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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

FEB 2 1987

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

SUPERIOR COURT
NO. A-090435

OCT 09 1987

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 14 OF 101
(PAGES 1818 TO 2019 , INCLUSIVE)

COPY

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

MONDAY, DECEMBER 1, 1986

VOLUME 14

(PAGES 1818 TO 2019, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401

FOR THE DEFENDANT:

ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067

AND

RICHARD C. CHIER, ESQ.
10920 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024

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

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MONDAY, DECEMBER 1, 1986 VOLUME 14 PAGES 1818 TO 2019

A.M. 1818

P.M. 1885

PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 1818

1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 1, 1986; 10:35 A.M.

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

3 (APPEARANCES AS NOTED HERETOFORE ON

4 TITLE PAGE)

5

6 MR. BARENS: GOOD MORNING, YOUR HONOR.

7 THE CLERK: READY FOR THE FIRST JUROR?

8 HAVE A SEAT UP HERE AND STATE YOUR NAME FOR THE

9 RECORD, PLEASE.

10 MR. MC MAHON: MY NAME IS MAURICE MC MAHON, MIDDLE

11 INITIAL R.

12 THE COURT: KEEP YOUR VOICE UP, WILL YOU?

13 WHERE DO YOU LIVE, MR. MC MAHON?

14 MR. MC MAHON: I LIVE IN SANTA MONICA.

15 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS

16 CASE?

17 MR. MC MAHON: NO.

18 THE COURT: DO YOU KNOW ANYTHING AT ALL ABOUT IT, EXCEPT

19 WHAT I TOLD YOU ABOUT IT WHEN ALL OF THE OTHER JURORS WERE

20 PRESENT?

21 MR. MC MAHON: NO.

22 THE COURT: YOU DIDN'T TALK TO ANY OF THE OTHER JURORS,

23 THE PROSPECTIVE JURORS IN ANY WAY ABOUT IT?

24 MR. MC MAHON: NO.

25 THE COURT: ALL RIGHT. ALL YOU KNOW ABOUT THE CASE IS

26 WHAT I EXPLAINED TO YOU HERE IN OPEN COURT A WEEK OR TWO AGO;

27 IS THAT RIGHT?

28 MR. MC MAHON: THAT'S ALL.

1 THE COURT: ALL RIGHT. WE WILL BRIEFLY TRY TO REFRESH
2 YOUR RECOLLECTION.

3 THE CHARGE AGAINST THE DEFENDANT IS THAT HE
4 COMMITTED A MURDER IN THE COURSE OF A ROBBERY. COMMITTING
5 A MURDER ITSELF DOESN'T QUALIFY THE CASE FOR THE DEATH
6 PENALTY. IT IS ONLY WHEN THERE ARE SPECIAL CIRCUMSTANCES THAT
7 THE LEGISLATURE HAS SAID IT QUALIFIES FOR A POSSIBLE DEATH
8 VERDICT; DO YOU UNDERSTAND?

9 MR. MC MAHON: I UNDERSTAND.

10 THE COURT: FOR EXAMPLE, A MURDER COMMITTED IN THE COURSE
11 OF A ROBBERY, AS IN THIS CASE, OR A MURDER COMMITTED IN THE
12 COURSE OF A BURGLARY OR A RAPE OR A KIDNAPPING OR ANY TORTURE
13 OR MULTIPLE MURDERS. THERE ARE 19 OF THEM WHICH THE
14 LEGISLATURE HAS SAID QUALIFIES FOR THE DEATH PENALTY SO THIS
15 IS ONE OF THEM.

16 IN THE TRIAL OF A MURDER CASE WHERE THE DEATH
17 PENALTY IS SOUGHT, THE TRIAL IS DIVIDED. THE FIRST OF THE
18 TRIAL IS WHAT IS KNOW AS THE GUILT PHASE WHERE THE JURORS ARE
19 CALLED UPON TO DETERMINE THE GUILT OR INNOCENCE OF THE
20 DEFENDANT. THEY HAVE TO DETERMINE WHETHER OR NOT HE IS GUILTY
21 OF MURDER IN THE FIRST DEGREE AND IF THEY DECIDE THAT, THEN
22 THEY HAVE TO MAKE A SPECIAL FINDING: WAS THAT MURDER
23 COMMITTED DURING THE COURSE OF A ROBBERY? AND AS I SAID, THAT
24 QUALIFIES IT AND IF THEY SO FIND, THEN WE START A SECOND
25 ASPECT OF THE TRIAL AND THAT IS KNOWN AS THE PENALTY PHASE.

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1 THE JURY DETERMINES WHETHER OR NOT BASED ON ALL
2 OF THE EVIDENCE BEFORE YOU, INCLUDING ALL OF THE EVIDENCE THAT
3 WAS HEARD BY THE JURY DURING THE GUILT PHASE AND OTHER
4 EVIDENCE WHICH WOULD BE PRESENTED BY BOTH SIDES, THE EVIDENCE
5 BY THE DEFENDANT WHICH WILL BE MITIGATING OF THE OFFENSE AND
6 BY THE PROSECUTION, WHICH WOULD BE IN AGGRAVATION, FACTS ABOUT
7 THE DEFENDANT THAT MIGHT BE IN AGGRAVATION OF THE OFFENSE.

8 THINGS WHICH ARE ABOUT THE DEFENDANT WHICH ARE
9 FAVORABLE TO THE DEFENDANT WILL BE PRESENTED BY THE DEFENDANT.
10 AND CONTRARYWISE, WHAT IS UNFAVORABLE WILL BE PRESENTED BY
11 THE PEOPLE. DURING THE GUILT PHASE OF THE TRIAL, WHICH IS
12 THE FIRST PHASE, THE QUESTION OF PENALTY WILL NEVER BE
13 DISCUSSED OR ANY CONSIDERATION GIVEN BY THE JURORS. IT IS
14 ONLY AFTER HE HAS BEEN FOUND GUILTY, IF HE IS, OF MURDER IN
15 THE FIRST DEGREE AND SPECIAL CIRCUMSTANCES ARE FOUND, THEN
16 YOU CONSIDER THAT.

17 NOW, AS I TOLD YOU, THE FACT THAT A MURDER HAS
18 BEEN COMMITTED, HOWEVER PREMEDITATED, DOES NOT QUALIFY BY
19 ITSELF FOR THE DEATH PENALTY. IT IS ONLY WHERE THE SPECIAL
20 CIRCUMSTANCES ARE PRESENT. ALL RIGHT?

21 MR. MC MAHON: I UNDERSTAND.

22 THE COURT: WHAT I AM GOING TO DO, IS ASK YOU A SERIES
23 OF QUESTIONS. THE PURPOSE OF THE QUESTIONS IS TO DETERMINE
24 YOUR MENTAL STATE WITH RESPECT TO THE DEATH PENALTY AND HOW
25 IT WILL AFFECT YOU IN THIS PARTICULAR CASE.

26 MY FIRST QUESTION IS, DO YOU HAVE ANY OPINION
27 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM
28 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF

1 THE DEFENDANT? THAT IS ON THE GUILT PHASE?

2 MR. MC MAHON: THE WAY THE QUESTION IS WORDED, NO.

3 HOWEVER, I THINK IN YOUR NEXT QUESTION, THE ANSWER WILL BE

4 YES. SO --

5 THE COURT: WELL, YOU DON'T KNOW WHAT MY NEXT QUESTION
6 IS. WHAT I AM SAYING IS, THAT I HAVE AN IDEA OF WHAT YOU HAVE
7 GOT IN MIND ON THE GUILT PHASE OF IT, THE FACT THAT YOU HAVE
8 AN OPINION WITH RESPECT TO THE DEATH PENALTY. THAT IS NOT
9 GOING TO AFFECT YOU IN BRINGING IN A VERDICT OF GUILTY OR NOT
10 GUILTY, IS THAT RIGHT?

11 MR. MC MAHON: RIGHT. IT IS NOT GOING TO AFFECT ME.

12 THE COURT: NOW, IT IS ONLY WHEN IT COMES TO THE PENALTY
13 PHASE THAT SOMETHING MIGHT AFFECT YOU, IS THAT RIGHT?

14 MR. MC MAHON: YES.

15 THE COURT: ALL RIGHT. NOW, LET ME ASK THE NEXT QUESTION.

16 DO YOU HAVE ANY OPINION REGARDING THE DEATH
17 PENALTY, THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
18 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
19 CIRCUMSTANCES ALLEGED IN THIS CASE? IT'S STILL IN THE FIRST
20 PHASE, THE GUILT PHASE PART, IS TO DETERMINE THE GUILT OR
21 INNOCENCE OF THE DEFENDANT BEYOND A REASONABLE DOUBT AND --

22 MR. MC MAHON: I UNDERSTAND.

23 THE COURT: THE SECOND PHASE WOULD BE THE PENALTY PHASE.
24 IS IT TRUE OR NOT TRUE THAT IT WAS IN THE COURSE OF A
25 ROBBERY?

26 MR. MC MAHON: RIGHT. NO. THE ANSWER IS NO TO THAT
27 QUESTION.

28 THE COURT: THAT'S RIGHT. NOW, THE THIRD QUESTION IS

1 AND THE QUESTION I THINK YOU ARE CONCERNED ABOUT PROBABLY IS,
2 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT
3 YOU WOULD AUTOMATICALLY VOTE TO OPPOSE IT AFTER THE VERDICT
4 OF GUILTY OF MURDER IN THE FIRST DEGREE, REGARDLESS OF WHAT
5 THE CONSEQUENCES -- REGARDLESS OF ANY EVIDENCE THAT MAY BE
6 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

7 MR. MC MAHON: YES.

8 THE COURT: ALL RIGHT. NOW, WHAT IS THAT OPINION THAT
9 YOU HAVE THAT WOULD PREVENT YOU --

10 MR. MC MAHON: I DON'T BELIEVE IN A PENALTY OR SENTENCE
11 OF LIFE WITHOUT PAROLE FOR FIRST DEGREE MURDER.

12 THE COURT: WELL, I HAVE NOT ASKED YOU ABOUT LIFE WITHOUT
13 THE POSSIBILITY OF PAROLE YET. I AM ONLY ASKING YOU WITH
14 RESPECT TO THE DEATH PENALTY.

15 MR. MC MAHON: ALL RIGHT.

16 THE COURT: DO YOU HAVE SUCH AN OPINION REGARDING THE
17 DEATH PENALTY?

18 MR. MC MAHON: NO.

19 THE COURT: THAT WOULD PREVENT YOU IN CONSIDERING ON
20 THE PENALTY PHASE OF THE CASE THAT -- LET ME READ THIS TO YOU.

21 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
22 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE
23 DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT YOU MAY BE
24 PRESENTED IN THE PENALTY PHASE OF THE TRIAL?

25 MR. MC MAHON: POSSIBLY. THAT IS, I AM STRONGLY PRO-
26 DEATH PENALTY.

27 THE COURT: I SEE. SO THAT IRRESPECTIVE OF THE EVIDENCE
28 ON THE PENALTY PHASE OF THE TRIAL, YOUR STATE OF MIND IS SUCH

1 THAT YOU WOULD ONLY VOTE FOR THE DEATH PENALTY AND NOT LIFE
2 WITHOUT POSSIBILITY OF PAROLE?

3 MR. MC MAHON: ALL RIGHT.

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

5 MR. BARENS: THE DEFENSE WOULD HAVE A MOTION.

6 THE COURT: YES?

7 MR. WAPNER: NO QUESTIONS.

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1 MR. BARENS: CHALLENGE FOR CAUSE.

2 THE COURT: I WILL GRANT YOUR MOTION.

3 BECAUSE OF YOUR ATTITUDE TOWARDS THE DEATH PENALTY,
4 I FEEL YOU DO NOT QUALIFY AS A JUROR IN THIS CASE.

5 MR. MC MAHON: I UNDERSTAND.

6 THE COURT: YOU LOOK LIKE A JUROR WE WOULD LIKE TO HAVE
7 ON SOME OTHER TYPE OF CASE, SO YOU STICK AROUND. YOU TELL
8 THE JURY ASSEMBLY CLERK THAT YOU ARE AVAILABLE FOR SOME OTHER
9 TRIAL BUT NOT ON A DEATH PENALTY CASE.

10 MR. MC MAHON: THANK YOU.

11 THE COURT: THANK YOU VERY MUCH FOR YOUR FRANKNESS AND
12 YOUR CANDOR, WE APPRECIATE IT.

13 NOBODY IS CRITICIZING YOU FOR YOUR ATTITUDE; YOU
14 UNDERSTAND THAT, DON'T YOU?

15 MR. MC MAHON: I UNDERSTAND.

16 (PROSPECTIVE JUROR MC MAHON EXITS THE
17 COURTROOM.)

18 THE COURT: ALL RIGHT, SUZANNE MUELLER.

19 MR. BARENS: WHAT HAPPENED TO LINDA MICKELL AND --

20 THE COURT: WE HEARD MICKELL AND NITZ AND NELSON THE
21 OTHER DAY.

22 MR. BARENS: I AM SORRY.

23 (PROSPECTIVE JUROR MUELLER ENTERS THE
24 COURTROOM.)

25 THE COURT: THAT IS MISS MUELLER, IS IT?

26 MS. MUELLER: MRS. MUELLER.

27 THE COURT: MRS. MUELLER, IS THAT RIGHT?

28 MS. MUELLER: YES.

1 THE COURT: MRS. MUELLER, WHERE DO YOU LIVE?

2 MS. MUELLER: IN SEPULVEDA, 3235 SOUTH SEPULVEDA.

3 THE COURT: IN LOS ANGELES?

4 MS. MUELLER: LOS ANGELES, YES.

5 THE COURT: MRS. MUELLER, HAVE YOU READ ANYTHING AT ALL
6 ABOUT THIS CASE IN WHICH WE ARE IN THE PROCESS OF SELECTING
7 A JURY?

8 MS. MUELLER: MAYBE ABOUT A PRAGRAPH, YES.

9 THE COURT: WHERE DID YOU READ THAT?

10 MS. MUELLER: IN THE NEWSPAPER, THE EVENING OUTLOOK,
11 I BELIEVE.

12 THE COURT: THE OUTLOOK?

13 WHAT DO YOU MEAN, JUST A PARAGRAPH?

14 MS. MUELLER: WHEN I REALIZED IT WAS A CASE WE WERE --

15 THE COURT: YOU STOPPED READING IT?

16 MS. MUELLER: YES.

17 THE COURT: YOU WILL MAINTAIN THAT SAME ATTITUDE IF YOU
18 ARE SELECTED AS ONE OF THE QUALIFIED JURORS IN THIS CASE, ALL
19 RIGHT.

20 IN THIS CASE, WHAT YOU DID READ, WOULD THAT IN
21 ANY WAY AFFECT YOU IN DETERMINING THE GUILT OR INNOCENCE OF
22 THIS DEFENDANT IN ANY WAY?

23 MS. MUELLER: NO.

24 THE COURT: AND WHAT DO YOU REMEMBER THAT YOU READ?

25 MS. MUELLER: I READ THAT IT HAD TO DO WITH A BILLIONAIRE
26 BOY'S CLUB.

27 THE COURT: BILLIONAIRE BOY'S CLUB?

28 MS. MUELLER: YES.

1 AND THAT THE BODY HAD NOT BEEN FOUND AND THAT IS
2 ABOUT ALL.

3 THE COURT: THAT IS ALL YOU REMEMBER?

4 MS. MUELLER: YES.

5 THE COURT: YOU ARE SURE YOUR STATE OF MIND WOULD NOT
6 INFLUENCE YOU IF YOU WERE SELECTED AS A JUROR ON THIS CASE?

7 MS. MUELLER: NO, SIR.

8 I DIDN'T READ ANYTHING MORE.

9 THE COURT: DID YOU DISCUSS ANYTHING ABOUT IT WITH
10 ANY THIRD PARTIES OR ANY OF THE OTHER JURORS IN THE CASE?

11 MS. MUELLER: NO, SIR, NOT SPECIFICALLY OR ANYTHING.

12 THE COURT: NOTHING ABOUT THE FACTS YOU MEAN?

13 MS. MUELLER: NO.

14 THE COURT: EXCEPT THAT YOU MIGHT BE A JUROR ON THE CASE?

15 MS. MUELLER: RIGHT.

16 THE COURT: ALL RIGHT. NOW LET ME JUST REFRESH YOUR
17 MEMORY AS TO WHAT I TOLD THE PROSPECTIVE JURORS ABOUT TWO WEEKS
18 AGO.

19 THE DEFENDANT IS CHARGED WITH THE COMMISSION OF
20 THE CRIME OF MURDER IN THE FIRST DEGREE AND THAT MURDER WAS
21 COMMITTED DURING THE COURSE OF A ROBBERY. BEING COMMITTED
22 DURING THE COURSE OF A ROBBERY QUALIFIES THE CASE FOR THE DEATH
23 PENALTY OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
24 PAROLE.

25 THE LEGISLATURE HAS PICKED OUT CERTAIN CRIMES
26 THEY SAY UNDER CERTAIN SPECIAL CIRCUMSTANCES THAT WOULD
27 QUALIFY THE CASE FOR THE DEATH PENALTY. IF THE MURDER WAS
28 COMMITTED DURING THE COURSE OF A ROBBERY, A BURGLARY OR A

1 KIDNAPPING OR RAPE OR TORTURE OR MULTIPLE MURDERS AND THERE
2 ARE 19 OF THEM THAT THE LEGISLATURE SAYS IN THOSE CASES JURORS
3 MAY CONSIDER, IF THE DISTRICT ATTORNEY REQUESTS THE DEATH
4 PENALTY, THEY HAVE THE RIGHT TO CONSIDER THE DEATH PENALTY.

5 NOW IF YOU ARE SELECTED AS A JUROR, THE JURY WILL
6 DETERMINE FIRST WHAT WE CALL THE GUILT PHASE, WAS THE DEFENDANT
7 GUILTY OF MURDER IN THE FIRST DEGREE AND IF THEY VOTE YES
8 UNANIMOUSLY THAT HE IS GUILTY OF MURDER IN THE FIRST DEGREE
9 BEYOND A REASONABLE DOUBT, THEN THEY HAVE AN AUXILIARY QUESTION
10 TO ANSWER: WAS THAT MURDER COMMITTED DURING THE COURSE OF
11 A ROBBERY?

12 AND IF THEY SAY YES AND MAKE A FINDING AS TO THAT
13 EFFECT THAT IT IS TRUE, THEN WE START A SECOND PHASE OF THE
14 TRIAL WHICH IS KNOWN AS THE PENALTY PHASE. DURING THE PENALTY
15 PHASE, THERE WILL BE OTHER EVIDENCE YOU HAVEN'T HEARD BEFORE
16 FROM THE DEFENDANT AND THE PROSECUTION BEARING UPON WHICH
17 PENALTY SHOULD BE IMPOSED UPON THE DEFENDANT, IF ANY.

18 NOW, THE DEFENDANT WILL ADDUCE TESTIMONY ABOUT
19 HIS BACKGROUND, HIS AGE, FAVORABLE THINGS IN HIS LIFE. THE
20 PROSECUTION WILL TELL YOU THE BAD THINGS IN HIS LIFE. ALSO,
21 THERE WILL BE TESTIMONY ADDUCED AS TO THE DEFENDANT'S
22 CHARACTER, HIS BACKGROUND, HIS HISTORY, HIS MENTAL CONDITION
23 AND HIS PHYSICAL CONDITION, THESE ALL WILL BE THINGS YOU MUST
24 CONSIDER IN DETERMINING WHAT PENALTY SHOULD BE IMPOSED UPON
25 HIM. DO YOU UNDERSTAND ALL OF THAT?

26 MS. MUELLER: YES.

27 THE COURT: NOW I AM GOING TO ASK YOU A SERIES OF
28 QUESTIONS WHICH RELATE TO YOUR ATTITUDE, YOUR MIND SET AS TO

1 THE DEATH PENALTY AND HOW IT WOULD AFFECT YOU IN THIS
2 PARTICULAR CASE.

3 MS. MUELLER: RIGHT.

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

8 MS. MUELLER: I DISAPPROVE OF THE DEATH PENALTY.

9 THE COURT: YES.

10 I AM ASKING YOU WHETHER THAT DISAPPROVAL WILL
11 TAINT YOUR JUDGMENT DURING THE GUILT PHASE OF THE CASE?
12 FORGET ABOUT THE PENALTY.

13 MS. MUELLER: I KNOW. I KNOW YOU SAID THEY WERE
14 SUPPOSED TO BE SEPARATE.

15 I DON'T KNOW. I REALLY CANNOT SAY IF THAT WOULD
16 COLOR MY DECISION ABOUT HIS GUILT.

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1 THE COURT: ALL RIGHT. THEN LET ME ASK YOU THE NEXT
2 QUESTION. DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
3 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
4 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES
5 ALLEGED?

6 DO YOU REMEMBER I TOLD YOU THAT IF YOU FIND THE
7 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, THEN YOU ARE
8 TO DETERMINE WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE
9 OF A ROBBERY, ONLY THAT PART OF IT.

10 WOULD YOUR OPINION OF THE DEATH PENALTY AFFECT
11 YOUR JUDGMENT IN DETERMINING THE TRUTH OR FALSITY OF THE
12 SPECIAL CIRCUMSTANCES, WHETHER IT WAS COMMITTED DURING THE
13 COURSE OF A ROBBERY? IT IS STILL ON THE GUILT PHASE.

14 MS. MUELLER: YES. I DON'T BELIEVE SO, BUT AS I SAID --

15 THE COURT: ALL RIGHT. NOW, DO YOU HAVE SUCH AN OPINION
16 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
17 VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE
18 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

19 MS. MUELLER: NO.

20 THE COURT: NOW, THERE IS ANOTHER ASPECT OF THE SAME
21 THING. DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
22 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT
23 POSSIBILITY OF PAROLE?

24 MS. MUELLER: YES.

25 THE COURT: REGARDLESS OF ANY EVIDENCE?

26 MS. MUELLER: YES.

27 THE COURT: WOULD YOU?

28 MS. MUELLER: YES.

4-2
1 THE COURT: WOULD YOU NOT VOTE -- YOUR OPINION IS SUCH
2 THAT YOU WOULD NOT VOTE -- YOU WILL VOTE FOR LIFE WITHOUT
3 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
4 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

5 MS. MUELLER: YES. THAT IS TRUE.

6 THE COURT: YOU WOULD VOTE FOR LIFE WITHOUT POSSIBILITY
7 OF PAROLE, IS THAT RIGHT?

8 MS. MUELLER: IF THAT IS THE ONLY OTHER CHOICE, YES.

9 THE COURT: NO. YOU HAVE TWO CHOICES.

10 MS. MUELLER: YES. I SAID I WOULD NOT VOTE FOR THE
11 DEATH PENALTY.

12 THE COURT: YOU WOULD VOTE FOR LIFE WITHOUT POSSIBILITY
13 OF PAROLE?

14 MS. MUELLER: YES.

15 THE COURT: IS THAT CORRECT?

16 MS. MUELLER: YES.

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

21 MS. MUELLER: YES.

22 THE COURT: ALL RIGHT.

23 MR. BARENS: MAY WE HAVE A MOMENT TO SEE IF WE WILL
24 HAVE QUESTIONS?

25 THE COURT: YES.

26 (PAUSE.)

27 MR. BARENS: GOOD MORNING, MISS MUELLER. I AM ARTHUR
28 BARENS. I REPRESENT THE DEFENDANT, JOE HUNT.

4
1 AS HIS HONOR DID, I AM GOING TO ASK YOU A FEW
2 QUESTIONS ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY. THERE
3 ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NONE OF
4 US, YOU KNOW, ARE REALLY JUDGING ANYTHING YOU SAY.

5 WE ARE JUST TRYING TO FIND OUT YOUR POINT OF VIEW.
6 THERE IS NO RIGHT OR WRONG POINT OF VIEW. THERE IS JUST YOUR
7 POINT OF VIEW.

8 MISS MUELLER, TO GET RIGHT TO AND TRY TO NARROW
9 THE FOCUS, TO SAVE EVERYONE'S TIME, WE ARE ALL CONCERNED ABOUT
10 YOUR RESPONSE THAT YOU WERE AGAINST THE DEATH PENALTY, NOT
11 THAT THAT IS A WRONG RESPONSE.

12 THE SITUATION WE HAVE IS THAT IN ORDER TO SERVE
13 ON A JURY OF THIS KIND, THE GOVERNMENT AND/OR THE PEOPLE OF
14 THE STATE OF CALIFORNIA AND THE DEFENDANT ARE ENTITLED TO
15 A NEUTRAL JUROR THAT COULD UNDER CERTAIN CIRCUMSTANCES, BRING
16 BACK A DEATH PENALTY VERDICT OR IN OTHER CIRCUMSTANCES, DURING
17 THE PENALTY PHASE, BRING BACK LIFE WITHOUT POSSIBILITY OF
18 PAROLE.

19 MY INQUIRY GOES TO ASKING YOU, IS THERE ANY CASE
20 CONCEIVABLE TO YOURSELF IN WHICH YOU COULD BRING BACK A FINDING
21 OF THE DEATH PENALTY FOR CERTAIN TYPES OF CONDUCT?

22 MS. MUELLER: NO.

23 MR. BARENS: ARE YOU TELLING ME IN ALL CANDOR, THAT
24 NO MATTER WHAT WAS PROVEN TO YOU, THAT THE DEFENDANT --
25 WHATEVER HE DID OR ABOUT THE DEFENDANT'S CHARACTER OR LACK
26 OF MORAL CHARACTER, THAT UNDER NO CIRCUMSTANCES, COULD YOU
27 VOTE IN FAVOR OF THE DEATH PENALTY?

28 MS. MUELLER: I CAN'T CONCEIVE OF ONE, NO. I REALLY

4
1 CAN'T. I HAVE THOUGHT ABOUT IT.

2 I HAVE THOUGHT ABOUT MASS MURDERERS. I HAVE THOUGHT
3 ABOUT EVERYTHING. I JUST CAN'T CONCEIVE OF MYSELF VOTING
4 TO END ANOTHER PERSON'S LIFE. NO.

5 MR. BARENS: THANK YOU FOR YOUR CANDOR THIS MORNING,
6 MISS MUELLER. THANK YOU.

7 THE COURT: ALL RIGHT.

8 MR. WAPNER: NO QUESTIONS.

9 THE COURT: ALL RIGHT. THE COURT WILL MAKE A FINDING
10 THAT THE JUROR, MISS MUELLER, DOES NOT QUALIFY IN THIS
11 PARTICULAR CASE. WE WOULD LOVE TO HAVE YOU AS A JUROR IN
12 SOME OTHER CASE.

13 BUT BECAUSE OF YOUR STATE OF MIND, I AM GRATEFUL
14 TO YOU FOR YOUR FRANKNESS AND YOUR CANDOR. YOU DO NOT
15 QUALIFY AS A JUROR IN THIS PARTICULAR CASE. BUT YOU WILL
16 QUALIFY VERY WELL FOR SOME OTHER TYPE OF CASE.

17 PLEASE GO BACK TO THE JURY ASSEMBLY ROOM. TELL
18 THE JURY ASSEMBLY CLERK THAT YOU WILL BE AVAILABLE FOR SOME
19 OTHER CASE BUT NOT THIS ONE.

20 MS. MUELLER: OKAY.

21 THE COURT: THANK YOU VERY MUCH.

22 (PROSPECTIVE JUROR MUELLER EXITED
23 THE COURTROOM.)

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1 (PROSPECTIVE JUROR IRENE OSBORNE
2 ENTERED THE COURTROOM.)

3 THE COURT: MRS. OSBORNE?

4 MS. OSBORNE: YES.

5 THE COURT: WHERE DO YOU LIVE?

6 MS. OSBORNE: IN WEST LOS ANGELES.

7 THE COURT: WHAT PART?

8 MS. OSBORNE: WESTWOOD AREA.

9 THE COURT: YES. AND HAVE YOU READ ANYTHING AT ALL
10 OR HEARD ANYTHING AT ALL ABOUT THIS CASE BEFORE I TOLD YOU
11 WHAT IT WAS ALL ABOUT?

12 MS. OSBORNE: I PICKED UP A MAGAZINE YOUR HONOR, WHILE
13 I WAS IN THE HAIR DRESSER'S ONE DAY.

14 THE COURT: WAS THAT ESQUIRE?

15 MS. OSBORNE: NO.

16 THE COURT: WHICH MAGAZINE? HOW LONG AGO?

17 MS. OSBORNE: IT IS FIVE OR SIX MONTHS AGO. I DON'T
18 KNOW WHAT THE MAGAZINE WAS.

19 THE COURT: LOS ANGELES MAGAZINE?

20 MS. OSBORNE: I DON'T KNOW. I JUST PICKED IT UP. I GOT
21 TO THE SECOND OR THIRD PAGE. I GOT CALLED IN, SO I DIDN'T --

22 THE COURT: WHAT DO YOU REMEMBER READING?

23 MS. OSBORNE: WELL, THE NAMES. THE NAMES CAME TO MIND
24 AFTER I HEARD IT HERE.

25 THE COURT: DO YOU REMEMBER ANY FACTS THAT YOU READ?

26 MS. OSBORNE: NO, NOT TOO MUCH.

27 THE COURT: TELL US WHAT YOU REMEMBER OF IT.

28 MS. OSBORNE: OH, WELL. IT WAS A GROUP OF YOUNG MEN.

1 THEY HAD SOME KIND OF A CLUB.

2 THE COURT: THE BILLIONAIRE BOYS CLUB?

3 MS. OSBORNE: YES, YES. THERE WAS SOMETHING ABOUT
4 COMMODITIES.

5 THE COURT: COMMODITY TRADING?

6 MS. OSBORNE: YES. AND THERE WERE PICTURES OF -- SCHOOL
7 PICTURES, YOU KNOW, OF THREE OR FOUR BOYS. THAT IS ABOUT
8 ALL. THAT IS AS FAR AS I GOT.

9 THE COURT: BUT THE FACTS THEMSELVES, YOU READ NOTHING?

10 MS. OSBORNE: NO.

11 THE COURT: ALL RIGHT. AND IN THE FUTURE, YOU ARE NOT
12 TO, IF YOU ARE SELECTED AS ONE OF THE POSSIBLE JURORS IN THIS
13 CASE, YOU WON'T READ ANYTHING OR HEAR ANYTHING OR DISCUSS
14 ANYTHING WITH ANYBODY?

15 MS. OSBORNE: NO.

16 THE COURT: ALL RIGHT. NOW, OTHER THAN WHAT I HAVE
17 TOLD YOU AND ALL OF THE OTHER JURORS ABOUT THE CASE, I AM
18 GOING TO SUMMARIZE IT SO WE CAN BRING IT BACK TO YOUR MIND
19 TO USE IT AS A BASIS FOR QUESTIONS I AM GOING TO ASK YOU.

20 MS. OSBORNE: YES.

21 THE COURT: DO YOU RECALL THAT I TOLD YOU THAT THIS
22 WAS A CASE WHERE THE PEOPLE ARE CHARGING THE DEFENDANT WITH
23 THE CRIME OF MURDER OR MURDER IN THE FIRST DEGREE AND THAT
24 THAT MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY.

25 NOW, THE SIGNIFICANCE OF IT BEING COMMITTED DURING
26 THE COURSE OF A ROBBERY, IS THAT IT WOULD QUALIFY THIS CASE
27 FOR A POSSIBLE DEATH VERDICT. DO YOU UNDERSTAND THAT?

28 MS. OSBORNE: YES.

1 THE COURT: THE LEGISLATURE HAS SAID THAT IN CERTAIN
2 TYPES OF MURDER -- NOT EVERY MURDER QUALIFIES FOR THE DEATH
3 PENALTY, NOT EVEN IF IT IS DELIBERATE AND CALCULATED AND
4 PLANNED. EVERY MURDER DOES NOT QUALIFY.

5 IT IS ONLY WHERE THE MURDER IS COMMITTED UNDER
6 SPECIAL CIRCUMSTANCES, THAT THEY CALL IT A SPECIAL
7 CIRCUMSTANCE CASE AND IT QUALIFIES FOR A POSSIBLE LIFE WITHOUT
8 POSSIBILITY OF PAROLE OR DEATH.

9 MS. OSBORNE: I UNDERSTAND.

10 THE COURT: NOW, THE LEGISLATURE HAS SAID THAT A MURDER
11 COMMITTED DURING THE COURSE OF A ROBBERY, WHICH IS IN THIS
12 CASE -- A MURDER COMMITTED DURING THE COURSE OF A BURGLARY
13 OR A RAPE OR A KIDNAPPING OR A TORTURE OR MULTIPLE MURDERS
14 AND THESE ARE ONLY SOME OF THE INSTANCES OR SPECIAL
15 CIRCUMSTANCES WHERE THE CASE WOULD QUALIFY FOR THE DEATH
16 PENALTY. DO YOU UNDERSTAND?

17 MS. OSBORNE: YES.

18 THE COURT: NOW, WHAT I AM GOING TO DO IS, ASK YOU A
19 SERIES OF QUESTIONS. THE PURPOSE OF THOSE QUESTIONS IS TO
20 DETERMINE WHAT YOUR STATE OF MIND IS AND WHAT YOUR BELIEFS
21 ARE WITH RESPECT TO THE DEATH PENALTY. OKAY?

22 MS. OSBORNE: YES.

23 THE COURT: NOW, FIRST I AM GOING TO ASK, DO YOU HAVE
24 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT
25 YOU -- BEFORE I GO INTO THAT, DO YOU KNOW THERE ARE TWO
26 PHASES OF A DEATH PENALTY CASE?

27 THE FIRST PHASE IS THE GUILT OR INNOCENCE PHASE,
28 IS THE DEFENDANT GUILTY OR NOT GUILTY OF MURDER IN THE FIRST

1 DEGREE?

2 IF YOU FIND HE IS GUILTY OF MURDER IN THE FIRST
3 DEGREE, THEN YOU DETERMINE THAT SECOND QUESTION, WHETHER OR
4 NOT IT WAS DURING THE COURSE OF A ROBBERY.

5 THE JURY MAKES A FINDING, TRUE OR FALSE AS TO
6 WHETHER IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.
7 ALL RIGHT. NOW, ON THE FIRST PHASE OF THE TRIAL WHICH IS
8 THE GUILT PHASE, THIS QUESTION IS IN RELATION TO THAT. DO
9 YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
10 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
11 OR INNOCENCE OF THE DEFENDANT?

12 MS. OSBORNE: NO.

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

17 MS. OSBORNE: NO.

18 THE COURT: ALL RIGHT. THE THIRD QUESTION IS, DO YOU
19 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU
20 WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS
21 OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY PHASE
22 OF THE TRIAL?

23 MS. OSBORNE: NO.

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1 THE COURT: THEN THERE IS ANOTHER ASPECT OF THE SAME
2 QUESTION: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
3 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISON-
4 MENT WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS OF ANY
5 EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE
6 TRIAL?

7 MS. OSBORNE: NO.

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

12 MS. OSBORNE: I UNDERSTAND.

13 THE COURT: ALL RIGHT.

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 GOOD MORNING, MRS. OSBORNE.

16 MS. OSBORNE: GOOD MORNING.

17 MR. BARENS: I AM ARTHUR BARENS. I AM REPRESENTING JOE
18 HUNT, WHO IS THE DEFENDANT IN THIS MATTER.

19 MS. OSBORNE: UH-HUH.

20 MR. BARENS: WE ARE AT A STAGE IN THE PROCEEDING WHERE
21 BOTH SIDES WOULD LIKE TO ASK YOU YOUR POINT OF VIEW CONCERNING
22 THE DEATH PENALTY. THERE ARE NO RIGHT OR WRONG ANSWERS TO
23 THESE QUESTIONS BUT, RATHER, WE ARE SEEKING TO FIND OUT JUST
24 YOUR POINT OF VIEW AND THERE IS NO RIGHT OR WRONG POINT OF
25 VIEW.

26 MS. OSBORNE: I UNDERSTAND.

27 MR. BARENS: MRS. OSBORNE, YOU MENTIONED EARLIER ON THAT
28 YOU HAD READ IN A MAGAZINE SOME INFORMATION CONCERNING THIS

1 MATTER.

2 THE DEFENSE AND THE PROSECUTION ARE ENTITLED TO
3 A NEUTRAL JUROR OR AS NEUTRAL AS WE HUMAN BEINGS CAN BE GOING
4 INTO A MATTER.

5 MA'AM, MY CONCERN WOULD BE THAT THERE HAD BEEN
6 NOTHING YOU READ IN THAT ARTICLE THAT WOULD CAUSE YOU ANY
7 BIAS OR PREJUDICE WHICH IN ANY WAY OR ANOTHER CONCERNS JOE
8 HUNT.

9 AFTER READING THAT ARTICLE, DID YOU FEEL THAT A
10 MURDER TOOK PLACE?

11 MS. OSBORNE: NO, I COULDN'T JUST FROM WHAT I READ, NO.

12 MR. BARENS: AND WERE YOU UPSET WITH MR. HUNT AFTER YOU
13 READ THE ARTICLE?

14 MS. OSBORNE: NO.

15 I JUST -- AS I SAID, I JUST BARELY JUST GOT
16 STARTED AND THEN I HAD TO PUT THE MAGAZINE DOWN AND I NEVER
17 DID SEE THE MAGAZINE AGAIN.

18 MR. BARENS: THEREFORE, IF YOU WERE TO BE SELECTED AS
19 A JUROR IN THIS CASE, AS HIS HONOR HAS SUGGESTED TO YOU, YOU
20 WOULD MAKE YOUR DECISION BASED ON THE EVIDENCE YOU HEARD IN
21 THIS COURTROOM, NOT BASED ON ANY ARTICLE YOU READ OR ANYTHING
22 YOU MIGHT HAVE SEEN ON TELEVISION OR OTHERWISE?

23 MS. OSBORNE: YES, ON THE EVIDENCE, RIGHT.

24 MR. BARENS: AND THERE IS NOTHING IN THAT MAGAZINE THAT
25 YOU READ THAT WOULD CAUSE YOU ANY CONCERN OR MAKE YOU PRE-
26 JUDGE ANY OF THE EVIDENCE?

27 MS. OSBORNE: NO.

28 MR. BARENS: SO YOU COULD PUT THAT COMPLETELY OUT OF

1 YOUR MIND?

2 MS. OSBORNE: YES.

3 MR. BARENS: THANK YOU FOR THAT.

4 HOW DO YOU FEEL ABOUT THE DEATH PENALTY IN OUR
5 SOCIETY AS A GENERAL PROPOSITION?

6 MS. OSBORNE: WELL, I AM NOT A HUNDRED PERCENT FOR IT
7 AND I AM NOT A HUNDRED PERCENT AGAINST.

8 I THINK IT DEPENDS ON THE CASE.

9 MR. BARENS: WHEN YOU SAY IT WOULD DEPEND ON THE CASE,
10 IS THERE SOMETHING IN PARTICULAR YOU ARE REFERRING TO THAT
11 IT WOULD DEPEND ON?

12 MS. OSBORNE: WELL, I MEAN THE EVIDENCE.

13 MR. BARENS: NOW IN THIS CASE, THERE WOULD BE TWO PHASES,
14 AS HIS HONOR EXPRESSED TO YOU.

15 THE FIRST PHASE IS ON WHETHER OR NOT THE
16 DEFENDANT IS GUILTY OF CONDUCT -- GUILTY OF DOING SOMETHING
17 THAT WOULD CONSTITUTE A FIRST DEGREE MURDER.

18 IN THE SECOND PHASE, YOU WOULD HAVE TO DECIDE
19 WHETHER THAT DEFENDANT LIVED OR DIED.

20 NOW BEARING IN MIND THAT YOU HAVE ALREADY FOUND
21 HIM GUILTY OF THE CRIME ALLEGED, HE THEN IS ENTITLED TO A
22 NEUTRAL JUROR CONCERNING WHETHER HE LIVES OR DIES.

23 DO YOU HAVE A BIAS, ASSUMING YOU HAD A CASE WHERE
24 A DEFENDANT WAS CONVICTED OF TAKING A PERSON'S LIFE
25 INTENTIONALLY DURING THE COURSE OF A ROBBERY FOR SOME SORT
26 OF A GAIN, DO YOU FEEL THAT HAVING HEARD NOTHING ELSE THAT
27 THAT PERSON SHOULD BE PUT TO DEATH OR GIVEN LIFE IMPRISONMENT
28 WITHOUT THE POSSIBILITY OF PAROLE?

1 MS. OSBORNE: JUST ON THAT, IT IS HARD TO SAY.

2 MR. BARENS: OKAY, RIGHT.

3 NOW HIS HONOR WOULD ADVISE YOU THAT THERE ARE
4 CIRCUMSTANCES IN MITIGATION AND AGGRAVATION THAT JURORS
5 OUGHT TO CONSIDER IN MAKING THAT DECISION.

6 WOULD YOU BE WILLING TO CONSIDER FACTORS IN TERMS
7 OF WHETHER OR NOT IT WAS LIFE OR DEATH IN TERMS OF THE
8 DEFENDANT'S AGE AT THE TIME THE CRIME WAS COMMITTED?

9 THE COURT: I WILL INSTRUCT YOU THAT ON THE PENALTY
10 PHASE OF THE CASE THAT YOU HAVE THE RIGHT TO CONSIDER EVERY-
11 THING THAT YOU HEARD ON THE GUILT PHASE. YOU HAVE THE RIGHT
12 TO CONSIDER WHETHER OR NOT THE DEFENDANT HAD A PREVIOUS
13 CRIMINAL BACKGROUND OR CONVICTION OR LACK OF IT. THE COURT
14 WILL ALSO TELL YOU THAT THE DEFENDANT'S CHARACTER, HIS
15 BACKGROUND, HIS HISTORY, HIS MENTAL CONDITION AND PHYSICAL
16 CONDITION ARE THINGS THAT YOU MUST TAKE INTO CONSIDERATION
17 IN DETERMINING WHETHER OR NOT IT WILL BE LIFE IMPRISONMENT
18 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. YOU WILL FOLLOW
19 THOSE INSTRUCTIONS, WILL YOU NOT?

20 MS. OSBORNE: RIGHT. I UNDERSTAND, YES.

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1 THE COURT: THANK YOU.

2 MR. BARENS: MRS. OSBORNE, WILL YOU CONSIDER THOSE
3 FACTORS ON WHETHER A PERSON SHOULD LIVE OR DIE?

4 MS. OSBORNE: ALL OF THE FACTORS, YES.

5 MR. BARENS: WOULD THERE BE ANYTHING ELSE THAT WOULD
6 COME TO YOUR MIND THAT YOU THINK SHOULD BE CONSIDERED?

7 MS. OSBORNE: NO.

8 MR. BARENS: OKAY. DO YOU BELIEVE IN THE CONCEPT OF
9 AN EYE FOR AN EYE?

10 MS. OSBORNE: NO.

11 MR. BARENS: NOT IN EVERY CASE?

12 MS. OSBORNE: NOT, NO.

13 MR. BARENS: AND DO YOU UNDERSTAND THAT WHEN THE COURT
14 REFERS TO LIFE WITHOUT POSSIBILITY OF PAROLE, THAT IN THIS
15 TYPE OF A SITUATION THAT IT REALLY MEANS THAT, THAT THE
16 DEFENDANT DOES NOT EVER GET OUT ON PAROLE? OR DO YOU THINK
17 MAYBE THAT IS JUST SOMETHING WE ARE TELLING YOU AND THAT LATER
18 ON, THE DEFENDANT IS GOING TO GET OUT ON PAROLE THROUGH SOME
19 LAWYER MOVES, OR SOMETHING?

20 MS. OSBORNE: THAT, I DON'T KNOW. I COULDN'T GIVE YOU
21 AN ANSWER ON THAT.

22 MR. BARENS: IF THE JUDGE TELLS YOU THAT LIFE WITHOUT
23 THE POSSIBILITY OF PAROLE MEANS THAT, WOULD YOU BELIEVE THAT
24 OR WOULD YOU HAVE SOME REMAINING SUSPICIONS THAT THAT WASN'T
25 REALLY TRUE?

26 MS. OSBORNE: NO. I WOULD BELIEVE THAT.

27 MR. BARENS: ALL RIGHT. DO YOU FEEL YOU ARE AN OPEN-
28 MINDED PERSON?

1 MS. OSBORNE: YES, I DO.

2 MR. BARENS: DO YOU IN YOUR OWN MIND THINK THERE ARE
3 PARTICULAR TYPES OF CRIMES FOR WHICH THE DEFENDANT SHOULD
4 ALWAYS GET THE DEATH PENALTY?

5 MS. OSBORNE: YEAH, A COUPLE CAME TO MIND.

6 MR. BARENS: WHAT WOULD THAT BE, MA'AM?

7 MS. OSBORNE: LIKE SIRHAN SIRHAN.

8 MR. BARENS: YES, MA'AM.

9 MS. OSBORNE: AND MANSON. THOSE ARE TWO THAT CAME TO
10 MIND.

11 MR. BARENS: BUT IN EVERY OTHER CASE THERE WOULD BE
12 NOTING AUTOMATIC IN YOUR STATE OF MIND ABOUT WHETHER A PERSON
13 SHOULD LIVE OR DIE --

14 MS. OSBORNE: NO.

15 MR. BARENS: -- AFTER HAVING BEEN CONVICTED OF FIRST
16 DEGREE MURDER?

17 MS. OSBORNE: NO.

18 MR. BARENS: NOW YOU UNDERSTAND, OF COURSE, THAT ALTHOUGH
19 I AM HERE DISCUSSING THE DEATH PENALTY WITH YOU, THAT WE MAY
20 NEVER GET TO THAT? AND I HOPE THERE IS NO IMPLICATION IN YOUR
21 MIND THAT MR. HUNT IS GUILTY OF ANYTHING OR HAS DONE ANYTHING
22 WRONG WHATSOEVER JUST BECAUSE WE ARE DISCUSSING THE PENALTY
23 PHASE OF THIS TRIAL.

24 MS. OSBORNE: THAT'S RIGHT.

25 MR. BARENS: AND YOU UNDERSTAND THERE IS A PRESUMPTION
26 OF INNOCENCE CONCERNING ALL OTHER DEFENDANTS, SUCH AS MR. HUNT,
27 UNTIL YOU HAVE HEARD THE EVIDENCE IN THIS CASE?

28 MS. OSBORNE: YES, I DO.

1 THE COURT: ALL RIGHT.

2 MR. WAPNER: THANK YOU.

3 GOOD MORNING, MRS. OSBORNE. I AM FRED WAPNER.
4 I AM THE DEPUTY D.A. PROSECUTING THIS CASE.

5 BEFORE YOU WERE ASKED TO SERVE ON THIS JURY, DID
6 YOU HAVE ANY OPINIONS ABOUT THE DEATH PENALTY ONE WAY OR THE
7 OTHER?

