

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DOCKET
NO. LA
88DA0269
Entered by _____
Date _____

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 0 8 12

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
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LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 30 OF 101
(PAGES 4362 TO 4556, INCLUSIVE)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

JOSEPH HUNT,)

DEFENDANT.)

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, JANUARY 7, 1987

VOLUME 30

PAGES 4362 TO 4556, INCL.

APPEARANCES:

FOR THE PLAINTIFF: 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
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WEDNESDAY, JANUARY 7, 1987 VOLUME 30 PAGES 4362 TO 4556

A.M. 4362

P.M. 4442

PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 4362

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, JANUARY 7, 1987; 10:27 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 MR. BARENS: ON THOSE SUBPOENAS THAT WE --

6 THE COURT: I HAVE SIGNED THEM.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 THE COURT: YOU HAVE SEEN THEM, HAVEN'T YOU?

9 MR. WAPNER: NO, I HAVEN'T.

10 MR. BARENS: I DON'T BELIEVE THE PROSECUTION OR THE
11 DEFENSE HAS TO EXCHANGE SUBPOENA MATERIALS, YOUR HONOR.

12 THE COURT: WELL, HE SHOULD KNOW WHAT IS GOING ON.

13 MR. BARENS: HE HAS NEVER TOLD US ABOUT ANY SUBPOENA
14 THE PROSECUTION HAS EVER ISSUED.

15 THE COURT: DO YOU THINK IT IS NECESSARY FOR YOU TO
16 SEE THEM?

17 MR. WAPNER: I DON'T THINK IT IS REQUIRED, NO.

18 THE COURT: IF IT ISN'T REQUIRED, THEN YOU DON'T SHOW
19 IT TO HIM.

20 MR. BARENS: IF YOUR HONOR WISHES TO, I DON'T MIND BUT --

21 THE COURT: NO. I AM JUST FOLLOWING PROTOCOL.

22 MR. BARENS: IF IT IS MADE RECIPROCAL AND I CAN SEE
23 ALL OF HIS, IT WOULD BE NICE.

24 (PROSPECTIVE JUROR GUCCIONE ENTERED
25 THE COURTROOM.)

26 THE COURT: ALL RIGHT, YOU ARE MR. GUCCIONE, IS THAT
27 IT?

28 MR. GUCCIONE: YES, SIR.

1 THE COURT: ALL RIGHT, MR. GUCCIONE, WHERE DO YOU LIVE?

2 MR. WAPNER: YOUR HONOR, COULD I HAVE ONE MOMENT?

3 THE COURT: YES.

4 (PAUSE IN PROCEEDINGS.)

5 THE COURT: READY?

6 MR. WAPNER: YES. THANK YOU.

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

8 MR. GUCCIONE: LOS ANGELES, YOUR HONOR.

9 THE COURT: WHAT PART OF LOS ANGELES?

10 MR. GUCCIONE: RIGHT BETWEEN MARINA DEL REY AND CULVER
11 CITY.

12 THE COURT: HAVE YOU READ ANYTHING OR HEARD ANYTHING
13 ABOUT THIS PARTICULAR CASE, EXCEPT WHAT I TOLD YOU IN COURT?

14 MR. GUCCIONE: NO, SIR, I HAVEN'T.

15 THE COURT: DOES THE NAME OF THE DEFENDANT, JOE HUNT,
16 MEAN ANYTHING OR BILLIONAIRE BOYS CLUB MEAN ANYTHING TO YOU?

17 MR. GUCCIONE: NO, SIR, IT DOESN'T.

18 THE COURT: YOU HAVE NEVER HEARD THAT EXPRESSION BEFORE?

19 MR. GUCCIONE: NO, SIR.

20 THE COURT: REMEMBER, I TOLD YOU THAT THE CHARGE AGAINST
21 THE DEFENDANT IS THAT HE COMMITTED A MURDER, MURDER IN THE
22 FIRST DEGREE IN THE COURSE OF A ROBBERY; DO YOU REMEMBER THAT?

23 MR. GUCCIONE: YES.

24 THE COURT: IN THE COURSE OF A ROBBERY HAS SPECIAL
25 SIGNIFICANCE BECAUSE NOT EVERY MURDER CALLS FOR THE IMPOSITION
26 OF THE DEATH PENALTY OR ELIGIBILITY FOR THE DEATH PENALTY,
27 EVEN IF IT IS PREMEDITATED AND DELIBERATE AND PLANNED AND
28 EVERYTHING ELSE. IT IS ONLY WHERE A MURDER IS COMMITTED UNDER

1 CERTAIN SPECIAL CIRCUMSTANCES --

2 MR. GUCCIONE: THAT'S RIGHT.

3 THE COURT: YOU SEE, THAT THEN THE POSSIBILITY OF A
4 DEATH PENALTY MIGHT COME IN TO PLAY; DO YOU UNDERSTAND THAT?

5 MR. GUCCIONE: RIGHT.

6 THE COURT: NOW, THE LEGISLATURE HAS SAID THAT A MURDER
7 COMMITTED IN THE COURSE OF A ROBBERY, WHICH IS THIS CASE,
8 OR IN THE COURSE OF A BURGLARY OR IN THE COURSE OF A KIDNAPPING
9 OR IN THE COURSE OF A RAPE, IN THE COURSE OF A MOLESTATION
10 OF A CHILD AND THE CHILD DIES, OR TORTURE, MULTIPLE MURDERS,
11 ANY NUMBER OF SPECIAL CIRCUMSTANCES OF THAT KIND, THE
12 LEGISLATURE HAS SAID THE DEATH PENALTY MIGHT BE INVOKED IN
13 THAT PARTICULAR CASE; DO YOU UNDERSTAND THAT?

14 MR. GUCCIONE: YES, SIR.

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1 THE COURT: SO THE JURY IN THIS CASE -- WHEN I TALK ABOUT
2 THE DEATH PENALTY, I MEAN THAT IT HAS TWO ASPECTS. THE JURY
3 HAS A CHOICE IN A DEATH PENALTY CASE BETWEEN RECOMMENDING OR
4 SUGGESTING OR HOLDING THAT THE DEFENDANT SHOULD SUFFER LIFE
5 WITHOUT POSSIBILITY OF PAROLE AND THAT MEANS EXACTLY THAT,
6 HE GOES TO PRISON FOR LIFE WITH NO PAROLE OR IT IS DEATH IN
7 THE GAS CHAMBER.

8 SO WHEN WE TALK ABOUT THE DEATH PENALTY, IT WILL
9 BE ONE OF THOSE TWO. THAT IS WHAT THE JURY HAS TO DETERMINE
10 IN A DEATH PENALTY CASE. DO YOU UNDERSTAND?

11 MR. GUCCIONE: YES.

12 THE COURT: ALL RIGHT. SO, THE JURY SELECTED IN THIS
13 CASE WILL FIRST DECIDE WHAT WE CALL ON THE GUILT PHASE OF THE
14 TRIAL -- THERE ARE TWO PHASES. ONE IS THE GUILT PHASE. THE
15 OTHER ONE I WILL TELL YOU ABOUT.

16 ON THE GUILT PHASE OF THE TRIAL, THE JURY DETERMINES
17 WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE
18 MURDER. AND IF IT IS GUILTY, THEN IT IS GUILTY, WHETHER IT
19 IS GUILTY OF MURDER IN THE FIRST DEGREE.

20 AND IF THEY FIND THAT THE DEFENDANT IS GUILTY OF
21 HAVING PERPETRATED A MURDER AND IT IS MURDER IN THE FIRST
22 DEGREE, THEN THE JURY DETERMINES WHETHER IT IS TRUE OR FALSE
23 THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

24 IF THEY SAY IT IS TRUE THAT IT WAS COMMITTED
25 DURING THE COURSE OF A ROBBERY, THEN THE SAME JURY GOES INTO
26 A SECOND PHASE OF THE TRIAL, WHICH IS KNOWN AS THE PENALTY
27 PHASE.

28 DURING THE GUILT PHASE, THE QUESTION OF PENALTY

1 IS NEVER INVOLVED. THE ONLY DETERMINATION IS, IS HE GUILTY
2 OR NOT GUILTY, WAS IT DURING THE COURSE OF A ROBBERY OR WASN'T
3 IT DURING THE COURSE OF A ROBBERY.

4 IF THEY SAY YES, IT IS IN THE COURSE OF A ROBBERY
5 THAT HE COMMITTED A MURDER, THEN THEY DETERMINE AS I TOLD YOU,
6 THE PENALTY.

7 THEN IT WILL EITHER BE LIFE WITHOUT POSSIBILITY
8 OF PAROLE OR DEATH IN THE GAS CHAMBER. NOW, ON THE SECOND
9 PHASE OF THE TRIAL WITH THE SAME JURY, THE JURY LISTENS TO
10 ADDITIONAL TESTIMONY THAT THEY HAD NOT HEARD BEFORE FROM THE
11 DEFENDANT AND FROM THE PROSECUTION.

12 THE DEFENDANT IN ORDER TO MITIGATE HIS OFFENSE,
13 IN ORDER TO AMELIORATE IT OR LESSEN THE OFFENSE PRESENTS AND
14 YOU MUST CONSIDER, EVIDENCE ABOUT HIS BACKGROUND, HIS AGE,
15 HIS EDUCATION, HIS MENTAL AND PHYSICAL CONDITION AND ANYTHING
16 THAT THEY PRODUCE FOR THE PURPOSE OF MITIGATING HIS OFFENSE,
17 FOR THE PURPOSE OF SHOWING FAVORABLE ASPECTS ABOUT HIM, GOOD
18 THINGS HE HAS DONE.

19 THE PROSECUTION ON THE OTHER HAND, HAS A RIGHT
20 TO SHOW AGGRAVATING CIRCUMSTANCES, THINGS ABOUT THE DEFENDANT
21 IN HIS PAST AND SO ON AND SO FORTH, WHICH ARE NOT FAVORABLE.
22 SO THE JURY HEARS ALL OF THAT.

23 YOU ARE NOT TO MAKE UP YOUR MIND ON THE GUILT PHASE
24 OF THE TRIAL WHAT THE PUNISHMENT IS THAT HE SHOULD HAVE. YOU
25 HAVE GOT TO WAIT UNTIL AFTER THE SECOND TRIAL. DO YOU UNDER-
26 STAND THAT?

27 MR. GUCCIONE: THE SECOND PHASE?

28 THE COURT: THE SECOND PHASE IS THE PENALTY PHASE. THEN

1 YOU MAKE UP YOUR MIND WHAT PENALTY IF ANY, HE SHOULD SUFFER,
2 LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER.
3 DO YOU UNDERSTAND THAT?

4 MR. GUCCIONE: YES.

5 THE COURT: GOOD. AND THAT OF COURSE, YOU WILL BE WILLING
6 TO DO; WON'T YOU?

7 MR. GUCCIONE: YES.

8 THE COURT: ALL RIGHT. NOW, WHAT I WILL DO IS TO ASK
9 YOU A SERIES OF FIVE QUESTIONS. THE PURPOSE OF THOSE
10 WILL BE TO DETERMINE WHAT YOUR STATE OF MIND IS, EXPLORE YOUR
11 STATE OF MIND AS TO YOUR FEELINGS AND OPINIONS ABOUT THE
12 DEATH PENALTY. DO YOU UNDERSTAND?

13 MR. GUCCIONE: YES, SIR.

14 THE COURT: OKAY. NOW, I TOLD YOU THAT THE FIRST PHASE
15 OF THE TRIAL IS THE GUILT OR INNOCENCE. NOW, DO YOU HAVE ANY
16 OPINION ABOUT THE DEATH PENALTY, WHATEVER IT MAY BE, WHICH
17 WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE
18 GUILT OR INNOCENCE OF THE DEFENDANT?

19 MR. GUCCIONE: NO, SIR.

20 THE COURT: GOOD. AND DO YOU REMEMBER, I TOLD YOU THAT
21 THE SPECIAL CIRCUMSTANCES IN THIS PARTICULAR CASE ARE THAT
22 THE CRIME WAS COMMITTED IN THE COURSE OF A ROBBERY. DO YOU
23 REMEMBER THAT?

24 MR. GUCCIONE: YES.

25 THE COURT: THE JURY AS I TOLD YOU, DETERMINES WHETHER
26 OR NOT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

27 NOW, DO YOU HAVE ANY OPINION REGARDING THE DEATH
28 PENALTY THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL

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1 DETERMINATION CONCERNING THE TRUTH OR FALSITY OF THE SPECIAL
2 CIRCUMSTANCE?

3 MR. GUCCIONE: NO.

4 THE COURT: OKAY. THE NEXT TWO QUESTIONS RELATE TO THE
5 PENALTY PHASE. THE JURY IS SUPPOSEDLY NOW -- THEY HAVE FOUND
6 THE DEFENDANT GUILTY OF MURDER AND MURDER IN THE FIRST DEGREE
7 IN THE COURSE OF A ROBBERY. NOW IT IS A QUESTION OF PENALTY.

8 DO YOU HAVE ANY OPINION CONCERNING THE DEATH
9 PENALTY THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH
10 PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT
11 THE PENALTY PHASE OF THE TRIAL?

12 MR. GUCCIONE: NO. COULD YOU REPEAT THAT AGAIN?

13 THE COURT: YES. ON THE PENALTY PHASE, YOU HEAR ALL
14 OF THE EVIDENCE AND SO FORTH. WOULD YOU AUTOMATICALLY VOTE
15 FOR THE DEATH PENALTY WITHOUT PAYING ANY ATTENTION TO ANY
16 TESTIMONY THAT YOU WERE GIVEN ON THE PENALTY PHASE?

17 MR. GUCCIONE: NO, SIR.

18 THE COURT: ALL RIGHT. AND IN THE SAME WAY, DO YOU HAVE
19 ANY OPINION CONCERNING THE DEATH PENALTY, THAT YOU WOULD
20 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
21 DISREGARDING OR REGARDLESS OF ANY EVIDENCE THAT MAY BE
22 PRESENTED AT THE PENALTY PHASE?

23 MR. GUCCIONE: NO, SIR.

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

28 MR. GUCCIONE: YES, SIR.

1 MR. BARENS: THANK YOU, YOUR HONOR. GOOD MORNING,
2 MR. GUCCIONE. I AM ARTHUR BARENS. I REPRESENT JOE HUNT, THE
3 DEFENDANT IN THIS MATTER.

4 AND AS WITH THE JUDGE, IT IS MY OBLIGATION NOW
5 TO ASK YOU SOME QUESTIONS ABOUT YOUR OPINION OF THE DEATH
6 PENALTY.

7 PLEASE UNDERSTAND THAT THERE ARE NO RIGHT OR WRONG
8 ANSWERS TO MY QUESTIONS AND NONE OF US ARE JUDGING YOUR
9 ANSWERS, BUT RATHER JUST EXPLORING YOUR OPINION. YOU CAN NEVER
10 BE WRONG ABOUT YOUR OWN OPINION.

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

3 MR. GUCCIONE: HOW DO I FEEL ABOUT IT?

4 MR. BARENS: WHAT IS YOUR OPINION ABOUT THE EXISTENCE
5 OF THE DEATH PENALTY AS AN ELEMENT OF OUR JUDICIAL SYSTEM
6 OR OUR PENAL SYSTEM, I SHOULD SAY?

7 MR. GUCCIONE: WELL, I BELIEVE WE SHOULD HAVE IT.

8 MR. BARENS: OKAY. AND DO YOU THINK THERE ARE CERTAIN
9 SITUATIONS OR CIRCUMSTANCES UNDER WHICH THE DEATH PENALTY
10 SHOULD BE IMPOSED?

11 MR. GUCCIONE: UNDER CERTAIN CONDITIONS, YES.

12 MR. BARENS: AND WHAT CONDITIONS WOULD YOU MEAN BY THAT,
13 SIR?

14 MR. GUCCIONE: WELL, IF THE -- IF THE CRIME AND GUILT
15 WARRANTS IT AND THE FACTS WARRANT IT, THEN IT SHOULD BE IMPOSED.

16 MR. BARENS: I AM GOING TO TRY TO GET SOME BETTER
17 UNDERSTANDING ABOUT WHAT YOU MEAN BY WARRANTS IT FOR A FEW
18 MOMENTS, IF WE MIGHT, SIR.

19 MR. GUCCIONE, DO YOU BELIEVE THAT IF A PERSON
20 TAKES A LIFE THAT THE ONLY APPROPRIATE PUNISHMENT IS THE DEATH
21 PENALTY?

22 MR. GUCCIONE: NOT NECESSARILY.

23 MR. BARENS: OKAY. WHAT DO YOU MEAN BY THAT, SIR?

24 MR. GUCCIONE: IF -- IF THE GUILT SHOWS IT WAS IN THE
25 FIRST DEGREE, THEN IT IS CALLED FOR.

26 MR. BARENS: NOW I APPRECIATE THAT, SIR.

27 DO YOU UNDERSTAND, SIR, THAT WE WILL NEVER COME
28 TO THIS QUESTION ABOUT PENALTY UNLESS FIRST DURING THAT

1 GUILT PHASE HIS HONOR REFERRED TO --

2 MR. GUCCIONE: CORRECT.

3 MR. BARENS: -- YOU AND THE OTHER JURORS BELIEVE IT
4 WAS A FIRST DEGREE MURDER.

5 YOU SEE, THE WAY THIS SYSTEM OPERATES, DURING
6 THE GUILT PHASE YOU AND THE OTHER JURORS WOULD HAVE TO BELIEVE
7 THAT THERE WAS A PREMEDITATED MURDER --

8 MR. GUCCIONE: CORRECT.

9 MR. BARENS: -- INTENTIONALLY COMMITTED --

10 MR. GUCCIONE: CORRECT.

11 MR. BARENS: -- BEYOND A REASONABLE DOUBT, DURING A
12 ROBBERY.

13 MR. GUCCIONE: IF THERE WAS INTENT?

14 MR. BARENS: YES.

15 MR. GUCCIONE: RIGHT.

16 MR. BARENS: YOU WOULD HAVE TO BELIEVE ALL OF THESE
17 FACTORS BEYOND A REASONABLE DOUBT BEFORE WE WOULD EVER GET
18 TO A PENALTY PHASE.

19 MR. GUCCIONE: CORRECT.

20 MR. BARENS: NOW, ARE YOU TELLING ME THAT YOU WOULD
21 BE PREDISPOSED IN YOUR OPINION THAT A DEFENDANT UNDER THOSE
22 SETTINGS SHOULD BE GIVEN THE DEATH PENALTY AS THE APPROPRIATE
23 PENALTY FOR THAT TYPE OF A CRIME?

24 THE COURT: WITHOUT REFERENCE TO THE PENALTY PHASE OF
25 IT, WITHOUT TESTIMONY?

26 MR. BARENS: I AM ASKING FOR A PREDISPOSITION AFTER
27 THE GUILT PHASE, YOUR HONOR.

28 THE COURT: I ASKED THE QUESTION BEFORE.

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1 WOULD YOU AUTOMATICALLY VOTE FOR THE DEATH PENALTY
2 WITHOUT REGARD TO ANY TESTIMONY THAT MIGHT COME IN ON THE
3 PENALTY PHASE?

4 MR. GUCCIONE: NO WAY, NO, SIR, NO, SIR.

5 THE COURT: THAT IS THE QUESTION YOU ARE SUPPOSED TO
6 ASK.

7 MR. BARENS: THE WORD "AUTOMATICALLY" IN THE WAY WE
8 USE LANGUAGE IS A WORD THAT MOST PEOPLE WOULD HESITATE TO
9 EVER ANSWER YES TO ABOUT ANYTHING.

10 MR. GUCCIONE: CORRECT.

11 MR. BARENS: AND I AGREE WITH YOU, THAT I WOULD HARDLY
12 EVER ANSWER YES TO THE WORD "AUTOMATICALLY" ABOUT ANYTHING
13 MYSELF.

14 MR. GUCCIONE: NO, NOTHING IS AUTOMATIC.

15 MR. BARENS: RIGHT.

16 WHAT I AM ASKING FOR, THOUGH, IS WHAT YOUR OPINION
17 OR POSSIBLE BIASES ARE BECAUSE WE ALL, AS PEOPLE, HAVE BIASES.

18 IF YOU HAD A DEFENDANT WHO HAD BEEN CONVICTED
19 OF AN INTENTIONAL FIRST DEGREE MURDER, WOULD YOU BELIEVE THAT
20 THE ONLY APPROPRIATE PENALTY WOULD BE A LIFE FOR A LIFE AT
21 THAT POINT?

22 MR. GUCCIONE: NO, SIR.

23 MR. BARENS: OKAY, WHAT ELSE WOULD YOU HAVE TO KNOW
24 ABOUT OR DO YOU THINK WOULD BE IMPORTANT FOR YOU TO KNOW ABOUT
25 BEFORE YOU COULD MAKE THE DECISION ABOUT DEATH IN THE GAS
26 CHAMBER OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE?

27 MR. GUCCIONE: WELL, I WOULD NEED TO KNOW THE FACTS
28 AND THE CIRCUMSTANCES.

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1 MR. BARENS: WELL, YOU ARE ALREADY GOING TO KNOW THAT.

2 MR. GUCCIONE: OKAY.

3 MR. BARENS: YOU ARE GOING TO KNOW ABOUT THE KILLING --

4 MR. GUCCIONE: YES.

5 MR. BARENS: -- IF A KILLING OCCURRED, YOU KNOW, AFTER
6 A TRIAL.

7 MR. GUCCIONE: CORRECT.

8 MR. BARENS: AND YOU ARE GOING TO KNOW IT WAS INTENTIONAL
9 AND IT WAS PREMEDITATED.

10 WHAT I AM REALLY TRYING TO FIND OUT, KNOWING THAT,
11 WOULD YOU REALLY NEED TO CONSIDER ANYTHING ABOUT THE BACKGROUND
12 OF THE DEFENDANT IN TERMS OF HIS AGE OR HIS LACK OF CRIMINAL
13 RECORD OR HIS CHARACTER, OR WOULD IT BE YOUR OPINION, WHICH
14 YOU ARE ENTITLED TO, THAT IF THE GUY TOOK A LIFE THE ONLY
15 APPROPRIATE PENALTY, IF IT WAS A PREMEDITATED INTENTIONAL
16 MURDER, WOULD BE THE DEATH PENALTY?

17 MR. GUCCIONE: NOT NECESSARILY.

18 MR. BARENS: OKAY. WHAT DO YOU MEAN, SIR?

19 MR. GUCCIONE: WELL --

20 THE COURT: DO YOU WANT HIM TO CONJURE UP CIRCUMSTANCES
21 WHERE HE WOULD SAY THE DEATH PENALTY WOULD NOT BE APPROPRIATE?
22 I DON'T UNDERSTAND THAT QUESTION.

23 MR. BARENS: RESPECTFULLY, YOUR HONOR, I THINK THAT
24 IS ENTIRELY PROPER.

25 THE COURT: I HAVE ASKED HIM THE QUESTION CATEGORICALLY;
26 THAT HE WOULD NOT MAKE UP HIS MIND UNTIL HE HEARS ALL OF THE
27 TESTIMONY ON THE PENALTY PHASE OF THE CASE AS TO WHAT
28 PENALTY SHOULD BE IMPOSED.

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1 WHAT YOU ARE TRYING TO DO IS TO GET HIM TO ADMIT
2 THAT HE WOULDN'T LISTEN TO ANY OF THAT AND HE WOULD
3 AUTOMATICALLY VOTE FOR THE DEATH PENALTY.

4 MR. BARENS: IF THAT WOULD BE HIS TRUE OPINION, JUDGE,
5 THAT IS WHAT I WOULD SEEK.

6 THE COURT: HE HAS ALREADY MANIFESTED HIS OPINION. HE
7 SAID HE WOULD NOT VOTE FOR IT UNTIL HE HAS HEARD ALL OF THE
8 TESTIMONY.

9 MR. GUCCIONE: I CAN'T -- I CAN'T PREJUDGE HIM.

10 MR. BARENS: I AM NOT ASKING YOU TO PREJUDGE, SIR.

11 I AM ASKING FOR YOUR STATE OF MIND, AND NOT YOUR
12 OPINION ABOUT ANY DEFENDANT.

13 I AM ASKING YOU IF YOU WOULD HAVE A BIAS IN YOUR
14 MIND, GIVEN A SITUATION WHERE THERE WAS AN INTENTIONAL KILLING,
15 WOULD YOU HAVE A BIAS GOING IN AS TO WHAT THE PENALTY SHOULD
16 BE?

17 MR. GUCCIONE: NO, SIR. I DO NOT HAVE ANY BIAS WHATSOEVER.

18 MR. BARENS: FINE.

19 WHAT I AM LOOKING FOR, SOME PEOPLE -- AND I AM
20 NOT SAYING THIS IS RIGHT OR WRONG, SIR -- BELIEVE IN THE
21 CONCEPT OF A LIFE FOR A LIFE, THAT IF YOU INTENTIONALLY KILL
22 SOMEONE AND IF IT WAS OUT OF A MOTIVE FOR GREED OR WHATEVER,
23 THAT THAT PERSON, THE ONLY THING WE SHOULD DO FOR THEM IS
24 EXECUTE THEM IN EXCHANGE FOR THAT AND WHAT I AM SEEKING IS
25 IF YOU WOULD HAVE THAT BIAS?

26 MR. GUCCIONE: NOT NECESSARILY.

27 MR. BARENS: WHEN YOU SAY NOT NECESSARILY, COULD I
28 INQUIRE AS TO WHAT YOU MIGHT MEAN BY THAT, SIR? WHAT WOULD

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1 BE THE FACTORS THAT MIGHT INFLUENCE THAT DECISION IN YOUR
2 MIND?

3 MR. GUCCIONE: WELL, I WOULD HAVE TO WEIGH ALL OF THE
4 EVIDENCE AND TESTIMONY AND SEE THE INDIVIDUALS, REVIEW THE
5 INDIVIDUAL SIDES.

6 MR. BARENS: IN OTHER WORDS, YOU WOULD CONSCIENTIOUSLY
7 LOOK AT THE DEFENDANT'S BACKGROUND?

8 MR. GUCCIONE: THAT'S CORRECT.

9 MR. BARENS: AS TO WHETHER OR NOT HE WAS THE TYPE OF
10 FELLOW WHO HAD COMMITTED VIOLENT CRIMINAL ACTS BEFORE THAT
11 INCIDENT?

12 MR. GUCCIONE: WELL, THAT, I ASSUME, WOULD BE PART OF
13 THE PICTURE THAT WOULD BE PRESENTED AS EVIDENCE.

14 MR. BARENS: THAT WOULD BE IN FACT, SIR, DURING THE
15 PENALTY PHASE.

16 MR. GUCCIONE: THAT IS CORRECT.

17 MR. BARENS: THAT IS WHAT HIS HONOR WAS SPEAKING ABOUT --

18 MR. GUCCIONE: THAT IS CORRECT.

19 MR. BARENS: -- IS THAT SECOND PHASE WHERE COUNSEL --

20 MR. GUCCIONE: I WOULD HAVE TO LOOK AT THAT PICTURE
21 SEPARATELY.

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1 MR. BARENS: HAVE YOU HAD AN OPINION ABOUT THE
2 APPROPRIATENESS OF THE DEATH PENALTY FOR A LONG TIME IN YOUR
3 LIFE?

4 MR. GUCCIONE: DID I HAVE THAT PICTURE IN MY MIND FOR
5 A LONG TIME? I HAVE NEVER GIVEN IT ANY THOUGHT BECAUSE I NEVER
6 HAD TO USE IT.

7 MR. BARENS: SURE. YOU HAVE NEVER REALLY HAD, UNTIL
8 THIS TIME IN YOUR LIFE, OCCASION TO REALLY ADDRESS THE DEATH
9 PENALTY AS A CONSIDERATION?

10 MR. GUCCIONE: THAT'S CORRECT.

11 MR. BARENS: DO YOU REMEMBER VOTING ON IT IN THE ELECTION
12 THAT WAS HELD IN THIS STATE SEVERAL YEARS AGO?

13 MR. GUCCIONE: I --

14 MR. BARENS: WHEN IT WAS A BALLOT PROPOSITION?

15 MR. GUCCIONE: I THINK I RECALL NOW THAT YOU MENTION
16 IT, YES.

17 MR. BARENS: DO YOU RECALL HOW YOU VOTED IN THAT INSTANCE,
18 SIR?

19 MR. GUCCIONE: I VOTED THAT IT SHOULD BE A PART OF
20 THE --

21 MR. BARENS: LEGAL PROCESS?

22 MR. GUCCIONE: LEGAL PROCESS, YES.

23 MR. BARENS: ALL RIGHT. MR. GUCCIONE, DO YOU UNDERSTAND
24 THAT ALTHOUGH THE JUDGE HAS TOLD YOU THERE ARE SOME 19
25 CATEGORIES WHERE A DEFENDANT COULD QUALIFY UNDER SPECIAL
26 CIRCUMSTANCES FOR THE IMPOSITION OF THE DEATH PENALTY, THAT
27 WOULD ONLY BE IF A JURY DETERMINED THAT?

28 THERE IS NOTHING ABOUT OUR LEGAL SYSTEM THAT MAKES

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1 THE DEATH PENALTY MANDATORY OR YOU KNOW, YOU MUST GIVE SOME-
2 BODY THE DEATH PENALTY, NO MATTER WHAT THE CRIME IS.

3 MR. GUCCIONE: THAT'S CORRECT. THERE IS NOTHING IN THE
4 BOOKS THAT SAYS THAT IT IS MANDATORY.

5 MR. BARENS: DO YOU UNDERSTAND THAT WOULD BE A DECISION
6 FOR YOU TO MAKE AS AN INDIVIDUAL JUROR?

7 MR. GUCCIONE: THAT'S CORRECT.

8 MR. BARENS: AND YOU WOULD HAVE THOSE TWO CHOICES, LIFE
9 WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY?

10 MR. GUCCIONE: THAT'S CORRECT.

11 MR. BARENS: MR. GUCCIONE, DO YOU UNDERSTAND THAT BECAUSE
12 WE ARE HERE DISCUSSING THE DEATH PENALTY, THERE IS NO REASON
13 FOR YOU TO BELIEVE OR NO IMPLICATION THAT MR. HUNT HAS
14 COMMITTED ANY CRIME WHATSOEVER?

15 MR. GUCCIONE: THAT'S CORRECT.

16 MR. BARENS: DO YOU BELIEVE THAT, SIR? OR DO YOU HAVE
17 SOME SNEAKING SUSPICION THAT WE WOULDN'T BE HERE TALKING
18 ABOUT THIS UNLESS HE HAD DONE SOMETHING TO BEGIN WITH?

19 MR. GUCCIONE: WELL, THE CASE HAS NOT BEEN PRESENTED
20 TO ME TO DETERMINE WHETHER HE HAS OR HAS NOT COMMITTED A
21 CRIME.

22 MR. BARENS: RIGHT. OF COURSE, HE IS ENTITLED TO THE
23 FUNDAMENTAL PRESUMPTION OF INNOCENCE, CONSTITUTIONALLY
24 GUARANTEED TO EVERYONE, INCLUDING YOURSELF, IF YOU WERE A
25 DEFENDANT IN THIS COURTROOM.

26 MR. GUCCIONE: THAT'S CORRECT.

27 MR. BARENS: THANK YOU VERY MUCH. I PASS FOR CAUSE.

28 THE COURT: ALL RIGHT. ANY QUESTIONS?

1 MR. WAPNER: YES, JUST A FEW. THANK YOU.

2 GOOD MORNING, MR. GUCCIONE. I AM FRED WAPNER,
3 THE DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE. DO YOU
4 HAVE ANY RELIGIOUS OR MORAL CONVICTIONS THAT WOULD MAKE IT
5 DIFFICULT FOR YOU TO SIT ON A CASE LIKE THIS?

6 MR. GUCCIONE: NO, SIR.

7 MR. WAPNER: IF YOU ARE IN THE JURY ROOM AT THAT
8 PARTICULAR TIME IN THE CASE, THE UILTIMATE QUESTION YOU ARE
9 GOING TO BE CALLED ON TO DECIDE IS WHETHER THE DEFENDANT
10 SHOULD SPEND THE REST OF HIS LIFE IN PRISON OR WHETHER HE
11 SHOULD DIE IN THE GAS CHAMBER. IS THAT A DECISION THAT YOU
12 ARE CAPABLE OF MAKING?

13 MR. GUCCIONE: YES, SIR.

14 MR. WAPNER: ARE YOU CAPABLE OF MAKING THAT EITHER WAY?

15 MR. GUCCIONE: YES, SIR.

16 MR. WAPNER: DEPENDING UPON THE FACTS?

17 MR. GUCCIONE: CORRECT, SIR.

18 MR. WAPNER: IS THERE ANYTHING AS YOU SIT THERE, WITH
19 YOUR BACKGROUND, THAT YOU THINK IS IMPORTANT FOR US TO KNOW
20 AS FAR AS YOUR ABILITY TO BE A FAIR JUROR IN TERMS OF THE
21 DEATH PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE?

22 MR. GUCCIONE: HOW IS THAT QUESTION AGAIN, SIR?

23 MR. WAPNER: WE DON'T KNOW YOU. IS THERE ANYTHING ABOUT
24 YOUR BACKGROUND THAT YOU THINK WE SHOULD KNOW THAT MIGHT BEAR
25 ON YOUR ABILITY TO BE A FAIR JUROR IN THIS PART OF THE CASE,
26 WHEN WE ARE TALKING ABOUT THE DEATH PENALTY?

27 MR. GUCCIONE: NO, SIR, NONE WHATSOEVER.

28 MR. WAPNER: PASS FOR CAUSE.

4-4

1 THE COURT: ALL RIGHT.

2 MR. GUCCIONE, BOTH SIDES AND THE COURT AGREE THAT
3 YOU HAVE BEEN QUALIFIED AS A TRIAL JUROR IN THIS CASE.

4 WHAT I WILL ASK YOU TO DO, IS TO COME BACK AT
5 1:45 THIS AFTERNOON. GO INTO THE JURY ASSEMBLY ROOM. WAIT
6 FOR THE OTHER JURORS. WE WILL CALL YOU BACK IN THEN.

7 MR. GUCCIONE: 1:45? THANK YOU.

8 (PROSPECTIVE JUROR GUCCIONE EXITS THE
9 COURTROOM.)

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1 (PROSPECTIVE JUROR FERRERAS ENTERS THE
2 COURTROOM.)

3 THE COURT: IS THAT FERRERAS?

4 MS. FERRERAS: YES.

5 THE COURT: MRS. OR MISS?

6 MS. FERRERAS: MRS., YOUR HONOR.

7 THE COURT: MRS. FERRERAS, WHERE DO YOU LIVE?

8 MS. FERRERAS: I LIVE IN HARBOR CITY.

9 THE COURT: HARBOR CITY?

10 MS. FERRERAS: YES.

11 THE COURT: HAVE YOU EVER HEARD ANYTHING AT ALL ABOUT
12 THIS CASE, EXCEPT WHAT I TOLD YOU ON MONDAY?

13 MS. FERRERAS: NO, YOUR HONOR.

14 THE COURT: THE NAME BILLIONAIRE BOYS CLUB DOESN'T RING
15 A BELL WITH YOU IN ANY WAY?

16 MS. FERRERAS: NO.

17 THE COURT: ALL RIGHT. DO YOU REMEMBER THAT I TOLD YOU
18 THAT THE CHARGE AGAINST THIS DEFENDANT IS THAT HE COMMITTED
19 A ROBBERY AND THAT HE COMMITTED A MURDER IN THE COURSE OF A
20 ROBBERY?

21 MS. FERRERAS: YES, SIR.

22 THE COURT: IN THE COURSE OF A ROBBERY HAS A SPECIAL
23 SIGNIFICANCE BECAUSE NOT EVERY MURDER, EVEN IF IT IS
24 DELIBERATE, PREMEDITATED AND INTENTIONAL, CALLS FOR THE
25 IMPOSITION OF THE DEATH PENALTY.

26 IT IS ONLY WHERE IT IS COMMITTED UNDER CERTAIN
27 SPECIAL CIRCUMSTANCES LIKE IN THE COMMISSION OF A ROBBERY OR
28 BURGLARY OR RAPE OR KIDNAPPING OR TORTURE OR CHILD IS MOLESTED

1 AND DIES AND MULTIPLE MURDERS.

2 ONLY IN INSTANCES OF THAT KIND, SPECIAL INSTANCES,
3 IS THE DEATH PENALTY APPLICABLE. DO YOU UNDERSTAND?

4 MS. FERRERAS: YES.

5 THE COURT: ALL RIGHT. NOW, IF THE JURY WHICH WOULD
6 ULTIMATELY BE SELECTED IN THIS CASE -- THEY WILL FIRST HAVE
7 TO DETERMINE WHAT WE CALL THE GUILT PHASE OF THE TRIAL. THEY
8 FIRST HAVE TO DETERMINE THE GUILT OR INNOCENCE OF THE
9 DEFENDANT, WAS HE GUILTY OF MURDER IN THE FIRST DEGREE OR WAS
10 HE NOT. IF THE JURY DETERMINES THAT HE WAS GUILTY OF MURDER
11 IN THE FIRST DEGREE, THEN THEY HAVE ANOTHER QUESTION TO
12 DETERMINE, THE SPECIAL CIRCUMSTANCE, WAS IT COMMITTED IN THE
13 COURSE OF A ROBBERY OR WAS IT NOT? THAT IS TRUE OR FALSE.

14 IF IT IS TRUE, THEN WE HAVE A SECOND TRIAL. THAT
15 IS, WE HAVE A SECOND PHASE OF THE TRIAL. THAT IS KNOWN AS
16 THE PENALTY PHASE.

17 NOW, AT THE GUILT PHASE OF THE TRIAL, THE QUESTION
18 OF PENALTY NEVER BECOMES INVOLVED IN ANY WAY, NEVER MUST BE
19 CONSIDERED.

20 IT IS ONLY ON THE PENALTY PHASE THAT YOU THEN HAVE
21 TO CONSIDER AFTER HEARING THE TESTIMONY, WHETHER OR NOT HE
22 SHOULD EITHER BE IN PRISON FOR LIFE WITHOUT POSSIBILITY OF
23 PAROLE AND THAT MEANS EXACTLY THAT -- NO PAROLE -- OR SHALL
24 IT BE DEATH IN THE GAS CHAMBER?

25 YOU WILL THEN HEAR TESTIMONY FROM THE DEFENSE AND
26 FROM THE PROSECUTION. THE TESTIMONY BY THE DEFENDANT WILL
27 BE TO SHOW -- YOU MUST CONSIDER HIS BACKGROUND, HIS AGE, HIS
28 EDUCATION, HIS MENTAL AND PHYSICAL CONDITION, ANYTHING THAT

1 TOUCHES HIM AS A PERSON, ALL THE THINGS ABOUT HIS LIFESTYLE
2 AND EVERYTHING THAT HAPPENED UP UNTIL THIS TIME AND EVERYTHING
3 THAT MAY BE FAVORABLE THAT THE DEFENDANT WILL TRY TO SHOW FOR
4 PURPOSES OF GETTING YOU TO BE LENIENT IN THE PENALTY THAT WILL
5 BE IMPOSED UPON HIM.

6 THE PROSECUTION ON THE OTHER HAND, WILL SHOW
7 UNFAVORABLE ASPECTS ABOUT HIM. THE PURPOSE OF THAT IS TO SHOW
8 THAT HE IS NOT ENTITLED OR DESERVING OF ANY CONSIDERATION FROM
9 THE JURY. ALL OF THOSE FACTORS, INCLUDING THE FACTS THAT YOU
10 LEARNED DURING THE GUILT PHASE OF THE TRIAL WILL BE TAKEN INTO
11 CONSIDERATION. YOU ARE NOT TO MAKE UP YOUR MIND AS TO WHAT
12 WOULD HAPPEN TO HIM AFTER YOU FIND HIM GUILTY OF MURDER IN
13 THE FIRST DEGREE, UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY.
14 DO YOU UNDERSTAND THAT?

15 MS. FERRERAS: I UNDERSTAND THAT.

16 THE COURT: ON THE PENALTY PHASE?

17 MS. FERRERAS: YES, YOUR HONOR.

18 THE COURT: OKAY. I AM GOING TO ASK YOU FIVE QUESTIONS.
19 THE PURPOSE OF THOSE QUESTIONS WILL BE TO EXPLORE YOUR MIND
20 AND TRY TO ASCERTAIN HOW YOU FEEL ABOUT THE DEATH PENALTY.
21 OKAY?

22 MS. FERRERAS: OKAY.

23 THE COURT: NOW, THE FIRST TWO QUESTIONS RELATE TO THE
24 GUILT PHASE. DO YOU HAVE ANY OPINION WHATEVER IT MAY BE,
25 WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
26 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

27 MS. FERRERAS: CAN YOU PUT THAT IN A DIFFERENT QUESTION,
28 YOUR HONOR? BECAUSE THE QUESTION DOESN'T SEEM TO BE SO CLEAR.

1 THE COURT: ALL RIGHT. DO YOU HAVE ANY OPINION ABOUT
2 THE DEATH PENALTY?

3 MS. FERRERAS: UH-HUH.

4 THE COURT: WHATEVER THAT OPINION IS, WOULD THAT PREVENT
5 YOU FROM MAKING AN IMPARTIAL DECISION AS TO WHETHER OR NOT
6 THE DEFENDANT IS GUILTY OR NOT GUILTY?

7 MS. FERRERAS: I DON'T THINK SO.
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1 THE COURT: OKAY. ARE YOU SURE ABOUT THAT?

2 MS. FERRERAS: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. NOW, THE SECOND QUESTION IS IN
4 THE SAME WAY, EXCEPT, DO YOU HAVE AN OPINION OF THE DEATH
5 PENALTY, WHATEVER IT MAY BE, THAT WOULD PREVENT YOU FROM
6 MAKING AN IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY
7 OF THE SPECIAL CIRCUMSTANCES, THAT IT WAS COMMITTED DURING
8 THE COURSE OF A ROBBERY?

9 MS. FERRERAS: OKAY. THIS IS HOW I UNDERSTAND THE
10 QUESTION --

11 THE COURT: IT IS THE SAME AS THE FIRST QUESTION EXCEPT
12 THAT I TOLD YOU, DO YOU REMEMBER, THAT YOU FIRST DETERMINE
13 WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER
14 IN THE FIRST DEGREE.

15 AND IF YOU FIND IT TO BE SO, THEN YOU DETERMINE
16 WAS IT TRUE OR FALSE THAT IT WAS COMMITTED DURING THE COURSE
17 OF A ROBBERY. THAT IS THE SECOND PART OF THE GUILT PHASE.

18 MS. FERRERAS: SO, YOU ARE SAYING --

19 THE COURT: DO YOU HAVE AN OPINION ABOUT THE DEATH
20 PENALTY, WHICH WOULD INTERFERE WITH YOUR MAKING A FINDING OF
21 THAT KIND?

22 MS. FERRERAS: NO.

23 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS
24 PRESUPPOSE THAT THE DEFENDANT HAS BEEN CONVICTED OF MURDER
25 IN THE FIRST DEGREE AND THAT IT WAS IN THE COURSE OF A
26 ROBBERY. NOW, YOU ARE CONSIDERING THE PENALTY. DO YOU UNDER-
27 STAND THAT?

28 MS. FERRERAS: YES.

1 THE COURT: YOU ARE CONSIDERING THE PENALTY. DO YOU
2 HAVE ANY OPINION CONCERNING THE DEATH PENALTY THAT WOULD
3 PREVENT YOU FROM -- THAT WOULD RATHER, CAUSE YOU AUTOMATICALLY
4 TO VOTE FOR THE DEATH PENALTY, REGARDLESS OF WHAT TESTIMONY
5 YOU HAVE HEARD OR ANY TESTIMONY WHICH HAS BEEN GIVEN ON THE
6 PENALTY PHASE OF THE TRIAL?

7 MS. FERRERAS: NO. I WOULDN'T USE THE DEATH PENALTY
8 TO INTERFERE WITH THAT. NO, YOUR HONOR.

9 THE COURT: WELL, I DON'T KNOW WHAT YOU MEAN WHEN YOU
10 SAY YOU WOULDN'T USE THE PENALTY TO INTERFERE WITH IT.

11 MS. FERRERAS: WELL, THIS IS HOW I APPRAISE YOUR
12 QUESTION. YOU ARE QUESTIONING ME, HAVING NO KNOWLEDGE OF THE
13 DEATH PENALTY, WILL I USE THAT AS -- TO MAKE MY PENALTY FOR
14 THE -- REPHRASE IT.

15 THE COURT: ALL RIGHT. NOW, YOU ARE CONSIDERING THE
16 PENALTY, WHAT IT IS GOING TO BE. ALL RIGHT? ARE YOU GOING
17 TO AUTOMATICALLY VOTE FOR THE DEATH PENALTY AND NOT PAY ANY
18 ATTENTION TO ANY OF THE TESTIMONY WHICH WAS GIVEN ON THE
19 PENALTY PHASE?

20 MS. FERRERAS: NO, NO.

21 THE COURT: ALL RIGHT. IN THE SAME WAY, WOULD YOU
22 AUTOMATICALLY VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
23 REGARDLESS OF ANY TESTIMONY THAT YOU MIGHT HAVE HEARD IN THE
24 PENALTY PHASE?

25 MS. FERRERAS: NO.

26 THE COURT: ALL RIGHT. NOW, YOU UNDERSTAND THAT THE
27 ISSUE OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS
28 CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT

1 THAT YOU HAVE TO CONSIDER PENALTY?

2 MS. FERRERAS: YES.
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1 MR. BARENS: THANK YOU, YOUR HONOR.

2 GOOD MORNING, MRS. FERRERAS.

3 MS. FERRERAS: GOOD MORNING.

4 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
5 DEFENDANT, JOE HUNT, AND IT IS MY DUTY AT THIS STAGE OF THE
6 PROCEEDINGS TO, ALSO AS THE JUDGE DID, ASK YOU ABOUT YOUR
7 OPINION ABOUT THE DEATH PENALTY.

8 PLEASE UNDERSTAND THAT NONE OF US ARE JUDGING
9 YOUR ANSWERS AND THERE ARE NO RIGHT OR WRONG ANSWERS TO MY
10 QUESTIONS. YOU COULD NEVER BE WRONG ABOUT YOUR OPINION.

