

AP 8 DA 0269

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

FEB 26 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 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 1<sup>A</sup> OF 101  
(PAGES 1536 TO 1616, INCLUSIVE)

COPY

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

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

NO. A-090435

JOSEPH HUNT, )

DEFENDANT. )

REPORTERS' DAILY TRANSCRIPT

TUESDAY, NOVEMBER 25, 1986

VOLUME 12

(PAGES 1536 - 1616, 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

PAULINE BUCHANAN, CSR NO. 3100  
SALLY YERGER, CSR NO. 2008  
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TUESDAY, NOVEMBER 25, 1986      VOLUME 12      PAGES 1536-1616

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P.M.      1536

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PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED)      1536

1 SANTA MONICA, CALIFORNIA; TUESDAY, NOVEMBER 25, 1986; 1:30 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 (IN CAMERA PROCEEDINGS REPORTED BUT  
6 NOT TRANSCRIBED AT THE ORDER OF THE  
7 COURT. NOTES SEALED.)

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

10 THE COURT: THE COURT WILL INDICATE THE PRESENCE OF THE  
11 DEFENDANT AND COUNSEL. FOR THE RECORD, THERE HAS BEEN A  
12 CONFERENCE HELD IN CHAMBERS AT WHICH THE DEFENDANT AND BOTH  
13 COUNSEL FOR THE DEFENDANT AND THE DISTRICT ATTORNEY WERE  
14 PRESENT. CERTAIN THINGS WERE STATED BY THE DISTRICT ATTORNEY  
15 AT THAT PARTICULAR CONFERENCE AND DISCUSSION HAD WITH RESPECT  
16 TO THE SUBJECTS BROUGHT BY THE DISTRICT ATTORNEY.

17 IN VIEW OF THE FACT THAT THOSE MATTERS ARE  
18 EXTREMELY CONFIDENTIAL, THE COURT IS DIRECTING COUNSEL AND  
19 THE DEFENDANT AND ANYBODY ELSE ASSOCIATED WITH THEM, UNDER  
20 NO CIRCUMSTANCES TO REVEAL ANYTHING AS TO WHAT WAS DISCUSSED  
21 AT THIS PARTICULAR MEETING.

22 THEREFORE, THAT INCLUDES ANY STATEMENTS TO BE MADE  
23 TO THE PRESS OR ANY OTHER THIRD PARTIES. ALL RIGHT?

24 MR. WAPNER: YES, YOUR HONOR, AND THAT WOULD INCLUDE --

25 THE COURT: AND THAT IS WITH THE CONSENTS AND APPROVAL  
26 OF THE DEFENDANT AND ALL COUNSEL. IS THAT CORRECT?

27 MR. BARENS: SO STIPULATED, YOUR HONOR.

28 THE COURT: RIGHT?

1 SANTA MONICA, CALIFORNIA; TUESDAY, NOVEMBER 25, 1986; 1:32 P.M.

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

3 (APPEARANCES AS NOTED ON TITLE PAGE.)

4  
5 (THE PRIOR GAG ORDER HAVING BEEN RESCINDED  
6 THE FOLLOWING PROCEEDINGS ARE NOW INCLUDED  
7 IN THE RECORD:)

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
9 CHAMBERS:)

10 THE COURT: LET THE RECORD INDICATE THAT WE ARE IN  
11 CHAMBERS AT THE PRESENT TIME WITH THE DEFENDANT BEING PRESENT.

12 MR. WAPNER: YOUR HONOR, TWO THINGS HAVE COME UP SINCE  
13 LAST FRIDAY. FIRST OF ALL, ON FRIDAY I RECEIVED A CALL FROM  
14 THE TUCSON POLICE DEPARTMENT.

15 THE COURT: TUCSON?

16 MR. WAPNER: TUCSON, ARIZONA POLICE DEPARTMENT; THEY  
17 WERE CONTACTED BY A WITNESS WHO SAYS THAT SHE READ THE  
18 ESQUIRE MAGAZINE ARTICLE ABOUT THE CASE, AND CLAIMS TO HAVE  
19 SEEN A PERSON RESEMBLING RON LEVIN AT A GAS STATION IN  
20 TUCSON, ARIZONA SIX TO EIGHT WEEKS AGO.

21 SHE SAYS SHE WAS WITH HER BOYFRIEND, AND I WENT  
22 WITH AN INVESTIGATOR; I TALKED TO THIS WOMAN. I TALKED TO  
23 THE BOYFRIEND.

24 THE STATEMENTS THAT SHE MADE AND THAT HE MADE  
25 WERE TAPE RECORDED. THOSE STATEMENTS, COPIES OF THOSE TAPES,  
26 HAVE BEEN MADE, ARE AVAILABLE TO THE DEFENSE AT THE  
27 DISTRICT ATTORNEY'S SOUND LAB.

28 AS IN ANY OTHER CASE, THE PROCEDURE IS THAT WHEN

1 THE DEFENSE PROVIDES US WITH COPIES OF CASSETTES, WHICH IN  
2 THIS CASE WE WILL KEEP BECAUSE THE COPIES HAVE ALREADY BEEN  
3 MADE, AND PAYS FOR THE TAPES, THEY ARE AVAILABLE. SO THEY  
4 ARE AVAILABLE AS SOON AS THIS AFTERNOON IF THAT PROCEDURE  
5 IS FOLLOWED.

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1                    THAT THE SECOND THING THAT HAPPENED ON FRIDAY,  
2 WAS THAT I WAS CONTACTED, CALLED BY AN ATTORNEY NAMED LEWIS  
3 TITUS, WHO --

4                    THE COURT:    WHO?

5                    MR. WAPNER:    TITUS, T-I-T-U-S.    MR. TITUS WAS MR. BARENS'  
6 CO-COUNSEL AT THE PRELIMINARY HEARING IN THIS CASE.

7                    MR. TITUS INFORMED ME THAT HE HAD A CONVERSATION  
8 WITH MR. BARENS ABOUT PROCURING A WITNESS TO TESTIFY THAT  
9 HE HAD SEEN RON LEVIN.

10                   THE COURT:    THE WITNESS HAD SEEN RON LEVIN?

11                   MR. WAPNER:    PROCURING A WITNESS WHO WOULD SAY THAT  
12 HE --

13                   THE COURT:    WHAT DO YOU MEAN "PROCURING"?

14                   MR. WAPNER:    IN OTHER WORDS, NOT A WITNESS WHO HAD  
15 ACTUALLY SEEN HIM BUT TO FIND SOMEONE TO SAY THAT.

16                   SUBSEQUENT TO THAT CONVERSATION ON THE TELEPHONE,  
17 I HAD A CONVERSATION WITH MR. TITUS AND OUR DISTRICT ATTORNEY  
18 INVESTIGATOR, THAT WAS IN MORE DETAIL.    THE CONVERSATION ON  
19 THE TELEPHONE WAS VERY BRIEF.

20                   AND THE CONVERSATION WHICH HE HAD IN PERSON WITH  
21 HIM, WAS IN MORE DETAIL.    IT WAS NOT TAPE RECORDED, AT HIS  
22 REQUEST.

23                   AND A REPORT IS BEING TYPED AND COPIES, AS WE  
24 SPEAK, THAT WILL BE PRESENTED TO THE DEFENSE.

25                   THE COURT:    LET ME SEE IF I CAN GET IT CLEAR.    YOU SAY  
26 THAT AN ASSOCIATE OF MR. BARENS HAD TOLD YOU AFTER THE  
27 PRELIMINARY HEARING IN THIS CASE, THAT THERE WAS A PERSON  
28 WHO PURPORTED TO BE -- WHO HAD PURPORTED TO HAVE SEEN

1 RON LEVIN, ALTHOUGH HE HAD NOT ACTUALLY SEEN HIM. BUT HE  
2 WOULD PRODUCE THIS PERSON SO HE WOULD TESTIFY TO THAT EFFECT.  
3 IS THAT WHAT YOU ARE TELLING US?

4 MR. WAPNER: THAT WAS THE ESSENCE OF THE CONVERSATION.  
5 THIS INFORMATION WAS GIVEN TO ME FRIDAY. THAT IS THE --

6 THE COURT: FRIDAY WHEN?

7 MR. WAPNER: LAST WEEK.

8 THE COURT: YOU ARE TALKING ABOUT AN ASSOCIATE, YOU  
9 MEAN?

10 MR. WAPNER: THE ASSOCIATE CALLED ME FRIDAY, NOVEMBER  
11 21ST.

12 THE COURT: THAT WAS TITUS?

13 MR. WAPNER: CORRECT, TO GIVE ME THIS INFORMATION.

14 THE COURT: WHAT IS THE IMPLICATION? I DON'T UNDERSTAND  
15 IT. I REALLY DON'T UNDERSTAND IT.

16 IS IT THAT THEY WERE CONCOCTING SOME KIND OF AN  
17 ALIBI TO PRODUCE A WITNESS WHO NEVER ACTUALLY SAW HIM BUT  
18 SAID HE WOULD?

19 MR. WAPNER: THAT IS THE GIST OF WHAT HE IS SAYING.

20 THE COURT: MR. TITUS?

21 MR. WAPNER: CORRECT, THAT HE HAD A CONVERSATION WITH  
22 MR. BARENS IN WHICH MR. BARENS SUGGESTED THAT THAT WAS --

23 THE COURT: WHAT HE SHOULD DO?

24 MR. WAPNER: NOT WHAT TITUS SHOULD DO, BUT THAT IS WHAT  
25 COULD BE DONE OR SHOULD BE DONE.

26 IT IS NOT MY INTENTION TO GO INTO THE DETAILS  
27 NOW.

28 THE COURT: BUT THEN HE HAD A SUBSEQUENT CONFERENCE



1 WITH HIM, YOU AND THE INVESTIGATOR?

2 MR. WAPNER: RIGHT. THE INVESTIGATOR MADE A REPORT  
3 OF THAT, WHICH I WILL HAVE COPIES OF TO THE DEFENSE BY THIS  
4 AFTERNOON.

5 THE COURT: WHAT WAS THE SUBSTANCE OF THAT CONVERSATION?

6 MR. WAPNER: THE SUBSTANCE OF THE CONFERENCE WITH THE --

7 THE COURT: TITUS AND YOU AND THE INVESTIGATOR?

8 MR. WAPNER: WELL, THE SUBSTANCE OF IT IS THAT MR. TITUS  
9 AND MR. BARENS HAD A CONVERSATION WHERE MR. BARENS LAID OUT  
10 THIS SCENARIO ABOUT THE POSSIBILITY -- ABOUT PROCURING A  
11 WITNESS TO TESTIFY THAT HE OR SHE HAD SEEN RON LEVIN IN RIO.  
12 THAT WAS THE SUBSTANCE OF IT.

13 MR. CHIER: WHEN WAS THIS CONVERSATION ALLEGED TO HAVE TAKEN  
14 PLACE?

15 MR. WAPNER: HE DID NOT GIVE ME THE PRECISE DATE OF  
16 IT.

17 MR. CHIER: WHAT YEAR?

18 MR. WAPNER: -- OF THE CONVERSATION, BUT HE SUGGESTED  
19 THAT IT WAS IMMEDIATELY -- THAT THE CONVERSATION TOOK PLACE  
20 IN MR. BARENS' VEHICLE OUTSIDE OF THE HALL OF JUSTICE AFTER  
21 A VISIT BY MR. BARENS TO MR. HUNT AT THE HALL OF JUSTICE JAIL.

22 MR. BARENS: COULD I RESPOND TO THIS, YOUR HONOR?

23 THE COURT: WELL, I WANT TO SEE WHAT THE PURPOSE OF  
24 ALL OF THIS IS.

25 MR. BARENS: BUT I WOULD LIKE TO BE HEARD.

26 THE COURT: OF COURSE, YOU WILL BE HEARD.

27 MR. WAPNER: THE PURPOSE OF IT IS TO GIVE THE DEFENSE  
28 THIS INFORMATION THAT I WAS GIVEN, BOTH OF THESE THINGS THAT

1 I WAS GIVEN OVER THE WEEKEND.

2 MR. CHIER: THESE CAME IN TANDEM?

3 THE COURT: WELL, LET MR. BARENS DO THE TALKING. HE  
4 IS THE ONE THAT IS INVOLVED.

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1 MR. BARENS: I WOULD LIKE TO ADDRESS THAT SPECIFIC ISSUE  
2 AND MAKE A STATEMENT.

3 THE COURT: SURE.

4 MR. BARENS: DURING THE PRELIMINARY HEARING LOU TITUS  
5 WAS EMPLOYED BY MY OFFICE TO ASSIST ME AT THE PRELIMINARY  
6 HEARING SOME TWO YEARS AGO, APPROXIMATELY ALMOST TWO YEARS  
7 AGO. SHORTLY THEREAFTER HE WAS FIRED BY MY OFFICE.

8 SUBSEQUENT TO THAT I BELIEVE MR. TITUS WAS  
9 DECLARED MENTALLY INCOMPETENT AND WAS INCARCERATED OR RETAINED  
10 IN A MENTAL HOSPITAL WHEREIN HE WAS PLACED BY HIS FAMILY.  
11 HE HAD BECOME -- WE TERMINATED MR. TITUS AS THE RESULT OF  
12 IRRATIONAL BEHAVIOR ON HIS PART WHEREIN HE HAD BEEN ARRESTED  
13 FOR HAVING BEATEN ONE OF THE SECRETARIES IN MY OFFICE.

14 HE HAD PROBLEMS WHICH I WAS LATER TO FIND OUT  
15 WERE LONG-STANDING MENTAL PROBLEMS. I UNDERSTOOD -- THE LAST  
16 TIME I HEARD ABOUT MR. TITUS, WHICH I WANT TO CONVEY TO THE  
17 COURT, MY OLDER BROTHER WHOSE NAME IS LEE IS PRESENTLY IN  
18 A RECOVERY HOME FOR DRUG ADDICTION.

19 MY BROTHER TOLD ME HE IS STAYING AT A PLACE CALLED  
20 BISHOP GOODIN, I BELIEVE, IN THE GLENDALE AREA. LAST WEEK  
21 MY BROTHER TOLD ME HE HAD SEEN LOU TITUS, IS ALSO A RESIDENT  
22 IN THE BISHOP GOODIN FACILITY.

23 MR. TITUS WAS TELLING MY BROTHER HE WAS AN EMPLOYEE  
24 AT O'MELVENY & MYERS, AND MY BROTHER THOUGHT THAT WAS SOMEWHAT  
25 INCREDULOUS BECAUSE HOW COULD HE BE IN A HALFWAY HOUSE AND  
26 SAYING HE WAS AN EMPLOYEE AT O'MELVENY & MYERS.

27 HE INDICATED TO ME THAT MR. TITUS BORE A LOT OF  
28 RESENTMENT TOWARD ME BECAUSE HE HAD BEEN TERMINATED, AND MADE

1 A LOT OF STATEMENTS TO PEOPLE THERE TO THE EFFECT THAT HE  
2 WAS "GOING TO GET ME" AND THAT I "HAD A BIG EGO" AND THAT  
3 "SOMEBODY SHOULD BRING ME DOWN A LITTLE."

4 MY BROTHER DID NOT MENTION TO ME ANYTHING ABOUT  
5 THIS TYPE OF ALLEGATION THAT MR. WAPNER HAS ARTICULATED.

6 DURING THE PERIOD OF TIME AFTER MR. TITUS WAS  
7 TERMINATED BY MY OFFICE, WE ATTEMPTED TO BE OF SOME ASSISTANCE  
8 TO HIM AND HIS FAMILY IN GETTING HIM THE MEDICAL CARE HE  
9 EVIDENTLY REQUIRED AT THAT TIME.

10 FOR A LONG TIME AFTER THAT WE HAD CONSTANT CALLS  
11 INCLUDING FROM THE STATE BAR, INQUIRING AS TO HIS WHEREABOUTS,  
12 BECAUSE OF CASES HE HAD BEEN INTERESTED IN IN OUR OFFICE THAT  
13 WERE NOT BEING SERVICED.

14 THE LAST WE WERE ADVISED BY, I BELIEVE, HIS OLDER  
15 SISTER IN -- IF I AM NOT MISTAKEN. I HAVE NEVER MET THE  
16 PERSON -- THAT HE HAD BEEN PLACED IN A FACILITY AT THAT POINT  
17 IN TIME. WE NEVER HEARD FROM HIM AGAIN ON A DIRECT LEVEL.

18 I WOULD ALSO LIKE TO STATE THAT ON TWO OR THREE  
19 OCCASIONS SUBSEQUENT TO HIS TERMINATION, MR. TITUS CALLED  
20 MY HOME AND THREATENED MY LIFE, SAID HE WAS GOING TO SHOOT  
21 ME, ET CETERA, ET CETERA; AND HE HAD SHOWN UP AT ONE OF MY  
22 SECRETARY'S HOMES, DRESSED AS A SHERIFF WITH A GUN, AND  
23 INTIMIDATED THIS YOUNG LADY IN A VERY BIZARRE FASHION.

24 AT THAT TIME I WARNED HIM THAT IF THIS CONTINUES,  
25 SOMETHING --

26 THE COURT: AT THAT TIME WHEN HE WAS DRESSED UP?

27 MR. BARENS: I SPOKE TO HIM BY TELEPHONE. HE WAS AT  
28 THIS GIRL'S HOUSE, AND I SPOKE TO HIM BY PHONE AND SAID THAT,

1 YOU KNOW, THIS WAS PRETTY BIZARRE STUFF TO BE GOING ON, AND  
2 THAT HE SHOULD DESIST FROM THAT KIND OF STUFF.

3 I BELIEVE THAT THERE WAS A POLICE REPORT MADE  
4 ABOUT THAT INCIDENT. I BELIEVE HE WAS ARRESTED AS A RESULT  
5 OF THAT INCIDENT. I DO RECALL AFTER THAT THAT HE HAD CALLED  
6 ME.

7 I DID NOT TAKE ACTION ON IT. HE THEN THREATENED  
8 MY LIFE ON CERTAIN OCCASIONS.

9 I SAY ALL OF THIS BECAUSE IT WOULD BE INCREDIBLE  
10 TO ME THAT THE DISTRICT ATTORNEY WOULD NOT BE AWARE OF ANY  
11 OF THIS INFORMATION. IT WOULD BE INCREDIBLE TO ME THAT THE  
12 DISTRICT ATTORNEY WOULD NOT BE AWARE THAT MR. TITUS IS IN  
13 A HALFWAY HOUSE OR A FACILITY.

14 THE COURT: WELL, HOW WOULD THEY BE CHARGED WITH KNOWLEDGE  
15 OF THAT?

16 MR. BARENS: I WOULD ASSUME THAT IN CONVERSATION, IF  
17 THEY HAD A MEETING WITH MR. TITUS, THAT THEY WOULD ASK HIM,  
18 "WHERE DO YOU LIVE?", OR "WHAT DO YOU DO FOR A LIVING?", OR  
19 THINGS OF THAT EFFECT, OR "WHAT HAVE YOU BEEN DOING FOR THE  
20 LAST FEW YEARS?"

1 I AM SURE ALSO THAT THE DISTRICT ATTORNEY WOULD  
2 BE AWARE OF THE FACT THAT ANY CONVERSATION THAT TITUS COULD  
3 BE ALLUDING TO WOULD HAVE TAKEN PLACE, IF TRUE, WHICH IS  
4 SPECIFICALLY DENIED BY YOUR COUNSEL, TWO YEARS AGO --  
5 WELL, LET'S SAY, JUDGE, 18 TO 22 MONTHS AGO.

6 NUMBER TWO, AT NO TIME HAS THE DEFENSE EVER  
7 INDICATED TO ANYONE THAT THERE WAS ANY SORT OF AN ALIBI  
8 WITNESS, AND I MAKE DECLARATION NOW THAT AT NO TIME HAS THE  
9 DEFENSE EVER SPOKEN TO ANY PERSON THAT WOULD BE IN ANY WAY  
10 CONSIDERED AN ALIBI WITNESS, THAT WOULD IDENTIFY EVER HAVING  
11 SEEN MR. LEVIN.

12 THIS IS THE FIRST KNOWLEDGE THE DEFENSE HAS EVER  
13 HAD OF A WITNESS THAT WOULD BE AVAILABLE TO IDENTIFY  
14 MR. LEVIN'S WHEREABOUTS, WOULD BE THE WITNESS THAT MR. WAPNER  
15 MAKES REFERENCE TO, WHICH COMES AS A MATTER OF FIRST  
16 IMPRESSION TO THE DEFENSE AT THIS JUNCTURE.

17 MR. WAPNER: LET ME MAKE IT VERY CLEAR THAT THE PURPOSE  
18 IN DOING THIS IS NOT FOR ME TO MAKE AN ACCUSATION. THE  
19 DISTRICT ATTORNEY'S OFFICE IS UNDER AN OBLIGATION WHEN WE  
20 GET THIS INFORMATION TO TELL COUNSEL ABOUT IT. SO THE  
21 SUGGESTION WAS MADE BY MR. BARENS THAT I SHOULD HAVE CHECKED  
22 IT OUT, AND THEREFORE FOUND OUT ABOUT IT, AND THEREFORE NOT  
23 TOLD ANYBODY --

24 THE COURT: I THINK THAT YOU ACTED QUITE PROPERLY.

25 MR. BARENS: I DO, TOO.

26 THE COURT: I THINK THAT YOU ACTED QUITE PROPERLY IN  
27 BRINGING IT TO THE ATTENTION OF THE COURT, WHAT OCCURRED.  
28 NOT TO HAVE DONE IT WOULD HAVE BEEN A BREACH OF YOUR OBLIGATION

1 AS A DISTRICT ATTORNEY, AND IT IS ALSO PROPER FOR YOU TO BRING  
2 TO THE COURT'S ATTENTION THIS PERSON WHO MATERIALIZED, WHERE  
3 IS THIS AGAIN?

4 MR. WAPNER: IN TUCSON, ARIZONA.

5 THE COURT: TUCSON, ARIZONA.

6 CAN YOU EXPLAIN HOW SHE KNEW RONALD LEVIN?

7 MR. WAPNER: WELL, ALL OF THE TAPES, SHE DOESN'T KNOW  
8 RONALD LEVIN AT ALL -- ALL OF THE TAPES OF THIS CONVERSATION  
9 AND THE REPORTS ABOUT HER ARE GOING TO BE AVAILABLE. THE  
10 TAPES WILL BE AVAILABLE AS SOON AS THE DEFENSE CAN GO TO THE  
11 SOUND LAB, PROVIDE US WITH COPIES OF THE TAPES, AND PAY FOR  
12 THE COPYING THAT WE DID.

13 THE COURT: YOU ARE JUST TELLING HIM THAT BECAUSE YOU  
14 WANT -- IT IS YOUR DUTY TO POINT OUT TO THE DEFENSE THAT THERE  
15 IS A POSSIBLE ALIBI WITNESS; IS THAT CORRECT? LET THEM  
16 EXPLORE THAT POSSIBLE WITNESS.

17 MR. WAPNER: CORRECT.

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1 MR. WAPNER: CORRECT.

2 MR. CHIER: I WOULDN'T CALL IT AN ALIBI WITNESS.

3 MR. BARENS: IT IS --

4 THE COURT: ALIBI WITNESS, ALL RIGHT?

5 MR. WAPNER: WELL --

6 THE COURT: HE WAS NEVER THERE. HE WAS NOT THE PERSON  
7 WHO KILLED HIM. I AM NOT SAYING THAT --

8 MR. BARENS: I UNDERSTAND.

9 THE COURT: PLEASE STOP STRAINING OVER GNATS.

10 LET'S GET TO THE BOTTOM OF THIS THING. LET'S GET  
11 TO THE MATERIAL PART OF IT, WHETHER I CHARACTERIZE IT AS ALIBI  
12 OR SOMEBODY WHO WOULD GIVE HIM AN ALIBI AND SAY THAT HE WAS  
13 NOT THERE AND NEVER DID IT.

14 THAT IS AN ALIBI.

15 MR. BARENS: IRRESPECTIVE OF THAT --

16 THE COURT: DO NOT QUIBBLE ABOUT WORDS. I WOULD SUGGEST  
17 THAT YOU CONDUCT THIS INQUIRY, SINCE YOU ARE THE LEAD ATTORNEY  
18 HERE. YOU BROUGHT MR. CHIER INTO THIS CASE, HE DIDN'T BRING  
19 YOU INTO IT.

20 MR. BARENS: MR. WAPNER, LET ME TRY TO UNDERSTAND WHERE  
21 WE ARE. BECAUSE -- AND WHERE WE ARE GOING, HERE AT THIS  
22 POINT SO I CAN INTEGRATE MY THINKING.

23 HAVING THIS MATERIAL AVAILABLE, IS IT YOUR  
24 PROPOSAL THAT WHAT WE DO NOW IN TERMS OF THE PROCEEDINGS BEFORE  
25 THE COURT IN TERMS OF THE JURY INTERVIEWS --

26 MR. WAPNER: WELL, FIRST OF ALL, THE PRESENT INTERVIEWS  
27 HAVE TO DO WITH THE DEATH PENALTY AND DON'T HAVE ANYTHING  
28 TO DO WITH THIS INFORMATION.



1                   SO, THIS INFORMATION IS NOT RELEVANT TO THE  
2 INQUIRY THAT WE ARE MAKING OF THE JURORS NOW.

3                   THE COURT: THAT IS TRUE.

4                   MR. WAPNER: THE PURPOSE OF ME TELLING YOU THIS, IS SO  
5 THAT YOU WILL BE AWARE THAT IT EXISTS.

6                   ALSO, I HAVE TO TELL YOU THAT WE GAVE BOTH OF THESE  
7 WITNESSES, THE GIRL AND HER BOYFRIEND, POLYGRAPH EXAMINATIONS  
8 AS TO WHETHER OR NOT THEY WERE LYING ABOUT SEEING THE PERSON  
9 AND WHETHER THEY WERE PUT UP TO THIS STORY. AND THEY BOTH  
10 PASSED.

11                   THERE WERE TAPES MADE OF THE POLYGRAPH EXAMINATION  
12 AND THOSE TAPES ARE INCLUDED IN THE TAPE THAT I MADE REFERENCE  
13 TO, THAT IS AVAILABLE TO YOU.

14                   THE ACTUAL GRAPH OF THE POLYGRAPH EXAMINATION IS  
15 NOT. I DON'T HAVE THAT IN MY POSSESSION AT THIS TIME. BUT  
16 I CAN GET IT.

