES, BLACKS AND HISPANICS TO THE WEST DISTRICT BEFORE
8 AND SINCE BULL'S EYE?

9 A I AM NOT AWARE OF ANY STUDIES FOCUSING ON THE
10 WEST DISTRICT BULL'S EYE.

11 Q HAVE THERE BEEN ANY COMPARATIVE STUDIES DONE AT
12 ALL, WHICH WOULD COMPARE THE ALLOCATION ON A COUNTY-WIDE BASIS
13 OF BLACKS AND HISPANICS PRIOR TO AND SINCE BULL'S EYE?

14 A NOT ON A COUNTY-WIDE BASIS. DR. EDWARD BUTLER,
15 B-U-T-L-E-R, OF THE UNIVERSITY OF CALIFORNIA RIVERSIDE, WHO
16 IS FREQUENTLY HIRED BY THE DEFENSE ATTORNEYS IN CAPITAL CASES,
17 HAS DONE STUDIES AND THAT IS AT SAN FERNANDO AND LONG BEACH
18 AND NORWALK AND TORRANCE AND OTHER COURTS.

19 THAT IS PRIOR TO AND SINCE WILLIAMS AND PRIOR
20 TO AND SINCE THE BULL'S EYE SYSTEM. IT IS HIS CONTENTION
21 THAT FOR EXAMPLE, AT SAN FERNANDO, THE PERCENTAGE OF BLACKS
22 IS NOT ADEQUATE.

23 BUT I SHOULD POINT OUT THAT THE DISPUTE WE HAVE
24 WITH DR. BUTLER HERE, IS NOT WITH RESPECT TO THE PERCENTAGE
25 OF BLACKS BUT WITH RESPECT TO WHERE THIS 20-MILE LINE SHOULD
26 BE DRAWN, HOW IT SHOULD BE DRAWN.

27 HIS CONTENTION IS FOR EXAMPLE, THAT IN SAN FERNANDO,
28 THAT WHEN YOU DRAW THE LINE AS THE CROW FLIES, WHICH MEANS

3B-2
1 THAT THE PROPORTION OF BLACKS IN SAN FERNANDO, THE POOL OUT
2 THERE WE ARE COMPARING TO, GOES FROM ABOUT 4 PERCENT,
3 3 POINT SOMETHING PERCENT, ROUGHLY 4 PERCENT, TO 8.8 PERCENT.

4 WHEN IN FACT, THE JURORS WE GET IN THERE OVER
5 A PERIOD OF TIME, IS RIGHT AROUND EITHER THE 20 MILES OR THE
6 JUDICIAL DISTRICT FIGURES.

7 SO HE THEN SAYS WELL, YOU ARE ACTUALLY NOT MAKING
8 THE PROPER COMPARISON BECAUSE YOU SHOULD BE GOING OUT AN
9 ADDITIONAL FIVE MILES BECAUSE THAT IS ACTUALLY 20 MILES. THAT
10 IS WHERE THE DISPUTE IS WITH RESPECT TO DR. BUTLER.

11 Q SO THE DISPUTE THEN, COMES BACK TO THIS CONCEPT
12 OF IS THIS REAL MILES OR ARTIFICIAL MILES AS WE HAVE DEFINED
13 THEM?

14 A WHAT IS 20 MILES? THAT IS WHAT IT COMES DOWN
15 TO. HOW DO YOU MEASURE 20 MILES?

16 THE COURT: BUT YOU SAY YOU ARE BOUND BY WHAT THE
17 STATUTE SAYS?

18 THE WITNESS: YES.

19 Q BY MR. CHIER: BUT THE STATUTE DOESN'T REFER TO
20 A SPECIFIC NUMBER OF MILES, DOES IT?

21 A IN WHAT SENSE?

22 Q WELL, THERE IS NO STATUTE THAT SPECIFICALLY
23 MENTIONS 20 MILES, IS THERE?

24 A YES.

25 THE COURT: YES. I THINK YOU READ IT TO US. IT IS
26 SECTION 203 OF THE CODE OF CIVIL PROCEDURE.

27 Q BY MR. CHIER: ALL RIGHT. OKAY. BUT THERE HAS
28 NEVER BEEN A JUDICIAL DECISION DEFINING WHAT THE 20 MILES

3R-3
1 IS, WHETHER IT IS YOU KNOW, TRUE MILES OR DRIVING MILES AS
2 YOU HAVE CALCULATED?

3 THE COURT: HE SAYS DRIVING MILES IS IN THE STATUTE
4 BECAUSE THEY ARE BEING PAID SO MUCH PER MILE THAT THEY DRIVE.
5 IS THAT CORRECT?

6 THE WITNESS: YES.

7 THE COURT: SO IT THEREFORE, REFERS TO DRIVING MILES
8 RATHER THAN THE WAY THE CROW FLIES.

9 NOBODY EVER TRAVELS THE WAY THE CROW FLIES, THOUGH.

10 THE WITNESS: NOT TO MY KNOWLEDGE, YOUR HONOR.

11 Q BY MR. CHIER: IS THERE ANY CASE THAT YOU ARE
12 AWARE OF PENDING, WHEREIN THE QUESTION OF WHAT 20 MILES MEANS,
13 IS IN ISSUE?

14 A WELL, YES, IN THE PENDING WILLIAMS CASE. THE
15 LARGER ISSUE, WHAT IS THE COMMUNITY, IS ONE OF THE ARGUMENTS
16 IN THAT CASE. IT IS THAT THE COMMUNITY FOR PURPOSES OF JURY
17 SELECTION, FOR PURPOSES OF COMPARING THE PEOPLE WHO SHOW UP
18 FOR JURY SERVICE, THE DEMOGRAPHY OF THE PEOPLE WHO SHOW UP
19 FOR JURY SERVICE, SHOULD BE THE 20 MILES. THAT IS ONE OF
20 THE CONTENTIONS.

21 WHETHER THE ISSUE OF THE COMPUTATION OF 20 MILES
22 IS INCLUDED IN THAT DISCUSSION, IS SOMETHING I AM NOT REALLY
23 CLEAR ON.

24 Q WHY DID YOUR OFFICE CHOOSE THE BULL'S EYE SYSTEM
25 OVER OTHER SYSTEMS THAT YOU AUDITIONED OR MADE PRESENTATIONS
26 TO YOU?

27 A IN OUR VIEW, IT WAS THE BEST SYSTEM FROM SEVERAL
28 VANTAGE POINTS. NUMBER ONE, THE MANDATE THAT WE RANDOMLY

1 SELECT AND ASSIGN, WOULD BE MET BY BULL'S EYE, AS IT WOULD
2 BY OTHER SYSTEMS. NUMBER TWO, WITH RESPECT TO THE 20-MILE
3 PROVISION, IT APPEARED TO US THAT IT WOULD MINIMIZE THE NUMBER
4 OF REQUESTS THAT PERSONS BE TRANSFERRED TO ANOTHER COURT THAT
5 WOULD BE WITHIN 20 MILES OF THEIR RESIDENCE.

6 ADMINISTRATIVELY, FROM THE POINT OF VIEW OF
7 PROGRAMMING THAT ASPECT OF IT IN HANDLING IT, IT SEEMED TO
8 US IT WOULD BE MORE FEASIBLE.

9 SO THERE WERE A NUMBER OF CONSIDERATIONS ON WHICH
10 THIS DECISION WAS BASED.

11 THERE IS ANOTHER ELEMENT, THAT IN TERMS OF THE
12 COST ASSOCIATED WITH THAT SYSTEM, AS OPPOSED TO SAY, ONE OF
13 THE OTHER SYSTEMS THAT WAS CONSIDERED, THAT THE ALLOCATION
14 BE ON THE SUPERVISORIAL DISTRICT, IT WAS CHEAPER.

15 SO YOU KNOW, THERE ARE SEVERAL FACTORS THAT ENTERED
16 INTO THE DECISION TO SELECT BULL'S EYE, AS OPPOSED TO THE
17 OTHER, ALTERNATIVE METHODS.

18

19

20

21

22

23

24

25

26

27

28

4-1

1 Q THEN WERE SOME, WHAT, EIGHT OR TWELVE OTHER
2 SYSTEMS FROM WHICH BULL'S EYE WAS SELECTED; IS THAT CORRECT?

3 A YES.

4 Q AND THE OTHER SYSTEMS WOULD HAVE HAD DIFFERENT
5 DEMOGRAPHIC IMPACT; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q THE OTHER SYSTEMS THAT WERE DECLINED IN FAVOR OF
8 BULL'S EYE WOULD HAVE IN SOME CASES MIRRORED MORE THE COUNTY-
9 WIDE DEMOGRAPHICS; IS THAT CORRECT?

10 A NO, THAT IS NOT QUITE CORRECT. THERE IS SOME
11 MISUNDERSTANDING HERE.

12 THE PREMISE, OR ONE OF THE PREMISES OF THE STUDY
13 WAS THE MANDATE, I BELIEVE IT IS SECTION 197 OF THE CODE OF
14 CIVIL PROCEDURE, AND I QUOTE,

15 "IT IS A POLICY OF THE STATE OF
16 CALIFORNIA THAT ALL PERSONS SELECTED FOR JURY
17 SERVICE SHALL BE SELECTED AT RANDOM FROM A FAIR
18 CROSS-SECTION OF THE POPULATION OF THE AREA
19 SERVED BY THE COURT." END OF QUOTE.

20 THAT IS NOT A COMPLETE STATEMENT OF THE ENTIRE
21 PARAGRAPH OR THE ENTIRE PROVISION.

22 BUT WE DID NOT HAVE A DEFINITION OF AREAS SERVED
23 BY THE COURT, SO THAT THE PREMISE WAS THAT GIVEN SECTION
24 302, WHICH REQUIRED THE COURT TO ESTABLISH RULES THAT
25 REASONABLY MINIMIZE THE TRAVEL DISTANCE AND, FURTHER, THAT
26 IN LOS ANGELES COUNTY WE COULD NOT REQUIRE A PERSON TO
27 SERVE MORE THAN 20 MILES DISTANCE, THE PREMISE THAT WE WORKED
28 UNDER THAT WE COULD BEST FILL IN THIS MANDATE OF SECTION 197,

1 BY DESIGNING THE SYSTEM THAT ATTEMPTS TO ASSIGN JURORS FROM
2 AREAS CLOSEST TO THE COURTS; THE PREMISE BEING THAT GIVEN THE
3 FACT THAT WE HAVE COMPETITION AMONG COURTS FOR THE POOL OF
4 AVAILABLE JURORS, GIVEN THE FACT THAT THE MANDATE OF THE
5 STATUTE SEEMS TO BE THAT THE INITIAL SELECTION BE ON A COUNTY-
6 WIDE RANDOM BASIS, THAT THEN BY ALLOCATING JURORS FROM THE
7 AREAS, YOU KNOW, FROM THE AREAS SERVED BY THE COURT, THAT
8 MEANING IN OUR SENSE THE AREAS IMMEDIATELY AROUND THE COURT
9 FIRST OR IN PRIORITY, THAT THE MANDATE WOULD BE FULFILLED,
10 THAT THE JURORS WOULD FAIRLY REPRESENT THE AREAS SERVED BY
11 THE COURT.

12 NOW, WE DIDN'T KNOW HOW LARGE THAT AREA WAS OR
13 HOW SMALL OR HOW LARGE BUT OUR PREMISE WAS, LOOK, IF YOU
14 MAKE AN ASSIGNMENT OF JURORS TO A COURT FROM THE AREA AROUND
15 THE COURT AND PROCEED OUTWARDS, YOU ARE LIKELY TO FILL THE
16 MANDATE OF THIS PROVISION.

17 Q OKAY, HERE IS MY TROUBLE. LET ME SEE IF I CAN
18 ARTICULATE THE QUESTION, MR. ARCE.

19 YOU HAVE JUST TOUCHED UPON A CONCEPT, STARTING
20 WITH A COURTHOUSE IN A CENTRAL AREA AND RADIATING OUTWARDS
21 WITHIN A 20-MILE RADIUS, DEPENDING UPON HOWEVER YOU DEFINE
22 20 MILES, RIGHT?

23 A YES.

24 Q THERE IS A UNIQUE FEATURE, LET'S SAY, ABOUT THE
25 SANTA MONICA COURTHOUSE WHICH, UNLESS YOU WERE GOING TO
26 GO TO CATALINA OR GET A BUNCH OF PEOPLE OFF THE BOAT, MAKES
27 IT IMPOSSIBLE TO RADIATE IN ALL DIRECTIONS FOR 20 MILES,
28 CORRECT?

1 A I AM NOT SURE I UNDERSTAND THE QUESTION.

2 Q WELL, MR. ARCE --

3 THE COURT: HE MEANS YOU CAN'T GO WEST OF HERE.

4 THE WITNESS: OH.

5 THE COURT: GOING WEST OF HERE, ALL YOU GET IS FISH.

6 THE WITNESS: ALL RIGHT.

7 MR. BARENS: AND THEY ARE IN THE BOWL, YOUR HONOR.

8 Q BY MR. CHIER: THAT IS TRUE, ISN'T IT?

9 A YES.

10 Q YOU CAN'T GO WEST OF HERE?

11 A THAT'S CORRECT.

12 Q AND DEMOGRAPHICALLY, A NUMBER OF STUDIES HAVE
13 INDICATED THAT THE PEOPLE LIVING CLOSEST TO THE WATER, WHICH
14 IS THE ARC FROM WHICH YOU DRAW THE JURORS, THE OCEAN -- DO
15 YOU UNDERSTAND WHAT I AM TALKING ABOUT?

16 A YES.

17 Q YOU HAVE THE COURTHOUSE HERE VIRTUALLY ON THE WATER,
18 SO YOU HAVE AN ARC, YOUR 20-MILE ARC, LET'S SAY, AND THESE
19 PEOPLE DEOMGRAPHICALLY ARE WAY OUT OF BALANCE WITH THE
20 DEMOGRAPHICS OF THE COUNTY, ARE THEY NOT?

21 THE COURT: HE MEANS THEY WILL BE MORE AFFLUENT PEOPLE
22 LIVING AROUND THE BEACH AREA.

23 MR. CHIER: THANK YOU, YOUR HONOR.

24 THE WITNESS: YES, I BELIEVE THAT IS TRUE IN MANY
25 PLACES, GENERALLY SPEAKING, YES.

26

27

28

14A-1

1 Q BY MR. CHIER: SO WHILE THE BULL'S EYE PROGRAM
2 MAY, LET US SAY, IN CASES OF LAND-LOCKED COURTS, IN A MORE
3 CENTRAL AREA, HAVE ATTEMPTED TO AND MAY HAVE IN FACT MADE
4 A BETTER DISTRIBUTION DEMOGRAPHICALLY, WE HAVE ENDED UP WITH
5 A SKEWING WHEN IT COMES TO, FOR EXAMPLE, THE WEST DISTRICT
6 COURT, WHICH IS RIGHT HERE ON THE EDGE OF THE WATER, RIGHT?

7 A WELL, I DON'T AGREE WITH THAT.

8 THE FIGURES THAT WE HAVE PREVIOUSLY DISCUSSED
9 WITH RESPECT TO THIS PANEL AND OTHER FIGURES INDICATE THAT
10 AT LEAST WITH RESPECT TO JURORS APPEARING AT THIS COURT, THEY
11 REPRESENT THE PEOPLE WITHIN THE JUDICIAL DISTRICT FAIRLY WELL,
12 IF WE ARE TALKING ABOUT ONE COGNIZABLE GROUP, AND THAT IS
13 THE BLACKS.

14 Q ALL RIGHT, THEY REPRESENT FAIRLY WELL WHEN YOU
15 JUST LOOK AT THE ASPECT OF THE COLOR BUT IF YOU START LOOKING
16 CLOSER IN TERMS OF EDUCATION AND INCOME GROUPS, THERE IS A
17 DISPARITY, ISN'T THERE?

18 A WELL, WITH RESPECT TO THE FIGURES THAT WE CITED,
19 THERE WERE DISPARITIES BEFORE AND WHETHER THEY ARE
20 STATISTICALLY SIGNIFICANT OR LEGALLY SIGNIFICANT, I CANNOT
21 ANSWER.

22 Q THERE IS DISPARITY?

23 A YES, THERE IS.

24 Q AT LEAST PALPABLE, RECOGNIZABLE?

25 A I SHOULD POINT OUT AGAIN THAT UNDER THE CONCEPT
26 OF RANDOM SELECTION, IT'S CONCEIVABLE THAT IF YOU HAVE A FISH
27 BOWL OF ORANGE BALLS AND PURPLE BALLS THAT ON ONE DRAWING,
28 YOU ARE GOING TO GET ALL PURPLE BALLS OR ALL ORANGE BALLS,

1 THAT YOU MAY NOT GET -- IN THAT SAMPLE, YOU MAY NOT GET THE
2 BREAKDOWN YOU WOULD FIND IF YOU WERE TO INTEGRATE THE TOTAL
3 NUMBER OF PURPLE BALLS AND ORANGE BALLS.

4 SO I WANT TO MAKE SURE THAT THAT IS UNDERSTOOD,
5 THAT UNDER RANDOM SELECTION, THERE IS NO ASSURANCE THAT WHEN
6 YOU RANDOMLY SELECT, WHEN THE COMPUTER REACHES DOWN AND PICKS
7 UP A HANDFUL OF JURORS, SO TO SPEAK, THAT THAT DISTRIBUTION
8 IS GOING TO BE EQUALLY DISTRIBUTED AS REPRESENTED BY THE
9 DISTRICT DEMOGRAPHICALLY, THAT IS, IT IS NOT GOING TO REACH
10 DOWN AND PICK UP A HANDFUL OF WHITE WOMEN, SO TO SPEAK.

11 Q ALL RIGHT, THAT COULD HAPPEN FROM TIME TO TIME
12 BUT WHEN IT HAPPENS CONSISTENTLY, THEN IT IS REFLECTIVE OF
13 SOME OTHER CONDITION; IS THAT CORRECT?

14 A IF THAT WERE THE CASE.

15 MR. CHIER: YES.

16 MAY I HAVE JUST ONE MOMENT, PLEASE, YOUR HONOR?

17 THE COURT: SURELY.

18 MR. WAPNER: WHILE MR. CHIER IS LOOKING FOR THAT, COULD
19 I BE EXCUSED FOR ONE MOMENT, JUST TO USE THE RESTROOM IN THE
20 JURY ROOM?

21 THE COURT: ALL RIGHT.

22 (PAUSE IN PROCEEDINGS.)

23 MR. CHIER: YOUR HONOR, IF I MIGHT -- I WILL WAIT FOR
24 MR. WAPNER TO GET BACK.

25 THE COURT: ALL RIGHT.

26 (FURTHER PAUSE IN PROCEEDINGS.)

27 THE COURT: THE RECORD WILL INDICATE THE PRESENCE OF THE
28 DEPUTY DISTRICT ATTORNEY.

4A-3
1 MR. WAPNER: THANK YOU, YOUR HONOR.

2 MR. CHIER: I DON'T HAVE ANY FURTHER QUESTIONS OF
3 MR. ARCE BUT I WOULD REQUEST -- I DON'T KNOW IF MR. WAPNER
4 HAS ANY QUESTIONS BUT I SUSPECT HE MIGHT, IN WHICH CASE, WHAT
5 THEY DID IN THIS OTHER ERICKSON CASE, WOULD SEEM TO BE A GOOD
6 SOLUTION HERE IS THAT SINCE SOME AMOUNT OF TIME IS REALLY
7 NECESSARY TO KIND OF LOOK AT THESE NUMBERS TO SEE HOW THE
8 FIGURES CRUNCH, YOUR HONOR, IS TO SET A DIFFERENT DATE TO
9 MAKE THE ARGUMENT.

5 FO
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

5A

1 THE COURT: IT IS PERFECTLY ALL RIGHT WITH ME. DO YOU
2 HAVE ANY QUESTIONS OF MR. ARCE?

3 MR. CHIER: SOMETIME BEFORE THE PANEL WOULD BE SWORN
4 AND SOMETIME AFTER TODAY?

5 THE COURT: YES.

6 IT SEEMS TO ME THAT HE WAS VERY, VERY THOROUGH.

7 MR. WAPNER: LET ME GET STARTED AND SEE HOW LONG IT IS
8 GOING TO TAKE.

9
10 EXAMINATION

11 BY MR. WAPNER:

12 Q MR. ARCE, YOU GAVE US THE NUMBERS, THE PERCENTAGES
13 BROKEN DOWN BY RACE FOR THE PANEL THAT WERE SUMMONED TO SANTA
14 MONICA AT THE BEGINNING OF NOVEMBER.

15 CAN YOU BY EACH CATEGORY, COMPARE THAT TO THE
16 COUNTY-WIDE STATISTICS AND THE SANTA MONICA JUDICIAL DISTRICT
17 STATISTICS?

18 THE COURT: I THINK HE HAS ALREADY DONE THAT. HAVE YOU
19 NOT?

20 THE WITNESS: I BELIEVE I HAVE, YOUR HONOR, FOR THE
21 DISTRICT.

22 THE COURT: WELL, WHAT IS THE RELEVANCY OF THE COUNTY?

23 MR. WAPNER: WELL, THE RELEVANCY OF THE COUNTY IS THAT
24 THE WHOLE ISSUE AT THIS HEARING IS, WHAT IS THE COMMUNITY.
25 AND THERE IS KIND OF PROLONGED ARGUMENTS --

26 THE COURT: THEY DON'T CONTEND THAT THE ENTIRE COUNTY
27 IS THE COMMUNITY, DO YOU?

28 MR. WAPNER: WELL, I DON'T KNOW WHAT THE CONTENTION IS

1 EXACTLY. BUT I WOULD LIKE TO HAVE THE FIGURES AVAILABLE.

2 THE COURT: ALL RIGHT. LET'S HAVE IT WITH RESPECT TO
3 THE COUNTY.

4 THE WITNESS: OKAY. WITH RESPECT TO THE COUNTY, THE
5 PERCENTAGE OF WHITES OVER 18 AND NON-HISPANIC, ARE 58.3
6 PERCENT.

7 SO THAT THE PANEL THAT WAS OF 162, WAS FOR THE
8 SAME CATEGORY, WAS 80.9 AND REMAINING IN THE POOL IS 81.3 OR
9 REMAINING IN DEPARTMENT C AS OF NOVEMBER 14, 81.3.

10 BLACKS, THE COUNTY-WIDE FIGURE IS 18 AND OVER,
11 11.4. OF THE 162, 10.5 AND REMAINING AS OF NOVEMBER THE 14TH,
12 13.2.

13 HISPANIC, AND I WOULD HAVE TO CAUTION THAT THE
14 FIGURE THAT I AM GOING TO READ ON HISPANIC HAS TO BE ADJUSTED
15 FOR PERSONS WHO ARE NOT CITIZENS OR CITIZENS WHO ARE OF
16 HISPANIC ORIGIN AND BACKGROUND, WHO DO NOT HAVE A SUFFICIENT
17 KNOWLEDGE OF THE ENGLISH LANGUAGE.

18 THE COURT: THAT IS A GREAT PERCENTAGE OF THAT?

19 THE WITNESS: YES, YOUR HONOR. ACCORDING TO THE
20 UNADJUSTED FIGURE, 23.3 PERCENT OF THE POPULATION, THE
21 ADULT POPULATION IS HISPANIC.

22 ACCORDING TO FIGURES THAT WE HAVE DEVELOPED FROM
23 OTHER CENSUS BUREAU FIGURES, THE FIGURE IS IN THE RANGE OF
24 BETWEEN 14.9 AND 16 PERCENT, DEPENDING UPON WHICH SET OF
25 FIGURES YOU USE.

26 BUT GENERALLY, YOU CAN SAY THAT A RANGE OF 15 TO
27 17 PERCENT IS WHAT YOU ARE LOOKING AT.

28 SO SIMPLY -- AND SO WITH RESPECT TO THE GROUP THAT

1 WAS SENT TO DEPARTMENT C, 162, THE PERCENTAGE OF HISPANICS
2 WAS 1.2. THE PERCENTAGE REMAINING IS 2.2 PERCENT.

3 WITH RESPECT TO THE OTHERS, THE OTHER CATEGORIES
4 18 AND OVER, IS 7.0.

5 AND AGAIN, I SHOULD POINT OUT THAT SOME ADJUSTMENT
6 HAS TO BE MADE TO THIS FIGURE FOR CITIZENSHIP, ALTHOUGH THE
7 FIGURES HERE ARE EVEN LESS CLEAR THAN THEY ARE IN THE CASE
8 OF HISPANICS.

9 SO WE GENERALLY USE 7.0 PERCENT. THE NUMBER SENT
10 TO DEPARTMENT C OF 162, WAS 7.4 PERCENT AND THE NUMBER REMAINING
11 IS 3.3 PERCENT.

12 THE COURT: ALL RIGHT. ANYTHING ELSE?

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Q BY MR. WAPNER: AND THE INFORMATION YOU HAD GIVEN
2 US PREVIOUSLY, THOSE FIGURES FOR THE WEST DISTRICT AND THE
3 FIGURES YOU GAVE US FOR HISPANIC, WAS 9.6 PERCENT? IS THAT
4 CORRECT?

5 A I BELIEVE THAT'S CORRECT, YES. THAT'S CORRECT.

6 Q IS THAT AN ADJUSTED OR AN UNADJUSTED FIGURE?

7 A UNADJUSTED.

8 Q IF YOU WERE TO ADJUST THAT 9.6 PERCENT IN THE
9 MANNER THAT YOU PREVIOUSLY DESCRIBED, TAKING INTO CONSIDERATION
10 THOSE PEOPLE WHO DO NOT HAVE SUFFICIENT COMMAND OF THE ENGLISH
11 LANGUAGE OR WHO ARE NOT CITIZENS, WHAT IS THE ADJUSTED
12 FIGURE FOR THE WEST JUDICIAL DISTRICT?

13 A 4.9 PERCENT. ACTUALLY, IT IS 4.97, WHICH WOULD
14 BE ROUNDED UP TO 5 PERCENT.

15 Q YOU MADE SOME REFERENCE TO THE INITIAL SOURCE
16 LIST WHICH IS PULLED OUT BY THE -- STRIKE THAT.

17 IS THE SOURCE LIST THE DEPARTMENT OF MOTOR VEHICLES
18 PLUS VOTER REGISTRATION?

19 A YES, THAT'S CORRECT.

20 Q AND DID YOU GIVE US SOME -- I HAVE SOME NOTES
21 ON DEMOGRAPHIC FIGURES THAT ARE TAKEN FROM THOSE LISTS.

22 WHERE DID THOSE FIGURES COME FROM OR DO YOU GET
23 THIS DEMOGRAPHIC FIGURE FROM THOSE LISTS?

24 A NO. WE DO NOT HAVE ANY DEMOGRAPHIC FIGURES AS
25 TO THE BREAKDOWN OF THOSE LISTS.

26 I BELIEVE MY TESTIMONY WAS, THAT IN LOOKING AT
27 HOW THE SYSTEM PERFORMS, WE CONCLUDE THAT THE SYSTEM IS
28 PERFORMING WELL, THAT THE LISTS ARE BALANCED AND GROUPS ARE

5B-2
1 REPRESENTED, AS WELL AS BEING INCLUSIVE BY THE PERCENTAGE
2 FIGURES ON THE COUNTY-WIDE BASIS OF PEOPLE WHO APPEAR.

3 Q SO THE FIGURES ARE THE PEOPLE WHO ACTUALLY APPEAR
4 FOR JURY SERVICE IN THE WHOLE COUNTY ON A YEARLY BASIS?

5 A THAT'S CORRECT.

6 Q AND YOU MENTIONED THAT YOU BROUGHT WITH YOU, TWO
7 DIFFERENT LISTS TODAY OF PEOPLE WHO WERE SUMMONED TO THIS
8 DISTRICT AND PEOPLE WHO ACTUALLY HAVE APPEARED IN THIS DISTRICT?

9 A WHO HAVE BEEN PAID, YES. FOR SERVICE IN THIS
10 DISTRICT. THAT'S CORRECT.

11 Q AND THE ONE THAT YOU WERE READING TO US FROM BEFORE,
12 INCLUDING THOSE DIFFERENT CITIES THAT YOU MENTIONED, WHICH
13 LIST WAS THAT?

14 A IT WAS FROM THE LIST OF PEOPLE WHO HAD BEEN
15 SUMMONED TO APPEAR HERE.

16 IT IS KNOWN AS THE JURY IMPANELMENT LIST.

17 Q DO YOU HAVE THAT NEXT LIST WITH YOU OF THE PEOPLE
18 WHO ACTUALLY SHOWED UP AND WERE PAID FOR JURY SERVICE?

19 THE COURT: HOW LONG ARE YOU GOING TO GO ON? WE HAVE
20 TO HAVE LUNCH. WE HAVE TO HAVE MR. ARCE BACK AGAIN, IF YOU
21 ARE GOING TO CONTINUE MUCH LONGER.

22 MR. WAPNER: I DON'T KNOW. I SUSPECT THAT IT WILL NOT
23 GO MUCH LONGER. MAYBE WE CAN BREAK AND THEN IF I HAVE TO
24 HAVE MR. ARCE BACK, WE CAN HAVE HIM COME BACK ON THE DATE
25 WE SELECTED FOR THE --

26 MR. CHIER: I SEE I HAVE OVERLOOKED A MAJOR QUESTION. IF
27 HE DOESN'T HAVE THE INFORMATION AVAILABLE TODAY, HE COULD
28 PROBABLY BRING IT BACK.

5B-3
1 THE COURT: ALL RIGHT. WHAT IS THAT?
2

3 FURTHER EXAMINATION

4 BY MR. CHIER:

5 Q MR. ARCE, DO YOU HAVE ANY DEMOGRAPHIC SURVEYS
6 OR FIGURES AVAILABLE FOR THE 20-MILE ARC RADIUS FROM THE
7 SANTA MONICA SUPERIOR COURTHOUSE?

8 A I HAVE FIGURES FOR THE 20 MILES ON THE BASIS OF
9 THE CENSUS TRACTS INCLUDED WITHIN THE 20-MILE ARC AS THE JUROR
10 DRIVES, YES.

11 Q AS THE JUROR DRIVES?

12 A THAT'S CORRECT.

13 Q WOULD THAT BE THE SAME 20 MILES FROM WHICH THE
14 JURORS ARE ALLOCATED TO THIS COURTHOUSE?

15 A YES.

16 Q AND DO YOU HAVE THOSE FIGURES WITH YOU?

17 A YES.

18 Q DO YOU HAVE A COPY OF THEM THAT COULD BE MARKED
19 FOR IDENTIFICATION AND PUT INTO THE RECORD?

20 A YES.

21 MR. CHIER: COULD WE SEE THEM FOR A MOMENT?

22 THE COURT: WE'LL MARK IT C.

23 MR. CHIER: YES, PLEASE, YOUR HONOR.

24 THE COURT: ALL RIGHT. WE WILL MARK IT ARCE C.

25 MR. CHIER: I DON'T KNOW IF THIS IS THE RIGHT TIME TO
26 ASK QUESTIONS ABOUT IT OR WAIT UNTIL HE COMES BACK.

27 THE COURT: LET'S WAIT UNTIL HE COMES BACK.

28 MR. CHIER: ALL RIGHT, YOUR HONOR.

6-1

1 THE COURT: ALL RIGHT, I DON'T KNOW. DO YOU REALLY WANT
2 HIM BACK AGAIN FOR ANY REASON?

3 MR. WAPNER: I THINK MR. CHIER WANTS TO ASK YOU SOME
4 QUESTIONS ABOUT THAT LIST AND I WOULD LIKE TO AT LEAST HAVE
5 AN OPPORTUNITY TO ASK HIM SOME MORE QUESTIONS.