11 MS. FERRERAS: OKAY. YOU JUST HAVE TO PUT UP WITH ME
12 BECAUSE SOMETIMES THE QUESTIONING --

13 THE COURT: PARDON ME? WHAT WAS THAT?

14 MS. FERRERAS: I JUST TOLD HIM THAT HE WOULD JUST HAVE
15 TO PUT UP WITH ME AS FAR AS SOMETIMES THE QUESTIONING.

16 THE COURT: YOU DON'T QUITE UNDERSTAND --

17 MS. FERRERAS: YES.

18 THE COURT: -- EVERYTHING THAT IS SAID?

19 MS. FERRERAS: YES.

20 MR. BARENS: AND I AM ASKING YOU TO PUT UP WITH ME,
21 TOO, OKAY?

22 WITH THAT IN MIND, HOW DO YOU FEEL ABOUT THE DEATH
23 PENALTY AS A GENERAL IDEA IN OUR SOCIETY?

24 MS. FERRERAS: WELL, DEATH PENALTY IS SOMETHING THAT
25 YOU DON'T SENTENCE A PERSON JUST BECAUSE YOU HEARSAY (SIC)
26 THAT HE HAD COMMITTED A MURDER. YOU HAVE TO STUDY THE
27 CIRCUMSTANCES.

28 THE COURT REPORTER: PLEASE REPEAT.

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1 MS. FERRERAS: THE CIRCUMSTANCES.

2 THE COURT: THE CIRCUMSTANCES?

3 MS. FERRERAS: YES, AND THE FACTS THAT IS LAID OUT TO
4 YOU AND EVEN -- EVEN WITH THE FACTS, EVEN WITH THE
5 CIRCUMSTANCES, YOU CANNOT JUST SAY, YES, SENTENCE HIM FOR
6 DEATH PENALTY. YOU REALLY HAVE TO STUDY IT.

7 MR. BARENS: YOU HAVE TO LOOK AT HIS BACKGROUND?

8 MS. FERRERAS: YES, EVERYTHING. YOU HAVE TO STUDY ALL,
9 ALL OVER SITUATION.

10 MR. BARENS: THAT IS EXACTLY --

11 THE COURT: YOU SEE, MR. BARENS ASKED YOU, DO YOU HAVE
12 AN OPINION, DO YOU BELIEVE IN IT OR DON'T YOU BELIEVE IN IT?

13 MS. FERRERAS: YES, I DO BELIEVE IN IT BUT --

14 THE COURT: ALL RIGHT, FINE. BUT WHAT?

15 MS. FERRERAS: BUT UNLESS IT IS, YOU KNOW, THAT YOU
16 HAVE STUDIED ALL OF THE CIRCUMSTANCES THAT THAT PERSON IS
17 REALLY TO BE SENTENCED FOR THE DEATH PENALTY.

18 MR. BARENS: WOULD YOU WANT TO CONSIDER AS WELL, WOULDN'T
19 YOU, THE PERSON'S AGE, IF HE COMMITTED A CRIME OR WHETHER
20 HE HAD EVER COMMITTED A CRIME BEFORE, WOULD YOU WANT TO
21 CONSIDER THAT AS WELL?

22 MS. FERRERAS: AS TO MY DECISION?

23 MR. BARENS: YES, MA'AM.

24 MR. FERRERAS: YES.

25 MR. BARENS: AND DO YOU UNDERSTAND THAT BEFORE YOU WOULD
26 EVER GET TO THAT, THAT THIS TRIAL PROCEDURE TAKES PLACE IN
27 TWO PARTS; DID YOU UNDERSTAND WHAT THE JUDGE MEANT BY THAT?

28 MS. FERRERAS: YES, UH-HUH.

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1 MR. BARENS: DID YOU UNDERSTAND IT WOULD BE FIRST CALLED
2 A TRIAL WHICH IS CALLED THE GUILT PHASE TO SEE WHETHER OR
3 NOT A MURDER WAS EVER COMMITTED AND WHETHER OR NOT YOU BELIEVED
4 THERE HAD BEEN A PREMEDITATED MURDER BEYOND A REASONABLE DOUBT
5 BEFORE YOU AND THE REST OF THE JURY WOULD EVER GET TO THE
6 SECOND PHASE, THE PENALTY PHASE?

7 MS. FERRERAS: OKAY. COULD YOU REPEAT THE LAST PART
8 OF YOUR QUESTION?

9 MR. BARENS: WELL, YOU SEE, THE PROCEDURE THAT THE LAW
10 SETS UP IS THAT THERE ARE TWO PARTS TO A TRIAL. YOU MAY NEVER
11 GET TO THE SECOND PART. THE SECOND PART IS THE PENALTY PHASE,
12 THAT IS WHERE THIS ISSUE OF THE DEATH PENALTY WOULD COME UP,
13 BUT YOU MIGHT NEVER GET TO THAT BECAUSE DURING THE FIRST PHASE,
14 THE GUILT PHASE, UNLESS YOU AND THE OTHER JURORS ALL BELIEVE
15 THAT JOE HUNT HAD COMMITTED A MURDER IN THE FIRST DEGREE THAT
16 WAS PREMEDITATED AND INTENTIONAL, UNLESS YOU BELIEVED THAT
17 BEYOND A REASONABLE DOUBT AND VOTED GUILTY, YOU WOULD NEVER
18 GET TO THE SECOND PHASE, THE PENALTY PHASE; DO YOU UNDERSTAND
19 THAT?

20 MS. FERRERAS: UH-HUH.

21 MR. WAPNER: IS THAT YES?

22 MS. FERRERAS: YES. I AM SORRY.

23 MR. BARENS: NOW, IN THAT SECOND PHASE, DO YOU UNDERSTAND
24 YOU WOULD HAVE TWO CHOICES?

25 MS. FERRERAS: YES.

26 MR. BARENS: AND THE TWO CHOICES WOULD BE LIFE
27 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE --

28 MS. FERRERAS: UH-HUH, YES.

5-4
1 MR. BARENS: -- OR THE DEATH PENALTY.

2 MR. FERRERAS: YES, SIR.

3 MR. BARENS: WHAT I AM LOOKING FOR IS, WOULD YOU HAVE
4 ANY BIASES OR ANY OPINIONS, STRONGLY HELD BELIEFS THAT WOULD
5 MAKE YOU WANT TO VOTE ONE WAY OR ANOTHER BEFORE YOU HEARD
6 ANY TESTIMONY ABOUT THE BACKGROUND OF THE DEFENDANT, EVEN
7 THOUGH YOU HAD ALREADY FOUND HIM GUILTY OF A MURDER, BEFORE
8 YOU MADE A DECISION ABOUT LIFE OR DEATH?

9 MS. FERRERAS: NO.

10 MR. BARENS: OKAY, DO YOU HAVE ANY RELIGIOUS OR
11 PHILOSOPHICAL BELIEFS THAT INFLUENCE YOUR VIEW OF THE DEATH
12 PENALTY?

13 MS. FERRERAS: NO, I DON'T THINK YOU SHOULD USE THAT
14 TO MAKE YOUR JUDGMENT.

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1 MR. BARENS: JUST BASED ON WHAT YOU HEAR IN THE
2 COURTROOM?

3 MS. FERRERAS: YES, SIR.

4 MR. BARENS: NOW, YOU UNDERSTAND THAT ALTHOUGH I AM
5 HERE TALKING TO YOU ABOUT THE DEATH PENALTY AND THE JUDGE
6 DID AND THE PROSECUTOR WILL IN A MOMENT, THAT THERE IS NO
7 REASON FOR YOU TO BELIEVE THAT JOE HUNT DID ANYTHING WRONG
8 AT THIS POINT IN TIME.

9 MS. FERRERAS: OKAY, CAN YOU REPEAT THAT AGAIN, PLEASE?

10 MR. BARENS: MS. FERRERAS, DO YOU BELIEVE, AS YOU SIT
11 HERE NOW, THAT JOE HUNT PROBABLY DID SOMETHING WRONG OR I
12 WOULDN'T BE TALKING TO YOU ABOUT THE DEATH PENALTY AND THE
13 JUDGE WOULDN'T BE TALKING TO YOU ABOUT THE DEATH PENALTY?

14 MS. FERRERAS: WITHOUT HEARING HIM, WITHOUT HEARING
15 THE FACTS?

16 MR. BARENS: YOU HAVEN'T HEARD ANYTHING SO FAR.

17 MS. FERRERAS: NOTHING.

18 MR. BARENS: EXCEPT WE ARE TALKING ABOUT YOUR VIEWS
19 ON THE DEATH PENALTY.

20 YOU DON'T BELIEVE HE HAS DONE ANYTHING WRONG?

21 MS. FERRERAS: NO.

22 MR. BARENS: YOU UNDERSTAND WHAT I MEAN WHEN I USE THE
23 EXPRESSION "PRESUMPTION OF INNOCENCE"?

24 MS. FERRERAS: YES.

25 MR. BARENS: DO YOU UNDERSTAND THAT UNDER OUR LEGAL
26 SYSTEM THAT ALL DEFENDANTS ARE ENTITLED TO, JUST LIKE YOU
27 WOULD BE OR ANY MEMBER OF YOUR FAMILY, A PRESUMPTION OF
28 INNOCENCE ANY TIME YOU ARE CHARGED WITH A CRIME.

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1 MS. FERRERAS: YES, SIR.

2 MR. BARENS: DO YOU UNDERSTAND THAT THE FACT THAT YOU ARE
3 CHARGED WITH A CRIME DOESN'T NECESSARILY MEAN YOU DID A CRIME?

4 MS. FERRERAS: YES, SIR, I UNDERSTAND THAT.

5 MR. BARENS: DO YOU UNDERSTAND THAT?

6 (MS. FERRERAS NODS HER HEAD UP AND DOWN.)

7 MR. BARENS: SO YOU APPRECIATE THAT WE ARE JUST GOING
8 THROUGH A PROCESS HERE WHERE THE LAW SAYS THAT THIS IS THE
9 TIME WHERE WE HAVE TO ASK YOU ABOUT THAT IN THE SYSTEM?

10 MS. FERRERAS: YES, SIR.

11 MR. BARENS: YOU UNDERSTAND THAT?

12 MS. FERRERAS: YES, SIR.

13 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

14 MS. FERRERAS: YES, SIR.

15 MR. BARENS: OKAY, HAVE YOU EVER THOUGHT ABOUT THE DEATH
16 PENALTY BEFORE YOU CAME HERE AS A POSSIBLE JUROR ON THIS CASE?

17 MS. FERRERAS: YES, SIR.

18 MR. BARENS: WHEN WAS THAT THAT YOU THOUGHT ABOUT IT?

19 MS. FERRERAS: EVEN -- EVEN WHEN I BECAME A JUROR.

20 MR. BARENS: WERE YOU A JUROR BEFORE?

21 MS. FERRERAS: NO.

22 MR. BARENS: JUST IN THIS CASE?

23 MS. FERRERAS: JUST IN THIS CASE.

24 MR. BARENS: WHAT I AM ASKING IS, BEFORE YOU CAME HERE
25 TO DISCUSS THIS CASE WITH US, HAD YOU EVER THOUGHT ABOUT THE
26 DEATH PENALTY BEFORE THAT TIME?

27 MS. FERRERAS: OKAY, I DON'T UNDERSTAND WHAT YOU ARE
28 SAYING.

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1 YOU MEAN FROM HEARING, FROM HEARING THE CASE?

2 MR. BARENS: NO, NO.

3 BEFORE YOU CAME HERE TO BE A MEMBER OR A POSSIBLE
4 PART OF THIS JURY, EARLIER IN YOUR LIFE, YOU KNOW, BEFORE
5 LAST WEEK OR WHENEVER IT WAS THAT YOU WERE FIRST ASKED TO
6 COME HERE FOR JURY DUTY, HAD YOU EVER THOUGHT ABOUT THE DEATH
7 PENALTY BEFORE IN YOUR LIFE?

8 MS. FERRERAS: YES.

9 MR. BARENS: WHEN WAS THAT THAT YOU THOUGHT ABOUT IT?

10 MS. FERRERAS: IT HAS BEEN A WHILE. I WOULD SAY ABOUT
11 THREE MONTHS.

12 MR. BARENS: WAS THERE A PARTICULAR REASON WHY YOU THOUGHT
13 ABOUT THE DEATH PENALTY EARLIER?

14 MS. FERRERAS: WELL, WHEN THE VOTINGS CAME UP, YOU KNOW,
15 REGISTERING FOR VOTINGS.

16 MR. BARENS: WHEN YOU REGISTERED TO VOTE?

17 MS. FERRERAS: YES.

18 MR. BARENS: WAS THERE SOMETHING ABOUT REGISTERING TO
19 VOTE THAT MADE YOU THINK ABOUT THE DEATH PENALTY?

20 MS. FERRERAS: WELL, YEAH, BECAUSE, YOU KNOW, WHEN YOU
21 ARE GOING TO VOTE AND THERE IS AN ISSUE OF DEATH PENALTY,
22 NOW THAT HAS SOMETHING TO THINK ABOUT BECAUSE THAT IS A
23 DECISION, YOU KNOW, THAT MAKE A DIFFERENCE.

24 MR. BARENS: OKAY, THANK YOU VERY MUCH. THE DEFENSE
25 WOULD RESERVE, YOUR HONOR. THANK YOU.

26 THE COURT: ALL RIGHT. HAVE YOU ANY QUESTIONS?

27 MR. WAPNER: I HAVE A FEW.

28 MRS. FERRERAS, WHERE IS HARBOR CITY -- I DON'T

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1 KNOW THAT -- IS THAT A LONG WAY FROM HERE OR IS IT CLOSE TO
2 HERE?

3 MS. FERRERAS: IT IS ABOUT 16 MILES. IT IS THE
4 SOUTH BAY AREA.

5 MR. WAPNER: HAVE YOU BEEN ON JURY DUTY BEFORE?

6 MS. FERRERAS: NO, NO.

7 MR. WAPNER: DO YOU THINK THAT YOU WOULD HAVE ANY PROBLEM
8 WITH LANGUAGE IF YOU WERE LISTENING TO WITNESSES TESTIFY,
9 DO YOU THINK YOU WOULD HAVE ANY PROBLEM UNDERSTANDING WHAT
10 THEY WERE SAYING?

11 MS. FERRERAS: WELL, SEE, WHEN -- WHEN USUALLY -- IN
12 MY OTHER DAYS WHEN I AM BEING ASKED, I GET NERVOUS. IT IS
13 MY OWN PERSONAL THING.

14 MR. WAPNER: SO YOU ARE SAYING IF YOU WERE JUST SITTING
15 THERE LISTENING TO SOMEBODY ELSE --

16 MS. FERRERAS: THEN I WOULDN'T BE NERVOUS.

17 I AM JUST, I CAN TELL YOU HONESTLY, THAT I AM
18 NERVOUS EVEN WHEN I CAME IN EVEN YESTERDAY.

19 THE COURT: EVERYBODY WHO TAKES THE STAND IS NERVOUS
20 SO YOU ARE NOT ALONE IN THAT.

21 MS. FERRERAS: THAT IS WHY, THE QUESTION, EVEN THOUGH
22 I UNDERSTOOD IT, IN THIS CASE I WANT TO MAKE SURE I REALLY
23 UNDERSTAND IT AND NOT GET CONFUSED BECAUSE OF MY NERVOUSNESS.

24 MR. WAPNER: THANK YOU. WE APPRECIATE THAT.

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1 MR. WAPNER: YOU SAID THAT YOU WOULD HAVE TO CAREFULLY
2 STUDY THIS QUESTION OF THE DEATH PENALTY. THAT IS VERY
3 UNDERSTANDABLE. WHEN YOU ARE DECIDING THE QUESTION OF WHETHER
4 THE DEFENDANT IS GUILTY OF THE CRIME OF MURDER, THE LAW SAYS
5 THAT THE PROSECUTION IS REQUIRED TO PROVE HIS GUILT BEYOND
6 A REASONABLE DOUBT. AND THAT IS THE SAME IN A MURDER CASE
7 OR IN A DRUNK DRIVING CASE OR IN ANY CASE. DO YOU UNDERSTAND
8 THAT?

9 MS. FERRERAS: YES.

10 MR. WAPNER: IF YOU ARE SITTING ON THIS CASE AND BECAUSE
11 YOU KNOW THAT YOU MIGHT HAVE TO DECIDE THE QUESTION OF THE
12 DEATH PENALTY LATER, WOULD YOU REQUIRE THE PROSECUTION TO
13 PROVE THE CASE MORE THAN BEYOND A REASONABLE DOUBT?

14 MS. FERRERAS: YES.

15 MR. BARENS: NO. NO, I OBJECT. I BELIEVE THE JUDGE
16 WOULD INSTRUCT THE JURY AS TO WHAT THE STANDARD OF PROOF IS,
17 JUST LIKE THE JUDGE WOULD INSTRUCT ON CONSIDERING EVIDENCE
18 DURING THE PENALTY PHASE.

19 THE COURT: BUT, YOU PERMITTED THAT QUESTION ANY NUMBER
20 OF TIMES BEFORE. THERE WERE NO OBJECTIONS TO IT. I THINK
21 IT IS PROPER AT THIS POINT.

22 MR. WAPNER: WHAT I AM GETTING AT MS. FERRERAS IS, ARE
23 YOU GOING TO REQUIRE MORE PROOF BECAUSE IT IS A DEATH PENALTY
24 CASE THAN YOU WOULD IF IT WAS NOT A DEATH PENALTY CASE?

25 MS. FERRERAS: YES.

26 MR. WAPNER: WHY?

27 MS. FERRERAS: BECAUSE IT IS THE DEATH PENALTY AND IT
28 IS NOT SOMETHING THAT YOU GIVE, SENTENCE TO A PERSON LIKE

1 WHAT I SAID EARLIER, WITHOUT STUDYING ALL OF THE OVERALL
2 CIRCUMSTANCES AND FACTS.

3 MR. WAPNER: LET ME INTERRUPT YOU FOR ONE SECOND BECAUSE
4 I WANT TO MAKE SURE THAT YOU UNDERSTAND THE QUESTION I AM
5 ASKING YOU.

6 REMEMBER WHAT THE JUDGE TOLD YOU ABOUT THE TWO
7 DIFFERENT PARTS OF THE CASE?

8 MS. FERRERAS: YES.

9 MR. WAPNER: DID YOU UNDERSTAND THAT?

10 MS. FERRERAS: YES.

11 MR. WAPNER: ALL RIGHT. NOW, I WANT TO TALK TO YOU
12 ABOUT THE FIRST PART OF THE CASE WHERE YOU ARE DECIDING WHETHER
13 THE PERSON IS GUILTY OR NOT. THAT DOESN'T HAVE ANYTHING TO
14 DO WITH THE PENALTY, DOES IT?

15 MS. FERRERAS: NO.

16 MR. WAPNER: AND IF THE JUDGE TOLD YOU WHEN YOU WERE
17 DECIDING THAT PART OF THE CASE, THAT YOU COULDN'T EVEN THINK
18 ABOUT WHAT THE PENALTY WOULD BE, COULD YOU DO THAT?

19 MS. FERRERAS: OKAY. YOU ARE ASKING ME IF -- TO THINK
20 FOR PENALTY?

21 MR. WAPNER: NO. LET ME TELL YOU WHAT I AM ASKING YOU.

22 THE COURT: WELL, I THINK THAT WE OUGHT TO HAVE A
23 CONFERENCE. DON'T YOU THINK SO? PLEASE WAIT OUTSIDE FOR
24 A MOMENT.

25 (PROSPECTIVE JUROR FERRERAS EXITED THE
26 COURTROOM.)

27 THE COURT: I THINK THE PROSPECTIVE JUROR IS HAVING
28 DIFFICULTY WITH THE LANGUAGE. I DON'T THINK WE OUGHT TO

1 QUALIFY HER AS ONE OF THE JURORS IN THIS CASE.

2 DO YOU FEEL THAT WAY ABOUT IT?

3 MR. BARENS: JUST A MOMENT, YOUR HONOR.

4 THE COURT: YOU HAVE NOT PASSED FOR CAUSE?

5 MR. BARENS: I RESERVED IT. BUT I HAVE NOT EXPRESSED
6 AN OPINION SINCE I RESERVED.

7 THE COURT: IF YOU ARE NOT GOING TO AGREE TO HAVE HER
8 EXCUSED, WE WILL HAVE HER BACK IN AND WE WILL FINISH IT UP.
9 LET'S NOT WASTE ANY TIME.

10 MR. BARENS: IF YOU WOULD. I WITHDRAW MY RESERVATION
11 AND PASS FOR CAUSE.

12 MR. WAPNER: I WOULD LIKE TO FINISH ASKING HER QUESTIONS.

13 THE COURT: BRING HER IN, WOULD YOU PLEASE?

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

16 THE COURT: SORRY TO KEEP YOU WAITING. BUT WE HAD SOME
17 QUESTIONS THAT CAME UP.

18 I WANTED TO TALK TO COUNSEL ABOUT THE SITUATION.

19 MR. WAPNER: KEEP IN MIND NOW ABOUT THE TWO PARTS OF
20 THE CASE. NOW, I AM ASKING YOU ABOUT THE FIRST PART. IN
21 THE FIRST PART, YOU HAVE TO DECIDE WHETHER THE DEFENDANT IS
22 GUILTY OR NOT OF MURDER, WITHOUT CONSIDERING WHAT MIGHT HAPPEN
23 TO HIM IF YOU FIND HIM GUILTY. DO YOU UNDERSTAND THAT?

24 MS. FERRERAS: CAN YOU SAY THAT AGAIN, PLEASE?

25 MR. WAPNER: YES. WHEN YOU ARE DECIDING WHETHER THERE
26 WAS A MURDER AND WHETHER THE PERSON ON TRIAL DID THE MURDER,
27 YOU HAVE TO DECIDE THAT CASE BASED ON THE FACTS THAT ARE
28 PRESENTED TO YOU. DO YOU UNDERSTAND THAT?

1 MS. FERRERAS: YES.

2 MR. WAPNER: AND THE JUDGE WILL TELL YOU THAT WHEN YOU
3 ARE MAKING A DECISION AS TO WHETHER THERE WAS A MURDER AND
4 WHETHER THE DEFENDANT DID IT, YOU CAN'T THINK ABOUT WHAT MIGHT
5 HAPPEN TO HIM, IF YOU FIND HIM GUILTY. DO YOU UNDERSTAND
6 THAT?

7 MS. FERRERAS: YES.

8 MR. WAPNER: DOES THAT MAKE SENSE TO YOU?

9 MS. FERRERAS: YES.

10 MR. WAPNER: IN OTHER WORDS, IF YOU BELIEVE THAT A MURDER
11 WAS COMMITTED AND YOU BELIEVE THAT HE DID IT, YOU CAN'T VOTE
12 TO ACQUIT HIM JUST BECAUSE YOU DON'T WANT HIM TO GET THE DEATH
13 PENALTY, FOR EXAMPLE.

14 MS. FERRERAS: YES.
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1 MS. FERRERAS: YES.

2 MR. WAPNER: DO YOU UNDERSTAND THAT?

3 MS. FERRERAS: YES.

4 MR. WAPNER: OKAY. AND THE LAW REQUIRES THE PROSECUTION
5 AND THAT IS ME, TO PROVE TO YOU BEYOND A REASONABLE DOUBT
6 THAT HE IS GUILTY. DO YOU UNDERSTAND THAT IS THE STANDARD
7 OF PROOF THAT IS REQUIRED?

8 MS. FERRERAS: YES.

9 MR. WAPNER: ALL RIGHT. AND SO, WILL YOU LET ME SEE
10 IF I CAN EXPLAIN IT TO YOU? I WILL TRY TO USE AN EXAMPLE.
11 ASSUME THAT THERE IS SUCH A THING AS ABSOLUTE PROOF, THAT
12 YOU COULD PROVE SOMETHING ABSOLUTELY. AND THERE IS ON THE
13 BOTTOM, NO PROOF AT ALL. AND SOMEWHERE ELSE ON THAT SCALE,
14 IS PROOF BEYOND A REASONABLE DOUBT. ARE YOU WITH ME?

15 MS. FERRERAS: YES.

16 MR. WAPNER: ALL RIGHT. ARE YOU GOING TO REQUIRE THE
17 PROSECUTION TO GIVE YOU MORE PROOF, MORE EVIDENCE THAN IS
18 REQUIRED BECAUSE YOU KNOW, IT IS A DEATH PENALTY CASE?

19 MS. FERRERAS: YES.

20 MR. WAPNER: AND NOW LET ME ASK YOU THIS. I AM TALKING
21 ONLY NOW ABOUT THE GUILT PART OF THE CASE. YOU ARE STILL
22 GOING TO REQUIRE THE PROSECUTION TO GIVE YOU MORE PROOF BECAUSE
23 YOU KNOW THAT THE DEATH PENALTY MIGHT BE SOMEWHERE IN THE
24 BACKGROUND?

25 MS. FERRERAS: YES.

26 MR. WAPNER: WHY?

27 MS. FERRERAS: LIKE I SAID BEFORE, THE DEATH PENALTY
28 IS SOMETHING THAT YOU DON'T JUST SENTENCE TO A PERSON WITHOUT

1 HEARING ALL OF THE FACTS. EVEN WHERE THERE WAS PROOFS (SIC)
2 OR RATHER EVIDENCE THAT WAS HANDED TO YOU, YOU STILL NEED
3 MORE FACTS BECAUSE IT IS THE PERSON.

4 HE IS GOING TO BE SENTENCED FOR DEATH PENALTY.
5 AND FOR OTHER REASONS AT THE LATER PART, FOUND OUT THERE IS
6 OTHER FACTS THAT CAN BE USED, SO AS NOT TO SENTENCE HIM DEATH
7 PENALTY, THEN YOU HAD GIVEN THIS PERSON THE WRONG JUDGMENT.

8 MR. WAPNER: YOU SAID THAT RELIGIOUS OR MORAL BELIEFS
9 SHOULD HAVE NOTHING TO DO WITH IT. DO YOU HAVE SOME RELIGIOUS
10 OR MORAL BELIEFS THAT WOULD AFFECT YOU? LET ME ASK YOU THIS.
11 DO YOU HAVE SOME RELIGIOUS OR MORAL BELIEFS THAT HAVE SOMETHING
12 TO DO WITH THIS QUESTION OF THE DEATH PENALTY?

13 MS. FERRERAS: YES. BUT I WOULDN'T USE IT.

14 MR. WAPNER: COULD YOU US WHAT THEY ARE?

15 MS. FERRERAS: OKAY. WELL, I AM A CATHOLIC. AND AS
16 A CATHOLIC, TO MY UNDERSTANDING, THAT IT IS NOT RIGHT TO HAVE
17 A PERSON KILLED FOR ANY REASON.

18 NOW, IN GIVING A JUDGMENT AS TO DEATH PENALTY,
19 I WOULDN'T USE THAT BECAUSE THAT WOULDN'T BE FAIR FOR THE
20 PERSON, FOR THE OTHER PEOPLE, EITHER.

21 MR. WAPNER: WHEN YOU ARE IN THE JURY ROOM, IF IT GETS
22 TO THAT PART OF THE CASE, YOU WILL BE CALLED ON TO RENDER
23 YOUR OWN, INDIVIDUAL VERDICT AS TO WHETHER THE DEFENDANT SHOULD
24 SPEND THE REST OF HIS LIFE IN PRISON OR WHETHER HE SHOULD
25 DIE IN THE GAS CHAMBER. ARE YOU CAPABLE OF MAKING THAT
26 DECISION?

27 MS. FERRERAS: YES.

28 MR. WAPNER: HOW WOULD YOUR RELIGIOUS BELIEFS, THAT

1 YOU SHOULDN'T TAKE A LIFE, AFFECT YOUR ABILITY WHEN YOU GET
2 DOWN TO THE QUESTION OF YOU, YOURSELF, MAKING THIS DECISION?
3 HOW WOULD YOUR RELIGIOUS BELIEFS ENTER INTO YOUR ABILITY TO
4 MAKE THAT DECISION?

5 MS. FERRERAS: I WOULD NOT USE MY BELIEF AS FAR AS
6 RELIGIOUSLY AS TO MAKE A JUDGMENT ON THE DEATH PENALTY.

7 MR. WAPNER: AND IF YOU HEARD THE WHOLE CASE AND YOU
8 BELIEVED THAT THE APPROPRIATE VERDICT WAS DEATH, COULD YOU
9 RENDER THAT VERDICT?

10 MS. FERRERAS: YES.

11 MR. WAPNER: YOUR HONOR, I HAVE A CHALLENGE.

12 THE COURT: ALL RIGHT. AGAIN, I WILL ASK YOU TO WAIT
13 OUTSIDE, MRS. FERRERAS.

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1 (PROSPECTIVE JUROR FERRERAS EXITS THE
2 COURTROOM.)

3 THE COURT: YES?

4 MR. WAPNER: YOUR HONOR, I THINK THAT MS. FERRERAS IS
5 CHALLENGEABLE FOR CAUSE BECAUSE I THINK IT IS CLEAR TO ME FROM
6 THE TENOR OF HER ANSWERS THAT WHEN SHE SAID AN ANSWER TO MR.
7 BARENS' QUESTION, "YOU HAVE TO REALLY STUDY IT AND REALLY HAVE
8 ALL OF THE CIRCUMSTANCES," I THINK THAT IT IS UNMISTAKABLY
9 CLEAR THAT SHE IS GOING TO REQUIRE MORE PROOF THAN THAT OF
10 BEYOND A REASONABLE DOUBT AND SHE IS GOING TO TREAT THIS CASE
11 DIFFERENTLY THAN SHE WOULD TREAT A CASE THAT WASN'T A DEATH
12 PENALTY CASE AND FOR THAT REASON, SHE COULD NOT GIVE THE
13 PROSECUTION A FAIR TRIAL IN THIS CASE.

14 THE COURT: I THINK SHE HAS A LOT OF DIFFICULTY,
15 EXTREME DIFFICULTY WITH THE LANGUAGE AND UNDERSTANDING IT.
16 I AM AFRAID VERY MUCH THAT ALL THROUGHOUT THE TRIAL SHE WILL
17 CONTINUE TO HAVE THAT DIFFICULTY AND I AM GOING TO SUSTAIN
18 THE CHALLENGE.

19 MR. BARENS: MY UNDERSTANDING THEN, YOUR HONOR, WOULD
20 BE THAT THE CHALLENGE IS UPHELD ON THE BASIS OF A LANGUAGE
21 ISSUE?

22 THE COURT: THE LANGUAGE ISSUE, TOGETHER WITH WHAT
23 COUNSEL HAS INDICATED. HE SAID THAT SHE REQUIRES A GREATER
24 DEGREE OF PROOF ON A DEATH PENALTY CASE THAN SHE WOULD ON A
25 NON-DEATH PENALTY CASE.

26 MR. BARENS: MAY I MAKE A RESPONSE ON THE RECORD?

27 THE COURT: IT IS ALREADY ON THE RECORD.

28 MR. BARENS: I WAS GOING TO MAKE A RESPONSE AS TO MY

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1 POINT OF VIEW ON THAT SUBJECT.

2 THE COURT: YOU DON'T HAVE TO DO THAT.

3 MR. BARENS: ALL RIGHT, THANK YOU, YOUR HONOR.

4 THE COURT: GET HER BACK IN, PLEASE.

5 (PROSPECTIVE JUROR FERRERAS ENTERS THE
6 COURTROOM.)

7 THE COURT: MRS. FERRERAS, WE THINK THAT YOU WOULD
8 QUALIFY AS A JUROR IN SOME OTHER TYPE OF CASE BUT NOT THIS
9 ONE, SO YOU WILL GO TO THE JURY ASSEMBLY ROOM AND TELL THEM
10 THE JUDGE SAID YOU WILL BE A GOOD JUROR ON SOME OTHER CASE
11 BUT NOT THIS ONE. WILL YOU DO THAT?

12 MS. FERRERAS: OKAY.

13 THE COURT: ALL RIGHT, THANK YOU.

14 (PROSPECTIVE JUROR FERRERAS EXITS THE
15 COURTROOM.)

16 THE COURT: I AM CURIOUS AS TO WHY YOU WITHHELD YOUR
17 PASSING FOR CAUSE UNTIL AFTER WE GOT THROUGH.

18 MR. BARENS: I HAD A CHANGE OF HEART, YOUR HONOR.

19 THE COURT: I HAVE A GOOD IDEA AS TO WHY YOU DID.

20 MR. BARENS: WHY IS THAT, YOUR HONOR?

21 THE COURT: I WILL TELL YOU ABOUT IT SOME OTHER TIME.

22 (PROSPECTIVE JUROR HANNA ENTERS THE
23 COURTROOM.)

24 THE COURT: IS THAT MR. HANNA, IS THAT YOUR NAME?

25 MR. HANNA: YES, SIR.

26 THE COURT: WHERE DO YOU LIVE, MR. HANNA?

27 MR. HANNA: I LIVE IN PANORAMA CITY IN SAN FERNANDO
28 VALLEY.

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1 THE COURT: HAVE YOU EVER HEARD ANYTHING OR READ ANY-
2 THING AT ALL ABOUT THIS CASE, EXCEPT WHAT I TOLD YOU ON
3 MONDAY?

4 MR. HANNA: NO, SIR.

5 THE COURT: DOES THE NAME BILLIONAIRE BOYS CLUB REGISTER
6 WITH YOU, DOES IT IN ANY WAY RING A BELL?

7 MR. HANNA: NO.

8 THE COURT: ALL RIGHT, NOW I AM GOING TO READ TO YOU
9 BRIEFLY WHAT THE CASE IS ABOUT AND THEN ASK YOU SOME QUESTIONS.
10 THE PURPOSE OF THOSE QUESTIONS WILL BE TO DETERMINE WHAT YOUR
11 ATTITUDE IS TOWARD THE DEATH PENALTY.

12 FIRST, YOU KNOW THAT THE CHARGE AGAINST THE
13 DEFENDANT, AND IT IS ONLY A CHARGE -- YOU UNDERSTAND, OF COURSE,
14 THAT MERELY BECAUSE HE HAS BEEN CHARGED WITH AN OFFENSE DOESN'T
15 MEAN HE IS GUILTY OF ANYTHING, YOU UNDERSTAND THAT; DO YOU
16 UNDERSTAND THAT?

17 MR. HANNA: YES, SIR.

18 THE COURT: ALL RIGHT, HE HAS BEEN CHARGED BY THE PEOPLE
19 WITH THE COMMISSION OF A CRIME OF MURDER AND THAT IT IS MURDER
20 IN THE FIRST DEGREE.

21 IT IS ALSO CHARGED THAT HE COMMITTED THAT MURDER
22 IN THE COURSE OF A ROBBERY.

23 YOU REMEMBER, I INDICATED TO YOU ON MONDAY THAT
24 THERE ARE CERTAIN OFFENSES FOR WHICH THE LEGISLATURE HAS SAID
25 THAT THOSE PARTICULAR TYPE OF OFFENSES, MURDER OFFENSES WHERE
26 THERE ARE SPECIAL CIRCUMSTANCES ENTAILED, CALL FOR OR MAY
27 QUALIFY FOR THE DEATH PENALTY; DO YOU UNDERSTAND THAT?

28 MR. HANNA: YES.

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THE COURT: A FIRST DEGREE MURDER WHICH IS COMMITTED
IN THE COURSE OF A ROBBERY OR IN THE COURSE OF A BURGLARY OR
A ROBBERY, AS IN THIS CASE, A BURGLARY OR A RAPE OR A KIDNAPPING
OR A CHILD MOLESTATION WHERE A CHILD DIES, AND TORTURE,
MULTIPLE MURDERS, A NUMBER OF OTHERS, THERE ARE ABOUT 19 OF
THEM, WHEN WE HAVE THOSE SPECIAL CIRCUMSTANCES, THEN THE JURY
WHICH IS SELECTED IN THE CASE DETERMINES THE GUILT OR INNOCENCE
OF THE DEFENDANT, IS HE GUILTY OR NOT GUILTY OF MURDER?

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1 IF THEY FIND HE IS GUILTY OF MURDER IN THE FIRST
2 DEGREE, THEN THE QUESTION THEY HAVE TO DECIDE IS WHETHER OR
3 NOT IT IS TRUE OR FALSE, WHETHER IT IS TRUE OR FALSE THAT IT
4 WAS COMMITTED DURING THE COURSE OF A ROBBERY AND THAT IS A
5 SPECIAL CIRCUMSTANCE.

6 IF THEY SAID THAT YES, IT IS TRUE, IT WAS
7 COMMITTED IN THE COURSE OF A ROBBERY, THEN THAT SAME JURY THEN
8 HEARS FURTHER TESTIMONY, FURTHER EVIDENCE ON THE CASE FROM
9 THE DEFENDANT AND FROM THE PROSECUTION. AND THAT IS WHAT WE
10 CALL THE PENALTY PHASE OF THE TRIAL WHERE THAT TESTIMONY WILL
11 BE ADDUCED FOR THE PURPOSE OF PERSUADING THE JURY FROM THE
12 DEFENDANT'S STANDPOINT THAT HE HAS -- YOU HAVE A RIGHT TO
13 CONSIDER HIS AGE, HIS BACKGROUND, HIS PHYSICAL AND MENTAL
14 CONDITION AND ANYTHING THE DEFENDANT SHOWS YOU WHICH WOULD
15 BE FAVORABLE TOWARD HIM SO THAT THE ULTIMATE PENALTY OF DEATH
16 IN THE GAS CHAMBER IS NOT IMPOSED.

17 AND THE PROSECUTION WILL SHOW AGGRAVATING
18 CIRCUMSTANCES, THINGS ABOUT HIM WHICH ARE UNFAVORABLE, SO THAT
19 THE ULTIMATE PENALTY SHOULD BE IMPOSED UPON THE DEFENDANT.

20 SO THE JURY HEARS ALL OF THAT TESTIMONY BEFORE
21 IT SHOULD MAKE UP ITS MIND AS TO THE PENALTY UNTIL THEY HAVE
22 HEARD ALL OF THE TESTIMONY.

23 WHEN THEY HEAR ALL OF THE TESTIMONY, THEN THEY
24 GO TO THE JURY ROOM AND THEN DELIBERATE AS TO WHAT THE PENALTY
25 SHOULD BE; DO YOU UNDERSTAND THAT?

26 MR. HANNA: YES, SIR.

27 THE COURT: NOW, WITH THAT AS A PRELIMINARY, I AM GOING
28 TO ASK YOU FIVE QUESTIONS. THE FIRST TWO QUESTIONS RELATE

1 OR -- RELATE TO THE GUILT PHASE OF THE TRIAL, GUILTY OR NOT
2 GUILTY: DO YOU HAVE ANY OPINION ABOUT THE DEATH PENALTY,
3 WHATEVER IT MAY BE, THAT WOULD PREVENT YOU FROM MAKING AN
4 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
5 DEFENDANT?

6 DO YOU HAVE ANY OPINION ABOUT THE DEATH PENALTY,
7 WHATEVER IT IS, WHICH WOULD PREVENT YOU FROM BEING AN
8 IMPARTIAL JUROR IN DECIDING THE GUILT OR INNOCENCE OF THE
9 DEFENDANT?

10 MR. HANNA: WELL, MY OPINION ABOUT THE DEATH PENALTY,
11 I AM AGAINST IT.

12 THE COURT: YOU ARE AGAINST THE DEATH PENALTY?

13 MR. HANNA: YES, SIR.

14 THE COURT: UNDER ALL CIRCUMSTANCES?

15 MR. HANNA: YES.

16 THE COURT: NO MATTER WHAT KIND OF A CASE IT IS, YOU
17 ARE AGAINST THE DEATH PENALTY?

18 MR. HANNA: YES.

19 THE COURT: THAT IS WITHOUT ANY DOUBT, IS THAT RIGHT?

20 MR. HANNA: YES, I AM AGAINST IT.

21 MR. BARENS: IF I MIGHT, YOUR HONOR.

22 THE COURT: GO AHEAD.

23 MR. BARENS: GOOD MORNING, MR. HANNA.

24 MR. HANNA: GOOD MORNING, SIR.

25 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
26 DEFENDANT, JOE HUNT SITTING AT THE END OF THE TABLE, THE
27 YOUNGISH MAN THERE.

28 IT IS MY DUTY TO ASK YOU QUESTIONS ABOUT THE DEATH

1 PENALTY AND NOW, SURPRISINGLY ENOUGH, I AM GOING TO COME FROM
2 A PERSPECTIVE THAT YOU WOULD NEVER IMAGINE AS A DEFENSE LAWYER
3 THAT I WOULD TALK TO YOU ABOUT.

4 YOU SEE, THE WAY THE LAW IS SET UP, IF YOU SAY --

5 MR. WAPNER: YOUR HONOR, I OBJECT TO COUNSEL TELLING HIM
6 WHAT IS GOING TO QUALIFY HIM AND WHAT WON'T. HE CAN ASK THE
7 QUESTION AND GET THE ANSWER. BUT TO TELL HIM WHAT IS GOING TO
8 GET HIM ON OR KEEP HIM ON, IS IMPROPER.

9 MR. BARENS: I THINK THE GENTLEMAN IS ENTITLED BY LAW
10 AS A CITIZEN OF THIS COUNTRY TO KNOW WHAT IS GOING ON HERE.

11 THE COURT: LET'S NOT MAKE ANY SPEECHES, WILL YOU,
12 PLEASE?

13 MR. BARENS: I THINK HE IS ENTITLED TO KNOW WHAT IS
14 GOING ON HERE.

15 THE COURT: ASK THE QUESTION. HE HAS CATEGORICALLY SAID,
16 WITHOUT QUALIFICATION THAT UNDER NO CIRCUMSTANCES WOULD HE
17 VOTE FOR THE DEATH PENALTY. AND YOU WANT TO CHANGE HIS MIND?

18 MR. BARENS: I WOULD LIKE HIM TO APPRECIATE THE
19 CIRCUMSTANCES UNDER WHICH THAT RESPONSE LEAVES HIM, YOUR HONOR.

20 THE COURT: GO AHEAD.

21 MR. BARENS: THAT IS ALL I TRIED TO DO.

22 MR. WAPNER: YOUR HONOR, THAT IS EXACTLY WHAT I AM
23 OBJECTING TO, IS TO TELL -- IS TO GIVE THIS JUROR INFORMATION
24 AND WHAT RESPONSES ARE GOING TO GET HIM ON THE JURY AND
25 RESPONSES ARE GOING TO KEEP HIM OFF THE JURY.

26 THE PURPOSE IS TO ASK THE QUESTION AND TO GET AN
27 ANSWER AND I DON'T THINK IT IS PROPER TO GIVE THIS JUROR
28 INFORMATION AND THAT IS THE OBJECTION ON THAT BASIS.

7A-4

1 MR. BARENS: WHERE IS IT WRITTEN ANYWHERE, ANYTHING THAT
2 WOULD SUPPORT THAT PROPOSITION?

3 THE COURT: ALL RIGHT, ASK YOUR QUESTION, IF YOU WOULD,
4 PLEASE, ABOUT HIS ATTITUDE TOWARD THE DEATH PENALTY. JUST
5 ASK HIM ABOUT THAT.

6 MR. BARENS: I DECLINE. I PASS. THANK YOU.

7 THE COURT: ALL RIGHT, ANY QUESTIONS?
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1 MR. WAPNER: LET ME JUST INQUIRE OF THE COURT OR COUNSEL,
2 AT THE RISK OF STIRRING UP A CAULDRON. IS COUNSEL DECLINING
3 TO ASK THE QUESTION BASED ON SOME FEELING THAT HE HAS BEEN
4 PROHIBITED FROM ASKING IT?

5 THE COURT: I AM NOT PROHIBITING HIM FROM ASKING THE
6 QUESTION. IF HE WANTS TO ASK THE QUESTION, HE CAN.

7 MR. BARENS: I BELIEVE I HAVE BEEN ADVISED THAT I CANNOT
8 ADVISE A JUROR AS TO THE STATUS OF THE LAW, BASED ON THEIR
9 ANSWERS AS TO WHETHER THEY WOULD QUALIFY AS A JUROR OR NOT
10 IN THIS COURTROOM.

11 THE COURT: THIS JUROR HAS TESTIFIED THAT THAT IS THE
12 PURPOSE OF THOSE INQUIRIES. HE HAS TESTIFIED WITH RESPECT
13 TO HIS ATTITUDES TOWARD THE DEATH PENALTY. HE HAS CATEGORICALLY
14 SAID THAT HE IS UNALTERABLY OPPOSED TO THE DEATH PENALTY, NO
15 MATTER WHAT THE FACTS ARE, NO MATTER WHAT THE CIRCUMSTANCES
16 ARE. DO YOU WANT TO ASK HIM ABOUT THAT? GO AHEAD.

17 MR. BARENS: WE DECLINE. THANK YOU, YOUR HONOR.

18 MR. WAPNER: MR. HANNA, ARE THERE ANY CIRCUMSTANCES
19 WHERE YOU CAN SEE YOURSELF VOTING TO IMPOSE A PUNISHMENT OF
20 DEATH ON SOMEONE?

21 MR. HANNA: I BELIEVE YOU KNOW, THAT IF THE PERSON
22 ACTUALLY -- I CANNOT SAY LIKE THE JUDGE TOLD ME, WE DON'T KNOW
23 YET IF HE IS GUILTY OR NOT GUILTY. SOMEBODY SAID THAT THE
24 PERSON HAS COMMITTED A CRIME. THERE IS GUILT. THERE IS
25 MISTAKE.

26 I CANNOT GIVE HIM THE OPPOSITE OF HIS MISTAKE AS
27 A MISTAKE AGAIN TO KILL HIM, TO REFLECT AS HIS ATTITUDE, TO
28 DO THE SAME THING.

1 I FIGURE I KNOW WHAT IT IS, THAT THIS MAN HAS A
2 PROBLEM. THERE IS A PROBLEM.

3 WE CAN THINK OF IT TO SOLVE THAT PROBLEM. IF THIS
4 MAN IS SICK, UNDER DOPE OR SOMETHING AGGRAVATED THIS MAN TO
5 LET HIM GO THAT FAR, TO COMMIT A DEATH CRIME, WHAT ARE THE
6 CIRCUMSTANCES THAT LED THAT MAN TO GO THAT FAR, TO LIFT THE
7 GUN? OKAY.