8 MS. OSBORNE: OH, I ALWAYS HAVE HAD, LIKE I SAID, I AM
9 NOT A HUNDRED PERCENT FOR IT AND I AM NOT A HUNDRED PERCENT
10 AGAINST THE DEATH PENALTY. IT DEPENDS.

11 MR. WAPNER: DO YOU REMEMBER WHEN THE ISSUE OF THE DEATH
12 PENALTY WAS ON THE BALLOT A FEW YEARS AGO?

13 MS. OSBORNE: I DON'T THINK I REALLY DO.

14 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
15 MORAL OR PHILOSOPHICAL OPINIONS THAT WOULD AFFECT YOUR
16 ABILITY TO VOTE ON THE DEATH PENALTY ONE WAY OR THE OTHER?

17 MS. OSBORNE: NO, I DON'T.

18 MR. WAPNER: ARE YOU THE KIND OF PERSON WHO IS CAPABLE
19 OF MAKING THIS LIFE OR DEATH DECISION?

20 MS. OSBORNE: YES, I COULD.

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

22 THE COURT: PASS FOR CAUSE?

23 MR. WAPNER: PASS FOR CAUSE.

24 THE COURT: MRS. OSBORNE, YOU HAVE QUALIFIED AS A POSSIBLE
25 JUROR IN THIS CASE SO WHAT I WILL ASK YOU TO DO IS TO COME
26 BACK TO THE JURY ASSEMBLY ROOM ON WEDNESDAY. HOPEFULLY, WE
27 MIGHT FINISH ALL OF THE REMAINING JURORS AS TO THEIR
28 QUALIFICATIONS BY TOMORROW BUT IF WE DON'T -- OFF THE RECORD --

1 WELL, IT CAN BE ON THE RECORD --

2 I THINK WE WILL CERTAINLY BE FINISHED BY THAT
3 TIME.

4 MR. WAPNER: TO ME, IT NOW LOOKS MORE LIKE REALISTICALLY,
5 LOOKING AT THIS LIST THAT WE ARE NOT GOING TO FINISH UNTIL
6 THE 4TH, CONSIDERING THE AMOUNT OF PEOPLE WE HAVE YET TO GO
7 THROUGH.

8 MR. BARENS: LET'S SAY THIS THURSDAY.

9 THE COURT: I THINK WE WILL DEFINITELY FINISH BY
10 THURSDAY. WE CAN FINISH TODAY AND TOMORROW AND WEDNESDAY.

11 MR. BARENS: ALL RIGHT, THE 4TH, YOUR HONOR.

12 THE COURT: SO YOU COME BACK TO THE JURY ASSEMBLY ROOM
13 ON THURSDAY, DECEMBER 4TH. DECEMBER 4TH, OKAY?

14 MS. OSBORNE: OKAY.

15 THE COURT: THAT IS AT 10:30 IN THE MORNING, ALL RIGHT?

16 MS. OSBORNE: YES.

17 THE COURT: IF BY ANY CHANCE IT IS DELAYED MORE THAN
18 THAT, WE HAVE YOUR TELEPHONE NUMBER AND WE CAN CALL YOU.

19 MS. OSBORNE: RIGHT.

20 THE COURT: UNLESS YOU HEAR TO THE CONTRARY, YOU WILL
21 BE HERE ON THURSDAY, ALL RIGHT?

22 MS. OSBORNE: OKAY, THANK YOU.

23 THE COURT: INCIDENTALY, MADAM, WE HAVE TOLD A NUMBER
24 OF THEM TO COME HERE ON THE 2ND, MADAM CLERK, SO YOU WILL
25 HAVE TO CALL THEM AND TELL THEM TO COME ON THE 4TH.

26 THE CLERK: YES, I WILL DO THAT.

27 THE COURT: STARTING WITH MRS. OSBORNE, BUT SHE HAS
28 BEEN TOLD TO COME ON THE 4TH. YOU START MAKING THOSE PHONE

1 CALLS, IF YOU WILL, PLEASE.

2 ALL RIGHT, CALL IN THE NEXT ONE.

3 (PROSPECTIVE JUROR OSBORNE EXITED

4 THE COURTROOM.)

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(PROSPECTIVE JUROR MARJORIE JOHNSON
ENTERED THE COURTROOM.)

THE COURT: YOUR NAME IS WHAT, AGAIN?

MS. JOHNSON: MARJORIE JOHNSON.

THE COURT: ALL RIGHT. IS IT MRS. JOHNSON?

MS. JOHNSON: MRS.

THE COURT: ALL RIGHT. MRS. JOHNSON, WHERE DO YOU LIVE?

MS. JOHNSON: THE EXACT ADDRESS?

THE COURT: NO.

MS. JOHNSON: WELL, I LIVE ON WELLESLEY AVENUE IN WEST
LOS ANGELES.

THE COURT: WELLESLEY?

MS. JOHNSON: IT IS AT THE CORNER OF --

MR. WAPNER: WELL, YOUR HONOR, WE DON'T NEED THE EXACT
CROSS STREETS.

THE COURT: YES. JUST WEST LOS ANGELES.

ALL RIGHT. DID YOU READ ANYTHING AT ALL OR HEAR
ANYTHING AT ALL ABOUT THIS CASE?

MS. JOHNSON: THERE WAS ONE ARTICLE IN THE PAPER. BUT
I DIDN'T REALLY READ IT.

THE COURT: WHICH PAPER WAS THAT?

MS. JOHNSON: THE OUTLOOK.

THE COURT: DID YOU RECOGNIZE THAT IT WAS ABOUT THIS
CASE AND FOR THAT REASON YOU DIDN'T READ IT?

MS. JOHNSON: RIGHT.

THE COURT: WELL, HOW FAR DID YOU GET INTO THE ARTICLE?

MS. JOHNSON: WELL, I SAW YOUR PICTURE AND THE
DISTRICT ATTORNEY'S PICTURE.

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1 THE COURT: AND DEFENSE COUNSEL'S PICTURE?

2 MS. JOHNSON: YES.

3 THE COURT: AND YOU DIDN'T --

4 MS. JOHNSON: I DIDN'T READ ANYTHING FURTHER ON IT.

5 THE COURT: ALL RIGHT. SO, YOU READ NOTHING ABOUT IT,
6 IS THAT RIGHT?

7 MS. JOHNSON: YES.

8 THE COURT: DID YOU DISCUSS IT AT ALL WITH ANY OF THE
9 PROSPECTIVE JURORS?

10 MS. JOHNSON: NO.

11 THE COURT: OR ANYBODY ELSE?

12 MS. JOHNSON: NO.

13 THE COURT: ALL RIGHT. NOW, YOU KNOW NOTHING ABOUT
14 THE CASE EXCEPT WHAT I EXPLAINED TO YOU WHEN WE WERE ALL HERE
15 TOGETHER ABOUT TWO WEEKS AGO?

16 MS. JOHNSON: THAT'S RIGHT.

17 THE COURT: ALL RIGHT. NOW, JUST TO SUMMARIZE IT AGAIN,
18 MRS. JOHNSON, IN THIS CASE, THE DEFENDANT IS CHARGED WITH
19 THE COMMISSION OF A MURDER IN THE FIRST DEGREE. AND THAT
20 MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

21 NOW, IN THE COURSE OF A ROBBERY, HAS SOME
22 SIGNIFICANCE BECAUSE IF IT IS FOUND TO BE TRUE, THEN IT
23 QUALIFIES THIS CASE FOR THE DEATH PENALTY.

24 THE DEATH PENALTY MEANS ONE OF TWO THINGS, EITHER
25 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH. DO YOU
26 UNDERSTAND?

27 THE LEGISLATURE HAS SAID THAT NOT EVERY MURDER
28 CALLS FOR THE DEATH PENALTY, EVEN IF IT IS DELIBERATE AND

1 PREMEDITATED AND PLANNED.

2 IT IS ONLY WHEN THAT MURDER IS COMMITTED UNDER
3 CERTAIN SPECIAL CIRCUMSTANCES AND THE SPECIAL CIRCUMSTANCES
4 WERE THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,
5 AS ALLEGED IN THIS CASE OR IN THE CASE OF A BURGLARY OR A
6 KIDNAPPING OR A RAPE OR A TORTURE OR MULTIPLE MURDERS AND
7 SO FORTH.

8 THERE ARE ABOUT 19 INSTANCES WHERE THE LEGISLATURE
9 HAS SAID THAT IN THOSE TYPES OF MURDERS, COMMITTED UNDER THOSE
10 SPECIAL CIRCUMSTANCES, IT QUALIFIES FOR THE DEATH PENALTY
11 OR LIFE WITHOUT POSSIBILITY OF PAROLE.

12 DO YOU UNDERSTAND THAT?

13 MS. JOHNSON: YES.

14 THE COURT: ALL RIGHT. NOW, THE JURY WHICH WILL BE
15 SELECTED IN THIS CASE, WILL FIRST HAVE TO DETERMINE WHETHER
16 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER IN
17 THE FIRST DEGREE. DO YOU UNDERSTAND THAT?

18 MS. JOHNSON: YES.

19 THE COURT: THAT IS WHAT IS KNOWN AS THE GUILT PHASE
20 OF THE TRIAL. AND IF THEY FIND IT WAS COMMITTED BEYOND A
21 REASONABLE DOUBT -- IT WAS MURDER OF THE FIRST DEGREE, THEN
22 THEY HAVE TO MAKE A FINDING, IS IT TRUE OR FALSE THAT IT WAS
23 COMMITTED DURING THE COURSE OF A ROBBERY. DO YOU SEE?

24 FIRST, THEY DETERMINE THE GUILT OR INNOCENCE OF
25 MURDER IN THE FIRST DEGREE. THEN THEY CONSIDER THE QUESTION,
26 WAS IT COMMITTED DURING THE COURSE OF A ROBBERY. THAT WILL
27 THEN QUALIFY THE CASE FOR THE SECOND PHASE OR THE PENALTY
28 PHASE OF THE TRIAL.

1 I TOLD YOU THAT IF THE MURDER IS COMMITTED DURING
2 THE COURSE OF A ROBBERY, THERE IS A POSSIBILITY THAT ONE OF
3 TWO THINGS WILL HAPPEN. THE JURY HAS TO DETERMINE WHETHER
4 IT SHALL BE LIFE WITHOUT POSSIBILITY OF PAROLE OR IT SHALL
5 BE DEATH. DO YOU UNDERSTAND THAT?

6 MS. JOHNSON: YES.

7 THE COURT: NOW, ON THE SECOND PHASE OF THE TRIAL,
8 TESTIMONY WILL BE HEARD. EVIDENCE WILL BE HEARD ADDUCED BY
9 THE DEFENDANT AND BY THE PROSECUTION.

10 THE DEFENDANT WILL PRODUCE EVIDENCE TO SHOW THAT
11 THE DEFENDANT IS A GOOD MAN. THEY WILL TELL US NICE THINGS
12 ABOUT HIM.

13 THE PROSECUTION WILL TELL YOU BAD THINGS ABOUT
14 HIM AND YOU MUST CONSIDER ALL OF THE EVIDENCE THAT YOU HEAR
15 ON THE PENALTY PHASE. THAT ALSO INCLUDES WHETHER OR NOT HE
16 IS -- HIS AGE OR WHETHER OR NOT HE COMMITTED ANY FELONIES
17 IN THE PAST OR WHETHER HE IS FREE FROM ANY RECORD.

18 YOU HAVE A RIGHT TO CONSIDER ALL OF THE EVIDENCE
19 THAT YOU HAVE HEARD ON THE GUILT PHASE OF THE CASE AND YOU
20 ALSO HAVE THE RIGHT TO HEAR EVIDENCE AS TO THE DEFENDANT'S
21 CHARACTER AND BACKGROUND, HISTORY, MENTAL CONDITION AND PHYSICAL
22 CONDITION. ALL OF THOSE YOU MUST CONSIDER IN DETERMINING
23 WHETHER IT SHOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE OR
24 DEATH. DO YOU UNDERSTAND THAT?

25 MS. JOHNSON: YES.

26 THE COURT: OKAY. NOW, I AM GOING TO ASK YOU A SERIES
27 OF QUESTIONS WHICH IS INTENDED FOR THE PURPOSE OF EXPLORING
28 YOUR STATE OF MIND AND YOUR ATTITUDES AND OPINION WITH RESPECT

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1 TO THE DEATH PENALTY.

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

6 MS. JOHNSON: NO.

7 THE COURT: ALL RIGHT. THE NEXT QUESTION IS -- IT HAS
8 TO DO WITH THE SPECIAL CIRCUMSTANCES, TRUE OR FALSE THAT THE
9 MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY.

10 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY
11 THAT WILL PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
12 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

13 MS. JOHNSON: I DON'T BELIEVE SO.

14 THE COURT: ALL RIGHT. THIRD, DO YOU HAVE SUCH AN
15 OPINION REGARDING THE DEATH PENALTY THAT YOU WOULD
16 AUTOMATICALLY VOTE TO IMPOSE IT, IRRESPECTIVE OF ANY EVIDENCE
17 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

18 MS. JOHNSON: NO.

19 THE COURT: ALL RIGHT. ANOTHER ASPECT OF THAT SAME
20 QUESTION IS, DO YOU HAVE SUCH AN OPINION REGARDING THE DEATH
21 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT
22 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
23 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

24 MS. JOHNSON: I DON'T BELIEVE SO.

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

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MS. JOHNSON: YES.

THE COURT: THANK YOU.

MR. BARENS: GOOD MORNING, MISS JOHNSON. I AM ARTHUR
BARENS. I REPRESENT JOE HUNT, THE DEFENDANT IN THIS CASE.

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1 AND AT THIS STAGE OF THE PROCEEDINGS AS HIS HONOR
2 DID, MYSELF AND THE PROSECUTOR WANT TO KNOW YOUR VIEWS ON THE
3 DEATH PENALTY. THERE ARE NO RIGHT OR WRONG ANSWERS TO MY
4 QUESTIONS. THERE ARE NO GOOD OR BAD ANSWERS, JUST YOUR
5 OPINION.

6 MS. JOHNSON: OKAY.

7 MR. BARENS: DO YOU UNDERSTAND THAT?

8 MS. JOHNSON: YES.

9 MR. BARENS: DO YOU FURTHER UNDERSTAND THAT ALTHOUGH
10 WE ARE TALKING ABOUT THE DEATH PENALTY PHASE, AS HIS HONOR
11 HAS EXPLAINED TO YOU, WE MAY NEVER GET TO THE PENALTY PHASE.

12 MS. JOHNSON: RIGHT.

13 MR. BARENS: FIRST, THERE IS A GUILT PHASE WHERE YOU
14 AND FELLOW JURORS HAVE TO MAKE A DECISION AS TO WHETHER OR
15 NOT MY CLIENT DID ANYTHING BAD OR WRONG TO BEGIN WITH AND
16 ONLY IN THAT EVENT, YOU WOULD BE FACED WITH THIS CHOICE.

17 MS. JOHNSON: YES.

18 MR. BARENS: DO YOU UNDERSTAND THAT AS A JUROR, YOU
19 WOULD BE GIVEN TWO CHOICES, ONE BEING THE DEATH PENALTY AND
20 THE GAS CHAMBER AND THE OTHER BEING LIFE WITHOUT POSSIBILITY
21 OF PAROLE?

22 MS. JOHNSON: YES.

23 MR. BARENS: DO YOU HAVE ANY BIASES EITHER WAY?

24 MS. JOHNSON: I DON'T BELIEVE SO.

25 MR. BARENS: THE JUDGE WILL INSTRUCT YOU THAT IN THE
26 PENALTY PHASE, YOU SHOULD CONSIDER FACTORS IN AGGRAVATION AND
27 FACTORS IN MITIGATION, THINGS LIKE THE DEFENDANT'S AGE AT THE
28 TIME THE CRIME TOOK PLACE. WOULD YOU BE WILLING TO CONSIDER

1 THAT IN MAKING A DECISION?

2 MS. JOHNSON: I BELIEVE SO.

3 MR. BARENS: AND WHETHER OR NOT THE DEFENDANT HAD A
4 PRIOR CRIMINAL RECORD? WOULD YOU CONSIDER THAT?

5 MS. JOHNSON: YES.

6 MR. BARENS: AND YOU KNOW, THE DEFENDANT AND THE
7 PROSECUTOR ARE ENTITLED TO GET A NEUTRAL JUROR OR AS NEUTRAL
8 AS WE CAN GET AS HUMANS.

9 DO YOU FEEL THAT YOU ARE NEUTRAL NOT JUST AS TO
10 THE GUILT OR INNOCENCE BUT NEUTRAL AS TO WHETHER THE DEFENDANT
11 LIVED OR DIED?

12 MS. JOHNSON: SORRY. I DIDN'T GET IT.

13 MR. BARENS: DO YOU FEEL THAT YOU ARE A NEUTRAL PERSON
14 OR AS NEUTRAL AS WE CAN GET IN TERMS OF WHETHER THE PERSON
15 SHOULD LIVE OR DIE, IF YOU WERE CONVINCED THAT HE HAD
16 COMMITTED A FIRST DEGREE MURDER?

17 MS. JOHNSON: I DON'T QUITE KNOW HOW TO ANSWER THAT.
18 I THINK THAT I WOULD NOT BE BIASED ONE WAY OR THE OTHER.

19 MR. BARENS: YOU WOULD OR WOULD NOT?

20 MS. JOHNSON: WOULD NOT.

21 MR. BARENS: YOU WOULD NOT BE. BUT YOU CAN MAKE A
22 DECISION SOLELY BASED ON ALL OF THE EVIDENCE THAT YOU WOULD
23 RECEIVE DURING THE HEARING?

24 MS. JOHNSON: EVIDENCE, RIGHT.

25 MR. BARENS: PASS FOR CAUSE.

26 THE COURT: ALL RIGHT. MR. WAPNER?

27 MR. WAPNER: THANK YOU. MISS JOHNSON, I AM FRED WAPNER.
28 I AM THE DEPUTY DISTRICT ATTORNEY PROSECUTING THE CASE.

1 IF YOU GET TO THAT STAGE OF THE CASE WHERE YOU
2 ARE ON THE JURY AND HAVE HEARD ALL OF THE EVIDENCE ON THE GUILT
3 OR PENALTY PHASES, IT WILL BE YOUR JOB TO MAKE A DECISION AS
4 TO WHAT THE APPROPRIATE PUNISHMENT SHOULD BE.

5 IF IT GETS TO THAT POINT, ARE YOU THE KIND OF A
6 PERSON WHO IS CAPABLE OF MAKING THAT TYPE OF LIFE OR DEATH
7 DECISION?

8 MS. JOHNSON: I WOULD HOPE SO.

9 MR. WAPNER: OKAY. WELL, WE NEED TO TRY TO GET A LITTLE
10 BIT MORE DEFINITE NOW, ONLY BECAUSE THIS IS THE ONLY TIME WE
11 CAN ASK YOU THESE QUESTIONS.

12 LATER ON, WE ARE NOT GOING TO HAVE THE CHANCE TO
13 ASK YOU THESE QUESTIONS. SO WHAT I AM ASKING YOU TO DO IS,
14 PUT YOURSELF IN A SITUATION WHERE YOU ARE ON THE JURY. YOU
15 HAVE HEARD THE ENTIRE CASE, THE GUILT PART OF IT AND THE
16 PENALTY PART OF IT AND ALL OF THE LAWYERS' ARGUMENTS AND NOW
17 YOU ARE IN THE JURY ROOM TRYING TO DECIDE WHAT THE PUNISHMENT
18 IS.

19 IF YOU DECIDE THAT BASED UPON ALL OF THE EVIDENCE --
20 IF YOU DECIDE THE APPROPRIATE PUNISHMENT IS DEATH, ARE YOU
21 CAPABLE OF RENDERING THAT VERDICT?

22 MS. JOHNSON: I THINK SO.

23 MR. BARENS: PARDON ME. OBJECTION. THE TEST I DON'T
24 BELIEVE GOES TO THE WORD "CAPABLE". IT GOES TO "CONSIDER".

25 THE COURT: CONSIDER MEANS CONSIDER.

26 MR. BARENS: CONSIDER BOTH OPTIONS. BUT CAPABLE IS NOT
27 THE LEGAL STANDARD.

28 THE COURT: YOU WILL CONSIDER BOTH OPTIONS?

1 MS. JOHNSON: I WOULD.

2 THE COURT: AND IF THE EVIDENCE JUSTIFIES IT, YOU WILL
3 VOTE ONE WAY OR THE OTHER, IS THAT CORRECT?

4 MS. JOHNSON: THAT'S RIGHT.

5 MR. WAPNER: I AM REALLY GETTING AT WHETHER OR NOT YOU
6 APPRECIATE -- MAYBE THAT IS NOT THE RIGHT WAY TO SAY IT.

7 WHAT I AM GETTING AT IS, CONSIDERING THE SEVERITY
8 OF THE DECISION THAT YOU ARE GOING TO BE CALLED UPON TO MAKE,
9 IS IT ONE THAT YOU THINK YOU CAN ACTUALLY CARRY OUT?

10 MS. JOHNSON: I BELIEVE SO.

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

12 MS. JOHNSON: NO.

13 MR. WAPNER: I WANT TO ASK HER A LITTLE BIT ABOUT THE
14 EVENING OUTLOOK ARTICLE. YOU SAID THAT YOU DIDN'T REALLY READ
15 IT. BESIDES LOOKING AT THE PICTURES, WHAT DO YOU RECALL
16 READING ABOUT IN THE ARTICLE?

17 MS. JOHNSON: NO, JUST I SAW THE PICTURES. I SAW YOUR
18 PICTURE AND JUDGE RITTENBAND'S PICTURE.

19 THE COURT: AND MR. BAREN'S PICTURE TOO, DID YOU?

20 MS. JOHNSON: THIS WAS SOMETHING I SHOULD NOT BE READING
21 SO I JUST DIDN'T READ IT.

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1 MR. WAPNER: OKAY. THANK YOU. I WILL PASS FOR CAUSE,
2 YOUR HONOR.

3 THE COURT: ALL RIGHT. IT IS EXPECTED WE WILL FINISH
4 WITH ALL THE REMAINING JURORS WITH THEIR QUESTIONS, THE WAY
5 WE HAVE BEEN QUESTIONING YOU, TO SEE WHETHER OR NOT THEY
6 QUALIFY TO BE A JUROR IN THIS PARTICULAR CASE BECAUSE OF THEIR
7 ATTITUDES TOWARD THE DEATH PENALTY, SO WHAT I WILL ASK YOU
8 TO DO IS TO REPORT TO THE JURY ASSEMBLY ROOM ON THURSDAY.

9 MS. JOHNSON: THIS COMING THURSDAY?

10 THE COURT: THIS COMING THURSDAY AT 10:30. THEN WE WILL
11 HAVE ALL OF THEM COME BACK HERE WHEN WE ARE READY TO START
12 THE TRIAL; DO YOU UNDERSTAND THAT?

13 MS. JOHNSON: YES.

14 THE COURT: IN THE MEANTIME, DON'T DISCUSS THIS CASE
15 WITH ANYBODY OR TRY TO READ ANYTHING AT ALL ABOUT IT, WILL
16 YOU DO THAT, MRS. JOHNSON?

17 MS. JOHNSON: YES.

18 THE COURT: ALL RIGHT, THANK YOU.

19 ALL RIGHT, THURSDAY, DECEMBER THE 4TH.

20 MS. JOHNSON: AT 10:30?

21 THE COURT: THAT'S RIGHT.

22 (PROSPECTIVE JUROR JOHNSON EXITS THE
23 COURTROOM.)

24 MR. WAPNER: I BELIEVE WE SHOULD BE ON MR. SCHAFFNER.

25 THE BAILIFF: RUTH SIMON, S-I-M-O-N.

26 THE COURT: WHERE IS THE CLERK?

27 THE BAILIFF: SHE IS IN CHAMBERS MAKING ALL THE PHONE
28 CALLS.

1 WE HAVE ALREADY DONE THOSE, YOUR HONOR.

2 THE COURT: WHO IS THIS LADY?

3 MS. SIMON: RUTH SIMON.

4 THE BAILIFF: WE TOLD THEM WE DIDN'T NEED THEM UNTIL
5 WEDNESDAY.

6 THE COURT: OH, THAT'S RIGHT.

7 MR. CHIER: WE NEED A PH.D. ON STATISTICS TO FOLLOW
8 THESE.

9 THE BAILIFF: THOSE ARE PEOPLE WE ARE SUPPOSED TO BE
10 DOING RIGHT NOW, THOSE WERE PEOPLE HERE ON NOVEMBER 26TH. WE
11 TOLD THEM TO COME BACK ON THE 2ND IN THE MORNING.

12 THE COURT: ALL RIGHT. THEY ARE ON THE 2ND.

13 THE BAILIFF: THEY WERE TOLD TO COME BACK AT 10:30 IN
14 THE MORNING.

15 THE COURT: ALL RIGHT, MRS. SIMON, SIT DOWN HERE, PLEASE.

16 I AM SORRY TO KEEP YOU WAITING, MRS. SIMON.

17 IS IT MISS OR MRS.?

18 MS. SIMON: MRS.

19 THE COURT: MRS. SIMON, WHERE DO YOU LIVE?

20 MS. SIMON: VAN NUYS.

21 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
22 CASE?

23 MS. SIMON: I AM NOT SURE.

24 THE COURT: WHAT DO YOU MEAN YOU ARE NOT SURE?

25 MS. SIMON: I AM NOT SURE THIS IS THE SPECIFIC CASE.

26 I NOTICED ONE THAT SEEMED LIKE THIS ONE IN THE
27 PAPER.

28 THE COURT: WHAT DO YOU REMEMBER HAVING READ ABOUT A

1 CASE THAT YOU HAVE IN MIND?

2 MS. SIMON: THE YOUNG MAN WENT TO HARVARD.

3 THE COURT: HARVARD SCHOOL?

4 MS. SIMON: ON COLDWATER, WHICH IS WHY I --

5 THE COURT: WHERE DID YOU READ IT?

6 MS. SIMON: PROBABLY THE TIMES, ALTHOUGH I GET THE VALLEY
7 NEWS AS WELL.

8 THE COURT: YOU READ IT PROBABLY IN THE METRO SECTION
9 OF THE TIMES, DO YOU RECALL?

10 WELL, TELL US WHAT YOU REMEMBER HAVING READ ABOUT
11 THE CASE.

12 MS. SIMON: IT WAS A LONG ARTICLE.

13 THE COURT: YES, I KNOW.

14 MS. SIMON: IT SEEMS LIKE IT MAY HAVE BEEN THE SUNDAY
15 PAPER.

16 THE COURT: WHAT DO YOU REMEMBER, IF ANYTHING?

17 MS. SIMON: I REMEMBER THE HARVARD SCHOOL BECAUSE IT
18 IS IN MY NEIGHBORHOOD.

19 THE COURT: ALL RIGHT, THAT'S RIGHT.

20 MS. SIMON: I AM TRYING TO THINK WHAT ELSE.

21 THE COURT: DO YOU MEAN ABOUT A GROUP OF BOYS THAT WENT
22 THERE, SOMETHING LIKE THAT?

23 MS. SIMON: YES, YES.

24 THE COURT: ANYTHING ELSE YOU REMEMBER?

25 MS. SIMON: I AM TRYING TO REMEMBER.

26 THERE SEEMED TO HAVE BEEN SOME FRAUD INVOLVED BUT
27 I AM NOT SURE WHAT KIND OR --

28 THIS WAS SOMETIME AGO, THE ARTICLE MUST HAVE

1 APPEARED MAYBE FIVE, SIX WEEKS AGO OR MORE THAN THAT, PROBABLY.

2 THE COURT: IS YOUR MEMORY OF IT SUCH THAT IT WOULD IN
3 ANY WAY INTERFERE WITH YOUR SERVING AS AN IMPARTIAL JUROR ON
4 THIS CASE?

5 MS. SIMON: NO.

6 THE COURT: HAVE YOU HEARD ANYTHING AT ALL ABOUT THE
7 CASE OTHER THAN WHAT YOU HAVE READ IN THE TIMES AND OTHER THAN
8 WHAT I TOLD YOU HERE IN OPEN COURT?

9 MS. SIMON: NO.

10 THE COURT: YOU HAVEN'T DISCUSSED IT WITH ANY OF THE
11 OTHER JURORS OR ANYTHING?

12 MS. SIMON: NO.

13 THE COURT: WHAT I WOULD ASK YOU TO DO, IF YOU ARE
14 SELECTED AS A POSSIBLE JUROR IN THIS CASE, YOU ARE NOT TO READ
15 ANYTHING ABOUT IT OR TALK TO ANYBODY ABOUT IT.

16 MS. SIMON: RIGHT.

17 THE COURT: ALL RIGHT, THANK YOU.

18 MS. SIMON: THAT IS IT, I CAN GO NOW?

19 I AM READY TO FLEE.

20 THE COURT: OH, NO, WE HAVEN'T EVEN STARTED.

21 JUST TO REFRESH YOUR RECOLLECTION, THE CHARGE AGAINST
22 THE DEFENDANT IS THAT HE COMMITTED A MURDER IN THE FIRST
23 DEGREE AND THAT MURDER WAS COMMITTED DURING THE COURSE OF A
24 ROBBERY.

25 NOW, DURING THE COURSE OF A ROBBERY HAS A
26 SIGNIFICANCE BECAUSE IT IS NOT EVERY MURDER, YOU KNOW, HOWEVER
27 DELIBERATE AND PLANNED IT MAY BE, THAT QUALIFIES FOR THE
28 DEATH PENALTY.

1 IT IS ONLY THOSE MURDERS WHICH SATISFY CERTAIN,
2 WHAT WE CALL SPECIAL CIRCUMSTANCES, THAT WERE COMMITTED UNDER
3 THOSE SPECIAL CIRCUMSTANCES, LIKE IN THIS CASE, COMMITTED DURING
4 THE COURSE OF A ROBBERY OR THE LEGISLATURE SAYS WAS COMMITTED
5 DURING A RAPE, DURING A KIDNAPPING, DURING TORTURE OR MULTIPLE
6 MURDERS AND A NUMBER OF OTHER THINGS.

7 THE ONLY ONE WE ARE CONCERNED ABOUT IS MURDER
8 COMMITTED DURING THE COURSE OF A ROBBERY.

9 IN ALL OF THOSE CASES THE LEGISLATURE SAYS THE
10 CASES QUALIFY FOR THE POSSIBLE DEATH PENALTY. THE PENALTY
11 CONSISTS OF EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
12 OF PAROLE, SOMETIMES WE REFER TO IT AS LIFE, OR DEATH; DO YOU
13 UNDERSTAND THAT?

14 MS. SIMONS: UH-HUH.

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1 THE COURT: OKAY, NOW THE JURY SELECTED IN THE CASE
2 WILL FIRST DETERMINE WHAT WE CALL THE GUILT PHASE, WAS THE
3 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND IF THEY
4 VOTE UNANIMOUSLY YES, THEN THEY CONSIDER AN AUXILIARY QUESTION
5 AND THEY HAVE TO MAKE A FINDING: IS IT TRUE OR FALSE THAT
6 THAT MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY?

7 YOU SEE, IF THEY FIND YES, IT WAS COMMITTED DURING
8 THE COURSE OF A ROBBERY, THEN WE START THE SECOND PHASE OF
9 THE TRIAL AND THAT IS KNOWN AS THE PENALTY PHASE WHERE BOTH
10 SIDES ADDUCE ADDITIONAL TESTIMONY WHICH IS RELATED TO
11 MITIGATION OR AGGRAVATION. THE DEFENSE WILL SHOW FAVORABLE
12 ASPECTS OF THE DEFENDANT'S LIFE AND CHARACTER, AND THE
13 PROSECUTION WILL SHOW UNFAVORABLE OR BAD THINGS ABOUT HIM.
14 AND THEN THE JURY CONSIDERS ALL OF THOSE MITIGATING AND
15 AGGRAVATING CIRCUMSTANCES.

16 THEY ALSO CONSIDER, AS I TOLD YOU, THE AGE OF
17 THE DEFENDANT WHICH IS A FACTOR OR HIS HAVING A CRIMINAL
18 BACKGROUND, FELONY CONVICTIONS, WHICH GOES TO HIS CHARACTER,
19 HIS BACKGROUND, HISTORY, MENTAL CONDITION AND PHYSICAL
20 CONDITION. ALL OF THOSE FACTORS, AS I JUST TOLD YOU, MUST
21 BE CONSIDERED BY THE JURY IN DETERMINING ONE OF TWO THINGS:
22 SHALL IT BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
23 OR SHALL IT BE DEATH; DO YOU UNDERSTAND THAT?

24 MS. SIMON: UH-HUH.

25 THE COURT: I AM ASKING YOU A SERIES OF QUESTIONS TO
26 WHICH YOUR ANSWERS WILL BE YES OR NO AND THEY ALL RELATE TO
27 YOUR STATE OF MIND AND YOUR FEELINGS ABOUT THE DEATH PENALTY
28 AND HOW IT WILL AFFECT YOU -- YOUR ATTITUDES TOWARD THE DEATH

1 PENALTY AND VARIOUS QUESTIONS THAT I WILL ASK YOU.

2 FIRST, ON THE GUILT PHASE, AS I TOLD YOU, YOU
3 DON'T CONSIDER ANYTHING AT ALL AS TO WHAT THE PENALTY SHOULD
4 BE OR THE POSSIBLE PENALTY. THAT ISN'T TO BE CONSIDERED BY
5 YOU. ALL YOU CONSIDER ON THE GUILT PHASE IS: IS THE DEFENDANT
6 GUILTY OF MURDER IN THE FIRST DEGREE AND, IF SO, WAS IT
7 COMMITTED DURING THE COURSE OF A ROBBERY. DO YOU UNDERSTAND
8 THAT?

9 MS. SIMON: UH-HUH, YES.

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

13 MS. SIMON: NO.

14 THE COURT: ALL RIGHT. THE NEXT QUESTION IS -- YOU
15 REMEMBER, ON THE PENALTY PHASE, THE TRUTH OR FALSITY -- DO
16 YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WILL
17 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE
18 TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS
19 CASE?

20 MS. SIMON: NO.

21 THE COURT: THE THIRD QUESTION -- OR THE NEXT TWO
22 QUESTIONS HAVE REFERENCE ONLY AS TO THE PENALTY PHASE: DO
23 YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT
24 YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY
25 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE
26 PENALTY PHASE OF THE TRIAL?

27 MS. SIMON: NO.

28 THE COURT: THEN THERE IS ANOTHER ASPECT OF THAT SAME

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

5 MS. SIMON: NO.

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

5 MS. SIMON: YES.

6 MR. BARENS: GOOD MORNING, MRS. SIMON. I AM ARTHUR
7 BARENS. I REPRESENT JOE HUNT, THE DEFENDANT IN THIS CASE.
8 AND WE ARE AT A STAGE IN THESE PROCEEDINGS WHERE I AM OBLIGATED
9 TO ASK YOU YOUR POINTS OF VIEW CONCERNING THE DEATH PENALTY.

10 I WANTED TO EXPRESS TO YOU THAT THERE IS NO RIGHT
11 OR WRONG ANSWER TO THE QUESTIONS I AM GOING TO ASK YOU. THERE
12 IS NO GOOD OR BAD ANSWER. THERE IS JUST YOUR OPINION.

13 MS. SIMON, BEFORE GETTING TO THAT, I WANTED TO
14 ASK YOU A LITTLE BIT ABOUT THE L.A. TIMES ARTICLE. WHY I
15 AM DOING THAT IS BECAUSE BOTH THE DEFENDANT AND THE PROSECUTION
16 ARE ENTITLED TO GET A NEUTRAL JUROR, SIMILAR TO THE PERSON
17 YOU WOULD WANT IF YOU WERE ON TRIAL.

18 AND I AM CONCERNED THAT AFTER READING THAT L.A.
19 TIMES ARTICLE, THAT MIGHT HAVE SOME BEARING ON YOUR POINT
20 OF VIEW TOWARD MR. HUNT.

21 HOW DID YOU FEEL ABOUT MR. HUNT, IN ALL CANDOR,
22 AFTER YOU READ THAT ARTICLE?

23 MS. SIMON: I DON'T REMEMBER ENOUGH ABOUT THE ARTICLE.
24 I DON'T THINK I FORMED ANY OPINIONS OTHER THAN IT WAS
25 INTERESTING BECAUSE OF THE LOCATION THE KIDS HAD GONE TO SCHOOL.

26 MR. BARENS: DID YOU THINK THE ARTICLE WAS TRUE?

27 MS. SIMON: THE TIMES DOES REASONABLY GOOD REPORTAGE.

28 MR. BARENS: DO YOU THINK THAT THE TIMES -- DID THE

1 TIMES TELL YOU ANYTHING ABOUT WHETHER MR. HUNT COMMITTED A
2 MURDER OR NOT?

3 MS. SIMON: I AM TRYING TO REMEMBER. I THINK THAT THAT
4 WAS NOT REPORTED TOO WELL BECAUSE IT IS NOT CLEAR TO ME.

5 MR. BARENS: THE TIMES DIDN'T COME TO A CONCLUSION ON
6 WHETHER THERE WAS A MURDER OR NOT, DID THEY?

7 MS. SIMON: WELL, MAYBE THEY REPORTED IT VERY WELL.

8 MR. BARENS: WERE YOU UPSET WITH MR. HUNT AFTER YOU
9 READ THE ARTICLE?

10 MS. SIMON: NO.

11 MR. BARENS: DO YOU THINK THAT HE WAS A GOOD GUY OR
12 A BAD GUY?

13 MS. SIMON: I DON'T KNOW.

14 MR. BARENS: DO YOU KNOW THAT THAT ARTICLE ISN'T
15 EVIDENCE?

16 MS. SIMON: RIGHT.

17 MR. BARENS: THE ONLY KIND OF EVIDENCE THAT YOU GET
18 IS WHAT HAPPENS IN THE FOUR WALLS OF THE COURTROOM.

19 MS. SIMON: RIGHT.

20 MR. BARENS: YOU ALSO REALIZE THAT SOMETIMES PEOPLE
21 WRITE ARTICLES TO SELL NEWSPAPERS?

22 MS. SIMON: THAT'S RIGHT.

23 MR. BARENS: DO YOU UNDERSTAND THAT THE GUY THAT WRITES
24 THAT ARTICLE REALLY DOESN'T HAVE THE SAME SEARCH FOR TRUTH
25 THAT YOU, AS A JUROR, WOULD HAVE?

26 MS. SIMON: ABSOLUTELY.

27 MR. BARENS: AND THAT ARTICLES CAN EXPRESS CERTAIN
28 PERSONAL BIASES OR PREJUDICES OF THE WRITER, CAN REPRESENT

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1 HIM TRYING TO VALIDATE ANY OF THE BELIEFS THAT HE HAS, IS
2 THAT CORRECT?

3 MS. SIMON: YES.

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1 MR. BARENS: OKAY. SO YOU FEEL THAT IN TERMS OF THAT
2 PRETRIAL PUBLICITY, YOU REMAIN NEUTRAL IN YOUR POINT OF VIEW
3 BECAUSE YOU HAVE HEARD NO EVIDENCE?

4 MS. SIMON: RIGHT.

5 MR. BARENS: OKAY, HOW DO YOU FEEL ABOUT THE DEATH
6 PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

7 MS. SIMON: I BELIEVE IN THE DEATH PENALTY.

8 MR. BARENS: WHAT DO YOU MEAN BY THAT, MA'AM?

9 MS. SIMON: I BELIEVE THERE ARE SOME PEOPLE WHO CREATE --
10 DO SUCH HEINOUS CRIMES THAT THEY DON'T DESERVE ANYTHING BUT
11 THE DEATH PENALTY.

12 MR. BARENS: COULD YOU TELL ME ANY INSTANCES OF THESE
13 TYPES OF CRIMES THAT COME TO YOUR MIND, IF YOU CAN?

14 MS. SIMON: WELL, WE HAVE NOT HEARD THE OUTCOME OF THE
15 NIGHT STALKER CASE, BUT SOMEONE OF THAT ILK.

16 MR. BARENS: A SERIAL KILLER?

17 MS. SIMON: YES, SERIAL KILLERS.

18 MR. BARENS: NOW, CERTAINLY, I CAN UNDERSTAND THAT POINT
19 OF VIEW. HOW ABOUT IN INDIVIDUAL WHO COMMITS A FIRST DEGREE
20 MURDER -- LET'S SAY AN INTENTIONAL MURDER. THE GUY INTENDED
21 TO DO IT AND IT WAS DURING THE COMMISSION OF A ROBBERY WHERE
22 THAT PERSON WAS GAINING SOME PROFIT OR PROPERTY AS A RESULT
23 OF THAT INTENTIONAL MURDER. WE CALL THAT FIRST DEGREE MURDER
24 WITH SPECIAL CIRCUMSTANCES. THE GUY INTENTIONALLY TOOK
25 SOMEBODY'S LIFE FOR GAIN OF SOME KIND.

26 WHAT DO YOU THINK OUGHT TO HAPPEN TO THAT GUY?

27 MR. SIMON: I WOULD HAVE TO HEAR MORE ABOUT THE
28 CIRCUMSTANCES.

1 MR. BARENS: NOW, WHEN WE TALK ABOUT THE CIRCUMSTANCES,
2 HIS HONOR WILL TELL YOU THAT YOU ARE TO CONSIDER THE
3 DEFENDANT'S AGE, WHETHER OR NOT HE HAD A BACKGROUND OF VIOLENT
4 CRIMINAL ACTS, HIS HEALTH AND ET CETERA, ET CETERA. WOULD
5 YOU CONSIDER THOSE THINGS IN DECIDING WHETHER THAT DEFENDANT
6 SHOULD LIVE OR DIE?

7 MS. SIMON: OF COURSE. ONE CONSIDERS THE WHOLE PICTURE.

8 MR. BARENS: AND THOSE WILL BE AMONG THE THINGS THAT
9 YOU WOULD CONSIDER? NOW, DO YOU BELIEVE IN THE CONCEPT OF AN
10 EYE FOR AN EYE?

11 MS. SIMON: IT DEPENDS. IF I AM FIGHTING WITH MY
12 HUSBAND --

13 MR. BARENS: INDEED. NO, IN THIS INSTANCE, THE FIGHT
14 WILL BE BETWEEN LAWYERS, HOPING THAT YOUR HUSBAND IS NOT ONE,
15 OF COURSE.

16 I MEAN, AS A GENERAL PHILOSOPHICAL PROPOSITION?

17 MS. SIMON: THAT'S SIMPLISTIC. NO. I DON'T.

18 MR. BARENS: YOU DON'T BELIEVE IN THAT?

19 MS. SIMON: NO.

20 MR. BARENS: BUT RATHER, WHETHER OR NOT A PERSON WHO
21 COMMITTED AN INTENTIONAL MURDER SHOULD LIVE OR DIE, IS REALLY
22 A QUESTION OF THE EVIDENCE YOU ARE GOING TO HEAR?

23 MS. SIMON: YES.

24 MR. BARENS: DO YOU UNDERSTAND THAT THE TWO CHOICES THAT
25 YOU HAVE ARE DEATH IN THE GAS CHAMBER OR LIFE WITHOUT
26 POSSIBILITY OF PAROLE?

27 MS. SIMON: YEAH.

28 MR. BARENS: NOW, WHEN WE TALK ABOUT LIFE WITHOUT

1 THE POSSIBILITY OF PAROLE, DO YOU BELIEVE THAT? OR, DO YOU
2 HAVE A SNEAKING SUSPICION WE ARE JUST TELLING YOU THAT AND
3 THAT THE DEFENDANT CAN REALLY GET OUT AFTERWARDS?

4 MS. SIMON: I BELIEVE WHAT YOU TELL ME. I ALSO KNOW
5 THAT IN LEOPOLD AND LOEB, LOEB GOT OUT.

6 THE COURT: WELL, THEY WEREN'T IN CALIFORNIA. THAT WAS
7 BACK IN CHICAGO.

8 MS. SIMON: THAT WAS A DIFFERENT CASE. BUT YOU KNOW,
9 THERE IS HISTORICAL PRECEDENT.

10 MR. BARENS: DID YOU READ MUCH OF LEOPOLD AND LOEB?

11 MS. SIMON: I READ THE BOOK. I WAS NOT AROUND AT THE
12 TIME.

13 MR. BARENS: OF COURSE NOT. INTERESTING READING, WASN'T
14 IT, THE BOOK?

15 MS. SIMON: YES.

16 MR. BARENS: HOW DID YOU FEEL ABOUT WHETHER OR NOT THOSE
17 BOYS SHOULD HAVE GOTTEN THE DEATH PENALTY IN THAT INSTANCE?

18 MS. SIMON: PROBABLY NOT.

19 MR. BARENS: PROBABLY NOT?

20 MS. SIMON: NO. OF COURSE, I READ THE BOOK SOMETIME
21 AGO.

22 MR. BARENS: IF HIS HONOR TELLS YOU -- NOT ME TELLING
23 YOU BUT HIS HONOR TELLING YOU -- THAT LIFE WITHOUT POSSIBILITY
24 OF PAROLE LITERALLY MEANS THAT, THE DEFENDANT NEVER GETS OUT,
25 WOULD YOU BELIEVE THAT?

26 MS. SIMON: YES.

27 MR. BARENS: NOW, THERE ARE SITUATIONS IN WHICH YOU
28 BELIEVE A PERSON SHOULD GET LIFE WITHOUT THE POSSIBILITY OF

1 PAROLE RATHER THAN THE DEATH PENALTY?

2 MS. SIMON: AFTER HEARING THE EVIDENCE, SURE.

3 MR. BARENS: AND THAT WOULD INCLUDE CONSIDERING EVIDENCE
4 ABOUT THE DEFENDANT'S BACKGROUND, PRIOR CONDUCT, AGE, BELIEF
5 SYSTEM?

6 MS. SIMON: ONE SHOULD LISTEN TO EVERYTHING.

7 MR. BARENS: THANK YOU, MA'AM.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: MS. SIMON, WITHOUT KNOWING ANYTHING ABOUT
10 THE FACTS OF THIS CASE -- I AM FRED WAPNER. I AM THE DEPUTY
11 DISTRICT ATTORNEY PROSECUTING THIS CASE.

12 MS. SIMON: HI.

13 MR. WAPNER: HI. WITHOUT KNOWING ANYTHING ABOUT THE
14 FACTS OF THIS CASE, AS YOU SIT THERE NOW, DO YOU THINK THAT
15 YOU ARE PREDISPOSED TO VOTE ONE WAY OR ANOTHER? AND WHEN I
16 ASK YOU THAT, I AM NOT TALKING ABOUT GUILTY OR NOT GUILTY.
17 I AM ASSUMING THAT YOU GET TO THE PENALTY PHASE. ARE YOU
18 PREDISPOSED TO RETURN FOR LIFE AS OPPOSED TO DEATH?

