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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

1988 09 29

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

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 18 OF 101
(PAGES 2408 TO 2563 , 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.)
)
JOSEPH HUNT,)
)
DEFENDANT.)
)

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

MONDAY, DECEMBER 8, 1986

VOLUME 18

(PAGES 2408 TO 2563, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

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

FOR THE DEFENDANT:

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

AND

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

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

1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 8, 1986; 10:30 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)

5
6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 IN CHAMBERS.)

8 MR. BARENS: YOUR HONOR, I HAD A LOT OF CONFUSION. I
9 THOUGHT IT WAS GOING TO BE AT 10:30 THIS MORNING.

10 THE COURT: ALL RIGHT.

11 MR. BARENS: I THOUGHT I WAS GOING TO BE NICE AND EARLY
12 THIS MORNING.

13 THE COURT: THIS IS A LITTLE FOLLOW-UP. WE HAVE SOME
14 REPORTERS OUT THERE AND ALSO CABLE TELEVISION PEOPLE OR SOME-
15 THING LIKE THAT. THEY READ THIS ARTICLE IN THE TIMES. THEY
16 WANT TO HAVE SOME COMMENT.

17 I DON'T WANT TO GIVE THEM ANY COMMENTS UNTIL I FIRST
18 TALK TO YOU GENTLEMEN.

19 WHAT DO YOU THINK I OUGHT TO DO?

20 MR. WAPNER: WELL, I DON'T THINK IT IS APPROPRIATE,
21 OBVIOUSLY, FOR THE COURT TO COMMENT ONE WAY OR THE OTHER ABOUT
22 WHAT IS GOING ON.

23 I MEAN IF THEY WANT A STATEMENT FROM THE COURT --

24 THE COURT: WHY DO YOU THINK IT IS INAPPROPRIATE?

25 MR. BARENS: WHO CAN COMMENT ON THE GAG ORDER BETTER THAN
26 HIS HONOR?

27 THE COURT: WHY DO YOU THINK IT IS INAPPROPRIATE?

28 MR. WAPNER: MAYBE I DIDN'T UNDERSTAND WHAT THEY WANTED

1 A COMMENT ON.

2 DO THEY WANT A COMMENT ON THE SUBSTANCE OF THE --
3 THE COURT: THEY DON'T WANT -- I DON'T KNOW WHAT THEY
4 WANT.

5 I JUST WANT TO HEAR THEIR QUESTIONS AND SEE WHETHER
6 OR NOT ANY COMMENT SHOULD BE MADE BY THE COURT.

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1 MR. WAPNER: WELL, WHAT I WOULD SAY IS THAT IF THEY
2 ARE ASKING THE COURT TO COMMENT ON --

3 THE COURT: I AM NOT COMMENTING ON ANYTHING. I JUST
4 WANT TO HEAR WHAT THE QUESTIONS ARE FIRST, BEFORE I COMMENT
5 ON ANYTHING.

6 MR. WAPNER: OKAY. WELL, YOU PUT THE QUESTION TO ME
7 THAT THEY WANT YOU TO MAKE SOME COMMENT AND WHAT DO I THINK.
8 I WAS TRYING TO RESPOND TO THAT QUESTION.

9 THE COURT: YOU MEAN I SHOULD MAKE NO COMMENT AT ALL
10 TO THE PRESS?

11 MR. WAPNER: WELL --

12 THE COURT: THERE IS A STORY THAT APPEARS IN THE TIMES.
13 THEY HAVE BEEN EXCLUDED. IT IS AN EXCLUSIVE STORY.

14 THEY FEEL A LITTLE BIT PUT OUT THAT THE TIMES
15 IS THE ONLY PUBLICATION THAT CARRIED THIS STORY. NOW THEY
16 WANT TO BE LET IN ON IT.

17 THE QUESTION IS, WHAT IS THERE TO BE LET IN ON?
18 I DON'T KNOW WHAT THEY WANT TO BE LET IN ON UNTIL I HEAR WHAT
19 THEIR QUESTIONS ARE.

20 MR. WAPNER: WELL, THE TIMES DIDN'T HAVE ANY EXCLUSIVE
21 ACCESS.

22 THE COURT: YES. THAT IS THE ONLY PUBLICATION THAT
23 PUBLISHED IT DOWN HERE.

24 MR. BARENS: MAY I COMMENT, YOUR HONOR? I UNDERSTAND
25 FROM MR. CHIER YESTERDAY, THAT SUE HORTON FROM THE HERALD
26 SAID THAT THEY WERE NOT GOING AHEAD WITH WHAT THEY HAD BECAUSE
27 OF SOME CONCERN THEIR ATTORNEYS HAD.

28 BUT THEY HAD THE SAME OR MORE INFORMATION POSSIBLY,

1 THAN THE TIMES DID. BUT THEY WERE FOR SOME REASON, DELAYING
2 TO SPEAK TO THEIR COUNSEL.

3 THE COURT: WHAT IS IT YOU WANT ME TO TELL THESE REPORTERS
4 OUT THERE, THAT WE HAVE NO COMMENT OF ANY KIND TO MAKE?

5 MR. WAPNER: WELL, THE FIRST ISSUE IS, WE HAVE A GAG
6 ORDER IN THIS COURT THAT WAS LIFTED.

7 THE COURT: THERE IS NO LONGER A GAG ORDER. IT HAS
8 BEEN DISCLOSED. IT IS ALL IN THE NEWSPAPER.

9 MR. WAPNER: THERE ARE TWO SEPARATE ISSUES, AS FAR AS
10 I AM CONCERNED. ONE IS THE GAG ORDER BECAUSE IT PREVENTS
11 DISSEMINATION OF INFORMATION. OBVIOUSLY, THE INFORMATION
12 IS NOW PUBLIC.

13 THE COURT: YES.

14 MR. WAPNER: TWO IS THAT THE GAG ORDER IS TO KEEP THE
15 LAWYERS FROM COMMENTING FURTHER ON ANYTHING THAT HAS ALREADY
16 BEEN DISCLOSED AND MAKING --

17 THE COURT: YOU ARE TALKING ABOUT THE ORIGINAL GAG ORDER?

18 MR. WAPNER: THE ORIGINAL GAG ORDER THAT THIS COURT
19 ISSUED, AS I UNDERSTAND IT AT THIS MOMENT, IS STILL IN EFFECT
20 AS TO THE INFORMATION REGARDING WHAT HAPPENED IN ARIZONA,
21 IF ANYTHING, AND WHAT HAPPENED WITH THIS OTHER HOMICIDE.

22 AND THE QUESTION IS, WHETHER IT IS APPROPRIATE
23 FOR US TO START TALKING ABOUT THAT. OBVIOUSLY, THE INFORMATION
24 IS OUT. SO, YOUR ORDER IS NOT GOING TO PREVENT THE INFORMATION
25 FROM GETTING OUT.

26 THE QUESTION IS WHETHER IT IS NOW APPROPRIATE
27 FOR COUNSEL ON BOTH SIDES TO COMMENT.

28 THE COURT: THERE IS NO LONGER ANY REASON FOR A GAG

1 ORDER WHICH I IMPOSED IN CONNECTION WITH THE NEW MATTER THAT
2 YOU ASKED ME TO IMPOSE. IT HAS ALL BEEN MADE PUBLIC NOW.

3 SO IT IS ALL ACADEMIC.

4 MR. BARENS: THE DEFENSE FEELS THE WHOLE THING APPEARS
5 RATHER ABSURD. I DON'T THINK THIS SHOWS WELL FOR US DOWN
6 HERE, THAT WE ARE PRETENDING LIKE THERE IS A GAG ORDER THAT
7 ACCOMPLISHES NO PURPOSE. I DON'T THINK IT IS TERRIBLY BECOMING.

8 THE COURT: IT IS ACADEMIC. THERE IS NO LONGER ANY
9 GAG ORDER BECAUSE WHAT I GAGGED APPEARED IN THE TIMES, WHICH
10 THIS JUDGE UP THERE, WITHOUT CALLING ME OR LETTING ME KNOW
11 ANYTHING ABOUT IT, EXHIBITED A POOR SENSE OF COLLEGIALITY
12 BECAUSE IT IS MY GAG ORDER AFFECTING A CASE DOWN HERE, NOT
13 UP THERE.

14 I DON'T SEE ANY REASON WHY HE, WITHOUT CONSULTING
15 ME, REFUSED TO HONOR IT.

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1 MR. BARENS: IN FURTHERANCE OF THAT, THE DEFENSE WAS
2 CURIOUS INDEED AS TO WHY MOST OF THAT MATERIAL WAS REVEALED
3 UP THERE, TO BEGIN WITH, BECAUSE ITS RELEVANCY FOR THE CASE
4 IN NORTHERN CALIFORNIA, FOR INSTANCE, THE INFORMATION ON THE
5 PEOPLE IN ARIZONA, I DON'T SEE WHAT THAT HAD TO DO WITH THE
6 CASE UP NORTH TO BEGIN WITH.

7 MR. WAPNER: WELL, THAT IS A MOOT POINT. THEY HAVE
8 REVEALED THE INFORMATION SO --

9 THE COURT: NOT ONLY WITH RESPECT TO ARIZONA BUT HOW IT
10 AFFECTED US IN OUR CASE HERE BUT ALSO TO COMMENT WITH RESPECT
11 TO TITUS, IT HAD NOTHING TO DO WITH ANYTHING UP THERE AND WHY
12 THAT WAS DISCLOSED, I DON'T UNDERSTAND THAT EITHER.

13 MR. BARENS: I DON'T KNOW WHAT THE ATTORNEY GENERAL
14 WAS THINKING WHEN HE BROUGHT THAT BEFORE THE COURT TO BEGIN
15 WITH.

16 THE COURT: THAT DIDN'T AFFECT THE CASE UP THERE IN THE
17 SLIGHTEST.

18 MR. WAPNER: WELL, THAT IS ALL ACADEMIC BECAUSE THEY DID
19 IT ALREADY.

20 SO THE QUESTION IS: WHAT DO WE DO NOW?

21 THE COURT: WELL, THERE IS NO GAG ORDER SO FAR AS I AM
22 CONCERNED ON THAT PARTICULAR ASPECT OF IT.

23 MR. WAPNER: LET ME JUST BE HEARD. WE HAVE A DISCOVERY
24 MOTION SET IN THIS COURT FOR THURSDAY REGARDING INFORMATION
25 ON THE HOMICIDE THAT OCCURRED IN HOLLYWOOD.

26 THE COURT: WELL, THAT IS A DIFFERENT STORY ENTIRELY NOW.
27 THE GAG ORDER -- THERE WAS NOTHING -- IS THAT UP IN SAN
28 MATEO COUNTY?

1 MR. WAPNER: RIGHT.

2 THE COURT: THERE IS NOTHING UP IN SAN MATEO THAT WOULD
3 IN ANY WAY SUGGEST OR RELATE IN ANY WAY TO THIS OTHER MATTER
4 ABOUT KARNY.

5 MR. BARENS: THERE WAS DISCLOSURE ON THE KARNY MATTER.

6 MR. WAPNER: SURE, THAT WAS PART OF THE L.A. TIMES
7 STORY ALSO.

8 THE COURT: I DON'T REMEMBER SEEING THAT.

9 MR. BARENS: IT IS QUITE -- WELL, THERE YOU ARE.

10 MR. WAPNER: IT IS IN THE FIRST PART OF THE ARTICLE, YOUR
11 HONOR. THERE ARE THREE LITTLE BLACK DOTS.

12 THE COURT: I DIDN'T READ IT VERY CAREFULLY, I SHOULD
13 HAVE DONE SO.

14 OH YES, THAT IS RIGHT, TOO. NOW I REMEMBER.

15 MR. WAPNER: AND TO THE EXTENT THAT WE ARE GOING TO HAVE
16 A DISCOVERY MOTION IN THIS COURT AND THIS COURT IS GOING TO
17 DECIDE HOW MUCH, IF ANYTHING, OF THAT INFORMATION SHOULD BE
18 DISCLOSED, I THINK IT IS PRUDENT AT LEAST AS FAR AS THAT
19 INFORMATION IS CONCERNED TO KEEP THE GAG ORDER IN EFFECT AT
20 LEAST UNTIL THURSDAY, WITH THE UNDERSTANDING THAT YOU ARE GOING
21 TO RULE THEN.

22 THE COURT: ON THAT ASPECT OF IT?

23 MR. WAPNER: RIGHT.

24 MR. BARENS: I VIGOROUSLY DISAGREE WITH THAT, YOUR HONOR.

25 THE COURT: IT HAS BEEN MADE PUBLIC ALREADY, HASN'T IT?

26 MR. WAPNER: WELL, LIMITED INFORMATION.

27 THE COURT: THERE IS NO GAG ORDER ANY LONGER. THAT TOO,
28 HAS BEEN MADE PUBLIC UP THERE.

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1 MR. BARENS: I THINK WE ARE GOING TO LOOK LIKE FOOLS.
2 IT LOOKS LIKE A CHARADE.

3 THE COURT: THERE IS NO GAG ORDER.

4 YOUR PROSECUTING AGENCY UP THERE, IF THEY HAD ANY-
5 THING TO DO WITH IT, OR THE JUDGE UP THERE HAD NO BUSINESS
6 PERMITTING THAT DISCLOSURE TO BE MADE.

7 MR. WAPNER: SO THE RECORD IS CLEAR, THE PROSECUTOR IN
8 THAT CASE REQUESTED AND VIGOROUSLY ARGUED FOR A GAG ORDER,
9 PRESENTED POINTS AND AUTHORITIES TO THE COURT AND THE COURT
10 TOOK IT UPON ITSELF TO --

11 THE COURT: WELL, THEN THE COURT WAS AT FAULT UP THERE.

12 MR. BARENS: WELL, WHY DON'T WE JUST MOVE AHEAD HERE AND
13 DO WHAT WE ARE TO DO TODAY? I GET THE FEELING WE ARE BEATING
14 A DEAD HORSE ON THIS WHOLE ISSUE. THIS WHOLE ISSUE IS A DEAD
15 HORSE, MR. WAPNER.

16 THE COURT: WELL, LET ME HEAR WHAT THESE REPORTERS WANT.
17 THEY HAVE ASKED TO TALK WITH ME AND I SAID I WOULDN'T TALK TO
18 THEM UNTIL COUNSEL ARE HERE. NOW LET ME SEE WHAT THEY WANT TO
19 ASK ME. I WILL USE MY JUDGMENT AS TO WHAT TO ANSWER.

20 THERE IS ONE FROM THE TIMES, I THINK, AND ONE FROM
21 THE DAILY NEWS.

22 MR. BARENS: CHAMBERS, WOULD BE PREFERABLE TO HAVE THEM
23 HERE.

24 MR. WAPNER: I UNDERSTAND WHAT MR. BARENS IS SAYING, THAT
25 IT WOULD BE PREFERABLE TO HAVE THEM IN CHAMBERS BUT THE PROBLEM
26 IS, AND TO AVOID THIS ATMOSPHERE OF WHERE EVERYBODY IS
27 CROWDING IN --

28 THE ONLY QUESTION I HAVE IS, OBVIOUSLY, THE COURT

1 WANTS TO BE FAIR TO THE ENTIRE MEDIA AND THERE IS SOMEBODY OUT
2 FROM CABLE NEWS NETWORK WITH A CAMERA OUT THERE AND THERE IS
3 A REPORTER FROM THE VALLEY NEWS.

4 MR. BARENS: LET'S DO IT IN COURT.

5 THE COURT: THAT IS RIGHT, THE VALLEY NEWS AND THE TIMES,
6 THEY ARE THE ONLY TWO REPORTERS OUT THERE.

7 MR. WAPNER: I DON'T THINK THERE IS A REPORTER FROM THE
8 TIMES, AT LEAST I DIDN'T SEE HER.

9 THE COURT: I WAS TOLD THERE WAS SOMEBODY ELSE FROM THE
10 TIMES.

11 MR. WAPNER: CAN I ASK THE COURT, JUST SO FAR AS OUR
12 UNDERSTANDING, YOU INTEND TO FIND OUT WHAT THEY WANT?

13 THE COURT: I JUST WANT TO FIND OUT WHAT THEY WANT.

14 MR. BARENS: YOUR HONOR, FOR PURPOSES OF PROTOCOL,
15 THIS MORNING I WOULD SUGGEST THAT YOUR HONOR RECEIVE AND
16 RESPOND IN ANY WAYS THAT YOUR HONOR SEES FIT AND THAT COUNSEL
17 STAY OUT OF IT THIS MORNING AND WE GO BACK TO THE JURY BUSINESS
18 AND PROCEED WITH OUR MORNING'S WORK.

19 THE COURT: ALL RIGHT.

20 MR. BARENS: IS THAT AGREEABLE, MR. WAPNER?

21 MR. WAPNER: THAT IS FINE WITH ME.

22 THE COURT: ALL RIGHT, OKAY.

23 I DON'T THINK ANYBODY NEED BE HERE. I WILL TELL
24 YOU ALL ABOUT IT AFTERWARD.

25 MR. BARENS: I THINK WHAT MR. WAPNER WAS SUGGESTING, SINCE
26 THERE WAS A CAMERA FROM THE CABLE NETWORK NEWS, IS THAT WHAT
27 YOU SUGGEST, YOU PREFER THE JUDGE TO DO IT IN COURT?

28 MR. WAPNER: I DON'T PREFER THAT HE DO IT ANYWHERE.

1 ALL I AM TELLING HIM IS IF YOU TALK TO ANYONE, THEN
2 THE OTHERS ARE GOING TO SAY "WHY DON'T YOU TALK TO ME?" I AM
3 JUST LETTING YOU KNOW WHAT THE SITUATION IS.

4 THE COURT: I AM NOT GOING TO HAVE ALL OF THE CAMERAS
5 IN HERE, OBVIOUSLY.

6 (RECESS.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT WITH ALL COUNSEL BEING
3 PRESENT, MR. WAPNER, MR. BARENS AND
4 MR. CHIER:)

5 THE CLERK: CECILIA MORRIS ON FOR THIS MORNING, NUMBER 23,
6 IS ILL TODAY. SHE WAS TOLD TO COME BACK MONDAY.

7 SHE ALSO THREW IN THAT HER EMPLOYER WILL NOT APPROVE
8 MORE THAN 30 DAYS.

9 THE COURT: WHAT IS THE NAME OF THAT PROSPECTIVE JUROR?

10 THE CLERK: CECILIA MORRIS. SHE IS NUMBER 23 ON THE
11 LIST.

12 THE COURT: CECILIA MORRIS? WE'LL MARK HER OFF, THEN.

13 THE NEXT ONE WE HAVE IS MC CABE, IS THAT RIGHT?

14 (PROSPECTIVE JUROR PAUL MC CABE ENTERED
15 THE COURTROOM.)

16 THE COURT: GOOD MORNING, MR. MC CABE. WHERE DO YOU
17 LIVE?

18 MR. MC CABE: I LIVE AT 900 CEDAR STREET, EL SEGUNDO.

19 THE COURT: HAVE YOU READ OR HEARD ANYTHING AT ALL ABOUT
20 THIS CASE, EXCEPT WHAT YOU HAVE HEARD FROM ME WHEN I TOLD
21 YOU WHAT THE CASE WAS ABOUT?

22 MR. MC CABE: NO, SIR.

23 THE COURT: YOU HAVE NOT DISCUSSED IT WITH ANY OTHER
24 PROSPECTIVE JURORS OR ANY THIRD PARTIES?

25 MR. MC CABE: NO.

26 THE COURT: ALL RIGHT. I AM BRIEFLY GOING TO TELL YOU
27 WHAT THE CASE IS ABOUT AND THEN ASK YOU CERTAIN QUESTIONS.
28 THOSE QUESTIONS WILL BE ORIENTED TO EXPLORE YOUR MIND AND

YOUR OPINIONS AS TO THE DEATH PENALTY, TO SEE WHETHER OR NOT
THAT WILL QUALIFY YOU AS A PROSPECTIVE JUROR IN THE CASE.

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1 THE COURT: YOU KNOW, OF COURSE, THAT THE DEFENDANT HAS
2 BEEN CHARGED WITH MURDER IN THE FIRST DEGREE AND THAT THAT
3 MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY.

4 NOW, IN THE COURSE OF A ROBBERY HAS SOME SPECIAL
5 SIGNIFICANCE BECAUSE IT IS NOT EVERY MURDER IN THE FIRST DEGREE
6 THAT CALLS FOR THE IMPOSITION OF THE DEATH PENALTY OR ANY
7 CONSIDERATION OF THE DEATH PENALTY; DO YOU UNDERSTAND THAT?

8 (PROSPECTIVE JUROR MC CABE NODS HIS
9 HEAD UP AND DOWN.)

10 THE COURT: IT IS ONLY WHEN MURDERS ARE COMMITTED UNDER
11 CERTAIN SPECIAL CIRCUMSTANCES, LIKE FOR EXAMPLE, THE
12 LEGISLATURE HAS SAID THAT A MURDER IN THE FIRST DEGREE
13 COMMITTED DURING THE COURSE OF A ROBBERY, DURING THE COURSE
14 OF A BURGLARY, DURING THE COURSE OF A KIDNAPPING OR A RAPE OR
15 A TORTURE OR A CHILD WHO HAS BEEN MOLESTED AND DIES AS A RESULT
16 OF IT, AND MULTIPLE MURDERS, THERE ARE 19 OF THEM WHERE THERE
17 ARE SPECIAL CIRCUMSTANCES WHERE THE LAW SAYS THAT PERSONS
18 ACCUSED OF MURDER UNDER SPECIAL CIRCUMSTANCES OF THE KIND I
19 HAVE INDICATED MIGHT BE SUBJECT TO THE DEATH PENALTY.

20 HEREAFTER WHEN I TALK ABOUT THE DEATH PENALTY, THERE
21 ARE TWO ASPECTS OF THE DEATH PENALTY, ONE MAY BE LIFE
22 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND THE OTHER
23 IS ACTUAL DEATH IN THE GAS CHAMBER.

24 ALL RIGHT, NOW THE JURY WHICH IS SELECTED TO TRY
25 THIS CASE WILL FIRST HAVE TO DECIDE ON WHAT WE CALL THE
26 GUILT PHASE, THEY WILL FIRST HAVE TO DECIDE THE GUILT OR
27 INNOCENCE OF THE DEFENDANT: WAS THE DEFENDANT GUILTY OF
28 MURDER IN THE FIRST DEGREE?

1 IF THE JURORS DECIDE THAT HE WAS GUILTY OF MURDER
2 IN THE FIRST DEGREE, THEN THEY HAVE ANOTHER QUESTION TO ANSWER
3 AND THAT QUESTION IS: IS IT TRUE OR IS IT FALSE THAT IT WAS
4 COMMITTED DURING THE COURSE OF A ROBBERY? THAT IS WHAT WE
5 CALL THE SPECIAL CIRCUMSTANCE, COMMITTED IN THE COURSE OF A
6 ROBBERY.

7 NOW, IF THE JURORS UNANIMOUSLY AGREE BEYOND A
8 REASONABLE DOUBT THAT THE MURDER WAS IN THE FIRST DEGREE AND
9 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEN THERE
10 IS THE SECOND PHASE.

11 BEFORE I COME TO THE SECOND PHASE, I'LL TELL YOU,
12 WHEN WE TALK ABOUT LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
13 OF PAROLE, WE MEAN EXACTLY THAT: THERE IS NO POSSIBILITY OF
14 PAROLE AND HE IS NEVER RELEASED FROM PRISON, DO YOU UNDERSTAND
15 THAT?

16 MR. MC CABE: I UNDERSTAND.

17 THE COURT: ALL RIGHT, THEN WE COME INTO THE SECOND
18 PHASE, WHICH WE CALL THE PENALTY PHASE OF THE TRIAL.

19 DURING THE PENALTY PHASE OF THE TRIAL, YOU WILL
20 HEAR ADDITIONAL TESTIMONY, EVIDENCE FROM THE DEFENDANT AND FROM
21 THE PEOPLE THAT WILL BE IN ADDITION TO WHAT YOU HAVE HEARD ON
22 THE GUILT PHASE OF THE TRIAL.

23 THE DEFENSE WILL INTRODUCE EVIDENCE AS TO THE
24 FAVORABLE THINGS ABOUT THE DEFENDANT, THE GOOD THINGS HE HAS
25 DONE, HIS WHOLE LIFE PATTERN, HIS WHOLE BACKGROUND AND HIS
26 CHARACTER AND EVERYTHING ELSE. YOU WILL HEAR ABOUT THE AGE
27 OF THE DEFENDANT, WHICH YOU WILL HAVE TO TAKE INTO CONSIDER-
28 ATION -- YOU MUST TAKE INTO CONSIDERATION -- AND ALSO HIS

1 PRIOR OR LACK OF ANY CRIMINAL ACTIVITY IN THE PAST. HIS
2 PHYSICAL OR MENTAL CONDITION. ALL OF THOSE FACTORS WILL BE
3 CONSIDERED BY THE JURY.

4 THE PEOPLE WILL INTRODUCE TESTIMONY, I ASSUME, OF
5 THE UNFAVORABLE ASPECTS OF THE DEFENDANT, THINGS ABOUT HIM,
6 HE IS A BAD MAN, THINGS THAT HE HAS DONE IN THE PAST WHICH ARE
7 BLAMEWORTHY OR --

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1 SO WHEN THE JURY HEARS ALL OF THAT TESTIMONY AND
2 THEY WILL CONSIDER ALSO THE FACTS OF THE CRIME, THE BACKGROUND
3 OF THE DEFENDANT AND ALL OF THE OTHER EVIDENCE THAT THEY HEAR
4 ON THE PENALTY PHASE, THEN THEY DECIDE WHETHER IT SHOULD BE
5 ONE OF TWO THINGS, LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH
6 IN THE GAS CHAMBER.

7 DO YOU UNDERSTAND THAT?

8 MR. MC CABE: YES, SIR.

9 THE COURT: NOW, THE QUESTION I AM GOING TO ASK YOU,
10 WHICH COUNSEL WILL ALSO ASK YOU, RELATES TO YOUR STATE OF
11 MIND AND YOUR FEELINGS ABOUT THE DEATH PENALTY, TO SEE HOW
12 YOUR STATE OF MIND OR YOUR OPINIONS ABOUT THE DEATH PENALTY
13 RELATE TO YOUR COMPETENCY TO BECOME A POSSIBLE TRIAL JUROR
14 IN THIS CASE.

15 MR. MC CABE: I UNDERSTAND.

16 THE COURT: NOW, THE FIRST TWO QUESTIONS I AM GOING
17 TO ASK YOU AFFECT OR RELATE TO THE GUILT PHASE OF THE TRIAL.

18 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY,
19 IF YOU HAVE ONE, WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU
20 FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE
21 OF THE DEFENDANT?

22 MR. MC CABE: NO OPINION.

23 THE COURT: ALL RIGHT. NO OPINION THAT WILL AFFECT
24 YOU. RIGHT?

25 MR. MC CABE: RIGHT.

26 THE COURT: THE SECOND ONE HAS TO DO WITH THE OTHER
27 ASPECT OF THE GUILT PHASE, DID HE OR DID HE NOT COMMIT THIS
28 MURDER IN THE COURSE OF A ROBBERY. THAT IS THE PENALTY PHASE

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1 OF THE SPECIAL CIRCUMSTANCES, IS IT TRUE OR FALSE THAT HE
2 COMMITTED IT DURING THE COURSE OF A ROBBERY.

3 SO, DO YOU HAVE ANY OPINION WHATEVER IT MAY BE,
4 REGARDING THE DEATH PENALTY, THAT WOULD PREVENT YOU FROM MAKING
5 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
6 SPECIAL CIRCUMSTANCES THAT ARE ALLEGED IN THIS CASE?

7 MR. MC CABE: NO.

8 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS
9 HAVE TO DO WITH THE PENALTY PHASE. WE ARE ASSUMING NOW THAT
10 THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE AND
11 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

12 NOW WE ARE ON THE PENALTY PHASE. DO YOU HAVE
13 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
14 AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS
15 OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY PHASE
16 OF THE TRIAL?

17 MR. MC CABE: NO.

18 THE COURT: ALL RIGHT. THE NEXT QUESTION IS RELATED
19 TO IT, ONLY AS IT RELATES TO LIFE WITHOUT POSSIBILITY OF
20 PAROLE.

21 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
22 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT
23 THE POSSIBILITY OF PAROLE, REGARDLESS OF ANY CIRCUMSTANCES
24 THAT MAY BE PRESENTED -- REGARDLESS OF ANY EVIDENCE THAT MAY
25 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

26 MR. MC CABE: NO.

27 THE COURT: NOW, THE LAST QUESTION IS, DO YOU UNDERSTAND
28 OF COURSE, THAT THE ISSUE OF THE DEATH PENALTY MAY OR MAY

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1 NOT OCCUR IN THIS CASE AND THESE QUESTIONS HAVE BEEN ASKED
2 ONLY IN THE EVENT THAT YOU SHOULD REACH THAT PHASE OF THE
3 TRIAL?

4 MR. MC CABE: I UNDERSTAND.

5 THE COURT: ALL RIGHT. YOU MAY PROCEED.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 GOOD MORNING, MR. MC CABE. I AM ARTHUR BARENS.
8 I REPRESENT THE DEFENDANT, JOE HUNT.

9 AS HIS HONOR DID, IT IS MY DUTY AT THIS STAGE
10 OF THE PROCEEDINGS TO INQUIRE INTO YOUR POINT OF VIEW
11 CONCERNING THE DEATH PENALTY. PARENTHETICALLY, LET ME INDICATE
12 THAT WHAT WE ARE LOOKING FOR IS AS NEUTRAL A JUROR AS POSSIBLE,
13 BOTH FOR THE GUILT PHASE AND THE PENALTY PHASE BECAUSE BOTH
14 SIDES, THE DEFENSE AND THE PROSECUTION ARE ENTITLED TO AS
15 UNBIASED AND NEUTRAL A JUROR AS WE CAN GET. DO YOU UNDERSTAND
16 THAT?

17 MR. MC CABE: I UNDERSTAND.

18 MR. BARENS: MR. MC CABE, WHAT IS YOUR OPINION ABOUT
19 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

20 MR. MC CABE: I BELIEVE IT IS FAIR AND A DETERRENT TO
21 CRIME.

22 MR. BARENS: AND DO YOU FEEL THAT THERE ARE ANY
23 PARTICULAR INSTANCES WHEN THE DEATH PENALTY SHOULD BE APPLIED?

24 MR. MC CABE: NOT THAT I CAN THINK OF NOW. BUT I KNOW
25 THERE ARE INSTANCES.

26 MR. BARENS: NOW IF YOU HAD AN INSTANCE HYPOTHETICALLY
27 SPEAKING SIR, OF A FIRST DEGREE MURDER, AN INTENTIONAL MURDER
28 COMMITTED DURING THE COURSE OF A ROBBERY, IN OTHER WORDS THE

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1 DEFENDANT BY THE TIME HE GOT TO THAT SECOND PENALTY PHASE,
2 AS HIS HONOR DESCRIBED, YOU WOULD HAVE BELIEVED BEYOND A
3 REASONABLE DOUBT THAT A FIRST-DEGREE MURDER TOOK PLACE DURING
4 THE COMMISSION OF A ROBBERY.

5 WOULD YOU AUTOMATICALLY AT THAT PARTICULAR TIME
6 PRIOR TO HEARING ANY EVIDENCE PRESENTED IN EITHER AGGRAVATION
7 OR MITIGATION, WOULD YOU AUTOMATICALLY FEEL THAT A DEFENDANT
8 CONVICTED OF FIRST DEGREE MURDER DURING THE COMMISSION OF
9 A ROBBERY, SHOULD BE GIVEN THE DEATH PENALTY?

10 MR. MC CABE: NO.

11 MR. BARENS: WOULD YOU BE WILLING TO LISTEN TO ALL OF
12 THE EVIDENCE PRESENTED ON BOTH SIDES?

13 MR. MC CABE: YES.

14 MR. BARENS: DO YOU BELIEVE IN THE CONCEPT OF AN EYE
15 FOR AN EYE?

16 MR. MC CABE: TO SOME DEGREE, YES.

17 MR. BARENS: ALL RIGHT. AGAIN, SIR, THERE ARE NO --

18 MR. MC CABE: THIS IS NOT A HARD AND FAST RULE.

19 MR. BARENS: THERE ARE NO RIGHT OR WRONG ANSWERS TO
20 MY QUESTIONS, MR. MC CABE, ONLY YOUR OPINION. I AM NOT
21 JUDGING YOU NOR IS ANYBODY ELSE, YOUR ANSWERS AS GOOD OR BAD.
22 WE ARE JUST TRYING TO GET YOUR POINT OF VIEW.

23 MR. MC CABE, TO THE EXTENT THAT YOU MIGHT
24 SUBSCRIBE TO THE BELIEF OF AN EYE FOR AN EYE OR A LIFE FOR
25 A LIFE, IN ANOTHER INSTANCE, WOULD THAT AFFECT YOUR ABILITY
26 TO CONSIDER LIFE WITHOUT POSSIBILITY OF PAROLE AS AN
27 APPROPRIATE PENALTY FOR SOMEONE WHO COMMITTED A FIRST DEGREE
28 MURDER?

1 MR. MC CABE: WOULD YOU ASK THAT AGAIN, PLEASE?

2 MR. BARENS: YES, SIR. MR. MC CABE, TO THE EXTENT THAT
3 YOU SUBSCRIBE TO A BELIEF OF A LIFE FOR A LIFE OR AN EYE FOR
4 AN EYE, HOW WOULD THAT AFFECT YOUR ABILITY TO CONSIDER LIFE
5 WITHOUT POSSIBILITY OF PAROLE AS AN APPROPRIATE SENTENCE FOR
6 A PENALTY FOR SOMEONE CONVICTED OF TAKING A LIFE ON AN
7 INTENTIONAL BASIS?

8 MR. MC CABE: I DON'T BELIEVE IT WOULD HAVE ANY EFFECT
9 ON IT.

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1 MR. BARENS: IN OTHER WORDS, YOU WOULD REMAIN OPEN-
2 MINDED IN TERMS OF EVALUATING THE PENALTY AT THAT POINT?

3 MR. MC CABE: YES.

4 MR. BARENS: IS LIFE WITHOUT THE POSSIBILITY OF PAROLE
5 A CONCEPTUALLY ACCEPTABLE PENALTY TO YOURSELF FOR SOMEONE WHO
6 TAKES A LIFE ON AN INTENTIONAL BASIS?

7 MR. MC CABE: YES, IT COULD BE.

8 MR. BARENS: YOU MENTIONED BEFORE THAT PART OF YOUR
9 BELIEF SYSTEM THAT THE DEATH PENALTY IS AN APPROPRAITE REMEDY
10 IN OUR SOCIETY RESTS ON BELIEVING THAT IT IS A DETERRENT TO
11 CRIME.

12 MR. MC CABE: YES.

13 MR. BARENS: IN TELLING ME THAT IT DETERS MURDERS IN A
14 GENERALIZED SENSE, CAN YOU FURTHER EXPOUND FOR ME, SIR, WHAT
15 YOU MEAN BY THAT?

16 MR. MC CABE: OTHER THAN IT IS A DETERRENT TO VIOLENT
17 CRIMES, I REALLY HAVE NOTHING IN MIND RIGHT NOW.

18 MR. BARENS: MR. MC CABE, ONE OF THE CONSIDERATIONS THAT
19 ONE MIGHT HAVE IN CONSIDERING SOMETHING AS A DETERRENT IS
20 WHETHER OR NOT IT IS APPLIED IN A PREDICTABLE AND UNIFORM
21 MANNER.

