

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DOCKET
#8DA0269
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 0 1982

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 31 OF 101
(PAGES 4557 TO 4724, INCLUSIVE)

COPY

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

JOSEPH HUNT,)

DEFENDANT.)

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

THURSDAY, JANUARY 8, 1987

VOLUME 31

PAGES 4557 TO, 4724 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

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

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THURSDAY, JANURY 8, 1987 VOLUME 31 PAGES 4557 TO 4724

A.M. 4557

P.M. 4615



PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 4557

1 SANTA MONICA, CALIFORNIA; THURSDAY, JANUARY 8, 1987; 10:35 A.M.

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

3 (APPEARANCES AS NOTED ON TITLE PAGE.)

4
5 (PROSPECTIVE JUROR RIVERE ENTERS THE
6 COURTROOM.)

7 THE COURT: GOOD MORNING.

8 MR. RIVERE: GOOD MORNING, YOUR HONOR.

9 THE COURT: MR. RIVERE, IS THAT IT?

10 MR. RIVERE: YES, YOUR HONOR.

11 THE COURT: MR. RIVERE, WHERE DO YOU LIVE?

12 MR. RIVERE: IN TORRANCE.

13 THE COURT: AND HAVE YOU EVER READ ABOUT, OR KNOW ANY-
14 THING AT ALL ABOUT THIS CASE EXCEPT WHAT I EXPLAINED TO YOU
15 LAST MONDAY?

16 MR. RIVERE: NO, I DIDN'T.

17 THE COURT: ALL RIGHT. NOW BRIEFLY TO REVIEW, THE PEOPLE
18 IN THIS CASE HAVE CHARGED THE DEFENDANT WITH THE CRIME OF
19 MURDER, MURDER IN THE FIRST DEGREE AND THAT THAT MURDER WAS
20 COMMITTED IN THE COURSE OF A ROBBERY.

21 YOU UNDERSTAND, OF COURSE, MERELY MAKING AN
22 ACCUSATION OR A CHARGE IS NOT EVIDENCE AND IT DOESN'T MEAN
23 THAT THE DEFENDANT DID ANYTHING UNTIL THE PEOPLE PROVE HIM
24 GUILTY BEYOND A REASONABLE DOUBT; YOU UNDERSTAND THAT, DON'T
25 YOU?

26 MR. RIVERE: YES.

27 THE COURT: ALL RIGHT, THAT IT WAS COMMITTED DURING A
28 ROBBERY HAS A SPECIAL SIGNIFICANCE. THE REASON FOR THAT IS

1 THAT WHERE A MURDER IN THE FIRST DEGREE IS COMMITTED DURING
2 THE COURSE OF A ROBBERY OR A BURGLARY OR A KIDNAPPING OR RAPE,
3 MURDERS OF THAT KIND, THE LEGISLATURE HAS SAID THAT THOSE
4 MURDERS QUALIFY FOR THE DEATH PENALTY.

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1 WITHOUT THE SPECIAL CIRCUMSTANCES, THEY DON'T
2 QUALIFY FOR THE DEATH PENALTY. IN OTHER WORDS, A MURDER COULD
3 BE COMMITTED, A CALCULATED, DELIBERATE AND INTENTIONALLY
4 PREMEDITATED AND PREPLANNED MURDER AND STILL NOT QUALIFY FOR
5 THE DEATH PENALTY. IT HAS TO BE ACCOMPANIED BY THE SPECIAL
6 CIRCUMSTANCES. THAT IS, IT WAS DONE DURING THE COURSE OF A
7 ROBBERY OR RAPE AND KIDNAPPING AND SO FORTH. DO YOU UNDERSTAND
8 THAT?

9 MR. RIVERE: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. AND WHEN WE TALK ABOUT THE DEATH
11 PENALTY, IT CONSISTS OF ONE OF TWO THINGS. THE DEATH PENALTY
12 INCLUDES LIFE WITHOUT THE POSSIBILITY OF PAROLE AND THAT MEANS
13 EXACTLY THAT. A MAN IS SENTENCED TO THE STATE PRISON WITHOUT
14 THE POSSIBILITY OF PAROLE. HE NEVER GETS OUT.

15 OR, IT IS DEATH IN THE GAS CHAMBER, ONE OF THOSE
16 TWO. THE JURY HAS TO DETERMINE THAT.

17 SO THE JURY SELECTED IN THIS CASE WOULD FIRST,
18 HAVE TO DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OR
19 NOT GUILTY OF THE MURDER. AND IF HE IS FOUND TO BE GUILTY
20 OF MURDER AND IT IS MURDER IN THE FIRST DEGREE AND THEN THE
21 JURY DOES DETERMINE WHETHER OR NOT IT WAS COMMITTED DURING
22 THE COURSE OF A ROBBERY, THAT WOULD QUALIFY IT FOR THE DEATH
23 PENALTY. DO YOU UNDERSTAND?

24 IF THE JURY DOES VOTE UNANIMOUSLY THAT IT WAS
25 BEYOND A REASONABLE DOUBT, IT WAS MURDER IN THE FIRST DEGREE
26 AND THAT IT WAS IN THE COURSE OF A ROBBERY, THEN THEY HEAR
27 FURTHER EVIDENCE ON WHAT WE CALL A PENALTY PHASE OF THE TRIAL.

28 THE FIRST PART OF THE TRIAL WAS THE GUILT PHASE.

1 NOW WE ARE ON THE PENALTY PHASE WHERE THE JURY DETERMINES WHAT
2 THE PENALTY WILL BE.

3 BOTH SIDES THEN INTRODUCE FURTHER EVIDENCE THAT
4 YOU HAD NOT HEARD BEFORE. AND THE PURPOSE OF THAT EVIDENCE
5 FROM THE DEFENDANT FOR EXAMPLE, IS THAT HE WILL SHOW YOU AND
6 THE COURT MUST CONSIDER FACTORS SUCH AS THE AGE OF THE
7 DEFENDANT, WHETHER OR NOT HE HAD ANY PRIOR CRIMINAL ACTIVITIES
8 OR CONDUCT, HIS BACKGROUND, HIS EDUCATION, MENTAL AND PHYSICAL
9 CONDITION OR THE FACTS OF THE CASE ITSELF THAT YOU HEARD ON
10 WHICH HE WAS FOUND GUILTY.

11 THE PURPOSE OF THAT IS TO TRY TO GET YOU, THE JURY,
12 TO GIVE HIM A LESSER PENALTY THAN DEATH IN THE GAS CHAMBER.
13 THAT WOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE.

14 THE PEOPLE ON THE OTHER HAND, WILL TRY TO SHOW
15 AGGRAVATING CIRCUMSTANCES THAT HE THINKS ARE UNFAVORABLE ABOUT
16 HIM, THAT HE IS NOT A GOOD PERSON AND SO ON AND TRY TO PERSUADE
17 YOU THAT THE ULTIMATE PENALTY OF DEATH IN THE GAS CHAMBER
18 SHOULD BE VOTED BY THE JURY. DO YOU UNDERSTAND THAT?

19 MR. RIVERE: YES.

20 THE COURT: SINCE THE DEATH PENALTY IS INVOLVED, THE
21 PURPOSE OF ALL OF THESE HEARINGS WITH THESE JURORS IS TO
22 DETERMINE WHAT THEIR MENTAL STATE IS, HOW DO THEY FEEL AND
23 WHAT THEIR ATTITUDE IS AND THEIR FEELINGS AND OPINIONS ARE
24 WITH RESPECT TO THE DEATH PENALTY. OKAY?

25 SO, I WILL ASK YOU A SERIES OF FIVE QUESTIONS.
26 THE FIRST TWO QUESTIONS RELATE TO THE GUILT PHASE. THAT IS
27 THE FIRST PHASE.

28 DO YOU HAVE ANY OPINION RESPECTING THE DEATH PENALTY

1 THAT WHATEVER IT MAY BE, WOULD PREVENT YOU FROM MAKING AN
2 IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?
3 WHATEVER OPINION IT IS THAT YOU HAVE OF THE DEATH PENALTY,
4 WOULD THAT PREVENT YOU FROM BEING FAIR AND IMPARTIAL AS TO
5 WHETHER OR NOT THE DEFENDANT --

6 MR. RIVERE: WELL, ACTUALLY, I AM YOU KNOW -- I AM IN
7 FAVOR.

8 THE COURT: YOU ARE NOT?

9 MR. RIVERE: I AM NOT IN FAVOR OF THE DEATH PENALTY.

10 THE COURT: YOU ARE NOT IN FAVOR OF THE DEATH PENALTY?

11 MR. RIVERE: WELL, I GUESS I AM JUST IN BETWEEN, YOU
12 KNOW.

13 THE COURT: WELL, I DIDN'T ASK YOU THAT. FORGET ABOUT
14 THE DEATH PENALTY FOR THE MOMENT. WHATEVER OPINION YOU MIGHT
15 HAVE, FAVORABLY, GOOD OR BAD, WOULD THAT IN ANY WAY INTERFERE
16 WITH YOUR BEING AN IMPARTIAL JUROR AND DECIDING WHETHER HE
17 IS GUILTY OR NOT GUILTY ON THE MURDER?

18 MR. RIVERE: NO.
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1 THE COURT: IT WOULD NOT?

2 MR. RIVERE: NO.

3 THE COURT: ALL RIGHT. AND SIMILARLY, WOULD IT IN ANY
4 WAY INTERFERE WITH YOU MAKING A DECISION AS TO WHETHER OR NOT
5 THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY?

6 MR. RIVERE: NO.

7 THE COURT: ALL RIGHT. NOW THE NEXT TWO QUESTIONS I
8 AM GOING TO ASK YOU --

9 INCIDENTALLY, DO YOU UNDERSTAND WHAT I AM TALKING
10 ABOUT?

11 MR. RIVERE: YEAH, SURE.

12 THE COURT: THE NEXT TWO QUESTIONS I AM GOING TO ASK
13 YOU RELATE TO THE PENALTY PHASE. ASSUME THAT THE DEFENDANT
14 HAS BEEN FOUND GUILTY OF MURDER IN THE FIRST DEGREE AND IT
15 WAS IN THE COURSE OF A ROBBERY; DO YOU UNDERSTAND?

16 (PROSPECTIVE RIVERE NODS HIS HEAD UP AND
17 DOWN.)

18 THE COURT: NOW, DO YOU HAVE ANY OPINION WITH RESPECT
19 TO THE DEATH PENALTY THAT WOULD CAUSE YOU AUTOMATICALLY TO
20 VOTE TO IMPOSE THE DEATH PENALTY, REGARDLESS OF ANY EVIDENCE
21 THAT MAY BE PRESENTED AT THE PENALTY PHASE OF THE TRIAL?

22 MR. RIVERE: NO.

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

28 MR. RIVERE: CAN YOU REPEAT THAT AGAIN?

1 THE COURT: YES.

2 IN OTHER WORDS, THE SAME AS THE OTHER QUESTION
3 I ASKED YOU: WOULD YOU AUTOMATICALLY VOTE FOR LIFE IMPRISON-
4 MENT WITHOUT THE POSSIBILITY OF PAROLE WITHOUT REGARD TO ANY
5 EVIDENCE THAT YOU HEARD ON THE PENALTY PHASE OF THE TRIAL?

6 MR. RIVERE: NO, NO.

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

12 MR. RIVERE: YES.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 GOOD MORNING, MR. RIVERE.

15 MR. RIVERE: GOOD MORNING.

16 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
17 DEFENDANT, JOE HUNT, AND AS WAS THE CASE WITH HIS HONOR, IT
18 IS MY DUTY TO ASK YOU SOME QUESTIONS ABOUT YOUR OPINION ON
19 THE DEATH PENALTY AT THIS POINT.

20 THERE ARE NO RIGHT OR WRONG ANSWERS TO MY QUESTIONS,
21 SIR, AND NONE OF US IN THIS ROOM ARE JUDGING ANY OF YOUR
22 ANSWERS BUT, RATHER, LISTENING TO YOUR OPINION TO SEE IF YOU
23 QUALIFY AS A JUROR ON THIS CASE. AND YOU CAN NEVER BE WRONG
24 ABOUT YOUR OWN OPINION.

25 MR. RIVERE: OKAY.

26 MR. BARENS: ALL RIGHT, WITH THAT IN MIND, EARLIER ON
27 YOU HAD SAID TWO THINGS: YOU SAID "I AM AGAINST THE DEATH
28 PENALTY" AND I BELIEVE YOU SAID, "I AM IN BETWEEN," WAS THE

1 OTHER EXPRESSION THAT YOU USED.

2 COULD YOU HELP ME UNDERSTAND WHAT YOU MEANT BY
3 THAT, SIR?

4 MR. RIVERE: YEAH.

5 ACTUALLY, WHAT I AM TRYING TO SAY, I AM NO
6 (UNINTELLIGIBLE).

7 THE COURT REPORTER: WHAT WAS THAT ANSWER?

8 MR. RIVERE: I AM NO -- I AM NO -- I AM NOT, SAY, IN
9 FAVOR OF THE DEATH PENALTY OR NOT --

10 MR. BARENS: IN OTHER WORDS, SIR, YOU ARE TELLING US
11 THAT YOU ARE KIND OF NEUTRAL?

12 MR. RIVERE: YES.

13 MR. BARENS: OR OPEN-MINDED?

14 MR. RIVERE: YES.

15 MR. BARENS: AFTER HEARING ALL OF THE EVIDENCE, COULD
16 YOU CONSIDER BOTH OF THOSE TWO TYPES OF PENALTIES IF WE EVER
17 HAD TO GET TO THAT PART OF THE TRIAL?

18 MR. RIVERE: WOULD YOU REPEAT THAT AGAIN?

19 MR. BARENS: YES.

20 LET ME BACK UP A LITTLE BIT --

21 MR. RIVERE: OKAY.

22 MR. BARENS: -- HERE AND MAKE SURE THAT WE ARE ALL
23 TALKING ABOUT THE SAME THING AND THAT I AM UNDERSTANDING YOU
24 AND YOU ARE UNDERSTANDING ME.

25 MR. RIVERE: YES.

26 MR. BARENS: HIS HONOR EXPLAINED TO YOU THAT THERE COULD
27 BE -- COULD BE TWO TRIALS IN THIS CASE.

28 MR. RIVERE: YES.

1 MR. BARENS: THE FIRST TRIAL BEING THE GUILT TRIAL,
2 WHETHER THE DEFENDANT IS GUILTY OF HAVING DONE A MURDER OR
3 NOT GUILTY OF HAVING DONE A MURDER; DO YOU UNDERSTAND THAT?

4 MR. RIVERE: YES.

5 MR. BARENS: IF YOU WERE A JUROR AND YOU AND THE OTHER
6 JURORS AGREED BEYOND A REASONABLE DOUBT THAT A MURDER HAD
7 OCCURRED, THAT IT WAS PREMEDITATED AND INTENTIONAL, A FIRST
8 DEGREE MURDER AND, FURTHER, THAT IT HAD OCCURRED DURING THE
9 COMMISSION OF A ROBBERY, WE WOULD ONLY THEN COME TO THE SECOND
10 TRIAL, BEING THE PENALTY PHASE TRIAL; DO YOU UNDERSTAND THAT?

11 MR. RIVERE: YES.

12 MR. BARENS: THEREFORE, THE ONLY TIME THIS ISSUE OF THE
13 DEATH PENALTY WOULD EVER BE BROUGHT TO YOU, SIR, WOULD BE IN
14 THE SECOND TRIAL; DO YOU UNDERSTAND THAT?

15 MR. RIVERE: YES.

16 MR. BARENS: NOW, THE TWO CHOICES -- THE ONLY TWO
17 CHOICES YOU WOULD HAVE AS JURORS IN THAT SECOND TRIAL WOULD
18 EITHER BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
19 OR THE DEATH PENALTY; DO YOU UNDERSTAND THAT?

20 MR. RIVERE: YES.

21 MR. BARENS: WHAT WE ARE NOW ASKING YOU, SIR, IS WOULD
22 YOU BE CAPABLE OF CONSIDERING THE DEATH PENALTY AFTER HEARING
23 ALL OF THE EVIDENCE DURING THAT PENALTY PHASE, WOULD YOU BE
24 CAPABLE OF CONSIDERING THE DEATH PENALTY AS ONE OF THE POSSIBLE
25 PUNISHMENTS YOU COULD HAVE, AS WELL AS CONSIDER LIFE IMPRISON-
26 MENT WITHOUT THE POSSIBILITY OF PAROLE, ARE YOU CAPABLE OF
27 CONSIDERING BOTH OF THEM IN REACHING A DECISION?

28 MR. RIVERE: I AM -- I MIGHT CONSIDER EACH ONE, EITHER

1 ONE.

2 THE COURT: PARDON ME?

3 MR. RIVERE: I CAN CONSIDER EITHER ONE.

4 MR. BARENS: OKAY, THAT IS ALL THE COURT AND MYSELF ARE
5 ASKING YOU, SIR, IS THAT YOU BE ABLE TO FAIRLY AND OPEN-
6 MINDEDLY CONSIDER EITHER ONE AND THAT YOU COULD IN FACT BE
7 CAPABLE OF VOTING FOR EITHER PENALTY IF THAT IS WHAT THE
8 EVIDENCE TOLD YOU WAS APPROPRIATE; COULD YOU DO THAT?

9 MR. RIVERE: YEAH, I CAN DO THAT.

10 MR. BARENS: ALL RIGHT. SO YOUR MIND IS NOT CLOSED TO
11 EITHER ONE BEFORE YOU HEAR ALL OF THE EVIDENCE?

12 MR. RIVERE: NO, NO.

13 MR. BARENS: OKAY. NOW YOU WOULD BE INSTRUCTED BY THE
14 JUDGE DURING THE GUILT PHASE, THAT FIRST TRIAL --

15 MR. RIVERE: YES.

16 MR. BARENS: -- THAT THE BURDEN OF PROOF IS BEYOND A
17 REASONABLE DOUBT; DO YOU UNDERSTAND THAT?

18 MR. RIVERE: YES.

19 MR. BARENS: THAT WHETHER THERE IS A MURDER OR ANY KIND
20 OF A CRIMINAL ACT, WHETHER IT IS A TRAFFIC TICKET LIKE DRIVING
21 UNDER THE INFLUENCE, YOU KNOW, A DRUNK DRIVING GUY.

22 MR. RIVERE: YES.

23 MR. BARENS: WHETHER IT IS A MURDER OR RAPE OR WHATEVER,
24 THE PROOF IS THE SAME, THAT IS CALLED BEYOND A REASONABLE
25 DOUBT.

26 MR. RIVERE: ALL RIGHT.

27 MR. BARENS: DO YOU UNDERSTAND THAT, ... THOUGH, THAT
28 THAT STANDARD IS THE SAME STANDARD, NO MATTER WHAT THE PENALTY

1 COULD BE; DO YOU UNDERSTAND?

2 MR. RIVERE: YES.

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1 MR. BARENS: DO YOU UNDERSTAND THAT DURING THAT GUILT
2 PHASE OF THE TRIAL, YOU AREN'T EVEN TO CONSIDER WHAT THE
3 PENALTY COULD BE? COULD YOU COME TO A DECISION AS THE JUDGE
4 ASKED YOU, ABOUT WHETHER A PERSON WAS GUILTY OR INNOCENT,
5 TOTALLY WITHOUT CONSIDERING THE PENALTY PHASE?

6 MR. RIVERE: NO. I DON'T CONSIDER THAT.

7 MR. BARENS: YOU WOULD NOT CONSIDER THE PENALTY AT ALL?

8 MR. RIVERE: NO.

9 MR. BARENS: JUST WHETHER THEY WERE GUILTY OR INNOCENT
10 IN THE FIRST TRIAL?

11 MR. RIVERE: YES.

12 MR. BARENS: NOW, BY THE SAME TOKEN, YOU WOULD ONLY
13 EXPECT PROOF BEYOND A REASONABLE DOUBT, IS THAT TRUE?

14 MR. RIVERE: YES.

15 MR. BARENS: YOU KNOW THERE IS NO SUCH THING IN THE WORLD
16 AS ABSOLUTE PROOF? YOU WOULD JUST LOOK FOR PROOF BEYOND A
17 REASONABLE DOUBT?

18 MR. RIVERE: YES.

19 MR. BARENS: OKAY. DO YOU UNDERSTAND THAT THE ONLY ONE
20 THAT CAN MAKE THE LIFE OR DEATH DECISION, IS YOU AS A JUROR?

21 MR. RIVERE: YES.

22 MR. BARENS: THAT IS NOT A DECISION -- THE LAW DOESN'T
23 SAY THAT ANYONE HAS TO EVER DIE FOR ANYTHING THEY DO. ONLY
24 A JURY CAN MAKE THAT DECISION.

25 MR. RIVERE: YES.

26 MR. BARENS: AND THE SAME WAY FOR LIFE WITHOUT POSSIBILITY
27 OF PAROLE. THAT IS THE OTHER CHOICE YOU HAVE AS A JUROR. DO
28 YOU UNDERSTAND THAT?

1 MR. RIVERE: YES.

2 MR. BARENS: NOW SIR, DO YOU UNDERSTAND THAT THERE IS
3 NO REASON FOR YOU TO BELIEVE, BECAUSE THE JUDGE AND MYSELF
4 AND LATER ON THE DISTRICT ATTORNEY ARE TALKING TO YOU ABOUT
5 THE DEATH PENALTY, THAT MR. HUNT HAS DONE ANYTHING WRONG?

6 MR. RIVERE: WELL, MAY I EXPLAIN? MAY I EXPLAIN SOME-
7 THING?

8 MR. BARENS: PLEASE, SIR.

9 MR. RIVERE: SEE, THIS IS THE FIRST TIME I HAVE BEEN
10 IN COURT FOR ANY KIND OF REASON.

11 MR. BARENS: YES, SIR.

12 MR. RIVERE: SO I HAVE NO EXPERIENCE AND I HAVE NO OTHER
13 KNOWLEDGE OF THIS KIND OF CASE.

14 MR. BARENS: THAT IS A GOOD THING.

15 MR. RIVERE: SO EVERYTHING FOR ME IN THE CASE IS NEW.

16 MR. BARENS: OKAY.

17 MR. RIVERE: SO I HAVE NOT THE EXPERIENCE TO ANSWER THE
18 QUESTIONS, YOU KNOW, THAT FAST AND SAY WELL, THIS IS ALL RIGHT
19 OR THIS IS WRONG.

20 SO THAT TAKES ME A LITTLE TIME TO UNDERSTAND.

21 MR. BARENS: PERHAPS WE CAN HELP YOU OUT ON ONE POINT.
22 MY CLIENT JOE HUNT, IS HERE BECAUSE HE IS ACCUSED OF MURDER.

23 MR. RIVERE: YES.

24 MR. BARENS: DO YOU UNDERSTAND THAT THE FACT THAT HE
25 IS ACCUSED OF MURDER, DOESN'T MEAN HE DID A MURDER?

26 MR. RIVERE: YES.

27 MR. BARENS: DO YOU UNDERSTAND THAT?

28 MR. RIVERE: YES. I UNDERSTAND.

1 THE COURT: DO YOU UNDERSTAND?

2 MR. RIVERE: YES. I UNDERSTAND.

3 MR. BARENS: DO YOU UNDERSTAND THAT MR. HUNT IS A
4 DEFENDANT AND IF YOU WERE A DEFENDANT OR ME AS A DEFENDANT,
5 THAT WE ARE ACCUSED OF A CRIME AND IN THE UNITED STATES, YOU
6 HAVE A PRESUMPTION OF INNOCENCE UNTIL YOU ARE PROVEN GUILTY?

7 MR. RIVERE: YES.

8 MR. BARENS: DO YOU KNOW WHAT THAT MEANS?

9 MR. RIVERE: YES.

10 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

11 MR. RIVERE: I AM NOT TOO SURE. I AM NOT TOO SURE ABOUT
12 THAT.

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

14 MR. RIVERE: BECAUSE I THINK I HAVE GOT TO CONVICT MYSELF
15 TO SAY THAT THIS IS RIGHT OR THIS IS WRONG. SO I AM NOT SURE
16 TO ANSWER.

17 THE COURT: YOU WHAT?

18 MR. RIVERE: I AM NOT TOO SURE TO ANSWER THAT KIND OF
19 QUESTION YET BECAUSE I AM NOT TOO FAMILIAR WITH THIS.

20 MR. BARENS: ONE LAST THING, SIR. DO YOU BELIEVE IN
21 YOUR MIND, THAT BECAUSE MR. HUNT IS SITTING IN THIS COURTROOM
22 ACCUSED OF A MURDER, THAT HE HAS DONE SOMETHING WRONG?

23 MR. RIVERE: NO.

24 MR. BARENS: YOU HAVE NOT HEARD ANY EVIDENCE, HAVE YOU?

25 MR. RIVERE: NO.

26 MR. BARENS: THERE HAS NOT BEEN ANY TRIAL?

27 MR. RIVERE: NO.

28 MR. BARENS: THANK YOU VERY MUCH. WE PASS FOR CAUSE.

1 MR. WAPNER: GOOD MORNING. I AM FRED WAPNER. I AM THE
2 DEPUTY DISTRICT ATTORNEY PROSECUTING THIS CASE. WOULD YOU
3 PRONOUNCE YOUR LAST NAME?

4 MR. RIVERE: RIVERE.

5 MR. WAPNER: ALL RIGHT. THANK YOU. I THINK THE JUDGE
6 PROBABLY MEANT TO ASK YOU, HAVE YOU HEARD OR READ ANYTHING
7 ABOUT THIS CASE?

8 MR. RIVERE: NO.

9 MR. WAPNER: DOES THE NAME BILLIONAIRE BOYS CLUB MEAN
10 ANYTHING TO YOU?

11 MR. RIVERE: NO.

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1 MR. WAPNER: DO YOU HAVE ANY STRONG RELIGIOUS OR MORAL
2 FEELINGS ABOUT THE DEATH PENALTY?

3 MR. RIVERE: NO.

4 MR. WAPNER: DO YOU HAVE ANY STRONG FEELINGS THAT THE
5 STATE SHOULD NOT BE INVOLVED IN TAKING SOMEONE'S LIFE?

6 MR. RIVERE: NO.

7 MR. WAPNER: IF YOU ARE A JUROR ON THIS CASE AND YOU
8 HEAR ALL OF THE EVIDENCE AND YOU DECIDE IN YOUR MIND THAT THE
9 EVIDENCE PROVES HIS GUILT BEYOND A REASONABLE DOUBT AND IT
10 PROVES THAT THE PUNISHMENT SHOULD BE DEATH, ARE YOU CAPABLE
11 OF RENDERING THAT VERDICT, SAYING MY VERDICT IS THAT THE
12 DEFENDANT SHOULD DIE?

13 MR. RIVERE: I MIGHT SAY YES.

14 THE COURT: YOU MIGHT?

15 MR. RIVERE: YES.

16 MR. WAPNER: YOU SAID THAT YOU MIGHT SAY YES?

17 MR. RIVERE: WELL, I SAY IF THAT PROVES YOU KNOW -- IT
18 CONVINCES ME IN MY OWN MIND, THAT THAT IS WHAT HAPPENED ON
19 THIS, ON THIS GUILTY, YOU KNOW, ALL I WOULD SAY IS YES.

20 MR. WAPNER: ALL RIGHT. ON THE OTHER HAND, IF YOU WERE
21 CONVINCED THAT HE COMMITTED THE CRIME BUT NOT CONVINCED THAT
22 THE PUNISHMENT SHOULD BE DEATH, ARE YOU CAPABLE OF VOTING FOR
23 A VERDICT OF LIFE WITHOUT POSSIBILITY OF PAROLE?

24 MR. RIVERE: YES.

25 MR. WAPNER: DID YOU EVER THINK ABOUT THE DEATH PENALTY
26 BEFORE YOU CAME INTO COURT TODAY?

27 MR. RIVERE: IN WHAT WAY?

28 MR. WAPNER: IN ANY WAY.

1 MR. WAPNER: DO YOU HAVE ANY STRONG RELIGIOUS OR MORAL
2 FEELINGS ABOUT THE DEATH PENALTY?

3 MR. RIVERE: NO.

4 MR. WAPNER: DO YOU HAVE ANY STRONG FEELINGS THAT THE
5 STATE SHOULD NOT BE INVOLVED IN TAKING SOMEONE'S LIFE?

6 MR. RIVERE: NO.

7 MR. WAPNER: IF YOU ARE A JUROR ON THIS CASE AND YOU
8 HEAR ALL OF THE EVIDENCE AND YOU DECIDE IN YOUR MIND THAT THE
9 EVIDENCE PROVES HIS GUILT BEYOND A REASONABLE DOUBT AND IT
10 PROVES THAT THE PUNISHMENT SHOULD BE DEATH, ARE YOU CAPABLE
11 OF RENDERING THAT VERDICT, SAYING MY VERDICT IS THAT THE
12 DEFENDANT SHOULD DIE?

13 MR. RIVERE: I MIGHT SAY YES.

14 THE COURT: YOU MIGHT?

15 MR. RIVERE: YES.

16 MR. WAPNER: YOU SAID THAT YOU MIGHT SAY YES?

17 MR. RIVERE: WELL, I SAY IF THAT PROVES YOU KNOW -- IT
18 CONVINCES ME IN MY OWN MIND, THAT THAT IS WHAT HAPPENED ON
19 THIS, ON THIS GUILTY, YOU KNOW, ALL I WOULD SAY IS YES.

20 MR. WAPNER: ALL RIGHT. ON THE OTHER HAND, IF YOU WERE
21 CONVINCED THAT HE COMMITTED THE CRIME BUT NOT CONVINCED THAT
22 THE PUNISHMENT SHOULD BE DEATH, ARE YOU CAPABLE OF VOTING FOR
23 A VERDICT OF LIFE WITHOUT POSSIBILITY OF PAROLE?

24 MR. RIVERE: YES.

25 MR. WAPNER: DID YOU EVER THINK ABOUT THE DEATH PENALTY
26 BEFORE YOU CAME INTO COURT TODAY?

27 MR. RIVERE: IN WHAT WAY?

28 MR. WAPNER: IN ANY WAY.

1 MR. RIVERE: WELL, YES. I THINK ABOUT THAT.

2 MR. WAPNER: WHAT HAVE YOU THOUGHT ABOUT IT?

3 MR. RIVERE: IT IS SOMETHING I CAN SAY THAT IT IS --
4 I CAN'T SAY IT IS GOOD OR IT IS BAD. IT IS JUST THAT I ADMIT
5 IT, THAT IT IS PART OF LIFE, THE DEATH PENALTY.

6 IT IS PART OF PUNISHMENT OR WHATEVER.

7 BUT I AM NOT SAYING THIS IS GOOD OR THIS IS BAD.

8 I AM NOT GOING TO VOTE 100 PERCENT AND SAY THIS
9 IS SUPPOSED TO BE THE DEATH PENALTY.

10 THE COURT: WELL, SUPPOSE YOU FEEL AFTER YOU HAVE HEARD
11 ALL OF THE EVIDENCE BOTH IN THE GUILT PHASE AND IN THE PENALTY
12 PHASE, SUPPOSE YOU BELIEVE THAT THE DEFENDANT SHOULD BE
13 SENTENCED TO THE GAS CHAMBER. WOULD YOU VOTE FOR THAT?

14 MR. RIVERE: YES.

15 THE COURT: ALL RIGHT.

16 MR. WAPNER: NOTHING FURTHER.

17 THE COURT: PASS FOR CAUSE?

18 MR. WAPNER: PASS FOR CAUSE.

19 THE COURT: ALL RIGHT. MR. RIVERE, BOTH SIDES AGREE
20 THAT YOU COULD MAKE A GOOD JUROR IN THIS CASE, THAT YOU CAN
21 SERVE PROPERLY.