17                   OBVIOUSLY, IT IS NOT FROM OUR STANDPOINT, SOMETHING  
18 THAT IS SIGNIFICANT AT THE MOMENT.

19                   THE COURT: DID ANYBODY INTERVIEW THIS WITNESS? WHERE  
20 AGAIN, WAS IT? WHAT STATE?

21                   MR. WAPNER: IN TUCSON, ARIZONA. YES.

22                   THE COURT: ANYBODY INTERVIEW THAT WITNESS?

23                   MR. WAPNER: YES.

24                   THE COURT: YOU GOT A STATEMENT FROM HIM?

25                   MR. WAPNER: YES.

26                   THE COURT: I THINK THE DISTRICT ATTORNEY WAS QUITE  
27 RIGHT IN MAKING ALL OF THIS AVAILABLE TO US.

28                   WOULD YOU MIND, TERRIBLY? I AM TALKING TO HIM,

1 NOT TO YOU. YOU KEEP OUT OF THIS UNTIL I FINISH WHAT I AM  
2 SAYING ON THE RECORD.

3 MR. BARENS: BEG YOUR PARDON.

4 MR. CHIER: YOU CAN'T KEEP TALKING TO ME THIS WAY,  
5 JUDGE.

6 MR. BARENS: PARDON ME, YOUR HONOR. BEGGING YOUR  
7 PARDON.

8 THE COURT: THAT IS VERY RUDE. I AM SAYING THAT IT WAS  
9 PERFECTLY PROPER FOR THE DISTRICT ATTORNEY TO EXPLORE THAT  
10 BECAUSE IT IS THEIR DUTY TO TURN OVER TO YOU ANY INFORMATION  
11 THAT COMES TO THEIR POSSESSION.

12 THEN OF COURSE, YOU WILL GET THAT INFORMATION AND  
13 PURSUE IT AND EVALUATE IT ANY WAY YOU SEE FIT. IT HAS TO DO  
14 WITH THE TRIAL OF THE ACTION AND THE ISSUES THAT WILL BE  
15 DETERMINED ON TRIAL.

16 YOU WILL HAVE PLENTY OF TIME TO DO THAT. AND  
17 THIS WITNESS IS ALSO AVAILABLE, IS SHE? THIS WITNESS?

18 MR. WAPNER: YES.

19 THE COURT: SHE SAID SHE RECOGNIZED LEVIN IN THE GAS  
20 STATION, IS THAT RIGHT?

21 MR. WAPNER: SHE NEVER SAID SHE RECOGNIZED LEVIN.

22 THE COURT: WELL, HOW DID SHE KNOW IT WAS HE?

23 MR. WAPNER: SHE READ THE ESQUIRE ARTICLE AND SHE SAW  
24 A SKETCH OF MR. LEVIN INCLUDED IN THAT ARTICLE AND SHE READ  
25 A DESCRIPTION OF MR. LEVIN THAT IS INCLUDED IN THAT ARTICLE  
26 AND SHE LOOKED AT A PHOTOGRAPHIC LINEUP WE SHOWED HER.

27 SHE COULD ONLY SAY THAT OUT OF THE SIX PHOTOS THAT  
28 WE SHOWED HER, THAT MR. LEVIN'S PICTURE WAS THE CLOSEST OF

4-4  
1 THESE SIX OF THE PERSON THAT SHE SAW.

2 NEITHER SHE NOR THE BOYFRIEND WHO WAS WITH HER,  
3 PICKED THE PICTURE OF MR. LEVIN AND SAID THAT IS THE PERSON  
4 THAT I SAW.

5 NEITHER ONE OF THEM SAID THAT.

6 THE COURT: AT ANY RATE, YOU PURSUE IT AS WELL AS YOU  
7 CAN.

8 MR. CHIER: MAY I JUST ASK ONE OTHER QUESTION OF THE  
9 COURT, YOUR HONOR? THAT IS, THAT AS TO THESE TWO PARTICULAR  
10 ISSUES, THAT IS THE WITNESSES IN TUCSON WHO CLAIM TO HAVE SEEN  
11 SOMEONE RESEMBLING RON LEVIN AND AS TO MR. TITUS MAKING A  
12 STATEMENT REGARDING WHAT MR. BARENS MAY OR MAY NOT HAVE TOLD  
13 HIM, IS THE COURT IMPOSING A GAG ORDER?

14 THE COURT: ABSOLUTELY.

15 MR. WAPNER: AND ORDERING BOTH COUNSEL NOT TO DISCUSS  
16 IT WITH ANY MEMBER OF THE MEDIA, ANYTHING ABOUT WHAT TRANSPIRED  
17 IN CHAMBERS OR ANYTHING ABOUT --

18 THE COURT: YES. DO YOU QUITE AGREE?

19 MR. BARENS: I QUITE AGREE. I ALSO MOVE THAT THE RECORD  
20 OF THESE PROCEEDINGS BE SEALED AT THAT TIME.

21 THE COURT: THAT WILL BE GRANTED.

22 MR. CHIER: COULD I ASK A QUESTION?

23 MR. BARENS: IF YOU WOULD, PLEASE. I DON'T KNOW THE  
24 QUESTION.

25 THE COURT: ALL RIGHT.

26 MR. CHIER: WERE THE PROCEEDINGS IN THAT PHOTOGRAPHIC  
27 SHOW-UP, WERE THEY TAPE RECORDED?

28 MR. WAPNER: YES.

1 MR. CHIER: THAT TAPE WILL BE AVAILABLE, TOGETHER WITH  
2 THE TAPE OF THE WITNESSES?

3 MR. WAPNER: IT WAS ALL DONE AT THE SAME TIME.

4 MR. CHIER: IT IS ALL ONE CONTINUOUS, SEGMENTED BUT  
5 CONTINUOUS TAPE?

6 MR. WAPNER: RIGHT.

7 THE COURT: THAT WILL BE OFFERED TO THEM?

8 MR. WAPNER: YES.

9 MR. BARENS: DID YOU SAY THAT THERE WAS A TAPE ON THIS  
10 TITUS AVAILABLE?

11 MR. WAPNER: NO. NO TAPE AS TO THE TITUS INTERVIEW.  
12 THERE IS A REPORT WHICH WE WILL HAVE TO YOU BY THIS AFTERNOON.

13 THE COURT: A REPORT MADE -- THE INVESTIGATOR MADE THE  
14 REPORT? DID YOU MAKE THE REPORT OR WHAT? THIS IS AFTER YOU  
15 AND THE INVESTIGATOR INTERVIEWED MR. TITUS, IS THAT IT?

16 MR. WAPNER: CORRECT. THE INVESTIGATOR PREPARED A  
17 REPORT.

18 THE COURT: BUT NO TAPE WAS MADE OF THE CONVERSATION?

19 MR. WAPNER: CORRECT.

20 THE COURT: BUT YOU HAVE GOT A TAPE OF THE TEST THAT WAS  
21 TAKEN OF MR. TITUS? YOU SAID YOU PUT HIM THROUGH A POLYGRAPH  
22 TEST?

23 MR. WAPNER: NO. MR. TITUS WAS NOT GIVE A POLYGRAPH  
24 TEST.

25 THE COURT: JUST THIS WITNESS?

26 MR. WAPNER: THE TWO WITNESSES IN ARIZONA.

27 MR. BARENS: ARE YOU REQUESTING A POLYGRAPH OF MR. TITUS?

28 MR. WAPNER: I AM NOT, PERIOD.

1 MR. CHIER: IS ONE GOING TO BE REQUESTED BY SOMEBODY  
2 ELSE?

3 MR. BARENS: WE REQUEST THAT YOU REQUEST HIM TO TAKE  
4 A POLYGRAPH.

5 MR. WAPNER: YOU CAN REQUEST IT. I WILL DISCUSS IT  
6 WITH THE PEOPLE IN MY OFFICE. YOU CAN REQUEST ANYTHING. I  
7 WILL --

8 MR. BARENS: WE REQUEST THAT HE BE ADMINISTERED A  
9 POLYGRAPH TEST SIMILAR TO THE ONE GIVEN TO THE WITNESSES IN  
10 ARIZONA.

11 MR. WAPNER: OKAY.

12 THE COURT: I THINK THAT WOULD BE FAIR.

13 MR. WAPNER: THE OTHER THING IS, SO THAT YOU UNDERSTAND,  
14 I SPOKE TO MR. TITUS WITH AN INVESTIGATOR SUNDAY AFTERNOON.  
15 SO, THERE WAS NO -- WELL, IN ANY EVENT, HE WAS NOT GIVEN A  
16 POLYGRAPH TEST. IT MAY BE AN HOUR'S CONVERSATION WITH HIM ON  
17 SUNDAY AFTERNOON.

18 THE COURT: I UNDERSTAND YOUR OFFICE, MR. REINER OR  
19 ANYBODY IN YOUR OFFICE IS NOT GOING TO MAKE THIS AVAILABLE,  
20 ANYTHING ABOUT WHAT WE DISCUSSED IN CHAMBERS AVAILABLE TO THE  
21 PRESS OR ANYBODY ELSE, TRUE?

22 MR. WAPNER: THAT'S CORRECT.

23 THE COURT: YOU TELL MR. REINER THAT I ISSUED A GAG  
24 ORDER AND ANYTHING ABOUT WHAT HAS TRANSPIRED HERE IS GOING TO  
25 BE -- IS NOT GOING TO BE REVEALED TO ANYBODY, ANY THIRD PERSON  
26 OTHER THAN THOSE PRESENT HERE.

27 MR. WAPNER: NOTHING ABOUT THOSE TWO ISSUES THAT WERE  
28 DISCUSSED IN CHAMBERS WILL NOT BE REVEALED.

1 THE COURT: THAT'S CORRECT.

2 MR. WAPNER: MAY I ASK THE COURT FOR A BRIEF RECESS SO  
3 THAT I CAN GO BACK TO MY OFFICE AND CONTACT THE PEOPLE IN MY  
4 OFFICE, SO THAT THEY KNOW IMMEDIATELY THAT THERE IS A GAG  
5 ORDER IN EFFECT?

6 THE COURT: BECAUSE THERE HAS BEEN SPECULATION. THE  
7 PRESS HAVE CALLED HERE AND MADE IN QUIRIES. I TOLD THEM THAT  
8 WE KNOW NOTHING AND WE ARE NOT MAKING ANY STATEMENTS OF ANY  
9 KIND.

10 I SAID WE HAVE NOT GOT ANY IDEA WHY YOU ASKED WHY  
11 THIS MATTER BE CONTINUED FROM THIS MORNING UNTIL THIS  
12 AFTERNOON.

13 MR. WAPNER: OKAY. MAY I ALSO REQUEST THAT WE GO OUT  
14 TO THE COURTROOM AND ON THE RECORD, THAT YOU STATE THAT WITH  
15 RESPECT TO WHAT WAS DISCUSSED IN CHAMBERS, THE COURT HAS  
16 IMPOSED A GAG ORDER AND ORDERED BOTH COUNSEL NOT TO DISCUSS  
17 IT?

18 THE COURT: ALL COUNSEL.

19 MR. WAPNER: ALL COUNSEL.

20 MR. CHIER: THE ORDER IS NOT TO DISCUSS WITH THE MEDIA,  
21 RIGHT? NO, I AM SERIOUS BECAUSE WE ARE --

22 THE COURT: WELL, LISTEN NOW. IF YOU DISCUSS IT WITH  
23 SOMEBODY THEN SOMEBODY TELLS SOMEBODY ELSE AND THEY MIGHT  
24 DISCUSS IT WITH THE MEDIA.

25 MR. CHIER: MR. HUNT HAS AN ATTORNEY NAMED PARKER KELLY,  
26 WHO REPRESENTS HIM UP IN SAN MATEO COUNTY.

27 THE COURT: IT IS ALL RIGHT FOR HIM -- I DON'T SEE HOW  
28 THAT HAS ANY RELEVANCE TO THE OTHER PROCEEDINGS. SO, THERE

1 IS NO POINT IN HIM TALKING TO MR. KELLY ABOUT IT.

2 IT ONLY HAS REFERENCE TO THIS PARTICULAR EVENT  
3 INVOLVING RON LEVIN. I DON'T THINK ANYBODY OUGHT TO TALK TO  
4 ANYBODY ABOUT THIS PARTICULAR SUBJECT BECAUSE THERE IS AN  
5 OLD SAYING THAT IF TWO PEOPLE KNOW SOMETHING, IT IS NO LONGER  
6 A SECRET.

7 THAT IS WHAT I AM TRYING TO MINIMIZE AS MUCH AS  
8 POSSIBLE, ANYTHING THAT WE HAVE DISCUSSED HERE TODAY BECOMING  
9 PUBLIC.

10 SO, DON'T DISCUSS IT WITH ANY THIRD PARTY. DO YOU  
11 AGREE WITH THAT?

12 MR. BARENS: YES.

13 MR. CHIER: I THINK IT WOULD BE APPROPRIATE TO DISCUSS  
14 IT WITH MR. BRODEY, COUNSEL FOR MR. PITTMAN.

15 THE COURT: WHAT?

16 MR. CHIER: MR. JEFFREY BRODEY, COUNSEL FOR MR. PITTMAN.

17 MR. WAPNER: YES. I THINK WE HAVE TO, FRANKLY.

18 THE COURT: YES, SURE. BECAUSE THAT INVOLVES HIM. BUT  
19 I DON'T THINK WE HAVE TO DO THAT RIGHT AWAY.

20 MR. WAPNER: I THINK WE HAVE TO DO IT BY NO LATER THAN  
21 TOMORROW MORNING AND PERHAPS THIS AFTERNOON, IF I CAN GET MR.  
22 BRODEY IN HERE.

23 FRANKLY, SINCE --

24 MR. CHIER: HE MAY BE HERE.

25 MR. WAPNER: SINCE WE WERE INVOLVED IN THE PENDENCY OF  
26 THIS, I WAS MORE CONCERNED ABOUT GETTING BACK HERE ON TIME.  
27 I DID NOT CONTACT MR. BRODEY.

28 THE COURT: AS LONG AS NOBODY IS REVEALING ANYTHING,

1 NOTHING HAS TO BE SAID. THERE IS NO IMMEDIACY IN HAVING MR.  
2 BRODEY KNOW ABOUT IT. HE WILL KNOW BY TOMORROW MORNING. THAT  
3 WILL BE SUFFICIENT TIME FOR HIM.

4 MR. WAPNER: SHOULD WE HAVE MR. BRODEY HERE TOMORROW  
5 MORNING?

6 THE COURT: YES. HAVE HIM HERE TOMORROW MORNING AT  
7 9:00 O'CLOCK.

8 MR. WAPNER: SO, AS TO OUR PROCEEDINGS NOW, WE ARE GOING  
9 TO GO INTO THE COURTROOM AND YOU ARE GOING TO ANNOUNCE THERE  
10 IS A GAG ORDER AND WE ARE GOING TO TAKE A BRIEF RECESS?

11 MR. BARENS: THE DEFENSE WOULD LIKE A 30-MINUTE RECESS.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: THANK YOU.

14 THE COURT: OKAY. THAT WILL BE 2:30. OKAY.

15 (RECESS.)  
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1 MR. WAPNER: YES.

2 THE COURT: HAVE WE GOT YOUR CONSENT, MR. CHIER?

3 MR. CHIER: YES.

4 THE COURT: ALL RIGHT. THANK YOU. WE WILL TAKE A SHORT  
5 RECESS AT THIS TIME.

6 THEN WE WILL PROCEED WITH THE INTERROGATION OF  
7 THE PROSPECTIVE JURORS AS TO THEIR VIEWS ON THE DEATH PENALTY.  
8 THANK YOU.

9 (RECESS.)

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1 (THE PRIOR GAG ORDER HAVING BEEN  
2 RECINDED, THE FOLLOWING PROCEEDINGS  
3 ARE NOW INCLUDED IN THE RECORD:)  
4 (THE FOLLOWING PROCEEDINGS WERE HELD  
5 IN CHAMBERS :)

6 THE COURT: THE RECORD WILL INDICATE THE PRESENCE OF  
7 THE DEFENDANT IN THIS CASE AND ALL COUNSEL, INCLUDING THE  
8 DISTRICT ATTORNEY AND COUNSEL FOR MR. PITTMAN.

9 I UNDERSTAND YOU HAVE BEEN APPRISED OF WHAT HAD  
10 BEEN DISCUSSED HERE WITH RESPECT TO THESE QUESTIONS OF  
11 WITNESSES AND SO FORTH.

12 MR. BRODEY: THAT'S CORRECT, YOUR HONOR.

13 I SHOULD STATE MY NAME FOR THE RECORD. JEFF  
14 BRODEY, B-R-O-D-E-Y.

15 THE COURT: AND YOU HAVE BEEN INFORMED OF THAT.

16 YOU ALSO CAME IN TO SEE ME, SO THAT MATTER OF  
17 RECORD, THAT IS THE GAG ORDER WHICH THE COURT IMPOSED AT  
18 THE REQUEST OF COUNSEL, ALSO APPLIES TO YOU.

19 MR. BRODEY: YES, SIR.

20 THE COURT: THAT ORDER TO YOU IS TO NOT DISCUSS THIS  
21 MATTER WITH ANYBODY, ANYBODY AT ALL. THAT INCLUDES THE  
22 PRESS OR ANY THIRD PERSON.

23 MR. BRODEY: THAT DOESN'T MEAN MY STAFF, DOES IT, YOUR  
24 HONOR?

25 THE COURT: WELL, NO, IF NECESSARY.

26 MR. BRODEY: NOT TO PREPARE MY CASE?

27 THE COURT: NO, NO, NO. YOU ARE NOT LIMITED ON THAT.

28 MR. BRODEY: ALL RIGHT.

1 THE COURT: YOU CAN DISCUSS IT WITH YOUR STAFF.

2 MR. BRODEY: OTHER THAN MY STAFF, I TAKE IT I AM NOT TO  
3 DISCUSS THIS MATTER WITH ANY OTHER PARTY.

4 THE COURT: THAT'S CORRECT.

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1 THE COURT: DO YOU WANT MR. BRODEY TO REMAIN FOR THIS  
2 DISCUSSION WE ARE HAVING NOW? BECAUSE THIS PERTAINS TO  
3 THIS --

4 MR. WAPNER: YES. I DO BECAUSE I JUST WANT TO MAKE SURE  
5 ON THE RECORD, THAT I MAKE THE SAME DISCLOSURE TO MR. BRODEY  
6 ON BEHALF OF MR. PITTMAN THAT I DID TO COUNSEL FOR MR. HUNT.  
7 AND --

8 THE COURT: DID YOU DO THAT? YOU SAID YOU DID THAT?  
9 DID YOU?

10 MR. WAPNER: I HAVE NOT DONE IT. FOR THE RECORD, I WOULD  
11 LIKE TO DO IT SO THAT THE RECORD IS CLEAR AS TO THE FACTS FOR  
12 MR. BRODEY --

13 THE COURT: SIT DOWN.

14 MR. WAPNER: MR. BRODEY HAS BEEN NOTIFIED THAT FRIDAY  
15 OF LAST WEEK, I RECEIVED INFORMATION FROM A DETECTIVE FROM THE  
16 TUCSON POLICE DEPARTMENT THAT THERE WAS A WITNESS IN ARIZONA  
17 WHO CLAIMS THAT SHE AND HER BOYFRIEND HAD SEEN A PERSON  
18 RESEMBLING A SKETCH AND DESCRIPTION OF RON LEVIN, THAT  
19 APPEARED IN THAT ESQUIRE MAGAZINE ARTICLE.

20 I WENT WITH AN INVESTIGATOR FROM OUR OFFICE TO TALK  
21 TO THAT PERSON. THE CONVERSATION THAT WE HAD WITH ACTUALLY  
22 BOTH OF THE PEOPLE, THE GIRL AND HER BOYFRIEND, WERE TAPE  
23 RECORDED. THERE WAS A POLYGRAPH EXAMINATION GIVEN TO EACH ONE  
24 OF THOSE PEOPLE, THAT THEY IN THE OPINION OF THE POLYGRAPHER  
25 FROM TUCSON, PASSED THE POLYGRAPH EXAMINATION.

26 AND THE TAPES OF THE CONVERSATIONS WITH THE WITNESSES  
27 AS WELL AS THE POLYGRAPH EXAMINATION, HAVE BEEN REPRODUCED AND  
28 ARE AVAILABLE TO YOU WHEN YOU PROVIDE THE DISTRICT ATTORNEYS'

1 SOUND LAB WITH COPIES OF BLANK CASSETTES AND PAY FOR THE  
2 COPYING.

3 THE COURT: HE IS NOT GOING TO PAY FOR IT. WE HAVE TO  
4 PAY FOR IT BECAUSE HE IS --

5 MR. WAPNER: WELL, HE APPARENTLY PAYS FOR IT AND THEN  
6 HE SUBMITS HIS BILL TO YOU AND YOU PAY HIM.

7 BUT, THEY WON'T GIVE HIM THE TAPES WITHOUT GETTING  
8 PAID FOR THEM INITIALLY.

9 I ALSO HAVE HAD A CONVERSATION ON FRIDAY. I WAS  
10 CALLED AND HAD A BRIEF CONVERSATION ON THE TELEPHONE WITH  
11 LOUIS TITUS, CO-COUNSEL --

12 THE COURT: WAIT. I DON'T KNOW THAT THAT HAS ANY  
13 MATERIALITY INSOFAR AS HIS CASE IS CONCERNED. IT WILL HAVE  
14 NO REFERENCE AT ALL TO HIM.

15 IT ONLY HAS REFERENCE TO OTHER COUNSEL IN THE  
16 CASE. I DON'T THINK THAT THERE OUGHT TO BE ANY DISCLOSURE  
17 OF THAT TO HIM.

18 MR. BARENS: I HAVE A COMMENT ON THAT THAT I WANT TO  
19 MAKE ON THE RECORD, AS WELL, YOUR HONOR. I DON'T MIND MAKING  
20 IT IN FRONT OF MR. BRODEY.

21 YOUR HONOR, DURING THE RECESS, THE PEOPLE PROVIDED  
22 ME WITH A THREE-PAGE INVESTIGATOR'S REPORT CONCERNING THIS  
23 CONTACT WITH MR. TITUS.

24 THE COURT: DO YOU WANT THIS? ALL RIGHT. GO AHEAD.  
25 I JUST THOUGHT THAT IT DIDN'T HAVE ANYTHING TO DO WITH  
26 PITTMAN.

27 MR. BARENS: I DON'T HAVE ANY EXCEPTION CONCERNING THE  
28 CONTACT BETWEEN THE PEOPLE AND MR. TITUS.

1                   IN MANY RESPECTS, THIS STATEMENT CORROBORATES  
2 SPECIFICALLY THE INFORMATION I GAVE YOUR HONOR WHEN I RESPONDED  
3 TO THE INITIAL COMMENTS THE D.A. MADE.

4                   ADDITIONALLY, WHAT I TAKE EXCEPTION TO IS THAT  
5 THE STATEMENT GOES INTO MR. TITUS' BACKGROUND AND HIS  
6 HOSPITALIZATION AND DRUG DEPENDENCY AND EMOTIONAL PROBLEMS AND --

7                   THE COURT: WHO WROTE THAT?

8                   MR. BARENS: MR. WAPNER'S INVESTIGATOR'S REPORT.

9                   I CAN ONLY SAY THAT WHEN MR. WAPNER MADE THE  
10 STATEMENT TO YOUR HONOR INITIALLY, I TAKE EXCEPTION THAT THE  
11 FACTUAL PICTURE WAS NOT GIVEN YOUR HONOR CONCERNING THE  
12 BACKGROUND OF THE PERSON MAKING THE STATEMENT, BEFORE AN  
13 ASPERSION WAS CAST AS TO COUNSEL.

14                   THE COURT SHOULD HAVE BEEN GIVEN THE ENTIRE KNOWLEDGE  
15 THAT THE PEOPLE WERE AWARE OF CONCERNING THE NATURE AND BACK-  
16 GROUND OF THE INDIVIDUAL THEY WERE SPEAKING ABOUT, IN ORDER  
17 TO MAKE A FAIR PRESENTATION FOR COUNSEL.

18                   THE COURT: I THOUGHT HE SAID THAT HE WAS GOING TO  
19 GIVE YOU A FULL REPORT OF IT WHICH WOULD HAVE BEEN INCLUDED  
20 AND IT WOULD HAVE BEEN UNNECESSARY TO STATE IT FOR THE RECORD  
21 AS LONG AS THE REPORT WAS GIVEN TO YOU.

22                   I AM NOT SAYING THIS IN DEFENSE OF MR. WAPNER. I  
23 AM ONLY SAYING SOLELY AS TO WHETHER IT SHOULD HAVE BEEN  
24 REVEALED AND IS NOW REVEALED, SINCE IT IS A MATTER OF RECORD.

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1           MR. BARENS: I AM ONLY SAYING, YOUR HONOR, I THINK IN  
2 A SPIRIT OF FAIR PLAY, WHEN A COMMENT IS MADE BY TRIAL  
3 COUNSEL, THAT IF THE PEOPLE WERE THEN AWARE OF A TOTAL PICTURE  
4 OF THE ALLEGED INFORMANT OR WHATEVER WE WANT TO CALL THIS  
5 INDIVIDUAL, THAT DUE TO THE FACT THAT THIS COUNSEL HAS TO WORK  
6 WITH THIS JUDGE FOR THE NEXT SEVERAL MONTHS IN CONCLUSION OF  
7 THIS TRIAL MATTER, THAT A FAIR THING TO HAVE DONE WOULD BE TO  
8 HAVE GIVEN A TOTAL PICTURE.

9           MR. WAPNER: WELL --

10          MR. BARENS: PARTICULARLY SINCE THERE WAS ALSO REFERENCE  
11 IN THIS DOCUMENT TO THE POLICE REPORT THAT I SAID I HAD MADE  
12 ABOUT THE ALLEGED THREATENED SHOOTING AND THE OTHER STATEMENTS  
13 THAT I HAD MADE, THAT WHEN I SAID THEM, MR. WAPNER DIDN'T EVEN  
14 HAVE THE COURTESY TO SAY, "YES, YOUR HONOR, WE WERE AWARE OF  
15 THAT BASED ON THE STATEMENT WE TOOK."

