

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DOCKET  
88DA0269  
OCT 9 1987

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

SUPERIOR COURT  
NO. A-090435

OCT 9 1987

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 29 OF 101  
(PAGES 4171 TO 4361, INCLUSIVE)

COPY

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

NO. A-090435

JOSEPH HUNT, )

DEFENDANT. )

REPORTERS' DAILY TRANSCRIPT

TUESDAY, JANUARY 6, 1987

VOLUME 29

(PAGES 4171 TO 4361, 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

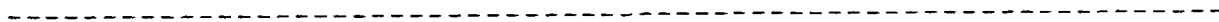
**COPY**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TUESDAY, JANUARY 6, 1987      VOLUME 29      PAGES 4171 TO 4361

A.M.      4171

P.M.      4243



PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED)      4171

1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 6, 1987; 10:30 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: THE RECORD WILL INDICATE THE PRESENCE OF  
6 THE DEFENDANT AND COUNSEL.

7 IT SEEMS THAT WE ARE MAKING HASTE MUCH TOO SLOWLY.  
8 LET'S TRY TO EXPEDITE IT IF YOU CAN.

9 MR. WAPNER: YOUR HONOR, EVEN EXPEDITING IT, IT SEEMS  
10 UNLIKELY THAT AT THE VERY FASTEST WE COULD DO MORE THAN 20  
11 TODAY. WE HAVE ALL OF THIS GROUP OF 35 HERE.

12 THE COURT: LET'S SEE WHAT WE CAN DO.

13 MR. WAPNER: ALL RIGHT.

14 THE COURT: IT MAY BE THAT WE MIGHT HAVE A SUFFICIENT  
15 NUMBER ANYWAY.

16 (PROSPECTIVE JUROR BONE ENTERED THE  
17 COURTROOM.)

18 THE COURT: ALL RIGHT, GOOD MORNING.

19 MS. BONE: GOOD MORNING.

20 MR. BARENS: I BELIEVE MR. WAPNER WAS PROCEEDING WITH  
21 MS. BONE.

22 THE COURT: ALL RIGHT.

23 MR. WAPNER: GOOD MORNING, MRS. BONE.

24 MS. BONE: GOOD MORNING.

25 MR. WAPNER: LET ME SEE IF I CAN CHANGE THE EXAMPLE  
26 A LITTLE BIT THAT I STARTED WITH YESTERDAY.

27 LET'S ASSUME THAT YOU ARE SITTING ON A JURY ON  
28 A MURDER CASE AND IN THE BEGINNING PART OF THIS EXAMPLE,

1 THAT CASE DOESN'T INVOLVE THE DEATH PENALTY, YOU HAVE NEVER  
2 HEARD ANYTHING ABOUT THE DEATH PENALTY AND YOU ARE SITTING  
3 ON A JURY AND YOU ARE TRYING TO FIGURE OUT WHETHER OR NOT  
4 IT HAS BEEN PROVED BEYOND A REASONABLE DOUBT THAT A MURDER  
5 WAS COMMITTED AND THAT THE DEFENDANT DID IT.

6 ARE YOU WITH ME SO FAR?

7 MS. BONE: YES, SIR.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2 F

1 MR. WAPNER: OKAY. AND YOU ARE IN THE JURY ROOM. AND  
2 AFTER SERIOUS DELIBERATION, YOU HAVE DECIDED THAT THE CASE  
3 HAS BEEN PROVED BEYOND A REASONABLE DOUBT, OKAY?

4 MS. BONE: YES.

5 MR. WAPNER: ALL RIGHT. NOW, LET'S ASSUME -- OF COURSE,  
6 THIS WOULDN'T HAPPEN. BUT FOR THE HYPOTHETICAL, ASSUME THAT  
7 BEFORE YOU COME BACK INTO COURT AND RENDER YOUR VERDICT, SOME-  
8 BODY COMES INTO THE JURY ROOM AND SAYS TO YOU, OKAY, NOW, DO  
9 YOU KNOW THAT THIS CASE MIGHT INVOLVE THE DEATH PENALTY? AND  
10 THEY TELL YOU IT MIGHT INVOLVE THE DEATH PENALTY.

11 WOULD YOU SAY TO YOURSELF WELL, I HAVE TO RETHINK  
12 WHETHER OR NOT THE CASE HAS BEEN PROVED BEYOND A REASONABLE  
13 DOUBT?

14 MS. BONE: NO.

15 MR. WAPNER: OKAY. SO, EVEN THOUGH YOU KNOW FROM THE  
16 BEGINNING IN THIS CASE, IF YOU ARE CHOSEN AS A JUROR, THAT  
17 SOMEWHERE DOWN THE LINE THERE IS A POSSIBILITY OF YOUR HAVING  
18 TO DECIDE THE QUESTION OF THE DEATH PENALTY, WOULD THAT CHANGE  
19 YOUR VIEW OF HOW MUCH PROOF IS REQUIRED FOR PROOF BEYOND A  
20 REASONABLE DOUBT?

21 MS. BONE: NO. BECAUSE I HAVE TO HAVE A LOT OF PROOF  
22 TO EVEN FIND HIM GUILTY. EITHER WAY I DECIDED, IT WOULD KEEP  
23 ME AWAKE. I MEAN, I KNOW THAT IS NOT A YES OR NO. BUT EITHER  
24 WAY, IT WOULD BOTHER ME.

25 MR. WAPNER: OKAY. LET ME COME BACK TO THAT IN A SECOND.  
26 WHAT I AM GETTING AT THOUGH, IS WOULD YOU REQUIRE MORE PROOF  
27 IN THE GUILT PHASE BECAUSE IT IS A DEATH PENALTY CASE THAN  
28 YOU WOULD IF IT WAS NOT A DEATH PENALTY CASE?

1 MS. BONE: I DON'T THINK SO BECAUSE I WOULD HAVE TO BE  
2 VERY SURE IN THE FIRST PLACE, TO EVEN RENDER A VERDICT OF  
3 GUILTY.

4 MR. WAPNER: ALL RIGHT. IF THE JUDGE TELLS YOU THAT  
5 THE STANDARD IS PROOF BEYOND A REASONABLE DOUBT AND IT IS THE  
6 SAME STANDARD IN THIS CASE AS ANY OTHER CASE, REGARDLESS OF  
7 THE PENALTY, COULD YOU FOLLOW THAT INSTRUCTION?

8 MS. BONE: YES.

9 MR. WAPNER: ALL RIGHT. YOU WILL REALIZE THAT THE  
10 STANDARD IS THE SAME? IT IS NOT ANY LOWER OR HIGHER BECAUSE --

11 MS. BONE: YES.

12 MR. WAPNER: ALL RIGHT. TELL ME WHAT YOU MEAN WHEN YOU  
13 SAY THAT EITHER WAY YOU DECIDE THE CASE, IT WOULD KEEP YOU  
14 AWAKE?

15 MS. BONE: I WOULD ALWAYS WORRY. SOMEONE'S LIFE, THE  
16 DECISION WOULD BE A PART OF MY DECISION IN MY HANDS. I WOULD  
17 FEEL VERY CONSCIENTIOUS ABOUT MAKING THAT DECISION.

18 I WOULD FEEL BADLY EITHER WAY. I WOULD FEEL BADLY  
19 FOR THE PERSON WHO COMMITTED IT. I WOULD FEEL BADLY FOR THE  
20 VICTIM. I WOULD FEEL VERY DISTRAUGHT IF THE PERSON SPENDS  
21 THE REST OF THEIR LIFE IN JAIL.

22 THAT IN ITSELF, IS A DEATH WISH. BOTH OF THEM  
23 ARE. BOTH ARE VERY DIFFICULT DECISIONS TO MAKE.

24 THERE IS NOT A RIGHT OR WRONG IN MAKING THE  
25 DECISION. IT IS ONE YOU MUST MAKE. EITHER ONE WOULD BE  
26 HARD. I WOULD REALLY GIVE IT -- I KNOW I WOULD AGONIZE OVER  
27 IT.

28 BUT I AGONIZE OVER MY CHORUS, THE RIGHT DECISIONS.

1       WHATEVER YOU SAY FOR THIS PERSON IS A VERY, VERY DIFFICULT  
2       DECISION.

3               THE COURT REPORTER:    CHORUS?

4               MS. BONE:    CHORUS.

5               MR. WAPNER:   DO YOU AGONIZE OVER SMALL DECISIONS AS WELL  
6       AS LARGE ONES?

7               MS. BONE:   NOT THAT MUCH.   BUT YES, SOMETIMES.   SOMETIMES  
8       BUT NOT AT GREAT LENGTH.

9                        BUT I AM USUALLY VERY SURE BEFORE I MAKE A  
10       DECISION ON SOMETHING.   I GIVE IT A LOT OF THOUGHT.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



-1  
1 MR. WAPNER: IF YOU ARE ON THIS JURY AND IF YOU GET  
2 TO THE PENALTY PHASE, YOUR CHOICES WILL BE EITHER LIFE  
3 IMPRISONMENT OR DEATH IN THE GAS CHAMBER; IS THAT A DECISION  
4 YOU ARE CAPABLE OF MAKING?

5 MS. BONE: I AM CAPABLE OF MAKING IT, YES.

6 MR. WAPNER: DO YOU HAVE ANY STRONGLY-HELD RELIGIOUS  
7 OR MORAL BELIEFS THAT WOULD PREVENT YOU OR MAKE IT DIFFICULT  
8 FOR YOU TO IMPOSE THE PENALTY OF DEATH ON SOMEBODY?

9 MS. BONE: NO.

10 IT WOULD JUST BE PERSONAL -- A PERSONAL FEELING.

11 MR. WAPNER: EXPLAIN THAT TO ME.

12 MS. BONE: I WOULD GIVE IT A LOT OF SOUL SEARCHING ON  
13 PLAYING GOD WITH A PERSON'S LIFE.

14 MR. WAPNER: YOU USED THAT PHRASE YESTERDAY --

15 MS. BONE: YES, I DID.

16 MR. WAPNER: -- ALSO.

17 MS. BONE: I REMEMBER IT.

18 MR. WAPNER: WHAT DO YOU MEAN WHEN YOU SAY THAT?

19 MS. BONE: IT WOULD BE VERY HARD TO MAKE A DECISION  
20 TO TAKE SOMEONE'S LIFE. YOU MIGHT FEEL THAT YOU WERE IN A  
21 POSITION OF, YOU KNOW, AS I SAID, GOD MAKES THOSE DECISIONS  
22 IN LIFE. HOWEVER, IF THE PERSON TOOK SOMEONE ELSE'S LIFE,  
23 THAT DECISION WAS MADE BY THEM, AND I COULD MAKE THE DECISION.

24 MR. WAPNER: WHEN YOU SAY GOD MAKES THAT DECISION  
25 NORMALLY --

26 MR. BONE: FOR LIFE AND DEATH NORMALLY.

27 MR. WAPNER: -- DO YOU HAVE ANY FEELING THAT IF YOU  
28 ARE IN THE JURY ROOM DECIDING THE QUESTION OF PENALTY IN THIS

3-2  
1 CASE THAT IT COULD ULTIMATELY COME DOWN TO SAYING "WELL, GOD  
2 SHOULD MAKE THAT DECISION, NOT ME, AND THEREFORE I WILL COME  
3 DOWN ON THE SIDE OF SPARING SOMEONE'S LIFE"?

4 MS. BONE: NO, I DON'T BELIEVE SO.

5 THAT IS A DIFFERENT THING.

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

7 MR. BARENS: YOUR HONOR MIGHT RECALL THE DEFENSE HAS  
8 RESERVED A MOTION.

9 THE COURT: YES.

10 MR. BARENS: IF WE COULD DISCUSS THAT.

11 THE COURT: WOULD YOU WAIT OUTSIDE JUST FOR A MOMENT,  
12 PLEASE? WE HAVE SOME LEGAL DISCUSSIONS.

13 MS. BONE: YES.

14 (PROSPECTIVE JUROR BONE EXITED THE  
15 COURTROOM.)

16 THE COURT: YES?

17 MR. BARENS: THANK YOU, YOUR HONOR. THE DEFENSE FINDS  
18 THIS TO BE A VERY HONEST AND STRAIGHTFORWARD WOMAN. I AM  
19 EXTREMELY CONCERNED BY THE FACT THAT SHE NEVER APPEARED TO  
20 RECONCILE AN UNDERSTANDING THAT AN ACCUSATION IS NOT TANTAMOUNT  
21 TO AN ASSUMPTION THAT THE DEFENDANT HAS DONE SOMETHING WRONG.  
22 WHEN I INQUIRED ON THIS SUBJECT FROM START TO FINISH, SHE  
23 CONSISTENTLY INDICATED THAT THE FACT HE WAS ACCUSED AND WAS  
24 HERE IN THIS COURTROOM AND WE WERE DISCUSSING THE DEATH PENALTY  
25 AT ALL, TO HER, SIGNIFIED HE MUST HAVE DONE SOMETHING WRONG.  
26 THOSE WERE HER OWN WORDS.

27 ALTHOUGH I ASKED YOUR HONOR TO ASSIST IN  
28 INTERVENING TO GIVE THE PRESUMPTION OF INNOCENCE EXPLANATION,

1 WHICH YOUR HONOR MOST GRACIOUSLY DID, SHE STILL WAS  
2 UNRECONCILED WITH HER BELIEF THAT HE MUST HAVE DONE SOMETHING  
3 WRONG OR WE WOULDN'T BE HERE TO BEGIN WITH AND I DON'T FEEL --  
4 AND WHEN SHE PERSISTENTLY MAKES THAT STATEMENT, YOUR HONOR,  
5 I DON'T FEEL THE DEFENSE COULD EVER GET A FAIR TRIAL.

6 LISTEN, I AM SURE YOUR HONOR HAS SEEN BEFORE A  
7 LOT OF PEOPLE THINK IF A GUY IS IN A COURTROOM AS A DEFENDANT,  
8 HE MUST HAVE DONE SOMETHING WRONG OR HE WOULDN'T BE THERE  
9 TO BEGIN WITH, BEING ACCUSED, PERIOD. THE DEFENSE SIMPLY  
10 COULDN'T ACCEPT A JUROR WITH THAT ORIENTATION IN THIS OR ANY  
11 OTHER CASE AND WE CHALLENGE FOR CAUSE ON THAT BASIS, YOUR  
12 HONOR.

13 MR. WAPNER: YOUR HONOR, I DON'T THINK THIS IS THE  
14 APPROPRIATE TIME TO MAKE THAT KIND OF A CHALLENGE. WE ARE  
15 HERE AT THIS STAGE TO DECIDE HER VIEWS ON THE DEATH PENALTY  
16 AND --

17 THE COURT: I THINK THAT THAT IS TRUE. WE ARE  
18 PRINCIPALLY CONCERNED, AS COUNSEL SAYS, WITH HER ATTITUDE  
19 TOWARDS THE DEATH PENALTY AND SHE SAYS ON THE DEATH PENALTY  
20 THAT SHE COULD BE FAIR.

21 HOWEVER, IF YOU FEEL THAT AFTER WE HAVE GOTTEN  
22 THROUGH THE VOIR DIRE IF SHE IS SELECTED AS A JUROR AND YOU  
23 WANT TO MAKE A MOTION AFTER YOU HAVE MORE THOROUGHLY EXAMINED  
24 HER WITH RESPECT TO HER ATTITUDE --

25 WOULD YOU TELL YOUR ASSOCIATE THERE, THE ASSISTANT  
26 THAT YOU HAVE, THAT WHEN I AM TALKING TO YOU I DON'T WANT  
27 HIM TO INTERRUPT IT?

28 MR. BARENS: YES, YOUR HONOR.

1 THE COURT: WILL YOU TELL HIM THAT?

2 MR. BARENS: YES, YOUR HONOR. IT IS UNDERSTOOD, YOUR  
3 HONOR.

4 YOUR HONOR, I WILL SUBMIT THE MATTER AS YOUR HONOR  
5 SUGGESTS.

6 THE COURT: I WILL RESERVE IT TO A LATER TIME.

7 MR. BARENS: UNTIL WE DO IT ON GENERAL VOIR DIRE?

8 THE COURT: YES.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 WOULD YOU GET HER BACK IN, PLEASE?

11 (PROSPECTIVE JUROR BONE RE-ENTERED THE  
12 COURTROOM.)

13 THE COURT: THE COURT HAS RULED THAT YOU QUALIFY AS  
14 A PROSPECTIVE JUROR IN THIS CASE ON THE DEATH PENALTY, SO  
15 WHAT I WILL ASK YOU TO DO IS TO COME BACK TOMORROW AFTERNOON  
16 AND JOIN THE OTHER JURORS WHO MIGHT BE POSSIBLE JURORS IN  
17 THE CASE AT 1:30 -- AT 1:45 IN THE AFTERNOON.

18 WILL YOU COME BACK TOMORROW AFTERNOON, PLEASE?

19 MS. BONE: YES.

20 THE COURT: IN THE MEANTIME, IF YOU HEAR OR READ  
21 ANYTHING ABOUT THE CASE, TRY NOT TO READ OR LISTEN TO  
22 ANYTHING ABOUT IT. THANK YOU VERY MUCH.

23 (PROSPECTIVE JUROR BONE EXITED THE  
24 COURTROOM.)

25

26

27

28

1 (PROSPECTIVE JUROR BONGEORNO ENTERS THE  
2 COURTROOM.)

3 THE COURT: GOOD MORNING. THAT IS MR. BONGEORNO?

4 MR. BONGEORNO: YES.

5 THE COURT: THAT MEANS GOOD DAY?

6 MR. BONGEORNO: IT SURE DOES.

7 THE COURT: ALL RIGHT. MR. BONGEORNO, WHERE DO YOU LIVE?

8 MR. BONGEORNO: I LIVE IN VAN NUYS.

9 THE COURT: YOU HEARD YESTERDAY, MY TELLING THE JURORS  
10 THAT THIS CASE INVOLVES A MURDER, ALLEGED MURDER, A MURDER  
11 IN THE FIRST DEGREE AND IT WAS COMMITTED DURING THE COURSE  
12 OF A ROBBERY.

13 I INDICATED TO YOU TOO, THAT BECAUSE IT WAS IN  
14 THE COURSE OF A ROBBERY, THAT QUALIFIES THE CASE FOR A  
15 POSSIBLE DEATH PENALTY. ALL RIGHT?

16 AND I HAVE ALSO INDICATED TO YOU YESTERDAY, THAT  
17 THE LEGISLATURE SAID THERE WERE ABOUT 19 INSTANCES WHERE MURDER  
18 OF THE FIRST DEGREE -- IT IS NOT JUST MURDER OF THE FIRST  
19 DEGREE THAT CALLS FOR THE IMPOSITION OF THE DEATH PENALTY AND  
20 LIFE WITHOUT POSSIBILITY OF PAROLE. IT IS ONLY IN THOSE 19  
21 INSTANCES, THAT SOMETHING IN ADDITION IS DONE, WHERE THERE  
22 ARE SPECIAL CIRCUMSTANCES, THAT IT THEN QUALIFIES FOR THE DEATH  
23 PENALTY.

24 ROBBERY IS ONE. BURGLARY IS ANOTHER. KIDNAPPING,  
25 MULTIPLE MURDERS, RAPE, TORTURE, THOSE ARE INSTANCES WHERE  
26 THE DEATH PENALTY MAY BE IMPOSED. DO YOU UNDERSTAND THAT?

27 MR. BONGEORNO: UH-HUH.

28 THE COURT: NOW, THE FIRST THING THE JURORS WILL DO WHO

1 ARE SELECTED TO TRY THIS CASE, THEY FIRST GO THROUGH WHAT THEY  
2 CALL THE GUILT PHASE OF THE TRIAL. THEN THEY WILL DETERMINE  
3 THE GUILT OR INNOCENCE OF THE DEFENDANT, WAS HE OR WAS HE NOT  
4 GUILTY OF MURDER IN THE FIRST DEGREE.

5 IF HE WAS GUILTY OF MURDER IN THE FIRST DEGREE,  
6 THEN WE HAVE A QUESTION TO ANSWER. WAS THAT MURDER COMMITTED  
7 DURING THE COURSE OF A ROBBERY? IS IT TRUE OR FALSE IT WAS  
8 COMMITTED DURING THE COURSE OF A ROBBERY? AS I SAY, IF THEY  
9 SAY IT IS TRUE, THEN THEY GO INTO THE SECOND PHASE OF THE  
10 TRIAL. THAT IS CALLED THE PENALTY PHASE.

11 NOW, DURING THE GUILT PHASE, THE QUESTION OF  
12 PENALTY MUST NEVER BE CONSIDERED BY THE JURY. IT HAS NOTHING  
13 TO DO WITH THE GUILT PHASE. IT IS ONLY IF HE IS FOUND GUILTY,  
14 THEN ON THE PENALTY PHASE OF IT, THEN CONSIDERATION OF PENALTY  
15 AND OTHER FACTORS MAY BE TAKEN INTO CONSIDERATION.

16 FOR EXAMPLE, ON THE PENALTY PHASE OF THE TRIAL,  
17 BOTH SIDES WILL INTRODUCE ADDITIONAL TESTIMONY. YOU MUST  
18 CONSIDER OF COURSE, THE FACTS THAT YOU HEARD IN CONNECTION  
19 WITH THE CRIME ITSELF AND THE ROBBERY.

20 YOU WILL ALSO HEAR FROM THE DEFENDANT, THINGS ABOUT  
21 HIM WHICH ARE FAVORABLE TO HIM, HIS AGE, HIS BACKGROUND, HIS  
22 LACK OF ANY PREVIOUS CRIMINAL CONVICTIONS AND ANYTHING -- HIS  
23 EDUCATION AS I SAID AND EVERYTHING RELATING TO HIS CHARACTER  
24 AND HIS BACKGROUND WILL BE HEARD BY THE JURORS. WE CALL THAT  
25 MITIGATING CIRCUMSTANCES.

26 AND THE PROSECUTION WILL ATTEMPT TO SHOW FACTS  
27 ABOUT HIM WHICH ARE UNFAVORABLE. THOSE ARE AGGRAVATING  
28 CIRCUMSTANCES.

4-3

1                   SO, THE JURY CONSIDERS ALL OF THAT BEFORE IT MAKES  
2 UP ITS MIND AS TO WHETHER OR NOT TO IMPOSE ONE OF TWO  
3 PENALTIES, LIFE WITHOUT POSSIBILITY OF PAROLE AND THAT MEANS  
4 EXACTLY THAT -- NO PAROLE, LIFE WITHOUT POSSIBILITY OF PAROLE.  
5 HE CAN'T GET OUT FOR THE REST OF HIS LIFE. OR, IT CAN BE THE  
6 DEATH PENALTY.

7                   DO YOU UNDERSTAND THAT?

8                   MR. BONGEORNO: UH-HUH.

9                   THE COURT: NOW, WE ARE HERE FOR THE PURPOSE OF  
10 EXPLORING YOUR MIND TO DETERMINE WHAT YOUR FEELINGS ARE AND  
11 YOUR MIND SET IS WITH RESPECT TO THE DEATH PENALTY.

12                   I WILL ASK YOU A SERIES OF QUESTIONS TO ASSIST  
13 IN DETERMINING THAT AND SO WILL COUNSEL. NOW, THE FIRST TWO  
14 QUESTIONS APPLY TO THE GUILT PHASE OF THE TRIAL. THE FIRST  
15 IS, DO YOU HAVE ANY OPINION WHATEVER THAT OPINION MAY BE,  
16 REGARDING THE DEATH PENALTY WHICH WOULD PREVENT YOU FROM  
17 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF  
18 THE DEFENDANT AS TO THE CRIMES WHICH HAVE BEEN CHARGED?

19                   MR. BONGEORNO: NO.

20                   THE COURT: THE SECOND QUESTION IS ALSO RELATED TO THE  
21 GUILT PHASE. DO YOU HAVE ANY OPINION REGARDING THE DEATH  
22 PENALTY WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
23 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT AS TO  
24 THE CRIMES WHICH HAVE BEEN CHARGED?

25                   MR. BONGEORNO: NO.

26                   THE COURT: THE SECOND QUESTION IS ALSO RELATING TO THE  
27 GUILT PHASE. DO YOU HAVE ANY OPINION REGARDING THE DEATH  
28 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL

4-4

1 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
2 CIRCUMSTANCES? THAT IS, ON WAS IT COMMITTED DURING THE COURSE  
3 OF A ROBBERY?

4 MR. BONGEORNO: NO. I FEEL THAT I DON'T.

5 THE COURT: ALL RIGHT. NOW, THE SECOND TWO QUESTIONS  
6 HAVE TO DO WITH THE PENALTY PHASE, ASSUMING THAT HE HAS BEEN  
7 CONVICTED OF MURDER IN THE FIRST DEGREE IN THE COURSE OF A  
8 ROBBERY. THEN WE ARE ON THE PENALTY PHASE. DO YOU HAVE ANY  
9 OPINION CONCERNING THE DEATH PENALTY THAT WOULD CAUSE YOU  
10 AUTOMATICALLY TO VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS  
11 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE  
12 OF THIS TRIAL?

13 MR. BONGEORNO: DEFINITELY NOT.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 THE COURT: AND THE SECOND ONE IS THE SAME KIND EXCEPT  
2 IT RELATES TO LIFE WITHOUT POSSIBILITY OF PAROLE. DO YOU HAVE  
3 SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT YOU WOULD  
4 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,  
5 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY  
6 PHASE OF THE TRIAL?

7 MR. BONGEORNO: NO.

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

12 MR. BONGEORNO: OKAY.

13 MR. BARENS: THANK YOU, YOUR HONOR. GOOD MORNING,  
14 MR. BONGEORNO. I AM ARTHUR BARENS.

15 I REPRESENT THE DEFENDANT, JOE HUNT. AND AS HIS  
16 HONOR DID, IT IS MY OBLIGATION AT THIS POINT IN THE PROCEEDINGS,  
17 TO INQUIRE INTO YOUR POINT OF VIEW CONCERNING THE DEATH  
18 PENALTY.

19 PRELIMINARILY, I WOULD LIKE TO INDICATE THAT THERE  
20 ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS. NO ONE HERE  
21 IS GOING TO JUDGE ANY OF YOUR ANSWERS BECAUSE YOU NEVER COULD  
22 BE WRONG ABOUT YOUR OWN OPINION. THAT IS ALL WE ARE SEEKING  
23 THIS MORNING. OKAY?

24 MR. BONGEORNO: OKAY.

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

27 MR. BONGEORNO: I REALLY DON'T HAVE MUCH OPINION. IT  
28 IS A PRETTY LARGE ISSUE ON WHICH I AM NOT VERSED TO MAKE THOSE

1 KINDS OF DECISIONS.

2 I AM RIGHT DOWN THE MIDDLE OF THE ROAD ON THAT.

3 MR. BARENS: I KIND OF NEED YOU TO HAVE AN OPINION  
4 BECAUSE THAT IS THE WHOLE SUBJECT OF OUR INQUIRY. DO YOU  
5 REMEMBER WHEN IT WAS A SUBJECT ON THE BALLOT A FEW YEARS AGO  
6 IN CALIFORNIA?

7 MR. BONGEORNO: HAS IT BEEN MORE THAN FIVE YEARS?

8 MR. BARENS: NO -- YES.

9 MR. BONGEORNO: I AM NEW TO THE STATE OF CALIFORNIA AS  
10 OF FIVE YEARS AGO. SO I WAS NOT INVOLVED IN THAT ISSUE.

11 MR. BARENS: WELL, IF YOU HAD BEEN HERE -- I AM GOING  
12 TO GREATLY OVER-SIMPLIFY WHAT THIS WHOLE ISSUE AND DEBATE AND  
13 HUE AND CRY WAS ABOUT.

14 BUT IF THERE WAS A BALLOT PROPOSITION THAT SAID  
15 IN INSTANCES WHERE THERE IS A FIRST DEGREE, PREMEDITATED,  
16 INTENTIONAL MURDER AND IT OCCURS DURING A ROBBERY OR A BURGLARY  
17 OR WHAT WE CALL ANOTHER FELONY, LET'S SAY, BUT A BAD FELONY  
18 LIKE RAPE, LIKE HIS HONOR SAID ABOUT THOSE 19 CATEGORIES, IF  
19 THAT WERE ON THE BALLOT AND THE BALLOT SAID, DO YOU WANT TO  
20 HAVE THAT AS A CITIZEN OF THIS STATE OR SHOULD WE ONLY HAVE  
21 LIFE WITHOUT THE POSSIBILITY OF PAROLE, NO MATTER WHAT ANYBODY  
22 HAS DONE, HOW DO YOU THINK THAT YOU WOULD HAVE VOTED?

23 MR. BONGEORNO: I THINK I WOULD VOTE AGAINST IT.

24 MR. BARENS: VOTE AGAINST THE DEATH PENALTY?

25 MR. BONGEORNO: YES.

26 MR. BARENS: OKAY. NOW, ONE OF THE CONCERNS WE HAVE  
27 DURING THIS PROCESS IS THAT BOTH SIDES ARE LOOKING FOR AS  
28 NEUTRAL A JUROR AS POSSIBLE. TO ME, WHAT THAT MEANS IN THIS

1 INSTANCE IS THAT WE NEED A PERSON WHO IS CAPABLE OF CONSIDERING  
2 VOTING EITHER FOR THE DEATH PENALTY OR VOTING FOR LIFE WITHOUT  
3 POSSIBILITY OF PAROLE, LISTENING TO ALL OF THE EVIDENCE AND  
4 BEING ABLE TO CONSIDER THAT EVIDENCE AND CAPABLE OF VOTING  
5 EITHER WAY.

6 NOW, I ASK YOU IF YOU WOULD BE THAT KIND OF A  
7 PERSON. WOULD YOU BE ABLE TO CONSIDER ALL OF THE EVIDENCE  
8 PRIOR TO VOTING? LET'S START WITH THAT.

9 MR. BONGEORNO: YES, I WOULD.

4B 10 MR. BARENS: OKAY. NOW, THE SECOND QUESTION THAT  
11 INEVITABLY COMES UP IS, DO YOU FEEL UNDER ANY CIRCUMSTANCES  
12 AND I AM GOING TO TRY TO GIVE YOU AN EXAMPLE, THAT YOU WOULD  
13 BE EVER CAPABLE OF VOTING FOR THE DEATH PENALTY? NOW  
14 OBVIOUSLY, I TELL YOU WHY. BECAUSE IF YOU SAY NO TO THAT,  
15 YOU COULD NEVER BE A JUROR BECAUSE THE LAW SAYS THAT IF SOMEONE  
16 IS IRRECONCILABLY OPPOSED TO THE DEATH PENALTY, THAT IS IT.  
17 BECAUSE THAT IS JUST THE WAY IT IS.

18 NOW, LET ME ASK YOU THIS. IF YOU HAD A SITUATION  
19 WHERE THERE WAS -- WELL, LET ME JUST REPHRASE THAT. IS THERE  
20 ANY CIRCUMSTANCE IN WHICH YOU FEEL YOU WOULD VOTE FOR THE  
21 DEATH PENALTY?

22 MR. BONGEORNO: YES. I THINK THERE ARE.

23 MR. BARENS: OKAY. SO, YOU ARE NOT IRRECONCILABLY  
24 AGAINST IT, WHERE YOU WOULD AUTOMATICALLY, NEVER, EVER VOTE  
25 FOR THE DEATH PENALTY?

26 MR. BONGEORNO: NO.

27 MR. BARENS: OKAY. NOW, THERE ARE GRADATIONS OF WHEN  
28 YOU SAY YOU COULD. AND I WOULD IMAGINE IN MY OWN MIND THAT

1 IF I ASKED YOU TO GIVE ME AN EXAMPLE OF THAT, MR. BONGEORNO,  
2 YOU MIGHT SAY MANSON OR RICHARD RAMIREZ. IS THAT WHAT YOU  
3 WERE THINKING WHEN YOU COULD IN SOME INSTANCES?

4 MR. BONGEORNO: IT WOULD BE ONE EXAMPLE, YES.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5-1  
1 MR. BARENS: COULD YOU GIVE ME ANY OTHER EXAMPLES THAT  
2 COME TO MIND?

3 MR. BONGEORNO: MAYBE SOMETHING THAT WAS PREMEDITATED.

4 MR. BARENS: ALL YOU WOULD EVER HAVE IN THIS CASE IS  
5 A PREMEDITATED MURDER BY THE TIME YOU AND A JURY GET TO  
6 EVALUATING THE LIFE OR DEATH PENALTY QUESTION. REMEMBER, AS  
7 HIS HONOR INDICATED, YOU WOULD FIRST HAVE HAD TO HAVE FOUND  
8 THE DEFENDANT GUILTY IN THE GUILT PHASE OF THE TRIAL, GUILTY  
9 OF A FIRST DEGREE MURDER, WHICH INCLUDES OBVIOUSLY A MURDER  
10 THAT IS PREMEDITATED, INTENTIONAL AND INDEFENSIBLE, THAT IT  
11 WAS NOT IN SELF DEFENSE, IT WASN'T JUSTIFIABLE IN ANY ASPECT  
12 OF THE WORD, THAT IT WAS IN FACT INTENTIONAL AND PREMEDITATED;  
13 DO YOU UNDERSTAND THAT?

14 MR. BONGEORNO: UH-HUH.

15 MR. WAPNER: IS THAT YES?

16 MR. BONGEORNO: YES, THAT IS A YES.

17 I AM SORRY.

18 MR. BARENS: MR. BONGEORNO, BEFORE WE WOULD EVER GET  
19 TO THE PENALTY PHASE, YOU WOULD HAVE FIRST MADE THAT  
20 DETERMINATION, ALL RIGHT?

21 MR. BONGEORNO: OKAY.

22 MR. BARENS: NOW, IF WE HAD AS THE PEOPLE ALLEGE IN  
23 THIS CASE, A SINGLE VICTIM, IT WOULD THEREFORE BE A  
24 SITUATION WHERE IF THERE WAS ONLY ONE VICTIM, WHERE IT WAS  
25 PROVED TO YOU BEYOND A REASONABLE DOUBT THAT THE VICTIM HAD  
26 BEEN KILLED BY THE DEFENDANT PREMEDITATEDLY AND INTENTIONALLY,  
27 COULD YOU EVER VOTE FOR THE DEATH PENALTY IN THAT INSTANCE?

28 MR. BONGEORNO: COULD YOU REPEAT THE QUESTION?

5-2  
1 I AM NOT SURE I UNDERSTAND.

2 MR. BARENS: SURE. I AM GOING TO ADD JUST A TAD HERE.

3 EARLIER ON, YOU HAD AN EXAMPLE OF WHERE YOU SAID  
4 "I COULD VOTE FOR THE DEATH PENALTY ON RICHARD RAMIREZ, ON  
5 SERIAL KILLERS LIKE RICHARD RAMIREZ AND CHARLES MANSON."  
6 NOW I AM ASKING YOU IF YOU HAD A PREMEDITATED, FIRST DEGREE  
7 BEYOND A REASONABLE DOUBT GUILTY DEFENDANT WITH A SINGLE  
8 VICTIM, COULD YOU UNDER ANY CIRCUMSTANCES IN THAT INSTANCE  
9 VOTE FOR THE DEATH PENALTY?

10 MR. BONGEORNO: YES.

11 MR. BARENS: THE CONVERSE OF THAT QUESTION IS: COULD  
12 YOU UNDER ANY OF THOSE CIRCUMSTANCES CONSIDER LIFE WITHOUT  
13 THE POSSIBILITY OF PAROLE?

14 MR. BONGEORNO: YES, I THINK I COULD.

15 MR. BARENS: DO YOU UNDERSTAND THAT IN THIS CONTEXT,  
16 LIFE WITHOUT THE POSSIBILITY OF PAROLE MEANS PRECISELY THAT,  
17 THAT THE DEFENDANT WILL NEVER EVER BE ELIGIBLE FOR OR GRANTED  
18 PAROLE?

19 MR. BONGEORNO: YES.

20 MR. BARENS: AND YOU DON'T THINK THAT IS JUST LAWYER  
21 TALK I AM GIVING YOU?

22 MR. BONGEORNO: NO.

23 MR. BARENS: OKAY, BECAUSE A LOT OF PEOPLE MAY HAVE  
24 A SNEAKING SUSPICION THAT WE HAVE SAID THAT FOR YEARS BUT  
25 IT ISN'T TRUE.

26 HIS HONOR WILL TELL YOU THAT THAT IS THE ABSOLUTE  
27 TRUTH AND I BELIEVE HE HAS ALREADY MENTIONED THAT TO YOU,  
28 THAT LIFE WITHOUT THE POSSIBILITY OF PAROLE SPECIFICALLY MEANS

5-3  
1 THAT.

2 NOW, COULD YOU TELL ME WHAT CIRCUMSTANCES MIGHT  
3 INFLUENCE YOU ON GIVING A PREMEDITATED MURDERER LIFE  
4 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

5 MR. BONGEORNO: I DON'T THINK I KNOW HOW TO ANSWER THAT  
6 QUESTION.

7 MR. BARENS: OKAY, YOU HAVE INDICATED THAT THERE ARE  
8 CIRCUMSTANCES UNDER WHICH -- AND I BELIEVE THE CIRCUMSTANCES  
9 THAT SEEMED TO SWAY YOU WERE IF THERE WAS A PREMEDITATED  
10 MURDER, AN INTENTIONAL MURDER, YOU COULD GIVE THAT DEFENDANT  
11 THE DEATH PENALTY.

12 MR. BONGEORNO: OKAY.

13 MR. BARENS: HAVING THE SAME DEFENDANT, I AM ASKING  
14 YOU FOR A CRITERIA OR CIRCUMSTANCE THAT WOULD MAKE IT WHERE  
15 YOU WOULDN'T GIVE THAT DEFENDANT THE DEATH PENALTY.

16 MR. BONGEORNO: OKAY, IN A CASE PERHAPS THERE WAS AN  
17 ACCIDENTAL MURDER INVOLVED WITH.

18 THE COURT: NO, NO.

19 MR. BARENS: WE ARE NEVER GOING TO HAVE THAT.

20 THE COURT: FORGET ABOUT THAT.

21 IT IS PREMEDITATED, INTENTIONAL AND DELIBERATE.

22 MR. BARENS: THE ONLY TIME THIS QUESTION WILL EVER COME  
23 UP, MR. BONGEORNO, IS IF YOU AND THE OTHER JURORS BELIEVE  
24 BEYOND A REASONABLE DOUBT THAT AN INTENTIONAL, PREMEDITATED,  
25 INDEFENSIBLE, UNJUSTIFIABLE MURDER OCCURRED. IF WE HAVE THAT  
26 SITUATION, WHAT THE QUESTION REALLY BECOMES FOR YOU,  
27 MR. BONGEORNO, COULD YOU EVER, EVER GIVE A DEFENDANT CONVICTED  
28 ON THAT BASIS, LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF

5-4  
1 PAROLE?

2 MR. BONGEORNO: NO.

3 MR. BARENS: YOU NEVER COULD, COULD YOU?

4 MR. BONGEORNO: NO.

5 MR. BARENS: I AM NOT EVEN SAYING I DISAGREE WITH YOU.  
6 RATHER, I AM SIMPLY TRYING TO GET YOUR POINT OF VIEW.

7 THE COURT: MR. BONGEORNO, DO YOU REMEMBER I TOLD YOU  
8 THAT ON THE SECOND PHASE OR THE PENALTY PHASE, YOU WILL HEAR  
9 A LOT OF TESTIMONY, ADDITIONAL TESTIMONY THAT YOU HADN'T HEARD  
10 ON THE GUILT PHASE AND THAT HAD TO DO WITH THE BACKGROUND  
11 OF THE DEFENDANT, HIS AGE AND EVERYTHING ABOUT HIM AS A PERSON  
12 AND ANY FAVORABLE FACTORS THAT WILL HAVE TO BE TAKEN INTO  
13 CONSIDERATION, MUST BE TAKEN INTO CONSIDERATION, TOGETHER  
14 WITH AGGRAVATING CIRCUMSTANCES THAT ARE UNFAVORABLE. IT IS  
15 THEN YOU MAKE UP YOUR MIND AS TO WHETHER IT WILL BE ONE OF  
16 THOSE TWO THINGS, YOU UNDERSTAND THAT?

17 MR. BONGEORNO: YES.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



5-5  
1 THE COURT: AND YOU WILL WAIT UNTIL YOU HEAR ALL OF  
2 THE TESTIMONY BEFORE YOU DETERMINE ONE WAY OR THE OTHER?

3 MR. BONGEORNO: YES, I WILL.

4 THE COURT: ALL RIGHT.

5 MR. BARENS: NOW, MR. BONGEORNO, I UNDERSTAND THAT YOU  
6 WOULD WAIT UNTIL YOU HEAR ALL OF THE EVIDENCE, BUT IN YOUR  
7 HEART OF HEARTS, I BELIEVE THAT I WOULD BE WASTING MY TIME  
8 GIVING YOU ANY EVIDENCE, ONCE YOU HAVE BECOME CONVINCED  
9 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED A  
10 PREMEDITATED, COLD-BLOODED FIRST DEGREE MURDER. IS IT YOUR  
11 POINT OF VIEW IN YOUR HEART OF HEARTS THAT WITH THOSE KINDS  
12 OF PEOPLE, WE HAVE GOT TO GIVE THEM THE DEATH PENALTY, LIFE  
13 FOR A LIFE?

14 (PAUSE.)

15 MR. BONGEORNO: I WOULD HAVE TO ANSWER YES.

16 MR. BARENS: OKAY, I BELIEVE -- AND AGAIN, YOU MAY EVEN  
17 REPRESENT THE MAJORITY VIEW IN THIS STATE -- THAT GIVEN A  
18 SITUATION WHERE WE HAVE A FIRST DEGREE, INTENTIONAL MURDER  
19 AND IT OCCURS DURING A ROBBERY WHERE A GUY GETS KILLED, SIMPLY  
20 BECAUSE THE DEFENDANT WANTS TO STEAL THIS PERSON'S MONEY,  
21 THAT YOU ARE GOING TO SAY CONSISTENTLY IN EVERY INSTANCE,  
22 THE ONLY PENALTY POSSIBLE EVEN IS THE DEATH PENALTY FOR THAT  
23 DEFENDANT; IS THAT CORRECT, SIR?

24 MR. BONGEORNO: YES.

25 MR. BARENS: I THANK YOU FOR YOUR HONESTY WITH-YOUR  
26 OPINION. THERE IS A MOTION.

27 MR. BONGEORNO: THANK YOU.

28 THE COURT: IN OTHER WORDS, YOU ARE SAYING IT DOESN'T

5-6  
1 MAKE A DIFFERENCE WHAT YOU HEAR ON THE PENALTY PHASE, YOU  
2 ARE GOING TO VOTE FOR THE DEATH PENALTY; IS THAT WHAT YOU  
3 ARE TELLING US?

4 MR. BONGEORNO: YES, SIR.

5 THE COURT: ALL RIGHT.

6 MR. WAPNER: MAY I ASK A FEW QUESTIONS?

7 MR. BONGEORNO, GOOD MORNING. I AM FRED WAPNER,  
8 THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.

9 YOU STARTED OUT BY SAYING THAT YOU HADN'T GIVEN  
10 THIS ISSUE ANY THOUGHT UNTIL YOU CAME HERE TODAY; IS THAT  
11 FAIRLY ACCURATE?

12 MR. BONGEORNO: I THINK UNTIL YESTERDAY WHEN I FOUND  
13 OUT WHAT THE CASE WAS ABOUT.

14 MR. WAPNER: DID YOU GIVE THIS SOME THOUGHT LAST NIGHT?

15 MR. BONGEORNO: YES.

16 MR. WAPNER: DID YOU KNOW LAST NIGHT THAT IF YOU WERE  
17 CHOSEN AS A JUROR IN THIS CASE, ONE OF YOUR JOBS WOULD BE  
18 TO DECIDE WHAT THE APPROPRIATE PUNISHMENT SHOULD BE?

19 MR. BONGEORNO: YES.

20 MR. WAPNER: WHEN YOU WERE THINKING ABOUT THAT LAST  
21 NIGHT, DID YOU SEARCH YOUR CONSCIENCE FOR YOUR OPINIONS ABOUT  
22 THE DEATH PENALTY?

23 MR. BONGEORNO: YES, I DID.

24 MR. WAPNER: AND UP UNTIL THAT POINT, YOU HADN'T GIVEN  
25 IT MUCH THOUGHT?

26 MR. BONGEORNO: THERE WAS NO NEED TO, NO.

27 MR. WAPNER: ARE YOU SAYING THAT IF YOU GET TO THE PENALTY  
28 PHASE OF THE TRIAL, THAT ALL PEOPLE CONVICTED OF INTENTIONAL

1 MURDERS DURING THE COURSE OF A ROBBERY SHOULD BE TREATED THE  
2 SAME, THEY SHOULD ALL GET THE SAME PUNISHMENT?

3 MR. BONGEORNO: WELL, LOGICALLY THAT DOESN'T MAKE ANY  
4 SENSE, NO.

5 MR. WAPNER: OKAY, PUTTING ASIDE WHETHER IT LOGICALLY  
6 MAKES ANY SENSE, IS THAT WHAT YOU WOULD DO IN YOUR OWN MIND?

7 MR. BONGEORNO: NO, I CAN'T SAY THAT I WOULD.

8 MR. WAPNER: WELL, IF THEY ALL SHOULDN'T GET THE SAME  
9 PUNISHMENT, WHAT SHOULD MAKE THE DIFFERENCE IN VARIOUS CASES?

10 MR. BONGEORNO: I AM NOT SURE ABOUT THAT.

11 MR. WAPNER: WOULD THE PARTICULAR FACTS OF THE CASE  
12 MAKE A DIFFERENCE TO YOU, THE FACTS OF HOW THE MURDER OCCURRED,  
13 FOR EXAMPLE?