22 WHAT I WILL DO, IS ASK YOU TO COME BACK ON MONDAY
23 MORNING WHEN WE START THE TRIAL. THAT WILL BE MONDAY MORNING.

24 MR. RIVERE: MONDAY MORNING?

25 THE COURT: MONDAY MORNING. GO TO THE JURY ASSEMBLY
26 ROOM WHERE YOU CAME FROM.

27 MR. RIVERE: YES.

28 THE COURT: THAT IS THE JURY ASSEMBLY ROOM AT 10:30 IN

1 THE MORNING. THAT WILL BE 10:30 IN THE MORNING NEXT MONDAY.
2 YOU BE THERE. THEN WE WILL HAVE YOU COME BACK IN HERE.

3 MR. RIVERE: OKAY, YOUR HONOR.

4 (PROSPECTIVE JUROR RIVERE EXITS THE
5 COURTROOM.)

6 (PROSPECTIVE JUROR NAISTAT ENTERS THE
7 COURTROOM.)

8 THE COURT: NAISTAT, IS THAT HOW YOU PRONOUNCE IT?

9 MR. NAISTAT: THAT'S RIGHT, SIR.

10 THE COURT: ALL RIGHT, MR. NAISTAT, WHERE DO YOU LIVE?

11 MR. NAISTAT: IN MAR VISTA, NEAR HERE.

12 THE COURT: YES. HAVE YOU HEARD ANYTHING AT ALL ABOUT
13 THIS CASE OR DO YOU KNOW ANYTHING AT ALL ABOUT IT EXCEPT WHAT
14 I TOLD YOU LAST MONDAY?

15 MR. NAISTAT: NO, NOTHING.

16 THE COURT: HAVE YOU EVER HEARD THE EXPRESSION
17 "BILLIONAIRE BOYS CLUB"? DOES THAT RING A BELL?

18 MR. NAISTAT: WHAT?

19 THE COURT: BILLIONAIRE BOYS CLUB?

20 MR. NAISTAT: NO.

21 THE COURT: WHAT I AM GOING TO DO IS TO BRIEFLY REVIEW
22 A COUPLE OF CASES. I DID TELL YOU ABOUT THIS LAST MONDAY BUT
23 YOU CAN PUT IT IN CONTEXT. IT IS PRELIMINARY TO WHAT I AM
24 GOING TO ASK YOU, THE QUESTIONS.

25 THOSE QUESTIONS, COUNSEL WILL ALSO ASK YOU. THEY
26 WILL ASK YOU QUESTIONS WHICH DEAL WITH YOUR STATE OF MIND AS
27 TO THE DEATH PENALTY.

28 FIRST, YOU KNOW THAT THE CHARGE AGAINST THE

1 DEFENDANT AND MERELY BECAUSE HE IS CHARGED, DOESN'T MEAN THAT
2 THE MAN IS GUILTY OF ANYTHING AS HE SITS THERE. THE CHARGE
3 AGAINST THE DEFENDANT IS MURDER IN THE FIRST DEGREE AND THAT
4 IT WAS COMMITTED DURING THE COURSE OF A ROBBERY.

5 IN THE COURSE OF A ROBBERY HAS SPECIAL SIGNIFICANCE
6 BECAUSE THE LEGISLATURE HAS SAID THAT NOT EVERY MURDER, EVEN
7 IF IT IS PREMEDITATED, INTENTIONALLY PLANNED, CALLS FOR THE
8 DEATH PENALTY.

9 IT IS ONLY WHERE THERE ARE CERTAIN CIRCUMSTANCES
10 CONNECTED WITH IT, LIKE FOR EXAMPLE, IN THE PERPETRATION OF
11 A ROBBERY OR A BURGLARY OR A KIDNAPPING OR A RAPE OR A CHILD
12 MOLESTATION WHERE THE CHILD DIES OR TORTURE OR MULTIPLE MURDER
13 AND THERE ARE A NUMBER OF OTHER INSTANCES -- THERE ARE 19 CASES
14 WHERE THE SPECIAL CIRCUMSTANCES QUALIFY IT FOR THE IMPOSITION
15 OF THE DEATH PENALTY.

16 DO YOU UNDERSTAND THAT?

17 MR. NAISTAT: YES, I DO.

18 THE COURT: NOW, AS TO THE IMPOSITION OF THE DEATH
19 PENALTY, THE DEATH PENALTY HAS TWO ASPECTS TO IT WHERE THE
20 JURY DETERMINES ON A DEATH PENALTY CASE, ONE OF TWO THINGS,
21 SHALL THE DEFENDANT BE SENTENCED TO LIFE WITHOUT POSSIBILITY
22 OF PAROLE WHICH MEANS EXACTLY THAT, LIFE, NO PAROLE EVER.

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1 OR DEATH IN THE GAS CHAMBER.

2 SO THE JURY SELECTED IN THIS CASE WOULD FIRST HAVE
3 TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT, DID
4 HE OR DIDN'T HE COMMIT MURDER?

5 IF THEY SAY HE DID AND IT IS MURDER IN THE FIRST
6 DEGREE, THEN THEY DETERMINE WHETHER OR NOT IT WAS IN THE COURSE
7 OF A ROBBERY.

8 NOW THE QUESTION WILL BE ASKED OF THEM: IS IT
9 TRUE OR IS IT FALSE THAT HE COMMITTED THE MURDER IN THE COURSE
10 OF A ROBBERY? AND THAT IS CALLED A SPECIAL CIRCUMSTANCE.

11 IF THEY SAY YES, THEN WE GO INTO THE SECOND
12 PHASE OF THE TRIAL AND THAT IS KNOWN AS THE PENALTY PHASE
13 WHERE THE JURY, AS I SAID, DETERMINES WHAT THE PENALTY WILL
14 BE.

15 AND ON THAT PHASE OF THE TRIAL, BOTH SIDES HAVE
16 A RIGHT TO INTRODUCE -- AND THEY WILL INTRODUCE TESTIMONY --
17 FOR EXAMPLE, THE DEFENDANT, OF COURSE, WILL INTRODUCE
18 TESTIMONY TO SHOW FAVORABLE ASPECTS ABOUT HIMSELF, HIS AGE,
19 FOR EXAMPLE MUST BE CONSIDERED, PRIOR RECORD IF ANY, OR LACK
20 OF ANY CRIMINAL CONDUCT, VIOLENT CONDUCT ON HIS PART, IF ANY,
21 HIS CHARACTER, HIS BACKGROUND, HIS EDUCATION, HIS MENTAL AND
22 PHYSICAL CONDITION AND HIS HISTORY AND SO FORTH, ANYTHING
23 THAT MAY BE FAVORABLE TO HIM TO SHOW THAT HE WAS A GOOD
24 PERSON, LED A BLAMELESS LIFE, FOR EXAMPLE. THAT WOULD BE
25 TESTIMONY THAT THE JURY WILL HEAR. THOSE ARE CALLED
26 EXTENUATING OR MITIGATING CIRCUMSTANCES.

27 THE PEOPLE, ON THE OTHER HAND, HAVE A RIGHT TO
28 SHOW, ALSO ADDUCE EVIDENCE THAT WILL BE UNFAVORABLE TO THE

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1 DEFENDANT, THINGS WHICH ARE BAD ABOUT HIM, THINGS WHICH HE
2 HAS DONE, AND THE PURPOSE OF THAT IS TO PERSUADE THE JURY
3 TO IMPOSE THE ULTIMATE SENTENCE OF DEATH IN THE GAS CHAMBER.

4 YOU WILL HEAR ALL OF THAT AND YOU WILL ALSO HAVE
5 THE RIGHT TO CONSIDER WHAT YOU HAVE HEARD IN THE TESTIMONY
6 ON THE GUILT PHASE. HEARING ALL OF THAT, THEN THE JURY CAN
7 MAKE UP ITS MIND WHICH OF THESE TWO PENALTIES SHOULD BE
8 IMPOSED.

9 CONSEQUENTLY, SINCE THE QUESTION OF THE DEATH
10 PENALTY IS INVOLVED, THE PURPOSE OF THIS HEARING IS TO DETERMINE
11 WHAT YOUR ATTITUDE IS, WHAT YOUR MIND SET IS ON THE QUESTION,
12 YOUR ATTITUDES TOWARDS THE DEATH PENALTY AS SUCH; DO YOU
13 UNDERSTAND?

14 MR. NAISTAT: YES, I DO.

15 THE COURT: NOW, THE FIRST TWO QUESTIONS I AM GOING
16 TO ASK YOU RELATE TO THE GUILT PHASE OF THE CASE: DO YOU
17 HAVE ANY OPINION AS TO THE DEATH PENALTY, WHATEVER IT MAY
18 BE, WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL DECISION
19 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

20 MR. NAISTAT: NO, I DON'T.

21 THE COURT: GOOD.

22 THE SECOND QUESTION IS: WOULD THAT IN ANY WAY,
23 WHATEVER YOUR OPINION OF THE DEATH PENALTY IS, WOULD IT
24 PREVENT YOU FROM MAKING A DETERMINATION AS TO WHETHER IT WAS
25 COMMITTED DURING THE COURSE OF A ROBBERY, OR A SPECIAL
26 CIRCUMSTANCE?

27 MR. NAISTAT: NO, NO, IT WOULDN'T.

28 THE COURT: THE NEXT TWO QUESTIONS I AM GOING TO ASK

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1 YOU RELATE TO THE PENALTY PHASE.

2 NOW, YOU PRESUPPOSE HE HAS BEEN CONVICTED OF
3 MURDER IN THE FIRST DEGREE AND IT WAS COMMITTED DURING THE
4 COURSE OF A ROBBERY.

5 THE FIRST OF THESE TWO QUESTIONS IS AS FOLLOWS:
6 DO YOU HAVE ANY OPINION CONCERNING THE DEATH PENALTY THAT
7 WOULD CAUSE YOU AUTOMATICALLY TO VOTE FOR THE DEATH PENALTY,
8 REGARDLESS OF ANY EVIDENCE THAT MAY BE PRESENTED AT THE
9 PENALTY PHASE OF THE TRIAL?

10 MR. NAISTAT: NO, NO, I DON'T.

11 THE COURT: ALL RIGHT. AND THE SAME KIND OF QUESTION
12 RELATING TO THE IMPOSITION OF LIFE IMPRISONMENT: DO YOU HAVE
13 SUCH AN OPINION CONCERNING THE DEATH PENALTY THAT YOU WOULD
14 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
15 OF PAROLE, REGARDLESS OF ANY EVIDENCE THAT YOU MIGHT HEAR
16 ON THE PENALTY PHASE OF THE TRIAL?

17 MR. NAISTAT: NO, NO.

18 THE COURT: AND LASTLY, YOU UNDERSTAND, OF COURSE, THAT
19 THE ISSUE OF THE DEATH PENALTY MAY OR MAY NOT TAKE PLACE IN
20 THIS CASE AND THESE QUESTIONS HAVE BEEN ASKED ONLY IN THE
21 EVENT THAT YOU REACH THAT PHASE OF THE TRIAL?

22 MR. NAISTAT: I UNDERSTAND.

23 THE COURT: VERY GOOD, SIR.

24 MR. BARENS: YOUR HONOR, MAY I HAVE A MOMENT TO SPEAK
25 TO THE DISTRICT ATTORNEY?

26 THE COURT: YES.

27 MR. BARENS: THANK YOU.

28 (UNREPORTED COLLOQUY BETWEEN MR. BARENS

5-4
1 AND MR. WAPNER.)

2 THE COURT: I ASKED YOU WHERE YOU LIVE.

3 MR. NAISTAT: YES, YOU DID.

4 MR. BARENS: YOUR HONOR, COULD WE APPROACH?

5 THE COURT: YES.

6 (THE FOLLOWING PROCEEDINGS WERE HELD

7 AT THE BENCH:)

8 MR. BARENS: YOUR HONOR, I HAVE JUST HAD A PHONE CALL
9 IN THE COURTROOM FROM MY OFFICE ADVISING ME THAT THERE ARE
10 20 OR SO POLICE OFFICERS AT BOBBY ROBERTS' HOUSE WHERE
11 MR. HUNT RESIDES RIGHT NOW, OSTENSIBLY EXERCISING A SEARCH
12 WARRANT FOR THOSE PREMISES.

13 MY CONCERN GOES TO THE FACT OF THE MASSIAH-TYPE
14 PROBLEMS WHICH COULD BE PRESENT HERE. MANY -- ALL OF MY LETTERS
15 TO MY CLIENT ARE UP THERE.

16 THE COURT: WHY DON'T YOU SEND HIM UP THERE?

17 MR. BARENS: WHAT I WOULD LIKE TO DO, IF I COULD JUST
18 HAVE ABOUT FIVE MINUTES TO SEE WHAT IS GOING ON HERE.

19 THE COURT: WHY DON'T YOU SEND CHIER UP THERE?

20 MR. BARENS: I DO PLAN TO SEND HIM UP THERE.

21 I WOULD LIKE TO JUST TO TAKE A MOMENT TO BE
22 PERSONALLY ADVISED AS TO WHAT IS GOING ON THERE, JUST FIVE
23 MINUTES.

24 THE COURT: GO AHEAD.

25 (THE FOLLOWING PROCEEDINGS WERE HELD

26 IN OPEN COURT:)

27 THE COURT: WE ARE JUST GOING TO TAKE A FIVE-MINUTE
28 RECESS. IT HAS NOTHING TO DO WITH YOU. SOMETHING HAS COME UP

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1 AND HE HAS TO MAKE A PHONE CALL.

2 DO YOU WANT TO USE MY PHONE?

3 MR. BARENS: IF YOUR HONOR WOULD NOT MIND.

4 THE COURT: GO AHEAD.

5 MR. BARENS: THANK YOU, YOUR HONOR.

6 THE COURT: JUST DIAL 9.

7 MR. BARENS: COULD MR. CHIER ACCOMPANY ME, PLEASE?

8 THE COURT: SURE.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 (PAUSE IN PROCEEDINGS.)

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1 MR. BARENS: GOOD MORNING, MR. NAISTAT.

2 MR. NAISTAT: NAISTAT.

3 MR. BARENS: I AM ARTHUR BARENS. I REPRESENT THE
4 DEFENDANT, JOE HUNT. AND AS WAS THE CASE WITH HIS HONOR,
5 IT IS MY DUTY AT THIS STAGE OF THE PROCEEDINGS, TO INQUIRE
6 AS TO YOUR POINT OF VIEW ON THE DEATH PENALTY. THERE ARE
7 NO RIGHT OR WRONG ANSWERS AS TO ANY OF OUR QUESTIONS BUT
8 RATHER, I AM JUST SEEKING YOUR OPINION. DO YOU UNDERSTAND
9 THAT?

10 MR. NAISTAT: I UNDERSTAND.

11 MR. BARENS: AND TOWARD THE END OF SEEING WHETHER OR
12 NOT FROM THIS VANTAGE POINT AT LEAST, YOU QUALIFY AS A JUROR
13 FOR THIS CASE -- WITH THAT IN MIND, HOW DO YOU FEEL ABOUT
14 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

15 MR. NAISTAT: WELL, MY VIEWS HAVE CHANGED OVER THE YEARS.
16 A NUMBER OF YEARS BACK, I WAS OPPOSED TO IT.

17 MY VIEWS HAVE CHANGED TO THE POINT WHERE I FEEL
18 THAT IT HAS A PLACE IN THE JUSTICE SYSTEM TODAY.

19 MR. BARENS: I APPRECIATE THAT, SIR. COULD YOU TELL
20 ME WHEN YOU FEEL -- YOU SAY THAT IT HAS A PLACE IN THE JUSTICE
21 SYSTEM. IF YOU COULD BE ANY MORE SPECIFIC IN IDENTIFYING
22 WHAT THAT PLACE IS --

23 MR. NAISTAT: WELL, TO THE EXTENT THAT I UNDERSTAND
24 THE LAW AS IT IS WRITTEN TODAY IN THE SPECIAL CIRCUMSTANCES
25 OF THE LAW, I THINK THE LAW MAKES SENSE AS IT STANDS AS TO
26 THE PENALTY AS I UNDERSTAND IT OR KNOW IT, APPARENTLY.

27 MR. BARENS: WOULD YOU HAVE A PREDISPOSITION IN ANY
28 WAY TO FEEL SIR, THAT IF A PERSON WERE CONVICTED BEYOND A

1 REASONABLE DOUBT, OF COURSE, OF A FIRST DEGREE MURDER BEING
2 ONE THAT IS INTENTIONAL AND PREMEDITATED, DURING THE
3 COMMISSION OF A ROBBERY, WOULD YOU IN EVERY INSTANCE, FEEL
4 THAT THAT SORT OF A DEFENDANT SHOULD BE GIVEN THE DEATH PENALTY?

5 MR. NAISTAT: NO, NOT BY VIRTUE OF THOSE FACTS ALONE.

6 MR. BARENS: WHAT ELSE WOULD YOU DEEM APPROPRIATE TO
7 BE ADVISED ABOUT BEFORE MAKING A DECISION ONE WAY OR THE OTHER?

8 MR. NAISTAT: WELL, AS THE JUDGE STATED EARLIER TO ME,
9 I THINK THERE NEEDS TO BE AN EXAMINATION OF THE BIOGRAPHY
10 OF THE DEFENDANT AND THE FACTS SURROUNDING THE DEFENDANT'S
11 LIFE.

12 MR. BARENS: QUITE SO. THAT IS WHAT HIS HONOR WAS
13 REFERRING TO ABOUT THE EVIDENCE THAT WOULD BE SUBMITTED FOR
14 YOUR CONSIDERATION DURING THE SECOND OR PENALTY PHASE OF THE
15 TRIAL.

16 WOULD YOU BELIEVE IN YOUR HEART, THAT YOU WOULD
17 BE CAPABLE OF VOTING FOR LIFE WITHOUT POSSIBILITY OF PAROLE
18 FOR A DEFENDANT THAT HAD BEEN CONVICTED OF A FIRST DEGREE
19 MURDER?

20 MR. NAISTAT: WOULD I BE CAPABLE OF VOTING THAT WAY?

21 MR. BARENS: YES, SIR.

22 MR. NAISTAT: YES I WOULD.

23 MR. BARENS: YOU ARE NOT THEN, A NECESSARY SUBSCRIBER
24 TO THAT OLD BELIEF IN A LIFE FOR A LIFE?

25 MR. NAISTAT: NO.

26 MR. BARENS: SIR, WHEN YOU SAY THAT YOUR POINT OF VIEW
27 HAS SOMEWHAT EVOLVED OVER THE YEARS AND IT MIGHT BE
28 ANALOGOUS TO SAYING WHEN WE WERE ALL YOUNG WE WERE LIBERALS

1 AS YOUNGER MEN AND WHEN WE GET A BIT MORE -- WE GET A BIT
2 MORE CONSERVATIVE WHEN WE GET OLDER, WHICH PROBABLY IS THE
3 TRUTH.

4 IS THERE ANYTHING IN PARTICULAR THAT MIGHT HAVE
5 COME TO YOUR ATTENTION OR TRANSPIRED THAT CAUSED YOU TO CHANGE
6 YOUR POINT OF VIEW?

7 MR. NAISTAT: WELL, I THINK PART OF IT JUST HAS TO DO
8 WITH AGING, MAYBE.

9 PART OF IT HAS TO DO WITH THE FACT THAT I HAVE
10 SERVED ON JURIES BEFORE AND I HAVE BECOME INCREASINGLY
11 IMPRESSED WITH THE WAY THE SYSTEM WORKS.

12 I THINK IT IS GENERALLY A VERY FAIR SYSTEM AND
13 I THINK I HAVE JUST BECOME MORE EXPOSED TO THE EXTENT OF CRIME
14 IN SOCIETY.

15 MR. BARENS: SIR, IF YOUR HONOR WILL PERMIT ME TO
16 INQUIRE, WERE YOU ON ANY DEATH PENALTY CASES AS A JUROR
17 PREVIOUSLY?

18 MR. NAISTAT: NO, NOT AT ALL, MINOR CRIMINAL AND CIVIL
19 IN MUNICIPAL COURT.

20 MR. BARENS: YOU UNDERSTAND THAT THIS IS THE SUPERIOR
21 COURT INVOLVING FELONY MATTERS WHICH ARE MORE SERIOUS AND
22 FOR WHICH PENALTIES DIFFER SIGNIFICANTLY FROM WHAT YOU WERE
23 EXPOSED TO IN MUNI COURT. NONETHELESS FOR INSTANCE, THE
24 STANDARD OF PROOF REMAINS THE SAME, THAT BEING BEYOND A
25 REASONABLE DOUBT?

26 MR. NAISTAT: YES. I UNDERSTAND THAT.

27 MR. BARENS: AND IRRESPECTIVE OF THE PENALTY, REASONABLE
28 DOUBT REMAINS THE STANDARD?

1 MR. NAISTAT: I UNDERSTAND THAT.

2 MR. BARENS: NOW, WHEN YOU SAY THAT YOU ARE IMPRESSED
3 WITH THE WAY THE SYSTEM WORKS, I TOOK THAT -- I TOOK FROM
4 THAT A FAVORABLE IMPLICATION?

5 MR. NAISTAT: YES. THAT'S RIGHT. THAT'S RIGHT.

6 MR. BARENS: ON THE OTHER HAND, I NOTED SOME CONCERN
7 THAT YOU ARE SENSITIVE TO THE FACT THAT THERE IS APPARENTLY
8 A LOT OF CRIME IN OUR SOCIETY?

9 MR. NAISTAT: YES. WELL, I AM VERY WELL AWARE OF THAT.

10 MR. BARENS: DO YOU FEEL THAT THE DEATH PENALTY ACTS
11 AS A DETERRENT TO MURDER?

12 MR. NAISTAT: I THINK IT EITHER HAS A NEUTRAL EFFECT
13 OR A POSITIVE EFFECT.

14 MR. BARENS: TO BE EFFECTIVE IN EITHER CAPACITY, WOULD
15 IT BE YOUR OPINION THAT THE DEATH PENALTY NEED NECESSARILY
16 BE APPLIED IN SOME UNIFORM MANNER?

17 MR. NAISTAT: WELL, I CERTAINLY THINK THAT JUSTICE WOULD
18 REQUIRE THAT.

19 MR. BARENS: IRRESPECTIVE OF THAT POINT OF VIEW, WOULD
20 YOU STILL BE ABLE TO VOTE EITHER FOR LIFE WITHOUT POSSIBILITY
21 OF PAROLE OR THE DEATH PENALTY, DEPENDING UPON THE ENTIRE
22 FACTUAL SETTING, INCLUDING BIOGRAPHICAL MATERIAL ATTENDANT
23 TO THE DEFENDANT?

24 MR. NAISTAT: I THINK SO. I BELIEVE SO.

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1 MR. BARENS: I THANK YOU FOR THAT.

2 YOU UNDERSTAND THAT THERE IS NOTHING IN THE LAW
3 THAT MAKES THE DEATH PENALTY COMPULSORY OR MANDATORY FOR ANY
4 SORT OF CONDUCT BUT, RATHER, THAT REMAINS SOLELY AS A JUROR
5 DECISION?

6 MR. NAISTAT: I WASN'T AWARE OF THAT UNTIL THIS MOMENT,
7 NO.

8 MR. BARENS: YOUR HONOR WOULD CONFIRM AS A POINT TO YOU
9 THAT THAT WOULD BE THE CASE.

10 THE COURT: WHAT WE MEAN BY THAT, THAT THE LAW DOESN'T
11 SAY THAT YOU MUST COME IN WITH A DEATH PENALTY.

12 MR. NAISTAT: OH, OKAY.

13 THE COURT: IT IS NOT MANDATORY IF A CRIME IS COMMITTED
14 OF A CERTAIN TYPE.

15 MR. NAISTAT: RIGHT, OKAY.

16 MR. BARENS: UNDER CALIFORNIA LAW, THERE ARE NO MANDATORY
17 DEATH FINDINGS. THAT IS AN INDIVIDUAL JURY DETERMINATION,
18 GIVEN THE OPTION FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
19 OF PAROLE.

20 MR. NAISTAT: I UNDERSTAND THAT.

21 MR. BARENS: LET'S ASK YOU THIS, SIR: THE FACT THAT
22 WE ARE HERE TALKING TO YOU ABOUT YOUR POINT OF VIEW ON THE
23 DEATH PENALTY AND THE FACT THAT JOE HUNT SITS AT THE END OF
24 COUNSEL TABLE NEXT TO ME ACCUSED OF A FIRST DEGREE MURDER,
25 DOES THAT GIVE YOU REASON TO BELIEVE THAT HE HAS DONE SOMETHING
26 WRONG?

27 MR. NAISTAT: NO.

28 MR. BARENS: AND YOU ARE FAMILIAR WITH THE FUNDAMENTAL

1 CONCEPT THAT WE ALL HAVE A PRESUMPTION OF INNOCENCE WHETHER
2 IT WAS YOURSELF, MYSELF OR ANYONE ELSE AS A DEFENDANT UNDER
3 OUR CONSTITUTIONAL SYSTEM, THERE IS A PRESUMPTION OF
4 INNOCENCE UNTIL GUILT HAS BEEN PROVEN BEYOND A REASONABLE
5 DOUBT.

6 MR. NAISTAT: YES, I KNOW THAT.

7 MR. BARENS: AND YOU DON'T HAVE ANY SNEAKING SUSPICION
8 THAT WHERE THERE IS SMOKE THERE IS FIRE?

9 MR. NAISTAT: TO THE EXTENT I UNDERSTAND WHAT YOU ARE
10 SAYING, NO, I DON'T.

11 MR. BARENS: ALL RIGHT. ALL WE GET IS WHAT WE CALL
12 EVIDENCE IN THE COURTROOM.

13 MR. NAISTAT: YES.

14 MR. BARENS: THANK YOU VERY MUCH.

15 THE COURT: ALL RIGHT.

16 MR. WAPNER: GOOD MORNING, MR. NAISTAT. I AM FRED WAPNER,
17 THE DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.

18 MR. NAISTAT: GOOD MORNING.

19 MR. WAPNER: AND ARE YOU A LAWYER, SIR?

20 MR. NAISTAT: NO, I AM NOT, BUT I DO WORK IN THE AREA
21 OF LAW TO A POINT.

22 MR. WAPNER: OKAY. IF WE GET TO THAT GENERAL PART OF
23 THE JURY SELECTION WITH YOU, WE WILL ASK YOU MORE QUESTIONS
24 ABOUT YOUR BACKGROUND BUT I AM NOT GOING TO PURSUE THAT RIGHT
25 NOW.

26 IN THE YEARS THAT YOU HELD YOUR VIEW AGAINST THE
27 DEATH PENALTY, WHAT WAS THE BASIS FOR IT?

28 MR. NAISTAT: I GUESS PRIMARILY I JUST FELT THAT THERE

1 MIGHT BE A POTENTIAL FOR -- A SIGNIFICANT POTENTIAL FOR ERROR
2 IN JURY FINDINGS AND I HAVE SINCE BECOME QUITE CONVINCED THAT
3 THE ERRORS ARE EXTREMELY RARE, IF THEY IN FACT EVER HAPPEN.

4 MR. WAPNER: I THINK THAT THE JUDGE MAY HAVE ASKED YOU
5 ABOUT THIS, BUT YOU UNDERSTAND THE SEPARATION BETWEEN THE TWO
6 DIFFERENT PHASES OF THE TRIAL, DON'T YOU, THE GUILT PHASE AND
7 THE PENALTY PHASE?

8 MR. NAISTAT: YES, THAT HAS BEEN EXPLAINED TO ME.

9 MR. WAPNER: OKAY. AND IN THE GUILT PHASE, YOU CAN'T
10 THINK ABOUT WHAT THE PUNISHMENT MIGHT BE IF YOU FIND HIM
11 GUILTY; DO YOU UNDERSTAND THAT?

12 MR. NAISTAT: I UNDERSTAND THAT.

13 MR. WAPNER: AND THAT IS THE SAME THEORY IN THIS CASE
14 AS IT IS ON ANY MINOR CRIMINAL CASES OR MISDEMEANOR CASES THAT
15 YOU MAY HAVE SAT IN THE PAST; DO YOU UNDERSTAND THAT?

16 MR. NAISTAT: I UNDERSTAND THAT.

17 MR. WAPNER: AND IT IS ONLY IF YOU GET TO THAT STAGE
18 OF THE CASE THAT WE CALL THE PENALTY PHASE THAT YOU CAN THEN
19 CONSIDER AND MUST CONSIDER WHAT THE PUNISHMENT MIGHT BE.

20 MR. NAISTAT: I UNDERSTATND.

21 MR. WAPNER: OKAY. IF YOU GET TO THE PENALTY PHASE IN
22 THIS CASE, ALTHOUGH THE JURY HAS TO BE UNANIMOUS IN ITS
23 VERDICT, THE JUDGE WILL TELL YOU THAT EACH JUROR IS REQUIRED
24 TO RENDER HIS OWN INDIVIDUAL VERDICT AS TO WHAT PUNISHMENT
25 SHOULD BE APPLIED TO THE DEFENDANT; DO YOU UNDERSTAND THAT?

26 MR. NAISTAT: I DO.

27 MR. WAPNER: IN CONSIDERING YOUR PAST VIEWS ON THE DEATH
28 PENALTY, DO YOU THINK NOW THAT IF YOU FELT THE FACTS PROVED

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1 THE DEFENDANT GUILTY OF AN INTENTIONAL MURDER DURING A
2 ROBBERY AND IF YOU FELT THE FACTS JUSTIFIED THE VERDICT OF
3 DEATH, COULD YOU RENDER THAT VERDICT?

4 MR. NAISTAT: YES, I COULD.

5 MR. WAPNER: AND LIKEWISE, YOU COULD VOTE FOR LIFE
6 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF YOU THOUGHT
7 THAT WAS PROPER?

8 MR. NAISTAT: YES, I COULD.

9 MR. WAPNER: DO YOU HAVE ANY STRONGLY HELD RELIGIOUS,
10 MORAL OR PHILOSOPHICAL OPINIONS THAT YOU THINK WOULD AFFECT
11 YOUR ABILITY TO DECIDE THIS QUESTION FAIRLY?

12 MR. NAISTAT: NO, NO, I DON'T.

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

14 THE COURT: ALL RIGHT. BOTH SIDES HAVE PASSED FOR
15 CAUSE. WHAT THAT MEANS IS THAT YOU ARE VERY WELL QUALIFIED
16 TO BECOME A JUROR IN THIS CASE.

17 AND WHAT I WILL ASK YOU TO DO IS TO COME BACK NEXT
18 MONDAY, BY THAT TIME WE WILL HAVE COMPLETED OUR INTERROGATING
19 ALL OF THE PROSPECTIVE JURORS ON THIS QUESTION. SO IF YOU
20 WILL COME BACK AT 10:30 NEXT MONDAY AND REPORT TO THE JURY
21 ASSEMBLY ROOM, WE WILL HAVE YOU ALL BACK IN HERE, ALL RIGHT?

22 MR. NAISTAT: OKAY, YOUR HONOR.

23 THE COURT: THANK YOU VERY MUCH. IF THERE IS ANYTHING
24 IN THE PRESS ABOUT THE CASE, DON'T READ IT.

25 MR. NAISTAT: ALL RIGHT.

26 (PROSPECTIVE JUROR NAISTAT EXITS THE
27 COURTROOM.)

28 (PROSPECTIVE JUROR RUTHERFORD ENTERS

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THE COURTROOM.)

THE COURT: MR. RUTHERFORD, GOOD MORNING. WHERE DO YOU
LIVE?

MR. RUTHERFORD: IN LAWDALE.

THE COURT: LAWDALE?

OTHER THAN WHAT I TOLD YOU HERE LAST MONDAY, HAVE
YOU READ OR HEARD ANYTHING OR SPOKEN TO ANYBODY OR KNOW
ANYTHING AT ALL ABOUT THIS CASE?

MR. RUTHERFORD: OH, NO, SIR.

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1 THE COURT: DOES THE EXPRESSION BILLIONAIRE BOYS CLUB
2 RING A BELL IN YOUR MIND IN ANY WAY?