19 MS. SIMON: I DON'T THINK I KNOW ENOUGH TO BE PREDISPOSED.

20 MR. WAPNER: TAKING THE EXAMPLE THAT YOU GAVE, THAT
21 EXAMPLE THAT CAME TO MIND, THAT IS MASS MURDER AND WITHOUT
22 KNOWING ANYTHING MORE ABOUT THIS CASE THAN THE FACT THAT IT
23 ONLY INVOLVES THE DEFENDANT IS ONLY CHARGED IN THIS CASE, AS
24 YOU HEARD THE JUDGE READ IT, WITH ONE MURDER AND THAT IS ALL
25 YOU KNOW, ARE YOU PREDISPOSED ONE WAY OR THE OTHER?

26 MS. SIMON: NO. I THINK I HAVE TO KNOW MORE ABOUT THE
27 CIRCUMSTANCES.

28 MR. WAPNER: DO YOU HAVE ANY RELIGIOUS, MORAL OR

1 PHILOSOPHICAL BELIEFS THAT WOULD AFFECT YOUR ABILITY TO RENDER
2 AN OPINION ONE WAY OR THE OTHER IN THIS CASE?

3 MS. SIMON: NO.

4 MR. WAPNER: ARE YOU THE KIND OF PERSON WHO CAN BRING
5 YOURSELF TO VOTE FOR A VERDICT OF DEATH, IF THE EVIDENCE
6 WARRANTS IT?

7 MR. BARNES: OBJECTION TO THAT. THAT SIMPLY IS NOT THE
8 STANDARD. IT IS CONSIDER.

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1 MR. WAPNER: I AM TRYING TO GET AT -- MAYBE THIS IS
2 LAWYERS BEING SEMANTIC. BUT CONSIDERING IT IS NOT JUST AN
3 INTELLECTUAL EXERCISE. IT IS NOT JUST THINKING ABOUT IT BUT
4 NOT ACTUALLY BEING ABLE TO ACT ON IT.

5 THE COURT WILL TELL YOU THAT YOU MUST CONSIDER
6 THE CIRCUMSTANCES IN THIS CASE. YOU WILL FOLLOW THAT
7 INSTRUCTION?

8 MS. SIMON: YES, OF COURSE.

9 MR. WAPNER: ARE YOU CAPABLE OF ACTING ON THAT DECISION,
10 ONCE YOU HAVE CONSIDERED IT? IN OTHER WORDS, WE ARE NOT ASKING
11 YOU TO JUST -- LET ME REPHRASE THAT.

12 OKAY. WHAT I AM TALKING ABOUT IS, THE DIFFERENCE
13 BETWEEN GOING THROUGH AN INTELLECTUAL EXERCISE OF CONSIDERING
14 SOMETHING, KNOWING FROM THE BEGINNING HOW YOU ARE GOING TO
15 VOTE, AS OPPOSED TO BEING ABLE TO ACTUALLY THINK ABOUT IT AND
16 ACT ON IT. DO YOU UNDERSTAND WHAT I AM TALKING ABOUT?

17 MS. SIMON: YES. I HAVE NEVER BEEN A JUROR BEFORE. I
18 HAVE NEVER GONE THROUGH THE PROCESS BEFORE.

19 YOU ARE ASKING ME TO SUPPOSE SOMETHING IN THE
20 FUTURE. I THINK I CAN DO IT.

21 BUT, YOU KNOW, YEAH. I WILL PERFORM AS AN HONEST
22 AND COMMITTED CITIZEN.

23 MR. WAPNER: OKAY.

24 MS. SIMON: YOU KNOW, YOU ARE KIND OF PROJECTING WHAT
25 YOU ARE GOING TO DO WHEN YOU HIT THE WALL.

26 MR. WAPNER: WELL, UNFORTUNATELY, IF YOU GET ON THIS
27 JURY, WHEN YOU GET TO THE POINT OF HITTING THE WALL, WE CAN'T
28 ASK YOU THOSE QUESTIONS.

1 MS. SIMON: BUT, I INTEND TO PERFORM, YOU KNOW, AS
2 THE COURT INSTRUCTS.

3 MR. WAPNER: OKAY. AS FAR AS YOU KNOW, THERE IS
4 NOTHING IN YOUR BACKGROUND THAT WOULD GET IN THE WAY OF YOUR
5 FOOLLOWING THE COURT'S INSTRUCTIONS?

6 MS. SIMON: NO.

7 MR. WAPNER: DO YOU UNDERSTAND THE KIND OF THING I AM
8 TRYING TO GET AT IS THE PERSON WHO SAYS, LOOK, JUST BECAUSE
9 OF MY UPBRINGING OR FOR WAHTEVER REASON, I CAN'T BRING MYSELF
10 TO SAY THAT THIS PERSON SHOULD DIE.

11 MS. SIMON: NO. THAT WOULDN'T INTERFERE.

12 MR. WAPNER: ALL RIGHT.

13 MS. SIMON: BECAUSE OF MY UPBRINGING.

14 MR. WAPNER: OKAY. IS THERE ANYTHING IN YOUR UPBRINGING
15 THAT WOULD BEAR -- I DON'T KNOW WHAT YOU HAD IN MIND WHEN YOU
16 MADE THAT LAST COMMENT. IS THERE ANYTHING THAT YOU WOULD --

17 MS. SIMON: WELL, ONLY JUST THAT WE ARE ALL PRODUCTS
18 OF OUR UPBRINGING, WHETHER IT PRESUPPOSES YOU ONE WAY OR THE
19 OTHER -- DO YOU WANT TO GET INTO A PHILOSOPHICAL DISCUSSION?

20 MR. WAPNER: IS THERE ANYTHING YOU THINK ABOUT THAT --
21 SORRY. IS THERE ANYTHING ABOUT YOUR UPBRINGING THAT YOU
22 THINK PREDISPOSES YOU ONE WAY OR THE OTHER?

23 MS. SIMON: NO.

24 MR. WAPNER: THANK. PASS FOR CAUSE.

25 THE COURT: ALL RIGHT. MS. SIMON, YOU QUALIFY AS A
26 POSSIBLE JUROR IN THIS CASE. WHAT I WILL ASK YOU TO DO IS,
27 WE HAVE TO GO THROUGH THE REST OF THE ALPHABET. WE HAVE GOT
28 SOME MORE TO DO. IT IS ANTICIPATED THAT WE'LL FINISH ALL OF

1 THE JURORS ON THURSDAY.

2 SO, WE'LL ASK YOU TO COME TO THE JURY ASSEMBLY

3 ROOM ON THURSDAY THIS WEEK, DECEMBER THE 4TH AT 10:30.

4 ALL RIGHT?

5 MS. SIMON: YES.

6 THE COURT: AND IF BY ANY POSSIBLE CHANCE, WE MIGHT NOT

7 BE FINISHED WITH ALL OF THIS, THE REMAINDER OF THE POSSIBLE

8 JURORS, WE WILL GIVE YOU A PHONE CALL. WE WILL TELL YOU WHEN

9 TO COME IN.

10 TENTATIVELY IT WILL BE THURSDAY AT 10:30. THANK

11 YOU. YOU CONTINUE NOT TO TALK TO ANYBODY OR READ ANYTHING

12 ABOUT THE CASE.

13 (PROSPECTIVE JUROR SIMON EXITS THE

14 COURTROOM.)

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1 THE COURT: ALL RIGHT, SIMS IS THE NEXT ONE. THIS IS
2 MR.. JOHN SIMS.

3 THE BAILIFF: MR. SIMS, HAVE A SEAT RIGHT UP HERE.

4 THE COURT: YOU ARE MR. SIMS, ARE YOU?

5 MR. SIMS: YES.

6 THE COURT: MR. SIMS, WHERE DO YOU LIVE?

7 MR. SIMS: SANTA MONICA.

8 THE COURT: HOW OLD ARE YOU?

9 MR. SIMS: 21.

10 THE COURT: AND HAVE YOU READ ANYTHING AT ALL ABOUT
11 THIS CASE --

12 MR. SIMS: NO.

13 THE COURT: -- ANYWHERE, ANY NEWSPAPER OR MAGAZINE?

14 MR. SIMS: NO.

15 THE COURT: OR DID YOU DISCUSS IT WITH ANY OF THE JURORS
16 OR ANY THIRD PERSON?

17 MR. SIMS: NO.

18 THE COURT: ALL RIGHT. NOW YOU RECALL YOU WERE HERE,
19 WEREN'T YOU, WITH THE OTHER JURORS?

20 MR. SIMS: YES.

21 THE COURT: WHEN YOU WERE TOLD WHAT THE CASE WAS ALL
22 ABOUT?

23 MR. SIMS: YES.

24 THE COURT: I WILL BRIEFLY JUST SUMMARIZE IT AGAIN SO
25 IT WILL FORM THE BACKGROUND FOR YOU WHEN I ASK YOU SOME
26 QUESTIONS.

27 THIS DEFENDANT IS CHARGED WITH THE COMMISSION
28 OF THE CRIME OF MURDER, MURDER IN THE FIRST DEGREE, AND THAT

1 HE COMMITTED THAT CRIME IN THE COURSE OF A ROBBERY.

2 NOW, THE SIGNIFICANCE OF COMMITTING THE CRIME
3 IN THE COURSE OF A ROBBERY IS IN THE COURSE OF A ROBBERY,
4 WE CALL THAT A SPECIAL CIRCUMSTANCE AND IT QUALIFIES THIS
5 CASE FOR THE CONSIDERATION OF THE PENALTY OF DEATH OR LIFE
6 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

7 THE LEGISLATURE HAS SAID IN THIS PARTICULAR TYPE
8 OF A CASE WHERE IT IS COMMITTED DURING THE COURSE OF A ROBBERY
9 AND ALSO IN CASES WHERE IT IS COMMITTED IN THE CASE OF A
10 BURGLARY, A RAPE OR KIDNAPPING, MULTIPLE MURDERS, TORTURE
11 OR A CHILD IS INVOLVED, MOLESTED AND DIED, ALL OF THOSE CASES,
12 INCLUDING A NUMBER OF OTHERS, QUALIFY FOR THE DEATH PENALTY.

13 SO THAT THE JURY SELECTED IN THIS CASE WILL
14 DETERMINE WHAT WE CALL IN THE GUILT PHASE, IS THE DEFENDANT
15 GUILTY OR MURDER OR IS HE NOT GUILTY?

16 IF THEY DECIDE HE IS GUILTY OF MURDER IN THE FIRST
17 DEGREE AND IT WAS COMMITTED IN THE COURSE OF ROBBERY, THEN
18 THEY MAKE SUCH A FINDING AND THEY SAY IT IS TRUE THAT IT WAS
19 COMMITTED DURING THE COURSE OF A ROBBERY AND THEN WE HAVE
20 A SECOND PHASE OF THE TRIAL AND THAT IS CALLED THE PENALTY PHASE.
21 THERE WILL BE ADDITIONAL TESTIMONY RELATING TO THE CIRCUMSTANCES
22 OF THE CASE WHICH YOU WILL ALSO CONSIDER AND ALSO A NUMBER
23 OF THINGS WHICH ARE FAVORABLE TO THE DEFENDANT AND THOSE WHICH
24 ARE UNFAVORABLE WHICH THE PEOPLE TRY TO SHOW HE IS A BAD GUY
25 AND THE DEFENSE WILL TRY TO SHOW ESSENTIALLY HE IS A GOOD
26 GUY. THOSE THINGS WILL ALL BE CONSIDERED BY THE JURY.

27 THEY WILL ALSO CONSIDER WHETHER OR NOT HE HAS
28 A PRIOR CRIMINAL BACKGROUND OF CRIMINALITY OR DID HE HAVE

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1 ANY FELONY CONVICTIONS AND THEY WILL ALSO CONSIDER HIS
2 CHARACTER, HIS BACKGROUND, HIS HISTORY, HIS MENTAL CONDITION
3 AND HIS PHYSICAL CONDITION, THOSE ALL WILL BE FACTORS THAT
4 YOU WILL CONSIDER ON THE PENALTY PHASE. IT IS ONLY ON THE
5 PENALTY PHASE THAT YOU CONSIDER THAT.

6 ON THE GUILT PHASE, YOU DON'T CONSIDER THE PENALTY
7 AT ALL. IT COMES ON LATER IF IT COMES AT ALL.

8 YOU WILL FOLLOW ALL OF THAT, WILL YOU?

9 MR. SIMS: YES.

10 THE COURT: WHAT I AM GOING TO ASK YOU NOW, I WILL PUT
11 TO YOU CERTAIN QUESTIONS AND THE PURPOSE OF THOSE QUESTIONS
12 WILL BE TO DETERMINE YOUR MENTAL STATE, YOUR OPINION REGARDING
13 THE DEATH PENALTY AND HOW IT WILL AFFECT YOU IN THIS CASE,
14 ALL RIGHT?

15 MR. SIMS: OKAY.

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

20 MR. SIMS: NO.

21 THE COURT: THE SECOND QUESTION -- AND THIS HAS TO DO
22 WITH, IF YOU FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE,
23 THEN YOU WILL DETERMINE THE SPECIAL CIRCUMSTANCE, WAS IT
24 COMMITTED DURING THE COURSE OF A MURDER AND IS IT TRUE OR
25 FALSE THAT HE DID?

26 THE SECOND QUESTION: DO YOU HAVE ANY OPINION
27 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
28 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE

1 SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE?

2 MR. SIMS: NO.

3 THE COURT: THE THIRD QUESTION: DO YOU HAVE SUCH AN
4 OPINION -- AND THE NEXT TWO QUESTIONS HAVE TO DO WITH THE
5 PENALTY PHASE -- DO YOU HAVE SUCH AN OPINION CONCERNING THE
6 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
7 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE
8 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

9 MR. SIMS: NO.

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1 THE COURT: AND THIS IS ANOTHER ASPECT OF THAT SAME
2 QUESTION: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
3 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
4 WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS OF ANY EVIDENCE
5 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

6 MR. SIMS: NO.

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

11 MR. SIMS: YES.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 MR. SIMS, I AM ARTHUR BARENS AND I REPRESENT JOE
15 HUNT, WHO IS THE DEFENDANT IN THIS CASE.

16 AT THIS STAGE OF THE PROCEEDINGS, I AM OBLIGATED
17 TO ASK YOU YOUR POINT OF VIEW ON THE DEATH PENALTY. NOW,
18 THERE IS CERTAINLY NOTHING RIGHT OR WRONG ABOUT THESE ANSWERS,
19 THEY CAN'T BE RIGHT OR WRONG AND THEY ARE NOT GOOD OR BAD.
20 IT IS JUST YOUR OPINION.

21 MR. SIMS, HOW DO YOU FEEL ABOUT THE DEATH PENALTY
22 AS A GENERAL PROPOSITION IN OUR SOCIETY?

23 MR. SIMS: DO YOU MEAN JUST MY OPINION, MY OPINION IN
24 GENERAL OR DO I BELIEVE IT IS A DETERRENT?

25 MR. BARENS: ALL I CARE ABOUT IS YOUR OPINION.

26 THE COURT: KEEP YOUR VOICE UP.

27 MR. SIMS: I BELIEVE IT IS APPROPRIATE IN CERTAIN
28 CIRCUMSTANCES. I BELIEVE OUR LAWS CERTAINLY ARE ADEQUATE

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1 TO REFLECT THE GENERAL OPINION, AT LEAST IN MY OPINION.

2 MR. BARENS: MR. SIMS, WHEN YOU SAY CERTAIN CIRCUMSTANCES,
3 COULD YOU HELP ME AND TELL ME WHAT YOU MEAN BY THOSE?

4 MR. SIMS: ANY SORT OF UNUSUAL -- THE CIRCUMSTANCES
5 INVOLVING AN UNUSUAL DEGREE OF PAIN OR SUFFERING ON THE PART
6 OF THE VICTIM OR UNUSUAL CIRCUMSTANCES IN WHICH IT OCCURS
7 IN THE COURSE OF IT.

8 MR. BARENS: SURE, I AM GOING TO TRY TO GET FOCUSED
9 ON THAT A LITTLE BIT.

10 BUT MR. SIMS, SUPPOSING WE HAD A CASE WHERE THERE
11 WAS AN INTENTIONAL MURDER, THE TAKING OF A LIFE BY SOMEONE,
12 LET'S SAY A SHOOTING, AND IT WAS FOR THE PURPOSE OF GAINING
13 SOME PROPERTY. LET'S SAY IT TOOK PLACE DURING THE COMMISSION
14 OF A ROBBERY SO WE HAVE GOT AN INTENTIONAL KILLING DURING
15 THE COMMISSION OF A ROBBERY SO THAT SOMEONE GAINS SOMETHING,
16 LET'S SAY, MONEY OR PROPERTY OR SOMETHING.

17 GIVEN NOTHING ELSE, WHAT DO YOU THINK OUGHT TO
18 HAPPEN TO THAT DEFENDANT? DO YOU HAVE A BIAS AS TO HOW WE
19 OUGHT TO TREAT THAT GUY?

20 MR. SIMS: I BELIEVE THAT THAT IS SORT OF -- THAT WOULD
21 BE ELIGIBLE FOR THE DEATH PENALTY IN MY OPINION.

22 THE COURT: YOU THINK IT WOULD WARRANT THE DEATH PENALTY,
23 YOU SAID?

24 MR. SIMS: YES.

25 MR. BARENS: WHY DO YOU THINK THAT, SIR? SIMPLY BECAUSE
26 A LIFE WAS TAKEN?

27 MR. SIMS: A LIFE WAS TAKEN, YES, ESPECIALLY IN THE COURSE
28 OF A ROBBERY.

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1 I MEAN THE PERSON WAS PROBABLY DEFENDING THEMSELVES.
2 I DON'T KNOW THE CIRCUMSTANCES, THOUGH. I KNOW
3 I AM BEING PRESUMPTUOUS.

4 THE COURT: MR. SIMS, I TOLD YOU ONCE IT HAS BEEN FOUND
5 THAT IT WAS DELIBERATE MURDER COMMITTED DURING THE COURSE
6 OF A ROBBERY, THAT DOESN'T END IT AS FAR AS THE JURY IS
7 CONCERNED. THEY HAVE TO CONSIDER ANOTHER ASPECT. AND DURING
8 THE PENALTY PHASE OF THE TRIAL, I TOLD YOU A LOT OF FACTS
9 WILL COME BEFORE YOU, GOOD ABOUT THE DEFENDANT OR BAD ABOUT
10 THE DEFENDANT. IT IS THEN UP TO YOU TO MAKE UP YOUR MIND
11 AS TO WHETHER IT WILL BE ONE OF TWO THINGS: LIFE IMPRISONMENT
12 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

13 WILL YOU MAKE UP YOUR MIND BEFORE YOU HEAR ALL
14 OF THAT TESTIMONY WHETHER IT SHOULD BE ONE OR THE OTHER?

15 MR. SIMS: NO, I WON'T.

16 THE COURT: YOU ARE SURE ABOUT THAT?

17 MR. SIMS: I AM SURE ABOUT THAT.

18 THE COURT: YOU WANT TO BE SURE ABOUT THAT.

19 MR. SIMS: I AM SURE ABOUT THAT.

20 MR. BARENS: MR. SIMS, LET'S TALK ABOUT SOME OF THOSE
21 PEOPLE THAT INTENTIONALLY KILL PEOPLE TO GET PROPERTY. DO
22 YOU CONSIDER THOSE TO BE THE MOST DANGEROUS OF OUR PEOPLE?

23 MR. SIMS: CERTAINLY AMONG THE MORE DANGEROUS PEOPLE
24 IN OUR SOCIETY.

25 MR. BARENS: YOU THINK WE OUGHT TO GET RID OF THOSE
26 PEOPLE, DON'T YOU THINK?

27 MR. SIMS: I WOULDN'T SAY THAT. IF THEY CAN BE
28 REHABILITATED, THAT IS ONE THING.

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1 MR. BARENS: WOULD YOU CONSIDER FACTORS THAT MIGHT
2 MITIGATE THAT? AS HIS HONOR HAS SAID, FACTORS THAT IF I WERE
3 TO TELL YOU THE JUDGE WOULD SAY DURING THE PENALTY PHASE THAT
4 YOU SHOULD CONSIDER THE PERSON'S AGE AT THE TIME THE CRIME
5 WAS COMMITTED, WOULD YOU CONSIDER THAT?

6 MR. SIMS: CERTAINLY.

7 MR. BARENS: HOW ABOUT WHETHER OR NOT THEY HAD A PRIOR
8 CRIMINAL RECORD?

9 MR. SIMS: I WOULD CONSIDER THAT.

10 MR. BARENS: THOSE THINGS, YOU WOULD CONSIDER --

11 MR. SIMS: YES.

12 MR. BARENS: -- BEFORE YOU MADE A DECISION?

13 ON THE OTHER SIDE, DO YOU THINK THERE ARE CERTAIN
14 PEOPLE THAT SHOULD GET LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
15 OF PAROLE?

16 MR. SIMS: CERTAINLY.

17 MR. BARENS: COULD YOU TELL ME WHAT KIND OF PEOPLE COME
18 TO YOUR MIND IN THAT INSTANCE?

19 MR. SIMS: DO YOU WANT ME TO NAME INDIVIDUALS?

20 MR. BARENS: NO, SIR.

21 I MEAN TYPES OF CRIMES THAT WOULD QUALIFY FOR
22 THAT AS OPPOSED TO THE DEATH PENALTY.

23 THE COURT: WELL, THE ONLY CRIME THAT WOULD QUALIFY
24 WOULD BE MURDER IN THE FIRST DEGREE.

25 MR. BARENS: I UNDERSTAND THAT, YOUR HONOR.

26 WHAT I AM LOOKING FOR, YOUR HONOR, AND MR. SIMS,
27 YOU HAD TOLD ME BEFORE THAT PEOPLE WHO COMMIT A FIRST DEGREE
28 MURDER AND THERE IS AN UNUSUAL AMOUNT OF SUFFERING, I BELIEVE

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1 YOU SAID, ON THE PART OF THE DECEASED OR WHERE -- AND I BELIEVE
2 YOU SAID IN A FIRST DEGREE MURDER DURING A ROBBERY WHERE IT
3 APPEARED THAT THE VICTIM WAS ONLY DEFENDING HIMSELF, I BELIEVE
4 YOU SAID THAT WOULD QUALIFY FOR THE DEATH PENALTY.

5 I AM NOW ASKING THE OBVERSE OF THAT: IF YOU COULD
6 TELL ME ANY TYPES OF CONDUCT THAT WOULD QUALIFY IN YOUR MIND
7 FOR LIFE IMPRISONMENT AS OPPOSED TO THE DEATH PENALTY.

8 MR. SIMS: YOU MEAN SOMEHOW A GRADATION DOWN FROM THAT
9 TYPE OF BEHAVIOR WHERE I HAVE ALREADY SAID WHERE I BELIEVE
10 THE DEATH PENALTY WOULD BE APPROPRIATE?

11 MR. BARENS: YES.

12 MR. SIMS: WELL, SECOND DEGREE MURDER, ONE THAT IS NOT
13 PREMEDITATED.

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1 MR. BARENS: IS THERE ANY TYPE OF FIRST DEGREE OR
2 INTENTIONAL MURDER IN YOUR MIND THAT YOU THINK SHOULD BE GIVEN
3 LIFE WITHOUT POSSIBILITY OF PAROLE?

4 MR. SIMS: CERTAINLY. THERE ARE MANY CIRCUMSTANCES
5 WHERE THAT WOULD BE THE MOST APPLICABLE SENTENCE, RATHER THAN
6 JUST AUTOMATICALLY CONDEMNING SOMEONE.

7 MR. BARENS: SO IF I UNDERSTAND YOU, YOU ARE NOT TELLING
8 THIS COURT THAT YOU BELIEVE THAT ALTHOUGH A FIRST DEGREE
9 MURDER HAS OCCURRED DURING A ROBBERY, THAT IN ALL INSTANCES,
10 THOSE DEFENDANTS SHOULD DIE?

11 MR. SIMS: NO. I DON'T BELIEVE ALL OF THEM SHOULD DIE
12 IN ALL CASES. I DON'T BELIEVE IN ALL CASES THAT THAT IS GOING
13 TO BE THE MOST APPROPRIATE SENTENCE.

14 MR. BARENS: WOULD YOU HAVE A BIAS IN YOUR OWN MIND
15 THAT MAKES YOU FEEL THAT THAT IS PROBABLY WHAT SHOULD HAPPEN,
16 GIVEN NOTHING ELSE?

17 MR. SIMS: NO.

18 THE COURT: I THINK WE HAVE A NUMBER OF OTHER MATTERS
19 THAT WE HAVE TO TAKE CARE OF THIS MORNING. PLEASE COME BACK
20 THIS AFTERNOON AT 1:30. COME RIGHT INTO THE COURTROOM. THANK
21 YOU.

22 (AT 12 NOON A RECESS WAS TAKEN UNTIL
23 1:30 P.M. OF THE SAME DAY.)
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1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 1, 1986; 1:35 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: PEOPLE VERSUS HUNT. COUNSEL ARE PRESENT
6 AND THE PROSPECTIVE JUROR. YOU MAY CONCLUDE.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 MR. SIMS, WHEN WE LEFT OFF, WE WERE DISCUSSING
9 YOUR VIEWS ABOUT THE DEATH PENALTY. I BELIEVE YOU TOLD ME
10 THAT YOU THOUGHT THERE WERE CERTAIN CIRCUMSTANCES UNDER WHICH
11 YOU THOUGHT THE DEATH PENALTY WAS APPROPRIATE. BY THAT, DO
12 YOU MEAN CIRCUMSTANCES LIKE SELF-DEFENSE OR MISTAKE OR
13 ACCIDENT?

14 MR. SIMS: REPEAT THE QUESTION.

15 MR. BARENS: IF YOU WOULD, THANK YOU.

16 THE COURT: PLEASE READ THE QUESTION.

17 (THE RECORD WAS READ BY THE REPORTER.)

18 MR. SIMS: WELL, THE DEATH PENALTY WAS APPROPRIATE IN
19 THOSE CIRCUMSTANCES. OF COURSE, IT IS NOT APPROPRIATE IF
20 SOMEONE IS DEFENDING THEMSELVES.

21 MR. BARENS: AND IF A PERSON WERE ACTING IN SELF-DEFENSE,
22 THE VICTIM, WOULD YOU FEEL IT WAS A SITUATION WHERE YOU
23 WOULDN'T GIVE THE DEATH PENALTY?

24 MR. SIMS: NO. IT IS EXACTLY THE OPPOSITE.

25 MR. BARENS: AND, WHAT DO YOU MEAN BY THE CIRCUMSTANCES
26 SURROUNDING IT WHEN A PERSON KILLS IN COLD BLOOD AND THROUGH
27 INTENTIONAL ACT? YOU SAID THAT WE SHOULD GIVE THAT FELLOW
28 THE DEATH PENALTY?

1 MR. SIMS: IT DEPENDS UPON THE CIRCUMSTANCES THAT
2 SURROUND IT.

3 MR. BARENS: WHAT DO YOU MEAN "CIRCUMSTANCES", MR. SIMS?

4 MR. SIMS: I MEAN HOW DID THEY DO IT? WHAT WAS THE
5 RELATIONSHIP, WHAT CAUSED IT? THERE ARE ALWAYS MITIGATING
6 CIRCUMSTANCES OF SOME SORT.

7 MR. BARENS: SO, IN THOSE CIRCUMSTANCES, WE APPEAR TO
8 BE TALKING ABOUT CIRCUMSTANCES SURROUNDING THE CRIME AND ITS
9 COMMISSION OR ACCOMPLISHMENT. IS THAT ALL YOU WOULD CONSIDER
10 IN DETERMINING WHETHER THAT DEFENDANT SHOULD LIVE OR DIE?

11 MR. SIMS: YOU MEAN IN TERMS OF SENTENCING?

12 MR. BARENS: YES, DURING THE PENALTY PHASE.

13 MR. SIMS: NO. I DON'T THINK IT WOULD BE THE ONLY THING
14 I WOULD CONSIDER. IT WOULD BE WHATEVER WAS BROUGHT TO ME
15 BY THE COURT.

16 MR. BARENS: IN OTHER WORDS, IN A LARGER SENSE,
17 CIRCUMSTANCES CONCERNING THE DEFENDANT'S HISTORY OR BACKGROUND?

18 MR. SIMS: RIGHT.

19 MR. BARENS: NOW, DO YOU BELIEVE IN THE CONCEPT OF AN
20 EYE FOR AN EYE?

21 MR. SIMS: NO. I CAN'T SAY THAT I DO.

22 MR. BARENS: SO IN EVERY INSTANCE WHERE THERE IS FIRST
23 DEGREE MURDER, YOU WOULDN'T AUTOMATICALLY FEEL --

24 MR. SIMS: NO.

25 MR. BARENS: THAT THE DEFENDANT SHOULD GET THE DEATH
26 PENALTY?

27 MR. SIMS: NO.

28 MR. BARENS: IN DISCUSSING THESE CIRCUMSTANCES BEFORE,

1 I GOT A FEELING FROM YOU, THAT MOTIVE WAS IMPORTANT. WHAT
2 WOULD YOU FEEL IN SITUATIONS WHERE THE MOTIVE WAS GREED OR
3 FOR PERSONAL GAIN? DO YOU THINK THOSE DEFENDANTS SHOULD GET
4 THE DEATH PENALTY?

5 MR. SIMS: THOSE WOULD BE CIRCUMSTANCES I WOULD
6 CONSIDER IN THE COLUMN, SO TO SPEAK WHERE I WOULD BE MORE
7 INCLINED.

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1 THOSE PEOPLE WHO COMMIT INTENTIONAL MURDERS THAT
2 DO IT REALLY WITHOUT PASSION BUT, RATHER, SIMPLY TO GET
3 SOMETHING THEY PROBABLY SHOULDN'T HAVE OR WOULDN'T HAVE GOTTEN
4 ANYHOW. THOSE KINDS OF VICIOUS PEOPLE YOU FEEL SHOULD GET
5 THE DEATH PENALTY?

6 MR. SIMS: YES.

7 MR. WAPNER: YOU HAVE TO ANSWER OUT LOUD SO SHE CAN
8 WRITE IT DOWN.

9 MR. SIMS: YES, SIR. YES.

10 MR. BARENS: IN EVERY INSTANCE?

11 MR. SIMS: NOT IN EVERY INSTANCE.

12 MR. BARENS: IN WHICH INSTANCES WOULD THEY NOT, SIR?

13 THE COURT: HOW CAN HE IMAGINE ALL OF THE CIRCUMSTANCES?

14 MR. SIMS: THAT IS WHAT I AM THINKING OF, A GREAT DEAL --
15 I AM HAVING A GREAT DEAL OF DIFFICULTY HAVING TO COME UP WITH
16 SPECIFIC CIRCUMSTANCES IN MY MIND.

17 I KNOW IT WHEN I SEE IT.

18 THE COURT: THAT IS RIGHT.

19 MR. BARENS: I WILL WITHDRAW IT THEN, YOUR HONOR.

20 MR. SIMS, IN CONSIDERING LIFE WITHOUT THE
21 POSSIBILITY OF PAROLE, DO YOU FEEL THERE COULD BE INTENTIONAL
22 FIRST DEGREE MURDERERS, FOR INSTANCE, FOR PERSONAL GAIN, THAT
23 YOU WOULD GIVE LIFE TO INSTEAD OF DEATH?

24 MR. SIMS: UH-HUH.

25 MR. WAPNER: IS THAT YES?

26 MR. SIMS: YES.

27 SORRY.

28 MR. BARENS: MR. SIMS, I KNOW I TALKED TO YOU ABOUT

1 THE FACT THAT THE DEFENDANT, LIKE THE PROSECUTION, IS ENTITLED
2 TO A NEUTRAL JUROR, BUT DO YOU FEEL YOU ARE NEUTRAL ABOUT
3 THE LIFE AND DEATH ISSUE EVEN WHEN WE COME TO A DEFENDANT
4 WHO MIGHT COMMIT A FIRST DEGREE MURDER FOR A ROBBERY?

5 MR. SIMS: YES, I AM NEUTRAL ABOUT IT.

6 MR. BARENS: YOU WOULD NOT RESOLVE A DECISION ON THE
7 LIFE OR DEATH ISSUE UNTIL YOU HAVE HEARD EVIDENCE -- AND WHAT
8 IS CRITICAL NOW IN MY QUESTION, MR. SIMS, IS NOT JUST EVIDENCE
9 ABOUT THE COMMISSION OF THE CRIME, ABOUT THOSE FACTORS HIS
10 HONOR TALKED ABOUT IN MITIGATION AND AGGRAVATION DURING THE
11 PENALTY PHASE, BUT WOULD YOU WAIT UNTIL YOU HEARD ALL OF THAT
12 EVIDENCE BEFORE YOU MADE A LIFE AND DEATH DECISION?

13 MR. SIMS: YES.

14 MR. BARENS: I THANK MR. SIMS.

15 THE COURT: PASS FOR CAUSE?

16 MR. BARENS: YES.

17 MR. WAPNER: MR. SIMS, GOOD AFTERNOON. I AM FRED WAPNER,
18 THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.

19 IF THE JUDGE ASKED YOU, I DIDN'T HEAR THE ANSWER
20 SO PLEASE FORGIVE ME.

21 HAVE YOU HEARD OR READ ANYTHING ABOUT THIS CASE?

22 MR. SIMS: NO, NO.

23 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
24 MORAL OR PHILOSOPHICAL BELIEFS THAT WOULD AFFECT YOUR ABILITY
25 TO DECIDE THE QUESTION OF WHICH PENALTY SHOULD BE IMPOSED
26 IN THIS CASE?

27 MR. SIMS: NO.

28 MR. WAPNER: HAD YOU GIVEN ANY THOUGHT TO THE QUESTION

1 OF THE DEATH PENALTY BEFORE YOU WERE CHOSEN TO SIT AS A JUROR
2 ON THIS CASE?

3 MR. SIMS: I HAVE THOUGHT OF IT IN THE PAST BUT NOT
4 IN GREAT DEPTH.

5 MR. WAPNER: I ASSUME YOU HAVE NEVER BEEN CONFRONTED
6 WITH A SITUATION OF THIS IMMEDIACY BEFORE?

7 MR. SIMS: NO.

8 MR. WAPNER: THANK YOU.

9 PASS FOR CAUSE.

10 THE COURT: ALL RIGHT, MR. SIMS, YOU QUALIFY AS A POSSIBLE
11 JUROR IN THIS CASE SO I WILL ASK YOU TO COME BACK TO THE JURY
12 ASSEMBLY ROOM ON THURSDAY. BY THAT TIME, WE WILL HAVE FINISHED
13 INTERROGATING ALL OF THESE OTHER PROSPECTIVE JURORS.

14 MR. SIMS: OKAY.

15 THE COURT: RETURN TO THE JURY ASSEMBLY ROOM AT 10:30
16 ON THURSDAY, DECEMBER 4TH.

17 MR. SIMS: OKAY.

18 THE COURT: ALL RIGHT, THANK YOU. MAKE A NOTE OF IT,
19 WILL YOU?

20 AND DON'T TALK TO ANYBODY ABOUT IT AND TRY NOT
21 TO READ ANYTHING ABOUT THE CASE EITHER.

22 MR. SIMS: OKAY, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 (PROSPECTIVE JUROR SIMS EXITED THE
25 COURTROOM.)

26 MR. BARENS: YOUR HONOR, WITH YOUR PERMISSION, I WILL
27 BE LEAVING AFTER THE NEXT JUROR.

28 THE COURT: ALL RIGHT.

1 MR. BARENS: THANK YOU VERY MUCH.

2 (PROSPECTIVE JUROR STONECIPHER
3 ENTERED THE COURTROOM.)

4 MR. WAPNER: WHAT HAPPENED TO DORRIS SMITH?

5 THE COURT: SHE IS OFF THE LIST.

6 THE CLERK: SHE WAS EXCUSED 11-18.

7 THE COURT: MR. STONECIPHER, IS THAT IT?

8 MR. STONECIPHER: YES.

9 THE COURT: AN UNUSUAL NAME. I HAVEN'T HEARD ANYTHING
10 LIKE IT BEFORE. WHAT IS ITS ORIGIN?

11 MR. STONECIPHER: GERMAN.

12 THE COURT: WHAT WOULD THAT BE TRANSLATED INTO ENGLISH
13 TO?

14 MR. STONECIPHER: I DON'T KNOW. I REALLY DON'T.

15 THE COURT: AT ANY RATE, MR. STONECIPHER, WHERE DO YOU
16 LIVE?

17 MR. STONECIPHER: I LIVE IN LAWNSDALE.

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

20 MR. STONECIPHER: NO, I HAVEN'T.

21 THE COURT: EXCEPT WHAT I HAVE INDICATED AND TOLD YOU
22 ABOUT?

23 MR. STONECIPHER: RIGHT.

24 THE COURT: WHEN ALL OF THE OTHER JURORS WERE PRESENT?

25 MR. STONECIPHER: YES.

26 THE COURT: YOU HAVEN'T HEARD OR DISCUSSED IT WITH ANY
27 OF THE OTHER JURORS, HAVE YOU?

28 MR. STONECIPHER: NO.

1 THE COURT: YOU KNOW NOTHING ABOUT IT, ALL RIGHT, EXCEPT
2 FOR THE FACT IT IS PENDING IN THIS COURT AND YOU KNOW GENERALLY
3 WHAT THE NATURE OF THE CHARGE IS?

4 MR. STONECIPHER: RIGHT.

5 THE COURT: LET ME SUMMARIZE THE NATURE OF THE CHARGE
6 AND ASK YOU SOME QUESTIONS ABOUT THAT.

7 YOU KNOW THE CHARGE AGAINST THE DEFENDANT IS HE
8 COMMITTED A MURDER AND IT IS MURDER IN THE FIRST DEGREE AND
9 QUALIFIES IN THIS CASE FOR THE POSSIBLE DEATH PENALTY, THE
10 DEATH PENALTY WILL INCLUDE LIFE IMPRISONMENT WITHOUT THE
11 POSSIBILITY OF PAROLE OR DEATH ITSELF, IF IN FACT IT WAS
12 COMMITTED DURING THE COURSE OF A ROBBERY.

13 NOW THE LEGISLATURE HAS SAID UNDER CERTAIN CASES
14 OF MURDER, UNDER CERTAIN CIRCUMSTANCES, WHAT THEY CALL SPECIAL
15 CIRCUMSTANCES, THE CASE WOULD QUALIFY FOR THE DEATH PENALTY
16 IF REQUESTED BY THE DISTRICT ATTORNEY. A MURDER COMMITTED
17 DURING THE COURSE OF ROBBERY IS ONE OF THEM. MURDER COMMITTED
18 IN THE COURSE OF A BURGLARY IS ANOTHER. MURDER COMMITTED
19 DURING THE COURSE OF KIDNAPPING OR RAPE OR A TORTURE OR
20 MULTIPLE MURDERS, THEY ALSO QUALIFY. THERE ARE ABOUT 19 OF
21 THEM.

22 NOW, WHAT THE JURORS WHO WILL BE QUALIFIED IN
23 THE FIRST PHASE OF THE TRIAL, THE GUILT PHASE, THOSE JURORS
24 SELECTED WILL HAVE TO DETERMINE WHETHER OR NOT THE DEFENDANT
25 IS GUILTY OR NOT GUILTY OF MURDER IN THE FIRST DEGREE. IF
26 THEY FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY
27 DECIDE THE AUXILIARY QUESTION AS TO WHETHER THAT MURDER WAS
28 COMMITTED DURING THE COURSE OF A ROBBERY WHICH WOULD QUALIFY
29 IT, IF THEY SAY YES, FOR THE DEATH PENALTY.

12A-1

1 AND IF THE JURORS SAY YES IT IS TRUE, THAT IT IS
2 COMMITTED DURING THE COURSE OF A ROBBERY, THEN THAT SAME JURY
3 THEN BEGINS TO HEAR EVIDENCE ON THE PENALTY PHASE OF THE
4 TRIAL.

5 DURING THE PENALTY PHASE OF THE TRIAL, YOU WILL
6 HEAR EVIDENCE FROM THE DEFENDANT AND FROM THE PROSECUTION.
7 FROM THE DEFENDANT, IT IS THINGS THAT ARE IN HIS LIFE THAT
8 ARE OTHERWISE CONSIDERED FAVORABLE TO HIM AND THE ABSENCE OF
9 ANY CRIMINAL CONDUCT IN THE PAST. GENERALLY, THE LEGISLATURE
10 SAYS ANYTHING THAT WOULD SHOW HIS CHARACTER AND HIS HISTORY,
11 HIS PHYSICAL OR MENTAL CONDITION AND THE BACKGROUND AND
12 ET CETERA, ET CETERA.

13 THE PROSECUTION ON THE OTHER HAND, WOULD TRY TO
14 SHOW THINGS ABOUT HIM IN THE PAST WHICH ARE UNFAVORABLE.
15 AND AFTER YOU HAVE HEARD ALL OF THAT TESTIMONY ON THE PENALTY
16 PHASE, YOU CONSIDER ALL THAT TESTIMONY TOGETHER WITH ALL OF
17 THE EVIDENCE THE JURY HEARD ON THE GUILT PHASE, TOO. THEY
18 HAVE A RIGHT TO ALSO CONSIDER THAT.

19 IT IS THEN THAT THEY RETIRE, AFTER ARGUMENT AND
20 INSTRUCTIONS FROM THE COURTROOM, TO DETERMINE ONE OF TWO
21 POSSIBLE PENALTIES, LIFE WITHOUT POSSIBILITY OR DEATH IN THE
22 GAS CHAMBER; DO YOU UNDERSTAND THAT?

23 MR. STONECIPHER: YES.

24 THE COURT: NOW, WHAT I AM GOING TO ASK YOU NOW, HAS
25 TO DO WITH YOUR ATTITUDE OR MENTAL STATE OR FEELINGS ABOUT
26 THE DEATH PENALTY AND HOW THAT WILL AFFECT YOU AS A JUROR.
27 THE FIRST QUESTION I WILL ASK YOU CALLS -- WELL, FIRST OF
28 ALL, THESE QUESTIONS CALL FOR A YES OR NO ANSWER. AND IF YOU

1 DON'T UNDERSTAND THE QUESTION, I WOULD BE GLAD TO EXPLAIN.
2 I WOULD BE HAPPY TO DO IT.

3 NOW, THE FIRST QUESTION HAS TO DO WITH THE GUILT
4 PHASE OF IT. DO YOU HAVE ANY OPINION CONCERNING THE DEATH
5 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
6 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

7 MR. STONECIPHER: I WOULD SAY NO, I GUESS. I AM NOT
8 REALLY SURE WHAT YOU ARE ASKING.

9 THE COURT: DO YOU UNDERSTAND THAT? DO YOU REMEMBER
10 I TOLD YOU ON THE FIRST DAY OF THE TRIAL TO DETERMINE WHETHER
11 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY?

12 NOW, YOU HAVE AN OPINION ON THE DEATH PENALTY.
13 WOULD THAT OPINION IN ANY WAY, INTERFERE WITH YOUR MAKING OR
14 COMING IN WITH A VERDICT OF GUILTY OR NOT GUILTY ON THE GUILT
15 PHASE OF THE TRIAL?

16 MR. STONECIPHER: NO.

17 THE COURT: THE SECOND QUESTION IS STILL ON THE GUILT
18 PHASE. I TOLD YOU THAT THE INCIDENTAL QUESTION OR AUXILIARY
19 QUESTION IS THAT THE JURY HAS TO DETERMINE, MAKE A FINDING
20 WHETHER IT IS TRUE OR FALSE THAT THAT MURDER WAS COMMITTED
21 DURING THE COURSE OF A ROBBERY.

22 DURING THE COURSE OF A ROBBERY MEANS SPECIAL
23 CIRCUMSTANCES. DO YOU UNDERSTAND THAT? THAT IS BEFORE WE
24 HAVE COME TO THE PENALTY PHASE OF THE TRIAL.

25 THE QUESTION IS, DO YOU HAVE ANY OPINION REGARDING
26 THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN
27 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
28 SPECIAL CIRCUMSTANCES?

12A-3

1 MR. STONECIPHER: NO.

2 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS HAVE
3 TO DO WITH THE PENALTY PHASE. WE ASSUME NOW THAT THERE HAS
4 BEEN A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE AND
5 IT OCCURS DURING THE COURSE OF A ROBBERY.

6 NOW, WE HAVE A PENALTY PHASE. THESE ARE THE
7 NEXT QUESTIONS: DO YOU HAVE SUCH AN OPINION CONCERNING THE
8 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE
9 DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
10 IN THE PENALTY PHASE OF THE TRIAL? DO YOU UNDERSTAND THE
11 QUESTION?

12 MR. STONECIPHER: NO. COULD I HEAR IT AGAIN?

13 THE COURT: SURELY. DO YOU HAVE ANY OPINION CONCERNING
14 THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
15 THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE
16 PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

17 MR. STONECIPHER: NO.

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1 THE COURT: NOW, THE SAME QUESTION BUT A DIFFERENT ASPECT
2 OF IT. DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY
3 THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY
4 OF PAROLE REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
5 ON THE PENALTY PHASE?

6 MR. STONECIPHER: YES.

7 THE COURT: WHAT WAS THAT?

8 MR. STONECIPHER: I DON'T BELIEVE IN THE DEATH PENALTY.

9 THE COURT: THAT MEANS THAT IF YOU DON'T BELIEVE IN
10 THE DEATH PENALTY, YOU WOULD NOT UNDER ANY CIRCUMSTANCES VOTE
11 THE DEATH PENALTY?

12 MR. STONECIPHER: NO, SIR.

13 THE COURT: ALL RIGHT. AND HOW ABOUT THE POSSIBILITY
14 OF -- HOW ABOUT AUTOMATICALLY VOTING FOR LIFE WITHOUT
15 POSSIBILITY OF PAROLE? YOU WOULDN'T AUTOMATICALLY -- WOULD
16 YOU AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
17 WITHOUT HEARING ANY EVIDENCE AT ALL AS TO THE PENALTY PHASE?

18 MR. STONECIPHER: NO.

19 THE COURT: ALL RIGHT. LET ME UNDERSTAND YOU AGAIN.

20 IS IT YOUR OPINION -- YOU HAVE AN OPINION ON THE
21 DEATH PENALTY THAT WOULD -- YOU WOULD CATEGORICALLY NEVER
22 VOTE FOR THE DEATH PENALTY, IS THAT RIGHT?

23 MR. STONECIPHER: YES.

24 MR. BARENS: THANK YOU, YOUR HONOR. MR. STONECIPHER,
25 I AM ARTHUR BARENS. I REPRESENT THE DEFENDANT HERE, JOE HUNT.
26 AND AS HIS HONOR WAS, IT IS MY OBLIGATION TO INQUIRE AS TO
27 YOUR VIEWS ON THE DEATH PENALTY AT THIS PART OF THE PROCEEDINGS.