16          MR. WAPNER: MY POINT IN MAKING THE DISCLOSURE WAS NOT  
17 TO LITIGATE THE ISSUE OR TO CAST ANY ASPERSIONS ON ANYONE.  
18 MY POINT WAS TO TELL YOU THAT I HAD THE CONVERSATION, THAT A  
19 REPORT WAS PREPARED, THAT YOU WOULD GET THE FULL CONTENTS OF  
20 IT. WE WEREN'T HERE TO LITIGATE WHETHER IT WAS TRUE, WHETHER  
21 IT WAS NOT TRUE, ONLY THAT A STATEMENT WAS MADE BY THIS  
22 PERSON. THE JUDGE WAS NOT --

23          THE COURT: WILL YOU GIVE HIM A CHANCE TO TALK, INSTEAD  
24 OF WHISPERING AROUND THERE? DON'T YOU THINK THAT'S A COURTESY  
25 YOU OWE TO HIM AND YOU OWE TO THE COURT?

26                       GO AHEAD.

27          MR. WAPNER: I WASN'T ASKING THE JUDGE TO MAKE ANY RULING  
28 ONE WAY OR THE OTHER OTHER THAN TO USE IT AS A FORUM TO DISCLOSE

1 THE INFORMATION. I WASN'T EITHER VOUCHING FOR MR. TITUS'  
2 CREDIBILITY ONE WAY OR THE OTHER, SIMPLY TO MAKE A STATEMENT,  
3 NOT THAT I SAID ANYTHING, BUT THAT MR. TITUS GAVE THIS  
4 INFORMATION. I WASN'T TRYING TO CAST ASPERSIONS ON ANYONE.

5 THE COURT: WILL YOU ACCEPT THAT, MR. BARENS?

6 MR. BARENS: I DO, WITH THIS PROVISIO, AND I UNDERSTAND  
7 MR. WAPNER'S POSITION. HOWEVER, YOUR HONOR HAD SPECIFICALLY  
8 ASKED MR. WAPNER WHAT THE SUBSTANCE OF THIS INFORMATION WAS,  
9 AND IN RESPONSE TO WHAT THE SUBSTANCE OF IT WAS, AGAIN I AM  
10 SUBMITTING RESPECTFULLY BOTH AS TO MR. WAPNER AS WELL, THAT  
11 A SENSE OF FAIR PLAY IN RESPONSE TO WHAT THE SUBSTANCE OF IT  
12 WAS WOULD HAVE BEEN TO HAVE GIVEN THE COURT A MORE TOTAL  
13 PICTURE OF NOT ONLY THE ALLEGATION THAT TITUS HAD MADE, BUT  
14 AS TO THE INFORMATION THE PEOPLE HAD CONCERNING BOTH HIS  
15 BACKGROUND AND THE ALLEGED THREAT ON MY LIFE THAT TITUS HAD  
16 EXTENDED THAT IS THE SUBJECT OF A BEVERLY HILLS POLICE  
17 DEPARTMENT REPORT.

18 I THINK CERTAINLY THE PEOPLE WOULD HAVE LOST  
19 NOTHING IN MAKING A FULL DISCLOSURE INSTEAD OF A PARTIAL  
20 DISCLOSURE.

21 ON THE OTHER HAND, RESPECTFULLY, MR. WAPNER, I CAN  
22 UNDERSTAND THE EXPLANATION THAT WAS TENDERED AND ACCEPTED.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: NOW, YOUR HONOR, AS FAR AS DISCLOSING THAT  
25 INFORMATION TO MR. BRODEY WHO WAS COUNSEL FOR MR. PITTMAN, I  
26 THINK THAT IT IS RELEVANT TO THE EXTENT THAT MR. BRODEY ON  
27 MR. PITTMAN'S BEHALF NEEDS TO MAKE A FULL INVESTIGATION OF  
28 THESE WITNESSES IN ARIZONA, AND WHETHER OR NOT THE ALLEGATIONS



1 THAT MR. TITUS MADE WERE TRUE; AND IS ENTITLED TO TRY AND MAKE  
2 A FULL DETERMINATION THAT IF THEY ARE TRUE, WHAT BEARING, IF  
3 ANY, DO THEY HAVE ON HIS INVESTIGATION. SO IT SEEMS TO ME  
4 HE IS ENTITLED TO THAT INFORMATION.

5 THE COURT: ALL RIGHT. WELL, HE HAS HAD IT.

6 MR. BRODEY: THANK YOU. DO YOU NEED ANYTHING FURTHER  
7 FROM ME AT THIS POINT?

8 MR. WAPNER: NO. ONLY TO STATE THAT IF YOU WILL REMAIN  
9 BRIEFLY, I WILL PROVIDE YOU A COPY OF THE REPORT THAT I HAVE  
10 GIVEN TO MR. BARENS AND MR. CHIER.

11 MR. BARENS: I WANT TO JUST SAY FOR THE RECORD, AND I  
12 WANT YOU TO GIVE HIM A COPY -- I DID SHOW MR. BRODEY A COPY  
13 OF THE TITUS MATERIAL DURING THE RECESS. I VOLUNTEERED THAT  
14 TO MR. BRODEY.

15 THE COURT: DO YOU PROPOSE TO MAKE THIS A MATTER OF  
16 RECORD, THE MATTER OF THE REPORT?

17 MR. WAPNER: NO. THE REPORT, THE GAG ORDER SHOULD APPLY  
18 TO DISCLOSING THE REPORTS.

19 THE COURT: YES, IT DID. BUT I AM ASKING NOW, THE  
20 MATTER OF THE RECORD IN THIS CASE, WILL IT BE KEPT CONFIDENTIAL  
21 AND NOT TO BE DISCLOSED? IT WILL BE SECRET FOR THE PURPOSE  
22 OF THE RECORD? SHOULDN'T THERE BE AN ENTIRE -- SHOULDN'T THIS  
23 REPORT BE A PART OF THE RECORD?

24 MR. WAPNER: YOU MEAN MARKED AS AN EXHIBIT?

25 THE COURT: YES.

26 MR. WAPNER: I DON'T THINK SO. I THINK THAT IN THE  
27 SAME FASHION THAT THE REPORT --

28 THE COURT: I AM JUST ASKING YOU WHETHER YOU WANT IT AS

1 AN EXHIBIT. THAT'S ALL RIGHT.

2 MR. WAPNER: ALL RIGHT.

3 ALSO, I JUST WANTED TO MENTION, MR. CHIER AND I  
4 APPARENTLY HAD A DISAGREEMENT OR MISUNDERSTANDING ABOUT THE  
5 EXTENT OF THE GAG ORDER BECAUSE IT WAS MY UNDERSTANDING THAT  
6 THE GAG ORDER INCLUDED NOT DISCLOSING THIS INFORMATION EVEN  
7 DURING THE RECESS TO MR. BRODEY, THAT THE COURT WAS GOING TO  
8 DO THAT.

9 THE COURT: PRECISELY.

10 MR. WAPNER: AND APPARENTLY COUNSEL HAD A DIFFERENT  
11 UNDERSTANDING. BUT I THINK WE SHOULD ALL BE CLEAR FROM NOW  
12 ON.

13 NOW THAT ALL OF THE ATTORNEYS HAVE BEEN ADVISED,  
14 THIS INFORMATION SHOULD NOT BE DISCLOSED TO ANY THIRD PARTIES.

15 THE COURT: IT WAS PROPER TO HAVE BEEN DISCLOSED TO MR.  
16 BRODEY, BUT IT SHOULD HAVE BEEN DONE IN THE PROPER WAY, NOT  
17 BY ANY THIRD PARTIES, BUT BY YOU ON THE RECORD IN THIS COURT,  
18 NOT BY ANY ORAL COMMUNICATIONS WHICH HAVE BEEN MADE. RIGHT?

19 MR. BARENS: YOUR HONOR, THE DEFENSE HAD ANOTHER MATTER  
20 TO ADDRESS TO YOUR HONOR.

21 THE COURT: YES.

22 DO YOU NEED MR. BRODEY?

23 MR. BRODEY: DO I NEED TO BE HERE?

24 MR. BARENS: NO.

25 MR. BRODEY: I WILL WAIT FOR YOU OUTSIDE.

26 THE COURT: ALL RIGHT. YOU ARE EXCUSED. THANK YOU,  
27 MR. BRODEY.

28 MR. BRODEY: THANK YOU, YOUR HONOR.

1 (ATTORNEY JEFF BRODEY LEAVES CHAMBERS.)

2 MR. BARENS: YOUR HONOR, IN LIGHT OF THESE DEVELOPMENTS,  
3 THE DEFENSE WOULD LIKE TO REQUEST A CONTINUANCE UNTIL MONDAY  
4 FOR SEVERAL REASONS. WE WOULD LIKE TO HAVE THE OPPORTUNITY  
5 TO IMMEDIATELY MAKE CONTACT WITH THE WITNESSES IN ARIZONA, AND  
6 ALSO BOTH PERSONALLY AND THROUGH OUR INVESTIGATORS, WE FEEL  
7 THIS WILL HAVE SIGNIFICANT BEARING ON THE TRIAL AND IS A  
8 NECESSITY SINCE THE PEOPLE HAVE HAD ACCESS TO THESE WITNESSES  
9 FOR A TIME UNKNOWN TO THE DEFENSE.

10 I CAN ASSURE YOUR HONOR THERE IS SOME INTENSIVE  
11 INVESTIGATIONS GOING ON ABOUT THEIR BACKGROUND OR WHOEVER THEY  
12 ARE, ET CETERA, ET CETERA. THE DEFENSE WOULD LIKE TO HAVE  
13 THE UNINHIBITED OPPORTUNITY AT THIS TIME TO ADDRESS THAT, AND  
14 INSERT OUR PRESENCE IN THAT INVESTIGATION, AND OUR PRESENCE  
15 IN THE INQUIRY THAT'S BEING MADE, TO INSURE THAT THERE IS SOME  
16 BALANCE GOING ON TO THE EXTENT WE CAN.

17 THE COURT: I WON'T RESTRICT YOU ON ANY INVESTIGATION  
18 WHICH IS BEING MADE, BUT I DON'T PROPOSE TO DELAY THE TRIAL  
19 OF THIS PARTICULAR PROCEEDING, UNLESS YOU NEED MORE TIME AFTER  
20 THE SELECTION OF THE JURY?

21 MR. BARENS: NO.

22 THE COURT: TO EXPLORE THE POSSIBILITIES. I WILL GIVE  
23 YOU ALL THE TIME YOU WANT AFTER THAT. BUT I WANT TO GET THIS  
24 DEATH QUALIFICATION OVER WITH. YOUR INVESTIGATION HAS NOTHING  
25 TO DO WITH THAT ASPECT OF IT.

26 MR. BARENS: ALL RIGHT, YOUR HONOR. ONLY PERSONALLY,  
27 FEELING THE NEED TO PROVIDE SOME TIME TO, AS A PERSON.

28 THE COURT: YOU WILL GET ALL OF THAT TIME. I WILL GIVE

1 YOU ALL OF THE TIME THAT YOU REQUIRE THAT'S NECESSARY. LET'S  
2 GET THIS FINISHED FIRST, FINISH WITH THIS ASPECT OF THE CASE.  
3 THIS IS COMPLETELY UNRELATED TO WHAT'S OCCURRED.

4 MR. BARENS: ALL RIGHT.

5 THE COURT: WE HAVE KEPT THESE PEOPLE WAITING OUT THERE,  
6 HAVING COME AROUND. ALL RIGHT. LET'S GET STARTED.

7 MR. WAPNER: YOUR HONOR, FOR THE RECORD, MR. BARENS TOLD  
8 ME THAT, AND MY POSITION IS IF THEY WANTED THE TIME, WE WOULD  
9 HAVE NO OBJECTION. I UNDERSTAND THE COURT'S POSITION, AND I  
10 THINK THE RECORD SHOULD BE CLEAR ON THAT.

11 THE COURT: WE'VE GOT PEOPLE SCHEDULED. THEY HAVE BEEN  
12 WAITING AROUND. I PROPOSE TO PROCEED WITH THAT BECAUSE WHAT  
13 HAS TRANSPIRED HAS NOTHING TO DO WITH THAT; AND ALL THE TIME  
14 YOU MIGHT NEED. IN THE MEANTIME, HE WILL BE HAVING INVESTIGATORS  
15 ON THE MATTER, INVESTIGATING THESE PEOPLE, ANY ASPECT OF IT.

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1 IF IT IS NOT COMPLETED BY THE TIME WE ARE IN THE  
2 JURY SELECTION PROCESS, AFTER WE HAVE GOTTEN ALL OF THE JURORS  
3 DEATH-QUALIFIED -- IF IT IS NOT, I WILL GIVE THEM ADDITIONAL  
4 TIME.

5 MR. WAPNER: BEFORE THE JURY IS ACTUALLY SWORN TO TRY  
6 THE CASE?

7 THE COURT: YES, BEFORE IT IS ACTUALLY SWORN.

8 MR. WAPNER: THANK YOU.

9 THE COURT: BEFORE THE JURY THAT IS SELECTED IS ACTUALLY  
10 SWORN.

11 MR. WAPNER: THANK YOU.

12 THE COURT: ALL RIGHT. LET'S GO INTO OPEN COURT.  
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1 (IN CAMERA PROCEEDINGS REPORTED BUT  
2 NOT TRANSCRIBED AT THE ORDER OF THE  
3 COURT. NOTES SEALED.)

4 (THE FOLLOWING PROCEEDINGS WERE HELD  
5 IN OPEN COURT:)

6 THE COURT: I AM GOING TO ALSO ORDER THAT THESE  
7 PROCEEDINGS IN CHAMBERS WILL BE SEALED.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 (PROSPECTIVE JUROR KRAUSS ENTERS THE  
10 COURTROOM.)

11 THE COURT: MR. KRAUSS, I APOLOGIZE FOR KEEPING YOU  
12 WAITING. WE HAD SOME IMPORTANT MATTERS TO DISCUSS THAT HAD  
13 NOTHING TO DO WITH THIS PROCESS OF JURY SELECTION. WE  
14 APOLOGIZE FOR KEEPING YOU WAITING ALL OF THAT TIME.

15 MR. KRAUSS: THANK YOU.

16 THE COURT: DO YOU PRONOUNCE IT KRAUSS?

17 MR. KRAUSS: KRAUSS.

18 THE COURT: WHERE DO YOU LIVE, MR. KRAUSS?

19 MR. KRAUSS: I LIVE AT 3725 MYERS STREET --

20 THE COURT: NO, NO, NOT THE STREET, JUST WHAT PART OF  
21 THE CITY.

22 MR. KRAUSS: SORT OF THE VENICE AREA.

23 THE COURT: ALL RIGHT, SIR.

24 MR. KRAUSS: I THINK IT IS CALLED VENICE.

25 THE COURT: ALL RIGHT. YOU WERE HERE WERE YOU NOT, AT  
26 THE TIME THAT I TOLD THE PROSPECTIVE JURORS WHAT THIS CASE  
27 IS ALL ABOUT?

28 MR. KRAUSS: YES.

1 THE COURT: JUST TO BRIEFLY SUMMARIZE IT, THE CHARGE  
2 IN THIS CASE AGAINST THE DEFENDANT, HE IS ACCUSED OF COMMITTING  
3 MURDER AND MURDER IN THE FIRST DEGREE, IN THAT THE MURDER WAS  
4 COMMITTED DURING THE COURSE OF A ROBBERY.

5 NOW, BECAUSE IT WAS COMMITTED DURING THE COURSE  
6 OF A ROBBERY WHICH IS CALLED A SPECIAL CIRCUMSTANCE, IT  
7 QUALIFIES FOR THE DEATH PENALTY THAT IS BEING SOUGHT BY THE  
8 DISTRICT ATTORNEY. NOW, YOU KNOW, NOT EVERY MURDER IN THE  
9 FIRST DEGREE QUALIFIES FOR THE DEATH PENALTY, ONLY THOSE  
10 MURDERS WHICH WERE COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES  
11 WHICH THE LEGISLATURE HAS DECLARED WOULD QUALIFY THIS  
12 PARTICULAR MURDER FOR THE DEATH PENALTY, FOR EXAMPLE.

13 I TOLD YOU THAT IN A CASE WHERE A MURDER WAS  
14 COMMITTED IN THE COURSE OF A ROBBERY, THAT QUALIFIES, ALSO.  
15 A KIDNAPPING FOR PURPOSES OF MURDER -- I MEAN, A KIDNAP  
16 IN THE COURSE OF WHICH A MURDER WAS COMMITTED, A BURGLARY OR  
17 A CHILD MOLESTATION, A CRIME AGAINST CHILDREN, MULTIPLE  
18 MURDERS, MURDER THAT RESULTS IN THE TORTURE OF A PERSON,  
19 THOSE ARE ALL -- I HAVE NOT EXHAUSTED ALL THE POSSIBILITIES,  
20 BUT THEY, TOGETHER WITH OTHERS, HAVE BEEN DECLARED BY THE  
21 LEGISLATURE TO BE CASES WHERE THE DEATH PENALTY WOULD BE  
22 REQUIRED.

23 NOW, IN A DEATH PENALTY CASE, WHEN I TALK ABOUT  
24 THE DEATH PENALTY AS I WILL TELL YOU LATER, THERE ARE TWO  
25 ASPECTS OF THE DEATH PENALTY WHERE THE JURORS DECIDE EITHER  
26 LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE OR DEATH.

27 NOW, IF THE JURY SELECTED IN THIS CASE FINDS THE  
28 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND THEY FIND

1 THAT SPECIAL CIRCUMSTANCES EXIST -- SPECIAL CIRCUMSTANCES  
2 MEANING THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,  
3 THEN THEY HAVE TO MAKE A FINDING THAT IT WAS TRUE OR FALSE.

4 IF IT WAS TRUE, THEN WE START A SECOND PHASE OF  
5 THE TRIAL WHICH IS KNOWN AS THE PENALTY PHASE, WHERE THE SAME  
6 JURY HEARS EVIDENCE THAT THEY HAVE NOT HEARD BEFORE, OTHER  
7 EVIDENCE WHICH RELATES TO THE QUESTION OF MITIGATION OR  
8 AGGRAVATION, WHEREIN THE MITIGATION, THE DEFENSE PUTS IN  
9 TESTIMONY TO SHOW NICE THINGS ABOUT THE DEFENDANT.

10 THE PROSECUTION WOULD SHOW BACKGROUND AND OTHER  
11 INFORMATION WHICH IS UNFAVORABLE TO THE DEFENDANT. THE JURY  
12 HEARS ALL OF THAT.

13 AFTER IT HAS BEEN CONCLUDED, COUNSEL ARGUE TO THE  
14 JURY. THE COURT INSTRUCTS THE JURY ON THAT PHASE OF THE  
15 TRIAL. THEN YOU GO INTO THE JURY ROOM AND YOU DECIDE ONE OF  
16 TWO THINGS, EITHER HE IS -- HIS PENALTY SHOULD BE LIFE WITHOUT  
17 POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND THAT?

18 MR. KRAUSS: YES.

19 THE COURT: OKAY. NOW, WHAT I WOULD DO, BEFORE I ASK  
20 YOU A SERIES OF QUESTIONS RELATING TO YOUR STATE OF MIND AND  
21 WHAT YOUR FEELINGS ARE WITH RESPECT TO THE DEATH PENALTY,  
22 I WANT TO KNOW FROM YOU WHETHER OR NOT YOU HAVE READ ANYTHING  
23 AT ALL ABOUT THIS CASE?

24 MR. KRAUSS: NO, SIR.

25 THE COURT: HAVE YOU TALKED TO ANY OTHER JURORS OR ANY  
26 THIRD PERSONS WHO TOLD YOU ANYTHING AT ALL ABOUT IT,  
27 GENERALLY CHARACTERIZED IT AS THE BILLIONAIRE BOYS CLUB OR  
28 SOMETHING LIKE THAT?



1 MR. KRAUSS: ONE OF THE LADIES MENTIONED THIS WHEN I  
2 WAS CALLED.

3 THE COURT: THAT THAT IS WHAT IT WAS CALLED? OTHER THAN  
4 THAT, HAVE YOU HEARD ANYTHING AT ALL ABOUT IT?

5 MR. KRAUSS: NO, SIR.

6 THE COURT: WELL, I WILL ENJOIN ON YOU NOW, THAT IF YOU  
7 ARE STILL A PROSPECTIVE JUROR IN THE CASE, THAT YOU NOT TALK  
8 TO ANYBODY ABOUT THIS CASE OR READ ANYTHING ABOUT IT OR LISTEN  
9 TO IT ON THE RADIO OR THE TELEVISION.

10 MR. KRAUSS: YES.

11 THE COURT: OKAY. ALL RIGHT. NOW, THESE ARE THE  
12 QUESTIONS. THERE ARE GOING TO BE FIVE IN NUMBER. I AM NOT  
13 GOING TO ASK QUESTION NUMBER 2, HERE.

14 WELL, MAYBE I WILL. I THINK IT MAY BE RELEVANT.  
15 SO I AM GOING TO ASK YOU SIX QUESTIONS.

16 THE FIRST ONE IS, DO YOU HAVE ANY OPINION REGARDING  
17 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN  
18 IMPARTIAL DECISION AS TO THE GUILTY OR INNOCENCE OF THE  
19 DEFENDANT?

20 MR. KRAUSS: WOULD YOU JUST --

21 THE COURT: DO YOU WANT ME TO REPEAT IT?

22 MR. KRAUSS: YES.

23 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE  
24 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
25 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?  
26 I TOLD YOU THAT THE FIRST PART OF THE TRIAL IS THE GUILT  
27 PHASE OF THE TRIAL, ONLY TO DETERMINE ONE THING, WAS HE GUILTY  
28 OR WAS HE NOT GUILTY. DO YOU UNDERSTAND THAT?

1 MR. KRAUSS: I WOULDN'T HAVE ANY PROBLEM WITH THAT.

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

6 MR. KRAUSS: I DON'T KNOW ON THAT ONE.

7 THE COURT: ALL RIGHT.

8 MR. KRAUSS: IF HE DOESN'T PROVE IT, HOW DO YOU VOTE  
9 FOR IT?

10 THE COURT: THAT IS EXACTLY THE POINT. BUT, YOU MIGHT  
11 HAVE AN OPINION WITH RESPECT TO THE DEATH PENALTY THAT --

12 MR. KRAUSS: NO, SIR.

13 THE COURT: EVEN IF HE COMMITTED A MURDER IN THE SECOND  
14 DEGREE --

15 MR. KRAUSS: WITHOUT PROOF, I WOULDN'T HAVE ANY OPINION.

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1 THE COURT: THAT IS WHY I WANTED TO LEAVE THAT QUESTION  
2 OUT. I DON'T THINK IT MAKES ANY SENSE.

3 SIR, DO YOU HAVE ANY OPINION REGARDING THE DEATH  
4 PENALTY THAT WILL PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
5 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE?  
6 DO YOU REMEMBER THAT I TOLD YOU THAT IF YOU FIND THE  
7 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, THEN YOU HAVE  
8 GOT TO MAKE A FINDING AS TO WHETHER IT WAS DURING THE COURSE  
9 OF A ROBBERY.

10 MR. KRAUSS: UH-HUH.

11 THE COURT: DO YOU UNDERSTAND THAT THAT IS THE SPECIAL  
12 CIRCUMSTANCE?

13 MR. KRAUSS: RIGHT.

14 THE COURT: NOW, DO YOU HAVE AN OPINION REGARDING THE  
15 DEATH PENALTY THAT WILL PREVENT YOU FROM MAKING AN IMPARTIAL  
16 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
17 CIRCUMSTANCES?

18 MR. KRAUSS: NO.

19 THE COURT: ALL RIGHT. NOW, I THINK I AM GOING TO COME  
20 TO A QUESTION WHICH YOU WILL PROBABLY WANT TO ANSWER. THE  
21 REASON I SAY THAT IS BECAUSE YOU HAVE BEEN HESITATING ALL ALONG.  
22 THAT IS WHY I --

23 MR. KRAUSS: WELL, WITH WORDS LIKE "IMPARTIAL" AND  
24 "FAIR" AND EVERYTHING ELSE, I WANT TO MAKE SURE I UNDERSTAND  
25 THE QUESTIONS.

26 THE COURT: OKAY. NOW, LISTEN TO THIS VERY CAREFULLY,  
27 TOO. DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY  
28 THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE IT AFTER A VERDICT

1 OF GUILTY OF MURDER IN THE FIRST DEGREE WITH SPECIAL  
2 CIRCUMSTANCES, REGARDLESS OF THE EVIDENCE THAT MAY BE  
3 PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

4 MR. KRAUSS: TO BE HONEST WITH YOU, I HAVE NEVER BEEN  
5 IN A SITUATION LIKE THIS. I WOULD HAVE TO THINK. I WOULD  
6 HAVE TO WEIGH THE EVIDENCE.

7 THE COURT: I KNOW THAT YOU ARE GOING TO WEIGH THE  
8 EVIDENCE. WHAT THIS QUESTION PURPORTS TO ASK YOU IS, DO YOU  
9 HAVE AN OPINION ABOUT THE DEATH PENALTY, SUCH THAT YOU WOULD  
10 AUTOMATICALLY --

11 MR. KRAUSS: NO, SIR.

12 THE COURT: VOTE THE DEATH PENALTY BEFORE WE HAVE A  
13 HEARING ON THE PENALTY PHASE OF IT? DO YOU REMEMBER I TOLD  
14 YOU THIS WAS A PENALTY PHASE?

15 MR. KRAUSS: YES, SIR.

16 THE COURT: WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH  
17 PENALTY, EVEN BEFORE YOU HEARD ANY EVIDENCE ON THE PENALTY  
18 PHASE OF THE CASE?

19 MR. KRAUSS: NO, SIR. I WOULDN'T.

20 THE COURT: ALL RIGHT. NOW, MY NEXT QUESTION IS, WHICH  
21 IS A DIFFERENT ASPECT OF THE SAME QUESTION THAT I JUST  
22 ASKED YOU, DO YOU HAVE AN OPINION CONCERNING THE DEATH PENALTY  
23 THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT THE  
24 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY  
25 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

26 MR. KRAUSS: I WOULDN'T FORM AN OPINION WITHOUT EVIDENCE,  
27 YOUR HONOR.

28 THE COURT: YES. BUT THEN YOU WOULD NOT AUTOMATICALLY

1 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE, IS THAT WHAT  
2 YOU ARE TRYING TO SAY?

3 MR. KRAUSS: NO, SIR, NO, SIR -- I MEAN, YES, SIR.

4 THE COURT: ALL RIGHT. YOU WILL HEAR ALL OF THE  
5 EVIDENCE THAT WILL BE PRESENTED ON THAT PHASE OF THE TRIAL?

6 MR. KRAUSS: YES.

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

5 MR. KRAUSS: YES, SIR.

6 THE COURT: ALL RIGHT. OKAY.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 MR. KRAUSS, I AM ARTHUR BARENS, AND I REPRESENT  
9 MR. HUNT, THE DEFENDANT.