22 WOULD YOU BELIEVE THAT IN ORDER FOR THE DEATH
23 PENALTY TO BE A CREDIBLE OR BELIEVABLE DETERRENT THAT THE COURT
24 SYSTEM SHOULD APPLY IT IN EVERY INSTANCE WHERE THERE IS A FIRST
25 DEGREE MURDER IN ORDER TO SEND THE MESSAGE TO SOCIETY, THE
26 ALARM THAT IF YOU COMMIT AN INTENTIONAL MURDER, THE DEATH
27 PENALTY IS A REMEDY?

28 MR. MC CABE: NO, I DON'T BELIEVE IT SHOULD BE USED

1 ARBITRARILY IN THAT MANNER.

2 MR. BARENS: IN OTHER WORDS, IT WOULD NOT CONFLICT WITH
3 YOUR BELIEF SYSTEM IF WE WERE TO HAVE FIRST DEGREE INTENTIONAL
4 MURDERERS THAT COULD, NONETHELESS, BE SENTENCED TO LIFE WITHOUT
5 THE POSSIBILITY OF PAROLE?

6 MR. MC CABE: THERE COULD BE SUCH SITUATIONS THAT WOULD
7 APPLY.

8 MR. BARENS: DO YOU FEEL THERE IS ANYTHING IN YOUR BELIEF
9 SYSTEM -- AND I ASK YOU THIS IN ALL HONESTY, SIR -- THAT WOULD
10 MAKE MY JOB MORE DIFFICULT IF WE EVER GOT TO THE PENALTY
11 PHASE, IN CONVINCING YOU THAT MY CLIENT SHOULD GET LIFE WITH-
12 OUT THE POSSIBILITY OF PAROLE AS OPPOSED TO THE DEATH PENALTY?

13 MR. MC CABE: NO.

14 MR. BARENS: NOW, MR. MC CABE, YOU UNDERSTAND, SIR, THAT
15 ALTHOUGH, LIKE HIS HONOR, I HAVE SPENT A FEW MOMENTS ASKING
16 YOU ABOUT YOUR VIEWS ON THE DEATH PENALTY, DOES THAT GIVE YOU
17 ANY REASON TO BELIEVE MY CLIENT HAS DONE ANYTHING WRONG?

18 MR. MC CABE: NO, NOT AT THIS POINT.

19 MR. BARENS: YOU HAVEN'T HEARD ANY EVIDENCE ABOUT THIS
20 MATTER?

21 MR. MC CABE: NO.

22 THE FIRST I HEARD HIS NAME IS WHEN YOU MENTIONED
23 IT.

24 MR. BARENS: THEN YOU DON'T HAVE ANY GREATER REASON TO
25 BELIEVE HE IS GUILTY OR HE HAS DONE ANYTHING WRONG BECAUSE HE
26 IS CHARGED WITH A CRIME HERE AND WE ARE HERE TALKING ABOUT THE
27 DEATH PENALTY?

28 MR. MC CABE: NO.

1 MR. BARENS: THANK YOU. PASS FOR CAUSE, YOUR HONOR.

2 THE COURT: ALL RIGHT, MR. WAPNER.

3 MR. WAPNER: THANK YOU, YOUR HONOR.

4 GOOD MORNING, MR. MC CABE. I AM FRED WAPNER, THE
5 DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THE CASE.

6 DOES THE NAME JOE HUNT OR THE PHRASE BILLIONAIRES
7 BOYS CLUB RING ANY BELLS IN YOUR MIND?

8 MR. MC CABE: NO.

9 MR. WAPNER: DO YOU UNDERSTAND THAT IF YOU GET TO THAT
10 POINT OF THE CASE WHERE YOU ARE DECIDING WHAT THE PENALTY SHOULD
11 BE, THAT YOUR JOB IS GOING TO BE TO DELIBERATE THE APPROPRIATE
12 PENALTY WITH 11 OTHER PEOPLE?

13 MR. MC CABE: YES.

14 MR. WAPNER: AND THE JUDGE IS ALSO GOING TO TELL YOU THAT
15 YOU WERE GOING TO BE REQUIRED TO RENDER YOUR OWN INDIVIDUAL
16 OPINION AND YOUR INDIVIDUAL BALLOT AS TO WHAT THE PUNISHMENT
17 SHOULD BE; DO YOU UNDERSTAND THAT?

18 MR. MC CABE: YES.

19 MR. WAPNER: IF YOU LISTEN TO ALL THE EVIDENCE AND YOU
20 DECIDE THAT THE APPROPRIATE PUNISHMENT IS DEATH, ARE YOU
21 CAPABLE OF RENDERING THAT KIND OF A VERDICT?

22 MR. MC CABE: I BELIEVE SO.

23 MR. WAPNER: IS THERE ANYTHING IN YOUR BACKGROUND,
24 RELIGIOUS, MORAL OR PHILOSOPHICAL BELIEFS THAT PREVENT YOU --
25 THAT WOULD PREVENT YOU FROM VOTING FOR A VERDICT OF DEATH IF
26 YOU FELT IT WAS APPROPRIATE?

27 MR. MC CABE: NO.

28 MR. WAPNER: CONVERSELY, IS THERE ANYTHING IN YOUR

1 BACKGROUND THAT WOULD PREVENT YOU FROM VOTING FOR A VERDICT
2 OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF YOU
3 FELT IT WAS APPROPRIATE?

4 MR. MC CABE: NO.

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1 MR. WAPNER: THANK YOU. PASS FOR CAUSE, YOUR HONOR.

2 THE COURT: MR. MC CABE, BOTH SIDES HAVE PASSED FOR
3 CAUSE. WHAT THAT MEANS IS YOU ARE ENTIRELY ACCEPTABLE AS A
4 PROSPECTIVE JUROR IN THIS CASE.

5 WHAT I WILL ASK YOU TO DO -- WE ARE IN THE PROCESS
6 NOW OF GOING THROUGH THE REST OF THIS LIST OF PROSPECTIVE
7 JURORS -- WHAT I AM GOING TO ASK YOU TO DO IS COME BACK -- IS
8 IT THURSDAY?

9 MR. WAPNER: WEDNESDAY.

10 THE COURT: COME BACK WEDNESDAY.

11 THE CLERK: AT 10:30.

12 THE COURT: WHAT I WILL ASK YOU TO DO, I WILL ASK YOU
13 TO COME BACK TO THE JURY ASSEMBLY ROOM ON WEDNESDAY OF THIS
14 WEEK, THE 10TH, AT 10:30 A.M. AND THEN I THINK WE WILL ALL BE
15 READY TO HAVE ALL OF YOU COME IN HERE AND WE WILL START TO
16 PROCEED WITH THE TRIAL WITH THE REST OF THE JURY, ALL RIGHT?

17 MR. MC CABE: FINE, JUDGE.

18 THE COURT: IF YOU READ ANYTHING IN THE PAPERS OR ANY
19 PUBLICATION OR HEAR ANYTHING ON THE RADIO OR TELEVISION, DON'T
20 LISTEN TO IT OR HEAR IT OR DON'T READ ANYTHING ABOUT IT IF YOU
21 CAN HELP IT.

22 MR. MC CABE: ALL RIGHT.

23 THE COURT: THANK YOU VERY MUCH.

24 (PROSPECTIVE JUROR MC CABE EXITS THE
25 COURTROOM.)

26 (PROSPECTIVE JUROR GARVIN ENTERS THE
27 COURTROOM.)

28 THE CLERK: THIS IS ERIC GARVIN.

1 THE COURT: OH YES, THAT IS RIGHT.

2 THE CLERK: HIS PET DIED.

3 THE COURT: HELLO, MR. GARVIN.

4 MR. GARVIN: GOOD MORNING.

5 THE COURT: WERE YOU ILL OR SOMETHING LIKE THAT THE OTHER
6 DAY?

7 MR. GARVIN: OH, MY PET DIED AND I WAS UPSET.

8 THE COURT: THAT'S RIGHT. YOU ASKED TO BE EXCUSED AND
9 WE ASKED YOU TO COME BACK.

10 WHERE DO YOU LIVE, MR. GARVIN?

11 MR. GARVIN: I LIVE IN OCEAN PARK APPROXIMATELY FOUR
12 BLOCKS FROM HERE.

13 THE COURT: ALL RIGHT, HAVE YOU READ ANYTHING AT ALL
14 ABOUT THIS CASE?

15 MR. GARVIN: EXCUSE ME, SIR?

16 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
17 CASE?

18 MR. GARVIN: I HAVE READ SEVERAL ARTICLES IN THE TIMES.
19 THERE WAS ONE SEVERAL MONTHS AGO AND ONE JUST YESTERDAY, I
20 BELIEVE.

21 THE COURT: WHAT IS YOUR UNDERSTANDING OF THAT? TELL
22 ME WHAT IT IS THAT YOU REMEMBER ABOUT ANYTHING THAT YOU READ
23 ABOUT THE CASE, OR WILL THAT TAKE TOO LONG?

24 MR. GARVIN: WELL, THE FIRST ARTICLE I READ WAS SEVERAL
25 MONTHS AGO AND I CAN'T REMEMBER --

26 THE COURT: WAS THAT IN THE TIMES?

27 MR. GARVIN: THAT WAS IN THE TIMES. THAT WAS PROBABLY
28 A TWO-PAGE ARTICLE, IT WAS QUITE EXTENSIVE.

1 THE COURT: YES. WHAT SECTION OF THE TIMES WAS THAT IN
2 AGAIN?

3 MR. GARVIN: I BELIEVE IT WAS IN THE FIRST SECTION.

4 THE COURT: ALL RIGHT, NOW WHAT IS IT YOU REMEMBER AT
5 ALL ABOUT THIS CASE THAT YOU HAVE READ?

6 MR. GARVIN: WELL, SUPPOSEDLY THIS SOCIAL AND INVESTMENT
7 CLUB COMPRISED OF MALE MEMBERS OF WELL TO DO FAMILIES OF
8 SOUTHERN CALIFORNIA, WHO NOT ONLY LIVED TOGETHER BUT THEY WORKED
9 TOGETHER AND AT SOME POINT THEY GOT EXTREMELY UPSET WITH THIS
10 FELLOW WHO PLAYED A HOAX ON THEM AND ARRANGED TO HAVE HIM
11 MURDERED AND DISPOSED OF. THAT WAS THE FIRST.

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1 THE COURT: BY DISPOSED OF, YOU MEAN BURIED SOMEWHERE
2 AND THE BODY NEVER HAS BEEN FOUND?

3 MR. GARVIN: SIR, ALL I KNOW IS WHAT I AM REPEATING
4 OF WHAT I READ.

5 THE COURT: YES.

6 MR. GARVIN: AND I DON'T KNOW HOW FACTUAL IT IS OR
7 ANYTHING. BUT THERE WAS ANOTHER CASE WHERE THEY WANTED TO
8 HAVE THE ESTATE OF THEIR FATHER. ONE OF THEIR MEMBERS TURNED
9 OVER -- HIS SON WAS A MEMBER OF THE CLUB. AND IN ATTEMPTING
10 TO COMPEL THE FELLOW TO TURN OVER THE ESTATE, HE WAS
11 SUFFOCATING IN THE TRUNK OR SOME SUCH THING AND THEY BURIED
12 HIM SOMEWHERE AND THE BODY WAS FOUND.

13 THE COURT: UH-HUH. NOW, AS A RESULT OF ANYTHING THAT
14 YOU HAVE READ, DO YOU THINK YOUR MIND IS SUCH THAT YOU CAN'T
15 PUT IT ALL ASIDE AND JUST BE GOVERNED BY THE TESTIMONY IN
16 THIS CASE IF YOU ARE SELECTED AS A JUROR?

17 MR. GARVIN: THAT IS WHAT I WOULD HOPE TO DO IF I WERE
18 A JUROR. THAT IS THE INSTRUCTION THAT WAS GIVEN TO ME.

19 THE COURT: AND YOU WOULD LISTEN TO BOTH SIDES, BOTH
20 THE PROSECUTION SIDE AND THE DEFENSE SIDE BEFORE YOU FINALLY
21 MAKE UP YOUR MIND AS TO WHETHER OR NOT THE DEFENDANT WAS GUILTY
22 OR NOT GUILTY, WON'T YOU?

23 MR. GARVIN: YES. I WOULD LISTEN TO ALL OF THE
24 TESTIMONY TO BOTH SIDES.

25 THE COURT: AND DO YOU THINK THAT YOU CAN
26 CONSCIENTIOUSLY ERADICATE, IF YOU CAN POSSIBLY DO IT ALTHOUGH
27 IT IS VERY DIFFICULT TO DO ANYTHING THAT IS IN YOUR MIND --
28 JUST SAY THAT IT HAS NOT BEEN PROVED AND FOR THAT REASON IT

1 MAY BE WRONG. IT MAY NOT BE RIGHT. IT MAY BE RIGHT OR IT
2 MAY BE WRONG. IT MAY BE PARTIALLY TRUE AND PARTIALLY UNTRUE.

3 SO THAT YOU WILL WAIT UNTIL YOU HEAR ALL OF THE
4 EVIDENCE YOURSELF BEFORE YOU DRAW ANY CONCLUSION, IS THAT
5 CORRECT?

6 MR. GARVIN: THAT'S ENTIRELY CORRECT.

7 THE COURT: ALL RIGHT.

8 MR. GARVIN: BECAUSE I REALIZE THAT NEWSPAPER STORIES
9 ARE WRITTEN FOR VARIOUS REASONS.

10 THE COURT: YES, SUCH AS CIRCULATION. YOU WOULD KEEP
11 AN OPEN MIND, WOULDN'T YOU?

12 MR. GARVIN: YES.

13 THE COURT: ALL RIGHT. NOW OF COURSE, YOU KNOW NOW
14 THAT THE CHARGE AGAINST THE DEFENDANT IS THAT HE HAD COMMITTED
15 A MURDER AND IT WAS A MURDER IN THE FIRST DEGREE AND THAT
16 THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

17 NOW, IN THE COURSE OF A ROBBERY HAS SOME
18 SIGNIFICANCE. THE SIGNIFICANCE IS FIRST, THAT NOT EVERY MURDER,
19 EVEN IF IT IS A MURDER IN THE FIRST DEGREE AND PLANNED AND
20 PREMEDITATED AND INTENTIONAL, CALLS FOR THE IMPOSITION OF
21 THE DEATH PENALTY, POSSIBLY. IT IS ONLY WHERE CERTAIN MURDERS
22 ARE COMMITTED UNDER WHAT WE CALL SPECIAL CIRCUMSTANCES THAT
23 THE LEGISLATURE HAS SAID AND THE LAW IS THAT THEY ARE THEN
24 SUBJECT TO A POSSIBLE DEATH PENALTY. DO YOU UNDERSTAND?

25 MR. GARVIN: YES.

26 THE COURT: SO THAT A MURDER WHICH IS COMMITTED IN THE
27 COURSE OF A ROBBERY AS THIS IS ALLEGED OR IN THE COURSE OF
28 A BURGLARY OR IN THE COURSE OF A KIDNAPPING OR IN THE COURSE

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1 OF A RAPE OR IN THE COURSE OF TORTURE OR MULTIPLE MURDERS --
2 AND THERE ARE 19 ALTOGETHER THAT THE LAW SAYS ONE WHO ALLEGEDLY
3 PERPETRATES IT IS SUBJECT TO ONE OF TWO THINGS, LIFE WITHOUT
4 POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER.

5 NOW, WHEN WE TALK ABOUT LIFE WITHOUT POSSIBILITY
6 OF PAROLE, WE MEAN EXACTLY THAT. IF HE IS CONVICTED, AND
7 HE IS SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE, HE
8 NEVER GETS PAROLED. DO YOU UNDERSTAND THAT?

9 MR. GARVIN: UH-HUH.

10 THE COURT: OKAY.

11 MR. WAPNER: IS THAT YES?

12 THE COURT: YES. THEN, PEOPLE SOMETIMES BELIEVE THAT
13 IT IS NOT SO. THEY BELIEVE HE WILL GET OUT IN A COUPLE OF
14 YEARS AND DO THE SAME THING AGAIN. THAT ISN'T TRUE.

15 LIFE WITHOUT POSSIBILITY OF PAROLE MEANS EXACTLY
16 THAT, WITHOUT THE POSSIBILITY OF PAROLE. ALL RIGHT?

17 SO, THE JURORS WHO ARE IMPANELED TO TRY THIS CASE
18 FINALLY WILL FIRST HAVE TO DETERMINE WHAT WE CALL THE GUILT
19 PHASE OF THE TRIAL, WHETHER THE DEFENDANT IS GUILTY OR NOT
20 GUILTY OF MURDER IN THE FIRST DEGREE.

21 IF THEY FIND THAT HE IS GUILTY OF MURDER IN THE
22 FIRST DEGREE, THEN THEY HAVE TO DECIDE A SECOND QUESTION,
23 WAS THAT MURDER COMMITTED IN THE COURSE OF A ROBBERY. THAT
24 IS WHAT WE CALL THE SPECIAL CIRCUMSTANCE.

25 AND IF THE JURORS SAY YES OR TRUE, THAT IT WAS
26 COMMITTED IN THE COURSE OF A ROBBERY, THEN WE COME TO THE
27 SECOND PHASE OF THE TRIAL WHERE THE SAME JURORS WILL LISTEN
28 TO TESTIMONY FROM BOTH THE DEFENDANT AND FROM THE PROSECUTION.

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1 FROM THE DEFENDANT IT IS WHAT WE CALL MITIGATING CIRCUMSTANCES,
2 THINGS WHICH ARE FAVORABLE ABOUT HIM, HIS BACKGROUND, HIS
3 AGE, THE LACK OF ANY CRIMINAL ACTIVITY IN HIS PAST, HIS
4 CHARACTER AND HIS HISTORY AND MENTAL AND PHYSICAL CONDITION
5 AND EVERYTHING THAT HAS TO DO ABOUT HIM AS A PERSON. THAT
6 WILL COME BEFORE YOU.

7 THE PEOPLE ON THE OTHER HAND, WILL ATTEMPT TO
8 PROVE AGGRAVATING CIRCUMSTANCES TO AGGRAVATE THE OFFENSE,
9 THAT THE DEFENDANT IS NOT A NICE PERSON, HE IS NOT A GOOD
10 PERSON. THEN THE JURORS CONSIDER ALL OF THAT AND THEY MAKE
11 UP THEIR MINDS AS TO ONE OR THE OTHER, LIFE WITHOUT POSSIBILITY
12 OF PAROLE AS I SAID, OR DEATH. DO YOU UNDERSTAND NOW?

13 MR. GARVIN: YES.

14 THE COURT: NOW, THE QUESTIONS I AM ABOUT TO ASK YOU
15 AND WHICH COUNSEL WILL ASK YOU ARE FOR THE PURPOSE OF
16 DETERMINING OR EXPLORING WHAT YOUR STATE OF MIND IS OR WHAT
17 YOUR OPINION IS RESPECTING THE DEATH PENALTY, TO SEE WHETHER
18 OR NOT YOU QUALIFY AS A JUROR IN THIS CASE. ALL RIGHT?

19 NOW, THE FIRST TWO QUESTIONS I AM GOING TO ASK
20 YOU BOTH RELATE TO THE GUILT PHASE OF THE TRIAL. NOW, MY
21 FIRST QUESTION IS, DO YOU HAVE ANY OPINION WHATEVER THAT
22 OPINION MAY BE, REGARDING THE DEATH PENALTY, THAT WOULD
23 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
24 OR INNOCENCE OF THE DEFENDANT?

25 MR. GARVIN: WELL, I WOULD HOPE TO SAY THAT THERE IS
26 NOTHING, NO OPINION I HAVE ABOUT THE DEATH PENALTY WHICH WOULD
27 PREVENT ME FROM MAKING AN IMPARTIAL DECISION. I HOPE THAT
28 WOULD BE THE CASE.

1 THE COURT: ALL RIGHT. SO YOUR ANSWER IS --

2 MR. GARVIN: THAT THERE IS NO OPINION.

3 THE COURT: YOUR ANSWER IS NO, THEN? IS THAT RIGHT?

4 MR. GARVIN: YES.

5 THE COURT: ALL RIGHT. NOW THE NEXT ONE HAS TO DO WITH
6 THE GUILT PHASE. YOU REMEMBER I SAID THAT IF HE WAS FOUND
7 GUILTY OF MURDER IN THE FIRST DEGREE, THEN THEY HAVE TO ANSWER
8 THE QUESTION TRUE OR FALSE, WHETHER IT WAS COMMITTED DURING
9 THE COURSE OF A ROBBERY.

10 THIS IS THE SAME QUESTION. DO YOU HAVE ANY OPINION
11 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
12 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
13 SPECIAL CIRCUMSTANCES?

14 MR. GARVIN: BY THAT, DO YOU MEAN --

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1 THE COURT: I TOLD YOU THAT IF THE JURY FINDS HIM GUILTY
2 OF MURDER IN THE FIRST DEGREE, THEY HAVE TO DECIDE A COLLATERAL
3 QUESTION, WAS THAT MURDER COMMITTED DURING THE COURSE OF A
4 ROBBERY.

5 COMMITTED DURING THE COURSE OF A ROBBERY IS WHAT
6 WE CALL A SPECIAL CIRCUMSTANCE.

7 IF THE JURY FINDS HIM GUILTY OF MURDER IN THE
8 FIRST DEGREE, THEN THEY HAVE TO ANSWER TRUE OR FALSE, WHETHER
9 OR NOT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. DO
10 YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD
11 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION ON THE TRUTH
12 OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

13 MR. GARVIN: NO.

14 THE COURT: NOW, THE NEXT TWO QUESTIONS HAVE TO DO WITH
15 THE PENALTY PHASE, ASSUMING THAT THE DEFENDANT HAS BEEN FOUND
16 GUILTY OF MURDER IN THE FIRST DEGREE AND IT WAS COMMITTED
17 DURING THE COURSE OF A ROBBERY.

18 THESE TWO QUESTIONS HAVE TO DO WITH THE PENALTY
19 PHASE, AS I TOLD YOU. DO YOU HAVE SUCH AN OPINION CONCERNING
20 THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
21 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MAY BE
22 PRESENTED IN THE PENALTY PHASE OF THE TRIAL?

23 MR. GARVIN: NO. I AM NOT 100 PERCENT FOR THE DEATH
24 PENALTY UNDER ANY CIRCUMSTANCES.

25 THE COURT: ALL RIGHT. THE NEXT QUESTION IS THE SAME
26 EXCEPT THAT IT RELATES TO LIFE WITHOUT POSSIBILITY OF PAROLE.
27 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY,
28 THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY

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

3 MR. GARVIN: I AM NOT SURE I UNDERSTAND. IS THE CHOICE
4 BETWEEN THE DEATH PENALTY AND THE POSSIBILITY OF --

5 THE COURT: NO. THE FIRST QUESTION I ASKED YOU REMEMBER,
6 WAS ON THE PENALTY PHASE OF IT, DO YOU HAVE ANY OPINION THAT
7 YOU WOULD AUTOMATICALLY, NO MATTER WHAT -- YOU WOULDN'T HEAR
8 ANYTHING, YOU WOULDN'T CONSIDER ANYTHING THAT YOU HAVE HEARD
9 ON THE EVIDENCE. WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH
10 PENALTY, NO MATTER WHAT THE EVIDENCE IS? YOUR ANSWER WAS
11 NO.

12 MR. GARVIN: YES.

13 THE COURT: THIS HAS TO DO WITH THE SAME THING, EXCEPT
14 WITH RESPECT TO LIFE WITHOUT POSSIBILITY OF PAROLE. WOULD
15 YOU, WHATEVER THE EVIDENCE, REGARDLESS OF ANY EVIDENCE, YOU
16 WOULDN'T PAY ANY ATTENTION, YOU WOULD AUTOMATICALLY VOTE FOR
17 LIFE WITHOUT POSSIBILITY OF PAROLE?

18 MR. GARVIN: NO. THAT WOULD NOT BE THE CASE.

19 THE COURT: GOOD. NOW, YOU UNDERSTAND THAT THE USE
20 OF THE DEATH PENALTY MAY OR MAY NOT OCCUR IN THIS CASE AND
21 THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT
22 YOU REACH THAT PHASE OF THE TRIAL?

23 MR. GARVIN: YES.

24 THE COURT: GOOD.

25 MR. BARENS: YOUR HONOR, THE DEFENSE WILL PASS FOR CAUSE.
26 MR. GARVIN IS ACCEPTABLE AS A JUROR.

27 THE COURT: ALL RIGHT.

28 MR. WAPNER: GOOD MORNING, MR. GARVIN. I AM FRED WAPNER,

1 THE DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE.

2 MR. GARVIN: GOOD MORNING.

3 MR. WAPNER: I WANT TO TAKE THINGS SOMEWHAT IN THE
4 REVERSE ORDER THAT THE JUDGE DID. I WILL ASK YOU ABOUT THE
5 DEATH PENALTY ISSUES FIRST AND THEN GO BACK TO THE QUESTION
6 OF PUBLICITY THAT YOU MAY HAVE READ ABOUT THE CASE.

7 YOU STARTED TO ASK THE JUDGE A QUESTION ABOUT
8 WHAT HAPPENS WHEN YOU GET TO THE PENALTY PHASE. THAT LED
9 ME TO BELIEVE THAT YOU MAY NOT KNOW EXACTLY WHERE YOU ARE
10 GOING, IF YOU GET THAT POINT. LET ME JUST ASK YOU, IF WE
11 GET TO THAT PART OF THE CASE WHERE YOU ARE DECIDING WHAT THE
12 APPROPRIATE PENALTY IS, DO YOU UNDERSTAND THAT YOU WILL ONLY
13 HAVE TWO CHOICES, ONE WOULD BE DEATH AND THE OTHER ONE WOULD
14 BE LIFE WITHOUT POSSIBILITY OF PAROLE? DID YOU UNDERSTAND
15 THAT BEFORE?

16 MR. GARVIN: I PROBABLY DIDN'T. I THOUGHT THERE MAY
17 BE OTHERS.

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1 THE COURT: YOU THOUGHT WHAT?

2 MR. GARVIN: I MAY HAVE BEEN CONFUSED ON THAT.

3 I THOUGHT -- WELL, OBVIOUSLY, YOU COULD ACQUIT
4 THE FELLOW.

5 THE COURT: NO, NO.

6 MR. WAPNER: LET ME EXPLAIN.

7 THE COURT: GO AHEAD.

8 MR. WAPNER: THERE ARE TWO DIFFERENT STAGES OF THE CASE.
9 THE FIRST ONE IS TO DECIDE WHETHER HE IS GUILTY OR NOT GUILTY;
10 DO YOU UNDERSTAND THAT?

11 MR. GARVIN: YES.

12 MR. WAPNER: AND IN THAT CASE, THE JUDGE IS GOING TO TELL
13 YOU THAT YOU CAN'T THINK ABOUT THE POSSIBLE PENALTY; DO YOU
14 UNDERSTAND THAT?

15 MR. GARVIN: YES.

16 MR. WAPNER: SO WHEN YOU ARE DECIDING WHETHER HE IS
17 GUILTY OR NOT, YOU HAVE TO DECIDE THAT ON THE FACTS AND ON THE
18 LAW WITHOUT THINKING ABOUT WHAT MIGHT HAPPEN TO HIM IF YOU FIND
19 HIM GUILTY. DOES THAT MAKE SENSE TO YOU?

20 (PAUSE.)

21 OR NOT?

22 THE COURT: ARE YOU CONFUSED ABOUT THE QUESTION?

23 MR. GARVIN: I -- MAYBE I SHOULD JUST REPHRASE IT.

24 FIRST, IT IS DECIDED WHETHER HE IS GUILTY AND THEN
25 THERE IS A CONSIDERATION OF THE PENALTY?

26 MR. WAPNER: CORRECT.

27 IN OTHER WORDS, FIRST THERE IS ONE STAGE THAT THE
28 JUDGE EXPLAINED TO YOU THAT I LEFT OUT OF THIS EQUATION. YOU



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1 FIRST DECIDE WHETHER OR NOT HE IS GUILTY OF MURDER AND WHETHER
2 IT IS FIRST OR SECOND DEGREE MURDER OR SOMETHING LESS THAN
3 THAT. ARE YOU WITH ME SO FAR?

4 MR. GARVIN: YES.

5 MR. WAPNER: OKAY. AND WHEN YOU ARE DECIDING WHETHER
6 OR NOT HE IS GUILTY OF MURDER AND IF SO IN WHAT DEGREE, YOU
7 ARE NOT PERMITTED TO SAY TO YOURSELF, "WELL, I HAD BETTER NOT
8 FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE BECAUSE IF I
9 DO THAT, THEN I MIGHT HAVE TO IMPOSE A DEATH PENALTY"; DO YOU
10 UNDERSTAND THAT?

11 MR. GARVIN: YES.

12 MR. WAPNER: ARE YOU OF SUCH A MIND THAT IF YOU WERE ON
13 THE JURY, YOU --

14 MR. GARVIN: I SEE.

15 MR. WAPNER: -- YOU COULD DECIDE THE QUESTION OF GUILT
16 OR INNOCENCE OR WHETHER IT IS MURDER OF THE FIRST DEGREE OR
17 SECOND DEGREE OR SOMETHING LESS WITHOUT THINKING ABOUT WHAT
18 MIGHT HAPPEN TO THE PERSON LATER?

19 OR ON THE OTHER HAND, ARE YOU GOING TO BE THINKING
20 "WELL, IF IT IS FIRST DEGREE MURDER, HE MIGHT GET THE DEATH
21 PENALTY SO I CAN'T VOTE FOR FIRST DEGREE MURDER?"

22 MR. GARVIN: NO.

23 I WOULD LISTEN TO THE EVIDENCE ON BOTH SIDES. I
24 WOULD MAKE A DETERMINATION I WAS SUPPOSED TO; IN OTHER WORDS,
25 I WOULD PERFORM MY JOB AS A JUROR AS I WAS SUPPOSED TO DO IT.

26 MR. WAPNER: KEEPING THAT IN MIND, DO YOU BRING TO THAT
27 DECISION CERTAIN BIASES OR PREJUDICES OR FAVORITISM ONE WAY
28 OR THE OTHER FOR THE PROSECUTION OR FOR THE DEFENSE?

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1 MR. GARVIN: FOR THE PROSECUTION?

2 MR. WAPNER: OR FOR THE DEFENSE?

3 MR. GARVIN: THIS WOULD ALL HAVE TO UNFOLD AS I HEARD
4 THE EVIDENCE.

5 RIGHT NOW, I CAN SAY THAT THEY ARE ON A PARITY.

6 MR. WAPNER: WHEN YOU GET TO THE NEXT PORTION OF YOUR
7 DECISION, THAT PORTION IS GOING TO BE WHETHER OR NOT THIS
8 MURDER, IF YOU DECIDED THAT IT WAS MURDER, WAS IT COMMITTED
9 DURING THE COURSE OF A ROBBERY; DO YOU UNDERSTAND THAT?
10 THAT IS THE SECOND DECISION YOU WILL BE CALLED ON TO MAKE.

11 MR. GARVIN: SPECIAL CIRCUMSTANCES?

12 MR. WAPNER: RIGHT.

13 DO YOU UNDERSTAND THAT THAT IS THE SECOND DECISION
14 YOU HAVE TO MAKE?

15 MR. GARVIN: YES.

16 MR. WAPNER: AND IF YOU DECIDE THAT THE MURDER WAS
17 COMMITTED UNDER SPECIAL CIRCUMSTANCES, THAT IS, THAT IT WAS
18 COMMITTED DURING A ROBBERY, ONLY THEN DO YOU GET TO THE
19 QUESTION OF PENALTY; DO YOU UNDERSTAND THAT?

20 MR. GARVIN: YES.

21 MR. WAPNER: KNOWING IN YOUR OWN MIND THAT IF YOU FIND
22 THE SPECIAL CIRCUMSTANCES ARE TRUE, THAT YOU WILL GET TO THE
23 PENALTY QUESTION, ARE YOU GOING TO THINK, WELL, I DON'T LIKE
24 THE DEATH PENALTY, THEREFORE, I WON'T FIND THE SPECIAL
25 CIRCUMSTANCES TRUE.

26 MR. GARVIN: I WOULD HOPE NOT.

27 I AM SUPPOSED TO BE IMPARTIAL.

28 MR. WAPNER: OKAY, EVERYONE IS SUPPOSED TO BE IMPARTIAL.

1 WHAT WE ARE TRYING TO DO NOW IS TO FIND OUT WHAT YOUR OPINIONS
2 ARE ON THE DEATH PENALTY. CAN YOU TELL ME BRIEFLY WHAT YOUR
3 OPINIONS ARE ON THE DEATH PENALTY?

4 MR. GARVIN: WELL, I WOULD THINK IT WOULD BE SUITABLE
5 PENALTY UNDER CERTAIN CIRCUMSTANCES, CERTAIN HEINOUS CRIMES.

6 I AM NOT UNALTERABLY OPPOSED TO IT OR WOULD I
7 OPPOSE IT A HUNDRED PERCENT ON MURDERS OF ALL DESCRIPTIONS.

8 MR. WAPNER: DO YOU HAVE IN YOUR MIND THE KIND OF
9 LIST OF CRIMES WHERE YOU WOULD IMPOSE IT AND A LIST OF CRIMES
10 WHERE YOU WOULDN'T OPPOSE IT, SUCH AS IF WITHOUT LISTENING TO
11 THE EVIDENCE IN THIS CASE, IF THIS CASE DOESN'T FIT IN YOUR
12 LIST THAT YOU WOULD NOT CONSIDER THE DEATH PENALTY IN THIS
13 CASE?

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1 MR. BARENS: I WOULD OBJECT TO THAT QUESTION, YOUR HONOR.

2 THE COURT: I DON'T LIKE IT THAT WAY.

3 ANOTHER WAY TO PUT IT IS THIS: IN THIS PARTICULAR
4 CASE, YOU ACT ON A SET STAGE. IN THIS PARTICULAR CASE, THE
5 CHARGE AGAINST THE DEFENDANT IS MURDER COMMITTED IN THE COURSE
6 OF A ROBBERY, WHICH I TOLD YOU QUALIFIES IT FOR THE DEATH
7 PENALTY, BY THAT, LIFE IMPRISONMENT OR DEATH IN THE GAS
8 CHAMBER.

9 IS YOUR STATE OF MIND SUCH THAT YOU WOULD VOTE FOR
10 THE DEATH PENALTY, IF IT IS APPROPRIATE IN THIS CASE, AFTER
11 HEARING ALL OF THE FACTS?

12 MR. GARVIN: IF IT WERE APPROPRIATE IN THIS CASE, I WOULD
13 VOTE FOR THE DEATH PENALTY.

14 THE COURT: AND IF IT WAS NOT APPROPRIATE, YOU WOULD VOTE
15 AGAINST IT; IS THAT RIGHT?

16 MR. GARVIN: YES.

17 MR. WAPNER: IF YOU FOUND THE SPECIAL CIRCUMSTANCES TRUE,
18 YOU WOULD THEN GET TO THE PENALTY PHASE AND ONCE YOU GOT TO
19 THAT POINT, YOU WOULD ONLY HAVE TWO CHOICES, TWO POSSIBLE
20 CHOICES OF PUNISHMENT; DO YOU UNDERSTAND THAT?

21 MR. GARVIN: YES.

22 MR. WAPNER: AND THOSE CHOICES WOULD BE DEATH IN THE
23 GAS CHAMBER OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
24 PAROLE; DO YOU UNDERSTAND THAT?