28 AND CERTAINLY SIR, I WANT YOU TO UNDERSTAND FROM

1 THE OUTSET THAT THERE IS NO RIGHT OR WRONG ANSWER TO MY
2 QUESTIONS OR GOOD OR BAD ANSWERS, JUST YOUR POINT OF VIEW
3 IS ALL I AM INTERESTED IN.

4 BOTH THE DEFENSE AND THE PROSECUTION ARE ENTITLED
5 TO A NEUTRAL JUROR DURING THESE PROCEEDINGS, BOTH IN THE GUILT
6 PHASE AND IN THE PENALTY PHASE. NEUTRAL MEANS FOR THE PENALTY
7 PHASE, ONE WHO WOULD CONSIDER THE DEATH PENALTY AND CONSIDER
8 LIFE WITHOUT POSSIBILITY OF PAROLE.

9 I THINK THE CONCERN IN THIS COURTROOM AT THE MOMENT,
10 WAS YOUR RESPONSE THAT YOU DON'T BELIEVE IN THE DEATH PENALTY,
11 SIR.

12 WHAT I AM INQUIRING INTO IS, ARE THERE ANY
13 CIRCUMSTANCES FOR ANY TYPE OF AN INTENTIONAL MURDER DURING
14 A ROBBERY, LET'S SAY, FOR GREED AND GAIN, WHERE YOU WOULD
15 CONSIDER THE DEATH PENALTY AS AN APPROPRIATE REMEDY?

16 MR. STONECIPHER: NO.

17 MR. BARENS: UNDER NO CIRCUMSTANCES?

18 MR. STONECIPHER: NO.

19 MR. BARENS: THUS YOU ARE TELLING ME SIR, THAT
20 IRRESPECTIVE OF THE CONDUCT OF THE DEFENDANT, YOU COULD NOT
21 BRING BACK A DEATH PENALTY VERDICT?

22 MR. STONECIPHER: NO.

23 MR. BARENS: ARE YOU SAYING SIR, THAT YOU CANNOT EVEN
24 CONSIDER THAT AS AN ALTERNATIVE THAT YOU HAD AVAILABLE?

25 MR. STONECIPHER: NO.

26 MR. BARENS: YOU COULD NOT CONSIDER IT?

27 MR. STONECIPHER: NO.

28 MR. BARENS: I THANK YOU FOR YOUR CANDOR.

1 MR. WAPNER: DID THE ANSWER TO THE LAST QUESTION --
2 I THINK MR. BARENS SAID --

3 THE COURT: HE REALLY MEANS THAT YES. YOU WOULD NOT
4 CONSIDER IT. IS THAT WHAT YOU MEAN?

5 MR. STONECIPHER: I WOULD NOT, YES.

6 MR. WAPNER: NOTHING FURTHER.

7 THE COURT: ALL RIGHT. THANK YOU VERY MUCH FOR BEING
8 HERE, MR. STONECIPHER. OBVIOUSLY, YOU WILL NOT QUALIFY FOR
9 A JURY WHICH HAS TO CONSIDER THE DEATH PENALTY, IN VIEW OF
10 YOUR EXPRESSED OPINION ON THE DEATH PENALTY.

11 WHAT I WILL ASK YOU TO DO IS, GO BACK TO THE JURY
12 ASSEMBLY ROOM AND TELL THEM THAT YOU WILL BE AVAILABLE IN
13 SOME OTHER KIND OF A CASE, NOT A MURDER CASE WHERE THEY ASK
14 THE DEATH PENALTY. THANK YOU VERY MUCH FOR BEING HERE AND
15 FOR YOUR FRANKNESS AND CANDOR. WE APPRECIATE THAT.

16 (PROSPECTIVE JUROR STONECIPHER EXITED
17 THE COURTROOM.)

18 (PROSPECTIVE JUROR ROY STROUP ENTERED
19 THE COURTROOM.)

20 THE COURT: GOOD AFTERNOON, MR. STROUP. WHERE DO YOU
21 LIVE?

22 MR. STROUP: IN MAR VISTA.

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

25 MR. STROUP: NO, SIR.

26 THE COURT: HAVE YOU DISCUSSED IT WITH ANYBODY?

27 MR. STROUP: NO.

28 THE COURT: NONE OF THE JURORS OR ANYBODY?

1 MR. STROUP: NO.

2 THE COURT: ALL RIGHT. IF YOU ARE SELECTED AS ONE OF
3 THE JURORS HERE, TRY NOT TO READ ANYTHING ABOUT IT OR DISCUSS
4 IT WITH ANYBODY. ALL RIGHT?

5 MR. STROUP: YES.

6 THE COURT: OKAY. NOW, YOU WERE HERE WHEN I TOLD THE
7 JURORS ESSENTIALLY WHAT THE CASE WAS ALL ABOUT?

8 MR. STROUP: YES. THAT'S RIGHT.

9 THE COURT: JUST TO REVIEW IT FOR YOU BRIEFLY, THE CHARGE
10 AGAINST THE DEFENDANT IS THAT HE COMMITTED A MURDER AND THAT
11 THAT MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY.

12 IT BEING COMMITTED ALLEGEDLY DURING THE COURSE
13 OF A ROBBERY, IT QUALIFIES THIS CASE FOR THE DEATH PENALTY.
14 BY THE "DEATH PENALTY" I MEAN THAT THE JURY DECIDES ON A DEATH
15 PENALTY CASE, EITHER TO COMMIT HIM TO LIFE WITHOUT POSSIBILITY
16 OF PAROLE OR DEATH IN THE GAS CHAMBER. DO YOU UNDERSTAND
17 THAT?

18 MR. STROUP: YES.

19 THE COURT: ALL RIGHT. NOW, THE JURY WILL BE CALLED
20 UPON TO DECIDE FIRST, WHAT THEY CALL THE GUILT PHASE, WHETHER
21 OR NOT THE DEFENDANT IS GUILTY OR INNOCENT OF THE COMMISSION
22 OF THE CRIME OF MURDER.

23 IF THEY FIND HIM GUILTY OF THE CRIME OF MURDER
24 AND IT IS MURDER IN THE FIRST DEGREE, THEN THEY WILL HAVE
25 TO ANSWER A QUESTION, WAS THAT MURDER COMMITTED DURING THE
26 COURSE OF A ROBBERY.

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1 A MURDER COMMITTED IN THE COURSE OF ROBBERY,
2 ACCORDING TO THE LEGISLATURE, QUALIFIES THAT CASE FOR A
3 POSSIBLE DEATH VERDICT, DEATH SENTENCE; DO YOU UNDERSTAND?

4 MR. STROUP: YES.

5 THE COURT: SO THE JURY DECIDES FIRST WHETHER OR NOT
6 HE IS GUILTY OF A CRIME OF MURDER IN THE FIRST DEGREE. THEN
7 THEY HAVE AN ADDITIONAL QUESTION TO ANSWER: IS IT TRUE OR
8 IS IT FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A
9 ROBBERY?

10 IF THEY FIND THAT IT IS TRUE THAT IT WAS COMMITTED
11 DURING THE COURSE OF A ROBBERY, THEN WE GO INTO A SECOND
12 PHASE OF THE TRIAL KNOWN AS THE PENALTY PHASE.

13 NOW DURING THE GUILT PHASE, YOU DON'T DISCUSS --
14 YOU ARE NOT TO CONSIDER ANY QUESTION OF PENALTY OR PUNISHMENT.
15 THAT IS NEVER CONSIDERED IN THE FIRST PHASE. ONLY GUILTY OR
16 NOT GUILTY.

17 MR. STROUP: YES.

18 THE COURT: THE SECOND PHASE, YOU ONLY CONSIDER THE
19 PENALTY. THE PENALTY I TOLD YOU IS EITHER LIFE IMPRISONMENT
20 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

21 NOW, IN CONSIDERATION OF THE PENALTY PHASE, BOTH
22 THE DEFENDANT AND THE PROSECUTION WILL INTRODUCE TESTIMONY.
23 THE DEFENSE TESTIMONY WILL BE TO SHOW IN MITIGATION, THE
24 DEFENSE MAY SHOW, AND IT WILL TRY TO TELL YOU AND WILL TELL
25 YOU NICE THINGS ABOUT THE DEFENDANT. AND THE PROSECUTION ON
26 THE CONTRARY WILL SHOW YOU FACTS, TRY TO INTRODUCE EVIDENCE
27 WHICH CASTS SOME UNFAVORABLE LIGHT ON THE DEFENDANT.

28 NOW, AMONG OTHER THINGS THAT WILL BE CONSIDERED

1 BY THE JURY WOULD BE ALL OF THE TESTIMONY THAT YOU HEARD ON
2 THE GUILT PHASE THAT MAY BE CONSIDERED BY YOU. THE AGE OF
3 THE DEFENDANT, WHETHER OR NOT HE HAS A CRIMINAL RECORD AND
4 HIS CHARACTER AND HIS PRIOR HISTORY, HIS MENTAL CONDITION,
5 HIS BACKGROUND AND HIS PHYSICAL CONDITION. DO YOU UNDERSTAND
6 THAT?

7 MR. STROUP: YES.

8 THE COURT: THEN AFTER ALL THAT IS HEARD, BOTH COUNSEL
9 WILL ARGUE TO YOU AND I WILL INSTRUCT YOU ON THE LAW WHICH
10 IS APPLICABLE ON THE PENALTY PHASE OF THE TRIAL AND THEN YOU
11 DECIDE WITH THE OTHER JURORS, SHOULD IT BE LIFE IMPRISONMENT
12 WITHOUT THE POSSIBILITY OF PAROLE OR SHOULD IT BE DEATH. DO
13 YOU UNDERSTAND?

14 MR. STROUP: YES.

15 THE COURT: OF COURSE, YOU KNOW AS I TOLD YOU, THAT NOT
16 EVERY MURDER IN THE FIRST DEGREE CALLS FOR A DEATH PENALTY
17 QUESTION.

18 IT IS ONLY ONE WHERE SPECIAL CIRCUMSTANCES ARE
19 TRUE, LIKE ROBBERY OR BRUGLARY OR RAPE, AND SO ON AND SO FORTH;
20 DO YOU UNDERSTAND THAT?

21 MR. STROUP: YES.

22 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS
23 WHERE YOUR ANSWERS WILL BE YES OR NO. IF THE QUESTION IS NOT
24 UNDERSTOOD BY YOU, ASK ME TO EXPLAIN IT AND IF YOU WANT IT
25 REPEATED, I WILL REPEAT IT FOR YOU, ALL RIGHT?

26 MR. STROUP: YES.

27 THE COURT: ALL RIGHT, NOW THE FIRST QUESTION OR THE
28 FIRST TWO QUESTIONS HAVE TO DO WITH, SO TO SPEAK, THE GUILT

1 PHASE, DURING THE GUILT PHASE:

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

5 MR. STROUP: NO.

6 THE COURT: NOW, ALSO ON THE PART OF THE GUILT PHASE
7 IS THE SPECIAL CIRCUMSTANCE I TOLD YOU ABOUT, IF IT WAS
8 COMMITTED DURING THE COURSE OF A ROBBERY: DO YOU HAVE ANY
9 OPINION REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU
10 FROM MAKING ANY IMPARTIAL DECISION CONCERNING THE TRUTH OR
11 FALSITY OF THE SPECIAL CIRCUMSTANCE?

12 MR. STROUP: NO.

13 THE COURT: THE NEXT QUESTIONS HAVE TO DO WITH --
14 ASSUMING THE DEFENDANT IS CONVICTED OF MURDER IN THE FIRST
15 DEGREE WITH SPECIAL CIRCUMSTANCES, HAS TO DO WITH THE PENALTY
16 ASPECT OF IT: DO YOU HAVE SUCH AN OPINION CONCERNING THE
17 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE
18 DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
19 AT THE PENALTY PHASE OF THE TRIAL?

20 MR. STROUP: NO.

21 THE COURT: THIS IS THE SAME QUESTION BUT A LITTLE
22 DIFFERENT: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
23 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT
24 WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS OF ANY EVIDENCE
25 THAT MAY BE PRESENTED ON THE PENALTY PHASE OF THE CASE?

26 MR. STROUP: NO.

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

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

3 MR. STROUP: YES.

4 MR. CHIER: YOUR HONOR, THANK YOU.

5 GOOD AFTERNOON, MR. STROUP.

6 MR. STROUP: YES.

7 MR. CHIER: MY NAME IS RICHARD CHIER AND I REPRESENT
8 MR. HUNT AND I WANT TO ASK YOU SOME QUESTIONS THAT ARE ALONG
9 THE LINES OF THE GENERAL QUESTIONS ASKED YOU BY THE JUDGE.

10 I WOULD LIKE TO JUST TELL YOU A LITTLE BIT ABOUT
11 WHAT I AM TRYING TO FIND OUT SO YOU WILL UNDERSTAND MY
12 QUESTIONS.

13 MR. STROUP: YES.

14 MR. CHIER: OKAY, YOU UNDERSTAND THAT BECAUSE WE ARE
15 DOING THIS DOESN'T MEAN THAT MR. HUNT IS GUILTY OF ANYTHING?

16 MR. STROUP: YES, I UNDERSTAND.

17 MR. CHIER: THIS IS JUST KIND OF A FILTRATION PROCESS
18 WHERE YOU HAVE TO BE SCREENED IN ORDER TO BE A JUROR IN THIS
19 CASE AND THAT BEING A JUROR IN THIS CASE IS NOT ANY REFLECTION
20 ON THE PERSON.

21 MR. STROUP: I KNOW.

22 MR. CHIER: THE QUESTIONS I AM GOING TO ASK YOU HAVE
23 NO RIGHT OR WRONG ANSWER; DO YOU UNDERSTAND THAT?

24 MR. STROUP: YES.

25 MR. CHIER: AND THERE IS NO GOOD OR BAD ANSWER. IT IS
26 JUST YOUR ANSWERS AND YOUR POINT OF VIEW WE WANT. IT IS NOT
27 A GOOD IDEA TO HAVE A PERSON AS A JUROR WHO IS TILTED STRONGLY
28 IN FAVOR OF THE DEATH PENALTY OR IN FAVOR OF LIFE, YOU KNOW,

1 AGAINST THE DEATH PENALTY.

2 MR. STROUP: YES.

3 MR. CHIER: ALL RIGHT?

4 MR. STROUP: YES.

5 MR. CHIER: SO WE ARE LOOKING FOR PEOPLE WHO ARE ABLE
6 TO CONSIDER BOTH POSSIBILITIES IF IT EVER COMES TO THAT.

7 LET ME ASK YOU THIS, TO GET IT UNDER WAY HERE.
8 IF I ASKED YOU THIS QUESTION, HOW WOULD YOU ANSWER IT, SIR:
9 I AM A PERSON WHO IS:

10 A, STRONGLY IN FAVOR OF THE DEATH PENALTY.

11 B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY.

12 C, OPPOSED TO THE DEATH PENALTY.

13 D, HAVEN'T REALLY THOUGHT ABOUT IT, OR SOME OTHER
14 ANSWER?

15 MR. STROUP: I WOULD TAKE B.

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

17 MR. STROUP: WELL, REPEAT THAT.

18 MR. CHIER: A IS STRONGLY IN FAVOR OF THE DEATH PENALTY --

19 MR. STROUP: YES.

20 MR. CHIER: -- AND B, SOMEWHAT IN FAVOR OF THE DEATH
21 PENALTY, AND C, OPPOSED TO THE DEATH PENALTY.

22 AND D, HAVEN'T REALLY THOUGHT ABOUT IT.

23 OR E, OTHER.

24 MR. STROUP: WELL, C, NEVER THOUGHT ABOUT IT.

25 THE COURT: PARDON ME?

26 MR. STROUP: NEVER THOUGHT OF IT.

27 MR. CHIER: DO YOU REMEMBER A NUMBER OF YEARS AGO THERE
28 WAS A DEATH PENALTY INITIATIVE ON THE BALLOT?

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MR. STROUP: YES.

MR. CHIER: DID YOU THINK ABOUT IT AT THAT TIME?

MR. STROUP: YES.

MR. CHIER: AND DID YOU VOTE FOR OR AGAINST IT, SIR?

MR. STROUP: I VOTED FOR IT.

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1 MR. CHIER: AND SO IT WOULD BE CORRECT AT LEAST AT SOME
2 TIME IN THE RECENT PAST YOU HAVE GIVEN SOME THOUGHT TO THE
3 ISSUE OF THE DEATH PENALTY?

4 MR. STROUP: YES.

5 MR. CHIER: AT THAT TIME YOU GAVE THOUGHT TO THE ISSUE
6 OF THE DEATH PENALTY AS AN ABSTRACT PROPOSITION OF WHETHER
7 WE SHOULD HAVE OR WE SHOULDN'T HAVE IT, RIGHT?

8 MR. STROUP: YES, I WOULD SAY THAT.

9 MR. CHIER: NOW IT IS A DIFFERENT SITUATION WHERE YOU
10 ARE BEING ASKED TO SPEAK ABOUT YOUR ATTITUDES TOWARD THE DEATH
11 PENALTY IN A SITUATION WHERE YOU MIGHT BE A JUROR IN A CASE
12 WHERE IT IS BEING ASKED FOR, RIGHT?

13 MR. STROUP: YES.

14 MR. CHIER: WHAT DO YOU THINK ABOUT THE DEATH PENALTY,
15 MR. STROUP?

16 MR. STROUP: WELL, I THINK WHEN CIRCUMSTANCES WARRANT
17 IT, I WOULD VOTE FOR IT, FIRST DEGREE MURDER AND STUFF LIKE
18 THAT. MANSON AND ALL OF THESE OTHER ONES AND THEY DON'T END
19 UP ON NO DEATH ROW. THEY ARE ON DEATH ROW FOR YEARS.

20 MR. CHIER: ALL RIGHT. YOU THINK EVEN THOUGH WE HAVE
21 A DEATH PENALTY, IT DOESN'T REALLY MEAN ANYTHING?

22 MR. STROUP: WELL, THEY GET LIFE IMPRISONMENT.

23 MR. CHIER: WELL, LET ME ASK YOU THIS: DO YOU THINK
24 THAT LIFE WITHOUT THE POSSIBILITY OF PAROLE REALLY MEANS THAT
25 OR THAT THERE IS ALWAYS SOME POSSIBILITY OF PAROLE?

26 THE COURT: SUPPOSE THAT I INSTRUCT YOU THAT LIFE
27 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE MEANS EXACTLY
28 THAT; YOU WILL FOLLOW THAT, WON'T YOU?

1 MR. STROUP: YES, YES.

2 I KNOW THEY DON'T GET PAROLE AGAIN.

3 MR. CHIER: PARDON ME?

4 MR. STROUP: I KNOW YOU DON'T GET A PAROLE IF YOU ARE
5 FOUND GUILTY OF --

6 MR. CHIER: SO YOU KNOW THAT LIFE WITHOUT POSSIBILITY
7 OF PAROLE MEANS EXACTLY THAT?

8 MR. STROUP: YES.

9 MR. CHIER: NOW YOU SAY THE DEATH PENALTY SEEMS
10 APPROPRIATE UNDER SOME CIRCUMSTANCES?

11 MR. STROUP: YES.

12 MR. CHIER: AND YOU MENTIONED AS AN EXAMPLE IN THE CASE
13 OF FIRST DEGREE MURDER, RIGHT?

14 MR. STROUP: YES.

15 MR. CHIER: DO YOU THINK THAT IN ALL CASES WHERE THE
16 PROSECUTION HAS PROVED THERE HAS BEEN A FIRST DEGREE
17 INTENTIONAL MURDER, LET'S SAY, IN THE COURSE OF A ROBBERY,
18 THAT THE DEATH PENALTY IS MORE APPROPRIATE THAN NOT?

19 MR. STROUP: NO, NO.

20 MR. CHIER: WHEN THE JUDGE TOLD YOU THAT IF YOU WERE
21 SELECTED AS A JUROR IN THIS CASE, HE WOULD INSTRUCT YOU ABOUT
22 THINGS THAT YOU SHOULD CONSIDER IN DETERMINING WHETHER IT IS
23 LIFE OR DEATH?

24 MR. STROUP: YES.

25 MR. CHIER: YOU HEARD THE JUDGE SAY THAT?

26 MR. STROUP: YES.

27 MR. CHIER: THE WORD "CONSIDER" COULD MEAN A COUPLE OF
28 THINGS.

1 LET ME JUST, BY WAY OF GIVING YOU AN EXAMPLE BEFORE
2 ASKING YOU THE QUESTION, LET'S LOOK AT THE WORD "CONSIDER"
3 IN TERMS OF YOUR GOING TO TAKE A VACATION, MR. STROUP, AND
4 YOU ARE GOING TO GO FROM HERE TO, LET'S, CANADA AND YOUR
5 ACTIVITIES UP THERE ARE GOING TO REMAIN KIND OF OPEN, YOU ARE
6 GOING TO SEE WHAT HAPPENS WHEN YOU GET THERE.

7 MR. STROUP: YES.

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1 DO YOU HAVE AN IDEA IN YOUR MIND BEFORE YOU GET
2 THERE AS TO WHAT YOU ARE GOING TO DO? ALL RIGHT. NOW, LET'S
3 SAY YOU DRIVE FROM HERE TO THERE. AND ALONG THE WAY, YOU
4 SEE CERTAIN TYPES OF LANDSCAPES.

5 LET'S SAY YOU THOUGHT MAYBE YOU COULD GO FISHING.
6 BUT THE LANDSCAPE THAT YOU SEE WHEN YOU GET THERE, SUGGESTS
7 THAT MAYBE FISHING IS NOT AVAILABLE OR IT WOULDN'T BE A GOOD
8 IDEA.

9 YOU CAN DRIVE FROM HERE TO CANADA AND CONSIDER
10 THE LANDSCAPE IN THE SENSE OF HOW IT WOULD ULTIMATELY AFFECT
11 WHAT YOU DECIDE WHEN YOU GET THERE. RIGHT?

12 MR. STROUP: YES.

13 MR. CHIER: OR YOU COULD DRIVE FROM HERE TO CANADA WITH
14 THE INTENTION OF CERTAIN PRECONCEIVED NOTIONS AND YOU COULD
15 CONSIDER THE LANDSCAPE IN THE SENSE OF LOOKING AT IT BUT IT
16 REALLY WOULDN'T MAKE ANY DIFFERENCE IN TERMS OF WHAT YOU DID
17 WHEN YOU GOT TO CANADA. DO YOU SEE WHAT I AM SAYING?

18 MR. STROUP: YES. I FOLLOW YOU.

19 MR. CHIER: NOW, IF THE COURT SAYS THAT YOU SHOULD
20 CONSIDER --

21 THE COURT: LET ME COMPLETE THAT. THAT YOU SHALL
22 CONSIDER, TAKE INTO ACCOUNT AND BE GUIDED BY THE FACTORS WHICH
23 I HAVE GIVEN YOU. DO YOU UNDERSTAND THAT CONSIDER TAKES INTO
24 ACCOUNT BEING GUIDED BY THE FACTORS THAT I HAVE OUTLINED?
25 THAT IS WHAT YOU ARE EXPECTED TO DO.

26 MR. STROUP: YES.

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1 THE COURT: YOU WILL DO THAT?

2 MR. STROUP: YES.

3 MR. CHIER: SO BY SAYING THAT YOU WILL DO THAT, THAT
4 MEANS THAT YOU WILL NOT ONLY LISTEN TO IT, BUT YOU WILL KEEP
5 AN OPEN MIND UNTIL YOU HAVE HAD AN OPPORTUNITY IN THERE WITH
6 THE OTHER JURORS TO DEBATE WHAT THE PUNISHMENT WOULD BE,
7 ASSUMING THAT WE EVER GOT TO THAT POINT?

8 MR. STROUP: YES. THAT IS WHAT I WOULD DO. YES.

9 MR. CHIER: OKAY. NOW, WHAT I WOULD LIKE TO KNOW IS,
10 IF THE THINGS THAT YOU CONSIDER -- THE THINGS THE JUDGE SAYS
11 ARE IMPORTANT IN DETERMINING WHETHER A PERSON LIVES OR DIES
12 SUCH AS THE AGE WHEN HE COMMITTED THE CRIME, DO YOU THINK THAT
13 IS IMPORTANT?

14 MR. STROUP: YES.

15 MR. CHIER: WHY DO YOU SAY THAT IS IMPORTANT, MR. STROUP?

16 MR. STROUP: WELL, IF A PERSON IS YOUNG OR UNDERAGE,
17 UNDER 18 OR SOMETHING LIKE THAT, THEY ARE NOT RESPONSIBLE FOR
18 THEIR ACTIONS.

19 MR. CHIER: HOW ABOUT IN THE SITUATION WHERE THE
20 DEFENDANT IS YOUNG, BUT IS OVER THE AGE OF ADULTHOOD? WHAT
21 IF HE IS LIKE IN HIS 20'S?

22 MR. STROUP: WELL, YOU WOULD HAVE TO CONSIDER THE
23 SAME PROVISIONS WOULD APPLY AS THEY WOULD TO AN ELDERLY
24 PERSON OR OLDER PERSON.

25 MR. CHIER: DO I UNDERSTAND CORRECTLY THAT IF A PERSON
26 IS AN ADULT, THAT IT REALLY IS NOT IMPORTANT HOW OLD THEY ARE?

27 MR. STROUP: I DON'T THINK THE AGE HAS GOT ANYTHING TO
28 DO WITH IT.

1 MR. CHIER: OKAY. DO YOU THINK IT IS IMPORTANT ABOUT
2 WHAT KIND OF BACKGROUND THE PERSON HAS HAD, MR. STROUP?

3 THE COURT: WELL, I TOLD YOU THAT THIS WAS ONE OF THE
4 FACTORS YOU HAVE TO CONSIDER, IS THE BACKGROUND AND HISTORY
5 OF THE DEFENDANT.

6 MR. CHIER: MY QUESTION IS OF WEIGHT NOT OF ADMISSIBILITY.

7 THE COURT: YOU ARE ASKING HIM TO PREJUDGE THE TESTIMONY.
8 I WILL OBJECT TO THAT QUESTION.

9 MR. CHIER: I AM ASKING HIS OBJECTIVE --

10 THE COURT: THAT IS ENOUGH. HE WOULD CONSIDER IT. HE
11 IS INSTRUCTED TO CONSIDER THE QUESTION OF THE BACKGROUND.

12 MR. CHIER: COULD I BE HEARD OUTSIDE THE PRESENCE OF
13 THE JUROR, YOUR HONOR?

14 THE COURT: NO.

15 MR. CHIER: COULD I ASK THE COURT TO READ COOPER V.
16 SUPERIOR COURT?

17 THE COURT: I AM NOT INTERESTED IN THAT AT THE MOMENT.
18 LET'S JUST GO AHEAD.

19 MR. CHIER: JUST ONE SECOND, PLEASE.

20 (PAUSE.)

21 MR. CHIER: DO YOU THINK THAT IN DETERMINING WHETHER
22 A PERSON SHOULD LIVE OR DIE, MR. STROUP, THAT IT IS IMPORTANT
23 TO HEAR EVIDENCE ABOUT WHAT KIND OF LIFE THE PERSON HAD UP
24 UNTIL THE TIME THAT THE CRIME WAS COMMITTED?

25 MR. STROUP: I DON'T THINK SO, NO.

26 THE COURT: I TOLD YOU. I READ OUT TO YOU AND I TOLD
27 YOU THE THINGS YOU WULD HAVE TO CONSIDER. DO YOU REMEMBER
28 THAT?

1 MR. STROUP: YES.

2 THE COURT: ONE OF THE THINGS THAT I TOLD YOU YOU WOULD
3 HAVE TO CONSIDER IS THE DEFENDANT'S CHARACTER, HIS BACKGROUND,
4 HIS HISTORY, THE MENTAL AND PHYSICAL CONDITION. DO YOU
5 REMEMBER THAT?

6 MR. STROUP: YES.

7 THE COURT: AND THAT YOU MUST CONSIDER ALL OF THOSE
8 FACTORS. YOU WILL CONSIDER THAT, IS THAT CORRECT?

9 MR. STROUP: YES.

10 THE COURT: ALL RIGHT.

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1 MR. CHIER: MR. STROUP, DO YOU UNDERSTAND HOW MY
2 QUESTIONS TO YOU ARE DIFFERENT FROM WHAT THE JUDGE IS TELLING
3 YOU?

4 THE COURT: WHAT IS YOUR QUESTION?

5 MR. STROUP: YES.

6 MR. CHIER: DO YOU UNDERSTAND THE DIFFERENCE BETWEEN --

7 THE COURT: WHAT IS YOUR QUESTION?

8 MR. CHIER: WHETHER HE THINKS THAT CERTAIN THINGS ARE
9 IMPORTANT TO HEAR ABOUT IN DETERMINING WHAT PUNISHMENT SHOULD
10 BE, YOUR HONOR. DO YOU UNDERSTAND THE DIFFERENCE, BETWEEN THEM?

11 MR. STROUP: WELL, I DON'T KNOW WHAT YOU MEAN BY THAT.

12 MR. CHIER: WELL, WE ARE NOT HYPOTHETICALLY AT A PLACE
13 IN THE CASE WHERE WE HAVE TO DECIDE WHAT TO DO WITH THE
14 DEFENDANT OR A DEFENDANT.

15 MR. STROUP: YES.

16 MR. CHIER: HE HAS BEEN CONVICTED OF FIRST DEGREE MURDER.
17 THE JURY HAS FOUND IT IS INTENTIONAL AND IT WAS COMMITTED IN
18 THE COURSE OF A ROBBERY. OKAY?

19 AND NOW, THEY ARE IN THE PENALTY PHASE. IT IS
20 KIND OF A TWO-STEP OPERATION, AS THE COURT EXPLAINED. IT IS
21 LIKE TWO TRIALS, IN A WAY.

22 IF YOU FIND THE DEFENDANT GUILTY AS CHARGED, YOU
23 GO INTO THE PENALTY PHASE. IT IS ALMOST LIKE STARTING OVER.
24 YOU HEAR SOME OF THE SAME EVIDENCE. YOU HEAR NEW EVIDENCE
25 ABOUT THE PERSON, THE KIND OF EVIDENCE THAT YOU PROBABLY
26 DIDN'T HEAR IN THE GUILT PHASE.

27 YOU HEAR EVIDENCE FOR EXAMPLE, SUCH AS WHAT KIND
28 OF A LIFE WAS LED BY THE DEFENDANT UP UNTIL THE TIME OF THE

1 COMMISSION OF THE CRIME. YOU HEAR EVIDENCE ABOUT HOW OLD HE
2 WAS WHEN THIS HAPPENED. YOU HEAR EVIDENCE ABOUT WHETHER HE
3 HAS A GOOD OR BAD CHILDHOOD.

4 DO YOU THINK THAT A CONSIDERATION OF THAT TYPE
5 OF EVIDENCE AMOUNTS TO ANYTHING THAT SHOULD DETERMINE OR SWAY
6 YOU IN DECIDING TO SAVE HIS LIFE OR TAKE HIS LIFE? DO YOU
7 UNDERSTAND THE QUESTION?

8 MR. STROUP: YES. YES, I DO.

9 MR. CHIER: OKAY.

10 MR. STROUP: I SAY THAT IT WOULD HAVE SOMETHING TO DO
11 WITH IT.

12 MR. CHIER: DO YOU THINK THAT THE AGE OF THE PERSON AT
13 THE TIME OF THE COMMISSION WOULD HAVE ANYTHING TO DO WITH IT?

14 THE COURT: YOU HAVE ASKED HIM THAT QUESTION BEFORE BUT
15 HE ANSWERED IT. I WILL SUSTAIN AN OBJECTION.

16 WE ARE GOING BACK TO THE AGE AGAIN.

17 MR. CHIER: YOUR HONOR, I --

18 THE COURT: DON'T ARGUE WITH ME. I MADE A RULING. GO
19 AHEAD AND FINISH WITH YOUR QUESTION IF YOU WILL, PLEASE?

20 MR. CHIER: IF THE COURT PLEASE, I RESPECTFULLY REQUEST
21 PERMISSION TO --

22 THE COURT: WOULD YOU PLEASE GO ON WITH THE BALANCE OF
23 YOUR QUESTIONS? I WILL RULE ON THAT ONE A LITTLE LATER.

24 MR. CHIER: WELL, OKAY. LET'S -- DO YOU THINK THAT IT
25 OUGHT TO MATTER IF A PERSON HAD A GOOD OR BAD CHILDHOOD IN
26 DETERMINING WHETHER HE SHOULD LIVE OR DIE?

27 MR. STROUP: YES.

28 MR. CHIER: IT OUGHT TO MATTER? WHY, SIR?

1 MR. STROUP: BECAUSE IT MAY HAVE SOME INFLUENCE ON HIS
2 ACTIONS.

3 MR. CHIER: OKAY. SO, ALL RIGHT. SO, JUST SO THAT WE
4 UNDERSTAND ONE ANOTHER, YOU ARE NOT SAYING THAT IF IT IS SHOWN
5 THAT A PERSON DID SOMETHING, THAT HE DID IT INTENTIONALLY,
6 THERE IS NO LEGAL EXCUSE FOR IT, THERE MAY BE FACTORS WHICH
7 WEIGH AGAINST THE DEATH PENALTY BECAUSE OF BACKGROUND FACTORS;
8 RIGHT?

9 MR. STROUP: THAT'S RIGHT. YES.

10 MR. CHIER: AND DO YOU THINK THAT IF YOU WERE A JUROR
11 IN THIS CASE AND THAT IF THE JURY -- THIS IS ALL HYPOTHETICAL
12 BECAUSE WE DON'T KNOW WHAT IS GOING TO HAPPEN.

13 IF THE JURY WERE TO FIND MR. HUNT GUILTY AS CHARGED
14 AND THEN YOU START THE PENALTY PHASE, WHICH IS LIKE STARTING
15 OVER AGAIN, DO YOU THINK THAT YOU WOULD BE NEUTRAL IN THE
16 SENSE THAT YOU WOULD BE OPEN TO ALL OF THE EVIDENCE THAT MAY
17 BE RECEIVED DURING THAT PART OF THE TRIAL?

18 MR. STROUP: YES. I WOULD BE NEUTRAL.

19 MR. CHIER: SO THAT YOU WOULD CONSIDER AND KEEP AN OPEN
20 MIND TO THE CONSIDERATION OF LIFE WITHOUT POSSIBILITY OF
21 PAROLE AS OPPOSED TO DEATH?

22 MR. STROUP: YES, I WOULD.

23 MR. CHIER: DO YOU UNDERSTAND THAT THIS SYSTEM, THIS
24 PROCEDURE CAN ONLY WORK IF YOU GIVE TRUTHFUL ANSWERS TO THOSE
25 QUESTIONS?

26 MR. STROUP: YES.

27 MR. CHIER: RIGHT. AND IF YOU HAVE ANY KIND OF HIDDEN
28 AGENDA, THAT IT ABSOLUTELY CAN'T WORK?

1 MR. STROUP: I DON'T HAVE NO HIDDEN AGENDA.

2 MR. CHIER: ALL RIGHT. BECAUSE WE DON'T KNOW THAT. WE
3 HAVE NEVER MET BEFORE. IT IS KIND OF A SERIOUS INQUIRY TO
4 BE HAVING WHEN YOU DON'T EVEN KNOW THE PERSON.

5 MR. STROUP: YES.

6 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE -- WELL, JUST
7 A MOMENT, YOUR HONOR. I DON'T ACTUALLY. I WOULD LIKE TO
8 ADDRESS THE COURT BEFORE WE FINISH WITH THIS PERSON.

9 THE COURT: THE SAME KIND OF THING YOU GAVE ME BEFORE?

10 MR. CHIER: PARDON ME?

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11 THE COURT: OF THE SAME KIND THAT YOU PUT ON THE RECORD
12 BEFORE?

13 MR. CHIER: I HAVE A SPECIFIC -- I WOULD WISH TO ADDRESS
14 THE COURT ON MATTERS OF LAW, YOUR HONOR.

15 MR. WAPNER: I JUST HAVE A FEW QUESTIONS.

16 MR. STROUP, I AM FRED WAPNER, THE DEPUTY DISTRICT
17 ATTORNEY WHO IS PROSECUTING THIS CASE.

18 DO YOU HAVE ANY STRONGLY HELD RELIGIOUS, MORAL
19 OR PHILOSOPHICAL BELIEFS THAT MIGHT AFFECT YOUR ABILITY TO
20 DECIDE THE QUESTION OF LIFE WITHOUT POSSIBILITY OF PAROLE
21 IN THIS CASE?

22 MR. STROUP: NO, SIR.

23 MR. WAPNER: ARE YOU THE KIND OF A PERSON WHO IS CAPABLE
24 OF VOTING FOR EITHER A VERDICT OF LIFE WITHOUT POSSIBILITY
25 OF PAROLE OR A VERDICT OF DEATH IF THE FACTS WARRANT IT?

26 MR. STROUP: YES.

27 MR. WAPNER: DO YOU UNDERSTAND WHAT I MEAN WHEN I ASK
28 YOU THAT QUESTION?

1 MR. STROUP: YES, WHETHER I CAN FIND EITHER LIFE
2 WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY. I WOULD
3 DECIDE.

4 MR. WAPNER: DECIDE AND THEN STICK TO YOUR CONVICTIONS?

5 MR. STROUP: YES.

6 MR. WAPNER: ALL RIGHT. AND IF YOU GET ALL THE WAY
7 THROUGH THIS CASE AND YOU HAVE DECIDED THAT THE APPROPRIATE
8 PUNISHMENT IS DEATH, CAN YOU VOTE THAT PUNISHMENT?

9 MR. STROUP: YES.

10 MR. WAPNER: COME INTO THE COURTROOM AND LOOK THE
11 DEFENDANT IN THE EYE AND SAY THAT YOUR VOTE IS THAT HE SHOULD
12 DIE?

13 MR. STROUP: YES.

14 MR. WAPNER: ON THE OTHER HAND, IF YOU GOT ALL THE WAY
15 THROUGH THE CASE AND YOU DECIDED THAT THE APPROPRIATE
16 PUNISHMENT WAS LIFE WITHOUT POSSIBILITY OF PAROLE, COULD YOU
17 VOTE FOR THAT VERDICT?

18 MR. STROUP: YES.

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1 MR. WAPNER: MR. STROUP, COULD YOU COME INTO THE COURTROOM
2 AND LOOK AT ME AND SAY "MY VERDICT IS LIFE IMPRISONMENT"?

3 MR. STROUP: YES, I COULD.

4 THE COURT: "WITHOUT THE POSSIBILITY OF PAROLE."

5 MR. WAPNER: "WITHOUT THE POSSIBILITY OF PAROLE."

6 THANK YOU. I HAVE NOTHING FURTHER.

7 THE COURT: ALL RIGHT, YOU MAY STEP OUTSIDE A MINUTE,
8 PLEASE, AND WE WILL CALL YOU RIGHT BACK.

9 MR. STROUP: OKAY.

10 THE COURT: JUST WAIT OUTSIDE A MINUTE AND I WILL CALL
11 YOU BACK.

12 (PROSPECTIVE JUROR STROUP EXITED THE
13 COURTROOM.)

14 THE COURT: ALL RIGHT, YES?

15 MR. CHIER: YOUR HONOR, IN THE CASE OF COOPER V. SUPERIOR
16 COURT, AT 55 CAL.2D, 291, THAT CASE PROVIDES THAT THE JUDGE
17 CANNOT FORECLOSE COUNSEL FROM AN OPPORTUNITY TO MAKE HIS
18 OBJECTIONS AND TO MAKE ARGUMENT, BY ADMONITIONS TO SIT DOWN
19 AND TO BE QUIET. YOU HAVE DONE THIS TO ME CONSTANTLY AND
20 IN THIS PARTICULAR --

21 THE COURT: CALL HIM IN AGAIN, PLEASE.

22 MR. CHIER: IN THIS PARTICULAR CASE --

23 THE COURT: WHAT ABOUT THIS PARTICULAR CASE?

24 MR. CHIER: I WAS EMBARKED UPON AN INQUIRY AS TO WHETHER
25 OR NOT THE FACTORS WHICH THE COURT HAS ENUMERATED SHOULD BE
26 CONSIDERED BY THE JUROR, ARE IMPORTANT TO HIM. THIS IS A
27 SUBJECTIVE INQUIRY. IT IS AN INQUIRY THAT IS TOTALLY SEPARATE.

28 THE COURT: I THINK HE ANSWERED THAT SUFFICIENTLY, ALMOST

1 AD NAUSEUM.

2 MR. CHIER: COULD I PLEASE FINISH MY OBJECTION, YOUR
3 HONOR?

4 THE COURT: YOU MAY CALL HIM IN. I HAVE HEARD ALL I
5 WANT TO HEAR FROM YOU ON THAT SUBJECT.

6 MR. CHIER: THANK YOU, YOUR HONOR.

7 (PROSPECTIVE JUROR STROUP RE-ENTERED
8 THE COURTROOM.)

9 THE COURT: MR. STROUP, YOU QUALIFY AS BEING A POSSIBLE
10 JUROR IN THIS CASE SO WHAT I WANT YOU TO DO IS TO COME BACK
11 ON WEDNESDAY -- THURSDAY, RATHER, THAT WILL BE THE 4TH.

12 MR. STROUP: YES.

13 THE COURT: THAT IS THURSDAY OF THIS WEEK, THE 4TH.
14 THAT IS ON THURSDAY THE 4TH.

15 MR. STROUP: YES.

16 THE COURT: COME BACK TO THE JURY ASSEMBLY ROOM, ALL
17 RIGHT?

18 MR. STROUP: UH-HUH.

19 THE COURT: AND WHEN YOU ARE ALL THERE, WE WILL HAVE
20 YOU ALL COME BACK HERE AND WE WILL START THE TRIAL.

21 AND DON'T TALK TO ANYBODY ABOUT THE CASE IN THE
22 MEANTIME.

23 MR. STROUP: OKAY.

24 THE COURT: ALL RIGHT, THURSDAY, THE 4TH OF DECEMBER
25 AT 10:30 IN THE MORNING.

26 MR. STROUP: YES, OKAY.

27 THE COURT: ALL RIGHT.

28 (PROSPECTIVE JUROR STROUP EXITED COURTROOM.)

1 (PROSPECTIVE JUROR MARTYN SUN ENTERED
2 THE COURTROOM.)

3 THE COURT: ALL RIGHT, GOOD AFTERNOON, MR. SUN.

4 MR. SUN: GOOD AFTERNOON, YOUR HONOR.

5 THE COURT: WHERE DO YOU LIVE?

6 MR. SUN: I LIVE IN MARINA DEL REY.

7 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
8 CASE OR TALKED TO ANYBODY ABOUT IT?

9 MR. SUN: NO.

10 THE COURT: YOU KNOW NOTHING ABOUT IT EXCEPT WHAT YOU
11 HEARD, WHAT ALL OF THE JURORS HEARD WHO WERE PRESENT IN THE
12 COURTROOM THE OTHER DAY?

13 MR. SUN: THAT'S RIGHT.

14 THE COURT: AND YOU WILL MAINTAIN THE SAME THING, YOU
15 WON'T READ ANYTHING ABOUT IT AND YOU WON'T DISCUSS IT WITH
16 ANYBODY --

17 MR. SUN: YES.

18 THE COURT: -- AFTER I HAVE EXCUSED YOU TODAY, ALL RIGHT?

19 MR. SUN: YES.

20 THE COURT: ALL YOU KNOW ABOUT THE CASE IS WHAT I
21 EXPLAINED TO YOU WHEN ALL OF THE OTHER JURORS WERE HERE
22 TOGETHER A COUPLE OF WEEKS AGO; IS THAT RIGHT?

23 MR. SUN: THAT'S RIGHT, THAT'S RIGHT.

24 THE COURT: WHAT I WANT TO DO IS SUMMARIZE THE CASE
25 ONLY AS A PRELIMINARY AND BACKGROUND FOR THE QUESTIONS I AM
26 GOING TO ASK.

27 YOU KNOW THE CHARGE AGAINST THE DEFENDANT IS
28 THAT HE COMMITTED A MURDER AND IT WAS MURDER IN THE FIRST

1 DEGREE AND THAT IT WAS COMMITTED DURING THE COURSE OF A
2 ROBBERY.

3 THAT IT WAS COMMITTED IN THE COURSE OF A ROBBERY
4 IS KNOWN IN THE LAW AS A SPECIAL CIRCUMSTANCE.

5 THE LEGISLATURE HAS SAID THAT IN CERTAIN TYPES
6 OF MURDERS, THOSE TYPES OF MURDERS WHERE THERE ARE SPECIAL
7 CIRCUMSTANCES PRESENT, THAT THAT PARTICULAR TYPE OF CASE
8 QUALIFIES FOR A CONSIDERATION OF THE IMPOSITION OF THE DEATH
9 PENALTY; DO YOU UNDERSTAND?

10 ONE OF THOSE CASES IS THE CASE WE HAVE HERE, A
11 MURDER COMMITTED DURING THE COURSE OF A ROBBERY.

12 THERE ARE OTHERS LIKE MURDER COMMITTED DURING
13 THE COURSE OF BURGLARY, MURDER COMMITTED DURING THE COURSE
14 OF A RAPE OR IN THE COURSE OF A TORTURE OR IN THE CASE OF
15 THE MOLESTATION OF A CHILD OR MULTIPLE MURDERS, AND THERE
16 ARE OTHERS.

17 THERE ARE ABOUT 19 OF THEM.

18 THIS IS ONE OF THE CASES WHERE THE LEGISLATURE
19 SAYS IT QUALIFIES FOR THE IMPOSITION OF THE DEATH PENALTY.

20 NOW, THE DEATH PENALTY IS NOT JUST THE DEATH PENALTY
21 ALONE, IT INCLUDES LIFE WITHOUT THE POSSIBILITY OF PAROLE,
22 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR ACTUAL
23 DEATH ITSELF; DO YOU UNDERSTAND THAT?

24 (PROSPECTIVE JUROR SUN NODS HEAD UP
25 AND DOWN.)

26 THE COURT: AND WHEN THE JURORS ARE FINALLY SELECTED,
27 THE FIRST PHASE THAT THEY GO THROUGH -- OR THAT WE GO THROUGH
28 IS TO DETERMINE THE GUILT PHASE, WHETHER OR NOT THE DEFENDANT

1 IS GUILTY OF MURDER IN THE FIRST DEGREE AND IF HE IS, THEY
2 THEN HAVE TO ANSWER THE QUESTION: WAS THAT MURDER COMMITTED
3 DURING THE COURSE OF A ROBBERY?

4 DO YOU UNDERSTAND, THAT WOULD QUALIFY IT, HAVING
5 BEEN COMMITTED DURING THE COURSE OF A ROBBERY IS WHAT WE CALL
6 A SPECIAL CIRCUMSTANCE AND THAT IS ALSO PART OF THE GUILT
7 PHASE. IF THE JURY REACHED A VERDICT OF MURDER IN THE FIRST
8 DEGREE, THEN THEY CONSIDER WAS IT COMMITTED DURING THE COURSE
9 OF A ROBBERY.