6 THE COURT: ALL RIGHT, FINE. TELL US WHEN YOU CAN COME
7 BACK.

8 THE WITNESS: YOUR HONOR, I CAN -- TODAY IS -- I CAN
9 BE BACK TOMORROW AFTERNOON OR FRIDAY MORNING.

10 THE COURT: NOT ON FRIDAYS, NEVER ON FRIDAYS.

11 MR. BARENS: NEVER, YOUR HONOR.

12 THE COURT: TOMORROW?

13 THE WITNESS: TOMORROW AFTERNOON.

14 THE COURT: ALL RIGHT, TOMORROW AFTERNOON WHICH IS
15 THURSDAY.

16 MR. CHIER: I WAS THINKING MORE IN TERMS OF NEXT WEEK.

17 THE COURT: NEXT WEEK, HOW ABOUT NEXT WEEK, MR. ARCE?

18 THE WITNESS: MONDAY AFTERNOON, YOUR HONOR, OR ANY TIME
19 ON WEDNESDAY.

20 THE COURT: IS MONDAY AFTERNOON AGREEABLE, MONDAY
21 AFTERNOON AT 1:30?

22 MR. CHIER: MONDAY AFTERNOON, FINE.

23 THE COURT: AT 1:30.

24 THE WITNESS: THANK YOU, YOUR HONOR.

25 MR. CHIER: THAT IS THE 24TH?

26 THE COURT: YES.

27 THANK YOU VERY MUCH. IT HAS BEEN EXTREMELY
28 INTERESTING AND THANK YOU FOR YOUR TIME.

1 THE WITNESS: YOU ARE WELCOME, YOUR HONOR.

2 MR. BARENS: WHAT TIME THIS AFTERNOON, YOUR HONOR?

3 THE COURT: I THINK IT WOULD BE QUARTER OF 2:00.

4 MR. BARENS: IT MAY WELL BE THAT MR. CHIER WILL BE
5 PROCEEDING ON HIS OWN JUST FOR TODAY, YOUR HONOR, WITH MR.
6 HUNT'S PERMISSION.

7 THE COURT: ALL RIGHT.

8 (AT 12:35 P.M. AN ADJOURNMENT WAS MADE
9 UNTIL 1:45 P.M. OF THE SAME DAY.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

7-1
1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 19, 1986; 1:47 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. BARENS IS NOT PRESENT.)
5

6 THE COURT: PEOPLE VERSUS HUNT.

7 THE BAILIFF: ARE YOU READY FOR THE FIRST ONE?

8 THE COURT: YES.

9 THE BAILIFF: IT IS MISS CODDINGTON. WE HAVE TWO LEFT
10 OVER FROM YESTERDAY.

11 THE COURT: ALL RIGHT, MISS CODDINGTON.

12 THE BAILIFF: YES. THEN WE CAN START WITH THE OTHERS.

13 THE COURT: ALL RIGHT. WE'LL START WITH WHOM?

14 THE BAILIFF: MISS CODDINGTON.

15 (PROSPECTIVE JUROR SUSAN CODDINGTON
16 ENTERED THE COURTROOM.)

17 THE COURT: MISS CODDINGTON?

18 MS. CODDINGTON: CODDINGTON, YES.

19 THE COURT: MISS CODDINGTON, I AM -- INCIDENTALLY, WHERE
20 DO YOU LIVE?

21 MS. CODDINGTON: I LIVE IN PACIFIC PALISADES.

22 THE COURT: UH-HUH. I AM GOING TO ASK YOU A SERIES
23 OF QUESTIONS AND THE ANSWERS TO THOSE QUESTIONS WILL BE EITHER
24 YES OR NO. AND IF ANY OF THE QUESTIONS ARE UNCLEAR, ASK ME
25 TO REPEAT THEM AND I WILL DO SO.

26 MS. CODDINGTON: YES.

27 THE COURT: THE FIRST QUESTION IS DO YOU HAVE ANY OPINION
28 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING

1 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
2 DEFENDANT?

3 MS. CODDINGTON: YES I DO.

4 THE COURT: WHAT IS THAT?

5 MS. CODDINGTON: I AM UNALTERABLY OPPOSED TO THE DEATH
6 PENALTY.

FO

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE COURT: UNDER NO CIRCUMSTANCES --

2 MS. CODDINGTON: UNDER NO CIRCUMSTANCES.

3 THE COURT: -- WOULD YOU IMPOSE IT?

4 ALL RIGHT.

5 MR. CHIER: MAY I INQUIRE, YOUR HONOR?

6 THE COURT: GO AHEAD.

7 THIS IS MR. CHIER, HE REPRESENTS THE DEFENDANT.

8 MS. CODDINGTON: THANK YOU.

9 MR. CHIER: HOW DO YOU DO?

10 MS. CODDINGTON: HOW DO YOU DO, MR. CHIER?

11 MR. CHIER: I WOULD LIKE TO ASK YOU SOME QUESTIONS
12 RELATIVE TO YOUR VIEWS ON CAPITAL PUNISHMENT AND THE DEATH
13 PENALTY.

14 IS IT MRS. CODDINGTON?

15 MS. CODDINGTON: CODDINGTON, YES.

16 MR. CHIER: DO YOU BELIEVE THAT EVERY PERSON IN THIS
17 COUNTRY IS ENTITLED TO -- EVERY PERSON CHARGED WITH A CRIMINAL
18 OFFENSE IS ENTITLED TO A TRIAL BY JURY?

19 MS. CODDINGTON: YES.

20 THE COURT: WHAT HAS THAT GOT TO DO WITH THIS QUESTION?
21 IT HAS NOTHING TO DO WITH HER BELIEFS AS TO THE DEATH PENALTY.

22 MR. CHIER: YES, IT DOES, YOUR HONOR.

23 THE COURT: NO, IT DOES NOT.

24 WOULD YOU PLEASE ASK RELEVANT QUESTIONS?

25 MR. CHIER: DO YOU UNDERSTAND THAT A PERSON IS ENTITLED
26 TO A JURY COMPOSED OF A CROSS-SECTION OF THE ENTIRE COMMUNITY?

27 MS. CODDINGTON: YES, I DO.

28 MR. CHIER: AND THAT PEOPLE LIVE IN THE COMMUNITY,

1 CITIZENS, HAVE A CIVIL OBLIGATION TO SERVE ON A JURY?

2 MS. CODDINGTON: THAT IS WHY I AM HERE.

3 MR. CHIER: ALL RIGHT, AND IN ORDER TO HAVE A FAIRLY
4 COMPOSED JURY, IT REQUIRES PEOPLE OF ALL PERSUASIONS, ETHNICITY
5 AND SO FORTH, TO MAKE UP THAT JURY?

6 MS. CODDINGTON: YES.

7 MR. CHIER: AND THAT AS A JUROR, YOU TAKE AN OATH TO
8 FOLLOW THE LAW AS IT IS GIVEN TO YOU BY THE COURT, CORRECT?

9 MS. CODDINGTON: CORRECT.

10 MR. CHIER: NOW, DESPITE THE FACT THAT -- AND I ASSUME
11 IT IS YOUR BELIEF THAT CAPITAL PUNISHMENT SHOULD NEVER BE
12 INFLICTED?

13 MS. CODDINGTON: THAT IS WHAT I JUST TOLD THE JUDGE.

14 MR. CHIER: YES. DESPITE THAT FACT AND THE FACT THAT
15 YOU MAY BE IRREVOCABLY COMMITTED TO ITS ABOLITION, COULD YOU
16 NEVERTHELESS SUBORDINATE YOUR PERSONAL VIEWS TO WHAT YOU MIGHT
17 PERCEIVE TO BE YOUR DUTY TO ABIDE BY YOUR OATH AS A JUROR?

18 MS. CODDINGTON: NO, SIR.

19

20

21

22

23

24

25

26

27

28

9-1
1 MR. CHIER: COULD YOU, NOTWITHSTANDING YOUR SCRUPLES
2 AGAINST CAPITAL PUNISHMENT, RETURN A VERDICT OF DEATH AND
3 MAKE YOUR PERSONAL SCRUPLES SUBSERVIENT TO YOUR DUTY AS A
4 JUROR?

5 MS. CODDINGTON: I COULD NOT.

6 MR. CHIER: DO YOU UNDERSTAND THAT IF YOU CATEGORICALLY
7 STATE THAT YOU ARE OPPOSED TO THE DEATH PENALTY, THAT EXCUSES
8 YOU FROM SERVICE ON THIS JURY?

9 MS. CODDINGTON: YES I DO.

10 MR. CHIER: AND THAT WILL RESULT IN A JURY COMPOSED
11 OF PERSONS IN FAVOR OF THE DEATH PENALTY?

12 MS. CODDINGTON: I DON'T THINK THAT FOLLOWS.

13 THE COURT: YOU ARE ABSOLUTELY CORRECT ABOUT THAT.
14 COUNSEL IS WRONG ABOUT HIS CONCLUSION THAT ALL OF THE PEOPLE
15 WHO MIGHT BE ON THE JURY FAVOR THE DEATH PENALTY.

16 MR. CHIER: ONE GROUP OF PERSONS THAT IS EXCLUDED FROM
17 SITTING ON A JURY IN A CASE SUCH AS THIS, ARE PERSONS SUCH
18 AS YOURSELF, WHO ARE OPPOSED TO THE DEATH PENALTY.

19 MS. CODDINGTON: YES. I REALIZE THAT, MR. CHIER.

20 IF IT WERE THE JUDGE WHO WERE SETTING THE PENALTY,
21 I COULD IN GOOD CONSCIENCE, SERVE ON A JURY TO DETERMINE GUILT
22 OR INNOCENCE. BUT SINCE JUDGE RITTENBAND HAS SAID THAT THE
23 JURY MUST DETERMINE THE PENALTY AND THAT THERE ARE ONLY TWO
24 CHOICES AND ONE OF THOSE IS THE DEATH PENALTY, I CANNOT
25 SERVE.

26 MR. CHIER: YOU ARE I GUESS, IN EFFECT, PASSING -- YOU
27 WOULD BE PASSING THE BUCK, IN OTHER WORDS BY SAYING THAT YOU
28 WOULD SERVE IF THE JUDGE WERE TO DETERMINE THE PENALTY?

1 MS. CODDINGTON: UH-HUH.

2 MR. CHIER: AND IF IT WERE UP TO THE JUDGE TO DETERMINE
3 WHETHER THE DEFENDANT LIVED OR DIED IN THE GAS CHAMBER, YOU
4 COULD TOLERATE THAT?

5 MS. CODDINGTON: I PROBABLY COULD TOLERATE THAT. BUT
6 SUCH IS NOT THE CASE.

7 MR. CHIER: AND THAT EVEN KNOWING THAT BY DECLINING --
8 BY DECLINING TO SERVE ON A JURY, BY NOT BEING ABLE TO
9 SUBORDINATE YOUR PERSONAL VIEWS TO WHAT IS AT THIS TIME, THE
10 LAW OF THE STATE OF CALIFORNIA, HE IS DEPRIVED OF A
11 REPRESENTATIVE FROM YOUR --

12 MR. WAPNER: OBJECTION. THAT IS IMPROPER.

13 MS. CODDINGTON: HE IS ONLY DEPRIVED OF MY SERVICES.

14 THE COURT: I WILL SUSTAIN THE OBJECTION. I DON'T --
15 I THINK YOU ARE WASTING YOUR TIME. THIS LADY IS POSITIVE
16 OF HER MIND. SHE IS ABSOLUTELY, CATEGORICALLY CLEAR THAT
17 UNDER NO CIRCUMSTANCES WOULD SHE IF GIVEN THE CHOICE, IMPOSE
18 THE DEATH PENALTY.

19 MS. CODDINGTON: THAT'S CORRECT, YOUR HONOR.

20 MR. CHIER: UNDER NO CIRCUMSTANCES COULD YOU?

21 MS. CODDINGTON: UNDER NO CIRCUMSTANCES.

22 MR. CHIER: NO MATTER WHAT THE CRIME?

23 MS. CODDINGTON: NO MATTER WHAT THE CRIME.

24 MR. CHIER: EVEN IF IT WERE THE NIGHT STALKER CASE,
25 FOR EXAMPLE?

26 MS. CODDINGTON: EVEN IN THE NIGHT STALKER CASE, FOR
27 EXAMPLE.

28 MR. CHIER: ALL RIGHT. WELL, THANK YOU FOR YOUR CANDOR.

1 MR. WAPNER: NO QUESTIONS, YOUR HONOR. THERE WILL BE
2 A CHALLENGE.

3 THE COURT: THANK YOU VERY MUCH. WE ALL RESPECT YOUR
4 VIEWS. YOU UNDERSTAND THAT?

5 MS. CODDINGTON: YES. THANK YOU.

6 THE COURT: GO BACK TO THE JURY ASSEMBLY ROOM FOR
7 FURTHER INSTRUCTIONS.

8 (MS. CODDINGTON EXITED THE COURTROOM.)

9 MR. WAPNER: FOR THE RECORD, THERE IS A CHALLENGE TO
10 MS. CODDINGTON FOR CAUSE.

11 THE COURT: YOU CHALLENGE FOR CAUSE?

12 MR. WAPNER: YES.

13 THE COURT: I ACCEPT THE CHALLENGE. I RECOGNIZE IT.
14 SHE IS CHALLENGED FOR CAUSE.

15 (PROSPECTIVE JUROR CRAWFORD ENTERED
16 THE COURTROOM.)

17 THE COURT: MR. CRAWFORD, WHERE DO YOU LIVE?

18 MR. CRAWFORD: I LIVE IN SOUTHWEST LOS ANGELES, SIR.

19 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
20 TO WHICH YOU ARE TO ANSWER YES OR NO TO EACH ONE OF THOSE
21 QUESTIONS. AND IF IT IS UNCLEAR TO YOU, THE QUESTION IS
22 UNCLEAR, ASK ME TO REPEAT IT AND I WILL BE GLAD TO.

23 MR. CRAWFORD: YES, SIR.

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

27 MR. CRAWFORD: NO.
28

0-1

1 THE COURT: AND SECONDLY, DO YOU HAVE AN OPINION
2 REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR
3 FIRST DEGREE MURDER, EVEN IF THE PROSECUTION DOES NOT PROVE
4 BEYOND A REASONABLE DOUBT MURDER IN THE FIRST DEGREE BUT SOME
5 OTHER DEGREE?

6 MR. CRAWFORD: NO.

7 THE COURT: BEFORE I ASK YOU THE THIRD QUESTION, I THINK
8 YOU WERE HERE WHEN I OUTLINED TO ALL OF THE MEMBERS OF THE
9 JURY PANEL THE NATURE OF THE CASE WE ARE ABOUT TO TRY AND
10 THE ISSUES WHICH ARE INVOLVED. I TOLD THEM THAT THIS IS A
11 MURDER CASE WHERE THE DISTRICT ATTORNEY IS SEEKING THE DEATH
12 PENALTY AND THAT THE JURORS THEN, AFTER HEARING ALL OF THE
13 EVIDENCE, WILL DECIDE FIRST WHETHER OR NOT THE DEFENDANT IS
14 GUILTY OF MURDER AND IN CONNECTION WITH THAT, MURDER IN THE
15 FIRST DEGREE AND AFTER THAT, THEY HAVE TO REPORT OR MAKE A
16 FINDING TO THE COURT AS TO WHETHER OR NOT THAT MURDER WAS
17 COMMITTED DURING THE COURSE OF A ROBBERY. DO YOU UNDERSTAND?

18 MR. CRAWFORD: YES.

19 THE COURT: SO THE FIRST PHASE OF IT, GUILT OR
20 INNOCENCE AND IF IT IS GUILT, GUILTY OF FIRST DEGREE MURDER,
21 AND THEN WHETHER OR NOT THE SPECIAL CIRCUMSTANCE OR
22 COMMISSION OF THE SPECIAL CIRCUMSTANCE, THE COMMISSION OF
23 THE ROBBERY TOOK PLACE, ALL RIGHT?

24 MR. CRAWFORD: ALL RIGHT.

25 THE COURT: THAT IS WHAT WE CALL THE SPECIAL CIRCUMSTANCE,
26 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

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

20-2

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

3 MR. CRAWFORD: NO.

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

9 MR. CRAWFORD: NO.

10 THE COURT: DO YOU UNDERSTAND THAT AFTER THE FIRST PHASE,
11 IF IT IS FOUND TO BE MURDER IN THE FIRST DEGREE AND SPECIAL
12 CIRCUMSTANCES, THEN WE HAVE THE SECOND TRIAL BY THE SAME
13 JURY TO DETERMINE THE PENALTY TO BE IMPOSED WHERE ADDITIONAL
14 EVIDENCE WOULD COME IN?

15 MR. CRAWFORD: YES.

16 THE COURT: THAT ADDITIONAL EVIDENCE WOULD BE TO SHOW
17 EXTENUATION OR MITIGATION, RATHER, OF THE PENALTY, OR
18 AGGRAVATION. MITIGATING CONSISTS OF THINGS WHICH ARE FAVORABLE
19 TO THE DEFENDANT AND AGGRAVATION, THOSE WHICH ARE NOT FAVORABLE
20 TO THE DEFENDANT; DO YOU UNDERSTAND THAT?

21 MR. CRAWFORD: YES, SIR.

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

28 MR. CRAWFORD: NO.

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

5 MR. CRAWFORD: YES.

6 THE COURT: ALL RIGHT. INCIDENTALLY, HAVE YOU READ ANY-
7 THING AT ALL ABOUT THIS CASE?

8 MR. CRAWFORD: NO, SIR, I HAVEN'T.

9 THE COURT: NEITHER IN THE L.A. TIMES OR ANY MAGAZINE
10 LIKE TIME OR NEWSWEEK OR ANYTHING LIKE THAT?

11 MR. CRAWFORD: NO, SIR.

12 THE COURT: HAVE YOU TALKED TO ANYBODY AT ALL ABOUT IT
13 AMONG THE JURORS OR ANYBODY ELSE?

14 MR. CRAWFORD: NO, I HAVEN'T.

15 THE COURT: EXCEPT YOU KNOW THAT THE CHARGE INVOLVING THE
16 DEATH PENALTY IS INVOLVED IN THIS CASE?

17 MR. CRAWFORD: YES, SIR.

18 THE COURT: ALL RIGHT, YOU HAVE NO FIXED OPINION, OF
19 COURSE, AT THIS PARTICULAR TIME ONE WAY OR THE OTHER?

20 MR. CRAWFORD: NO, SIR.

21 THE COURT: ALL RIGHT, YOU MAY INQUIRE.

22 MR. CHIER: MAY I HAVE JUST A MOMENT, PLEASE, YOUR HONOR?

23 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
24 AND THE DEFENDANT.)

25 MR. CHIER: PASS FOR CAUSE, YOUR HONOR.

26 THE COURT: VERY WELL.

27 MR. WAPNER: MR. CRAWFORD, DO YOU UNDERSTAND THAT IF
28 YOU GET TO THAT PHASE OF THE TRIAL THAT WOULD INVOLVE

1 DELIBERATION ON THE DEATH PENALTY, THAT YOU HAVE TO RENDER
2 AN INDIVIDUAL OPINION AS TO WHAT YOU THINK THE APPROPRIATE
3 PENALTY SHOULD BE WHETHER IT IS LIFE IN PRISON OR DEATH?

4 MR. CRAWFORD: YES.

5 MR. WAPNER: DO YOU THINK YOU ARE CAPABLE OF DOING THAT?

6 MR. CRAWFORD: SURE.

7 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT IT?

8 MR. CRAWFORD: NO, NONE.

9 MR. WAPNER: DO YOU HAVE ANY RELIGIOUS, PHILOSOPHICAL
10 OR MORAL FEELINGS ABOUT THE DEATH PENALTY THAT YOU THINK WOULD
11 MAKE IT DIFFICULT FOR YOU TO SIT ON A CASE OF THIS NATURE?

12 MR. CRAWFORD: NO.

13 MR. WAPNER: I HAVE NOTHING FURTHER. I WILL PASS FOR
14 CAUSE.

15 THE COURT: DO YOU PASS FOR CAUSE?

16 MR. WAPNER: YES.

17 THE COURT: ALL RIGHT, MR. CRAWFORD, YOU KNOW WE ARE
18 IN THE PROCESS NOW OF INQUIRING OF ALL OF THE JURORS ON THOSE
19 POINTS WHICH I HAVE ASKED YOU ABOUT AND THAT WILL TAKE US
20 QUITE A BIT OF TIME, AS YOU KNOW. WE HAVE SEVEN OR EIGHT
21 A DAY AND BEFORE WE EXHAUST A NUMBER OF PROSPECTIVE JURORS,
22 IT IS ANTICIPATED THAT WE WON'T FINISH UNTIL ABOUT DECEMBER
23 THE 2ND SO WHAT I WILL ASK YOU TO DO, IF IT IS AGREEABLE TO
24 YOU, YOU COME BACK TO THE JURY ASSEMBLY ROOM ON DECEMBER 2ND
25 AT 10:30. DECEMBER 2ND AT 10:30.

26 MR. CRAWFORD: YES.

27 THE COURT: AND HOPEFULLY, WE WILL BE FINISHED WITH
28 THIS PHASE WITH ALL OF THE JURORS; DO YOU UNDERSTAND?

1 MR. CRAWFORD: YES, SIR.

2 THE COURT: IF BY ANY CHANCE IT IS GOING TO BE LONGER
3 THAN THAT, THEN WE WILL GIVE YOU A CALL AND TELL YOU NOT TO
4 COME AND TELL YOU WHEN TO COME. WE HAVE YOUR TELEPHONE
5 NUMBER.

6 WE HAVE THE TELEPHONE NUMBERS, YOU SAID, OF ALL
7 OF THEM, MA'AM?

8 THE CLERK: YES, HERE, YES.

9 THE COURT: YES, WE HAVE YOUR TELEPHONE NUMBER.

10 MR. CRAWFORD: THANK YOU, SIR.

11 THE COURT: THANK YOU VERY MUCH. YOU ARE EXCUSED UNTIL
12 DECEMBER 2ND IN THE JURY ASSEMBLY ROOM AT 10:30 A.M.

13 MR. CRAWFORD: THANK YOU, SIR.

14 THE COURT: ALL RIGHT, CALL THE NEXT ONE.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

21-1
1 MR. WAPNER: YOUR HONOR, MAY I HAVE A MINUTE ON THE
2 RECORD BEFORE WE BRING IN THE NEXT JUROR?

3 THE COURT: YES.

4 MR. WAPNER: I JUST WANTED TO MAKE THE RECORD CLEAR
5 THAT MR. CRAWFORD IS BLACK AND MS. BRYANTPURVEY, WHO WE
6 EXAMINED YESTERDAY AND WHO ALSO THE DEFENSE PASSED FOR CAUSE
7 AND DID NOT ASK ANY QUESTIONS, WAS ALSO BLACK.

8 THE COURT: YES.

9 MR. WAPNER: THANK YOU.

10 (PROSPECTIVE JUROR RUBY EWELL ENTERED
11 THE COURTROOM.)

12 THE COURT: MISS EWELL, WHERE DO YOU LIVE?

13 MS. EWELL: LOS ANGELES.

14 THE COURT: WHAT PART?

15 MS. EWELL: WEST LOS ANGELES.

16 THE COURT: WEST LOS ANGELES. ALL RIGHT.

17 I AM GOING TO ASK YOU A SERIES OF QUESTIONS.
18 THE ANSWERS TO THE QUESTIONS WILL BE EITHER YES OR NO. IF
19 YOU DON'T UNDERSTAND ANY OF THEM OR IF THEY ARE UNCLEAR TO
20 YOU, ASK ME TO REPEAT THEM AND I WILL BE VERY HAPPY TO DO
21 SO.

22 MS. EWELL: OKAY.

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. EWELL: NO.

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

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

3 MS. EWELL: NO.

4 THE COURT: ALL RIGHT. BEFORE I ASK YOU THE THIRD
5 QUESTION, I WANT TO PREFACE IT BY SAYING THAT YOU WERE HERE
6 WHEN ALL OF THE JURORS WERE PRESENT?

7 MS. EWELL: YES.

8 THE COURT: AND YOU HEARD ME EXPLAIN THE NATURE OF THE
9 CASE?

10 MS. EWELL: YES.

11 THE COURT: YOU HEARD ME SAY THAT IT IS A DEATH PENALTY
12 CASE WHERE THE DEFENDANT IS ACCUSED OF COMMITTING A MURDER
13 AND THAT MURDER IS IN THE FIRST DEGREE AND THAT THAT MURDER
14 WAS COMMITTED IN THE COURSE OF A ROBBERY?

15 MS. EWELL: YES.

16 THE COURT: DO YOU UNDERSTAND THAT?

17 MS. EWELL: YES.

18 THE COURT: NOW, WHEN A MURDER IS COMMITTED IN THE COURSE
19 OF A ROBBERY, THAT MAY CALL FOR THE IMPOSITION OF EITHER THE
20 DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF
21 PAROLE.

22 SO IF THE JURORS COME IN WITH A VERDICT OF GUILTY
23 OF MURDER IN THE FIRST DEGREE, THEY ARE THEN CALLED UPON TO
24 DECIDE WHETHER OR NOT THAT MURDER WAS COMMITTED UNDER THE
25 SPECIAL CIRCUMSTANCES, DURING THE COURSE OF A ROBBERY. AND
26 THAT IS EITHER TRUE OR UNTRUE, FALSE OR TRUE. DO YOU
27 UNDERSTAND THAT?

28 MS. EWELL: YES.

1 THE COURT: ALL RIGHT. NOW THE QUESTION IS, DO YOU HAVE
2 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
3 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
4 OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

5 MS. EWELL: NO.

6 THE COURT: ALL RIGHT. DO YOU HAVE SUCH AN OPINION
7 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
8 VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY OF MURDER IN THE
9 FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS
10 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
11 OF THE TRIAL?

12 MS. EWELL: NO.

13 THE COURT: DO YOU UNDERSTAND THAT IF THERE IS MURDER
14 IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES, THEN THAT
15 SAME JURY DETERMINES WHETHER OR NOT THERE SHOULD BE DEATH
16 OR LIFE WITHOUT POSSIBILITY OF PAROLE?

17 MS. EWELL: I UNDERSTAND.

18 THE COURT: AND THAT THERE WILL BE ADDITIONAL EVIDENCE,
19 EITHER FAVORABLE EVIDENCE FOR THE DEFENDANT WHICH WE CALL
20 MITIGATING CIRCUMSTANCES OR AGGRAVATING CIRCUMSTANCES WHICH
21 ARE UNFAVORABLE TO THE DEFENDANT. YOU UNDERSTAND THAT?

22 MS. EWELL: I UNDERSTAND THAT.

23 THE COURT: AND THEN YOU MAKE UP YOUR MIND ONE WAY OR
24 THE OTHER?

25 MS. EWELL: RIGHT.

26 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
27 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
28 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT

1-4
1 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH A FINDING OF
2 SPECIAL CIRCUMSTANCES REGARDLESS OF ANY EVIDENCE THAT MAY
3 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

4 MS. EWELL: I HAVE NO OPINION.

5 THE COURT: WOULD YOU AUTOMATICALLY VOTE FOR LIFE
6 WITHOUT POSSIBILITY OF PAROLE OR WOULD YOU ALSO CONSIDER THE
7 OTHER ASPECT, DEATH? IS THAT RIGHT?

8 MS. EWELL: I WOULD CONSIDER THAT.

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

13 MS. EWELL: I UNDERSTAND.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE COURT: ALL RIGHT. ANY QUESTIONS?

2 MR. CHIER: YES. IS IT MISS OR MRS.?

3 MS. EWELL: MS.

4 MR. CHIER: MS. EWELL, MY NAME IS RICHARD CHIER. I
5 AM CO-COUNSEL FOR MR. HUNT.

6 THE COURT: THAT IS THE DEFENDANT.

7 MR. CHIER: THE DEFENDANT, YES. AND I WOULD LIKE TO
8 ASK YOU PRIOR TO COMING IN HERE TODAY, IF YOU HAVE HEARD OR
9 SEEN ANYTHING ABOUT THIS CASE.

10 MS. EWELL: NO.

11 THE COURT: SORRY. I MEANT TO ASK THAT.

12 MR. CHIER: YOU HAVE HEARD NO TELEVISION OR READ NO
13 ARTICLES OR MAGAZINES OR NEWSPAPERS?

14 MS. EWELL: NO.

15 MR. CHIER: HAVE YOU HEARD IN THE HALLWAY, JUROR GOSSIP
16 OF ANY KIND?

17 MS. EWELL: NO.

18 MR. CHIER: AND DO YOU UNDERSTAND THAT THERE IS IN
19 CALIFORNIA, NO MANDATORY DEATH PENALTY FOR ANY CRIME?

20 MS. EWELL: I UNDERSTAND THAT.

21 MR. CHIER: THERE ARE CERTAIN CRIMES FOR WHICH THE PENALTY
22 OF DEATH OR IN THE ALTERNATIVE, THE PENALTY OF LIFE WITHOUT
23 POSSIBILITY OF PAROLE CAN BE IMPOSED?

24 MS. EWELL: YES.

25 MR. CHIER: AND THAT I ASSUME THAT IN YOUR CASE, HAVING
26 ANSWERED THE JUDGE'S QUESTIONS, THAT IT WOULD DEPEND UPON
27 THE PARTICULAR CIRCUMSTANCES OF THE CASE AND THE EVIDENCE
28 THAT YOU HEARD WHICH WAY YOU WOULD BE INCLINED TO VOTE?

1 MS. EWELL: YES.

2 MR. CHIER: ALL RIGHT. ARE YOU BASICALLY IN FAVOR OF
3 THE DEATH PENALTY AS A GENERAL PROPOSITION?

4 MS. EWELL: I REALLY HAVE NOT GIVEN IT MUCH THOUGHT.

5 MR. CHIER: OKAY. I PASS FOR CAUSE.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. WAPNER: MRS. EWELL, DO YOU UNDERSTAND THE JUDGE'S
8 EXPLANATION ABOUT THE DIFFERENT PHASES OF THE TRIAL?