25 MR. GARVIN: YES.

26 MR. WAPNER: AND AFTER LISTENING TO ALL OF THE EVIDENCE
27 AND DELIBERATING ON THE CASE WITH YOUR OTHER FELLOW-JURORS,
28 YOU WOULD BE REQUIRED TO RENDER YOUR OWN INDIVIDUAL VERDICT

1 AS TO WHAT THE PUNISHMENT SHOULD BE; DO YOU UNDERSTAND THAT?

2 IN OTHER WORDS, YOU WOULD HAVE TO DISCUSS THE CASE
3 WITH 11 OTHER PEOPLE BUT NO ONE COULD TELL YOU HOW TO VOTE;
4 DO YOU UNDERSTAND THAT?

5 MR. GARVIN: YES.

6 THE COURT: YOU WOULD MAKE UP YOUR OWN MIND, WOULDN'T
7 YOU?

8 MR. GARVIN: YES.

9 THE COURT: AFTER TALKING WITH THE OTHER JURORS, AFTER
10 YOU HAVE HAD ALL OF THESE DELIBERATIONS AND TALKING BACK AND
11 FORTH, YOU WOULD MAKE UP YOUR OWN MIND; IS THAT RIGHT?

12 MR. GARVIN: THAT'S TRUE.

13 MR. WAPNER: AND ARE YOU THE KIND OF PERSON WHO, IF THE
14 EVIDENCE WARRANTED IT, IS CAPABLE OF RENDERING A VERDICT OF
15 DEATH IF YOU THINK THAT IT IS THE APPROPRIATE VERDICT?

16 MR. GARVIN: I WOULD MAKE A DECISION THAT WAS APPROPRIATE
17 UNDER THE CIRCUMSTANCES, THE EVIDENCE AND THE -- I DO NOT HAVE
18 A MIND SET AGAINST THE DEATH PENALTY. I AM NOT -- I COULD VOTE
19 FOR THE DEATH PENALTY.

20 MR. WAPNER: OKAY, AND ON THE OTHER HAND, COULD YOU VOTE
21 FOR A VERDICT OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
22 PAROLE IF YOU FELT THAT THAT WAS THE APPROPRIATE VERDICT?

23 MR. GARVIN: YES, THAT IS WHAT I WOULD DO.

24 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS OR
25 MORAL BELIEFS THAT WOULD PREVENT YOU FROM VOTING FOR A VERDICT
26 OF DEATH IF YOU FELT THAT WAS THE APPROPRIATE VERDICT?

27 MR. GARVIN: I DON'T BELIEVE SO, NO.

28 MR. WAPNER: AND DO YOU HAVE ANY STRONGLY HELD

1 PHILOSOPHICAL BELIEFS THAT WOULD KEEP YOU FROM VOTING FOR A
2 VERDICT OF DEATH IF YOU FELT THAT WAS THE APPROPRIATE VERDICT?

3 MR. GARVIN: PHILOSOPHICAL, NO.

4 MR. WAPNER: IS THERE ANYTHING THAT I HAVEN'T COVERED
5 WHEN I SAID RELIGIOUS, MORAL OR PHILOSOPHICAL, ANY OTHER
6 BELIEFS THAT COME FROM ANY OTHER PLACE THAT YOU PUT ANY OTHER
7 LABEL ON THAT WOULD CAUSE YOU TO HESITATE IN VOTING FOR A
8 VERDICT OF DEATH IF YOU FELT THAT WAS THE APPROPRIATE VERDICT?

9 MR. GARVIN: NO.

10 I THINK I WOULD VOTE FOR THAT IF THAT WERE
11 APPROPRIATE.

12 MR. WAPNER: YOU READ THE ARTICLE IN THE LOS ANGELES
13 TIMES; IS THAT RIGHT?

14 MR. GARVIN: I DID READ AN ARTICLE IN YESTERDAY'S TIMES
15 ABOUT THIS CASE, YES.

16 MR. WAPNER: DID YOU FORM ANY OPINION AS A RESULT OF
17 READING THAT ARTICLE THAT YOU THINK MIGHT AFFECT YOU IN
18 DECIDING THIS CASE?

19 (PAUSE.)

20 MR. GARVIN: IT MORE OR LESS SOUNDED TO ME LIKE SOMEONE
21 WAS INJECTING SOMETHING INTO THE NEWSPAPERS OF SOME -- SOUNDED
22 ALMOST FABRICATED, SO I REALLY TENDED TO DISBELIEVE WHAT I
23 READ.

24 MR. WAPNER: DID YOU FORM AN OPINION OF WHO THAT SOMEONE
25 WAS, WHO WAS INJECTING THAT INTO THE NEWSPAPER?

26 MR. GARVIN: NO -- WELL, I COULD ONLY SPECULATE.

27 MR. WAPNER: WELL, WHAT WE ARE TRYING TO FIND OUT NOW
28 WHAT IS IN YOUR MIND, EVEN YOUR SPECULATION IS IMPORTANT BECAUSE

1 IT GIVES US SOME INDICATION OF WHAT YOUR STATE OF MIND MIGHT
2 BE.

3 MR. GARVIN: WELL, IT WOULD HAVE BEEN SOME UNIDENTIFIED
4 THIRD PARTY. I DO NOT KNOW. I DO NOT KNOW. IT SOUNDED
5 SUSPICIOUS TO ME, THE ARTICLE AND THE ALLEGATIONS.

6 MR. WAPNER: DID YOU PUT THOSE ALLEGATIONS TOGETHER WITH
7 ANY OF THE PARTIES CONNECTED WITH THIS CASE, THE PROSECUTION
8 OR THE DEFENSE?

9 MR. GARVIN: WELL, NO, I COULDN'T SAY THAT, NO.

10 MR. WAPNER: DO YOU THINK THAT YOU WOULD BE ABLE TO PUT
11 OUT OF YOUR MIND THE THINGS THAT YOU READ YESTERDAY AND IN THE
12 OTHER ARTICLES IN DECIDING THIS CASE?

13 MR. GARVIN: WELL, IT IS VERY INTERESTING. I AM SURE
14 THAT AS I LISTEN TO ANYTHING THAT WENT ON IN THE COURTROOM
15 THAT I WOULD -- I WOULD BECOME AN EXPERT IN MY OWN MIND ON
16 WHAT WENT ON AND I WOULD PROBABLY BE ABLE TO PUT THESE ARTICLES
17 AND WHATEVER I HAVE READ IN PERSPECTIVE, I WOULD HOPE SO.

18 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT, BOTH SIDES HAVE PASSED FOR CAUSE.
21 THAT MEANS THAT YOU QUALIFY POSSIBLY AS A JUROR IN THIS CASE.
22 THERE ARE A NUMBER OF OTHERS WHO HAVE BEEN INTERVIEWED THE SAME
23 WAY AS YOU HAVE SO WHAT I WILL ASK YOU TO DO, PLEASE, IS TO
24 GO TO THE JURY ASSEMBLY ROOM ON WEDNESDAY, THE JURY ASSEMBLY
25 ROOM ON WEDNESDAY AND YOU WILL BE TOGETHER WITH ALL OF THE
26 OTHER JURORS AND YOU COME BACK INTO THE COURTROOM AND WE WILL
27 START THE TRIAL. THAT IS 10:30 ON WEDNESDAY, WHICH IS THE
28 10TH, IN THE JURY ASSEMBLY ROOM, ALL RIGHT? YOU MAKE A NOTE

1 OF THAT.

2 MR. GARVIN: 10:30?

3 THE COURT: 10:30 ON WEDNESDAY.

4 MR. GARVIN: FINE.

5 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. IN THE
6 MEANTIME, DON'T TRY TO READ ANY MORE ARTICLES OR TALK TO
7 ANYBODY ELSE ABOUT THIS CASE.

8 MR. GARVIN: NO, SIR, I WON'T.

9 THE COURT: SO YOU CAN HAVE A CLEAR MIND AND AN IMPARTIAL
10 MIND, ALL RIGHT?

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(PROSPECTIVE JUROR SUZETTE MONROE
ENTERED THE COURTROOM.)

THE COURT: IS THAT MRS.?

MS. MONROE: MRS.

THE COURT: MRS. MONROE, WHERE DO YOU LIVE?

MS. MONROE: BEVERLY HILLS.

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

MS. MONROE: A WHILE BACK, ABOUT A MONTH AGO. I DON'T
REMEMBER VERY MANY DETAILS.

THE COURT: WAS THAT IN THE TIMES?

MS. MONROE: YES AND TIME MAGAZINE, I BELIEVE.

THE COURT: YES. TELL US WHAT YOU REMEMBER, IF YOU
DO, ABOUT WHAT YOU HAVE READ.

MS. MONROE: I CAN ONLY REMEMBER THAT IT WAS CALLED
THE BILLIONAIRE BOYS CLUB. AND I BELIEVE THE MAN'S NAME WAS
MR. HUNT. IT WAS SOMETHING TO DO WITH FINANCIAL MISMANAGEMENT
AND THAT IS ALL I RECALL.

THE COURT: THAT IS ALL YOU RECALL?

MS. MONROE: YES.

THE COURT: BUT THERE WAS A MURDER COMMITTED ALLEGEDLY?

MS. MONROE: I DIDN'T RECALL THAT UNTIL SOMEONE MENTIONED
IT IN THE JURY ASSEMBLY ROOM LAST WEEK.

THE COURT: WHAT DID YOU HEAR IN THE JURY ASSEMBLY ROOM?

MS. MONROE: ONLY THAT IT WAS A MURDER.

THE COURT: A MURDER CASE? WELL, I TOLD YOU THAT OUT
HERE.

MS. MONROE: I GUESS THAT IS IT.

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1 THE COURT: THAT'S RIGHT. YOU ARE CAPABLE, ARE YOU,
2 MRS. MONROE, OF CLEANSING YOUR MIND OF ANYTHING THAT YOU MIGHT
3 HAVE READ AND HEARD ABOUT THE CASE AND JUST BE GUIDED BY THE
4 EVIDENCE YOU WILL HEAR, IF YOU ARE SELECTED AS A JUROR IN
5 THIS COURTROOM AND NOTHING ELSE?

6 MS. MONROE: YES.

7 THE COURT: NOW AGAIN, TO REPEAT WHAT I TOLD YOU AND
8 EXPAND ON THAT A LITTLE BIT, THE DEFENDANT IN THIS CASE IS
9 CHARGED WITH THE COMMISSION OF A MURDER IN THE FIRST DEGREE.
10 AND THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

11 NOW, IN THE COURSE OF A ROBBERY HAS SOME SPECIAL
12 SIGNIFICANCE. YOU SEE, IT IS NOT EVERY MURDER THAT CAN CALL
13 FOR THE DEATH PENALTY. IN OTHER WORDS, A MURDER COMMITTED
14 DELIBERATELY, INTENTIONALLY AND PLANNED MAY OR MAY NOT. IT
15 DEPENDS UPON WHETHER OR NOT THERE ARE ADDITIONAL FACTS AND
16 CIRCUMSTANCES DEPENDENT UPON IT. MERELY BECAUSE IT IS A
17 MURDER, THAT DOESN'T QUALIFY FOR THE DEATH PENALTY.

18 IT IS ONLY WHERE THAT MURDER WAS COMMITTED UNDER
19 WHAT WE CALL SPECIAL CIRCUMSTANCES, LIKE FOR EXAMPLE IN THIS
20 CASE, THE LAW IS THAT IF A MURDER IS COMMITTED DURING THE
21 COURSE OF A ROBBERY, IT MAY QUALIFY THAT CASE. IF REQUESTED
22 BY THE DISTRICT ATTORNEY, IT MAY QUALIFY THAT CASE FOR THE
23 DEATH PENALTY.

24 WHEN I TALK ABOUT THE DEATH PENALTY, THERE ARE
25 TWO ASPECTS OF THE DEATH PENALTY. FIRST IS LIFE WITHOUT
26 POSSIBILITY OF PAROLE OR SECOND, DEATH IN THE GAS CHAMBER.
27 DO YOU UNDERSTAND THAT?

28 MS. MONROE: YES.

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1 THE COURT: SO THE JURORS SELECTED IN THIS CASE, WHO
2 TRY THIS CASE, WILL HAVE TO FIRST DETERMINE WHETHER OR NOT
3 THE DEFENDANT COMMITTED A MURDER AND WHETHER IT WAS A MURDER
4 IN THE FIRST DEGREE. THAT DOESN'T BY ITSELF, QUALIFY FOR
5 THE DEATH PENALTY.

6 THE NEXT QUESTION THEY HAVE TO DETERMINE IS WHETHER
7 OR NOT THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.
8 THAT IS KNOWN AS THE SPECIAL CIRCUMSTANCES. AND THE LAW IS
9 THAT IF A MURDER IS COMMITTED IN THE COURSE OF A ROBBERY OR
10 IN THE COURSE OF A BURGLARY OR IN THE COURSE OF A KIDNAPPING
11 OR IN THE COURSE OF A RAPE OR IN THE COURSE OF A CHILD
12 MOLESTATION WHERE A CHILD DIES OR WHETHER A TORTURE OR MULTIPLE
13 MURDERS, THESE QUALIFY FOR THE DEATH PENALTY. THEY ARE ALL
14 KNOWN AS SPECIAL CIRCUMSTANCES, A MURDER COMMITTED UNDER
15 SPECIAL CIRCUMSTANCES.

16 DO YOU UNDERSTAND THAT?

17 MS. MONROE: YES.

18 THE COURT: SO WHEN I TALK ABOUT ONE OF TWO POSSIBILITIES,
19 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS
20 CHAMBER, LIFE WITHOUT POSSIBILITY OF PAROLE MEANS EXACTLY
21 THAT. IT IS LIFE WITHOUT POSSIBILITY OF PAROLE. HE NEVER
22 GETS OUT.

23 SOMETIMES PEOPLE ARE MISTAKEN IN THE BELIEF THAT
24 HE MIGHT GET OUT IN A COUPLE OF YEARS OR FIVE YEARS OR
25 SOMETHING. BUT HE NEVER GETS OUT.

26 DO YOU UNDERSTAND THAT?

27 MS. MONROE: YES.

28 THE COURT: FIRST, THE JURY HAS TO DETERMINE WHETHER

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1 THE MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY. FIRST
2 THEY DECIDE THE PRELIMINARY QUESTION, WAS THERE A MURDER
3 COMMITTED AND WAS THE MURDER COMMITTED IN THE FIRST DEGREE.

4 IF THEY SAY YES, THEN THEY HAVE TO ANSWER THE
5 QUESTION, IS IT TRUE OR IS IT FALSE THAT THAT MURDER WAS
6 COMMITTED IN THE COURSE OF A ROBBERY.

7 IF THEY SAY TRUE, THEN THE NEXT PHASE OF THE TRIAL
8 IS WHAT WE CALL THE PENALTY PHASE. HAVING ESTABLISHED THAT
9 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY AND IT WAS
10 MURDER IN THE FIRST DEGREE, THEN YOU WOULD HAVE TO DETERMINE
11 WHAT SHOULD BE DONE WITH THE DEFENDANT, WHAT THE PENALTY IS
12 GOING TO BE, ONE OF THOSE TWO PENALTIES I TOLD YOU ABOUT.

13 THEN, THE SAME JURORS HEAR FURTHER EVIDENCE IN
14 THE CASE. THE DEFENSE AND THE PROSECUTION PUT ON ADDITIONAL
15 EVIDENCE. THE DEFENSE WILL TRY TO PORTRAY THE DEFENDANT AS
16 A GOOD PERSON, ESSENTIALLY, AND EVERYTHING FAVORABLE ABOUT
17 HIM, HIS BACKGROUND, HIS CHARACTER, ANYTHING THAT IS FAVORABLE
18 ABOUT HIM THAT THEY HAVE A RIGHT AND YOU HAVE A RIGHT TO
19 CONSIDER. YOU MUST CONSIDER ANY TESTIMONY WHICH HAS TO DO
20 WITH HIS MENTAL CONDITION, HIS CHARACTER AND ANYTHING ABOUT
21 HIM.

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1 AND THE PROSECUTION HAS A RIGHT TO SHOW
2 AGGRAVATING CIRCUMSTANCES, BAD THINGS ABOUT THE DEFENDANT
3 IF THEY HAVE ANY. SO THE JURORS THEN WILL CONSIDER ALL OF
4 IT, THE FAVORABLE AND THE UNFAVORABLE. THEY ALSO HAVE A RIGHT
5 TO CONSIDER THE OFFENSE ITSELF, THE MURDER AND ALL OF THE
6 FACTS THAT THEY HEARD IN CONNECTION WITH IT. AND THEN THEY
7 MAKE UP THEIR MINDS AS TO WHETHER IT SHOULD BE LIFE WITHOUT
8 POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND THAT?

9 MS. MONROE: YES.

10 THE COURT: NOW, THE PURPOSE OF QUESTIONING THESE
11 PROSPECTIVE JURORS IS TO DETERMINE THEIR MENTAL STATE, WHAT
12 THEIR FEELING IS, HOW THEY FEEL ABOUT THE DEATH PENALTY, TO
13 SEE WHETHER OR NOT THAT MIGHT QUALIFY THEM OR DISQUALIFY THEM
14 FROM ACTING AS A TRIAL JUROR IN THIS CASE.

15 SO, THE FOLLOWING QUESTIONS WHICH I AM GOING TO
16 ASK YOU AND ALSO THE QUESTIONS WHICH WILL BE ASKED OF YOU
17 BY COUNSEL, WILL BE DETERMINE YOUR STATE OF MIND, YOUR FEELINGS
18 ABOUT THE DEATH PENALTY. IS THAT RIGHT?

19 MS. MONROE: YES.

20 THE COURT: MY FIRST TWO QUESTIONS HAVE TO DO WITH THE
21 GUILT PHASE OF THE TRIAL. IN OTHER WORDS, THAT IS WHETHER
22 HE IS GUILTY OR NOT GUILTY, WAS IT COMMITTED UNDER CERTAIN
23 SPECIAL CIRCUMSTANCES.

24 NOW, DO YOU HAVE ANY OPINION, WHATEVER THAT OPINION
25 MAY BE, WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
26 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

27 MS. MONROE: I CAN'T THINK OF ANY.

28 THE COURT: ALL RIGHT. NOW, STILL ON THE GUILT PHASE,

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1 YOU REMEMBER THAT I TOLD YOU THAT IF YOU FIND HIM GUILTY OF
2 MURDER IN THE FIRST DEGREE, THEN YOU DETERMINE WHETHER OR
3 NOT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY. THOSE
4 ARE KNOWN AS SPECIAL CIRCUMSTANCES. AND YOU SAY TRUE OR FALSE,
5 IT WAS COMMITTED -- THE MURDER WAS COMMITTED IN THE COURSE
6 OF A ROBBERY. THAT IS THE SPECIAL CIRCUMSTANCES.

7 NOW, DO YOU HAVE ANY OPINION WHATEVER IT MAY BE,
8 AS TO THE DEATH PENALTY, THAT WOULD PREVENT YOU FROM MAKING
9 AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
10 SPECIAL CIRCUMSTANCES?

11 MS. MONROE: NO.

12 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS
13 PRESUPPOSE THAT THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER
14 IN THE FIRST DEGREE AND IT WAS DURING THE COURSE OF A ROBBERY.
15 THEN THEY HAVE TO DETERMINE WHAT THE PENALTY WILL BE.

16 NOW, WE ARE IN THE PENALTY PHASE OF THE TRIAL.
17 NOW, DO YOU HAVE ANY OPINION RESPECTING THE DEATH PENALTY
18 THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY,
19 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY
20 PHASE OF THE TRIAL?

21 MS. MONROE: NOT AUTOMATICALLY, NO.

22 THE COURT: GOOD. AND THE SAME QUESTION WITH RESPECT
23 TO LIFE WITHOUT POSSIBILITY OF PAROLE. DO YOU HAVE SUCH AN
24 OPINION CONCERNING THE DEATH PENALTY, THAT YOU WOULD
25 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
26 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY
27 PHASE OF THE TRIAL?

28 MS. MONROE: NO.

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

5 MS. MONROE: YES, I KNOW.

6 THE COURT: ALL RIGHT.

7 MR. CHIER: GOOD MORNING, MS. MONROE. MY NAME IS
8 RICHARD CHIER. I REPRESENT THE DEFENDANT, MR. HUNT, ALONG
9 WITH MY COLLEAGUE, MR. BARENS, HERE.

10 MS. MONROE: GOOD MORNING.

11 MR. CHIER: AND I WOULD LIKE TO ASK YOU SOME FURTHER
12 QUESTIONS ALONG THE LINES OF THE QUESTIONS ASKED YOU BY THE
13 JUDGE. THE JUDGE HAS GIVEN YOU KIND OF A CRASH COURSE IN
14 DEATH PENALTY LAW, HERE. IT IS A LOT OF INFORMATION TO
15 ASSIMILATE.

16 MS. MONROE: YES.

17 MR. CHIER: AND I WOULD LIKE TO JUST BEGIN BY TELLING
18 YOU A FEW THINGS ABOUT WHAT I AM DOING, SO THAT WILL HELP
19 YOU UNDERSTAND MY QUESTIONS BETTER.

20 FOR EXAMPLE, THE QUESTIONS I AM GOING TO ASK YOU
21 HAVE NO RIGHT OR WRONG ANSWERS. THERE IS NO GOOD OR BAD
22 ANSWER. THEY ARE INFORMATIONAL ONLY.

23 THEY ARE NOT DESIGNED TO HELP US JUDGE YOU AS
24 A PERSON. THEY ARE DESIGNED TO HELP FIND OUT YOUR ATTITUDES
25 TOWARD THE DEATH PENALTY, MURDER AND PUNISHMENT IN A VERY
26 LIMITED CONTEXT.

27 IT MAY BE THAT YOU ARE SUITED TO BE A JUROR IN
28 THIS CASE. IT MAY BE THAT FOR REASONS ATTRIBUTABLE TO YOUR

1 PERSONAL BELIEFS, YOU ARE MORE SUITABLE TO BE A JUROR IN ANOTHER
2 KIND OF CASE.

3 SO PLEASE, THE ONLY WAY THAT THE SYSTEM CAN WORK,
4 IS IF IN RESPONSE TO MY QUESTIONS, YOU GIVE ONLY CANDID AND
5 FORTHRIGHT ANSWERS.

6 WITH THAT IN MIND, LET ME ASK YOU GENERALLY HOW
7 YOU ANSWER THIS QUESTION: I AM A PERSON WHO IS A, STRONGLY
8 IN FAVOR OF THE DEATH PENALTY; B, SOMEWHAT IN FAVOR OF THE
9 DEATH PENALTY; C, OPPOSED TO THE DEATH PENALTY; D, HAVE NOT
10 GIVEN IT MUCH THOUGHT BEFORE THIS DAY; OR E, OTHER. THAT
11 IS, SOME OTHER ANSWER THAN THE ONES I HAVE LISTED. DO YOU
12 HAVE THOSE IN MIND, MRS. MONROE?

13 MS. MONROE: YES. MY ANSWER WOULD BE B.

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

2 MS. MONROE: YES.

3 MR. CHIER: COULD YOU TELL US IN YOUR WORDS HOW YOU FEEL
4 AND WHY YOU FEEL THAT WAY?

5 MS. MONROE: WELL, THE KEY WORD IS "SOMEWHAT," I WOULDN'T
6 AUTOMATICALLY WISH A DEATH PENALTY ON SOMEONE UNTIL I HAVE
7 HEARD ALL OF THE FACTS.

8 I -- POSSIBLY MY ANSWER WOULD HAVE TO BE THE LAST
9 ONE, "OTHER." I THINK THAT WOULD DEPEND ON THE EVIDENCE
10 BROUGHT IN AND HOW --

11 MR. CHIER: OKAY, LET ME ASK YOU SOME BASIC QUESTIONS
12 JUST SO I CAN DETERMINE WHAT YOUR PRESENT INFORMATION IS UPON
13 WHICH YOU OPERATE.

14 YOU UNDERSTAND THAT NOT EVERY KILLING IS A MURDER?

15 MS. MONROE: YES, I UNDERSTAND.

16 MR. CHIER: AND A MURDER IS SOMETHING THAT IS DONE
17 INTENTIONALLY AND DELIBERATELY?

18 MS. MONROE: I UNDERSTAND.

19 MR. CHIER: OKAY, AND YOU SAY THAT IN SOME CIRCUMSTANCES
20 YOU THINK THE DEATH PENALTY WOULD BE APPROPRIATE; IS THAT
21 RIGHT?

22 MS. MONROE: YES, IN CERTAIN CIRCUMSTANCES.

23 MR. CHIER: I TAKE IT THEN, YOU BELIEVE THAT WE NEED A
24 DEATH PENALTY LAW?

25 MS. MONROE: MAYBE I AM NOT MAKING MYSELF VERY CLEAR.

26 I THINK IT IS POSSIBLE, YEAH, BUT I DON'T KNOW
27 OF -- HOW CAN I SAY -- I DON'T KNOW ANYTHING ABOUT THIS CASE
28 UNTIL I HAVE HEARD THE FACTS.

1 MR. CHIER: RIGHT, I AM NOT ASKING YOU TO PREJUDGE THIS
2 CASE.

3 MS. MONROE: NO.

4 MR. CHIER: OR TO EVEN COMMIT YOURSELF TO HOW YOU ARE
5 GOING TO VOTE ON THIS CASE.

6 WHAT I AM TRYING TO DO IS SEE IF YOU HAVE SOME
7 BASIC ATTITUDES, INDEPENDENT OF THIS CASE, OR ANY EVIDENCE IN
8 THIS CASE AND THEN WE CAN PERHAPS, IF NECESSARY, GO TO THE
9 NEXT STEP AND TO APPLY THESE ATTITUDES TO YOUR ABILITY TO BE
10 A JUROR IN THIS CASE.

11 SO LET'S JUST DISREGARD OR PUT OUT OF YOUR MIND
12 ANYTHING ABOUT THIS CASE AND JUST TALK ABOUT BASIC ATTITUDES.

13 DO YOU SEE THE DEATH PENALTY AS A TYPE OF
14 DETERRENT?

15 MS. MONROE: YES.

16 MR. CHIER: ALL RIGHT, DO YOU THINK IT IS A DETERRENT
17 IN THE SENSE THAT IT ELIMINATES UNDESIRABLE TYPES OF PEOPLE
18 FROM OUR SOCIETY?

19 MS. MONROE: THEORETICALLY, BUT I DON'T THINK IN FACT
20 IT REALLY DOES.

21 MR. CHIER: I WILL COME BACK TO THAT IN A MOMENT.

22 DO YOU SEE IT AS A DETERRENT IN THAT IT MAKES AN
23 EXAMPLE OF PEOPLE WHO DO THESE THINGS AND PREVENTS OTHER PEOPLE
24 FROM DOING THEM?

25 MS. MONROE: POSSIBLY.

26 MR. CHIER: ALL RIGHT. SO A LITTLE OF BOTH?

27 MS. MONROE: YES.

28 MR. CHIER: OKAY, DO YOU SEE IT AS A NECESSITY FOR THE

1 GOVERNMENT TO HAVE A PENALTY WHICH IS APPLIED UNIFORMLY IN
2 CERTAIN TYPES OF CASES OR IN CERTAIN TYPES OF CRIMES?

3 MS. MONROE: NO.

4 MR. CHIER: DO YOU SEE THAT IT IS NOT -- DO YOU THINK
5 IT IS A GOOD OR BAD IDEA TO HAVE A PUNISHMENT WHICH IS
6 AUTOMATICALLY IMPOSED REGARDLESS OF THE CIRCUMSTANCES?

7 MS. MONROE: NO.

8 I THINK EACH CASE SHOULD STAND ON ITS OWN.

9 MR. CHIER: NOW LET'S ASSUME THAT --

10 DO YOU UNDERSTAND THAT A DEATH PENALTY CASE WORKS
11 IN TWO SECTIONS? THERE IS A GUILT PHASE AND THEN IF YOU FIND
12 THE DEFENDANT GUILTY AS CHARGED, THERE IS A PENALTY PHASE.

13 MS. MONROE: YES, I UNDERSTAND.

14 MR. CHIER: IT IS ALMOST LIKE TWO TRIALS.

15 MS. MONROE: YES.

16 MR. CHIER: BUT THE FIRST ONE IS TO DETERMINE WHETHER
17 THE PERSON DID IT, THE SECOND ONE IS TO DETERMINE WHAT TO DO
18 WITH THE PERSON.

19 MS. MONROE: YES.

20 MR. CHIER: SO THE EMPHASIS IN THE SECOND PHASE IS ON
21 THE PERSON MORE THAN ON THE FACTS OF THE CASE, RIGHT?

22 MS. MONROE: YES.

23 MR. CHIER: OKAY, DO YOU THINK THAT -- WE WOULD ALL
24 AGREE THAT MURDER IS BAD, RIGHT?

25 MS. MONROE: RIGHT.

26 MR. CHIER: DO YOU THINK THAT IF IN THIS CASE IF YOU WERE
27 A JUROR AND YOU DID FIND THE DEFENDANT GUILTY OF FIRST DEGREE,
28 INTENTIONAL MURDER COMMITTED IN THE COURSE OF A ROBBERY, THAT

1 YOU WOULD BE ABLE TO UNDERTAKE THE SECOND PART OF THE TRIAL,
2 THE PENALTY PHASE FROM AN ESSENTIALLY NEUTRAL POSITION?

3 MS. MONROE: YES.

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1 MR. CHIER: YOU DO NOT FEEL THAT YOU WOULD AT THAT POINT,
2 HAVING FOUND HIM GUILTY, BE BIASED IN FAVOR OF THE DEATH
3 PENALTY AS OPPOSED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
4 OF PAROLE, WITHOUT HEARING ANY EVIDENCE AT ALL?

5 MS. MONROE: NO, I WOULD NOT BE BIASED.

6 MR. CHIER: DO YOU UNDERSTAND MY QUESTION?

7 MS. MONROE: YES.

8 MR. CHIER: IT IS ASSUMING YOU HAVE HEARD NO EVIDENCE
9 AT ALL BUT YOU HAVE JUST CONVICTED HIM OF FIRST DEGREE,
10 INTENTIONAL MURDER. AT THAT POINT, YOUR FRAME OF MIND IS
11 SUCH THAT YOU COULD START FROM A NEUTRAL --

12 MS. MONROE: YES.

13 MR. CHIER: -- PLANE AND DO WHATEVER THE FACTS WARRANTED
14 IN YOUR JUDGMENT, RIGHT?

15 MS. MONROE: THAT'S CORRECT.

16 MR. CHIER: OKAY, NOW THERE ARE A NUMBER OF DIFFERENT
17 THINGS THAT COME INTO EVIDENCE AT A PENALTY PHASE, EVIDENCE
18 ABOUT THE PERSON, HIS BACKGROUND, HIS CHILDHOOD, HIS AGE,
19 WHETHER OR NOT HE HAS A PRIOR RECORD OF DOING VIOLENT THINGS,
20 THINGS LIKE THAT, AND THESE ARE THINGS THAT THE COURT WILL
21 INSTRUCT YOU THAT YOU ARE REQUIRED TO CONSIDER.

22 AND WHAT I WOULD LIKE TO KNOW IS, OBVIOUSLY, YOU
23 HAVEN'T HEARD ANY EVIDENCE EITHER ABOUT THE CASE OR THE FACTS
24 OF THE CASE OR THE PERSON SO YOU CAN'T OBVIOUSLY MAKE ANY
25 JUDGMENT, ANY PERSONAL JUDGMENT ABOUT THIS CASE OR THE
26 EVIDENCE.

27 MS. MONROE: THAT'S TRUE.

28 MR. CHIER: I WANT TO ASK YOU SOME QUESTIONS THAT ARE

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1 ATTITUDINAL, OR QUESTIONS ABOUT YOUR ATTITUDE TOWARD THINGS
2 LIKE AGE IN DETERMINING WHETHER A PERSON SHOULD LIVE OR DIE.

3 DO YOU THINK, EITHER ALONE OR TOGETHER WITH OTHER
4 FACTORS, AGE OUGHT TO MAKE A DIFFERENCE?

5 THE COURT: I TOLD YOU THAT THERE ARE FACTORS WHICH
6 YOU MUST CONSIDER, AMONG WHICH ARE THE AGE, ABSENCE OF ANY
7 CRIMINAL RECORD, BACKGROUND, AND EVERYTHING ELSE. THOSE ARE
8 FACTORS WHICH THE JURY MUST CONSIDER BEFORE THEY MAKE THEIR
9 DETERMINATION, ARE YOU WILLING TO FOLLOW THAT?

10 MS. MONROE: YES, YES.

11 MR. CHIER: YOU ARE WILLING TO CONSIDER THAT; IS THAT
12 RIGHT?

13 MS. MONROE: YES.

14 MR. CHIER: DO YOU THINK IT IS IMPORTANT TO CONSIDER
15 A THING LIKE AGE?

16 MS. MONROE: YES.

17 MR. CHIER: DO YOU THINK IT IS IMPORTANT TO CONSIDER
18 WHETHER A PERSON HAS A PRIOR HISTORY OR NOT IN DETERMINING
19 HOW TO PUNISH A PERSON?

20 MS. MONROE: YES.

21 MR. CHIER: DO YOU THINK ANY OF THOSE THINGS THAT THE
22 JUDGE MENTIONED TO YOU ARE UNIMPORTANT FOR PURPOSES OF KNOWING
23 WHAT TO DO WITH A PERSON?

24 MS. MONROE: NO.

25 MR. CHIER: AND WHEN I SAY AGE, DO YOU UNDERSTAND THAT
26 I AM NOT TALKING ABOUT WHETHER HE WAS AN ADULT OR A JUVENILE?

27 MS. MONROE: IS THAT WHAT YOU MEAN?

28 MR. CHIER: YES.

1 I WANT TO MAKE MYSELF CLEAR. AGE IN THE SENSE
2 OF HOW OLD THE PERSON IS, WHETHER HE IS 25 OR 55, OKAY?

3 MS. MONROE: A 25-YEAR-OLD IS AN ADULT.

4 MR. CHIER: IS, RIGHT, YES.

5 BUT I AM NOT TALKING ABOUT AGE IN THE SENSE OF
6 WHETHER HE WAS UNDER 18 OR OVER 18.

7 MS. MONROE: A MINOR.

8 MR. CHIER: OKAY?

9 MS. MONROE: ALL RIGHT.

10 MR. CHIER: HOW DO YOU FEEL ABOUT A PERSON'S AGE IN
11 TERMS OF A CRITERIA FOR PUNISHING HIM?

12 THE COURT: YOU ARE ASKING HER TO PREJUDGE THE TESTIMONY.
13 LET'S GO ON TO SOMETHING ELSE, WILL YOU?

14 YOU WILL CONSIDER ALL OF THOSE FACTORS; ISN'T
15 THAT WHAT YOU SAID?

16 MS. MONROE: YES, YOUR HONOR.

17 MR. CHIER: I UNDERSTAND THAT AND I UNDERSTAND THAT
18 YOU HAVE AGREED TO CONSIDER ALL OF THESE IN THE SENSE OF
19 LOOKING AT THEM.

20 WHAT I WOULD LIKE TO KNOW, MRS. MONROE, IF ANY
21 OF THOSE THINGS THAT THE JUDGE OR I MENTIONED TO YOU SEEM
22 AT THIS POINT TOO INSIGNIFICANT IN THE OVERALL --

23 THE COURT: YOU HAVE ASKED THAT QUESTION AND SHE SAID
24 SHE WOULD CONSIDER ALL OF IT AND IT IS IMPORTANT. LET'S GO
25 ON TO SOMETHING ELSE NOW, WILL YOU, PLEASE?

