

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DOCKET
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Entered in _____
Date _____

FEB 24 1988

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

SUPERIOR COURT
NO. A-090435

OCT 09 1987

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

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP
STATE ATTORNEY GENERAL
3580 WILSHIRE BOULEVARD
ROOM 800
LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 11 OF 101
(PAGES 1344 TO 1535, INCLUSIVE)

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435)

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

MONDAY, NOVEMBER 24, 1986

VOLUME 11

(PAGES 1344 TO 1535, 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
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13	DEFENDANT'S WITNESS:	EXAMINATION BY MR. CHIER	EXAMINATION BY MR. WAPNER
14	ARCE, RAYMOND		
15	(RESUMED)	1410	1417
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1 SANTA MONICA, CALIFORNIA; MONDAY, NOVEMBER 24, 1986; 10:37 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)
5

6 MR. WAPNER: I NEED TO DISCUSS SOMETHING BEFORE WE
7 BRING THE JUROR IN THIS MORNING.

8 YOUR HONOR, I WOULD LIKE TO RESPECTFULLY REQUEST
9 THE COURT THAT WE BEGIN TOMORROW AFTERNOON AT 1:30.

10 THE COURT: BEGIN WHAT?

11 MR. WAPNER: INSTEAD OF NORMALLY STARTING AT 10:30, AND
12 I KNOW WE HAVE JURORS SCHEDULED FOR TOMORROW, THERE IS SOME-
13 THING RELEVANT TO THE CASE THAT NEEDS TO BE HANDLED.

14 THE COURT: IN THE MORNING, YOU MEAN?

15 MR. WAPNER: YES. IF IT IS AT ALL POSSIBLE, I REALIZE
16 IT IS AN INCONVENIENCE AND I KNOW THAT WE HAVE PEOPLE SCHEDULED
17 BUT I BEG THE INDULGENCE OF THE COURT, IF WE CAN START AT
18 1:30 TOMORROW.

19 WHAT WE COULD DO IS CONTACT THOSE PEOPLE THAT ARE
20 SCHEDULED FOR TOMORROW MORNING AND JUST TELL THEM TO COME --
21 WE HAVE SCHEDULED JURORS FOR DECEMBER 2ND IN THE MORNING AND
22 PERHAPS WE COULD SCHEDULE THOSE PEOPLE FOR TOMORROW MORNING
23 FOR DECEMBER 2ND IN THE AFTERNOON AND THEN THE PEOPLE THAT
24 WE HAVE TOLD TO COME BACK ON DECEMBER 2ND, WE CAN TELL THEM
25 TO COME BACK ON THE 3RD.

26 THE COURT: ALL RIGHT. HAVE YOU GOT THE TELEPHONE
27 NUMBERS OF THESE PEOPLE?

28 THE CLERK: YES, THEY ARE ALL AVAILABLE TO ME, YOUR HONOR.

1 THE COURT: ALL RIGHT, THAT WILL BE TOMORROW AFTERNOON --

2 MR. WAPNER: RIGHT.

3 THE COURT: -- THE 25TH, IS THAT IT?

4 MR. WAPNER: CORRECT.

5 THE COURT: WE HAVE SIX OF THEM SCHEDULED AND CALL THEM
6 UP AND TELL THEM TO COME BACK ON DECEMBER 2ND IN THE AFTER-
7 NOON, IS THAT THE IDEA?

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1 MR. WAPNER: I THINK WHAT WE SHOULD DO IS, THE ONES WE
2 HAVE SCHEDULED FOR TOMORROW AFTERNOON -- WHAT WE CAN DO IS,
3 THE ONES WE HAVE SCHEDULED FOR TOMORROW MORNING, WE CAN CALL
4 THEM AND TELL THEM TO COME BACK ON THE AFTERNOON OF
5 DECEMBER 2ND.

6 THE CLERK: BUT --

7 THE COURT: WHAT DO WE HAVE IN THE AFTERNOON? WHAT
8 HAVE WE GOT TOMORROW AFTERNOON?

9 MR. WAPNER: THE REGULARLY SCHEDULED GROUP ALREADY IN
10 THE AFTERNOON TOMORROW.

11 THE COURT: WHICH GROUP DO YOU WANT TO HAVE CONTINUED?

12 MR. WAPNER: WELL, I NEED TO BE AWAY --

13 MR. BARENS: HE WANTS TO CONTINUE THE MORNING GROUP.

14 MR. WAPNER: I NEED TO BE ABSENT IN THE MORNING TOMORROW.
15 SO, IF WE CAN CONTINUE THE MORNING GROUP, TOMORROW MORNING'S
16 GROUP, CALL THEM AND TELL THEM TO COME DECEMBER 2ND IN THE
17 AFTERNOON.

18 MAY I HAVE A MOMENT WITH THE CLERK, PLEASE?

19 THE COURT: YES.

20 (PAUSE.)

21 MR. WAPNER: I HAVE HAD AN OPPORTUNITY YOUR HONOR, TO
22 DISCUSS THE LOGISTICS OF THIS WITH THE CLERK.

23 THERE IS A GROUP OF PEOPLE THAT WE HAVE SCHEDULED
24 TO COME BACK ON DECEMBER THE 2ND WHO HAVE NOT YET BEEN
25 INTERVIEWED.

26 IT WAS THE GROUP ORIGINALLY SCHEDULED FOR
27 NOVEMBER 18. WHAT I AM SUGGESTING THAT WE DO IS, WE TAKE
28 THE PEOPLE THAT WE WERE SUPPOSED TO TALK TO TOMORROW MORNING

1 AND RESCHEDULE THEM FOR DECEMBER 2ND IN THE AFTERNOON.

2 WE CAN THEN TELL EVERYONE FROM NOW ON, THAT
3 INSTEAD OF COMING BACK ON THE 2ND, THEY SHOULD COME BACK ON
4 THE 3RD.

5 WE CAN CONTACT THE 22 PEOPLE THAT HAVE BEEN
6 PREVIOUSLY PASSED FOR CAUSE AND CHANGE THEIR SCHEDULED DATE
7 OF RETURN FROM THE 2ND TO THE 3RD.

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1 THE COURT: ALL RIGHT.

2 MR. WAPNER: THANK YOU.

3 THE COURT: THAT WILL BE SO ORDERED.

4 MR. WAPNER: THANK YOU.

5 THE COURT: WE WILL GET THE FIRST ONE IN NOW, THAT WILL
6 BE HOPPER.

7 THE COURT: ON NOVEMBER 24TH, WHICH IS TODAY, WE WERE
8 SUPPOSED TO HAVE MRS. MARJORIE JOHNSON, WHO WAS TOLD BY THE
9 CLERK TO RETURN AND BE INTERVIEWED ON DECEMBER 2ND AS SHE
10 CALLED IN ILL AND CANNOT BE HERE TODAY.

11 MR. WAPNER: ALL RIGHT, THANK YOU.

12 THE COURT: SO CROSS THAT NAME OFF.

13 AND WE WILL HAVE CAMERON HOPPER.

14 MR. BARENS: WHERE ARE WE NOW?

15 THE COURT: WE ARE ON THE LAST ONE ON THE NOVEMBER 21ST
16 LIST AND CAMERON HOPPER WAS WHERE WE LEFT OFF. HE WAS
17 CONTINUED UNTIL TODAY.

18 MR. BARENS: OKAY. THANK YOU, JUDGE.

19 (PROSPECTIVE JUROR HOPPER ENTERS THE
20 COURTROOM.)

21 THE COURT: ALL RIGHT, HERE HE IS.

22 MR. HOPPER: GOOD MORNING, SIR.

23 THE COURT: ALL RIGHT, MR. HOPPER, I AM GOING TO ASK
24 YOU A SERIES OF QUESTIONS TO WHICH THE ANSWERS WILL BE YES
25 OR NO.

26 AND IF YOU DON'T UNDERSTAND THE QUESTION, ASK ME
27 TO REPEAT IT AND I WILL EXPLAIN IT TO YOU IF YOU NEED ANY
28 EXPLANATION.

1 BUT BEFORE I DO THAT, I JUST WANT TO REFRESH YOUR
2 RECOLLECTION AS TO WHAT THIS CASE IS ALL ABOUT AND MAKE SOME
3 OTHER OBSERVATIONS BEFORE YOU START ANSWERING THE QUESTIONS,
4 ALL RIGHT?

5 YOU WERE HERE WHEN I HAD TOLD ALL OF THE PROSPECTIVE
6 JURORS WHAT THE CASE IS ALL ABOUT, WEREN'T YOU?

7 MR. HOPPER: YES, SIR.

8 THE COURT: AT THAT TIME, I TOLD YOU THAT IT WAS A
9 MURDER CASE, A MURDER OF THE FIRST DEGREE IN WHICH THE
10 DISTRICT ATTORNEY IS SEEKING THE DEATH PENALTY.

11 AND NOW, OF COURSE, UNDER THE LAW OF THE STATE
12 OF CALIFORNIA, I WILL EXPLAIN TO YOU THAT NOT EVERY MURDER
13 IN THE FIRST DEGREE CALLS FOR THE DEATH PENALTY. IT IS ONLY
14 CERTAIN TYPES OF MURDERS WHICH THE LEGISLATURE SAYS QUALIFIES
15 FOR THE DEATH PENALTY THAT THE DEATH PENALTY MAY BE ASKED FOR
16 OR REQUESTED.

17 NOW, FOR EXAMPLE, IN THIS PARTICULAR CASE, IT IS
18 ALLEGED IN THE INFORMATION THAT THE DEFENDANT COMMITTED THE
19 CRIME OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A
20 ROBBERY. NOW, IN THE COURSE OF A ROBBERY QUALIFIES IT FOR
21 THE DEATH PENALTY. IF, FOR EXAMPLE, ALSO IF IT WERE MURDER
22 IN THE COURSE OF A BURGLARY, THAT WOULD CALL FOR THE DEATH
23 PENALTY, OR KIDNAPPING OR TORTURE OR RAPE, SOMETHING THE
24 LEGISLATURE SET FORTH WHEREIN CERTAIN INSTANCES WHERE THE DEATH
25 PENALTY APPLIES OR QUALIFIES.

26 AND IT DOES IN THE CASE OF A MURDER WHICH WAS
27 COMMITTED IN THE COURSE OF A ROBBERY; DO YOU UNDERSTAND THAT?

28 MR. HOPPER: YES, SIR.

1 THE COURT: NOW, THE JURY WHICH WILL BE SELECTED IN THIS
2 CASE WILL FIRST DETERMINE WHAT WE CALL THE GUILT PHASE,
3 WHETHER OR NOT HE IS GUILTY OF MURDER IN THE FIRST DEGREE AND
4 IF HE IS, THE JURY THEN MAKES A FINDING WHETHER OR NOT THAT
5 MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY, A FINDING
6 WHETHER IT IS TRUE OR IT IS FALSE THAT IT WAS COMMITTED IN
7 THE COURSE OF A ROBBERY AND THAT IS KNOWN AS A SPECIAL
8 CIRCUMSTANCE; DO YOU UNDERSTAND THAT?

9 MR. HOPPER: YES, SIR.

10 THE COURT: NOW, IF THE JURY FINDS THE DEFENDANT GUILTY
11 OF MURDER IN THE FIRST DEGREE AND FINDS THE SPECIAL
12 CIRCUMSTANCE THAT IT WAS COMMITTED DURING THE COURSE OF
13 ROBBERY, THEN THE JURY THEN HEARS EVIDENCE FROM THE PEOPLE
14 AND FROM THE DEFENDANT AS TO EXTENUATING OR MITIGATING
15 CIRCUMSTANCES IN WHICH ALL OF THE THINGS FAVORABLE ABOUT THE
16 DEFENDANT AND HIS BACKGROUND WOULD BE CONSIDERED BY THE JURY
17 AND THE PEOPLE, ON THE OTHER HAND, WILL INTRODUCE EVIDENCE
18 OF AGGRAVATION, THINGS WHICH ARE BAD ABOUT HIM.

19 DO YOU UNDERSTAND? SO THE JURORS WILL HEAR ALL
20 OF THAT. THEN THEY MAKE A DETERMINATION, SHOULD IT BE LIFE
21 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR SHOULD IT
22 BE DEATH; DO YOU UNDERSTAND THAT?

23 (WHEREUPON, MR. HOPPER SHAKES HIS HEAD
24 UP AND DOWN.)

25 THE COURT: HAVE I MADE IT CLEAR?

26 MR. HOPPER: YES, SIR.

27 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT --

28 MR. HOPPER: NONE.

1 THE COURT: -- ANYTHING SO FAR?

2 NOW I WILL PROCEED TO ASK YOU VARIOUS QUESTIONS.
3 THE PURPOSE OF THESE QUESTIONS WILL BE TO ASCERTAIN WHAT YOUR
4 ATTITUDE IS TOWARD THE DEATH PENALTY IN CONNECTION WITH THE
5 VARIOUS POSSIBILITIES; DO YOU UNDERSTAND?

6 ALL RIGHT, NOW THE FIRST QUESTION I HAVE TO ASK
7 YOU IS: DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
8 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
9 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

10 MR. HOPPER: NO, SIR.

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1 THE COURT: NOW, DO YOU HAVE ANY OPINION REGARDING THE
2 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
3 MURDER, EVEN IF THE PROSECUTION DOES NOT PROVE MURDER IN THE
4 FIRST DEGREE?

5 MR. HOPPER: COULD YOU REPEAT THAT, PLEASE?

6 THE COURT: YES. DO YOU HAVE ANY OPINION REGARDING
7 THE DEATH PENALTY WHICH WOULD CAUSE YOU TO VOTE FOR FIRST
8 DEGREE MURDER, EVEN IF THE PROSECUTION HAD NOT PROVEN MURDER
9 IN THE FIRST DEGREE?

10 MR. HOPPER: NO, SIR.

11 THE COURT: ALL RIGHT. NOW, DO YOU HAVE ANY OPINION
12 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
13 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
14 SPECIAL CIRCUMSTANCES ALLEGED IN THIS CASE?

15 MR. HOPPER: NO, SIR.

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

22 MR. HOPPER: NO.

23 THE COURT: NEXT, DO YOU HAVE SUCH AN OPINION CONCERNING
24 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
25 WITHOUT POSSIBILITY OF PAROLE, REGARDLESS OF THE CIRCUMSTANCES
26 THAT MAY BE PRESENTED AT THE PENALTY PHASE?

27 MR. HOPPER: NO, SIR.

28 THE COURT: THANK YOU. NOW, DO YOU UNDERSTAND THAT

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

5 MR. HOPPER: YES, SIR.

6 THE COURT: VERY WELL. GO AHEAD.

7 MR. BARENS: MR. HOPPER, I AM ARTHUR BARENS. I
8 REPRESENT THE DEFENDANT, JOE HUNT.

9 AND AT THIS POINT IN TIME, I AM GOING TO BE ASKING
10 YOU QUESTIONS SIMILAR TO WHAT THE JUDGE DID, TO DETERMINE
11 WHAT YOUR ATTITUDE IS TOWARD THE DEATH PENALTY.

12 I WANT YOU TO UNDERSTAND MR. HOPPER, THERE ARE
13 NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS. BUT RATHER, I
14 AM GOING TO BE ASKING YOU ABOUT YOUR ATTITUDES. THERE ARE
15 NO GOOD OR BAD ANSWERS.

16 I AM TRYING TO GET INSIGHT INTO YOUR OPINIONS
17 AND ATTITUDES. I WANT TO PREFACE BY REMARKING THAT YOU UNDER-
18 STAND THAT ALTHOUGH I AM DISCUSSING THE DEATH PENALTY WITH
19 YOU, THERE HAS BEEN NO EVIDENCE IN THIS CASE AND YOU DON'T
20 HAVE ANY REASON DO YOU, TO BELIEVE THAT MR. HUNT IS GUILTY
21 OF ANYTHING OR NOT GUILTY JUST BECAUSE HE IS CHARGED AND WE
22 ARE HERE AND WE ARE DISCUSSING THESE THINGS?

23 MR. HOPPER: NO, SIR.

24 MR. BARENS: OKAY. WHAT IS YOUR ATTITUDE ABOUT THE
25 DEATH PENALTY AS A GENERAL PROPOSITION, SIR?

26 MR. HOPPER: WELL, GIVEN THAT IF I AM TOLD TO DECIDE
27 THE CASE AND THEY FIND WHETHER A DEFENDANT OR NOT, YOU KNOW,
28 IS PROVED BEYOND A REASONABLE DOUBT AND THEN THE PROSECUTOR

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1 WANTS TO BRING ABOUT THAT PENALTY, MY OPINION IS THAT IT WOULD
2 BE ONE OF FOLLOWING THE LAW, I WOULD IMAGINE.

3 AND I WOULD JUST LISTEN TO BOTH SIDES OF COUNSEL.
4 AS FAR AS THE DEATH PENALTY, I DON'T HAVE A FEELING ONE WAY
5 OR THE OTHER ABOUT IT BECAUSE I HAVE NEVER REALLY GIVEN IT
6 SO MUCH CONCERN AS A MORAL ISSUE.

7 MR. BARENS: I SEE. WOULD YOU UNDERSTAND THAT THERE
8 ARE TWO POSSIBLE DECISIONS YOU COULD BRING BACK, IF WE GET
9 TO THE PENALTY PHASE? ONE IS LIFE WITHOUT POSSIBILITY OF
10 PAROLE AND THE OTHER IS DEATH IN THE GAS CHAMBER. DO YOU
11 UNDERSTAND THAT YOU AS JURORS, DURING THE PENALTY PHASE,
12 WOULD HAVE BOTH OF THOSE AVAILABLE?

13 MR. HOPPER: YES.

14 MR. BARENS: DO YOU UNDERSTAND THAT THE LAW DOESN'T
15 IMPOSE THE DEATH PENALTY FOR ANY OFFENSE? THERE IS NO
16 MANDATORY DEATH PENALTY FOR ANY CONDUCT IN CALIFORNIA BUT
17 RATHER, IT IS A DECISION MADE BY JURORS.

18 MR. HOPPER: I DIDN'T KNOW THAT.

19 MR. BARENS: OKAY. THE JUDGE ULTIMATELY, IF WE EVER GET
20 TO THAT, WILL INSTRUCT YOU IN THE CHOICES AND THERE IS NOTHING
21 AUTOMATIC, ONE WAY OR ANOTHER.

22 IT IS A DECISION, GIVEN THE EVIDENCE IN MITIGATION
23 AND AGGRAVATION, AS HIS HONOR EXPLAINED, THAT YOU AS JURORS
24 HAVE TO MAKE. WHAT I AM LOOKING FOR, ARE YOUR ATTITUDES THAT
25 WOULD HELP YOU MAKE A DECISION, ONE AS AGAINST THE OTHER.

26 GIVEN THE CHOICE BETWEEN LIFE WITHOUT POSSIBILITY
27 OF PAROLE AND THE DEATH PENALTY, LET'S SAY THOSE ARE THE TWO
28 CHOICES, ASSUMING THAT YOU HEARD THE CASE AND YOU WERE

1 CONVINCED BEYOND A REASONABLE DOUBT THAT A MURDER IN THE FIRST
2 DEGREE HAD OCCURRED DURING THE COMMISSION OF A ROBBERY, WHICH
3 WOULD CONSTITUTE A SPECIAL CIRCUMSTANCE THAT HIS HONOR
4 REFERRED TO, ENABLING THE PEOPLE TO REQUEST THE DEATH PENALTY.

5 AS YOU SIT THERE TODAY, WOULD YOU HAVE A PREFERENCE
6 TO VOTE EITHER FOR THE DEATH PENALTY OR LIFE WITHOUT
7 POSSIBILITY OF PAROLE?

8 MR. HOPPER: DO I HAVE A PREFERENCE?

9 MR. BARENS: YES. WOULD YOU BE LEANING ONE WAY OR
10 ANOTHER, IS MAYBE A BETTER WAY TO PUT IT.

11 MR. HOPPER: YES I WOULD.

12 MR. BARENS: WHAT WOULD YOUR PREFERENCE BE?

13 MR. HOPPER: IT WOULD BE TOWARD THE DEATH PENALTY.

14 MR. BARENS: AND COULD YOU EXPLAIN WHY THAT WOULD BE
15 YOUR PREFERENCE?

16 MR. HOPPER: WELL, AMONGST THE FACT THAT SPECIAL
17 CIRCUMSTANCES THAT ARE INVOLVED -- BEING IF A GUY IS GOING
18 TO YOU KNOW, HOLD UP A STORE, WELL THAT SHOULD BE HIS GOAL
19 BECAUSE HE WANTS THE MONEY.

20 BUT IN ORDER TO GO A STEP FURTHER AND TO KILL
21 THE WITNESSES WOULD BE, YOU KNOW, I WOULD SUSPECT IT WOULD
22 BE REASON ENOUGH IF CONVICTED BEYOND A REASONABLE DOUBT, TO
23 SUBDUE THE LIFE WITHOUT POSSIBILITY OF PAROLE AND GO FOR THE
24 OTHER ALTERNATIVE.

25 MR. BARENS: I APPRECIATE THAT, MR. HOPPER. IF YOU
26 FEEL IN ANY INSTANCE WHERE YOU HAD A DEFENDANT WHO, IT HAD
27 BEEN PROVEN TO YOU, COMMITTED A FIRST DEGREE MURDER WHERE
28 HE WAS COMMITTING A ROBBERY OR TRYING TO GET PROPERTY OR MONEY

1 OR SOMETHING FOR HIS PERSONAL GAIN, THAT IN EACH OF THOSE
2 INSTANCES, THAT THE DEFENDANT SHOULD RECEIVE THE DEATH PENALTY?

3 MR. HOPPER: CAN YOU REPEAT THAT ONE MORE TIME?

4 MR. BARENS: SURE. IF WE HAD A CASE WHERE YOU AS A
5 JUROR, WERE CONVINCED BEYOND A REASONABLE DOUBT THAT A
6 DEFENDANT COMMITTED A FIRST DEGREE MURDER DURING THE COMMISSION
7 OF A ROBBERY OR A BURGLARY OR SOMETHING WHERE HE WAS GETTING
8 FINANCIAL GAIN, LET'S SAY, PROFIT MOTIVE, MONEY, JEWELS, OR
9 SOMETHING OF THAT NATURE, WOULD YOU FEEL THAT THAT DEFENDANT
10 IN THAT INSTANCE, SHOULD ALWAYS RECEIVE THE DEATH PENALTY?

11 MR. HOPPER: IF THEY COMMITTED MURDER WHILE DOING
12 ANOTHER CRIME?

13 MR. BARENS: YES, SIR.

14 MR. HOPPER: YES, SIR.

15 MR. BARENS: WOULD YOU FEEL THAT I WOULD HAVE A TOUGHER
16 JOB THAN THE PEOPLE OF THE STATE WOULD, TO CONVINCING YOU THAT
17 THE GUY SHOULDN'T GET THE DEATH PENALTY? WOULD YOU BE
18 LEANING PRETTY HEAVILY IN EVERY INSTANCE, LIKE YOU HAVE SAID,
19 TOWARD THE DEATH PENALTY UNDER THOSE FACTS?

20 MR. HOPPER: WELL, WE ARE GOING TO GO BACK TO BEYOND
21 A REASONABLE DOUBT. ALL RIGHT.

22 MR. BARENS: LET'S ASSUME, MR. HOPPER, THAT IT IS
23 DEFINITELY BEYOND A REASONABLE DOUBT AT THAT PARTICULAR TIME.

24 MR. HOPPER: THERE SHOULD BE NO PROBLEM DECIDING AGAINST
25 THAT.

26 MR. BARENS: SO IN EACH INSTANCE, YOU WOULD VOTE FOR
27 THE DEATH PENALTY?

28 MR. HOPPER: YES, SIR.

1 MR. BARENS: AND NOW MR. HOPPER, THERE COULD BE AN
2 OCCASION EVEN UNDER THOSE CIRCUMSTANCES, WHERE THE JUDGE
3 WOULD SAY TO YOU WELL MR. HOPPER, WOULD YOU BE WILLING TO
4 CONSIDER THE DEFENDANT'S AGE OR WHETHER OR NOT HE HAD A PRIOR
5 CRIMINAL BACKGROUND AND I DON'T THINK THOSE KINDS OF THINGS
6 WOULD MAKE ANY DIFFERENCE TO YOU, WOULD THEY?

7 THE COURT: WELL, LET'S PUT IT A DIFFERENT WAY.

8 SUPPOSE THE JUDGE WOULD HAVE INSTRUCTED YOU ON
9 THE PENALTY PHASE THAT YOU HAVE GOT TO TAKE INTO CONSIDERATION
10 THE AGE, THE PREVIOUS CRIMINAL BACKGROUND OF THE DEFENDANT
11 IF ANY, ANY PRIOR CONVICTIONS AND ALL FACTS WHICH THE COURT
12 TELLS YOU THAT YOU MAY TAKE INTO CONSIDERATION, HIS BACKGROUND
13 AND THE ENVIRONMENT WHERE HE CAME FROM AND ALL OF THE FACTS
14 WHICH WOULD MITIGATE OR EXTENUATE THE CRIME WHICH HAS BEEN
15 COMMITTED.

16 NOW, THE PEOPLE AS I HAVE TOLD YOU, TOO, HAVE
17 A RIGHT TO SHOW THAT HE HAD DONE OTHER THINGS OR MAYBE BAD
18 THINGS ABOUT HIM TO AGGRAVATE IT. YOU WOULD LISTEN TO ALL
19 OF THAT FIRST, WOULD YOU NOT, BEFORE THE DECISION AND TAKE
20 THAT INTO CONSIDERATION?

21 MR. HOPPER: YES.

22 THE COURT: YOU WOULD LISTEN TO ALL OF THE EVIDENCE
23 ON THE PENALTY PHASE BEFORE YOU MAKE UP YOUR MIND AS TO WHETHER
24 IT SHOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE OR THE DEATH
25 PENALTY? THAT IS THE LAW. YOU WOULD FOLLOW THAT LAW?

26 MR. HOPPER: YES, SIR.

27 THE COURT: YOU WOULDN'T AUTOMATICALLY GIVE HIM THE
28 DEATH PENALTY WITHOUT HEARING ANYTHING ELSE?

1 MR. HOPPER: NO, SIR. YOU WOULD LISTEN TO HIS AGE AND
2 WHERE HE COMES FROM AND WHAT WERE THE CIRCUMSTANCES WHY HE
3 DECIDED TO DO ANYTHING BEYOND THE INITIAL CRIME.

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1 THE COURT: WELL, YOU WILL LISTEN TO ALL THE EVIDENCE
2 IN THE CASE?

3 MR. HOPPER: YES.

4 THE COURT: ON THE GUILT PHASE AS WELL AS ON THE
5 PENALTY PHASE?

6 MR. HOPPER: YES, SIR.

7 BUT THE DEFENDANT'S ATTORNEY WAS SAYING -- SAYING
8 THAT HE WAS ALREADY PROVEN GUILTY BEYOND A REASONABLE DOUBT
9 THAT EVERYTHING WAS DONE AND IT IS JUST UP TO THE DEATH
10 PENALTY PHASE AND WE WERE DECIDING THAT, AFTER HE HAS ALREADY
11 BEEN FOUND GUILTY, THAT PENALTY WE ARE DECIDING ON NOW AND
12 WE ARE GOING TO TAKE INTO, ALL OF THESE OTHER CONSIDERATIONS,
13 OF COURSE.

14 BUT DOESN'T THE LEGISLATURE SAY IF SOMEONE IS
15 FOUND GUILTY OF MURDER UNDER SPECIAL CIRCUMSTANCES THAT WE
16 HAVE THAT OPTION OF LIFE IMPRISONMENT OR THE DEATH PENALTY,
17 RIGHT?

18 MR. BARENS: YOU ABSOLUTELY HAVE THE OPTION, MR.
19 HOPPER, AND WHAT I AM LOOKING FOR, MR. HOPPER, AND YOU
20 CORRECTLY STATE THE POSITION, THAT GIVEN THE OPTION, AFTER
21 YOU HAVE FOUND THE PERSON GUILTY OF MURDER IN THE FIRST
22 DEGREE DURING A ROBBERY, LET'S SAY, ISN'T IT YOUR STATE OF
23 MIND THAT IN EACH OF THOSE INSTANCES, YOU WOULD VOTE FOR
24 THE DEATH PENALTY NO MATTER WHAT ELSE WAS GOING ON?

25 MR. HOPPER: THAT IS MY STATE OF MIND.

26 BUT IF A PERSON IS 70 YEARS OLD AND THEY DID ALL
27 OF THIS AND A PERSON IS 20 YEARS AND THE PERSON WHO WAS 20
28 CAME FROM A GREAT BACKGROUND AND THE ONE WHO WAS 80 YEARS OLD

1 CAME FROM A HARD LIFE, I DON'T THINK YOU SHOULD BE ABLE TO
2 JUDGE FROM A PERSON'S LIFE, WELL, THIS GUY BECAUSE HE IS 80
3 YEARS OLD AND HE AIN'T GOT MUCH TIME LEFT AND THIS GUY IS 20
4 YEARS OLD AND HE HAS A LOT OF LIFE AHEAD OF HIM AND WE SHOULDN'T
5 SPARE HIS LIFE AS COMPARED TO THE OTHER PERSON'S.

6 THE COURT: WHAT COUNSEL WAS TRYING TO FIND OUT FROM
7 YOU IS WHETHER UNDER NO CIRCUMSTANCES WOULD YOU VOTE FOR LIFE
8 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. UNDER NO
9 CIRCUMSTANCES, WOULD YOU VOTE FOR ANYTHING BUT THE DEATH
10 PENALTY, WHATEVER THE CIRCUMSTANCES MAYBE BE?

11 MR. HOPPER: NO.

12 MR. BARENS: THANK YOU, MR. HOPPER.

13 THE DEFENSE WOULD HAVE A MOTION, YOUR HONOR.

14 THE COURT: WELL, HE SAID HE WOULD NOT VOTE FOR THE
15 DEATH PENALTY UNDER ALL CIRCUMSTANCES WHATEVER.

16 MR. HOPPER: I THINK THE JARGON IS GETTING ME A LITTLE
17 BIT MIXED UP HERE. I AM STANDING ON --

18 MR. BARENS: I MAY HAVE MISUNDERSTOOD, YOUR HONOR, AND
19 LET ME SEE IF I CAN CLARIFY.

20 THE COURT: GO AHEAD.

21 MR. BARENS: WOULD YOU FINISH YOUR STATEMENT?

22 MR. HOPPER: OKAY. I JUST WANTED TO SAY, ON THE PENALTY
23 PHASE, NATURALLY, I AM GOING TO LISTEN TO ARGUMENT ABOUT A
24 PERSON'S FUTURE, THE AGE AND BACKGROUND, OKAY, BUT WE HEARD
25 IN THE EARLIER PHASE OF THE CRIMINAL CASE THAT THIS DEFENDANT
26 WAS FOUND BEYOND A REASONABLE DOUBT TO HAVE COMMITTED THE
27 MURDER UNDER SPECIAL CIRCUMSTANCES, RIGHT?

28 MR. BARENS: YES, SIR.

5-3

1 MR. HOPPER: WELL, MY OPINION IS IF A PERSON IS FOUND
2 GUILTY UNDER SPECIAL CIRCUMSTANCES, HE IS WORTHY OF THE DEATH
3 PENALTY.

4 MR. BARENS: IN EVERY INSTANCE?

5 MR. HOPPER: NO, EVERY INSTANCE.

6 MR. BARENS: NOW, YOUR HONOR, I BELIEVE THE WITNESS --
7 THE JUROR HAS MADE A DEFINITIVE STATEMENT.

8 THE COURT: LET THE D.A. HAVE AN OPPORTUNITY.

9 MR. BARENS: I WILL RESERVE FURTHER QUESTIONING AT THE
10 MOMENT, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MR. BARENS: THANK YOU.

13 THE COURT: LET'S SEE IF WE CAN GET IT CLEAR.

14 I TOLD YOU ON THE PENALTY PHASE YOU WOULD LISTEN
15 TO EVERYTHING THAT THE DISTRICT ATTORNEY'S OFFICE WILL TELL
16 YOU ABOUT HOW BAD HE IS, EVERYTHING THE DEFENSE WILL TELL YOU
17 HOW GOOD HE IS.

18 MR. HOPPER: RIGHT.

19 THE COURT: HIS AGE, HIS BACKGROUND, HIS LACK OF CRIMINAL
20 RECORD AND EVERYTHING ELSE. AND THEN YOU ARE CALLED UPON TO
21 DETERMINE WHETHER IT SHOULD BE THE DEATH PENALTY OR LIFE
22 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

23 ARE YOU OF THE STATE OF MIND THAT YOU WILL ALWAYS
24 VOTE FOR THE DEATH PENALTY?

25 MR. HOPPER: OKAY, YOU SAID ONE THING RIGHT THERE THAT
26 MADE ME THINK OTHERWISE.

27 THE COURT: YES?

28 MR. HOPPER: THAT WAS PRIOR CRIMINAL RECORD.

5-4
1 THE COURT: THAT IS CORRECT, THE ABSENCE OF IT.

2 MR. HOPPER: AND THAT IS ONE THING THAT WASN'T -- I
3 WASN'T THINKING ABOUT.

4 THE COURT: ALL RIGHT, THE COURT WILL GIVE YOU AN
5 INSTRUCTION AT THE CONCLUSION OF THE PENALTY PHASE AS TO WHAT
6 YOU SHOULD TAKE INTO CONSIDERATION, ALL OF THE THINGS, AND
7 WHAT COUNSEL WANTS TO KNOW IS --

8 MR. HOPPER: OKAY.

9 THE COURT: -- YOU WON'T PAY ANY ATTENTION TO THAT BUT
10 YOU WILL VOTE FOR THE DEATH PENALTY?

11 MR. HOPPER: OKAY, I WILL PAY ATTENTION TO EVERYTHING,
12 OKAY.

13 I JUST FELT REAL STRONGLY ABOUT A PERSON COMMITTING
14 MURDER UNDER SPECIAL CIRCUMSTANCES.

15 MR. BARENS: WHAT ABOUT THIS GUY, THAT IS THE GUY WE
16 ARE TALKING ABOUT, I WANT TO KNOW BECAUSE I DO THINK THAT I
17 KNOW ALREADY, THIS PERSON THAT YOU FOUND HAS COMMITTED A
18 MURDER IN THE COURSE OF -- DURING A ROBBERY, THAT EVERY TIME
19 YOU ARE GOING TO VOTE THE DEATH PENALTY FOR THAT PARTICULAR
20 GUY, NO MATTER WHAT ELSE IS GOING FOR HIM?

21 MR. HOPPER: THAT'S CORRECT BUT --
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5-5

1 THE COURT: NO MATTER WHAT YOU HEAR ON THE DEATH
2 PENALTY PHASE?

3 MR. HOPPER: NOW WE ARE GETTING DOWN TO "NO MATTER."

4 LIKE I SAID, THIS IS AN IMPORTANT THING AND PRIOR
5 CRIMINAL RECORD, I WOULD SAY WOULD WEIGH VERY HEAVY -- IT
6 WOULD WEIGH VERY HEAVY IN MY OPINION OF DECIDING ONE WAY OR
7 THE OTHER.

8 THE COURT: WHAT YOU MEAN IS, ABSENT ANY CIRCUMSTANCES
9 LIKE THAT, JUST RIGHT FROM THE BAT, WITHOUT ANY OTHER EVIDENCE
10 COMING IN, YOU WOULD VOTE FOR THE DEATH PENALTY FOR ANY
11 MAN WHO COMMITS A MURDER IN THE COURSE OF A ROBBERY, IS THAT
12 IT?

13 MR. HOPPER: YES, SIR.

14 THE COURT: FORGETTING EVERYTHING ELSE, NOT TAKING ANY-
15 THING ELSE INTO CONSIDERATION?

16 MR. HOPPER: OKAY. I WOULD TAKE INTO CONSIDERATION A
17 PERSON'S PRIOR CRIMINAL RECORD.

18 THE COURT: IN DETERMINING WHETHER HE SHOULD BE GIVEN
19 THE DEATH PENALTY?

20 MR. HOPPER: RIGHT.

21 BUT AS FAR AS AGE OR UPBRINGING, YOU KNOW, I DON'T
22 THINK THOSE WEIGH VERY HEAVILY.

23 BUT THE PRIOR CRIMINAL RECORD, IT WOULD BE SOME-
24 THING THAT I WOULD WEIGH HEAVY, I WOULD CONSIDER.

25 THE COURT: ALL RIGHT, LET MR. WAPNER ASK QUESTIONS.
26 YOU WANT TO ASK ANY QUESTIONS?

27 MR. WAPNER: I HAVE A FEW.

28 CAN YOU GIVE ME A LITTLE MORE EXPLANATION OF THAT

5-6
1 EXAMPLE THAT YOU GAVE, LIKE THE GUY WHO WAS 20 AS OPPOSED TO
2 THE GUY WHO WAS 80? CAN YOU EXPLAIN IT?

5A
3 MR. HOPPER: WELL, I THINK THE PROSECUTOR AND
4 DEFENSE --

5 THE COURT: EIGHTY STRIKES TOO CLOSE HERE. SEVENTY,
6 HE SAID.

7 MR. HOPPER: OKAY, WELL I THINK WE WERE TALKING ABOUT
8 IN THE PENALTY PHASE, TALKING ABOUT, OKAY, WE ARE GOING TO
9 GIVE OUT EVERYTHING WHY THIS GUY SHOULDN'T GET THE DEATH
10 PENALTY OR PERSUADE THE JURY NOT TO, AND THE PROSECUTOR WOULD
11 TRY AND GIVE ARGUMENT WHY, BUT I WOULDN'T REALLY TAKE INTO
12 CONSIDERATION, BECAUSE I THINK THE JUDGE WAS MENTIONING AGE
13 AND BACKGROUND, BECAUSE TO SHOW PARTIALITY FOR THE DEATH
14 PENALTY WHERE SOMEBODY HAS SUPPOSEDLY HAD 40 YEARS OF GOOD
15 LIFE TO LIVE OR A GUY THAT IS CLOSE TO 65, WHILE HE IS CLOSE
16 TO DYING ANYWAYS, THAT IS NOT SOMETHING I AM GOING TO WEIGH
17 IN EFFECT, "WELL, THIS GUY HAS A LIFE TO LIVE, SO LET'S GIVE
18 HIM A CHANCE TO LIVE IT OUT IN PRISON," I WOULDN'T THINK ABOUT
19 SOMETHING, THAT HE AIN'T GOT MUCH LONGER TO LIVE, SO GIVE HIM
20 THE DEATH PENALTY OR THIS YOUNG MAN HAS A LOT OF LIFE TO LIVE
21 SO LET'S LET HIM LIVE IT OUT, THAT TYPE OF DEAL. DO YOU
22 UNDERSTAND WHAT I AM SAYING?

23 MR. WAPNER: SO WHAT YOU ARE SAYING IS THAT AGE WOULD
24 NOT WEIGH VERY HEAVILY --

25 MR. HOPPER: NO, SIR.

26 MR. WAPNER: -- IN YOUR CONSIDERATION?

27 MR. HOPPER: NO, SIR.

28 MR. WAPNER: WHEN YOU GAVE THAT EXAMPLE, IT SOUNDS TO

1 ME LIKE THAT YOU WOULD AT LEAST BE PUTTING THINGS ON THE SCALE
2 IN TERMS OF WEIGHING ONE WAY OR THE OTHER, WHETHER SOMEBODY
3 SHOULD OR SHOULDN'T GET THE DEATH PENALTY; IS THAT A FAIR
4 STATEMENT?

5 MR. HOPPER: AGAIN, I DON'T THINK THAT WOULD -- I WAS
6 SAYING THAT IS NOT MAKING IT --

7 THE COURT: FORGET ABOUT AGE.

8 TAKE INTO CONSIDERATION ALL OF THE CIRCUMSTANCES,
9 EVERYTHING THAT MIGHT BE FAVORABLE ABOUT THE DEFENDANT DURING
10 HIS LIFETIME THAT WOULD COME BEFORE YOU, THAT YOU WOULD
11 CONSIDER ALL OF THAT BEFORE YOU GAVE HIM THE DEATH PENALTY
12 OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

13 MR. HOPPER: IT WOULD BE CONSIDERED, YES, SIR.

14 THE COURT: ALL RIGHT. I WANT YOU TO CONSIDER AGAIN
15 THE FOURTH QUESTION: DO YOU HAVE SUCH AN OPINION CONCERNING
16 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
17 IT AFTER A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE
18 WITH A FINDING OF SPECIAL CIRCUMSTANCE, REGARDLESS OF ANY EVIDENCE
19 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?
20 AND YOU SAID NO.

21 MR. HOPPER: I, OKAY, SIR.

22 THE COURT: IS THAT TRUE OR ISN'T IT TRUE?

23 MR. HOPPER: YES, WHEN YOU ARE ASKING ABOUT THE PENALTY
24 OF, THE DEATH PENALTY, I THOUGHT YOU WERE IMPLYING ABOUT
25 PRECONCEIVED, YES, THE DEATH PENALTY SHOULD HAPPEN TO EVERYBODY
26 BUT NOW THIS IS MY FIRST TIME I HAVE EVER BEEN EXPOSED TO
27 ANYTHING LIKE THIS WHERE I HAVE HAD TO THINK ABOUT THE DEATH
28 PENALTY AND WE ARE TALKING ABOUT THE LAW, BEING UNDER SPECIAL

1 CIRCUMSTANCES, IS THIS GUY A PERSON THAT WILL GET LIFE
2 IMPRISONMENT OR GET THE DEATH PENALTY? I HAVEN'T MADE UP MY
3 MIND BEFORE I CAME TO THE COURTROOM THAT ANYBODY WHO KILLS
4 OUGHT TO BE KILLED, I NEVER HAD THOUGHT MUCH ABOUT IT. IT
5 IS A MORAL QUESTION THAT HAS BEEN IN SOCIETY FOR MANY YEARS
6 BUT I NEVER -- I DIDN'T PONDER OVER IT.

7 BUT WHEN I CAME IN HERE AND WE WERE TALKING ABOUT
8 A PERSON THAT IS FOUND GUILTY BEYOND A REASONABLE DOUBT AND
9 MURDER AND SPECIAL CIRCUMSTANCES, MURDER IN THE FIRST DEGREE
10 AND I SAID TO THE DEFENSE ATTORNEY, I BELIEVE THAT THEY SHOULD
11 GET THE DEATH PENALTY BECAUSE THAT WAS MY OPINION. BUT I GUESS
12 QUESTION NUMBER 4, I GUESS I DIDN'T UNDERSTAND QUESTION
13 NUMBER 4 WHEN YOU ASKED ABOUT MY OPINION.

14 THE COURT: YOU HAVE AN OPINION AS TO THE DEATH PENALTY
15 THAT IT SHOULD BE GENERALLY IMPOSED; IS THAT RIGHT?

16 MR. HOPPER: I GUESS I JUST FOUND THAT OUT NOW, YES.

17 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
18 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
19 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE
20 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

21 MR. HOPPER: THAT WORD "AUTOMATICALLY" IS PRETTY STRONG.

22 ALSO, LIKE I SAID, I WOULD TAKE INTO CONSIDERATION --

23 THE COURT: WOULD YOU DISREGARD EVERYTHING AND WOULD
24 YOU AUTOMATICALLY DO THAT?

25 MR. HOPPER: I DON'T SEE HOW WE CAN DISREGARD EVERYTHING
26 AND AUTOMATICALLY SENTENCE SOMEBODY TO THE DEATH PENALTY.

27 THE COURT: THEN YOU WOULD NOT AUTOMATICALLY SENTENCE
28 SOMEONE TO THE DEATH PENALTY?

1 MR. HOPPER: NO.

2 IT WOULD SEEM LIKE YOU ARE MIXING ME UP SOMETIMES.

3 MR. WAPNER: LET ME SEE IF I CAN TRY TO CLARIFY IT.

4 SOMETIMES I ASK QUESTIONS THAT I THINK MAKE IT MORE CLEAR AND
5 IT TURNS OUT TO MAKE IT MORE MUDDY.

6 BUT AS FAR AS THE QUESTION OF THE DEATH PENALTY,
7 THE LAW IN CALIFORNIA IS THAT NOT ALL MURDERS QUALIFY A CASE
8 FOR THE DEATH PENALTY.

9 THE COURT: I TOLD HIM ALL OF THAT. HE KNOWS THAT.
10 LET'S GO ON FROM THERE.

11 MR. WAPNER: I UNDERSTAND YOU TOLD HIM THAT BUT I AM
12 NOT SURE THAT IT NECESSARILY SUNK IN SO I AM TRYING TO START
13 FROM THE BEGINNING.

14 DO YOU UNDERSTAND THAT IN THIS PARTICULAR CASE
15 YOU WON'T GET TO THE QUESTION OF THE DEATH PENALTY OR LIFE
16 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE UNLESS THE JURY
17 HAS DECIDED THAT THERE WAS A FIRST DEGREE MURDER AND THAT IT
18 HAPPENED DURING THE COURSE OF A ROBBERY?