8 THE PERSON CAN GET ANGRY IN LESS THAN A SECOND,
9 TO PULL THE TRIGGER AND COMMIT THIS CRIME.

10 THE COURT: NO. THERE IS NO ANGER INVOLVED. YOU MUST
11 ASSUME THAT HE DELIBERATELY, WITH MALICE AND INTENTIONALLY,
12 PREMEDITATEDLY PLANNED TO KILL SOMEBODY AND HE KILLED HIM
13 DURING THE COURSE OF A ROBBERY.

14 THEN YOU HAVE TO CONSIDER WHAT SHOULD BE DONE.
15 SUPPOSE YOU ARE ON THE JURY. SUPPOSE YOU FIND THAT HE
16 DELIBERATELY, INTENTIONALLY KILLED SOMEBODY DURING THE COURSE
17 OF A ROBBERY.

18 THEN YOU HAVE TO CONSIDER WHETHER OR NOT HE SHOULD
19 SUFFER DEATH IN THE GAS CHAMBER OR LIFE WITHOUT POSSIBILITY
20 OF PAROLE.

21 IS YOUR MIND SUCH THAT UNDER NO CIRCUMSTANCES,
22 WOULD YOU VOTE FOR THE DEATH PENALTY?

23 MR. HANNA: NO, SIR. I CAN'T.

24 THE COURT: YOU WOULDN'T? IS THAT IT?

25 MR. HANNA: YES. I CANNOT VOTE FOR IT.

26 THE COURT: NOW, REMEMBER, THERE IS NO QUESTION OF DOPE
27 INVOLVED. THERE IS NO QUESTION OF ANYTHING LIKE THAT INVOLVED.
28 IT IS JUST A DELIBERATE MURDER DURING THE COURSE OF A ROBBERY.

1 THE JURY HAS TO DETERMINE WHAT SHOULD BE DONE WITH
2 HIM. UNDER NO CIRCUMSTANCES, WOULD YOU VOTE FOR THE DEATH
3 PENALTY?

4 MR. HANNA: YES, SIR.

5 MR. BARENS: THE DEFENSE ONLY RESPECTFULLY SUBMITS THAT
6 THE PROPER INQUIRY IS WHETHER OR NOT THE PROSPECTIVE JUROR
7 COULD CONSIDER THE DEATH PENALTY, NOT WHETHER OR NOT HE COULD
8 VOTE FOR IT.

9 I BELIEVE FRAMING THE QUESTION THAT WAY, IS NOT
10 CONSISTENT WITH CASE LAW. BUT I SUBMIT THE MATTER.

11 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
12 BE EXCUSED.

13 PLEASE GO BACK TO THE JURY ASSEMBLY ROOM AND TELL
14 THEM YOU ARE QUALIFIED AS A JUROR ON SOME OTHER CASE BUT NOT
15 ON THIS ONE.

16 (PROSPECTIVE JUROR HANNA EXITS THE
17 COURTROOM.)

18 (PROSPECTIVE JUROR JANIS ENTERS THE
19 COURTROOM.)

20 THE COURT: I TOLD COUNSEL THAT I KNOW YOU. YOUR FATHER
21 WAS ONE OF MY CLOSE FRIENDS, A JUDGE THAT IS RETIRED NOW.
22 SO, THEY KNOW YOUR BACKGROUND.

23 WHAT I WILL DO FIRST OF ALL, I WILL ASK YOU THIS.
24 JUST TELL US WHERE YOU LIVE, FOR THE RECORD.

25 MS. JANIS: I LIVE IN LOS ANGELES AT 10870 VICENZA WAY.

26 THE COURT: ALL RIGHT. DID YOU EVER READ OR DO YOU KNOW
27 ANYTHING AT ALL ABOUT THIS CASE OR HAVE YOU EVER HEARD ANYTHING
28 ABOUT THIS CASE?

1 MS. JANIS: I DON'T KNOW.

2 THE COURT: WELL, DOES THE EXPRESSION "BILLIONAIRE BOYS
3 CLUB" RING ANY BELL WITH YOU?

4 MS. JANIS: NO.

5 THE COURT: BOYS AT THE HARVARD SCHOOL THAT GOT TOGETHER
6 AND HAD SOME BUSINESS ARRANGEMENTS?

7 MS. JANIS: OH, YES.

8 THE COURT: WHAT IS THAT YOU REMEMBER ABOUT THAT?

9 MS. JANIS: THAT IS ABOUT IT.

10 THE COURT: IS THAT ABOUT IT? WHATEVER YOU HEARD, WOULD
11 THAT -- HAVE YOU MADE UP YOUR MIND ABOUT ANYTHING ONE WAY OR
12 THE OTHER? YOU HAVE NOT MADE UP YOUR MIND WHETHER OR NOT THE
13 MAN IS GUILTY OR NOT GUILTY?

14 MS. JANIS: NO.
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1 THE COURT: ALL RIGHT. DO YOU REMEMBER WHAT I TOLD YOU
2 THAT THE CHARGE WAS AGAINST THE DEFENDANT? YOU KNOW THE
3 CHARGE. HE IS JUST CHARGED. THERE IS NO GUILT OF HIS
4 GUILT WHATEVER.

5 THE CHARGE AGAINST THE DEFENDANT IS THAT HE
6 COMMITTED A MURDER AND IT WAS A MURDER IN THE FIRST DEGREE
7 IN THE COURSE OF A ROBBERY. NOW, I POINT OUT THAT IN THE COURSE
8 OF A ROBBERY HAS SOME SPECIAL SIGNIFICANCE BECAUSE THE
9 LEGISLATURE HAS SAID THAT IN A NUMBER OF CASES WHERE THERE
10 IS A MURDER COMMITTED AND PARENTHETICALLY, MERELY BECAUSE A
11 MURDER IS COMMITTED DOESN'T MEAN THAT IT CALLS FOR THE DEATH
12 PENALTY. IT HAS GOT TO BE COMMITTED UNDER CERTAIN SPECIAL
13 CIRCUMSTANCES.

14 THE LEGISLATURE HAS SAID THAT A MURDER COMMITTED
15 DURING THE COURSE OF A ROBBERY OR A BURGLARY OR A RAPE OR A
16 KIDNAPPING OR 19 OTHERS, MULTIPLE MURDERS AND SO ON AND SO
17 FORTH, THEN THE DEATH PENALTY MAY BE IN ORDER, DEPENDING UPON
18 WHAT THE FACTS ARE AND THE JURY'S DETERMINATION.

19 SO, THE JURY THAT WILL BE SELECTED IN THIS CASE
20 WILL DETERMINE FIRST, WHAT WE CALL THE GUILT PHASE. THEY WILL
21 DETERMINE FIRST, WHETHER OR NOT THE DEFENDANT IS GUILTY OF
22 MURDER IN THE FIRST DEGREE. IF HE IS, THEY SO FIND, THEN THE
23 SECOND, COLLATERAL QUESTION THEY HAVE TO DETERMINE IS WHETHER
24 THAT MURDER COMMITTED -- IS IT TRUE OR FALSE THAT IT WAS
25 COMMITTED DURING THE COURSE OF A ROBBERY.

26 BECAUSE THAT THEN QUALIFIES FOR A POSSIBLE DEATH
27 PENALTY. WHEN WE TALK ABOUT THE DEATH PENALTY, THERE ARE TWO
28 ASPECTS OF THE DEATH PENALTY. ONE IS LIFE WITHOUT POSSIBILITY

1 OF PAROLE AND THAT MEANS EXACTLY THAT, LIFE WITHOUT POSSIBILITY
2 OF PAROLE, NO PAROLE. HE STAYS IN PRISON FOR THE REST OF HIS
3 LIFE.

4 OR, IT COULD BE DEATH IN THE GAS CHAMBER. OKAY?
5 SO, IF THE JURY HAS DECIDED IT WAS MURDER IN THE FIRST DEGREE
6 IN THE COURSE OF A ROBBERY, THEN THAT SAME JURY HEARS
7 ADDITIONAL TESTIMONY BOTH FROM THE DEFENDANT AND THE PROSECUTION.
8 THE PURPOSE OF THAT ADDITIONAL TESTIMONY -- AND WE CALL IT
9 THE PENALTY PHASE -- AND THE FIRST ONE IS GUILT OR INNOCENCE.

10 IN THE PENALTY PHASE, THE DEFENDANT AND THE JURY --
11 THE JURY MUST CONSIDER EVERYTHING ABOUT THE DEFENDANT, HIS
12 AGE, HIS BACKGROUND, HIS EDUCATION, HIS ABSENCE OF ANY PRIOR
13 CRIMINAL ACTIVITIES OR CONDUCT AND EVERYTHING THAT MIGHT BE
14 FAVORABLE ABOUT HIM.

15 THE PURPOSE OF ALL OF THAT IS TO TRY TO GET THE
16 JURY TO GIVE HIM THE ULTIMATE PENALTY. AND THE PROSECUTION
17 ON THE OTHER HAND, WILL SHOW AGGRAVATING CIRCUMSTANCES, I
18 ASSUME, THINGS THAT ARE UNFAVORABLE ABOUT THE DEFENDANT, THAT
19 HE IS A BAD MAN AND THINGS THAT HE HAS DONE IN THE PAST WHICH
20 WERE WRONG, SO THAT THE JURY WOULD NOT EXERCISE ITS DISCRETION
21 AND GIVE HIM THE LESSER PENALTY.

22 THEN THE JURY DELIBERATES IN THE JURY ROOM AND
23 MAKES UP THEIR MINDS AS TO WHICH OF THE TWO PENALTIES IT SHOULD
24 BE, IF AT ALL. NOW, I AM GOING TO ASK YOU A SERIES OF
25 QUESTIONS. THERE ARE FIVE OF THEM. THE PURPOSE OF THOSE
26 QUESTIONS WOULD BE TO EXPLORE YOUR STATE OF MIND AND YOUR
27 FEELINGS AND ATTITUDES TOWARD THE DEATH PENALTY.

28 NOW, THE FIRST TWO QUESTIONS RELATE TO THE GUILT

1 PHASE. FIRST, DO YOU HAVE AN OPINION AS TO THE DEATH PENALTY,
2 WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU FROM MAKING AN
3 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
4 DEFENDANT?

5 MS. JANIS: NO.

6 THE COURT: THEN THE OTHER PART OF THAT ALSO IS, DO YOU
7 HAVE ANY OPINION ON THE DEATH PENALTY, WHICH WOULD PREVENT
8 YOU FROM MAKING AN IMPARTIAL DECISION AS TO WHETHER OR NOT
9 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY?

10 MS. JANIS: NO.

11 THE COURT: NOW, THE NEXT TWO QUESTIONS RELATE TO THE
12 PENALTY. IT IS ON THE ASSUMPTION THE DEFENDANT WOULD BE FOUND
13 GUILTY OF MURDER IN THE FIRST DEGREE AND WITH SPECIAL
14 CIRCUMSTANCES, THAT IT WAS COMMITTED DURING THE COURSE OF A
15 ROBBERY.

16 DO YOU HAVE ANY OPINION CONCERNING THE DEATH
17 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH
18 PENALTY, IRRESPECTIVE OF OR REGARDLESS OF THE EVIDENCE WHICH
19 MAY BE PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

20 MS. JANIS: NO.

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

27 MS. JANIS: NO.

28 THE COURT: DO YOU UNDERSTAND OF COURSE, THAT THE ISSUE

1 OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE
2 AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE EVENT
3 THAT YOU REACH THE PENALTY PHASE OF THE TRIAL?

4 MS. JANIS: YES.

5 THE COURT: GO AHEAD.

6 MR. BARENS: YOUR HONOR, THANK YOU. GOOD MORNING, MISS
7 JANIS. I AM ARTHUR BARENS. I REPRESENT THE DEFENDANT, JOE
8 HUNT.

9 AND AS WITH HIS HONOR, IT IS MY DUTY AT THIS STAGE
10 OF THE PROCEEDINGS, TO ASK YOU SOME QUESTIONS ABOUT YOUR POINT
11 OF VIEW ON THE DEATH PENALTY. I AM SURE THAT YOU APPRECIATE
12 AND UNDERSTAND THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO
13 ANY OF MY QUESTIONS AND NONE OF US ARE JUDGING YOU ON ANY OF
14 YOUR ANSWERS, BUT SEEK ONLY YOUR OPINION. YOU CAN NEVER BE
15 WRONG ABOUT YOUR OPINION.

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

18 MS. JANIS: I AM AT A STAGE RIGHT NOW, WHERE FRANKLY,
19 I AM OPEN TO THE POTENTIAL FOR THE DEATH PENALTY. BUT I AM
20 NOT A PROPONENT OF THE DEATH PENALTY. IS THAT A SUFFICIENT
21 ANSWER?

22 MR. BARENS: YOU WOULD BE OPEN-MINDED?

23 MS. JANIS: I GUESS THAT IS IT, YES.

24 MR. BARENS: WELL, THAT IS ALL WE ARE LOOKING FOR.

25 MS. JANIS: YES.

26 MR. BARENS: AS YOU KNOW, HIS HONOR EXPLAINED THAT THERE
27 ARE TWO PHASES TO THE TRIAL. AND IF YOU BELIEVE BEYOND A
28 REASONABLE DOUBT WITH 11 OTHER JURORS, THAT IN FACT, A FIRST

1 DEGREE HOMICIDE HAD OCCURRED DURING THE COMMISSION OF A
2 ROBBERY AND BY THAT I MEAN AN INTENTIONAL, PREMEDITATED MURDER,
3 IT WOULD THEN BE YOUR DUTY TO MAKE A DECISION ABOUT WHETHER
4 THE DEFENDANT, DURING THE PENALTY PHASE, SHOULD BE GIVEN LIFE
5 WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY. DO YOU
6 UNDERSTAND THAT THAT IS THE SETTING THAT WOULD BE EXISTENT
7 AT THAT POINT IN TIME?

8 MS. JANIS: RIGHT.
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1 MR. BARENS: WOULD YOU BE WILLING TO CONSIDER FACTORS
2 CONCERNING THE DEFENDANT'S BACKGROUND AND WHETHER OR NOT HE
3 HAD A PRIOR CRIMINAL RECORD AND HIS AGE AT THE TIME THE CRIME
4 WAS ALLEGEDLY COMMITTED IN DECIDING WHETHER OR NOT HE SHOULD
5 LIVE OR DIE?

6 MS. JANIS: YES.

7 MR. BARENS: THOSE WOULD BE RELEVANT FACTORS YOU WOULD
8 CONSIDER IN FACT?

9 MS. JANIS: RIGHT.

10 MR. BARENS: HAVE YOU EVER HAD A STRONGER OR MORE
11 DEFINED OPINION ABOUT THE DEATH PENALTY THAN YOU DO AS YOU
12 COME BEFORE US IN THIS SETTING?

13 MS. JANIS: AH, I THINK SEVERAL YEARS AGO, I WAS VERY
14 MUCH OPPOSED TO THE DEATH PENALTY AND I THINK IT HAS ONLY
15 BEEN IN RECENT YEARS, UNDER CERTAIN CIRCUMSTANCES WHERE I
16 HAVE HAD MY UNDERSTANDING THAT IT WAS EVER AN ACCEPTABLE
17 DECISION.

18 MR. BARENS: ARE YOU ABLE TO EXPOUND FOR ME AT ALL AS
19 TO WHAT YOU MEANT IN YOUR REFERENCE TO CERTAIN CIRCUMSTANCES
20 WHERE IT WOULD BE APPLICABLE OR ACCEPTABLE?

21 MS. JANIS: WELL, I GUESS IN THOSE CIRCUMSTANCES WHERE
22 YOU SEE THAT IT IS A PREMEDITATED CRIME, WHERE THERE IS A
23 PERSON WHO IS CLEARLY A MENACE TO SOCIETY, HAS COMMITTED OTHER
24 CRIMES.

25 IT IS A WHOLE RANGE OF CIRCUMSTANCES THAT I THINK
26 WOULD INFLUENCE MY THINKING ON THAT.

27 MR. BARENS: YOU WOULD HAVE TO CONSIDER ALL OF THOSE
28 FACTORS BEFORE COMING TO A DECISION.

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1 NOW YOU UNDERSTAND THAT NOTHING IN THE LAW MAKES
2 THE DEATH PENALTY MANDATORY FOR ANY SORT OF CONDUCT; DO YOU
3 UNDERSTAND THAT?

4 MS. JANIS: I ASSUME. YOU ARE TELLING ME THAT IS THE
5 CASE, THEN THAT IS WHAT I UNDERSTAND.

6 MR. BARENS: OKAY, ACCEPT WHAT I TELL YOU BECAUSE THE
7 JUDGE, I BELIEVE, WOULD CONFIRM THAT. ALTHOUGH THERE ARE
8 19 CATEGORIES OR SO OF OFFENSES THAT COULD QUALIFY A DEFENDANT
9 UPON CONVICTION FOR THE DEATH PENALTY, THAT IS STILL A
10 DECISION THAT JURORS HAVE TO MAKE DURING A PENALTY PHASE WHETHER
11 ONE GETS DEATH OR LIFE, THAT IS A JURY DECISION, NOT BY
12 LEGISLATIVE MANDATE OR FIAT; DO YOU UNDERSTAND THAT?

13 MS. JANIS: OKAY, YES.

14 MR. BARENS: IT IS STILL IN THE HANDS OF THE JURY.

15 MS. JANIS: RIGHT.

16 MR. BARENS: NOT A JUDGE OR --

17 MS. JANIS: RIGHT.

18 MR. BARENS: -- OR THE LEGISLATURE.

19 WOULD YOU BE CAPABLE OF VOTING FOR LIFE IMPRISONMENT
20 WITHOUT THE POSSIBILITY OF PAROLE IF YOU BELIEVED A DEFENDANT
21 HAD COMMITTED A PREMEDITATED MURDER DURING THE COURSE OF A
22 ROBBERY?

23 MS. JANIS: I THINK IT WOULD DEPEND ON OTHER
24 CIRCUMSTANCES AS WELL.

25 MR. BARENS: ALL OF THOSE OTHER FACTORS --

26 MS. JANIS: RIGHT.

27 MR. BARENS: -- THAT WOULD BE ARTICULATED DURING THE
28 SECOND PHASE OF THE TRIAL?

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1 MS. JANIS: RIGHT.

2 MR. BARENS: IF I MIGHT INQUIRE, DO YOU FEEL THAT THERE
3 IS ANY BEARING ON THE FACT THAT YOUR FATHER WAS A JUDGE THAT
4 MIGHT MAKE YOU MORE INCLINED TO LISTEN TO THE PROSECUTION
5 THAN YOU MIGHT BE TO THE DEFENSE OR, VICE VERSA, FOR THAT
6 MATTER?

7 MS. JANIS: MY FATHER BECAME A JUDGE AFTER I HAD ACTUALLY
8 MOVED OUT OF CALIFORNIA AND I WASN'T HERE TO HEAR HIM DISCUSS
9 ANY OF THESE ISSUES AND HE WAS A MUNICIPAL JUDGE, NOT A
10 SUPERIOR COURT JUDGE.

11 MR. BARENS: I APPRECIATE THAT.

12 I THINK YOU CAN UNDERSTAND WHY I FELT OBLIGED
13 TO MAKE THE INQUIRY, MA'AM.

14 I AM SURE YOU UNDERSTAND THAT ALTHOUGH I AM HERE
15 ASKING YOU SOME QUESTIONS ABOUT THE DEATH PENALTY AND THE
16 JUDGE DID AND MR. WAPNER WILL, THAT THERE IS NO IMPLICATION
17 FROM THAT OR REASON FOR YOU TO BELIEVE IN ANY WAY THAT WE
18 ARE SAYING THAT MR. HUNT IS GUILTY OF ANYTHING BECAUSE THE
19 LAW PROCEDURALLY REQUIRES THAT WE MAKE THE INQUIRY AT THIS
20 JUNCTURE; DO YOU UNDERSTAND THAT?

21 MS. JANIS: YES, YES.

22 MR. BARENS: AND YOU ARE COMFORTABLE WITH THE CONCEPT
23 OF THE PRESUMPTION OF INNOCENCE THAT WE WOULD ALL HAVE AS
24 DEFENDANTS, THAT BECAUSE SOMEONE IS ACCUSED OF A CRIME DOESN'T
25 MAKE YOU BELIEVE THEY HAVE COMMITTED A CRIME.

26 MS. JANIS: RIGHT.

27 MR. BARENS: YOU UNDERSTAND THAT?

28 (MS. JANIS NODS HER HEAD UP AND DOWN.)

9-4
1 MR. BARENS: THANK YOU FOR YOUR TIME, MA'AM.

2 WE PASS FOR CAUSE.

3 THE COURT: ALL RIGHT.

4 MR. WAPNER: GOOD MORNING, MRS. JANIS.

5 MS. JANIS: GOOD MORNING.

6 MR. WAPNER: I AM FRED WAPNER. I AM THE DEPUTY DISTRICT
7 ATTORNEY WHO IS PROSECUTING THIS CASE.

8 THERE IS OBVIOUSLY A DIFFERENCE BETWEEN THINKING
9 ABOUT THE DEATH PENALTY AS A THEORETICAL OR POLITICAL ISSUE
10 AND ACTUALLY BEING CALLED UPON TO RENDER A VERDICT ON THE
11 DEATH PENALTY.

12 LET ME ASK YOU TO PUT YOURSELF IN THE SITUATION
13 OF A JUROR IN THIS CASE. YOU ARE IN THE JURY ROOM AND YOU
14 HAVE ALREADY DECIDED THE DEFENDANT IS GUILTY OF MURDER, THAT
15 IT HAPPENED DURING A ROBBERY AND YOU HAVE LISTENED TO ALL
16 OF THE EVIDENCE ON THE PENALTY PHASE AND NOW YOU ARE TRYING
17 TO DECIDE WHAT THE APPROPRIATE PUNISHMENT IS.

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1 YOUR ONLY TWO CHOICES WOULD BE LIFE IMPRISONMENT
2 WITHOUT PAROLE OR DEATH IN THE GAS CHAMBER. GIVEN THOSE TWO
3 CHOICES, DO YOU THINK THAT IS A DECISION YOU ARE CAPABLE OF
4 MAKING?

5 MS. JANIS: YES.

6 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
7 MORAL OR PHILOSOPHICAL BELIEFS THAT WOULD BEAR ON YOUR ABILITY
8 TO RENDER A VERDICT ON THIS ISSUE?

9 MS. JANIS: NO.

10 MR. WAPNER: THE THINGS THAT YOU HAVE HEARD OR READ
11 ABOUT THIS CASE, DO YOU REMEMBER WHERE YOU READ OR HEARD ABOUT
12 THEM?

13 MS. JANIS: PROBABLY IN THE LOS ANGELES TIMES.

14 MR. WAPNER: AND DO YOU REMEMBER WHETHER YOU READ ONE
15 ARTICLE OR MORE THAN ONE?

16 (MS. JANIS SHAKES HER HEAD FROM SIDE TO
17 SIDE.)

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

20 MS. JANIS: OH, NO.

21 I AM SORRY.

22 MR. WAPNER: OKAY. I TAKE IT, YOU DON'T HAVE A REALLY
23 STRONG RECOLLECTION OF ANY OF THE FACTS IN THOSE ARTICLES?

24 MS. JANIS: NO.

25 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
26 HONOR.

27 THE COURT: MRS. JANIS, BOTH SIDES HAVE PASSED FOR CAUSE.
28 WHAT THAT MEANS IS THEY FEEL, AND THE COURT FEELS, THAT YOU

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1 ARE QUALIFIED TO BE A TRIAL JUROR IN THIS CASE IF YOU ARE
2 SELECTED. SO WHAT I WILL ASK YOU TO DO IS TO COME BACK AT
3 1:45 THIS AFTERNOON AND JOIN THE OTHER JURORS IN THE JURY
4 ASSEMBLY ROOM AND WE WILL HAVE YOU BACK IN HERE.

5 HOPEFULLY -- I DON'T THINK WE CAN GET THROUGH
6 WITH ALL OF THE NAMES BUT I WILL TELL YOU WHAT TO DO WHEN
7 YOU CAME BACK THIS AFTERNOON AT 1:45, ALL RIGHT?

8 MS. JANIS: THANK YOU.

9 THE COURT: ALL RIGHT, THANK YOU.

10 THE BAILIFF: DO YOU WANT TO KEEP ONE MORE?

11 THE COURT: ONE MORE AND THEN I THINK WE CAN HAVE THEM
12 BACK AT 1:45.

13 (PROSPECTIVE JUROR JANIS EXITED THE
14 COURTROOM.)

15 (PROSPECTIVE JUROR KAPES ENTERED THE
16 COURTROOM.)

17 THE COURT: IS THAT MISS KAPES OR MRS.?

18 MS. KAPES: KAPES.

19 THE COURT: KAPES?

20 MS. KAPES: KAPES, YES.

21 THE COURT: THAT IS AN UNUSUAL NAME, THAT IS THE FIRST
22 TIME I HAVE HEARD THAT NAME, HARIKLIA.

23 MS. KAPES: OH, YES. THAT IS VERY NICE.

24 THE COURT: PARDON ME?

25 MS. KAPES: YOU SAID IT PERFECTLY.

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

27 MS. KAPES: IN SANTA MONICA.

28 THE COURT: AND LAST MONDAY, YOU HEARD ME SUMMARIZE

9A-3
1 THE NATURE OF THE CASE WE ARE ABOUT TO TRY, CERTAIN ASPECTS
2 OF IT.

3 MS. KAPES: YES.

4 THE COURT: JUST TO REPEAT IT BRIEFLY, THE CHARGE AGAINST
5 THE DEFENDANT -- AND REMEMBER IT IS A CHARGE AND A CHARGE
6 DOESN'T MEAN THAT HE DID IT. IT HAS TO BE PROVED THAT HE
7 DID DO IT BEYOND A REASONABLE DOUBT.

8 THE CHARGE AGAINST THE DEFENDANT IS THAT HE
9 COMMITTED A MURDER IN THE COURSE OF A ROBBERY.

10 NOW, IN THE COURSE OF A ROBBERY HAS A SPECIAL
11 SIGNIFICANCE BECAUSE NOT EVERY MURDER IN THE FIRST DEGREE
12 IS PUNISHABLE BY DEATH OR BY LIFE IMPRISONMENT WITHOUT THE
13 POSSIBILITY OF PAROLE. THAT MURDER MUST BE ACCOMPANIED BY
14 CERTAIN SPECIAL CIRCUMSTANCES, DONE UNDER CERTAIN SPECIAL
15 CIRCUMSTANCES.

16 I TOLD YOU MONDAY THAT, AS IN THIS CASE, THE
17 SPECIAL CIRCUMSTANCE IS THAT IT WAS COMMITTED DURING THE COURSE
18 OF A ROBBERY, AND YOU UNDERSTAND THAT?

19 MS. KAPES: YES.

20 THE COURT: AND THE LEGISLATURE HAS SAID THAT OTHER
21 KINDS OF SPECIAL CIRCUMSTANCES MAY CALL FOR THE IMPOSITION
22 OF THE DEATH PENALTY AND THOSE ARE MURDERS COMMITTED IN THE
23 COURSE OF A BURGLARY, KIDNAPPING OR RAPE OR MOLESTATION OF
24 A CHILD, MULTIPLE MURDERS, TORTURE AND SO FORTH. IT IS ONLY
25 WHERE THERE IS SPECIAL CIRCUMSTANCES THAT THE DEATH PENALTY
26 MIGHT BE APPLICABLE; DO YOU UNDERSTAND THAT?

27 (MS. KAPES NODS HER HEAD UP AND DOWN.)

28 THE COURT: SO THE JURY SELECTED IN THIS CASE WILL FIRST

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1 DETERMINE WHAT WE CALL ON THE GUILT PHASE OF THE TRIAL, THEY
2 WILL FIRST DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT,
3 DID HE OR DID HE NOT COMMIT A MURDER OF THE FIRST DEGREE?

4 IF HE DID NOT, THAT IS THE END OF THE CASE.

5 IF HE DID, AND IT IS MURDER IN THE FIRST DEGREE,
6 THEN THEY HAVE TO ANSWER A SECOND QUESTION: WAS THAT MURDER
7 COMMITTED IN THE COURSE OF A ROBBERY? IS IT TRUE OR IS IT
8 FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY,
9 WHICH IS A SPECIAL CIRCUMSTANCE.

10 IF THEY DECIDE IT WAS COMMITTED DURING THE COURSE
11 OF A ROBBERY, THEN THE SAME JURY HEARS MORE EVIDENCE ON A
12 SECOND TRIAL, SO TO SPEAK, WHERE THE DEFENSE AND THE
13 PROSECUTION WILL INTRODUCE OTHER EVIDENCE THAT THEY HAVEN'T
14 HEARD BEFORE.

15 THAT OTHER EVIDENCE ON BEHALF OF THE DEFENDANT
16 WILL BE THINGS WHICH ARE FAVORABLE TO HIM SO THAT THE JURY
17 WOULD NOT GIVE HIM THE ULTIMATE PENALTY OF DEATH. THINGS
18 ABOUT HIS BACKGROUND THAT YOU MUST CONSIDER: HIS AGE YOU MUST
19 CONSIDER, ABSENCE OF ANY CRIMINAL RECORD, IF ANY, THAT YOU
20 MUST CONSIDER AND HIS PHYSICAL AND MENTAL CONDITION AND HIS
21 BACKGROUND AND CHARACTER, THOSE ARE THINGS YOU HAVE TO
22 CONSIDER WHICH MIGHT BE FAVORABLE TO HIM.

1 THE PROSECUTION WILL HAVE A RIGHT TO SHOW TESTIMONY
2 WHICH WOULD BE UNFAVORABLE TOWARD THE DEFENDANT. WE CALL IT
3 AGGRAVATING CIRCUMSTANCES. THE JURY HEARS ALL OF THAT.

4 BUT BEFORE THEY HEAR ALL OF THAT, THEY CAN'T MAKE
5 UP THEIR MINDS AS TO THE PENALTY. THEY CAN'T MAKE UP THEIR
6 MINDS THEN.

7 THEN, THEY RETIRE AND DELIBERATE AND COME IN WITH
8 A VERDICT, WHATEVER IT MAY BE. NOW, WHEN I TALKED ABOUT THE
9 DEATH PENALTY, IT HAS TWO ASPECTS. ONE IS LIFE WITHOUT
10 POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER. DO YOU
11 UNDERSTAND THAT?

12 MS. KAPES: YES.

13 THE COURT: OKAY. NOW, WHAT I WILL DO IS, ASK YOU FIVE
14 QUESTIONS. THOSE QUESTIONS WILL BE FOR THE PURPOSE OF
15 EXPLORING YOUR MIND AND ASCERTAINING WHAT YOUR FEELING IS AND
16 YOUR ATTITUDE IS TOWARD THE DEATH PENALTY. OKAY?

17 NOW, THE FIRST TWO QUESTIONS RELATE TO THE GUILT
18 PHASE OF THE CASE. DO YOU HAVE AN OPINION WHATEVER IT MAY
19 BE, AS TO THE DEATH PENALTY, WHICH WOULD PREVENT YOU FROM
20 IMPARTIALLY RENDERING A VERDICT AS TO THE GUILT OR THE
21 INNOCENCE OF THE DEFENDANT?

22 MS. KAPES: NO.

23 THE COURT: ALL RIGHT. AND DO YOU REMEMBER THE SECOND
24 PHASE OF THAT? IF YOU FIND THE DEFENDANT GUILTY OF MURDER
25 IN THE FIRST DEGREE, THEN THE SPECIAL CIRCUMSTANCES, IS IT
26 TRUE OR FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A
27 ROBBERY, APPLIES.

28 DO YOU HAVE ANY OPINION REGARDING THAT PHASE OF

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1 IT, WHICH WOULD IN ANY WAY, PREVENT YOU FROM MAKING A FINDING
2 ON THAT QUESTION?

3 MS. KAPES: NO.

4 THE COURT: ALL RIGHT. THE NEXT TWO QUESTIONS RELATE
5 TO THE PENALTY PHASE. WE ASSUME THAT THE JURY HAS FOUND HIM
6 GUILTY OF MURDER IN THE FIRST DEGREE AND IT WAS IN THE COURSE
7 OF A ROBBERY. NOW, THESE TWO QUESTIONS RELATE TO THE PENALTY
8 PHASE OF IT.

9 DO YOU HAVE SUCH AN OPINION WITH RESPECT TO THE
10 DEATH PENALTY, THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE FOR
11 THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE THAT MAY BE
12 PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

13 MS. KAPES: NO.

14 THE COURT: ALL RIGHT. AND THE SAME THING. DO YOU HAVE
15 SUCH AN OPINION CONCERNING THE DEATH PENALTY, THAT YOU WOULD
16 AUTOMATICALLY VOTE FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE,
17 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED IN THE PENALTY
18 PHASE OF THE TRIAL?

19 MS. KAPES: NO.

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

25 MS. KAPES: YES.

26 MR. BARENS: GOOD MORNING, MS. KAPES. I AM ARTHUR BARENS.
27 I REPRESENT THE DEFENDANT, JOE HUNT.

28 MS. KAPES: HOW DO YOU DO.

1 MR. BARENS: IT IS MY OBLIGATION TO ASK YOU YOUR
2 POINT OF VIEW ABOUT THE DEATH PENALTY AT THIS POINT. PLEASE
3 UNDERSTAND THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO MY
4 QUESTIONS.

5 NO ONE IS JUDGING YOUR ANSWERS BECAUSE YOU CAN'T
6 BE WRONG IN YOUR OWN OPINION. WHAT IS YOUR OPINION ABOUT THE
7 APPROPRIATENESS OF THE DEATH PENALTY AS A GENERAL PROPOSITION
8 IN OUR SOCIETY?

9 MS. KAPES: I FEEL THAT IT IS CORRECT IN CERTAIN CASES.

10 MR. BARENS: COULD YOU HELP ME UNDERSTAND WHAT YOU MEAN
11 BY "CERTAIN CASES"?

12 MS. KAPES: THEY HAVE TO BE VERY EXTREME, SOMETHING THAT
13 I FEEL WOULD BE VERY VIOLENT, THOUGHT OUT PERHAPS OR IN A
14 VIOLENT ACT, PREMEDITATED.

15 MR. BARENS: OKAY. WOULD YOU FEEL THAT IN EVERY CASE
16 WHERE YOU HAD SOMEONE COMMIT A VIOLENT MURDER THAT WAS
17 PREMEDITATED AND INTENTIONAL, THAT THE ONLY APPROPRIATE PENALTY
18 WE SHOULD GIVE A DEFENDANT IN THAT INSTANCE, WOULD BE THE DEATH
19 PENALTY?

20 MS. KAPES: NOT NECESSARILY. NOT NECESSARILY. I FEEL
21 THAT I WOULD HAVE TO KNOW ALL OF IT TO UNDERSTAND IT.

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1 MR. BARENS: BY "ALL OF IT" DO YOU MEAN YOU WOULD HAVE
2 TO KNOW SOMETHING ABOUT THE BACKGROUND OF THE DEFENDANT, LIKE
3 WHETHER OR NOT HE HAD EVER COMMITTED A VIOLENT ACT BEFORE OR
4 HIS AGE AT THE TIME THE CRIME WAS COMMITTED OR SOMETHING ABOUT
5 HIS CHARACTER?

6 MS. KAPES: THAT, OF COURSE.

7 MR. BARENS: JUST BECAUSE A MAN HAD COMMITTED LET'S SAY --
8 AND I AM JUST SPECULATING HYPOTHETICALLY OR PHILOSOPHICALLY
9 WITH YOU NOW, JUST BECAUSE THE INDIVIDUAL HAD IN YOUR MIND,
10 COMMITTED A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER,
11 ARE YOU SAYING THAT YOU WOULD HAVE TO CONSIDER OTHER FACTORS
12 BEFORE YOU COULD DECIDE WHETHER HE WOULD LIVE OR DIE?

13 MS. KAPES: THAT WOULD BE A PART OF MAKING MY DECISION.
14 THE CASE THAT WAS BEING TRIED WOULD HAVE TO BE THE MAIN REASON
15 FOR MY DECISION, EITHER WAY.

16 MR. BARENS: NOW, DO YOU UNDERSTAND THAT THE JUDGE HAS
17 EXPLAINED TO YOU, THAT WE'LL NEVER GET TO HAVING TO MAKE THAT
18 DECISION OR THIS EVALUATION UNLESS YOU HAVE FIRST BELIEVED
19 BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT COMMITTED A
20 FIRST DEGREE MURDER DURING THE COURSE OF A ROBBERY?

21 MS. KAPES: YES.

22 MR. BARENS: YOU WOULD ALREADY HAVE THAT STATE OF MIND?
23 YOU WOULD BELIEVE THAT THE PERSON HAD INTENTIONALLY AND
24 WITH PREMEDITATION, COMMITTED A MURDER DURING A ROBBERY?

25 MS. KAPES: YES.

26 MR. BARENS: NO ACCIDENT, NO JUSTIFICATION, NO NOTHING.
27 IT WAS JUST MURDER IN THE FIRST DEGREE.

28 MS. KAPES: YES.

1 MR. BARENS: KNOWING THAT, DO YOU BELIEVE YOU WOULD BE
2 CAPABLE STILL, OF VOTING FOR LIFE WITHOUT POSSIBILITY OF
3 PAROLE FOR THAT TYPE OF A PERSON?

4 MS. KAPES: YES.

5 MR. BARENS: YOU COULD?

6 MS. KAPES: YES.

7 MR. BARENS: NOW, YOU UNDERSTAND THAT THIS IS A DECISION
8 FOR YOU AS AN INDIVIDUAL JUROR, IF YOU ARE SELECTED, TO MAKE?
9 IT IS NOT SOMETHING THE LAW -- THE LAW NEVER SAYS ANYBODY HAS
10 TO DIE FOR ANY REASON. ONLY A JURY CAN DECIDE THAT.

11 MS. KAPES: YES.

12 MR. BARENS: DO YOU UNDERSTAND THAT?

13 MS. KAPES: YES.

14 MR. BARENS: OKAY. AND YOU UNDERSTAND THAT LIFE WITHOUT
15 POSSIBILITY OF PAROLE MEANS WHAT THE JUDGE SAID, HE ABSOLUTELY
16 NEVER GETS OUT?

17 MS. KAPES: YES.

18 MR. BARENS: OKAY. HAVE YOU ALWAYS FELT PRETTY MUCH
19 THE SAME ABOUT THE DEATH PENALTY?

20 MS. KAPES: NO.

21 MR. BARENS: DID SOMETHING OCCUR THAT CHANGED YOUR MIND
22 ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY?

23 MS. KAPES: YES, OVER THE YEARS. I HAVE REALIZED THAT
24 MY BELIEFS HAVE CHANGED. I DON'T KNOW AT WHAT POINT.

25 MR. BARENS: HOW HAVE YOUR BELIEFS CHANGED, MA'AM?

26 MS. KAPES: FROM NO DEATH PENALTY TO BELIEVING THAT THAT
27 IS AN ACCEPTABLE JUDGMENT, THAT DEATH AT SOME VERY SPECIAL
28 TIMES CAN BE ACCEPTABLE OR BE THE RIGHT DECISION.

1 MR. BARENS: WOULD YOU SAY THAT PERHAPS THE BEST LANGUAGE
2 WOULD BE THAT IT WOULD BE SOMETHING YOU COULD CONSIDER AS AN
3 ALTERNATIVE?

4 MS. KAPES: YES.

5 MR. BARENS: AND I THINK THAT IS ALL YOU ARE BEING ASKED
6 TO DO AS A JUROR ON THIS CASE, IS DETERMINE WHETHER YOU COULD
7 CONSIDER BOTH ALTERNATIVES, LIFE WITHOUT POSSIBILITY OF PAROLE
8 OR DEATH, WITH AN EQUALLY OPEN MIND.

9 NOW, DO YOU UNDERSTAND THAT ALTHOUGH WE ARE HERE
10 TALKING TO YOU ABOUT YOUR POINT OF VIEW ON THE DEATH PENALTY
11 AND THE JUDGE DID AND THE PROSECUTOR WILL, THAT THERE IS NO
12 REASON FOR YOU TO BELIEVE, BECAUSE WE ARE HERE HAVING THIS
13 DISCUSSION, THAT JOE HUNT HAS DONE ANYTHING WRONG?

14 MS. KAPES: SORRY. REPEAT THAT.

15 MR. BARENS: DO YOU UNDERSTAND THAT ALTHOUGH THE JUDGE
16 AND MYSELF AND MR. WAPNER MOMENTARILY, ARE ASKING YOU ABOUT
17 YOUR POINT OF VIEW AS TO THE DEATH PENALTY, THAT FROM THAT,
18 THERE IS NO REASON FOR YOU TO BELIEVE MR. HUNT HAS DONE ANY-
19 THING WRONG?

20 MS. KAPES: YES.

21 MR. BARENS: YOU DON'T BELIEVE BECAUSE WE ARE HAVING
22 THIS DISCUSSION, OR DO YOU, THAT HE MUST HAVE DONE SOMETHING
23 WRONG OR WE WOULDN'T BE HERE TALKING TO BEGIN WITH?

24 MS. KAPES: ARE YOU REALLY ASKING MY OPINION AT THIS
25 TIME?

26 MR. BARENS: QUITE SO, JUST YOUR OPINION.

27 MS. KAPES: NO. I AM SAYING, YOU ARE NOT ASKING ME
28 SPECIFICALLY FOR THAT? YOU ARE ASKING ME MY OPINION ON THIS?

1 IS THAT WHAT YOU ARE ASKING ME, JUST SO I UNDERSTAND? WE ARE
2 NOT DISCUSSING THIS CASE? WE ARE DISCUSSING ME?

3 MR. BARENS: RIGHT.

4 MS. KAPES: I UNDERSTAND THAT.

5 MR. BARENS: AND WOULD YOU NOT EQUATE THE FACT THAT HE
6 IS CHARGED WITH MURDER, WITH THE FACT THAT HE IS GUILTY OF
7 ANYTHING? WOULD YOU?

8 MS. KAPES: NO, SIR.

9 MR. BARENS: ALL RIGHT. THERE IS A DIFFERENCE BETWEEN
10 BEING CHARGED WITH SOMETHING AND SOMETHING BEING PROVED?

11 MS. KAPES: I UNDERSTAND.

12 MR. BARENS: ALL RIGHT. THANK YOU VERY MUCH. I PASS
13 FOR CAUSE, YOUR HONOR.

14 THE COURT: ALL RIGHT.

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1 THE COURT: ALL RIGHT.

2 MR. WAPNER: GOOD MORNING, MRS. KAPES.

3 MS. KAPES: GOOD MORNING.

4 MR. WAPNER: I AM FRED WAPNER.

5 MS. KAPES: HOW DO YOU DO?

6 MR. WAPNER: I'M THE DEPUTY DISTRICT ATTORNEY WHO IS
7 PROSECUTING THIS CASE.

8 I KNOW YOU CAN'T EXACTLY QUANTIFY WHEN YOU CHANGED
9 YOUR OPINION ON THE DEATH PENALTY.

10 DO YOU HAVE ANY IDEA HOW LONG OR HOW MANY YEARS
11 YOU FELT THAT WE SHOULDN'T HAVE IT AND FOR HOW MANY YEARS
12 YOU FELT THAT IT IS ACCEPTABLE UNDER CERTAIN CIRCUMSTANCES?

13 MS. KAPES: AS A YOUNG WOMAN, I REMEMBER QUITE CLEARLY
14 BEING AGAINST THE DEATH PENALTY.

15 I REALLY COULDN'T TELL YOU. OVER THE YEARS IT
16 SEEMED ON AN INDIVIDUAL BASIS IF I WOULD HEAR OF A PARTICULAR
17 CRIME THAT WAS COMMITTED, THAT I WOULD HAVE DOUBTS AND THEN
18 IN THE LAST FEW YEARS, I WOULD SAY I HAVE BECOME AWARE THAT
19 MY FEELINGS HAD CHANGED AND THAT NOW I FEEL AT TIMES WHEN
20 I HEAR OF A CRIME, WELL PUBLICIZED THAT MY OPINIONS ARE FOR
21 THE DEATH PENALTY FOR THAT PARTICULAR CRIME, THAT IT IS
22 CORRECT AS FOR THE DEATH PENALTY.

23 HOW MANY YEARS, I COULDN'T TELL YOU, SIR.

24 MR. WAPNER: OKAY.

25 MS. KAPES: THERE ARE MANY YEARS IN BETWEEN THAT I DON'T
26 THINK I WAS AWARE EITHER WAY, PAID MUCH ATTENTION.

27 MR. WAPNER: OKAY.

28 MS. KAPES: I AM SORRY.

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1 MR. WAPNER: I THINK I UNDERSTAND. I DON'T NEED TO
2 KNOW EXACTLY THE NUMBER OF YEARS.

3 MS. KAPES: I COULDN'T TELL.

4 MR. WAPNER: I WANT TO TAKE IT OUT OF THE ARENA OF THE
5 PAPERS AND THINKING ABOUT IT IN THEORY AND BRING IT DOWN TO
6 WHAT YOU MIGHT ACTUALLY BE FACED WITH IN THIS CASE IF YOU
7 ARE A JUROR AND THAT IS, YOU MIGHT BE CALLED UPON TO MAKE
8 THE DECISION AS TO WHETHER OR NOT THE DEFENDANT SHOULD LIVE
9 OR WHETHER HE SHOULD DIE; DO YOU UNDERSTAND THAT?

10 MS. KAPES: YES.

11 MR. WAPNER: IS THAT A DECISION YOU THINK YOU CAN MAKE?

12 MS. KAPES: YES.

13 MR. WAPNER: I REALIZE IT IS A VERY, VERY DIFFICULT
14 DECISION TO PUT ANYONE IN BUT IF YOU ARE ON THE JURY AND YOU
15 DECIDE LATER THAT YOU CAN'T MAKE THAT DECISION, IT IS TOO
16 LATE TO TELL US ABOUT IT.

17 MS. KAPES: I UNDERSTAND.

18 MR. WAPNER: ALL RIGHT. DO YOU HAVE ANY STRONGLY-HELD
19 RELIGIOUS OR MORAL BELIEFS THAT YOU THINK WOULD AFFECT YOUR
20 ABILITY TO RENDER A VERDICT ON A CASE THAT INVOLVES THE DEATH
21 PENALTY?