26 MR. CHIER: DO YOU THINK THAT IN ORDER FOR THE DEATH
27 PENALTY TO HAVE ANY MEANING THAT IT IS NECESSARY TO APPLY
28 IT IN SOME UNIFORM MANNER?

1 MS. MONROE: NO.

2 MR. CHIER: DO YOU HAVE ANY FEELINGS ABOUT HOW AND UNDER
3 WHAT CIRCUMSTANCES, GENERALLY SPEAKING, IT OUGHT TO BE
4 APPLIED?

5 MS. MONROE: NO.

6 MR. CHIER: WITHOUT HEARING ANY EVIDENCE AND WITHOUT
7 KNOWING ANYTHING ABOUT THIS CASE, ARE THERE ANY THINGS THAT
8 COME TO YOUR MIND WHEN I ASK YOU IN WHAT TYPES OF GENERAL
9 CIRCUMSTANCES DO YOU THINK THAT THE DEATH PENALTY OUGHT TO
10 BE APPLIED?

11 THE COURT: I WILL ON THE COURT'S MOTION OBJECT TO THAT
12 QUESTION AND SUSTAIN IT.

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1 MR. CHIER: WE'LL PASS FOR CAUSE CONDITIONALLY, YOUR
2 HONOR.

3 THE COURT: CONDITIONALLY AS TO WHAT?

4 MR. CHIER: ON THE LIMITED --

5 THE COURT: ARE YOU STARTING THAT AGAIN? ARE YOU?

6 THAT IS WHY I SUGGESTED YOU DO THE QUESTIONING.

7 (AT THIS TIME MR. CHIER EXITS THE COURT-
8 ROOM.)

9 THE COURT: ALL RIGHT. MR. WAPNER?

10 MR. WAPNER: GOOD MORNING. I AM FRED WAPNER, THE DEPUTY
11 DISTRICT ATTORNEY PROSECUTING THIS CASE.

12 MS. MONROE: GOOD MORNING.

13 MR. WAPNER: IF YOU GET TO THE PENALTY PHASE OF THE
14 TRIAL, YOU WILL LISTEN TO ALL OF THE EVIDENCE IN THAT PHASE
15 AND THEN YOU WILL GO INTO THE JURY ROOM AND DISCUSS THE
16 QUESTION OF LIFE OR DEATH WITH 11 OTHER PEOPLE. THE JUDGE WILL
17 TELL YOU THAT ALTHOUGH THE JURY AS A GROUP MAKES THE DECISION,
18 EACH PERSON IS REQUIRED TO RENDER THEIR OWN, INDIVIDUAL
19 VERDICT. DO YOU UNDERSTAND THAT?

20 MS. MONROE: I UNDERSTAND THAT.

21 MR. WAPNER: IF YOU GET TO THAT POINT IN THE CASE AND
22 YOU ARE CONSIDERING ALL OF THE EVIDENCE AND YOU THINK THAT THE
23 EVIDENCE POINTS TO A VERDICT OF DEATH AS THE APPROPRIATE
24 VERDICT, IS THERE ANYTHING IN YOUR BACKGROUND OR HISTORY THAT
25 WOULD PREVENT YOU FROM RENDERING THAT VERDICT?

26 MS. MONROE: I BELIEVE IT WOULD BE VERY DIFFICULT FOR
27 ME TO DO THAT.

28 MR. WAPNER: TELL ME WHY.

1 MS. MONROE: AS A PERSON IN THE HEALTH-RELATED FIELD,
2 I AM OPPOSED TO THE DESTRUCTION OF HUMAN LIFE.

3 MR. WAPNER: WHAT HEALTH-RELATED FIELD ARE YOU IN?

4 MS. MONROE: NURSING SUPERVISOR.

5 MR. WAPNER: SINCE YOU ARE OPPOSED TO THE DESTRUCTION
6 OF HUMAN LIFE, DO YOU -- WELL, LET ME ASK YOU.

7 HOW LONG HAVE YOU HELD THAT BELIEF? WHERE DID YOU
8 COME AT IT FROM?

9 MS. MONROE: AS MANY YEARS AS I HAVE BEEN A NURSE, ABOUT
10 20 YEARS.

11 MR. WAPNER: OKAY. AND CONSIDERING THAT YOU ARE OPPOSED
12 TO THE DESTRUCTION OF HUMAN LIFE, HOW DO YOU IMAGINE THAT THAT
13 IS GOING TO AFFECT YOU IN DECIDING THE QUESTION OF PENALTY IN
14 THIS CASE?

15 MS. MONROE: IT MAY NOT. I CAN'T SAY AT THIS TIME.

16 MR. WAPNER: WELL, UNFORTUNATELY FOR US, THIS IS THE ONLY
17 TIME WE CAN ASK YOU THESE QUESTIONS. ONCE YOU ARE ON THE JURY,
18 THERE IS ALMOST AN INVISIBLE WALL BETWEEN YOU AND THE LAWYERS
19 AND THE JUDGE. WE DON'T GET TO ASK YOU ANYTHING.

20 SO, EXCUSE ME FOR PRYING OR PUSHING THIS POINT,
21 BUT IT IS IMPORTANT TO KNOW NOW.

22 WHAT I AM GETTING AT IS, THE JUDGE IS GOING TO TELL
23 YOU THAT YOU HAVE TO DECIDE THE ISSUE OF PUNISHMENT ON THE FACTS
24 THAT YOU HEAR AND THE INSTRUCTIONS THAT HE GIVES YOU. DO YOU
25 UNDERSTAND THAT?

26 MS. MONROE: YES.

27 MR. WAPNER: IF YOUR FEELING ABOUT NOT DESTROYING A HUMAN
28 LIFE IS SO STRONG THAT NOTWITHSTANDING ANYTHING THAT THE JUDGE

1 TELLS YOU AND NOT WITHSTANDING THE EVIDENCE, YOU COULDN'T VOTE
2 FOR A VERDICT OF DEATH UNDER ANY CIRCUMSTANCES, THEN WE NEED
3 TO KNOW THAT NOW.

4 MS. MONROE: YES. I AGREE.

5 THE COURT: YOU AGREE TO WHAT?

6 MS. MONROE: THAT I WOULDN'T BE ABLE TO VOTE FOR THE
7 DEATH PENALTY.

8 MR. WAPNER: UNDER ANY CIRCUMSTANCES?

9 MS. MONROE: I PROBABLY WOULD NOT BE ABLE TO. I DON'T
10 KNOW AT THIS POINT.

11 MR. WAPNER: I AM NOT TRYING TO GET YOU TO AGREE OR
12 DISAGREE TO ANYTHING.

13 LIKE MR. CHIER SAID, ALTHOUGH HE LEFT THE COURT-
14 ROOM APPARENTLY, THERE ARE NO RIGHT OR WRONG ANSWERS.

15 MS. MONROE: YES.

16 MR. WAPNER: I AM NOT TRYING TO GET YOU TO SAY ANYTHING
17 ONE WAY OR THE OTHER. BUT SINCE BOTH SIDES IN THE CASE ARE
18 LOOKING FOR A FAIR TRIAL --

19 MS. MONROE: YES.

20 MR. BARENS: IF I AM STANDING IN THE PENALTY PHASE AND
21 ARGUING TO YOU THE APPROPRIATE PUNISHMENT SHOULD BE DEATH AND
22 ALL OF THE TIME YOUR MIND IS THAT YOU DON'T CARE WHAT I SAY,
23 YOU WOULD NEVER VOTE FOR THE DEATH PENALTY, THEN I NEED TO KNOW
24 THAT NOW.

25 SO TELL ME, FOR HOW MANY -- YOUR OPINION ABOUT THE
26 SANCTITY OF LIFE OR THE -- HOW LONG DID THAT EVOLVE OVER A
27 PERIOD OF TIME? OR, HAVE YOU HELD IT SINCE YOU FIRST BECAME
28 A NURSE?

1 MS. MONROE: I HAVE ALWAYS HELD THAT.

2 MR. WAPNER: AND BESIDES BEING DEVELOPED FROM YOUR
3 CAREER AS A NURSE, IS IT ROOTED IN ANY RELIGIOUS BELIEF OR
4 PHILOSOPHICAL BELIEF OR MORAL BELIEF?

5 MS. MONROE: YES.

6 MR. WAPNER: OKAY. TELL ME A LITTLE BIT ABOUT THAT.

7 MS. MONROE: I SUPPOSE FROM MY CHRISTIAN RELIGIOUS
8 BELIEF.

9 MR. WAPNER: ALL RIGHT.

10 MS. MONROE: THAT I WOULDN'T BE ABLE TO TAKE A HUMAN
11 LIFE.

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1 MR. WAPNER: THE QUESTION OF TAKING A HUMAN LIFE, ONE
2 OF THE THINGS AS I SAID BEFORE, IS THAT THE JUDGE IS GOING
3 TO GIVE YOU CERTAIN GUIDELINES THAT YOU SHOULD APPLY.

4 MS. MONROE: YES. I UNDERSTAND.

5 MR. WAPNER: BASED ON YOUR CHRISTIAN BELIEF, ARE YOU
6 GOING TO SAY THAT EVEN THOUGH I MIGHT RESPECT THE JUDGE, THAT
7 THERE IS A HIGHER AUTHORITY WHO IS TELLING ME WHAT TO DO AND
8 THAT THAT AUTHORITY SAYS I CAN'T TAKE A LIFE?

9 MS. MONROE: YES.

10 MR. WAPNER: WHEN IT COMES RIGHT DOWN TO IT FOR YOU,
11 THE QUESTION THEN REALLY IS A RELIGIOUS QUESTION? THAT IS,
12 THAT YOUR RELIGIOUS BELIEFS SAY YOU CAN'T TAKE A LIFE, YOU
13 COULDN'T VOTE FOR THE DEATH PENALTY IN THIS CASE?

14 MS. MONROE: PROBABLY NOT. I WON'T KNOW UNTIL I AM
15 IN THAT SITUATION.

16 MR. WAPNER: THE REASON THAT I ASKED YOU THE QUESTION
17 THAT I DID WHEN WE STARTED IS BECAUSE I WANT YOU TO TRY, AS
18 DIFFICULT AS IT IS, TO IMAGINE YOURSELF IN THAT SITUATION.
19 I AM NOT ASKING YOU TO GUESS WHAT THE EVIDENCE IS.

20 BUT, IMAGINE THAT YOU HEARD ALL OF THE EVIDENCE
21 AND IMAGINE THAT YOU ARE NOW IN THE JURY ROOM AND YOU ONLY
22 HAVE TWO CHOICES, ONE WHICH IS LIFE WITHOUT POSSIBILITY OF
23 PAROLE AND THE OTHER WHICH IS THE DEATH PENALTY.

24 YOU HAVE TO RENDER YOUR OWN, INDIVIDUAL VOTE.
25 YOU HAVE TO CAST YOUR BALLOT. IF THOSE WERE YOUR ONLY TWO
26 CHOICES, BASED ON YOUR BELIEFS, COULD YOU VOTE FOR THE DEATH
27 PENALTY?

28 MS. MONROE: I WOULD HAVE TO HEAR ALL OF THE EVIDENCE.

12B-2

1 I COULDN'T GIVE YOU AN ANSWER AT THIS TIME.

2 MR. WAPNER: I AM NOT ASKING YOU HOW YOU WOULD VOTE.

3 THE COURT: SUPPOSE YOU HAVE HEARD ALL OF THE EVIDENCE,
4 RIGHT?

5 MS. MONROE: YES.

6 THE COURT: ARE YOU CAPABLE OF MAKING A DECISION, IF
7 IT IS WARRANTED, THAT THE DEFENDANT SHOULD BE SENTENCED TO
8 THE GAS CHAMBER?

9 MS. MONROE: PROBABLY NOT.

10 THE COURT: HOW DO YOU MEAN BY "PROBABLY" NOT?

11 MS. MONROE: I CAN'T --

12 THE COURT: WHEN WOULD YOU DO THAT?

13 MS. MONROE: AFTER I HEARD ALL OF THE FACTS.

14 THE COURT: ALL RIGHT. AFTER YOU HEARD ALL OF THE FACTS.
15 COULD YOU THEN, IF IT IS WARRANTED, COME IN WITH A VERDICT --
16 IN YOUR OWN MIND -- GUILTY OF MURDER IN THE FIRST DEGREE AND
17 THAT HE SHOULD BE SENTENCED TO THE GAS CHAMBER?

18 MS. MONROE: I BELIEVE SO.

19 THE COURT: LET ME PUT IT TO YOU THIS WAY. DO YOU BELIEVE
20 SO?

21 MS. MONROE: I BELIEVE THAT I COULD BE IMPARTIAL.

22 THE COURT: I AM SURE YOU COULD BE IMPARTIAL. BUT I
23 AM ASKING YOU SPECIFICALLY, WOULD YOU UNDER ANY CIRCUMSTANCES,
24 COME IN WITH THE DECISION THAT THE DEFENDANT SHOULD SUFFER
25 THE DEATH PENALTY IN THE GAS CHAMBER IF THE FACTS WARRANTED
26 IT?

27 MS. MONROE: IF THE FACTS WARRANTED IT, I BELIEVE I
28 COULD.

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1 MR. WAPNER: MRS. MONROE, I AM NOT ASKING YOU HOW YOU
2 WOULD VOTE.

3 MS. MONROE: NO.

4 MR. WAPNER: BECAUSE OBVIOUSLY, YOU DON'T KNOW WHAT
5 THE EVIDENCE IS GOING TO BE.

6 MS. MONROE: THAT'S RIGHT.

7 MR. WAPNER: SO I AM NOT ASKING YOU WHICH VERDICT YOU
8 WOULD RENDER. ALL I AM SAYING TO YOU IS -- OR TRYING TO FIND
9 OUT IS -- IS THE PROSECUTION GETTING A FAIR TRIAL, IF I AM
10 ASKING YOU TO ENTER A VERDICT OF DEATH IN THIS CASE?

11 MR. BARENS: OBJECTION TO THAT QUESTION. I BELIEVE
12 HIS HONOR IS THE ONLY ONE THAT CAN DETERMINE WHAT IS A FAIR
13 TRIAL.

14 THE COURT: I WILL SUSTAIN THE OBJECTION.

15 MR. WAPNER: OKAY. IN YOUR MIND, MS. MONROE, ARE YOU
16 GIVING THE PROSECUTION A FAIR SHAKE IF I AM STANDING ARGUING
17 THAT YOU SHOULD RENDER A VERDICT OF DEATH IN THIS CASE?

18 MS. MONROE: YES.

19 MR. WAPNER: CAN YOU IMAGINE THE SITUATION THAT I
20 SUGGESTED TO YOU A WHILE BEFORE, THAT YOU ARE IN THE JURY
21 ROOM AND YOU ARE BEING ASKED TO DETERMINE THE QUESTION OF
22 LIFE OR DEATH?

23 MS. MONROE: YES.

24 MR. WAPNER: AND WHEN YOU ARE IN THAT SITUATION, WOULD
25 YOU BE GUIDED BY THE LAW THE JUDGE GIVES YOU AND THE FACTS
26 IN THIS CASE OR WOULD YOU BE GUIDED BY SOME HIGHER AUTHORITY,
27 MEANING GOD, FOR EXAMPLE?

28 MS. MONROE: I WOULD BE GUIDED BY THE JUDGE AND THE

1 INSTRUCTIONS OF THE COURT.

2 MR. WAPNER: OKAY. AND CAN YOU PROMISE ME NOW THAT YOU
3 WILL BE GUIDED -- IF YOU ACTUALLY GET INTO THAT SITUATION
4 AND WE OF COURSE HAVE NO WAY OF KNOWING WHETHER YOU WILL --
5 BUT CAN YOU PROMISE ME THAT IF YOU GET INTO THAT SITUATION,
6 YOU WILL BE GUIDED BY THE INSTRUCTIONS OF THE COURT AND THE
7 FACTS IN THIS CASE?

8 MS. MONROE: I PROMISE.

9 MR. WAPNER: ALL RIGHT. AND CAN YOU PROMISE ME THAT
10 IF YOU LISTEN TO ALL OF THE FACTS IN THE CASE AND IF THE FACTS
11 AND THE LAW PROVE TO YOU THAT THE PROPER VERDICT IS LIFE WITHOUT
12 POSSIBILITY OF PAROLE, THAT YOU CAN VOTE FOR THAT VERDICT?

13 MS. MONROE: YES.

14 MR. WAPNER: AND CAN YOU PROMISE ME THAT IF THE FACTS
15 AND THE LAW TELL YOU THAT THE PROPER VERDICT IS DEATH, THAT
16 YOU CAN VOTE FOR THAT VERDICT?

17 MS. MONROE: YES.

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

19 THE COURT: YOU CONDITIONALLY PASS FOR CAUSE?

20 MR. BARENS: NO. WE UNCONDITIONALLY PASS FOR CAUSE,
21 YOUR HONOR. THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU ARE
23 ACCEPTABLE AS A JUROR IN THIS CASE. AND SO, I WILL ASK YOU
24 TO COME BACK WHEN ALL THE OTHER JURORS DO, ON WEDNESDAY.
25 YOU GO TO THE JURY ASSEMBLY ROOM. THEN WE WILL CALL YOU BACK
26 HERE ON WEDNESDAY OF THIS WEEK AT 10:30 IN THE MORNING.

27 MS. MONROE: 10:30?

28 THE COURT: YES. SEE YOU LATER, ALL RIGHT?

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THANK YOU.
(PROSPECTIVE JUROR MONROE EXITED THE
COURTROOM.)

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1 THE BAILIFF: JUDGE, WE HAVE TWO MORE, SHALL I TELL THEM
2 TO COME BACK AFTER LUNCH?

3 THE COURT: YES, I THINK SO.

4 THE BAILIFF: HAVE A SEAT, MR. REID.

5 MR. WAPNER: MAY WE APPROACH THE BENCH BRIEFLY, YOUR
6 HONOR?

7 THE COURT: YES.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
9 HELD AT THE BENCH:)

10 MR. WAPNER: YOUR HONOR, MR. REID WAS AND STILL MAY BE
11 AN INVESTIGATOR FOR THE DISTRICT ATTORNEY'S OFFICE. I DON'T
12 KNOW IF HE IS STILL EMPLOYED BY THE OFFICE BUT I DID KNOW HIM
13 IN THAT CAPACITY WHEN I WORKED IN DOWNTOWN LOS ANGELES IN OUR
14 CENTRAL OPERATIONS DIVISION. I HAVE PREVIOUSLY DISCLOSED THAT
15 TO MR. CHIER LAST WEEK WHEN MR. BARENS WAS NOT HERE. I TOLD
16 MR. BARENS THAT THIS MORNING.

17 THE COURT: I WILL ASK HIM --

18 MR. BARENS: IF HE IS, YOUR HONOR, I BELIEVE HE IS AN
19 INAPPROPRIATE JUROR. HE WOULD BE WORKING FOR MR. WAPNER'S
20 OFFICE.

21 THE COURT: WELL, WE WILL DETERMINE WHAT HIS ATTITUDE
22 TOWARD THE DEATH PENALTY IS.

23 MR. BARENS: THE FACT IS ULTIMATELY, I DON'T WANT TO HAVE
24 TO USE A CHALLENGE, YOUR HONOR.

25 THE COURT: WELL, SUPPOSE HE IS, WOULD YOU AGREE TO
26 EXCUSE HIM IF HE IS EMPLOYED THERE?

27 MR. WAPNER: I HAVE NO OBJECTION.

28 THE COURT: ALL RIGHT.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
3 HELD IN OPEN COURT:)

4 THE COURT: MR. REID, WHERE DO YOU LIVE?

5 MR. REID: I LIVE IN SHERMAN OAKS.

6 THE COURT: YOU HAVE HEARD ABOUT THIS CASE, HAVEN'T YOU?

7 MR. REID: NO, I DON'T EVEN KNOW ANYTHING ABOUT THIS
8 CASE.

9 THE COURT: WHAT IS YOUR JOB?

10 MR. REID: I AM RETIRED.

11 THE COURT: AND WHERE, WHAT JOB DID YOU HOLD?

12 MR. REID: I WAS AN INVESTIGATOR WITH THE DISTRICT
13 ATTORNEY'S OFFICE, LOS ANGELES COUNTY.

14 THE COURT: ALL RIGHT. STIPULATE?

15 MR. WAPNER: YES, YOUR HONOR, WE WOULD STIPULATE.

16 THE COURT: WELL, IN VIEW OF THE FACT THAT YOU HAVE HAD
17 TRAINING AS AN INVESTIGATOR FOR THE DISTRICT ATTORNEY'S OFFICE,
18 I THINK BOTH SIDES HAVE AGREED THAT WE CAN EXCUSE YOU.

19 YOU CAN SERVE AS A JUROR ON SOME OTHER CASE MAYBE.
20 YOU GO BACK TO THE JURY ASSEMBLY ROOM.

21 DO YOU THINK WE OUGHT TO EXCUSE HIM ALTOGETHER?

22 MR. WAPNER: WELL, I AM SURE THERE MAY BE CIVIL CASES
23 THAT HE CAN SIT ON.

24 THE COURT: ALL RIGHT, THANK YOU. YOU GO BACK TO THE
25 JURY ASSEMBLY ROOM AND TELL THEM YOU QUALIFY AS A JUROR IN
26 ANOTHER CASE BUT NOT ON THIS ONE.

27 MR. REID: OKAY.

28 MR. WAPNER: THANK YOU.

1 (PROSPECTIVE JUROR REID EXITS THE COURT
2 ROOM.)

3 THE COURT: DID YOU EXCUSE THE OTHER ONES?

4 THE BAILIFF: I JUST EXCUSED BOTH OF THEM UNTIL 1:30.

5 THE COURT: ALL RIGHT, WE HAVE TWO THAT WERE EXCUSED FROM
6 THIS MORNING AND WE WILL GET THEM BACK HERE THIS AFTERNOON.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 THE COURT: YOU WILL BE BACK THIS AFTERNOON?

9 MR. BARENS: YES, YOUR HONOR.

10 THE COURT: MR. BARENS, YOU ARE AT LIBERTY TO DISCUSS,
11 IF YOU WANT TO, WITH ANY MEMBERS OF THE PRESS ANYTHING ABOUT
12 WHAT WE HAD DISCUSSED IN CHAMBERS. IN OTHER WORDS, THE GAG
13 ORDER WON'T BE APPLICABLE TO THOSE ASPECTS THAT WERE PREVIOUSLY
14 MATTERS IN THE LOS ANGELES TIMES ARTICLE THAT WERE PUBLISHED.

15 MR. BARENS: VERY GOOD.

16 (AT 12:00 NOON A RECESS WAS TAKEN UNTIL
17 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 8, 1986; 1:35 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)
5

6 THE COURT: ALL RIGHT.

7 MR. BARENS: GOOD AFTERNOON.

8 MR. WAPNER: YOUR HONOR, AT THIS TIME I WANT THE RECORD
9 TO REFLECT THAT I AM HANDING TO MR. BARENS, TWO REPORTS, ONE
10 CONCERNING THE INITIAL PHONE CALL THAT I RECEIVED FROM MR.
11 TITUS THAT WAS THE SUBJECT OF A DISCLOSURE THAT I MADE IN
12 CHAMBERS LAST WEEK FROM THE BEVERLY HILLS POLICE DEPARTMENT
13 AND A SECOND ONE FROM THE BEVERLY HILLS POLICE DEPARTMENT AND
14 THE TUCSON POLICE DEPARTMENT REGARDING INFORMATION THAT HAS
15 BEEN DEVELOPED DURING THE COURSE OF THE INVESTIGATION.

16 THE COURT: ALL RIGHT.

17 MR. BARENS: THANK YOU.

18 THE COURT: IT HAS BEEN LODGED WITH THE CLERK?

19 MR. WAPNER: SORRY?

20 THE COURT: I HAVE NOT SEEN ANY OF THEM AT ALL, NOR HAVE
21 I SEEN THE REPORT THAT YOU GAVE TO COUNSEL.

22 MR. WAPNER: WELL, YOUR HONOR, AS IS THE CASE IN ALMOST
23 EVERY INSTANCE, I DON'T THINK IT IS APPROPRIATE TO BE GIVING
24 THE POLICE REPORTS TO THE COURT BECAUSE THEY MAY BE THE SUBJECT
25 OF FUTURE LITIGATION, IN THE EVENT THAT THE WITNESSES MAY SAY
26 ONE THING THAT IS IN THE REPORT OR NOT IN THE REPORT AND --

27 THE COURT: I AM JUST ASKING ABOUT COPIES OF REPORTS GIVEN
28 TO COUNSEL.

1 MR. WAPNER: WELL, THEY ARE IN ESSENCE, POLICE REPORTS
2 OF INCIDENTS THAT ARE CURRENTLY UNDER INVESTIGATION.

3 THE COURT: BUT HOW ABOUT THE REPORT THAT YOU GAVE HIM
4 THAT FORMED THE BASIS OF THE GAG ORDER, THAT I HAVE NOT SEEN
5 ANY OF EITHER?

6 MR. WAPNER: AGAIN, I DON'T THINK IT IS APPROPRIATE TO --

7 THE COURT: I THINK IT IS APPROPRIATE. WOULD YOU FILE
8 IT, PLEASE?

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1 MR. WAPNER: WELL, YOUR HONOR, MAY I ASK YOU TO INVITE
2 COUNSEL TO BE HEARD IN THE EVENT THAT --

3 THE COURT: I HAVE HEARD YOU, HAVEN'T I?

4 MR. WAPNER: NO.

5 I AM TALKING ABOUT DEFENSE COUNSEL.

6 THE COURT: THEY HAVE NO OBJECTION.

7 MR. BARENS: I HAVE NO OBJECTION.

8 MR. WAPNER: THE COURT IS ORDERING --

9 THE COURT: YOU HAD ASKED ME TO MAKE A PROPOSED GAG
10 ORDER INSIDE ON THE BASIS OF SOME REPORT YOU GAVE TO COUNSEL.
11 I DON'T HAVE A COPY.

12 MR. WAPNER: THE SUBSTANCE OF IT WAS DISCUSSED, OBVIOUSLY.

13 THE COURT: WELL, IF THE SUBSTANCE WAS DISCUSSED, WHY
14 DON'T I GET THE REPORT?

15 I WOULD LIKE TO HAVE THE REPORT AND HAVE IT IN THE
16 FILE.

17 MR. WAPNER: WELL, YOUR HONOR, AS FAR AS THE REPORT BEING
18 IN THE FILE, FIRST OF ALL, I NEED TO UNDERSTAND IF THE COURT
19 IS ORDERING ME TO TURN OVER A COPY OF THE REPORT.

20 SECOND OF ALL, IF IT IS GOING TO BE IN THE FILE,
21 THAT FILE, AS THE COURT IS WELL AWARE, IS PURUSED BY THE
22 PRESS ON AN ALMOST DAILY BASIS AND THOSE REPORTS, IN MY VIEW,
23 SHOULD NOT BE THE SUBJECT OF BEING IN THE FILE.

24 THE COURT: SUBMIT THE REPORT TO ME AND LET ME READ IT
25 SO I KNOW WHAT IS GOING ON SO I DON'T HAVE TO HAVE IT IN THE
26 FILE.

27 MR. BARENS: PERHAPS THE WAY TO RESOLVE THIS, YOUR HONOR,
28 IS FOR YOUR HONOR TO RECEIVE ALL OF THE REPORTS. YOUR HONOR

1 WILL READ THE REPORTS AND CONSIDER WHETHER OR NOT THEY SHOULD
2 BE SEALED WITHIN THE COURT'S FILE OR LEFT IN GENERAL IN THE
3 COURT'S FILE.

4 THE COURT: PRECISELY.

5 MR. BAREN: AND I WILL STIPULATE TO YOUR HONOR'S
6 CONCLUSIONS ON THAT MATTER.

7 THE COURT: PRECISELY.

8 MR. WAPNER: WELL, AS A GENERAL RULE, YOUR HONOR --

9 THE COURT: I DON'T UNDERSTAND. IT IS ALL RIGHT FOR
10 COUNSEL TO SEE IT BUT IT IS NOT FOR THE COURT TO SEE IT, IS
11 THAT WHAT YOU ARE TELLING ME?

12 MR. WAPNER: IT HAPPENS IN EVERY CRIMINAL CASE AS A
13 ROUTINE MATTER --

14 THE COURT: I HAVE HAD MORE CRIMINAL CASES THAN YOU HAVE,
15 I KNOW WHAT HAPPENS IN CRIMINAL CASES MORE THAN YOU DO. I
16 KNOW WHAT HAS HAPPENED IN EVERY SINGLE CASE MORE THAN YOU KNOW.
17 IF YOU MEAN THAT WHEN POLICE REPORTS ARE GIVEN TO COUNSEL,
18 BECAUSE YOU ARE OBLIGATED TO DO THAT AND TURN OVER THE REPORTS
19 THAT YOU HAVE, THAT IS PERFECTLY ALL RIGHT, BUT I AM NOT TALKING
20 ABOUT THAT.

21 I AM TALKING ABOUT SOMETHING WHICH IS ALTOGETHER
22 DIFFERENT, SOMETHING WHICH FORMED THE BASIS OF A GAG ORDER WHICH
23 I IMPOSED.

24 MR. WAPNER: WELL, TO THE EXTENT THAT THE GAG ORDER HAS
25 NOW BEEN LIFTED, I DON'T UNDERSTAND HOW THAT IS RELEVANT AT
26 THIS POINT.

27 THE COURT: WELL, I WANT A COPY OF IT; IS THAT UNDERSTOOD?

28 MR. BARENS: WELL, YOUR HONOR, I BELIEVE YOUR HONOR IS

1 ENTITLED TO RECEIVE ALL OF THE EVIDENCE ON THE THREE MATTERS
2 WHICH ARE SUBJECT TO THE COURT ORDER.

3 MR. WAPNER: WELL, YOUR HONOR, THAT IS THE SUBJECT THAT
4 IS THE BASIS OF THE LITIGATION THAT IS GOING TO OCCUR IN THIS
5 ON THURSDAY AND I AM NOT PREPARED, ONE, TO COMMENT ON THAT OR,
6 NUMBER TWO, TO TURN THOSE REPORTS OVER UNTIL WE LITIGATE THAT.

7 THE COURT: I AM TALKING ABOUT ONLY ONE REPORT, ONLY
8 ONE.

9 MR. WAPNER: ALL RIGHT.

10 THE COURT: AND THIS WAS THE REPORT YOU GAVE TO COUNSEL
11 AND WE HAD A HEARING INSIDE ON THE BASIS OF WHICH, I MADE A
12 GAG ORDER. NOW I AM SUPPOSED TO BE APPRISED OF WHAT IS IN THAT
13 REPORT AND MAKE A GAG ORDER BASED ON THAT.

14 MR. WAPNER: I WILL PROVIDE THAT REPORT TO THE COURT,
15 YOUR HONOR.

16 THE COURT: VERY GOOD, ALL RIGHT. THANK YOU.

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1 (PROSPECTIVE JUROR PEGGY ROBERTS
2 ENTERED THE COURTROOM.)

3 THE COURT: ALL RIGHT. IS THAT MISS ROBERTS OR MRS.?

4 MS. ROBERTS: MRS.

5 THE COURT: MRS. ROBERTS, WHERE DO YOU LIVE?

6 MS. ROBERTS: LOS ANGELES.

7 THE COURT: WHERE?

8 MS. ROBERTS: 1115 SOUTH SYCAMORE AVENUE.

9 THE COURT: ALL RIGHT. HAVE YOU READ OR HEARD ANYTHING
10 AT ALL ABOUT THIS CASE, EXCEPT THAT IT IS PENDING AND WHAT
11 I TOLD ALL JURORS WHO CAME INTO THIS COURTROOM?

12 MS. ROBERTS: I HAVE NOT HEARD ANYTHING.

13 THE COURT: ALL RIGHT. HAVE YOU TALKED TO ANY OF THE
14 PROSPECTIVE JURORS ABOUT IT?

15 MS. ROBERTS: NO.

16 THE COURT: WHAT I AM GOING TO DO BRIEFLY, IS TO TELL
17 YOU WHAT THE CASE IS ABOUT AND ASK YOU CERTAIN QUESTIONS.
18 THE QUESTIONS THAT I AM GOING TO ASK YOU ARE FOR THE PURPOSE
19 OF DETERMINING WHAT YOUR MENTAL STATE IS AND WHAT YOUR
20 ATTITUDE IS AND OPINION IS RESPECTING THE DEATH PENALTY.
21 ALL RIGHT?

22 NOW, THIS AS YOU KNOW, IS A CASE WHERE THE
23 DEFENDANT HAS BEEN CHARGED WITH THE COMMISSION OF MURDER AND
24 MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY. THAT
25 IS, THAT THE MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

26 IN THE COURSE OF A ROBBERY QUALIFIES THIS CASE
27 FOR THE POSSIBLE IMPOSITION OF THE DEATH PENALTY. NOW, THE
28 LAW IS THAT NOT EVERY MURDER IS PUNISHABLE BY DEATH OR LIFE

1 WITHOUT POSSIBILITY OF PAROLE. EVEN IF IT IS PREMEDITATED
2 AND EVEN IF IT IS DELIBERATE AND INTENTIONAL, IT IS ONLY WHERE
3 THE MURDER WAS ACCOMPANIED BY WHAT WE CALL SPECIAL
4 CIRCUMSTANCES THAT IT DOES QUALIFY.

5 FOR EXAMPLE IN THIS CASE, THE DEFENDANT IS CHARGED
6 WITH MURDER IN THE FIRST DEGREE COMMITTED DURING THE COURSE
7 OF A ROBBERY. IN THE COURSE OF A ROBBERY QUALIFIES THE CASE
8 FOR THE IMPOSITION OF THE DEATH PENALTY BY THE JURY. THIS
9 IS ONE OF THE SPECIAL CIRCUMSTANCE CASES.

10 OTHER CASES ARE FOR EXAMPLE, A MURDER COMMITTED
11 IN THE COURSE OF A BURGLARY OR A RAPE OR A KIDNAPPING OR IF
12 A CHILD HAS BEEN MOLESTED AND HAS BEEN KILLED AND MULTIPLE
13 MURDERS OR MURDERS ACCOMPLISHED WITH TORTURE. THOSE AND A
14 NUMBER OF OTHERS QUALIFY FOR THE DEATH PENALTY.

15 DO YOU UNDERSTAND THAT?

16 NOW, THE JURY WILL ULTIMATELY DECIDE THE CASE
17 AND THEY WILL BE PICKED AND WILL FIRST HAVE TO DETERMINE WHETHER
18 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER IN
19 THE FIRST DEGREE. THAT IS THE GUILT PHASE OF THE CASE. AND
20 IF THEY DECIDE THAT, THEN THEY HAVE A FURTHER QUESTION TO
21 ANSWER, IS IT TRUE OR IS IT FALSE THAT THAT MURDER WAS
22 COMMITTED DURING THE COURSE OF A ROBBERY.

23 SO WE HAVE A GUILT PHASE OF WHETHER HE IS GUILTY
24 OR INNOCENT. IF IT IS GUILTY, WAS IT COMMITTED IN THE COURSE
25 OF A ROBBERY.

