

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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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

FOOT

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 13 OF 101
(PAGES 1617 TO 1817, INCLUSIVE)

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

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435)

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, NOVEMBER 26, 1986

VOLUME 13

(PAGES 1617 TO 1817, 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
OFFICIAL REPORTERS

COPY

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 26, 1986; 10:55 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. BARENS IS NOT PRESENT.)
5

6 THE CLERK: YOUR HONOR, I BELIEVE WE ARE READY FOR THE
7 FIRST PROSPECTIVE JUROR.

8 THE COURT: ALL RIGHT.

9 (PROSPECTIVE JUROR MICKELL ENTERS THE
10 COURTROOM.)

11 THE CLERK: HAVE A SEAT.

12 STATE YOUR NAME.

13 MS. MICKELL: LINDA MICKELL.

14 MR. WAPNER: YOUR HONOR, I BELIEVE SHE WOULD BE THE
15 SECOND ONE ON THE LIST FROM YESTERDAY AFTERNOON.

16 (PAUSE.)

17 THE COURT: SORRY TO KEEP YOU WAITING.

18 MS. MICKELL: THAT'S ALL RIGHT.

19 THE COURT: BECAUSE IT HAS TAKEN SOME TIME. WE HAVE
20 HAD A LOT OF OTHER MATTERS TO TAKE CARE OF.

21 I JUST WANT TO CHECK YOUR NAME OFF.

22 MICKELL, IS THAT IT?

23 MS. MICKELL: IT IS PRONOUNCED MICKELL.

24 THE COURT: MICKELL. ALL RIGHT. IS THAT MISS OR MRS.?

25 MS. MICKELL: MRS.

26 THE COURT: WHERE DO YOU LIVE, MRS. MICKELL?

27 MS. MICKELL: IN LOS ANGELES, 49, BRENTWOOD.

28 THE COURT: BRENTWOOD?

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MS. MICKELL: UH-HUH.

THE COURT: HAVE YOU HEARD ANYTHING AT ALL ABOUT THIS
CASE OR READ ANYTHING AT ALL ABOUT IT?

MS. MICKELL: I HAVE HEARD A LITTLE BIT, AND I READ ONE
ARTICLE IN THE NEWSPAPER BEFORE I EVEN STARTED JURY DUTY.

THE COURT: WHICH NEWSPAPER WAS THAT?

MS. MICKELL: THAT WAS THE LOS ANGELES TIMES.

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1 THE COURT: AS A RESULT OF READING THAT PARTICULAR
2 ARTICLE, WHAT IS YOUR STATE OF MIND? DO YOU HAVE ANY BELIEFS
3 ONE WAY OR THE OTHER AS TO THE GUILT OR INNOCENCE OF THE
4 DEFENDANT?

5 MS. MICKELL: NO.

6 THE COURT: YOU WOULDN'T PERMIT THAT TO INFLUENCE YOU
7 IN ANY WAY AND YOU WILL BE GUIDED ONLY BY THE EVIDENCE
8 PRODUCED IN THIS COURT?

9 MS. MICKELL: CORRECT.

10 THE COURT: WHAT WERE THE CONVERSATIONS THAT YOU HAD
11 WITH ANYBODY?

12 MS. MICKELL: ACTUALLY, JUST I THINK MURMURINGS AROUND
13 HERE THAT IT IS A MURDER TRIAL AND NOT SO MUCH FROM ANYBODY
14 ELSE THAT HAD READ OR KNOWN MORE, BUT JUST THE BASIC FACT.

15 THE COURT: NOTHING ABOUT THE FACTS AS SUCH?

16 MS. MICKELL: NO.

17 THE COURT: NONE OF THE DETAILS?

18 MS. MICKELL: NO.

19 THE COURT: ALL RIGHT. IN THE FUTURE, I WOULD SUGGEST
20 THAT YOU NOT TALK TO ANYBODY ABOUT IT. DON'T READ ANYTHING,
21 IF YOU CAN AVOID IT OR HEAR ANYTHING ON THE RADIO OR ON
22 TELEVISION.

23 MS. MICKELL: RIGHT.

24 THE COURT: ALL RIGHT. YOU WERE HERE OF COURSE, WHEN
25 I HAD ALL OF THE PROSPECTIVE JURORS AND GAVE THEM AN OUTLINE
26 OF WHAT THE CASE WAS ABOUT AND READ FROM THE INFORMATION?

27 MS. MICKELL: YES.

28 THE COURT: TO REPEAT BRIEFLY, THIS IS THE CASE WHERE

1 THE PROSECUTION -- WHERE THE INFORMATION CHARGES THE DEFENDANT
2 WITH THE CRIME OF MURDER IN THE FIRST DEGREE.

3 AND IT ALSO ALLEGES THAT DURING THE COURSE OF THAT
4 MURDER, IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. DO
5 YOU UNDERSTAND THAT?

6 MS. MICKELL: YES.

7 THE COURT: NOW, WHEN A MURDER IS COMMITTED IN THE COURSE
8 OF A ROBBERY, THAT IS A SPECIAL CIRCUMSTANCE WHICH QUALIFIES
9 THAT PARTICULAR CASE FOR EITHER THE DEATH PENALTY OR LIFE
10 WITHOUT POSSIBILITY OF PAROLE.

11 THE LEGISLATURE HAS SAID NOT ALL MURDERS -- A
12 MURDER JUST BECAUSE IT IS A MURDER, IT DOESN'T CALL FOR THE
13 DEATH PENALTY. IT HAS GOT TO BE A SPECIAL KIND, SPECIAL
14 CIRCUMSTANCES.

15 I THINK THAT THE LEGISLATURE HAS SAID THAT THERE
16 ARE ABOUT 19 KINDS OF CIRCUMSTANCES WHICH CALL FOR OR MAY
17 RESULT IN A DEATH PENALTY OR WHERE THE JURY WILL BE CALLED
18 UPON TO MAKE A DETERMINATION OF LIFE WITHOUT POSSIBILITY OF
19 PAROLE OR DEATH.

20 AMONG FOR EXAMPLE THOSE KINDS, IS A MURDER
21 COMMITTED DURING THE COURSE OF A BURGLARY OR A ROBBERY OR A
22 MURDER COMMITTED IN THE COURSE OF A KIDNAPPING. IT COULD BE
23 A MURDER CAUSED BY POISONING. IT COULD BE A MURDER COMMITTED
24 DURING THE COURSE OF A RAPE. THOSE ARE SOME OF WHAT THE
25 LEGISLATURE HAS SAID MIGHT RESULT IN THE DEATH PENALTY.

26 SO, THE JURY IS CALLED UPON FIRST, TO MAKE A
27 DETERMINATION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT.
28 IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE, THEN

1 THEY HAVE TO VOTE ON WHETHER OR NOT IT WAS COMMITTED DURING
2 THE COURSE OF A ROBBERY.

3 THAT IS WHAT IS KNOWN AS A SPECIAL CIRCUMSTANCE.
4 THAT QUALIFIES IT FOR THE DEATH PENALTY. THE JURY THEN, AFTER
5 THEY COME BACK WITH -- IF THEY COME BACK WITH A VERDICT OF
6 MURDER IN THE FIRST DEGREE, THE JURY VOTES THAT IT IS SPECIAL
7 CIRCUMSTANCES. IF THEY VOTE THAT SPECIAL CIRCUMSTANCES, THAT
8 THEY WERE COMMITTED DURING THE COURSE OF A ROBBERY, THEN WE
9 HAVE ANOTHER PHASE OF THE TRIAL CALLED A PENALTY PHASE WHERE
10 THE SAME JURY LISTENS TO THE EVIDENCE PRESENTED BY BOTH THE
11 DEFENDANT AND BY THE PEOPLE.

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1 THE PURPOSE OF THAT WOULD BE TO SHOW CIRCUMSTANCES
2 WHICH ARE FAVORABLE TO THE DEFENDANT AND CIRCUMSTANCES WHICH
3 ARE UNFAVORABLE TO THE DEFENDANT.

4 WHAT I AM GOING TO DO IS TO READ TO YOU FROM THE
5 PENAL CODE SO THAT YOU WILL HAVE AN IDEA AS TO WHAT IS EXPECTED
6 ON THE PENALTY PHASE.

7 "IN THE PROCEEDINGS ON THE QUESTION
8 OF PENALTY EVIDENCE MAY BE PRESENTED BY BOTH THE
9 PEOPLE AND THE DEFENDANT AS TO ANY MATTER RELEVANT
10 TO AGGRAVATION, MITIGATION AND SENTENCING INCLUDING
11 BUT NOT LIMITED TO THE NATURE AND CIRCUMSTANCES OF
12 THE PRESENT OFFENSE ..."

13 DURING THE GUILT PHASE OF A CASE YOU HEAR ALL
14 OF THE CIRCUMSTANCES. YOU CAN CONSIDER THAT.

15 "... ANY PRIOR FELONY CONVICTION OR
16 CONVICTIONS, WHETHER OR NOT SUCH CONVICTION OR
17 CONVICTIONS INVOLVED A CRIME OF VIOLENCE, THE
18 PRESENCE OR ABSENCE OF OTHER CRIMINAL ACTIVITY
19 BY THE DEFENDANT WHICH INVOLVED THE USE OR ATTEMPTED
20 USE OF FORCE OR VIOLENCE OR WHICH INVOLVED THE
21 EXPRESS OR IMPLIED THREAT TO USE FORCE OR VIOLENCE,
22 AND THE DEFENDANT'S CHARACTER, BACKGROUND, HISTORY,
23 MENTAL CONDITION AND PHYSICAL CONDITION."

24 MS. MICKELL: UH-HUH.

25 THE COURT: THESE ARE SOME OF THE INSTANCES, THESE ARE
26 SOME OF THE THINGS THAT THE JURY MAY CONSIDER.

27 MS. MICKELL: THAT IS THE SECOND PHASE?

28 THE COURT: IN THE SECOND PHASE OR THE PENALTY PHASE.

1 INCLUDING ALSO THE AGE OF THE DEFENDANT AND ANY
2 OTHER FACTORS WHICH ARE RELEVANT TO DETERMINE WHETHER OR NOT
3 THE JURY SHOULD IMPOSE THE DEATH PENALTY OR LIFE IMPRISONMENT
4 WITHOUT THE POSSIBILITY OF PAROLE.

5 AND THEN THEY VOTE AND THEN THEY COME IN, AND
6 REACH THEIR VERDICT, IF THEY CAN REACH A VERDICT.

7 NOW WHAT I AM GOING TO DO IS ASK YOU A NUMBER
8 OF QUESTIONS, AND THE ANSWERS TO THESE QUESTIONS WILL BE
9 EITHER YES OR NO.

10 IF YOU DON'T UNDERSTAND THE QUESTION OR YOU WANT
11 TO HAVE IT REPEATED, I WILL REPEAT IT TO YOU. IF YOU WANT
12 IT EXPLAINED, I WILL EXPLAIN IT TO YOU. ALL RIGHT?

13 MS. MICKELL: THERE IS NO SUCH ANSWER AS "I DON'T KNOW"
14 OR "I AM NOT SURE."

15 THE COURT: THAT'S RIGHT. YOU HAVE GOT TO ANSWER YES
16 OR NO SO WE WILL HAVE AN IDEA. THEN YOU CAN EXPLAIN THE
17 ANSWER THAT YOU HAVE GIVEN IF YOU WANT TO.

18 MS. MICKELL: ALL RIGHT.

19 THE COURT: NOW YOU RECALL THAT I SAID THERE WERE TWO
20 PHASES OF THE TRIAL, A GUILT PHASE WHERE YOU DETERMINE GUILT
21 OR INNOCENCE OF THE DEFENDANT, WHETHER OR NOT IT WAS
22 COMMITTED DURING THE COURSE OF A ROBBERY; IF HE WAS GUILTY
23 OF MURDER IN THE FIRST DEGREE, OR INNOCENT.

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

27 MS. MICKELL: NO.

28 THE COURT: OKAY. NOW DO YOU HAVE ANY OPINION REGARDING

1 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR THE FIRST
2 DEGREE MURDER EVEN IF THE PROSECUTION DOESN'T PROVE MURDER
3 IN THE FIRST DEGREE OR --

4 MS. MICKELL: COULD YOU SAY THAT ONE MORE TIME?

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 IF THE PROSECUTION -- IT SEEMS LIKE A SILLY QUESTION
8 BUT I GOT TO ASK IT -- DO YOU HAVE ANY OPINION REGARDING THE
9 DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST DEGREE
10 MURDER EVEN IF THE PROSECUTION HAS NOT PROVED MURDER IN THE
11 FIRST DEGREE, BUT MAYBE MURDER IN THE SECOND DEGREE?

12 MS. MICKELL: NO.

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

17 MS. MICKELL: NO.

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

22 MS. MICKELL: NO.

23 THE COURT: THE OTHER SIDE OF THE COIN ON THAT SAME
24 QUESTION: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
25 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
26 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS
27 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
28 OF THE TRIAL?

1 MS. MICKELL: NO.

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

6 MS. MICKELL: CORRECT.

7 THE COURT: OKAY.

8 ALL RIGHT.

9 MR. CHIER: GOOD MORNING, MRS. MICKELL.

10 MS. MICKELL: GOOD MORNING.

11 MR. CHIER: MY NAME IS RICHARD CHIER. I REPRESENT
12 MR. HUNT HERE, THE DEFENDANT.

13 WE ARE GATHERED TOGETHER IN THE RELATIVE PRIVACY
14 OF THIS COURTROOM TO TALK TO YOU IN KIND OF A FRANK MANNER
15 ABOUT YOUR ATTITUDE TOWARD THE DEATH PENALTY. THE JUDGE JUST
16 ASKED A SERIES OF QUESTIONS WHICH ARE, I GUESS, INTENDED TO
17 SEE IF THERE IS ANY KIND OF ANY KNEE JERK RESPONSE ONE WAY
18 OR THE OTHER TOWARD THE DEATH PENALTY, AND THERE NOT BEING
19 ANY, THEN I WOULD LIKE TO JUST FOLLOW UP A LITTLE BIT WITH
20 SOME MORE SUBTLE GRADATIONS.

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1 BEFORE I DO THAT HOWEVER, I WOULD LIKE TO TALK
2 TO YOU ABOUT THE PUBLICITY ASPECT OF THIS CASE AND TO EXPRESS
3 TO YOU MY CONCERN ABOUT YOUR HAVING READ THE ARTICLE IN THE
4 TIMES AND TO ASK YOU FIRST OF ALL, ARE YOU A REGULAR SUBSCRIBER
5 TO THE TIMES?

6 MS. MICKELL: YES.

7 MR. CHIER: AND DO YOU READ IT ON A REGULAR BASIS?

8 MS. MICKELL: PRETTY REGULARLY, YES.

9 MR. CHIER: DO YOU CONSIDER IT A RELIABLE NEWSPAPER?

10 MS. MICKELL: YES.

11 MR. CHIER: DO YOU CONSIDER IT AN OBJECTIVE NEWSPAPER?

12 MS. MICKELL: WELL, REASONABLY SO.

13 MR. CHIER: ALL RIGHT. DO YOU CONSIDER IT MORE TRUST-
14 WORTHY IN THE AREA IN WHICH YOU LIVE THAN ANY OTHER AVAILABLE
15 DAILY AND SUNDAY NEWSPAPER?

16 MS. MICKELL: I KNOW THAT IT IS FULLER. I DON'T KNOW
17 IF IT IS MORE TRUSTWORTHY THAN SOME LOCAL PAPERS.

18 MR. CHIER: NOW, YOU UNDERSTAND -- I KNOW THIS SEEMS
19 ELEMENTARY BUT WE HAVE TO HAVE A RECORD OF THIS. SOMETIMES
20 WE START AT SQUARE ONE.

21 DO YOU UNDERSTAND THAT EVERYTHING IN THE NEWSPAPER
22 IS NOT ALWAYS TRUE?

23 MS. MICKELL: YES.

24 MR. CHIER: AND THAT THE DEFENDANT AND THE DEFENSE DOESN'T
25 ALWAYS NECESSARILY AGREE WITH THE CHARACTERIZATION OF THINGS
26 IN THE NEWSPAPER?

27 MS. MICKELL: UH-HUH.

28 MR. CHIER: ESPECIALLY WHEN THE INFORMATION DOESN'T COME

1 FROM THE DISTRICT ATTORNEY, IT COMES FROM OTHER SOURCES WHICH
2 ARE NOT EVEN ALWAYS APPARENT TO THE READER?

3 MS. MICKELL: UH-HUH.

4 MR. CHIER: AND DO YOU REMEMBER MUCH ABOUT THE ARTICLE?

5 MS. MICKELL: ACTUALLY, I WAS GOING TO GO BACK AND
6 READ IT. BUT IT HAD ALREADY BEEN THROWN OUT. I REMEMBER
7 GENERAL THINGS.

8 THIS WAS AS I SAY, FOUR WEEKS AGO BEFORE I EVEN
9 CAME HERE.

10 MR. CHIER: DID YOU KNOW YOU WERE COMING HERE AT THE
11 TIME?

12 MS. MICKELL: I KNEW I WAS COMING HERE.

13 MR. CHIER: DID YOU THINK THAT THAT CASE MIGHT BE
14 SOMETHING THAT YOU MIGHT BE INVOLVED IN?

15 MS. MICKELL: I THINK THERE WAS NO DATE GIVEN IN THE
16 NEWSPAPER. IT WAS JUST A CASE COMING TO SANTA MONICA SUPERIOR.

17 I SAID -- WELL, I DIDN'T THINK THAT I WOULD GET
18 A BIG CASE OR ANYTHING THAT MADE THE NEWSPAPER.

19 MR. CHIER: OKAY. COULD YOU TELL US IN A SUMMARY
20 FASHION, WHAT YOU REMEMBER ABOUT THE ARTICLE?

21 MS. MICKELL: OKAY. I DON'T REMEMBER THE EXACT NAME
22 OF THE CLUB OR GROUP THERE ON THE WEST SIDE. IT WAS SOMETHING
23 OR OTHER.

24 I KNOW IT INVOLVED A SCHOOL THAT I KNOW THE NAME
25 OF AND AM SLIGHTLY FAMILIAR WITH BECAUSE I KNOW PEOPLE IN THIS
26 PART OF TOWN WHERE I LIVE, HAVE SENT CHILDREN TO HARVARD, THE
27 NAME OF THE SCHOOL. THAT RANG A BELL. SOMEBODY HAD GONE THERE,
28 EVIDENTLY.

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1 I DON'T KNOW IF THERE WERE OTHER PEOPLE FROM THE
2 SCHOOL INVOLVED THAT HAD BEEN ACCUSED OF MURDER. I DON'T
3 THINK I EVEN KNEW THERE WAS A ROBBERY INVOLVED OR I DON'T
4 THINK IT WAS MENTIONED. I THINK IT WAS THE CRIME OF MURDER.
5 WHAT ELSE DO I REMEMBER?

6 MR. CHIER: DID YOU FORM ANY IMPRESSIONS OR OPINIONS
7 FROM READING THE ARTICLE AS TO WHAT THE MOTIVE FOR THE CRIME
8 WAS?

9 MS. MICKELL: NO.

10 MR. CHIER: OKAY. DO YOU REMEMBER ABOUT THE ARTICLE
11 MORE NAMES OR MORE THE GENERAL SCENARIO? WHAT IS THE OVERALL
12 GESTALT THAT THE ARTICLE LEAVES YOU WITH?

13 MS. MICKELL: THIS WAS SOMETHING ON THE WEST SIDE OF
14 TOWN WITH MONEY AND PRIVATE SCHOOLS. THAT WOULD BE MY FRAME
15 OF REFERENCE.

16 IT IS SOMEHOW SOMETHING THAT HAPPENED IN A VERY
17 ATTENTION-GETTING WORDAGE. THAT WAS MORE OF MY FEELING, NOT
18 THE SPECIFICS SO MUCH.

19 MR. CHIER: NOW, LET ME ASK YOU SOME FOLLOW-UP QUESTIONS.
20 SOMETIMES WHEN WE READ STUFF IN THE PRESS, ESPECIALLY STUFF
21 CONCERNING EITHER YOU KNOW, POLICE ACTIVITIES WHERE THE POLICE
22 MAKE AN ARREST OR THERE IS A CRIME, WE SOMETIMES SAY TO
23 OURSELVES -- AT LEAST I DO, SPEAKING FOR MYSELF -- THAT I HOPE
24 THEY GET THAT PERSON OR I AM GLAD THAT THEY GOT THAT PERSON.
25 I THINK THAT THEY OUGHT TO HANG THAT PERSON AND THAT TYPE OF
26 STUFF.

27 DID YOU HAVE ANY REACTION OF THAT TYPE, AFTER
28 READING THE ARTICLE? LIKE, THAT THIS IS A NASTY LITTLE

1 CHAP OR --

2 MS. MICKELL: NO. I THINK MAYBE CURIOSITY AS TO WHAT
3 REALLY HAPPENED. I MEAN, IT SOUNDED INTRIGUING.

4 BUT I DON'T THINK THAT I SAID -- I DON'T THINK
5 THERE WAS ENOUGH GIVEN. AS I SAID, I WOULDN'T HAVE SAID
6 THAT I HOPED THAT THEY CAUGHT HIM BECAUSE I DON'T THINK IT
7 WAS FULL ENOUGH.

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1 MR. CHIER: I AM WINDING DOWN, HERE. WHAT I GUESS I
2 REALLY WANT TO FIND OUT FROM YOU AT THIS POINT, IS WHETHER
3 OR NOT THE MANNER IN WHICH THIS THING WAS PORTRAYED IN THE
4 TIMES, CREATES THE IMPRESSION IN YOUR MIND THAT IT WAS KIND
5 OF CUT AND DRIED.

6 MS. MICKELL: NO, ABSOLUTELY NOT.

7 MR. CHIER: SO, IT LEFT OPEN NUMEROUS POSSIBILITIES?

8 MS. MICKELL: YES.

9 MR. CHIER: OKAY. NOW, MOVING ON TO THE NEXT SUBJECT
10 WHICH IS THE DEATH PENALTY, I WANT TO JUST PRESENT THIS WITH
11 A COUPLE OF REMARKS SO THAT YOU UNDERSTAND THAT THERE IS NO
12 RIGHT ANSWER OR WRONG ANSWER TO THE QUESTIONS THAT I WILL ASK
13 YOU. THERE JUST ISN'T.

14 THERE IS NO FAIR ANSWER OR UNFAIR ANSWER. THERE
15 IS NO GOOD ATTITUDE OR BAD ATTITUDE ABOUT OR TOWARD THE DEATH
16 PENALTY. IT IS JUST AN ATTITUDE.

17 IT MAY BE THAT BECAUSE OF YOUR ATTITUDE ONE WAY
18 OR THE OTHER TOWARD THE DEATH PENALTY, IT WOULD BE INAPPROPRIATE
19 FOR YOU TO BE ON THIS JURY. THAT DOESN'T MEAN THAT YOU ARE
20 NOT A PERSON THAT WOULD BE A GOOD JUROR IN SOME OTHER TYPE
21 OF CASE. AND THIS IS NOT ANY KIND OF A TEST.

22 YOU ARE NOT GRADED. IT HAS NO MEANING OTHER THAN
23 IN THIS LIMITED CONTEXT.

24 MS. MICKELL: RIGHT. I WILL LISTEN BETTER IF I PUT MY
25 GLASSES ON.

26 MR. CHIER: OKAY. THIS PROCEDURE CAN ONLY WORK --

27 THE COURT: WILL YOU PLEASE GET TO THE QUESTIONS? WE
28 HAVE HAD THIS DIALOGUE OF YOURS FOR QUITE A WHILE. NOW, LET'S

1 GET TO THE QUESTIONS ON THE DEATH PENALTY, WILL YOU PLEASE?

2 WE HAVE GOT OTHER JURORS THAT WE HAVE GOT TO
3 INTERVIEW.

4 MR. CHIER: ALL RIGHT. COULD I JUST SAY THAT THIS WILL
5 ONLY WORK MS. MICKELL, IF THE ANSWERS ARE TRUTHFUL. AND IF
6 THEY ARE NOT, IT IS NOT FAIR TO EITHER SIDE.

7 LET ME ASK YOU HOW YOU WOULD ANSWER THIS QUESTION:
8 I AM A PERSON WHO IS A, STRONGLY IN FAVOR OF THE DEATH PENALTY;
9 B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY; C, OPPOSED TO THE
10 DEATH PENALTY; OR D, HAVE NOT REALLY THOUGHT ABOUT IT BEFORE
11 NOW.

12 MS. MICKELL: WELL, IT IS MISSING POSSIBLY, A CHOICE
13 THAT I WOULD PREFER TO THOSE FOUR.

14 MR. CHIER: THEN I WILL PUT AN "OTHER" IN.

15 MS. MICKELL: ALL RIGHT. I WILL TAKE "OTHER."

16 MR. CHIER: WHAT IS "OTHER"?

17 MS. MICKELL: I WOULD WANT YOU TO GIVE ME YOUR -- WHAT
18 WAS IT? THE SECOND? I AM NOT MORE IN FAVOR --

19 MR. CHIER: STRONGLY IN FAVOR?

20 MS. MICKELL: NOT THAT.

21 MR. CHIER: SOMEWHAT IN FAVOR?

22 MS. MICKELL: NO.

23 MR. CHIER: OPPOSED TO IT OR HAVE NOT REALLY CONSIDERED
24 IT?

25 MS. MICKELL: IT IS NOT THAT I HAVE NOT CONSIDERED IT.
26 I HAVE CONSIDERED IT SO MUCH IN THE LAST WEEK, TO EVEN DECIDE
27 WHETHER I AM CAPABLE OR WANT TO BE A PART OF THIS KIND OF
28 PROCEDURE.

1 I THINK THAT THE OLDER I GET, THE LESS CERTAIN
2 I AM. I THINK IT IS HARDER FOR ME TO KNOW WHERE IT STAND.

3 I THINK I WOULD HAVE TO SAY I AM OPEN. I WOULD
4 HAVE TO GO ON A POINT-BY-POINT, CASE-BY-CASE BASIS.

5 I AM NOT MORE IN FAVOR IN A GENERAL WAY, EITHER
6 WAY.

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1 MR. CHIER: OKAY. WOULD YOU SAY THAT IT WOULD BE A
2 CORRECT ASSESSMENT OF YOUR PRESENT STATE OF MIND THAT UNDER
3 THE APPROPRIATE CIRCUMSTANCES, AND GIVEN, YOU KNOW, A
4 PERSUASIVE ARGUMENT BY COUNSEL ON ONE SIDE OR THE OTHER, YOU
5 COULD FIND IT WITHIN YOU, IF YOU TOOK AN OATH AS A JUROR,
6 TO FOLLOW THE LAW, TO RETURN A PENALTY OF DEATH, IF YOU THOUGHT
7 IT WAS THE RIGHT THING TO DO?

8 MS. MICKELL: YES, BEYOND ALL REASONABLE DOUBT, I THINK
9 I COULD DO THAT. IF IT WERE --

10 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE.

11 THE COURT: VERY GOOD.

12 QUESTIONS?

13 MR. WAPNER: GOOD MORNING, MRS. MICKELL. I AM FRED
14 WAPNER. I AM THE DEPUTY DISTRICT ATTORNEY THAT'S PROSECUTING
15 THIS CASE.

16 AS YOU EXAMINED YOUR CONSCIENCE OVER AND OVER
17 AGAIN IN THE LAST WEEK OR WEEK AND A HALF, WHAT CONCLUSIONS,
18 IF ANY, DID YOU COME TO?

19 MS. MICKELL: THAT IT IS A VERY HEAVY RESPONSIBILITY
20 TO BE A JUROR IN A CASE LIKE THIS. THAT IT WAS EASY MANY
21 YEARS AGO TO SAY I AM IN FAVOR -- AND VERY -- A STRONG WAY
22 OF ONE FORM OF PUNISHMENT OR THE OTHER.

23 I THINK AS YOU GROW OLDER, AS I SAY, THAT I AM
24 LESS SURE OF A WHOLE LOT OF THINGS, AND FIND THE RESPONSIBILITY
25 OF LIFE AND DEATH A VERY CHALLENGING QUESTION OR PROPOSITION.

26 I ONLY KNOW THAT I AM A VERY -- WHATEVER, LAW-
27 ABIDING, RESPONSIBLE PERSON, AND I THINK THAT I WOULD TAKE
28 A LOT OF TIME WITH WHATEVER DECISION I HAD TO COME TO.

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1 MR. WAPNER: YOU SUGGESTED THAT IT WAS EASIER YEARS
2 AGO TO TAKE A POSITION ONE WAY OR THE OTHER?

3 MS. MICKELL: YES.

4 MR. WAPNER: DID YOU HAVE A FIRM POSITION YEARS AGO?

5 MS. MICKELL: YES.

6 MR. WAPNER: WHAT WAS IT?

7 MS. MICKELL: I WAS AGAINST CAPITAL PUNISHMENT.

8 MR. WAPNER: AND WHEN DID THAT OPINION BEGIN TO CHANGE,
9 IF YOU KNOW?

10 MS. MICKELL: I DON'T THINK I COULD SAY IT WAS TEN YEARS
11 AGO OR TWENTY YEARS AGO OR FIVE YEARS AGO. I JUST THINK THAT
12 THE MORE YOU LIVE AND EXPERIENCE THINGS IN LIFE AND HEAR ABOUT
13 THINGS, AND QUESTION WHETHER CERTAIN PENALTIES -- AND YOU
14 LOOK AT THE RECIDIVISM RATES, AND YOU LOOK AT THE PEOPLE THAT
15 DON'T SERVE LIFE WITHOUT POSSIBILITY OF PAROLE; AND I THINK
16 YOU BECOME A LITTLE BIT MORE CYNICAL THE LONGER YOU LIVE,
17 AND YOU QUESTION YOUR VERY EASY ANSWERS THAT YOU MAY HAVE
18 HAD IN COLLEGE.

19 MR. WAPNER: PUT YOURSELF, IF YOU WILL, IN THIS
20 IMAGINARY SITUATION. YOU ARE A JUROR IN A CASE WHERE THE
21 JURY HAS BEEN DELIBERATING ON THE PENALTY PHASE, AND IT IS
22 YOUR DECISION AS TO WHAT THE APPROPRIATE PUNISHMENT SHOULD
23 BE, AND YOU ARE IN THE JURY ROOM, AND YOU ARE DISCUSSING THE
24 QUESTION; AND THE JUDGE HAS ALREADY TOLD YOU THAT YOU HAVE
25 TO MAKE UP YOUR OWN MIND, THAT YOU CAN'T JUST SIT THERE AND
26 LET THE OTHER PEOPLE DO THE WORK FOR YOU.

27 MS. MICKELL: UH-HUH.

28 MR. WAPNER: YOU HAVE CONSIDERED ALL THE EVIDENCE AND

1 AND YOU THINK THAT THE APPROPRIATE PUNISHMENT IS DEATH. DO
2 YOU THINK THAT YOU HAVE IT WITHIN YOU TO THEN, FIRST OF ALL,
3 DO YOU HAVE IT WITHIN YOU TO VOTE FOR THAT PUNISHMENT?

4 MS. MICKELL: YES, I THINK SO. IF IT COMES TO THAT
5 POINT. IT WOULD HAVE TO BE BEYOND ALL REASONABLE DOUBT. I
6 THINK I WOULD HANG ONTO THAT, BECAUSE I WOULD HAVE TO FEEL
7 COMFORTABLE WITH MY DECISION.

8 MR. WAPNER: OKAY. DID YOU UNDERSTAND THE JUDGE WHEN
9 HE EXPLAINED TO YOU ABOUT THE TWO DIFFERENT PHASES OF THE
10 TRIAL?

11 MS. MICKELL: RIGHT, YES.

12 MR. WAPNER: OKAY. THE BEYOND A REASONABLE DOUBT STANDARD
13 APPLIES TO THE DEGREE OF PROOF THAT IS REQUIRED TO FIND SOMEONE
14 GUILTY; DID YOU UNDERSTAND THAT?

15 MS. MICKELL: YES.

16 MR. WAPNER: THAT WHEN YOU GET -- IF HE IS NOT GOING
17 TO TELL YOU ANYTHING ABOUT BEYOND A REASONABLE DOUBT WHEN
18 YOU GET TO THE PENALTY PHASE, UNLESS IT HAS TO DO WITH PROOF
19 OF OTHER OFFENSES DURING THE PENALTY PHASE; DO YOU UNDERSTAND
20 THAT?

21 MS. MICKELL: PROOF OF OTHER -- OKAY. YES.

22 MR. WAPNER: IN OTHER WORDS, THE STANDARD OF DECIDING
23 WHETHER --

24 MS. MICKELL: RIGHT.

25 MR. WAPNER: -- WHETHER IT IS LIFE OR DEATH, IS NOT
26 A BEYOND A REASONABLE DOUBT STANDARD?

27 MS. MICKELL: RIGHT.

28 MR. WAPNER: DO YOU THINK THAT GOING BACK TO THE

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1 SITUATION THAT I WAS TALKING ABOUT A MOMENT BEFORE WHERE YOU
2 ARE DECIDING THIS QUESTION, DO YOU THINK THAT YOU ARE CAPABLE
3 OF COMING INTO THE COURTROOM, SITTING IN THE JURY BOX, AND
4 LOOKING AT THE DEFENDANT, AND SAYING, "MY VERDICT IS THAT
5 THE PENALTY SHOULD BE DEATH IN THIS CASE."?

6 MS. MICKELL: I HAVE NEVER --

7 MR. CHIER: THE QUESTION IS COMPOUND.

8 THE COURT: DO YOU UNDERSTAND THE QUESTION?

9 MS. MICKELL: YES.

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1 THE COURT: YOU MAY ANSWER IT.

2 MS. MICKELL: BUT I HAVE NEVER BEEN THERE. BUT I WOULD
3 SAY FROM THIS POINT, I THINK I COULD DO THAT. IT IS A HARD
4 THING TO PUT YOURSELF IN CIRCUMSTANCES WHERE YOU HAVEN'T --
5 IT IS A HARD DECISION AT THAT POINT. BUT I THINK I AM STRONG
6 ENOUGH MYSELF THAT I WOULD BE ABLE TO DO THAT.

7 MR. WAPNER: THERE IS ABSOLUTELY NO QUESTION THAT IT
8 IS A VERY DIFFICULT THING TO ASK ANYONE TO DO. WE ARE
9 CONSTRAINED BY THE RULES OF THIS COURT THAT THIS IS THE ONLY
10 TIME WE CAN ASK YOU THESE QUESTIONS. SO IF IT IS SOMETHING
11 THAT YOU WOULD NOT BE ABLE TO DO --

12 MS. MICKELL: UH-HUH.

13 MR. WAPNER: THEN WE NEED TO KNOW NOW BECAUSE WE WON'T
14 BE ABLE TO FIND OUT LATER.

15 DO YOU HAVE ANY RESERVATIONS ABOUT YOUR ABILITY
16 TO DO THAT?

17 MS. MICKELL: I DON'T THINK, BUT I COULDN'T GIVE YOU --
18 I WAS GOING TO SAY I COULDN'T SIGN OR -- I GUESS I COULD SWEAR,
19 YES, IF I FELT THAT THAT WAS THE WAY THE EVIDENCE PROVED,
20 I COULD BRING IN THAT KIND OF VERDICT.

21 MR. WAPNER: YOU UNDERSTAND MY CONCERN?

22 MS. MICKELL: YES.

23 MR. WAPNER: THAT IF I AM ARGUING TO YOU DURING THE
24 PENALTY PHASE THAT THE PUNISHMENT SHOULD BE DEATH --

25 MS. MICKELL: RIGHT.

26 MR. WAPNER: AND YOUR MIND IS SUCH THAT YOU ARE REALLY
27 NOT HEARING WHAT I AM SAYING?

28 MS. MICKELL: RIGHT, BECAUSE I AM BLOCKING, BECAUSE

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1 I DON'T BELIEVE IN IT TO START WITH.

2 MR. WAPNER: YES, EXACTLY.

3 IF YOU PASS THIS PHASE OF THE JURY SELECTION
4 PROCESS AND YOU DO END UP SERVING ON THE JURY, AND THEN IT
5 TURNS OUT THAT YOU START TO HAVE THESE FEELINGS, "WELL, I
6 JUST CAN'T DO THIS"; CAN YOU RECOGNIZE THOSE AND PUT THEM
7 ASIDE AND FOLLOW THE JUDGE'S INSTRUCTIONS, AND DECIDE THIS
8 CASE ON THE LAW AND ON THE FACTS?

9 DID YOU UNDERSTAND THAT QUESTION?

10 MS. MICKELL: YES. MIDWAY I FEEL A CHANGE OF OPINION,
11 CAN I JUST GO BY THE LEGAL BOOK, LAWS, OF WHAT THE JUDGE HAS
12 INSTRUCTED ME TO DO; IS THAT WHAT YOU ARE SAYING, AND NOT
13 BY SUDDENLY A CHANGE OF EMOTIONAL FEELING ABOUT IT; IS THAT
14 WHAT YOU ARE ASKING?

15 MR. WAPNER: WHAT I AM SAYING IS YOUR PREVIOUS ANSWER
16 WAS YOU ARE REALLY NOT SURE IF YOU CAN DO IT; YOU THINK YOU
17 CAN.

18 MS. MICKELL: RIGHT.

19 MR. WAPNER: AND WHAT I AM ASKING YOU IS IF IT TURNS
20 OUT THAT DESPITE YOUR THINKING THAT NOW YOU THINK YOU CAN, THAT
21 LATER YOU DON'T THINK YOU CAN, CAN YOU PUT THAT ASIDE AND
22 SAY, I HAVE TO PUT MY PERSONAL FEELINGS ASIDE, AND I HAVE
23 TAKEN AN OATH TO DECIDE AND BE FAIR TO BOTH SIDES; CAN YOU
24 DO THAT?

5A-1
25 MR. CHIER: YOUR HONOR, I OBJECT TO THE QUESTION AS
26 CALLING FOR THIS WITNESS'S ANTICIPATION OF A REACTION TO SOME
27 UNFORESEEABLE EVENT. SHE HAS NO WAY OF KNOWING THAT, YOUR
28 HONOR.

1 THE COURT: VERY BRIEFLY, IS YOUR STATE OF MIND SUCH
2 THAT IF YOU WERE A JUROR IN THIS CASE AND YOU WERE DISCUSSING
3 THE PENALTY TO BE IMPOSED ON THIS DEFENDANT, ASSUMING THAT
4 YOU REACHED THAT STAGE, WOULD YOU IF THE CIRCUMSTANCES AND
5 FACTS JUSTIFIED IT VOTE FOR THE DEATH PENALTY OR LIFE
6 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

7 MS. MICKELL: YES. GOING BACK TO WHAT I SAID, I THINK
8 AT THE VERY BEGINNING, MY HUSBAND LAUGHS AT ME BECAUSE IF
9 IT SAYS "NO U-TURN", I DON'T MAKE A U-TURN. I TEND TO FOLLOW
10 THE RULES DOWN TO THE LAST LINE, TO THE RIDICULOUS.

11 SO I THINK IF YOU CHOSE ME, AND I AM PUTTING ALL
12 OF MY AMBIVALENT FEELINGS RIGHT IN FRONT OF YOU, BECAUSE I
13 DON'T WANT TO HAVE IT HAPPEN LATER; SO IF YOU DECIDE TO SAY,
14 "WELL, SHE IS UNSURE. WE WILL GO WITH HER." IF I WAS THEN
15 THERE, THEN I WOULD HAVE TO DO WHAT THE LAW REQUIRED ME TO
16 DO. I THINK THAT'S THE KIND OF PERSON I AM.

17 THE COURT: AND WHAT THE EVIDENCE SHOWED?

18 MS. MICKELL: AND WHAT THE EVIDENCE SHOWED.

19 BUT I WANT YOU TO KNOW THERE IS SOME HESITATION
20 NOW, AND THEN IF YOU GO AHEAD WITH ME, I WILL FOLLOW ALL OF
21 THE RULES OF LAW.

22 THE COURT: YES.

23 MR. WAPNER: OKAY. I WILL PASS FOR CAUSE.

24 THE COURT: BUT YOUR STATE OF MIND IS SUCH AT THIS
25 PARTICULAR POINT YOU DON'T KNOW WHAT THE EVIDENCE IS, AND
26 THEREFORE YOU DON'T KNOW WHAT YOUR STATE OF MIND IS GOING
27 TO BE WHEN YOU HEAR IT; IS THAT RIGHT?

28 MS. MICKELL: YES.

1 THE COURT: YOU DID SAY BEFORE THAT YOU WOULD VOTE FOR
2 THE DEATH PENALTY IF IT WAS WARRANTED?

3 MS. MICKELL: YES, IF IT WAS WARRANTED; YES, SIR.

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

5 PASS FOR CAUSE?

6 MR. WAPNER: PASS FOR CAUSE.

7 MR. CHIER: PASS FOR CAUSE.

8 THE COURT: VERY GOOD.

9 WE ARE IN THE PROCESS NOW OF INTERROGATING THE
10 PROSPECTIVE JURORS, YOU SEE. WE HAVE HAD A NUMBER OF THEM.
11 THERE ARE SOME MORE TO GO, THE LAST NAMES OF THE JURORS WHOSE
12 NAMES BEGIN WITH "Z." YOU KNOW, IT IS EXPECTED WE WILL
13 FINISH THIS PROCESS BY DECEMBER 3RD.

14 SO WHAT I WILL ASK YOU TO DO IS TO COME BACK TO
15 THE JURY ASSEMBLY ROOM ON DECEMBER 3RD AND JOIN ALL OF THE
16 OTHER JURORS WHO HAVE BEEN SELECTED AS PROSPECTIVE JURORS
17 IN THE CASE. WE WILL GET YOU ALL BACK HERE IN THE COURTROOM.
18 THAT WILL BE ON DECEMBER 3RD AT 10:30 A.M. YOU REPORT TO
19 THE JURY ASSEMBLY ROOM.

20 IN THE EVENT THE PROCESS TAKES LONGER THAN WE
21 ANTICIPATE, AND IT MAY VERY WELL DO SO. WE THINK IT WILL
22 BE DECEMBER 3RD BEFORE WE FINISH. BUT WE WILL HAVE YOUR
23 TELEPHONE NUMBER AND WE WILL CALL AND LET YOU KNOW EXACTLY
24 WHEN IT IS THAT YOU SHOULD COME DOWN IF IT ISN'T DECEMBER 3RD.

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1 MS. MICKELL: THIS IS ONLY ONE STAGE AND THEN YOU GO
2 ON TO FURTHER CHOOSING?

3 THE COURT: THEN WE GO ON TO IMPANEL THE JURY. TWELVE
4 NAMES ARE SELECTED AND WE ASK THEM QUESTIONS AND THE WHOLE
5 PROCESS IS THE SAME LIKE IN ANY OTHER TRIAL.

6 THEN WE REALLY BEGIN THE TRIAL.

7 MS. MICKELL: I SEE.

8 THE COURT: AFTER WE HAVE HAD THIS DEATH QUALIFICATION
9 PROCEDURE.

10 MS. MICKELL: ALL RIGHT.

11 THE COURT: THANK YOU. THAT WILL BE DECEMBER 3RD AT
12 10:30 A.M.

13 (PROSPECTIVE JUROR MICKELL EXITS THE
14 COURTROOM.)

15 THE COURT: ALL RIGHT.

16 (PROSPECTIVE JUROR KENNETH NITZ ENTERS
17 THE COURTROOM.)

18 THE COURT: ALL RIGHT. GOOD MORNING, MR. NITZ.

19 MR. NITZ: GOOD MORNING, SIR.

20 THE COURT: WHERE DO YOU LIVE?

21 MR. NITZ: SANTA MONICA.

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

26 MR. CHIER: EXCUSE ME. IS THIS MR. NITZ?

27 THE COURT: NITZ. NOW, I WILL EXPLAIN IT TO YOU. BEFORE
28 I DO THAT, I WANT TO FIND OUT IF YOU HAVE READ ANYTHING AT

1 ALL ABOUT THIS CASE.

2 MR. NITZ: NO, I HAVE NOT.

3 THE COURT: HAVE YOU DISCUSSED IT WITH ANYBODY AT ALL?

4 MR. NITZ: NO, SIR.

5 THE COURT: THE ONLY THING YOU KNOW ABOUT THE CASE IS
6 WHAT YOU HEARD WHEN I MADE THE EXPLANATION OF THE NATURE OF
7 THE CASE WHEN ALL THE JURORS WERE PRESENT?

8 MR. NITZ: YES.

9 THE COURT: ALL RIGHT. NOW, THE FIRST QUESTION I AM
10 GOING TO ASK YOU IS -- THIS HAS TO DO WITH YOUR ATTITUDE TOWARD
11 THE DEATH PENALTY, HOW IT WILL AFFECT YOU IN SERVING AS A
12 JUROR IN THIS CASE. SO, THE FIRST QUESTION IS, DO YOU HAVE
13 AN OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU
14 FROM MAKING AN IMPARTIAL DECISION -- BEFORE I GO INTO THAT,
15 I HAVE GOT TO EXPLAIN SOMETHING TO YOU.

16 WHAT THE CASE IS ALL ABOUT, IS WHAT I WILL EXPLAIN,
17 TO REFRESH YOUR RECOLLECTION. FIRST, YOU UNDERSTAND THAT THE
18 CHARGES AGAINST THE DEFENDANT IS THAT HE COMMITTED A MURDER
19 AND IT IS A MURDER IN THE FIRST DEGREE. IT WAS COMMITTED
20 DURING THE COURSE OF A ROBBERY.

21 IF IT IS COMMITTED DURING THE COURSE OF A ROBBERY,
22 THE MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY, THAT
23 IS A SPECIAL CIRCUMSTANCE.