19 MR. HOPPER: I UNDERSTAND THAT, YES.
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6-1
1 MR. WAPNER: THEN THE NEXT QUESTION IS, ONCE YOU KNOW
2 THAT, OKAY, THAT A MURDER HAS BEEN COMMITTED DURING THE COURSE
3 OF A ROBBERY AND RIGHT NOW WE ARE ASKING YOU THESE QUESTIONS,
4 YOU DON'T KNOW WHAT THE FACTS OF THE CASE ARE, RIGHT?

5 MR. HOPPER: NO, SIR.

6 MR. WAPNER: DO YOU UNDERSTAND THAT THERE CAN BE A
7 DIFFERENCE BETWEEN FACTUAL SITUATIONS WHERE MURDERS MIGHT
8 HAPPEN DURING ROBBERIES?

9 MR. HOPPER: WOULD YOU REPEAT THAT, PLEASE?

10 MR. WAPNER: I WILL TRY TO ASK IT IN A DIFFERENT WAY.
11 DO YOU UNDERSTAND THAT THERE MIGHT BE SITUATIONS WHERE A PERSON
12 WOULD COMMIT A ROBBERY AND KILL SOMEONE, THAT MIGHT BE A LOT
13 DIFFERENT FROM OTHER SITUATIONS WHERE SOMEONE MIGHT COMMIT
14 A ROBBERY AND KILL SOMEONE?

15 IN OTHER WORDS, THE FACTS OF EACH CASE WOULD BE
16 DIFFERENT?

17 MR. HOPPER: YES. I UNDERSTAND THAT.

18 MR. WAPNER: OKAY. SO THAT FOR EXAMPLE, LET'S SAY THAT
19 THERE IS A GUY AND HE IS KIND OF DOWN ON HIS LUCK. HE HAS
20 NOT BEEN ABLE TO GET A JOB. HE DOESN'T HAVE ANY MONEY. HE
21 HAS NOT BEEN ABLE TO GET ANY MONEY IN ANY OTHER WAY, SO HE
22 DECIDES THAT HE WILL TAKE A GUN AND GO DOWN THE STREET AND
23 THE FIRST PERSON THAT HE SEES, HE IS GOING TO ROB THEM.

24 AND HE TAKES THE GUN AND HE ROBS THE FIRST PERSON
25 THAT HE SEES. AND THE GUY HAS ONLY -- THE GUY GIVES HIM SOME
26 MONEY AND MAYBE GIVES HIM A LITTLE BIT OF A HASSLE.

27 DURING THE COURSE OF THAT, HIS GUN GOES OFF AND
28 THE PERSON --

6-2
1 MR. BARENS: OBJECTION TO THE HYPOTHETICAL, YOUR HONOR.

2 MR. WAPNER: I WILL REPHRASE IT. DURING THE COURSE

3 OF --

4 THE COURT: LET ME POINT OUT WHAT PEOPLE V. FIELDS

5 SAYS:

6 "THE COURT HAS HELD THAT THE TRIAL
7 COURT IN CAPITAL CASES MAY PROPERLY PROHIBIT
8 VOIR DIRE WHICH SEEKS TO ASCERTAIN A JUROR'S
9 VIEWS ON THE DEATH PENALTY IN ACTUAL OR
10 HYPOTHETICAL CASES NOT BEFORE THEM."

11 MR. WAPNER: I AM NOT TRYING SO MUCH TO SEEK HIS VIEWS
12 AS TO A PARTICULAR CASE, AS MUCH AS TO TRY TO ILLUSTRATE THE
13 POSSIBILITY THAT THE FACTUAL SCENARIOS CAN DIFFER.

14 MR. BARENS: IT IS MISLEADING. THERE WAS A
15 SUGGESTION OF SELF-DEFENSE IN THE HYPOTHETICAL. THERE WAS
16 A SUGGESTION OF ACCIDENT IN THE HYPOTHETICAL.

17 THE COURT: I WILL SUSTAIN THE OBJECTION.

18 MR. BARENS: THANK YOU, YOUR HONOR.

19 MR. WAPNER: MR. HOPPER, LET'S JUST TAKE THE FACTS A
20 LITTLE BIT. THE PERSON GOES OUT AND HE GOES OUT ON THE
21 STREET TO ROB SOMEONE AND HE TAKES A GUN AND HE ROBS THE FIRST
22 PERSON THAT HE SEES.

23 AND FOR WHATEVER REASON, AFTER HE ROBS THEM, HE
24 SAYS OKAY, THAT HE IS GOING TO SHOOT THE GUY. HE SHOOTS HIM
25 AND HE KILLS HIM.

26 ALL RIGHT. THAT IS ONE FACTUAL SCENARIO. ON
27 THE OTHER SIDE OF THE COIN, YOU COULD -- WELL, LET ME ASK
28 YOU A QUESTION ABOUT THAT.

6-3
1 CAN YOU UNDERSTAND THAT THAT MIGHT BE A SPECIAL
2 CIRCUMSTANCES CASE, THAT IS MURDER IN THE COURSE OF A ROBBERY?

3 MR. HOPPER: RIGHT. AND ALSO THE OTHER SIDE OF THE
4 COIN, IT COULD BE THAT THE GUY WAS UNARMED, THE ROBBER AND
5 HE MAY HAVE GONE OUT TO ROB SOMEBODY AND THE VICTIM MAY HAVE
6 HAD A GUN. AND THE VICTIM MAY HAVE GOT SHOT BY HIS OWN GUN.

7 THE COURT: NO, NO.

8 MR. WAPNER: BUT, THAT IS NOT THE ONE -- I JUST WANTED
9 YOU TO UNDERSTAND THE HYPOTHETICAL THAT I GAVE YOU, THAT I
10 ASKED YOU.

11 CAN YOU UNDERSTAND THAT THAT MIGHT POSSIBLY BE
12 A MURDER IN THE COURSE OF A ROBBERY, MIGHT BE A SPECIAL
13 CIRCUMSTANCE?

14 MR. HOPPER: YES.

15 MR. WAPNER: OKAY. AND ON THE OTHER HAND, SOMEONE WHO
16 DECIDES THAT HE IS GOING TO ROB A JEWELRY STORE AND HE GETS
17 PLANS FOR THE JEWELRY STORE AND SPENDS A LOT OF TIME PLANNING
18 THIS AND ARMING HIMSELF AND GETTING THE PROPER EQUIPMENT AND
19 HE GOES TO THE JEWELRY STORE AND HE ROBS THE JEWELRY STORE
20 AND THERE IS ONLY ONE PERSON WORKING IN THERE AT THE TIME
21 AND HE DECIDES THAT NO ONE SHOULD BE LEFT TO IDENTIFY HIM
22 AND HE THEN SHOOTS THAT PERSON AND KILLS THEM.

23 DO YOU UNDERSTAND THAT THAT IS A MURDER IN THE
24 COURSE OF A ROBBERY, TOO?

25 MR. HOPPER: YES.

26 MR. WAPNER: OKAY. IS THERE ANY DIFFERENCE IN YOUR
27 MIND IN THOSE TWO FACTUAL SCENARIOS?

28 MR. HOPPER: NO.

-4
1 MR. WAPNER: OKAY. YOU WOULD TREAT THEM BOTH THE SAME?

2 MR. HOPPER: YES.

3 THE COURT: I DON'T THINK WE NEED TO GO MUCH FURTHER.

4 MR. WAPNER: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
6 BE EXCUSED, MR. HOPPER. YOU GO TO THE JURY ASSEMBLY ROOM
7 AND YOU TELL THEM THAT YOU WILL BE AVAILABLE FOR SOME OTHER
8 CASE. THANK YOU VERY MUCH FOR BEING HERE AS A WITNESS AND
9 WAITING AROUND THIS LONG.

10 (PROSPECTIVE JUROR HOPPER EXITED THE
11 COURTROOM.)

12 MR. BARENS: THE DEFENSE WOULD LIKE TO RESPECTFULLY
13 THANK HIS HONOR.

14 THE COURT: ALL RIGHT.
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6-5
1 (PROSPECTIVE JUROR WILLIE HUBBARD
2 ENTERED THE COURTROOM.)

3 THE COURT: SORRY TO KEEP YOU WAITING, MR. HUBBARD.
4 WE HAVE TO TAKE THEM ONE AT A TIME.

5 YOU WERE HERE AT THE TIME THAT I GENERALLY TOLD
6 ALL OF THE JURORS WHAT THE CASE IS ALL ABOUT?

7 MR. HUBBARD: YES.

8 THE COURT: YES. OH, INCIDENTALLY, BEFORE I ASK YOU
9 ANY FURTHER QUESTIONS, DID YOU HEAR ANYTHING AT ALL ABOUT
10 THIS CASE, EXCEPT WHAT I TOLD YOU WHEN YOU WERE ALTOGETHER
11 IN THE COURTROOM?

12 MR. HUBBARD: NO.

13 THE COURT: HAVE YOU READ ANYTHING OR HEARD ANYTHING
14 OR SEEN ANYTHING ON TELEVISION?

15 MR. HUBBARD: NO.

16 THE COURT: DID YOU TALK TO ANY OF THE OTHER JURORS,
17 PROSPECTIVE JURORS? DID YOU TALK TO THEM AT ALL ABOUT THE
18 CASE?

19 MR. HUBBARD: NO.

20 THE COURT: ALL RIGHT. VERY WELL. NOW, YOU KNOW THAT
21 I TOLD YOU IN OPEN COURT WHAT THE CASE WAS ALL ABOUT, THAT
22 THE DISTRICT ATTORNEY IS HERE AND THE DEFENDANT IS ACCUSED
23 OF THE CRIME OF MURDER IN THE FIRST DEGREE AND THAT THE CRIME
24 WAS COMMITTED DURING THE COURSE OF A ROBBERY.

25 DURING THE COURSE OF A ROBBERY, QUALIFIES THIS
26 CASE FOR THE DEATH PENALTY. IT IS NOT EVERY MURDER IN THE
27 FIRST DEGREE, WHEN SOMEBODY GOES OVER TO SOMEBODY AND SAYS,
28 "I DON'T LIKE YOU," AND SHOOTS THEM, THAT DOES NOT QUALIFY

1 FOR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

2 MR. HUBBARD: YES.

3 THE COURT: IT IS ONLY WHERE THERE ARE SPECIAL
4 CIRCUMSTANCES WHICH ATTEND THAT MURDER IN THE FIRST DEGREE
5 THAT THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE
6 THEN BECOMES THE CONSIDERATION.

7 (BRIEF PAUSE.)

8 THE COURT: I WAS AT THE POINT WHERE I TOLD YOU THAT
9 THE DISTRICT ATTORNEY IN THIS CASE HAS REQUESTED THE DEATH
10 PENALTY BECAUSE IT WAS MURDER IN THE FIRST DEGREE COMMITTED
11 DURING THE COURSE OF A ROBBERY. RIGHT?

12 AS I TOLD YOU, NOT EVERY MURDER CASE CALLS FOR
13 THE DEATH PENALTY WHERE THERE ARE SPECIAL CIRCUMSTANCES LIKE
14 IN THE COURSE OF A ROBBERY OR THE COURSE OF A KIDNAPPING OR
15 IN THE COURSE OF A RAPE OR IN THE COURSE OF A BURGLARY OR
16 IN THE COURSE OF TORTURE.

17 THOSE ARE INSTANCES WHERE THE LEGISLATURE HAS
18 SAID THAT THE DEATH PENALTY QUALIFIES IN THOSE CASES. DO
19 YOU UNDERSTAND THAT?

20 MR. HUBBARD: YES. I UNDERSTAND.

21 THE COURT: NOW, THE JURY WHO IS SELECTED IN THIS CASE
22 WILL ON THE GUILT PHASE, HAVE TO DETERMINE THE GUILT OR
23 INNOCENCE OF THE DEFENDANT. IF THEY FIND THE DEFENDANT GUILTY
24 OF MURDER IN THE FIRST DEGREE AND THEY MAKE A SPECIAL FINDING
25 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEN
26 THAT WOULD QUALIFY THE CASE FOR THE SECOND PHASE KNOWN AS
27 THE DEATH PENALTY PHASE WHERE THIS SAME JURY WOULD HEAR FURTHER
28 EVIDENCE, BOTH FROM THE PEOPLE AND FROM THE DEFENDANT.

1 THE DEFENDANT WILL PRODUCE EVIDENCE TO SHOW
2 REASONS WHY THE DEATH PENALTY SHOULD NOT BE IMPOSED, THINGS
3 THAT ARE FAVORABLE TO HIM, CIRCUMSTANCES WHICH ARE FAVORABLE
4 TO HIM. THOSE ARE CALLED THE MITIGATING CIRCUMSTANCES.

5 THE PEOPLE WILL TRY TO SHOW AGGRAVATING
6 CIRCUMSTANCES, REASONS WHY THE DEATH PENALTY SHOULD BE
7 IMPOSED BECAUSE THERE IS SOMETHING BAD IN HIS BACKGROUND AND
8 SO ON. YOU UNDERSTAND THAT?

9 MR. HUBBARD: UH-HUH.

10 THE COURT: ALL RIGHT. SO THERE ARE THOSE TWO PENALTY
11 PHASES.

12 ALL RIGHT. NOW, THESE ARE THE QUESTIONS THAT
13 I AM GOING TO ASK YOU. THEY ARE SIX IN NUMBER.

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. HUBBARD: NO I DON'T.

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

22 MR. HUBBARD: COULD YOU REPEAT THAT?

23 THE COURT: YES. DO YOU HAVE ANY OPINION REGARDING
24 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
25 MURDER, EVEN IF THE PEOPLE DO NOT PROVE MURDER IN THE FIRST
26 DEGREE?

27 MR. HUBBARD: HUH-UH, NO.

28 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING

1 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN
2 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
3 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

4 MR. HUBBARD: NO.

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

11 MR. HUBBARD: NO.

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

18 MR. HUBBARD: NO.

19 THE COURT: REGARDLESS OF ANY EVIDENCE THAT MAY BE
20 PRESENTED AT THE PENALTY PHASE?

21 MR. HUBBARD: NO.

22 THE COURT: ALL RIGHT. DO YOU UNDERSTAND THAT THE ISSUE
23 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND
24 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
25 YOU REACH THAT PHASE OF THE TRIAL?

26 MR. HUBBARD: I UNDERSTAND.

27 MR. BARENS: THE DEFENSE WILL PASS FOR CAUSE,
28 YOUR HONOR.

1 THE COURT: ALL RIGHT. ANY QUESTIONS?

2 MR. WAPNER: YES.

3 DO YOU HAVE ANY FEELINGS ABOUT THE DEATH PENALTY,
4 ONE WAY OR THE OTHER? DO YOU HAVE ANY FEELINGS ONE WAY OR
5 THE OTHER?

6 MR. HUBBARD: NO.

7 MR. WAPNER: HAVE YOU GIVEN IT ANY THOUGHT BEFORE YOU
8 WERE ASKED TO SIT AS A JUROR IN THIS CASE?

9 MR. HUBBARD: NO.

10 MR. WAPNER: ARE YOU THE KIND OF PERSON WHO CAN MAKE
11 A DETERMINATION AS TO WHAT THE APPROPRIATE PUNISHMENT SHOULD
12 BE?

13 MR. HUBBARD: I THINK I AM, YES.

14 MR. WAPNER: OKAY. DO YOU UNDERSTAND THAT IF WE GET
15 TO THAT PHASE OF THE TRIAL, THAT AS A JUROR, YOUR JOB WILL
16 BE TO RENDER YOUR OWN, INDIVIDUAL OPINION AS TO WHETHER THE
17 PUNISHMENT SHOULD BE DEATH OR LIFE WITHOUT POSSIBILITY OF
18 PAROLE?

19 MR. HUBBARD: RIGHT. I UNDERSTAND THAT.

20 MR. WAPNER: CAN YOU DO THAT?

21 MR. HUBBARD: YES.

22 MR. WAPNER: HAVE YOU READ OR HEARD OF ANY ARTICLES
23 MENTIONING ANYTHING ABOUT THE BILLIONAIRE BOYS CLUB OR
24 ANYTHING SUCH AS THAT?

25 MR. HUBBARD: NO.

26 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE.

27 THE COURT: ALL RIGHT. MR. HUBBARD, WE ARE IN THE
28 PROCESS AS YOU KNOW, OF GOING THROUGH ALL OF THESE PROSPECTIVE

1 JURORS AND ASKING THEM THE SAME QUESTIONS THAT YOU HAVE BEEN
2 ASKED. THIS WILL PROBABLY TAKE AT LEAST UNTIL DECEMBER 3RD.

3 SO, INSTEAD OF HAVING YOU WAIT AROUND AND COME
4 IN EVERY DAY, WHAT I WILL ASK YOU TO DO IS, COME BACK TO THE
5 JURY ASSEMBLY ROOM ON DECEMBER 3RD AT 10:30 A.M.

6 MEANTIME, DON'T READ ANYTHING ABOUT THE CASE OR
7 DISCUSS IT WITH ANYBODY.

8 MR. HUBBARD: ALL RIGHT.

9 THE COURT: THAT WILL BE DECEMBER 3RD IN THE JURY
10 ASSEMBLY ROOM.

11 MR. HUBBARD: OKAY.

12 THE COURT: AND IF BY ANY CHANCE, IT MIGHT TAKE LONGER,
13 WE HAVE GOT YOUR TELEPHONE NUMBER AND WE WILL CALL YOU IF
14 IT ISN'T THE 3RD.

15 MR. HUBBARD: OKAY.

16 THE COURT: THANK YOU VERY MUCH.

17 MR. WAPNER: COULD WE ASK MR. HUBBARD WHERE HE LIVES?

18 THE COURT: YES. WHERE DO YOU LIVE?

19 MR. HUBBARD: 3933 KENWAY AVENUE, LOS ANGELES.

20 MR. WAPNER: WE DIDN'T WANT THE EXACT ADDRESS, JUST
21 THE GENERAL PART OF THE COUNTY.

22 MR. HUBBARD: LOS ANGELES, THE CRENSHAW AREA.

23 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

24 (PROSPECTIVE JUROR HUBBARD EXITED
25 THE COURTROOM.)
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1 MR. WAPNER: YOUR HONOR, MAY WE HAVE ONE MOMENT BEFORE
2 THE NEXT JUROR COMES IN?

3 THE COURT: JUST WAIT A MINUTE.

4 MR. WAPNER: DIANE, JUST ASK HIM TO WAIT FOR HALF A
5 SECOND OUTSIDE.

6 CAN I JUST MAKE A RECORD, YOUR HONOR, THAT MR.
7 HUBBARD IS BLACK?

8 THE COURT: YES.

9 MR. WAPNER: THANK YOU.

10 MR. BARENS: THE DEFENSE FINDS THAT IRRELEVANT BUT --

11 THE COURT: WELL, IF HE WANTS TO MAKE A RECORD OF IT,
12 HE CAN MAKE A RECORD OF IT.

13 MR. BARENS: AND WE WILL MAKE A RECORD THAT THE GENTLEMAN
14 PRECEDING HIM WAS WHITE.

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

16 THE CLERK: READY?

17 MR. WAPNER: YES.

18 THE COURT: YES.

19 (PROSPECTIVE JUROR IBARRA ENTERS THE
20 COURTROOM.)

21 THE COURT: MR. IBARRA, WHERE DO YOU LIVE?

22 MR. IBARRA: THANK YOU.

23 THE COURT: WHERE DO YOU LIVE?

24 MR. IBARRA: THANK YOU, YOUR HONOR.

25 THE COURT: WHERE DO YOU LIVE?

26 MR. IBARRA: WILL YOU PLEASE REPEAT FOR ME?

27 THE COURT: YES. WHERE DO YOU LIVE?

28 MR. IBARRA: LOS ANGELES.

1 THE COURT: WHAT PART?

2 MR. IBARRA: WEST SIDE OF NORMANDIE, SOUTH NORMANDIE.

3 THE COURT: SOUTH NORMANDIE? ALL RIGHT.

4 WERE YOU HERE WHEN I EXPLAINED THE CASE WE ARE
5 ABOUT TO TRY, WERE YOU HERE WITH THE OTHER JURORS?

6 MR. IBARRA: YES, I DID.

7 THE COURT: DID YOU UNDERSTAND THAT?

8 MR. IBARRA: THE WHOLE THING?

9 THE COURT: DID YOU UNDERSTAND ABOUT THE CASE?

10 MR. IBARRA: WELL, THAT A MURDER WAS COMMITTED AND SOME
11 ROBBERY WAS DONE.

12 THE COURT: YES, VERY WELL. IN A LITTLE MORE DETAIL,
13 WHAT I TOLD YOU WAS IN THIS PARTICULAR CASE, THE DEFENDANT
14 IS CHARGED WITH MURDER IN THE FIRST DEGREE AND THAT THAT MURDER
15 WAS COMMITTED DURING THE COURSE OF A ROBBERY. YOU SEE, IT
16 IS NOT EVERY CASE OF MURDER THAT APPLIES.

17 NOW IN THIS PARTICULAR CASE, BECAUSE IT WAS
18 COMMITTED DURING THE COURSE OF A ROBBERY, THE DISTRICT ATTORNEY
19 IS SEEKING THE DEATH PENALTY. BY SEEKING THE DEATH PENALTY
20 MEANS THAT THE JURORS IN THIS PARTICULAR CASE, IF THEY FIND
21 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND THAT
22 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEY THEN
23 WILL HAVE TO DETERMINE WHAT THE PENALTY WILL BE. SO THERE
24 IS THE FIRST PHASE OF THE TRIAL. THE FIRST PART OF IT IS TO
25 DETERMINE WHETHER HE IS GUILTY OR INNOCENT.

26 AND IF HE IS FOUND GUILTY OF MURDER IN THE FIRST
27 DEGREE AND IT WAS FOUND TO BE DURING THE COURSE OF ROBBERY,
28 THEN THE SEPARATE PHASE, IN A SEPARATE PART OF THE TRIAL THE

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1 JURY WILL HAVE TO DETERMINE WHAT THE PENALTY SHOULD BE, SHOULD
2 IT BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR
3 SHOULD IT BE DEATH; DO YOU UNDERSTAND THAT?

4 MR. IBARRA: RIGHT, I DO.

5 THE COURT: NOW, YOU UNDERSTAND, OF COURSE, THAT ALTHOUGH
6 THE JURORS, ASSUMING THEY FOUND HIM GUILTY OF MURDER IN THE
7 FIRST DEGREE AND THAT IT WAS COMMITTED IN THE COURSE OF A
8 ROBBERY, THAT DOESN'T MEAN AUTOMATICALLY THAT HE EITHER GETS
9 LIFE IMPRISONMENT OR HE GETS THE DEATH PENALTY.

10 MR. IBARRA: RIGHT.

11 THE COURT: THE JURY HAS TO DETERMINE IN THE SECOND PHASE
12 OF THE TRIAL, THE DEFENSE PUTS ON EVIDENCE OF GOOD THINGS,
13 THINGS THAT ARE FAVORABLE TO HIM LIKE THE ABSENCE OF ANY
14 CRIMINAL RECORD, HIS YOUTH, UPBRINGING AND EVERYTHING ELSE,
15 AND THE PEOPLE, ON THE OTHER HAND, WILL INTRODUCE EVIDENCE
16 AS TO THE AGGRAVATING CIRCUMSTANCES, THINGS WHICH ARE BAD ABOUT
17 HIM; DO YOU UNDERSTAND THAT?

18 MR. IBARRA: YES.

19 THE COURT: ALL RIGHT, SO THE JURY THEN MAKES UP ITS
20 MIND SHOULD IT BE ONE OR THE OTHER; DO YOU UNDERSTAND THAT?

21 MR. IBARRA: YES, I DO.

22 THE COURT: NOW, I WILL ASK YOU THE FOLLOWING QUESTIONS:
23 FIRST DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT
24 WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE
25 GUILT OR INNOCENCE OF THE DEFENDANT?

26 DO YOU UNDERSTAND?

27 MR. IBARRA: YES.

28 MY PERSONAL VIEW, I AM AGAINST THE DEATH PENALTY.

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1 THE COURT: YOU ARE AGAINST THE DEATH PENALTY?

2 MR. IBARRA: YES.

3 THE COURT: SO BECAUSE YOU ARE AGAINST THE DEATH PENALTY,
4 IN EVERY CASE, OR IN THIS PARTICULAR CASE WOULD YOU VOTE FOR
5 NOT GUILTY BECAUSE OF THAT FACT?

6 MR. IBARRA: NO.

7 THE COURT: YOU WOULD NOT?

8 MR. IBARRA: NOT EXACTLY.

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1 THE COURT: SO THAT, THEREFORE, YOUR OPINION AS TO THE
2 DEATH PENALTY WOULD NOT PREVENT YOU FROM MAKING AN IMPARTIAL
3 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

4 MR. IBARRA: RIGHT.

5 THE COURT: IS THAT CORRECT?

6 MR. IBARRA: RIGHT.

7 THE COURT: THE NEXT QUESTION: DO YOU HAVE AN OPINION
8 REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR
9 FIRST DEGREE MURDER EVEN IF THE PEOPLE HAVE NOT PROVED MURDER
10 IN THE FIRST DEGREE?

11 MR. IBARRA: I WOULDN'T --

12 WILL YOU REPEAT THAT, PLEASE?

13 THE COURT: YES: DO YOU HAVE AN OPINION REGARDING THE
14 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR MURDER, FOR
15 FIRST DEGREE MURDER EVEN IF THE PROSECUTION HAD NOT ESTABLISHED,
16 HAD NOT PROVED MURDER IN THE FIRST DEGREE?

17 MR. IBARRA: IF I BELIEVE THAT HE IS GUILTY, I WILL SAY
18 THAT HE IS GUILTY --

19 THE COURT: YES.

20 MR. IBARRA: -- EVEN IF THE PROSECUTOR BELIEVES HE IS
21 NOT, IF COMING TO MY REASONING THAT HE IS GUILTY, YES, I WILL
22 VOTE FOR GUILTY.

23 THE COURT: YOU WILL VOTE FOR GUILTY IF THE PROSECUTION
24 PROVES HIM GUILTY?

25 MR. IBARRA: NO, IF HE IS NOT PROVEN GUILTY, EITHER WAY,
26 I WILL EXERCISE MY JUDGEMENT, I WILL SAY -- I WILL GIVE MY
27 BELIEF IF HE IS INNOCENT, NOT GUILTY OR GUILTY.

28 THE COURT: WELL, WOULD YOU IN EVERY CASE VOTE FOR

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1 GUILTY OF MURDER IN THE FIRST DEGREE EVEN IF THE PROSECUTION
2 HAS NOT PROVED IT?

3 MR. IBARRA: NO, I WOULD NOT VOTE.

4 THE COURT: ALL RIGHT, THIRD QUESTION: DO YOU HAVE ANY
5 OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU
6 FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY
7 OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE? DO YOU KNOW
8 WHAT THAT MEANS?

9 MR. IBARRA: NO.

10 THE COURT: I THINK I TOLD YOU THAT THE JURY FIRST
11 DETERMINES WHETHER OR NOT THE DEFENDANT IS GUILTY OF MURDER
12 IN THE FIRST DEGREE, WHETHER HE KILLED SOMEBODY; DO YOU
13 UNDERSTAND?

14 MR. IBARRA: RIGHT.

15 THE COURT: AND THEN IF THEY SAY YES, THEY THEN HAVE
16 TO MAKE A FINDING WHETHER IT WAS COMMITTED DURING THE COURSE
17 OF A ROBBERY, BECAUSE IF IT WAS COMMITTED DURING THE COURSE
18 OF A ROBBERY, THAT QUALIFIES FOR THE DEATH PENALTY AND THEN
19 THE JURY COMES IN WITH, YES, TRUE OR, NO, UNTRUE AS TO WHETHER
20 OR NOT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY; DO
21 YOU UNDERSTAND?

22 MR. IBARRA: YES.

23 THE COURT: NOW I ASKED YOU THE QUESTION: DO YOU HAVE
24 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
25 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
26 OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

27 MR. IBARRA: NO, IT WOULDN'T PREVENT.

28 THE COURT: IT WOULDN'T PREVENT YOU?

1 NOW, DO YOU HAVE SUCH AN OPINION CONCERNING THE
2 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE IT,
3 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
4 PHASE OF THE TRIAL?

5 MR. IBARRA: NO, I WOULDN'T VOTE.

6 THE COURT: YOU WOULDN'T AUTOMATICALLY IMPOSE IT; IS
7 THAT RIGHT?

8 MR. IBARRA: RIGHT.

9 THE COURT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
10 DEATH 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 DO YOU UNDERSTAND THAT?

16 MR. IBARRA: UH-HUH.

17 THE COURT: BECAUSE OF YOUR ATTITUDE, WOULD YOU
18 AUTOMATICALLY, WITHOUT CONSIDERING ANYTHING ELSE, IF THE
19 DEFENDANT WAS FOUND GUILTY OF MURDER IN THE FIRST DEGREE AND
20 SPECIAL CIRCUMSTANCES, WOULD YOU AUTOMATICALLY VOTE ONLY FOR
21 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

22 MR. IBARRA: RIGHT, I WILL.

23 THE COURT: AUTOMATICALLY?

24 MR. IBARRA: AUTOMATICALLY.

25 THE COURT: YOU WOULDN'T CONSIDER THE DEATH PENALTY?

26 MR. IBARRA: NO, NO.

27 MR. BARENS: RESPECTFULLY, THE DEFENSE WOULD LIKE YOUR

28 HONOR --

1 THE COURT: YES, GO AHEAD.

2 MR. BARENS: I DON'T BELIEVE YOUR HONOR ASKED THE LAST
3 QUESTION ON YOUR FORMAT.

4 THE COURT: ALL RIGHT, I WILL DO IT ANYWAY. DO YOU UNDERSTAND
5 THAT THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN
6 THIS CASE, AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN
7 THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

8 MR. IBARRA: I UNDERSTAND.

9 THE COURT: YOU UNDERSTAND THAT, ALL RIGHT.

10 MR. BARENS: GOOD MORNING. I REPRESENT JOE HUNT, THE
11 DEFENDANT.

12 MR. IBARRA, I, LIKE HIS HONOR, AM TRYING TO FIND
13 OUT YOUR ATTITUDES ABOUT THE DEATH PENALTY.

14 I THINK WHAT IS CONCERNING HIS HONOR IS THAT YOU
15 INDICTED YOU WOULD AUTOMATICALLY NEVER GIVE ANYBODY THE DEATH
16 PENALTY.

17 MR. IBARRA: RIGHT.

18 MR. BARENS: WHAT I AM TRYING TO FIND OUT, IF THERE ARE
19 ANY INSTANCES IN WHICH YOU MIGHT CONSIDER GIVING SOMEONE THE
20 DEATH PENALTY, UNDERSTANDING MR. IBARRA, THERE ARE NO RIGHT
21 OR WRONG ANSWERS TO MY QUESTIONS. THERE ARE NO GOOD OR BAD
22 ANSWERS. I AM JUST TRYING TO FIND OUT HOW YOU FEEL OR YOUR
23 OPINION.

24 MR. IBARRA, IF YOU HAD A CASE WHERE YOU BELIEVED
25 BEYOND A REASONABLE DOUBT THAT SOMEONE HAD COMMITTED A MURDER
26 IN THE FIRST DEGREE, HAD KILLED SOMEONE INTENTIONALLY AND IT
27 WAS DURING A ROBBERY, WHERE A MAN SHOOTS SOMEBODY, LET'S SAY,
28 AND KILLED THEM SO HE COULD STEAL MONEY, LET'S SAY, WHERE

1 THERE WAS NO EXCUSE FOR THAT, WOULD YOU EVER BE ABLE TO GIVE
2 THAT DEFENDANT WHO DID THAT KIND OF A CRIME, COULD YOU EVER
3 GIVE HIM THE DEATH PENALTY?

4 MR. IBARRA: NO, I WON'T.

5 MR. BARENS: NO MATTER HOW BAD THE CRIME WAS?

6 MR. IBARRA: NO MATTER HOW BAD THE CRIME WAS.

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BA-1 1 MR. BARENS: YOU COULD NEVER, EVER GIVE THE DEATH PENALTY?

2 MR. IBARRA: (NODDING HEAD FROM SIDE TO SIDE.)

3 MR. WAPNER: IS THAT NO?

4 MR. IBARRA: I SAY NO.

5 MR. BARENS: THE MATTER IS SUBMITTED, YOUR HONOR.

6 THE COURT: THANK YOU, SIR.

7 MR. WAPNER: NO QUESTIONS.

8 THE COURT: ALL RIGHT. THE COURT MAKES A FINDING THAT
9 THE JUROR IS NOT QUALIFIED AS A JUROR IN THIS CASE. THANK
10 YOU VERY MUCH.

11 IT WAS NICE OF YOU TO BE FRANK AND TELL US HOW
12 YOU FELT ABOUT THE DEATH PENALTY. YOU WILL NOT SERVE AS A
13 JUROR IN THIS CASE.

14 HOWEVER, YOU COULD SERVE AS A JUROR IN OTHER KINDS
15 OF CASES. PLEASE GO BACK TO THE JURY ASSEMBLY ROOM AND TELL
16 THEM THAT YOU CAN SIT IN ANOTHER CASE BUT NOT IN THIS ONE.

17 MR. IBARRA: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU.

19 (PROSPECTIVE JUROR IBARRA EXITED
20 THE COURTROOM.)

21 (PROSPECTIVE JUROR JOHNSON ENTERED
22 THE COURTROOM.)

23 THE COURT: GOOD MORNING, MR. JOHNSON.

24 MR. JOHNSON: GOOD MORNING.

25 THE COURT: WHERE DO YOU LIVE?

26 MR. JOHNSON: I LIVE IN SHERMAN OAKS.

27 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
28 CASE OR HEARD ANYTHING AT ALL ABOUT IT FROM ANY SOURCE?

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1 MR. JOHNSON: YES.

2 THE COURT: TELL US WHAT YOU HEARD?

3 MR. JOHNSON: WELL, NOT WHAT I HEARD, IT IS WHAT I READ
4 IN THE NEWSPAPER.

5 THE COURT: YES. WHICH ONE?

6 MR. JOHNSON: THE L.A. TIMES AND THE NEW YORK TIMES.

7 THE COURT: IN THE NEW YORK TIMES, TOO?

8 MR. JOHNSON: YES.

9 THE COURT: UH-HUH.

10 MR. JOHNSON: AND TIME MAGAZINE.

11 THE COURT: AND NEWSWEEK?

12 MR. JOHNSON: AND ESQUIRE.

13 THE COURT: ESQUIRE? YOU READ THE ARTICLE IN ESQUIRE,
14 DID YOU NOT, ABOUT TWO MONTHS AGO? IS THAT IT?

15 MR. JOHNSON: YES.

16 THE COURT: NOW, HAVING READ ALL OF THOSE ARTICLES,
17 HAVE YOU FORMED SUCH A FIRM DECISION AS TO THE GUILT OR
18 INNOCENCE OF THE DEFENDANT THAT YOU CAN'T BE A FAIR JUROR?

19 MR. JOHNSON: NOT A FIRM ONE BECAUSE I HAVE JUST --

20 THE COURT: DO YOU HAVE A TENTATIVE ONE?

21 MR. JOHNSON: NO. I DON'T KNOW IF --

22 THE COURT: DO YOU HAVE ANY OPINION AT ALL?

23 MR. JOHNSON: WELL, OF COURSE YOU ARE GOING TO HAVE
24 AN OPINION WHEN YOU READ SOMETHING.

25 THE COURT: BUT, ARE YOU WILLING TO DISREGARD ANYTHING
26 THAT YOU READ AND LISTEN TO THE EVIDENCE IN THIS CASE BEFORE
27 YOU MAKE ANY FINDING AS TO THE GUILT OR INNOCENCE OF THE
28 DEFENDANT, IS THAT CORRECT?

1 MR. JOHNSON: YES.

2 THE COURT: DO YOU THINK YOU ARE ABLE TO PUT OUT OF
3 YOUR MIND, ANYTHING THAT YOU HAVE HEARD AND READ, AND BE
4 GUIDED BY WHAT YOU HEAR IN THIS COURTROOM?

5 MR. JOHNSON: I CAN'T PUT ANYTHING OUT OF MY MIND ONCE
6 IT IS IN THERE. I MEAN, IT IS STILL GOING TO BE THERE.

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1 THE COURT: YES, I KNOW. BUT WOULD YOU CONSIDER THAT
2 HOWEVER, IN MAKING A DETERMINATION IN THIS CASE?

3 MR. JOHNSON: NO. I WOULD LISTEN TO THE EVIDENCE THAT
4 IS PRESENTED HERE IN COURT.

5 THE COURT: BUT YOUR MIND IS NOT MADE UP AS TO WHETHER
6 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY?

7 MR. JOHNSON: NO.

8 THE COURT: AND IN THE FUTURE OF COURSE, YOU WILL BE
9 ASKED NOT TO READ ANYTHING ABOUT THE CASE OR LISTEN TO THE
10 RADIO OR TELEVISION.

11 MR. JOHNSON: YES.

12 THE COURT: ALL RIGHT. OF COURSE, I DON'T HAVE TO TELL
13 YOU WHAT THE CASE IS ALL ABOUT. YOU KNOW IT IS A CASE WHERE
14 THE DEFENDANT IS CHARGED WITH MURDER IN THE FIRST DEGREE THAT
15 WAS COMMITTED DURING THE COURSE OF A ROBBERY AND THAT THE
16 PEOPLE ARE SEEKING THE DEATH PENALTY IN THE CASE, RIGHT?

17 ALL RIGHT. NOW, WITH THAT BACKGROUND, I WILL ASK
18 YOU A SERIES OF QUESTIONS TO WHICH YOUR ANSWERS WILL BE
19 YES OR NO. AND IF YOU DON'T UNDERSTAND ANY OF THE QUESTIONS,
20 ASK ME TO REPEAT IT AND I WILL BE HAPPY TO DO SO OR EXPLAIN
21 IT TO YOU. FIRST DO YOU HAVE ANY OPINION REGARDING THE DEATH
22 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
23 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

24 MR. JOHNSON: HOW DO YOU MEAN?

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

1 MR. JOHNSON: NO. I DON'T THINK SO.

2 THE COURT: YOU KNOW, THE FIRST PHASE OF THE TRIAL IS
3 WHERE THE JURY DETERMINES WHETHER OR NOT THE DEFENDANT
4 COMMITTED A MURDER IN THE FIRST DEGREE AND WHETHER OR NOT IT
5 WAS COMMITTED DURING THE COURSE OF A ROBBERY.

6 AND AFTER THAT FIRST PHASE, AND AFTER THEY COME
7 IN WITH SUCH A VERDICT, THEN THERE IS A SECOND PHASE OF THE
8 TRIAL WHICH WE CALL A PENALTY PHASE WHERE ADDITIONAL TESTIMONY
9 IS HEARD THAT IS GIVEN BY THE DEFENDANT AND GIVEN BY THE PEOPLE.

10 THE TESTIMONY OF THE DEFENDANT WILL BE TO
11 MITIGATE THE OFFENSE, TO SHOW YOU REASONS WHY THE EVIDENCE
12 IS FAVORABLE TO HIM, LIKE HIS AGE, HIS BACKGROUND, HIS ABSENCE
13 OF ANY CRIMINAL RECORD AND ET CETERA, ET CETERA.

14 AND THE PEOPLE ON THE OTHER HAND, WILL ADUCE
15 EVIDENCE IN AGGRAVATION TO SHOW YOU WHY HE IS A BAD MAN AND
16 HE SHOULD GET THE DEATH PENALTY. DO YOU UNDERTAND THAT?

17 MR. JOHNSON: YES.

18 THE COURT: NOW, DO YOU HAVE ANY OPINION REGARDING THE
19 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
20 MURDER, EVEN IF THE PEOPLE HAVE NOT ESTABLISHED FIRST DEGREE
21 MURDER?

22 MR. JOHNSON: DO YOU MEAN DO I BELIEVE IN THE DEATH
23 PENALTY? IS THAT WHAT YOU ARE SAYING?

24 THE COURT: NO. I DIDN'T ASK YOU THAT.

25 MR. JOHNSON: OR NOT BELIEVE IN IT?

26 THE COURT: YOU SEE, ASSUMING THERE ARE PEOPLE THAT
27 ARE SO CONVINCED WHEN THERE IS A MURDER THAT THE DEATH PENALTY
28 SHOULD BE IMPOSED, THAT THAT WAS RIGHT, THAT THEY WILL FIND

1 THAT SO THAT EVEN IF THE PEOPLE HAVE NOT PROVEN THE DEFENDANT
2 GUILTY OF MURDER IN THE FIRST DEGREE --

3 MR. JOHNSON: NO.

4 THE COURT: ALL RIGHT. NEXT, YOU UNDERSTAND OF COURSE
5 THAT THE JURORS WILL DECIDE WHETHER OR NOT THE DEFENDANT IS
6 GUILTY OF MURDER IN THE FIRST DEGREE AND IT WAS COMMITTED
7 UNDER WHAT WE CALL SPECIAL CIRCUMSTANCES. THE SPECIAL
8 CIRCUMSTANCES DURING THE COURSE OF A ROBBERY.

9 NOW, THE LEGISLATURE HAS SET FORTH VARIOUS CASES,
10 INSTANCES WHERE MURDER IN THE FIRST DEGREE WILL CALL FOR THE
11 DEATH PENALTY, IF SPECIAL CIRCUMSTANCES HAVE BEEN PROVED.

12 IN THIS CASE, IT IS A MURDER DURING THE COURSE
13 OF A ROBBERY. OR IT COULD BE MAYBE A CASE OF A MURDER DURING
14 A KIDNAPPING OR A MURDER DURING A BURGLARY OR MURDER DURING
15 TORTURE OR RAPE OR OTHER INSTANCE OF MULTIPLE MURDERS.

16 GENERALLY, THERE ARE DIFFERENT TYPES OF MURDERS
17 WHERE THERE CAN BE A SPECIAL CIRCUMSTANCE WHICH CALLS FOR THE
18 DEATH PENALTY. NOT EVERY MURDER OF THE FIRST DEGREE OR
19 EVEN ANY SO-CALLED BRUTAL MURDER OR INTENTIONAL MURDER CALLS
20 FOR THE DEATH PENALTY. YOU SEE, IT HAS GOT TO BE UNDER THOSE
21 CIRCUMSTANCES, SPECIAL CIRCUMSTANCES.

22 ALL RIGHT. AND WHEN THE JURY DETERMINES WHETHER
23 IT IS MURDER IN THE FIRST DEGREE, THEY ARE THEN CALLED UPON
24 TO MAKE A FINDING OF SPECIAL CIRCUMSTANCES, NAMELY, WHETHER
25 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. THEY HAVE
26 GOT TO SAY YES OR NOT, FALSE OR TRUE. DO YOU SEE?

27 NOW, THIS QUESTION PERTAINS TO THAT. DO YOU HAVE
28 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT

1 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
2 OR FALSITY OF THE SPECIAL CIRCUMSTANCES ALLEGED?

3 MR. JOHNSON: NO.

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

10 MR. JOHNSON: NO.

11 THE COURT: AND THERE IS A VARIATION OF THAT SAME QUESTION.
12 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT
13 YOU AUTOMATICALLY WOULD VOTE FOR LIFE WITHOUT POSSIBILITY OF
14 PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED IN
15 THE PENALTY PHASE OF THE TRIAL?

16 MR. JOHNSON: NO.

17 THE COURT: DO YOU UNDERSTAND THAT THE ISSUE OF THE
18 DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE AND THAT THESE
19 QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU REACH
20 THAT PHASE OF THE TRIAL?

21 MR. JOHNSON: YES.

22 THE COURT: ALL RIGHT.

23 MR. BARENS: THANK YOU, YOUR HONOR. MR. JOHNSON, I
24 REPRESENT THE DEFENDANT, JOE HUNT. LIKE HIS HONOR, I WANT
25 TO ASK YOU SOME QUESTIONS ABOUT YOUR VIEW ON THE DEATH PENALTY
26 AND ALSO ABOUT WHAT INFLUENCE OR EFFECT PRETRIAL PUBLICITY
27 MAY HAVE HAD ON YOU. OKAY?

28 MR. JOHNSON: YES, SURE.

1 MR. BARENS: NOW, HOW DO YOU FEEL ABOUT MR. HUNT AFTER
2 YOU HAVE READ THE ESQUIRE ARTICLE?

3 MR. JOHNSON: IF HE DID WHAT THEY SAID, I DON'T THINK
4 IT IS GOOD.

5 MR. BARENS: WELL, DO YOU THINK THAT IF HE HAD NOT DONE
6 ALL THOSE THINGS, THAT THEY WOULD HAVE WRITTEN THAT ARTICLE?

7 MR. JOHNSON: YES.
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1 MR. BARENS: DO YOU THINK THAT THEY MIGHT HAVE JUST
2 WRITTEN IT TO SELL ARTICLES?