14 MR. BONGEORNO: YOU MEAN AS TO THE METHOD?

15 MR. WAPNER: EITHER THE METHOD, THE AMOUNT OF VIOLENCE  
16 OR BRUTALITY, THE AMOUNT OF PLANNING, ANYTHING IN TERMS OF  
17 THE FACTS OF THE WAY THE MURDER WAS COMMITTED.

18 MR. BONGEORNO: WELL, I DON'T THINK SO.

19 MR. WAPNER: SO A PERSON WHO COMMITS A VICIOUS AND BRUTAL  
20 MURDER SHOULD BE TREATED THE SAME IN YOUR OPINION AS THE PERSON  
21 WHO, FOR EXAMPLE, MAYBE SHOOTS SOMEONE ONE TIME, THE OFFENSE  
22 IS THE SAME?

23 MR. BARENS: ASSUMING THEY ARE BOTH INTENTIONAL AND  
24 PREMEDITATED, I ASSUME?

25 THE COURT: YES.

26 MR. BARENS: ALL RIGHT.

27 MR. BONGEORNO: WELL, DEAD IS DEAD. IT IS KIND OF HARD  
28 TO SAY, YOU KNOW.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MR. WAPNER: OKAY, AND WHAT ABOUT THE PERSON WHO DID  
THE KILLING, WOULD THAT MAKE ANY DIFFERENCE TO YOU IN TERMS  
OF HIS BACKGROUND?

MR. BONGEORNO: NO.

6 F

6-1

1 MR. WAPNER: IF LOGICALLY, IT DOESN'T MAKE ANY SENSE  
2 TO TREAT THEM ALL THE SAME, WHAT DISTINCTION WOULD YOU MAKE  
3 BETWEEN PEOPLE WHO COMMIT MURDERS IN TERMS OF WHAT PUNISHMENT  
4 THEY SHOULD GET?

5 MR. BONGEORNO: I DON'T THINK I UNDERSTAND WHAT YOU MEAN.  
6 I AM A LITTLE BIT NERVOUS. THIS IS KIND OF NEW FOR ME.

7 MR. WAPNER: OKAY. LET ME ASK YOU TO PUT YOURSELF IN  
8 A SITUATION. YOU ARE ON THE JURY. YOU ARE IN THE JURY ROOM.  
9 YOU ARE TRYING TO DECIDE WHAT THE APPROPRIATE PUNISHMENT  
10 SHOULD BE. YOU ONLY HAVE TWO CHOICES.

11 ONE IS LIFE WITHOUT POSSIBILITY OF PAROLE AND ONE  
12 IS THE DEATH PENALTY. ARE YOU CAPABLE OF VOTING FOR EITHER  
13 ONE?

14 MR. BONGEORNO: YES.

15 MR. WAPNER: HAVE YOU FIGURED OUT BY NOW THAT IN THE  
16 CASE OF THIS NATURE, YOU WILL NEVER GET TO THE QUESTION OF  
17 PENALTY UNTIL YOU HAVE DECIDED THAT THERE WAS AN INTENTIONAL  
18 MURDER DURING A ROBBERY?

19 MR. BONGEORNO: YES.

20 MR. WAPNER: AFTER YOU HAVE HEARD ALL OF THE EVIDENCE  
21 IN THE GUILT PHASE AND YOU HAVE DECIDED THERE WAS AN  
22 INTENTIONAL MURDER DURING A ROBBERY, WE ARE GOING TO HAVE  
23 ANOTHER TRIAL WHERE YOU WOULD HEAR ALL KINDS OF OTHER EVIDENCE.

24 WOULD YOU LISTEN TO THAT EVIDENCE IN DECIDING WHAT  
25 THE APPROPRIATE PUNISHMENT WOULD BE OR WOULD YOU HAVE ALREADY  
26 MADE UP YOUR MIND?

27 THE COURT: I ASKED HIM THAT QUESTION. DON'T YOU  
28 REMEMBER? HE SAID THAT IRRESPECTIVE OF WHAT THAT EVIDENCE

5-2

1 WAS, HE WOULD VOTE FOR THE DEATH PENALTY. ISN'T THAT WHAT  
2 YOU SAID?

3 MR. BONGEORNO: YES.

4 MR. WAPNER: NOTHING FURTHER. THANK YOU.

5 MR. BARENS: THE DEFENSE HAS A MOTION.

6 THE COURT: THANK YOU VERY MUCH, MR. BONGEORNO. YOU  
7 WILL QUALIFY I GATHER AS A VERY FINE JUROR IN SOME OTHER CASE  
8 BUT NOT A DEATH PENALTY CASE.

9 YOU GO BACK AND TELL THEM THERE THAT YOU COULD  
10 SERVE ON SOME OTHER CASE, WOULD YOU?

11 (PROSPECTIVE JUROR BONGEORNO EXITS THE  
12 COURTROOM.)

13 THE BAILIFF: MR. KISLIUK NEEDS TO BE EXCUSED BECAUSE  
14 OF HIS EMPLOYER. THEY ONLY PAY FOR 25 DAYS.

15 THE COURT: HOW DO YOU SPELL THAT?

16 THE BAILIFF: K-I-S-L-I-U-K.

17 THE COURT: HE WILL BE EXCUSED.

18 (PROSPECTIVE JUROR BRUBAKER ENTERS THE  
19 COURTROOM.)

20 THE COURT: IS THAT MISS OR MRS.?

21 MS. BRUBAKER: MRS.

22 THE COURT: GOOD MORNING, MRS. BRUBAKER. WHERE DO YOU  
23 LIVE?

24 MS. BRUBAKER: WESTCHESTER.

25 THE COURT: DO YOU RECALL YESTERDAY I TOLD THE JURORS  
26 WHAT KIND OF A CASE WE ARE ABOUT TO TRY? IT IS A MURDER WHERE  
27 IT IS ALLEGED THAT THE MURDER WAS COMMITTED DURING THE COURSE  
28 OF A ROBBERY. I TOLD YOU THAT THERE WERE CERTAIN MURDERS --

1 NOT EVERY MURDER CALLS FOR THE DEATH PENALTY, EVEN IF IT IS  
2 INTENTIONAL, DELIBERATE AND PREMEDITATED AND PLANNED.

3 IT IS ONLY WHERE THAT MURDER WAS COMMITTED UNDER  
4 CERTAIN, WHAT WE CALL SPECIAL CIRCUMSTANCES, THAT IT MAY THEN  
5 QUALIFY FOR THE DEATH PENALTY. AND INCLUDED IN THOSE  
6 CATEGORIES, THERE ARE 19 OF THEM -- IS MURDER COMMITTED DURING  
7 THE COURSE OF A ROBBERY, A BURGLARY, A RAPE, KIDNAPPING,  
8 TORTURE, MULTIPLE MURDERS AND WHERE A CHILD DIES AS THE RESULT  
9 OF A MOLESTATION. THERE ARE OTHER KINDS. I DON'T HAVE TO  
10 GIVE YOU ALL 19 OF THEM.

11 BUT THOSE ARE INSTANCES OF WHICH THE JURY HAS TO  
12 DETERMINE WHAT THE PENALTY IS GOING TO BE, IF THEY FIND HIM  
13 GUILTY. DO YOU UNDERSTAND?

14 MS. BRUBAKER: YES.

15 THE COURT: SO WHAT WILL HAPPEN, IS THAT THE JURY WHO  
16 IS SELECTED, WILL FIRST HAVE TO DETERMINE WHAT WE CALL THE  
17 GUILT PHASE. THEY WILL FIRST HAVE TO DETERMINE WHETHER OR  
18 NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF A PREMEDITATED  
19 MURDER AND IF THEY FIND THAT HE WAS GUILTY OF THAT, THEN THEY  
20 ANSWER A QUESTION. THE QUESTION IS, WAS THAT MURDER -- IS  
21 IT TRUE OR FALSE THAT THAT MURDER WAS COMMITTED DURING THE  
22 COURSE OF A ROBBERY, SO THAT IT WOULD QUALIFY FOR THE DEATH  
23 PENALTY.

24 DO YOU UNDERSTAND? IF THE ANSWER IS YES, IT WAS  
25 COMMITTED DURING THE COURSE OF A ROBBERY, IT WAS A PREMEDITATED  
26 MURDER, THEN WE COME INTO WHAT IS KNOWN AS THE PENALTY PHASE.

27 DURING THE GUILT PHASE, THE QUESTION OF PENALTY  
28 MUST NEVER BE DISCUSSED OR CONSIDERED UNDER ANY CIRCUMSTANCES.

1           IT IS ONLY IN THE PENALTY PHASE WHEN YOU REACH  
2           THAT PHASE, THEY THEN CONSIDER ANY NUMBER OF FACTORS BEFORE  
3           THEY DETERMINE WHAT THE PENALTY SHOULD BE. IT WILL EITHER  
4           BE LIFE WITHOUT THE POSSIBILITY OF PAROLE OR IT WILL BE DEATH  
5           IN THE GAS CHAMBER. SO ON THE SECOND PHASE OF THE TRIAL, THE  
6           SAME JURY DETERMINES AND HEARS ADDITIONAL EVIDENCE FROM BOTH  
7           SIDES.

8           THE PURPOSE OF ALL OF THIS ADDITIONAL EVIDENCE  
9           IS TO SEE WHETHER OR NOT THERE ARE ANY MITIGATING CIRCUMSTANCES  
10          THAT MITIGATE THE OFFENSE WITH WHICH HE IS FOUND GUILTY OR  
11          AMELIORATE IT OR AGGRAVATING CIRCUMSTANCES OR FACTS ABOUT  
12          THE DEFENDANT WHICH WOULD JUSTIFY THE IMPOSITION OF THE DEATH  
13          PENALTY.

14          SO, THE DEFENDANT WILL INTRODUCE EVIDENCE WHICH  
15          IS FAVORABLE TO HIM, THINGS ABOUT HIS AGE, HIS BACKGROUND AND  
16          HIS EDUCATION, HIS MENTAL AND PHYSICAL CONDITION, ANY FACTS  
17          WHICH MAY BE FAVORABLE TO HIM. THEY WILL BE OFFERED TO THE  
18          JURY IN THE FORM OF EVIDENCE.

19          ON THE OTHER HAND, THERE ARE MITIGATING AND  
20          EXTENUATING CIRCUMSTANCES. I HAVE JUST TOLD YOU ABOUT THAT.

21          ON THE OTHER HAND, THE PEOPLE WILL ADDUCE, I ASSUME,  
22          EVIDENCE TO SHOW BAD THINGS ABOUT HIM, UNFAVORABLE THINGS ABOUT  
23          THE DEFENDANT WHICH WOULD THEN TRY TO CANCEL OUT ANYTHING  
24          FAVORABLE ABOUT HIM.

25          AT ANY RATE, ALL OF THOSE THINGS WILL BE  
26          CONSIDERED BY THE JURY, INCLUDING ALL OF THE FACTS OF THE  
27          MURDER ITSELF, WHICH THE JURY FOUND TO BE TRUE. DO YOU UNDER-  
28          STAND ALL OF THAT, DON'T YOU?



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

2 THE COURT: NOW, WHAT WE ARE GOING TO DO PRESENTLY IS  
3 TO EXPLORE YOUR STATE OF MIND WITH RESPECT TO THE DEATH  
4 PENALTY, WHAT YOUR FEELINGS, YOUR OPINIONS ARE ON THE DEATH  
5 PENALTY, TO SEE WHETHER OR NOT YOU CAN QUALIFY AS A JUROR IN  
6 THIS PARTICULAR CASE. DO YOU UNDERSTAND THAT?

7 MS. BRUBAKER: YES.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: ALL RIGHT. NOW, THE FIRST QUESTION I WILL  
2 ASK YOU, THE FIRST TWO QUESTIONS HAVE TO DO WITH THE GUILT  
3 PHASE OF IT.

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

8 MS. BRUBAKER: NO. I DON'T THINK SO.

9 THE COURT: ALL RIGHT. AND THE OTHER QUESTION IS ALSO  
10 ON THE GUILT PHASE. DO YOU HAVE ANY OPINION REGARDING THE  
11 DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
12 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
13 CIRCUMSTANCES? THE SPECIAL CIRCUMSTANCES ARE THE TRUTH OR  
14 FALSITY, WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE  
15 OF A ROBBERY.

16 MS. BRUBAKER: I DON'T KNOW.

17 THE COURT: YOU DON'T KNOW WHAT?

18 MS. BRUBAKER: WELL --

19 THE COURT: DO YOU HAVE AN OPINION WHERE YOU -- SUCH  
20 THAT YOU CAN'T REACH AN IMPARTIAL DECISION ON THE QUESTION  
21 AS TO WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE OF  
22 A ROBBERY?

23 MS. BRUBAKER: YES. I SUPPOSE I COULD WITH THE  
24 EVIDENCE.

25 THE COURT: YOU MEAN IF THE EVIDENCE SHOWED THAT IT WAS  
26 COMMITTED DURING THE COURSE OF A ROBBERY, YOU CAN SAY YES,  
27 IT IS TRUE THAT IT WAS COMMITTED DURING THE COURSE OF A  
28 ROBBERY, IF THE EVIDENCE JUSTIFIES THAT? IS THAT WHAT YOU

1 ARE SAYING?

2 MS. BRUBAKER: YES.

3 THE COURT: YOUR FEELING ABOUT THE DEATH PENALTY DOESN'T  
4 AFFECT YOUR JUDGMENT ON THIS PARTICULAR SUBJECT, WOULD IT?

5 MS. BRUBAKER: I DON'T KNOW.

6 THE COURT: ALL RIGHT. THEN I HAVE TO ASK YOU SOMETHING.  
7 I KNOW WHAT IS IN YOUR MIND.

8 THE NEXT TWO QUESTIONS HAVE TO DO WITH THE PENALTY  
9 PHASE OF THE TRIAL, ASSUMING THAT THE JURY HAS FOUND THE  
10 DEFENDANT GUILTY AND IT WAS DURING THE COURSE OF A ROBBERY.

11 DO YOU HAVE ANY OPINION CONCERNING THE DEATH  
12 PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE TO IMPOSE  
13 THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE  
14 PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

15 MS. BRUBAKER: NO. I DON'T THINK SO.

16 THE COURT: ALL RIGHT. THE SECOND IS SUBSTANTIALLY THE  
17 SAME EXCEPT IT HAS TO DO WITH THE LIFE WITHOUT POSSIBILITY  
18 OF PAROLE. DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH  
19 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE WITHOUT  
20 THE POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT  
21 MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

22 MS. BRUBAKER: NO.

23 THE COURT: NOW, YOU UNDERSTAND THAT THE ISSUE OF THE  
24 DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE AND THESE  
25 QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU REACH  
26 THAT PHASE OF THE TRIAL?

27 MS. BRUBAKER: RIGHT.

28 THE COURT: OKAY.

1 MR. BARENS: THANK YOU, YOUR HONOR. GOOD MORNING, MS.  
2 BRUBAKER. I AM ARTHUR BARENS. I REPRESENT THE DEFENDANT,  
3 JOE HUNT. IT IS MY OBLIGATION, AS IT WAS THE JUDGE'S, TO ASK  
4 YOU ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY AT THIS STAGE  
5 OF THE PROCEEDINGS. IT IS JUST THE WAY THINGS ARE SET UP,  
6 THAT WE DO THINGS IN THIS WHOLE PROCESS.

7 I WANT YOU TO UNDERSTAND PARENTHETICALLY, THERE  
8 ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NEITHER  
9 MYSELF NOR ANYBODY IS GOING TO JUDGE YOUR ANSWERS BECAUSE YOU  
10 CAN NEVER BE WRONG ABOUT YOUR OWN OPINION. THAT IS ALL I AM  
11 LOOKING FOR. OKAY?

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

14 MS. BRUBAKER: I THINK IT IS NEEDED.

15 THE COURT: WHAT?

16 MS. BRUBAKER: NEEDED.

17 MR. BARENS: COULD YOU TELL US WHEN YOU THINK IT IS  
18 NEEDED?

19 MS. BRUBAKER: FOR MASS MURDERERS AND REPEATERS.

20 MR. BARENS: MASS MURDERERS, GUYS LIKE RICHARD RAMIREZ  
21 OR CHARLES MANSON? THAT TYPE OF PEOPLE, RIGHT?

22 MS. BRUBAKER: WELL, THERE COULD BE OTHERS, TOO.

23 MR. BARENS: UNFORTUNATELY, I AM SURE THAT THERE ARE.  
24 WHAT WE HAVE GOT IN THIS SITUATION, IS A CASE WHERE, BEFORE  
25 YOU WOULD EVER GET TO THAT SECOND PHASE HIS HONOR SPOKE ABOUT,  
26 THE PENALTY PHASE WHICH WE ARE TALKING ABOUT NOW, YOU WOULD  
27 FIRST GO THROUGH THE GUILT PHASE WHERE YOU WOULD HAVE TO  
28 BELIEVE IN THIS TYPE OF A CASE, THAT THE DEFENDANT HAD COMMITTED

1 A FIRST DEGREE, INTENTIONAL MURDER DURING A ROBBERY. YOU WOULD  
2 HAVE TO BELIEVE THOSE THINGS BEYOND A REASONABLE DOUBT.

3 NOW, ONLY IF YOU BELIEVE THAT, WOULD THIS QUESTION  
4 OF WHETHER WE ARE GOING TO GIVE THAT DEFENDANT LIFE WITHOUT  
5 POSSIBILITY OR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

6 MS. BRUBAKER: YES.

7 MR. BARENS: NOW, IF WE HAVE A SITUATION WHERE YOU AS  
8 AN INDIVIDUAL BELIEVE IN YOUR HEART THAT A DEFENDANT COMMITTED  
9 AN INTENTIONAL, FIRST DEGREE MURDER FOR GREED OR GAIN, YOU  
10 KNOW DURING A ROBBERY, WHAT DO YOU THINK OUGHT TO HAPPEN TO  
11 THAT DEFENDANT?

12 MS. BRUBAKER: WOULD DEPEND UPON THE EVIDENCE GIVEN.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7-1  
1 MR. BARENS: WELL, THE EVIDENCE SHOWED THAT HE COMMITTED  
2 A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER AND THERE  
3 IS A DEAD PERSON AND HE DID IT DURING A ROBBERY.

4 THE COURT: YOU MEAN THE EVIDENCE ON THE PENALTY PHASE,  
5 IS THAT WHAT YOU MEAN ON THE PENALTY PHASE, THE SECOND PHASE  
6 OF THE TRIAL?

7 MS. BRUBAKER: WELL, YEAH, BECAUSE GUILT SUPPOSEDLY  
8 HAS ALREADY BEEN DECIDED.

9 THE COURT: THAT'S RIGHT.

10 MS. BRUBAKER: ON THE EVIDENCE.

11 THE COURT: WHICH EVIDENCE IS THAT? YOU MEAN THE  
12 EVIDENCE ON THE PENALTY PHASE, WHICH IS GOOD AND BAD ABOUT  
13 THE DEFENDANT?

14 MS. BRUBAKER: I DON'T KNOW. I AM NOT SURE.

15 THE COURT: WHAT DO YOU MEAN BY "THE EVIDENCE"?

16 MS. BRUBAKER: WELL, THE EVIDENCE EVIDENTLY CAME IN  
17 ON THE FIRST PHASE AND THEN THERE IS MORE EVIDENCE IN THE  
18 PENALTY PHASE.

19 THE COURT: THAT IS RIGHT, THAT IS CORRECT.

20 YOU MEAN YOU HEAR ALL OF THAT EVIDENCE, YOU NEED  
21 ALL OF THAT EVIDENCE BEFORE YOU WOULD MAKE UP YOUR MIND; IS  
22 THAT RIGHT?

23 MS. BRUBAKER: YES.

24 MR. BARENS: WHAT WE ARE LOOKING FOR HERE IN WHAT WE  
25 CALL A FAIR TRIAL OR AS FAIR A TRIAL AS WE CAN GET, IS A JUROR  
26 WHO DOESN'T HAVE, AS NEARLY AS HUMAN BEINGS CAN, ANY  
27 PRECONCEIVED IDEAS ON THIS SUBJECT OR ANY IRRECONCILABLE  
28 BIASES ABOUT WHAT SHOULD HAPPEN IN THESE CASES.

7-2

1 DO YOU THINK THAT IF YOU WERE DEALING WITH SOMEONE  
2 WHO HAD COMMITTED AN INTENTIONAL, FIRST DEGREE MURDER,  
3 UNJUSTIFIABLY SO, YOU KNOW, HE WASN'T CRAZY AND IT WASN'T  
4 AN ACCIDENT, AND IT WASN'T BECAUSE HE REALLY NEEDED THE MONEY  
5 OR SOME OTHER REASON, BUT HE DID IT AND DID IT WITH A BLACK  
6 HEART AND JUST DID IT, DO YOU THINK YOU COULD EVER GIVE THAT  
7 INDIVIDUAL, THAT TYPE OF A DEFENDANT LIFE IMPRISONMENT WITHOUT  
8 THE POSSIBILITY OF PAROLE?

9 MS. BRUBAKER: I SUPPOSE SO.

10 THE COURT: WHAT WAS THAT?

11 (THE RECORD WAS READ BY THE REPORTER.)

12 MR. BARENS: DO YOU THINK YOU COULD?

13 MS. BRUBAKER: YES.

14 MR. BARENS: AM I CORRECT THEN IN ASSUMING THAT YOU  
15 COULD CONSIDER THE AGE OF THE DEFENDANT IN MAKING A DECISION  
16 ON WHETHER HE SHOULD LIVE OR DIE?

17 MS. BRUBAKER: NO.

18 MR. BARENS: YOU WOULDN'T CONSIDER THAT?

19 MS. BRUBAKER: NO.

20 THE COURT: SUPPOSE I INSTRUCT YOU THAT YOU MUST CONSIDER  
21 THAT, YOU WILL CONSIDER IT, TOO, WON'T YOU? IF I TELL YOU  
22 THAT IS ONE OF THE FACTORS THAT YOU MUST TAKE INTO  
23 CONSIDERATION.

24 MS. BRUBAKER: YES, I WOULD.

25 THE COURT: LIKE HIS AGE AND HIS BACKGROUND, HIS LACK  
26 OF ANY RECORD, ALL OF THOSE THINGS.

27 MS. BRUBAKER: YES.

28 THE COURT: ALL OF THAT TESTIMONY IS DESIGNED FOR ONE

7-3  
1 PURPOSE: TO TRY TO GIVE YOU THE ENTIRE PICTURE OF THE PERSON  
2 BEFORE YOU MAKE UP YOUR MIND AS TO HOW YOU ARE GOING TO PUNISH  
3 HIM.

4 MS. BRUBAKER: YES.

5 THE COURT: DO YOU UNDERSTAND THAT?

6 (MS. BRUBAKER: NODS HER HEAD UP AND DOWN.)

7 MR. BARENS: DO YOU HAVE A PHILOSOPHY OR RELIGIOUS  
8 BELIEF WHERE YOU SUBSCRIBE TO A BELIEF KNOWN AS AN EYE FOR  
9 AN EYE, MRS. BRUBAKER --

10 MS. BRUBAKER: NO.

11 MR. BARENS: -- WHICH IS KIND OF AN OLD BIBLICAL THING.

12 MS. BRUBAKER: NO, I DON'T BELIEVE IN IT.

13 MR. BARENS: WOULD YOU SAY THAT IT IS POSSIBLE, THEREFORE,  
14 IN YOUR MIND THAT IF MITIGATING CIRCUMSTANCES -- NOT  
15 MITIGATING ABOUT THE CRIME, MIND YOU, BUT ABOUT THE DEFENDANT'S  
16 BACKGROUND, HIS AGE OR CHARACTER, COULD THOSE SORT OF FACTORS  
17 INFLUENCE YOU AS TO WHETHER YOU WOULD VOTE FOR THE DEATH PENALTY  
18 OR NOT?

19 MS. BRUBAKER: POSSIBLY.

20 MR. BARENS: POSSIBLY?

21 EVEN THOUGH A FIRST DEGREE MURDER HAD OCCURRED?

22 MS. BRUBAKER: I DON'T KNOW.

23 MR. BARENS: I KNOW THAT IS A HARD QUESTION, ISN'T IT?

24 IT IS KIND OF HARD, I THINK MRS. BRUBAKER, IN  
25 YOUR OWN MIND TO REALLY TELL ME -- AND UNDERSTAND, MRS. BRUBAKER,  
26 THERE IS NOTHING WRONG WITH YOUR OPINION. YOU MAY BE IN THE  
27 MAJORITY.

28 MRS. BRUBAKER, ARE YOU HAVING A PROBLEM TELLING



1 ME THAT YOU COULD EVER CONSIDER NOT GIVING THE DEATH PENALTY  
2 TO A FIRST DEGREE INTENTIONAL MURDERER?

3 MS. BRUBAKER: MAYBE THAT IS WHAT I AM TRYING TO SAY  
4 BUT --

5 MR. BARENS: THAT IS WHAT I NEED YOU TO TELL ME IS IN  
6 YOUR HEART OF HEARTS WHAT YOU HONESTLY FEEL ON THIS SUBJECT.

7 AND AGAIN, MRS. BRUBAKER, I AM NOT JUDGING THE  
8 ANSWER. I AM JUST LOOKING FOR TYPES OF JURORS, AS THE PEOPLE  
9 ARE AS WELL IN THIS SYSTEM.

10 I BELIEVE YOU, BUT I DON'T THINK YOU REALLY COULD  
11 EVER GIVE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE  
12 TO A DEFENDANT WHO COMMITTED A FIRST DEGREE MURDER, AN  
13 INTENTIONAL MURDER.

14 MR. WAPNER: I OBJECT TO THE FORM OF THE QUESTION.  
15 COUNSEL CONSTANTLY --

16 THE COURT: I WILL SUSTAIN THE OBJECTION. YOUR REACTION  
17 IS NOT IMPORTANT AT THE MOMENT.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7-5  
1 MR. BARENS: WELL, LET ME ASK YOU YOUR REACTION.

2 MR. WAPNER: THANK YOU.

3 MR. BARENS: IN YOUR HEART OF HEARTS, MRS. BRUBAKER,  
4 COULD YOU -- WOULD YOU FEEL IT APPROPRIATE TO GIVE THE DEATH  
5 PENALTY TO A FIRST DEGREE, PREMEDITATED MURDERER?

6 MS. BRUBAKER: I DON'T KNOW.

7A  
7 MR. BARENS: OKAY.

8 THE COURT: I ASKED YOU THE QUESTION BEFORE. I ASKED  
9 YOU: DO YOU HAVE ANY OPINION CONCERNING THE DEATH PENALTY  
10 THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE TO IMPOSE THE DEATH  
11 PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED  
12 AT THE PENALTY PHASE OF THE TRIAL, AND YOU SAID NO.

13 IS THAT TRUE, WOULD YOU AUTOMATICALLY VOTE TO  
14 IMPOSE THE DEATH PENALTY IF SOMEBODY HAD BEEN CONVICTED OF  
15 MURDER IN THE FIRST DEGREE, AUTOMATICALLY, WITHOUT CONSIDERING  
16 THE BACKGROUND OR WITHOUT CONSIDERING EVERYTHING?

17 MS. BRUBAKER: NO.

18 THE COURT: ALL RIGHT.

19 MR. BARENS: IF WE TAKE AWAY THE WORD "AUTOMATICALLY"  
20 AND I KNOW THAT SOMETIMES MIGHT HAVE SOME NEGATIVE IMPLICATION,  
21 WOULD YOUR PHILOSOPHICAL POINT OF VIEW IN WHICH YOU MIGHT  
22 BELIEVE THAT THE DEATH PENALTY IS THE ONLY APPROPRIATE  
23 PUNISHMENT FOR SOMEONE WHO COMMITS A FIRST DEGREE MURDER  
24 SUBSTANTIALLY IMPAIR YOUR ABILITY TO VOTE FOR LIFE IMPRISONMENT  
25 WITHOUT THE POSSIBILITY OF PAROLE FOR THAT TYPE OF A DEFENDANT?

26 MS. BRUBAKER: NO.

27 MR. BARENS: DO YOU FEEL THAT YOU COULD VOTE FOR  
28 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR THAT

7-6  
1 TYPE OF DEFENDANT?

2 MS. BRUBAKER: YES.

3 MR. BARENS: DO YOU THINK YOU COULD?

4 I HAVE SOME CONFLICTING SIGNALS FROM YOU WHICH  
5 ARE CONFUSING ME.

6 MS. BRUBAKER: I GUESS I AM SO NERVOUS THAT I AM JUST  
7 NOT --

8 MR. BARENS: DON'T BE NERVOUS BECAUSE, AGAIN, YOU ARE  
9 NOT BEING JUDGED ON YOUR ANSWERS, BECAUSE WHEN I APPEAR TO  
10 GET DIFFERENT ANSWERS TO THE SAME INQUIRY, I NEED TO SQUARE  
11 THOSE TWO THINGS AND I DON'T MEAN TO BE REDUNDANT BUT WE HAVE  
12 AN INCONSISTENCY TO RESOLVE.

13 I WILL ASK YOU: HOW DO YOU FEEL IF YOU HAD THAT  
14 DEFENDANT AND YOU BELIEVE THAT HE HAD COMMITTED A FIRST DEGREE  
15 MURDER AND IT WAS PREMEDITATED, INTENTIONAL AND UNJUSTIFIABLE  
16 IN EVERY SENSE OF THE WORD, DO YOU THINK YOU WOULD GIVE THOSE  
17 DEFENDANTS THE DEATH PENALTY?

18 MS. BRUBAKER: YES.

19 MR. BARENS: OKAY, NOW I ASK YOU -- I REALIZE THAT IN  
20 RESPONSE TO THE JUDGE'S QUESTION THAT YOU SAID YOU WOULD  
21 CONSIDER EVIDENCE ABOUT THEIR BACKGROUND AND ABOUT THEIR AGE  
22 AND WHATEVER, BUT WOULD IT BE A FAIR STATEMENT TO SAY THAT  
23 ALTHOUGH YOU WOULD CONSIDER THAT, YOU ARE REALLY PREDISPOSED  
24 TO GIVING THOSE DEFENDANTS THE DEATH PENALTY IF THEY HAVE  
25 INTENTIONALLY TAKEN A LIFE DURING A ROBBERY?

26 MS. BRUBAKER: I SUPPOSE, YES.

27 THE COURT: PARDON ME?

28 MS. BRUBAKER: YES.

1 MR. BARENS: OKAY, I APPRECIATE THAT AND, AGAIN, I AM  
2 NOT TRYING TO MAKE YOU NERVOUS.

3 THANK YOU FOR YOUR CANDOR AND FOR STAYING WITH  
4 YOUR OPINION.

5 WE WOULD RESERVE A MOTION, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. WAPNER: MRS. BRUBAKER, GOOD MORNING. I AM FRED  
8 WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS  
9 CASE.

10 HAVE YOU GIVEN MUCH THOUGHT TO THIS QUESTION BEFORE  
11 YOU CAME INTO COURT YESTERDAY?

12 MS. BRUBAKER: NO.

13 MR. WAPNER: HAVE YOU EVER BEEN CALLED UPON TO DECIDE  
14 THIS QUESTION BEFORE IN ANOTHER CASE?

15 MS. BRUBAKER: NO.

16 MR. WAPNER: DO YOU EVER REMEMBER VOTING ON THE QUESTION  
17 WHEN IT WAS ON THE BALLOT?

18 MS. BRUBAKER: YES.

19 MR. WAPNER: HOW DID YOU VOTE, IF YOU REMEMBER?

20 MS. BRUBAKER: WELL, THAT IS A LITTLE BIT --

21 MR. WAPNER: LET ME ASK YOU A DIFFERENT QUESTION.  
22 I DON'T WANT TO GET INTO YOUR RIGHT OF PRIVACY IN TERMS OF  
23 VOTING.

24 DO YOU THINK WE SHOULD HAVE A DEATH PENALTY IN  
25 CALIFORNIA?

26 MS. BRUBAKER: I DO.

27 MR. WAPNER: LET ME PUT YOU IN A SITUATION THAT YOU  
28 MIGHT BE IN IF YOU ARE ON THIS JURY: YOU HAVE HEARD ALL OF

1 THE EVIDENCE ON THE GUILT PHASE AND YOU HAVE DECIDED THE  
2 DEFENDANT IS GUILTY OF MURDER DURING A ROBBERY AND YOU ARE  
3 NOW DECIDING -- YOU HAVE HEARD ALL OF THE EVIDENCE ON THE  
4 PENALTY PHASE, THE GOOD THINGS ABOUT THE DEFENDANT AND THE  
5 BAD THINGS ABOUT HIM, AND YOU ARE NOW DECIDING IN THE JURY  
6 ROOM WHAT SHOULD HAPPEN TO HIM. AT THAT POINT YOU ONLY HAVE  
7 TWO CHOICES, LIFE IN PRISON WITHOUT PAROLE OR DEATH IN THE  
8 GAS CHAMBER. DO YOU UNDERSTAND THAT THOSE WOULD BE YOUR TWO  
9 CHOICES?

10 (MS. BRUBAKER NODDED HER HEAD UP AND DOWN.)

7B F  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7B-1  
1 MR. WAPNER: YOU HAVE TO ANSWER OUT LOUD.

2 MS. BRUBAKER: YES.

3 MR. WAPNER: KNOWING THAT THOSE WOULD BE YOUR ONLY TWO  
4 CHOICES, WOULD YOU HAVE ALREADY MADE UP YOUR MIND WHAT YOU  
5 WERE GOING TO DO AFTER HEARING THE EVIDENCE OF HIS GUILT?

6 MS. BRUBAKER: AFTER HEARING THE EVIDENCE, I WOULD HOPE  
7 I HAVE DECIDED.

8 THE COURT: YOU WOULD WHAT?

9 MS. BRUBAKER: I HOPE I HAVE DECIDED AFTER HEARING THE  
10 EVIDENCE.

11 MR. WAPNER: OKAY, THAT WASN'T A GOOD QUESTION.

12 LET'S SAY YOU HAVE LISTENED TO ALL OF THE EVIDENCE  
13 AND YOU HAVE DECIDED HE IS GUILTY OF THE CRIME, OKAY? BUT  
14 YOU HAVEN'T GOTTEN TO THE PENALTY PHASE YET.

15 ARE YOU WITH ME SO FAR?

16 MS. BRUBAKER: YES.

17 MR. WAPNER: ONCE YOU HAVE DECIDED THAT HE IS GUILTY  
18 OF AN INTENTIONAL MURDER DURING A ROBBERY, WILL YOU HAVE  
19 ALREADY MADE UP YOUR MIND THAT THE PENALTY SHOULD BE DEATH?

20 MS. BRUBAKER: I DON'T KNOW.

21 THE COURT: YOU HAVEN'T HEARD ANY TESTIMONY ON THE PENALTY  
22 PHASE, WILL YOU MAKE UP YOUR MIND BEFORE YOU DO THAT?

23 MS. BRUBAKER: NO.

24 THE COURT: ALL RIGHT.

25 MR. WAPNER: WHEN LISTENING TO THE EVIDENCE ON THE PENALTY  
26 PHASE, WOULD YOU BE OPEN TO BOTH PUNISHMENTS, THAT IS, EITHER  
27 DEATH OR LIFE IMPRISONMENT?

28 MS. BRUBAKER: I ASSUME SO.

1 MR. WAPNER: I HAVE NOTHING FURTHER, YOUR HONOR.

2 MR. BARENS: THERE IS A MOTION, YOUR HONOR.

3 THE COURT: ALL RIGHT, WOULD YOU WAIT OUTSIDE JUST A  
4 MOMENT, PLEASE? THERE ARE SOME LEGAL PROBLEMS THAT WE HAVE  
5 TO DISCUSS.

6 (PROSPECTIVE JUROR BRUBAKER EXITED THE  
7 COURTROOM.)

8 MR. BARENS: YOUR HONOR, IF I MIGHT HAVE ONE MOMENT.  
9 WE HAVE A MEDICAL EMERGENCY AT THE OFFICE. IF I MIGHT HAVE  
10 JUST ONE MOMENT.

11 (PAUSE IN PROCEEDINGS.)

12 MR. BARENS: I AM SORRY, YOUR HONOR.

13 AGAIN, I BELIEVE THIS TO BE A CANDID WOMAN. SHE  
14 SAID TO ME SPECIFICALLY, ALTHOUGH SHE COULD CONSIDER THE  
15 EVIDENCE, SHE WOULD ALWAYS GIVE DEFENDANTS THE DEATH PENALTY  
16 THAT HAD BEEN CONVICTED OF A FIRST DEGREE MURDER; THAT WAS  
17 HER RESPONSE TO MY LAST INQUIRY TO HER, YOUR HONOR.

18 WHEN MR. WAPNER INQUIRED AS TO WHAT SHE WOULD  
19 DO, COULD SHE LISTEN TO THE EVIDENCE, SHE COULDN'T EVEN SAY  
20 YES TO THAT. SHE SAID THAT SHE ASSUMED SHE WOULD LISTEN TO  
21 THE EVIDENCE, AFTER HAVING TOLD ME THAT ALTHOUGH SHE WOULD  
22 LISTEN TO THE EVIDENCE, SHE WOULD ALWAYS GIVE FIRST DEGREE  
23 MURDERERS THE DEATH PENALTY.

24 THIS WOMAN SHOWED AN ABSOLUTE PREDISPOSITION,  
25 AND SHE IS ENTITLED TO HER OPINION, TO ALWAYS GIVING THE DEATH  
26 PENALTY TO A FIRST DEGREE MURDERER. SHE WAS RATHER CLEAR  
27 ON THAT, YOUR HONOR.

28 THE COURT: SHE WAS WISHY-WASHY ALL THROUGHOUT.

1 MR. BARENS: A BIT SO, YOUR HONOR, BUT SHE WAS  
2 CONSISTENT.

3 THE COURT: SHE HAD NO FIRM CONVICTION ABOUT ANYTHING.  
4 HER NAME SHOULD HAVE BEEN BLANK, THE SAME AS THE OTHER ONE  
5 WE HAD. I DON'T THINK IT IS THE KIND OF JUROR WE WANT IN  
6 THIS CASE.

7 MR. WAPNER: THANK YOU, YOUR HONOR, THAT WAS MY SENTIMENT.

8 THE COURT: YOU FEEL THE SAME WAY ABOUT IT?

9 MR. WAPNER: ABSOLUTELY.

10 THE COURT: ASK HER TO COME IN AND THEN WE WILL GET  
11 MR. BUSHNELL READY.

12 MR. WAPNER: THE ONLY THING DEFINITE ABOUT THIS LADY  
13 WAS SHE WASN'T DEFINITE ABOUT ANYTHING.

14 (PROSPECTIVE JUROR BRUBAKER RE-ENTERED  
15 THE COURTROOM.)

16 THE COURT: THAT IS ALL RIGHT, YOU CAN STAY THERE.  
17 THANK YOU VERY MUCH, MRS. BRUBAKER. WE THINK THAT YOU WILL  
18 MAKE A VERY FINE JUROR ON SOMETHING OTHER THAN A DEATH PENALTY  
19 CASE, SO YOU TELL THEM IN THE JURY ASSEMBLY ROOM, THE CLERK  
20 THERE, THAT I THINK YOU WILL MAKE A GOOD JUROR ON SOME OTHER  
21 CASE.

22 MS. BRUBAKER: THANK YOU VERY MUCH.

23 (PROSPECTIVE JUROR BRUBAKER EXITED  
24 THE COURTROOM.)

25 (PROSPECTIVE JUROR DONALD R. BUSHNELL  
26 ENTERED THE COURTROOM.)

27 THE COURT: MR. BUSHNELL, IS IT?

28 MR. BUSHNELL: THAT'S CORRECT.



1 THE COURT: MR. BUSHNELL, WHERE DO YOU LIVE?

2 MR. BUSHNELL: I RESIDE IN CULVER CITY.

3 THE COURT: DO YOU REMEMBER YESTERDAY I TOLD YOU WHAT  
4 THIS CASE IS ABOUT AND THAT THE DEFENDANT IS CHARGED WITH  
5 THE COMMISSION OF A MURDER AND THAT MURDER WAS COMMITTED DURING  
6 THE COURSE OF A ROBBERY?

7 MR. BUSHNELL: RIGHT.

8 THE COURT: INCIDENTALLY, I MEANT TO ASK YOU: HAVE  
9 YOU READ ANYTHING AT ALL ABOUT THIS CASE?

10 MR. BUSHNELL: NO, I HAVEN'T.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE COURT: YOU HAVE NOT SEEN THE NAME, BILLIONAIRE BOYS  
2 CLUB? IT DOESN'T MEAN ANYTHING TO YOU?

3 MR. BUSHNELL: NO.

4 THE COURT: ALL RIGHT. THE JURY THAT WILL BE SELECTED  
5 IN THIS CASE, WILL FIRST HAVE TO DETERMINE THE GUILT OR  
6 INNOCENCE OF THE DEFENDANT. THAT IS KNOWN AS THE GUILT PHASE  
7 OF THE TRIAL. AND IF THEY FIND THE DEFENDANT GUILTY OF MURDER  
8 IN THE FIRST DEGREE, THEN THEY ANSWER A QUESTION, IS IT TRUE  
9 OR IS IT FALSE THAT IT OCCURRED DURING THE COURSE OF A ROBBERY.

10 NOW, DURING THE COURSE OF A ROBBERY IS SIGNIFICANT  
11 BECAUSE NOT EVERY MURDER, EVEN IF IT IS DELIBERATE,  
12 PREMEDITATED AND PLANNED, IS PUNISHABLE BY LIFE WITHOUT  
13 POSSIBILITY OF PAROLE OR BY DEATH. IT IS ONLY WHERE IT IS  
14 COMMITTED DURING CERTAIN SPECIAL CIRCUMSTANCES, YOU SEE, THAT  
15 THEN IT QUALIFIES FOR THE DEATH PENALTY.

16 ONE OF THE SPECIAL CIRCUMSTANCES, AS I INDICATED  
17 YESTERDAY, WAS ROBBERY, OR BURGLARY OR RAPE OR KIDNAPPING OR  
18 WHERE A CHILD IS MOLESTED AND DIES OR TORTURE OR MULTIPLE  
19 MURDERS AND SO ON AND SO FORTH. THERE ARE 19 OF THEM WHERE THE  
20 LEGISLATURE HAS SAID IN THOSE CASES, THEY QUALIFY FOR A  
21 POSSIBLE DEATH SENTENCE. DO YOU UNDERSTAND THAT?

22 MR. BUSHNELL: YES.

23 THE COURT: NOW AS I SAID, THE JURY WILL FIRST HAVE TO  
24 DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT, WAS HE  
25 GUILTY OR NOT GUILTY OF MURDER IN THE FIRST DEGREE, DELIBERATE,  
26 PREMEDITATED MURDER.

27 AND IF THEY SAY YES, THEN THEY HAVE TO DETERMINE  
28 AS REQUESTED, IS IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED

2  
1 DURING THE COURSE OF A ROBBERY. OKAY?

2 IF IT IS YES, THEN THE SAME JURY GOES THROUGH THE  
3 SECOND PHASE OF TRIAL WHERE THERE WILL BE ADDITIONAL TESTIMONY.  
4 NOW, THE ADDITIONAL TESTIMONY WAS INTENDED FOR THE PURPOSE  
5 OF SHOWING THE DEFENDANT IN A FAVORABLE LIGHT OR GOOD THINGS  
6 ABOUT HIM WILL BE BROUGHT OUT.

7 YOU MUST CONSIDER HIS AGE, BACKGROUND, EDUCATION,  
8 PHYSICAL OR MENTAL CONDITION PLUS ALL OF THE THINGS ABOUT THE  
9 MURDER ITSELF.

10 THESE ARE WHAT WE CALL MITIGATING OR EXTENUATING  
11 CIRCUMSTANCES WHICH THEY WILL PRODUCE OR TRY TO PERSUADE THE  
12 JURORS THAT THEY SHOULD NOT IMPOSE THE ULTIMATE PENALTY OF  
13 DEATH.

14 ON THE OTHER HAND, THE PROSECUTION WILL PRODUCE  
15 EVIDENCE I ASSUME, WHICH WOULD SHOW UNFAVORABLE ASPECTS ABOUT  
16 THE DEFENDANT, WHICH WOULD COUNTERBALANCE ALL OF THE FAVORABLE  
17 ASPECTS. THEY WILL TRY TO SHOW THAT NO CONSIDERATION SHOULD  
18 BE GIVEN TO HIM AT ALL, IN DETERMINING THE PENALTY. THAT IS  
19 THE PENALTY PHASE.

20 NOW ON THE GUILT PHASE, YOU DON'T CONSIDER THE  
21 QUESTION OF PENALTY AT ALL. THAT HAS NOTHING TO DO WITH IT,  
22 AS TO WHAT WILL HAPPEN TO HIM IF HE IS FOUND GUILTY. YOU ONLY  
23 CONSIDER THE FACTS OF THE CASE.

24 MR. BUSHNELL: YES.

25 THE COURT: ALL RIGHT. NOW, WITH THAT IN MIND, WE ARE  
26 INQUIRING AND ALL OF THE PROSPECTIVE JURORS HAVE BEEN ASKED  
27 WHAT THEIR STATE OF MIND IS AND WHAT THEIR -- EXPLORING THEIR  
28 STATE OF MIND WITH RESPECT TO THEIR ATTITUDES AND FEELINGS

1 ABOUT THE DEATH PENALTY. THAT IS WHAT I AM GOING TO ASK YOU  
2 ABOUT NOW.

3 MR. BUSHNELL: WELL, IN MY OPINION --

4 THE COURT: LET ME ASK YOU THE QUESTIONS FIRST.

5 MR. BUSHNELL: OKAY.

6 THE COURT: NOW, THE FIRST TWO QUESTIONS HAVE TO DO WITH  
7 THE GUILT PHASE OF THE TRIAL. DO YOU HAVE ANY OPINION  
8 REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM MAKING  
9 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE  
10 DEFENDANT?