24 THE LEGISLATURE HAS SAID THAT IF A MURDER IS
25 COMMITTED IN THE COURSE OF A ROBBERY OR A BURGLARY OR
26 KIDNAPPING OR A RAPE AND SO FORTH, THEY CALL THOSE CASES
27 QUALIFIED FOR THE IMPOSITION OF THE DEATH PENALTY OR LIFE
28 WITHOUT POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

1 MR. NITZ: YES.

2 THE COURT: NOW, THE FIRST THING THE JURY HAS TO
3 DETERMINE, IF YOU ARE SELECTED AS A JUROR, IS, WAS THE
4 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE OR WAS HE
5 INNOCENT. IF THEY FIND GUILTY OF MURDER IN THE FIRST DEGREE,
6 THEN THEY HAVE TO ANSWER ANOTHER QUESTION, WAS IT COMMITTED
7 DURING THE COURSE OF A ROBBERY.

8 IF IT IS, THEN THAT QUALIFIES IT FOR THE SECOND
9 PHASE OF THE TRIAL, WHICH IS KNOWN AS THE PENALTY PHASE, WHERE
10 THE JURORS THEN ARE CALLED UPON TO DETERMINE WHAT THE PENALTY
11 SHOULD BE, SHOULD IT BE LIFE WITHOUT POSSIBILITY OF PAROLE
12 OR SHOULD IT BE DEATH. DO YOU UNDERSTAND THAT?

13 MR. NITZ: I UNDERSTAND.

14 THE COURT: NOW, YOU OF COURSE ARE NOW -- I TOLD YOU
15 THAT NOT EVERY MURDER CALLS FOR A PENALTY PHASE OR LIFE
16 WITHOUT POSSIBILITY OF PAROLE OR DEATH. IT IS ONLY THE
17 SPECIAL CIRCUMSTANCES ATTENDING THE MURDER THAT QUALIFIED FOR
18 THAT. DO YOU UNDERSTAND THAT?

19 MR. NITZ: YES.

20 THE COURT: ALL RIGHT. NOW, DO YOU HAVE ANY OPINION
21 CONCERNING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM
22 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF
23 THE DEFENDANT?

24 MR. NITZ: NO.

25 THE COURT: SECOND, DO YOU HAVE AN OPINION REGARDING
26 THE DEATH PENALTY THAT WOULD CAUSE YOU TO VOTE FOR FIRST
27 DEGREE MURDER, EVEN IF THE PROSECUTION DOESN'T PROVE FIRST
28 DEGREE MURDER BUT SOME OTHER DEGREE? DO YOU KNOW WHAT I MEAN?

1 DO YOU THINK YOU HAVE AN OPINION OF MURDER -- DO
2 YOU HAVE AN OPINION REGARDING THE DEATH PENALTY THAT WOULD
3 CAUSE YOU TO VOTE FOR FIRST DEGREE MURDER IN EVERY, SINGLE
4 INSTANCE, EVEN IF THE PEOPLE HAVE NOT PROVED FIRST DEGREE
5 MURDER?

6 FORGET THAT QUESTION. I WILL NOT ASK IT HEREAFTER.
7 I THINK IT IS A SILLY QUESTION.

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

12 MR. NITZ: NO.

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

18 MR. NITZ: NO, I DON'T.

19 THE COURT: NOW THERE IS ANOTHER ASPECT OF THAT SAME
20 QUESTION. DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
21 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
22 WITHOUT POSSIBILITY OF PAROLE AFTER A VERDICT OF GUILTY OF
23 MURDER IN THE FIRST DEGREE WITH A FINDING OF SPECIAL CIRCUMSTANCES
24 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
25 PHASE OF THE TRIAL?

26 LET ME REWORD IT FOR YOU. DO YOU HAVE SUCH AN
27 OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTO-
28 MATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE

1 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE
2 PENALTY PHASE OF THE TRIAL?

3 MR. NITZ: NO.

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

8 MR. NITZ: YES, SIR.

9 THE COURT: OKAY. GO AHEAD.

10 MR. CHIER: THANK YOU, YOUR HONOR. GOOD MORNING, MR.
11 NITZ. MY NAME IS CHIER. I AM ONE OF THE ATTORNEYS FOR MR.
12 HUNT, HERE.

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1 WE WOULD LIKE TO ASK YOU SOME FURTHER QUESTIONS
2 CONCERNING YOUR ATTITUDES TOWARD THE DEATH PENALTY. WE WILL
3 JUST REMIND YOU THERE IS NO RIGHT OR WRONG ANSWER. ALL WE
4 REALLY ASK FOR IS A TRUTHFUL ANSWER SO THAT WE CAN DETERMINE
5 WHETHER YOU ARE A PERSON WHO, IN THIS CASE, IS NEUTRAL AND
6 IMPARTIAL OR WHETHER IT MIGHT BE APPROPRIATE FOR YOU TO BE
7 A JUROR IN ANOTHER CASE.

8 IT DOESN'T MEAN THAT YOU ARE A BAD PERSON. THERE
9 IS NO RIGHT ANSWER OR WRONG ANSWER.

10 MR. NITZ: OKAY.

11 MR. CHIER: LET ME GIVE YOU A QUESTION THAT HAS SOME
12 PARTS AND YOU TELL ME ONE THAT BEST FITS YOURSELF: I AM A
13 PERSON WHO IS A, STRONGLY IN FAVOR OF THE DEATH PENALTY; B,
14 SOMEWHAT IN FAVOR OF THE DEATH PENALTY; C, OPPOSED TO THE DEATH
15 PENALTY; D, HAVE NOT REALLY THOUGHT ABOUT IT; OR E, OTHER.

16 MR. NITZ: I WOULD SAY A, SIR.

17 MR. CHIER: STRONGLY IN FAVOR?

18 MR. NITZ: STRONGLY.

19 MR. CHIER: IN FAVOR? OKAY. SO BY THAT, LET'S TALK
20 ABOUT WHAT YOU MEAN. YOU BELIEVE THAT THE DEATH PENALTY IS
21 NECESSARY, FIRST OF ALL?

22 MR. NITZ: YES, SIR, I DO.

23 MR. CHIER: OKAY. AND THAT IT IS REALLY THE ONLY
24 APPROPRIATE PUNISHMENT IN CERTAIN TYPES OF CASES?

25 MR. NITZ: IN CERTAIN TYPES OF CASES, YES.

26 MR. CHIER: OKAY. AND THAT INDICATES THAT FIRST DEGREE,
27 INTENTIONAL MURDER, IT IS APPROPRIATE, CORRECT?

28 MR. NITZ: I WOULD FEEL THAT IT WOULD BE.

1 MR. CHIER: OKAY. AND DO YOU FEEL -- DO YOU UNDERSTAND
2 THAT THERE IS A TWO-STEP DEAL? THE FIRST STEP IS THE GUILT
3 PHASE AND THE SECOND STEP IS THE PENALTY PHASE?

4 MR. NITZ: CORRECT.

5 MR. CHIER: YOU NEVER GET TO THAT PHASE UNLESS YOU
6 DETERMINE THE PERSON IS GUILTY AS CHARGED.

7 MR. NITZ: RIGHT.

8 MR. CHIER: OKAY. DO YOU THINK YOU ARE THE TYPE OF
9 PERSON WHO, HAVING ALONG WITH 11 OTHER JURORS, HAVING FOUND
10 A PERSON TO BE GUILTY OF INTENTIONAL, FIRST DEGREE MURDER IN
11 THE COURSE OF A ROBBERY BEYOND A REASONABLE DOUBT, COULD YOU
12 THEN BE OPEN-MINDED IN THE PENALTY PHASE, OPEN-MINDED TO THE
13 CONSIDERATION OF LIFE WITHOUT POSSIBILITY OF PAROLE AS WELL
14 AS DEATH?

15 MR. NITZ: YES, SIR. I THINK I COULD.

6B 16 MR. CHIER: DO YOU THINK THAT THERE COULD BE CIRCUMSTANCES
17 WHICH MIGHT WEIGH AGAINST THE DEATH PENALTY AND IN FAVOR OF
18 SOMETHING LESS THAN THAT, EVEN THOUGH A PERSON COMMITTED A
19 FIRST DEGREE MURDER?

20 THE COURT: I THOUGHT THAT HE JUST ANSWERED THAT
21 QUESTION.

22 MR. CHIER: PARDON ME?

23 THE COURT: HE ANSWERED THAT QUESTION YES. IS THAT WHAT
24 YOU SAID?

25 MR. NITZ: YES, YOUR HONOR.

26 THE COURT: LET US GET ON TO ANOTHER QUESTION.

27 MR. CHIER: COULD YOU TELL US WITHOUT KNOWING WHAT THE
28 LAW SAYS, SIR, MR. NITZ, WHAT IS YOUR ATTITUDE INSOFAR AS THE

1 TYPE OF THING THAT YOU MIGHT CONSIDER WOULD WEIGH AGAINST THE
2 DEATH PENALTY?

3 THE COURT: WELL, LET ME TELL YOU FIRST WHAT THE LAW
4 IS ON THAT SUBJECT. THE FACTORS TO BE CONSIDERED, WHETHER
5 IT SHOULD BE --

6 MR. CHIER: COULD YOUR HONOR JUST --

7 THE COURT: WILL YOU BE QUIET A MINUTE? WHETHER IT
8 SHOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE OR WHETHER IT
9 SHOULD BE DEATH. I WILL READ YOU THE LAW.

10 "IN PROCEEDINGS ON THE QUESTION
11 OF PENALTY, EVIDENCE MAY BE PRESENTED BY BOTH
12 THE PEOPLE AND THE DEFENANT AS TO ANY MATTER
13 RELEVANT TO AGGRAVATION, MITIGATION AND SENTENCE,
14 INCLUDING BUT NOT LIMITED TO THE NATURE AND
15 CIRCUMSTANCES OF THE PRESENT OFFENSE ..."

16 IN OTHER WORDS, ALL OF THE FACTS THAT YOU WILL
17 HEAR ON THE GUILT PHASE OF THE CASE, EVERYTHING THAT YOU HAVE
18 HEARD.

19 "... ANY PRIOR FELONY CONVICTIONS
20 OR CONVICTIONS, WHETHER OR NOT SUCH CONVICTION
21 OR CONVICTIONS INVOLVE A CRIME OF VIOLENCE, THE
22 PRESENCE OR ABSENCE OF OTHER CRIMINAL ACTIVITIES
23 BY THE DEFENDANT WHICH INVOLVE THE USE OR
24 ATTEMPTED USE OF FORCE OR VIOLENCE, OR WHICH
25 INVOLVE THE EXPRESS OR IMPLIED THREAT TO USE
26 FORCE OR VIOLENCE AND THE DEFENDANT'S CHARACTER,
27 BACKGROUND, HISTORY, MENTAL CONDITION AND PHYSICAL
28 CONDITION."

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1 THE COURT: YOU WILL CONSIDER ALL OF THOSE FACTORS IN
2 THE PENALTY PHASE IF I SO INSTRUCT YOU?

3 MR. NITZ: YES, I WILL.

4 THE COURT: ALL RIGHT. YOU WILL CONSIDER THAT BEFORE
5 YOU MAKE UP YOUR MIND AS TO WHETHER OR NOT IT WOULD BE LIFE
6 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR DEATH?

7 MR. NITZ: YES.

8 THE COURT: OKAY.

9 GO AHEAD.

10 MR. CHIER: ALL RIGHT. MR. NITZ, THE JUDGE HAS ASKED
11 YOU AND YOU HAVE STATED THAT YOU WOULD FOLLOW HIS INSTRUCTIONS,
12 AND THAT IS WITH RESPECT TO THESE TYPES OF FACTORS; RIGHT?

13 MR. NITZ: YES.

14 MR. CHIER: YOU UNDERSTAND THE JUDGE CAN ONLY OUTLINE
15 FOR YOU THE TYPES OF THINGS YOU MAY CONSIDER.

16 MR. NITZ: YES.

17 MR. CHIER: THE JUDGE CANNOT TELL YOU HOW TO VOTE, THAT
18 IS TO SAY FOR DEATH OR LIFE WITHOUT POSSIBILITY OF PAROLE?

19 MR. NITZ: YES.

20 MR. CHIER: YOU UNDERSTAND THAT?

21 MR. NITZ: I UNDERSTAND THAT.

22 MR. CHIER: THAT DECISION IS UP TO YOU. HE CAN SAY
23 YOU CAN CONSIDER THESE THINGS, A LOT OF WHICH HE JUST
24 DESCRIBED TO YOU.

25 MR. NITZ: RIGHT.

26 MR. CHIER: BUT THE INQUIRY THAT I HAVE IS NOT SO MUCH
27 WHETHER YOU WILL FOLLOW THE INSTRUCTIONS, BECAUSE IF YOU TOOK
28 THE OATH, I AM SURE YOU WOULD, BUT THE QUESTION IS THAT DO

7-2
1 YOU THINK THAT IN A MORAL SENSE THAT THINGS SUCH AS AGE OR
2 LACK OF CRIMINAL RECORD -- LET ME ASK YOU THIS SO THE QUESTION
3 IS NOT COMPOUND. DO YOU THINK SOMETHING SUCH AS A PERSON'S
4 AGE OUGHT TO MAKE ANY DIFFERENCE WHETHER HE LIVES OR DIES?

5 THE COURT: THE COURT WILL INSTRUCT YOU YOU MAY CONSIDER
6 THAT.

7 NEXT QUESTION.

8 MR. CHIER: YOUR HONOR, I AM ASKING ABOUT HIS MORAL
9 VIEWS TOWARDS SOMETHING.

10 THE COURT: YOU ASKED HIM ABOUT THE QUESTION OF AGE
11 AND I SAID THAT THE COURT WILL TELL HIM THAT HE MAY CONSIDER
12 THE AGE OF THE DEFENDANT.

13 MR. CHIER: BUT THAT DOESN'T MEAN THAT HE BELIEVES --

14 THE COURT: WOULD YOU PROCEED TO THE NEXT QUESTION,
15 PLEASE.

16 MR. CHIER: MR. NITZ, DO YOU THINK THAT IN A CASE WHERE
17 YOU HAD FOUND THE DEFENDANT GUILTY OF FIRST DEGREE INTENTIONAL
18 MURDER, AND YOU WERE THEN BEGINNING OR CONCLUDING THE PENALTY
19 PHASE, THAT YOU WOULD BE LIKE TILTED OR LEANING IN FAVOR OF
20 DEATH AT THAT POINT SO THAT IT WOULD TAKE A LOT TO CONVINC
21 YOU THAT SOMETHING OTHER THAN DEATH WAS APPROPRIATE?

22 MR. NITZ: I DON'T THINK I WOULD LEAN ONE WAY OR THE
23 OTHER UNTIL THE EVIDENCE WAS PRESENTED.

24 MR. CHIER: ALL RIGHT. YOU HAVE SAID THAT AS A MATTER
25 OF A GENERAL PROPOSITION THAT YOU THINK THE DEATH PENALTY
26 IS APPROPRIATE IN SOME CASES; RIGHT?

27 MR. NITZ: IN SOME CASES, YES.

28 MR. CHIER: ARE THERE CASES WHERE YOU THINK THE DEATH

1 PENALTY WOULD NOT BE APPROPRIATE IN CASE OF A FIRST DEGREE
2 MURDER?

3 MR. NITZ: I THINK THERE WOULD BE CASES WHERE IT WOULD
4 NOT APPLY.

5 MR. CHIER: WHAT TYPE OF CASES DO YOU THINK IT WOULD
6 NOT APPLY?

7 MR. NITZ: AT THIS TIME I HAVE NO IDEA, SIR.

8 MR. CHIER: YOU HAVE NO IDEA BECAUSE IT IS HARD TO THINK
9 OF ANY CASES THAT WOULD COME WITHIN ANY EXCEPTIONS OF THAT?

10 MR. NITZ: YES, SIR.

11 MR. CHIER: SO THEN IS IT CORRECT TO SAY THAT YOU ARE
12 FAIRLY STRONGLY COMMITTED TO THE DEATH PENALTY AS A PUNISHMENT?

13 THE COURT: HE ALREADY ANSWERED THAT. HE SAID HE HAD
14 A STRONG -- HE WAS STRONGLY INCLINED TOWARD THE DEATH PENALTY.

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1 MR. CHIER: THIS IS A FOLLOW-UP QUESTION.

2 THE COURT: NO, IT ISN'T A FOLLOW-UP; IT IS THE SAME
3 QUESTION YOU ASKED BEFORE WHICH HE ANSWERED.

4 MR. CHIER: DO YOU FEEL -- DO YOU BELIEVE, SIR, THAT --
5 DO YOU BELIEVE IN THE ADAGE "AN EYE FOR AN EYE"?

6 MR. NITZ: NO, SIR; I DON'T.

7 MR. CHIER: DO YOU BELIEVE THAT THERE CAN BE ANY --
8 CAN YOU THINK OF ANYTHING -- LET'S ASSUME THAT YOU WERE --
9 YOU GOT TO DECIDE -- YOU GOT TO MAKE THE LAW, AND YOU GOT
10 TO DECIDE WHAT TYPES OF PEOPLE OR WHAT TYPES OF THINGS WOULD
11 BE ABLE TO BE CONSIDERED IN DECIDING AGAINST OR FOR LIFE OR
12 DEATH IN A PUNISHMENT SITUATION. WHAT TYPES OF THINGS DO
13 YOU THINK WOULD BE SIGNIFICANT IN DETERMINING WHETHER A PERSON
14 GOT LIFE IN PRISON OR THE DEATH PENALTY?

15 THE COURT: YOU MEAN OTHER THAN WHAT I HAVE TOLD HIM
16 THE LAW PROVIDES?

17 MR. CHIER: WELL, THE THINGS THAT MATTER TO HIM
18 PERSONALLY, YES, YOUR HONOR, OTHER THAN WHAT YOU --

19 MR. NITZ: THAT WOULD HAVE TO TAKE SOME THOUGHT ON MY
20 PART, SIR, MORE THAN --

21 MR. CHIER: I DON'T UNDERSTAND WHAT YOU MEAN, SIR.

22 MR. NITZ: IT WOULD -- I FEEL IT WOULD TAKE MORE THOUGHT
23 ON MY PART THAN I FEEL WE HAVE TIME FOR HERE, SIR.

24 MR. CHIER: SO -- ALL RIGHT. YOU ARE REALLY NOT ABLE
25 TO GIVE AN ANSWER TO THAT QUESTION AT THIS TIME?

26 MR. NITZ: AT THIS TIME, RIGHT.

27 MR. CHIER: IF THE DEFENDANT WERE SOMEONE WHO WAS
28 RELATED TO YOU BY BLOOD OR MARRIAGE, WOULD YOU FEEL COMFORTABLE

1 HAVING A JURY OF 12 PEOPLE WITH YOUR ATTITUDE TOWARD THE DEATH
2 PENALTY SITTING AS JURORS IN THAT CASE?

3 THE COURT: YOU DON'T HAVE TO ANSWER THAT QUESTION.

4 NEXT QUESTION.

5 MR. CHIER: MAY I HAVE A MOMENT TO THINK OF MY NEXT
6 QUESTION, YOUR HONOR?

7 THE COURT: YES.

8 (PAUSE.)

9 MR. CHIER: DID YOU VOTE FOR THE DEATH PENALTY,
10 MR. NITZ?

11 MR. NITZ: YES, SIR; I DID.

12 MR. CHIER: AND DID YOU VOTE FOR THE DEATH PENALTY --
13 DID YOU READ THE LEGISLATIVE MATERIALS THAT CAME ALONG WITH
14 THE VOTER INFORMATION?

15 MR. NITZ: YES, SIR; I DID.

16 MR. CHIER: DID YOU BELIEVE THAT WE NEEDED A DEATH PENALTY?

17 MR. NITZ: YES, SIR.

18 MR. CHIER: AND DID YOU BELIEVE THAT THE CRIME RATE
19 WAS ESCALATING AT THAT TIME BECAUSE WE DIDN'T HAVE A DEATH
20 PENALTY?

21 MR. NITZ: YES, SIR.

22 MR. CHIER: DID YOU BELIEVE THAT THE DEATH PENALTY --
23 THAT THE EXISTENCE OF THE DEATH PENALTY WOULD HELP REDUCE
24 CRIME?

25 MR. NITZ: YES, SIR; I HOPE IT WOULD.

26 MR. CHIER: DID YOU BELIEVE THAT THE DEATH PENALTY WOULD
27 HELP US GET RID OF CERTAIN TYPES OF UNDESIRABLE PEOPLE?

28 MR. NITZ: YES, SIR.

1 MR. CHIER: AND DO YOU BELIEVE THAT THE MOST UNDESIRABLE
2 TYPE OF PERSON THAT WE CAN HAVE IN THIS SOCIETY IS A PERSON
3 WHO COMMITS AN INTENTIONAL MURDER?

4 MR. NITZ: NO, SIR.

5 MR. CHIER: CAN YOU THINK OF SOMEBODY THAT WOULD BE
6 MORE UNDESIRABLE IN THIS SOCIETY THAN THAT TYPE OF PERSON?

7 THE COURT: YOU DON'T HAVE TO ANSWER THAT QUESTION.

8 NEXT QUESTION.

9 MR. CHIER: COULD I FIND OUT WHAT IS WRONG WITH THE
10 QUESTION?

11 THE COURT: NO. JUST GO AHEAD AND ASK ANOTHER QUESTION.

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1 MR. CHIER: THIS WAS PART OF A SERIES --

2 THE COURT: YOU ARE UNDULY PROLONGING THIS. I DON'T SEE
3 REASON WHY. HE HAS ALREADY GIVEN YOU HIS OPINION CATEGORICALLY.
4 AND HE DID.

5 IS IT TRUE OR ISN'T IT TRUE THAT YOU WOULD KEEP
6 AN OPEN MIND DURING THE PENALTY PHASE AND HEAR ALL OF THE
7 EVIDENCE FOR OR AGAINST THE DEFENDANT AND DECIDE EITHER LIFE
8 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH, ON THE PENALTY
9 PHASE?

10 MR. NITZ: I WOULD KEEP AN OPEN MIND, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MR. CHIER: MAY I HAVE A MOMENT, PLEASE?

13 THE COURT: YES.

14 (BRIEF PAUSE.)

15 MR. CHIER: BASED ON THE EXTENT OF THE INQUIRY PERMITTED,
16 YOUR HONOR, I WOULD BE COMPELLED TO PASS FOR CAUSE.

17 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS, MR.
18 WAPNER?

19 MR. WAPNER: YES, YOUR HONOR.

20 JUST BRIEFLY, THANK YOU.

21 HAVE YOU EVER HAD A DIFFERENT OPINION ABOUT THE
22 DEATH PENALTY OTHER THAN THE ONE YOU HAVE NOW?

23 MR. NITZ: NO, SIR.

24 MR. WAPNER: CONSIDERING HOW YOU FEEL ABOUT THE DEATH
25 PENALTY, DO YOU THINK YOU ARE GOING TO BE OBJECTIVE IN
26 DECIDING THE QUESTION OF WHAT THE PUNISHMENT SHOULD BE IN THIS
27 CASE?

28 MR. NITZ: YES. I WOULD BE OBJECTIVE.

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1 MR. WAPNER: NOT HAVING HEARD ANY EVIDENCE IN THIS CASE
2 WHATSOEVER AT THIS POINT, HAVE YOU MADE UP YOUR MIND ALREADY
3 HOW YOU ARE GOING TO VOTE ON THE QUESTION OF THE DEATH
4 PENALTY, IF WE GET TO THAT POINT?

5 MR. NITZ: NO, I HAVE NOT.

6 MR. WAPNER: DO YOU UNDERSTAND THAT YOU WILL NEVER GET
7 TO THE QUESTION OF THE DEATH PENALTY UNLESS YOU HAVE ALREADY
8 DECIDED THAT IT WAS AN INTENTIONAL MURDER COMMITTED DURING
9 THE COURSE OF A ROBBERY?

10 MR. NITZ: YES, SIR.

11 MR. WAPNER: AND KNOWING THAT AND KNOWING YOUR FEELINGS
12 ON THE DEATH PENALTY, DO YOU STILL FEEL THAT YOU WOULD BE
13 OBJECTIVE AND FAIR TO BOTH SIDES?

14 MR. NITZ: YES, I DO.

15 MR. WAPNER: DO YOU HAVE ANY STRONG RELIGIOUS, MORAL
16 OR PHILOSOPHICAL BASIS FOR YOUR FEELINGS ON THE DEATH PENALTY?

17 MR. NITZ: NO, I DON'T.

18 MR. WAPNER: DO YOU KNOW WHERE YOUR OPINIONS ABOUT THE
19 DEATH PENALTY ORIGINATE FROM?

20 MR. NITZ: BASICALLY THROUGH THE NEWS MEDIA, SIR.

21 MR. WAPNER: THANK YOU. NOTHING FURTHER.

22 THE COURT: DO YOU PASS FOR CAUSE?

23 MR. WAPNER: I PASS FOR CAUSE.

24 THE COURT: ALL RIGHT. MR. NITZ, YOU UNDERSTAND THAT
25 WE HAVE GOT TO GO THROUGH THE REST OF THE ALPHABET, THE
26 JURORS' NAMES FOLLOWING YOURS, THE LAST NAMES WITH O, P, Q,
27 R AND S AND DOWN THE LINE.

28 MR. NITZ: RIGHT.

1 THE COURT: AND IT IS ANTICIPATED IT WILL TAKE UNTIL
2 AT LEAST DECEMBER 3RD. WHAT I WILL ASK YOU TO DO, IS TO RETURN
3 TO THE JURY ASSEMBLY ROOM ON DECEMBER 3RD AT 10:30 A.M.

4 WE WILL HAVE ALL OF THE JURORS COME HERE AND START
5 THIS TRIAL. IF BY ANY CHANCE, WE ARE NOT FINISHED BY
6 DECEMBER 3RD, WE HAVE YOUR TELEPHONE NUMBER. WE WILL CALL
7 YOU AND TELL YOU WHAT EXACTLY IS THE DATE, WHEN YOU ARE
8 SUPPOSED TO COME IN.

9 IN THE MEANTIME, DON'T TALK TO ANYBODY ABOUT THIS
10 CASE OR READ ANYTHING IN THE NEWSPAPER. THANK YOU VERY MUCH.
11 SEE YOU THEN.

12 (PROSPECTIVE JUROR NITZ EXITS THE
13 COURTROOM.)

14 MR. CHIER: YOUR HONOR, I HAVE A MATTER I WOULD LIKE
15 TO TAKE UP WITH THE COURT WHICH WILL TAKE ABOUT FIVE OR SIX
16 MINUTES.

17 THE COURT: LET'S GET THROUGH THE JUROR. THEN WE'LL
18 TAKE IT UP.

19 MR. WAPNER: SHOULD WE GET STARTED WITH MR. NELSON?
20 SHOULD WE STOP ABOUT FIVE MINUTES TO 12:00?

21 (PROSPECTIVE JUROR NORMAN NELSON ENTERS
22 THE COURTROOM.)

23 THE CLERK: DO YOU SOLEMNLY SWEAR THAT YOU WILL ANSWER
24 SUCH QUESTIONS AS MAY BE ASKED OF YOU, TOUCHING UPON YOUR
25 QUALIFICATIONS TO ACT AS A TRIAL JUROR IN THE CAUSE NOW
26 PENDING BEFORE THIS COURT, SO HELP YOU GOD?

27 MR. NELSON: I DO.

28 THE COURT: OKAY. PLEASE BE SEATED. STATE YOUR NAME

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1 FOR THE RECORD.

2 MR. NELSON: NORMAN NELSON.

3 THE COURT: WHERE DO YOU LIVE?

4 MR. NELSON: IN WESTCHESTER, 7706 BEELAND AVENUE.

5 THE COURT: THANK YOU. DID YOU EVER READ ANYTHING ABOUT
6 THIS CASE?

7 MR. NELSON: I READ IT IN THE NEWSPAPER.

8 THE COURT: WHICH ONE?

9 MR. NELSON: I BELIEVE IT WAS THE TIMES.

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1 THE COURT: THE TIMES? WELL, WITHOUT ASKING WHAT YOU
2 READ, AFTER HAVING READ IT, DO YOU HAVE ANY OPINION AS TO THE
3 GUILT OR INNOCENCE OF THIS DEFENDANT OR WOULD YOU LISTEN TO
4 ALL OF THE EVIDENCE IN THE CASE BEFORE YOU MAKE UP YOUR MIND?

5 MR. NELSON: NO. I WILL LISTEN TO THE EVIDENCE ALL
6 RIGHT.

7 THE COURT: AND, YOU HAVE NO SUBTLE REACTIONS OF ANY
8 KIND WHICH WOULD DISQUALIFY YOU FROM ACTING AS AN IMPARTIAL
9 AND FAIR JUROR IN THIS CASE?

10 MR. NELSON: NO.

11 THE COURT: THAT IS THE ONLY PLACE YOU READ IT?

12 MR. NELSON: YES.

13 THE COURT: NO OTHER MAGAZINE?

14 MR. NELSON: NO. I HAVE NOT READ ANYTHING.

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15 THE COURT: ALL RIGHT. JUST BRIEFLY, I AM GOING TO
16 SUMMARIZE WHAT THIS CASE IS ALL ABOUT. YOU HAVE HEARD IT,
17 TOGETHER WITH THE OTHER JURORS. BUT I WILL JUST REFRESH YOUR
18 RECOLLECTION.

19 THIS IS A CASE WHERE THE PEOPLE HAVE CHARGED --
20 THAT IS, THE INFORMATION HAS CHARGED THE DEFENDANT WITH THE
21 CRIME OF MURDER IN THE FIRST DEGREE. AND THAT MURDER WAS
22 COMMITTED DURING THE COURSE OF A ROBBERY.

23 THE SIGNIFICANCE OF A MURDER COMMITTED DURING THE
24 COURSE OF A ROBBERY IS THAT IT QUALIFIES THIS CASE, BECAUSE
25 OF THAT REASON, FOR EITHER LIFE WITHOUT POSSIBILITY OF PAROLE
26 OR DEATH. DO YOU UNDERSTAND THAT?

27 MR. NELSON: I UNDERSTAND.

28 THE COURT: THERE ARE OTHER KINDS OF MURDERS ALSO. THERE

1 ARE SPECIAL CIRCUMSTANCES WHICH ALSO QUALIFY FOR THE DEATH
2 PENALTY WHERE THE LEGISLATURE HAS SAID THAT FOR ALL OF THE
3 DIFFERENT TYPES OF CASES WHERE THAT COULD CALL FOR THE DEATH
4 PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE, THAT WOULD BE
5 LIKE A MURDER COMMITTED DURING THE COURSE OF A RAPE OR A
6 KIDNAPPING OR A BURGLARY OR A MURDER BY POISON OR MULTIPLE
7 MURDERS.

8 THERE ARE ABOUT 19 CASES WHERE THE LEGISLATURE
9 HAS SAID THAT. SO THEREFORE, MERELY BECAUSE THE DEFENDANT
10 HAS BEEN FOUND GUILTY OF MURDER IN THE FIRST DEGREE, DOESN'T
11 NECESSARILY MEAN THAT THAT CALLS FOR A DEATH PENALTY WITHOUT
12 THE POSSIBILITY OF PAROLE. IT IS ONLY WHEN THE SPECIAL
13 CIRCUMSTANCES ARE PRESENT.

14 MR. NELSON: UH-HUH.

15 THE COURT: SO THAT WHEN THE JURY IS SELECTED IN THIS
16 CASE, THEY WILL DETERMINE FIRST, WAS THE DEFENDANT GUILTY OF
17 MURDER IN THE FIRST DEGREE OR WAS HE INNOCENT. IF HE IS
18 GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY HAVE A QUESTION
19 TO ANSWER TRUE OR FALSE, WAS IT COMMITTED DURING THE COURSE
20 OF A ROBBERY.

21 IF THEY FIND THAT IT WAS COMMITTED DURING THE
22 COURSE OF A ROBBERY, THEN THAT SAME JURY IS CALLED IN AGAIN
23 AND THEY HEAR EVIDENCE FROM BOTH SIDES, DIFFERENT EVIDENCE
24 ON WHAT WE CALL THE PENALTY PHASE OF THE HEARING, PENALTY
25 PHASE OF THE TRIAL.

26 AND ON THE PENALTY PHASE OF THE TRIAL, EVIDENCE
27 MAY BE PRESENTED BY BOTH THE PEOPLE AND THE DEFENDANT AS
28 TO ANY MATTER RELEVANT TO AGGRAVATION, IN OTHER WORDS, FACTORS

1 ABOUT THE DEFENDANT WHICH ARE BAD FOR HIM OR WHICH MITIGATE
2 THE OFFENSE, WHICH IS FAVORABLE TO HIM INCLUDING BUT NOT
3 LIMITED TO THE FOLLOWING: THE NATURE AND CIRCUMSTANCES OF
4 THE PRESENT OFFENSE -- YOU HAVE HEARD EVIDENCE ON THE GUILT
5 PHASE AND YOU TAKE THAT INTO CONSIDERATION.

6 THERE ARE ALSO ANY PRIOR FELONY CONVICTIONS OR
7 CONDITIONS WHETHER OR NOT SUCH CONVICTIONS INVOLVE A CRIME
8 OF VIOLENCE AND ET CETERA AND ET CETERA.

9 ALSO, YOU CAN TAKE INTO CONSIDERATION THE
10 DEFENDANT'S CHARACTER, BACKGROUND, HISTORY, MENTAL CONDITION
11 AND PHYSICAL CONDITION, INCLUDING HIS AGE AND SO ON AND SO
12 FORTH.

13 THOSE FACTORS ARE TO BE CONSIDERED BY THE JURY
14 AND THE EVIDENCE TO THAT EFFECT WILL BE ADDUCED AT THE PENALTY
15 PHASE OF THE TRIAL. YOU WILL HEAR ALL OF THAT. YOU WILL
16 CONSIDER ALL OF THAT.

17 AND THEN YOU MAKE UP YOUR MIND AS TO WHETHER OR
18 NOT, BASED UPON ALL OF THAT EVIDENCE AND THOSE FACTORS, THE
19 MITIGATION AND THE AGGRAVATION, WHETHER THAT WARRANTS IN YOUR
20 OPINION, LIFE WITHOUT POSSIBILITY OF PAROLE OR THE DEATH
21 PENALTY. DO YOU UNDERSTAND ALL OF THAT?

22 MR. NELSON: I UNDERSTAND.

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1 THE COURT: NOW I AM GOING TO ASK YOU A SERIES OF
2 QUESTIONS WHICH YOUR ANSWER WILL BE EITHER YES OR NO, AND
3 IF YOU DON'T UNDERSTAND THE QUESTION, ASK ME TO REPEAT IT
4 OR EXPLAIN IT TO YOU IF YOU DON'T UNDERSTAND.

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

8 MR. NELSON: NO.

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

13 MR. NELSON: NO.

14 THE COURT: YOU REMEMBER I TOLD YOU --

15 MR. NELSON: THAT'S RIGHT, YES, I UNDERSTAND.

16 THE COURT: YOU UNDERSTAND THAT.

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

21 MR. NELSON: YES.

22 THE COURT: LISTEN. YOU UNDERSTAND --

23 MR. NELSON: OH.

24 THE COURT: DO YOU HAVE AN OPINION THAT YOU WOULD VOTE
25 FOR THE DEATH PENALTY IRRESPECTIVE OF THE EVIDENCE THAT WILL
26 BE PRESENTED ON THE SECOND OR THE PENALTY PHASE OF THE TRIAL?

27 MR. NELSON: OH, I UNDERSTAND -- NO.

28 THE COURT: WHAT'S YOUR ANSWER?

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1 MR. NELSON: IT WOULD BE NO.

2 THE COURT: OKAY. NOW THIS IS ANOTHER ASPECT OF THE
3 SAME QUESTION.

4 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
5 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
6 WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE
7 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

8 MR. NELSON: NO.

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

13 MR. NELSON: YES.

14 THE COURT: ALL RIGHT.

15 MR. CHIER: GOOD MORNNG, MR. NELSON.

16 MR. NELSON: YES, SIR.

17 MR. WAPNER: YOUR HONOR, CONSIDERING THE HOUR AND THAT
18 MR. CHIER HAS THIS OTHER MATTER, I WONDER IF WE MIGHT TAKE
19 UP THE QUESTIONING OF MR. NELSON AFTER LUNCH.

20 THE COURT: IS THAT ALL RIGHT WITH YOU?

21 MR. CHIER: SURE.

22 THE COURT: OKAY. WILL YOU COME BACK AT QUARTER OF
23 2:00, PLEASE? WE WILL BE IN RECESS NOW.

24 MR. NELSON: YES. JUST COME RIGHT IN?

25 THE COURT: YES, JUST COME RIGHT IN. YES, THAT'S FINE.
26 YOU CAN COME RIGHT IN.

27 MR. NELSON: OKAY.

28 THE COURT: THANK YOU VERY MUCH.

1 MR. NELSON: YOU BET.

2 (PROSPECTIVE JUROR NELSON EXITED THE
3 COURTROOM.)

4 THE COURT: ALL RIGHT.

5 MR. CHIER: ALTHOUGH MR. BARENS AND I ARE CO-COUNSEL
6 IN THIS CASE, I DO NOT OFFICE WITH MR. BARENS. I OFFICE IN
7 A SUITE OF CRIMINAL LAWYERS IN WESTWOOD WITH A NUMBER OF VERY
8 ABLE LAWYERS; DONALD WAGER, DAVID ELDEN; MONA SOO HOO; AND
9 WE HAVE IN THE PAST ALWAYS -- WHEN WE FELT IT WAS NECESSARY --
10 BEEN ABLE TO COUNSEL WITH ONE ANOTHER CONCERNING LEGAL
11 PROBLEMS THAT COME UP IN OUR RESPECTIVE CASES.

12 THERE WAS IN THE OFFICE A CERTAIN AMOUNT OF
13 ANTICIPATION GENERATED BY THE RECESS REQUESTED BY MR. WAPNER
14 THE OTHER DAY, AND WHEN I RETURNED TO THE OFFICE AND WAS
15 QUESTIONED ABOUT IT, I WAS CONSTRAINED TO TELL THEM ABOUT
16 THE GAG ORDER YOUR HONOR HAD IMPOSED. AND I -- A NUMBER OF
17 THEM ASKED ME WHY, AND I WAS REALLY UNABLE TO --

18 THE COURT: YOU TOLD THEM BECAUSE YOU REQUESTED IT,
19 DIDN'T YOU?

20 MR. CHIER: NOT I, YOUR HONOR.

21 THE COURT: YES, YOU DID. YOU AND THE PEOPLE ASKED
22 ON THE RECORD, BOTH OF YOU HAD REQUESTED IT, AND I SAID YES.

23 MR. CHIER: OH, ALL RIGHT. I DID NOT.

24 THE COURT: WELL, I ASKED MR. BARENS, AND HE SAID, "YES."

25 I THINK YOUR CLIENT WILL TELL YOU THAT.

26 (PAUSE.)

27 MR. CHIER: HE HAS JUST CONFIRMED THAT. I MISSED THAT.

28 THE COURT: YES. I SO INFORMED THE PRESS. WHEN THEY

1 MADE INQUIRY AS TO WHAT IT WAS ALL ABOUT, I TOLD THEM THERE
2 HAD BEEN A GAG ORDER REQUESTED BY COUNSEL IN THE CASE IN WHICH
3 I CONCURRED.

4 MR. CHIER: WELL, THEN THE SECOND ASPECT OF THIS, JUDGE,
5 IS THAT I AM REQUESTING THAT THE GAG ORDER BE RELAXED TO THE
6 EXTENT THAT I BE PERMITTED TO CONFER WITH THE OTHER COUNSEL
7 CONCERNING THE RAMIFICATIONS AND --

8 THE COURT: YOU HAVE MR. BARENS AND YOURSELF. YOU ARE
9 BOTH QUALIFIED.

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1 MR. CHIER: BUT MY EFFECTIVENESS AS AN ATTORNEY, YOUR
2 HONOR, REALLY, IN THE PAST HAS DERIVED FROM MY BEING ABLE
3 TO CONFER WITH A NUMBER OF PEOPLE. I CAN NAME MR. BRADLEY
4 BRUNON, MR. WAGER AND MR. RAY, PRIMARILY.

5 I AM -- I DON'T CONSIDER MYSELF THE FOUNTAINHEAD
6 OF ALL LEGAL KNOWLEDGE. I CONSIDER THAT THERE ARE OTHER PEOPLE
7 IN THIS TOWN AND IN THIS LEGAL COMMUNITY WHO ARE WISER AND
8 SMARTER THAN I, AND I SEEK THEIR COUNSEL WHENEVER POSSIBLE.

9 THE COURT: HAVE YOU CONSULTED WITH MR. BARENS ABOUT
10 THAT?

11 MR. CHIER: YES. HE -- I MEAN HE KNOWS THAT MY ABILITY
12 TO --

13 THE COURT: DID YOU ASK HIM WHETHER OR NOT YOU SHOULD
14 TALK TO YOUR ASSOCIATES ON ASPECTS THAT WE HAVE BEEN DISCUSSING?

15 MR. CHIER: YES.

16 THE COURT: HE SAID WHAT?

17 MR. CHIER: HE AGREES THAT I -- THAT I NEED A LITTLE
18 BIT OF -- OF ROOM HERE IN ORDER TO DO THIS BECAUSE I CAN'T
19 BE EFFECTIVE. I CAN'T EFFECTIVELY ADVISE HIM OR MR. HUNT
20 OR EVEN THE COURT WITHOUT -- WITHOUT REALLY BEING ABLE TO
21 EXPLORE THESE FAIRLY UNIQUE PROBLEMS WITH THESE OTHER COUNSEL;
22 AND THEY WOULD RESPECT ANY GAG ORDER, YOUR HONOR, AND WOULD
23 KEEP IT CONFIDENTIAL.

24 THE COURT: THEY ARE NOT HERE FOR ME TO ORDER THEM TO
25 DO SO. THEREFORE, HOW CAN I GIVE YOU CARTE BLANCHE. THEY
26 ARE NOT HERE. THEY WON'T BE BOUND BY WHAT YOU ARE TELLING
27 ME.

28 WHAT'S YOUR ATTITUDE TOWARD IT?

1 MR. WAPNER: YOUR HONOR, THAT'S MY ATTITUDE, WHICH IS
2 ALTHOUGH I KNEW SEVERAL OF THESE LAWYERS TO WHOM MR. CHIER
3 IS REFERRING, THERE WOULD BE OBVIOUSLY NO OBLIGATION ON THEIR
4 PART SINCE THEY ARE NOT ORDERED BY THE COURT, AND THE PROBLEM
5 IS THAT WE REALLY HAVE -- IF ONE PERSON KNOWS, THEN WE HAVE
6 NO CONTROL OVER WHO THAT PERSON TELLS.

7 I WOULD BE WILLING TO TRY AND WORK WITH MR. CHIER,
8 IF HE OSTENSIBLY HAD SOME LEGAL AUTHORITY, AND I WILL DISCUSS
9 THAT WITH HIM; AND IF THERE IS SOME WAY WE CAN WORK IT OUT,
10 MAYBE WE CAN COME BACK TO THE COURT.

11 BUT THE WAY I FEEL ABOUT IT RIGHT NOW IS THAT
12 WITHOUT AUTHORITY AND CERTAINLY WITHOUT HAVING THE PEOPLE
13 HERE, THAT THERE IS NO WAY TO CONTROL WHAT'S GOING TO HAPPEN.

14 AND THERE ARE SO MANY PEOPLE IN THE PRESS
15 SCOURING THIS TOWN TRYING TO GET LITTLE TIDBITS THAT I THINK
16 IT EASILY COULD GET OUT OF CONTROL.

17 SO MAYBE IF I CAN HAVE SOME TIME TO DISCUSS IT
18 WITH MR. CHIER, WE CAN COME TO SOME KIND OF ARRANGEMENT.

19 THE COURT: WHY DON'T YOU DO THAT. ALL RIGHT. WHY
20 DON'T YOU DO THAT.

21 MR. CHIER: IF I WERE TO BRING SOME SORT OF A WRITTEN
22 DOCUMENT BACK?

23 THE COURT: NO. YOU TALK TO MR. WAPNER ABOUT IT AND
24 SEE IF YOU CAN REACH AN AGREEMENT.

25 (AT 12:05 P.M. A RECESS WAS TAKEN
26 UNTIL 1:45 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 26, 1986; 1:50 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 THE COURT: HAVE YOU ASKED HIM ANY QUESTIONS YET?

6 MR. CHIER: NO, THANK YOU.

7 GOOD AFTERNOON. IS IT MR. NELSON?

8 MR. NELSON: YES, SIR.

9 MR. CHIER: MY NAME IS CHIER. I AM ONE OF THE ATTORNEYS
10 FOR MR. HUNT. AND YOU HAVE READ AN ARTICLE IN THE LOS ANGELES
11 TIMES WHICH APPEARED SOMETIME AGO, RIGHT?

12 MR. NELSON: YES.

13 MR. CHIER: ARE YOU A REGULAR SUBSCRIBER TO THE TIMES?

14 MR. NELSON: NO.

15 MR. CHIER: DID YOU GO OUT TO GET THAT PARTICULAR ISSUE
16 OF THE PAPER TO SEE THAT ARTICLE?

17 MR. NELSON: NO.

18 MR. CHIER: HOW DID IT HAPPEN THAT YOU CAME TO READ
19 THAT, SIR?

20 MR. NELSON: WELL, I USUALLY WALK DOWN IF I GO FOR A
21 WALK -- EVERY OTHER DAY I PICK UP A PAPER LIKE THAT, YOU KNOW,
22 JUST PICK IT OUT OF THE NEWS VENDING MACHINE.