3 MR. JOHNSON: YES.

4 MR. BARENS: TO SELL MAGAZINES?

5 MR. JOHNSON: YES.

6 MR. BARENS: HOW DID YOU FEEL AFTER YOU READ THE TIME
7 MAGAZINE ARTICLE? DID THAT INFLUENCE YOU IN THE WAY YOU FELT
8 ABOUT MR. HUNT?

9 MR. JOHNSON: THERE WASN'T MUCH DEPTH IN THE TIME
10 ARTICLE. IT WAS VERY SHORT.

11 MR. BARENS: DO YOU HAVE ANY OPINION ABOUT WHETHER OR
12 NOT HE HAD DONE ANYTHING WRONG OR NOT AFTER YOU READ THE TIME
13 ARTICLE?

14 MR. JOHNSON: NO. I JUST READ IT FOR YOU KNOW -- LIKE
15 I SAID, I READ IT A LONG TIME AGO. AND NOW, WHEN THESE BITS
16 OF INFORMATION APPEAR, NATURALLY YOU ARE GOING TO READ IT.
17 I DON'T HAVE ANY PRECONCEIVED --

18 MR. BARENS: DID IT MAKE YOU THINK HE WAS GUILTY OF
19 SOMETHING?

20 MR. JOHNSON: SURE.

21 MR. BARENS: IT MADE YOU FEEL THAT HE WAS GUILTY, DIDN'T
22 IT?

23 MR. JOHNSON: YES.

24 MR. BARENS: AND IN YOUR POINT OF VIEW, IN ALL HONESTY --

25 MR. JOHNSON: SURE, OF COURSE. IF IT IS TRUE WHAT THEY
26 REPORT, I WOULD SAY YES.

27 MR. BARENS: YOU CAME AWAY FROM READING THOSE TWO
28 ARTICLES THINKING THAT THEY WERE TRUE, DIN'T YOU?

1 MR. JOHNSON: NOT TOTALLY TRUE.

2 MR. BARENS: PARTIALLY TRUE?

3 MR. JOHNSON: IT COULD BE.

4 MR. BARENS: IT COULD BE. HOW ABOUT AFTER YOU READ THE
5 L.A. TIMES ARTICLE AND YOU SAW A PICTURE OF A HANDWRITTEN
6 LETTER OR A HANDWRITTEN MEMORANDUM? HOW DID YOU FEEL ABOUT
7 MR. HUNT AFTER YOU READ THAT?

8 MR. JOHNSON: IF HE WROTE IT AND IT WAS HIM, YOU KNOW,
9 THAT ISN'T GOOD.

10 MR. BARENS: NOT GOOD AT ALL?

11 MR. JOHNSON: NO.

12 MR. BARENS: IT MAKES YOU THINK HE IS GUILTY OF SOMETHING,
13 DOESN'T IT?

14 MR. JOHNSON: IF HE DID IT, YEAH.

15 MR. BARENS: WOULDN'T BE IT A FAIR STATEMENT TO SAY --
16 LISTEN, THERE IS NO RIGHT OR WRONG ANSWER TO WHAT I AM ASKING
17 YOU. I AM JUST ASKING YOUR OPINION, YOU KNOW.

18 AGAIN, ALL WE REALLY CARE ABOUT IS YOUR OPINION.
19 THERE IS NO RIGHT OR WRONG OR GOOD OR BAD TO WHAT YOU ARE
20 TELLING ME.

21 MR. JOHNSON: THAT'S RIGHT.

22 MR. BARENS: WOULD IT BE A FAIR STATEMENT TO SAY THAT
23 AFTER READING ALL THE MATERIAL, YOU HAVE GOT A PRETTY STRONG
24 FEELING IN YOUR MIND THAT MR. HUNT IS GUILTY OF SOMETHING?

25 MR. JOHNSON: SURE. IF ALL THAT IS TRUE AND THE COURT
26 YOU KNOW -- THE EVIDENCE OF COURSE, THEN HE IS GUILTY.

27 MR. BARENS: YOU HAVE NOT HEARD THE EVIDENCE IN THIS
28 COURTROOM. WHAT I AM ASKING ABOUT IS YOUR STATE OF MIND AS

1 YOU SIT HERE TODAY. YOU HAVE READ A LOT OF STUFF. A LOT
2 OF IT YOU KNOW, IT WAS IN REPUTABLE MAGAZINES, IT WAS NOT
3 EXACTLY IN THE NATIONAL INQUIRER THAT YOU WERE READING WHEN
4 YOU READ THAT STUFF.

5 THAT SORT OF STUFF, SOME OF US TEND TO BELIEVE
6 THAT AND PUT A LOT OF WEIGHT ON IT IN OUR MINDS AND IT TENDS
7 TO EDUCATE US AS PEOPLE.

8 PERHAPS ONE OF THE FUNCTIONS OF THOSE PUBLICATIONS
9 IS TO EDUCATE US. DO YOU FEEL THAT THOSE THINGS YOU READ,
10 HAVE CAUSED YOU TO HAVE A PRETTY FIRM STATE OF MIND ABOUT
11 MR. HUNT'S GUILT OR INNOCENCE?

12 MR. JOHNSON: I CAN HONESTLY SAY NO BECAUSE I HAVE BEEN
13 INVOLVED ON THE OTHER SIDE WHERE INFORMATION HAS BEEN PUT INTO
14 THE PAPERS THAT ISN'T TRUE.

15 MR. BARENS: YOU BET, ESPECIALLY STUFF, WOULDN'T YOU
16 AGREE, THAT IS KIND OF SENSATIONAL IN THE WAY IT SOUNDS?
17 MAYBE IT IS MORE INTENDED TO BE THERE BECAUSE IT WILL SELL
18 A LOT OF MAGAZINES AND MAKE SOME GUY WHO WROTE IT A LOT OF
19 MONEY, RATHER THAN WHETHER IT IS TRUE OR NOT?

20 MR. JOHNSON: IT COULD BE, YES.
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4-1
1 MR. BARENS: DO YOU UNDERSTAND THAT THE GUY WHO WRITES
2 AN ARTICLE FOR A MAGAZINE MAY NOT BE AS CONCERNED ABOUT TRUTH
3 AND JUSTICE, LET'S SAY, AS YOU AS A JUROR MIGHT BE BUT WOULD
4 HAVE MORE OF AN INTEREST IN MAKING HIMSELF A REPUTATION AND
5 GETTING HIRED TO WRITE A LOT OF STORIES.

6 MR. JOHNSON: THERE ARE A LOT OF PEOPLE WHO DO THAT.

7 MR. BARENS: YOU UNDERSTAND THAT YOU AS A JUROR WOULD
8 HAVE MORE OF A CONCERN FOR TRUTH THAN A GUY WRITING AN ARTICLE
9 TO SELL IT?

10 MR. JOHNSON: SURE.

11 MR. BARENS: YOU KNOW, UNDER THE LAW OF THIS COUNTRY,
12 MR. HUNT IS ENTITLED TO A JURY OF HIS PEERS AND A NEUTRAL
13 JURY, PEOPLE THAT COME IN REALLY NEUTRAL, AS NEUTRAL AS WE
14 CAN BE, AS PEOPLE EVER GET TO BE; HOW DO YOU FEEL HONESTLY,
15 MR. JOHNSON, AFTER READING THAT STUFF, DO YOU THINK YOU COULD
16 REALLY BE ONE OF THOSE NEUTRAL KIND OF GUYS?

17 MR. JOHNSON: I HAVE GOT THE INFORMATION IN MY HEAD
18 NOW.

19 MR. BARENS: IT IS HARD TO GET RID OF THAT, ISN'T IT?

20 MR. JOHNSON: SURE.

21 MR. BARENS: IT KEEPS BOUNCING AROUND?

22 MR. JOHNSON: IT IS GOING TO BE THERE AND --

23 MR. BARENS: YOU ARE GOING TO MAKE MY JOB TOUGH. YOU
24 HEARD ALL OF THIS BAD STUFF ABOUT MY CLIENT AND I HAVE TO
25 COME IN AND HERE, NOT ONLY IS THE D.A. WRONG BUT ALL OF THOSE
26 GUYS WHO WROTE IN THESE HIGH-PRICED MAGAZINES ARE WRONG, TOO,
27 SO IT IS GOING TO MAKE MY JOB KIND OF TOUGH.

28 MR. JOHNSON: YES, AND THAT IS WHAT YOU ARE GETTING

1 PAID FOR.

2 MR. BARENS: I APPRECIATE YOUR HONESTY.

3 WHAT I AM WORRIED ABOUT IS WHETHER I HAVE GOT
4 AN EVEN START WITH YOU TO BEGIN WITH, AND THAT IS MY PROBLEM
5 HERE.

6 MR. JOHNSON: YES.

7 MR. BARENS: I DON'T THINK YOU OR I THINK I DO, DO I?

8 MR. JOHNSON: I DON'T KNOW.

9 MR. BARENS: LET ME PUT IT ANOTHER WAY: SUPPOSE YOU
10 WERE SITTING NEXT TO ME WHERE MR. HUNT IS AND YOU WERE ON
11 TRIAL FOR YOUR LIFE AND IF THINGS DIDN'T WORK OUT, YOU SURELY
12 WOULD GO TO THE GAS CHAMBER, AND LET'S SAY THE GUY SITTING
13 IN THE BOX THERE TOLD YOUR LAWYER HE HAD READ ALL OF THAT
14 STUFF AND HAD THE STATE OF MIND THAT YOU DO NOW, DO YOU THINK
15 HE SHOULD BE ON THE JURY DECIDING WHETHER YOU LIVE OR DIE?

16 MR. JOHNSON: I THINK IF HE WAS COMING FROM WHERE I
17 COME FROM, YEAH.

18 MR. BARENS: WHY DO YOU TELL ME THAT, MR. JOHNSON?

19 MR. JOHNSON: ARE WE SUPPOSED TO ANSWER OTHER THAN YES
20 OR NO?

21 THE COURT: YOU CAN MAKE AN EXPLANATION.

22 MR. BARENS: THANK YOU, YOUR HONOR.

23 MR. JOHNSON: OH, FIRST OF ALL, I COME FROM A CHRISTIAN
24 BACKGROUND AND I PROFESS TO BE THAT AND, THEREFORE, I THINK
25 I AM CLEAR-HEADED ENOUGH THAT IF SOME FACTS ARE PRESENTED,
26 I WOULD BE ABLE TO KNOW WHAT IS RIGHT OR WRONG, TRUE OR FALSE.
27 THAT IS ALL I CAN SAY.

28 MR. BARENS: DID YOU FEEL IN READING THOSE ARTICLES

1 THAT THERE COULD BE ANY REASONABLE DOUBT ABOUT MR. HUNT'S
2 GUILT OR INNOCENCE?

3 MR. JOHNSON: SURE, THERE IS, YOU KNOW.

4 I DON'T KNOW THAT MUCH ABOUT THE CASE, OTHER THAN
5 WHAT I READ. BUT PIECES OF PAPER CAN APPEAR, YOU KNOW, LISTING
6 DOS AND DON'TS. IT CAN BE WRITTEN BY HIM. IT COULD BE
7 PLANTED. THERE ARE A MULTITUDE OF VARIATIONS CAN GO IN
8 ANYTHING.

9 MR. BARENS: DO YOU REMEMBER READING IN THOSE ARTICLES
10 THAT THEY HAD NEVER FOUND ANYBODY'S BODY?

11 MR. JOHNSON: YES, IN ONE OF THEM.

12 MR. BARENS: DID THAT MEAN ANYTHING TO YOU?

13 MR. JOHNSON: WELL, SURE. I MEAN IF A BODY DOESN'T
14 APPEAR, SOMETHING HAPPENED TO IT.

15 MR. BARENS: DOES IT MEAN THERE IS A BODY?

16 MR. JOHNSON: IF SOMEBODY SAYS THERE WAS ONE, YOU KNOW,
17 IF THE PERSON DOESN'T APPEAR, EITHER HE IS GONE SOMEPLACE
18 OR ELSE HE IS DEAD.

19 MR. BARENS: IT COULD BE ONE OR THE OTHER, COULDN'T
20 IT?

21 MR. JOHNSON: YES.

22 MR. BARENS: NOT NECESSARILY ONE THING, IS IT?

23 MR. JOHNSON: NOT UNLESS HE SHOWS UP SOMEPLACE.

24 MR. BARENS: DEAD OR ALIVE?

25 MR. JOHNSON: DEAD OR ALIVE.

26 MR. BARENS: MR. JOHNSON, DO YOU BELIEVE IN THE
27 PRESUMPTION OF INNOCENCE?

28 MR. JOHNSON: NOW YOU ARE GOING TO HAVE TO CLARIFY THAT

9-4
1 BECAUSE I DON'T KNOW EXACTLY WHAT THAT MEANS.

2 MR. BARENS: WELL, IN SIX OR SEVEN HUNDRED YEARS OF
3 ANGLO-SAXON JURISPRUDENCE, WHICH GETS US HERE TO THIS
4 COURTROOM TODAY --

5 MR. JOHNSON: OKAY.

6 MR. BARENS: -- THIS WHOLE ANGLO-AMERICAN SYSTEM OF
7 JURISPRUDENCE, UNDER THAT SYSTEM THE DEFENDANTS HAVE A
8 PRESUMPTION OF INNOCENCE UNTIL THE JURORS SAY THEY ARE
9 GUILTY, NOT BECAUSE THE D.A. SAYS THEY ARE GUILTY AND NOT
10 BECAUSE TIME MAGAZINE SAYS THEY ARE GUILTY BUT UNTIL A JURY
11 OF THEIR PEERS FINDS HIM GUILTY, HE IS PRESUMED FOR ALL
12 PURPOSES AND UNDER ALL CIRCUMSTANCES TO BE INNOCENT. IT IS
13 ONE OF OUR FUNDAMENTAL, CONSTITUTIONAL RIGHTS AS AN
14 AMERICAN.

15 HOW DO YOU FEEL ABOUT THAT?

16 MR. JOHNSON: I BELIEVE IN IT.
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BA-1
1 MR. JOHNSON: I BELIEVE IN IT.

2 MR. BARENS: DO YOU BELIEVE IN IT EVEN IF TIME MAGAZINE
3 OR THE NEW YORK TIMES SAYS A GUY IS GUILTY, THAT HE COULD
4 STILL BE INNOCENT?

5 MR. JOHNSON: SURE.

6 MR. BARENS: DO YOU BELIEVE, AS YOU LOOK AT MR. HUNT
7 SITTING THERE NOW, DOES HE HAVE A PRESUMPTION OF INNOCENCE
8 IN YOUR MIND, NO MATTER WHAT YOU HAVE READ?

9 MR. JOHNSON: SURE.

10 MR. BARENS: DO YOU SAY THAT FROM YOUR HEART OF HEARTS,
11 SIR?

12 MR. JOHNSON: YES, I DO.

13 BUT I AM NOT GOING TO KICK OUT WHAT I HAVE ALREADY
14 READ.

15 MR. BARENS: WELL, WHAT AM I GOING TO DO ABOUT THAT,
16 MR. JOHNSON?

17 MR. JOHNSON: I DON'T KNOW. I MEAN IF I HAVE SOMETHING
18 IN MY MIND AND EVEN IF YOU HAVE SOMETHING IN YOUR MIND, IT
19 IS GOING TO BE THERE.

20 MR. BARENS: I KNOW THAT. I BELIEVE THAT.

21 MR. JOHNSON: I CAN'T SAY THAT I AM GOING TO JUST VOID
22 MY MIND OF SOMETHING THAT I HAVE READ, I CAN'T DO IT.

23 THE COURT: PART OF WHAT YOU READ IS WHAT HAS BEEN
24 QUOTED, I THINK IN THE TIMES.

25 MR. JOHNSON: YES.

26 THE COURT: WHAT THE DISTRICT ATTORNEY'S INTERVIEW WAS,
27 WHAT HE SAID AND WHAT MR. BARENS, WHO WAS INTERVIEWED ALSO,
28 WHAT HE SAID?

BA-2

1 MR. JOHNSON: YES.

2 AND THERE WAS ANOTHER GUY'S NAME THAT I SAW THERE.

3 THE COURT: WOULD YOU BELIEVE WHAT THE NEWSPAPER
4 REPORTER PUBLISHED AS TO WHAT MR. BARENS SAID?

5 MR. JOHNSON: NO, NO.

6 THE COURT: OR WHAT MR. WAPNER SAID?

7 MR. JOHNSON: NO.

8 THE EVIDENCE THAT I HAVE TO GO ON IS WHAT I HEAR
9 HERE.

10 THE COURT: ALL RIGHT. THAT IS EXACTLY WHAT WE ARE
11 TRYING TO FIND OUT.

12 MR. JOHNSON: YES.

13 MR. BARENS: THAT IS ALL.

14 THE COURT: DO YOU BELIEVE THAT YOU CAN SO ELIMINATE
15 THAT FROM YOUR MIND, ANYTHING YOU READ, AND JUST BE GUIDED
16 ONLY BY THE EVIDENCE IN THIS CASE WHEN YOU CONSIDER IT AND
17 DISCUSS IT WITH THE JURORS, AND TALK ONLY ABOUT THE EVIDENCE
18 YOU HEARD IN THIS CASE AND NOT WHAT YOU READ IN THE NEWSPAPER,
19 ALL RIGHT?

20 MR. JOHNSON: YES.

21 THE COURT: THAT IS THE AMERICAN WAY.

22 MR. JOHNSON: YES, I BELIEVE IN IT.

23 THE COURT: AND THAT IS THE CHRISTIAN WAY, TOO.

24 MR. JOHNSON: YES.

25 MR. BARENS: MR. JOHNSON --

26 MR. JOHNSON: YES.

27 MR. BARENS: -- YOU HAVE SAT WITH MR. HUNT THIS MORNING
28 AND YOU DON'T HAVE ANY RESENTMENT IN YOUR HEART TOWARDS

BA-3
1 MR. HUNT AFTER READING WHAT YOU HAVE READ?

2 MR. JOHNSON: IF HE DID WHAT IT SAID, YES, OF COURSE.

3 MR. BARENS: WE DON'T KNOW IF HE DID ANYTHING.

4 MR. JOHNSON: NO, I KNOW, BUT I AM JUST SAYING --

5 MR. BARENS: THAT IS WHAT I AM LOOKING FOR: DO YOU
6 FEEL OPEN-MINDED AND IMPARTIAL AND NEUTRAL TOWARDS MR. HUNT
7 AS YOU SIT HERE TODAY, IN ALL HONESTY, MR. JOHNSON?

8 MR. JOHNSON: WITH WHAT EVIDENCE I HAVE BEFORE ME, I
9 WOULD HAVE TO SAY NO BECAUSE IF THAT IS TRUE, THEN I CAN'T
10 SAY.

11 THE COURT: THERE IS NO EVIDENCE BEFORE YOU.

12 MR. JOHNSON: NO, BUT I MEAN IF HE IS SAYING IN MY MIND --

13 MR. BARENS: WHAT IS YOUR STATE OF MIND? THAT IS ALL
14 I AM LOOKING FOR AT THIS MOMENT. WHAT IS YOUR STATE OF MIND
15 TODAY? HOW DO YOU FEEL ABOUT MR. HUNT TODAY?

16 MR. JOHNSON: JUST -- JUST AN INDIVIDUAL WHO IS GOING
17 THROUGH LIFE JUST LIKE I AM AND HE IS HERE TO, I GUESS,
18 DEFEND HIMSELF.

19 MR. BARENS: WHAT I REALLY WANT TO ASK YOU, MR. JOHNSON,
20 YOU SEE, WHAT I AM LOOKING TO SAY TO YOU IS, DO YOU FEEL THERE
21 IS NO GREATER REASON TO FEEL HE IS GUILTY THAN TO FEEL HE
22 IS INNOCENT, AS YOU SIT THERE TODAY?

23 AND YOU KNOW I AM LOOKING FOR YOU TO SAY, NO I
24 DON'T FEEL ANY DIFFERENTLY THAN THAT BUT I ONLY WANT YOU TO
25 SAY THAT IF IT IS TRUE, IF IN YOUR MORAL HEART YOU BELIEVE
26 THAT IS TRUE.

27 MR. JOHNSON: SETTING HERE TODAY, WITH WHAT I READ AND
28 IF THAT IS TRUE, I WOULD SAY HE IS MORE GUILTY THAN WHAT HE

1 IS INNOCENT.

2 MR. BARENS: YOU CAN'T GET THAT OUT OF YOUR MIND?

3 MR. JOHNSON: I WOULD HAVE TO SAY YES.

4 THE COURT: YOU HAVEN'T HEARD ANY EVIDENCE.

5 MR. JOHNSON: NO.

6 THE COURT: YOU DON'T KNOW WHETHER IT IS TRUE OR
7 FALSE.

8 MR. JOHNSON: BUT I AM SAYING IF HE IS SAYING MY STATE
9 OF MIND AS I SIT HERE TODAY, WITH NO FACTS OTHER THAN WHAT
10 SOME NEWSPAPER CORRESPONDENT HAS DONE, THEN I WOULD HAVE TO
11 SAY SURE, BECAUSE THAT IS THE ONLY FACTS THAT HAVE BEEN PUT
12 TO ME.

13 MR. BARENS: COULD WE SPEAK, YOUR HONOR, OUT OF THE --

14 THE COURT: WELL, LET THE D.A. ASK SOME QUESTIONS.

15 MR. BARENS: WELL, I HAVEN'T GONE INTO THE DEATH
16 PENALTY YET, YOUR HONOR, BUT I THINK PRELIMINARILY, PERHAPS
17 WE SHOULD CROSS THIS RUBICON BEFORE WE PROCEED.

18 THE COURT: LET THE PEOPLE ASK SOME QUESTIONS.
19 I BELIEVE HE WOULD LIKE TO ASK SOME QUESTIONS FIRST.

20 MR. WAPNER: THANK YOU.

21 MR. BARENS: WILL WE LIMIT MR. WAPNER TO PRETRIAL
22 PUBLICITY IN THIS INSTANCE AND I WILL RESERVE AS TO THE DEATH
23 PENALTY.

24 THE COURT: YES, SURE.

25 MR. WAPNER: THANK YOU, YOUR HONOR.

26 MR. JOHNSON, I WILL PROBABLY HAVE SOME OTHER
27 QUESTIONS ALSO BUT I THINK THE BOTTOM LINE QUESTION THAT
28 MR. BARENS WAS TRYING TO GET AT IS: IS THE DEFENDANT IN

1 THIS CASE GETTING A FAIR TRIAL FROM YOU, KNOWING WHAT YOU
2 KNOW ALREADY?

3 MR. JOHNSON: I HAVE NEVER BEEN IN THIS SITUATION
4 BEFORE SO I GUESS TO BE HONEST WITH YOU, TO CUT THROUGH A
5 LOT OF MAYBE VERBIAGE, I DON'T KNOW. I WOULD HAVE TO SAY
6 HE IS -- HE IS MORE GUILTY THAN WHAT HE IS INNOCENT FROM WHAT
7 I HAVE READ, I WOULD HAVE TO SAY THAT.

8 MR. WAPNER: OKAY, NOW THERE ARE TWO FOLLOW-UP QUESTIONS
9 THAT I WANT TO ASK. ONE IS: IF THE JUDGE TELLS YOU THAT
10 HE IS PRESUMED TO BE INNOCENT UNTIL HE IS PROVED GUILTY, IF
11 HE SAYS THAT IS THE LAW, CAN YOU PUT ASIDE YOUR FEELINGS OR
12 YOUR OPINIONS BASED ON WHAT YOU READ AND FOLLOW THE JUDGE'S
13 INSTRUCTIONS?

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1 I AM NOT ASKING YOU TO.

2 MR. JOHNSON: I DON'T KNOW, BECAUSE I HAVE NEVER BEEN
3 IN THIS SITUATION. I WOULD SAY THAT I HAVE TO BE HONEST WITH
4 YOU. I WOULD HAVE TO SAY PROBABLY NO, BECAUSE IT IS IN MY
5 HEAD, YOU KNOW.

6 I DON'T KNOW HOW TO ANSWER THE QUESTION.

7 THE COURT: YES. ALL RIGHT. I WILL TELL YOU WHAT, MR.
8 JOHNSON. WHY DON'T YOU JUST GO OUTSIDE. WE WILL HAVE A
9 LITTLE DISCUSSION HERE AND THEN WE WILL CALL YOU RIGHT BACK.

10 (PROSPECTIVE JUROR JOHNSON EXISTS THE
11 COURTROOM.)

12 THE COURT: MY IMPRESSION IS THAT HE HAS SO MADE UP HIS
13 MIND AS TO WHAT HE HAS HEARD, THAT THE DEFENDANT IS STARTING
14 OFF IN THE MINUS COLUMN.

15 MR. WAPNER: THAT IS MY IMPRESSION, ALSO. I HAVE NO
16 OBJECTION IF HE IS EXCUSED FOR CAUSE.

17 MR. BARENS: THANK YOU, YOUR HONOR.

18 THE COURT: BRING HIM BACK, PLEASE.

19 (PROSPECTIVE JUROR JOHNSON REENTERS THE
20 COURTROOM.)

21 THE COURT: MR. JOHNSON, THANK YOU VERY, VERY MUCH FOR
22 YOUR FRANKNESS AND HONESTY. WE APPRECIATE IT VERY MUCH.

23 YOU TELL THE JURY CLERK IN THE JURY ASSEMBLY ROOM
24 THAT YOU CAN SIT ON SOME OTHER CASE.

25 MR. JOHNSON: GOOD. THANK YOU.

26 (PROSPECTIVE JUROR JOHNSON EXITS THE
27 COURTROOM.)

28 THE COURT: EXCUSE THE OTHER TWO JURORS AND TELL THEM

1 TO COME BACK AT 1:30. BUT I DO HAVE NO PROBLEM IF YOU WANT
2 TO START WITH THIS ONE AND GO FIVE MINUTES UNTIL NOON.

3 MR. BARENS: WELL, I DON'T WANT TO DO THAT. MR. CHIER
4 WILL BE DOING IT IN THE AFTERNOON. I DON'T WANT TO BREAK THE
5 CONTINUITY ON A SINGLE JUROR, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. BARENS: IF YOUR HONOR WOULD LIKE TO START AND FINISH
8 THIS MORNING --

9 THE COURT: ALL RIGHT. WE WILL START AT 1:30 THIS
10 AFTERNOON.

11 (AT 11:55 A.M. AN ADJOURNMENT WAS TAKEN
12 UNTIL 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; MONDAY, NOVEMBER 24, 1986; 1:37 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: 1:30 MEANS 1:30.

7 MR. WAPNER: I WAS HERE BEFORE 1:30 AND THEN DISCOVERED
8 I HAD FORGOTTEN SOMETHING. I APOLOGIZE.

9 THE COURT: ALL RIGHT. YOU WANT TO RECALL MR. ARCE
10 NOW?

11 MR. WAPNER: YES, PLEASE.
12

13 RAYMOND ARCE,
14 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN PREVIOUSLY
15 DULY SWORN, RESUMED THE WITNESS STAND AND TESTIFIED FURTHER
16 AS FOLLOWS:

17 THE CLERK: YOU HAVE BEEN PREVIOUSLY SWORN.

18 YOU ARE STILL UNDER OATH, IS YOU WOULD HAVE A
19 SEAT.

20 THE WITNESS: YES.

21 THE COURT: HAVE A SEAT AND STATE YOUR NAME AGAIN FOR
22 THE RECORD.

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

24 THE COURT: I THINK THERE WAS ONE ITEM UPON WHICH HE
25 WAS SUPPOSED TO REPORT FURTHER, SOME PAPERS THAT YOU HANDED
26 HIM THAT YOU WANTED TO GO OVER.

27 MR. CHIER: I HAVE BEEN SICK ALL WEEKEND, JUDGE, AND
28 I AM TRYING TO REMEMBER WHAT IT WAS.

1 MR. WAPNER: THERE WAS THE 20-MILE RADIUS.

2

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EXAMINATION (RESUMED)

4

BY MR. CHIER:

5

Q MR. ARCE, LET ME FOR THE RECORD SEE IF I CAN --

6

YOUR HONOR, WOULD YOU EXCUSE ME IF I DON'T CINCH

7

UP MY --

8

THE COURT: THAT IS ALL RIGHT.

9

Q BY MR. CHIER: LET ME FOR THE RECORD SEE IF I

10

CAN MAKE IT CLEAR. THERE ARE AT LEAST THREE SETS OF FIGURES

11

WHICH MAY OR MAY NOT COINCIDE OR CORRESPOND.

12

ONE SET OF FIGURES, THE DEMOGRAPHIC FIGURES WOULD

13

BE THE ANALYSIS OF THOSE PERSONS WHO SHOWED UP HERE FOR JURY

14

DUTY AND WHO WERE THEN SURVEYED IN THE JURY ASSEMBLY ROOM,

15

CORRECT, THAT WOULD BE A SET OF FIGURES?

16

A THAT'S CORRECT.

17

Q AND ANOTHER SET OF FIGURES, DEMOGRAPHIC FIGURES,

18

WOULD BE THE DEMOGRAPHY OF THE WEST DISTRICT, CORRECT, AS

19

THAT IS A SEPARATE SET OF FIGURES WHICH MAY OR MAY NOT BE

20

THE SAME IN SOME CASES OR DIFFERENT IN SOME CASES THAN THE

21

JURY PANEL?

22

A THAT IS CORRECT.

23

Q THERE IS A THIRD DEMOGRAPHIC, LET'S SAY,

24

SITUATION AND I WILL DESCRIBE IT, WHICH WOULD BE THE

25

DEMOGRAPHY OR DEMOGRAPHIC CHARACTERISTICS OF THE COMMUNITIES

26

THAT ARE IN A 20-MILE RADIUS OF THIS COURTHOUSE; IS THAT

27

CORRECT?

28

A YES.

1 Q THAT INCLUDES MORE THAN THE WEST DISTRICT, IS THAT
2 CORRECT?

3 A YES.

4 Q AND IN FACT, IT EXCLUDES SOME PORTIONS OF THE WEST
5 DISTRICT, ISN'T THAT TRUE, AT THE FAR EASTERN END OF THE WEST
6 DISTRICT?

7 A FAR END?

8 Q YES. IN OTHER WORDS, HERE WE ARE ON THE EDGE OF
9 THE WATER. IF YOU GO EAST, I BELIEVE THE WEST DISTRICT EXTENDS
10 ALL OF THE WAY TO LA BREA IN SOME CASES, AT LEAST TO LA CIENEGA.

11 A THEN IT IS KIND OF GERRYMANDERED. AND, MR.
12 CHIER, I AM ONLY AWARE THAT IT INCLUDES A PORTION OF THE
13 EAST -- SORRY. IT IS ONLY A PORTION OF THE JUDICIAL DISTRICT
14 THAT IS PART OF MALIBU, OUT TOWARD THE VENTURA COUNTY LINE.

15 Q THE WEST DISTRICT?

16 A YES.

17 Q DOES NOT THE WEST DISTRICT INCLUDE BEVERLY
18 HILLS, FOR THE SUPERIOR COURT WEST DISTRICT?

19 A YES.

20 Q DOES NOT THE WEST DISTRICT INCLUDE THE CITY OF
21 WEST HOLLYWOOD?

22 A I CANNOT ANSWER THAT. I DON'T KNOW.

23 MR. CHIER: COULD I ASK THE COURT TO TAKE JUDICIAL
24 NOTICE THEN, THAT FELONY MATTERS OCCURRING IN WEST HOLLYWOOD,
25 ARE ULTIMATELY TRIED HERE IN SANTA MONICA SUPERIOR COURT?

26 THE COURT: YES.

27 MR. CHIER: ALL RIGHT.

28 THE WITNESS: MR. CHIER, MAY I ASK FOR CLARIFICATION?

1 DO YOU MEAN THE WEST LOS ANGELES BRANCH --

2 Q BY MR. CHIER: NO. I AM TALKING ABOUT THE NEW
3 WEST DISTRICT OF THE SUPERIOR COURT, THE NEW WEST DISTRICT
4 ARRANGEMENT.

5 A YES. I UNDERSTAND.

6 Q IN THIS COUNTY, I BELEIVE WE HAVE THE WEST
7 DISTRICT, NORTHWEST, SOUTHWEST, WHATEVER YOUR PLEASURE IS?

8 A YES.

9 Q ALL RIGHT. SO THE JURORS FOR THE MOST PART,
10 ARE PULLED WITHIN A THEORETICAL 20-MILE RADIUS BUT AN ACTUAL
11 RADIUS OF SOMEWHAT LESS THAN THAT, FROM THE COURTHOUSE;
12 CORRECT?

13 A FOR THE MOST PART. THE JURORS ARE PULLED FROM
14 A DISTANCE OF 20 MILES, DRIVEN DISTANCE.

15 Q RIGHT. OKAY. WE HAVE ALREADY ESTABLISHED THAT
16 THAT 20-MILE DISTANCE IS SOMEWHAT THEORETICAL IN THAT IT
17 CAN ACTUALLY BE CONSIDERABLY LESS THAN THAT BY YOU KNOW,
18 DRIVEN DISTANCE?

19 MR. WAPNER: OBJECTION, VAGUE.

20 THE COURT: WHAT IS THE PURPOSE OF ALL OF THAT? HAVE
21 WE NOT GONE OVER ALL OF THIS MATTER BEFORE?

22 MR. CHIER: ACTUALLY, WE HAVE NOT, YOUR HONOR. THIS
23 IS SOMETHING THAT --

24 THE COURT: I THOUGHT THAT WE HAD GONE OVER EVERYTHING
25 EXCEPT ONE PARTICULAR DOCUMENT THAT HE HAD THAT YOU WANTED
26 AN EXPLANATION OF.

27 MR. CHIER: THIS IS THE ONE AREA THAT WE DIDN'T GO OVER.
28 I AM TRYING TO SHOW THAT THERE IS A DEMOGRAPHIC DIFFERENCE

1 BETWEEN THE SO-CALLED WEST DISTRICT, WHICH ENCOMPASSES WEST
2 HOLLYWOOD, BEVERLY HILLS AND RUNS WEST AND THE DISTRICT OR
3 THE AREA FROM WHICH THE JURORS ARE PULLED TO THIS COURTHOUSE,
4 ACCORDING TO THE BULL'S EYE SYSTEM. THAT IS THE PURPOSE OF
5 MY --

6 THE COURT: DO YOU KNOW WHAT HE IS TALKING ABOUT?

7 THE WITNESS: YES.

8 THE COURT: ANSWER THAT, WILL YOU PLEASE?

9 THE WITNESS: YES. THE CONFUSION THAT I AM HAVING IS
10 THAT HE IS MAKING REFERENCE TO A SPECIFIC STREET.

11 AND IF I AM NOT MISTAKEN, FROM HERE TO THE CENTRAL
12 DISTRICT AS THE JUROR DRIVES, IS 17 MILES OR THEREABOUTS.

13 SO THAT IT APPEARS TO ME, JUST WITHOUT CONSULTING
14 A MAP, THAT THE LA BREA STREET INTERSECTION THEY MENTIONED
15 IS INCLUDED WITHIN THE 20-MILE DRAW OF THIS COURT.

16 AS A MATTER OF FACT, AS I RECALL THE MAPS,
17 EXCEPT FOR THE PORTION I DESCRIBED, THE ENTIRE WEST JUDICIAL
18 DISTRICT IS INCLUDED WITHIN THE 20 MILES.

19 Q BY MR. CHIER: OKAY. I DON'T WANT TO GET HUNG
20 UP ON A STREET BECAUSE THAT IS REALLY NOT MY OBJECT, HERE.
21 I WILL SEE IF I CAN PUT IT IN TERMS OF THE NEGATIVE.

22 THE COMMUNITIES FROM WHICH JURORS ARE ALLOCATED
23 OR ARE DRAWN AND ALLOCATED TO THIS COURT, ARE NOT COTERMINOUS
24 WOULD BE SO-CALLED WEST DISTRICT?

25 A NO.

26 Q OKAY. THAT IS REALLY THE POINT I WAS TRYING TO MAKE
27 IT. SORRY I TOOK SO LONG TO MAKE.

28 DO YOU HAVE ANY DEMOGRAPHIC STUDY OF THE COMMUNITIES

1 THAT ARE IN THIS THEORETICAL 20-MILE RADIUS OF THE COURTHOUSE
2 THAT FEED THE COURTHOUSE WITH SUPERIOR COURT JURORS?

3 A NO.

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1 Q DOES THE BULL'S EYE SYSTEM --

2 OR DO YOU CALL IT PROGRAM OR SYSTEM, WHAT IS IT?

3 A A COMPUTER PROGRAM. IT IS A COMPUTER PROGRAM.

4 EXCUSE ME.

5 Q DOES THE BULL'S EYE PROGRAM ENDEAVOR IN MOST
6 CASES TO SUPPLY A SUPERIOR COURT WITH JURORS THAT ARE
7 REPRESENTATIVE OF A CROSS-SECTION OF THAT DISTRICT?

8 A NO.

9 Q NO?

10 IS THERE ANY DISTRICT CROSSOVER IN MANY CASES
11 BY JURORS AS LONG AS IT IS WITHIN THE 20-MILE LIMIT?

12 A YES.

13 Q AND IS THAT A CONSIDERATION OF ANY KIND IN THE
14 ALLOCATION OF JURORS TO A PARTICULAR COURT, THE FACT THAT
15 THEY MAY BE IN ONE DISTRICT AND GOING TO ANOTHER DISTRICT?

16 A NO, IT IS NOT A CONSIDERATION.

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

18 THE COURT: ALL RIGHT.

19 (UNREPORTED COLLOQUY BETWEEN MR. CHIER

20 AND THE DEFENDANT.)

21 MR. WAPNER: YOUR HONOR, MAY I HAVE THAT LAST QUESTION
22 AND ANSWER READ BACK?

23 THE COURT: YES.

24 (WHEREUPON, THE RECORD WAS READ BY THE

25 REPORTER.)

26 Q BY MR. CHIER: DID WE ALREADY PUT IN TO --
27 MARK FOR IDENTIFICATION THE SOCIAL AND ECONOMIC AND RACIAL
28 DEMOGRAPHICS OF THE COUNTY, DO YOU KNOW?

13-2
1 A WE DID WITH RESPECT TO THE ETHNICITY.

2 Q THE ETHNICITY?

3 A YES.

4 Q HOW ABOUT EDUCATION AND INCOME?

5 A NO, WE DID NOT WITH RESPECT TO THOSE.

6 Q DO YOU HAVE THOSE FIGURES?

7 A NO, WE DO NOT.

8 Q WHEN YOU SAY YOU DON'T HAVE THEM, DO THEY EXIST
9 OR DON'T THEY EXIST, AT LEAST IN ANY COMPILATION THAT IS
10 AVAILABLE TO YOU?

11 A NO.

12 THEY DO EXIST IN A COMPILATION THAT IS AVAILABLE
13 TO US.

14 I WAS NOT ASKED TO BRING THEM. IT WOULD TAKE
15 A DAY OR TWO TO PUT THOSE TOGETHER.

16 Q I SEE.

17 DO THEY EXIST ON A STATISTICAL TYPE OF GRAPH OR
18 FORM OR DO THEY HAVE TO ACTUALLY BE MADE?

19 A WELL, THEY EXIST IN TWO FORMS THAT WE HAVE
20 AVAILABLE.

21 THEY EXIST IN A SET OF FOUR VOLUMES THAT WERE
22 PRODUCED BY THE DEPARTMENT OF COMMERCE, THE BUREAU OF THE
23 CENSUS, FROM WHICH THEY WOULD HAVE TO BE EXTRACTED AND TYPED
24 UP, IF YOU WILL, COPIED.

25 AND THEY ALSO EXIST ON COMPUTER TAPE, WHICH IS
26 THE FORM IN WHICH WE NORMALLY DEAL WITH THAT DATA.

27 Q HAVE YOU EVER DONE AN EXTRAPOLATION OF THOSE
28 FIGURES AND WHICH WERE SUBMITTED IN CONNECTION WITH ONE OF

13-3
1 THESE TYPES OF HEARINGS?

2 A IN MOST OF THESE HEARINGS, THE QUESTIONS DEAL
3 PRIMARILY WITH RACE, THE ETHNICITY, AND SO THE REASON THAT
4 I HAVE GIVEN YOU THE RACE AND ETHNICITY FOR THE COUNTY IS
5 FOR THAT REASON, THAT WE HAVE NEVER HAD OCCASION TO COMPILE
6 THEM BEFORE.

7 Q HOW MUCH DIFFICULTY IS INVOLVED IN, LIKE, ASKING
8 THE COMPUTER TO GIVE THOSE FIGURES BACK TO YOU?

9 A WELL, THERE IS NO DIFFICULTY INVOLVED WITH IT.
10 IT IS A MATTER OF SCHEDULING THE COMPUTER, GIVEN
11 OTHER PRIORITIES.

12 Q RIGHT. I MEAN IT DOESN'T INVOLVE AN ENORMOUS
13 NUMBER OF MANHOURS?

14 A NO.

15 Q IT COULD BE QUERIED IN A RELATIVELY EASY WAY --

16 A YES.

17 Q -- TO GET THAT INFORMATION?

18 A YES.

19 MR. CHIER: I HAVE NOTHING FURTHER OF THIS WITNESS AT
20 THE TIME, YOUR HONOR.

21 THE COURT: ANY QUESTIONS?

22 MR. WAPNER: YES, I DO. THANK YOU.

23
24 EXAMINATION (RESUMED)

25 BY MR. WAPNER:

26 Q YOU SAID THAT YOU DON'T DO ANY FOLLOWUP ON THE
27 JURORS WHO DON'T RETURN THE QUESTIONNAIRES?

28 A THAT IS CORRECT.

13-4
1 Q WHY IS THAT?

2 A WELL, FOR TWO REASONS.

3 PRESENTLY, THE APPLICABLE STATUTE IN THE CODE
4 OF CIVIL PROCEDURE, WHICH IS SECTION 204.3(B), DOES NOT
5 REQUIRE IT. IT READS AS FOLLOWS:

6 "ANY PERSON WHO FAILS TO RETURN A
7 COMPLETED JUROR QUESTIONNAIRE AS INSTRUCTED MAY
8 BE SUMMONED TO APPEAR BEFORE THE JURY COMMISSIONER
9 TO FILL OUT THE QUESTIONNAIRE."

10 SO WHEREAS THE FORMER PROVISION, WHICH WAS IN
11 PLACE MADE IT MANDATORY, THE STATUTE NOW MAKES IT PERMISSIVE.

12 AND THE REASON THAT WE HAVE FOUND THAT IT IS
13 PERMISSIVE AS OPPOSED TO BEING MANDATORY IS THAT WHEN A
14 FOLLOWUP IS CONDUCTED OF PERSONS WHO FAILED TO RESPOND TO
15 THE QUESTIONNAIRE, WE FIND THE FOLLOWING. LET'S SAY OUT OF
16 A HUNDRED JURORS WHO FAIL TO RESPOND, WE WILL FIND THAT
17 25 PERCENT WILL RETURN THE SECOND NOTICE, THE SECOND REQUEST
18 THAT THEY COMPLETE THE QUESTIONNAIRE AND 75 PERCENT WON'T.

19 NOW, OF THE 25 PERCENT THAT DO RETURN THE
20 QUESTIONNAIRE, WE WILL QUALIFY ABOUT 8 PERCENT.

21 NOW OF THE 75 THAT WE DO NOT FOLLOW UP ON A THIRD
22 TIME, OUR EXPERIENCE WAS THAT UNLESS WE WERE WILLING TO GO
23 TO THE FULL EXTENT OF THE LAW, THAT IS, TO ISSUE AN ORDER
24 TO SHOW CAUSE, TO THEN ISSUE AN ATTACHMENT AND BRING THE JUROR
25 IN AND HAVE THEM BEFORE THE COURT, THAT THE RESULT WOULD BE,
26 SAY, OF A THIRD NOTICE, WOULD BE AGAIN A SIMILAR FALL-OUT
27 SO THAT THE BOTTOM LINE WITH RESPECT TO THE FOLLOWUP
28 PROCEDURES IS THAT IT DOESN'T YIELD THE SIGNIFICANT NUMBER

1 OF JURORS.

2 WE FIND OUT THAT MANY OF THE JURORS IN THE FIRST
3 INSTANCE SIMPLY DID NOT RECEIVE THE QUESTIONNAIRE.

4 WE ALSO FIND OUT THAT SOME OF THE JURORS, BELIEVING
5 THEY HAD GOOD CAUSE TO BE EXCUSED, FINANCIAL, MEDICAL OR OTHER
6 REASONS, SIMPLY FAILED TO RETURN BACK THE QUESTIONNAIRE ON
7 THAT BASIS, ESSENTIALLY SAYING "THEY ARE GOING TO FIND ME
8 TO BE EXCUSED ANYWAY SO I WON'T RETURN IT."