11 MR. BUSHNELL: I DON'T THINK SO.

12 THE COURT: ALL RIGHT. THE SECOND PART IS OF COURSE,  
13 IN THE GUILT PHASE I TOLD YOU THAT IF HE IS FOUND GUILTY OF  
14 MURDER IN THE FIRST DEGREE, THEN THEY DETERMINE WHETHER OR  
15 NOT IT IS TRUE OR FALSE THAT IT WAS COMMITTED DURING THE  
16 COURSE OF A ROBBERY.

17 DO YOU HAVE ANY OPINION REGARDING THE DEATH  
18 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
19 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
20 CIRCUMSTANCES?

21 MR. BUSHNELL: I DON'T THINK SO.

22 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH  
23 PENALTY THAT WOULD CAUSE YOU TO AUTOMATICALLY VOTE TO IMPOSE  
24 THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE  
25 PRESENTED IN THE PENALTY PHASE OF THE TRIAL?

26 MR. BUSHNELL: NO.

27 THE COURT: THE SAME THING, THE SAME QUESTION AS TO LIFE  
28 WITHOUT POSSIBILITY OF PAROLE.

8-4

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

5 MR. BUSHNELL: NO.

6 THE COURT: DO YOU UNDERSTAND OF COURSE, THAT THE ISSUE  
7 OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE?

8 MR. BUSHNELL: RIGHT.

9 THE COURT: THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE  
10 EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

11 MR. BUSHNELL: YES.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: ALL RIGHT.

2 MR. BARENS: THANK YOU. GOOD MORNING, MR. BUSHNELL.  
3 I AM ARTHUR BARENS. I REPRESENT THE DEFENDANT, JOE HUNT AND  
4 AS IS THE CASE WITH HIS HONOR, IT IS MY DUTY TO INQUIRE OF  
5 YOU NOW AS TO YOUR POINT OF VIEW ON THE DEATH PENALTY.

6 PARENTHETICALLY, LET ME INDICATE THAT THERE ARE  
7 NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS. I AM CERTAINLY  
8 NOT, NOR IS ANYONE ELSE GOING TO JUDGE YOU ON YOUR ANSWERS.  
9 ALL I AM LOOKING FOR IS YOUR OPINION. YOU CAN NEVER BE WRONG  
10 ABOUT YOUR OPINION. OKAY?

11 MR. BUSHNELL: RIGHT.

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

14 MR. BUSHNELL: I FEEL THAT IN VIEW OF THE FACT THAT THE  
15 DEATH PENALTY IS IN LAW NOW AND THE EVDIENCE PRESENTED IS  
16 SUFFICIENT TO CARRY IT, I THINK THAT THAT IS THE WAY IT SHOULD  
17 BE.

18 MR. BARENS: OKAY. HOW DO YOU FEEL, IF YOU HAVE A  
19 SITUATION WHERE A DEFENDANT COMMITS A FIRST DEGREE MURDER,  
20 AND -- YOU KNOW, BY THAT, WHAT WE ARE TALKING ABOUT HERE IS  
21 THAT YOU NEVER GET TO THE QUESTION UNLESS YOU FIRST BELIEVE  
22 BEYOND A REASONABLE DOUBT ALONG WITH 11 OTHER PEOPLE, THAT  
23 AN INTENTIONAL, PREMEDITATED, FIRST DEGREE MURDER OCCURRED  
24 DURING A ROBBERY.

25 THE DEFENDANT DID IT FOR SOME KIND OF GAIN. HE  
26 STOLE MONEY OR SOMETHING. WHAT DO YOU THINK WE SHOULD DO WITH  
27 THOSE DEFENDANTS?

28 MR. BUSHNELL: THAT IS A GOOD QUESTION.

1 MR. BARENS: THAT IS THE QUESTION AT THIS MOMENT.

2 MR. BUSHNELL: THE QUESTION. I HONESTLY DON'T KNOW RIGHT  
3 AT THIS TIME. I DON'T KNOW.

4 MR. BARENS: OKAY. WELL, WE KIND OF NEED TO KNOW RIGHT  
5 NOW, BECAUSE THAT IS THE WHOLE INQUIRY THAT WE ARE MAKING.

6 THE COURT: WELL, YOU ARE ASKING HIM TO PREJUDGE.  
7 REALLY, THAT FACT ALONE -- WHY DON'T YOU ASK HIM ABOUT THE  
8 PENALTY PHASE OF IT AND ALL OF THE FAVORABLE AND UNFAVORABLE  
9 ASPECTS AND WOULD HE WAIT UNTIL THAT IS DONE. THAT IS WHAT  
10 I ASKED HIM.

11 MERELY TO SAY HE COMMITTED A DELIBERATE, INTENTIONAL  
12 MURDER AND WHAT DO YOU DO WITH HIM, THAT ISN'T SUFFICIENT.

13 MR. BARENS: WELL, AGAIN, I AM LOOKING FOR A PREDISPOSITION  
14 ON BEHALF OF THE JUROR. I WOULD LIKE TO HAVE A GOOD RECORD.

15 THE COURT: WELL, THEN STATE ALL OF THE FACTS IN YOUR  
16 QUESTION.

17 MR. BARENS: WELL NOW MR. BUSHNELL, THE COURT WOULD  
18 INSTRUCT YOU TO CONSIDER IN REACHING A DECISION ON THE LIFE  
19 OR DEATH ISSUE, THINGS LIKE THE DEFENDANT'S AGE OR WHETHER  
20 OR NOT THE DEFENDANT HAD A HISTORY OF PRIOR CRIMINAL ACTS OR  
21 VIOLENT ACTS AND FACTS ABOUT THE DEFENDANT'S CHARACTER.

22 WOULD YOU CONSIDER THOSE THINGS BEFORE YOU MADE  
23 A DECISION?

24 MR. BUSHNELL: YES.

25 MR. BARENS: OKAY.

26 MR. BUSHNELL: YES.

27 MR. BARENS: COULD YOU BE SWAYED ALTHOUGH YOU WOULD  
28 CONSIDER THOSE THINGS, IF THE DEFENDANT HAD NONETHELESS,

1 COMMITTED A FIRST DEGREE MURDER? WOULD THE FACT THAT YOU  
2 CONSIDER THOSE, MAKE ANY DIFFERENCE TO YOU OR WOULD YOU HAVE  
3 ALREADY MADE UP YOUR MIND THAT IF HE TOOK A LIFE INTENTIONALLY,  
4 THE ONLY APPROPRIATE PENALTY WOULD BE THE DEATH PENALTY?

5 MR. BUSHNELL: PROVIDING THE EVIDENCE PRESENTED WAS  
6 DIRECTED IN THAT DIRECTION, WE WOULD HAVE TO MAKE THE DECISION  
7 THAT WAY.

8 MR. BARENS: NO. WHATEVER EVIDENCE ARE YOU REFERRING  
9 TO, MR. BUSHNELL?

10 MR. BUSHNELL: WELL, I WOULD SAY THAT THE EVIDENCE THAT  
11 HE ACTUALLY DID COMMIT THE CRIME AND IT WAS WITHOUT A DOUBT  
12 AND WE WOULD HAVE TO MAKE A DECISION ON THAT.

13 MR. BARENS: WELL, WHAT I AM TELLING YOU MR. BUSHNELL,  
14 IS THAT YOU WILL NEVER HAVE TO CONSIDER THE ISSUE OF PENALTY.

15 MR. BUSHNELL: NO.

16 MR. BARENS: UNTIL YOU FIRST BELIEVE THAT YOU WOULD  
17 ALREADY -- YOU WOULD ALREADY HAVE BELIEVED THAT THE DEFENDANT  
18 INTENTIONALLY, PREMEDITATEDLY AND WITHOUT JUSTIFICATION, KILLED  
19 A HUMAN BEING DURING A ROBBERY.

20 NOW, THAT IS WHO WE HAVE GOT. YOU BELIEVE THAT  
21 BEYOND A REASONABLE DOUBT. NOW, IF THAT IS YOUR STATE OF MIND,  
22 BEFORE WE GET TO THE PENALTY PHASE, I ASK YOU SIR, IN ALL  
23 TRUTH, DURING THE PENALTY PHASE, WOULD ANYTHING MAKE A DIFFERENCE  
24 TO YOU OR WOULD YOU IN EVERY INSTANCE, GIVE THAT DEFENDANT  
25 THE DEATH PENALTY?

26 MR. BUSHNELL: WELL, ALL THINGS WOULD HAVE TO BE WEIGHED,  
27 WHAT WAS GIVEN IN THE WAY OF EVIDENCE AND PROOF, BEFORE YOU  
28 COULD COME UP WITH THE DEATH PENALTY, IN MY OPINION.



1 MR. BARENS: I DON'T QUITE FOLLOW YOU, SIR.

2 MR. BUSHNELL: WELL, IF YOU ARE ASKING ME ABOUT WHETHER  
3 I WOULD BE HESITANT ABOUT PUTTING THE DEATH PENALTY INTO  
4 ACTION, THE ONLY WAY I WOULD DO THAT IS DEPENDING UPON THE  
5 EVIDENCE PRESENTED TO ME, BEYOND PROOF THAT THE MAN DID IT,  
6 THE CRIME OF THAT NATURE.

7 MR. BARENS: ASSUMING YOU BELIEVE THAT HE COMMITTED A  
8 CRIME, SIR?

9 MR. BUSHNELL: WELL, SURE. IF HE -- I WOULDN'T SAY  
10 ASSUMPTION. I WOULD SAY THAT IT WOULD HAVE TO BE A FACT.

11 MR. BARENS: NO. IT IS A FACT IN YOUR MIND MR. BUSHNELL,  
12 BY THE TIME WE EVER GET TO THE PENALTY PHASE. IT WILL BE AN  
13 ESTABLISHED FACT IN YOUR MIND BEYOND A REASONABLE DOUBT THAT  
14 THE DEFENDANT IN FACT COMMITTED AN INTENTIONAL, FIRST DEGREE,  
15 PREMEDITATED AND UNJUSTIFIABLE MURDER. WE HAVE GOT THAT  
16 ESTABLISHED.

17 MR. BUSHNELL: RIGHT.

18 MR. BARENS: I ASK YOU SIR, ONCE THAT HAS BEEN ESTABLISHED  
19 IN YOUR MIND, WOULD IT BE A TRUE STATEMENT THAT YOU WOULD  
20 BELIEVE THAT THOSE DEFENDANTS SHOULD ALWAYS GET THE DEATH  
21 PENALTY? THAT IS THE ONLY APPROPRIATE PENALTY TO THOSE  
22 DEFENDANTS?

23

24

25

26

27

28

1 THE COURT: IRRESPECTIVE OF ANY TESTIMONY AS TO THE  
2 BACKGROUND --

3 MR. BUSHNELL: YES.

4 THE COURT: -- OF THE DEFENDANT AND SO FORTH?

5 MR. BUSHNELL: YES.

6 MR. BARENS: I AM NOT SAYING YOU ARE RIGHT OR WRONG  
7 ON THAT, SIR. I AM SAYING YOU ARE ABSOLUTELY ENTITLED TO  
8 THAT BELIEF.

9 AND THE DEFENSE WOULD RESERVE A MOTION. AND THANK  
10 YOU VERY MUCH, SIR.

11 THE COURT: ALL RIGHT.

12 MR. WAPNER: MR. BUSHNELL, LET ME SEE IF WE UNDERSTAND  
13 EACH OTHER AND IF YOU UNDERSTAND EXACTLY HOW THE LAW WORKS.

14 YOU UNDERSTAND WE HAVE A DEATH PENALTY IN CALIFORNIA?

15 MR. BUSHNELL: CORRECT.

16 MR. WAPNER: DO YOU UNDERSTAND THAT IF YOU GET TO THAT  
17 POINT OF THE TRIAL, IT WILL BE YOUR JOB, ALONG WITH 11 OTHER  
18 PEOPLE, TO DECIDE WHAT THE APPROPRIATE PUNISHMENT SHOULD BE?

19 MR. BUSHNELL: CORRECT.

20 MR. WAPNER: THE LAW IN THIS STATE IS SUCH THAT FOR  
21 CERTAIN CATEGORIES OF CRIMES, THE LEGISLATURE AND THE PEOPLE  
22 HAVE SAID THAT PEOPLE QUALIFY FOR THE DEATH PENALTY; DO YOU  
23 UNDERSTAND THAT?

24 MR. BUSHNELL: UH-HUH.

25 MR. WAPNER: YOU HAVE TO SAY YES OR NO.

26 MR. BUSHNELL: YES -- I'M SORRY -- YES.

27 MR. WAPNER: THAT DOESN'T MEAN THAT IF THE EVIDENCE  
28 PROVES THAT A PERSON IS GUILTY OF THAT CRIME, AUTOMATICALLY

9-2  
1 THEY GET THAT PUNISHMENT, DID YOU KNOW THAT?

2 MR. BUSHNELL: NO.

3 MR. WAPNER: WHAT IT MEANS IS THAT IF THE JURY DECIDES  
4 THAT THE PERSON COMMITTED A CRIME THAT FITS INTO THOSE  
5 CATEGORIES, THEN THE JURY HAS TO DECIDE WHETHER THAT PERSON  
6 SHOULD SPEND THE REST OF HIS LIFE IN PRISON WITHOUT THE  
7 POSSIBILITY OF PAROLE OR THE JURY HAS TO DECIDE WHETHER THAT  
8 PERSON SHOULD DIE IN THE GAS CHAMBER; DO YOU UNDERSTAND THAT?

9 MR. BUSHNELL: YES, I UNDERSTAND THAT.

10 MR. WAPNER: NOW, IF YOU ARE A JUROR IN THIS CASE, THE  
11 FIRST QUESTION YOU HAVE TO DECIDE IS WHETHER OR NOT THERE  
12 WAS AN INTENTIONAL MURDER DURING A ROBBERY; YOU UNDERSTAND  
13 THAT?

14 MR. BUSHNELL: YES, I UNDERSTAND.

15 MR. WAPNER: IF YOU ARE ON THIS CASE AND YOU HAVE ALREADY  
16 DECIDED THAT THERE WAS AN INTENTIONAL MURDER DURING THE COURSE  
17 OF A ROBBERY, YOU GET TO THE PENALTY PHASE; DO YOU UNDERSTAND  
18 THAT?

19 MR. BUSHNELL: YES.

20 MR. WAPNER: WHEN YOU GET TO THE PENALTY PHASE, THEN  
21 YOU AND 11 OTHER PEOPLE HEAR THE OTHER EVIDENCE, AS THE COURT  
22 HAS EXPLAINED TO YOU; DO YOU UNDERSTAND THAT?

23 MR. BUSHNELL: YES.

24 MR. WAPNER: IS YOUR STATE OF MIND NOW SUCH THAT ONCE  
25 YOU HAVE DECIDED THAT THERE WAS AN INTENTIONAL MURDER DURING  
26 A ROBBERY, YOU ARE NOT GOING TO LISTEN TO ANY EVIDENCE ON  
27 THE PENALTY PHASE?

28 MR. BUSHNELL: OH, NO.

9-3  
1 MR. BARENS: WELL, YOUR HONOR, THE DEFENSE OBJECTS TO  
2 THE EXPRESSION "NOT GOING TO LISTEN TO IT."

3 WHAT IS HE GOING TO DO, PUT HIS FINGERS IN HIS  
4 EARS?

5 MR. WAPNER: I WILL ELABORATE ON THAT.

6 THE COURT: GO AHEAD.

7 MR. WAPNER: WOULD YOU BE OPEN TO EITHER POSSIBLE  
8 PUNISHMENT AS WE STARTED THE GUILT PHASE, THAT IS, EITHER  
9 DEATH IN THE GAS CHAMBER OR LIFE IMPRISONMENT?

10 MR. BUSHNELL: YES.

11 MR. WAPNER: WOULD YOU HAVE ALREADY MADE UP YOUR MIND  
12 HOW YOU WERE GOING TO VOTE ON THE ISSUE OF THE DEATH PENALTY  
13 BEFORE YOU HEARD THE EVIDENCE ON THE PENALTY PHASE OF THE  
14 TRIAL?

15 MR. BUSHNELL: NO.

16 MR. WAPNER: SHOULD ALL MURDERERS -- LET ME START THAT  
17 AGAIN.

18 SHOULD ALL PEOPLE WHO COMMIT MURDERS DURING  
19 ROBBERIES, INTENTIONAL MURDERS DURING ROBBERIES BE TREATED  
20 THE SAME, REGARDLESS OF THE WAY THE CRIME WAS COMMITTED  
21 AND THE BACKGROUND OF THE PERSON WHO DID IT?

22 MR. BARENS: OBJECTION TO THE COMPOUND NATURE OF THE  
23 QUESTION.

24 THE COURT: I WILL SUSTAIN IT.

25 MR. BARENS: THE FIRST PART IS VERY MISLEADING.

26 MR. WAPNER: SHOULD ALL PEOPLE WHO COMMIT MURDERS DURING  
27 THE COURSE OF ROBBERIES BE TREATED THE SAME, REGARDLESS OF  
28 THE MANNER IN WHICH THE CRIME WAS COMMITTED?

9-4

1 MR. BUSHNELL: NO.

2 MR. WAPNER: SHOULD ALL PEOPLE WHO COMMIT INTENTIONAL  
3 MURDERS DURING ROBBERIES BE TREATED THE SAME, REGARDLESS OF  
4 THE BACKGROUND OF THAT PERSON?

5 MR. BUSHNELL: NO.

6 MR. WAPNER: FOR EXAMPLE, SHOULD A PERSON WHO COMMITS  
7 AN INTENTIONAL MURDER DURING THE COURSE OF A ROBBERY AND HAS  
8 DONE THAT THREE OR FOUR TIMES BEFORE AND BEEN CONVICTED OF  
9 IT, BE TREATED THE SAME AS A PERSON WHO COMMITS AN INTENTIONAL  
10 MURDER DURING THE COURSE OF A ROBBERY AND HAS NO CRIMINAL  
11 BACKGROUND AT ALL?

12 MR. BUSHNELL: I THINK THERE SHOULD BE SOME CONSIDERATION  
13 TAKEN TO THE BACKGROUND.

GA F  
14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

9A-1  
1 MR. WAPNER: WOULD YOU TAKE THAT INTO CONSIDERATION  
2 IN DECIDING WHAT THE APPROPRIATE PUNISHMENT SHOULD BE?

3 MR. BUSHNELL: IT IS A POSSIBILITY.

4 THE COURT: WELL, SUPPOSE I INSTRUCT YOU THAT YOU MUST  
5 CONSIDER BEFORE YOU DETERMINE WHAT THE PENALTY IS, THE  
6 BACKGROUND OF THE DEFENDANT, HIS AGE, HIS LACK OF ANY PRIOR  
7 CONVICTIONS, HIS EDUCATION, HIS PHYSICAL AND MENTAL CONDITION  
8 AND ALSO CONSIDER THE FACTS OF THE CRIME ITSELF AND ALSO  
9 CONSIDER ANY OTHER FAVORABLE ASPECTS OF IT BEFORE YOU MAKE  
10 UP YOUR MIND AS TO WHAT THE PENALTY WOULD BE?

11 MR. BUSHNELL: I SEE.

12 THE COURT: WOULD YOU DO THAT?

13 MR. BUSHNELL: YES, YES.

14 MR. WAPNER: WHAT DID YOU MEAN BEFORE WHEN YOU SAID  
15 "WE HAVE A LAW, IF THE EVIDENCE IS SUFFICIENT, THEN THAT IS  
16 HOW IT SHOULD GO"; COULD YOU EXPLAIN THAT TO ME.

17 MR. BUSHNELL: WHAT I WAS MEANING THERE, THAT THE DEATH  
18 PENALTY LAW IS IN FACT IN STATUS IN CALIFORNIA NOW AND IF  
19 THE EVIDENCE PRESENTED IS SUCH THAT THE DEFENDANT IS GUILTY  
20 AND IF THE EVIDENCE PRESENTS ITSELF THAT HE SHOULD BE GIVEN  
21 THE DEATH PENALTY, THAT IS WHAT SHOULD BE.

22 MR. WAPNER: OKAY, YOU MENTIONED TWO DIFFERENT THINGS.

23 IS IT SUFFICIENT IN YOUR MIND TO HAVE HIM PROVEN  
24 GUILTY OF THE CRIME IN ORDER FOR HIM TO -- THAT IS A BAD  
25 QUESTION.

26 THE COURT: YES.

27 MR. WAPNER: I DIDN'T LIKE THAT FROM THE BEGINNING.

28 THE COURT: START IT AGAIN.

9A-2  
1 MR. WAPNER: THANK YOU.

2 JUST BECAUSE HE IS FOUND GUILTY OF THE PARTICULAR  
3 CRIME ON THE GUILT PHASE AND THAT THAT CRIME IS IN THE CATEGORY  
4 OF CRIMES THAT QUALIFIES THE CASE FOR THE DEATH PENALTY, DOES  
5 THAT AUTOMATICALLY MEAN HE SHOULD GET THE DEATH PENALTY?

6 MR. BUSHNELL: NO.

7 MR. WAPNER: IF THE LAW IS THAT AFTER HE IS CONVICTED  
8 OF THE CRIME, THERE IS A SECOND PART OF THE CASE WHERE YOU  
9 LISTEN TO EVIDENCE AS TO WHAT THE CORRECT PUNISHMENT SHOULD  
10 BE, WOULD YOU LISTEN TO THAT EVIDENCE?

11 MR. BUSHNELL: ABSOLUTELY.

12 MR. WAPNER: WOULD YOU BE WILLING TO CONSIDER BOTH SIDES?

13 MR. BUSHNELL: YES.

14 MR. WAPNER: WOULD YOU BE ABLE TO CONSIDER LIFE  
15 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

16 MR. BUSHNELL: YES.

17 MR. WAPNER: WOULD YOU VOTE FOR LIFE IMPRISONMENT WITHOUT  
18 THE POSSIBILITY OF PAROLE IF YOU THOUGHT IT WAS THE APPROPRIATE  
19 PUNISHMENT?

20 MR. BUSHNELL: YES.

21 MR. WAPNER: ON THE OTHER HAND, WOULD YOU VOTE FOR THE  
22 DEATH PENALTY IF YOU THOUGHT THAT WAS THE APPROPRIATE  
23 PUNISHMENT?

24 MR. BUSHNELL: YES.

25 MR. WAPNER: THANK YOU.

26 MR. BARENS: I MIGHT WANT TO INQUIRE AGAIN OF THE JUROR,  
27 YOUR HONOR. I WISH TO.

28 THE COURT: GO AHEAD.

A-2  
1 MR. BARENS: DOES YOUR HONOR TAKE EXCEPTION AT THIS  
2 POINT?

3 THE COURT: YES. YOU HAVE EXHAUSTED ALL OF THE  
4 QUESTIONS THAT YOU WANT TO ASK. IF YOU WANT ME TO HEAR ARGUMENT  
5 I WILL HEAR ARGUMENT.

6 IF YOU HAVE ANY ADDITIONAL QUESTIONS TO ASK HIM,  
7 I WILL PERMIT YOU TO DO SO.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 MR. BUSHNELL, AS BRIEFLY AS I CAN PUT IT, MY  
10 CONCERN IS THAT I SEEM TO HAVE SOME CONFLICTING SIGNALS FROM  
11 YOU IN YOUR RESPONSES.

12 WHEN I LEFT OFF WITH YOU EARLIER, YOU TOLD ME  
13 THAT ALTHOUGH YOU WOULD CONSIDER THE EVIDENCE DURING THE  
14 PENALTY PHASE, THAT IT WAS YOUR POINT OF VIEW THAT WE SHOULD  
15 ALWAYS GIVE DEFENDANTS WHO WERE CONVICTED OF INTENTIONAL,  
16 FIRST DEGREE MURDERS THAT ARE UNJUSTIFIABLE AND JUST A BLACK  
17 HEART AND IT WAS COMMITTED DURING --

18 MR. WAPNER: THERE IS AN OBJECTION TO THE FORM OF THE  
19 QUESTION BECAUSE WHO --

20 THE COURT: I WILL SUSTAIN THE OBJECTION.

21 MR. WAPNER: THANK YOU.

22 MR. BARENS: YOU HAD TOLD ME EARLIER THAT IT WAS YOUR  
23 POINT OF VIEW THAT A DEFENDANT WHO WAS CONVICTED OF AN  
24 INTENTIONAL, FIRST DEGREE, PREMEDITATED MURDER DURING THE  
25 COURSE OF A ROBBERY, THAT THOSE DEFENDANTS WE SHOULD ALWAYS  
26 GIVE THE DEATH PENALTY; IS THAT WHAT YOU TOLD ME, SIR?

27 MR. BUSHNELL: I DON'T THINK THAT WAS MY INTENTION ON  
28 THAT.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MR. BARENS: I AM SORRY IF I MISUNDERSTOOD.

WHAT DID YOU MEAN IN THAT RESPONSE, SIR?

THE COURT: WELL, THAT IS ASSUMING THAT HE MADE THAT  
RESPONSE.

9A-4

9 F

1 MR. BARENS: I BELIEVE THE RECORD SHOULD REFLECT THAT  
2 WAS THE RESPONSE TO MY LAST QUESTION WHEN I RESERVED AT THAT  
3 POINT, YOUR HONOR. I WOULDN'T HAVE RESERVED, BUT FOR THAT  
4 RESPONSE, YOUR HONOR.

5 THE COURT: WELL, LET ME ASK THE QUESTION. ALL RIGHT.

6 MR. BARENS: YES, YOUR HONOR.

7 THE COURT: IS YOUR STATE OF MIND SUCH THAT IF YOU WERE  
8 ONE OF THE JURORS AND THE JURY CAME IN WITH A VERDICT OF  
9 MURDER DURING THE COURSE OF A ROBBERY, THAT IRRESPECTIVE OF  
10 WHAT THE TESTIMONY IS ON THE PENALTY PHASE OF IT, YOU WOULD  
11 VOTE TO IMPOSE THE DEATH PENALTY?

12 MR. BUSHNELL: NOT NECESSARILY, NO.

13 THE COURT: YOU WOULD LISTEN TO THE TESTIMONY?

14 MR. BUSHNELL: SURE, ABSOLUTELY.

15 THE COURT: GO AHEAD.

16 MR. BARENS: IS IT THEN POSSIBLE IN YOUR MIND, THAT EVEN  
17 THOUGH A PERSON WAS IN YOUR MIND, GUILTY BEYOND A REASONABLE  
18 DOUBT OF FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER DURING  
19 A ROBBERY, THAT YOU COULD VOTE FOR LIFE WITHOUT POSSIBILITY  
20 OF PAROLE FOR THAT DEFENDANT?

21 MR. BUSHNELL: YES.

22 MR. BARENS: YOU COULD CONSIDER THAT?

23 MR. BUSHNELL: SURE, YES.

24 MR. BARENS: MR. BUSHNELL, HAVE YOU READ OR SEEN ANYTHING  
25 ON TELEVISION OR IN ANY MEDIA ABOUT THIS CASE?

26 MR. BUSHNELL: I HAVE NOT.

27 MR. BARENS: HAVE YOU HEARD --

28 THE COURT: I ASKED THAT QUESTION.

1 MR. BARENS: YOUR HONOR HAD INQUIRED? I STAND CORRECTED.  
2 SORRY.

3 MR. BUSHNELL, YOU UNDERSTAND THAT ALTHOUGH I AM  
4 HERE TALKING TO YOU ABOUT THE DEATH PENALTY, THAT THERE IS  
5 NO REASON FOR YOU TO BELIEVE THAT MR. HUNT HAS DONE ANYTHING  
6 WRONG.

7 OR, DO YOU FEEL THAT HE MIGHT -- MUST HAVE DONE  
8 SOMETHING WRONG OR HE WOULDN'T BE HERE?

9 MR. BUSHNELL: WELL, APPARENTLY HE HAS DONE SOMETHING  
10 WRONG OR THERE WOULDN'T HAVE BEEN A TRIAL ON IT.

11 THE COURT: YOU MEAN YOU ARE DETERMINING HE HAS DONE  
12 SOMETHING WRONG? HE IS PRESUMED TO BE INNOCENT, AS YOU KNOW,  
13 UNTIL THE CONTRARY IS PROVED.

14 MR. BUSHNELL: WELL, THAT IS TRUE. YES, I UNDERSTAND.

15 THE COURT: ALL RIGHT. WELL, AS HE SITS THERE, HE IS  
16 PRESUMED TO BE INNOCENT. HE HAS NOT DONE ANYTHING WRONG. DO  
17 YOU UNDERSTAND THAT?

18 MR. BUSHNELL: YES.

19 THE COURT: I WANT TO DISABUSE YOUR MIND OF THAT. HE  
20 IS ONLY ACCUSED AS HE SITS THERE.

21 THIS MAN IS PRESUMABLY INNOCENT. DO YOU UNDERSTAND  
22 THAT?

23 MR. BUSHNELL: YES.

24 MR. BARENS: WELL, LET'S TRY TO SQUARE THAT, IF WE  
25 COULD.

26 MR. WAPNER: AGAIN, I HATE TO INTERRUPT COUNSEL. I  
27 DON'T THINK THIS IS THE APPROPRAITE TIME TO GO INTO THIS  
28 QUESTION.

1 MR. BARENS: WELL, I BELIEVE THE PRECEDENT CASES --  
2 THE COURT: NO. I DON'T THINK HIS ATTITUDE TOWARD THE  
3 DEATH PENALTY -- THIS DOESN'T DEAL WITH THOSE THINGS. HE IS  
4 SITTING HERE AND WE NEED TO EXAMINE HIS ATTITUDES ABOUT THE  
5 DEATH PENALTY. THIS HAS NOTHING TO DO WITH THE DEATH PENALTY.

6 MR. BARENS: WELL, LET ME MERELY INDICATE AS HIS HONOR  
7 HAS, AND CONFIRM WITH YOU, THAT YOU UNDERSTAND THAT ALTHOUGH  
8 PROCEDURALLY THE LAW OF THE STATE OF CALIFORNIA SAYS I HAVE  
9 TO ASK YOU ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY --

10 MR. BUSHNELL: CORRECT.

11 MR. BARENS: THAT THAT DOES NOT SUGGEST TO YOU IN ANY  
12 WAY, THAT EITHER THE JUDGE OR MYSELF OR THE PROSECUTOR IS  
13 SAYING THAT THERE IS ANY YOU KNOW, REASON FOR YOU TO BELIEVE  
14 HE HAS DONE ANYTHING WRONG, JUST BECAUSE WE ARE ASKING THESE  
15 QUESTIONS.

16 MR. BUSHNELL: YES. I UNDERSTAND.

17 MR. BARENS: THAT IT IS A PROCEDURAL REQUIREMENT AT THIS  
18 POINT. IT IS NOT EVIDENCE.

19 MR. BUSHNELL: RIGHT.

20 MR. BARENS: THANK YOU, SIR.

21 THE COURT: ALL RIGHT.

22 MR. BARENS: WE WOULD LIKE TO COMMENT TO THE COURT.

23 THE COURT: ALL RIGHT. WOULD YOU WAIT OUTSIDE JUST FOR  
24 ONE MINUTE PLEASE, MR. BUSHNELL.

25 (PROSPECTIVE JUROR BUSHNELL EXITS THE  
26 COURTROOM.)

27 THE COURT: YES?

28 MR. BARENS: WELL YOUR HONOR, WE HAVE GOT AN INCONSISTENT

1 JUROR. I AM SURE YOUR HONOR REALIZED THAT I WOULD NOT HAVE  
2 RESERVED A CHALLENGE, BUT FOR HIS AFFIRMATIVE RESPONSE IN  
3 TELLING ME -- AND I HAVE THE QUOTATION HERE. I ASKED HIM,  
4 "ALTHOUGH YOU WOULD CONSIDER THE EVIDENCE THAT WOULD BE GIVEN  
5 TO YOU DURING THE PENALTY PHASE, AS YOUR HONOR INSTRUCTED,  
6 WOULD YOU NONETHELESS ALWAYS GIVE THOSE DEFENDANTS THE DEATH  
7 PENALTY?" AND HE SAID, "YES."

8 EARLIER ON, HE SAID THAT IT IS THE LAW IN THE STATE  
9 AND IF THE EVIDENCE SHOWS HE IS GUILTY, WE WILL GIVE THAT  
10 DEFENDANT THE DEATH PENALTY. HE CONSISTENTLY EVIDENCED A STATE  
11 OF MIND THAT ALTHOUGH HE WOULD CONSIDER THE EVIDENCE OR LISTEN  
12 TO IT, I THINK WAS THE EXPRESSION, THAT WHEN HE GOT DOWN TO  
13 THAT, HE WOULD LISTEN TO THE EVIDENCE DURING THE PENALTY PHASE.

14 HE SAID THAT HE WOULD ALWAYS GIVE THOSE DEFENDANTS  
15 THE DEATH PENALTY. LATER ON, I WILL CONCEDE THAT THERE WAS  
16 SOME INCONSISTENCY IN HIS WILLINGNESS TO CONSIDER LIFE WITHOUT  
17 POSSIBILITY OF PAROLE. BUT YOUR HONOR, I BELIEVE IN A MORE  
18 CANDID FRAME OF MIND EARLIER ON, THIS JUROR WAS CONSISTENT  
19 IN SAYING THAT GUILT TO HIM, EQUATED THE NECESSITY FOR THE  
20 DEATH PENALTY. THERE WAS NO QUESTION IN MY MIND ABOUT THAT,  
21 YOUR HONOR.

22  
23  
24  
25  
26  
27  
28

10R-1

1 MR. WAPNER: YOUR HONOR, I DISAGREE WITH THAT TO THE  
2 EXTENT THAT IT SEEMED TO ME, THAT THE JUROR DIDN'T UNDERSTAND  
3 THAT A FINDING OF GUILT ALONE, WAS NOT SUFFICIENT FOR THE  
4 DETERMINATION OF THE PENALTY. IT SEEMED TO ME THAT ONCE HE  
5 WAS MADE AWARE THAT HE THEN HAD TO GO INTO THE PENALTY PHASE,  
6 THAT HE COULD AND THAT A FINDING OF SPECIAL CIRCUMSTANCES  
7 WAS NOT ALONE, SUFFICIENT FOR THE IMPOSITION OF THE DEATH  
8 PENALTY.

9 HE SAID THAT HE WOULD CONSIDER AND VOTE FOR BOTH  
10 PUNISHMENTS. BUT BEFORE THE COURT MAKES A DETERMINATION  
11 WHETHER WE SHOULD KEEP HIM, I WOULD LIKE TO ASK THE COURT  
12 TO MAKE A FACTUAL FINDING IN THAT REGARD, THAT THAT IS THE  
13 COURT'S OPINION ALSO.

14 IF NOT, IF THE COURT DOESN'T CONCUR WITH THAT  
15 OPINION, THEN I THINK THAT PERHAPS MR. BUSHNELL SHOULD BE  
16 EXCUSED.

17 THE COURT: WELL, I AM OF THE OPINION THAT HE WILL  
18 NOT AUTOMATICALLY VOTE FOR THE DEATH PENALTY, IRRESPECTIVE  
19 OF WHAT THE TESTIMONY WILL BE ON THE PENALTY PHASE. I WILL  
20 SAY THAT HE IS QUALIFIED. WOULD YOU BRING HIM IN, PLEASE?

21 (PROSPECTIVE JUROR BUSHNELL ENTERED THE  
22 COURTROOM.)

23 THE COURT: MR. BUSHNELL, THE COURT IS MAKING A RULING  
24 THAT YOU ARE QUALIFIED TO SIT AS A POSSIBLE JUROR IN THIS  
25 CASE. IN THAT EVENT, I WILL ASK YOU TO COME BACK TO THE JURY  
26 ASSEMBLY ROOM TOMORROW AFTERNOON AT 1:45. WILL YOU DO THAT,  
27 PLEASE?

28 MR. BUSHNELL: WILL DO.

10B-2  
1 THE COURT: IN THE MEANTIME, IF YOU HEAR ANYTHING ABOUT  
2 THIS CASE, DON'T READ IT OR DON'T LISTEN TO IT. ALL RIGHT?

3 MR. BUSHNELL: YES, SIR.

4 THE COURT: ALL RIGHT. THANK YOU.

5 (PROSPECTIVE JUROR BUSHNELL EXITED THE  
6 COURTROOM.)

7 (PROSPECTIVE JUROR LINDA CABELL ENTERED  
8 THE COURTROOM.)

9 THE COURT: IS IT CABELL-CABLE?

10 MS. CABELL: CABELL WAS MY REAL FATHER'S NAME. AND  
11 CABLE IS MY STEPFATHER'S NAME.

12 THE COURT: I SEE. IS THAT MISS?

13 MS. CABELL: MISS.

14 THE COURT: ALL RIGHT. MISS CABELL-CABLE --

15 MS. CABELL: YOU CAN JUST SAY CABELL.

16 THE COURT: ALL RIGHT. MS. CABLE, YOU HEARD YESTERDAY,  
17 MY INFORMATION ON THE NATURE OF THE CHARGE AGAINST THE DEFENDANT,  
18 THAT HE IS ACCUSED OF THE CRIME OF MURDER IN THE FIRST DEGREE  
19 AND THAT THE MURDER WAS COMMITTED DURING THE COURSE OF A  
20 ROBBERY.

21 BEING COMMITTED DURING THE COURSE OF A ROBBERY  
22 HAS SIGNIFICANCE IN THIS WAY, AS I EXPLAINED IT.

23 NOT EVERY MURDER, EVEN IF IT IS DELIBERATE AND  
24 PREMEDITATED, CALLS FOR THE DEATH PENALTY OR FOR LIFE  
25 WITHOUT POSSIBILITY OF PAROLE. IT IS ONLY THOSE MURDERS WHICH  
26 ARE COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES LIKE  
27 COMMITTED DURING THE COURSE OF A ROBBERY, A BURGLARY, A  
28 KIDNAPPING, A RAPE, OR TORTURE OR CHILD MOLESTATION AND THE

1 CHILD DIES -- ONLY IN THOSE INSTANCES TOGETHER WITH A NUMBER  
2 OF OTHERS THAT THE LEGISLATURE HAS SAID, DO THOSE THEN QUALIFY  
3 FOR A POSSIBLE DEATH PENALTY.

4 NOW, A DEATH PENALTY CONSISTS OF TWO THINGS. IT  
5 IS LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS  
6 CHAMBER. DO YOU UNDERSTAND THAT?

7 MS. CAMBELL: YES, SIR.

8 THE COURT: NOW, IF THE JURY SELECTED IN THIS CASE WILL  
9 FIRST HAVE TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT,  
10 WE CALL THAT THE GUILT PHASE. DID THE DEFENDANT COMMIT THIS  
11 MURDER AND WAS IT A MURDER IN THE FIRST DEGREE AND WAS IT  
12 COMMITTED-- IS IT TRUE OR FALSE THAT IT WAS COMMITTED DURING  
13 THE COURSE OF A ROBBERY.

14 THEN THAT WILL QUALIFY FOR A POSSIBLE DEATH PENALTY.  
15 DO YOU UNDERSTAND THAT?

16 MS. CAMBELL: YES, SIR.

17 THE COURT: OKAY. AND IF THEY SAY YES, IT IS TRUE THAT  
18 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY, THEN THE  
19 SAME JURY HEARS ADDITIONAL TESTIMONY. THE SECOND PHASE OF  
20 THE TRIAL IS KNOWN AS TO THE PENALTY PHASE. AND DURING THE  
21 PENALTY PHASE, TESTIMONY WILL BE ADDUCED BY THE DEFENDANT  
22 TO SHOW FAVORABLE THINGS ABOUT HIM, EXTENUATING CIRCUMSTANCES,  
23 MITIGATING CIRCUMSTANCES WHICH MITIGATE THE OFFENSE AND HIS  
24 BACKGROUND, HIS EDUCATION, HIS LACK OF ANY OTHER CRIMINAL  
25 ACTIVITIES AND ANYTHING THAT IS FAVORABLE TO HIM. THAT IS  
26 FOR THE PURPOSE OF CONVINCING THE JURORS THAT HE IS NOT SUCH  
27 A BAD PERSON AFTER ALL, THAT HE THEREFORE, SHOULD NOT SUFFER THE  
28 ULTIMATE PENALTY OF DEATH IN THE GAS CHAMBER.



1 THE PEOPLE ON THE OTHER HAND, WILL TRY TO SHOW  
2 UNFAVORABLE ASPECTS, WHATEVER IT WILL BE, FOR THE PURPOSE  
3 OF PERSUADING THE JURY THAT HE IS NOT A PERSON WHO SHOULD  
4 RECEIVE ANY CONSIDERATION ON THE QUESTION OF WHAT THE PENALTY  
5 IS THAT SHOULD BE IMPOSED UPON HIM.

6 DO YOU UNDERSTAND THAT?

7 MS. CAMBELL: YES, SIR.

8 THE COURT: WHAT I WILL DO IS, ASK YOU A SERIES OF  
9 QUESTIONS. WE ARE INTENDING TO EXPLORE YOUR MIND AS TO YOUR  
10 ATTITUDE AND YOUR FEELINGS ABOUT THE DEATH PENALTY. DO YOU  
11 UNDERSTAND THAT?

12 MS. CAMBELL: YES.

13 THE COURT: NOW, THE FIRST TWO QUESTIONS RELATE TO THE  
14 GUILT PHASE OF IT. DO YOU HAVE ANY OPINION REGARDING THE  
15 DEATH PENALTY, WHATEVER IT MAY BE, THAT WOULD PREVENT YOU  
16 FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE  
17 OF THE DEFENDANT?

18 MS. CAMBELL: I DO NOT.

19 THE COURT: ALL RIGHT. AND DO YOU REMEMBER THAT I TOLD  
20 YOU THAT YOU WILL HAVE TO ANSWER THE QUESTION, WAS IT COMMITTED  
21 DURING THE COURSE OF A ROBBERY? THOSE ARE THE SPECIAL  
22 CIRCUMSTANCES.

23 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY  
24 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
25 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

26 MS. CAMBELL: I DO NOT.

27 THE COURT: THE NEXT TWO QUESTIONS HAVE TO DO WITH THE  
28 PENALTY PHASE. DO YOU HAVE ANY OPINION CONCERNING THE DEATH

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

4 MS. CAMBELL: I DO NOT.

5 THE COURT: AND THE SAME THING WITH RESPECT TO LIFE  
6 WITHOUT POSSIBILITY OF PAROLE. DO YOU HAVE ANY OPINION  
7 CONCERNING THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY  
8 VOTE TO IMPOSE LIFE WITHOUT POSSIBILITY OF PAROLE, REGARDLESS  
9 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE  
10 OF THE TRIAL?

11 MS. CAMBELL: I DO NOT.

12 THE COURT: ALL RIGHT. DO YOU UNDERSTAND OF COURSE,  
13 THAT THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE  
14 IN THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY  
15 IN THE EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

16 MS. CAMBELL: YES, SIR.

17 THE COURT: ALL RIGHT. INCIDENTALLY, YOU HAVE NOT READ  
18 OR HEARD ANYTHING ABOUT THIS CASE?

19 MS. CAMBELL: NO.

20 THE COURT: THE NAME BILLIONAIRE BOYS CLUB OR JOE HUNT  
21 OR ANYTHING LIKE THAT DOESN'T MEAN ANYTHING TO YOU?

22 MS. CAMBELL: NO, SIR.

23 THE COURT: ALL RIGHT. I THINK WE WILL GIVE YOU A CHANCE  
24 TO GO TO LUNCH. YOU COME BACK THIS AFTERNOON. WHAT TIME?

25 MR. BARENS: I HAVE TO GO TO THE HOSPITAL ON A MATTER,  
26 YOUR HONOR, INVOLVING MY OFFICE MANAGER'S MOTHER, WHO HAS  
27 HAD A STROKE.

28 I WOULD LIKE TO HAVE 1:45 AT THE EARLIEST,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT. THAT WILL BE 1:45. PLEASE COME  
3 BACK AT 1:45, THANK YOU.

4 MR. WARNER: COULD YOU JUST ASK MS. CAMBELL WHERE SHE  
5 LIVES?

6 THE COURT: YES. WHERE DO YOU LIVE?

7 MS. CAMBELL: AGOURA.

8 THE COURT: THANK YOU VERY MUCH.

9  
10 CAT 12:02 P.M. A RECESS WAS TAKEN  
11 UNTIL 1:45 P.M. OF THE SAME DAY.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 6, 1986; 1:55 P.M.  
2 DEPARTMENT EST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: ALL RIGHT, COUNSEL AND THE DEFENDANT ARE  
6 PRESENT.

7 (PROSPECTIVE JUROR LINDA CAMPBELL  
8 ENTERS THE COURTROOM.)

9 THE COURT: GOOD AFTERNOON.

10 ALL RIGHT, YOU MAY INQUIRE.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 GOOD AFTERNOON, MISS CAMPBELL.

13 MS. CAMPBELL: HI.

14 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE  
15 DEFENDANT, JOE HUNT, IN THIS MATTER, AND AS WITH HIS HONOR,  
16 IT IS MY OBLIGATION AND DUTY AT THIS POINT TO ASK YOU ABOUT  
17 YOUR POINT OF VIEW ON THE DEATH PENALTY.