23 Q SO IT WAS JUST FORTUITOUS THAT YOU HAPPENED TO
24 BUY THE PAPER THAT DAY?

25 A RIGHT.

26 Q DID YOU KNOW YOU WERE COMING FOR JURY SERVICE?

27 A NO.

28 Q SO, YOU DIDN'T MAKE ANY ASSOCIATION BETWEEN THE

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1 ARTICLE THAT YOU READ AND THE FACT THAT YOU WERE I GUESS,
2 SCHEDULED TO GO TO JURY DUTY?

3 A NO.

4 Q YOU LIVE IN SANTA MONICA, HERE?

5 A WELL, YES. I LIVE IN WESTCHESTER, EIGHT MILES
6 FROM HERE.

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1 MR. CHIER: DID YOU READ THE ENTIRE ARTICLE?

2 MR. NELSON: YES.

3 MR. CHIER: AND DID YOU COME AWAY FROM THE ARTICLE WITH
4 ANY PARTICULAR FEELING OR FEELINGS ABOUT WHAT YOU HAD JUST
5 READ?

6 MR. NELSON: WELL, NOT REALLY.

7 MR. CHIER: I MEAN, DID YOU THINK, WHAT A BAD PERSON,
8 OR WHAT AN INTERESTING CASE, OR -- I MEAN, WHAT WAS YOUR --
9 HOW WOULD YOU CHARACTERIZE YOUR IMPRESSION?

10 MR. NELSON: WELL, WHEN I GET A PAPER, I READ IT FROM
11 END TO END, YOU KNOW. IT IS JUST NORMAL FOR ME TO READ ALL
12 THE ARTICLES.

13 MR. CHIER: WELL, THIS WASN'T THE USUAL KIND OF STORY
14 YOU READ?

15 MR. NELSON: NOW YOU ARE -- I MEAN -- I READ THE PAPER.
16 I EVEN READ THE WANT ADS.

17 MR. CHIER: SOME OF THE WANT ADS ARE KIND OF INTERESTING;
18 RIGHT?

19 MR. NELSON: RIGHT.

20 MR. CHIER: I MEAN, DID YOU COME AWAY FROM THE ARTICLE
21 ABOUT THIS CASE WITH ANY PARTICULAR VIEWS TOWARDS THIS
22 PROSECUTION OR THE DEFENDANT?

23 MR. NELSON: WELL, I GUESS I WOULD HAVE TO SAY YES
24 BECAUSE ANY NORMAL GUY, WHEN YOU READ IT, YOU KNOW, TO BE
25 TRUTHFUL ABOUT IT.

26 MR. CHIER: SURE.

27 MR. NELSON: YES.

28 MR. CHIER: ALL RIGHT. I MEAN, PLEASE UNDERSTAND THAT

1 THERE IS NOT GOING TO -- I AM GOING TO ASK YOU SOME QUESTIONS.
2 THERE IS NO RIGHT OR WRONG ANSWER.

3 MR. NELSON: THAT'S ALL RIGHT. FINE.

4 MR. CHIER: THE ONLY ANSWER IS A TRUTHFUL ANSWER.

5 MR. NELSON: THAT'S RIGHT.

6 MR. CHIER: AND WE HAVE TO DEPEND ON YOU FOR THAT.

7 MR. NELSON: THAT'S RIGHT. I REALIZE THAT TOO.

8 MR. CHIER: ALL RIGHT. AND THE SYSTEM CAN ONLY WORK
9 OF YOU LIKE SPEAK UP AND TELL US WHAT IS REALLY --

10 MR. NELSON: RIGHT.

11 MR. CHIER: INSIDE THERE. ALL RIGHT.

12 SO DO YOU REMEMBER DETAILS THAT WERE CONTAINED
13 IN THE ARTICLE, SIR?

14 MR. NELSON: WELL, A FEW OF THEM, YES.

15 MR. CHIER: WHAT DO YOU REMEMBER THAT COMES TO MIND AT
16 THIS TIME?

17 MR. NELSON: WELL, JUST THE MAIN THING, LIKE LEVIN WAS
18 PUT IN A BOX OR SOMETHING.

19 THE COURT: WHAT WAS THAT?

20 (RECORD READ.)

21 THE COURT: YOU ARE SURE THAT WAS IN THE ARTICLE?

22 MR. NELSON: YEAH. WELL, I MEAN -- I AM ASSUMING IT
23 WAS BECAUSE THEY SAID, YOU KNOW, HE SUFFOCATED OR WHATEVER.

24 THE COURT: I DON'T REMEMBER ANYTHING ABOUT LEVIN BEING
25 PUT IN A BOX.

26 MR. NELSON: WELL, THAT'S ALL I REMEMBER.

27 MR. CHIER: WHAT ELSE DO YOU REMEMBER, MR. NELSON?

28 MR. NELSON: LET'S SEE. WELL, THAT WAS A BILLIONAIRE

1 BOY'S CLUB. I MEAN -- AND I THINK THERE MAY BE MENTION THERE
2 IS ANOTHER BODY MISSING OR SOMETHING. OKAY. THAT'S THE MAIN
3 OPINION I CAN COME UP WITH.

4 MR. CHIER: NOW LET ME ASK A FEW MORE QUESTIONS. IF
5 I SAID TO YOU THE NAME "JOE HUNT," WHAT ADJECTIVE COMES TO
6 MIND AT ONCE?

7 MR. NELSON: WELL, THAT --

8 MR. CHIER: AS A RESULT OF THAT ARTICLE.

9 MR. NELSON: OKAY. HE WAS SUPPOSEDLY THE HEAD OF THE
10 CLUB OR WHAT YOU CALL IT?

11 MR. CHIER: THE BBC?

12 MR. NELSON: YES.

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1 MR. CHIER: ALL RIGHT. BUT WHAT KIND OF ADJECTIVES,
2 GOOD, BAD, TALL, SHORT, FAT, THIN, SMART, DUMB, ANYTHING LIKE
3 THAT?

4 MR. NELSON: I WOULD SAY THAT HE WASN'T SMART, BUT I
5 WOULDN'T CONSIDER HIM DUMB. AND AS FAR AS ANY OTHER FEELINGS,
6 I DIDN'T HAVE THEM, YOU KNOW.

7 MR. CHIER: KNOWING WHAT WE ARE DOING HERE SIR, AND
8 LOOKING FOR PEOPLE THAT ARE NEUTRAL AND IMPARTIAL --

9 MR. NELSON: I REALIZE THAT.

10 MR. CHIER: DO YOU THINK THAT HAVING READ THAT ARTICLE
11 AND HAVING POSSIBLY READ ABOUT THINGS THAT MAY NOT EVEN COME
12 INTO EVIDENCE, DO YOU THINK THAT IT WOULD BE POSSIBLE FOR
13 YOU TO PUT SOME OF THE THINGS OUT OF YOUR MIND AND TO ONLY
14 LISTEN TO THE EVIDENCE THAT WOULD BE RECEIVED DURING THE COURSE
15 OF THE TRIAL?

16 MR. NELSON: WELL, I WILL ANSWER YES FOR MYSELF. I
17 AM A PRETTY SHREWD BOY, FROM MY OWN -- I KNOW THAT IT HAS
18 GOT TO COME WITH THE EVIDENCE IN THE COURT.

19 MR. CHIER: HAVE YOU EVER DONE THIS JURY SERVICE BEFORE?

20 MR. NELSON: YES. THIS IS MY FIFTH TIME.

21 MR. CHIER: OKAY. HAVE YOU EVER BEEN IN A SITUATION
22 BEFORE WHERE YOU HAD READ OR HEARD --

23 MR. NELSON: NO, NOT REALLY. NO.

24 MR. CHIER: SO THIS WOULD BE A FIRST EXPERIENCE FOR
25 YOU?

26 MR. NELSON: FIRST EXPERIENCE THIS WAY, YES.

27 MR. CHIER: HAVE YOU EVER HEARD ANYTHING -- HAVE YOU
28 HEARD ANY OTHER KIND OF CONVERSATION IN THE COURTHOUSE ABOUT

1 THE CASE, GOSSIP?

2 MR. NELSON: NO, NO.

3 MR. CHIER: SO YOUR ENTIRE IMPRESSION OF THE CASE COMES
4 FROM THAT ARTICLE IN THE LOS ANGELES TIMES?

5 MR. NELSON: THAT'S RIGHT.

6 MR. CHIER: AND YOU HAVE TOLD US THE HIGHLIGHTS AS YOU
7 REMEMBER THEM?

8 MR. NELSON: THAT'S RIGHT.

9 MR. CHIER: OKAY. LET ME ASK YOU THIS. I WILL GET
10 INTO ANOTHER SUBJECT OF INQUIRY, HERE.

11 MR. NELSON: ALL RIGHT.

12 MR. CHIER: THAT IS THE DEATH PENALTY. THE JUDGE HAS
13 EXPLAINED TO YOU HOW IT WORKS, THAT IT IS A TWO-STEP THING?

14 MR. NELSON: RIGHT.

15 MR. CHIER: AND BEFORE WE EVEN GET INTO THAT, LET ME
16 JUST SAY -- LET ME ASK YOU HOW YOU FEEL ABOUT THE DEATH PENALTY
17 AS AN EMOTIONAL ISSUE.

18 MR. NELSON: OKAY. I BELIEVE IN CAPITAL PUNISHMENT.
19 I MEAN, IF YOU COULD SEE MY VOTING RECORDS, YOU WOULD KNOW
20 THAT.

21 MR. CHIER: OKAY.

22 MR. WAPNER; I DIDN'T HEAR THAT.

23 THE COURT: YOU BELIEVE IN CAPITAL PUNISHMENT?

24 MR. WAPNER: COULD I HAVE THE LAST --

25 MR. CHIER: HE SAID THAT IF WE COULD SEE HIS VOTING
26 RECORD --

27 THE COURT: WELL, NOBODY CAN SEE YOUR VOTING RECORD.

28 MR. NELSON: NO. I WAS JUST SAYING IF YOU COULD.

1 THE COURT: IN OTHER WORDS, YOU VOTED FOR IT WHEN IT
2 WAS ON THE BALLOT?

3 MR. NELSON: RIGHT.

4 MR. CHIER: CAPITAL PUNISHMENT MEANS THE DEATH PENALTY?

5 MR. NELSON: RIGHT.

6 THE COURT: IT ALSO MEANS LIFE WITHOUT POSSIBILITY OF
7 PAROLE.

8 MR. NELSON: RIGHT.

9 MR. CHIER: WHEN YOU AND I SAY CAPITAL PUNISHMENT,
10 MR. NELSON, YOU HAVE IN MIND AND I HAVE IN MIND THAT WE ARE
11 SPEAKING OF THE DEATH PENALTY?

12 MR. NELSON: YES.

13 MR. CHIER: ALL RIGHT. SO, YOU ARE FOR THE DEATH PENALTY.
14 SHALL WE CALL IT THE DEATH PENALTY TO BE CLEAR?

15 MR. NELSON: YES, YES.

16 MR. CHIER: YOU ARE FOR THE DEATH PENALTY. HOW WOULD
17 YOU CHARACTERIZE YOURSELF IN ANSWER TO THE QUESTION: I AM
18 A PERSON WHO IS STRONGLY IN FAVOR OF THE DEATH PENALTY;
19 SOMEWHAT IN FAVOR OF THE DEATH PENALTY; MILDLY IN FAVOR OF
20 THE DEATH PENALTY?

21 MR. NELSON: WELL, I WOULD HAVE TO SAY STRONGLY.

22 MR. CHIER: OKAY. YES, NOW, THE DEATH PENALTY YOU THINK
23 IS APPROPRIATE IN SOME CIRCUMSTANCES?

24 MR. NELSON: YES. BUT IT HAS GOT TO BE WHERE THE EVIDENCE
25 IS PRESENTED.

26 MR. CHIER: OKAY. I UNDERSTAND. EVERYTHING THAT WE
27 SAY OBVIOUSLY, WE ARE NOT TALKING ABOUT GRABBING SOMEBODY
28 OUT IN THE HALL AND EXECUTING THEM.

1 MR. NELSON: YES.

2 MR. CHIER: WE ARE TALKING ABOUT DUE PROCESS, WHERE
3 YOU LISTEN TO THE EVIDENCE AND YOU CONSIDER THE EVIDENCE AND
4 AFTER THE EVIDENCE IS ALL IN, YOU MAKE YOUR DECISION.

5 MR. NELSON: RIGHT.

6 MR. CHIER: WE ARE NOT TALKING ABOUT LYNCHING OR ANYTHING
7 LIKE THAT, OKAY?

8 MR. NELSON: NO. ALL RIGHT.

9 MR. CHIER: SO THE QUESTIONS THAT I ASKED OF YOU HAVE
10 IMPLIED THAT THERE HAS BEEN DUE PROCESS.

11 MR. NELSON: ALL RIGHT.

12 MR. CHIER: NOW, I WANT TO ASK YOU, ASSUMING THAT IN
13 THE COURSE OF THE TRIAL, THE FIRST PART IS THE GUILT PHASE.
14 MR. HUNT -- WELL, LET ME NOT EVEN ASK YOU ABOUT MR. HUNT.
15 LET ME ASK YOU A GENERAL QUESTION.

16 DO YOU THINK THAT IN EVERY CASE WHERE FIRST DEGREE
17 MURDER IS PROVEN BEYOND A REASONABLE DOUBT AND THAT OCCURS
18 IN THE COURSE OF A ROBBERY, THAT THE DEATH PENALTY IS THE
19 MOST APPROPRIATE PUNISHMENT?

20 MR. NELSON: NO. I DON'T BELIEVE SO.

21 MR. CHIER: DO YOU THINK THAT LIFE WITHOUT POSSIBILITY
22 OF PAROLE IS APPROPRIATE IN SOME CASES?

23 MR. NELSON: YES.

24 MR. CHIER: EVEN THOUGH THERE HAS BEEN A MURDER?

25 MR. NELSON: YES.

26 MR. CHIER: DO YOU BELIEVE THAT LIFE WITHOUT POSSIBILITY
27 OF PAROLE IS AN ILLUSION IN THE SENSE THAT THERE IS ALWAYS
28 SOME POSSIBILITY OF PAROLE?

1 MR. NELSON: NO.

2 MR. CHIER: DO YOU BELIEVE THAT LIFE WITHOUT POSSIBILITY
3 OF PAROLE MEANS PRECISELY THAT?

4 MR. NELSON: RIGHT.

5 MR. CHIER: THAT YOU ARE LOCKED UP AND THE KEY --

6 MR. NELSON: YES.

7 MR. CHIER: -- NOT IN ANYBODY'S POCKET?

8 MR. NELSON: RIGHT.

9 MR. CHIER: OKAY. NOW, THE JUDGE -- YOU HAVE BEEN ON
10 JURY DUTY FIVE TIMES BEFORE?

11 MR. NELSON: WELL, YES.

12 MR. CHIER: SO YOU KNOW HOW THE COURT INSTRUCTS YOU
13 AT THE END?

14 MR. NELSON: RIGHT.

15 MR. CHIER: INSTRUCTS YOU ON THE LAW AND YOU SAY THAT
16 YOU HAVE NEVER SAT ON A DEATH CASE BEFORE?

17 MR. NELSON: NO.

18 MR. CHIER: WHAT I WANT TO KNOW IS THAT, I ASSUME THAT
19 EACH TIME YOU DO THIS, YOU FOLLOW THE LAW? YOU TAKE AN OATH
20 AND YOU DO WHAT THE JUDGE TELLS YOU?

21 MR. NELSON: THAT'S RIGHT.

22 MR. CHIER: YOU ALSO KNOW THAT THE JUDGE CAN'T TELL
23 YOU HOW TO VOTE?

24 MR. NELSON: THAT'S RIGHT. RIGHT.

25 MR. CHIER: THAT IS UP TO YOU?

26 MR. NELSON: YES.

27 MR. CHIER: NOBODY CAN TELL YOU? THE ATTORNEYS TRY
28 TO PERSUADE YOU?

1 MR. NELSON: THAT'S TRUE.

2 MR. CHIER: RIGHT. AND APROPOS OF BEING PERSUADED,
3 ARE YOU OF SUCH A MIND THAT YOU THINK THAT YOU LEAN MORE TOWARD
4 THE DEATH PENALTY THAN LIFE WITHOUT POSSIBILITY OF PAROLE,
5 HAVING HEARD NO EVIDENCE AT ALL IN THIS CASE?

6 MR. NELSON: WELL, NO. NOT WITHOUT EVIDENCE.

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1 MR. CHIER: ALL RIGHT. DO YOU THINK IF YOU HEARD ALL
2 THE EVIDENCE AND THE EVIDENCE TURNED OUT TO BE TRUE, THAT MR.
3 HUNT DID MURDER SOMEBODY, AND THAT IT WAS INTENTIONAL; IT
4 WASN'T SELF-DEFENSE, AND IT WASN'T IN THE HEAT OF PASSION,
5 AND IT WAS EVEN IN THE COURSE OF A ROBBERY, DO YOU THINK THEN
6 THAT THERE SHOULD BE ANY CONSIDERATION ABOUT THINGS ABOUT HIS
7 LIFE TO DETERMINE WHAT TO DO WITH HIM?

8 MR. NELSON: WELL, YES.

9 MR. CHIER: LIKE THINGS ABOUT HIS BACKGROUND?

10 MR. NELSON: RIGHT.

11 MR. CHIER: THE JUDGE WILL INSTRUCT YOU THAT YOU CAN
12 CONSIDER A NUMBER OF THINGS LIKE HIS AGE OR HIS LACK OF
13 CRIMINAL RECORD, AND THESE THINGS YOU MAY CONSIDER. I MEAN,
14 YOU ARE REQUIRED TO LISTEN TO THE EVIDENCE.

15 MR. NELSON: RIGHT.

16 MR. CHIER: BUT AFTER YOU GO INTO THE ROOM TO DELIBERATE,
17 YOU HAVE TO DECIDE WHETHER THE DEFENDANT WILL BE EXECUTED OR
18 NOT, OR BE PUT IN PRISON FOR THE REST OF HIS LIFE. DO YOU
19 THINK THAT IT IS APPROPRIATE TO CONSIDER THINGS LIKE HIS AGE
20 OR LACK OF CRIMINAL CONVICTIONS?

21 MR. NELSON: WELL, YES.

22 MR. CHIER: DO YOU THINK IT REALLY SHOULD MAKE A
23 DIFFERENCE IF A PERSON WAS INEXPERIENCED OR NOT WHEN THEY
24 COMMITTED AN INTENTIONAL CRIME?

25 THE COURT: INEXPERIENCED?

26 MR. CHIER: INEXPERIENCED IN LIFE, A YOUNG PERSON.

27 MR. NELSON: WELL, NOT REALLY.

28 MR. CHIER: SO LET ME SEE, JUST SO THAT WE UNDERSTAND

1 EACH OTHER. DO YOU THINK THAT IF A PERSON COMMITS AN
2 INTENTIONAL CRIME AND IS AN ADULT, IT DOESN'T MAKE ANY
3 DIFFERENCE HOW OLD HE IS?

4 MR. NELSON: WELL, THAT'S TRUE, YES.

5 MR. CHIER: OKAY. HOW ABOUT -- WHAT DO YOU THINK --
6 DO YOU THINK IT SHOULD MAKE ANY DIFFERENCE WHETHER A PERSON
7 HAS LED A GOOD LIFE UP UNTIL THE POINT THAT HE COMMITS AN
8 INTENTIONAL CRIME, IN TERMS OF WHAT ULTIMATELY HAPPENS TO HIM?
9 YOU KNOW WHAT I MEAN?

10 MR. NELSON: YEAH, WELL --

11 THE COURT: REMEMBER I TOLD YOU ONE OF THE CONSIDERATIONS,
12 ONE OF THE FACTORS TO BE CONSIDERED IS THE DEFENDANT'S
13 CHARACTER AND BACKGROUND, HISTORY, MENTAL AND PHYSICAL
14 CONDITION?

15 MR. NELSON: YES.

16 THE COURT: YOU WILL CONSIDER ALL OF THOSE, WILL YOU?

17 MR. NELSON: OH, YES. YES, OKAY.

18 MR. CHIER: ALL RIGHT. WHEN YOU SAID YOU WOULD CONSIDER
19 THOSE, WHAT DO YOU MEAN BY THAT, MR. NELSON? THE JUDGE ASKED
20 YOU IF YOU WOULD CONSIDER THESE THINGS.

21 MR. NELSON: WELL, WHAT YOU BRING UP IN COURT, LIKE HIS
22 AGE, AND HIS BACKGROUND BEFORE; THAT STUFF WOULD ALL HAVE TO
23 COME INTO IT.

24 MR. CHIER: WHEN YOU SAY YOU WOULD CONSIDER IT, YOU MEAN
25 YOU WOULD LISTEN TO IT?

26 MR. NELSON: YES.

27 MR. CHIER: YOU ARE NOT GOING TO BLOCK YOUR EARS?

28 MR. NELSON: OH, NO, NO.

1 MR. CHIER: BUT WHEN YOU GOT IN THERE, I AM ASKING WHEN
2 YOU GOT IN THERE, ARE THESE THINGS THAT YOU BELIEVE IN YOUR
3 HEART REALLY OUGHT TO MAKE ANY DIFFERENCE, AND WHEN YOU ARE
4 LIKE ADDING IT UP, THE DEBIT AND THE CREDIT COLUMN HERE --

5 THE COURT: MR. CHIER, I THINK YOU HAVE EXHAUSTED THAT
6 SUBJECT. GET ON TO SOMETHING ELSE. IF THERE IS ANYTHING ELSE
7 YOU WANT TO EXHAUST. WE UNDERSTAND HIS ATTITUDE TOWARD THE
8 DEATH PENALTY AND WHAT HE WOULD CONSIDER.

9 MR. CHIER: WITH ALL DUE RESPECT TO THE COURT, I THINK
10 IT IS NOT CLEAR WITH RESPECT TO THE AGE THING.

11 THE COURT: I THINK IT IS VERY CLEAR. HE MADE IT CLEAR
12 HE WOULD CONSIDER EVERYTHING IN CONNECTION WITH THE DEFENDANT.

13 ISN'T THAT WHAT YOU SAID?

14 MR. NELSON: YES.

15 MR. CHIER: DO YOU BELIEVE IN THE NOTION OF "AN EYE FOR
16 AN EYE", MR. NELSON?

17 MR. NELSON: NO, NOT THAT.

18 MR. CHIER: DO YOU THINK IF YOU WERE IN CHARGE OF THE --
19 IF YOU WERE THE BOSS, AND YOU GOT TO SAY WHAT THINGS SHOULD
20 BE CONSIDERED IN SPARING A PERSON'S LIFE THAT HAD COMMITTED
21 A MURDER, WHAT SORT OF THINGS WOULD YOU PROVIDE FOR THAT WOULD
22 BE CONSIDERATIONS FOR SPARING A PERSON'S LIFE?

23 MR. NELSON: YOU KNOW, I THINK A LOT OF THAT WOULD HAVE
24 TO DO WITH THE CIRCUMSTANCES OF IT.

25 MR. CHIER: ALL RIGHT. BUT LET'S SUPPOSE THAT THE
26 CIRCUMSTANCES ARE THE THINGS THAT IT WAS DELIBERATE,
27 INTENTIONAL; AND LET'S SAY EVEN MOTIVATED BY GREED. IN THAT
28 CASE IS THERE ANY REASON TO SAVE A PERSON'S LIFE AFTER, IF

1 YOU HAVE ESTABLISHED BEYOND A REASONABLE DOUBT THAT --

2 THE COURT: IS THERE AN OBJECTION?

3 MR. WAPNER: THERE IS AN OBJECTION TO THAT BECAUSE WHEN
4 HE SAYS THE CIRCUMSTANCES, JUST TO SAY INTENTIONAL AND IN THE
5 COURSE OF A ROBBERY OR FOR FINANCIAL GAIN DOESN'T LIMIT THE
6 CIRCUMSTANCES.

7 THE COURT: THAT'S WHAT I TRIED TO POINT OUT TO HIM TIME
8 AND TIME AGAIN, ALMOST AD NAUSEAM, BUT HE DOESN'T LISTEN TO
9 ME.

10 MR. CHIER: YOUR HONOR, THE PROBLEM IS I DIDN'T GO INTO
11 THE CIRCUMSTANCES THEN.

12 THE COURT: I THINK YOU HAVE EXHAUSTED THE SUBJECT WITH
13 THIS GENTLEMAN.

14 MR. CHIER: HE SAYS IT DEPENDS ON THE CIRCUMSTANCES.

15 THE COURT: YOU HAVE EXHAUSTED THE SUBJECT. LET'S GO
16 ON TO SOMETHING ELSE.

17 ALL RIGHT. YOU GOT ANY QUESTIONS TO ASK?

18 MR. WAPNER: WELL, I MAY OR MAY NOT, BUT I DON'T KNOW
19 THAT MR. CHIER IS FINISHED. THERE MAY BE OTHER AVENUES OF
20 INQUIRY.

21 THE COURT: HE HAS EXHAUSTED EVERY POSSIBILITY THAT I
22 KNOW OF, AS HAVE I.

23 MR. WAPNER: WELL, HE MAY BE ABLE TO APPROACH THAT
24 PARTICULAR SUBJECT IN A DIFFERENT TACK, BUT I THINK TO LIMIT
25 A SET OF CIRCUMSTANCES TO AN INTENTIONAL KILLING FOR FINANCIAL
26 GAIN ISN'T AN APPROPRIATE QUESTION.

27 THE COURT: I TRIED TO TELL HIM THAT.

28 MR. CHIER: MAY I ASK A SERIES OF QUESTIONS, YOUR HONOR?

1 THE COURT: IF THEY ARE PERTINENT AND HAVEN'T ALREADY
2 BEEN ASKED.

3 MR. CHIER: LET ME ASK YOU THIS, MR. NELSON. DO YOU
4 FEEL THAT IF A PERSON COMMITS AN INTENTIONAL AND PREMEDITATED
5 AND COLD-BLOODED MURDER, THAT THIS ACT IS INCONTROVERTIBLE
6 EVIDENCE OF THE FACT THAT THE PERSON IS A BAD PERSON?

7 MR. NELSON: WELL, NO, NOT REALLY, BUT --

8 MR. CHIER: ALL RIGHT. WHAT TYPE OF THING WOULD YOU
9 THINK WOULD CONTROVERT THAT CONCLUSION?

10 THE COURT: WELL, I DON'T KNOW WHAT YOU MEAN BY THAT.

11 MR. CHIER: YOU SAID THAT A PERSON -- THAT WOULDN'T BE
12 INCONTROVERTIBLE EVIDENCE THAT THE PERSON IS A BAD PERSON;
13 RIGHT?

14 MR. NELSON: RIGHT.

15 MR. CHIER: MY QUESTION IS, WHAT IS IT -- WHAT WOULD
16 IT MEAN TO YOU --

17 THE COURT: I DON'T KNOW WHAT THAT QUESTION MEANS.

18 MR. NELSON: I DON'T GET THAT EITHER.

19 THE COURT: YOU DON'T UNDERSTAND WHAT IT MEANS?

20 MR. CHIER: WELL, I AM ASKING YOU IF YOU WOULD FEEL THAT
21 SUCH A PERSON WAS -- SUCH AN ACT WAS IRREFUTABLE EVIDENCE THAT
22 THE PERSON WHO DID IT WAS A BAD PERSON?

23 MR. WAPNER: WELL, I WOULD OBJECT TO THAT AS VAGUE. AT
24 WHAT POINT? AT THE TIME HE COMMITS THE MURDER, THE DAY AFTER,
25 HIS WHOLE LIFE BEFORE?

26 THE COURT: I WILL SUSTAIN THE OBJECTION.

27 MR. WAPNER: I DON'T UNDERSTAND WHAT THAT MEANS.

28 THE COURT: I THINK I HAVE SUGGESTED TO YOU THAT I THINK

1 YOU HAVE EXHAUSTED THE POSSIBILITIES.

2 MR. CHIER: LET ME ASK ANOTHER QUESTION. IN THE EVENT
3 THAT YOU FOUND THAT A PERSON HAD COMMITTED AN INTENTIONAL
4 AND PREMEDITATED AND COLD-BLOODED MURDER, WOULD CONSIDERING
5 HIS AGE CHANGE YOUR DECISION ABOUT THE PENALTY THE MAN DESERVES
6 IN ANY WAY?

7 THE COURT: HE SAID HE WOULD CONSIDER ALL THE FACTORS
8 INCLUDING AGE. YOU ARE JUST REPEATING YOURSELF AGAIN.

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1 MR. CHIER: IS THERE AN OBJECTION TO THAT?

2 THE COURT: I AM OBJECTING. I THINK YOU HAVE RUN OUT
3 OF QUESTIONS. DO YOU HAVE ANY QUESTIONS?

4 MR. WAPNER: WELL YOUR HONOR, I MAY OR MAY NOT HAVE
5 ANY QUESTIONS --

6 THE COURT: WELL, I AM TELLING YOU THAT THE QUESTIONING
7 OF DEFENSE COUNSEL IS COMPLETED NOW SO FAR AS THE COURT IS
8 CONCERNED.

9 MR. CHIER: ARE YOU ORDERING ME TO STOP?

10 THE COURT: THAT'S RIGHT. I AM ORDERING YOU NOT TO
11 SAY ANYTHING FURTHER BECAUSE YOU HAVE RUN OUT OF QUESTIONS.

12 MR. WAPNER: MAY I INQUIRE OR ASK THE COURT TO INQUIRE
13 IF COUNSEL MAY HAVE OTHER QUESTIONS?

14 THE COURT: WILL YOU PROCEED, NOW?

15 TELL HIM WHO YOU ARE. LET'S ASK THE QUESTIONS.
16 DO YOU HAVE ANY? TELL ME IF YOU HAVE NOT GOT ANY.

17 MR. WAPNER: MR. NELSON, CAN YOU TELL ME WHAT THE BASIS
18 OF YOUR VIEWS ON THE DEATH PENALTY IS? THAT IS, IS IT SOME
19 RELIGIOUS, MORAL OR PHILOSOPHICAL BASIS THAT YOU HAVE FOR
20 FEELING --

21 MR. NELSON: NO, JUST MORAL.

22 MR. WAPNER: AND HOW LONG HAVE YOU HELD THIS PARTICULAR
23 VIEW ABOUT THE DEATH PENALTY?

24 MR. NELSON: I HAVE HAD IT FOR LET'S SEE -- I WOULD
25 SAY A GOOD 30 YEARS.

26 MR. WAPNER; KEEPING IN MIND THAT YOU ARE GENERALLY
27 A PERSON WHO IS IN FAVOR OF THE DEATH PENALTY, IS THE
28 DEFENDANT GOING TO GET A FAIR BREAK IF YOU ARE ON THE JURY

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1 DECIDING WHETHER HE SHOULD LIVE OR HE SHOULD DIE?

2 MR. NELSON: YES.

3 MR. WAPNER: JUST BECAUSE YOU ARE IN FAVOR OF THE DEATH
4 PENALTY GENERALLY, ARE YOU AUTOMATICALLY GOING TO VOTE THAT
5 THIS DEFENDANT SHOULD GET THE DEATH PENALTY WITHOUT KNOWING
6 WHAT THE FACTS ARE?

7 MR. NELSON: NO.

8 MR. WAPNER: WOULD THE FACTS OF THIS PARTICULAR CASE
9 AND THE FACTS ABOUT THE DEFENDANT'S BACKGROUND MAKE A
10 DIFFERENCE TO YOU IN DECIDING WHETHER OR NOT HE SHOULD LIVE
11 OR HE SHOULD DIE?

12 THE COURT: I ALREADY TOLD HIM THAT IT IS ONE OF THE
13 FACTORS TO BE CONSIDERED. HE SAID YES.

14 MR. WAPNER: SO, WOULD YOU TAKE THOSE THINGS INTO
15 CONSIDERATION?

16 MR. NELSON: THAT'S RIGHT.

17 MR. WAPNER: NOTHING FURTHER.

18 THE COURT: ALL RIGHT. DO YOU PASS FOR CAUSE?

19 MR. CHIER: BASED UPON THE LIMITED EXAMINATION, I AM
20 CONSTRAINED TO PASS FOR CAUSE, YOUR HONOR.

21 THE COURT: ALL RIGHT. LIMITED?

22 MR. CHIER: YES. PASS FOR CAUSE.

23 MR. WAPNER: I HAVE NO FURTHER QUESTIONS. I AM ONLY
24 CONCERNED THAT --

25 THE COURT: DO YOU PASS FOR CAUSE OR DON'T YOU?

26 MR. WAPNER: I DO, YOUR HONOR.

27 THE COURT: ALL RIGHT. THEN, I AM TRYING TO FIGURE
28 OUT HOW LONG IT MIGHT TAKE. MR. NELSON, IT IS EXPECTED THAT

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1 WE WILL FINISH WITH THE REST OF THE PROSPECTIVE JURORS AWAITING
2 THEIR TURN TO BE ASKED QUESTIONS, THE SAME AS YOU, ABOUT
3 DECEMBER 3RD.

4 SO WHAT I WILL ASK YOU TO DO IS, COME BACK TO
5 THE JURY ASSEMBLY ROOM ON DECEMBER THE 3RD AT 10:30 A.M. AND
6 IF BY ANY CHANCE WE ARE NOT FINISHED WITH THIS PROCESS BECAUSE
7 IT MIGHT TAKE OVER LONG, WE HAVE GOT YOUR TELEPHONE NUMBER
8 AND WE'LL CALL YOU AND LET YOU KNOW WHEN TO COME DOWN.

9 MR. NELSON: I AM TO COME IN ON THE 3RD AT 10:30?

10 THE COURT: YES. COME TO THE JURY ASSEMBLY ROOM AT
11 10:30 ON DECEMBER THE 3RD. IF BY ANY CHANCE WE HAVE NOT
12 FINISHED, WE'LL CALL YOU AND LET YOU KNOW. DON'T TALK TO
13 ANYBODY ABOUT THE CASE.

14 MR. NELSON: ALL RIGHT.

15 (PROSPECTIVE JUROR NELSON EXITED THE
16 COURTROOM.)
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1 (PROSPECTIVE JUROR DAVID PEIKERT
2 ENTERED THE COURTROOM.)

3 THE COURT: ALL RIGHT. YOUR NAME IS PEIKERT?

4 MR. PEIKERT: YES.

5 THE COURT: P-E-I-K-E-R-T?

6 MR. PEIKERT: YES.

7 THE COURT: WHERE DO YOU LIVE, MR. PEIKERT?

8 MR. PEIKERT: 24391 MULHOLLAND HIGHWAY, CALABASAS.

9 THE COURT: UH-HUH. HAVE YOU EVER READ ANYTHING AT
10 ALL ABOUT THIS CASE IN ANY NEWSPAPER OR MAGAZINE OR HEARD
11 ANYTHING ELSE ABOUT IT FROM ANY OTHER SOURCE?

12 MR. PEIKERT: NO, YOUR HONOR.

13 THE COURT: YOU HAVE NEVER DISCUSSED IT WITH ANY
14 PROSPECTIVE JURORS, HAVE YOU?

15 MR. PEIKERT: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. SIR --

17 MR. WAPNER: YOUR HONOR, WE HAVE FORGOTTEN TO DO THIS.
18 IT MIGHT BE THE APPROPRIATE TIME TO ADMONISH THE JUROR THAT
19 IF HE DOES SEE ANYTHING OR --

20 THE COURT: WE WILL TELL HIM AT THE END OF THE
21 QUESTIONING. WELL, I WILL TELL YOU NOW. IN THE MEANTIME,
22 UNTIL WE START THIS TRIAL OR EVEN DURING THE COURSE OF THE
23 TRIAL, YOU ARE NOT TO TALK TO ANYBODY ABOUT THE CASE OR
24 READ ANYTHING ABOUT IT.

25 IF YOU SEE ANYTHING IN ANY KIND OF NEWSPAPER OR
26 PUBLICATION, JUST PUT IT ASIDE AND IF ANYTHING SOUNDS LIKE
27 IT IS GOING TO BE DISCUSSED ON THE RADIO OR TELEVISION, JUST
28 TURN IT OFF. DO YOU THINK YOU COULD DO THAT?

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1 MR. PEIKERT: YES, SIR.

2 THE COURT: DO YOU THINK YOU CAN RESIST THE TEMPTATION?

3 MR. PEIKERT: I GET ONE TELEVISION CHANNEL, YOUR HONOR.

4 IT IS CHANNEL 3 OUT OF SANTA BARBARA. IT IS LOCAL NEWS.

5 THAT IS ALL I GET.

6 THE COURT: GOOD. ALL RIGHT.

7 MR. PEIKERT: SO THERE WOULDN'T BE MUCH OF A PROBLEM.

8 THEY DON'T COVER THIS SORT OF THING, I DON'T THINK OR AT
9 LEAST, THEY HAVE NOT.

10 THE COURT: YES. THANK YOU.

11 YOU WERE HERE WHEN I EXPLAINED TO THE PROSPECTIVE
12 JURORS THE NATURE OF THE CASE WE ARE ABOUT TO TRY?

13 MR. PEIKERT: YES, SIR.

14 THE COURT: SO, JUST TO ENCAPSULATE IT, THIS DEFENDANT
15 IS BEING PROSECUTED FOR A MURDER AND A MURDER IN THE FIRST
16 DEGREE COMMITTED DURING THE COURSE OF A ROBBERY.

17 THE LEGISLATURE HAS PROVIDED THAT IN CERTAIN
18 SPECIFIED INSTANCES OF MURDERS, WHERE A CERTAIN SPECIAL
19 CIRCUMSTANCE IS INVOLVED, THAT MIGHT CALL FOR THE IMPOSITION
20 OF THE DEATH PENALTY.

21 NOW, THE DEATH PENALTY WOULD MEAN THAT THE JUROR
22 WOULD HAVE ONE OF TWO ALTERNATIVES, EITHER TO RETURN LIFE
23 WITHOUT POSSIBILITY OF PAROLE OR DEATH. NOW, TO COMMIT A
24 MURDER IN THE COURSE OF A ROBBERY, IT IS ONE OF THOSE CASES
25 WHERE, IF THE DEFENDANT IS CONVICTED OF MURDER IN THE FIRST
26 DEGREE AND IT WAS IN THE COURSE OF A ROBBERY, THAT QUALIFIES
27 FOR CONSIDERATION BY A JURY OF THE DEATH PENALTY. DO YOU
28 UNDERSTAND THAT?

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1 MR. PEIKERT: YES, SIR.

2 THE COURT: THERE ARE A NUMBER OF OTHER KINDS OF CRIMES
3 LIKE MURDER COMMITTED DURING THE COURSE OF A KIDNAPPING OR
4 BURGLARY OR COMMITTED DURING TORTURE, FOR EXAMPLE OR MULTIPLE
5 MURDERS.

6 IN OTHER WORDS, THERE ARE ABOUT 19 CASES WHERE
7 THE LEGISLATURE SAID THAT THESE CASES QUALIFY FOR THE
8 IMPOSITION OF THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY
9 OF PAROLE AND SO FORTH.

10 NOW, THE FIRST FUNCTION OF THE JURY IS THE GUILT
11 PHASE, WHERE THE JURY CONSIDERS WHETHER OR NOT THE DEFENDANT
12 HAD COMMITTED MURDER AND IF IT WAS MURDER IN THE FIRST DEGREE
13 OR WHETHER HE DID NOT.

14 IF THEY CONSIDER THAT HE DID, THEN THEY CONSIDER
15 THE QUESTION OF WHETHER OR NOT IT WAS COMMITTED DURING THE
16 COURSE OF A ROBBERY. AND IF IT WAS COMMITTED DURING THE COURSE
17 OF A ROBBERY, THEN WE HAVE A SECOND TRIAL CALLED THE PENALTY
18 PHASE OF THE CASE WHERE THE EVIDENCE IS PRODUCED BY THE DEFENSE
19 AND BY THE PROSECUTION.

20 AND THE THINGS THAT ARE TO BE CONSIDERED ON THIS
21 PARTICULAR PHASE OF IT ARE CONTAINED IN THE LAW, THE PENAL
22 CODE WHICH I WILL READ TO YOU.

23 "IN PROCEEDINGS ON THE QUESTION OF
24 PENALTY, EVIDENCE MAY BE PRESENTED BY BOTH
25 THE PEOPLE AND THE DEFENDANT AS TO ANY MATTER
26 RELEVANT TO AGGRAVATION ..."

27 THAT IS ANYTHING ABOUT THE DEFENDANT WHICH IS
28 BAD, WHICH AGGRAVATES THE OFFENSE.

11B-1

1 OR, IT COULD BE MITIGATION, ANYTHING ABOUT HIM
2 AND HIS BACKGROUND WHICH MITIGATES THE OFFENSE. AND IT WOULD
3 INCLUDE THE NATURE AND THE CIRCUMSTANCES OF THE VERY CASE
4 THAT WE ARE HEARING ON THE GUILT PHASE AND ANY PRIOR FELONY
5 CONVICTIONS OR LACK OF CONVICTIONS OF THE DEFENDANT AND THE
6 FACT THAT HE WAS FREE FROM ANY KIND OF CRIMINAL RECORD.

7 IT COULD ALSO BE THE DEFENDANT'S CHARACTER, HIS
8 BACKGROUND, HIS HISTORY, HIS MENTAL CONDITION AND HIS PHYSICAL
9 CONDITION. THESE ARE ALL FACTORS THAT MAY BE TAKEN INTO
10 CONSIDERATION BY THE JURY IN DETERMINING WHETHER OR NOT HE
11 GETS LIFE WITHOUT POSSIBILITY OF PAROLE OR --

12 MR. PEIKERT: IT WOULD BE VERY IMPORTANT.

13 THE COURT: YES. ALL OF THOSE THINGS, INCLUDING HIS
14 AGE.

15 MR. PEIKERT: RIGHT.

16 THE COURT: SO, YOU WILL HEAR ALL OF THE EVIDENCE IF
17 HE IS CONVICTED AND YOU ARE A JUROR. YOU WILL HEAR IT IF
18 HE IS CONVICTED OF MURDER IN THE FIRST DEGREE AND SPECIAL
19 CIRCUMSTANCES WHICH ARE, DURING THE COURSE OF A ROBBERY. YOU
20 WILL HEAR ALL OF THAT EVIDENCE. YOU WILL MAKE UP YOUR MIND
21 AT THAT TIME. DO YOU UNDERSTAND THAT?

22 MR. PEIKERT: YES. IT IS ACTUALLY A TWO-STEP PROCESS?

23 THE COURT: THAT'S RIGHT. THERE IS THE GUILT PHASE
24 WHICH IS THE FIRST PHASE WHERE YOU DON'T CONSIDER PENALTY
25 AT ALL IN ANY WAY.

26 IT IS ONLY ON THE SECOND PHASE THAT YOU CONSIDER
27 THE PENALTY. THEN IT IS ONE OF THOSE TWO.

28 MR. PEIKERT: THE FIRST PHASE WOULD BE SOLELY UP TO

1 THE JUDGE?

2 THE COURT: NO. NO, IT IS UP TO THE JURY.

3 MR. PEIKERT: WELL, YOU MEAN IF HE WAS GUILTY --

4 THE COURT: YOU DECIDE WHETHER HE IS GUILTY OF MURDER
5 IN THE FIRST DEGREE AND WHETHER IT IS COMMITTED DURING THE
6 COURSE OF A ROBBERY. YOU DECIDE THAT AS A JUROR.

7 MR. PEIKERT: UNDER THE FIRST PHASE?

8 THE COURT: YES. I DON'T DECIDE ANYTHING. RIGHT.

9 MR. PEIKERT: UNDER THE SECOND PHASE, THEY HEAR
10 ADDITIONAL EVIDENCE. NOW, THAT IS THE GUILT PHASE ALREADY
11 AFTER HE HAS BEEN FOUND GUILTY.

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1 MR. PEIKERT: YES, BUT YOU DON'T HEAR THE SECOND PHASE
2 IF YOU COME IN WITH THE FIRST DEGREE.

3 THE COURT: NO, NO, NO. IF YOU COME IN WITH -- YOU
4 DONT' COME IN WITH THE FIRST DEGREE, AND YOU DON'T COME IN
5 WITH THE SPECIAL CIRCUMSTANCE THAT IT WAS COMMITTED DURING
6 THE COURSE OF A ROBBERY. IT IS ONLY WHERE YOU FIND THE
7 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND YOU FIND
8 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, AND THEN
9 YOU CONSIDER THE PENALTY PHASE.

10 NOW EVIDENCE IS PRESENTED ON BOTH SIDES AS TO
11 THE PENALTY, THAT IS ANYTHING THAT HAS ANYTHING TO DO WITH
12 THE PENALTY; THOSE FACTORS I READ TO YOU.

13 MR. PEIKERT: UH-HUH.

14 THE COURT: YOU HAVE THAT IN MIND?

15 MR. PEIKERT: YES.

16 THE COURT: THE JURY DECIDES THE GUILT PHASE AND ALSO
17 DECIDES THE PENALTY PHASE.

18 MR. PEIKERT: OH, THAT'S -- I STAND TO BE CORRECTED.
19 I THOUGHT IF THE DEFENDANT WAS FOUND GUILTY IN THE FIRST DEGREE
20 THAT THE JURY WOULDN'T HAVE ANYTHING ELSE TO SAY ABOUT THAT.