10 MR. KRAUSS, AT THIS POINT IN THE PROCEEDINGS I  
11 HAVE THE OBLIGATION TO ASK YOU ABOUT YOUR VIEWS ON THE DEATH  
12 PENALTY, AND THERE ARE NO RIGHT ANSWERS OR WRONG ANSWERS AS  
13 TO WHAT I AM GOING TO ASK YOU, AND THERE ARE NO GOOD OR BAD  
14 ANSWERS. I JUST WANT TO GET YOUR OPINIONS AND WHAT YOUR STATE  
15 OF MIND IS ABOUT THAT.

16 YOU UNDERSTAND THAT EVEN THOUGH WE ARE TALKING  
17 ABOUT THIS, MR. KRAUSS, YOU DON'T HAVE ANY REASON TO BELIEVE  
18 AT THIS POINT THAT MR. HUNT HAS DONE ANYTHING WRONG OR IS  
19 GUILTY OF ANYTHING AT ALL, JUST BECAUSE HE IS CHARGED WITH  
20 THIS CRIME, AND WE ARE TALKING ABOUT THE DEATH PENALTY. THERE  
21 HAS BEEN NO EVIDENCE AND THERE IS NO SHOWING AT ALL THAT HE  
22 HAS DONE ANYTHING WRONG, IS THERE?

23 MR. KRAUSS: RIGHT.

24 MR. BARENS: YOU DON'T FEEL THAT HE IS GUILTY OF ANYTHING  
25 JUST BECAUSE WE ARE HERE, DO YOU?

26 MR. KRAUSS: OF COURSE NOT.

27 MR. BARENS: MR. KRAUSS, HOW DO YOU FEEL ABOUT THE DEATH  
28 PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

1 MR. KRAUSS: THERE ARE AREAS THAT I THINK THE DEATH  
2 PENALTY SHOULD BE IMPOSED.

3 MR. BARENS: COULD YOU HELP ME BY TELLING ME WHAT YOU  
4 MEAN BY THOSE AREAS, SIR?

5 MR. KRAUSS: WELL, FOR INSTANCE, AND I HAVE A VERY UNIQUE  
6 AREA WHICH WOULD BE BECAUSE I WAS BORN IN EUROPE, AND IF I  
7 SEE THE WORD "NAZI", I HAVE A VERY STRONG FEELING TOWARDS THAT.

8 MR. BARENS: YES.

9 MR. KRAUSS: THAT AREA, I AM VERY STRONG. AND OTHER  
10 AREAS, SO MANY VARIATIONS, I CAN'T JUST JUMP AT IT.

11 MR. BARENS: MR. KRAUSS, DO YOU UNDERSTAND THAT AS A  
12 JUROR, IF WE GET PAST THE GUILT PHASE OF THIS TRIAL, IF YOU  
13 BELIEVE THAT THE CRIMES HAD BEEN COMMITTED BEYOND A REASONABLE  
14 DOUBT, AND THE BALANCE OF YOUR FELLOW JURORS FELT THE SAME  
15 WAY, THEN THE DEFENDANT, OF COURSE, WOULD BE CONVICTED, AND  
16 WE WOULD BE IN THE PENALTY PHASE.

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

18 MR. BARENS: I AM SORRY, MR. KRAUSS. YOU HAVE TO  
19 RESPOND AUDIBLY BECAUSE THE REPORTER CAN'T TAKE DOWN A NOD  
20 OF THE HEAD.

21 MR. KRAUSS: I AM SORRY. YES, I UNDERSTAND.

22 MR. BARENS: AND MR. KRAUSS, DO YOU UNDERSTAND THAT THE  
23 JURORS WOULD BE FACED WITH TWO CHOICES AT THAT TIME, LIFE  
24 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE OR THE DEATH  
25 PENALTY AND THE GAS CHAMBERS?

26 MR. KRAUSS: YES, I UNDERSTAND.

27 MR. BARENS: YOU UNDERSTAND THOSE WOULD BE THE TWO  
28 CHOICES. IF THE COURT SAID TO YOU THAT YOU WOULD HAVE TO TAKE

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1 INTO CONSIDERATION IN MAKING THAT EVALUATION THINGS LIKE THE  
2 DEFENDANT'S AGE, WHETHER OR NOT THE DEFENDANT HAD A PRIOR  
3 RECORD OF VIOLENT CRIME OR FELONY ACTIVITIES, AND CIRCUMSTANCES  
4 CONCERNING THE DEFENDANT'S BACKGROUND, WOULD YOU CONSIDER  
5 THOSE THINGS IN REACHING A DECISION AS TO WHETHER OR NOT YOU  
6 THOUGHT THE DEATH PENALTY SHOULD BE APPLIED?

7 MR. KRAUSS: IF THE JUDGE SO STATED AS TO TAKE THAT INTO  
8 CONSIDERATION, OF COURSE I WOULD.

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1 MR. BARENS: DO YOU THINK ANY OF THOSE FACTORS WOULD  
2 MAKE A DIFFERENCE TO YOU IN YOUR DECISION?

3 MR. KRAUSS: IT WOULD DEPEND ON WHAT THE INSTRUCTIONS  
4 WERE FROM THE JUDGE.

5 MR. BARENS: I AM REALLY ASKING YOU YOUR STATE OF MIND,  
6 IN LIGHT OF THE JUDGE'S -- I AM TELLING YOU NOW THAT THE JUDGE  
7 WILL INSTRUCT YOU TO CONSIDER THOSE THINGS, MR. KRAUSS. I  
8 AM ASKING YOU IF YOU WOULD, IF THAT WOULD BE A PART OF YOUR  
9 DELIBERATIONS.

10 MR. KRAUSS: IF THE JUDGE USED THAT AS A CRITERIA, OF  
11 COURSE I WOULD.

12 MR. BARENS: NOW, MR. KRAUSS, I AM NOW TRYING TO SEE  
13 IF YOU HAVE IN YOUR STATE OF MIND ANY BIASES OR AUTOMATIC  
14 RESPONSES. IF YOU HAD A SITUATION WHERE A DEFENDANT WAS  
15 CONVICTED OF A FIRST DEGREE MURDER, LET'S SAY THE DEFENDANT  
16 HAD SHOT SOMEONE, AND HAD SHOT SOMEONE SO THAT HE COULD TAKE  
17 THEIR PROPERTY AWAY FROM THEM, WHICH WOULD BE, LET'S SAY,  
18 FOR THIS PURPOSE, ROBBERY.

19 MR. KRAUSS: UH-HUH.

20 MR. BARENS: WHICH WOULD GIVE YOU THE SPECIAL CIRCUMSTANCES  
21 HIS HONOR MADE REFERENCE TO. IN THAT INSTANCE, JUST GIVEN  
22 THAT SITUATION, WOULD YOU AUTOMATICALLY THINK THAT THAT  
23 DEFENDANT SHOULD BE GIVEN THE DEATH PENALTY?

24 MR. KRAUSS: I HONESTLY THINK SO, IF IT WAS A MATTER  
25 OF PREMEDITATED.

26 MR. BARENS: LET'S ASSUME IT WAS INTENTIONAL AT LEAST.

27 MR. KRAUSS: YES, SIR.

28 THE COURT: WELL, YOU ARE LEAVING OUT, AS I POINTED OUT

1 TO YOUR COLLEAGUE, YOU ARE LEAVING OUT AN IMPORTANT CONSIDER-  
2 ATION.

3 MR. BARENS: I AM GETTING TO THAT.

4 THE COURT: THAT WE HAVE A PENALTY PHASE OF IT WHERE  
5 THE CIRCUMSTANCES IN MITIGATION OR AGGRAVATION MAY BE SHOWN.

6 MR. BARENS: I MADE REFERENCE TO THAT EARLIER. I WAS  
7 COMING BACK TO THAT, YOUR HONOR.

8 NOW, MR. KRAUSS, I UNDERSTAND THAT YOU TRUTHFULLY  
9 TOLD ME THAT YOU HAVE A STATE OF MIND THAT GIVEN THOSE FACTS,  
10 THAT THAT PERSON SHOULD GET THE DEATH PENALTY. WHAT THE JUDGE  
11 IS MAKING REFERENCE TO, AND I AGREE, IS THAT YOU WOULD BE GIVEN  
12 AN INSTRUCTION BY THE JUDGE THAT IN MAKING THE DECISION ON  
13 THE DEATH PENALTY, YOU SHOULD CONSIDER THE PERSON'S AGE, AND  
14 WHETHER OR NOT THEY HAD, LET'S SAY, A BACKGROUND OF CRIMINAL  
15 ACTIVITY OR VIOLENT CRIMES; AND SOMETHING ABOUT -- FACTORS,  
16 YOU KNOW, GOOD THINGS ABOUT THE DEFENDANT, YOU KNOW, WHATEVER  
17 GOOD CHARACTER THINGS COULD BE FOUND; AND ALSO THE PEOPLE WOULD  
18 PUT ON BAD CHARACTER THINGS ABOUT THE DEFENDANT IF THEY HAD  
19 THOSE AVAILABLE TO THEM.

20 WHAT I AM ASKING YOU IS THAT ALTHOUGH YOU SAY YOU  
21 WOULD CONSIDER THAT, DO YOU FEEL THAT YOU ARE SO DETERMINED  
22 THAT THE PERSON SHOULD GET THE DEATH PENALTY FOR THAT TYPE  
23 OF CONDUCT, THAT IT WOULD CAUSE YOU TO BE UNABLE TO REALLY  
24 CONSIDER THOSE FACTORS AND VOTE FOR THE DEATH PENALTY IN AN  
25 INSTANCE WHERE YOU HAD THAT TYPE OF A DEFENDANT?

26 MR. KRAUSS: WELL, YOU ARE ASKING ME A HYPOTHETICAL  
27 QUESTION.

28 MR. BARENS: YES, SIR.

1 MR. KRAUSS: OF MORAL VALUE.

2 MR. BARENS: YES, SIR.

3 MR. KRAUSS: WHICH ANSWERS THE ONE ABOUT --

4 MR. BARENS: YES, SIR.

5 MR. KRAUSS: WHICH IS THE WAY I FEEL MORALLY. THEN AS  
6 A SECOND PART OF IT IS WHAT HAPPENS TO BE THE FACTS OF IT.  
7 NOW THAT IS A DIFFERENT QUESTION, NOT RELATIVE TO MY MORAL  
8 CONCEPT, BECAUSE NOW I AM EVALUATING WHAT YOU MAY CALL THE  
9 INSTRUCTIONS FROM THE JUDGE, INSTRUCTIONS IN FACTS, IN OTHER  
10 AREAS, WHICH ARE SUPPOSED TO BE TAKEN INTO CONSIDERATION.  
11 SO WE ARE TALKING ABOUT TWO DIFFERENT THINGS FROM MY VIEWPOINT.

12 MR. BARENS: YES, SIR.

13 MR. KRAUSS: I HAVE A STRAIGHT MORAL CONCEPT, BUT THAT  
14 HAS SOME -- THAT IS A LITTLE DIFFERENT.

15 MR. BARENS: DO YOU FEEL THAT YOUR MORAL CONCEPT WOULD  
16 SUBSTANTIALLY IMPAIR YOUR ABILITY TO CONSIDER ANY OF THOSE  
17 OTHER FACTORS THAT THE JUDGE SAYS YOU SHOULD CONSIDER IN  
18 DECIDING WHETHER THE DEFENDANT LIVED OR DIED?

19 MR. KRAUSS: NO, SIR, BECAUSE MY MORAL OBLIGATION WOULD  
20 THEN BE TO THE INSTRUCTIONS OF THE COURT.

21 MR. BARENS: SO YOU ARE TELLING ME THAT IF THE JUDGE  
22 SAYS THAT YOU OF NECESSITY SHOULD CONSIDER THOSE AGE FACTORS  
23 AND PRIOR CRIMINAL RECORD, LET'S SAY, THAT YOU WOULD FEEL  
24 MORALLY INCUMBENT TO CONSIDER THOSE THINGS?

25 MR. KRAUSS: TO THE COURT, YES, SIR.

26 MR. BARENS: WOULD I AS A DEFENSE LAWYER HAVE A HARDER  
27 TIME CONVINCING YOU BECAUSE OF YOUR MORAL BIAS -- AND I AM  
28 NOT SAYING THERE IS ANYTHING WRONG WITH THAT, MR. KRAUSS?

1 MR. KRAUSS: NO, I AM NOT A DEFENDANT.

2 MR. BARENS: WE ARE ALL HUMAN BEINGS HERE. WOULD I AS  
3 A DEFENSE LAWYER HAVE A HARDER TIME CONVINCING YOU THAT YOU  
4 SHOULD GIVE MY CLIENT LIFE WITHOUT POSSIBILITY OF PAROLE,  
5 BECAUSE YOU HAVE A MORAL FEELING THAT PEOPLE THAT COMMIT A  
6 CRIME OF MURDER FOR PROPERTY GAIN SHOULD GET THE DEATH PENALTY?

7 MR. KRAUSS: NOT REALLY. NO, BECAUSE LIFE IMPRISONMENT  
8 IS A FORM OF DEATH ALSO.

9 MR. BARENS: QUITE SO.

10 MR. KRAUSS, DO YOU UNDERSTAND THAT WHEN HIS HONOR  
11 MAKES REFERENCE TO LIFE WITHOUT POSSIBILITY OF PAROLE, THAT  
12 UNDER THE STATE OF THE LAW IN CALIFORNIA, IT REALLY MEANS THAT?  
13 DO YOU HAVE ANY LINGERING DOUBT THAT, OH, WE SAY THAT TO YOU,  
14 BUT WE DON'T REALLY MEAN THAT? A COUPLE OF YEARS GO BY AND  
15 THE GUY IS LET OUT?

16 DO YOU UNDERSTAND THAT WHEN THE COURT SAYS THAT  
17 TO YOU, THE COURT MEANS THAT, AND IT IS LITERALLY THE TRUTH?

18 MR. KRAUSS: YES, SIR.

19 MR. BARENS: YOU KNOW UNDER OUR SYSTEM, THE DEFENDANT  
20 IS ENTITLED TO A NEUTRAL JURY OF HIS PEERS, OR AS NEUTRAL AS  
21 WE HUMAN BEINGS CAN EVER BE IN THIS INSTANCE. KNOWING AS YOU  
22 DO ABOUT YOUR MORAL CONVICTIONS, WHICH I RESPECT, CONCERNING  
23 THE DEATH PENALTY FOR CERTAIN TYPES OF CRIMES, DO YOU FEEL  
24 YOU COULD BE TRUTHFULLY A NEUTRAL JUROR IN DECIDING WHETHER  
25 MY CLIENT SHOULD LIVE OR DIE IF YOU CAME TO A PENALTY PHASE  
26 IN THIS CASE?

27 MR. KRAUSS: I THINK SO ON THE BASIS THAT I HAVE A  
28 JUDAIC-TALMUDIC BACKGROUND, AND TO SEND ONE PERSON INNOCENTLY

1 TO IMPRISONMENT OR ANYTHING, WE ARE ALL GUILTY OF IT; THE  
2 WHOLE VILLAGE IS GUILTY.

3 MR. BARENS: I APPRECIATE THAT, MR. KRAUSS. THE PROBLEM  
4 I HAVE IS THAT BY THE TIME YOU GET TO A PENALTY PHASE, YOU  
5 HAVE ALREADY DETERMINED THAT MY CLIENT WAS GUILTY.

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1                   NOW WHAT I AM ASKING YOU ABOUT IS YOUR ABILITY  
2 TO BE A TRULY NEUTRAL JUROR ON THE ISSUE OF LIFE OR DEATH.

3                   MR. KRAUSS: I FEEL I WOULD.

4                   MR. BARENS: MR. KRAUSS, DO YOU BELIEVE IN THE TALMUDIC  
5 ADAGE OF "AN EYE FOR AN EYE"?

6                   MR. KRAUSS: THAT'S A VERY INTELLECTUAL QUESTION, AND  
7 IT HAS BEEN DEBATED FOR YEARS.

8                   MR. BARENS: IT IS HARD FOR ME TOO, MR. KRAUSS.

9                   MR. KRAUSS: LIKE I SAID, IT DEPENDS ON THE CIRCUMSTANCES.  
10 IF IT HAD TO DEAL WITH ANYTHING THAT HAPPENED IN EUROPE, I  
11 HAVE NO PROBLEMS ABOUT IT. A POLICEMAN SHOT --

12                   THE COURT: WHAT DO YOU MEAN BY THAT? WHAT ABOUT ANY-  
13 THING THAT HAPPENS HERE?

14                   MR. KRAUSS: NO. I AM REFERRING TO THE HOLOCAUST, SIR.

15                   THE COURT: I UNDERSTAND THAT.

16                   MR. KRAUSS: I AM SORRY. GO AHEAD.

17                   THE COURT: BUT THEY AREN'T HAPPENING IN EUROPE. THEY  
18 ARE HAPPENING HERE. WHAT'S YOUR ATTITUDE?

19                   MR. KRAUSS: WELL, HERE IS -- I WAS REFERRING TO HERE.  
20 FOR INSTANCE, THE POLICEMAN WHO ACCIDENTALLY SHOT SOMEBODY.

21                   THE COURT: THERE IS NO QUESTION OF ACCIDENT INVOLVED.  
22 NOTHING TO DO WITH THE DEATH PENALTY WHERE SOMEBODY ACCIDENTALLY  
23 DID ANYTHING.

24                   MR. KRAUSS: YES, SIR.

25                   THE COURT: THAT DOESN'T APPLY TO A DEATH PENALTY CASE.  
26 YOU UNDERSTAND THAT?

27                   MR. KRAUSS: UH-HUH.

28                   MR. BARENS: WHAT YOUR HONOR IS SUGGESTING AND WHAT I

1 AM CONFRONTED WITH, MR. KRAUSS, YOU SEE, THE ONLY TIME WE  
2 GET TO THIS PENALTY PHASE IS IF YOU ARE CONVINCED BY THE  
3 PEOPLE OF THIS STATE THAT AN INTENTIONAL MURDER TOOK PLACE  
4 DURING THE COMMISSION OF A ROBBERY. LET'S SAY THAT SOMEBODY  
5 GOT KILLED SO SOMEBODY COULD GET SOME MONEY OR PROFIT OR GAIN  
6 OUT OF THAT UNHAPPY CIRCUMSTANCE.

7 WHAT I AM ASKING YOU AND WHAT I AM TRYING TO FIND  
8 OUT IS WHETHER GIVEN THOSE FACTS, YOU COULD BE NEUTRAL IN  
9 DETERMINING WHETHER THAT DEFENDANT LIVED OR DIED, OR WHETHER  
10 YOUR MORAL BELIEFS WOULD DICTATE TO YOU THAT THAT DEFENDANT  
11 HAS GOT TO DIE NO MATTER WHAT?

12 MR. KRAUSS: NO. THAT DEFENDANT DOES NOT HAVE TO DIE.  
13 BASED ON, LIKE I SAID BEFORE, WHAT THE INSTRUCTIONS WOULD BE,  
14 WHAT BACKGROUND YOU WOULD BRING IN, OR WHATEVER EVIDENCE YOU  
15 WOULD BRING IN. I ALSO WAS A PSYCH. MAJOR.

16 THE COURT: YOU WERE WHAT?

17 MR. KRAUSS: A PSYCH. MAJOR, PSYCHOLOGY MAJOR.

18 THE COURT: OH, I SEE. YES.

19 MR. KRAUSS: THERE ARE AREAS OF UNDERSTANDING THERE TOO.

20 THE COURT: OKAY.

21 MR. BARENS: I THINK YOU FOR YOUR OPENNESS, MR. KRAUSS.

22 THANK YOU.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: THANK YOU, YOUR HONOR.

25 MR. KRAUSS, I AM FRED WAPNER. I AM THE DEPUTY  
26 DISTRICT ATTORNEY THAT'S PROSECUTING THIS CASE.

27 PUR YOURSELF IN THIS SITUATION. THE JURY HAS  
28 ALREADY DECIDED THAT THE DEFENDANT IS GUILTY OF MURDER IN THE

1 FIRST DEGREE DURING THE COURSE OF A ROBBERY, AND YOU HAVE SAT  
2 AND LISTENED TO ALL OF THE EVIDENCE ON BOTH SIDES IN THE  
3 PENALTY PHASE, AND NOW YOU ARE IN THE JURY ROOM DELIBERATING  
4 THE QUESTION OF LIFE OR DEATH.

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2 IF YOU THINK THE APPROPRIATE PUNISHMENT IS DEATH,  
3 DO YOU THINK YOU CAN FIND IT IN YOUR HEART AND IN YOUR  
4 CONSCIENCE, TO COME INTO THE COURT, SIT IN THE JURY BOX, LOOK  
5 AT THE DEFENDANT AND SAY, "MY INDIVIDUAL VOTE IS THAT YOU  
6 SHOULD RECEIVE THE DEATH PENALTY"?

7 MR. KRAUSS: I THINK SO. I HAVE NEVER BEEN IN THAT  
8 POSITION. BUT I THINK SO.

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

10 MR. KRAUSS: WELL, IT IS --

11 THE COURT: WAIT A MINUTE. IF THE FACTS INDICATED IT,  
12 COULD YOU FIND IT IN YOUR HEART TO VOTE FOR LIFE WITHOUT THE  
13 POSSIBILITY OF PAROLE? IT IS JUSTIFIED?

14 MR. KRAUSS: I FEEL THAT I COULD DO EITHER ONE IF  
15 NECESSARY. I COULD DO EITHER ONE, WHICHEVER WAS THE  
16 APPROPRIATE DECISION THAT I WOULD HAVE TO MAKE.

17 MR. WAPNER: YOU WOULD BE ABLE TO WEIGH THE FACTS?

18 MR. KRAUSS: YES, SIR, I THINK I COULD. THAT IS --

19 MR. WAPNER: WELL, UNFORTUNATELY, NOW IS THE ONLY TIME  
20 WE HAVE TO ASK YOU ABOUT THIS.

21 BECAUSE IF IT TURNS OUT THAT YOU GET INTO THE  
22 JURY ROOM AND YOU START EXAMINING YOURSELF AND YOU SAY YOU  
23 KNOW, REGARDLESS OF THE FACTS, I JUST DON'T HAVE IT IN ME  
24 TO RETURN A VERDICT OF DEATH, THEN IT IS TOO LATE. DO YOU  
25 UNDERSTAND THAT?

26 MR. KRAUSS: YES, SIR.

27 MR. WAPNER: SO, I UNDERSTAND THAT THIS IS A DIFFICULT  
28 QUESTION. WHAT I AM ASKING YOU TO DO IS, SEARCH YOUR SOUL  
AND SEE IF YOU CAN COME UP WITH A DEFINITE ANSWER ONE WAY

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1 OR THE OTHER, IF IT IS POSSIBLE.

2 MR. KRAUSS: YES, SIR. I CAN DETACH MYSELF EMOTIONALLY,  
3 THAT IS, FROM WHAT WOULD BE NECESSARY.

4 MR. WAPNER: OKAY. THANK YOU. PASS FOR CAUSE.

5 THE COURT: ALL RIGHT.

6 MR. BARENS: PASS FOR CAUSE.

7 THE COURT: ALL RIGHT. MR. KRAUSS, YOU SEE, WE ARE  
8 IN THE PROCESS OF -- ALTHOUGH IT HAS NOW BEEN DELAYED AND  
9 I DON'T KNOW EXACTLY WHEN WE ARE GOING TO GET TO FINISHING  
10 THIS WHOLE PROCESS YOU ARE GOING TO THROUGH, I HAVE TO GO  
11 THROUGH IT WITH THE REST OF THE JURORS WHOSE LAST NAMES BEGIN  
12 AFTER K, RIGHT THROUGH TO Z.

13 SO IT IS EXPECTED THAT IT WILL BE AT LEAST UNTIL  
14 DECEMBER 3RD WHEN WE FINISH THIS WHOLE PROCESS.

15 SO, I DON'T WANT YOU TO HAVE TO WAIT AROUND UNTIL  
16 THEN. WHAT I WANT YOU TO DO IS TO COME BACK TO THE JURY  
17 ASSEMBLY ROOM. MAKE A MENTAL NOTE OF IT. IT IS DECEMBER  
18 THE 3RD.

19 THAT IS DECEMBER 3RD AT 10:30 A.M.

20 THAT WILL BE 10:30 A.M. ON DECEMBER 3RD. AND  
21 IF WE AREN'T FINISHED WITH THE PROCESS BY THAT TIME, WE HAVE  
22 GOT YOUR TELEPHONE NUMBER. WE WILL GIVE YOU A CALL. WE WILL  
23 TELL YOU WHEN IT IS EXPECTED YOU SHOULD COME IN.

24 MEANTIME, DON'T TALK ABOUT THE CASE.

25 MR. CHIER: YOUR HONOR, BEFORE THE NEXT JUROR IS CALLED  
26 IN, COULD COUNSEL HAVE A MOMENT TO CONFER?

27 THE COURT: YES.

28 MR. KRAUSS: AM I EXCUSED?

10 1 THE COURT: YES. THANK YOU. THAT WILL BE DECEMBER 3RD.

2 (PROSPECTIVE JUROR KRAUSS EXITED

3 THE COURTROOM.)

4 (BRIEF PAUSE.)

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(PROSPECTIVE JUROR MICHAEL LACEY  
ENTERED THE COURTROOM.)

THE COURT: YOU ARE MR. LACEY, SIR?

MR. LACEY: YES, SIR.

THE COURT: ALL RIGHT. MR. LACEY, HAVE YOU READ  
ANYTHING AT ALL ABOUT THIS CASE?

MR. LACEY: NO I HAVE NOT.

THE COURT: NOTHING IN THE NEWSPAPER OR ANY MAGAZINES  
OR ANYTHING?

MR. LACEY: NO.

THE COURT: OR DISCUSSED IT WITH ANY PROSPECTIVE JURORS?

MR. LACEY: NO I HAVE NOT.

THE COURT: WHERE DO YOU LIVE, SIR?

MR. LACEY: LOS ANGELES.

THE COURT: WHERE? WHICH PART OF LOS ANGELES?

MR. LACEY: LIKE NORTH INGLEWOOD.

THE COURT: NORTH INGLEWOOD?

MR. LACEY: UH-HUH.

THE COURT: ALL RIGHT. NOW, YOU WERE HERE AT THE TIME  
I EXPLAINED THE NATURE OF THIS CASE TO ALL OF THE PROSPECTIVE  
JURORS WHO WERE SEATED BACK THERE?

MR. LACEY: YES, SIR.