10 IF THEY SAY YES, IT WAS COMMITTED DURING THE COURSE
11 OF A ROBBERY AS BEING TRUE, THEN WE HAVE ANOTHER TRIAL, A
12 CONTINUANCE OF THE TRIAL WHICH IS LIMITED. THE TRIAL IS LIMITED
13 TO DETERMINING UPON A PRESENTATION OF FACTS TO THE JURY WHICH
14 WOULD SHOW THINGS FAVORABLE TO THE DEFENDANT, WHAT WE CALL
15 IN MITIGATION, OR THINGS WHICH ARE UNFAVORABLE TO THE
16 DEFENDANT WHICH THE PROSECUTION WILL ADDUCE AND THAT IS KNOWN
17 AS AGGRAVATION, WHICH AGGRAVATE THE OFFENSE. AND THE JURY
18 WILL ALSO HEAR EVIDENCE AS TO THE AGE OF THE DEFENDANT, WHETHER
19 OR NOT HE HAS ANY PRIOR FELONY CONVICTIONS, ABSENCE OR
20 EXISTENCE OF A PRIOR FELONY, THAT IS TO BE CONSIDERED, AND
21 MANY, MANY OTHER QUESTIONS WHICH HAVE TO DO WITH HIS
22 CHARACTER, HIS BACKGROUND, HIS HISTORY, HIS MENTAL AND
23 PHYSICAL CONDITION, ALL OF THE FACTORS WHICH MIGHT BEAR WITH
24 THE JURY. AND ALL OF THOSE MUST BE CONSIDERED BY THE JURY
25 BEFORE THEY MAKE UP THEIR MINDS WHETHER IT SHOULD BE, ONE,
26 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR, TWO,
27 DEATH.

28 NOW REMEMBER THE FIRST PHASE, THE GUILT PHASE

1 IS -- ALL YOU DETERMINE IS WHETHER, DID HE COMMIT MURDER IN
2 THE FIRST DEGREE AND WITH A FINDING, WAS IT COMMITTED DURING
3 THE COURSE OF A ROBBERY. IT IS ONLY THEN WHEN WE HAVE THE
4 PENALTY PHASE. DO YOU UNDERSTAND?

5 MR. SUN: YES.
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1 THE COURT: NOW I AM GOING TO ASK YOU A SERIES OF
2 QUESTIONS TO WHICH THE ANSWERS WILL BE YES OR NO. IF YOU
3 DON'T UNDERSTAND IT, ASK ME TO REPEAT IT OR EXPLAIN IT TO
4 YOU AND I WILL BE VERY GLAD TO DO IT.

5 NOW THE FIRST TWO QUESTIONS RELATE TO THE GUILT
6 PHASE, NOT THE PENALTY PHASE BUT THE GUILT PHASE.

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

11 MR. SUN: NO.

12 THE COURT: NOW, THE SECOND QUESTION IS: SUPPOSING
13 THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE,
14 THEN YOU CONSIDER WHETHER IT WAS COMMITTED DURING THE COURSE
15 OF A ROBBERY AND THAT IS STILL PART OF THE SAME GUILT PHASE.
16 AND THE QUESTION IS: DO YOU HAVE ANY OPINION REGARDING THE
17 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
18 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
19 CIRCUMSTANCES?

20 IN OTHER WORDS, THE JURY IS CALLED UPON TO SAY
21 IT IS TRUE OR IT IS NOT TRUE WHETHER OR NOT THE MURDER WHICH
22 IS FOUND TO HAVE BEEN COMMITTED WAS COMMITTED DURING THE COURSE
23 OF A ROBBERY, DO YOU HAVE AN OPINION ABOUT THE DEATH PENALTY
24 THAT WOULD PREVENT YOU FROM MAKING SUCH A FINDING?

25 MR. SUN: NO.

26 THE COURT: NOW THE NEXT TWO QUESTIONS, WHICH HAVE TO
27 DO WITH THE PENALTY PHASE ARE: DO YOU HAVE SUCH AN OPINION
28 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY

15A-2

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

3 DO YOU UNDERSTAND?

4 MR. SUN: CAN YOU EXPLAIN TO ME, YOUR HONOR?

5 THE COURT: YES, I WILL.

6 MR. SUN: ALL RIGHT.

7 THE COURT: NOW ASSUMING THE DEFENDANT HAS BEEN FOUND
8 GUILTY OF MURDER IN THE FIRST DEGREE --

9 MR. SUN: YES.

10 THE COURT: -- AND IT WAS DURING THE COURSE OF A ROBBERY,
11 NOW WE WANT TO FIND OUT ABOUT YOUR ATTITUDE TOWARD THE DEATH
12 PENALTY.

13 MR. SUN: OH.

14 THE COURT: WOULD YOUR ATTITUDE TOWARD THE DEATH PENALTY
15 MAKE YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY IRRESPECTIVE
16 OF THE EVIDENCE WE HAVE ON THE PENALTY PHASE?

17 MR. SUN: MUST I ANSWER IT YES OR NO?

18 THE COURT: WELL, ANSWER IT ANY WAY THAT YOU LIKE.

19 MR. SUN: WELL, BASICALLY, I AM NOT CONSCIENTIOUS
20 OBJECTOR OF THE DEATH PENALTY --

21 THE COURT: YES.

22 MR. SUN: -- CAPITAL PUNISHMENT PER SE, BUT I MYSELF,
23 BECAUSE OF MY UPBRINGING AND BACKGROUND, I WOULD NOT LIKE
24 TO -- I DON'T THINK I CAN RECOMMEND THE DEATH PENALTY.

25 THE COURT: UNDER ANY CIRCUMSTANCES?

26 MR. SUN: UNDER ANY CIRCUMSTANCES.

27 THE COURT: YOU HAVE VERY SERIOUSLY CONSIDERED THAT
28 IN YOUR OWN MIND AND YOU FEEL UNDER NO CIRCUMSTANCES COULD

15A-3

1 YOU VOTE FOR THE DEATH PENALTY, IRRESPECTIVE OF WHAT THE FACTS
2 ARE IN THIS CASE?

3 MR. SUN: NOT THE DEATH PENALTY ITSELF, BUT I WOULD
4 VOTE FOR LIFE IMPRISONMENT WITHOUT PAROLE.

5 THE COURT: WITHOUT THE POSSIBILITY OF PAROLE?

6 MR. SUN: YES.

7 THE COURT: BUT YOU WOULD NOT VOTE FOR THE DEATH PENALTY?

8 MR. SUN: NO.

9 THE COURT: UNDER ANY CIRCUMSTANCES?

10 MR. SUN: UNDER ANY CIRCUMSTANCES, YES.

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1 MR. CHIER: MR. SUN, MY NAME IS RICHARD CHIER.
2 I REPRESENT MR. HUNT. I WOULD LIKE TO ASK YOU SOME ADDITIONAL
3 QUESTIONS ABOUT YOUR ATTITUDES IN THIS CASE CONCERNING THE
4 DEATH PENALTY. I WANT YOU TO UNDERSTAND THAT THE QUESTIONS
5 I AM GOING TO ASK YOU HAVE NO RIGHT OR WRONG ANSWERS, SIR.
6 THERE IS NO GOOD OR BAD ANSWER. YOU ARE NOT BEING JUDGED
7 HERE AS A PERSON, NOR ARE YOUR ATTITUDES TOWARD THE DEATH
8 PENALTY BEING JUDGED.

9 WE ARE SIMPLY IN SEARCH OF JURORS WHO HAVE TO
10 HAVE CERTAIN QUALIFICATIONS.

11 WITHOUT ASKING YOU SIR HOW YOU WOULD -- WHETHER
12 YOU COULD IN THIS PARTICULAR CASE, VOTE FOR DEATH, I WOULD
13 LIKE TO ASK YOU WHETHER, IF YOU WERE A JUROR IN THIS CASE
14 AND TOOK THE OATH TO FOLLOW THE LAW, THE JUROR'S OATH, IN
15 OTHER WORDS, YOU WOULD BE WILLING TO CONSIDER ALL OF THE
16 PENALTIES PROVIDED BY LAW WHICH IN THIS CASE, ARE EITHER LIFE
17 WITHOUT POSSIBILITY OF PAROLE OR DEATH? WOULD YOU BE WILLING
18 TO CONSIDER THE PENALTIES IF YOU WERE A JUROR IN THIS CASE?

19 MR. SUN: IF THE DEATH PENALTY IS INVOLVED, I WOULDN'T
20 EVEN CONSIDER IT.

21 MR. CHIER: SO, DOES THAT MEAN -- IN OTHER WORDS, SIR,
22 YOU ARE A PERSON WHO WOULD BE IRREVOCABLY COMMITTED BEFORE
23 HEARING ANY EVIDENCE TO A PENALTY OF NOT WORSE THAN LIFE
24 WITHOUT POSSIBILITY OF PAROLE? YOU ARE COMMITTED TO A PENALTY
25 OTHER THAN DEATH?

26 MR. SUN: THAT'S RIGHT.

27 MR. CHIER: EVEN WITHOUT HEARING ANYTHING?

28 MR. SUN: EVEN WITHOUT HEARING ANYTHING.

1 MR. CHIER: IS THAT A BELIEF THAT IS BOTTOMED IN SOME
2 RELIGIOUS UPBRINGING?

3 MR. SUN: PARTIALLY BECAUSE I THINK ACTUALLY IT IS MY
4 UPBRINGING. I AM -- YOUR HONOR, I AM A NEW CITIZEN IN THIS
5 COUNTRY. I HAVE ONLY BEEN A CITIZEN FOR FIVE MONTHS. AND
6 I AM RELATIVELY NEW AS A RESIDENT IN THIS COUNTRY.

7 I ARRIVED HERE IN 1982. I AM 64 YEARS OLD. OF
8 THE 64 YEARS, I SPENT 50 YEARS ABROAD.

9 MY FORMATIVE YEARS WERE SPENT IN CHINA WHERE MY
10 FAMILY PRACTICED VERY STRONG BUDDHIST RELIGION. AND THERE
11 IS NO SUCH THING IN THE BUDDHIST RELIGION OF BEING BAPTIZED
12 OR NOT BAPTIZED.

13 I HAVE NEVER -- I HAVE NEVER CONSIDERED MYSELF
14 A BUDDHIST. IN FACT, I CONSIDER MYSELF A CHRISTIAN BECAUSE
15 I WAS BAPTIZED AS AN EPISCOPALIAN WHEN I WAS IN HIGH SCHOOL
16 IN CHINA.

17 BUT THE DEEP-ROOTED BELIEF IN NOT KILLING, NOT
18 NECESSARILY A RELIGIOUS BELIEF BUT A COMBINATION OF
19 CONFUCIAN AND RELIGIOUS TEACHINGS AFFECTS ME TO A GREAT EXTENT
20 IN MY WAY OF THINKING TOWARD PENALIZED PEOPLE FOR FELONIOUS
21 ACTS.

22 MR. CHIER: SO IF I UNDERSTAND YOU CORRECTLY, IT IS
23 THE RESULT OF A COMBINATION OF BACKGROUND AND RELIGIOUS AND
24 SPIRITUAL BELIEFS THAT YOU HAVE.

25 THIS IS A MATTER OF SOCIAL CONSCIENCE WITH YOU?

26 MR. SUN: IT IS A MATTER OF SOCIAL CONSCIENCE WITH ME.
27 I WOULD NOT GO TO THE EXTENT OF SAYING THAT I AM RESTRICTED
28 BY MY RELIGION.

1 MR. CHIER: I UNDERSTAND. WELL, THANK YOU FOR YOUR
2 EXTREME CANDOR, MR. SUN. WE APPRECIATE THAT THE SYSTEM ONLY
3 WORKS IF PEOPLE SPEAK UP.

4 THE COURT: THANK YOU VERY MUCH, MR. SUN. FROM WHAT
5 YOU HAVE TOLD US, YOU CANNOT QUALIFY AS A JUROR IN THIS
6 PARTICULAR CASE ALTHOUGH YOU WILL MAKE A VERY FINE JUROR IN
7 SOME OTHER CASE.

8 GO BACK TO THE JURY ASSEMBLY ROOM AND TELL THE
9 CLERK THAT YOU ARE EXCUSED FROM THIS CASE BUT THAT YOU WILL
10 BE ABLE TO SERVE IN SOME OTHER TYPE OF CASE. THANK YOU VERY
11 MUCH.

12 (PROSPECTIVE JUROR SUN EXITED THE
13 COURTROOM.)

14 (PROSPECTIVE JUROR EVELYN WALKER
15 ENTERED THE COURTROOM.)

16 THE COURT: IS THAT MRS. WALKER?

17 MS. WALKER: MRS.

18 THE COURT: ALL RIGHT. GOOD AFTERNOON. WHERE DO YOU
19 LIVE, MRS. WALKER?

20 MS. WALKER: I LIVE IN WEST LOS ANGELES.

21 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
22 CASE IN ANY PUBLICATION OF ANY KIND?

23 MS. WALKER: NO. I DON'T KNOW ANYTHING ABOUT THE CASE.

24 THE COURT: NOTHING BUT WHAT I TOLD YOU WHEN YOU WERE
25 ALL TOGETHER HERE?

26 MS. WALKER: RIGHT.

27 THE COURT: THE ONLY THING THAT YOU KNOW ABOUT THE CASE
28 IF YOU ARE SELECTED AS A JUROR, YOU WILL HEAR FROM THE EVIDENCE

1 IN THIS CASE?

2 MS. WALKER: THAT'S RIGHT.

3 THE COURT: AND DON'T DISCUSS IT WITH ANYBODY IN THE
4 FUTURE OR READ ANYTHING IF THERE IS ANYTHING TO BE READ ABOUT
5 IT.

6 MS. WALKER: NO.

7 THE COURT: ALL RIGHT. YOU HEARD GENERALLY WHAT THE
8 CASE IS ABOUT WHEN YOU WERE ALL TOGETHER. REMEMBER?

9 MS. WALKER: YES.

10 THE COURT: WELL, I AM GOING TO BRIEFLY SUMMARIZE IT
11 SO YOU WILL HAVE AN IDEA. THE CHARGE AGAINST THE DEFENDANT
12 IS THAT HE COMMITTED A MURDER. IT WAS A MURDER IN THE FIRST
13 DEGREE AND IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

14 NOW, THE WORDS, "IN THE COURSE OF A ROBBERY," HAVE
15 SIGNIFICANCE BECAUSE THE LEGISLATURE HAS SAID THAT NOT EVERY
16 MURDER IF IT IS IN THE FIRST DEGREE, IS PUNISHABLE BY LIFE
17 WITHOUT POSSIBILITY OF PAROLE OR DEATH.

18 IT IS ONLY CERTAIN TYPES WHERE THERE ARE OTHER
19 CIRCUMSTANCES CONNECTED WITH THE MURDER THAT IT THEN QUALIFIES
20 FOR THE DEATH PENALTY.

21 WHEN I USE THE WORDS, "DEATH PENALTY," I MEAN
22 LIFE WITHOUT POSSIBILITY OF PAROLE OR ACTUAL DEATH IN THE
23 GAS CHAMBER. ALL RIGHT?

24 MS. WALKER: YES.

25 THE COURT: NOW, IN THAT TYPE OF A CASE -- YES. ANY
26 MURDER COMMITTED IN THE COURSE OF A ROBBERY OR A BURGLARY
27 OR A RAPE OR A KIDNAPPING OR A MULTIPLE MURDER OR TORTURE
28 OR DEATH TO A CHILD BECAUSE OF MOLESTATION, THOSE TOGETHER

1 WITH A NUMBER OF OTHERS, HAVE BEEN INDICATED BY THE
2 LEGISLATURE TO BE CASES WHERE IT IS POSSIBLE THAT THE DEATH
3 PENALTY CAN BE IMPOSED. SO WHAT THE JURORS WHO WILL BE
4 SELECTED IN THIS CASE WOULD HAVE TO DO FIRST, IS TO -- ON
5 WHAT WE CALL THE GUILT PHASE, THEY WILL BE CALLED UPON TO
6 DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY
7 OF MURDER IN THE FIRST DEGREE AND AN INCIDENTAL QUESTION THEY
8 HAVE TO ANSWER WAS, WHETHER THE MURDER WAS COMMITTED DURING
9 THE COURSE OF A ROBBERY, WHICH QUALIFIES IT FOR THE DEATH
10 PENALTY.

11 IF THE JURORS FIND THE DEFENDANT GUILTY OF MURDER
12 IN THE FIRST DEGREE AND THEY SAY IT WAS COMMITTED DURING THE
13 COURSE OF A ROBBERY, THEN WE ENTER INTO A SECOND PHASE OR
14 SECOND TRIAL WITH THE SAME JURY, SAME LAWYERS, SAME JUDGE.

15 IN THE COURSE OF THAT SECOND TRIAL, THERE WILL
16 BE EVIDENCE PRESENTED TO THE JURY BY THE DEFENDANT TO SHOW
17 THAT HIS BACKGROUND AND EVERYTHING ELSE AS A PERSON -- THAT
18 HE IS A GOOD MAN AND NEVER HAD ANY TROUBLE OF ANY KIND AND
19 A NUMBER OF OTHER FACTORS LIKE HIS AGE AND THAT WILL ALL BE
20 CONSIDERED -- MUST BE CONSIDERED BY THE JURY, ALL OF THE FACTS
21 THAT THEY HEARD ABOUT THE CRIME ITSELF IN THE FIRST PHASE
22 OF THE TRIAL.

23 THEN THERE WILL BE EVIDENCE BY BOTH SIDES TO
24 CONSIDER THE CHARACTER OF THE DEFENDANT, WHETHER OR NOT HE
25 HAS HAD ANY PRIOR CRIMINAL HISTORY, YOU KNOW. THAT IS,
26 WHETHER THERE ARE ANY OTHER MURDERS -- I AM TERRIBLY SORRY,
27 ANY OTHER FELONIES THAT HE MIGHT HAVE COMMITTED OR ANY THAT
28 HE DID NOT OR IN OTHER WORDS HIS CRIMINAL BACKGROUND IF ANY.

1 THE DEFENDANT'S CHARACTER, BACKGROUND, HIS HISTORY,
2 HIS MENTAL CONDITION AND/OR HIS PHYSICAL CONDITION OR ANYTHING
3 THAT HAS A BEARING THAT I HAVE INDICATED TO YOU, THE JURORS
4 MUST CONSIDER TO DETERMINE WHETHER OR NOT THE DEATH PENALTY
5 OR LIFE WITHOUT POSSIBILITY SHOULD BE METED OUT TO HIM. DO
6 YOU UNDERSTAND THAT SO FAR?

7 MS. WALKER: YES I DO.

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1 THE COURT: ALL RIGHT. NOW, I AM GOING TO ASK YOU A
2 SERIES OF QUESTIONS TO DETERMINE WHAT YOUR MENTAL STATE IS
3 AND YOUR OPINION AND BELIEF WITH RESPECT TO THE DEATH PENALTY.
4 NOW, THE FIRST TWO QUESTIONS RELATE TO YOUR ATTITUDE AND
5 OPINION ABOUT THE DEATH PENALTY, IF YOU HAVE ANY, INSOFAR AS
6 THE GUILT PHASE IS CONCERNED.

7 THE FIRST QUESTION IS, HAVE YOU ANY OPINION REGARD-
8 ING THE DEATH PENALTY, THAT WOULD PREVENT YOU FROM MAKING AN
9 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

10 MS. WALKER: NO.

11 THE COURT: NOW, THE SECOND QUESTION IS ALSO A PART OF
12 THE GUILT PHASE. THAT HAS TO DO WITH THE SPECIAL CIRCUMSTANCES,
13 WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE OF A
14 ROBBERY. YOU HAVE TO SAY TRUE OR FALSE.

15 THE JURY WILL DETERMINE WHETHER IT IS TRUE OR FALSE,
16 IF IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. THE
17 SECOND QUESTION IS, DO YOU HAVE ANY OPINION REGARDING THE
18 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
19 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
20 CIRCUMSTANCES?

21 MS. WALKER: NO.

22 THE COURT: NOW, THE NEXT TWO QUESTIONS HAVE TO DO
23 WITH THE PENALTY PHASE. I TOLD YOU THAT DURING THE GUILT
24 PHASE, YOU NEVER CONSIDER THE QUESTIONS OF PENALTY AT ALL.
25 ONLY DURING THE PENALTY PHASE OF THE TRIAL, IF THERE IS ONE,
26 CAN YOU CONSIDER IT.

27 THE NEXT QUESTION IS AS FOLLOWS: FIRST, DO YOU
28 HAVE SUCH AN OPINION REGARDING THE DEATH PENALTY THAT YOU

1 WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS
2 OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY PHASE
3 OF THE TRIAL?

4 MR. WALKER: NO.

5 THE COURT: AND THE OTHER ONE IS THE SAME ALTHOUGH IT
6 RELATES TO LIFE WITHOUT POSSIBILITY OF PAROLE. DO YOU HAVE
7 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
8 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
9 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY
10 PHASE OF THE TRIAL?

11 MR. WALKER: NO.

12 THE COURT: THE LAST QUESTION I WILL ASK YOU IS, DO YOU
13 UNDERSTAND THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT
14 OCCUR IN THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED
15 ONLY IN THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

16 MS. WALKER: YES.

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1 THE COURT: THANK YOU, ALL RIGHT.

2 MR. CHIER: GOOD AFTERNOON. IS IT MRS. WALKER?

3 MS. WALKER: YES.

4 MR. CHIER: MY NAME IS RICHARD CHIER AND I REPRESENT
5 MR. HUNT.

6 AND THE JUDGE HAS ASKED A SERIES OF QUESTIONS WHICH
7 ARE REALLY INTENDED TO SEE IF THERE IS ANY KIND OF MAJOR
8 REACTION YOU HAVE FOR OR AGAINST THE DEATH PENALTY, AND I WOULD
9 LIKE TO ASK YOU SOME QUESTIONS WHICH GO A LITTLE FURTHER THAN
10 THE JUDGE'S QUESTIONS ALONG THE SAME LINES.

11 I WOULD LIKE TO PREFACE MY QUESTIONS BY TELLING
12 YOU THAT THERE IS NO RIGHT OR WRONG ANSWER TO THESE QUESTIONS.

13 MS. WALKER: I UNDERSTAND.

14 MR. CHIER: AND YOU ARE NOT BEING ASKED HERE AS A
15 PERSON, THIS IS SIMPLY AN ATTEMPT TO DETERMINE WHAT PEOPLE
16 ARE MORE APPROPRIATELY QUALIFIED TO BE JURORS IN THIS TYPE
17 OF CASE THAN OTHERS. IT DOESN'T MEAN ANYTHING IN A PERSONAL
18 SENSE, IN A GLOBAL SENSE. IT IS JUST A LIMITED INQUIRY, OKAY?

19 MS. WALKER: YES, YES.

20 MR. CHIER: WE HAVE NEVER MET BEFORE AND THESE ARE
21 SERIOUS THINGS TO BE TALKING ABOUT, SO WE HAVE TO RELY UPON
22 YOUR ABSOLUTE CANDOR IN ANSWERING THESE QUESTIONS.

23 DID THE JUDGE ASK YOU IF YOU HAD HEARD OR READ
24 ANYTHING ABOUT THIS CASE?

25 THE COURT: I DID.

26 MS. WALKER: YES, HE DID.

27 MR. CHIER: YOU HAVE HEARD NOTHING ABOUT THIS CASE?

28 MS. WALKER: I KNOW NOTHING ABOUT IT.

1 MR. CHIER: LET ME ASK YOU TO CONSIDER THE FOLLOWING
2 QUESTION, HOW WOULD YOU ANSWER THIS: I AM A PERSON WHO IS:

3 A, STRONGLY IN FAVOR OF THE DEATH PENALTY.

4 B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY.

5 C, OPPOSED TO THE DEATH PENALTY..

6 D, HAVEN'T REALLY THOUGHT MUCH ABOUT IT.

7 E, SOME OTHER ANSWER.

8 MS. WALKER: I WOULD SAY I AM STRONGLY IN FAVOR OF THE
9 DEATH PENALTY.

10 MR. CHIER: OKAY, USING THAT AS A STARTING POINT, COULD
11 YOU TELL US WHY YOU ARE STRONGLY IN FAVOR OF THE DEATH
12 PENALTY?

13 MS. WALKER: I SUPPOSE IT IS WHAT I HAVE READ, I SUPPOSE,
14 IN NEWSPAPERS AND ARTICLES AND INFORMATION I HAVE HEARD.

15 I DON'T REALLY -- I HAVE NEVER BEEN ON A JURY
16 BEFORE BUT JUST HEARING AND READING CASES OR READING ABOUT
17 CERTAIN CASES THAT HAVE COME UP, I FEEL THAT IT IS UNFAIR FOR
18 ONE PERSON TO DO AWAY WITH ANOTHER PERSON'S LIFE AND TO DEPRIVE
19 MAYBE A FAMILY OF A FATHER OR A SON, OR WHATEVER, FOR THE REST
20 OF THEIR LIFE.

21 AND SO IF THE CIRCUMSTANCES WERE IN FAVOR AND THE
22 INFORMATION THAT IT WAS RIGHT, I WOULD POSSIBLY VOTE FOR THE
23 DEATH PENALTY. BUT I WOULD CERTAINLY CONSIDER ALL OF THE
24 INFORMATION THAT I WOULD GET ON BOTH SIDES.

25 MR. CHIER: ALL RIGHT, LET ME ASK TO SEE IF WE UNDERSTAND
26 EACH OTHER BECAUSE IT IS VERY IMPORTANT --

27 MS. WALKER: YES, I UNDERSTAND.

28 MR. CHIER: -- THAT THERE IS NO MISUNDERSTANDING HERE.

1 MS. WALKER: YES, I UNDERSTAND.

2 MR. CHIER: YOU ARE SAYING YOU WOULD CERTAINLY CONSIDER
3 ALL OF THE EVIDENCE THAT WAS RECEIVED, THAT YOU HAVE A
4 PREFERENCE FOR THE DEATH PENALTY?

5 MS. WALKER: NOT A PREFERENCE.

6 I JUST BELIEVE IN IT. I BELIEVE IN IT BUT NOT
7 NECESSARILY A PREFERENCE.

8 MR. CHIER: DO YOU BELIEVE IN IT AS A NECESSITY, AS A
9 DETERRENT TO OTHER PEOPLE?

10 OR LET ME GIVE YOU THE POSSIBILITIES HERE SO THAT
11 YOU DON'T HAVE TO, LIKE, SEARCH YOUR MIND AND WRITE AN ESSAY
12 HERE.

13 THE DEATH PENALTY COULD BE IMPORTANT BECAUSE YOU
14 MAY HAVE BELIEFS THAT IT DETERS OTHER PEOPLE FROM COMMITTING
15 MURDERS, FOR EXAMPLE, OR IT MIGHT BE IMPORTANT IN THE SENSE
16 THAT YOU BELIEVE IN IT BECAUSE IT RIDS SOCIETY OF UNDESIRABLE
17 ELEMENTS OR -- AND THESE ARE JUST GENERAL CATEGORIES -- OR
18 SEE, THAT YOU COULD BE STRONGLY IN FAVOR OF IT BECAUSE
19 CONSIDERING THAT THERE HAS BEEN AN INTENTIONAL TAKING OF A
20 LIFE BY ONE PERSON OF ANOTHER PERSON IT IS REALLY THE ONLY
21 FITTING OR SUITABLE PENALTY FOR THAT PERSON.

22 MS. WALKER: YES.

23 MR. CHIER: WHICH OF THOSE THREE CATEGORIES, MORE OR
24 LESS, REFLECTS YOUR THINKING ON THIS ISSUE, IF ANY OF THEM?

25 MS. WALKER: WELL, I WOULDN'T KNOW.

26 I WOULD HAVE TO HEAR THE EVIDENCE.

27 EVEN THOUGH I AM FOR THE DEATH PENALTY, I WOULDN'T
28 JUST SAY THAT IS WHAT IT SHOULD BE OR THAT WOULDN'T BE MY

1 ANSWER. I WOULD HAVE TO STILL HEAR THE EVIDENCE.

2 MR. CHIER: ALL RIGHT.

3 MS. WALKER: BUT I --

4 MR. CHIER: ASSUMING THAT YOU ARE A PERSON WHO IS
5 WILLING TO CONSIDER -- ARE YOU WILLING TO CONSIDER LIFE
6 WITHOUT POSSIBILITY OF PAROLE AS WELL AS THE DEATH PENALTY?

7 MS. WALKER: YES, YES, I WOULD.

8 MR. CHIER: IS THERE ANY POINT AT WHICH YOU WOULD THINK
9 THAT LIFE WITHOUT THE POSSIBILITY OF PAROLE IS JUST
10 INAPPROPRIATE, SUCH AS WHETHER THE MURDER OCCURRED IN THE
11 COURSE OF A ROBBERY OR WHETHER IT WAS FOR GREED OR --

12 THE COURT: WAIT A MINUTE. THAT IS NOT THE LAW, BECAUSE
13 OF THE FACT THAT THE MURDER WAS COMMITTED IN THE COURSE OF
14 A ROBBERY THAT THEY HAVE TO CONSIDER THE TWO PENALTIES.

15 MR. CHIER: YOUR HONOR, I AM ASKING FOR HER SUBJECTIVE
16 FEELING.

17 THE COURT: NO, YOU ARE NOT ASKING FOR IT. YOU ARE
18 TELLING HER.

19 MR. CHIER: I AM NOT TELLING HER. I AM NOT TELLING HER
20 ANYTHING, YOUR HONOR. I AM JUST ASKING HER TO TELL ME HOW
21 SHE FEELS ABOUT THESE THINGS.

22 MRS. WALKER --

23 MS. WALKER: YES.

24 MR. CHIER: -- I AM TRYING TO FIND OUT HOW YOU FEEL
25 ABOUT, FIRST, THE DEATH PENALTY, ABOUT MURDER, PUNISHMENT AND
26 IT HAS NOTHING TO DO WITH WHETHER -- WITH YOUR QUALIFICATIONS
27 TO BE A JUROR IN THE SENSE OF FOLLOWING THE LAW.

28 MS. WALKER: YES.

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1 MR. CHIER: I WANT TO KNOW YOUR MOST PERSONAL FEELINGS
2 ABOUT THESE THINGS.

3 ARE THERE ANY CIRCUMSTANCES WHERE YOU THINK THE
4 DEATH PENALTY IS APPROPRIATE?

5 MS. WALKER: YES, I --

6 MR. CHIER: I AM SORRY?

7 MS. WALKER: I DON'T KNOW BUT I DO.

8 MR. CHIER: IN YOUR HEART OF HEARTS, YOU THINK THERE
9 MUST BE SITUATIONS WHERE THERE IS NO OTHER REAL ADEQUATE
10 PENALTY, IS THAT WHAT YOU ARE SAYING?

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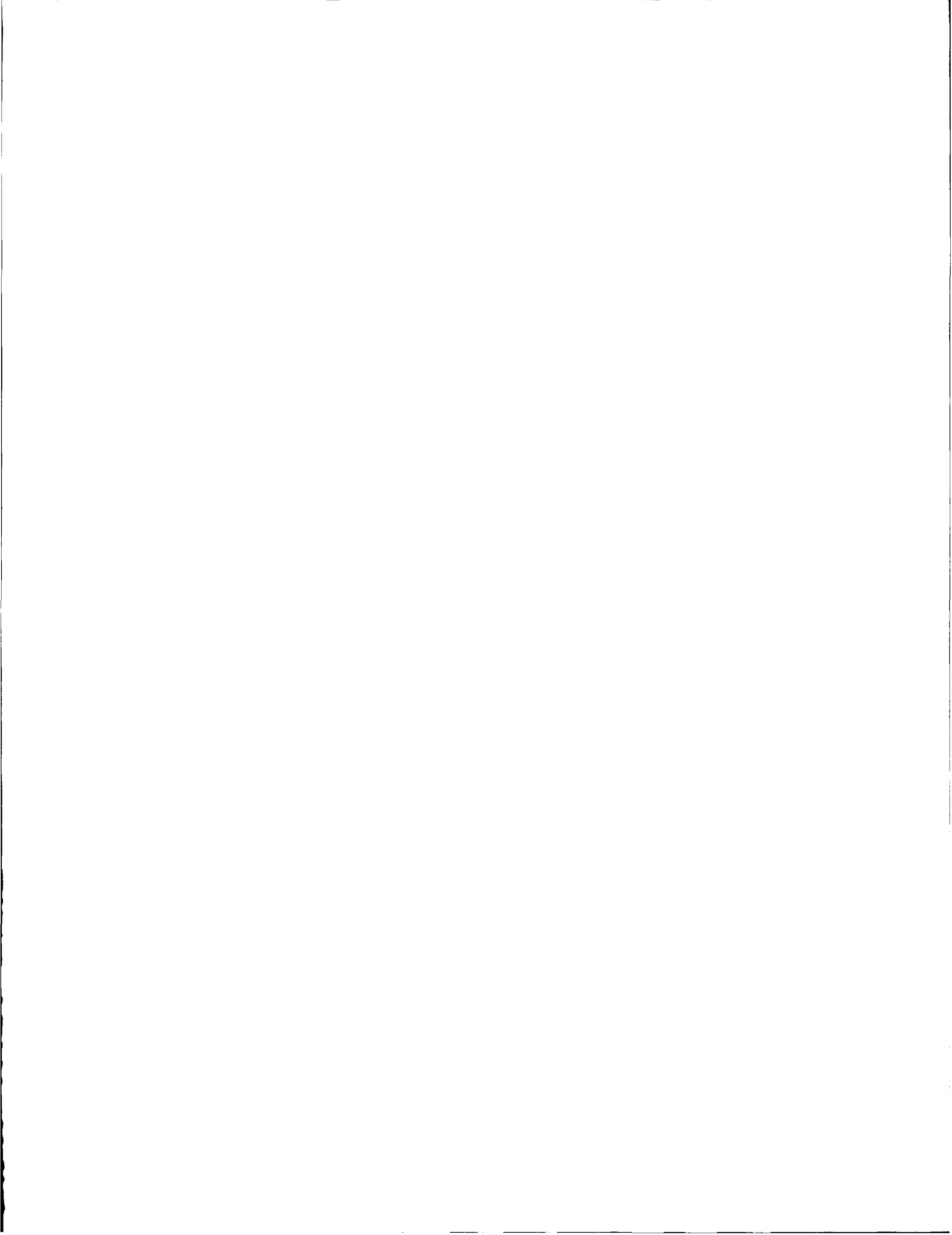
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1 MS. WALKER: YES, I MIGHT -- I PREFER THAT, YES.

2 MR. CHIER: ARE YOU A PERSON WHO READS THE NEWSPAPERS?
3 DO YOU READ THE NEWSPAPER ON A REGULAR BASIS?

4 MS. WALKER: YES, I DO.

5 MR. CHIER: DO YOU READ STORIES ABOUT CRIME? IT IS HARD
6 NOT TO THESE DAYS.

7 MS. WALKER: YES, YES, RIGHT.

8 MR. CHIER: DO YOU EVER SAY TO YOURSELF "THAT PERSON
9 OUGHT TO GET THE DEATH PENALTY" WHEN READING ABOUT A PARTICULAR
10 TYPE OF CRIME?

11 MS. WALKER: I SUPPOSE I HAVE, UH-HUH.

12 MR. CHIER: IS THERE A TYPE OF CRIME --

13 LET ME ASK YOU THIS: ARE YOU ABLE TO RECALL AT
14 THIS TIME WHETHER YOUR REACTION THAT A PARTICULAR PERSON OUGHT
15 TO GET THE DEATH PENALTY, FROM READING ABOUT CRIME IN THE
16 NEWSPAPER, IS BASED UPON THE NATURE OF THE CRIME OR THE
17 CONSEQUENCES THAT ARE CAUSED BY THE CRIME OR A COMBINATION?

18 DO YOU KNOW WHAT I AM SAYING?

19 MS. WALKER: A COMBINATION PROBABLY, A COMBINATION.

20 I DON'T KNOW OF ONE RIGHT NOW.

21 MR. CHIER: DID YOU SEE CHANNEL 9 LAST NIGHT, BY ANY
22 CHANCE?

23 MS. WALKER: NO.

24 MR. CHIER: LET ME ASK YOU THIS: IF IT WERE YOU THAT
25 WERE ON TRIAL HERE, GOD FORBID, BUT IF IT WERE YOU AND THE
26 SITUATION WERE EXCHANGED, WOULD YOU WANT TO HAVE 12 PEOPLE IN
27 YOUR PRESENT FRAME OF MIND TO BE JURORS IN THE CASE, DO YOU
28 THINK?

1 MS. WALKER: WELL, POSSIBLY NOT, BUT IF I HAD COMMITTED
2 A CRIME AND WHAT WAS I THINKING WHEN I KILLED SOMEONE, IF THAT
3 WAS --

4 MR. CHIER: NO.

5 I MEAN LOOKING AT YOURSELF RIGHT NOW, IN TERMS
6 OF YOUR NEUTRALITY OR IMPARTIALITY AS A JUROR, A PROSPECTIVE
7 JUROR, CAN YOU SAY THAT YOU ARE RIGHT NOW SO NEUTRAL THAT IF
8 IT WERE YOU THAT WERE SITTING THERE INSTEAD OF MR. HUNT, THAT
9 YOU WOULD FEEL COMFORTABLE IN INTRUSTING YOUR FAITH TO 12
10 JURORS WHO WERE IN THE SAME STATE OF MIND AS YOU ARE AS A
11 PROSPECTIVE JUROR?

12 MS. WALKER: PROBABLY NOT.

13 MR. CHIER: DO YOU FEEL YOU'RE LEANING ONE WAY OR THE
14 OTHER IN THIS CASE --

15 MS. WALKER: NO.

16 MR. CHIER: -- AS YOU SIT THERE NOW?

17 MS. WALKER: BECAUSE I KNOW OF -- NO, BECAUSE I KNOW
18 NONE OF THE EVIDENCE. NO, BECAUSE I DON'T KNOW ANY OF THE
19 EVIDENCE.

20 MR. CHIER: WHY WOULD YOU NOT FEEL COMFORTABLE WITH
21 12 JURORS IN YOUR PRESENT STATE OF MIND AS REGARDS YOUR
22 NEUTRALITY AT THIS POINT?

23 MS. WALKER: IF I WAS?

24 MR. CHIER: YES.

25 MS. WALKER: WELL, BECAUSE, OF COURSE, MOST OF THEM SAY
26 THEY ARE NOT GUILTY AND I WOULD PROBABLY SAY I WAS NOT GUILTY
27 OR MY ATTORNEY WOULD ADVISE ME TO, DEPENDING UPON THE SITUATION.

28 MR. CHIER: I THINK MAYBE WE MISUNDERSTOOD EACH OTHER,

1 MS. WALKER.

2 LET ME SEE IF I CAN PUT IT TO YOU THIS WAY:
3 ASSUMING THE SITUATION WERE SUCH THAT YOU WERE SITTING THERE
4 WHERE THE DEFENSE IS AND YOU ARE LOOKING FOR 12 PEOPLE TO BE
5 JURORS IN THE CASE.

6 MS. WALKER: YES.

7 MR. CHIER: AND YOU ARE LOOKING FOR THE MOST NEUTRAL,
8 IMPARTIAL PEOPLE YOU COULD FIND.

9 MS. WALKER: YES.

10 MR. CHIER: AND WE ARE STARTING FROM THE ABSOLUTE
11 MIDDLE OF THE DIAL, NOT LEANING THIS WAY OR THAT WAY, RIGHT?

12 MS. WALKER: YES, I UNDERSTAND.

13 MR. CHIER: INDICATING RIGHT OR LEFT, YOUR HONOR.

14 WOULD YOU FEEL COMFORTABLE IF YOU WERE SITTING
15 THERE IN SEARCH OF 12 JURORS FOR YOUR CASE, IN PICKING 12
16 PEOPLE, KNOWING WHAT YOU KNOW ABOUT HIM, THE WAY YOU FEEL
17 RIGHT NOW, IN YOUR SAME FRAME OF MIND AS YOU ARE RIGHT NOW --
18 DO YOU UNDERSTAND MY QUESTION?

19 MS. WALKER: YES, BECAUSE AS I SAID BEFORE, I DO BELIEVE
20 IN THE DEATH PENALTY BUT I CERTAINLY WOULD CONSIDER ALL OF
21 THE EVIDENCE AND I COULD GO THE OTHER WAY.

22 YOU JUST ASKED ME, DO I BELIEVE IN THE DEATH
23 PENALTY AND I SAID YES.

24 BUT I CERTAINLY WOULD CONSIDER THE EVIDENCE. I
25 AM NOT GOING TO CONVICT SOMEONE WITHOUT LEANING TO BOTH SIDES.

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1 MR. CHIER: OF COURSE NOT. BUT LET ME SAY -- WHEN YOU
2 SAY YOU WOULD CONSIDER ALL OF THE EVIDENCE, LET ME ASK YOU
3 THIS. THE JUDGE HAS INDICATED THAT THIS IS A TWO-STAGE
4 PROCEEDING WHERE IT IS LIKE THE GUILTY PHASE AND THEN IF THERE
5 IS A FINDING OF GUILT, THERE IS A PENALTY PHASE.

6 MS. WALKER: YES.

7 MR. CHIER: OKAY. AND AFTER THE PENALTY PHASE, THERE
8 IS A DIFFERENT TYPE OF EVIDENCE THAT IS PRESENTED.

9 MS. WALKER: YES.

10 MR. CHIER: SOME OF IT IS THE SAME AND SOME OF IT IS
11 DIFFERENT. AND THE JUDGE HAS INDICATED THAT THERE ARE A
12 NUMBER OF THINGS THAT SHOULD BE CONSIDERED BY THE JURORS.

13 WHAT I WOULD LIKE TO KNOW IS, THAT IF IN THE CASE
14 OF A FIRST DEGREE MURDER, AN INTENTIONAL MURDER IN THE COURSE
15 OF A ROBBERY, IF YOU THINK THAT ALL THESE THINGS HAVE EQUAL
16 CONSIDERATION OR SOME ARE MORE IMPORTANT THAN OTHERS --

17 THE COURT: YOU ARE ASKING HER TO PREJUDGE THE TESTIMONY.
18 LET'S GET ON TO SOME OTHER QUESTION.

19 MR. CHIER: SHE DOESN'T KNOW WHAT THE TESTIMONY IS.

20 THE COURT: WELL, YOU ARE ASKING HER TO PREJUDGE IT
21 BEFORE --

22 MR. CHIER: I AM ASKING FOR ATTITUDES. I AM ASKING --

23 THE COURT: I KNOW WHAT YOU ARE TRYING TO DO. GET ON TO
24 ANOTHER QUESTION.

25 MR. CHIER: MS. WALKER, ASSUMING THAT THE -- DO YOU HAVE
26 IN MIND THE THINGS THE JUDGE SAID THAT YOU SHOULD CONSIDER?

27 MS. WALKER: YES, I DO.

28 MR. CHIER: SUCH AS PRIOR BACKGROUND IF ANY?

1 MS. WALKER: YES.

2 MR. CHIER: CIRCUMSTANCES OF THE OFFENSE?

3 MS. WALKER: YES.

4 MR. CHIER: AGE OF THE DEFENDANT?

5 MS. WALKER: YES.

6 MR. CHIER: ALL RIGHT. SO, HAVING IN MIND THOSE VARIOUS
7 TYPES OF THINGS THAT OUGHT TO BE CONSIDERED, DO YOU THINK THAT
8 THEY ARE ALL OF EQUAL IMPORTANCE?

9 MS. WALKER: I THINK THEY ARE ALL IMPORTANT, YES.

10 MR. CHIER: OKAY. AND DO YOU THINK THAT THERE ARE ANY
11 OF THEM THAT ARE UNIMPORTANT, SUCH AS THE AGE AT THE TIME OF
12 THE ACT BEING COMMITTED?

13 MS. WALKER: NO. I THINK THEY ARE ALL IMPORTANT.

14 MR. CHIER: OKAY. I PASS FOR CAUSE, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MR. WAPNER: GOOD AFTERNOON, MS. WALKER. I AM FRED
17 WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS
18 CASE.

19 CAN YOU EXPLAIN TO ME IN A LITTLE MORE DETAIL
20 THE BASIS FOR YOUR OPINION THAT YOU SAY COMES FROM THE MEDIA
21 AND THE NEWSPAPERS?

22 MS. WALKER: I DON'T BELIEVE I UNDERSTAND HOW TO ANSWER
23 THAT.

24 MR. WAPNER: IT PROBABLY WAS NOT A GOOD QUESTION. YOU
25 SAID THAT YOU ARE IN FAVOR OF THE DEATH PENALTY AND WHEN MR.
26 CHIER ASKED YOU WHY, I THOUGHT YOU SAID IT WAS BECAUSE OF THINGS
27 THAT YOU HAVE READ IN THE PAPERS. DID I GET YOUR ANSWER RIGHT
28 ON THAT?

1 MS. WALKER: PARTIALLY, YES. I JUST DO BELIEVE IN IT.
2 BUT I WOULD HAVE TO KNOW ALL OF THE EVIDENCE AND --

3 THE COURT: SHE STATED SHE FORMED HER JUDGMENT AFTER
4 READING THE NEWSPAPERS ABOUT VARIOUS CASES. LET'S GET ON WITH
5 IT, PLEASE.

6 MS. WALKER: YES.

7 MR. WAPNER: WHAT KINDS OF THINGS DID YOU READ THAT LED
8 YOU TO FORM YOUR OPINION?

9 MS. WALKER: I CAN'T RECALL ANYTHING SPECIFIC RIGHT NOW.
10 BUT, JUST HEARING THE EVIDENCE OR READING -- I MEAN, READING
11 ABOUT IT OR SEEING SOMETHING ON TV AND NEWS WHICH MAY NOT BE
12 A GOOD WAY TO JUDGE.

13 BUT THAT IS WHAT I WOULD HEAR. AND I, IN MY MIND,
14 WOULD CONSIDER THAT THERE WAS THE EVIDENCE AND IF THERE WAS
15 A FAMILY INVOLVED AND I WOULD JUST FEEL THAT IT WAS WRONG FOR
16 THE PERSON TO GO INTO A PLACE WITH A GUN OR WHATEVER THE CASE
17 WOULD BE OR MAYBE IN A RAPE CASE, YOU KNOW, AND BE ALLOWED
18 TO GO ALONG LIVING A GOOD LIFE. MAYBE NOT A GOOD LIFE BUT
19 EVEN IF HE WAS IN PRISON, BEING TAKEN CARE OF.

20 AND THE OTHER ONES ARE NEVER GOING TO HAVE THEIR
21 PERSON AGAIN AND NOBODY IN THEIR -- MAYBE THEY HAVE A DEAD
22 FAMILY MEMBER OR A WORKING FATHER OR WHATEVER THE CASE MAY
23 BE. JUST TO MURDER SOMEONE LIKE THAT AND YET, THE OTHER ONE
24 THAT WAS THE MURDERER WOULD BE ALLOWED TO LIVE AND BE TAKEN
25 CARE OF FOR THE REST OF HIS LIFE.