21 THE COURT: OH, NO. OH, NO.

22 MR. PEIKERT: AND THAT IT WOULD BE SOLELY THE JUDGE.

23 THE COURT: OH, NO. NO, NO. IT IS THE JURY.

24 MR. PEIKERT: WELL, THAT'S VERY IMPORTANT TO ME. THAT'S
25 VERY GOOD.

26 THE COURT: SO IF HE IS FOUND GUILTY OF MURDER IN THE
27 FIRST DEGREE, AND IT MUST BE DURING THE COURSE OF A ROBBERY --

28 MR. PEIKERT: UH-HUH.

1 THE COURT: THAT MAKES THE DEATH PENALTY OPERABLE. THEN
2 YOU UNDERSTAND WE HAVE A SECOND TRIAL, THE SAME JURY?

3 MR. PEIKERT: UH-HUH.

4 THE COURT: THEY THEN HEAR EVIDENCE ON BOTH SIDES
5 RESPECTING THE PENALTY TO BE IMPOSED, LIFE IMPRISONMENT WITHOUT
6 THE POSSIBILITY OF PAROLE OR DEATH. THAT'S ENTIRELY UP TO
7 THE JURY AFTER THEY HAVE HEARD ALL OF THE EVIDENCE IN THE
8 SECOND PHASE.

9 MR. PEIKERT: OKAY.

10 THE COURT: YOU GOT THAT CLEAR?

11 MR. PEIKERT: I STAND TO BE CORRECTED. YES, THE
12 CLARIFICATION IS CLEAR.

13 THE COURT: CLEAR NOW?

14 MR. PEIKERT: YES.

15 THE COURT: ALL RIGHT. YES?

16 MR. PEIKERT: VERY GOOD.

17 THE COURT: NOW AT THIS PARTICULAR STAGE OF THE
18 PROCEEDINGS YOU, OF COURSE, AS I TOLD YOU, HAVE THE RIGHT TO
19 CONSIDER THE FACTS IN CONNECTION WITH THE MURDER IN DETERMINING
20 WHAT PENALTY SHOULD BE USED, BUT YOU HAVE GOT OTHER FACTORS
21 TO BE CONSIDERED TOO, THAT I READ TO YOU, THE FACTORS OF
22 CHARACTER --

23 MR. PEIKERT: WELL, THAT'S IMPORTANT.

24 THE COURT: OF COURSE. ALL OF THESE THINGS ARE
25 IMPORTANT. AND YOU WILL DO THAT, WON'T YOU? YOU WILL
26 CONSIDER ALL THOSE THINGS?

27 MR. PEIKERT: OKAY. WELL, YES. IF YOU GET INTO MY
28 BACKGROUND, IF YOU ASK ME, I CAN CLARIFY SOME OF THAT.

1 THE COURT: WELL, I AM GOING TO GO INTO YOUR BACKGROUND.
2 I AM GOING TO ASK A SERIES OF QUESTIONS.

3 MR. PEIKERT: OKAY.

4 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
5 WHICH YOUR ANSWER WILL BE EITHER "YES" OR "NO." IF YOU DNO'T
6 UNDERSTAND IT YOU CAN ASK ME TO REPEAT IT AND IF YOU STILL
7 DON'T UNDERSTAND IT, I WILL TRY TO EXPLAIN IT TO YOU. OKAY.

8 NOW THESE ARE THE QUESTIONS.

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

13 MR. PEIKERT: DO I HAVE AN OPINION --

14 THE COURT: DO YOU HAVE AN OPINION ABOUT THE DEATH
15 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
16 DECISION AS TO WHETHER HE IS GUILTY OR NOT GUILTY?

17 MR. PEIKERT: NO.

18 THE COURT: SECOND QUESTION: DO YOU HAVE ANY OPINION
19 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
20 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
21 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE? THE SPECIAL
22 CIRCUMSTANCE IS -- IN OTHER WORDS, IF YOU FIND HIM GUILTY OF
23 MURDER IN THE FIRST DEGREE, THEN YOU GOT TO CONSIDER WHETHER
24 THAT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

25 MR. PEIKERT: THAT WOULD BE MOST IMPORTANT.

26 THE COURT: ALL RIGHT. THE JURY THEN, YOU HAVE GOT TO
27 FIND WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE OF THE
28 ROBBERY. THAT'S THE SPECIAL CIRCUMSTANCE.

1 MR. PEIKERT: YES.

2 THE COURT: YOU MAKE A FINDING ON THAT, TRUE OR FALSE.

3 MR. PEIKERT: YES.

4 THE COURT: NOW I AM ASKING YOU WHETHER YOU HAVE AN
5 OPINION CONCERNING THE DEATH PENALTY SUCH AS WOULD PREVENT
6 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
7 OR FALSITY OF THE SPECIAL CIRCUMSTANCE?

8 MR. PEIKERT: ABSOLUTELY NOT, OR NO.

9 THE COURT: THANK YOU.

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

14 MR. PEIKERT: NEGATIVE. NO WAY.

15 THE COURT: OKAY. NOW THIS IS ANOTHER ASPECT OF THE
16 SAME QUESTION. IT INVOLVES LIFE IMPRISONMENT.

17 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
18 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
19 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS OF
20 ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF
21 THE TRIAL?

22 MR. PEIKERT: NO. I -- WITHOUT POSSIBILITY OF PAROLE?

23 THE COURT: YES.

24 MR. PEIKERT: NO.

25 THE COURT: NOW YOU UNDERSTAND THAT THE ISSUE OF THE
26 DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE, AND THESE
27 QUESTIONS ARE ASKED ONLY IN THE EVENT THAT YOU REACH THAT
28 PHASE OF THE TRIAL.

1 MR. PEIKERT: YES. WELL --

2 THE COURT: ALL OF THESE QUESTIONS ALL PRESUPPOSE YOU
3 FOUND THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE WITH
4 THE FINDING THAT IT WAS COMMITTED DURING THE COURSE OF A
5 ROBBERY.

6 MR. PEIKERT: WELL, THAT COMES UNDER THAT SPECIAL
7 CIRCUMSTANCE. I MEAN, IF YOU GOT A PERSON THAT -- OKAY --
8 ALLEGEDLY DID SOMETHING VERY BAD, BUT YOU LOOK AT HIS AGE.
9 I MEAN, WITHOUT POSSIBILITY OF PAROLE -- I MEAN, PEOPLE CAN
10 BE REHABILITATED. THEY CAN BE TURNED AROUND.

11 THE COURT: WELL, YOU SEE, YOU CONSIDER ALL OF THE FACTORS
12 LIKE AGE AND BACKGROUND.

13 MR. PEIKERT: YES. I CAN'T SEE TAKING A 21-YEAR-OLD
14 AND PUTTING HIM ON DEATH ROW FOR THE REST OF HIS LIFE. WELL,
15 THAT WAS JUST MY OWN PERSONAL THING. I PROBABLY SHOULDN'T
16 HAVE SAID THAT.

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1 THE COURT: NO. I ASKED YOU THE QUESTION BEFORE, WHETHER
2 OR NOT YOU HAVE AN OPINION OF THE DEATH PENALTY. I AM TALKING
3 ABOUT THE DEATH PENALTY PUNISHMENT. DO YOU HAVE SUCH AN
4 OPINION ABOUT THE DEATH PENALTY THAT WOULD PREVENT YOU FROM
5 IMPARTIALLY CONSIDERING THE TRUTH OR FALSITY OF THE SPECIAL
6 CIRCUMSTANCE, THAT IT WAS COMMITTED DURING THE COURSE OF A
7 ROBBERT?

8 MR. PEIKERT: NO, ABSOLUTELY; NO, RIGHT.

9 THE COURT: NOW THE LAST QUESTION THAT I WILL ASK YOU
10 AGAIN IS THESE QUESTIONS ARE BEING ASKED WITH RESPECT TO THE
11 DEATH PENALTY ON THE ASSUMPTION THAT WE REACH THE SECOND
12 PHASE OF THE TRIAL, THAT QUESTION. THAT PHASE OF THE TRIAL
13 IS WHERE WE GO INTO THE QUESTION OF THE PENALTY, THE PUNISH-
14 MENT. IS IT LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
15 PAROLE, OR IS IT THE DEATH PENALTY?

16 BECAUSE I AM ASKING THESE QUESTIONS WITH RESPECT
17 TO THE DEATH PENALTY DOESN'T MEAN THAT THAT'S GOING TO BECOME
18 APPLICABLE. IT IS ONLY IF YOU FIND THAT HE IS GUILTY OF MURDER
19 IN THE FIRST DEGREE AND THE SPECIAL CIRCUMSTANCE THAT IT WAS
20 COMMITTED DURING THE COURSE OF A ROBBERY THAT THEN YOU
21 CONSIDER THE QUESTION OF PENALTY.

22 MR. PEIKERT: YES. THE ANSWER WOULD BE NO. NOW THE
23 REASON I CAN -- IF I AM ALLOWED TO SAY ANYTHING TO CLARIFY
24 MY ANSWER?

25 THE COURT: SURE. GO AHEAD.

26 MR. PEIKERT: WHICH MAY SOUND LIKE STUPIDITY. OKAY.

27 THE COURT: NO.

28 MR. PEIKERT: I WAS IN THE MILITARY, TO TAKE AN OATH

1 TO GO OUT AND INFLICT THE MOST HORRIBLE BODILY HARM ON A PERSON
2 THAT I COULD.

3 THE COURT: YES.

4 MR. PEIKERT: OKAY. SO DELEGATED BY THE CONGRESS AND
5 THE PRESIDENT OF THE UNITED STATES.

6 THE COURT: AND THE MILITARY CODE.

7 MR. PEIKERT: NOW I COME BACK TO CIVILIAN LIFE AND I
8 HAVE DEDICATED THE LAST 21 YEARS OF MY LIFE AS A PARAMEDIC
9 FIRE FIGHTER. NOW I AM IN THE GHETTO FOR 21 YEARS AND AROSE
10 TO THE OCCASION WHERE WE RUN ON ABOUT 30 TO 60 HOMICIDES A
11 YEAR.

12 I DON'T WANT TO GET OUT OF THE GHETTO. I SEE BOTH
13 SIDES OF THE FENCE. I AM ON BOTH SIDES OF THE FENCE AND I
14 CAN HAVE A VERY PARTIAL UNDERSTANDING OF WHAT HAPPENS ON BOTH
15 SIDES OF THE FENCE. NOW I THINK --

16 THE COURT: YOU THINK THAT BACKGROUND --

17 MR. PEIKERT: I THINK THAT BOTH THE DEFENSE AND THE
18 PROSECUTOR SHOULD KNOW THAT. I-- JUST BECAUSE I AM A FIREMAN
19 DOESN'T MEAN I AM A REDNECK OR HARD-NOSED. I AM VERY PARTIAL
20 TO ONE SIDE OR THE OTHER BECAUSE I HAVE BEEN THERE.

21 THE COURT: YOU ARE GOING TO BE IMPARTIAL, AREN'T YOU?

22 MR. PEIKERT: VERY IMPARTIAL.

23 THE COURT: THAT'S ALL ANYBODY EXPECTS OF YOU, TO BE
24 IMPARTIAL. THAT'S WHAT WE ARE TRYING TO DETERMINE AT THIS
25 STAGE OF THE PROCEEDINGS. AT THIS STAGE OF THE PROCEEDINGS
26 WE WANT TO FIND OUT WHAT YOUR THINKING IS ON THE SUBJECT OF
27 THE DEATH PENALTY, WHETHER THAT WILL INTERFERE WITH YOUR
28 BEING AN IMPARTIAL JUROR, IN DECIDING THE ISSUES IN THIS CASE.

1 MR. PEIKERT: ABSOLUTELY NOT. THE ONLY TIME THAT I COULD
2 SAY THAT IT WOULD POSSIBLY MAKE A DIFFERENCE IF IT WAS
3 PREMEDITATED.

4 THE COURT: WELL, THAT'S WHY -- I TOLD YOU THAT ASSUMING
5 THAT IT WAS A PREMEDITATED MURDER, ASSUMING IT WAS INTENTIONAL
6 AND PREMEDITATED, THAT'S THE ONLY TIME THAT YOU CAN FIND THE
7 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, IF IT WAS
8 INTENTIONAL.

9 MR. PEIKERT: THAT'S TRUE. THAT'S TRUE.

10 THE COURT: AND IT WAS DURING THE COURSE OF A ROBBERY,
11 THE MURDER TOOK PLACE DURING THE COURSE OF A ROBBERY, THAT
12 MAKES THE DEATH PENALTY, AS I TOLD YOU, APPLICABLE IN THIS
13 PARTICULAR CASE.

14 MR. PEIKERT: YES, IT DOES.

15 THE COURT: ALL RIGHT. NOW WOULD YOU, MERELY BECAUSE
16 OF THAT FACT, WOULD YOU BECAUSE OF THE FACT THAT IT WAS A
17 PREMEDITATED MURDER, INTENTIONAL MURDER, AND IN THE COURSE
18 OF A ROBBERY, STOPPING THERE, WITHOUT CONSIDERING THE PENALTY
19 PHASE OF IT, WOULD YOU SAY THAT THE DEATH PENALTY WOULD BE
20 APPLICABLE?

21 MR. PEIKERT: YES, BUT I WOULD HAVE TO HEAR HOW IT
22 HAPPENED.

23 THE COURT: YES. YOU WOULD HEAR ALL OF THAT. YOU WILL
24 ALSO HEAR, I TOLD YOU, ON THE SECOND PHASE, THE PENALTY PHASE,
25 GOOD THINGS ABOUT THE DEFENDANT, OR BAD THINGS ABOUT THE
26 DEFENDANT. YOU HAVE TO CONSIDER ALL OF THAT BEFORE YOU MAKE
27 UP YOUR MIND.

28 MR. PEIKERT: THAT IS ACTUALLY THE PRIMARY CONCERN,

1 IF I WAS TO BE SITTING ON THIS PANEL.

2 THE COURT: YOU WON'T DO THAT?

3 MR. PEIKERT: NO -- YES.

4 THE COURT: YOU WILL?

5 MR. PEIKERT: YES, YES.

6 THE COURT: IF YOU ARE SELECTED AS A JUROR, BEFORE YOU
7 MAKE UP YOUR MIND AS TO WHAT THE PENALTY IS GOING TO BE, EVEN
8 IF IT IS A PREMEDITATED MURDER, AND IT IS AN INTENTIONAL
9 MURDER, IN THE COURSE OF A ROBBERY; BEFORE YOU MAKE UP YOUR
10 MIND AS TO THE PENALTY, YOU SHOULD HEAR, AND YOU WILL HEAR
11 ALL OF THE EVIDENCE ON BOTH SIDES AS TO WHY OR WHY IT SHOULD
12 NOT BE IMPOSED.

13 MR. PEIKERT: RIGHT.

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1 THE COURT: AND YOU ARE WILLING TO DO THAT?

2 MR. PEIKERT: YES. WHEN I ROLL ON A SHOOTING OR WHATEVER,
3 IT MAKES NO DIFFERENCE TO ME IF THE GUY IS A GOOD GUY OR A
4 BAD GUY. HE GETS THE SAME TREATMENT.

5 THE COURT: ABSOLUTELY. BUT IN THIS PARTICULAR CASE
6 AS TO WHETHER OR NOT HE IS A BAD GUY OR A GOOD GUY, YOU HAVE
7 TO MAKE A DETERMINATION AS TO WHETHER OR NOT HE IS A BAD GUY
8 OR WHETHER HE IS A GOOD GUY. THEN YOU ARE --

9 MR. PEIKERT: WELL, I DON'T EVEN ASK. I DON'T. IT
10 DOESN'T ENTER INTO IT.

11 THE COURT: WELL, YOU WILL HEAR ALL OF THE EVIDENCE
12 THEN. THEN YOU MAKE UP YOUR MIND AS TO WHAT YOU WANT TO DO.
13 OR, HAVE YOU MADE UP YOUR MIND IN ADVANCE?

14 MR. PEIKERT: NO. HOW CAN I MAKE UP MY MIND IN ADVANCE?

15 THE COURT: SORRY TO IMPOSE ON YOU. YOU MAY ASK FURTHER
16 QUESTIONS.

17 MR. CHIER: MR. PEIKERT, MY NAME IS CHIER. I REPRESENT
18 MR. HUNT HERE, THE DEFENDANT. I WANT TO ASK YOU SOME QUESTIONS.

19 BUT PRELIMINARILY, I WOULD LIKE TO JUST TELL YOU
20 A COUPLE OF THINGS SO THAT YOU UNDERSTAND A LITTLE BIT MORE
21 ABOUT THE QUESTIONS I ASK YOU. OKAY?

22 MR. PEIKERT: SURE.

23 MR. CHIER: THE JUDGE EXPLAINED TO YOU THAT THIS IS
24 ALMOST LIKE TWO TRIALS IN A DEATH CASE.

25 MR. PEIKERT: YES IT IS. YES.

26 MR. CHIER: OKAY. AND THE FIRST TRIAL IS WHETHER HE
27 IS GUILTY OR INNOCENT. THE SECOND TRIAL IS WHAT DO WE DO
28 WITH HIM.

16A-2

1 MR. PEIKERT: YES.

2 MR. CHIER: YOU AND THE OTHER JURORS ARE THE DECIDING
3 FORCE IN EACH CASE, THE FIRST TRIAL AS TO GUILT OR INNOCENCE
4 AND THE SECOND, DEATH OR LIFE WITHOUT POSSIBILITY OF PAROLE.

5 MR. PEIKERT: YES.

6 MR. CHIER: OKAY. WHAT I WOULD LIKE --

7 MR. PEIKERT: THERE IS THE POSSIBILITY OF PAROLE?

8 THE COURT: YES. THAT'S RIGHT, TOO. THE POSSIBILITY
9 OF PAROLE --

10 MR. CHIER: THERE IS NO POSSIBILITY OF PAROLE.

11 MR. PEIKERT: PARDON ME.

12 MR. CHIER: IT IS LIFE WITHOUT POSSIBILITY OF PAROLE.

13 THE COURT: LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH.
14 DO YOU UNDERSTAND THAT THOSE ARE THE ALTERNATIVES?

15 MR. PEIKERT: YES. THAT IS WHAT I UNDERSTAND.

16 MR. CHIER: SO, LIFE WITHOUT POSSIBILITY OF PAROLE IS
17 NOT AN ILLUSION. IT MEANS THE KEY IS THROWN AWAY.

18 MR. PEIKERT: RIGHT.

19 MR. CHIER: EXACTLY WHAT IT SAYS.

20 MR. PEIKERT: RIGHT.

21 MR. CHIER: OKAY. SO THE CHOICE -- THERE IS REALLY
22 NOT THREE CHOICES. SOME PEOPLE THINK MAYBE THERE IS A THIRD
23 CHOICE, A HIDDEN ONE, THAT THE GUY GETS OUT IN TEN YEARS OR
24 WHATEVER.

25 MR. PEIKERT: NO.

26 MR. CHIER: ALL RIGHT. WITHOUT POSSIBILITY OF PAROLE
27 IS JUST THAT, CUT AND DRIED, FLAT OUT.

28 MR. PEIKERT: I UNDERSTAND.

1 MR. CHIER: ALL RIGHT. NOW, THESE QUESTIONS I AM GOING
2 TO ASK YOU ARE TO FIND OUT YOUR ATTITUDES TOWARD THE DEATH
3 PENALTY, YOUR FEELINGS. AND IT HAS GOT NOTHING TO DO WITH
4 YOUR WILLINGNESS OR ABILITY TO FOLLOW THE LAW AS GIVEN TO
5 YOU BY THE JUDGE. THE JUDGE CAN TELL YOU WHAT THE LAW IS.
6 HE TELLS YOU WHAT THE LAW IS AND THEN YOU DETERMINE WHETHER
7 THIS PERSON BROKE THE LAW. OKAY?

8 MR. PEIKERT: YES.

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1 MR. CHIER: BUT HE CAN'T TELL YOU WHAT TO DECIDE. HE
2 CAN'T SAY YOU SHOULD CONVICT THIS MAN OR YOU SHOULD ACQUIT
3 THIS MAN. HE CAN'T TELL YOU TO EXECUTE THE MAN OR TO PUT
4 HIM IN PRISON FOR THE REST OF HIS LIFE. THAT IS YOUR DECISION
5 IF YOU ARE A JUROR.

6 MR. PEIKERT: AT THE SECOND PHASE?

7 MR. CHIER: RIGHT.

8 MR. PEIKERT: YES.

9 MR. CHIER: OKAY.

10 MR. PEIKERT: ALL RIGHT.

11 MR. CHIER: WHAT I WANT TO KNOW NOW AND THESE QUESTIONS
12 I AM GOING TO ASK YOU, THERE IS NO RIGHT ANSWER OR NO WRONG
13 ANSWER. THIS IS NOT A TEST.

14 MR. PEIKERT: THAT'S FINE.

15 MR. CHIER: THIS IS JUST KIND OF AN INQUIRY TO SEE IF
16 THIS IS A GOOD CASE FOR YOU AS A JUROR OR MAYBE THERE ARE
17 SOME OTHER TYPES OF CASES THAT WOULD BE MORE APPROPRIATE FOR
18 YOU TO BE A JUROR ON. OKAY? WE ARE NOT TESTING YOU AS A
19 GOOD PERSON OR NOT.

20 MR. PEIKERT: NO. THIS IS THE FIRST TIME I HAVE ACTUALLY
21 BEEN IN A COURTROOM IN 43 YEARS OF MY LIFE.

22 MR. CHIER: OKAY. NOW, WE HAVE --

23 MR. PEIKERT: I HAVE NOTHING TO GAUGE IT AGAINST.

24 MR. CHIER: NOW. LET ME SEE IF WE CAN APPROACH IT FROM
25 THIS DIRECTION, SINCE YOU HAVE HAD SOME EXPERIENCE, HERE.
26 YOU WERE IN THE ARMY, RIGHT?

27 MR. PEIKERT: YES, SIR.

28 MR. CHIER: YOU WERE IN COMBAT?

16R-2

1 MR. PEIKERT: YES, SIR.

2 MR. CHIER: AND YOU TOOK AN OATH TO DEFEND YOUR COUNTRY?

3 MR. PEIKERT: YES, SIR.

4 MR. CHIER: AND PART OF THAT OATH INCLUDES YOUR GOING
5 OUT AND KILLING A STRANGER, IF NECESSARY, IN THE COURSE OF
6 COMBAT, CORRECT?

7 MR. PEIKERT: YES, SIR.

8 MR. CHIER: AND THE KILLING OF A STRANGER, A PERSON
9 THAT YOU HAD NEVER MET BEFORE, WAS DONE BECAUSE YOU HAD TAKEN
10 AN OATH TO DO THAT, RIGHT?

11 MR. PEIKERT: AND SO DID HE.

12 THE COURT: HE TOLD US ALL OF THAT BEFORE. WHY DON'T
13 YOU GO ON TO SOMETHING ELSE, WILL YOU PLEASE? HE TOLD US
14 ALL OF THAT ALREADY.

15 MR. CHIER: THIS IS EXPLORATORY OF HIS ATTITUDE.

16 THE COURT: IT IS JUST REPEATING THE SAME THING.

17 MR. CHIER: THIS IS LEGAL KILLING AND A LEGAL DISCUSSION,
18 YOUR HONOR.

19 MR. PEIKERT: SORRY IF I BROUGHT UP SOMETHING THAT YOU
20 TWO GUYS ARE GOING TO DEBATE.

21 MR. CHIER: I AM TRYING TO MAKE IT EASIER TO COMMUNICATE
22 WITH YOU ABOUT WHAT THIS IS ABOUT AND WHAT I WANT TO FIND
23 OUT FROM YOU. OKAY?

24 MR. PEIKERT: WELL, SOME OF IT MAY BE CLASSIFIED AND
25 I CAN'T TALK TO YOU ABOUT IT.

26 MR. CHIER: I WON'T ASK ABOUT IT. I JUST WANT TO KNOW --
27 WHEN YOU TOOK THAT OATH AND YOU WENT INTO COMBAT, DID YOU
28 HAVE ANY RESERVATIONS ABOUT KILLING SOMEBODY, IF IT WAS

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1 NECESSARY?

2 MR. PEIKERT: NO.

3 MR. CHIER: BECAUSE IT WAS SOMETHING THAT WAS COMMANDED
4 BY YOUR SOVEREIGN, RIGHT?

5 MR. PEIKERT: YOUR COMMANDER OR WHOEVER YOUR SUPERIOR
6 WAS.

7 MR. CHIER: OKAY. NOW --

8 MR. PEIKERT: AND YOUR RIGHT TO SURVIVE, INTERNALLY.
9 YOUR RIGHT TO SURVIVE.

10 MR. CHIER: OKAY. NOW, THIS IS CIVILIAN LIFE,
11 MR. PEIKERT.

12 MR. PEIKERT: YES, SIR. IT IS.

13 MR. CHIER: BUT IN ONE SENSE, IT IS KIND OF THE SAME
14 IN THAT IT INVOLVES THE TAKING OF LIFE, THE QUESTION OF WHETHER
15 A MAN'S LIFE SHOULD BE TAKEN, A MAN YOU HAVE NEVER MET BEFORE.
16 RIGHT?

17 MR. PEIKERT: YES, SIR. I HAVE SEEN IT MANY TIMES.

18 MR. CHIER: ALL RIGHT. NOW, DO YOU THINK THAT -- DO
19 YOU BELIEVE IN AN EYE FOR AN EYE?

20 MR. PEIKERT: NO, SIR.

21 MR. CHIER: DO YOU THINK THAT THERE ARE CIRCUMSTANCES
22 SHORT OF BEING A LEGAL EXCUSE SUCH AS SELF-DEFENSE OR COMBAT
23 OR SOMETHING LIKE THAT, THERE ARE CIRCUMSTANCES THAT WEIGH
24 IN FAVOR OF PUTTING A GUY IN PRISON FOR THE REST OF HIS LIFE,
25 AS OPPOSED TO TAKING HIS LIFE?

26 MR. PEIKERT: YES.

27 MR. WAPNER: OBJECTION.

28 THE COURT: WAIT A MINUTE. SELF-DEFENSE HAS NOTHING

1 TO DO WITH THE PROBLEM WE HAVE HERE. IT IS MERELY TO DETERMINE
2 WHAT HIS ATTITUDE IS TOWARD THE DEATH PENALTY.

3 MR. CHIER: DID YOU UNDERSTAND THE QUESTION?

4 MR. PEIKERT: YES. I ANSWERED IT.

5 THE COURT: WELL, YOU DON'T HAVE TO ANSWER IT.

6 MR. PEIKERT: WELL, SORRY. I ANSWERED IT YES, THE WAY
7 YOU PUT IT TO ME.

8 THE COURT: ALL RIGHT.

9 MR. PEIKERT: I ANSWERED IT YES, THE WAY YOU PUT IT
10 TO ME, TOO.

11 THE COURT: ALL RIGHT. GO AHEAD.

12 MR. CHIER: SO THAT EVEN IF A PERSON COMMITS AN
13 INTENTIONAL, DELIBERATE MURDER, THE QUESTION OF WHAT TO DO
14 WITH THAT PERSON, AS FAR AS PUNISHMENT, IS NOT OVER. IT IS
15 NOT CUT AND DRIED.

16 MR. PEIKERT: REPEAT THAT AGAIN. YOU HAD ME HUNG UP
17 ON THE LAST QUESTION.

18 I JUST WANT TO MAKE SURE THAT I ANSWERED IT THE
19 WAY I FELT.

20 MR. CHIER: IF A PERSON WERE CONVICTED OF INTENTIONAL
21 MURDER IN THE COURSE OF A ROBBERY --

22 MR. PEIKERT: OKAY.

23 MR. CHIER: LET'S SAY HE IS CONVICTED ON EVIDENCE THAT
24 CONVINCES 12 PEOPLE BEYOND A REASONABLE DOUBT.

25 MR. PEIKERT: BEYOND A REASONABLE DOUBT, YES.

26 MR. CHIER: THAT THE PERSON IS GUILTY OF THAT.

27 MR. PEIKERT: ALL RIGHT.

28 MR. CHIER: OKAY. IS IT ALL OVER IN YOUR MIND AT THAT

1 POINT AS TO WHAT WE SHOULD DO WITH HIM? DO YOU KNOW WHAT
2 I MEAN? HAVE YOU ALREADY DECIDED AT THAT POINT TO GIVE HIM
3 THE DEATH PENALTY OR PUT HIM IN PRISON FOR THE REST OF HIS
4 LIFE?

5 MR. PEIKERT: WELL, YOU DECIDE IF HE IS GUILTY.

6 MR. CHIER: RIGHT.

7 MR. PEIKERT: OKAY.

8 MR. CHIER: NOW, THERE IS ANOTHER TRIAL.

9 MR. PEIKERT: NOW YOU DECIDE WHAT YOU ARE GOING TO DO
10 WITH HIM?

11 MR. CHIER: RIGHT.

12 THE COURT: THAT IS EXACTLY RIGHT.

13 MR. CHIER: DO YOU HAVE ANY PREDISPOSITION IN CONNECTION
14 WITH THE SECOND PART?

15 MR. PEIKERT: NO.

16 MR. CHIER: NO? WOULD THINGS SUCH AS HIS AGE OR BACKGROUND
17 OR MAKEUP, MAKE A DIFFERENCE TO YOU IN TERMS OF DECIDING WHAT
18 TO DO WITH HIM?

19 MR. PEIKERT: YES.

20 MR. CHIER: AND DO YOU BELIEVE THAT EVEN IF THE EVIDENCE
21 SHOWED THAT A PERSON TOOK ANOTHER PERSON'S LIFE INTENTIONALLY,
22 WITHOUT LEGAL EXCUSE, THAT THERE ARE STILL REASONS FOR NOT
23 KILLING THAT PERSON AND PUTTING HIM IN PRISON FOR THE REST
24 OF HIS LIFE AS AN ALTERNATIVE? YOU UNDERSTAND MY QUESTION?

25 MR. PEIKERT: YES I DO. AND THAT IS REALLY HARD TO
26 ANSWER WITHOUT HEARING THE CIRCUMSTANCES.

27 MR. CHIER: I AM NOT ASKING YOU TO MAKE A DECISION IN
28 THIS CASE. BUT AS A GENERAL PROPOSITION, CAN YOU CONCEIVE --

1 MR. PEIKERT: HUMANITARIAN-WISE (SIC) IT WOULD MAKE
2 A DIFFERENCE, YES. THINKING OF THE HUMAN SIDE OF IT, AN EYE
3 FOR AN EYE, A POUND OF FLESH FOR A POUND OF FLESH AND ALL
4 OF THAT, YOU ASKED ME IF I BELIEVED IN THAT AND I SAYS, NO.
5 I DON'T.

6 MR. CHIER: ALL RIGHT. ARE THERE ANY THINGS THAT COME
7 TO MIND WITHOUT HEARING THE JUDGE'S INSTRUCTIONS AS TO WHAT
8 SORT OF THINGS OUGHT TO WEIGH IN FAVOR OF SAVING A GUY'S LIFE,
9 AS OPPOSED TO EXECUTING HIM?

10 MR. PEIKERT: WELL, PERSONALLY?

11 MR. CHIER: YES, THIS IS A PERSONAL INQUIRY.

12 MR. PEIKERT: WELL, OKAY. DID HE DO IT FOR MONEY OR
13 DRUGS? DID HE DO IT FOR MONEY BECAUSE HIS FAMILY WAS STARVING?
14 DID HE DO IT AS AN IMPULSIVE, IRRATIONAL THING? WHY DID THIS
15 HAPPEN?

16 MR. CHIER: OKAY. SO, ONE OF THE THINGS THAT WOULD
17 BE IMPORTANT IN YOUR MIND, IS MOTIVE, CORRECT? WHAT MADE
18 THE PERSON DO THAT?

19 MR. PEIKERT: DEFINITELY. MOTIVE.

20 MR. CHIER: OKAY. LET'S SUPPOSE THAT THE MOTIVE WERE
21 GREED. WOULD THAT KIND OF ANSWER THE QUESTION FOR YOU AS
22 AS TO WHAT TO DO WITH THE PERSON OR ARE YOU STILL OPENMINDED?

23 MR. PEIKERT: WELL, YOU HAVE GOT TO BE AWFULLY GREEDY
24 TO KILL SOMEBODY.

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1 MR. CHIER: WELL, ASSUME THAT THAT'S -- ASSUME THE WORST.
2 ASSUME THAT MAYBE THAT HAPPENED. ASSUME THAT YOU WERE GOING
3 TO BE IN A CASE WHERE THAT WAS THE EVIDENCE. ASSUME THE
4 WORST POSSIBILITY.

5 MR. PEIKERT: SEE, I AM TRYING TO APPLY THESE QUESTIONS
6 TO MYSELF. WOULD I EVER BE THAT GREEDY TO KILL SOMEBODY? NO.

7 MR. CHIER: OKAY. SO -- AND YOU CONSIDER YOURSELF A
8 PRETTY FAIR MINDED PERSON, I CAN TELL.

9 MR. PEIKERT: I AM TRYING TO BE.

10 MR. CHIER: I KNOW, AND NEUTRAL, IMPARTIAL?

11 MR. PEIKERT: VERY MUCH SO.

12 MR. CHIER: AND SINCE YOU WOULD NEVER EXPECT THAT KIND
13 OF BEHAVIOR FROM YOURSELF, AND YOU WOULDN'T TOLERATE IT, YOU
14 WULDN'T TOLERATE IT FROM ANYBODY ELSE; RIGHT? YOU WOULD BE
15 HARDEST ON YOURSELF; RIGHT?

16 THE COURT: YOU DON'T HAVE TO ANSWER THAT QUESTION. I
17 AM SUSTAINING THE OBJECTION ON THE COURT'S OWN MOTION.

18 LET'S GET ON WITH IT, WILL YOU PLEASE?

19 MR. CHIER: I AM GETTING ON WITH IT.

20 THE COURT: YOU ARE NOT GETTING ON WITH IT. YOU ARE
21 NOT. THE QUESTIONS ARE TO BE RELATED TO THE DEATH PENALTY
22 AND HIS FEELINGS ABOUT IT.

23 MR. CHIER: MR. PEIKERT, WHAT I AM TRYING TO FIND OUT
24 IS IF YOU -- SEE HERE IS -- LET ME EXPLAIN SOMETHING TO YOU.
25 THEN MAYBE WE CAN --

26 MR. PEIKERT: OKAY. JUST COME ON OUT AND SAY IT, YOU
27 KNOW. I HAVE BEEN ON THE STREETS FOR 21 YEARS. I MEAN, JUST
28 SAY IT.

1 THE PROSECUTOR PROBABLY THINKS I AM SOME SORT OF
2 A SUCK-FINGER UP HERE THAT DOESN'T BELIEVE IN THUMPING ON A
3 GUY THAT DID SOMETHING WRONG, AND THAT'S NOT TRUE.

4 MR. CHIER: WE REALLY DON'T KNOW AT THIS POINT. WHAT
5 WE WANT TO DO IS MAKE SURE THAT IF YOU ARE SELECTED AS A
6 JUROR IN THIS CASE, THAT YOU DON'T HAVE A HIDDEN AGENDA THAT
7 YOU HAVE SOME SECRET INTENT WHERE YOU ARE LIKE SO AGAINST THE
8 DEATH PENALTY THAT YOU WOULD ALWAYS VOTE AGAINST THE
9 PROSECUTOR?

10 MR. PEIKERT: NO. I ANSWERED THAT WITH THE JUDGE.

11 MR. CHIER: OKAY. I MEAN, BASICALLY ARE YOU TELLING
12 US THAT YOU ARE LIKE A NEUTRAL GUY THAT WOULD, LIKE, WAIT UNTIL
13 YOU HAVE HEARD ALL THE EVIDENCE, AND YOU WOULD MAKE UP YOUR
14 MIND?

15 MR. PEIKERT: I CAN HONESTLY TELL YOU, SIR, THAT I WOULD
16 PROBABLY BE THE MOST NEUTRAL PERSON THAT YOU COULD FIND OUT
17 OF A HUNDRED. THAT'S THE WAY I FEEL, ONLY BECAUSE I HAVE
18 BEEN ON BOTH SIDES OF THE FENCE.

19 I HAVE BEEN ON THE TRIGGER END AND THE I.V. END
20 WHERE YOU ADMINISTER THE DRUGS TO KEEP PEOPLE ALIVE OUT ON
21 THE FIELD UNTIL WE CAN GET THEM TO THE HOSPITAL.

22 MR. CHIER: OKAY. BUT THIS IS A SLIGHTLY DIFFERENT
23 SITUATION WHEN YOU MIGHT BE REQUIRED TO SIT IN JUDGMENT ON
24 A PERSON WHOM THE EVIDENCE MIGHT POINT TO HAVING COMMITTED
25 A CRIME FOR GREED. IT IS NOT IN COMBAT. IT IS NOT ON THE
26 STREET. IT IS NOT FOR FOOD. IT IS FOR GREED. DO YOU THINK
27 IF IT WERE SUCH A CASE THAT YOU COULD BE TOTALLY NEUTRAL AND
28 IMPARTIAL?

1 MR. WAPNER: THERE WILL BE AN OBJECTION.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 MR. WAPNER: HE IS ASKING HIM TO PREJUDGE.

4 THE COURT: YES. YOU CAN'T DO THAT.

5 YOU DON'T HAVE TO ANSWER THAT.

6 MR. PEIKERT: I AM SAYING I CAN'T ANSWER THAT.

7 THE COURT: THAT'S GOOD. YOU DON'T HAVE TO ANYWAY.

8 MR. CHIER: DO YOU THINK PEOPLE WHO MURDER FOR GREED
9 OUGHT TO BE EXECUTED?

10 THE COURT: I WILL SUSTAIN THE OBJECTION ON THE COURT'S
11 OWN MOTION.

12 MR. CHIER: ON WHAT GROUNDS?

13 THE COURT: I DON'T HAVE TO GIVE YOU ANY GROUNDS.
14 COMPLETELY IMMATERIAL AND IRRELEVANT.

15 MR. PEIKERT: I BELIEVE IN THE DEATH PENALTY. NOW
16 WHAT THE MOTIVATION WAS, WELL, WOULD MAKE A DIFFERENCE TO ME,
17 WHERE I SAY YAY OR NAY.

18 MR. CHIER: OKAY.

19 MR. PEIKERT: OKAY.

20 MR. CHIER: THAT'S WHAT I WANT TO TALK ABOUT.

21 MR. PEIKERT: ALL RIGHT.

22 MR. CHIER: YOU WOULD SAY "NAY" IF THE MOTIVATION WERE
23 HUNGER OR SUPPORT OF FAMILY; RIGHT?

24 MR. PEIKERT: THAT WOULD BE A MOTIVATION FOR A PERSON
25 THAT WOULD BE HARD-PRESSED. FOR ME TO SAY, AND YOU ARE ASKING
26 ME TO SAY THIS, I WOULD SAY "NAY." I MEAN, YOU ARE GIVING
27 A HYPOTHETICAL SITUATION.

28 MR. CHIER: WE ARE TALKING ABOUT YOUR PERSONAL BELIEFS.

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1 MR. PEIKERT: SO, YES, THAT WOULD BE A PERSONAL BELIEF
2 OF MINE.

3 MR. CHIER: I AM ONLY INTERESTED IN YOUR --

4 MR. PEIKERT: BECAUSE I HAVE BEEN IN THE GHETTO FOR 21
5 YEARS, AND I SEEN WHAT OPPRESSED PEOPLE ARE, THAT ARE HUNGRY
6 ENOUGH TO GO OUT AND COMMIT A CRIME.

7 MR. CHIER: OKAY.

8 MR. PEIKERT: AND I UNDERSTAND WHAT HAPPENS TO THEM.

9 MR. CHIER: I AM INTERESTED IN EXPLORING YOUR STATEMENT
10 THAT THE MOTIVATION BEHIND AN ACT WOULD GREATLY INFLUENCE YOUR
11 DECISION, YAY OR NAY; THAT'S ALL I WANT TO DO RIGHT NOW.

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1 MR. PEIKERT: YES.

2 MR. CHIER: OKAY.

3 MR. PEIKERT: WELL, LET ME ADD ALSO TOO, I WAS AWARDED
4 THE MEDAL OF VALOR FOR HELPING A PERSON THAT WOULD BE
5 CONSIDERED A BAD GUY. NOW I DON'T KNOW IF THAT'S GOING TO
6 HELP YOU AT ALL IN YOUR JUDGMENT AS FAR AS IF I AM SUPPOSED
7 TO SIT ON THIS PANEL OR NOT. I AM TRYING TO TELL YOU IT DOESN'T
8 MAKE ANY DIFFERENCE TO ME IF HE IS A GOOD GUY OR A BAD GUY.
9 I WOULD HAVE TO HEAR IT.

10 MR. CHIER: OKAY.

11 THE COURT: YOU WOULD HAVE TO HEAR ALL THE EVIDENCE?

12 MR. PEIKERT: ALL THE EVIDENCE, YES.

13 MR. CHIER: MAY I HAVE JUST ONE MOMENT PLEASE, YOUR
14 HONOR?

15 (PAUSE.)

16 MR. CHIER: LET ME JUST ASK YOU THIS: YOU UNDERSTAND
17 THAT MR. HUNT IS NOT CONVICTED OF ANYTHING, AND WE HAVE TO
18 GO THROUGH THIS INQUIRY JUST IN THE EVENT HE IS CONVICTED?

19 MR. PEIKERT: THIS IS THE UNITED STATES OF AMERICA. YOU
20 ARE INNOCENT UNTIL PROVEN GUILTY.

21 MR. CHIER: WOULD IT MAKE A DIFFERENCE TO YOU WHETHER
22 THE ALLEGED VICTIM WAS A GOOD GUY OR A BAD GUY?

23 MR. PEIKERT: I DON'T KNOW IF HE IS OR NOT.

24 THE COURT: IS THERE AN OBJECTION TO THAT?

25 MR. WAPNER: THERE IS NO OBJECTION TO THAT.

26 MR. PEIKERT: I DON'T KNOW THAT, COUNSEL.

27 MR. CHIER: OKAY.

28 PASS FOR CAUSE, YOUR HONOR.

1 MR. WAPNER: IS IT PEIKERT OR PEIKERT?

2 MR. PEIKERT: IT IS PEIKERT. IT IS GERMAN AND THEY DO
3 THINGS FUNNY. IT IS E BEFORE I OR I BEFORE E. I SHOULD HAVE
4 CHANGED IT. MY WIFE IS SMART. SHE KEPT HER MAIDEN NAME,
5 BAKER, SO SHE WOULDN'T HAVE THAT PROBLEM THE REST OF HER LIFE.

6 THE COURT: SHE IS KNOWN AS MRS. BAKER-PEIKERT; IS THAT
7 IT?

8 MR. PEIKERT: SHE JUST KEPT IT BAKER-PEIKERT -- YOU ARE
9 RIGHT.

10 MR. WAPNER: I WANT TO GET TO A SLIGHTLY DIFFERENT
11 ASPECT OF THIS TWO PHASES OF THE TRIAL BUSINESS.

12 MR. PEIKERT: OKAY. I WOULD LOVE TO TOO. I WAS GETTING
13 ON EDGE THERE TRYING TO DEFEND WHAT I -- YOU KNOW, DIFFERENT
14 PHILOSOPHY IS REALLY TOUGH. EVERYBODY THINKS A LITTLE
15 DIFFERENT, HAS THEIR REASONS WHY THEY THINK, AND WE ARE
16 KNIFING INTO THE BONE AREA HERE OF AN AREA THAT I DON'T KNOW
17 ANYTHING ABOUT, IS WHAT WAS HAPPENING.

18 MR. WAPNER: IT IS ESPECIALLY TOUGH WHEN YOU BRING IT
19 DOWN TO A REALISTIC SITUATION.

20 MR. PEIKERT: YEAH.

21 MR. WAPNER: THAT YOU MIGHT BE FACED WITH.

22 MR. PEIKERT: AND I UNDERSTAND HIS REASONS FOR IT TOO.
23 HE IS LOOKING OUT AFTER THE BEST INTERESTS OF HIS CLIENT.

24 MR. WAPNER: OKAY. LET ME ASK YOU A QUESTION THAT HAS
25 TO DO WITH THE DUAL PHASE OF THE TRIAL, AT THE FIRST PHASE,
26 WHICH YOU ALREADY UNDERSTAND BY YOUR ANSWERS, YOU KNOW THAT
27 YOU ARE CONCERNED WITH GUILT OR INNOCENCE?

28 MR. PEIKERT: YES.

1 MR. WAPNER: AT THAT TIME WHEN YOU ARE DECIDING GUILT
2 OR INNOCENCE, CAN YOU KEEP ANY SUGGESTION OF PENALTY OUT OF
3 YOUR MIND?

4 MR. PEIKERT: DEFINITELY.

5 MR. WAPNER: SO IN OTHER WORDS, WHETHER HE IS GUILTY
6 OR NOT DOESN'T DEPEND ON WHAT PUNISHMENT HE MIGHT GET?

7 MR. PEIKERT: NO.

8 MR. WAPNER: OKAY. I DIDN'T QUITE UNDERSTAND YOUR
9 COMMENT -- MAYBE I DIDN'T HEAR THE WHOLE THING -- ABOUT SOME-
10 THING TO THE EFFECT YOU WOULDN'T WANT TO KEEP SOMEONE WHO WAS
11 21 YEARS OLD ON DEATH ROW FOR THE REST OF HIS LIFE. CAN YOU
12 EXPLAIN THAT TO ME?

13 MR. PEIKERT: WELL, WHEN I WAS 21 YEARS OLD, I MEAN,
14 I KNEW EVERYTHING THAT THERE WAS TO KNOW IN THE WORLD. NOW
15 I AM 43, I FIND OUT I DON'T KNOW ANYTHING. SO I MEAN, AS YOU
16 GROW OLDER, WITH AGE COMES WISDOM.

17 NOW SOME PEOPLE WILL ARGUE THAT AND SAY NO, AS
18 YOU GROW OLDER YOU JUST GET OLDER AND THERE ISN'T ANY MORE
19 WISDOM.