THE COURT: NOW, JUST BRIEFLY, I AM GOING TO EXPLAIN  
THE THING TO YOU WHY WE ARE HERE.

THE CHARGE AGAINST THE DEFENDANT IS THAT HE  
COMMITTED A FIRST DEGREE MURDER IN THE COURSE OF A ROBBERY.

BECAUSE IT WAS COMMITTED ALLEGEDLY DURING THE  
COURSE OF A ROBBERY, THAT QUALIFIES THIS CASE FOR A POSSIBLE

1 DEATH PENALTY. DO YOU UNDERSTAND THAT?

2 MR. LACEY: YES.

3 THE COURT: NOW, IT IS NOT EVERY MURDER OF THE FIRST  
4 DEGREE THAT CALLS FOR A DEATH PENALTY. IT IS ONLY THOSE  
5 MURDERS COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES THAT  
6 THE LEGISLATURE SAYS QUALIFY FOR A POSSIBLE DEATH VERDICT.  
7 DO YOU UNDERSTAND THAT?

8 MR. LACEY: YES, SIR.

9 THE COURT: NOW FOR EXAMPLE, AS I TOLD YOU IN THIS CASE,  
10 A MURDER COMMITTED DURING THE COURSE OF A ROBBERY, A MURDER  
11 COMMITTED DURING THE COURSE OF A KIDNAPPING, MURDER COMMITTED  
12 DURING THE COURSE OF A BURGLARY, MURDER DURING THE COURSE  
13 OF A RAPE, MURDER COMMITTED DURING THE COURSE OF MULTIPLE  
14 MURDERS FOR EXAMPLE OR MURDERS COMMITTED DURING THE COURSE  
15 OF TORTURING SOMEBODY, THE LEGISLATURE HAS SAID THAT IN THOSE  
16 INSTANCES, AND THERE MAY BE SOME OTHERS, THE DEATH PENALTY  
17 MAY BE WARRANTED IF THE JURY SO FINDS. IS THAT CLEAR?

18 MR. LACEY: YES.

19 THE COURT: SO, THERE ARE TWO PHASES THEREFORE OF THE  
20 TRIAL. THE FIRST PHASE WOULD BE WHEN THE JURY IS SELECTED.  
21 IN THIS CASE, WE WILL HAVE TO DETERMINE FIRST WHETHER THE  
22 DEFENDANT COMMITTED THE CRIME OF MURDER IN THE FIRST DEGREE.

23 AND THEN WHEN WE DO THAT, THEN WE HAVE TO MAKE  
24 A FINDING OF SPECIAL CIRCUMSTANCES, FINDING WAS IT TRUE.  
25 THEY WILL BE ASKED WAS IT TRUE OR FALSE THAT THAT MURDER WAS  
26 COMMITTED DURING THE COURSE OF A ROBBERY.

27 NOW, IF THEY SAY YES IT IS TRUE, THEN THAT SAME  
28 JURY HEARS EVIDENCE FROM BOTH SIDES ON WHAT WE CALL THE

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1 PENALTY PHASE, AS TO WHAT PENALTY SHOULD BE INFLICTED UPON  
2 THE DEFENDANT.

3 NOW, THERE ARE ONE OF TWO PENALTIES. IT IS EITHER  
4 LIFE WITHOUT POSSIBILITY OF PAROLE OR IT IS DEATH.

5 NOW, AT THE PENALTY PHASE, THE SAME JURY HEARS  
6 THE EVIDENCE FROM BOTH SIDES. THE DEFENDANT WILL PRODUCE  
7 EVIDENCE WHICH IS FAVORABLE TO THE DEFENDANT, HIS AGE, GOOD  
8 REPUTATION, THE FACT THAT HE LED A GOOD LIFE UNTIL THEN, HAD  
9 NEVER BEEN CONVICTED OF ANY CRIME OR FACTS OF THAT KIND ABOUT  
10 HIS BACKGROUND, HIS ENVIRONMENT.

11 AND THE PEOPLE ON THE OTHER HAND, HAVE THE RIGHT  
12 TO SHOW AGGRAVATING CIRCUMSTANCES, CIRCUMSTANCES WHICH WOULD  
13 SHOW THAT HE IS A BAD PERSON THAT DID BAD THINGS. DO YOU  
14 UNDERSTAND THAT?

15 MR. LACEY: YES, SIR.

16 THE COURT: SO THE JURY CONSIDERS ALL OF THAT AND  
17 ULTIMATELY, THEY ARRIVE AT A VERDICT IF THEY CAN, WHETHER  
18 IT WOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE OR SHOULD IT  
19 BE DEATH. NOW, DO YOU HAVE A BIRD'S-EYE VIEW OF WHAT THIS  
20 THING IS ALL ABOUT?

21 MR. LACEY: YES.

22 THE COURT: ALL RIGHT. NOW, I WILL ASK YOU A SERIES  
23 OF QUESTIONS TO WHICH THE ANSWERS WILL BE YES OR NO. IF YOU  
24 DON'T UNDERSTAND IT, ASK ME TO REPEAT IT OR EXPLAIN IT AND  
25 I WILL BE HAPPY TO DO SO.

26 MR. LACEY: OKAY.

27 THE COURT: MY FIRST QUESTION TO YOU IS AS FOLLOWS --  
28 REMEMBER, THERE ARE TWO PHASES OF THE TRIAL. DO YOU HAVE

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1 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT  
2 YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR  
3 INNOCENCE OF THE DEFENDANT?

4 MR. LACEY: NO.

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

9 MR. LACEY: NO, SIR.

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1 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING  
2 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN  
3 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE  
4 SPECIAL CIRCUMSTANCES ALLEGED IN THE CASE?

5 MR. LACEY: NO, SIR.

6 THE COURT: NOW DO YOU HAVE SUCH AN OPINION CONCERNING  
7 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE  
8 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE  
9 PRESENTED AT THE PENALTY, THE SECOND PHASE OF THE TRIAL?

10 MR. LACEY: NO.

11 THE COURT: NOW ANOTHER ASPECT OF THAT SAME QUESTION:  
12 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY  
13 THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT  
14 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY  
15 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

16 MR. LACEY: NO, SIR.

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

21 MR. LACEY: YES, SIR.

22 THE COURT: ALL RIGHT.

23 ANY QUESTIONS?

24 MR. CHIER: THANK YOU, YOUR HONOR.

25 GOOD AFTERNOON, MR. LACEY.

26 MR. LACEY: GOOD AFTERNOON.

27 MR. CHIER: I WOULD LIKE TO ASK YOU --

28 THE COURT: HIS NAME IS MR. CHIER. HE REPRESENTS THE



1 DEFENDANT TOGETHER WITH MR. BARENS, YOU SEE.

2 MR. CHIER: I AM SORRY. YES. GOOD AFTERNOON.

3 MR. LACEY: I MET YOU BEFORE WHEN YOU ALL STOOD UP.

4 THE COURT: YOU MET HIM BEFORE WHEN?

5 MR. LACEY: THEY ALL STOOD UP AND INTRODUCED, EVERYTHING.

6 THE COURT: OH, YES, SURE. THAT'S WHEN I ORIGINALLY  
7 SWORE THE JURY; IS THAT RIGHT?

8 MR. LACEY: YES.

9 THE COURT: ALL RIGHT.

10 MR. CHIER: FIRST OF ALL I JUST WANT TO MAKE SURE THAT  
11 YOU UNDERSTAND THAT IN CALIFORNIA THERE IS NO MANDATORY DEATH  
12 PENALTY.

13 MR. LACEY: RIGHT.

14 MR. CHIER: RIGHT. THAT THERE ARE SOME CRIMES FOR WHICH  
15 THE PENALTY OF DEATH CAN BE GIVEN, BUT IT DOESN'T -- DOESN'T  
16 HAVE TO BE.

17 MR. LACEY: YES, SIR.

18 MR. CHIER: ALL RIGHT. NOW IN THIS PROCEEDING, IN THE  
19 RELATIVE PRIVACY OF THIS COURTROOM, WE ARE REALLY TRYING TO  
20 FIND OUT IF YOU HAVE SOME SORT OF A HIDDEN OR DEEP FEELINGS  
21 FOR OR AGAINST THE DEATH PENALTY THAT WOULD MAKE IT  
22 INADVISABLE FOR YOU TO BE A JUROR IN THIS CASE.

23 OBVIOUSLY, IT WOULDN'T BE FAIR TO THE PEOPLE FOR  
24 YOU TO BE A JUROR AND TO GO IN THERE WITHOUT EVER TELLING  
25 ANYBODY THAT YOU ARE AGAINST THE DEATH PENALTY, YOU WOULD  
26 NEVER CONVICT ANYBODY OF ANYTHING IN A CASE WHERE THEY ARE  
27 ASKING THE DEATH PENALTY; RIGHT?

28 MR. LACEY: YES, SIR.

1           MR. CHIER: AND SIMILARLY, ON THE OTHER SIDE OF THE  
2 COIN, IT WOULDN'T BE FAIR TO THE DEFENDANT FOR YOU TO HAVE  
3 A SECRET OR HIDDEN INTENT TO CONCEAL FROM THE COURT AND THE  
4 ATTORNEYS HERE THE FACT THAT YOU HAVE A REAL STRONG BIAS  
5 AGAINST THIS TYPE OF CRIME, OR THAT THE DEATH PENALTY, YOU  
6 THINK, IS NECESSARY, SO THAT ANY TIME IT IS ASKED FOR, IT  
7 OUGHT TO BE GIVEN; RIGHT?

8           MR. LACEY: YES, SIR.

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1 MR. CHIER: JUST BECAUSE THEY ASK FOR IT DOESN'T MEAN  
2 THAT YOU HAVE TO GIVE IT.

3 MR. LACEY: RIGHT.

4 MR. CHIER: THAT'S UP TO YOU.

5 MR. LACEY: YES.

6 MR. CHIER: AND THE JUDGE -- THERE IS NOBODY THAT CAN  
7 ORDER YOU TO VOTE FOR CAPITAL PUNISHMENT OR AGAINST CAPITAL  
8 PUNISHMENT IN THIS CASE; DO YOU UNDERSTAND THAT?

9 MR. LACEY: RIGHT.

10 MR. CHIER: NOT EVEN THE JUDGE.

11 MR. LACEY: YES, SIR.

12 MR. CHIER: HE CAN'T TELL YOU HOW TO DECIDE. HE CAN  
13 TELL YOU WHAT THINGS TO LOOK AT AND WHAT THINGS YOU ARE ALLOWED  
14 TO LOOK AT. BUT HE CAN'T TELL YOU WHAT THEY MEAN TO YOU, WHAT  
15 THEY OUGHT TO MEAN TO YOU; RIGHT?

16 MR. LACEY: RIGHT.

17 MR. CHIER: ALL RIGHT. NOW WITH THAT, LET ME ASK YOU  
18 THIS. HOW WOULD YOU ANSWER THIS QUESTION, MR. LACEY?

19 I AM A PERSON WHO IS, A, STRONGLY IN FAVOR OF THE  
20 DEATH PENALTY; B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY; C,  
21 OPPOSED TO THE DEATH PENALTY; OR D, YOU HAVEN'T REALLY THOUGHT  
22 ABOUT IT VERY MUCH?

23 MR. LACEY: I REALLY HAVEN'T THOUGHT ABOUT IT VERY MUCH  
24 BUT I FEEL THAT IN A CASE WHERE IT IS CALLED FOR, IT SHOULD  
25 BE USED. IN A CASE WHERE IT IS NOT CALLED FOR, IT SHOULDN'T  
26 BE USED.

27 MR. CHIER: WELL, IT IS CALLED FOR IN A NUMBER OF  
28 DIFFERENT TYPE OF CASES.

1 MR. LACEY: WELL, I MEAN BASED ON THE EVIDENCE.

2 MR. CHIER: ALL RIGHT. WELL, YOU THINK THAT IN A CASE  
3 WHERE THE PEOPLE PROVE THAT A MURDER OCCURRED, THAT IT WAS  
4 INTENTIONAL, AND THAT IT HAPPENED DURING THE COURSE OF A  
5 ROBBERY, THAT THE DEATH PENALTY SHOULD BE GIVEN IN THAT CASE?

6 THE COURT: WELL, NO. THAT'S NOT -- NO. THAT'S NOT  
7 ALL OF IT.

8 MR. CHIER: THAT'S JUST THE --

9 THE COURT: THAT'S NOT ALL OF IT. GIVE HIM THE REST  
10 OF IT.

11 THE REST OF IT IS -- I WILL EXPLAIN TO YOU. THAT'S  
12 ONLY THE FIRST PART OF IT. THE SECOND PART IS THE PENALTY  
13 PHASE WHERE YOU HEAR THINGS FAVORABLE TO THE DEFENDANT AND  
14 UNFAVORABLE TO THE DEFENDANT. THEN YOU MAKE UP YOUR MIND.

15 MR. LACEY: RIGHT.

16 THE COURT: THAT'S WHAT HE WANTS TO FIND OUT.

17 MR. LACEY: THAT'S HOW I WOULD ANSWER HIM, ON THAT BASIS,  
18 ON THE EVIDENCE, I WOULD HAVE TO MAKE A DECISION.

19 MR. CHIER: RIGHT, RIGHT. BUT LET'S ASSUME THAT YOU  
20 HAVE FOUND THE DEFENDANT GUILTY AS CHARGED, IN WHICH CASE THEN  
21 YOU HAVE TO DECIDE THE PENALTY.

22 YOU DON'T EVER GET TO THE PENALTY UNLESS HE IS  
23 GUILTY AS CHARGED; RIGHT?

24 MR. LACEY: RIGHT.

25 MR. CHIER: OKAY. SO WHAT YOU HAVE TO DO IN A WAY,  
26 WHEN YOU HAVE -- AFTER YOU FINISH THE GUILT PHASE, WHEN YOU  
27 GO TO THE PENALTY PHASE, YOU KIND OF HAVE TO START OVER AGAIN.

28 MR. LACEY: RIGHT.

1 MR. CHIER: YOU HEAR EVIDENCE AGAIN ABOUT THE DEFENDANT'S  
2 LIFE, WHETHER HE WAS A GOOD PERSON OR A BAD PERSON.

3 NOW THE PROSECUTION ALWAYS HAS THE BURDEN OF PROOF,  
4 ALWAYS; YOU UNDERSTAND THAT?

5 MR. LACEY: YES, I DO.

6 MR. CHIER: SO MY QUESTION IS THIS -- AND YOU ARE THE  
7 ONLY PERSON THAT CAN REALLY TELL US HOW YOU FEEL ABOUT THIS  
8 BECAUSE WE DON'T KNOW YOU. WE NEVER MET BEFORE. WE DON'T  
9 KOW ANYTHING ABOUT YOU. AND IF YOU DON'T -- THERE IS NO RIGHT  
10 ANSWER OR WRONG ANSWER. IF YOU DON'T TELL -- THERE IS ONLY  
11 A TRUTHFUL ANSWER OR A NOT TRUTHFUL ANSWER.

12 UNLESS YOU GIVE US A TRUTHFUL ANSWER, THE SYSTEM  
13 DOESN'T WORK. IT IS KIND OF A VOLUNTARY SELF-IDENTIFICATION  
14 THING SO THAT CERTAIN PEOPLE SHOULDN'T BE JURORS ON CERTAIN  
15 CASES. IT DOESN'T MEAN ANYTHING ABOUT YOU, THAT YOU ARE A  
16 BAD PERSON OR A GOOD PERSON; YOU UNDERSTAND?

17 MR. LACEY: RIGHT.

18 MR. CHIER: OKAY. SO HERE WE ARE BACK IN THE JURY ROOM,  
19 THE GUILT PHASE IS OVER, THE PENALTY PHASE IS ABOUT TO  
20 START, AND YOU HAVE CONVICTED HIM OF FIRST DEGREE INTENTIONAL  
21 MURDER, AND THE NEEDLE LIKE ON A GASOLINE GAUGE IS SUPPOSED  
22 TO BE BACK AT NEUTRAL; RIGHT? IT IS NOT SUPPOSED TO BE LEANING.

23 NOW HAVING CONVICTED THE PERSON OF FIRST DEGREE  
24 INTENTIONAL MURDER IN THE COURSE OF A ROBBERY, IS THAT GOING  
25 TO PUT IN YOUR MIND A GREATER BURDEN ON THE DEFENDANT OF  
26 PERSUADING YOU TO SAVE HIS LIFE THAN FOR THE PROSECUTION, THE  
27 PROSECUTION'S BURDEN OF ASKING YOU TO TAKE THEIR LIFE; YOU  
28 UNDERSTAND MY QUESTION?

1           MR. LACEY: YES, I DON'T THINK IT WILL, BUT LIKE I SAID,  
2 I HAVE TO HEAR THE EVIDENCE AND HEAR ALL THE FACTS ABOUT WHAT  
3 HAPPENED. THEN YOU MAKE A DETERMINATION, DECISION, ABOUT  
4 WHETHER THE DEATH PENALTY OR NOT.

5           MR. CHIER: OKAY. LET'S -- THE DEFENDANT -- THE JUDGE  
6 IS GOING TO TELL YOU THAT THERE ARE THINGS YOU CAN CONSIDER.  
7 YOU THINK YOU MAY CONSIDER. BUT OBVIOUSLY HE CAN'T FORCE YOU --  
8 HE CAN'T FORCE THESE THINGS TO MAKE ANY DIFFERENCE TO YOU.

9           DO YOU UNDERSTAND WHAT I AM SAYING?

10          MR. LACEY: RIGHT.

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1 MR. CHIER: HE CAN SAY YOU CAN CONSIDER THE FACT OF  
2 WHETHER HE IS OLD OR YOUNG. HE CAN'T FORCE YOU TO CARE WHETHER  
3 HE IS OLD OR YOUNG.

4 MR. LACEY: UH-HUH.

5 MR. CHIER: WHAT I WANT TO KNOW IS DO YOU THINK IF THE  
6 COURT TOLD YOU THAT YOU COULD CONSIDER THE DEFENDANT WAS YOUNG,  
7 WHETHER IT WOULD MAKE ANY DIFFERENCE TO YOU?

8 MR. LACEY: NO. A CRIME'S A CRIME, AND THE PENALTY'S  
9 A PENALTY.

10 MR. CHIER: A CRIME'S A CRIME AND THE TIME'S THE TIME,  
11 RIGHT?

12 OKAY. HOW ABOUT IF THE JUDGE SAID YOU COULD ALSO  
13 CONSIDER WHETHER OR NOT HE HAD BEEN A GOOD PERSON, DIDN'T HAVE  
14 ANY PRIOR CONVICTIONS UP UNTIL THE TIME THAT YOU CONVICTED  
15 HIM OF FIRST DEGREE INTENTIONAL MURDER IN THE COURSE OF A  
16 ROBBERY; DO YOU THINK THAT SHOULD MAKE ANY DIFFERENCE?

17 MR. LACEY: NO.

18 MR. CHIER: OKAY. NOW UNDERSTAND, I AM NOT TALKING  
19 ABOUT YOUR WILLINGNESS TO LISTEN TO THE JUDGE. I AM TALKING  
20 ABOUT --

21 THE COURT: YOU ARE ASKING HIM TO PREJUDGE THE TESTIMONY.

22 MR. CHIER: I AM?

23 THE COURT: YES. YOU ARE ASKING HIM WHETHER OR NOT HE  
24 WOULD CONSIDER IT. HE WOULD SAY NO. THAT'S WHAT YOU ARE  
25 ASKING HIM. I TOLD HIM THAT THE JUDGE WILL INSTRUCT HIM AS  
26 TO ALL OF THE THINGS THAT THEY CAN TAKE INTO CONSIDERATION.

27 "WOULD YOU OBEY THAT PARTICULAR INSTRUCTION?"  
28 AND HE SAID, "YES."

1                   NOW YOU ARE ASKING HIM TO PREMATURELY JUDGE WHETHER  
2 OR NOT KNOWING WHAT THE RECORD IS OR ANYTHING ELSE, TO ASK  
3 HIM WHETHER OR NOT HE AT THIS TIME, WHETHER HE WOULD CONSIDER  
4 IT. THAT'S NOT PROPER.

5                   MR. CHIER: NOT WHETHER HE WOULD, YOUR HONOR, THAT THE  
6 QUESTION WAS WHETHER --

7                   THE COURT: I HAVE MADE MY RULING. LET'S GET ON TO  
8 SOMETHING ELSE.

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1 MR. CHIER: WELL, I AM RIGHT IN THE MIDDLE OF QUESTIONING  
2 THIS MAN.

3 THE COURT: NO. I DON'T WANT YOU TO ASK THAT, NOT THE  
4 WAY YOU ASKED IT. YOU ARE ASKING WHETHER HE COULD CONSIDER --  
5 WHETHER HE COULD CONSIDER THE CRIMINAL BACKGROUND.

6 MR. CHIER: THAT IS NOT WHAT I SAID. YOU PUT IT TO HIM  
7 AS IMMORAL AND --

8 THE COURT: REGROUP YOUR QUESTION.

9 MR. CHIER: THE QUESTION IS SIR, ASSUMING THAT THE JUDGE  
10 HAD INSTRUCTED YOU THAT YOU MIGHT -- YOU MAY CONSIDER CERTAIN  
11 THINGS, DO YOU THINK IT SHOULD MAKE ANY DIFFERENCE IN CONSIDER-  
12 ING WHETHER A PERSON GETS THE DEATH PENALTY OR LIFE WITHOUT  
13 POSSIBILITY OF PAROLE, WHETHER HE IS YOUNG OR OLD? DO YOU  
14 UNDERSTAND THE DIFFERENCE?

15 MR. LACEY: YES.

16 MR. CHIER: I AM NOT ASKING YOU TO PREJUDGE. BUT, DO  
17 YOU REALLY THINK THAT AS A MORAL PRINCIPLE, THAT IT OUGHT TO  
18 MATTER WHETHER A PERSON IS YOUNG OR NOT?

19 MR. LACEY: NO, SIR.

20 MR. CHIER: OKAY. SHOULD IT MATTER WHETHER A PERSON  
21 HAS NEVER DONE IT BEFORE, IF THEY DID DO IT?

22 MR. LACEY: YES.

23 MR. CHIER: THAT SHOULD MATTER?

24 MR. LACEY: YES, SIR.

25 MR. CHIER: OKAY. SHOULD IT MATTER WHETHER OR NOT THEY  
26 HAD A GOOD OR BAD CHILDHOOD?

27 MR. LACEY: NO, SIR.

28 MR. CHIER: OKAY. SO THAT EVEN IF THE COURT WERE TO

1 TELL YOU THAT THESE ARE THINGS THAT YOU COULD CONSIDER, YOU  
2 DON'T THINK THAT THEY REALLY OUGHT TO MAKE ANY DIFFERENCE TO  
3 YOU, MR. LACEY?

4 MR. LACEY: YES, SIR.

5 THE COURT: WAIT A MINUTE. HE ANSWERED THE QUESTION  
6 SPECIFICALLY WITH RESPECT TO THE CONVICTION. HE SAID THAT  
7 IT WOULD MAKE A DIFFERENCE TO HIM.

8 NOW, YOU ARE LUMPING EVERYTHING TOGETHER AND --

9 MR. CHIER: WELL THEN, I WILL SEPARATE IT OUT.

10 WITH RESPECT TO THE BAD CHILDHOOD AND THE AGE,  
11 EVEN IF THE COURT SAYS NOW THAT IN DECIDING WHETHER TO -- WHAT  
12 TO DO WITH THIS PERSON, YOU CAN CONSIDER AGE, YOU CAN CONSIDER

13 MR. LACEY: THE JUDGE IS SAYING THIS?

14 MR. CHIER: YES. HE IS SAYING THAT YOU CAN LOOK AT THOSE  
15 THINGS.

16 THE COURT: SUPPOSE I SAY TO YOU THE FACT THAT ALL OF  
17 HIS LIFE, ALL OF HIS LIFE EXCEPT FOR THIS ONE TIME, HE LED  
18 AN EXEMPLARY LIFE. WOULD YOU CONSIDER THAT FAVORABLE TO HIM  
19 IN WHETHER OR NOT YOU SHOULD IMPOSE THE DEATH PENALTY?

20 MR. LACEY: YES, SIR.

21 THE COURT: OKAY.

22 MR. CHIER: BUT YOUR HONOR IS ASKING HIM TO PREJUDGE  
23 THE EVIDENCE AND --

24 THE COURT: I AM NOT. I AM TELLING HIM WHETHER OR NOT  
25 SOMEBODY LEADS AN EXEMPLARY LIFE AND HE SAID YES, HE WOULD  
26 CONSIDER THAT. DON'T YOU WANT HIM TO CONSIDER THAT? IS THAT  
27 WHAT YOU ARE ASKING?

28 MR. CHIER: NO. THERE IS A DIFFERENCE BETWEEN WHETHER

12-3

1 HE WOULD FOLLOW YOUR INSTRUCTIONS AND HOW HE FEELS ABOUT THESE  
2 THINGS.

3 WE ARE TALKING ABOUT HOW HE FEELS.

4 THE COURT: I THINK WE HAVE ABOUT EXHAUSTED ALL OF THE  
5 QUESTIONS OF THIS JUROR.

6 MR. CHIER: MAY I HAVE ONE MOMENT?

7 (THERE WAS A BRIEF PAUSE.)

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1 MR. CHIER: WELL, I WILL ABIDE BY THE COURT'S WISHES,  
2 YOUR HONOR.

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

4 MR. WAPNER: YES. MR. LACEY, I AM FRED WAPNER, THE  
5 DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE.

6 DO YOU HAVE ANY STRONGLY HELD RELIGIOUS, MORAL  
7 OR PHILOSOPHICAL BELIEFS ABOUT THE DEATH PENALTY THAT WOULD  
8 MAKE IT DIFFICULT FOR YOU TO SIT AS A JUROR IN THIS CASE?

9 MR. LACEY: NO, SIR.

10 MR. WAPNER: HAD YOU GIVEN ANY THOUGHT TO THE DEATH  
11 PENALTY BEFORE YOU WERE ASKED TO COME AND ANSWER THESE  
12 QUESTIONS IN THIS CASE?

13 MR. LACEY: NO, SIR.

14 MR. WAPNER: DO YOU THINK THAT YOU ARE THE TYPE OF PERSON  
15 WHO WAS CAPABLE OF MAKING THE DECISION THAT WE ARE ASKING  
16 YOU TO MAKE AS TO WHETHER THE DEFENDANT SHOULD LIVE OR DIE?