18 NOW PARENTHETICALLY, LET ME INDICATE THAT THERE  
19 ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NO ONE IN  
20 THIS COURTROOM IS GOING TO BE JUDGING ANY OF YOUR ANSWERS.  
21 YOU CAN NEVER BE WRONG ABOUT YOUR OWN OPINION AND THAT IS ALL  
22 I AM SEEKING HERE, OKAY?

23 MS. CAMPBELL: YES, SIR.

24 MR. BARENS: ALL RIGHT, HOW DO YOU FEEL ABOUT THE DEATH  
25 PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

26 MS. CAMPBELL: IT IS KIND OF HARD TO ANSWER. I FEEL  
27 THAT IT DEPENDS ON THE INDIVIDUAL CASE, I REALLY DO.

28 THERE IS NO EASY ANSWER TO THAT QUESTION.

1-2

1 MR. BARENS: ARE THERE ANY INSTANCES OR CIRCUMSTANCES  
2 IN WHICH YOU FEEL THE DEATH PENALTY IS THE APPROPRIATE  
3 REMEDY OR APPROPRIATE PUNISHMENT?

4 MS. CAMPBELL: OFFHAND, I WOULD HAVE TO SAY NO. I WOULD  
5 BE AGAINST --

6 I AM SORRY. I AM A LITTLE NERVOUS TALKING IN FRONT  
7 OF A BUNCH OF PEOPLE.

8 IT WOULD DEPEND ON THE CIRCUMSTANCES THAT LED UP  
9 TO IT, TO, YOU KNOW. WHATEVER HAPPENED.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2-1

1 MR. BARENS: THERE ARE TWO SETS OF CIRCUMSTANCES WE ARE  
2 TALKING ABOUT, HERE. LET ME MAKE SURE WE ARE PROPERLY FOCUSED  
3 ON THE ONE WE WANT TO ADDRESS.

4 THE FIRST SET OF CIRCUMSTANCES ARE GUILT CIRCUM-  
5 STANCES, CIRCUMSTANCES INVOLVING WHETHER OR NOT THE DEFENDANT  
6 IS IN THE FIRST INSTANCE, GUILTY OF HAVING COMMITTED A FIRST  
7 DEGREE, PREMEDITATED, INTENTIONAL MURDER.

8 NOW, WE'LL NEVER GET TO THIS PENALTY QUESTION  
9 UNLESS YOU AND -- IF YOU ARE A JUROR AND THE OTHER JURORS  
10 BELIEVE BEYOND A REASONABLE DOUBT THAT, IN FACT, THE DEFENDANT  
11 COMMITTED AN INTENTIONAL, PREMEDITATED MURDER DURING A ROBBERY.

12 NOW, THAT SET OF CIRCUMSTANCES, LET'S CALL THOSE  
13 THE GUILT CIRCUMSTANCES. NOW, JUST STOPPING THERE FOR A  
14 MOMENT, WE ARE GOING TO GET TO THE PENALTY SET OF CIRCUMSTANCES  
15 IN A MOMENT.

16 BUT IF YOU WERE CONVINCED BEYOND A REASONABLE DOUBT  
17 THAT THE DEFENDANT HAD COMMITTED A FIRST DEGREE, INTENTIONAL,  
18 PREMEDITATED MURDER, WOULD YOU FEEL THAT THE ONLY WAY TO DEAL  
19 WITH OR TO PUNISH PROPERLY A DEFENDANT UNDER THOSE CIRCUMSTANCES,  
20 WOULD BE TO GIVE HIM THE DEATH PENALTY?

21 THE COURT: WITHOUT HEARING ANY OF THE --

22 MR. BARENS: WITHOUT HEARING --

23 THE COURT: WITHOUT HEARING ANYTHING ELSE?

24 MR. BARENS: YES, YOUR HONOR. QUITE SO.

25 AS I MENTIONED MISS CAMPBELL, I WILL COME TO THE  
26 SECOND SET OF CIRCUMSTANCES IN A MOMENT.

27 MS. CAMPBELL: WITHOUT HEARING ANY TESTIMONY AT ALL?

28 MR. BARENS: NOW, YOU HEARD TESTIMONY THAT HE COMMITTED

1 A CRIME AND YOU BELIEVED THAT IT WAS COMMITTED -- IT WAS A  
2 FIRST DEGREE MURDER DURING A ROBBERY.

3 MS. CAMPBELL: I WOULD HAVE TO REALLY SEARCH LONG AND  
4 HARD TO DECIDE ON IT ON A DEATH PENALTY CASE.

5 BUT I WOULD BE CAPABLE OF DOING SO, IF I REALLY  
6 FELT IT WAS NECESSARY.

7 MR. BARENS: WOULD IT BE A FAIR STATEMENT, THEN, THAT  
8 YOU WOULD NEED TO HEAR EVIDENCE IN THAT SECOND PHASE, THE  
9 PENALTY PHASE, CONCERNING THE DEFENDANT'S AGE AT THE TIME THE  
10 CRIME WAS ALLEGEDLY COMMITTED AND WHETHER OR NOT HE HAD A  
11 CRIMINAL BACKGROUND, BEFORE THIS INCIDENT AND ANY EVIDENCE  
12 OF HIS CHARACTER BEFORE YOU COULD MAKE THAT DECISION?

13 MS. CAMPBELL: I BELIEVE THAT WOULD BE HELPFUL, YES.

14 MR. BARENS: OKAY. IS IT A TRUE STATEMENT THEN, THAT  
15 YOU WOULD WANT TO KNOW SOMETHING ABOUT THE DEFENDANT OTHER  
16 THAN THE FACT THAT HE HAD COMMITTED THE CRIME, BEFORE YOU  
17 WOULD DETERMINE HOW HE SHOULD BE SENTENCED?

18 MS. CAMPBELL: YES.

19 MR. BARENS: OKAY. THAT'S THE KIND OF JUROR I THINK  
20 WE ARE LOOKING FOR HERE, THAT YOU WOULD REALLY LISTEN AND  
21 CONSIDER ALL OF THE EVIDENCE BEFORE MAKING THE DECISION.

22 MS. CAMPBELL: I HOPE THAT I WOULD BE ABLE TO DO IT.

23 MR. BARENS: NOW, DO YOU UNDERSTAND THAT LIFE WITHOUT  
24 POSSIBILITY OF PAROLE REALLY MEANS THAT TODAY IN CALIFORNIA?

25 MS. CAMPBELL: I WAS NOT AWARE OF THAT.

26 MR. BARENS: OKAY. I REALIZE THAT A LOT OF PEOPLE HAVE  
27 KIND OF A LINGERING DOUBT AT THE MINIMUM, THAT WHEN LAWYERS  
28 SAY THAT, THAT IT IS TRUE.

12-3

1                   BUT HIS HONOR WILL TELL YOU AND I BELIEVE MENTION  
2 DURING HIS QUESTIONING OF YOU, THAT LIFE WITHOUT POSSIBILITY  
3 OF PAROLE TODAY MEANS LITERALLY THAT, THE DEFENANT CAN NEVER,  
4 EVER, EVER QUALIFY FOR OR BE ELIGIBLE FOR PAROLE AT ANY TIME.  
5 DO YOU UNDERSTAND THAT?

6           MS. CAMPBELL: YES.

7           MR. BARENS: AND YOU WOULD ACCEPT THAT IF THE COURT TELLS  
8 YOU THAT?

9           MS. CAMPBELL: I WOULD ACCEPT THAT IF THE COURT TOLD  
10 ME THAT.

11           MR. BARENS: ALL RIGHT. NOW, ALTHOUGH HIS HONOR  
12 REFERRED TO SOME 19 CATEGORIES THAT THE STATE LEGISLATURE HAS  
13 CREATED WHEREBY A DEFENDANT CAN BECOME ELIGIBLE FOR THE DEATH  
14 PENALTY, DO YOU UNDERSTAND THAT NONE OF THOSE 19 CATEGORIES  
15 IN A MATTER OF FACT, UNDER NO SECTION OF OUR LEGAL SYSTEM,  
16 IS IT EVER MANDATORY THAT A DEFENDANT GETS THE DEATH PENALTY?

17           MS. CAMPBELL: SORRY. WOULD YOU REPEAT THE FIRST PART  
18 OF THAT?

13

19  
20  
21  
22  
23  
24  
25  
26  
27  
28



13-1

1 MR. BARENS: DO YOU UNDERSTAND THAT ALTHOUGH THE  
2 LEGISLATURE HAS CREATED 19 CATEGORIES WHERE A DEFENDANT CAN  
3 QUALIFY FOR THE DEATH PENALTY, THAT NONE OF THEM ARE MANDATORY?

4 MS. CAMBELL: OKAY. I DID NOT REALIZE THAT.

5 MR. BARENS: WELL, I WANT TO MAKE SURE YOU REALIZE THAT  
6 ALTHOUGH A JURY --

7 THE COURT: WHAT HE MEANS IS THAT THE JURY DETERMINES  
8 IN EVERY SINGLE CASE WHAT PENALTY SHOULD BE IMPOSED. IT IS  
9 NOT MANDATORY. IN OTHER WORDS, THEY ARE NOT FORCED TO COME  
10 TO ANY SUCH CONCLUSION IF THEY DON'T WANT TO.

11 MS. CAMBELL: OKAY, I UNDERSTAND.

12 MR. BARENS: THANK YOU, YOUR HONOR. THAT IS PRECISELY  
13 MY POINT.

14 NOW, DO YOU HAVE ANY BELIEF IN YOUR MIND THAT  
15 MR. HUNT MUST HAVE DONE SOMETHING WRONG OR WE WOULDN'T BE  
16 HERE TALKING ABOUT THE DEATH PENALTY?

17 MS. CAMBELL: THAT IS A TOUGH ONE TO ANSWER.

18 I REALLY BELIEVE THAT ONE IS INNOCENT UNTIL THEY  
19 ARE ABSOLUTELY PROVEN GUILTY.

20 I HAVE GROWN UP WITH --

21 MR. BARENS: THANK YOU VERY MUCH. THAT IS THE POINT  
22 I WANTED TO MAKE, MRS. CAMBELL. THANK YOU FOR YOUR TIME.

23 WE PASS FOR CAUSE, YOUR HONOR.

24 THE COURT: YOU KNOW THAT IS WHAT WE TALK ABOUT, THE  
25 PRESUMPTION OF INNOCENCE, HE IS PRESUMED TO BE INNOCENT UNTIL  
26 HE IS PROVEN GUILTY BEYOND A REASONABLE DOUBT; YOU MEAN THAT,  
27 DON'T YOU?

28 MS. CAMBELL: YES, SIR.

1 THE COURT: ALL RIGHT, I THOUGHT YOU DID.

2 MR. WAPNER: GOOD AFTERNOON, MS. CABELL. I AM FRED  
3 WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS  
4 CASE.

5 WHAT WAS THE VERY LAST WORD OR THE WORDS IN THAT  
6 ANSWER? I BELIEVE YOU SAID ABSOLUTELY PRESUMED INNOCENT UNTIL  
7 PROVEN GUILTY AND THEN THERE WAS ANOTHER WORD THAT I DIDN'T  
8 HEAR.

9 MS. CABELL: I BELIEVE WHAT I SAID WAS, I BELIEVE THAT  
10 A PERSON IS INNOCENT UNTIL THEY ARE ABSOLUTELY PROVEN GUILTY.

11 THE COURT: WELL, THERE IS NO ABSOLUTE GUILT, YOU SEE.

12 THEY ARE PROVEN GUILTY BEYOND A REASONABLE DOUBT.

13 MS. CABELL: BEYOND A REASONABLE DOUBT.

14 THE COURT: IT IS NOT BEYOND ANY DOUBT BUT IT IS BEYOND  
15 A REASONABLE DOUBT.

16 MS. CABELL: BEYOND A REASONABLE DOUBT.

17 I AM SORRY.

18 I MEANT WHAT HE SAID. IT JUST DOESN'T ALWAYS  
19 COME OUT LIKE THAT.

20 MR. WAPNER: OKAY.

21 MS. CABELL: I AM A LITTLE NERVOUS.

22 MR. WAPNER: OF COURSE. I UNDERSTAND THAT.

23 THE STANDARD THAT THE JUDGE JUST TALKED ABOUT,  
24 THAT IS PROOF BEYOND A REASONABLE DOUBT IS THE SAME IN ALL  
25 CRIMINAL CASES, WHETHER IT IS A DEATH PENALTY CASE, A MURDER  
26 CASE OR A DRUNK DRIVING CASE.

27 WOULD YOU SOMEHOW ELEVATE THAT BURDEN OF PROOF  
28 TO ABSOLUTE PROOF BECAUSE YOU KNOW THAT THE DEATH PENALTY

1 IS INVOLVED?

2 MS. CAMBELL: WELL, I THINK BECAUSE THE DEATH PENALTY  
3 IS INVOLVED THAT YOU HAVE TO TAKE THAT INTO CONSIDERATION.  
4 YOU JUST CAN'T GO -- WELL, YEAH, A PERSON --

5 THE COURT: I JUST GOT THROUGH TELLING YOU THAT IN EVERY  
6 CRIMINAL CASE, IT DOESN'T MAKE ANY DIFFERENCE WHETHER IT IS  
7 A DRUNK DRIVING CASE OR RUNNING A RED LIGHT OR A MURDER IN  
8 THE FIRST DEGREE CASE WHERE THERE ARE SPECIAL CIRCUMSTANCES,  
9 THE LAW IS THE SAME FOR A DEFENDANT, IN ORDER TO BE CONVICTED  
10 OF BEING UNDER THE INFLUENCE OF DRIVING AN AUTOMOBILE, BEFORE  
11 HE CAN BE CONVICTED OF MURDER IN THE FIRST DEGREE WITH SPECIAL  
12 CIRCUMSTANCES WARRANTING THE DEATH PENALTY, THE RULE IS  
13 EXACTLY THE SAME IN BOTH CASES, THAT HE MUST BE PROVED GUILTY  
14 BEYOND A REASONABLE DOUBT AND NOT ANYTHING MORE. THE TWO  
15 ARE EXACTLY THE SAME.

16 MS. CAMBELL: UH-HUH.

17 THE COURT: YOU CAN'T GET ANY MORE PROOF IN ONE CASE  
18 THAN YOU DO IN ANOTHER. BY PROOF, I MEAN BEYOND A REASONABLE  
19 DOUBT. IN OTHER WORDS, IT CAN'T BE BEYOND ANY DOUBT.

20 MS. CAMBELL: UH-HUH.

21 THE COURT: IT IS A REASONABLE DOUBT IN BOTH CASES,  
22 WHETHER IT IS A DRUNK DRIVING CASE OR WHETHER IT IS A MURDER  
23 CASE; DO YOU UNDERSTAND?

24 MS. CAMBELL: I THINK SO.

25 THE COURT: THE RULE IS EXACTLY THE SAME.

26 MS. CAMBELL: OKAY.

27 THE COURT: ALL RIGHT.

28 MR. WAPNER: OKAY, LET ME GIVE YOU A HYPOTHETICAL

1 SITUATION. YOU ARE SITTING ON A MURDER CASE AND AS FAR AS  
2 YOU KNOW THERE IS NO DEATH PENALTY INVOLVED, OKAY? AND YOU  
3 HAVE HEARD ALL OF THE EVIDENCE AND YOU GO BACK INTO THE JURY  
4 ROOM TO DELIBERATE AND THE JUDGE HAS TOLD YOU THAT IN ORDER  
5 TO FIND THE DEFENDANT GUILTY YOU MUST -- THE PROOF MUST BE  
6 BEYOND A REASONABLE DOUBT -- AND SO YOU LISTEN TO ALL OF THE  
7 EVIDENCE AND YOU DISCUSS IT WITH THE OTHER JURORS AND YOU  
8 DECIDE IN YOUR OWN MIND THAT THE PROOF IS BEYOND A REASONABLE  
9 DOUBT AND THE OTHER 11 PEOPLE AGREE WITH YOU AND YOU ARE ABOUT  
10 TO RENDER YOUR VERDICT WHEN SOMEONE COMES INTO THE JURY ROOM --  
11 BY THE WAY, THIS WOULD NEVER HAPPEN -- AND TELLS YOU THAT  
12 IF YOU FIND THE PERSON GUILTY, THE CASE COULD INVOLVED THE  
13 DEATH PENALTY. WOULD YOU THINK THAT THAT WOULD CHANGE THE  
14 AMOUNT OF PROOF THAT IS REQUIRED? WOULD YOU CHANGE YOUR MIND  
15 AND SAY "WELL, MAYBE THAT HAS NOT BEEN PROVEN BEYOND A  
16 REASONABLE DOUBT"?

17 MS. CAMBELL: I BELIEVE THAT IF I BELIEVED IN MY HEART  
18 THAT IT WAS PROVED BEYOND A REASONABLE DOUBT THAT I WOULD  
19 HAVE TO CARRY OUT THAT VERDICT, YES, THAT DECISION OF MINE.

20 MR. WAPNER: REGARDLESS OF WHAT THE PUNISHMENT WAS?

21 MS. CAMBELL: REGARDLESS OF WHAT THE PUNISHMENT IS,  
22 I WOULD HOPE I WOULD BE ABLE TO DO THAT WITH A CLEAR HEART  
23 AND CONSCIENCE.

24 MR. WAPNER: THE JUDGE WILL TELL YOU AT THE END OF THE  
25 GUILT PHASE OF THE TRIAL BEFORE YOU GO IN TO DELIBERATE THAT  
26 YOU CAN'T CONSIDER PENALTY OR PUNISHMENT; DO YOU UNDERSTAND  
27 THAT?

28 MS. CAMBELL: NO, I DO NOT.

14-1

1 MR. WAPNER: KEEP IN MIND THAT WE HAVE TWO PARTS OF THE  
2 TRIAL, THE GUILT PART AND THE PENALTY PART. WHEN YOU ARE  
3 DECIDING WHETHER THE DEFENDANT IS GUILTY OR NOT, THE JUDGE  
4 IS GOING TO TELL YOU THAT YOU CAN'T THINK ABOUT WHAT THE  
5 PUNISHMENT IS. DO YOU UNDERSTAND THAT?

6 MS. CAMPBELL: YES.

7 MR. WAPNER: THAT IS KIND OF TANTAMOUNT TO A REFEREE  
8 AT A FOOTBALL GAME, NOT BEING ABLE TO MAKE HIS DECISION ON  
9 WHETHER THERE IS A PENALTY OR NOT, DEPENDING UPON WHETHER ONE  
10 TEAM WILL GO TO THE SUPER BOWL OR NOT, BASED ON HIS DECISION.  
11 DO YOU UNDERSTAND THAT?

12 MS. CAMPBELL: YES.

13 MR. WAPNER: OKAY. AND IF HE TELLS YOU DURING THE  
14 GUILT PART OF THE CASE, THAT YOU CAN'T THINK ABOUT WHAT THE  
15 PUNISHMENT IS, COULD YOU FOLLOW THAT INSTRUCTION?

16 MS. CAMPBELL: I BELIEVE SO.

17 MR. WAPNER: OKAY. WHEN YOU GET TO THE PENALTY PART  
18 OF THE TRIAL, IF YOU GET TO THAT POINT, YOUR JOB WOULD BE TO  
19 FIRST OF ALL, LISTEN TO ALL OF THE EVIDENCE ON BOTH SIDES AND  
20 SECOND OF ALL, TO DECIDE WHETHER THE PUNISHMENT SHOULD BE  
21 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS  
22 CHAMBER.

23 AND THOSE WOULD BE YOUR ONLY CHOICES IF YOU GOT  
24 TO THAT POINT. DO YOU UNDERSTAND THAT?

25 MS. CAMPBELL: YES.

26 MR. WAPNER: IF YOU WERE FORCED TO CHOOSE BETWEEN THOSE  
27 TWO THINGS, DO YOU THINK THAT IS A DECISION YOU ARE CAPABLE  
28 OF MAKING?

4-2

1 MS. CAMPBELL: I BELIEVE SO.

2 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,  
3 MORAL OR PHILOSOPHICAL BELIEFS THAT WOULD GET IN THE WAY OF  
4 YOUR MAKING A DECISION BASED ON THE FACTS AND THE LAW?

5 MS. CAMPBELL: I DO NOT.

6 MR. WAPNER: HAVE YOU GIVEN MUCH THOUGHT TO THE QUESTION  
7 OF THE DEATH PENALTY BEFORE YOU CAME INTO COURT?

8 MS. CAMPBELL: I HAD NOT.

9 MR. WAPNER: IF YOU SAT THROUGH THE WHOLE CASE AND YOU  
10 BELIEVED THERE WAS PROOF BEYOND A REASONABLE DOUBT THAT THE  
11 DEFENDANT WAS GUILTY, THAT THE MURDER OCCURRED DURING A  
12 ROBBERY AND YOU BELIEVED THAT THE APPROPRIATE PUNISHMENT WAS  
13 DEATH, ARE YOU CAPABLE OF RENDERING THAT VERDICT?

14 MS. CAMPBELL: IT WOULD BE HARD. BUT I BELIEVE I WOULD  
15 BE ABLE TO.

16 MR. WAPNER: OKAY. TELL ME WHY YOU THINK IT WOULD BE  
17 HARD, OTHER THAN THE OBVIOUS?

18 MR. BARENS: WELL, I OBJECT.

19 THE COURT: YOU DON'T HAVE TO ANSWER THAT QUESTION.  
20 IT IS OBVIOUS, ISN'T IT?

21 MR. WAPNER: WELL, IF THERE IS ANYTHING THAT IS NOT --

22 THE COURT: THAT IS OBVIOUS. TO MAKE A DECISION TO SEND  
23 SOMEBODY TO THE GAS CHAMBER, IS A VERY HARD DECISION TO MAKE.

24 MR. WAPNER: NO QUESTION ABOUT IT.

25 THE COURT: ALL RIGHT. THEN WHY ASK THE QUESTION?

26 MR. WAPNER: DO YOU UNDERSTAND THAT IF YOU GET TO THAT  
27 POINT OF THE CASE, THAT ALTHOUGH THERE WILL BE 11 OTHER  
28 PEOPLE IN THE JURY ROOM, THAT IS A DECISION THAT YOU HAVE TO

14-3  
1 MAKE AS AN INDIVIDUAL?

2 MS. CAMPBELL: YES, I DO.

3 MR. WAPNER: DO YOU HAVE ANY VIEWS ABOUT WHETHER THAT  
4 SUBJECT -- THAT YOU THINK WOULD AFFECT YOUR DECISION THAT YOU  
5 HAVE NOT TOLD US ABOUT?

6 MS. CAMPBELL: NO, I DO NOT.

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

8 MR. BARENS: PASS FOR CAUSE.

9 THE COURT: BOTH SIDES AGREE, AS DOES THE JUDGE, THAT  
10 YOU QUALIFY TO SIT ON THIS CASE AS A TRIAL JUROR IF YOU ARE  
11 SELECTED. SO WHAT I WILL DO IS ASK YOU TO COME BACK --

12 MR. BARENS: I DOUBT THAT --

13 THE COURT: WELL AT ANY RATE, COME BACK IN ANY EVENT  
14 TOMORROW AFTERNOON AT 1:45 TO THE JURY ASSEMBLY ROOM. MEET  
15 THE OTHER JURORS AND WE'LL GET YOU BACK HERE. OKAY? THANK  
16 YOU VERY MUCH.

17 OF COURSE, I DON'T THINK THERE IS ANY CHANCE OF  
18 YOUR READING ANYTHING ABOUT THE CASE OR SEEING ANYTHING ON  
19 TELEVISION OR HEARING IT ON THE RADIO, BUT TURN IT OFF IF YOU  
20 HAPPEN TO HEAR. WILL YOU DO THAT?

21 MS. CAMPBELL: YES.

22 THE COURT: SEE YOU TOMORROW.

23 MS. CAMPBELL: OKAY.

24 (PROSPECTIVE JUROR CAMPBELL EXITS THE  
25 COURTROOM.)

26 (PROSPECTIVE JUROR CHAFFEE ENTERS  
27 THE COURTROOM.)

28 THE COURT: IS IT CHAFFEE?

1 MS. CHAFFEE: YES.

2 THE COURT: IS IT MISS OR MRS.?

3 MS. CHAFFEE: MRS.

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

5 MS. CHAFFEE: I LIVE IN LOS ANGELES.

6 THE COURT: BEFORE YOU CAME TO COURT YESTERDAY, DID YOU  
7 EVER HEAR ANYTHING AT ALL ABOUT THIS CASE OR SINCE THAT TIME?

8 MS. CHAFFEE: NO, I DID NOT.

9 THE COURT: EXCEPT WHAT I TOLD YOU HERE?

10 MS. CHAFFEE: THAT'S CORRECT.

11 THE COURT: AND THE NAME BILLIONAIRE BOYS CLUB OR JOE  
12 HUNT OR ANYTHING DOESN'T RING A BELL WITH YOU?

13 MS. CHAFFEE: NO.

14 THE COURT: ALL RIGHT. WOULD YOU TELL US WHERE YOU LIVE?

15 MS. CHAFFEE: I WOULD RATHER NOT GIVE MY ADDRESS.

16 THE COURT: NOT YOUR ADDRESS. I JUST WANT TO KNOW --

17 MS. CHAFFEE: LOS ANGELES, CALIFORNIA.

18 THE COURT: ALL RIGHT. DO YOU REMEMBER YESTERDAY I TOLD  
19 YOU SOMETHING ABOUT THE CASE?

20 MS. CHAFFEE: YES.

21 THE COURT: LET ME REPEAT IT BRIEFLY. THE CHARGE AGAINST  
22 THE DEFENDANT IS THAT HE COMMITTED A MURDER. A MURDER WAS  
23 COMMITTED DURING THE COURSE OF A ROBBERY.

24 MS. CHAFFEE: UH-HUH.

25 THE COURT: AND IN THE COURSE OF A ROBBERY HAS SPECIAL  
26 SIGNIFICANCE IN THIS CASE BECAUSE THE LEGISLATURE HAS SAID  
27 THAT EVEN IF A MURDER IS COMMITTED DELIBERATELY AND  
28 PREMEDITATEDLY AND INTENTIONALLY, BY ITSELF, DOESN'T CALL FOR



1 THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE.

2 THAT MURDER MUST BE COMMITTED UNDER CERTAIN SPECIAL  
3 CIRCUMSTANCES LIKE FOR EXAMPLE, IN THIS PARTICULAR CASE,  
4 COMMITTED DURING THE COURSE OF A ROBBERY OR A BURGLARY OR  
5 KIDNAPPING OR RAPE OR TORTURE.

6 THE LEGISLATURE HAS GIVEN US ANY NUMBER OF  
7 INSTANCES WHERE, IF A MURDER IS COMMITTED UNDER THOSE SPECIAL  
8 CIRCUMSTANCES, THEN THE CASE QUALIFIES FOR A POSSIBLE DEATH  
9 PENALTY.

10 MS. CHAFFEE: RIGHT.

11 THE COURT: ALL RIGHT. SO THE JURY WHICH WILL BE  
12 IMPANELED IN THIS CASE TO TRY THIS CASE, WILL FIRST HAVE TO  
13 DETERMINE WHAT WE CALL THE GUILT PHASE, IS THE DEFENDANT GUILTY  
14 OR NOT GUILTY ON THE MURDER IN THE FIRST DEGREE?

15 IF THEY SAY THAT HE WAS GUILTY OF MURDER IN THE  
16 FIRST DEGREE, THEN THEY HAVE TO MAKE A SPECIAL FINDING, IS  
17 IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED DURING THE COURSE  
18 OF A ROBBERY.

19 MS. CHAFFEE: UH-HUH.

20 THE COURT: IF THEY SAY IT IS TRUE, THEN WE COME TO WHAT  
21 WE CALL THE SECOND PHASE. ALL RIGHT?

22 MS. CHAFFEE: YES.

23 THE COURT: NOW, THE SECOND PHASE -- YOU REMEMBER IN  
24 THE FIRST PHASE HOWEVER, THE QUESTION OF PENALTY OR PUNISHMENT  
25 IS NOT TO BE DISCUSSED. IT DOESN'T COME INTO QUESTION AT ALL.  
26 IT IS ONLY UNTIL AFTER THE JURY HAS FOUND THE DEFENDANT GUILTY  
27 OF MURDER IN THE FIRST DEGREE AND IT WAS IN THE COURSE OF A  
28 ROBBERY, THAT THEN, THEY COME TO WHAT IS KNOWN AS THE PENALTY

1 PHASE, WHAT PENALTY SHOULD BE IMPOSED UPON HIM, YOU SEE.

2 NOW, THE PENALTY IN CALIFORNIA IS ONE OF TWO THINGS,  
3 EITHER LIFE WITHOUT POSSIBILITY OF PAROLE AND THAT MEANS  
4 EXACTLY THAT, NO POSSIBILITY OF PAROLE. HE IS SENTENCED TO  
5 THE STATE PRISON. DO YOU UNDERSTAND THAT?

6 MS. CHAFFEE: YES, I DO.

7 THE COURT: OR IT IS DEATH IN THE GAS CHAMBER, ONE OF  
8 THOSE TWO. NOW, BEFORE THE JURY -- AND IT WILL BE THE SAME  
9 JURY ON THE GUILT PHASE THAT ALSO SITS ON THE PENALTY PHASE.

10 NOW, ON THE PENALTY PHASE, YOU WILL HEAR MUCH MORE  
11 TESTIMONY WHICH YOU DIDN'T HEAR BEFORE. AND THAT TESTIMONY  
12 WILL RELATE TO THE DEFENDANT. THE DEFENDANT WILL HAVE THE  
13 TESTIMONY THAT IS IN MITIGATION.

14 MS. CHAFFEE: WHAT DOES THAT MEAN?

15 THE COURT: TO DIMINISH. IN OTHER WORDS, TO SHOW THAT  
16 AFTER ALL, HE MIGHT HAVE COMMITTED THIS CRIME, BUT HE IS  
17 ESSENTIALLY MUCH BETTER THAN THE CRIME MIGHT INDICATE HE IS.

18 IN OTHER WORDS, HIS CHARACTER.

19 MS. CHAFFEE: OKAY.

20 THE COURT: AND HIS AGE AND THE FACT THAT HE HAS A  
21 FINE, UNBLEMISHED REPUTATION BEFORE THAT AND HIS BACKGROUND,  
22 HIS EDUCATION AND AS I SAID, HIS MENTAL AND PHYSICAL  
23 CONDITION.

24

25

26

27

28

15-1  
1 EVERYTHING THAT HAS A TENDENCY TO BE FAVORABLE  
2 TO HIM, OF COURSE THE DEFENDANT WILL TRY TO SHOW.

3 MS. CHAFFEE: OKAY.

4 THE COURT: ON THE OTHER HAND, THE PROSECUTION WILL  
5 TRY TO SHOW FACTS WHICH ARE UNFAVORABLE TO THE DEFENDANT.  
6 WE CALL THAT AGGRAVATING CIRCUMSTANCES.

7 MS. CHAFFEE: ALL RIGHT.

8 THE COURT: SO THEN THE JURY WEIGHS BOTH, MUST WEIGH  
9 THAT BEFORE THEY COME TO A DECISION. THEY CAN'T SAY IMMEDIATELY  
10 JUST BECAUSE HE HAPPENED TO COMMIT A MURDER IN THE FIRST DEGREE  
11 DURING THE COURSE OF A ROBBERY THAT HE SHOULD SUFFER ONE OR  
12 TWO OF THOSE PENALTIES. THEY FIRST HAVE TO WEIGH AND HEAR  
13 WHAT THE TESTIMONY IS ON BOTH SIDES BEFORE THEY MAKE UP THEIR  
14 MINDS.

15 MS. CHAFFEE: RIGHT.

16 THE COURT: DO YOU UNDERSTAND?

17 MS. CHAFFEE: YES.

18 THE COURT: MERELY BECAUSE HE COMMITTED MURDER IN THE  
19 FIRST DEGREE, THAT ISN'T ENOUGH.

20 MS. CHAFFEE: OKAY.

21 THE COURT: YOU UNDERSTAND THAT?

22 MS. CHAFFEE: YES.

23 THE COURT: BEFORE THEY MAKE UP THEIR MINDS, DO YOU  
24 UNDERSTAND?

25 MS. CHAFFEE: YES.

26 THE COURT: ARE YOU WILLING TO DO IT IF YOU SERVE AS  
27 A JUROR?

28 MS. CHAFFEE: I GUESS SO.

5-2  
1 THE COURT: THE QUESTIONS I AM GOING TO ASK YOU AND  
2 COUNSEL WILL ASK YOU, AND THE SPECIAL PURPOSE OF THIS HEARING,  
3 IS TO DETERMINE, TO EXPLORE YOUR STATE OF MIND ON THE SUBJECT  
4 OF THE DEATH PENALTY, WHAT YOUR BELIEFS ARE WITH RESPECT TO  
5 IT.

6 MS. CHAFFEE: OKAY.

7 THE COURT: ALL RIGHT, THE QUESTIONS I AM GOING TO ASK  
8 YOU HAVE REFERENCE TO THE FIRST PHASE OF THE TRIAL, THE GUILT  
9 PHASE, AND THESE ARE THE QUESTIONS:

10 FIRST, DO YOU HAVE ANY OPINION, WHATEVER IT MAY  
11 BE, REGARDING THE DEATH PENALTY THAT WOULD PREVENT YOU FROM  
12 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE  
13 OF THE DEFENDANT?

14 MS. CHAFFEE: I HAVE IN MY OWN PERSONAL FAMILY, MY  
15 BROTHER WAS MURDERED AND THAT MIGHT INFLUENCE ME AS A JUROR.

16 THE COURT: IN DETERMINING WHETHER THE DEFENDANT IS  
17 GUILTY OR NOT GUILTY?

18 MS. CHAFFEE: NO, NOT THAT WAY. BUT THAT WOULD MAKE --

19 THE COURT: THAT ISN'T WHAT I ASKED.

20 MS. CHAFFEE: THAT IS WHY I --

21 THE COURT: ALL RIGHT, NOW WE WILL COME TO THE OTHER  
22 IN A MINUTE.

23 MS. CHAFFEE: OKAY.

24 THE COURT: THE FIRST PART OF IT, YOU COULD MAKE AN  
25 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE  
26 DEFENDANT?

27 MS. CHAFFEE: YES.

28 THE COURT: THE SECOND QUESTION ALSO RELATES TO THE

15-3  
1 GUILT OR INNOCENCE PART OF IT.

2 MS. CHAFFEE: UH-HUH.

3 THE COURT: DO YOU HAVE ANY OPINION REGARDING THE DEATH  
4 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
5 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
6 CIRCUMSTANCES?

7 YOU REMEMBER I TOLD YOU THAT IF YOU FIND HIM GUILTY  
8 OF MURDER IN THE FIRST DEGREE, THEN YOU DETERMINE IS IT TRUE  
9 OR IS IT FALSE THAT IT WAS COMMITTED DURING THE COURSE OF  
10 A ROBBERY? AND THAT IS THE SPECIAL CIRCUMSTANCE.

11 MS. CHAFFEE: UH-HUH.

12 THE COURT: YOUR OPINION OF THE DEATH PENALTY, WOULD  
13 THAT IN ANY WAY AFFECT YOU IN MAKING THAT PARTICULAR DECISION?

14 MS. CHAFFEE: NO. I WOULD HAVE TO WEIGH THE CIRCUMSTANCES.

15 THE COURT: ALL RIGHT, FINE.

16 NOW, THE NEXT TWO QUESTIONS HAVE TO DO WITH THE  
17 PENALTY PHASE: DO YOU HAVE AN OPINION CONCERNING THE DEATH  
18 PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE TO IMPOSE  
19 THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE YOU MAY HEAR  
20 ON THE PENALTY PHASE OF THE TRIAL?

21 RIGHT AWAY, IF YOU'D SAY "I AM GOING TO FIND HIM  
22 GUILTY" OR "I AM GOING TO IMPOSE THE DEATH PENALTY IRRESPECTIVE  
23 OF ANYTHING I HAVE HEARD OR WILL HEAR OR HAVE HEARD."

24 MS. CHAFFEE: I DON'T KNOW IF IT WOULD BE AUTOMATIC  
25 BUT I BELIEVE IN THE DEATH PENALTY.

26 THE COURT: THAT IS ALL RIGHT.

27 MS. CHAFFEE: OKAY.

28 THE COURT: YOU CAN ENTERTAIN THAT BELIEF. A LOT OF

1 OTHER PEOPLE DO, TOO.

2 BUT WOULD YOU AUTOMATICALLY VOTE FOR DEATH WITHOUT  
3 HEARING ANY EVIDENCE ON THE PENALTY PHASE?

4 MS. CHAFFEE: WITHOUT -- THAT WOULD BE THE SECOND  
5 INFORMATION THAT YOU GET?

6 THE COURT: YES, THE SECOND TRIAL. EVEN BEFORE YOU  
7 GO INTO THE SECOND TRIAL, ON THE SECOND PHASE OF IT, IS YOUR  
8 MIND MADE UP THAT YOU ARE GOING TO IMPOSE THE DEATH PENALTY  
9 WITHOUT HEARING ANYTHING?

10 MS. CHAFFEE: I GUESS I FEEL WHEN SOMEBODY TAKES  
11 SOMEBODY'S LIFE, I WOULD PROBABLY MAKE IT AUTOMATIC.

12 THE COURT: ALL RIGHT.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. BARENS: A DEFENSE MOTION, YOUR HONOR.

2 MR. WAPNER: I HAVE NO OBJECTION.

3 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. I AM SORRY  
4 ABOUT THAT TRAGEDY THAT HAPPENED IN YOUR LIFE THAT MIGHT HAVE  
5 INFLUENCED YOUR REASONING. I CAN UNDERSTAND HOW IT WOULD,  
6 YOU KNOW.

7 MS. CHAFFEE: UH-HUH.

8 THE COURT: BUT UNDER THE CIRCUMSTANCES, I DON'T THINK  
9 YOU WOULD QUALIFY AS A JUROR ON THIS CASE.

10 YOU GO BACK INTO THE JURY ASSEMBLY ROOM AND TELL  
11 THEM THAT YOU DO QUALIFY, HOWEVER, IN ANY OTHER KIND OF CASE.

12 MS. CHAFFEE: THANK YOU.

13 (PROSPECTIVE JUROR CHAFFEE EXITED  
14 THE COURTROOM.)

15 (PROSPECTIVE JUROR CRAMER ENTERED THE  
16 COURTROOM.)

17 MS. CRAMER: GOOD AFTERNOON, JUDGE.

18 THE COURT: GOOD AFTERNOON.

19 MOST OF US AROUND THE COURTHOUSE KNOW THIS VERY  
20 LOVELY LADY. SHE WAS IDENTIFIED WITH THE CLERK'S OFFICE FOR  
21 MANY, MANY YEARS, WEREN'T YOU?

22 MS. CRAMER: YES, I WAS, SIR, FOR 17.

23 THE COURT: 17 YEARS?

24 DO YOU THINK BECAUSE YOU HAVE BEEN IN THE CLERK'S  
25 OFFICE THAT THAT WOULD IN ANY WAY UNQUALIFY YOU TO BE A JUROR  
26 IN THIS CASE?

27 MS. CRAMER: NO, SIR.

28 THE COURT: ALL RIGHT, WHERE DO YOU LIVE?

1 MS. CRAMER: 1234 MORNINGSIDE WAY, VENICE.

2 THE COURT: BEING AROUND HERE, IT IS PROBABLE THAT YOU  
3 KNOW SOMETHING ABOUT THIS CASE, DON'T YOU?

4 MS. CRAMER: I ONLY HEARD THAT IT IS A MURDER CASE.

5 THE COURT: THAT IS ALL THAT YOU HEARD?

6 MS. CRAMER: ALL.

7 THE COURT: HOW LONG HAVE YOU BEEN RETIRED, BY THE WAY?

8 MS. CRAMER: THREE YEARS RETIRED.

9 THE COURT: THREE YEARS?

10 HOW LONG HAD YOU BEEN WITH THE CLERK'S OFFICE?

11 MS. CRAMER: 17 YEARS, MUNICIPAL COURT.

12 THE COURT: MUNICIPAL COURT, THAT'S RIGHT.

13 ALL RIGHT, YOU HEARD YESTERDAY WHEN I TOLD YOU  
14 ABOUT THE CASE A LITTLE BIT AND I TOLD YOU ABOUT THE FACT  
15 THAT THE CHARGE AGAINST THE DEFENDANT IS THAT HE COMMITTED  
16 A MURDER, FIRST DEGREE MURDER IN THE COURSE OF A ROBBERY.

17 IN THE COURSE OF A ROBBERY HAS SIGNIFICANCE BECAUSE  
18 WE CALL THAT SPECIAL CIRCUMSTANCES. THE LEGISLATURE HAS SAID  
19 THAT IN CERTAIN TYPES OF MURDERS --

20 INCIDENTALLY, BEFORE I START THAT, YOU KNOW THAT  
21 NOT EVERY MURDER, EVEN IF IT IS DELIBERATE, PREMEDITATED AND  
22 INTENTIONAL, CALLS FOR THE DEATH PENALTY OR FOR LIFE  
23 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. IT HAS GOT  
24 TO BE DONE UNDER SPECIAL CIRCUMSTANCES.

25 NOW THE SPECIAL CIRCUMSTANCE IN THIS CASE IS  
26 THAT IT WAS ALLEGEDLY COMMITTED DURING THE COURSE OF A ROBBERY  
27 AND OTHER SPECIAL CIRCUMSTANCES COULD BE THAT IT WAS COMMITTED  
28 IN THE COURSE OF A BURGLARY, OF A RAPE, KIDNAPPING, CHILD



1 MOLESTATION WHERE THE CHILD DIES, MULTIPLE MURDERS, TORTURE,  
2 THERE ARE 19 OF THEM.

3 SO IT IS ONLY WHEN THE MURDER IS COMMITTED UNDER  
4 THOSE CIRCUMSTANCES THAT THE DEATH PENALTY MAY COME INTO PLAY.

5 WHEN I TALK ABOUT THE DEATH PENALTY, THE DEATH  
6 PENALTY HAS TWO PHASES, TWO PARTS.

7 ONE IS THAT THE DEFENDANT MAY BE SENTENCED TO  
8 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND THAT  
9 MEANS EXACTLY THAT. THERE IS NO POSSIBILITY OF PAROLE.

10 OR DEATH IN THE GAS CHAMBER.

11 SO IF YOU ARE SELECTED AS A JUROR IN THIS CASE,  
12 THE JURY WILL FIRST HAVE TO DETERMINE THE GUILT OR INNOCENCE  
13 OF THE DEFENDANT, WAS HE GUILTY OR WASN'T HE GUILTY OF COMMITTING  
14 MURDER IN THE FIRST DEGREE?

15 IF THEY SAY YES, HE COMMITTED THE MURDER AND IT  
16 WAS IN THE FIRST DEGREE, THEN THEY HAVE TO ANSWER THIS QUESTION:  
17 WAS IT OR WAS IT NOT COMMITTED DURING THE COURSE OF A  
18 ROBBERY?

19 IF THEY SAY, YES, IT WAS COMMITTED DURING THE  
20 COURSE OF A ROBBERY, THEN THAT SAME JURY BEGINS THE TRIAL  
21 OF THE PENALTY PHASE OF THE CASE.

22 THE FIRST PHASE IS THE GUILT PHASE AND THIS ONE  
23 I AM REFERRING TO NOW IS THE PENALTY PHASE. ON THE PENALTY  
24 PHASE THE DEFENDANT AND THE PROSECUTION INTRODUCE TESTIMONY  
25 WHICH THE JURY HAS TO CONSIDER. THE DEFENDANT WILL INTRODUCE  
26 TESTIMONY ABOUT HIS AGE, HIS BACKGROUND, HIS EDUCATION, HIS  
27 MENTAL AND PHYSICAL CONDITION, EVERYTHING HE HAS DONE IN HIS  
28 LIFETIME WHICH MIGHT BE FAVORABLE TO HIM THAT THE JURY WOULD

1 FEEL THAT HE IS A PERSON THAT SHOULD NOT SUFFER THE DEATH  
2 PENALTY, BY THAT, I MEAN THE GAS CHAMBER AND THEY WILL HAVE  
3 TO DETERMINE IF IT SHOULD BE LIFE IMPRISONMENT WITHOUT THE  
4 POSSIBILITY OF PAROLE, AS I TOLD YOU, OR DEATH IN THE GAS  
5 CHAMBER.

6 AND THE TESTIMONY WHICH THE DEFENDANT INTRODUCED  
7 IS WHAT WE CALL EXTENUATING OR MITIGATING CIRCUMSTANCES.

8 ON THE OTHER HAND, THE PROSECUTION WILL ATTEMPT  
9 TO SHOW BAD THINGS, AGGRAVATING CIRCUMSTANCES IN CONNECTION  
10 WITH HIS BEING A BAD PERSON.

11 THE JURY CONSIDERS ALL OF THAT. THEY CONSIDER  
12 THE EVIDENCE THEY HEARD AT THE GUILT PHASE AND THEY TAKE  
13 EVERYTHING INTO CONSIDERATION IN DETERMINING WHETHER IT SHOULD  
14 BE ONE OR THE OTHER; DO YOU UNDERSTAND THAT?