3 MR. RUTHERFORD: NO, SIR.

4 THE COURT: ALL RIGHT. WHAT I AM GOING TO DO IS BRIEFLY
5 REVIEW THE CASE, AS I TOLD YOU LAST MONDAY, AND I WILL USE THAT
6 AS A PRELIMINARY TO MY ASKING YOU THE CRITICAL QUESTIONS
7 AS TO YOUR ATTITUDES TOWARD THE DEATH PENALTY.

8 FIRST, YOU KNOW THAT THE CHARGE AGAINST THE
9 DEFENDANT IS THAT HE COMMITTED A MURDER AND IT WAS COMMITTED
10 DURING THE COURSE OF A ROBBERY.

11 COMMITTED IN THE COURSE OF A ROBBERY IS VERY
12 SIGNIFICANT, BECAUSE NOT EVERY MURDER IS SUBJECT TO THE DEATH
13 PENALTY. EVEN IF YOU HAVE A MURDER WHICH IS DELIBERATE,
14 INTENTIONAL, PREMEDITATED AND PLANNED, WITHOUT ANYTHING FURTHER,
15 THAT DOES NOT CALL FOR THE DEATH PENALTY.

16 IT IS ONLY WHERE IT IS DONE UNDER CERTAIN SPECIAL
17 CIRCUMSTANCES LIKE, FOR EXAMPLE, IN THIS CASE, A MURDER
18 COMMITTED IN THE COURSE OF A ROBBERY OR A MURDER COMMITTED
19 IN THE COURSE OF A BURGLARY OR A KIDNAPPING OR A RAPE OR A
20 CHILD MOLESTATION WHERE A CHILD DIES OR TORTURE OR MULTIPLE
21 MURDERS, THERE ARE 19 OF THEM WHERE THE LEGISLATURE HAS SAID
22 THAT UNDER THESE SPECIAL CIRCUMSTANCES AND THESE PARTICULAR
23 TYPES OF MURDER, THE DEATH PENALTY MAY BE WARRANTED AND THAT
24 IT IS FOR THE JURY TO DETERMINE. OKAY?

25 SO THE JURY SELECTED IN THIS CASE WILL GO THROUGH
26 TWO POSSIBLE PHASES OF THE TRIAL. THE FIRST PHASE IS KNOWN
27 AS THE GUILT PHASE WHERE ALL THEY DO IS -- NOT ALL, IT IS A
28 LOT TO DO -- WHAT THEY DO IS DETERMINE THE GUILT OR INNOCENCE

7A

1 OF THE DEFENDANT: DID HE OR DID HE NOT COMMIT A MURDER AND
2 WAS THAT MURDER IN THE FIRST DEGREE?

3 IF THEY VOTE YES UNANIMOUSLY, THEN THEY HAVE A
4 QUESTION TO ANSWER: IS IT TRUE OR IS IT FALSE THAT IT WAS
5 COMMITTED DURING THE COURSE OF A ROBBERY?

6 AND IF THEY SAY YES, IT IS TRUE, THEN WE GO
7 THROUGH THE SECOND PHASE OF THE TRIAL. WE GO TO A SECOND
8 PHASE WHICH IS KNOWN AS THE PENALTY PHASE.

9 THE FIRST IS THE GUILT PHASE WHERE THE QUESTION
10 OF PENALTY NEVER COMES UP AND SHOULD NEVER BE CONSIDERED. THEN
11 WE COME TO THE PENALTY PHASE WHERE THEN THE JURY DECIDES:
12 SHALL IT BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
13 PAROLE?

14 AND THAT MEANS EXACTLY WHAT IT SAYS, LIFE IN
15 PRISON WITH NO PAROLE. HE NEVER GETS OUT.

16 OR DEATH IN THE GAS CHAMBER.

17 ALL RIGHT? NOW ON THE PENALTY PHASE OF THE TRIAL --
18 THE CLERK: EXCUSE ME, YOUR HONOR.

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1 MR. BARENS: I AM GOING TO WANT TO DISCUSS THIS WHOLE
2 ISSUE WITH YOUR HONOR WHEN WE HAVE AN OPPORTUNITY.

3 THE COURT: VERY GOOD. ALL RIGHT.

4 I THINK I WAS TELLING YOU ON THE SECOND OR THE
5 PENALTY PHASE OF THE TRIAL, BOTH SIDES WILL INTRODUCE FURTHER
6 EVIDENCE. AND THE JURY THEN MUST CONSIDER A NUMBER OF FACTORS
7 IN DETERMINING WHAT PENALTY SHOULD BE IMPOSED.

8 (THERE WAS A BRIEF PAUSE.)

9 MR. BARENS: MR. WAPNER?

10 MR. WAPNER: MR. BARENS, IS THIS SOMETHING THAT IS BETTER
11 DONE BY ASKING THE JUROR TO STEP OUTSIDE AND DOING IT IN OPEN
12 COURT?

13 MR. BARENS: IF WE COULD.

14 (PROSPECTIVE JUROR RUTHERFORD EXITED
15 THE COURTROOM.)

16 THE COURT: YES?

17 MR. BARENS: WELL YOUR HONOR, I HARDLY KNOW HOW TO
18 BEGIN, AS THIS IS UNPRECEDENTED IN MY CAREER.

19 AS I TOLD YOUR HONOR WHEN WE APPROACHED THE BENCH
20 A MOMENT AGO, I APOLOGIZE FOR HAVING TO INTERRUPT THE COURT
21 WITH THIS.

22 I AM ADVISED AFTER SPEAKING TO ONE LYNN ROBERTS,
23 WHO IS THE WIFE OF BOBBIE ROBERTS WHOSE RESIDENCE IN BEL AIR
24 IS WHERE MR. HUNT RESIDES, THAT SPECIAL AGENT OSCAR BRILLING
25 FROM SAN MATEO, IS PRESENT AT MR. HUNT'S AND MR. ROBERTS'
26 RESIDENCE.

27 THE COURT: IS HE A FEDERAL AGENT?

28 MR. BARENS: NO, HE IS FROM THE ATTORNEY GENERAL'S OFFICE.

8A
1 HE IS A SPECIAL INVESTIGATOR ON THE ESLAMINIA MATTER, YOUR
2 HONOR.

3 HE IS IN THE COMPANY OF CERTAIN OFFICERS FROM
4 HOLLYWOOD POLICE DEPARTMENT, THAT ARE PURSUING AS I UNDERSTAND
5 IT, THE KARNY ALLEGED HOMICIDE IN HOLLYWOOD. THEY ARE
6 REMOVING ALL OUR DEFENSE FILES. THEY ARE TAKING OUT ALL OF
7 THE MATERIALS THAT WE HAVE PROVIDED MR. HUNT WITH AND MR.
8 HUNT HAS PROVIDED US WITH DURING THE PREPARATION OF DEFENSE
9 IN THIS COURTROOM.

10 AND I WILL BE SPECIFIC WITH YOUR HONOR. WE HAVE
11 CERTAIN DIALOGUES AS BETWEEN MR. HUNT AND HIS COUNSEL,
12 CONCERNING HIS TESTIMONY IN THIS TRIAL.

13 I AM SURE THAT YOUR HONOR IS AWARE THAT WE NUMBER
14 ONE, PLAN TO PUT MR. HUNT ON AS A WITNESS AND NUMBER TWO,
15 I AM SURE YOUR HONOR IS AWARE THAT WE HAVE HAD CROSS-EXAMINATION
16 SESSIONS WITH HIM WHERE WE SAY TO HIM, YOU ARE GOING TO BE
17 ASKED THE FOLLOWING QUESTIONS AND WHAT IS YOUR RESPONSE.

18 AND THEY ARE GOING TO PICK UP THE FOLLOWING
19 EVIDENCE AND WHAT IS YOUR RESPONSE. AND I AM BEING AS HONEST
20 AS I CAN POSSIBLY BE.

21 OBVIOUSLY, IF YOUR HONOR WERE PREPARING A DEFENDANT,
22 HE WOULD DO THE SAME THING WITH YOUR DEFENDANT WITNESS. WELL,
23 THEY ARE NOW GOING TO TAKE THOSE MATERIALS OUT OF THE HOUSE.

24 I AM ASKING THIS COURT -- NOW, LET ME ALSO SAY
25 THAT MR. WAPNER IS TOTALLY UNAWARE OF THIS.

26 THE COURT: DID THEY HAVE A SEARCH WARRANT?

27 MR. BARENS: THEY HAVE A SEARCH WARRANT FROM A JUDGE
28 IN SAN MATEO. LET ME FURTHER --

1 THE COURT: IS HE THE ONE THAT DIDN'T GIVE ME THE
2 COURTESY OF CALLING ME ABOUT THE --

3 MR. BARENS: THAT IS THE GUY, AGAIN. IT IS THAT GUY
4 AGAIN.

5 MR. WAPNER: MAY I HAVE A MOMENT?

6 (THERE WAS A BRIEF PAUSE.)

7 MR. BARENS: I ASKED SPECIAL AGENT BRILLING WHO SIGNED
8 THE ORDER AND IT WAS THE SAME JUDGE THAT WE DEALT WITH LAST
9 TIME AROUND THIS CASE. NOW -- NOW BRILLING IS UP THERE.

10 THE ROBERTS TELL ME THAT THEY ARE REMOVING ALL
11 OF JOE'S DEFENSE FILES, WHICH PROBABLY -- NOW, I WANT TO SAY
12 PARENTHETICALLY, THAT MR. WAPNER WAS TOTALLY UNAWARE OF THE
13 ACTIVITY BY THE ATTORNEY GENERAL'S OFFICE. MR. WAPNER TOLD
14 ME THAT.

15 I BELIEVE THAT TO BE THE CASE, THAT HE HAD NO
16 PRIOR KNOWLEDGE, WARNING OR CONSULTATION ABOUT THE MATTER
17 WHATSOEVER. I BELIEVE THAT.

18 I BELIEVE THAT THIS WAS SOLELY INITIATED AND
19 UNDERTAKEN BY SPECIAL AGENT BRILLING IN CONJUNCTION WITH
20 JOHN VANCE, THE ATTORNEY GENERAL ON THE ESLAMINIA CASE AND
21 WITH WHATEVER DETECTIVES ARE INVOLVED WITH THE KARNY CASE
22 IN THE HOLLYWOOD POLICE DEPARTMENT.

23 I AM ASKING THE COURT FOR THE COURT'S ORDER FOR
24 THE APPOINTMENT OF A REFEREE OR MASTER TO BE APPOINTED BY
25 HIS HONOR, FORTHWITH AND THAT HIS HONOR ORDER THEM TO CEASE
26 AND DESIST REMOVING OTHER MATERIALS AND TO LEAVE ALL MATERIALS
27 IN PLACE ON THE PREMISES, NOT TO BE CIRCULATED AMONG POLICE
28 DEPARTMENTS AND DISTRICT ATTORNEY'S OFFICES UNTIL A SPECIAL

1 REFEREE OR MASTER MAY BE AT HAND TO SAFEGUARD THE INTEREST
2 OF THE DEFENSE IN THIS CASE IN THE PREPARATION OF THIS TRIAL.

3 I DON'T KNOW HOW ELSE ONE CAN PROCEED. THE SOLE
4 REMEDY --

5 THE COURT: WELL, I DON'T HAVE JURISDICTION OVER AN
6 ORDER ISSUED BY ANOTHER JUDGE, A SEARCH WARRANT WHICH HE HAS
7 ISSUED. WE HAVE CONCURRENT JURISDICTION.

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1 I HAVE IT HERE IN THIS COUNTY. HE HAS CONCURRENT
2 JURISDICTION IN ANOTHER COUNTY ON THE MATTER WHICH IS SITTING
3 BEFORE HIM.

4 MR. BARENS: YOUR HONOR HAS JURISDICTION TO MAKE ORDERS
5 REGARDING REAL PROPERTY AND CHATTEL PROPERTY IN THE COUNTY
6 OF LOS ANGELES, WHERE THIS PROPERTY RESIDES.

7 I BELIEVE YOUR HONOR HAS JURISDICTION TO ORDER
8 THAT PROPERTY NOT BE REMOVED OR SECRETED OR HYPOTHECATED
9 WITHOUT THE PRESENCE OF A REFEREE OR MASTER.

10 MR. WAPNER: YOUR HONOR, THERE ARE PROVISIONS --

11 THE COURT: THIS IS UNPRECEDENTED. I HAVE NEVER HAD
12 ANYTHING LIKE THAT COME UP IN THE 26 YEARS I HAVE BEEN ON
13 THE BENCH.

14 MR. WAPNER: THERE ARE PROVISIONS FOR SPECIAL MASTERS
15 WHEN SEARCH WARRANTS ARE DONE ON ATTORNEY'S OFFICES AND THINGS
16 LIKE THAT.

17 TO BE PERFECTLY HONEST WITH YOU, I NEED TO GO
18 LOOK UP SOME OF THE PROVISIONS. I DON'T THINK THAT A MASTER
19 IS APPOINTED DURING THE SEARCH.

20 BUT IN ANY EVENT, AS A PRACTICAL MATTER RIGHT
21 NOW, IF I UNDERSTAND THE SITUATION AND MR. BARENS IS CORRECT,
22 I DON'T KNOW MUCH MORE ABOUT IT THAN THE COURT DOES BECAUSE
23 I FOUND OUT ABOUT IT THIS MORNING.

24 BUT AS I UNDERSTAND IT, THERE ARE POLICE OFFICERS
25 WITH A SEARCH WARRANT IN THEIR HANDS AND THEY ARE TAKING
26 DOCUMENTS OUT OF THE HOUSE.

27 WHAT I THINK WE NEED TO DO IS BREAK NOW. LET'S
28 SAY THAT THE COURT ISSUES AN ORDER. YOU MAKE AN ORAL ORDER

1 FROM THE BENCH THAT THEY STOP SEARCHING. AS A PRACTICAL
2 MATTER --

3 THE COURT: HOW CAN I DO THAT?

4 MR. WAPNER: WELL FIRST OF ALL, I DON'T THINK YOU CAN
5 DO IT. BECAUSE THEY HAVE A SEARCH WARRANT TO TAKE THE STUFF.
6 WHAT THEY ARE THEN ENTITLED TO DO WITH IT AND WHETHER THEY
7 ARE ENTITLED TO KEEP IT AND WHAT --

8 THE COURT: HOW THEY USE IT IS SOMETHING ELSE, IF IT
9 HAS ANYTHING TO DO WITH MY CASE. I CAN MAKE AN ORDER WITH
10 RESPECT TO THAT.

11 MR. BARENS: COULD I ASK IN THE MOST PROPHYLACTIC SENSE,
12 THAT YOUR HONOR AT THIS POINT ORDER THE DISTRICT ATTORNEY
13 MR. WAPNER AND HIS OFFICE NOT TO VIEW ANY OF THE MATERIALS
14 THEY ARE OBTAINING AT THIS MOMENT, WITHOUT FURTHER DISCUSSION
15 WITH THIS COURT AND REVIEW BY HIS HONOR'S EYES FIRST, BEFORE
16 THEY WOULD BE VIEWED BY THE DISTRICT ATTORNEY'S OFFICE OR
17 ANY REPRESENTATIVE OF THE SANTA MONICA DISTRICT ATTORNEY'S
18 OFFICE IN THIS MATTER?

19 MR. WAPNER: WELL, I WOULD BE WILLING TO BROADEN THAT.
20 THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE. I DON'T
21 HAVE ANY IDEA WHERE THIS WARRANT WAS OBTAINED, WHAT PROSECUTORS
22 IF ANY, ASSISTED IN PREPARING IT, WHO HAS SEEN IT, WHO IS
23 SERVING IT AND WHERE IT IS RETURNABLE TO.

24 IT MAY BE RETURNABLE IN LOS ANGELES COUNTY. IT
25 MAY BE RETURNABLE --

26 THE COURT: CAN'T YOU, OVER THE NOONHOUR, FIND OUT MORE
27 ABOUT THIS THING SO WE CAN ACTUALLY SEE WHAT THEY ARE SEIZING
28 AND WHAT THEY INTEND TO DO WITH IT AND WHERE IT IS BEING KEPT?

1 MR. BARENS: WOULD YOU COOPERATE WITH ME AT LUNCH IN
2 YOUR OFFICE, TO FIND OUT WHAT IS GOING ON?

3 MR. WAPNER: I WILL BE HAPPY TO ATTEMPT TO FIND OUT
4 AS MUCH AS I CAN ABOUT IT.

5 I WILL ASSURE COUNSEL THAT I HAVE NO INTEREST
6 IN READING ANY FILES THAT WERE PREPARED BY THE DEFENSE UNDER
7 THE LAWYER/CLIENT PRIVILEGE OR ANYTHING LIKE THAT.

8 I DON'T WANT TO DO ANYTHING TO JEOPARDIZE --

9 THE COURT: I DON'T THINK YOU CAN EITHER. YOU ARE NOT
10 PERMITTED TO.

11 MR. BARENS: NO.

12 MR. WAPNER: I AM TRYING TO ASSURE HIM AND THE COURT
13 THAT I WON'T DO IT.

14 YES, I WILL ASSIST COUNSEL AT THE NOONHOUR AND
15 FIND OUT AS MUCH ABOUT THAT AS I CAN.

16 MR. BARENS: LET ME, JUST TO MAKE A RECORD ON THIS,
17 ONE OF THE THINGS I AM SENSITIVE TO --

18 THE COURT: WELL, I CAN UNDERSTAND. WHAT IS THE PURPOSE
19 OF THAT ORDER BEING ISSUED FROM SAN MATEO COUNTY?

20 MR. BARENS: JUDGE, WHAT I HAVE DONE FOR THE PAST TWO
21 YEARS, I TOOK ALL THE WITNESSES THAT THEY WILL PRODUCE FROM
22 THAT WITNESS LIST AND I MADE UP QUESTIONS THAT I WOULD ASK
23 ALL THOSE GUYS AND AFTER HAVING ALL OF THOSE PREPARED, I WOULD
24 GIVE THEM TO HUNT.

25 I SAID THAT THERE WOULD BE QUESTIONS THAT WOULD
26 BE ASKED HIM AND SHOULD THERE BE OTHER QUESTIONS.

27 WELL, ALL THAT STUFF IS UP AT THE HOUSE. I MEAN,
28 EVERYTHING I WOULD BE DOING TO EITHER IMPEACH OR TO

1 CROSS-EXAMINE EVERY WITNESS EVER REFERENCED IN THIS TRIAL
2 IS UP AT THAT HOUSE.

3 THE COURT: DO YOU KNOW WHAT THE BASIS IS?

4 MR. BARENS: I DON'T MEAN TO INTERRUPT YOUR HONOR.

5 (THERE WAS A BRIEF PAUSE.)

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1 MR. BARENS: YOUR HONOR, ANOTHER CONSIDERATION YOUR
2 HONOR MIGHT HAVE, I AM JUST TRYING TO BOOTSTRAP MYSELF INTO
3 SOME KIND OF PROCEDURAL POSTURE HERE FOR YOUR HONOR TO BE ABLE
4 TO MAKE AN ORDER.

5 IT OCCURS TO COUNSEL AT THIS POINT THAT IF AT THIS
6 MOMENT YOUR HONOR DEEMED MR. HUNT TO BE IN PRO PER ASSOCIATED
7 WITH HIS COUNSEL, AND GAVE HIM THE STATUS OF A PRO PER IN
8 CONJUNCTION WITH COUNSEL, HE WOULD THEN BE SUBJECT -- YOUR
9 HONOR WOULD HAVE THE AUTHORITY TO ORDER FORTHWITH THE
10 APPOINTMENT OF A MASTER OR A REFEREE TO SUPERVISE WHAT IS
11 GOING ON AT THIS MOMENT.

12 MR. WAPNER IS CORRECT THAT WE KNOW IF IT WAS A
13 LAWYER'S OFFICE THAT WAS BEING APPROACHED AT THIS MOMENT, THAT
14 YOUR HONOR CERTAINLY COULD MAKE SUCH AN ORDER. THERE IS NO
15 DISPUTE, UNDER ANYBODY'S VIEW, THAT YOUR HONOR COULD AND
16 PROBABLY WOULD MAKE THAT ORDER ALMOST IN EVERY CASE.

17 IN THIS INSTANCE, YOUR HONOR MIGHT RECALL THAT
18 GOING AS FAR BACK AS THE INITIAL BAIL MOTION THAT I EVER MADE
19 IN THIS COURT, WE SUBMITTED THAT THE REASON WE WANTED MR.
20 HUNT ON BAIL WAS THAT HE WAS ACTIVELY WORKING IN THE LIBRARY
21 IN MY OFFICE IN THE PREPARATION OF HIS DEFENSE. NOW, THAT
22 IS THE TRUTH. HE IS THERE EVERY DAY OR HE IS IN THIS
23 LIBRARY EVERY DAY AND HE HAS BEEN, FRANKLY, AS ACTIVE IN THE
24 PREPARATION OF HIS DEFENSE AS ANY LAWYERS HAVE THAT HAVE
25 WORKED WITH HIM.

26 IF YOUR HONOR WOULD DEEM HIM ASSOCIATE PRO PER
27 COUNSEL WITH MY OFFICE.

28 THE COURT: I CAN'T DO THAT.

1 MR. BARENS: WELL, I DON'T KNOW. FRANKLY, I HAVE NEVER
2 EVEN LOOKED AT THE SECTION.

3 THE COURT: WHY DON'T YOU BOTH EXPLORE IT OVER THE NOON
4 HOUR? IF YOU AGREE ON ANYTHING, I WILL GO ALONG WITH YOUR
5 SUGGESTION IF I HAVE THE POWER TO DO SO.

6 MR. BARENS: THE OTHER PROBLEM I AM GOING TO HAVE HERE,
7 THE INTERRUPTION THIS IS GOING TO CAUSE THE PREPARATION BY
8 THE REMOVAL -- MR. CHIER HAS JUST ADVISED ME BY PHONE THEY
9 ARE REMOVING ALL OF THE ORIGINAL MATERIALS, ALL DEFENSE
10 MATERIALS FROM THE HOUSE. I WOULD HAVE TO REPRODUCE ALL --
11 ALL MY DEFENSE EXHIBITS ARE UP THERE AND A LOT OF MY -- WELL,
12 ALL OF MY CROSS-EXAMINATION FORMAT.

13 THE COURT: WHERE ARE THOSE RECORDS AND DOCUMENTS?

14 MR. BARENS: AT MR. HUNT'S HOUSE.

15 THE COURT: ARE THEY STILL THERE?

16 MR. BARENS: YES, YOUR HONOR.

17 THE COURT: AND THEY ARE KEEPING THEM THERE?

18 MR. BARENS: NO, THEY ARE PLANNING TO PUT THEM IN A
19 TRUCK NOW, YOUR HONOR.

20 WHAT AM I GOING TO DO TO GET THEM BACK?

21 I AM GOING TO TRIAL PROBABLY WEEEEK AFTER NEXT HERE.

22 THE COURT: WELL, I WILL TELL YOU WHAT WE DO -- THERE
23 IS NOTHING THAT YOU CAN DO AT THE MOMENT OR I CAN DO AT THE
24 MOMENT, CAN I?

25 MR. BARENS: WELL, I THINK YOUR HONOR COULD CALL THEM
26 UP AND TELL THEM "YOU BOYS SHOULD STOP FOR A FEW MINUTES UNTIL
27 WE DECIDE WHAT WE CAN DO BY 1:45 TODAY" AND THEN WE WILL DO
28 IT.

1 THE COURT: I HAVE NO AUTHORITY TO DO THAT. THE WARRANT
2 HAS BEEN EXECUTED PURSUANT TO AN ORDER MADE BY ANOTHER JUDGE,
3 I CAN'T DO ANYTHING.

4 MR. BARENS: I HAVE SOMETHING LIKE 80 DEFENSE EXHIBITS
5 UP THERE.

6 THE COURT: I UNDERSTAND. BUT WHAT CAN I DO ABOUT IT?

7 I CAN'T NULLIFY AN ORDER MADE BY ANOTHER JUDGE.

8 I THINK IT MAY BE IN ORDER FOR THE DISTRICT
9 ATTORNEY TO SAY THAT IT MIGHT BE AN INTERRUPTION OF THIS
10 PARTICULAR CASE AND THAT THEREFORE, THEY MAKE SOME ARRANGEMENTS
11 THAT THESE RECORDS WOULD BE AVAILABLE TO YOU DURING THE COURSE
12 OF THIS TRIAL AND THEY CAN REPRODUCE THEM.

13 MR. BARENS: THEY ARE GOING TO HAVE THEM UP IN SAN MATEO,
14 YOUR HONOR, AND THEY ARE GOING TO SAY THEY ARE AVAILABLE TO
15 ME IN SAN MATEO.

16 THE COURT: WHO IS RESPONSIBLE? WHO IS HOLDING IT UP?

17 THE BAILIFF: THAT JUDGE UP THERE.

18 THE COURT: THAT COURT DIDN'T HAVE THE COURTESY TO CALL
19 ME.

20 MR. BARENS: I CAN'T BELIEVE THIS.

21 MR. WAPNER: YOUR HONOR, WE ARE JUST FUMBLING AROUND
22 IN THE DARK HERE BECAUSE WE DON'T KNOW WHAT THE WARRANT SAYS.

23 THE COURT: I THINK SO.

24 LET'S FINISH UP THIS MORNING AND THEN BOTH OF YOU
25 CONFER AND SEE WHAT CAN BE DONE TO FIND OUT WHO HAS GOT IT,
26 AND SO FORTH, AND WHAT MY AUTHORITY IS TO STOP THEM FROM
27 EXECUTING ON THE WARRANT.

28 MR. BARENS: THANK YOU, YOUR HONOR.

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THE COURT: OR WHETHER OR NOT I CAN ORDER THAT THESE RECORDS BE PRODUCED, THEY CAN HAVE CUSTODY OF THEM BUT THEY MAY BE USED BY YOU IN THE COURSE OF THIS TRIAL.

MR. BARENS: THEY ARE MY THINGS TO BEGIN WITH. THANK YOU, YOUR HONOR.

1 (PROSPECTIVE JUROR RUTHERFORD REENTERS
2 THE COURTROOM.)

3 THE COURT: I AM SORRY TO KEEP YOU, MR. RUTHERFORD, BUT
4 SOME MATTER HAS TURNED UP THAT HAS NOTHING TO DO WITH YOU OR
5 HAS NOTHING TO DO WITH MY QUESTIONING OF YOU HERE.

6 WE WERE WHERE?

7 MR. RUTHERFORD: THE PENALTY PHASE.

8 THE COURT: YES, THE PENALTY PHASE, ALL RIGHT.

9 NOW, I TOLD YOU THAT ON THE PENALTY PHASE EACH
10 SIDE HAS A RIGHT TO INTRODUCE TESTIMONY, ADDITIONAL EVIDENCE.

11 THE DEFENDANT'S EVIDENCE, I ASSUME, WILL CONSIST
12 OF TESTIMONY TO SHOW THAT HE IS ESSENTIALLY OF GOOD CHARACTER
13 AS A PERSON, NEVER BEEN INVOLVED IN ANY VIOLENT ACTIVITIES
14 OF ANY KIND AND HIS EDUCATION AND BACKGROUND, HIS MENTAL AND
15 PHYSICAL CONDITION WILL BE DESCRIBED TO YOU. ANYTHING THAT
16 MIGHT BE FAVORABLE TO HIM, I ASSUME, WILL BE OFFERED TO THE
17 JURY. THAT IS KNOWN AS EXTENUATING AND MITIGATING CIRCUMSTANCES.

18 ON THE OTHER HAND, THE PEOPLE --

19 AND THE PURPOSE OF THAT IS TO TRY TO PERSUADE THE
20 JURY NOT TO GIVE HIM THE UILTIMATE PENALTY, THE PENALTY OF
21 DEATH IN THE GAS CHAMBER.

22 AND THE PEOPLE'S TESTIMONY, I ASSUME, WILL SHOW
23 AGGRAVATING CIRCUMSTANCES, THINGS WHICH ARE UNFAVORABLE ABOUT
24 THE DEFENDANT AND THE PURPOSE OF THAT, TOO, WOULD BE TO HAVE
25 YOU IMPOSE THE ULTIMATE PENALTY OF DEATH IN THE GAS CHAMBER.

26 SO YOU ARE TO HEAR ALL OF THAT AND MAKE UP YOUR
27 MIND AS TO WHAT SHOULD BE DONE: SHOULD IT BE LIFE IMPRISON-
28 MENT WITHOUT POSSIBILITY OF PAROLE -- WHICH MEANS EXACTLY

1 THAT -- OR DEATH IN THE GAS CHAMBER.

2 I AM GOING TO ASK YOU A SERIES OF QUESTIONS
3 DESIGNED FOR THE PURPOSE OF EXPLORING YOUR MIND AS TO YOUR
4 FEELINGS ABOUT THE DEATH PENALTY.

5 THE FIRST QUESTION HAS TO DO WITH THE GUILT PHASE,
6 INNOCENCE OR GUILT: DO YOU HAVE ANY OPINION ABOUT THE DEATH
7 PENALTY, WHATEVER IT MAY BE, WHICH WILL PREVENT YOU FROM
8 MAKING AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF
9 THE DEFENDANT?

10 MR. RUTHERFORD: NO, SIR.

11 THE COURT: ALL RIGHT. SIMILARLY WITH RESPECT TO THE
12 SPECIAL CIRCUMSTANCE, WAS IT COMMITTED IN THE COURSE OF A
13 ROBBERY: DO YOU HAVE ANY OPINION AS TO THE DEATH PENALTY,
14 FAVORABLE OR WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU FROM
15 MAKING AN IMPARTIAL DECISION AS TO WHETHER OR NOT THE MURDER
16 WAS COMMITTED IN THE COURSE OF A ROBBERY?

17 MR. RUTHERFORD: NO, SIR.

18 THE COURT: THE NEXT TWO QUESTIONS HAVE TO DO WITH THE
19 PENALTY PHASE. ASSUME THAT THE DEFENDANT HAS BEEN CONVICTED
20 OF MURDER IN THE FIRST DEGREE AND IT WAS IN THE COURSE OF A
21 ROBBERY AND NOW WE ARE ON THE PENALTY PHASE: DO YOU HAVE
22 ANY OPINION CONCERNING THE DEATH PENALTY THAT WOULD MAKE YOU
23 AUTOMATICALLY VOTE FOR THE IMPOSITION OF THE DEATH PENALTY,
24 REGARDLESS OF ANY EVIDENCE THAT YOU HEAR ON THE PENALTY PHASE?

25 MR. RUTHERFORD: NO, SIR.

26 THE COURT: THE SAME WAY WITH RESPECT TO LIFE IMPRISON-
27 MENT WITHOUT THE POSSIBILITY OF PAROLE: DO YOU HAVE ANY
28 OPINION AS TO THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY

1 VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
2 AND DISREGARD ANY EVIDENCE THAT YOU HEARD ON THE PENALTY PHASE?

3 MR. RUTHERFORD: NO, SIR.

4 THE COURT: ALL RIGHT. YOU UNDERSTAND THAT THESE QUES-
5 TIONS ARE BEING ASKED ONLY IN THE EVENT THAT WE REACH THE
6 PENALTY PHASE?

7 MR. RUTHERFORD: YES, SIR.

8 THE COURT: ALL RIGHT.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 GOOD MORNING, MR. RUTHERFORD.

11 MR. RUTHERFORD: GOOD MORNING.

12 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
13 DEFENDANT AND, AS WITH HIS HONOR, IT IS MY DUTY AT THIS POINT
14 TO ASK YOU SOME QUESTIONS ABOUT YOUR POINT OF VIEW ON THE
15 DEATH PENALTY.

16 MR. RUTHERFORD, THERE ARE NO RIGHT OR WRONG
17 ANSWERS TO MY QUESTIONS OR GOOD OR BAD ANSWERS.

18 MR. RUTHERFORD: OKAY.

19 MR. BARENS: IT IS JUST WE ARE SEEKING YOUR OPINION AND
20 YOU CAN NEVER BE WRONG ABOUT YOUR OPINION.

21 MR. RUTHERFORD: ALL RIGHT.

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

25 MR. RUTHERFORD: I THINK IT IS NEEDED.

26 MR. BARENS: COULD YOU HELP ME BETTER RELATE TO WHAT
27 AREAS OR FOR WHAT KINDS OF SITUATIONS, I GUESS, THAT YOU FEEL
28 IT MIGHT BE NEEDED?