17 MR. LACEY: YES, SIR.

18 MR. WAPNER: AND SO, DO YOU HAVE IT WITHIN YOU TO MAKE  
19 EITHER DECISION, ONE WAY OR THE OTHER, IF IT IS APPROPRIATE?

20 MR. LACEY: YES I DO.

21 MR. WAPNER: OKAY. HAVE YOU EVER BEEN THROUGH THIS  
22 PROCESS BEFORE, SITTING AS A JUROR IN A DEATH PENALTY CASE?

23 MR. LACEY: NO.

24 MR. WAPNER: IS THERE ANYTHING THAT YOU CAN THINK OF  
25 ABOUT YOUR BACKGROUND THAT WOULD BEAR ON YOUR ABILITY TO BE  
26 A FAIR JUROR ON THE PENALTY PHASE OF THIS CASE?

27 MR. LACEY: NO, SIR.

28 MR. WAPNER: DO YOU UNDERSTAND THAT WHEN YOU ARE

12R-2

1 DECIDING THE QUESTION OF GUILT OR INNOCENCE, THAT YOU CAN'T  
2 THINK ABOUT THE PENALTY? YOU HAVE TO SAY YES OR NO.

3 MR. LACEY: YES, SIR.

4 MR. WAPNER: SO THAT MEANS WHEN YOU ARE DECIDING WHETHER  
5 A CRIME WAS COMMITTED, WHETHER THE DEFENDANT DID IT, YOU HAVE  
6 GOT TO PUT OUT OF YOUR MIND WHAT MIGHT HAPPEN TO HIM IF YOU  
7 FIND ONE WAY OR THE OTHER?

8 MR. LACEY: YES, SIR.

9 MR. WAPNER: YOU CAN DO THAT?

10 MR. LACEY: YES, SIR.

11 MR. WAPNER: PASS FOR CAUSE.

12 MR. BARENS: PASS FOR CAUSE.

13 THE COURT: THANK YOU VERY MUCH, MR. LACEY. WE ARE  
14 ONLY UP TO THE L'S. WE HAVE GOT TO GO THROUGH TO Z WITH ALL  
15 OF THE OTHER PROSPECTIVE JURORS AND FINISH THIS PROCESS.

16 AND THE WAY IT IS GOING, IT LOOKS LIKE WE WON'T  
17 BE FINISHED BEFORE DECEMBER 3RD. SO WHAT I WILL ASK YOU TO  
18 DO, MR. LACEY, IS TO COME BACK TO THE JURY ASSEMBLY ROOM.  
19 HOPEFULLY, WE WILL BE FINISHED BY THAT DAY. THAT WILL BE  
20 DECEMBER 3RD AT 10:30 A.M. ALL RIGHT?

21 MR. LACEY: YES, SIR.

22 THE COURT: AND WE HAVE YOUR TELEPHONE NUMBER IN THE  
23 EVENT THAT IT TAKES US LONGER. AND IT MAY VERY WELL.

24 IF IT DOES, WE'LL CALL YOU UP AND TELL YOU THAT  
25 WE EXPECT TO FINISH IT AND WHEN YOU CAN COME BACK. WOULD  
26 THAT BE ALL RIGHT?

27 MR. LACEY: YES, SIR.

28 THE COURT: MEANTIME, DON'T READ ANYTHING ABOUT THE

12R-3

1 CASE. DON'T TALK TO ANYBODY ELSE ABOUT IT. ALL RIGHT?

2 MR. LACEY: YES, SIR.

3 THE COURT: THAT WILL BE DECEMBER 3RD IN THE JURY  
4 ASSEMBLY ROOM AT 10:30. SEE YOU THEN.

5 MR. LACEY: OKAY.

6 THE COURT: GOOD NIGHT. SORRY TO HAVE KEPT YOU WAITING.

7 (PROSPECTIVE JUROR LACEY EXITED THE  
8 COURTROOM.)

9 (PROSPECTIVE JUROR SHIRLEY LEEDS  
10 ENTERED THE COURTROOM.)

11 THE COURT: HOW ARE YOU?

12 MS. LEEDS: FINE.

13 THE COURT: IS IT MISS LEEDS?

14 MS. LEEDS: MRS.

15 THE COURT: MRS. LEEDS?

16 MS. LEEDS: YES.

17 THE COURT: WHERE DO YOU LIVE, MRS. LEEDS?

18 MS. LEEDS: CHEVIOT HILLS.

19 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS  
20 CASE OR HEARD ANYTHING AT ALL ABOUT IT FROM ANY SOURCE, THIS  
21 CASE?

22 MS. LEEDS: NO.

23 THE COURT: EXCEPT WHAT I TOLD YOU ABOUT THE CASE  
24 GENERALLY?

25 MS. LEEDS: THAT'S ALL.

26 THE COURT: THAT'S ALL?

27 MS. LEEDS: YES.

28 THE COURT: ALL RIGHT. WHAT I WILL DO IS, BRIEFLY TELL

12R-3

1 YOU AGAIN ABOUT WHAT THE CASE IS ALL ABOUT. THEN I WILL ASK  
2 A NUMBER OF QUESTIONS.

3 BEFORE I DO, I JUST WANT TO SUMMARIZE THE FACTS  
4 SO THAT YOU WOULD HAVE SOME BACKGROUND IN ANSWERING SPECIFIC  
5 QUESTIONS THAT I AM GOING TO ASK YOU. THERE WILL BE SIX IN  
6 ALL.

7 MS. LEEDS: OKAY.

8 THE COURT: RIGHT. DO YOU REMEMBER THAT I TOLD THE  
9 JURORS THAT THIS WAS A MURDER CASE, MURDER IN THE FIRST DEGREE  
10 AND THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY?

11 MS. LEEDS: YES.

12 THE COURT: NOW, IT WAS COMMITTED IN THE COURSE OF A  
13 ROBBERY QUALIFIES THIS CASE FOR THE DEATH PENALTY. THAT IS  
14 A DEATH QUALIFICATION, DO YOU UNDERSTAND?

15 MS. LEEDS: UH-HUH.

16 THE COURT: THE LEGISLATURE HAS SAID IN CERTAIN KINDS  
17 OF SITUATIONS WHERE THERE ARE CERTAIN SPECIAL CIRCUMSTANCES  
18 PRESENT, THE DEATH PENALTY MAY BE IN THE JURY'S DISCRETION,  
19 METED OUT TO THE DEFENDANT WHO HAS BEEN CONVICTED OF MURDER  
20 IN THE FIRST DEGREE.

21 A MURDER COMMITTED DURING THE COURSE OF A ROBBERY,  
22 A MURDER COMMITTED DURING THE COURSE OF A KIDNAPPING, A  
23 MURDER COMMITTED DURING THE COURSE OF A RAPE, A MURDER  
24 COMMITTED DURING THE COURSE OF A BURGLARY, A MURDER COMMITTED  
25 DURING THE COURSE OF TORTURE OR MULTIPLE MURDERS, THOSE ARE  
26 SOME OF THE INSTANCES WHERE THE LEGISLATURE HAS SAID THAT  
27 IN THOSE CASES, THE DEATH PENALTY MAY BE A PENALTY IN THE  
28 CASE. DO YOU UNDERSTAND THAT?

12B-4

1 MS. LEEDS: YES.

2 THE COURT: NOW, WHEN I TALK ABOUT THE DEATH PENALTY,  
3 I MEAN THE DEATH PENALTY PHASE. THAT DOESN'T MEAN THAT IT  
4 IS ONLY THE DEATH PENALTY THAT CAN BE VOTED. BUT THERE IS  
5 AN ALTERNATIVE WHICH IS LIFE WITHOUT POSSIBILITY OF PAROLE.

6 DO YOU UNDERSTAND WHAT THOSE ARE? SO, WHAT YOU  
7 WILL HEAR FIRST IF YOU ARE A JUROR, IS WHAT WE CALL THE GUILT  
8 PHASE. IS THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE?

9 AND IF YOU SAY THAT HE IS GUILTY OF MURDER IN  
10 THE FIRST DEGREE, THEN THE JURY AT THE SAME TIME, WILL  
11 CONSIDER WHETHER OR NOT IT IS TRUE OR FALSE THAT IT WAS  
12 COMMITTED DURING THE COURSE OF A ROBBERY.

13 AND IF THE JURY SAYS YES, THAT IT WAS COMMITTED  
14 DURING THE COURSE OF A ROBBERY AND THEY SAY IT IS TRUE, THEN  
15 WE HAVE ANOTHER TRIAL, SO TO SPEAK.

16 THE SAME JURY THAT HEARS EVIDENCE FROM BOTH SIDES  
17 ON WHAT WE CALL -- WHAT IS KNOWN AS THE PENALTY PHASE, WHERE  
18 THEY HAVE TO DECLARE WHAT THE PENALTY SHOULD BE IF THEY CAN.  
19 SHALL IT BE LIFE WITHOUT POSSIBILITY OF PAROLE OR SHALL IT  
20 BE DEATH?

21 THEN THE DEFENSE AND THE PROSECUTION BRING IN  
22 EVIDENCE THAT YOU WILL HEAR FROM THE WITNESS STAND. THE  
23 DEFENSE OF COURSE, WILL SHOW THAT THE DEFENDANT IS AN  
24 EXCEEDINGLY GOOD PERSON AND ALL OF THE THINGS THAT ARE  
25 FAVORABLE ABOUT HIM. THE COURT WILL ASK YOU TO CONSIDER HIS  
26 AGE AND WILL ASK YOU TO CONSIDER THE ABSENCE OF ANY CRIMINAL  
27 BACKGROUND OR RECORD OR GOOD CONDUCT DURING THE COURSE OF  
28 HIS LIFE, WHETHER HE ENGAGED IN ANY KIND OF IMPROPRIETY AND



12B-5

1 SO FORTH. THAT WILL BE HIS WHOLE MAKEUP.

2 THE PROSECUTION WILL TRY TO SHOW THAT HE IS A  
3 BAD PERSON, THAT HE HAS DONE BAD THINGS. THE JURY WILL HEAR  
4 BOTH SIDES AND THEN THEY GO INTO THE JURY ROOM TO MAKE A  
5 DECISION, SHOULD IT BE LIFE WITHOUT POSSIBILITY OF PAROLE  
6 OR SHOULD IT BE DEATH. DO YOU UNDERSTAND THAT?

7 MS. LEEDS: YES I DO.

8 THE COURT: OKAY. NOW, OF COURSE, NOT EVERY MURDER,  
9 EVEN IF IT IS DELIBERATE, PREMEDITATED MURDER, CALLS FOR THE  
10 DEATH PENALTY. IT IS ONLY THOSE MURDERS WHICH ARE ACCOMPANIED  
11 BY SPECIAL CIRCUMSTANCES THAT I TOLD YOU ABOUT, THAT QUALIFY  
12 THE CASE FOR IT.

13 MS. LEEDS: OKAY.

14 THE COURT: YOU DO NOT HAVE ANY QUESTIONS, DO YOU?

15 MS. LEEDS: NO.

16 THE COURT: ALL RIGHT. NOW, THESE ARE THE QUESTIONS  
17 I AM GOING TO ASK YOU.

18 MS. LEEDS: OKAY.

19 THE COURT: IF IT IS NOT CLEAR, ASK ME TO REPEAT IT  
20 OR EXPLAIN IT TO YOU.

21 MS. LEEDS: OKAY.

22 THE COURT: FIRST, DO YOU HAVE ANY OPINION REGARDING  
23 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN  
24 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE  
25 DEFENDANT? NOW, THIS IS THE GULIT PHASE, THE FIRST PHASE,  
26 WHERE YOU DETERMINE IS HE GUILTY OR NOT GUILTY OF MURDER IN  
27 THE FIRST DEGREE. YOU UNDERSTAND THAT?

28 MS. LEEDS: I AM NOT SURE I UNDERSTAND THAT WHOLE QUESTION.

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1 THE COURT: DO YOU HAVE AN OPINION ABOUT THE DEATH  
2 PENALTY?

3 MS. LEEDS: I DON'T.

4 THE COURT: YOU DON'T?

5 MS. LEEDS: NO, I DON'T.

6 THE COURT: ALL RIGHT. WHATEVER OPINION YOU MIGHT HAVE  
7 HAD, WILL THAT AFFECT YOU IN ANY WAY IN MAKING A DECISION AS  
8 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

9 MS. LEEDS: I HAVE NO OPINION, SIR. I GUESS IT WOULD  
10 NOT.

11 THE COURT: SO IT WOULD NOT?

12 MS. LEEDS: IT WOULD NOT.

13 THE COURT: ALL RIGHT. SO THE SECOND QUESTION IS DO  
14 YOU HAVE AN OPINION REGARDING THE DEATH PENALTY THAT WOULD  
15 CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER EVEN IF THE  
16 PROSECUTION HAD NOT PROVED MURDER IN THE FIRST DEGREE OR SOME  
17 OTHER, MURDER IN THE SECOND DEGREE, OR SOMETHING LIKE THAT?

18 MS. LEEDS: I DON'T THINK SO.

19 THE COURT: ALL RIGHT.

20 MS. LEEDS: NONE AT ALL.

21 THE COURT: ALL RIGHT.

22 NOW DO YOU REMEMBER I TOLD YOU THAT IF YOU FIND  
23 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE  
24 JURY WOULD BE CALLED UPON TO DETERMINE WHETHER OR NOT IT WAS  
25 COMMITTED DURING THE COURSE OF A ROBBERY. DURING THE COURSE  
26 OF A ROBBERY IS WHAT IS KNOWN AS A SPECIAL CIRCUMSTANCES WHERE  
27 THE JURY HAS TO DETERMINE, IS IT TRUE OR IS IT FALSE THAT IT  
28 WAS COMMITTED IN THE COURSE OF A ROBBERY. THAT'S WHAT WE CALL

1 THE PENALTY PHASE; DO YOU UNDERSTAND THAT?

2 MS. LEEDS: YES.

3 THE COURT: NOT THE PENALTY PHASE -- I AM SORRY --  
4 PART OF THE GUILT PHASE.

5 NOW DO YOU HAVE ANY OPINION REGARDING THE DEATH  
6 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
7 DECISION CONCERNING THE TRUTH OR FALSITY OF SPECIAL CIRCUM-  
8 STANCES?

9 MS. LEEDS: NO.

10 THE COURT: ALL RIGHT. NOW DO YOU HAVE SUCH AN OPINION  
11 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY  
12 VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE  
13 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

14 MS. LEEDS: ABSOLUTELY NO.

15 THE COURT: ANOTHER ASPECT OF THAT IS DO YOU HAVE SUCH  
16 AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD  
17 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY  
18 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED  
19 AT THE PENALTY PHASE?

20 MS. LEEDS: ABSOLUTELY NO.

21 THE COURT: OKAY. NOW YOU UNDERSTAND, OF COURSE, THAT  
22 THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS  
23 CASE, THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT  
24 THAT YOU REACH THAT PHASE OF THE TRIAL?

25 MS. LEEDS: OKAY.

26 THE COURT: OKAY. YOU UNDERSTAND THAT?

27 MS. LEEDS: I DO.

28 THE COURT: ALL RIGHT.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 MRS. LEEDS, I AM ARTHUR BARENS. I REPRESENT MR.  
3 HUNT.

4 MS. LEEDS: OKAY. BUT MY LAST NAME IS LEEDS WITH A  
5 "D-S."

6 MR. BARENS: YES, MRS. LEEDS.

7 MS. LEEDS: I AM SORRY. I THOUGHT YOU SAID "LEE."

8 MR. BARENS: MRS. LEEDS, AT THIS PART OF THESE  
9 PROCEEDINGS I HAVE THE DUTY TO ASK YOU WHAT YOUR OPINIONS ARE  
10 ABOUT THE DEATH PENALTY, AND YOU UNDERSTAND THAT ALTHOUGH WE  
11 ARE DISCUSSING THIS NOW, THERE IS NO REASON FOR YOU TO BELIEVE  
12 THAT MR. HUNT IS GUILTY OF ANYTHING OR HAS DONE ANYTHING  
13 RIGHT OR WRONG FOR THAT MATTER, JUST BECAUSE HE IS CHARGED  
14 WITH A CRIME AND HE IS HERE AND WE ARE TALKING ABOUT THE DEATH  
15 PENALTY; DO YOU UNDERSTAND THAT?

16 MS. LEEDS: YES, I DO.

17 MR. BARENS: AND YOU FURTHER UNDERSTAND HIS HONOR HAS  
18 POINTED OUT TO YOU THAT BEFORE -- WE MAY NEVER GET TO THIS  
19 BECAUSE BEFORE WE GET TO THIS, YOU AND THE OTHER JURORS WOULD  
20 HAVE TO FIRST CONCLUDE THAT MR. HUNT WAS GUILTY BEYOND A  
21 REASONABLE DOUBT, AND THEN YOU WOULD HAVE TO MAKE A DECISION  
22 ABOUT WHETHER HE LIVED OR DIED, AND WE NEED TO TALK ABOUT  
23 THAT.

24 AS A GENERAL -- AND BY THE WAY, THERE ARE NO RIGHT  
25 OR WRONG ANSWERS TO WHAT I AM GOING TO ASK YOU. THERE ARE  
26 NO GOOD OR BAD ANSWERS. I JUST WANT TO GET AT SOME FEELING  
27 FOR WHAT YOUR OPINIONS ARE.

28 MS. LEEDS: FINE.

1 MR. BARENS: AS A GENERAL PROPOSITION IN OUR SOCIETY  
2 HOW DO YOU FEEL ABOUT THE DEATH PENALTY?

3 MS. LEEDS: I HAVE NEVER REALLY THOUGHT ABOUT IT. IT  
4 IS SORT OF UNREALISTIC TO ME. IT IS HARD.

5 MR. BARENS: MRS. LEEDS, WE HAVE TO THINK ABOUT IT.

6 MS. LEEDS: I KNOW.

7 MR. BARENS: BECAUSE OF THIS SITUATION. KNOWING IT IS  
8 THERE, AND KNOWING YOU POSSIBLY COULD BE A JUROR ON A CASE  
9 WHERE YOU WOULD BE ASKED TO RETURN A DEATH PENALTY OR LIFE  
10 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE, HOW DO YOU FEEL  
11 ABOUT THE DEATH PENALTY?

12 MS. LEEDS: I DON'T KNOW IF I COULD GIVE THE DEATH  
13 PENALTY TO ANYBODY.

14 THE COURT: YOU DON'T KNOW IF YOU COULD DO WHAT?

15 MS. LEEDS: GIVE THE DEATH PENALTY TO ANYBODY.

16 MR. BARENS: WELL, IN THIS INSTANCE YOU WOULD HAVE AN  
17 OBLIGATION TO CONSIDER BOTH THE ALTERNATIVES, ONE BEING LIFE  
18 WITHOUT POSSIBILITY OF PAROLE, AND ONE BEING THE DEATH  
19 PENALTY. THE PROSECUTION IS ENTITLED, AS IS THE DEFENSE, TO  
20 NEUTRAL JURORS, JURORS WHO COULD VOTE EITHER WAY, NOT WHO  
21 WOULD AUTOMATICALLY VOTE EITHER WAY, BUT PEOPLE WHO AFTER  
22 DELIBERATIONS SHOULD SELECT ONE REMEDY OR THE OTHER.

23 IF YOU COULD TELL ME, COULD YOU NEVER IN ANY  
24 INSTANCE GIVE SOMEONE THE DEATH PENALTY, IF THAT'S YOUR POINT  
25 OF VIEW, THEN YOU PROBABLY WOULDN'T BE QUALIFIED TO SIT ON  
26 THIS JURY.

27 MS. LEEDS: UH-HUH.

28 MR. WAPNER: WAS THAT YES?

1 MS. LEEDS: I AM -- I UNDERSTOOD HIM, YES. I UNDERSTOOD  
2 WHAT HE SAID. YES.

3 MR. BARENS: AT LEAST THAT'S THE SENSE I HAVE OF IT.

4 MS. LEEDS: I AM SORRY.

5 MR. BARENS: MRS. LEEDS, IF YOU HAD A SITUATION WHERE  
6 SOMEBODY COMMITTED A FIRST DEGREE MURDER, LET'S SAY SHOT  
7 SOMEBODY, AND DID IT FOR FINANCIAL REASONS, YOU KNOW, TO STEAL  
8 THEIR MONEY, OR HELD UP A STORE, SOMETHING LIKE THAT, THAT  
9 WOULD QUALIFY FOR SPECIAL CIRCUMSTANCES; AND LET'S SAY THAT  
10 GUY WASN'T SORRY AT ALL; HE JUST SAID, "I WOULD DO IT AGAIN."  
11 YOU THINK HE OUGHT TO GET THE DEATH PENALTY?

12 MR. WAPNER: OBJECTION, YOUR HONOR, AS ASKING HER TO  
13 PREJUDGE THE EVIDENCE. ALSO THE HYPOTHETICAL DOESN'T REALLY  
14 HAVE ANY -- I MEAN, IT IS AKIN TO ASKING ABOUT ANOTHER CASE,  
15 IN THE PEOPLE V. FIELDS SITUATION.

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1 THE COURT: I SUSTAIN THE OBJECTION.

2 MR. BARENS: ALL RIGHT.

3 WELL, GIVEN A SITUATION -- I BELIEVE I ASKED THIS  
4 QUESTION BEFORE, YOUR HONOR.

5 GIVEN A SITUATION OF A FIRST DEGREE MURDER DURING  
6 A ROBBERY WHERE SOMEONE WAS STEALING SOMEBODY'S MONEY, COULD  
7 YOU SEE ANY SITUATION IN YOUR MIND WHERE THAT DEFENDANT SHOULD  
8 GET THE DEATH PENALTY?

9 MS. LEEDS: YES.

10 MR. BARENS: OKAY. AND I PRESUME GIVEN THE SAME KIND  
11 OF SITUATIONS WITH DIFFERENT FACTS, YOU COULD SEE WHERE THAT  
12 TYPE OF A DEFENDANT COULD GET LIFE WITHOUT POSSIBILITY OF  
13 PAROLE?

14 MS. LEEDS: CERTAINLY.

15 MR. BARENS: YOU WOULD HAVE TO LISTEN TO ALL THE --

16 THE COURT: KEEP YOUR VOICE UP.

17 MS. LEEDS: I AM SORRY. SHOULD I MOVE CLOSER? EXCUSE  
18 ME. OKAY. SORRY.

19 MR. BARENS: MRS. LEEDS, YOU HAVE TO LISTEN TO ALL OF  
20 THE EVIDENCE BEFORE YOU COULD MAKE A DECISION EITHER WAY?

21 MS. LEEDS: ABSOLUTELY.

22 MR. BARENS: AND WOULD YOU LISTEN TO ALL OF THE EVIDENCE?

23 MS. LEEDS: YOU BET I WOULD FOR SOMETHING LIKE THAT.

24 MR. BARENS: NOW I AM WORRIED THAT THE PEOPLE OF THE  
25 STATE ARE GOING TO SAY, WELL, MRS. LEEDS SHOULDN'T BE ON THIS  
26 JURY BECAUSE SHE EARLIER SAID, "WELL, I WOULDN'T GIVE ANYBODY  
27 THE DEATH PENALTY." BUT AFTER TALKING TO YOU, I WANT TO MAKE  
28 SURE THAT WHAT I REALLY HEARD YOU SAY, I THINK IN RESPONSE

13A-2

1 TO LATER QUESTIONS THAT I GAVE YOU, YOU SAID THAT YOU COULD  
2 ENVISION SOME FACTS WHERE YOU WOULD GIVE A PERSON THE DEATH  
3 PENALTY?

4 MS. LEEDS: YES, THAT'S TRUE.

5 MR. BARENS: SO YOU WOULDN'T AUTOMATICALLY SAY NOBODY  
6 SHOULD EVER GET THE DEATH PENALTY?

7 MS. LEEDS: NO.

8 THE COURT: PARDON ME.

9 WOULD YOU GIVE THE DEATH PENALTY IN A CASE WHERE  
10 A MURDER HAD BEEN COMMITTED, A MURDER HAD BEEN COMMITTED IN  
11 THE COURSE OF A ROBBERY?

12 MS. LEEDS: UNDER CERTAIN -- YES, UNDER CERTAIN, YOU  
13 KNOW, CIRCUMSTANCES. I MEAN, THIS IS SOMETHING I HAVE NEVER  
14 HAD TO DEAL WITH BEFORE.

15 THE COURT: ALL RIGHT. BUT YOU WOULD VOTE POSSIBLY  
16 DEATH?

17 MS. LEEDS: THERE HAVE BEEN CRIMES, LET'S SAY, THAT  
18 I HAVE READ ABOUT, THAT I WOULD HAVE GIVEN THE DEATH PENALTY  
19 FOR.

20 THE COURT: I SEE.

21 MS. LEEDS: THAT'S THE BEST I CAN DO.

22 THE COURT: NOW IN THIS PARTICULAR CASE, ASSUMING THERE  
23 HAD BEEN MURDER IN THE FIRST DEGREE, AND ASSUMING THAT, AND  
24 ASSUMING THAT IT WAS IN THE COURSE OF A ROBBERY, AND ASSUMING  
25 THAT YOU FIND THAT THERE WERE NO MITIGATING CIRCUMSTANCES  
26 INVOLVED, YOU WOULD BE ABLE TO VOTE THE DEATH PENALTY, WOULD  
27 YOU?

28 MS. LEEDS: YES, I BELIEVE I WOULD.



13A-3

1 THE COURT: ALL RIGHT.

2 MS. LEEDS: IF THE EVIDENCE WERE SO.

3 MR. BARENS: SO YOU WOULD LISTEN TO ALL OF THE EVIDENCE, AND  
4 YOU UNDERSTAND THE DEFENDANT HAS A PRESUMPTION OF INNOCENCE GOING IN?

5 MS. LEEDS: YES.

6 MR. BARENS: AND WE ALL HAVE THAT. IT IS ONE OF THE  
7 BIGGEST RIGHTS AS AMERICANS WE HAVE.

8 MS. LEEDS: I HOPE WE DO.

9 MR. BARENS: THE JUDGE WOULD SAY TO YOU AT A POINT IN  
10 TIME WHEN WE COME TO THE PENALTY PHASE, JURORS, YOU ARE TO  
11 CONSIDER THE QUESTION OF THE DEFENDANT'S AGE, AND WHETHER  
12 OR NOT THE DEFENDANT HAD A CRIMINAL BACKGROUND, AS PART OF  
13 THE FACTORS, THINGS TO TAKE INTO CONSIDERATION IN THE  
14 DELIBERATION PROCESS, WOULD YOU DO THAT IN DECIDING WHETHER  
15 HE SHOULD LIVE OR DIE?