15 MS. CRAMER: I UNDERSTAND.

16 THE COURT: WHAT WE HAVE YOU HERE FOR IS TO EXPLORE  
17 YOUR MIND TO FIND OUT HOW YOU FEEL ABOUT THE DEATH PENALTY.

18 MS. CRAMER: ALL RIGHT.

19 THE COURT: THE FIRST TWO QUESTIONS HAVE TO DO WITH THE  
20 GUILT PHASE.

21 DO YOU HAVE ANY OPINION, WHATEVER THAT OPINION  
22 MAY BE, WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
23 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

24 MS. CRAMER: I WOULD GO BY THE LAW.

25  
26  
27  
28

1 THE COURT: YES. NOW, IS YOUR OPINION OF THE DEATH  
2 PENALTY SUCH, WHATEVER IT MAY BE, THAT IMMEDIATELY YOU WILL  
3 MAKE A DECISION FOR THE GUILT OR INNOCENCE OF THE DEFENDANT  
4 WITHOUT CONSIDERING ALL OF THE FACTORS?

5 MS. CRAMER: NO. I WOULD WANT TO HEAR EVERYTHING.

6 THE COURT: SURELY. ALSO, THAT HAS TO DO WITH THE  
7 SPECIAL CIRCUMSTANCES? IN OTHER WORDS, WAS IT COMMITTED DURING  
8 THE COURSE OF A ROBBERY?

9 MS. CRAMER: YES.

10 THE COURT: NOW, ASSUMING NOW THAT THE JURY HAS FOUND  
11 HIM GUILTY OF MURDER IN THE FIRST DEGREE AND IT WAS UNDER  
12 SPECIAL CIRCUMSTANCES, IN OTHER WORDS, IT WAS DURING THE COURSE  
13 OF A ROBBERY, THEN ON THE PENALTY PHASE OF IT, DO YOU HAVE ANY  
14 OPINION CONCERNING THE DEATH PENALTY THAT WOULD CAUSE YOU  
15 AUTOMATICALLY TO VOTE FOR THE DEATH- PENALTY WITHOUT REGARD  
16 TO ANY EVIDENCE THAT WAS PRESENTED AT THE PENALTY PHASE OF  
17 THE TRIAL?

18 MS. CRAMER: NO. I WOULD GO BY THE EVIDENCE.

19 THE COURT: ALL RIGHT. SO YOUR ANSWER IS NO, THAT YOU  
20 WOULD NOT AUTOMATICALLY VOTE FOR THE DEATH PENALTY?

21 MS. CRAMER: NO. I WOULD WANT TO HEAR ALL OF THE  
22 EVIDENCE.

23 THE COURT: ON THE PENALTY PHASE?

24 MS. CRAMER: YES.

25 THE COURT: AND SIMILARILY, DO YOU HAVE SUCH AN OPINION  
26 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY  
27 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE, REGARDLESS OF  
28 ANY EVIDENCE THAT MAY BE PRESENTED ON THE PENALTY PHASE OF

1 THE TRIAL?

2 MS. CRAMER: NO.

3 THE COURT: DO YOU REMEMBER THAT I TOLD YOU THAT ONE  
4 OF TWO THINGS YOU HAVE TO CONSIDER WOULD BE LIFE WITHOUT  
5 POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER? THESE TWO  
6 QUESTIONS WERE DESIGNED TO FIND OUT IF YOUR OPINION OF THE  
7 DEATH PENALTY IS SUCH THAT YOU WOULD VOTE FOR ONE OR THE OTHER  
8 AUTOMATICALLY. YOUR ANSWER IS NO?

9 MS. CRAMER: YES, SIR.

10 THE COURT: ALL RIGHT. DO YOU KNOW THAT THE ISSUE OF  
11 THE DEATH PENALTY MAY OR MAY NOT COME INTO CONSIDERATION IN  
12 THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN  
13 THE EVENT YOU REACH THAT PENALTY PHASE OF THE TRIAL?

14 MS. CRAMER: YES.

15 THE COURT: RIGHT?

16 MS. CRAMER: RIGHT.

17 THE COURT: THANK YOU.

18 MR. BARENS: THANK YOU. GOOD AFTERNOON, MISS CRAMER.  
19 WAS IT MRS. CRAMER?

20 MS. CRAMER: IT WAS MRS. CRAMER. MY HUSBAND DIED, PASSED  
21 AWAY FOUR YEARS AGO.

22 MR. BARENS: SORRY. I JUST HAD NOT PROPERLY HEARD WHEN  
23 THE JUDGE ADDRESSED YOU. IT WAS WHILE YOU WERE WORKING HERE?

24 MS. CRAMER: YES. THAT IS WHY I STAYED ANOTHER YEAR.

25 MR. BARENS: MISS CRAMER, I AM ARTHUR BARENS. I REPRESENT  
26 JOE HUNT, THE DEFENDANT IN THIS CASE, SEATED DOWN THERE AT  
27 THE END OF THE TABLE. IT IS MY DUTY, AS IT WAS THE JUDGE'S  
28 A MOMENT AGO, TO INQUIRE AT THIS POINT OF THE PROCEEDINGS.

1 THE LAW IS SET UP SO THAT WE ASK YOU NOW ABOUT  
2 YOUR POINT OF VIEW ON THE DEATH PENALTY. AND NONE OF US HERE  
3 ARE JUDGING ANY OF YOUR ANSWERS AND THERE ARE NO RIGHT OR WRONG  
4 ANSWERS TO MY QUESTIONS BECAUSE YOU CAN'T BE RIGHT OR WRONG  
5 ABOUT WHAT YOUR OPINION IS. IT IS JUST YOUR OPINION.

6 SO WITH THAT IN MIND, HOW DO YOU FEEL ABOUT THE  
7 DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

8 MS. CRAMER: YOU MEAN WHETHER I THINK IT SHOULD BE OR  
9 SHOULDN'T BE?

10 MR. BARENS: QUITE SO.

11 MS. CRAMER: WELL, IF HE HAS DONE SOMETHING WRONG AND  
12 HAS COMMITTED -- HAS BEEN PROVEN WITHOUT A DOUBT --

13 THE COURT: NO, NO, IT CAN'T BE THAT. IT IS BEYOND A  
14 REASONABLE DOUBT.

15 MS. CRAMER: WELL, I MEAN BEYOND A REASONABLE DOUBT.  
16 THANK YOU, SIR.

17 IF IT WAS BEYOND A REASONABLE DOUBT AND HE IS  
18 PROVEN GUILTY, I WOULD GO FOR THE DEATH PENALTY.

19 MR. BARENS: OKAY. WOULD IT BE -- AND AGAIN, THERE IS  
20 NO RIGHT OR WRONG ANSWER TO THOSE QUESTIONS, YOU KNOW. YOU  
21 MAY BE IN A MAJORITY ON THIS.

22 WOULD IT BE YOUR STATE OF MIND THAT A PERSON WHO  
23 TAKES A LIFE WITH PREMEDITATION, INTENT, WITHOUT JUSTIFICATION,  
24 THAT THE ONLY APPROPRIATE PENALTY FOR THAT PERSON IS THE DEATH  
25 PENALTY?

26 THE COURT: YOU MEAN AFTER WE HAVE HAD THE PENALTY PHASE  
27 OF THE TRIAL AND AFTER ALL THE EVIDENCE IS IN OF THE BACKGROUND  
28 AND EVERYTHING?

1 MR. BARENS: QUITE SO. I LOOK FOR, AS I BELIEVE IT IS  
2 APPROPRIATE AND PROPER, FOR COUNSEL TO INQUIRE AS TO ANY  
3 PREDISPOSITION THAT MAY EXIST AS TO A LIFE-FOR-A-LIFE  
4 BASIS, YOUR HONOR. WITHOUT ANY FURTHER INQUIRY AT THIS POINT  
5 IN THE QUESTIONING --

6 THE COURT: WELL, THE LAW IN CALIFORNIA IS BEFORE A  
7 DEATH PENALTY CAN BE IMPOSED, YOU HAVE GOT TO HAVE A PENALTY  
8 PHASE OF THE TRIAL WHERE THE JURORS HEAR THE ENTIRE BACKGROUND  
9 AND EVERYTHING ELSE ABOUT THE DEFENDANT.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

16A-5

1 MR. BARENS: QUITE SO.

2 THE COURT: THEY CAN'T MAKE UP THEIR MINDS UNTIL THAT  
3 IS DONE. YOUR QUESTION JUST RELATES TO THE FACT THAT THERE  
4 IS A TERRIBLE MURDER AND WILL SHE VOTE FOR THE IMPOSITION OF  
5 THE DEATH PENALTY, WHICH ISN'T A FAIR QUESTION.

6 MR. BARENS: NOT MEANING ANY DISRESPECT, YOUR HONOR,  
7 BUT THE CASES SEEM TO INDICATE THAT COUNSEL IS ENTITLED TO  
8 INQUIRE AS TO A PROSPECTIVE JUROR'S BELIEF IN A LIFE-FOR-A-LIFE,  
9 IN AND OF ITSELF, AS A QUESTION.

10 THE COURT: I DIDN'T HEAR YOU ASK THAT QUESTION.

11 MR. BARENS: I THOUGHT I WAS TRYING TO FRAME THAT. I  
12 WILL DO SO, YOUR HONOR.

13 THE COURT: GO AHEAD.

14 MR. BARENS: IS IT YOUR OPINION THAT IF A DEFENDANT IS  
15 PROVEN TO HAVE TAKEN A LIFE WITH INTENT AND PREMEDITATION AND  
16 WITHOUT JUSTIFICATION, THAT THE ONLY POSSIBLE APPROPRIATE  
17 PENALTY THERE COULD BE FOR THAT DEFENDANT, WOULD BE TO  
18 SACRIFICE HIS OWN LIFE?

19 MS. CRAMER: THAT IS NOT THE ONLY POSSIBILITY. HE COULD  
20 HAVE LIFE WITHOUT RELEASE.

21 MR. BARENS: RIGHT. I UNDERSTAND THAT THAT IS THE OTHER  
22 POSSIBILITY. I AM ASKING YOU FOR YOUR OPINION.

23 MS. CRAMER: I WOULD HAVE TO HEAR THE WHOLE CASE IN ORDER  
24 TO MAKE THAT KIND OF A DECISION.

25 MR. BARENS: BY THAT, YOUR HONOR MADE REFERENCE TO THE  
26 FACT THAT IN THE SECOND PART OF THE CASE, THE PENALTY PHASE,  
27 EVIDENCE WOULD BE INTRODUCED AS TO THE DEFENDANT'S AGE AT THE  
28 TIME OF THE ALLEGED CRIME, WHETHER OR NOT THE DEFENDANT HAD

1 ANY PRIOR HISTORY OF CRIMINAL CONDUCT, EVIDENCE AS TO THE  
2 DEFENDANT'S CHARACTER.

3 EVEN IF THE DEFENDANT IN YOUR MIND HAD COMMITTED  
4 A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER, WOULD THOSE  
5 FACTORS MAKE A DIFFERENCE TO YOU IN DETERMINING WHETHER HE  
6 SHOULD GET LIFE WITHOUT POSSIBILITY OF PAROLE OR THE DEATH  
7 PENALTY?

8 MS. CRAMER: I WOULD STILL HAVE TO HEAR THE CASE. I  
9 WOULD WANT TO HEAR --

10 MR. BARENS: WHAT DO YOU MEAN BY THAT?

11 MS. CRAMER: I DON'T KNOW EXACTLY. I WOULD WANT TO HEAR  
12 THE WHOLE STORY TO FORM MY OPINION.

13 MR. BARENS: SUPPOSING YOU HEARD A TRIAL IN THE GUILT  
14 PHASE WHERE YOU CAME TO A BELIEF BEYOND A REASONABLE DOUBT  
15 THAT IN FACT, A DEFENDANT HAD COMMITTED AN UNJUSTIFIABLE IN  
16 ANY WAY, SHAPE OR FORM, FIRST DEGREE, PREMEDITATED, COLD-  
17 BLOODED MURDER. THAT IS ALL I AM ASKING YOU RIGHT NOW.

18 WOULD THE FACT THAT HAD OCCURRED, PREDETERMINE  
19 IN YOUR MIND, THAT THE ONLY WAY TO DEAL WITH THAT TYPE OF A  
20 DEFENDANT IS THE DEATH PENALTY?

21 MR. WAPNER: YOUR HONOR, I OBJECT TO THAT QUESTION BECAUSE  
22 I DON'T UNDERSTAND WHAT UNJUSTIFIABLE IN ANY WAY, SHAPE OR  
23 FORM MIGHT MEAN. IT MIGHT MEAN --

24 THE COURT: YOU ARE STILL OMITTING THOSE CONSIDERATIONS,  
25 THOSE FACTORS THAT THEY MUST CONSIDER BEFORE --

26 MR. BARENS: I KNOW, YOUR HONOR. I THINK THOUGH THAT  
27 WHAT WE ARE LOOKING FOR IS THE EXPRESSION THAT THE CASES HAVE  
28 REFERRED TO ABOUT A PREDISPOSITION TO BE FOR THE DEATH PENALTY



1 OR FOR LIFE WITHOUT POSSIBILITY OF PAROLE.

2 I DON'T KNOW HOW I CAN DETERMINE PREDISPOSITION WITH-  
3 OUT INQUIRING AS TO THEIR STATE OF MIND AT THAT POINT OF THE  
4 PROCEEDINGS.

5 THE COURT: WELL, I THINK I MADE IT CLEAR HOW I FEEL  
6 ABOUT IT. PROCEED ALONG THOSE LINES, IF YOU WILL.

7 MR. BARENS: ALL RIGHT.

8 MS. CRAMER: I THINK WHAT YOU ARE TRYING TO GET ME TO  
9 SAY IS WOULD I OBJECT TO LIFE WITHOUT POSSIBILITY OF PAROLE  
10 OR DEATH?

11 MR. BARENS: YES.

12 MS. CRAMER: I WOULD HAVE TO DECIDE ONE OR THE OTHER.  
13 I DON'T KNOW HOW I WOULD GO. I MEAN, UNDER THOSE CIRCUMSTANCES -  
14 I HAVE NEVER BEEN ON A MURDER TRIAL. I AM NOT SURE.

15 MR. BARENS: ALL RIGHT.

16 MS. CRAMER: I MEAN, I AM NOT SURE WHAT I WOULD SAY.  
17 I WOULD WANT TO KNOW EVERYTHING.

18 MR. BARENS: SURE. MRS. CRAMER, I AM REALLY NOT TRYING  
19 TO GET YOU TO SAY ANYTHING EXCEPT YOUR OPINION.

20 MS. CRAMER: THAT IS MY OPINION.

21 MR. BARENS: OKAY. DO YOU FEEL THAT YOU ARE OPEN-  
22 MINDED, EVEN THOUGH A DEFENDANT WERE CONVICTED AND GUILTY IN  
23 YOUR MIND OF A FIRST DEGREE MURDER IN THE COURSE OF A ROBBERY,  
24 IS IT BELIEVABLE IN YOUR MIND THAT YOU COULD EVER GIVE THAT  
25 SORT OF A DEFENDANT LIFE WITHOUT POSSIBILITY OF PAROLE AS  
26 OPPOSED TO THE DEATH PENALTY?

27 MS. CRAMER: I HAVE NO IDEA WHAT I WOULD DO. I MEAN,  
28 I REALLY DON'T. I AM NOT SET ON EITHER WAY.

1 THE COURT: DO YOU WANT TO HEAR ALL OF THE EVIDENCE?  
2 IS THAT WHAT YOU ARE TRYING TO TELL US?

3 MS. CRAMER: YES.

4 MR. BARENS: WELL, WHEN WE ARE USING THE WORD "EVIDENCE"  
5 DOES THAT NOW INCLUDE IN YOUR MIND, EVIDENCE ABOUT THE  
6 DEFENDANT'S BACKGROUND? I AM TALKING ABOUT EVIDENCE ASIDE  
7 FROM THE CRIME. IN OTHER WORDS, DURING THE GUILT PHASE OF THE  
8 TRIAL, YOU WOULD HEAR EVIDENCE ABOUT LET'S SAY, A BAD CRIME  
9 THAT HAPPENS. YOU KNOW, SOMEONE WAS KILLED IN COLD BLOOD,  
10 INTENTIONALLY, PREMEDITATEDLY AND LET'S SAY HE IS KILLED SOLELY  
11 FOR THE PURPOSE OF SOMEBODY GETTING HIS MONEY, YOU KNOW.

12 SOMEONE COMES OVER AND ROBS SOMEBODY AND COMMITS  
13 A MURDER IN ORDER TO EFFECT OR COMPLETE A ROBBERY. ALL RIGHT?

14 LET'S SAY THAT YOU BELIEVE THAT THAT IS WHAT  
15 HAPPENED BEYOND A REASONABLE DOUBT. ALL RIGHT.

16 WOULD YOU BE SO PREDISPOSED TO GIVE THE DEATH  
17 PENALTY TO THAT DEFENDANT AT THAT INSTANCE, THAT IT WOULD MAKE  
18 IT IMPOSSIBLE FOR YOU TO FAIRLY CONSIDER EVIDENCE, FOR  
19 INSTANCE, ABOUT HIS BACKGROUND OR CHARACTER?

20 MS. CRAMER: NO. I WOULD WANT TO KNOW WHY HE DID IT.  
21 I WOULD WANT TO KNOW WHAT THE CIRCUMSTANCES ARE BEHIND IT.

22

23

24

25

26

27

28

1 MR. BARENS: YOU WOULD WANT TO KNOW SOMETHING ABOUT HIM,  
2 TOO?

3 MS. CRAMER: YES.

4 THE COURT: I TOLD YOU THAT IT WOULD BE ON THE PENALTY  
5 PHASE, ALL OF THE THINGS FAVORABLE TO HIM OR UNFAVORABLE TO  
6 HIM TO BE CONSIDERED BY THE JURY BEFORE THEY WERE COMMITTED  
7 TO MAKE UP THEIR MINDS.

8 MS. CRAMER: THAT'S CORRECT.

9 MR. BARENS: WHAT I AM LOOKING FOR AND I THINK WHAT THE  
10 JUDGE IS LOOKING FOR, WHEN YOU SAY YOU WOULD WANT TO HEAR MORE  
11 EVIDENCE BEFORE MAKING A DECISION, I AM LOOKING FOR WHAT YOU  
12 MEAN BY THAT.

13 MS. CRAMER: I HAVE NO DEFINITE DECISION ON WHETHER I  
14 WOULD SAY THE DEATH PENALTY OR LIFE WITHOUT THE POSSIBILITY  
15 OF PAROLE.

16 MR. BARENS: OKAY. DO YOU UNDERSTAND THAT UNDER THE  
17 STATUS OF THE LAW TODAY, LIFE WITHOUT POSSIBILITY OF PAROLE  
18 MEANS PRECISELY THAT? THE DEFENDANT IS NEVER ELIGIBLE FOR  
19 PAROLE AND NEVER GETS OUT?

20 MS. CRAMER: THAT'S CORRECT.

21 MR. BARENS: YOU DON'T HAVE ANY LINGERING DOUBT THAT  
22 THAT IS JUST LAWYER TALK I AM SAYING TO YOU?

23 MS. CRAMER: NO.

24 MR. BARENS: OKAY. IS IT BELIEVABLE IN YOUR MIND, THAT  
25 A DEFENDANT CONVICTED OF A FIRST DEGREE MURDER DURING A  
26 ROBBERY, COULD FAIRLY QUALIFY IN YOUR MIND AS A JUROR, YOUR  
27 INDIVIDUAL DECISION, THAT THAT TYPE OF A DEFENDANT COULD QUALIFY  
28 FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE?

1 MS. CRAMER: YOU MEAN, DO I THINK THAT HE COULD?

2 MR. BARENS: ARE YOU CAPABLE OF VOTING FOR THAT PENALTY,  
3 GIVEN THE CHOICE BETWEEN THAT AND THE DEATH PENALTY FOR A  
4 DEFENDANT WHO YOU BELIEVE BEYOND A REASONABLE DOUBT COMMITTED  
5 A FIRST DEGREE MURDER DURING A ROBBERY?

6 MS. CRAMER: WE ARE BACK TO THE SAME QUESTION OF WHETHER  
7 I WOULD VOTE FOR THE DEATH PENALTY OR THE GAS CHAMBER. I  
8 WOULD --

9 THE COURT: NO, THE DEATH PENALTY OR --

10 MS. CRAMER: THE GAS CHAMBER OR LIFE WITHOUT POSSIBILITY  
11 OF PAROLE. THANK YOU.

12 MR. BARENS: THANK YOU, YOUR HONOR.

13 MS. CRAMER: THANK YOU, YOUR HONOR. I AM BACK TO THE  
14 SAME DECISION.

15 MR. BARENS: THAT UNTIL YOU HAD HEARD ALL OF THE EVIDENCE,  
16 NOT JUST ABOUT THE CASE BECAUSE YOU KNOW FOR SURE, YOU WILL  
17 HEAR EVIDENCE ABOUT THE CASE BEFORE YOU EVER COME TO THIS  
18 DECISION, BUT YOU WOULD WANT TO HEAR EVIDENCE ABOUT THE  
19 DEFENDANT AND HIS BACKGROUND, AS WELL?

20 MS. CRAMER: YES.

21 MR. BARENS: AND NOT JUST WHAT LEADS UP TO THE CRIME,  
22 BUT I MEAN, EVIDENCE PERSONAL TO MAYBE, THE KIND OF CHILDHOOD  
23 THE GUY HAD OR HIS HISTORY AS A PERSON?

24 MS. CRAMER: THAT'S CORRECT.

25 MR. BARENS: YOU WOULD LISTEN TO THAT?

26 MS. CRAMER: CERTAINLY.

27 MR. BARENS: NOW, DID YOU UNDERSTAND, MRS. CRAMER, THAT  
28 ALTHOUGH I HAVE BEEN ALLOWED TO ASK YOU ABOUT THE DEATH PENALTY

1 AND THE OTHER PARTICIPANTS AS WELL, THAT BY THAT, THERE IS  
2 NO IMPLICATION THAT MR. HUNT IS GUILTY OF ANYTHING OR HAS DONE  
3 ANYTHING WRONG JUST BECAUSE HE IS HERE SITTING AS A DEFENDANT  
4 IN THIS COURTROOM?

5 MS. CRAMER: THAT'S CORRECT. HE IS HERE FOR TRIAL.

6 MR. BARENS: AND YOU UNDERSTAND, HAVING BEEN IN THIS  
7 BUILDING LONGER THAN I HAVE, THAT HE HAS A PRESUMPTION OF  
8 INNOCENCE THROUGHOUT THE PROCEEDINGS?

9 MS. CRAMER: THAT'S CORRECT.

10 MR. BARENS: I THANK YOU FOR YOUR TIME, MA'AM. I PASS  
11 FOR CAUSE, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 MR. WAPNER: GOOD AFTERNOON. I AM FRED WAPNER, THE  
14 DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.

15 DO YOU HAVE ANY STRONGLY HELD RELIGIOUS, MORAL  
16 OR PHILOSOPHICAL BELIEFS THAT WOULD GET IN THE WAY OF YOUR  
17 DECIDING FOR EITHER THE DEATH PENALTY OR LIFE WITHOUT  
18 POSSIBILITY OF PAROLE?

19 MS. CRAMER: NO, I HAVE NOT.

20 MR. WAPNER: IF WE GET DOWN TO THAT PART OF THE CASE  
21 WHERE YOU ARE DECIDING THE PENALTY, YOU WILL BE REQUIRED TO  
22 RENDER YOUR OWN, INDIVIDUAL VOTE AS TO WHETHER THE PENALTY  
23 SHOULD BE DEATH OR WHETHER IT SHOULD BE LIFE WITHOUT THE  
24 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

25 MS. CRAMER: I DO.

26 MR. WAPNER: IS THAT A DECISION YOU THINK YOU ARE CAPABLE  
27 OF MAKING?

28 MS. CRAMER: YES.

1 MR. WAPNER: AND IF YOU WILL FORGIVE ME, I DON'T  
2 RECOGNIZE YOU. DO YOU RECOGNIZE ME FROM HAVING WORKED IN THIS  
3 BUILDING?

4 MS. CRAMER: NO. I WORKED DOWN IN THE MUNICIPAL COURT.  
5 I WAS IN TRAFFIC AS THE SUPERVISOR FOR MAIL-IN MONEYS. I NEVER  
6 WAS ACTUALLY IN JUDGE MINTER'S OR JUDGE RUBIN'S OR JUDGE  
7 CHANDLER'S COURTROOM. I DON'T THINK I RECOGNIZE YOU. I MAY  
8 HAVE SEEN YOU BUT I DON'T RECOGNIZE YOU.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

17-1

1 MR. WAPNER: OKAY, THANK YOU VERY MUCH.

2 MS. CRAMER: YOU ARE WELCOME, SIR.

3 THE COURT: PASS FOR CAUSE?

4 MR. WAPNER: YES.

5 THE COURT: ALL RIGHT, MRS. CRAMER, YOU ARE ENTIRELY  
6 ACCEPTABLE AS A POSSIBLE JUROR IN THIS CASE, SO WHAT I WILL  
7 ASK YOU TO DO IS TO COME TOMORROW AFTERNOON AT 1:45 AND GO  
8 INTO THE JURY ASSEMBLY ROOM AND YOU WILL FIND ALL OF THE OTHER  
9 JURORS HAVE BEEN QUESTIONED, AND WHEN WE ARE READY FOR YOU,  
10 WE WILL ASK YOU TO COME IN.

11 IT MAY BE THAT WE WON'T FINISH OUR PROCESS HERE  
12 SO IT WON'T BE TOMORROW AFTERNOON BUT IN ANY EVENT, IF IT  
13 IS NOT TOMORROW AFTERNOON, WE WILL POSSIBLY CALL YOU AND TELL  
14 YOU WHEN TO COME IN.

15 MS. CRAMER: ALL RIGHT. SO I SHOULD BE HERE AT 2:00 --  
16 1:45?

17 THE COURT: 1:45 IN THE JURY ASSEMBLY ROOM.

18 MS. CRAMER: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT, TRY NOT TO TALK ABOUT THE CASE  
20 OR TO LISTEN TO ANYTHING ABOUT THE CASE OR TALK TO ANYBODY  
21 ABOUT THE CASE, ALL RIGHT?

22 MS. CRAMER: ALL RIGHT. THANK YOU, YOUR HONOR.

23 THE COURT: NICE TO SEE YOU.

24 (PROSPECTIVE JUROR CRAMER EXITED THE  
25 COURTROOM.)

26 (PROSPECTIVE JUROR DROKER ENTERED THE  
27 COURTROOM.)

28 THE COURT: GOOD AFTERNOON, MRS. DROKER.

17-2  
1 IS THAT PRONOUNCED DROKER?

2 MS. DROKER: DROKER, YES.

3 THE COURT: IS THAT MRS.?

4 MS. DROKER: MRS.

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

6 MS. DROKER: WOODLAND HILLS.

7 THE COURT: HAVE YOU READ OR HEARD ANYTHING ABOUT THIS  
8 CASE?

9 MS. DROKER: I HAVE NEVER HEARD ANYTHING ABOUT IT.

10 THE COURT: DOES THE WORD BILLIONAIRE BOYS CLUB MEAN  
11 ANYTHING TO YOU?

12 MS. DROKER: NO.

13 THE COURT: YOU HAVE NEVER HEARD ANYTHING OR READ  
14 ANYTHING ABOUT JOE HUNT OR ANYTHING LIKE THAT?

15 (MS. DROKER SHAKES HER HEAD FROM SIDE  
16 TO SIDE.)

17 THE COURT: YESTERDAY, I THINK IT IS, I TOLD YOU BRIEFLY --  
18 WAS IT YESTERDAY -- BRIEFLY, YESTERDAY, I TOLD YOU WHAT THE  
19 CASE IS ALL ABOUT AND TO REPEAT THAT, THE DEFENDANT IS CHARGED  
20 WITH THE COMMISSION OF THE CRIME OF MURDER AND IT IS ALLEGEDLY  
21 MURDER IN THE FIRST DEGREE.

22 IT IS ALSO ALLEGED THAT THAT MURDER WAS COMMITTED  
23 IN THE COURSE OF A ROBBERY. NOW, IN THE COURSE OF A ROBBERY  
24 HAS SPECIAL SIGNIFICANCE BECAUSE THE LEGISLATURE HAS SAID  
25 UNDER SPECIAL CIRCUMSTANCES THAT A MURDER WAS COMMITTED, THAT  
26 A MURDER CAN QUALIFY FOR THE DEATH PENALTY.

27 NOW, THE DEATH PENALTY DOESN'T LITERALLY MEAN  
28 DEATH ONLY. THE DEATH PENALTY INVOLVES TWO THINGS: LIFE



17-3

1 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE -- AND WITHOUT  
2 THE POSSIBILITY OF PAROLE MEANS EXACTLY THAT, HE STAYS IN  
3 FOR THE REST OF HIS LIFE AND NO PAROLE -- OR IT MEANS DEATH  
4 IN THE GAS CHAMBER.

5 NOW THE JURY SELECTED IN THIS CASE WILL FIRST  
6 HAVE TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT  
7 AND THAT IS KNOWN AS THE GUILT PHASE WHERE THE QUESTION OF  
8 PENALTY IS NOT INVOLVED IN ANY WAY. IT MUST NOT BE CONSIDERED  
9 BY THE JURY IN THE BACK OF THEIR MINDS OR OTHER WISE. THEY  
10 FIRST HAVE TO DETERMINE, DID THE DEFENDANT COMMIT THE CRIME  
11 OF MURDER AND WAS IT IN THE FIRST DEGREE AND WAS THAT COMMITTED  
12 DURING THE COURSE OF A ROBBERY? AND OF COURSE THAT WILL  
13 QUALIFY IT FOR THE DEATH PENALTY IF THE JURY SAYS, YES, HE  
14 IS GUILTY OF MURDER IN THE FIRST DEGREE AND IF THEY MAKE THE  
15 FINDING THAT IT IS TRUE IT WAS COMMITTED DURING THE COURSE  
16 OF A ROBBERY.

17 AND THEN THAT SAME JURY ENTERS INTO THE SECOND  
18 PHASE OF THE TRIAL KNOWN AS THE PENALTY PHASE WHERE  
19 TESTIMONY IS HEARD BY THE JURY GIVEN BY BOTH SIDES. THE  
20 DEFENDANT WILL, OF COURSE, I ASSUME, PRESENT EVIDENCE IN HIS  
21 BEHALF ABOUT HIS AGE, HIS LACK OF ANY CRIMINAL ACTIVITY IN  
22 THE PAST, HIS EDUCATION, HIS BACKGROUND, HIS CHARACTER,  
23 ANYTHING THAT IS FAVORABLE ABOUT HIM. AND THE REASON FOR  
24 THAT TESTIMONY IS TO PRESUADE THE JURY, AND PROPERLY SO, THAT  
25 THE ULTIMATE PENALTY SHOULD NOT BE IMPOSED UPON HIM, NAMELY,  
26 DEATH IN THE GAS CHAMBER. THOSE ARE CALLED EXTENUATING  
27 OR MITIGATING CIRCUMSTANCES.

28 ON THE OTHER HAND, THE PROSECUTION WILL TRY TO

17-4  
1 SHOW UNFAVORABLE ASPECTS OF THE DEFENDANT'S BACKGROUND AND  
2 CHARACTER, WE CALL THAT AGGRAVATING CIRCUMSTANCES, WHICH WOULD  
3 SHOW HE IS NOT ENTITLED TO ANY CONSIDERATION FROM THE JURY.

4 NOW, THE JURY MUST CONSIDER ALL OF THOSE FACTORS,  
5 HIS AGE, HIS BACKGROUND, HIS CHARACTER OR LACK OF ANY CRIMINAL  
6 ACTIVITY BY THE DEFENDANT IN HIS PAST OR PRESENT AND ANYTHING  
7 AT ALL THAT HAS TO DO WITH THE DEFENDANT AS A PERSON, THEY  
8 MUST CONSIDER ALL OF THAT BEFORE THEY MAKE UP THEIR MINDS.

9 IN OTHER WORDS, MERELY BECAUSE HE HAS BEEN  
10 CONVICTED OF MURDER IN THE FIRST DEGREE AND IT WAS DURING  
11 THE COURSE OF A ROBBERY DOESN'T MEAN HE MUST SUFFER THE ULTIMATE  
12 PENALTY OF DEATH IN THE GAS CHAMBER OR LIFE IMPRISONMENT WITHOUT  
13 THE POSSIBILITY OF PAROLE. THAT ONLY MEANS HE HAS BEEN FOUND  
14 GUILTY OF THAT PARTICULAR CRIME.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

7-5  
1 THE PUNISHMENT THEN, THAT IS SEPARATE, THAT HAS  
2 TO BE SEPARATELY CONSIDERED BY THE JURY, ALTHOUGH THEY HAVE  
3 THE RIGHT TO CONSIDER THE FACTS OF THE COMMISSION OF THE CRIME  
4 AS PART OF THE FACTORS WHICH THEY ARE CALLED UPON TO CONSIDER;  
5 DO YOU UNDERSTAND?

6 MS. DROKER: YES.

7 THE COURT: NOW, WITH THAT LONG PRELIMINARY, I AM GOING  
8 TO ASK YOU SOME QUESTIONS, AS WILL COUNSEL. THESE QUESTIONS  
9 ARE INTENDED FOR THE PURPOSE OF TRYING TO EXPLORE YOUR MIND  
10 AND YOUR FEELINGS WITH RESPECT TO THE DEATH PENALTY AND THE  
11 SUBJECT OF THE DEATH PENALTY, ALL RIGHT?

12 NOW THE FIRST TWO QUESTIONS RELATE TO THE GUILT  
13 PHASE, AS I TOLD YOU, OF THE TRIAL: DO YOU HAVE SUCH AN  
14 OPINION REGARDING THE DEATH PENALTY, WHATEVER IT MAY BE, WHICH  
15 WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO  
16 THE GUILT OR INNOCENCE OF THE DEFENDANT?

17 MS. DROKER: WELL, I DON'T BELIEVE IN CAPITAL PUNISHMENT  
18 AND IN THIS PARTICULAR CASE, SINCE YOU ARE SEEKING THE DEATH  
19 PENALTY, SHOULD HE BE FOUND GUILTY, I THINK -- I COULD NOT  
20 MAKE A DECISION BECAUSE I WOULD KNOW THEN THAT A DECISION  
21 I MAKE WOULD ULTIMATELY AND POSSIBLY LEAD TO HIS DEATH AND I  
22 COULDN'T DO THAT.

23 THE COURT: YOU MEAN UNDER NO CIRCUMSTANCES WOULD YOU  
24 VOTE FOR GUILT?

25 MS. DROKER: I DON'T KNOW HOW I COULD COME TO THAT  
26 CONCLUSION BECAUSE I KNOW THAT ULTIMATELY IT WOULD PUT HIM  
27 IN THE POSITION OF HAVING HIM PUT TO DEATH.

28 THE COURT: YOU DON'T WANT TO BE IN THAT POSITION?

7-6  
1 MS. DROKER: I CANNOT MAKE THAT DECISION, I DON'T  
2 BELIEVE.

3 THE COURT: DO YOU WANT TO BE OR DON'T YOU WANT TO BE  
4 IN THAT POSITION?

5 MS. DROKER: I CAN'T. I DON'T WANT TO BE, NO.

6 IT IS NOT A MATTER OF WHETHER I DON'T WANT TO  
7 TAKE THE RESPONSIBILITY.

8 I DON'T BELIEVE IN THE DEATH PENALTY.

9 THE COURT: NOBODY IS QUARRELING WITH YOU ABOUT THAT.

10 MS. DROKER: NO. I UNDERSTAND IT.

11 THE COURT: A LOT OF PEOPLE FEEL THE SAME WAY YOU DO  
12 AND A LOT OF PEOPLE FEEL THE OPPOSITE WAY YOU DO; DO YOU  
13 UNDERSTAND?

14 MS. DROKER: YES, I DO UNDERSTAND.

15 THE COURT: THAT IS THE PURPOSE OF HAVING THIS HEARING,  
16 IS TO DETERMINE YOUR ATTITUDE TOWARD THE DEATH PENALTY.

17 MS. DROKER: YES, I DO UNDERSTAND.

18 THE COURT: AND AS I UNDERSTAND, YOU DO NOT WANT TO  
19 SIT AS A JUROR IN THIS CASE BECAUSE YOU CANNOT VOTE THE DEATH  
20 PENALTY; IS THAT CORRECT?

21 MS. DROKER: CORRECT.

22 THE COURT: ALL RIGHT.

23 MR. BARENS: DOES YOUR HONOR HAVE AN OPINION THAT THE  
24 DEFENSE COULD NOT REHABILITATE THE JUROR?

25 THE COURT: YOU GO AHEAD AND DO ANYTHING YOU WANT.

26 MR. BARENS: TAKE YOUR BEST SHOT?

27 THE COURT: YOU CAN SEE IF YOU CAN GET HER TO CHANGE  
28 HER MIND, IF THAT IS WHAT YOU WANT.

17-7  
1 MR. BARENS: WELL, I WILL AT LEAST INQUIRE, YOUR HONOR.

2 GOOD AFTERNOON.

3 MS. DROKER: GOOD AFTERNOON.

4 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE  
5 DEFENDANT, JOE HUNT.

6 AND NOW YOU MUST BE TOTALLY CONFUSED ON WHY I  
7 WOULD WANT YOU TO EVER CHANGE YOUR MIND, SINCE I REPRESENT  
8 THE DEFENDANT, WHICH DOESN'T SEEM LOGICAL TO ME EITHER.

9 THE PROBLEM WE HAVE HERE, MS. DROKER, IS THAT  
10 OBVIOUSLY IF YOU SAY THAT YOU ARE JUST IRRECONCILABLY  
11 OPPOSED TO THE DEATH PENALTY UNDER ANY AND ALL CIRCUMSTANCES,  
12 YOU DON'T QUALIFY AS A JUROR IN THIS CASE, AND THAT IS JUST  
13 THE WAY THE LAW IN THIS STATE MADE THINGS BE AND I WANT TO  
14 SOMEWHAT FURTHER INQUIRE INTO YOUR STATE OF MIND TO SEE IF  
15 THAT IS IN FACT YOUR STATE OF MIND.

16 MS. DROKER: OKAY.

17 MR. BARENS: NOW PLEASE BEAR IN MIND THAT NEITHER THE  
18 JUDGE NOR THE PROSECUTION NOR MYSELF ARE JUDGING ANY OF YOUR  
19 ANSWERS. THERE IS NO RIGHT OR WRONG ANSWER TO ANY OF THESE.

20 MS. DROKER: I DON'T FEEL JUDGED.

21 MR. BARENS: BECAUSE YOU COULD NEVER BE WRONG ABOUT  
22 YOUR OPINION.

23 MS. DROKER: THANK YOU. I DON'T FEEL JUDGED.

24 MR. BARENS: NOW ARE YOU TELLING ME AND THE COURT THAT  
25 NO MATTER WHAT, NO MATTER HOW HEINOUS THE CRIME, NO MATTER  
26 THAT THE DEFENDANT ACTED IN PREMEDITATION IN A COLD-BLOODED  
27 SENSE, FOR GREED AND GAIN, THAT YOU COULD NEVER VOTE FOR THE  
28 DEATH PENALTY EVEN THOUGH THERE IS A DEAD PERSON?

29 MS. DROKER: THAT'S CORRECT.

1 MR. BARENS: HAVE YOU EVER HAD A SITUATION WHERE YOU  
2 KNEW SOMEONE YOU LIKED QUITE A BIT INITIALLY BUT LATER ON YOU  
3 CHANGED YOUR OPINION ABOUT THEM?

4 MS. DROKER: PROBABLY.

5 MR. BARENS: I AM GOING TO SUBMIT THE MATTER, YOUR HONOR.  
6 THANK YOU VERY MUCH FOR YOUR HONESTY TODAY.

7 MR. WAPNER: NO QUESTIONS.

8 THE COURT: WE WOULD VERY MUCH LIKE TO HAVE YOU. YOU  
9 LOOK LIKE AN EXTREMELY INTELLIGENT JUROR. IF IT WEREN'T  
10 A DEATH PENALTY CASE, WE WOULD GRAB YOU IN A MINUTE.

11 MS. DROKER: THANK YOU. I WOULD LOVE TO BE A PART OF  
12 THE PROCESS, BUT --

13 THE COURT: SINCE YOU HAVE THIS DEEP CONVICTION THAT  
14 UNDER NO CIRCUMSTANCES WOULD YOU VOTE THE DEATH PENALTY, WE  
15 RELUCTANTLY ARE GOING TO EXCUSE YOU.

16 MS. DROKER: THANK YOU.

17 THE COURT: THANK YOU VERY MUCH.

18 (PROSPECTIVE JUROR DROKER EXITS THE  
19 COURTROOM.)

20 (PROSPECTIVE JUROR ELIE ENTERS THE  
21 COURTROOM.)

22 THE COURT: IS THAT PRONOUNCED ELIE?

23 MS. ELIE: IT IS PRONOUNCED ELIE.

24 THE COURT: ELIE?

25 MS. ELIE: YES. JUST LIKE IT IS SPELLED.

26 THE COURT: I WOULD HAVE PRONOUNCED IT ELIE IF IT WERE  
27 SPELLED E-L-Y. IS THAT MISS?

28 MS. ELIE: MRS.

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

2 MS. ELIE: EL SEGUNDO.

3 THE COURT: AND HAVE YOU HEARD ANYTHING AT ALL ABOUT  
4 THIS CASE, EXCEPT WHAT I TOLD YOU ABOUT?

5 MS. ELIE: ZERO. NOTHING TO MY KNOWLEDGE.

6 THE COURT: DOES ANY CHARACTERIZATION LIKE THE BILLIONAIRE  
7 BOYS CLUB RING A BELL?

8 MS. ELIE: NO.

9 THE COURT: JOE HUNT OR ANYTHING LIKE THAT?

10 MS. ELIE: NO.

11 THE COURT: ALL RIGHT. AS I TOLD YOU YESTERDAY, I WILL  
12 REPEAT IT BRIEFLY, THE DEFENDANT IS CHARGED IN THIS CASE WITH  
13 THE COMMISSION OF A MURDER AND MURDER IN THE FIRST DEGREE.

14 IT IS ALSO ALLEGED THAT THAT MURDER WAS COMMITTED  
15 IN THE COURSE OF A ROBBERY. AND I INDICATED TO YOU YESTERDAY,  
16 THAT IN THE COURSE OF A ROBBERY HAS SPECIAL SIGNIFICANCE  
17 BECAUSE THE LEGISLATURE HAS SAID AND IT IS THE LAW IN  
18 CALIFORNIA, THAT NOT EVERY MURDER COMMITTED, EVEN IF IT IS  
19 A MURDER DELIBERATELY PLANNED AND EXECUTED, EVEN IF IT WAS  
20 PREMEDITATED AND INTENTIONAL, DOESN'T MEAN THAT IT IS SUBJECT  
21 TO THE DEATH PENALTY.

22 IT IS ONLY IF THE MURDER IS COMMITTED UNDER  
23 CERTAIN SPECIAL CIRCUMSTANCES THAT IT THEN QUALIFIES FOR THE  
24 DEATH PENALTY. DO YOU UNDERSTAND THAT?

25 MS. ELIE: UH-HUH.

26 THE COURT: WHEN I TALK ABOUT THE DEATH PENALTY, THE  
27 DEATH PENALTY INCLUDES TWO THINGS. IT INCLUDES FIRST, LIFE  
28 WITHOUT POSSIBILITY OF PAROLE AND IT MEANS EXACTLY THAT. IF

8A-3

1 HE GETS LIFE WITHOUT POSSIBILITY OF PAROLE, HE NEVER COMES  
2 OUT AGAIN. THERE IS NO PAROLE. HE IS NEVER OUT AGAIN.

3 OR, IT IS DEATH IN THE GAS CHAMBER. IT IS ONE  
4 OF THOSE TWO THINGS. DO YOU UNDERSTAND THAT?

5 NOW, THOSE SPECIAL CIRCUMSTANCES ARE PRESENT ONLY  
6 IN CERTAIN ENUMERATED CASES THAT THE LEGISLATURE HAS SAID.  
7 THERE ARE 19 OF THEM.

8 THAT IS COMMITTING A MURDER IN THE COURSE OF A  
9 ROBBERY QUALIFIES FOR THE DEATH PENALTY. SO DOES A MURDER  
10 COMMITTED DURING THE COURSE OF A BURGLARY OR A RAPE OR A  
11 KIDNAPPING OR A CHILD WHO IS MOLESTED AND DIES, TORTURE,  
12 MULTIPLE MURDERS AND SO ON. ALL OF THOSE QUALIFY FOR THE  
13 DEATH PENALTY. DO YOU UNDERSTAND THAT?

14 MS. ELIE: YES.

15 THE COURT: SO WHAT THE JURORS ARE CALLED UPON TO DO  
16 FIRST, IS DETERMINE WHAT WE CALL THE GUILT PHASE OF THE TRIAL.  
17 FIRST, IT IS THE GUILT PHASE, DID THE DEFENDANT COMMIT THE  
18 CRIME OF MURDER OR WAS IT MURDER IN THE FIRST DEGREE?

19 THEN THEY HAVE TO ANSWER THE QUESTION, IS IT TRUE  
20 OR FALSE THAT IT WAS COMMITTED IN THE COURSE OF A ROBBERY.  
21 IF THEY DECIDE THAT IT WAS MURDER IN THE FIRST DEGREE AND IT  
22 WAS COMMITTED IN THE COURSE OF A ROBBERY, TRUE, THEN THAT  
23 SAME JURY HEARS ADDITIONAL TESTIMONY, WHAT WE CALL THE SECOND  
24 PHASE.

25 THE SECOND PHASE IS THE PENALTY PHASE. NOW, ON  
26 THE GUILT PHASE, ALL THEY DETERMINE IS THE GUILT OR INNOCENCE  
27 OF THE DEFENDANT, WAS IT COMMITTED IN THE COURSE OF A ROBBERY.