1 MR. RUTHERFORD: MURDER. RAPE. THE REALLY, REALLY
2 SERIOUS TYPE OF CRIMES. CHILD MOLESTATION TYPE THINGS.

3 MR. BARENS: WOULD YOU BE OF A MIND SET THAT YOU HAVE
4 AN OPINION THAT ANYONE WHO TAKES A LIFE OR COMMITS A MURDER,
5 THAT THE ONLY PROPER PENALTY FOR THEM IS THEIR LIFE SHOULD
6 BE TAKEN, TOO?

7 MR. RUTHERFORD: NO, SIR.

8 MR. BARENS: WHEN YOU SAY NO, WOULD YOU WANT TO CONSIDER
9 ALL OF THE FACTORS THAT WERE PRESENT?

10 MR. RUTHERFORD: SURE.

11 MR. BARENS: NOW, YOU KNOW, MR. RUTHERFORD, THIS WHOLE
12 SUBJECT OF THE DEATH PENALTY OR THE OPTION THAT YOU HAVE FOR
13 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, ONLY WOULD
14 COME UP IN THE SECOND PHASE OF THE TRIAL IF WE EVER GET TO
15 THAT.

16 MR. RUTHERFORD: YES, SIR. YES, SIR.

17 MR. BARENS: YOU UNDERSTAND THAT AT THIS POINT IN TIME,
18 YOU WOULD FIRST HAVE TO BELIEVE THAT A FIRST DEGREE MURDER HAD
19 BEEN COMMITTED?

20 MR. RUTHERFORD: YES, SIR.

21 MR. BARENS: THAT THE DEFENDANT HAD DONE SO WITH THE
22 INTENT AND WITH PREMEDITATION --

23 MR. RUTHERFORD: YES, SIR.

24 MR. BARENS: -- AND THAT IT HAD BEEN COMMITTED DURING
25 THE COURSE OF A ROBBERY?

26 MR. RUTHERFORD: YES, SIR.

27 MR. BARENS: NOW, IF YOU AND THE OTHER JURORS BELIEVE
28 THAT BEYOND A REASONABLE DOUBT, YOU WOULD GET INTO A SECOND

1 PHASE OF THE TRIAL, THE PENALTY PHASE; DO YOU UNDERSTAND ME,
2 SIR?

3 MR. RUTHERFORD: YES, SIR.

4 MR. BARENS: NOW, THAT IS WHEN YOU WOULD HAVE THESE TWO
5 OPTIONS.

6 IF YOU FIRST FOUND THAT A DEFENDANT HAD COMMITTED
7 A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER DURING A
8 ROBBERY, WOULD YOU BE THEN SO PREDISPOSED TO VOTE IN FAVOR
9 OF THE DEATH PENALTY THAT YOU WOULD NOT BE WILLING TO CONSIDER
10 ANY FURTHER EVIDENCE?

11 MR. RUTHERFORD: NO, SIR.

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1 MR. BARENS: ALL RIGHT. WOULD YOU BE WILLING TO CONSIDER
2 EVIDENCE FOR INSTANCE, OF THE DEFENDANT'S CHARACTER AND
3 BACKGROUND AND LACK OF CRIMINAL CONDUCT?

4 MR. RUTHERFORD: YES, SIR.

5 MR. BARENS: WOULD YOU?

6 MR. RUTHERFORD: YES.

7 MR. BARENS: NOW, THERE IS A DIFFERENCE BETWEEN ME
8 LISTENING TO SOMETHING, BECAUSE I DON'T SIT IN THE JURY BOX
9 AND LIKE THAT, AND REALLY CONSIDERING SOMETHING.

10 WOULD ANY OF THOSE FACTORS MAKE ANY KIND OF A
11 DIFFERENCE TO YOU?

12 MR. RUTHERFORD: THEY MIGHT.

13 MR. BARENS: THEY MIGHT?

14 MR. RUTHERFORD: YES, SIR. IT IS ONE OF THOSE THINGS
15 THAT COULD GO EITHER WAY. HOW CAN I EXPLAIN IT?

16 THERE ARE PEOPLE -- WELL, I DON'T KNOW. THERE
17 ARE PEOPLE THAT DO THINGS THAT THEY DON'T REALLY, DEEP DOWN
18 INSIDE, INTENTIONALLY MEAN TO DO, YOU KNOW.

19 THEN THERE ARE PEOPLE THAT JUST ABSOLUTELY, THAT
20 IS WHAT THEY WANT TO DO.

21 MR. BARENS: WELL, YOU MEAN THAT POSSIBLY AS A RESULT
22 OF THEIR BACKGROUNDS, THEIR PRIOR EXPERIENCES OR THEIR
23 EDUCATION OR THEIR ECONOMIC SITUATION IN LIFE, THAT THOSE
24 COULD HAVE SOME BEARING?

25 MR. RUTHERFORD: YES, RIGHT.

26 MR. BARENS: ON THIER OUTLOOK?

27 MR. RUTHERFORD: RIGHT.

28 MR. BARENS: IN OTHER WORDS, THE FACT THAT SOMEBODY

1 CAN COMMIT AN INTENTIONAL, PREMEDITATED MURDER, IN AND OF
2 ITSELF, WOULD NOT MAKE YOU BELIEVE WELL, THAT GUY AUTOMATICALLY
3 HAS GOT TO GET THE DEATH PENALTY?

4 MR. RUTHERFORD: NO, SIR.

5 MR. BARENS: OKAY. YOU WOULD BE WILLING TO LISTEN TO
6 ALL OF THE EVIDENCE DURING THE PENALTY PHASE?

7 MR. RUTHERFORD: YES, SIR.

8 MR. BARENS: NOW, DO YOU UNDERSTAND THAT THERE IS NOTHING
9 IN OUR LEGAL SYSTEM IN ANY WAY, THAT MAKES THE DEATH PENALTY
10 MANDATORY OR COMPULSORY FOR ANYBODY?

11 MR. RUTHERFORD: YES, SIR.

12 MR. BARENS: THAT DECISION ON LIFE WITHOUT POSSIBILITY
13 OF PAROLE OR THE DEATH PENALTY, IS SOLELY A DECISION YOU AS
14 A JUROR MAKE?

15 MR. RUTHERFORD: YES, SIR.

16 MR. BARENS: DO YOU UNDERSTAND THAT?

17 MR. RUTHERFORD: YES, SIR.

18 MR. BARENS: NOW, IS IT BELIEVABLE IN YOUR MIND AND
19 I ASK YOU THIS TRUE, THAT YOU COULD BE CAPABLE OF VOTING FOR
20 LIFE WITHOUT POSSIBILITY OF PAROLE FOR A DEFENDANT WHO HAS
21 BEEN CONVICTED OF COMMITTING A FIRST DEGREE, INTENTIONAL
22 MURDER?

23 MR. RUTHERFORD: YES, SIR.

24 MR. BARENS: DO YOU THINK YOU WOULD BE CAPABLE OF THAT?

25 MR. RUTHERFORD: YES, SIR.

26 MR. BARENS: ALL RIGHT. DO YOU CONSIDER YOURSELF A
27 PRETTY OPEN-MINDED GUY?

28 MR. RUTHERFORD: I TRY TO BE, YES, SIR.

1 MR. BARENS: THAT IS ALL WE CAN DO.

2 MR. RUTHERFORD: YES.

3 MR. BARENS: MR. RUTHERFORD, DO YOU FEEL THAT BECAUSE
4 THE JUDGE HAS SPOKEN TO YOU ABOUT YOUR VIEWS ON THE DEATH
5 PENALTY AND I AM ASKING YOU QUESTIONS ABOUT THE DEATH PENALTY
6 AND MR. WAPNER WILL BE IN A MOMENT, THE DISTRICT ATTORNEY,
7 DOES THAT MAKE YOU BELIEVE THAT MR. HUNT MUST HAVE DONE
8 SOMETHING WRONG OR WE WOULDN'T BE HERE TALKING?

9 MR. RUTHERFORD: NO, SIR.

10 MR. BARENS: OKAY. DO YOU UNDERSTAND THAT MR. HUNT,
11 JUST LIKE YOU IF YOU WERE A DEFENDANT IN HERE OR ME, IS
12 ENTITLED TO THE PRESUMPTION OF INNOCENCE AT ALL TIMES UNTIL
13 AN ACTUAL TRIAL TAKES PLACE?

14 MR. RUTHERFORD: YES, SIR.

15 MR. BARENS: WE WILL FIND OUT WHETHER HE IS GUILTY OR
16 INNOCENT, DEPENDING UPON WHAT A TRIAL SHOWS?

17 MR. RUTHERFORD: YES, SIR.

18 MR. BARENS: THANK YOU, MR. RUTHERFORD. I PASS FOR
19 CAUSE.

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1 THE COURT: ALL RIGHT.

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

5 DO YOU HAVE ANY STRONG RELIGIOUS OR MORAL BELIEFS
6 THAT WOULD AFFECT YOUR ABILITY TO DECIDE THE ULTIMATE QUESTION
7 OF WHETHER THIS DEFENDANT SHOULD LIVE OR WHETHER HE SHOULD
8 DIE?

9 MR. RUTHERFORD: NO, SIR.

10 MR. WAPNER: DO YOU UNDERSTAND THAT IF IT GETS RIGHT
11 DOWN TO IT, TO THAT PART OF THE CASE, THAT IS WHAT YOU HAVE
12 TO DECIDE?

13 MR. RUTHERFORD: YES, SIR.

14 MR. WAPNER: ALSO, THAT NO ONE CAN TELL YOU HOW TO VOTE?
15 YOU HAVE TO VOTE YOUR INDIVIDUAL CONSCIENCE?

16 MR. RUTHERFORD: YES, SIR.

17 MR. WAPNER: DO YOU HAVE ANY PROBLEMS WITH THAT?

18 MR. RUTHERFORD: NO.

19 MR. WAPNER: DO YOU HAVE ANY -- STRIKE THAT.

20 I THINK YOU WERE ASKED THAT QUESTION ALREADY.
21 WHEN YOU WERE DECIDING THE GUILT OF THE DEFENDANT, WHETHER
22 HE DID THE MURDER AND WHETHER IT WAS DURING A ROBBERY, COULD
23 YOU KEEP OUT OF YOUR MIND WHAT MIGHT HAPPEN TO HIM IF YOU
24 FOUND HIM GUILTY?

25 MR. RUTHERFORD: YES, SIR.

26 MR. WAPNER: OKAY. HAVE YOU SAT ON ANY OTHER CRIMINAL
27 CASES?

28 MR. RUTHERFORD: NO, SIR.

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1 MR. WAPNER: I PASS FOR CAUSE.

2 THE COURT: ALL RIGHT. BOTH SIDES HAVE PASSED FOR CAUSE,
3 MR. RUTHERFORD. THAT MEANS THAT THEY FEEL YOU WOULD QUALIFY
4 AS A POSSIBLE JUROR IN THIS CASE.

5 WHAT I WILL ASK YOU TO DO IS, TO COME BACK TO
6 THE JURY ASSEMBLY ROOM MONDAY AT 10:30 A.M. THAT IS MONDAY
7 AT 10:30 A.M. IN THE JURY ASSEMBLY ROOM.

8 WE WILL GET YOU ALL BACK IN HERE AND WE WILL START
9 THE TRIAL.

10 MR. RUTHERFORD: OKAY.

11 THE COURT: THANK YOU VERY MUCH. THANK YOU.

12 (PROSPECTIVE JUROR RUTHERFORD EXITED
13 THE COURTROOM.)

14 THE COURT: CAN YOU GET IN TOUCH WITH THIS, WHOEVER
15 THIS BRILLING IS AND FIND OUT WHAT IS GOING TO HAPPEN TO THE
16 PAPERS? I DON'T WANT ANYTHING HAPPENING TO POSTPONE THIS
17 TRIAL.

18 MR. WAPNER: I WILL GET IN TOUCH WITH MR. BRILLING.
19 I PROBABLY CAN'T DO IT OVER THE NOONHOUR.

20 MR. BARENS: SORRY, YOUR HONOR. HE IS AT THE ROBERTS'
21 RESIDENCE NOW. I SPOKE TO HIM.

22 THE COURT: WHY DON'T YOU TALK TO HIM UP THERE? TELL
23 HIM THAT I DON'T WANT TO HAVE ANYTHING THAT WILL INTERFERE
24 WITH THIS TRIAL GOING FORWARD.

25 ALL OF COUNSEL'S PAPERS ARE THERE. HE CAN'T
26 PROCEED WITH THE CROSS-EXAMINATION OF WITNESSES OR IN THE
27 TRIAL OF THIS CASE. I HAVE GOT TO STOP THAT.

28 MR. WAPNER: I UNDERSTAND THAT. I WILL TALK TO HIM.

1 I WANT TO BE VERY CIRCUMSPECT, TO MAKE SURE THAT
2 I DON'T GET ANY INFORMATION FROM MR. BRILLING.

3 THE COURT: YOU TELL HIM THAT YOU DON'T WANT TO HAVE
4 ANY CONFIDENTIAL INFORMATION WHICH WOULD BE PREJUDICIAL TO
5 THE DEFENSE.

6 MR. BARENS: YOUR HONOR, I APPRECIATE THAT FRED WAPNER
7 IS A REALLY GOOD-FAITH GUY.

8 THE COURT: JUST A MOMENT.

9 (BRIEF PAUSE.)

10 MR. BARENS: JUST TO MAKE THE RECORD ON THIS POINT,
11 MR. WAPNER IS CONFIRMING THAT NOT ONLY WOULD HE NOT READ OR
12 NOT LOOK AT ANY OF THOSE MATERIALS, THAT HE WOULD NOT SPEAK
13 TO ANYONE THAT HE UNDERSTANDS HAS READ ANY OF THOSE MATERIALS.

14 HE KNOWS --

15 THE COURT: HE KNOWS WHAT HIS DUTIES AND OBLIGATIONS
16 ARE. HE KNOWS THAT HE CANNOT EXAMINE ANY OF YOUR CONFIDENTIAL
17 FILES NOR USE IT IN ANY WAY. HE IS A MEMBER OF THE BAR AND
18 A VERY HONORABLE ONE.

19 I AM SURE THAT HE WILL CONFORM WITH HIS OATH.

20 MR. BARENS: QUITE SO. THEY HAVE GOT TWO YEARS OF MY
21 WORK UP THERE.

22 THE COURT: I UNDERSTAND. THAT IS WHY I WANT MR. WAPNER
23 TO INQUIRE INTO IT AND FIND OUT WHAT IT IS ABOUT.

24 I DON'T WANT TO HAVE ANYTHING THAT THEY ARE GOING
25 TO DO IN ANY WAY INTERRUPT THIS TRIAL.

26 MR. BARENS: I DON'T EITHER. THE DEFENSE DOES NOT
27 EITHER, YOUR HONOR. THANK YOU.

28 THE COURT: ALL RIGHT.

(AT 11:45 A.M. THE NOON RECESS WAS TAKEN.)

1 SANTA MONICA, CALIFORNIA; THURSDAY, JANUARY 8, 1986; 1:50 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 MR. BARENS: I WOULD SIMPLY STATE FOR THE RECORD THAT
6 THE DEFENSE THANKS MR. WAPNER FOR HIS COOPERATION AT THE
7 COURT'S REQUEST DURING THE NOON HOUR AND WE WILL RESERVE
8 ANY FURTHER COMMENT ON THAT WHOLE ACTIVITY UNTIL WE HAVE
9 HAD A BETTER OPPORTUNITY TO ASSESS THE IMPACT OF THESE
10 MATTERS ON THE DEFENSE'S POSITION AND THE PROSECUTION'S
11 POSITION AND FILE APPROPRIATE WRITTEN MOTIONS.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 MR. WAPNER: MAY I REQUEST THAT ANY MOTION THAT BE
15 FILED ON THE MATTER BE DONE OR HEARD BEFORE THE JURY IS
16 SWORN, YOUR HONOR?

17 THE COURT: YES.

18 MR. WAPNER: THANK YOU.

19 THE COURT: YOU MEAN AFTER THE JURY IS SELECTED AND
20 SWORN?

21 MR. CHIER: IMPANELED, YOU MEAN.

22 MR. WAPNER: NO. I MEAN BEFORE THE JURY IS SWORN.

23 THE COURT: THEY HAVE ALREADY BEEN SWORN.

24 MR. CHIER: IMPANELED.

25 MR. WAPNER: I MEAN SWORN TO TRY THE CASE, YOUR HONOR.

26 THE COURT: OH, YES, ALL RIGHT. SURE.

27 MR. WAPNER: THANK YOU, YOUR HONOR.

28 (PROSPECTIVE JUROR SAUNDERS ENTERS

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THE COURTROOM.)

THE COURT: LET ME SEE, THIS IS MISS SAUNDERS OR MRS.?

MS. SAUNDERS: MS.

THE COURT: MISS SAUNDERS?

MS. SAUNDERS: YES.

THE COURT: MISS SAUNDERS, WHERE DO YOU LIVE?

MS. SAUNDERS: SANTA MONICA.

MR. WAPNER: IS THAT SANTA MONICA?

MS. SAUNDERS: SANTA MONICA.

THE COURT: OTHER THAN WHAT I TOLD THE JURORS LAST
MONDAY ABOUT THE NATURE OF THE CASE, HAVE YOU READ OR HEARD
ANYTHING ELSE ABOUT IT?

MS. SAUNDERS: NO, I HAVEN'T.

12-1
1 THE COURT: DOES THE EXPRESSION "BILLIONAIRE BOYS CLUB"
2 RING A BELL IN YOUR MIND?

3 MS. SAUNDERS: SAY THAT AGAIN?

4 THE COURT: "BILLIONAIRE BOYS CLUB"?

5 MS. SAUNDERS: NO.

6 THE COURT: WHAT I AM GOING TO DO AGAIN, IS BRIEFLY
7 TELL YOU ABOUT THE CASE AND ASK YOU SOME QUESTIONS. THE
8 PURPOSE OF THE QUESTIONS WILL BE TO DETERMINE YOUR STATE OF
9 MIND WITH RESPECT TO THE ATTITUDES TOWARD THE DEATH PENALTY.

10 DO YOU UNDERSTAND?

11 MS. SAUNDERS: OKAY.

12 THE COURT: ALL RIGHT. DO YOU REMEMBER I TOLD YOU THAT
13 THE CHARGE AGAINST THE DEFENDANT IS THAT HE COMMITTED THE
14 CRIME OF MURDER IN THE COURSE OF A ROBBERY? NOW, IN THE COURSE
15 OF A ROBBERY HAS SIGNIFICANCE. YOU KNOW, A MURDER MAY BE
16 COMMITTED DELIBERATELY, INTENTIONALLY, PREMEDITATEDLY AND
17 STILL NOT MERIT ANY CONSIDERATION OF THE DEATH PENALTY.

18 IT IS ONLY WHERE A MURDER IS COMMITTED UNDER
19 CERTAIN SPECIAL CIRCUMSTANCES THAT THEN, THE POSSIBILITY OF
20 A DEATH PENALTY COMES INTO PLAY.

21 NOW, THE LEGISLATURE HAS SAID FOR EXAMPLE, THAT
22 A MURDER COMMITTED IN THE COURSE OF A ROBBERY AS IN THE CASE
23 ALLEGED OR A BURGLARY OR A KIDNAPPING OR IN A RAPE OR WHERE
24 TORTURE IS APPLIED OR A CHILD IS KILLED OR MULTIPLE MURDERS,
25 THOSE ARE SOME OF THE INSTANCES OF THE 19 CASES WHERE THE
26 DEATH PENALTY MAY BE INVOLVED. DO YOU UNDERSTAND?

27 MS. SAUNDERS: UH-HUH.

28 THE COURT: ALL RIGHT. NOW, THE JURY SELECTED IN THIS

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1 CASE, WILL FIRST DETERMINE THE GUILT OR INNOCENCE OF THE
2 DEFENDANT, DID THE DEFENDANT COMMIT THE MURDER AND WAS IT
3 A MURDER IN THE FIRST DEGREE AND IF SO, WAS IT COMMITTED IN
4 THE COURSE OF A ROBBERY. OKAY?

5 IF THEY SAY YES, IT WAS A MURDER IN THE FIRST
6 DEGREE COMMITTED IN THE COURSE OF A ROBBERY, THEN WE COME
7 TO THE CONSIDERATION OF THE PENALTY INVOLVED.

8 THAT SAME JURY WILL HEAR EVIDENCE AS TO THE PENALTY
9 WHICH SHOULD BE IMPOSED. THE DEFENSE OF COURSE, WILL INTRODUCE
10 TESTIMONY TO SHOW -- AND THE JURY MUST CONSIDER FACTORS LIKE
11 THE DEFENDANT'S AGE, HIS LACK OF ANY PRIOR CRIMINAL ACTIVITY,
12 HIS BACKGROUND, HIS EDUCATION, HIS MENTAL AND PHYSICAL
13 CONDITION AND THOSE WILL BE CONSIDERED BY THE JURY.

14 THE PURPOSE OF THAT IS TO GET THE JURY TO COME
15 IN WITH A VERDICT LESS THAN DEATH IN THE GAS CHAMBER.

16 AND THE PROSECUTION ON THE OTHER HAND, WILL I
17 ASSUME, INTRODUCE TESTIMONY WHICH IS IN AGGRAVATION OF THE
18 OFFENSE, WHICH WOULD SHOW THAT HE IS REALLY A BAD PERSON AND
19 HE MERITS NO CONSIDERATION FROM THE JURY, THINGS WHICH ARE
20 UNFAVORABLE ABOUT HIM, SO THAT THE JURY SHOULD IMPOSE THE
21 MAXIMUM PENALTY IN THE CASE.

22 DO YOU UNDERSTAND THAT THAT IS THE FUNCTION OF
23 THE JURY?

24 MS. SAUNDERS: YES.

25 THE COURT: I TOLD YOU THAT THE JURY DOESN'T MAKE UP
26 THEIR MINDS UNTIL THEY FIND HIM GUILTY AND THEY HEAR ALL OF
27 THE TESTIMONY ON THE PENALTY PHASE.

28 NOW, THE QUESTIONS I AM GOING TO ASK YOU RELATE

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1 TO YOUR STATE OF MIND. COUNSEL WILL ASK YOU QUESTIONS TOO,
2 AS TO YOUR ATTITUDES AND OPINIONS ON THE DEATH PENALTY AND
3 HOW IT AFFECTS YOU AS A JUROR IN THIS CASE.

4 NOW, THE FIRST TWO QUESTIONS RELATE TO THE GUILT
5 PHASE OR THE INNOCENCE. FIRST, DO YOU HAVE ANY OPINION ABOUT
6 THE DEATH PENALTY EITHER WAY, WHATEVER IT MAY BE, WHICH WILL
7 PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO THE GUILT
8 OR INNOCENCE OF THE DEFENDANT?

9 MS. SAUNDERS: NO I DON'T.

10 THE COURT: ALL RIGHT. AND THERE IS ANOTHER PART OF
11 THE SAME QUESTION, WHICH IS: DO YOU HAVE ANY OPINION WITH
12 RESPECT TO THE DEATH PENALTY, THAT WOULD PREVENT YOU FROM
13 MAKING AN IMPARTIAL DECISION AS TO WHETHER OR NOT THE MURDER
14 WAS COMMITTED IN THE COURSE OF A ROBBERY?

15 MS. SAUNDERS: NO.

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1 THE COURT: NOW, THE NEXT TWO QUESTIONS PRESUPPOSE THAT
2 THE JURY HAS FOUND THE DEFENDANT GUILTY OF MURDER IN THE FIRST
3 DEGREE AND THAT IT WAS IN THE COURSE OF A ROBBERY.

4 MS. SAUNDERS: OKAY.

5 THE COURT: NOW, THE FIRST OF THOSE TWO QUESTIONS IS:
6 DO YOU HAVE ANY OPINION AS TO THE DEATH PENALTY SUCH AS YOU
7 WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY, REGARDLESS
8 OF ANY EVIDENCE THAT MAY BE PRESENTED ON THE PENALTY PHASE
9 OF THE CASE?

10 MS. SAUNDERS: NO, I WOULDN'T AUTOMATICALLY VOTE.

11 THE COURT: AND THE SAME THING WITH RESPECT TO LIFE
12 IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE: DO YOU HAVE AN
13 OPINION WITH RESPECT TO THE DEATH PENALTY WHICH WOULD IN ANY
14 WAY SWAY YOU SO YOU WOULD AUTOMATICALLY VOTE FOR LIFE
15 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, WITHOUT
16 REGARD TO THE EVIDENCE HEARD BY YOU ON THE PENALTY PHASE?

17 MS. SAUNDERS: I WOULDN'T.

18 THE COURT: YOU KNOW THERE ARE ONE OR TWO ASPECTS --

19 MR. WAPNER: WHAT WAS THAT?

20 (WHEREUPON, THE RECORD WAS READ BY THE
21 REPORTER.)

22 THE COURT: YOU WOULDN'T, RIGHT?

23 MS. SAUNDERS: UH-HUH.

24 THE COURT: YOU UNDERSTAND, OF COURSE, THAT THE DEATH
25 PENALTY QUESTION HAS TWO ASPECTS TO IT.

26 THE FIRST ASPECT IS LIFE IMPRISONMENT WITHOUT
27 THE POSSIBILITY OF PAROLE AND THAT MEANS EXACTLY THAT: HE
28 GOES TO PRISON FOR LIFE WITHOUT POSSIBILITY OF PAROLE AND

3-2
1 HE NEVER GETS OUT.

2 THE OTHER PART OF IT IS DEATH IN THE GAS CHAMBER.
3 DO YOU UNDERSTAND THAT?

4 MS. SAUNDERS: UH-HUH.

5 THE COURT: DO YOU UNDERSTAND THESE QUESTIONS WHICH
6 HAVE BEEN ASKED OF YOU WITH RESPECT TO THE DEATH PENALTY ARE
7 ONLY ASKED BECAUSE IT IS PART OF THE ENTIRE PROCESS. IT DOES
8 NOT NECESSARILY MEAN THAT WE ARE GOING TO HAVE IT INVOLVED
9 IN THIS CASE; DO YOU UNDERSTAND?

10 MS. SAUNDERS: UH-HUH.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 GOOD AFTERNOON, MISS SAUNDERS.

13 MS. SAUNDERS: HI.

14 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT THE
15 DEFENDANT, JOE HUNT.

16 MS. SAUNDERS: UH-HUH.

17 MR. BARENS: AND, AS IT WAS THE CASE WITH HIS HONOR,
18 IT IS MY OBLIGATION AT THIS POINT IN THESE PROCEEDINGS TO ASK
19 YOU ABOUT YOUR OPINION ON THE DEATH PENALTY.

20 MS. SAUNDERS: OKAY.

21 MR. BARENS: AND ON RELATED ISSUES.

22 PARENTHETICALLY, THERE ARE NO RIGHT OR WRONG
23 ANSWERS TO MY QUESTIONS AND NO ONE IN THIS COURTROOM IS JUDGING
24 ANY OF YOUR ANSWERS BUT, RATHER, JUST LOOKING AT THEM TO SEE
25 WHAT YOUR OPINION IS TO SEE HOW YOU MIGHT QUALIFY AS A JUROR
26 IN THIS CASE. AND YOU CAN NEVER BE WRONG ABOUT YOUR OWN
27 OPINION.

28 MS. SAUNDERS: OKAY.

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

3 MS. SAUNDERS: I FEEL IT IS -- IT SHOULD BE, YOU KNOW,
4 INITIATED BUT --

5 THE COURT: SPEAK UP SO WE CAN ALL HEAR YOU. IT
6 SHOULD BE WHAT?

7 MS. SAUNDERS: I FEEL IT SHOULD BE INITIATED BUT ONLY
8 IF EVIDENCE, YOU KNOW, IS DIRECTED TOWARDS WHAT THE PERSON
9 HAS DONE; IT HAS TO BE WEIGHED TOTALLY ON THAT.

10 MR. BARENS: NOW, THERE ARE ONLY CERTAIN CIRCUMSTANCES
11 UNDER WHICH THE DEATH PENALTY CAN EVEN BE CONSIDERED, AS HIS
12 HONOR SAID, AND IN THIS INSTANCE, THE ONLY WAY A DEFENDANT
13 WOULD QUALIFY WOULD BE IF YOU BELIEVED THAT A FIRST DEGREE
14 MURDER HAD TAKEN PLACE AS A RESULT OF THE GUILT PHASE OF THE
15 TRIAL.

16 MS. SAUNDERS: UH-HUH.

17 MR. BARENS: YOU KNOW THE WAY THE JUDGE DESCRIBED IT,
18 AND IT IS THE WAY IT IS ACCURATELY SEEN, IS THERE ARE TWO
19 SEPARATE TRIALS THAT COULD OCCUR IN THE COURTROOM, IF YOU
20 WERE A JUROR HERE, THAT YOU WOULD PARTICIPATE IN. THE FIRST
21 BEING THE GUILT PHASE WHERE YOU WOULD HAVE TO MAKE A DECISION
22 BEYOND A REASONABLE DOUBT AS TO WHETHER OR NOT A MURDER, A
23 PREMEDITATED, INTENTIONAL MURDER IN THE FIRST DEGREE TOOK
24 PLACE DURING THE COMMISSION OF A ROBBERY.

25 DO YOU UNDERSTAND THAT WOULD BE THE FIRST
26 ACTIVITY?

27 MS. SAUNDERS: OKAY.

28 MR. BARENS: AND ONLY THEN, IF YOU BELIEVED THAT BEYOND

1 A REASONABLE DOUBT, WOULD THERE BE THE SECOND TRIAL OR THE
2 PENALTY PHASE TRIAL WHERE THIS WHOLE BUSINESS ABOUT LIFE OR
3 DEATH WOULD COME UP. ARE YOU WITH ME ON THAT?

4 MS. SAUNDERS: YES, I AM FOLLOWING YOU.

5 MR. BARENS: OKAY. NOW, IF YOU WERE DEALING WITH WHAT
6 WAS GOING TO HAPPEN TO A DEFENDANT THAT YOU BELIEVED HAD
7 COMMITTED A FIRST DEGREE, PREMEDITATED, INTENTIONAL MURDER
8 DURING A ROBBERY, WOULD YOU BE PREDISPOSED TO SAY THAT HE
9 SHOULD GET THE DEATH PENALTY, THAT THAT WOULD BE THE ONLY
10 THING WE COULD DO WITH THE DEFENDANT THAT HAD COMMITTED THAT
11 SORT OF A CRIME?

12 MS. SAUNDERS: IS ONLY THE DEATH PENALTY, WOULD YOU SAY
13 THAT WOULD BE THE WAY I WOULD LOOK AT IT?

14 MR. BARENS: YES.

15 MS. SAUNDERS: NO.

16 MR. BARENS: YOU WOULD BE WILLING TO LISTEN TO ALL OF
17 THE EVIDENCE --

18 MS. SAUNDERS: YES.

19 MR. BARENS: -- ON THE SECOND PHASE AND THEN DETERMINE
20 WHETHER IT SHOULD BE LIFE WITHOUT POSSIBILITY OF PAROLE OR
21 THE DEATH PENALTY?

22 MS. SAUNDERS: YES, I WOULD.

23 MR. BARENS: ARE YOU CAPABLE OF CONSIDERING BOTH THE
24 POSSIBLE PENALTIES BEFORE MAKING A DECISION?

25 MS. SAUNDERS: UH-HUH.

26 MR. WAPNER: IS THAT YES?

27 MS. SAUNDERS: YES.

28 MR. BARENS: OKAY. WHY I ASK YOU IF YOU ARE CAPABLE

1 IS BECAUSE, YOU KNOW, SOME PEOPLE COULD SAY, WELL, I COULD
2 ONLY CONSIDER LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
3 PAROLE AND I WOULD NEVER CONSIDER THE DEATH PENALTY UNDER
4 ANY CIRCUMSTANCES.