26 NOW, IF IT IS DETERMINED THAT THE -- INCIDENTALLY,
27 WHEN I TALK ABOUT LIFE WITHOUT POSSIBILITY OF PAROLE AS BEING
28 ONE OF THE TWO POSSIBLE PENALTIES, THE OTHER BEING DEATH,

1 LIFE WITHOUT POSSIBILITY OF PAROLE MEANS EXACTLY THAT. IT
2 MEANS LIFE WITHOUT POSSIBILITY OF PAROLE AT ANY TIME.

3 NOW, AS I SAID, THE JURY THEN DETERMINES FIRST,
4 THE QUESTION OF GUILT OR INNOCENCE AND THEN WHETHER OR NOT
5 THE SPECIAL CIRCUMSTANCES THAT IT WAS COMMITTED IN THE COURSE
6 OF A ROBBERY, HAS TO BE DETERMINED BY THEM IN ANSWER TO THE
7 QUESTION, WAS IT TRUE OR FALSE.

8 IF IT IS TRUE, THEN WE START A SECOND PHASE OF
9 THE TRIAL BY THE SAME JURY. IN THE SECOND PHASE OF THE TRIAL,
10 THE JURORS HEAR ADDITIONAL TESTIMONY, ADDITIONAL EVIDENCE.

11 THE DEFENSE WILL SHOW A PICTURE OF THE DEFENDANT
12 IN THE VERY FAVORABLE LIGHT OR FAVORABLE FACTS AND
13 CIRCUMSTANCES WILL BE BROUGHT OUT. HIS AGE MUST BE CONSIDERED
14 AND WHETHER OR NOT HE HAS A PRIOR CRIMINAL RECORD.

15 THE PEOPLE WILL TRY TO SHOW WHAT WE CALL
16 AGGRAVATING CIRCUMSTANCES, IN OTHER WORDS, FACTS TO SHOW THE
17 DEFENDANT IN A BAD LIGHT. ALL OF THAT IS HEARD AND THEN THE
18 JURY DECIDES ONE OF TWO THINGS, EITHER THAT THE DEFENDANT
19 SHOULD BE IMPRISONED FOR LIFE WITHOUT POSSIBILITY OF PAROLE
20 OR HE SHALL SUFFER DEATH. DO YOU UNDERSTAND THAT SO FAR?

21 MS. ROBERTS: I AM TRYING.

22 THE COURT: WELL, WHAT OF IT DON'T YOU UNDERSTAND?

23 MS. ROBERTS: WELL, I AM VERY NERVOUS JUST BEING HERE.
24 IT IS --

25 THE COURT: WELL, TRY NOT TO BE NERVOUS. JUST PRETEND
26 THAT YOU ARE SITTING DOWN AT YOUR DINNER TABLE AND SOMEBODY
27 IS TALKING TO YOU. ALL RIGHT?

28 AS I TOLD YOU, ALL OF THE THINGS WE CALL THE

1 PENALTY PHASE, THEY DECIDE WHAT THE PENALTY WILL BE. ALL
2 OF THOSE FACTORS I HAVE INDICATED TO YOU WILL BE CONSIDERED
3 BY THE JURY AND THEN THEY DECIDE ONE OF TWO THINGS, LIFE
4 WITHOUT POSSIBILITY OF PAROLE OR DEATH. ALL RIGHT?

5 NOW, THE QUESTIONS I AM GOING TO ASK YOU AND WHICH
6 COUNSEL WILL ASK YOU WILL TOUCH UPON YOUR STATE OF MIND OR
7 YOUR FEELINGS OR YOUR OPINION WITH RESPECT TO THE DEATH PENALTY.
8 OKAY?

9 NOW, THE FIRST TWO QUESTIONS I AM GOING TO ASK
10 YOU RELATE TO THE GUILT PHASE, SHOULD HE BE GUILTY OR NOT
11 GUILTY AND SO FORTH. NOW, THE FIRST QUESTION I AM GOING TO
12 ASK YOU IS, DO YOU HAVE AN OPINION, NO MATTER WHAT THE
13 OPINION MAY BE, REGARDING THE DEATH PENALTY, THAT WOULD
14 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
15 OR INNOCENCE OF THE DEFENDANT?

16 MS. ROBERTS: THE DEATH PENALTY? WHETHER I AM FOR OR
17 AGAINST IT?

18 THE COURT: NO. WHATEVER YOUR OPINION IS ON THE DEATH
19 PENALTY, WHETHER YOU ARE FOR OR AGAINST, WOULD THAT PREVENT
20 YOU IF YOU ARE A JUROR, FROM DECIDING WHETHER OR NOT THE
21 DEFENDANT IS GUILTY OR NOT GUILTY?

22 MS. ROBERTS: WELL, THE ONLY THING I CAN SAY IS THAT
23 I DON'T WANT TO HAVE TO MAKE THAT DECISION.

24 THE COURT: WHETHER HE IS GUILTY OR NOT GUILTY?

25 MS. ROBERTS: YES.

26 THE COURT: AND IF YOU ARE A JUROR IN THIS CASE, YOU
27 REFUSE TO VOTE ONE WAY OR THE OTHER, IS THAT IT?

28 MS. ROBERTS: I JUST HOPE THAT I WON'T BE A JUROR ON

1 THIS CASE.

2 THE COURT: YOU DON'T WANT TO BE A JUROR, IS THAT THE
3 IDEA?

4 MS. ROBERTS: UH-HUH.

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1 THE COURT: YOU KNOW, YOU REPORTED FOR JURY DUTY AND YOU
2 WERE ASSIGNED TO THIS PARTICULAR MATTER POSSIBLY AND YOU ARE
3 TELLING US NOW YOU DON'T WANT TO BE A JUROR ON THIS PARTICULAR
4 TYPE OF CASE?

5 MS. ROBERTS: WELL, I MENTIONED THAT LAST WEEK WHEN I
6 WAS HERE AND --

7 THE COURT: YOU MEAN IN CHAMBERS?

8 MS. ROBERTS: NO.

9 RIGHT IN HERE.

10 THE COURT: DO YOU HAVE ANY QUESTIONS, MR. BARENS?

11 MR. BARENS: I WOULD, YOUR HONOR, BRIEFLY.

12 GOOD AFTERNOON, MS. ROBERTS. I AM ARTHUR BARENS
13 AND I REPRESENT THE DEFENDANT, JOE HUNT.

14 MS. ROBERTS, DO YOU UNDERSTAND THAT PART OF YOUR
15 DUTIES AS A CITIZEN IN THE UNITED STATES IS TO SERVE ON A
16 JURY IF YOU ARE QUALIFIED TO DO SO?

17 MS. ROBERTS: OH, YES.

18 MR. BARENS: AND SOMETIMES WE HAVE TO DO THINGS IN
19 SOCIETY THAT WE ARE NOT REALLY THRILLED TO DO BUT IT IS PART
20 OF OUR CITIZENSHIP DUTIES, VOTING AND BEING ON JURIES AND
21 GETTING DRIVERS LICENSE TESTS.

22 ALTHOUGH YOU ARE UNHAPPY AT HAVING TO BE A JUROR,
23 WOULD YOU BE ABLE TO ACT AS A JUROR, DO YOU FEEL, TO MAKE A
24 DECISION ON THE GUILT OR INNOCENCE BASED ON THE EVIDENCE
25 PRESENTED AT A TRIAL?

26 MS. ROBERTS: I REALLY DON'T KNOW.

27 MR. BARENS: WOULD IT BE TERRIBLY UPSETTING TO YOU TO
28 HAVE TO SERVE AS A JUROR ON THIS CASE?

1 MS. ROBERTS: YES.

2 MR. BARENS: THE DEFENSE WILL STIPULATE, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. WAPNER: IS THAT A STIPULATION THAT SHE MAY BE
5 EXCUSED?

6 MR. BARENS: YES, MR. WAPNER.

7 THE COURT: YES.

8 MR. WAPNER: SO STIPULATED.

9 THE COURT: THANK YOU. YOU ARE EXCUSED.

10 MS. ROBERTS: YES.

11 THE COURT: HOW ABOUT CIVIL CASES, WOULD YOU LIKE TO BE
12 ON A CIVIL CASE OR NOTHING AT ALL?

13 MS. ROBERTS: I JUST WOULDN'T.

14 THE COURT: JUST GO TO THE JURY ASSEMBLY ROOM AND TELL
15 THE CLERK THERE THAT THE JUDGE SAID YOU SHOULD BE STRICKEN FROM
16 THE JURY LIST.

17 MS. ROBERTS: OKAY. THANK YOU.

18 (PROSPECTIVE JUROR ROBERTS EXITS THE
19 COURTROOM.)

20 THE COURT: SHE IS CALLING FOR PEGGY ROBERTS AND SHE HAS
21 ALREADY BEEN HERE.

22 PATRICIA ROBLES IS THE ONE YOU WANT.

23 THE CLERK: YES.

24 MR. BARENS: WHAT GOOD HEARING YOU HAVE, YOUR HONOR.

25 THE BAILIFF: THIS IS PATRICIA ROBLES.

26 (PROSPECTIVE JUROR ROBLES ENTERS THE
27 COURTROOM.)

28 THE COURT: GOOD AFTERNOON. IS THAT MISS OR MRS.?

1 MS. ROBLES: MRS.

2 THE COURT: MRS. ROBLES?

3 MS. ROBLES: YES.

4 THE COURT: MRS. ROBLES, WHERE DO YOU LIVE?

5 MS. ROBLES: SANTA MONICA.

6 THE COURT: HAVE YOU EVER HEARD ANYTHING OR HAVE YOU
7 READ ANYTHING ABOUT THIS CASE --

8 MS. ROBLES: NO.

9 THE COURT: -- EXCEPT IT IS PENDING IN THE COURT AT THIS
10 TIME AND WHAT I TOLD YOU WHEN YOU WERE ALL HERE?

11 (WHEREUPON, MS. ROBLES NODS HER HEAD UP
12 AND DOWN.)

13 THE COURT: YOU HAVEN'T READ ANYTHING ABOUT IT?

14 MS. ROBLES: I DON'T HAVE ANY IDEA.

15 THE COURT: YOU DON'T HAVE ANY IDEA WHAT IT IS ALL ABOUT,
16 YOU DIDN'T TALK TO THE OTHER JURORS AND THEY DIDN'T TELL YOU
17 ANYTHING ABOUT IT?

18 MS. ROBLES: NO.

19 THE COURT: ALL RIGHT, FINE.

20 BRIEFLY, TO GIVE YOU A RESUME, THE DEFENDANT IN
21 THIS CASE IS CHARGED WITH THE COMMISSION OF A MURDER, THAT
22 BEING MURDER IN THE FIRST DEGREE, AND IT WAS COMMITTED IN THE
23 COURSE OF A ROBBERY.

24 NOW, IN THE COURSE OF A ROBBERY HAS SIGNIFICANCE
25 IN THIS CASE. IN THE COURSE OF A ROBBERY QUALIFIES THIS CASE
26 FOR THE IMPOSITION POSSIBLY OF THE DEATH PENALTY.

27 NOW, A DEATH PENALTY IS ONE OF TWO THINGS: IT IS
28 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR ACTUAL

1 DEATH IN THE GAS CHAMBER, DO YOU UNDERSTAND?

2 MS. ROBLES: YES.

3 THE COURT: NOW, THE LEGISLATURE HAS SAID AND IT IS THE
4 LAW THAT NOT ALL MURDERERS ARE PUNISHABLE BY THE DEATH PENALTY,
5 YOU KNOW.

6 YOU MIGHT HAVE A MURDER WHICH IS FIRST DEGREE
7 MURDER, DELIBERATE AND PLANNED AND CALCULATED AND INTENTIONAL
8 AND STILL NOT QUALIFY FOR THE DEATH PENALTY.

9 IT IS ONLY IF THAT MURDER WAS COMMITTED UNDER
10 CERTAIN SPECIAL CIRCUMSTANCE, A SPECIAL CIRCUMSTANCE THAT IT
11 WAS COMMITTED DURING THE COURSE OF A ROBBERY, COMMITTED DURING
12 THE COURSE OF A BURGLARY, COMMITTED DURING THE COURSE OF A
13 KIDNAPPING, COMMITTED DURING THE COURSE OF A CHILD MOLESTATION
14 WHERE A CHILD IS KILLED, COMMITTED DURING A TORTURE OR MULTIPLE
15 MURDERS, THERE ARE 19 OF THEM. BUT IN ANY RATE, IN ALL OF
16 THOSE SPECIAL CIRCUMSTANCES CASE, ALL OF THOSE CASES
17 QUALIFY FOR THE DEATH PENALTY.

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1 BY THE DEATH PENALTY, I MEAN IT IS ONE OF TWO
2 THINGS: EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
3 PAROLE -- AND WHEN I SAY LIFE IMPRISONMENT WITHOUT THE
4 POSSIBILITY OF PAROLE, THERE IS NO RELEASE. SOMEBODY MIGHT
5 SAY THAT THEY WILL GET OUT IN A FEW YEARS BUT THAT IS NOT TRUE.
6 SECONDLY, IT COULD BE DEATH IN THE GAS CHAMBER.

7 ALL RIGHT, THE JURY SELECTED IN THIS CASE WILL
8 FIRST DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT. IF
9 THEY DECIDE INNOCENCE, THAT IS THE END OF THE CASE. IF THEY
10 DECIDE GUILT, IN OTHER WORDS, THAT HE COMMITTED THE MURDER,
11 THAT IT MUST BE MURDER IN THE FIRST DEGREE, AND IF THEY
12 DECIDE THAT, THAT IS NOT OVER YET. YOU HAVE GOT TO DECIDE
13 WHETHER OR NOT THAT MURDER WAS COMMITTED IN THE COURSE OF A
14 ROBBERY. AND WE CALL THAT A SPECIAL CIRCUMSTANCE AND THE
15 JURY ANSWERS THE QUESTION: IS IT TRUE OR IS IT FALSE THAT IT
16 WAS COMMITTED DURING THE COURSE OF A ROBBERY? DO YOU UNDER-
17 STAND?

18 MS. ROBLES: UH-HUH.

19 THE COURT: NOW, IF THE JURORS DECIDE THAT IT WAS
20 COMMITTED DURING THE COURSE OF A ROBBERY, THEN THEY HAVE TO
21 CONSIDER WHAT THE PENALTY IS GOING TO BE.

22 NOW, ON THE GUILT PHASE OF THE TRIAL, THE QUESTION
23 OF PENALTY IS NEVER INVOLVED AND MUST NEVER BE CONSIDERED.

24 IT IS ONLY IF THEY FIND THE DEFENDANT GUILTY OF
25 MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY, THEN
26 THEY CONSIDER WHAT THE PENALTY SHOULD BE.

27 NOW, WHEN THEY CONSIDER WHAT THE PENALTY SHOULD
28 BE, THEY CAN CONSIDER A NUMBER OF FACTORS, INCLUDING ALL OF

1 THE FACTS THAT THEY HAVE ALREADY HEARD ON THE GUILT PHASE, THEY
2 ALSO CAN CONSIDER -- MUST CONSIDER THE AGE OF THE DEFENDANT,
3 HIS LACK OF ANY CRIMINAL RECORD, HIS CHARACTER, HIS BACKGROUND,
4 HIS MENTAL CONDITION, HIS PHYSICAL CONDITION, EVERYTHING WHICH
5 HAS TO DO WITH THE PERSON, THE DEFENDANT, NOT ONLY THE CRIME
6 HE COMMITTED, ALTHOUGH THAT HAS TO BE CONSIDERED ALSO, BUT IS
7 HE A GOOD OR BAD PERSON? THE DEFENSE WILL INTRODUCE EVIDENCE
8 TO SHOW HIS BACKGROUND FOR GOOD CHARACTER AND GOOD EVERYTHING
9 ELSE, YOU SEE. THOSE ARE CALLED MITIGATING CIRCUMSTANCES,
10 EXTENUATING CIRCUMSTANCES.

11 THE PROSECUTION WILL TRY TO SHOW BAD THINGS ABOUT
12 HIM, THAT HE IS A BAD MAN, THAT HE DID BAD THINGS IN HIS LIFE
13 AND SO FORTH, WHICH WOULD BE AGGRAVATING THE PENALTY WHICH HAS
14 BEEN COMMITTED.

15 THEN THE JURORS DECIDE WHETHER OR NOT HE SHOULD
16 BE IN PRISON FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
17 HE SHOULD SUFFER DEATH; DO YOU UNDERSTAND ALL OF THAT NOW?

18 MR. ROBLES: YES.

19 THE COURT: DO YOU HAVE ANY QUESTIONS?

20 MS. ROBLES: NO, NOT SO FAR.

21 THE COURT: GOOD.

22 WHAT I AM GOING TO DO IS ASK YOU CERTAIN QUESTIONS,
23 AS WILL COUNSEL. THE POINT OF THOSE QUESTIONS WILL BE TO
24 DETERMINE WHAT YOUR STATE OF MIND IS OR YOUR FEELING
25 CONCERNING THE DEATH PENALTY OR IF YOU HAVE ANY OPINION ABOUT
26 THE DEATH PENALTY, HOW WILL THAT AFFECT YOU IN DETERMINING
27 THE ISSUES TO BE DECIDED IN THIS CASE, PARTICULARLY THE PENALTY
28 PHASE OF IT.

1 NOW, THE FIRST INQUIRY I AM GOING TO ASK YOU HAS
2 TO DO WITH ONLY THE GUILT PHASE: DO YOU HAVE AN OPINION,
3 WHATEVER IT MAY BE, ABOUT THE DEATH PENALTY THAT WOULD PREVENT
4 YOU FROM MAKING ANY PARTIAL DECISION AS TO THE GUILT OR
5 INNOCENCE OF THE DEFENDANT?

6 MS. ROBLES: NO, NOT THAT WOULD PREVENT ME, NO.

7 THE COURT: GOOD.

8 NOW THE NEXT QUESTION IS ABOUT THE SAME KIND ALSO.
9 I TOLD YOU THAT IF YOU FIND THE DEFENDANT GUILTY
10 OF MURDER IN THE FIRST DEGREE, THEN THEY DECIDE THE COLLATERAL
11 QUESTION: WAS THAT MURDER COMMITTED IN THE COURSE OF A
12 ROBBERY? DO YOU UNDERSTAND?

13 (WHEREUPON, MRS. ROBLES NODS HER HEAD UP
14 AND DOWN.)

15 THE COURT: THAT IS THE SPECIAL CIRCUMSTANCE AND THEY
16 HAVE TO ANSWER THAT QUESTION TRUE OR FALSE ON THE VERDICT
17 FORM, IS IT TRUE OR FALSE THAT IT WAS COMMITTED IN THE COURSE
18 OF A ROBBERY. IF THE MURDER HAS BEEN ESTABLISHED, THE
19 QUESTION THE JURY WILL HAVE TO DECIDE, IS IT TRUE OR FALSE AND
20 IF THEY SAY TRUE, UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT
21 IT WAS COMMITTED IN THE COURSE OF A ROBBERY, THEN WE HAVE WHAT
22 IS KNOWN AS THE PENALTY PHASE OF THE TRIAL.

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1 THE SAME JURORS NOW LISTEN TO OTHER EVIDENCE AND
2 OTHER TESTIMONY WHICH HAS TO DO WITH IS HE A GOOD PERSON OR
3 A BAD PERSON. THEY MUST CONSIDER HIS AGE, HIS LACK OF OR
4 THE PRESENCE OF A PRIOR CRIMINAL RECORD, HIS CHARACTER, HIS
5 BACKGROUND, HIS MENTAL AND PHYSICAL STATE. THOSE ALL WILL
6 BE TAKEN INTO CONSIDERATION. THEY ARE ALL FACTORS WHICH YOU
7 HAVE TO CONSIDER, INCLUDING ALSO THE DETAILS OF THE CRIME
8 OF WHICH YOU FOUND HIM GUILTY. THOSE ARE CALLED MITIGATING
9 CIRCUMSTANCES.

10 THE PROSECUTION ON THE OTHER HAND, WILL OFFER
11 EVIDENCE, IF THEY DO, ABOUT BAD THINGS, UNFAVORABLE THINGS
12 ABOUT THE DEFENDANT. THEN YOU TAKE ALL OF THAT EVIDENCE
13 INTO CONSIDERATION AND THEN DETERMINE ONE OF TWO THINGS, LIFE
14 WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER.

15 DO YOU UNDERSTAND WHAT I AM SAYING?

16 MS. ROBLES: YES.

17 THE COURT: GOOD. NOW, THOSE ARE THE QUESTIONS THAT
18 I AM GOING TO ASK YOU, AS WELL AS COUNSEL ASKING YOU QUESTIONS.
19 DO YOU HAVE ANY OPINION WHATEVER IT MAY BE, ABOUT THE DEATH
20 PENALTY THAT WOULD PREVENT YOU FROM MAKING A FAIR AND
21 IMPARTIAL DETERMINATION OR VERDICT OF GUILT OR INNOCENCE OF
22 THE DEFENDANT?

23 MS. ROBLES: NO.

24 THE COURT: ALL RIGHT. NOW, THE SECOND PART OF IT IS,
25 DO YOU HAVE ANY OPINION, WHATEVER IT IS, OF THE DEATH PENALTY
26 THAT WOULD PREVENT YOU FROM MAKING A FINDING AS TO WHETHER
27 OR NOT THE SPECIAL CIRCUMSTANCE IS TRUE OR FALSE?

28 MS. ROBLES: NO.

1 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS
2 HAVE TO DO WITH THE PENALTY PHASE. THAT IS ON THE ASSUMPTION
3 ONLY, THAT THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER IN
4 THE FIRST DEGREE AND IT IS TRUE THAT IT WAS COMMITTED DURING
5 THE COURSE OF A ROBBERY. ALL RIGHT?

6 NOW, THE FIRST QUESTION -- AND THERE ARE TWO
7 QUESTIONS I WILL ASK YOU ON THE PENALTY PHASE. DO YOU HAVE
8 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
9 AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS
10 OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY PHASE
11 OF THE TRIAL?

12 MS. ROBLES: NO.

13 THE COURT: NOW, THE OTHER ONE IS EXACTLY THE SAME ONLY
14 IT HAS REFERENCE TO LIFE WITHOUT POSSIBILITY OF PAROLE. DO
15 YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT
16 YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY
17 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
18 IN THE PENALTY PHASE OF THE TRIAL?

19 MS. ROBLES: NO.

20 THE COURT: ALL RIGHT. AND LASTLY, YOU UNDERSTAND OF
21 COURSE, THAT THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT
22 COME UP IN THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED
23 ONLY IN THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

24 MS. ROBLES: YES.

25 THE COURT: ALL RIGHT.

26 MR. BARENS: THANK YOU, YOUR HONOR.

27 GOOD AFTERNOON, MRS. ROBLES. I AM ARTHUR BARENS.
28 I REPRESENT THE DEFENDANT, JOE HUNT.

19-3

1 AND AS HIS HONOR DID, IT IS MY DUTY AT THIS POINT
2 IN THE PROCEEDINGS TO INQUIRE AS TO YOUR OPINION AND STATE
3 OF MIND CONCERNING THE DEATH PENALTY.

4 PARENTHETICALLY, THERE ARE NO RIGHT OR WRONG
5 ANSWERS TO MY QUESTIONS. THERE ARE NO GOOD OR BAD ANSWERS.
6 I AM SIMPLY SEEKING YOUR OPINIONS WHICH ARE YOUR VERY OWN
7 AND CAN'T BE RIGHT OR WRONG. THEY ARE JUST YOURS.

8 MS. ROBLES: OKAY.

9 MR. BARENS: MS. ROBLES, HOW DO YOU FEEL ABOUT THE DEATH
10 PENALTY AS A GENERAL PROPOSITION, IN OUR SOCIETY?

11 MS. ROBLES: I BELIEVE IN THE DEATH PENALTY.

12 MR. BARENS: AND BY THAT, DO YOU HAVE IN MIND CERTAIN
13 SITUATIONS WHICH YOU THINK THE DEATH PENALTY SHOULD UNIFORMLY
14 APPLY TO?

15 MS. ROBLES: CERTAIN SITUATIONS? YOU MEAN --

16 MR. BARENS: CERTAIN CRIMES?

17 MS. ROBLES: THE ONLY ONE THAT COMES TO MIND IS POSSIBLY
18 THE MANSON CASE.

19 MR. BARENS: SURE.

20 MS. ROBLES: LIKE THAT.

21 MR. BARENS: I WILL TRY TO FOCUS YOU IN TO SEE YOUR
22 POINT OF VIEW ABOUT THE DEATH PENALTY MORE FOR THE TYPE OF
23 FACTS THE PEOPLE WILL TRY TO ALLEGE OCCURRED IN THIS CASE
24 BECAUSE THIS IS THE ONE YOU WILL HAVE TO MAKE A DECISION ABOUT.

25 TAKING A STEP BACK FIRST, I WILL ASK YOU, DO YOU
26 BELIEVE IN THE OLD CONCEPT OF AN EYE FOR AN EYE OR A LIFE
27 FOR A LIFE?

28 MS. ROBLES: NO, NOT REALLY. NO.

18-4

1 MR. BARENS: AND IF YOU HAD A SITUATION WHERE IF YOU
2 BELIEVED BEYOND A REASONABLE DOUBT THAT A FIRST DEGREE MURDER
3 HAD OCCURRED, AN INTENTIONAL MURDER DURING THE COMMISSION
4 OF A ROBBERY, LET'S SAY YOU BELIEVED THAT BEYOND A REASONABLE
5 DOUBT -- BEFORE YOU HEARD ANY EVIDENCE FROM THE LAWYERS
6 CONCERNING THE MITIGATING FACTORS OR THE AGGRAVATING FACTORS
7 OR THAT THE JUDGE HAD TALKED ABOUT THAT WILL BE PRESENTED
8 DURING THE PENALTY PHASE, WOULD YOU HAVE A BIAS AS TO WHETHER
9 OR NOT THAT THE DEFENDANT SHOULD GET THE DEATH PENALTY?

10 MS. ROBLES: PRIOR TO HEARING THAT?

11 MR. BARENS: YES.

12 MS. ROBLES: NO.

13 MR. BARENS: NOW, WOULD YOU BE CAPABLE OF --

14 MS. ROBLES: EXCUSE ME. YOU HAVE TO MEASURE EACH
15 SEPARATELY. IS THAT WHAT HE SAID? RIGHT?

16 MR. BARENS: QUITE SO. QUITE SO. AND WHEN HIS HONOR
17 MADE REFERENCE TO FACTORS IN MITIGATION AND AGGRAVATION, THOSE
18 WILL BE FACTORS LIKE THE AGE OF THE DEFENDANT AT THE TIME
19 THE CRIME ALLEGEDLY OCCURRED, WHETHER OR NOT THE DEFENDANT
20 HAD A PRIOR HISTORY OF CRIMINAL ACTS OR VIOLENT ACTS. WOULD
21 YOU BE WILLING TO CONSIDER THOSE THINGS PRIOR TO MAKING A
22 DECISION AS TO WHETHER THE DEFENDANT LIVED OR DIED?

23 MS. ROBLES: YES.

24 MR. BARENS: WOULD THERE BE ANYTHING ABOUT A DEFENDANT
25 WHO YOU BELIEVED HAD INTENTIONALLY TAKEN A LIFE OF ANOTHER
26 HUMAN BEING DURING THE COMMISSION OF A ROBBERY, THAT WOULD
27 MAKE YOU WANT TO SEE THAT PERSON AUTOMATICALLY GET THE DEATH
28 PENALTY?

1 MS. ROBLES: JUST HEARING THAT THE DEFENDANT DID IT,
2 YOU MEAN?

3 MR. BARENS: YES, MA'AM.

4 MS. ROBLES: NO.

5 MR. BARENS: DO YOU FEEL YOU WOULD NONETHELESS BE A
6 NEUTRAL AND OPEN-MINDED JUROR WHEN IT CAME TIME TO DECIDE
7 WHETHER THAT DEFENDANT LIVED OR DIED, EVEN THOUGH HE HAD
8 COMMITTED A MURDER?

9 MS. ROBLES: I THINK SO.

10 MR. BARENS: NOW, MS. ROBLES, YOU KNOW THAT I AM GETTING
11 INTO THIS WITH YOU AND THE REASON IS THAT BOTH THE PROSECUTION
12 AND THE DEFENSE ARE ENTITLED TO AS NEUTRAL A JUROR AS POSSIBLE
13 IN DECIDING THESE SERIOUS ISSUES AND RESOLVING THESE FACTS.

14 DO YOU THINK THAT YOU COULD BE NEUTRAL THROUGHOUT,
15 IN MAKING THE DECISION ON GUILT OR INNOCENCE AND LIFE AND
16 DEATH?

17 MS. ROBLES: YES I DO.

18 MR. BARENS: THEREFORE, IF YOU HAD A DEFENDANT WHO
19 COMMITTED A MURDER, YOU COULD SEE VOTING IN FAVOR OF LIFE
20 WITHOUT POSSIBILITY OF PAROLE, IF THE FACTS SHOWED THAT THAT
21 PERSON WAS SUITABLE FOR THAT PENALTY?

22 MS. ROBLES: I BELIEVE SO, YES.

23 MR. BARENS: NOW, LASTLY, MS. ROBLES, AND PERHAPS MOST
24 IMPORTANTLY TO ME, DO YOU UNDERSTAND THAT EVEN THOUGH HIS
25 HONOR AND MYSELF AND THE PROSECUTING COUNSEL ARE TALKING ABOUT
26 THE DEATH PENALTY, THAT THERE IS NO REASON TO BELIEVE THAT
27 MR. HUNT HAS DONE ANYTHING WRONG OR IS GUILTY OF ANYTHING,
28 JUST BECAUSE WE ARE HERE TALKING ABOUT THAT?

1 MS. ROBLES: YES.

2 MR. BARENS: DO YOU UNDERSTAND THAT?

3 MS. ROBLES: YES.

4 MR. BARENS: YOU HAVE NOT HEARD ANY EVIDENCE ABOUT THIS
5 CASE ONE WAY OR ANOTHER, HAVE YOU?

6 MS. ROBLES: NO I HAVE NOT.

7 MR. BARENS: THANK YOU FOR YOUR HELP THIS AFTERNOON.
8 I PASS FOR CAUSE, YOUR HONOR.

9 MR. WAPNER: GOOD AFTERNOON. I AM FRED WAPNER, THE
10 DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE.

11 DOES THE NAME JOE HUNT OR THE TERM BILLIONAIRE
12 BOYS CLUB MEAN ANYTHING TO YOU?

13 MS. ROBLES: NO.

14 MR. WAPNER: YOU HAVE NOT READ ANY ARTICLES ABOUT THAT?

15 MS. ROBLES: NO.

16 MR. WAPNER: OKAY. LET ME EXPLAIN TO YOU THE SITUATION
17 OR GIVE YOU A HYPOTHETICAL SITUATION THAT YOU MIGHT BE FACED
18 WITH IF YOU WERE CHOSEN AS A JUROR IN THIS CASE.

19 IF YOU ARE A JUROR IN THIS CASE, YOU WILL SIT
20 THROUGH THE GUILT PHASE OF THE TRIAL AND IF YOU FIND THAT THE
21 DEFENDANT IS GUILTY, AND IF YOU FIND THE SPECIAL CIRCUMSTANCES
22 ARE TRUE, THEN YOU WILL SIT THROUGH THE PENALTY PHASE OF THE
23 TRIAL.

24 AND AFTER THE PENALTY PHASE, THE JUDGE WILL GIVE
25 YOU THE LAW THAT YOU ARE TO APPLY. AND THEN YOU WILL GO BACK
26 INTO THE JURY ROOM AND WITH 11 OTHER PEOPLE, YOU WILL BE
27 CALLED UPON TO MAKE A DECISION AS TO WHAT THE PUNISHMENT SHOULD
28 BE.

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DO YOU UNDERSTAND THAT?

MS. ROBLES: YES.

MR. WAPNER: IF YOU GET TO THAT POINT, YOU ARE ONLY
GOING TO HAVE TWO CHOICES, LIFE WITHOUT POSSIBILITY OF PAROLE
OR DEATH. DO YOU UNDERSTAND THAT?

MS. ROBLES: YES.

18B

18B-1

1 MR. WAPNER: OBVIOUSLY, THAT IS A VERY SERIOUS THING
2 FOR ANYONE TO HAVE TO DECIDE. MY QUESTION TO YOU HAS TO DO
3 WITH NOT HOW YOU WILL VOTE, BECAUSE YOU DON'T KNOW THE EVIDENCE
4 IN THE CASE, OBVIOUSLY. BUT, IT IS WHETHER OR NOT YOU ARE
5 CAPABLE OF RENDERING A VERDICT FOR DEATH IF YOU FEEL THE
6 EVIDENCE WARRANTS IT.

7 MS. ROBLES: ARE YOU ASKING --

8 MR. WAPNER: I AM ASKING.

9 MS. ROBLES: I THINK SO, YES.

10 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS
11 BELIEFS THAT WOULD KEEP YOU FROM VOTING FOR A VERDICT OF DEATH
12 IF YOU FELT THAT IT WAS APPROPRIATE IN THIS CASE?

13 MS. ROBLES: NO I DO NOT.

14 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD MORAL BELIEFS
15 THAT MAKE YOU THINK YOU WOULDN'T WANT TO BE A PART OF TAKING
16 SOMEONE'S LIFE?

17 MS. ROBLES: NO. I FEEL THAT I AM A VERY FAIR PERSON,
18 OVERALL, YOU KNOW. AND I TRY NEVER TO HAVE ANY NOTIONS ONE
19 WAY OR THE OTHER IN ADVANCE.

20 AND SINCE I HAVE NEVER HEARD OF THIS BEFORE, AT
21 THIS TIME, I WOULD HAVE TO SAY NO, THAT I THINK I COULD BE
22 FAIR.

23 MR. WAPNER: OKAY. I AM NOT EVEN QUESTIONING THAT FOR
24 A MOMENT, YOUR FAIRNESS. I DIDN'T INTEND TO DO THAT.

25 MS. ROBLES: OKAY.

26 MR. WAPNER: IT IS JUST SOMETIMES PEOPLE SAY THAT THEY
27 ARE FAIR. AND WHEN IT COMES RIGHT DOWN TO IT, WHEN YOU REALLY
28 ASK THEM TO MAKE A VOTE AND THE VOTE IS THAT THE PERSON WHO

1 IS ON TRIAL SHOULD DIE, THAT THEY JUST CAN'T DO IT. THEY
2 ARE FAIR TO EVERYBODY. DO YOU UNDERSTAND WHAT I AM SAYING?

3 MS. ROBLES: YES.

4 MR. WAPNER: THAT IS THE SITUATION.

5 MS. ROBLES: YES. I COULD.

6 MR. WAPNER: SO THE QUESTION IS NOT THAT YOU WOULDN'T
7 BE FAIR. IT HAS MORE TO DO WITH YOUR INTERNAL MAKEUP. WOULD
8 IT GO AGAINST YOUR NATURE TO RENDER --

9 MS. ROBLES: I DON'T THINK SO.

10 MR. WAPNER: THE OTHER THING I NEED TO EXPLAIN TO YOU
11 IS, HAVE YOU BEEN ON JURY DUTY BEFORE?

12 MS. ROBLES: YES.

13 MR. WAPNER: SO YOU KNOW THAT EVEN THOUGH THERE ARE
14 11 OTHER PEOPLE IN THE ROOM WITH YOU, THAT YOU ARE
15 REQUIRED TO VOTE YOUR INDIVIDUAL CONSCIENCE, YOUR INDIVIDUAL
16 OPINION ABOUT WHAT SHOULD HAPPEN. DO YOU UNDERSTAND THAT?

17 MS. ROBLES: YES I DO.

18 MR. WAPNER: AND IN THIS PARTICULAR CASE, AFTER
19 CONSIDERING ALL OF THE FACTS ON THE GUILT AND PENALTY PHASE,
20 YOU DECIDE WHAT THE APPROPRIATE VERDICT IS. IF YOU DECIDE
21 IT IS DEATH -- CAN YOU CAST THAT VOTE?