9 MS. EWELL: YES.

10 MR. WAPNER: AND DO YOU UNDERSTAND THAT IF YOU GET TO
11 THAT PHASE WHERE YOU ARE DECIDING UPON A PENALTY, THAT YOU
12 WILL HAVE TO RENDER YOUR INDIVIDUAL VERDICT OR OPINION AS
13 TO WHETHER OR NOT THE PROPER PENALTY SHOULD BE DEATH OR LIFE
14 WITHOUT POSSIBILITY OF PAROLE?

15 MR. EWELL: YES.

16 MR. WAPNER: DO YOU THINK THAT YOU ARE THE KIND OF PERSON
17 WHO IS CAPABLE OF MAKING THAT KIND OF A JUDGMENT?

18 MS. EWELL: YES.

19 MR. WAPNER: OKAY. SO THAT IF YOU LISTEN TO ALL OF
20 THE EVIDENCE AND YOU DECIDE THAT THE PROPER PUNISHMENT IS
21 DEATH, THAT YOU COULD BRING BACK THAT VERDICT?

22 MS. EWELL: IF I THOUGHT IT WAS REQUIRED, YES.

23 MR. WAPNER: CAN YOU TELL ME WHAT YOU MEANT BY, "IF
24 YOU THOUGHT IT WAS REQUIRED"?

25 MS. EWELL: IF I THOUGHT ALL OF THE CIRCUMSTANCES POINTED
26 THAT WAY, THAT THE DEFENDANT WAS GUILTY.

27 MR. WAPNER: THANK YOU. THE REASON I ASKED THAT
28 QUESTION IS BECAUSE SOMETIMES JURORS ANSWER THOSE QUESTIONS

1 LIKE THEY THOUGHT IT WAS REQUIRED. THEY THINK THAT THE JUDGE
2 IS SUPPOSED TO TELL THEM WHAT TO DO.

3 MS. EWELL: OKAY.

4 MR. WAPNER: LIKewise, IF YOU THOUGHT THE EVIDENCE
5 JUSTIFIED A VERDICT OF LIFE WITHOUT POSSIBILITY OF PAROLE,
6 COULD YOU BRING BACK THAT VERDICT?

7 MS. EWELL: YES.

8 MR. WAPNER: DO YOU HAVE ANY RELIGIOUS OR PHILOSOPHICAL
9 OR MORAL FEELINGS THAT WOULD MAKE IT DIFFICULT FOR YOU TO
10 SIT AS A JUROR IN A CASE OF THIS KIND, KNOWING THAT YOU WOULD
11 HAVE TO MAKE -- YOU MIGHT BE CALLED UPON TO MAKE THIS DECISION?

12 MS. EWELL: NO.

13 MR. WAPNER: I JUST WANTED TO TOUCH ON THE PUBLICITY
14 ASPECT BRIEFLY. I TAKE IT THAT YOU DID NOT RECOGNIZE THE
15 NAME JOE HUNT WHEN YOU HEARD THE DEFENDANT'S NAME READ, IS
16 THAT RIGHT?

17 MS. EWELL: NO I DIDN'T.

18 MR. WAPNER: OKAY. HAVE YOU READ ANYTHING OR HEARD
19 ANYTHING ABOUT THE SOMETHING -- SOMETHING CALLED THE
20 BILLIONAIRE BOYS CLUB?

21 MS. EWELL: NO. I AM AFRAID THAT I DON'T READ THE PAPER.
22 I DON'T LOOK AT TELEVISION, NO.

23 MR. WAPNER: OKAY. WELL, THAT IS PROBABLY A PRETTY
24 GOOD THING. I THINK THE JUDGE WILL TELL YOU BEFORE YOU LEAVE,
25 THAT IN THE EVENT THAT YOU DO WATCH TV OR READ PAPERS, YOU
26 ARE NOT SUPPOSED TO READ ANYTHING THAT MIGHT BE WRITTEN ABOUT
27 THIS CASE FROM NOW ON.

28 THE COURT: DON'T TALK TO ANYBODY ABOUT WHAT HAPPENED

1 HERE OR THE QUESTIONS ASKED OF YOU. ALL RIGHT?

2 MS. EWELL: OKAY.

3 MR. WAPNER: I PASS FOR CAUSE.

4 THE COURT: ALL RIGHT. NOW, WE ARE IN THE PROCESS AS
5 YOU SEE, OF GOING THROUGH ALL OF THE PROSPECTIVE JURORS AND
6 ASKING THEM THE SAME QUESTIONS WE HAVE ASKED YOU.

7 AND THIS PROBABLY WILL TAKE UNTIL DECEMBER 2ND
8 AT LEAST. SO WHAT WE WILL ASK YOU TO DO IS, COME BACK TO
9 THE JURY ASSEMBLY ROOM ON DECEMBER 2ND AT 10:30 A.M.

10 THAT IS DECEMBER 2ND AT 10:30 A.M. WE HAVE YOUR
11 TELEPHONE NUMBER. IN THE EVENT THAT WE DON'T FINISH UP UNTIL
12 THAT TIME OR IT IS GOING TO BE LATER, WE WILL CALL YOU AND
13 TELL YOU WHEN TO COME BACK.

14 MS. EWELL: OKAY.

15 THE COURT: WILL THAT BE ALL RIGHT?

16 MS. EWELL: YES.

17 THE COURT: THANK YOU VERY MUCH.

18 (PROSPECTIVE JUROR EWELL EXITED THE
19 COURTROOM.)

20

21

22

23

24

25

26

27

28

1 (PROSPECTIVE JUROR FARBER ENTERS THE
2 COURTROOM.)

3 THE COURT: MR. FARBER, WHERE DO YOU LIVE?

4 MR. FARBER: REDONDO BEACH.

5 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
6 AND THE ANSWERS TO WHICH WILL EITHER BE YES OR NO. IF YOU
7 ARE NOT CLEAR ABOUT A QUESTION ASKED, I WILL BE HAPPY TO
8 CLEAR IT UP FOR YOU.

9 MR. FARBER: YES.

10 THE COURT: I WILL EXPLAIN IT TO YOU DURING THE COURSE
11 OF MY QUESTIONING.

12 NOW THE FIRST QUESTION I AM GOING TO ASK YOU IS:
13 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
14 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
15 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

16 MR. FARBER: NO, I DON'T.

17 THE COURT: ALL RIGHT, SECONDLY: DO YOU HAVE ANY OPINION
18 REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR
19 FIRST DEGREE MURDER, EVEN IF THE PROSECUTION DOES NOT PROVE
20 MURDER IN THE FIRST DEGREE?

21 MR. FARBER: NO.

22 THE COURT: BEFORE I ASK YOU THE THIRD QUESTION I AM
23 GOING TO EXPLAIN TO YOU -- AND YOU WERE HERE AT THE TIME I
24 GAVE THE GENERAL DESCRIPTION OF THE NATURE OF THE CASE AND
25 OUTLINED IT TO THE JURY -- THE DEFENDANT IS CHARGED IN THIS
26 CASE WITH MURDER IN THE FIRST DEGREE AND THE DEATH PENALTY
27 IS BEING SOUGHT BY THE PEOPLE BECAUSE IT IS CLAIMED BY THE
28 PEOPLE THAT THIS MURDER OCCURRED DURING THE COURSE OF A

2-2

1 ROBBERY. BECAUSE OF THAT FACT, THAT IT IS CLAIMED THAT THE
2 MURDER TOOK PLACE IN THE COURSE OF A ROBBERY, THE JURY THEN
3 WILL BE CALLED UPON, IF THEY FIND THE DEFENDANT GUILTY OF
4 MURDER IN THE FIRST DEGREE, TO SAY WHETHER OR NOT IT WAS IN
5 THE COURSE OF A ROBBERY. IN THE COURSE OF A ROBBERY IS WHAT
6 IS DESIGNATED AS A SPECIAL CIRCUMSTANCE IN CONNECTION WITH
7 THE MURDER AND SO THE JURY, IF THEY FIND THE DEFENDANT GUILTY
8 OF MURDER IN THE FIRST DEGREE, THEY THEN WILL BE CALLED UPON
9 TO MAKE A FINDING WHETHER IT IS TRUE OR UNTRUE THAT IT WAS
10 COMMITTED DURING THE COURSE OF A ROBBERY, THAT IS A SPECIAL
11 CIRCUMSTANCE.

12 SO MY QUESTION IS: DO YOU HAVE ANY OPINION REGARDING
13 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
14 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE
15 ALLEGED IN THIS CASE?

16 MR. FARBER: NO.

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

23 MR. FARBER: NO.

24 THE COURT: NOW, THE PENALTY PHASE, AS YOU KNOW AND YOU
25 HAVE HEARD, IF AFTER A JURY DOES FIND THE DEFENDANT GUILTY
26 OF MURDER WITH THE SPECIAL CIRCUMSTANCE THAT IT WAS COMMITTED
27 DURING THE COURSE OF A ROBBERY, THEN THERE IS A SECOND PHASE
28 OF THE TRIAL WHERE THE JURY HEARS EVIDENCE OF EXTENUATING

1 CIRCUMSTANCES OR MITIGATING CIRCUMSTANCES OR FACTS WHICH ARE
2 FAVORABLE TO THE DEFENDANT AND FACTS WHICH ARE UNFAVORABLE,
3 WHICH ARE KNOWN AS AGGRAVATING CIRCUMSTANCES; DO YOU UNDER-
4 STAND?

5 MR. FARBER: YES.

6 THE COURT: YOU HEAR BOTH SIDES OF THAT, THEN THE JURY
7 MAKES UP THEIR MIND WHETHER IT SHOULD BE DEATH OR LIFE
8 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

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

15 MR. FARBER: NO.

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

20 MR. FARBER: YES.

21 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
22 CASE IN ANY PUBLICATION, NEWSPAPER?

23 MR. FARBER: OH, NO.

24 I REALLY DON'T KNOW ANYTHING ABOUT THE CASE.

25 THE COURT: AND YOU HAVEN'T READ ANYTHING ABOUT IT IN
26 THE LOS ANGELES TIMES?

27 MR. FARBER: NO, NOT --

28 THE COURT: NOR ANY MAGAZINE?

1 HAVE YOU HEARD ANY DISCUSSION AROUND THE JURY ROOM
2 OR ANY OTHER PLACE BY PEOPLE WHO MIGHT HAVE READ ANYTHING ABOUT
3 IT?

4 MR. FARBER: NO.

5 THE COURT: NOTHING AT ALL? ALL RIGHT, YOU MAY INQUIRE.

6 MR. CHIER: MR. FARBER, MY NAME IS RICHARD CHIER. I
7 AM ONE OF THE ATTORNEYS FOR MR. HUNT, JOE HUNT, THE DEFENDANT
8 IN THIS CASE.

9 AND AT THE RISK OF BEING SLIGHTLY REPETITIOUS,
10 I WANT TO POINT OUT AT THE OUTSET THAT BECAUSE WE ARE TALKING
11 ABOUT YOUR VIEWS TOWARD THE DEATH PENALTY, IT IS NOT TO BE
12 ASSUMED BY YOU THAT MR. HUNT IS GUILTY OF ANYTHING.

13 THIS IS MERELY A PROCEDURAL TECHNIQUE IN THESE
14 TYPES OF CASES THAT HAS TO BE DONE AND THE FACT THAT WE ARE
15 TALKING ABOUT DEATH HAS ABSOLUTELY NO IMPLICATION WHATSOEVER:
16 DO YOU UNDERSTAND THAT?

17 MR. FARBER: YES, I DO.

18
19
20
21
22
23
24
25
26
27
28

1 MR. CHIER: AND AS UNPLEASANT AS IT MAY BE, I WOULD LIKE
2 TO BRIEFLY QUESTION YOU CONCERNING YOUR VIEWS GENERALLY AND
3 MAYBE SPECIFICALLY, IF NECESSARY ON THE DEATH PENALTY.

4 IF I ASK YOU THE FOLLOWING QUESTION, HOW WOULD
5 YOU CHARACTERIZE YOURSELF: STRONGLY IN FAVOR OF THE DEATH
6 PENALTY, MILDLY IN FAVOR OF THE DEATH PENALTY, NO OPINION OR
7 STRONGLY OPPOSED TO THE DEATH PENALTY?

8 (PAUSE.)

9 MR. FARBER: I WOULD PROBABLY SAY MILDLY IN FAVOR.

10 MR. CHIER: I TAKE IT THEN, MR. FARBER, THAT YOU FEEL
11 THE DEATH PENALTY IS AN APPROPRIATE PUNISHMENT FOR CERTAIN
12 TYPES OF OFFENSES?

13 MR. FARBER: I GUESS THAT WOULD DEPEND UPON THE
14 CIRCUMSTANCES, YOU KNOW.

15 MR. CHIER: RIGHT.

16 BUT LET'S ASSUME FOR JUST THE PURPOSE OF DISCUSSION
17 HERE THAT YOU ARE THE BOSS AND YOU GET TO DECIDE WHO GETS THE
18 DEATH PENALTY AND WHO DOESN'T; ARE THERE ANY -- IS THERE ANY
19 TYPE OR TYPES OF CRIME WHICH YOU WOULD FEEL WARRANTED THE
20 DEATH PENALTY MORE THAN SOME OTHER TYPES?

21 MR. FARBER: YES, I WOULD, YOU KNOW.

22 MR. CHIER: COULD YOU TELL ME?

23 MR. FARBER: WELL, SOME MURDER THAT WAS EXTREMELY
24 GRUESOME, YOU KNOW, LIKE DISMEMBERMENT OF SOMEONE.

25 MR. CHIER: TORTURE?

26 MR. FARBER: YES, THAT TYPE OF THING.

27 MR. CHIER: THAT TYPE OF THING? I TAKE IT THEN FROM
28 THE TOTALITY OF YOUR ANSWERS THAT YOU HOLD NO PERSONAL BELIEFS

1 WHICH WOULD SUBSTANTIALLY IMPAIR YOUR ABILITY TO RETURN A
2 VERDICT OF EITHER DEATH OR LIFE WITHOUT THE POSSIBILITY OF
3 PAROLE IF SELECTED AS A JUROR IN THIS CASE?

4 MR. FARBER: NO, I DON'T HAVE.

5 MR. CHIER: ALL RIGHT, PASS FOR CAUSE.

6 THE COURT: ALL RIGHT, THANK YOU.

7 MR. WAPNER: MR. FARBER, DO YOU UNDERSTAND THAT IF YOU
8 ARE CHOSEN AS A JUROR IN THIS CASE AND YOU ARE DELIBERATING
9 ON THE GUILT PHASE, THE FIRST PART OF THE TRIAL WHERE YOU ARE
10 TRYING TO DETERMINE THE ISSUE OF GUILT, THAT AT THAT PART OF
11 THE TRIAL YOU CAN'T CONSIDER THE POSSIBLE PENALTY THAT MIGHT
12 BE IMPOSED?

13 MR. FARBER: WOULD YOU REPEAT THAT?

14 MR. WAPNER: YES, SIR.

15 THE COURT: WHAT HE IS TELLING YOU IS, THERE ARE TWO
16 PHASES OF THE TRIAL. THE FIRST PART OF THE TRIAL IS AS TO
17 THE GUILT OR INNOCENCE OF THE DEFENDANT OF THE COMMISSION OF
18 THE CRIME OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A
19 ROBBERY. IT HAS NOTHING TO DO WITH PENALTY; DO YOU UNDERSTAND
20 THAT?

21 MR. FARBER: YES.

22 THE COURT: THE JURY THEN MAKES A DETERMINATION OF GUILT
23 OR INNOCENCE. IF IT IS GUILT, THEN THERE IS A SECOND PHASE
24 OF THE TRIAL WHERE THE JURY THEN DETERMINES WHETHER IT SHOULD
25 BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR
26 DEATH AND IN CONNECTION WITH THAT PARTICULAR PHASE OF THE TRIAL,
27 THE JURY WILL CONSIDER ALL OF THE FACTS WHICH MILITATE IN
28 FAVOR OF THE DEFENDANT, IN OTHER WORDS, EXTENUATING OR

1 MITIGATING CIRCUMSTANCES, FAVORABLE OR AGGRAVATING CIRCUMSTANCES
2 WHICH ARE AGAINST HIM; DO YOU UNDERSTAND?

3 MR. FARBER: UH-HUH.

4 THE COURT: SO THE JURY WILL HEAR BOTH SIDES OF THAT
5 AND THEN MAKE UP THEIR MINDS AS TO WHAT THE PENALTY WILL BE?

6 MR. FARBER: YEAH.

7 MR. WAPNER: WHAT I WAS TRYING TO ASK YOU IS: AT THE
8 FIRST PART ARE YOU WERE TRYING TO DETERMINE WHETHER THE
9 DEFENDANT IS GUILTY OR NOT, THE JUDGE IS GOING TO TELL YOU
10 THAT YOU HAVE TO MAKE THAT DECISION WITHOUT CONSIDERING WHAT
11 THE PENALTY MIGHT BE; IF HE TELLS YOU THAT, CAN YOU FOLLOW
12 THAT INSTRUCTION?

13 MR. FARBER: OH, YEAH, I THINK SO.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

23A 1
1 MR. WAPNER: OKAY. THE POINT BEING, THAT YOU ARE
2 SUPPOSED TO DECIDE GUILT OR INNOCENCE, BASED ON THE FACTS
3 BEFORE YOU AND THE LAW THAT THE JUDGE GIVES YOU AND NOT BASED
4 ON WHAT THE PENALTY MIGHT BE AT SOME POINT DOWN THE LINE.
5 YOU UNDERSTAND THAT?

6 MR. FARBER: YES.

7 MR. WAPNER: OKAY. DO YOU HAVE ANY RELIGIOUS,
8 PHILOSOPHICAL OR MORAL VIEWS OR BELIEFS THAT WOULD MAKE IT
9 DIFFICULT FOR YOU TO SIT ON A CASE OF THIS TYPE?

10 MR. FARBER: NO I DON'T.

11 MR. WAPNER: HAD YOU GIVEN ANY THOUGHT TO THE QUESTION
12 OF THE DEATH PENALTY BEFORE YOU WERE BROUGHT INTO THIS
13 COURTROOM AND ASKED TO ANSWER THESE QUESTIONS?

14 MR. FARBER: NO.

15 MR. WAPNER: DO YOU REMEMBER THE QUESTION OF THE DEATH
16 PENALTY BEING ON THE BALLOT SEVERAL YEARS AGO?

17 MR. FARBER: YES. YOU KNOW, I USUALLY DON'T VOTE ON
18 THOSE MEASURES, JUST THE PRESIDENCY AND THAT IS IT, YOU KNOW.

19 MR. WAPNER: OKAY. SO, YOU DIDN'T VOTE ON IT? YOU
20 DON'T RECALL WHICH WAY YOU VOTED?

21 MR. FARBER: WELL, I AM SURE THAT I DIDN'T VOTE ON IT.

22 MR. WAPNER: OKAY. DO YOU HAVE ANY FEELINGS ABOUT THE
23 DEATH PENALTY THAT WOULD BIAS YOU ONE WAY OR THE OTHER IN
24 FAVOR OF ONE SIDE OR THE OTHER IN THIS CASE AS YOU SIT THERE
25 RIGHT NOW?

26 MR. FARBER: NO.

27 MR. WAPNER: PASS FOR CAUSE, YOUR HONOR.

28 THE COURT: ALL RIGHT. YOU PASS FOR CAUSE, MR. CHIER?

23A-2
1 MR. CHIER: YES, YOUR HONOR.

2 THE COURT: YOU SEE, WE ARE IN THE PROCESS NOW OF
3 INTERVIEWING ALL OF THE JURORS WHO MIGHT BE POSSIBLE JURORS
4 IN THIS CASE, EXACTLY AS WE HAVE DONE WITH YOU. WE HAVE GOT
5 QUITE A LIST TO GO. THE INITIAL OF YOUR LAST NAME IS F.
6 WE HAVE GOT TO GO THROUGH Z. IT IS ANTICIPATED THAT WE'LL
7 BE THROUGH BY DECEMBER 2ND.

8 WHAT I WILL ASK YOU TO DO, IS COME BACK TO THE
9 JURY ASSEMBLY ROOM ON DECEMBER 2ND AT 10:30. THAT WILL BE
10 DECEMBER 2ND AT 10:30.

11 IF IT IS GOING TO BE ANY LATER, OF COURSE IT MIGHT
12 TAKE US LONGER. WE DO HAVE YOUR TELEPHONE NUMBER. WE WILL
13 CALL YOU AND LET YOU KNOW.

14 MR. FARBER: OKAY. THAT IS 10:30 DECEMBER 2ND.

15 THE COURT: DON'T TALK TO ANYBODY ABOUT WHAT HAS BEEN
16 ASKED OF YOU OR ANYTHING ABOUT THE CASE.

17 MR. WAPNER: PLEASE ADMONISH HIM ABOUT READING ANYTHING
18 OR LISTENING TO ANYTHING.

19 THE COURT: YES. AND IF THERE IS ANYTHING, ANY
20 PUBLICATION, DON'T READ IT. ALL RIGHT? AND DO NOT LISTEN
21 TO THE TELEVISION ABOUT THIS.

22 MR. FARBER: YES.

23 THE COURT: THANK YOU VERY MUCH.

24 (PROSPECTIVE JUROR FARBER EXITED THE
25 COURTROOM.)

26 (PROSPECTIVE JUROR NELSON FASO ENTERED
27 THE COURTROOM.)

28 THE COURT: THAT IS MR. FASO?

3A-3
1 MR. FASO: YES, SIR.

2 THE COURT: WHERE DO YOU LIVE, SIR?

3 MR. FASO: REDONDO BEACH.

4 THE COURT: ALL RIGHT. I AM GOING TO ASK YOU A SERIES
5 OF QUESTIONS AND I EXPECT AN ANSWER OF YES OR NO.

6 IF ANY OF THE QUESTIONS ARE UNCLEAR AND YOU WOULD
7 LIKE TO HAVE THEM EXPLAINED, I WILL DO SO. ALL RIGHT?

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

12 MR. FASO: PLEASE REPEAT THAT.

13 THE COURT: SURELY.

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

17 MR. FASO: I DON'T BELIEVE IN THE DEATH PENALTY.

18 THE COURT: YOU DON'T BELIEVE IN THE DEATH PENALTY?
19 WOULD YOU UNDER ANY CIRCUMSTANCES, IMPOSE THE DEATH PENALTY
20 IF YOU WERE CALLED UPON TO DO SO OR IF WERE WARRANTED?

21 MR. FASO: NO. I DON'T THINK SO.

22 THE COURT: YOU WOULD NOT?

23 MR. FASO: NO.

24 THE COURT: IMPOSE THE DEATH PENALTY UNDER ANY
25 CIRCUMSTANCES, IS THAT RIGHT?

26 MR. FASO: RIGHT.

27 THE COURT: YOU ARE SURE ABOUT THAT?

28 MR. FASO: YES. MANY YEARS AGO, I WAS SENT A

3A-4
1 QUESTIONNAIRE FOR NEW YORK STATE TO BE A JUROR. AND THEY
2 ASKED YOU THAT. THE LAST QUESTION WAS, "DO YOU BELIEVE IN
3 THE DEATH PENALTY?"

4 UP UNTIL THAT PART, I THOUGHT I DID. BUT WHEN
5 I HAD TO PUT IT DOWN IN BLACK AND WHITE AND I WENT TO MARK
6 IT, I COULDN'T MARK IT. I PUT THE PEN DOWN.

7 I CAME BACK TWO DAYS LATER AND I DECIDED THAT
8 NO, I WOULDN'T GIVE THE DEATH PENALTY.

9 THE COURT: DO YOU MEAN UNDER ANY CIRCUMSTANCES,
10 IRRESPECTIVE OF THE NATURE OF THE CASE, WOULD YOU NEVER VOTE
11 FOR THE DEATH PENALTY? IS THAT RIGHT?

12 MR. FASO: THAT'S RIGHT.

13 MR. CHIER: MAY I HAVE A FEW MOMENTS WITH HIM?

14 THE COURT: SURE.

15 MR. CHIER: I HAVE A SHEET HERE, FOR THIS SITUATION.

16 THE COURT: YOU USED THAT WITH ONE OF THE OTHERS.

17 MR. CHIER: YES. THANK YOU.

18 MR. FASO?

19 MR. FASO: FASO.

20 MR. CHIER: MY NAME IS CHIER. I AM ONE OF MR. HUNT'S
21 ATTORNEYS. MR. HUNT IS THE GENTLEMAN SEATED AT THE TABLE.

22 I WOULD LIKE TO TALK TO YOU ABOUT THE SUBJECT
23 OF THE DEATH PENALTY, SO FAR AS IT RELATES TO YOU SERVING
24 AS A JUROR IN THIS CASE.

25 PRELIMINARILY, DO YOU AGREE THAT ALL PERSONS IN
26 THIS COUNTRY ARE ENTITLED TO -- ALL PERSONS ACCUSED OF CRIME
27 ARE ENTITLED TO A TRIAL BY JURY?

28 MR. FASO: YES.

1 MR. CHIER: ALL RIGHT. AND THAT THAT JURY SHOULD BE
2 COMPRISED OF A CROSS SECTION OF THE COMMUNITY IN WHICH THE
3 DEFENDANT LIVES, IS THAT CORRECT?

4 MR. FASO: CORRECT.

5 MR. CHIER: DO YOU AGREE WITH THAT? THAT IS, THAT A
6 CROSS SECTION OF THE COMMUNITY NECESSARILY REPRESENTS VARIOUS
7 AND DIVERSE ETHNIC GROUPS, POINTS OF VIEW, RELIGIOUS
8 PERSUASIONS AND PHILOSOPHICAL PERSUASIONS. IS THAT A CORRECT
9 STATEMENT, IS IT NOT? I MEAN, THE COMMUNITY IS MADE UP OF
10 DIVERSE ELEMENTS, RIGHT?

11 MR. FASO: RIGHT.

12 MR. CHIER: AND THERE ARE PERSONS IN THE COMMUNITY WHO
13 MAY BE CALLED UPON TO SERVE ON A JURY WHO ARE IN FAVOR OF
14 THE DEATH PENALTY?

15 MR. FASO: RIGHT.

16 MR. CHIER: THERE MAY BE PERSONS WHO ARE STRONGLY IN
17 FAVOR OF THE DEATH PENALTY. THERE MAY BE PERSONS WHO ARE
18 SOMEWHAT IN FAVOR OF THE DEATH PENALTY? RIGHT?

19 MR. FASO: RIGHT.

20 MR. CHIER: THERE MAY BE OTHER PERSONS WHO ARE OPPOSED
21 TO THE DEATH PENALTY, CORRECT?

22 MR. FASO: CORRECT.

23 MR. CHIER: AND THAT IN ORDER TO PROPERLY -- WELL, THERE
24 IS A COROLLARY HERE. AND THAT IS, THAT IF A DEFENDANT IS
25 ENTITLED, AS YOU AGREE, TO A TRIAL BY JURY, IT IS ALSO THE
26 DUTY OF THE CITIZENS TO COME FORWARD AND TO SERVE AS A JUROR
27 IN THE CRIMINAL CASES WHEN CALLED TO DO SO?

28 MR. FASO: RIGHT.

1 MR. CHIER: RIGHT. AND DO YOU UNDERSTAND, SIR, THAT
2 IF ALL PERSONS WHO ARE OPPOSED PHILOSOPHICALLY AND MORALLY
3 TO THE DEATH PENALTY, REFUSE OR FOR SOME REASON DO NOT SERVE
4 ON A JURY, THAT THE JURY IS COMPOSED OF -- IS MISSING AN
5 ELEMENT OF THE COMMUNITY. DO YOU UNDERSTAND THAT?

6 MR. WAPNER: OBJECTION. IMPROPER QUESTION.

7 THE COURT: SUSTAINED. I DON'T KNOW WHY YOU ARE
8 ARGUING WITH THE JUROR. DO YOU WANT TO CONVINCHE HIM TO GO
9 FOR THE DEATH PENALTY? IS THAT WHAT YOU ARE TRYING TO DO,
10 MR. CHIER?

11 MR. CHIER: YES.

12 THE COURT: YOU WANT TO CONVINCHE HIM TO GO FOR THE
13 DEATH PENALTY, MR. CHIER?

14 MR. CHIER: I WANT TO SEE IF --

15 THE COURT: ASK HIM, THEN.

16 MR. CHIER: WELL, I WOULD LIKE TO DO IT THE WAY IN WHICH
17 I AM DOING IT.

18 THE COURT: NO. YOU ARE JUST WASTING A LOT OF TIME
19 WITH THESE PRELIMINARY QUESTIONS.

20 MR. CHIER: WITH ALL RESPECT TO THE COURT, MR. FASO --

21 THE COURT: FASO.

22 MR. CHIER: FASO. SORRY.

23 HAVE YOU EVER SERVED ON A JURY BEFORE?

24 MR. FASO: ONCE.

25 MR. CHIER: AND IN THAT CASE, DID YOU TAKE AN OATH TO
26 FOLLOW THE LAW AS INSTRUCTED YOU BY THE COURT?

27 MR. FASO: THAT WAS A LONG TIME AGO. I BELIEVE I
28 PROBABLY DID.

1 MR. CHIER: AND IF YOU WERE TO BE SELECTED AS A JUROR
2 IN THIS PRESENT -- NOT THIS PRESENT CASE, BUT AT THIS TIME
3 OF YOUR JURY SERVICE, I ASSUME THAT YOU WOULD TAKE AN OATH
4 TO FOLLOW THE LAW THAT WAS GIVEN TO YOU BY THE COURT?

5 MR. FASO: YES.

6 MR. CHIER: IF THAT WAS REQUIRED, RIGHT?

7 MR. FASO: RIGHT.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

23BF

1 MR. CHIER: WHAT I AM ASKING YOU --

2 MR. WAPNER: EXCUSE ME. WAS THERE AN ANSWER TO THAT?

3 THE COURT: THE ANSWER WAS YES, I THINK HE SAID.

4 MR. WAPNER: OKAY.

5 MR. CHIER: WHAT I REALLY WOULD LIKE TO KNOW AT THIS
6 TIME, IS WHETHER OR DESPITE THE FACT THAT YOU ARE OPPOSED TO
7 THE DEATH PENALTY, WHETHER YOU COULD NEVERTHELESS, SUBORDINATE
8 YOUR PERSONAL VIEWS TO YOUR DUTY TO FOLLOW THE LAW AS A JUROR
9 AND OBEY THE LAW OF THE STATE AS GIVEN TO YOU BY THE JUDGE?
10 DO YOU UNDERSTAND THE QUESTION?

11 MR. FASO: WHAT YOU ARE SAYING IS CAN I OVERLOOK MY OWN
12 VIEWS AND GIVE --

13 MR. CHIER: NOT OVERLOOK IT --

14 MR. FASO: AND GIVE HIM THE DEATH PENALTY IF IT WAS
15 REQUIRED?

16 MR. CHIER: COULD YOU SUBORDINATE -- THAT IS TO SAY,
17 PLACE AHEAD OF YOUR OWN PERSONAL VIEWS, YOUR OBLIGATION AS
18 A CITIZEN OF THIS COMMUNITY AND AS A JUROR, TO SERVE AS A
19 JUROR AND TO FOLLOW THE LAW, AS IT EXISTS AND TO, IF THE
20 CIRCUMSTANCES WERE APPROPRIATE, TO RETURN A VERDICT OF DEATH
21 IN AN APPROPRIATE CASE?