5 MS. SAUNDERS: UH-HUH.

6 MR. BARENS: THAT IS NOT WHAT YOU ARE SAYING, IS IT?

7 MS. SAUNDERS: NO.

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1 MR. BARENS: YOU ARE INDICATING THAT YOU WOULD WEIGH
2 AND CONSIDER BOTH AVAILABLE PENALTIES?

3 MS. SAUNDERS: YES.

4 MR. BARENS: AND IN MAKING THAT DECISION, WOULD YOU
5 BE WILLING TO CONSIDER FACTORS ABOUT THE DEFENDANT, FOR
6 INSTANCE, HIS AGE AT THE TIME THE ALLEGED CRIME WAS COMMITTED?

7 MS. SAUNDERS: UH-HUH.

8 MR. BARENS: WOULD YOU CONSIDER THAT?

9 MS. SAUNDERS: UH-HUH. CAN I ASK YOU A QUESTION?

10 MR. BARENS: ANYTHING.

11 MS. SAUNDERS: ALL RIGHT. YOU WERE SAYING THAT IT WOULD
12 EITHER BE TWO WAYS, LIFE WITHOUT POSSIBILITY OF PAROLE, NO
13 PAROLE AND THAT IS NO PAROLE AT NO TIME?

14 MR. BARENS: NEVER, THAT'S CORRECT.

15 MS. SAUNDERS: OR EITHER THE DEATH PENALTY WOULD BE
16 THE GAS CHAMBER, RIGHT?

17 MR. BARENS: DEFINITELY NO PAROLE AT THAT TIME, THAT'S
18 RIGHT.

19 MS. SAUNDERS: ALL RIGHT. I JUST WANTED TO KNOW.

20 MR. BARENS: RIGHT. BY THE TIME WE GET TO THIS STAGE
21 OF THE PROCEEDINGS, MS. SAUNDERS, THOSE ARE THE ONLY TWO
22 PENALTIES AVAILABLE, AFTER CONVICTION ON A FIRST DEGREE MURDER
23 WITH SPECIAL CIRCUMSTANCES.

24 NOW OF COURSE, THAT ASSUMES THAT YOU FOUND THE
25 SPECIAL CIRCUMSTANCES TO BE TRUE, AS HIS HONOR INDICATED,
26 THAT IT WAS COMMITTED DURING THE COMMISSION OF A ROBBERY.
27 DID THAT CONFUSE YOU?

28 MS. SAUNDERS: YES. AND THEN LIFE WITHOUT POSSIBILITY

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1 OF PAROLE, YES.

2 MR. BARENS: OKAY. LET ME JUST REITERATE VERY BRIEFLY
3 WHAT HIS HONOR INDICATED.

4 NOW ALL MURDERS CAN RESULT IN A DEATH PENALTY
5 SENTENCE.

6 MS. SAUNDERS: UH-HUH.

7 MR. BARENS: AND IF THE MURDER TAKES PLACE DURING CERTAIN
8 KINDS OF SETTINGS --

9 MS. SAUNDERS: YES.

10 MR. BARENS: ONE OF THEM BEING ROBBERY, THAT A MURDER
11 WAS COMMITTED DURING A ROBBERY, THAT IS WHAT WE ARE KIND OF
12 FOCUSING IN ON JUST FOR THESE QUESTIONS, NOT THAT I AM SAYING
13 THAT ANY OF US BELIEVE THAT IS WHAT HAPPENED.

14 FOR THIS DIALOGUE, LET'S SAY THAT, OKAY? AND
15 THAT IS WHEN YOU WOULD HAVE THOSE TWO CHOICES. DO YOU
16 UNDERSTAND?

17 MS. SAUNDERS: YES.

18 MR. BARENS: OKAY. NOW, THE BURDEN OF PROOF THAT THE
19 GOVERNMENT, THE PEOPLE HAVE IN THIS CASE, IS CALLED BEYOND
20 A REASONABLE DOUBT.

21 MS. SAUNDERS: OKAY.

22 MR. BARENS: DO YOU UNDERSTAND THAT YOU ARE NOT TO
23 CONSIDER THE PENALTY A DEFENDANT COULD GET DURING THE GUILT
24 PHASE WHEN YOU ARE DETERMINING WHETHER HE IS GUILTY OR
25 INNOCENT? DO YOU UNDERSTAND THAT?

26 MS. SAUNDERS: YEAH.

27 MR. BARENS: YOU JUST CONSIDER GUILT OR INNOCENCE. YOU
28 DON'T CONSIDER WHAT COULD OR WHAT MIGHT HAPPEN TO THE GUY

1 IF YOU FIND EITHER WAY. DO YOU UNDERSTAND THAT?

2 MS. SAUNDERS: UH-HUH.

3 MR. WAPNER: IS THAT YES?

4 MS. SAUNDERS: YES.

5 MR. BARENS: WE NEED TO HAVE YOU ARTICULATE YOUR ANSWERS
6 BECAUSE THIS LADY CAN'T TAKE IT DOWN OTHERWISE.

7 MS. SAUNDERS: ALL RIGHT. SORRY.

8 MR. BARENS: NOW, JUST BECAUSE I AM HERE TALKING TO
9 YOU ABOUT YOUR VIEWS ON THE DEATH PENALTY AND BECAUSE THE
10 JUDGE DID AS WELL AND BECAUSE MY CLIENT, JOE HUNT IS SITTING
11 DOWN THERE ACCUSED OF A MURDER, DOES THAT MAKE YOU BELIEVE
12 THAT HE MUST HAVE DONE SOMETHING WRONG?

13 MS. SAUNDERS: NO, NOT NECESSARILY. BUT SOMETHING HAS
14 BEEN DONE BECAUSE HE IS HERE.

15 MR. BARENS: WELL, I AM HERE, TOO.

16 THE COURT: WELL, I THOUGHT YOU UNDERSTOOD OF COURSE,
17 THAT MERELY MAKING AN ACCUSATION DOESN'T MEAN HE COMMITTED
18 IT.

19 MS. SAUNDERS: NO. I MEAN YES, YES.

20 MR. BARENS: BUT AS HE SITS THERE, HE IS PRESUMED TO
21 BE INNOCENT.

22 MS. SAUNDERS: OKAY.

23 THE COURT: YOU KNOW THE OLD EXPRESSION ABOUT WHERE
24 THERE IS SMOKE, THERE IS FIRE, THAT HAS NO PART IN THIS CASE.

25 MR. BARENS: HIS HONOR IS QUITE ON POINT. ALL OF US,
26 WHETHER IT WAS YOU AS A DEFENDANT IN THIS COURTROOM OR ME
27 OR ANYBODY ELSE, HAVE AN ABSOLUTE PRESUMPTION OF INNOCENCE
28 UNDER OUR CONSTITUTION UNTIL THERE IS EVIDENCE OR A TRIAL,

1 IF THAT OCCURS, THAT PROVES YOU ARE GUILTY. DO YOU UNDERSTAND
2 THAT?

3 MS. SAUNDERS: UH-HUH.

4 MR. BARENS: AND THE ONLY TYPE OF FIRE WE CAN ACCEPT
5 IN THIS COURTROOM IS EVIDENCE, NOT JUST THE FACT THAT SOMEONE
6 IS SITTING THERE. OKAY?

7 MS. SAUNDERS: OKAY.

8 MR. BARENS: THANK YOU FOR YOUR TIME. THE DEFENSE PASSES
9 FOR CAUSE, YOUR HONOR.

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1 MR. WAPNER: MS. SAUNDERS, CAN YOU ELABORATE A LITTLE
2 BIT FOR ME ON WHAT YOU MEAN WHEN YOU SAY THE DEATH PENALTY
3 SHOULD BE INITIATED ONLY IF THERE IS EVIDENCE DIRECTED TOWARD
4 IT?

5 MS. SAUNDERS: THERE HAS TO BE NO DOUBT THAT THAT
6 PARTICULAR CRIME WAS COMMITTED AND IN THAT WAY, IN ORDER TO --

7 THE COURT: WELL, YOU DON'T UNDERSTAND. IT IS NOT NO
8 DOUBT.

9 THE STANDARD IS REASONABLE DOUBT.

10 MS. SAUNDERS: OKAY.

11 THE COURT: SOMETIMES IT IS IMPOSSIBLE TO PROVE THAT
12 THERE IS NO DOUBT ABOUT SOMETHING.

13 MS. SAUNDERS: REASONABLE DOUBT. SO, I WILL SAY A
14 REASONABLE DOUBT.

15 MR. WAPNER: LET ME GIVE YOU AN EXAMPLE. LET'S SAY
16 THAT YOU WERE SITTING ON A MURDER CASE AND IT DIDN'T START
17 OUT WITH ALL THOSE QUESTIONS ABOUT THE DEATH PENALTY. BUT
18 IT WAS JUST A REGULAR CASE.

19 YOU HEARD THE WHOLE CASE AND THEN YOU WENT INTO
20 THE JURY ROOM TO DELIBERATE AND YOU DECIDED AFTER THINKING
21 ABOUT IT, THAT THE EVIDENCE PROVED THE DEFENDANT GUILTY BEYOND
22 A REASONABLE DOUBT.

23 AND YOU WERE JUST ABOUT TO GIVE YOUR VERDICT AND
24 THEN SOMEONE CAME INTO THE JURY ROOM AND SAID WAIT A MINUTE,
25 DO YOU KNOW THAT IF YOU FIND HIM GUILTY, HE MIGHT GET THE
26 DEATH PENALTY? WOULD THAT CAUSE YOU TO GO BACK AND START
27 THINKING AGAIN WHETHER OR NOT THERE WAS ENOUGH PROOF?

28 MS. SAUNDERS: NO.

1 MR. WAPNER: OKAY.

2 MS. SAUNDERS: NO.

3 MR. WAPNER: SO, IN THIS CASE, EVEN THOUGH YOU KNOW
4 NOW THAT YOU MIGHT SOMEWHERE ALONG THE LINE GET TO THE DEATH
5 PENALTY WHEN YOU ARE IN THE JURY ROOM TRYING TO FIGURE OUT
6 WHETHER OR NOT HE COMMITTED A CRIME, AND IF SO WHAT DEGREE,
7 CAN YOU DO THAT WITHOUT THINKING ABOUT WHAT MIGHT HAPPEN TO
8 HIM IF YOU FIND HIM GUILTY?

9 MS. SAUNDERS: YES.

10 MR. WAPNER: AND WILL YOU REQUIRE MORE PROOF IN YOUR
11 MIND BECAUSE YOU KNOW THAT THE DEATH PENALTY MIGHT BE INVOLVED
12 SOMEWHERE DOWN THE LINE?

13 MS. SAUNDERS: YES I WOULD.

14 MR. BARENS: SORRY. DID THE COURT HEAR THAT ANSWER?

15 THE COURT: WOULD YOU REPEAT IT? I WAS JUST DIRECTING
16 ATTENTION TO COUNSEL, WHO ARE RUSTLING THEIR PAPERS. IT
17 INTERFERES WITH MY HEARING THE ANSWERS.

18 WOULD YOU READ THE QUESTION AND THE ANSWER, PLEASE?

19 MR. WAPNER: WOULD YOU REQUIRE MORE PROOF THAN BEYOND
20 A REASONABLE DOUBT IN YOUR MIND, BECAUSE YOU KNOW THAT YOU
21 MIGHT GET TO THE QUESTION OF THE DEATH PENALTY IN THIS CASE?

22 MS. SAUNDERS: NOW YOU ARE SAYING BEYOND A REASONABLE
23 DOUBT? NO. I WOULDN'T REQUIRE MORE, NOT AT THAT TIME.

24 MR. WAPNER: OKAY. ARE YOU GOING TO REQUIRE MORE PROOF
25 IN THIS MURDER CASE BECAUSE YOU KNOW THAT THE DEATH PENALTY
26 MIGHT BE INVOLVED, THAN YOU WOULD IN SOME OTHER MURDER CASE
27 WHERE YOU KNEW THAT IT WAS NOT INVOLVED?

28 MS. SAUNDERS: OKAY. THEN YES, YES.

1 THE COURT REPORTER: PLEASE KEEP YOUR VOICE UP.

2 MR. WAPNER: WHY?

3 MS. SAUNDERS: WELL, LIKE YOU SAID BECAUSE YOU KNOW,
4 THE DEATH PENALTY IS INVOLVED.

5 THE COURT: I CAN'T HEAR YOU. PRETEND THAT YOU ARE
6 MAD AT YOUR BOYFRIEND. YELL AT HIM.

7 MS. SAUNDERS: BECAUSE, YOU KNOW, THE DEATH PENALTY
8 IS INVOLVED IN THIS CASE.

9 MR. BARENS: THE DEFENSE YOUR HONOR, WOULD TELL THE
10 JUROR THAT THEY WILL BE INSTRUCTED ON WHAT THE STANDARD OF
11 PROOF IS AND --

12 MR. WAPNER: YOUR HONOR, UNLESS THERE IS AN OBJECTION,
13 I THINK THAT EDUCATING THIS JUROR --

14 MR. BARENS: THE OBJECTION IS THAT IT IS MISLEADING.

15 THE COURT: YOU MAY PROCEED. ASK THE QUESTION IN ANOTHER
16 FORM, WILL YOU?

17 MR. WAPNER: THANK YOU.

18 MS. SAUNDERS, PUTTING ASIDE FOR A SECOND WHAT
19 THE JUDGE TELLS YOU, ARE YOU GOING TO REQUIRE MORE PROOF THAN --
20 STRIKE ALL THAT.

21 I WILL TRY TO ASK THE QUESTION A DIFFERENT WAY.
22 YOU HAVE TWO MURDER CASES. IN EACH CASE, BECAUSE IT IS A
23 CRIMINAL CASE, YOU KNOW THAT THE STANDARD OF PROOF IS PROOF
24 BEYOND A REASONABLE DOUBT.

25 AND ASSUME FOR PURPOSES OF THIS QUESTION, THAT
26 BOTH CASES, THE FACTS ARE EXACTLY THE SAME. ALL RIGHT?

27 AND YOU ARE A JUROR ON BOTH CASES. AND THE ONLY
28 DIFFERENCE IS, THAT IN ONE CASE, YOU KNOW THAT THE DEATH PENALTY

1 MIGHT BE INVOLVED IF YOU FIND THE DEFENDANT GUILTY AND IN
2 THE OTHER CASE, YOU KNOW THAT REGARDLESS OF YOUR VERDICT,
3 THE DEATH PENALTY WON'T BE INVOLVED.

4 ARE YOU WITH ME SO FAR?

5 MS. SAUNDERS: UH-HUH.

6 MR. WAPNER: IS THAT YES?

7 MS. SAUNDERS: YES.

8 MR. WAPNER: OKAY. ARE YOU GOING TO REQUIRE PROOF
9 BEYOND A REASONABLE DOUBT IN THE CASE THAT DOESN'T INVOLVE
10 THE DEATH PENALTY AND MORE THAN PROOF BEYOND A REASONABLE
11 DOUBT IN THE CASE THAT DOES INVOLVE THE DEATH PENALTY?

12 MS. SAUNDERS: NO, NO.

13 MR. WAPNER: WILL YOU REQUIRE IN YOUR MIND, THINGS IN
14 THE GUILT PHASE TO BE PROVED BEYOND ALL DOUBT BEFORE YOU COULD
15 FIND THE DEFENDANT GUILTY BECAUSE YOU KNOW THAT THE DEATH
16 PENALTY MIGHT BE INVOLVED SOMETIME LATER?

17 MS. SAUNDERS: CAN I HAVE THAT ONE ONCE AGAIN? SAY
18 THAT ONCE AGAIN.

19 MR. WAPNER: PUTTING ASIDE FOR A MOMENT WHAT THE JUDGE
20 WILL TELL YOU, IN YOUR MIND, WILL YOU REQUIRE THE PROSECUTION
21 TO PROVE THE CASE BEYOND ALL DOUBT BECAUSE YOU KNOW THAT YOU
22 MIGHT HAVE TO DECIDE THE QUESTION OF THE DEATH PENALTY?

23 MR. BARENS: OBJECTION. I CAN'T QUANTIFY THE WORDS
24 "ALL DOUBT." YOU HAVE GOT REASONABLE DOUBT AS THE STANDARD.

25 THE COURT: ANY DOUBT.

26 MR. BARENS: ABSOLUTE DOUBT.

27 THE COURT: ANY DOUBT IS THE SAME THING. ALL RIGHT,
28 GO AHEAD.

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MR. BARENS: ALL DOUBT IS A DIFFERENT WORD, YOUR HONOR.

THE COURT: ANY DOUBT.

MS. SAUNDERS: SO YOU ARE ASKING ME, WOULD I WANT THE
PROSECUTION TO HAVE MORE EVIDENCE?

MR. WAPNER: BECAUSE IT IS A DEATH PENALTY CASE?

MS. SAUNDERS: NO.

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1 MR. WAPNER: HAVE YOU THOUGHT MUCH ABOUT THE DEATH
2 PENALTY BEFORE YOU CAME TO COURT TO SIT ON THIS CASE?

3 MS. SAUNDERS: WELL, I HAD -- I HAD DEALT WITH THE ISSUE
4 ON ONE OF THE BALLOTS BUT I MEAN OTHER THAN THAT, NO.

5 MR. WAPNER: DO YOU REMEMBER IT BEING AN ISSUE DURING
6 THE LAST ELECTION WHEN PEOPLE WERE TALKING ABOUT THE CHIEF
7 JUSTICE?

8 MS. SAUNDERS: YES.

9 MR. WAPNER: DURING THAT TIME, DID YOU HAVE ANY OPINIONS
10 ON IT?

11 MS. SAUNDERS: BEFORE, NO.

12 MR. WAPNER: I AM NOT ASKING --

13 MS. SAUNDERS: YOU MEAN AT THE TIME THAT I VOTED?

14 MR. WAPNER: DURING THE TIME WHEN PEOPLE WERE DISCUSSING
15 THE ELECTION FOR THE SUPREME COURT --

16 MS. SAUNDERS: OKAY.

17 MR. WAPNER: -- THERE WAS A LOT OF TALK ABOUT THE
18 VIEWS OF THE SUPREME COURT ABOUT THE DEATH PENALTY; DO YOU
19 REMEMBER THAT?

20 MS. SAUNDERS: UH-HUH.

21 MR. WAPNER: IS THAT YES?

22 MS. SAUNDERS: YES.

23 MR. WAPNER: DID YOU HAVE ANY OPINION DURING THAT
24 ELECTION ABOUT THE DEATH PENALTY?

25 MS. SAUNDERS: YES.

26 MR. WAPNER: WHAT WAS IT?

27 MS. SAUNDERS: I FELT THAT IT SHOULD BE INITIATED.

28 MR. WAPNER: THAT WE SHOULD HAVE THE DEATH PENALTY?

1 MS. SAUNDERS: YES.

2 MR. WAPNER: AND IF YOU ARE A JUROR ON THIS CASE, IT
3 WOULDN'T BE A POLITICAL ISSUE BUT YOU WILL BE REQUIRED TO CAST
4 YOUR OWN INDIVIDUAL BALLOT AS TO WHETHER THIS DEFENDANT SHOULD
5 SPEND THE REST OF HIS LIFE IN PRISON OR SHOULD DIE IN THE GAS
6 CHAMBER; DO YOU UNDERSTAND THAT?

7 MS. SAUNDERS: YES.

8 MR. WAPNER: IF IT COMES DOWN TO YOU HAVING TO MAKE
9 THAT DECISION, IS THAT A DECISION YOU THINK YOU COULD MAKE?

10 MS. SAUNDERS: YES, AFTER HEARING THE EVIDENCE AT TRIAL,
11 YES.

12 MR. WAPNER: DO YOU HAVE ANY STRONG RELIGIOUS CONVICTIONS
13 THAT WOULD AFFECT YOUR ABILITY TO DECIDE THIS QUESTION?

14 MS. SAUNDERS: NO.

15 MR. WAPNER: DO YOU HAVE ANY STRONG MORAL VIEWS THAT
16 WOULD AFFECT YOUR ABILITY TO DECIDE THIS QUESTION?

17 MS. SAUNDERS: NO.

18 MR. WAPNER: WHEN IT GETS RIGHT DOWN TO IT IN THE JURY
19 ROOM, ARE YOU GOING TO BE THE KIND OF PERSON WHO SAYS,
20 REGARDLESS OF THE EVIDENCE I JUST CAN'T PARTICIPATE IN PUTTING
21 SOMEONE TO DEATH?

22 MS. SAUNDERS: NO.

23 MR. WAPNER: WHEN YOU ARE DECIDING THE QUESTION OF
24 WHETHER THE DEFENDANT IS GUILTY OR NOT, CAN YOU KEEP OUT OF
25 YOUR MIND WHAT MIGHT HAPPEN TO HIM IF YOU FIND HIM GUILTY?

26 MS. SAUNDERS: YES, BUT --

27 MR. WAPNER: CAN YOU MAKE THE DECISION WHETHER HE IS
28 GUILTY OR NOT WITHOUT THINKING ABOUT THE FACT HE MIGHT GET

1 THE DEATH PENALTY IF YOU FIND HIM GUILTY?

2 MS. SAUNDERS: THAT IS DIFFICULT.

3 THE COURT: I COULDN'T HEAR.

4 MS. SAUNDERS: I CAN'T JUST TOTALLY PUT OUT THAT HE MIGHT BE
5 CONSIDERED FOR THE DEATH PENALTY, NO, BECAUSE I KNOW THAT
6 HE CAN BE. I MEAN I CAN'T TOTALLY JUST WIPE THAT OUT, NO.

7 MR. WAPNER: WHEN YOU ARE DECIDING WHETHER HE IS
8 GUILTY OR NOT, WHAT EFFECT DO YOU THINK IT IS GOING TO
9 HAVE ON YOU THAT HE MIGHT GET THE DEATH PENALTY IF YOU
10 FIND HIM GUILTY?

11 MS. SAUNDERS: WELL, AFTER FINDING HIM GUILTY, IF THAT
12 IS WHAT THE VERDICT WOULD BE, I WOULD JUST HAVE TO GO ON
13 WITH MY LIFE. I COULDN'T -- IT COULDN'T -- I COULDN'T LET
14 IT AFFECT ME.

15 MR. WAPNER: I DON'T THINK YOU UNDERSTOOD MY QUESTION
16 AND I AM SORRY IF IT WASN'T CLEAR.

17 WHEN YOU ARE DECIDING WHETHER HE IS GUILTY OR
18 WHETHER HE IS NOT GUILTY --

19 MS. SAUNDERS: UH-HUH.

20 MR. WAPNER: -- NOT THE PENALTY PART, JUST THE GUILTY
21 PART.

22 MS. SAUNDERS: OH, OKAY.

23 MR. WAPNER: WHEN YOU ARE DECIDING THAT PART OF THE
24 CASE, HOW IS IT GOING TO AFFECT YOU THAT HE MIGHT GET THE
25 DEATH PENALTY IF YOU FIND HIM GUILTY?

26 MS. SAUNDERS: IT WOULDN'T AFFECT ME IN ANY WAY.

27 MR. WAPNER: I AM SORRY?

28 MS. SAUNDERS: IT WOULDN'T AFFECT ME IN ANY WAY.

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1 MR. WAPNER: SO YOU CAN PUT THAT QUESTION OUT OF YOUR
2 MIND WHEN YOU ARE TRYING TO DECIDE WHETHER HE IS GUILTY OR
3 NOT?

4 MS. SAUNDERS: I WILL TRY.

5 MR. WAPNER: CAN YOU PROMISE THAT YOU CAN DO THAT?

6 MS. SAUNDERS: NO, NO.

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1 MR. WAPNER: THE JUDGE IS GOING TO TELL YOU THAT WHEN
2 YOU ARE DECIDING THE QUESTION OF HIS GUILT OR INNOCENCE, YOU
3 CAN'T THINK ABOUT THE FACT THAT HE MIGHT GET THE DEATH
4 PENALTY IF YOU FIND HIM GUILTY.

5 MS. SAUNDERS: UH-HUH.

6 MR. WAPNER: IF THE JUDGE TELLS YOU THAT, CAN YOU DO
7 THAT?

8 MS. SAUNDERS: I COULD TRY.

9 I CANNOT PROMISE YOU BECAUSE I KNOW THAT THAT
10 IS ONE OF THE CONDITIONS AND THAT WOULD BE IN MY MIND. I
11 MEAN I CAN'T TOTALLY ERASE THAT.

12 MR. WAPNER: IF YOU ARE CHOSEN -- OKAY. THANK YOU,
13 YOUR HONOR. I HAVE NO FURTHER QUESTIONS.

14 I DO HAVE A MOTION, HOWEVER.

15 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. WOULD YOU
16 JUST WAIT OUTSIDE?

17 MS. SAUNDERS: SURE.

18 THE COURT: JUST WAIT A MOMENT, PLEASE. WE HAVE SOME
19 LEGAL QUESTIONS TO DECIDE.

20 (PROSPECTIVE JUROR SAUNDERS EXITS THE
21 COURTROOM.)

22 THE COURT: ALL RIGHT.

23 MR. WAPNER: IT APPEARS TO ME THAT THIS JUROR WOULD
24 NOT BE ABLE TO FOLLOW THE OATH TO FAIRLY TRY THE CASE IF
25 SHE CAN'T FOLLOW THE COURT'S INSTRUCTION WHERE THE COURT
26 SAYS THAT YOU CAN'T CONSIDER PENALTY DURING THE GUILT
27 PHASE, WHICH SEEMS TO ME THAT IS WHAT SHE IS SAYING.

28 MR. BARENS: YOUR HONOR, RESPECTFULLY, SHE SAID IT

1 WOULD NOT AFFECT HER. SHE SAID SHE COULD VOTE FOR THE DEATH
2 PENALTY. SHE SAID, KNOWING HE COULD GET THE DEATH PENALTY,
3 SHE COULD VOTE FOR IT. AND SHE USED THE WORDS, "IT WOULDN'T
4 AFFECT ME."

5 SHE SAID, AS ANY HUMAN BEING CAN SAY, IN ALL
6 TRUTH, HOW COULD SHE EVER SAY IT IS NOT IN HER HEAD, THAT
7 SHE IS AWARE HE COULD GET THE DEATH PENALTY OR HE COULD GET
8 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE, HOW COULD
9 SHE PROMISE -- FRED -- MR. WAPNER -- SHE WOULD NOT BE AWARE
10 OF IT ANYMORE? THAT IS AN IMPOSSIBILITY FOR HUMANS.

11 THE COURT: I THINK SHE EXPRESSED HER OPINION THAT SHE
12 IS NOT OPPOSED TO THE DEATH PENALTY IN A PARTICULAR CASE, THAT
13 IS THE CONCLUSION THAT I MADE.

14 YOU MIGHT GET HER IN, PLEASE.

15 (PROSPECTIVE JUROR SAUNDERS ENTERS THE
16 COURTROOM.)

17 THE COURT: ALL RIGHT, YOU CAN STAY THERE.

18 THE COURT HAS FOUND YOU TO BE QUALIFIED TO ACT
19 AS A TRIAL JUROR IN THIS CASE.

20 MS. SAUNDERS: UH-HUH.

21 THE COURT: AND THE COURT WILL ASK YOU TO COME BACK
22 ON MONDAY WHEN WE WILL HAVE ALL THE OTHER JURORS BACK.

23 MS. SAUNDERS: OKAY.

24 THE COURT: THEN WE WILL START TO COMPLETE THE SELECTION
25 OF THE JURY.

26 YOU BE HERE MONDAY AT 10:30, ALL RIGHT?

27 MS. SAUNDERS: ALL RIGHT.

28 THE COURT: THAT IS IN THE JURY ASSEMBLY ROOM AT

1 10:30 ON MONDAY.

2 MS. SAUNDERS: OKAY.

3 THE COURT: WE WILL SEE YOU THEN.

4 MS. SAUNDERS: ALL RIGHT.

5 (PROSPECTIVE JUROR SAUNDERS EXITS THE
6 COURTROOM.)

7 (PROSPECTIVE JUROR SCHWARTZ ENTERS THE
8 COURTROOM.)

9 THE COURT: GOOD AFTERNOON, MR. SCHWARTZ.

10 MR. SCHWARTZ: GOOD AFTERNOON.

11 THE COURT: WHERE DO YOU LIVE, SIR?

12 MR. SCHWARTZ: LOS ANGELES.

13 THE COURT: WHICH PART OF IT?

14 MR. SCHWARTZ: NEAR CULVER CITY.

15 THE COURT: HAVE YOU HEARD OR READ ANYTHING AT ALL
16 ABOUT THIS CASE, EXCEPT WHAT I TOLD YOU IN COURT ON MONDAY?

17 MR. SCHWARTZ: NO.

18 THE COURT: DOES THE EXPRESSION BILLIONAIRE BOYS CLUB
19 RING A BELL?

20 MR. SCHWARTZ: WHICH?

21 THE COURT: BILLIONAIRE BOYS CLUB?

22 MR. SCHWARTZ: YES.

23 THE COURT: WHAT DO YOU REMEMBER ABOUT THAT?

24 MR. SCHWARTZ: THAT IS ABOUT IT. SOMETHING ABOUT THAT,
25 YES.

26 THE COURT: SOMETHING ABOUT BILLIONAIRE BOYS CLUB?

27 MR. SCHWARTZ: YES.

28 THE COURT: THAT IS ALL YOU KNOW?

1 MR. SCHWARTZ: YES.

2 THE COURT: WHERE DID YOU HEAR IT?

3 MR. SCHWARTZ: IT WAS IN THE PAPER.

4 THE COURT: WHICH PAPER DID YOU READ?

5 MR. SCHWARTZ: L.A. TIMES.

6 THE COURT: THAT WAS SOME WEEKS AGO, WAS IT?

7 MR. SCHWARTZ: I CAN'T REALLY RECALL.

8 THE COURT: BUT YOU DID READ THE ARTICLE?

9 MR. SCHWARTZ: YES, AND I DON'T RECALL ANY PART OF IT.

10 THE COURT: NOTHING AT ALL?

11 MR. SCHWARTZ: OTHER THAN THAT CATCH PHRASE.

12 THE COURT: IF DURING THE COURSE OF THE TRIAL, IF
13 THINGS COME BACK TO YOU, YOU WILL BE GUIDED BY THE EVIDENCE
14 YOU HEAR AND NOT BY WHAT YOU MIGHT RECALL FROM HAVING READ
15 THE NEWSPAPER; ISN'T THAT TRUE?

16 MR. SCHWARTZ: I UNDERSTAND THAT.

17 THE COURT: ALL RIGHT. WHATEVER YOU MIGHT HAVE READ,
18 OF COURSE, YOU JUST FORGET ABOUT IT, WILL YOU?

19 MR. SCHWARTZ: I AM HAVING TROUBLE REMEMBERING.

20 THE COURT: GOOD, KEEP ON FORGETTING IT.

21 I AM GOING TO BRIEFLY TELL YOU ABOUT THE CASE,
22 ALTHOUGH I TOLD IT TO YOU LAST MONDAY, AND ONLY AS A BACK-
23 GROUND FOR QUESTIONS THAT I AM GOING TO ASK YOU AND WHICH
24 COUNSEL WILL ASK YOU.

25 THOSE QUESTIONS ARE WITH RESPECT TO YOUR MIND
26 SET AND REACTION AND WHAT YOUR OPINIONS ARE WITH RESPECT TO
27 THE DEATH PENALTY.

28 ALL RIGHT, FIRST I WANT TO REMIND YOU THAT THE

1 CHARGE AGAINST THIS DEFENDANT -- AND IT IS ONLY A CHARGE
2 BECAUSE THAT IS ALL IT IS, THERE IS NO PROOF THAT HE DID
3 ANY OF WHAT I AM TELLING YOU YET -- HE IS PRESUMED TO BE
4 INNOCENT UNTIL THE CONTRARY IS PROVED BEYOND A REASONABLE
5 DOUBT.