22 MS. ROBLES: YES. I THINK I COULD.

23 MR. WAPNER: OKAY. AND ON THE OTHER HAND, IF THE
24 APPROPRIATE VERDICT WAS LIFE, COULD YOU CAST THAT VOTE?

25 MS. ROBLES: YES.

26 MR. WAPNER: OKAY. IS THERE ANYTHING IN YOUR LIFE
27 EXPERIENCE THAT YOU CAN THINK OF THAT WOULD BEAR ON THE QUESTION
28 OF YOUR ABILITY TO MAKE THAT KIND OF DECISION?

1 MS. ROBLES: NO.

2 MR. WAPNER: IF THE EVIDENCE IN THIS CASE DOESN'T COME
3 TO THE LEVEL OF A MANSON-TYPE OF SITUATION -- AND I REALIZE
4 THAT YOU JUST GAVE THAT AS AN EXAMPLE -- DOES THAT MEAN THAT
5 YOU WOULDN'T BE ABLE TO VOTE FOR THE DEATH PENALTY?

6 MS. ROBLES: NO.

7 MR. WAPNER: SO, YOU WOULD BE WILLING TO JUDGE THIS
8 CASE ON ITS OWN MERITS?

9 MS. ROBLES: THAT'S RIGHT. YES.

10 MR. WAPNER: THANK YOU. I PASS FOR CAUSE, YOUR HONOR.

11 THE COURT: ALL RIGHT. THE ATTORNEYS AGREE, AS DOES
12 THE COURT, THAT YOU WOULD MAKE A PROPER AND QUALIFIED JUROR
13 IN THIS CASE. THERE ARE ALSO A NUMBER OF OTHERS WHO PASSED
14 MUSTER. SO, THEY ARE TO BE IN THE JURY ASSEMBLY ROOM ON
15 WEDNESDAY OF THIS WEEK AT 10:30 IN THE MORNING.

16 THAT IS DECEMBER 10TH, WEDNESDAY AT 10:30 IN THE
17 JURY ASSEMBLY ROOM. SO I WILL ASK YOU TO BE THERE AT THAT
18 TIME.

19 MS. ROBLES: SURE.

20 THE COURT: THANK YOU VERY MUCH.

21 MS. ROBLES: THANK YOU.

22 THE COURT: TRY NOT TO READ ANYTHING ABOUT THIS CASE.

23 MS. ROBLES: OKAY. I WON'T.

24 (PROSPECTIVE JUROR ROBLES EXITED
25 THE COURTROOM.)

1 MR. BARENS: IT IS ACADEMIC.

2 THE COURT: ALL RIGHT, BRING MR. SEGELKE IN.

3 THE BAILIFF: THE LAST JUROR JUST ASKED ME IS SHE
4 ACCEPTED AS A JUROR?

5 THE COURT: YES.

6 MR. WAPNER: YES. SHE IS SUPPOSED TO COME BACK WEDNESDAY.

7 THE COURT: YES, I TOLD HER WHEN TO COME BACK. DIDN'T
8 I TELL HER? I TOLD HER WHEN TO COME BACK.

9 (PROSPECTIVE JUROR SEGELKE ENTERS THE
10 COURTROOM.)

11 THE COURT: ALL RIGHT, MR. SEGELKE, GOOD AFTERNOON.

12 MR. SEGELKE: IT IS SEGELKE.

13 THE COURT: HAS THE ACCENT ON THE FIRST SYLLABLE?

14 MR. SEGELKE: YES.

15 THE COURT: ALL RIGHT, WHERE DO YOU LIVE, MR. SEGELKE?

16 MR. SEGELKE: I LIVE IN MAR VISTA RIGHT NEAR THE SANTA
17 MONICA AIRPORT.

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

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

21 THE COURT: EXCEPT FOR THE FACT OF WHAT I TOLD YOU WHEN
22 YOU WERE ALL HERE?

23 MR. SEGELKE: NO.

24 THE COURT: YOU HAVE NEVER TALKED TO ANY OF THE JURORS
25 ABOUT IT?

26 MR. SEGELKE: NO.

27 THE COURT: YOU WILL MAINTAIN THAT ATTITUDE THROUGHOUT
28 THE TRIAL. DON'T READ ANYTHING ABOUT IT, IF THERE IS

1 ANYTHING IN THE NEWSPAPER OR ANYTHING THAT YOU MIGHT HEAR ON
2 RADIO OR TELEVISION, ALL RIGHT?

3 MR. SEGELKE: YES, SIR.

4 THE COURT: I DID INDICATE THE NATURE OF THE CASE.
5 I WILL JUST REPEAT IT BRIEFLY. THE DEFENDANT IS CHARGED IN
6 THIS CASE WITH THE COMMISSION OF THE CRIME OF ROBBERY --
7 I MEAN -- I AM TERRIBLY SORRY -- HE IS CHARGED WITH THE
8 COMMISSION OF THE CRIME OF MURDER, FIRST DEGREE MURDER AND IT
9 IS ALSO ALLEGED THAT THAT MURDER WAS COMMITTED IN THE COURSE
10 OF A ROBBERY.

11 NOW, IN THE COURSE OF A ROBBERY HAS SIGNFICANCE
12 AND THIS IS THE REASON FOR IT: NOT EVERY CASE OF MURDER
13 IS PUNISHABLE BY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
14 OF PAROLE OR DEATH. IT IS ONLY WHEN A MURDER IN THE FIRST
15 DEGREE IS COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES, WE
16 CALL THEM.

17 NOW, A MURDER COMMITTED IN THE COURSE OF A ROBBERY,
18 AS THIS ONE IS ALLEGED, OR COMMITTED IN THE COURSE OF A
19 BURGLARY, OR COMMITTED IN THE COURSE OF A KIDNAPPING, OR
20 COMMITTED IN THE COURSE OF A RAPE OR IN THE COURSE OF TORTURE
21 OR WHERE A CHILD WAS MOLESTED AND A CHILD IS KILLED, OR MULTIPLE
22 MURDERS, THE LEGISLATURE HAS SAID IN THOSE CASES OF SPECIAL
23 CIRCUMSTANCES, AND THERE ARE 19 OF THEM -- I HAVEN'T GIVEN YOU
24 ALL OF THEM -- THAT IF THE JURY FINDS THAT THE MURDER WAS
25 COMMITTED AND WAS MURDER IN THE FIRST DEGREE AND WAS COMMITTED
26 UNDER THE SPECIAL CIRCUMSTANCES WHICH I HAVE INDICATED TO YOU,
27 IN THIS PARTICULAR CASE THE SPECIAL CIRCUMSTANCE BEING THAT
28 IT WAS COMMITTED IN THE COURSE OF A ROBBERY, THEN IT QUALIFIES

1 FOR THE DEATH PENALTY.

2 NOW, WHEN I TALK ABOUT LIFE IMPRISONMENT WITHOUT
3 THE POSSIBILITY OF A PAROLE, I REALLY MEAN THAT.

4 IN OTHER WORDS, IF THE DEFENDANT IS FOUND GUILTY
5 OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY AND
6 THEY FIX THE PENALTY OF LIFE IMPRISONMENT WITHOUT THE
7 POSSIBILITY OF PAROLE, THEN THAT MEANS EXACTLY THAT: HE GOES
8 TO PRISON FOR LIFE WITHOUT ANY POSSIBILITY OF PAROLE.

9 SOME PEOPLE MIGHT THINK HE WOULD BE OUT IN A FEW
10 YEARS BUT THAT IS NOT TRUE, ALL RIGHT.

11 NOW, THE JURY WHICH IS DRAWN AND FINALLY QUALIFIED
12 TO TRY THIS CASE WILL FIRST DECIDE THE GUILT OR INNOCENCE OF
13 THE DEFENDANT. IF HE IS INNOCENT, THAT IS THE END OF IT. IF
14 HE IS FOUND GUILTY AND IS FOUND GUILTY OF MURDER IN THE FIRST
15 DEGREE, THEN THEY HAVE ANOTHER QUESTION TO ANSWER.

16 YOU REMEMBER, I TOLD YOU THAT THE SPECIAL CIR-
17 CUMSTANCE ALLEGED IT WAS COMMITTED IN THE COURSE OF A
18 ROBBERY --

19 MR. SEGELKE: YES.

20 THE COURT: -- IS IT TRUE OR IS IT FALSE THAT THAT
21 MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY?

22 IF THEY DO FIND IT WAS COMMITTED IN THE COURSE OF
23 A ROBBERY, THEN THE JURY HEARS ADDITIONAL EVIDENCE. THEY HAVE
24 ANOTHER TRIAL, SO TO SPEAK, ANOTHER PHASE OF THE TRIAL. IT
25 IS CALLED THE PENALTY PHASE BY WHICH THE JURORS ARE ASKED,
26 AFTER THEY HEAR TESTIMONY FROM THE DEFENSE AND FROM THE
27 PROSECUTION, WHAT THE PENALTY IS GOING TO BE.

28 THEY WILL THEN AND THEY MUST CONSIDER THE AGE OF

19--+

1 THE DEFENDANT, WHETHER OR NOT HE HAS ANY PRIOR CRIMINAL
2 RECORD, FELONY CONVICTIONS, THEY WILL HEAR EVERYTHING ABOUT
3 THE PERSON HIMSELF, HIS CHARACTER, HIS BACKGROUND, HIS MENTAL
4 AND PHYSICAL CONDITION, ANYTHING THAT RELATES TO THE PERSON.
5 AND THE DEFENSE NATURALLY WILL SHOW FAVORABLE ASPECTS WHICH
6 ARE FAVORABLE TO HIM.

7 THE PROSECUTION, ON THE OTHER HAND, WILL SHOW
8 FACTORS WHICH ARE UNFAVORABLE TO HIM, FACTS ABOUT THE
9 DEFENDANT TO SHOW HE IS A BAD MAN AND SO FORTH.

10 THEN WHEN THE JURY HEARS ALL OF THAT EVIDENCE, THEY
11 HAVE THEN TO REACH A VERDICT ON THAT PHASE; DO YOU UNDERSTAND?

12 MR. SEGELKE: YES.

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1 THE COURT: THE QUESTIONS I AM GOING TO ASK YOU ARE
2 TO DETERMINE WHAT YOUR STATE OF MIND IS, WHAT YOUR FEELINGS
3 ARE AS TO THE DEATH PENALTY AS TO WHETHER OR NOT YOU QUALIFY
4 AS A JUROR IN THIS CASE.

5 NOW, THE FIRST TWO QUESTIONS HAVE TO DO WITH THE
6 GUILT PHASE: DO YOU HAVE AN OPINION, WHATEVER THAT OPINION
7 MAY BE, WHICH WOULD PREVENT YOU FROM BEING IMPARTIAL IN
8 DECIDING THE GUILT OR INNOCENCE OF THE DEFENDANT?

9 MR. SEGELKE: I PROBABLY WOULD, YOUR HONOR, BECAUSE MY
10 FATHER WAS A DEPUTY SHERIFF FOR 25 YEARS. I HAVE BEEN AN
11 L.A. FIREMAN FOR 30 YEARS AND I HAVE HAD A LOT OF ASSOCIATION
12 WITH POLICEMEN AND I HAD A VERY GOOD FRIEND WHO WAS A POLICE
13 OFFICER --

14 THE COURT: YOU SEE, I AM NOT ASKING YOU THAT NOW. THAT
15 WILL COME LATER ON.

16 MR. SEGELKE: OKAY.

17 THE COURT: I AM NOT ASKING YOU WHETHER OR NOT YOU ARE
18 PREDISPOSED TO FAVOR THE TESTIMONY OF -- TO FAVOR THE
19 PROSECUTION. WE HAVEN'T COME TO THAT YET.

20 MR. SEGELKE: OKAY.

21 THE COURT: WHAT I WANT TO DO NOW IS TO DETERMINE WHAT
22 YOUR STATE OF MIND IS WITH RESPECT TO THE DEATH PENALTY AND
23 HOW THAT WILL AFFECT YOU.

24 IF A MAN IS CHARGED WITH MURDER IN THE FIRST
25 DEGREE, WOULD YOU AUTOMATICALLY, BECAUSE YOU HAVE AN OPINION
26 ON THE DEATH PENALTY, WOULD YOU AUTOMATICALLY VOTE HE IS
27 GUILTY WITHOUT HEARING THE EVIDENCE?

28 MR. SEGELKE: NO.

19-5

1 THE COURT: YOU ARE SURE NOW? YOU WILL KEEP AN OPEN
2 MIND, WILL YOU?

3 MR. SEGELKE: WELL --

4 THE COURT: MERELY BECAUSE A MAN IS CHARGED, UNDER OUR
5 LAW, EVERY MAN IS PRESUMED TO BE INNOCENT UNTIL THE CONTRARY
6 IS PROVED; DO YOU UNDERSTAND THAT?

7 MR. SEGELKE: YES, THAT IS TRUE.

8 THE COURT: IS YOUR MIND SET SUCH THAT IF YOU ARE A
9 JUROR IN THIS CASE AND YOU HEARD THERE WAS A MURDER, THAT YOU
10 WOULD AUTOMATICALLY VOTE THE MAN GUILTY OF MURDER IN THE FIRST
11 DEGREE WITHOUT CONSIDERATION OF ALL OF THE EVIDENCE?

12 MR. SEGELKE: IT WOULD BE TOUGH FOR ME.

13 MR. BARENS: YOUR HONOR, I FIND THE JUROR TO BE CANDID
14 AND FORTHCOMING IN STATING -- WHICH THE DEFENSE APPRECIATES --
15 AND HONORABLE AND HONEST IN THIS INSTANCE AND WE WOULD MAKE
16 A MOTION FOR CAUSE.

17 THE COURT: DO YOU HAVE ANY QUESTIONS?

18 MR. WAPNER: JUST ONE OR TWO.

19 MR. SEGELKE, SEGELKE?

20 MR. SEGELKE: THAT'S IT.

21 MR. WAPNER: ARE YOU SAYING BECAUSE OF THIS LONG HISTORY
22 OF LAW ENFORCEMENT ASSOCIATIONS BY YOUR FATHER AND YOUR
23 FRIENDS, THAT YOU ARE GOING TO BE SO BIASED IN FAVOR OF THE
24 PROSECUTION THAT THE DEFENSE IS NOT GETTING A FAIR TRIAL; IS
25 THAT WHAT YOU ARE BASICALLY SAYING?

26 MR. SEGELKE: I HAVE A TENDENCY TO BE THAT WAY.

27 I HAVE JUST HAD SO MANY EXPERIENCES DURING THE
28 30 YEARS ON THE FIRE DEPARTMENT. I HAVE BEEN MUGGED AT THE

1 COLISEUM AND I HAVE HAD SEVERAL DIFFICULTIES AND IT IS TOUGH
2 FOR ME TO NOT GO ALONG WITH THE PROSECUTION.

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

4 THE COURT: WELL, THANK YOU VERY MUCH.

5 MR. SEGELKE: YES, SIR.

6 THE COURT: THANK YOU FOR YOUR FRANKNESS AND YOUR CANDOR.
7 WE APPRECIATE IT.

8 MR. SEGELKE: THANK YOU, YOUR HONOR.

9 THE COURT: RATHER THAN YOU TELLING US, NO, NO I AM VERY
10 IMPARTIAL, KNOWING YOU WOULDN'T BE. THAT IS WHY WE APPRECIATE
11 YOUR CANDOR.

12 MR. SEGELKE: YES, SIR.

13 THE COURT: YOU GO BACK TO THE JURY ASSEMBLY ROOM AND
14 TELL THEM YOU WILL BE EXCUSED FROM JURY DUTY OF ALL KINDS --
15 IN ANY CRIMINAL CASE, RATHER. YOU MIGHT BE A GOOD JUROR IN
16 A CIVIL CASE.

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1 YOU MIGHT TELL THEM YOU CAN SERVE IN THAT CAPACITY.

2 MR. SEGELKE: ALL RIGHT.

3 (PROSPECTIVE JUROR SEGELKE EXITS THE
4 COURTROOM.)

5 (PROSPECTIVE JUROR SOMMER ENTERS THE
6 COURTROOM.)

7 THE COURT: GOOD AFTERNOON. IS IT MISS OR MRS. SOMMER?

8 MS. SOMMER: MRS. SOMMER.

9 THE COURT: WHERE DO YOU LIVE, MRS. SOMMER?

10 MS. SOMMER: IN PACIFIC PALISADES.

11 THE COURT: HAVE YOU EVER HEARD ANYTHING AT ALL ABOUT
12 THIS CASE, EXCEPT WHAT I TOLD YOU WHEN YOU WERE ALL TOGETHER
13 HERE?

14 MS. SOMMER: NO, I HAVEN'T.

15 THE COURT: HAVE YOU READ ANYTHING ABOUT IT?

16 MS. SOMMER: NO.

17 THE COURT: DOES THE TERM BILLIONAIRES BOYS CLUB RING
18 A BELL IN YOUR MIND?

19 MS. SOMMER: NO.

20 THE COURT: OR JOE HUNT?

21 YOU HAVEN'T DISCUSSED ANYTHING WITH ANY OF THE
22 PROSPECTIVE JURORS?

23 MS. SOMMER: NO.

24 THE COURT: FINE, GOOD. THAT IS THE KIND OF JUROR WE
25 WANT, WHO HASN'T READ ANYTHING OR KNOW ANYTHING ABOUT THE
26 CASE AND THEN THEY COME TO COURT WITH A COMPLETELY OPEN
27 AND FREE MIND.

28 WHAT I AM GOING TO DO IS REPEAT AGAIN AND TELL YOU

1 WHAT THE CASE IS ALL ABOUT AND ASK YOU CERTAIN QUESTIONS.

2 THE PURPOSE OF THESE QUESTIONS WILL BE FOR US TO
3 DETERMINE WHAT YOUR STATE OF MIND IS WITH RESPECT TO THE
4 DEATH PENALTY, ALL RIGHT?

5 YOU KNOW THE CHARGE AGAINST THE DEFENDANT IS THAT
6 HE COMMITTED A MURDER, A MURDER IN THE FIRST DEGREE, AND THAT
7 THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

8 NOW, IN THE COURSE OF A ROBBERY HAS SPECIAL
9 SIGNIFICANCE. THE LEGISLATURE HAS SAID, AND IT IS THE LAW,
10 THAT NOT EVERY MURDER, EVEN IF IT WAS DELIBERATE, EVEN IF IT
11 IS PREMEDITATED AND EVEN IF IT IS INTENTIONAL, MERITS --
12 NOT MERITS BUT -- BUT THAT CONSIDERATION OF THE DEATH PENALTY
13 WOULD BE IN ORDER IN THAT PARTICULAR TYPE OF CASE AND IT IS
14 ONLY WHERE IT IS COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES,
15 IF THAT MURDER WAS COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES,
16 THEN IT MAY QUALIFY FOR THE POSSIBLE DEATH PENALTY; DO YOU
17 UNDERSTAND THAT?

18 MRS. SOMMER: UH-HUH.

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20A-1

1 THE COURT: THE LEGISLATURE HAS SAID THAT A MURDER
2 COMMITTED IN THE COURSE OF A ROBBERY AND IN THE COURSE OF
3 A BURGLARY AND IN THE COURSE OF A KIDNAPPING AND IN THE COURSE
4 OF A RAPE AND IN THE COURSE OF A CHILD MOLESTATION WHERE THE
5 CHILD DIES AND IN THE COURSE OF A TORTURE OR MULTIPLE MURDERS
6 AND SO ON AND SO FORTH -- THERE ARE 19 OF THEM -- ONLY IN
7 THOSE SPECIAL CIRCUMSTANCES DOES THE MURDER THEN QUALIFY FOR
8 A POSSIBLE CONSIDERATION OF THE DEATH PENALTY.

9 MS. SOMMER: UH-HUH.

10 THE COURT: WHEN I TALK ABOUT THE DEATH PENALTY, THE
11 DEATH PENALTY IS WHERE THE JURORS HAVE ONE OR TWO OPTIONS,
12 SHALL IT BE LIFE WITHOUT POSSIBILITY OF PAROLE AND THAT MEANS
13 EXACTLY THAT, LIFE WITHOUT POSSIBILITY OF PAROLE. HE DOESN'T
14 GET OUT IN A COUPLE OF YEARS OR TEN YEARS. HE STAYS THERE
15 FOR LIFE.

16 OR, IT COULD BE DEATH IN THE GAS CHAMBER. THAT
17 IS THE DEATH PENALTY. SO, HE QUALIFIES FOR THAT.

18 NOW, THE JURORS THAT WILL BE SELECTED AND IF YOU
19 ARE ONE, YOU WILL HAVE TO DETERMINE FIRST, WHETHER OR NOT --
20 WE CALL IT THE GUILT PHASE OF THE TRIAL. IT IS FIRST, WHETHER
21 OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY. OBVIOUSLY,
22 IF HE IS NOT GUILTY, THAT IS THE END OF THE CASE.

23 IF HE IS GUILTY, YOU DECIDE IF IT IS GUILTY OF
24 MURDER IN THE FIRST DEGREE. IF IT IS, THEN YOU HAVE TO DECIDE
25 A SECOND QUESTION, WAS IT TRUE OR FALSE THAT IT WAS COMMITTED
26 IN THE COURSE OF A ROBBERY. THAT IS WHAT WE CALL THE SPECIAL
27 CIRCUMSTANCE PART OF THE TRIAL.

28 NOW, IF THEY FIND THAT HE WAS GUILTY OF MURDER

20A-2

1 IN THE FIRST DEGREE AND THE SPECIAL CIRCUMSTANCE WAS PRESENT,
2 IT WAS COMMITTED IN THE COURSE OF ROBBERY, THEN THAT SAME
3 JURY THEN HEARS ADDITIONAL TESTIMONY AND EVIDENCE.

4 THE PURPOSE OF THAT TESTIMONY WOULD BE TO SEE
5 WHETHER OR NOT THERE ARE ANY MITIGATING CIRCUMSTANCES THAT
6 MITIGATE OR EXTENUATE THE OFFENSE.

7 THE DEFENDANT WILL TRY TO SHOW THINGS ABOUT HIMSELF
8 WHICH ARE FAVORABLE, SUCH AS HIS YOUTH. THAT MUST BE
9 CONSIDERED AND WHETHER OR NOT HE HAS ANY PRIOR CRIMINAL RECORD.
10 THAT CAN BE CONSIDERED AND HIS CHARACTER, HIS BACKGROUND,
11 HIS PHYSICAL AND MENTAL CONDITION AND ANYTHING THAT HAS A
12 TENDENCY FAVORABLY TO BEAR UPON HIM.

20B

13 THOSE ARE CALLED MITIGATING CIRCUMSTANCES. THE
14 PROSECUTION ON THE OTHER HAND, WILL TRY TO INTRODUCE
15 EVIDENCE OF WHAT THEY WILL CALL AGGRAVATING CIRCUMSTANCES
16 ABOUT THE OFFENSE AND TRY TO SHOW UNFAVORABLE FACETS OR
17 ASPECTS OF THE DEFENDANT IN HIS LIFE, YOU SEE.

18 THEN THE JURY CONSIDERS ALL OF THAT. THEY RETIRE
19 TO THE JURY ROOM AND THEY CONSIDER LIFE WITHOUT POSSIBILITY
20 OF PAROLE OR DEATH. NOW, THE QUESTIONS I AM GOING TO ASK
21 YOU AND COUNSEL WILL ASK YOU, WILL BE TO EXPLORE YOUR MIND,
22 EXPLORE YOUR OPINIONS WITH RESPECT TO THE DEATH PENALTY, TO
23 SEE WHETHER OR NOT YOU CAN BE A FAIR JUROR TO BOTH SIDES IN
24 THE TRIAL. OKAY?

25 ALL RIGHT. THEN, THE JURY THEN CONSIDERS -- AND
26 YOU ALSO HAVE A RIGHT TO CONSIDER THE FACTS OF THE CRIME AND
27 ALL OF THE MITIGATING AND AGGRAVATING CIRCUMSTANCES. DO YOU
28 UNDERSTAND THAT?

20B-1

1 MS. SOMMER: YES.

2 THE COURT: GOOD. NOW, THE QUESTIONS I WILL ASK YOU,
3 WHICH COUNSEL WILL ALSO ASK YOU, WILL DETERMINE WHAT YOUR
4 STATE OF MIND IS.

5 NOW, THE FIRST TWO QUESTIONS RELATE TO THE GUILT
6 PHASE OF THE TRIAL. DO YOU HAVE ANY OPINION RESPECTING THE
7 DEATH PENALTY, OF ANY KIND WHATEVER IT MIGHT BE, WHICH WOULD
8 IN ANY WAY, CAUSE YOU TO HAVE ANY -- WOULD YOU BE IMPARTIAL
9 IN DECIDING THE GUILT OR INNOCENCE OF THE DEFENDANT? DO YOU
10 HAVE ANY OPINION OF THE DEATH PENALTY WHICH WOULD CAUSE YOU
11 TO NOT BE IMPARTIAL IN DECIDING THE GUILT OR INNOCENCE OF
12 THE DEFENDANT?

13 MS. SOMMER: I DON'T KNOW IF UNDERSTAND YOUR QUESTION.
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1 THE COURT: WELL, THE FIRST THING YOU HAVE TO DECIDE
2 IS THE GUILT OR INNOCENCE OF THE DEFENDANT. WHAT YOUR OPINION
3 IS OF THE DEATH PENALTY, WOULD THAT INTERFERE WITH YOUR
4 IMPARTIAL CONSIDERATION OF THE QUESTION OF GUILT OR INNOCENCE
5 OF THE DEFENDANT?

6 MS. SOMMER: NO.

7 THE COURT: ALL RIGHT. NOW, THE NEXT ONE IS THAT I
8 TOLD YOU IF YOU FOUND HIM GUILTY OF MURDER IN THE FIRST DEGREE,
9 THEN YOU ARE TO CONSIDER WHETHER OR NOT IT WAS COMMITTED DURING
10 THE COURSE OF A ROBBERY. THAT IS SPECIAL CIRCUMSTANCES.

11 THE JURY SAYS TRUE OR FALSE, IS IT TRUE OR FALSE
12 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

13 NOW, DO YOU HAVE ANY OPINION WHATEVER IT IS ON
14 THE DEATH PENALTY, THAT WOULD PREVENT YOU FROM MAKING AN
15 IMPARTIAL DECISION AS TO THE TRUTH OR FALSITY OF THE SPECIAL
16 CIRCUMSTANCES?

17 MS. SOMMER: NO.

18 THE COURT: NOW, THE NEXT TWO QUESTIONS HAVE TO DO WITH
19 THE PENALTY PHASE, SUPPOSEDLY. NOW, THE JURY HAS FOUND HIM
20 GUILTY OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY.
21 THE NEXT TWO QUESTIONS HAVE TO DO WITH THE PENALTY PHASE.

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

26 MS. SOMMER: NO.

27 THE COURT: THE NEXT ONE IS ALSO THE SAME TYPE, BUT
28 RELATES TO LIFE WITHOUT POSSIBILITY OF PAROLE.

20B-3

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

5 MS. SOMMER: NO.

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

11 MS. SOMMER: YES.

12 THE COURT: OKAY.

13 MR. BARENS: THANK YOU.

14 GOOD AFTERNOON, MS. SOMMER. I AM ARTHUR BARENS.
15 I REPRESENT THE DEFENDANT, JOE HUNT.

16 AT THIS STAGE OF THE PROCEEDINGS, IT IS MY DUTY
17 TO ASK YOU YOUR OPINION ABOUT THE DEATH PENALTY. UNDERSTANDING
18 THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS OR
19 GOOD OR BAD ANSWERS, THERE ARE JUST YOUR OPINIONS, WHAT WE
20 ARE TRYING TO DO IS TO CONFIRM THAT YOU ARE A NEUTRAL JUROR
21 ON THE ISSUE OF GUILT AND ON PENALTY. IF WE EVER GET TO THAT,
22 BOTH SIDES, THE PROSECUTION AND THE DEFENSE ARE ENTITLED TO
23 THAT.

24 AS A GENERAL PROPOSITION, HOW DO YOU FEEL ABOUT
25 THE DEATH PENALTY IN OUR SOCIETY?

26 MS. SOMMER: I AM IN FAVOR OF IT.

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

28 MS. SOMMER: WELL, I JUST THINK THAT THERE ARE MANY --

1 WE HAVE A JUSTICE SYSTEM THAT WOULD FIND GUILT OR INNOCENCE
2 OF A PERSON. AND I THINK THAT IF IT IS BEYOND A REASONABLE
3 DOUBT AND WE FIND SOMEONE GUILTY, THERE ARE JUST SOME PEOPLE
4 THAT I THINK ARE DESERVING OF THE DEATH PENALTY.

5 MR. BARENS: NOW, WHAT I WANT TO DO IS, FOCUS IN NOW
6 ON SOME PEOPLE. IN OTHER WORDS, ASSUMING THAT YOU BELIEVED
7 BEYOND A REASONABLE DOUBT THAT A PERSON HAS INTENTIONALLY
8 TAKEN SOMEONE'S LIFE, CALLED A FIRST DEGREE MURDER AND IT
9 WAS DURING THE COURSE OF A ROBBERY THAT THAT OCCURRED -- NOW,
10 WITHOUT HAVING HEARD ANY OTHER EVIDENCE IN MITIGATION OR
11 AGGRAVATION, WOULD YOU FEEL THAT THOSE PEOPLE SHOULD GET THE
12 DEATH PENALTY?

13 MS. SOMMER: I DON'T THINK I COULD ANSWER THAT QUESTION
14 JUST BASED ON THE EVIDENCE. IT IS NOT ENOUGH.

15 MR. BARENS: WHAT OTHER TYPES OF EVIDENCE DO YOU THINK
16 YOU NEED, TO ANSWER THAT QUESTION?

17 MS. SOMMER: WELL, I THINK I WOULD HAVE TO SIT THROUGH
18 THE TRIAL AND HEAR ALL OF THE FACTS BEFORE I COULD ANSWER
19 THE QUESTION AND DECIDE WHO THESE PEOPLE ARE. I REALIZE THAT
20 IT IS A VERY BROAD STATEMENT TO MAKE.

21 MR. BARENS: WHAT I AM TALKING ABOUT MS. SOMMER, AT
22 THE TIME THAT YOU ARE GOING TO BE CALLED UPON TO MAKE THE
23 TYPE OF DECISION, YOU WILL ALREADY HAVE HEARD A FACT TRIAL
24 ABOUT WHETHER OR NOT THE CRIME TOOK PLACE AND YOU WILL BELIEVE
25 AT THAT MOMENT IN TIME BEYOND A REASONABLE DOUBT, THAT THE
26 DEFENDANT COMMITTED AN INTENTIONAL MURDER DURING THE COURSE
27 OF A ROBBERY.

28 NOW, I HAVE TO ASK YOU, BECAUSE YOU ARE IN FAVOR

1 OF THE DEATH PENALTY AND THERE IS NOTHING WRONG WITH THAT,
2 WOULD YOU BELIEVE THAT DEFENDANTS WHO COMMIT FIRST DEGREE
3 MURDERS DURING THE COURSE OF A ROBBERY, WITHOUT ANY OTHER
4 EVIDENCE ABOUT THEIR BACKGROUND OR THEIR AGE OR ANYTHING LIKE
5 THAT, WOULD YOU BELIEVE THAT THESE PEOPLE SHOULD GET THE DEATH
6 PENALTY?

7 MS. SOMMER: I AM UNDERSTANDING YOUR QUESTION. I AM
8 REALLY TRYING. I KNOW YOU ARE FEEDING ME TO ANSWER YOU.

9 BUT I DON'T REALLY FEEL THAT I COULD GIVE YOU
10 A YES OR NO UNTIL I HEARD ALL OF THE FACTS. I MEAN, THIS
11 IS --

12 MR. BARENS: MS. SOMMER, I DON'T WANT TO FEED YOU
13 ANYTHING.

14 MS. SOMMER: I UNDERSTAND WHAT YOU ARE GETTING AT, YOU
15 KNOW. IF IT WOULD BE HELPFUL, I CAN GIVE YOU AN EXAMPLE OF
16 SOMEONE THAT I FEEL WOULD BE VERY APPROPRIATELY --

17 MR. BARENS: TALK TO ME, MS. SOMMER.

18 MS. SOMMER: THAT'S CHARLES MANSON. I MEAN IN MY MIND,
19 HE IS SOMEONE THAT SHOULD HAVE BEEN HUNG BY THE GALLOWS LONG
20 AGO.

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1 MR. BARENS: I WON'T DISAGREE WITH YOU, MS. SOMMER AS
2 A DEFENSE LAWYER. WHAT I AM TALKING ABOUT THOUGH, IS WHAT
3 DO WE DO WITH THESE PEOPLE WHO COMMIT A MURDER IN THE FIRST
4 DEGREE, A MURDER DURING A ROBBERY. ONE GUY IS DEAD
5 UNJUSTIFIABLY IN THE FIRST DEGREE, AN INTENTIONAL MURDER
6 DURING A ROBBERY. WHAT ARE WE GOING TO DO WITH THOSE GUYS?

7 MR. WAPNER: OBJECTION, ASKED AND ANSWERED. THIS IS
8 THE THIRD TIME HE ASKED THE SAME QUESTION. SHE ANSWERED IT
9 TWICE.

10 MR. BARENS: BUT SHE IS TELLING ME SHE CAN'T ANSWER
11 THAT.

12 MR. WAPNER: SHE NEVER SAID THAT.

13 MR. BARENS: PERHAPS SHE ANSWERED IT AND I DIDN'T HEAR
14 HER.

15 THE COURT: WELL, IF YOU FIND HIM GUILTY OF MURDER IN
16 THE FIRST DEGREE DURING THE COURSE OF A ROBBERY, YOU WILL
17 FIND HIM GUILTY; IS THAT RIGHT?

18 MS. SOMMER: YES.

19 THE COURT: I TOLD YOU THAT YOU COME TO THE SECOND PHASE
20 OF THE TRIAL?

21 MS. SOMMER: YES.

22 THE COURT: WHERE YOU DETERMINE --

23 MS. SOMMER: I HAVE NO PROBLEM.

24 THE COURT: YOU CAN DO THAT?

25 MS. SOMMER: RIGHT.

26 MR. BARENS: IS IT CONCEIVABLE TO YOU OR BELIEVABLE
27 BY YOURSELF, THAT A PERSON WHO HAD COMMITTED A FIRST DEGREE
28 MURDER DURING THE COURSE OF A ROBBERY SHOULD NONETHELESS,

1 BE ABLE TO HAVE LIFE WITHOUT POSSIBILITY OF PAROLE? COULD
2 YOU VOTE THAT WAY?

3 MS. SOMMER: UH-HUH.

4 MR WAPNER: IS THAT YES?

5 MS. SOMMER: YES, SORRY.

6 MR. BARENS: DO YOU BELIEVE IN THE CONCEPT OF A LIFE
7 FOR A LIFE?

8 MS. SOMMER: THAT IS A QUESTION THAT --

9 THE COURT: DO YOU MEAN IN THE ABSTRACT?

10 MR. BARENS: IN THE ABSTRACT, WHICH IS ABSOLUTELY A
11 PERMISSIBLE QUESTION UNDER ALL OF THE CASES, TO MY KNOWLEDGE.

12 THE COURT: I DIDN'T SAY YOU COULDN'T ASK IT.

13 MR. BARENS: PARDON ME, YOUR HONOR. HOW DO YOU ANSWER
14 THAT, MS. SOMMER?

15 MS. SOMMER: YOU MEAN, MY HUSBAND IS CROSSING THE STREET
16 AND SOMEONE KILLS HIM? DO I WANT THAT PERSON TO DIE?

17 MR. BARENS: NO. THIS IS WHERE YOUR HUSBAND IS CROSSING
18 THE STREET AND SOMEONE INTENTIONALLY KILLS HIM AND INTENTIONALLY
19 TOOK A HUMAN LIFE UNJUSTIFIABLY.