28 THE QUESTION OF PUNISHMENT OR PENALTY IS NOT



1 INVOLVED IN ANY WAY IN DETERMINING GUILT OR INNOCENCE. DO  
2 YOU UNDERSTAND THAT?

3 MS. ELIE: UH-HUH.

4 THE COURT: IT IS ONLY IN THE SECOND PHASE THAT THE  
5 PENALTY COMES INTO VIEW. THE JURY THEN HEARS ADDITIONAL  
6 TESTIMONY, THINGS WHICH ARE FAVORABLE TO THE DEFENDANT.

7 THEY MUST CONSIDER HIS AGE, HIS BACKGROUND, HIS  
8 EDUCATION, MENTAL AND PHYSICAL CONDITION, HIS LACK OF ANY KIND  
9 OF PRIOR CRIMINAL HISTORY.

10 THEY WILL HAVE EVIDENCE PRESENTED BEFORE THE JURY  
11 ON THOSE ASPECTS. THESE ARE CALLED EXTENUATING OR MITIGATING  
12 CIRCUMSTANCES.

13 THE PROSECUTION ON THE OTHER HAND, WOULD TRY TO  
14 SHOW AGGRAVATING CIRCUMSTANCES, TO SHOW UNFAVORABLE THINGS  
15 ABOUT THE DEFENDANT.

16 NOW, YOU CONSIDER THE UNFAVORABLE AND THE FAVORABLE,  
17 EVERYTHING THAT YOU HEAR IN THE PENALTY PHASE. YOU CONSIDER  
18 THAT. YOU ALSO CONSIDER THE NATURE OF THE OFFENSE ITSELF AND  
19 THE FACTS YOU HAVE HEARD.

20 THEN THE JURY DETERMINES WHETHER IT SHOULD BE  
21 ONE, LIFE WITHOUT POSSIBILITY OF PAROLE; OR TWO, DEATH IN THE  
22 GAS CHAMBER.

23 IS THAT CLEAR SO FAR?

24 MS. ELIE: BASICALLY.

25 THE COURT: ANY QUESTIONS SO FAR?

26 MS. ELIE: NO.

27 THE COURT: OKAY. NOW, THE QUESTIONS WE ARE GOING TO  
28 ASK YOU ARE DESIGNED FOR THE PURPOSE OF TRYING TO EXPLORE YOUR

SA-5

1 MIND AS TO WHAT YOUR FEELINGS ARE OR WHAT YOUR THOUGHTS ARE  
2 ON THE SUBJECT OF THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

3 MS. ELIE: UH-HUH.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: NOW, THE FIRST TWO QUESTIONS I AM GOING TO  
2 ASK YOU, ARE REFERRABLE TO THE GUILT PHASE OF THE TRIAL. THE  
3 FIRST QUESTION I AM GOING TO ASK YOU IS, DO YOU HAVE AN  
4 OPINION OF THE DEATH PENALTY, IF YOU HAVE ONE WHATEVER IT MAY  
5 BE, THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
6 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT? DO YOU UNDER-  
7 STAND?

8 MS. ELIE: YES.

9 THE COURT: WHAT IS YOUR ANSWER?

10 MS. ELIE: NO.

11 THE COURT: ALL RIGHT. THE SECOND QUESTION IS, DO YOU  
12 REMEMBER THAT I TOLD YOU THAT ON THE GUILT PHASE, YOU ARE TO  
13 ANSWER THE QUESTION TRUE OR FALSE, WAS IT COMMITTED DURING  
14 THE COURSE OF A ROBBERY? THAT IS KNOWN AS A SPECIAL  
15 CIRCUMSTANCE.

16 DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY,  
17 THAT PREVENTS YOU FROM MAKING AN IMPARTIAL DECISION  
18 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

19 MS. ELIE: NO.

20 THE COURT: NOW, THE NEXT TWO HAVE TO DO WITH THE  
21 PENALTY PHASE. ALL RIGHT?

22 DO YOU HAVE ANY OPINION CONCERNING THE DEATH  
23 PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE FOR THE  
24 DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED  
25 ON THE PENALTY PHASE OF THE TRIAL? IN OTHER WORDS, HAVING  
26 FOUND THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE DURING  
27 THE COURSE OF A ROBBERY, WOULD YOU IMMEDIATELY SAY HE SHOULD  
28 SUFFER THE DEATH PENALTY?

1 MS. ELIE: NO.

2 THE COURT: WITHOUT HEARING ANY OTHER TESTIMONY ON THAT?

3 MS. ELIE: NO. YOU MEAN PREJUDGING?

4 THE COURT: YES.

5 MS. ELIE: YES. PREJUDGING THE TESTIMONY?

6 THE COURT: RIGHT. YOU HAVE GOT TO HEAR ALL OF THE  
7 TESTIMONY?

8 MS. ELIE: RIGHT.

9 THE COURT: SO YOUR ANSWER IS NO, YOU WOULD NOT  
10 AUTOMATICALLY IMPOSE THE DEATH PENALTY WITHOUT HEARING EVIDENCE  
11 ON THE PENALTY PHASE. IS THAT RIGHT?

12 MS. ELIE: RIGHT.

13 THE COURT: AND SIMILARLY, DO YOU HAVE ANY OPINION  
14 CONSIDERING THE DEATH PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY  
15 TO VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE. REGARDLESS  
16 OF ANY EVIDENCE THAT MAY HAVE BEEN PRESENTED ON THE PENALTY  
17 PHASE OF THE TRIAL?

18 MS. ELIE: WOULD YOU RUN THAT BY ME ONE MORE TIME?

19 THE COURT: YES, I WILL. YOU TOLD US THAT YOU WOULD NOT  
20 AUTOMATICALLY VOTE FOR THE DEATH PENALTY? IN OTHER WORDS --

21 MS. ELIE: NOT AUTOMATICALLY, WITHOUT HEARING --

22 THE COURT: RIGHT. WOULD YOU AUTOMATICALLY VOTE FOR  
23 LIFE WITHOUT POSSIBILITY OF PAROLE, BEFORE YOU HAD HEARD  
24 ANY TESTIMONY ON THE PENALTY PHASE?

25 MS. ELIE: NO.

26 THE COURT: OKAY. NOW, YOU UNDERSTAND THAT THE ISSUE  
27 OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE  
28 AND THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT THAT

1 YOU REACH THAT PHASE OF THE TRIAL? DO YOU UNDERSTAND THAT?

2 MS. ELIE: RIGHT.

3 THE COURT: THANK YOU.

4 MR. BARENS: THANK YOU, YOUR HONOR. GOOD AFTERNOON,  
5 MS. ELIE. I AM ARTHUR BARENS. I REPRESENT THE DEFENDANT,  
6 JOE HUNT.

7 AND AS WAS THE CASE WITH HIS HONOR, IT IS MY DUTY  
8 TO INQUIRE AS TO YOUR STATE OF MIND ABOUT THE DEATH PENALTY  
9 AT THIS STAGE OF THE PROCEEDINGS. AND PARENTHETICALLY, THERE  
10 ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NO ONE HERE  
11 IS JUDGING YOUR ANSWERS BECAUSE YOU CAN'T BE WRONG ABOUT YOUR  
12 OWN OPINIONS. OKAY?

13 MS. ELIE: OKAY.

14 MR. BARENS: WITH THAT IN MIND, HOW DO YOU FEEL AS A  
15 GENERAL PROPOSITION, ABOUT THE DEATH PENALTY IN OUR SOCIETY?

16 MS. ELIE: I AM FOR IT.

17 MR. BARENS: YOU ARE FOR THE DEATH PENALTY?

18 MS. ELIE: YES.

19 MR. BARENS: COULD YOU TELL US OR ELABORATE A LITTLE  
20 BIT WHY YOU FEEL THAT WAY?

21 MS. ELIE: WELL, I AM VERY NERVOUS. I JUST FEEL THAT  
22 WE HAVE TO BE A LITTLE STIFFER MAYBE, BECAUSE OUR PRISONS ARE  
23 OVER-CROWDED. I AM JUST FOR IT.

24 MR. BARENS: OKAY. CERTAINLY, THERE IS NOTHING WRONG  
25 WITH THAT. ARE THERE CERTAIN TYPES OF PEOPLE OR SITUATIONS  
26 THAT YOU FEEL SHOULD GET THE DEATH PENALTY?

27 MS. ELIE: ABSOLUTELY.

28 MR. BARENS: AND COULD YOU TELL US WHAT YOU MEAN IN THAT

1 REFERENCE?

2 MS. ELIE: CHILD MOLESTERS. HEINOUS CRIMES.

3 MR. BARENS: DO YOU FEEL THAT WITHOUT ANYTHING FURTHER,  
4 JUST PHILOSOPHICALLY, THAT SOMEONE WHO TAKES A LIFE SHOULD  
5 HAVE HIS LIFE TAKEN IN RETURN? A LIFE FOR A LIFE?

6 MS. ELIE: I THINK IT DEPENDS UPON THE CIRCUMSTANCES.

7 MR. BARENS: WELL, LET'S SAY THE CIRCUMSTANCES IN THIS  
8 INSTANCE, IN THE GUILT PHASE OF THE TRIAL, WOULD INVOLVE SOME-  
9 ONE WHO INTENTIONALLY, WITH PREMEDITATION, COMMITS A MURDER  
10 OF A PERSON DURING THE COMMISSION OF A ROBBERY.

11 MS. ELIE: YES.

12 MR. BARENS: NOW, INDEED, THAT THAT TYPE OF A PERSON,  
13 THAT WE SHOULD ALWAYS GIVE THE PERSON THE DEATH PENALTY?

14 MS. ELIE: IF IT IS PREMEDITATED.

15 MR. BARENS: QUITE SO. NOW, THE JUDGE INDICATED TO YOU  
16 THAT DURING THAT SECOND PHASE, THE PENALTY PHASE, THE  
17 DEFENSE MIGHT AND PROBABLY WOULD INTRODUCE EVIDENCE SAY, ABOUT  
18 THE DEFENDANT'S AGE AT THE TIME THE ALLEGED CRIME WAS COMMITTED  
19 OR ABOUT WHETHER OR NOT HE HAD A CRIMINAL BACKGROUND OR  
20 EVIDENCE ABOUT HIS CHARACTER OR HIS CHILDHOOD AND ET CETERA.

21 AND I AM UNDERSTANDING CORRECTLY, THAT THAT WOULD  
22 NOT BE CONSIDERED BY YOURSELF. BUT RATHER, IF HE HAD  
23 PREMEDITATEDLY TAKEN SOMEONE'S LIFE, THAT THAT IN YOUR MIND,  
24 WOULD QUALIFY HIM FOR THE DEATH PENALTY AND THAT WOULD BE  
25 IT?

26 MS. ELIE: YES.

27 MR. BARENS: AND AGAIN, I --

28 THE COURT: NOW. WHAT THAT QUESTION IMPLIES, IT MEANS

1 THAT YOU WOULDN'T LISTEN TO ANY KIND OF TESTIMONY ON THE  
2 PENALTY PHASE, THAT YOU WOULD AUTOMATICALLY VOTE FOR THE  
3 DEATH PENALTY.

4 MS. ELIE: NO. I DON'T MEAN THAT.

5 THE COURT: THAT IS THE WAY HE PUT IT TO YOU. IS THAT  
6 WHAT YOUR ANSWER IS?

7 MS. ELIE: NO.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

9-1  
1 MR. BARENS: TELL ME WHAT THE DIFFERENCE IS BETWEEN  
2 WHAT YOU ARE SAYING NOW AS OPPOSED TO WHAT YOU SAID WHEN YOU  
3 ANSWERED ME TO BEGIN WITH.

4 MS. ELIE: YOU ASKED ME, IF A PERSON COMES FROM A BETTER  
5 FAMILY OR A BETTER BACKGROUND AND THEY ARE YOUNG WHEN THEY  
6 COMMITTED A PREMEDITATED MURDER, AS OPPOSED TO SOMEONE WHO  
7 IS OLDER WITH A RECORD, A LESSER BACKGROUND BUT COMMITTED  
8 A PREMEDITATED MURDER, WOULD I FIND THERE TO BE A DIFFERENCE?

9 MS. BARENS: YES.

10 (PAUSE.)

11 MS. ELIE: IT IS STILL A MURDER, RIGHT.

12 MR. BARENS: MURDER IS MURDER, ISN'T IT?

13 AND IF THEY TAKE A LIFE, THE ONLY THING WE CAN  
14 DO IN EVERY INSTANCE IS TAKE THEIR LIFE; ISN'T THAT YOUR STATE  
15 OF MIND?

16 THE COURT: OR IS IT YOUR STATE OF MIND?

17 MR. BARENS: IS IT YOUR STATE OF MIND? QUITE SO. IS  
18 IT YOUR STATE OF MIND?

19 MS. ELIE: I AM NOT SURE. I -- I AM GETTING CONFUSED  
20 BETWEEN THE GUILT PHASE AND --

21 MR. BARENS: WE DON'T WANT --

22 MR. WAPNER: YOUR HONOR, CAN THE RECORD REFLECT A LONG  
23 PAUSE BEFORE THAT LAST ANSWER WHICH WAS "I AM NOT SURE."

24 THE COURT: YES.

25 MR. WAPNER; THANK YOU.

26 MR. BARENS: OKAY, LET ME TRY TO RECREATE THE SETTING  
27 FOR YOU.

28 BEFORE WE EVER GET TO A PENALTY PHASE, THE PHASE



19-2

1 WHERE WE TALK ABOUT BACKGROUND AND YOUTH AND WE TALK ABOUT  
2 CHARACTER AND PRIOR CRIMINAL CONDUCT AND ALL OF THAT STUFF,  
3 IF YOU WERE A JUROR, YOU AND THE OTHER 11 PEOPLE HAVE TO HAVE  
4 BELIEVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED  
5 A PREMEDITATED, INTENTIONAL FIRST DEGREE MURDER DURING THE  
6 COMMISSION OF A ROBBERY, AND YOU ARE CONVINCED OF THAT BEYOND  
7 A REASONABLE DOUBT BEFORE WE EVER GET TO WHETHER OR NOT WE  
8 SHOULD GIVE THE DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT  
9 THE POSSIBILITY OF PAROLE, YOU UNDERSTAND THAT?

10 MS. ELIE: RIGHT.

11 MR. BARENS: YOU ALREADY ARE IN THAT STATE OF MIND,  
12 YOU HAVE THAT BELIEF SYSTEM BY THE TIME WE GET TO THE PENALTY  
13 PHASE, OKAY?

14 (MS. ELIE NODS HER HEAD UP AND DOWN.)

15 MR. BARENS: NOW, HAVING FIRST BELIEVED THAT, WOULD  
16 YOU BELIEVE THAT THE ONLY PENALTY THAT IS APPROPRIATE FOR  
17 THAT TYPE OF A DEFENDANT IS THE DEATH PENALTY, OR WOULD YOU  
18 SAY WELL, I WOULD NEED TO CONSIDER HIS BACKGROUND AND ALL  
19 OF THAT SORT OF EVIDENCE BEFORE I COULD MAKE A DECISION?

20 MS. ELIE: WHY WOULD THE BACKGROUND HAVE ANYTHING TO  
21 DO WITH IT?

22 MR. BARENS: IT DOESN'T NECESSARILY.

23 THE COURT: THE LAW SAYS IT HAS TO DO IN DETERMINING  
24 WHETHER OR NOT HE IS TO RECEIVE LIFE IMPRISONMENT WITHOUT  
25 THE POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER.  
26 THE LAW IS YOU HAVE TO CONSIDER ALL OF THOSE FACTORS I JUST  
27 TOLD YOU ABOUT, HIS BACKGROUND, SUPPOSE HE LED AN EXEMPLARY  
28 LIFE AND HE JUST HAPPENED TO COMMIT THIS ONE MURDER DELIBERATELY,

19-3

1 AND THAT IS ONE OF THE REASONS THEY SAY THE JURY SHOULD  
2 DETERMINE WHETHER THE PENALTY SHOULD BE LIFE IMPRISONMENT  
3 OR LIFE WITHOUT THE POSSIBILITY OF PAROLE, YOU HAVE TO  
4 CONSIDER THOSE THINGS BECAUSE YOU CAN'T IMMEDIATELY MAKE UP  
5 YOUR MIND THAT BECAUSE HE HAS BEEN FOUND GUILTY OF MURDER  
6 IN THE FIRST DEGREE THAT HE WOULD GET THE DEATH PENALTY WITHOUT  
7 CONSIDERING ALL OF THOSE OTHER FACTORS, HIS BACKGROUND AND  
8 SO FORTH. YOU CAN'T AUTOMATICALLY DECIDE HE WOULD GET THE  
9 DEATH PENALTY WITHOUT HAVING ALL OF THAT. THAT IS THE REASON  
10 FOR HAVING TO HAVE THE SECOND PHASE, THE PENALTY PHASE.

11 MS. ELIE: FOR LIFE IMPRISONMENT AND THE PENALTY PHASE,  
12 OKAY, NOW I UNDERSTAND. I THOUGHT THE TWO WERE THE SAME.

13 THE COURT: IT IS NOT THAT YOU HAVE ONLY ONE DECISION  
14 TO MAKE, SHALL IT BE DEATH IN THE GAS CHAMBER?

15 YOU ALSO HAVE TO CONSIDER LIFE IMPRISONMENT  
16 WITHOUT THE POSSIBILITY OF PAROLE. SO WHEN THIS LEARNED  
17 LAWYER TELLS YOU REGARDING DEATH, HE MEANS ONE OR THE OTHER,  
18 I ASSUME.

19 MR. BARENS: I DO, BUT I DON'T THINK THE JUROR DOES.

20 MS. ELIE: I UNDERSTAND NOW.

21 I DIDN'T UNDERSTAND BEFORE.

22 I THOUGHT THE DEATH PENALTY AND LIFE IMPRISONMENT  
23 WITHOUT THE POSSIBILITY OF PAROLE BOTH WERE THE SAME THING,  
24 I MEAN.

25 MR. BARENS: OH, NO. ONE, YOU ARE QUITE DEAD AND ONE,  
26 YOU ARE QUITE LOCKED UP.

27 YOU SEE, YOU ONLY HAVE TWO CHOICES IF WE EVER  
28 GET TO THAT PART OF THIS PROCEEDING.

1904

1                   WHAT I NEED TO KNOW IS, IF YOU WERE TO HAVE TWO  
2 CHOICES --

3           MS. ELIE:   RIGHT.

4           MR. BARENS:  -- I GET A FEELING, IN ALL CANDOR, IN  
5 TALKING TO YOU AND AGAIN I AM NOT SAYING YOU ARE WRONG --

6           MR. WAPNER:  AGAIN, I OBJECT TO THE FORM OF THE QUESTION  
7 OF MR. BARENS' OPINION.  IT IS NOT HIS OPINION.

8           MR. BARENS:  I KNOW, BUT TO GET HER OPINION, I HAVE  
9 TO TELL HER THE OPINION I FORMED ABOUT HER TESTIMONY SO FAR.

10          MR. WAPNER:  NO.  HE CAN JUST ASK THE QUESTION.

11          THE COURT:  GO AHEAD.

12          MR. BARENS:  WELL, LET ME ASK YOU THIS:  DO YOU BELIEVE  
13 THAT YOU WOULD EVER, IF YOU HAD A DEFENDANT YOU HAD ALREADY  
14 FOUND GUILTY OF A PREMEDITATED MURDER DURING A ROBBERY, DO  
15 YOU THINK YOU WOULD BE CAPABLE OF VOTING FOR LIFE IMPRISONMENT  
16 WITHOUT THE POSSIBILITY OF PAROLE FOR SOMEONE WHO HAD TAKEN  
17 A LIFE UNDER THOSE CIRCUMSTANCES?

18          MS. ELIE:  YES.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19A-1  
1 MR. BARENS: YOU COULD?

2 MS. ELIE: YES.

3 MR. BARENS: ALL RIGHT, NOW WHAT WOULD INFLUENCE YOU  
4 OR WHAT FACTORS MIGHT INFLUENCE YOU IN COMING TO THAT DECISION?

5 MS. ELIE: WELL, LIKE WE GOT BACK TO BEFORE, THE BACK-  
6 GROUND WOULD PROBABLY HAVE SOMETHING TO DO WITH THE SECOND,  
7 LIFE IMPRISONMENT.

8 MR. BARENS: YOU WOULD HAVE TO LISTEN TO THAT SORT OF  
9 EVIDENCE?

10 MS. ELIE: YES.

11 MR. BARENS: NOW, WOULD YOUR BELIEF THAT A PERSON WHO  
12 COMMITTED A FIRST -- IF YOU HAVE A BELIEF -- DO YOU HAVE A  
13 BELIEF THAT A PERSON WHO COMMITS A PREMEDITATED MURDER SHOULD  
14 MORE LIKELY GET THE DEATH PENALTY?

15 MR. WAPNER: EXCUSE ME. I WOULD OBJECT TO THE FORM  
16 OF THE QUESTION. MORE LIKELY THAN WHO?

17 MR. BARENS: MORE LIKELY THAN GET LIFE IMPRISONMENT  
18 WITHOUT THE POSSIBILITY OF PAROLE.

19 MS. ELIE: WELL, THAT GETS BACK TO THE FIRST QUESTION.  
20 WE STILL HAVE TO HAVE ALL OF THE --

21 MR. BARENS: EVIDENCE?

22 MS. ELIE: EVIDENCE.

23 MR. BARENS: YOU SEE, WHAT I AM LOOKING FOR, DO YOU  
24 FEEL YOU HAVE ANY PREDISPOSITION THAT WOULD INFLUENCE YOU  
25 ONE WAY OR THE OTHER JUST BECAUSE YOU HAVE SOMEONE -- AND  
26 NOT THAT I AM UNDERSTATING THIS -- BUT BECAUSE YOU HAVE  
27 SOMEONE WHO IS GUILTY OF FIRST DEGREE MURDER, WOULD YOU HAVE  
28 A PREDISPOSITION TO BE MORE IN FAVOR OF THE DEATH PENALTY

19A-2  
1 AS A RESULT OF THAT, BEFORE YOU EVER HEARD ANY MORE EVIDENCE?

2 MS. ELIE: NO.

3 MR. BARENS: OKAY. YOU WOULD LISTEN TO ALL OF THE  
4 EVIDENCE?

5 MS. ELIE: RIGHT.

6 MR. BARENS: DO YOU UNDERSTAND THAT LIFE IMPRISONMENT  
7 WITHOUT THE POSSIBILITY OF PAROLE MEANS PRECISELY THAT, THAT  
8 THE DEFENDANT DOES NOT GET OUT?

9 MS. ELIE: IN SEVEN YEARS.

10 MR. BARENS: YES, THAT IS THE OTHER KIND OF MURDER.  
11 THAT IS THE NON-SPECIAL CIRCUMSTANCE DEAL AND THAT ISN'T EVEN  
12 REALLY SEVEN YEARS.

13 I AM TALKING ABOUT THE SPECIAL CIRCUMSTANCES MURDER  
14 WHERE THE JUDGE TELLS US HE NEVER GETS OUT, NEVER EVEN BECOMES  
15 ELIGIBLE FOR A PAROLE HEARING; DO YOU UNDERSTAND THAT?

16 MS. ELIE: YES.

17 MR. BARENS: AND THAT IS THE LAW.

18 ALL RIGHT, YOU MENTIONED TO ME EARLIER THAT THE  
19 PRISONS ARE OVERCROWDED AND I SUPPOSE -- IS IT YOUR BELIEF  
20 THAT ONE OF THE REMEDIES FOR OVERCROWDED PRISONS IS THE DEATH  
21 PENALTY?

22 MS. ELIE: NOT NECESSARILY BUT MAYBE IT MIGHT SET AN  
23 EXAMPLE.

24 MR. BARENS: ARE YOU OF A BELIEF THAT THE DEATH PENALTY  
25 IS REALLY A DETERRENT TO CRIME?

26 THE COURT: DETERRENT TO MURDER, YOU MEAN?

27 MS. ELIE: I BEG YOUR PARDON?

28 MR. BARENS: WELL, IT IS A DETERRENT TO OTHER KINDS

19A-3  
1 OF CRIMES, TOO, I THINK.

2 YOU DON'T GO IN AND COMMIT AN ARMED ROBBERY IN  
3 A LIQUOR STORE WHERE YOU MIGHT PULL THE TRIGGER, IF THE FELLOW  
4 DEFENDS HIMSELF, EVEN THOUGH YOU WEREN'T INTENDING TO COMMIT  
5 A MURDER WHEN YOU WALKED IN.

6 BUT BE THAT AS IT MAY, DO YOU THINK IT IS A  
7 DETERRENT TO MURDER, THE DEATH PENALTY?

8 MS. ELIE: I THINK IN SOME CASES IT COULD BE.

9 MR. BARENS: IF IT IS A DETERRENT TO MURDER, DO YOU  
10 THINK IT HAS TO BE UNIFORMLY AND PREDICTABLY APPLIED AS A  
11 PENALTY?

12 MS. ELIE: YES.

13 MR. BARENS: NOW, IF WE ARE GOING TO UNIFORMLY APPLY  
14 IT, HOW DO WE RECONCILE THAT WITH CONSIDERATIONS ABOUT THE  
15 DEFENDANTS' BACKGROUNDS, IF DEFENDANTS HAVE TAKEN A LIFE IN  
16 A PREMEDITATED SETTING, IS IT THEN APPROPRIATE IN YOUR OPINION  
17 TO CONSIDER THEIR BACKGROUNDS BEFORE WE MAKE A DETERMINATION  
18 AS TO LIFE OR DEATH?

19 MS. ELIE: THIS IS GOING BACK TO THE OTHER QUESTION  
20 AND I AM SORRY, I AM CONFUSED WITH THE DEATH PENALTY AND LIFE  
21 IMPRISONMENT AND SO MY ANSWER TO THE OTHER ONE WOULD NOT BE  
22 YES. IT WOULD BE NO BECAUSE IT WOULD DEPEND ON ALL OF THE  
23 EXTENUATING CIRCUMSTANCES.

24 MR. BARENS: SO EVEN THOUGH WE HAVE A NEED TO PREDICTABLY  
25 APPLY THE DEATH PENALTY TO MAKE IT AN EFFECTIVE DETERRENT,  
26 YOU ARE SAYING, NONETHELESS, WE STILL HAVE TO CONSIDER THE  
27 BACKGROUND OF THE DEFENDANT BEFORE DETERMINING WHAT PENALTY  
28 IS APPROPRIATE?

1 MS. ELIE: RIGHT.

2 MR. BARENS: ALL RIGHT, NOW DO YOU UNDERSTAND THAT  
3 ALTHOUGH WE HAVE BEEN DISCUSSING THE DEATH PENALTY AT THIS  
4 POINT IN TIME, THAT THERE IS NO REASON FOR YOU TO BELIEVE  
5 THAT MR. HUNT IS GUILTY OF ANYTHING JUST BECAUSE WE ARE SITTING  
6 HERE OR STANDING HERE TALKING ABOUT THIS?

7 MS. ELIE: RIGHT.

8 MR. BARENS: AND DO YOU UNDERSTAND THAT HE HAS THE  
9 PRESUMPTION, AS YOU WOULD IF YOU WERE A DEFENDANT IN THIS  
10 COURTROOM, OF INNOCENCE, UNTIL A TRIAL HAS TAKEN PLACE AND  
11 THERE HAS BEEN A DEMONSTRATION OF EVIDENCE?

12 MS. ELIE: RIGHT.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

20-1  
1 MR. BARENS: DO YOU BELIEVE THAT?

2 MS. ELIE: YES.

3 MR. BARENS: I THANK YOU FOR YOUR TIME. I PASS FOR  
4 CAUSE, YOUR HONOR.

5 MS. ELIE: AM I THROUGH?

6 THE COURT: NOT QUITE. MR. WAPNER IS THE DEPUTY DISTRICT  
7 ATTORNEY. HE WILL ASK YOU A COUPLE OF QUESTIONS.

8 MR. WAPNER: DO YOU HAVE ANY STRONGLY-HELD RELIGIOUS,  
9 MORAL OR PHILOSOPHICAL BELIEFS THAT WOULD GET IN YOUR WAY  
10 OF DECIDING THE QUESTION OF DEATH OR LIFE WITHOUT POSSIBILITY  
11 OF PAROLE?

12 MS. ELIE: NO.

13 MR. WAPNER: IF IT GETS DOWN TO THE BOTTOM LINE IN THIS  
14 CASE, YOU WOULD BE IN THE JURY ROOM WITH 11 OTHER PEOPLE TRYING  
15 TO DECIDE WHETHER THE DEFENDANT SHOULD SPEND THE REST OF HIS  
16 LIFE IN PRISON OR SHOULD DIE IN THE GAS CHAMBER. DO YOU THINK  
17 THAT IS A DECISION THAT YOU ARE CAPABLE OF MAKING?

18 MS. ELIE: YES.

19 MR. WAPNER: ARE YOU CAPABLE OF MAKING THAT DECISION  
20 EITHER WAY?

21 MS. ELIE: YES.

22 MR. WAPNER: IF THE EVIDENCE DEMONSTRATES TO YOU THAT  
23 THE APPROPRIATE PUNISHMENT IS LIFE WITHOUT POSSIBILITY OF  
24 PAROLE, COULD YOU RENDER THAT VERDICT?

25 MS. ELIE: YES.

26 MR. WAPNER: AND IF THE EVIDENCE DEMONSTRATES TO YOU  
27 THAT THE APPROPRIATE PUNISHMENT IS DEATH, CAN YOU RENDER THAT  
28 VERDICT?



20-2  
1 MS. ELIE: YES.

2 MR. WAPNER: AND ARE YOU NOW CLEAR ON THE FACT THAT  
3 BASICALLY WE ARE HAVING TWO TRIALS HERE, IF IT GETS TO THAT  
4 POINT?

5 MS. ELIE: YES.

6 MR. WAPNER: ALL RIGHT. ONE IS GUILT OR INNOCENCE AND  
7 ONE IS PENALTY?

8 MS. ELIE: RIGHT.

9 MR. WAPNER: AND CAN YOU KEEP OUT OF YOUR MIND, THE  
10 IDEA OF PENALTY WHEN YOU ARE TRYING TO MAKE A DECISION ON  
11 GUILT OR INNOCENCE?

12 MS. ELIE: YES.

13 MR. WAPNER: IN OTHER WORDS, THE JUDGE IS GOING TO TELL  
14 YOU BEFORE YOU GO IN TO DELIBERATE ON THE GUILT OR INNOCENCE  
15 PART, THAT WHEN YOU ARE MAKING THAT DECISION, YOU HAVE TO  
16 MAKE IT BASED ON WHETHER HE IS GUILTY OR WHETHER HE IS NOT  
17 GUILTY, NOT BASED ON WHAT MIGHT HAPPEN TO HIM IF YOU FIND  
18 HIM GUILTY.

19 MS. ELIE: RIGHT.

20 MR. WAPNER: DO YOU UNDERSTAND THAT?

21 MS. ELIE: UH-HUH.

22 MR. WAPNER: IS THAT YES?

23 MS. ELIE: YES.

24 MR. WAPNER: CAN YOU DO THAT?

25 MS. ELIE: YES.

26 MR. WAPNER: I PASS FOR CAUSE, YOUR HONOR.

27 THE COURT: ALL RIGHT. BOTH LAWYERS HAVE PASSED FOR  
28 CAUSE. THAT IS SAYING THAT YOU ARE FULLY QUALIFIED TO SERVE

20-3  
1 AS A JUROR IN THIS CASE IF YOU ARE SELECTED.

2 SO, WHAT I WILL ASK YOU TO DO IS, TO COME BACK  
3 TOMORROW AFTERNOON AT 1:45 TO THE JURY ASSEMBLY ROOM. IF  
4 BY ANY CHANCE, IT MIGHT HAVE TO BE POSTPONED BECAUSE WE HAVE  
5 NOT GONE THROUGH THE ENTIRE LIST, WE HAVE YOUR TELEPHONE NUMBER.

6 WE'LL GIVE YOU A CALL. SO TENTATIVELY, YOU COME  
7 BACK TOMORROW AFTERNOON AT 1:45 TO THE JURY ASSEMBLY ROOM.

8 ALL RIGHT?

9 MS. ELIE: OKAY.

10 THE COURT: THANK YOU VERY MUCH.

11 TRY NOT TO READ OR HEAR ANYTHING ABOUT THE CASE.

12 MR. BARENS: IF WE COULD TAKE A MOMENT NOW, YOUR HONOR?

13 THE COURT: YES. ALL RIGHT.

14 (RECESS.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: ALL RIGHT, IT IS STIPULATED THE DEFENDANT  
2 IS PRESENT AND COUNSEL ARE PRESENT.

3 (PROSPECTIVE JUROR KAREN FELTS ENTERS  
4 THE COURTROOM.)

5 THE COURT: LET ME SEE, IS THAT MISS FELT?

6 MS. FELT: MRS.

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

8 MS. FELT: WOODLAND HILLS.

9 THE COURT: AND HAVE YOU READ ANYTHING AT ALL ABOUT THIS  
10 CASE OR KNOW ANYTHING AT ALL ABOUT IT, EXCEPT IT IS PENDING  
11 HERE, AS I TOLD YOU?

12 MS. FELT: I CAN'T HONESTLY SAY THAT I HAVE BECAUSE I  
13 DON'T RECOGNIZE THE NAME.

14 THE COURT: DID YOU EVER HEAR OF SOMETHING CALLED THE  
15 BILLIONAIRE BOYS CLUB, DID YOU READ ANYTHING ABOUT THAT?

16 MS. FELT: NO.

17 THE COURT: WHAT I AM GOING TO DO IS BRIEFLY TELL YOU  
18 AGAIN WHAT THE CASE IS ABOUT AND THEN ASK YOU SOME QUESTIONS  
19 AFTER THAT.

20 THE CHARGE AGAINST THE DEFENDANT IS THAT HE  
21 COMMITTED A MURDER AND IT WAS MURDER IN THE FIRST DEGREE AND  
22 THAT IT WAS COMMITTED IN THE COURSE OF A ROBBERY.

23 AND NOW IN THE COURSE OF A ROBBERY, THAT HAS  
24 SPECIAL SIGNIFICANCE BECAUSE THE LEGISLATURE HAS SAID --

25 NOW NOT EVERY MURDER, YOU KNOW, EVEN IF IT IS  
26 DELIBERATE, PREMEDITATED AND INTENTIONAL CALLS FOR THE DEATH  
27 PENALTY. IT IS ONLY CERTAIN MURDERS WHICH ARE COMMITTED UNDER  
28 CERTAIN SPECIAL CIRCUMSTANCES THAT QUALIFY IT FOR THE POSSIBLE

1 DEATH PENALTY, YOU UNDERSTAND?

2 NOW, THE LEGISLATURE HAS SAID THAT MURDER COMMITTED  
3 IN THE COURSE OF A ROBBERY, COMMITTED IN THE COURSE OF A  
4 BURGLARY, COMMITTED IN THE COURSE OF A RAPE, IN THE COURSE  
5 OF A KIDNAPPING OR WHERE A CHILD IS MOLESTED AND DIES, OR  
6 MULTIPLE MURDERS OR TORTURE-MURDERS, IN THOSE INSTANCES, THOSE  
7 ARE SOME OF THE INSTANCES WHERE THE DEATH PENALTY MAY BE  
8 IMPOSED AS TO THOSE PARTICULAR MURDERS; DO YOU UNDERSTAND THAT?

9 MS. FELTS: UH-HUH.

10 THE COURT: ALL RIGHT, SO THE JURY WILL BE CALLED UPON  
11 IN THIS CASE FIRST TO DECIDE THE GUILT OR INNOCENCE OF THE DE-  
12 FENDANT, THAT IS THE FIRST PHASE OF THE TRIAL. IT IS CALLED  
13 THE GUILT PHASE.

14 THE QUESTION OF PENALTY IS NOT INVOLVED IN ANY  
15 WAY AND MUST NOT BE CONSIDERED IN ANY WAY.

16 WHAT THE JURY HAS TO DETERMINE AFTER THEY HAVE  
17 HEARD ALL OF THE EVIDENCE ON THE GUILT PHASE IS, WAS THE  
18 DEFENDANT GUILTY OF COMMITTING THE MURDER AND WAS IT MURDER  
19 IN THE FIRST DEGREE AND, IF SO, THEY HAVE TO ANSWER THIS  
20 QUESTION: IS IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED  
21 IN THE COURSE OF A ROBBERY? THAT MAKES IT A SPECIAL  
22 CIRCUMSTANCE.

23 IF THEY SAY IT IS TRUE, THEN THE SAME JURY  
24 CONSIDERS WHAT THE PENALTY IS GOING TO BE.

25 AND BY THE PENALTY, THAT COULD BE LIFE IMPRISONMENT  
26 WITHOUT THE POSSIBILITY OF PAROLE AND THAT MEANS EXACTLY THAT.  
27 THERE WON'T BE ANY CHANCE OF ANY PAROLE IF HE IS COMMITTED  
28 TO STATE PRISON.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

OR SHALL IT BE DEATH IN THE GAS CHAMBER.

NOW BEFORE THEY MAKE UP THEIR MINDS AS TO THAT,  
YOU HEAR ALL OF THE EVIDENCE AS TO THE GUILTY PHASE OF IT, BUT  
THAT IS NOT QUITE ENOUGH. THEY ARE GOING TO HAVE TO DETERMINE--  
THERE WILL BE EVIDENCE WHICH WILL BE PRESENTED TO THE SAME  
JURY THAT THEY HAVEN'T HEARD BEFORE, FROM THE DEFENDANT AND  
FROM THE PROSECUTION, EVIDENCE FROM THE DEFENDANT TO SHOW,  
WHICH THE JURY MUST CONSIDER, FACTORS LIKE THE AGE OF THE  
DEFENDANT, THE LACK OF ANY PRIOR CRIMINAL RECORD, HIS EDUCATION,  
HIS BACKGROUND, HIS PHYSICAL CONDITION, ANYTHING AT ALL THAT  
HAS TO DO WITH THE PERSON THAT MAY BE FAVORABLE TO HIM. ALL  
OF THOSE FACTORS MUST BE CONSIDERED BY THE JURY IN EVALUATING  
THE PERSON.

22A  
1           THEY ALSO HAVE A RIGHT TO CONSIDER THE FACTS OF  
2 THE CASE ITSELF. THE PROSECUTION ON THE OTHER HAND, WOULD  
3 TRY TO SHOW AGGRAVATING CIRCUMSTANCES, IN OTHER WORDS, TO  
4 SHOW THAT HE IS NOT ENTITLED TO ANY CONSIDERATION MITIGATING  
5 THE CRIME.

6           THE THINGS ABOUT HIM THEY WILL PROVE OR ATTEMPT  
7 TO PROVE OR SHOW, ARE UNFAVORABLE TO THE DEFENDANT.

8           IN OTHER WORDS, ONE SAYS FAVORABLE AND THE OTHER  
9 SAYS UNFAVORABLE. THE JURY HEARS ALL OF THAT AND CONSIDERS  
10 ALL OF THAT. THEN THEY MAKE UP THEIR MINDS, SHOULD IT BE  
11 ONE OR THE OTHER, SHOULD IT BE LIFE WITHOUT POSSIBILITY OF  
12 PAROLE OR SHOULD IT BE DEATH IN THE GAS CHAMBER.

13           THEY ARE NOT SUPPOSED TO MAKE UP THEIR MINDS UNTIL  
14 THEY HEAR ALL OF THAT TESTIMONY BECAUSE IT IS IMPORTANT. AND  
15 THEN THE JURY DETERMINES WHICH IT SHALL BE. DO YOU UNDERSTAND  
16 THAT?

17           MS. FELTS: UH-HUH.

18           THE COURT: ALL RIGHT. NOW, SINCE IT IS A QUESTION  
19 OF LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS  
20 CHAMBER, WE ARE NOW TRYING TO FIND OUT WHAT YOUR STATE OF  
21 MIND IS, WHAT YOUR ATTITUDE IS AND EXPLORE YOUR STATE OF MIND  
22 TO FIND OUT HOW YOU FEEL ABOUT THE DEATH PENALTY.

23           SO I WILL ASK YOU A SERIES OF FIVE QUESTIONS.  
24 THE FIRST TWO QUESTIONS RELATE TO THE GUILT PHASE OF THE TRIAL.

25           DO YOU HAVE ANY OPINION WHATEVER THAT OPINION  
26 MAY BE, WHICH WOULD IN ANY WAY, AFFECT YOUR IMPARTIAL  
27 DECISION IN COMING TO A DECISION AS TO THE GUILT OR INNOCENCE  
28 OF THE DEFENDANT?

1 MS. FELTS: OKAY. DO I --

2 THE COURT: DO YOU HAVE AN OPINION AS TO THE DEATH PENALTY,  
3 WHATEVER IT MAY BE --

4 MS. FELTS: ARE YOU ASKING ME IF I BELIEVE IN THE DEATH  
5 PENALTY OR HOW I FEEL ABOUT IT?

6 THE COURT: NO, NO. I AM TELLING YOU, WHATEVER YOU  
7 MIGHT FEEL ABOUT THE DEATH PENALTY ONE WAY OR THE OTHER OR  
8 NOT AT ALL, WOULD THAT OPINION THAT YOU MIGHT HAVE IN ANY  
9 WAY, MAKE YOU -- PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
10 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

11 MS. FELTS: NO. I DON'T THINK SO.

12 THE COURT: SIMILARLY, DO YOU REMEMBER THAT I TOLD YOU  
13 THAT IF YOU FIND THE DEFENDANT GUILTY OF MURDER IN THE FIRST  
14 DEGREE, WHETHER OR NOT IT WAS COMMITTED DURING THE COURSE  
15 OF A ROBBERY, THE SPECIAL CIRCUMSTANCES, IS IT TRUE OR FALSE --  
16 SIMILARLY, DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY  
17 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION  
18 CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL CIRCUMSTANCES?

19 MS. FELTS: NO.

20 THE COURT: OKAY. THE NEXT TWO QUESTIONS PRESUPPOSE  
21 THAT THE DEFENDANT HAS BEEN CONVICTED OF MURDER IN THE FIRST  
22 DEGREE IN THE COURSE OF A ROBBERY. NOW WE ARE IN THE PENALTY  
23 PHASE. ALL RIGHT?

24 MS. FELTS: UH-HUH.

25 THE COURT: NOW, DO YOU HAVE ANY OPINION CONCERNING  
26 THE DEATH PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE  
27 FOR THE DEATH PENALTY, REGARDLESS OF ANY TESTIMONY THAT YOU  
28 MIGHT HEAR ON THE PENALTY PHASE?

1 MS. FELTS: NO.

2 THE COURT: SIMILARLY, THE SAME SORT OF QUESTION BUT  
3 RELATING TO THE POSSIBILITY OF PAROLE. DO YOU HAVE SUCH AN  
4 OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD  
5 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,  
6 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY  
7 PHASE OF THE TRIAL?

8 MS. FELTS: NO.

9 THE COURT: OKAY. DO YOU UNDERSTAND THAT THE ISSUE  
10 OF THE DEATH PENALTY MAY OR MAY NOT COME INTO PLAY IN THIS  
11 CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE  
12 EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

13 MS. FELTS: YES.

14 THE COURT: ALL RIGHT.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 GOOD AFTERNOON, MISS FELTS. I AM ARTHUR BARENS.  
17 I REPRESENT THE DEFENDANT, JOE HUNT, IN THIS MATTER.

18 AND AS IT WAS THE JUDGE'S DUTY, IT IS MY DUTY  
19 IN THIS PROCEDURE AT THIS STAGE OF THE MATTER, TO INQUIRE  
20 AS TO YOUR POINT OF VIEW ON THE DEATH PENALTY.

21 PARENTHETICALLY THERE ARE NO RIGHT OR WRONG  
22 ANSWERS TO MY QUESTIONS AND NONE OF US ARE JUDGING ANY OF  
23 YOUR ANSWERS. YOU CAN'T POSSIBLY GIVE A WRONG ANSWER ABOUT  
24 YOUR OWN OPINION. OKAY?

25 MS. FELTS: UH-HUH.

26 MR. BARENS: WITH THAT IN MIND, HOW DO YOU FEEL ABOUT  
27 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

28 MS. FELTS: I THINK THAT IT HAS ITS PLACE.



1 MR. BARENS: COULD YOU TELL US WHERE THAT PLACE IS?

2 MS. FELTS: I THINK WE HAVE TO HAVE LIMITATIONS IN OUR  
3 SOCIETY AND THAT IS ONE OF THEM. IT IS AN EXTREME ONE. BUT  
4 I DO THINK THAT IT IS A NECESSARY ONE.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

22R-1  
1 MR. BARENS: COULD YOU TELL US ANY SITUATIONS THAT COME  
2 TO YOUR MIND WHEN YOU THINK THE DEATH PENALTY WOULD BE  
3 APPROPRIATE AS A PUNISHMENT?

4 MS. FELTS: I THINK IF SOMEONE TAKES ANOTHER PERSON'S  
5 LIFE AND IT IS PREMEDITATED AND WITH MALICE AND THERE IS NO  
6 MENTAL INCAPACITY OR ANYTHING LIKE THAT, I WOULD THINK THAT  
7 WOULD BE APPLICABLE.

8 MR. BARENS: ALL RIGHT. NOW, ONE OF THE THINGS YOU  
9 HAVE BEEN TOLD, IS THAT THERE WOULD BE A SECOND PHASE, IF  
10 YOU GOT PAST THE GUILT PHASE.