9 SO IT IS A PROCESS WHEREBY THEY EITHER WERE
10 ESSENTIALLY SELF-QUALIFYING OR SELF-EXCUSING, IF YOU WOULD,
11 THEMSELVES.

12 WE HAD A PROGRAM IN THE SUPERIOR COURT PRIOR TO
13 NOVEMBER OF 1978 THAT WAS THE BASIS FOR MANY FOLLOWUP
14 PROGRAMS THROUGHOUT THE STATE, BUT WE FOUND OUT, HOWEVER,
15 THAT IT WAS NOT AN EFFECTIVE PROGRAM, NOT EFFECTIVE EITHER
16 FROM A COST POINT OF VIEW OR IN TERMS OF THE NET YIELD OF
17 JURORS THAT WE COULD GET.

18 FURTHER, WE FOUND THAT IN TERMS OF THE
19 DISTRIBUTION OF PEOPLE WHO FAILED TO RESPOND, WITH SOME
20 EXCEPTIONS, THEY WERE PRETTY MUCH DISTRIBUTED ACROSS THE
21 DIFFERENT COGNIZABLE GROUPS. IN OTHER WORDS, IT DIDN'T MAKE
22 A DIFFERENCE WHETHER YOU ARE WHITE, BLACK, BROWN OR MALE OR
23 FEMALE, THAT THEY SEEMED TO BE PRETTY WELL RANDOMLY
24 DISTRIBUTED.

25 I SAID THERE WERE SOME EXCEPTIONS. WE FOUND THAT
26 THERE ARE SOME AREAS IN THE COUNTY ASSOCIATED WITH HIGH
27 TRANSIENCY IN WHICH THOSE FIGURES DO NOT HOLD TRUE OR THOSE
28 STATEMENTS DID NOT HOLD TRUE.

1 WHERE THERE IS A HIGH TRANSIENCY RATE, PARTICULARLY
2 IN AREAS WHERE THERE IS MOVEMENT OF CENTRAL AND SOUTH AMERICAN
3 PERSONS COMING INTO THE COUNTY OF LOS ANGELES, THAT YOU CAN
4 SAY YES, THIS IS HITTING THOSE HISPANICS IN THAT AREA MUCH
5 HARDER THAN IT IS ANYBODY AROUND THE COUNTY.

6 SO THAT, OTHER THAN THAT GENERALIZATION, THERE
7 ARE SOME POCKETS ASSOCIATED WITH HIGH TRANSIENCY RATES THAT
8 YOU CAN MAKE THE GENERALIZATION THAT PEOPLE WHO FAIL TO RESPOND
9 TO THE QUESTIONNAIRE ARE PRETTY EVENLY DISTRIBUTED THROUGHOUT
10 THE COUNTY.

11 Q OKAY. HOW LONG HAVE YOU BEEN THE DIRECTOR OF
12 JUROR SERVICES?

13 A I WAS APPOINTED IN AN ACTING CAPACITY IN APRIL
14 OF 1978 AND ON THE PERMANENT BASIS A YEAR LATER, APRIL OF
15 1979.

16 Q DID YOU WORK WITH THE JUROR SERVICES DIVISION
17 BEFORE YOU BECAME THE DIRECTOR?

18 A YES. I WAS APPOINTED AS DIRECTOR OF RESEARCH AND
19 DEVELOPMENT IN THE COURT IN 1974. AND IN THAT CAPACITY, I
20 ASSISTED JUROR'S SERVICES IN THE DEVELOPMENT OF MANY OF THE
21 COMPUTER PROGRAMS WE ARE NOW USING.

22 Q AND COULD YOU JUST RELATE TO US BRIEFLY THE
23 TRAINING YOU HAVE HAD --

24 THE COURT: IS THERE ANY QUESTION ABOUT HIS QUALIFICATIONS?
25 I DON'T THINK WE HAVE TO GO INTO THIS.

26 MR. CHIER: NOT BY ME. HE IS A HIGHLY QUALIFIED
27 INDIVIDUAL.

28 THE COURT: NOT BY ME EITHER.

1 Q BY MR. WAPNER: IS THERE ANY EFFORT BY YOU AT
2 YOUR DEPARTMENT, TO CONTINUOUSLY UPGRADE YOUR JURY PANEL
3 SELECTION SYSTEM TO INSURE FAIRNESS AND INTEGRITY?

4 MR. CHIER: OBJECTION. THAT IS IRRELEVANT. THE ISSUE
5 IS NOT WHAT THE --

6 THE COURT: HE SAID FAIRNESS, WHICH I THINK --

7 MR. CHIER: BUT THE QUESTION IS, WHETHER THEY STRIVE
8 TO ACHIEVE A HIGHER DEGREE OF FAIRNESS, RATHER THAN WHAT THE
9 EXISTING SITUATION IS. SO I THINK THAT IT IS IRRELEVANT.
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1 THE COURT: WELL, IMPLICIT IN THE QUESTION WAS THE
2 UPGRADING. SO THAT SHOWS IT IS INTENDED TO BE A HIGHER
3 STANDARD. IS THAT RIGHT?

4 THE WITNESS: I BELIEVE SO, YOUR HONOR. YES.

5 THE COURT: WHAT IS THE NEXT QUESTION?

6 Q BY MR. WAPNER: ARE THE VARIOUS RACE AND ETHNIC
7 GROUPS IN LOS ANGELES COUNTY RANDOMLY OR EVENLY DISTRIBUTED
8 THROUGHOUT THE COUNTY?

9 A NO.

10 Q AND WHAT IS THE EFFECT OF UNEQUAL DISTRIBUTION
11 OF RACE/ETHNIC GROUPS ON THE JURY SELECTION PROCESS?

12 A ALL RIGHT. I THINK WE SHOULD POINT OUT THAT FOR
13 EXAMPLE, THERE IS A CONCENTRATION OF BLACK CITIZENS IN WHAT
14 IS GENERALLY KNOWN AS THE SOUTH CENTRAL AREA OF LOS ANGELES
15 COUNTY.

16 THE EFFECT OF THAT CONCENTRATION IS THAT UNLESS
17 THERE ARE OTHER AREAS POPULATED BY BLACKS, THAT YOU ARE NOT
18 LIKELY TO GET -- OR YOU ARE NOT GOING TO GET A DISTRIBUTION
19 IN ACCORD WITH A CONCENTRATION AT ALL OF THE COURTS IN LOS
20 ANGELES COUNTY.

21 THERE ARE OTHER POCKETS OF BLACKS IN THE COUNTY
22 FOR EXAMPLE, AROUND THE ALTADENA/PASADENA AREA AND IN PACOIMA.
23 BUT COMPARED TO THE SOUTH CENTRAL AREA OF LOS ANGELES, THOSE
24 LATTER TWO CONCENTRATIONS ARE SMALL.

25 SO THAT THE EFFECT ON THE JURY SELECTION SYSTEM
26 IS THAT UNLESS THERE IS PURPOSEFUL INCLUSION, WHICH MEANS
27 NON-RANDOM EXCLUSION -- IN OTHER WORDS, YOU SPECIFICALLY GO
28 INTO THESE AREAS FOR THE TARGET COURT IN QUESTION -- LET'S

1 SAY IN SANTA MONICA.

2 IF YOU WANT TO INCREASE THE NUMBER OF BLACKS AT
3 THIS PARTICULAR COURT, THEN YOU PURPOSELY HAVE TO GO INTO THAT
4 AREA WHERE THE CONCENTRATION OF THE TARGET GROUP IS LOCATED
5 AND OVER-CALL, IF YOU WILL, VIS A VIS THE OTHER COURTS. SO
6 IT IS ON THE ONE HAND YES, THAT THERE IS A CONCENTRATION MADE,
7 ON THE OTHER HAND, THE EFFECT IS THAT THE PROPORTIONS THAT
8 YOU SEE ON THE COUNTY-WIDE BASIS MAY OR MAY NOT BE THE
9 PROPORTIONS THAT EACH ONE OF THE TARGET COURTS GETS.

10 REMEMBER, WE ARE TALKING ABOUT 33 DIFFERENT COURT
11 LOCATIONS WHERE JURORS ARE REQUIRED. SO I WOULD EXPECT, GIVEN
12 THESE CONCENTRATIONS, THAT THE MALIBU MUNICIPAL COURT, THE
13 PERCENTAGE OF BLACKS WOULD BE FAIRLY SMALL VIS A VIS THE
14 11.4 PERCENT OF BLACKS THAT RESIDE IN LOS ANGELES COUNTY.

15 SIMILARLY, IN SAN FERNANDO IN ANTELOPE VALLEY AND
16 SOME OF THE OTHER COURTS, THAT YOU WOULD NOT GET THE SAME
17 PROPORTION THAT WE WOULD SEE IN THE COUNTY. BY THE SAME TOKEN,
18 AROUND THE COURTS SITUATED IN THE SOUTH CENTRAL AREA, I WOULD
19 EXPECT TO SEE MORE THAN THE PERCENTAGE THAT WE ARE TALKING
20 ABOUT FOR THE COUNTY, A GREATER PROPORTION THAN THE 11.4 PER-
21 CENT. THAT IN FACT, IS WHAT TENDS TO HAPPEN.

22 FOR EXAMPLE, IN THE INGLEWOOD COURT, IN THE COMPTON
23 COURT AND EVEN IN THE CENTRAL DISTRICT COURT FOR THAT AND
24 OTHER FACTORS, OTHER REASONS, YOU DO GET A HIGHER PERCENTAGE
25 OF BLACKS THAN YOU FIND IN THE COUNTY.

26 I SHOULD POINT OUT THAT WITH RESPECT TO THE CENTRAL
27 DISTRICT, SINCE OUR TRANSPORTION SYSTEM HERE IN LOS ANGELES
28 COUNTY IS REALLY GEARED TO FEED THAT CENTRAL HUB, IT IS EASIER

1 FOR JURORS SUMMONED TO GET TO THE CENTRAL DISTRICT.

2 AS A MATTER OF FACT, IN CERTAIN AREAS OF COMPTON,
3 NOTWITHSTANDING THAT THERE IS A COMPTON COURT TO WHICH BLACK
4 PROSPECTIVE JURORS HAVE BEEN SUMMONED, THEY WILL SEND IN A
5 REQUEST, A LETTER JUSTIFYING THE TRANSFER TO THE CENTRAL
6 DISTRICT ON THE BASIS OF TRANSPORTATION, THAT THE BUS SCHEDULES
7 DOWNTOWN VIS A VIS THE BUS SCHEDULES IN COMPTON ARE MORE
8 FREQUENT. THEY EXIST, TO BEGIN WITH AND IF THERE ARE BUSES
9 TO THE COMPTON COURT FROM A PARTICULAR AREA, THEY DON'T RUN
10 AS FREQUENTLY.

11 SO, THAT IS THE EFFECT OF THIS LESS THAN RANDOM
12 OR UNRANDOM DISTRIBUTION OF PEOPLE THROUGHOUT THE COUNTY.

13 MR. WAPNER: NOTHING FURTHER.

14 MR. CHIER: I HAVE JUST A FEW QUESTIONS.

15 THE COURT: ALL RIGHT.

16

17 FURTHER EXAMINATION

18 BY MR. CHIER:

19 Q MR. ARCE, DO YOU HAVE IN MIND SIR, OF THE NINE
20 HUNDRED SOME QUESTIONNAIRES THAT ARE SENT OUT ANNUALLY FOR
21 AT LEAST 1984/85, THAT WAS THE LAST TIME YOU DID THE STUDY --
22 THE ULTIMATE NUMBER OF PROSPECTIVE JURORS THAT ACTUALLY
23 SHOWED UP WAS APPROXIMATELY ONE-QUARTER OF THAT AMOUNT, WASN'T
24 THAT CORRECT? IT WAS TWO HUNDRED FIFTY SOME ODD THOUSAND?

25 A TWO HUNDRED FIFTY THOUSAND.

26 Q THAT WAS THE NUMBER THAT WAS QUALIFIED?

27 A YES.

28 Q RIGHT. SO THERE IS SOME 70 PERCENT OR 60 PERCENT

1 OF THE JURORS WHO APPEAR ON THE DMV -- OR PROSPECTIVE JURORS
2 THAT APPEAR ON THE DMV OR VOTER REGISTRATION ROLLS THAT NEVER
3 GET INTO THE JUROR SYSTEM?

4 A RIGHT. YES.

5 Q HAVE THERE EVER BEEN ANY CORRELATION STUDIES OR
6 STUDIES OF ANY KIND OF EITHER ATTITUDINAL STUDIES OF THESE
7 PEOPLE THAT DON'T ACTUALLY MAKE IT INTO THE SYSTEM --

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1 THE COURT: THIS ISN'T PROPER REDIRECT. IF THERE IS
2 ANYTHING AT ALL THAT WAS ASKED BY THE PEOPLE, YOU CAN ASK IT.

3 BUT ON THAT QUESTION, YOU ARE REOPENING. WE ARE
4 GOING BACK INTO A LOT OF THE OTHER STUFF WE HAD BEFORE.

5 MR. CHIER: ALL RIGHT, YOUR HONOR. I DO HAVE SOME
6 REDIRECT, HERE. SORRY, YOUR HONOR. I BELIEVE THIS WOULD BE
7 DIRECT BECAUSE HE WAS TALKING ABOUT --

8 THE COURT: I DON'T THINK IT IS REDIRECT. WILL YOU GO
9 ON TO SOMETHING THAT HE HAD TAKEN UP?

10 Q BY MR. CHIER: HOW MANY TIMES HAVE YOU ACTUALLY
11 QUALIFIED AS AN EXPERT IN SUPERIOR COURT, MR. ARCE?

12 A WELL, THIS YEAR, IT HAS BEEN BETWEEN 12 AND 15
13 TIMES.

14 Q AND SINCE YOU ASSUMED THE POST OF JURY COMMISSIONER?

15 A I HAVE NOT COUNTED. IT IS A SIZABLE NUMBER OF
16 TIMES.

17 Q HAVE YOU ALSO QUALIFIED AS AN EXPERT IN THE FEDERAL
18 COURTS?

19 A NO, I HAVE NOT.

20 Q ALL RIGHT. WITH RESPECT TO YOUR TESTIMONY ABOUT
21 THE ETHNIC GROUPS NOT BEING EQUALLY DISTRIBUTED IN THE COUNTY,
22 I HAVE A COUPLE OF QUESTIONS I WOULD LIKE TO ASK YOU ABOUT
23 THAT.

24 YOU SAID FOR EXAMPLE, THAT THERE IS A HIGH
25 CONCENTRATION OF BLACKS IN SOUTH CENTRAL LOS ANGELES, TO MAKE
26 YOUR POINT?

27 A YES.

28 Q AND THEN YOU DISCUSSED THAT IT WOULD REQUIRE

1 PURPOSEFUL INCLUSION IN ORDER TO TRY TO RECREATE OR MORE,
2 LET'S SAY, A COUNTY-WIDE DEMOGRAPHIC -- COUNTY-WIDE DEMOGRAPHICS
3 IN TERMS OF ETHNICITY, RIGHT?

4 A YES.

5 Q WHEN YOU SAY "PURPOSEFUL INCLUSION" IT IS JUST
6 ANOTHER WORD FOR WHAT MIGHT BE AN ANALOG OF AFFIRMATIVE ACTION?

7 THE COURT: HE MEANS PUTTING THE JURORS -- EVENING UP
8 THE DISTRIBUTION SO AS TO MAKE UP THAT 11.3 OR .4 PERCENT.
9 IS THAT RIGHT?

10 THE WITNESS: YES. IT REQUIRES IDENTIFYING THE TARGET
11 GROUP, COGNIZABLE GROUP AND BRINGING IN SUFFICIENT NUMBERS
12 TO BRING THAT PERCENTAGE UP TO THE TARGET PERCENTAGE.

13 Q BY MR. CHIER: WELL, LET ME ASK YOU THIS. DO YOU
14 HAVE --

15 THE COURT: IF YOU WANTED TO HAVE A DISTRIBUTION, SO
16 YOU COULD HAVE POOR PEOPLE, YOU WOULD GO DOWN TO SKID ROW AND
17 PICK ALL OF THEM UP THERE AND BRING THEM, IS THAT RIGHT?

18 THE WITNESS: YES, YOUR HONOR. AND YOU WOULD IDENTIFY
19 THAT AREA IN THE COUNTY WHERE "POOR PEOPLE" LIVE AND AGAIN,
20 OVER-SAMPLE THAT AREA AND BRING THEM IN.

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15-1

1 Q IN LIGHT OF THE CONSTITUTIONAL AND JUDICIAL MANDATE
2 TO PROVIDE A CONSTITUTIONALLY FAIRLY COMPOSED SELECTION OF
3 JURORS ON CRIMINAL CASES, DOES THE COUNTY OF LOS ANGELES
4 ATTEMPT TO MIRROR IN ITS JURY SELECTION, JURY ALLOCATION
5 PROGRAM, THE DEMOGRAPHICS OF THE ENTIRE COUNTY?

6 A NO.

7 Q WITH RESPECT TO THE ALLOCATION OF JURORS TO
8 PARTICULAR COURTS, IS THERE AN ATTEMPT TO MIRROR THE
9 DEMOGRAPHY IN WHICH THAT COURT LIES?

10 A NO.

11 Q YOU SAY THAT RANDOM SELECTION OF JURORS RESULTS
12 IN THE ALLOCATION OF JURORS TO PARTICULAR COURTS THAT ARE
13 TOTALLY OUT OF SYNCHRONISITY OR DO NOT CORRESPOND TO THE
14 COUNTY-WIDE DEMOGRAPHYS; IS THAT CORRECT?

15 A YES.

16 THE COURT: IS THERE ANY WAY OF CHANGING THAT, EXCEPT
17 TO DELIBERATELY GO OUT AND FIND OUT WHO IS WHITE AND WHO IS
18 YELLOW AND WHO IS GREEN AND THEN PICK THEM OUT AND MAKE A
19 PROPORTION THAT WOULD BE EQUAL FOR EVERYBODY, IS THAT IT?

20 THE WITNESS: YOUR HONOR, YOUR POINT IS WELL TAKEN.
21 WITHOUT THAT SPECIFIC IDENTIFICATION AND WITHOUT MANIPULATING
22 THOSE FIGURES IN THE FASHION THAT YOU ARE INFERRING, THERE
23 IS NO WAY.

24 THE COURT: I THINK YOU HAVE MADE YOUR POINT.

25 MR. CHIER: I THINK YOU MADE IT FOR ME, JUDGE.

26 THE COURT: I DID?

27 MR. CHIER: YES.

28 THE COURT: ALL RIGHT.

15-2

1 Q BY MR. CHIER: I HAVE JUST ONE FOLLOWUP QUESTION,
2 MR. ARCE.

3 MR. ARCE, ON THE QUESTIONNAIRES THAT GO OUT, THE
4 INITIAL QUESTIONNAIRES --

5 A YES.

6 Q THAT GO OUT AND THAT COME BACK AND THAT ARE
7 PROCESSED, ARE THE PERSONS BEING QUESTIONED REQUIRED TO SELF-
8 IDENTIFY THEMSELVES IN TERMS OF ETHNICITY ON THOSE
9 QUESTIONNAIRES?

10 A NO, THEY ARE NOT REQUIRED TO.

11 AS A MATTER OF FACT, AGAIN, THE CODE OF CIVIL
12 PROCEDURE IS VERY SPECIFIC WITH THE TYPE OF INFORMATION THAT
13 YOU CAN ASK OF PROSPECTIVE JURORS AND ONLY INFORMATION TOUCHING
14 UPON THEIR NAME, THEIR ADDRESS, THEIR IDENTITY AND THE BARE
15 OUTLINES OF THE COMPETENCY REQUIREMENTS UNDER THE CIVIL CODE
16 PROCEDURE ARE PERMISSIBLE.

17 Q IS IT YOUR -- HAVE YOU EVER SOUGHT AN OPINION
18 OF, LIKE, FROM THE COUNTY COUNSEL, FOR EXAMPLE, THAT THE
19 ETHNIC SELF-IDENTIFICATION IS EXCLUDED OR NOT ALLOWED BY THE
20 CODE OF CIVIL PROCEDURE OR IS THAT A POINT OF VIEW THAT HAS
21 BEEN ADOPTED BY YOUR OFFICE AND HANDED DOWN FROM YOUR
22 SUCCESSOR?

23 WHERE DID THIS COME FROM, IN OTHER WORDS?

24 A WELL, MR. CHIER, IF I MAY CITE SECTION 204.4 OF
25 THE CALIFORNIA CODE OF CIVIL PROCEDURE, IT READS AS FOLLOWS,
26 PARENTHESIS LITTLE (L), LITTLE (A):

27 "IF A JURY COMMISSIONER REQUIRES A
28 PERSON TO COMPLETE A QUESTIONNAIRE AS AUTHORIZED

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1 BY SECTION 204.3, THE QUESTIONNAIRE SHALL ASK FOR
2 THE FOLLOWING INFORMATION AND SHALL BE IN
3 SUBSTANTIALLY THE FOLLOWING FORM:

4 "1. QUALIFICATIONS. CHECK YES OR NO.

5 "1A: I AM ABLE TO READ AND UNDER-
6 STAND ENGLISH."

7 AND THEN THERE IS A PLACE PROVIDED FOR A YES OR
8 NO CHECK.

9 "1B: I AM A CITIZEN OF THE UNITED
10 STATES.

11 "1C: I AM A RESIDENT."

12 AND THEN THERE IS A SPACE PROVIDED FOR THE COUNTY
13 NAME AND THE COUNTY.

14 "1D: I AM 18 YEARS OR OLDER.

15 "1E: I AM NOW SERVING AS A GRAND JUROR."

16 THE COURT: DIDN'T WE GO OVER THAT THE LAST TIME WE
17 WERE HERE?

18 THE WITNESS: YES, WE DID, YOUR HONOR, IN THE SENSE
19 THAT WHAT WE USE IN OUR QUESTIONNAIRE IS TAKEN FROM THIS.

20 THE COURT: YES.

21 THE WITNESS: THE POINT I AM GOING TO MAKE IS THAT THE
22 LITTLE B, ONCE THAT IS SET FORTH, PARENTHESIS LITTLE B, CLOSE
23 PARENTHESIS, OF THAT SECTION READS AS FOLLOWS:

24 "IN ADDITION TO THE QUESTIONS SET FORTH
25 IN SUBSECTION, PAREN LITTLE A, CLOSE PAREN, A JURY
26 COMMISSIONER MAY INCLUDE ADDITIONAL QUESTIONS
27 WHICH MAY BE USED TO EXPEDITE VOIR DIRE WHICH MAY
28 INCLUDE BUT ARE NOT LIMITED TO QUESTIONS AS TO AGE,

1 OCCUPATION, EMPLOYER, MARITAL STATUS, OCCUPATION
2 OF SPOUSE, SPOUSE'S EMPLOYER AND NUMBER OF CHILDREN."

3 SO IN OUR VIEW, THE REQUIREMENTS OF THE STATUTE
4 ARE QUITE CLEAR AND INASMUCH AS WE DO NOT USE THOSE QUESTIONS,
5 ADDITIONAL QUESTIONS TO EXPEDITE VOIR DIRE, INASMUCH AS THOSE
6 QUESTIONS, IF YOU RECALL, THEY ARE THE SAME ONES THAT
7 TYPICALLY APPEAR IN A COURTROOM ON SOME SORT OF A SIGN, THOSE
8 ARE NOT INCLUDED ON OUR QUESTIONNAIRE.

9 Q BY MR. CHIER: ALL RIGHT, I BELIEVE THAT ANSWERS
10 MY QUESTION. AND I JUST HAVE ONE LAST QUESTION WHICH IS:

11 WHY IS IT OR HOW IS IT THAT YOU FEEL COMFORTABLE
12 ASKING FOR SELF-IDENTIFICATION WITH RESPECT TO ETHNICITY
13 WHEN THE JURORS ARE SURVEYED IN THE JURY ASSEMBLY ROOM?

14 A BECAUSE THAT FORMAT USED THERE IS VOLUNTARY.
15 THERE IS A MORAL SUASION THAT WE ATTEMPT TO USE
16 TO GET THE PEOPLE TO FILL THOSE OUT AND EXPLAIN TO THEM IN
17 PERSON WHY WE ARE CONDUCTING THE SURVEY. BUT THERE IS NO
18 REQUIREMENT, AS WOULD BE, IF USED IN CONJUNCTION WITH THE
19 QUESTIONNAIRE FORM FOR THE PERSON TO GIVE HIS NAME, ADDRESS
20 OR OTHER IDENTIFYING INFORMATION.

21 Q THERE IS NO REQUIREMENT THEY SEND BACK THE
22 QUESTIONNAIRES, IS THERE?

23 A WELL, THERE IS A STATEMENT, YES, YOU KNOW, THAT
24 INDICATES THEY MUST RETURN IT IN 10 DAYS.

25 Q BUT THERE IS NO ARMING OR NO ENFORCEMENT OF THAT
26 SO IT IS ESSENTIALLY VOLUNTARY WITH RESPECT TO THE
27 QUESTIONNAIRE?

28 A THERE IS NO ENFORCEMENT OF IT, THAT'S CORRECT.

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1 Q SO THE OPPOSITE OF THE NO ENFORCEMENT IS IT IS
2 VOLUNTARY, RIGHT, YOU DON'T DO IT BECAUSE YOU HAVE TO BUT
3 YOU DO IT BECAUSE YOU WANT TO, RIGHT?

4 A YOU DO IT BECAUSE YOU WANT TO.

5 MR. CHIER: THANK YOU. I HAVE NO FURTHER QUESTIONS.

6 THE COURT: ALL RIGHT. I THINK WHAT REMAINS IS
7 ARGUMENT. WE CAN HAVE THAT AT SOME OTHER TIME. I WOULD LIKE
8 TO GET ON WITH THE JURY QUALIFICATIONS.

9 MR. CHIER: YES. COULD WE, LIKE, RESERVE ARGUMENT FOR
10 ANOTHER DATE, YOUR HONOR?

11 THE COURT: ABSOLUTELY, THAT IS WHAT I SAID.

12 MR. CHIER: AND MAYBE MR. ARCE AT HIS ABSOLUTE
13 CONVENIENCE COULD PROVIDE US WITH THOSE STATISTICS HE SAID
14 ARE IN THE COMPUTER BUT HAVE TO BE RETRIEVED.

15 THE COURT: IF YOU GET A CHANCE, SUPPLY THEM FOR US.
16 YOU WON'T BE CALLED UPON EXCEPT TO SUBMIT THAT INFORMATION.
17 THANK YOU VERY MUCH, MR. ARCE.

18 MR. CHIER: PERHAPS THERE IS ANOTHER DATE ON WHICH
19 MR. ARCE IS GOING TO BE IN THE NEIGHBORHOOD SO HE --

20 THE COURT: HE DOESN'T HAVE TO COME IN HERE. ALL HE
21 HAS TO DO IS PRODUCE THOSE STATISTICS WHICH YOU SAID YOU
22 WANTED.

23 MR. CHIER: ALL RIGHT.

24 THE COURT: YOU HAVE OTHER DUTIES TO PERFORM BESIDES
25 COMING HERE EVERY MONDAY, WEDNESDAY AND FRIDAY.

26 THE WITNESS: YES, YOUR HONOR. THANK YOU.

27 THE COURT: THANK YOU VERY MUCH, MR. ARCE. IT HAS BEEN
28 VERY ENLIGHTENING. WE APPRECIATE VERY MUCH THE TIME YOU HAVE

15-6
1 TAKEN AND THE EFFORTS YOU HAVE TAKEN.

2 MR. CHIER: I AM SORRY. I WAS TALKING TO MR. WAPNER.

3 THE COURT: I WAS THANKING MR. ARCE.

4 MR. CHIER: OH, ABSOLUTELY. PLEASE INCLUDE MY THANKS.

5 THE COURT: YES, AND YOURS, TOO.

6 ALL RIGHT, LET'S GET THE NEXT JUROR IN.

7 MR. CHIER: BEFORE THE NEXT JUROR COMES, COULD WE SPEAK
8 TO THE COURT FOR A MINUTE WITH RESPECT TO THE RECESS TOMORROW
9 MORNING, YOUR HONOR?

10 THE COURT: AS FAR AS WHAT?

11 MR. CHIER: AS FAR AS THIS MATTER THAT HAS COME UP
12 REGARDING TOMORROW MORNING, I JUST WANT TO BRIEFLY ADDRESS
13 THE COURT ON THIS.

14 THE COURT: YOU CAN DO SO.

15 MR. CHIER: I DON'T -- AGAIN EXCUSE ME. I DON'T KNOW
16 WHAT IT IS, YOUR HONOR, THAT HAS COME UP THAT WOULD BE SO
17 IMPORTANT.

18 THE COURT: I DON'T KNOW EITHER BUT APPARENTLY IT MUST
19 BE SOMETHING THAT IS OF GREAT URGENCY. WHAT IS IT, A PERSONAL
20 MATTER OR OTHERWISE?

21 MR. WAPNER: WELL, I HOPE THAT IT IS SUFFICIENT THAT
22 I ADOPT THE COURT'S STATEMENT THAT IT IS SOMETHING OF GREAT
23 URGENCY AND IT WILL COME OUT IN DUE COURSE. I AM NOT
24 ATTEMPTING TO BE --

25 THE COURT: I DON'T WANT TO PRESS HIM. IF HE HAS A
26 LEGITIMATE REASON FOR IT, I WILL TAKE HIS WORD FOR IT AS AN
27 OFFICER OF THE COURT.

28 MR. WAPNER: THANK YOU, YOUR HONOR.

1 MR. CHIER: IT OCCURS TO ME, IF IT IS SOMETHING REGARDING
2 THIS CASE, THAT IT IS SOMETHING OF GREAT MOMENT THAT MAYBE
3 DEFENSE COUNSEL MIGHT HAVE AN OBLIGATION TO BE HERE OR A RIGHT
4 TO BE THERE.

5 THE COURT: LET'S SEE.

6 MR. CHIER: I AM JUST SAYING, JUDGE, SINCE YOU DON'T
7 KNOW, DOES IT REQUIRE ATTENDANCE OF DEFENSE COUNSEL?

8 MR. WAPNER: NOT ONLY DOES IT NOT REQUIRE -- WELL, IT
9 DOES NOT REQUIRE THE ATTENDANCE OF DEFENSE COUNSEL. WE HAVE
10 NEVER IN THIS CASE --

11 THE COURT: WILL THE DEFENDANT BE PREJUDICED IN ANY
12 WAY BECAUSE OF WHAT YOU ARE GOING TO DO TOMORROW?

13 MR. WAPNER: NO.

14 THE COURT: EXCEPT IT IS IN CONNECTION WITH THE
15 PREPARATION OF THE CASE?

16 MR. WAPNER: IF THERE IS ANYTHING IN THIS CASE THAT
17 SHOULD BE DISCLOSED TO THE DEFENSE, IT HAS BEEN AND IT WILL
18 BE. WE HAVE NEVER ATTEMPTED TO HIDE ANYTHING AND WE WILL
19 NOT ATTEMPT TO HIDE ANYTHING.

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16A-1

1 MR. CHIER: I WON'T BELABOR THIS, YOUR HONOR. BUT IT
2 SEEMS TO ME THAT IF YOUR HONOR DOESN'T KNOW WHAT IT IS AND
3 WE DON'T KNOW WHAT IT IS AND MR. WAPNER INDICATES THAT IT IS
4 IN THE NATURE OF A CONTINUING INVESTIGATION, THEN I AM NOT
5 SURE THAT I UNDERSTAND THE URGENCY.

6 THE COURT: WELL, THAT IS ENOUGH. I THINK HE HAS ASSURED
7 YOU THAT IT WON'T PREJUDICE YOU IN THE SLIGHTEST. THAT IS
8 ALL I AM CONCERNED ABOUT.

9 MR. CHIER: ALL RIGHT.

10 THE COURT: WHO HAVE WE GOT NEXT? UNLESS, YOU WANT ME
11 TO FIND OUT AND THEN I CAN DETERMINE FOR MYSELF, IF YOU WANT
12 ME TO.

13 BUT I DON'T KNOW WHETHER HE WILL TELL ME, EITHER.

14 MR. CHIER: IF YOUR HONOR IS SATISFIED, I AM SATISFIED.

15 THE COURT: IF HE SHOULD HAVE LET ME KNOW ABOUT IT, YOU
16 KNOW THAT YOU WILL HEAR FROM ME.

17 MR. CHIER: YES.

18 (PROSPECTIVE JUROR KAUZOR ENTERS THE
19 COURTROOM.)

20 THE COURT: MR. KAUZOR, WHERE DO YOU LIVE?

21 MR. KAUZOR: IN VAN NUYS.

22 THE COURT: YOU WERE PRESENT, OF COURSE, WHEN I OUTLINED
23 TO THE PROSPECTIVE JURORS THE NATURE OF THE CASE WE ARE ABOUT
24 TO TRY?

25 MR. KAUZOR: YES, SIR.

26 THE COURT: VERY BRIEFLY, AGAIN, THIS IS A CASE WHERE
27 THE DEFENDANT, IT IS CHARGED, COMMITTED A FIRST DEGREE MURDER
28 AND THAT THAT MURDER WAS COMMITTED DURING THE COURSE OF A

1 ROBBERY.

2 NOW, THERE ARE CERTAIN CRIMES OF COURSE IN
3 CALIFORNIA WHICH CALL FOR THE DEATH PENALTY IF REQUESTED.
4 FOR EXAMPLE, THERE IS A MURDER COMMITTED DURING THE COURSE
5 OF A ROBBERY, LIKE WE HAVE IN THIS CASE AND A ROBBERY (SIC)
6 COMMITTED DURING THE COURSE OF A KIDNAPPING, DURING THE COURSE
7 OF A BURGLARY, THE COURSE OF A RAPE, IN MULTIPLE MURDERS AND
8 MATTERS OF THAT KIND, WHICH THE LEGISLATURE HAS SAID IN THOSE
9 SPECIAL KINDS OF CASES, THEY SHALL BE CALLED SPECIAL
10 CIRCUMSTANCE CASES.

11 THE DISTRICT ATTORNEY MAY REQUEST THE DEATH PENALTY
12 IN THOSE CASES. AND IN THIS PARTICULAR CASE, IT IS INVOLVING
13 A CASE OF AN ALLEGED MURDER IN THE COURSE OF A ROBBERY.

14 THE DISTRICT ATTORNEY HAS ASKED FOR THE DEATH
15 PENALTY IN THIS CASE. NOW, THE JURY WILL BE SELECTED TO TRY
16 THE CASE FIRST ON WHAT WE CALL THE GUILT PHASE. YOU WILL
17 DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OF MURDER
18 IN THE FIRST DEGREE AND IF SO, THE SECOND THING THEY WILL HAVE
19 TO DO IS DETERMINE WHETHER OR NOT THAT MURDER WAS COMMITTED
20 IN THE COURSE OF A ROBBERY.

21 THAT IS KNOWN AS A SPECIAL CIRCUMSTANCE PHASE OF
22 THE CASE. AND IN THAT CASE, THE JURY SAYS THAT IT IS TRUE
23 OR FALSE WHEN IT WAS COMMITTED DURING THE COURSE OF A
24 MURDER (SIC) AND IF THEY SO FIND, THEN WE GO TO A SECOND PHASE
25 OF THE TRIAL WHICH IS KNOWN AS THE PENALTY PHASE.

26 DURING THE PENALTY PHASE AGAIN, THE JURY LISTENS
27 TO THE EVIDENCE PRESENTED BOTH BY THE DEFENSE AND BY THE
28 PROSECUTION.

16B-1
1 THE DEFENSE EVIDENCE WILL CONSIST OF WHAT WE CALL
2 EXTENUATING OR MITIGATING CIRCUMSTANCES TO SHOW THE GOOD
3 CHARACTER OF THE DEFENDANT, THE FACT THAT HE HAD NO PRIOR
4 CRIMINAL RECORD, HIS AGE, HIS BACKGROUND AND EVERY FACTOR
5 WHICH MIGHT BE FAVORABLE TO HIM.

6 ON THE OTHER HAND, THE DISTRICT ATTORNEY WILL
7 HAVE THE RIGHT TO INTRODUCE EVIDENCE IN AGGRAVATION OF THIS
8 OFFENSE, TO SHOW THAT HE IS A BAD BOY OR A BAD MAN, SO TO
9 SPEAK AND INSTANCES IN WHICH THAT HAPPENED.

10 THEN THE JURY WEIGHS ALL OF THE EVIDENCE IN THE
11 PENALTY PHASE AND THEY MAKE UP THEIR MINDS AS TO WHAT THE
12 PENALTY IS THAT SHOULD BE IMPOSED, SHOULD IT BE LIFE IN PRISON
13 WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY. DO YOU
14 UNDERSTAND THAT?

15 MR. KAUZOR: YES.

16 THE COURT: ALL RIGHT. NOW HOWEVER, I WANT
17 PRELIMINARILY TO ASK YOU WHETHER OR NOT YOU HAVE READ OR HEARD
18 ANYTHING AT ALL ABOUT THIS CASE, EXCEPT WHAT I TOLD YOU IN
19 OPEN COURT.

20 MR. KAUZOR: NOT A THING.

21 THE COURT: NOT A THING? HAVE YOU DISCUSSED ANYTHING
22 WITH ANY JURORS OR HAVE ANY OF THEM TOLD YOU WHAT THEY THINK
23 ABOUT IT?

24 MR. KAUZOR: NO, SIR.

25 THE COURT: ALL RIGHT, FINE. AND OF COURSE, YOU ARE
26 NOT TO AT ANY TIME DURING THE COURSE OF THIS JURY SELECTION
27 PROCESS, YOU OR ANY OF THE JURORS THAT ARE TO BE SELECTED,
28 YOU ARE NOT TO TALK TO ANY THIRD PERSON ABOUT THIS CASE OR

1 MAKE UP YOUR MIND ABOUT ANYTHING UNTIL YOU HAVE HEARD ALL
2 OF THE EVIDENCE. YOU UNDERSTAND THAT?

3 MR. KAUZOR: YES.

4 THE COURT: DO NOT READ ANY NEWSPAPER OR LISTEN TO
5 TELEVISION OR LOOK AT TELEVISION OR HEAR ANYTHING ON THE RADIO.
6 ALL RIGHT?

7 MR. KAUZOR: YES.

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1 THE COURT: NOW, I WILL GET TO THE QUESTIONS I AM GOING
2 TO ASK YOU. I AM GOING TO ASK YOU SIX QUESTIONS. THEY CALL
3 FOR A YES OR NO ANSWER. IF YOU DON'T UNDERSTAND THE QUESTION,
4 PLEASE ASK ME TO REPEAT IT OR EXPLAIN IT.

5 AS TO THE FIRST ONE, REMEMBER TO KEEP IN MIND
6 THAT THERE ARE TWO PHASES OF THE TRIAL, THE PENALTY PHASE
7 AND THE GUILT PHASE.

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

11 MR. KAUZOR: NO, SIR.

12 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING
13 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
14 MURDER, EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT
15 GUILTY OF MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

16 MR. KAUZOR: NO, SIR.

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

21 MR. KAUZOR: NO, SIR.

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

28 MR. KAUZOR: NO, SIR.

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

8 MR. KAUZOR: NO, SIR.

9 THE COURT: VERY WELL. THANK YOU.

10 MR. CHIER: GOOD AFTERNOON. MY NAME IS RICHARD CHIER,
11 MR. KAUZOR. I AM ONE OF THE ATTORNEYS FOR MR. HUNT. WHAT
12 I WOULD LIKE TO DO IS JUST BRIEFLY TELL YOU WHAT THE NATURE
13 OF MY QUESTIONS ARE, SO THAT YOU UNDERSTAND THAT I WANT TO
14 SAY AT THIS JUNCTURE, THESE ARE NOT QUESTIONS THAT I AM ABOUT
15 TO ASK YOU TO TRICK YOU.

16 THESE ARE QUESTIONS WHICH ARE INTENDED SOLELY,
17 MR. KAUZOR, TO SEE WHETHER OR NOT YOU HAVE SOME HIDDEN AGENDA,
18 SO TO SPEAK, EITHER GREATLY IN FAVOR OF OR AGAINST THE DEATH
19 PENALTY WHICH WOULD THEN DISQUALIFY YOU AS A JUROR IN THIS
20 CASE BECAUSE YOU WEREN'T LIKE THE NEUTRAL, IMPARTIAL TYPE
21 OF PERSON THAT IS REQUIRED.

22 THERE IS NO RIGHT ANSWER. THERE IS NO WRONG
23 ANSWER. THERE IS NO GOOD ANSWER. THERE IS NO BAD ANSWER.
24 ONE'S ATTITUDE TOWARD THE DEATH PENALTY IS PERSONAL. IT IS
25 NOT BAD OR GOOD.

26 SO PLEASE, UNDERSTAND THAT THE ONLY RIGHT ANSWER
27 IS THE TRUE ANSWER, THE TRUTHFUL ANSWER, SIR. AND ONLY IF
28 YOU ANSWER TRUTHFULLY THE QUESTIONS THAT COUNSEL AND/OR THE

1 COURT PROPOUNDS TO YOU, CAN WE EVEN APPROACH THE RATHER
2 AWESOME TASK OF FINDING THE JURORS.

3 SO LET ME, WITHOUT FURTHER ADIEU, ASK YOU HOW
4 YOU WOULD ANSWER THIS QUESTION: I AM A PERSON WHO IS A,
5 STRONGLY IN FAVOR OF THE DEATH PENALTY; B, SOMEWHAT IN FAVOR
6 OF THE DEATH PENALTY; C, OPPOSED TO THE DEATH PENALTY; D, I
7 HAVE NOT REALLY THOUGHT ABOUT IT.

8 MR. KAUZOR: IF I UNDERSTAND ALL OF THE QUESTIONS, I
9 WOULD SAY B WOULD BE THE MOST.

10 MR. CHIER: SOMEWHAT IN FAVOR OF THE DEATH PENALTY?

11 MR. KAUZOR: YES.
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1 MR. CHIER: ALL RIGHT. NOW, MR. KAUZOR IN YOUR OWN
2 WORDS, CAN YOU TELL US WHAT YOU MEAN BY "SOMEWHAT IN FAVOR"
3 OF THE DEATH PENALTY?

4 THE COURT: WELL, YOU USED THE EXPRESSION. YOU TELL
5 HIM WHAT IT MEANS.

6 MR. CHIER: WELL, I AM ASKING HIM --

7 THE COURT: YOU USED THE WORD "SOMEWHAT".

8 MR. CHIER: THAT IS THE CATEGORY HE SELECTED, YOUR HONOR.
9 I AM TRYING TO ASK HIM WHY HE FEELS THAT HE BELONGS IN THAT
10 CATEGORY.

11 THE COURT: WELL, HE --

12 MR. CHIER: COULD YOU DO THAT?

13 MR. KAUZOR: I WOULD SAY DEPENDING TOTALLY ON WHAT CAME
14 OUT IN THE SPECIAL CIRCUMSTANCES PART OF THE TRIAL AS TO THE
15 MITIGATING -- WHAT THE MITIGATING CIRCUMSTANCES WERE AND WHAT
16 WOULD WEIGH ME MORE TO THE DEATH PENALTY THAN AGAINST THE
17 DEATH PENALTY.

18 MR. CHIER: WOULD YOU SAY THAT YOU WERE -- LET ME SEE,
19 JUST GENERALLY SPEAKING. ARE YOU A STRONG BELIEVER IN THE
20 DEATH PENALTY GENERALLY OR WHAT?

21 MR. KAUZOR: NO. I AM NOT A STRONG BELIEVER IN THE
22 DEATH PENALTY.

23 MR. CHIER: YOU BELIEVE IN THE DEATH PENALTY IN CERTAIN
24 CASES?

25 MR. KAUZOR: IN SOME CASES, YES.

26 MR. CHIER: YOU THINK THE DEATH PENALTY IS NECESSARY
27 IN CASES OF FIRST DEGREE MURDER?

28 MR. KAUZOR: YES.

1 THE COURT: WELL, WHERE THERE ARE SPECIAL CIRCUMSTANCES?

2 MR. KAUZOR: WELL, THAT IS WHAT I SAID, WITH SPECIAL
3 CIRCUMSTANCES SHOWING IT.

4 THE COURT: THERE ARE MANY MURDERS THAT DON'T CALL FOR --
5 AS BAD AS THEY ARE -- THAT DON'T CALL FOR THE DEATH PENALTY. YOU
6 UNDERSTAND THAT.

7 IT IS JUST WHAT THE LEGISLATURE HAS SAID IS WITH
8 SPECIAL CIRCUMSTANCES IN CERTAIN INSTANCES WHICH I HAVE GIVEN
9 YOU.