22 MR. FASO: NO. I DON'T THINK SO. LIFE AND DEATH IS TOO
23 SERIOUS A THING TO JUST TREAT THAT FRIVOLOUSLY. YOU BELIEVE
24 IT OR YOU DON'T.

25 MR. CHIER: MAY I UNDERSTAND SIR, WHAT YOU ARE SAYING,
26 THE BOTTOM LINE IS THAT YOUR PERSONAL VIEWS CONCERNING
27 CAPITAL PUNISHMENT ARE SUCH THAT IT WOULD SUBSTANTIALLY IMPAIR
28 YOUR ABILITY TO SERVE AS A JUROR AND FOLLOW THE LAW AS GIVEN
29 TO YOU?

4-1

1 MR. FASO: POSSIBLY.

2 MR. CHIER: POSSIBLY?

3 MR. FASO: POSSIBLY.

4 THE COURT: POSSIBLY IS NOT ENOUGH. YOU HAVE GOT TO
5 TELL US NOW CATEGORICALLY.

6 MR. FASO: WELL, I WOULD HAVE TO SAY YES.

7 THE COURT: IS YOUR CONVICTION SUCH THAT UNDER NO
8 CIRCUMSTANCES, IRRESPECTIVE OF THE NATURE OF THE CASE, WOULD
9 YOU EVER IMPOSE THE DEATH PENALTY IN THIS CASE?

10 MR. FASO: CORRECT.

11 THE COURT: THAT IS, YOU NEVER WOULD IMPOSE THAT?

12 MR. FASO: THAT IS MY FEELING.

13 MR. CHIER: SIR, I'M SORRY. I DIDN'T HEAR THAT LAST
14 QUESTION.

15 THE COURT: HE SAID UNDER NO CIRCUMSTANCES WOULD HE
16 IMPOSE THE DEATH PENALTY.

17 MR. CHIER: UNDER NO CIRCUMSTANCES WOULD YOU EVER IMPOSE
18 THE DEATH PENALTY IN ANY CASE --

19 MR. FASO: CORRECT.

20 MR. CHIER: -- REGARDLESS OF THE CIRCUMSTANCES?

21 MAY I HAVE JUST A MOMENT, PELASE?

22 THE COURT: CERTAINLY.

23 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
24 AND THE DEFENDANT.)

25 MR. CHIER: SIR, WE UNDERSTAND THAT YOU WOULD NOT LIKE
26 A MAN TO BE GIVEN THE DEATH PENALTY, ESPECIALLY IF YOU WERE
27 THE PERSON THAT WAS REQUIRED TO PARTICIPATE IN IT.

28 BUT ARE YOU AWARE THAT THE DEFENSE IS ENTITLED

1 TO A NEUTRAL JURY, IN OTHER WORDS A JURY WHICH IS DRAWN FROM
2 A POOL WHICH REASONABLE MIRRORS THE DIVERSITY OF EXPERIENCES
3 AND RELEVANT VIEWPOINTS OF THOSE PERSONS IN THE COMMUNITY WHO
4 CAN FAIRLY AND IMPARTIALLY TRY THE CASE, MEANING THAT THERE
5 IS -- THERE ARE TWO PHASES TO A CASE SUCH AS THIS, ONE OF
6 WHICH IS THE GUILT PHASE AND THE OTHER IS THE PENALTY PHASE?
7 IT MAY BE THAT YOU NEVER REACH THE PENALTY PHASE; DO YOU
8 UNDERSTAND THAT, SIR?

9 MR. FASO: CORRECT.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MR. CHIER: AND THAT THE FACT WE ARE HERE TALKING ABOUT
2 THE DEATH PENALTY IS NOT REFLECTIVE OF ANY PRECONCEIVED GUILT
3 ON THE PART OF THE DEFENDANT. THIS IS SOMETHING THAT WE HAVE
4 TO DO IN OBEDIENCE TO THE LAW OF THE STATE.

5 NOW, IF YOU BELIEVE THAT MR. HUNT IS ENTITLED TO
6 A FAIR TRIAL AND AN IMPARTIAL JURY, DO YOU BELIEVE THAT YOU
7 YOURSELF ARE A FAIR AND IMPARTIAL PERSON WHO IS CAPABLE OF
8 SERVING AS A JUROR?

9 THE COURT: IN THIS CASE?

10 MR. CHIER: YES.

11 MR. FASO: I WOULD BELIEVE SO.

12 MR. CHIER: YOU BELIEVE YOU ARE?

13 MR. FASO: SURE.

14 MR. CHIER: DO YOU BELIEVE THAT YOUR PERSONAL VIEWS
15 TOWARD THE DEATH PENALTY WOULD INTERFERE WITH YOUR ABILITY
16 TO RENDER A JUST AND PROPER VERDICT IN THE GUILT PHASE?

17 THE COURT: IN OTHER WORDS, IF YOU KNEW THAT IF YOU WERE
18 TO BRING IN A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
19 WITH THE FINDING OF SPECIAL CIRCUMSTANCES, THAT YOU THEN WOULD
20 BE CALLED UPON TO DETERMINE WHETHER OR NOT HE SHOULD GET LIFE
21 IMPRISONMENT OR DEATH, WOULD YOU BRING IN A VERDICT OF GUILTY?

22 MR. FASO: I HAVE NO OBJECTION TO FINDING ANYONE GUILTY.

23 I HAVE OBJECTIONS WITH THE PENALTY.

24 THE COURT: I SAY, EVEN IF YOU --

25 MR. FASO: IF I COULD SAY THE MAN --

26 THE COURT: ON THE GUILT PHASE OF IT, IF YOU WERE TO FIND
27 HIM GUILTY OR NOT GUILTY OF MURDER IN THE FIRST DEGREE, THAT
28 IT WAS COMMITTED IN THE COURSE OF ROBBERY, IF IT STOPPED THERE

1 YOU WOULD BE WILLING TO SERVE AS A JUROR, IS THAT IT? JUST
2 STOPPING THERE AND NOTHING ABOUT THE DEATH PENALTY?

3 MR. FASO: WELL, YES, THEN IT WOULDN'T HAVE ANY BEARING
4 ON MY FEELING ABOUT THE DEATH PENALTY.

5 THE COURT: BUT IF IT ENTAILS WITH YOUR BEING A JUROR
6 AND THEN YOU WOULD BE CALLED UPON TO DETERMINE WHETHER OR
7 NOT THE DEATH PENALTY SHOULD BE IMPOSED, YOU WOULD NOT VOTE
8 FOR THE DEATH PENALTY?

9 MR. FASO: I WOULDN'T CONSIDER THE DEATH PENALTY.

10 MR. CHIER: YOU WOULD NOT CONSIDER IT?

11 MR. FASO: I DEFINITELY WOULDN'T CONSIDER IT.

12 THE COURT: YOU DEFINITELY WOULDN'T VOTE FOR THE DEATH
13 PENALTY?

14 MR. FASO: NO.

15 MR. CHIER: YOU SAID EARLIER YOU MIGHT POSSIBLY IN
16 RESPONSE TO A QUESTION, YOU SAID YOU MIGHT.

17 THE COURT: THAT WAS A POSSIBILITY ON SOMETHING ELSE.
18 IT WASN'T ON THIS SPECIFIC QUESTION THAT I ASKED.

19 MR. FASO: I FIND NO DIFFICULTY IN SERVING AS A JUROR
20 AND SEEING WHETHER SOMEONE IS RIGHT OR WRONG.

21 THE ONLY DIFFICULTY I HAVE IS FINDING SOMEBODY
22 GUILTY AND SENDING HIM TO HIS DEATH, WHICH I WOULDN'T DO.

23 MR. CHIER: LET ME ASK YOU THIS: LET'S ASSUME JUST FOR
24 THE PURPOSES OF THIS DISCUSSION THAT YOU ARE THE BOSS, YOU
25 MAKE THE RULES AND YOU GET TO DECIDE WHAT TYPE OF CONDUCT IS
26 PUNISHABLE BY DEATH AND WHAT TYPE OF CONDUCT IS PUNISHABLE
27 BY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. IS
28 THERE ANY TYPE OF CONDUCT THAT YOU CAN CONCEIVE OF AS A PERSON

1 IN CHARGE WHEREBY YOU WOULD FIND THE DEATH PENALTY AN
2 APPROPRIATE PUNISHMENT?

3 (PAUSE.)

4 MR. FASO: IN A CIVILIZED WORLD, I JUST DON'T FIND THE
5 DEATH PENALTY APPROPRIATE.

6 THE COURT: APPROPRIATE PUNISHMENT?

7 MR. FASO: PUNISHMENT FOR PEOPLE SITTING HERE WITH COOL,
8 CALCULATING MINDS WITH NO PASSION INVOLVED, TO SAY THAT SOMEONE
9 IS GOING TO DIE.

10 MR. CHIER: IF YOU ARE UNABLE TO PUT ASIDE YOUR PERSONAL
11 FEELINGS TO THE EXTENT THAT YOU COULD NEVER VOTE FOR THE DEATH
12 PENALTY, YOU REALIZE THAT A DEFENDANT IN THE POSITION OF MR. HUNT
13 IS GOING TO BE TRIED BY A JURY OF PERSONS ALL DEATH PENALTY
14 ORIENTED; DO YOU UNDERSTAND THAT?

15 MR. WAPNER: OBJECTION TO THAT. THAT IS AN ARGUMENTATIVE
16 QUESTION. I THINK IT IS IMPROPER.

17 THE COURT: THE OBJECTION IS SUSTAINED.

18 I THINK WE HAVE GONE AS FAR AS WE CAN.

19 MR. FASO: I AGREE WITH THAT.

20 THE COURT: ALL RIGHT. YOU AGREE THAT THERE IS NOTHING
21 FURTHER THAT CAN BE SAID TO YOU, TO BE ASKED OF YOU WHICH WOULD
22 CHANGE YOUR MIND IN ANY WAY?

23 MR. FASO: NO.

24 AS I SAID, I MADE THE DECISION MANY YEARS AGO AND
25 IT HAS ONLY BEEN REAFFIRMED OVER A SPAN OF TIME.

26 MR. CHIER: I HAVE NO FURTHER QUESTIONS.

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

28 MR. WAPNER: MAY I ASK HIM JUST A FEW QUESTIONS, YOUR

1 HONOR, ONE OR TWO?

2 YOU SAID THAT YOU DEFINITELY WOULD NOT CONSIDER
3 THE DEATH PENALTY?

4 MR. FASO: TRUE.

5 MR. WAPNER: ARE THERE ANY CIRCUMSTANCES UNDER WHICH
6 YOU WOULD CONSIDER IT?

7 MR. FASO: NO.

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

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU CAN
10 GO BACK TO THE JURY ASSEMBLY ROOM. YOU MAY TELL THEM YOU MIGHT
11 BE AVAILABLE FOR SOME OTHER CASE, ALL RIGHT?

12 MR. FASO: ALL RIGHT.

13 THE COURT: THANK YOU VERY MUCH. DON'T DISCUSS ANYTHING
14 THAT YOU ANSWERED HER TO ANYBODY ELSE, ALL RIGHT?

15 MR. FASO: THANK YOU.

16 (PROSPECTIVE FASO EXITS THE COURT-
17 ROOM.)

18

19

20

21

22

23

24

25

26

27

28

1 MR. WAPNER: SO THE RECORD IS CLEAR, I KNOW IT IS
2 OBVIOUS BUT WE DIDN'T EXACTLY STATE THAT MR. FASO WAS EXCUSED
3 FOR CAUSE.

4 THE COURT: YES.

5 (PROSPECTIVE JUROR FIDERER ENTERS THE
6 COURTROOM.)

7 THE COURT: MRS. FIDERER, HOW DO YOU PRONOUNCE YOUR
8 NAME?

9 MS. FIDERER: FIDERER.

10 THE COURT: FIDERER?

11 MS. FIDERER: YES, SIR.

12 THE COURT: MRS. FIDERER, IS IT?

13 MS. FIDERER: YES.

14 THE COURT: MRS. FIDERER, WHERE DO YOU LIVE?

15 MS. FIDERER: IN ENCINO.

16 THE COURT: ENCINO, ALL RIGHT.

17 I AM GOING TO ASK YOU A SERIES OF QUESTIONS, TO
18 WHICH YOUR ANSWERS WILL BE EITHER YES OR NO AND IF YOU DON'T
19 UNDERSTAND ANY OF THE QUESTIONS OR IF YOU WANT ME TO REPEAT
20 THEM TO YOU, I WILL BE VERY HAPPY TO DO SO.

21 MS. FIDERER: YES OR NO, NOTHING ELSE?

22 THE COURT: YES. IF YOU DON'T UNDERSTAND IT, I WILL
23 EXPLAIN IT TO YOU.

24 MS. FIDERER: ALL RIGHT.

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

28 MS. FIDERER: YES.

1 THE COURT: AND WHAT IS THAT OPINION?

2 MS. FIDERER: IN GENERAL, I AM OPPOSED TO IT.

3 THE COURT: HOW DO YOU MEAN IN GENERAL, OPPOSED TO WHAT?

4 MS. FIDERER: TO THE DEATH PENALTY.

5 THE COURT: YOU MEAN UNDER NO CIRCUMSTANCES WOULD YOU
6 VOTE FOR THE DEATH PENALTY?

7 MS. FIDERER: I WOULDN'T SAY THAT BUT FOR MOST
8 CIRCUMSTANCES, I WOULD SAY NO.

9 THE COURT: UNDER WHAT CIRCUMSTANCES WOULD YOU VOTE THE
10 DEATH PENALTY?

11 MS. FIDERER: WHEN THERE IS -- WHEN THERE IS SOME DOUBT
12 AS TO THE GUILT OF THE PERSON.

13 THE COURT: WELL, THAT HAS NOTHING TO DO WITH VOTING
14 THE DEATH PENALTY.

15 YOU SEE, THERE ARE TWO PHASES OF A TRIAL. THE FIRST
16 PHASE OF THE TRIAL IS WHERE YOU HAVE TO DETERMINE WHETHER OR
17 NOT THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE AND
18 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. NOW
19 IF YOU HAVE A DOUBT AS TO WHETHER OR NOT HE IS GUILTY OR YOU
20 HAVE A REASONABLE DOUBT, THEN YOU HAVE GOT TO FIND HIM NOT
21 GUILTY.

22 MS. FIDERER: YES, SIR.

23

24

25

26

27

28

1 THE COURT: ALL RIGHT. BUT SUPPOSE YOU FIND HIM GUILTY
2 OF MURDER IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES AND
3 THEN IT COMES TO THE SECOND PHASE OF THE TRIAL WHERE THE SAME
4 JURY IS TO DETERMINE WHETHER OR NOT IT SHOULD BE LIFE WITHOUT
5 POSSIBILITY OF PAROLE OR THE DEATH PENALTY. UNDER THOSE
6 CIRCUMSTANCES, WOULD YOU VOTE THE DEATH PENALTY IF IT WERE
7 WARRANTED?

8 MS. FIDERER: IF IT WERE WARRANTED, POSSIBLY. BUT
9 GENERALLY IT IS NOT WARRANTED.

10 THE COURT: HOW DO YOU MEAN, GENERALLY?

11 MS. FIDERER: WELL YOU SEE, IF THERE IS NO DOUBT IN
12 MY MIND THAT THE PERSON, WITH MALICE AFORETHOUGHT, DID KNOW
13 WHAT HE WAS DOING, PLANNED IT AND ET CETERA, ET CETERA, THEN
14 I COULD SEE THE DEATH PENALTY.

15 BUT SO VERY OFTEN, THERE ARE NO WITNESSES AND
16 THERE ARE --

17 THE COURT: WELL, YOU DON'T KNOW WHAT THE FACTS ARE.

18 MS. FIDERER: I DON'T KNOW WHAT THE FACTS ARE.

19 THE COURT: SUPPOSE YOU WERE TO FIND HIM GUILTY OF MURDER
20 IN THE FIRST DEGREE AND IT WAS COMMITTED DURING THE COURSE
21 OF A ROBBERY. SUPPOSE YOU MAKE THAT FINDING.

22 MS. FIDERER: I WOULD STILL SAY IT WOULD BE LIFE WITHOUT
23 POSSIBILITY OF PAROLE.

24 THE COURT: ALL RIGHT. AND IF YOU FIND THEN THAT YOU
25 WOULD VOTE LIFE WITHOUT POSSIBILITY OF PAROLE AND NOT GET
26 THE DEATH PENALTY, IS THAT RIGHT?

27 MS. FIDERER: RIGHT, SIR.

28 THE COURT: UNDER ALL CIRCUMSTANCES?

5-2
1 MS. FIDERER: I THINK SO.

2 THE COURT: ALL RIGHT.

3 MR. CHIER: MS. FIDERER, MY NAME IS CHIER. THIS IS
4 JOE HUNT, MY CLIENT. YOU DON'T MEAN TO SAY THAT THERE ARE
5 NO CIRCUMSTANCES -- THERE ARE NO CIRCUMSTANCES YOU COULD
6 CONCEIVE OF, UNDER WHICH YOU WOULD RETURN THE DEATH PENALTY
7 AFTER FINDING A PERSON GUILTY OF THE CRIME, DO YOU? LET ME
8 STATE IT IN A POSITIVE WAY.

9 THERE ARE CIRCUMSTANCES UNDER WHICH YOU WOULD
10 FELL THE DEATH PENALTY IS APPROPRIATE, CORRECT?

11 MS. FIDERER: I WILL TELL YOU QUITE FRANKLY, I HAVE
12 NEVER GIVEN THE MATTER GREAT THOUGHT, GREAT THOUGHT. THERE
13 ARE SOME CASES THAT REALLY WARRANT IT.

14 MR. CHIER: ALL RIGHT. AND THERE ARE CASES WHICH WARRANT
15 THE DEATH PENALTY. AND AS A PERSON WHO HAS COME FORWARD TO
16 SERVE AS A JUROR AND IF SELECTED AS A JUROR ON A CASE IN WHICH
17 YOU FELT THAT THE CIRCUMSTANCES WARRANTED IT, YOU COULD FOLLOW
18 YOUR OATH AS A JUROR AND RETURN A VERDICT OF DEATH, COULD
19 YOU NOT?

20 THE COURT: OR COULD YOU?

21 MS. FIDERER: I WOULD PREFER NOT TO.

22 MR. CHIER: ALL RIGHT. I UNDERSTAND THAT YOU WOULD
23 PREFER NOT TO. BUT SUBORDINATING YOUR PERSONAL VIEWS TO YOUR
24 HIGHER DUTY AS A JUROR, WHICH YOU WOULD DO WHEN YOU TAKE THE
25 OATH AS A JUROR, YOU SUBORDINATE YOUR PERSONAL VIEWS TO THE
26 DUTY OF FOLLOWING THE LAW AS GIVEN TO YOU BY THE COURT, UNDER
27 THOSE CIRCUMSTANCES, YOU COULD IF APPROPRIATE AND WARRANTED,
28 RETURN A DEATH PENALTY VERDICT, COULD YOU NOT? OR, COULDN'T

5-3
1 YOU? COULD YOU OR COULDN'T YOU?

2 MS. FEDERER: I HAVE SOME DOUBT IN MY MIND AS TO WHETHER
3 I COULD VOTE FOR THE DEATH PENALTY.

4 MR. CHIER: ALL RIGHT. THE FACT THAT YOU MAY HAVE SOME
5 PERSONAL VIEWS THAT MILITATE AGAINST THE DEATH PENALTY,
6 GENERALLY --

7 MS. FEDERER: YES.

8 MR. CHIER: IF I UNDERSTOOD YOUR ANSWERS IN RESPONSE
9 TO SOME OF THE JUDGE'S QUESTIONS, THERE ARE CIRCUMSTANCES
10 UNDER WHICH YOU FEEL THE DEATH PENALTY IS APPROPRIATE, RIGHT?

11 MS. FEDERER: RIGHT.

12 MR. CHIER: ALL RIGHT.

13 THE COURT: AND YOU WOULD VOTE IT?

14 MS. FEDERER: YES. ONE FOR EXAMPLE, IF I WERE
15 CONVINCED THAT THE PERSON DID SOMETHING TO HARM OUR COUNTRY.

16 THE COURT: YOU MEAN LIKE TREASON?

17 MS. FEDERER: ESPECIALLY LIKE DURING WARTIME, CERTAIN
18 UNUSUAL CIRCUMSTANCES.

19 THE COURT: THOSE ARE THE ONLY TIMES?

20 MS. FEDERER: YES, CERTAIN UNUSUAL CIRCUMSTANCES.

21 THE COURT: BUT YOU WOULD VOTE THE DEATH PENALTY IN
22 THE CASE WHERE THERE IS MURDER OF THE FIRST DEGREE DURING
23 THE COURSE OF A ROBBERY AND IF YOU WERE CALLED UPON TO
24 CONSIDER WHETHER OR NOT IT SHOULD BE LIFE WITHOUT POSSIBILITY
25 OF PAROLE OR DEATH, YOU WOULD PREFER TO VOTE DEATH, IS THAT
26 IT?

27 MS. FEDERER: THAT IS --

28 THE COURT: THAT IS THE CASE WE HAVE HERE.

25-4
1 MS. FEDERER: YES.

2 THE COURT: THAT IS WHAT WE ARE TRYING TO SEE, IF YOU
3 MIGHT BECOME A JUROR IN THIS CASE. THOSE ARE THE FACTS IN
4 THIS CASE.

5 MS. FEDERER: I WILL TELL YOU THE TRUTH, I CAN'T STAND
6 ANY KIND OF VIOLENCE. IT BOTHERS ME.

7 THE COURT: THAT IS NOT THE QUESTION. THE QUESTION
8 IS, IF YOU WERE SELECTED AS A JUROR IN THIS CASE AND THE FACTS
9 SHOWED THE DEFENDANT, ASSUMING THAT HE DID -- THAT HE COMMITTED
10 A MURDER IN THE FIRST DEGREE WHILE HE WAS IN THE COURSE OF
11 A ROBBERY AND A MAN WAS KILLED, THEN YOU ARE CALLED UPON TO
12 DECIDE WHETHER OR NOT ON THE PENALTY PHASE OF THE CASE, HE
13 SHOULD HAVE LIFE WITHOUT POSSIBILITY OF PAROLE OR THE GAS
14 CHAMBER OR DEATH, WOULD YOU BE ABLE AND COULD YOU VOTE THE
15 DEATH PENALTY IN THIS CASE IF IT WAS WARRANTED?

16 MS. FEDERER: I WOULD PREFER VOTING FOR LIFE WITHOUT
17 POSSIBILITY OF PAROLE.

18 THE COURT: BUT, YOU WOULD NOT VOTE THE DEATH PENALTY?

19 MS. FEDERER: NO.

20 THE COURT: GO AHEAD.

21 MR. CHIER: MS. FEDERER, ARE YOU TELLING ME THAT IF
22 YOU FOUND IN THIS CASE THAT A MAN PLOTTED TO KILL ANOTHER
23 PERSON, PLOTTED TO ROB THAT PERSON AND THEN WENT OVER THERE
24 AND ROBBED THE PERSON, KILLED THE PERSON COLD-BLOODEDLY,
25 DELIBERATELY, THAT YOU COULDN'T RETURN A DEATH PENALTY AGAINST
26 THAT PERSON? IS THAT WHAT YOU ARE TELLING ME?

27 MS. FEDERER: WELL, IF I WAS CONVINCED THAT THE DEATH
28 WAS -- THAT THE MURDER WAS DELIBERATE AND PREMEDITATED AND

5-5
1 THEN MAYBE I COULD DO IT.

2 MR. CHIER: ALL RIGHT. THANK YOU. YOU COULD IMPOSE
3 THE DEATH PENALTY?

4 MS. FEDERER: IF I WAS CONVINCED THAT THE MURDER WAS
5 PREMEDITATED.

6 THE COURT: UNDER THOSE CIRCUMSTANCES, IF YOU HAD TO
7 CHOSE LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH, WHICH WOULD
8 IT BE, FOR EXAMPLE? AND IF THE EVIDENCE --

9 MS. FEDERER: IF THE PERSON, THERE IS IN THE EVIDENCE
10 THE PROOF THAT HE HAS DELIBERATELY AND PREMEDITATEDLY --
11 DELIBERATELY PLANNED AND PREMEDITATED MURDER, THEN HE REALLY
12 DESERVES DEATH.

13 THE COURT: ALL RIGHT.

14 MR. CHIER: THANK YOU, YOUR HONOR.

15 MR. WAPNER: MRS. FEDERER?

16 MS. FEDERER: YES, SIR.

17 MR. WAPNER: IN A CIRCUMSTANCE WHERE YOU DETERMINED
18 IN YOUR OWN MIND, THAT THE PERSON DESERVES THE DEATH PENALTY,
19 ARE YOU CAPABLE OF MAKING AN INDIVIDUAL DECISION AS A JUROR
20 THAT THAT SHOULD BE THE APPROPRIATE PUNISHMENT?

21 MS. FEDERER: IT IS VERY DIFFICULT, SIR. IT IS VERY
22 DIFFICULT.

23

24

25

26

27

28

25B-1
1 THE COURT: THAT IS NOT THE QUESTION, WHETHER IT IS
2 GOING TO BE DIFFICULT OR NOT. THE WHOLE THING IS GOING TO
3 BE DIFFICULT. SITTING AS A JUROR IN A MURDER CASE IS A
4 DIFFICULT THING OR IN ANY KIND OF A CASE.

5 BUT THE QUESTION IS, COULD YOU DO IT, EVEN THOUGH
6 IT IS DIFFICULT? COULD YOU DO IT?

7 MS. FEDERER: I AM CAPABLE BUT I WOULD RATHER NOT.
8 THAT WAS A TERRIBLE THING TO SAY.

9 MR. WAPNER: I KNOW YOU THINK THAT LAWYERS LIKE TO ARGUE
10 WITH PEOPLE. IT IS NOT A QUESTION OF DIFFICULT OR RATHER
11 NOT. IT IS A QUESTION WHEN PUSH COMES TO SHOVE AND YOU ARE
12 IN THE ROOM WITH THE 11 OTHER PEOPLE AND THEY SAY OKAY,
13 MRS. FEDERER, TIME TO MAKE A DECISION AND THERE IS NO CHOICE
14 ABOUT RATHER NOT, IT CAN'T BE 11 VOTING AND ONE ABSTAINING.
15 IT IS A QUESTION OF YOU HAVE TO MAKE UP YOUR INDIVIDUAL MIND.
16 COULD YOU DO THAT?

17 MS. FEDERER: I COULD TRY.

18 MR. WAPNER: THANK YOU. NOTHING FURTHER.

19 THE COURT: DO YOU CLAIM CAUSE?

20 MR. WAPNER: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. I WILL TELL YOU WHAT YOU DO,
22 MISS FEDERER. OF COURSE, WE HAVE GOT TO GO THROUGH THIS WHOLE
23 PROCESS WITH EVERYBODY. SO WHAT I WILL DO IS, ASK YOU TO
24 RETURN ON DECEMBER THE 2ND, TO THE JURY ASSEMBLY ROOM AT
25 10:30 A.M. AND IF WE HAVE NOT FINISHED THIS PROCESS OF ASKING
26 THE JURORS ALL OF THE QUESTIONS WHICH HAVE TO BE ASKED, I
27 WILL GIVE YOU A CALL AND TELL YOU WHEN TO COME IN. ALL RIGHT?

28 MEANTIME, YOU ARE NOT TO TALK TO ANYBODY AT ALL

1 ABOUT THIS CASE.

2 MS. FEDERER: YES.

3 THE COURT: BY THE WAY, YOU HAVE NOT READ ANYTHING ABOUT
4 THE CASE, HAVE YOU?

5 MS. FEDERER: YES. I HAVE READ SOMETHING ABOUT IT IN
6 THE NEWSPAPER.

7 THE COURT: WHICH NEWSPAPER WAS THAT?

8 MS. FEDERER: THE L.A. TIMES.

9 THE COURT: UH-HUH. WELL, AFTER READING IT, DID YOU
10 FORM ANY OPINION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

11 MS. FEDERER: NO.

12 THE COURT: ALL RIGHT. YOU WON'T PERMIT WHAT YOU HAVE
13 READ TO INTERFERE IN ANY WAY WITH YOUR SERVING AS A TRIAL
14 JUROR IN THIS CASE?

15 MS. FEDERER: RIGHT.

16 THE COURT: IS THAT RIGHT?

17 MS. FEDERER: RIGHT.

18 THE COURT: ALL RIGHT. YOU ARE NOT TO DISCUSS WITH
19 ANYBODY ANYTHING ABOUT WHAT WE TALKED ABOUT HERE.

20 MS. FEDERER: THAT'S RIGHT.

21 THE COURT: RETURN HERE ON DECEMBER 2ND AT 10:30 A.M.
22 TO THE JURY ASSEMBLY ROOM. WE'LL SEE YOU THEN.

23 MS. FEDERER: DECEMBER 2ND?

24 THE COURT: YES. THAT WILL BE AT 10:30.

25 MS. FEDERER: DOES THAT MEAN I AM CHOSEN?

26 THE COURT: NO. YOU WILL BE PART OF A WHOLE GROUP.
27 THEN WE HAVE TO SELECT 12 OUT OF THAT.

28 MS. FEDERER: ALL RIGHT. DECEMBER THE 2ND IN THE JURY

1 ASSEMBLY ROOM?

2 THE COURT: AT 10:30.

3 MS. FEDERER: ALL RIGHT. 10:30.

4 THE COURT: IF WE DON'T FINISH BY THAT TIME, THEN WE'LL
5 GIVE YOU A CALL AND LET YOU KNOW WHEN TO COME IN. IF WE DON'T
6 FINISH, WE WILL ASK EVERYONE WHO IS ON THIS LIST, THE SAME
7 QUESTIONS THAT WE ARE ASKING YOU. WE HAVE TO DO IT UNTIL
8 WE FINISH. THAT MAY BE BEYOND DECEMBER 2ND.

9 MS. FEDERER: HOW WILL I KNOW WHETHER TO COME IN?

10 THE COURT: COME IN UNLESS YOU HEAR FROM US. WE HAVE
11 YOUR TELEPHONE NUMBER.

12 DO YOU HAVE ALL OF THE TELEPHONE NUMBERS?

13 THE CLERK: YES.

14 THE COURT: WE HAVE YOUR TELEPHONE NUMBER. WE WILL
15 CALL YOU AND LET YOU KNOW WHEN TO COME IN IF IT ISN'T
16 DECEMBER 2ND.

17 MS. FEDERER: THANK YOU.

18 THE COURT: ALL RIGHT.

19 (PROSPECTIVE JUROR FEDERER EXITED
20 THE COURTROOM.)

21 (PROSPECTIVE JUROR FURSTENBERG ENTERED
22 THE COURTROOM.)