26 THAT IS WHY I SOMETIMES -- I FEEL THAT THE DEATH
27 PENALTY IS APPROPRIATE. BUT I WAS NOT ON THE CASE. I WOULD
28 CERTAINLY HAVE TO KNOW ALL OF THE FACTS.

1 I PROBABLY MIGHT CHANGE MY MIND IF I KNEW ALL OF
2 THE FACTS.

3 MR. WAPNER: DO YOU START OUT WHEN YOU GET TO THE PENALTY
4 PHASE, BIASED IN FAVOR OF ONE OR THE OTHER?

5 MS. WALKER: NO. I DON'T THINK SO.

6 MR. WAPNER: NOTHING FURTHER.

7 MR. CHIER: I HAVE SOME FURTHER QUESTIONS THAT COUNSEL'S
8 QUESTIONS HAVE --

9 THE COURT: GO AHEAD.

10 MR. CHIER: MS. WALKER, DO YOU THINK THAT IT IS
11 BASICALLY UNFAIR FOR A PERSON TO BE ALLOWED TO LIVE AFTER HE
12 HAS BEEN FOUND GUILTY OF AN INTENTIONAL FIRST DEGREE MURDER,
13 WITHOUT ANY LEGAL JUSTIFICATION OR EXCUSE?

14 THE COURT: I WILL SUSTAIN THE COURT'S OWN OBJECTION
15 TO THAT. IT IS NOT THIS CASE.

16 MR. CHIER: WHEN I ASKED YOU BEFORE IF THE ROLES WERE
17 REVERSED --

18 MS. WALKER: YES.

19 MR. CHIER: DID YOU ASSUME FOR PURPOSES OF THAT QUESTION
20 THAT YOU WERE GUILTY OF -- THAT MR. HUNT WAS GUILTY FOR
21 PURPOSES OF ANSWERING MY QUESTION?

22 MS. WALKER: THE WAY YOU WORDED IT, I THOUGHT THAT THAT
23 IS WHAT YOU MEANT, YES. THAT I WAS GUILTY.

24 MR. CHIER: DO YOU THINK MR. HUNT IS GUILTY?

25 MS. WALKER: I DON'T KNOW. I DO NOT KNOW.

26 THE COURT: UNDER THE LAW, HE IS PRESUMED TO BE INNOCENT
27 UNTIL THE CONTRARY IS PROVED AND IT MUST BE PROVED BEYOND A
28 REASONABLE DOUBT. DO YOU KNOW THAT?

1 MS. WALKER: YES, I DO.

2 MR. CHIER: PERHAPS I SHOULD RESERVE THESE QUESTIONS
3 FOR THE GENERAL VOIR DIRE, YOUR HONOR?

4 THE COURT: ALL RIGHT. I THINK THAT WILL BE APPROPRIATE.

5 MR. WAPNER: PASS FOR CAUSE.

6 THE COURT: BOTH SIDES PASS FOR CAUSE. YOU QUALIFY AS
7 A JUROR IN THIS CASE, IF YOU ARE SELECTED.

8 WHAT I AM GOING TO ASK YOU TO DO, WE HAVE TO GO
9 THROUGH THE REST OF THE W'S AND X AND Y AND Z AND SO FORTH.
10 I EXPECT THAT IT WILL TAKE TOMORROW AND WEDNESDAY, THE REST
11 OF THE DAY. SO I WILL ASK YOU TO COME BACK TO THE JURY
12 ASSEMBLY ROOM ON THURSDAY.

13 THAT WILL BE DECEMBER 4TH AT 10:30. THAT IS
14 DECEMBER 4TH, THURSDAY IN THE JURY ASSEMBLY ROOM AND THEN I
15 EXPECT THAT ALL OF YOU WILL COME HERE AND WE WILL START PICKING
16 A JURY. ALL RIGHT?

17 MS. WALKER: YES.

18 THE COURT: AND AGAIN, DO NOT TALK TO ANYONE ABOUT THIS
19 CASE.

20 MS. WALKER: YES.

21 THE COURT: THANK YOU VERY MUCH.

22 (PROSPECTIVE JUROR WALKER EXITS THE
23 COURTROOM.)

24 THE COURT: WE WILL TAKE A TEN-MINUTE RECESS.

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1 THE COURT: IS THAT MISS WAUGH OR MRS.?
2 MS. WAUGH: WAUGH.
3 THE COURT: WAUGH?
4 MS. WAUGH: WAUGH.
5 THE COURT: ALL RIGHT, THAT IS THE NAME OF EVELYN WAUGH,
6 A FAMOUS AUTHOR, ISN'T IT?
7 MS. WAUGH: YES.
8 THE COURT: AN ENGLISH AUTHOR.
9 MS. WAUGH: YES.
10 THE COURT: I THINK WE HAD YOU IN CHAMBERS TALKING
11 ABOUT -- DID WE EVER HAVE YOU IN CHAMBERS?
12 MS. WAUGH: YES.
13 THE COURT: SO WE HAVE MET BEFORE THEN, HAVEN'T WE?
14 MS. WAUGH: YES, WE HAVE.
15 THE COURT: IS THAT MISS OR MRS. WAUGH?
16 MS. WAUGH: MISS.
17 THE COURT: MISS?
18 MS. WAUGH: UH-HUH.
19 THE COURT: MISS WAUGH, HAVE YOU READ ANYTHING AT ALL
20 ABOUT THIS CASE?
21 MS. WAUGH: NO.
22 THE COURT: NOTHING IN ANY NEWSPAPER OR MAGAZINE OR
23 YOU DIDN'T TALK TO ANY OF THE JURORS ABOUT IT?
24 MS. WAUGH: NO.
25 THE COURT: AND YOU WILL MAINTAIN YOUR SAME IGNORANCE
26 OF IT?
27 MS. WAUGH: YES.
28 THE COURT: EXCEPT IF YOU ARE SELECTED AS A JUROR, YOU

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1 WILL BE ABLE TO HEAR WHAT THE CASE IS ALL ABOUT?

2 MS. WAUGH: YES.

3 THE COURT: NOW, I BELIEVE AS I RECALL, I TOLD YOU THIS
4 IS A CASE WHERE THE DEFENDANT IS CHARGED WITH THE COMMISSION
5 OF A CRIME OF MURDER AND MURDER IN THE FIRST DEGREE AND IT
6 WAS COMMITTED DURING THE COURSE OF A ROBBERY.

7 THE PHRASE "IN THE COURSE OF A ROBBERY" QUALIFIES
8 THIS CASE FOR THE DEATH PENALTY BECAUSE THE LEGISLATURE HAS
9 SAID THAT WHERE THERE ARE MURDERS COMMITTED, FIRST DEGREE
10 MURDERS COMMITTED IN THE COURSE OF A ROBBERY OR DURING THE
11 COURSE OF A BURGLARY OR IN THE COURSE OF A RAPE OR IN THE
12 COURSE OF A KIDNAPPING OR IN THE COURSE OF MOLESTATION OF
13 A CHILD OR MULTIPLE MURDERS, OR A NUMBER OF OTHERS, THAT
14 QUALIFIES THE CASE FOR THE IMPOSITION OF THE DEATH PENALTY.

15 BY THE DEATH PENALTY, I MEAN THERE IS AN
16 ALTERNATIVE THAT THE JURORS HAVE OF EITHER LIFE IMPRISONMENT
17 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH; DO YOU UNDERSTAND
18 THAT?

19 MS. WAUGH: YES.

20 THE COURT: ALL RIGHT, SO THE JURY SELECTED IN THIS
21 CASE WILL DETERMINE FIRST -- AND WE CALL THAT THE GUILT PHASE --
22 THEY WILL DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY
23 OF MURDER IN THE FIRST DEGREE AND IF HE IS, WHETHER OR NOT
24 THAT MURDER WAS COMMITTED UNDER THE SPECIAL CIRCUMSTANCE IN
25 THE COURSE OF A ROBBERY.

26 IF THEY DECIDE THAT, THEN WE HAVE A SECOND PHASE
27 WHICH IS KNOWN AS THE PENALTY PHASE WHERE THE SAME JURORS
28 HEAR EVIDENCE, TESTIMONY ABOUT GOOD THINGS ABOUT THE DEFENDANT

1 AND BAD THINGS ABOUT THE DEFENDANT; DO YOU UNDERSTAND?

2 (PROSPECTIVE JUROR WAUGH NODS HER HEAD
3 UP AND DOWN.)

4 THE COURT: THEY ALSO CONSIDER WHETHER OR NOT HE HAS
5 ANY PRIOR CRIMINAL RECORD AND HIS CHARACTER, HIS HISTORY,
6 HIS BACKGROUND, EVERYTHING ABOUT THE DEFENDANT, HIS MENTAL
7 AND PHYSICAL CONDITION, EVERYTHING MAY BE CONSIDERED BY THE
8 JURY AND THEN AFTER ALL OF THAT TESTIMONY IS HEARD ON THE
9 SECOND PHASE OR THE PENALTY PHASE --

10 ON THE FIRST PHASE, YOU DO NOT CONSIDER THE MATTER
11 OF PENALTY, AS YOU KNOW, BUT ON THE SECOND PHASE IS WHERE
12 THE JURY DOES CONSIDER THE PENALTY. AFTER THEY HAVE HEARD
13 ALL OF THE ARGUMENT OF COUNSEL AND THE INSTRUCTIONS OF THE
14 COURT, THE JURY THEN RETIRES TO THE JURY ROOM AND THEN
15 DISCUSSES ALL OF THE TESTIMONY AND EVERYTHING ELSE ABOUT THE
16 CASE INCLUDING THE VERY CRIME ITSELF, THEY HAVE TO CONSIDER
17 ALL OF THE FACTS THEY HEARD ON THE CRIME ASPECT AND THEN THEY
18 DECIDE ONE OF TWO THINGS: WILL IT BE LIFE IMPRISONMENT WITHOUT
19 THE POSSIBILITY OF PAROLE OR DEATH. IS THAT CLEAR?

20 MS. WAUGH: YES.

21 THE COURT: NOW I AM GOING TO ASK YOU A NUMBER OF
22 QUESTIONS WHICH ARE DESIGNED -- COUNSEL WILL ALSO ASK YOU
23 QUESTIONS THAT ARE DESIGNED TO ASCERTAIN WHAT YOUR STATE OF
24 MIND IS AND WHAT YOUR OPINIONS OR BELIEFS ARE WITH RESPECT
25 TO THE DEATH PENALTY TO SEE WHETHER OR NOT YOU WOULD QUALIFY
26 OR CAN QUALIFY AS A JUROR IN THIS PARTICULAR CASE.

27 NOW THE FIRST TWO QUESTIONS I AM GOING TO ASK
28 YOU RELATE TO THE GUILT PHASE OF THE TRIAL. AND THE FIRST

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

4 MS. WAUGH: I THINK IT ALL DEPENDS ON THE CRIME AND
5 ON THE CIRCUMSTANCES.

6 THE COURT: WELL, THAT IS NOT THE QUESTION.

7 THE QUESTION I ASKED YOU: DO YOU HAVE AN OPINION
8 REGARDING THE DEATH PENALTY --

9 MS. WAUGH: I AM NOT AGAINST THE DEATH PENALTY.

10 THE COURT: WELL, THAT IS AN OPINION; ISN'T THAT RIGHT?

11 WITH THAT OPINION, WOULD THAT PREVENT YOU FROM
12 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE
13 OF THE DEFENDANT?

14 MS. WAUGH: NO.

15 THE COURT: GOOD.

16 NOW THE SECOND QUESTION HAS TO DO, AS I TOLD YOU,
17 IT IS STILL ON THE GUILT PHASE. IF THEY FIND THE DEFENDANT
18 GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY HAVE TO
19 DETERMINE WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE
20 OF A ROBBERY.

21 IN THE COURSE OF A ROBBERY, I TOLD YOU, IS A
22 SPECIAL CIRCUMSTANCE WHICH QUALIFIES THE CASE TO BE FOUND
23 FOR THE DEATH PENALTY ASPECT.

24 NOW, DO YOU HAVE ANY OPINION REGARDING THE DEATH
25 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
26 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
27 CIRCUMSTANCE?

28 MS. WAUGH: NO, I DON'T.

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1 THE COURT: ALL RIGHT, NOW THE NEXT TWO QUESTIONS HAVE
2 TO DO WITH THE PENALTY PHASE. ASSUMING THAT THE JURORS HAVE
3 FOUND HIM GUILTY OF MURDER IN THE FIRST DEGREE AND HAVE FOUND
4 THE SPECIAL CIRCUMSTANCE TRUE, NOW THE NEXT QUESTION HAS TO
5 DO WITH THE PENALTY PHASE OF IT: DO YOU HAVE SUCH AN OPINION
6 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
7 VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE
8 THAT MAY BE PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

9 MS. WAUGH: WOULD YOU REPEAT THAT, PLEASE?

10 THE COURT: PARDON ME?

11 MS. WAUGH: WOULD YOU MAKE THAT STATEMENT AGAIN, PLEASE,
12 YOUR LAST STATEMENT?

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1 THE COURT: YES. NOW, DO YOU HAVE ANY OPINION ABOUT
2 THE DEATH PENALTY, WHATEVER IT MAY BE, THAT YOU WOULD
3 AUTOMATICALLY VOTE FOR THE DEATH PENALTY, REGARDLESS OF ANY
4 EVIDENCE THAT YOU MIGHT HEAR ON THE PENALTY PHASE OF THE CASE
5 OR WOULD YOU LISTEN TO ALL OF IT FIRST?

6 MS. WAUGH: I WOULD LISTEN TO ALL OF IT FIRST.

7 THE COURT: SO YOUR ANSWER IS NO?

8 MS. WAUGH: NO.

9 THE COURT: NOW, THE NEXT QUESTION IS ABOUT THE SAME,
10 EXCEPT IT RELATES TO LIFE WITHOUT POSSIBILITY OF PAROLE. DO
11 YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT
12 YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY
13 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
14 AT THE PENALTY PHASE OF THE TRIAL?

15 MS. WAUGH: NO.

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

20 MS. WAUGH: YES.

21 THE COURT: ALL RIGHT.

22 MR. CHIER: I PASS FOR CAUSE, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: GOOD AFTERNOON, MISS WAUGH. I AM FRED
25 WAPNER, THE DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE.
26 DID YOU GIVE ANY THOUGHT TO THE ISSUE OF THE DEATH PENALTY
27 BEFORE YOU WERE CHOSEN TO SIT AS A JUROR IN THIS CASE?

28 MS. WAUGH: I HAVE THOUGHT OF THE DEATH PENALTY.

1 MR. WAPNER: OKAY. WHAT HAPPENED AFTER YOU THOUGHT
2 ABOUT IT?

3 MS. WAUGH: AS I SAID BEFORE, I THINK IT GOES WITH THE
4 CRIME. BUT I AM NOT AGAINST THE DEATH PENALTY.

5 MR. WAPNER: OKAY. CAN YOU EXPLAIN TO ME A LITTLE BIT
6 MORE ABOUT WHAT YOU MEAN WHEN YOU SAY THAT YOU THINK IT GOES
7 WITH THE CRIME?

8 MS. WAUGH: REALLY, I THINK THE PENALTY SHOULD GO WITH
9 THE CRIME. FOR EXAMPLE, A PERSON THAT GOES AROUND KILLING
10 CHILDREN, YOU KNOW.

11 MR. WAPNER: IN YOUR OPINION, SHOULD GET THE DEATH PENALTY?

12 MS. WAUGH: YES.

13 MR. WAPNER: OKAY. IN YOUR EXAMPLE, YOU TALKED ABOUT
14 A PERSON WHO GOES AROUND KILLING CHILDREN. DID YOU NECESSARILY
15 MEAN TO REFER TO MORE THAN ONE CHILD OR WAS THAT JUST -- JUST
16 A WAY OF MAKING THE STATEMENT?

17 MS. WAUGH: JUST CHILDREN. THEY HAVE NOT HAD A CHANCE.

18 MR. WAPNER: OKAY. ASSUMING WITHOUT KNOWING ANYTHING
19 MORE ABOUT THIS CASE THAT THE PERSON WHO WAS KILLED WAS NOT
20 A CHILD, DOES THAT COLOR YOUR OPINION ONE WAY OR THE OTHER?
21 I MEAN, ARE YOU GOING TO SAY FOR EXAMPLE, I CAN'T VOTE THE
22 DEATH PENALTY IN THAT KIND OF A CASE BECAUSE THE PERSON WHO
23 WAS KILLED WAS A GROWN-UP? I DON'T MEAN TO BE TWISTING YOUR
24 WORDS.

25 MR. CHIER: ALLEGEDLY KILLED, YOUR HONOR.

26 THE COURT: YES.

27 MR. WAPNER: DO YOU WANT ME TO ASK YOU THE QUESTION
28 AGAIN?

1 MS. WAUGH: YES, PLEASE.

2 MR. WAPNER: OKAY. I AM JUST TAKING YOUR EXAMPLE AND
3 TRYING TO CARRY IT A STEP FURTHER WHICH IS, I WANT TO KNOW
4 IF YOU ARE SAYING FOR EXAMPLE, THAT THE ONLY PEOPLE WHO DESERVE
5 THE DEATH PENALTY ARE PEOPLE WHO KILL CHILDREN OR WAS THAT
6 JUST AN EXAMPLE THAT YOU HAPPENED TO USE?

7 MS. WAUGH: IT WAS JUST AN EXAMPLE, REALLY.

8 MR. WAPNER: OKAY. SO, IF IT TURNS OUT THAT YOU HAVE
9 SAT ON THIS JURY AND FOUND THE DEFENDANT GUILTY OF MURDER
10 AND IT TURNS OUT THAT THE PERSON WHO WAS -- THAT YOU FOUND
11 THEM GUILTY OF KILLING, WAS NOT A CHILD, WOULD YOU STILL BE
12 OPEN TO THE QUESTION OF THE DEATH PENALTY ON THE PENALTY PHASE
13 OF THE TRIAL? YOU DIDN'T UNDERSTAND THE QUESTION?

14 MS. WAUGH: NO.

15 MR. WAPNER: OKAY. ARE YOUR VIEWS ABOUT THE DEATH PENALTY
16 BASED IN SOME RELIGIOUS, MORAL OR PHILOSOPHICAL BASIS?

17 MS. WAUGH: WELL, THE BIBLE SAYS THOU SHALT NOT KILL.

18 THE COURT: PARDON ME? I DIDN'T HEAR THAT.

19 MS. WAUGH: THE BIBLE SAYS THOU SHALT NOT KILL.

20 THE COURT: ALL RIGHT.

21 MS. WAUGH: YET, BUT IN THE CASE OF SELF-DEFENSE, THAT
22 IS ALTOGETHER A DIFFERENT STORY, TOO.

23 THE COURT: WELL, THAT IS NOT INVOLVED IN THE QUESTIONS
24 WE ARE ASKING YOU NOW.

25 MS. WAUGH: OKAY.

26 MR. WAPNER: OBVIOUSLY, THERE ARE TWO SIDES TO THE
27 BIBLICAL THING OR COMMANDMENT THOU SHALT NOT KILL. THAT IS,
28 AS IT COULD POSSIBLY APPLY IN THIS CASE.

1 ONE IS A KILLING THAT MAY OR MAY NOT HAVE HAPPENED
2 THAT FORMS THE BASIS FOR THESE CHARGES.

3 THAT IS, SOMEONE IS BEING CHARGED WITH COMMITTING
4 A MURDER. DO YOU UNDERSTAND THAT?

5 MS. WAUGH: BUT YOU SAID THAT THAT MAY OR MAY NOT HAVE
6 HAPPENED. IS THAT WHAT YOU SAID?

7 MR. WAPNER: WELL, IF YOU SIT ON THIS JURY, WHAT YOU
8 HAVE TO DECIDE IS, WHETHER THERE WAS A CRIME COMMITTED AND
9 IF SO, DID THE DEFENDANT DO IT. AND THERE ARE A FEW OTHER
10 THINGS LIKE WHAT WAS THE DEGREE OF THE CRIME AND THAT KIND
11 OF THING.

12 IN OTHER WORDS, YOU UNDERSTAND THAT THE DEFENDANT
13 IS PRESUMED TO BE INNOCENT?

14 MS. WAUGH: YES, UNTIL PROVEN GUILTY.

15 MR. WAPNER: RIGHT. AND AS FAR AS THE COMMANDMENT THOU
16 SHALT NOT KILL, IF IT TURNS OUT THAT YOU SIT ON THIS JURY
17 AND YOU FIND THE DEFENDANT GULTY OF THIS CRIME, THEN OBVIOUSLY,
18 YOU WILL HAVE ALSO FOUND THAT HE VIOLATED THE BIBLICAL
19 COMMANDMENT AGAINST KILLING, RIGHT?

20 MS. WAUGH: YES.

21 MR. WAPNER: BUT THEN, IF YOU ARE ON THE JURY AND YOU
22 GET TO THE PENALTY PHASE OF THE CASE AND IN THAT PHASE OF
23 THE CASE, YOU AND THE OTHER 11 JURORS HAVE TO DECIDE WHAT
24 THE APPROPRIATE PUNISHMENT IS. DO YOU UNDERSTAND THAT?

25 MS. WAUGH: I DO.

26 MR. WAPNER: AND DO YOU UNDERSTAND THAT IT IS A DECISION
27 THAT YOU WOULD HAVE TO MAKE INDIVIDUALLY AND WITH THE OTHERS
28 IN THE GROUP OF 11 PEOPLE? DO YOU UNDERSTAND THAT?

1 MS. WAUGH: YES.

2 MR. WAPNER: SO THE JUDGE WILL TELL YOU THAT YOU HAVE
3 TO CAST YOUR OWN, INDIVIDUAL BALLOT ON WHAT THE PUNISHMENT
4 SHOULD BE. DO YOU UNDERSTAND THAT?

5 MS. WAUGH: YES.

6 MR. WAPNER: AND WHAT I WANT TO KNOW IS, WILL YOUR
7 FEELINGS ABOUT THE BIBLICAL COMMANDMENT, THOU SHALT NOT KILL,
8 PLAY ANY PART IN YOUR DECISION AS TO WHAT THE PUNISHMENT SHOULD
9 BE?

10 MS. WAUGH: AFTER ALL OF THE FACTS ARE GATHERED.

11 MR. WAPNER: THEN WHAT?

12 MS. WAUGH: HE IS INNOCENT UNTIL HE HAS BEEN PROVEN
13 GUILTY.

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1 MR. WAPNER: OKAY. I AM NOT TRYING TO ARGUE WITH YOU.
2 WHAT I AM SAYING IS AND WHAT I WANT TO TRY TO FIND OUT IS,
3 IF YOU GET -- IF YOU ARE A JUROR ON THIS CASE AND YOU GET TO
4 THAT PROTION OF THE CASE WHERE YOU ARE TRYING TO DECIDE WHAT
5 THE APPROPRIATE PUNISHMENT IS GOING TO BE AND THE JUDGE TELLS
6 YOU AND YOU LISTEN TO ALL OF THE EVIDENCE ON BOTH SIDES IN
7 FAVOR OF SPARING HIS LIFE AND FOR TAKING IT AND THEN THE JUDGE
8 TELLS YOU WHAT THE LAW IS, ARE YOU WITH ME SO FAR?

9 MS. WAUGH: I AM WITH YOU.

10 MR. WAPNER: OKAY. THEN YOU WILL GO INTO THE JURY ROOM.
11 YOU ARE BEING CALLED UPON TO MAKE THIS DECISION ABOUT LIFE
12 AND DEATH. WHAT I WANT TO KNOW IS, WHETHER YOU WILL BE
13 GUIDED BY THE LAW THAT THE JUDGE GIVES YOU OR BY YOU MIGHT
14 SAY -- PARDON ME, YOUR HONOR -- A HIGHER AUTHORITY, WHICH IS
15 THE BIBLICAL COMMANDMENT THAT THOUGH SHALT NOT KILL? I THINK
16 I LOST YOU. YOU LOOK AS THOUGH I MIGHT HAVE LOST YOU.

17 MR. CHIER: YOU LOST ME.

18 MR. WAPNER: WHEN YOU GET INTO THE JURY ROOM AND YOU
19 ARE DECIDING WHETHER THE DEFENDANT SHOULD LIVE OR SHOULD HE
20 DIE, ARE YOU GOING TO SAY AT THAT TIME THAT THE BIBLE SAYS
21 THAT THOUGH SHALT NOT KILL AND THEREFORE, I COULD NEVER RETURN
22 A VERDICT OF DEATH, NO MATTER WHAT THE CIRCUMSTANCES ARE?

23 MS. WAUGH: NO. I AM NOT GOING TO SAY THAT.

24 MR. WAPNER: OKAY. COULD YOU DECIDE LIFE OR DEATH, BASED
25 ON THE FACTS AND EVIDENCE IN THIS CASE?

26 MR. WAUGH: YES.

27 MR. WAPNER: I TRIED PRETTY HARD TO MAKE IT CLEAR. I
28 GUESS I MADE IT MUDDIER AND MUDDIER. DO YOU FINALLY UNDERSTAND

1 ME, DO YOU THINK?

2 MS. WAUGH: I UNDERSTAND YOU. BUT YOU MADE IT MUDDIER.

3 MR. WAPNER: LAWYERS DO THAT SOMETIMES.

4 MS. WAUGH: YES. I UNDERSTAND THAT, TOO.

5 MR. WAPNER: OKAY. I PASS FOR CAUSE.

6 THE COURT: ALL RIGHT. WE ARE IN THE PROCESS AS YOU
7 SEE, MS. WAUGH, OF FINDING OUT FROM ALL THE PROSPECTIVE JURORS
8 WHAT THEIR ATTITUDES ARE TOWARD THE DEATH PENALTY AND WHETHER
9 THEY ARE QUALIFIED TO BE SUCH A JUROR.

10 WE HAVE DETERMINED THAT YOU WILL QUALIFY. I WILL
11 ASK YOU, TOGETHER WITH ALL THE OTHER JURORS WHO HAVE QUALIFIED,
12 TO COME BACK TO THE JURY ASSEMBLY ROOM ON THURSDAY THIS WEEK
13 AT 10:30 IN THE MORNING.

14 THAT IS THURSDAY OF THIS WEEK AT 10:30 IN THE
15 MORNING. THEN WE'LL GET YOU IN THE COURTROOM AND WE'LL STARTING
16 PICKING THE JURY.

17 IN THE MEANTIME, DON'T READ ANYTHING ABOUT THE
18 CASE. DON'T TALK TO ANYBODY ABOUT THE CASE. MAKE A NOTE OF
19 IT, A MENTAL NOTE ON THURSDAY.

20 MS. WAUGH: ALL RIGHT. OKAY.

21 THE COURT: DECEMBER 4TH AT 10:30.

22 MS. WAUGH: ALL RIGHT.

23 THE COURT: OKAY. 10:30 ON DECEMBER 4TH, THURSDAY.

24 MS. WAUGH: ALL RIGHT.

25 (PROSPECTIVE JUROR WAUGH EXITS THE
26 COURTROOM.)

27 MR. WAPNER: MAY I JUST HAVE ONE MOMENT TO PUT SOMETHING
28 ON THE RECORD BEFORE WE BRING IN THE NEXT JUROR?

1 THE COURT: YES. YOU WANT TO PUT ON THE RECORD THE FACT
2 THAT THERE WAS NO INTERROGATION BY THE DEFENDANT?

3 MR. WAPNER: WELL, I THINK THAT THE RECORD IS CLEAR.
4 BUT I WANTED TO PUT ON THE RECORD THE FACT THAT MS. WAUGH WAS
5 BLACK, SO THE RECORD IS CLEAR.

6 THE COURT: ALL RIGHT.

7 (PROSPECTIVE JUROR WEINGARTEN ENTERS
8 THE COURTROOM.)

9 THE COURT: MISS WEINGARTEN?

10 MS. WEINGARTEN: YES.

11 THE COURT: ALL RIGHT. MISS WEINGARTEN, WHERE DO YOU
12 LIVE?

13 MS. WEINGARTEN: TORRANCE.

14 THE COURT: DID YOU READ ANYTHING AT ALL ABOUT THIS CASE?

15 MS. WEINGARTEN: NO. THE ONLY THING I KNOW IS FROM THE
16 BRIEFING THAT YOU GAVE US BEFORE.

17 THE COURT: THAT'S RIGHT. NOTHING ELSE?

18 MS. WEINGARTEN: NO.

19 THE COURT: ALL RIGHT. THAT WILL HOLD IF YOU ARE
20 SELECTED AS ONE OF THE POSSIBLE JURORS IN THIS CASE. DON'T
21 READ ANYTHING ABOUT IT.

22 DON'T LISTEN TO THE RADIO OR TELEVISION.

23 MS. WEINGARTEN: I SEE.

24 THE COURT: THANK YOU. DO NOT DISCUSS IT WITH ANYONE.

25 MS. WEINGARTEN: OKAY.

26 THE COURT: NOW, OF COURSE YOU SAID THAT YOU HEARD FROM
27 ME WHAT THIS CASE IS ALL ABOUT. LET ME SUMMARIZE IT FOR YOU
28 AGAIN.

20B-4

1 THE DEFENDANT IS CHARGED WITH COMMISSION OF THE
2 CRIME OF MURDER. IT IS MURDER IN THE FIRST DEGREE AND IT WAS
3 COMMITTED DURING THE COURSE OF A ROBBERY.

4 NOW, COMMITTED DURING THE COURSE OF A ROBBERY
5 QUALIFIES THIS CASE FOR THE POSSIBILITY OF THE DEATH PENALTY.
6 NOW, THE DEATH PENALTY REALLY CONSISTS OF TWO THINGS, WHERE
7 A JURY FINDS EITHER LIFE WITHOUT POSSIBILITY OF PAROLE OR
8 DEATH. THAT IS ENTIRELY UP TO THE JUROR.

9 WHAT THE JURORS DO, THE JURORS SELECTED IN THE
10 CASE, FIRST IS TO DETERMINE WHETHER OR NOT THE DEFENDANT IS
11 GUILTY OF MURDER IN THE FIRST DEGREE. IF THEY DECIDE THAT
12 HE IS GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY HAVE
13 TO ANSWER THE QUESTION, WAS THAT MURDER COMMITTED IN THE
14 COURSE OF A ROBBERY.

15 BECAUSE IF IT IS COMMITTED IN THE COURSE OF A
16 ROBBERY, THE LEGISLATURE HAS SAID IT QUALIFIES THE CASE FOR
17 THE DEATH PENALTY.

18 MS. WEINGARTEN: YES.

19 THE COURT: OTHER CASES WOULD QUALIFY, FOR EXAMPLE, A
20 MURDER COMMITTED IN THE COURSE OF A BURGLARY, MURDER COMMITTED
21 IN THE COURSE OF A KIDNAPPING, MURDER COMMITTED IN THE COURSE
22 OF A RAPE, MURDER COMMITTED IN THE COURSE OF TORTURE, MURDER
23 COMMITTED IN THE COURSE OF THE MOLESTATION OF A CHILD AND THE
24 CHILD DIES AND MULTIPLE MURDERS AND A NUMBER OF OTHERS. THERE
25 ARE 19 OF THEM.

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1 THIS IS ONE OF THE 19 CASES WHERE IT QUALIFIES
2 FOR THE DEATH PENALTY SO THAT IT IS REQUESTED BY THE DISTRICT
3 ATTORNEY. THAT IS THE PURPOSE OF ALL OF THESE QUESTIONS,
4 IS TO FIND OUT WHAT YOUR ATTITUDE IS TOWARD THE DEATH PENALTY
5 AND WHETHER YOU CAN SERVE AS AN UNBIASED, UNPREJUDICED JUROR
6 IN THIS CASE IN LIGHT OF YOUR BELIEF OR OPINIONS AS TO THE
7 DEATH PENALTY; DO YOU UNDERSTAND?

8 MS. WEINGARTEN: UH-HUH.

9 THE COURT: I AM GOING TO ASK YOU A SERIES OF QUESTIONS.
10 THOSE QUESTIONS ARE SIMPLE ENOUGH, I THINK THEY ARE SIMPLE
11 ENOUGH. THEY CALL FOR A YES OR NO ANSWER BUT BECAUSE THEY
12 ARE COUCHED IN LANGUAGE THAT YOU MIGHT HAVE A QUESTION ABOUT,
13 ASK ME TO REPEAT IT OR EXPLAIN IT TO YOU.

14 MS. WEINGARTEN: OKAY.

15 THE COURT: NOW, THE FIRST TWO QUESTIONS HAVE TO DO
16 WITH FIRSTLY THE GUILT PHASE. I TOLD YOU ON THE GUILT PHASE,
17 THEY DON'T CONSIDER PENALTY AT ALL.

18 ON THE GUILT PHASE, THE FIRST QUESTION IS: DO
19 YOU HAVE ANY OPINION AS TO THE DEATH PENALTY THAT YOU CANNOT
20 MAKE AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF
21 THE DEFENDANT?

22 MS. WEINGARTEN: NO.

23 THE COURT: NOW, THE SECOND QUESTION, WHICH IS STILL
24 ON THE GUILT PHASE -- I TOLD YOU THAT IF YOU -- IF HE IS
25 FOUND GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE JURY
26 HAS TO ANSWER THE QUESTION TRUE OR FALSE, THAT IT WAS
27 COMMITTED DURING THE COURSE OF A ROBBERY; DO YOU UNDERSTAND?

28 MS. WEINGARTEN: UH-HUH.

1 THE COURT: ALL RIGHT, SO THE SECOND QUESTION IS:
2 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
3 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING THE
4 TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE? THE SPECIAL
5 CIRCUMSTANCE IS THAT IT WAS COMMITTED DURING THE COURSE OF
6 A ROBBERY.

7 MS. WEINGARTEN: NO.

8 THE COURT: ALL RIGHT, THE NEXT TWO QUESTIONS ASSUME
9 THAT THE DEFENDANT HAS BEEN FOUND GUILTY BY THE JURY OF MURDER
10 IN THE FIRST DEGREE WITH THE SPECIAL CIRCUMSTANCE THAT IT
11 WAS COMMITTED DURING THE COURSE OF A ROBBERY AND THIS IS THE
12 QUESTION NOW: DO YOU HAVE SUCH AN OPINION CONCERNING THE
13 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
14 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE
15 PRESENTED AT THE SECOND PHASE OF THE TRIAL?

16 MS. WEINGARTEN: NO.

17 THE COURT: I EXPLAINED TO YOU WHAT HAPPENS ON THE
18 SECOND PHASE OF THE TRIAL, DIDN'T I?

19 MS. WEINGARTEN: RIGHT.

20 THE COURT: THE NEXT QUESTION IS NOT THE SAME BUT IT
21 HAS TO DO WITH LIFE IMPRISONMENT: DO YOU HAVE SUCH AN OPINION
22 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
23 VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE,
24 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY
25 PHASE OF THE TRIAL?

26 MS. WEINGARTEN: NO.

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

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

3 MS. WEINGARTEN: YES, I DO.

4 THE COURT: GOOD.

5 GO AHEAD.

6 MR. CHIER: THANK YOU, YOUR HONOR.

7 MISS WEINGARTEN, MY NAME IS RICHARD CHIER AND
8 I REPRESENT MR. HUNT WHOM, AS YOU KNOW, IS PRESUMED TO BE
9 INNOCENT OF ANY WRONGDOING, CORRECT?

10 MS. WEINGARTEN: CORRECT.

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1 MR. CHIER: YOU KNOW THAT HE IS PRESUMED TO BE INNOCENT?

2 MS. WINGARTEN: RIGHT, INNOCENT UNTIL PROVEN GUILTY.

3 MR. CHIER: RIGHT?

4 MS. WEINGARTEN: RIGHT.

5 MR. CHIER: AND AT THIS INQUIRY HERE, IT IS NECESSARY
6 AT THIS STAGE BECAUSE IT WOULD BE TOO LATE TO GO INTO THESE
7 MATTERS IF YOU WERE SELECTED AS A JUROR AND THEN LATER ON FIND
8 OUT THAT YOU HAVE CERTAIN BIASES OR PREJUDICES OR LEANINGS.

9 WHAT I WOULD LIKE TO DO IS TO TELL YOU WHAT I AM
10 LOOKING FOR SO THAT YOU UNDERSTAND MY QUESTIONS A LITTLE
11 BETTER. I AM NOT TRYING TO TRICK YOU. THERE IS NO RIGHT
12 ANSWER OR WRONG ANSWER TO MY QUESTIONS. THERE IS ONLY YOUR
13 ANSWER AND YOUR POINT OF VIEW WHICH WE ARE TRYING TO DETERMINE
14 HERE.

15 AND WHAT I WOULD LIKE TO KNOW IS HOW YOU WOULD
16 ANSWER THE FOLLOWING QUESTION: I AM A PERSON WHO IS:

17 A, STRONGLY IN FAVOR OF THE DEATH PENALTY.

18 B, SOMEWHAT IN FAVOR OF THE DEATH PENALTY.

19 C, OPPOSED TO THE DEATH PENALTY.

20 OR D, HAVEN'T REALLY THOUGHT ABOUT IT.

21 OR E, OTHER.

22 MS. WEINGARTEN: A.

23 THE COURT: PARDON ME?

24 MS. WEINGARTEN: PARDON ME?

25 THE COURT: I DIDN'T HEAR YOUR ANSWER.

26 MS. WEINGARTEN: I AM STRONGLY FOR THE DEATH PENALTY.

27 MR. CHIER: OKAY. WHAT DO YOU MEAN?

28 ARE YOU ABLE TO TELL US WHAT YOU MEAN BY BEING

1 STRONGLY IN FAVOR OF THE DEATH PENALTY?

2 MS. WEINGARTEN: YES, I CAN.

3 I FEEL IF A MAN HAS KILLED A PERSON AND DONE A
4 CRIME, HE CAN BE SENTENCED OR SHOULD BE SENTENCED TO THE DEATH
5 PENALTY.

6 BUT THEN AGAIN, THERE ARE TWO DIFFERENT TYPES OF
7 CRIMES THAT COULD BE INVOLVED. FOR INSTANCE, YOU COULD TAKE
8 A MANSON -- OKAY, I WOULD SAY I AM STRONGLY FOR THE DEATH
9 PENALTY FOR THIS MAN AND YOU COULD TAKE A PERSON WHO HAS BEEN
10 CONVICTED OF A CRIME, WHO HAS BEEN PROVEN INNOCENT, WHICH
11 COULD INVOLVE THE DEATH PENALTY AND IT IS NOT FOR HIM. I FEEL
12 THAT THE DEATH PENALTY IS FOR A PERSON WHO HAS COMMITTED A
13 CRIME SEVERE ENOUGH TO DESERVE THE DEATH PENALTY.

14 DOES THAT ANSWER THE QUESTION?

15 THE COURT: YOU MEAN MURDER?

16 MS. WEINGARTEN: OR ONE OF THE 19 THAT YOU DESCRIBED.

17 THE COURT: WELL, THEY ARE ALL MURDERS.

18 MS. WEINGARTEN: OKAY, RIGHT.

19 MR. CHIER: IS THERE ANY CRIME, OTHER THAN A MURDER,
20 THAT YOU THINK THE DEATH PENALTY WOULD BE APPROPRIATE FOR?

21 MS. WEINGARTEN: SURE. CHILD MOLESTATION AND BRUTALLY
22 KILLING A CHILD.

23 THE COURT: YOU MEAN KILLING A CHILD IN THE COURSE OF
24 MOLESTATION, YOU MEAN?

25 MS. WEINGARTEN: RIGHT, WHICH YOU SAID.

26 THE COURT: HE DIDN'T ASK YOU THAT.

27 HE SAID OTHER THAN MURDER.

28 MS. WEINGARTEN: NO, NO, NO.

1 MR. CHIER: YOU MEAN OTHER THAN MURDER?

2 MS. WEINGARTEN: NO, NO.

3 SOMEBODY THAT KILLED SOMEBODY, MURDER.

4 MR. CHIER: SO IF THERE IS A MURDER WHICH IS INTENTIONAL
5 AND IN THE COURSE OF A ROBBERY, DO YOU THINK THAT THE DEATH
6 PENALTY IS THE MOST APPROPRIATE PENALTY FOR THAT TYPE OF CRIME?

7 I MEAN, WE ARE NOT DEALING NOW WITH YOUR ABILITY
8 TO FOLLOW THE EVIDENCE. WE ARE JUST TALKING ABOUT YOUR
9 ATTITUDE TOWARDS PUNISHMENT.

10 MS. WEINGARTEN: YOU ARE TELLING ME IF A MAN IN THE COURSE
11 OF A ROBBERY KILLED A MAN INTENTIONALLY DURING THE COURSE OF
12 A ROBBERY?

13 MR. CHIER: YES.

14 MS. WEINGARTEN: DOES HE DESERVE THE DEATH PENALTY?

15 MR. CHIER: YES.

16 MS. WEINGARTEN: YES, I THINK HE DOES.

17 MR. CHIER: IF THE JUDGE WERE TO INSTRUCT YOU THAT BEFORE
18 DECIDING WHAT TO DO WITH THIS PERSON, BUT AFTER YOU AND THE
19 REST OF THE JURORS -- THIS IS ASSUMING YOU WERE A JUROR ON
20 THIS CASE.

21 MS. WEINGARTEN: OKAY.

22 MR. CHIER: LET'S ASSUME THAT THE JURORS, YOU AND THE
23 11 OTHER JURORS HAVE FOUND THE DEFENDANT GUILTY AS CHARGED
24 OF FIRST DEGREE, INTENTIONAL MURDER IN THE COURSE OF A
25 ROBBERY AND THEN THERE IS A SECOND SEGMENT WHICH IS THE
26 PENALTY PHASE WHERE YOU DECIDE WHAT THE PUNISHMENT SHOULD BE
27 WHICH CAN BE, ACCORDING TO THE LAW, EITHER DEATH OR LIFE
28 WITHOUT THE POSSIBILITY OF PAROLE. NOW YOU ARE GOING TO

1 HEAR EVIDENCE, SOME OF WHICH EVIDENCE YOU WILL HAVE HEARD
2 BEFORE, SOME OF WHICH YOU WILL NOT HAVE HEARD BEFORE, SOME
3 OF THE EVIDENCE WILL BE GOOD FOR THE DEFENDANT AND SOME OF
4 THE EVIDENCE WILL BE BAD FOR HIM IN THE SENSE IT WILL, YOU
5 KNOW, IT WILL NOT BE FAVORABLE. YOU WILL HEAR GOOD AND BAD
6 IN THE SENSE OF FAVORABLE OR UNFAVORABLE, OKAY?

7 MS. WEINGARTEN: UH-HUH.

8 MR. CHIER: NOW, THE JUDGE WILL INSTRUCT YOU THAT YOU
9 SHOULD CONSIDER AND TAKE INTO ACCOUNT A NUMBER OF DIFFERENT
10 THINGS, SUCH AS THE CIRCUMSTANCES OF THE OFFENSE, WHICH YOU
11 WILL HEAR TO A CERTAIN EXTENT AGAIN, THE BACKGROUND OF THE
12 DEFENDANT, THE CIRCUMSTANCES ABOUT HIS CHILDHOOD, HIS AGE AT
13 THE TIME OF THE OFFENSE, HIS MENTAL STATE, THINGS LIKE THAT,
14 AND MY QUESTION TO YOU IS: DO YOU THINK THAT IN A CASE WHERE
15 THE EVIDENCE SHOWED THAT THE DEFENDANT INTENTIONALLY KILLED
16 IN THE COURSE OF A ROBBERY, LET'S SAY MOTIVATED BY GREED, IN
17 SUCH A CASE DO YOU THINK THE CIRCUMSTANCES OF THE OFFENSE
18 WOULD BE FAR MORE IMPORTANT THAN THE OTHER THINGS THAT THE
19 JUDGE SAID YOU OUGHT TO CONSIDER, SUCH AS AGE AND PRIOR
20 BACKGROUND, LACK OF PRIOR CRIMINAL HISTORY?

21 DO YOU KNOW WHAT I AM SAYING?

22 MS. WEINGARTEN: I KNOW WHAT YOU ARE SAYING BUT --

23 MR. CHIER: I AM NOT TRYING TO PUT WORDS IN YOUR
24 MOUTH.

25 MS. WEINGARTEN: YES, I UNDERSTAND.

26 MR. CHIER: I JUST WANT TO KNOW HOW YOU FEEL.

27 MS. WEINGARTEN: HOW I FEEL? OF COURSE, ALL OF THAT
28 WOULD BE TAKEN INTO CONSIDERATION BUT IF THE DEFENDANT DID

1 KILL A MAN, I MEAN --

2 THE COURT: DO I UNDERSTAND FROM THAT, THAT NO MATTER
3 WHAT YOU HEAR ON THE PENALTY PHASE, YOU ARE GOING TO VOTE FOR
4 DEATH AND NOTHING ELSE?

5 MS. WEINGARTEN: NO, NO, THAT IS NOT WHAT I AM SAYING.

6 THE COURT: THAT IS WHAT HE MAKES YOU APPEAR THAT YOU
7 ARE SAYING.

8 MS. WEINGARTEN: NO.

9 WHAT I AM TRYING TO SAY IN HIS CASE, IF HE IS PROVEN
10 BEYOND A DOUBT THAT HE IS GUILTY AND IS CHARGED WITH WHAT HE
11 IS BEING, IF HE IS CONVICTED OF, THEN THE PENALTY THAT HE GETS
12 OR THAT HE IS UP FOR, I WOULD SAY DEATH, I WOULD BE FOR IT.
13 BUT IF HE IS PROVEN INNOCENT, THEN NOT.

14 THE COURT: NO, NO.

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1 THE COURT: NO. NO, IF HE IS PROVEN INNOCENT, YOU DON'T
2 EVEN HAVE TO CONSIDER PENALTY AT ALL.

3 MS. WEINGARTEN: BUT MY POINT -- MY POINT ABOUT THE
4 DEATH PENALTY IS THAT IF A MAN IS GUILTY OF THE CRIME, THEN
5 HE SHOULD PAY.

6 MR. CHIER: WITH HIS LIFE?

7 MS. WEINGARTEN: NOT WITH HIS LIFE. YOU WOULD TAKE
8 INTO CONSIDERATION WHAT YOU SAID, THE THINGS YOU HAD SAID
9 EARLIER.

10 BUT, THERE IS A VERY FINE LINE BETWEEN THEM. IT
11 IS NOT ONE EXTREME OR THE OTHER.

12 I DON'T FEEL IT IS ONE EXTREME OR THE OTHER.
13 I DON'T MEAN TO BE PRESENTING IT THAT WAY. BUT THERE IS A
14 FINE LINE BETWEEN THE TWO.