11 LET ME TRY TO CREATE THE SETTING FOR YOU, AS  
12 SPECIFICALLY AS I CAN. IF YOU VOTED GUILTY ALONG WITH --  
13 IF YOU WERE A JUROR ALONG WITH 11 OTHER PEOPLE, THAT WOULD  
14 MEAN THAT YOU WOULD HAD FORMED A BELIEF BEYOND A REASONABLE  
15 DOUBT THAT THE DEFENDANT HAD IN FACT COMMITTED A FIRST DEGREE,  
16 PREMEDITATED, INTENTIONAL KILLING.

17 MS. FELTS: UH-HUH.

18 MR. BARENS: IN THIS INSTANCE, DURING THE COMMISSION  
19 OF A ROBBERY. NOW, THE JUDGE WOULD TELL YOU WELL, YOU HAVE  
20 TO CONSIDER IN REACHING A PENALTY, THE DEFENDANT'S BACKGROUND  
21 IN TERMS OF HIS AGE OR HIS LACK OF CRIMINAL BACKGROUND OR  
22 CHILDHOOD OR CHARACTER.

23 ARE YOU TELLING ME THAT NONE OF THAT WOULD MAKE  
24 A DIFFERENCE TO YOU?

25 MS. FELTS: NO. THAT IS NOT WHAT I SAID.

26 MR. BARENS: WHAT ARE YOU TELLING ME?

27 MS. FELTS: YES. THE CIRCUMSTANCES WOULD IN THE SECOND  
28 PHASE OF THE TRIAL, IF THERE WERE CIRCUMSTANCES THAT WOULD

1 SWAY ME, IT IS POSSIBLE THAT I WOULD GO THE OTHER WAY.

2 MR. BARENS: NOW, YOU UNDERSTAND THAT THERE WOULD BE  
3 NO CIRCUMSTANCE WHERE YOU ARE BEING TOLD THAT THE DEFENDANT  
4 IS INSANE OR INCAPABLE OF FORMULATING THE INTENT TO COMMIT  
5 A MURDER? BECAUSE YOU WOULDN'T HAVE FOUND A FIRST DEGREE  
6 MURDER TO BEGIN WITH.

7 MS. FELTS: UH-HUH.

8 MR. BARENS: YOU WOULD NOT HEAR ANYTHING ABOUT ACCIDENT  
9 OR UNINTENTIONAL OR ANY OF THAT SORT OF THING. YOU WOULD  
10 BE DEALING WITH THE TYPE OF PERSON YOU TOLD ME IN THE FIRST  
11 INSTANCE, THAT SHOULD GET THE DEATH PENALTY.

12 ARE YOU TELLING ME THAT ALTHOUGH YOU BELIEVE THAT  
13 INTENTIONAL, PREMEDITATED MURDERS WITH MALICE SHOULD GET THE  
14 DEATH PENALTY, THAT NONETHELESS, YOU THINK THAT THERE COULD  
15 BE FACTORS WHERE THEY SHOULD NOT?

16 MS. FELTS: YES.

17 MR. BARENS: OKAY. WHAT FACTORS DO YOU MEAN BY THAT?

18 MS. FELTS: I CAN'T ANSWER THAT QUESTION. THERE ARE  
19 A LOT OF --

20 THE COURT: WELL, THE COURT WILL TELL YOU WHAT FACTORS  
21 YOU HAVE GOT TO TAKE INTO CONSIDERATION. YOU WILL FOLLOW  
22 THE COURT'S INSTRUCTIONS. IS THAT TRUE?

23 MS. FELTS: YES. AND TRY TO TAKE IN ALL OF THE OTHER --

24 THE COURT: THOSE THAT I ALREADY ENUMERATED, THE AGE  
25 OF THE DEFENDANT, THE LACK OF ANY CRIMINAL ACTIVITY, HIS  
26 EDUCATION, BACKGROUND AND EVERYTHING ABOUT THE PERSON YOU  
27 WILL BE HEARING ABOUT? YOU WILL CONSIDER THAT, WILL YOU?

28 MS. FELTS: YES.

1 MR. BARENS: NOW, DO YOU HONESTLY BELIEVE IN YOUR HEART,  
2 THAT YOU ARE CAPABLE OF VOTING FOR LIFE WITHOUT POSSIBILITY  
3 OF PAROLE FOR A DEFENDANT WHO HAD BEEN CONVICTED BEYOND A  
4 REASONABLE DOUBT IN YOUR MIND, OF HAVING COMMITTED A MURDER  
5 IN THE FIRST DEGREE DURING THE COMMISSION OF A ROBBERY, A  
6 MURDER THAT WAS PREMEDITATED?

7 MS. FELTS: YES.

8 MR. BARENS: YOU COULD NONETHELESS, VOTE FOR LIFE  
9 WITHOUT POSSIBILITY OF PAROLE?

10 MS. FELTS: YES, SIR.

11 MR. BARENS: DO YOU RECONCILE THAT OR CAN YOU RECONCILE  
12 THAT WITH YOUR EARLIER RESPONSE THAT I TOOK TO UNDERSTAND  
13 THAT YOU WERE SAYING PREMEDITATED MURDERS WITH MALICE SHOULD  
14 GET THE DEATH PENALTY?

15 MS. FELTS: WHEN I ANSWERED THAT QUESTION, IT WAS A  
16 FLAT STATEMENT. BUT THERE ARE A LOT OF GENERALITIES THAT  
17 WOULD ENTER INTO THE CASE.

18 I WOULD HAVE TO TAKE THOSE INTO CONSIDERATION.

19 MR. BARENS: YOU WOULD?

20 MS. FELTS: YES I WOULD.

21 MR. BARENS: AND DO YOU THINK YOU COULD BE FAIR AND  
22 OPEN-MINDED?

23 MS. FELTS: YES.

24 MR. BARENS: TO THE DEFENDANT UNDER THOSE CIRCUMSTANCES?

25 MS. FELTS: YES.

26 MR. BARENS: NOW, YOU UNDERSTAND THAT LIFE WITHOUT  
27 POSSIBILITY OF PAROLE REALLY MEANS THAT?

28 MS. FELTS: YES.

1 MR. BARENS: ARE YOU SATISFIED WITH THAT?

2 MS. FELTS: YES.

3 MR. BARENS: NOW, HAD YOU THOUGHT MUCH ABOUT THE DEATH  
4 PENALTY BEFORE YOU CAME HERE TODAY?

5 MS. FELTS: NO. I REALLY HAD NOT.

6 MR. BARENS: DO YOU REMEMBER WHETHER OR NOT YOU VOTED  
7 IN THE ELECTION IN CALIFORNIA WHERE THIS WAS A SUBJECT ON  
8 THE BALLOT?

9 MS. FELTS: I --

10 THE COURT: I DON'T KNOW THAT SHE WAS OLD ENOUGH.

11 MS. FELTS: TO BE HONEST WITH YOU, I DON'T KNOW WHEN  
12 IT WAS VOTED AGAIN.

13 MR. BARENS: YOU PROBABLY WEREN'T OLD ENOUGH AT THE  
14 TIME. I WILL AGREE WITH HIS HONOR.

15 I BELIEVE THAT YOU SAID THAT YOU HAD HEARD NO  
16 PUBLICITY ABOUT THIS CASE WHATSOEVER?

17 MS. FELTS: NO. I DON'T RECOGNIZE THE NAME.

18 MR. BARENS: DO YOU UNDERSTAND THAT ALTHOUGH IT WAS  
19 REQUIRED OF THE JUDGE AND MYSELF AND THE DISTRICT ATTORNEY  
20 IN A MOMENT, TO ASK YOU QUESTIONS ABOUT THE DEATH PENALTY  
21 AT THIS STAGE, THAT THERE IS NO REASON FOR YOU TO BELIEVE  
22 THAT THE DEFENDANT IS GUILTY OF ANYTHING, JUST BECAUSE WE  
23 ARE HERE DISCUSSING THIS AT THIS STAGE OF THE PROCEEDINGS?

24 MS. FELTS: YES I DO.

25 MR. BARENS: DO YOU UNDERSTAND THAT HE HAS AN ONGOING  
26 PRESUMPTION OF INNOCENCE, THE SAME WAY YOU WOULD IF YOU WERE  
27 A DEFENDANT IN THIS COURTROOM?

28 MS. FELTS: YES, SIR.

1 MR. BARENS: THANK YOU FOR YOUR CANDOR AND YOUR TIME.  
2 I PASS FOR CAUSE, YOUR HONOR.

3 MR. WAPNER: GOOD AFTERNOON, MS. FELTS.

4 I AM FRED WAPNER, THE DEPUTY DISTRICT ATTORNEY  
5 WHO IS PROSECUTING THIS CASE.

6 IF YOU GET DOWN TO DECIDING THE QUESTION OF PENALTY  
7 IN THIS CASE, YOU WILL HAVE TO RENDER AN INDIVIDUAL VOTE AS  
8 TO WHETHER THE DEFENDANT SHOULD DIE OR WHETHER HE SHOULD SPEND  
9 THE REST OF HIS LIFE IN PRISON. IS THAT A DECISION YOU ARE  
10 CAPABLE OF MAKING?

11 MS. FELTS: I THINK SO, YES.

12 MR. WAPNER: DO YOU HAVE ANY STRONGLY-HELD RELIGIOUS,  
13 MORAL OR PHILOSOPHICAL BELIEFS THAT WOULD PREVENT YOU FROM  
14 RENDERING A DECISION ONE WAY OR THE OTHER?

15 MS. FELTS: NO.

16 MR. WAPNER: ARE YOU AWARE OR HAVE YOU HAD ANY LEGAL  
17 TRAINING?

18 MS. FELTS: NO.

19 MR. WAPNER: OKAY. HAVE YOU SAT ON OTHER CRIMINAL CASES  
20 OR MURDER CASES?

21 MS. FELTS: NO.

22 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

23 THE COURT: BOTH SIDES HAVING PASSED FOR CAUSE, WHAT  
24 THAT MEANS IS THAT YOU ARE ENTIRELY ACCEPTABLE AS A JUROR  
25 IN THIS CASE.

26 WHAT I WILL DO IS ASK YOU TO REPORT TOMORROW  
27 AFTERNOON AT 1:45 TO THE JURY ASSEMBLY ROOM. HOPEFULLY, WE  
28 WILL GET THROUGH. IT MAY NOT BE POSSIBLE TO GET THROUGH.

1 WE HOPE WE WILL BE READY FOR YOU TOMORROW. IF  
2 NOT, WE MIGHT GIVE YOU A CALL.

3 BUT IN OTHER WORDS, PLAN ON BEING HERE TOMORROW.

4 MS. FELTS: I WILL BE.

5 THE COURT: THANK YOU.

6 DON'T TALK TO ANYBODY ABOUT THIS CASE.

7 MS. FELTS: I WON'T.

8 THE COURT: OR LISTEN TO THE RADIO OR TELEVISION.

9 MS. FELTS: OKAY.

10 (PROSPECTIVE JUROR FELTS EXITED THE  
11 COURTROOM.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 (PROSPECTIVE JUROR BRENDA GALL ENTERS  
2 THE COURTROOM.)

3 MS. GALL: HI.

4 THE COURT: HI. HOW ARE YOU?

5 MS. GALL: GOOD. THANK YOU.

6 THE COURT: FINE.

7 IS THAT MRS. GALL OR MISS?

8 MS. GALL: MRS.

9 THE COURT: MRS.?

10 MS. GALL: YES.

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

12 MS. GALL: MANHATTAN BEACH.

13 THE COURT: DID YOU EVER READ ANYTHING AT ALL ABOUT THIS  
14 CASE OR KNOW ANYTHING AT ALL ABOUT IT, EXCEPT WHAT I TOLD YOU  
15 IN THE COURTROOM --

16 MS. GALL: NO.

17 THE COURT: -- THE OTHER DAY?

18 MS. GALL: NO.

19 THE COURT: THE NAME BILLIONAIRE BOYS CLUB DOESN'T MEAN  
20 ANYTHING?

21 MS. GALL: BOYS CLUB?

22 THE COURT: BILLIONAIRE BOYS CLUB?

23 MS. GALL: NO.

24 THE COURT: ALL RIGHT. YOU WILL HAVE OCCASION, IF YOU  
25 ARE A JUROR, YOU WILL HEAR ABOUT IT.

26 MS. GALL: IT SOUNDS INTERESTING.

27 THE COURT: ALL RIGHT, I DID TELL ALL OF THE PROSPECTIVE  
28 JURORS SOMETHING ABOUT THE CASE AND LET ME REPEAT IT BRIEFLY



3-2  
1 TO LAY THE BACKGROUND.

2 YOU KNOW THAT THE CHARGE AGAINST THE DEFENDANT  
3 IS THAT HE COMMITTED A MURDER IN THE FIRST DEGREE AND THAT  
4 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY?

5 MS. GALL: UH-HUH.

6 THE COURT: NOW, IN THE COURSE OF A ROBBERY HAS SOME  
7 SPECIAL SIGNIFICANCE BECAUSE THE LEGISLATURE HAS SAID -- FIRST  
8 OF ALL, BEFORE I GO INTO WHAT THE LEGISLATURE SAID.

9 FIRST OF ALL, ANY FIRST DEGREE MURDER COMMITTED  
10 DELIBERATELY AND INTENTIONALLY AND BY DESIGN AND PLAN DOESN'T  
11 NECESSARILY INVOLVE THE DEATH PENALTY.

12 IT IS ONLY WHEN THAT MURDER IN THE FIRST DEGREE  
13 IS COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES THAT IT THEN  
14 QUALIFIES FOR CONSIDERATION OF THE DEATH PENALTY; DO YOU UNDER-  
15 STAND?

16 (WHEREUPON MRS. GALL NODS HER HEAD UP  
17 AND DOWN.)

18 THE COURT: NOW, THE DEATH PENALTY INCLUDES LIFE  
19 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND THAT MEANS  
20 EXACTLY THAT: THERE IS NO POSSIBILITY OF ANY PAROLE. THE  
21 PERSON GOES FOR LIFE.

22 OR DEATH IN THE GAS CHAMBER.

23 DO YOU UNDERSTAND THAT?

24 (WHEREUPON, MRS. GALL NODS HER HEAD UP  
25 AND DOWN.)

26 THE COURT: SO THE JURY WILL FIRST HAVE TO DETERMINE  
27 ON THE FIRST PHASE OF THE TRIAL, WHICH IS CALLED THE GUILT  
28 PHASE, WHEN THE PENALTY IS NOT INVOLVED IN ANY WAY AND IT IS

3-3

1 NEVER EVEN TO BE CONSIDERED BY THE JURY WHEN THEY DECIDE THE  
2 GUILT PHASE, THE GUILT PHASE IS, IS THE DEEFENDANT GUILTY OF  
3 THE COMMISSION OF THE CRIME OF MURDER IN THE FIRST DEGREE AND  
4 IF THEY SAY YES, THEN THEY HAVE A QUESTION THEY ANSWER AND  
5 THAT QUESTION IS: WAS IT TRUE OR WAS IT FALSE THAT IT WAS  
6 COMMITTED DURING THE COURSE OF A ROBBERY?

7 DO YOU UNDERSTAND?

8 MS. GALL: UH-HUH.

9 THE COURT: NOW, IN THE COURSE OF A ROBBERY, AS I TOLD  
10 YOU, IS A SPECIAL CIRCUMSTANCE WHICH QUALIFIES THE CASE FOR  
11 THE DEATH PENALTY, LIKE IF IT WAS A MURDER COMMITTED DURING  
12 THE COURSE OF A BURGLARY, DURING THE COURSE OF A KIDNAPPING  
13 OR A RAPE OR TORTURE OR A CHILD WAS MOLESTED AND DIES, OR  
14 MULTIPLE MURDERS, THOSE ARE INSTANCES WHERE THE SPECIAL  
15 CIRCUMSTANCE QUALIFIES THAT PARTICULAR MURDER FOR THE DEATH  
16 PENALTY.

17 ALL RIGHT, YOU UNDERSTAND THAT NOT EVERY MURDER  
18 QUALIFIES, SO A MAN CAN COMMIT A DELIBERATE, BRUTAL AND  
19 PREMEDITATED, CALCULATED, PLANNED MURDER AND STILL NOT HAVE  
20 TO SUFFER THE DEATH PENALTY.

21 IT ONLY HAS TO BE DONE UNDER CERTAIN CIRCUMSTANCES  
22 THAT I TOLD YOU ABOUT, ALL RIGHT?

23 MS. GALL: UH-HUH.

24 THE COURT: OH, YES, THERE IS A CASE WHERE IT IS VERY  
25 FIENDISH AND MAY HAVE BEEN INVOLVED AND SO FORTH, BUT WE WILL  
26 FORGET ABOUT THAT.

27 BUT MERELY COMMITTING A MURDER THAT WAS PLANNED  
28 AND INTENTIONAL, AND SO FORTH, DOESN'T MEAN IT QUALIFIES FOR

1 THE DEATH PENALTY; DO YOU UNDERSTAND THAT?

2 MS. GALL: YES.

3 THE COURT: AS I TOLD YOU, THE JURY FIRST DETERMINES  
4 THE ISSUE AS TO WHETHER OR NOT THE DEFENDANT COMMITTED THE  
5 MURDER AND THEN DETERMINES WHETHER IT WAS IN THE COURSE OF  
6 A ROBBERY.

7 NOW, AT THAT PENALTY PHASE OF THE TRIAL, THE JURY  
8 WILL HEAR EVIDENCE FROM BOTH SIDES, THE PROSECUTION AND THE  
9 DEFENSE.

10 THE DEFENSE WILL INTRODUCE TESTIMONY, I ASSUME,  
11 TO SHOW FAVORABLE THINGS, ASPECTS AND DEEDS AND EVERYTHING  
12 ABOUT THE DEFENDANT. THEY WILL SHOW -- YOU HAVE A RIGHT TO  
13 CONSIDER AND YOU WILL BE INSTRUCTED TO CONSIDER HIS AGE, HIS  
14 PREVIOUS BACKGROUND, HIS EDUCATION, HIS MENTAL AND PHYSICAL  
15 CONDITION, YOU HAVE THE RIGHT TO CONSIDER THE FACT HE NEVER  
16 WAS CONVICTED OF ANY KIND OF A FELONY IN THE PAST. YOU WILL  
17 CONSIDER ALL OF THOSE. THOSE ARE CALLED EXTENUATING OR  
18 MITIGATING CIRCUMSTANCES.

19 THE PROSECUTION WILL PRODUCE EVIDENCE, I ASSUME  
20 WILL TRY TO SHOW EVIDENCE THAT IS UNFAVORABLE TO THE DEFENDANT'S  
21 LIFE AND CHARACTER AND THE REASON FOR THAT IS THE DEFENDANT'S  
22 FAVORABLE TESTIMONY WILL THEN TRY TO PERSUADE YOU NOT TO  
23 IMPOSE THE ULTIMATE PENALTY AGAINST HIM.

24 AND THE PROSECUTION BY THE UNFAVORABLE ASPECTS  
25 WILL TRY TO SHOW YOU THAT HE DOESN'T DESERVE ANY FAVORABLE  
26 CONSIDERATION BY THE JURY, YOU SEE.

27 YOU DON'T MAKE UP YOUR MIND UNTIL YOU HEAR ALL  
28 OF THE EVIDENCE. MERELY BECAUSE HE HAS COMMITTED A MURDER

1 IN THE FIRST DEGREE IN THE COURSE OF A ROBBERY DOESN'T MEAN  
2 HE SHOULD SUFFER THE DEATH PENALTY. YOU WILL WAIT TO MAKE  
3 UP YOUR MIND UNTIL YOU HAVE HEARD ALL OF THE EVIDENCE, WON'T  
4 YOU?

5 MS. GALL: YES.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: NOW, THESE QUESTIONS ARE ASKED TO DETERMINE  
2 YOUR STATE OF MIND OR OPINION AS TO THE DEATH PENALTY.

3 NOW THE FIRST TWO QUESTIONS HAVE TO DO WITH THE  
4 GUILT OR INNOCENCE ASPECT OF IT, AND NOT THE PENALTY ASPECT:  
5 NOW, DO YOU HAVE ANY OBJECTION AS TO THE DEATH PENALTY WHICH  
6 WOULD PREVENT YOU IN ANY WAY FROM MAKING AN IMPARTIAL --  
7 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE  
8 DEFENDANT?

9 MS. GALL: NO.

10 THE COURT: ALL RIGHT, NOW SIMILARLY, ON WHETHER IT IS  
11 TRUE OR FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A  
12 ROBBERY, DO YOU HAVE ANY OPINION REGARDING THE DEATH PENALTY  
13 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS  
14 TO THE SPECIAL CIRCUMSTANCE WHETHER IT WAS COMMITTED DURING  
15 THE COURSE OF A ROBBERY?

16 MS. GALL: NO.

17 THE COURT: THE NEXT TWO QUESTIONS HAVE TO DO WITH THE  
18 PENALTY PHASE. ASSUMING HE HAS BEEN CONVICTED OF MURDER IN  
19 THE FIRST DEGREE AND IT WAS IN THE COURSE OF A ROBBERY, THEN  
20 WE HAVE THE PENALTY PHASE I TOLD YOU ABOUT WHERE YOU HEAR ALL  
21 OF THE EVIDENCE ON BOTH SIDES, PRO AND CON AS TO THE DEFENDANT.

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

26 THE COURT REPORTER: WHAT WAS YOUR ANSWER?

27 MS. GALL: I SAID NO.

28 THE COURT: SIMILARLY, AS TO LIFE IMPRISONMENT WITHOUT

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

6 MS. GALL: NO.

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

11 MS. GALL: YES.

12 THE COURT: ALL RIGHT, GO AHEAD.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 GOOD AFTERNOON, MRS. GALL. I AM ARTHUR BARENS  
15 AND I REPRESENT THE DEFENDANT, JOE HUNT.

16 AND AS WITH HIS HONOR, IT IS MY OBLIGATION AT THIS  
17 POINT TO ASK YOU SOME QUESTIONS ABOUT YOUR POINT OF VIEW ON  
18 THE DEATH PENALTY.

19 MS. GALL: OKAY.

20 MR. BARENS: PARENTHETICALLY, THERE ARE NO RIGHT OR WRONG  
21 ANSWERS TO MY QUESTIONS AND NONE OF US ARE GOING TO JUDGE YOU  
22 ON YOUR ANSWERS, AS YOU CAN NEVER BE WRONG ON YOUR OPINION,  
23 OKAY?

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

26 MS. GALL: UNTIL YESTERDAY, I WAS FOR IT AND THEN --

27 THE COURT: PARDON ME?

28 MS. GALL: UNTIL YESTERDAY, I ALWAYS FELT THAT I WAS

1 FOR IT UNTIL I CAME IN HERE AND WAS REALLY IMPRESSED WITH THE  
2 IDEA THAT I MIGHT REALLY BE INVOLVED IN THIS IN SOME WAY AND  
3 NOW I AM A LITTLE MORE UNSURE OF MYSELF.

4 MR. BARENS: FROM THAT, SHOULD I TAKE IT THAT YOU STILL  
5 BELIEVE IN THE DEATH PENALTY BUT YOU MAY HESITATE A BIT MORE  
6 BEFORE YOU COULD RENDER THAT TYPE OF DECISION?

7 MS. GALL: YEAH.

8 MR. BARENS: NOW, WHEN YOU SAY THAT -- I AM GOING TO  
9 SAY ON BALANCE YOU ARE FOR IT, IF THAT IS NOT ACCURATE, YOU  
10 WILL CORRECT ME, WHEN YOU SAY YOU ARE ON BALANCE FOR IT, ARE  
11 THERE SITUATIONS IN WHICH YOU THINK THAT THE DEATH PENALTY  
12 WOULD BE THE APPROPRIATE PENALTY?

13 MS. GALL: YEAH, I THINK SO.

14 MR. BARENS: COULD YOU TELL ME ABOUT THAT?

15 MS. GALL: MURDER THAT WOULD GO INTO THAT CATEGORY.

16 MR. BARENS: MURDER IS SOMEWHAT OF A CATEGORY IN AND  
17 OF ITSELF, I SUPPOSE.

18 ARE THERE CERTAIN TYPES OF MURDER OR CERTAIN  
19 INSTANCES OF MURDER THAT YOU ARE REFERRING TO WHEN YOU SAY  
20 THAT THOSE DEFENDANTS SHOULD GET THE DEATH PENALTY OR ARE YOU  
21 SAYING ALL MURDERERS? WHICH IS OKAY, TOO.

22 MS. GALL: NO, I DON'T THINK ALL MURDERERS, NO.

23 MR. BARENS: OKAY, WHICH MURDERS ARE YOU REFERRING TO?

24 MS. GALL: I WOULD THINK -- I DON'T KNOW WHAT THE LAWS  
25 ARE, BUT CHILD MURDERS FOR ONE; THAT, DEFINITELY.

26 MR. BARENS: HOW ABOUT A MURDER DURING ROBBERY?

27 MS. GALL: I DON'T KNOW ABOUT THAT.

28 MR. BARENS: OKAY, WELL "I DON'T KNOW" IS A FAIR ANSWER

1 IN THIS SETTING.

2 THE JUDGE HAS EXPLAINED TO YOU THERE ARE TWO  
3 DISTINCT SEGMENTS TO THESE PROCEEDINGS. FIRST, THERE IS THAT  
4 GUILT PHASE WHERE YOU HAVE TO DETERMINE IN YOUR OWN MIND  
5 BEYOND A REASONABLE DOUBT WHETHER THE DEFENDANT COMMITTED IN  
6 FACT, A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER DURING  
7 THE COURSE OF A ROBBERY.

8 YOU WILL NEVER GET TO THE SECOND OR PENALTY PHASE  
9 UNLESS YOU FIRST FOUND BEYOND A REASONABLE DOUBT THAT THE MURDER  
10 HAD OCCURRED AS I DESCRIBED; DO YOU UNDERSTAND THAT?

11 MS. GALL: YES.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



24A-1

1 MR. BARENS: NOW, WHEN WE GET TO THE SECOND PHASE, THE  
2 PENALTY PHASE, WHAT I NEED TO KNOW IS, WHETHER OR NOT YOUR  
3 OVERALL BELIEF IN THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR  
4 YOUR ABILITY TO CONSIDER GIVING LIFE WITHOUT POSSIBILITY OF  
5 PAROLE TO A DEFENDANT WHO HAD INTENTIONALLY AND WITH  
6 PREMEDITATION, TAKEN AWAY A HUMAN LIFE? WHAT DO YOU THINK?

7 MS. GALL: I THINK IF IT WAS WARRANTED, I WOULD PROBABLY  
8 ALLOW THE DEATH PENALTY TO BE DECIDED UPON.

9 MR. BARENS: I AM NOT TOTALLY SURE I FOLLOWED YOUR ANSWER,  
10 MS. GALL.

11 WHAT DO YOU MEAN BY THAT ANSWER? SORRY. IF IT  
12 WAS WARRANTED YOU WOULD PROBABLY ALLOW THE DEATH PENALTY TO  
13 BE VOTED UPON? YOU ARE THE ONE THAT IS GOING TO VOTE.

14 MS. GALL: OH.

15 MR. BARENS: YOU ARE THE JUROR AT THIS POINT.

16 MS. GALL: YES. THIS IS ALL NEW TO ME.

17 MR. BARENS: OKAY. AS AN INDIVIDUAL, YOU KNOW THAT  
18 THERE ARE 11 OTHER JURORS. YOU HAVE TO MAKE YOUR INDIVIDUAL  
19 VOTE.

20 MS. GALL: SO YOU ARE SAYING THAT THE GUY IS GUILTY  
21 AND WE ARE TRYING TO DECIDE ON THE DEATH PENALTY AND IF I  
22 WOULD?

23 MR. BARENS: NO. WE ARE NOT GOING TO TRY THE DEATH  
24 PENALTY. YOU ARE GOING TO BE ABLE TO MAKE THAT DECISION ON  
25 YOUR OWN. I WOULD NEVER BE TRYING THAT PERSONALLY.

26 I AM THE LAWYER FOR THE DEFENDANT, ACTUALLY. WHAT  
27 I AM ASKING YOU IS, WHEN WE GET TO THAT SECOND PHASE, I WANT  
28 TO MAKE SURE YOU UNDERSTAND WHAT WE ARE DOING HERE. WE HAD

24A-2

1 A GUILT PHASE TRIAL. AND JUST FOR THE SAKE OF THE QUESTIONS,  
2 I AM ASSUMING -- I AM NOT SAYING THAT THIS IS GOING TO HAPPEN.  
3 BUT I HAVE GOT TO CREATE A WAY TO ASK YOU THESE QUESTIONS.

4 LET'S ASSUME THAT YOU AND THE OTHER 11 PEOPLE,  
5 DECIDED THAT THE DEFENDANT WAS GUILTY OF A FIRST DEGREE,  
6 PREMEDITATED, INTENTIONAL MURDER.

7 MS. GALL: UH-HUH.

8 MR. BARENS: DURING A ROBBERY.

9 MS. GALL: UH-HUH.

10 MR. BARENS: OKAY?

11 MS. GALL: YES.

12 MR. BARENS: NOW, WE ARE GOING TO START ALL OVER AGAIN  
13 WITH THAT SECOND PHASE. WE ARE GOING TO ASK YOU WELL, WHAT  
14 ARE WE GOING TO DO WITH THE DEFENDANT.

15 MS. GALL: YES. THAT IS THE CONFUSING PART.

16 MR. BARENS: OKAY. NOW, IN THAT SECOND PHASE, YOU ARE  
17 GOING TO HAVE TWO CHOICES, LIKE THE JUDGE EXPLAINED TO YOU.  
18 YOU ARE GOING TO HAVE LIFE WITHOUT POSSIBILITY OF PAROLE.  
19 YOU ARE GOING TO HAVE THE DEATH IN THE GAS CHAMBER CHOICE.

20 I AM TRYING TO FIND OUT WHAT IS YOUR STATE OF  
21 MIND WHEN IT COMES TO THOSE TWO CHOICES, ASSUMING THAT YOU  
22 FOUND THE DEFENDANT GUILTY OF MURDER IN THAT FIRST TRIAL.  
23 OKAY?

24 MS. GALL: OKAY.

25 MR. BARENS: HOW DO YOU THINK --

26 MS. GALL: WHICH WOULD I VOTE FOR?

27 MR. WAPNER: YOUR HONOR, IT IS NOT A QUESTION OF WHICH  
28 ONE.

24A-3  
1 MR. BARENS: I DIDN'T ASK THAT QUESTION.

2 MR. WAPNER: TO THE EXTENT THAT SHE UNDERSTANDS IT THAT  
3 WAY, THERE IS AN OBJECTION.

4 MR. BARENS: I WOULD OBJECT MYSELF. I WILL OBJECT.  
5 WE ALL OBJECT.

6 NOW, I WILL ASK YOU A QUESTION.

7 THE COURT: WE ARE NOT ASKING YOU NOW HOW YOU ARE GOING  
8 TO VOTE IN THE CASE IF YOU ARE SELECTED AS A JUROR.

9 ALL HE IS TRYING TO FIND OUT IS, IF YOU HAVE AN  
10 OPEN MIND, SO THAT YOU WILL HEAR ALL OF THE TESTIMONY ON THE  
11 PENALTY PHASE BEFORE YOU DETERMINE WHETHER IT WOULD BE LIFE  
12 WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER.

13 WOULD YOU BE CAPABLE OF MAKING SUCH A DECISION?

14 MS. GALL: YES.

15 THE COURT: ALL RIGHT. THAT IS ALL WE ARE TRYING TO  
16 FIND OUT. GO AHEAD.

17 MR. BARENS: THANK YOU, YOUR HONOR. COULD YOU FAIRLY  
18 AND OPEN-MINDEDLY CONSIDER BOTH ALTERNATIVES?

19 MS. GALL: YES.

20 MR. BARENS: OKAY. WOULD YOUR OVERALL BELIEFS THAT  
21 THE DEATH PENALTY IS SOMETHING YOU ARE IN FAVOR OF,  
22 SUBSTANTIALLY IMPAIR YOUR ABILITY TO VOTE FOR LIFE WITHOUT  
23 POSSIBILITY OF PAROLE?

24 MS. GALL: I DON'T THINK SO.

25 MR. BARENS: YOU DON'T THINK IT WOULD?

26 MS. GALL: NO.

27 MR. BARENS: DO YOU THINK THAT THERE COULD BE A  
28 SITUATION IN WHICH A DEFENDANT WAS CONVICTED OF AN INTENTIONAL,

24A-4  
1 PREMEDITATED MURDER DURING A ROBBERY, IN WHICH YOU ARE CAPABLE  
2 OF VOTING FOR LIFE WITHOUT POSSIBILITY OF PAROLE?

3 MS. GALL: YES.

4 MR. BARENS: YOU COULD?

5 MS. GALL: YES.

6 MR. BARENS: WOULD IT BE UNLIKELY?

7 MS. GALL: NO.

8 MR. BARENS: YOU COULD OPEN-MINDEDLY DO THAT?

9 MS. GALL: YEAH.

10 MR. BARENS: WOULD YOU BE WILLING TO CONSIDER AND LISTEN  
11 TO THE EVIDENCE ABOUT THE DEFENDANT'S BACKGROUND IN TERMS  
12 OF HIS AGE OR LACK OF PRIOR CRIMINAL RECORD OR CHARACTER AT  
13 THAT POINT IN TIME?

14 MS. GALL: YES.

15 MR. BARENS: SO YOU WOULD BE WILLING TO ENTERTAIN AND  
16 CONSIDER THOSE ELEMENTS OR THOSE FACTORS BEFORE YOU WOULD  
17 DETERMINE THE LIFE OR DEATH QUESTION?

18 MS. GALL: YES.

19 MR. BARENS: WHEN YOU SAY THAT UNTIL YESTERDAY, YOU  
20 WERE IN FAVOR OF THE DEATH PENALTY, IS THAT A BELIEF YOU HAD  
21 HAD FOR A LONG TIME?

22 MS. GALL: PROBABLY.

23 MR. BARENS: WAS THERE SOMETHING IN PARTICULAR THAT  
24 CREATED THAT BELIEF SYSTEM IN YOUR MIND?

25 MS. GALL: PROBABLY INFLUENCE FROM MY PARENTS.

26 THE COURT: I DIDN'T HEAR YOU.

27 MS. GALL: PROBABLY INFLUENCE FROM MY PARENTS.

28 MR. BARENS: PRAY TELL ME. YOUR PARENTS WERE NOT

1 DISTRICT ATTORNEYS? THEY WEREN'T, WERE THEY?

2 MS. GALL: NO.

3 MR. BARENS: WAS THERE SOMETHING THAT THEY TOLD YOU  
4 ABOUT PERHAPS IN YOUR RELIGIOUS UPBRINGING OR EDUCATIONAL  
5 PROCESS OR --

6 MS. GALL: MY DAD WAS INVOLVED WITH LAW ENFORCEMENT.

7 MR. BARENS: INDEED. WELL, THAT IS CERTAINLY  
8 UNDERSTANDABLE.

9 BUT WE HAVE TO INQUIRE INTO THAT AT ANOTHER POINT.  
10 EVEN THOUGH YOUR FATHER PROBABLY TOLD YOU THAT PEOPLE WHO  
11 COMMIT VIOLENT, PREMEDITATED MURDERS SHOULD GET THE DEATH  
12 PENALTY -- AND AGAIN, I DON'T NECESSARILY TELL YOU THAT I  
13 AM DISAGREEING WITH WHAT YOUR FATHER TOLD YOU --

14 MR. WAPNER: OBJECTION. ASSUMING FACTS NOT IN EVIDENCE,  
15 IF THAT IS AN APPROPRIATE OBJECTION. HE HAS NOW TOLD HER  
16 WHAT HER FATHER TOLD HER. HE HAS NOW ASSUMED --

17 MR. BARENS: WELL, SHE CAN TELL ME.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: I DON'T THINK WE HAVE TO PURSUE THAT ANY  
2 FURTHER. HOW SHE ARRIVED AT THAT HAS NOTHING TO DO WITH HER  
3 ABILITY TO BE A FAIR AND IMPARTIAL TRIAL JUROR IN THIS CASE.

4 MR. BARENS: THAT WAS MY QUESTION.

5 EVEN THOUGH YOU MIGHT HAVE GROWN UP WITH THAT  
6 ORIENTATION, AS YOU SIT HERE TODAY AS A PROSPECTIVE JUROR  
7 IN THIS CASE, CAN YOU NONETHELESS BE OPEN-MINDED IN TERMS  
8 OF POSSIBLY GIVING THAT TYPE OF A DEFENDANT, IF WE EVER GOT  
9 TO THE PENALTY PHASE, LIFE WITHOUT POSSIBILITY OF PAROLE?

10 MS. GALL: YES.

11 MR. BARENS: DO YOU THINK THAT YOU COULD?

12 MS. GALL: YES.

13 MR. BARENS: ALL RIGHT. NOW, DO YOU UNDERSTAND THAT  
14 ALTHOUGH I HAVE BEEN TALKING TO YOU AND THE JUDGE HAS AND  
15 THE PROSECUTOR WILL ABOUT THE DEATH PENALTY, THERE IS NO REASON  
16 FOR YOU TO BELIEVE AT THIS POINT THAT MR. HUNT HAS DONE  
17 ANYTHING WRONG OR IS GUILTY OF ANYTHING?

18 MS. GALL: RIGHT.

19 MR. BARENS: DO YOU BELIEVE THAT?

20 MS. GALL: YES.

21 MR. BARENS: OR DO YOU BELIEVE THAT BECAUSE WE ARE  
22 HERE TALKING ABOUT IT, THAT SOMETHING MUST HAVE HAPPENED?  
23 THAT HE DID SOMETHING WRONG?

24 MS. GALL: WELL, SOMETHING HAPPENED. BUT I DON'T KNOW  
25 WITH WHOM OR WHY OR ANYTHING.

26 MR. BARENS: YOU UNDERSTAND THAT WHAT I AM REALLY TALKING  
27 ABOUT IS THAT ALL DEFENDANTS, INCLUDING YOURSELF IF YOU WERE  
28 ACCUSED OF A CRIME AND WERE IN HERE ON TRIAL IN THIS COURTROOM,

1 YOU ARE ENTITLED TO THE PRESUMPTION OF INNOCENCE UNDER OUR  
2 CONSTITUTION AND THE WAY WE DO THINGS IN THIS COUNTRY. DO  
3 YOU BELIEVE IN THAT?

4 MS. GALL: YES.

5 MR. BARENS: I THANK YOU FOR YOUR TIME AND CANDOR.  
6 I PASS FOR CAUSE.

7 THE COURT: THANK YOU.

8 MR. WAPNER: GOOD AFTERNOON, MS. GALL. I AM FRED WAPNER,  
9 THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.  
10 WHAT HAPPENED YESTERDAY? WHAT STARTED TO MAKE  
11 YOU UNSURE?

12 MS. GALL: I NEVER FELT SO CLOSELY INVOLVED. AND I  
13 SAW A NICE, HEALTHY-LOOKING, CLEAN-CUT YOUNG MAN. AND IT  
14 JUST PUT A DIFFERENT PERSPECTIVE ON IT.

15 MR. WAPNER: DID HE LOOK DIFFERENT THAN THE PERSON YOU  
16 EXPECTED TO SEE SITTING IN THAT CHAIR?

17 MS. GALL: YES.

18 MR. WAPNER: OKAY.

19 MR. BARENS: SHE PROBABLY THOUGHT IT WAS MR. CHIER  
20 ACTUALLY. EXCUSE ME. SORRY, YOUR HONOR.

21 MR. WAPNER: WELL, WE DO GET SOME LEVITY FROM TIME TO  
22 TIME IN THIS COURTROOM, NOTWITHSTANDING THE FACT THAT WE ARE  
23 DISCUSSING THE ISSUE OF THE DEATH PENALTY.

24 IT IS VERY IMPORTANT FOR ME TO UNDERSTAND YOUR  
25 FEELINGS ON THAT.

26 FIRST OF ALL, LET ME EXPLORE THAT A LITTLE BIT.  
27 WHEN YOU SAW THE DEFENDANT SITTING THERE, HEALTHY, YOUNG,  
28 CLEAN-CUT, WHAT DID YOU THINK?

1 MR. BARENS: OBJECTION, IRRELEVANT TO HER POINT OF VIEW  
2 ON THE DEATH PENALTY AND THE SUBJECT OF GENERAL VOIR DIRE.

3 THE COURT: SUSTAINED.

4 MR. WAPNER: WELL, YOU SAID THAT YOUR OPINION ON THE  
5 DEATH PENALTY CHANGED WHEN YOU SAW THE DEFENDANT, RIGHT?

6 MS. GALL: UH-HUH.

7 MR. WAPNER: YOU HAVE TO SAY YES OR NO.

8 MS. GALL: YES.

9 MR. WAPNER: TELL ME HOW IT CHANGED.

10 MS. GALL: I DIDN'T FEEL AS STRONGLY FOR THE DEATH PENALTY.  
11 I SAW SOMEONE SITTING THERE THAT I THOUGHT LOOKED WORTHWHILE  
12 AND MORE SOCIALLY ACCEPTABLE THAN WHAT I EXPECTED TO SEE.

13 MR. WAPNER: WOULD IT BE -- WELL, OKAY. LET ME PUT  
14 IT TO YOU IN THIS SITUATION.

15 YOU HAVE HEARD ALL OF THE EVIDENCE ON THE GUILT  
16 PHASE OF THE TRIAL. YOU HAVE DECIDED THAT THE EVIDENCE PROVES  
17 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENTIONALLY  
18 KILLED SOMEONE DURING A ROBBERY.

19 YOU HAVE HEARD ALL OF THE EVIDENCE IN THE PENALTY  
20 PHASE OF THE TRIAL. NOW, YOU ARE IN THE JURY ROOM DECIDING  
21 THE QUESTION OF WHETHER THE DEFENDANT SITTING IN THAT CHAIR  
22 OVER THERE, SHOULD SPEND THE REST OF HIS LIFE IN PRISON OR  
23 WHETHER HE SHOULD DIE IN THE GAS CHAMBER.

24 AND THE JUDGE WILL TELL YOU THAT YOU HAVE TO RENDER  
25 YOUR OWN, INDIVIDUAL VERDICT ON THAT QUESTION. CAN YOU MAKE  
26 THAT DECISION?

27 MS. GALL: YES.

28 MR. WAPNER: DO YOU HAVE ANY HESITATION OR RESERVATION



1 ABOUT YOUR ABILITY TO MAKE THE DECISION?

2 MR. BARENS: OBJECTION. OF COURSE SHE HAS TO HAVE  
3 HESITANCY.

4 MR. WAPNER: HOW DOES HE KNOW? THE JUROR IS THE ONE  
5 THAT ANSWERS THE QUESTIONS.

6 MR. BARENS: WE KNOW THESE ARE HARD DECISIONS, JUDGE.

7 MR. WAPNER: I AM NOT ASKING FOR MR. BARENS' OPINION.

8 THE COURT: WELL, WHEN YOU GET THROUGH, I WILL MAKE  
9 A RULING. YOU MAY ASK THE QUESTION.

10 MR. WAPNER: THANK YOU.

11 MS. GALL: I THINK I WOULD BE ABLE TO MAKE THE DECISION.  
12 I KNOW IT WOULD BE A VERY HARD ONE TO DO, THOUGH.

13 MR. WAPNER: ONCE YOU MAKE THAT DECISION, YOU HAVE TO  
14 COME INTO COURT AND THE FOREPERSON ON THE JURY GIVES THE  
15 VERDICT TO THE BAILIFF, WHO GIVES IT TO THE JUDGE AND THE  
16 CLERK THEN READS IT.

17 KNOWING THAT, THAT THE VERDICT IS GOING TO BE  
18 READ IN THE PRESENCE OF THE DEFENDANT, IS THAT STILL A VERDICT  
19 THAT YOU CAN RENDER ONE WAY OR THE OTHER?

20 MS. GALL: YES.

21 MR. WAPNER: OKAY. DOES THE FACT THAT THE DEFENDANT  
22 IS, TO USE YOUR WORDS, SOCIALLY ACCEPTABLE, IS THAT GOING  
23 TO AFFECT YOUR DECISION ONE WAY OR THE OTHER?

24 MR. BARENS: YOUR HONOR, I AM GOING TO OBJECT TO THAT  
25 QUESTION. IT IS OBVIOUS THAT THE JUROR IS ENTITLED TO  
26 CONSIDER THAT TYPE OF A THOUGHT PROCESS IN MAKING A DECISION  
27 ON LIFE OR DEATH.

28 THE COURT: I WILL SUSTAIN THE OBJECTION.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 MR. WAPNER: ARE YOUR BELIEFS ABOUT THE DEATH PENALTY  
3 ROOTED IN ANY MORAL OR PHILOSOPHICAL BASIS?

4 MS. GALL: I DON'T THINK I COULD DEFINE IT. BUT GOSH,  
5 I DON'T KNOW HOW TO ANSWER THAT.

6 MR. WAPNER: OKAY. DO YOU SEE THEM AS MORE OF A  
7 POLITICAL STATEMENT IN TERMS OF THE DEATH PENALTY BEING  
8 SOMETHING NECESSARY TO SOCIETY OR --

9 MS. GALL: THAT IS HOW I SEE IT.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. WAPNER: I WILL PASS FOR CAUSE, YOUR HONOR.