22 MS. KAPES: I DO.

23 MR. WAPNER: WOULD YOU TELL US ABOUT THAT?

24 MS. KAPES: I FEEL THAT IT IS WRONG TO TAKE A HUMAN
25 LIFE, THAT -- THAT TO HOLD THAT RESPONSIBILITY IN SUCH A CASE
26 IS TO DO IT WITH A VERY CLEAR CONSCIENCE AND TO BE VERY, VERY
27 SURE THAT IT IS THE ONLY THING, THE ONLY DECISION TO BE MADE
28 BEYOND A REASONABLE DOUBT WITHIN MYSELF, AND I ALSO REALIZE

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1 THAT IT IS A TREMENDOUS RESPONSIBILITY BUT ONE THAT I FEEL,
2 IF I AM CALLED UPON, I MUST MAKE, BUT IT IS SOMETHING THAT
3 I WOULD HAVE TO DO UNDER -- WITH TREMENDOUS CARE TO THE VERY
4 BEST OF MY ABILITY.

5 MR. WAPNER: ABSOLUTELY. AND NEITHER SIDE WOULD WANT
6 ANYTHING LESS --

7 MS. KAPES: YES.

8 MR. WAPNER: -- FROM YOU.

9 THE REAL QUESTION IS THAT I WOULD LIKE YOU TO
10 SEARCH YOURSELF AND BE ABLE TO ANSWER IS, WHEN IT GETS DOWN
11 TO THE NITTY-GRITTY AND YOU ARE IN THE JURY ROOM, DO YOU THINK
12 THAT YOUR BELIEF THAT IT IS WRONG TO TAKE A HUMAN LIFE WOULD
13 OVERRIDE YOU AS A JUROR TO BE ABLE TO RENDER A DEATH VERDICT
14 IF YOU FOUND THE FACTS AND THE LAW JUSTIFIED IT?

15 MS. KAPES: I DON'T THINK SO, SIR.

16 THE COURT: WHAT?

17 MS. KAPES: I DON'T THINK -- BELIEVE THAT THAT WOULD
18 BE THE CASE. IT WOULD NOT OVERRIDE ME, YOU KNOW, MY FEELING
19 OF HAVING TAKEN A LIFE. IN OTHER WORDS, I WOULD NOT SHIRK
20 MY RESPONSIBILITY AS I SAW FIT WITH A CLEAR CONSCIENCE TO
21 SAY THAT A DEATH PENALTY SHOULD BE RENDERED.

22 MR. WAPNER: AND SO IF YOU FELT THAT THAT WAS THE
23 APPROPRIATE VERDICT AND YOU VOTED FOR THAT VERDICT ALONG WITH
24 11 OTHER PEOPLE, YOU COULD LIVE WITH YOURSELF AFTERWARDS?

25 MS. KAPES: I PRAY SO. I -- I PRAY SO, THAT I WILL
26 HAVE DONE IT BECAUSE I HAVE SEARCHED MY SOUL AND MY CONSCIENCE
27 AND THAT WAS THE ONLY RIGHT DECISION TO MAKE.

28 I CAN'T TELL YOU, SIR. THAT IS THE BEST I CAN

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1 TELL YOU.

2 I HAVE THOUGHT OF IT VERY -- A LOT SINCE I WAS
3 TOLD THAT I MIGHT SERVE AND I BELIEVE THAT I WOULD BE ABLE
4 TO SAY YES TO THE DEATH PENALTY.

5 I AM NOT SURE HOW ELSE TO TELL YOU BECAUSE I CAN'T
6 TELL YOU.

7 MR. WAPNER: YOUR HONOR, I HAVE A FEW OTHER QUESTIONS
8 FOR THIS JUROR BUT CONSIDERING THE HOUR --

9 THE COURT: WELL, LET'S GET FINISHED WITH THE QUESTIONS.

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1 MR. WAPNER: I WANT TO TAKE YOU AWAY FROM THE PENALTY
2 PHASE OF THE CASE FOR A MOMENT AND GET INTO THE GUILT PHASE.

3 WHEN YOU ARE DECIDING THE QUESTION OF GUILT OR
4 INNOCENCE, THE LAW REQUIRES THE PROSECUTION TO PROVE THE
5 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT; WOULD YOU REQUIRE
6 MORE PROOF THAN THAT BECAUSE YOU KNOW THAT YOU MIGHT BE CALLED
7 ON TO DECIDE THE QUESTION OF THE DEATH PENALTY SOMEWHERE DOWN
8 THE LINE?

9 MS. KAPES: I HAVE A QUESTION ON THAT. HOW CAN I POSSIBLY
10 ASK FOR MORE THAN YOU GIVE ME?

11 MR. WAPNER: ALL I AM SAYING -- YOU CAN ALWAYS ASK FOR
12 MORE THAN I GIVE YOU BUT BY THE TIME YOU ARE ASKING, IT IS
13 GOING TO BE TOO LATE BECAUSE YOU WILL ALREADY BE IN THE JURY
14 ROOM AND I WON'T BE ABLE TO GIVE YOU ANY MORE.

15 BUT WHAT I AM SAYING IS THE JUDGE WILL TELL YOU
16 THAT THE PROSECUTION IS REQUIRED TO PROVE THE CASE BEYOND
17 A REASONABLE DOUBT; DO YOU UNDERSTAND THAT?

18 MS. KAPES: YES, SIR.

19 MR. WAPNER: OKAY, PUT YOURSELF IN THIS SITUATION: YOU
20 ARE DECIDING A MURDER CASE AND YOU NEVER DID HEAR ANY OF THIS
21 STUFF ABOUT THE DEATH PENALTY AND AS FAR AS YOU KNOW, THERE
22 IS NO QUESTION OF THE DEATH PENALTY AND SO YOU ARE IN THE
23 JURY ROOM AND YOU ARE DECIDING A MURDER CASE AND YOU HAVE
24 HAVE DECIDED AFTER CAREFUL DELIBERATION THAT THE EVIDENCE
25 PROVES THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND
26 YOU ARE JUST ABOUT TO RENDER YOUR VERDICT AND SOMEONE COMES
27 INTO THE JURY ROOM AND SAYS "NOW LET ME JUST ADD THIS ONE
28 ADDITIONAL FACT, THIS IS GOING TO BE A DEATH PENALTY CASE,"

11A-2
1 WOULD THAT CHANGE YOUR MIND ABOUT THE AMOUNT OF PROOF?

2 MS. KAPES: NO.

3 MR. WAPNER: YOU WOULDN'T REQUIRE ANY MORE PROOF JUST
4 BECAUSE WE ARE TALKING ABOUT THE DEATH PENALTY?

5 MS. KAPES: NO.

6 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT, BOTH ATTORNEYS HAVE PASSED FOR
9 CAUSE AND THAT MEANS THAT THEY FEEL AND I FEEL THAT YOU ARE
10 QUALIFIED TO SIT AS A TRIAL JUROR IN THIS CASE.

11 MS. KAPES: I SEE.

12 THE COURT: WHAT I WILL ASK YOU TO DO IS TO COME BACK
13 AT 1:45 IN THE JURY ASSEMBLY ROOM. GO INTO THE JURY ASSEMBLY
14 ROOM AND I WILL HAVE YOU ALL BACK HERE AND I WILL GIVE YOU
15 FURTHER INSTRUCTIONS AS TO WHAT TO DO, ALL RIGHT?

16 MS. KAPES: THANK YOU.

17 THE COURT: BY THE WAY, I DID ASK YOU WHETHER YOU HAVE
18 READ OR HEARD ANYTHING AT ALL ABOUT THE CASE AND YOU SAID
19 NO.

20 MS. KAPES: I DID NOT, NO.

21 THE COURT: ALL RIGHT, THANK YOU.

22 MS. KAPES: THANK YOU.

23 (PROSPECTIVE JUROR KAPES EXITED THE
24 COURTROOM.)

25 THE COURT: WE HAVE GOT 16 MORE PROSPECTIVE JURORS TO
26 QUESTION THIS AFTERNOON AND TOMORROW MORNING, I THINK WE CAN
27 FINISH WITH THAT NUMBER, CAN'T WE, DO YOU THINK?

28 MR. BARENS: I BELIEVE SO, YOUR HONOR.

1 MR. WAPNER: I THINK SO.

2 THE COURT: AND THEN AFTER THAT, WE WILL GET ALL OF
3 THE JURORS BACK IN. I WILL TELL THEM THAT WE EXPECT TO FINISH
4 BY TOMORROW AFTERNOON AND HAVE THEM COME BACK AT 1:45 TOMORROW
5 AFTERNOON.

6 MR. BARENS: YES.

7 COULD I ASK A PROCEDURAL QUESTION, YOUR HONOR?

8 THE COURT: YES.

9 MR. BARENS: WE HAD, AS I RECALL, TEN OR ELEVEN
10 PROSPECTIVE JURORS LEFT FROM THE PRIOR PANEL PRIOR TO THE
11 HOLIDAY RECESS. THE DEFENSE WOULD PRESUME THAT WE WOULD
12 PROCEED WITH THOSE TEN OR ELEVEN.

13 THE COURT: I THINK THAT THAT WOULD BE THE DESIRABLE
14 THING TO DO FOR THIS REASON: THEY HAVE SAT THROUGH ALL OF
15 THE ENTIRE TRIAL AND WE DON'T NEED TO GO THROUGH THE WHOLE
16 QUESTIONING WITH THEM AGAIN. WE WILL ASK THEM WHETHER OR
17 NOT THEY HAVE HEARD ALL OF THE QUESTIONS AND ANSWERS AS THEY
18 WERE SEATED HERE ALREADY.

19 MR. BARENS: I THINK IT WOULD BE BETTER TO ASK THEM
20 FIRST. THANK YOU VERY MUCH.

21 THE COURT: WE WILL SELECT FROM THAT NUMBER FIRST.

22 MR. BARENS: BECAUSE, OBVIOUSLY, I THINK, YOUR HONOR
23 WOULD AGREE, IT COULD SAVE US A LOT OF TIME BECAUSE WE HAVE
24 MORE QUALIFIED PROSPECTIVE JURORS.

25 THE COURT: THE REMAINING JURORS WILL BECOME THEMSELVES
26 EDUCATED DURING THE COURSE OF THAT EDUCATION.

27 MR. BARENS: ONE HOPES, YOUR HONOR.

28 THE COURT: ALL RIGHT. DO YOU WANT THOSE ORDERS THAT

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I HAVE SIGNED?

MS. BARENS: YES, WE DO.

(AT 12:06 P.M. A RECESS WAS TAKEN UNTIL
1:45 P.M. OF THE SAME DAY.)

12

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, JANUARY 7, 1986; 1:50 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: IT WILL BE STIPULATED THE DEFENDANT IS
6 PRESENT. COUNSEL ARE PRESENT. I BET ALL OF YOU WON'T BE
7 SURPRISED IF I TELL YOU THAT WE HAVE NOT FINISHED GOING
8 THROUGH THE NEW JURORS. I KNOW IT IS A SURPRISE TO YOU.

9 WELL, WE HAVE TO ANTICIPATE THAT WE WILL PROBABLY
10 FINISH BY TOMORROW AFTERNOON. BUT TO BE ON THE SAFE SIDE,
11 WHAT WE WILL DO IS TO ASK ALL OF YOU PRESENTLY SEATED IN THE
12 JURY BOX AND ALL OF THE OLD ONES AND ALL OF THE NEW ONES AS
13 A MATTER OF FACT, ALL OF YOU COME BACK. WE WILL SURELY BE
14 READY FOR YOU MONDAY MORNING. THAT WILL BE MONDAY MORNING
15 AT 10:30. ALL OF YOU PLEASE BE IN THE JURY ASSEMBLY ROOM READY
16 TO PROCEED IN THIS CASE. SORRY ABOUT THAT.

17 HAVE A VERY PLEASANT WEEKEND. I AM SORRY THAT
18 IT HAS BEEN EXTENDED AS MUCH AS IT HAS. THOSE ARE THE
19 FORTUNES OF WAR.

20 ALL RIGHT. THANK YOU VERY MUCH FOR BEING HERE.
21 WE WILL SEE YOU AT 10:30 NEXT MONDAY MORNING.

22 (PROSPECTIVE JURORS EXIT THE COURTROOM.)
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1 THE COURT: ALL RIGHT, NOW THERE IS A NOTE BY MRS. CRAMER.
2 DO YOU MIND IF I SHOW IT TO COUNSEL?

3 MS. CRAMER: NO. OH, NO, I DON'T.

4 THE COURT: AS I HAVE TO GET THEIR APPROVAL.

5 (NOTE HANDED TO COUNSEL BY THE CLERK.)

6 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

7 THE COURT: ALL RIGHT, THANK YOU, MRS. CRAMER, THANK
8 YOU VERY MUCH. BY CONSENT OF BOTH COUNSEL --

9 MS. CRAMER: I AM SORRY TO INCONVENIENCE ALL OF YOU.

10 THE COURT: THANK YOU VERY MUCH. YOU ARE EXCUSED.

11 THE CLERK: WAS SHE EXCUSED?

12 THE COURT: YES.

13 MR. WAPNER: THE RECORD WOULD REFLECT SHE IS EXCUSED
14 BY STIPULATION OF THE PARTIES?

15 THE COURT: YES. THAT IS ELEANOR CRAMER.

16 MR. WAPNER: AND THE NOTE SHE SUBMITTED WILL BE PART
17 OF THE RECORD?

18 THE COURT: WE REALLY DON'T HAVE TO. I WOULD RATHER
19 NOT HAVE IT.

20 MR. WAPNER: ALL RIGHT.

21 MR. BARENS: I WOULD STIPULATE IT NOT BE A PART OF THE
22 RECORD.

23 THE COURT: ALL RIGHT.

24 (PROSPECTIVE JUROR KEENAN ENTERED

25 THE COURTROOM.)

26 THE COURT: THAT IS MRS. KEENAN, IS IT?

27 MS. KEENAN: MISS.

28 THE COURT: MISS KEENAN, WHERE DO YOU LIVE?

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1 MS. KEENAN: EL SEGUNDO.

2 THE COURT: HAVE YOU EVER READ OR HEARD ANYTHING ABOUT
3 THIS CASE, EXCEPT WHAT YOU HAVE HEARD HERE IN COURT?

4 MS. KEENAN: I DON'T -- THE NAME IS NOT FAMILIAR TO
5 ME.

6 THE COURT: THE NAME BILLIONAIRE BOYS CLUB, DOES THAT
7 HAVE ANY SIGNIFICANCE?

8 MS. KEENAN: YES, I HAVE READ ABOUT THAT.

9 THE COURT: YOU READ ABOUT THAT?

10 WHAT HAVE YOU READ ABOUT IT?

11 MS. KEENAN: LET'S SEE, THERE WERE A GROUP OF YOUNG
12 MEN. I DON'T REMEMBER ANY NAMES. AND THEY HAD SOME MONEY
13 OF THEIR OWN. I THINK THEY MET IN PREP SCHOOL AND ONE OF
14 THE YOUNG MEN WAS ABLE TO PERSUADE HIS FRIENDS AND THEIR
15 PARENTS TO INVEST MONEY WITH HIM.

16 APPARENTLY IN THE BEGINNING, IT WAS QUITE A
17 SUCCESSFUL OPERATION. THEN IT BEGAN TO LOSE MONEY AND SOME
18 GUY WHO WAS INVOLVED IN IT, WHO APPARENTLY WAS A CON MAN,
19 WAS ALLEGEDLY KILLED. NO BODY.

20 THERE WAS A LIST OF THINGS TO DO FOUND WITH THE
21 GUY WHO IS ACCUSED OF THE MURDER.

22 SOME PEOPLE IN ARIZONA CLAIMED TO HAVE SEEN THE
23 GUY THAT IS DEAD.

24 AND IT WAS DONE IN ORDER TO EXTORT MONEY FROM
25 THE VICTIM.

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1 THE COURT: THEY SAID THAT -- THEY CLAIMED THEY SAW
2 THE MAN WHO WAS KILLED SUPPOSEDLY?

3 MS. KEENAN: RIGHT. I READ THAT, TOO.

4 THE COURT: WHAT ELSE?

5 MS. KEENAN: LET'S SEE. WHERE DID I STOP? THE MURDER
6 WAS ALLEGEDLY DONE TO EXTORT MONEY FROM THE VICTIM. I DON'T
7 KNOW WHETHER HE HAD MONEY OR NOT. IT SEEMS TO ME THAT I READ
8 HE WAS A CON MAN.

9 THEN, I HAVE ALSO READ THERE WAS ANOTHER MURDER
10 IN NORTHERN CALIFORNIA, AN IRANIAN WHOSE SON, APPARENTLY,
11 WAS IN THE BILLIONAIRE BOYS CLUB. THERE IS A BODY CONNECTED
12 WITH THAT.

13 I DON'T THINK I KNOW ANY MORE. I THINK THAT IS
14 QUITE A BIT. BUT THAT IS ALL I KNOW.

15 THE COURT: HAVING READ ALL OF THAT, HAVE YOU MADE UP
16 YOUR MIND AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT WHO
17 IS CHARGED WITH THE MURDER OF LEVIN, WHOSE BODY HAS NOT BEEN
18 FOUND?

19 MS. KEENAN: NO.

20 THE COURT: YOU WOULD KEEP AN OPEN MIND?

21 MS. KEENAN: YES.

22 THE COURT: YOU KNOW THAT MANY TIMES YOU READ THINGS
23 IN THE NEWSPAPERS AND SOMETIMES IT MAY BE RIGHT BUT MANY TIMES
24 IT MAY BE WRONG. SO THEREFORE, YOU CAN'T FORM ANY IMPRESSION
25 OR REACH ANY CONCLUSION FROM WHAT YOU HEAR.

26 THE NEWSPAPER IS LIKE ANYTHING ELSE. THEY SELL
27 TO MAKE MONEY. SO THE MORE SENSATIONAL IT IS, THE MORE
28 PAPERS THEY CAN SELL. DO YOU UNDERSTAND THAT?

1 IT IS NOT THAT IT MEANS THAT EVERYTHING THAT IS
2 PRINTED IN THE NEWSPAPER IS WRONG OR FALSE. BUT SOMETIMES
3 IT CAN BE WRONG.

4 MAYBE SOME OF THE FACTS WHICH WERE GIVEN, WERE
5 PROBABLY NOT RIGHT, ANYHOW. SO, YOU FORGET EVERYTHING THAT
6 YOU READ, WILL YOU?

7 DO YOU THINK YOU CAN CLEANSE YOUR MIND OF THAT
8 SORT OF THING AND JUST HEAR THE EVIDENCE IN THIS CASE?

9 MS. KEENAN: I BELIEVE SO. I MEAN, I COULD CERTAINLY
10 TRY. I DON'T KNOW WHETHER IT IS ACTUALLY POSSIBLE TO FORGET
11 EVERYTHING YOU HAVE READ.

12 THE COURT: BUT, IF YOU I ASKED YOU TO, WOULD YOU TRY?

13 MS. KEENAN: I WOULD TRY.

14 THE COURT: AS MUCH AS IT IS HUMANLY POSSIBLE FOR YOU
15 TO DO SO?

16 MS. KEENAN: YES.

17 THE COURT: ALL RIGHT. NOW THEN, YOU KNOW WHAT THE
18 DEFENDANT HERE, IS ACCUSED OF, IS COMMITTING A MURDER. IT
19 IS FIRST DEGREE MURDER BECAUSE IT WAS COMMITTED DURING THE
20 COURSE OF A ROBBERY. AS I TOLD THE JURORS ON MONDAY, COMMITTED
21 IN THE COURSE OF A ROBBERY HAS A SPECIAL SIGNIFICANCE BECAUSE
22 THE LEGISLATURE SAID IN CERTAIN TYPES OF MURDERS WHERE THERE
23 ARE SPECIAL CIRCUMSTANCES ATTACHED TO THOSE MURDERS, THAT
24 THOSE PARTICULAR MURDERS ARE QUALIFIED FOR A POSSIBLE DEATH
25 PENALTY.

26 NOW FOR EXAMPLE, I GAVE YOU INSTANCES OF MURDER
27 IN THE FIRST DEGREE COMMITTED DURING THE COURSE OF A ROBBERY,
28 IS ONE. A BURGLARY, KIDNAPPING, A RAPE, MULTIPLE MURDERS

1 OR WHERE A CHILD IS MOLESTED AND DIES AS A RESULT, MULTIPLE
2 MURDERS AS I SAID AND ALL OF THOSE QUALIFY FOR THE DEATH PENALTY.

3 SO THAT THE JURY IN THIS PARTICULAR CASE WOULD
4 FIRST, HAVE TO DECIDE THE GUILT OR INNOCENCE OF THE DEFENDANT,
5 WAS HE GUILTY OF MURDER IN THE FIRST DEGREE. AND IF THEY
6 SAY NO, THAT IS THE END OF THE CASE.

7 IF THEY SAY YES, THEN THEY HAVE A FURTHER QUESTION
8 TO ANSWER, WAS THAT MURDER COMMITTED IN THE COURSE OF A
9 ROBBERY. IS IT TRUE OR FALSE IT WAS COMMITTED IN THE COURSE
10 OF A ROBBERY. THAT IS KNOWN AS THE SPECIAL CIRCUMSTANCES.

11 IF THEY SAY YES, THEN WE START THE SECOND PHASE
12 OF THE TRIAL, WHICH IS KNOWN AS THE PENALTY PHASE. AND IN
13 THE PENALTY PHASE, YOU HEAR NEW EVIDENCE PRESENTED BY BOTH
14 SIDES. THE PURPOSE OF THAT EVIDENCE IS SO THAT YOU CAN CONSIDER
15 FACTORS, LIKE BOTH SIDES WILL INTRODUCE EVIDENCE -- FACTORS
16 SUCH AS THE AGE OF THE DEFENDANT, THE LACK OF OR PRESENCE
17 OF ANY CRIMINAL ACTIVITY IN HIS PAST, HIS CHARACTER, HIS
18 BACKGROUND, HIS PHYSICAL AND MENTAL CONDITION, ANYTHING THAT
19 HAS TO DO WITH HIS PERSONNA.

20 EVERYTHING THAT MAY BE FAVORABLE TO HIM, HE WILL
21 INTRODUCE TESTIMONY ABOUT IT. IN OTHER WORDS, THAT IS TO
22 GET THE JURY TO GIVE HIM THE LESSER OF THE TWO PENALTIES.

23 ON THE OTHER HAND -- WELL, THAT IS CALLED
24 EXTENUATING OR MITIGATING CIRCUMSTANCES. ON THE OTHER HAND,
25 THE PEOPLE WILL ATTEMPT TO SHOW UNFAVORABLE ASPECTS OF HIM,
26 THINGS BAD ABOUT HIM IN ORDER TO MAXIMIZE HIS GUILT, SO TO
27 SPEAK, TO GET THE MAXIMUM PENALTY PERMITTED.

1 AS I TOLD YOU, THE PENALTY IS ONE OF TWO: LIFE
2 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND THAT MEANS
3 EXACTLY THAT. NO POSSIBILITY OF PAROLE AND HE STAYS IN PRISON
4 FOR THE REST OF HIS LIFE.

5 OR DEATH IN THE GAS CHAMBER.

6 THAT IS SOMETHING WHICH IS ENTIRELY WITHIN THE
7 PROVINCE OF THE JURY TO DETERMINE BECAUSE, AS YOU KNOW, AS
8 THE DEFENDANT SITS THERE NOW HE IS PRESUMED TO BE INNOCENT.
9 HE IS PRESUMED TO HAVE DONE NOTHING AND HE IS INNOCENT OF ANY
10 CRIME UNTIL THE CONTRARY IS PROVED BEYOND A REASONABLE DOUBT
11 AND THAT IS THE OBLIGATION OF THE PEOPLE; DO YOU UNDERSTAND
12 THAT?

13 MS. KEENAN: I DO.

14 THE COURT: ALL RIGHT, NOW WHAT WE ARE HERE FOR PRINCIPALLY
15 IS TO -- NOT ENTIRELY -- TO EXPLORE YOUR MIND TO DETERMINE
16 WHAT YOUR ATTITUDES AND FEELINGS ARE ABOUT THE DEATH PENALTY,
17 TO SEE WHETHER OR NOT YOU CAN QUALIFY AS A JUROR ON A DEATH
18 PENALTY CASE.

19 I WILL ASK YOU FIVE QUESTIONS. THE FIRST TWO
20 QUESTIONS ARE REALLY ON THE GUILT PHASE OF THE TRIAL.

21 NOW, DO YOU HAVE ANY OPINION REGARDING THE DEATH
22 PENALTY, WHATEVER IT MAY BE, WHICH WILL PREVENT YOU FROM
23 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF
24 THE DEFENDANT?

25 MS. KEENAN: NO.

26 THE COURT: AND THE NEXT ONE IS, IF HE IS FOUND GUILTY
27 OF MURDER IN THE FIRST DEGREE, THEN THE JURY IS TO DETERMINE
28 IS IT TRUE OR FALSE THAT IT WAS IN THE COURSE OF A ROBBERY.

1 NOW THE SAME THING: HAVE YOU ANY OPINION REGARDING
2 THE DEATH PENALTY WHICH WOULD PREVENT YOU FROM MAKING AN
3 IMPARTIAL DECISION CONCERNING THE TRUTH OR FALSITY OF THE
4 SPECIAL CIRCUMSTANCE?

5 MS. KEENAN: NO.

6 THE COURT: NOW, THE NEXT HAVE TO DO WITH THE PENALTY.
7 WE ASSUME THAT HE HAS BEEN FOUND GUILTY OF MURDER IN THE FIRST
8 DEGREE AND IT WAS IN THE COURSE OF A ROBBERY AND NOW WE ARE
9 ON THE PENALTY PHASE: DO YOU HAVE ANY OPINION CONCERNING THE
10 DEATH PENALTY THAT WOULD CAUSE YOU TO AUTOMATICALLY VOTE TO
11 IMPOSE THE DEATH PENALTY, REGARDLESS OF THE EVIDENCE THAT MAY
12 BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

13 MS. KEENAN: NO.

14 THE COURT: I EXPLAINED TO YOU WHAT THE PENALTY PHASE
15 IS, BOTH SIDES INTRODUCE EVIDENCE, BOTH ON THE GOOD SIDE AND
16 ON THE BAD SIDE.

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

22 MS. KEENAN: NO.

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

27 MS. KEENAN: YES.

28 THE COURT: VERY GOOD.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 GOOD AFTERNOON, MISS KEENAN.

3 MS. KEENAN: HI.

4 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
5 DEFENDANT, JOE HUNT AND, AS WITH HIS HONOR, IT IS MY
6 OPPORTUNITY AT THIS STAGE TO ASK YOU QUESTIONS ABOUT THE DEATH
7 PENALTY OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.
8 THERE ARE NO RIGHT OR WRONG ANSWERS TO ANY OF OUR QUESTIONS
9 BECAUSE NO ONE IS JUDGING YOUR ANSWERS, BECAUSE YOU CAN NEVER
10 BE WRONG ABOUT YOUR OWN OPINION.

11 HOWEVER, BEFORE I GET TO THOSE QUESTIONS, I WANTED
12 TO JUST GO BACK FOR A BRIEF MOMENT ABOUT THE ARTICLE THAT
13 YOU READ.

14 LET ME ASK YOU, I BELIEVE THE ARTICLE YOU REFER
15 TO APPEARED IN THE LOS ANGELES TIMES?

16 MS. KEENAN: PROBABLY.

17 MR. BARENS: DID YOU EVER READ ANY OTHER ARTICLE, OTHER
18 THAN THE ONE YOU REFERRED TO, IF IT BE ONLY ONE?

19 MS. KEENAN: IT PROBABLY WAS MORE THAN ONE. I READ THE
20 PAPER EVERY DAY PRETTY MUCH FRONT TO BACK.

21 MR. BARENS: IS IT THE LOS ANGELES TIMES YOU READ?

22 MS. KEENAN: YES.

23 MR. BARENS: DO YOU EVER READ THE NEWSPAPER HERE IN
24 SANTA MONICA, THE EVENING OUTLOOK?

25 MS. KEENAN: THE EL SEGUNDO HERALD.

26 IT DOESN'T HAVE ANYTHING.

27 MR. BARENS: HOW ABOUT LOS ANGELES MAGAZINE?

28 MS. KEENAN: NO.

1 MR. BARENS: ESQUIRE?

2 MS. KEENAN: NO.

3 MR. BARENS: SO THE ONLY SOURCE MATERIAL YOU COULD EVER
4 RECALL THAT YOU MIGHT HAVE READ SOMETHING ABOUT THIS CASE IN
5 WOULD BE THE L.A. TIMES?

6 MS. KEENAN: THAT'S RIGHT.

7 MR. BARENS: I ASK YOU TRUE, BEFORE YOU CAME HERE TODAY
8 AFTER YOU HAD READ THAT LOS ANGELES TIMES ARTICLE, HAD YOU
9 FORMED ANY OPINION AS TO WHETHER OR NOT A MURDER HAD OCCURRED?

10 MS. KEENAN: I DON'T THINK -- I MEAN I DON'T KNOW WHETHER
11 I THOUGHT ABOUT IT. I DON'T -- I DON'T THINK SO.

12 I MEAN THERE IS NO BODY SO IT -- IT WAS UNUSUAL.
13 THAT IS PROBABLY WHY I REMEMBER IT.

14 MR. BARENS: QUITE SO. KIND OF AN INTERESTING STORY,
15 WOULDN'T YOU SAY?

16 MS. KEENAN: YES.

17 MR. BARENS: I AM SURE THAT IS HOW YOU COULD REMEMBER
18 IT SO WELL.

19 YOU UNDERSTAND THAT WE COULD HAVE A PROSECUTION
20 IN CALIFORNIA FOR A FIRST DEGREE MURDER EVEN THOUGH THERE IS
21 NO BODY?

22 MS. KEENAN: YES.

23 I REMEMBER READING ABOUT A FAMOUS CASE OF A MAN
24 WITH HIS WIFE, THE GUY JUST DIED.

25 MR. BARENS: L. EWING SCOTT?

26 MS. KEENAN: RIGHT.

27 MR. BARENS: THAT IS BEFORE YOU WERE BORN.

28 MS. KEENAN: I DON'T THINK SO BUT THANK YOU.

1 MR. BARENS: I WAS AROUND FOR THAT BUT I DON'T THINK
2 YOU WERE.

3 OKAY, DID YOU HAVE AN OPINION AS TO WHETHER OR
4 NOT MY CLIENT HAD COMMITTED A MURDER AFTER YOU READ THE L.A.
5 TIMES ARTICLE?

6 MS. KEENAN: NO.

7 MR. BARENS: OKAY, DO YOU FEEL THAT IF DURING THE
8 TRIAL THAT OCCURS HERE, A LOT OF THE STUFF THAT WAS IN THAT
9 ARTICLE DOESN'T COME INTO EVIDENCE, FOR INSTANCE, SUPPOSING
10 THROUGH THE TRIAL HERE YOU DON'T HEAR ANYTHING ABOUT A MURDER
11 UP NORTH AND YOU DON'T HEAR ANYTHING ABOUT AN IRANIAN MAN AND
12 HIS BODY AND YOU DON'T HEAR ANYTHING ABOUT HIS SON, WOULD YOU
13 BE CURIOUS AS TO WHY YOU WOULDN'T HEAR ABOUT THAT?

14 MS. KEENAN: CURIOUS, PROBABLY.

15 MR. BARENS: OKAY, WOULD IT IN ANY WAY MAKE YOU FEEL
16 SOMETHING WAS BEING COVERED UP OR HELD AWAY FROM YOU OR THAT
17 THERE WAS SOME LAWYER GAMES GOING ON HERE?

18 MS. KEENAN: NO.

19 MR. BARENS: OKAY, DO YOU THINK THAT YOU COULD PUT OUT
20 OF YOUR MIND IN TRUTH EVERYTHING YOU HEARD OR READ IN THAT
21 ARTICLE AND MAKE A JUDGMENT AS A JUROR IN THIS CASE SOLELY
22 ON THE TESTIMONY AND EVIDENCE THAT WOULD BE DEMONSTRATED IN
23 THIS COURTROOM?

24 MS. KEENAN: I THINK SO, YES.

25 MR. BARENS: DO YOU THINK YOU WOULD HAVE A TENDENCY TO
26 COMPARE WHAT YOU HEARD IN THIS COURTROOM AGAINST WHAT YOU HAD
27 READ IN THE ARTICLE?

28 MS. KEENAN: PROBABLY NOT.

1 MR. BARENS: OKAY, WE WOULD ASK YOU TO GO WAY BEYOND
2 "PROBABLY."

3 MS. KEENAN: YES, I KNOW.

4 MR. BARENS: AND I WILL TELL YOU WHY.

5 HIS HONOR, IN AN EXTREMELY ARTICULATE AND ACCURATE
6 MANNER, ADVISED YOU WHAT IS TRUE, THAT A PERSON THAT WRITES
7 A NEWSPAPER ARTICLE DOES NOT HAVE THE RESPONSIBILITY OR THE
8 OBJECTIVES THAT WE AS LAWYERS AND JUDGES AND JURORS DO IN THIS
9 COURTROOM IN THE SEARCH FOR TRUTH AND JUSTICE. DO YOU UNDER-
10 STAND WHAT I MEAN?

11 MS. KEENAN: I UNDERSTAND.

12 I MEAN I HAVE NEVER HAD TO DO THIS SO I DON'T KNOW
13 WHAT I CAN PUT OUT OF MY MIND.

14 MR. BARENS: OKAY.

15 MS. KEENAN: I UNDERSTAND IN PRINCIPAL THAT THE ONLY
16 EVIDENCE IS WHAT I WOULD HEAR HERE.

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1 MR. BARENS: PRECISELY. AGAIN, IF THE NEWSPAPER ARTICLE
2 HAD NOT MADE IT INTERESTING AND PROVOCATIVE, YOU WOULDN'T HAVE
3 READ IT AND YOU CERTAINLY WOULDN'T HAVE THE GOOD MEMORY FOR
4 IT THAT YOU DO TODAY.

5 MS. KEENAN: PROBABLY NOT.

6 MR. BARENS: PERHAPS WHAT YOU HEAR IN THIS COURTROOM WOULD
7 BE A LOT DULLER THAN THAT, TOO. BUT THE MAIN THING IS, WE WOULD
8 ALL ASK YOU TO ASSURE US THAT YOU WOULD JUDGE MY CLIENT AND
9 THE PEOPLE'S CASE, SOLELY ON WHAT YOU HEARD IN THIS COURTROOM
10 AND NOT BASED ON WHAT A GUY WRITES IN A COMMERCIAL PUBLICATION.

11 MS. KEENAN: YES. I WOULD MAKE EVERY ATTEMPT TO DO THAT.

12 MR. BARENS: OKAY. BUT YOU HAVE AGAIN, TOLD ME THAT
13 YOU REALLY HAD NOT COME TO ANY CONCLUSIONS ONE WAY OR ANOTHER
14 ABOUT THE GUILT OR INNOCENCE, MURDER, NO MURDER, JUST FROM
15 HAVING READ THAT ARTICLE?

16 MS. KEENAN: THAT'S RIGHT.

17 MR. BARENS: OKAY. YOU DON'T HAVE TO BELIEVE -- OR
18 DO YOU HAVE A BELIEF THAT THINGS YOU READ IN THE LOS ANGELES
19 TIMES ARE NECESSARILY ACCURATE ON ALL COUNTS?

20 MS. KEENAN: I DON'T BELIEVE THAT THEY ARE.

21 MR. BARENS: ALL RIGHT. I THANK YOU FOR THAT. NOW
22 WE ARE GOING TO THE DEATH PENALTY. HOW DO YOU FEEL ABOUT
23 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

24 MS. KEENAN: IN THEORY, I THINK THAT IT IS OKAY. IN
25 PRACTICE, I DON'T KNOW THAT IT WORKS.

26 THE COURT: IN PRACTICE WHAT?

27 MS. KEENAN: THAT IT WORKS.

28 THE COURT: YOU MEAN IT REALLY ISN'T A DETERRENT TO

1 MURDER?

2 MS. KEENAN: I DON'T REALLY CARE ABOUT DETERRENT.
3 I DON'T THINK ANYBODY SHOULD BE PUNISHED, OTHER PEOPLE LESS
4 THAN -- I DON'T KNOW WHETHER EVERYBODY THAT SHOULD GET IT,
5 GETS IT OR EVERYBODY WHO GETS IT SHOULD HAVE IT.

6 IT IS A HUMAN INSTITUTION. I AM CONVINCED
7 MISTAKES ARE FREQUENTLY MADE.

8 MR. BARENS: THERE IS NO QUESTION THAT THIS IS NOT THE
9 MOST SCIENTIFICALLY PERFECT ACTIVITY THAT HUMANS ENGAGE IN.
10 BUT NONETHELESS, IT IS IN EXISTENCE AS AN ELEMENT OF OUR
11 JUDICIAL PROCESS.

12 WOULD YOU BE CAPABLE, GIVEN TWO CHOICES DURING
13 A PENALTY PHASE, OF VOTING EITHER FOR LIFE WITHOUT POSSIBILITY
14 OF PAROLE OR DEATH IN THE GAS CHAMBER, IF IT CAME DOWN TO
15 YOUR HAVING TO BE CAPABLE OF MAKING ONE OF THOSE TWO CHOICES?

16 MS. KEENAN: YES.

17 MR. BARENS: NOW, DO YOU UNDERSTAND, AS HIS HONOR POINTED
18 OUT, THAT THERE ARE TWO DISTINCT AND SEPARATE PHASES OF THIS
19 PROCEEDINGS? THERE IS THE GUILT TRIAL, DURING WHICH YOU ARE
20 ASKED AS A JUROR TO DETERMINE WHETHER OR NOT YOU BELIEVE
21 BEYOND A REASONABLE DOUBT THAT A FIRST DEGREE, INTENTIONAL,
22 PREMEDITATED MURDER TOOK PLACE DURING THE COURSE OF A ROBBERY.

23 MS. KEENAN: RIGHT.

24 MR. BARENS: ONLY IF YOU BELIEVE THAT, WITH 11 OTHER
25 JURORS BEYOND A REASONABLE DOUBT, DOES THIS LIFE AND DEATH
26 PENALTY PHASE QUESTION EVER ARISE.

27 DO YOU UNDERSTAND THAT?

28 MS. KEENAN: YES.

1 MR. BARENS: IS IT BELIEVABLE TO YOU, THAT YOU COULD
2 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE DURING A PENALTY
3 PHASE FOR A DEFENDANT THAT YOU HAD EARLIER FOUND GUILTY OF
4 A FIRST DEGREE, PREMEDITATED MURDER?

5 MS. KEENAN: YES.

6 MR. BARENS: YOU WOULD BE WILLING TO CONSIDER ALL OF
7 THE EVIDENCE HIS HONOR MADE REFERENCE TO, THAT WOULD BE
8 ELICITED DURING THE PENALTY PHASE?

9 MS. KEENAN: YES.

10 MR. BARENS: ABOUT HIS BACKGROUND, AGE, WHETHER OR NOT
11 THERE IS PRIOR CRIMINAL CONDUCT?

12 MS. KEENAN: YES.

13 MR. BARENS: NOW, I ASKED YOU, AFTER READING THE LOS
14 ANGELES TIMES ARTICLE, NOW BEING IN THIS COURTROOM AND THE
15 JUDGE AND MYSELF AND MR. WAPNER IN A MOMENT, IS GOING TO BE
16 TALKING TO YOU ABOUT THE DEATH PENALTY.

17 WE HAVE GOT JOE HUNT SITTING DOWN THERE AT THE
18 END OF THE COUNSEL TABLE. DO YOU HAVE REASON IN YOUR MIND,
19 TO BELIEVE -- DO YOU BELIEVE JOE HUNT MUST HAVE DONE SOMETHING
20 WRONG OR HE WOULDN'T BE HERE?

21 MS. KEENAN: NO I DON'T. I DON'T THINK THAT MR. MEESE
22 IS RIGHT.

23 I SHOULDN'T SAY THAT. I DON'T AGREE THAT ANYBODY
24 WHO IS ARRESTED IS PROBABLY GUILTY OR IS GUILTY.

25 MR. BARENS: AND I CAN ASSURE YOU THAT HIS HONOR WOULD
26 ENDORSE YOUR POINT OF VIEW, THAT HIS HONOR DOES NOT SUBSCRIBE
27 TO WHAT MIGHT HAVE BEEN A SOMEWHAT CAVALIER COMMENT BY THE
28 ATTORNEY GENERAL.

1 THAT IS PRECISELY BECAUSE THE CONSTITUTION GIVES
2 ALL OF US THE PRESUMPTION OF INNOCENCE, YOU, ME, ANYBODY ELSE
3 THAT IS SITTING THERE IN THAT DEFENSE SEAT, UNTIL THERE HAS
4 ACTUALLY BEEN A TRIAL.

5 WE PASS FOR CAUSE. THANK YOU, YOUR HONOR.

6 THE COURT: THANK YOU.

7 MR. BARENS: YOUR HONOR, I DID NOT MEAN ANY DISRESPECT
8 TO THE ATTORNEY GENERAL.

9 THE COURT: I KNOW THAT YOU DON'T.

10 MR. BARENS: I AM SURE THAT IT WAS IN FACT, A CAVALIER
11 COMMENT ON HIS PART. THANK YOU.

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

4 WHETHER OR NOT YOU THINK IT WAS A CAVALIER COMMENT
5 ON THE PART OF MR. MEESE, DO YOU THINK THAT ALL PROSECUTORS
6 FEEL THE SAME WAY THAT HE DOES?

7 MS. KEENAN: I HOPE NOT.

8 MR. WAPNER: OKAY. MAYBE THIS IS SOMEWHAT SIMPLISTIC,
9 AS A WAY TO PUT THIS QUESTION, BUT YOU ARE NOT GOING TO BE
10 LOOKING AT ME AND SEEING ED MEESE, ARE YOU?

11 MS. KEENAN: NO.

12 MR. WAPNER: OKAY. LET ME ASK YOU ABOUT YOUR VIEWS
13 ON THE DEATH PENALTY.

14 YOU SAID THAT YOU THINK MISTAKES ARE MADE BECAUSE
15 IT IS A HUMAN INSTITUTION. IS THAT A FAIR CHARACTERIZATION
16 OF WHAT YOU SAID?

17 MS. KEENAN: YES.

18 MR. WAPNER: HOW DOES YOUR VIEW OF THE DEATH PENALTY
19 IN GENERAL, TRANSLATE INTO YOUR ABILITY TO SIT FAIRLY ON THIS
20 CASE, IF IT DOES AT ALL?

21 (NO AUDIBLE RESPONSE.)

22 MR. WAPNER: DO YOU WANT ME TO ASK YOU A DIFFERENT
23 QUESTION?

24 MS. KEENAN: I DON'T THINK -- IN TERMS OF LIKE, THE
25 GUILT PART OF IT, IN TERMS OF WHETHER A CRIME WAS COMMITTED,
26 WHAT CRIME WAS COMMITTED, I DON'T THINK IT WOULD AFFECT ME
27 AT ALL.

28 MR. WAPNER: THAT IS A GOOD STARTING POINT. YOU CAN

1 APPRECIATE, I TAKE IT FROM THAT ANSWER, THAT DURING THE TIME
2 THAT YOU ARE DECIDING WHAT CRIME WAS COMMITTED, WHAT THE DEGREE
3 OF THE CRIME WAS AND WHO DID IT, THAT YOU CAN'T BE THINKING
4 ABOUT WHAT THE PUNISHMENT IS?

5 MS. KEENAN: RIGHT.

6 MR. WAPNER: OR MIGHT BE?

7 MS. KEENAN: RIGHT.

8 MR. WAPNER: OKAY. AND IF THE JURY CONCLUDES THERE
9 WAS A FIRST DEGREE MURDER DURING A ROBBERY, THEN IT GOES ON
10 TO DECIDE THE QUESTION OF PENALTY.

11 HOW DO YOU THINK THAT YOUR VIEWS ON THE DEATH
12 PENALTY WILL AFFECT YOU WHEN YOU GET TO THAT STAGE OF THE
13 CASE?

14 MS. KEENAN: I THINK THAT I WOULD BE -- HOW DO YOU BE
15 MORE CAREFUL ABOUT SOMETHING LIKE THAT? SINCE IT SEEMS TO
16 ME THAT IT IS EASY -- NOT EASY, BUT THAT IT IS POSSIBLE TO
17 MAKE ERRORS, THAT YOU WOULD HAVE TO BE -- THE OTHER PENALTY
18 IS PRETTY BAD, TOO. SO I DON'T KNOW EXACTLY HOW TO ANSWER
19 THE QUESTION.

20 MR. WAPNER: OKAY.

21 MS. KEENAN: I MEAN, I COULD VOTE FOR EITHER.

22 MR. WAPNER: DO YOU HAVE ANY STRONGLY-HELD RELIGIOUS
23 BELIEFS OR MORAL BELIEFS THAT WOULD AFFECT YOUR ABILITY TO
24 FAIRLY AND IMPARTIALLY DECIDE THE QUESTION OF EITHER DEATH
25 OR LIFE WITHOUT POSSIBILITY OF PAROLE?

26 MS. KEENAN: I DON'T THINK SO. I BELIEVE IN HUMAN
27 INSTITUTIONS TO THE EXTENT THAT I THINK PUNISHMENT IS MORALLY
28 NECESSARY, IF THAT IS WHAT YOU ARE ASKING ME.

1 MR. WAPNER: WELL, I AM JUST ASKING YOU FOR EXAMPLE,
2 ARE YOU OF THE OPINION THAT IT IS IMPROPER TO TAKE A HUMAN
3 LIFE AND THEREFORE, YOU COULD NEVER VOTE FOR THE DEATH PENALTY
4 OR VIEWS ON THAT ORDER?

5 MS. KEENAN: NO. I THINK THERE ARE TIMES WHEN IT IS
6 MORALLY ACCEPTABLE TO TAKE A HUMAN LIFE.

7 MR. WAPNER: AND IF YOU ARE CHOSEN AS A JUROR IN THIS
8 CASE, YOU WOULD BE ONE OF TWELVE PEOPLE MAKING THAT DECISION,
9 WHETHER THAT HUMAN LIFE SHOULD BE TAKEN. DO YOU UNDERSTAND
10 THAT?