6 SO THE CHARGE AGAINST THE DEFENDANT IS THAT HE
7 COMMITTED A MURDER AND IT WAS A MURDER IN THE FIRST DEGREE
8 AND THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY.

9 AS I TOLD THE JURORS, AND I WANT TO REMIND YOU
10 AGAIN, COMMITTING A MURDER BY ITSELF, EVEN IF IT IS DELIBERATE,
11 INTENTIONAL, PLANNED AND EXECUTED, DOESN'T QUALIFY IT FOR THE
12 DEATH PENALTY.

13 IT IS ONLY WHERE THE MURDER IS PERPETRATED UNDER
14 CERTAIN SPECIAL CIRCUMSTANCES. NOW, A SPECIAL CIRCUMSTANCE
15 IS, FOR EXAMPLE, IF IT WAS COMMITTED DURING THE COURSE OF
16 A ROBBERY, AS ALLEGED IN THIS CASE, OR A BURGLARY OR A
17 KIDNAPPING OR A RAPE OR CHILD MOLESTATION WHERE THE CHILD
18 DIES OR MULTIPLE MURDERS OR TORTURES, THERE ARE A NUMBER OF
19 THEM, 19 IN ALL WHERE THERE ARE THE SPECIAL CIRCUMSTANCES
20 WHICH QUALIFY THAT PARTICULAR MURDER FOR THE CONSIDERATION
21 OF THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

22 (PROSPECTIVE JUROR SCHWARTZ NODS HIS
23 HEAD UP AND DOWN.)

24 THE COURT: NOW, THE JURY WHICH WILL BE IMPANELED TO
25 TRY THIS CASE WILL FIRST HAVE TO DETERMINE THE GUILT OR
26 INNOCENCE OF THE DEFENDANT, WHICH IS KNOWN AS THE GUILT PHASE
27 OF THE TRIAL. THAT IS THE FIRST PART OF IT.

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1 THE GUILT OR INNOCENCE OF THE DEFENDANT THAT IS
2 IF HE IS INNOCENT, THAT IS THE END OF IT. IF YOU FIND HIM
3 GUILTY OF THE MURDER IN THE FIRST DEGREE, THEN YOU WOULD ANSWER
4 ANOTHER QUESTION, IS IT TRUE OR IS IT FALSE THAT IT WAS
5 COMMITTED DURING THE COURSE OF A ROBBERY.

6 IF IT IS TRUE THEN THAT QUALIFIES THE CASE BECAUSE
7 OF THE SPECIAL CIRCUMSTANCES, FOR CONSIDERATION OF THE DEATH
8 PENALTY. NOW, WHEN I TALK ABOUT THE DEATH PENALTY, IT HAS
9 GOT TWO ASPECTS.

10 THE JURY HAS A RIGHT TO SELECT EITHER LIFE
11 WITHOUT POSSIBILITY OF PAROLE OR DEATH IN THE GAS CHAMBER,
12 DEPENDING UPON ALL OF THE TOTALITY OF THE EVIDENCE YOU HAVE
13 HEARD IN THE CASE, INCLUDING TESTIMONY WHICH THEY HEAR ON
14 THE PENALTY PHASE.

15 THE SAME JURY, IF IT FINDS THE DEFENDANT GUILTY
16 OF MURDER IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES AND
17 IT WAS COMMITTED IN THE COURSE OF A ROBBERY, THEN THAT SAME
18 JURY WILL HEAR OTHER TESTIMONY FROM THE DEFENSE AND FROM THE
19 PROSECUTION. THE PURPOSE OF THAT TESTIMONY FROM THE POINT
20 OF VIEW OF THE DEFENDANT, IS TO SHOW FACTORS AND YOU MUST
21 CONSIDER THEM -- WHICH ARE FAVORABLE, MIGHT BE FAVORABLE TO
22 HIM, HIS AGE, HIS BACKGROUND, HIS EDUCATION AND THE ABSENCE
23 OF ANY VIOLENT CRIMES IN THE PAST, HIS MENTAL AND PHYSICAL
24 CONDITION, ANY FACTOR OR ANY KIND OF A FACTOR WHICH WOULD
25 HAVE A BEARING, WHICH MAY BE FAVORABLE TO HIM.

26 OBVIOUSLY, HE IS NOT GOING TO SHOW YOU ANY
27 UNFAVORABLE THINGS ABOUT HIMSELF. THE REASON FOR THAT IS
28 BECAUSE THEN HE WOULD WANT TO TRY TO PERSUADE THE JURY TO

16A-2
1 ADOPT THE LESSER OF THE TWO PENALTIES WHICH WOULD BE LIFE
2 WITHOUT POSSIBILITY OF PAROLE.

3 THE PROSECUTION ON THE OTHER HAND, WILL SHOW WHAT
4 WE CALL AGGRAVATING CIRCUMSTANCES, SHOW THAT HE IS A BAD
5 PERSON ESSENTIALLY AND THAT HE IS NOT ENTITLED TO ANY
6 CONSIDERATION, THAT HE IS NOT A NICE PERSON, HE IS A BAD
7 PERSON.

8 AND THE PURPOSE OF THAT TESTIMONY OF COURSE, IS
9 TO HAVE YOU IMPOSE THE MOST SEVERE OF THE PENALTIES AGAINST
10 HIM. NOW, YOU LISTEN TO ALL OF THAT. YOU MUST CONSIDER ALL
11 OF THE TESTIMONY THAT YOU HEAR ON THE PENALTY PHASE AND YOU
12 MUST CONSIDER ALSO ALL OF THE FACTS THAT YOU HAVE HEARD ON
13 THE GUILT PHASE, TOO, IN DETERMINING ULTIMATELY WHAT PENALTIES
14 SHOULD BE IMPOSED, IF ANY. DO YOU UNDERSTAND THAT,
15 MR. SCHWARTZ?

16 MR. SCHWARTZ: YES, SIR.

17 THE COURT: ALL RIGHT. WITH THAT LONG PRELIMINARY,
18 I WILL NOW ASK YOU THE QUESTIONS DEALING WITH YOUR STATE OF
19 MIND AS TO THE DEATH PENALTY. THE FIRST TWO QUESTIONS RELATE
20 TO THE GUILT PHASE OF IT.

21 DO YOU HAVE SUCH AN OPINION AS TO THE DEATH PENALTY,
22 WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU FROM REACHING
23 AN IMPARTIAL DECISION AS TO THE GUILT OR INNOCENCE OF THE
24 DEFENDANT?

25 MS. SCHWARTZ: NO.

26 THE COURT: OKAY. AND SIMILARLY, DO YOU HAVE SUCH AN
27 OPINION WITH RESPECT TO THE DEATH PENALTY, THAT IT WOULD
28 PREVENT YOU FROM REACHING AN IMPARTIAL DECISION AS TO WHETHER

16A-3
1 OR NOT THAT MURDER WAS COMMITTED IN THE COURSE OF A ROBBERY,
2 WITH SPECIAL CIRCUMSTANCES?

3 MR. SCHWARTZ: NO.

4 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS
5 I WILL ASK YOU RELATE TO THE PENALTY PHASE. ASSUMING THAT
6 THE JURY HAS CONVICTED THE DEFENDANT OF MURDER IN THE FIRST
7 DEGREE WITH SPECIAL CIRCUMSTANCES, IT WAS COMMITTED DURING
8 THE COURSE OF A ROBBERY, THESE ARE THE TWO QUESTIONS: FIRST,
9 DO YOU HAVE AN OPINION WITH RESPECT TO THE DEATH PENALTY,
10 THAT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY
11 REGARDLESS OF ANY EVIDENCE THAT YOU MIGHT HAVE HEARD ON THE
12 PENALTY PHASE OF THE CASE?

13 MR. SCHWARTZ: NO.
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1 THE COURT: THE SAME WAY WITH RESPECT TO LIFE WITHOUT
2 POSSIBILITY OF PAROLE. DO YOU HAVE SUCH AN OPINION AS TO
3 THE DEATH PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE
4 THE DEATH PENALTY, IRRESPECTIVE OF THE TESTIMONY YOU HEARD
5 IN THE PENALTY PHASE OF THE CASE?

6 MR. SCHWARTZ: NO.

7 THE COURT: ALL RIGHT. THAT IS WITH REGARD TO LIFE
8 WITHOUT POSSIBILITY OF PAROLE. I DID SAY THAT.

9 NOW, LASTLY, YOU KNOW OF COURSE, WHEN I HAVE
10 ASKED YOU THESE QUESTIONS WITH RESPECT TO THE DEATH PENALTY,
11 IT IS ONLY BECAUSE I HAVE TO. WE MAY NEVER REACH THAT PHASE
12 OF THE CASE. DO YOU UNDERSTAND THAT?

13 MR. SCHWARTZ: I UNDERSTAND.

14 THE COURT: ALL RIGHT. MR. BARENS?

15 MR. BARENS: THANK YOU.

16 GOOD AFTERNOON, MR. SCHWARTZ. I AM ARTHUR BARENS.
17 I REPRESENT JOE HUNT. AS WAS THE CASE WITH HIS HONOR, IT
18 IS MY OBLIGATION TO INQUIRE AS TO YOUR OPINION ABOUT THE DEATH
19 PENALTY AT THIS POINT. THERE ARE NO RIGHT OR WRONG ANSWERS
20 TO ANY OF THESE QUESTIONS. THERE ARE NO GOOD OR BAD ANSWERS,
21 JUST YOUR OPINION, TO SEE IF YOU QUALIFY AS A JUROR. DO YOU
22 UNDERSTAND THAT?

23 MR. SCHWARTZ: YES.

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

26 MR. SCHWARTZ: I FEEL IT IS NECESSARY. DO YOU WANT
27 ME TO QUALIFY THAT?

28 MR. BARENS: IF YOU CAN.

1 MR. SCHWARTZ: YES. A DETERRENT --

2 THE COURT: WHAT? A DETERRENT?

3 MR. SCHWARTZ: A DETERRENT.

4 MR. BARENS: DO YOU FEEL THAT THERE ARE INSTANCES WHERE
5 THE DEATH PENALTY IS APPROPRIATE, THAT YOU COULD TELL ME ABOUT?
6 ARE THERE CERTAIN TYPES OF CRIMES OR CONDUCT?

7 MR. SCHWARTZ: PREMEDITATED, VICIOUS CRIMES.

8 MR. BARENS: ALL RIGHT, SIR. WOULD IT BE YOUR OPINION
9 THAT IN EVERY INSTANCE OF A FIRST DEGREE, PREMEDITATED,
10 INTENTIONAL MURDER, THAT A PERSON WHO IS GUILTY BEYOND A
11 REASONABLE DOUBT OF THAT KIND OF CONDUCT, THAT THE ONLY
12 APPROPRIATE PENALTY WOULD BE THE DEATH PENALTY?

13 MR. SCHWARTZ: YES.

14 MR. BARENS: OKAY.

15 THE COURT: PARDON ME. DO YOU REMEMBER MY TELLING YOU
16 THAT THERE IS A SECOND PHASE OF THE CASE WHERE YOU CONSIDER
17 THE PENALTY?

18 MR. SCHWARTZ: YES.

19 THE COURT: YOU DON'T ARRIVE AT ANY PENALTY UNTIL YOU
20 HAVE FOUND THE MAN COMMITTED A MURDER DELIBERATELY,
21 INTENTIONALLY, DURING THE COURSE OF A ROBBERY.

22 THEN COMES THE SECOND PHASE OF IT. IS IT YOUR
23 TESTIMONY THAT YOU WOULDN'T LISTEN TO ANY OF THE TESTIMONY
24 ON THE SECOND PHASE, BUT IMMEDIATELY VOTE THE DEATH PENALTY
25 WITHOUT CONSIDERING WHAT YOU HEARD?

26 MR. SCHWARTZ: NO. YOU ADDED A LOT OF QUALIFICATIONS.
27 I UNDERSTOOD HIM TO --

28 THE COURT: THAT IS BECAUSE OF THE FORM OF THE QUESTION.

1 MR. BARENS: LET ME GO INTO THE SECOND PHASE. DURING
2 THE SECOND PHASE, LET ME RESET THIS FOR YOU IN A NEW SETTING,
3 MR. SCHWARTZ.

4 BEFORE YOU EVER GET TO THAT SECOND PHASE, IF YOU
5 ARE A JUROR, YOU AND THE REST OF THE JURORS WOULD FIRST HAVE
6 TO BELIEVE BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT YOU
7 WERE TALKING ABOUT, HAD IN FACT, COMMITTED A FIRST DEGREE,
8 PREMEDITATED, INTENTIONAL MURDER DURING THE COMMISSION OF
9 A ROBBERY.

10 NOW, WE ARE AT THE SECOND OR GUILT PHASE. WE
11 HAVE GOT TO DETERMINE WHAT WE ARE GOING TO DO. THERE ARE
12 TWO ALTERNATIVES, LIFE WITHOUT POSSIBILITY OF PAROLE OR THE
13 DEATH PENALTY.

14 COUNSEL WOULD BE INTRODUCING EVIDENCE ABOUT THE
15 BACKGROUND OF THE DEFENDANT, HIS AGE AT THE ALLEGED COMMISSION
16 OF THE CRIME, AT THE TIME OF THE ALLEGED COMMISSION OF THE
17 CRIME, WHETHER OR NOT HE HAD A PRIOR HISTORY OF CRIMINAL
18 CONDUCT, HIS CHARACTER.

19 WOULD YOU BE WILLING TO CONSIDER THAT TYPE OF
20 EVIDENCE OR WOULD YOU FEEL THAT SINCE YOU HAD ALREADY
21 CONVICTED HIM OF A FIRST DEGREE MURDER, THAT THE ONLY PENALTY
22 THAT WAS APPROPRIATE, WAS THE DEATH PENALTY?

23 MR. SCHWARTZ: I WOULD CONSIDER THAT EVIDENCE.

24 MR. BARENS: ALL RIGHT. THE FACT THAT YOU COULD
25 CONSIDER THAT EVIDENCE, IS IT POSSIBLE IN YOUR MIND THAT YOU
26 WOULD BE CAPABLE OF VOTING FOR LIFE WITHOUT POSSIBILITY OF
27 PAROLE FOR A DEFENDANT WHO YOU HAD FIRST CONVICTED OF FIRST
28 DEGREE MURDER?

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MR. SCHWARTZ: YES.

MR. BARENS: WHAT WOULD INFLUENCE YOU IN COMING TO THAT
DECISION?

MR. SCHWARTZ: I THINK YOU SET IT UP, YOURSELF. IT
IS AGE, CHARACTER, ALL OF THOSE THINGS.

16B F

16P
1 MR. BARENS: SO THOSE THINGS WOULD HAVE A BEARING ON
2 YOUR ULTIMATE DECISION-MAKING PROCESS, SIR?

3 MR. SCHWARTZ: YES, SIR.

4 MR. BARENS: NOW, DO YOU BELIEVE THAT THE DEATH PENALTY
5 IS A DETERRENT AGAINST CRIME? STRIKE THAT. SORRY.

6 DO YOU BELIEVE THAT THE DEATH PENALTY IS A
7 DETERRENT AGAINST MURDER?

8 MR. SCHWARTZ: IT HAS THREE FACETS. IT IS A DETERRENT.
9 IT IS A PUNISHMENT. AND IT IS ALSO PREVENTING A GUILTY PERSON
10 FROM EVER DOING IT AGAIN.

11 MR. BARENS: ALL RIGHT. NOW, ONE WOULD ASSUME, WOULD
12 WE NOT, THAT LIFE WITHOUT POSSIBILITY OF PAROLE WOULD
13 ACCOMPLISH THE SAME THINGS, AT LEAST AS TO THE THIRD ASPECT?

14 MR. SCHWARTZ: UNDER CERTAIN CIRCUMSTANCES, YES.

15 MR. BARENS: ALL RIGHT. LET ME TELL YOU THE ONLY
16 CIRCUMSTANCE THAT THAT MEANS IN THIS COURTROOM. LIFE WITHOUT
17 POSSIBILITY OF PAROLE MEANS PRECISELY THAT, AS HIS HONOR HAS
18 SAID.

19 IF YOU HAVE ANY LINGERING SUSPICION, MR. SCHWARTZ,
20 THAT A DEFENDANT CONVICTED UNDER THOSE CIRCUMSTANCES AND
21 SENTENCED COULD EVER GET OUT, THAT WOULD NOT BE ACCURATE.

22 UNDER THE LAW, HE WOULD NEVER BE ELIGIBLE FOR
23 PAROLE. DO YOU ACCEPT THAT, SIR?

24 MR. SCHWARTZ: NEVER?

25 MR. BARENS: NEVER.

26 MR. SCHWARTZ: I ACCEPT IT.

27 MR. BARENS: YOU WOULD NOT THINK I AM JUST GIVING YOU
28 LAWYER TALK NOW AND JUST SAYING THAT? WHAT DO YOU THINK?

1 DO YOU HAVE A LINGERING DOUBT ABOUT THAT, MR. SCHWARTZ?

2 MR. SCHWARTZ: VERY LINGERING.

3 MR. BARENS: QUITE SO. HIS HONOR WILL TELL YOU AGAIN,
4 WOULD INSTRUCT YOU AGAIN, THAT WHAT I AM TELLING YOU IS THE
5 TRUE STATE OF THE LAW, THAT THERE IS NO POSSIBILITY OF PAROLE,
6 IF CONVICTED ON A DEATH PENALTY CASE.

7 WOULD YOU ACCEPT THAT WITHOUT A LINGERING DOUBT,
8 SIR?

9 MR. SCHWARTZ: YES.

10 MR. BARENS; ALL RIGHT. BECAUSE IT IS THE LAW. THAT
11 IS THE ONLY REASON I SAY THAT.

12 DO YOU FEEL CAPABLE THEN, OF VOTING FOR LIFE
13 WITHOUT POSSIBILITY OF PAROLE, IF YOU FELT THE EVIDENCE, THE
14 BIOGRAPHICAL DATA ON THE DEFENDANT, WARRANTED THAT?

15 MR. SCHWARTZ: YES.

16 MR. BARENS: ALL RIGHT. DO YOU UNDERSTAND THAT THERE
17 IS NOTHING MANDATORY IN OUR LEGAL SYSTEM FOR ANY SORT OF
18 CONDUCT, THAT MANDATES THE DEATH PENALTY?

19 MR. SCHWARTZ: YES.

20 MR. BARENS: ALL RIGHT. IT IS A JUROR DECISION THAT
21 YOU WOULD HAVE TO MAKE.

22 MR. SCHWARTZ: I UNDERSTAND.

23 MR. BARENS: I ONLY EXPRESS THAT YOU NEED TO RESPOND
24 AUDIBLY FOR THE REPORTER.

25 MR. SCHWARTZ: YES.

26 MR. BARENS: MR. SCHWARTZ, WOULD YOU FEEL THAT IF YOU
27 VOTED FOR LIFE WITHOUT POSSIBILITY OF PAROLE AFTER FIRST
28 HAVING CONVICTED A DEFENDANT OF A FIRST DEGREE MURDER, THAT

1 YOU WOULD BE LESSENING THE DETERRENT VALUE OF THE DEATH PENALTY?

2 MR. SCHWARTZ: NO.

3 MR. BARENS: HOW DO YOU RECONCILE THAT, SIR?

4 THE COURT: WELL, I TOLD YOU, DID I NOT, THAT HE WOULD
5 NEVER GET OUT? SO THEREFORE, HE SAID ONE OF THE REASONS WHY
6 HE PREFERRED THE DEATH PENALTY, IS THAT HE WOULDN'T GET OUT
7 AND MURDER SOMEBODY ELSE AGAIN. IS THAT WHAT YOU SAID?

8 MR. BARENS: THERE WERE TWO OTHER CONCERNS OR BELIEFS
9 HE HAS ABOUT THE DEATH PENALTY THAT I WANTED TO SEE
10 RECONCILED WITH HIM.

11 THE COURT: GO AHEAD.

12 MR. BARENS: IF YOU WOULD, YOUR HONOR?

13 THE COURT: THAT QUESTION AGAIN?

14 MR. BARENS: IF WE COULD HAVE IT BACK, PLEASE?

15 THE COURT: SURE.

16 (THE RECORD WAS READ BY THE REPORTER.)

17 MR. SCHWARTZ: WELL, I THINK THAT LIFE WITHOUT
18 POSSIBILITY OF PAROLE IS ALMOST AN EQUAL DETERRENT VALUE,
19 PUNISHMENT VALUE.

20 MR. BARENS: PRECISELY MY POINT, AS WELL, SIR.

21 MR. SCHWARTZ, LET ME GO BACK FOR A MINUTE.

22 I REALIZE THAT YOU HAVE TESTIFIED THAT YOU READ A LOS ANGELES
23 TIMES ARTICLE INVOLVING PERHAPS, THIS CASE. I SUBMIT TO YOU
24 IF IT REFERENCED THE BILLIONAIRE BOYS CLUB, IT DID.

25 COULD YOU TELL US IF, AFTER READING THAT, HAVE
26 YOU COME TO SOME CONCLUSION AS TO WHETHER OR NOT A MURDER
27 HAS TAKEN PLACE?

28 MR. SCHWARTZ: NO.

1 MR. BARENS: ARE YOU TELLING ME THAT YOU CAN'T RECALL
2 OR ARE YOU TELLING ME THAT YOU DID NOT COME TO A CONCLUSION?

3 MR. SCHWARTZ: I CAN'T RECALL A CONCLUSION.
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1 MR. BARENS: ALL RIGHT. THE WAY YOUR PERCEPTION OF
2 THE TRUTHFULNESS OF REPORTING IT, WHEN YOU HEAR OR READ IN
3 THE NEWSPAPER ABOUT A CRIME THAT A FELLOW IS CHARGED WITH
4 AND, YOU KNOW, YOU READ AN ARTICLE "TRIAL FOR JOHN SMITH ON
5 MURDER CHARGES COMMENCING IN DOWNTOWN LOS ANGELES TODAY,"
6 DO YOU FEEL THAT THE REPORTING OF THAT IS NECESSARILY ACCURATE
7 WHEN YOU READ IT IN THE NEWSPAPER?

8 MR. SCHWARTZ: NO.

9 MR. BARENS: YOU UNDERSTAND THAT THERE IS A COMMERCIAL
10 ACTIVITY GOING ON BY THE REPORTER, THAT THEY GET PAID TO
11 REPORT STORIES AND THEIR SEARCH FOR THE TRUTH IS NOTHING
12 LIKE WHAT GOES ON IN A JUDICIAL SETTING HERE.

13 MR. SCHWARTZ: YES, I UNDERSTAND THAT.

14 MR. BARENS: AND A LOT OF TIMES, YOU MIGHT READ AN
15 ARTICLE IN A NEWSPAPER OR MAGAZINE WHICH MAKES A GUY SOUND
16 REAL GUILTY, WHO ISN'T GUILTY AT ALL, BECAUSE THEY ARE
17 SENSATIONALIZING THINGS TO SELL THINGS, WHICH THEY ARE
18 SUPPOSED TO DO; DO YOU ACCEPT THAT?

19 MR. SCHWARTZ: I UNDERSTAND THAT.

20 MR. BARENS: NOW, MR. SCHWARTZ, DOES THE FACT THAT I
21 AM TALKING TO YOU ABOUT YOUR OPINIONS ON THE DEATH PENALTY,
22 AND HIS HONOR HAS AS WELL AND THE PROSECUTOR WILL
23 MOMENTARILY, AND THE FACT THAT JOE HUNT IS SITTING THERE AT
24 THE END OF THE COUNSEL TABLE, MAKE YOU BELIEVE THAT JOE HUNT
25 HAS DONE SOMETHING WRONG?

26 MR. SCHWARTZ: NO.

27 MR. BARENS: YOU UNDERSTAND THAT HE COMES HERE WITH THE
28 SAME PRESUMPTION OF INNOCENCE AS A DEFENDANT, THAT YOU WOULD

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1 OR I WOULD OR ANYBODY ELSE WOULD AS A DEFENDANT IN A COURTROOM
2 IN THIS COUNTRY?

3 MR. SCHWARTZ: YES, I DO.

4 MR. BARENS: AND YOU ACCEPT THAT, SIR?

5 MR. SCHWARTZ: YES, SIR.

6 MR. BARENS: THANK YOU VERY MUCH, MR. SCHWARTZ.

7 PASS FOR CAUSE, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: MR. SCHWARTZ, I AM FRED WAPNER. I AM THE
10 DEPUTY DISTRICT ATTORNEY WHO IS PROSECUTING THIS CASE.

11 DO YOU HAVE ANY STRONG RELIGIOUS OR MORAL OR
12 PHILOSOPHICAL VIEWS THAT WOULD AFFECT YOUR ABILITY TO DECIDE
13 THIS QUESTION AS TO WHETHER THE DEFENDANT SHOULD LIVE OR
14 WHETHER HE SHOULD DIE?

15 MR. SCHWARTZ: NO.

16 MR. WAPNER: HAD YOU GIVEN MUCH THOUGHT TO THE QUESTION
17 OF THE DEATH PENALTY BEFORE YOU CAME INTO COURT BEFORE THIS
18 DAY?

19 MR. SCHWARTZ: NOT MUCH. SOME.

20 MR. WAPNER: AS FAR AS THE DETERRENT VALUE OF THE DEATH
21 PENALTY, AND YOUR THIRD ASPECT, IT CERTAINLY WOULD DETER
22 SOMEONE FROM KILLING SOMEONE ELSE IN PRISON, FOR EXAMPLE.

23 MR. SCHWARTZ: YOU ARE ASKING ME IF IT WOULD DETER THEM?

24 MR. WAPNER: DO YOU THINK IT WOULD?

25 MR. SCHWARTZ: NO.

26 MR. WAPNER: IF THEY GAVE THEM THE DEATH PENALTY, THAT
27 WOULD CERTAINLY DETER THEM FROM KILLING SOMEONE ELSE IN
28 PRISON?

1 MR. SCHWARTZ: I THINK IT WOULD BE QUITE FINAL.

2 MR. WAPNER: OKAY. THANK YOU, SIR.

3 I WILL PASS FOR CAUSE, YOUR HONOR.

4 THE COURT: ALL RIGHT, BOTH SIDES HAVE PASSED FOR CAUSE,
5 MR. SCHWARTZ. WHAT THAT MEANS IS THAT YOU ARE ENTIRELY
6 QUALIFIED TO ACT AS A TRIAL JUROR IN THIS CASE. SO WHAT I
7 WILL ASK YOU TO DO IS TO COME BACK WITH THE OTHER JURORS TO
8 THIS COURTROOM ON MONDAY AT 10:30 IN THE MORNING.

9 MR. SCHWARTZ: ALL RIGHT.

10 THE COURT: AT 10:30 IN THE MORNING, YOU REPORT TO THE
11 JURY ASSEMBLY ROOM. ALL OF THE OTHER JURORS WILL BE THERE
12 AND THEN WE WILL ASK YOU TO COME HERE WHEN YOU ARE ALL
13 COLLECTED.

14 MR. SCHWARTZ: ALL RIGHT.

15 THE COURT: THANK YOU VERY MUCH AND HAVE A NICE
16 WEEKEND.

17 MR. SCHWARTZ: YOU, TOO.

18 (PROSPECTIVE JUROR SCHWARTZ EXITS THE
19 COURTROOM.)

20 (PROSPECTIVE JUROR SPEARMAN ENTERS THE
21 COURTROOM.)

22 THE COURT: GOOD AFTERNOON, MR. SPEARMAN.

23 MR. SPEARMAN: HI.

24 THE COURT: WHERE DO YOU LIVE?

25 MR. SPEARMAN: 851 MALCOLM AVENUE.

26 THE COURT: WHERE IS THAT?

27 MR. SPEARMAN: LOS ANGELES.

28 THE COURT: HAVE YOU HEARD OR READ ANYTHING AT ALL ABOUT

1 THIS CASE, EXCEPT WHAT I TOLD YOU WHEN YOU WERE HERE LAST
2 MONDAY?

3 MR. SPEARMAN: YES, SIR.

4 THE COURT: WHAT DID YOU HEAR?

5 MR. SPEARMAN: I HEARD SOMETHING ABOUT ON TELEVISION,
6 BUT I WASN'T AWARE THAT IT WAS THIS CASE UNTIL TODAY.

7 THE COURT: WHAT DID YOU HEAR?

8 MR. SPEARMAN: I CAN'T REALLY REMEMBER. I JUST --

9 THE COURT: WELL, JUST TELL US ANYTHING YOU REMEMBER,
10 IF YOU DO REMEMBER.

11 MR. SPEARMAN: THAT IT WAS A MURDER CASE.

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1 THE COURT: WHAT ELSE DO YOU REMEMBER?

2 MR. SPEARMAN: I REALLY DON'T REMEMBER. ALL I KNOW IS
3 I HEARD ABOUT IT AND I DIDN'T REALIZE IT WAS THIS CASE.

4 THE COURT: I SEE. SO YOU DON'T RECALL ANY FACTS AT
5 ALL WHICH WERE SUPPOSEDLY TALKED ABOUT ON TELEVISION, DO
6 YOU?

7 WAS THAT CHANNEL 2, WAS IT?

8 MR. SPEARMAN: I COULDN'T TELL YOU THAT EITHER.

9 THE COURT: ALL RIGHT. WHATEVER IT IS THAT YOU MIGHT
10 HAVE HEARD, ANY REACTION YOU MIGHT HAVE HAD, JUST PUT THAT
11 ALL OUT OF YOUR MIND AND THE ONLY PLACE WHERE YOU WILL HEAR
12 WHAT THE FACTS REALLY ARE IS IN THIS COURTROOM WHEN THE
13 TESTIMONY IS GIVEN ON THE TRIAL; DO YOU UNDERSTAND THAT?

14 (PROSPECTIVE JUROR SPEARMAN NODS HEAD
15 UP AND DOWN.)

16 THE COURT: ALL RIGHT. IF, DURING THE COURSE OF THE TRIAL
17 YOU RECALL ANYTHING THAT YOU MIGHT HAVE HEARD WHICH RECALLS
18 TO YOUR MIND THINGS THAT YOU HEARD ON TELEVISION, JUST FORGET
19 ABOUT THAT AND JUST BE GUIDED BY THE EVIDENCE HERE, ALL
20 RIGHT?

21 MR. SPEARMAN: ALL RIGHT.

22 THE COURT: GOOD.

23 LET ME JUST BRIEFLY SUMMARIZE SOME OF THE
24 FACTS AND TELL YOU WHAT THE CASE IS ABOUT AS A NECESSARY
25 BACKGROUND FOR THE QUESTIONS WE ARE GOING TO ASK YOU.

26 AND THE CRITICAL QUESTIONS WE ARE GOING TO
27 ASK YOU ARE TO EXPLORE YOUR STATE OF MIND WITH RESPECT TO
28 YOUR OPINIONS AND ATTITUDES TOWARD THE DEATH PENALTY; DO YOU

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1 UNDERSTAND?

2 (PROSPECTIVE JUROR SPEARMAN NODS HIS
3 HEAD UP AND DOWN.)

4 THE COURT: AGAIN, TO REPEAT, THE CHARGE AGAINST THE
5 DEFENDANT IS THAT HE COMMITTED THE CRIME OF MURDER IN THE
6 FIRST DEGREE AND THAT THAT CRIME WAS COMMITTED IN THE COURSE
7 OF A ROBBERY.

8 NOW, IN THE COURSE OF A ROBBERY IS SIGNIFICANT.

9 YOU KNOW, OR AT LEAST I WILL TELL YOU, THE LAW
10 IN THE STATE OF CALIFORNIA IS THAT IF SOMEBODY COMMITS A
11 MURDER, DELIBERATELY, INTENTIONALLY, WITHOUT ANY JUSTIFICATION
12 WHATEVER AND PLANNED, THAT DOESN'T CALL FOR THE IMPOSITION
13 OF THE DEATH PENALTY.