10 MR. KAUZOR: THAT'S RIGHT.

11 MR. CHIER: DO YOU BELIEVE THAT ALL THINGS BEING EQUAL,
12 THAT THE DEATH PENALTY IS MORE APPROPRIATE IN A CASE OF FIRST
13 DEGREE MURDER IN THE COURSE OF A ROBBERY THAN ISN'T
14 APPROPRIATE? WITHOUT ANY OTHER INFORMATION?

15 MR. KAUZOR: NO.

16 MR. CHIER: DO YOU HAVE ANY LEANINGS ONE WAY OR THE
17 OTHER?

18 MR. KAUZOR: IN THE ABSENCE OF SPECIAL CIRCUMSTANCES,
19 I WOULD HAVE TO SAY NO.

20 MR. CHIER: WELL, BY "SPECIAL CIRCUMSTANCES" ARE YOU
21 SAYING THE CIRCUMSTANCES OF THE OFFENSE? IS THAT WHAT YOU ARE
22 SAYING?

23 MR. KAUZOR: YES.

24 MR. CHIER: THE SPECIAL CIRCUMSTANCES MEANS IN THE LEGAL
25 CONTEXT IN WHICH IT IS USED IN THIS COURTHOUSE, SIR, THAT
26 THERE WAS A MURDER COMMITTED IN ONE OR MORE OF A STATUTORILY
27 DEFINED SITUATION, WHICH SITUATIONS ARE THEN CHARGED AGAINST
28 A DEFENDANT AND ARE CALLED SPECIAL CIRCUMSTANCES.

1 SO SPECIAL CIRCUMSTANCES AS IT IS USED IN THIS
2 COURTHOUSE, MEANS MERELY A CASE IN WHICH THE DEATH PENALTY
3 IS BEING REQUESTED BY THE PEOPLE. OKAY? SO --

4 MR. KAUZOR: UH-HUH.

5 MR. WAPNER: EXCUSE ME. WAS THAT YES?

6 MR. KAUZOR: YES.

7 MR. CHIER: SO, IF WE CAN LIKE, GO BACK FOR A MINUTE,
8 WHEN YOU SAY THAT YOUR ATTITUDE FOR DEATH OR LIFE IMPRISONMENT
9 WITHOUT POSSIBILITY OF PAROLE WOULD DEPEND UPON THE SPECIAL
10 CIRCUMSTANCES, DO YOU UNDERSTAND IT TO MEAN THAT IT WOULD
11 DEPEND UPON THE CIRCUMSTANCES OF THE OFFENSE AS YOU UNDERSTOOD
12 THEM? IS THAT A CORRECT STATEMENT? DO YOU UNDERSTAND WHAT
13 I AM SAYING?

14 MR. KAUZOR: YES. I THINK SO.

15 MR. CHIER: I AM NOT TRYING TO CONFUSE YOU. BUT I AM
16 TRYING TO CLARIFY SOME TERMINOLOGY THAT WAS USED, THAT YOU
17 USED.

18 MR. KAUZOR: THAT THE PENALTY PHASE --

19 MR. CHIER: YOU MEAN THE TESTIMONY DURING THE PENALTY
20 PHASE, YOU WOULD BE GUIDED BY WHAT YOU WOULD HEAR ON THAT,
21 IS THAT RIGHT?

22 MR. KAUZOR: YES. THAT IS WHAT I AM TRYING TO SAY.

23 MR. CHIER: ALL RIGHT. YOU WILL OBVIOUSLY, I ASSUME
24 THAT IF THE COURT INSTRUCTS YOU WHAT THINGS YOU CAN CONSIDER
25 AND WHAT THINGS YOU CAN'T CONSIDER -- YOU WILL DO THAT, RIGHT?

26 MR. KAUZOR: CORRECT.

27 MR. CHIER: WHAT I AM ATTEMPTING TO ASK YOU ABOUT, ARE
28 THINGS OTHER THAN YOUR WILLINGNESS TO FOLLOW THE COURT'S

1 INSTRUCTIONS.

2 I WANT TO ASK YOU ABOUT YOUR BASIC PERSONAL VIEWS
3 TOWARD THE DEATH PENALTY. AND COULD I ASK YOU AT THIS TIME
4 SIR, WOULD YOU FEEL MORE COMFORTABLE IN DISCUSSING THIS WITH
5 ME IF THE COURTROOM WERE EMPTY, YOU KNOW, OF OTHER THAN
6 COUNSEL AND THE JUDGE?

7 MR. KAUZOR: NO I WOULDN'T.

8 MR. CHIER: IT DOESN'T MAKE ANY DIFFERENCE TO YOU?

9 MR. KAUZOR: NO.

10 MR. CHIER: ALL RIGHT. SO DO I UNDERSTAND THAT YOUR
11 ATTITUDE TOWARD THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY
12 OF PAROLE WOULD DEPEND UPON THE EVIDENCE YOU HEARD DURING
13 THE PENALTY PHASE OF THIS TRIAL, IF YOU WERE SELECTED AS A
14 JUROR?

15 MR. KAUZOR: THAT'S CORRECT.

16 MR. CHIER: ALL RIGHT. AND WHAT TYPE OF INFORMATION
17 DO YOU BELIEVE WOULD COME FORWARD IN THE PENALTY PHASE, SIR?

18 MR. KAUZOR: I HAVE NO IDEA.

19 MR. CHIER: WHEN YOU SAY THEN, THAT IT WOULD DEPEND
20 UPON THE INFORMATION THAT WOULD BE RECEIVED DURING THE PENALTY
21 PHASE, WHAT TYPE OF INFORMATION IS IT THAT YOU HAVE IN MIND,
22 GENERALLY?

23 THE COURT: THE COURT WILL INSTRUCT THE JURY AT THE
24 PENALTY PHASE WHAT THEY CAN CONSIDER IN CONNECTION WITH THE
25 PENALTY PHASE, MITIGATING AND AGGRAVATING CIRCUMSTANCES. YOU
26 WILL FOLLOW THOSE INSTRUCTIONS, WON'T YOU?

27 MR. KAUZOR: YES, SIR.

28

1 THE COURT: THAT IS WHAT YOU WILL BE GUIDED BY, WON'T
2 YOU?

3 MR. KAUZOR: YES, SIR.

4 MR. CHIER: WHAT TYPE OF INFORMATION IS IT THAT WOULD
5 MAKE A DIFFERENCE TO YOU?

6 THE COURT: HOW DOES HE KNOW? IT IS IMPOSSIBLE FOR
7 A QUESTION OF THAT KIND TO BE ANSWERED.

8 MR. CHIER: YOUR HONOR, HE SAYS IT WOULD BE.

9 THE COURT: HE CAN'T CONJURE UP EVERY CONCEIVABLE TYPE
10 OF TESTIMONY THAT MIGHT BE ADDUCED.

11 MR. CHIER: I AM NOT ASKING HIM FOR EVERY CONCEIVABLE
12 KIND.

13 THE COURT: YES, YOU ARE.

14 I WILL SUSTAIN THE OBJECTION.

15 LET'S GET ON, WILL YOU?

16 MR. CHIER: MR. KAUZOR, IF THE PEOPLE ESTABLISH TO THE
17 SATISFACTION OF YOU, IF YOU ARE SELECTED AS A JUROR IN THIS
18 CASE, AND THE PEOPLE PROVE THE DEFENDANT GUILTY OF FIRST DEGREE
19 MURDER AND THEY PROVE THAT THE MURDER WAS INTENTIONALLY
20 INFLECTED AND COMMITTED IN THE COURSE OF A ROBBERY, YOU
21 UNDERSTAND THERE WOULD BE ANOTHER PHASE, THE PENALTY PHASE,
22 RIGHT?

23 (PROSPECTIVE JUROR KAUZOR NODS HIS HEAD
24 UP AND DOWN.)

25 MR. CHIER: AND THERE WOULD BE MORE EVIDENCE THAT WOULD
26 COME OUT AT THE PENALTY PHASE?

27 MR. KAUZOR: YES.

28 MR. CHIER: AND THE INFORMATION WOULD BE MORE ABOUT

7-2
1 THE DEFENDANT AS A PERSON AND THERE MAY BE ADDITIONAL
2 INFORMATION OR THE SAME INFORMATION ABOUT THE CIRCUMSTANCES
3 OF THE OFFENSE ITSELF; DO YOU UNDERSTAND?

4 MR. KAUZOR: YES, I DO.

5 MR. CHIER: DO YOU UNDERSTAND AT THE POINT OF THE
6 PENALTY PHASE THAT YOU DON'T RECONSIDER THE GUILT OF THE
7 DEFENDANT? HE HAS ALREADY BEEN ESTABLISHED TO BE GUILTY.

8 MR. KAUZOR: YES.

9 MR. CHIER: AND IF THE COURT WERE TO INSTRUCT YOU THAT
10 YOU COULD CONSIDER A NUMBER OF THINGS, INCLUDING THE AGE OF
11 THE DEFENDANT, WOULD YOU CONSIDER THE AGE OF THE DEFENDANT?

12 MR. KAUZOR: NO.

13 THE COURT: YOU MEAN IF THE COURT WERE TO TELL YOU THAT
14 YOU MAY CONSIDER IT? SUPPOSE THE COURT TELLS YOU THAT YOU
15 MAY CONSIDER HIS AGE AND PRIOR LACK OF CRIMINAL RECORD OR
16 CONVICTIONS, AND SO FORTH, YOU WOULD CONSIDER THAT OR WON'T
17 YOU?

18 MR. KAUZOR: I WOULD CONSIDER IT.

19 THE COURT: THAT'S RIGHT.

20 MR. CHIER: ALL RIGHT, YOU WOULD CONSIDER IT BECAUSE
21 THE JUDGE TOLD YOU THAT YOU HAD TO, RIGHT?

22 MR. KAUZOR: YES.

23 MR. CHIER: BUT IT WOULDN'T MAKE ANY DIFFERENCE, WOULD
24 IT, THE AGE OF THE DEFENDANT, FOR EXAMPLE?

25 MR. WAPNER: YOUR HONOR, I THINK THAT IS ASKING HIM
26 TO PREJUDGE THE EVIDENCE IN THIS CASE.

27 THE COURT: ABSOLUTELY. I WILL SUSTAIN THE OBJECTION.

28 MR. WAPNER: "COULD IT MAKE ANY DIFFERENCE?"

17-3 1 MR. CHIER: I AM NOT ASKING HIM TO PREJUDGE.

2 THE COURT: YES, YOU ARE.

3 I SUSTAINED THE OBJECTION. LET'S GET ON, WILL
4 YOU, PLEASE?

5 MR. CHIER: ARE YOU TELLING ME THEN, MR. KAUZOR, THAT
6 IN A CASE -- THAT IN ANY CASE, NOT NECESSARILY THIS CASE --
7 BUT IN ANY CASE WHERE YOU FOUND THE DEFENDANT GUILTY OF
8 FIRST DEGREE MURDER, INTENTIONAL IN THE COURSE OF A ROBBERY
9 AND THE ONLY EVIDENCE OFFERED IN HIS BEHALF AT THE PENALTY
10 PHASE WAS, A, THAT HE WAS YOUNG AT THE TIME IT HAPPENED AND,
11 B, THAT HE HAD NO PRIOR RECORD, ARE YOU SAYING THAT YOU
12 WOULDN'T IN SUCH A CASE --

13 THE COURT: YOU ARE ASKING HIM TO PREJUDGE. I WILL
14 SUSTAIN THE OBJECTION ON MY OWN MOTION.

15 LET'S GET ON. YOU ARE ASKING THE SAME THING ALL
16 OVER AGAIN IN ANOTHER FORM.

17 MR. CHIER: YOUR HONOR, MAY I APPROACH THE SIDE BAR?

18 THE COURT: NO, YOU MAY NOT.

19 LET'S GET ON, WILL YOU? YOU CAN MAKE A RECORD
20 OF IT LATER ON IF YOU WANT.

21 MR. CHIER: I AM HAVING DIFFICULTY INQUIRING OF THIS
22 JUROR'S ATTITUDES.

23 THE COURT: NO, YOU ARE NOT. IF YOU ASK THE PROPER
24 QUESTION, I WILL PERMIT YOU TO DO IT.

25 MR. CHIER: I WAS REQUESTING TO APPROACH THE SIDE BAR
26 TO FIND OUT THE KIND OF QUESTION.

27 THE COURT: LISTEN, WILL YOU, PLEASE? I TOLD THE
28 PROSPECTIVE JUROR THAT AT THE CONCLUSION OF THE CASE, I WILL

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1 TELL HIM THAT HE MAY CONSIDER ANY NUMBER OF THINGS: ONE,
2 THE AGE, AND ONE, THE LACK OF PREVIOUS RECORD, THAT HE MAY
3 CONSIDER IT, IT IS ENTIRELY UP TO HIM AS TO WHETHER OR NOT
4 HE WANTS TO BE GUIDED BY THAT. BUT THAT IT IS ENTIRELY UP
5 TO HIM HOW MUCH WEIGHT HE WANTS TO GIVE TO THAT; IS THAT TRUE?

6 MR. KAUZOR: THAT IS RIGHT, THAT IS WHAT I UNDERSTOOD.

7 MR. CHIER: YOUR HONOR, IT IS NOT ENTIRELY UP TO THE
8 JUROR.

9 THE COURT: DON'T ARGUE WITH ME ANY FURTHER. IF YOU
10 HAVE A QUESTION, ASK IT.

11 MR. CHIER: YOUR HONOR, I WOULD LIKE TO SAY --

12 THE COURT: NO, YOU CAN MAKE YOUR RECORD LATER ON.
13 LET'S GET THROUGH WITH THIS INTERROGATION.

14 MR. CHIER: YOUR HONOR, I HAVE TO MAKE A RECORD IN ORDER
15 TO CONTINUE ON.

16 THE COURT: NO, NEVER MIND. ASK YOUR NEXT QUESTION.

17 MR. CHIER: JUST A MOMENT, PLEASE.

18 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
19 AND THE DEFENDANT.)

20 MR. CHIER: DO YOU THINK THAT IT MAKES A DIFFERENCE
21 HOW OLD A PERSON IS IF HE COMMITS AN INTENTIONAL MURDER IN
22 THE COURSE OF A ROBBERY, WHETHER HE LIVES OR DIES?

23 MR. KAUZOR: NO, I DON'T.

24 MR. CHIER: DO YOU THINK IT MATTERS WHETHER HE HAS A
25 PRIOR CRIMINAL BACKGROUND, WHETHER HE LIVES OR DIES?

26 MR. KAUZOR: AGAIN, DEPENDING ON THE EVIDENCE THAT COMES
27 OUT AT THE PENALTY PHASE, WHETHER I --

28 MR. CHIER: I AM NOT SAYING THAT.

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1 MR. KAUZOR: I CAN'T ANSWER IT THEN.

2 MR. CHIER: YOU HAVE A BASIC FEELING, YOU HAVE AN
3 ATTITUDE --

4 THE COURT: HE SAYS HE CAN'T ANSWER THAT. LET'S GET
5 ON TO THE NEXT QUESTION.

6 MR. CHIER: WITHOUT TRYING TO ANTICIPATE ANY EVIDENCE
7 IN THIS CASE, MR. KAUZOR, YOU HAVE A FEELING ABOUT WHETHER
8 THESE THINGS MATTER OR NOT, DON'T YOU, A PERSONAL VIEW?

9 MR. KAUZOR: YES.

10 MR. CHIER: AND IT IS YOUR PERSONAL VIEW THAT THESE
11 THINGS DON'T MATTER MUCH, ISN'T IT?

12 THE COURT: AGAIN, YOU ARE ASKING HIM TO PREJUDGE. WE
13 HAVE ALREADY GONE OVER THAT ONCE OR TWICE OR THREE TIMES.

14 MR. CHIER: I AM NOT SUGGESTING ANYTHING, YOUR HONOR.

15 THE COURT: THAT IS ALL NOW. SIT DOWN.

16 ANYTHING FURTHER?

17 MR. DISTRICT ATTORNEY, YOU CAN ASK THE QUESTIONS
18 NOW. APPARENTLY HE HAS NO FURTHER QUESTIONS WHICH ARE
19 PERTINENT.

20 MR. WAPNER: WELL, I AM NOT SURE WHETHER HE DOES OR
21 DOESN'T.

22 THE COURT: WELL, I AM SURE HE DOESN'T.

23 MR. CHIER: YOUR HONOR, IS YOUR HONOR ASKING ME TO SIT
24 DOWN?

25 THE COURT: ARE THERE ANY OTHER QUESTIONS YOU WANT TO
26 ASK HIM?

27 MR. CHIER: ALONG THE SAME LINES, YES, YOUR HONOR.

28 THE COURT: NO, I WON'T PERMIT THEM ALONG THE SAME LINE.

17-6
1 MR. CHIER: ALL RIGHT, YOUR HONOR. THOSE ARE THE
2 QUESTIONS THAT I THOUGHT WE ARE HERE TO ASK, YOUR HONOR.

3 THE COURT: WILL YOU PLEASE NOT ARGUE WITH ME? IF YOU
4 WANT TO MAKE A RECORD, MAKE IT AFTER THE JUROR HAS BEEN
5 EXCUSED.

6 MR. CHIER: IT IS TOO LATE THEN, YOUR HONOR.

7 THE COURT: TOO LATE THEN? YOU HAVE GOT A RECORD, HAVEN'T
8 YOU? IF I MADE ANY ERROR --

9 MR. CHIER: I AM NOT LOOKING FOR ERROR. I AM LOOKING
10 FOR A FAIR TRIAL, JUDGE.

11 THE COURT: NO, YOU ARE NOT. YOU ARE LOOKING FOR ERROR.

12 MR. CHIER: THAT IS NOT THE CASE.
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1 THE COURT: GO AHEAD.

2 MR. WAPNER: MR. KAUZOR, DID YOU GIVE ANY THOUGHT TO
3 THE ISSUE OF THE DEATH PENALTY BEFORE YOU CAME TO SERVE AS
4 A JUROR IN THIS CASE?

5 MR. KAUZOR: UH-HUH, YES, I DID.

6 MR. WAPNER: WHAT ARE YOUR FEELINGS ON THE DEATH PENALTY
7 GENERALLY?

8 MR. KAUZOR: IF THE CASE WARRANTS IT, I WILL VOTE FOR
9 IT EVEN THOUGH I DIDN'T WANT TO OR DIDN'T HAVE A HAPPY FEELING
10 ABOUT IT.

11 MR. WAPNER: AND WHAT DO YOU MEAN WHEN YOU SAY "IF THE
12 CASE WARRANTS IT"?

13 MR. CHIER: I AM SORRY. OBJECTION. HE IS ASKING HIM
14 TO PREJUDGE THE EVIDENCE, YOUR HONOR.

15 THE COURT: I WILL SUSTAIN THE OBJECTION.

16 MR. WAPNER: WELL, WITH ALL DUE RESPECT, I WASN'T ASKING
17 HIM ABOUT THIS PARTICULAR CASE.

18 HE SAID "IF EVIDENCE WARRANTS IT." I AM NOT TALKING
19 ABOUT WHAT THE FACTS ARE IN THIS PARTICULAR CASE.

20 THE COURT: WELL, THAT IS SUFFICIENT. HE SAID IF THE
21 FACTS WARRANT IT IN THIS CASE, HE WOULD VOTE FOR THE DEATH
22 PENALTY.

23 MR. WAPNER: AND THE OTHER SIDE OF THAT COIN, IF YOU
24 LISTEN TO ALL THE EVIDENCE IN THE CASE AND THE FACTS IN YOUR
25 MIND WERE INSUFFICIENT TO WARRANT THE IMPOSITION OF THE DEATH
26 PENALTY, COULD YOU VOTE FOR THE PENALTY OF LIFE IMPRISONMENT
27 WITHOUT THE POSSIBILITY OF PAROLE?

28 MR. KAUZOR: I COULD.

1 MR. WAPNER: IF THE JUDGE IN THE PENALTY PHASE OF THE
2 TRIAL GIVES YOU A LIST OF THINGS THAT YOU CAN CONSIDER IN MAKING
3 UP YOUR MIND ABOUT WHAT THE POSSIBLE PUNISHMENT IS AND HE TELLS
4 YOU THAT IT IS UP TO YOU TO DECIDE HOW MUCH WEIGHT OR HOW
5 MUCH IMPORTANCE THAT EACH ONE OF THOSE ARE TO YOU, CAN YOU
6 FOLLOW THOSE INSTRUCTIONS?

7 MR. KAUZOR: YES, I THINK I CAN.

8 MR. WAPNER: SO IF HE TELLS YOU THAT YOU CAN CONSIDER
9 AGE OR LACK OF RECORD OR THE FACT THAT A PERSON HAS A RECORD,
10 EITHER WAY, ALONG WITH A LOT OF OTHER FACTORS, ARE YOU WILLING
11 TO CONSIDER ALL THOSE AND GIVE TO THEM THE IMPORTANCE THAT
12 YOU FEEL THEY ARE ENTITLED TO?

13 MR. CHIER: OBJECTION. THERE IS A COMPLETE LACK OF
14 SYMMETRY, YOUR HONOR. I WASN'T ALLOWED TO ASK THOSE QUESTIONS
15 MYSELF.

16 THE COURT: OBJECTION OVERRULED.

17 YOU MAY ANSWER THAT.

18 MR. KAUZOR: WILL YOU REPEAT THE LAST, JUST THE LAST
19 PART OF YOUR QUESTION?

20 THE COURT: IT IS THE QUESTION I ASKED YOU BEFORE:
21 WOULD YOU CONSIDER EVERYTHING THAT I INSTRUCTED YOU --

22 MR. KAUZOR: YES.

23 THE COURT: -- THAT IS WHAT MAY BE CONSIDERED BY YOU?

24 MR. KAUZOR: YES, I WOULD.

25 MR. WAPNER: AND THE LAST PART OF IT, I THINK WAS, AND
26 TO GIVE TO EACH ONE OF THOSE FACTORS THE WEIGHT OR THE
27 IMPORTANCE TO WHICH YOU THINK THEY ARE ENTITLED?

28 MR. KAUZOR: YES.

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1 MR. WAPNER: ALL RIGHT, SO IF AFTER LISTENING TO ALL
2 OF THE FACTS IN ANY GIVEN CASE -- AND I AM NOT NECESSARILY
3 TALKING ABOUT THIS CASE -- BUT IN ANY GIVEN CASE, IF YOU
4 DECIDE UNDER A PARTICULAR SET OF FACTS THAT THE PERSON'S AGE
5 MIGHT BE IMPORTANT IN MAKING YOUR DECISION, YOU WOULD TAKE
6 THAT INTO CONSIDERATION?

7 MR. KAUZOR: YES.

8 MR. WAPNER: IF, AFTER LISTENING TO ALL OF THE FACTS
9 YOU DECIDE THAT THE PERSON'S AGE WASN'T GOING TO BE A CONTROLL-
10 ING FACTOR IN YOUR MIND, THEN YOU WOULD TEND TO GIVE MORE
11 WEIGHT TO OTHER THINGS?

12 MR. KAUZOR: YES.

13 MR. WAPNER: I KNOW THAT I HAVE BASICALLY BEEN ASKING
14 LEADING QUESTIONS, I MEAN, BUT DO THOSE ACCURATELY STATE HOW
15 YOU FEEL?

16 MR. KAUZOR: I BELIEVE SO.

17 MR. WAPNER: DO YOU HAVE ANY CONSCIENTIOUS, MORAL OR
18 RELIGIOUS OPINIONS ABOUT THE DEATH PENALTY THAT WOULD AFFECT
19 YOUR ABILITY TO BE A FAIR JUROR IN THIS CASE?

20 MR. KAUZOR: NO, SIR.

21 MR. WAPNER: THANK YOU. I HAVE NO OTHER QUESTIONS.
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1 THE COURT: ALL RIGHT. DO YOU WANT HIM TO WAIT OUTSIDE?

2 MR. CHIER: YES, YOUR HONOR.

3 THE COURT: WOULD YOU WAIT OUTSIDE, PLEASE?

4 (PROSPECTIVE JUROR KAUZOR EXITS THE
5 COURTROOM.)

6 MR. CHIER: YOUR HONOR, I AM CHALLENGING THIS LAST
7 PROSPECTIVE, MR. JOHN KAUZOR, FOR CAUSE. THE GROUNDS OF THE
8 CHALLENGE ARE AS FOLLOWS: FIRST, IN THE COURSE OF MY
9 INTERROGATION OF THE PROSPECTIVE JUROR, IT BECAME APPARENT
10 TO ME THAT HE HAS CERTAIN DEATH-PRONE TENDENCIES AND SUCH AS
11 HIS INDIFFERENTNESS TOWARDS AGE OR LACK OF CRIMINAL RECORD.
12 YOUR HONOR FORECLOSED FOLLOW-UP INQUIRY IN THESE AREAS,
13 THEREBY MAKING IT -- RENDERING ME UNABLE TO ASK THE GENTLEMAN
14 ABOUT HIS ATTITUDES TOWARD LIFE AND DEATH, WITHIN THE CONTEXT
15 OF THIS SETTING.

16 FURTHER YOUR HONOR, I WOULD LIKE TO SAY FOR THE
17 RECORD, THE PURPOSE OF THIS WHOLE VOIR DIRE IS NOT TO DETERMINE
18 WHETHER THE JUROR IS CAPABLE OR WILLING TO FOLLOW YOUR
19 HONOR'S INSTRUCTIONS. BUT RATHER, THAT IS AN INQUIRY INTO
20 THE VERY BASIC ATTITUDINAL LEANING, THAT IS, HIS FEELING ABOUT
21 THE DEATH PENALTY AS RELATES TO CRIMINAL DEFENDANTS.

22 I MUST BE YOUR HONOR, I SUBMIT, COMMITTED TO FIND
23 OUT FROM THESE PROSPECTIVE JURORS WHAT TYPES OF PERSONS THEY
24 THINK SHOULD LIVE AND WHAT TYPE OF PEOPLE THEY THINK SHOULD
25 DIE.

26 IT DOES NOT ESTABLISH ANYTHING THAT IS RELEVANT
27 TO THIS HEARING, MERELY TO DETERMINE THAT THEY ARE GOING TO
28 LISTEN FIRST AND SECOND, TO OBEY YOUR HONOR'S INSTRUCTIONS.

1 YOUR HONOR CANNOT INSTRUCT THEM TO VOTE FOR DEATH. YOU CANNOT
2 INSTRUCT THEM TO VOTE FOR LIFE.

3 ALL YOU CAN DO IS TELL THEM THE TYPES OF THINGS
4 THEY CAN CONSIDER.

5 IF THEY COME TO THE COURTROOM AND SIT IN THAT
6 CHAIR, UNWILLING IN THEIR HEART OF HEARTS, IN THEIR MIND,
7 TO CONSIDER OR TO LET'S SAY PUT ANYTHING SUCH AS AGE OR LACK
8 OF CRIMINAL RECORD -- IF THAT WOULDN'T MAKE A DIFFERENCE TO
9 THEM, THEN THEY SHOULDN'T BE ALLOWED TO SIT AS A JUROR IN THIS
10 CASE, YOUR HONOR. THE FACT THAT THEY SAY YES, I WILL LISTEN
11 TO YOUR HONOR, THAT ONLY GETS PARTWAY THERE. OBVIOUSLY, IF
12 THEY ARE NOT WILLING TO LISTEN TO YOU, THEY SHOULDN'T BE ALLOWED
13 TO SIT ON THE JURY.

14 BUT THE SECOND PART OF IT AND THE OTHER SIDE OF
15 THE COIN, THE UNDERSIDE OF THE ROCK IF YOU WILL, IS HOW THEY
16 FEEL ABOUT LIFE OR DEATH, HOW THEY FEEL ABOUT PEOPLE.

17 BECAUSE THEY ARE YOUNG, JUST HOW THEY FEEL ABOUT
18 PEOPLE WHO KILL WHEN THEY ARE YOUNG, WE MUST KNOW. IF IT
19 DOESN'T MAKE ANY DIFFERENCE JUDGE -- AND THIS IS A THRESHOLD
20 INQUIRY THAT I SHOULD BE ABLE TO MAKE -- IF I CAN'T MAKE IT,
21 JUDGE THEN WE DON'T KNOW WHAT WE ARE GETTING. WE ARE GETTING
22 JURORS WHO HAVE A HIDDEN AGENDA AND THAT IS WHEN THE HOVEY
23 THING HAS BEEN RENDERED A COMPLETE NULLITY.

24 THE COURT: MR. CHIER, YOU SUBMITTED TO ME A LIST OF
25 QUESTIONS WHICH WERE DESIGNED TO FIND OUT THE STATE OF MIND
26 OF A PERSPECTIVE JUROR.

27 I WAS NOT QUITE SATISFIED THAT THEY REPRESENTED
28 A FAIR CROSS-SECTION OF THE QUESTIONS WHICH WOULD BE ASKED

1 WHERE TWO OR THREE OR FOUR AT THE MOST SHOULD BE ASKED.

2 BUT NONETHELESS, I HAVE ASKED THEM EVERY, SINGLE
3 TIME, PARTICULARLY: DID YOU HAVE SUCH AN OPINION CONCERNING
4 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
5 IT, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE
6 PENALTY PHASE OF THE TRIAL.

7 WHEN THEY TELL ME NO, WHICH IS AN ANSWER TO YOUR
8 QUESTION WHICH YOU HAD SUBMITTED, I ASSUME THAT THEY ARE
9 TELLING THE TRUTH. THEY ARE UNDER OATH.

10 MR. CHIER: YES, JUDGE --

11 THE COURT: NOW, THE PURPOSE YOU HAVE BEEN ASKING QUESTIONS
12 OF ONE WHO FEELS -- HAS A CONSCIENTIOUS OBJECTION TO THE
13 IMPOSITION OF THE DEATH PENALTY, YOU TRY TO MAKE IT APPEAR
14 AND TRY TO PERSUADE HIM OR HER ALL THROUGHOUT THE QUESTIONING
15 THAT THEY SHOULD VOTE FOR THE DEATH PENALTY SO THAT THEY CAN
16 BE QUALIFIED.

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1 NOW, THE JUROR WHO SAYS THAT HE BELIEVES IN THE
2 DEATH PENALTY, ALTHOUGH HE WOULD FOLLOW THE COURT'S
3 INSTRUCTIONS, HE WOULD FOLLOW IN ANSWERING THE QUESTIONS
4 PROPERLY AND YOU ALWAYS TRY TO MAKE IT APPEAR AS IF HE SAID
5 HE WOULD ONLY VOTE FOR IT AND NOTHING ELSE. THIS IS WHAT YOU
6 HAVE BEEN CONSISTENTLY BEEN DOING ALL THROUGH THE QUESTIONS.
7 YOU ARE NOT TRYING TO DETERMINE WHETHER THEY WOULD BE A FAIR-
8 MINDED JUROR.

9 YOU ARE TRYING TO TRICK HIM BY THESE MISLEADING
10 QUESTIONS INTO ADMITTING WHAT YOU WANT HIM TO ADMIT AND
11 THEREFORE YOU CAN MAKE THE SAME TYPES OF MOTIONS THAT YOU ARE
12 MAKING NOW.

13 MR. CHIER: I AM ACTUALLY TRYING TO GET AS YOU SAY, TO
14 WHAT I PERCEIVE ABOUT THE PERSON. I DON'T JUST SAY SOMETHING
15 ABOUT THE --

16 THE COURT: IF WE HAVE SELECTED A JURY, WE HAVE A GENERAL
17 VOIR DIRE. YOU CAN ASK HIM ALL THE QUESTIONS YOU WANT WITH
18 RESPECT TO HIS STATE OF MIND ABOUT EVERYTHING.

19 BUT WE ARE LIMITED ONLY TO THE HOVEY QUESTIONS
20 ABOUT WHETHER OR NOT HE SO BELIEVES IN THE DEATH PENALTY THAT
21 HE WOULD UNDER ALL CIRCUMSTANCES, VOTE FOR IT IRRESPECTIVE
22 OF WHAT THE TESTIMONY WOULD SHOW.

23 IF HE SAYS NO, HOW MUCH MORE THAN THAT WOULD YOU
24 GET FROM HIM BUT THAT ANSWER?

25 MR. CHIER: WELL, WE HAVE FOUND SOME PEOPLE WHO SAID
26 THAT --

27 THE COURT: NO, NOT SO. THEY VOLUNTEERED IT THEMSELVES
28 ALL THROUGHOUT.

1 MR. CHIER: COULD I SAY THAT THE QUESTIONS, THIS IS A
2 LEARNING EXPERIENCE FOR ALL OF US, I ASSUME AND --

3 THE COURT: I HAVE BEEN THROUGH IT A FEW TIMES. I HAVE
4 HAD MY LEARNING EXPERIENCE ALREADY.

5 MR. CHIER: ALL RIGHT. FOR MYSELF THEN, I WOULD SPEAK
6 ONLY FOR MYSELF. IT IS A LEARNING EXPERIENCE. THESE QUESTIONS
7 WERE SUBMITTED TO THE COURT IN ADVANCE OF ANY OF THESE
8 PROCEEDINGS THAT WERE CONDUCTED IN THIS COURTROOM AND IN THIS
9 PARTICULAR HEARING WHICH IS KNOWN AS THE HOVEY VOIR DIRE.

10 THE COURT: IT WAS INTENDED FOR THE HOVEY VOIR DIRE,
11 WASN'T IT?

12 MR. CHIER: YES. BUT I HAD NO IDEA THAT THE QUESTIONS
13 BASICALLY WOULD BE INEFFECTIVE IN TERMS OF DRAWING OUT THE
14 JUROR'S ATTITUDES. I PERSONALLY --

15 THE COURT: YOU READ THEM BEFORE YOU SUBMITTED THEM.
16 IS THERE ANYTHING AMBIGUOUS ABOUT THAT?

17 YOU ASKED THE JUROR WHETHER OR NOT HIS ATTITUDE
18 TOWARD THE DEATH PENALTY IS SUCH THAT UNDER ALL CIRCUMSTANCES --
19 ALL CIRCUMSTANCES -- HE WOULD AUTOMATICALLY VOTE FOR IT. AND
20 IF HE SAYS YES, THAT DISQUALIFIES THEM.

21 MR. CHIER: I THINK THE WORD "AUTOMATICALLY" IS PERHAPS
22 NOT WELL CHOSEN, YOUR HONOR.

23 THE COURT: "UNDER ALL CIRCUMSTANCES," IS THAT BETTER
24 FOR YOU?

25 MR. CHIER: ALL CIRCUMSTANCES BECAUSE PEOPLE DON'T
26 LIKE TO THINK OF THEMSELVES, EVEN THOUGH THEY MAY BE, AS
27 DOCTRINAIRE.

28 THEY DON'T LIKE TO THINK OF THEMSELVES AS --

1 THE COURT: PEOPLE HAVE SUBMITTED THAT THEY WOULD NOT
2 VOTE FOR THE DEATH PENALTY BECAUSE THEY DON'T BELIEVE IN IT.

3 MR. CHIER: WELL, THE PROBLEM THAT I HAVE AND I THINK
4 THIS IS AN IMPORTANT TIME TO BROACH THE SUBJECT, IS THAT SINCE
5 THE TIME THAT WE DISCUSSED IT IN CHAMBERS, I MUST CONFESS THAT
6 I DON'T KNOW WHAT THE PROPER STANDARD IS, WHETHER IT IS A
7 WITT STANDARD OR A WITHERSPOON STANDARD.

8 I HAVE TALKED TO OTHER COUNSEL, WHO DO THIS MORE
9 OFTEN THAN I, YOUR HONOR. THEY BELIEVE THAT THIS FOLLOWS --
10 I CAN SUMMARIZE THIS QUITE BRIEFLY. THAT IN CALIFORNIA,
11 APPARENTLY IT HAS NEVER HAD ITS OWN, INDEPENDENT STANDARD
12 WITH RESPECT TO THE DEATH QUALIFICATION.

13 THAT WITHERSPOON V. ILLINOIS WAS A FEDERAL CASE
14 AND THAT WE HAVE BASICALLY IN CALIFORNIA, EMBRACED WITHERSPOON,
15 SINCE ITS DECISION IN 1970 -- WHATEVER IT WAS.

16 AND THEREFORE, SINCE WITT, AS A REFINEMENT OF
17 WITHERSPOON, THAT THE PERSONS WHO ARE -- SUCH AS DENNIS
18 FISHER AND MR. CHALEFF AND HIS ASSOCIATES, THOSE PEOPLE WHO
19 I CAN SEE AT THIS TIME ARE MORE KNOWLEDGEABLE THAN I -- BELIEVE
20 THAT WITT MAY IN FACT, BE THE STATE OF THE LAW FOR THIS STATE.

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1 AND THAT THEREFORE, WHEREAS THOSE QUESTIONS WERE
2 PREPARED IN A VACUUM, IT NOW SEEMS YOUR HONOR, THAT THE
3 LATITUDE OR THE SCOPE OF INQUIRY OUGHT TO BE RELAXED SOMEWHAT
4 BECAUSE WHILE THESE QUESTIONS MAY BE DESIGNED TO FILTER OUT
5 WITHERSPOON TYPE PEOPLE, THE QUESTIONS ARE REALLY NOT DESIGNED
6 FOR WITT TYPE PEOPLE, WHICH IS A SOMEWHAT RELAXED STANDARD.

7 WITHERSPOON TALKS ABOUT WHO WOULD DO IT
8 AUTOMATICALLY. WITT ON THE OTHERHAND, TALKS ABOUT PERSONS
9 WHOSE PERSONAL VIEWS ARE SUCH THAT THEY WOULD BE SUBSTANTIALLY
10 IMPAIRED OR IT WOULD IMPEDE THEIR ABILITY TO ENTER A FAIR AND
11 IMPARTIAL VERDICT.

12 SO THAT YOUR HONOR, IS WHY I FEEL THAT THE SCOPE
13 OF THE INQUIRY OUGHT TO BE SOMEWHAT BROADENED IN THIS HEARING
14 BECAUSE WE DON'T KNOW --

15 THE COURT: MAY I READ YOU FROM THE CJER, THE CALIFORNIA
16 CENTER FOR JUDICIAL EDUCATION, ON RESEARCH ABOUT THE
17 WAINWRIGHT OR WITT CASES:

18 "THE WITHERSPOON STANDARD WAS
19 ORIGINALLY OFFERED IN WAINWRIGHT V. WITT IN
20 WHICH THE UNITED STATES SUPREME COURT HELD THAT
21 IT IS NO LONGER NECESSARY THAT THE TRIAL JUDGE
22 FIND IT TO BE UNMISTAKABLY CLEAR THAT A JUROR
23 WOULD AUTOMATICALLY VOTE AGAINST THE DEATH
24 PENALTY. THE COURT STATED THAT THE PROSPECTIVE
25 JUROR MAY BE EXCLUDED FOR CAUSE WHEN HIS OR HER
26 STATEMENTS AND DEMEANOR INDICATE THAT THE JURORS'
27 VIEWS WOULD PREVENT OR SUBSTANTIALLY IMPAIR HIS
28 ABILITY TO BE NEUTRAL AND FOLLOW THE JUDGE'S

1 INSTRUCTIONS."

2 THAT IS FROM WAINWRIGHT.

3 MR. CHIER: BUT IT WORKS BOTH WAYS.

4 THE COURT: WELL APPARENTLY, THEY SEEM TO HAVE LIMITED
5 IT TO JUST ONE WAY.

6 MR. CHIER: WELL, THEY TALK ABOUT THE CONSCIENTIOUS
7 OBJECTION. BUT IT MUST WORK BOTH WAYS OR OTHERWISE YOU HAVE
8 A TOTAL LACK OF SYMMETRY.

9 THE COURT: WELL, I READ IT TO YOU. THAT IS WHAT THE
10 COURT HELD.

11 ALL RIGHT. YOU MADE YOUR POINT ABUNDANTLY CLEAR.
12 YOU WANT TO CHALLENGE FOR CAUSE?

13 MR. WAPNER: WELL, I BELIEVE THAT I DON'T -- I BELIEVE
14 MR. CHIER IS IN THE COURSE OF THAT. THAT LONG EXPLANATION
15 WAS CHALLENGING MR. KAUZOR FOR CAUSE.

16 THE COURT: WELL, HE SAID THAT. WHAT IS YOUR ATTITUDE?

17 MR. WAPNER: MY ATTITUDE?

18 THE COURT: DO YOU JOIN?

19 MR. WAPNER: NO.

20 THE COURT: THEN TELL US WHAT IT IS.

21 MR. WAPNER: WELL, I THINK MR. KAUZOR SAID THAT EVEN
22 THOUGH HE DIDN'T LIKE THE DEATH PENALTY, THAT -- THAT IS NOT
23 A CORRECT STATEMENT. BUT I THINK WHAT HE SAID IS, EVEN
24 THOUGH HE MAY NOT WANT TO DO IT, HE COULD VOTE FOR THE DEATH
25 PENALTY IN AN APPROPRIATE CASE.

26 THE COURT: THAT IS WHAT HE SAID, IN EFFECT.

27 MR. WAPNER: IT SOUNDS TO ME LIKE THE PERSON WOULD BE
28 VERY SERIOUS IN CONSIDERING BOTH SIDES.

1 THE COURT: WELL, I WILL REJECT THE CHALLENGE FOR CAUSE.
2 I THINK HE QUALIFIES.

3 (PROSPECTIVE JUROR KAUZOR REENTERS
4 THE COURTROOM.)

5 THE COURT: WHAT I WILL DO IS ASK YOU TO REPORT TO THE
6 JURY ASSEMBLY ROOM ON DECMEBER THE 3RD. BY THAT TIME, WE HOPE
7 THAT WE WILL HAVE GONE THROUGH ALL OF THIS WHOLE LIST OF ALL
8 OF THESE PEOPLE, THE SAME AS WE HAVE BEEN ASKING YOU.

9 WE THINK WE WILL FINISH BY THAT DATE. PLEASE
10 RETURN TO THE JURY ASSEMBLY ROOM ON DECEMBER 3RD 10:30 A.M.

11 AND IF BY THE WAY, TEHRE IS ANY CHANCE THAT WE
12 HAVE NOT COMPLETED IT, THEN WE HAVE GOT YOUR TELEPHONE NUMBER
13 AND WE'LL CALL YOU AND TELL YOU WHEN TO COME IN.

14 SO, THAT IS DECEMBER 3RD AT 10:30 IN THE JURY
15 ASSEMBLY ROOM. IN THE MEANTIME, DON'T READ ANYTHING ABOUT
16 THE CASE OR TALK TO ANYBODY ABOUT IT. WILL YOU DO THAT,
17 PLEASE?

18 MR. KAUZOR: YES.

19 THE COURT: OKAY, SIR. THANK YOU VERY MUCH. WE WILL
20 SEE YOU DECEMBER 3RD.

21 (PROSPECTIVE JUROR KAUZOR EXITS THE
22 COURTROOM.)

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1 THE CLERK: NOW IF YOU WOULD STATE YOUR NAME FOR THE
2 RECORD.

3 MR. KNIGHT: ALLEN KNIGHT.

4 THE CLERK: ALL RIGHT. THAT IS MR. KNIGHT?

5 MR. KNIGHT: YES.

6 THE COURT: I AM TERRIBLY SORRY, MR. KNIGHT, TO HAVE
7 KEPT YOU WAITING ALL THIS TIME.

8 MR. KNIGHT: THAT IS ALL RIGHT.

9 THE COURT: WE WERE IN THE PROCESS OF VOIR DIRING OTHER
10 JURORS AND WE HAD SOME OTHER QUESTIONS TO DETERMINE.

11 HAVE YOU READ ANYTHING AT ALL ABOUT THIS CASE,
12 MR. KNIGHT?

13 MR. KNIGHT: NOTHING AT ALL.

14 THE COURT: NOTHING AT ALL?

15 YOU HAVEN'T TALKED TO ANY JURORS OR ANYBODY ELSE
16 ABOUT THE FACTS OF THE CASE?

17 MR. KNIGHT: NO.

18 THE COURT: YOU HEARD WHAT I GENERALLY TOLD THE JURORS
19 AT THE TIME YOU WERE ALL TOGETHER AND TOLD THEM WHAT THE CASE
20 WAS ALL ABOUT?

21 IT IS A CRIMINAL CASE, OBVIOUSLY, AND ONE WHERE
22 THE DEFENDANT IS CHARGED WITH THE COMMISSION OF A FIRST DEGREE
23 MURDER AND THAT THAT MURDER WAS COMMITTED DURING THE COURSE
24 OF ROBBERY.

25 NOW I SHOULD TELL YOU THIS RIGHT NOW: ANY KIND
26 OF A MURDER -- NOT EVERY KIND OF A MURDER, NO MATTER HOW
27 GHASTLY IT MAY BE -- EXCEPT IN CERTAIN CIRCUMSTANCES, NOT
28 EVERY MURDER IS PUNISHABLE, NOT EVERY FIRST DEGREE MURDER IS

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1 PUNISHABLE BY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
2 PAROLE OR DEATH, YOU UNDERSTAND THAT?