20 SO I, KNOWING HOW I FELT AT 21, AND HOW I FELT
21 AT 43, I DON'T KNOW A DOGGONE THING RIGHT NOW. BUT AT 21 I
22 WAS AN ACE.

23 MR. WAPNER: OKAY. THAT GETS ME BACK TO THE QUESTION
24 THAT I ASKED YOU JUST BEFORE. LET'S ASSUME YOU HAD A 21-YEAR-
25 OLD DEFENDANT ON TRIAL.

26 MR. PEIKERT: RIGHT.

27 MR. WAPNER: AND YOU KNEW THAT IF YOU FOUND HIM GUILTY
28 OF FIRST DEGREE MURDER AND SPECIAL CIRCUMSTANCES, THAT THAT

1 MURDER HAPPENED IN THE COURSE OF A ROBBERY, THAT THERE WERE
2 ONLY TWO POSSIBLE THINGS THAT COULD HAPPEN TO HIM; THAT HE
3 COULD GET EITHER DEATH OR THAT HE WAS GOING TO GO TO PRISON
4 FOR THE REST OF HIS LIFE WITHOUT ANY CHANCE THAT HE WAS GOING
5 TO GET OUT --

6 MR. PEIKERT: OKAY. THE FIRST PHASE OF THIS THING, AS
7 I UNDERSTAND IT, HE IS EITHER DIRTY OR HE IS CLEAN. YOU DON'T
8 TAKE ANYTHING ELSE INTO CONSIDERATION. SO THAT'S WHAT YOU
9 DECIDE. HE IS CLEAN OR HE IS DIRT. AND THAT'S WHAT YOU DECIDE,
10 AND THEN YOU GO TO THE SECOND PHASE OF IT.

11 THE COURT: THERE ARE DIFFERENT TERMS FOR IT, GUILTY
12 OR NOT GUILTY.

13 MR. PEIKERT: HE EXPLAINED THAT TO ME EXPLICITLY, AND
14 I UNDERSTAND THAT.

15 NOW DID I ANSWER YOUR QUESTION?

16 THE COURT: APPARENTLY COUNSEL DON'T UNDERSTAND THAT
17 I ASKED YOU THESE QUESTIONS.

18 MR. PEIKERT: I WAS WONDERING WHY YOU WERE TALKING TO
19 ME ANYMORE BECAUSE HE IS ASKING ME THE SAME THINGS.

20 THE COURT: I DON'T NEED TO BE HERE AT ALL.

21 MR. PEIKERT: I UNDERSTAND WHAT YOU ARE TRYING TO SAY.

22 MR. WAPNER: YOU MAY OR MAY NOT HAVE ANSWERED THE
23 QUESTION.

24 MR. PEIKERT: MAYBE I SHOULD BE A POLITICIAN.

25 MR. WAPNER: WHAT I AM TRYING TO DO IS RELATE YOUR
26 ANSWER TO THE PREVIOUS QUESTION ABOUT THE 21-YEAR-OLD AND THE
27 43-YEAR-OLD.

28 THE COURT: 21-YEAR-OLD IS TOTALLY IRRELEVANT. THAT'S

1 NOT WHAT THE TESTIMONY WILL BE. THAT HAS NOTHING TO DO WITH
2 THE CASE.

3 NOW WOULD YOU GO ON TO SOMETHING ELSE, PLEASE.

4 MR. WAPNER: IF YOU KNEW THAT THE DEFENDANT WHO WAS
5 ON TRIAL WAS YOUNG, WHETHER HE IS 21 OR WHATEVER, AND YOU KNEW
6 THAT IF HE WAS CONVICTED, THAT ONLY TWO THINGS COULD HAPPEN
7 TO HIM; HE COULD EITHER GO TO PRISON FOR THE REST OF HIS LIFE
8 OR HE COULD DIE; WOULD IT AFFECT HOW YOU WOULD VOTE, WHETHER
9 HE WAS GUILTY OR NOT GUILTY?

10 MR. PEIKERT: NO.

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1 MR. WAPNER: THAT IS ALL I WANT TO KNOW.

2 MR. PEIKERT: DIDN'T I SAY THAT, YOUR HONOR?

3 THE COURT: THAT IS WHAT YOU TOLD ME.

4 MR. PEIKERT: THAT'S OKAY. THIS IS VERY IMPORTANT TO
5 ALL PARTIES CONCERNED. I UNDERSTAND THAT. I DIDN'T MEAN
6 TO COME UP HERE AND CONFUSE EVERYBODY.

7 MR. WAPNER: THAT'S OKAY. WE DIDN'T MEAN TO CONFUSE
8 YOU, EITHER.

9 MR. PEIKERT: IT IS JUST WHEN WE ARE TALKING ABOUT A
10 PERSON'S LIFE, IT IS A PRETTY HEAVY SUBJECT.

11 THE COURT: THAT IS TRUE.

12 MR. PEIKERT: YOU SAT UP HERE AND YOU SAID IT THREE
13 TIMES. I WAS IN THIS COURTROOM. THIS IS A VERY SERIOUS CHARGE.

14 YOU CAN'T GET MUCH MORE SERIOUS THAN A PERSON'S
15 LIFE.

16 MR. WAPNER: THIS IS PROBABLY IMPLIED FROM WHAT YOU
17 HAVE TOLD US ALREADY. BUT, ARE YOU THE KIND OF PERSON WHO
18 IS CAPABLE OF MAKING THE DECISION WHETHER A PERSON SHOULD
19 LIVE OR WHETHER THEY SHOULD DIE?

20 MR. PEIKERT: I DO IT ALL OF THE TIME OUT IN THE FIELD.
21 IT IS CALLED CODE BLUE.

22 MR. WAPNER: SO I ASSUME THAT YOU ARE THEREFORE CAPABLE
23 OF DOING IT IN THE COURTROOM?

24 MR. PEIKERT: DEFINITELY.

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

26 THE COURT: ALL RIGHT. THANK YOU, MR. PEIKERT. I WILL
27 TELL YOU WHAT. WE ARE AT "P". WE HAVE TO GO THROUGH "Z"
28 BEFORE WE HAVE CALLED ALL OF THE JURORS BACK.

1 MR. PEIKERT: THAT'S FINE.

2 THE COURT: I EXPECT THAT BY DECEMBER 3RD, WE WOULD
3 HAVE GONE THROUGH THE ENTIRE PROCESS WITH ALL OF THE JURORS.
4 YOU SEE HOW LONG IT TAKES FOR EACH ONE ALONE.

5 MR. PEIKERT: YES I DO.

6 THE COURT: THAT WILL BE DECEMBER 3RD AS THE TARGET
7 DATE. SO, WHAT I WILL ASK YOU TO DO IS TO COME BACK TO THE
8 JURY ASSEMBLY ROOM ON DECEMBER THE 3RD AT 10:30 A.M. THAT
9 IS DECEMBER 3RD AT 10:30 A.M.

10 MR. PEIKERT: I WOULD LIKE TO TALK TO YOU ALL DAY.
11 I FEEL LIKE I HAVE COME UP HERE AND JUST CONFUSED EVERYBODY.

12 THE COURT: YOU DIDN'T. THERE WILL BE PLENTY OF TIME
13 BECAUSE YOU WILL GO INTO THE BOX NEXT AND THEY WILL ASK YOU
14 A LOT OF OTHER QUESTIONS.

15 MR. PEIKERT: HERE IS A PEN. I HURT MY BACK SAWING
16 WOOD YESTERDAY. I WAS PRUNING AN OAK TREE.

17 THE COURT: THAT WILL BE DECEMBER 3RD AT 10:30 A.M.
18 IN THE JURY ASSEMBLY ROOM.

19 MR. PEIKERT: WHAT DAY IS THAT?

20 THE COURT: DECEMBER 3RD IS A WEDNESDAY. IF WE DON'T
21 GET THROUGH WITH ALL OF THE JURORS ASKING ALL OF THESE
22 QUESTIONS THAT YOU HAVE BEEN ASKED -- YOU SEE, IT COULD BE
23 A LITTLE BIT LATER. WE HAVE YOUR TELEPHONE NUMBER. WE'LL
24 CALL YOU IF IT IS NOT GOING TO BE DECEMBER 3RD TO TELL YOU
25 WHEN TO COME BACK IN. IS THAT ALL RIGHT?

26 MR. PEIKERT: 10:30, SIR?

27 THE COURT: YES. THAT WILL BE 10:30 IN THE JURY ASSEMBLY
28 ROOM. THAT WILL BE 10:30 ON DECEMBER 3RD.

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1 MEANTIME, IF THERE IS ANYTHING IN THE NEWSPAPER
2 OR YOU HEAR ANYTHING ON THE TELEVISION, DON'T READ IT OR
3 LISTEN TO IT. DON'T TALK TO ANYBODY AT ALL ABOUT THE CASE.
4 THANK YOU VERY MUCH. I WILL SEE YOU ON DECEMBER 3RD.

5 MR. PEIKERT: I WILL BE HONORED TO COME BACK.

6 THE COURT: THANK YOU VERY MUCH. WE WILL BE DELIGHTED
7 TO HAVE YOU BACK.

8 (PROSPECTIVE JUROR PEIKERT EXITED
9 THE COURTROOM.)

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1 (PROSPECTIVE JUROR M. J. PICKETT
2 ENTERED THE COURTROOM.)

3 THE COURT: GOOD AFTERNOON, MR. PICKETT. SORRY TO KEEP
4 YOU WAITING ALL OF THIS TIME. BUT, IT IS A LONG PROCESS AS
5 YOU SEE.

6 MR. PICKETT: YES.

7 THE COURT: YOU CAN BE SEATED. WHERE DO YOU LIVE,
8 MR. PICKETT?

9 MR. PICKETT: AN AREA CALLED MAR VISTA.

10 THE COURT: HAVE YOU READ ANYTHING IN THE NEWSPAPER
11 OR ANY MAGAZINE ABOUT THIS PARTICULAR CASE?

12 MR. PICKETT: NO.

13 THE COURT: ABOUT WHAT YOU HEARD WHEN --

14 MR. PICKETT: YES. WHEN YOU ADDRESSED ALL OF THE JURORS
15 EN MASSE. YES.

16 THE COURT: YOU HAVE NOT DISCUSSED IT AT ALL WITH ANY
17 OF THE OTHER JURORS, HAVE YOU?

18 MR. PICKETT: NO.

19 THE COURT: ALL RIGHT. NOW, WHAT I WILL DO VERY BRIEFLY
20 IS SUMMARIZE THE CASE AND GIVE YOU THE ISSUES WHICH ARE
21 INVOLVED WHILE YOU WERE HERE.

22 YOU KNOW OF COURSE, THAT THE DEFENDANT IS CHARGED
23 WITH THE COMMISSION OF A MURDER IN THE FIRST DEGREE.

24 MR. PICKETT: YES.

25 THE COURT: AND THE MURDER WAS COMMITTED DURING THE
26 COURSE OF A ROBBERY?

27 MR. PICKETT: YES.

28 THE COURT: AND YOU KNOW THAT IT IS NOT EVERY MURDER

1 THAT CALLS FOR THE IMPOSITION OF THE DEATH PENALTY OR LIFE
2 WITHOUT POSSIBILITY OF PAROLE, ONLY THOSE MURDERS WHICH ARE
3 COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES WHICH QUALIFIES
4 FOR DEATH OR LIFE WITHOUT POSSIBILITY OF PAROLE.

5 NOW, SO WHAT THE JURORS DO AT THE BEGINNING IS
6 TO DETERMINE FIRST, WHETHER OR NOT THE DEFENDANT COMMITTED
7 A MURDER AND WHETHER THAT WAS A MURDER IN THE FIRST DEGREE,
8 PREMEDITATED OR INTENTIONAL.

9 AND THEN THE JURY IS CALLED UPON TO MAKE A FINDING
10 AND THEY VOTE IN THE JURY ROOM, THAT HE IS GUILTY OF MURDER
11 IN THE FIRST DEGREE AND AT THE SAME TIME, THEY CONSIDER THE
12 FOLLOWING QUESTION, WAS THAT MURDER COMMITTED DURING THE COURSE
13 OF A ROBBERY.

14 AND THE REASON WHY THEY DO THAT IS BECAUSE THAT
15 IS WHAT IS KNOWN AS A SPECIAL CIRCUMSTANCE. AND THE
16 LEGISLATURE HAS SAID THAT IN CERTAIN MURDERS, WHERE THERE
17 ARE CERTAIN SPECIAL CIRCUMSTANCES PRESENT, THAT THAT IS A
18 CRIME OF SPECIAL CIRCUMSTANCES AND IT QUALIFIES FOR THE DEATH
19 PENALTY.

20 BY THE "DEATH PENALTY" I MEAN, LIFE WITHOUT
21 POSSIBILITY OF PAROLE OR ACTUAL DEATH. SO, THE LEGISLATURE
22 SAID THAT IN A CASE OF SPECIAL CIRCUMSTANCES LIKE THE
23 COMMISSION OF A ROBBERY, A MURDER DURING THE COMMISSION OF
24 A ROBBERY OR A MURDER DURING A BURGLARY OR A MURDER DURING
25 THE COMMISSION OF A KIDNAPPING OR DURING A RAPE OR DURING
26 A MOLESTATION OF A CHILD, YOU SEE, OR BY POISON OR BY TORTURE --
27 THERE ARE 19 OF THEM.

28 THE ONLY ONE WE ARE CONCERNED WITH IS MURDER

1 COMMITTED DURING THE COURSE OF A ROBBERY. SO, THE JURY
2 CONSIDERS THE QUESTION OF WHETHER OR NOT THE DEFENDANT IS
3 GUILTY OR NOT GUILTY OF MURDER IN THE FIRST DEGREE.

4 AND IF HE IS GUILTY, WAS THAT COMMITTED DURING
5 THE COURSE OF A ROBBERY. AND THE JURY MAKES A FINDING THAT
6 IT IS TRUE, IT WAS DURING THE COURSE OF A ROBBERY OR IT IS
7 NOT TRUE THAT IT WAS DURING THE COURSE OF A ROBBERY. THAT
8 IS THE FINDING THAT THEY HAVE TO MAKE.

9 IT IS ONLY WHEN THE JURY FINDS THAT IT WAS IN
10 THE COURSE OF A ROBBERY, THAT THAT IS TRUE, THAT THEN THE
11 JURORS COME BACK AGAIN INTO THE COURTROOM. IT IS THE SAME
12 JURORS AND WE HAVE ANOTHER MINI TRIAL.

13 THAT SECOND TRIAL IS WHAT IS KNOWN AS THE PENALTY
14 PHASE OF THE TRIAL. THE FIRST PHASE IS THE ONE ON WHETHER
15 HE WAS GUILTY OR NOT GUILTY. THE SECOND PHASE IS THE PENALTY
16 PHASE WHERE THE JURORS THEN HEAR INDEPENDENTLY NOW, OTHER
17 EVIDENCE THAT THEY HAVE NOT HEARD BEFORE.

18 IT HAS TO DO WITH THE -- THE LEGISLATURE HAS SAID
19 THAT THESE ARE THE FACTORS WHICH THEY CAN TAKE INTO
20 CONSIDERATION AMONG OTHER THINGS IN THE PROCEEDINGS ON THE
21 QUESTION OF PENALTY.

22 EVIDENCE MAY BE PRESENTED BY BOTH THE PEOPLE AND
23 THE DEFENDANT AS TO ANY MATTER RELATING TO AGGRAVATION --
24 THAT IS AGGRAVATING CIRCUMSTANCES AND THINGS ABOUT THE
25 DEFENDANT WHICH ARE UNFAVORABLE OR MITIGATION, THOSE FACTS
26 WHICH ARE FAVORABLE TO THE DEFENDANT.

27 AND THE SENTENCE PHASE, THESE THINGS CAN INCLUDE
28 BUT ARE NOT LIMITED TO THE CONSIDERATIONS AS TO WHETHER HE

1 HAD EVER BEEN CONVICTED OF A CRIME, A FELONY, OR WHETHER OR
2 NOT HE IS FREE OF ANY RECORD OF ANY KIND AND MORE PARTICULARLY,
3 THE DEFENDANT'S CHARACTER, BACKGROUND, HISTORY, MENTAL
4 CONDITION AND PHYSICAL CONDITION, INCLUDING HIS AGE AND ALL
5 OF THOSE FACTORS WHICH WILL BE PRESENTED TO THE JURY ON THE
6 SECOND PHASE OF THE TRIAL.

7 THOSE FACTORS IN MITIGATION ARE THERE. AND THERE
8 ARE FACTORS IN AGGRAVATION.

9 THEN, THE JURY MAKES A DETERMINATION OF ONE OF
10 TWO THINGS, SHALL HE BE SENTENCED TO LIFE WITHOUT POSSIBILITY
11 OF PAROLE OR SHALL HE BE SENTENCED TO DEATH. DO YOU UNDERSTAND
12 ALL OF THAT?

13 MR. PICKETT: YES.

14 THE COURT: I WANT TO GIVE YOU THE WHOLE BACKGROUND
15 SO YOU UNDERSTAND WHAT WE ARE AFTER NOW. AT THIS STAGE, I
16 AM GOING TO ASK YOU A SERIES OF QUESTIONS TO WHICH THE ANSWERS
17 WILL BE EITHER YES OR NO.

18 IF YOU DON'T UNDERSTAND IT, ASK ME TO REPEAT IT
19 OR EXPLAIN IT. THE FIRST QUESTION I AM GOING TO ASK YOU IS:
20 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
21 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
22 OR INNOCENCE OF THE DEFENDANT?

23 MR. PICKETT: YES.

24 THE COURT: YOU HAVE?

25 MR. PICKETT: YES.

26 THE COURT: WHAT IS THAT?

27 MR. PICKETT: I HAVE A QUAKER BACKGROUND AND CONSCIENCE.

28 THE COURT: THAT MEANS THAT YOU WOULD NEVER, UNDER

1 ANY CIRCUMSTANCES, IMPOSE THE DEATH PENALTY EVEN IF THE
2 PROPER CASE WERE --

3 MR. PICKETT: CORRECT.

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1 THE COURT: UNDER NO CIRCUMSTANCES?

2 MR. PICKETT: CORRECT.

3 THE COURT: CATEGORICALLY; CORRECT?

4 MR. PICKETT: CORRECT.

5 THE COURT: ALL RIGHT. GO AHEAD.

6 ONE OTHER QUESTION -- I WAS GOING TO ASK YOU THAT
7 IF -- DO YOU HAVE AN OPINION -- NO. THAT'S ALL RIGHT.

8 GO AHEAD.

9 SO YOU WILL NEVER FIND THE DEFENDANT GUILTY --
10 YOU MIGHT FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE IN
11 THE COURSE OF A ROBBERY. BUT ON THE PENALTY PHASE OF IT, YOU
12 WILL NOT FIND -- YOU WILL NOT IMPOSE THE DEATH PENALTY UNDER
13 ANY CIRCUMSTANCES?

14 MR. PICKETT: YES.

15 THE COURT: ANY QUESTIONS?

16 MR. CHIER: YES. I HAVE A FEW QUESTIONS.

17 MR. PICKETT, YOU HAVE RESPONDED TO A SUMMONS FOR
18 JURY DUTY BY COMING TO THIS COURTHOUSE; CORRECT, SIR?

19 MR. PICKETT: YES.

20 MR. CHIER: I TAKE IT THAT YOU HAVE COME TO THIS COURT-
21 HOUSE TO SERVE ON A JURY OUT OF A SENSE OF A CIVIC OBLIGATION?

22 MR. PICKETT: YES.

23 MR. CHIER: AND I TAKE IT THAT IN ORDER TO --

24 THE COURT: PARDON ME.

25 STATE YOUR NAME AND WHO YOU REPRESENT.

26 MR. CHIER: I AM SORRY.

27 MY NAME IS RICHARD CHIER AND I REPRESENT MR. HUNT
28 HERE, THE DEFENDANT IN THIS CASE.

1 THE PURPOSE OF THIS HEARING RIGHT NOW IS TO
2 DETERMINE, AND PARTICULARLY IN YOUR CASE, IF THERE IS -- IF
3 YOU HAVE SUCH STRONG FEELINGS FOR OR AGAINST THE DEATH PENALTY
4 THAT YOU COULDN'T BE A NEUTRAL JUROR. THE INDICATIONS ARE
5 THAT YOU ARE A PERSON WHO APPEARS EXCUSABLE BECAUSE OF THESE
6 FEELINGS ABOUT OR AGAINST THE DEATH PENALTY.

7 I WOULD LIKE TO JUST INQUIRE OF YOU ABOUT THIS,
8 IF I MIGHT, AND FOLLOW THAT.

9 YOU CAME HERE TO THE COURTHOUSE OUT OF A SENSE OF
10 CIVIC OBLIGATION; CORRECT?

11 MR. PICKETT: PARTIALLY.

12 MR. CHIER: PARTIALLY. WHAT OTHER REASONS DID YOU COME
13 HERE?

14 MR. PICKETT: BECAUSE I WOULD BE IN TROUBLE WITH THE
15 LAW IF I DIDN'T, SIR.

16 MR. CHIER: OKAY. OKAY. SO IT WAS PART -- PART
17 VOLUNTARY AND PART INVOLUNTARY?

18 MR. PICKETT: YES.

19 MR. CHIER: OKAY. THEN I ASSUME THAT -- HAVE YOU EVER
20 BEEN ON JURY DUTY BEFORE?

21 MR. PICKETT: NO.

22 MR. CHIER: YOU KNOW THAT IF YOU BECOME -- YOU ARE
23 SELECTED AS A JUROR IN A CASE, YOU HAVE AN OBLIGATION, YOU
24 TAKE AN OATH?

25 MR. PICKETT: YES.

26 MR. CHIER: TO FOLLOW THE LAW AS THE COURT INSTRUCTS
27 IT TO YOU, GIVES IT TO YOU. DO YOU FEEL -- DO YOU BELIEVE
28 THAT EVERY CITIZEN IN THIS COUNTRY HAS A RIGHT TO A JURY

1 TRIAL WHEN ACCUSED OF A SERIOUS CRIME?

2 MR. PICKETT: YES.

3 MR. CHIER: AND DO YOU BELIEVE THAT -- AT THE SAME TIME
4 THOSE PERSONS HAVE A RIGHT TO A JURY THAT'S COMPRISED OF A
5 CROSS-SECTION OF THE COMMUNITY IN WHICH THEY LIVE?

6 MR. PICKETT: YES.

7 MR. CHIER: YOU REALIZE, SIR, THAT THE COMMUNITY CONSISTS
8 OF A LOT OF DIVERGENT POINTS OF VIEW?

9 MR. PICKETT: YES.

10 MR. CHIER: SOME FOR THE DEATH PENALTY, SOME AGAINST
11 THE DEATH PENALTY; SOME FOR GAMBLING, SOME AGAINST GAMBLING.
12 I MEAN, A THOUSAND DIFFERENT DIVERGENT POINTS OF VIEW.

13 DO YOU THINK THAT IN A CASE WHERE YOU WERE A
14 JUROR, IN A CASE OF THIS TYPE, COULD YOU SUBORDINATE FOR THE
15 PURPOSES OF EXECUTING YOUR CIVIC OBLIGATION -- COULD YOU
16 SUBORDINATE YOUR PERSONAL VIEWS TO YOUR OATH AS A JUROR TO
17 FOLLOW THE LAW, AND DO YOU THINK YOU COULD DO THAT, SIR?

18 MR. PICKETT: MAY I ANSWER OTHER THAN YES OR NO HERE?

19 MR. CHIER: YES, SIR.

20 MR. PICKETT: THE ANSWER IS NO. IF I UNDERSTAND BY
21 SUBORDINATING IT, TO DISPOSE OF, TO SET ASIDE.

22 MR. CHIER: PUT IT ASIDE.

23 MR. PICKETT: MY FEELINGS AGAINST ONE HUMAN KILLING
24 ANOTHER, THE ANSWER IS NO, I WOULD NOT FEEL FREE TO SET THAT
25 ASIDE.

26 MR. CHIER: SO IN THIS CASE YOU COULD SIT AS A JUROR
27 IN THE GUILT PHASE, BUT IN THE PENALTY PHASE YOU WOULD BE A
28 PERSON THAT WAS UNDER NO CIRCUMSTANCES, EVEN THE MOST HIDEOUS

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1 THING YOU COULD THINK OF, YOU WOULD NEVER VOTE IN FAVOR OF
2 THE DEATH PENALTY?

3 MR. PICKETT: YES.

4 MR. CHIER: WELL, THANK YOU FOR YOUR FRANKNESS, SIR.

5 THE COURT: DO THE PEOPLE HAVE ANY QUESTIONS?

6 MR. WAPNER: I HAVE NO QUESTIONS.

7 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, SIR. WE
8 DON'T WANT YOU.

9 I BELEIVE COUNSEL WASN'T TRYING TO CHANGE YOUR
10 MIND ABOUT THE DEATH PENALTY. HE WAS WANTING TO SEE WHETHER
11 OR NOT YOU WERE OF SUCH A MIND THAT UNDER NO CIRCUMSTANCES
12 WOULD YOU VOTE DEATH PENALTY, NO MATTER WHAT.

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1 MR. PICKETT: I REPEAT, THE QUAKER BACKGROUND IS VERY
2 STRONG.

3 THE COURT: AND THEREFORE I WILL ASK YOU TO GO BACK TO
4 THE JURY ASSEMBLY ROOM THEN. TELL THEM THAT YOU WILL BE
5 ELIGIBLE, IF YOU WANT TO SIT IN SOME OTHER KIND OF A CASE.
6 IS THAT ALL RIGHT?

7 THANK YOU VERY MUCH FOR BEING SO FRANK, OPEN AND
8 HONEST.

9 MR. PICKETT: THANK YOU.

10 (PROSPECTIVE JUROR PICKETT EXITS THE
11 COURTROOM.)

12 THE COURT: ALL RIGHT. THE NEXT ONE IS MR. PRINCE.

13 (PROSPECTIVE JUROR PRINCE ENTERS THE
14 COURTROOM.)

15 THE COURT: GOOD AFTERNOON, MR. PRINCE.

16 SORRY TO KEEP YOU WAITING.

17 MR. PRINCE: NO PROBLEM.

18 THE COURT: WE ARE IN THE PROCESS NOW, AND IT IS A SLOW
19 PROCESS, OF TRYING TO GET QUALIFIED JURORS TO SIT IN THIS
20 PARTICULAR TYPE OF A CASE. YOU UNDERSTAND THAT?

21 MR. PRINCE: YES.

22 THE COURT: WHERE DO YOU LIVE?

23 MR. PRINCE: I LIVE IN BRENTWOOD, CALIFORNIA.

24 THE COURT: BRENTWOOD.

25 DID YOU OR HAVE YOU READ ANYTHING AT ALL ABOUT
26 THIS CASE?

27 MR. PRINCE: I AM AFRAID TO SAY I READ THE NOVEMBER 2
28 ARTICLE IN THE LOS ANGELES TIMES.

1 THE COURT: THAT'S IN THE METRO SECTION?

2 MR. PRINCE: RIGHT.

3 THE COURT: DO YOU REMEMBER VERY MUCH ABOUT THE CONTENTS
4 OF THAT PARTICULAR ARTICLE?

5 MR. PRINCE: WELL, I WAS VERY INTERESTED IN IT, AND I
6 REREAD IT THAT SAME WEEKEND OR THAT WEEK IT WAS IN, SO I DO
7 REMEMBER QUITE A FEW DETAILS.

8 THE COURT: YOU KNOW, OF COURSE, THAT THOSE FACTS WHICH
9 WERE PRINTED MAY BE TRUE; THEY MAY NOT BE TRUE; SOME WILL BE
10 TRUE AND SOME WILL NOT BE TRUE; THAT THOSE FACTS HAVE NOT BEEN
11 ESTABLISHED IN A COURT OF LAW IN THIS PARTICULAR CASE, HAVE
12 THEY?

13 MR. PRINCE: NO. I REALIZE THAT, YOUR HONOR.

14 THE COURT: YES. HOWEVER, I DO WANT TO ASK YOU, IS YOUR
15 READING OR REREADING OF THAT ARTICLE, HAS THAT CAUSED YOU TO
16 HAVE ANY KIND OF A CONCLUSION THAT YOU HAVE REACHED ABOUT THE
17 MERITS OF THIS PARTICULAR CASE?

18 MR. PRINCE: NOT REALLY, YOUR HONOR. JUST AROUSED MY
19 INTEREST. THAT'S WHY I REREAD IT. IT IS STILL VERY MUCH AN
20 OPEN QUESTION FOR ME.

21 THE COURT: YES. I THINK IN THAT PARTICULAR THE ATTORNEY
22 FOR THE DEFENDANT HAD MADE VARIOUS STATEMENTS, AND SO DID THE
23 DISTRICT ATTORNEY; ISN'T THAT TRUE?

24 MR. PRINCE: CORRECT.

25 THE COURT: YOU KNOW THEY REPRESENT DIFFERENT SIDES?

26 MR. PRINCE: THAT'S RIGHT.

27 THE COURT: SO WHAT THEY SAID MAY OR MAY NOT BE TRUE.
28 YOU WILL DISREGARD ANYTHING THEY DID SAY IF YOU WERE CALLED

1 AS A JUROR IN THIS CASE?

2 MR. PRINCE: I DON'T REALLY RECALL THE SPECIFICS OF WHAT
3 THEY DID SAY, YOUR HONOR.

4 THE COURT: FINE. BUT AT ANY RATE, WHATEVER THE BALANCE
5 OF IT IS THAT YOU DO REMEMBER, YOU WILL KEEP AN OPEN MIND,
6 WOULD YOU? WON'T YOUR MIND BE OPEN TO LISTENING TO JUST THE
7 EVIDENCE, SWORN EVIDENCE IN THIS PARTICULAR CASE, AND THEN
8 MAKING YOUR OWN JUDGMENT ABOUT THE FACTS OF THE CASE?

9 MR. PRINCE: I BELIEVE I COULD KEEP AN OPEN MIND.

10 THE COURT: YOU CAN. AND RESIDUALLY, YOU ARE SURE NOW
11 THAT YOU CAN ELIMINATE IT FROM YOUR MIND, AND TRY AS BEST YOU
12 CAN JUST TO BE GOVERNED BY THE EVIDENCE IN THIS CASE AND MY
13 MY INSTRUCTIONS?

14 MR. PRINCE: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. DID YOU HEAR ANYTHING ELSE FROM
16 ANY OTHER SOURCE? DID YOU READ ANYTHING, ANY OTHER MAGAZINE?

17 MR. PRINCE: NO, I DID NOT.

18 THE COURT: ALL RIGHT. HAD YOU TALKED WITH ANY OF THE
19 OTHER JURORS OR ANY OTHER THIRD PERSON ON ANY SUBJECT
20 CONNECTED WITH ANY PARTICULAR CASE?

21 MR. PRINCE: NO, OTHER THAN WHEN WE WERE IN THE GENERAL
22 ASSEMBLY IN HERE THE FIRST DAY, AND I HEARD THE NAME OF THE
23 CASE, I NUDGED THE JUROR NEXT TO ME BECAUSE I RECOGNIZED THE
24 NAME OF THE CASE. BUT THAT WAS ALL. DIDN'T DISCUSS IT.

25 THE COURT: ALL RIGHT. VERY GOOD. YOU DIDN'T SAY ANY-
26 THING TO THAT OTHER JUROR?

27 MR. PRINCE: NO, I DID NOT.

28 THE COURT: THANK YOU VERY MUCH.

1 JUST TO REFRESH YOUR RECOLLECTION, THE CHARGE
2 AGAINST THE DEFENDANT IS MURDER IN THE FIRST DEGREE,
3 PREMEDITATED, DELIBERATE, INTENTIONAL MURDER; AND IF THAT WERE
4 JUST ALONE INVOLVED, THAT WOULD NOT QUALIFY FOR THE DEATH
5 PENALTY. YOU UNDERSTAND THAT? IT IS ONLY WHERE THERE ARE
6 CERTAIN WHAT WE CALL SPECIAL CIRCUMSTANCES ATTENDING IT THAT
7 THEN THE LEGISLATURE SAYS IN THOSE PARTICULAR CASES THE DEATH
8 PENALTY MAY BE CONSIDERED BY A JURY; YOU UNDERSTAND THAT?

9 MR. PRINCE: YES, YOUR HONOR.

10 THE COURT: FOR EXAMPLE, AS I TOLD YOU, IN THIS CASE
11 A MURDER COMMITTED DURING THE COURSE OF A ROBBERY; MURDER
12 COMMITTED DURING THE COURSE OF A BURGLARY, MURDER COMMITTED
13 IN THE COURSE OF A KIDNAPPING, MURDER COMMITTED IN THE
14 MOLESTATION OF A CHILD, FOR EXAMPLE, OR RAPE, OR TORTURE, OR
15 POISON; AND MURDER COMMITTED UNDER ALL OF THOSE CIRCUMSTANCES;
16 AND THERE ARE ABOUT 19 ALTOGETHER, THE LEGISLATURE SAID IN
17 THOSE CASES THE DEATH PENALTY MIGHT BE APPLICABLE.

18 MR. PRINCE: I UNDERSTAND THAT.

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1 THE COURT: SO THAT THE DEATH PENALTY IS APPLICABLE
2 IN THIS CASE. BY THE "PENALTY" I MEAN LIFE WITHOUT POSSIBILITY
3 OF PAROLE OR DEATH IS APPLICABLE IN THIS CASE. SO WHAT THE
4 JURY DOES, THAT IS SELECTED IN THE CASE, IS TO DETERMINE FIRST,
5 THE GUILT OR INNOCENCE OF THE DEFENDANT.

6 IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST
7 DEGREE, THEN THERE IS A COLLATERAL QUESTION THEY HAVE TO
8 ANSWER, WAS THAT MURDER COMMITTED DURING THE COURSE OF A
9 ROBBERY.

10 SO, THEY HAVE TO ANSWER THAT QUESTION TRUE OR
11 FALSE. IF THEY ANSWER IT TRUE, THAT IT WAS COMMITTED DURING
12 THE COURSE OF A ROBBERY, THEN WE HAVE ANOTHER PHASE OF THE
13 TRIAL WHICH IS KNOWN AS THE PENALTY PHASE.

14 THE FIRST PHASE IS THE GUILTY PHASE. THE SECOND
15 PHASE IS THE PENALTY PHASE. THE SAME JURORS LISTEN TO
16 ADDITIONAL EVIDENCE, BOTH BY THE DEFENDANT AND BY THE
17 PROSECUTION.

18 AND THE LEGISLATURE HAS SAID THAT THESE OTHER
19 THINGS THAT YOU CAN CONSIDER, YOU MAY CONSIDER IN THE PENALTY
20 PHASE, ANY MATTER WHICH IS RELEVANT TO AGGRAVATION, ANY FACTORS
21 ABOUT THE DEFENDANT WHICH AGGRAVATE THE OFFENSE AND SO FORTH
22 OR WHICH ARE IN MITIGATION, WHICH LESSEN THE OFFENSE AND THE
23 SENTENCE, INCLUDING THE NATURE AND CIRCUMSTANCES OF IT AND IF
24 HE HAD BEEN CONVICTED OF A PRIOR FELONY AND THE NATURE OF
25 THAT OR IF HE HAD BEEN COMPLETELY FREE OF ANY CRIMINAL
26 ACTIVITY, ANY CONVICTIONS IN THE PAST, THAT MAY BE CONSIDERED.

27 AND ALSO, YOU CAN CONSIDER THE DEFENDANT'S
28 CHARACTER, BACKGROUND, HISTORY, MENTAL CONDITION AND PHYSICAL

1 CONDITION. THOSE ARE FACTORS WHICH MAY BE CONSIDERED,
2 INCLUDING HIS AGE. YOU WILL CONSIDER ALL OF THOSE BEFORE
3 YOU MAKE UP YOUR MIND AS TO WHAT THE PENALTY IS, ASSUMING
4 ALREADY THAT HE HAS BEEN CONVICTED OF MURDER IN THE FIRST
5 DEGREE IN THE COURSE OF A ROBBERY.

6 MR. PRINCE: I SEE.

7 THE COURT: ALL RIGHT. NOW, DO YOU UNDERSTAND EVERYTHING
8 I HAVE SAID TO YOU?

9 MR. PRINCE: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. NOW, WHAT I AM GOING TO DO IS,
11 ASK YOU A SERIES OF QUESTIONS. THEY ALL RELATE IN ONE FORM
12 OR THE OTHER TO THE DEATH PENALTY AND YOUR ATTITUDE TOWARD
13 THE DEATH PENALTY.

14 THE FIRST QUESTION I AM GOING TO ASK YOU IS AS
15 FOLLOWS: DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
16 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION?
17 THAT IS, AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

18 MR. PRINCE: I WOULD HAVE A PROBLEM IF I HAD TO
19 DELIVER A VERDICT FOR CAPITAL PUNISHMENT, YES.

20 THE COURT: NO. NO, FIRST, BEFORE YOU COME TO THE
21 CAPITAL PUNISHMENT, ON THE GUILT OR INNOCENCE --

22 MR. PRINCE: GUILT OR INNOCENCE, I WOULD NOT HAVE A
23 PROBLEM.

24 THE COURT: SO YOUR ANSWER TO THAT IS NO?

25 MR. PRINCE: NO.

26 THE COURT: IS THAT CORRECT?

27 MR. PRINCE: YES, YOUR HONOR.

28 THE COURT: THAT'S GOOD. NOW, SECONDLY, DO YOU HAVE

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1 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
2 YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH
3 OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

4 MR. PRINCE: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. THE NEXT QUESTION IS, DO YOU
6 HAVE AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
7 AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS
8 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
9 OF THE TRIAL?

10 IN OTHER WORDS, DO YOU HAVE RESERVATIONS AGAINST
11 IMPOSING IT?

12 MR. PRINCE: NO. NO.
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1 THE COURT: I WILL REPEAT THE QUESTION. HAVE YOU SUCH
2 AN OPINION ABOUT THE DEATH PENALTY THAT IN EVERY, SINGLE CASE,
3 IRRESPECTIVE OF THE EVIDENCE THAT WILL BE SHOWN ON THE PENALTY
4 PHASE, YOU WOULD VOTE FOR DEATH?

5 MR. PRINCE: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. NOW, THIS IS THE OTHER ASPECT
7 OF THE SAME QUESTION, WHETHER IT RELATES TO LIFE WITHOUT
8 POSSIBILITY OF PAROLE OR THE POSSIBILITY OF -- WELL, DO YOU
9 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT YOU
10 WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
11 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
12 PHASE OF THE TRIAL?

13 MR. PRINCE: NO, YOUR HONOR.

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

18 MR. PRINCE: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT. WELL, TELL US WHAT YOUR FEELING
20 IS ABOUT THE DEATH PENALTY, INSOFAR AS IT MIGHT RELATE TO
21 YOUR REACHING A VERDICT OF MURDER IN THE FIRST DEGREE AND
22 THERE WERE SPECIAL CIRCUMSTANCES THAT WERE TRUE.

23 WHAT IS YOUR BELIEF WITH RESPECT TO WHETHER OR
24 NOT YOU WOULD CONSIDER THE DEATH PENALTY?

25 MR. PRINCE: WELL, I WOULDN'T HAVE ANY PROBLEM DELIVERING
26 A VERDICT OR A PENALTY THAT WOULD INVOLVE LIFE WITHOUT
27 POSSIBILITY OF PAROLE.

28 BUT I CANNOT IN GOOD CONSCIENCE, VOTE FOR A VERDICT

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1 OF CAPITAL PUNISHMENT.

2 THE COURT: DEATH?

3 MR. PRINCE: DEATH.

4 THE COURT: UNDER NO CIRCUMSTANCES?

5 MR. PRINCE: UNDER NO CIRCUMSTANCES.

6 THE COURT: NO MATTER WHAT?

7 MR. PRINCE: THAT'S CORRECT, YOUR HONOR.

8 MR. CHIER: GOOD AFTERNOON, MR. PRINCE. MY NAME IS
9 CHIER. I REPRESENT MR. HUNT.

10 MR. PRINCE: GOOD AFTERNOON, MR. CHIER.

11 MR. CHIER: WHAT I WANT TO DO IS SEE IF THERE ARE SOME
12 CIRCUMSTANCES UNDER WHICH -- ANY CIRCUMSTANCES UNDER WHICH
13 YOU COULD RETURN A VERDICT OF DEATH, SO THAT YOU WOULD BE
14 ELIGIBLE AS A JUROR IN THIS CASE.

15 THE LAW IS SUCH THAT THERE IS A SCREENING PROCESS
16 WHICH EXCLUDES PEOPLE THAT ARE EITHER SO IN FAVOR OF THE DEATH
17 PENALTY THAT IT WOULD INTERFERE WITH THEIR ABILITY TO BE
18 NEUTRAL AND PEOPLE THAT ARE SO OPPOSED TO IT, THAT IT WOULD
19 INTERFERE WITH THEIR ABILITY TO BE NEUTRAL.

20 AND IDEALLY, YOU WANT A CROSS SECTION OF PEOPLE
21 OF DIVERGENT VIEWS, PRO DEATH AND ANTI DEATH OR CAPITAL
22 PUNISHMENT OR WHAT HAVE YOU.

23 SO, WHAT I WANT TO REALLY DETERMINE FROM YOU,
24 EVEN THOUGH YOU MAY HAVE ANSWERED PRELIMINARILY THAT THIS
25 IS THE SITUATION, IS, IF THERE ARE NOT CIRCUMSTANCES UNDER
26 WHICH YOU WOULD EVER RETURN A PENALTY OF DEATH IN ANY CASE?

27 MR. PRINCE: THAT'S RIGHT, MR. CHIER.

28 MR. CHIER: AND THERE IS NO POSSIBILITY OF SUBORDINATING

1 YOUR PERSONAL VIEWS TO YOUR OATH AS A JUROR, TO FOLLOW THE
2 LAW AND TO AT LEAST AGREE TO LISTEN TO ALL OF THE EVIDENCE
3 BEFORE MAKING UP YOUR MIND IN FAVOR OF DEATH OR CAPITAL
4 PUNISHMENT OR LIFE WITHOUT POSSIBILITY OF PAROLE?

5 MR. PRINCE: IF I COULD KNOW A PRIORI THAT IT WOULDN'T
6 BE CAPITAL PUNISHMENT, I WOULD LOVE TO BE ON THE JURY.

7 BUT SINCE IT IS AN OPTION THAT COULD POSSIBLY
8 COME UP, I DON'T FEEL THAT I WOULD BE QUALIFIED TO EXERCISE
9 THAT OPTION.

10 MR. CHIER: YOU REALIZE THAT THAT LEAVES ONLY PEOPLE
11 IN FAVOR OF THE DEATH PENALTY --

12 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

13 THE COURT: ARE YOU ARGUING THE REASON THAT HE SHOULD
14 STAY ON THIS JURY IN SPIE OF HIS CONVICTIONS?

15 MR. WAPNER: OBJECTION, ARGUMENTATIVE. NO PROPER
16 INQUIRY.

17 THE COURT: I SUSTAIN THE OBJECTION.

18 MR. CHIER: I THINK THAT HE IS ENTITLED TO KNOW WHAT
19 IT IS ALL ABOUT.

20 THE COURT: I WILL SUSTAIN THE OBJECTION.

21 MR. CHIER: I PASS FOR CAUSE.

22 THE COURT: ANY QUESTIONS, MR. WAPNER?

23 MR. WAPNER: NO. I HAVE NO QUESTIONS.

24 THE COURT: DO YOU PASS FOR CAUSE?

25 MR. WAPNER: NO. I THINK THAT I WOULD CHALLENGE
26 MR. PRINCE FOR CAUSE, BASED ON HIS VIEWS.

27 THE COURT: ALL RIGHT. MR. PRINCE, YOU HAVE BEEN VERY
28 HONEST AND FORTHRIGHT. I RESPECT YOU FOR IT.

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MR. PRINCE: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. FROM WHAT YOU HAVE SAID, OBVIOUSLY, YOU CAN'T QUALIFY IN THIS PARTICULAR CASE. YOU UNDERSTAND THAT?

MR. PRINCE: YES, SIR.

THE COURT: PLEASE GO BACK TO THE JURY ASSEMBLY ROOM AND TELL THEM THAT YOU WILL BE ELIGIBLE. I HOPE THEY PUT YOU ON SOME OTHER JURIES BECAUSE WE LIKE PEOPLE LIKE YOU AS JURORS ON OTHER CASES.

MR. PRINCE: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: WE WILL NOW TAKE A BRIEF RECESS.

(RECESS.)

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1 (PROSPECTIVE JUROR RAGLE ENTERS THE
2 COURTROOM.)

3 THE COURT: ALL RIGHT.

4 THE CLERK: JUST STATE YOUR NAME FOR THE RECORD, PLEASE.

5 MR. RAGLE: LAWRENCE M. RAGLE.

6 THE COURT: RAGLE, IS THAT IT?

7 MR. RAGEL: THAT'S IT.

8 THE COURT: LAWRENCE?

9 MR. RAGEL: GOOD NAME, HUH?

10 THE COURT: YES, IT SURE IS.

11 MR. RAGEL, WHERE DO YOU LIVE?

12 MR. RAGEL: LAWNSDALE.

13 THE COURT: LAWNSDALE; HOW FAR IS THAT FROM HERE?

14 MR. RAGEL: OH, ABOUT 16 MILES.

15 THE COURT: ALL RIGHT. HAVE YOU READ ANYTHNG AT ALL
16 ABOUT THIS CASE?

17 MR. RAGEL: NO, I HAVE NOT.

18 THE COURT: HAVE YOU TALKED TO ANYBODY AT ALL ABOUT IT
19 AMONG THE JURORS OR ANY THIRD PARTY?

20 MR. RAGEL: NO.

21 THE COURT: YOU KNOW NOTHING ABOUT IT EXCEPT WHAT I TOLD
22 YOU WHEN YOU WERE HERE; RIGHT?

23 MR. RAGEL: THAT'S IT.

24 THE COURT: LET ME JUST SUMMARIZE IT BRIEFLY FOR YOU
25 AND ASK YOU SOME QUESTIONS WHICH WILL ALL BE RELATED TO A
26 SERIES OF QUESTIONS WHICH ARE LIMITED QUESTIONS AS TO YOUR
27 OPINIONS WITH RESPECT TO THE DEATH PENALTY AND HOW IT WILL
28 AFFECT YOU UNDER CERTAIN CIRCUMSTANCES.