23 THE COURT: MISS FURSTENBERG?

24 MS. FURSTENBERG: YES.

25 THE COURT: MISS FURSTENBERG, WHERE DO YOU LIVE?

26 MS. FURSTENBERG: BEVERLY HILLS.

27 THE COURT: I WILL ASK YOU A SERIES OF QUESTIONS AND
28 THE ANSWERS WILL BE EITHER YES OR NO TO EACH ONE. IF IT IS

1 UNCLEAR OR YOU DON'T UNDERSTAND IT, ASK ME TO REPEAT IT AND
2 I WILL EXPLAIN IT TO YOU, ALL RIGHT?

3 NOW, THE FIRST QUESTION IS -- BY THE WAY, HAVE
4 YOU HEARD ANYTHING ABOUT THIS CASE EXCEPT WHAT I HAVE
5 EXPLAINED TO THE JURORS?

6 MS. FURSTENBERG: NO.

7 THE COURT: YOU HAVE NOT READ ANYTHING ABOUT IT IN ANY
8 NEWSPAPER?

9 MS. FURSTENBERG: NO.

10 THE COURT: OR ANYTHING IN ANY MAGAZINE?

11 MS. FURSTENBERG: SORRY?

12 THE COURT: IN ANY MAGAZINE?

13 MS. FURSTENBERG: NO.

14 THE COURT: ANY DISCUSSIONS WITH ANY OF THE JURORS?

15 MS. FURSTENBERG: NO.

16 THE COURT: ALL RIGHT. MISS FURSTENBERG, THE FIRST
17 QUESTION TO YOU IS 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. FURSTENBERG: WELL, IT IS A MORAL AND LEGAL QUESTION.

21 MORALLY, I DON'T HAVE ANY PROBLEM WITH IT.
22 LEGALLY, THERE IS HESITATION. I AM UNCERTAIN WHETHER I --

23 THE COURT: YOU MEAN MORALLY THERE MIGHT BE HESITATION?
24 BUT LEGALLY, THERE IS NO QUESTION ABOUT IT.

25 MS. FURSTENBERG: NO. MORALLY THERE ISN'T.

26 THE COURT: LEGALLY, THERE IS A DEATH PENALTY STATUTE
27 IN CALIFORNIA.

28 MS. FURSTENBERG: YES.

1 THE COURT: SO YOU MEAN --

2 MS. FURSTENBERG: NO, FOR ME PERSONALLY.

3 THE COURT: YES. TELL US WHY. DO YOU HAVE
4 CONSCIENTIOUS SCRUPLES AGAINST THE DEATH PENALTY? HAVE YOU?

5 MS. FURSTENBERG: MY CONCERN IS, DID WE REALLY HAVE
6 A SYSTEM THAT ESTABLISHES CRITERIA THAT ARE OBJECTIVE.
7 I DON'T KNOW IF WE DO OR NOT.

8 WE MIGHT -- TO PUT IT SOME WAY, I DON'T KNOW IF
9 WE HAVE AN OBJECTIVE SYSTEM. THAT MAY BE BECAUSE OF IGNORANCE
10 ON MY PART.

11 THE COURT: UNDER OUR LEGAL SYSTEM, IN CERTAIN CASES
12 OF MURDER IN THE FIRST DEGREE, THE LEGISLATURE HAS ENACTED
13 INTO LAW, A PROVISION THAT IF A MURDER IS COMMITTED UNDER
14 CERTAIN SPECIAL CIRCUMSTANCES, THAT WOULD CALL FOR ONE OF
15 TWO THINGS, EITHER LIFE WITHOUT POSSIBILITY OF PAROLE OR
16 DEATH. DO YOU UNDERSTAND THAT?

17 MS. FURSTENBERG: YES. UH-HUH.

18

19

20

21

22

23

24

25

26

27

28

6-1

1 THE COURT: THAT DOESN'T MEAN THAT EVERY SINGLE MURDER,
2 EVEN IF IT IS DELIBERATE AND EVERYTHING ELSE, CALLS FOR A
3 DEATH PENALTY.

4 MS. FURSTENBERG: OKAY.

5 THE COURT: IT IS ONLY UNDER CERTAIN CIRCUMSTANCES THAT
6 THE LEGISLATURE SAYS THAT. FOR EXAMPLE, IN THE COURSE OF A
7 KIDNAPPING, IF SOMEBODY DIES IN THE COURSE OF A KIDNAPPING
8 OR SOMEBODY SETS FIRE TO A HOUSE AND THERE ARE PEOPLE IN THERE
9 AND THE PEOPLE ARE KILLED OR IN THE COURSE OF A ROBBERY --

10 MS. FURSTENBERG: UH-HUH.

11 THE COURT: -- THAT THEN THE DEATH PENALTY OR LIFE
12 IMPRISONMENT CAN BE INVOKED; DO YOU UNDERSTAND THAT?

13 MS. FURSTENBERG: OKAY, SO IF IT IS ESTABLISHED THAT IT
14 DID HAPPEN?

15 THE COURT: THAT'S RIGHT. FIRST, YOU ESTABLISH WHETHER
16 OR NOT IN THIS PARTICULAR CASE THE DEFENDANT COMMITTED A
17 MURDER IN THE FIRST DEGREE, WHICH WILL BE EXPLAINED, AND IF
18 IT WAS DONE DURING THE COURSE OF A ROBBERY--

19 MS. FURSTENBERG: UH-HUH.

20 THE COURT: -- THAT THEN QUALIFIES IT FOR LIFE IMPRISON-
21 MENT WITHOUT THE POSSIBILITY OF PAROLE; DO YOU UNDERSTAND?

22 MS. FURSTENBERG: UH-HUH.

23 THE COURT: NOW, THE FIRST PHASE OF THE CASE IS THE
24 GUILT OR INNOCENCE PHASE WHERE YOU DETERMINE WHETHER OR NOT
25 HE COMMITTED THE MURDER IN THE COURSE OF A ROBBERY; DO YOU
26 UNDERSTAND THAT?

27 MS. FURSTENBERG: OKAY.

28 THE COURT: IF YOU SAY AND YOU VOTE THAT HE DID, THEN

-2

1 THEY HAVE A SECOND PHASE OF THE TRIAL WHERE OTHER EVIDENCE
2 COMES IN TO SHOW THE DEFENDANT, FOR EXAMPLE, IS A PERSON OF
3 GOOD CHARACTER AND YOUNG, HE HAS A GOOD REPUTATION AND ANYTHING
4 WHICH IS IN MITIGATION OR IN FAVOR OF HIM. AND ON THE OTHER
5 HAND, THE DISTRICT ATTORNEY MIGHT BRING IN EVIDENCE OF
6 AGGRAVATING CIRCUMSTANCES, THINGS HE HAD DONE WHICH WERE VERY
7 BAD. DO YOU UNDERSTAND?

8 MS. FURSTENBERG: YES.

9 THE COURT: THEN THE JURY WEIGHS --

10 MS. FURSTENBERG: YES.

11 THE COURT: -- THE JURY WEIGHS BOTH THE EXTENUATING AND
12 THE AGGRAVATING CIRCUMSTANCES TO DETERMINE WHETHER IT SHOULD
13 INVOKE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR
14 THE DEATH PENALTY. WOULD YOU BE WILLING TO SERVE AS A JUROR
15 AND DETERMINE THE GUILT PHASE, DESPITE ANY FEELINGS THAT YOU
16 MIGHT HAVE ABOUT THE DEATH PENALTY? THAT IS THE FIRST QUESTION.

17 MS. FURSTENBERG: YES.

18 I WOULD NOT WANT TO SERVE.

19 THE COURT: YOU WOULD NOT WANT TO SERVE?

20 MS. FURSTENBERG: I WOULD NOT WANT TO PARTICIPATE.

21 THE COURT: IS THAT BECAUSE IT MIGHT ENTAIL YOUR --

22 MS. FURSTENBERG: FOR PERSONAL REASONS, I WOULDN'T WANT
23 TO EXPERIENCE THAT.

24 THE COURT: YOU MEAN CONSTITUTIONALLY, YOU ARE SO
25 CONSTITUTED YOU DON'T WANT TO TAKE THE RESPONSIBILITY OF MAKING
26 SUCH A DECISION; IS THAT RIGHT?

27 MS. FURSTENBERG: YES. THANK YOU FOR PUTTING IT THAT
28 WAY.

26-3

1 THE COURT: THAT IS WHAT IT IS, IS THAT IT?

2 MS. FURSTENBERG: UH-HUH, YES.

3 THE COURT: SO UNDER THOSE CIRCUMSTANCES, FEELING AS
4 YOU DO, WOULD YOU VOTE THE DEATH PENALTY IRRESPECTIVE OF
5 GUILT OR INNOCENCE OF THE DEFENDANT? IRRESPECTIVE OF THE
6 GUILT OF THE DEFENDANT, BECAUSE EMOTIONALLY OR OTHERWISE YOU
7 ARE INCAPABLE OF MAKING A DECISION OF THAT KIND OR WANTING
8 TO MAKE A DECISION OF THAT KIND?

9 MS. FURSTENBERG: I DON'T WANT TO MAKE THE DECISION.

10 THE COURT: BUT SUPPOSE IT IS YOUR DUTY TO DO SO, WOULD
11 YOU NONETHELESS WANT TO BE EXCUSED FROM MAKING THE DECISION
12 OR WOULD YOU DO SO IF IT IS WARRANTED?

13 MS. FURSTENBERG: IF IT IS WARRANTED, I WOULD HAVE TO
14 MAKE THE DECISION AS TO WHETHER OR NOT?

15 THE COURT: YES, THAT IS RIGHT.

16 MS. FURSTENBERG: I GUESS I WOULD HAVE TO MAKE THE
17 DECISION FOR THE DEATH PENALTY BECAUSE MORALLY I CONCUR WITH
18 IT, I AGREE --

19 THE COURT: WITH THE DEATH PENALTY?

20 MS. FURSTENBERG: WITH THE LAW.

21 THE COURT: EXCEPT YOU FEEL THAT YOU ARE SO CONSTITUTED
22 THAT YOU WOULD RATHER NOT TAKE THE RESPONSIBILITY?

23 MS. FURSTENBERG: I WOULD RATHER NOT TAKE THE
24 RESPONSIBILITY.

25 THE COURT: WELL, LET ME ASK YOU THE SECOND QUESTION:
26 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
27 CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER, EVEN IF THE
28 PROSECUTION FAILS TO PROVE FIRST DEGREE MURDER?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(PAUSE.)

THE COURT: SUPPOSE THE PROSECUTION FAILS TO PROVE FIRST
DEGREE MURDER, YOU WOULDN'T FIND HIM GUILTY OF FIRST DEGREE
MURDER, WOULD YOU?

MS. FURSTENBERG: NO, I WOULDN'T.

THE COURT: THAT IS ALL THAT MEANS.

MS. FURSTENBERG: YES.

5-5

1 THE COURT: THAT IS IRRESPECTIVE OF YOUR FEELINGS ABOUT
2 THE DEATH PENALTY?

3 MS. FURSTENBERG: YES, YES.

4 THE COURT: THE THIRD QUESTION IS: DO YOU UNDERSTAND
5 THAT IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER IN THE
6 FIRST DEGREE, THEN THEY HAVE TO MAKE A FINDING AT THE SAME
7 TIME WHETHER THAT MURDER WAS COMMITTED DURING THE COURSE OF
8 A ROBBERY?

9 MS. FURSTENBERG: UH-HUH.

10 THE COURT: DO YOU UNDERSTAND, THAT IS DURING THE COURSE
11 OF A ROBBERY, THAT IS WHAT WE CALL A SPECIAL CIRCUMSTANCE AND
12 THE JURY HAS TO MAKE THAT FINDING TRUE OR FALSE. IF THEY
13 AGREE, IS IT TRUE OR FALSE, WAS IT COMMITTED DURING THE COURSE
14 OF A ROBBERY?

15 MS. FURSTENBERG: YES.

16 THE COURT: DO YOU UNDERSTAND?

17 MS. FURSTENBERG: YES.

18 THE COURT: THAT IS A SPECIAL FINDING.

19 SO THE QUESTION IS: DO YOU HAVE ANY OPINION REGARDING
20 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
21 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE
22 ALLEGED IN THIS CASE?

23 MS. FURSTENBERG: I GUESS I WOULDN'T.

24 THE COURT: YOU WOULDN'T FIND THE SPECIAL CIRCUMSTANCE
25 TRUE, IS THAT IT, BECAUSE OF YOUR FEELING ABOUT THE DEATH
26 PENALTY?

27 MS. FURSTENBERG: UNDER THE SPECIAL CIRCUMSTANCE, IF THERE
28 IS A MURDER COMMITTED, IT WOULD STILL STAND, THEN I GUESS IF

1 IT WARRANTED IT, I WOULD HAVE TO ACCEPT THE DEATH PENALTY.

2 THE COURT: NO, NO.

3 YOU SEE, I AM TRYING TO --

4 MS. FURSTENBERG: I AM MISUNDERSTANDING WHAT YOU ARE
5 SAYING?

6 THE COURT: NO.

7 I AM TRYING TO EXPLAIN TO YOU THAT THE FIRST PHASE
8 OF THE TRIAL IS TO DETERMINE WHETHER OR NOT THE DEFENDANT
9 COMMITTED MURDER AND THAT IT WAS MURDER IN THE FIRST DEGREE.

10 MS. FURSTENBERG: UH-HUH.

11 THE COURT: AND WHETHER IT WAS COMMITTED IN THE COURSE
12 OF A ROBBERY.

13 MS. FURSTENBERG: UH-HUH.

14 THE COURT: NOW, IF IT WAS COMMITTED IN THE COURSE OF
15 A ROBBERY, THAT MAKES IT A SPECIAL CIRCUMSTANCE.

16 MS. FURSTENBERG: UH-HUH.

17 THE COURT: AND THE JURY HAS TO FIND THAT IT IS TRUE
18 OR NOT TRUE THAT IT WAS COMMITTED DURING THE COURSE OF A
19 ROBBERY.

20 MS. FURSTENBERG: RIGHT.

21 THE COURT: ALL RIGHT?

22 MS. FURSTENBERG: RIGHT.

23 THE COURT: DO YOU THINK YOU ARE CAPABLE, IF YOU ARE
24 A JUROR AND IF YOU FIND THE DEFENDANT GUILTY OF MURDER IN THE
25 FIRST DEGREE, WOULD YOUR FEELING, YOUR OPINION AS TO THE
26 DEATH PENALTY CAUSE YOU TO FIND THAT YOU CANNOT MAKE AN
27 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
28 SPECIAL CIRCUMSTANCE?

1 YOU SEE, YOU UNDERSTAND ONCE YOU FIND HIM GUILTY
2 OF MURDER IN THE FIRST DEGREE, THEN YOU HAVE TO DETERMINE
3 WHETHER OR NOT IT WAS IN THE COURSE OF A ROBBERY.

4 MS. FURSTENBERG: RIGHT.

5 THE COURT: IS YOUR FEELING ABOUT THE DEATH PENALTY SUCH
6 THAT IF YOU MADE A FINDING THAT IT WAS TRUE, THEN YOU WOULD
7 HAVE TO CONSIDER WHETHER OR NOT HE HAD TO GO TO THE GAS
8 CHAMBER OR SUFFER LIFE IMPRISONMENT WITHOUT PAROLE; DO YOU
9 UNDERSTAND THAT?

10 MS. FURSTENBERG: YES, UNDER THE SPECIAL CIRCUMSTANCES,
11 YEAH.

12 THE COURT: IS YOUR OPINION REGARDING THE DEATH PENALTY
13 SUCH THAT IT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL --

14 MS. FURSTENBERG: I DON'T THINK IT WOULD PREVENT ME.

15 THE COURT: -- DECISION?

16 ALL RIGHT, FINE. THANK YOU.

17 THE NEXT QUESTION IS: DO YOU HAVE SUCH AN OPINION
18 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
19 VOTE TO IMPOSE IT -- WOULD YOU AUTOMATICALLY, WITHOUT
20 CONSIDERING ALL OF THE FACTS, VOTE FOR OR AGAINST A VERDICT
21 OF GUILT OF MURDER IN THE FIRST DEGREE WITH A FINDING OF
22 SPECIAL CIRCUMSTANCES?

23 MS. FURSTENBERG: I WOULDN'T AUTOMATICALLY.

24 THE COURT: NEXT: DO YOU HAVE SUCH AN OPINION CONCERNING
25 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
26 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE IF YOU FIND GUILT
27 AND SPECIAL CIRCUMSTANCES, REGARDLESS OF WHAT THE EVIDENCE
28 IS THAT MIGHT BE PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

1 MS. FURSTENBERG: REGARDLESS OF IT?

2 THE COURT: YES.

3 MS. FURSTENBERG: I COULDN'T SAY THAT I AM NOT OPEN TO
4 IT. I THINK I WOULD STILL BE OPEN TO LIFE IMPRISONMENT.

5 THE COURT: WOULD YOU WANT TO VOTE FOR LIFE IMPRISONMENT
6 RATHER THAN DEATH BECAUSE OF YOUR FEELING ABOUT THE DEATH
7 PENALTY?

8 MS. FURSTENBERG: OKAY. THESE ARE HARD QUESTIONS TO
9 ANSWER.

10 THE COURT: OH, ABSOLUTELY. THAT IS WHY WE ARE ASKING
11 THEM.

12 MS. FURSTENBERG: I WOULD VOTE THE DEATH PENALTY.

13 THE COURT: YOU WOULD VOTE FOR THE DEATH PENALTY? IF
14 IT WERE WARRANTED?

15 MS. FURSTENBERG: YES.

16 THE COURT: NOW, YOU UNDERSTAND, OF COURSE, THAT IN
17 ASKING ALL OF THESE QUESTIONS ABOUT THE DEATH PENALTY, IT MAY
18 OR MAY NOT OCCUR IN THIS CASE.

19 MS. FURSTENBERG: UH-HUH, RIGHT.

20 THE COURT: ONLY THESE QUESTIONS HAVE BEEN ASKED, ONLY
21 IN THE EVENT YOU REACH THE PENALTY PHASE, THAT PHASE OF THE
22 TRIAL.

23 MS. FURSTENBERG: RIGHT.

24 MR. CHIER: PUBLICITY, YOUR HONOR?

25 MR. WAPNER: HE ASKED THOSE QUESTIONS.

26 THE COURT: I ASKED THOSE IN THE BEGINNING.

27 MR. CHIER: I AM SORRY.

28 PASS FOR CAUSE.

1 MR. WAPNER: MRS. FURSTENBERG, YOU UNDERSTAND ABOUT THE
2 TWO DIFFERENT PHASES OF THE TRIAL, RIGHT?

3 MS. FURSTENBERG: I BELIEVE SO.

4 MR. WAPNER: THE GUILT PHASE AND THE PENALTY PHASE?

5 MS. FURSTENBERG: YES, YES.

6 MR. WAPNER: OKAY.

7 MS. FURSTENBERG: YES.

8 MR. WAPNER: THE FIRST ANSWER THAT YOU GAVE TO THE
9 JUDGE'S QUESTION WAS THAT MORALLY YOU DIDN'T HAVE A PROBLEM --

10 MS. FURSTENBERG: UH-HUH
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MR. WAPNER: -- BUT LEGALLY, YOU WERE UNCERTAIN.

2 MS. FURSTENBERG: RIGHT.

3 MR. WAPNER: IS THAT RIGHT?

4 MS. FURSTENBERG: RIGHT.

5 MR. WAPNER: PART OF THE PURPOSE OF ASKING YOU THESE
6 QUESTIONS IS TO DETERMINE WHETHER YOU CAN BE A FAIR JUROR IN
7 BOTH PARTS OF THE TRIAL, THAT IS THE GUILT PHASE AND THE PENALTY
8 PHASE; DO YOU UNDERSTAND THAT?

9 MS. FURSTENBERG: YES.

10 MR. WAPNER: AND THE JUDGE IS GOING TO TELL YOU THAT
11 WHEN YOU MAKE A DECISION DURING THE GUILT PHASE, YOU HAVE TO
12 DECIDE WHETHER OR NOT THE PROSECUTION HAS PROVED THE DEFENDANT
13 GUILTY BEYOND A REASONABLE DOUBT; DO YOU UNDERSTAND THAT?

14 MS. FURSTENBERG: YES.

15 MR. WAPNER: BECAUSE YOU KNOW THAT THE ISSUE OF THE
16 DEATH PENALTY MIGHT BE LURKING SOMEWHERE IN THE BACKGROUND,
17 WILL YOU HOLD THE PROSECUTION TO A HIGHER STANDARD? WILL YOU
18 SAY THEY HAVE TO PROVE THIS CASE BY MORE EVIDENCE?

19 MS. FURSTENBERG: YES -- ON ALL OF THE FACTS THAT ARE
20 POSSIBLE, ALL OF THE EVIDENCE THAT CAN BE ASCERTAINED.

21 MR. WAPNER: OKAY. BUT IF THE JUDGE TELLS YOU THAT
22 THE STANDARD IS PROOF BEYOND A REASONABLE DOUBT --

23 MS. FURSTENBERG: OKAY.

24 MR. WAPNER: -- AND HE SAYS THAT THAT IS NOT PROOF
25 BEYOND ALL DOUBT, IT IS PROOF BEYOND A REASONABLE DOUBT --

26 MS. FURSTENBERG: OKAY, YES.

27 MR. WAPNER: -- WILL YOU HOLD THE PROSECUTION TO A HIGHER
28 STANDARD THAN THAT IN YOUR OWN MIND BECAUSE YOU KNOW THAT YOU

1 MIGHT BE CALLED UPON TO DECIDE THE QUESTION OF THE DEATH
2 PENALTY?

3 MR. CHIER: I THINK THE QUESTION HIGHER THAN WHAT OUGHT
4 TO BE ARTICULATED, YOUR HONOR.

5 MR. WAPNER: THAN PROOF BEYOND A REASONABLE DOUBT.

6 MR. CHIER: HIGHER THAN WHAT?

7 MS. FURSTENBERG: WHAT IS PROOF BEYOND A REASONABLE DOUBT?

8 I THINK WE ARE JUST TALKING ABOUT ANY -- THE
9 ABSENCE OF ANY EXTENUATING CIRCUMSTANCES, RIGHT? THAT IS ALL
10 WE ARE TALKING ABOUT, THAT IS THE STANDARD? I WOULD AGREE
11 TO THAT.

12 MR. WAPNER: WELL, IT IS CERTAINLY NOT THE ABSENCE OF
13 ANY EXTENUATING CIRCUMSTANCES. AND EXCUSE ME FOR SMILING
14 SOMEWHAT BUT WHEN YOU SAY WHAT IS PROOF BEYOND A REASONABLE
15 DOUBT, LAWYERS HAVE BEEN TRYING TO ANSWER THAT QUESTION FOR
16 HUNDREDS OF YEARS.

17 THE COURT: AND JUDGES, TOO.

18 MR. WAPNER: AND I COULD TELL YOU OR ASK THE JUDGE TO
19 GIVE YOU THE INSTRUCTION ON WHAT PROOF BEYOND A REASONABLE
20 DOUBT IS BUT I DON'T THINK THAT WOULD HELP YOU ALL THAT MUCH.

21 LET ME SEE IF I CAN GIVE YOU SOME PARAMETERS.

22 MS. FURSTENBERG: OKAY.

23

24

25

26

27

28

1 MR. WAPNER: ONE OF THE THINGS THAT HE IS GOING TO TELL
2 YOU THAT IS NOT, IS PROOF BEYOND ALL DOUBT.

3 MS. FURSTENBERG: OKAY.

4 MR. WAPNER: IN OTHER WORDS, THE OTHER THING HE IS GOING
5 TO TELL YOU IS THAT EVERYTHING IN LIFE IS OPEN TO SOME POSSIBLE
6 OR IMAGINARY DOUBT.

7 MS. FURSTENBERG: UH-HUH.

8 MR. WAPNER: YOU HAVE TO SAY YES OR NO, SO SHE CAN WRITE
9 IT DOWN.

10 MS. FURSTENBERG: YES.

11 MR. WAPNER: OKAY. SO THERE IS ALWAYS IN ANY GIVEN
12 SITUATION -- YOU CAN ALWAYS SAY POSSIBLY THIS OR POSSIBLY
13 THAT.

14 MS. FURSTENBERG: UH-HUH.

15 MR. WAPNER: SO THERE IS ALWAYS SOME REASON TO DOUBT.
16 YOU CAN ACCEPT THAT, IN ANY GIVEN SITUATION?

17 MS. FURSTENBERG: YES.

18 MR. WAPNER: OKAY. WHEN YOU USED THE PHRASE, "LEGALLY
19 UNCERTAIN," CAN YOU ARTICULATE THAT A LITTLE BIT MORE FOR
20 ME?

21 MS. FURSTENBERG: WELL, I SUGGESTED THAT I AM NOT TOO
22 CLEAR OF THE LEGAL PROCESS.

23 I DON'T HAVE VERY MUCH UNDERSTANDING OF THE LEGAL
24 PROCESS. SO, THIS WOULD BE A LEARNING EXPERIENCE AND SO THAT
25 IS THERE. SO THAT IS UNDERSTOOD.

26 BASED ON THE PERIOD OF TIME I LIVE IN, I AM NOT
27 SURE WE HAVE OBJECTIVE LAWS. I DON'T KNOW IF THE PROCESS
28 HAS ALWAYS BEEN AS VALID AS IT COULD HAVE BEEN.

7A
1 SO, THAT IS JUST MY GENERAL FEELING ABOUT THE
2 LEGAL PROCESS, THE JUDICIAL PROCESS.

3 IT IS JUST A DOUBT, YOU KNOW THAT IS THERE. IT
4 IS JUST A FEELING ABOUT IT, ABOUT THE LEGAL, JUDICIAL PROCESS.

5 THE COURT: I DON'T UNDERSTAND THAT. YOU MEAN THAT
6 YOU HAVE A DOUBT AS TO THE WHOLE LEGAL PROCESS AND FOR THAT
7 REASON, YOU WOULDN'T WANT TO SERVE ON A JURY? IS THAT WHAT
8 YOU ARE TELLING US? WHAT I AM TRYING TO FIND OUT IS, LEGALLY,
9 YOU HAVE A DOUBT ABOUT THE WHOLE LEGAL PROCESS? THERE IS
10 SOME DOUBT ABOUT IT? YOUR ANSWER IS WHAT?

11 MS. FURSTENBERG: MY ANSWER WOULD BE THAT I GUESS MOST
12 OF MY DOUBT IS IGNORANCE THAT I HAVE ABOUT THE JUDICIAL PROCESS.

13 I THINK, NOT KNOWING VERY MUCH ABOUT THE LAWS --

14 THE COURT: WELL, YOU WILL BE EDUCATED ABOUT THAT IF
15 YOU ARE A JUROR. THE JUDGE WILL EDUCATE YOU. THE LAWYERS
16 WILL EDUCATE YOU SO YOU WILL KNOW EXACTLY WHAT IT IS YOU HAVE
17 TO DETERMINE.

18 MS. FURSTENBERG: RIGHT. THAT IS THE ONLY THING THAT
19 CAUSES ME --

20 THE COURT: SO THERE WON'T BE ANY IGNORANCE LEFT FOR
21 YOU. YOU WILL BE EDUCATED.

22 MS. FURSTENBERG: I AM ASSUMING IT IS OBJECTIVE. I
23 MEAN, IF I ENTERED INTO THIS TRIAL, IF I DID PARTICIPATE IN
24 THIS TRIAL, I WOULD ASSUME THAT THE LAWS ARE OBJECTIVE AND
25 PROPER AND THAT THE PROCESS IS A VALID PROCESS.

26 MR. WAPNER: WHEN YOU SAY THE "LAWS ARE OBJECTIVE,"
27 THE JUDGE AT THE END OF THE TRIAL, IF YOU ARE CHOSEN TO SIT
28 AS A JUROR, WILL READ YOU WHAT WE CALL THE JURY INSTRUCTIONS

7A-3

1 WHICH ARE STATEMENTS OF THE LAW THAT YOU ARE TO APPLY TO THE
2 CASE.

3 MS. FURSTENBERG: I SEE.

4 MR. WAPNER: BUT AFTER HE DOES THAT, IT IS GOING TO
5 BE YOUR JOB TO GO IN TO DELIBERATE WITH THE OTHER JURORS AND
6 APPLY THE FACTS TO THE LAW. YOU UNDERSTAND THAT?

7 MS. FURSTENBERG: YES.

8 MR. WAPNER: AND IT IS -- HE IS NOT GOING TO GIVE YOU
9 A LITTLE BOX, A, B, C, D, 1, 2, 3 FOR YOU TO CHECK OFF AND
10 FILL IN.

11 IT IS NOT GOING TO BE THAT KIND OF OBJECTIVE
12 STANDARD. DO YOU UNDERSTAND THAT?

13 MS. FURSTENBERG: YES.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

27B-1
1 MR. WAPNER: IT IS KIND OF LIKE THE DIFFERENCE BETWEEN
2 AN OBJECTIVE AND ESSAY TEST IN SCHOOL.

3 MS. FURSTENBERG: YES.

4 MR. WAPNER: AND IF YOU -- WELL, THE JUDGE DOESN'T GIVE
5 YOU THE LITTLE BOXES TO FILL IN. HE TELLS YOU THAT THE
6 PROSECUTION HAS TO PROVE THE CASE BEYOND A REASONABLE DOUBT.
7 DO YOU THINK THAT YOU ARE CAPABLE OF MAKING A DECISION UNDER
8 THOSE CIRCUMSTANCES?

9 MS. FURSTENBERG: I AM CAPABLE OF MAKING A DECISION
10 BUT I DON'T WANT TO. I DON'T WANT TO REALLY PARTICIPATE IN
11 THE TRIAL.

12 MR. WAPNER: OKAY. I UNDERSTAND THAT.

13 THE COURT: IN OTHER WORDS, YOU WANT TO BE EXCUSED FROM
14 JURY DUTY IN THIS PARTICULAR CASE, IS THAT IT?

15 MS. FURSTENBERG: UH-HUH.

16 MR. WAPNER: I UNDERSTAND WHAT YOU ARE SAYING.

17 THE COURT: YOU DON'T THINK YOU WILL MAKE A GOOD JUROR.
18 IS THAT WHAT YOU ARE TELLING US?

19 MS. FURSTENBERG: I DON'T WANT TO EXPERIENCE IT.

20 THE COURT: I SEE.

21 MR. WAPNER: ALL RIGHT. WE HAVE TWO PHASES OF THE TRIAL.
22 WE ARE GOING TO HAVE TWO PHASE OF JURY SELECTION. THIS IS
23 THE FIRST PHASE. WHAT WE ARE GOING TO DO IS TALK TO YOU ABOUT
24 YOUR VIEWS ON THE DEATH PENALTY, AS FAR AS --

25 MS. FURSTENBERG: UH-HUH.

26 MR. WAPNER: I UNDERSTAND EXACTLY WHAT YOU ARE SAYING
27 ABOUT NOT WANTING TO SIT. WHAT I AM TRYING TO DO IS INQUIRE
28 A LITTLE BIT MORE INTO YOUR --

7B-3
1 MS. FURSTENBERG: MY UNDERSTANDING. YES.