3 IT IS ONLY, THE LEGISLATURE HAS SAID, IN CERTAIN
4 SPECIAL CIRCUMSTANCES WHERE CERTAIN SPECIAL CIRCUMSTANCES ARE
5 PRESENT, THEN THAT PARTICULAR CRIME OF MURDER IN THE FIRST
6 DEGREE QUALIFIES FOR THE IMPOSITION OF LIFE IMPRISONMENT WITH-
7 OUT THE POSSIBILITY OF PAROLE OR DEATH.

8 ALL RIGHT, MURDER COMMITTED IN THE COURSE OF
9 ROBBERY, MURDER COMMITTED IN THE COURSE OF A BURGLARY, MURDER
10 COMMITTED IN THE COURSE OF KIDNAPPING, MURDER COMMITTED IN
11 THE COURSE OF A RAPE OR A TORTURE OR MULTIPLE MURDERS, THINGS
12 OF THAT KIND -- I HAVEN'T ENUMERATED ALL OF THEM -- BUT ONLY
13 IN THOSE SPECIAL CIRCUMSTANCES IS THE DEATH PENALTY WARRANTED
14 OR SOUGHT AND IF THE FACTS JUSTIFY IT. DO YOU UNDERSTAND THAT?

15 MR. KNIGHT: YES.

16 THE COURT: NOW, IN THE TRIAL OF THIS CASE THE JURY WILL
17 FIRST DETERMINE THE QUESTION OF THE GUILT OR INNOCENCE OF THE
18 DEFENDANT ON WHETHER OR NOT HE IS GUILTY OF MURDER IN THE
19 FIRST DEGREE AND IF THEY SAY THAT HE IS GUILTY OF MURDER IN
20 THE FIRST DEGREE, THEN THEY HAVE TO MAKE A SPECIAL FINDING,
21 IS IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED DURING THE
22 COURSE OF A ROBBERY.

23 IF THEY SAY YES, IT IS TRUE, IT WAS COMMITTED
24 DURING THE COURSE OF ROBBERY, THAT ENDS THE FIRST PHASE OR
25 THE GUILT PHASE OF THE TRIAL AND THEN THAT SAME JURY, HEARING
26 ADDITIONAL EVIDENCE, HEARING ADDITIONAL EVIDENCE FROM BOTH
27 THE DEFENDANT AND THE PROSECUTION WILL DETERMINE WHAT PENALTY
28 SHOULD BE IMPOSED, LIFE IMPRISONMENT WITHOUT POSSIBILITY OF

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1 PAROLE OR DEATH.

2 THE DEFENDANT WILL ADDUCE TESTIMONY WHICH IS
3 FAVORABLE TO HIM, WHICH WOULD MITIGATE HIS OFFENSE, IN OTHER
4 WORDS, IT WOULD LESSEN THE SERIOUSNESS OF IT, WHATEVER IT MAY
5 BE, AND GOOD THINGS ABOUT HIM WOULD BE TOLD AND YOU MAY
6 CONSIDER HIS AGE AND LACK OF CRIMINAL RECORD AND HIS BEING
7 IN THE COMMUNITY AND HOW HE BEHAVED AND SO ON AND SO FORTH.
8 ALL FAVORABLE FACTORS WILL BE ADDUCED BY HIM, I ASSUME.

9 AND SIMILARLY, THE PEOPLE WILL SHOW THAT THERE
10 ARE ASPECTS OF HIS LIFE OR HIS BACKGROUND WHICH ARE NOT GOOD,
11 WHICH ARE BAD, IN ORDER TO COUNTERBALANCE THE TESTIMONY HE
12 MAY GIVE AS TO HOW GOOD HE IS.

13 DO YOU UNDERSTAND?

14 MR. KNIGHT: YES.

15 THE COURT: NOW, ALL OF THAT WILL BE LISTENED TO BY THE
16 JURY ON THE SECOND PHASE, THE PENALTY PHASE OF THE CASE, AND
17 THAT WILL BE CONSIDERED BY THE JURY AND THEY MAKE UP THEIR
18 MINDS, NUMBER ONE, SHALL IT BE LIFE IMPRISONMENT WITHOUT THE
19 POSSIBILITY OF PAROLE OR DEATH; DO YOU UNDERSTAND?

20 MR. KNIGHT: YES.

21 THE COURT: ALL OF THAT SHOULD BE CONSIDERED.

22 WILL YOU CONSIDER ALL OF THEM AT THAT TIME?

23 MR. KNIGHT: YES, I WILL.

24 THE COURT: IN OTHER WORDS, YOUR STATE OF MIND IS SUCH
25 NOW THAT YOU CAN SAY THAT YOU WOULD BE A FAIR AND IMPARTIAL
26 JUROR AND WAIT UNTIL YOU HEAR ALL OF THE EVIDENCE IN THE CASE?

27 MR. KNIGHT: YES, I WOULD BE FAIR.

28 THE COURT: YOU WILL BE FAIR?

1 MR. KNIGHT: YES.

2 THE COURT: AND YOU WILL LISTEN TO ALL OF THE EVIDENCE,
3 BOTH ON THE GUILT PHASE AND ON THE PENALTY PHASE?

4 MR. KNIGHT: YES, I WOULD.

5 THE COURT: BEFORE YOU MAKE UP YOUR MIND?

6 MR. KNIGHT: YES, SIR.

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1 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
2 TO WHICH YOUR ANSWERS WILL BE YES OR NO. IF THE QUESTIONS
3 ARE UNCLEAR, ASK ME TO REPEAT IT OR EXPLAIN IT AND I WILL
4 BE VERY HAPPY TO DO THAT.

5 MR. KNIGHT: OKAY.

6 THE COURT: NOW, THE FIRST QUESTION I AM GOING TO ASK
7 YOU IS: DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
8 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
9 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

10 MR. KNIGHT: NO.

11 THE COURT: SECOND: DO YOU HAVE ANY OPINION REGARDING
12 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR A FIRST
13 DEGREE MURDER CONVICTION, IF THE PEOPLE HAVEN'T PROVEN MURDER
14 IN THE FIRST DEGREE?

15 MR. KNIGHT: NO.

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

20 MR. KNIGHT: NO.

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

27 MR. KNIGHT: NO.

28 THE COURT: THEN ANOTHER ASPECT OF THAT SAME QUESTION:

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

7 MR. KNIGHT: NO.

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

12 MR. KNIGHT: YES.

13 THE COURT: ALL RIGHT, SIR, GO AHEAD.

14 MR. CHIER: THANK YOU, YOUR HONOR.

15 MR. KNIGHT, MY NAME IS CHIER. I REPRESENT JOE
16 HUNT, THE DEFENDANT IN THIS CASE.

17 AND I WOULD LIKE TO TALK TO YOU ABOUT FAIRLY
18 PERSONAL MATTERS WHICH ARE ESSENTIALLY YOUR ATTITUDES TOWARD
19 THE DEATH PENALTY, THE ATTITUDE TOWARD A CRIME PUNISHABLE
20 BY DEATH WITHIN THE CONTEXT OF THIS TRIAL AND I WANT TO SAY
21 JUST IN THE BEGINNING SO YOU UNDERSTAND WHAT WE ARE DOING,
22 WHAT I AM DOING, IS THAT I AM NOT TRYING TO TRICK YOU. I
23 AM NOT ASKING YOU ANY TRICK QUESTIONS. I AM NOT TRYING TO
24 PROVE YOU ARE NOT A FAIR PERSON. I AM GOING TO ASK YOU
25 QUESTIONS THAT THERE IS NO RIGHT ANSWER OR NO WRONG ANSWER
26 TO. THERE IS NO FAIR ANSWER OR UNFAIR ANSWER. THEY ARE JUST
27 QUESTIONS CONCERNING YOUR STATE OF MIND AND YOUR FEELINGS.

28 I ASSUME THAT YOU ARE PERFECTLY AGREEABLE TO

1 LISTENING TO ANY EVIDENCE THAT COMES IN?

2 MR. KNIGHT: YES.

3 MR. CHIER: AND TO LISTEN TO WHATEVER THE JUDGE SAYS
4 YOU MAY CONSIDER?

5 MR. KNIGHT: YES.

6 MR. CHIER: AND I WANT TO ASK YOU QUESTIONS WHICH TOUCH
7 MORE UPON YOUR ATTITUDE IN TERMS OF WHERE THESE FEELINGS MAY
8 TAKE YOU, RATHER THAN YOUR ABILITY TO LISTEN AND TO OBEY THE
9 COURT'S ORDERS, WHICH I TAKE FOR GRANTED.

10 THIS SYSTEM CAN ONLY WORK IF IN THE COURSE OF
11 THIS PRIVATE TYPE OF HEARING, AS OPPOSED TO ONE WHERE ALL
12 OF THE PEOPLE ARE PRESENT, WHICH TAKES PLACE IN THE BELIEF
13 THAT IN THIS RELATIVELY PRIVATE SETTING, YOU CAN BE MORE
14 FRANK THAN YOU MIGHT BE ABLE TO BE, YOU KNOW, IF IT WERE IN
15 THE MIDST OF ALL OF THESE OTHER PEOPLE. THIS CAN ONLY WORK
16 IF IN RESPONSE TO THE QUESTIONS I ASK YOU, THAT YOU TELL THE
17 TRUTH.

18 THE ONLY RIGHT ANSWER IN THIS SITUATION IS THE
19 TRUTHFUL ANSWER, OKAY?

20 MR. KNIGHT: YES.

21 MR. CHIER: AND WHAT WE ARE TRYING TO DO, IN MY OWN
22 WORDS, IS TO SEE IF YOU HAVE A HIDDEN AGENDA EITHER IN FAVOR
23 OF OR AGAINST THE DEATH PENALTY THAT WOULD MAKE IT DESIRABLE
24 THAT SOME OTHER PERSON OTHER THAN YOURSELF SIT AS A JUROR
25 IN THIS CASE.

26 ARE YOU WITH ME SO FAR?

27 MR. KNIGHT: YES.

28 MR. CHIER: ALL RIGHT, HAVING DONE THAT, LET ME ASK

1 YOU IF YOU ARE A PERSON IN FAVOR OF THE DEATH PENALTY.

2 MR. KNIGHT: I GUESS IN SOME CIRCUMSTANCES, YES.

3 MR. CHIER: ALL RIGHT, IN APPROPRIATE CIRCUMSTANCES,
4 YOU BELIEVE THAT THE DEATH PENALTY IS SOMETHING THAT SOCIETY
5 MUST HAVE IN ORDER TO EVEN HOPE TO HAVE A DETERRENT FOR
6 VIOLENT CRIMINAL ACTIVITY?

7 MR. KNIGHT: I THINK IT HELPS.

8 MR. CHIER: IS THAT ESSENTIALLY IT?

9 MR. KNIGHT: YES.

10 MR. CHIER: AND IF YOU ARE SELECTED AS A JUROR IN THIS
11 CASE, YOU COULD FOLLOW THE COURT'S INSTRUCTIONS?

12 MR. KNIGHT: YES.

13 MR. CHIER: AND THAT YOU NOT ONLY COULD BUT WOULD
14 AFFIRMATIVELY CONSIDER WHATEVER THINGS THE COURT INSTRUCTS
15 YOU YOU COULD CONSIDER AND WHATEVER THINGS YOU FELT WERE
16 APPROPRIATE IN YOUR OWN HEART?

17 MR. KNIGHT: YES, I WOULD.

18 MR. CHIER: IS THAT CORRECT?

19 MR. KNIGHT: YES.

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1 MR. CHIER: AND THAT AS YOU SIT THERE NOW, KNOWING THAT
2 WE ARE IN THIS SEARCH AND THERE IS NO PERFECT JUROR, WE ARE
3 IN SEARCH OF PEOPLE WHO CAN BE FAIR AND NOBODY LIKES TO THINK
4 AS THEMSELVES AS UNFAIR.

5 ALL RIGHT, LET ME WITHDRAW THE WORD "FAIR" AND
6 SAY WE ARE LOOKING FOR PEOPLE THAT ARE CAPABLE OF BEING NEUTRAL.
7 ARE YOU SUCH A PERSON?

8 MR. KNIGHT: I THINK SO, YES.

9 MR. CHIER: SO THAT IN TRYING TO GRASP THIS CONCEPT,
10 THE DEATH PENALTY CASES, THERE ARE TWO SEGMENTS. THE FIRST
11 PART DEALS WITH THE GUILT.

12 THE COURT: I HAVE EXPLAINED ALL OF THAT TO HIM. YOU
13 ARE JUST WASTING A LOT OF TIME ASKING YOUR QUESTIONS.

14 I HAVE TOLD HIM THAT ALREADY.

15 MR. CHIER: THIS IS A PRELIMINARY QUESTION THAT I AM
16 GOING TO ASK HIM, YOUR HONOR. YOU TOLD HIM SO MANY THINGS,
17 I CAN'T JUST GIVE IT A NUMBER AND --

18 THE COURT: I TOLD HIM THAT THERE ARE TWO PHASES. DO
19 YOU REMEMBER ME TELLING YOU THAT?

20 MR. KNIGHT: YES, SIR.

21 THE COURT: FIRST OF ALL, THE GUILT PHASE AND THEN THERE
22 IS A PENALTY PHASE. I EXPLAINED WHAT HAPPENS IN EACH PHASE?

23 MR. KNIGHT: YES.

24 THE COURT: ALL RIGHT. DISPENSE WITH YOUR QUESTIONS.

25 MR. CHIER: BUT IT IS PRELIMINARY TO --

26 THE COURT: BUT YOU ARE ASKING THE SAME QUESTIONS AGAIN.

27 MR. CHIER: NOT REALLY. I AM SIMPLY REMINDING HIM. YOU
28 TOLD HIM A LOT OF THINGS, JUDGE. I WANT TO SEGREGATE ONE

1 OUT.

2 THE COURT: I THINK IT WILL BE FASTER TO JUST LET YOU
3 GO AHEAD AND ASK THE QUESTIONS.

4 MR. CHIER: ALL RIGHT. MR. KNIGHT, IN THE GUILT PHASE
5 OR IN THE GUILT SEGMENT, YOU HEAR EVIDENCE ABOUT WHAT HAPPENED
6 AND THE JURY DECIDES WHETHER THOSE INCIDENTS HAPPENED AND
7 WHETHER HE DID IT BEYOND A REASONABLE DOUBT OR NOT, RIGHT?

8 MR. KNIGHT: YES.

9 MR. CHIER: OKAY. THEN, THE NEXT SEGMENT IS THE PENALTY
10 PHASE. YOU HAVE GOT, ASSUMING THAT YOU FIND THE DEFENDANT
11 GUILTY, OBVIOUSLY -- WELL, IF YOU FIND HIM NOT GUILTY, THAT
12 IS THE END OF IT. NEVER GET TO THE PENALTY PHASE.

13 WHEN YOU START THE PENALTY PHASE OR THE PENALTY
14 SEGMENT, YOU HAVE TO START OVER AGAIN IN THE SENSE THAT YOU
15 HAVE BEEN ALL OF THE WAY OVER HERE TO BEYOND A REASONABLE
16 DOUBT, TO FIND HIM GUILTY, RIGHT?

17 MR. KNIGHT: YES.

18 MR. CHIER: THEN THE NEEDLE HAS TO COME BACK TO NEUTRAL,
19 TO START OVER AGAIN. SO WHAT I REALLY WANT TO KNOW IS, IF
20 IN THE EVENT THAT MR. HUNT -- YOU WERE ON THE JURY AND MR. HUNT
21 WAS FOUND GUILTY BY YOU AS ONE OF THE JURORS, THAT IN THE
22 BEGINNING OF THE PENALTY PHASE, YOU WOULD LIKE, START NEUTRAL
23 AND YOU WOULDN'T TILT ONE WAY OR THE OTHER UNTIL THE END OF
24 THAT TRIAL. THAT PHASE OF IT, ANYWAY. DO YOU UNDERSTAND
25 THE QUESTION?

26 MR. KNIGHT: YES, I DO.

27 MR. CHIER: ALL RIGHT. AND ARE YOU A PERSON THAT YOU
28 FEEL IS CAPABLE OF DOING THAT?

1 MR. KNIGHT: YES, I AM.

2 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE, YOUR HONOR.

3 THE COURT: ALL RIGHT. ARE THERE ANY QUESTIONS?

4 MR. WAPNER: BRIEFLY. MR. KNIGHT --

5 THE COURT: THIS IS MR. FRED WAPNER. HE IS A DEPUTY
6 DISTRICT ATTORNEY, SO YOU KNOW WHO IS TALKING TO YOU.

7 MR. WAPNER: THANK YOU.

8 MR. KNIGHT, BEFORE YOU WERE CHOSEN AS A JUROR TO
9 SIT -- MAYBE NOT SIT ON THIS CASE, BUT TO COME INTO COURT AND
10 ANSWER THESE QUESTIONS, HAD YOU GIVEN IT ANY THOUGHT TO THE
11 QUESTION OF THE DEATH PENALTY?

12 MR. KNIGHT: A LITTLE BIT OF THOUGHT. I GUESS I AM
13 WONDERING WHAT WOULD BE SAID HERE AND WHAT QUESTIONS WOULD
14 BE ASKED OF ME.

15 MR. WAPNER: AND AS YOU WERE EXAMINING YOUR OWN BELIEFS,
16 DID YOU COME TO ANY OPINIONS THAT YOU HAD -- DISCOVER ANY
17 OPINIONS THAT YOU HAD ABOUT THE DEATH PENALTY?

18 MR. KNIGHT: WELL, I HAVE NOT COME TO ANY STEADFAST
19 OPINION ON IT, NO. I THINK IT WOULD BE ACCORDING TO THE CRIME,
20 THE SERIOUSNESS OF IT AND EVERYTHING INVOLVED IN THE CASE.

21 MR. WAPNER: THE ONE THING ABOUT THE TWO DIFFERENT
22 PHASES IS THAT THE JUDGE WILL TELL YOU THAT WHEN YOU ARE
23 IN THE FIRST PHASE, YOU HAVE TO MAKE YOUR DECISION AS TO GUILTY
24 OR NOT GUILTY WITHOUT CONSIDERING THE PUNISHMENT. DO YOU
25 UNDERSTAND THAT?

26 MR. KNIGHT: YES, I DO.

27 MR. WAPNER: DO YOU UNDERSTAND THAT?

28 MR. KNIGHT: YES, I DO.

1 MR. WAPNER: DO YOU UNDERSTAND THAT THE IDEA BEHIND THAT
2 IS THAT YOU ARE SUPPOSED TO MAKE YOUR DECISION ON WHETHER HE
3 IS GUILTY OR NOT, NOT BASED ON THE PUNISHMENT THAT HE MIGHT
4 GET BUT WHETHER OR NOT THERE WAS A CRIME COMMITTED AND HE DID
5 IT?

6 MR. KNIGHT: YES.

7 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
8 MORAL OR PHILOSOPHICAL CONVICTIONS ABOUT THE DEATH PENALTY
9 THAT WOULD AFFECT YOU IN SITTING AS A JUROR IN THIS CASE?

10 MR. KNIGHT: NO.

11 MR. WAPNER: IS THERE ANYTHING THAT I LEFT OUT, THAT
12 DOESN'T COME UNDER THE HEADING OF RELIGIOUS, MORAL OR
13 PHILOSOPHICAL IN TERMS OF OPINIONS THAT YOU MIGHT HAVE ABOUT
14 THE DEATH PENALTY AND THAT MIGHT AFFECT YOU?

15 MR. KNIGHT: NO. I AM COMPLETELY NEUTRAL. IF I THOUGHT
16 THAT WOULD BE EVIDENCE THAT THEY BROUGHT OUT IN THAT SECOND
17 PHASE -- IF I THOUGHT THAT IT WOULD WARRANT THE DEATH PENALTY,
18 I COULD GIVE IT. IF I DIDN'T THINK SO, I COULD GO WITH A
19 LESSER.

20 THE COURT: LIFE WITHOUT POSSIBILITY OF PAROLE?

21 MR. KNIGHT: YES. I WOULDN'T HAVE A PRESET THING THAT
22 I WOULD DO. I WOULD HAVE TO WAIT AND SEE BEFORE I DECIDED.

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

24 THE COURT: ALL RIGHT. MR. KNIGHT, WE ARE IN THE
25 PROCESS OF -- WE HAVE GOT TO GO THROUGH Z WITH ALL OF THE
26 JURORS REMAINING IN THE SAME WAY THAT WE DID WITH YOU. THAT
27 WILL TAKE SOME TIME, AS YOU KNOW. YOU ARE TAKING SOME TIME
28 TOO.

1 SO, IT IS EXPECTED THAT WE'LL FINISH THIS PROCESS
2 BY DECEMBER 3RD. SO WHAT I WILL ASK YOU TO DO, IS TO COME
3 BACK ON DECEMBER THE 3RD, 10:30 A.M. AND GO TO THE JURY
4 ASSEMBLY ROOM WITH ALL OF THE JURORS.

5 THEN WE'LL PROCEED WITH THE OTHER PHASES OF THIS
6 TRIAL.

7 MR. KNIGHT: YES.

8 THE COURT: IN THE MEANTIME, DO NOT READ ANYTHING AT
9 ALL ABOUT THE CASE OR DISCUSS IT WITH ANYBODY, PARTICULARLY
10 OTHER JURORS ABOUT WHAT WAS SAID IN THE PROCEEDINGS.

11 MR. KNIGHT: OKAY.

12 THE COURT: THANK YOU. PLEASE BE BACK AT DECEMBER 3RD
13 AT 10:30.

14 MR. KNIGHT: THANK YOU VERY MUCH.

15 (PROSPECTIVE JUROR KNIGHT EXIST THE
16 COURTROOM.)

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1 THE COURT: NO --

2 MR. WAPNER: CAN WE TAKE A RECESS?

3 THE COURT: DO YOU NEED A RECESS?

4 THE COURT REPORTER: YES.

5 THE COURT: WELL, AFTER THE NEXT JUROR, WE'LL TAKE A
6 RECESS.

7 (PROSPECTIVE JUROR LORI KNUEDELER ENTERS
8 THE COURTROOM.)

9 THE CLERK: STATE YOUR NAME FOR THE RECORD.

10 MS. KNUEDELER: LORI KNUEDELER.

11 THE COURT: IS IT MISS KNUEDELER?

12 MS. KNUEDELER: YES.

13 THE COURT: MISS KNUEDELER, WHERE DO YOU LIVE, PLEASE?

14 MS. KNUEDELER: IN CANOGA PARK.

15 THE COURT: I HAVE GOT TO ASK YOU A SERIES OF QUESTIONS
16 TO WHICH YOUR ANSWERS SHOULD BE YES OR NO. IF YOU DON'T
17 UNDERSTAND THE QUESTION, ASK ME TO REPEAT IT OR EXPLAIN IT
18 TO YOU, AND I'LL BE VERY HAPPY TO DO SO.

19 MS. KNUEDELER: OKAY.

20 THE COURT: HOWEVER, BEFORE I GET TO THOSE QUESTIONS,
21 I WOULD LIKE TO KNOW PRELIMINARILY, WHETHER YOU HAVE READ
22 ANYTHING AT ALL ABOUT THIS CASE.

23 MS. KNUEDELER: NO.

24 THE COURT: HAVE YOU READ ANY NEWSPAPER ACCOUNTS OR
25 ANY MAGAZINE ACCOUNTS?

26 MS. KNUEDELER: I DON'T READ THE PAPER OR WATCH THE NEWS.

27 THE COURT: ALL RIGHT, FINE. IF BY ANY CHANCE, YOU SEE
28 SOMETHING, DON'T READ IT. DON'T HEAR IT. JUST KEEP YOUR MIND

1 OPEN.

2 MS. KNUEDELER: OKAY.

3 THE COURT: RIGHT?

4 MS. KNUEDELER: YES.

5 THE COURT: DO YOU PROMISE ME THAT?

6 MS. KNUEDELER: UH-HUH.

7 THE COURT: AS YOU GET THROUGH HERE, YOU WILL ALSO NOT
8 DISCUSS THIS WITH ANY THIRD PERSON. DID YOU HEAR ANYTHING
9 AT ALL ABOUT THE CASE FROM ANY OF THE OTHER JURORS?

10 MS. KNUEDELER: NO.

11 THE COURT: ALL RIGHT. YOUR MIND IS PERFECTLY OPEN NOW,
12 NO INFLUENCE ONE WAY OR THE OTHER?

13 MS. KNUEDELER: UH-HUH.

14 THE COURT: VERY GOOD. NOW, THE FIRST QUESTION TO YOU
15 IS: DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT
16 WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE
17 GUILT OR INNOCENCE OF THE DEFENDANT?

18 DO YOU UNDERSTAND THAT?

19 MS. KNUEDELER: NO, NOT REALLY.

20 THE COURT: WELL, LET ME GO BACK AND GIVE YOU A LITTLE
21 RESUME. YOU WERE SITTING HERE WHEN I TOLD YOU WHAT THE CASE
22 WAS ALL ABOUT?

23 MS. KNUEDELER: YES.

24 THE COURT: NOW, THE CHARGE AGAINST THE DEFENDANT IS
25 THAT HE COMMITTED A MURDER AND THAT IT WAS A MURDER IN THE
26 FIRST DEGREE DURING THE COURSE OF A ROBBERY.

27 NOW, IT IS NOT EVERY ROBBERY -- IT IS NOT EVERY
28 MURDER, YOU KNOW, THAT CALLS FOR THE DEATH PENALTY OR CALLS

1 FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

2 MS. KNUEDER: UH-HUH.

3 THE COURT: IT IS ONLY WHEN THAT MURDER WAS COMMITTED
4 UNDER CERTAIN SPECIAL CIRCUMSTANCES, THAT WHERE THOSE SPECIAL
5 CIRCUMSTANCES ARE PRESENT, IT IS THEN ONLY THAT THE JURY
6 CONSIDERS EITHER LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH.

7 MS. KNUEDER: UH-HUH.

8 THE COURT: AND IT TAKES PLACE IN TWO TRIALS. THE FIRST
9 TRIAL IS THE GUILT PHASE, WHERE YOU DETERMINE FIRST, WHETHER
10 OR NOT THE DEFENDANT COMMITTED A MURDER IN THE FIRST DEGREE
11 AND IF HE DID, WAS IT UNDER THOSE SPECIAL CIRCUMSTANCES, NAMELY,
12 DURING THE COURSE OF A ROBBERY. ALL RIGHT?

13 MS. KNUEDER: UH-HUH.

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1 THE COURT: THE QUESTION OF PENALTY OR PUNISHMENT IS
2 NOT TO BE DISCUSSED OR CONSIDERED AT ALL ON THAT GUILT
3 PHASE.

4 IT IS WHEN THAT GUILT PHASE IS FINISHED THEN, THAT
5 THE SAME JURY COMES OUT AGAIN AND THERE IS MORE TESTIMONY
6 WHICH WILL BE HEARD, EVIDENCE FROM THE DEFENDANT AND TESTIMONY
7 FROM THE PEOPLE. THE TESTIMONY FROM THE DEFENDANT WILL BE
8 DESIGNED TO SHOW THAT THERE ARE FACTS OR CIRCUMSTANCES WHICH
9 MINIMIZE OR MITIGATE OR EXTENUATE THE OFFENSE WHICH WAS
10 COMMITTED.

11 DO YOU UNDERSTAND THAT? THAT WOULD BE INCLUDING
12 AMONG THOSE, FIRST OF ALL, THE RIGHT THAT YOU CAN CONSIDER
13 IF YOU WANT TO, HIS AGE. YOU HAVE THE RIGHT TO CONSIDER
14 WHETHER OR NOT HE HAD ANY PRIOR CRIMINAL RECORD. YOU HAVE
15 THE RIGHT TO CONSIDER HIS CONDUCT IN THE COMMUNITY. THAT IS
16 WHATEVER IS FAVORABLE TO HIM.

17 ON THE OTHER HAND, THE PEOPLE WILL SHOW AGGRAVATING
18 CIRCUMSTANCES, FACTS ABOUT THE DEFENDANT WHICH ARE NOT GOOD,
19 RIGHT? DO YOU UNDERSTAND THAT?

20 SO, THE JURY THEN CONSIDERS ALL OF THAT AFTER THEY
21 HAVE HEARD ALL OF IT. THEY GO INTO THE JURY ROOM AND THEN
22 THEY CONSIDER ON THE PENALTY PHASE, SHOULD HE GET LIFE
23 WITHOUT POSSIBILITY OF PAROLE OR SHOULD HE GET DEATH. DO YOU
24 UNDERSTAND THAT?

25 MS. KNUEDLER: UH-HUH, YES.

26 THE COURT: NOW, WE ARE ON THE FIRST PHASE, IS HE
27 GUILTY OR INNOCENT OF THE CHARGES WHAT ARE PROFFERED AGAINST
28 HIM? NOW, THIS QUESTION IS, DO YOU HAVE AN OPINION REGARDING

1 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN
2 IMPARTIAL DECISION AS TO HIS GUILT OR INNOCENCE?

3 MS. KNUEDLER: NO.

4 THE COURT: ALL RIGHT. YOU UNDERSTOOD THEN, FINALLY.
5 NOW, THE SECOND ONE IS DO YOU HAVE ANY OPINION REGARDING THE
6 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
7 MURDER, EVEN WHEN THE PROSECUTION ONLY PROVES THE DEFENDANT
8 GUILTY OF MURDER IN THE SECOND DEGREE OR MANSLAUGHTER?

9 MS. KNUEDLER: NO.

10 THE COURT: ALL RIGHT. THE THIRD QUESTION IS -- I TOLD
11 YOU THAT ON THE FIRST PHASE OF THE TRIAL, YOU ARE TO DETERMINE
12 THE GUILT OR INNOCENCE OF THE DEFENDANT. IF HE IS GUILTY OF
13 MURDER IN THE FIRST DEGREE, THEN YOU HAVE TO FIND OUT WHETHER
14 OR NOT THAT MURDER WAS COMMITTED DURING THE COURSE OF A
15 ROBBERY WHICH QUALIFIES IT FOR THE DEATH PENALTY. THAT IS
16 KNOWN AS A SPECIAL CIRCUMSTANCE, THAT IT WAS COMMITTED DURING
17 THE COURSE OF A ROBBERY.

18 THE JURY WILL HAVE TO VOTE WHETHER THAT SPECIAL
19 CIRCUMSTANCE IS TRUE OR UNTRUE. SO, THAT IS THE TRUE OR
20 UNTRUE PART OF IT.

21 DO YOU HAVE ANY OPINION REGARDING THE DEATH
22 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
23 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

24 MS. KNUEDLER: NO.

25 THE COURT: DO YOU UNDERSTAND THAT IF THERE IS A FINDING
26 THAT IT WAS UNTRUE, THAT IT WAS COMMITTED DURING THE COURSE
27 OF A ROBBERY, THAT ENDS THE MATTER COMPLETELY?

28 MS. KNUEDLER: YES.

1 THE COURT: SOMETIMES PEOPLE WOULD MUCH RATHER SAY THERE
2 WAS NO SPECIAL CIRCUMSTANCE BECAUSE THEN THEY WILL NOT BE
3 CALLED UPON TO DETERMINE THE DEATH OR LIFE WITHOUT POSSIBILITY
4 OF PAROLE. THAT IS WHAT THIS QUESTION IS DESIGNED TO DO, TO
5 FIND OUT WHAT IS YOUR STATE OF MIND WITH RESPECT TO THE TRUTH
6 OR FALSITY OF THE SPECIAL CIRCUMSTANCES.

7 NOW, THEN THE NEXT QUESTION IS, DO YOU HAVE SUCH
8 AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
9 AUTOMATICALLY VOTE TO IMPOSE IT, REGARDLESS OF ANY EVIDENCE
10 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

11 MS. KNUEDLER: NO.
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1 THE COURT: NOW, THIS IS AN ASPECT OF THE SAME QUESTION,
2 THE NEXT ONE: DO YOU HAVE SUCH AN OPINION CONCERNING THE
3 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
4 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS
5 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
6 OF THE TRIAL?

7 MS. KNUEDELER: NO.

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

12 MS. KNUEDELER: UH-HUH.

13 THE COURT: ALL RIGHT, NOW WE WILL HAVE MR. CHIER ASK
14 QUESTIONS.

15 MR. CHIER: GOOD AFTERNOON, MS. KNUEDELER.

16 IS THAT MRS.?

17 MS. KNUEDELER: NO. MISS.

18 THE COURT: MISS.

19 MR. CHIER: MISS KNUEDELER, MY NAME IS RICHARD CHIER.
20 I REPRESENT JOE HUNT.

21 AND THE FACT THAT WE ARE ASKING THESE QUESTIONS
22 ABOUT THE DEATH PENALTY, YOU UNDERSTAND DOESN'T MEAN THAT
23 WE ARE EVER GOING TO GET THERE.

24 MS. KNUEDELER: RIGHT.

25 MR. CHIER: I KNOW YOU SAID THAT TO THE JUDGE. I JUST
26 WANT TO HEAR YOU SAY THAT TO ME BECAUSE OF WHAT WE ARE DOING
27 HERE. IT IS LIKE HAVING A FUNERAL BEFORE SOMEBODY DIES.

28 MS. KNUEDELER: RIGHT, I UNDERSTAND.

1 MR. CHIER: HOW DO YOU FEEL ABOUT THE DEATH PENALTY?

2 MS. KNUEDELER: WELL, I FEEL IF A LIFE WAS TAKEN
3 DELIBERATELY AND IF THE PERSON KNEW THAT THEY WERE GOING TO
4 DO THAT, THEN I AM ALL FOR IT.

5 MR. CHIER: DO YOU FEEL THAT YOU WOULD BE ABLE TO DO
6 THAT, TO VOTE SOMEBODY TO DEATH IN THE GAS CHAMBER?

7 MS. KNUEDELER: IT WOULD DEPEND UPON SOME OF THOSE THINGS,
8 YES.

9 MR. CHIER: NOT WITH REFERENCE TO THIS CASE, BUT DO
10 YOU THINK IN A CASE WHERE A PERSON COMMITTED AN INTENTIONAL
11 MURDER IN THE COURSE OF A ROBBERY THAT YOU COULD VOTE FOR
12 THE DEATH PENALTY IN THAT KIND OF A CASE?

13 MS. KNUEDELER: IF IT WAS INTENTIONAL, YES.

14 MR. CHIER: YES, ASSUME THAT THERE IS NO QUESTION THAT
15 THE MURDER WAS INTENTIONAL.

16 MS. KNUEDELER: RIGHT.

17 MR. CHIER: IN THAT CASE, YOU COULD VOTE FOR DEATH?

18 MS. KNUEDELER: YES.

19 MR. CHIER: AND WOULD IT BE FAIR TO SAY, CORRECT TO
20 SAY THAT YOU WOULD VOTE FOR DEATH WITHOUT MORE?

21 MS. KNUEDELER: IF IT WAS PROVEN WITHOUT A DOUBT, YES,
22 I WOULD.

23 THE COURT: NO, NO. THAT IS NOT THE STANDARD, NOT
24 WITHOUT ANY DOUBT.

25 YOU WILL BE INSTRUCTED IF YOU BECOME A JUROR IN
26 THIS CASE THAT IT IS ONLY A REASONABLE DOUBT, IT IS BEYOND
27 A REASONABLE DOUBT THAT YOU FIND GUILT OR INNOCENCE.

28 AND YOU UNDERSTOOD WHAT I WAS TELLING YOU ABOUT

21-3
1 THE PENALTY PHASE OF THE CASE?

2 MS. KNUEDELER: UH-HUH.

3 THE COURT: THAT AFTER YOU FOUND THE DEFENDANT GUILTY
4 OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY,
5 YOU WILL HAVE TO DECIDE ANOTHER QUESTION AFTER HEARING ALL
6 OF THE EVIDENCE ON THE PENALTY PHASE, GOOD AND BAD ABOUT THE
7 DEFENDANT, WHETHER OR NOT YOU SHOULD IMPOSE LIFE IMPRISONMENT
8 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH; YOU HEARD ME SAY
9 THAT?

10 MS. KNUEDELER: RIGHT, YES.

11 THE COURT: YOU WILL FOLLOW THAT LAW?

12 MS. KNUEDELER: UH-HUH.

13 THE COURT: YOU WON'T MAKE UP YOUR MIND ABOUT DEATH
14 OR LIFE IMPRISONMENT UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY?

15 MS. KNUEDELER: OH, NO.

16 THE COURT: ALL RIGHT.

17 MR. CHIER: YOU WOULD WAIT UNTIL YOU HAVE HEARD ALL
18 OF THE EVIDENCE BEFORE YOU --

19 MS. KNUEDELER: YES.

20 MR. CHIER: -- BEFORE YOU VOTED FOR THE DEATH PENALTY,
21 RIGHT?

22 MS. KNUEDELER: YES.

23 MR. CHIER: LET ME PUT IT THIS WAY: WITHOUT REGARD
24 TO WHAT THE COURT MAY TELL YOU, CAN YOU THINK OF, THIS IS
25 IN YOUR OWN PERSONAL POINT OF VIEW, CAN YOU THINK OF ANY TYPE
26 OF THING WHICH YOU FEEL MIGHT MITIGATE AGAINST THE DEATH PENALTY
27 IN A CASE OF INTENTIONAL, DELIBERATE MURDER IN THE COURSE
28 OF A ROBBERY?

1-4
1 MS. KNUEDELER: "MITIGATE," WHAT DO YOU MEAN BY THAT?

2 MR. CHIER: WELL, IN OTHER WORDS, YOU HAVE DEATH HERE
3 AND LIFE WITHOUT POSSIBILITY OF PAROLE HERE AND IN THE MIDDLE
4 YOU HAVE AN INTENTIONAL MURDER IN THE COURSE OF A ROBBERY.
5 NOW THERE IS NO QUESTION ABOUT SELF-DEFENSE OR A PERSON BEING
6 INSANE, RIGHT? YOU ELIMINATE ALL OF THAT. ALL OF THAT HAS
7 BEEN ELIMINATED. WHAT TYPE OF FACTOR MIGHT WEIGH AGAINST THE
8 DEATH PENALTY AND IN FAVOR OF LIFE?

9 THE COURT: WELL, THE COURT WILL INSTRUCT YOU, THE JURY,
10 AS TO WHAT THEY MAY CONSIDER IN DETERMINING THAT. SHE DOESN'T
11 MAKE IT UP. IT IS THE COURT THAT TELLS HER WHAT SHE HAS TO
12 CONSIDER. DON'T ASK HER OPINION OF THAT. IT ISN'T FAIR.

13 MR. CHIER: MS. KNUEDELER, LET ME SAY, HYPOTHETICALLY,
14 LET'S ASSUME YOU ARE IN CHARGE, YOU ARE THE PRESIDENT OR YOU
15 ARE KING OR THE QUEEN AND YOU ARE MAKING THE RULES. ALL RIGHT,
16 YOU GET TO SAY WHAT IS A CRIME AND WHAT ISN'T, WHO LIVES AND
17 WHO DIES AND WHAT THE PUNISHMENTS ARE; WOULD YOU MAKE MURDER
18 A CRIME?

19 MS. KNUEDELER: OH, DEFINITELY.

20 MR. CHIER: DEFINITELY?

21 AND WOULD YOU PROVIDE THE DEATH PENALTY FOR MURDER?

22 MS. KNUEDELER: DEPENDING ON THE CIRCUMSTANCES.

23 MR. CHIER: OKAY, NOW WHAT TYPES OF THINGS WOULD YOU
24 PROVIDE COULD BE CONSIDERED AGAINST GIVING A DEATH PENALTY?

25 THE COURT: IS SHE MAKING THE LAW NOW?

26 MR. CHIER: YES, THAT IS ASSUMING --

27 THE COURT: WHAT ARE YOU ASKING HER FOR?

28 I WILL SUSTAIN THE OBJECTION ON THE COURT'S OWN

21-5
1 MOTION.

2 MR. CHIER: THIS IS FOR THE PURPOSE --

3 THE COURT: PLEASE, WILL YOU ASK THE QUESTIONS WHICH
4 ARE APPROPRIATE?

5 MR. CHIER: ALL RIGHT, DO YOU THINK -- LET ME PUT IT
6 THIS WAY -- IF YOU WERE A JUROR ON THIS CASE OR IF YOU WERE
7 A JUROR ON A CASE AND YOU FOUND A DEFENDANT GUILTY OF FIRST
8 DEGREE MURDER THAT WAS INTENTIONAL AND YOU FOUND IT WAS
9 COMMITTED IN THE COURSE OF A ROBBERY, THERE WERE NO EXCUSES
10 FOR IT, SO TO SPEAK, THEN YOU GO INTO ANOTHER PHASE WHICH
11 IS THE PENALTY PHASE, RIGHT? YOU HAVE DECIDED A PERSON WAS
12 GUILTY, HAVING FOUND THE PERSON WAS GUILTY, NEXT QUESTION
13 IS, WHAT DO WE DO WITH THIS PERSON? DO WE PUT HIM IN PRISON
14 FOR LIFE OR DO WE GAS HIM?

15 MS. KNUEDELER: UH-HUH.

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

17 MS. KNUEDELER: YES.
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21A-1
1 MR. CHIER: AT THAT POINT, WOULD YOU SAY THAT HAVING
2 FOUND A PERSON GUILTY OF FIRST DEGREE MURDER, INTENTIONAL
3 IN THE COURSE OF ROBBERY, THAT YOU WOULD BE LEANING STRONGER
4 IN FAVOR OF THE DEATH PENALTY AS OPPOSED TO LIFE IN PRISON?

5 MS. KNUEDELER: YES, I WOULD.

6 MR. CHIER: ALL RIGHT. WOULD IT TAKE A LOT OF
7 CONVINCING ON THE PART OF THE DEFENDANT TO BRING YOU BACK
8 FROM THAT FEELING OF APPROPRIATENESS, OF THAT FEELING THAT
9 DEATH IS APPROPRIATE?

10 MS. KNUEDELER: WELL, I DON'T THINK I WOULD MAKE UP
11 MY MIND ON THAT UNTIL I WAS CONVINCED, MEANING THAT I
12 COULDN'T BE SWAYED THE OTHER WAY.

13 MR. CHIER: RIGHT. BUT YOU WOULDN'T MAKE UP YOUR MIND
14 ON IT UNTIL IT WAS OVER?

15 MS. KNUEDELER: UNTIL IT WAS OVER?

16 MR. CHIER: UNTIL IT IS OVER.

17 MS. KNUEDELER: RIGHT.

18 MR. CHIER: BUT THE DEFENDANT WOULD HAVE TO WORK
19 AWFULLY HARD TO CONVINCING YOU AT THAT POINT, HAVING FOUND HIM
20 GUILTY OF INTENTIONAL MURDER IN THE COURSE OF ROBBERY, HE
21 WOULD HAVE TO WORK AWFULLY HARD TO CONVINCING YOU NOT TO BRING
22 BACK THE DEATH PENALTY, RIGHT?

23 THE COURT: IS THAT A QUESTION OR DO YOU WANT HER TO
24 ANSWER THAT WAY?

25 MR. CHIER: HE WOULD HAVE TO WORK HARD TO CONVINCING YOU
26 THAT HE SHOULD NOT GO TO THE DEATH CHAMBER, RIGHT; IS THAT
27 CORRECT?

28 MS. KNUEDELER: AT THAT POINT I WOULD SAY SO, YES.

A-2

1 MR. CHIER: OKAY. AND HE, THE DEFENDANT WOULD HAVE
2 TO WORK HARDER TO CONVINCING YOU NOT TO PUT HIM IN THE GAS
3 CHAMBER THAN THE PROSECUTION WOULD HAVE TO WORK TO CONVINCING
4 YOU TO PUT HIM IN THE GAS CHAMBER AT THAT POINT, RIGHT?

5 MS. KNUEDER: IF THAT WERE THE CASE, IF HE WERE FOUND --

6 MR. CHIER: GUILTY.

7 MS. KNUEDER: RIGHT.

8 MR. CHIER: GUILTY, NO EXCUSE, INTENTIONAL, FIRST DEGREE,
9 WITH ROBBERY, RIGHT?

10 MS. KNUEDER: YES.

11 MR. CHIER: OKAY, SUBMIT IT, YOUR HONOR.

12 THE COURT: THEN YOU WON'T LISTEN TO ANY TESTIMONY AFTER
13 THE CONVICTION AND AFTER YOU FOUND HIM GUILTY?

14 MS. KNUEDER: NO.

15 THE COURT: YOU WOULDN'T LISTEN TO ANY FAVORABLE FACTORS
16 IN FAVOR OF THE DEFENDANT BUT YOU WOULD AUTOMATICALLY VOTE
17 GUILTY?