16 MS. LEEDS: YES.

17 MR. BARENS: THE DEFENSE PASSES FOR CAUSE, YOUR HONOR.  
18 THANK YOU.

19 THE COURT: PEOPLE.

20 MR. WAPNER: THANK YOU.

21 MRS. LEEDS, I AM FRED WAPNER. I AM THE DEPUTY  
22 DISTRICT ATTORNEY PROSECUTING THE CASE.

23 MS. LEEDS: HI.

24 MR. WAPNER: YOU SAID THAT YOU HAD READ ABOUT CRIMES  
25 WHERE YOU WOULD GIVE THE DEATH PENALTY. WHAT KIND OF CRIMES?

26 MS. LEEDS: CERTAIN -- CAN I MENTION NAMES OR NO?

27 MR. WAPNER: SURE.

28 MS. LEEDS: OH, WELL, MANSON -- YOU KNOW, IT WOULD BE

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1 IN THAT CONCEPT.

2 MR. WAPNER: OKAY. DO YOU HAVE A CERTAIN -- WELL, LET  
3 ME STRIKE THAT. LET ME TELL YOU WHAT THIS CASE MIGHT GET  
4 DOWN TO FOR YOU IF YOU ARE CHOSEN TO SERVE AS A JUROR.

5 I WANT YOU TO PUT YOURSELF IN THIS SITUATION.  
6 YOU HAVE SAT AND LISTENED TO THE EVIDENCE. YOU HAVE DECIDED  
7 THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE; IT  
8 HAPPENED DURING A ROBBERY. YOU HAVE SAT AND LISTENED TO ALL  
9 OF THE EVIDENCE IN THE PENALTY PHASE --

10 MR. BARENS: BEG YOUR PARDON. DON'T I HAVE AN OBJECTION?  
11 HE IS NOW ASKING HER TO PREJUDGE THE EVIDENCE WHICH WE ARE  
12 NOT SUPPOSED TO DO.

13 MR. WAPNER: I AM NOT ASKING HER WHAT THE EVIDENCE IS,  
14 YOUR HONOR.

15 THE COURT: LET'S HEAR THE REST OF THE QUESTION.

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1 MR. WAPNER: YOU HAVE NOW LISTENED TO ALL OF THE  
2 EVIDENCE IN THE PENALTY PHASE AND YOU ARE BACK IN THE JURY  
3 ROOM AND YOU WERE CALLED UPON TO RENDER YOUR OWN INDIVIDUAL  
4 VERDICT AS TO WHETHER THE DEFENDANT SHOULD LIVE OR WHETHER  
5 HE SHOULD DIE, YOU ARE GOING TO BE TALKING WITH 11 OTHER  
6 PEOPLE. BUT THE JUDGE WILL TELL YOU THAT EACH PERSON HAS  
7 TO MAKE UP THEIR OWN MINDS.

8 MS. LEEDS: UH-HUH.

9 MR. WAPNER: I AM NOT GOING TO ASK YOU THE WAY YOU WOULD  
10 VOTE BECAUSE YOU DON'T KNOW THE FACTS OF THE CASE.

11 MS. LEEDS: THAT'S CORRECT.

12 MR. WAPNER: WHAT I AM TRYING TO ASK YOU IS, ABOUT YOUR  
13 MORAL CONVICTIONS. BASICALLY, ARE YOU THE KIND OF PERSON  
14 WHO COULD MAKE A DECISION AS TO WHETHER THE DEFENDANT IN THIS  
15 CASE SHOULD LIVE OR WHETHER HE SHOULD DIE?

16 MS. LEEDS: YES, FROM THE EVIDENCE THAT WAS GIVEN. I,  
17 YES.

18 MR. WAPNER: OKAY. THE QUESTION REALLY IS, IF YOU GET  
19 INTO THE -- IF YOU ARE CHOSEN AS A JUROR IN THIS CASE AND  
20 GET INTO THE JURY ROOM ON THE PENALTY PHASE AND THEN IT  
21 OCCURS TO YOU, MY GOD, I CAN'T MAKE THE DECISION. IT IS TOO  
22 LATE FOR US TO FIND THAT OUT THEN. DO YOU UNDERSTAND THAT?

23 MS. LEEDS: YES I DO.

24 MR. WAPNER: OKAY. SO WHAT I AM ASKING YOU TO DO IS,  
25 TO SEARCH YOUR CONSCIENCE NOW AND TO TELL ME WHETHER YOU THINK  
26 YOU ARE A PERSON CAPABLE OF MAKING THAT DECISION.

27 MS. LEEDS: YES. BECAUSE IF I COMMIT TO DOING THAT,  
28 THAT IS WHAT I AM SUPPOSED TO DO. I SHOULDN'T SAY I WILL

1 IF I CAN'T.

2 I AM TELLING YOU THAT IF I GO ON A JURY, I WILL  
3 DO WHAT I AM SUPPOSED TO DO. THAT IS TO LISTEN TO THE  
4 EVIDENCE AND COME UP WITH WHAT I FEEL IS THE ANSWER FROM WHAT  
5 I LISTENED TO.

6 THE COURT: IF IT MEANS LIFE WITHOUT POSSIBILITY OF  
7 PAROLE OR DEATH, IS THAT RIGHT?

8 MS. LEEDS: YES.

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: WHAT DID YOU MEAN BY THE STATEMENT, "I  
11 DON'T KNOW IF I COULD GIVE THE DEATH PENALTY TO ANYBODY"?

12 MS. LEEDS: BECAUSE I HAVE NEVER REALLY THOUGHT ABOUT  
13 IT, ONLY SINCE LAST WEEK WHEN YOU TALKED ABOUT IT.

14 IT WAS JUST SOMETHING -- AND I HAVE HAD TO  
15 CONSIDER WHETHER I COULD OR COULDN'T.

16 THEN I FEEL AFTER SITTING HERE AND WE TAKE A  
17 CERTAIN OATH TO GO AHEAD WITH THIS, THAT YOU HAVE TO DO WHAT  
18 YOU ARE UNDER OATH TO DO. THAT IS TO LISTEN TO IT AND COME  
19 UP WITH A VERDICT, WHATEVER IT IS. THAT IS WHAT IT HAS TO  
20 BE.

21 MR. WAPNER: SO, WOULD YOU IN YOUR MIND, BE FAIR TO  
22 BOTH SIDES IN THE PENALTY PHASE? IN OTHER WORDS, WHEN YOU  
23 MAKE THE STATEMENT, "I DON'T KNOW IF I COULD GIVE THE DEATH  
24 PENALTY TO ANYONE," LET'S SUPPOSE THAT YOU ARE SITTING ON  
25 THE JURY AND YOU WERE IN THE PENALTY PHASE OF THE TRIAL, AND  
26 NOW I AM ARGUING TO YOU.

27 I AM STANDING HERE AND YOU ARE SITTING OVER HERE  
28 IN THE JURY BOX AND I AM LOOKING YOU IN THE EYE AND TELLING

1 YOU WHY I THINK HE SHOULD GET THE DEATH PENALTY.

2 MS. LEEDS: YES.

3 MR. WAPNER: ARE YOU GOING TO BE LISTENING TO ME WITH  
4 AN OPEN MIND?

5 MS. LEEDS: ABSOLUTELY.

6 MR. WAPNER: OKAY. SO, YOU ARE NOT GOING TO BE SITTING  
7 THERE SAYING WELL, I DON'T CARE WHAT HE SAYS, I REALLY CAN'T  
8 BRING BACK A DEATH PENALTY VERDICT.

9 MS. LEEDS: IF I FELT THAT WAY, I WOULD HAVE ALREADY  
10 STATED IT.

11 MR. WAPNER: THANK YOU. AND DID YOU TELL US THAT YOU  
12 HAVE NOT READ OR HEARD ANYTHING ABOUT THIS CASE?

13 MS. LEEDS: NO I HAVE NOT, NO, NOT AT ALL.

14 MR. WAPNER: I THINK THE JUDGE WILL PROBABLY TELL YOU  
15 IF HE HAS NOT ALREADY, THAT YOU ARE NOT FROM NOW ON, TO HEAR  
16 OR READ ANYTHING ABOUT IT. YOU ARE NOT TO LISTEN TO OR READ  
17 ANYTHING. DO NOT WATCH TELEVISION ABOUT THIS.

18 MS. LEEDS: I HAVE NOT.

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

20 THE COURT: ALL RIGHT. MRS. LEEDS, WE ARE GOING THROUGH  
21 THIS PROCESS NOW. WE HAVE TO GO THROUGH ALL OF THE JURORS  
22 RIGHT FROM L THROUGH Z.

23 NOW, THAT WILL TAKE A FEW DAYS. AND WE ANTICIPATE  
24 THAT WE WILL PROBABLY BE FINISHED BY DECEMBER 3RD.

25 WHAT I WILL ASK YOU TO DO, IS TO GO BACK TO THE  
26 JURY ASSEMBLY ROOM ON DECEMBER 3RD AT 10:30 A.M.

27 IF WE ARE NOT FINISHED WITH THIS PROCESS BY THAT  
28 TIME, WE HAVE YOUR TELEPHONE NUMBER. WE WILL CALL YOU AND

1 LET YOU KNOW ABOUT IT.

2 OKAY. THAT IS DECEMBER 3RD AT 10:30 IN THE JURY  
3 ASSEMBLY ROOM. MAKE A MENTAL NOTE OF IT.

4 MS. LEEDS: I WILL WRITE IT DOWN SO I WON'T FORGET.

5 THE COURT: THANK YOU VERY MUCH.

6 MS. LEEDS: THANK YOU.

7 THE COURT: DON'T TALK TO ANYBODY.

8 MS. LEEDS: I WON'T.

9 (PROSPECTIVE JUROR LEEDS EXITED  
10 THE COURTROOM.)

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1 MR. WAPNER: YOUR HONOR, BEFORE MS. MACK, THERE IS A  
2 MATTER THAT HAS COME UP REGARDING WHAT WE DISCUSSED IN  
3 CHAMBERS THAT IS A LOGISTICAL THING.

4 MIGHT I HAVE A FEW MOMENTS TO TRY TO MAKE SOME  
5 PHONE CALLS TO TRY TO STRAIGHTEN SOMETHING OUT?

6 THE COURT: GO AHEAD.

7 MR. BARENS: DOES YOUR HONOR PLAN TO START ANOTHER JUROR  
8 THIS AFTERNOON?

9 THE COURT: JUST ONE MORE, I THINK.

10 MR. BARENS: THANK YOU, YOUR HONOR.

11 (THERE WAS A BRIEF PAUSE.)

12 THE COURT: THE REASON FOR THAT IS THAT THESE JURORS  
13 HAVE BEEN WAITING SINCE YESTERDAY.

14 THE OTHER JURORS ARE WAITING ALL DAY BUT THE ONES  
15 I WANT TO GET TO HAVE BEEN WAITING TWO DAYS.

16 THE CLERK: SHALL I EXCUSE THE OTHER SIX JURORS  
17 SCHEDULED FOR THIS AFTERNOON?

18 THE COURT: YES. I THINK THE BEST THING TO DO IS TO  
19 EXCUSE THEM. WE WILL HAVE JUST ONE MORE, I IMAGINE.

20 MR. BARENS: YES, YOUR HONOR.

21 THE COURT: SHALL WE TRY TO GET TWO MORE OR ONE MORE?

22 MR. BARENS: WELL YOUR HONOR, I WOULD APPRECIATE IT IF  
23 WE COULD -- I MEAN, I MADE SOME COMMITMENTS AT 5:00 O'CLOCK  
24 AT MY OFFICE. I NEED TO SPEAK TO MR. CHIER AFTER THE SESSION  
25 TODAY.

26 THE COURT: ALL RIGHT. WE WILL EXCUSE THE OTHER SIX,  
27 WILL YOU PLEASE? HAVE THEM COME BACK TOMORROW MORNING. WE  
28 WILL TRY TO HURRY IT ALONG AND FINISH IT. IT WILL BE

1 TOMORROW MORNING AT 10:00 O'CLOCK.

2 MR. BARENS: I WILL BE AWAY FROM THE CITY.

3 MR. CHIER: I HAVE AN APPOINTMENT DOWNTOWN IN CONNECTION  
4 WITH THE CASE WHERE I AM STILL ATTORNEY OF RECORD.

5 BUT THERE WAS A PROBLEM WHEN YOU PREEMPTED ME  
6 FROM MUNOZ.

7 I HAVE TO APPEAR THERE AT 9:00 O'CLOCK TOMORROW  
8 MORNING.

9 THE COURT: WHAT TIME COULD YOU BE BACK HERE?

10 MR. CHIER: HOPEFULLY -- WELL, THERE ARE SIX COUNSEL,  
11 JUDGE. IF EVERYBODY SHOWS UP ON TIME --

12 THE COURT: WHY DON'T THEY COME ON TIME?

13 MR. CHIER: I DIDN'T MENTION ANYTHING, YOUR HONOR, BECAUSE  
14 WE USUALLY START AT 10:30. I CAN ORDINARILY MAKE THAT. BUT  
15 10:00 O'CLOCK WOULD BE PRETTY CLOSE FOR ME.

16 THE COURT: WILL 10:30 BE ALL RIGHT?

17 MR. CHIER: YES.

18 THE COURT: ALL RIGHT. THAT WILL BE 10:30 TOMORROW  
19 MORNING FOR THE OTHER JURORS.

20 (PROSPECTIVE JUROR MACK ENTERS THE  
21 COURTROOM.)

22 THE COURT: I WILL MAKE A JUDICIAL PRONOUNCEMENT AT THIS  
23 TIME THAT MS. MACK IS EXTREMELY INTELLIGENT. ALL RIGHT. THIS  
24 IS MS. MACK?

25 MS. MACK: MS.

26 THE COURT: MS. MACK?

27 MS. MACK: YES.

28 THE COURT: MS. MACK, WHERE DO YOU LIVE?



1 MS. MACK: MANHATTAN BEACH.

2 THE COURT: NOW, HAVE YOU HEARD OR READ ANYTING AT ALL  
3 ABOUT THIS CASE, EXCEPT WHAT I EXPLAINED TO THE JURORS?

4 MS. MACK: YES. I READ TIME AND NEWSWEEK ARTICLES OF  
5 NOVEMBER 17.

6 THE COURT: TIME AND NEWSWEEK. DID YOU READ NY NEWS-  
7 PAPERS ABOUT IT?

8 MS. MACK: I DID WHEN IT OCCURRED. BUT I HAD FORGOTTEN.

9 THE COURT: I SEE. I WANT TO EXPLORE YOUR MIND AND YOUR  
10 REACTIONS, YOUR FEELINGS.

11 WOULD WHAT YOU HAVE READ IN ANY WAY INFLUENCE YOU  
12 AT THIS TIME IN DETERMINING THE GUILT OR INNOCENCE OF THE  
13 DEFENDANT?

14 MS. MACK: I DON'T THINK WHAT WAS SAID, STATED WHETHER  
15 OR NOT THERE WAS ENOUGH EVIDENCE FOR GUILT OR INNOCENCE.

16 THE COURT: IT WAS JUST AN EXPLANATION OF THE CHARGES?  
17 IS THAT THE IDEA, WHAT YOU READ?

18 MS. MACK: UH-HUH.

19 THE COURT: HAVE YOU GOT AN OPEN MIND AT THIS TIME?  
20 WOULD YOU KEEP THAT OPEN MIND IF YOU WERE SELECTED AS A JUROR  
21 AND JUST WAIT UNTIL YOU HEAR THE EVIDENCE AND ONLY WEIGH THE  
22 EVIDENCE THAT YOU HEAR AND NOT WHAT YOU MAY HAVE READ?

23 MS. MACK: I WOULD TRY.

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1 THE COURT: THINK YOU CAN DO THAT?

2 MS. MACK: I WILL TRY TO.

3 THE COURT: ALL RIGHT. THAT'S ALL WE CAN ASK YOU TO  
4 DO BECAUSE, YOU KNOW, MANY TIMES, I DON'T HAVE TO TELL YOU,  
5 THAT WHAT YOU READ SOMETIMES IN THE MAGAZINES OR NEWSPAPERS  
6 MAY OR MAY NOT BE TRUE.

7 MS. MACK: I KNOW THAT.

8 THE COURT: IT DEPENDS UPON THE POINT OF VIEW OF THE  
9 PERSON WRITING IT, OR HIS PREJUDICES OR BIASES, SO ON AND SO  
10 FORTH. THEREFORE IT IS UNWISE TO, PARTICULARLY IF YOU ARE  
11 GOING TO BE A JUROR IN A CASE, TO TAKE WHAT YOU HAVE READ AS  
12 GOSPEL.

13 COMPLETELY FORGET ABOUT IT. ONLY BE GUIDED BY  
14 THE EVIDENCE IN THIS CASE. YOU WILL, WON'T YOU?

15 MS. MACK: RIGHT.

16 THE COURT: HAVE YOU DISCUSSED ANYTHING AT ALL ABOUT  
17 THE CASE WITH ANY OF THE OTHER JURORS OR HAVE THEY DISCUSSED  
18 IT WITH YOU?

19 MS. MACK: WELL, WE WERE TALKING ABOUT WHAT THE CASE  
20 IS ABOUT.

21 THE COURT: YES, WHAT I TOLD YOU ABOUT?

22 MS. MACK: YES.

23 THE COURT: OTHER THAN WHAT I TOLD YOU ABOUT, YOU HAD  
24 NO DISCUSSIONS?

25 MS. MACK: I DON'T THINK SO.

26 THE COURT: ALL RIGHT. IF THERE WAS SUCH, YOU WOULD  
27 PUT THAT OUT OF YOUR MIND, BE GUIDED BY WHAT YOU HEAR IN THIS  
28 COURT, IF YOU ARE SELECTED AS A JUROR; RIGHT?

1 MS. MACK: (NODS HEAD UP AND DOWN.)

2 THE COURT: ALL RIGHT. AND THAT WILL CARRY THROUGH FROM  
3 HERE IN THAT IF YOU ARE PART OF THE PANEL, SO CHOSEN, YOU ARE  
4 NOT TO TALK TO ANYBODY ABOUT THE CASE OR READ ANYTHING ABOUT  
5 IT.

6 MS. MACK: YOU CAN'T READ ANYTHING ABOUT IT?

7 THE COURT: DON'T READ ANYTHING ABOUT IT, NOTHING,  
8 NOTHING ABOUT IT.

9 MS. MACK: SO YOU HAVE TO HAVE SOMEBODY CUT IT OUT FOR  
10 YOU?

11 THE COURT: WELL, IF YOU SEE ANYTHING AT ALL ABOUT THE  
12 CASE, FORGET ABOUT IT. DON'T READ IT. RESIST THAT TEMPTATION.  
13 I KNOW IT WILL BE A TEMPTATION, A STRONG TEMPTATION.

14 MS. MACK: YES.

15 THE COURT: BUT RESIST IT. DON'T BE LIKE OSCAR WILDE  
16 WHO SAID, "THE EASIEST WAY OF OVERCOMING TEMPTATION IS TO  
17 YIELD TO IT."

18 MS. MACK: I HAVE ALWAYS FELT THAT WAY.

19 MR. BARENS: THE DEFENSE FELT THAT WAY AS WELL.

20 THE COURT: DON'T YIELD TO IT.

21 NOW WITH THAT PRELIMINARY I AM GOING TO ASK YOU  
22 A SERIES OF QUESTIONS. THESE ARE DESIGNED TO PROBE YOUR MIND  
23 AS TO YOUR FEELINGS AND YOUR REACTIONS AND YOUR CONVICTIONS  
24 WITH RESPECT TO THE DEATH PENALTY; YOU UNDERSTAND THAT?

25 MS. MACK: (NODS HEAD UP AND DOWN.)

26 THE COURT: LET ME BRIEFLY RESUME AND TELL YOU WHAT THE  
27 CASE IS ABOUT. I TOLD YOU THAT THIS WAS A CASE WHERE THE  
28 INFORMATION AGAINST THE DEFENDANT WAS THAT HE COMMITTED A

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1 MURDER, AND IT WAS A MURDER IN THE FIRST DEGREE, AND IT WAS  
2 COMMITTED DURING THE COURSE OF A ROBBERY.

3 NOW THE LEGISLATURE HAS SAID THAT IN CERTAIN  
4 CIRCUMSTANCES, CERTAIN SPECIAL CIRCUMSTANCES, OF MURDER IN  
5 THE FIRST DEGREE, IF THERE ARE CERTAIN SPECIAL CIRCUMSTANCES  
6 THAT ARE PRESENT, THOSE CIRCUMSTANCES QUALIFY THE CASE FOR  
7 THE IMPOSITION OF THE DEATH PENALTY OR LIFE IN PRISON WITHOUT  
8 THE POSSIBILITY OF PAROLE; DO YOU UNDERSTAND THAT?

9 MS. MACK: UH-HUH.

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1 THE COURT: NOW ONE OF WHICH IS THIS CASE, A MURDER  
2 COMMITTED IN THE COURSE OF A ROBBERY, OR MURDER COMMITTED IN  
3 THE COURSE OF A KIDNAPPING, MURDER COMMITTED DURING THE COURSE  
4 OF A BURGLARY, MURDER COMMITTED DURING THE COURSE OF A  
5 TORTURE, A MULTIPLE MURDERS, MURDER COMMITTED DURING THE COURSE  
6 OF A CRIME UPON CHILDREN, MOLESTATION OF CHILDREN. NOW  
7 THAT'S SOME OF THEM.

8 BUT I POINTED OUT TO YOU BECAUSE THE LEGISLATURE  
9 SAYS THAT, WHEN THERE ARE CERTAIN SPECIAL CIRCUMSTANCES  
10 PRESENT, THAT THAT THEN QUALIFIES THE CASE FOR THE DEATH  
11 PENALTY; YOU UNDERSTAND THAT?

12 MS. MACK: (NODS HEAD UP AND DOWN.)

13 THE COURT: NOW BECAUSE OF THAT WE HAVE TWO PHASES OF  
14 THE TRIAL. THE FIRST PHASE IS KNOWN AS THE GUILTY PHASE  
15 WHERE YOU FORGET ABOUT PENALTY COMPLETELY AND ONLY BE  
16 INTERESTED IN DETERMINING, AND YOU WILL BE CALLED UPON TO  
17 DETERMINE, WHETHER OR NOT THE DEFENDANT IS GUILTY OF MURDER  
18 IN THE FIRST DEGREE.

19 IF YOU SO FIND, THEN AFTER THAT, YOU HAVE TO  
20 DETERMINE WHETHER OR NOT THAT MURDER WAS COMMITTED DURING THE  
21 COURSE OF A ROBBERY, AND YOU MAKE A FINDING, TRUE OR FALSE,  
22 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

23 IF YOU SAY TRUE, THEN YOU GOT MURDER IN THE FIRST  
24 DEGREE COMMITTED DURING TEH COURSE OF A ROBBERY.

25 THEN WE COME TO A SECOND OR PENALTY PHASE WHERE  
26 THAT SAME JURY, AFTER IT BRINGS IN ITS VERDICT AS TO THE  
27 GUILT, WILL THEN CONSIDER WHAT THE PENALTY IS GOING TO BE;  
28 AND THERE ARE TWO POSSIBLE PENALTIES, AS I TOLD YOU FIRST,

1 IN OTHER WORDS, LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF  
2 PAROLE OR IT IS DEATH.

3 IN THAT PHASE OF THE TRIAL WE HAVE MORE EVIDENCE.  
4 BOTH THE DEFENSE AND THE PROSECUTION PRESENT EVIDENCE ON THE  
5 PENALTY PHASE. THE DEFENSE, OBVIOUSLY, PROPERLY SO, WILL TRY  
6 TO SHOW THINGS ABOUT THE DEFENDANT WHICH ARE FAVORABLE TO HIM,  
7 YOU UNDERSTAND, HIS BACKGROUND; THERE ARE ANY NUMBER OF THINGS  
8 WHICH ARE FAVORABLE TO HIM, WHETHER HE HAD A CRIMINAL BACK-  
9 GROUND, AND AGE MAY BE CONSIDERED BY THE JURY, AND ANYTHING  
10 THAT IS AT ALL FAVORABLE TO HIM.

11 THE PROSECUTION, ON THE OTHER HAND, WILL INTRODUCE  
12 AGGRAVATING CIRCUMSTANCES TO SHOW THAT HE IS NOT A GOOD BOY  
13 OR A MAN, THINGS THAT ARE WRONG ABOUT HIM. YOU SEE, ALL OF  
14 THAT, AS A PART, AND ALL OF THAT WILL BE CONSIDERED BY THE  
15 JURY, AFTER THE ARGUMENT OF COUNSEL, WHEN I INSTRUCT AS TO  
16 THE LAW RELATING TO THE PENALTY PHASE AND WHAT YOU SHOULD OR  
17 SHOULDN'T CONSIDER, WHAT YOU SHOULD CONSIDER; YOU UNDERSTAND  
18 THAT?

19 MS. MACK: UH-HUH.

20 THE COURT: OKAY. NOW I WANT TO ASK YOU THE QUESTIONS  
21 THAT CALL FOR A YES OR NO ANSWER. IF YOU DON'T UNDERSTAND  
22 THE QUESTIONS, AND I AM SURE YOU PROBABLY WILL, ASK ME TO  
23 REPEAT IT. IF YOU DON'T, ASK ME TO REPEAT THEM OR EXPLAIN  
24 THEM TO YOU.

25 OKAY. NOW THE FIRST QUESTION IS DO YOU HAVE ANY  
26 OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU  
27 FROM DETERMINING THE GUILT OR INNOCENCE OF THE DEFENDANT IN  
28 THE GUILT PHASE?

1 MR. WAPNER: IS THAT NO?

2 MS. MACK: NO.

3 THE COURT: TWO, DO YOU HAVE ANY OPINION REGARDING THE  
4 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR MURDER IN THE  
5 FIRST DEGREE, EVEN IF THE PROSECUTION -- THAT'S A SILLY  
6 QUESTION -- EVEN IF THE PROSECUTION DOESN'T PROVE MURDER IN  
7 THE FIRST DEGREE OR PROVES IT IN THE SECOND DEGREE?

8 MR. WAPNER: WAS THERE AN ANSWER TO THAT?

9 THE COURT: THE ANSWER IS --

10 MR. WAPNER: I DIDN'T HEAR.

11 THE COURT: THE ANSWER IS NO OPINION THAT WOULD PREVENT  
12 HER FROM BRINGING IN A VERDICT OF MURDER IN THE FIRST DEGREE.