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

5 MS. GALL: OH, OKAY.

6 THE COURT: SO WHAT I WANT YOU TO DO IS TO GO TO THE  
7 JURY ASSEMBLY ROOM TOMORROW AT 1:45. HOPEFULLY, WE MIGHT GET  
8 THROUGH WITH MOST OF THESE BY THAT TIME. IF NOT, WE WILL HAVE  
9 TO CONTINUE IT UNTIL A WHILE LATER. WE HAVE YOUR TELEPHONE  
10 NUMBER AND WE WILL CALL YOU IF YOU DON'T HAVE TO COME AT  
11 1:45. UNLESS YOU HEAR TO THE CONTRARY, YOU WILL BE HERE  
12 TOMORROW AFTERNOON AT 1:45 IN THE JURY ASSEMBLY ROOM.

13 MS. GALL: OKAY.

14 THE COURT: ALL RIGHT?

15 MS. GALL: OKAY. THANK YOU.

16 THE COURT: DON'T READ ANYTHING ABOUT THE CASE IF ANY-  
17 THING IS REFERRED TO ON TELEVISION OR IN THE NEWSPAPERS.

18 MS. GALL: OKAY.

19 THE COURT: DON'T TALK WITH ANYBODY ABOUT IT, ALL RIGHT?

20 MR. GALL: ALL RIGHT, THANK YOU.

21 THE COURT: SEE YOU TOMORROW.

22 MS. GALL: OKAY.

23 (PROSPECTIVE JUROR GALL EXITS THE  
24 COURTROOM.)

25 (PROSPECTIVE JUROR GAIL GLORIOSO ENTERS  
26 THE COURTROOM.)

27 THE COURT: MRS. GLORIOSO?

28 MS. GLORIOSO: YES.

5-2

1 THE COURT: THAT IS A VERY ATTRACTIVE NAME. IS IT A  
2 MARRIED NAME? ARE YOU MARRIED?

3 MS. GLORIOSO: YES.

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

5 MS. GLORIOSO: IN SANTA MONICA.

6 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS  
7 CASE OR DO YOU KNOW ANYTHING AT ALL ABOUT IT EXCEPT WHAT I  
8 TOLD YOU HERE YESTERDAY?

9 MS. GLORIOSO: NO.

10 THE COURT: THE NAME OF JOE HUNT OR THE PHRASE  
11 BILLIONAIRE BOYS CLUB, DOES THAT MEAN ANYTHING TO YOU AT ALL?

12 MS. GLORIOSO: NO.

13 THE COURT: ALL RIGHT, I AM GOING TO BRIEFLY JUST AGAIN  
14 TELL YOU WHAT THE CASE IS ABOUT AND THEN ASK YOU SOME  
15 QUESTIONS.

16 THE PURPOSE OF THE QUESTIONS IS TO DETERMINE WHAT  
17 YOUR STATE OF MIND IS WITH RESPECT TO THE DEATH PENALTY.

18 BUT FIRST LET ME REPEAT WHAT I TOLD THE OTHER  
19 JURORS. THE DEFENDANT IN THIS CASE IS CHARGED WITH THE  
20 COMMISSION OF THE CRIME OF MURDER, MURDER IN THE FIRST  
21 DEGREE AND THAT IT WAS COMMITTED DURING THE COURSE OF A  
22 ROBBERY.

23 IN THE COURSE OF A ROBBERY HAS SPECIAL  
24 SIGNIFICANCE BECAUSE THE LEGISLATURE HAS SAID THAT IN  
25 CERTAIN -- NOT EVERY MURDER, YOU KNOW, EVEN IF IT IS DELIBERATE  
26 AND PREMEDITATED AND INTENTIONAL CALLS FOR THE DEATH PENALTY.  
27 IT IS ONLY WHERE THAT MURDER IS COMMITTED UNDER CERTAIN SPECIAL  
28 CIRCUMSTANCES THAT THE DEATH PENALTY MAY COME INTO PLAY.

1           NOW, FOR EXAMPLE, IN THIS CASE IT IS ALLEGED THE  
2 MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY, THAT IS  
3 A SPECIAL CIRCUMSTANCE. A SPECIAL CIRCUMSTANCE MIGHT BE IT  
4 WAS COMMITTED IN THE COURSE OF A BURGLARY OR COMMITTED IN THE  
5 COURSE OF A KIDNAPPING OR IN THE COURSE OF A RAPE OR IN THE  
6 COURSE OF A MOLESTATION OF A CHILD AND THE CHILD DIED, OR  
7 TORTURE, MULTIPLE MURDERS. THERE ARE ANY NUMBER OF THEM, 19  
8 OR MORE, WHERE IF THE MURDERS WERE COMMITTED UNDER THOSE  
9 SPECIAL CIRCUMSTANCES, THEN THE QUESTION OF THE DEATH PENALTY  
10 MIGHT BE CONSIDERED.

11           NOW WHEN I TALK ABOUT THE DEATH PENALTY, IT HAS  
12 TWO ASPECTS. THE JURY, AS I WILL TELL YOU LATER, DETERMINES  
13 WHAT THE PENALTY IS GOING TO BE: SHALL IT BE LIFE IMPRISONMENT  
14 WITH OUT THE POSSIBILITY OF PAROLE -- WHICH MEANS EXACTLY THAT,  
15 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. HE NEVER  
16 GETS OUT.

17           OR IT MEANS DEATH IN THE GAS CHAMBER, THAT IS THE  
18 DEATH PENALTY; DO YOU UNDERSTAND THAT?

19           MS. GLORIOSO: UH-HUH.

20           THE COURT: NOW, IF YOU ARE SELECTED AS A JUROR, THE  
21 JURY WILL FIRST HEAR THE PARTICULARS ABOUT THE CRIME ITSELF,  
22 THE ALLEGED COMMISSION OF THE MURDER DURING THE COURSE OF A  
23 ROBBERY, THAT IS THE GUILT PHASE OF THE TRIAL. YOU WILL BE  
24 CALLED ON TO DETERMINE WAS THERE A MURDER, MURDER IN THE  
25 FIRST DEGREE AND IF IT WAS MURDER IN THE FIRST DEGREE, WAS  
26 IT COMMITTED IN THE COURSE OF A ROBBERY.

27           YOU SEE, IN THE COURSE OF A ROBBERY, I TOLD YOU,  
28 IS A SPECIAL CIRCUMSTANCE.

1 SO THE JURY WILL THEN FIRST DECIDE, WAS IT MURDER  
2 IN THE FIRST DEGREE AND IF SO, WAS IT TRUE OR WAS IT FALSE  
3 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

4 IF THEY SAY TRUE, THEN THAT SAME JURY HEARS  
5 ADDITIONAL EVIDENCE ON THE SECOND PHASE OF THE TRIAL AND THAT  
6 IS KNOWN AS THE PENALTY PHASE WHERE THEY DETERMINE WHAT THE  
7 PENALTY WILL BE.

8 HOWEVER, BEFORE THEY MAKE UP THEIR MINDS AS TO  
9 WHAT THE PENALTY WILL BE, THEY HAVE GOT TO HEAR OTHER EVIDENCE,  
10 OTHER EVIDENCE FROM THE PROSECUTION AND EVIDENCE FROM THE  
11 DEFENDANT.

12 THE DEFENDANT, IN ORDER TO GET THE LESSER OF THE  
13 TWO PENALTIES, WILL ATTEMPT TO SHOW YOU THINGS WHICH ARE  
14 FAVORABLE ABOUT HIM THAT YOU MIGHT CONSIDER. YOU MUST  
15 CONSIDER HIS AGE. YOU MUST CONSIDER HIS BACKGROUND. YOU MUST  
16 CONSIDER HIS PHYSICAL AND MENTAL CONDITION. YOU HAVE TO  
17 CONSIDER HIS ABSENCE OF ANY PRIOR CRIMINAL CONDUCT. NOW, THESE  
18 ARE ALL FAVORABLE FACTORS SO AS TO MINIMIZE THE PENALTY OR  
19 MITIGATE THE PENALTY WHICH WILL BE INFLICTED, IF ANY.

20 THE PROSECUTION, ON THE OTHER HAND, WILL SHOW  
21 AGGRAVATING CIRCUMSTANCES, I ASSUME. BY AGGRAVATING  
22 CIRCUMSTANCES, I MEAN THINGS ABOUT THE DEFENDANT ABOUT WHICH  
23 ARE FAVORABLE, SO AS TO NOT MITIGATE THE OFFENSE.

24 AND YOU HAVE TO DECIDE THE ULTIMATE PENALTY, WHICH  
25 WOULD BE DEATH IN THE GAS CHAMBER; DO YOU UNDERSTAND THAT?

26 MS. GLORIOSO: YES.

27 THE COURT: YOU DON'T MAKE UP YOUR MIND UNTIL YOU HEAR  
28 ALL OF THE EVIDENCE.

1                   OF COURSE, YOU ALSO CONSIDER THE FACTS OF THE  
2 COMMISSION OF THE CRIME ITSELF. IF YOU HAVE ALREADY  
3 CONVICTED HIM, OF COURSE, THAT WILL ALSO BE CONSIDERED BY THE  
4 JURY. IT IS AFTER YOU HEAR ALL OF THAT, THAT YOU THEN RETIRE  
5 TO THE JURY ROOM AND DISCUSS THE MATTER THOROUGHLY WITH THE  
6 OTHER JURORS AND THEN CONSIDER WHAT IT SHOULD BE, ONE OR THE  
7 OTHER. ALL RIGHT?

8                   MS. GLORIOSO: UH-HUH.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: NOW, WITH THAT AS A BACKGROUND, I AM GOING  
2 TO ASK YOU SOME QUESTIONS. THE FIRST TWO QUESTIONS HAVE TO  
3 DO WITH THE GUILT PHASE OF THE CASE: DO YOU HAVE ANY OPINION,  
4 WHATEVER THAT OPINION MAY BE, REGARDING THE DEATH PENALTY  
5 WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS  
6 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

7 MS. GLORIOSO: COULD YOU REPEAT THAT?

8 THE COURT: DO YOU HAVE ANY OPINION AS TO THE DEATH  
9 PENALTY, WHATEVER IT MAY BE, OR IT MAY NOT BE ANY AT ALL, WHICH  
10 WOULD IN ANY WAY PREVENT YOU FROM DETERMINING THE GUILT OR  
11 INNOCENCE OF THE DEFENDANT?

12 THE COURT REPORTER: WHAT WAS THE ANSWER?

13 MS. GLORIOSO: NO, I DON'T HAVE NO OPINION ON IT.

14 THE COURT: NO OPINION TO PREVENT YOU FROM MAKING AN  
15 IMPARTIAL DECISION; IS THAT CORRECT?

16 MS. GLORIOSO: YES.

17 THE COURT: THE NEXT QUESTION -- YOU REMEMBER, I TOLD  
18 YOU THAT YOU HAVE TO FIRST FIND HIM GUILTY OF MURDER IN THE  
19 FIRST DEGREE AND THEN YOU HAVE TO FIND WHETHER IT WAS  
20 COMMITTED IN THE COURSE OF A ROBBERY, THAT IS THE SPECIAL  
21 CIRCUMSTANCE I INDICATED TO YOU.

22 NOW, DO YOU HAVE ANY OPINION REGARDING THE DEATH  
23 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL  
24 DECISION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL  
25 CIRCUMSTANCE?

26 MS. GLORIOSO: NO.

27 THE COURT: NOW, THE NEXT TWO QUESTIONS -- WE WILL  
28 ASSUME THAT THE JURY HAS FOUND THE DEFENDANT GUILTY OF MURDER



1 IN THE FIRST DEGREE AND THAT IT WAS IN THE COURSE OF A ROBBERY  
2 AND NOW WE ARE ON THE PENALTY PHASE QUESTION: DO YOU HAVE  
3 ANY OPINION REGARDING THE DEATH PENALTY THAT WOULD CAUSE YOU  
4 AUTOMATICALLY TO VOTE TO IMPOSE THE DEATH PENALTY REGARDLESS  
5 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE  
6 OF THE TRIAL?

7 MS. GLORIOSO: NO.

8 THE COURT: AND SIMILARLY, THE SAME QUESTION BUT RELATING  
9 TO LIFE IMPRISONMENT: DO YOU HAVE ANY OPINION CONCERNING THE  
10 DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE  
11 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS  
12 OF ANY EVIDENCE THAT MIGHT BE PRESENTED AT THE PENALTY PHASE  
13 OF THE TRIAL?

14 MS. GLORIOSO: NO.

15 THE COURT: ALL RIGHT, DO YOU UNDERSTAND THAT THE ISSUE  
16 OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE  
17 AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT  
18 THAT YOU REACH THAT PHASE OF THE TRIAL?

19 MS. GLORIOSO: YES.

20 THE COURT: ALL RIGHT, THANK YOU.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 GOOD AFTERNOON, MRS. GLORIOSO. I AM ARTHUR  
23 BARENS AND I REPRESENT THE DEFENDANT, JOE HUNT. AND AS WAS  
24 THE JUDGE'S OBLIGATION, IT IS MY DUTY NOW TO ASK YOU SOME  
25 QUESTIONS ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY.

26 AND PARENTHETICALLY, I WISH TO INDICATE TO YOU  
27 THERE ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NO  
28 ONE IS GOING TO JUDGE YOU HERE BECAUSE YOU CAN'T BE WRONG ABOUT

1 YOUR OWN OPINION, OKAY?

2 MS. GLORIOSO: UH-HUH.

3 MR. BARENS: WITH THAT IN MIND, HOW DO YOU FEEL ABOUT  
4 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

5 MS. GLORIOSO: WELL, I THINK IN SOME CASES, YOU KNOW,  
6 THAT IT SHOULD BE USED, DEPENDING UPON THE CASE OR THE  
7 CIRCUMSTANCES.

8 MR. BARENS: COULD YOU TELL ME WHAT CASES COME TO YOUR  
9 MIND AND WHEN YOU THINK IT POSSIBLY SHOULD BE EMPLOYED?

10 MR. GLORIOSO: THE ONLY CASE THAT COMES TO MY MIND WAS  
11 I HAD READ THE BOOK ON, WAS THE TED BUNDY CASE.

12 THE COURT: THE WHAT?

13 MS. GLORIOSO: TED BUNDY.

14 MR. BARENS: TED BUNDY IS ONE WE MIGHT REFER TO AS A  
15 SERIAL MURDERER?

16 MS. GLORIOSO: UH-HUH.

17 MR. BARENS: TWENTY PEOPLE, OR GOD KNOWS HOW MANY PEOPLE.  
18 AND CERTAINLY, I DON'T THINK THERE IS ANYONE IN THE WORLD THAT  
19 WOULD PROBABLY DISAGREE WITH YOU THERE.

20 ARE THERE ANY OTHER INSTANCES IN WHICH YOU THINK  
21 THE DEATH PENALTY MIGHT BE APPROPRIATE?

22 MS. GLORIOSO: I WOULD SAY A PLANNED MURDER IF, YOU KNOW,  
23 SOMEBODY PLANS IT OUT.

24

25

26

27

28

26A-1  
1 MR. BARENS: OKAY. A PREMEDITATED MURDER?

2 MS. GLORIOSO: RIGHT.

3 MR. BARENS: OKAY. BEFORE YOU WOULD EVER GET TO A PENALTY  
4 PHASE IN THIS TRIAL, YOU UNDERSTAND AS THE JUDGE EXPLAINED  
5 TO YOU, THAT WE FIRST WOULD HAVE A GUILT PHASE.

6 DURING THE GUILT PHASE, YOU WOULD HAVE TO BELIEVE  
7 THAT THE DEFENDANT IN FACT, AND BEYOND A REASONABLE DOUBT,  
8 COMMITTED AN INTENTIONAL, PREMEDITATED, PLANNED, MURDER DURING  
9 THE COURSE OF A ROBBERY.

10 YOU WOULD FIRST HAVE TO BELIEVE THAT BEFORE WE  
11 EVER GOT TO A PENALTY PHASE. DO YOU FOLLOW ME WITH THAT?

12 MS. GLORIOSO: YES.

13 MR. BARENS: OKAY. NOW, ASSUMING THAT TO BE THE CASE,  
14 ARE YOU TELLING ME THAT IN ANY CASE WHERE YOU HAD A DEFENDANT  
15 WHO HAD COMMITTED A PREMEDITATED, PLANNED MURDER DURING THE  
16 COURSE OF A ROBBERY, LET'S SAY, WOULD YOU ALWAYS FEEL THAT  
17 THAT DEFENDANT SHOULD BE GIVEN THE DEATH PENALTY?

18 MS. GLORIOSO: NO.

19 MR. BARENS: NOT ALWAYS?

20 MS. GLORIOSO: NO.

21 MR. BARENS: WHEN FOR INSTANCE, WOULD IT NOT BE  
22 APPROPRIATE?

23 MS. GLORIOSO: WELL, IN THE CASE OF A ROBBERY, I DON'T  
24 KNOW IF A PERSON ALWAYS PLANS TO COMMIT MURDER.

25 THEY MIGHT BE ROBBING A PLACE AND HAVING A WEAPON  
26 WITH THEM BUT NOT PLANNING TO KILL A PERSON.

27 MR. BARENS: OKAY. MS. GLORIOSO, STAY WITH ME ON THIS  
28 POINT. YOU WILL NEVER BE CONSIDERING A PENALTY PHASE IN THIS

26A-2

1 CASE, UNLESS YOU FIRST BELIEVE BEYOND A REASONABLE DOUBT IN  
2 THE GUILT PHASE, THAT THE DEFENDANT PLANNED THE MURDER AND  
3 INTENDED TO COMMIT THAT MURDER. LET'S YOU AND I AGREE FOR  
4 A MOMENT HERE, IN THIS QUESTIONING, THAT YOU BELIEVED THE  
5 DEFENDANT PLANNED AND INTENDED TO KILL SOMEONE AND STEAL THEIR  
6 MONEY.

7 LET'S GIVE THAT AS A GIVEN. THERE IS NO DOUBT  
8 ABOUT IT. IT IS BEYOND A REASONABLE DOUBT, AT LEAST. OKAY?

9 MS. GLORIOSO: UH-HUH.

10 MR. BARENS: GIVEN THAT, WHAT I AM ASKING YOU IS, IS  
11 IT YOUR STATE OF MIND OR OPINION, THAT THOSE DEFENDANTS SHOULD  
12 GET THE DEATH PENALTY?

13 MS. GLORIOSO: YES.

14 MR. BARENS: OKAY. NOW, THE COURT WOULD INSTRUCT YOU  
15 WELL, YOU ARE SUPPOSED TO CONSIDER DURING THE PENALTY PHASE,  
16 FACTORS ABOUT THE DEFENDANT'S AGE AT THE ALLEGED COMMISSION  
17 OF THE CRIME, OR HIS CHARACTER OR POSSIBLE LACK OF PRIOR  
18 CRIMINAL BACKGROUND.

19 NOW, ALTHOUGH I AM SURE YOU WOULD LISTEN TO THAT  
20 DURING THE PENALTY PHASE, ARE YOU TELLING ME THAT YOU REALLY  
21 WOULDN'T CONSIDER ANY OF THOSE FACTORS BUT RATHER, SINCE IT  
22 WAS A PREMEDITATED, INTENTIONAL MURDER IN THE FIRST INSTANCE,  
23 THAT WE SHOULD ALWAYS GIVE THOSE DEFENDANTS THE DEATH PENALTY?

24 MS. GLORIOSO: NO. I THINK I WOULD LOOK AT THE OTHER  
25 FACTORS, TOO.

26 MR. BARENS: YOU WOULD?

27 MS. GLORIOSO: UH-HUH.

28 MR. BARENS: WHAT I AM TRYING TO SQUARE WITH YOU NOW,

26A-3  
1 OBVIOUSLY, MRS. GLORIOSO, IS A BIT OF AN INCONSISTENCY BETWEEN  
2 YOUR FIRST ANSWER AND YOUR SECOND RESPONSE, WHICH IS CERTAINLY  
3 UNDERSTANDABLE TO ME, BECAUSE THERE ARE GRADATIONS OF REALITY  
4 IN ALL OF THIS PROCESS.

5 YOU FIRST TOLD ME THAT YOU THOUGHT DEFENDANTS  
6 WHO COMMIT PREMEDITATED, INTENTIONAL MURDER AND THERE IS A  
7 DEAD PERSON, SHOULD GET THE DEATH PENALTY?

8 MS. GLORIOSO: UH-HUH.

9 MR. BARENS: BUT, YOU ARE TELLING ME IN THE SECOND  
10 INSTANCE, WHICH I CAN UNDERSTAND, THAT SOME OF THOSE PEOPLE  
11 SHOULD NOT GET THE DEATH PENALTY?

12 MS. GLORIOSO: I GUESS I WOULD HAVE TO WEIGH THE  
13 EVIDENCE. I GUESS I WOULD HAVE TO LISTEN TO ALL OF THE  
14 EVIDENCE.

15 MR. BARENS: EVIDENCE OF WHAT?

16 MS. GLORIOSO: WELL, LIKE YOU ARE TALKING ABOUT, THE  
17 AGE FACTOR.

18 MR. BARENS: YOU COULD CONSIDER THAT?

19 MS. GLORIOSO: I WOULD CONSIDER IT, YES, SIR.

20 MR. BARENS: YOU WOULD CONSIDER WHETHER OR NOT THERE  
21 WAS A PRIOR CRIMINAL HISTORY?

22 MS. GLORIOSO: YES.

23 MR. BARENS: AND YOU WOULD CONSIDER PERHAPS CHARACTER  
24 EVIDENCE?

25 MS. GLORIOSO: YES.

26 MR. BARENS: IS IT BELIEVABLE TO YOU IN YOUR HEART OF  
27 HEARTS, THAT YOU COULD VOTE -- THAT YOU ARE CAPABLE OF VOTING  
28 FOR LIFE WITHOUT POSSIBILITY OF PAROLE, FOR A DEFENDANT WHO

26A-4  
1 COMMITTED A PREMEDITATED, INTENTIONAL MURDER DURING A ROBBERY?

2 MS. GLORIOSO: YES.

3 MR. BARENS: YOU COULD DO THAT?

4 MS. GLORIOSO: UH-HUH.

5 MR. WAPNER: IS THAT YES?

6 MS. GLORIOSO: YES.

7 MR. BARENS: NOW, IT IS POSSIBLE THAT I COULD HIGH JUMP  
8 SEVEN FEET. BUT IT IS NOT REALISTIC.

9 NOW, WHEN YOU TELL ME THAT IT IS POSSIBLE THAT  
10 YOU COULD DO THAT, ARE YOU SAYING IT IS POSSIBLE BUT REALLY  
11 IMPROBABLE?

12 MS. GLORIOSO: AS FAR AS WHAT?

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

26B FO

26R-1

1 MR. BARENS: THAT YOU COULD VOTE FOR LIFE WITHOUT  
2 POSSIBILITY OF PAROLE? OR, ARE YOU SAYING THAT YOU WOULD  
3 OPEN-MINDEDLY APPROACH THAT AS EASILY AS YOU COULD APPROACH  
4 VOTING IN FAVOR OF THE DEATH PENALTY FOR A DEFENDANT WHO  
5 COMMITTED AN INTENTIONAL MURDER?

6 MS. GLORIOSO: I COULD VOTE FOR BOTH. I MEAN, I COULD  
7 VOTE --

8 MR. BARENS: EITHER WAY?

9 MS. GLORIOSO: EITHER WAY.

10 MR. BARENS: RIGHT. WHEN YOU EARLIER SAID THAT YOU  
11 WERE IN FAVOR OF THE DEATH PENALTY, IS THAT A POINT OF VIEW  
12 THAT YOU HAVE HAD FOR A LONG TIME?

13 MS. GLORIOSO: NO.

14 MR. BARENS: IS THERE ANYTHING IN PARTICULAR THAT CAUSED  
15 YOU TO HAVE THAT POINT OF VIEW?

16 MS. GLORIOSO: NO, JUST READING -- WELL, I DON'T READ  
17 THE NEWSPAPERS. IT WAS JUST LISTENING TO SOME CASES WHERE  
18 THERE HAVE BEEN YOU KNOW, CONTINUOUS MURDERS AND THEY SIT  
19 IN JAIL FOR A LONG TIME.

20 AND THE PAROLE COMES UP AND THEY DON'T GET PAROLE,  
21 BUT THEY SIT IN JAIL.

22 I AM TALKING ABOUT MORE OR LESS FROM THE BEGINNING.  
23 LIKE I WAS SAYING, THE TED BUNDY CASE, WHERE THERE ARE A LOT  
24 OF PEOPLE INVOLVED.

25 MR. BARENS: ALL RIGHT. DO YOU UNDERSTAND THAT ALTHOUGH  
26 I WAS REQUIRED TO ASK YOU QUESTIONS ABOUT THE DEATH PENALTY  
27 NOW AND THE JUDGE WAS AND THE PROSECUTOR IS IN A MOMENT, THAT  
28 FROM THAT, THERE IS NO IMPLICATION OR REASON FOR YOU TO BELIEVE

1 THAT MR. HUNT HAS DONE ANYTHING WRONG?

2 MS. GLORIOSO: UH-HUH, YES.

3 MR. BARENS: DO YOU BELIEVE THAT?

4 MS. GLORIOSO: UH-HUH.

5 MR. BARENS: YOU DON'T BELIEVE BECAUSE WE ARE HERE  
6 TALKING ABOUT THAT, THAT HE MUST HAVE DONE SOMETHING WRONG  
7 OR WE WOULDN'T BE TALKING ABOUT THIS TO BEGIN WITH?

8 MS. GLORIOSO: WELL, I DO BELIEVE HE HAS DONE SOMETHING  
9 WRONG.

10 MR. BARENS: YOU BELIEVE THAT?

11 MS. GLORIOSO: I DON'T KNOW. WHAT I KNOW IS THAT HE  
12 HAS DONE A MURDER AND A ROBBERY, BUT I DON'T KNOW THE  
13 CIRCUMSTANCES.

14 MR. BARENS: OKAY. WELL, SEE, NO ONE -- HIS HONOR NEVER  
15 INTENDED TO MAKE YOU THINK THAT JOE HUNT COMMITTED A MURDER  
16 OR A ROBBERY. ARE YOU SURPRISED TO HEAR THAT?

17 MS. GLORIOSO: WELL, I GUESS I WORDED IT WRONG. YEAH.  
18 I -- NO. I -- YES, I AM SURPRISED.

19 MR. BARENS: YOU THINK THE JUDGE SAID TO YOU --

20 MS. GLORIOSO: NO. I REALIZE NOW WHAT HE SAID.

21 MR. BARENS: WHAT DID HE SAY?

22 MS. GLORIOSO: THAT HE IS NOT MORE OR LESS ACCUSING  
23 THE PERSON.

24 MR. BARENS: DO YOU THINK THE JUDGE THINKS THAT  
25 MR. HUNT DID ANYTHING WRONG?

26 MS. GLORIOSO: I DON'T KNOW.

27 MR. BARENS: WHAT DO YOU THINK?

28 MS. GLORIOSO: I THINK THAT IS WHY HE IS GOING TO COURT.



1 MR. BARENS: OKAY. DO YOU THINK BECAUSE IT IS REAL  
2 IMPORTANT THAT WE GET TOGETHER ON THIS, MS. GLORIOSO -- IS  
3 THERE ANY REASON IN YOUR MIND THAT YOU THINK THAT THE JUDGE  
4 IS SAYING TO YOU, LISTEN, MR. HUNT HAS COMMITTED A ROBBERY  
5 AND A MURDER AT THE SAME TIME AND WE HAVE GOT TO FIGURE OUT  
6 WHAT WE ARE GOING TO DO WITH HIM?

7 IS THAT WHAT YOU THINK THIS IS ALL ABOUT?

8 THE COURT: DON'T YOU REMEMBER THAT I TOLD YOU? DON'T  
9 YOU REMEMBER THAT I TOLD YOU THAT IF YOU ARE SELECTED AS A  
10 JUROR, YOU FIRST HAVE TO DETERMINE THE GUILT OR INNOCENCE  
11 OF THE DEFENDANT, WHETHER HE COMMITTED A MURDER AND IT WAS  
12 MURDER IN THE FIRST DEGREE?

13 MS. GLORIOSO: UH-HUH.

14 THE COURT: RIGHT?

15 MS. GLORIOSO: YES.

16 THE COURT: IF YOU DECIDE -- IF THE JURY DECIDES IT  
17 WAS MURDER IN THE FIRST DEGREE, THEN THEY HAVE GOT TO CONSIDER  
18 WHETHER OR NOT IT WAS IN THE COURSE OF A ROBBERY.

19 DID I INDICATE ANYTHING TO YOU WHICH WOULD GIVE  
20 YOU THE IDEA THAT HE HAS COMMITTED MURDER?

21 MS. GLORIOSO: NO.

22 THE COURT: WELL, MERELY BECAUSE HE IS SITTING THERE,  
23 THE LAW SAYS THAT HE IS PRESUMED TO BE INNOCENT.

24 MS. GLORIOSO: UH-HUH.

25 THE COURT: AS HE SITS THERE, HE IS PRESUMED TO BE  
26 INNOCENT. UNTIL HE IS PROVEN GUILTY BEYOND A REASONABLE DOUBT,  
27 HE IS NOT GUILTY OF ANYTHING. DO YOU UNDERSTAND THAT?

28 MERELY BECAUSE HE IS SITTING THERE, DOESN'T MEAN

1 THAT THERE IS ANY BASIS -- THERE IS ANY REASON FOR YOU TO  
2 BELIEVE THAT HE IS GUILTY.

3 MS. GLORIOSO: UH-HUH.

4 MR. WAPNER: IS THAT YES?

5 MS. GLORIOSO: YES.

6 MR. BARENS: MS. GLORIOSO --

7 THE COURT: PARDON ME. YOU REMEMBER, I ASKED YOU THOSE  
8 QUESTIONS ABOUT YOUR ATTITUDES TOWARD THE DEATH PENALTY.  
9 I ONLY ASKED YOU TO FIND OUT WHAT YOUR STATE OF MIND WAS IN  
10 THE EVENT THAT THE JURY FOUND HIM GUILTY.

11 THEN THE QUESTION OF THE DEATH PENALTY BECOMES  
12 APPLICABLE. DO YOU UNDERSTAND THAT?

13 MS. GLORIOSO: YES.

14 THE COURT: I WAS GOING TO ASK YOU THAT QUESTION ON  
15 THE ASSUMPTION THAT HE FIRST HAD BEEN FOUND GUILTY. BUT HE  
16 IS NOT GUILTY YET OR AT ALL. HE IS PRESUMED INNOCENT.

17 MR. GLORIOSO: YES.

18 THE COURT: DO YOU UNDERSTAND THAT?

19 MS. GLORIOSO: YES.

20 THE COURT: YOU WILL FOLLOW THAT BECAUSE THAT IS THE  
21 LAW OF THE CASE?

22 MS. GLORIOSO: PARDON ME?

23 THE COURT: YOU WILL FOLLOW THAT?

24 MS. GLORIOSO: YES.

25 MR. BARENS: MS. GLORIOSO, I WANT TO MAKE SURE THAT  
26 YOU DON'T THINK THAT I AM GIVING YOU LAWYER TALK AND THE JUDGE  
27 IS GIVING YOU JUDGE TALK.

28 NOW, IN YOUR HEART OF HEARTS, LET ME ASK YOU

1 SOMETHING. DO YOU THINK THAT THAT FELLOW DOWN THERE PROBABLY  
2 COMMITTED A MURDER OR WE WOULDN'T BE HERE TALKING ABOUT DEATH  
3 PENALTIES AND LIFE WITHOUT POSSIBILITY OF PAROLE AND GAS  
4 CHAIRS?

5 MS. GLORIOSO: I DON'T KNOW.

6 MR. BARENS: YOU DON'T KNOW?

7 MS. GLORIOSO: I --

8 MR. BARENS: WHAT DO YOU REALLY THINK?

9 MS. GLORIOSO: I THINK YES.

10 MR. BARENS: OKAY. I KNOW YOU DO BECAUSE THAT IS WHAT  
11 YOU TOLD ME EARLIER. I DON'T THINK YOU WERE KIDDING ME.

12 MR. WAPNER: AGAIN, I DON'T THINK IT IS APPROPRIATE  
13 FOR COUNSEL TO INJECT HIS OPINIONS TO THE JUROR.

14 MR. BARENS: I DON'T KNOW WHERE IT SAYS THAT IN THE  
15 LAW --

16 THE COURT: LET'S FIND OUT WHAT MS. GLORIOSO THINKS.

17 MR. BARENS: NOW, YOU TOLD ME AND YOU ARE ENTITLED TO  
18 YOUR POINT OF VIEW, THAT THAT IS THE POINT OF VIEW YOU HAVE  
19 GOT. I AM GLAD THAT YOU HAVE TOLD ME THAT. I THANK YOU.

20 WE RESERVE OUR CHALLENGE. THANK YOU VERY MUCH.

21 MR. WAPNER: GOOD AFTERNOON, MS. GLORIOSO. I AM FRED  
22 WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS TRYING THIS CASE.

23 ARE YOU WILLING TO GIVE THE DEFENDANT IN THIS  
24 CASE, THE BENEFIT OF BEING PRESUMED INNOCENT UNTIL HE IS  
25 PROVED GUILTY?

26 MS. GLORIOSO: YES.

27

28

1 MR. WAPNER: HOW DO YOU RECONCILE THAT WITH WHAT YOU  
2 JUST TOLD MR. BARENS?

3 MS. GLORIOSO: LISTENING TO THE EVIDENCE, LISTENING.

4 MR. WAPNER: DO YOU THINK THAT SOMETHING MUST HAVE  
5 HAPPENED OR ELSE WE WOULDN'T BE HAVING A TRIAL ABOUT IT?

6 MS. GLORIOSO: YES.

7 MR. WAPNER: DOES THAT NECESSARILY MEAN TO YOU THAT  
8 THE DEFENDANT DID ANYTHING?

9 MS. GLORIOSO: NO.

10 MR. WAPNER: HAVE YOU EVER SAT ON A TRIAL BEFORE?

11 MS. GLORIOSO: NO.

12 MR. WAPNER: HAVE YOU READ ANY OTHER BOOKS ABOUT CRIMINAL  
13 TRIALS BESIDES THE ONE ABOUT MR. BUNDY?

14 MS. GLORIOSO: NO.

15 MR. WAPNER: YOU HAVE HEARD ABOUT OTHER CRIMINAL CASES?

16 MS. GLORIOSO: I HAVE READ A LITTLE ABOUT IT IN THE  
17 PAPER AT SOMETIME.

18 MR. WAPNER: YOU HAVE HEARD ABOUT CASES ABOUT MISTAKEN  
19 IDENTITY, FOR EXAMPLE?

20 MS. GLORIOSO: YES.

21 MR. WAPNER: SO THERE ARE SOME CASES, FOR EXAMPLE, WHERE  
22 SOMEONE IS CHARGED WITH A CRIME AND IT TURNS OUT THAT SURE  
23 ENOUGH, THERE WAS A CRIME BUT THEY GOT THE WRONG PERSON?

24 MS. GLORIOSO: YES.

25 MR. WAPNER: THE PERSON WHO WAS CHARGED IN THAT CASE  
26 IS ENTITLED TO THE BENEFIT OF THE PRESUMPTION OF INNOCENCE,  
27 AREN'T THEY?

28 MS. GLORIOSO: YES.

1 MR. WAPNER: YOU DON'T KNOW ANYTHING ABOUT THE FACTS  
2 OF THIS CASE, DO YOU?

3 MS. GLORIOSO: NO .

4 MR. WAPNER: ARE YOU WILLING TO LOOK AT THE DEFENDANT  
5 IN THIS CASE AND SAY, YOU ARE PRESUMED TO BE INNOCENT UNTIL  
6 THE PROSECUTOR PROVES OTHERWISE?

7 MS. GLORIOSO: YES.

8 MR. WAPNER: DO YOU THINK THAT IS HOW IT SHOULD BE?

9 MS. GLORIOSO: YES.

10 MR. WAPNER: IF WE GET TO THE PENALTY PHASE IN THIS  
11 CASE, YOU WILL HAVE, FIRST OF ALL, ALREADY DECIDED THAT THE  
12 DEFENDANT WAS GUILTY OF A MURDER BEYOND A REASONABLE DOUBT  
13 AND THAT IT HAPPENED DURING A ROBBERY, AND THEN YOU WILL BE  
14 REQUIRED TO LISTEN TO ALL OF THE EVIDENCE ON THE PENALTY PHASE  
15 AND THEN YOU WILL GO INTO THE JURY ROOM AND DECIDE WHAT THE  
16 PUNISHMENT SHOULD BE. WHEN YOU GET TO THAT POINT, YOU ONLY  
17 HAVE TWO CHOICES, DEATH IN THE GAS CHAMBER OR LIFE IN PRISON  
18 WITHOUT THE POSSIBILITY OF PAROLE; DO YOU UNDERSTAND THAT  
19 THOSE WOULD BE YOUR TWO CHOICES?

20 MS. GLORIOSO: YES.

21 MR. WAPNER: AND KNOWING THAT THOSE WOULD BE YOUR TWO  
22 CHOICES, ARE YOU PREDISPOSED TO VOTE ONE WAY OR THE OTHER  
23 JUST BASED ON YOUR BACKGROUND AND YOUR BELIEFS AND HOW YOU  
24 THINK?

25 MS. GLORIOSO: YES.

26 MR. WAPNER: YOU ARE PREDISPOSED TO VOTE -- MAYBE THAT  
27 IS NOT A GOOD WORD TO USE.

28 MR. BARENS: BUT THAT IS THE WORD THAT WAS USED.

1                   COULD WE GET THE FULL ANSWER OF THE JUROR?

2                   THE COURT: DO YOU KNOW WHAT HE MEANT BY THAT QUESTION?

3                   BY PREDISPOSED, YOU HAVE MADE UP YOUR MIND YOU  
4 ARE GOING TO VOTE FOR DEATH IN THE GAS CHAMBER RATHER THAN  
5 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR  
6 OTHERWISE.

7                   HAVE YOU MADE UP YOUR MIND ABOUT HOW YOU ARE GOING  
8 TO VOTE WITHOUT HEARING THE EVIDENCE?

9                   MS. GLORIOSO: OH, NO.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

27A

1 MR. WAPNER: THANK YOU, YOUR HONOR.

2 SO WHEN YOU SAY -- MAYBE I WILL ASK IT A DIFFERENT  
3 WAY.

4 WHEN YOU FINISH THE GUILT PHASE, THAT IS, YOU HAVE  
5 DECIDED -- LET'S ASSUME THAT YOU HAVE DECIDED THAT HE IS  
6 GUILTY AND THAT IT WAS DURING A ROBBERY, WOULD THAT BE THE  
7 END OF IT FOR YOU? WOULD YOU THEN SAY, WELL, I ALREADY KNOW  
8 WHAT PUNISHMENT I AM GOING TO DECIDE ON, WITHOUT HEARING ANY-  
9 THING ELSE?

10 MS. GLORIOSO: NO.

11 MR. WAPNER: WOULD YOU BE WILLING TO LISTEN TO THE REST  
12 OF THE CASE?

13 MS. GLORIOSO: YES.

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

15 I WILL PASS FOR CAUSE, YOUR HONOR.

16 THE COURT: JUST LET ME MAKE SOME INQUIRIES.

17 ONE OF THE QUESTIONS ON THE PENALTY PHASE, ASSUMING  
18 NOW THAT YOU MAY HAVE FOUND HIM GUILTY OF MURDER IN THE FIRST  
19 DEGREE AND IT WAS COMMITTED IN THE COURSE OF A ROBBERY, I ASKED  
20 YOU ONE OF THE QUESTIONS ON THE PENALTY PHASE, I ASKED YOU  
21 WHETHER OR NOT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH  
22 PENALTY AUTOMATICALLY WITHOUT HEARING ANY TESTIMONY ON THE  
23 PENALTY PHASE AND YOU SAID NO; IS THAT CORRECT?

24 MS. GLORIOSO: YES.

25 THE COURT: ALL RIGHT, AND YOU ALSO SAID THAT YOU WOULD  
26 NOT AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE  
27 POSSIBILITY OF PAROLE WITHOUT HEARING EVIDENCE ON THE PENALTY  
28 PHASE; ISN'T THAT WHAT YOU SAID?

1 MS. GLORIOSO: YES.

2 THE COURT: DID YOU MEAN THAT?

3 (NO AUDIBLE RESPONSE.)

4 THE COURT: AS YOU SIT THERE, ASSUMING THAT YOU FIND  
5 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND OF THE  
6 SPECIAL CIRCUMSTANCES, WOULD YOU CLOSE YOUR MIND AND SAY, I  
7 AM GOING TO IMPOSE THE DEATH PENALTY WITHOUT HEARING ANYTHING  
8 FURTHER?

9 MS. GLORIOSO: NO.

10 I WOULD LISTEN FURTHER.

11 THE COURT: ARE YOU SURE ABOUT THAT?

12 MS. GLORIOSO: UH-HUH.

13 THE COURT: AND THE FACT THAT THE DEFENDANT IS SITTING  
14 THERE, YOU THINK REALLY -- THAT IS WHAT YOU INDICATED -- YOU  
15 THINK REALLY HE MUST HAVE DONE SOMETHING, OTHERWISE HE WOULDN'T  
16 BE SITTING THERE?

17 (NO AUDIBLE RESPONSE.)

18 THE COURT: I TOLD YOU THAT HE IS SURROUNDED BY THE  
19 PRESUMPTION OF INNOCENCE AND HE IS INNOCENT FOR ALL PURPOSES  
20 UNLESS THE CONTRARY IS PROVED BEYOND A REASONABLE DOUBT.

21 MS. GLORIOSO: UH-HUH.

22 THE COURT: HE IS ENTIRELY SURROUNDED WITH THAT KIND  
23 OF SAFEGUARD; ARE YOU GOING TO TAKE IT AWAY FROM HIM?

24 MS. GLORIOSO: NO.

25 THE COURT: YOU ARE SURE NOW? YOU ARE SURE NOW?

26 MS. GLORIOSO: I AM SURE.

27 THE COURT: ALL RIGHT, WILL YOU STEP OUTSIDE JUST FOR  
28 A MINUTE. I WILL HEAR SOME ARGUMENT.



1 (PROSPECTIVE JUROR GLORIOSO EXITS THE  
2 COURTROOM.)

3 MR. WAPNER: YOUR HONOR, I KNOW COUNSEL HAS A MOTION.  
4 COUNSEL AND I HAVE DISCUSSED IT, AND IF IT IS ACCEPTABLE WITH  
5 THE COURT, I THINK THAT THIS WOMAN FALLS INTO THE CATEGORY  
6 FIRST ESTABLISHED BY MRS. BLANK, AND ALTHOUGH SHE IS SOMEWHAT  
7 MORE OPINIONATED, I THINK COUNSEL AND I SEEM TO AGREE THAT  
8 SHE PROBABLY WOULDN'T BE AN APPROPRIATE JUROR FOR THIS TYPE  
9 OF CASE.

10 THE COURT: I THINK SO, TOO.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT. WOULD YOU CALL MRS. GLORIOSO  
13 IN?

14 ONE OF THE JURORS, I RECOGNIZE HER NAME, SHE IS  
15 THE DAUGHTER OF JUDGE MENDELSON, JUEL JANIS.

16 (PROSPECTIVE JUROR GLORIOSO REENTERS  
17 THE COURTROOM.)

18 THE COURT: WE THINK YOU WILL MAKE A VERY FINE JUROR.  
19 BUT BECAUSE OF THE ANSWERS YOU GAVE, IT IS A LITTLE DOUBTFUL  
20 WHETHER OR NOT YOU MIGHT QUALIFY AS A JUROR ON A DEATH PENALTY  
21 CASE, SO WE ARE GOING TO EXCUSE YOU. YOU GO TO THE JURY  
22 ASSEMBLY ROOM AND TELL THEM YOU HAVE BEEN EXCUSED FROM THIS  
23 CASE BUT YOU ARE EMINENTLY QUALIFIED TO SERVE ON SOME OTHER  
24 KIND OF A CASE.

25 (PROSPECTIVE JUROR GLORIOSO EXITS THE  
26 COURTROOM.)

27 THE COURT: ALL RIGHT, WE WILL TAKE AN ADJOURNMENT NOW  
28 UNTIL TOMORROW MORNING.

1 MR. BARENS: YOUR HONOR, IS IT 10:30 TOMORROW?

2 THE COURT: I WOULD LIKE YOU TO COME IN EARLIER AND TRY  
3 TO GET THROUGH AS MANY AS POSSIBLE.

4 MR. BARENS: I APPRECIATE THAT BUT IT IS JUST I HAVE  
5 BOOKED MY LIFE FOR 10:30 LIKE PAVLOV'S DOG, WHEN I DO 10:30,  
6 I ALWAYS DO 10:30.

7 THE COURT: ALL RIGHT, THE FIRST TWO ARE COMING IN AT 10:00.  
8 WE WILL HAVE THEM WAIT IF YOU CAN'T MAKE IT.

9 MR. BARENS: DID YOU SET IT AT 10:00 O'CLOCK TOMORROW,  
10 YOUR HONOR?

11 THE COURT: WE TOLD THEM TO COME IN AT 10:00 O'CLOCK  
12 AND THE OTHERS ARE COMING IN AT 10:30.

13 MR. BARENS: I AM SORRY, YOUR HONOR. I WAS NOT AWARE  
14 OF THAT PREVIOUSLY.

15 THE COURT: TRY TO MAKE IT AS EARLY AS YOU CAN.

16 MR. BARENS: I WILL, INDEED.

17 I DID WANT TO ASK A QUESTION ON YOUR WAY OUT, JUST  
18 A SINGLE QUESTION, YOUR HONOR.

19 (AT 4:32 P.M. AN ADJOURNMENT WAS TAKEN  
20 UNTIL WEDNESDAY, JANUARY 7, 1987 AT  
21 10:00 A.M.)

22

23

24

25

26

27

28