2 MR. WAPNER: YOUR OPINIONS. OKAY. WHAT I WAS TRYING
3 TO ASK YOU BEFORE, ABOUT HOLDING THE PROSECUTION TO A HIGHER
4 STANDARD, I WANT TO TRY TO ASK YOU AGAIN BY USING AN EXAMPLE.
5 MAYBE I CAN MAKE IT MORE CLEAR, HOPEFULLY.

6 IF YOU HAVE TWO IDENTICAL MURDER CASES, THE FACTS
7 ARE THE SAME --

8 MS. FURSTENBERG: YES.

9 MR. WAPNER: AND THE JUDGE TELLS YOU IN EACH CASE, THAT
10 AS A JUROR IN DETERMINING THE GUILT OR INNOCENCE, YOU HAVE
11 TO BE GUIDED BY THE STANDARD OF PROOF BEYOND A REASONABLE
12 DOUBT AND THE ONLY DIFFERENCE -- THE ONLY DIFFERENCE IN THE
13 TWO CASES, THE FACTS ARE EXACTLY THE SAME --

14 MS. FURSTENBERG: YES.

15 MR. WAPNER: OKAY. THE ONLY DIFFERENCE IS THAT IN ONE
16 CASE, YOU KNOW THAT WHEN YOU GET TO THE END, YOU MIGHT HAVE
17 TO DECIDE THE ISSUE OF THE DEATH PENALTY AND IN THE OTHER
18 CASE, YOU KNOW THAT IS NOT GOING TO BE A QUESTION, WOULD YOU
19 NONETHELESS BE ABLE TO APPLY THAT SAME STANDARD OF PROOF BEYOND
20 A REASONABLE DOUBT IN THE GUILT PHASE OF BOTH CASES?

21 MS. FURSTENBERG: YES.

22 MR. WAPNER: IN THIS PARTICULAR CASE, IF YOU GET TO
23 THE GUILT PHASE OF THE TRIAL, YOU WOULD BE CALLED UPON TO
24 RENDER AN INDIVIDUAL DECISION AS TO THE APPROPRIATE PUNISHMENT.
25 YOU UNDERSTAND THAT?

26 MS. FURSTENBERG: YES.

27 MR. WAPNER: DO YOU THINK THAT YOU ARE CAPABLE OF DOING
28 THAT?

27B-4
1 MS. FURSTENBERG: YES. I JUST DON'T WANT TO EXPERIENCE
2 THE TRIAL.

3 MR. WAPNER: OKAY. I UNDERSTAND THAT.

4 MS. FURSTENBERG: OKAY.

5 MR. WAPNER: IS THE REASON THAT YOU DON'T WANT TO
6 EXPERIENCE THE TRIAL BECAUSE OF NOT WANTING TO HAVE TO MAKE
7 A DECISION ON THE ISSUE OF THE DEATH PENALTY?

8 MS. FURSTENBERG: NO. THAT IS NOT THE REASON.

9 MR. WAPNER: WHAT IS THE REASON?

10 MS. FURSTENBERG: I DON'T WANT TO GO THROUGH THE --
11 THE COURT: EMOTIONALITY. SHE TOLD YOU THAT SHE WOULD
12 BE TERRIBLY UPSET IF SHE HAS TO MAKE A DECISION.

13 MS. FURSTENBERG: NO. I AM CAPABLE OF MAKING THE
14 DECISION.

15 I DON'T WANT TO SIT THROUGH HORRIBLE DETAILS.
16 I DON'T WANT THE EXPERIENCE OF HAVING TO LISTEN, DAY AFTER
17 DAY, TO EVIDENCE OR WITNESSES THAT BRING FORWARD INFORMATION.

18 I FEEL THAT EMOTIONALLY, THAT IS DISTURBING.
19 I DON'T WANT TO EXPERIENCE THAT.

20 MR. WAPNER: WOULD IT BE SO EMOTIONALLY DISTURBING FOR
21 YOU, THAT IT WOULD PREVENT YOU FROM RENDERING -- PREVENT YOU
22 FROM BEING CAPABLE TO DELIBERATE, DISCUSS THE FACTS WITH THE
23 OTHER JURORS AND RENDER A FAIR VERDICT?

24 MR. CHIER: OBJECTION, ASKED AND ANSWERED AT LEAST TWICE.

25 THE COURT: PARDON ME? PLEASE READ THE QUESTION BACK.

26 (THE QUESTION WAS READ BY THE REPORTER.)

27 THE COURT: THAT IS COMPOUND.

28 MR. CHIER: IT IS ALSO ASKED AND ANSWERED AT LEAST TWICE

1 BY THIS WITNESS. SHE SAID THAT.

2 THE COURT: REPHRASE IT. I WILL SUSTAIN THE OBJECTION.

3 MR. WAPNER: WOULD YOUR FEELINGS ABOUT NOT WANTING TO
4 GO THROUGH THE EMOTIONAL TRAUMA, PRESENT YOU FROM RENDERING
5 A FAIR VERDICT IN THIS CASE?

6 MS. FURSTENBERG: I AM CAPABLE OF RENDERING A FAIR
7 DECISION ABOUT IT. I JUST DON'T WANT TO.

8 MR. WAPNER: THANK YOU.

9 THE COURT: OKAY. YOU PASS FOR CAUSE?

10 WILL YOU PLEASE WAIT OUTSIDE? WE WILL LET YOU
11 KNOW WHAT TO DO NEXT.

12 (PROSPECTIVE JUROR FURSTENBERG EXITED
13 THE COURTROOM.)

14 THE COURT: DO YOU CHALLENGE FOR CAUSE?

15 MR. WAPNER: I DON'T THINK I CAN CHALLENGE FOR CAUSE
16 ON HER VIEWS ON THE DEATH PENALTY.

17 THE COURT: WELL, IN THAT CASE OF COURSE, WE CAN ACCEPT
18 HER. ALL RIGHT. TELL HER TO COME BACK IN.

19 MR. CHIER: NO CHALLENGE.

20 THE COURT: GET HER, WILL YOU PLEASE?

21 MR. CHIER: WE ALL GET VERY EMOTIONAL. I GET VERY
22 EMOTIONAL ABOUT PAYING TAXES BUT I DO IT. I DON'T LIKE
23 STOPPING FOR STOP SIGNS WHEN NO ONE IS AROUND, BUT I DO IT.
24 THERE ARE SOME THINGS THAT YOU HAVE TO DO.

25 MR. WAPNER: I DON'T BELIEVE THE LAST ONE.

26 (PROSPECTIVE JUROR FURSTENBERG ENTERED
27 THE COURTROOM.)

28 THE COURT: MISS FURSTENBERG, WE HAVE TAKEN SOME TIME.

7B 6
1 YOU KNOW, WE HAVE GOT TO GO THROUGH THE QUESTIONS WE ARE ASKING
2 YOU WITH ALL THE JURORS. WE HAVE TO GO THROUGH TO Z IN THE
3 ALPHABET. SO I WILL ASK YOU TO COME BACK TO THE JURY ASSEMBLY
4 ROOM ON DECEMBER THE 2ND.

5 BY THAT TIME, HOPEFULLY, WE WILL BE THROUGH WITH
6 ALL OF THE NAMES. THAT WILL BE AT 10:30 A.M. IN THE JURY
7 ASSEMBLY ROOM ON DECEMBER THE 2ND.

8 IF WE ARE NOT FINISHED BY THAT TIME, WE HAVE GOT
9 YOUR TELEPHONE NUMBER AND WE WILL CALL YOU AND TELL YOU WHEN
10 TO COME IN.

11 MS. FURSTENBERG: OKAY. THANK YOU.

12 THE COURT: THANK YOU.

13 (PROSPECTIVE JUROR FURSTENBERG EXITED
14 THE COURTROOM.)

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE COURT: IS THAT MRS. GALSTON?

2 MS. GALSTON: YES.

3 THE COURT: MRS. GALSTON, WHERE DO YOU LIVE?

4 MS. GALSTON: WOODLAND HILLS.

5 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS,
6 TO WHICH YOUR ANSWERS TO EACH ONE OF THOSE QUESTIONS WILL BE
7 EITHER YES OR NO. IF THERE ARE ANY QUESTIONS THAT ARE UNCLEAR
8 AND YOU WANT TO HAVE THAT EXPLAINED, ASK ME TO DO THAT AND
9 I WILL BE HAPPY TO DO SO.

10 MS. GALSTON: THANK YOU.

11 THE COURT: NOW THE FIRST QUESTION WHICH I AM GOING TO
12 ASK YOU IS AS FOLLOWS:

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

16 MS. GALSTON: YES.

17 THE COURT: EXPLAIN THAT FOR US.

18 MS. GALSTON: I BELIEVE --

19 THE COURT: YOU MEAN UNDER NO CIRCUMSTANCES --

20 YOU DON'T BELIEVE IN THE DEATH PENALTY, IS THAT
21 IT?

22 MS. GALSTON: NO, NO.

23 I DO BELIEVE IN THE DEATH PENALTY.

24 THE COURT: WOULD THAT PREVENT YOU IN ANY WAY FROM FINDING
25 WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY ON THE FACTS
26 OF THE CASE?

27 MS. GALSTON: WELL, FROM WHAT YOU PRESENTED TO US LAST
28 WEEK, MY PERSONAL BELIEF IS THAT LIFE IS VERY PRECIOUS AND

1 NOBODY HAS THE RIGHT TO TAKE THAT AWAY FROM ANYONE.

2 THE COURT: SO YOU DON'T BELIEVE IN THE DEATH PENALTY?

3 MS. GALSTON: NO, NO.

4 I MEAN FOR THE CRIME.

5 IT IS HARD TO EXPLAIN.

6 I DO BELIEVE IN THE DEATH PENALTY AND I RESPECT
7 THAT NOBODY HAS THE RIGHT TO TAKE SOMEONE ELSE'S LIFE.

8 THE COURT: I SEE WHAT YOU MEAN. YOU MEAN A PERSON
9 MAY NOT KILL ANOTHER PERSON, IS THAT THE IDEA?

10 MS. GALSTON: NOBODY HAS THE RIGHT TO DO THAT.

11 THE COURT: SUPPOSE THEY DO.

12 MS. GALSTON: THEN I HAVE A VERY STRONG BELIEF ABOUT
13 HAVING THEM PAY THE PENALTY.

14 THE COURT: WELL, THAT IS WHAT THE LAW PROVIDES. THE
15 LAW PROVIDES THAT IF SOMEBODY TAKES THE LIFE OF ANOTHER PERSON
16 UNDER CERTAIN CIRCUMSTANCES LIKE, FOR EXAMPLE, RAPE, A MAN
17 KILLS A WOMAN IN A RAPE OR WHERE IN THIS PARTICULAR CASE, IT
18 IS ALLEGED THAT THE DEFENDANT KILLED ANOTHER PERSON IN THE
19 COURSE OF ROBBERY -- DO YOU UNDERSTAND?

20 MS. GALSTON: (NODS HER HEAD UP AND DOWN.)

21 THE COURT: -- THAT CALLS EITHER FOR THE DEATH PENALTY
22 OR FOR LIFE IMPRISONMENT IF THE DEFENDANT IS FOUND GUILTY OF
23 MURDER IN THE FIRST DEGREE AND THE JURY FINDS THAT IT WAS
24 COMMITTED DURING THE COURSE OF A ROBBERY; DO YOU UNDERSTAND?

25 MS. GALSTON: (NODS HEAD UP AND DOWN.)

26 THE COURT: WOULD YOU DO THAT? WOULD YOU CONSIDER THE
27 DEATH PENALTY IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER
28 IN THE FIRST DEGREE, THAT HE KILLED SOMEBODY?

1 MS. GALSTON: YES.

2 THE COURT: AND DURING THE COURSE OF A ROBBERY?

3 MS. GALSTON: YES.

4 THE COURT: YOU WOULD? ALL RIGHT.

5 SO WHEN I SAY TO YOU: DO YOU HAVE AN OPINION
6 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
7 A DECISION AS TO WHETHER HE IS GUILTY OR NOT GUILTY, YOUR
8 ANSWER IS YES OR NO?

9 MS. GALSTON: IT IS STILL CONFUSING TO ME.

10 I BELIEVE IN THE DEATH PENALTY.

11 THE COURT: YES. BELIEVING IN THE DEATH PENALTY, WOULD
12 THAT PREVENT YOU FROM MAKING AN IMPARTIAL DETERMINATION AS
13 TO WHETHER HE IS GUILTY OR INNOCENT OF THIS PARTICULAR OFFENSE?

14 MS. GALSTON: IT IS HARD FOR ME TO BE CLEAR IN MY MIND
15 WHAT YOU ARE TRYING TO SAY.

16 THE COURT: LET ME SEE IF I CAN MAKE IT CLEAR TO YOU.

17 REMEMBER I TOLD THE JURORS THAT IN THIS PARTICULAR
18 CASE THE CHARGE AGAINST THE DEFENDANT IS THAT HE COMMITTED A
19 MURDER --

20 MS. GALSTON: RIGHT.

21 THE COURT: -- DURING THE COURSE OF A ROBBERY?

22 MS. GALSTON: YES.

23 THE COURT: NOW, WHEN A MURDER IS COMMITTED DURING THE
24 COURSE OF A ROBBERY, THAT QUALIFIES THAT CASE, IF THE JURY
25 SO FINDS, FOR EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
26 OF PAROLE OR TO DETERMINE THE DEATH PENALTY AND THAT IS A
27 SEPARATE PROCEEDING BY THE SAME JURY. THEY HEAR ALL OF THE
28 EVIDENCE FOR OR AGAINST THE DEFENDANT, THINGS THAT ARE IN

1 FAVOR OF HIM AND THINGS THAT ARE AGAINST HIM, AND THEN THE
2 JURY MAKES THAT DETERMINATION BASED UPON ALL OF THE FACTS AS
3 TO WHETHER HE SHOULD SUFFER DEATH OR WHETHER HE SHOULD GO TO
4 PRISON FOR THE REST OF HIS LIFE WITHOUT PAROLE; DO YOU UNDER-
5 STAND THAT?

6 MS. GALSTON: (NODS HEAD UP AND DOWN.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE COURT: NOW BEFORE YOU EVER GET TO THE QUESTION OF
2 THE DEATH PENALTY, YOU HAVE FIRST GOT TO DETERMINE WHETHER
3 OR NOT HE COMMITTED A MURDER, FIRST DEGREE MURDER IN THE COURSE
4 OF A ROBBERY, SO YOUR FEELINGS ABOUT THE DEATH PENALTY HAVE
5 NOTHING TO DO WITH WHETHER OR NOT YOU FIND HIM GUILTY OR NOT
6 GUILTY; DO YOU UNDERSTAND THAT?

7 MS. GALSTON: YES.

8 THE COURT: ARE YOU WILLING TO DO THAT?

9 MS. GALSTON: IF I CAN FIND HIM GUILTY OR NOT GUILTY?

10 THE COURT: IRRESPECTIVE OF THE DEATH PENALTY?

11 MS. GALSTON: YES.

12 THE COURT: EVEN THOUGH YOU BELIEVE IN THE DEATH PENALTY,
13 THAT HAS NOTHING TO DO WITH YOUR DETERMINING HIS GUILT OR
14 INNOCENCE; ISN'T THAT TRUE?

15 MS. GALSTON: TRUE.

16 THE COURT: AND YOU WILL WAIT UNTIL YOU HEAR ALL OF THE
17 EVIDENCE?

18 MS. GALSTON: OH, SURE.

19 THE COURT: ALL RIGHT. NOW DO YOU HAVE AN OPINION
20 REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR
21 FIRST DEGREE MURDER, EVEN IF THE PROSECUTION FAILS TO PROVE
22 FIRST DEGREE MURDER, LIKE SECOND DEGREE MURDER OR MANSLAUGHTER?

23 (PAUSE.)

24 THE COURT: WOULD YOU VOTE FOR FIRST DEGREE MURDER IF
25 THE PEOPLE HAVE NOT PROVED FIRST DEGREE MURDER, MERELY BECAUSE
26 YOU HAVE A FEELING ABOUT THE DEATH PENALTY?

27 SUPPOSE THEY DON'T PROVE THE CASE, WOULD YOU VOTE
28 FOR IT, NONETHELESS?

1 MS. GALSTON: NO, NO. IT WOULDN'T BE FAIR.

2 THE COURT: ALL THAT QUESTION MEANS, WHETHER OR NOT YOU
3 WULD VOTE FOR MURDER --

4 MS. GALSTON: NO.

5 THE COURT: -- BECAUSE OF YOUR BELIEF IN THE DEATH
6 PENALTY. THAT WOULD NOT CAUSE YOU TO VOTE FOR FIRST DEGREE
7 MURDER IF THE PEOPLE HAD NOT PROVED FIRST DEGREE MURDER; ISN'T
8 THAT RIGHT?

9 MS. GALSTON: TRUE.

10 THE COURT: ALL RIGHT. NOW I THINK I HAVE INDICATED
11 TO YOU THAT NOT EVERY FIRST DEGREE MURDER CALLS FOR A DEATH
12 PENALTY, DO YOU UNDERSTAND THAT, OR LIFE IMPRISONMENT WITHOUT
13 THE POSSIBILITY OF PAROLE?

14 IT IS ONLY WHEN THERE ARE CERTAIN CIRCUMSTANCES
15 CONNECTED WITH IT, LIKE A PERSON WAS TORTURED TO DEATH, THAT
16 WOULD CALL FOR LIFE IMPRISONMENT OR IF SOMEBODY WAS KIDNAPPED
17 AND DURING THE COURSE OF THE KIDNAPPING FOR RANSOM, OR OTHER-
18 WISE, HE WAS MURDERED; DO YOU UNDERSTAND THAT?

19 OR IF A MAN COMMITTED ACTS UPON A CHILD, CHILD
20 ENDANGERMENT, AND SO ON AND SO FORTH, HE MOLESTED THE CHILD
21 AND THE CHILD DIED IN THE COURSE OF IT, THAT CALLS FOR EITHER
22 ONE OF THEM.

23 AND SIMILARLY, IN THIS CASE IF THE MURDER WERE
24 COMMITTED DURING THE COURSE OF A ROBBERY, THAT ALSO CALLS FOR,
25 DO YOU UNDERSTAND THAT, DEATH OR LIFE IMPRISONMENT?

26 MS. GALSTON: THAT'S RIGHT.

27 THE COURT: NOW, IF THE JURY DECIDES THE DEFENDANT IS
28 GUILTY OF MURDER IN THE FIRST DEGREE AND IT WAS COMMITTED

1 DURING THE COURSE OF A ROBBERY, THEN WE HAVE A SECOND PHASE
2 OF THE TRIAL WHERE THE JURY THEN DETERMINES ON THE SECOND
3 PHASE OF THE TRIAL WHETHER OR NOT IT SHOULD BE LIFE IMPRISON-
4 MENT OR DEATH, LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
5 PAROLE OR DEATH; DO YOU UNDERSTAND THAT?

6 MS. GALSTON: (NODS HEAD UP AND DOWN.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5A

8A-1

1 THE COURT: NOW FIRST, OF COURSE, YOU HAVE TO DETERMINE
2 WHETHER OR NOT HE IS GUILTY OF MURDER IN THE FIRST DEGREE
3 AND WHETHER OR NOT THE SPECIAL CIRCUMSTANCE -- WHETHER IT
4 WAS COMMITTED DURING THE COURSE OF A ROBBERY HAS TO FIRST
5 BE MADE BY THE JURY, SO THE QUESTION I ASKED YOU IS: DO YOU
6 HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
7 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE
8 TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

9 MS. GALSTON: NO.

10 THE COURT: NO?

11 ALL RIGHT, NEXT DO YOU HAVE SUCH AN OPINION
12 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
13 VOTE TO IMPOSE IT AFTER A VERDICT OF GUILTY OF MURDER IN THE
14 FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS
15 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
16 OF THE TRIAL?

17 I TOLD YOU THAT AT THE PENALTY PHASE OF THE TRIAL,
18 EVIDENCE WOULD BE ADDUCED WHICH WOULD BE FAVORABLE TO THE
19 DEFENDANT AND EVIDENCE ADDUCED WHICH WOULD BE UNFAVORABLE
20 TO HIM AND THEN YOU HAVE TO MAKE A DECISION.

21 WOULD YOU AUTOMATICALLY VOTE FOR A VERDICT OF
22 GUILTY OF MURDER --

23 WOULD YOU AUTOMATICALLY VOTE TO IMPOSE THE PENALTY
24 OF DEATH AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST
25 DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCES, REGARDLESS
26 OF ANY EVIDENCE THAT MAY BE PRESENTED ON THE PENALTY PHASE
27 OF THE TRIAL?

28 YOU WOULD LISTEN TO ALL OF THE EVIDENCE ON THE

8A-2
1 PENALTY PHASE AND THEN DECIDE WHETHER IT SHOULD BE MURDER --
2 WHETHER IT SHOULD BE LIFE IMPRISONMENT WITHOUT PAROLE OR THE
3 DEATH PENALTY; ISN'T THAT RIGHT?

4 MS. GALSTON: OKAY.

5 THE COURT: YOU WON'T MAKE UP YOUR MIND AUTOMATICALLY
6 JUST BECAUSE YOU FOUND THE DEFENDANT GUILTY OF MURDER IN THE
7 FIRST DEGREE WITH THE SPECIAL CIRCUMSTANCES AND THAT HE MUST
8 SUFFER DEATH, BUT YOU WILL HEAR THE EVIDENCE ON THE OTHER
9 SIDE AS TO WHETHER OR NOT IT MIGHT BE LIFE IMPRISONMENT WITHOUT
10 THE POSSIBILITY OF PAROLE; ISN'T THAT TRUE?

11 MS. GALSTON: RIGHT.

12 THE COURT: ALL RIGHT.

13 MR. WAPNER: IS THAT YES?

14 MS. GALSTON: YES.

15 THE COURT: YES?

16 MS. GALSTON: YES.

17 THE COURT: NOW BY THE SAME TOKEN; DO YOU HAVE SUCH
18 AN OPINION AS TO THE DEATH PENALTY THAT YOU WOULD ONLY VOTE
19 FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, OR
20 WOULD YOU CONSIDER THAT -- OR DEATH IN CONNECTION WITH THE
21 DELIBERATIONS ON THE PENALTY PHASE?

22 IN OTHER WORDS, WOULD YOU ONLY IMPOSE LIFE
23 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF YOU FIND
24 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE?

25 MS. GALSTON: YES.

26 THE COURT: ONLY THEN? YOU WOULDN'T IMPOSE THE DEATH
27 PENALTY?

28 MS. GALSTON: WELL, YOU DIDN'T SAY THE DEATH PENALTY.

28A-3
1 YOU SAID WITH --

2 THE COURT: YOU HAVE A CHOICE BETWEEN THE TWO.

3 MS. GALSTON: ONE WITHOUT PAROLE AND ONE WITH THE DEATH
4 PENALTY?

5 THE COURT: YOU HAVE A CHOICE ON THE PENALTY PHASE,
6 YOU HAVE A CHOICE --

7 MS. GALSTON: RIGHT.

8 THE COURT: -- OF ONE OF THE TWO: WOULD YOU AUTOMATICALLY
9 VOTE FOR DEATH OR WOULD YOU AUTOMATICALLY VOTE FOR LIFE IN
10 PRISON WITHOUT THE POSSIBILITY OF PAROLE OR WOULD YOU LISTEN
11 TO ALL OF THE EVIDENCE?

12 MS. GALSTON: I WOULD LISTEN TO THE EVIDENCE.

13 THE COURT: ALL RIGHT, THEN YOU WILL VOTE WHATEVER IS
14 APPROPRIATE?

15 MS. GALSTON: RIGHT.

16 THE COURT: IS THAT RIGHT?

17 MS. GALSTON: RIGHT.

18 THE COURT: MERELY BECAUSE WE ARE ASKING THE QUESTIONS
19 WITH RESPECT TO THE DEATH PENALTY, IT MAY OR MAY NOT OCCUR
20 IN THIS PARTICULAR CASE THAT YOU MIGHT BE CALLED UPON TO MAKE
21 ANY DECISION AND THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE
22 EVENT YOU REACH THAT PHASE OF THE TRIAL, THAT IS TO SAY, THE
23 PENALTY PHASE OF IT.

24 ALL RIGHT, YOU MAY INQUIRE.

25 MR. CHIER: MRS. GALSTON, MY NAME IS RICHARD CHIER AND
26 I REPRESENT MR. JOE HUNT, THIS GENTLEMAN AT THE COUNSEL TABLE
27 IN THE BLUE COAT.

28 AND I WOULD LIKE TO KNOW IF YOU HAVE, PRIOR TO

EA-4
1 TODAY, HEARD OR READ ANYTHING ABOUT THIS CASE.

2 MS. GALSTON: MAY I ASK YOU A QUESTION?

3 MR. CHIER: YES.

4 MS. GALSTON: IS THIS THE GROUP OF YOUNG MEN THAT WERE
5 REFERRED TO AS THE BBC?

6 MR. CHIER: YES.

7 THE COURT: YES.

8 MS. GALSTON I HAVE HEARD ABOUT IT.

9 THE COURT: WHERE? DID YOU READ IT?

10 MS. GALSTON: SOMEBODY TOLD ME ABOUT IT AT ONE TIME.

11 MR. CHIER: I AM SORRY. I DIDN'T HEAR THE WITNESS.

12 THE WITNESS: SOMEBODY TOLD ME THEY READ ABOUT IT.

13 MR. CHIER: ONE OF THE OTHER PROSPECTIVE JURORS?

14 MS. GALSTON: YES.

15 MR. CHIER: OR SOMEBODY FROM THE COMMUNITY IN WHICH
16 YOU LIVE?

17 MS. GALSTON: THE FIRST DAY THAT WE CAME TO JURY DUTY,
18 WE WERE JUST TALKING IN GENERAL ABOUT THINGS WE READ ABOUT
19 AND, YOU KNOW, OUR DIFFERENT INTERESTS AND IT WAS ANOTHER
20 JUROR WHO HAD MENTIONED IT.

21 MR. CHIER: AND DO YOU RECALL WHAT WAS MENTIONED IN
22 THAT REGARD, MRS. GALSTON?

23 MS. GALSTON: IN BRIEF, THE OTHER PERSON SPECIFIED THERE
24 WAS A GROUP OF WEALTHY -- WELL, WEALTHY YOUNG MEN WHO HAD
25 ENTRUSTED SOMEONE TO INVEST MONEY IN THEIR NAME AND THIS
26 PERSON -- LET ME SEE -- I AM VERY NERVOUS SO YOU WILL HAVE
27 TO EXCUSE ME.

28 THIS PERSON DID IT ON PAPER AND WHEN THE OTHER

3A-5
1 GENTLEMAN CAME TO COLLECT THE PROFITS, AND I BELIEVE IT WAS
2 THE INITIAL INVESTMENT WAS SUPPOSED TO BE FIVE MILLION, HE
3 HAD CONVINCED A STOCKBROKER TO GIVE HIM A CREDIT AND HE HAD
4 TAKEN IT UP LIKE TO THIRTEEN MILLION AND WHEN THEY CAME FOR
5 THEIR SHARE OF THE PROFITS, IT WAS ALL ON PAPER AND THERE
6 WAS NO EXCHANGE OF MONEY AND THEY BECAME VERY UPSET WITH THE
7 INDIVIDUAL.

9 FO
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9A-1
1 MR. CHIER: AND --

2 MS. GALSTON: AND A MURDER OCCURRED?

3 MR. CHIER: OF THE PERSON WHO --

4 MS. GALSTON: INITIALLY --

5 MR. CHIER: SAID THERE WAS NO FOOD IN THE CUPBOARD SO
6 TO SPEAK?

7 MS. GALSTON: YES.

8 MR. CHIER: AND AS A RESULT OF THAT CONVERSATION OR
9 FOLLOWING THAT CONVERSATION, DID YOU READ ANYTHING OR SEE
10 ANYTHING ON THE TELEVISION?

11 MS. GALSTON: NO.

12 MR. CHIER: WHICH REFERRED TO THIS CASE?

13 MS. GALSTON: NO.

14 MR. CHIER: AS A RESULT OF THAT CONVERSATION WITH THAT
15 PERSON, DID YOU FORM ANY OPINION AS TO THE GUILT OR INNOCENCE
16 OF THE DEFENDANT IN THIS CASE?

17 MS. GALSTON: WE DIDN'T DISCUSS THAT.

18 MR. CHIER: WHETHER OR NOT YOU DISCUSSED IT --

19 MS. GALSTON: DID I FORM --

20 MR. CHIER: DID YOU FORM AN OPINION, YOU KNOW, THAT
21 YOU MAY NOT HAVE EVER DISCLOSED BEFORE THIS VERY MOMENT IN
22 TIME?

23 MS. GALSTON: NO. IT IS VERY HARD BECAUSE TO ME, IT
24 WAS NOT REALLY AS YOU SAID, A BURGLARY OR THEFT IN THE
25 TERMINOLOGY. IT IS NOT CUT AND DRIED.

26 IT WAS NOT LIKE YOU SHOULD COME INTO MY HOME AND
27 STEAL FROM ME. IT WAS -- I CAN'T YOU KNOW, SPECIFY. BUT IT
28 IS DIFFERENT, YOU KNOW.

29A-2

1 MR. CHIER: WAS IT RELATED TO YOU BY WHOMEVER IT WAS
2 GIVING YOU THE DETAILS THAT YOU HAVE SHARED WITH US SO FAR,
3 THAT THE PERSON WHO WAS TOLD THAT THE PROFITS WERE ALL ON
4 PAPER, THERE WAS NOT REALLY MONEY -- WAS IT EXPLAINED TO YOU
5 OR TOLD TO YOU, THAT THE PERSON WHO ALLEGEDLY MURDERED THE
6 VICTIM IN THIS CASE, DID SO IN THE COURSE OF A ROBBERY, WHERE
7 THEY WERE TRYING TO GET BACK THE MONEY THAT WAS OWED?

8 MS. GALSTON: WELL, THAT WAS THE ASSUMPTION, THAT THE
9 PERSON WENT WITH THE INTENT TO GET WHAT HE HAD COMING TO HIM
10 AND WAS TOLD OBVIOUSLY, THERE WAS NOTHING. IT WAS JUST ON
11 PAPER.

12 MR. CHIER: ALL RIGHT. NOW, A MURDER OCCURRED,
13 SUPPOSEDLY?

14 MS. GALSTON: YES.

15 MR. CHIER: AND SUBSEQUENTLY, THIS TRIAL THAT WE ARE
16 ABOUT TO START?

17 MS. GALSTON: YES.

18 MR. CHIER: NOW, LET'S ASSUME -- WELL, LET ME BACK UP
19 FOR JUST A MOMENT. I TAKE IT FROM YOUR ANSWER WITH THE JUDGE,
20 THAT YOU ARE A PERSON WHO WOULD BE CHARACTERIZED AS STRONGLY
21 IN FAVOR OF THE DEATH PENALTY, MISS GALSTON?