18 MS. KNUEDER: NO, NO, NO.

19 I SAID WHEN EVERYTHING IS SAID AND DONE.

20 THE COURT: AFTER YOU HAVE HEARD ALL OF THE TESTIMONY
21 FOR OR AGAINST?

22 MS. KNUEDER: BOTH.

23 THE COURT: DURING THE PENALTY PHASE OF THE TRIAL,
24 WHERE YOU WILL HEAR ALL OF THESE NICE THINGS ABOUT THE
25 DEFENDANT AND YOU WILL HEAR ALL OF THE BAD THINGS ABOUT THE
26 DEFENDANT, THEN WOULD YOU WEIGH AND THEN MAKE UP YOUR MIND --

27 MS. KNUEDER: YES.

28 THE COURT: -- WHICH WAY YOU WILL GO, WHETHER IT WILL

1 BE ONE WAY OR THE OTHER; IS THAT RIGHT?

2 MS. KNUEDELER: YES.

3 THE COURT: WOULD YOU AUTOMATICALLY, JUST BECAUSE YOU
4 FOUND HIM GUILTY OF FIRST DEGREE MURDER, WOULD YOU
5 AUTOMATICALLY VOTE FOR THE DEATH PENALTY WITHOUT HEARING
6 ANYTHING FURTHER?

7 MS. KNUEDELER: NO, I WOULD NOT.

8 THE COURT: ALL RIGHT. YOU HAVE ANYTHING, MR. WAPNER?

9 THAT IS MR. WAPNER NOW. HE IS THE DEPUTY DISTRICT
10 ATTORNEY.

11 MR. WAPNER: DID YOU THINK ABOUT THE DEATH PENALTY AT
12 ALL BEFORE YOU WERE CALLED TO SERVE AS A JUROR ON THIS CASE?

13 MS. KNUEDELER: WELL, ONLY TO THE EXTENT WHERE, LIKE
14 I SAID, I FEEL VERY STRONGLY IF SOMEONE DELIBERATELY TAKES
15 A LIFE AND THEY HAVE NO EXCUSE FOR IT OR ANYTHING, THEN I
16 BELIEVE I AM FOR IT.

17 MR. WAPNER: WHAT DO YOU MEAN WHEN YOU SAY THEY HAVE
18 NO EXCUSE FOR IT?

19 MS. KNUEDELER: WELL, I MEAN THERE ARE CIRCUMSTANCES
20 WHERE, YOU KNOW, IT IS SELF-DEFENSE, SOMETIMES IT IS WHAT
21 THEY CALL, YOU KNOW, THE HEAT OF PASSION. YOU KNOW, IT DEPENDS
22 ON THE SITUATION.

23 BUT IF IT WAS DONE INTENTIONALLY WHERE THE GUY
24 HAS GOT IT IN MIND OR THE GIRL, WHATEVER, "I AM GOING TO KILL
25 SOMEBODY" AND THEY DO IT, IF IT IS DELIBERATE AND THEY KNOW
26 WHAT THEY ARE DOING AND THEY ARE DOING IT ANYWAY, THEN I
27 BELIEVE IN THE DEATH PENALTY.

28 MR. WAPNER: WHEN YOU SAY YOU BELIEVE IN THE DEATH

21-4
1 PENALTY, DOES THAT MEAN IN THOSE CIRCUMSTANCES THAT A PERSON
2 SHOULD GET THE DEATH PENALTY?

3 MS. KNUEDELER: YES.

4 MR. WAPNER: ALL OF WHAT WE HAVE BEEN TALKING ABOUT
5 IN TERMS OF THESE DIFFERENCE PHASES OF THE TRIAL AND THE
6 SPECIAL CIRCUMSTANCES COMES DOWN TO THIS: THE LAW IN THIS
7 STATE IS THAT A JUROR IN ANY GIVEN CASE WOULD NEVER EVEN GET
8 TO THE QUESTION OF DEATH OR LIFE IMPRISONMENT WITHOUT THE
9 POSSIBILITY OF PAROLE UNLESS AND UNTIL THEY HAD FOUND THAT
10 THE MURDER WAS IN FACT DELIBERATE AND THAT UNDER THE
11 PARTICULAR CIRCUMSTANCES OF THIS CASE IT WAS COMMITTED DURING
12 THE COURSE OF ROBBERY; DO YOU UNDERSTAND THAT?

13 MS. KNUEDELER: YES.
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2 TO

22-A-1
1 MR. WAPNER: ALL RIGHT. SO, WE ARE TALKING NOW ABOUT
2 THOSE GIVENS, THAT THE MURDER WAS DELIBERATE AND IT WAS
3 COMMITTED DURING THE COURSE OF A ROBBERY. THAT IS THE ONLY
4 WAY THAT YOU CAN GET TO THE QUESTION OF THE DEATH PENALTY
5 IN THIS PARTICULAR CASE. DO YOU UNDERSTAND THAT?

6 MS. KNUEDELER: YES.

7 MR. WAPNER: ASSUMING THAT YOU GOT TO THE PENALTY
8 QUESTION -- LET ME START THAT AGAIN. THAT IS NOT GOING TO
9 COME OUT RIGHT.

10 NOW, YOU KNOW THESE THINGS THAT I JUST TOLD YOU,
11 ASSUMING THAT, ARE YOU GOING TO BE -- WOULD YOU BE A FAIR
12 JUROR TO BOTH SIDES OR DO YOU AUTOMATICALLY HAVE YOUR MIND
13 MADE UP AS TO THE WAY YOU ARE GOING TO VOTE?

14 MS. KNUEDELER: I BELIEVE THAT I WOULD BE FAIR. I WOULD
15 HAVE TO HEAR BOTH SIDES COMPLETELY.

16 MR. WAPNER: OKAY. HOW DO YOU SQUARE YOUR FIRST
17 STATEMENT THAT YOU MADE, WHICH IS THAT IF IT IS AN INTENTIONAL
18 THING COMMITTED IN A ROBBERY, WITH YOUR SECOND STATEMENT THAT
19 YOU WOULD BE FAIR TO BOTH SIDES?

20 MR. CHIER: OBJECTION, ARGUMENTATIVE.

21 THE COURT: OVERRULED. YOU MAY ANSWER THAT.

22 MS. KNUEDELER: WELL, I HAVE NEVER SERVED ON A JURY
23 BEFORE. SO I NEVER HEARD ANY TYPE OF CASE BEFORE.

24 I BELIEVE THAT THERE ARE YOU KNOW, CERTAIN THINGS
25 THAT CAN COME UP, THAT NORMALLY WOULDN'T -- LIKE, IF IT WAS
26 JUST ASIDE FROM THE FACT THAT THIS WAS ALSO A PART OF A
27 ROBBERY, IT WAS NOT LIKE SOMEONE JUST WENT OUT AND KILLED
28 SOMEBODY.

22A-2
1 I MEAN, THIS HAPPENED BECAUSE OF A SPECIAL
2 CIRCUMSTANCE.

3 I THINK I WOULD HAVE TO HEAR EVERYTHING, TO FIND
4 OUT YOU KNOW, WOULD HE HAVE KILLED SOMEBODY, HAD HE NOT BEEN
5 ROBBING THE PERSON? DO YOU KNOW WHAT I MEAN?

6 MR. WAPNER: WELL, WE ARE TRYING TO FIND OUT WHAT YOU
7 DO MEAN. SO IF YOU CAN EXPLAIN IT TO US BETTER, WHAT I AM
8 GETTING AT OR WHAT I THINK THAT MR. CHIER IS TRYING TO GET
9 AT IS --

10 MR. CHIER: SPEAK FOR YOURSELF, SIR.

11 THE COURT: ALL RIGHT.

12 MR. WAPNER: WAS THAT AN OBJECTION?

13 MR. CHIER: YES. I DON'T WISH TO BE CHARACTERIZED.

14 THE COURT: WHY DON'T YOU SAY THAT WE ARE ALL TRYING
15 TO FIND OUT, INCLUDING THE COURT --

16 MR. WAPNER: THANK YOU.

17 WOULD YOU, ONCE YOU HAVE DECIDED THAT THERE WAS
18 AN INTENTIONAL MURDER DURING A ROBBERY, WHAT FACTS WOULD MAKE
19 YOU VOTE TO SPARE THE PERSON'S LIFE, AS OPPOSED TO -- LET
20 ME PHRASE THE QUESTION DIFFERENTLY.

21 ONCE YOU HAD DECIDED THAT THE PERSON WAS GUILTY
22 OF MURDER AND IT HAPPENED DURING THE COURSE OF A ROBBERY AND
23 NOW YOU ARE AT THE POINT OF DECIDING WHAT THE PUNISHMENT SHOULD
24 BE, WHAT WOULD BE THE THINGS THAT WOULD BE IMPORTANT TO YOU
25 OR THAT YOU WOULD WANT TO KNOW IN TRYING TO DECIDE WHAT
26 PUNISHMENT TO IMPOSE?

27 MR. CHIER: ASKING HER TO PREJUDGE THE EVIDENCE. SHE
28 HAS NOT HEARD ANY FACTS, JUDGE.

22A-3

1 THE COURT: SUSTAINED.

2 MR. WAPNER: IF YOU WERE A JUROR IN A CASE WHERE YOU
3 HAD DECIDED THAT THERE WAS A MURDER AND IT WAS INTENTIONAL,
4 DURING A ROBBERY AND YOU GOT TO THE PENALTY PHASE, THEN IN
5 EVERY CASE, WOULD YOU THEN SAY OKAY, THAT THE PERSON SHOULD
6 DIE IN THE GAS CHAMBER?

7 MR. KNUEDER: NO.

8 MR. WAPNER: WHY NOT?

9 MS. KNUEDER: I DON'T KNOW IF I CAN EXPLAIN IT. I THINK
10 IT WOULD STILL HAVE TO DO WITH THE BACKGROUND OF THE PERSON
11 THAT IS SUPPOSEDLY GUILTY.

12 IT WOULD HAVE TO DO WITH -- I DON'T KNOW HOW TO
13 EXPLAIN IT.

14 MR. WAPNER: WHEN YOU SAY THE "BACKGROUND OF THE PERSON"
15 WOULD YOU SAY THAT IT WOULD HAVE TO DO WITH THE BACKGROUND?
16 IN OTHER WORDS, WHAT WOULD HAVE TO DO WITH THE BACKGROUND?

17 MS. KNUEDER: MY DECISION. I WOULD HAVE TO FIND OUT
18 MORE ABOUT THE PERSON, YOU KNOW, WHAT MADE THEM EVEN
19 COMMIT A CRIME TO BEGIN WITH, YOU KNOW, WHAT LED UP TO THIS
20 POINT IN THEIR LIFE, YOU KNOW, WHAT BASICALLY TYPE OF PERSON
21 THEY WERE BEFORE THIS HAPPENED.

22 MR. WAPNER: AND IF THERE WERE THINGS IN THE PERSON'S
23 BACKGROUND -- WELL, IF YOU HEARD BAD EVIDENCE ABOUT THE PERSON'S
24 BACKGROUND, WOULD YOU CONSIDER THESE THINGS IN TRYING TO
25 DECIDE WHETHER THEY SHOULD LIVE OR DIE?

26 MS. KNUEDER: I WOULD CONSIDER THEM, YES.

27 MR. WAPNER: ALL RIGHT. AND BESIDES THE PERSON'S
28 BACKGROUND, WHAT OTHER THINGS WOULD YOU CONSIDER?

1 THE COURT: I DON'T THINK IT IS FAIR TO A JUROR TO ASK
2 THEM WHAT THEY WOULD CONSIDER. THE COURT WILL TELL THEM WHAT
3 TO CONSIDER ON THE PENALTY PHASE OF IT.

4 MR. CHIER: WELL, THEY MIGHT HAVE THEIR OWN CRITERIA.

5 THE COURT: NO. THEY LISTEN ONLY TO THE COURT'S
6 CRITERIA.

7 MR. CHIER: IF THEY HAVE THEIR OWN CRITERIA --

8 THE COURT: I SAID THAT THEY WOULD LISTEN TO THE COURT'S
9 CRITERIA, NOT THEIR OWN.

10 MR. CHIER: WE WOULD LIKE TO HEAR WHAT THEIR OWN IS,
11 JUDGE. I KNOW THAT THEY WOULD ONLY --

12 THE COURT: ANYTHING FURTHER?

13 MR. WAPNER: YES. THANK YOU.

14 YOU HAVE EXPRESSED -- STRIKE THAT.

15 YOU HAVE TOLD US THAT YOU WOULD CONSIDER THE
16 BACKGROUND. WOULD YOUR VIEWS ON THE DEATH PENALTY KEEP YOU
17 FROM PAYING MUCH ATTENTION TO A PERSON'S BACKGROUND IN
18 DECIDING WHAT PENALTY THEY SHOULD GET?

19 MS. KNUEDLER: NO. IT WOULDN'T KEEP ME FROM DECIDING.

20 MR. WAPNER: DO YOU HAVE ANY STRONG FEELINGS, MORALLY
21 OR PHILOSOPHICALLY, FEELINGS ABOUT THE DEATH PENALTY ONE WAY
22 OR THE OTHER?

23 MS. KNUEDLER: NO, NONE.

24 MR. WAPNER: DO YOU UNDERSTAND THAT IF YOU ARE CHOSEN
25 AS A JUROR AND YOU GET TO THAT PART OF THE CASE WHERE YOU
26 DECIDE WHAT THE APPROPRIATE PUNISHMENT IS TO BE, THAT THE
27 DECISION IS AN INDIVIDUAL DECISION MADE BY YOU ALONG WITH
28 THE OTHER 11 PEOPLE?

22A-5

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MS. KNUEDER: YES.

MR. WAPNER: SO THERE IS NO ONE THAT IS GOING TO DECIDE THIS QUESTION FOR YOU. YOU UNDERSTAND THAT?

MS. KNUEDER: YES.

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

MS. KNUEDER: WELL, I THINK SO. I MEAN, I HAVE NEVER DONE IT BEFORE. IT IS HARD TO SAY YES OR NO DEFINITELY.

22B FO

22B-1
1 MR. WAPNER: UNFORTUNATELY, THIS IS THE ONLY TIME WHEN
2 WE GET TO ASK YOU THE QUESTION AND WHEN YOU GET TO ANSWER.
3 AND IT IS IMPORTANT FOR US TO KNOW WHETHER YOU ARE THE TYPE
4 OF PERSON WHO CAN LISTEN TO THE EVIDENCE IN THIS CASE AND
5 MAKE A DECISION ON THIS QUESTION.

6 MR. KNUEDER: WELL, YES. I CAN MAKE A DECISION. LIKE
7 I SAID, I DON'T NECESSARILY -- IT WOULD DEPEND UPON THE OUTCOME
8 OF THE WHOLE TRIAL AS TO WHAT THE DECISION WOULD BE.

9 BUT YES, I WILL MAKE ONE. YES, I WOULD MAKE ONE.

10 MR. WAPNER: THAT IS THE QUESTION, IS YOUR ABILITY TO
11 MAKE IT.

12 MS. KNUEDER: YES.

13 MR. WAPNER: OKAY. NOTHING FURTHER.

14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. WOULD
15 YOU PLEASE WAIT OUTSIDE JUST A MOMENT? WE WILL CALL YOU RIGHT
16 IN.

17 (PROSPECTIVE JUROR KNUEDER EXITED
18 THE COURTROOM.)

19 MR. CHIER: YOUR HONOR, MAY IT PLEASE THE COURT, I
20 SUBMIT THAT THIS IS A PROSPECTIVE JUROR, MS. KNUEDER, WHO
21 SHOULD BE EXCUSED FOR CAUSE.

22 SHE HAS INDICATED THROUGH A SERIES OF QUESTIONS
23 IN RESPONSE TO A SERIES OF QUESTIONS BY MYSELF, THAT ALL THINGS
24 BEING CONSIDERED, THAT IF A PERSON COMMITS AN INTENTIONAL
25 MURDER OF THE FIRST DEGREE IN THE COURSE OF A ROBBERY, THAT
26 THAT PERSON PROBABLY DESERVES TO DIE.

27 BUT THE IMPORTANT ASPECT TO HER TESTIMONY IS THAT
28 SHE FEELS THAT I WOULD HAVE TO WORK HARDER, IN OTHER WORDS,

1 THAT I SHOULD HAVE THE GREATER BURDEN OF PERSUADING HER NOT
2 TO EXECUTE MR. HUNT AND THAT MR. WAPNER SHOULD HAVE THE BURDEN
3 OF CONVINCING HER TO EXERCISE (SIC) MR. HUNT. THEREBY, SHE
4 HAS DEMONSTRATED THAT SHE POSSESSES HER OWN CRITERIA.

5 IF YOU COULD JUST BEAR WITH ME FOR A MOMENT, THIS
6 IS HER OWN CRITERIA.

7 WHAT WE HAVE SEEN IN THE COURSE OF THIS HOVEY
8 VOIR DIRE WITH RESPECT TO THIS TYPE OF PROSPECTIVE JUROR,
9 WE MIGHT CALL A CONSCIENTIOUS OBJECTOR, YOUR HONOR. THAT IS,
10 THAT THE CONSCIENTIOUS OBJECTORS HAVE BEEN EXCUSED WHO HAVE
11 THEIR OWN CRITERIA.

12 THEY PROVE IN FACT, THAT THEY HAVE THEIR OWN
13 CRITERIA BECAUSE THEY SAY EVEN THOUGH THE LAW PROVIDES FOR
14 THE DEATH PENALTY AND EVEN THOUGH THEY WOULD LISTEN TO THE
15 INSTRUCTIONS, THEY IN FACT, COULDN'T FOLLOW THE INSTRUCTIONS
16 TO RETURN A VERDICT OF DEATH.

17 SO WHAT WE HAVE SEEN IS THAT MANY PEOPLE HAVE
18 CONVICTIONS WHICH OVERRIDE THEIR NEUTRAL CONSIDERATIONS OF
19 THE CRITERIA GIVEN TO THEM BY A JUDGE.

20 THIS PERSON IS SUCH A PERSON. SHE SHOULD BE JUDGED
21 BY NO DIFFERENT STANDARD.

22 SHE IS A PERSON WHO HAS THIS BUILT-IN CRITERIA,
23 THIS AGENDA, IF YOU WILL SO THAT IN HER MIND, THERE IS NO
24 SELF-DEFENSE.

25 AND IF THERE ARE NO OTHER LEGAL EXCUSES FOR
26 HOMICIDE, THEN SHE WOULD SEEK TO PLACE THE BURDEN OF
27 PERSUASION ON THE DEFENDANT, TO SAVE HIS LIFE, RATHER THAN
28 TO HAVE IT EVENLY DISTRIBUTED.

1 I SUBMIT YOUR HONOR, THAT EVEN THOUGH THERE WERE
2 SOME ATTEMPTS TO REHABILITATE THIS WITNESS, THAT THE REAL
3 PERSON, IS A PERSON WHOSE PERSONAL CONVICTIONS WOULD
4 SUBSTANTIALLY IMPAIR THEIR ABILITY IN THIS CASE, TO BE FAIR.

5 SHE SAID THAT SHE WAS FAIR. IT IS NOT FAIR TO
6 EVEN ASK A PERSON OR A PROSPECTIVE JUROR IF THEY COULD BE
7 FAIR.

8 WHO AMONG US WOULD EVER ADMIT TO BEING UNFAIR?
9 NONE OF US.

10 BUT YOUR HONOR, WE SHOW -- I ASKED HER WHETHER --
11 I BELIEVE THAT SHE IS NOT A PERSON WHO COULD BE NEUTRAL AND
12 IMPARTIAL. I SUBMIT THAT SHE SHOULD BE EXCUSED FOR CAUSE.
13 THANK YOU.

14 THE COURT: YES?

15 MR. WAPNER: I WILL SUBMIT THE MATTER, YOUR HONOR.

16 THE COURT: YOU HAVE BEEN ASKING EVERY ONE OF THESE
17 PROSPECTIVE JURORS THIS LOADED QUESTION.

18 AND THIS IS YOUR LOADED QUESTION. YOU SAY TO THE
19 JUROR, SUPPOSE IT HAS BEEN DEMONSTRATED IN THE CASE THAT THE
20 DEFENDANT DELIBERATELY, WITH MALICE AFORETHOUGHT, DELIBERATELY
21 KILLED A PERSON AND IT WAS IN THE COURSE OF A ROBBERY AND
22 WOULD YOU VOTE THE DEATH PENALTY.

23 THAT IS A LOADED QUESTION. IT COMPLETELY OMITTS
24 A CONSIDERATION OF THE PENALTY PHASE.

25 WOULD YOU WAIT BEFORE YOU VOTED THE DEATH PENALTY
26 TO HEAR THE FAVORABLE AND UNFAVORABLE PARTS OF THE TESTIMONY?
27 THAT IS THE PURPOSE OF A PENALTY PHASE OF IT. YOU DON'T
28 ASK THAT QUESTION.

1 MR. CHIER: BUT, JUDGE, WHETHER SHE WOULD HAVE THE
2 DESIRE TO WAIT IS NOT THE ISSUE.

3 THE COURT: NO, NO. YOU JUST PUT IT ON AN ALL OR NOTHING
4 BASIS. YOU LIMIT IT TO EXACTLY WHAT I JUST INDICATED.

5 MR. CHIER: THAT WAS WHAT MAYBE --

6 THE COURT: YOU PUT IT AS COLD BLOODED MURDER, DELIBERATELY
7 COMMITTED IN THE COURSE OF A ROBBERY, WOULD YOU VOTE FOR THE
8 DEATH PENALTY? THAT IS NOT A FAIR QUESTION.

9 MR. CHIER: YES, IT IS.

10 THE COURT: IT IS NOT.

11 GET HER IN, WILL YOU, PLEASE?

12 MR. CHIER: MAY I TELL YOU WHY?

13 THE COURT: I DON'T WANT TO HEAR ANY MORE FROM YOU ON
14 THIS SUBJECT.

15 MR. CHIER: BUT, JUDGE, THIS IS IMPORTANT TO ME.

16 THE COURT: I DON'T WANT TO HEAR ANY MORE ON THE SUBJECT.

17 MR. CHIER: IT IS IMPORTANT TO THE DEFENDANT.

18 THE COURT: BRING THE JUROR IN, WILL YOU?

19 MR. CHIER: WE DON'T HAVE THE BURDEN TO PUT ON ANY
20 EVIDENCE.

21 THE COURT: I TOLD YOU I DON'T WANT QUESTIONS OF THAT
22 KIND TO BE ASKED.

23 MR. CHIER: WE DON'T HAVE ANY BURDEN OF PERSUASION AT
24 THE PENALTY PHASE, JUDGE.

25 (PROSPECTIVE JUROR KNUEDELER ENTERS THE
26 COURTROOM.)

27 THE COURT: ALL RIGHT. MRS. KNUEDELER, WHAT I WILL ASK
28 YOU TO DO IS TO COME BACK, IT IS ANTICIPATED THAT WE WILL

23-2

1 FINISH THE WHOLE LIST OF THE PROSPECTIVE JURORS -- YOU SEE
2 WE ARE UP TO K AND WE HAVE TO GO THROUGH Z SO THAT WILL TAKE
3 SOME DAYS. IT IS EXPECTED WE WILL FINISH ON DECEMBER 3RD.

4 MS. KNUEDELER: OKAY.

5 THE COURT: WHAT I WILL ASK YOU TO DO IS TO COME BACK
6 TO THE JURY ASSEMBLY ROOM ON DECEMBER 3RD AT 10:30 A.M.

7 MS. KNUEDELER: 10:30.

8 THE COURT: IT IS ONLY IN EVENT THAT WE DON'T FINISH
9 ALL OF THAT, WE HAVE GOT YOUR TELEPHONE NUMBER AND WE WILL
10 CALL YOU AND THEN WILL TELL YOU EXACTLY WHEN IT IS YOU HAVE
11 TO COME BACK IF WE DON'T FINISH. IS THAT ALL RIGHT?

12 MS. KNEUDELER: OKAY.

13 THE COURT: DECEMBER 3RD, THE JURY ASSEMBLY ROOM AT
14 10:30.

15 MS. KNUEDELER: OKAY.

16 THE COURT: ALL RIGHT. WE WILL TAKE A RECESS AT THIS
17 TIME.

18 (RECESS.)
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1 (PROSPECTIVE JUROR KOSSOVE ENTERS THE
2 COURTROOM.)

3 THE CLERK: STATE YOUR NAME FOR THE RECORD.

4 MS. KOSSOVE: MY NAME IS HARRIET KOSSOVE.

5 THE COURT: WHERE DO YOU LIVE?

6 MS. KOSSOVE: I LIVE IN SANTA MONICA.

7 THE COURT: AND HAVE YOU READ ANYTHING AT ALL ABOUT THIS
8 CASE OR SEEN IT ON TELEVISION OR THE RADIO OR ANYTHING LIKE
9 THAT?

10 MS. KOSSOVE: YES, I HAVE.

11 THE COURT: WHAT DID YOU READ?

12 MS. KOSSOVE: I READ IN THE LOS ANGELES TIMES, A LARGE
13 ARTICLE.

14 THE COURT: IT WAS IN THE METRO SECTION, RIGHT?

15 MS. KOSSOVE: YES.

16 THE COURT: WELL, IS THAT THE ONLY SOURCE OF WHERE YOU
17 GET YOUR INFORMATION?

18 MS. KOSSOVE: NO. I READ AN ARTICLE IN NEWSWEEK A COUPLE
19 OF WEEKS AGO.

20 THE COURT: YES? ANYTHING ELSE?

21 MS. KOSSOVE: NO. THAT IS ALL.

22 THE COURT: TIME MAGAZINE, YOU HAVE NOT READ ANYTHING
23 IN THERE?

24 MS. KOSSOVE: NO.

25 THE COURT: THE SANTA MONICA OUTLOOK?

26 MS. KOSSOVE: NO.

27 THE COURT: WELL, AS A RESULT OF HAVING READ WHATEVER
28 YOU DID IN CONNECTION WITH THIS MATTER, HAVE YOU FORMED ANY

1 OPINION OF THE CASE OR THE GUILT OR THE INNOCENCE OF THE
2 DEFENDANT?

3 MS. KOSSOVE: NO, I HAVE NOT.

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

6 MS. KOSSOVE: I CERTAINLY HOPE SO.

7 THE COURT: YES. AND WHATEVER IT IS THAT YOU READ, YOU
8 KNOW, MANY TIMES, READ PERIODICALS OR NEWSPAPERS, SOMETIMES
9 REPORTERS EITHER EXAGGERATE OR FANCY FACTS THAT DON'T FULLY
10 EXIST.

11 SOMETIMES THEY ARE TRUTHFUL AND SOMETIMES THEY
12 ARE NOT. ISN'T THAT TRUE?

13 MS. KOSSOVE: YES.

14 THE COURT: FOR THAT REASON, YOU DON'T ACCEPT IT AS
15 GOSPEL, YOU READ AN ARTICLE OF INTEREST AND JUST FORGET ABOUT
16 IT AFTER THAT, ISN'T THAT TRUE? THAT IS WHAT YOU ARE GOING
17 TO DO?

18 MS. KOSSOVE: CERTAINLY.

19 THE COURT: ALL RIGHT. OTHER THAN THAT, HAVE YOU TALKED
20 TO ANY OF THE JURORS AT ALL ABOUT THIS MATTER, ANY OF THE OTHER
21 JURORS?

22 MS. KOSSOVE: NO.

23 THE COURT: ALL RIGHT. YOU CAN MAINTAIN THAT ATTITUDE
24 AFTER TODAY? IN OTHER WORDS, DO NOT TALK TO ANYBODY ABOUT
25 THIS CASE OR ASK ANY QUESTIONS OF ANY OF THE OTHER JURORS OR
26 READ ANYTHING ABOUT IT, IF YOU CAN REMEMBER IT. OKAY?

27 MS. KOSSOVE: (NODS HEAD UP AND DOWN.)

28 THE COURT: NOW, YOU WERE HERE AT THE TIME I TALKED

1 TO ALL OF THE JURORS AND TOLD THEM GENERALLY WHAT THE CASE
2 WAS ABOUT?

3 MS. KOSSOVE: YES.

4 THE COURT: DO YOU REMEMBER MY TELLING THEM THAT THIS
5 WAS A CASE WHERE THE DEFENDANT IS ACCUSED OF COMMITTING A MURDER
6 AND IT WAS A MURDER IN THE FIRST DEGREE AND WAS COMMITTED DURING
7 THE COURSE OF A ROBBERY?

8 NOW, IN THIS CASE, BECAUSE IT WAS COMMITTED
9 DURING THE COURSE OF A ROBBERY, PEOPLE HAVE ASKED FOR THE
10 DEATH PENALTY IN THIS CASE. BY ASKING FOR THE DEATH PENALTY,
11 THE JURORS WILL AUTOMATICALLY FIX THE DEATH PENALTY IN THE
12 PENALTY PHASE OF THE TRIAL. I WILL TELL YOU IN A MINUTE, AS
13 TO WHAT IS EXPECTED.

14 BUT AT ANY RATE, THE JURORS FIRST DETERMINE WHETHER
15 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE MURDER
16 AND IT MUST BE MURDER IN THE FIRST DEGREE.

17 IF IT IS ANYTHING LESS THAN THAT, THAT IS THE END
18 OF THE MATTER. THAT IS THE END OF THE CASE SO FAR AS THE JURY
19 IS CONCERNED.

20 IF THEY FIND HE IS GUILTY OF MURDER IN THE FIRST
21 DEGREE, THEN THEY HAVE ANOTHER QUESTION TO ANSWER. AND IT
22 RELATES TO WHAT IS KNOWN AS THE SPECIAL CIRCUMSTANCES.

23 THE LEGISLATURE HAS SAID THAT UNDER SPECIAL
24 CIRCUMSTANCES, THE DEATH PENALTY MAY BE WARRANTED AND THOSE
25 SPECIAL CIRCUMSTANCES ARE AS FOLLOWS: FOR EXAMPLE, IN THIS
26 CASE, THAT THE MURDER IN THE FIRST DEGREE WAS COMMITTED DURING
27 THE COURSE OF A ROBBERY OR IT WAS COMMITTED IN THE COURSE OF
28 A KIDNAPPING OR A MURDER COMMITTED IN THE COURSE OF A RAPE

1 OR IN THE CASE OF A BURGLARY OR IN THE COURSE OF -- WHETHER
2 THERE ARE MULTIPLE MURDERS OR IN THE COURSE OF TORTURE OR IN
3 THE COURSE OF CHILD MOLESTATION WHERE A CHILD DIES AS THE
4 RESULT OF BEING MOLESTED.

5 IN ALL OF THOSE INSTANCES -- AND THERE MAY BE
6 OTHERS ALSO -- THAT TYPE OF OFFENSE, A MURDER WILL GET A
7 SPECIAL CIRCUMSTANCE, IF JUSTIFIED. THAT IS, IT WARRANTS A
8 DEATH PENALTY OR A DEATH PENALTY TRIAL WHERE IT IS EITHER THE
9 DEATH PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE THAT
10 IS METED OUT. DO YOU UNDERSTAND THAT?

11 MS. KOSSOVE: YES.

12 THE COURT: THE JURY IS THE ONE THAT DETERMINES AFTER
13 THE GUILT PHASE, AFTER THE JURY SUPPOSEDLY IN THIS CASE, FINDS
14 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND WITH
15 SPECIAL CIRCUMSTANCES, THAT IT WAS COMMITTED DURING THE COURSE
16 OF A ROBBERY AND THEN AFTER THEY HAVE TURNED IN A VERDICT OF
17 THAT KIND, THAT THEY ARE CALLED UPON TO SIT AGAIN ON ANOTHER
18 QUESTION.

19 THAT IS, WHAT THE PENALTY SHOULD BE THAT WILL BE
20 IMPOSED, LIFE WITHOUT POSSIBILITY OF PAROLE OR THE DEATH
21 PENALTY.

22 NOW, BOTH SIDES IN THIS PARTICULAR PHASE OF THE
23 TRIAL INTRODUCE OTHER TESTIMONY. THE DEFENSE WILL INTRODUCE
24 TESTIMONY WHICH IS FAVORABLE TO HIM, SHOWING HIS LIFESTYLE
25 AND SHOWING HIS AGE AND THAT MAY BE CONSIDERED AND THE FACT
26 THAT HE HAD NO CRIMINAL RECORD MAY BE CONSIDERED IF THAT IS
27 SO.

28 AND HIS LIFESTYLE AND EVERYTHING ABOUT HIM AS A

1 PERSON WILL BE CONSIDERED BY THE JURY UNDER ALL THE FAVORABLE
2 ASPECTS OF HIS LIFE THAT MIGHT BE CONSIDERED.
3 THAT IS, WITHOUT TELLING YOU EACH SINGLE FACT OF
4 WHAT HAS TO BE ESTABLISHED, YOU WILL HEAR ALL OF THAT IN THE
5 COURSE OF THE TRIAL.

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25-1 | 1 AND THE DISTRICT ATTORNEY HAS A RIGHT TO ADDUCE
2 TESTIMONY IN WHAT WE CALL AGGRAVATING CIRCUMSTANCES, SHOWING
3 THINGS ABOUT HIM WHICH ARE NOT SO GOOD, SO NICE. THOSE, TOO
4 SHALL BE CONSIDERED BY THE JURY, AND AT THE CONCLUSION OF
5 WHICH THE JURY CONSIDERS ALL THAT THEY HAVE HEARD, ALL OF
6 IT AND THEN THEY DETERMINE, SHALL IT BE LIFE IMPRISONMENT
7 WITHOUT THE POSSIBILITY OF PAROLE OR SHOULD IT BE THE DEATH
8 PENALTY?

9 DO YOU UNDERSTAND?

10 NOW MERELY BECAUSE A MURDER HAS BEEN COMMITTED,
11 EVEN IF IT IS A DELIBERATE MURDER, DOESN'T MEAN, OF COURSE,
12 DOESN'T CALL FOR THE DEATH PENALTY.

13 ONLY THOSE MURDERS, AS I HAVE INDICATED, THAT
14 HAVE THESE SPECIAL CIRCUMSTANCES, THEN ONLY IS THE DEATH
15 PENALTY TO BE CONSIDERED AS ONE OF THE PENALTIES IN THE CASE.

16 DO I MAKE MYSELF CLEAR?

17 MS. KOSSOVE: YES.

18 THE COURT: AND YOU ARE WILLING TO DO THAT?

19 MS. KOSSOVE: YES.

20 THE COURT: YOU WOULDN'T STOP, MERELY BECAUSE A MURDER
21 HAS BEEN COMMITTED AND BECAUSE OF THE ROBBERY, YOU DON'T STOP
22 RIGHT THERE AND STAY THAT IT SHALL BE DEATH OR IT SHALL BE
23 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. YOU
24 WILL WAIT UNTIL YOU HEAR ALL OF THE MITIGATING CIRCUMSTANCES
25 OR AGGRAVATING CIRCUMSTANCES AND THEN YOU MAKE UP YOUR MIND.

26 ARE YOU WILLING TO DO THAT?

27 MS. KOSSOVE: YES.

28 THE COURT: OKAY, ALL RIGHT. NOW I AM GOING TO ASK

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1 YOU A SERIES OF QUESTIONS, TO WHICH YOU WILL ANSWER YES OR
2 NO. IF THE QUESTION IS UNCLEAR OR IF YOU WANT IT EXPLAINED,
3 I WILL BE HAPPY TO DO SO. JUST ASK ME.

4 FIRST, DO YOU HAVE ANY OPINION REGARDING THE DEATH
5 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
6 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

7 MS. KOSSOVE: NO.

8 THE COURT: SECOND QUESTION: DO YOU HAVE ANY OPINION
9 REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR
10 FIRST DEGREE MURDER, EVEN IF THE PROSECUTION DOESN'T PROVE
11 FIRST DEGREE MURDER?

12 MS. KOSSOVE: NO.

13 THE COURT: ALL RIGHT, NUMBER THREE -- I TOLD YOU THAT
14 THE FIRST PHASE OF THE TRIAL IS GUILTY OR NOT GUILTY OF THE
15 MURDER IN THE FIRST DEGREE AND THEN YOU ARE TO MAKE A FINDING
16 WHETHER IT IS TRUE OR FALSE THAT IT WAS COMMITTED DURING THE
17 COURSE OF THE ROBBERY, SPECIAL CIRCUMSTANCES, ARE THEY TRUE
18 OR FALSE. THAT IS, AFTER YOU FIND HIM GUILTY OF MURDER IN
19 THE FIRST DEGREE, THEN YOU ARE TO DECIDE WHETHER IT WAS TRUE
20 OR FALSE THAT HE COMMITTED IT DURING THE COURSE OF A ROBBERY.

21 ALL RIGHT, OF COURSE, IF THE VERDICT IS GUILTY
22 OF MURDER BUT IT IS NOT IN THE FIRST DEGREE, THEN YOU FORGET
23 ABOUT EVERYTHING ELSE AFTER THAT, INCLUDING THE PENALTY PHASE,
24 ALL RIGHT?

25 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
26 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CON-
27 CERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE
28 ALLEGED IN THIS CASE?

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1 MS. KOSSOVE: NO.

2 THE COURT: NEXT QUESTION, DO YOU HAVE SUCH AN OPINION
3 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
4 VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE
5 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

6 MS. KOSSOVE: NO.

7 THE COURT: NOW, THIS IS ANOTHER ASPECT OF THE SAME
8 QUESTION. IT RELATES TO LIFE IMPRISONMENT.

9 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
10 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
11 WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS OF THE
12 CIRCUMSTANCES THAT MAY BE PRESENTED AT THE PENALTY PHASE OF
13 THE TRIAL?

14 MS. KOSSOVE: NO.

15 THE COURT: NOW, YOU UNDERSTAND THAT THE ISSUE OF THE
16 DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND THAT
17 THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU
18 REACH THAT PHASE OF THE TRIAL, NAMELY, THE PENALTY PHASE;
19 IS THAT RIGHT?

20 (MS. KOSSOVE NODS HER HEAD UP AND DOWN.)

21 MR. WAPNER: IS THAT YES?

22 MS. KOSSOVE: YES.

23 MR. WAPNER: THANK YOU.

24 THE COURT: ALL RIGHT.

25 MR. CHIER: WERE YOU POINTING TO ME, JUDGE?

26 THE COURT: YES.

27 MR. CHIER: GOOD AFTERNOON, MRS. KOSSOVE, IS IT?

28 MS. KOSSOVE: KOSSOVE.

25-4
1 MR. CHIER: I AM RICHARD CHIER. I REPRESENT JOE HUNT.

2 THE COURT: PARDON ME. DO YOU LIVE IN SANTA MONICA?

3 MS. KOSSOVE: YES, I DO.

4 THE COURT: ALL RIGHT, I AM SORRY.

5 MR. CHIER: BEFORE I GET INTO OTHER ASPECTS, HAVING
6 ANSWERED SOME OF THE QUESTIONS YES REGARDING PUBLICITY OR
7 PRETRIAL PUBLICITY, THERE ARE TWO THINGS I WANT TO ASK YOU
8 ABOUT. ONE IS THE DEATH PENALTY AND THE OTHER IS THE
9 PUBLICITY.

10 BEFORE WE GET TO THE DEATH PENALTY, I WOULD LIKE
11 YOUR ASSISTANCE IN ANSWERING SOME QUESTIONS ABOUT THE ARTICLES
12 YOU HAVE READ.

13 HAD YOU ALREADY SIGNED UP FOR JURY DUTY HERE IN
14 SANTA MONICA WHEN THE TIMES ARTICLE HAD APPEARED?

15 THIS IS NOT MEANT TO BE CRITICAL. IT IS A NEUTRAL
16 INQUIRY.

17 MS. KOSSOVE: I HAD ALREADY RECEIVED MY NOTICE TO APPEAR,
18 YES.

19 MR. CHIER: DID YOU COME TO ANY CONCLUSIONS OR
20 SPECULATE AS TO WHETHER OR NOT THE CASE YOU READ ABOUT MIGHT
21 BE ONE OF THE CASES THAT WAS GOING ON?

22 MS. KOSSOVE: YES, I DID.

23 MR. CHIER: AND DID IT OCCUR TO YOU, AFTER YOU HAD READ
24 THE ARTICLE, THAT WHAT YOU MIGHT HAVE DONE, THAT YOU READ
25 ABOUT IN THAT ARTICLE WAS A CASE THAT YOU MIGHT BE A
26 PROSPECTIVE JUROR ON?

27 MS. KOSSOVE: YES, THAT IS TRUE.

28 MR. CHIER: THIS OFTEN HAPPENS AND, AS I SAY, THIS IS

1 NOT MEANT CRITICALLY.
2 MS. KOSSOVE: IT IS A FACT.
3 MR. CHIER: YES, I KNOW.
4 DID YOU READ THE ENTIRE ARTICLE?
5 MS. KOSSOVE: YES, I DID.

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1 MR. CHIER: AND YOU HAVE IN MIND A LOT OF THE SUBSTANCE
2 OF THE ARTICLE?

3 MS. KOSSOVE: YES, I DO.

4 MR. CHIER: NOW, HERE IS THE PROBLEM, MS. KOSSOVE, AND
5 I DNO'T KNOW WHAT THE ANSWER IS. I WILL PUT IT TO YOU. LET'S
6 ASSUME THAT YOU ARE SELECTED AS A JUROR IN THIS CASE AND LET'S
7 ASSUME IN THE COURSE -- LET'S SAY THERE ARE TWO SEGMENTS HERE,
8 THE GUILT PHASE AND THE PENALTY PHASE.

9 IN THE COURSE OF THE GUILT PHASE OF THE TRIAL,
10 CERTAIN EVIDENCE COMES IN AND CERTAIN EVIDENCE DOESN'T COME
11 IN BUT, LET'S ASSUME FURTHER THAT YOU UNWITTINGLY HAVE READ
12 THIS ARTICLE IN THE LOS ANGELES TIMES, AND EXACERBATED PERHAPS
13 BY THE ARTICLE IN NEWSWEEK MAGAZINE, AND THAT YOU HAVE IN
14 MIND --

15 THE COURT: I DON'T KNOW WHAT YOU MEAN BY EXACERBATED.

16 MR. CHIER: COMPOUNDED.

17 THE COURT: IN ADDITION TO, YOU MEAN?

18 MR. CHIER: IN ADDITION TO THE NEWSWEEK ARTICLE, AND
19 SO YOU HAD GONE TO DELIBERATE ON THE GUILT PHASE OF THE
20 CASE AND IN YOUR MIND IS A BUNCH OF STUFF THAT YOU READ ABOUT
21 IN THESE PERIODICALS BUT DIDN'T COME INTO EVIDENCE. HOW DOES
22 ONE PUT THOSE THINGS OUT OF THEIR MIND IN DELIBERATING THE
23 FATE OF A DEFENDANT, HOW WOULD YOU?

24 MS. KOSSOVE: YOU ARE ASKING ME?

25 MR. CHIER: YES, CAN IT BE DONE?

26 MS. KOSSOVE: I DON'T KNOW WHETHER IT CAN BE DONE.

27 I THINK I WOULD LISTEN TO WHAT I FEEL WAS THE
28 TRUE FACTS OF THE MATTER.

1 I DON'T KNOW WHETHER I READ THE FACTS.

2 MR. CHIER: I UNDERSTAND THAT.

3 BUT LET'S ASSUME THEN -- WE ARE DISCUSSING NOW,
4 THIS IS JUST A DISCUSSION. LET'S ASSUME THAT CERTAIN EVIDENCE
5 YOU HEARD DURING THE COURSE OF THE TRIAL CAUSED YOU TO FEEL
6 THAT WHAT YOU READ IN THE MAGAZINE AND THE NEWSPAPER WAS MORE
7 PROBABLY TRUE THAN NOT TRUE. ARE YOU WITH ME SO FAR?

8 THE COURT: WELL, I AM NOT WITH YOU. I DON'T UNDERSTAND
9 THE QUESTION.

10 MS. KOSSOVE: I DON'T KNOW HOW I COULD DETERMINE IT.

11 MR. CHIER: WELL, LET'S ASSUME --

12 YOU DON'T KNOW WHAT YOU ARE GOING TO HEAR,
13 OBVIOUSLY AND YOU DON'T KNOW WHETHER IT IS TRUE, WHAT THEY
14 PUT IN THE NEWSPAPER.

15 MS. KOSSOVE: NO.

16 MR. CHIER: OR IN THE MAGAZINE.

17 BUT YOU SAW -- BUT YOU READ CERTAIN THINGS IN THE
18 MAGAZINE AND THE NEWSPAPER; WOULD YOU SAY THEY WERE FAVORABLE
19 TO MY CLIENT OR UNFAVORABLE?