11 MS. KEENAN: YES.

12 MR. WAPNER: I TAKE IT FROM YOUR PREVIOUS ANSWERS THAT
13 IT IS A DECISION YOU ARE CAPABLE OF MAKING?

14 MS. KEENAN: YES.

15 MR. WAPNER: DURING THE GUILT PHASE OF THE TRIAL, THE
16 PROSECUTION IS REQUIRED TO PROVE THE DEFENDANT'S GUILT BEYOND
17 A REASONABLE DOUBT. WOULD YOU SOMEHOW, ELEVATE THAT STANDARD
18 IN YOUR MIND BECAUSE YOU KNOW THAT THE QUESTION OF THE DEATH
19 PENALTY MIGHT BE INVOLVED AT SOME LATER POINT?

20 MS. KEENAN: NO.

21 THE COURT: YOU MEAN WOULD YOU ELEVATE IT TO A POINT
22 WHERE YOU WOULD SAY BEYOND ALL DOUBT, NOT REASONABLE DOUBT?

23 MS. KEENAN: NO. I DON'T THINK SO.

24 MR. WAPNER: IF THE JUDGE TELLS YOU THAT THAT IS THE
25 STANDARD AND IT IS THE SAME FOR ALL CASES, CAN YOU ACCEPT
26 THAT AND FOLLOW THAT?

27 MS. KEENAN: I THINK THAT IS THE WAY IT SHOULD BE FOR
28 A TRAFFIC VIOLATION AND MURDER.

1 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

2 THE COURT: THAT IS EXACTLY RIGHT. BOTH SIDES HAVE
3 PASSED FOR CAUSE. THAT MEANS THAT YOU ARE EMINENTLY QUALIFIED
4 TO BE A JUROR IN THIS CASE. AND IF YOU ARE SELECTED, YOU
5 COULD BE FAIR IN DECIDING THE ISSUES IN THE CASE.

6 WE HAVE GOT SOME MORE PROSPECTIVE JURORS TO GO
7 THROUGH.

8 MS. KEENAN: YES, I KNOW.

9 THE COURT: YOU HAVE BEEN WAITING AROUND FOR A WHILE.
10 I APOLOGIZE FOR IT. THE WHEELS OF JUSTICE GRIND EXCEEDINGLY
11 SLOWLY BUT EXCEEDINGLY FINE, AS YOU HAVE HEARD.

12 WE'LL ASK YOU TO COME BACK WITH THE OTHER JURORS
13 MONDAY MORNING. WE'LL GET STARTED WITH THE TRIAL. WILL YOU
14 DO THAT?

15 COME BACK TO THE JURY ASSEMBLY ROOM AT 10:30
16 MONDAY MORNING. WE WILL BE READY TO GO. THANK YOU. MEANTIME,
17 TRY NOT TO READ ANYTHING ABOUT THE CASE OR TALK TO ANYONE
18 ABOUT IT.

19 MS. KEENAN: OKAY.

20 (PROSPECTIVE JUROR KEENAN EXITED THE
21 COURTROOM.)

22 (PROSPECTIVE JUROR KORVIN ENTERED THE
23 COURTROOM.)

24 THE COURT: IS IT MRS. KORVIN?

25 MS. KORVIN: YES.

26 THE COURT: WHERE DO YOU LIVE?

27 MS. KORVIN: MANHATTAN BEACH.

28 THE COURT: YOU HEARD ON MONDAY GENERALLY WHAT THIS

1 CASE IS ALL ABOUT?

2 MS. KORVIN: YES.

3 THE COURT: BEFORE WE GO INTO DISCUSSION OF IT, I JUST
4 WANT TO KNOW IF YOU HAVE READ ANYTHING AT ALL ABOUT THIS CASE.

5 MS. KORVIN: WELL, I READ SOMETHING IN THE LOS ANGELES
6 TIMES. I DON'T KNOW WHEN IT WAS, BUT WITHIN THE LAST TWO
7 MONTHS.

8 THE COURT: WEEKS AGO?

9 MS. KORVIN: YES. BUT I DON'T REMEMBER ANY DETAILS
10 OR --

11 THE COURT: TRY TO REMEMBER ANYTHING THAT YOU CAN, IF
12 YOU CAN.

13 MS. KORVIN: I DON'T KNOW IF IT WAS THE SAME ONE ABOUT
14 A CLUB?

15 THE COURT: THAT'S IT. THE BILLIONAIRE BOYS CLUB?

16 MS. KORVIN: ABOUT A LOT OF MONEY. THAT IS ABOUT IT.
17 AND THERE WAS SOME KIND OF INVESTMENT. THAT IS ABOUT IT.
18 THAT IS ALL I REMEMBER.

19 THE COURT: WHATEVER YOU MIGHT HAVE READ, DO YOU THINK
20 THAT IT IN ANY WAY, WILL AFFECT YOU IF YOU ARE SELECTED AS
21 A JUROR IN THIS CASE, IN GIVING BOTH SIDES A FAIR TRIAL?

22 MS. KORVIN: NO. I DON'T BELIEVE EVERYTHING I READ.

23 THE COURT: WELL THEN, YOU ARE LEARNING ONE OF THE
24 CARDINAL LESSONS IN LIFE, DON'T BELIEVE EVERYTHING THAT YOU
25 READ.

26 AT ANY RATE, WHATEVER YOU DID READ, PUT IT OUT
27 OF YOUR MIND, EVEN IF IT COMES BACK TO YOU. FORGET ABOUT
28 IT AND BE GUIDED BY THE EVIDENCE IN THE CASE.

29 MS. KORVIN: OKAY.

1 THE COURT: AND IN THE FUTURE, IF WHILE YOU ARE ON THE
2 CASE OR EVEN BEFORE THAT, IF YOU SEE ANYTHING IN THE PAPERS,
3 DON'T READ IT, OR WHATEVER YOU HEAR ON THE RADIO OR SEE ON
4 TELEVISION, FORGET ABOUT IT.

5 MS. KORVIN: UH-HUH.

6 THE COURT: NOW BRIEFLY, AGAIN, TO REFRESH YOUR
7 RECOLLECTION, THE CHARGE IN THIS CASE AGAINST THE DEFENDANT --
8 AND YOU UNDERSTAND, OF COURSE, THAT IT IS JUST A CHARGE.
9 MERELY BECAUSE HE IS CHARGED WITH AN OFFENSE DOESN'T MEAN HE
10 IS GUILTY OF THE OFFENSE CHARGED; DO YOU UNDERSTAND THAT?

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

13 THE COURT: I JUST WANT TO BE SURE OF THAT BECAUSE SOME
14 OF THE JURORS THOUGHT MAYBE THAT WHERE THERE IS SMOKE THERE
15 IS FIRE AND THAT DOESN'T NECESSARILY APPLY.

16 THE CHARGE AGAINST HIM IS THAT HE COMMITTED A MURDER
17 IN THE FIRST DEGREE DURING THE COURSE OF A ROBBERY.

18 AND I INDICATED TO YOU AND THE OTHER JURORS THAT
19 IN THE COURSE OF A ROBBERY HAS SOME SPECIAL SIGNIFICANCE
20 BECAUSE EVEN IF A MURDER IS DELIBERATE, PREMEDITATED,
21 CALCULATED AND PLANNED, THAT DOESN'T QUALIFY IT FOR THE DEATH
22 PENALTY NECESSARILY. IT IS ONLY WHERE IT IS ACCOMPANIED BY
23 WHAT WE CALL SPECIAL CIRCUMSTANCES, THAT IT WAS COMMITTED
24 DURING THE COURSE OF A ROBBERY, AS IN THIS CASE AS IT IS
25 ALLEGED, OR IN THE COURSE OF A BURGLARY OR IN THE COURSE OF
26 A KIDNAPPING OR RAPE, OR IN A CHILD MOLESTATION WHERE THE
27 CHILD DIES, OR TORTURE OR MULTIPLE MURDERS, WHERE THE
28 LEGISLATURE HAS SAID IN 19 INSTANCES OF SPECIAL CIRCUMSTANCES,

1 THAT THAT PARTICULAR CASE WILL QUALIFY FOR THE DEATH PENALTY;
2 DO YOU UNDERSTAND THAT?

3 MS. KORVIN: UH-HUH.

4 THE COURT: AND SO THIS IS ONE OF THEM WHERE ALLEGEDLY
5 A MURDER WAS COMMITTED IN THE COURSE OF ROBBERY, WHICH IS WHAT
6 WE ARE DEALING WITH HERE.

7 NOW, THE JURY WHICH WILL BE SELECTED IN THIS CASE
8 WILL FIRST HAVE TO DETERMINE THE GUILT OR INNOCENCE OF THE
9 DEFENDANT: DID HE OR DIDN'T HE COMMIT THE MURDER AND WAS OR
10 WASN'T IT IN THE FIRST DEGREE, AS WILL BE DEFINED TO YOU.

11 AND IF THE JURORS DECIDE THAT IT IS MURDER IN THE
12 FIRST DEGREE, THEN THEY HAVE ANOTHER QUESTION TO ANSWER: IS
13 IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED DURING THE COURSE
14 OF A ROBBERY?

15 BECAUSE THAT SPECIAL CIRCUMSTANCE QUALIFIES IT
16 FOR THE CONSIDERATION OF THE DEATH PENALTY, DO YOU UNDERSTAND,
17 AS I TOLD YOU?

18 (WHEREUPON, MS. KORVIN NODS HER HEAD UP
19 AND DOWN.)

20 THE COURT: ALL RIGHT, NOW IF THEY ANSWER YES -- THAT
21 IS ON THE GUILT PHASE -- IF THEY ANSWER YES, THEN WE START
22 ANOTHER PHASE OF THE TRIAL AND THAT PHASE OF THE TRIAL IS
23 CALLED THE PENALTY PHASE.

24 ON THE PENALTY PHASE, THE JURY WILL CONSIDER A
25 NUMBER OF OTHER FACTORS IN DETERMINING WHAT PENALTY SHOULD
26 BE IMPOSED.

27 THE DEATH PENALTY HAS TWO ASPECTS: ONE IS LIFE
28 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND THAT MEANS

1 EXACTLY THAT. NO POSSIBILITY OF PAROLE. HE STAYS THERE FOR
2 THE REST OF HIS LIFE.

3 AND THE OTHER IS DEATH IN THE GAS CHAMBER.

4 DO YOU UNDERSTAND THAT?

5 MS. KORVIN: UH-HUH. I DIDN'T KNOW THAT BUT, YEAH, I
6 DO KNOW, OKAY.

7 THE COURT: THAT IS ONE OF THE TWO ON THE DEATH PENALTY
8 PHASE.

9 NOW, THE JURORS THEN HEAR ON THE PENALTY PHASE
10 ADDITIONAL TESTIMONY THEY HAVEN'T HEARD BEFORE AND THAT ALL
11 GOES TO THE QUESTION OF PERSUADING THE JURY FOR OR AGAINST
12 ONE OF THOSE TWO PENALTIES.

13 THE DEFENDANT WILL INTRODUCE THE TESTIMONY TO SHOW,
14 AND YOU MUST CONSIDER, TESTIMONY OF HIS AGE, LACK OF ANY PRIOR
15 CRIMINAL ACTIVITY, HIS CHARACTER, HIS BACKGROUND AND EDUCATION,
16 HIS PHYSICAL AND/OR MENTAL CONDITION, ANYTHING WHICH HE MAY
17 PRODUCE, EVIDENCE TO SHOW FAVORABLE ASPECTS ABOUT HIMSELF IN
18 THE HOPE THAT THE JURY WOULD GIVE HIM THE LESSER OF THE TWO
19 PENALTIES, AND THOSE ARE CALLED MITIGATING OR EXTENUATING
20 CIRCUMSTANCES.

21 THE PROSECUTION, ON THE OTHER HAND, WOULD SHOW
22 AGGRAVATING CIRCUMSTANCES, THINGS WHICH ARE BAD AND
23 UNFAVORABLE ABOUT THE DEFENDANT SO THAT THE ULTIMATE PENALTY
24 WILL BE RECOMMENDED BY THE JURY, FOUND BY THE JURY.

25 NOW WHAT WE ARE INTERESTED IN AT THIS PARTICULAR
26 STAGE, AND THAT IS WHY YOU ARE HERE, IS TO FIND OUT WHAT YOUR
27 ATTITUDE IS, YOUR MIND SET IS WITH RESPECT TO THE QUESTION
28 OF THE DEATH PENALTY AND WE ARE GOING TO PROBE YOUR MIND TO

1 FIND OUT HOW YOU FEEL ABOUT IT.

2 NOW I WILL ASK YOU FIVE QUESTIONS AND COUNSEL WILL
3 ASK YOU ADDITIONAL QUESTIONS IN ORDER TO EXPLORE YOUR
4 ATTITUDES AND YOUR FEELINGS ABOUT THE DEATH PENALTY.

5 THE FIRST TWO QUESTIONS I ASK WILL RELATE TO THE
6 GUILT PHASE OF THE TRIAL: DO YOU HAVE AN OPINION AS TO THE
7 DEATH PENALTY, WHATEVER THAT OPINION MAY BE, WHICH WOULD
8 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
9 OR INNOCENCE OF THE DEFENDANT?

10 MS. KORVIN: NO.

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1 THE COURT: ALL RIGHT, YOU REMEMBER I TOLD YOU THAT IF
2 HE IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE
3 SPECIAL CIRCUMSTANCES, IF IT OCCURRED DURING THE COURSE OF
4 A ROBBERY, COMES UP.

5 NOW, DO YOU HAVE ANY OPINION ABOUT THE DEATH
6 PENALTY THAT WOULD PREVENT YOU FROM MAKING A FINDING ON THE
7 QUESTION OF SPECIAL CIRCUMSTANCE IN THIS CASE, WHETHER IT WAS
8 COMMITTED IN THE COURSE OF A ROBBERY?

9 MS. KORVIN: NO.

10 THE COURT: NOW, THE NEXT TWO QUESTIONS PRESUPPOSE THAT
11 THE JURY HAS REACHED A GUILTY VERDICT OF MURDER IN THE FIRST
12 DEGREE AND THE SPECIAL CIRCUMSTANCE WAS FOUND TO BE TRUE,
13 NAMELY, IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

14 NOW THIS IS ON THE PENALTY PHASE: DO YOU HAVE
15 ANY OPINION CONCERNING THE DEATH PENALTY THAT WOULD CAUSE YOU
16 AUTOMATICALLY TO VOTE FOR THE DEATH PENALTY, REGARDLESS OF
17 ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE OF
18 THE TRIAL?

19 MS. KORVIN: NO.

20 THE COURT: NOW THE SAME THING APPLIES TO LIFE
21 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE: DO YOU HAVE
22 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
23 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
24 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
25 AT THE PENALTY PHASE OF THE TRIAL?

26 MS. KORVIN: NO.

27 THE COURT: YOU REALIZE, OF COURSE, THAT THE ISSUE OF
28 THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE AND

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

3 MS. KORVIN: YES, SIR, YES.

4 THE COURT: ALL RIGHT.

5 MR. BARENS: THANK YOU, YOUR HONOR.

6 GOOD AFTERNOON, MS. KORWIN (SIC).

7 I AM ARTHUR BARENS AND I REPRESENT THE DEFENDANT,
8 JOE HUNT, AND AS WITH HIS HONOR, IT IS MY OBLIGATION AT THIS
9 POINT OF THESE PROCEEDINGS TO ASK YOU SOME QUESTIONS ABOUT
10 YOUR POINT OF VIEW ON THE DEATH PENALTY.

11 MS. KORVIN: UH-HUH.

12 MR. BARENS: PLEASE UNDERSTAND THAT NONE OF US ARE GOING
13 TO BE JUDGING ANY OF YOUR ANSWERS AND THERE ARE NO RIGHT OR
14 WRONG ANSWERS TO ANY QUESTIONS. YOU CAN NEVER BE WRONG ABOUT
15 YOUR OWN OPINION.

16 MS. KORVIN: ALL RIGHT.

17 MR. BARENS: MRS. KORWIN --

18 MS. KORVIN: KORVIN.

19 MR. BARENS: KORVIN. THERE IS A FELLOW NAMED KORWIN
20 WHO HAPPENS TO BE A VERY CLOSE FRIEND OF MINE.

21 MS. KORVIN: OH, I AM SORRY.

22 MR. BARENS: I AM GETTING YOU OVERLAPPED HERE.

23 BEFORE WE GET TO THAT, I JUST WANT TO REFLECT BACK
24 FOR A MOMENT TO THE LOS ANGELES TIMES ARTICLE YOU MADE
25 REFERENCE TO. WAS THAT THE ONLY SOURCE DOCUMENT YOU EVER READ
26 ANYTHING ABOUT THAT MIGHT INVOLVE THIS CASE?

27 MS. KORVIN: YES.

28 MR. BARENS: JUST THAT SINGLE ARTICLE?

7-7

1 MS. KORVIN: UH-HUH.

2 MR. BARENS: YOU ADVISED THE COURT THAT YOU RECALLED
3 READING ABOUT A CLUB OF FELLOWS FROM A PREP SCHOOL AND THAT
4 THERE HAD BEEN SOME BUSINESS DEALS AND ABOUT THIS AND THAT.
5 YOU DIDN'T MENTION ANYTHING ABOUT THE ARTICLE MAKING REFERENCE
6 TO A MURDER; DO YOU RECALL THAT ARTICLE SAYING THAT?

7 MS. KORVIN: YEAH, I DO REMEMBER THERE WAS SOMETHING
8 ABOUT A MURDER BUT I DIDN'T -- I DIDN'T REMEMBER READING ANY-
9 THING ABOUT A ROBBERY DURING THE MURDER.

10 MR. BARENS: OKAY, DO YOU REMEMBER AT THIS POINT, WHEN
11 YOU MENTIONED THAT THE ARTICLE MADE REFERENCE TO A MURDER,
12 DO YOU REMEMBER ANYTHING MORE ABOUT THE ARTICLE THAN WHAT YOU
13 MENTIONED EARLIER TO THE JUDGE?

14 MS. KORVIN: NO, I DON'T.

15 MR. BARENS: AFTER READING THAT ARTICLE, DID YOU COME
16 AWAY WITH AN IMPRESSION THAT THE MURDER HAD IN FACT TAKEN PLACE?

17 MS. KORVIN: THE ONE THING I REMEMBER IS THAT SOMEBODY
18 WAS MISSING, SO NO, I DIDN'T GET THE IMPRESSION THERE WAS A
19 MURDER BUT SOMEBODY WAS MISSING AND HADN'T BEEN FOUND OR
20 HADN'T BEEN LOCATED OR NOT HEARD OF IN A WHILE SO, NO, I DON'T.

21 MR. BARENS: BUT DO YOU FEEL CONFIDENT THAT YOU COULD
22 PUT ALL OF THAT SORT OF NEWSPAPER ARTICLE OUT OF YOUR MIND
23 ENTIRELY --

24 MS. KORVIN: YES.

25 MR. BARENS: -- AND IF YOU WERE SELECTED AS A JUROR,
26 YOU WOULD JUDGE THIS MATTER SOLELY ON WHAT YOU HEAR IN THIS
27 COURTROOM, PERIOD?

28 MS. KORVIN: YES.

1 MR. BARENS: OKAY, THANK YOU.

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

4 MS. KORVIN: I AM VERY AMBIVALENT ON THE WHOLE SUBJECT
5 AND I DON'T HAVE -- I DON'T HAVE A STAUNCH OPINION ON IT.

6 MR. BARENS: YOU DON'T HAVE TO.

7 AS YOU KNOW, BEFORE YOU WOULD EVER HAVE TO COME
8 TO EVER MAKING A DECISION ABOUT THE DEATH PENALTY, YOU WOULD
9 FIRST, ALONG WITH THE OTHER JURORS, HAVE TO GET THROUGH THAT
10 GUILT PHASE OF THE TRIAL.

11 SO FOR PURPOSES OF THIS DISCUSSION, LET'S ASSUME
12 THAT YOU AND THE OTHER JURORS HAD COME TO A BELIEF BEYOND A
13 REASONABLE DOUBT THAT A MURDER IN THE FIRST DEGREE HAD
14 OCCURRED, THAT IS, A PREMEDITATED, INTENTIONAL MURDER AND THAT
15 IT WAS DURING THE COURSE OF A ROBBERY, SO NOW WE ARE THROUGH
16 WITH THAT GUILT PHASE OF THE TRIAL AND WE ARE ON TO THE PENALTY
17 PHASE; COULD YOU ON THAT PENALTY PHASE VOTE FOR LIFE
18 IMPRISONMENT, ARE YOU CAPABLE OF VOTING FOR LIFE IMPRISONMENT
19 WITHOUT THE POSSIBILITY OF PAROLE FOR A DEFENDANT, WHO YOU
20 BELIEVED HAD COMMITTED A FIRST DEGREE MURDER?

21 MS. KORVIN: YES, I COULD.

22 MR. BARENS: AND WOULD YOU ALSO BE CAPABLE OF VOTING
23 FOR THE DEATH PENALTY IF YOU FOUND THAT TO BE WHAT WAS
24 APPROPRIATE FOR THAT SAME DEFENDANT?

25 MS. KORVIN: THAT IS A TOUGH ONE. I DON'T KNOW.

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1 MR. BARENS: BEING A TOUGH ONE IS TOTALLY ACCEPTABLE.
2 AND I SHARE IT WITH YOU. IT COULD BE EXTREMELY HARD TO DO.

3 WHAT WE NEED TO KNOW IS, THAT YOU WOULD BE CAPABLE
4 OF CONSIDERING THAT AS AN ALTERNATIVE, AS WELL AS CAPABLE FAIR-
5 MINDEDLY OF CONSIDERING LIFE WITHOUT POSSIBILITY OF PAROLE
6 AS A POSSIBLE SENTENCE OR PUNISHMENT. COULD YOU CONSIDER BOTH?

7 MR. KOVIN: I COULD CONSIDER BOTH.

8 MR. BARENS: OKAY. AND YOU WOULD BE CAPABLE OF
9 CONSIDERING BOTH?

10 MS. KORVIN: YES.

11 MR. BARENS: NOW, YOU REALIZE THAT THE LAW, ALTHOUGH
12 HIS HONOR ARTICULATES THAT THERE ARE 19 CATEGORIES OF CONDUCT,
13 THAT IF ONE IS CONVICTED OF THAT, IT MAKES ONE QUALIFIED --
14 OR A DEFENDANT, QUALIFIED FOR THE DEATH PENALTY.

15 NOTHING IN OUR LEGAL SYSTEM MAKES THE DEATH PENALTY
16 MANDATORY, BUT RATHER, IT IS A DECISION FOR JURORS TO MAKE.
17 DO YOU UNDERSTAND THAT?

18 MS. KORVIN: YES.

19 MR. BARENS: THAT WOULD HAVE TO BE A DECISION YOU WOULD
20 INDIVIDUALLY HAVE TO MAKE. DO YOU UNDERSTAND?

21 (NO AUDIBLE RESPONSE.)

22 THE COURT: ANSWER AUDIBLY, BECASUE SHE CANNOT GET A
23 NOD OF THE HEAD.

24 MS. KORVIN: OKAY. I WILL. SORRY.

25 MR. BARENS: NOW, DO YOU UNDERSTAND THAT IN CALIFORNIA,
26 ALL THAT THE PEOPLE, THE GOVERNMENT EVER HAS TO PROVE IN ANY
27 CRIMINAL CASE, BE IT A TRAFFIC TICKET OR A FIRST DEGREE MURDER
28 CASE, IS PROOF BEYOND A REASONABLE DOUBT?

1 MS. KORVIN: YES.

2 MR. BARENS: DO YOU UNDERSTAND THAT?

3 MS. KORVIN: YES.

4 MR. BARENS: AND DO YOU UNDERSTAND THAT THAT IS ALL THAT
5 NEED BE ESTABLISHED? AND I DON'T MEAN TO MAKE THAT SOUND LIKE
6 A SMALL THING BY SAYING THAT THAT IS ALL THEY NEED TO DO. BUT
7 THAT IS A STANDARD, IRRESPECTIVE OF THE TYPE OF CASE.

8 MS. KORVIN: YES.

9 MR. BARENS: AND THAT EVEN THOUGH THERE MIGHT BE A DEATH
10 PENALTY SENTENCE AVAILABLE AS A PUNISHMENT, THAT NO GREATER
11 THRESHOLD OF PROOF NEED BE CROSSED?

12 MS. KORVIN: THAT'S CORRECT.

13 MR. BARENS: ALL RIGHT. DO YOU HAVE ANY BELIEF SYSTEMS
14 ABOUT THE DEATH PENALTY OR LIFE WITHOUT POSSIBILITY OF PAROLE
15 THAT YOU THINK YOU SHOULD TELL ME ABOUT THAT I HAVE NOT ASKED
16 YOU ABOUT?

17 MS. KORVIN: NO.

18 MR. BARENS: OKAY. HAVE YOU ALWAYS FELT PRETTY MUCH
19 THE SAME WAY IN YOUR OPINION ABOUT THE DEATH PENALTY AND
20 WHETHER IT IS APPROPRIATE OR NOT?

21 MS. KORVIN: YES, I HAVE.

22 MR. BARENS: NOW, DO YOU UNDERSTAND THAT ALTHOUGH YOU
23 MIGHT HAVE READ AN ARTICLE IN THE LOS ANGELES TIMES THAT IN
24 A WAY REFERENCED THIS CASE AND BECAUSE THE JUDGE HAS TALKED
25 TO YOU ABOUT THE DEATH PENALTY AND I HAVE TALKED TO YOU ABOUT
26 THE DEATH PENALTY AND MR. WAPNER WILL MOMENTARILY, THAT THERE
27 IS NO REASON FOR YOU TO BELIEVE AS A RESULT OF THAT, THAT JOE
28 HUNT HAS DONE ANYTHING WRONG, JUST BECAUSE WE ARE HERE TALKING

1 ABOUT THAT?

2 MS. KORVIN: THAT'S CORRECT.

3 MR. BARENS: HE HAS WHAT IS CALLED A PRESUMPTION OF
4 INNOCENCE, THE SAME WAY YOU WOULD OR ANYBODY ELSE WOULD IN
5 THIS COUNTRY, IF THEY WERE ON TRIAL.

6 MS. KORVIN: OF COURSE.

7 MR. BARENS: THANK YOU FOR YOUR TIME. THE DEFENSE WOULD
8 PASS FOR CAUSE, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: GOOD AFTERNOON, MS. KORVIN. I AM FRED
11 WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS
12 CASE.

13 TELL ME WHAT YOU MEANT WHEN YOU SAID YOU COULD
14 CONSIDER BOTH PUNISHMENTS.

15 MS. KORVIN: WELL, THOSE ARE THE ONLY TWO CHOICES, RIGHT?

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1 MR. WAPNER: IF YOU GET TO THAT POINT IN THE CASE, IF
2 YOU GET TO THAT POINT --

3 MS. KORVIN: THAT'S CORRECT. I COULD CONSIDER IT ONLY
4 BECAUSE I AM A RATIONAL HUMAN BEING AND I ALWAYS CONSIDER
5 LISTENING TO BOTH SIDES.

6 MR. WAPNER: OKAY. LISTENING TO BOTH SIDES AND THINKING
7 ABOUT IT IS ONE THING. ACTING ON IT IS SOMETHING ELSE.

8 MS. KORVIN: THAT'S CORRECT.

9 MR. WAPNER: OKAY. NOW, WHEN WE GET DOWN AND OUT OF
10 THE CEREBRAL AND INTO THE PRACTICAL, EVERY-DAY WORLD, IF
11 RATIONALLY YOU FELT THAT THE DEATH PENALTY WAS THE APPROPRIATE
12 PUNISHMENT, COULD YOU THEN ACT ON THAT DECISION?

13 MR. BARENS: I WOULD OBJECT TO THAT, YOUR HONOR. HE
14 IS ASKING HER TO PRE-COMMIT HERSELF TO A JUDGMENT THAT SHE
15 MAY NEVER HAVE TO MAKE.

16 THE COURT: NO. I THINK THAT THE QUESTION IS A PROPER
17 ONE. YOU MAY ASK IT.

18 MR. BARENS: IF THE QUESTION INVOLVES THE WORD
19 "CAPABLE" IT IS AN APPROPRIATE QUESTION.

20 THE COURT: ALL RIGHT.

21 MR. WAPNER: I THINK IT IS "CAN".

22 MR. BARENS: "CAPABLE" IS MORE ACCURATE, MORE ARTICULATED
23 WITH THE CASES.

24 THE COURT: "CAN" MEANS IS ABLE TO.

25 MR. BARENS: LIKE THE WORD "CAPABLE". THANK YOU, YOUR
26 HONOR.

27 MS. KORVIN: WHAT WAS THE QUESTION?

28 MR. WAPNER: THE QUESTION IS, IF YOU HAVE MADE A DECISION

1 RATIONALLY OR IF YOU BELIEVE RATIONALLY THAT THE DEATH PENALTY
2 IS THE APPROPRIATE PUNISHMENT, CAN YOU ACT ON THAT?

3 MS. KORVIN: I CAN.

4 MR. WAPNER: OKAY. NOW, BEFORE, I BELIEVE YOUR WORDS
5 WERE "I DON'T KNOW IF I COULD VOTE FOR THE DEATH PENALTY."

6 WHAT DID YOU MEAN BY THAT?

7 MS. KORVIN: I DON'T KNOW IF I COULD VOTE FOR IT. I HAVE
8 NEVER BEEN ASKED TO BEFORE. IT IS YOU KNOW -- IT SOUNDS GOOD
9 WHEN YOU READ ABOUT IT IN THE PAPER OR YOU HEAR ABOUT AN
10 INSTANCE WHERE MAYBE SOMETHING BAD HAPPENED. MAYBE YOU THINK
11 SOMEONE SHOULD DIE BECAUSE OF IT.

12 BUT I JUST DON'T KNOW IF I COULD VOTE FOR IT OR
13 NOT. YOU KNOW, IF MY HUSBAND WAS MURDERED TOMORROW IN A
14 ROBBERY AT 7-ELEVEN, I DON'T KNOW I WOULD FEEL. I WOULD
15 PROBABLY, MORE THAN LIKELY, VOTE FOR IT.

16 MR. WAPNER: OKAY. BUT YOU --

17 MS. KORVIN: BUT IF I DON'T BELIEVE IN IT, IT DOESN'T
18 MEAN THAT YOU KNOW -- IT IS HARD FOR ME TO PIN IT DOWN. IT
19 WOULD HAVE TO DEPEND UPON THE CIRCUMSTANCES.

20 MR. WAPNER: I UNDERSTAND THAT IT IS A VERY HARD
21 DECISION TO ASK ANYBODY TO HAVE TO MAKE. BECAUSE OF THE WAY
22 THE SYSTEM IS STRUCTURED, WE CAN'T ASK YOU THIS QUESTION LATER.
23 ONCE YOU GET INTO THE JURY ROOM, IT IS TOO LATE.

24 SO, WE HAVE TO ASK YOU NOW. I DON'T KNOW IF THIS
25 WILL HELP YOU, BUT TRY TO IMAGINE YOURSELF IN A SITUATION WHERE
26 YOU HAVE FOUND THE DEFENDANT GUILTY OF AN INTENTIONAL MURDER
27 DURING A ROBBERY.

28 AND YOU HAVE LISTENED TO ALL OF THE EVIDENCE ON

1 THE PENALTY PHASE AND NOW YOU ARE IN THE JURY ROOM DECIDING
2 THE QUESTION OF GUILT OR INNOCENCE. I HAVE BEEN HERE TOO LONG.

3 NOW, YOU ARE IN THE JURY ROOM DECIDING THE
4 QUESTION OF WHAT THE APPROPRIATE PENALTY SHOULD BE. AND YOUR
5 ONLY CHOICES ARE LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH
6 IN THE GAS CHAMBER. CAN YOU IMAGINE YOURSELF IN THAT
7 SITUATION?

8 MS. KORVIN: UH-HUH.

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

10 MS. KORVIN: YES.

11 MR. WAPNER: ALL RIGHT. AND IF YOU HAVE DECIDED -- WELL,
12 FIRST OF ALL, THE JUDGE WILL TELL YOU THAT EVEN THOUGH IT
13 REQUIRES A UNANIMOUS JURY TO ARRIVE AT A VERDICT, EACH JUROR
14 IS REQUIRED TO RENDER HIS OWN, INDIVIDUAL OPINION ON THE
15 QUESTION. DO YOU UNDERSTAND THAT?

16 MS. KORVIN: YES.

17 MR. WAPNER: SO, YOU CAN'T BE DICTATED TO BY 11 PEOPLE
18 OR ANY OF THE PEOPLE IN THE JURY ROOM. YOU HAVE TO MAKE UP
19 YOUR OWN MIND.

20 IF YOU DECIDE IN YOUR OWN MIND THAT THE DEATH
21 PENALTY IS THE APPROPRIATE PUNISHMENT, DO YOU THINK THAT YOU
22 ARE CAPABLE OF RENDERING A VERDICT FOR THE DEATH PENALTY?

23 MR. BARENS: OBJECTION TO THE FORM OF THE QUESTION. HE
24 IS ASKING HER IF SHE COULD VOTE FOR SOMETHING. AND I DON'T
25 BELIEVE THAT IS PERMISSIBLE. IT IS NOT PERMISSIBLE THAT EITHER
26 SIDE ASK IF THEY CAN VOTE THIS WAY OR THAT WAY.

27 THE COURT: THAT SHE WOULD BE CAPABLE OF DOING IT, THAT
28 IS ALL. HOW ELSE CAN HE FIND OUT, IF SHE BECOMES A JUROR,

1 WHETHER OR NOT THE FACTS JUSTIFY IT, IF SHE WOULD VOTE FOR
2 THE DEATH PENALTY, UNLESS HE ASKS HER THAT?

3 MR. BARENS: THE WAY THE QUESTION HAS NOW BEEN STRUCTURED,
4 YOUR HONOR, SHE HAS BEEN GIVEN A SITUATION WHERE HE IS SAYING
5 THAT SHE HAS ALREADY CONVICTED THE GUY, WILL SHE VOTE FOR THE
6 DEATH PENALTY. IT IS --

7 THE COURT: NO, HE WANTS TO KNOW WHETHER OR NOT SHE IS
8 CAPABLE, IF THE CIRCUMSTANCES WARRANT IT, OF VOTING FOR THE
9 DEATH PENALTY. IS THAT RIGHT?

10 MR. WAPNER: THAT'S CORRECT.
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1 THE COURT: WOULD YOU BE CAPABLE OF VOTING FOR THE DEATH
2 PENALTY?

3 MS. KORVIN: I WOULD BE CAPABLE OF IT. I AM NOT SAYING
4 I WOULD. I AM CAPABLE OF IT.

5 MR. WAPNER: I AM NOT ASKING YOU, BECAUSE YOU HAVE NOT
6 HEARD THE FACTS OF THE CASE --

7 MS. KORVIN: RIGHT. I DON'T KNOW.

8 MR. WAPNER: ALL I AM TRYING TO FIND OUT IS, WHETHER
9 OR NOT YOU ARE ABLE TO GIVE THE PROSECUTION A FAIR TRIAL.

10 MS. KORVIN: YES, OF COURSE.

11 MR. WAPNER: I REALIZE THAT WHEN WE PUT IT IN THAT
12 CONTEXT, THAT EVERYONE SAYS, "OF COURSE," WE CAN BE FAIR.

13 WHAT IT REALLY COMES DOWN TO IS, IF YOU ARE A JUROR
14 AND I AM ARGUING TO YOU ON THE PENALTY PHASE AND MY ARGUMENT
15 IS THAT THE APPROPRIATE PUNISHMENT SHOULD BE DEATH, BUT YOU
16 ARE REALLY LOOKING AT ME AND SAYING WELL, I DON'T CARE WHAT
17 HE SAYS, WHEN IT COMES DOWN TO IT, DOWN TO THE NITTY-GRITTY,
18 REGARDLESS OF THE EVIDENCE, I COULDN'T BRING MYSELF TO VOTE
19 FOR THAT VERDICT.

20 MS. KORVIN: NO. I DON'T FEEL THAT WAY.

21 MR. WAPNER: THANK YOU.

22 DO YOU HAVE ANY STRONGLY HELD RELIGIOUS BELIEFS
23 OR MORAL BELIEFS THAT YOU THINK WOULD BEAR UPON YOUR ABILITY
24 TO BE A FAIR JUROR IN THIS CASE?

25 MS. KORVIN: NO.

26 MR. WAPNER: CAN YOU DECIDE THE QUESTION OF GUILT OR
27 INNOCENCE WITHOUT THINKING ABOUT WHAT MIGHT HAPPEN TO THE
28 DEFENDANT IF YOU FIND HIM GUILTY?

1 MS. KORVIN: YES.

2 MR. WAPNER: WOULD YOU REQUIRE THE PROSECUTION TO HAVE
3 MORE EVIDENCE OR REQUIRE THE PROSECUTION TO PROVE THIS CASE
4 TO YOU BY A HIGHER STANDARD OF PROOF BECAUSE YOU KNOW THAT
5 THE DEATH PENALTY MIGHT BE INVOLVED AT SOME POINT?

6 MR. BARENS: HIGHER STANDARD OF PROOF, MEANING BEYOND
7 A REASONABLE DOUBT?

8 MR. WAPNER: HIGHER THAN THAT.

9 THE COURT: DO YOU KNOW IN EVERY CRIMINAL CASE, THE SAME
10 STANDARD APPLIES? A DEFENDANT IS PRESUMED TO BE INNOCENT UNTIL
11 THE CONTRARY IS PROVED.

12 IN THE CASE OF A REASONABLE DOUBT WHETHER HIS GUILT
13 IS SATISFACTORILY SHOWN, HE IS ENTITLED TO A VERDICT OF NOT
14 GUILTY.

15 WOULD YOU EXPECT A HIGHER STANDARD IN THIS CASE?
16 IN OTHER WORDS, BEYOND ANY DOUBT, BECAUSE IT HAPPENED TO BE
17 A MURDER CASE?

18 MS. KORVIN: NO, JUST REASONABLE DOUBT.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. WAPNER: I PASS FOR CAUSE.

21 THE COURT: BOTH SIDES HAVE PASSED FOR CAUSE. WHAT THAT
22 MEANS IS THAT YOU ARE SELECTED AS A JUROR IN THIS CASE. YOU
23 ARE QUALIFIED TO PASS UPON THE GUILT OR INNOCENCE AND ALSO
24 THE PENALTY IN THIS PARTICULAR CASE.

25 WHAT I WILL ASK YOU TO DO, IS, WE HAVE TO GO
26 THROUGH THE ENTIRE LIST BY MONDAY MORNING. I WILL ASK YOU
27 TO COME BACK ON MONDAY MORNING TO THE JURY ASSEMBLY ROOM AT
28 10:30. WE WILL BE READY TO GO AHEAD. OKAY? DON'T READ

1 ANYTHING ABOUT THE CASE.

2 MS. KORVIN: NO. I WON'T.

3 (PROSPECTIVE JUROR KORVIN EXITS THE
4 COURTROOM.)

5 (PROSPECTIVE JUROR KUBECK ENTERS THE
6 COURTROOM.)

7 THE COURT: IS IT MISS OR MRS.?

8 MS. KUBECK: MRS.

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

10 MS. KUBECK: TOPANGA.

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

13 MS. KUBECK: NO.

14 THE COURT: HAVE YOU TALKED TO ANYBODY ABOUT IT?

15 MS. KUBECK: NO.

16 THE COURT: DOES THE EXPRESSION "BILLIONAIRE BOYS CLUB"
17 RING A BELL IN YOUR MIND?

18 MS. KUBECK: NO. SOMEBODY MENTIONED THAT THAT IS WHAT
19 IT WAS, BUT THAT IS ABOUT ALL. I DON'T KNOW ANYTHING ELSE.

20 THE COURT: WHAT DID YOU HEAR FROM ANYBODY?

21 MS. KUBECK: MY MOTHER-IN-LAW SAID IT WAS A VERY COMPLICATED
22 CASE.

23 THE COURT: ALL RIGHT. WHAT DID SHE TELL YOU? ANY
24 FACTS?

25 MS. KUBECK: NO. SHE SAID SHE'S NOT SUPPOSED TO.

26 THE COURT: I SEE. HOW LONG AGO WAS THAT?

27 MS. KUBECK: IT WAS MONDAY NIGHT.

28 THE COURT: THAT IS WHEN YOU KNEW AND SHE KNEW THAT YOU

1 MIGHT BE A POSSIBLE JUROR IN THIS CASE. IS THAT RIGHT?

2 MS. KUBECK: NO, NO. I DID NOT KNOW I WOULD BE -- I
3 DIDN'T EVEN KNOW THE CASE. I DIDN'T HEAR THE NAME.

4 SHE SAID SHE HOPED IT WAS NOT THE SO AND SO CASE.
5 AND I ASKED WHAT THAT WAS. BECAUSE SHE SAID IT WAS A VERY
6 COMPLICATED CASE BUT SHE COULDN'T TELL ME ABOUT IT. I SAID
7 THAT MAYBE IT WAS IT.

8 THE COURT: SHE KNEW YOU WERE GOING TO BE A JUROR?

9 MS. KUBECK: SHE KNEW THAT I WAS GOING TO BE A JUROR.

10 THE COURT: I SEE. WELL, YOU UNDERSTAND OF COURSE, THAT
11 IF YOU ARE A JUROR ON THIS CASE, FROM NOW ON YOU ARE NOT TO
12 TALK TO ANYBODY ABOUT THIS?

13 MS. KUBECK: YES. I UNDERSTAND. YES.

14 THE COURT: YOU ARE NOT SUPPOSED TO READ ANYTHING ABOUT
15 IT?

16 MS. KUBECK: YES. I UNDERSTAND.

17 THE COURT: ALL RIGHT. YOU REMEMBER THAT ON MONDAY,
18 I GAVE YOU A GENERAL OUTLINE, AN IDEA WHAT THE CASE WAS ABOUT.
19 I TOLD YOU AT THAT TIME THAT THE DEFENDANT IS CHARGED WITH
20 THE COMMISSION OF THE CRIME OF MURDER AND IT IS MURDER IN THE
21 FIRST DEGREE COMMITTED DURING THE COURSE OF A ROBBERY.

22 PARENTHETICALLY, MERELY BECAUSE SOMEBODY IS CHARGED
23 WITH A CRIME DOESN'T MEAN THAT HE IS GUILTY OF THAT CRIME.

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1 IT DOESN'T MEAN THAT BECAUSE THERE IS SMOKE THERE
2 IS FIRE NECESSARILY, YOU UNDERSTAND?

3 MS. KUBECK: YES, SIR.

4 THE COURT: SO YOU START ANEW WITH A PRESUMPTION OF
5 INNOCENCE, THAT THE DEFENDANT IS PRESUMED TO BE INNOCENT UNTIL
6 HE IS PROVED GUILTY BEYOND A REASONABLE DOUBT.

7 MS. KUBECK: UH-HUH.

8 THE COURT: AND THAT WILL ALL BE DEFINED FOR YOU IF
9 YOU BECOME A JUROR IN THE CASE.

10 NOW, THE JURY SELECTED IN THIS CASE STARTS OFF
11 WITH THE GUILT PHASE OF THE CASE. THE GUILT PHASE IS: IS
12 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE OR ISN'T
13 HE?

14 IF HE ISN'T, THAT IS THE END OF IT.

15 IF THE JURY FINDS HE IS GUILTY OF MURDER IN THE
16 FIRST DEGREE, THEN THEY HAVE TO ANSWER ANOTHER QUESTION: IS
17 IT TRUE OR IS IT FALSE THAT IT WAS COMMITTED DURING THE COURSE
18 OF A ROBBERY?

19 AND WHY IT IS IMPORTANT, AS I INDICATED, I THINK,
20 TO THE OTHER JURORS, IS THAT IN THE COURSE OF A ROBBERY MEANS
21 THAT THAT CASE QUALIFIES FOR THE DEATH PENALTY.

22 IT IS NOT EVERY MURDER THAT QUALIFIES. IT IS
23 ONLY THOSE MURDERS WHICH THE LEGISLATURE SAID, IF THOSE MURDERS
24 WERE COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES, THEN THE
25 DEATH PENALTY WILL BE APPLICABLE AND MURDER COMMITTED IN THE
26 COURSE OF A ROBBERY IS ONE. MURDER COMMITTED IN THE COURSE
27 OF A BURGLARY OR RAPE OR KIDNAPPING OR CHILD MOLESTATION AND
28 THE CHILD DIES, OR TORTURE, OR MULTIPLE MURDERS, TOGETHER

19-2
1 WITH A NUMBER OF OTHERS THE LEGISLATURE SAID, THOSE CASES
2 QUALIFY FOR THE DEATH PENALTY.

3 NOW, THE JURY THAT WILL BE IMPANELED IN THIS CASE
4 AND FINALLY SELECTED WILL HAVE TO DETERMINE FIRST, AS I TOLD
5 YOU, WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY
6 AND IF HE IS FOUND GUILTY, THEN WHETHER OR NOT THE SPECIAL
7 CIRCUMSTANCE HAS BEEN PROVEN TO BE TRUE. IF THEY SAY YES,
8 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY IF HE IS FOUND
9 GUILTY --

10 AND BY THE WAY, DURING THE GUILT PHASE THE QUESTION
11 OF PENALTY DOESN'T COME UP AT ALL. IT IS NOT TO BE CONSIDERED
12 BY THE JURY UNDER ANY CIRCUMSTANCES.

13 IF THEY SAY YES, THEN WE HAVE A SECOND TRIAL CALLED
14 THE SECOND PHASE, WHICH IS THE PENALTY PHASE WHERE WE HAVE
15 OTHER TESTIMONY THAT COMES IN WHICH YOU HAVEN'T HEARD BEFORE,
16 AND THAT RELATES, FROM THE DEFENDANT'S STANDPOINT AS TO HIM,
17 YOU MUST CONSIDER HIS AGE, ANY PREVIOUS CRIMINAL BACKGROUND,
18 IF ANY, IF THERE IS NONE, THEN IT IS A FAVORABLE ASPECT, HIS
19 BACKGROUND, HIS CHARACTER, HIS MENTAL AND PHYSICAL CONDITION
20 AND ANY FAVORABLE ASPECTS ABOUT HIS LIFE OR HIS PERSON, THEY
21 MAY BE CONSIDERED BY THE JURY.