22 MS. GALSTON: YES.

23 MR. CHIER: THAT YOU ARE A PERSON WHO IS THEREFORE,
24 STRONGLY OPPOSED TO MURDER OF ANY KIND?

25 MS. GALSTON: YES.

26 MR. CHIER: AND THAT ALL MURDER IS BAD?

27 MS. GALSTON: YES.

28 MR. CHIER: AND ALL MURDER IS WRONG? AND THAT THE ONLY

1 REALLY JUST PUNISHMENT FOR A PERSON WHO DELIBERATELY MURDERS
2 ANOTHER PERSON, IS DEATH ITSELF? IS THAT RIGHT?

3 MS. GALSTON: IF IT IS DELIBERATE, YES.

4 THE COURT: IF IT IS WHAT?

5 MS. GALSTON: IF IT IS DELIBERATE, IF THEY GO WITH
6 THE INTENT TO KILL SOMEBODY.

7 THE COURT: I THOUGHT I INDICATED TO YOU THAT MURDER
8 ALONE, DOESN'T CALL FOR THE DEATH PENALTY. IT HAS GOT TO
9 BE COMMITTED UNDER CERTAIN CIRCUMSTANCES LIKE IN THE COURSE
10 OF A ROBBERY OR RAPE OR SOMETHING LIKE THAT.

11 MS. GALSTON: UH-HUH.

12 THE COURT: SO, MERELY BECAUSE SOMEBODY COMMITTED A
13 MURDER IN THE FIRST DEGREE, DOESN'T NECESSARILY MEAN THAT
14 IT IS GOING TO BE DEATH OR LIFE WITHOUT POSSIBILITY OF PAROLE.
15 I THOUGHT I INDICATED THAT TO YOU.

16 MS. GALSTON: YOU DID.

17 THE COURT: SO MERELY BECAUSE IT IS A DELIBERATE MURDER
18 DOESN'T MEAN THE MAN IS GOING TO SUFFER THE DEATH PENALTY?

19 MS. GALSTON: NO, BUT --

20 THE COURT: IT HAS TO BE WITH SPECIAL CIRCUMSTANCES?

21 MS. GALSTON: BUT IF SOMEBODY COMES UP TO YOU WITH A
22 GUN AND SHOOTS YOU, THAT IS DELIBERATE MURDER, ISN'T IT?

23 THE COURT: YES. IT DOESN'T CALL FOR THE DEATH PENALTY.

24 MR. CHIER: YOUR HONOR, THAT WAS NOT THE QUESTION, WITH
25 ALL DUE RESPECT TO THE COURT.

26 THE COURT: WELL, YOU SAID COMMITS A DELIBERATE MURDER,
27 WOULD SHE VOTE FOR THE DEATH PENALTY.

28 MS. CHIER: HER BELIEF IS -- AM I CORRECT, MISS GALSTON,

1 THAT A PERSON WHO DELIBERATELY, COLD-BLOODEDLY, WITHOUT ANY
2 EXCUSE, MURDERS ANOTHER PERSON, DESERVES TO DIE?

3 MS. GALSTON: YES.

4 MR. CHIER: CORRECT?

5 MS. GALSTON: YES.

6 THE COURT: I AM TRYING TO TELL YOU THAT IS NOT THE
7 LAW.

8 MS. GALSTON: BUT HE IS ASKING ME A DIFFERENT
9 QUESTION.

10 THE COURT: ALL RIGHT. GO AHEAD.

11 MR. CHIER: THIS IS YOUR PERSONAL ATTITUDE?

12 MS. GALSTON: MY PERSONAL ATTITUDE.

13 MR. CHIER: THAT IS WHAT WE ARE TALKING ABOUT RIGHT
14 NOW, NOT TALKING ABOUT THE LAW?

15 MS. GALSTON: YES. I AM JUST A LAYMAN. I DON'T KNOW
16 FROM THE LAW.

17 MR. CHIER: PLEASE. I AM TALKING TO YOU AS A LAYPERSON
18 ABOUT YOUR EMOTIONAL AND PHILOSOPHICAL VIEWS AND NOT ABOUT
19 YOUR LEGAL VIEWS.

20 MS. GALSTON: RIGHT.

21 MR. CHIER: THAT IS TRUE ALSO, MRS. GALSTON, THAT IN
22 YOUR PARTICULAR CASE, BECAUSE OF YOUR PERSONAL VIEWS ABOUT
23 THE SANCTITY OF LIFE AND THE WRONGNESS OF MURDER, THAT YOU
24 WOULD BE -- IT WOULD BE VERY DIFFICULT IN A CASE WHERE YOU
25 FOUND THAT MY CLIENT MURDERED, DELIBERATELY AND PREMEDITATEDLY
26 AND COLD-BLOODEDLY, ANOTHER PERSON, IT WOULD BE DIFFICULT
27 FOR YOU TO RETURN A PENALTY OF LIFE WITHOUT POSSIBILITY OF
28 PAROLE UNDER THOSE CIRCUMSTANCES, WOULDN'T IT?

1 MS. GALSTON: IT IS HARD FOR ME TO SAY BECAUSE I HAVE
2 TWO CHILDREN OF MY OWN.

3 BUT IF THEY DID SOMETHING LIKE THAT, THEY WOULD
4 HAVE TO PAY THE PENALTY.

5 MR. CHIER: YOUR OWN CHILDREN WOULD HAVE TO PAY THE
6 PENALTY?

7 MS. GALSTON: TO ME, LIFE IS A VERY PRECIOUS COMMODITY.

8 MR. CHIER: AND THEREFORE, SINCE THIS GENTLEMAN HERE
9 IS NOT EVEN RELATED TO YOU, AS YOU SEE THINGS AND IN YOUR
10 VIEW, IF HE DID THAT, THE ONLY APPROPRIATE PUNISHMENT FOR
11 HIM IS THE DEATH PENALTY, CORRECT?

12 MS. GALSTON: YES.

13 MR. CHIER: AND THAT YOUR VIEWS ARE SUCH THAT THEY WOULD
14 SUBSTANTIALLY INTERFERE WITH YOUR ABILITY TO IMPARTIALLY
15 RETURN A VERDICT OF DEATH OR LIFE WITHOUT POSSIBILITY OF
16 PAROLE, IF YOU EVER REACHED THE PENALTY PHASE, ASSUMING THAT
17 THE MURDER -- YOU FOUND THAT HE HAD COMMITTED THIS MURDER,
18 RIGHT?

19 MS. GALSTON: WELL, THE WAY IT WAS PHRASED, YOU SAID
20 IT WAS COLD-BLOODED MURDER.

21 MR. CHIER: RIGHT. FIRST DEGREE.

22 MS. GALSTON: WITH MALICE.

23 MR. CHIER: RIGHT. WITH MALICE AFORETHOUGHT. RIGHT,
24 ASSUMING THAT YOU REACH THAT POINT, THERE WOULDN'T REALLY
25 BE ANY CHOICE FOR YOU AS TO WHAT PENALTY HE SHOULD RECEIVE,
26 WOULD THERE?

27 MS. GALSTON: NO.

28 MR. CHIER: ALL RIGHT. I SUBMIT IT, YOUR HONOR.

1 THE COURT: SUPPOSE THE JUDGE TOLD YOU THAT YOU DO HAVE
2 A CHOICE BETWEEN LIFE WITHOUT POSSIBILITY OF PAROLE AND THE
3 DEATH PENALTY, DEPENDING UPON THE MITIGATING CIRCUMSTANCES
4 OR THE AGGRAVATING CIRCUMSTANCES. WOULD YOU FOLLOW THAT?

5 MS. GALSTON: WHATEVER THE JUDGE WOULD SAY, I WOULD
6 HAVE TO FOLLOW IT.

7 THE COURT: SO THAT AUTOMATICALLY YOU WOULD NOT VOTE
8 FOR THE DEATH PENALTY JUST BECAUSE HE HAPPENED TO COLD-
9 BLOODEDLY MURDER SOMEBODY IN THE COURSE OF A ROBBERY? THERE
10 MAY BE CIRCUMSTANCES THAT MIGHT BE EXPLAINED TO YOU WHICH
11 WOULD MITIGATE THAT?

12 MS. GALSTON: TRUE. BUT THE WAY IT HAS BEEN PHRASED,
13 IT IS PHRASED AS COLD-BLOODED MURDER AND THAT IS MY ANSWER
14 TO COLD-BLOODED MURDER, IF SOMEBODY GOES IN WITH THE INTENT
15 TO KILL SOMEONE --

16
17
18
19
20
21
22
23
24
25
26
27
28

1 MR. CHIER: EXCUSE ME. THE TEST IS NOT WHETHER SHE WOULD
2 FOLLOW THE LAW, BUT THE TEST IS THE QUESTION WITH RESPECT TO
3 HER ATTITUDES, NOT HER ABILITY TO FOLLOW THE LAW.

4 THE COURT: WELL, THE LEADING QUESTIONS THAT YOU HAVE
5 BEEN ASKING, PUTS HER IN A POSITION THAT SHE CAN ONLY ANSWER
6 WHAT YOU ASK HER.

7 THE FACT IS, I WILL ASK YOU THIS QUESTION. SUPPOSE
8 THAT YOU FOUND HIM GUILTY OF MURDER IN THE FIRST DEGREE AND
9 YOU FOUND SPECIAL CIRCUMSTANCES, THAT IT WAS DURING THE COURSE
10 OF A ROBBERY AND WE TOLD YOU THAT THERE WILL BE A SECOND PHASE
11 OF THE TRIAL, WHERE BOTH SIDES WOULD PRODUCE EVIDENCE, GIVE
12 EVIDENCE, SHOW EVIDENCE THAT THE DEFENDANT, THERE WERE
13 CIRCUMSTANCES OF HIS BACKGROUND AND HIS AGE AND A NUMBER OF
14 OTHER THINGS WHICH WOULD NOT JUSTIFY IMPOSING THE DEATH
15 PENALTY.

16 AND THE PEOPLE WILL PRODUCE EVIDENCE IN AGGRAVATION
17 TO SHOW THAT IT SHOULD BE DEATH. AND THE JURY WILL DETERMINE
18 UPON ALL OF THE EVIDENCE, AFTER THEY HAVE THE PENALTY PHASE,
19 WHAT IT SHOULD BE. ARE YOU WILLING TO WAIT UNTIL AFTER ALL
20 OF THE EVIDENCE WAS BROUGHT IN BEFORE YOU MAKE UP YOUR MIND
21 OR WOULD YOU AUTOMATICALLY VOTE FOR DEATH?

22 MS. GALSTON: I WOULD HAVE TO WAIT FOR THE EVIDENCE.
23 BUT THAT DOESN'T MEAN THAT I --

24 THE COURT: UNTIL THE PENALTY PHASE?

25 MS. GALSTON: YES.

26 THE COURT: AND MR. CHIER ASKED YOU A DIRECT QUESTION.
27 HE SAID TO YOU, THAT SUPPOSE IT WAS DELIBERATE, PREMEDITATED
28 MURDER, WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY?

9B-2

1 IS THAT WHAT YOU MEANT?

2 MS. GALSTON: IF IT WAS PREMEDITATED, IF SOMEBODY GOES
3 IN TO ANOTHER PERSON WITH THE INTENT TO KILL THEM --

4 THE COURT: YES?

5 MS. GALSTON: AND TAKES SOMEBODY'S LIFE?

6 THE COURT: THAT'S CORRECT. AND IN EVERY, SINGLE CASE
7 OF THAT KIND, YOU WOULD VOTE FOR THE DEATH PENALTY?

8 MS. GALSTON: I AM VERY STRONG ABOUT THAT.

9 MR. CHIER: I SUBMIT IT.

10 THE COURT: ALL RIGHT.

11 MR. WAPNER: MAY I QUESTION THIS JUROR?

12 THE COURT: YES.

13 MR. WAPNER: THANK YOU. MISS GALSTON, WHAT ABOUT THE
14 OTHER SIDE OF THAT COIN? THAT IS, THE IDEA OF LIFE BEING
15 PRECIOUS AND THE STATE TAKING SOMEONE'S LIFE BY IMPOSING THE
16 DEATH PENALTY. HOW DO YOU FEEL ABOUT THAT?

17 MS. GALSTON: IT GOES BACK TO THE SAME THING. IF YOU
18 TAKE SOMEBODY'S LIVE, YOU HAVE TO KNOW AHEAD OF TIME THAT YOU
19 DON'T DO THINGS LIKE THAT. I MEAN, THERE ARE CIRCUMSTANCES
20 THAT YOU KNOW, THAT I COULD SEE. PEOPLE COULD BE UNDER
21 DURESS OR YOU KNOW, DIFFERENT CIRCUMSTANCES.

22 BUT IF YOU WALK INTO SOMEBODY'S HOME WITH A GUN --
23 RIGHT -- YOU ARE THERE TO DO HARM.

24 THERE ARE OTHER WAYS OF WORKING THINGS OUT,
25 WITHOUT VIOLENCE.

26 MR. WAPNER: IN A CASE LIKE THAT, IF YOU ARE SITTING
27 ON THE JURY, THE JURY LISTENS TO THE PENALTY PHASE OF THE TRIAL,
28 THAT IS THE CIRCUMSTANCES IN AGGRAVATION AND THE CIRCUMSTANCES

1 IN MITIGATION AND THEN YOU ARE ASKED TO GO BACK AND RENDER
2 A DECISION AS TO WHETHER THE PENALTY SHOULD BE DEATH OR LIFE
3 WITHOUT THE POSSIBILITY OF PAROLE, COULD YOU MAKE THE CHOICE
4 BETWEEN THOSE TWO?

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

29B-3

30

0-1

1 MR. CHIER: I THINK THE QUESTION IS UNINTELLIGIBLE, YOUR
2 HONOR.

3 THE COURT: DO YOU UNDERSTAND THE QUESTION?

4 MS. GALSTON: COULD YOU BRING IT DOWN TO MY LEVEL, PLEASE?

5 MR. WAPNER: I WILL TRY.

6 IF YOU WERE CHOSEN TO SIT AS A JUROR IN THIS CASE
7 AND YOU GET TO THAT PHASE OF THE CASE WHERE YOU ARE DECIDING
8 ON WHAT THE PENALTY SHOULD BE, THE FIRST THING THAT YOU WOULD
9 DO IS YOU WOULD SIT IN COURT AND LISTEN TO THE EVIDENCE ON
10 BOTH SIDES; DO YOU UNDERSTAND THAT?

11 MS. GALSTON: YES.

12 MR. WAPNER: IS YOUR FRAME OF MIND NOW SUCH THAT YOU
13 WOULD NOT LISTEN TO THAT EVIDENCE BECAUSE YOU ALREADY HAVE
14 YOUR MIND MADE UP AS TO WHAT YOU WERE GOING TO DO AS FAR AS
15 PENALTY IS CONCERNED?

16 MS. GALSTON: NO, I CANNOT POSSIBLY. AS MUCH AS I BELIEVE
17 IN THE DEATH PENALTY, I AM WILLING TO LISTEN TO BOTH SIDES.

18 MR. WAPNER: AND ASSUMING --

19 THE COURT: I KNOW YOU ARE WILLING TO LISTEN TO BOTH
20 SIDES.

21 BUT AFTER LISTENING TO BOTH SIDES, WOULD YOU ONLY
22 BRING IN THE DEATH PENALTY, A VERDICT OF DEATH?

23 MS. GALSTON: I CAN'T ANSWER THAT AT THIS TIME. I AM
24 SORRY.

25 MR. CHIER: YOU LEFT OUT THE MOST IMPORTANT PART.

26 THE COURT: LIFE IMPRISONMENT WITHOUT PAROLE.

27 MR. CHIER: OR FIRST DEGREE.

28 THE COURT: YES.

1 ASSUMING ALL OF THE TIME THAT THIS IS MURDER IN
2 THE FIRST DEGREE, DELIBERATE MURDER AND IT WAS IN THE COURSE
3 OF A ROBBERY, WOULD YOU UNDER ALL CIRCUMSTANCES VOTE FOR THE
4 DEATH PENALTY OR WOULD YOU CONSIDER ALL OF THE FACTS IN THE
5 CASE BEFORE YOU MADE UP YOUR MIND WHETHER IT SHOULD BE THE
6 DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
7 OF PAROLE?

8 MS. GALSTON: YOU SEE, THIS IS CONFUSING TO ME BECAUSE
9 I BELIEVE IN THE DEATH PENALTY AND, YET, YOU ARE SAYING,
10 "WOULD YOU LISTEN TO THE CIRCUMSTANCES ON BOTH SIDES, AND ALL
11 THE EVIDENCE?" HOW COULD I GIVE AN ANSWER NOW?

12 THE COURT: THE LAW IS BEFORE YOU CONSIDER THE DEATH
13 PENALTY, YOU MUST ALSO CONSIDER AN ALTERNATIVE TO THE DEATH
14 PENALTY, WHETHER OR NOT IT SHOULD BE LIFE IMPRISONMENT WITHOUT
15 THE POSSIBILITY OF PAROLE.

16 YOU ARE NOT JUST GOING TO CONSIDER THE DEATH PENALTY
17 ALONE, YOU ARE GOING TO CONSIDER ONE OR THE OTHER; DO YOU
18 UNDERSTAND THAT?

19 MS. GALSTON: YES, SIR.

20 THE COURT: IF YOU FIND THE DEFENDANT GUILTY OF MURDER
21 IN THE FIRST DEGREE AND IT WAS COMMITTED IN THE COURSE OF A
22 ROBBERY, AGAIN I ASK YOU THE QUESTION: WOULD YOU ONLY VOTE
23 THE DEATH PENALTY OR WOULD YOU ALSO CONSIDER THE POSSIBILITY
24 OF LIFE WITHOUT PAROLE?

25 MS. GALSTON: I CAN'T ANSWER THAT.

26 THE COURT: WE ARE TRYING TO UNDERSTAND YOUR THOUGHT
27 PROCESS.

28 DO YOU KNOW WHAT I MEAN?

1 MS. GALSTON: I KNOW WHAT YOU MEAN.

2 MR. WAPNER: LET ME ASK YOU A COUPLE MORE QUESTIONS.

3 THE FIRST PHASE OF THE TRIAL IS WHERE YOU WOULD
4 SIT AND MAKE A DETERMINATION AS TO WHETHER OR NOT A MURDER
5 WAS COMMITTED AND WHETHER OR NOT THIS DEFENDANT COMMITTED IT
6 AND WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE OF
7 A ROBBERY; DO YOU UNDERSTAND THAT?

8 MS. GALSTON: YES.

9 THE COURT: I AM SORRY. GO AHEAD.

10 MR. WAPNER: IN MAKING THAT DECISION ON THE GUILT PHASE
11 OF THE TRIAL, COULD YOU PUT OUT OF YOUR MIND THE ISSUE OF WHAT
12 PENALTY MIGHT BE IMPOSED.

13 MS. GALSTON: YES.

14 MR. WAPNER: ASSUMING THAT YOU AND THE OTHER 11 JURORS
15 FOUND THE DEFENDANT GUILTY OF MURDER AND THAT YOU FOUND THAT
16 THAT MURDER OCCURRED DURING THE COURSE OF A ROBBERY, YOU WOULD
17 THEN GET INTO THE SECOND PHASE OF THE TRIAL; DO YOU UNDERSTAND
18 THAT?

19 MS. GALSTON: YES.

20 MR. WAPNER: WHEN YOU GOT TO THE SECOND PHASE OF THE
21 TRIAL, WHAT HAPPENS IS YOU AND THE OTHER 11 JURORS LISTEN
22 TO MORE EVIDENCE, EVIDENCE OF AGGRAVATION AND EVIDENCE OF
23 MITIGATION. IN OTHER WORDS, AS THE JUDGE HAS TOLD YOU, IT
24 MAY BE GOOD THINGS ON BEHALF OF THE DEFENDANT AND OTHER THINGS
25 THAT MIGHT BE BAD THINGS ON HIS BEHALF; DO YOU UNDERSTAND THAT?

26 MS. GALSTON: RIGHT.

27 MR. WAPNER: AND THEN THE JUDGE WILL GIVE YOU SOME
28 INSTRUCTIONS ON THE LAW AND THEN YOU, WITH THE OTHER 11 JURORS,

1 WILL HAVE TO MAKE A DECISION ON THE PENALTY; DO YOU UNDERSTAND
2 THAT?

3 MS. GALSTON: YES.

4 MR. WAPNER: WHEN YOU SIT AS A JUROR IN THE PENALTY
5 PHASE OF THE TRIAL, DO YOU HAVE YOUR MIND MADE UP ALREADY OR
6 ARE YOU WILLING TO LISTEN TO THE EVIDENCE ON BEHALF OF THE
7 DEFENDANT AND THE EVIDENCE AGAINST HIM DURING THE PENALTY
8 PHASE?

9 MS. GALSTON: I AM WILLING TO LISTEN.

10 MR. WAPNER: IN EVERY CASE, REGARDLESS OF WHAT THE
11 EVIDENCE IS, WOULD YOU VOTE FOR THE DEATH PENALTY?

12 MR. CHIER: OBJECTION TO THE QUESTION AS BEING IRRELEVANT.
13 REGARDLESS OF THE EVIDENCE IS NOT RELEVANT, YOUR HONOR.

14 MR. WAPNER: WELL, I THINK THAT IS ALMOST THE WAY THAT
15 THE QUESTIONS ARE PHRASED.

16 MR. CHIER: THAT HAS BEEN ASKED AND ANSWERED ANYWAY.

17 MR. WAPNER: THAT IS THE WAY THE QUESTIONS THAT MR. CHIER
18 AND MR. BARENS PHRASED WERE PROPOUNDED.

19

20

21

22

23

24

25

26

27

28

DA-11
1 MR. CHIER: IN THE CONTEXT IN WHICH THE QUESTION IS
2 BEING ASKED, YOUR HONOR, IT IS NOT RELEVANT TO WHAT WE ARE
3 TALKING ABOUT. A PERSON HAS TO BE FOUND GUILTY OF FIRST DEGREE
4 MURDER, THAT IS WHAT WE ARE TALKING ABOUT.

5 MR. WAPNER: I ALREADY ASKED HER THOSE QUESTIONS, YOUR
6 HONOR.

7 THE COURT: HE IS ASKING HER ON THE PENALTY PHASE, HE
8 IS ASKING NUMBER FOUR ANOTHER WAY; ISN'T THAT RIGHT?

9 MR. WAPNER: YES. THANK YOU.

10 YOU FOLLOWED ME SO FAR?

11 MS. GALSTON: RIGHT.

12 MR. WAPNER: WE WENT THROUGH THE GUILT PHASE?

13 MS. GALSTON: RIGHT.

14 MR. WAPNER: AND WE ARE NOW INTO THE PENALTY PHASE;
15 DO YOU UNDEstand THAT?

16 (WHEREUPON, MS. GALSTON NODS HER HEAD
17 UP AND DOWN.)

18 MR. WAPNER: AND YOU UNDERSTAND THAT WE WON'T BE IN
19 THE PENALTY PHASE UNLESS YOU AND 11 OTHER JURORS HAD MADE
20 A DECISION THAT THERE WAS MURDER IN THE FIRST DEGREE IN THE
21 COURSE OF A ROBBERY?

22 MS. GALSTON: RIGHT.

23 MR. WAPNER: RIGHT, AND NOW YOU ARE ON THE PENALTY PHASE
24 AND WHAT I AM ASKING YOU IS: WOULD YOU, REGARDLESS OF THE
25 EVIDENCE THAT WAS PRESENTED IN THE PENALTY PHASE, VOTE FOR
26 THE DEATH PENALTY?

27 MS. GALSTON: HOW COULD I ANSWER THAT NOW IF I DON'T
28 KNOW WHAT EVIDENCE YOU ARE GOING TO BE PRESENTING?

1 DO YOU UNDERSTAND WHAT I AM TRYING TO SAY?

2 MR. WAPNER: YES. I THINK YOU JUST ANSWERED THE QUESTION
3 AND THAT IS, IS YOUR MIND --

4 MS. GALSTON: OPEN TO BOTH SIDES, I AM WILLING TO LISTEN
5 TO BOTH SIDES OF THE CASE.

6 MR. WAPNER: OKAY, WELL, THAT IS THE FIRST POINT.

7 MS. GALSTON: RIGHT.

8 MR. WAPNER: NOW THAT YOU HAVE LISTENED TO BOTH SIDES,
9 ARE YOU WILLING TO GO INTO THE JURY ROOM AND VOTE FOR EITHER
10 SIDE, DEPENDING UPON WHAT THE EVIDENCE SHOWS, OR ARE YOU OF
11 SUCH A MIND THAT YOU HAVE ALREADY MADE UP YOUR MIND?

12 OR DID YOU UNDERSTAND THAT QUESTION?

13 MS. GALSTON: NO, NO, I UNDERSTAND WHAT YOU SAID.

14 MR. CHIER: IT IS IMPROPER TO ASK WHETHER SHE HAS MADE
15 UP HER MIND BECAUSE SHE OBVIOUSLY HAS NOT HEARD ANY EVIDENCE.

16 MR. WAPNER: WELL, MAYBE THE QUESTION WAS NOT CLEAR.

17 BUT THE IDEA IS, DOES SHE HAVE ANY PRECONCEIVED
18 NOTIONS?

19 MS. GALSTON: THAT IS WHAT I THOUGHT YOU WERE TRYING
20 TO GET TO.

21 MR. WAPNER: OKAY, OBVIOUSLY THE JUROR UNDERSTOOD THE
22 QUESTION, YOUR HONOR.

23 MS. GALSTON: BUT I HAD BEEN ASKED BEFORE ALSO IF I
24 HAD MADE UP -- IF I HAD MADE A DECISION.

25 THE COURT: I ASKED HER THAT QUESTION BEFORE.

26 MS. GALSTON: FROM WHAT THE OTHER GENTLEMAN ASKED ME,
27 FROM WHAT I HAD HEARD OF THE CASE FROM, YOU KNOW, FROM SOMEONE
28 ELSE IF I HAD A PRECONCEIVED JUDGMENT.

0A-3.

1 MR. WAPNER: THESE ARE TWO SEPARATE QUESTIONS.

2 I AM NOT ASKING YOU TO MAKE A DECISION BASED UPON
3 WHAT YOU READ ABOUT THIS CASE IN THE NEWSPAPERS, THAT IS NOT
4 THE QUESTION I AM ASKING YOU.

5 MS. GALSTON: I DIDN'T READ IT.

6 I HEARD IT FROM SOMEONE ELSE.

7 THE COURT: FORGET ABOUT WHAT YOU HAVE HEARD.

8 YOU ARE NOT GOING TO BE GUIDED IN THIS CASE BY
9 WHAT SOMEBODY ELSE TOLD YOU OR WHAT YOU READ. YOU WILL LISTEN
10 TO THE EVIDENCE IN THE CASE.

11 MS. GALSTON: OH, DEFINITELY, YOU HAVE TO.

12 MR. WAPNER: FOR THE PURPOSES OF THESE QUESTIONS, THE
13 FACTS OF THIS PARTICULAR CASE AREN'T IMPORTANT BECAUSE WE
14 ARE NOT ALLOWED TO ASK YOU NOW TO PREJUDGE THE FACTS OF THIS
15 CASE; DO YOU UNDERSTAND THAT?

16 MS. GALSTON: IT WOULDN'T BE FAIR.

17 MR. WAPNER: RIGHT.

18 THE QUESTION IS: IF YOU SIT AS A JUROR ON THE
19 PENALTY PHASE, YOU HAVE ALREADY TOLD US THAT YOU WOULD BE
20 WILLING TO LISTEN TO BOTH SIDES, RIGHT?

21 MS. GALSTON: DEFINITELY.

22 MR. WAPNER: OKAY, THERE ARE A LOT OF PEOPLE WHO --
23 IT IS EASY TO SAY "WELL, I WOULD LISTEN TO BOTH SIDES" --
24 BUT THAT DOESN'T NECESSARILY MEAN THAT THEY ARE REALLY
25 LISTENING. ANYBODY COULD SIT THERE AND LISTEN WITHOUT REALLY --

26 MS. GALSTON: LISTENING.

27 MR. WAPNER: -- BEING SERIOUS ABOUT CONSIDERING IT;
28 DO YOU UNDERSTAND THAT?

1 MS. GALSTON: UH-HUH.

2 MR. WAPNER: YOU HAVE TO SAY YES OR NO SO SHE CAN WRITE
3 IT DOWN.

4 MS. GALSTON: YES. I AM SORRY.

5 MR. WAPNER: THE QUESTION IS, WHETHER OR NOT HAVING
6 LISTENED TO BOTH SIDES, ARE YOU WILLING TO GIVE BOTH SIDES
7 IN THE PENALTY PHASE A FAIR SHAKE?

8 MS. GALSTON: YES. I WOULD HAVE TO SAY YES.

9 MR. WAPNER: IF THE EVIDENCE SHOWS YOU THAT THE PROPER
10 PUNISHMENT IN THIS PARTICULAR CASE, WHERE A DEFENDANT HAS
11 BEEN FOUND GUILTY OF MURDER IN THE FIRST DEGREE DURING THE
12 COURSE OF A ROBBERY, IS LIFE IMPRISONMENT WITHOUT THE
13 POSSIBILITY OF PAROLE, CAN YOU VOTE FOR THAT PENALTY?

14 MS. GALSTON: IF THAT IS AS MUCH AS -- I AM FOR THE
15 DEATH PENALTY -- I WOULD HAVE TO GO ACCORDING TO THE EVIDENCE
16 PRESENTED.

17 MR. WAPNER: SO ARE YOU WILLING TO PUT ASIDE YOUR
18 PERSONAL VIEWS AND DECIDE THIS CASE BASED ON THE EVIDENCE
19 IN THIS CASE AND THE LAW THAT THE JUDGE GIVES YOU?

20 MS. GALSTON: I WOULD HAVE TO.

21 ISN'T THE DEATH PENALTY USUALLY PHRASED WITHOUT
22 A SHADOW OF A DOUBT?

23 THE COURT: OH, NO, NO.

24 MR. WAPNER: WELL, FIRST OF ALL, WHEN YOU ARE TALKING
25 ABOUT -- YOU PROBABLY ARE REFERRING TO THE STANDARD OF PROOF
26 BY WHICH THINGS HAVE TO BE PROVED IN A CRIMINAL CASE, WHICH
27 APPLIES TO EVIDENCE IN THE GUILT PHASE AND EVIDENCE IN THE
28 PENALTY PHASE, OKAY?

1 (PROSPECTIVE JUROR GALSTON NODS HER HEAD
2 UP AND DOWN.)