20 MS. SOMMER: WELL, I --

21 THE COURT: I THOUGHT I TOLD HER THAT THAT WAS MURDER
22 AND IT DOESN'T CALL FOR THE DEATH PENALTY.

23 MR. BARENS: I AM NOW GOING TO A GREATER ABSTRACTION,
24 YOUR HONOR AND ASKING IF SHE BELIEVES IN A LIFE FOR A LIFE.
25 I AM DEFINING THAT AS AN INTENTIONAL TAKING OF A LIFE OR AN
26 INTENTIONAL TAKING OF ANOTHER HUMAN'S LIFE.

27 THE COURT: WELL THEN, YOU ARE ASKING HER WITHOUT ANY
28 PENALTY PHASE EVIDENCE WHETHER OR NOT SHE SHOULD BELIEVE IN

1 TAKING THE LIFE OF A PERSON WHO TOOK A LIFE?

2 MS. SOMMER: I WOULD LEAN IN THAT DIRECTION. BUT I
3 MEAN, THE PERSON MAY HAVE BEEN ON DRUGS FROM THE DOCTOR.
4 I MEAN, THERE ARE ALL KINDS OF EXTENUATING CIRCUMSTANCES.
5 SO POSSIBLY --

6 MR. BARENS: WOULD YOU BE WILLING TO DISCUSS THE
7 EXTENUATING CIRCUMSTANCES? WOULD YOU BE WILLING TO CONSIDER
8 THE AGE OF THE DEFENDANT AT THE TIME THE CRIME WAS ALLEGEDLY
9 COMMITTED AND THE EXTENUATING CIRCUMSTANCES?

10 THE COURT: YOU ARE ASKING HER TO PREJUDGE THE TESTIMONY.

11 MR. BARENS: NO. I AM ASKING HER IF SHE COULD CONSIDER
12 IT.

13 THE COURT: I TOLD YOU GENERALLY SPEAKING, ALL OF THE
14 FACTORS WHICH MAY BE CONSIDERED SUCH AS THE AGE OF THE DEFENDANT
15 AND THE RECORD, IF ANY, HIS CHARACTER, HIS BACKGROUND, HIS
16 MENTAL AND PHYSICAL STATE AND THE FACTS OF THE CRIME. THAT
17 IS HOW I WILL INSTRUCT YOU AT THE CONCLUSION OF THE CASE.
18 YOU WOULD CONSIDER AND BE GUIDED BY THAT, WOULD YOU NOT?

19 MS. SOMMER: YES.

20 THE COURT: YES?

21 MS. SOMMER: YES. I AM TRYING TO ANSWER HIS QUESTIONS.

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1 MR. BARENS: THEREFORE, DO YOU CONSIDER, IF YOU HAD A
2 CASE OF INTENTIONAL TAKING OF A LIFE, WHEN WE GOT TO THAT
3 PENALTY PHASE, IF WE GOT TO IT, THAT YOU WOULD REALLY BE
4 TRULY NEUTRAL IN LISTENING TO THE DEFENSE AND WHETHER THE
5 DEFENDANT SHOULD LIVE OR DIE?

6 MS. SOMMER: DO I BELIEVE I COULD BE OBJECTIVE, IS THAT
7 YOUR QUESTION?

8 MR. BARENS: NOT OBJECTIVE. NEUTRAL.

9 MS. SOMMER: YES, I FEEL LIKE I COULD BE.

10 MR. BARENS: WOULD YOU BE?

11 MS. SOMMER: YES.

12 MR. BARENS: IS ONE OF THE REASONS YOU BELIEVE IN THE
13 DEATH PENALTY THE FACT THAT IT SERVES AS A DETERRENT TO CRIME,
14 DO YOU BELIEVE THAT?

15 MS. SOMMER: YES.

16 MR. BARENS: IF YOU DO BELIEVE THAT, DO YOU BELIEVE THE
17 DEATH PENALTY SHOULD BE APPLIED IN SOME PREDICTABLE MANNER?

18 THE COURT: I DON'T KNOW WHAT YOU MEAN BY THAT.

19 MS. SOMMER: YES.

20 MR. BARENS: I AM COMING TO IT, YOUR HONOR.

21 IN OTHER WORDS, DO YOU BELIEVE, IF WE ARE GOING
22 TO HAVE A DEATH PENALTY AT ALL AND THE PURPOSE OF IT IS TO
23 DETER CERTAIN TYPES OF CRIMES, DO YOU BELIEVE THEREFORE THAT
24 WE SHOULD APPLY THE DEATH PENALTY IN SOME UNIFORM AND
25 PREDICTABLE MANNER?

26 THE COURT: DO YOU MEAN THAT SHOULD ALWAYS BE APPLIED,
27 IS THAT WHAT YOU ARE ASKING?

28 MR. BARENS: UNDER CERTAIN FACT SITUATIONS, YOUR HONOR,

1 THAT IT SHOULD BE PREDICTABLY AND UNIFORMLY APPLIED.

2 THE COURT: I STILL DON'T UNDERSTAND YOUR QUESTION.

3 MR. BARENS: WELL, I WOULD LIKE TO GET AN ANSWER.

4 I COULD EXPLAIN THE LOGIC OF THIS AT A LATER TIME
5 TO YOUR HONOR PERHAPS.

6 THE COURT: DO YOU UNDERSTAND THE QUESTION?

7 MR. WAPNER: WELL, I THINK I UNDERSTAND WHAT THE NEXT
8 QUESTION IS GOING TO BE, BUT THAT IS THE SAME ONE HE ASKED
9 ALREADY THREE TIMES AND DIDN'T GET AN ANSWER.

10 MR. BARENS: MR. WAPNER, I WILL ASK MY QUESTIONS, ALTHOUGH
11 YOU MAY ACCURATELY DEPICT IT.

12 THE COURT: YOU WILL GET YOUR OPPORTUNITY.

13 MR. BARENS: COULD WE HAVE AN ANSWER TO THAT?

14 MS. SOMMER: MY ANSWER WOULD BE NO, BECAUSE I DON'T KNOW
15 THAT EVERY SITUATION WOULD BE PROPER.

16 MR. BARENS: I THANK YOU FOR THAT.

17 NOW, MRS. SOMMER, DO YOU UNDERSTAND THAT ALTHOUGH
18 HIS HONOR AND MYSELF AND MR. WAPNER ARE TALKING ABOUT THE
19 DEATH PENALTY, DO YOU HAVE ANY REASON TO BELIEVE THAT MR.
20 HUNT HAS DONE ANYTHING WRONG OR IS GUILTY OF ANYTHING JUST
21 BECAUSE WE ARE TALKING TO YOU ABOUT THIS?

22 MS. SOMMER: I DON'T EVEN KNOW.

23 MR. BARENS: YOU HAVEN'T HEARD ANY EVIDENCE ABOUT THIS
24 CASE AND YOU ARE OPENMINDED ABOUT GUILT OR INNOCENCE?

25 MS. SOMMER: I DON'T KNOW ANYTHING ABOUT THE CASE, NO.

26 MR. BARENS: ALL RIGHT, THANK YOU. PASS FOR CAUSE.

27 THANK YOU, MA'AM.

28 MS. SOMMER: SURE.

1 MR. WAPNER: GOOD AFTERNOON, MRS. SOMMER. I AM FRED
2 WAPNER. I AM THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING
3 THIS CASE.

4 AS MR. BARENS SAID, NEITHER ONE OF US, I DON'T
5 THINK, ARE TRYING TO GET YOU TO ANSWER THESE QUESTIONS ONE
6 WAY OR THE OTHER.

7 LET ME ASK YOU SOME QUESTIONS ABOUT THE DEATH
8 PENALTY, NOT AS IT APPLIES HOW YOU THINK ABOUT IN GENERAL, BUT
9 HOW IT MAY APPLY IN THIS SPECIFIC INSTANCE.

10 WHAT IS GOING TO HAPPEN, AS THE JUDGE EXPLAINED
11 TO YOU, IS THAT YOU FIRST SIT THROUGH A PENALTY PHASE AND IF
12 THE JURY HAS FOUND THE DEFENDANT GUILTY AND THE SPECIAL
13 CIRCUMSTANCE TRUE -- I HAVE BEEN HERE TOO LONG. LET ME REPHRASE
14 THAT.

15 YOU FIRST SIT THROUGH THE GUILT PHASE OF THE TRIAL.
16 IF THE JURY FINDS THE DEFENDANT GUILTY AND THE SPECIAL
17 CIRCUMSTANCES TRUE, THEN YOU GET TO THE PENALTY PHASE AND YOU
18 SIT DURING THAT PHASE OF THE TRIAL AND THEN YOU GO INTO THE
19 JURY ROOM TO DELIBERATE; DO YOU UNDERSTAND THAT?

20 MS. SOMMER: YES.

21 I HAVE SERVED BEFORE.

22 MR. WAPNER: OKAY, GREAT. YOU HAVE HEARD IN OTHER CASES,
23 THE JUDGE TELLING YOU THAT EVEN THOUGH THE JURY HAS TO COME
24 TO AN AGREEMENT, IF THEY CAN, ALL TOGETHER, THAT EACH PERSON
25 IS REQUIRED TO VOTE THEIR INDIVIDUAL CONSCIENCE?

26 MS. SOMMER: UH-HUH.

27 MR. WAPNER: YOU HAVE TO SAY YES OR NO.

28 MS. SOMMER: YES. I AM SORRY.

1 MR. WAPNER: SO SHE CAN WRITE IT DOWN.

2 MS. SOMMER: YES.

3 MR. WAPNER: IN THIS PARTICULAR CASE -- LET ME ASK YOU
4 THIS -- HAVE YOU EVER SERVED ON A DEATH PENALTY JURY BEFORE?

5 MS. SOMMER: NO.

6 IT WAS A CIVIL CASE.

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1 MR. WAPNER: IN THIS PARTICULAR CASE, IF YOU GET TO THE
2 PENALTY CASE, THE JURY IS GOING TO BE ASKED TO DECIDE THE
3 PENALTY AND YOU ONLY HAVE TWO CHOICES, EITHER LIFE IMPRISON-
4 MENT WITHOUT THE POSSIBILITY OF PAROLE OR DEATH; DO YOU UNDER-
5 STAND THAT?

6 MS. SOMMER: YES.

7 MR. WAPNER: THE QUESTION I WANT TO ASK YOU NOW IS NOT
8 ABOUT YOUR GENERAL FEELINGS ABOUT THE DEATH PENALTY AND NOT
9 ABOUT HOW YOU WILL VOTE, BECAUSE YOU DON'T HAVE THE EVIDENCE.
10 I AM NOT GOING TO GIVE YOU THE EVIDENCE NOW.

11 MY QUESTION IS: DO YOU THINK THAT YOU ARE CAPABLE
12 OF MAKING A VOTE THAT SOMEONE SHOULD DIE IF YOU THINK THE
13 EVIDENCE WARRANTS IT?

14 MS. SOMMER: YES.

15 MR. WAPNER: ARE YOU CAPABLE OF MAKING A VOTE THAT SOMEONE
16 SHOULD LIVE IF YOU THINK THE EVIDENCE WARRANTS IT?

17 MS. SOMMER: YES.

18 MR. WAPNER: IS THERE ANYTHING IN YOUR BACKGROUND OR
19 CHARACTER THAT MIGHT BEAR ON YOUR ABILITY TO MAKE THAT
20 KIND OF DECISION?

21 MS. SOMMER: NO.

22 MR. WAPNER: I TAKE IT THAT THE MANSON CASE WAS AN
23 EXAMPLE OF ONE CASE WHERE YOU FELT THAT THE DEATH PENALTY
24 SHOULD BE APPLIED?

25 MS. SOMMER: UH-HUH, YES.

26 MR. WAPNER: IS THAT A STANDARD BY WHICH YOU ARE GOING
27 TO JUDGE ALL OTHER CASES?

28 MS. SOMMER: NO.

1 I JUST WAS AT A LOSS TO THINK OF AN ANSWER. THAT
2 IS THE FIRST THING THAT CAME TO MIND.

3 MR. WAPNER: OKAY, THANK YOU. I WILL PASS FOR CAUSE,
4 YOUR HONOR.

5 THE COURT: I HAVE GOOD NEWS FOR YOU. BOTH SIDES HAVE
6 PASSED FOR CAUSE. THEY AGREE THAT YOU MAY BE A POSSIBLE
7 JUROR IN THIS CASE AND THAT YOUR ATTITUDE AND STATE OF MIND
8 IS SUCH THAT YOU WILL BE FAIR AND IMPARTIAL. SO WHAT I AM
9 GOING TO DO IS TO ASK YOU TO COME BACK WITH ALL THE OTHER
10 JURORS, WHO SIMILARLY HAVE PASSED MUSTER, ON WEDNESDAY OF
11 THIS WEEK.

12 MS. SOMMER: OKAY.

13 THE COURT: AT 10:30 IN THE MORNING YOU GO TO THE JURY
14 ASSEMBLY ROOM AND WHEN YOU ARE ALL ASSEMBLED, I WILL HAVE YOU
15 BACK IN HERE AND WE WILL START THE TRIAL.

16 MS. SOMMER: THANK YOU.

17 THE COURT: WILL THAT BE ALL RIGHT?

18 MS. SOMMER: FINE.

19 THE COURT: THANK YOU VERY MUCH.

20 MS. SOMMER: YOU ARE WELCOME.

21 THE COURT: IN THE MEANTIME, IF THERE IS ANYTHING IN
22 THE NEWSPAPERS, DON'T READ ANYTHING ABOUT THE CASE OR IF YOU
23 HEAR ANYTHING ABOUT IT ON THE RADIO OR TELEVISION, DON'T
24 LISTEN TO IT, ALL RIGHT?

25 MS. SOMMER: ALL RIGHT.

26 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

27 MS. SOMMER: YOU ARE WELCOME.

28 (PROSPECTIVE JUROR SOMMER EXITS THE

1 COURTROOM.)

2 (PROSPECTIVE JUROR TAUB ENTERS THE
3 COURTROOM.)

4 THE COURT: GOOD AFTERNOON, MR. TAUB.

5 MR. TAUB: GOOD AFTERNOON, SIR.

6 THE COURT: WHERE DO YOU LIVE?

7 MR. TAUB: I LIVE -- DO YOU WANT THE SPECIFIC?

8 THE COURT: NO.

9 WHAT PART OF THE CITY?

10 MR. TAUB: SANTA MONICA.

11 THE COURT: SANTA MONICA?

12 MR. TAUB: FOURTH AND MONTANA.

13 THE COURT: MR. TAUB, HAVE YOU READ OR HEARD ANYTHING
14 AT ALL ABOUT THIS CASE EXCEPT WHAT I TOLD YOU ABOUT?

15 MR. TAUB: NO. I DON'T EVEN KNOW WHAT CASE IT IS.

16 THE COURT: I WILL TELL YOU A LITTLE BIT MORE ABOUT
17 THE CASE.

18 DOES THE NAME BILLIONAIRE BOYS CLUB MEAN ANYTHING
19 TO YOU?

20 MR. TAUB: NO.

21 THE COURT: WELL, YOU WILL HEAR A LOT ABOUT THAT IF YOU
22 ARE SELECTED AS A JUROR IN THE CASE.

23 MR. TAUB: I WOULD RATHER BE A MEMBER OF THE
24 BILLIONAIRES CLUB.

25 MR. BARENS: STIPULATED, YOUR HONOR.

26 THE COURT: IN ANY EVENT, I AM GOING TO BRIEFLY AGAIN
27 TELL YOU WHAT THE CASE IS ABOUT AND JUST ASK YOU A NUMBER OF
28 QUESTIONS, AS COUNSEL WILL ALSO. THE PURPOSE OF THESE

1 QUESTIONS WILL BE TO EXPLORE YOUR MIND ABOUT YOUR ATTITUDE OR
2 YOUR OPINION ABOUT THE DEATH PENALTY TO SEE WHETHER OR NOT YOU
3 CAN QUALIFY AS A POSSIBLE JUROR IN THIS CASE, ALL RIGHT?

4 MR. TAUB: SURE.

5 THE COURT: REMEMBER, I TOLD YOU THAT THE NATURE OF THE
6 CASE IS THAT THE DEFENDANT IS CHARGED WITH THE COMMISSION OF
7 THE CRIME OF MURDER, MURDER IN THE FIRST DEGREE, AND IT WAS
8 COMMITTED DURING THE COURSE OR IN THE COURSE OF ROBBERY.

9 NOW, IN THE COURSE OF A ROBBERY HAS A SPECIAL
10 SIGNIFICANCE. YOU SEE, IT IS NOT EVERY MURDER THAT CALLS FOR
11 THE POSSIBLE DEATH PENALTY, EVEN IF IT IS PREMEDITATED AND
12 DELIBERATE AND PLANNED AND EVERYTHING ELSE. IT IS ONLY THOSE
13 MURDERS WHICH ARE COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES
14 THAT QUALIFY FOR A POSSIBLE DEATH PENALTY.

15 WHEN I TALK OF THE DEATH PENALTY, YOU KNOW, THAT
16 IN THE DEATH PENALTY THERE ARE TWO POSSIBLE PENALTIES, ONE IS
17 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE -- AND IT
18 MEANS EXACTLY THAT: LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
19 OF PAROLE. HE DOESN'T GET OUT IN FIVE OR TEN YEARS. HE IS
20 IN THERE FOR LIFE. OR DEATH IN THE GAS CHAMBER.

21 NOW, IF YOU HAVE A MURDER COMMITTED IN THE FIRST
22 DEGREE WITH SPECIAL CIRCUMSTANCES, THAT IS, IN THE COMMISSION
23 OF A ROBBERY AS IN THIS CASE, OR IN THE COMMISSION OF A
24 BURGLARY OR IN THE COMMISSION OF A KIDNAPPING OR IN THE
25 COMMISSION OF A RAPE OR THE COMMISSION OF CHILD MOLESTING
26 AND A CHILD DIES, OR TORTURE OR MULTIPLE MURDERS, AND THERE
27 ARE 19 OF THOSE SPECIAL CIRCUMSTANCES, THOSE CASES QUALIFY
28 FOR A DEATH PENALTY. IT IS ONLY IN THOSE CASES WHICH THE

1 LEGISLATURE HAS SAID THE DEATH PENALTY APPLIES. SO IT IS NOT
2 EVERY MURDER CASE THAT CALLS FOR THE DEATH PENALTY.

3 MR. TAUB: UH-HUH.
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1 SO THE JURY SELECTED IN THIS CASE WILL FIRST HAVE
2 TO DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT
3 GUILTY. IF THEY FIND HIM NOT GUILTY, THAT IS THE END OF THE
4 CASE. IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE,
5 THEN THEY HAVE ANOTHER QUESTION TO DECIDE. THAT IS, WAS IT
6 TRUE OR WAS IT FALSE THAT THAT MURDER WAS COMMITTED IN THE
7 COURSE OF A ROBBERY. BECAUSE ONLY THEN WOULD THE QUESTION
8 OF THE DEATH PENALTY COME UP, AS I TOLD YOU.

9 IF THEY ANSWER NO, THAT IT WAS NOT COMMITTED IN
10 THE COURSE OF A ROBBERY, THAT IS THE END OF THE CASE SO FAR
11 AS THE JURY IS CONCERNED. ALL RIGHT?

12 BUT, IF THEY SAY TRUE, IT WAS COMMITTED IN THE
13 COURSE OF A ROBBERY, THEN THAT SAME JURY WHO GOES THROUGH
14 ANOTHER PHASE OF THE TRIAL THAT IS KNOWN AS THE PENALTY PHASE.

15 NOW, IN THE PENALTY PHASE, YOU REMEMBER THAT YOU
16 HAVE TRIED THE OFFENSE IN THE GUILT PHASE.

17 IN THE PENALTY PHASE, YOU REALLY IN EFFECT, TRY
18 THE DEFENDANT. ARE THERE THINGS ABOUT HIM WHICH ARE SO
19 FAVORABLE THAT IT WOULD BE IN MITIGATION OF THE PENALTY TO
20 BE INFLICTED OR AN EXTENUATION? OR, IN THE CASE OF THE
21 PROSECUTION, ARE THERE AGGRAVATING CIRCUMSTANCES WHICH THEY
22 WILL TRY TO SHOW THAT HE IS A BAD MAN OR UNFAVORABLE THINGS
23 ABOUT HIM? DO YOU UNDERSTAND?

24 THEN THE JURY TAKES INTO CONSIDERATION ALL OF
25 THE FACTORS IN THE CASE. THEY MUST CONSIDER AND BE GUIDED
26 BY MY INSTRUCTIONS.

27 I WILL TELL YOU WHAT ARE THE FACTORS THAT HAVE
28 TO BE CONSIDERED. BRIEFLY, THE FACTORS THAT HAVE TO BE

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1 CONSIDERED ARE THE FACTS OF THE OFFENSE WHICH YOU HAVE HEARD.
2 THEY ARE TO BE CONSIDERED AND HIS YOUTH OR HIS AGE, RATHER,
3 WHETHER OR NOT HE HAS ANY PRIOR HISTORY OF CRIMINAL ACTIVITIES,
4 CRIMINAL CONVICTIONS, HIS BACKGROUND, HIS HISTORY, HIS
5 CHARACTER, HIS MENTAL AND PHYSICAL CONDITION. ALL OF THOSE
6 WILL BE SET FORTH IN MY INSTRUCTIONS TO THE JURY AT THE
7 CONCLUSION OF THE PENALTY PHASE THAT YOU MUST CONSIDER IN
8 DETERMINING THE PENALTY.

9 AS I TOLD YOU, THE PENALTY WILL BE LIFE WITHOUT
10 POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER. DO YOU
11 UNDERSTAND THAT?

12 MR. TAUB: YES.

13 THE COURT: NOW, THE QUESTIONS I WILL ASK YOU AND WHICH
14 COUNSEL WILL ASK YOU, WILL BE TO DETERMINE WHAT YOUR STATE
15 OF MIND IS TOWARD THE DEATH PENALTY, TO SEE WHETHER OR NOT
16 YOU QUALIFY AS A PROSPECTIVE JUROR IN THIS CASE.

17 MR. TAUB: SURE.

18 THE COURT: OKAY. NOW, THE FIRST TWO QUESTIONS I WILL
19 ASK YOU, ARE REFERABLE TO THE GUILT PHASE.

20 FIRST, DO YOU HAVE ANY OPINION WHATEVER IT MAY
21 BE, ABOUT THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING
22 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
23 DEFENDANT?

24 MR. TAUB: NO, NONE AT ALL.

25 THE COURT: NOW, YOU REMEMBER THAT IF HE IS FOUND GUILTY
26 OF MURDER IN THE FIRST DEGREE, THEN THEY CONSIDER WAS IT
27 COMMITTED DURING THE COURSE OF A ROBBERY. THAT IS WHAT THEY
28 CALL THE SPECIAL CIRCUMSTANCES. THEN THEY HAVE ANOTHER

1 QUESTION TO ANSWER, IS IT TRUE OR FALSE THAT THAT MURDER WAS
2 COMMITTED IN THE COURSE OF A ROBBERY.

3 THEN, THE JURY ANSWERS TRUE OR FALSE. IF THEY
4 ANSWER TRUE, THEN WE START THE SECOND PHASE OF THE TRIAL,
5 WHICH IS KNOWN AS THE PENALTY PHASE. THERE, I TOLD YOU ABOUT
6 ALL OF THE THINGS THAT WILL BE COMING INTO PLAY.

7 MR. TAUB: YES.

8 THE COURT: ALL RIGHT. YOU UNDERSTAND ALL THAT?

9 MR. TAUB: YES.

10 THE COURT: NOW, I WILL ASK YOU THOSE QUESTIONS.
11 WHATEVER YOUR OPINION IS -- SORRY, I REPEATED MYSELF. YOU
12 SAID THAT ANY OPINION THAT YOU MAY HAVE ABOUT THE DEATH PENALTY
13 WILL NOT PREVENT YOU FROM REACHING AN IMPARTIAL DECISION AS
14 TO THE GUILT OR INNOCENCE. IS THAT RIGHT?

15 MR. TAUB: THAT'S RIGHT.

16 THE COURT: AND THE SECOND IS, WOULD THAT IN ANY WAY,
17 INTERFERE WITH YOUR REACHING A FAIR AND IMPARTIAL DECISION
18 AS TO WHETHER OR NOT IT WAS COMMITTED IN THE COURSE OF A
19 ROBBERY?

20 MR. TAUB: NO.

21 THE COURT: NOW, THE NEXT TWO QUESTIONS I WILL ASK YOU
22 REFER TO THE PENALTY PHASE. IN OTHER WORDS, ASSUMING THAT
23 HE HAS ALREADY BEEN CONVICTED OF MURDER IN THE FIRST DEGREE,
24 YOU FIND IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

25 THEN YOU HAVE TO DECIDE THE PENALTY ASPECT OF
26 THE CASE. HERE ARE TWO QUESTIONS ABOUT THAT. DO YOU HAVE
27 AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
28 AUTOMATICALLY VOTE FOR THE DEATH PENALTY, REGARDLESS OF ANY

1 EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY PHASE OF THE
2 TRIAL?

3 MR. TAUB: NO.

4 THE COURT: THE NEXT QUESTION IS THE SAME, EXCEPT IT
5 APPLIES TO LIFE WITHOUT POSSIBILITY OF PAROLE.

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

10 MR. TAUB: NO.

11 THE COURT: LASTLY, DO YOU UNDERSTAND OF COURSE, THAT
12 THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN
13 THIS CASE? THESE QUESTIONS ARE ONLY ASKED IN THE EVENT THAT
14 YOU REACH THAT PHASE OF THE TRIAL.

15 MR. TAUB: YES.

16 THE COURT: ALL RIGHT. THANK YOU.

17 MR. BARENS: GOOD AFTERNOON, MR. TAUB. I AM ARTHUR
18 BARENS. I REPRESENT THE DEFENDANT, JOE HUNT. AND AS HIS
19 HONOR DID, IT IS MY DUTY AT THIS STAGE OF THE PROCEEDINGS
20 TO INQUIRE AS TO YOUR POINT OF VIEW ON THE DEATH PENALTY.

21 MR. TAUB, THERE ARE NO RIGHT OR WRONG ANSWERS
22 TO MY QUESTIONS. THERE IS NO GOOD OR BAD ANSWER TO MY QUESTION.
23 THERE IS JUST YOUR OPINION.

24 MR. TAUB: RIGHT.

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

3 MR. TAUB: I THINK THAT AS A GENERAL RULE, THAT IT IS
4 CALLED FOR IN MANY INSTANCES.

5 MR. BARENS: CAN YOU HELP FOCUS ME ON THOSE INSTANCES
6 THAT MIGHT READILY COME TO YOUR MIND, MR. TAUB?

7 MR. TAUB: I THINK THAT THE ONLY THING THAT COMES
8 READILY TO MY MIND IS CHARLES MANSON.

9 MR. BARENS: HE IS POPULAR IN THIS COURTROOM, MR. TAUB.

10 MR. TAUB, WHAT WE WOULD BE DEALING WITH IN THIS
11 INSTANCE, WOULD BE A FIRST DEGREE MURDER, IF YOU BELIEVED IT,
12 COMMITTED DURING THE COURSE OF A ROBBERY.

13 NOW, GIVEN NOTHING ELSE, NO OTHER FACTS -- AND THE
14 JUDGE HAS TOLD YOU THAT THERE ARE MITIGATING CIRCUMSTANCES
15 AND AGGRAVATING CIRCUMSTANCES ABOUT THE DEFENDANT. BUT, JUST
16 ASSUMING THAT YOU BELIEVED HE COMMITTED AN INTENTIONAL,
17 FIRST DEGREE MURDER DURING A ROBBERY, WOULD YOU HAVE A BIAS
18 TOWARD GIVING THE DEATH PENALTY, JUST GIVEN THOSE FACTORS?

19 MR. TAUB: NO.

20 MR. BARENS: YOU WOULD BE OPENMINDED AND CONSIDER ALL
21 OF THE EVIDENCE ABOUT SAY, THE AGE OF THE DEFENDANT AND
22 WHETHER OR NOT HE HAD A PRIOR CRIMINAL BACKGROUND, BEFORE
23 MAKING A DECISION?

24 MR. TAUB: I THINK THAT I WOULD CONSIDER AS MANY
25 FACTORS AS I COULD BEFORE SENDING SOMEONE TO THE GAS CHAMBER.

26 MR. BARENS: THANK YOU FOR THAT, SIR. SIR, WOULD IT
27 BE CREDIBLE TO YOU THAT UNDER PROPER CIRCUMSTANCES, YOU
28 COULD, EVEN THOUGH A LIFE HAD BEEN INTENTIONALLY TAKEN, THAT

1 YOU WOULD VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE IF THE
2 EVIDENCE SUGGESTED THAT TO YOU?

3 MR. TAUB: YES, DEPENDING UPON THE CIRCUMSTANCES. I
4 CERTAINLY COULD.

5 MR. BARENS: LASTLY AND PERHAPS, MOST IMPORTANTLY, MR.
6 TAUB, DO YOU UNDERSTAND THAT ALTHOUGH HIS HONOR AND MR.
7 WAPNER AND MYSELF ARE HERE TALKING ABOUT THE DEATH PENALTY,
8 THAT THERE IS NO REASON FOR YOU TO BELIEVE THAT MY CLIENT HAS
9 DONE ANYTHING WRONG OR IS GUILTY OF ANYTHING JUST BECAUSE THE
10 LAW REQUIRES WE INVESTIGATE THAT RIGHT NOW?

11 MR. TAUB: YES. I UNDERSTAND THAT HE IS INNOCENT UNTIL
12 PROVEN GUILTY.

13 MR. BARENS: QUITE SO. THANK YOU. WE PASS FOR CAUSE,
14 YOUR HONOR.

15 THE COURT: ALL RIGHT.

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

19 IF YOU GET TO THAT PHASE OF THE CASE WHERE YOU ARE
20 CONSIDERING PENALTY, DO YOU THINK THAT YOU ARE THE KIND OF
21 A PERSON WHO IS CAPABLE OF CASTING A VOTE IN YOUR WORDS, TO
22 SEND SOMEONE TO THE GAS CHAMBER, IF YOU THINK THAT THE FACTS
23 JUSTIFY IT?

24 MR. TAUB: YES.

25 MR. WAPNER: ON THE OTHER HAND, ARE YOU CAPABLE OF
26 RENDERING A VOTE OF LIFE WITHOUT POSSIBILITY OF PAROLE IF YOU
27 THINK THE FACTS JUSTIFY THAT?

28 MR. TAUB: YES.

1 MR. WAPNER: DO YOU UNDERSTAND THAT IF WE GET TO THAT
2 PHASE OF THE CASE, THERE ARE ONLY TWO CHOICES THAT YOU WILL
3 HAVE, EITHER DEATH IN THE GAS CHAMBER OR LIFE WITHOUT
4 POSSIBILITY OF PAROLE?

5 MR. TAUB: YES. I UNDERSTAND THAT.

6 MR. WAPNER: IS THERE ANYTHING ABOUT YOUR BACKGROUND,
7 RELIGIOUS, MORAL OR PHILOSOPHICAL BASIS, THAT WOULD INTERFERE
8 IN YOUR MAKING A DECISION OF THIS TYPE?

9 MR. TAUB: NO, NOTHING AT ALL.

10 MR. WAPNER: IS THERE ANY REASON YOU CAN THINK OF, ANY-
11 THING IN YOUR BACKGROUND THAT YOU THINK WE SHOULD KNOW ABOUT
12 THAT WOULD BEAR ON YOUR ABILITY TO BE A FAIR JUROR TO BOTH SIDES
13 ON THIS QUESTION?

14 MR. TAUB: I HAVE TO TELL YOU THAT MY BIGGEST FAULT IS
15 THAT I ALWAYS SEE BOTH SIDES OF THE QUESTION.

16 AND I AM UP AGAINST IT WITH THOSE PEOPLE WHO ARE
17 SO DAMNED POSITIVE AND ARE WRONG.

18 MR. WAPNER: OKAY.

19 THE COURT: YOU MEAN THAT YOU ARE FAIR MINDED AND OPEN-
20 MINDED, AREN'T YOU?

21 MR. TAUB: YES.

22 THE COURT: SUBJECT TO ONLY IN THIS PARTICULAR CASE, ONLY
23 WHAT YOU HEAR FROM THE WITNESS STAND AND OTHER EVIDENCE THAT
24 COMES BEFORE YOU?

25 MR. TAUB: YES.

26 THE COURT: YES. ANYTHING FURTHER?

27 MR. WAPNER: JUST BRIEFLY. I ASSUME THAT THAT ABILITY
28 TO SEE BOTH SIDES OF THE QUESTION DOESN'T -- LET ME PHRASE IT

1 A DIFFERENT WAY.

2 DOES THE ABILITY TO SEE BOTH SIDES OF A QUESTION
3 INTERFERE WITH YOUR ABILITY TO MAKE A DECISION ONE WAY OR THE
4 OTHER?

5 MR. TAUB: NO. IT IS ONLY TO HAVE OTHER PEOPLE LISTEN
6 TO IT.

7 MR. WAPNER: OKAY. AND WOULD YOU RUN THAT PAST ME
8 AGAIN?

9 MR. TAUB: OKAY. I HAVE NO DIFFICULTY IN MAKING A
10 DECISION. BUT I WOULD HAVE DIFFICULTY IN FORCING MY DECISION
11 ON OTHER PEOPLE.

12 THE COURT: BUT YOU WOULD TELL THEM WHAT IT IS, WOULDN'T
13 YOU?

14 MR. TAUB: YES.

15 THE COURT: YOU WOULD TELL THEM WHAT YOUR REASONS ARE
16 FOR IT TOO, WOULDN'T YOU?

17 MR. TAUB: YES.

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

19 THE COURT: ALL RIGHT. BOTH SIDES HAVE PASSED FOR
20 CAUSE. WHAT THAT MEANS IS THAT BOTH ARE SATISFIED TO HAVE A
21 JUROR WHO IS IN YOUR FRAME OF MIND SIT AS A TRIAL JUROR IN
22 THIS CASE. YOU ARE ACCEPTED AS SUCH.

23 MR. TAUB: I UNDERSTAND.

24 THE COURT: NOW, WE HAVE GONE TO THE BOTTOM OF THE LIST.
25 WHAT I WILL ASK YOU TO DO IS, YOU ARE ACCEPTABLE AS A JUROR
26 AND I WANT YOU TO RETURN TO THE JURY ASSEMBLY ROOM ON WEDNESDAY
27 OF THIS WEEK.

28 THAT IS DECEMBER THE 10TH. THAT WILL BE AT

1 10:30 IN THE MORNING IN THE JURY ASSEMBLY ROOM. THAT IS
2 WEDNESDAY, DECEMBER 10. WHEN YOU ARE ALL GATHERED, I WILL
3 ASK YOU TO COME HERE. WE WILL START THE TRIAL OF THIS CASE.

4 MR. TAUB: CERTAINLY, SIR.

5 THE COURT: IN THE MEANTIME, IF THERE MIGHT BE SOMETHING
6 IN THE NEWSPAPERS OR ANYTHING ON TELEVISION OR RADIO, DON'T
7 LISTEN TO IT OR HEAR ANYTHING.