1 NOW YOU KNOW, OF COURSE, THAT THE CHARGE AGAINST
2 THE DEFENDANT IS MURDER IN THE FIRST DEGREE COMMITTED DURING
3 THE COURSE OF A ROBBERY.

4 YOU SEE, IT IS NOT EVERY MURDER THAT CALLS FOR
5 A DEATH PENALTY, BUT ONLY THOSE MURDERS WHICH ARE COMMITTED
6 UNDER CERTAIN SPECIAL CIRCUMSTANCES, AS THEY ARE CALLED.
7 THE SPECIAL CIRCUMSTANCES IS THAT COMMITTED DURING THE COURSE
8 OF A ROBBERY, A SPECIAL CIRCUMSTANCE IS COMMITTED DURING THE
9 COURSE OF A BURGLARY OR DURING A KIDNAPPING, OR DURING A
10 RAPE, DURING A TORTURE, DURING A CHILD MOLESTATION, FOR
11 EXAMPLE, OR BY POISON. THE LEGISLATURE HAS SET FORTH ABOUT
12 19 TYPES -- MULTIPLE MURDERS -- THE LEGISLATURE HAS SET FORTH --
13 WITHOUT GOING THROUGH ALL OF THEM -- 19 TYPES OF CIRCUMSTANCES,
14 SPECIAL CIRCUMSTANCES WHERE THE DEATH PENALTY MAY BE
15 APPLICABLE, ONE OF WHICH IS WHAT WE ARE FACED WITH HERE, MURDER
16 ALLEGEDLY COMMITTED DURING THE COURSE OF A ROBBERY.

17 SO THE JURY SELECTED IN THIS CASE WILL ON THE
18 FIRST PHASE OF THE TRIAL, WHICH IS WHAT WE CALL THE GUILT PHASE,
19 THE JURY WILL BE CALLED UPON TO DETERMINE ONLY WHETHER OR NOT
20 THE DEFENDANT IS GUILTY OR NOT GUILTY OF A MURDER; AND IF HE
21 IS GUILTY OF MURDER, THEY WILL HAVE TO MAKE A FINDING WHETHER
22 IT WAS TRUE OR FALSE THAT IT WAS COMMITTED DURING THE COURSE
23 OF A ROBBERY.

24 IT IS ONLY WHERE THEY DETERMINE THAT THE MURDER
25 WAS COMMITTED DURING THE COURSE OF A ROBBERY, MURDER IN THE
26 FIRST DEGREE, THAT THEN THAT SAME JURY WILL THEN BE CALLED
27 BACK TO HEAR EVIDENCE FROM BOTH THE DEFENSE AND BY THE
28 PROSECUTION; AND THE PURPOSE OF THAT EVIDENCE WILL BE TO

1 DETERMINE ON THE BASIS OF ALL OF THE EVIDENCE, AND THE BASIS
2 OF THE EVIDENCE THAT THEY HAD HEARD BEFORE IN CONNECTION WITH
3 THE GUILT PHASE, OF WHETHER OR NOT ONE OR TWO THINGS SHOULD
4 HAPPEN: SHOULD THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT
5 WITHOUT THE POSSIBILITY OF PAROLE, OR SHOULD HE GET THE DEATH
6 PENALTY.

7 AND IN CONNECTION WITH THAT PENALTY PHASE, THE
8 LEGISLATURE HAS SAID THAT YOU HAVE A RIGHT TO CONSIDER CERTAIN
9 FACTORS. THOSE FACTORS. THOSE FACTORS THAT I HAVE INDICATED
10 ARE FACTORS IN AGGRAVATION WHICH AGGRAVATE THE OFFENSE, HIS
11 CONDUCT; OR MITIGATION, WHICH ARE FACTORS WHICH MIGHT BE
12 FAVORABLE TO HIM, WHICH THE JURY HAS THE RIGHT TO CONSIDER;
13 AND WHETHER OR NOT HE HAS ANY CRIMINAL RECORD, ANY CRIMINAL
14 CONVICTIONS; OR WHETHER HE IS FREE OF ANY KIND OF A CONVICTION;
15 AND ALSO THE DEFENDANT'S CHARACTER, BACKGROUND, HISTORY,
16 MENTAL AND PHYSICAL CONDITION.

17 ALL OF THESE WOULD BE PERTINENT IN DETERMINING,
18 INCLUDING HIS AGE, WOULD BE PERTINENT IN DETERMINING WHETHER
19 OR NOT HE SHOULD SUFFER ONE OF THE TWO PENALTIES THAT I HAVE
20 INDICATED TO YOU.

21 DO YOU UNDERSTAND ALL THAT SO FAR?

22 MR. RAGLE: YES.

23 THE COURT: SO THERE ARE THOSE TWO PHASES, THE PENALTY
24 PHASE AND THE GUILT PHASE.

25 NOW THE QUESTIONS I AM GOING TO ASK YOU WILL TOUCH
26 UPON YOUR ATTITUDES TOWARDS THE DEATH PENALTY AND HOW IT WOULD
27 AFFECT YOU UNDER CERTAIN CIRCUMSTANCES.

28 NOW THE FIRST QUESTION IS DO YOU HAVE AN OPINION

1 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
2 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
3 DEFENDANT, AND THAT'S ON THE GUILT PHASE?

4 MR. RAGLE: NO.

5 THE COURT: NEXT QUESTION: YOU REMEMBER I TOLD YOU THAT
6 IF HE IS NOT GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE
7 JURY HAS TO MAKE A FINDING WHETHER IT IS TRUE OR FALSE THAT
8 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY; THAT'S THE
9 SPECIAL CIRCUMSTANCE.

10 NOW DO YOU HAVE ANY OPINION REGARDING THE DEATH
11 PENALTY THAT WILL PREVENT YOU FROM MAKING AN IMPARTIAL
12 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
13 CIRCUMSTANCE?

14 MR. RAGLE: NO.

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

20 MR. RAGLE: NO.

21 THE COURT: NOW THIS IS ANOTHER ASPECT OF THE SAME
22 QUESTION: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
23 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISON-
24 MENT WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS OF ANY
25 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
26 TRIAL?

27 MR. RAGLE: NO.

28 THE COURT: VERY GOOD.

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

5 MR. RAGLE: YES.

6 THE COURT: ALL RIGHT.

7 GO AHEAD.

8 THIS IS MR. CHIER. HE REPRESENTS THE DEFENDANT
9 IN THIS CASE.

10 MR. CHIER: GOOD AFTERNOON, MR. RAGLE.

11 MR. RAGLE: GOOD AFTERNOON.

12 MR. CHIER: IS IT RAGLE OR RAGLE?

13 MR. RAGEL: RAGLE.

14 MR. CHIER: YOU UNDERSTAND, SIR, THAT JUST BECAUSE WE
15 ARE HAVING THIS LITTLE INQUIRY CONCERNING THE DEATH PENALTY
16 DOESN'T MEAN MR. HUNT IS GUILTY OF ANYTHING?

17 MR. RAGEL: I UNDERSTAND THAT.

18 MR. CHIER: HE IS PRESUMED INNOCENT, AND THIS IS JUST
19 A SCREENING PROCESS FOR THE JURY SELECTION.

20 MR. RAGEL: YES.

21 MR. CHIER: WELL, LET'S GET RIGHT TO THE POINT. ARE
22 YOU IN FAVOR OF THE DEATH PENALTY, SIR?

23 MR. RAGEL: YES.

24 MR. CHIER: HOW WOULD YOU ANSWER THIS QUESTION, IF I
25 WERE TO SAY -- HERE IS THE QUESTION: I AM A PERSON WHO IS,
26 A, STRONGLY IN FAVOR OF THE DEATH PENALTY; B, SOMEWHAT IN
27 FAVOR OF THE DEATH PENALTY; C, MILDLY IN FAVOR OF THE DEATH
28 PENALTY; OR D, HAVEN'T REALLY THOUGHT ABOUT IT?

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MR. RAGEL: I HAVE THOUGHT ABOUT IT. I WOULD SAY BE.

MR. CHIER: B, SOMEWHAT IN FAVOR OF IT?

MR. RAGEL: YES.

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1 MR. CHIER: CAN YOU TELL ME JUST FROM YOUR PERSONAL
2 FEELINGS ABOUT HOW YOU FEEL ABOUT THE DEATH PENALTY, WHEN
3 IT IS APPROPRIATE AND WHEN IT ISN'T?

4 MR. RAGLE: WHEN THE EVIDENCE IS OVERWHELMING THAT THE
5 PERSON COMMITTED THE CRIME. THEN I WOULD VOTE FOR THE DEATH
6 PENALTY.

7 MR. CHIER: WHEN THE EVIDENCE OF GUILT --

8 MR. RAGLE: YES.

9 MR. CHIER: IS OVERWHELMING?

10 MR. RAGLE: YES.

11 MR. CHIER: IS THAT BEYOND A REASONABLE DOUBT?

12 MR. RAGLE: YES.

13 THE COURT: DOES THAT MEAN YES?

14 MR. RAGLE: YES.

15 MR. CHIER: ARE YOU THEN, A PERSON WHO IS IN ALL CASES
16 IN WHICH THERE IS AN INTENTIONAL MURDER COMMITTED IN THE COURSE
17 OF A ROBBERY, WHICH IS ESTABLISHED BEYOND A REASONABLE DOUBT,
18 ARE YOU A PERSON WHO THEN IS TILTING IN FAVOR OF THE DEATH
19 PENALTY IN MOST CASES IN THAT TYPE OF SITUATION?

20 MR. RAGLE: IT WOULD BE A HARD JUDGMENT. IT IS A JUDGMENT
21 I COULD MAKE. BUT YES, I PROBABLY WOULD TILT TOWARD THE DEATH
22 PENALTY.

23 THE COURT: DO YOU REMEMBER THAT I TOLD YOU THAT THERE
24 WAS A PENALTY PHASE OF THE TRIAL WHERE YOU HEAR OTHER EVIDENCE
25 THAT IS GOOD THINGS AND BAD THINGS ABOUT THE DEFENDANT, ABOUT
26 HIS BACKGROUND, HIS HISTORY AND HIS AGE AND EVERYTHING ELSE
27 WHICH YOU HAVE TO CONSIDER BEFORE YOU REACH A CONCLUSION AS
28 TO WHETHER OR NOT THE DEATH PENALTY SHOULD BE IMPOSED OR

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1 WHETHER IT SHOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE? ARE
2 YOU WILLING TO DO THAT? AREN'T YOU?

3 MR. RAGLE: YES I AM. THAT IS WHY I SAY IT WOULD BE
4 HARD. IT IS STILL A JUDGMENT THAT HAS TO BE MADE.

5 THE COURT: WELL, THE QUESTION WAS NOT COMPLETE ENOUGH.
6 IS THAT THE IDEA?

7 MR. RAGLE: YES. I FEEL THAT I HAVE SOME COMPASSION.
8 BUT --

9 MR. CHIER: ARE YOU SAYING THAT YOU WOULDN'T ALWAYS
10 VOTE TO EXECUTE SOMEBODY IF YOU THOUGHT THERE WAS SOME REASON
11 TO SPARE THEIR LIFE? IS THAT WHAT YOU ARE SAYING?

12 MR. RAGLE: YES, RIGHT.

13 MR. CHIER: CAN YOU GIVE US AN IDEA OF THE TYPE OF THING
14 WHICH YOU THINK OUGHT TO WEIGH IN FAVOR OF SPARING SOMEONE'S
15 LIFE, MR. RAGLE?

16 MR. RAGLE: WELL, I DON'T LIKE TO BRING UP RELIGION.
17 BUT I THINK THE SCRIPTURES SAY THAT IF THERE IS ONLY ONE
18 WITNESS, THEN SPARE HIM. IF THERE ARE TWO WITNESSES, EVERYTHING
19 IS PROVED BY THE TWO WITNESSES. ALL THINGS ARE ESTABLISHED
20 BY MORE THAN ONE WITNESS.

21 IN OTHER WORDS --

22 MR. CHIER: ARE YOU TALKING ABOUT THE SCRIPTURES OR
23 THE APOCRYPHA, SIR?

24 MR. RAGLE: THE SCRIPTURES.

25 MR. CHIER: SO, IN THE APOCRYPHA THERE IS THE STORY
26 ABOUT SUSANNA AND THE ELDERS. ARE YOU FAMILIAR WITH THAT?

27 MR. RAGLE: NO.

28 MR. CHIER: IS THE CONCEPT OF AN EYE FOR AN EYE A

1 SCRIPTURAL NOTION?

2 MR. RAGLE: IT IS, BUT --

3 MR. CHIER: DO YOU SUBSCRIBE TO THAT?

4 MR. RAGLE: NO.

5 MR. CHIER: LET ME UNDERSTAND YOU. YOUR REFERENCE TO
6 THE SCRIPTURES AND THAT IF THERE IS ONE WITNESS --

7 MR. RAGLE: THAT'S RIGHT. THE SCRIPTURE STATES THAT
8 IF THERE IS ONE WITNESS, THEN THE MAN SHOULD NOT DIE. IF
9 THERE ARE TWO OR MORE, THEN THE EVIDENCE IS OVERWHELMING.

10 THE COURT: WELL, YOU WILL APPLY THE LAW OF THE STATE
11 OF CALIFORNIA AND NOT THE SCRIPTURES IN DETERMINING THIS,
12 IS THAT RIGHT?

13 MR. RAGLE: TRUE. BUT I STILL HAVE COMPASSION.

14 THE COURT: YES. YOU WILL STILL JUDGE ACCORDING TO
15 THE ADDITIONAL EVIDENCE? YOU HAVE A RIGHT AT THE PENALTY
16 PHASE TO CONSIDER SYMPATHY, TOO. YOU KNOW, THAT IS A PART
17 OF WHAT YOU CAN CONSIDER. YOU WILL DO THAT, WON'T YOU?

18 MR. RAGLE: YES I WILL.

19 THE COURT: ALL RIGHT.

20 MR. CHIER: YOU UNDERSTAND THAT THIS IS A TWO-STEP DEATH
21 PENALTY PHASE. IT IS A TWO-STEP THING. THERE ARE BASICALLY
22 TWO TRIALS?

23 MR. RAGLE: YES.

24 MR. CHIER: DO YOU UNDERSTAND?

25 MR. RAGLE: YES.

26 MR. CHIER: YOU UNDERSTOOD HOW THE JUDGE EXPLAINED IT
27 TO YOU? WHAT I AM MOST INTERESTED IN AT THIS MOMENT, SIR,
28 IS WHETHER, AFTER GOING THROUGH THE GUILT PHASE AND GETTING

1 TO THE PENALTY PHASE, IF YOU WOULD BEGIN THAT ASPECT OF THE
2 TRIAL IN A TOTALLY NEUTRAL POSITION OR THAT YOU WOULD BE MAYBE,
3 HAVING JUST FOUND THE PERSON GUILTY OF FIRST DEGREE,
4 INTENTIONAL MURDER, YOU WOULD BE LEANING TOWARD THE DEATH
5 PENALTY AT THAT PARTICULAR TIME. THAT IS, BEFORE YOU HEAR
6 THE TESTIMONY.

7 MR. RAGLE: NO. I WOULD FEEL THAT I SHOULD HEAR THE
8 TESTIMONY BEFORE I WOULD MAKE ANY OPINION ON THE DEATH PENALTY.

9 MR. CHIER: ALL RIGHT. I WILL PASS FOR CAUSE.

10 THE COURT: ALL RIGHT.
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1 MR. WAPNER: MR. RAGLE, I AM FRED WAPNER, THE DEPUTY
2 DISTRICT ATTORNEY PROSECUTING THIS CASE. YOU SAID THAT YOU
3 WOULD CONSIDER THE DEATH PENALTY WHERE THE EVIDENCE IS
4 OVERWHELMING?

5 MR. RAGLE: YES.

6 MR. WAPNER: DO YOU UNDERSTAND THAT THE STANDARD APPLIED
7 BY THE STATE OF CALIFORNIA IN ORDER TO FIND SOMEONE GUILTY
8 OF A CRIME IS PROOF BEYOND A REASONABLE DOUBT?

9 MR. RAGLE: YES.

10 MR. WAPNER: IF YOU KNEW IN THE BACK OF YOUR MIND WHEN
11 YOU WERE DECIDING THE GUILT PHASE THAT THE POSSIBLE PUNISHMENT
12 COULD BE DEATH, WOULD YOU REQUIRE ME TO PROVE THE CASE TO
13 YOU BY SOME STANDARD HIGHER THAN PROOF BEYOND A REASONABLE
14 DOUBT?

15 MR. RAGLE: NO.

16 MR. WAPNER: IF YOU ARE CHOSEN TO SIT ON A JURY IN THIS
17 CASE, CAN YOU PUT OUT OF YOUR MIND THE SUBJECT OF PENALTY
18 WHEN YOU ARE DECIDING THE QUESTION OF GUILT OR INNOCENCE?

19 MR. RAGLE: YES.

20 MR. WAPNER: WHEN YOU START THE PENALTY PHASE OF THE
21 CASE, IF WE GET TO THAT POINT, AS YOU SIT THERE NOW, DO YOU
22 HAVE ANY BIASES ONE WAY OR THE OTHER THAT YOU CAN THINK OF?

23 MR. RAGLE: NO.

24 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS
25 OR MORAL OR PHILOSOPHICAL FEELINGS ABOUT THE DEATH PENALTY?

26 MR. RAGLE: THAT --

27 MR. WAPNER: THAT WOULD PREVENT YOU FROM CONSIDERING
28 THE DEATH PENALTY IN THIS CASE?

1 MR. RAGLE: NO.

2 MR. WAPNER: OR ON THE OTHER HAND, RELIGIOUS,
3 PHILOSOPHICAL OR MORAL OPINIONS ABOUT THE DEATH PENALTY THAT
4 WOULD CAUSE YOU TO IMPOSE IT ALL OF THE TIME, IN THIS CASE,
5 FOR EXAMPLE?

6 MR. RAGLE: NO.

7 MR. WAPNER: PASS FOR CAUSE.

8 THE COURT: ALL RIGHT. MR. RAGLE, WE ARE IN THE PROCESS
9 OF AS YOU KNOW, OF EXAMINING ALL OF THE PROSPECTIVE JURORS WITH
10 QUESTIONS OF THE KIND THAT HAVE BEEN ASKED OF YOU. THAT WILL
11 TAKE SOME TIME.

12 WE ARE NOW AT "R." WE HAVE TO GO DOWN THROUGH
13 "Z." IT IS ANTICIPATED THAT WE WILL FINISH THIS PROCESS BY
14 DECEMBER THE 3RD.

15 SO, WHAT I WILL ASK YOU TO DO, IS TO COME BACK
16 TO THE JURY ASSEMBLY ROOM ON DECEMBER THE 3RD. THE REASON
17 IT IS GOING TO BE DECEMBER THE 3RD IS BECAUSE AS YOU KNOW,
18 TOMORROW AND FRIDAY ARE HOLIDAYS AND SO FORTH.

19 BY THAT TIME HOPEFULLY, WE WILL FINISH WITH THIS
20 PHASE OF THE EXAMINATION OF THE JURORS. SO, PLEASE MAKE A
21 NOTE IN YOUR MIND AS TO DECEMBER 3RD AT 10:30 A.M. IN THE
22 JURY ASSEMBLY ROOM.

23 THEN, PLEASE COME BACK TO THE COURTROOM. WE'LL
24 START WITH THE TRIAL. WE WILL START THAT PART OF THE TRIAL
25 WHICH FOLLOWS.

26 MEANTIME, TRY NOT TO READ ANYTHING ABOUT THE CASE
27 OR WATCH TELEVISION OR LISTEN TO THE RADIO AND SO FORTH.

28 TRY NOT TO TALK TO ANYBODY ABOUT THE CASE IN THE

1 MEANTIME.

2 MR. RAGLE: THAT'S EASY. I DON'T READ THE PAPER THAT
3 MUCH.

4 THE COURT: FINE. WE HAVE NO PROBLEM. WE'LL SEE YOU
5 BACK HERE ON DECEMBER THE 3RD.

6 IF BY ANY CHANCE, IT WILL TAKE LONGER THAN THAT,
7 THEN WE'LL CALL YOU AND LET YOU KNOW. WE HAVE YOUR TELEPHONE
8 NUMBER.

9 WE WILL CALL YOU AND LET YOU KNOW WHEN TO COME
10 IN. THANK YOU VERY MUCH. HAVE A NICE THANKSGIVING.

11 (PROSPECTIVE JUROR RAGLE EXITED THE
12 COURTROOM.)

13 (PROSPECTIVE JUROR GROVER REILLY ENTERED
14 THE COURTROOM.)

15 THE COURT: GOOD AFTERNOON, MR. REILLY. SORRY TO KEEP
16 YOU WAITING. AS YOU SEE, THIS IS A SLOW PROCESS. THAT IS
17 WHY WE AREN'T GOING AS FAST AS THOUGHT WE WOULD.

18 MR. REILLY: I UNDERSTAND.

19 THE COURT: WHERE DO YOU LIVE, MR. REILLY?

20 MR. REILLY: MARINA DEL REY.

21 THE COURT: AND HAVE YOU READ ANYTHING AT ALL ABOUT
22 THIS CASE IN THE NEWSPAPER OR ANY MAGAZINE OR ANY PERIODICAL?

23 MR. REILLY: I DON'T BELIEVE I HAVE.

24 THE COURT: ALL RIGHT. HAVE YOU TALKED TO ANY OF THE
25 JURORS OR ANY THIRD PERSONS ON ANYTHING ABOUT THIS CASE?

26 MR. REILLY: NO.

27 THE COURT: ALL YOU KNOW IS WHAT I EXPLAINED TO YOU
28 WHEN YOU WERE ALL SEATED HERE TOGETHER WHEN WE STARTED THIS

1 TRIAL?

2 MR. REILLY: YES, LAST WEDNESDAY, I BELIEVE.

3 THE COURT: LAST WEDNESDAY? RIGHT.

4 MR. REILLY: RIGHT.

5 THE COURT: ALL RIGHT, SIR, I AM GOING TO BRIEFLY TELL
6 YOU ABOUT THE CASE AND TELL YOU CERTAIN ASPECTS ABOUT IT WHICH
7 ARE PERTINENT TO THIS.

8 WE WANT TO FIND OUT AT THIS TIME WHETHER YOU HAVE
9 ANY THOUGHTS OR ANY CONVICTIONS OR ANY BELIEFS ABOUT THE DEATH
10 PENALTY THAT WOULD CAUSE YOU NOT TO BE A FAIR JUROR IN THIS
11 CASE.

12 I WILL ASK YOU TO ANSWER A SERIES OF QUESTIONS.
13 FIRST, I WANT TO EXPLAIN WHAT IS GOING TO HAPPEN. THEN WE'LL
14 START PICKING THE JURY. AND WHEN WE PICK THE JURY, THEN WE
15 START WHAT IS KNOWN AS THE GUILT PHASE OF THE TRIAL WHERE
16 THE JURY IS CALLED UPON TO DETERMINE THE GUILT OR INNOCENCE
17 OF THE DEFENDANT.

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1 NOW IF THE JURY FINDS THE DEFENDANT GUILTY OF
2 PREMEDITATED MURDER, THEN THEY WILL HAVE A QUESTION TO ANSWER,
3 AND THAT QUESTION IS, WAS THAT MURDER COMMITTED DURING THE
4 COURSE OF A ROBBERY? IF THEY SAY, YES, IT WAS, THAT IT WAS
5 TRUE, THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,
6 THAT QUALIFIES THE CASE THEN FOR CONSIDERATION BY THE JURY
7 OF THE SECOND PHASE OR THE PENALTY PHASE OF THE CASE.

8 THE WE HEAR OTHER TESTIMONY.

9 INCIDENTALLY, IN THE GUILT PHASE OF THE TRIAL,
10 THE QUESTION OF PENALTY IS NOT INVOLVED IN ANY WAY. YOU DON'T
11 CONSIDER THAT. YOU ONLY CONSIDER IT IF THE DEFENDANT IS FOUND
12 GUILTY OF MURDER IN THE FIRST DEGREE UNDER SPECIAL CIRCUMSTANCES,
13 THE SPECIAL CIRCUMSTANCES BEING IT WAS COMMITTED DURING THE
14 COURSE OF A ROBBERY.

15 THE LEGISLATURE SAID IT IS ONLY IN CERTAIN CASES,
16 SPECIAL CIRCUMSTANCES, WHERE THE DEATH PENALTY WOULD BE
17 APPLICABLE, LIKE DURING THE COURSE OF A ROBBERY, A BURGLARY,
18 OR RAPE, OR KIDNAPPING, TORTURE, MULTIPLE MURDER, AND SO FORTH.
19 WITHOUT GOING THROUGH ALL OF THEM, YOU UNDERSTAND THAT?

20 MR. REILLY: I DO.

21 THE COURT: ALL RIGHT. SO WHEN WE REACH THE SECOND
22 PHASE OF THE TRIAL, THE DEFENSE AND THE PROSECUTION WILL
23 INTRODUCE EVIDENCE ON WHAT WE CALL THE PENALTY PHASE. THAT
24 IS AS I TOLD YOU.

25 NOW DURING THE PENALTY PHASE OF THE TRIAL EVIDENCE
26 WILL BE PRESENTED WHICH CERTAIN FACTORS ARE TO BE CONSIDERED
27 BY THE JURY. NOW THERE WILL BE FACTORS WHICH ARE RELEVANT
28 TO AGGRAVATION OF THE OFFENSE, OR THINGS ABOUT THE DEFENDANT

1 AND HIS BACKGROUND WHICH AGGRAVATE THE OFFENSE WHICH HE HAD
2 COMMITTED; AND INDEED, YOU CONSIDER ALL OF THE FACTS THAT YOU
3 HEAR ON THE GUILT PHASE TOO. ALL RIGHT.

4 ARE THERE ANY FACTORS IN MITIGATION? THINGS WHICH
5 ARE FAVORABLE TO THE DEFENDANT, WHICH HE HAS A RIGHT TO SHOW,
6 AND YOU HAVE A RIGHT TO CONSIDER BEFORE MAKING UP YOUR MIND
7 WHETHER IT SHOULD BE LIFE IN PRISON WITHOUT THE POSSIBILITY
8 OF PAROLE OR DEATH. ALL RIGHT.

9 OTHER FACTORS YOU WOULD CONSIDER IS WHETHER OR
10 NOT THERE IS ANY -- HAS THE DEFENDANT SUFFERED ANY CONVICTION
11 OF ANY FELONY; WHETHER HE IS FREE OF ANY KIND OF CRIMINAL
12 BACKGROUND; YOU KNOW, YOU MAY CONSIDER THAT.

13 AND ALSO LASTLY, YOU HAVE THE RIGHT TO CONSIDER
14 THE DEFENDANT'S CHARACTER, HIS BACKGROUND, HIS HISTORY, HIS
15 MENTAL CONDITION AND HIS PHYSICAL CONDITION, AND ALSO YOU HAVE
16 A RIGHT TO CONSIDER HIS AGE.

17 IF YOU ARE SELECTED AS A JUROR ON THIS CASE, YOU
18 WILL CONSIDER ALL OF THOSE FACTORS AND ANY OTHER FACTORS WHICH
19 MIGHT BE PERTINENT TO THIS PARTICULAR QUESTION OF THE PENALTY
20 TO BE IMPOSED; RIGHT?

21 MR. REILLY: I UNDERSTAND.

22 THE COURT: NOW I AM GOING TO ASK YOU A SERIES OF
23 QUESTIONS, AND THEY RELATE TO YOUR FEELINGS ABOUT THE DEATH
24 PENALTY, AND HOW IT WILL AFFECT YOU IN DETERMINING THE ISSUES
25 IN THIS PARTICULAR CASE.

26 FIRST, DO YOU HAVE ANY OPINION REGARDING THE DEATH
27 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
28 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

1 MR. REILLY: I DO.

2 THE COURT: WHAT IS THAT?

3 MR. REILLY: I WOULD BASICALLY HAVE TO GO INTO MY BACK-
4 GROUND.

5 THE COURT: UH-HUH.

6 MR. REILLY: I AM A RETIRED POLICE OFFICER FROM THE NEW
7 YORK CITY POLICE DEPARTMENT. I WAS A POLICE OFFICER FOR TEN
8 YEARS.

9 THE COURT: YES.

10 MR. REILLY: AT THE PRESENT TIME I AM A CIVILIAN EMPLOYEE
11 OF THE UNIVERSITY OF CALIFORNIA LOS ANGELES POLICE DEPARTMENT,
12 OPERATIONS MANAGER OF HOSPITAL SECURITY, AND I WOULD SAY I
13 WOULD BE OPINIONATED UNDER THE CIRCUMSTANCES.

14 THE COURT: NO. YOU SEE, THE QUESTION I ASKED YOU HAS
15 TO DO WITH THE FIRST PHASE OF THE TRIAL. THE FIRST PHASE OF
16 THE TRIAL IS THE GUILT OR INNOCENCE.

17 MR. REILLY: RIGHT.

18 THE COURT: IS YOUR OPINION ABOUT THE DEATH PENALTY SUCH,
19 AS I ASKED YOU, SUCH AN EXTENT THAT YOU CAN -- YOU CANNOT
20 GIVE A FAIR AND IMPARTIAL VERDICT ON THE GUILT PHASE OF THE
21 TRIAL?

22 MR. REILLY: I -- YES.

23 THE COURT: WHY IS THAT? YOU MEAN YOU FIND THE DEFENDANT,
24 BECAUSE HE IS CHARGED WITH THIS PARTICULAR OFFENSE, YOU WOULD
25 FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE AND THE SPECIAL
26 CIRCUMSTANCES, IS THAT IT, BECAUSE OF YOUR ATTITUDE TOWARD
27 THE DEATH PENALTY?

28 MR. REILLY: MY ATTITUDE TOWARD THE DEATH PENALTY AS

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1 BEING IMPOSED IN GENERAL. I HAVE ALWAYS FELT THAT THE -- THE
2 IMPOSING OF A DEATH PENALTY IN MANY CASES THROUGHOUT THE UNITED
3 STATES, THAT THE FOCUS MANY TIMES IS ON THE SKIN OF A PERSON,
4 THE COLOR OF A PERSON.

5 THE COURT: SO THE COLOR OF A PERSON IN THIS
6 PARTICULAR CASE IS NOT -- HE IS WHITE. WOULD THAT SAME ATTITUDE
7 PREVAIL?

8 MR. REILLY: WELL, MY ATTITUDE PREVAILS, IS THAT YOU
9 SHOULDN'T HAVE A DEATH PENALTY.

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1 THE COURT: UNDER ANY CIRCUMSTANCES; IS THAT CORRECT?

2 MR. REILLY: THAT'S CORRECT.

3 THE COURT: SO YOUR OPINION AS TO THE DEATH PENALTY IS
4 SUCH THAT UNDER NO CIRCUMSTANCES WOULD YOU VOTE FOR THE
5 DEATH PENALTY, IRRESPECTIVE OF THE NATURE OF THE CRIME
6 COMMITTED?

7 MR. REILLY: TRUE.

8 THE COURT: THAT'S TRUE?

9 MR. REILLY: YES.

10 THE COURT: YOU ARE SURE OF THAT?

11 MR. REILLY: I AM POSITIVE ABOUT IT.

12 THE COURT: AND WHATEVER THE EVIDENCE MAY SHOW, YOU WOULD
13 NONETHELESS VOTE AGAINST THE DEATH PENALTY?

14 MR. REILLY: I BELIEVE SO.

15 THE COURT: WELL, WE WANT YOU TO GIVE US YOUR BEST
16 JUDGMENT NOW. IF YOU BELIEVE SO, THAT MEANS YES OR NO?

17 MR. REILLY: YES.

18 MR. CHIER: GOOD AFTERNOON, MR. REILLY. MY NAME IS
19 CHIER AND I REPRESENT MR. HUNT.

20 THE COURT: HE IS THE DEFENDANT.

21 MR. CHIER: AND I WOULD LIKE TO SEE IF THERE IS ANY
22 POSSIBLE EXCEPTION TO YOUR POSITION THAT YOU HAVE ANNOUNCED
23 THAT YOU ARE AGAINST THE DEATH PENALTY. DO YOU THINK THAT
24 IN THE ABSTRACT -- BY THE WAY, YOU UNDERSTAND MR. HUNT IS
25 PRSUMED TO BE INNOCENT AT THIS POINT?

26 MR. REILLY: DEFINITELY.

27 MR. CHIER: AND THAT THIS IS A THEORETICAL KIND OF
28 PROCEDURE HERE THAT WE HAVE TO DO IN THE EVENT THAT HE SHOULD

1 BE TRIED AND CONVICTED OF THE CHARGE, SO THAT THIS IS A
2 SCREENING PROCESS WHICH WE HAVE TO DO NOW, BECAUSE IT IS TOO
3 LATE TO DO IT THEN?

4 THE COURT: HAS SAID HE WON'T VOTE HIM GUILTY BECAUSE
5 OF THE POSSIBILITY OF THE DEATH SENTENCE IN THE CASE, IF HE
6 IS FOUND GUILTY.

7 MR. CHIER: WELL, I WOULD LIKE TO TALK TO HIM ABOUT THAT,
8 JUDGE.

9 THE COURT: WELL, GO ON, TALK TO HIM ABOUT THAT.

10 MR. CHIER: DO I UNDERSTAND THAT YOU WOULD HAVE
11 DIFFICULTY VOTING ON THE GUILT PHASE BECAUSE OF THE PRESENCE
12 OF THE DEATH PENALTY? ARE YOU SAYING THAT, MR. REILLY?

13 MR. REILLY: NO.

14 MR. CHIER: OKAY.

15 THE COURT: WELL, WAIT. MR. REILLY, LET'S --

16 MR. CHIER: COULD I ASK HIM, PLEASE?

17 THE COURT: WE WILL START ALL OVER AGAIN. YOU WAIT A
18 MINUTE.

19 MR. CHIER: YOUR HONOR --

20 THE COURT: I ASKED YOU A QUESTION: DO YOU HAVE ANY
21 OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU
22 FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR
23 INNOCENCE OF THE DEFENDANT?

24 MR. REILLY: AS TO THE GUILT OR INNOCENCE OF THE
25 DEFENDANT?

26 THE COURT: YES. THAT'S THE FIRST PHASE OF IT.

27 MR. REILLY: THE FIRST PHASE?

28 THE COURT: AT THE FIRST PHASE, YES.

1 MR. REILLY: NO. I COULD JUDGE.

2 THE COURT: WELL THEN, YOUR ANSWER --

3 MR. REILLY: JUDGE WHETHER HE IS GUILTY OR NOT GUILTY.

4 THE COURT: THEN YOUR ANSWER IS NO.

5 MR. REILLY: NO.

6 THE COURT: ALL RIGHT. THEN LET ME CONTINUE.

7 SECONDLY, DO YOU HAVE ANY OPINION REGARDING THE
8 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
9 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
10 CIRCUMSTANCE ALLEGED IN THIS CASE? THE SPECIAL CIRCUMSTANCE
11 IS THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. IS
12 YOUR OPINION WITH RESPECT TO THE DEATH PENALTY SUCH THAT
13 KNOWING THAT, AS YOU SAY, HE IS GUILTY OF MURDER IN THE FIRST
14 DEGREE, AND IT IS TRUE THAT IT WAS COMMITTED DURING THE COURSE
15 OF THE ROBBERY, YOU WOULD THEN HAVE TO GO INTO THE PENALTY
16 PHASE WHERE YOU HAVE TO CONSIDER THE QUESTION OF LIVE
17 IMPRISONMENT OR DEATH?

18 MR. REILLY: I WOULD SAY YES. I WOULD SAY -- YES, I
19 COULD JUDGE ON THAT.

20 THE COURT: THAT MEANS YOU COULD -- SO YOU HAVE NO --
21 YOUR OPINION ABOUT THE DEATH PENALTY WOULDN'T INTERFERE WITH
22 YOUR VERDICT AS TO THE TRUTH OR FALSITY; IS THAT CORRECT?

23 MR. REILLY: TRUE, YES.

24 THE COURT: ALL RIGHT. NOW THE NEXT QUESTION: DO YOU
25 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU
26 WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS
27 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
28 OF THE TRIAL?

1 MR. REILLY: YES -- NO -- WELL, NO. I SAY NO.

2 THE COURT: YOU MEAN NO?

3 MR. REILLY: IN THIS PARTICULAR THING.

4 THE COURT: YOU MEAN NO.

5 NOW ANOTHER ASPECT OF THIS SAME THING, I TOLD YOU
6 THAT THERE ARE TWO PENALTIES, LIFE IMPRISONMENT WITHOUT THE
7 POSSIBILITY OF PAROLE OR DEATH. NOW THIS IS A DIFFERENT
8 ASPECT OF THE OTHER QUESTION I ASKED YOU.

9 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
10 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISON-
11 MENT WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS OF THE
12 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
13 TRIAL?

14 MR. REILLY: YES.

15 THE COURT: YOU WOULD AUTOMATICALLY VOTE FOR LIFE
16 IMPRISONMENT?

17 MR. REILLY: YES.

18 THE COURT: ALL RIGHT.

19 GO AHEAD.

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

21 THE COURT: ALL RIGHT.

22 MR. WAPNER: MR. REILLY, I TAKE IT THAT THIS IS A BELIEF
23 THAT'S BEEN DETERMINED OVER A LONG PERIOD OF TIME?

24 MR. REILLY: TRUE.

25 MR. WAPNER: THAT YOU HOLD VERY DEEPLY?

26 MR. REILLY: TRUE.

27 MR. WAPNER: OKAY. AND IT IS SOMETHING -- I TAKE IT
28 FROM YOUR DEMEANOR, THAT'S A MATTER THAT'S OBVIOUSLY VERY

1 SERIOUS TO YOU?

2 MR. REILLY: TRUE.

3 MR. WAPNER: AND TAKING INTO CONSIDERATION ALL OF THESE
4 THINGS, WOULD IT BE POSSIBLE FOR YOU TO PUT ASIDE THOSE
5 FEELINGS, AND NONETHELESS FOLLOW THE INSTRUCTIONS OF THE COURT
6 AND THE LAW?

7 WAS THAT NO?

8 MR. REILLY: NO.

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1 MR. WAPNER: NOTHING FURTHER.

2 THE COURT: DOES THAT MEAN THAT UNDER NO CIRCUMSTANCES
3 WOULD YOU VOTE THE DEATH PENALTY, IRRESPECTIVE OF WHAT THE
4 FACTS ARE THAT WOULD BE BROUGHT OUT ON THE PENALTY PHASE?

5 MR. REILLY: YES, SIR.

6 MR. CHIER: EXCUSE ME, YOUR HONOR. I MISUNDERSTOOD
7 THE WITNESS'S -- THE JUROR'S ANSWERS TO THE QUESTIONS. I
8 THOUGHT HE ANSWERED --

9 THE COURT: THE PREVIOUS QUESTIONS BEFORE THAT, THAT --

10 MR. CHIER: NO. TO THE PART THAT -- I THOUGHT THE
11 QUESTIONS THAT YOUR HONOR ASKED HIM, I THOUGHT THAT HE ANSWERED
12 NO TO THEM.

13 THE COURT: NO, NO. HE ANSWERED YES ON QUESTION NUMBER
14 FIVE.

15 MR. CHIER: I WOULD HAVE SOME QUESTIONS, THEN.

16 THE COURT: WELL, GO AHEAD.

17 MR. CHIER: MR. REILLY, PUTTING ASIDE YOUR SOCIAL VIEWS
18 FOR THE TIME BEING, FOR PURPOSES OF THIS DISCUSSION, ON THE
19 WAY THE DEATH PENALTY IS ADMINISTERED IN THIS COUNTRY, COULD
20 YOU IN A CASE WHERE YOU WERE SELECTED AS A JUROR, IF THE
21 CIRCUMSTANCES WARRANTED IT, COULD YOU APPLY OR RETURN A
22 DEATH PENALTY VERDICT IN WHAT YOU THOUGHT WAS A FAIR AND
23 EVEN-HANDED MANNER?

24 MR. REILLY: SAY THAT AGAIN?

25 MR. CHIER: ALL RIGHT. IF I UNDERSTAND YOU CORRECTLY,
26 YOU HAVE A CERTAIN BIAS AGAINST THE DEATH PENALTY BECAUSE
27 OF AN UNEVEN APPLICATION OF THE DEATH PENALTY IN THIS COUNTRY?

28 MR. REILLY: YES.

24A-2

1 MR. CHIER: IS THAT CORRECT?

2 MR. REILLY: THAT'S CORRECT.

3 MR. CHIER: IF YOU YOURSELF, WERE A JUROR IN A CASE
4 WHERE THE DEATH PENALTY WAS BEING REQUESTED, DO YOU THINK
5 THAT THERE ARE CIRCUMSTANCES UNDER WHICH YOU COULD, YOU YOUR-
6 SELF, COULD BE SO OFFENDED BY THE CONDUCT OF THE ACCUSED
7 PERSON, THAT AFTER LISTENING TO ALL OF THE EVIDENCE, YOU COULD
8 RETURN A VERDICT OF DEATH, IF THAT WAS ONE OF THE OPTIONS?

9 MR. REILLY: YOU SAY PUTTING ASIDE ALL MY SOCIAL --

10 MR. CHIER: YES, PUTTING THAT ASIDE.

11 MR. REILLY: NO.

12 MR. CHIER: THERE IS NO POSSIBILITY?

13 MR. REILLY: NO POSSIBILITY.

14 MR. CHIER: ZERO? I MEAN, LIKE EVEN IF IT WAS THE WORST
15 THING YOU COULD IMAGINE, YOU COULDN'T RETURN A DEATH PENALTY
16 VERDICT?

17 MR. REILLY: NO. I DON'T FEEL THAT I COULD IMPOSE THE
18 DEATH PENALTY.

19 MR. CHIER: ALL RIGHT. THANK YOU VERY MUCH FOR YOUR
20 HONESTY, SIR.

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

23 BUT THE FACT IS, THAT YOU HAVE TALKED YOURSELF
24 OUT OF BEING A JUROR IN THIS PARTICULAR CASE. DO YOU
25 UNDERSTAND THAT?

26 MR. REILLY: YES.

27 THE COURT: SO, WHAT I WILL DO, IS ASK YOU TO GO BACK
28 TO THE JURY ASSEMBLY ROOM. TELL THEM THAT YOU ARE AVAILABLE

24A-3

1 IN SOME OTHER CASE BUT NOT IN THIS PARTICULAR CASE.

2 THANK YOU EVER SO MUCH FOR YOUR FRANKNESS.

3 (PROSPECTIVE JUROR REILLY EXITED THE
4 COURTROOM.)

5 MR. WAPNER: YOUR HONOR, I JUST WANTED THE RECORD TO
6 REFLECT THAT THERE WOULD HAVE BEEN A CHALLENGE, IF THE COURT
7 HAD NOT ALREADY STEPPED IN. THERE WOULD HAVE BEEN A CHALLENGE
8 OF MR. REILLY.

9 THE COURT: WELL, I FELT THAT I HAD NO ALTERNATIVE.

10 MR. WAPNER: THAT WOULD HAVE BEEN A CHALLENGE OF
11 MR. REILLY FOR CAUSE.

12 (PROSPECTIVE JUROR ROMBERG ENTERED
13 THE COURTROOM.)

14 THE COURT: THIS IS MR. ROMBERG IS IT, SIR?

15 MR. ROMBERG: YES.

16 THE COURT: MR. ROMBERG, WHERE DO YOU LIVE?

17 MR. ROMBERG: VENICE.

18 THE COURT: ALL RIGHT. HAVE YOU READ ANYTHING AT ALL
19 IN ANY PERIODICAL OR ANY NEWSPAPER ABOUT THIS PARTICULAR CASE?

20 MR. ROMBERG: NO.

21 THE COURT: HAVE YOU DISCUSSED IT AT ALL WITH ANY OF
22 THE OTHER JURORS?

23 MR. ROMBERG: NO.

24 THE COURT: NOBODY HAS TALKED TO YOU ABOUT IT?

25 MR. ROMBERG: NO.

26 THE COURT: OKAY. YOU UNDERSTAND THAT OF COURSE, THAT
27 IF YOU ARE TO BE ONE OF THE PANEL, YOU ARE NOT TO TALK TO
28 ANYBODY OR READ ANYTHING AT ALL ABOUT THIS CASE OR HEAR

24A-4

1 ANYTHING ON TELEVISION, IS THAT RIGHT?

2 MR. ROMBERG: YES.

3 THE COURT: OKAY, SIR. YOU KNOW NOTHING ABOUT THE CASE,
4 EXCEPT AS I EXPLAINED TO YOU AT THE TIME THAT I READ THE
5 INFORMATION AND TOLD YOU ALL ABOUT IT WHEN YOU WERE HERE
6 ALL TOGETHER WITH THE OTHER JURORS, IS THAT RIGHT?