3 MR. WAPNER: AND IT IS NOT BEYOND A SHADOW OF A DOUBT.
4 IT IS BEYOND A REASONABLE DOUBT; DO YOU UNDERSTAND
5 THAT?

6 MS. GALSTON: YES, UH-HUH.

7 MR. WAPNER: AND ASSUMING THAT -- MAY I HAVE A MOMENT,
8 PLEASE?

9 THE COURT: ALL RIGHT.

10 MS. GALSTON: I DON'T MEAN TO BE DIFFICULT. I JUST
11 DON'T UNDERSTAND.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE COURT: SHE DOESN'T WANT TO BE DIFFICULT, SHE SAYS.
2 WE MUST UNDERSTAND THAT.

3 (THERE WAS A BRIEF PAUSE.)

4 MR. CHIER: YOUR HONOR, IN ANTICIPATION OF WHAT MR.
5 WAPNER IS GOING TO BE DOING, I THINK IT WOULD BE INAPPROPRIATE
6 TO BEGIN INSTRUCTING THE JUROR ON ANY PATTERN INSTRUCTIONS
7 AT THIS POINT.

8 THIS IS THE TIME FOR ATTITUDINAL INQUIRY.

9 THE COURT: I DON'T KNOW WHAT HE IS LOOKING FOR. I DO
10 NOT HAVE THE REMOTEST IDEA.

11 MR. CHIER: WELL, IT MUST BE INSTRUCTIONS. HE IS LOOKING
12 IN CALJIC, YOUR HONOR. HE IS NOT LOOKING AT THE PROVERBS.

13 MR. WAPNER: THE STANDARD THAT YOU ARE TALKING ABOUT,
14 PROOF BEYOND A REASONABLE DOUBT, PRIMARILY APPLIES TO THE
15 QUESITON OF GUILT. DO YOU UNDERSTAND THAT?

16 MS. GALSTON: UH-HUH.

17 MR. WAPNER: THERE ARE INSTANCES CONCERNING SOME
18 EVIDENCE THAT MAY BE INTRODUCED IN THE PENALTY PHASE, TO WHICH
19 THAT STANDARD MAY APPLY, WHICH AREN'T REALLY RELEVANT TO THIS
20 PROCEEDINGS.

21 BUT PRIMARILY, WHAT IS GOING TO HAPPEN IN THE --

22 MR. CHIER: YORU HONOR, THIS IS CLEARLY IMPROPER.

23 THE COURT: I DON'T HAVE ANY IDEA WHAT YOU ARE TALKING
24 ABOUT.

25 MR. WAPNER: WELL, THE JUROR ASKED A QUESTION WHICH I
26 AM MAYBE --

27 THE COURT: WELL, WHAT?

28 MR. WAPNER: WELL, ABOUT PROOF BEYOND A SHADOW OF A DOUBT.

1 THE COURT: WE TOLD HER THAT IT IS NOT THE SHADOW OF
2 A DOUBT. IT IS REASONABLE DOUBT.

3 MR. WAPNER: DO YOU UNDERSTAND THAT THAT APPLIES
4 PRIMARILY TO THE GUILT PHASE OF THE TRIAL?

5 MS. GALSTON: YES.

6 MR. WAPNER: OKAY. WHEN YOU GET TO THE -- IF YOU GET
7 TO THE PENALTY PHASE OF THE TRIAL AND YOU LISTEN TO THE EVIDENCE
8 ON BOTH SIDES AND NOW YOU ARE IN THE JURY ROOM AND YOU ARE
9 DELIBERATING, ARE YOU WILLING TO BRING BACK THE VERDICT OF
10 LIFE WITHOUT POSSIBILITY OF PAROLE, NOTWITHSTANDING YOUR OWN
11 PERSONAL VIEWS, IF THE EVIDENCE JUSTIFIES IT?

12 MS. GALSTON: YES. I WOULD HAVE TO.

13 MR. WAPNER: NOTHING FURTHER.

14 THE COURT: AND WOULD YOU ALSO, BY THE SAME TOKEN, WOULD
15 YOU ALSO BRING BACK A VERDICT OF DEATH, IF THE CIRCUMSTANCES
16 WARRANTED IT?

17 MS. GALSTON: YES.

18 THE COURT: YOU HAVE GOT AN OPEN MIND ABOUT ALL OF THAT?

19 MS. GALSTON: YES. I WOULD HAVE TO.

20 THE COURT: DO YOU HAVE AN OPEN MIND, HAVE YOU?

21 MS. GALSTON: YES. I WOULD LISTEN TO BOTH SIDES.

22 THE COURT: ALL RIGHT.

23 MR. CHIER: MAY I INQUIRE?

24 THE COURT: YES.

25 MR. CHIER: LOOK, MRS. GALSTON --

26 MS. GALSTON: GALSTON.

27 MR. CHIER: I AM SORRY. YOU ARE GETTING PING-PONGED
28 AROUND LIKE THIS. BUT YOU CAN UNDERSTAND THE SERIOUSNESS OF

1 THIS.

2 MS. GALSTON: IT IS VERY SERIOUS.

3 MR. CHIER: OF THIS SUBJECT ON THIS INQUIRY. NATURALLY,
4 IF SELECTED AS A JUROR IN THIS CASE, YOU WOULD FOLLOW
5 WHATEVER INSTRUCTIONS THE COURT GAVE YOU, CORRECT?

6 MS. GALSTON: CORRECT.

7 MR. CHIER: AND DO YOU UNDERSTAND THAT THE COURT CANNOT
8 INSTRUCT YOU ON WHAT PENALTY TO VOTE FOR, IF YOU FIND THE
9 DEFENDANT GUILTY? RIGHT?

10 MS. GALSTON: RIGHT.

11 MR. CHIER: HE CAN ONLY TELL YOU HOW TO APPROACH THE
12 JOB OF DECIDING LIFE OR DEATH, RIGHT?

13 MS. GALSTON: CORRECT.

14 MR. CHIER: SO THE DECISION IS UP TO YOU AND THE OTHER
15 11 JURORS, WHETHER THE DEFENDANT LIVES OR DIES.

16 AND WHAT I THOUGHT YOU SAID AND I AM TRYING TO
17 DETERMINE NOW, IS THAT YOU BELIEVE THAT IN ALL CASES WHERE
18 A PERSON, EVEN IF IT WERE ONE OF YOUR OWN CHILDREN, WILLFULLY
19 AND DELIBERATELY AND COLD-BLOODEDLY TOOK THE LIFE OF ANOTHER
20 PERSON AND THAT THE CHOICE AND THE EVIDENCE IS SUFFICIENT TO
21 PROVE THAT PERSON GUILTY OF THAT, WHEN DETERMINING THE PENALTY
22 FOR THAT PERSON, GIVEN A CHOICE BETWEEN LIFE OR DEATH, THAT
23 PERSON AS FAR AS YOU ARE CONCERNED, OUGHT TO DIE. ISN'T THAT
24 YOUR BELIEF?

25 MS. GALSTON: YOU ARE CONFUSING ME BECAUSE IF YOU
26 PRESENT THE EVIDENCE IN FAVOR AND AGAINST THE INDIVIDUAL, I
27 HAVE TO WEIGH IT. WE HAVE TO WEIGH IT IN OUR OWN MINDS BEFORE
28 WE CAN MAKE A DECISION. AS MUCH AS I BELIEVE IN THE DEATH

1 PENALTY AND IF SOMEBODY TAKES SOMEBODY ELSE'S LIFE, THEY
2 SHOULD BE PENALIZED.

3 STILL, IT IS VERY DIFFICULT FOR ME. MURDER IS
4 A VERY DIFFICULT THING FOR ME TO COPE WITH.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1B

31R+1
1 MR. CHIER: I UNDERSTAND THAT. I MEAN, I FEEL FOR YOU
2 THAT YOU HAVE TO BE GRILLED LIKE THIS, AS IT WERE.

3 MS. GALSTON: THE TERMS EVERYBODY IS USING ARE
4 IN DIFFERENT WAYS. IF YOU ARE TRYING TO GET TO A SPECIFIC --

5 MR. CHIER: WELL, LET ME SEE IF I CAN GIVE YOU A REALLY
6 CLEAR EXAMPLE OF WHAT WE ARE TALKING ABOUT.

7 MS. GALSTON: WHAT I AM SAYING IS THAT I WOULD BE OPEN
8 TO HEAR BOTH SIDES.

9 THEN, IF THE COURT INSTRUCTS US, THEN WE GO INTO
10 THE OTHER ROOM AS A PART OF THE JURY. WE HAVE TO WORK IT
11 OUT OURSELVES.

12 MR. CHIER: WE ARE TALKING ABOUT THE PENALTY PHASE OR
13 ARE YOU TALKING ABOUT THE GUILT PHASE?

14 MS. GALSTON: YOU WERE TALKING ABOUT THE PENALTY PHASE
15 JUST NOW.

16 MR. CHIER: THAT IS WHAT I AM TALKING ABOUT. LET'S
17 ASSUME THAT YOU HAVE ALL 12 OF YOU -- YOU HAVE FOUND THE
18 DEFENDANT GUILTY AS CHARGED AND THE THINGS THAT THE PERSON
19 TOLD YOU ABOUT THIS CASE -- LET'S ASSUME THAT YOU FIND THOSE
20 THINGS ARE TRUE. LET'S JUST ASSUME THAT, THAT YOU FIND THAT
21 IT IS ESSENTIALLY WHAT HAPPENED IN THAT CASE.

22 THE 12 OF YOU AGREE THAT THAT IS WHAT HAPPENED.
23 THE VERDICT IS GUILTY OF MURDER. YOU FIND THAT THE MURDER
24 WAS COMMITTED IN THE COURSE OF A ROBBERY.

25 ALL RIGHT, THAT PART IS OVER. NOW, YOU GO OVER
26 TO PHASE TWO. WHAT DO WE DO WITH THIS GUY, HERE? ALL RIGHT.

27 THERE WILL BE EVIDENCE PRESENTED THAT WILL BE
28 EVIDENCE OF GOOD THINGS ABOUT THE PERSON AND THERE WILL BE

1 EVIDENCE PRESENTED ABOUT BAD THINGS.

2 THE D.A. WILL BE PUTTING ON EVERYTHING BAD THAT
3 HE CAN PUT ON. THE DEFENDANT WILL PUT ON EVERYTHING GOOD
4 THAT HE WILL PUT ON. OKAY?

5 SO THEN, YOU HAVE HEARD ALL OF THE GOOD AND ALL
6 OF THE BAD AND THE 12 OF YOU GO BACK TO THE ROOM, TO ONCE
7 AGAIN DELIBERATE.

8 THIS TIME, THE CHOICE IS NOT GUILTY OR INNOCENT.
9 THE CHOICE IS LIFE OR DEATH.

10 YOU HAVE FOUND PREVIOUSLY THAT HE DID EVERYTHING
11 THAT THEY SAID THAT HE WAS ALLEGED TO HAVE DONE, THAT HE KILLED
12 SOMEBODY. WITHIN THE COURSE OF A ROBBERY. THERE WAS NO
13 EXCUSE, NO MITIGATION, NOTHING. IT WAS A MURDER. IT WAS
14 A ROBBERY --

15 THE COURT: WAIT A MINUTE. WHAT DO YOU MEAN "MITIGATION"?

16 MR. CHIER: THAT IT WAS NOT A MANSLAUGHTER. IT WAS
17 NO HEAT OF PASSION. IT WAS A COLD-BLOODED DELIBERATE MURDER.
18 OKAY?

19 YOU HAVE FOUND THAT. NOW, YOU ARE DECIDING WHAT
20 TO DO. ISN'T IT TRUE, MS. GALSTON, THAT BECAUSE OF YOUR
21 BELIEFS THAT THERE IS ALMOST NOTHING THAT COULD BE PRESENTED
22 AT THAT POINT, THAT IN YOUR MIND, WOULD SAVE HIM FROM THE
23 GAS CHAMBER?

24 THE COURT: WHAT HE MEANS IS, WOULD YOU AUTOMATICALLY --

25 MR. CHIER: PLEASE, YOUR HONOR --

26 THE COURT: WOULD YOU AUTOMATICALLY VOTE FOR DEATH
27 IRRESPECTIVE OF WHAT THE EVIDENCE --

28 MR. CHIER: THAT IS NOT MY QUESTION, YOUR HONOR,

1 AND I --

2 THE COURT: WOULD YOU AUTOMATICALLY VOTE FOR DEATH OR
3 WOULD YOU CONSIDER LIFE WITHOUT POSSIBILITY OF PAROLE AT THAT
4 PHASE OF THE TRIAL?

5 MS. GALSTON: I CAN'T ANSWER THAT RIGHT NOW.

6 THE COURT: WHAT DO YOU MEAN WHEN YOU SAY YOU CAN'T
7 ANSWER?

8 MS. GALSTON: YOU ARE SAYING IF THERE IS NO QUESTION
9 THAT HE IS GUILTY AND THAT HE DID IT? I WOULD HAVE TO VOTE
10 FOR THE DEATH PENALTY.

11 THE COURT: IRRESPECTIVE OF THE MITIGATING CIRCUMSTANCES
12 AND AGGRAVATING CIRCUMSTANCES?

13 MS. GALSTON: WELL, SEE, YOU ARE THROWING THAT IN.

14 THE COURT: WELL, THAT IS WHAT HE IS TRYING TO TELL
15 YOU.

16 MR. CHIER: THAT IS NOT WHAT I AM TRYING TO TELL YOU.

17 THE COURT: THAT IS WHAT HE SAID, THE FACTS ABOUT ALL
18 THE GOOD THINGS ABOUT HIM AND ALL THE BAD THINGS, ISN'T THAT
19 WHAT YOU SAID?

20 MR. CHIER: YES. WELL, I DIDN'T MEAN --

21 THE COURT: HE DIDN'T SAY AGGRAVATING AND MITIGATING.
22 HE SAID GOOD AND BAD. THAT IS WHAT WE ARE TALKING ABOUT.

23 AFTER YOU HEARD ALL OF THE GOOD THINGS ABOUT HIM
24 AND ALL THE BAD THINGS, THEN YOU ARE CALLED UPON TO DETERMINE
25 WHAT SHOULD HAPPEN TO HIM. DO YOU UNDERSTAND THAT?

26 MS. GALSTON: YES.

27 THE COURT: ALL RIGHT. THEN YOU WOULD DETERMINE WHETHER
28 OR NOT HE SHOULD GET LIFE WITHOUT POSSIBILITY OF PAROLE OR

1 WHETHER HE SHOULD GET DEATH. COUNSEL WANTS TO KNOW WHETHER
2 YOU WOULDN'T CONSIDER LIFE WITHOUT POSSIBILITY OF PAROLE OR
3 WHETHER YOU WOULD ONLY COME BACK WITH A VERDICT OF DEATH?

4 MR. CHIER: THIS IS AFTER YOU FOUND HIM GUILTY.

5 THE COURT: RIGHT. THERE WAS NO OTHER -- I MEAN, IT
6 WAS CUT AND DRIED. HE WAS --

7 MS. GALSTON: HE WAS GUILTY? THAT IS IT?

8 MR. CHIER: RIGHT. IT IS DEATH, RIGHT?

9 MS. GALSTON: YEAH.

10 MR. CHIER: OKAY. I SUBMIT IT ONCE AGAIN, YOUR HONOR.

11 THE COURT: ALL RIGHT, THEN. I UNDERSTAND WHAT YOU
12 SAY.

13 YOU SAY THAT IF IT IS DELIBERATE, FIRST DEGREE
14 MURDER, IRRESPECTIVE OF ANYTHING ABOUT GOOD OR BAD ABOUT HIM,
15 YOU WILL THEN VOTE THE DEATH PENALTY, IS THAT RIGHT?

16 MS. GALSTON: I SAID THAT I WOULD BE OPEN TO LISTENING.
17 I DON'T MEAN TO -- LET ME EXPLAIN TO YOU. I WOULD BE WILLING
18 TO LISTEN TO BOTH SIDES.

19 HOW COULD YOU GIVE SOMEBODY A VERDICT UNTIL YOU
20 HEARD BOTH SIDES?

21 DO YOU UNDERSTAND WHAT I AM TRYING TO SAY? I
22 CAN'T MAKE A DECISION AND SAY, HEY, HE IS --

23 THE COURT: SUPPOSE YOU HEARD BOTH SIDES. WHATEVER
24 WAS SAID BY BOTH SIDES, YOU WILL AUTOMATICALLY VOTE THE DEATH
25 PENALTY, IRRESPECTIVE OF WHAT YOU HEARD? WOULD YOU VOTE FOR
26 THE DEATH PENALTY WITHOUT CONSIDERING WHAT IS FAVORABLE ABOUT
27 THE DEFENDANT AND WHAT IS UNFAVORABLE ABOUT THE DEFENDANT?

28 THE POINT OF YOUR GOING INTO A SECOND PHASE WITH

1 THE JURY IS TO DETERMINE ALL OF THE FACTS THAT YOU HAVE HEARD
2 ON THE PENALTY PHASE AND WHETHER OR NOT HE SHOULD SUFFER THE
3 DEATH PENALTY OR WHETHER OR NOT HE SHOULD SUFFER LIFE WITHOUT
4 POSSIBILITY OF PAROLE.

5 MR. CHIER: I AM POINTING OUT TO YOU -- I THINK YOUR
6 HONOR, IT IS THE GOOD STUFF AND THE BAD STUFF AND IT HAS
7 NOTHING TO DO WITH THE FIRST PART, THE GUILT PHASE. WE DON'T
8 RETRY THAT PART. THAT PART IS OVER.

9 THE GOOD STUFF AND THE BAD STUFF IS JUST ABOUT
10 THE KIND OF PERSON THAT HE IS, BASICALLY.

11 MS. GALSTON: COULD I SAY SOMETHING IN MY DEFENSE?
12 I BELIEVE IN THE DEATH PENALTY. BUT I AM ALSO HUMANE. DOES
13 THAT MAKE SENSE TO YOU?

14 THE COURT: YES. IN OTHER WORDS, YOU WOULD CONSIDER
15 EVERYTHING IN THE PENALTY PHASE BEFORE YOU MAKE UP YOUR MIND?

16 MS. GALSTON: YES.

17 THE COURT: ALL RIGHT. YOU ARE NOW POSITIVE ABOUT THAT?

18 MS. GALSTON: YES. I SHOULD HAVE TAKEN LAW.

19 THE COURT: SORRY TO PROLONG ALL OF THIS. AS YOU SEE,
20 WE HAVE TO FIND OUT WHAT YOUR STATE OF MIND IS. WE HAVE TO
21 FIND OUT WHETHER YOU SO BELIEVE IN THE DEATH PENALTY THAT
22 IRRESPECTIVE --

23 MS. GALSTON: YOU CAN'T MAKE A DECISION BEFORE YOU HEAR
24 ALL OF THE FACTS.

25 THE COURT: ALL RIGHT. ALL OF THE FACTS IN THE PENALTY
26 PHASE?

27 MS. GALSTON: RIGHT, EVEN IF YOU BELIEVE IN THE DEATH
28 PENALTY. YOU HAVE TO HEAR BOTH SIDES.

1 MR. CHIER: ALL RIGHT. I UNDERSTAND YOUR WILLINGNESS
2 TO LISTEN TO BOTH SIDES. BUT, YOU HAVE A POINT OF VIEW WHICH
3 YOU HAVE HAD I ASSUME, FOR SOME TIME ABOUT MURDER AND THE
4 DEATH PENALTY, RIGHT?

5 MS. GALSTON: YES.

6 MR. CHIER: SO, HE DOESN'T GET YOUR TOTALLY NEUTRAL --
7 A TOTALLY NEUTRAL JUROR IN YOUR CASE, DOES HE, WHEN IT COMES
8 TO DECIDING WHETHER HE LIVES OR DIES?

9 MS. GALSTON: I DON'T HAVE ANY -- PERTAINING TO THE
10 GENTLEMAN, I DON'T HAVE ANY FEELINGS PRO OR CON RIGHT NOW.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2-1
1 MR. CHIER: I UNDERSTAND ABOUT HIM BUT --

2 MS. GALSTON: I MEAN EVEN THOUGH I HAVE HEARD WHAT THE
3 CASE WAS ABOUT, I DON'T HAVE A JUDGEMENT AT THIS TIME.

4 DO YOU UNDERSTAND WHAT I AM SAYING?

5 MR. CHIER: I UNDERSTAND YOU DON'T HAVE BUT I AM ASKING
6 YOU FOR THE PURPOSE OF THIS --

7 MS. GALSTON: RIGHT, RIGHT.

8 MR. CHIER: -- PROCEEDING, TO ASSUME THAT YOU HAVE
9 CONVICTED HIM, JUST ASSUME THAT.

10 MR. WAPNER: YOUR HONOR, I WOULD OBJECT TO THAT AS HAVING
11 BEEN ASKED AND ANSWERED. WE CAN GO BACK AND FORTH ALL DAY.

12 THE COURT: I WILL SUSTAIN THE OBJECTION. I HAVE ASKED
13 THAT BEFORE FOR THE LAST TIME.

14 MR. WAPNER: THE POINT IS MR. CHIER DIDN'T EVEN ASK FOR
15 PERMISSION TO REOPEN EXAMINATION. AT SOME POINT, THE PING-PONG
16 GAME HAS TO STOP HERE.

17 MR. CHIER: I SUBMIT THE MATTER.

18 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
19 DEATH PENALTY --

20 MS. GALSTON: YES.

21 THE COURT: -- THAT YOU WOULD AUTOMATICALLY VOTE -- THIS
22 IS AFTER YOU HAVE FOUND HIM GUILTY OF MURDER IN THE FIRST
23 DEGREE -- THAT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH
24 PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT
25 THE PENALTY PHASE OF THE TRIAL?

26 MS. GALSTON: REGARDLESS OF ANY EVIDENCE?

27 THE COURT: REGARDLESS. WOULD YOU DISREGARD ANY EVIDENCE
28 THAT MAY COME IN AT THE PENALTY PHASE OF THE TRIAL AND

1 AUTOMATICALLY YOU ARE GOING TO VOTE FOR THE DEATH PENALTY?

2 MS. GALSTON: NO, I CAN'T DO THAT.

3 THE COURT: YOU CAN'T DO THAT?

4 MS. GALSTON: NO, I WOULDN'T DO THAT.

5 THE COURT: THANK YOU VERY MUCH.

6 MS. GALSTON: MAY I SAY SOMETHING?

7 THE COURT: YES.

8 MS. GALSTON: I DON'T KNOW IF I HAVE WASTED YOUR TIME.

9 I AM SORRY. I HAVE CLASSES THAT START FEBRUARY 2ND AND LAST
10 WEEK AND BEFORE YOU ASKED IF I HAD ANY HARDSHIP, FINANCIAL
11 OR HEALTH, AND I DON'T HAVE THAT BUT I HAVE ASKED THE DEPUTY
12 IF I SHOULD HAVE MENTIONED THAT AT THAT TIME AND THEY SAID
13 WHEN THE QUESTIONING STARTED, THEN I SHOULD MENTION IT.

14 THE COURT: ALL RIGHT, LOOK, IF BY ANY CHANCE, IF WE
15 HAVE YOU COME BACK AND IF BY ANY CHANCE YOU ARE SELECTED AND
16 YOU ARE PUT IN THE JURY BOX, WE WILL SEE WHAT THE CONDITION
17 OF THE CASE IS AT THAT TIME AND IT VERY MAY VERY WELL BE THAT
18 WE MIGHT EXCUSE YOU AT THAT TIME.

19 THAT IS NOT WHAT WE ARE HERE FOR NOW.

20 MS. GALSTON: ALL RIGHT, THANK YOU.

21 THE COURT: WE WILL BEAR THAT IN MIND.

22 MS. GALSTON: OKAY. THANK YOU.

23 THE COURT: JUST WAIT OUTSIDE FOR HALF A MINUTE, PLEASE.

24 MS. GALSTON: THANK YOU.

25 (PROSPECTIVE JUROR GALSTON EXITS THE
26 COURTROOM.)

27 THE COURT: ALL RIGHT, MR. CHIER.

28 MR. CHIER: I SUBMIT THAT THE JUROR, MRS. GALSTON, SHOULD

2-3

1 BE EXCUSED FOR CAUSE, YOUR HONOR.

2 SHE HAS SAID AT LEAST THREE TIMES THAT I CAN COUNT
3 THAT HER VIEWS ARE SUCH THAT SHE WOULD LISTEN TO IT BUT THAT
4 THE RESULT IS THAT SHE WOULD FIND IN FAVOR OF DEATH; THAT SHE
5 WOULD DO SO EVEN FOR HER OWN CHILDREN.

6 I DON'T THINK IT CAN BE -- I THINK IT IS UN-
7 MISTAKABLY CLEAR THAT SHE IS COMMITTED TO THE DEATH PENALTY
8 TO SUCH AN EXTENT THAT IF SHE WERE TO FIND THE DEFENDANT
9 GUILTY AS CHARGED, THAT IN LIGHT OF THAT SHE WOULD CERTAINLY
10 SIT THROUGH -- SHE WOULDN'T CLOSE HER EARS TO THE EVIDENCE
11 BUT THAT THERE IS NO QUESTION AS TO WHAT VERDICT SHE WOULD
12 RETURN AND I THINK THAT SHE IS NOT QUALIFIED TO SIT AS A JUROR
13 ON THIS CASE.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2B-1

1 THE COURT: I ASKED HER THE VERY QUESTION YOU ASKED ME
2 TO ASK HER AND SHE JUST CATEGORICALLY SAID SHE WOULD WAIT AND
3 LISTEN TO ALL OF THE EVIDENCE AND THAT SHE WOULDN'T VOTE FOR
4 THE DEATH PENALTY REGARDLESS OF WHAT THE EVIDENCE MAY BE.
5 THAT IS THE LAST THING I ASKED HER.

6 MR. CHIER: I HATE TO SAY, JUDGE, THAT EVEN THOUGH WE
7 PROPOUNDED THOSE QUESTIONS, THAT THE QUESTIONS ARE ESSENTIALLY
8 WORTHLESS.

9 THE COURT: I WILL HAVE TO GET THE INPUT OF THE DISTRICT
10 ATTORNEY.

11 MR. WAPNER: I DISAGREE WITH COUNSEL. I DON'T THINK
12 IT IS UNMISTAKABLY CLEAR THAT SHE WOULD AUTOMATICALLY VOTE
13 FOR THE DEATH PENALTY. I THINK THAT SHE WAS VERY SERIOUS,
14 VERY THOUGHTFUL AND I THINK IT IS VERY OBVIOUS FROM HER
15 ANSWERS THAT, NOTWITHSTANDING HER STRONG PERSONAL FEELINGS
16 ABOUT THE DEATH PENALTY, SHE IS WILLING TO NOT ONLY SIT AND
17 LISTEN TO THE EVIDENCE ON THE PENALTY PHASE, BUT TO CONSIDER
18 IT AND TO BRING BACK A VERDICT OF LIFE WITHOUT THE POSSIBILITY
19 OF PAROLE IF THAT IS WARRANTED AND SHE SAID THAT.

20 AND I THINK UNDER THOSE CIRCUMSTANCES THAT SHE
21 QUALIFIES TO SIT ON THIS JURY AND SHOULD NOT BE CHALLENGED
22 FOR CAUSE.

23 THE COURT: ALL RIGHT, HAVE HER COME IN.

24 THAT IS MY OPINION, TOO. I CAN'T CATEGORICALLY
25 SAY THAT SHE IS GOING TO AUTOMATICALLY VOTE FOR IT. THAT IS
26 THE LAST THING I ASKED HER, TO MAKE SURE SHE KNEW WHAT I WAS
27 TALKING ABOUT.

28 IT MAY VERY WELL BE THAT SHE MIGHT BE EXCUSED BEFORE

3-2

1 WE EVER GET TO THAT.

2 (PROSPECTIVE JUROR GALSTON ENTERS THE
3 COURTROOM.)

4 THE COURT: MRS. GALSTON, WE WOULD LIKE TO HAVE YOU COME
5 BACK. IT WILL TAKE US UNTIL AT LEAST DECEMBER 2ND UNTIL WE
6 ARE ABLE TO GET THROUGH ALL OF THESE NAMES. YOU KNOW WE ARE
7 HAVING TO GO THROUGH PRACTICALLY THROUGH Z SO IT WILL TAKE
8 AT LEAST UNTIL DECEMBER 2ND. I WILL EXCUSE YOU AND ASK YOU
9 TO COME BACK TO THE JURY ASSEMBLY ROOM ON DECEMBER 2ND AT
10 10:30 A.M. THAT IS THE JURY ASSEMBLY ROOM ON DECEMBER 2ND.

11 AND IF IT TAKES LONGER THAN DECEMBER 2ND, WE HAVE
12 YOUR TELEPHONE NUMBER AND WE WILL CALL YOU AND LET YOU KNOW
13 WHATEVER DATE IT MIGHT BE, ALL RIGHT?

14 MS. GALSTON: OKAY.

15 THE COURT: THIS IS, OF COURSE, WITHOUT PREJUDICE TO
16 YOU BEING EXCUSED IN THE EVENT YOU CAN'T SIT AS A JUROR BEYOND
17 JANUARY 31ST; DO YOU UNDERSTAND?

18 ALLRIGHT, THEN YOU COME BACK DECEMBER 2ND AT 10:30
19 IN THE JURY ASSEMBLY ROOM.

20 MS. GALSTON: OKAY.

21 THE COURT: THANK YOU VERY MUCH FOR BEING HERE.

22 I AM SORRY BUT IT WAS NECESSARY FOR US TO ASK YOU
23 ALL OF THESE QUESTIONS.

24 MS. GALSTON: IT HAS BEEN AN EXPERIENCE.

25 DO I RECEIVE A SLIP OF PAPER TO TAKE BACK?

26 THE COURT: NO, NO. YOU JUST COME BACK HERE ON DECEMBER
27 2ND, UNLESS YOU HEAR FROM US TO THE CONTRARY.

28 MR. WAPNER: YOUR HONOR, CAN THE COURT ADMONISH HER NOT

1 TO READ ANYTHING ABOUT THE CASE?

2 THE COURT: MRS. GALSTON, DON'T TALK TO ANYBODY AT ALL
3 ABOUT WHAT HAS HAPPENED HERE OR ANYTHING ABOUT THE CASE.

4 MR. WAPNER: OR TO READ ANYTHING.

5 MR. CHIER: OR TO TALK TO THAT SAME PERSON.

6 THE COURT: DON'T READ ANYTHING IN THE NEWSPAPERS IF
7 THERE IS ANYTHING OR HEAR ANYTHING OR SEE ANYTHING ON TELEVISION.

8 MS. GALSTON: WHAT IF IT IS ON THE NEWS?

9 THE COURT: IF THEY START DISCUSSING IT, TURN IT OFF.

10 (PROSPECTIVE JUROR GALSTON EXITS THE
11 COURTROOM.)

12 THE COURT: ALL RIGHT, WE WILL SEE YOU TOMORROW.

13 MR. WAPNER: AT 10:30, YOUR HONOR?

14 THE COURT: 10:30, YES.

15 MR. WAPNER: THANK YOU.

16 (AT 4:13 P.M. AN ADJOURNMENT WAS TAKEN
17 THURSDAY, NOVEMBER 20, 1986 AT 10:30 A.M.)

18

19

20

21

22

23

24

25

26

27

28