14 IT IS ONLY WHERE IT IS DONE UNDER CERTAIN SPECIAL
15 CIRCUMSTANCES. THE SPECIAL CIRCUMSTANCES IN THIS CASE IS
16 IT WAS COMMITTED IN THE COURSE OF A ROBBERY. SIMILARLY, IF
17 A MURDER IS COMMITTED IN THE COURSE OF A BURGLARY, IN THE
18 COURSE OF A KIDNAPPING, IN THE COURSE OF A RAPE, IN THE COURSE
19 OF A TORTURE OR MULTIPLE MURDERS OR A CHILD, FOR INSTANCE,
20 IS MOLESTED AND DIES, THOSE ARE SOME INSTANCES OF SPECIAL
21 CIRCUMSTANCES WHERE THE DEATH PENALTY MAY COME INTO PLAY.
22 AND THE LEGISLATURE HAS SAID THERE ARE 19 SUCH INSTANCES.

23 MURDER COMMITTED IN THE COURSE OF A ROBBERY IS
24 ONE OF THOSE WHERE THE DEATH PENALTY MAY BE INVOKED; IS THAT
25 CLEAR?

26 MR. SPEARMAN: YES.

27 THE COURT: NOW, THE JURY WHICH WILL BE SELECTED IN
28 THIS CASE WILL FIRST HAVE TO DETERMINE, OBVIOUSLY, WHETHER

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1 THE DEFENDANT HAD COMMITTED THE CRIME OF MURDER AND WHETHER
2 IT WAS MURDER IN THE FIRST DEGREE.

3 THEN IF THEY SAY YES, IT WAS COMMITTED BY HIM AND
4 IT IS MURDER IN THE FIRST DEGREE, THEN THEY HAVE TO DETERMINE
5 THE SPECIAL CIRCUMSTANCES, WAS IT COMMITTED IN THE COURSE OF
6 A ROBBERY? SO THEY WILL ANSWER THE QUESTION TRUE OR FALSE
7 WHETHER IT WAS COMMITTED IN THE COURSE OF A ROBBERY.

8 IF THEY SAY TRUE, THEN WE ENTER INTO A SECOND
9 PHASE OF THE TRIAL THAT IS KNOWN AS THE PENALTY PHASE WHERE
10 THE JURY NOW IS CALLED UPON TO GIVE THE PENALTY.

11 NOW, ON THE PENALTY PHASE YOU ARE GOING TO HEAR
12 MORE TESTIMONY, WHICH YOU HADN'T HEARD BEFORE, AND THAT
13 TESTIMONY WILL BE GIVEN BY THE DEFENDANT, FOR EXAMPLE,
14 WHICH WOULD SHOW THINGS ABOUT HIM, FAVORABLE THINGS ABOUT
15 HIM AND YOU MUST CONSIDER HIS AGE, HIS BACKGROUND FOR VIOLENT
16 CONDUCT, IF ANY, AND IF HE HASN'T GOT ANY, THAT IS A FACTOR
17 TO BE CONSIDERED, HIS AGE AND HIS EDUCATION AND HIS MENTAL
18 AND PHYSICAL CONDITION, AND YOU MUST CONSIDER ALL OF THE FACTS
19 AS FACTORS YOU HEARD IN CONNECTION WITH THE CRIME. NOW, ALL
20 OF THAT IS DESIGNED FOR THE JURY NOT TO FIND THE ULTIMATE
21 PENALTY OF DEATH.

22 THE PROSECUTION, HOWEVER, ON THE OTHER HAND WILL
23 SHOW AGGRAVATING CIRCUMSTANCES TO AGGRAVATE THE OFFENSE,
24 THINGS ABOUT THE DEFENDANT WHICH ARE NOT FAVORABLE, WHICH
25 ARE UNFAVORABLE, AND THE PURPOSE OF THAT, OBVIOUSLY, IS TO
26 HAE YOU REACH THE CONCLUSION THAT THE BEST THING TO DO WOULD
27 BE TO SENTENCE THE DEFENDANT TO THE GAS CHAMBER.

28 DO YOU UNDERSTAND?

1 (PROSPECTIVE JUROR SPEARMAN NODS HEAD UP
2 AND DOWN.)

3 THE COURT: THOSE ARE THE TWO ALTERNATIVES.

4 NOW, WHEN WE TALK ABOUT LIFE IMPRISONMENT WITHOUT
5 THE POSSIBILITY OF PAROLE AS ONE OF THE ALTERNATIVES, IT
6 MEANS EXACTLY THAT: HE GOES TO PRISON FOR LIFE AND HE CANNOT
7 BE PAROLED. IS THAT CLEAR TO YOU?

8 MR. SPEARMAN: SOMEWHAT.

9 THE COURT: WELL, TELL ME WHAT IS DOUBTFUL ABOUT IT.

10 MR. SPEARMAN: I JUST WASN'T AWARE THAT YOU COULD BE
11 SENTENCED TO PRISON FOR LIFE.

12 I THOUGHT LIFE MEANT THAT YOU KNOW, AFTER SO
13 MANY, AFTER SEVEN YEARS, YOU COME UP FOR PAROLE.

14 THE COURT: NO. THAT IS IN A CASE WHERE THERE IS
15 MURDER WITHOUT THE SPECIAL CIRCUMSTANCES.

16 MR. SPEARMAN: OKAY.

17 THE COURT: THAT IS JUST FIRST DEGREE MURDER, THEN YOU
18 ARE ELIGIBLE FOR PAROLE.

19 BUT WHERE SPECIAL CIRCUMSTANCES ARE INVOLVED,
20 THERE IS NO POSSIBILITY OF PAROLE; DO YOU GET IT?

21 MR. SPEARMAN: ALL RIGHT.

22 THE COURT: IS THAT CLEAR IN YOUR MIND?

23 MR. SPEARMAN: OKAY, I UNDERSTAND THAT.

24 THE COURT: NOW OF COURSE, YOU CAN'T MAKE UP YOUR MIND
25 AS TO THE PENALTY TO BE IMPOSED UNTIL YOU FIRST HEAR ALL OF
26 THE TESTIMONY AND MAKE A DETERMINATION AS TO WHETHER OR
27 NOT HE IS GUILTY OF MURDER IN THE FIRST DEGREE WITH THE
28 SPECIAL CIRCUMSTANCE; IS THAT CLEAR?

1 MR. SPEARMAN: YES.

2 THE COURT: DURING THAT PARTICULAR PHASE, THE GUILT
3 PHASE, YOU DON'T CONSIDER THE PENALTY; IT MUST NEVER ENTER
4 INTO YOUR MIND, IS THAT RIGHT?

5 (PROSPECTIVE JUROR SPEARMAN NODS HEAD
6 UP AND DOWN.)

7 THE COURT: ALTHOUGH YOU KNOW ULTIMATELY YOU WILL DO
8 IT BUT YOU MUSTN'T CONSIDER WHAT THE PENALTY WILL BE ON THE
9 FIRST PHASE OF THE TRIAL.

10 I AM GOING TO ASK YOU FIVE QUESTIONS. THE FIRST
11 TWO QUESTIONS RELATE TO THE GUILT PHASE: DO YOU HAVE SUCH
12 AN OPINION, WHATEVER THE OPINION MAY BE, OF THE DEATH
13 PENALTY WHICH WOULD PREVENT YOU FROM MAKING AN IMPARTIAL
14 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

15 MR. SPEARMAN: NO.

16 THE COURT: OKAY. AND SIMILARLY, DO YOU HAVE AN
17 OPINION AS TO THE DEATH PENALTY WHICH WOULD PREVENT YOU FROM
18 MAKING AN IMPARTIAL DECISION AS TO WHETHER OR NOT THAT MURDER
19 WAS COMMITTED IN THE COURSE OF A ROBBERY?

20 MR. SPEARMAN: I -- NO, NO, I DON'T THINK SO.

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1 THE COURT: ARE YOU SURE ABOUT THAT?

2 MR. SPEARMAN: YOU KNOW, AS TO THE FACTS IN THE CASE,
3 YOU HAVE TO BE.

4 THE COURT: WELL, THAT IS ALL RIGHT. ASSUMING --

5 MR. SPEARMAN: AS LONG AS IT WAS SHOWN TO ME BEYOND
6 A REASONABLE DOUBT. I WOULD SAY NO.

7 THE COURT: ALL RIGHT, GOOD.

8 NOW, THE NEXT TWO QUESTIONS PRESUPPOSE THAT THE
9 DEFENDANT HAS BEEN CONVICTED OF MURDER IN THE FIRST DEGREE
10 WITH SPECIAL CIRCUMSTANCES. WE GET TO THE PENALTY PHASE OF
11 THE CASE.

12 DO YOU HAVE SUCH AN OPINION CONCERNING THE DEATH
13 PENALTY, THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH
14 PENALTY, IRRESPECTIVE OF OR REGARDLESS OF THE EVIDENCE THAT
15 YOU HAVE HEARD ON THE PENALTY PHASE?

16 MR. SPEARMAN: I AM NOT SURE I UNDERSTAND THE QUESTION.

17 THE COURT: WELL, I TOLD YOU THAT WE HAVE TWO PHASES
18 OF THE TRIAL, THE GUILT PHASE AND THE PENALTY PHASE. NOW, ON
19 THE PENALTY PHASE YOU ARE GOING TO HEAR TESTIMONY FAVORABLE
20 OR UNFAVORABLE ABOUT THE DEFENDANT. THAT IS TO HAVE YOU MAKE
21 UP YOUR MIND AS TO WHAT PENALTY IS GOING TO BE IMPOSED.

22 NOW MY QUESTION TO YOU IS ON THE PENALTY PHASE
23 OF IT, DO YOU HAVE SUCH AN OPINION AS TO THE DEATH PENALTY,
24 THAT YOU WOULD AUTOMATICALLY VOTE TO IMPOSE THE DEATH PENALTY
25 AND DISREGARD COMPLETELY ANY TESTIMONY THAT YOU HEARD ON THE
26 PENALTY PHASE OF THE TRIAL?

27 MR. SPEARMAN: NO.

28 THE COURT: NOW, BY THE SAME QUESTION, BUT RELATING

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1 TO LIFE WITHOUT POSSIBILITY OF PAROLE, DO YOU HAVE SUCH AN
2 OPINION AS TO THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
3 VOTE TO IMPOSE THE DEATH PENALTY -- WELL, SORRY, TO IMPOSE
4 LIFE WITHOUT POSSIBILITY OF PAROLE, WITHOUT LISTENING TO ANY
5 TESTIMONY OR CONSIDERING ANY TESTIMONY THAT YOU HEARD ON THE
6 PENALTY PHASE?

7 MR. SPEARMAN: NO.

8 THE COURT: ALL RIGHT. NOW, YOU UNDERSTAND OF COURSE,
9 THAT WE HAVE ASKED YOU THESE QUESTIONS WITH RESPECT TO THE
10 DEATH PENALTY BECAUSE WE MAY NOT REACH THAT STAGE OF THE CASE.
11 BUT WE ARE ONLY ASKING BECAUSE OF THE POSSIBILITY THAT WE
12 MIGHT. DO YOU UNDERSTAND?

13 (MR. SPEARMAN NODS HEAD UP AND DOWN.)

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14 MR. BARENS: GOOD AFTERNOON, MR. SPEARMAN. I AM ARTHUR
15 BARENS. I REPRESENT THE DEFENDANT, JOE HUNT. AND AT THIS
16 JUNCTURE, IT IS MY OBLIGATION TO ASK YOU YOUR POINT OF VIEW
17 ON THE DEATH PENALTY, AS IT WAS THE JUDGE'S TO SEE WHETHER OR
18 NOT YOU QUALIFY AS A JUROR.

19 PLEASE UNDERSTAND MR. SPEARMAN, THERE ARE NO RIGHT
20 OR WRONG ANSWERS TO MY QUESTIONS AND NO GOOD OR BAD ANSWERS,
21 JUST YOUR OPINIONS.

22 MR. SPEARMAN: FINE.

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

26 MR. SPEARMAN: I BELIEVE THE DEATH PENALTY SHOULD BE
27 IMPOSED WHERE REQUIRED BY THE LAW.

28 MR. BARENS: OKAY. NOW, MR. SPEARMAN, THE LAW NEVER

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1 REQUIRES THE DEATH PENALTY.

2 MR. SPEARMAN: WELL, IF A PERSON IS CONVICTED FOR A
3 CRIME THAT HAS THE DEATH SENTENCE, IN OTHER WORDS, THE WAY
4 I LOOK AT THE DEATH PENALTY, IT IS A DETERRENT TO CRIME.

5 MR. BARENS: RIGHT. MR. SPEARMAN, PLEASE BEAR WITH
6 ME ON THIS. THE JUDGE HAS INDICATED TO YOU THAT THERE ARE
7 19 CATEGORIES OR TYPES OF CONDUCT FOR WHICH A DEFENDANT CAN
8 QUALIFY FOR THE DEATH PENALTY.

9 THE LAW NEVER MAKES THE DEATH PENALTY MANDATORY
10 BUT RATHER, A JURY IS GIVEN TWO CHOICES, THE CHOICE BETWEEN
11 LIFE WITHOUT POSSIBILITY OF PAROLE OR THE DEATH PENALTY. DO
12 YOU UNDERSTAND THAT?

13 MR. SPEARMAN: YES.

14 MR. BARENS: NOW, IF YOU WERE A JUROR AND WE GOT TO
15 THAT SECOND PENALTY PHASE, YOU WOULD HAVE TO MAKE ONE OF THOSE
16 TWO CHOICES. DO YOU UNDERSTAND THAT?

17 MR. SPEARMAN: YES.

18 MR. BARENS: AND DO YOU UNDERSTAND THAT THE ONLY TIME
19 YOU WOULD BE MAKING ONE OF THOSE TWO CHOICES, WOULD BE IF
20 YOU HAD FIRST BELIEVED THAT THE DEFENDANT HAD COMMITTED A
21 FIRST DEGREE, PREMEDITATED, INTENTIONAL MURDER. DO YOU
22 UNDERSTAND THAT?

23 MR. SPEARMAN: YES.

24 MR. BARENS: NOW THEN, THE QUESTION BECOMES WHAT DO
25 WE DO WITH THAT SORT OF A FELLOW, RIGHT?

26 MR. SPEARMAN: RIGHT.

27 MR. BARENS: OKAY. DO YOU BELIEVE THAT UNDER ANY
28 CIRCUMSTANCES, YOU WOULD BE CAPABLE OF VOTING FOR LIFE WITHOUT

1 POSSIBILITY OF PAROLE FOR A DEFENDANT WHO HAD FIRST BEEN
2 CONVICTED OF A FIRST DEGREE, INTENTIONAL, PREMEDITATED MURDER?

3 MR. SPEARMAN: YES.

4 MR. BARENS: OKAY. WHAT WOULD HAVE BEARING FOR YOU
5 OR WHAT WOULD BE RELEVANT FOR YOU IN MAKING THAT DECISION?

6 MR. SPEARMAN: I BELIEVE THAT I WOULD HAVE TO HAVE ACCESS
7 TO ALL OF THE FACTS AS THEY PERTAINED.

8 MR. BARENS: BY THAT DO YOU MEAN BIOGRAPHICAL FACTS
9 ABOUT THE DEFENDANT, FOR INSTANCE, HIS AGE AT THE TIME THE
10 ALLEGED CRIME WAS COMMITTED?

11 THE COURT: I WILL INSTRUCT YOU THAT THAT IS ONE OF
12 THE FACTORS YOU MUST CONSIDER. YOU WILL TAKE THAT INSTRUCTION,
13 WON'T YOU?

14 MR. SPEARMAN: YES. AGE WOULD HAVE TO BE A FACTOR.
15 BUT, IT IS HARD TO SAY UNTIL YOU HAVE HEARD ALL OF THE FACTS.
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1 THE COURT: SUPPOSE THE DEFENDANT HAD LEAD AN EXEMPLARY
2 LIFE IN EVERY RESPECT, A VERY FINE PERSON ALL THROUGHOUT HIS
3 LIFE, WOULD YOU CONSIDER THAT FACTOR ALSO, IF IT WAS PROVEN
4 TO YOU IN A TRIAL, AS A FACTOR TO BE CONSIDERED AS TO WHAT
5 PENALTY TO IMPOSE?

6 MR. SPEARMAN: WELL, I WOULD HAVE TO.

7 THE COURT: IT IS NOT THAT YOU WOULD HAVE TO. BUT WOULD
8 YOU?

9 MR. SPEARMAN: I WOULD.

10 MR. BARENS: MR. SPEARMAN, WOULD IT BE A FAIR STATEMENT
11 TO SAY THEN, THAT YOU WOULD NOT SUBSCRIBE TO THE BELIEF OF
12 A LIFE FOR A LIFE?

13 MR. SPEARMAN: NO. I WOULDN'T SAY THAT.

14 MR. BARENS: WOULD YOU COMMENT AT ALL ON THAT CONCEPT?

15 MR. SPEARMAN: I THINK THAT IT SPEAKS FOR ITSELF.

16 MR. BARENS: HOW SO?

17 THE COURT: COUNSEL MEANS THAT BECAUSE HE HAS TAKEN
18 A LIFE, DO YOU THINK HIS LIFE SHOULD BE TAKEN AUTOMATICALLY?

19 MR. SPEARMAN: WELL, I JUST SAID NO, BEFORE.

20 MR. BARENS: AGAIN, I AM NOT ATTEMPTING TO IMPEACH WHAT
21 YOU ARE SAYING, SIR. I AM ATTEMPTING TO RELATE TO YOU AND
22 UNDERSTAND WHAT -- LET'S SAY THE PARAMETERS OF YOUR OPINION,
23 MR. SPEARMAN.

24 MR. SPEARMAN: OKAY.

25 MR. BARENS: MR. SPEARMAN, HAVE YOU EVER THOUGHT MUCH
26 ABOUT THE DEATH PENALTY BEFORE YOU CAME IN HERE TODAY?

27 MR. SPEARMAN: YES. I HAVE THOUGHT ABOUT IT BEFORE.

28 MR. BARENS: WHAT WERE YOUR THOUGHTS IN THAT REGARD?

1 MR. SPEARMAN: MY THOUGHTS IN THAT REGARD WERE THAT
2 I THOUGHT THE DEATH PENALTY SHOULD HAVE BEEN IMPLEMENTED IN
3 THIS STATE LONG AGO, TO SIMPLY PREVENT CRIME.

4 MR. BARENS: DO YOU REALLY BELIEVE THAT THE DEATH PENALTY
5 ACTS AS A DETERRENT TO MURDER?

6 MR. SPEARMAN: I DO BELIEVE THAT, YES.

7 MR. BARENS: OKAY. NOW, IF YOU BELIEVE THAT, DO YOU
8 BELIEVE THAT THE DEATH PENALTY SHOULD BE APPLIED IN SOME
9 UNIFORM AND CONSISTENT MANNER?

10 MR. SPEARMAN: I DON'T KNOW WHAT YOU MEAN BY THAT
11 QUESTION.

12 MR. BARENS: PRECISELY. THE WAY I ASKED --

13 THE COURT: I DON'T UNDERSTAND THAT.

14 MR. BARENS: IF YOU BELIEVE THE DEATH PENALTY IS A
15 DETERRENT TO CRIME, THEREFORE, IN ORDER FOR IT TO BE --

16 THE COURT: YOU MEAN IN EVERY SINGLE CASE IT SHOULD
17 BE THE DEATH PENALTY? IT SHOULD BE DEATH IN THE GAS CHAMBER?
18 IS THAT WHAT YOU ARE ASKING HIM?

19 MR. BARENS: YES.

20 THE COURT: DO YOU BELIEVE THAT EVERY TIME THERE IS
21 A MURDER WITH SPECIAL CIRCUMSTANCES, IT SHOULD AUTOMATICALLY
22 GET THE DEATH PENALTY?

23 MR. SPEARMAN: NO.

24 MR. BARENS: YOU BELIEVE THAT EVEN THOUGH YOUR ANSWER
25 IS NO, THAT THE DEATH PENALTY REALLY COULD REMAIN AN EFFECTIVE
26 DETERRENT?

27 MR. SPEARMAN: WELL, EACH CASE IS DIFFERENT.

28 MR. BARENS: SO. IT IS THEREFORE, THAT YOU WOULD SAY

1 YOU ARE CAPABLE OF SEEING SOME DEFENDANTS IN THAT SETTING
2 AS BEING ELIGIBLE FOR LIFE WITHOUT POSSIBILITY OF PAROLE?

3 MR. SPEARMAN: YES.

4 MR. BARENS: NOW, WAS THERE ANYTHING IN YOUR LIFE THAT
5 CAUSED YOU TO DEVELOP THIS POINT OF VIEW THAT YOU HAVE ABOUT
6 THE DEATH PENALTY AND THAT YOU HAVE HAD BEFORE YOU CAME HERE
7 TODAY?

8 MR. SPEARMAN: IT IS HARD TO SAY. IT IS JUST A
9 CULMINATION OF YOU KNOW, SEEING A LOT OF YOU KNOW, HEINOUS
10 CRIMES COMMITTED WITH A LOT OF PEOPLE THAT YOU KNOW, JUST
11 THINK ABIDING BY THE LAW IS A JOKE.

12 THEY JUST GET AWAY WITH WHATEVER THEY CAN, YOU
13 KNOW. THAT IS REALLY THE BASIS OF MY OPINION. I DON'T REALLY
14 WELL, WHAT DO YOU WANT TO KNOW?

15 THE COURT: HE WANTS TO KNOW IF ANYTHING HAPPENED TO
16 YOU IN YOUR LIFE WHICH IN ANY WAY, MADE YOU COME TO THAT
17 CONCLUSION?

18 MR. SPEARMAN: JUST --

19 THE COURT: WHAT YOU READ?

20 MR. SPEARMAN: YES, A COMBINATION OF FACTS OVER A PERIOD
21 OF TIME.

22 MR. BARENS: MR. SPEARMAN, YOU MENTIONED EARLY ON,
23 THAT YOU HAD SEEN SOMETHING ON TELEVISION ABOUT THIS CASE
24 AND THAT WHEN YOU CAME IN HERE TODAY, IT MADE YOU REMEMBER
25 THAT THAT IS WHAT YOU HAD HEARD ON TV. IS THAT TRUE?

26 MR. SPEARMAN: THAT'S TRUE. BUT WHAT I HEARD ON
27 TELEVISION, I DON'T REMEMBER. ALL I REMEMBER IS THAT THERE
28 WAS SOMETHING ABOUT IT. I SAW TELEVISION CAMERAS OUT THERE.

1 I WAS NOT AWARE IT HAD ANYTHING TO DO WITH THAT.

2 MR. BARENS: WELL, WHAT IS IT THAT MADE YOU THINK THAT
3 THIS WAS THE CASE YOU HAD HEARD ABOUT ON THE TV, JUST BECAUSE
4 YOU SAW TELEVISION CAMERAS OUT THERE?

5 MR. SPEARMAN: SOMETHING SOMEONE SAID IN THE HALLWAY.

6 MR. BARENS: WHAT WAS THAT, MR. SPEARMAN?

7 MR. SPEARMAN: SOMETHING ABOUT THAT IT WAS IN ALL OF
8 THE PAPERS. YOU KNOW, I ASKED WHEN AND THEY SAID YOU KNOW,
9 A FEW WEEKS AGO. IT JUST SORT OF CLICKED THAT WAY.

10 MR. BARENS: WELL, BUT THERE ARE A LOT OF MURDER TRIALS
11 IN THE NEWSPAPER EVERY WEEK THAT WE TALK ABOUT. I MEAN, THERE
12 WERE A COUPLE OF SIGNIFICANT MURDER TRIALS STARTING TODAY.
13 THEY WERE IN TODAY'S LOS ANGELES TIMES.

14 WHAT MADE YOU THINK THAT IT WAS THE JOE HUNT MURDER
15 TRIAL THAT WE ARE TALKING ABOUT?

16 MR. SPEARMAN: I REALLY DIDN'T THINK ANYTHING ABOUT
17 THE JOE HUNT CASE. I JUST, YOU KNOW, WAS SURPRISED TO SEE
18 CAMERAS OUT THERE.

19 MR. BARENS: SURE. BUT DO YOU REALLY THINK THAT THIS
20 IS -- WHAT I AM TRYING TO DO IS FIND OUT HOW YOU LINK WHAT
21 IS GOING ON HERE TODAY WITH WHAT YOU SAW ON TELEVISION WEEKS
22 AGO OR WHENEVER?

23 MR. SPEARMAN: I LINK IT THROUGH WHAT I HEARD, SOMETHING
24 ABOUT A MURDER AND, YOU KNOW, THAT IS ALL I REMEMBER. I DIDN'T
25 FOLLOW THE STORY OR PAY CLOSE ATTENTION.

26 MR. BARENS: SEE, WHAT I AM TROUBLED WITH MR. SPEARMAN,
27 I AM NOT QUITE RELATING TO WHAT YOU ARE TELLING ME. WE ARE
28 HERE TODAY. YOU SEE A TELEVISION CAMERA. THAT REMINDS YOU

1 THAT YOU HAVE HEARD ABOUT THIS PARTICULAR MURDER CASE ON TV
2 BECAUSE THERE HAVE BEEN A LOT OF MURDER CASES --

3 MR. SPEARMAN: WELL, IT COULD HAVE BEEN ANOTHER CASE,
4 FOR ALL I KNOW.

5 MR. BARENS: THAT IS ALL I AM ASKING FOR.

6 MR. SPEARMAN: THAT COULD BE IT. I DON'T KNOW ANYTHING
7 ABOUT IT, YET.

8 MR. BARENS: OKAY. ALL RIGHT. THAT IS WHAT I WAS
9 TRYING TO DETERMINE, MR. SPEARMAN.

10 MR. SPEARMAN, LET ME ASK YOU TRUTHFULLY, DO YOU
11 BECAUSE I AM HERE TALKING ABOUT YOUR OPINION ABOUT THE DEATH
12 PENALTY AND THE JUDGE IS TALKING ABOUT THAT AND WE HAVE GOT
13 JOE HUNT SITTING DOWN THERE AT THE END OF THE COUNSEL TABLE
14 ACCUSED OF MURDER, DO YOU THINK HE HAS DONE SOMETHING WRONG?

15 MR. SPEARMAN: I DON'T KNOW YET.

16 MR. BARENS: WHAT DO YOU THINK?

17 MR. SPEARMAN: WELL, I WOULD IMAGINE THAT YOU KNOW,
18 THEY ARE NOT GOING TO BRING A CASE AGAINST SOMEONE FOR NO
19 REASON.

20 BUT, YOU KNOW, IT IS UP TO THE TRIAL TO, YOU KNOW,
21 WHETHER YOU ARE PROVEN GUILTY BEYOND A REASONABLE DOUBT, YOU
22 KNOW.

23 MR. BARENS: DO YOU UNDERSTAND THE CONCEPT THAT WHETHER
24 YOU WERE HERE AS A DEFENDANT OR JOE HUNT OR ME, THAT ALL
25 CITIZENS IN THIS COUNTRY ARE ENTITLED TO A PRESUMPTION OF
26 INNOCENCE UNTIL THEY ARE PROVEN GUILTY AT A TRIAL, IF THEY
27 ARE PROVEN GUILTY?

28 MR. SPEARMAN: I AM WELL AWARE OF THAT FACT.

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MR. BARENS: YOU ARE COMFORTABLE WITH THAT?

MR. SPEARMAN: I WILL DEFEND THAT RIGHT.

MR. BARENS: THANK YOU FOR YOUR TIME AND ANSWERS. WE
PASS FOR CAUSE.

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1 THE COURT: ALL RIGHT. WAIT JUST A MINUTE NOW. THE
2 DISTRICT ATTORNEY MIGHT ASK YOU SOME QUESTIONS.

3 MR. WAPNER: MAY I HAVE JUST A MOMENT, YOUR HONOR.

4 MR. BARENS: PROBABLY NOT.

5 MR. WAPNER: I DON'T.

6 I WILL PASS FOR CAUSE, YOUR HONOR.

7 THE COURT: WAIT A MINUTE. BOTH SIDES HAVE PASSED
8 FOR CAUSE, MR. SPEARMAN. WHAT THAT MEANS IS THEY FEEL, AND
9 I DO, TOO, THAT YOU ARE QUALIFIED TO ACT AS A TRIAL JUROR IN
10 THIS CASE.

11 MR. SPEARMAN: OH, NO.

12 THE COURT: YES.

13 YOU MIGHT WANT TO GET AWAY FROM IT BUT YOU ARE
14 STUCK. SO WHAT I WILL ASK YOU TO DO IS TO COME BACK ON MONDAY
15 MORNING, TOGETHER WITH ALL OF THE OTHER JURORS, AND COME INTO
16 THE COURTROOM AND THEN WE WILL CONTINUE WITH THE TRIAL OF THE
17 CASE.

18 MR. SPEARMAN: OKAY.

19 THE COURT: AND DON'T READ ABOUT OR TALK ABOUT THIS
20 CASE WITH ANYBODY.

21 YOU GO TO THE JURY ASSEMBLY ROOM ON MONDAY
22 MORNING AT 10:30, ALL RIGHT?

23 MR. SPEARMAN: IS THIS GOING TO BE FOR, LIKE, TWO
24 MONTHS?

25 THE COURT: YES.

26 MR. SPEARMAN: OKAY.

27 THE COURT: ALL RIGHT.

28 MR. SPEARMAN: THAT IS FINE.

1 THE COURT: THANK YOU.

2 (PROSPECTIVE JUROR SPEARMAN EXITS THE
3 COURTROOM.)

4 (PROSPECTIVE JUROR WARBURTON ENTERS THE
5 COURTROOM.)

6 THE COURT: IS THAT MISS OR MRS. WARBURTON?

7 MS. WARBURTON: MISS.

8 THE COURT: MISS WARBURTON, WHERE DO YOU LIVE?

9 MS. WARBURTON: HERMOSA BEACH.

10 MR. WAPNER: WHAT?

11 THE COURT: HERMOSA BEACH.

12 MR. WAPNER: THANK YOU.

13 THE COURT: HAVE YOU READ OR HEARD ANYTHING AT ALL ABOUT
14 THIS CASE, EXCEPT WHAT I TOLD YOU ABOUT IT?

15 MS. WARBURTON: NO.

16 THE COURT: YOU DON'T KNOW ANYTHING ELSE?

17 MS. WARBURTON: NO.

18 THE COURT: DOES THE PHRASE BILLIONAIRE BOYS CLUB RING
19 A BELL IN ANY WAY?

20 MS. WARBURTON: NO.

21 THE COURT: WHAT I AM GOING TO DO IS BRIEFLY SUMMARIZE
22 WHAT THE CASE IS ABOUT AND TELL YOU A LITTLE BIT ABOUT IT.
23 THE PURPOSE OF THAT, AFTER YOU HAVE HEARD THAT PRELIMINARY,
24 IS THAT I AM GOING TO ASK YOU SOME QUESTIONS, AS WILL COUNSEL,
25 AND THE PURPOSE OF THOSE QUESTIONS WILL BE TO EXPLORE YOUR
26 MIND AND FEELINGS ABOUT THE DEATH PENALTY; DO YOU UNDERSTAND?

27 MS. WARBURTON: OKAY.

28 THE COURT: FIRST, LET ME TELL YOU, AS I TOLD THE JURORS

1 MONDAY WHEN YOU WERE HERE, THAT THE DEFENDANT IS CHARGED IN
2 THIS CASE WITH THE COMMISSION OF THE CRIME OF MURDER, MURDER
3 IN THE FIRST DEGREE, AND THAT THAT MURDER WAS COMMITTED IN
4 THE COURSE OF A ROBBERY.

5 NOW, IN THE COURSE OF A ROBBERY IS VERY SIGNIFICANT
6 BECAUSE NOT ALL MURDERS, YOU KNOW, ARE PUNISHED THE SAME WAY.

7 EVEN IF YOU HAVE A MURDER WHICH IS COMMITTED
8 INTENTIONALLY, DELIBERATELY, CALLOUSLY, WITHOUT REGARD AT ALL
9 TO FEELINGS, THAT DOESN'T CALL FOR THE IMPOSITION OF A DEATH
10 PENALTY.