7 MR. ROMBERG: YES.

8 THE COURT: ALL RIGHT. WHAT I WILL DO IS, BRIEFLY TELL
9 YOU ABOUT THE CASE AND THEN I WILL BE IN A POSITION TO ASK
10 YOU CERTAIN QUESTIONS AND COUNSEL WILL BE, TOO.

11 YOU KNOW THAT THE CHARGE AGAINST THE DEFENDANT
12 IS MURDER IN THE FIRST DEGREE. AND IT WAS COMMITTED DURING
13 THE COURSE OF A ROBBERY.

14 MR. ROMBERG: YES, SIR.

15 THE COURT: NOW, IF A MURDER IS COMMITTED DURING THE
16 COURSE OF A ROBBERY, THAT QUALIFIES FOR A POSSIBLE DEATH
17 PENALTY.

18 BY "DEATH PENALTY" I MEAN, ONE OF TWO PENALTIES,
19 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND?

20 MR. ROMBERG: YES.

21 THE COURT: NOW, THE LEGISLATURE HAS SAID THAT NOT EVERY,
22 SINGLE CASE OF MURDER ARE YOU GOING TO HAVE THE DEATH PENALTY
23 INVOLVED. IT IS ONLY CERTAIN CASES, CERTAIN SPECIAL
24 CIRCUMSTANCES WHETHER MURDER HAS BEEN COMMITTED THAT QUALIFY
25 THAT PARTICULAR MURDER FOR THE DEATH PENALTY.

26 NOW, THERE ARE SOME INSTANCES WHERE IT IS DONE.
27 LIKE IN THIS CASE, THE MURDER DURING THE COURSE OF A ROBBERY
28 OR A MURDER DURING THE COURSE OF A BURGLARY OR MURDER DURING

1 THE COURSE OF A KIDNAPPING OR A MURDER DURING THE COURSE OF
2 A RAPE OR A MURDER DURING THE COURSE OF A CHILD MOLESTATION
3 OR MURDER DURING THE COURSE OF A TORTURE OR A MURDER WHERE
4 POISON IS ADMINISTERED AND THERE ARE 19 OF THEM WHERE THE
5 LEGISLATURE HAS SAID THEY QUALIFY FOR THE DEATH PENALTY.

6 DO YOU UNDERSTAND THAT?

7 MR. ROMBERG: YES, SIR.
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1 THE COURT: NOW, THE JURY SELECTED IN THIS CASE WILL
2 FIRST, HAVE TO DETERMINE THE GUILT OR INNOCENCE OF THE
3 DEFENDANT. OF COURSE, IF THEY DECLARE HIM TO BE INNOCENT,
4 THAT IS THE END OF THE CASE.

5 IF THEY FIND HIM TO BE GUILTY OF MURDER IN THE
6 FIRST DEGREE, THEN THEY HAVE TO DECIDE AT THE SAME TIME WHETHER
7 THAT MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY.
8 SO, THAT WILL QUALIFY IT FOR THE DEATH PENALTY. DO YOU UNDER-
9 STAND THAT?

10 MR. ROMBERG: YES, SIR.

11 THE COURT: IF THEY SAY THAT IT IS TRUE AND THEY MAKE
12 A SPECIAL FINDING, THE TRUTH OR FALSITY OF THE SPECIAL
13 CIRCUMSTANCE THAT IT WAS COMMITTED DURING THE COURSE OF A
14 ROBBERY, THEN THE JURY COMES IN AGAIN AND WE HAVE ANOTHER,
15 MINI TRIAL.

16 THIS TIME, THE TRIAL IS WHAT WE CALL THE PENALTY
17 PHASE OF THE TRIAL. THE OTHER ONE WAS THE GUILT PHASE. THE
18 SECOND IS THE PENALTY PHASE.

19 THAT HAS TO DO WITH WHAT PENALTY SHOULD BE IMPOSED
20 UPON THE DEFENDANT. NOW, BEFORE ANY PENALTY CAN BE IMPOSED
21 UPON HIM, EITHER LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH,
22 YOU HAVE GOT TO CONSIDER ALL DIFFERENT KINDS OF FACTORS WHICH
23 THE LEGISLATURE SAID YOU HAVE A RIGHT TO CONSIDER. FOR EXAMPLE,
24 THE LEGISLATURE SAYS THAT YOU HAVE A RIGHT TO CONSIDER
25 CIRCUMSTANCES WHICH ARE IN MITIGATION OF THE OFFENSE. IN
26 OTHER WORDS, THE GOOD OR FAVORABLE FACTORS ABOUT THE DEFENDANT
27 CAN BE CONSIDERED. YOU HAVE THE RIGHT TO CONSIDER A LOT OF
28 THINGS AND I WILL TELL YOU ABOUT THAT IN A MINUTE.

24B

1 YOU HAVE A RIGHT TO CONSIDER ALSO, AGGRAVATING
2 FACTORS. THE PEOPLE WILL TRY TO ESTABLISH AGGRAVATING FACTORS
3 WITH RESPECT TO THE DEFENDANT, BAD THINGS ABOUT HIM WHICH
4 WOULD COUNTERBALANCE OR WEIGH HEAVILY AGAINST HIM IN THE
5 MITIGATING CIRCUMSTANCES.

6 AND YOU HAVE THE RIGHT ALSO TO CONSIDER WHAT YOU
7 HAVE HEARD IN THE CASE ON THE GUILT PHASE, ALL OF THE
8 CIRCUMSTANCES OF THE PARTICULAR MURDER.

9 YOU WILL ALSO HAVE A RIGHT TO CONSIDER WHETHER
10 OR NOT HE HAS ANY CRIMINAL CONVICTIONS IN HIS PAST OR WHETHER
11 HE IS FREE OF ANY CONVICTIONS IN HIS PAST.

12 AND THE LEGISLATURE HAS SAID ALSO THAT YOU HAVE
13 A RIGHT TO CONSIDER HIS CHARACTER, HIS BACKGROUND, HIS HISTORY,
14 HIS MENTAL CONDITION AND HIS PHYSICAL CONDITION, AS WELL AS
15 HIS AGE.

16 WOULD YOU BE WILLING IF YOU ARE ACCEPTED AS A
17 JUROR, TO CONSIDER ALL OF THESE FACTORS IN THE EVENT THAT
18 YOU ARE A JUROR AND YOU ARE ON THE PENALTY PHASE OF THE CASE?

19 MR. ROMBERG: YES.

20 THE COURT: ALL RIGHT. NOW, REMEMBER ON THE GUILT PHASE
21 OF THE TRIAL THAT YOU DON'T CONSIDER ANYTHING ABOUT THE
22 PENALTY, NOTHING AT ALL ABOUT THAT.

23 YOU CONSIDER NO FACTORS FOR OR AGAINST, YOU JUST
24 CONSIDER THE MERITS OF THAT PARTICULAR CHARGE AND WHETHER
25 HE IS GUILTY OR NOT GUILTY BEYOND A REASONABLE DOUBT OF THOSE
26 CHARGES. ALL RIGHT? ARE YOU WILLING TO DO THAT?

27 MR. ROMBERG: YES, SIR.

28 THE COURT: ALL RIGHT. NOW, I WILL ASK YOU A SERIES

1 OF QUESTIONS WHICH WILL RELATE TO YOUR ATTITUDE TOWARD THE
2 DEATH PENALTY.

3 AND I WOULD LIKE TO HAVE YOUR ANSWER EITHER YES
4 OR NO. AND IF YOU DON'T UNDERSTAND IT, ASK ME TO REPEAT IT
5 AND I WOULD BE HAPPY TO DO SO OR EXPLAIN IT TO YOU. IS
6 EVERYTHING CLEAR SO FAR?

7 MR. ROMBERG: YES, SIR.

8 THE COURT: GOOD. ALL RIGHT. NOW, MY FIRST QUESTION
9 TO YOU IS AS FOLLOWS: DO YOU HAVE ANY OPINION REGARDING THE
10 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
11 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

12 MR. ROMBERG: NO.

13 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION REGARDING
14 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN
15 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
16 SPECIAL CIRCUMSTANCES ALLEGED?

17 MR. ROMBERG: NO.

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

22 MR. ROMBERG: NO.

23 THE COURT: NOW, THERE IS ANOTHER ASPECT OF THAT SAME
24 QUESTION.

25 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
26 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT
27 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
28 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

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MR. ROMBERG: NO.

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

MR. ROMBERG: YES.

THE COURT: ALL RIGHT.

MR. CHIER: GOOD AFTERNOON, MR. ROMBERG. MY NAME IS RICHARD CHIER. I REPRESENT MR. HUNT, THE DEFENDANT IN THIS CASE.

5 FD

1 MR. CHIER: YOU UNDERSTAND, SIR, THAT MR. HUNT IS
2 PRESUMED INNOCENT OF ALL OR ANY WRONGDOING AT THIS POINT?

3 MR. ROMBERG: YES.

4 MR. CHIER: AND THAT WE ARE -- WE HAVE TO DO THE
5 SCREENING PROCESS NOW, BECAUSE THERE IS NO OPPORTUNITY TO DO
6 IT LATER AFTER THE TRIAL STARTS; DO YOU UNDERSTAND THAT?

7 MR. ROMBERG: YES, SIR.

8 MR. CHIER: HOW WOULD YOU ANSWER THE FOLLOWING QUESTION,
9 SIR: I AM A PERSON WHO IS, A, STRONGLY IN FAVOR OF THE DEATH
10 PENALTY; B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY; C, OPPOSED
11 TO THE DEATH PENALTY; D, HAVEN'T REALLY THOUGHT ABOUT IT MUCH;
12 OR E, OTHER?

13 MR. ROMBERG: "B."

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

15 MR. ROMBERG: YEAH, UNDER THE RIGHT --

16 MR. CHIER: YOU THINK THE DEATH PENALTY IS NECESSARY,
17 GENERALLY SPEAKING?

18 MR. ROMBERG: AT TIMES, I WOULD SAY YES.

19 MR. CHIER: DO YOU SEE THE DEATH PENALTY AS A DETERRENT
20 TO CRIME?

21 MR. ROMBERG: YES.

22 MR. CHIER: DO YOU SEE THE DEATH PENALTY AS A MEANS OF
23 RIDDING SOCIETY OF UNDESIRABLES?

24 MR. ROMBERG: I WOULDN'T SAY RIDDING. I SAY, YOU KNOW,
25 IF THEY DESERVE IT, THEY -- WHATEVER -- I AM TRYING TO THINK.
26 I WOULDN'T SAY -- NO DESERVING IT. I WOULDN'T USE THAT WORD.
27 I WOULD SAY IT IS STILL A DETERRENT.

28 MR. CHIER: YOU THINK THAT THE VALUE OF THE DEATH

1 PENALTY TO SOCIETY IS MORE A DETERRENT THAN IT IS ELIMINATING
2 UNDESIRABLES?

3 MR. ROMBERG: DETER, YES.

4 MR. CHIER: IT HAS MORE DETERRENT VALUE?

5 MR. ROMBERG: RIGHT.

6 MR. CHIER: DO YOU THINK THAT THE DEATH PENALTY IS MOST
7 APPROPRIATE IN THE CASE OF INTENTIONAL MURDER?

8 THE COURT: WELL, I TOLD HIM THAT INTENTIONAL MURDER
9 IS NOT A DEATH PENALTY CASE.

10 MR. CHIER: I AM JUST TALKING ABOUT HIS FEELINGS.

11 THE COURT: WELL, THAT'S ALL RIGHT, BUT ASK A PROPER
12 QUESTION.

13 MR. CHIER: YOUR HONOR, I AM NOT ASKING --

14 THE COURT: ASK THE PROPER QUESTION.

15 MR. CHIER: I AM ASKING WHAT I BELIEVE TO BE A PROPER
16 QUESTION.

17 THE COURT: I WILL SUSTAIN THE OBJECTION.

18 YOU DON'T HAVE TO ANSWER THAT THEN.

19 MR. CHIER: COULD WE HAVE A HEARING AT THE SIDE BAR?

20 THE COURT: NO, WE DON'T NEED TO. WE HAVE GONE THROUGH
21 THIS ANY NUMBER OF TIMES. JUST PROCEED AS I HAVE TOLD YOU.

22 MR. CHIER: I WOULD LIKE TO --

23 THE COURT: I DON'T WANT TO.

24 MR. CHIER: YOUR HONOR, I AM NOT ABLE --

25 THE COURT: I TOLD YOU --

26 MR. CHIER: I AM NOT ABLE TO GO FORWARD.

27 THE COURT: GO FORWARD IF YOU WANT TO. IF YOU DON'T
28 WANT TO ASK ANY MORE QUESTIONS, YOU DON'T HAVE TO.

1 MR. CHIER: YOU HAVE ESSENTIALLY BLOCKED EVERY INQUIRY.

2 THE COURT: YOU JUST GO AHEAD. ASK THE PROPER QUESTION,
3 WILL YOU PLEASE? I TOLD YOU --

4 MR. CHIER: I AM TRYING TO --

5 THE COURT: I HAVE INDICATED TO THIS JUROR, YOU HAVE
6 HEARD ME BEFORE; I SAID IT IS NOT EVERY INTENTIONAL MURDER
7 THAT CALLS FOR A DEATH PENALTY; I TOLD YOU THAT?

8 MR. ROMBERG: YES, SIR.

9 THE COURT: IT IS ONLY WHERE THERE ARE CERTAIN
10 CIRCUMSTANCES CONNECTED WITH IT, RIGHT? IN THE COURSE OF A
11 ROBBERY, A RAPE OR A KIDNAPPING; YOU REMEMBER THAT, DON'T
12 YOU?

13 MR. ROMBERG: YES.

14 THE COURT: ALL RIGHT.

15 MR. CHIER: DO YOU BELIEVE IN AN EYE FOR AN EYE, MR.
16 ROMBERG?

17 MR. ROMBERG: I DON'T KNOW -- TO ME -- THAT'S A BIBLICAL
18 TERM. NO, I DON'T BELIEVE IN AN EYE FOR AN EYE, NOT ME;
19 WHATEVER THE CIRCUMSTANCES, INDIVIDUALLY.

20 MR. CHIER: IF YOU WERE SELECTED AS A JUROR IN THIS CASE,
21 YOU WOULD, OF COURSE, FOLLOW THE INSTRUCTIONS GIVEN TO YOU
22 BY THE COURT; CORRECT?

23 MR. ROMBERG: YES.

24 MR. CHIER: AND THE INSTRUCTIONS ARE THAT YOU MAY, MAY
25 CONSIDER CERTAIN THINGS IN DETERMINING THE PUNISHMENT, IF YOU
26 REACH THAT POINT.

27 MR. ROMBERG: YES.

28 MR. CHIER: RIGHT. I MEAN, YOU UNDERSTOOD, AND THE

1 JUDGE SAID, YOU MAY CONSIDER, FOR EXAMPLE, THE DEFENDANT'S
2 AGE.

3 MR. ROMBERG: YES.

4 MR. WAPNER: YOUR HONOR, I HATE TO BE PICKY, BUT I THINK
5 THAT MAYBE UNINTENTIONALLY THAT'S A SLIGHT MISSTATEMENT OF
6 THE LAW BECAUSE THE INSTRUCTIONS, AS I UNDERSTAND THEM, TELL
7 THE JURORS THAT THEY SHALL CONSIDER AND TAKE INTO ACCOUNT AND
8 GUIDED BY THE FOLLOWING FACTORS, IF APPLICABLE, AND THEN IT
9 LISTS SEVERAL.

10 THE COURT: IN THE PROCEEDINGS ON THE QUESTION OF
11 PENALTY, EVDIENCE MAY BE PRESENTED BY BOTH THE PEOPLE AND THE
12 DEFENDANT.

13 MR. WAPNER: IT SAYS EVIDENCE -- WELL, I AM JUST QUOTING
14 FROM CALJIC 8.84.1. I WILL BE HAPPY TO PROVIDE COUNSEL A COPY.
15 I AM NOT SUGGESTING HE DID ANYTHING INTENTIONALLY INCORRECT.

16 MR. CHIER: I WILL REPHRASE THE QUESTION, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 I AM SORRY. WHAT CALJIC INSTRUCTION IS THAT?

19 MR. WAPNER: 8.84.1 WHICH IS IN THE POCKET PART.

20 MR. CHIER: THE JUDGE WILL INSTRUCT YOU --

21 THE COURT: WAIT A MINUTE. WHAT IS IT?

22 MR. WAPNER: 8.84.1.

23 THE COURT: 8. --

24 MR. WAPNER: --.84.1.

25 THE COURT: 8.84.1; IS THAT IT?

26 OH, I THINK I GOT IT NOW. WAIT A MINUTE.

27 MR. WAPNER: IT SHOULD BE ON PAGE 127 OF THE POCKET PART
28 AT THE BOTTOM.

1 THE COURT: PAGE WHAT AGAIN?

2 MR. WAPNER: IT SHOULD BE ON PAGE 127 OF THE POCKET
3 PART.

4 THE COURT: YES.

5 I THINK WHAT I WILL DO IS HEREAFTER INSTEAD OF
6 READING THE STATUTE ITSELF, I WILL READ THAT PARTICULAR
7 INSTRUCTION. IT SAYS YOU "SHALL CONSIDER."

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1 I THINK COUNSEL IS RIGHT. IT SAYS "YOU SHALL
2 CONSIDER" ALL OF THE EVIDENCE WHICH HAS BEEN RECEIVED DURING
3 ANY PART OF THE TRIAL, AND "YOU SHALL CONSIDER AND TAKE INTO
4 ACCOUNT AND BE GUIDED BY THE FOLLOWING FACTORS, IF APPLICABLE."

5 MR. CHIER: I AM NOT ARGUING, JUDGE.

6 THE COURT: GO AHEAD.

7 MR. CHIER: MR. ROMBERG, DO YOU HAVE IN MIND THE JUDGE'S
8 ADMONITION OR INSTRUCTION THAT YOU SHALL CONSIDER CERTAIN
9 THINGS?

10 MR. ROMBERG: YES.

11 MR. CHIER: DOES THE WORD "SHALL" -- IS THAT MANDATORY?

12 THE COURT: WHAT ARE YOU ASKING HIM THAT FOR?

13 MR. CHIER: WELL --

14 THE COURT: YOU DON'T ASK HIM HIS OPINION AS TO THE LAW,
15 WHETHER IT IS PERMISSIBLE, WHETHER IT IS MANDATORY.

16 MR. CHIER: I AM ASKING FOR HIS UNDERSTANDING.

17 THE COURT: WELL, NO. PLEASE JUST GO ON. I WILL TELL
18 HIM IF IT IS MANDATORY. ALL RIGHT.

19 MR. CHIER: WHAT DOES THE WORD "CONSIDER" MEAN, MR.
20 ROMBERG, IN THE CONTEXT OF YOUR ANSWER, SIR? WHEN THE --

21 MR. ROMBERG: CONSIDER ALL THE FACTORS.

22 MR. CHIER: YES. OKAY. WHAT DO YOU MEAN BY CONSIDER,
23 TO LOOK AT IT?

24 MR. ROMBERG: ANALYZE IT.

25 MR. CHIER: PARDON?

26 MR. ROMBERG: ANALYZE IT.

27 MR. CHIER: DO YOU THINK THAT A FACTOR SUCH AS THE
28 DEFENDANT'S AGE OUGHT TO MAKE A DIFFERENCE WHETHER A DEFENDANT

1 GETS LIFE OR DEATH?

2 MR. ROMBERG: NO.

3 MR. CHIER: HUH?

4 THE COURT: YOU WILL BE INSTRUCTED THAT THE AGE OF THE
5 DEFENDANT AT THE TIME OF THE CRIME IS ONE OF THE FACTORS THAT
6 YOU SHALL CONSIDER; YOU WILL CONSIDER THAT, WOULD YOU?

7 MR. ROMBERG: AGE?

8 THE COURT: YES. SUPPOSE I TELL YOU THAT'S ONE OF THE
9 FACTORS YOU SHALL CONSIDER; YOU WOULD CONSIDER IT THEN, WOULD
10 YOU NOT?

11 MR. ROMBERG: (NODS HEAD UP AND DOWN.)

12 MR. CHIER: DO YOU BELIEVE A PERSON'S AGE OUGHT TO MAKE
13 ANY DIFFERENCE WHETHER HE LIVES OR DIES, HAVING COMMITTED A
14 FIRST DEGREE MURDER?

15 MR. ROMBERG: NO.

16 MR. CHIER: DO YOU BELIEVE -- WE ARE TALKING ABOUT --
17 ABOUT MORALITY HERE, NOT ABOUT THE INSTRUCTIONS; YOU UNDER-
18 STAND THAT?

19 MR. ROMBERG: (NODS HEAD UP AND DOWN.)

20 MR. CHIER: ALL RIGHT. AND YOUR PERSONAL FEELINGS, NOT
21 ABOUT YOUR VIEW OF THE LAW. OKAY. YOU THINK THAT IN A
22 MORAL SENSE IT OUGHT TO MAKE A DIFFERENCE IN DETERMINING A
23 MURDERER'S PUNISHMENT WHETHER HE HAS LIVED A GOOD LIFE OR NOT
24 UP TO THE TIME OF THE COMMISSION OF THE OFFENSE?

25 MR. ROMBERG: NO.

26 MR. CHIER: OKAY. DO YOU THINK THAT -- IN CONSIDERING
27 WHETHER AN INTENTIONAL MURDERER OUGHT TO BE IMPRISONED FOR
28 LIFE OR CAN BE EXECUTED, DO YOU THINK IT OUGHT TO MAKE ANY

1 DIFFERENCE WHETHER HE HAD A GOOD OR BAD CHILDHOOD?

2 MR. ROMBERG: NO.

3 MR. CHIER: DO YOU THINK THE BOTTOM LINE IS WHETHER THE
4 PERSON ACTUALLY DID THE THING INTENTIONALLY AND DELIBERATELY
5 AND COLD-BLOODEDLY?

6 MR. ROMBERG: I SAY YES, BASICALLY, YES.

7 MR. CHIER: AND IF YOU ARE CONVINCED THAT THE CIRCUM-
8 STANCES POINT TOWARD A DELIBERATE MURDER, MOTIVATED BY GREED,
9 THAT THE ONLY RIGHT THING TO DO IS TO RETURN THE DEATH PENALTY?

10 MR. ROMBERG: YES.

11 THE COURT: DID YOU OBJECT TO THAT QUESTION BEFORE?

12 MR. WAPNER: I DID OBJECT TO IT BEFORE AS ASSUMING --
13 WELL FIRST OF ALL, ASKING HIM TO PREJUDGE THE EVIDENCE.

14 THE COURT: I WILL SUSTAIN THE OBJECTION.

15 MR. WAPNER: ALSO NOT CONTAINING ENOUGH FACTS TO BE A
16 PROPER QUESTION.

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26A-1

1 MR. CHIER: THAT IS THE CENTRAL ISSUE IN THIS HEARING,
2 YOUR HONOR.

3 THE COURT: LET'S GO ON, PLEASE.

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

5 THE COURT: YES.

6 (BRIEF PAUSE.)

7 MR. CHIER: WELL YOUR HONOR, GIVEN THE LIMITS OF THE
8 EXAMINATION, I AM COMPELLED TO PASS FOR CAUSE.

9 THE COURT: I DIDN'T GIVE YOU ANY LIMITS. ASK THE
10 QUESTIONS. I WILL PASS ON THEM AS YOU ASK THE QUESTIONS.

11 MR. CHIER: I ASKED THE QUESTION WHICH I THOUGHT WAS
12 THE MOST RELEVANT.

13 THE COURT: I WILL PASS UPON EACH QUESTION THAT YOU
14 ASK. DON'T SAY THAT I AM LIMITING YOU.

15 MR. CHIER: WELL, IF I CAN'T HAVE AN ANSWER TO THAT
16 QUESTION, I CAN'T CONTINUE MY QUESTIONING, YOUR HONOR.

17 THE COURT: YOU CONTINUE WITH OTHER QUESTIONS.

18 MR. WAPNER: MR. ROMBERG, I AM FRED WAPNER. I AM THE
19 DEPUTY DISTRICT ATTORNEY PROSECUTING THE CASE. YOU SAID THAT
20 YOU WERE SOMEWHAT IN FAVOR OF THE DEATH PENALTY, IS THAT RIGHT?

21 MR. ROMBERG: YES.

22 MR. WAPNER: AND HAD YOU GIVEN MUCH THOUGHT TO THE ISSUE
23 OF THE DEATH PENALTY ONE WAY OR ANOTHER BEFORE YOU WERE CALLED
24 TO BE A JUROR IN THIS CASE?

25 MR. ROMBERG: SOMEWHAT, YES.

26 MR. WAPNER: AND ARE YOUR FEELINGS ABOUT THE DEATH PENALTY
27 BASED ON SOME RELIGIOUS REASON OR SOME MORAL REASON OR SOME
28 PHILOSOPHICAL REASON OR SOME OTHER REASON?

26A-2

1 MR. ROMBERG: BASICALLY, A MORAL REASON I WOULD SAY.
2 YES, JUST WHAT IS RIGHT AND WRONG IN MY MIND AND THE CRIME.

3 MR. WAPNER: WHEN YOU SAY, "WHAT IS RIGHT AND WRONG
4 IN YOUR MIND," AND ALSO "THE CRIME" CAN YOU EXPLAIN THAT A
5 LITTLE MORE TO ME?

6 MR. ROMBERG: WELL, THE CRIME AND THE CIRCUMSTANCES,
7 YOU KNOW, YOU KNOW. I BELIEVE THAT YOU KNOW, A PERSON COULD
8 HAVE THE DEATH PENALTY.

9 MR. WAPNER: DID YOU UNDERSTAND THE JUDGE WHEN HE TOLD
10 YOU THAT YOU WOULD NEVER EVEN GET TO THE QUESTION OF THE PENALTY
11 UNLESS YOU ALREADY DECIDED THAT THERE WAS A MURDER DURING
12 THE COURSE OF A ROBBERY AND THE MURDER WAS DONE WITH INTENT
13 TO KILL?

14 MR. ROMBERG: YES, SIR.

15 MR. WAPNER: DO YOU UNDERSTAND THAT?

16 MR. ROMBERG: YES.

17 MR. WAPNER: OKAY. SO, IF YOU GET TO THE QUESTION OF
18 THE DEATH PENALTY, YOU HAVE ALREADY DECIDED THAT THERE WAS
19 AN INTENTIONAL MURDER IN THE COURSE OF A ROBBERY. DO YOU
20 UNDERSTAND THAT?

21 MR. ROMBERG: YES.

22 MR. WAPNER: UNDER THOSE CIRCUMSTANCES, HAVE YOU ALREADY
23 MADE UP YOUR MIND AS TO WHAT PUNISHMENT YOU WERE GOING TO
24 GIVE?

25 MR. ROMBERG: NO.

26 MR. WAPNER: DO YOU UNDERSTAND THAT IF YOU GET TO THAT
27 PHASE OF THE TRIAL, THAT WHEN YOU ARE MAKING A DECISION ON
28 THE PROPER PUNISHMENT, YOU HAVE TO RENDER YOUR OWN, INDIVIDUAL

6A-3
1 VERDICT?

2 MR. ROMBERG: YES, SIR.

3 MR. WAPNER: ARE YOU THE KIND OF A PERSON WHO IS CAPABLE
4 OF RENDERING A VERDICT OF LIFE WITHOUT POSSIBILITY OF PAROLE,
5 IF YOU THINK THAT IS THE RIGHT VERDICT?

6 MR. ROMBERG: YES, SIR.

7 MR. WAPNER: ARE YOU THE KIND OF A PERSON WHO IS CAPABLE
8 OF RENDERING A VERDICT OF DEATH, IF YOU THINK THAT IS THE
9 PROPER VERDICT?

10 MR. ROMBERG: YES.

11 MR. WAPNER: COULD YOU GO INTO THE JURY ROOM AND VOTE
12 FOR A VERDICT OF DEATH AND COME OUT INTO THE COURTROOM AND
13 LOOK THE DEFENDANT IN THE EYE AND SAY, "MY VERDICT IS THAT
14 YOU SHOULD DIE"?

15 MR. ROMBERG: YES.

16 MR. WAPNER: WHEN MR. CHIER ASKED YOU A QUESTION ABOUT
17 THE AGE OF THE PERSON AND YOU SAID THAT YOU WOULDN'T CONSIDER
18 IT, WHAT DID YOU MEAN BY THAT?

19 MR. CHIER: THAT MISSTATES MY QUESTION.

20 THE COURT: WELL, ASK HIM THE QUESTION ALL OVER AGAIN.

21 MR. WAPNER: I WILL.

22 THE COURT: SUPPOSE YOU WERE INSTRUCTED BY THE COURT
23 THAT YOU SHOULD CONSIDER THE AGE OF THE DEFENDANT. WOULD
24 YOU DO SO OR WOULD YOU DISREGARD THAT?

25 MR. ROMBERG: IF THE COURT ASKED ME TO CONSIDER THE AGE?

26 THE COURT: YES. IF I TELL YOU THAT IT WAS ONE OF THE
27 FACTORS YOU MAY CONSIDER, WOULD YOU FOLLOW THAT INSTRUCTION
28 AND CONSIDER IT? OR, WOULD YOU GIVE IT NO WEIGHT OR A LITTLE

26A-4

1 WEIGHT OR A LOT OF WEIGHT? WOULD YOU CONSIDER IT? WOULDN'T
2 YOU?

3 MR. ROMBERG: YES.

4 THE COURT: ALL RIGHT.

5 MR. WAPNER: AND YOU UNDERSTAND THAT "CONSIDER IT" DOESN'T
6 MEAN JUST THINK ABOUT IT. IT ISN'T THAT IT GOES IN AND OUT
7 OF YOUR HEAD BUT THAT YOU WILL GIVE IT SOME SERIOUS THOUGHT?

8 MR. ROMBERG: YES.

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1 MR. WAPNER: IS THAT WHAT THE WORD "CONSIDER" MEANS TO
2 YOU?

3 MR. ROMBERG: YES.

4 MR. CHIER: OBJECTION. YOU WOULDN'T LET ME ASK THE
5 WITNESS THAT AND COUNSEL IS ASKING HIM NOW.

6 THE COURT: YOU ASKED HIM SPECIFICALLY WHAT HE MEANT
7 BY THE WORD "CONSIDER". HE TOLD YOU. THERE WAS NO OBJECTION
8 TO THAT NOR DID I OBJECT TO IT.

9 MR. CHIER: WELL, I THINK THE QUESTION -- I OUGHT TO
10 BE ABLE TO ASK THE QUESTION.

11 THE COURT: WELL, YOU DID ASK AND HE ANSWERED IT.

12 DO YOU REMEMBER COUNSEL ASKING YOU WHAT YOU MEANT
13 BY "CONSIDER"? DO YOU REMEMBER THAT? YOU SAID ANALYZE. ISN'T
14 THAT WHAT YOU SAID?

15 MR. ROMBERG: YES.

16 THE COURT: COUNSEL APPARENTLY DIDN'T HEAR YOU.

17 MR. WAPNER: IF THE JUDGE TELLS YOU TO CONSIDER ALL OF
18 THOSE FACTORS, WILL YOU DO THAT?

19 MR. ROMBERG: YES.

20 MR. WAPNER: HE IS NOT TELLING YOU WHICH ONES YOU SHOULD
21 FIND TO BE IMPORTANT OR NOT IMPORTANT. DO YOU UNDERSTAND THAT?

22 MR. ROMBERG: YES.

23 MR. WAPNER: HE IS NOT TELLING YOU THAT YOU HAVE TO MAKE
24 ANY DECISION ONE WAY OR ANOTHER BASED ON THOSE FACTORS. IT
25 IS JUST THAT YOU HAVE TO THINK ABOUT THEM. DO YOU UNDERSTAND
26 THAT?

27 MR. ROMBERG: YES.

28 MR. WAPNER: CAN YOU DO THAT?

1 MR. ROMBERG: I THINK SO, YES.

2 MR. WAPNER: AS YOU SIT THERE NOW, ARE YOU PREDISPOSED
3 TO VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE?

4 MR. ROMBERG: NO.

5 MR WAPNER: AS YOU SIT THERE NOW, ARE YOU PREDISPOSED
6 TO VOTE FOR A VERDICT OF DEATH?

7 MR. ROMBERG: NO.

8 MR. WAPNER: DO YOU UNDERSTAND THAT THERE CAN BE ALL
9 KINDS OF DIFFERENT FACTUAL SCENARIOS WHERE THERE MIGHT BE
10 MURDERS IN THE COURSE OF A ROBBERY COMMITTED BY ALL KINDS OF
11 DIFFERENT PEOPLE FROM DIFFERENT BACKGROUNDS AND DIFFERENT AGES?

12 MR. ROMBERG: YES.

13 MR. WAPNER: AND ASSUMING THAT THERE WERE ALL THOSE
14 VARIOUS SCENARIOS AND THAT YOU WERE A JUROR ON EACH, INDIVIDUAL
15 CASE, WOULD YOU DECIDE EACH, INDIVIDUAL SITUATION ON ITS
16 OWN FACTS?

17 MR. ROMBERG: YES.

18 MR. WAPNER: CAN YOU IMAGINE THAT THERE ARE SOME CASES
19 WHERE THERE ARE MURDERS IN THE COURSE OF A ROBBERY THAT MIGHT
20 WARRANT THE DEATH PENALTY AND OTHERS THAT MIGHT WARRANT LIFE
21 WITHOUT POSSIBILITY OF PAROLE?

22 MR. ROMBERG: YES.

23 MR. WAPNER: ARE YOU WILLING TO CONSIDER THIS CASE, BASED
24 ON THE FACTS OF THE CASE?

25 MR. ROMBERG: YES.

26 MR. WAPNER: AND IF THE FACTS OF THIS CASE -- IF IN
27 CONSIDERING THE CIRCUMSTANCES OF THE OFFENSE AND ALL OF THE
28 GOOD THINGS ABOUT THE DEFENDANT AND THE BAD THINGS ABOUT THE

1 DEFENDANT IN YOUR MIND, IF YOU DECIDED ON A VERDICT OF LIFE
2 WITHOUT POSSIBILITY OF PAROLE, COULD YOU RENDER THAT VERDICT?

3 MR. ROMBERG: YES.

4 MR. WAPNER: AND IF ALL OF THE FACTS OF THIS CASE,
5 INCLUDING THE GOOD THINGS ABOUT THE DEFENDANT AND THE BAD
6 THINGS WOULD WARRANT A DEATH VERDICT, CAN YOU BRING IN THAT
7 VERDICT?

8 MR. ROMBERG: YES.

9 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
10 MORAL OR PHILOSOPHICAL CONVICTIONS THAT PREVENT YOU FROM
11 RENDERING A VERDICT ONE WAY OR THE OTHER?

12 MR. ROMBERG: NO.

13 MR. WAPNER: PASS FOR CAUSE.

14 THE COURT: ALL RIGHT.

15 MR. WAPNER: YOUR HONOR, MAY I SUGGEST BEFORE WE LET
16 MR. ROMBERG GO, IF THERE IS ANY SPECIFIC AREA OF INQUIRY THAT
17 COUNSEL FEELS THAT HE WAS PRECLUDED FROM ASKING, THAT HE STATE
18 IT FOR THE RECORD?

19 THE COURT: ALL RIGHT. WOULD YOU WAIT OUTSIDE JUST A
20 MOMENT, MR. ROMBERG?

21 (PROSPECTIVE JUROR ROMBERG EXITS THE
22 COURTROOM.)

23 THE COURT: ALL RIGHT. PROSPECTIVE JUROR HAS LEFT THE
24 ROOM.

25 MR. CHIER: I SUBMIT THAT THE COURT HAS EFFECTIVELY
26 MUZZLED ME AND INTERFERED IN EVERY, SINGLE CASE WITH MY VOIR
27 DIRE OF --

28 THE COURT: THAT IS ALL I WANT TO HEAR FROM YOU. CALL

1 THE PROSPECTIVE JUROR BACK, PLEASE. WE WANT TO KNOW IN THIS
2 PARTIUCLAR CASE WHAT IT IS.

3 MR. CHIER: I AM ABOUT TO SAY THAT --

4 THE COURT: IN THIS PARTICULAR CASE, NOT IN EVERY
5 SINGLE --

6 MR. CHIER: THERE IS A PATTERN THAT HAS EMERGED
7 THROUGHOUT --

8 THE COURT: I WANT TO KNOW IN THIS PARTICULAR CASE WHAT
9 IT IS THAT YOU WANT TO ASK THE JUROR AND I DIDN'T PERMIT YOU
10 TO.

11 MR. CHIER: EVERY, SINGLE TIME I EMBARK ON --

12 THE COURT: I ASKED YOU SPECIFICALLY WHAT YOU WANTED TO
13 ASK HIM THAT I PRECLUDED YOU FROM.

14 MR. CHIER: DO YOU WANT A ONE-WORD ANSWER? WHAT IS IT
15 THAT YOU WANT ME TO --

16 THE COURT: JUST THAT. JUST WHAT QUESTIONS I PRECLUDED
17 YOU FROM ASKING.

18 MR. CHIER: WHEN I BEGAN TO ASK THE GENTLEMAN ABOUT HIS
19 FEELINGS TOWARD THE DEATH PENALTY IN A MORAL SENSE, THE WORD
20 "OUGHT" IS NOT A PREJUDGEMENT OF ANY EVIDENCE. THE WORD
21 "OUGHT" IMPLIES A MORAL CONDITION.

22 YOUR HONOR IMMEDIATELY TAKES THE WITNESS AWAY FROM
23 ME AND BEGINS LECTURING HIM ON THE LAW.

24 AND THEN YOU EXTRACT FROM THE WITNESS AN AGREEMENT
25 TO FOLLOW THE LAW. THE ISSUE YOUR HONOR, IS NOT THE WILLINGNESS
26 OF THE PROSPECTIVE JUROR TO FOLLOW YOUR HONOR'S INSTRUCTIONS.
27 THE ISSUE IS HIS ATTITUDE TOWARD DEATH.

28 THAT IS A SPECIFIC AND YET, FAR RANGING INQUIRY

1 THAT TOUCHES UPON A LOT OF DIFFERENT THINGS.

2 EVERY TIME I WANT TO TRY TO REALLY UNCOVER WHAT
3 A WITNESS' FEELINGS ARE, AS OPPOSED TO HIS LAW-ABIDINGNESS
4 (SIC) YOUR HONOR INTERFERES. YOU WON'T LET ME ASK THE --

5 THE COURT: YOU HAVE ASKED A LOT OF TRICKY, LOADED
6 QUESTIONS WHICH ARE CLEARLY IMPROPER. YOU ARE NOT SEEKING
7 TO DISCOVER THE TRUTH.

8 WHAT YOU WANT TO DO IS FORCE HIM BY THE WAY YOU
9 ASK THE QUESTIONS TO MAKE AN ADMISSION OF SOME KIND WHICH YOU
10 CAN USE AS THE BASIS FOR SAYING THAT HE DOES NOT QUALIFY AS
11 A TRIAL JUROR.

12 I AM WARNING YOU NOT TO DO THAT. I WARNED YOU
13 BEFORE NOT TO DO THAT. I KNOW WHAT YOUR PURPOSE IS.

14 DO YOU THINK I AM AN IDIOT? DO YOU THINK I DON'T
15 KNOW WHAT YOU ARE UP TO. I KNOW WHAT YOU ARE UP TO. I KNOW
16 YOU ARE TRYING --

17 MR. CHIER: WHAT DO YOU THINK I AM UP TO?

18 THE COURT: YOU ASK TRICKY QUESTIONS. YOU ASK LOADED
19 QUESTIONS YOU CONFUSE THE BASIS FOR SEEING IF HE IS NOT
20 QUALIFIED TO BE A TRIAL JUROR IN THIS CASE.

21 MR. CHIER: I AM ENTITLED TO USE MY SKILL AND ASK --

22 THE COURT: YOU ARE NOT USING SKILL. YOU ARE TRYING
23 TO TRICK THE JUROR INTO MAKING SOME KIND OF STATEMENT BY YOUR
24 AMBIGUOUS QUESTIONS.

25 CALL HIM IN, WILL YOU PLEASE?

26 MR. CHIER: I AM TRYING TO EXPOSE DEATH PRONENESS. I
27 AM ENTITLED TO USE --

28 THE COURT: YOU MAY STEP DOWN NOW.

1 MR. CHIER: BUT YOUR HONOR, I --

2 THE COURT: SIT DOWN.

3 MR. CHIER: BUT YOUR HONOR, I --

4 THE COURT: YOUR COLLEAGUE DOESN'T ACT THE WAY YOU DO.

5 THAT IS WHY I PREFER TO HAVE HIM ASK THE QUESTIONS INSTEAD

6 OF YOU.

7 MR. CHIER: I KNOW THAT. WE ALL KNOW THAT. IT IS VERY

8 CLEAR TO ALL OF US.

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1 (PROSPECTIVE JUROR ROMBERG ENTERED
2 THE COURTROOM.)

3 THE COURT: MR. ROMBERG, I AM GOING TO ASK YOU TO COME
4 BACK. YOU HAVE BEEN QUALIFIED AS A TRIAL JUROR IN THIS CASE.
5 I WILL ASK YOU TO COME BACK TO THE JURY ASSEMBLY ROOM ON
6 DECEMBER 3RD. HOPEFULLY WE WILL FINISH WITH THE REST OF THE
7 JURORS IN ANSWERING THE SAME QUESTIONS YOU HAVE BEEN ASKED.

8 DECEMBER 3RD AT 10:30 A.M. 10:30 A.M.

9 IF BY ANY CHANCE WE HAVEN'T QUITE COMPLETED IT,
10 WE HAVE GOT YOUR TELEPHONE NUMBER, AND WE WILL CALL YOU AND
11 ASK YOU TO COME IN SOME OTHER DAY. ALL RIGHT.

12 MR. ROMBERG: OKAY.

13 THE COURT: IN THE MEANTIME, DON'T READ ANYTHING ABOUT
14 THE CASE, IF YOU SEE ANYTHING IN THE NEWSPAPER, OR HEAR
15 ANYTHING ON THE RADIO OR TELEVISION. ALL RIGHT? DON'T DISCUSS
16 IT WITH ANY THIRD PERSONS.

17 MR. ROMBERG: ALL RIGHT.

18 THE COURT: THANK YOU.

19 (PROSPECTIVE JUROR ROMBERG EXITED
20 THE COURTROOM.)

21 MR. WAPNER: ARE WE GOING TO CONTINUE OR BREAK?

22 THE COURT: WE ARE GOING TO CONTINUE. WE HAVE GOT THREE
23 MORE.

24 THE CLERK: THE LAST THREE WERE ASKED TO COME BACK.

25 (PROSPECTIVE JUROR SATTERLEE ENTERED
26 THE COURTROOM.)

27 THE COURT: MR. SATTERLEE, IS IT?

28 MR. SATTERLEE: YES, THAT'S RIGHT.

1 THE COURT: WHERE DO YOU LIVE, MR. SATTERLEE?

2 MR. SATTERLEE: SANTA MONICA, PIER AVENUE.

3 THE COURT: YES. HAVE YOU READ ANYTHING AT ALL ABOUT
4 THIS CASE, MR. SATTERLEE?

5 MR. SATTERLEE: I HAVEN'T READ ANYTHING, NO. I SAW
6 A LITTLE BIT ON THE ELECTION NIGHT ON THE NEWS. CHANNEL 7.

7 THE COURT: YES? WHAT DID YOU HEAR?

8 MR. SATTERLEE: I HEARD IT WAS A MURDER TRIAL AND
9 SOMETHING ABOUT A NOTEBOOK.

10 THE COURT: SOMETHING ABOUT A NOTEBOOK?

11 MR. SATTERLEE: CYNTHIA ALLISON WAS THE REPORTER.

12 THE COURT: YES. OTHER THAN THAT DID YOU REMEMBER
13 ANYTHING FURTHER ABOUT WHAT SHE SAID?

14 MR. SATTERLEE: NO. THAT -- SOMETHING ABOUT A BOY'S
15 CLUB, I THINK.

16 THE COURT: BILLIONAIRE BOYS CLUB?

17 MR. SATTERLEE: IT DIDN'T MAKE SENSE TO ME.

18 THE COURT: WHATEVER YOU READ, WOULD THAT INFLUENCE
19 YOU IN ANY WAY AS A JUROR, IF YOU WERE SELECTED AS A JUROR
20 IN THIS CASE?

21 MR. SATTERLEE: NO, IT WOULDN'T.

22 THE COURT: YOU WOULD BE GUIDED BY THE EVIDENCE IN THE
23 CASE, WOULD YOU NOT?

24 MR. SATTERLEE: YES.

25 THE COURT: ALL RIGHT. I WILL TELL YOU NOW WHAT THIS
26 CASE IS ABOUT. ALL RIGHT? SO YOU LISTEN TO ME.

27 MR. SATTERLEE: GOOD.

28 THE COURT: NOT THE RADIO OR TELEVISION.

27-3

1 YOU HEARD WHEN YOU WERE ALL ASSEMBLED HERE THAT
2 THIS WAS A CASE WHERE THE DEFENDANT HAS BEEN ACCUSED OF
3 COMMITTING A MURDER, AND IN THE COURSE OF A ROBBERY; THAT
4 THAT MURDER WAS COMMITTED, DELIBERATE MURDER WAS COMMITTED
5 IN THE COURSE OF A ROBBERY.

6 WHAT IS SIGNIFICANT ABOUT THE FACT THAT IT WAS
7 COMMITTED DURING THE COURSE OF A ROBBERY IS THAT COMMITTED
8 IN THE COURSE OF A ROBBERY QUALIFIES THE CASE FOR A DEATH
9 PENALTY, IF IT IS APPROPRIATE, AND THE JURY WOULD HAVE TO
10 DETERMINE THAT. SO THAT IF THE JURY FINDS THE DEFENDANT GUILTY
11 OF MURDER IN THE FIRST DEGREE AND FINDS THAT IT WAS BY A SPECIAL
12 FINDING, THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,
13 THAT QUALIFIES THE CASE FOR THE DEATH PENALTY. THAT'S WHAT
14 WE ARE INQUIRING ABOUT, YOUR ATTITUDE ABOUT THE DEATH PENALTY.