22 AND THE REASON FOR THAT IS SO THAT IT CAN MITIGATE
23 THE OFFENSE. IN OTHER WORDS, INSTEAD OF HAVING THE ULTIMATE
24 PENALTY, THERE MAY BE SOME LESSER PENALTY THAT MIGHT BE
25 INFLICTED UPON HIM.

26 MS. KUBECK: EVEN THOUGH THE DEATH PENALTY IS SUPPOSED
27 TO BE FOR THAT CRIME?

28 THE COURT: ONE OF THE TWO FOR THAT CRIME, YES.

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1 AFTER HE IS FOUND GUILTY OF MURDER IN THE FIRST
2 DEGREE, IF YOU DO --

3 MS. KUBECK: OKAY.

4 THE COURT: -- THEN YOU CONSIDER ONE OF THOSE TWO
5 PENALTIES: LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE,
6 AND THAT MEANS EXACTLY THAT.

7 SOMETIMES PEOPLE HAVE A MISCONCEPTION, WHEN THEY
8 ARE CONVICTED AND SENT TO PRISON FOR LIFE WITHOUT THE
9 POSSIBILITY OF PAROLE, THEY THINK THEY CAN GET OUT. HE WOULDN'T
10 GET OUT. HE CAN'T GET OUT. HE STAYS THERE FOR THE REST OF
11 HIS LIFE.

12 OR DEATH IN THE GAS CHAMBER.

13 THOSE ARE THE ALTERNATIVES.

14 ALL RIGHT, SO AFTER HEARING ALL OF THE EVIDENCE
15 FAVORABLE TO THE DEFENDANT AND UNFAVORABLE TO THE DEFENDANT
16 THAT THE PROSECUTION WILL ADDUCE, THE AGGRAVATING
17 CIRCUMSTANCES, WE CALL THEM, THEN THE JURY MAKES UP ITS MIND
18 AS TO WHAT IT WANTS TO IMPOSE, ONE OF THE TWO PENALTIES, IF
19 THEY MAKE UP THEIR MINDS AT ALL.

20 NOW, SINCE THE QUESTION OF THE DEATH PENALTY IS
21 INVOLVED, WE ARE HAVING THESE HEARINGS AND ASKING EACH
22 INDIVIDUAL JUROR WHAT THEIR MIND SET IS ABOUT THE DEATH PENALTY,
23 EXPLORING YOUR FEELINGS AND YOUR THOUGHTS ON THE SUBJECT AND
24 YOUR ATTITUDES TOWARD IT.

25 I AM GOING TO ASK YOU FIVE QUESTIONS AND THERE
26 WILL BE A NUMBER OF OTHERS WHICH WILL BE ASKED BY COUNSEL.

27 AND THESE FIVE QUESTIONS ARE -- THE FIRST TWO
28 HAVE TO DO WITH THE GUILT PHASE, NOT THE PENALTY BUT THE GUILT

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1 PHASE OF IT, GUILTY OR NOT GUILTY: DO YOU HAVE AN OPINION
2 AS TO THE DEATH PENALTY, WHATEVER IT MAY BE, WHICH WILL PREVENT
3 YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR
4 INNOCENCE OF THE DEFENDANT?

5 MS. KUBECK: NO, I DON'T THINK SO.

6 THE COURT: NOW, THE SECOND PART OF THAT, ALSO ON THE
7 GUILT PHASE, HAS TO DO WITH THE SPECIAL CIRCUMSTANCE, WHETHER
8 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY: DO YOU HAVE
9 ANY OPINION WITH RESPECT TO THE DEATH PENALTY THAT WOULD
10 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE SPECIAL
11 CIRCUMSTANCES, AS TO WHETHER OR NOT IT WAS COMMITTED DURING
12 THE COURSE OF A ROBBERY?

13 MS. KUBECK: NO, I DON'T.
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1 THE COURT: THE NEXT PRESUPPOSES THAT THE DEFENDANT
2 HAS BEEN CONVICTED OF MURDER IN THE FIRST DEGREE AND IT WAS
3 IN THE COURSE OF A ROBBERY.

4 THE NEXT QUESTION I AM GOING TO ASK YOU IS: DO
5 YOU HAVE ANY OPINION CONCERNING THE DEATH PENALTY THAT WOULD
6 CAUSE YOU AUTOMATICALLY TO VOTE FOR THE DEATH PENALTY,
7 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED ON THE PENALTY
8 PHASE OF THE TRIAL?

9 MS. KUBECK: NO, I DON'T THINK SO.

10 THE COURT: THE SAME THING HAS TO DO WITH LIFE
11 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE: DO YOU HAVE
12 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
13 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
14 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED
15 ON THE PENALTY PHASE OF THE TRIAL?

16 MS. KUBECK: NO, I DON'T.

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

21 MS. KUBECK: YOU ARE TALKING ABOUT A VERY DEFINITE MIND
22 SET ON THE DEATH PENALTY, RIGHT?

23 THE COURT: WELL, WHATEVER IT MAY BE, WHATEVER YOUR
24 FEELINGS ARE.

25 MS. KUBECK: NO, OH, NO. I DON'T HAVE ANY.

26 THE COURT: WHATEVER YOUR FEELINGS MAY BE, THESE
27 QUESTIONS HAVE BEEN ASKED ON THE ASSUMPTION -- YOU MAY OR
28 YOU MAY NOT HAVE AN OPINION ONE WAY OR THE OTHER AND YOU MAY

9A-2
1 HAVE VERY DEFINITE OPINIONS ONE WAY OR THE OTHER AND THAT
2 IS WHAT I AM TRYING TO FIND AND THAT IS WHAT COUNSEL ARE GOING
3 TO BE FINDING OUT.

4 MR. BARENS: GOOD AFTERNOON, MS. KUBECK.

5 MS. KUBECK: GOOD AFTERNOON.

6 MR. BARENS: I AM MR. ARTHUR BARENS AND I REPRESENT
7 JOE HUNT, AND AS HIS HONOR TOLD YOU, I AM GOING TO ASK YOU
8 SOME QUESTIONS ABOUT THE DEATH PENALTY, AS I AM OBLIGED TO
9 DO, THE WAY THESE PROCEEDINGS GO FORWARD.

10 PRELIMINARILY, LET ME INDICATE THAT THERE IS NO
11 WRONG OR RIGHT ANSWER. NO ONE IS JUDGING YOUR OPINIONS AND
12 WE ARE JUST SEEKING YOUR OPINION AND YOU CAN NEVER BE WRONG
13 ABOUT YOUR OPINION.

14 MS. KUBECK: I UNDERSTAND.

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

17 MS. KUBECK: UNDECIDED. I CAN'T SAY HOW I DO FEEL.

18 DO YOU WANT MY TOTAL OPINIONS?

19 MR. BARENS: YES.

20 MS. KUBECK: OH, WELL, INTELLECTUALLY, I AM AGAINST
21 THE DEATH PENALTY, VERY MUCH AGAINST IT.

22 PERHAPS IF THE CRIME WERE SO HORRIBLE, EMOTIONALLY,
23 I PROBABLY WOULD MAYBE FEEL, YOU KNOW, MORE TOWARD THE DEATH
24 PENALTY BUT INTELLECTUALLY, I AM AGAINST IT.

25 MR. BARENS: AND I HAVE NO PROBLEM WITH THAT.

26 WHAT WE NEED TO FIND OUT IS WHETHER OR NOT DURING
27 THAT SECOND PENALTY PHASE -- AND YOU SEE WHAT THIS IS ALL
28 ABOUT IS FINDING OUT WHETHER OR NOT WHEN WE HAVE A JUROR SUCH

19A-3
1 AS YOURSELF --

2 MS. KUBECK: YES.

3 MR. BARENS: -- WHETHER YOU CAN GIVE A FAIR TRIAL TO
4 BOTH SIDES.

5 MS. KUBECK: YES.

6 MR. BARENS: -- THE PROSECUTION'S SIDE AND THE DEFENSE
7 SIDE AND FOR THAT TO BE, WE NEED TO KNOW WHETHER YOU ARE
8 CAPABLE AND OPEN-MINDED OF CONSIDERING THE DEATH PENALTY AND
9 CAPABLE OF CONSIDERING LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
10 OF PAROLE, IF WE EVER COME TO THAT IN A PENALTY PHASE.

11 MS. KUBECK: I THINK I AM CAPABLE OF EITHER DECISION,
12 YES.

13 MR. BARENS: OKAY, DO YOU UNDERSTAND THAT THE ONLY TIME
14 WE ARE EVER GOING TO DISCUSS THIS WITH YOU AGAIN WOULD BE
15 AT A JUNCTURE WHERE YOU AND ELEVEN OTHER JURORS, IF YOU WERE
16 SELECTED, WOULD HAVE ALREADY MADE A DETERMINATION THAT A FIRST
17 DEGREE, PREMEDITATED, INTENTIONAL MURDER HAD OCCURRED DURING
18 THE COURSE OF A ROBBERY?

19 MS. KUBECK: UH-HUH.

20 MR. BARENS: DO YOU UNDERSTAND THAT?

21 MS. KUBECK: YES, I DO.

22 MR. BARENS: AND NOW THE QUESTION BEING PUT TO YOU IS:
23 WHAT SHOULD WE DO WITH THE DEFENDANT BY WAY OF PENALTY, DO
24 YOU UNDERSTAND?

25 (MS. KUBECK NODS HER HEAD UP AND DOWN.)

26 MR. BARENS: NOW, DURING THAT PART OF THE PROCESS,
27 COUNSEL WOULD BE GIVING YOU NEW EVIDENCE, AS HIS HONOR
28 REFERENCED, CONCERNING THE BACKGROUND OF THE DEFENDANT, HIS

19A-4

1 AGE AT THE TIME OF THE ALLEGED COMMISSION OF THE CRIME,
2 WHETHER HE HAD A CRIMINAL RECORD PRIOR THERETO, ET CETERA;
3 WOULD YOU BE WILLING TO CONSIDER THAT EVIDENCE IN MAKING YOUR
4 DECISION ON LIFE OR DEATH?

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5 MS. KUBECK: YES. YOU ARE SUPPOSED TO, AREN'T YOU?
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1 MR. BARENS: QUITE SO. SO, YOU WOULD BE INSTRUCTED
2 TO DO THAT BY THE JUDGE.

3 MS. KUBECK: YES.

4 MR. BARENS: THAT IS ALL IT IS. I REALIZE THAT THE
5 DEATH PENALTY IS AN ALTERNATIVE THAT IS HARSH AND A HARD
6 DECISION TO EVER HAVE TO MAKE. WHAT I AM SEEKING TO RECONFIRM
7 IS, THAT YOU WOULD BE CAPABLE OF CONSIDERING THAT ALTERNATIVE,
8 AS WELL AS CAPABLE OF CONSIDERING THE ALTERNATIVE OF LIFE
9 WITHOUT POSSIBILITY OF PAROLE. IS THAT TRUE?

10 MS. KUBECK: I THINK SO.

11 MR. BARENS: ALL RIGHT. NOW, YOU WOULD BE INSTRUCTED
12 AT A POINT IN TIME AND THE JUDGE MADE PASSING REFERENCE TO
13 THE FACT THAT WHAT IS OBLIGATED FOR THE PEOPLE, THE GOVERNMENT
14 IN THIS TYPE OF A CASE, IS THAT THEY PROVE THE CASE BEYOND
15 A REASONABLE DOUBT. WHETHER IT BE A TICKET OR A MURDER CASE,
16 IT IS THE SAME STANDARD OF PROOF. IT IS NOT TO AN ABSOLUTE
17 DOUBT.

18 WE DON'T EVEN BELIEVE IN ABSOLUTE. BUT IT IS
19 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT BECAUSE
20 IT IS A MURDER CASE, THAT THE PEOPLE ARE NOT HELD TO A HIGHER
21 LEVEL OF PROOF THAN BEYOND A REASONABLE DOUBT?

22 MS. KUBECK: OKAY. YES.

23 MR. BARENS: DO YOU UNDERSTAND THAT? YOU WOULDN'T EXPECT
24 ANY SORT OF ABSOLUTE PROOF OR YOU WOULDN'T EXPECT THEM TO
25 DO MORE THAN THAT, JUST BECAUSE THERE IS A POSSIBILITY OF
26 A DEATH PENALTY, AS WELL AS A POSSIBILITY OF LIFE WITHOUT
27 POSSIBILITY OF PAROLE?

28 MS. KUBECK: ARE YOU SAYING THAT THE EVIDENCE DOESN'T

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1 HAVE TO BE AS ABSOLUTE IF A MURDER CASE IS -- AS IT DOES IN
2 OTHER CASES?

3 MR. BARENS: YOU SEE, IN ALL CRIMINAL CASES, ALL
4 CRIMINAL CASES, TRAFFIC TICKETS, MURDER, RAPE, BURGLARY,
5 FOREGERY, COUNTERFEITING, THE WHOLE GAMUT OF ALL THOSE CRIMES
6 THAT WE GET INVOLVED IN AS LAWYERS, OF COURSE, THE ONLY
7 STANDARD OF PROOF THAT THE GOVERNMENT EVER HAS TO ESTABLISH
8 IS CALLED BEYOND A REASONABLE DOUBT. THAT IS ALL THEY HAVE
9 TO PROVE.

10 THE FACT THAT THERE COULD BE A PENALTY INVOLVING
11 THE DEATH PENALTY OR A PENALTY INVOLVING THREE WEEKS IN THE
12 COUNTY JAIL, NONETHELESS, THE ONLY BURDEN OF PROOF THE
13 GOVERNMENT EVER HAS TO SHOW IS SOMETHING BEYOND A REASONABLE
14 DOUBT.

15 MS. KUBECK: OKAY.

16 MR. BARENS: CAN YOU ACCEPT THAT?

17 MS. KUBECK: YES.

18 MR. BARENS: AND WOULD YOU NOT HOLD THE PEOPLE TO A
19 HIGHER STANDARD OF CARE?

20 MS. KUBECK: I UNDERSTAND BECAUSE OF THE EXTREME --
21 OKAY. I UNDERSTAND, YES.

22 MR. BARENS: OKAY?

23 MS. KUBECK: YES.

24 MR. BARENS: BUT YOU KNOW THEY HAVE TO AT LEAST, PROVE
25 THEIR CASE BEYOND A REASONABLE DOUBT?

26 MS. KUBECK: I UNDERSTAND.

27 MR. BARENS: DO YOU UNDERSTAND THAT ALTHOUGH I SAY "AT
28 LEAST," THAT DOESN'T MEAN TO SAY THAT IT ISN'T A SIGNIFICANT

20A-3
1 BURDEN THAT THOSE FOLKS HAVE?

2 MS. KUBECK: UH-HUH.

3 MR. BARENS: DO YOU ALSO UNDERSTAND THAT THE LAW NEVER
4 SAYS THAT THE DEATH PENALTY IS MANDATORY FOR ANY SORT OF
5 CIRCUMSTANCES. DO YOU KNOW THAT?

6 MS. KUBECK: NO.

7 MR. BARENS: OKAY. IN CALIFORNIA, YOU NEVER HAVE TO
8 GIVE ANYBODY THE DEATH PENALTY FOR ANYTHING. THAT IS SIMPLY,
9 A DECISION TO BE MADE BY JURORS.

10 ONLY YOU AS A JUROR AND IN CONCERT WITH THE OTHER
11 JURORS, CAN MAKE THAT DECISION. THE JUDGE CAN'T MAKE THAT.
12 WE CERTAINLY CAN'T.

13 THE LEGISLATURE DOESN'T MAKE THAT. THAT IS YOUR
14 INDIVIDUAL DECISION.

15 MS. KUBECK: OKAY.

16 MR. BARENS: DO YOU UNDERSTAND THAT?

17 MS. KUBECK: YES.

18 MR. BARENS: NOW, DO YOU REALIZE THAT ALTHOUGH WE ARE
19 HERE TALKING ABOUT THE DEATH PENALTY AND YOUR MOTHER-IN-LAW
20 MIGHT HAVE HEARD SOMETHING ABOUT THIS, THAT THERE IS NO
21 INDICATION THAT JOE HUNT HAS DONE ANYTHING WRONG, JUST BECAUSE
22 WE ARE HERE DISCUSSING IT?

23 MS. KUBECK: OF COURSE.

24 MR. BARENS: YOU UNDERSTAND THAT HE HAS THE SAME
25 PRESUMPTION OF INNOCENCE THAT YOU WOULD OR ANYONE ELSE WOULD,
26 IF THEY WERE CHARGED WITH THE CRIME?

27 MS. KUBECK: I UNDERSTAND THAT.

28 MR. BARENS: DO YOU UNDERSTAND THAT IT IS VIRTUALLY

1 WITHOUT PRECEDENT THAT A JUDGE CAN SANCTION YOUR NOT SPEAKING
2 TO YOUR MOTHER-IN-LAW ABOUT SOMETHING? THAT WAS A BIT OF
3 A JOKE, MA'AM.

4 MS. KUBECK: SHE SPOKE TO ME. I DIDN'T SPEAK TO HER.

5 MR. BARENS: I WAS JUST TEASING.

6 THE COURT: HE IS MAKING A JOKE.

7 MR. BARENS: THANK YOU VERY MUCH. WE PASS FOR CAUSE,
8 YOUR HONOR.

9 THE COURT: ALL RIGHT, MR. WAPNER?
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1 MR. WAPNER: GOOD AFTERNOON, MRS. KUBECK. I DIDN'T
2 QUITE UNDERSTAND. YOUR MOTHER-IN-LAW JUST REFRAINED FROM
3 TALKING TO YOU ABOUT --

4 MS. KUBECK: NO. DO YOU WANT ME TO TELL YOU THE WHOLE
5 CONVERSATION?

6 MR. WAPNER: YES, PLEASE.

7 MS. KUBECK: SHE WAS ON JURY DUTY FOR FOUR MONTHS AT
8 ONE TIME. AND SO SHE WAS INTERESTED. SHE KNEW THAT I WAS
9 ON JURY DUTY. AND SHE SAID -- SHE ASKED IF I HAD GOT SELECTED
10 FOR A PANEL YET. I SAID NO.

11 AND SHE SAID THAT SHE HOPED IT WAS NOT -- I DIDN'T
12 HEAR THE NAME. I REALLY DIDN'T BECAUSE I DIDN'T KNOW ANYTHING
13 ABOUT THE CASE.

14 I ASKED WHAT THAT WAS.

15 SHE SAID IT IS GOING TO BE A LONG TRIAL. AND
16 I ASKED WHAT IT WAS ABOUT.

17 SHE SAID IT WAS ABOUT A MURDER AND SHE SAID THAT
18 IT WAS A VERY COMPLICATED TRIAL AND IT WOULD BE A LONG ONE.

19 MR. WAPNER: OKAY. AND THE CASE THAT SHE SAT ON DIDN'T
20 HAVE ANYTHING TO DO WITH THIS CASE?

21 MS. KUBECK: NO. NO, IT WAS 20 YEARS AGO.

22 MR. WAPNER: OKAY. THAT IS THE ONLY PART OF THAT, THAT
23 I DIDN'T UNDERSTAND. I KEPT WRITING NOTES TO MYSELF ABOUT
24 WHO THE MOTHER-IN-LAW WAS AND DID SHE SIT AS A JUROR.

25 MS. KUBECK: NO, NO. SORRY. SORRY, I AM JUST TRYING
26 TO --

27 THE COURT: I AM GLAD THAT YOU TOLD US. IT IS PERFECTLY
28 PROPER.

20R-2
1 MS. KUBECK: YES. WHAT I WANTED TO EXPLAIN WAS THAT
2 I DIDN'T KNOW ANYTHING ABOUT THE CASE.

3 THE COURT: ALL RIGHT.

4 MS. KUBECK: AND SHE SAID THAT SHE COULDN'T UNDERSTAND.
5 AND I SAID THAT I HAD BEEN OUT OF THE COUNTRY. SO I DIDN'T
6 KNOW ANYTHING ABOUT IT.

7 THE COURT: THAT IS THE END OF THAT. NOW, LET'S GET
8 ON TO SOMETHING ELSE.

9 MR. WAPNER: THANK YOU. TELL ME HOW LONG YOU HAVE FELT
10 THAT WAY ABOUT THE DEATH PENALTY, INTELLECTUALLY, VERY STRONGLY
11 AGAINST IT.

12 MS. KUBECK: HOW LONG HAVE I FELT THAT WAY? WHEN I
13 WAS VERY YOUNG, I WAS VERY LIBERAL.

14 THE COURT: WHAT?

15 MS. KUBECK: WHEN I WAS YOUNG I WAS VERY LIBERAL.

16 THE COURT: LIBERAL?

17 MS. KUBECK: AS I GET OLDER, I AM PROBABLY LESS LIBERAL.

18 MAYBE I KNOW MORE ABOUT LIFE. AND I HAVE -- I
19 GUESS I HAVE SEEN GRAYS MORE THAN BLACKS AND WHITES. THAT
20 IS ABOUT AS CLEAR AS I CAN GET TO IT.

21 MR. WAPNER: ALL RIGHT. AND WHEN YOU SAY THAT YOU WERE
22 INTELLECTUALLY VERY MUCH AGAINST IT, WHAT DO YOU MEAN BY THAT?

23 MS. KUBECK: WELL, I MEAN THAT IF NOBODY IN THE WORLD
24 INCLUDING A STATE COULD EVER PUT ANYBODY TO DEATH, WE WOULD
25 NEVER HAVE WARS. WE WOULD NEVER HAVE YOU KNOW, STATES PUTTING
26 PEOPLE TO DEATH FOR POLITICAL REASONS. THAT IS WHAT I MEAN.

27 MR. WAPNER: HOW DOES THAT TRANSLATE INTO YOUR ABILITY
28 TO BE --

1 MS. KUBECK: IT IS JUST A THOUGHT. IT WOULD BE NICE
2 IF SOCIETY WERE THAT WAY. THAT IS WHAT I MEAN.

3 MR. WAPNER: OKAY. YOU HAVE TO DO ME ONE FAVOR --

4 MS. KUBECK: OKAY.

5 THE COURT: YOU MEAN ALL OF THIS IS JUST AN
6 INTELLECTUAL EXERCISE? IS THAT WHAT YOU MEAN?

7 MS. KUBECK: NO. I FEEL VERY DEEPLY ABOUT THE SUBJECT.
8 AND I WOULD BE VERY SERIOUS ABOUT IT.

9 THAT IS WHAT I MEAN. THAT IS WHAT I AM TRYING
10 TO IMPART. I DON'T HAVE LIGHT FEELINGS ABOUT TAKING A LIFE
11 BY A STATE OR THE INDIVIDUAL.

12 MR. WAPNER: OKAY.

13 MS. KUBECK: THAT'S ALL.

14 MR. WAPNER: I UNDERSTAND. THE FAVOR THAT I AM GOING
15 TO ASK OF YOU IS, THIS NICE, YOUNG LADY SITTING BETWEEN US
16 CAN ONLY WRITE DOWN ONE PERSON TALKING AT A TIME. SO --

17 MS. KUBECK: DID I INTERRUPT YOU?

18 MR. WAPNER: JUST WAIT UNTIL I AM FINISHED WITH --

19 MS. KUBECK: OKAY.

20 MR. WAPNER: NOW, CONSIDER THE STRENGTH OF YOUR FEELINGS
21 ABOUT THE STATE TAKING SOMEONE'S LIFE, DO YOU THINK THAT WERE
22 YOU TO BE A JUROR ON THIS CASE, YOU COULD RECONCILE YOUR
23 OPINION WITH BEING A PARTICIPANT WITH ELEVEN OTHER JURORS
24 IN A DECISION TO DO JUST THAT, TO TAKE SOMEONE ELSE'S LIFE?

25 MS. KUBECK: IF THE CASE DEMANDS IT, YES. I AM SURE
26 I COULD.

27 MR. WAPNER: WHAT DO YOU MEAN WHEN YOU SAY, "IF THE
28 CASE DEMANDS IT"?

1 MS. KUBECK: THE EVIDENCE WOULD HAVE TO BE STRONG ENOUGH
2 FOR US, ALL 12, TO AGREE TO IT.

3 MR. WAPNER: THE FIRST THING IS --

4 MS. KUBECK: THE PENALTY PART?

5 MR. WAPNER: THE FIRST THING IS, ALTHOUGH A DECISION
6 BY A JURY IS REACHED BY 12 PEOPLE, THE JUDGE WILL TELL YOU
7 THAT EACH PERSON RENDERS THEIR OWN, INDIVIDUAL VERDICT. DO
8 YOU UNDERSTAND THAT?

9 MS. KUBECK: UH-HUH, YES.

10 MR. WAPNER: SO PUTTING ASIDE WHAT THE OTHER 11 PEOPLE
11 MIGHT THINK, CONSIDERING THE STRENGTH OF YOUR VIEWS ON THE
12 DEATH PENALTY, DO YOU FEEL THAT YOU COULD EVER VOTE TO SEND
13 SOMEONE TO DEATH IN THE GAS CHAMBER?

14 MS. KUBECK: YES I DO.

15 MR. WAPNER: I BELIEVE THAT YOU SAID BEFORE, YOU COULD
16 DO SO MAYBE IF THE CRIME WERE SO HORRIBLE. WERE THOSE NOTES
17 THAT I TOOK ACCURATE?

18 MS. KUBECK: MAYBE IF THE CRIME WERE SO HORRIBLE.

19 MR. WAPNER: YOU COULD VOTE FOR THE DEATH PENALTY?

20 MS. KUBECK: YES. IF I FELT THAT THE DEATH PENALTY
21 JUSTIFIED IT, I COULD VOTE FOR THE DEATH PENALTY.

22 MR. WAPNER: DO YOU MEAN TO IMPLY BY THAT THAT EVEN
23 IF IT WAS A HORRIBLE CRIME, YOU ARE NOT SURE?

24 MS. KUBECK: NO, NO. I COULD VOTE FOR THE DEATH PENALTY.
25 IT WOULD HAVE TO BE STRONG CIRCUMSTANCES FOR ME TO VOTE.

26 MR. WAPNER: DO YOU HAVE ANY PARTICULAR CIRCUMSTANCES
27 IN MIND THAT YOU ARE THINKING ABOUT? IS THERE SOME STANDARD
28 THAT YOU WOULD USE TO COMPARE THIS CASE TO, FOR EXAMPLE?

1 MS. KUBECK: I DON'T THINK SO, NO. I DON'T THINK I
2 COULD SAY THAT.

3 MR. WAPNER: DO YOU HAVE ANYTHING IN MIND WHEN YOU SAY
4 "STRONG CIRCUMSTANCES"? I MEAN, ARE YOU JUST VISUALIZING
5 ANYTHING IN YOUR MIND WHEN YOU SAY THAT?

6 THE COURT: SHE SAID NO. SHE ANSWERED THAT. YOU ASKED
7 THAT TWICE.

8 MR. WAPNER: WELL, I AM NOT SURE. THE FIRST TIME I
9 ASKED IT UNFORTUNATELY, IT WAS A COMPOUND QUESTION. SO I
10 THOUGHT I WOULD SIMPLIFY IT.

11 THE COURT: GO AHEAD.

12 MS. KUBECK: I AM TRYING TO SAY THAT I AM NOT 100 PERCENT
13 FOR THE DEATH PENALTY OR 100 PERCENT AGAINST THE DEATH PENALTY.
14 THAT IS ALL I AM TRYING TO SAY.

15 MR. WAPNER: OKAY. IN THIS CASE, THE ONLY WAY THAT
16 YOU WILL GET TO THE QUESTION OF THE DEATH PENALTY, IS IF THE
17 JURY HAS DECIDED THAT THERE WAS A MURDER COMMITTED INTENTIONALLY
18 DURING A ROBBERY. DO YOU UNDERSTAND THAT?

19 MS. KUBECK: YES.

20 MR. WAPNER: LET ME START OVER WITH THIS. I AM NOT
21 ASKING YOU ABOUT THE FACTS OF THIS PARTICULAR CASE. BUT IN
22 THE GENERAL CATEGORY OF MURDERS THAT OCCUR IN THE COURSE OF
23 A ROBBERY, DO YOU THINK THAT YOU ARE CAPABLE, IF THE FACTS
24 OF THAT PARTICULAR MURDER DURING A ROBBERY JUSTIFY IT, ARE
25 YOU CAPABLE OF VOTING FOR THE DEATH PENALTY?

26 MR. BARENS: OBJECTION TO THAT. THAT IS MUCH TOO
27 CENTERED AND TOO SPECIFIC A QUESTION.

28 THE JUDGE HAS SAID TO HER THAT WE ARE GOING TO

1 TRY THE CASE THAT INVOLVES A MURDER ALLEGED COMMITTED DURING
2 THE COURSE OF AN ALLEGED ROBBERY. NOW HE IS ASKING IF A MURDER
3 IS COMMITTED DURING THE COURSE OF AN ALLEGED ROBBERY, COULD
4 SHE VOTE FOR THE DEATH PENALTY FOR THAT.

5 THAT IS THE QUESTION.

6 THE COURT: I WILL SUSTAIN THE OBJECTION. REPHRASE
7 THE QUESTION.

8 MR. WAPNER: THANK YOU, YOUR HONOR.

9 WHAT I AM TRYING TO GET AT IS, TAKING THIS CASE,
10 TRYING TO SEPARATE THEORY FROM REALITY, I AM NOT ASKING YOU
11 HOW YOU WOULD VOTE ON THIS CASE. ARE YOU CLEAR ON THAT?

12 MS. KUBECK: YES, OF COURSE. OF COURSE.

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1 MR. WAPNER: AND I WON'T GIVE YOU ANY OF THE FACTS OF
2 THIS CASE.

3 MS. KUBECK: NO.

4 MR. WAPNER: BUT THERE IS ONLY ONE VEHICLE IN THIS CASE
5 THAT WILL ALLOW YOU TO GET TO THE QUESTION OF THE DEATH PENALTY
6 AND THAT VEHICLE IS THAT THE JURY WOULD HAVE TO DECIDE THAT
7 THERE WAS AN INTENTIONAL MURDER DURING A ROBBERY; DO YOU UNDER-
8 STAND THAT?

9 MS. KUBECK: YES, OF COURSE.

10 MR. WAPNER: ALL RIGHT, SO NOW LET'S TALK ABOUT THE
11 GENERIC CATEGORY OF MURDERS THAT OCCUR DURING ROBBERIES.

12 WITHOUT KNOWING THE PARTICULAR FACTS OF ANY GIVEN
13 CASE, IS THAT A CATEGORY OF CRIME FOR WHICH YOU FEEL THAT IT
14 IS APPROPRIATE TO HAVE THE DEATH PENALTY?

15 MR. BARENS: OBJECTION. I DON'T BELIEVE THAT CAN BE
16 ASKED.

17 THE COURT: I WILL OVERRULE YOUR OBJECTION. I THINK
18 IT IS A PROPER QUESTION.

19 YOU ARE ASKING HER, IN EFFECT, SUPPOSING THAT
20 GENERALLY THERE IS A DELIBERATE MURDER WHICH HAS BEEN COMMITTED
21 IN THE COURSE OF A ROBBERY, WOULD SHE UNDER NO CIRCUMSTANCE
22 VOTE FOR THE DEATH PENALTY IN A CASE OF THAT KIND; IS THAT
23 WHAT YOU ARE ASKING HER?

24 MR. WAPNER: THANK YOU, YOUR HONOR. YES.

25 MS. KUBECK: A ROBBERY ISN'T ALWAYS PREMEDITATED, THE
26 MURDER IN A ROBBERY IS NOT ALWAYS PREMEDITATED?

27 THE COURT: YOU MEAN THE MURDER, THE KILLING IS
28 PREMEDITATED AND PLANNED AND EVERYTHING ELSE, ASSUMING IT IS

1 ALL PLANNED AND AN INTENTIONAL MURDER?

2 MS. KUBECK: PREMEDITATED, INTENTIONAL MURDER COMMITTED
3 DURING A ROBBERY.

4 THE COURT: YES.

5 MR. WAPNER: CORRECT.

6 MR. BARENS: THE DEFENSE SUBMITS YOU ARE ASKING THE JUROR
7 TO PREJUDGE THE EVIDENCE NOW.

8 THE COURT: NO, NO. HE WANTS --

9 MS. KUBECK: OKAY.

10 THE COURT: HE WANTS TO GET HER OPINION AS TO WHETHER
11 OR NOT IN ANY CASE WHERE THERE MIGHT BE THAT, NOT ON THIS
12 PARTICULAR CASE, BUT WHETHER OR NOT HER MIND IS SUCH THAT --

13 MS. KUBECK: CAN I STATE IT AGAIN?

14 THE COURT: YES.

15 MS. KUBECK: A ROBBERY IN WHICH THERE WAS A PREMEDITATED,
16 INTENTIONAL MURDER COMMITTED INTENTIONALLY.

17 THE COURT: THAT'S RIGHT.

18 MS. KUBECK: PREMEDITATED AND INTENTIONAL?

19 THE COURT: YES.

20 MS. KUBECK: COULD I VOTE FOR THE DEATH PENALTY IF A
21 PERSON WERE FOUND GUILTY OF AN INTENTIONAL, PREMEDITATED
22 MURDER DURING A ROBBERY?

23 THE COURT: YES.

24 MR. WAPNER: CORRECT, AND YOU HEARD ALL OF THE EVIDENCE
25 ON THE PENALTY PHASE AND YOU FELT --

26 MS. KUBECK: YES, I COULD.

27 IN OTHER WORDS, IF A MURDER DURING A ROBBERY IS
28 STRONG ENOUGH FOR ME TO BE ABLE TO DO THAT?

1 MR. WAPNER: THAT IS BASICALLY WHAT IT GETS DOWN TO.

2 THE COURT: I DON'T KNOW WHAT YOU MEAN BY "STRONG
3 ENOUGH".

4 MS. KUBECK: WELL --

5 THE COURT: YOU MEAN IF IT WAS INTENTIONAL AND
6 PREMEDITATED --

7 MS. KUBECK: WE ARE HITTING PREMEDITATED AND INTENTIONAL
8 HERE, AREN'T WE?

9 THE COURT: AND PLANNED.

10 MS. KUBECK: AND PLANNED, PREMEDITATED AND INTENTIONAL,
11 ARE THOSE THE KEY WORDS?

12 THE COURT: YES.

13 MS. KUBECK: YES.

14 MR. WAPNER: YES?

15 MS. KUBECK: YES.

16 MR. BARENS: BEYOND A REASONABLE DOUBT.

17 MR. WAPNER: IN THAT KIND OF A CASE, DO YOU FEEL THAT
18 IF THE FACTS WARRANTED IT, YOU COULD VOTE FOR A VERDICT OF
19 DEATH?

20 MS. KUBECK: YES, I FEEL THAT I COULD.

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

22 MS. KUBECK: I AM SORRY I BROUGHT UP THE DESIRE TO LIVE
23 IN A DEATH-FREE WORLD.

24 THE COURT: OH, THAT IS QUITE ALL RIGHT. WE LIKE TO
25 KNOW HOW YOU FEEL ABOUT IT, THAT IS WHY WE ARE ASKING YOU THESE
26 QUESTIONS, TO GET WHAT YOUR STATE OF MIND IS.

27 BOTH SIDES AGREE, AND THE COURT AGREES ALSO, THAT
28 YOU ARE EMINENTLY QUALIFIED TO BE A TRIAL JUROR IN THIS CASE.

1 MS. KUBECK: UH-HUH.

2 THE COURT: SO WHAT WE WILL ASK YOU TO DO IS TO COME
3 BACK. WE WILL FINISH WITH THE REST OF THE LIST AND WE WILL
4 BE READY ON MONDAY MORNING TO PROCEED WITH THE TRIAL IN THIS
5 CASE.

6 MS. KUBECK: SO I AM EXCUSED UNTIL MONDAY MORNING?

7 THE COURT: SO YOU ARE EXCUSED UNTIL MONDAY MORNING AT
8 10:30, AND YOU WILL GO TO THE JURY ASSEMBLY ROOM AND BE THERE
9 WITH THE OTHER JURORS AND THEN YOU ALL COME BACK IN HERE.

10 MS. KUBECK: ALL RIGHT, MONDAY.

11 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

12 MR. BARENS: YOUR HONOR, COULD WE --

13 THE COURT: ALL RIGHT, A TEN-MINUTE RECESS.

14 (RECESS.)

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1 (PROSPECTIVE JOROR MC EWAN ENTERS THE
2 COURTROOM.)

3 THE COURT: MS. MC EWAN, WHERE DO YOU LIVE?

4 MS. MC EWAN: SANTA MONICA CANYON.

5 THE COURT: HAVE YOU EVER READ ABOUT THE CASE OR HEARD
6 ANYTING ABOUT THE CASE AT ALL?

7 MS. MC EWAN: YES. I READ A GREAT DEAL ABOUT IT.

8 THE COURT: WHERE DID YOU READ IT?

9 MS. MC EWAN: I HAVE READ IT IN THE LOS ANGELES TIMES
10 AND ABOUT A MONTH OR TWO AGO I READ IT IN TIME AND NEWSWEEK.
11 THEY HAD A LONG ARTICLE ABOUT IT, THE WHOLE THING.

12 THE COURT: WHAT DO YOU REMEMBER ABOUT THE FACTS
13 SUPPOSEDLY OF THE CASE?

14 MS. MC EWAN: WHAT DO I REMEMBER? I REMEMBER THAT THERE
15 WAS STOCK DEALS AND A GROUP OF YOUNG PEOPLE WHO CALLED THEM-
16 SELVES THE YOUNG MILLIONAIRES OR SOMETHING.

17 THE COURT: THE BILLIONAIRE BOYS CLUB?

18 MS. MC EWAN: UH-HUH. AND THEN A MAN NAMED MR. LEVIN
19 OR LEVIN, PUT UP A DEAL TO -- GAVE -- WAIT. LET ME SEE.

20 HE GAVE -- I GUESS THAT IS WHAT IT IS -- THAT HE
21 WOULD GIVE HIM A MILLION DOLLARS, LET'S SAY, TO INVEST.

22 THEN THE DEFENDANT BUILT UP THAT MILLION DOLLARS.
23 THEN THERE WASN'T ANY MONEY AT ALL. IT WAS A PHONY DEAL.

24 SO THEN THEY SAID THAT MR. LEVIN WAS KILLED. AND
25 THEN THEY GOT INTO THE NEXT ONE. DO YOU WANT ME TO GO INTO
26 THE NEXT ONE?

27 THE COURT: YES.

28 MR. MC EWAN: THEN, ONE OF THE YOUNG MEN SOUNDED LIKE

1 A SAUDI ARABIAN OR AN IRANIAN. HIS FATHER, THEY TRIED TO GET
2 MONEY FROM HIS FATHER. AND THEN THEY KILLED HIS FATHER.

3 THE COURT: WELL, ASSUMING THAT WHAT YOU READ ARE THE
4 FACTS AND ASSUMING WHAT YOU READ IS TRUE -- SORRY.

5 ASSUMING WHAT YOU READ IS -- WHAT YOU THINK THE
6 FACTS ARE IN THE CASE, WOULD YOU LISTEN TO THE TESTIMONY IN
7 THIS CASE IF YOU ARE SELECTED AS A JUROR AND FORGET ABOUT ANY-
8 THING THAT YOU READ?

9 MS. MC EWAN: I COULDN'T LISTEN WITH AN OPEN MIND. I
10 WOULD BE BIASED.

11 THE COURT: HOW DO YOU MEAN YOU WOULD BE BIASED?

12 MS. MC EWAN: I HAVE MADE UP MY MIND.

13 THE COURT: MOST OF THE FACTS YOU TOLD ME ABOUT WERE
14 NOT THE FACTS IN THE CASE.

15 MS. MC EWAN: THEY ARE NOT?

16 THE COURT: THEY ARE NOT.

17 MS. MC EWAN: WELL, THE FACTS THAT I READ --

18 THE COURT: THAT IS THE REPORTER THAT REPORTED THEM.

19 MS. MC EWAN: WELL, TO ME, THOSE ARE THE FACTS. THAT
20 IS WHAT I THINK I READ. AS FAR AS THAT, I THINK THE DEFENDANT
21 IS GUILTY.

22 THE COURT: DO YOU THINK SO?

23 MS. MC EWAN: YES, POSITIVE.

24 THE COURT: WITHOUT EVER HEARING ANYTHING OF THE
25 TESTIMONY?

26 MS. MC EWAN: I MIGHT SAY THAT I AM PRETTY BIASED.

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23-1
1 THE COURT: YOU THINK YOUR MIND IS SUCH THAT, NO MATTER
2 WHAT YOU HEAR YOU HAVE MADE UP YOUR MIND AS TO WHETHER THE
3 DEFENDANT IS GUILTY OR NOT?

4 MS. MC EWAN: I AM AFRAID SO.

5 MR. BARENS: I HAVE A MOTION -- STIPULATION, I BELIEVE.

6 MR. WAPNER: I STIPULATE SHE CAN BE EXCUSED, YOUR HONOR.

7 THE COURT: ALL RIGHT, THANK YOU VERY MUCH FOR YOUR
8 HONESTY AND FRANKNESS, I APPRECIATE IT VERY MUCH.

9 MS. MC EWAN: OKAY. THANK YOU.

10 THE COURT: IT IS TOO BAD YOU ARE SOLD ON WHAT YOU READ
11 IN THE NEWSPAPERS AND BELIEVE ALL OF THE FACTS YOU READ ARE
12 CORRECT WITHOUT WAITING TO HEAR WHAT THE TESTIMONY IS UNDER
13 OATH AND GIVING YOU AN OPPORTUNITY OF HEARING IT FIRSTHAND
14 RATHER THAN SECONDHAND.

15 HOWEVER, IF YOU HAVE MADE UP YOUR MIND ABOUT THE
16 FACTS IN THIS CASE AND NOTHING WOULD EVER CHANGE YOU, YOU
17 WILL NOT MAKE A GOOD JUROR IN THE CASE.

18 MS. MC EWAN: THANK YOU.

19 THE COURT: THANK YOU VERY MUCH.

20 MR. BARENS: YOUR HONOR, COULD YOUR HONOR PLEASE INSTRUCT
21 THE JUROR NOT TO SPEAK TO OUR OTHER JURORS?

22 MS. MC EWAN: NO, I WOULDN'T.

23 THE COURT: DON'T TALK TO ANY OF THE OTHER JURORS.

24 MS. MC EWAN: NO, HUH-UH.

25 THE COURT: BECAUSE THE FACTS YOU HAVE ARE WRONG.

26 MS. MC EWAN: NO, I DIDN'T TALK TO THEM BEFORE EITHER.

27 MR. BARENS: THANK YOU VERY MUCH.

28 (PROSPECTIVE JUROR MC EWAN EXITED THE COURTROOM.)

23-2

1 (PROSPECTIVE JUROR MC GLONE ENTERED THE
2 COURTROOM.)

3 THE COURT: MR. MC GLONE? THAT IS MR. MC GLONE?

4 MR. MC GLONE: YES.

5 THE COURT: MC GLONE?

6 MR. MC GLONE: MC GLONE, M-C-G-L-O-N-E.

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

8 MR. MC GLONE: IN LOS ANGELES.

9 THE COURT: IN WHAT PART OF IT?

10 MR. MC GLONE: LAUREL CANYON AREA.

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

13 MR. MC GLONE: NO, SIR.

14 THE COURT: DO YOU KNOW ANYTHING ABOUT IT EXCEPT WHAT
15 I TOLD YOU HERE ON MONDAY?

16 MR. MC GLONE: NO, SIR.

17 THE COURT: YOU KNOW NOTHING?

18 MR. MC GLONE: NO.

19 THE COURT: THE EXPRESSION BILLIONAIRE BOYS CLUB, DOES
20 THAT RING A BELL IN YOUR MIND?

21 MR. MC GLONE: NO, IT DOES NOT.

22 THE COURT: ALL RIGHT, WHAT I AM GOING TO DO IS BRIEFLY
23 AGAIN TELL YOU WHAT THE CASE IS ABOUT AND THEN ASK YOU CERTAIN
24 QUESTIONS. THOSE QUESTIONS WHICH COUNSEL AND I WILL ASK, THOSE
25 QUESTIONS ARE INTENDED TO EXPLORE YOUR MIND AS TO WHAT YOUR
26 FEELINGS ARE AND ATTITUDES TOWARD THE DEATH PENALTY; DO YOU
27 UNDERSTAND?

28 MR. MC GLONE: YES, SIR.

23-3

1 THE COURT: NOW TO BEGIN WITH, I DID TELL YOU THAT THE
2 CHARGE IN THIS CASE AGAINST THE DEFENDANT IS THAT HE COMMITTED
3 A MURDER IN THE COURSE OF A ROBBERY.

4 YOU MUST UNDERSTAND, OF COURSE, THAT THAT IS THE
5 CHARGE. IT DOESN'T NECESSARILY MEAN BECAUSE OF THE FACT THAT
6 A CHARGE HAS BEEN MADE THAT IT IS TRUE OR UNTRUE; DO YOU
7 UNDERSTAND THAT?

8 MR. MC GLONE: YES.

9 THE COURT: IF YOU ARE A JUROR, YOU WILL HEAR ALL OF
10 THE EVIDENCE AND MAKE UP YOUR MIND AS TO WHETHER OR NOT THERE
11 IS A BASIS FOR ANY OF THE CHARGES.

12 AT ANY RATE, THE CHARGE AGAINST HIM IS THAT HE
13 COMMITTED A MURDER AND IT WAS A DELIBERATE, INTENTIONAL MURDER
14 IN THE COURSE OF A ROBBERY.

15 NOW, IN THE COURSE OF A ROBBERY AS I POINTED OUT
16 TO YOU, HAS A SIGNIFICANCE. NOT EVERY MURDER, EVEN IF IT
17 IS DELIBERATE AND PLANNED AND PREMEDITATED, CALLS FOR THE
18 IMPOSITION OF THE DEATH PENALTY.

19 IT IS ONLY THOSE MURDERS WHICH THE LEGISLATURE
20 HAS SINGLED OUT UNDER CERTAIN SPECIAL CIRCUMSTANCES THAT THOSE
21 MURDERS THEN QUALIFY FOR A DEATH PENALTY; DO YOU UNDERSTAND?

22 (MR. MC GLONE NODS HIS HEAD UP AND DOWN.)