13 LET'S RESTATE IT TO YOU. ALL RIGHT. LISTEN.

14 MR. WAPNER: THERE WASN'T AN ANSWER?

15 MS. MACK: I DIDN'T KNOW WHETHER IT WAS A YES OR NO.

16 MR. WAPNER: ALL RIGHT.

17 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING  
18 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST  
19 DEGREE MURDER, EVEN IF THE PROSECUTION DOESN'T PROVE MURDER  
20 IN THE FIRST DEGREE, FOR EXAMPLE, PROVES IT IN THE SECOND  
21 DEGREE OR MANSLAUGHTER?

22 MS. MACK: DO IT AGAIN.

23 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH  
24 PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER  
25 EVEN IF THE PROSECUTION DIDN'T PROVE MURDER IN THE FIRST  
26 DEGREE?

27 MS. MACK: NO.

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1 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH  
2 PENALTY -- BEFORE I COME TO THAT -- YOU REMEMBER I TOLD YOU  
3 IN THE GUILT PHASE OF IT YOU FIND WHETHER OR NOT IT IS MURDER  
4 IN THE FIRST DEGREE? IF SO, THEN YOU MAKE A FINDING, IS IT  
5 TRUE OR FALSE, AS TO WHETHER IT WAS COMMITTED DURING THE COURSE  
6 OF A ROBBERY?

7 MS. MACK: YES.

8 THE COURT: THAT'S SPECIAL CIRCUMSTANCES.

9 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY  
10 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
11 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES  
12 ALLEGED IN THIS CASE?

13 MS. MACK: NO.

14 THE COURT: NEXT QUESTION: DO YOU HAVE SUCH AN OPINION  
15 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY  
16 VOTE TO IMPOSE IT, THAT IS THE DEATH PENALTY, REGARDLESS OF  
17 ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF  
18 THE TRIAL?

19 MS. MACK: NO.

20 THE COURT: AND DO YOU HAVE SUCH AN OPINION CONCERNING --  
21 THAT IS ANOTHER ASPECT -- DO YOU HAVE SUCH AN OPINION  
22 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY  
23 VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE  
24 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE  
25 PENALTY PHASE?

26 MS. MACK: NO.

27 THE COURT: DO YOU UNDERSTAND THAT THE ISSUE OF THE  
28 DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND THAT



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1 THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT YOU REACH  
2 THAT PHASE OF THE TRIAL; IS THAT RIGHT?

3 MS. MACK: YES.

4 THE COURT: NOW I WILL EXPOSE YOU TO THE KINDNESS OF  
5 COUNSEL IN THE CASE.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 MRS. MACK, I AM ARTHUR BARENS, AND I REPRESENT  
8 THE DEFENDANT, JOE HUNT, ALONG WITH MR. CHIER THERE, WHO  
9 DEFINITELY CAN'T RESIST TEMPTATION.

10 MRS. MACK, AT THIS STAGE OF THE PROCEEDING I HAVE  
11 THE OBLIGATION TO ASK YOU YOUR POINT OF VIEW AND YOUR OPINIONS  
12 CONCERNING THE DEATH PENALTY. I DO THAT -- I DON'T KNOW  
13 WHETHER WE ARE EVER GOING TO GET TO THE PENALTY PHASE OF THIS  
14 TRIAL BECAUSE BEFORE WE GET THERE, YOU AND THE OTHER JURORS  
15 WOULD HAVE TO FIRST DECIDE MY CLIENT WAS GUILTY OF SOMETHING  
16 BAD. IN THE EVENT WE DO GET TO THE DEATH PENALTY, YOU WOULD  
17 HAVE TWO CHOICES. DO YOU UNDERSTAND THAT?

18 MS. MACK: UH-HUH.

19 MR. BARENS: AND THE TWO CHOICES WOULD BE LIFE WITHOUT  
20 POSSIBILITY OF PAROLE; THE OTHER IS DEATH IN THE GAS CHAMBER.  
21 DO YOU UNDERSTAND THOSE TWO CHOICES?

22 MS. MACK: YES.

23 MR. BARENS: THERE ARE NO RIGHT OR WRONG ANSWERS TO  
24 WHAT I AM GOING TO ASK YOU ABOUT, AND THERE ARE NO GOOD OR  
25 BAD ANSWERS. I JUST NEED TO KNOW WHAT YOUR ATTITUDE AND  
26 OPINIONS ARE ON THE DEATH PENALTY.

27 MRS. MACK, AS A GENERAL PROPOSITION IN OUR SOCIETY,  
28 HOW DO YOU FEEL ABOUT THE DEATH PENALTY?

29 MS. MACK: I AM IN FAVOR OF THE DEATH PENALTY.

JFA-1

1 MR. BARENS: AND COULD YOU TELL US WHY?

2 MS. MACK: IF IT IS PROVEN BEYOND A SHADOW OF A DOUBT --

3 THE COURT: NO, NOT THE SHADOW OF A DOUBT. REASONABLE  
4 DOUBT.

5 MS. MACK: REASONABLE DOUBT.

6 THE COURT: RIGHT. IT HAS TO BE REASONABLE DOUBT.

7 MS. MACK: IF IT IS PROVEN THAT SOMEBODY DID MURDER  
8 AND THEY DID IT BY THEIR CHOICE AND THEY TOOK SOMEONE'S LIFE,  
9 THE VICTIM NEVER HAD A CHOICE IN THAT.

10 MR. BARENS: WE GIVE THOSE PEOPLE THE DEATH PENALTY?

11 MS. MACK: I BELIEVE IN THE DEATH PENALTY. I DON'T  
12 KNOW WHAT THE CIRCUMSTANCES WOULD BE, BUT I BELIEVE THAT IF --

13 MR. BARENS: OKAY. I WANT TO TRY TO FOCUS IN ON THAT.  
14 I WANT YOU TO HELP ME ON THAT.

15 IN THIS CASE, THE PEOPLE ARE GOING TO TRY TO  
16 CONVINCING YOU THAT A MURDER IN THE FIRST DEGREE OCCURRED, THAT  
17 A PERSON GOT KILLED, THAT IT WAS DURING THE COMMISSION OF  
18 A ROBBERY AND THAT SOMEONE IS GUILTY OF THAT.

19 NOW, LET'S JUST LEAP AHEAD AND MAKE AN ASSUMPTION  
20 THAT YOU BELIEVE ALL THAT IN THE PENALTY PHASE. YOU BELIEVE  
21 A MURDER OCCURRED. YOU BELIEVE IT WAS DURING A ROBBERY AND  
22 A MURDER IN THE FIRST DEGREE. IT WAS AN INTENTIONAL ACT.

23 ARE YOU TELLING ME NOW -- I AM GOING TO ASK YOU  
24 SOME OTHER QUESTIONS ABOUT YOUR ORIENTATION. BUT ARE YOU  
25 TELLING ME THAT YOUR INITIAL BIAS WOULD BE THAT THAT KIND  
26 OF PERSON OUGHT TO GET THE DEATH PENALTY?

27 MS. MACK: YES.

28 MR. BARENS: OKAY. NOW, HIS HONOR WOULD INSTRUCT YOU

1 THAT IN MAKING YOUR DECISION ON WHETHER MY CLIENT LIVED OR  
2 DIED, THAT YOU COULD CONSIDER HIS AGE OR LACK OF PRIOR CRIMINAL  
3 RECORD, THE FACT THAT HE HAD BEEN A GOOD GUY ALL OF HIS LIFE  
4 UP UNTIL THAT TIME.

5 OF COURSE, THE PEOPLE WOULD TELL YOU THAT HE WAS  
6 A BAD GUY UP TO THAT TIME. WOULD YOU CONSIDER THOSE FACTORS  
7 IN MAKING A DECISION WHETHER A DEFENDANT SHOULD LIVE OR DIE?

8 MS. MACK: I THINK THAT A MURDER IS A MURDER, WITH INTENT.

9 MR. BARENS: OKAY. IT COULD WELL BE --

10 THE COURT: WAIT A MINUTE. NOW, WOULD YOU SAY THAT  
11 YOUR VOTE WOULD ONLY BE, WHATEVER THE EVIDENCE ON THE PENALTY  
12 PHASE IS, THAT YOUR VOTE WOULD BE FOR DEATH AND YOU WOULD  
13 NOT CONSIDER THE QUESTION OF WHETHER OR NOT IT SHOULD BE LIFE  
14 WITHOUT POSSIBILITY OF PAROLE? ARE YOU SAYING THAT IN NO  
15 CASE, HAVING HEARD ALL OF THE EVIDENCE IN THE PENALTY PHASE,  
16 THAT YOU WILL ONLY VOTE FOR DEATH AND NOT LIFE WITHOUT  
17 POSSIBILITY OF PAROLE?

18 THE PURPOSE OF THE PENALTY TRIAL, AS YOU UNDERSTAND,  
19 IS TO SHOW YOU FACTS WHICH ARE IN MITIGATION OF THE OFFENSE,  
20 THINGS WHICH ARE FAVORABLE TOWARD THE DEFENDANT.

21 DESPITE THE FACT THAT HE HAS BEEN CONVICTED OF  
22 MURDER IN THE FIRST DEGREE, THAT IS THE PURPOSE OF IT. THE  
23 PURPOSE OF THAT IS TO TRY TO HAVE THE JURORS KNOW ALL OF THE  
24 FACTS ABOUT THE DEFENDANT, SO THEN YOU COULD DETERMINE ONE  
25 OF TWO THINGS, IS IT LIFE WITHOUT POSSIBILITY OF PAROLE OR  
26 IS IT DEATH. DO YOU UNDERSTAND THAT?

27 MS. MACK: YES.

28 THE COURT: NOW, WOULD YOU NOT LISTEN TO ANY EVIDENCE

16A-3

1 WHICH RELATES TO THE POSSIBILITY OF LIFE WITHOUT POSSIBILITY  
2 OF PAROLE AND ALWAYS VOTE FOR THE DEATH PENALTY?

3 MS. MACK: NO.

4 THE COURT: NOW, YOU SEE, I ASKED YOU THAT QUESTION  
5 IN NUMBER FOUR, DO YOU HAVE SUCH AN OPINION CONCERNING THE  
6 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE  
7 IT, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE  
8 PENALTY PHASE OF THE TRIAL?

9 AND YOU SAID NO. NOW, ARE YOU CHANGING YOUR MIND  
10 ABOUT THAT?

11 MR. BARENS: WHICH A WITNESS IS ENTITLED TO DO.

12 THE COURT: SURE. YOU ARE ENTITLED TO DO THAT.

13 BUT I WANT TO KNOW WHETHER OR NOT -- WHAT IS YOUR  
14 ANSWER? IS IT THAT YOU WILL ALWAYS VOTE THE DEATH PENALTY?

15 MS. MACK: I DON'T THINK I WOULD ALWAYS VOTE THE DEATH  
16 PENALTY. BUT IF SOMEONE WERE GUILTY OF FIRST DEGREE MURDER  
17 WITHOUT A REASONABLE DOUBT --

18 THE COURT: THAT'S CORRECT. IT WOULD BE WITHOUT A  
19 RASONABLE DOUBT AND IT WAS INTENTIONAL AND IT WAS DELIBERATE  
20 AND ALL OF THAT AND IT WAS DURING THE COURSE OF A ROBBERY  
21 AND THE PURPOSE OF HAVING THE PENALTY PHASE IS TO DETERMINE  
22 ON THE EVIDENCE THAT WILL THEN BE GIVEN, WHETHER IT SHOULD  
23 OR SHOULD NOT BE DEATH THAT IS IMPOSED. DO YOU UNDERSTAND  
24 THAT?

25 MS. MACK: YES.

26 THE COURT: BUT IS YOUR MIND SO MADE UP THAT UNDER NO  
27 CIRCUMSTANCES, WOULD YOU -- WOULD YOU AUTOMATICALLY VOTE FOR  
28 THE DEATH PENALTY, IRRESPECTIVE OF WHAT THE EVIDENCE IS THAT

1 MAY BE PRESENTED ON THE PENALTY PHASE? BE FRANK. WILL YOU  
2 TELL US?

3 MS. MACK: I DON'T KNOW.

4 THE COURT: GO AHEAD.

5 MR. BARENS: I GET THE FEELING THAT YOU DO KNOW. I  
6 AM GOING TO TRY TO SEE IF WE CAN FERRET IT OUT TOGETHER.  
7 OKAY?

8 I HAVE A RECOLLECTION OF ASKING YOU A QUESTION.  
9 AND AGAIN, THERE IS NOTHING RIGHT OR WRONG, HERE. I DON'T  
10 THINK THE JUDGE IS TRYING TO MAKE IT RIGHT OR WRONG EITHER.

11 WHAT WE ARE TALKING ABOUT, YOU HAVE ALREADY DECIDED  
12 AS A JUROR, BEFORE WE GET TO THIS LIFE OR DEATH QUESTION,  
13 THAT THE DEFENDANT IN THIS CASE HAS INTENTIONALLY KILLED  
14 SOMEONE BEYOND A SHADOW OF A DOUBT DURING A ROBBERY --

15 MR. WAPNER: EXCUSE ME.

16 MR. BARENS: NOW YOU HAVE GOT ME SAYING THE SHADOW OF  
17 A DOUBT. SORRY. SORRY.

18 MR. WAPNER: IT IS OKAY FOR A JUROR. SHE DOESN'T KNOW  
19 THE LAW. BUT MR. BARENS SHOULD KNOW.

20 MR. BARENS: WELL, I HEARD IT AND IT SOUNDED GOOD TO  
21 ME, MR. WAPNER. I THOUGHT I WOULD JUST GO WITH IT.

22 IT IS BEYOND A REASONABLE DOUBT. NOW THAT WE  
23 HAVE GOT THAT, WE ARE ALREADY THERE. ALL OF THESE FACTORS  
24 ARE BEYOND A REASONABLE DOUBT. THOSE ARE ESTABLISHED THINGS,  
25 NOT JUST FOR YOU BUT THE OTHER 11 PEOPLE THERE.

26 NOW, WE ARE GOING TO TALK ABOUT THE DECISION ON  
27 WHETHER THIS GUY LIVES OR DIES. WHAT I AM ASKING YOU IS,  
28 ONCE YOU HAVE GOTTEN THERE, ISN'T IT TRUE THAT YOU REALLY

1 BELIEVE THAT THAT PERSON SHOULD DIE?

2 MS. MACK: YES.

3 MR. BARENS: IN EVERY CASE BECAUSE THAT'S THE WAY IT  
4 IS WHEN YOU TAKE A PERSON'S LIFE INTENTIONALLY?

5 MS. MACK: YES.

6 MR. BARENS: AGE AND ALL OF THE OTHER FACTORS DON'T  
7 COME INTO IT? THE FACT IS THAT A LIFE WAS TAKEN INTENTIONALLY  
8 AND THE VICTIM HAD NO SAY IN IT?

9 MS. MACK: YES.

10 MR. BARENS: AND WHAT WE HAVE GOT TO DO IS WHAT IS RIGHT  
11 UNDER THOSE CIRCUMSTANCES? AND THAT MEANS THE DEATH PENALTY,  
12 DOESN'T IT?

13 MS. MACK: YES.

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16B-1

1 MR. BARENS: YOUR HONOR --

2 THE COURT: ANY QUESTIONS?

3 MR. WAPNER: I HAVE A FEW.

4 THE COURT: ALL RIGHT.

5 MR. WAPNER: MS. MACK, COULD YOU FORESEE A SITUATION  
6 WHERE, GIVEN AN INTENTIONAL KILLING DURING THE COURSE OF A  
7 ROBBERY, THAT YOU COULD BRING BACK A VERDICT OF LIFE WITHOUT  
8 POSSIBILITY OF PAROLE?

9 MS. MACK: YES.

10 MR. WAPNER: EXPLAIN THAT TO ME.

11 MS. MACK: IF IT WERE NOT INTENTIONAL AND PREMEDITATED,  
12 IF THEY WERE ROBBING SOMEONE WITH NO INTENTION OF MURDER --

13 THE COURT: NO. NO, YOU HAVE GOT TO ASSUME THAT IT  
14 WAS INTENTIONAL AND A DELIBERATE MURDER AND IT WAS COMMITTED --  
15 ASSUMING THAT THAT WAS SO, ASSUMING THAT THAT WAS PROVED,  
16 THAT IT WAS A DELIBERATE AND INTENTIONAL MURDER COMMITTED  
17 DURING THE COURSE OF A ROBBERY.

18 YOU MADE A FINDING OF THAT. THAT JURY DETERMINED  
19 YES, THAT THAT IS SO, THE DEFENDANT IS GUILTY OF MURDER IN  
20 THE FIRST DEGREE COMMITTED DURING THE COURSE OF A ROBBERY  
21 AND THAT IS BEYOND A REASONABLE DOUBT.

22 NOW, ASSUMING THOSE FACTS TO BE TRUE, WOULD YOU  
23 ALWAYS VOTE THE DEATH PENALTY?

24 MS. MACK: RUN THAT BY ME AGAIN. ASK ME THAT AGAIN.

25 MR. WAPNER: OKAY. LET ME SEE IF I CAN PUT IT A  
26 DIFFERENT WAY. THE STATE PROVIDES THAT THERE ARE CERTAIN  
27 PREREQUISITES BEFORE YOU CAN GET TO THE QUESTION OF THE DEATH  
28 PENALTY. AND AS THEY APPLY TO THIS PARTICULAR CASE, THOSE

1 PREREQUISITES ARE THAT A MURDER WAS COMMITTED DURING THE COURSE  
2 OF A ROBBERY. IT WAS DONE WITH THE INTENT TO KILL. DO YOU  
3 UNDERSTAND THAT?

4 MS. MACK: YES.

5 MR. WAPNER: SO UNLESS THESE PREREQUISITES ARE MET,  
6 YOU WOULD NEVER EVEN GET TO THE ISSUE OF WHETHER OR NOT THERE  
7 IS A DEATH PENALTY. DO YOU UNDERSTAND THAT?

8 MS. MACK: YES.

9 MR. WAPNER: OKAY. NOW, GIVEN THAT THOSE ARE THE  
10 PREREQUISITES, CAN YOU -- AND YOU ARE NOW SITTING AS A JUROR  
11 AND THOSE PREREQUISITES HAVE BEEN SATISFIED.

12 AND NOW, PUT YOURSELF IN A SITUATION WHERE YOU  
13 ARE SITTING AS A JUROR LISTENING TO THE PENALTY PHASE. DO  
14 YOU HAVE THAT SITUATION IN MIND?

15 MS. MACK: YES.

16 MR. WAPNER: OKAY. THOSE PREREQUISITES -- IF THOSE  
17 PREREQUISITES HAVE BEEN MET AND IF YOU ARE LISTENING TO THE  
18 EVIDENCE IN THE PENALTY PHASE, ARE YOU A FAIR JUROR TO BOTH  
19 SIDES? OR, ARE YOU GOING TO AUTOMATICALLY VOTE FOR DEATH?

20 MS. MACK: I WOULD HOPE I WOULD BE FAIR.

21 THE COURT: PARDON ME?

22 MR. WAPNER: OKAY.

23 MS. MACK: I WOULD HOPE THAT I WOULD BE FAIR.

24 MR. WAPNER: OKAY. PROBABLY MR. BARENS AND MR. CHIER  
25 AND MR. HUNT DON'T FEEL REAL COMFORTABLE ABOUT YOUR JUST HOPING  
26 THAT YOU WOULD BE FAIR AND --

27 MR. BARENS: I TAKE STRONG EXCEPTION BEING CHARACTERIZED  
28 BY THE DISTRICT ATTORNEY IN ANY FASHION.



1 THE COURT: KEEP HIM OUT OF IT.

2 MR. WAPNER: I WAS NOT TRYING TO BE UNFAIR TO ANYBODY.  
3 WHAT I AM --

4 MS. MACK: I WOULDN'T WANT TO BE UNFAIR TO ANYONE EITHER  
5 BUT IF I HAD NO DOUBT OF THE INTENT, I THINK I WOULD VOTE  
6 FOR THE DEATH PENALTY.

7 MR. WAPNER: REGARDLESS OF ANY EVIDENCE THAT MIGHT BE  
8 PRESENTED TO YOU, TO SHOW --

9 THE COURT: BUT WE HAVE ALREADY DECIDED ON THE GUILT  
10 OF THE PREMEDITATED --

11 MS. MACK: YES, YES.

12 THE COURT: YES?

13 MR. WAPNER: WE HAVE ALREADY DECIDED THE ISSUE OF GUILT.

14 MS. MACK: YES.

15 MR. WAPNER: AND THE JUDGE WILL TELL YOU THAT IF YOU  
16 GET -- WHEN YOU GET TO THE PENALTY PHASE, THAT YOU CAN  
17 CONSIDER IN THE PENALTY PHASE, AMONG OTHER THINGS, THE  
18 CIRCUMSTANCES OF THE OFFENSE. DO YOU UNDERSTAND THAT?

19 MS. MACK: WOULD YOU TELL ME THAT?

20 THE COURT: YES.

21 MR. WAPNER: HE WILL TELL YOU THAT. I CAN GUARANTEE  
22 IT. I WILL ALSO -- HE WILL TELL YOU THAT THERE ARE A LOT  
23 OF OTHER FACTORS THAT YOU CAN CONSIDER IN MAKING A DECISION  
24 AS TO WHETHER OR NOT THE DEFENDANT SHOULD LIVE OR WHETHER  
25 THE DEFENDANT SHOULD DIE.

26 WHAT WE ARE TRYING TO FIND OUT NOW IS, REGARDLESS  
27 OF WHAT HE TELLS YOU ABOUT WHAT YOU CAN CONSIDER, HAVE YOU  
28 ALREADY MADE UP YOUR MIND?

1 MS. MACK: NO.

2 MR. WAPNER: ALL RIGHT. HOW DOES THAT ANSWER SQUARE  
3 WITH WHAT YOU TOLD MR. BARENS BEFORE?

4 MS. MACK: IT IS CONFUSING.

5 MR. WAPNER: OKAY. TELL ME WHAT IT IS THAT YOU DON'T  
6 UNDERSTAND.

7 MS. MACK: I KNOW IT IS -- I AM JUST CONFUSED. I WOULD  
8 HATE TO BE PUT INTO THAT POSITION. I WOULDN'T WANT TO BE  
9 IN THE POSITION OF SAYING THAT SOMEONE SHOULD DIE.

10 BUT, IF I HAD TO DO IT, IF THOSE WERE MY CHOICES,  
11 I THINK I WOULD VOTE FOR THE DEATH PENALTY.

12 MR. WAPNER: I HAVE NO FURTHER QUESTIONS.

13 MR. BARENS: YOUR HONOR?

14 THE COURT: WELL, THANK YOU VERY, VERY MUCH FOR BEING  
15 FRANK WITH US.

16 BUT IN VIEW OF THE STATEMENTS THAT YOU MADE, I  
17 DON'T THINK THAT YOU WOULD QUALIFY FOR A DEATH PENALTY CASE.  
18 SO, WHAT I AM GOING TO ASK YOU TO DO IS -- I AM GOING TO  
19 EXCUSE YOU RELUCTANTLY. I WILL ASK YOU --

20 MR. BARENS: TO ALL OF OUR DISAPPOINTMENT.

21 THE COURT: YES. COME BACK TOMORROW TO THE JURY ASSEMBLY  
22 ROOM.

23 TELL THE CLERK THAT YOU ARE NOT TO BE A JUROR  
24 IN THIS CASE BUT YOU QUALIFY FOR SOME OTHER KIND OF A CASE.

25 MS. MACK: OKAY.

26 THE COURT: SORRY. WE WOULD HAVE LOVED TO HAVE HAD  
27 YOU, BUT IN VIEW OF YOUR ATTITUDES --

28 MS. MACK: I AM RELIEVED.

1 (PROSPECTIVE JUROR MACK EXITED THE  
2 COURTROOM.)

3 THE COURT: ALL RIGHT. WE'LL TAKE OUR ADJOURNMENT AT  
4 THIS TIME UNTIL TOMORROW MORNING AT HOPEFULLY 10:30.

5 WILL YOU BE ABLE TO GET HERE BY THAT TIME?

6 MR. CHIER: I HOPE SO.

7 THE COURT: ALL RIGHT. THREE OF THE JURORS DOWN HERE  
8 FOR TODAY, WHOM WE ASKED TO COME BACK TOMORROW, COULDN'T MAKE  
9 IT TOMORROW.

10 BUT, SOME OF THEM SAID THEY COULD COME BACK ON  
11 MONDAY. NOW, WHICH ARE THE THREE?

12 THE CLERK: OKAY, FOR TOMORROW, LINDA MICKELL, NORMAN  
13 NELSON --

14 THE COURT: WAIT A MINUTE. WHERE DID YOU GET THOSE  
15 FROM?

16 THE CLERK: FROM TODAY, NOVEMBER 25, P.M.

17 THE COURT: P.M.?

18 THE CLERK: YES. THAT'S RIGHT. WAIT, WE HAVE GOT THE  
19 A.M., TOO.

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1 MR. WAPNER: WE ASKED THOSE JURORS TO COME BACK ON  
2 DECEMBER 2ND IN THE AFTERNOON, YOUR HONOR.

3 THE COURT: DECEMBER 2ND?

4 THE CLERK: YES.

5 THE COURT: NOW NOVEMBER 25, P.M.

6 THE CLERK: SO MAURICE MCMAHON WILL COME -- I AM SORRY.  
7 EXCUSE ME. LINDA MICKELL WILL COME BACK TOMORROW MORNING.  
8 NORMAN NELSON, TOMORROW MORNING. AND KENNETH NITZ, TOMORROW  
9 MORNING.

10 THE THREE THAT WILL COME BACK MONDAY ARE --

11 THE COURT: THE OTHER THREE WILL COME BACK MONDAY; IS  
12 THAT RIGHT?

13 THE CLERK: YES.

14 THE COURT: ALL RIGHT. FINE.

15 MR. BARENS: YOUR HONOR, AS I MENTIONED, I WILL NOT BE  
16 IN ATTENDANCE TOMORROW. I WILL SEE YOU MONDAY. I WISH YOU  
17 A GOOD HOLIDAY.

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

19 WISH HIM WELL. HE IS GETTING MARRIED TOMORROW.

20 MR. BARENS: I JUST DID. TOMORROW HE WILL BE THE ONLY  
21 GUY NEEDING MORE LUCK THAN THE DEFENSE, JUDGE.

22 (AT 4:45 P.M. AN ADJOURNMENT WAS TAKEN  
23 UNTIL WENDESDAY, NOVEMBER 26, 1986 AT  
24 10:30 A.M.)

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