15 YOU KNOW, THE LEGISLATURE -- IT IS NOT EVERY
16 DELIBERATE MURDER THAT QUALIFIES FOR THE DEATH PENALTY. IT
17 IS ONLY WHEN A MURDER IS COMMITTED UNDER CERTAIN SPECIAL
18 CIRCUMSTANCES LIKE A ROBBERY, A BURGLARY, A RAPE, A KIDNAPPING,
19 BY POISON, OR BY TORTURE, OR MULTIPLE MURDER. THOSE ARE
20 SPECIAL CIRCUMSTANCES WHERE THE JURY HAS TO DETERMINE THE
21 PENALTY, IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST
22 DEGREE WITH THE SPECIAL CIRCUMSTANCE; AND THE PENALTY IS EITHER
23 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

24 NOW THE FIRST THING THAT THE JURY HAS TO DETERMINE
25 IS WHETHER OR NOT THE DEFENDANT COMMITTED THE CRIME OF MURDER,
26 AND WHETHER IT WAS IN THE COURSE OF A ROBBERY. IF THEY SAID,
27 YES, IT WAS IN THE COURSE OF A ROBBERY, THEN THAT SAME JURY
28 HEARS OTHER EVIDENCE, OTHER EVIDENCE ON WHAT WE CALL THE PENALTY

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1 PHASE.

2 NOW ON THE PENALTY PHASE THE JURY WILL CONSIDER
3 A NUMBER OF WHAT WE CALL OTHER FACTORS, WHETHER OR NOT THE
4 DEATH PENALTY OR LIFE IMPRISONMENT SHOULD BE IMPOSED. AMONG
5 THE FACTORS TO BE CONSIDERED IS THE CRIME ITSELF OR THE FACTS
6 IN CONNECTION WITH THE CRIME, AGGRAVATING CIRCUMSTANCES;
7 FOR EXAMPLE, THINGS WHICH AGGRAVATE THE OFFENSE; MITIGATING
8 CIRCUMSTANCES, THINGS WHICH ARE FAVORABLE TO THE DEFENDANT;
9 WHETHER OR NOT HE HAS ANY PREVIOUS CRIMINAL RECORD, AND IF
10 HE HASN'T, THAT'S A FACTOR TO BE CONSIDERED; WHETHER OR NOT --
11 AND ALSO, THE DEFENDANT'S CHARACTER, HIS BACKGROUND, HIS
12 HISTORY, HIS MENTAL CONDITION AND PHYSICAL CONDITION. ALL
13 OF THESE FACTORS SHALL BE CONSIDERED BY THE JURY IN THE PENALTY
14 PHASE OF IT.

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1 ON THE GUILT PHASE YOU ARE NOT TO CONSIDER ANY
2 FACTORS AT ALL, ANYTHING THAT HAS ANYTHING TO DO WITH THE
3 PENALTY AT ALL. JUST IF THE JURY FINDS HIM GUILTY OF MURDER
4 IN THE FIRST DEGREE WITH THE SPECIAL CIRCUMSTANCE, AND THEN
5 IN THE SEPARATE PROCEEDING WE THEN CONSIDER THESE FACTORS
6 IN AGGRAVATION OR MITIGATION AND SO ON AND SO FORTH.

7 ARE YOU WILLING TO FOLLOW THAT LAW?

8 MR. SATTERLEE: OH, YES.

9 THE COURT: ALL RIGHT. NOW I AM GOING TO ASK YOU A
10 SERIES OF QUESTIONS WHICH RELATE TO YOUR ATTITUDES TOWARD
11 THE DEATH PENALTY.

12 MR. SATTERLEE: ALL RIGHT.

13 THE COURT: NOW THE FIRST QUESTION I AM GOING TO ASK
14 YOU IS DO YOU HAVE AN OPINION REGARDING THE DEATH PENALTY
15 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
16 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

17 MR. SATTERLEE: I THOUGHT A LOT ABOUT THIS RECENTLY.

18 THE COURT: REMEMBER, THIS IS ON THE GUILT PHASE.

19 MR. SATTERLEE: YES. I COULD GO AHEAD AND SIT ON THE
20 JURY, LISTEN TO THE EVIDENCE ON THE GUILT PHASE, WITHOUT ANY
21 PROBLEM AT ALL.

22 THE COURT: WITHOUT ANY PROBLEM. ALL RIGHT. SO YOUR
23 ANSWER IS -- YOUR ANSWER IS --

24 MR. SATTERLEE: YES.

25 THE COURT: DO YOU HAVE ANY OPINION THAT WOULD PREVENT --
26 IT WOULD NOT PREVENT YOU FROM SITTING ON THE GUILT PHASE OF
27 IT AND DETERMINING ON THE MERIT'S QUESTION, THE GUILT OR
28 INNOCENCE OF THE DEFENDANT?

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1 MR. SATTERLEE: NO, I HAVE NO PROBLEM WITH THAT.

2 THE COURT: NO PROBLEM.

3 NOW THE SECOND QUESTION IS I TOLD YOU, YOU REMEMBER
4 THAT IF YOU FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE,
5 THEN YOU HAVE TO CONSIDER WHETHER OR NOT IT WAS COMMITTED
6 DURING THE COURSE OF A ROBBERY. THAT'S THE PENALTY PHASE.
7 WOULD YOU HAVE ANY PROBLEM WITH THAT?

8 MR. SATTERLEE: IS THIS JUST THE SECOND PHASE?

9 THE COURT: NO, NO. THAT'S THE GUILT ON THE FIRST PHASE.

10 MR. SATTERLEE: OH. NO PROBLEM WITH THAT.

11 THE COURT: NO PROBLEM WITH THAT.

12 NOW WE ARE COMING TO THE PROBLEM YOU HAVE.

13 NOW DO YOU HAVE SUCH AN OPINION CONCERNING THE
14 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
15 THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE
16 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

17 MR. SATTERLEE: NO, NOT AT ALL.

18 THE COURT: YOU WOULD NOT AUTOMATICALLY --

19 MR. SATTERLEE: IMPOSE THE DEATH PENALTY.

20 THE COURT: IMPOSE THE DEATH PENALTY. ALL RIGHT.

21 NEXT ASPECT OF THE SAME QUESTION: DO YOU HAVE
22 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
23 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE
24 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
25 BE PRESENTED AT THE PENALTY PHASE OF THE CASE?

26 MR. SATTERLEE: I AM MORE INCLINED FOR THAT.

27 THE COURT: YOU SAY THAT YOUR OPINION OF THE DEATH PENALTY
28 IS SUCH THAT YOU WILL ALWAYS VOTE FOR LIFE IMPRISONMENT

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1 WITHOUT THE POSSIBILITY OF PAROLE AND NOT THE DEATH PENALTY?

2 MR. SATTERLEE: 98 PERCENT OF THE TIME.

3 THE COURT: 2 PERCENT OF THE TIME YOU WOULD VOTE DEATH
4 PENALTY?

5 MR. SATTERLEE: PERHAPS. IF IT WAS -- IF I WAS
6 EMOTIONALLY INVOLVED -- I AM GENERALLY AGAINST THE DEATH
7 PENALTY, BUT I DON'T KNOW HOW I WOULD ACT IN -- LIKE A MASS
8 MURDERER OR BLOWING UP AN AIRPLANE OR SOMEBODY IN MY OWN
9 FAMILY.

10 THE COURT: I UNDERSTAND.

11 MR. SATTERLEE: BUT GENERALLY I WOULD VOTE AGAINST.

12 THE COURT: YOU ARE INCLINED TO VOTE AGAINST THE DEATH
13 PENALTY?

14 MR. SATTERLEE: I WOULD VOTE AGAINST IT.

15 THE COURT: AND WOULD YOUR VIEWS CONCERNING THE DEATH
16 PENALTY BE SUCH AS TO PREVENT YOU OR SUBSTANTIALLY IMPAIR
17 YOUR ABILITY TO BE NEUTRAL AND FOLLOW THE JUDGE'S INSTRUCTIONS?

18 MR. SATTERLEE: I HAVE TO SAY YES.
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1 THE COURT: ALL RIGHT. YOU UNDERSTAND OF COURSE, THAT
2 THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE AND THESE
3 QUESTIONS ARE ASKED ONLY IN THE EVENT THAT YOU REACH THE PENALTY
4 PHASE OF THE TRIAL?

5 MR. SATTERLEE: YES, SIR.

6 THE COURT: ALL RIGHT. YOU MAY INQUIRE.

7 MR. CHIER: GOOD AFTERNOON, MR. SATTERLEE. MY NAME
8 IS CHIER. I REPRESENT MR. HUNT.

9 YOU UNDERSTAND THAT THE QUESTIONS I AM GOING TO
10 PROPOUND TO YOU HAVE NO RIGHT OR WRONG ANSWERS?

11 MR. SATTERLEE: YES.

12 MR. CHIER: IT IS SIMPLY TRYING TO FIND OUT WHETHER
13 YOU ARE A PERSON WHO IS QUALIFIED TO BE A JUROR IN THIS CASE.

14 DO I UNDERSTAND THAT UNDER NO CIRCUMSTANCES --
15 DO I UNDERSTAND THAT THERE ARE SOME CIRCUMSTANCES IN WHICH
16 YOU COULD FEEL COMFORTABLE IN RETURNING A DEATH PENALTY
17 VERDICT AGAINST A DEFENDANT?

18 MR. SATTERLEE: I DON'T KNOW IF "COMFORTABLE" WOULD
19 BE THE WORD.

20 BUT I COULD PROBABLY LIVE WITH IT UNDER SOME
21 CIRCUMSTANCES.

22 IN THIS CASE, I DON'T KNOW. I KIND OF DON'T THINK
23 SO IN THIS CASE.

24 MR. CHIER: WELL, YOU HAVE NOT HEARD ANY EVIDENCE,
25 THOUGH.

26 MR. SATTERLEE: YES. I DON'T KNOW, THOUGH.

27 MR. CHIER: ALL RIGHT. BUT CAN YOU SAY AS A GENERAL
28 PROPOSITION, THAT IF YOU WERE SELECTED AS A JUROR IN THIS

1 CASE, YOU WOULD BE WILLING TO CONSIDER ALL OF THE PENALTIES
2 PROVIDED BY STATE LAW AND THAT YOU WOULD NOT BE IRREVOCABLY
3 COMMITTED BEFORE THE TRIAL BEGINS, TO VOTE AGAINST THE DEATH
4 PENALTY? REGARDLESS OF THE FACTS OF THE CASE?

5 MR. SATTERLEE: NO.

6 MR. CHIER: WOULD YOU SAY THAT?

7 MR. SATTERLEE: HUH-UH. NO. I DON'T THINK I COULD
8 LIVE WITH THIS CASE.

9 IF I HAD TO -- IF HE WERE PROVEN GUILTY AND I
10 HAD TO, I PROBABLY WOULD HOLD OUT AGAINST THE DEATH PENALTY.

11 MR. CHIER: WELL, YOU SAY THAT YOU HAVE NOT READ OR
12 HEARD ANYTHING ABOUT THE CASE?

13 MR. SATTERLEE: NO.

14 MR. CHIER: SO AT THIS POINT, YOU DON'T KNOW ANYTHING
15 ABOUT THE CASE OTHER THAN WHAT THE JUDGE HAS --

16 MR. SATTERLEE: THAT'S RIGHT.

17 MR. CHIER: OTHER THAN WHAT THE JUDGE DESCRIBED IN A
18 GENERAL WAY?

19 MR. SATTERLEE: YES.

20 MR. CHIER: IT WAS AN ALLEGED MURDER?

21 MR. SATTERLEE: YES, AN ALLEGED MURDER.

22 MR. CHIER: IN THE COURSE OF A ROBBERY?

23 MR. SATTERLEE: UH-HUH.

24 MR. CHIER: THAT IS ALL YOU KNOW ABOUT IT?

25 MR. SATTERLEE: THAT'S RIGHT.

26 MR. CHIER: AND YOU HAVE NOT HEARD ANY OF THE --

27 MR. SATTERLEE: NO.

28 MR. CHIER: ANY OF THE EVIDENCE?

1 MR. SATTERLEE: NO. BUT I HAVE SEEN THE DEFENDANT.

2 MR. CHIER: OKAY. NOW, I WANT YOU TO LISTEN REAL
3 CAREFULLY TO THIS QUESTION THAT I AM GOING TO ASK YOU. JUST
4 ONE MORE TIME, DID YOU UNDERSTAND THE QUESTION THAT I PUT
5 TO YOU --

6 MR. SATTERLEE: I BELIEVE SO.

7 MR. CHIER: ARE YOU UNWILLING TO CONSIDER ALL OF THE
8 PENALTIES PROVIDED BY LAW IN THE EVENT --

9 MR. SATTERLEE: I DON'T THINK I WOULD CONSIDER THE DEATH
10 PENALTY IN THIS CASE.

11 MR. CHIER: EVEN AFTER THERE WAS A FINDING OF GUILT
12 AND THAT YOU WOULD CONSIDER IT A GRIEVOUS OR OFFENSIVE
13 CIRCUMSTANCE?

14 MR. SATTERLEE: IT IS A MURDER IN THE COURSE OF A
15 ROBBERY. IT JUST DOESN'T SEEM THAT SEVERE TO ME AS FAR AS
16 THE DEATH PENALTY GOES.

17 MR. CHIER: SUPPOSE THERE WERE TWO MURDERS, SIR?

18 MR. WAPNER: OBJECTION, IRRELEVANT.

19 THE COURT: SUSTAINED. THERE ARE NOT TWO MURDERS, ONLY
20 ONE.

21 MR. WAPNER: YOUR HONOR, PERHAPS UNDER THE CIRCUMSTANCES --
22 I AM SORRY. I REACTED TOO QUICKLY. LET ME WITHDRAW THAT
23 OBJECTION.

24 THE COURT: ALL RIGHT. SUPPOSE THAT -- NO. DON'T
25 SUPPOSE ANYTHING. NO. I WILL SUSTAIN THE OBJECTION ANYWAY.

26 MR. CHIER: ALL RIGHT. SUPPOSE MR. SATTERLEE, THE JUDGE
27 IF YOU WERE SELECTED AS A JUROR IN THIS CASE -- THE JUDGE
28 WOULD INSTRUCT YOU THAT YOU SHOULD CONSIDER IN THE PENALTY

1 PHASE, THE SECOND PHASE OF THE TRIAL, A NUMBER OF THINGS,
2 ONE OF WHICH WOULD BE THE CIRCUMSTANCES OF THE OFFENSE.

3 MR. SATTERLEE: YES.

4 MR. CHIER: ARE YOU TELLING ME THAT IF YOU FOUND THE
5 CIRCUMSTANCES OF THE OFFENSE, EVIDENCE OF WHICH YOU HAVE NOT
6 HEARD ANYTHING -- IF YOU FOUND THE CIRCUMSTANCES PARTICULARLY
7 EGREGIOUS AND OFFENSIVE, THAT OFFENDED YOUR SENSE OF MORALITY
8 AND YOUR CONSCIENCE, THAT YOU COULDN'T RETURN AND WOULD NOT
9 CONSIDER THE DEATH PENALTY IN THIS CASE? IS THAT WHAT YOU
10 ARE SAYING?

11 MR. SATTERLEE: YES. I DON'T THINK I COULD LIVE THE
12 REST OF MY LIFE, KNOWING THAT I HELPED IN THE PROCESS OF
13 JUSTICE.

14 MR. CHIER: DO YOU UNDERSTAND YOU ARE NOT BEING ASKED
15 TO AGREE TO RETURN A PENALTY OF DEATH? THE QUESTION IS THIS --

16 MR. SATTERLEE: COULD I?

17 MR. CHIER: COULD YOU CONSIDER THE DEATH PENALTY OR
18 ARE YOU SO IRREVOCABLY COMMITTED TO A POSITION AGAINST THE
19 DEATH PENALTY THAT YOU WON'T EVEN CONSIDER IT? THE QUESTION
20 IS NOT WHETHER YOU --

21 MR. SATTERLEE: WELL, I MIGHT CONSIDER IT. I DON'T
22 KNOW. IT IS A DEFINITE MAYBE.

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1 MR. CHIER: ALL RIGHT. SO THE QUESTION I AM PUTTING
2 TO YOU IS WHETHER OR NOT, IF AFTER HEARING ALL OF THE
3 CIRCUMSTANCES OF THE CASE AND ABOUT THE EVENTS, YOU COULD
4 CONSIDER THE DEATH PENALTY.

5 MR. SATTERLEE: IT WOULD BE IN THE 2 PERCENT RANGE. I
6 MEAN, IT WOULD BE RELATIVELY TOUGH FOR ME.

7 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE.

8 MR. WAPNER: MR. SATTERLEE, YOU UNDERSTAND THAT
9 "CONSIDER" COVERS A LOT OF GROUND?

10 MR. SATTERLEE: YES.

11 MR. WAPNER: WE ARE NOT ASKING YOU WHETHER YOU JUST
12 WOULD THINK ABOUT IT IN PASSING. WHAT I WANT TO KNOW IS, IF
13 YOU WERE CHOSEN AS A JUROR IN THIS CASE, YOU WOULD PUT YOUR-
14 SELF IN THE SITUATION WHERE YOU HAVE HEARD ALL OF THE EVIDENCE
15 IN THE GUILT AND PENALTY PHASES AND NOW YOU ARE IN THE JURY
16 ROOM.

17 AND YOU ARE NOW ASKED TO RENDER YOUR OWN, INDIVIDUAL
18 VERDICT AS TO WHETHER THE DEFENDANT LIVES OR WHETHER HE SHOULD
19 DIE. COULD YOU, IF THE FACTS -- YOU THOUGHT THE FACTS
20 WARRANTED IT, RENDER A VERDICT THAT THE DEFENDANT SHOULD DIE
21 AND COME INTO THIS COURTROOM AND SIT IN THE JURY BOX AND LOOK
22 THE DEFENDANT IN THE EYE AND SAY THAT YOUR VERDICT WAS DEATH?

23 MR. CHIER: OBJECTION. THAT IS ASKING HIM TO PREJUDGE
24 THE EVIDENCE. THAT IS NOT THE TEST.

25 THE COURT: OVERRULED.

26 MR. SATTERLEE: I WOULD HAVE TO SAY NO. I COULDN'T DO
27 IT.

28 MR. WAPNER: IF I WERE STANDING HERE ARGUING TO YOU THAT

1 YOU SHOULD VOTE THE DEATH PENALTY, WOULD MY ARGUMENTS BASICALLY
2 BE FALLING ON DEAF EARS?

3 MR. SATTERLEE: YES.

4 MR. WAPNER: SO WHEN YOU SAY THAT YOU COULD CONSIDER
5 THE DEATH PENALTY, WHAT IS THAT --

6 MR. SATTERLEE: IT WOULD HAVE TO BE A REALLY HEINOUS
7 OCCURRENCE. MAYBE IT WOULD BE OVER A LONG PERIOD OF TIME OR
8 SOMETHING. I DON'T THINK THAT THE DEATH PENALTY AS A PUNISH-
9 MENT SHOULD EVER BE -- IT SHOULD BE JUST TO PROTECT SOCIETY,
10 PERHAPS. THAT WOULD BE THE ONLY -- I MEAN, IF FOR INSTANCE,
11 HE HAD A LONG SERIES OF CRIMES, MURDERS. THEN, PERHAPS IT
12 MIGHT BE THAT THE DEATH PENALTY IS WARRANTED.

13 THE COURT: I MEAN, HE WANTS TO KNOW WHAT YOU WOULD
14 DO --

15 MR. SATTERLEE: WHAT I WOULD DO? I WOULD, IF IT WERE
16 ONE MURDER, PROBABLY VOTE AGAINST THE DEATH PENALTY.

17 MR. WAPNER: WELL, WHAT IS YOUR DEFINITION OF A LONG
18 SERIES OF MURDERS? IS IT MORE THAN ONE AND LESS THAN 500?

19 MR. SATTERLEE: WELL, FOR INSTANCE, JUAN CORONA.

20 MR. WAPNER: OKAY. THAT WAS WHAT YOU INITIALLY SAID,
21 A MASS MURDER? IS THAT THE EXAMPLE THAT YOU HAD IN YOUR MIND?

22 MR. SATTERLEE: FOR INSTANCE, YES.

23 MR. WAPNER: OKAY. THE OTHER EXAMPLE THAT YOU USED WAS
24 THE BLOWING UP OF AN AIRPLANE?

25 MR. SATTERLEE: FOR INSTANCE, YES.

26 MR. WAPNER: WHERE LOTS OF PEOPLE ON THE AIRPLANE WOULD
27 DIE?

28 MR. SATTERLEE: YES.

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1 MR. WAPNER: WAS THAT YES?

2 MR. SATTERLEE: YES.

3 MR. WAPNER: OR SOMEONE IN YOUR OWN FAMILY, PERHAPS?

4 MR. SATTERLEE: PERHAPS, YES. I DON'T KNOW HOW I WOULD
5 FEEL. I WOULD MAYBE WANT REVENGE. I DON'T KNOW.

6 MR. WAPNER: SO THE RECORD IS CLEAR, THE ALLEGED VICTIM
7 IN THIS CASE WAS NOT A MEMBER OF YOUR OWN FAMILY?

8 MR. SATTERLEE: NO. I DON'T BELIEVE SO. I DON'T KNOW.

9 MR. WAPNER: IN A SITUATION WHERE THE DEFENDANT IS
10 CHARGED WITH ONE MURDER AND WHERE YOU MIGHT HEAR EVIDENCE IN
11 THE PENALTY PHASE OF ANOTHER ONE, IN THAT SITUATION, WITHOUT
12 KNOWING ANYTHING MORE, IS THERE ANY POSSIBILITY THAT YOU COULD
13 VOTE FOR THE DEATH PENALTY?

14 MR. SATTERLEE: THERE MAY BE A POSSIBILITY BUT IT IS
15 VERY, VERY SLIGHT.

16 MR. WAPNER: EXPLAIN IT TO ME.

17 MR. SATTERLEE: WELL, IF AFTER HEARING ALL THE FACTS,
18 AND IF I WERE AFRAID TO LET HIM OUT ON SOCIETY AGAIN, THAT
19 LIFE WITHOUT POSSIBILITY OF PAROLE WOULDN'T WORK, HE COULD
20 BE A DANGER TO SOMEBODY, THEN YES. I WOULD PROBABLY ENFORCE
21 CAPITAL PUNISHMENT.

22 MR. WAPNER: IF THE PUNISHMENT IN THE ALTERNATIVE IS
23 LIFE WITHOUT POSSIBILITY OF PAROLE, HOW WOULD THAT LET HIM
24 OUT IN SOCIETY AGAIN?

25 MR. SATTERLEE: WELL, SORRY. I JUST DON'T THINK IT
26 IS -- THE ONLY REASON TO TAKE A MAN'S LIFE WOULD BE TO PROTECT
27 US.

28 MR. WAPNER: ALL RIGHT. DO YOU THINK THAT LIFE WITHOUT

1 POSSIBILITY OF PAROLE --

2 MR. SATTERLEE: PARDON ME?

3 MR. WAPNER: DO YOU MEAN BY THAT, IN ORDER TO PROTECT
4 SOCIETY, LIFE WITHOUT POSSIBILITY OF PAROLE THEN WOULD BE THE
5 OTHER ALTERNATIVE?

6 MR. SATTERLEE: YES.

7 MR. WAPNER: A PROPER ONE THAT YOU COULD VOTE FOR?

8 MR. SATTERLEE: YES.

9 MR. WAPNER: WHEN YOU SAY THAT THE ONLY REASON TO TAKE
10 A PERSON'S LIFE IS TO PROTECT US, THAT SUPPOSES THAT YOU
11 THINK THAT LIFE WITHOUT POSSIBILITY OF PAROLE DOESN'T MEAN
12 THAT?

13 MR. SATTERLEE: IT MEANS IF IT HAPPENS. I MEAN, SUPPOSE
14 IT DOES HAPPEN. SUPPOSE THAT THE MAN IS IN PRISON FOR LIFE
15 WITHOUT POSSIBILITY OF PAROLE. THERE WOULDN'T BE ANY
16 POSSIBILITY OF HIS GETTING OUT. I CAN VOTE FOR THAT.

17 THE COURT: WOULD YOU IN A VERY EXTREME CASE VOTE FOR
18 LIFE WITHOUT POSSIBILITY OF PAROLE?

19 MR. SATTERLEE: IF I HAD A CLEAR CHOICE BETWEEN THAT
20 AND THE DEATH PENALTY, IT WOULD ALWAYS BE LIFE WITHOUT
21 POSSIBILITY OF PAROLE.

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1 MR. WAPNER: IF THE JUDGE TELLS YOU THAT WITHOUT THE
2 POSSIBILITY OF PAROLE MEANS WITHOUT THE POSSIBILITY OF PAROLE,
3 WOULD YOU BELIEVE HIM?

4 MR. SATTERLEE: I WOULD LIKE TO, YEAH. I DON'T KNOW
5 IF I WOULD.

6 MR. WAPNER: WELL, IF YOU ARE NOT GOING TO BELIEVE HIM,
7 YOU ARE PROBABLY NOT GOING TO BELIEVE ANYONE.

8 MR. SATTERLEE: ALL THE TIME YOU HEAR THIS PERSON GOT
9 FIVE DEATH -- OR FIVE LIFE IMPRISONMENT SENTENCES, AND HE
10 IS OUT IN TEN YEARS.

11 MR. WAPNER: WELL, OKAY.

12 THE COURT: THAT WON'T HAPPEN.

13 MR. WAPNER: FOR THE PURPOSES OF YOUR MAKING A DECISION
14 BETWEEN THE DEATH PENALTY AND LIFE WITHOUT THE POSSIBLITY
15 OF PAROLE, YOU HAVE TO TAKE AS GOSPEL WHAT THE JUDGE TELLS
16 YOU, THAT WITHOUT THE POSSIBILITY OF PAROLE MEANS HE IS NOT
17 GOING TO GET OUT; DO YOU UNDERSTAND THAT?

18 MR. SATTERLEE: YES.

19 MR. WAPNER: FOR THE PURPOSES OF MAKING THE CHOICE
20 BETWEEN THE TWO PUNISHMENTS, WILL YOU TAKE IT AS A GIVEN THAT
21 IT MEANS THAT HE WILL NOT GET OUT OF PRISON?

22 MR. SATTERLEE: YES.

23 MR. WAPNER: OKAY. COMING BACK TO YOUR STATEMENT THAT
24 YOU WOULD GIVE THE DEATH PENALTY IF IT MEANT PROTECTING
25 SOCIETY, IF WE NOW ASSUME THAT IF YOUR VOTE IS LIFE
26 IMPRISONMENT, AND HE IS NOT GOING TO GET OUT, DOES THAT CHANGE
27 YOUR OPINION AT ALL ABOUT VOTING FOR THE DEATH PENALTY AS
28 A PROTECTION OF SOCIETY?

1 MR. SATTERLEE: I AM NOT SURE IF I GET WHAT YOU MEAN.
2 THE SAME THING -- I SUPPOSE. BUT IF I HAD A CLEAR CHOICE,
3 IT WOULD ALWAYS BE LIFE IMPRISONMENT, AND I WOULD NEVER VOTE
4 FOR THE DEATH PENALTY.

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

6 THE COURT: CHALLENGE?

7 MR. WAPNER: YES, BUT I AM SURE MR. CHIER WOULD LIKE
8 TO BE HEARD, SO WE PROBABLY SHOULD DO IT OUTSIDE THE PRESENCE
9 OF THE JURY.

10 THE COURT: WOULD YOU WAIT OUTSIDE, PLEASE?

11 (PROSPECTIVE JUROR SATTERLEE EXITED
12 THE COURTROOM.)

13 THE COURT: MAY I JUST PREFACE ANY DISCUSSION BY READING
14 TO YOU FROM THE CJER JOURNAL, THE CALIFORNIA CENTER FOR
15 JUDICIAL EDUCATION AND RESEARCH, PARAGRAPH 29:

16 "WAINWRIGHT STANDARD FOR EXCLUSION:

17 "THE WITHERSPOON STANDARD WAS RECENTLY
18 ALTERED IN WAINWRIGHT V. WITT ..."

19 WHICH WE HAVE DISCUSSED IN THE PAST.

20 "... IN WHICH THE U.S. SUPREME COURT
21 HELD THAT IT IS NO LONGER NECESSARY THAT THE TRIAL
22 JUDGE FIND IT TO BE UNMISTAKABLY CLEAR THAT A
23 JUROR WOULD AUTOMATICALLY VOTE AGAINST THE DEATH
24 PENALTY. THE COURT STATED THAT A PROSPECTIVE
25 JUROR MAY BE EXCLUDED FOR CAUSE WHEN HIS OR HER
26 STATEMENTS AND Demeanor INDICATE THAT THE JUROR'S
27 VIEWS WOULD 'PREVENT OR SUBSTANTIALLY IMPAIR' HIS
28 ABILITY TO BE NEUTRAL AND TO FOLLOW THE JUDGE'S

1 INSTRUCTIONS."

2 I THINK THAT THIS JUROR PECULIARLY AND
3 PARTICULARLY QUALIFIES UNDER THE LANGUAGE I HAVE JUST READ
4 TO YOU, BUT I WOULD LIKE TO HEAR SOMETHING TO THE CONTRARY.

5 MR. CHIER: I WOULD LIKE TO THEN CITE THE CASE OF
6 PEOPLE V. O'BRIEN.

7 THE COURT: BUT THIS IS THE LATEST CASE, THE WAINWRIGHT
8 CASE.

9 MR. CHIER: YOU READ FROM A JOURNAL, YOUR HONOR. I
10 AM READING FROM THE CALIFORNIA SUPREME COURT.

11 THE COURT: I AM READING TO YOU FROM THE WAINWRIGHT
12 CASE. IT IS A QUOTE FROM THE WAINWRIGHT CASE.

13 MR. CHIER: BUT YOU ARE READING FROM A JUDGE'S EDUCATIONAL
14 JOURNAL. I AM READING FROM THE SUPREME COURT, PEOPLE V.
15 O'BRIEN, 71 CAL.2D, 394.

16 THE COURT: CAL.2D?

17 MR. CHIER: CAL.2D, YES, YOUR HONOR.

18 THE COURT: LET ME SEE THAT.

19 MR. CHIER: THE LAST PASSAGE, I WOULD LIKE TO READ,
20 PAGE 405. IT SAYS:

21 "JUST AS VENIREMEN CANNOT BE EXCLUDED
22 FOR CAUSE ON THE GROUNDS THAT THEY HOLD SUCH VIEWS,
23 SO TOO THEY CANNOT BE EXCUSED FOR CAUSE SIMPLY
24 BECAUSE THEY INDICATE THERE ARE SOME KINDS OF
25 CASES IN WHICH THEY WOULD REFUSE TO RECOMMEND
26 CAPITAL PUNISHMENT."

27 THE COURT: THAT IS NOT APPLICABLE TO THIS CASE.

28 MR. CHIER: I WOULD ALSO --

1 THE COURT: THAT IS NOT APPLICABLE TO THIS CASE.

2 MR. CHIER: WELL, YOU -- I WOULD ALSO CITE THE CASE
3 OF IN RE ELI, E-L-I, 71 CAL.2D, 214, AT PAGE 217. IT STATES --
4 THE CALIFORNIA SUPREME COURT STATES:

5 "THE MOST THAT CAN BE DEMANDED OF A
6 VENIREMAN IN THIS REGARD IS [WHETHER HE WOULD IN
7 FACT VOTE FOR THE DEATH PENALTY IN THE CASE BEFORE
8 HIM,] IS THAT HE BE WILLING TO CONSIDER ..." --

9 EMPHASIS IN THE ORIGINAL.

10 "... ALL OF THE PENALTIES PROVIDED BY
11 STATE LAW, AND THAT HE NOT BE IRREVOCABLY COMMITTED
12 BEFORE THE TRIAL HAS BEGUN TO VOTE AGAINST THE DEATH
13 PENALTY, REGARDLESS OF THE FACTS AND CIRCUMSTANCES
14 THAT MIGHT EMERGE IN THE COURSE OF THE PROCEEDINGS."

15 THE COURT: I AM GOING TO RULE THAT WITH RESPECT TO
16 WHAT THIS PROSPECTIVE JUROR HAS SAID, THAT HE IS NOT QUALIFIED
17 TO ACT AS A TRIAL JUROR IN THIS CASE, UNLESS YOU FEEL TO THE
18 CONTRARY; DO YOU?

19 MR. WAPNER: I DON'T FEEL TO THE CONTRARY, YOUR HONOR.
20 I THINK HE SHOULD BE CHALLENGED FOR CAUSE.

21 COULD I HAVE THE NAME OF THAT CASE?

22 MR. CHIER: IN RE ELI, E-L-I.

23 THE COURT: WHAT YEAR?

24 MR. CHIER: 1969, YOUR HONOR.
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1 THE COURT: WELL, A LOT OF WATER HAS PASSED UNDER THE
2 BRIDGE SINCE THAT TIME.

3 MR. WAPNER: WELL, NOTWITHSTANDING THAT -- AND I AM NOT
4 FAMILIAR WITH THE ELI CASE, BUT IT SEEMS TO ME, EVEN USING
5 THE LANGUAGE OF THE ELI CASE WHERE COUNSEL SAYS THE JUROR HAS
6 SAID THAT HE IS NOT IRREVOCABLY COMMITTED ONE WAY OR THE
7 OTHER -- THIS JUROR IS IRREVOCABLY COMMITTED, AND IT WAS EVEN
8 MADE MORE CLEAR WHEN IT WAS EXPLAINED TO HIM ABOUT LIFE
9 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE MEANING JUST
10 THAT, WHICH MR. CHIER AND MR. BARENS HAVE BEEN HARPING ON FOR
11 DAYS NOW TO MAKE SURE THAT ALL OF THE JURY UNDERSTAND THAT.
12 CURIOUSLY, THEY DIDN'T ASK THAT QUESTION OF THIS PARTICULAR
13 JUROR.

14 BUT ONCE HE UNDERSTOOD THAT, THERE WAS NO QUESTION,
15 THAT HE IS COMMITTED TO VOTING FOR LIFE IMPRISONMENT; AND IF
16 THERE NEEDS TO BE A CITATION OF AUTHORITY REGARDING THIS
17 PARTICULAR JUROR, I WOULD CITE TO THE COURT PEOPLE V. FIELDS
18 AT 35 CAL.3D, 329, WHERE A JUROR MAY PROPERLY BE EXCUSED WHO
19 WOULD AUTOMATICALLY VOTE AGAINST THE DEATH PENALTY IN THE CASE
20 BEFORE HIM, REGARDLESS OF HIS WILLINGNESS TO CONSIDER IT IN
21 OTHER CASES.

22 THIS JUROR, MR. SATTERLEE, SAYS THAT -- THERE ARE
23 2 PERCENT OF THE CASES THAT HE WOULD CONSIDER IT, AND THOSE
24 INVOLVE PLANE CRASHES WHERE LOTS OF PEOPLE ARE KILLED OR
25 MASS MURDERERS, OR PERHAPS SOMEONE IN HIS OWN FAMILY -- AND
26 HE WASN'T EVEN SURE ABOUT THAT.

27 SO I THINK UNDER THE WITT STANDARD, AND UNDER THE
28 WITHERSPOON STANDARD, EVEN USING THE WITHERSPOON STANDARD,

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1 I THINK THAT ONCE HE WAS EXAMINED, IT IS UNMISTAKABLY CLEAR
2 HE IS NOT GOING TO CONSIDER THE DEATH PENALTY, NOT GOING TO
3 SERIOUSLY CONSIDER THE DEATH PENALTY IN THIS CASE; AND THAT'S
4 NOTWITHSTANDING THE FACT THAT MR. CHIER GOT HIM TO ADOPT THE
5 USAGE OF THE WORD "CONSIDER", BECAUSE YOU EXAMINED HIM IN MORE
6 DETAIL AS TO WHAT HE MEANT BY THAT. HE IS NOT GOING TO
7 REALLY THINK ABOUT IT. THAT IS MORE OF AN INTELLECTUAL
8 EXERCISE.

9 THE COURT: ALL RIGHT. WOULD YOU GET HIM IN, PLEASE.

10 (PROSPECTIVE SATTERLEE REENTERS THE
11 COURTROOM.)

12 THE COURT: MR. SATTERLEE, I WANT TO THANK YOU VERY,
13 VERY MUCH FOR YOUR ATTENDANCE AND CANDOR. NOBODY IS QUARRELING
14 WITH YOU. THOSE ARE YOUR BELIEFS AND YOUR CONVICTIONS. YOU
15 ARE ENTITLED TO HAVE THEM. NOBODY WANTS TO CHANGE THEM.

16 MR. SATTERLEE: GOOD. THANK YOU.

17 THE COURT: FOR THAT REASON I DON'T BELIEVE THAT YOU
18 WOULD QUALIFY AS A TRIAL JUROR IN THIS CASE WITH THIS
19 ATTITUDE THAT YOU HAVE TOWARDS THE DEATH PENALTY. FOR THAT
20 REASON I WILL ASK YOU TO GO BACK AT THE APPROPRIATE TIME, TO
21 GO BACK TO THE JURY ASSEMBLY ROOM, TELL THE CLERK ON MONDAY,
22 WHENEVER IT IS, THAT YOU ARE WILLING TO SERVE ON OTHER CASES.

23 MR. SATTERLEE: YES. I WOULD LIKE TO.

24 THE COURT: ALL RIGHT. BUT IN THIS CASE YOU ARE NOT
25 QUALIFIED.

26 MR. SATTERLEE: OKAY. GOOD. THANK YOU VERY MUCH.

27 THANK YOU, JUDGE.

28 THE COURT: YOU MEAN YOU WOULD LIKE TO BE A JUROR IN

1 THIS CASE?

2 MR. SATTERLEE: YES, I WOULD, IF WE DIDN'T HAVE THE DEATH
3 PENALTY, I WOULD LIKE TO.

4 THE COURT: THANK YOU.

5 (PROSPECTIVE JUROR SATTERLEE EXITS THE
6 COURTROOM.)

7 THE COURT: ALL RIGHT. WE WILL TAKE A RECESS.

8 I HOPE YOU WILL ALL HAVE A HAPPY THANKSGIVING.

9 MR. WAPNER: THANK YOU, YOUR HONOR.

10 MR. CHIER: YOUR HONOR, WE HAVE THAT PROBLEM THAT WE
11 HAVEN'T RESOLVED. I BROUGHT IT TO THE COURT'S ATTENTION
12 LAST TUESDAY, THAT MR. HUNT HAS A COURT APPEARANCE.

13 THE COURT: OH, YES. CAN I DO ANYTHING ABOUT THAT FOR
14 HIM?

15 MR. CHIER: I THINK HE IS THE ONLY PERSON THAT CAN
16 APPEAR, AND PROBABLY BE BACK HERE BY 1:30. HE HAS AGREED --

17 THE DEFENDANT: MR. WAPNER, DO YOU KNOW WHAT TIME --

18 MR. WAPNER: LET ME TALK TO YOU THROUGH YOUR LAWYER.
19 THAT'S REALLY THE BEST THING.

20 (PAUSE.)

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1 MR. WAPNER: BEFORE WE BREAK, CAN I JUST TRY TO MAKE
2 ONE PHONE CALL? I DON'T THINK THAT IT IS GOING TO BE
3 SUCCESSFUL.

4 MR. CHIER: BEFORE YOU GET CONNECTED, I HAVE TALKED
5 TO MR. PARKER KELLY, WHO IS MR. HUNT'S COUNSEL UP NORTH.

6 I HAVE ALSO TALKED TO MR. ANDREW PARNES, WHO IS
7 AN ATTORNEY IN TOM NOLAN'S OFFICE IN PALO ALTO. THEY ADVISED
8 ME THAT MR. VANCE HAS GRUDGINGLY CONCEDED THE NECESSITY OF
9 MR. HUNT BEING SEVERED FROM THAT CASE UP THERE.

10 THE COURT: UP THERE, YOU MEAN?

11 MR. CHIER: THEY ARE GOING TO GO FORWARD I GUESS ON
12 SOME OF THE DEFENDANTS BUT NOT ON SOME OTHERS.

13 THE COURT: WELL, THEY DON'T NEED HIM UP THERE.

14 MR. CHIER: THEY DO NEED HIM UP THERE, JUDGE.

15 MR. WAPNER: WELL, MAYBE WE CAN DO THIS. WE CAN HAVE --
16 CAN'T THEY ISSUE BENCH WARRANT AND HOLD IT? I THINK THAT
17 THAT IS WHAT THEY COULD DO AT THE VERY LEAST.

18 THERE IS NOT GOING TO BE MUCH QUESTION AS TO
19 MR. HUNT'S WHEREABOUTS. CERTAINLY, A CALL FROM YOUR HONOR
20 WOULD SATISFY THE JUDGE UP THERE THAT HE IS IN COURT AND NOT
21 IN FLIGHT SOMEWHERE.

22 THEN, IF WE COULD INQUIRE OVER THE WEEKEND AND
23 ALSO ON EARLY MONDAY MORNING, IF THAT IS NOT GOING TO BE
24 SUFFICIENT, THEN WE CAN EXCUSE MR. HUNT TO GO THERE EITHER
25 ON MONDAY AFTERNOON OR TUESDAY MORNING.

26 THE COURT: ALL RIGHT. FIND OUT.

27 OR, IF YOU WANT ME TO CALL THE JUDGE, I WILL ASK
28 HIM WHETHER OR NOT IT IS ALL RIGHT. THEY CAN ISSUE A BENCH

1 WARRANT AND HOLD IT FOR HIM.

2 MR. CHIER: BUT THERE IS A SUBSTANTIAL BOND UP THERE.

3 THE COURT: I UNDERSTAND. BUT IF THEY HOLD IT, THEY
4 DON'T FORFEIT THE BOND. YOU MAKE THE INQUIRY PLEASE.

5 MR. WAPNER: YES. I CAN PERHAPS MAKE INQUIRY RIGHT
6 NOW, PERHAPS.

7 THE COURT: LET ME ALSO STATE FOR THE RECORD THAT I
8 AM READING FURTHER FROM THE REPORT IN WAINWRIGHT THAT A JUROR
9 STATED THAT SHE HELD "PERSONAL BELIEFS" AGAINST THE DEATH
10 PENALTY AND WAS EXCUSED. AND THE COURT HELD THAT HER EXCUSE
11 WAS PERMISSIBLE UNDER THE NEW STANDARD.

12 MR. CHIER: ARE WE USING THE WITT STANDARD, YOUR HONOR?

13 THE COURT: THAT IS THE UNITED STATES SUPREME COURT.
14 AND THE CALIFORNIA SUPREME COURT HAS BEEN FOLLOWING THE U.S.
15 SUPREME COURT DECISIONS IN WITHERSPOON AND WAINWRIGHT ALSO.

16 I THINK MENTION WAS MADE IN ONE OF THE LATEST
17 SUPREME COURT CASES ABOUT WAINWRIGHT, NOT UNFAVORABLY.

18 (BRIEF PAUSE.)

19 THE COURT: YOU DIDN'T GET HIM, DID YOU?

20 MR. WAPNER: NO. I WAS UNABLE TO REACH HIM.

21 THE COURT: WELL, LET'S SEE WHAT WILL HAPPEN AND WHAT
22 WE ARE GOING TO DO.

23 MR. WAPNER: WELL, I --

24 THE COURT: YOU WANT ME TO CALL THE JUDGE?

25 MR. WAPNER: I THINK THAT WHAT WE SHOULD DO IS TO --

26 THE COURT: WE ARE IN THE MIDDLE OF TRIAL. HE IS NOT
27 EXPECTED TO BE UP THERE FOR ANOTHER CASE, IS HE?

28 MR. WAPNER: WELL, OBVIOUSLY HE IS SUPPOSED TO MAKE

1 AN APPEARANCE. IN THE ORDINARY COURSE OF THINGS, HE WOULD
2 BE REQUIRED TO MAKE AN APPEARANCE OR A WARRANT WOULD ISSUE.

3 THE COURT: BUT, HE HAS AN EXCUSE FOR NOT MAKING AN
4 APPEARANCE.

5 MR. WAPNER: SO, PERHAPS WHAT WE CAN DO IS CONVENE HERE
6 AT 10:30 ON MONDAY. I WILL KNOW SOMETHING BY THEN ONE WAY
7 OR THE OTHER.

8 THE COURT: LET'S CONVENE AT 9 O'CLOCK ON MONDAY. WE
9 WILL MAKE THE CALL AND FIND OUT BEFORE 10:30.

10 MR. WAPNER: THAT'S FINE.

11 THE COURT: ALL RIGHT.

12 MR. CHIER: I WOULD ASK THAT YOUR HONOR THEN FORBID --
13 OR ORDER MR. HUNT TO BE HERE.

14 THE COURT: I WILL ORDER YOU TO BE HERE AT 9 O'CLOCK.
15 ALL RIGHT. OKAY, THANK YOU.

16 SO, HE HAS BEEN ORDERED TO STAY HERE. SO THEREFORE,
17 THERE IS A JUDICIAL ORDER TO PREVENT HIM FROM GOING UP THERE.
18 HAVE A NICE THANKSGIVING.

19 (AT 5:10 P.M. AN ADJOURNMENT WAS TAKEN
20 UNTIL MONDAY, DECEMBER 1, 1986, AT 9 A.M.)

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