23 THE COURT: ONE OF THOSE SPECIAL CIRCUMSTANCES IS A
24 DELIBERATE MURDER COMMITTED IN THE COURSE OF A ROBBERY, LIKE
25 THIS ONE IS ALLEGED TO HAVE BEEN, THAT QUALIFIES IT FOR THE
26 DEATH PENALTY.

27 SIMILARLY, MURDERS COMMITTED DURING THE COURSE
28 OF A BURGLARY, FOR EXAMPLE, OR A RAPE OR A KIDNAPPING OR

23-4
1 MULTIPLE MURDERS OR TORTURE MURDERS AND SO FORTH, THOSE ALSO
2 QUALIFY FOR THE DEATH PENALTY.

3 SO IT IS ONLY WHERE IT IS COMMITTED UNDER CERTAIN
4 SPECIAL CIRCUMSTANCES THAT THE LEGISLATURE SAID THESE CASES
5 QUALIFY FOR THE DEATH PENALTY.

6 NOW, BY DEATH PENALTY, WE MEAN ONE OF TWO THINGS:
7 EITHER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE --
8 AND IT MEANS EXACTLY THAT: LIFE IMPRISONMENT WITHOUT THE
9 POSSIBILITY OF PAROLE. YOU ARE IN PRISON FOR THE REST OF
10 YOUR LIFE WITHOUT ANY POSSIBILITY OF PAROLE, YOU NEVER GET
11 OUT.

12 OR IT IS DEATH IN THE GAS CHAMBER.

13 NOW, THE JURY WHICH WILL BE IMPANELED IN THIS
14 CASE TO TRY THE CASE WILL FIRST DETERMINE ON WHAT WE CALL
15 THE GUILT PHASE, THEY WILL FIRST DETERMINE THE GUILT OR
16 INNOCENCE OF THE DEFENDANT.

17 IF THEY FIND HIM INNOCENT OF THE CRIME OF MURDER,
18 THEN THAT IS THE END OF IT.

19 IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST
20 DEGREE, THEN THEY HAVE TO DECIDE THIS SPECIAL CIRCUMSTANCE
21 I TOLD YOU, WHETHER IT WAS COMMITTED IN THE COURSE OF A ROBBERY.

22 IF THEY SAY TRUE, IT WAS COMMITTED IN THE COURSE
23 OF A ROBBERY, THEN THAT SAME JURY HEARS MORE EVIDENCE BOTH
24 FROM THE DEFENSE AND FROM THE PROSECUTION. THAT EVIDENCE
25 WILL BE FOR THE PURPOSE OF INFLUENCING THE JURY AS TO WHICH
26 OF THE PENALTIES SHALL BE IMPOSED.

27 THE DEFENDANT, OF COURSE, WILL INTRODUCE EVIDENCE,
28 WE EXPECT, OF THINGS THAT ARE FAVORABLE ABOUT HIM. AND YOU

23-5
1 MUST CONSIDER THE FACT OF HIS AGE, HIS BACKGROUND, HIS LACK
2 OF ANY PREVIOUS CRIMINAL ACTIVITY, HIS CHARACTER, HIS MENTAL
3 AND PHYSICAL CONDITION AND ANYTHING THAT HAS TO DO WITH A
4 PERSON WHICH MIGHT BE FAVORABLE TO HIM.

5 THE PROSECUTION, ON THE OTHER HAND --
6 THAT IS CALLED MITIGATING AND EXTENUATING
7 CIRCUMSTANCES TO LESSEN THE OFFENSE WHICH HAS BEEN COMMITTED.

8 AND THE PEOPLE, ON THE OTHER HAND, WILL SHOW
9 AGGRAVATING CIRCUMSTANCES WHICH WILL SHOW FACTS ABOUT THE
10 DEFENDANT WHICH ARE UNFAVORABLE SO THAT THE ULTIMATE PENALTY
11 CAN BE IMPOSED UPON HIM.

12 SO THEY WILL MAKE A CHOICE OF DEATH IN THE GAS
13 CHAMBER OR LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE
14 AND THE JURY HEARS ALL OF THAT ON THE PENALTY PHASE OF THE
15 TRIAL AND THEN THEY MAKE UP THEIR MINDS WHEN THEY GO IN THE
16 JURY ROOM TO DELIBERATE AND MAKE UP THEIR MINDS WHICH IT SHOULD
17 BE, LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE OR DEATH
18 IN THE GAS CHAMBER.

19 NOW, THE QUESTION OF PENALTY NEVER COMES UP ON
20 THE FIRST PHASE, ON THE GUILT PHASE. ALL YOU HAVE TO DETERMINE
21 IS GUILT OR INNOCENCE OF THE DEFENDANT ON THE GUILT PHASE,
22 THAT IS ALL. NO QUESTION OF PENALTY IS INVOLVED IN ANY WAY.

23 THAT COMES LATER; DO YOU UNDERSTAND THAT?

24 MR. MC GLONE: YES, I DO.

25 THE COURT: NOW, THE QUESTIONS I AM GOING TO ASK YOU,
26 AND COUNSEL ARE GOING TO ASK YOU, HAVE TO DO WITH YOUR STATE
27 OF MIND, YOUR MIND SET, TO EXPLORE YOUR MIND ABOUT HOW YOU
28 FEEL, WHAT YOUR ATTITUDE IS TOWARD THE DEATH PENALTY.

1 I AM GOING TO ASK YOU FIVE QUESTIONS. THE FIRST
2 TWO QUESTIONS INVOLVE THE FIRST PART OF THE TRIAL, THE GUILT
3 PHASE.

4 AND NOW IT IS THIS: DO YOU HAVE AN OPINION,
5 WHATEVER THAT OPINION MAY BE, WHICH WILL PREVENT YOU FROM
6 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE
7 OF THE DEFENDANT?

8 MR. MC GLONE: NO, I DO NOT.

9 THE COURT: THEN YOU REMEMBER I TOLD YOU THAT IF HE
10 IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE QUESTION
11 OF WAS IT COMMITTED DURING THE COURSE OF A ROBBERY WILL BE
12 DETERMINED, THE JURY WILL BE ASKED TO SAY TRUE OR FALSE AS
13 TO THE SPECIAL CIRCUMSTANCE THAT IT WAS COMMITTED DURING THE
14 COURSE OF A ROBBERY.

15 I WILL ASK YOU THE SAME QUESTION WITH RESPECT
16 TO THAT: DO YOU HAVE ANY OPINION ON THE DEATH PENALTY, WHATEVER
17 IT MAY BE, WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
18 DECISION AS TO THE SPECIAL CIRCUMSTANCE?

19 MR. MC GLONE: NO, I DON'T.

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1 THE COURT: ALL RIGHT. THE NEXT TWO QUESTIONS PRESUPPOSE
2 THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER IN THE FIRST
3 DEGREE AND THAT IT WAS INTENTIONAL AND DELIBERATE AND THAT
4 IT WAS IN THE COURSE OF A ROBBERY.

5 THIS HAS GOT TO DO WITH THE PENALTY PHASE. NOW,
6 THE FIRST OF THOSE TWO QUESTIONS I WILL ASK YOU ON THE PENALTY
7 PHASE IS AS FOLLOWS: DO YOU HAVE AN OPINION CONCERNING THE
8 DEATH PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO VOTE FOR
9 THE IMPOSITION OF THE DEATH PENALTY, REGARDLESS OF EVIDENCE
10 THAT MAY BE PRESENTED ON THE PENALTY PHASE IN THE TRIAL?

11 MR. MC GLONE: NO, I DON'T.

12 THE COURT: THE SAME QUESTION WITH RESPECT TO LIFE
13 WITHOUT THE POSSIBILITY OF PAROLE. DO YOU HAVE ANY OPINION
14 CONCERNING THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY VOTE
15 FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE, REGARDLESS OF ANY
16 EVIDENCE THAT MAY BE PRESENTED ON THE PENALTY PHASE OF THE
17 TRIAL?

18 MR. MC GLONE: YES, I DO.

19 THE COURT: WHAT IS THAT?

20 MS. MC GLONE: I DISAGREE WITH THE DEATH PENALTY. I
21 WOULD VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE.

22 THE COURT: LIFE WITHOUT POSSIBILITY OF PAROLE?

23 MR. MC GLONE: LIFE WITHOUT POSSIBILITY OF PAROLE.

24 THE COURT: THAT IS ONLY IF YOU FIND HIM GUILTY OF
25 MURDER IN THE FIRST DEGREE, DELIBERATE, INTENTIONAL AND IT
26 WAS COMMITTED IN THE COURSE OF A ROBBERY, WOULD YOU UNDER NO
27 CIRCUMSTANCES, VOTE FOR DEATH IN THE GAS CHAMBER BUT YOU MIGHT
28 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE? IS THAT WHAT

1 YOU ARE TELLING US?

2 MR. MC GLONE: THAT'S RIGHT.

3 MR. BARENS: FOR JUST A MOMENT, YOUR HONOR?

4 MR. MC GLONE, I AM ARTHUR BARENS. I REPRESENT
5 THE DEFENDANT, JOE HUNT.

6 AND ALTHOUGH I MIGHT PERSONALLY SHARE YOUR VIEW
7 ABOUT THE DEATH PENALTY, WHAT WE ARE LOOKING FOR HERE, IS TO
8 SEE IF WE CAN FIND JURORS THAT WOULD BE OPEN-MINDED ENOUGH
9 TO AT LEAST CONSIDER BOTH ALTERNATIVES, THOSE BEING LIFE WITH-
10 OUT POSSIBILITY OF PAROLE AND THE DEATH PENALTY.

11 SO, THESE PEOPLE WOULD QUALIFY AS JURORS BECAUSE
12 A PERSON THAT COULDN'T, COULD NOT. DO YOU UNDERSTAND THAT?

13 MR. MC GLONE: YES, I DO.

14 MR. BARENS: NOW, A MOMENT AGO, YOU SAID THAT YOU BELIEVED
15 I THINK, UNDER NO CIRCUMSTANCES WOULD YOU EVER VOTE FOR THE
16 DEATH PENALTY?

17 (MR. CHIER ENTERS THE COURTROOM.)

18 MR. MC GLONE: THAT'S RIGHT.

19 MR. BARENS: AS YOU CONSIDER DIFFERENT CONDUCT THAT COULD
20 BE POSSIBLE, LET'S START, LET'S SAY WITH RICHARD RAMIREZ, THE
21 NIGHT STALKER FELLOW. DO YOU THINK IF YOU BELIEVED BEYOND
22 A REASONABLE DOUST AFTER A TRIAL, AFTER LISTENING TO A TRIAL,
23 THAT YOU COULD NEVER VOTE IN FAVOR OF THE DEATH PENALTY FOR
24 HIM?

25 MR. MC GLONE: YES. I COULD NEVER VOTE FOR THE DEATH
26 PENALTY.

27 MR. BARENS: I AM CONVINCED. THANK YOU VERY MUCH FOR
28 YOUR TIME AND YOUR CANDOR, SIR.

1 THE MATTER IS SUBMITTED.

2 MR. WAPNER: NO QUESTIONS.

3 THE COURT: ALL RIGHT. THANK YOU VERY MUCH FOR YOUR
4 CANDOR AND YOUR FRANKNESS. WE APPRECIATE IT VERY MUCH.

5 THAT IS, WE APPRECIATE IT RATHER THAN YOUR WAITING
6 UNTIL YOU ARE A JUROR AND THEN MAKING IT KNOWN IN THE JURY
7 ROOM THAT YOU DO THINK THAT WAY.

8 WE ARE GLAD YOU TELL US NOW. HOWEVER, WE THINK
9 YOU WOULD MAKE AN EXCELLENT JUROR IN SOME OTHER TYPE OF CASE.
10 SO, YOU TELL THE CLERK IN THE JURY ASSEMBLY ROOM THAT YOU ARE
11 WILLING TO SERVE IN SOME OTHER CASE WHERE THE DEATH PENALTY
12 IS NOT REQUIRED. THANK YOU.

13 (PROSPECTIVE JUROR MC. GLONE EXITS THE
14 COURTROOM.)

15 (PROSPECTIVE JUROR MC GREAL ENTERS THE
16 COURTROOM.)

17 THE COURT: MR. MC GREAL, IS THAT IT?

18 MR. MC GREAL: YES, YOUR HONOR.

19 THE COURT: I UNDERSTAND THAT YOU WANT TO CLAIM HARDSHIP,
20 DO YOU?

21 MR. MC GREAL: YES, ON ACCOUNT OF MY WIFE'S HEALTH. SHE
22 HAS A CHRONIC HEART CONDITION. SHE ALSO HAS HYPERTENSION AND
23 ARTHRITIS.

24 SHE IS DUE TO GO AND SEE THE DOCTOR. THERE ARE
25 ONLY TWO OF US AT HOME.

26 THE COURT: HOW LONG HAS SHE HAD IT?

27 MR. MC GREAL: SHE HAD A BY-PASS ABOUT NINE YEARS AGO.
28 THE REASON THAT I DIDN'T TELL YOU BEFORE, I THOUGHT YOU COULD

24-4

1 GET A DAY OFF IF YOU WERE ON THE JURY PANEL. BUT NOW I
2 REALIZE THAT YOU CAN'T.

3 THE COURT: YOU CAN HAVE A DAY OFF, ON FRIDAYS.

4 MR. MC GREAL: NO, NO. SHE HAS GOT TO GO AND SEE A
5 SPECIALIST. THEN THERE WILL BE TESTS AFTER THAT. I WILL HAVE
6 TO TAKE HER IN FOR IT.

7 I DON'T KNOW WHEN THAT IS GOING TO BE. IT WILL
8 BE IN TWO WEEKS' TIME.

9 MR. BARENS: I BELIEVE IT WILL BE STIPULATED.

10 MR. WAPNER: YES. I STIPULATE THAT HE BE EXCUSED.

11 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
12 BE EXCUSED. YOU TELL THE JURY ASSEMBLY CLERK THAT YOU SHOULD
13 BE EXCUSED FROM JURY DUTY ALTOGETHER.

14 (PROSPECTIVE JUROR MC GREAL EXITS THE
15 COURTROOM.)

16 (PROSPECTIVE JUROR LORETTA BROOKS
17 ENTERS THE COURTROOM.)

18 THE COURT: I HAVE MOORE AND BROOKS. WHICH IS IT?

19 MS. BROOKS: IT IS BROOKS NOW.

20 THE COURT: MOORE WAS YOUR MAIDEN NAME?

21 MS. BROOKS: YES.

22 THE COURT: WHERE DO YOU LIVE?

23 MS. BROOKS: SHERMAN OAKS.

24 THE COURT: HAVE YOU READ ANYTHING AT ALL ABOUT THIS
25 CASE OR DO YOU KNOW ANYTHING ABOUT IT EXCEPT WHAT I TOLD YOU
26 WHEN YOU WERE HERE ON MONDAY?

27 MS. BROOKS: NO.

28 THE COURT: DOES THE PHRASE "BILLIONAIRE BOYS CLUB" RING

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1 ANY BELL WITH YOU?

2 MS. BROOKS: NO.

3 THE COURT: DO YOU REMEMBER ON MONDAY I GAVE YOU AN IDEA
4 ABOUT THE NATURE OF THE CASE WE ARE ABOUT TO TRY? I TOLD YOU
5 THAT IT WAS A CHARGE AGAINST THE DEFENDANT, THAT HE COMMITTED
6 A DELIBERATE, PREMEDITATED MURDER IN THE COURSE OF A ROBBERY.

7 NOW, IN THE COURSE OF A ROBBERY HAS, AS I TOLD
8 YOU, SPECIAL SIGNIFICANCE IN THIS CASE.

9 DO YOU KNOW THAT NOT EVERY MURDER, IF IT IS
10 DELIBERATE, INTENTIONAL, PREMEDITATED AND PLANNED AND EXECUTED
11 MEANS IT QUALIFIES FOR THE DEATH PENALTY? IT IS ONLY WHEN
12 THAT MURDER HAS BEEN COMMITTED IN THAT WAY UNDER SPECIAL
13 CIRCUMSTANCES.

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1 IN OTHER WORDS, IT IS A MURDER WHICH IS COMMITTED
2 IN THE COURSE OF A ROBBERY AS THIS ONE IS ALLEGED TO HAVE BEEN,
3 A MURDER WHICH IS COMMITTED IN THE COURSE OF A BURGLARY OR
4 A KIDNAPPING OR A RAPE OR MULTIPLE MURDERS OR MURDERS AFFECTED
5 BY TORTURE AND ANY NUMBER OF OTHERS.

6 THERE ARE 19 IN WHICH THE LEGISLATURE HAS SAID
7 THOSE MURDERS COMMITTED UNDER THOSE CIRCUMSTANCES QUALIFY FOR
8 A POSSIBLE DEATH PENALTY. DO YOU UNDERSTAND THAT?

9 MS. BROOKS: RIGHT.

10 THE COURT: ALL RIGHT. NOW, THE FACT THAT THE CHARGES
11 HAVE BEEN BROUGHT AGAINST THE DEFENDANT DOESN'T MEAN ANYTHING.
12 IT DOESN'T MEAN ANYTHING IN THE SENSE THAT WHERE THERE IS
13 SMOKE THERE IS FIRE.

14 YOU HAVE GOT TO FORGET ABOUT THAT. THERE IS MERELY
15 A CHARGE AND AN ACCUSATION. IT DOESN'T MEAN HE COMMITTED
16 ANYTHING. HE IS PRESUMED TO BE INNOCENT UNTIL THE CONTRARY
17 IS PROVED BEYOND A REASONABLE DOUBT.

18 NOW, THE JURY WHO WILL BE SELECTED IN THIS CASE,
19 WILL FIRST HAVE TO DETERMINE WHETHER OR NOT THE DEFENDANT
20 COMMITTED THE MURDER IN THE FIRST DEGREE AND WHETHER OR NOT
21 THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY. IF THEY
22 FIND THAT HE DIDN'T COMMIT ANY MURDER, THAT IS THE END OF THE
23 CASE. IF THEY FIND HE COMMITTED THE MURDER AND IT WAS
24 DELIBERATE, THEY HAVE TO THEN FIND WHETHER OR NOT IT WAS IN
25 THE COURSE OF A ROBBERY.

26 AND IF THEY DO THAT, THEN THE JURY HEARS ADDITIONAL
27 TESTIMONY WHICH IS UNRELATED AS SUCH, TO THE MURDER EXCEPT
28 THAT YOU HAVE THE RIGHT TO CONSIDER THE ACT OF MURDER, TOO.

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1 THE DEFENDANT WILL PRODUCE EVIDENCE WHICH IS
2 FAVORABLE TO HIM. YOU MUST CONSIDER HIS AGE, HIS PREVIOUS
3 LACK OF ANY CRIMINAL ACTIVITIES OF ANY KIND, HIS CHARACTER,
4 HIS BACKGROUND AND ANYTHING WHICH IS FAVORABLE TO HIM.

5 AND THE PURPOSE OF THAT OF COURSE, IS TO HAVE YOU
6 GIVE THE LESSER OF THE TWO ALTERNATIVES.

7 THE PROSECUTION ON THE OTHER HAND, WILL SHOW
8 AGGRAVATING CIRCUMSTANCES. THE CIRCUMSTANCES WILL SHOW THAT
9 HE IS NOT A GOOD PERSON. HE IS A BAD PERSON. THE PROSECUTION
10 WILL SHOW THINGS UNFAVORABLE ABOUT HIM.

11 THE PURPOSE OF THAT OF COURSE, WOULD BE TO HAVE
12 THE JURY GIVE HIM THE MAXIMUM PENALTY, WHICH IS DEATH IN THE
13 GAS CHAMBER. DO YOU UNDERSTAND?

14 SO, THE JURY HEARS ALL OF THAT. AND THEN THEY
15 DELIBERATE AND DECIDE ONE OF TWO THINGS, SHOULD IT BE LIFE
16 WITHOUT THE POSSIBILITY OF PAROLE -- AND THAT MEANS EXACTLY
17 THAT, LIFE WITH NO PAROLE. IT IS STATE PRISON FOR THE REST
18 OF HIS LIFE.

19 OR, IT COULD BE DEATH IN THE GAS CHAMBER. DO YOU
20 UNDERSTAND? NOW, ON THE GUILT PHASE OF THE TRIAL, THEY
21 DETERMINE WHETHER HE IS GUILTY OR NOT GUILTY. YOU CANNOT --
22 YOU MUST NOT CONSIDER THE QUESTION AS TO THE PENALTY PHASE
23 OF THE TRIAL.

24 YOU ARE TO CONSIDER THE MERITS ONLY AS TO WHETHER
25 OR NOT A CRIME WAS COMMITTED AND THE DEFENDANT COMMITTED IT
26 AND WHETHER IT WAS MURDER IN THE FIRST DEGREE. DO YOU UNDER-
27 STAND?

28 MS. BROOKS: OKAY.

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1 THE COURT: ALL RIGHT, NOW WITH THAT PRELIMINARY BACK-
2 GROUND, I AM GOING TO ASK YOU SOME QUESTIONS. THE PURPOSE
3 OF THESE QUESTIONS WILL BE TO EXPLORE THE STATE OF YOUR MIND
4 WITH RESPECT TO YOUR FEELINGS AND YOUR ATTITUDES TOWARD THE
5 DEATH PENALTY, THAT IS WHAT THE JURY IN THIS CASE WILL HAVE
6 TO CONSIDER SO WE HAVE TO FIND OUT WHETHER OR NOT THEY ARE
7 SO PREJUDICED AGAINST THE DEATH PENALTY OR SO PREJUDICED FOR
8 THE DEATH PENALTY THAT THEY CANNOT BE A FAIR JUROR; DO YOU
9 UNDERSTAND THAT?

10 (MS. BROOKS NODS HER HEAD UP AND DOWN.)

11 THE COURT: NOW I AM GOING TO ASK YOU FIVE QUESTIONS.
12 COUNSEL WILL ASK YOU A NUMBER OF OTHERS. ALL OF THE QUESTIONS
13 ARE DESIGNED FOR THE PURPOSE OF EXPLORING YOUR MIND ON THE
14 SUBJECT.

15 NOW THE FIRST TWO QUESTIONS I AM GOING TO ASK
16 YOU HAVE TO DO WITH THE FIRST PHASE OF THE TRIAL, NAMELY,
17 THE GUILT OR INNOCENCE OF THE DEFENDANT: DO YOU HAVE ANY
18 OPINION AS TO THE DEATH PENALTY, WHATEVER IT MAY BE, WHICH
19 WILL PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE
20 GUILT OR INNOCENCE OF THE DEFENDANT?

21 MS. BROOKS: NO.

22 THE COURT: OKAY, AND ALSO ON THE GUILT PHASE OF IT,
23 I TOLD YOU THAT THE NEXT QUESTION THAT THE JURY DETERMINES,
24 IF THEY FIND HIM GUILTY OF MURDER IN THE FIRST DEGREE, WAS
25 THAT MURDER COMMITTED IN THE COURSE OF A ROBBERY? THAT IS
26 A SPECIAL CIRCUMSTANCE, WE CALL IT. AND THEY SAY TRUE OR
27 FALSE.

28 DO YOU HAVE ANY OPINION WITH RESPECT TO THE DEATH

25-2
1 PENALTY, WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU FROM
2 MAKING AN IMPARTIAL DECISION AS TO THE TRUTH OR FALSITY OF
3 THE SPECIAL CIRCUMSTANCE?

4 MS. BROOKS: NO.

5 THE COURT: ALL RIGHT, THE NEXT TWO QUESTIONS RELATE
6 TO THE PENALTY PHASE. WE PRESUPPOSE THAT THE JURY HAS FOUND
7 THE DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE AND IT
8 WAS IN THE COURSE OF A ROBBERY.

9 THE FIRST OF THOSE QUESTIONS IS: DO YOU HAVE
10 ANY OPINION CONCERNING THE DEATH PENALTY THAT WOULD CAUSE
11 YOU AUTOMATICALLY TO VOTE FOR THE DEATH PENALTY, REGARDLESS
12 OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE PENALTY PHASE
13 OF THE TRIAL?

14 WHAT I AM ASKING YOU IS: AUTOMATICALLY, ARE YOU
15 GOING TO VOTE FOR THE DEATH PENALTY, NO MATTER WHAT YOU HEAR
16 ON THE PENALTY PHASE?

17 MS. BROOKS: NO.

18 THE COURT: ALL RIGHT, AND THE SAME THING IS: DO YOU
19 HAVE SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU
20 WOULD AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE
21 POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT MAY
22 BE PRESENTED ON THE PENALTY PHASE OF THE TRIAL?

23 (NO AUDIBLE RESPONSE.)

24 THE COURT: DO YOU UNDERSTAND THE QUESTION?

25 MS. BROOKS: NO --

26 WELL, I THINK YOU ARE SAYING THAT, WHATEVER I
27 HEAR, WILL I CONSIDER WHAT I HAVE HEARD? I AM --

28 THE COURT: NO. I AM SAYING, WILL YOU AUTOMATICALLY,

1 WITHOUT EVEN CONSIDERING WHAT YOU HEAR ON THE PENALTY PHASE,
2 WOULD YOU AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT?

3 MS. BROOKS: NO, NO, NO.

4 THE COURT: ALL RIGHT, THAT IS GOOD.

5 YOU UNDERSTAND THAT THE ISSUE OF THE DEATH PENALTY
6 MAY OR MAY NOT TAKE PLACE IN THIS CASE AND THAT THESE QUESTIONS
7 HAVE BEEN ASKED ONLY IN THE EVENT THAT YOU REACH THAT PHASE
8 OF THE TRIAL?

9 MS. BROOKS: YES.

10 THE COURT: DO YOU UNDERSTAND THAT?

11 MS. BROOKS: RIGHT.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 GOOD AFTERNOON, MRS. BROOKS.

15 MS. BROOKS: HI.

16 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
17 DEFENDANT, JOE HUNT.

18 AND AS WAS THE CASE WITH HIS HONOR, IT IS MY
19 OBLIGATION NOW TO ASK YOU SOME QUESTIONS ABOUT YOUR POINT
20 OF VIEW ON THE DEATH PENALTY.

21 PARENTHETICALLY, LET ME INDICATE THAT THERE ARE
22 NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS AND NO GOOD AND
23 BAD ANSWERS. NO ONE HERE IS EVEN JUDGING ANY OF YOUR
24 ANSWERS, BECAUSE YOU CAN NEVER BE WRONG ABOUT YOUR OWN OPINION.

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

27 MS. BROOKS: I DON'T AGREE WITH IT.

28 THE COURT: YOU SAY YOU DON'T AGREE WITH IT?

1 MS. BROOKS: I DON'T AGREE WITH THE DEATH PENALTY, THAT
2 WE SHOULD SOLVE OUR PROBLEMS WITH THE DEATH PENALTY AS IT
3 IS INSTITUTED NOW.

4 MR. BARENS: RIGHT, AND I DON'T EVEN THINK THAT IS THE
5 ISSUE THAT WE ARE CONFRONTED WITH HERE.

6 BUT, RATHER, WHAT IT COMES DOWN TO IN THIS PROCESS,
7 TO QUALIFY AS A JUROR, WE NEED TO KNOW WHETHER YOU WOULD BE
8 WILLING DURING A PENALTY PHASE OF THE TRIAL, SO THAT BOTH
9 THE PROSECUTION AND THE DEFENSE ARE AFFORDED A FAIR TRIAL,
10 WOULD YOU BE WILLING TO CONSIDER THE DEATH PENALTY AS ONE
11 ALTERNATIVE TO DEALING WITH A CONVICTED DEFENDANT, AS WELL
12 AS BEING WILLING TO CONSIDER LIFE IN PRISON WITHOUT THE
13 POSSIBILITY OF PAROLE?

14 THE COURT: I THINK YOU HAD BETTER DIVIDE IT UP.

15 MS. BROOKS: UH-HUH.
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1 THE COURT: YOU HAD BETTER DIVIDE IT UP. ASK HER WHETHER
2 SHE WOULD CONSIDER THE DEATH PENALTY FIRST AND LIFE IMPRISONMENT
3 WILL COME LATER.

4 MR. BARENS: WELL, SHE WOULD PROBABLY HAVE TO CONSIDER
5 THEM BOTH CONJUNCTIVELY.

6 THE COURT: NO, NO.

7 MR. BARENS: THERE ARE TWO ALTERNATIVES PRESENT.

8 THE COURT: NO, NO.

9 MR. BARENS: WELL, I WILL ASK YOU SEPARATELY.

10 WOULD YOU BE WILLING TO CONSIDER THE DEATH PENALTY
11 AS AN ALTERNATIVE?

12 THE COURT: YOU MEAN DEATH IN THE GAS CHAMBER?

13 MR. BARENS: IT IS THE ONLY WAY IT CAN BE DONE, TO MY
14 KNOWLEDGE.

15 MS. BROOKS: DEATH, NO.

16 MR. BARENS: OKAY --

17 THE COURT: THE DEATH PENALTY INVOLVES, AS I TOLD HER,
18 TWO ASPECTS: ONE, LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
19 OF PAROLE AND THE OTHER, DEATH IN THE GAS CHAMBER, SO THE
20 DEATH PENALTY COVERS TWO THINGS INSTEAD OF ONE.

21 MR. BARENS: WELL, GETTING BACK TO WHERE WE ARE HERE,
22 YOU HAVE INDICATED TO ME THAT YOU WOULD NOT CONSIDER THE DEATH
23 PENALTY UNDER ANY CIRCUMSTANCES?

24 MS. BROOKS: OKAY, BY DEATH PENALTY, IF WE ARE TALKING
25 ABOUT PUTTING SOMEONE TO DEATH --

26 MR. BARENS: THAT IS THE ONE.

27 MS. BROOKS: WE HAVE GONE THROUGH EVERYTHING ELSE AND
28 WE HAVE DECIDED THAT THIS IS NOW OUR ALTERNATIVE, WHAT HAPPENS

1 TO THIS PERSON.

2 MR. BARENS: YES.

3 MS. BROOKS: I WOULD NOT WANT TO.

4 THE COURT: YOU WOULD NOT WANT TO WHAT?

5 MS. BROOKS: PUT THEM TO DEATH.

6 MR. BARENS: OKAY, AND I CAN UNDERSTAND THAT YOU WOULDN'T
7 WANT TO.

8 BUT WHAT I AM ASKING YOU, LET'S TRY TO CREATE
9 THE SETTING AS TO WHERE THAT WOULD EVER COME UP.

10 YOU AND THE OTHER JURORS WOULD FIRST HAVE TO HAVE
11 BELIEVED BEYOND A REASONABLE DOUBT THAT A PREMEDITATED,
12 INTENTIONAL, COLD-BLOODED MURDER OCCURRED.

13 MS. BROOKS: UH-HUH.

14 MR. BARENS: AND THAT IT WAS COMMITTED DURING A ROBBERY.

15 I AM NOT TALKING ABOUT SOMETHING ACCIDENTAL.

16 I AM NOT TALKING ABOUT SOMETHING IN SELF-DEFENSE.

17 I AM TALKING ABOUT A PREMEDITATED, FIRST DEGREE
18 MURDER.

19 MS. BROOKS: UH-HUH.

20 MR. BARENS: ARE YOU TELLING ME THAT YOU COULD NEVER
21 UNDER NO CIRCUMSTANCES CONSIDER THAT THE DEATH PENALTY WOULD
22 BE AN APPROPRIATE REMEDY FOR A FIRST DEGREE MURDERER?

23 MS. BROOKS: YES.

24 MR. BARENS: IRRESPECTIVE OF THE FACT THAT THE CRIME
25 MIGHT HAVE BEEN COMMITTED SOLELY FOR GREED WITH A WANTON
26 HEART?

27 MS. BROOKS: YES.

28 MR. BARENS: THE MATTER IS SUBMITTED, YOUR HONOR.

1 THE COURT: WE ARE GRATEFUL TO YOU FOR BEING AS FRANK
2 AS YOU ARE AND THAT IS THE ONLY WAY WE WANT JURORS TO BE.

3 MS. BROOKS: THAT IS THE ONLY WAY IT CAN BE.

4 THE COURT: OF COURSE, IT SHOULD BE AND THAT IS SO.
5 BUT UNDER THE CIRCUMSTANCES, YOU SEE, YOU CAN'T QUALIFY AS
6 A JUROR ON THIS CASE, ON A DEATH PENALTY CASE, ALL RIGHT?

7 MS. BROOKS: OKAY.

8 THE COURT: THANK YOU VERY MUCH.

9 MS. BROOKS: OKAY.

10 THE COURT: YOU CAN REPORT TO THE JURY ASSEMBLY ROOM
11 AND TELL THEM YOU ARE EMINENTLY QUALIFIED TO BE A JUROR ON
12 SOME OTHER CASE.

13 MS. BROOKS: FINE. OKAY.

14 THE COURT: I AM SORRY I CUT YOU OFF, MR. WAPNER. DID
15 YOU WANT TO ASK ANY QUESTIONS?

16 MR. WAPNER: NO.

17 (PROSPECTIVE JUROR BROOKS EXITED THE
18 COURTROOM.)

19 (PROSPECTIVE JUROR VENICE MURRAY ENTERED
20 THE COURTROOM.)

21 THE COURT: YOUR FIRST NAME IS VENICE?

22 MR. MURRAY: RIGHT.

23 THE COURT: THAT IS AN UNUSUAL FIRST NAME.

24 MR. MURRAY, HAVE YOU READ OR HEARD ANYTHING AT
25 ALL ABOUT THIS CASE, EXCEPT WHAT I TOLD YOU ABOUT IT ON MONDAY?

26 MR. MURRAY: NO, I HAVEN'T.

27 THE COURT: THE NAME BILLIONAIRE BOYS CLUB, DOES THAT
28 MEAN ANYTHING TO YOU, REGISTER IN ANY WAY?

1 MR. MURRAY: NO, IT DOESN'T.

2 THE COURT: ALL RIGHT, WHAT I AM GOING TO DO IS BRIEFLY
3 SUMMARIZE WHAT I TOLD YOU ON MONDAY ABOUT THE FACTS OF THE
4 CASE AND THEN ASK YOU SOME QUESTIONS.

5 THE QUESTIONS WILL BE ASKED BOTH BY MYSELF AND
6 BY OPPOSING COUNSEL AND THEY WILL BE TO DETERMINE YOUR ATTITUDE
7 TOWARD THE DEATH PENALTY. THAT IS WHY YOU ARE SITTING HERE
8 NOW, ALL RIGHT?

9 MR. MURRAY: YES.

10 THE COURT: FIRST, YOU WILL REMEMBER I TOLD YOU THAT
11 THIS IS A CASE WHERE THE PEOPLE HAVE CHARGED THE DEFENDANT
12 WITH THE CRIME OF MURDER IN THE FIRST DEGREE AND IT WAS
13 COMMITTED DURING A ROBBERY; DO YOU REMEMBER THAT?

14 MR. MURRAY: YES.

15 THE COURT: ALL RIGHT, COMMITTED DURING A ROBBERY HAS
16 SOME SPECIAL SIGNIFICANCE.

17 YOU KNOW, IT IS NOT EVERY MURDER THAT IS PUNISHABLE
18 BY DEATH OR BY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
19 PAROLE.

20 WE MIGHT HAVE A DELIBERATE, INTENTIONAL, PLANNED
21 MURDER COMMITTED INTENTIONALLY AND STILL NOT BE SUBJECT TO
22 THE DEATH PENALTY.

23 IT IS ONLY WHERE THAT MURDER IS COMMITTED IN THE
24 COURSE OF A ROBBERY UNDER SPECIAL CIRCUMSTANCES IN THE COURSE
25 OF A ROBBERY OR A BURGLARY OR A RAPE OR A KIDNAPPING OR WHERE
26 A CHILD IS MOLESTED AND DIES OR WHERE SOMEBODY IS TORTURED
27 OR WHERE THERE IS A MULTIPLE MURDER. THERE ARE 19 IN ALL OF
28 THESE SPECIAL CIRCUMSTANCES THAT QUALIFY THE CASE FOR IT.

29 MR. MURRAY: I BEG YOUR PARDON. YOU SAID THERE WERE 19?

1 THE COURT: THERE ARE 19 ALTOGETHER OF THOSE DIFFERENT
2 KINDS OF CRIMES. I DON'T HAVE TO ENUMERATE THEM. BUT IN THOSE
3 INSTANCES, THE DEATH PENALTY MAY BE SOUGHT BY THE PEOPLE. ALL
4 RIGHT?

5 NOW, YOU UNDERSTAND THAT MERELY BECAUSE IT IS A
6 DELIBERATE, INTENTIONAL MURDER BY ITSELF, DOES NOT SUFFICE.
7 IT HAS GOT TO BE UNDER CERTAIN SPECIAL CIRCUMSTANCES, LIKE
8 I TOLD YOU, ROBBERY, BURGLARY AND SO FORTH.

9 AND IT IS ALLEGED IN THIS CASE THAT IT WAS
10 COMMITTED DURING THE COURSE OF A ROBBERY. NOW, THE JURY WILL
11 FIRST, HAVE TO DETERMINE IRRESPECTIVE OF ANY KIND OF PENALTY,
12 WHAT WE CALL THE GUILT PHASE.

13 THAT IS, IS THE DEFENDANT GUILTY OF MURDER IN THE
14 FIRST DEGREE? IF HE IS NOT GUILTY, THAT IS THE END OF IT.
15 IF HE IS GUILTY OF MURDER IN THE FIRST DEGREE, THEN THE JURY
16 HAS ANOTHER QUESTION TO DECIDE, WAS THAT COMMITTED DURING THE
17 COURSE OF A ROBBERY, TRUE OR FALSE.

18 IF THEY SAY YES, IT IS TRUE THAT IT WAS COMMITTED
19 DURING THE COURSE OF A ROBBERY, THAT IS A SPECIAL CIRCUMSTANCE.

20 THEN, THAT SAME JURY LISTENS TO ADDITIONAL
21 TESTIMONY BOTH FROM THE DEFENDANT AND FROM THE PROSECUTION.
22 THE PURPOSE OF THAT TESTIMONY WILL BE ON BEHALF OF THE
23 DEFENDANT, TO TRY TO SHOW THINGS WHICH ARE FAVORABLE TO HIM.

24 YOU MUST CONSIDER HIS AGE AND YOU MUST CONSIDER
25 HIS LACK OF ANY PRIOR CRIMINAL ACTIVITIES, HIS CHARACTER, HIS
26 REPUTATION, HIS MENTAL AND PHYSICAL CONDITION AND ANYTHING
27 THAT DEALS WITH THE PERSON AS SUCH, WHICH IS FAVORABLE TO HIM.

28 IT COULD BE THAT HE HAS BEEN A GOOD MAN ALL OF

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1 HIS LIFE, EXCEPT FOR THIS ONE THING. THE PURPOSE OF THAT
2 OBVIOUSLY, IS TO PERSUADE THE JURY NOT TO GIVE HIM THE
3 ULTIMATE PENALTY OF DEATH IN THE GAS CHAMBER.

4 AND THE PROSECUTION ON THE OTHER HAND, WILL SHOW
5 AGGRAVATING CIRCUMSTANCES, WILL SHOW THINGS ABOUT HIM WHICH
6 ARE BAD, UNFAVORABLE, TO PERSUADE THE JURY TO GIVE HIM THE
7 ULTIMATE PENALTY.

8 NOW, THE JURORS HEAR ALL OF THAT AND THEY GO INTO
9 A SECOND DELIBERATION. THEY DELIBERATE THE FIRST TIME ON THE
10 GUILT OR INNOCENCE. THEN THEY DELIBERATE AS TO WHETHER IT
11 SHOULD BE ONE OR THE OTHER, LIFE WITHOUT POSSIBILITY OF PAROLE
12 OR DEATH IN THE GAS CHAMBER.

13 LIFE WITHOUT POSSIBILITY OF PAROLE MEANS EXACTLY
14 THAT. IT IS LIFE WITH NO POSSIBILITY OF PAROLE. HE STAYS
15 THERE THE REST OF HIS LIFE.

16 OR, IT COULD BE DEATH IN THE GAS CHAMBER. THAT,
17 THE JURY HAS TO DETERMINE. NOW, THE QUESTIONS I AM GOING TO
18 ASK YOU AND COUNSEL WILL ASK, RELATE TO YOUR STATE OF MIND
19 AND YOUR FEELINGS AND ATTITUDES ABOUT THE DEATH PENALTY TO
20 SEE WHETHER OR NOT YOU CAN QUALIFY AS A JUROR IN THIS TYPE
21 OF CASE.

22 MR. MURRAY: OKAY.

23 THE COURT: NOW, THE FIRST TWO QUESTIONS RELATE TO THE
24 GUILT PHASE. I TOLD YOU THAT IT IS GUILTY OR NOT GUILTY AND
25 SO FORTH.

26 NOW, DO YOU HAVE ANY OPINION ABOUT THE DEATH
27 PENALTY, WHATEVER IT MAY BE, WHICH WILL PREVENT YOU FROM MAKING
28 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE

1 DEFENDANT?

2 MR. MURRAY: NO.

3 THE COURT: ALL RIGHT. NOW, THE SAME QUESTION HAS TO
4 DO WITH THE SPECIAL CIRCUMSTANCES. YOU HAVE TO MAKE A FINDING
5 WHETHER IT IS TRUE OR FALSE THAT IT WAS COMMITTED DURING THE
6 COURSE OF A ROBBERY. THAT IS A SPECIAL CIRCUMSTANCE.

7 DO YOU HAVE ANY OPINION ABOUT THE DEATH PENALTY
8 THAT WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS
9 TO WHETHER OR NOT THAT MURDER WAS COMMITTED IN THE COURSE OF
10 A ROBBERY?

11 MR. MURRAY: NO.

12 THE COURT: OKAY. NOW, THE NEXT TWO QUESTIONS
13 PRESUPPOSE THAT THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER
14 IN THE FIRST DEGREE, FOUND GUILTY OF MURDER IN THE FIRST DEGREE,
15 DELIBERATE, PREMEDITATED AND THAT IT WAS COMMITTED IN THE
16 COURSE OF A ROBBERY.

17 NOW WE ARE ON THE PENALTY PHASE, AS I EXPLAINED
18 TO YOU. RIGHT?

19 NOW, DO YOU HAVE SUCH AN OPINION AS TO THE DEATH
20 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH
21 PENALTY, TO IMPOSE THE DEATH PENALTY, REGARDLESS OF ANY
22 EVIDENCE THAT WAS PRESENTED ON THE PENALTY PHASE OF THE
23 TRIAL?

24 MR. MURRAY: NO.

25 THE COURT: ALL RIGHT. THE SAME THING AS LIFE WITHOUT
26 POSSIBILITY OF PAROLE. DO YOU HAVE SUCH AN OPINION CONCERNING
27 THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE FOR
28 LIFE WITHOUT POSSIBILITY OF PAROLE, REGARDLESS OF ANY EVIDENCE

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1 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

2 MR. MURRAY: NO.

3 THE COURT: GOOD. NOW, YOU UNDERSTAND OF COURSE, THAT
4 THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN
5 THIS CASE AND THAT THESE QUESTIONS HAVE BEEN ASKED ONLY IN
6 THE EVENT THAT YOU REACH THAT PHASE OF THE CASE? RIGHT?

7 MR. MURRAY: YES.
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1 THE COURT: ALL RIGHT.

2 MR. WAPNER: COULD YOU INQUIRE WHAT --

3 THE COURT: YES?

4 MR. WAPNER: YOU ASKED HIM ABOUT PUBLICITY. BUT, COULD
5 YOU ASK WHAT PART OF TOWN HE RESIDES IN?

6 THE COURT: YES. WHERE DO YOU LIVE?

7 MR. MURRAY: I LIVE IN WOODLAND HILLS IN LOS ANGELES
8 COUNTY.

9 MR. WAPNER: THANK YOU.

10 MR. BARENS: GOOD AFTERNOON, MR. MURRAY. I AM ARTHUR
11 BARENS. I REPRESENT THE DEFENDANT, JOE HUNT.

12 AND AS WITH HIS HONOR, I AM OBLIGED AT THIS PART
13 OF THESE PROCEEDINGS, TO ASK YOU ABOUT YOUR POINT OF VIEW ON
14 THE DEATH PENALTY. PLEASE UNDERSTAND THAT THERE ARE NO RIGHT
15 OR WRONG ANSWERS TO MY QUESTIONS. NO ONE IN THE ROOM IS
16 JUDGING YOU ON YOUR ANSWERS.

17 BUT RATHER, WE ARE JUST SEEKING YOUR OPINION. YOU
18 CAN NEVER BE WRONG ABOUT YOUR OWN OPINION.

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

21 MR. MURRAY: I FEEL THAT IT IS -- I WOULD HATE TO USE
22 IT UNLESS IT IS ABSOLUTELY NECESSARY. THERE ARE CASES I FEEL,
23 THAT ARE NECESSARY.

24 MR. BARENS: NOW, BY THAT, I BELIEVE -- ARE YOU TELLING
25 ME THAT IF YOU EVER GOT TO THAT SECOND PHASE OF THE TRIAL,
26 AS HIS HONOR WAS REFERRING TO THE PENALTY PHASE, THAT YOU WOULD
27 BE ABLE TO AT LEAST CONSIDER THE DEATH PENALTY AS A PUNISHMENT,
28 THAT YOU WOULD BE ABLE TO AT LEAST CONSIDER THE DEATH PENALTY

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1 AS A PUNISHMENT IF THE FACTS WARRANTED IT?

2 MR. MURRAY: YES.

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3 MR. BARENS: AND ON THE OTHER HAND, YOU WOULD BE AS
4 EASILY OPEN-MINDED IN CONSIDERING LIFE WITHOUT POSSIBILITY
5 OF PAROLE AS A PUNISHMENT IF THAT IS WHAT THE FACTS AND
6 CIRCUMSTANCES MADE YOU BELIEVE WAS APPROPRIATE?

7 MR. MURRAY: YES.

8 MR. BARENS: NOW, EARLIER ON WHEN YOU FIRST RESPONDED
9 TO ME THAT YOU WOULD BELIEVE THE DEATH PENALTY WOULD BE
10 APPROPRIATE UNDER CERTAIN SITUATIONS, DID YOU HAVE ANY
11 SITUATIONS THAT YOU WERE THINKING ABOUT OR THAT CAME TO MIND
12 IN YOUR OPINION WHEN YOU THOUGHT THAT WE SHOULD USE THE DEATH
13 PENALTY?