8 MR. TAUB: I HAVE NOT HEARD ANYTHING YET. I DON'T THINK
9 I WILL START.

10 THE COURT: CONTINUE IN THAT STATE OF BLISS. ALL RIGHT?

11 MR. TAUB: YES.

12 (PROSPECTIVE JUROR TAUB EXITS THE
13 COURTROOM.)

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1 (PROSPECTIVE JUROR WERNER VON DER OHE
2 ENTERED THE COURTROOM.)

3 THE COURT: DO YOU PRONOUNCE IT WERNER OR WARNER?

4 MR. VON DER OHE: WERNER VON DER OHE.

5 THE COURT: VON DER OHE?

6 MR. VON DER OHE: VON DER OHE. THAT IS HOW IT IS
7 PRONOUNCED, YES.

8 I HAVE A BRIEF STATEMENT TO MAKE. I APOLOGIZE.
9 I WAS INCORRECTLY INFORMED ABOUT MY EMPLOYER'S POLICIES ON
10 WEDNESDAY.

11 THE COURT: OH, REALLY.

12 MR. VON DER OHE: ON MY PREVIOUS JURY, THERE WAS NO
13 TIME LIMIT AND IN BETWEEN, A TIME LIMIT HAS BEEN INSTITUTED
14 AND THERE IS 25 WORKING DAYS.

15 MR. BARENS: WE WILL STIPULATE, YOUR HONOR.

16 MR. WAPNER: I WILL STIPULATE THAT HE MAY BE EXCUSED.

17 THE COURT: THEY DON'T PAY YOU FOR MORE THAN 25 DAYS?

18 MR. VON DER OHE: YES.

19 THE COURT: YOU WOULDN'T WANT TO BE ON YOUR OWN, WOULD
20 YOU?

21 MR. VON DER OHE: FOR A FEW DAYS, POSSIBLY.

22 THE COURT: NOT FOR THREE MONTHS?

23 MR. VON DER OHE: THAT, I COULDN'T AFFORD.

24 I APOLOGIZE.

25 THE COURT: THANK YOU VERY MUCH. YOU ARE EXCUSED.

26 MR. VON DER OHE: THANK YOU.

27 (PROSPECTIVE JUROR VON DER OHE
28 EXITED THE COURTROOM.)

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THE COURT: LET THE RECORD SHOW THE COURT HAS EXCUSED
CECILIA MORRIS.

MR. WAPNER: WAS THAT FOR HARDSHIP, YOUR HONOR?

THE COURT: YES, ILLNESS, HARDSHIP.

(PROSPECTIVE JUROR STEVEN WIENS
ENTERED THE COURTROOM.)

THE COURT: GOOD AFTERNOON. THAT IS MR. WIENS, IS IT?

MR. WIENS: YES.

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1 THE COURT: MR. WIENS, WHERE DO YOU LIVE?

2 MR. WIENS: I LIVE IN REDONDO BEACH.

3 THE COURT: HAVE YOU READ OR HEARD ANYTHING AT ALL ABOUT
4 THIS CASE, EXCEPT IT IS PENDING HERE, WHAT I TOLD YOU WHEN
5 WE WERE ALL HERE TOGETHER?

6 MR. WIENS: THE ONLY THING I HEARD IN THE JURY ROOM
7 EARLIER THAT SOMEBODY SAID IT WAS IN THE TIMES AND THAT IT
8 MAY BE DISMISSED. THAT IS ALL I HEARD.

9 THE COURT: WELL, YOU SEE, THAT IS WHAT RUMOR DOES ALL
10 OF THE TIME. THERE IS ABSOLUTELY NO BASIS FOR IT AND YOU
11 WILL FORGET ANYTHING YOU HEARD IN THE JURY ROOM OR ANY PLACE
12 ELSE.

13 AND DON'T READ ANYTHING ABOUT THE CASE IF BY ANY
14 CHANCE IT IS IN THE NEWSPAPER. DON'T LISTEN TO TELEVISION
15 OR THE RADIO. IF IT IS ON, TURN IT OFF, ALL RIGHT?

16 I WILL TELL YOU WHAT THIS CASE IS ABOUT. I DID
17 TELL YOU SOMETHING ABOUT IT WHEN YOU WERE ALL HERE LAST WEEK.

18 THE DEFENDANT HAS BEEN CHARGED WITH THE COMMISSION
19 OF THE CRIME OF MURDER, MURDER IN THE FIRST DEGREE AND THAT
20 IT WAS COMMITTED IN THE COURSE OF A ROBBERY.

21 IN THE COURSE OF A ROBBERY HAS CERTAIN
22 SIGNIFICANCE.

23 YOU SEE, IT IS NOT EVERY MURDER, IF IT IS MURDER
24 IN THE FIRST DEGREE, BE IT DELIBERATE, CALCULATED, INTENTIONAL,
25 PREMEDITATED MURDER THAT CALLS FOR THE IMPOSITION OF THE DEATH
26 PENALTY.

27 IT IS ONLY THOSE MURDERS IN THE FIRST DEGREE WHICH
28 THE LAW DECLARES OR THE LEGISLATURE DECLARES SHALL BE PUNISHABLE

1 POSSIBLY BY THE DEATH PENALTY. THOSE MURDERS MUST BE
2 COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES, LIKE THE
3 COMMISSION OF THE CRIME OF MURDER DURING THE COURSE OF A
4 ROBBERY, WHICH IS THE CHARGE IN THIS PARTICULAR CASE, OR MURDER
5 WHICH WAS COMMITTED IN THE COURSE OF A BURGLARY, MURDER WHICH
6 WAS COMMITTED IN THE COURSE OF A KIDNAPPING OR IN THE COURSE
7 OF A RAPE OR COMMITTED WHEN A CHILD IS MOLESTED AND THE CHILD
8 DIES, IS KILLED, OR A MURDER WHICH IS COMMITTED BY TORTURE
9 OR WHICH IS COMMITTED -- MULTIPLE MURDERS. THERE ARE 19 OF
10 THEM WHERE THE LEGISLATURE HAS SAID THAT IT IS ONLY IN THOSE
11 SPECIAL KIND OF CASES, SPECIAL CIRCUMSTANCES THAT THE DEATH
12 PENALTY COMES INTO PLAY AND WHERE IT IS REQUESTED.

13 SINCE MURDER IN THE COURSE OF ROBBERY IS ONE OF
14 THEM, THEREFORE, WE HAVE TO DETERMINE IN THIS CASE WHAT YOUR
15 ATTITUDE IS TOWARD THE DEATH PENALTY TO DETERMINE WHETHER
16 OR NOT YOU WILL MAKE A FAIR JUROR FOR BOTH SIDES, ALL RIGHT?

17 MR. WIENS: UH-HUH.

18 THE COURT: NOW, THE JURY WHICH WILL BE SELECTED IN
19 THIS CASE WILL FIRST DECIDE THE GUILT OR INNOCENCE OF THE
20 DEFENDANT: IS HE GUILTY OR NOT GUILTY OF THE MURDER?

21 IF THE JURORS SAY THAT HE IS NOT GUILTY, WHY THAT
22 IS THE END OF IT.

23 IF THEY SAY HE IS GUILTY OF MURDER, THEN THEY
24 DETERMINE DEGREE. IF IT IS MURDER IN THE FIRST DEGREE, IF
25 THEY DECIDE IT IS MURDER IN THE FIRST DEGREE, THEN THEY HAVE
26 ANOTHER QUESTION TO DECIDE.

27 DO YOU REMEMBER I TOLD YOU IT IS A SPECIAL
28 CIRCUMSTANCE, WAS THAT MURDER COMMITTED IN THE COURSE OF A

1 ROBBERY? THEY ANSWER THAT IN THIS WAY, THEY SAY IT IS TRUE
2 OR IT IS FALSE THAT IT WAS COMMITTED IN THE COURSE OF A ROBBERY.

3 IF THEY SAY IT IS TRUE, THEN THAT SAME JURY GOES
4 BACK INTO THE JURY BOX AGAIN TO HEAR ADDITIONAL TESTIMONY
5 FROM BOTH SIDES.

6 WE CALL THAT PHASE OF THE TRIAL THE PENALTY PHASE,
7 TO DETERMINE WHAT THE PENALTY IS GOING TO BE: SHOULD IT BE
8 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR SHOULD
9 IT BE DEATH IN THE GAS CHAMBER.

10 AND ON THAT PHASE OF THE TRIAL, WHICH IS THE PENALTY
11 PHASE, YOU WILL HEAR TESTIMONY FROM THE DEFENDANT AND FROM
12 THE PROSECUTION. THE TESTIMONY WILL -- NOW THEY ARE GOING
13 TO TRY THE PERSON, NOT THE CRIME, AND THE TESTIMONY WILL BE
14 ANYTHING THAT IS FAVORABLE AND ANYTHING THAT IS NICE AND GOOD
15 ABOUT THE DEFENDANT IN THE COURSE OF HIS LIFE, HIS AGE, IS
16 HE FREE FROM ANY -- IN OTHER WORDS, IS HE FREE FROM ANY CRIMINAL
17 RECORD IN THE PAST. HIS CHARACTER, HIS BACKGROUND, HIS MENTAL
18 AND PHYSICAL CONDITION. ALL OF THOSE FACTORS WILL BE TAKEN
19 INTO CONSIDERATION.

20 ON THE OTHER HAND, IN ADDITION TO THAT, THE
21 PROSECUTION WILL INTRODUCE EVIDENCE UNFAVORABLE TO THE
22 DEFENDANT. WE CALL THOSE AGGRAVATING CIRCUMSTANCES.

23 THOSE FAVORABLE TO THE DEFENDANT ARE CALLED
24 MITIGATING OR EXTENUATING CIRCUMSTANCES.

25 THOSE WHICH ARE UNFAVORABLE ARE CALLED
26 AGGRAVATING CIRCUMSTANCES.

27 AND THE PROSECUTION WILL TRY TO SHOW THAT HE DID
28 VERY BAD THINGS IN HIS LIFE OR HE IS A BAD PERSON.

1 DO YOU UNDERSTAND?

2 MR. WIENS: UH-HUH.

3 THE COURT: THEN THE JURY CONSIDERS BOTH SIDES OF IT,
4 THEY CONSIDER THE CRIME ITSELF, THEY CONSIDER ALL OF THESE
5 OTHER FACTORS AND THEY MUST CONSIDER ALL OF THOSE FACTORS
6 I TOLD YOU ABOUT, AGE, BACKGROUND AND CHARACTER AND EVERYTHING
7 ELSE, LACK OF CRIMINAL ACTIVITY, CONVICTIONS, ALL OF THOSE
8 YOU TAKE INTO CONSIDERATION. THEN YOU RETIRE AGAIN AND
9 DETERMINE WHAT THE PENALTY IS GOING TO BE: SHALL IT BE LIFE
10 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

11 AND THAT MEANS EXACTLY WHAT IT SAYS: THERE IS
12 NO POSSIBILITY OF PAROLE ONCE HE IS SENTENCED TO LIFE
13 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. HE DOESN'T
14 GET OUT IN TWO YEARS OR FIVE YEARS OR TWENTY YEARS. HE STAYS
15 THERE FOR THE REST OF HIS LIFE.

16 OR SHALL IT BE DEATH IN THE GAS CHAMBER?

17 THAT IS THEN THE FUNCTION OF THE JURY.

18 WHAT I AM GOING TO DO NOW IS TO ASK YOU SOME
19 QUESTIONS, AS WILL COUNSEL ASK YOU QUESTIONS, AND THAT IS
20 TO EXPLORE YOUR STATE OF MIND AND YOUR ATTITUDE AND YOUR
21 OPINION WITH RESPECT TO THE DEATH PENALTY TO SEE WHETHER OR
22 NOT THAT WILL INTERFERE IN ANY WAY IN YOUR BEING A FAIR
23 JUROR TO DETERMINE THE GUILT OR INNOCENCE OR IF HE IS FOUND
24 GUILTY, TO DETERMINE WHETHER OR NOT YOU CAN FIX THE PENALTY
25 WHICH IS JUSTIFIED UNDER ALL OF THE CIRCUMSTANCES.

26 DO YOU UNDERSTAND THAT?

27 (PROSPECTIVE JUROR NODS HIS HEAD
28 UP AND DOWN.)

1 THE COURT: THE FIRST TWO QUESTIONS I AM GOING TO ASK
2 YOU RELATE ONLY TO THE GUILT PHASE: DO YOU HAVE ANY OPINION,
3 WHATEVER IT MAY BE, REGARDING THE DEATH PENALTY THAT WOULD
4 PREVENT YOU FROM RENDERING AN IMPARTIAL DECISION AS TO THE
5 GUILT OR INNOCENCE OF THE DEFENDANT?

6 MR. WIENS: NO.

7 THE COURT: NOW, AS I TOLD YOU, IF YOU FIND HIM GUILTY
8 OF MURDER IN THE FIRST DEGREE, THEN YOU ARE TO DETERMINE TRUE
9 OR FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.
10 THE SECOND QUESTION HAS TO DO WITH JUST THAT PHASE OF IT: DO
11 YOU HAVE ANY OPINION, WHATEVER IT MAY BE, WHICH WOULD PREVENT
12 YOU FROM MAKING AN IMPARTIAL DECISION AS TO EXACTLY CONCERNING
13 THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCE IN THIS
14 CASE?

15 MR. WIENS: NO.

16 THE COURT: NOW, THE NEXT TWO QUESTIONS HAVE TO DO WITH
17 THE PENALTY PHASE. YOU WILL ASSUME THAT YOU HAVE FOUND HIM
18 GUILTY OF MURDER IN THE FIRST DEGREE AND THE SPECIAL CIR-
19 CUMSTANCES WERE FOUND TO BE TRUE, IT WAS COMMITTED IN THE
20 COURSE OF A ROBBERY AND THE NEXT QUESTION IS ON THE PENALTY
21 PHASE: DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
22 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH
23 PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT
24 THE PENALTY PHASE OF THE TRIAL?

25 MR. WIENS: NO.

26 THE COURT: THE NEXT QUESTION IS THE SAME ONLY IT APPLIES
27 TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; DO
28 YOU HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT

1 YOU WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE
2 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE
3 PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

4 MR. WIENS: NO.

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

9 MR. WIENS: I UNDERSTAND.

10 MR. BARENS: THANK YOU, YOUR HONOR.

11 GOOD AFTERNOON, MR. WIENS. I AM ARTHUR BARENS AND
12 I REPRESENT THE DEFENDANT, JOE HUNT.

13 AND AS IT WAS HIS HONOR'S, IT IS MY DUTY TO ASK
14 YOU ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY AT THIS
15 POINT, AND INCLUDING, THERE ARE NO GOOD OR BAD ANSWERS TO MY
16 QUESTIONS OR RIGHT OR WRONG ANSWERS. JUST YOUR OPINION, SIR.

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

19 MR. WIENS: GENERALLY, I HAVE BEEN IN FAVOR OF IT.

20 THE COURT: GENERALLY, YOU ARE IN FAVOR OF IT?

21 MR. WIENS: YES.

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24A-1

1 MR. BARENS: CAN YOU TELL ME WHEN YOU THINK THE DEATH
2 PENALTY SHOULD BE APPLIED, IF YOU CAN, IN THE ABSTRACT?

3 MR. WIENS: IN THE ABSTRACT?

4 THE COURT: PARDON ME. I THOUGHT I INDICATED THOSE
5 CASES IN WHICH THE DEATH PENALTY MAY BE IMPOSED.

6 MR. BARENS: I HAVE ASKED HIM. ALTHOUGH THERE ARE
7 19, YOUR HONOR, HE MAY HAVE CERTAIN PREFERENCES.

8 THE COURT: ALL RIGHT. GO AHEAD.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 MR. WIENS: CASES WHERE I THINK THE DEATH PENALTY SHOULD
11 BE IMPOSED WOULD BE A HIDEOUS CRIME.

12 THE COURT: YOU MEAN A HEINOUS CRIME?

13 MR. WIENS: YES, EXCUSE ME, OR IN CIRCUMSTANCES WHERE THE
14 ACCUSED HAD HAD A CHOICE WHETHER HE COULD HAVE LEFT THE SCENE
15 AND NOT COMMITTED THE MURDER BUT HE IN FACT, DID IT ANYWAY.

16 MR. BARENS: NOW --

17 THE COURT: WE ASSUME THAT IN ALL CASES, IT HAS BEEN
18 DELIBERATE AND PREMEDITATED AND INTENTIONAL. NOW YOU GO
19 BEYOND THAT.

20 MR. BARENS: SO, WE HAVE HERE A --

21 MR. WIENS: DO YOU MEAN A SPECIFIC CRIME?

22 MR. BARENS: SURE. IN OTHER WORDS, LET'S ASSUME WE HAVE
23 GOT A SITUATION WITH A DEFENDANT WHO COMMITS A FIRST DEGREE,
24 INTENTIONAL MURDER DURING A ROBBERY. THERE IS NO DOUBT ABOUT
25 IT ABSOLUTELY.

26 IT IS UNACCEPTABLE OR UNFORGIVABLE, A FIRST
27 DEGREE TYPE OF MURDER. ARE WE GOING TO GIVE THOSE PEOPLE THE
28 DEATH PENALTY?

1 MR. WIENS: ALL OF THEM?

2 MR. BARENS: ALL OF THEM, SIR.

3 MR. WIENS: POSSIBLY NOT.

4 MR. BARENS: WHICH ONES DO WE EXEMPT FROM THEM, MR.
5 WIENS?

6 MR. WIENS: EXEMPT FROM THAT?

7 MR. BARENS: YES. WHO WOULDN'T WE GIVE THE DEATH
8 PENALTY TO THAT DID THAT?

9 MR. WIENS: A VERY YOUNG PERSON, POSSIBLY.

10 MR. BARENS: I AM NOT TALKING ABOUT A MINOR. WE WILL
11 ONLY BE DEALING WITH ADULTS IN THIS COURTROOM. WE HAVE GOT
12 SOMEONE OVER 18. IT IS 18, RIGHT?

13 OR IS IT 21? LET'S SAY WE HAVE GOT SOMEONE OVER
14 21.

15 MR. WIENS: POSSIBLY NOT ON THE FIRST OFFENSE.

16 MR. BARENS: ALL RIGHT. IN OTHER WORDS, YOU WOULD BE
17 WILLING TO CONSIDER WHETHER OR NOT THEY HAD A PRIOR HISTORY
18 OF CRIMINAL ACTIVITY, AS HIS HONOR SUGGESTED TO YOU?

19 MR. WIENS: YES.

20 MR. BARENS: IS IT BELIEVABLE TO YOU, THAT YOU COULD
21 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE FOR SOMEONE WHO
22 INTENTIONALLY TOOK ANOTHER HUMAN LIFE?

23 MR. WIENS: YES. I COULD.

24 MR. BARENS: NOW, COULD YOU ALSO, NOT AS EASILY PERHAPS,
25 BUT ARE YOU CAPABLE OF VOTING FOR THE DEATH PENALTY IF THE
26 EVIDENCE SUGGESTED THAT TO YOU BEYOND A REASONABLE DOUBT?

27 MR. WIENS: YES.

28 MR. BARENS: DO YOU BELIEVE -- STRIKE THAT.

1 I DON'T BELIEVE SIR, THAT YOU BELIEVE IN THE OLD
2 IDEA OF AN EYE FOR AN EYE OR A LIFE FOR A LIFE. YOU DON'T
3 BELIEVE THAT, DO YOU?

4 MR. WIENS: NOT IN EVERY CASE, NO.

5 MR. BARENS: YOU WOULD WANT TO LISTEN TO THE EVIDENCE
6 BEFORE YOU MADE THAT TYPE OF A DECISION?

7 MR. WIENS: YES.

8 MR. BARENS: DO YOU CONSIDER THAT YOU WOULD BE A TRULY
9 NEUTRAL JUROR, AS NEUTRAL AS WE HUMANS CAN BE WHEN IT CAME TO
10 DECIDING BOTH GUILT AND INNOCENCE AND THE LIFE/DEATH QUESTION?

11 MR. WIENS: YES, SIR.

12 MR. BARENS: NOW, YOU UNDERSTAND, MR. WIENS -- ALTHOUGH
13 WE HAVE SPENT A FEW MOMENTS DISCUSSING THE DEATH PENALTY, YOU
14 HAVE NO REASON TO BELIEVE THAT MY CLIENT HAS DONE ANYTHING
15 WRONG OR IS GUILTY OF ANYTHING DO YOU, SIR?

16 MR. WIENS: NO.

17 MR. BARENS: JUST BECAUSE WE ARE HERE DOING THIS?

18 MR. WIENS: YES.

19 MR. BARENS: YOU HAVE NOT HEARD ANY EVIDENCE.

20 MR. WIENS: I HAVE NOT HEARD ANY EVIDENCE.

21 MR. BARENS: THANK YOU VERY MUCH, SIR. WE PASS FOR
22 CAUSE.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: GOOD AFTERNOON, MR. WIENS. I AM FRED
25 WAPNER, THE DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE.
26 TELL ME WHAT YOU HEARD IN THE JURY ROOM, AS BEST YOU CAN
27 RECALL?

28 MR. WIENS: EXACTLY WHAT I SAID. SOMEONE, ANOTHER JUROR,

1 STATED THAT THERE WAS A STORY IN THE L.A. TIMES ABOUT THIS
2 CASE AND THERE WAS A POSSIBILITY THAT IT WOULD BE EXCUSED.

3 MR. WAPNER: DO YOU KNOW IF IT WAS JUROR ON THIS CASE
4 OR JUST ANOTHER JUROR IN THE JURY ROOM?

5 MR. WIENS: JUST ANOTHER JUROR IN THE JURY ROOM.

6 MR. WAPNER: DID YOU HEAR ANY DETAILS FROM THE JUROR?

7 MR. WIENS: NO. WE DROPPED THE SUBJECT IMMEDIATELY AFTER
8 THAT,

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4B-1

1 MR. WAPNER: OKAY. AND I ASSUME THAT YOU TAKE IT, FROM
2 THE FACT THAT WE ARE HERE ASKING YOU THESE QUESTIONS, THAT
3 IT HAS NOT BEEN DISMISSED?

4 MR. WIENS: YES. I ASSUMED THAT.

5 MR. WAPNER: OKAY. THE NEXT QUESTION IS, DO YOU HAVE
6 ANY STRONGLY HELD RELIGIOUS BELIEFS THAT MIGHT AFFECT YOUR
7 ABILITY TO DECIDE THE QUESTION OF LIFE OR DEATH IN THIS CASE?

8 MR. WIENS: NO.

9 MR. WAPNER: ANY STRONGLY HELD MORAL CONVICTIONS THAT
10 MIGHT BEAR ON YOUR ABILITY TO MAKE A DECISION ON THE LIFE
11 OR DEATH OF A PERSON?

12 MR. WIENS: NO. I ALREADY SAID THAT AS A MORAL
13 CONVICTION, I DO BELIEVE IN THE DEATH PENALTY IN SOME CASES.

14 BUT, I BELIEVE THAT I COULD BE A FAIR JUROR.
15 I DON'T BELIEVE IT WOULD SWAY ME ONE WAY OR THE OTHER.

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

17 THE COURT: MR. WIENS, BOTH SIDES HAVE PASSED FOR CAUSE.
18 THAT MEANS THAT THEY AGREE THAT YOU COULD MAKE A FAIR AND
19 IMPARTIAL JUROR IN THIS CASE AND DECIDE THE ISSUES FAIRLY
20 AND IMPARTIALLY.

21 THERE ARE OTHER JURORS WE HAVE TO EXAMINE. WE
22 ARE GOING TO START A TRIAL AND IMPANELING THE JURY.

23 I HAVE ASKED ALL OF THEM TO COME BACK ON WEDNESDAY
24 OF THIS WEEK. THAT WOULD BE THE 10TH OF DECEMBER, THE DAY
25 AFTER TOMORROW AT 10:30 IN THE MORNING.

26 THAT IS 10:30 TOMORROW. THEY WILL ALL MEET IN
27 THE JURY ASSEMBLY ROOM. WHEN YOU ARE ALL THERE, WE WILL ASK
28 YOU TO COME IN HERE TO START THE TRIAL. ALL RIGHT?

24R-2

1 MR. WIENS: AM I ON THE JURY?

2 THE COURT: YES. YOU ARE. YOU HAVE QUALIFIED. YOU
3 ARE GOING TO BE ONE OF THEM.

4 MR. WIENS: ALL RIGHT.

5 THE COURT: BOTH SIDES HAVE ACCEPTED YOU AS A POSSIBLE
6 JUROR IN THIS CASE.

7 MR. WIENS: THERE IS ANOTHER JURY SELECTION?

8 THE COURT: WE HAVE EVERYBODY COME IN. THEY ARE ALL
9 QUALIFIED TO BECOME TRIAL JURORS. THEN THEY WILL BE SELECTED.
10 WHETHER YOU WILL BE SELECTED, WE DON'T KNOW.

11 YOU WILL BE CALLED AND YOU WILL BE PUT IN THE
12 BOX, YOU SEE.

13 ALL OF YOU MUST APPEAR HERE ON WEDNESDAY AND THEN
14 WE WILL START THE TRIAL AND DRAW 12 JURORS. THEIR NAMES WILL
15 BE CALLED.

16 THEY WILL BE PUT IN THE JURY BOX. WE'LL START
17 THE QUESTIONING.

18 MR. WIENS: OKAY.

19 THE COURT: WE WON'T TELL YOU AGAIN WHAT THE CASE IS
20 ABOUT BECAUSE YOU KNOW WHAT IT IS ABOUT. BUT WE WILL ASK
21 YOU OTHER QUESTIONS WHICH RELATE TO SOMETHING OTHER THAN WE
22 ASKED HERE. ALL RIGHT? THANK YOU VERY MUCH. SEE YOU ON
23 WEDNESDAY AT 10:30 IN THE JURY ASSEMBLY ROOM.

24 MR. WIENS: THANK YOU.

25 (PROSPECTIVE JUROR WIENS EXITED THE
26 COURTROOM.)

27 MR. BARENS: 10:30, YOUR HONOR?

28 THE COURT: NOW, THERE ARE A LOT OF DETAILS ABOUT HOW

24R-3

1 WE SHOULD GO ABOUT IT AND WHAT SHOULD AND SHOULDN'T BE ASKED.
2 THE D.A. IS STRONGLY IN FAVOR OF HAVING 12 JURORS SELECTED
3 AND THEN FOUR OR SIX MORE OR WHATEVER IT IS AT THE SAME TIME.
4 ISN'T THAT HOW YOU WOULD LIKE TO DO IT?

5 MR. WAPNER: I WOULD LIKE TO DO IT IN A VERY TRADITIONAL
6 MANNER.

7 THE COURT: TWELVE JURORS?

8 MR. WAPNER: YES.

9 THE COURT: NO MORE? DIDN'T YOU ONCE SUGGEST THAT WE
10 HAVE MORE THAN THAT SO WE WOULDN'T HAVE TO GO THROUGH THE
11 QUESTIONS AGAIN?

12 MR. BARENS: YOU MEAN IN TERMS OF ALTERNATES?

13 MR. WAPNER: NO.

14 THE COURT: YES. THAT'S RIGHT.

15 MR. WAPNER: I SUGGESTED THAT WE PUT 12 OR 14 IN THE
16 BOX DURING THE HARDSHIP PART OF OUR JURY SELECTION, BUT NOT
17 ON THE GENERAL VOIR DIRE.

18 THE COURT: WELL, WE WILL DO IT EXACTLY AS WE HAVE BEEN
19 DOING, IS THAT RIGHT?

20 MR. WAPNER: YES. WE WILL PUT 12 IN THE BOX. WE WILL
21 START THERE LIKE WE DO IN EVERY OTHER CASE.

22 THE COURT: IS THAT RIGHT?

23 MR. WAPNER: YES.

24 MR. BARENS: I ALSO PRESUMED THAT THAT WILL BE THE MANNER
25 IN WHICH WE PROCEED, YOUR HONOR.

26 THE COURT: ALL RIGHT. ANYTHING ELSE ABOUT HOW THE
27 TRIAL WILL BE CONDUCTED? HAVE YOU GOT ANY SUGGESTIONS?

28 MR. WAPNER: AS TO THE MECHANICS OF JURY SELECTION?

1 THE COURT: YES. THAT'S RIGHT.

2 MR. WAPNER: NO.

3 THE COURT: THEY WILL BE TREATED IN THE USUAL WAY, DRAWN
4 BY LOT.

5 MR. WAPNER: NO. I HAVE NO OTHER SUGGESTIONS ABOUT
6 THE MECHANICS.

7 I AM GOING TO HAVE A MOTION IN LIMINE REGARDING
8 WHAT CAN BE ASKED OF THE JURORS AS PERTAINS TO SUBJECTS THAT
9 WERE ISSUES THAT WERE THE SUBJECT OF A GAG ORDER.

10 BECAUSE I THINK THAT UNLESS AND UNTIL THOSE
11 SUBJECTS COME UP DURING THE TRIAL, THEY SHOULD NOT BE ASKED
12 DURING VOIR DIRE.

13 THE COURT: WELL, ON THE VOIR DIRE, HOW WILL THOSE
14 QUESTIONS POSSIBLY COME UP EXCEPT AS TO WHETHER THEY HAVE
15 READ ANYTHING AT ALL ABOUT THE CASE. WHAT ELSE?

16 MR. WAPNER: WHEN YOU ASK HOW IT WOULD COME UP, THEY
17 WOULD COME UP BECAUSE SOMEBODY WOULD ASK THE QUESTION. AND
18 IN THE QUESTION, THEY WOULD GIVE THE INFORMATION AND THEN
19 ONCE THE QUESTION IS ASKED, IT IS TOO LATE.

20 THE COURT: THERE WON'T BE ANY QUESTIONS ASKED WITH
21 RESPECT TO ANYTHING DEVELOPED RECENTLY, CERTAINLY NOT ABOUT
22 THE FORMER ASSOCIATE OF MR. BARENS AND CERTAINLY NOT ABOUT
23 THIS PERSON UP IN TUCSON AND CERTAINLY NOT ABOUT ANY
24 PROSECUTION WITNESSES EXCEPT WHETHER OR NOT THEY KNOW ANY
25 OF THEM, LIKE YOU DO IN ANY CRIMINAL CASE.

26 MR. WAPNER: FINE. I MEAN, I JUST WANTED TO MAKE SURE
27 THAT THAT WAS THE CASE.

28 I DO HAVE A MOTION THAT I INTEND TO FILE. IF

1 WE ARE GOING TO BE IN SESSION AGAIN ON WEDNESDAY AT 10:30,
2 MAYBE WE CAN CONVENE AT 10 O'CLOCK AND WE CAN HEAR THE
3 MOTION.

4 THE COURT: WELL, WE CAN HEAR ALL MOTIONS NOW. WHY
5 WAIT UNTIL 10 O'CLOCK? ARE THERE ANY FURTHER MOTIONS?
6 WE HAVE TIME NOW.

7 WHY DON'T WE JUST GO ON?

8 MR. BARENS: YOUR HONOR, I WOULD AGREE WITH THE
9 PROCEDURE TO DO IT WEDNESDAY BECAUSE THE DEFENSE MAY HAVE
10 A MOTION ON GENERAL VOIR DIRE, QUESTIONS AS WELL, FOR YOUR
11 HONOR.

12 THE COURT: WELL, I LIKE TO CONSIDER EVERYTHING. THAT
13 IS WHY I ASKED YOU.

14 MR. BARENS: I DID NOT REALIZE THAT THAT IS WHAT YOUR
15 HONOR WAS INQUIRING.

16 THE COURT: WE HAVE GOT TIME NOW. I DON'T WANT TO TAKE
17 TIME WHICH MAY RUN BEYOND 10:30.

18 MR. WAPNER: SINCE WE ARE NOT APPARENTLY DOING ANYTHING
19 TOMORROW, MAYBE WE CAN CONVENE AT 10:30 TOMORROW.

20 THE COURT: THAT IS PERFECTLY ALL RIGHT WITH ME. I
21 HAVE GOT THIS TIME BEFORE WEDNESDAY. WEDNESDAY WE WILL CLEAR
22 THE DECKS.

23 MR. BARENS: DON'T WE HAVE MORE JURORS TOMORROW?

24 THE COURT: NO. WE ARE ALL FINISHED.

25 MR. BARENS: HOW MANY DO WE HAVE? WE ONLY HAVE 71
26 PROSPECTIVE JURORS.

27 MR. WAPNER: DOES THE COURT WANT --

28 MR. BARENS: WE ARE GOING TO RUN SHORT.

1 THE COURT: WE WILL DEAL WITH THAT WHEN THE TIME COMES.
2 WE CAN TAKE OFF A DAY OR TWO TO QUALIFY MORE JURORS.

3 MR. BARENS: FINE WITH ME.

4 THE COURT: IT WON'T TAKE AS LONG, BELIEVE ME. MY OWN
5 FEELING IS THAT WE PROBABLY HAVE ENOUGH WITH 71. THAT WILL
6 BE QUITE ENOUGH.

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1 MR. BARENS: COULD I HAVE A MOMENT, YOUR HONOR?

2 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

3 MR. BARENS: ALL RIGHT, WE WILL DO IT AT 10:30 TOMORROW,
4 YOUR HONOR.

5 THE COURT: YOU WANT TO RECESS NOW?

6 MR. BARENS: YES, YOUR HONOR.

7 THE COURT: THERE IS NOTHING ELSE YOU WANT TO TAKE UP
8 NOW, AS LONG AS WE HAVE GOT THE TIME FOR IT?

9 MR. BARENS: NO, YOUR HONOR. I SUPPOSE I COULD THINK OF
10 SOMETHING BUT I CAN'T.

11 THE COURT: THAT IS ALL RIGHT.

12 MR. WAPNER: LET ME JUST SUGGEST THAT TOMORROW AFTER WE
13 DO THE MOTION, WE HAVE TO PROBABLY FINISH GOING OVER THAT
14 QUESTIONNAIRE THAT MR. BARENS WANTED THE COURT TO GO OVER THE
15 QUESTIONS IN ORDER FOR THE COURT TO TELL HIM WHAT THEY COULD
16 AND COULD NOT ASK.

17 THE COURT: YES, WE COULD DO THAT.

18 MR. WAPNER: WE WERE IN THE MIDDLE OF THAT. WE CAN
19 PROBABLY DO THAT TOMORROW.

20 MR. BARENS: IF WE COULD DO THAT TOMORROW, YOUR HONOR,
21 I WOULD APPRECIATE IT.

22 THE COURT: ALL RIGHT. WAIT A MINUTE. LET ME SEE, I
23 INDICATED TO YOU SO FAR WHICH OF THOSE I WILL ASK MYSELF OR
24 PERMIT YOU TO ASK.

25 MR. BARENS: I HAVE NOTED THAT.

26 THE COURT: AND THOSE WHICH YOU ARE TO ASK.

27 MR. BARENS: YOUR HONOR WAS QUITE CLEAR ON THAT.

28 THE COURT: YES, ALL RIGHT.

1 MR. WAPNER: HOW MANY DO WE HAVE?
2 THE BAILIFF: SEVENTY-ONE. I HAVE THE LIST RIGHT HERE.

3 MR. WAPNER: OKAY.

4 THE COURT: SEE YOU TOMORROW MORNING AT 10:30.

5 (AT 3:15 P.M. AN ADJOURNMENT WAS TAKEN
6 UNTIL TUESDAY, DECEMBER 9, 1986 AT
7 10:30 A.M.)
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