15 THERE IS A VERY FINE LINE WHETHER A MAN -- IT
16 IS LIKE IF YOU TAKE A PERSON WHO -- HOW SHALL I SAY THIS?
17 OKAY. SO, FOR INSTANCE, WE'LL TAKE THE DEFENDANT. WE'LL
18 PUT HIM UP AGAINST A PERSON WHO HAS DONE MULTIPLE KILLINGS
19 AND THIS AND THAT.

20 I WOULD SAY WHY THAT ONE PERSON -- WE'LL USE MANSON,
21 FOR EXAMPLE. HE COMMITTED MURDERS. I WOULD, WITHOUT A SHADOW
22 OF A DOUBT, SAY YES, THAT MAN DESERVES TO DIE.

23 HE KILLED MULTIPLE PEOPLE. HE KNEW WHAT HE WAS
24 DOING. HE PLEADED INSANE. BUT I MEAN -- I DON'T KNOW THAT
25 MUCH ABOUT IT. BUT THEN IF YOU PUT THIS MAN RIGHT HERE UP
26 AGAINST HIM, THERE DOESN'T SEEM TO BE A COMPARISON IN THE
27 CRIME.

28 BUT YOU ARE BOTH SAYING THEY BOTH DESERVE -- DO

22^ 2
1 YOU GET WHAT I AM SAYING? THEY BOTH DESERVE THE DEATH PENALTY
2 AND I AM SAYING NO. THAT DOESN'T ANSWER THE QUESTION.

3 CAN YOU UNDERSTAND A LITTLE BIT?

4 MR. CHIER: YOU ARE SAYING THAT COMPARED TO OTHER REAL
5 BAD PEOPLE, THAT IT MAY NOT BE IN THIS PARTICULAR CASE, THAT
6 THE DEATH PENALTY IS WARRANTED? IS THAT WHAT YOU ARE SAYING?
7 OR IN A CASE?

8 MS. WEINGARTEN: YES.

9 MR. CHIER: WHEN YOU COMPARE THIS DEFENDANT TO THE WORST
10 THING YOU CAN THINK OF, WHICH WOULD BE SOMETHING LIKE THE
11 MANSON CRIME?

12 MS. WEINGARTEN: RIGHT, YES.

13 MR. CHIER: WHAT IS THE THING OR THE THINGS THAT YOU
14 THINK DISTINGUISH AN ORDINARY CASE FROM A MANSON-TYPE CASE,
15 MISS WEINGARTEN? DO YOU KNOW WHAT I AM SAYING?

16 THE COURT: I THINK IT IS IMPOSSIBLE TO ANSWER THAT
17 QUESTION. HOW CAN SHE CONCEIVE OF A SET OF CIRCUMSTANCES
18 NECESSARY IN THE VARIOUS TYPES OF CASES AND DISTINGUISH IT
19 FROM MANSON?

20 IT DOESN'T MAKE ANY SENSE.

21 MR. CHIER: I WILL REPHRASE THE QUESTION, THEN.

22 THE COURT: GO AHEAD.

23 MR. CHIER: THE MANSON CASE IS PARTICULARLY OFFENSIVE
24 BECAUSE IT INVOLVES MULTIPLE MURDERS. IS THAT IT?

25 MS. WEINGARTEN: I SEE WHAT HE IS TRYING TO SAY. NO.
26 THAT IS NOT WHAT I AM SAYING. I AM SAYING -- LET ME SEE IF
27 I CAN SAY THIS RIGHT.

28 YOU DON'T -- I DON'T THINK IT IS RIGHT TO, IF

1 A MAN COMMITS A MURDER -- IF A MAN COMMITS A MURDER, IT IS
2 LIKE WITH THE DEATH PENALTY. YOU ARE TURNING AROUND AND KILLING
3 HIM. OKAY?

4 A GUY COMMITS MURDER. HE GETS PUNISHMENT. HE
5 GETS KILLED.

6 I DON'T WANT TO SEEM THAT I AM STANDING UP HERE
7 AND SAYING YES, I WOULD KILL THE PERSON AND I PREFER THE DEATH
8 PENALTY.

9 WHAT I AM SAYING IS, THERE ARE SOME CASES SUCH
10 AS THE MANSON CASE WHERE YOU COULD FLAT OUT, SAY THAT OR THAT
11 I COULD. I CAN FLAT OUT, SAY IT. OKAY? AS I SIT HERE, THIS
12 GENTLEMAN SITTING HERE IS INNOCENT TO ME. HE IS NOT PROVEN
13 GUILTY.

14 OKAY? IF IT DOES PREVAIL THAT TO ME HE IS
15 100 PERCENT GUILTY, HE PULLED THE TRIGGER OR WHATEVER ON
16 ANOTHER MAN'S LIFE AND THE JUDGE SAYS YOU MUST EITHER SENTENCE
17 HIM TO DEATH OR TO LIFE WITHOUT POSSIBILITY OF PAROLE, MY
18 ANSWER WOULD BE TO THAT THAT I WOULD HAVE NO TROUBLE DECIDING.

19 I COULDN'T TELL YOU RIGHT NOW WHAT THAT WOULD
20 BE. BUT I WOULD NOT HAVE A HARD TIME DECIDING WHAT IT WOULD
21 BE. DOES THAT ANSWER YOUR QUESTION?

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1 MR. CHIER: NOT REALLY. BUT --

2 THE COURT: WELL, IT ANSWERS MY QUESTION.

3 MS. WEINGARTEN: THANK YOU.

4 THE COURT: HE WANTS TO ASK YOU SOME OTHER QUESTIONS.
5 HE IS NOT SATISFIED WITH YOUR ANSWERS.

6 MR. CHIER: YOU CAN'T SAY RIGHT NOW WHAT YOUR POSITION
7 WOULD BE?

8 MS. WEINGARTEN: ABSOLUTELY NOT.

9 MR. CHIER: BUT YOU ARE SAYING THAT YOU ARE A DECISIVE
10 ENOUGH TYPE OF PERSON SO YOU COULD MAKE A DECISION?

11 MS. WEINGARTEN: RIGHT. EXACTLY. I DEFINITELY COULD.

12 MR. CHIER: WHAT I AM REALLY INTERESTED IN MISS
13 WEINGARTEN, IS, ASSUMING THAT YOU ARE A DECISIVE PERSON AND
14 THAT YOU ARE A DECISIVE PERSON WHO WILL LISTEN TO THE JUDGE
15 AND FOLLOW HIS INSTRUCTIONS, DO YOU UNDERSTAND THAT NOBODY,
16 NOT EVEN THE JUDGE, CAN TELL YOU HOW TO VOTE FOR DEATH OR
17 LIFE? DO YOU UNDERSTAND THAT?

18 MS. WEINGARTEN: I FULLY UNDERSTAND THAT.

19 MR. CHIER: NOT THE OTHER JURORS?

20 MS. WEINGARTEN: ABSOLUTELY.

21 MR. CHIER: NOT ME?

22 MS. WEINGARTEN: THAT'S RIGHT.

23 MR. CHIER: NOT I AND NOT MR. WAPNER? EXCUSE ME.

24 MS. WEINGARTEN: THAT'S FINE.

25 MR. CHIER: DO YOU UNDERSTAND THAT COMPLETELY.

26 MS. WEINGARTEN: I ABSOLUTELY UNDERSTAND THAT.

27 MR. CHIER: SO IT IS TOTALLY UP TO YOU?

28 MS. WEINGARTEN: RIGHT.

1 MR. CHIER: AND THAT THERE ARE A LOT OF CIRCUMSTANCES
2 OTHER THAN THE FACT THAT SOMEBODY DIES AND WAS KILLED
3 INTENTIONALLY TO CONSIDER, RIGHT?

4 MS. WEINGARTEN: YES.

5 MR. CHIER: WHEN YOU DECIDE WHAT TO DO WITH THE PERSON?

6 MS. WEINGARTEN: UH-HUH.

7 MR. CHIER: YOU ARE BASICALLY ASSUMING, SHALL WE KILL
8 THIS GUY OR SHALL WE PUT HIM IN PRISON FOR LIFE FOR WHATEVER
9 REASON, RIGHT?

10 MS. WEINGARTEN: NO. I THOUGHT THAT WAS A QUESTION YOU
11 WERE ASKING ME, THOUGH.

12 MR. CHIER: MY QUESTION IS THIS, WOULD YOU BE WILLING
13 TO ATTACH ANY IMPORTANCE TO THINGS SUCH AS, IN ADDITION TO
14 THE CIRCUMSTANCES, SUCH AS AGE OR LACK OF CRIMINAL HISTORY
15 IN DECIDING WHETHER HE SHOULD LIVE OR DIE? OR DO YOU THINK
16 THAT YOU WOULD BE PRIMARILY INFLUENCED BY THE FACT THAT THE
17 DEFENDANT INTENTIONALLY TOOK THE LIFE OF ANOTHER PERSON?
18 DO YOU UNDERSTAND MY QUESTION?

19 MS. WEINGARTEN: I DID UP UNTIL YOU TOLD ME THAT HE
20 INTENTIONALLY TOOK THE LIFE OF ANOTHER PERSON.

21 MR. CHIER: YES. HE INTENTIONALLY DID IT BEYOND A
22 REASONABLE DOUBT.

23 MS. WEINGARTEN: SO YOU ARE TELLING ME THAT HE WALKED
24 UP IN A ROBBERY AND KILLED ANOTHER PERSON?

25 MR. CHIER: I AM NOT TELLING YOU HE DID THAT.

26 MS. WEINGARTEN: YOU ARE JUST SAYING FOR INSTANCE?
27 THAT IS A TOUGH ONE.

28 MR. CHIER: OKAY. I KNOW. DO YOU WANT A MINUTE TO

1 THINK ABOUT IT OR --

2 MS. WEINGARTEN: THAT'S NO. I DON'T NEED A MINUTE TO
3 THINK ABOUT IT.

4 THE COURT: WELL, I WILL ASK YOU A DIRECT QUESTION WITH
5 NOTHING FANCY ABOUT IT OR TRICKY OR --

6 MS. WEINGARTEN: WELL, HE IS ASKING MY OPINION, THOUGH.
7 IT IS TOUGH, ON MY OPINION.

8 THE COURT: LET ME ASK YOU THE QUESTIONS. OKAY?

9 MS. WEINGARTEN: OKAY.

10 THE COURT: YOU HAVE REACHED NOW THE PENALTY PHASE. YOU
11 DECIDE THAT THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST
12 DEGREE IN THE COURSE OF A ROBBERY.

13 I TOLD YOU THERE IS A SECOND PHASE OF THE TRIAL
14 WHERE YOU HEAR ALL OF THE EVIDENCE FOR AND AGAINST THE
15 DEFENDANT, HIS BACKGROUND, HIS AGE, HIS PRIOR CRIMINAL HISTORY
16 IF ANY, HIS MENTAL CONDITION AND A NUMBER OF OTHER FACTS.

17 THE PEOPLE TRY TO SHOW YOU THAT HE IS A BAD MAN.
18 THE DEFENDANT WILL TRY TO SHOW HE IS A GOOD MAN. NOW, WITHOUT
19 HEARING ALL OF THAT, FAVORABLE AND UNFAVORABLE STUFF, WITHOUT
20 HEARING THAT, HAVE YOU GOT YOUR MIND MADE UP TO THE POINT THAT
21 YOU WILL SAY THAT HE KILLED A MAN AND THEREFORE HE SHOULD GO
22 TO THE GAS CHAMBER?

23 MS. WEINGARTEN: NO. I SEE WHAT YOU ARE SAYING. NO,
24 ABSOLUTELY NOT.

25 THE COURT: YOU WILL CONSIDER EVERYTHING ON THE PENALTY
26 PHASE?

27 MS. WEINGARTEN: YES. I DIDN'T UNDERSTAND BEFORE.

28 THE COURT: OF COURSE. THAT IS THE LAW.

1 MS. WEINGARTEN: I DIDN'T UNDERSTAND WHAT HE WAS
2 SAYING. ABSOLUTELY.

3 THE COURT: THAT IS WHY I TAKE OVER BECAUSE I AM SURE
4 THAT YOU DIDN'T UNDERSTAND.

5 MS. WEINGARTEN: I WAS GETTING CONFUSED THERE A LITTLE
6 BIT.

7 THE COURT: THEN, YOU WILL DECIDE WHETHER IT SHOULD BE
8 LIFE WITHOUT POSSIBILITY OF PAROLE OR SHOULD IT BE THE GAS
9 CHAMBER? IS THAT CORRECT?

10 MS. WEINGARTEN: BELIEVE ME, EVERYTHING THAT WOULD BE
11 PRESENTED WOULD BE TAKEN INTO CONSIDERATION BEFORE EVER
12 SENTENCING ANY MAN OR WOMAN TO THE DEATH PENALTY.

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1 THE COURT: OF COURSE, BECAUSE IF THE JURORS FOUND LET'S
2 SAY THAT HE COMMITTED A MURDER AND IT WAS DELIBERATE AND
3 INTENTIONAL AND IT'S DONE IN THE COURSE OF A ROBBERY, ARE YOU
4 GOING TO AUTOMATICALLY VOTE THE DEATH PENALTY BECAUSE OF THAT?

5 MS. WEINGARTEN: NO. I WILL NOT.

6 THE COURT: THAT IS WHAT I ASKED YOU.

7 MS. WEINGARTEN: OKAY.

8 MR. CHIER: SUPPOSE HE COMMITTED TWO MURDERS: WOULD
9 YOU AUTOMATICALLY GIVE HIM THE DEATH PENALTY IN THAT CASE?

10 THE COURT: DON'T ANSWER THAT QUESTION. ALL RIGHT. GO
11 AHEAD.

12 MS. WEINGARTEN: I WILL ANSWER IT. NO, IT WOULD BE
13 UNDER THE SAME CIRCUMSTANCES THAT HE JUST EXPLAINED TO ME.
14 EVERYTHING STILL WOULD BE TAKEN INTO CONSIDERATION OF WHAT
15 YOU SAID PRIOR AND WHAT HE SAID.

16 MR. CHIER: YOU HAVE IN MIND HOW THE TYPE OF CASE WORKS
17 IN TERMS OF THE TRIAL PROCEDURES WHERE THERE IS A GUILT PHASE
18 AND A PENALTY PHASE?

19 MS. WEINGARTEN: RIGHT. UH-HUH.

20 MR. CHIER: DO YOU KNOW THAT IF IN THE PENALTY PHASE
21 YOU BASICALLY START OVER AGAIN -- BUT THE ISSUE OF GUILT HAS
22 ALREADY BEEN DECIDED?

23 MS. WEINGARTEN: RIGHT.

24 MR. CHIER: THE PENALTY PHASE IS SAYING WHAT DO WE DO
25 WITH THIS PERSON WHO HAS DONE THIS? I DON'T KNOW WHAT TO DO,
26 SO, LET'S HEAR ABOUT IT. BASICALLY, THAT IS WHAT IS
27 HAPPENING, RIGHT?

28 MS. WEINGARTEN: ISN'T THAT WHERE YOU WEIGH THE SEVERITY

1 OF THE CASE?

2 MR. CHIER: RIGHT. OKAY. BUT YOU UNDERSTAND WHAT IS
3 HAPPENING AT THE PENALTY PHASE. YOU ARE SAYING OR IT IS BEING
4 SAID BEFORE WE DECIDE WHAT TO DO WITH THIS PERSON, LET'S HEAR
5 ABOUT THE PERSON, RIGHT?

6 MS. WEINGARTEN: RIGHT.

7 MR. CHIER: OKAY. NOW, WHEN YOU BEGIN THE GUILT PHASE,
8 WHEN YOU DO THAT THE NEEDLE HERE, WAS LIKE TOTALLY IN THE
9 MIDDLE. IT WAS NOT LEANING ONE WAY OR THE OTHER.

10 WHEN YOU START ON THE PENALTY PHASE, YOU HAD JUST
11 CONVICTED THE DEFENDANT OF FIRST DEGREE, INTENTIONAL MURDER
12 IN THE COURSE OF A ROBBERY.

13 DO YOU THINK THE NEEDLE, YOUR NEEDLE, YOUR
14 NEUTRALITY NEEDLE WOULD BE LEANING ONE WAY OR THE OTHER AT
15 THAT POINT, HAVING JUST CONVICTED THE GUY?

16 MS. WEINGARTEN: NO.

17 MR. CHIER: OR WOULD YOU LIKE, WIPE THE SLATE CLEAN
18 BEFORE DECIDING WHAT TO DO WITH HIM?

19 MS. WEINGARTEN: YES.

20 MR. CHIER: WOULD YOU, IF SELECTED AS A JUROR, PROMISE
21 TO DO THAT?

22 MS. WEINGARTEN: ABSOLUTELY.

23 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 MR. WAPNER: PASS FOR CAUSE.

26 THE COURT: ALL RIGHT. BOTH OF THEM SAID THAT THEY PASS
27 FOR CAUSE. THAT MEANS THAT YOU QUALIFY AS A JUROR IN THIS
28 CASE.

1 MS. WEINGARTEN: AFTER ALL THAT?

2 THE COURT: AFTER ALL THAT, YOU QUALIFY.

3 MS. WEINGARTEN: OKAY.

4 THE COURT: NOW, THIS IS WHAT I WILL ASK YOU TO DO, IS
5 TO COME BACK TO THE JURY ASSEMBLY ROOM ON THURSDAY. THAT IS
6 DECEMBER THE 4TH AT 10:30 A.M.

7 BY THAT TIME, WE'LL HAVE GONE THROUGH THE REST
8 OF THOSE ON THE LIST. YOU ARE A W. WE HAVE GOT A FEW MORE
9 W'S AND Z'S AND SOME OTHERS THAT WERE CARRIED OVER.

10 WE'LL BE FINISHED BY THURSDAY. SO, ALL OF YOU
11 WILL COME INTO THE COURTROOM AND WE WILL START PICKING A JURY.

12 MS. WEINGARTEN: I DIDN'T TRY TO MAKE THINGS DIFFICULT.
13 I JUST WANTED TO UNDERSTAND.

14 THE COURT: YOU DID THE BEST THAT YOU COULD. IT WAS
15 VERY GOOD.

16 SO, I WILL ASK YOU TO COME BACK ON THURSDAY,
17 DECEMBER 4TH AT 10:30 A.M. IN THE JURY ASSEMBLY ROOM.

18 MS. WEINGARTEN: OKAY. I WILL BE THERE.

19 THE COURT: WE WILL SEE YOU AGAIN. THANK YOU.

20 MS. WEINGARTEN: THANK YOU.

21 (PROSPECTIVE JUROR WEINGARTEN EXITS
22 THE COURTROOM.)

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1 (PROSPECTIVE JUROR ERVIN WHITFIELD
2 ENTERED THE COURTROOM.)

3 THE COURT: GOOD AFTERNOON, MR. WHITFIELD.

4 MR. WHITFIELD: GOOD AFTERNOON, YOUR HONOR.

5 THE COURT: HAVE WE SEEN YOU BEFORE? I THINK WE HAD
6 YOU IN HERE BEFORE.

7 MR. WHITFIELD: NO, SIR.

8 THE COURT: MR. WHITFIELD, WHERE DO YOU LIVE?

9 MR. WHITFIELD: I LIVE IN WEST LOS ANGELES.

10 THE COURT: ALL RIGHT. DID YOU READ ANYTHING AT ALL
11 ABOUT THIS CASE IN THE NEWSPAPERS OR ANY PUBLICATIONS OR
12 ANYTHING OF THAT KIND?

13 MR. WHITFIELD: NO, I HAVEN'T.

14 THE COURT: YOU HAVEN'T DISCUSSED IT WITH ANY OF THE
15 PROSPECTIVE JURORS OR ANY THIRD PERSON?

16 MR. WHITFIELD: NO, I HAVEN'T.

17 THE COURT: ALL RIGHT. AND YOU MAINTAIN THAT, IF YOU
18 WOULD, IF YOU ARE SELECTED AS A JUROR AND IF YOU ARE QUALIFIED,
19 YOU THEN WILL HEAR ALL OF THE EVIDENCE.

20 MR. WHITFIELD: YES, SIR.

21 THE COURT: OF COURSE, YOU WERE HERE WHEN I GAVE A
22 GENERAL IDEA AS TO WHAT THE CASE IS ALL ABOUT, BUT LET ME
23 SUMMARIZE IT AGAIN FOR YOU AS A PRELIMINARY TO SOME OF THE
24 QUESTIONS I AM GOING TO ASK YOU.

25 YOU KNOW THAT THE CHARGE AGAINST THE DEFENDANT
26 IS THAT HE COMMITTED A MURDER IN THE COURSE OF A ROBBERY.

27 MR. WHITFIELD: I AM AWARE OF THAT.

28 THE COURT: AND THE PHRASE "IN THE COURSE OF A ROBBERY"

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1 QUALIFIES THE CASE FOR THE POSSIBLE DEATH PENALTY; DO YOU
2 UNDERSTAND?

3 MR. WHITFIELD: YES, SIR.

4 THE COURT: ALSO, WHEN I TALK ABOUT THE DEATH PENALTY,
5 UNLESS I MAKE IT OTHERWISE OBVIOUS, THE DEATH PENALTY IN
6 CALIFORNIA INCLUDES ONE OF TWO THINGS: LIFE IMPRISONMENT
7 WITHOUT THE POSSIBILITY OF PAROLE OR ACTUAL DEATH IN THE GAS
8 CHAMBER, DO YOU UNDERSTAND THAT?

9 MR. WHITFIELD: YES.

10 THE COURT: NOW THE LEGISLATURE HAS SAID THAT IF
11 SOMEBODY COMMITS A MURDER WHICH IS FIRST DEGREE MURDER IN
12 THE COURSE OF A ROBBERY, IN THE COURSE OF A BURGLARY IN
13 THE COURSE OF A RAPE, IN THE COURSE OF KIDNAPPING, MULTIPLE
14 MURDER, IN THE COURSE OF TORTURE AND CRIMES OF THAT KIND,
15 WITH THOSE CIRCUMSTANCES, THEY ALL QUALIFY FOR THE DEATH PENALTY,
16 THE POSSIBILITY OF THE DEATH PENALTY.

17 MR. WHITFIELD: I SEE.

18 THE COURT: DO YOU UNDERSTAND --

19 MR. WHITFIELD: YES.

20 THE COURT: -- OUR PROCESS?

21 AND WHAT WE ARE GOING TO DO IS TO DETERMINE WHETHER
22 OR NOT ALL OF THE PROSPECTIVE JURORS CAN QUALIFY AS A JUROR
23 IN A CASE OF THIS KIND.

24 MR. WHITFIELD: YES, SIR.

25 THE COURT: AND IT ALL DEPENDS UPON THEIR ATTITUDES
26 TOWARDS THE DEATH PENALTY. THAT IS WHY THE QUESTIONS I AM
27 GOING TO ASK YOU ARE DESIGNED FOR THE PURPOSE OF SEARCHING
28 YOUR MIND AS TO YOUR FEELINGS OR YOUR OPINION WITH RESPECT

1 TO THE DEATH PENALTY.

2 MR. WHITFIELD: OKAY.

3 THE COURT: ALL RIGHT, NOW THE FIRST QUESTIONS -- OR
4 BEFORE I GO INTO THAT, THE JURY AS IT IS CONSTITUTED WHEN
5 IT IS SELECTED WILL HEAR EVIDENCE AND THAT EVIDENCE WILL DEAL
6 ONLY WITH WHETHER OR NOT THE DEFENDANT COMMITTED THE CRIME
7 OF MURDER IN THE FIRST DEGREE. IF THEY FIND THAT IT WAS MURDER
8 IN THE FIRST DEGREE, THEN THEY ARE CALLED UPON TO ANSWER A
9 QUESTION: WAS THAT MURDER COMMITTED IN THE COURSE OF A ROBBERY?
10 AND THAT IS WHAT IS CALLED A SPECIAL CIRCUMSTANCE, YOU SEE.

11 MR. WHITFIELD: YES.

12 THE COURT: IF IT WAS COMMITTED IN THE COURSE OF A
13 BURGLARY OR IN THE COURSE OF A KIDNAPPING, YOU SEE, THE JURY
14 THEN ANSWERS THE QUESTION TRUE OR FALSE, THAT IF THE MURDER
15 WAS COMMITTED DURING THE COURSE OF A ROBBERY, WHICH QUALIFIES
16 IT, AS I SAID, FOR THE POSSIBLE DEATH PENALTY OR LIFE
17 IN PRISON.

18 NOW THE FIRST TWO QUESTIONS I AM GOING TO ASK
19 YOU ARE ON THE GUILT PHASE OF THE TRIAL WHERE THEY ARE TO
20 DETERMINE GUILT OR NOT AND THAT IS CALLED THE GUILT PHASE.
21 THE QUESTION OF PENALTY IS NEVER INVOLVED IN THAT PHASE AND
22 THAT COMES LATER ON IN THE EVENT THE JURY DECIDES THAT IT
23 IS MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY.

24 NOW THE FIRST TWO QUESTIONS I AM GOING TO ASK
25 YOU DEAL WITH JUST THE GUILT PHASE, NOT THE PENALTY PHASE
26 AT THE TRIAL.

27 AND IF YOU DON'T UNDERSTAND ANY QUESTION, ASK
28 ME TO REPEAT IT AND I WILL BE HAPPY TO EXPLAIN IT.

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

MR. WHITFIELD: NO, I DON'T.

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1 THE COURT: THE SECOND QUESTION HAS TO DO WITH THE TRUTH
2 OR FALSITY OF THE SPECIAL CIRCUMSTANCE, WHETHER IT WAS COMMITTED
3 DURING THE COURSE OF A ROBBERY: DO YOU HAVE ANY OPINION
4 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
5 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
6 SPECIAL CIRCUMSTANCE?

7 MR. WHITFIELD: NO, I DO NOT.

8 THE COURT: NOW, THE NEXT TWO QUESTIONS PRESUPPOSE THAT
9 THERE HAS BEEN A VERDICT OF GUILT OF MURDER IN THE FIRST DEGREE
10 WITH THE SPECIAL CIRCUMSTANCE COMMITTED DURING THE COURSE
11 OF ROBBERY. THESE TWO QUESTIONS PERTAIN TO THAT WHEN YOU
12 CONSIDER THE PENALTY PHASE: DO YOU HAVE SUCH AN OPINION
13 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
14 VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE
15 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

16 MR. WHITFIELD: AUTOMATICALLY, NO.

17 THE COURT: AND THE NEXT QUESTION IS ALSO "AUTOMATICALLY"
18 BUT IT PERTAINS TO LIFE IMPRISONMENT: DO YOU HAVE SUCH AN
19 OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
20 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE
21 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
22 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

23 MR. WHITFIELD: AUTOMATICALLY, NO.

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

28 MR. WHITFIELD: YES, I UNDERSTAND.

23A-2

1 THE COURT: ALL RIGHT. ANY QUESTIONS?

2 MR. CHIER: YES, JUST A FEW, YOUR HONOR.

3 GOOD AFTERNOON, MR. WHITFIELD. MY NAME IS RICHARD
4 CHIER AND I REPRESENT MR. HUNT.

5 MR. WHITFIELD: HOW DO YOU DO?

6 MR. CHIER: HI.

7 AND I WOULD LIKE TO ASK YOU A FEW PERSONAL QUESTIONS
8 CONCERNING YOUR ATTITUDE TOWARDS THE DEATH PENALTY.

9 NOT EVER HAVING MET YOU BEFORE, IT IS KIND OF
10 AWKWARD TO START OUT BY ASKING REAL PERSONAL QUESTIONS BUT
11 THIS IS THE ONLY WAY WE CAN DO IT.

12 MR. WHITFIELD: I UNDERSTAND.

13 MR. CHIER: AND I WANT TO ASK YOU IF YOU ARE STRONGLY
14 IN FAVOR OF THE DEATH PENALTY, SOMEWHAT IN FAVOR OF IT, NOT
15 IN FAVOR OF IT OR HAVEN'T THOUGHT ABOUT IT MUCH PRIOR TO TODAY.

16 MR. WHITFIELD: WELL, OTHER THAN WHAT I HAVE SEEN THROUGH
17 THE MEDIA -- EXCUSE ME -- I MYSELF PERSONALLY, I WOULD WEIGH
18 THE DEATH PENALTY IN TERMS OF THE CIRCUMSTANCE INVOLVED HERE.

19 MR. CHIER: HAVE YOU SEEN OR HEARD ANYTHING ABOUT THIS
20 PARTICULAR CASE IN THE MEDIA?

21 MR. WHITFIELD: NO.

22 THE COURT: I ASKED HIM ABOUT THAT AND HE SAID NO.

23 MR. CHIER: I AM SORRY. I DIDN'T HEAR YOUR HONOR.

24 THE COURT: YOU SHOULD LISTEN.

25 MR. CHIER: DID YOU HAPPEN TO WATCH CHANNEL 9 LAST NIGHT,
26 THE PROGRAM "TO KILL IN CALIFORNIA," THE PROGRAM ABOUT THE
27 DEATH PENALTY IN CALIFORNIA?

28 MR. WHITFIELD: NO, I DIDN'T.

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1 THE COURT: IF THE CIRCUMSTANCES IN YOUR OPINION
2 WARRANTED IT, YOU WOULD HAVE NO PROBLEM IN RETURNING A PENALTY
3 OF DEATH?

4 MR. WHITFIELD: WITH THE EVIDENCE AVAILABLE TO ME AND
5 I WEIGHED ALL OF THE FACTS, ACCORDING TO LAW, I WOULD -- IT
6 WOULD BE UP TO -- LIKE I SAID, IT WOULD BE UP TO THE EVIDENCE
7 INVOLVED.

8 I COULDN'T SAY RIGHT NOW BUT I WOULD HAVE, IF
9 THE EVIDENCE AVAILABLE TO ME WOULD WARRANT THAT, I WOULDN'T
10 HAVE A PROBLEM WITH IT, I'D SAY, IF THAT IS ANSWERING YOUR
11 QUESTION.

12 MR. CHIER: I UNDERSTAND, YES.

13 DO YOU UNDERSTAND THAT THE LAW PRESUMES MR. HUNT
14 TO BE INNOCENT UNTIL HE IS PROVEN GUILTY?

15 MR. WHITFIELD: OF COURSE, OF COURSE.

16 MR. CHIER: LET ME JUST ASK, MR. WHITFIELD, IF THE
17 SITUATION WERE REVERSED AND YOU WERE SITTING IN THE DEFENDANT'S
18 SPOT AND LOOKING FOR 12 JURORS WHOM YOU THOUGHT, TOGETHER
19 WITH YOUR ATTORNEYS, WOULD BE NEUTRAL AND IMPARTIAL AND GIVE
20 YOU A FAIR TRIAL, IS YOUR PRESENT STATE OF MIND IN THAT REGARD
21 SUCH THAT YOU WOULD BE COMFORTABLE HAVING 12 PEOPLE IN YOUR
22 STATE OF MIND SIT AS A JUROR ON YOUR OWN CASE?

23 MR. WHITFIELD: I WOULD FEEL COMFORTABLE, YES.

24 MR. CHIER: OKAY, THANK YOU. I PASS FOR CAUSE, YOUR
25 HONOR.

26 THE COURT: ALL RIGHT.

27 MR. WAPNER: GOOD AFTERNOON, MR. WHITFIELD. I AM FRED
28 WAPNER, THE DEPUTY D.A. WHO IS PROSECUTING THIS CASE.

1 ARE YOUR VIEWS ABOUT THE DEATH PENALTY ROOTED
2 IN ANY RELIGIOUS, MORAL OR PHILOSOPHICAL BASIS?

3 MR. WHITFIELD: NO.

4 MR. WAPNER: DO YOU THINK YOU ARE THE KIND OF PERSON
5 WHO IS CAPABLE OF MAKING THIS KIND OF LIFE OR DEATH DECISION?

6 MR. WHITFIELD: YES.

7 MR. CHIER: DO YOU HAVE ANY HESITATION ABOUT IT?

8 MR. WHITFIELD: NO.

9 MR. WAPNER: DO YOU UNDERSTAND THAT ALTHOUGH YOU WILL
10 BE DELIBERATING WITH 11 OTHER PEOPLE, THE JUDGE IS GOING TO
11 TELL YOU THAT YOU HAVE TO CAST YOUR OWN INDIVIDUAL BALLOT?

12 MR. WHITFIELD: I UNDERSTAND.

13 MR. WAPNER: AND YOU DON'T THINK YOU WOULD HAVE
14 ANY TROUBLE WITH THAT?

15 MR. WHITFIELD: LIKE I SAID, IF THE EVIDENCE PRESENTED
16 TO ME AND THROUGH DELIBERATIONS, I WOULD WEIGH IT ACCORDING
17 TO THE WAY IT WAS PRESENTED AND I DON'T THINK SITTING HERE,
18 THIS IS MY FIRST TIME I HAVE EVER BEEN A PROSPECTIVE JUROR,
19 BUT I DON'T IMAGINE I WOULD HAVE ANY PROBLEM.

20 MR. WAPNER: OKAY, THANK YOU. I WILL PASS FOR CAUSE,
21 YOUR HONOR.

22 THE COURT: PASS FOR CAUSE?

23 MR. CHIER: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. NOW MR. WHITFIELD, BOTH SIDES
25 HAVE PASSED FOR CAUSE, WHICH MEANS YOU CAN QUALIFY AS A JUROR
26 IN THIS CASE.

27 MR. WHITFIELD: I SEE.

28 THE COURT: NOW WE HAVE TO GO THROUGH ALL THE W'S AND

1 THROUGH Z AND FINISH UP WITH EVERYBODY WE HAVE ON THE LIST.

2 MR. WHITFIELD: I UNDERSTAND.

3 THE COURT: IT IS EXPECTED -- WE ALSO HAVE SOME OTHERS
4 THAT HAVE BEEN CARRIED OVER UNTIL TOMORROW. IT IS EXPECTED
5 WE WILL FINISH THIS WHOLE PROCESS BY WEDNESDAY. WHAT I WILL
6 ASK YOU TO DO IS COME IN HERE ON THURSDAY, IF YOU WILL,
7 THURSDAY AT 10:30 IN THE JURY ASSEMBLY ROOM AND YOU WILL ALL
8 GATHER THERE AND WE WILL ASK YOU TO COME IN HERE AND WE WILL
9 START THE TRIAL, ALL RIGHT?

10 MR. WHITFIELD: OKAY.

11 THE COURT: IN THE MEANTIME, DON'T READ ANYTHING ABOUT
12 IT OR DON'T TALK TO ANYBODY ABOUT IT.

13 MR. WHITFIELD: OKAY.

14 THE COURT: THANK YOU VERY MUCH. SEE YOU HERE AT 10:30
15 ON THURSDAY.

16 MR. WHITFIELD: THURSDAY AT 10:30?

17 THE COURT: YES. SEE YOU THEN.

18 (RECESS.)

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1 THE COURT: WE ARE TAKING A LADY OUT OF TURN.

2 (PROSPECTIVE JUROR ZWIESLER ENTERS

3 THE COURTROOM.)

4 THE COURT: MRS. ZWIESLER, GOOD AFTERNOON.

5 MS. ZWIESLER: THANK YOU FOR TAKING ME.

6 THE COURT: WHERE DO YOU LIVE, MS. ZWIESLER?

7 MS. ZWIESLER: SANTA MONICA.

8 THE COURT: CAN'T YOU WALK HOME FROM HERE?

9 MS. ZWIESLER: I COULD IF IT IS DAYTIME. BUT NOT IN
10 THE NIGHTTIME, NO.

11 THE COURT: I SEE.

12 MS. ZWIESLER: I HAVE TO TAKE THE BUS.

13 THE COURT: I SEE. ALL RIGHT. HAVE YOU EVER READ ABOUT
14 THIS CASE EXCEPT WHAT I TOLD YOU IN THE COURTROOM?

15 MS. ZWIESLER: I MAY HAVE READ IT. I MAY HAVE READ IT
16 IN THE PAPER BUT I CAN'T SAY THAT --

17 THE COURT: YOU READ THE SANTA MONICA OUTLOOK?

18 MS. ZWIESLER: THE SANTA MONICA --

19 THE COURT: OUTLOOK?

20 MS. ZWIESLER: YES, OUTLOOK.

21 THE COURT: AND DID YOU READ ANYTHING AT ALL ABOUT THE
22 CASE?

23 MS. ZWIESLER: I DON'T REMEMBER. I MAY HAVE. BUT I
24 HONESTLY DON'T REMEMBER.

25 THE COURT: DID YOU SEE A PICTURE OF THE DISTRICT
26 ATTORNEY AND ME OR ONE OF THE OTHER COUNSEL FOR THE DEFENDANT?

27 MS. ZWIESLER: NO. I HAVE NOT, NO.

28 THE COURT: YOU DIDN'T READ ANYTHING? YOU DON'T REMEMBER?

1 MS. ZWIESLER: I DON'T REMEMBER, NO.

2 THE COURT: IF WHATEVER YOU HAVE READ COMES BACK TO YOU
3 AGAIN, YOU SHOULD FORGET EVERYTHING ABOUT IT.

4 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, YOU
5 WILL BE GUIDED ENTIRELY BY THE EVIDENCE, WON'T YOU?

6 MS. ZWIESLER: YES.

7 THE COURT: ALL RIGHT. NOW, LET ME SUMMARIZE WHAT I
8 TOLD ALL OF THE JURORS WHEN YOU WERE HERE SEVERAL WEEKS AGO.

9 THE CHARGE AGAINST THE DEFENDANT IS ONE OF MURDER
10 IN THE FIRST DEGREE AND THAT THAT MURDER WAS COMMITTED IN THE
11 COURSE OF A ROBBERY.

12 NOW, WHERE A MURDER IS COMMITTED IN THE COURSE
13 OF A ROBBERY OR A BURGLARY OR A KIDNAPPING OR MULTIPLE MURDERS
14 OR THE MOLESTATION OF A CHILD WHO DIES OR A CASE OF TORTURE
15 AND A NUMBER OF OTHERS, THE LEGISLATURE HAS SAID THAT IN ALL
16 OF THOSE SPECIFIC INSTANCES WHICH I HAVE JUST OUTLINED TO YOU,
17 THAT INCLUDES ROBBERY -- ALL OF THOSE INSTANCES, THOSE CRIMES,
18 THE WAY THEY WERE COMMITTED QUALIFY FOR THE DEATH PENALTY.

19 NOW, WHEN I TALK ABOUT THE DEATH PENALTY, I MEAN
20 WHERE THE JURY HAS A RIGHT TO DETERMINE WHETHER OR NOT IT SHOULD
21 BE LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS
22 CHAMBER. DO YOU SEE?

23 MS. ZWIESLER: YES.

24 THE COURT: ALL RIGHT. NOW, IN A CASE OF THAT KIND,
25 THERE ARE TWO PHASES OF THE TRIAL. WE MAY NEVER COME TO THE
26 SECOND. BUT THE FIRST PHASE OF THE TRIAL IS WHAT WE CALL THE
27 GUILT PHASE WHERE THE JURY DETERMINES THE GUILT OR INNOCENCE
28 OF THE DEFENDANT ON THE CHARGE OF MURDER.

1 IF THEY FIND THAT THE DEFENDANT WAS GUILTY OF THE
2 CRIME OF MURDER, THEN THEY HAVE QUESTIONS TO ANSWER, WAS THAT
3 MURDER COMMITTED IN THE COURSE OF A ROBBERY. ALL RIGHT?

4 MS. ZWIESLER: YES.

5 THE COURT: THAT IS WHAT IS KNOWN AS A SPECIAL
6 CIRCUMSTANCE. AND THEY ANSWER THAT QUESTION, IS IT TRUE OR
7 IS IT FALSE THAT IT WAS COMMITTED IN THE COURSE OF A
8 ROBBERY. THE JURY ANSWERS THAT QUESTION.

9 IF THEY ANSWER YES, THAT IT WAS COMMITTED IN THE
10 COURSE OF A ROBBERY, THEN WE HAVE A SECOND PHASE THAT WE CALL
11 THE PENALTY PHASE AND ANOTHER TRIAL WITH THE SAME JURY, YOU
12 SEE WHERE EVIDENCE IS PRESENTED BOTH BY THE DEFENSE AND BY
13 THE PEOPLE.

14 THAT EVIDENCE IS DIRECTED TO SHOW EITHER ONE, THAT
15 THE DEFENDANT -- OR BOTH -- THAT THE DEFENDANT IS A GOOD MAN
16 AND THINGS FAVORABLE TO HIM OR THINGS UNFAVORABLE, THAT HE
17 IS A BAD MAN, WHICH THE PROSECUTION DOES.

18 NOW, THE JURY MUST CONSIDER ALL THE FACTORS THAT
19 I AM GOING TO MENTION TO YOU, FACTORS OF HIS AGE, WHETHER OR
20 NOT HE HAS ANY PENAL BACKGROUND -- I MEAN CRIMINAL BACKGROUND --
21 ANY FELONIES COMMITTED.

22 THEY DETERMINE WHETHER OR NOT -- THEY ALSO
23 CONSIDER, OF COURSE, THE FACTS OF THE CRIME ITSELF. AND THEY
24 ALSO CONSIDER THE DEFENDANT'S CHARACTER, HIS BACKGROUND, HIS
25 HISTORY, HIS MENTAL AND HIS PHYSICAL CONDITION. ALL OF THOSE
26 MUST BE CONSIDERED BY THE JURY AND THERE IS EVIDENCE TO THAT
27 EFFECT.

28 IN OTHER WORDS, BEFORE YOU MAKE UP YOUR MIND AS

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1 TO WHAT THE PENALTY SHOULD BE, YOU ARE TO CONSIDER ALL OF
2 THAT EVIDENCE WHICH COMES BEFORE YOU ON THE PENALTY PHASE.
3 ARE YOU WILLING TO DO THAT?

4 MS. ZWIESLER: YES.

5 THE COURT: NOW, I AM GOING TO ASK YOU A SERIES OF
6 QUESTIONS TO EXPLORE YOUR STATE OF MIND OR YOUR FEELINGS
7 ABOUT THE DEATH PENALTY, YOUR OPINION WITH RESPECT TO IT.
8 NOW, THOSE QUESTIONS AS WORDED WILL REQUIRE A YES OR NO
9 ANSWER. IF YOU DON'T UNDERSTAND THE QUESTION, I WILL REPEAT
10 IT. IF YOU ARE UNCLEAR ABOUT IT, I WILL EXPLAIN IT TO YOU.
11 ALL RIGHT?

12 MS. ZWIESLER: ALL RIGHT.

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1 THE COURT: NOW, THE FIRST TWO QUESTIONS ARE QUESTIONS
2 WHICH RELATE TO THE GUILT PHASE OF THE TRIAL. THE GUILT PHASE
3 IS THE GUILTY OR NOT GUILTY, THE TRUE OR FALSE, WAS IT DURING
4 THE COURSE OF A ROBBERY.

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

9 MS. ZWIESLER: WELL, I AM OPPOSED TO THE DEATH PENALTY.
10 WOULD THAT ANSWER THE QUESTION?

11 THE COURT: ARE YOU OPPOSED TO THE DEATH PENALTY UNDER
12 ALL CIRCUMSTANCES?

13 MS. ZWIESLER: YES I AM.

14 THE COURT: ANY CIRCUMSTANCES?

15 MS. ZWIESLER: YES.

16 THE COURT: NO MATTER HOW HEINOUS?

17 MS. ZWIESLER: YES. YES, I REALLY AM.

18 THE COURT: WHETHER THE DEFENDANT COMMITTED MULTIPLE
19 MURDERS OR WHAT?

20 MS. ZWIESLER: YES. THAT HAS ALWAYS BEEN MY IDEA,
21 ALWAYS.

22 THE COURT: YOU HAVE A CONSTITUTIONAL OBJECTION?

23 MS. ZWIESLER: YES. I ALWAYS HAVE HAD.

24 THE COURT: AGAINST THE DEATH PENALTY?

25 MS. ZWIESLER: YES.

26 THE COURT: AND NO MATTER WHAT THE FACTS ARE --

27 MS. ZWIESLER: RIGHT.

28 THE COURT: WOULD YOU ALWAYS VOTE AGAINST IT?

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1 MS. ZWIESLER: YES.

2 THE COURT: NO MATTER HOW HEINOUS AN OFFENSE OR HOW
3 AGGRAVATED THE CIRCUMSTANCES ARE, YOU WOULD VOTE AGAINST IT?

4 MS. ZWIESLER: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. CHIER: MAY I JUST HAVE A FEW QUESTIONS?

7 MISS ZWIESLER, MY NAME IS RICHARD CHIER.

8 I REPRESENT MR. HUNT. I WOULD LIKE TO JUST INQUIRE A LITTLE
9 BIT MORE IF I MIGHT, ABOUT YOUR CONSCIENTIOUS OBJECTION AND
10 ATTITUDE, IF YOU WILL.

11 IS YOUR ATTITUDE TOWARD THE DEATH PENALTY ROOTED
12 IN SOME RELIGIOUS OR PHILOSOPHICAL TEACHING?

13 MS. ZWIESLER: WELL, I JUST DON'T THINK THAT ANYTHING
14 IS ACCOMPLISHED BY TAKING A LIFE.

15 MR. CHIER: ALL RIGHT. DO YOU BELIEVE THAT EVERY PERSON
16 ACCUSED OF A CRIME IN THIS COUNTRY HAS A RIGHT TO A TRIAL
17 BY JURY? DO YOU NOT?

18 MS. ZWIESLER: YES I DO.

19 MR. CHIER: IN SERIOUS CRIMES?

20 MS. ZWIESLER: YES.

21 MR. CHIER: THIS IS A SERIOUS CRIME?

22 MS. ZWIESLER: YES.

23 MR. CHIER: THAT THEY HAVE A RIGHT TO A JURY COMPOSED
24 OF A CROSS SECTION OF THE COMMUNITY, IS THAT CORRECT?

25 MS. ZWIESLER: YES.

26 MR. CHIER: WOULD YOU ALSO AGREE WITH THAT?

27 MR. ZWIESLER: YES.

28 MR. CHIER: WOULD YOU AGREE THAT THE COMMUNITY CONSISTS

1 OF A LOT OF DIVERGENT POINTS OF VIEW?

2 MS. ZWIESLER: WELL, THAT SOUNDS FAIR, YES.

3 MR. CHIER: OKAY. AND THAT THERE IS AN OBLIGATION AMONG
4 THE CITIZENS IN A CIVILIZED COMMUNITY, IN THIS COUNTRY, TO
5 SERVE ON JURY DUTY WHEN SUMMONED?