14 MR. MURRAY: YES, REPEAT MURDER OFFENSES AND MASS MURDERS.

15 MR. BARENS: ASSUMING THAT YOU HAD A SITUATION WHERE
16 THERE WAS ONLY ONE PERSON DEAD -- AND AGAIN, LET ME PREFACE
17 IT BY SAYING I AM NOT AT ALL REFERRING TO ANYTHING YOU ARE
18 LIKELY TO HEAR ABOUT THIS CASE. I AM JUST INDICATING A
19 HYPOTHETICAL QUESTION FOR YOU, OUT OF THE BLUE.

20 ASSUMING THAT YOU ONLY HAD A DEAD PERSON AND THAT
21 THAT PERSON WAS KILLED BY A DEFENDANT DURING THE COMMISSION
22 OF A ROBBERY AND LET'S SAY -- LET'S ASSUME THAT IT WAS
23 PREMEDITATED AND IT WAS INTENTIONAL AND THIS PERSON GETS KILLED
24 BECAUSE THE DEFENDANT IS SEEKING TO ROB HIM AND JUST GOES UP
25 TO HIM AND SHOTS HIM AND KILLS HIM AND STEALS ALL THE MONEY,
26 THAT IS WHAT WE HAVE GOT.

27 YOU BELIEVE THAT BEYOND A REASONABLE DOUBT. COULD
28 YOU IN THAT SITUATION, AT LEAST CONSIDER THE DEATH PENALTY

1 AS A POSSIBLE SENTENCE FOR THAT DEFENDANT?

2 MR. MURRAY: WELL, I WOULD HAVE TO KNOW MORE ABOUT HIS
3 CHARACTER. I WOULD HAVE TO KNOW MORE ABOUT IT.

4 MR. BARENS: QUITE SO. THAT IS PRECISELY WHAT HIS HONOR
5 WAS SUGGESTING TO YOU WHEN HE SAID YOU WOULD BE INSTRUCTED
6 BY THE COURT TO CONSIDER THE DEFENDANT'S BACKGROUND, HIS
7 CHARACTER, WHETHER OR NOT HE HAD ANY CRIMINAL RECORD, WHEN
8 IT WAS TIME TO DO THE PENALTY PHASE, IF YOU EVER GOT TO THAT.
9 IS THAT WHAT YOUR UNDERSTANDING WAS?

10 MR. MURRAY: YES.

11 MR. BARENS: NOW, YOU UNDERSTAND ALTHOUGH HIS HONOR
12 DESCRIBED 19 VARIOUS TYPES OF CRIMES FOR WHICH THE DEATH
13 PENALTY IS AVAILABLE, THAT NOWHERE DOES THE LEGISLATURE SAY
14 YOU HAVE GOT TO GIVE SOMEBODY THE DEATH PENALTY.

15 THEY HAVE GOT TO DIE IF THEY DID THIS, BUT RATHER,
16 THAT IS REALLY SOMETHING YOU AS A JUROR WOULD HAVE TO DECIDE.
17 DO YOU UNDERSTAND THAT?

18 MR. MURRAY: YES, I DO.

19 MR. BARENS: ALL RIGHT. NOW, WHEN WE WERE IN THAT FIRST
20 PART OF THE TRIAL, THE GUILT PHASE, A POINT IN TIME WOULD COME
21 WHEN THE JUDGE WOULD SAY TO YOU IF YOU WERE A JUROR AND THE
22 REST OF THE JURORS, THE PEOPLE, THE GOVERNMENT, THE PROSECUTION
23 HAS A BURDEN OF PROOF BEYOND A REASONABLE DOUBT FOR YOU TO
24 FIND GUILT. YOU HAVE HEARD THAT EXPRESSION BEFORE, HAVE YOU
25 NOT?

26 MR. MURRAY: YES.

27 MR. BARENS: NOW, DO YOU UNDERSTAND THAT WHETHER IT IS
28 A TRAFFIC TICKET, A RAPE, A BURGLARY, A MURDER, THE STANDARD

1 OF PROOF IS ALWAYS THE SAME, THAT BEING BEYOND A REASONABLE
2 DOUBT?

3 MR. MURRAY: YES.

4 MR. BARENS: AND DO YOU UNDERSTAND THAT THE PEOPLE ARE
5 HELD TO THE SAME BURDEN OF PROOF, WHETHER THE PENALTY IS DEATH
6 IN THE GAS CHAMBER OR A WEEK IN THE COUNTY JAIL? DO YOU KNOW
7 THAT THAT IS THE LAW?

8 MR. BURRAY: WELL, IF I AM TOLD SO. I MEAN, THAT I --
9 WELL, DEATH IN THE GAS CHAMBER AND BEING TRIED FOR A TRAFFIC
10 TICKET ARE TOTALLY SOMETHING DIFFERENT TO ME.

11 MR. BARENS: TRUST ME WHEN I TELL YOU THAT THE STANDARD
12 OF PROOF IS THE SAME, IRRESPECTIVE OF THE PENALTY. THE JUDGE
13 WILL TELL YOU THAT STRAIGHT UP. OKAY?

14 MR. MURRAY: YES.

15 MR. BARENS: NOW, KNOWING THAT THAT IS THE ABSOLUTE
16 LEGAL INSTRUCTION THAT YOU WILL RECEIVE AS A JUROR, ARE YOU
17 WILLING TO ACCEPT THAT ALL THAT HAS TO BE PROVED IS GUILT
18 BEYOND A REASONABLE DOUBT?

19 MR. MURRAY: YES.

20 MR. BARENS: YOU WILL ACCEPT THAT, SIR?

21 MR. MURRAY: YES.

22 MR. BARENS: YOU WILL FOLLOW THAT?

23 MR. MURRAY: YES, I WILL.

24 MR. BARENS: NOW, UNDERSTAND SO THAT YOU DON'T CONFUSE
25 ME WITH THE OTHER SIDE, THAT ALTHOUGH I MIGHT SAY TO YOU THAT
26 ALL THEY HAVE TO PROVE IS GUILT BEYOND A REASONABLE DOUBT,
27 I DON'T MEAN TO MAKE THAT SOUND LIKE IT IS SOMETHING SMALL.
28 DO YOU UNDERSTAND WHAT I AM SAYING?

1 MR. MURRAY: YES.

2 MR. BARENS: ALL RIGHT. NOW, YOU WOULD ALSO BE TOLD THAT
3 DURING THE GUILT PHASE OF THE TRIAL, IN OTHER WORDS WHETHER
4 YOU BELIEVE THE DEFENDANT OR INNOCENT, YOU ARE NOT AT ALL TO
5 CONSIDER THIS PENALTY OF EITHER DEATH OR LIFE WITHOUT
6 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

7 MR. MURRAY: YES.

8 MR. BARENS: DO YOU THINK THAT YOU COULD MAKE A DECISION
9 AS TO WHETHER THE DEFENDANT WAS GUILTY OR INNOCENT, WITHOUT
10 CONSIDERING AT ALL WHAT THE POTENTIAL PENALTY MIGHT BE, WERE
11 YOU TO FIND GUILT OR INNOCENCE?

12 MR. MURRAY: YES, I COULD.

13 MR. BARENS: ALL RIGHT. DO YOU UNDERSTAND THAT ALTHOUGH
14 I AM HERE TALKING TO YOU ABOUT QUESTIONS INVOLVING YOUR
15 ATTITUDES ON THE DEATH PENALTY AND HIS HONOR DID SO PREVIOUSLY
16 AND MR. WARNER, THE DISTRICT ATTORNEY WILL DO SO, THAT THERE
17 IS NO REASON FOR YOU TO BELIEVE THAT MR. HUNT HAS DONE ANY-
18 THING WRONG, JUST BECAUSE WE ARE HERE TALKING ABOUT THAT?

19 MR. MURRAY: I UNDERSTAND.

20 MR. BARENS: DO YOU UNDERSTAND THAT THE FACT THAT HE
21 IS ACCUSED OF A CRIME, DOESN'T MEAN HE COMMITTED A CRIME?

22 MR. MURRAY: I UNDERSTAND THAT.

23 MR. BARENS: DO YOU UNDERSTAND WHAT I MEAN BY PRESUMPTION
24 OF INNOCENCE?

25 MR. MURRAY: YES.

26 MR. BARENS: BUT IF YOU WERE A DEFENDANT IN THIS COURT-
27 ROOM OR ANYBODY ELSE WAS, THAT EVERYONE COMES IN HERE WITH
28 A PRESUMPTION OF INNOCENCE? WE HAVE TO HAVE A TRIAL.

1 MR. MURRAY: INNOCENT UNTIL PROVEN GUILTY, YES.

2 MR. BARENS: QUITE SO. THE DEFENSE PASSES FOR CAUSE.

3 THANK YOU FOR YOUR TIME, SIR.

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

4 MR. MURRAY: GOOD AFTERNOON.

5 MR. WAPNER: WOULD YOU EXPLAIN TO ME WHAT YOU MEANT
6 WHEN YOU SAID THAT YOU HATE TO USE THE DEATH PENALTY UNLESS
7 IT IS ABSOLUTELY NECESSARY?

8 MR. MURRAY: WELL, I WOULDN'T, JUST BECAUSE -- NOT TO
9 MAKE IT SEEM LIKE ANY SMALL MATTER -- BUT I THINK PEOPLE ARE
10 ABLE TO BE -- WELL, PEOPLE ARE ABLE TO BE REINSTITUTED INTO
11 SOCIETY, YOU KNOW, REHABILITATED, SO TO SPEAK, YOU KNOW, IF
12 THEY COMMITTED A MURDER OR I DON'T -- THAT DOESN'T MAKE THEM
13 NECESSARILY -- IT DOESN'T NECESSARILY MAKE THEM A HAZARD TO
14 SOCIETY.

15 OR I MEAN I THINK THAT SOME PEOPLE ARE ABLE TO
16 LIVE IN A SOCIETY, TO GO TO PRISON AND BE REHABILITATED, SO
17 TO SPEAK, AND BE ABLE TO COPE IN SOCIETY.

18 MR. WAPNER: SO THE "ABSOLUTELY NECESSARY" HAS TO DO
19 WITH PEOPLE THAT YOU THINK, AFTER HEARING THE EVIDENCE, THAT
20 THERE IS NO CHANCE THAT THEY WOULD BE REHABILITATED, IS THAT
21 WHAT YOU ARE TALKING ABOUT?

22 (NO AUDIBLE RESPONSE.)

23 MR. WAPNER: I DON'T MEAN TO BE PUTTING WORDS IN YOUR
24 MOUTH.

25 WAS THAT A FAIR STATEMENT?

26 MR. MURRAY: WELL, I WOULDN'T WANT ANYONE ON THE STREET
27 WHEN I AM PRETTY SURE THEY ARE GOING TO GO OUT AND COMMIT
28 ANOTHER MURDER. IF I FEEL THEY ARE GOING TO GO OUT AND

27-2

1 COMMIT ANOTHER MURDER -- IF I FEEL THEY ARE GOING TO GO OUT
2 AND COMMIT ANOTHER MURDER, I WOULDN'T WANT THEM OUT ON THE
3 STREET. I DON'T THINK THEY ARE ABLE TO LIVE IN THE SOCIETY.
4 WE DON'T WANT THOSE PEOPLE OUT.

5 MR. WAPNER: OKAY. HOW DOES YOUR OPINION ON THIS CHANGE
6 IF I TELL YOU THAT IF YOU ARE A JUROR ON THIS CASE YOU ONLY
7 HAVE TWO CHOICES AND ONE IS DEATH IN THE GAS CHAMBER BUT THE
8 OTHER ONE IS LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
9 PAROLE?

10 THE COURT: HE NEVER GETS OUT AND HE IS NEVER
11 REHABILITATED.

12 MR. WAPNER: WHETHER HE IS REHABILITATED OR NOT, HE
13 IS NEVER GOING TO BE ABLE TO GET OUT INTO SOCIETY TO PROVE
14 IT TO ANYONE.

15 MR. MURRAY: WELL, HE IS ALIVE. I IMAGINE PEOPLE CAN
16 BE PRODUCTIVE IF THEY ARE GIVEN THE CHANCE TO BE PRODUCTIVE
17 IN PRISON.

18 I WOULD RATHER -- I WOULDN'T -- THAT IS A BAD
19 CHOICE TO SAY, "RATHER."

20 THE COURT: YOU WOULD RATHER WHAT?

21 MR. MURRAY: I WAS GOING TO SAY, YOU KNOW, WELL, IF HIS
22 CHARACTER DOESN'T WARRANT HIM BEING PUT TO DEATH, IF THE CRIME
23 WASN'T SO MALICIOUS, I THINK THE CHOICE OF LIFE IMPRISONMENT
24 WOULD BE, YOU KNOW, FINE, A GOOD CHOICE, YOU KNOW, IF HIS
25 CHARACTER AND THE CRIME HE SUPPOSEDLY COMMITTED WASN'T
26 MALICIOUS, YOU KNOW, MALICIOUS.

27 MR. WAPNER: DO YOU HAVE ANY STRONG PERSONAL RELIGIOUS
28 OR MORAL CONVICTIONS THAT WOULD AFFECT YOUR ABILITY TO DECIDE

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1 THIS CASE FAIRLY?

2 MR. MURRAY: I DON'T THINK SO, NO.

3 MR. WAPNER: DO YOU HAVE ANY HESITATION ABOUT THAT --

4 MR. MURRAY: NO, I DON'T.

5 MR. WAPNER: -- DO YOU HAVE ANY STRONG BELIEFS?

6 IF YOU ARE A JUROR ON THIS CASE AND YOU SIT THROUGH
7 THE GUILT PHASE AND YOU AND 11 OTHER PEOPLE DECIDE THAT THERE
8 WAS AN INTENTIONAL MURDER DURING A ROBBERY AND THEN YOU SIT
9 THROUGH THE PENALTY PHASE AND YOU HEAR ALL OF THE EVIDENCE
10 AND THEN YOU GO INTO THE JURY ROOM AND YOU DELIBERATE ON THE
11 CASE AND YOU DECIDE IN YOUR OWN MIND THAT THE APPROPRIATE
12 PUNISHMENT IS DEATH, ARE YOU CAPABLE OF RENDERING THAT
13 VERDICT?

14 MR. MURRAY: YES, YES, I AM.

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1 MR. WAPNER: ON THE OTHER HAND, IF YOU DECIDE THAT THE
2 APPROPRIATE PUNISHMENT IS LIFE IMPRISONMENT WITHOUT PAROLE,
3 ARE YOU CAPABLE OF RENDERING THAT VERDICT?

4 MR. MURRAY: YES, I AM.

5 MR. WAPNER: DO YOU UNDERSTAND THAT NOBODY IS GOING
6 TO TELL YOU HOW TO VOTE, THAT YOU HAVE TO MAKE UP YOUR OWN
7 MIND?

8 MR. MURRAY: YES.

9 MR. WAPNER: KNOWING THAT YOU MIGHT BE CALLED ON TO
10 MAKE A DECISION OF THAT CALIBER, DOES THAT --

11 WELL, MAYBE YOU HAVE ANSWERED THIS QUESTION: YOU
12 FEEL LIKE YOU CAN MAKE THAT KIND OF A DECISION?

13 MR. MURRAY: YES, I DO.

14 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT, BOTH SIDES HAVE PASSED FOR CAUSE.
17 WHAT THAT MEANS IS THAT YOU CAN QUALIFY AS A TRIAL JUROR ON
18 THIS CASE AND SIT AS A TRIAL JUROR AND DECIDE THE GUILT PHASE
19 AND THE PENALTY PHASE.

20 WHAT I WILL ASK YOU TO DO IS -- WE WILL FINISH
21 IT UP TOMORROW, I THINK, SO I WILL ASK YOU TO COME BACK ON
22 MONDAY MORNING AND YOU WILL GO TO THE JURY ASSEMBLY ROOM AT
23 10:30 AND THEN WE WILL BRING YOU ALL HERE AND WE WILL START
24 THE TRIAL, FINISH UP THE IMPANELMENT OF THE JURY, ALL RIGHT?

25 MR. MURRAY: ALL RIGHT.

26 THE COURT: WILL THAT BE ALL RIGHT WITH YOU?

27 MR. MURRAY: THAT IS FINE.

28 THE COURT: ALL RIGHT, MONDAY MORNING AT 10:30, THE

27A-2
1 JURY ASSEMBLY ROOM.

2 MR. MURRAY: OKAY, FINE.

3 THE COURT: ALL RIGHT, FINE. SEE YOU THEN.

4 (PROSPECTIVE JUROR MURRAY EXITED THE
5 COURTROOM.)

6 MR. BARENS: YOUR HONOR, BEFORE PROCEEDING NOW, PERHAPS
7 AT THIS TIME IT WOULD BE APPROPRIATE FOR US TO -- IT APPEARS
8 THERE MAY BE TWO THINGS WE NEED TO QUERY THE COURT ABOUT,
9 RATHER THAN STARTING WITH ANOTHER JUROR.

10 THE BAILIFF: THERE ARE NO MORE JURORS.

11 THE COURT: THERE ARE NO MORE JURORS UNTIL TOMORROW.

12 MR. BARENS: ALL RIGHT. THAT MAKES IT EASY THEN.

13 AND OBVIOUSLY, WITH ONLY EIGHT NAMES LEFT WE ARE
14 IN GOOD SHAPE AS IT IS.

15 THE COURT: WE WILL FINISH TOMORROW.

16 MR. BARENS: YOUR HONOR WILL RECALL THERE WAS THIS
17 CONSERVATOR FELLOW OSTROVE ON THE LEVIN ESTATE THAT WE HAVE
18 BEEN TRYING TO SCHEDULE IN TO GO AND SEE AND MR. WAPNER HAS
19 BEEN --

20 THE COURT: WHAT IS HIS NAME?

21 MR. BARENS: OSTROVE.

22 MR. WAPNER: OSTROVE.

23 THE COURT: WHO IS HE NOW?

24 MR. BARENS: HE IS THE CONSERVATOR FOR THE LEVIN ESTATE.

25 THE COURT: YES, YES.

26 MR. BARENS: AND MR. WAPNER HAS BEEN MOST HELPFUL IN
27 AFFORDING US COOPERATION IN ARRANGING FOR THAT APPOINTMENT.

28 IT OCCURS TO THE DEFENSE THAT SUCH AN EXAMINATION

1 OF HIS RECORDS WILL NOT BE MEANINGFUL TO THE DEFENSE WITHOUT
2 THE PARTICIPATION OF MR. HUNT. THE DEFENSE NOT BEING FAMILIAR
3 WITH ALL OF THE POSSIBLE TRANSACTIONS THAT MIGHT HAVE GONE
4 ON INVOLVING MR. LEVIN, AND LET'S ASSUME, HIS COMPLEX
5 MACHINATIONS THAT SIMPLY MYSELF NOR MR. CHIER WOULD BE AWARE
6 OF OR ADVISED ABOUT, AND WE WOULD LIKE TO HAVE PERMISSION
7 TO HAVE MR. HUNT PRESENT DURING THE EXAMINATION OF THOSE
8 RECORDS.

9 FOR REASONS KNOWN TO HIMSELF, MR. WAPNER OBJECTS
10 TO MR. HUNT BEING PRESENT DURING THE REVIEW OF THOSE RECORDS.

11 NOW, WE FEEL THAT OBVIOUSLY SAFEGUARDS COULD
12 EASILY BE INSTALLED TO SANITIZE THE SETTING WHEREIN THOSE
13 RECORDS WOULD BE REVIEWED.

14 IT WOULD BE IMPOSSIBLE FOR US TO GO TO THE EXPENSE,
15 AS WE JUST DON'T HAVE THE ABILITY TO DO SO, TO GO AND COPY
16 ALL OF THAT STUFF AND SOMEHOW TRANSPORT IT BACK TO MY OFFICE.
17 THE TIME AND THE EFFORT WOULD BE INCREDIBLE, NOT TO MENTION
18 THAT WE WOULD PROBABLY END UP COPYING A LOT OF STUFF WE DON'T
19 WANT.

20 THE COURT: DO YOU HAVE AN INVESTIGATOR THAT YOU CAN
21 SEND ALONG AND BE PRESENT AT THE TIME?

22 MR. WAPNER: YOUR HONOR, THERE ARE PEOPLE WHO COULD
23 BE THERE.

24 BUT I WAS ONLY YESTERDAY, TOLD BY MR. CHIER THAT
25 THEY WANTED THE PRESENCE OF MR. HUNT THERE. I DIDN'T KNOW
26 THAT UNTIL YESTERDAY AND AFTER GIVING IT SOME THOUGHT, TO
27 ME, IT IS TANTAMOUNT TO ALLOWING MR. HUNT TO GO INTO
28 MR. LEVIN'S APARTMENT BECAUSE, IN ESSENCE, MR. OSTROVE HAS

1 POSSESSION OF A LOT OF DOCUMENTS THAT WERE TAKEN OUT OF
2 MR. LEVIN'S PLACE.

3 IT IS INCREDIBLE TO ME THAT AFTER COUNSEL HAS
4 HAD THIS CASE FOR TWO AND A HALF YEARS THAT COUNSEL IS NOT
5 FAMILIAR ENOUGH WITH THE FACTS OF THE CASE TO LOOK AT THAT
6 OR HAVE AN INVESTIGATOR LOOK AT THOSE RECORDS AND DETERMINE
7 WHAT IS SIGNIFICANT AND WHAT IS NOT SIGNIFICANT. AND I JUST--

8 THERE ARE OTHER WAYS THAT WE MIGHT BE ABLE TO
9 ACCOMMODATE THIS OR ACCOMPLISH THIS -- I AM SORRY -- BUT I
10 JUST THINK THAT IT IS HIGHLY IMPROPER. I DON'T KNOW OF ANY
11 CASE WHERE THE DEFENDANT HAS BEEN ALLOWED TO GO RIFLE THROUGH
12 ORIGINAL EXHIBITS.

13 IT IS ALMOST, TO USE AN EXAMPLE, TANTAMOUNT TO
14 SAYING THAT "YOU CAN GO TO THE EXHIBIT ROOM AT THE BEVERLY
15 HILLS POLICE DEPARTMENT AND JUST LOOK AT ALL OF THE RECORDS
16 THAT WE HAVE GOT" AND I DON'T THINK THAT IS PROPER EITHER.

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1 FOR THOSE REASONS --

2 MR. WAPNER: I DON'T THINK THAT --

3 THE COURT: IS YOUR ASSOCIATE HERE FAMILIAR WITH ALL
4 OF THE RECORDS? HE IS THOROUGHLY AWARE OF IT. CAN HE BE THERE
5 AT THE TIME?

6 MR. BARENS: YOUR HONOR, IT WOULD BE VIRTUALLY IMPOSSIBLE
7 FOR US TO BE ABLE TO TOTALLY APPRECIATE EVERYTHING THAT WE
8 MIGHT NEED TO APPRECIATE. THE LAWYERS SIMPLY ARE NOT THE CLIENT.

9 THE COURT: HOW IS HE AWARE OF THE RECORDS THAT LEVIN
10 HAD? HE NEVER SAW THEM.

11 MR. BARENS: THE DEFENDANT HAD EXTENSIVE BUSINESS
12 RELATIONSHIPS ON A VARIETY OF LEVELS WITH MR. LEVIN, ALL OF WHICH
13 I SUBMIT I WOULDN'T BE AWARE OF BECAUSE I DIDN'T SPEND THE
14 YEARS IN CONTACT WITH MR. LEVIN THAT THE DEFENDANT DID.

15 THE DEFENDANT IS FAMILIAR WITH ALL OF THE VARIOUS
16 TOPICS THAT MR. LEVIN WAS INVOLVED WITH, AS WELL AS A VARIETY
17 OF OTHER THINGS. I JUST DON'T HAVE ANY KNOWLEDGE AT ALL ABOUT
18 IT. BUT YOUR HONOR, IF WE COULD ADDRESS WHAT THE CONCERN
19 APPEARS TO BE, OBVIOUSLY, LET'S BE HONEST, OKAY?

20 THE COURT: WELL, ABOUT THE INTEGRITY OF THE RECORDS.
21 THAT IS WHAT I AM CONCERNED ABOUT.

22 MR. BARENS: THAT IS WHAT I WOULD LIKE TO ADDRESS.
23 HONESTLY, WHAT THE PEOPLE ARE SAYING IS THAT THEY ARE AFRAID
24 MR. HUNT IS GOING TO GO THERE WITH HIS LAWYERS AND DESTROY
25 RECORDS OR REMOVE RECORDS OR TAMPER WITH RECORDS OR ALTER
26 RECORDS. LET'S CALL A SPADE A SPADE.

27 NOW, THAT IS EASILY ACCOMPLISHED OR OBIATED
28 THROUGH TWO WAYS.

28-2

1 NUMBER ONE, I DARE SAY THAT COUNSEL WOULD NEVER
2 PERMIT THAT. COUNSEL FOR THE DEFENDANT WOULD NEVER PERMIT
3 THAT AND COUNSEL WOULD BE A WITNESS TO THAT ACTIVITY.

4 SECONDARILY, THE PEOPLE HAVE THE ENTIRE BEVERLY
5 HILLS POLICE DEPARTMENT AT THEIR DISPOSAL. THEY HAVE THE
6 ENTIRE DISTRICT ATTORNEY'S OFFICE AND INVESTIGATOR'S STAFF
7 AVAILABLE. WE ASK THEM TO MAKE ONE OF THOSE BODIES AVAILABLE
8 TO GO OVER AND SAFEGUARD THE INTEGRITY.

9 THE COURT: HOW LONG IS IT INDICATED THAT THIS THING
10 WILL LAST?

11 MR. BARENS: I WOULD SAY AS LONG AS ANYWHERE FROM THREE
12 TO FOUR HOURS.

13 THE COURT: CAN'T YOU GET SOMEBODY FOR THREE OR FOUR
14 HOURS TO BE THERE AND SEE THAT NOTHING IS TAMPERED WITH?

15 MR. WAPNER: WELL, FIRST OF ALL, THE FILES OF MR. OSTROVE
16 ARE QUITE EXTENSIVE.

17 AND TO SAY THAT WE ARE GOING TO GO THROUGH THE
18 ENTIRE BEVERLY HILLS POLICE DEPARTMENT AND MR. OSTROVE'S
19 LIBRARY --

20 THE COURT: DON'T YOU THINK SINCE YOU ARE PRESENTING
21 THE CASE AND SO FORTH, THAT YOU SHOULD KNOW WHAT IS IN THOSE
22 RECORDS YOURSELF?

23 MR. WAPNER: I DO KNOW WHAT IS IN THOSE RECORDS.

24 THE COURT: WELL THEN, YOU HAVE SEEN THEM BEFORE?

25 MR. WAPNER: YES.

26 MR. BARENS: WE HAVE NOT.

27 MR. WAPNER: I TOLD MR. BARENS AND MR. CHIER FROM THE
28 VERY BEGINNING, THAT I WOULD BE HAPPY TO LET THEM LOOK AT THAT.

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1 I DIDN'T HAVE ANY CLUE UNTIL YESTERDAY THAT THEY
2 WERE INTENDING TO HAVE MR. HUNT THERE.

3 IF THEY WANTED TO LOOK AT THOSE, IF THE ATTORNEYS
4 WANT TO LOOK AT THOSE RECORDS OR COPY WHATEVER THEY WANT, THEN
5 THEY CAN BE MADE AVAILABLE. THEY CAN GO OVER THEM AT THEIR
6 LEISURE WITH THE DEFENDANT THEN.

7 BUT I DON'T WANT JOE HUNT RIFLING THROUGH RON
8 LEVIN'S RECORDS.

9 THE COURT: WELL, MR. BARENS CLAIMS THAT HE DOESN'T KNOW
10 WHAT TO LOOK FOR.

11 MR. WAPNER: HOW CAN THAT BE?

12 THE COURT: I DON'T KNOW. BUT THAT IS WHAT HE IS TELLING
13 ME. THAT IS WHAT HE SAYS.

14 MR. BARENS: I AM STRAIGHT UP, TELLING YOU THAT I DON'T
15 FEEL SECURE GOING THERE. I AM NOT SECURE IN SAYING I WOULD
16 BE ABLE TO REPRESENT JOE HUNT, AS A DEFENDANT AND LISTEN, I
17 FOUND EVERYTHING THAT WAS RELEVANT THERE. I DON'T FEEL
18 COMPETENT TO DO THAT.

19 I AM A LAWYER, NOT AN ACCOUNTANT.

20 THE COURT: MR. CHIER COULD PROBABLY BE AVAILABLE FOR
21 THAT PUBPOSE. HE KNOWS WHAT IT IS ABOUT.

22 MR. BARENS: MR. CHIER, THERE IS NO WAY THAT I WOULD
23 EVER FEEL MR. CHIER EITHER IS COMPETENT TO SATISFY THE DUTY
24 I FEEL TO JOE HUNT IN REGARD TO THE EXAMINATION OF THOSE
25 RECORDS.

26 THAT LEAVES ME WITH TWO UNACCEPTABLE CHOICES.
27 I HAVE TO EITHER --

28 THE COURT: WHAT IS IT YOU ARE CONCERNED ABOUT? YOU

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1 ARE CONCERNED ABOUT THE INTEGRITY OF THE RECORDS, SO NOTHING
2 IS CHANGED?

3 WHY DON'T YOU GET SOMEONE? THREE OR FOUR HOURS,
4 IF IT IS THAT LONG, I THINK YOU COULD TAKE AN INVESTIGATOR
5 OVER THERE AT THE TIME.

6 YOU HAVE GOT THE FACILITIES, HAVE YOU NOT?

7 MR. WAPNER: WELL, IF THAT IS WHAT --

8 THE COURT: I THINK THAT WOULD BE THE FAIR THING TO DO,
9 WOULDN'T IT? THAT IS, PROVIDING THAT HE DOES NOT HANDLE ANY
10 OF THOSE RECORDS.

11 MR. WAPNER: WELL, I THINK I TOLD YOU THAT THAT IS WHAT
12 I DON'T WANT, IS TO HAVE MR. HUNT SITTING THERE, RIFLING
13 THROUGH THE FILES. AND THEN --

14 THE COURT: HE IS NOT SUPPOSED TO HANDLE ANY OF THE
15 FILES.

16 MR. WAPNER: WELL, THAT IS EXACTLY THE POINT I AM
17 GETTING TO. THAT IS WHY IF HE NEEDS TO BE THERE WHILE THE
18 ATTORNEY IS EXAMINING THE RECORDS AND THEN IF THE ATTORNEY
19 WANTS TO CONSULT WITH MR. HUNT AND SAY, IS THIS SIGNIFICANT
20 AND THEY SHOW IT TO HIM, THAT'S ALL RIGHT.

21 IF THAT IS THE PROCEDURE THAT WE HAVE TO GET, THAT
22 IS OKAY.

23 MR. BARENS: JUDGE, I --

24 MR. WAPNER: EXCUSE ME. I AM NOT THROUGH.

25 THE COURT: GO AHEAD.

26 MR. WAPNER: IF MR. CHIER OR MR. BARENS OR BOTH WANT
27 TO EXAMINE THE FILE PAGE BY PAGE, THAT IS FINE WITH ME.

28 BUT I THINK THAT THAT SHOULD BE VERY CLEAR THAT

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1 IT IS THE LAWYER WHO IS EXAMINING THE FILE, WITH THE
2 DEFENDANT THERE ONLY FOR CONSULTATION.

3 THE COURT: WELL, THAT IS ALL IT WOULD BE FOR.

4 MR. WAPNER: THANK YOU.

5 MR. BARENS: THAT IS ALL I ASKED FOR, LET ME TELL YOU.

6 THE COURT: BE SURE THAT THAT IS FOLLOWED. YOU HAVE
7 AN INVESTIGATOR THERE.

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1 MR. WAPNER: THANK YOU.

2 THE COURT: HAVE MR. OSTROVE KNOW WHAT IS GOING TO TAKE
3 PLACE. THE LAWYERS WILL EXAMINE THOSE FILES. THE DEFENDANT
4 WILL BE THERE FOR THE PURPOSE OF CORROBORATING OR CHECKING
5 OR IDENTIFYING AND THAT IS ALL, NOT HANDLING ANY OF THE PAPERS.

6 MR. WAPNER: YOUR HONOR, COULD WE GET A MINUTE ORDER
7 TO THAT EFFECT?

8 THE COURT: CERTAINLY. IS THAT AGREEABLE TO YOU?

9 MR. BARENS: YES, QUITE SO. JUST ONE MOMENT.

10 (BRIEF PAUSE.)

11 MR. BARENS: WE WOULD LIKE AN EXAMINATION AT THE SAME
12 TIME, TO VIEW BUT NOT TOUCH -- TO VIEW ALL OF LEVIN'S
13 OFFICE EQUIPMENT, MATERIALS THAT MIGHT BE PRESENT IN MR.
14 OSTROVE'S OFFICE AT THAT TIME, TO VIEW THEM.

15 THE COURT: WHAT DOES THAT MEAN?

16 MR. BARENS: WELL, WE BELIEVE THAT THERE MAY OR MAY NOT
17 BE CERTAIN CHATTEL PROPERTIES, PROPERTY THAT COULD BE
18 EXCULPATORY IN NATURE, THAT WOULD BE PRESENT IN OSTROVE'S
19 OFFICE THAT OSTROVE WOULD IDENTIFY AS BEING THE PROPERTY
20 PREVIOUSLY IN MR. LEVIN'S POSSESSION.

21 MR. WAPNER: EXCUSE ME FOR JUST ONE MOMENT.

22 (PAUSE.)

23 MR. WAPNER: YOUR HONOR, THERE ARE NO SUCH THINGS. I
24 HAD A CONVERSATION WITH MR. BARENS. HE IS TALKING ABOUT
25 PIECES OF OFFICE MACHINERY.

26 THEY DON'T HAVE ANYTHING LIKE THAT. AND WHEN MR.
27 BARENS GOES THROUGH THE FILES TO SEE IT, HE WILL SEE THAT THEY
28 HAD AN APPRAISER APPOINTED.

1 ALL OF THE PROPERTY WAS APPRAISED AND THEN IT WAS
2 AUCTIONED OFF. THERE IS NO PROPERTY, AS SUCH.

3 MR. BARENS: THEN HE DOESN'T HAVE THE PROPERTY.

4 THE COURT: WHAT ARE YOU GOING TO DO?

5 MR. BARENS: THEN I SHALL NOT VIEW SUCH PROPERTY. AND
6 THEN WE WOULD LIKE OBVIOUSLY, JUST --

7 THE COURT: JUST THE RECORDS?

8 MR. BARENS: JUST LIKE THE RECORDS, OBVIOUSLY. I WOULD
9 LIKE TO COPY THE DOCUMENTATION SUBSTANTIATING WHERE THOSE
10 CHATTELS WENT, WHERE THEY ARE AND WHEN THEY WERE SOLD.

11 THE COURT: WHICH CHATTELS ARE YOU TALKING ABOUT NOW?
12 WHAT MATERIAL?

13 MR. BARENS: WELL, YOUR HONOR, YOU WILL SEE DURING THE
14 TRIAL THAT THERE IS SOME CONTENTION ABOUT HOW THINGS WERE
15 MADE.

16 THE COURT: WELL, YOU CAN ASK THE ADMINISTRATOR.

17 MR. BARENS: THE EXECUTOR, I BELIEVE?

18 THE COURT: THE EXECUTOR. WAS THERE A WILL?

19 MR. BARENS: WHAT IS HE NOW? I GUESS THE CONSERVATOR.
20 I BELIEVE IT IS THE CONSERVATOR OF THE ESTATE.

21 THE COURT: THAT'S RIGHT. WE HAVE THE FIVE-YEAR PERIOD.

22 MR. BARENS: YES. I WAS INTO P.I. NOT PROBATE. THAT
23 IS A BIT OF A JOKE.

24 ALL RIGHT. NOW YOUR HONOR, THERE WAS A SECOND
25 ISSUE. YESTERDAY, THE DEFENDANT FILED A MOTION FOR A HEARING
26 ON THE ISSUE OF THE HOLLYWOOD INVESTIGATION MATERIALS ON
27 KARNY.

28 WE RECALENDARERD THAT YESTERDAY FOR HEARING TODAY.

1 THE COURT: I DID SEE SOME PAPERS.

2 ALL IT SAYS IS THAT IT WAS A MOTION FOR DISCOVERY,
3 WITHOUT ANY ACCOMPANYING PAPERS.

4 MR. BARENS: IT MADE REFERENCE IN THE BODY OF IT TO
5 RESTORING TO CALENDAR THE MOTION PREVIOUSLY FILED.

6 I THINK THAT IT WAS ON DECEMBER 12TH OR WHATEVER
7 DATE IT WAS, BY REFERENCE.

8 THE COURT: WELL, "PLEASE TAKE NOTICE ON JANUARY 7TH
9 AT 10:30 A.M. THE DEFENDANT WILL MOVE THE COURT FOR THE
10 RELEASE SPECIFIED IN DEFENDANT'S MOTION OF DECEMBER 3RD."

11 WHAT IS THAT MOTION?

12 MR. BARENS: THAT MOTION YOUR HONOR, IS IN YOUR FILE.
13 IT WAS THE ORIGINAL, FILED MOTION OF THE DISCOVERY MATERIALS
14 FROM THE HOLLYWOOD POLICE DEPARTMENT AND EVERYONE ELSE
15 CONCERNING THAT KARNY ISSUE. WE HAVE NEVER --

16 THE COURT: I DON'T REMEMBER THAT.

17 MR. BARENS: IT IS QUITE WELL IN YOUR FILE, YOUR HONOR.
18 AND NOW I UNDERSTOOD WHEN WE FILED THE MOTION YESTERDAY, I
19 ADDRESSED IT TO MR. WAPNER, WHO ADVISED ME THAT HE WOULD NEED
20 A PERIOD OF TIME IN WHICH TO BE ABLE TO RESPOND, WHICH WE
21 CERTAINLY THINK IS APPROPRIATE.

22 WE ARE JUST INQUIRING AS TO WHAT DATE WE COULD
23 HAVE THIS MOTION HEARD.

24 THE COURT: ANY TIME THAT IS AGREEABLE WITH YOU IS OKAY
25 WITH ME.

26 MR. BARENS: DO YOU HAVE A DATE FOR THAT?

27 MR. WAPNER: I DON'T HAVE A DATE, YOUR HONOR.

28 THE COURT: DID YOU FIND THE MOTION PAPERS?

1 THE CLERK: DID I FIND THEM?

2 THE COURT: DID YOU FIND THEM?

3 THE CLERK: NO. I HAVE NOT FOUND THEM YET.

4 MR. BARENS: DECEMBER 3RD, I BELIEVE. WE HAVE A PHOTO-
5 COPY HERE, BEARING THE COURT FILE STAMP, YOUR HONOR.

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1 I KNOW MR. WAPNER HAS A COPY.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: WILL YOU FURNISH US WITH A COPY OF IT?
4 SHE DOESN'T SEEM TO FIND IT.

5 MR. BARENS: ALL RIGHT. NOW THIS IS THE ONLY COPY I
6 HAVE AT HAND, WHICH I WILL LEAVE WITH YOU FOR NOW.

7 THE COURT: YOU HAVE IT, THAT IS THE FILE COPY. YOU
8 HAVE IT STAMPED THERE?

9 MR. BARENS: QUITE SO, IT IS STAMPED DECEMBER 4TH, 1986.

10 THE COURT: THAT IS LAST MONTH.

11 MR. BARENS: YES, YOUR HONOR.

12 THE COURT: IS IT IN ANOTHER FILE? IS THAT THE ONLY
13 FILE YOU HAVE RIGHT HERE?

14 THE CLERK: NO. I HAVE ANOTHER FILE BUT I HAVE GONE
15 THROUGH ALL MY PAPERS.

16 THE COURT: TAKE A LOOK AT THE OTHER FILE IF YOU DON'T
17 FIND IT IN THIS ONE.

18 THE CLERK: I WAS LOOKING FOR A DIFFERENT DATE.

19 THE COURT: DECEMBER 4TH.

20 OFF THE RECORD.

21 (UNREPORTED COLLOQUY BETWEEN THE COURT,
22 COUNSEL AND THE CLERK.)

23 MR. BARENS: YOUR HONOR, WHY DON'T WE SAY THAT WE WILL
24 HAVE THIS HEARING NEXT WEDNESDAY, THE 14TH?

25 THE COURT: AT 1:30?

26 MR. BARENS: AT 1:30, ALL RIGHT.

27 THE COURT: OR 9:30, ANY TIME YOU WANT IT.

28 MR. BARENS: 9:30, DID YOU SAY?

29-2
1 THE COURT: OR 9 O'CLOCK, IS THAT BETTER?

2 MR. BARENS: NO. I WAS ACTUALLY THINKING OF 10:30.

3 THE COURT: ALL RIGHT, I DON'T WANT TO TAKE ANY TIME
4 OFF FROM THE JURY TRIAL.

5 MR. WAPNER: I THINK WE SHOULD GET THE JURY FIRST AND
6 THEN BEFORE WE SWEAR THE JURY, WHICH I GUESS IS BEFORE WE
7 DO THE ALTERNATES BECAUSE YOU CAN'T DO THE ALTERNATES UNTIL
8 YOU SWEAR -- I GUESS YOU COULD TECHNICALLY, HOWEVER NORMALLY
9 YOU SWEAR THE FIRST 12 BEFORE YOU GET THE ALTERNATES. AND
10 AFTER WE GET THE FIRST 12 AND BEFORE THEY ARE SWORN, I THINK
11 WE CAN DO THIS MOTION.

12 AND WE ALSO HAVE TO RESOLVE THE ARCE MOTION, WHICH
13 THE COURT SAID IT WOULD RULE ON.

14 THE COURT: I WILL RULE ON IT NOW.

15 MR. WAPNER: WELL, WITH ALL DUE RESPECT --

16 THE COURT: YOU MEAN YOU WANT TO ARGUE IT, DO YOU?

17 MR. WAPNER: WE PUT IT DOWN FOR ARGUMENT SO WE SHOULD
18 AT LEAST ARGUE THAT BEFORE.

19 THE COURT: ALL RIGHT, WHEN DO YOU WANT TO ARGUE THAT?

20 MR. WAPNER: BUT WE CAN PUT DOWN THESE MOTIONS
21 TENTATIVELY FOR NEXT WEDNESDAY AT 10:30, ASSUMING THAT WE
22 HAVE A JURY, AND IF NOT, WE WILL POSTPONE THEM UNTIL WE GET
23 THROUGH.

24 THE COURT: WHY NOT MAKE IT AT 10 O'CLOCK?

25 MR. WAPNER: THAT IS FINE.

26 THE COURT: NEXT WEDNESDAY.

27 MR. WAPNER: ALL RIGHT.

28 THE COURT: DO YOU THINK WE WILL HAVE A JURY BY THAT

29-3
1 TIME?

2 LET ME SEE, YOU HAVE EIGHT CHALLENGES AND HE HAS
3 NINE CHALLENGES SO THAT IS SEVENTEEN.

4 MR. WAPNER: MAYBE. I DON'T KNOW IF WE WILL HAVE A
5 JURY BY THAT TIME OR NOT.

6 MR. BARENS: WELL, LET ME JUST SAY, FOR THE RECORD,
7 THE DEFENSE'S ONLY CONCERN IS THAT WE HAVE AN OPPORTUNITY,
8 NUMBER ONE, TO BE HEARD ON THAT DISCOVERY MOTION.

9 THE COURT: SURE.

10 MR. BARENS: AND, NUMBER TWO, TO BE IN RECEIPT OF THE
11 MATERIALS, SHOULD WE PREVAIL ON THE MOTION, PRIOR TO THE TIME
12 OR TO SEEK AN ALTERNATIVE REMEDY IF WE ARE UNSUCCESSFUL IN
13 THE TRIAL COURT PRIOR TO THE TIME WE MAKE AN OPENING
14 STATEMENT.

15 THE COURT: THIS ARGUMENT IS IN A VACUUM, I DON'T KNOW
16 WHAT THE MOTION IS ALL ABOUT. I HAVEN'T SEEN THE PAPERS.
17 SHE HASN'T BEEN ABLE TO FIND THEM.

18 MR. BARENS: FINE, YOUR HONOR. I WOULD HAVE SWORN THAT
19 YOUR HONOR HAD BEEN GIVEN THE MOTION BECAUSE AT ONE TIME WE
20 HAD A LITTLE DISCUSSION ABOUT THIS.

21 THE COURT: WHAT WAS THE MOTION FOR NOW?

22 MR. BARENS: THIS WAS THIS BUSINESS ABOUT, YOU REMEMBER,
23 WE HAD THAT DAVIS V. ALASKA DISCUSSION, YOUR HONOR?

24 THE COURT: YES, YES.

25 MR. BARENS: AND THIS IS THAT BUSINESS ABOUT, YOU KNOW,
26 KARNY BEING ALLEGEDLY A SUSPECT IN A MURDER CASE IN HOLLYWOOD
27 AND THE PEOPLE WOULDN'T TURN OVER THEIR INVESTIGATION MATERIALS
28 TO SEE HOW KARNY FITS IN THAT HOMICIDE PICTURE.

29-4

1 THE COURT: OH, YES, I REMEMBER THAT.

2 MR. BARENS: SO WE HAD IT ON CALENDAR ONE TIME AND WE
3 GOT BUSY WITH JURY SELECTION SO WE OFF-CALENDARED THE
4 DISCUSSION, WE HAD SOME DISCUSSION IN CHAMBERS, AND NOW WE
5 WOULD LIKE TO GO BACK ON THAT, YOUR HONOR, SINCE IT IS
6 OBVIOUSLY VERY IMPORTANT TO THE DEFENSE.

7 THE COURT: ALL RIGHT.

8 MR. BARENS: BE THAT AS IT MAY, YOUR HONOR.

9 THE COURT: ALL RIGHT, WE WILL SCHEDULE IT, I WILL READ
10 YOUR COPY AND THEN GIVE IT BACK TO YOU.

11 MR. BARENS: QUITE SO, YOUR HONOR. THANK YOU.

12 (AT 4:35 P.M. AN ADJOURNMENT WAS TAKEN
13 UNTIL THURSDAY, DECEMBER 8, 1987, AT
14 10:30 A.M.)

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