20 MS. KOSSOVE: I DIDN'T ATTEMPT TO JUDGE IT ON WHETHER
21 IT WAS FAVORABLE OR UNFAVORABLE.

22 MR. CHIER: DO YOU REMEMBER ANYTHING GOOD THEY SAID ABOUT
23 MR. HUNT?

24 MS. KOSSOVE: I DON'T KNOW WHAT YOU CONSIDER GOOD.

25 I THINK I REMEMBER HIS BEING CONSIDERED A BRIGHT,
26 CHARISMATIC YOUNG MAN WHO --

27 MR. CHIER: DID THEY USE THE WORD "MANSON" IN ONE OF
28 THOSE ARTICLES, "MANSON-LIKE"?

1 MS. KOSSOVE: I THINK IT WAS REFERRED TO BY SOMEONE IN
2 THE ARTICLE.

3 MR. CHIER: THAT IS NOT A FAVORABLE CHARACTERIZATION,
4 IS IT?

5 MS. KOSSOVE: NO.

6 MR. CHIER: LET ME DO IT THIS WAY RATHER THAN HAVE YOU
7 CHARACTERIZE IT.

8 CAN YOU TELL ME WHAT YOU REMEMBER ABOUT THE LOS
9 ANGELES TIMES ARTICLE? JUST TELL ME WHAT YOU REMEMBER, THE
10 SUBSTANCE OF THE ARTICLE.

11 MS. KOSSOVE: I THINK I REMEMBER, IT APPEARED TO ME,
12 IT WAS GOING TO BE A SENSATIONAL TYPE OF TRIAL AND RATHER SOME
13 BIZARRE IMPLICATIONS, WHETHER THEY ARE THE FACTS OR NOT, BUT
14 THEY WERE IMPLYING.

15 MR. CHIER: SUCH AS?

16 MS. KOSSOVE: WELL, EVIDENTLY A TIEUP WITH ANOTHER MURDER
17 IN NORTHERN CALIFORNIA THAT IS A SEPARATE THING FROM THIS.

18 I THINK WHAT I REMEMBERED THE MOST WAS THE
19 CONCLUSIONS ABOUT ALL OF THE HOLLYWOOD TYPES BREATHING DOWN
20 EVERYBODY'S NECK TO GET THE SCENARIO. I MEAN THAT DISTURBED
21 ME -- I REMEMBER THAT DISTINCTLY--AND THE KIND OF MONEY THEY
22 WERE TALKING ABOUT.

23 MR. CHIER: THE FACT THAT IT WAS REPORTED THERE WERE
24 A LOT OF MOTION PICTURE TYPES COMPETING?

25 MS. KOSSOVE: THEY PRACTICALLY HAD THE SCENARIO WRITTEN
26 FROM WHAT I REMEMBER, THAT WAS MY FEELING.

27 MR. CHIER: AND WHAT WAS ABOUT IT THAT DISTURBED YOU,
28 MRS. KOSSOVE?

1 MS. KOSSOVE: BECAUSE THEY WERE BIDDING FOR THE RIGHTS,
2 A MILLION AND A HALF DOLLARS WAS THE FIGURE THAT I READ. I
3 REMEMBERED IT DISTINCTLY.

4 MR. CHIER: AND THE RIGHTS TO THE STORY, THE LAST
5 CHAPTER, TOO, WHICH HAS NOT YET BEEN WRITTEN?

6 MS. KOSSOVE: SURE.

7 MR. CHIER: AND WHICH INVOLVED IN REAL LIFE THE ALLEGED
8 DEATH OF A HUMAN BEING?

9 MS. KOSSOVE: WELL, I DON'T RECALL THAT.

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1 MR. CHIER: WHAT WAS --

2 MS. KOSSOVE: I DIDN'T THINK THE LAST CHAPTER WAS
3 WRITTEN.

4 MR. CHIER: ALL RIGHT. WHAT WAS IT ABOUT THE FACT THAT
5 THERE WAS A COMPETITION FOR THOSE RIGHTS THAT OFFENDED YOU?
6 I AM NOT SURE I UNDERSTAND.

7 MS. KOSSOVE: WELL, I THINK IT HURT MY FEELINGS OR
8 MORALITY THAT THERE SHOULD BE CONCERN OF A FINANCIAL GAIN
9 OF SUCH A MAGNITUDE THAT SHOULD BE ENTERED INTO AT THIS STAGE
10 OF THE TRIAL.

11 MR. CHIER: AND DID IT SEEM TO YOU, FROM WHAT YOU WERE
12 READING, THAT THE ULTIMATE BENEFICIARY OF ANY FINANCIAL GAIN
13 THAT WAS GENERATED BY THIS TALE, IF YOU WILL, WOULD GO TO
14 MR. HUNT?

15 MS. KOSSOVE: IT APPEARED THAT WAY.

16 MR. CHIER: ALL RIGHT. AND DID YOU FIND THAT OFFENSIVE?

17 MS. KOSSOVE: YES I DID.

18 MR. CHIER: ALL RIGHT. NOW, DID IT OCCUR TO YOU, THAT
19 PERHAPS MR. HUNT MAY HAVE ALREADY RECEIVED SOME CONSIDERATION
20 AS A RESULT OF THIS WHOLE THING?

21 MS. KOSSOVE: NO.

22 MR. CHIER: SUPPOSE THAT IN THE COURSE OF THIS TRIAL
23 THERE WERE NO REFERENCES TO THIS OTHER ALLEGED SITUATION IN
24 NORTHERN CALIFORNIA. BUT YOU HAD READ THAT AND IN YOUR MIND,
25 THERE WAS SOMETHING ELSE WHICH FOR SOME REASON, WAS NOT COMING
26 INTO THIS CASE.

27 AND SUPPOSE FURTHER, THAT DURING THE COURSE OF
28 THE TRIAL, IT SEEMED TO YOU THAT THE PROSECUTION TRIED TO

26A-2
1 MAKE SOME REFERENCE TO THAT OR GET IT IN AND THERE WERE
2 OBJECTIONS AND THE JUDGE ULTIMATELY KEPT IT OUT AND --

3 THE COURT: YOU ARE ASKING HER TO PREJUDGE THE
4 TESTIMONY.

5 MR. CHIER: NO.

6 THE COURT: YES YOU ARE. YOU ARE ASKING HER THAT --

7 MR. CHIER: I AM TRYING TO PRESENT --

8 THE COURT: YOU CAN'T ASK HER WHETHER OR NOT WHAT SHE
9 SAID ABOUT THE OTHER MATTER, IF IT IS NOT BROUGHT UP IN THIS
10 TRIAL, WHETHER SHE WOULD CONSIDER THE --

11 MR. CHIER: I AM TRYING TO DEMONSTRATE --

12 MR. WAPNER: I ALSO WANT TO OBJECT TO THE REFERENCE
13 OF WHAT I PERCEIVE TO BE A SUGGESTION OF SOME KIND OF
14 UNETHICAL CONDUCT.

15 MR. CHIER: NOT AT ALL.

16 MR. WAPNER: I TAKE EXCEPTION TO THAT.

17 THE COURT: WELL, I WILL SUSTAIN THE OBJECTION. YOU
18 GO AHEAD.

19 MR. CHIER: WELL --

20 THE COURT: WHATEVER YOU READ IN THAT ARTICLE,
21 PARTICULARLY WITH RESPECT TO AN ALLEGED INCIDENT THAT HAPPENED
22 UP NORTH, IF THERE IS NOTHING IN THIS TRIAL WHICH DISCLOSES
23 ANY EVIDENCE OF THAT, WILL YOU CONSIDER IT?

24 MS. KOSSOVE: NO.

25 MR. WAPNER: YOUR HONOR, LET ME MAKE CLEAR MY OBJECTION.
26 I DID NOT MEAN TO INDICATE THAT COUNSEL SHOULD BE PRECLUDED
27 FROM ASKING QUESTIONS IN THIS AREA.

28 WHAT I AM OBJECTING TO IS THE REFERENCE THAT

256A-3 1 SOMEHOW, THE PROSECUTOR IS GOING TO TRY TO PUT --

2 THE COURT: DO SOMETHING IMPROPER?

3 MR. WAPNER: EXACTLY. I THINK THAT COUNSEL SHOULD BE
4 ALLOWED TO INQUIRE BECAUSE I THINK IT IS VERY IMPORTANT.

5 THE COURT: WELL, I THINK I ASKED THE QUESTION WHICH
6 IS PERTINENT AND SHE HAS ALREADY ANSWERED IT.

7 MR. CHIER: MAY I INQUIRE ON MY OWN? IT IS A MATTER
8 OF SIGNAL CONCERN TO THE DEFENSE AND TO THE PEOPLE AS WELL.

9 THE COURT: WELL, I ASSUME THAT EVERYTHING IS OF CONCERN
10 TO EVERYBODY. BUT YOU DON'T HAVE TO MENTION IT.

11 GO AHEAD. ASK WHATEVER YOU WANT TO ASK.

12 MR. CHIER: NOW, LET ME JUST GO BACK FOR A MINUTE AND
13 SAY MA'AM, THAT THIS PROCEDURE IS NECESSARY AND HAS BEEN MORE
14 OR LESS DIRECTED BY THE APPELLATE COURTS IN THE BELIEF THAT
15 IN ANSWERING THE QUESTIONS IN THE RELATIVE PRIVACY OF THIS
16 COURTROOM, AWAY FROM THE OTHER JURORS, WILL SOMEHOW
17 FACILITATE MORE CANDID ANSWERS ON THE PART OF PROSPECTIVE
18 JURORS.

19 THERE ARE NO RIGHT OR WRONG ANSWERS IN THIS
20 PROCEEDING. THERE IS NO GOOD OR BAD ANSWER. THERE IS NO
21 GOOD OR BAD ATTITUDE. SO WE ARE TRYING TO JUST FIND OUT IF
22 PEOPLE FOR ONE REASON OR ANOTHER, HAVE, LET'S SAY, HIDDEN
23 AGENDAS OR FEELINGS BASED UPON THINGS THAT THEY HAVE READ,
24 BASED UPON DEEP CONVICTIONS THAT SUGGEST THAT THEY ARE
25 SOMEWHAT LESS THAN NEUTRAL.

26 EVERYONE LIKES TO THINK THAT THEY ARE A FAIR
27 PERSON, RIGHT?

28 MS. KOSSOVE: RIGHT.

26A-4

1 MR. CHIER: SO, THERE ARE A LOT OF PEOPLE THAT HAVE
2 COME THROUGH AS PROSPECTIVE JURORS THAT HAVE NOT READ
3 ANYTHING ABOUT THIS CASE, SO THEY HAVE SAID. DO YOU THINK
4 FOR EXAMPLE, THAT HAVING READ TWO THINGS AND SEEING PICTURES
5 EVEN OF SOME OF THE EXHIBITS IN THE CASE, WHICH MAY OR MAY
6 NOT EVEN BE RECEIVED INTO EVIDENCE, THAT YOU ARE A TOTALLY
7 NEUTRAL PERSON AT THIS POINT IN TIME?

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8 MS. KOSSOVE: I WOULD LIKE TO THINK THAT I WAS.
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B-1

1 MR. CHIER: I KNOW. I KNOW, BUT DO YOU THINK IN FACT,
2 THAT IT IS EVEN POSSIBLE TO BE TOTALLY NEUTRAL, HAVING BEEN
3 EXPOSED TO REALLY, ONLY ONE SIDE OF THE CASE AND EVIDENCE
4 WHICH MAY OR MAY NOT BE RECEIVED IN THE TRIAL? DO YOU THINK
5 IT IS POSSIBLE?

6 MS. KOSSOVE: I THINK IT IS POSSIBLE.

7 MR. CHIER: HOW DOES ONE PUT OUT OF THEIR MIND, THINGS
8 THAT THEY HAVE READ ABOUT DURING THE COURSE OF A TRIAL WHICH
9 MAY SEEM TO HAVE MORE RELEVANCE THAN IT DID AT THE TIME YOU
10 READ THE ARTICLE? DO YOU FOLLOW ME?

11 MS. KOSSOVE: I THINK IT HAS TO REFLECT THE WAY THE FACTS
12 ARE PRESENTED, IF THEY ARE FACTS, IF THEY ARE TRUTH.

13 MR. CHIER: OKAY. DO YOU ASSUME THAT WHAT YOU READ
14 IN NEWSWEEK IS NOT TRUE?

15 MS. KOSSOVE: NO.

16 MR. CHIER: IF YOU ASSUME THAT IT IS NOT UNTRUTHFUL
17 AND THAT IT IS NOT A FLIGHT OF SOMEBODY'S FANCY, THAT LEAVES
18 YOU WITH THE ALTERNATIVE THAT IT WAS TRUE; RIGHT?

19 MS. KOSSOVE: NO.

20 MR. CHIER: WHAT IS THE ALTERNATIVE?

21 THE COURT: SHE IS RIGHT ABOUT THAT. THERE IS NO SUCH
22 ALTERNATIVE.

23 MS. KOSSOVE: IT WAS SPECULATION. I MEAN, IT IS AN
24 APPROACH, SOMEBODY'S IDEA.

25 THE COURT: WELL, SHE SAYS THAT SHE DOESN'T BELIEVE
26 IT TO BE UNTRUE. AT THE SAME TIME, SHE DOESN'T BELIEVE IT
27 TO BE TRUE I GATHER.

28 MS. KOSSOVE: EXACTLY.

1 MR. CHIER: SO AS A RESULT OF HAVING READ THIS ARTICLE,
2 YOU DON'T SAY WHETHER YOU HAVE ANY OPINION AT ALL?

3 MS. KOSSOVE: NO.

4 MR. CHIER: DID YOU READ ANY OTHER STORIES IN THAT
5 MAGAZINE, IN THAT PARTICULAR ISSUE OF THAT MAGAZINE?

6 MS. KOSSOVE: ANY OTHER STORIES?

7 MS. CHIER: ANY OTHER ARTICLES, YOU KNOW.

8 MS. KOSSOVE: I AM A GREAT NEWSPAPER BUFF. I READ ALL
9 KINDS OF NEWSPAPERS.

10 MR. CHIER: OKAY. WHAT I AM ASKING YOU IS, IF YOU CAN
11 REMEMBER ANY OTHER ARTICLES THAT YOU READ IN THAT PARTICULAR
12 ISSUE OF NEWSWEEK.

13 THE COURT: WELL, I WILL SUSTAIN AN OBJECTION ON THE
14 COURT'S OWN MOTION. LET'S GET ON TO THIS PARTICULAR ARTICLE,
15 NOT ANY OTHER ARTICLE THAT YOU READ. YOU MEAN ABOUT THE CASE?

16 MR. CHIER: OTHER THINGS.

17 THE COURT: OTHER THINGS ARE IMMATERIAL. LET'S GET
18 ON, WILL YOU PLEASE?

19 YOU CAN ASK HER IF SHE BELIEVED THEM OR NOT.
20 OTHERWISE, IT WOULD GO ON ENDLESSLY THIS WAY AND I --

21 MR. CHIER: YOUR HONOR SUSTAINS YOUR OWN OBJECTION?

22 THE COURT: YES, THAT'S CORRECT.

23 MR. CHIER: ALL RIGHT. HOW DO YOU FEEL ABOUT CAPITAL
24 PUNISHMENT?

25 MS. KOSSOVE: I AM AMBIVALENT.

26 MR. CHIER: OKAY. WHEN YOU SAY "AMBIVALENT" YOU MEAN
27 THAT SOMETIMES IT IS A GOOD IDEA AND OTHER TIMES IT IS LIKE
28 NOT A GOOD IDEA?

1 MS. KOSSOVE: YES I DO.

2 MR. CHIER: YOU DON'T MEAN AMBIVALENT IN THE SENSE THAT
3 IT SEEMS APPROPRIATE FOR SOME PEOPLE BUT NOT OTHERS?

4 MS. KOSSOVE: NO. WHAT I AM SAYING IS THAT PROBABLY
5 AT ONE TIME IN MY LIFE, I DID NOT BELIEVE IN IT AT ALL.

6 BUT AT THIS STAGE IN MY LIFE, I BELIEVE THAT IN
7 SOME CIRCUMSTANCES, I BELIEVE IN CAPITAL PUNISHMENT.

8 MR. CHIER: ALL RIGHT. WELL, LET ME ASK YOU THIS.
9 OBVIOUSLY, THERE ARE CERTAIN THINGS THAT PEOPLE SHOULDN'T
10 DO IN THIS SOCIETY, RIGHT? I MEAN, AS A GENERAL PROPOSITION
11 THAT IS TRUE, RIGHT?

12 MS. KOSSOVE: TRUE.

13 MR. CHIER: FOR EXAMPLE, IT IS NOT A GOOD IDEA FOR BLIND
14 PEOPLE TO DRIVE CARS?

15 MS. KOSSOVE: RIGHT.

16 THE COURT: OKAY. YOU CAN GO ON ENDLESSLY WITH QUESTIONS
17 OF THAT KIND. WHY DON'T YOU GET TO THE POINT?

18 MR. CHIER: I BELIEVE THAT I AM.

19 THE COURT: WITH BLIND PEOPLE DRIVING CARS? OF COURSE
20 AND --

21 MR. CHIER: IT IS AN EXAMPLE, YOUR HONOR.

22 THE COURT: OF COURSE.

23 MR. CHIER: EXCUSE ME, MA'AM. I AM NOT TRYING TO BE
24 FUNNY HERE OR ENTERTAIN YOU AT ALL. I AM TRYING TO FIND OUT
25 IF AT THE PRESENT TIME, YOU ARE MORE IN FAVOR OF CAPITAL
26 PUNISHMENT THAN YOU ARE ITS ALTERNATIVE, LIFE WITHOUT
27 POSSIBILITY OF PAROLE, THAT YOUR CONVICTIONS IN THAT REGARD
28 MIGHT MAKE YOU LESS THAN A NEUTRAL JUROR IN THAT REGARD.

29 MS. KOSSOVE: WHAT IS YOUR QUESTION?

27-1

1 MR. CHIER: MY QUESTION IS: DO YOU BELIEVE THAT THERE
2 IS ANY KIND OF EXCUSE OR MITIGATION FOR A FIRST DEGREE
3 MURDER, INTENTIONAL, IN THE COURSE OF ROBBERY, FIRST OF ALL?

4 MS. KOSSOVE: ARE YOU ASKING IF I COULD FEEL THAT
5 CAPITAL PUNISHMENT WAS NOT WARRANTED IN SOME INSTANCES, IS
6 THAT WHAT YOU ARE ASKING?

7 MR. CHIER: NO.

8 I AM REALLY WANTING TO SEE IF YOU THINK IT IS MORE
9 WARRANTED THAN IT IS NOT AS A GENERAL PROPOSITION.

10 MS. KOSSOVE: I DON'T KNOW. I COULD NOT ANSWER THAT.

11 MR. CHIER: WHY COULDN'T YOU ANSWER IT?

12 MS. KOSSOVE: BECAUSE IT IS COMPLETELY DEPENDENT UPON
13 THE CASE AND THE FACTS.

14 MR. CHIER: BUT AS AN ABSTRACT PROPOSITION, WITHOUT
15 REGARD TO ANY CASE OR FACTS, DO YOU SEE CAPITAL PUNISHMENT
16 AS BEING MORE DESIRABLE THAN UNDESIRABLE, LET'S START THAT
17 WAY?

18 MS. KOSSOVE: NO.

19 I THINK I AM NEUTRAL ON THE SUBJECT. I AM ON THE
20 FENCE.

21 MR. CHIER: DID YOU VOTE FOR CAPITAL PUNISHMENT WHEN
22 IT WAS ON THE BALLOT?

23 MS. KOSSOVE: I DON'T RECALL.

24 MR. CHIER: DID YOU READ THE LEGISLATIVE ANALYST'S
25 MATERIAL THAT CAME WITH THE BALLOT ON WHICH THE CAPITAL
26 PUNISHMENT INITIATIVE APPEARED?

27 MS. KOSSOVE: YES.

28 MR. CHIER: DID YOU NOTICE THAT CAPITAL PUNISHMENT WAS

7-2

1 AVAILABLE IN CERTAIN TYPES OF OFFENSES?

2 MS. KOSSOVE: YES.

3 MR. CHIER: THEY HAD A CATALOG OF CERTAIN TYPES OF
4 OFFENSES.

5 ONE OF THEM WAS MURDER IN THE COURSE OF ROBBERY.

6 MS. KOSSOVE: YES.

7 MR. CHIER: NOW DO YOU AGREE THAT MURDER, INTENTIONAL
8 MURDER IN THE COURSE OF ROBBERY IS AN APPROPRIATE TYPE OF CASE
9 IN WHICH TO GIVE A DEATH PENALTY?

10 MS. KOSSOVE: I DON'T KNOW.

11 MR. CHIER: DO YOU THINK THERE ARE OTHER TYPES OF CASES
12 WHICH IS EASIER TO SAY THEY ARE MORE APPROPRIATE CANDIDATES
13 FOR THE DEATH PENALTY?

14 MS. KOSSOVE: YES, I DO.

15 MR. CHIER: OKAY, LET'S ASSUME THAT THERE IS A TRIAL
16 AND YOU ARE ONE OF THE JURORS, THE EVIDENCE IS PRESENTED BY
17 BOTH SIDES AND THE JURY FINDS MR. HUNT GUILTY OF MURDER, FIRST
18 DEGREE MURDER, INTENTIONAL, IN THE COURSE OF A ROBBERY. YOU
19 THEN MOVE TO THE SECOND SEGMENT WHICH IS THE PENALTY PHASE:
20 WHAT DO WE DO WITH THIS PERSON, HAVING NOW CONVICTED HIM OF
21 MURDER?

22 NOW, DO YOU THINK THAT AT THAT POINT, HAVING HEARD
23 NO EVIDENCE BY EITHER SIDE, THAT THE DEFENDANT AND HIS COUNSEL
24 WOULD HAVE A HARDER BURDEN TO CONVINCING YOU TO SPARE HIS LIFE
25 THAN THE PEOPLE WOULD HAVE TO PERSUADE YOU TO TAKE HIS LIFE?

26 OR TO PUT IT ANOTHER WAY: WOULD THE DEFENDANT
27 HAVE A HARDER BURDEN TO PERSUADE YOU AGAINST CAPITAL PUNISHMENT
28 THAN THE PEOPLE WOULD PERSUADING YOU IN FAVOR OF CAPITAL

27-3

1 PUNISHMENT?

2 MS. KOSSOVE: I DON'T THINK SO.

3 I THINK IT IS A VERY FUZZY QUESTION. I AM NOT
4 QUITE SURE WHAT I AM SUPPOSED TO ANSWER. I MEAN I DON'T KNOW.

5 MR. CHIER: YOU SEE, THERE IS NO RIGHT OR WRONG ANSWER.

6 MS. KOSSOVE: I KNOW THERE ISN'T ANY RIGHT OR WRONG ANSWER,
7 BUT I DON'T REALLY KNOW HOW I AM GOING TO REACT.

8 HOW AM I GOING TO PREJUDGE?

9 MR. CHIER: I AM NOT ASKING YOU TO PREJUDGE.

10 THE COURT: THAT IS WHAT YOU ARE ASKING HER TO DO.
11 YOU ARE ASKING HER TO PREJUDGE. SHE IS RIGHT ABOUT IT.

12 NOW LET'S GET ON TO SOMETHING ELSE, WILL YOU?

13 I TOLD YOU THAT YOU WERE GOING TO HEAR TESTIMONY
14 FROM BOTH SIDES ON THE PENALTY PHASE. THEN YOU HEAR GOOD AND
15 BAD ABOUT THE DEFENDANT AND THEN YOU MAKE UP YOUR MIND AS TO
16 WHICH PENALTY SHOULD BE IMPOSED --

17 MS. KOSSOVE: I HAVE TO WAIT AND SEE WHAT ARE THE FACTS.

18 THE COURT: -- EITHER LIFE IMPRISONMENT WITHOUT THE
19 POSSIBILITY OF PAROLE OR THE DEATH PENALTY; IS THAT CORRECT?

20 MS. KOSSOVE: CORRECT.

21 THE COURT: I TOLD YOU THAT.

22 MS. KOSSOVE: YOU TOLD ME THAT.

23 THE COURT: AND THAT IS WHAT YOU ARE GOING TO DO?

24 MS. KOSSOVE: ALL RIGHT.

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

26 THE COURT: ALL RIGHT.

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7A-1
1 MR. WAPNER: MRS. KOSSOVE, I AM FRED WAPNER. I AM THE
2 DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE. GOOD
3 AFTERNOON.

4 MS. KOSSOVE: GOOD AFTERNOON.

5 MR. WAPNER: YOU SAID THAT AS A GENERAL PROPOSITION
6 THE DEATH PENALTY IS PROBABLY MORE APPROPRIATE BUT YOU COULD
7 THINK OF TYPES OF CASES THAT MIGHT BE MORE APPROPRIATE FOR
8 THE DEATH PENALTY THAN THIS ONE, WHICH IS A MURDER IN THE
9 COURSE OF A ROBBERY.

10 IF YOU ARE CHOSEN TO SIT AS A JUROR IN THIS CASE
11 AND YOU GET TO THAT PART OF THE TRIAL WHERE YOU ARE DECIDING
12 ON WHAT THE APPROPRIATE PUNISHMENT COULD BE, IF YOU THOUGHT
13 IT WARRANTED IT, COULD YOU BRING IN A VERDICT OF DEATH?

14 MS. KOSSOVE: I DON'T KNOW.

15 MR. WAPNER: OKAY, I AM NOT ASKING YOU TO IMAGINE WHAT
16 THE FACTS ARE. MY QUESTION IS --

17 LET ME ASK YOU ANOTHER QUESTION FIRST: DO YOU
18 HAVE SUCH STRONG RELIGIOUS, MORAL OR PHILOSOPHICAL
19 CONVICTIONS REGARDING THE DEATH PENALTY THAT THEY WOULD
20 PREVENT YOU FROM BEING FAIR TO BOTH SIDES IN THIS CASE?

21 MS. KOSSOVE: NO, I DON'T THINK I DO.

22 I THINK I COULD BE FAIR.

23 MR. WAPNER: IF YOU GOT TO THAT STAGE OF THE CASE WHERE
24 YOU LISTENED TO THE EVIDENCE ON THE PENALTY PHASE AND WHEN
25 YOU GOT FINISHED LISTENING TO THE EVIDENCE AND THE ARGUMENTS
26 OF THE LAWYERS, THE JUDGE WOULD TELL YOU THAT YOU HAD TO GO
27 INTO THE JURY ROOM AND YOU HAD TO RENDER YOUR OWN INDIVIDUAL
28 OPINION ABOUT WHAT THE APPROPRIATE PUNISHMENT COULD BE AND

1 THERE WOULD ONLY BE TWO CHOICES, THERE WOULD BE LIFE
2 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR DEATH,
3 WHAT I WANT TO KNOW IS: DO YOU HAVE IT WITHIN YOU, IF THE
4 FACTS WARRANT IT, TO VOTE FOR THE VERDICT OF DEATH?

5 MS. KOSSOVE: MAY I ASK YOU A QUESTION?

6 MR. WAPNER: SURE.

7 MS. KOSSOVE: WHAT DO YOU MEAN, IF THE FACTS WARRANTED
8 IT?

9 MR. WAPNER: WELL, OBVIOUSLY I AM NOT MAKING MYSELF
10 CLEAR.

11 WHAT I AM GETTING AT IS --

12 MS. KOSSOVE: IT WAS MY UNDERSTANDING THAT YOU DECIDE
13 ON THE PENALTY AFTER THE VERDICT HAS BEEN MADE ON THE FIRST
14 PART OF THE TRIAL --

15 THE COURT: THAT'S CORRECT.

16 MR. WAPNER: THAT IS CORRECT.

17 MS. KOSSOVE: -- AS TO WHETHER THE DEFENDANT IS GUILTY
18 OR NOT GUILTY, AND THEN THE PENALTY PHASE IS ACTED UPON; IS
19 THAT CORRECT?

20 THE COURT: THAT IS CORRECT.

21 MR. WAPNER: THAT IS CORRECT.

22 AND IN THE PENALTY PHASE, YOU WILL HEAR OTHER
23 EVIDENCE, WHICH IS EVIDENCE THAT THE DEFENDANT MIGHT
24 INTRODUCE SAYING GOOD THINGS ABOUT HIM.

25 MS. KOSSOVE: EVIDENCE THAT WE DIDN'T HEAR IN THE FIRST
26 PART?

27 THE COURT: THAT IS CORRECT.

28 MR. WAPNER: CORRECT, ADDITIONAL EVIDENCE, EXACTLY.

1 AND THE EVIDENCE THAT THE DEFENDANT MIGHT
2 INTRODUCE TELLING YOU GOOD THINGS ABOUT HIM AND BRINGING OUT
3 FACTS TO SUGGEST TO YOU WHY YOU SHOULD VOTE FOR LIFE
4 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND I MIGHT
5 PUT ON EVIDENCE TO INDICATE FACTS THAT MIGHT, I WOULD HOPE,
6 SUGGEST TO YOU WHY YOU SHOULD VOTE FOR A VERDICT OF THE DEATH
7 PENALTY AND THEN THE LAWYERS FOR EACH SIDE WOULD GET TO ARGUE
8 TO YOU AS TO WHAT WE THOUGHT THE APPROPRIATE PENALTY WOULD
9 BE. THEN YOU WOULD GO IN, THE JUDGE WOULD GIVE YOU
10 INSTRUCTIONS ON THE LAW AND GIVE YOU A LIST OF THINGS THAT
11 YOU CAN CONSIDER IN MAKING UP YOUR MIND AS TO WHAT THE
12 APPROPRIATE PUNISHMENT SHOULD BE. YOU WON'T AGAIN HEAR THE
13 FACTS THAT YOU HEARD IN THE GUILT PHASE, BUT THE JUDGE WILL
14 TELL YOU THAT YOU CAN TAKE THOSE FACTS, THE FACTS OF THE CASE,
15 THE CIRCUMSTANCES OF THE CASE INTO CONSIDERATION IN DECIDING
16 WHAT THE APPROPRIATE PUNISHMENT SHOULD BE.

17 WHAT I AM TRYING TO MAKE THE FOCUS OF MY QUESTION
18 IS: ARE YOU THE TYPE OF PERSON WHO WOULD GO INTO THE JURY
19 ROOM AND SAY, "REGARDLESS OF THE FACTS, I CAN'T HAVE IT ON
20 MY CONSCIENCE THAT I VOTED FOR THE DEATH PENALTY, I CAN'T
21 WALK INTO THE COURTROOM AND LOOK AT THE DEFENDANT AND SAY
22 MY INDIVIDUAL JUDGMENT IS THAT YOU SHOULD GET THE DEATH PENALTY."
23 ARE YOU THAT KIND OF PERSON?

24 MR. CHIER: OBJECTION. COMPOUND.

25 THE COURT: DO YOU UNDERSTAND THE QUESTION?

26 MS. KOSSOVE: I THINK I UNDERSTAND THE QUESTION.

27 THE COURT: ALL RIGHT, YOU MAY ANSWER IT. OBJECTION
28 OVERRULED.

29 MS. KOSSOVE: I WOULD FIND IT DIFFICULT.

1 MR. WAPNER: OKAY. I AM REALLY NOT GOING TO TRY TO BE
2 PICKY. BUT I THINK FOR PURPOSES OF THIS INQUIRY, THAT IS NOT
3 GOING TO BE A SUFFICIENT ANSWER.

4 OF COURSE IT IS DIFFICULT BECAUSE THAT IS THE KIND
5 OF A QUESTION THAT IS IMPLICIT IN THIS JOB. IT IS DIFFICULT.

6 AND UNFORTUNATELY, THIS IS THE ONLY TIME THAT YOU
7 ARE GOING TO HAVE TO ANSWER THIS. I REALIZE THAT WE DIDN'T
8 GIVE YOU A LOT OF WARNING ABOUT THE KINDS OF QUESTIONS YOU
9 WERE GOING TO BE ASKED.

10 BUT WHEN YOU SAY YOU WOULD FIND IT DIFFICULT, CAN
11 YOU TELL ME WHAT YOU MEAN BY THAT?

12 MS. KOSSOVE: WELL, I THINK IT IS BASED ON THE FACT THAT
13 FOR MOST OF MY LIFE, I DID NOT BELIEVE IN THE DEATH PENALTY.

14 MR. WAPNER: UP UNTIL HOW LONG AGO, FOR EXAMPLE?

15 MS. KOSSOVE: WELL, MAYBE IN THE LAST 10 OR 15 YEARS.
16 I HAVE BEEN MORE INCLINED TO FEEL THAT THERE ARE SOME
17 CIRCUMSTANCES UNDER WHICH THE DEATH PENALTY SHOULD BE IMPOSED.

18 MR. WAPNER: FOR EXAMPLE?

19 MS. KOSSOVE: WELL, THE MANSON CASE IS AN EXAMPLE. I
20 THINK THAT STARTED MY THINKING.

21 MR. WAPNER: ALL RIGHT. AND WHEN YOU SAY THE "MANSON
22 CASE" YOU ARE TALKING ABOUT A CASE THAT MIGHT HAVE ACTUALLY
23 BEEN TWO OR THREE DIFFERENT COURT CASES BUT INVOLVED THE
24 KILLING OF CERTAINLY, MORE THAN ONE PERSON, CORRECT?

25 MS. KOSSOVE: YES.

26 MR. WAPNER: ALL RIGHT. IN THIS CASE -- IF THIS CASE
27 INVOLVES THE KILLING OF ONLY ONE PERSON, COULD YOU BRING BACK
28 A VERDICT OF DEATH?

8-2

1 MR. CHIER: OBJECTION, ASKING HER TO PREJUDGE THE
2 EVIDENCE.

3 THE COURT: SUSTAINED.

4 MR. WAPNER: I WILL REPHRASE THE QUESTION. THANK YOU.

5 ARE YOU SAYING THAT -- WELL, ARE THERE OTHER
6 POSSIBLE SCENARIOS THAT YOU HAVE IN YOUR MIND ABOUT WHEN YOU
7 THINK THE DEATH PENALTY IS APPROPRIATE, OTHER THAN THE MANSON
8 TYPE SITUATION?

9 MS. KOSSOVE: I THINK SO. I THINK A SCENARIO IN WHICH
10 I WOULD FEEL THAT REHABILITATION WOULD BE ABSOLUTELY IMPROBABLE.

11 MR. WAPNER: OKAY. IN A CASE THAT WOULD DEPEND UPON
12 THE EVIDENCE THAT YOU HEARD FOR EXAMPLE ABOUT THE DEFENDANT'S
13 BACKGROUND --

14 MS. KOSSOVE: YES.

15 MR. WAPNER: WHAT I AM GETTING AT IS, I GUESS WHEN I
16 ASK YOU WHETHER OR NOT YOU ARE THE TYPE OF PERSON WHO COULD
17 BRING BACK A VERDICT OF DEATH, IS IF IT IS WARRANTED UNDER
18 THE FACTS OF THE CASE, IS -- IF WE GET TO THAT PHASE OF THE
19 TRIAL, WHERE YOU HEAR OTHER EVIDENCE IN AGGRAVATION AND
20 MITIGATION AND THEN THE LAWYERS STAND UP AND THEY ARGUE TO
21 YOU WHAT THE APPROPRIATE PUNISHMENT SHOULD BE, IF YOU WERE
22 THE KIND OF A PERSON WHO HAS ALREADY MADE UP YOUR MIND, THAT
23 REGARDLESS OF WHAT THE EVIDENCE IS IN THE PENALTY PHASE AND
24 REGARDLESS OF WHAT I MIGHT ARGUE TO YOU, THERE IS NO
25 SITUATION WHERE YOU CAN BRING IN THE DEATH PENALTY. THAT IS
26 THE KIND OF THING WE NEED TO KNOW NOW.

27 DO YOU THINK YOU ARE OF THAT KIND OF A MIND?

28 MS. KOSSOVE: I DON'T KNOW. I CAN'T ANSWER THAT A FLAT

1 YES OR NO. I HONESTLY CAN'T. IT IS A TERRIBLE POSITION TO
2 BE IN.

3 THE COURT: ARE YOU TELLING US, MS. KOSSOVE, THAT YOU
4 CAN'T GIVE ANY DEFINITE ANSWER? YOU HAVE HEARD ALL OF THE
5 EVIDENCE ON BOTH SIDES AND KNOW EVERY ASPECT OF THIS CASE,
6 INCLUDING WHAT WILL BE REVEALED TO YOU ON THE PENALTY PHASE?

7 MS. KOSSOVE: I AM SAYING THAT, YES, SIR.

8 THE COURT: ALL RIGHT. IN OTHER WORDS, YOU ARE NOT
9 SAYING UNDER NO CIRCUMSTANCES WILL I VOTE FOR THE DEATH PENALTY.
10 IS THAT WHAT YOU ARE SAYING?

11 MS. KOSSOVE: I AM SAYING THAT, YES.

12 MR. WAPNER: IF WE GET TO THE PENALTY PHASE AND I AM
13 PUTTING ON EVIDENCE AND I AM ARGUING TO YOU ABOUT MY VIEW ON
14 THE CASE, AM I GETTING A FAIR SHAKE FROM YOU?

15 IS THE PROSECUTION GETTING A FAIR SHAKE FROM YOU
16 WITH YOUR STATE OF MIND?

17 MS. KOSSOVE: I WOULD HONESTLY LIKE TO SAY THAT I THINK
18 YES.

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28B-1
1 MR. WAPNER: I KNOW YOU WOULD LIKE TO SAY THAT.

2 MS. KOSSOVE: I CAN ONLY SAY THAT I THINK I AM FAIR.
3 I THINK I WILL LISTEN TO THE FACTS.

4 I THINK THAT I HAVE A MIND THAT I CAN SIFT THROUGH
5 AND GET TO WHAT I FEEL IS THE TRUTH. THAT IS ALL I CAN ASK
6 OF MYSELF.

7 WHAT MORE YOU CAN ASK OF ME, I DON'T KNOW.

8 MR. WAPNER: CAN YOU THINK OF YOURSELF IN A SITUATION
9 WHERE YOU ARE IN THE JURY ROOM AND YOU ARE BEING ASKED TO
10 MAKE A VOTE OF WHAT THE PUNISHMENT SHOULD BE. IMAGINE YOURSELF
11 IN THAT SITUATION.

12 YOU HAVE HEARD ALL OF THE EVIDENCE IN THE GUILT
13 PHASE AND IN THE PENALTY PHASE AND YOU HAVE HEARD ALL OF THE
14 ARGUMENTS.

15 NOW, THE COURT IS ASKING YOU ALONG WITH THE OTHER
16 11 PEOPLE TO MAKE THIS DECISION. AND THE COURT WILL TELL YOU
17 THAT YOU HAVE TO MAKE UP YOUR OWN MIND. YOU HAVE TO RENDER
18 YOUR OWN, INDIVIDUAL VERDICT, YOUR OWN INDIVIDUAL OPINION.

19 CAN YOU DO THAT? YOU HAVE TO DECIDE WHETHER THE
20 PUNISHMENT SHOULD BE DEATH OR WHETHER THE PUNISHMENT SHOULD
21 BE LIFE WITHOUT POSSIBILITY OF PAROLE.

22 MS. KOSSOVE: YES. I COULD MAKE UP MY MIND.

23 MR. WAPNER: HAVE YOU MADE IT UP ALREADY BEFORE YOU
24 HAVE HEARD THE FACTS?

25 MS. KOSSOVE: NO.

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

27 THE COURT: DO YOU PASS FOR CAUSE?

28 MR. CHIER: YES.

28B-2
1 THE COURT: WE ARE IN THE PROCESS OF ASKING ALL OF THE
2 REMAINING JURORS THROUGH Z AND THIS WILL TAKE SOME DAYS.

3 WHAT I WILL ASK YOU TO DO IS, COME BACK TO THE
4 JURY ASSEMBLY ROOM. AS I INDICATED, WE HOPE TO FINISH BY
5 DECEMBER 3RD. WE WILL HAVE A HOLIDAY IN BETWEEN.

6 SO, WE'LL ASK YOU TO COME BACK ON DECEMBER 3RD
7 AT 10:30 A.M. TO THE JURY ASSEMBLY ROOM.

8 IN THE EVENT THAT IT TAKES US LONGER THAN WE
9 ANTICIPATE, WE HAVE YOUR HOME TELEPHONE NUMBER. WE WILL CALL
10 YOU. WE WILL SEE WHAT IS GOING TO HAPPEN.

11 WE WILL TELL YOU NOT TO COME IN ON THE 3RD AND
12 TO COME IN ON SOME OTHER DATE IF NECESSARY.

13 MEANTIME, DON'T TALK TO ANYBODY OR READ ANYTHING
14 ELSE ABOUT THIS CASE OR TALK TO ANYBODY ABOUT IT. THANK YOU
15 VERY MUCH.

16 (PROSPECTIVE JUROR KOSSOVE EXITED THE
17 COURTROOM.)

18 MR. WAPNER: ARE WE GOING TO BREAK NOW?

19 THE COURT: YES. I THINK WE ARE GOING TO BREAK NOW
20 UNTIL 1:30 TOMORROW.

21 MR. WAPNER: YES. THANK YOU.

22 THE COURT: ALL RIGHT.

23 MR. CHIER: EXCUSE ME, JUDGE. BEFORE YOU LEAVE THE
24 BENCH, WE HAVE A PROBLEM COMING UP. I THOUGHT MAYBE WE SHOULD

25 THE COURT: YES?

26 MR. CHIER: MR. HUNT HAS A COURT APPEARANCE IN REDWOOD
27 CITY ON DECEMBER 1ST.

28 THE COURT: WHERE?

1 MR. CHIER: REDWOOD CITY. HE OBVIOUSLY, CAN'T BE IN
2 BOTH PLACES AND SHOULD NOT BE IN THAT COURT IF HE HAS A --

3 THE COURT: DO YOU WANT TO GET AN EXCUSE FROM ME?

4 MR. CHIER: I DON'T KNOW. WE ARE BRINGING IT TO THE
5 COURT'S ATTENTION THAT --

6 THE COURT: WELL, LET ME KNOW WHAT IS ALL ABOUT. I
7 WILL CALL UP THE JUDGE, WHOEVER IT MAY BE, AND TELL HIM THAT
8 HE IS NEEDED IN THIS PARTICULAR TRIAL AND SEE IF WE CAN'T
9 GET HIM A CONTINUANCE.

10 MR. CHIER: IT MAY BE THAT WE MIGHT HAVE TO LIKE,
11 ADJOURN FOR HALF A DAY, IF THERE IS NO WAY TO WORK IT OUT.

12 THE COURT: WELL, LET ME KNOW. TELL ME WHAT IT IS ABOUT
13 FIRST AND THEN I WILL SEE IF I CAN'T GET THE MATTER CONTINUED.

14 THE DEFENDANT: IT IS FOR THE OTHER MATTER.

15 MR. CHIER: IT IS THE TRIAL FOR THE OTHER MATTER.

16 THE DEFENDANT: IT WAS DECEMBER 1ST THAT WAS THE DAY
17 FOR TRIAL UP NORTH.

18 MR. CHIER: TRIAL?

19 THE COURT: UP THERE?

20 MR. CHIER: YES, YOUR HONOR.

21 MR. WAPNER: CAN WE POSTPONE THIS DISCUSSION UNTIL
22 TOMORROW? I MIGHT BE ABLE TO GIVE YOU SOME INPUT ON THAT
23 TOMORROW BECAUSE I HAVE BEEN IN TOUCH WITH THE PROSECUTOR
24 IN THAT CASE.

25 THE COURT: ALL RIGHT. FINE. WE'LL WAIT UNTIL
26 TOMORROW.

27 MR. WAPNER: I MIGHT BE ABLE TO BE OF SOME ASSISTANCE.

28 THE COURT: ALL RIGHT. GOOD NIGHT.

1 MR. CHIER: THERE IS ONE OTHER MATTER, YOUR HONOR.
2 MR. HUNT IS OFFICIALLY JOSEPH HUNT. THERE ARE REFERENCES
3 ALL THROUGHOUT THE STUFF TO THIS JOSEPH HENRY GAMSKY.

4 I HAVE HERE, A CERTIFICATE OF NAME CHANGE. AND
5 I THINK THAT IT IS NOT APPROPRIATE FOR FURTHER --

6 THE COURT: WELL, SO FAR, NOBODY HAS EVER REFERRED TO
7 HIM AS ANYTHING BUT HUNT.

8 MR. CHIER: ON THE CHARGING DOCUMENTS --

9 THE COURT: WELL, THE JURY HAS NOT SEEN THAT.

10 MR. CHIER: ALL RIGHT.

11 THE COURT: WHEN I READ IT TO THE JURY, I DIDN'T USE
12 ANY AKA.

13 MR. CHIER: THE TRANSCRIPT HERE IS REFERRING TO HIM
14 AS GAMSKY. WE WOULD LIKE IT --

15 THE COURT: NOBODY WILL MAKE A REFERENCE TO HIM EXCEPT
16 AS JOE HUNT. THANK YOU.

17 (AT 4:45 P.M. AN ADJOURNMENT WAS TAKEN
18 UNTIL TUESDAY, NOVEMBER 25, 1986, AT
19 1:45 P.M.)

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