6 MS. ZWIESLER: YES. WELL, I CAME.

7 THE COURT: ARE YOU WILLING TO SERVE AS A JUROR IN SOME
8 OTHER CASE? ARE YOU?

9 MS. ZWIESLER: THIS IS MY FIRST TIME. SO I DON'T KNOW
10 WHAT HAPPENS NOW.

11 MR. CHIER: NOW, MY QUESTION THAT I HAVE BEEN LEADING
12 UP TO IS THIS, MRS. ZWIESLER, IN A CASE WHERE YOU HAVE TAKEN
13 AN OATH AS A JUROR TO FOLLOW THE LAW THAT SHALL BE GIVEN TO
14 YOU BY THE COURT REPRESENTED BY HIS HONOR, COULD YOU FOR
15 PURPOSES OF SERVING AS A JUROR, SUBORDINATE YOUR PERSONAL
16 VIEWS REGARDING THE DEATH PENALTY TO YOUR OATH AS A JUROR,
17 TO THE EXTENT THAT YOU WOULD CONSIDER THE DEATH PENALTY AS
18 ONE OF THE ALTERNATIVES IN A CASE WHERE YOU WERE SELECTED?

19 MS. ZWIESLER: NO. I DON'T THINK I WOULD. I FEEL VERY
20 STRONGLY AGAINST IT.

21 MR. CHIER: UNDER THE MOST EGREGIOUS CIRCUMSTANCES?

22 MS. ZWIESLER: YES. I DON'T THINK I COULD DO THAT.

23 MR. CHIER: WELL, DID YOU HAPPEN TO WATCH CHANNEL 9
24 LAST NIGHT?

25 MS. ZWIESLER: NO I DIDN'T.

26 MR. CHIER: OKAY. THANK YOU VERY MUCH FOR YOUR CANDOR,
27 MS. ZWIESLER.

28 THE COURT: OBVIOUSLY FROM THE ANSWERS THAT YOU GAVE,

1 YOU WOULD NOT QUALIFY AS A JUROR IN THIS PARTICULAR CASE.

2 YOU SEEM TO BE A VERY INTELLIGENT WOMAN. YOU
3 CAN SERVE AS A JUROR IN SOME OTHER TYPE OF CASE.

4 MS. ZWIESLER: I IMAGINE THAT I COULD.

5 THE COURT: OF COURSE YOU CAN. THANK YOU VERY MUCH
6 FOR YOUR FRANKNESS. YOU WILL BE EXCUSED FROM SERVING AS A
7 JUROR IN THIS CASE.

8 GO TO THE JURY ASSEMBLY ROOM AND TELL THEM THAT
9 YOU CAN SERVE IN SOME OTHER CASE.

10 MS. ZWIESLER: OKAY. THANK YOU.

11 (PROSPECTIVE JUROR ZWIESLER EXITED
12 THE COURTROOM.)

13 (PROSPECTIVE JUROR NORMAN WILLARD
14 ENTERED THE COURTROOM.)

15 THE COURT: MR. WILLARD?

16 MR. WILLARD: YES, SIR.

17 THE COURT: GOOD AFTERNOON. SORRY TO KEEP YOU WAITING.
18 BUT WE ARE DOWN TO THE W'S. WE WILL BE ALMOST THROUGH WITH
19 THESE QUESTIONS --

20 MR. WILLARD: I HAVE BEEN ALL MY LIFE, WITH THE W'S --

21 THE COURT: YOU ARE THE LAST IN LINE, AREN'T YOU?

22 MR. WILLARD: RIGHT.

23 THE COURT: BY THE WAY, WHERE DO YOU LIVE?

24 MR. WILLARD: MANHATTAN BEACH.

25 THE COURT: HAVE YOU EVER READ ANYTHING ABOUT THIS CASE
26 AT ALL?

27 MR. WILLARD: NO, NOTHING.

28 THE COURT: NOT IN ANY NEWSPAPER OR ANY PUBLICATION?

1 MR. WILLARD: ZERO. I KNOW NOTHING ABOUT IT.

2 THE COURT: OR TALKED TO ANY OF THE JURORS ABOUT IT?

3 MR. WILLARD: NO.

4 THE COURT: ALL YOU KNOW IS WHAT I TOLD YOU ABOUT THE
5 CASE WHEN YOU WERE ALL HERE TOGETHER?

6 MR. WILLARD: ON THE 17TH.

7 THE COURT: THAT'S RIGHT. JUST TO REFRESH YOUR
8 RECOLLECTION AND GIVE YOU A FEW MORE DETAILS, THE DEFENDANT
9 IN THIS CASE IS CHARGED WITH THE COMMISSION OF THE CRIME OF
10 MURDER IN THE FIRST DEGREE.

11 FURTHER, IT IS ALLEGED THAT HE COMMITTED THIS
12 MURDER IN THE COURSE OF A ROBBERY. NOW, IN THE COURSE OF
13 A ROBBERY IS SIGNIFICANT BECAUSE THE LEGISLATURE HAS SAID
14 THAT IN A NUMBER OF MURDERS COMMITTED UNDER CERTAIN SPECIAL
15 CIRCUMSTANCES, THOSE CASES QUALIFY FOR THE IMPOSITION OF THE
16 DEATH PENALTY IF IT IS WARRANTED.

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1 THE COURT: NOW, THAT IS NOT ONLY TRUE OF ROBBERY BUT
2 IF IT WAS COMMITTED IN THE COURSE OF A BURGLARY, IN THE COURSE
3 OF A KIDNAPPING, IN THE COURSE OF A CHILD BEING MOLESTED AND
4 KILLED OR IN THE COURSE OF RAPE, IN THE COURSE OF TORTURE,
5 IN THE COURSE OF MULTIPLE MURDERS IN ADDITION TO A NUMBER OF
6 OTHERS, AS THERE ARE ABOUT 19 OF THEM. ALL OF THOSE CASES
7 QUALIFY FOR THE DEATH PENALTY.

8 MERELY BECAUSE A MURDER HAS BEEN COMMITTED, HOW-
9 EVER PREMEDITATED OR HOWEVER PLANNED, JUST THE MURDER ITSELF
10 DOESN'T QUALIFY IT FOR THE DEATH PENALTY.

11 IT IS ONLY WHEN THERE ARE SPECIAL CIRCUMSTANCES,
12 IT WAS COMMITTED IN THE COURSE OF A ROBBERY OR BURGLARY, OR
13 SO ON AND SO FORTH, THAT THEN THE QUESTION OF THE PENALTY COMES
14 IN TO PLAY; DO YOU UNDERSTAND ME?

15 MR. WILLARD: SO PREMEDITATION ALONE DOES NOT?

16 THE COURT: PREMEDITATION, PLANNING THAT IS A
17 CIRCUMSTANCE, HOWEVER, TO BE CONSIDERED LATER ON ON THE
18 PENALTY PHASE.

19 SO THEREFORE, SINCE THIS CASE QUALIFIES AS
20 COMMITTED IN THE COURSE OF A ROBBERY, SINCE IT QUALIFIES FOR
21 THE DEATH PENALTY, THE JURY WHICH IS SELECTED TO TRY THIS
22 CASE WILL HAVE TO DETERMINE FIRST ON WHAT WE CALL THE GUILT
23 PHASE DETERMINES FIRST WAS THAT MURDER COMMITTED DURING THE
24 COURSE OF A ROBBERY -- FIRST, THEY HAVE TO DETERMINE NOW WHAT
25 WAS THAT MURDER THAT WAS COMMITTED? WAS IT FIRST DEGREE
26 MURDER? IF THE JURORS FIND THAT IT IS MURDER IN THE FIRST
27 DEGREE, THEN THEY DECIDE WHETHER OR NOT THAT MURDER WAS
28 COMMITTED IN THE COURSE OF A ROBBERY, WHICH IS A SPECIAL

1 CIRCUMSTANCE THAT I TOLD YOU ABOUT.

2 SO THERE ARE TWO PHASES OF IT. FIRST, THE JURY
3 DECIDES WHETHER OR NOT IT IS MURDER IN THE FIRST DEGREE AND
4 IF THEY DECIDE BEYOND A REASONABLE DOUBT THAT IT IS, THEN THEY
5 HAVE ANOTHER QUESTION. THE OTHER QUESTION TO ANSWER IS: WAS
6 IT COMMITTED DURING THE COURSE OF A ROBBERY?

7 ALL RIGHT, MR. WILLARD, IF THE JURY SAYS, NO, IT
8 WAS NOT COMMITTED DURING THE COURSE OF A ROBBERY, THAT IS THE
9 END OF THE GUILT PHASE, YOU DON'T GO TO THE PENALTY PHASE AT
10 ALL.

11 SUPPOSE THE JURY DOES FIND THE DEFENDANT GUILTY
12 OF MURDER IN THE FIRST DEGREE AND IN THE COURSE OF A ROBBERY,
13 THEN WE HAVE A SECOND PHASE OF THE TRIAL WHICH IS KNOWN AS
14 THE PENALTY PHASE. THE JURY THEN DETERMINES WHAT PENALTY SHOULD
15 BE IMPOSED ON THE DEFENDANT: SHALL IT BE LIFE IMPRISONMENT
16 WITHOUT THE POSSIBILITY OF PAROLE OR SHOULD IT BE DEATH IN
17 THE GAS CHAMBER?

18 NOW, BEFORE THEY DETERMINE THAT, THEY HAVE GOT
19 TO HEAR ADDITIONAL EVIDENCE, ADDITIONAL TESTIMONY WHICH THEY
20 HAVEN'T HEARD BEFORE. THAT ADDITIONAL TESTIMONY WILL BE
21 PRODUCED BY THE DEFENDANT AND BY THE PROSECUTION. THE
22 DEFENDANT WILL PRODUCE TESTIMONY WHICH WOULD MITIGATE, BE
23 FAVORABLE TOWARDS HIM TO IMPRESS THE JURY NOT TO IMPOSE THE
24 DEATH PENALTY. THE PROSECUTION WILL ADDUCE TESTIMONY WHICH
25 IS IN AGGRAVATION, WHICH WILL SHOW BAD THINGS ABOUT THE
26 DEFENDANT. NOW THE JURY HEARS ALL OF THAT AND THEN AFTER THE
27 INSTRUCTIONS ARE GIVEN BY THE COURT, AFTER ARGUMENT OF COUNSEL,
28 THEY ARE THEN TO DETERMINE WHAT PENALTY SHOULD BE IMPOSED:

1 SHALL IT BE LIFE IMPRISONMENT WIHTOUT THE POSSIBILITY OF
2 PAROLE OR SHALL IT BE DEATH? AND THE JUDGE WILL INSTRUCT THE
3 JURY THAT THERE ARE DIFFERENT FACTORS THAT THEY HAVE TO
4 CONSIDER.

5 NOW, THEY HAVE TO CONSIDER THE AGE OF THE
6 DEFENDANT, HIS PRIOR BACKGROUND OR IF HE HAS ANY CRIMINAL
7 RECORD, HIS CHARACTER, HIS HISTORY, HIS PHYSICAL OR MENTAL
8 CONDITION OR ANY OF THE OTHER FACTORS THAT THE COURT WILL TELL
9 YOU THAT YOU MUST TAKE INTO CONSIDERATION, WHICH YOU HAVE
10 TO DO, YOU SEE.

11 YOU UNDERSTAND, OF COURSE, THAT MERELY THAT HE
12 COMMITTED A MURDER AND IT WAS PREMEDITATED AND THAT IT WAS
13 IN THE COURSE OF A ROBBERY, THAT DOESN'T IMMEDIATELY QUALIFY
14 IT FOR THE DEATH PENALTY. YOU HAVE TO CONSIDER ALL OF THESE
15 FACTORS THAT I TOLD YOU ABOUT. AND YOU ARE WILLING TO DO THAT,
16 ARE YOU?

17 MR. WILLARD: OH, YES.

18 THE COURT: NOW, I AM GOING TO ASK YOU A SERIES OF FIVE
19 QUESTIONS. THOSE QUESTIONS ARE DESIGNED FOR THE PURPOSE OF
20 EXPLORING YOUR MIND OR YOUR ATTITUDES TOWARDS THE DEATH
21 PENALTY TO SEE WHETHER OR NOT YOU QUALIFY TO BE A JUROR IN
22 THIS CASE.

23 NOW THE FIRST TWO QUESTIONS RELATE TO THE GUILT
24 PHASE OF THE CASE. ON THE GUILT PHASE, YOU DON'T CONSIDER
25 PENALTY AT ALL. ALL YOU CONSIDER IS: IS HE GUILTY OR NOT
26 GUILTY OF COMMISSION OF MURDER IN THE FIRST DEGREE AND WAS
27 IT DURING THE COURSE OF A ROBBERY.

28 NOW THE FIRST QUESTION I AM GOING TO ASK YOU IS:

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

MR. WILLARD: NO.

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1 THE COURT: NOW AGAIN, THE SECOND QUESTION HAS TO DO
2 WITH THE SPECIAL CIRCUMSTANCES.

3 AS I SAID, IF YOU FIND HIM GUILTY BEYOND A
4 REASONABLE DOUBT OF MURDER IN THE FIRST DEGREE, THEN YOU DETERMINE
5 WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE OF A
6 ROBBERY. COMMITTED IN THE COURSE OF A ROBBERY IS WHAT WE
7 CALL A SPECIAL CIRCUMSTANCE AND THE JURY IS TO ANSWER THE
8 QUESTION TRUE OR FALSE THAT IT WAS COMMITTED DURING THE COURSE
9 OF A ROBBERY, THEY HAVE TO MAKE THE FINDING, ALL RIGHT?

10 NOW THE SECOND QUESTION HAS TO DO WITH THAT: DO
11 YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
12 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION CONCERNING
13 THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE?

14 MR. WILLARD: NO.

15 THE COURT: THE NEXT TWO QUESTIONS ASSUME THAT THE
16 DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE AND THE
17 SPECIAL CIRCUMSTANCES HAVE BEEN FOUND AND THEN WE COME TO
18 THE PENALTY PHASE, AS I TOLD YOU BEFORE.

19 THESE TWO RELATE TO THE GUILT PHASE AND THE LATTER
20 TWO WITH THE DEATH PENALTY.

21 THE QUESTION IS: DO YOU HAVE SUCH AN OPINION
22 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
23 VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE
24 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

25 MR. WILLARD: NO.

26 THE COURT: THE FIFTH QUESTION IS EXACTLY THE SAME,
27 EXCEPT IT APPLIES TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
28 OF PAROLE.

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

5 MR. WILLARD: NO.

6 THE COURT: NOW YOU UNDERSTAND THAT THE ISSUE OF THE
7 DEATH PENALTY MAY OR MAY NOT ARISE IN THIS CASE AND MAY NOT
8 OCCUR AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE
9 EVENT THAT YOU REACH THAT PHASE OF THE TRIAL, ALL RIGHT?

10 (PROSPECTIVE JUROR WILLARD NODS HIS
11 HEAD UP AND DOWN.)

12 THE COURT: ALL RIGHT, THANK YOU.

13 MR. CHIER: THANK YOU, YOUR HONOR.

14 GOOD AFTERNOON, MR. WILLARD. MY NAME IS RICHARD
15 CHIER. I REPRESENT MR. HUNT HERE.

16 THE JUDGE HAS ASKED YOU A SERIES OF QUESTIONS
17 TO KIND OF TEST FOR A KNEE JERK REACTION. AND ALONG THE SAME
18 LINES, I WOULD LIKE TO ASK ADDITIONAL QUESTIONS CONCERNING
19 THE DEATH PENALTY AND YOUR ATTITUDES TOWARD IT.

20 BUT PRELIMINARILY, I WOULD LIKE TO TELL YOU, SO
21 THAT YOU UNDERSTAND MY QUESTIONS BETTER, THAT THERE ARE NO
22 RIGHT OR WRONG ANSWERS TO THE QUESTIONS I AM GOING TO ASK
23 YOU. THERE AREN'T ANY GOOD OR BAD ANSWERS TO THE QUESTIONS.
24 YOU ARE NOT BEING JUDGED HERE AS A PERSON.

25 THIS PROCESS IS DESIGNED TO TRY TO FIND PERSONS
26 WHO ARE SUITABLE TO SIT ON CERTAIN TYPES OF CASES AS JURORS.

27 YOU CAN IMAGINE THAT IF YOU HAD HAD SOMEBODY IN
28 YOUR FAMILY THAT WAS THE VICTIM OF, LET'S SAY, CHILD MOLESTATION,

1 THAT IT MIGHT BE INAPPROPRIATE FOR YOU TO SIT ON A CASE WHERE
2 THAT IS THE CRIME CHARGED. SO THIS SYSTEM WILL ONLY WORK
3 IF YOU ANSWER THE QUESTIONS TRUTHFULLY, SIR, BECAUSE WE DON'T
4 KNOW IF YOU HAVE ANY HIDDEN AGENDA OR IF YOU HAVE SECRET
5 FEELINGS AND WE CAN ONLY DO THIS BY THIS QUESTION AND ANSWER
6 PROCEDURE.

7 SO WITH THAT, LET ME ASK YOU IF YOU WERE AT ALL
8 SURPRISED WHEN THE JUDGE TOLD YOU THAT THERE WAS NO AUTOMATIC
9 DEATH PENALTY IN THE CASE OF A FIRST DEGREE, INTENTIONAL,
10 PREMEDITATED MURDER; WERE YOU SOMEWHAT SURPRISED BY THAT?

11 MR. WILLARD: YEAH, A LITTLE BIT, YEAH.

12 MR. CHIER: OKAY. ARE YOU IN FAVOR OF THE DEATH PENALTY,
13 SIR?

14 MR. WILLARD: YES.

15 MR. CHIER: AND I TAKE IT, YOU VOTED FOR IT WHEN YOU
16 HAD AN OPPORTUNITY TO --

17 MR. WILLARD: YES.

18 MR. CHIER: -- AS A BALLOT MEASURE?

19 MR. WILLARD: UH-HUH.

20 MR. CHIER: CAN YOU TELL US, AND WE ARE ALL LISTENING
21 TO YOUR ANSWERS HERE, CAN YOU TELL US IN YOUR OWN WORDS WHY
22 YOU ARE IN FAVOR OF THE DEATH PENALTY, MR. WILLARD?

23 MR. WILLARD: I THINK IT IS A DETERRENT, A DEFINITE
24 DETERRENT.

25 MR. CHIER: OKAY. YOU BELIEVE THAT IT DETERS OTHER
26 PEOPLE FROM COMMITTING THE SAME TYPES OF CRIMES?

27 MR. WILLARD: YES.

28 MR. CHIER: DO YOU BELIEVE -- YOU MEAN THAT IT IS A

1 DETERRENT IN THE SENSE THAT IF YOU KILLED THE PERSON WHO KILLS
2 OTHERS, THAT IT DETERS THAT PERSON BY PUTTING HIM OUT OF SOCIETY;
3 DO YOU MEAN A DETERRENT IN THAT SENSE AT ALL?

4 MR. WILLARD: NO, NO.

5 MR. CHIER: IT IS A DETERRENT IN THE SENSE OF THE PUBLIC
6 EXECUTION BEING AN EXAMPLE TO OTHERS NOT TO DO THIS?

7 MR. WILLARD: RIGHT.

8 MR. CHIER: DO YOU THINK THAT THERE OUGHT TO BE A
9 MANDATORY DEATH PENALTY FOR CERTAIN CRIMES, SIR?

10 THE COURT: WHAT DO YOU MEAN "A MANDATORY DEATH PENALTY"?

11 THERE IS NO MANDATORY DEATH PENALTY IN CALIFORNIA.

12 MR. CHIER: I KNOW THERE ISN'T, YOUR HONOR.

13 THE COURT: WELL, DON'T ASK HIM THAT QUESTION THEN.
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1 MR. CHIER: WELL, IT IS PROBATIVE. CAN YOU TELL ME,
2 SIR, WHAT WAS IT THAT SOMEWHAT SURPRISES YOU WHEN THE JUDGE
3 TOLD YOU THAT EVEN IN A CASE OF PREMEDITATED, INTENTIONAL
4 MURDER, THE DEATH PENALTY WAS NOT AUTOMATIC? DID YOU THINK
5 THAT THAT WAS A LAW, SIR, IN ALL CANDOR?

6 MR. WILLARD: YES. I GUESS I DID. YES.

7 THE COURT: NOW YOU HAVE BEEN DISABUSED OF THAT NOTION,
8 HAVEN'T YOU?

9 MR. WILLARD: YES.

10 MR. CHIER: DO YOU THINK THAT IT OUGHT TO BE THE LAW,
11 SIR?

12 THE COURT: ANY OBJECTION?

13 MR. WAPNER: I AM HAPPY IF HE ANSWERS THAT QUESTION,
14 YOUR HONOR. I DON'T CARE.

15 MR. WILLARD: WELL, THE SPECIAL CIRCUMSTANCES ARE THERE,
16 RIGHT?

17 MR. CHIER: YES. EVERYTHING AS CHARGED IS THERE,
18 INTENTIONAL, PREMEDITATED, IN THE COURSE OF A ROBBERY, NO
19 INSANITY, NO SELF-DEFENSE, NO LEGAL EXCUSE.

20 DO YOU THINK THAT THERE OUGHT TO BE A MANDATORY
21 DEATH PENALTY FOR THAT?

22 THE COURT: MANDATORY? I WILL OBJECT TO THAT. GO ON
23 TO THE NEXT QUESTION, PLEASE. MANDATORY IS NEVER INVOLVED.

24 YOU UNDERSTOOD WHEN I TOLD YOU THAT THERE IS AN
25 OPTION THAT THE JURY HAS IF THEY FIND THE DEFENDANT GUILTY
26 OF MURDER IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES LIKE
27 ROBBERY OR BURGLARY OR KIDNAPPING AND SO FORTH -- I TOLD YOU
28 THAT THE JURY THEN CAN CONSIDER WHAT PENALTY TO IMPOSE, SHALL

1 IT BE LIFE WITHOUT POSSIBILITY OF PAROLE OR SHALL IT BE
2 DEATH. AND YOU HEAR ALL OF THE EVIDENCE FOR AND AGAINST THAT.
3 DO YOU UNDERSTAND THAT?

4 MR. WILLARD: YES.

5 THE COURT: ALL RIGHT. ARE YOU WILLING TO DO THAT?

6 MR. WILLARD: YES.

7 THE COURT: ALL RIGHT. THERE IS NOTHING MANDATORY ABOUT
8 IT. IT IS ENTIRELY UP TO THE JURY WHAT THEY WANT TO VOTE.

9 MR. CHIER: NOW, DO YOU THINK THAT ANY OF THE TYPES OF
10 THINGS INDIVIDUALLY OR COLLECTIVELY THAT THE JUDGE HAS TOLD
11 YOU YOU SHOULD CONSIDER IN DECIDING PUNISHMENT, OUGHT TO MAKE
12 A DIFFERENCE IN THE FACE OF EVIDENCE BEYOND A REASONABLE DOUBT
13 THAT A DEFENDANT KILLED A PERSON DELIBERATELY, INTENTIONALLY
14 IN THE COURSE OF A ROBBERY? DO YOU UNDERSTAND MY QUESTION?

15 MR. WILLARD: NO. YOU LOST ME SOMEWHERE.

16 MR. CHIER: OKAY. THE JUDGE SAID TO YOU THAT IF YOU
17 ARE A JUROR IN THE CASE, HE WOULD INSTRUCT YOU ABOUT THE SORTS
18 OF THINGS YOU SHOULD CONSIDER AND TAKE INTO ACCOUNT. THOSE
19 THINGS TO SUMMARIZE BRIEFLY, ARE THINGS SUCH AS WHETHER OR
20 NOT THE DEFENDANT HAS A PRIOR CRIMINAL HISTORY, THE AGE OF
21 THE DEFENDANT, WHETHER HE WAS A YOUNG PERSON OR AN OLD PERSON,
22 THE BACKGROUND OF THE DEFENDANT, HIS CHILDHOOD, ANY GOOD THINGS
23 THAT HE HAS DONE IN HIS LIFE, ANY BAD THINGS.

24 YOU HEAR A LOT ABOUT THE DEFENDANT AS A PERSON,
25 AS OPPOSED TO THE ELEMENTS OF THE ALLEGED CRIME, WHICH YOU
26 HEAR DURING THE GUILT PHASE.

27 OKAY. WE ARE NOW HYPOTHETICALLY IN THE GUILT OR
28 PENALTY PHASE. AND ONE OF THE THINGS THAT THE JUDGE SAYS YOU

1 SHOULD CONSIDER AND TAKE INTO ACCOUNT, IS THE CIRCUMSTANCES
2 OF THE OFFENSE.

3 AND IN THE CASE WHERE THE CIRCUMSTANCES ARE THAT
4 THE CRIME WAS INTENTIONAL, WAS COLD BLOODED IF YOU WILL, IN
5 THE FIRST DEGREE AND IN THE COURSE OF A ROBBERY, DO YOU THINK
6 THOSE ARE THE FACTORS THAT THE JUDGE HAS TOLD YOU ABOUT,
7 EITHER INDIVIDUALLY OR COLLECTIVELY, SHOULD COUNT AS MUCH AS
8 THE FACT THAT THERE WAS AN INTENTIONAL MURDER?

9 MR. WILLARD: WELL, I THINK THAT --

10 THE COURT: YOU ARE ASKING HIM TO PREJUDGE THE TESTIMONY.
11 I WILL SUSTAIN MY OWN OBJECTION.

12 MR. WILLARD: I THINK THAT --

13 THE COURT: DON'T ANSWER THAT QUESTION. HE IS ASKING
14 YOU TO PREJUDGE IT. HE IS ASKING YOU TO TELL US NOW WHEN YOU
15 HAVE NOT HEARD THE TESTIMONY.

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1 MR. CHIER: IN THIS CASE, WHERE THERE IS NO LEGAL EXCUSE
2 MR. WILLARD -- I MEAN, NO LEGAL JUSTIFICATION SUCH AS SELF-
3 DEFENSE OR MISTAKE OR MENTAL IMPAIRMENT, WHEN IT IS JUST AN
4 INTENTIONAL, DELIBERATE MURDER IN THE COURSE OF A ROBBERY,
5 DO YOU LEAN OR TILT IN FAVOR OF THE DEATH PENALTY OVER LIFE
6 WITHOUT POSSIBILITY OF PAROLE?

7 MR. WILLARD: YES. I BELIEVE SO.

8 MR. CHIER: IS YOUR LEANING SUCH THAT -- OR IS YOUR
9 BELIEF IN THAT REGARD SUCH THAT YOU BELIEVE THAT IT WOULD
10 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
11 ON THE ISSUE OF PENALTY, ASSUMING THAT THE LAW WAS LOOKING
12 FOR A TOTALLY NEUTRAL PERSON?

13 MR. WILLARD: NO. I DON'T BELIEVE IT WOULD IMPAIR ME.

14 MR. CHIER: YOU NEVERTHELESS, ARE LEANING TOWARD THE
15 DEATH PENALTY AS A PUNISHMENT?

16 MR. WILLARD: YES.

17 MR. CHIER: NOW, IN THE PENALTY PHASE, THEORETICALLY,
18 WE ARE SUPPOSED TO START OVER IN TERMS OF WIPING THE SLATE
19 CLEAN AND STARTING OVER.

20 THE PROSECUTION ALWAYS HAS THE BURDEN OF PROOF,
21 EVEN IN THE PENALTY PHASE. THEY HAVE THE BURDEN OF PROOF
22 BY PROOF BEYOND A REASONABLE DOUBT, TO PERSUADE YOU THAT
23 CERTAIN THINGS ARE SO.

24 NOW, DO YOU THINK BECAUSE OF YOUR LEANING TOWARD
25 THE DEATH PENALTY -- AND I APPRECIATE YOUR CANDOR -- DO YOU
26 THINK THAT BECAUSE OF THAT, THAT IN THE PENALTY PHASE, THE
27 DEFENDANT WOULD HAVE TO WORK HARDER TO PERSUADE YOU TO SAVE
28 HIS LIFE THAN THE PEOPLE WOULD, TO PERSUADE YOU TO TAKE HIS

1 LIFE? DO YOU SEE MY QUESTION? THAT IS, BECAUSE OF YOUR
2 LEANING IN FAVOR OF THE DEATH PENALTY.

3 THE COURT: HE JUST TOLD YOU THAT THE PEOPLE HAVE THE
4 BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE FACTORS WHICH
5 YOU WOULD DECIDE AT THE DEATH PENALTY. ARE YOU WILLING TO
6 FOLLOW THAT?

7 MR. WILLARD: I HAVE ALREADY SAID THAT I HAVE A LEANING.
8 I THINK THIS IS RATHER OBVIOUS.

9 MR. CHIER: YOU PROBABLY WOULD BE? OR DO YOU THINK
10 IN THIS PARTICULAR TYPE OF CASE, IT WOULD PROBABLY BE BETTER
11 IF SOMEBODY OTHER THAN YOURSELF WERE A JUROR IN THIS CASE?

12 MR. WILLARD: NO. I DON'T THINK THAT.

13 MR. CHIER: WELL, I WILL SUBMIT THE MATTER, YOUR HONOR.

14 THE COURT: DO YOU PASS FOR CAUSE?

15 MR. CHIER: NO I DO NOT.

16 MR. WAPNER: WOULD YOU LIKE ME TO PROCEED NOW OR
17 TOMORROW MORNING?

18 THE COURT: NOW.

19 MR. WAPNER: MR. WILLARD, I AM FRED WAPNER, THE DEPUTY
20 DISTRICT ATTORNEY PROSECUTING THIS CASE. DO YOU UNDERSTAND
21 THAT THERE CAN BE ALL KINDS OF DIFFERENT FACTUAL SCENARIOS
22 THAT MIGHT BE MURDERS IN THE COURSE OF A ROBBERY?

23 MR. WILLARD: YES.

24 MR. WAPNER: DO YOU THINK THAT ALL OF THOSE, JUST BECAUSE
25 THEY ARE MURDERS IN THE COURSE OF A ROBBERY, SHOULD BE TREATED
26 THE SAME?

27 MR. WILLARD: NO. I THINK THEY SHOULD ALL BE WEIGHED.

28 MR. WAPNER: I MEAN, WITHOUT GOING INTO A DETAILED

1 ANALYSIS, COULD YOU SEE SOME GUY WHO COMMITS A ROBBERY ON
2 THE STREET AND SHOOTS SOMEONE ONE TIME AND TAKES HIS MONEY
3 AND RUNS AWAY, AS OPPOSED TO ANOTHER PERSON WHO GOES UP TO
4 COMMIT A ROBBERY AND DURING THE COURSE OF IT, TAKES A KNIFE
5 AND BLUDGEONS SOMEONE 20 OR 30 TIMES TO GET THEIR MONEY. AND
6 THE FIRST GUY WHO DID THE SHOOTING MIGHT HAVE A MINIMAL RECORD
7 AND THE OTHER GUY MIGHT HAVE A LONG RECORD.

8 DO YOU UNDERSTAND THAT THERE CAN BE ALL KINDS
9 OF DIFFERENT FACTS AND ALL OF THOSE WOULD BE INTENTIONAL
10 KILLINGS IN THE COURSE OF A ROBBERY? DO YOU UNDERSTAND THAT?

11 MR. WILLARD: YES.

12 MR. WAPNER: SHOULD THEY ALL BE TREATED THE SAME WAY
13 JUST BECAUSE THEY ARE MURDERS IN THE COURSE OF A ROBBERY?

14 MR. WILLARD: NO. I HAVE ALREADY SAID THAT THE
15 CIRCUMSTANCES SHOULD BE WEIGHED, I BELIEVE.

16 MR. WAPNER: WHEN YOU SAY YOU ARE IN FAVOR OF THE DEATH
17 PENALTY BECAUSE IT IS A DETERRENT, HOW DOES THAT AFFECT YOU
18 WHEN YOU BRING IT INTO THIS CASE? I MEAN, HOW DO YOUR GENERAL
19 VIEWS ON THE DEATH PENALTY AFFECT YOU ON THIS CASE?

20 MR. WILLARD: I DON'T THINK THAT THEY WILL.

21 MR. WAPNER: WHY NOT?

22 MR. WILLARD: THIS CASE WOULD CHANGE MY VIEWS.

23 MR. WAPNER: OKAY.

24 MR. WILLARD: I DEFINITELY FEEL IT IS A DETERRENT.

25 MR. WAPNER: OKAY. DOES THAT MEAN REGARDLESS OF THE
26 FACTS AND CIRCUMSTANCES OF THIS PARTICULAR CASE, THAT IN ORDER
27 TO DETER OTHER PEOPLE FROM COMMITTING MURDERS, THAT YOU ARE
28 GOING TO VOTE FOR THE DEATH PENALTY FOR THIS DEFENDANT?

1 MR. WILLARD: NOT AUTOMATICALLY, NO.

2 MR. WAPNER: ARE YOUR VIEWS ON THE DEATH PENALTY GOING
3 TO GET IN THE WAY OF YOUR ABILITY TO BE FAIR TO THE DEFENDANT
4 IN THIS CASE ON THE ISSUE OF WHAT PUNISHMENT HE SHOULD GET?

5 MR. WILLARD: NO. I DON'T BELIEVE SO.

6 MR. WAPNER: WHY NOT?

7 MR. WILLARD: BECAUSE I THINK I HAVE THE ABILITY TO
8 WEIGH THE DIFFERENT CIRCUMSTANCES AND MAKE A CORRECT DECISION.

9 MR. WAPNER: WHAT EFFECT, IF ANY, WILL THE FACT THAT
10 YOU ARE IN FAVOR OF THE DEATH PENALTY HAVE ON YOUR ABILITY
11 TO BE FAIR IN THIS CASE?

12 MR. WILLARD: I GUESS I DON'T KNOW HOW TO ANSWER THAT.

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1 MR. WAPNER: DO YOU UNDERSTAND THAT YOU ARE GOING TO
2 BE REQUIRED TO RENDER YOUR OWN INDIVIDUAL OPINION AS A JUROR --

3 MR. WILLARD: YES.

4 MR. WAPNER: -- AS TO THE PROPER PUNISHMENT?

5 MR. WILLARD: YES.

6 MR. WAPNER: DO YOU UNDERSTAND YOU WILL NEVER GET TO
7 THE QUESTION OF WHAT THE PUNISHMENT SHOULD BE UNTIL AND UNLESS
8 YOU FIND THAT THERE WAS A MURDER, AN INTENTIONAL MURDER
9 COMMITTED DURING THE COURSE OF ROBBERY?

10 MR. WILLARD: YES.

11 MR. WAPNER: AND HAVING DECIDED THAT THERE WAS AN
12 INTENTIONAL MURDER IN THE COURSE OF A ROBBERY, YOU KNOW THAT
13 THERE IS GOING TO BE ANOTHER PHASE OF THE TRIAL WHERE
14 EVIDENCE IS GOING TO BE PRESENTED FAVORABLE TO THE DEFENDANT
15 AND EVIDENCE IS GOING TO BE PRESENTED AGAINST --

16 THE COURT: I TOLD HIM ALL ABOUT THAT.

17 MR. WILLARD: DURING THE PENALTY PHASE OF IT, YES.

18 THE COURT: I TOLD HIM ALL ABOUT IT. LET'S GET ON TO
19 SOMETHING ELSE, WILL YOU?

20 MR. WAPNER: IF YOU HAD ALREADY DECIDED THAT THERE WAS
21 A MURDER IN THE COURSE OF A ROBBERY, ARE YOU GOING TO BE
22 OPENMINDED IN LISTENING TO THE EVIDENCE ABOUT THINGS THAT ARE
23 FAVORABLE ABOUT THE DEFENDANT?

24 MR. WILLARD: YES.

25 MR. WAPNER: NOT WITHSTANDING YOUR VIEWS ON THE DEATH
26 PENALTY?

27 MR. WILLARD: YES.

28 MR. WAPNER: AND ARE YOU GOING TO BE OPENMINDED IN

1 LISTENING TO EVIDENCE THAT MIGHT BE PRESENTED AGAINST HIM THAT
2 MIGHT WEIGH ON THE SIDE OF THE DEATH PENALTY?

3 MR. WILLARD: YES, I BELIEVE I CAN.

4 MR. CHIER: CAN YOU PUT ASIDE YOUR GENERAL VIEWS IN
5 FAVOR OF THE DEATH PENALTY AND DECIDE THIS CASE BASED ON THE
6 FACTS AND EVIDENCE IN THIS CASE?

7 MR. WILLARD: I DON'T THINK I CAN PUT THEM ASIDE
8 TOTALLY, NO.

9 MR. WAPNER: WELL, IF YOU CAN'T PUT THEM ASIDE, ARE YOU
10 BEING FAIR TO BOTH SIDES?

11 MR. WILLARD: YES, I THINK I CAN BE FAIR.

12 MR. WAPNER: OKAY. HOW DO YOU SQUARE THOSE TWO?

13 MR. WILLARD: WELL, I HAVE ALREADY SAID I THINK I CAN
14 WEIGH ALL OF THE CIRCUMSTANCES AND DECIDE WHETHER THE DEATH
15 PENALTY IS WARRANTED IN THIS CASE.

16 MR. WAPNER: OKAY, THANK YOU. I WILL PASS FOR CAUSE,
17 YOUR HONOR.

18 MR. CHIER: THERE ARE A FEW QUESTIONS, ADDITIONAL
19 QUESTIONS OR A MOTION, YOUR HONOR.

20 THE COURT: GO AHEAD.

21 MR. CHIER: MAY I INQUIRE?

22 THE COURT: GO AHEAD, THAT YOU HAVEN'T INQUIRED ABOUT
23 YET?

24 MR. CHIER: YES, IT IS.

25 THE COURT: GO AHEAD.

26 MR. CHIER: MR. WILLARD, DO YOU PLAY GOLF, SIR, BY ANY
27 CHANCE?

28 MR. WILLARD: NO -- WELL, I HAVE PLAYED TWICE IN MY

47A-3

1 LIFE BUT I AM NOT A GOLFER.

2 MR. CHIER: DO YOU KNOW WHAT A HANDICAP IS, SIR?

3 MR. WILLARD: YES.

4 MR. CHIER: WHAT DO YOU UNDERSTAND A HANDICAP TO BE?

5 THE COURT: I WILL SUSTAIN THE OBJECTION. YOU DON'T HAVE
6 TO ANSWER THAT.

7 GO AHEAD AND ASK A QUESTION WHICH IS PERTINENT.

8 MR. CHIER: THIS IS PRELIMINARY TO MY QUESTIONS.

9 THE COURT: I DON'T WANT ANY PRELIMINARIES. ASK THE
10 MAIN QUESTION.

11 MR. CHIER: MY QUESTION IS --

12 THE COURT: HE WANTS TO ASK YOU WHETHER HE IS UNDER A
13 HANDICAP TO YOU IN VIEW OF THE FACT THAT YOU HAVE THE ATTITUDE
14 TOWARDS THE DEATH PENALTY THAT YOU DO HAVE, WOULD HE START
15 OFF MINUS?

16 MR. WILLARD: I BELIEVE HE DOES, YES.

17 MR. CHIER: PARDON ME?

18 MR. WILLARD: YES, I BELIEVE YOU DO.

19 THE COURT: WHY IS THAT?

20 MR. WILLARD: BECAUSE I -- I AM IN FAVOR OF THE DEATH
21 PENALTY UNDER SPECIAL CIRCUMSTANCES.

22 MR. CHIER: I HAVE A MOTION TO MAKE, YOUR HONOR.

23 THANK YOU, MR. WILLARD.

24 THE COURT: WAIT A MINUTE. YOU ARE IN A HURRY.

25 MR. WILLARD, YOU HAVE AN ATTITUDE, AS YOU TOLD
26 US, TOWARD THE DEATH PENALTY, RIGHT?

27 MR. WILLARD: DEFINITELY.

28 THE COURT: WITH THAT ATTITUDE TOWARD THE DEATH PENALTY,

27A-4

1 YOUR OPINION ABOUT THE DEATH PENALTY, WILL THAT PREVENT YOU
2 FROM IMPARTIALLY CONSIDERING ALL OF THE EVIDENCE ON THE PENALTY
3 PHASE BEFORE MAKING UP YOUR MIND AS TO WHETHER OR NOT TO IMPOSE
4 THE DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
5 OF PAROLE?

6 MR. WILLARD: NO.

7 THE COURT: YOU WHAT?

8 MR. WILLARD: NO, IT WOULD NOT.

9 THE COURT: IT WON'T PREVENT YOU FROM MAKING AN IMPARTIAL
10 OPINION?

11 MR. WILLARD: NO.

12 THE COURT: YOU DON'T START OFF NOW BY SAYING "WHATEVER
13 THE TESTIMONY IS, I AM GOING TO VOTE FOR THE DEATH PENALTY?"

14 MR. WILLARD: NO, I DO NOT.

15 THE COURT: ALL RIGHT, I WILL HEAR YOUR MOTION AFTER
16 I ADMONISH THE JUROR.

17 I TELL YOU WHAT YOU DO, YOU WAIT OUTSIDE JUST FOR
18 ONE MOMENT.

19 MR. WILLARD: ME?

20 THE COURT: YES. YOU WAIT OUTSIDE. WE WILL CALL YOU
21 BACK HERE IN A MOMENT.

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277 1

1 (PROSPECTIVE JUROR WILLARD EXITED THE
2 COURTROOM.)

3 THE COURT: ALL RIGHT, HE HAS LEFT THE COURTROOM.

4 MR. CHIER: I CHALLENGE THIS GENTLEMEN, MR. WILLARD
5 FOR CAUSE, YOUR HONOR, IN THAT HE HAS MADE IT UNMISTAKABLE
6 THAT HIS BIAS IN FAVOR OF THE DEATH PENALTY WOULD WORK AGAINST
7 ME AND THE DEFENDANT IN THE SENSE THAT HE LEANS IN FAVOR OF
8 THE DEATH PENALTY OVER LIFE WITHOUT THE POSSIBILITY OF PAROLE.
9 HE HAS SAID THAT I WOULD BE HANDICAPPED IN THE SENSE I WOULD
10 START OFF MINUS RATHER THAN IN A NEUTRAL POSITION, THEREBY
11 REQUIRING HARDER EFFORT ON MY PART, WHICH WOULD BE CONTRARY
12 TO THE LAW, AND IT WOULD SEEM OVERALL THAT THE GENTLEMAN'S
13 VIEWS CONCERNING THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR
14 HIS ABILITY TO BE A TOTALLY FAIR AND IMPARTIAL JUROR IN THIS
15 CASE WITHIN THE MEANING OF WITT V. WAINWRIGHT, YOUR HONOR.

16 THE COURT: GO AHEAD.

17 MR. WAPNER: YOUR HONOR, I THINK IT IS KIND OF A CLOSE
18 CALL AS FAR AS MR. WILLARD IS CONCERNED BECAUSE I AM NOT SURE
19 THAT IT IS IN AND OF ITSELF ENOUGH TO SAY THAT YOU HAVE
20 OPINIONS ONE WAY OR THE OTHER.

21 ON THE OTHER HAND, HE HAS DEFINITELY VOICED AN
22 OPINION ON ONE SIDE AND I THINK I AM GOING TO SUBMIT THE MATTER
23 TO THE COURT AND LET THE COURT MAKE THE CALL.

24 THE COURT: WHAT IS YOUR FEELING? DO YOU JOIN IN THE
25 MOTION TO NOT QUALIFY HIM?

26 MR. WAPNER: MY FEELING IS THAT, WHILE IT MAY NOT BE
27 A LEGAL BASIS FOR A CHALLENGE, OUT OF AN ABUNDANCE OF CAUTION,
28 I REALLY HAVE NO OBJECTION IF THE COURT EXCUSES HIM FOR CAUSE.

1 THE COURT: WELL, I WILL EXCUSE HIM FOR CAUSE ONLY
2 BECAUSE YOU HAVE NO OBJECTION TO IT.

3 I THINK HE QUALIFIES BUT IF YOU DON'T THINK HE
4 QUALIFIES, THEN I WILL SUSTAIN THE OBJECTION OF THE DEFENDANT
5 AS TO HIS QUALIFICATIONS.

6 WILL YOU BRING HIM IN, PLEASE.

7 (PROSPECTIVE JUROR WILLARD ENTERED
8 THE COURTROOM.)

9 THE COURT: MR. WILLARD, SINCE IT IS AMBIGUOUS AND NOT
10 TOO CLEAR HOW YOU FEEL ABOUT THE DEATH PENALTY OR WHETHER
11 YOU WOULD IMPOSE IT IN EVERY CASE, WHILE YOU TOLD ME YOU WOULD
12 NOT, I THINK NONETHELESS, ERRING TO THE SIDE OF CAUTION, I
13 AM GOING TO EXCUSE YOU AS A JUROR IN THIS CASE.

14 YOU WOULD QUALIFY EXTREMELY WELL IN ANY OTHER
15 CASE. YOU TELL THE JURY CLERK THAT YOU ARE ELIGIBLE TO BE
16 A JUROR ON ANY OTHER KIND OF A CASE BUT YOU ARE EXCUSED IN
17 THIS ONE.

18 MR. WILLARD: YES, SIR.

19 CAN I ASK YOU A QUESTION?

20 THE COURT: YES, SURELY.

21 MR. WILLARD: DOES THAT MEAN THAT ANYONE WHO IS IN FAVOR
22 OF THE DEATH PENALTY DOES NOT SIT ON A JURY?

23 THE COURT: NO, IT DOES NOT. BUT COUNSEL HAVE MADE
24 THE POINT --

25 MR. WILLARD: ON A MURDER TRIAL?

26 THE COURT: IN YOUR ANSWER TO COUNSEL'S QUESTION, HE
27 ASKED WHETHER OR NOT HE STARTED OUT WITH A HANDICAP AND YOU
28 SAID YES, SO THAT MIGHT INDICATE --

1 MR. WILLARD: THAT MEANS THAT EVERYBODY ON A MURDER
2 TRIAL WOULD HAVE TO BE AGAINST THE DEATH PENALTY?

3 THE COURT: NO, NO.

4 I THINK YOU ARE QUALIFIED, I REALLY DO MYSELF.

5 MR. WILLARD: YES, I UNDERSTAND.

6 THE COURT: HOWEVER, TO ERR ON THE SIDE OF CAUTION.

7 MR. WILLARD: HE DOESN'T WANT TO START WITH THAT
8 HANDICAP?

9 THE COURT: BECAUSE OF THAT, I WILL EXCUSE YOU AND THANK
10 YOU VERY MUCH. BECAUSE OF THAT HANDICAP, HE WANTS YOU EXCUSED.

11 BUT I WANT TO THANK YOU VERY MUCH.

12 MR. WILLARD: THANK YOU, YOUR HONOR.

13 THE COURT: WE WILL EXCUSE THE OTHER JURORS AND WE WILL
14 RESUME TOMORROW.

15 THE BAILIFF: JUDGE, THERE ARE THREE MORE JURORS. TWO
16 OF THEM WERE EXCUSED AND THE OTHER ONE I COULDN'T FIND.
17 I COULDN'T FIND MR. WODEHOUSE. I THINK HE EXCUSED HIMSELF.
18 I COULDN'T FIND HIM. HE IS NOT AROUND.

19 THE COURT: HE WILL SHOW UP HERE TOMORROW.

20 (AT 4:45 P.M. AN ADJOURNMENT WAS TAKEN
21 UNTIL TUESDAY, DECEMBER 2, 1986, AT
22 10:30 A.M.)

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