11 IT IS ONLY WHEN THAT MURDER WAS COMMITTED UNDER
12 CERTAIN SPECIAL CIRCUMSTANCES THAT THEN IT QUALIFIES FOR THE
13 IMPOSITION OF A DEATH PENALTY.

14 FOR EXAMPLE, A MURDER COMMITTED IN THE COURSE OF
15 A ROBBERY IS A SPECIAL CIRCUMSTANCE WHICH MAY, AS IN THIS
16 CASE, CALL FOR THE IMPOSITION OF THE DEATH PENALTY. A MURDER
17 COMMITTED IN THE COURSE OF A BURGLARY OR A RAPE OR A KIDNAPPING
18 OR A TORTURE OR WHERE A CHILD IS MOLESTED AND DIES OR WHERE
19 THERE IS MORE THAN ONE MURDER, MULTIPLE MURDERS, THOSE ARE
20 ONLY SOME OF THE INSTANCES WHERE THE DEATH PENALTY MAY BE
21 IMPOSED. DO YOU UNDERSTAND THAT?

22 MS. WARBURTON: UH-HUH.

23 THE COURT: NOW, WHEN I TALK ABOUT THE DEATH PENALTY,
24 THERE ARE TWO ASPECTS OF THE DEATH PENALTY WHICH THE JURY THEN
25 HAS TO DECIDE AND THAT, I WILL GET TO LATER.

26 THE TWO ASPECTS OF THE DEATH PENALTY IS: ONE,
27 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, AND THAT
28 MEANS EXACTLY THAT, WHERE YOU ARE IN PRISON FOR THE REST OF

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1 YOUR LIFE WITHOUT THE POSSIBILITY OF PAROLE AND YOU CAN'T GET
2 OUT AT ANY TIME.

3 OR SECONDLY, DEATH IN THE GAS CHAMBER.

4 DO YOU UNDERSTAND THOSE ARE THE TWO ASPECTS
5 OF THE DEATH PENALTY IN CALIFORNIA?

6 MS. WARBURTON: OKAY.

7 THE COURT: NOW, THE JURY IN THIS CASE WILL FIRST HAVE
8 TO DETERMINE: DID THE DEFENDANT COMMIT THE CRIME OF MURDER,
9 WAS IT IN THE FIRST DEGREE?

10 AND IF THEY SAY YES, IT WAS MURDER IN THE FIRST
11 DEGREE, THEN THEY HAVE TO DECIDE: WAS IT TRUE OR WAS IT
12 FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A ROBBERY?
13 THAT IS THE SPECIAL CIRCUMSTANCE.

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1 IF THEY SAY YES, IT IS TRUE THAT IT WAS COMMITTED
2 IN THE COURSE OF A ROBBERY, THEN THAT SAME JURY CONSIDERS
3 WHAT THE PENALTY IS TO BE.

4 THE FIRST PART OF THE TRIAL HAS TO DO WITH THE
5 GUILT OR INNOCENCE, DID HE OR DID HE NOT COMMIT THE CRIME?

6 THE SECOND PART OF THE TRIAL IS, HAVING
7 COMMITTED THE CRIME, WHAT PENALTY SHALL BE IMPOSED UPON
8 HIM.

9 THERE WILL BE NEW TESTIMONY NOW, THEY WILL HEAR
10 DIFFERENT TYPE OF TESTIMONY THAN THEY HEARD BEFORE. THE
11 TESTIMONY FROM THE DEFENDANT WILL TRY TO SHOW YOU FAVORABLE
12 ASPECTS ABOUT HIS LIFE, WHICH THE JURY MUST CONSIDER, HIS
13 AGE, HIS BACKGROUND, WHETHER OR NOT HE HAS ANY PRIOR CRIMINAL
14 HISTORY, HIS EDUCATION AND HIS MENTAL AND PHYSICAL CONDITION,
15 ANYTHING AT ALL THAT HAS TO DO WITH HIS PERSONA THAT IS
16 FAVORABLE TO HIM. ALL OF THAT, OBVIOUSLY, IS INTENDED, YOU
17 SEE, FOR THE PURPOSE OF PERSUADING THE JURY NOT TO COME IN
18 WITH THE ULTIMATE VERDICT OF DEATH IN THE GAS CHAMBER.

19 MS. WARBURTON: RIGHT.

20 THE COURT: THE PEOPLE, I ASSUME, WILL, ON THE OTHER
21 HAND, PRESENT TESTIMONY OR WILL ADDUCE TESTIMONY TO SHOW
22 UNFAVORABLE THINGS, THINGS THAT ARE BAD ABOUT HIM, WHAT WE
23 CALL AGGRAVATING CIRCUMSTANCES. THE PURPOSE OF THAT, OF
24 COURSE, IS TO TRY TO CONVINCING THE JURY TO METE THE MOST
25 SEVERE PENALTY THAT THEY CAN; DO YOU UNDERSTAND?

26 MS. WARBURTON: UH-HUH.

27 THE COURT: SO THE JURY HEARS ALL OF THAT AND THEN THEY
28 GO INTO THE JURY ROOM TO DELIBERATE A SECOND TIME AS TO WHAT

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1 SHOULD THE PENALTY BE, YOU SEE.

2 MS. WARBURTON: UH-HUH.

3 THE COURT: NOW, SINCE IT INVOLVES THE DEATH PENALTY,
4 I HAVE GOT TO ASK YOU QUESTIONS ABOUT YOUR ATTITUDES, AS I
5 TOLD YOU, ABOUT THE DEATH PENALTY.

6 MS. WARBURTON: OKAY.

7 THE COURT: NOW, THERE WILL BE FIVE QUESTIONS ESSENTIALLY.
8 THEY ARE COMPARABLY SIMPLE.

9 THE FIRST TWO QUESTIONS RELATE TO THE FIRST PART
10 OF THE TRIAL, THE GUILT PHASE OF THE TRIAL: DO YOU HAVE ANY
11 OPINION AS TO THE DEATH PENALTY, WHATEVER IT MAY BE, WHICH
12 WILL PREVENT YOU FROM MAKING AN IMPARTIAL DECISION AS TO
13 THE GUILT OR INNOCENCE OF THE DEFENDANT?

14 MS. WARBURTON: WELL, I DIDN'T KNOW THAT THE DEATH
15 PENALTY WAS EITHER IMPRISONMENT FOR LIFE OR THE GAS CHAMBER,
16 I DIDN'T KNOW.

17 I THOUGHT IT WAS THE GAS CHAMBER.

18 THE COURT: NO, IT IS EITHER ONE OF THOSE TWO.

19 MR. WARBURTON: OH, NO, NO. I FEEL IF I THINK THAT THE
20 PERSON IS GUILTY, THEN I THINK THEY SHOULD.

21 THE COURT: IRRESPECTIVE OF YOUR OPINION AS TO THE
22 DEATH PENALTY; IS THAT RIGHT?

23 MS. WARBURTON: RIGHT.

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24 THE COURT: YOU SEE, THE SECOND QUESTION IS THE SAME
25 THING ON THE GUILT PHASE. AS I TOLD YOU, IF HE IS FOUND
26 GUILTY OF MURDER IN THE FIRST DEGREE, THEN YOU HAVE TO
27 DETERMINE WHETHER IT WAS COMMITTED DURING THE COURSE OF
28 A ROBBERY. THAT IS WHAT WE CALL THE SPECIAL CIRCUMSTANCES.

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1 DO YOU HAVE ANY OPINION AS TO THE DEATH PENALTY,
2 WHATEVER IT MAY BE, THAT WILL PREVENT YOU FROM REACHING A
3 DECISION AS TO THE SPECIAL CIRCUMSTANCE OR WHETHER IT WAS
4 COMMITTED DURING THE COURSE OF A ROBBERY?

5 MS. WARBURTON: NO, NOT THAT I --

6 THE COURT: ALL RIGHT. NOW, THE NEXT TWO QUESTIONS I
7 AM GOING TO ASK YOU, WE ARE ASSUMING OR PRESUPPOSING THE
8 FACT THAT THE DEFENDANT HAS NOW BEEN CONVICTED OF MURDER IN
9 THE FIRST DEGREE WITH THE SPECIAL CIRCUMSTANCE THAT IT WAS
10 COMMITTED DURING THE COURSE OF A ROBBERY. ALL RIGHT, WE
11 ASSUME THAT NOW.

12 MS. WARBURTON: ALL RIGHT.

13 THE COURT: SO THE NEXT TWO QUESTIONS ARE AS FOLLOWS:
14 FIRST, DO YOU HAVE AN OPINION AS TO THE DEATH PENALTY THAT
15 YOU WOULD AUTOMATICALLY VOTE -- AUTOMATICALLY VOTE TO IMPOSE
16 THE DEATH PENALTY, THAT MEANS IN THE GAS CHAMBER, REGARDLESS
17 OF ANY EVIDENCE THAT YOU HEAR ON THE PENALTY PHASE OF THE
18 TRIAL, AUTOMATICALLY WITHOUT -- DISREGARDING ANY TESTIMONY
19 THAT YOU HAVE HEARD?

20 MS. WARBURTON: YOU MEAN WOULD I JUST IMPOSE IT?

21 THE COURT: AUTOMATICALLY, WITHOUT CONSIDERING ANY
22 TESTIMONY THAT YOU HAVE HEARD ON THE PENALTY PHASE.

23 MS. WARBURTON: I DON'T KNOW.

24 THE COURT: WHAT I MEAN BY THAT IS WHEN YOU HAVE HEARD
25 ALL OF THE EVIDENCE ON THE GUILT PHASE AND IF YOU COME IN WITH
26 A VERDICT, A FINDING THAT HE WAS GUILTY OF MURDER AND IT
27 WAS COMMITTED DURING THE COURSE OF A ROBBERY, WITHOUT HEARING
28 ANYTHING FURTHER ON THE PENALTY, WOULD YOU AUTOMATICALLY IMPOSE

1 THE DEATH PENALTY WITHOUT HEARING ANYTHING FURTHER?

2 MS. WARBURTON: NO.

3 THE COURT: ALL RIGHT, THAT WAS THE QUESTION.

4 SIMILARLY, DO YOU HAVE AN OPINION AS TO THE DEATH
5 PENALTY SUCH THAT YOU WOULD AUTOMATICALLY VOTE FOR LIFE
6 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE WITHOUT ANY
7 CONSIDERATION, REGARDLESS OF THE TESTIMONY THAT YOU MIGHT
8 HEAR ON THE PENALTY PHASE?

9 MS. WARBURTON: NO.

10 THE COURT: YOU KNOW I HAVE ASKED THESE QUESTIONS ABOUT
11 THE DEATH PENALTY BECAUSE I AM REQUIRED TO DO SO. IT MAY OR
12 MAY NOT COME INTO PLAY IN THIS CASE. WE MAY NOT REACH THAT
13 STAGE, YOU UNDERSTAND. IT IS ONLY DONE SO WE CAN GET YOUR
14 VIEWS ON IT.

15 ALL RIGHT, MR. BARENS.

16 MR. BARENS: THANK YOU, YOUR HONOR.

17 GOOD AFTERNOON, MISS WARBURTON. I AM ARTHUR
18 BARENS AND I REPRESENT THE DEFENDANT, JOE HUNT.

19 AND LIKE WITH HIS HONOR, IT IS MY DUTY NOW TO ASK
20 YOU SOME QUESTIONS ABOUT YOUR POINT OF VIEW ON THE DEATH
21 PENALTY, OKAY?

22 MS. WARBURTON: OKAY.

23 MR. BARENS: AND YOU REALIZE, OF COURSE, THERE ARE NO
24 RIGHT OR WRONG ANSWERS TO ANY OF MY QUESTIONS AND NO ONE
25 HERE IS REALLY JUDGING ANY OF YOUR ANSWERS BECAUSE YOU CAN
26 NEVER BE WRONG ABOUT YOUR OWN OPINION. OKAY?

27 MS. WARBURTON: OKAY.

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20A-1
1 MR. BARENS: WITH THAT IN MIND, HOW DO YOU FEEL ABOUT
2 THE DEATH PENALTY AS A GENERAL PROPOSITION IN OUR SOCIETY?

3 MS. WARBURTON: WELL, IF IT WAS MY FAMILY THAT WAS
4 MURDERED, I WOULD FEEL LIKE I WOULD WANT THAT PERSON TO PAY
5 FOR WHAT HE HAS DONE.

6 MR. BARENS: OKAY. I DARE SAY THAT WE COULD HARDLY
7 EVER FIND ANYONE IN THE WORLD THAT WOULD DISAGREE WITH THAT
8 STATEMENT. YOU WOULD NOT BE DEALING WITH YOUR FAMILY IN THIS
9 CASE. BUT RATHER, YOU WOULD BE DEALING WITH A DEFENDANT THAT
10 YOU WERE NOT FAMILIAR WITH.

11 AND IF YOU BELIEVED THAT THERE HAD BEEN A VICTIM,
12 YOU WOULD BE DEALING WITH A VICTIM YOU ARE NOT FAMILIAR WITH.
13 WHAT WE HAVE TALKED ABOUT HERE, IS HOW WE ARE GOING TO TREAT
14 A DEFENDANT IN THAT SETTING, SPEAKING IN A HYPOTHETICAL
15 SETTING, NOW.

16 FOR SOME REASON, AFTER YOUR DISCUSSION WITH THE
17 JUDGE, I CAME AWAY FROM THAT DISCUSSION WITH SOME BELIEF IN
18 MY MIND THAT YOU MIGHT SUBSCRIBE TO A BELIEF COMMONLY REFERRED
19 TO AS A LIFE FOR A LIFE. YOU BELIEVE IN THAT, DON'T YOU?

20 MS. WARBURTON: I DO IF THE PERSON IS GUILTY. THEN --

21 MR. BARENS: SURE. I THINK THAT IT IS A FAIR STATEMENT
22 TO SAY THAT YOU BELIEVE IF A PERSON TAKES A LIFE IN A CRIMINAL
23 MANNER, THAT THE ONLY APPROPRIATE PENALTY FOR THAT PERSON,
24 WOULD BE TO SACRIFICE THEIR LIFE IN EXCHANGE?

25 MS. WARBURTON: RIGHT. BUT I DON'T KNOW -- WELL, AS
26 TO LIFE WITHOUT POSSIBILITY OF PAROLE --

27 MR. BARENS: THAT IS THE OTHER OPTION THAT IS AVAILABLE
28 DURING A PENALTY PHASE.

20A-2
1 MS. WARBURTON: RIGHT.

2 MR. BARENS: OF A TRIAL. YOU MEAN THAT YOU COULD
3 CONSIDER THAT OPTION TOO? IS THAT THE IDEA?

4 MS. WARBURTON: RIGHT.

5 MR. BARENS: WELL NOW, MY CONCERN WITH THIS IS, YOU
6 SEE, WHAT WE ARE LOOKING FOR HERE, IS TO GET AS FAIR A
7 TRIAL AS POSSIBLE FOR BOTH SIDES, FOR OUR SIDE ON THE DEFENSE
8 AND FOR THE PROSECUTION SIDE.

9 AND FOR THAT, WE LOOK FOR A JUROR WHO IS NEUTRAL
10 OR CAPABLE OF EQUALLY BEING ABLE TO VOTE EITHER FOR THE DEATH
11 PENALTY OR FOR LIFE WITHOUT POSSIBILITY OF PAROLE.

12 IN LIGHT OF YOUR BELIEF OR SUBSCRIPTION TO THE
13 IDEA OF A LIFE FOR A LIFE, THERE IS CERTAINLY NOTHING WRONG
14 WITH THAT -- COULD YOU REALLY TELL ME IN YOUR HEART OF HEARTS,
15 THAT YOU COULD EVER CONSIDER VOTING FOR -- BE CAPABLE OF
16 VOTING FOR LIFE WITHOUT POSSIBILITY OF PAROLE FOR SOMEONE
17 WHO HAD COMMITTED A FIRST DEGREE, PREMEDITATED, COLD-BLOODED
18 MURDER DURING THE COMMISSION OF A ROBBERY?

19 MS. WARBURTON: DEPENDING UPON THE CIRCUMSTANCES.

20 MR. BARENS: WHAT CIRCUMSTANCES DO YOU MEAN BY THAT?

21 MS. WARBURTON: THE STATE OF MIND MAYBE, OF THE PERSON.

22 MR. BARENS: INTENTIONAL STATE OF MIND. THAT IS THE
23 ONLY KIND OF STATE OF MIND YOU WILL EVER HEAR ABOUT, IF YOU
24 ARE IN A PENALTY PHASE OF A CASE OF THIS NATURE.

25 IT IS INTENTIONAL, PREMEDITATED, FIRST DEGREE,
26 COLD-BLOODED MURDER, NOT JUSTIFIABLE.

27 MS. WARBURTON: I WOULD SAY YES.

28 MR. BARENS: YES WHAT?

1 MS. WARBURTON: IT WOULD BE HARD.

2 MR. BARENS: IS WHAT YOU ARE TELLING ME, THAT YOU COULD
3 NEVER CONSIDER VOTING FOR LIFE WITHOUT POSSIBILITY OF PAROLE
4 FOR THAT SORT OF A DEFENDANT, COULD YOU?

5 MS. WARBURTON: I COULD.

6 THE COURT: ARE YOU SURPRISED?

7 MR. BARENS: QUITE SO. I WILL TELL YOU WHY, BECAUSE
8 THE NEXT THING I HAVE TO ASK THIS YOUNG LADY IS HOW DO YOU
9 RECONCILE OR SQUARE THAT WITH YOUR BELIEF IN THE IDEA OF A
10 LIFE FOR A LIFE?

11 MS. WARBURTON: I DON'T KNOW. I GUESS I WOULD JUST --
12 FROM WHAT I WOULD HAVE TO LISTEN -- FROM THE TRIAL, MAYBE
13 IT WOULD BE THE PERSON'S BACKGROUND. I DON'T KNOW.

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1 MR. BARENS: THAT IS WHAT I AM GETTING TO. WOULD IT
2 BE A FAIR STATEMENT TO SAY THAT BEFORE YOU COULD CONCLUDE
3 THAT A PERSON SHOULD BE EITHER GIVEN THE DEATH PENALTY OR
4 LIFE WITHOUT POSSIBILITY OF PAROLE, WOULD YOU FIRST HAVE TO
5 CONSIDER THEIR BACKGROUND, THEIR AGE, WHETHER OR NOT THEY
6 HAD A PRIOR CRIMINAL RECORD AND THOSE TYPES OF FACTS? WOULD
7 YOU?

8 MS. WARBURTON: OF COURSE.

9 MR. BARENS: NOW, WOULD YOU SAY THAT AND WHAT I AM TRYING
10 TO DO NOW, IS SEE HOW I CAN WORK THE TWO THEMES TOGETHER,
11 BETWEEN YOUR WILLINGNESS TO CONSIDER THOSE BIOGRAPHICAL
12 DETAILS ABOUT THE DEFENDANT, AGAINST THIS CONCEPT OF A LIFE
13 FOR A LIFE. AND I AM TRYING TO RECONCILE THOSE TWO SOMEHOW.
14 ALL RIGHT?

15 MS. WARBURTON: YES.

16 MR. BARENS: CAN WE?

17 MS. WARBURTON: I WILL TRY.

18 MR. BARENS: WELL, BECAUSE I DON'T THINK WE COULD HAVE
19 BOTH. WE WOULD HAVE TO HAVE ONE OR THE OTHER.

20 MS. WARBURTON: OKAY.

21 MR. BARENS: NOW, IF YOU BELIEVE IN A LIFE FOR A LIFE
22 AS BEING THE APPROPRIATE PENALTY, HOW COULD YOU THEN ACCEPT
23 IF A PERSON HAD NEVER COMMITTED A PREVIOUS MURDER, BUT HE
24 HAD COMMITTED THE MURDER FOR WHICH YOU HAD FOUND HIM GUILTY
25 BEYOND A REASONABLE DOUBT DURING THE FIRST PHASE OF THE TRIAL,
26 HOW COULD YOU RECONCILE IN YOUR OWN MIND, BEING ABLE TO GIVE
27 THAT PERSON LIFE WITHOUT POSSIBILITY OF PAROLE?

28 MS. WARBURTON: OKAY. WE FOUND THE PERSON GUILTY?

1 MR. BARENS: YES.

2 MS. WARBURTON: AND NOW HE IS UP FOR LIFE?

3 MR. BARENS: OR DEATH.

4 MS. WARBURTON: AND NOW I HAVE TO MAKE THE CHOICE?

5 MR. BARENS: QUITE SO.

6 MS. WARBURTON: WELL, LIKE I SAY, I WOULD HAVE TO TAKE
7 INTO CONSIDERATION THE BACKGROUND, LIKE WE SAID BEFORE.

8 MR. BARENS: WOULD YOUR BELIEF IN THE CONCEPT OF A LIFE
9 FOR A LIFE, SUBSTANTIALLY IMPAIR YOUR ABILITY TO VOTE FOR
10 LIFE WITHOUT POSSIBILITY OF PAROLE FOR THE FIRST DEGREE MURDER?

11 MS. WARBURTON: NO.

12 MR. BARENS: IT WOULD NOT?

13 MS. WARBURTON: NO.

14 MR. BARENS: YOU BELIEVE THAT?

15 MS. WARBURTON: NO.

16 MR. BARENS: DO YOU THINK YOU COULD GIVE ME A FAIR TRIAL
17 IF WE EVER GOT TO A PENALTY PHASE AND I WAS GIVING TESTIMONY
18 ABOUT -- TRYING TO SAY THAT A DEATH PENALTY SHOULD NOT BE
19 IMPOSED, BUT RATHER LIFE WITHOUT POSSIBILITY OF PAROLE SHOULD
20 BE THE SENTENCE --

21 MR. WAPNER: WAIT. IS MR. BARENS NOW THE WITNESS AND
22 THE DEFENDANT IN THAT QUESTION?

23 THE COURT: YOU MEAN HIS CLIENT, DON'T YOU?

24 MR. BARENS: WELL, WHEN I SAY GIVE ME, I MEAN GIVE MY
25 SIDE, OBVIOUSLY. I AM NOT THE DEFENDANT. WE WILL GET TO
26 HIM IN A MOMENT.

27 THE COURT: RESTATE IT.

28 MR. BARENS: COULD YOU GIVE THE DEFENSE A FAIR TRIAL

1 ON THE ISSUE OF PENALTY, IF WE EVER GOT TO THAT?

2 MS. WARBURTON: I THINK SO.

3 MR. BARENS: DO YOU THINK YOU COULD BE OPEN-MINDED?

4 MS. WARBURTON: VERY.

5 MR. BARENS: ALL RIGHT. DO YOU THINK THAT YOU COULD
6 AGREE WITH ME AFTER OUR DISCUSSION HERE, THAT YOU MIGHT NOT
7 IN ALL INSTANCES, SUBSCRIBE TO A BELIEF IN A LIFE FOR A LIFE?

8 MS. WARBURTON: IT IS HARD TO SAY.

9 MR. BARENS: WELL, I KNOW. BUT I NEED YOU TO. THE
10 PROBLEM IS THAT OBVIOUSLY, IT IS INCONSISTENT, YOU SEE.

11 YOU ARE NEVER GOING TO GET TO THE PENALTY PHASE --
12 I DON'T MEAN TO BELABOR THIS POINT BUT I MUST. YOU WILL NEVER
13 GET TO A PENALTY PHASE UNLESS YOU BELIEVE A LIFE WAS
14 INTENTIONALLY, PREMEDITATEDLY TAKEN DURING A CRIMINAL ROBBERY.

15 YOU WILL NEVER GET TO THIS DECISION. WHAT I NEED
16 TO KNOW FROM YOU, IF YOU GET TO THE DECISION, IS YOUR BELIEF
17 IN A LIFE FOR A LIFE OVERWHELMING ANY OTHER CONSIDERATIONS,
18 MAKING YOU FEEL THE DEATH PENALTY MUST BE IMPOSED?

19 MS. WARBURTON: NO.

20 MR. BARENS: YOU DON'T FEEL THAT WAY?

21 MS. WARBURTON: NO. THAT IT MUST BE IMPOSED? NO.

22 MR. BARENS: YOU WOULD WANT TO LISTEN TO ALL OF THE
23 EVIDENCE BEFORE COMING TO A CONCLUSION?

24 MS. WARBURTON: OF COURSE.

25 MR. BARENS: OKAY. NOW, THE FACT THAT I AM HERE TALKING
26 TO YOU ABOUT YOUR ATTITUDES ABOUT THE DEATH PENALTY AND HIS
27 HONOR DID AND NOW MR. WAPNER, THE PROSECUTOR WILL AND WE HAVE
28 JOE HUNT SITTING DOWN THERE AT THE END OF THE COUNSEL TABLE

1 ACCUSED OF A MURDER, WHICH BRINGS US ALL HERE, DO YOU THINK
2 HE HAS DONE ANYTHING WRONG?

3 MS. WARBURTON: DO I?

4 MR. BARENS: UH-HUH.

5 MS. WARBURTON: I HAVE NO IDEA.

6 MR. BARENS: THE FACT THAT HE IS HERE AS A DEFENDANT
7 AND WE ARE GOING THROUGH THESE PROCEDURAL REQUIREMENTS AT
8 THIS POINT, DOESN'T MAKE YOU THINK THAT HE IS GUILTY OF
9 ANYTHING, DOES IT?

10 MS. WARBURTON: NO.

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1 MR. BARENS: YOU ARE FAMILIAR WITH THE CONCEPT THAT
2 WE ALL, WHETHER IT WAS YOU OR ME AS A DEFENDANT IN THIS
3 COURTROOM, WE ARE ALL ENTITLED TO THE PRESUMPTION OF
4 INNOCENCE IN OUR COUNTRY?

5 MS. WARBURTON: UNTIL PROVEN GUILTY, YES.

6 MR. BARENS: AND IF PROVEN GUILTY, IS THAT CORRECT?

7 MS. WARBURTON: CORRECT.

8 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

9 MS. WARBURTON: YES.

10 MR. BARENS: THANK YOU VERY MUCH. WE PASS FOR CAUSE.

11 MR. WAPNER: THANK YOU. GOOD AFTERNOON, MS. WARBURTON.
12 I AM FRED WAPNER, THE DEPUTY DISTRICT ATTORNEY WHO IS
13 PROSECUTING THIS CASE.

14 HOW DO YOU FEEL ABOUT THE DEATH PENALTY, JUST
15 GENERALLY?

16 MS. WARBURTON: IF THE PERSON IS LIKE, GUILTY AND
17 WHATEVER, I THINK THAT THE DEATH PENALTY SHOULD BE.

18 MR. WAPNER: OKAY. THE JUDGE TOLD YOU ABOUT THE
19 CATEGORIES OF CRIMES THAT WOULD QUALIFY AS CASES FOR THE
20 POSSIBILITY OF THE DEATH PENALTY. DID YOU HEAR THAT?

21 MS. WARBURTON: RIGHT.

22 MR. WAPNER: THAT DOESN'T MEAN THAT IF YOU FIT INTO
23 THAT CATEGORY, THEN YOU PRESS THE BOX THAT SAYS DEATH AND
24 HE IS AUTOMATICALLY EXECUTED. YOU UNDERSTAND THAT?

25 MS. WARBURTON: RIGHT.

26 MR. WAPNER: IT ONLY MEANS THAT WHEN IT GETS TO THAT
27 POINT IN THE LAW WHERE A JUROR THEN HAS TO DECIDE WHETHER
28 THE PUNISHMENT IS DEATH OR NOT --

1 MS. WARBURTON: CORRECT.

2 MR. WAPNER: OKAY. NOW, THE REAL QUESTION IS, IN YOUR
3 MIND, IF YOU SIT ON THIS CASE AND YOU FIND HIM GUILTY, WHETHER
4 YOU HAVE ALREADY DECIDED THAT YOU ARE GOING TO AUTOMATICALLY
5 CHECK THE BOX THAT SAYS DEATH OR ARE YOU GOING TO WEIGH BOTH
6 SIDES AND DECIDE WHETHER IT SHOULD BE DEATH OR WHETHER IT
7 SHOULD BE LIFE?

8 THE COURT: AFTER YOU HEAR THE TESTIMONY ON THE PENALTY
9 PHASE, YOU MEAN, DON'T YOU?

10 MR. WAPNER: RIGHT. THANK YOU, YOUR HONOR.

11 MS. WARBURTON: I WILL HAVE TO WEIGH BOTH SIDES.

12 MR. WAPNER: OKAY. DO YOU THINK YOU UNDERSTAND THIS
13 IDEA OF THE SEPARATION OF THE TWO DIFFERENT PARTS OF THE CASE?

14 MS. WARBURTON: RIGHT. I DO.

15 MR. WAPNER: THERE IS THE GUILT PART ON THE FIRST PART --

16 MS. WARBURTON: AND THEN THERE IS SENTENCING.

17 MR. WAPNER: THE PENALTY PHASE?

18 MS. WARBURTON: THE PENALTY PART, RIGHT. WHATEVER IT
19 IS CALLED.

20 MR. WAPNER: OKAY. IN ESSENCE, MAYBE THIS IS SOMEWHAT
21 OF A SIMPLIFICATION, BUT, ONE REALLY DOESN'T HAVE ANYTHING
22 TO DO WITH THE OTHER, EXCEPT THAT YOU WOULD NEVER GET TO THE
23 SECOND PART UNLESS HE IS FOUND GUILTY IN THE FIRST PART.
24 YOU UNDERSTAND THAT?

25 MS. WARBURTON: RIGHT.

26 MR. WAPNER: OKAY. ON THE SECOND PART, YOU HAVE TO
27 CONSIDER ALL OF THE EVIDENCE YOU HEARD ON THE FIRST PART IN
28 ASSUMING WHAT THE PENALTY SHOULD BE.

1 MS. WARBURTON: YES.

2 MR. WAPNER: WHEN YOU ARE DETERMINING THE FIRST PART
3 WHICH IS THE GUILTY PART, COULD YOU DO THAT WITHOUT THINKING
4 ABOUT THE FACT THAT THE PERSON MIGHT GET THE DEATH PENALTY
5 IF YOU FOUND HIM GUILTY?

6 MS. WARBURTON: NO. I THINK -- WELL, NO, I WOULD WEIGH
7 THE EVIDENCE JUST THE WAY IT IS. AND THEN I WOULD MAKE MY
8 DECISION FROM THERE.

9 MR. WAPNER: OKAY. BECAUSE YOU SEE, THE JUDGE WILL
10 TELL YOU THAT YOU CAN'T THINK ABOUT WHAT MIGHT HAPPEN TO HIM.

11 MS. WARBURTON: RIGHT.

12 MR. WAPNER: IF YOU FIND HIM GUILTY. DO YOU UNDERSTAND
13 THAT?

14 MS. WARBURTON: YES.

15 MR. WAPNER: ALL RIGHT. DO YOU HAVE ANY STRONG
16 RELIGIOUS OR MORAL VIEWS THAT WOULD AFFECT YOUR ABILITY TO
17 DECIDE THIS QUESTION OF DEATH OR LIFE?

18 MS. WARBURTON: NO.

19 MR. WAPNER: WHEN IT COMES RIGHT DOWN TO IT, IF YOU
20 GET TO THAT PART OF THE CASE, YOU WILL BE IN THE JURY ROOM
21 WITH 11 OTHER PEOPLE, TRYING TO DECIDE WHAT THE PUNISHMENT
22 SHOULD BE. AND EVEN THOUGH THE JURY HAS TO RENDER A
23 UNANIMOUS VERDICT, THE JUDGE WILL TELL YOU THAT YOU HAVE TO
24 VOTE YOUR OWN, INDIVIDUAL CONSCIENCE. DO YOU UNDERSTAND THAT?

25 MS. WARBURTON: UH-HUH, YES.

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21-1

1 MR. WAPNER: OKAY. AND AFTER YOU HAVE HEARD EVERYTHING
2 AND YOU DECIDE THAT THE APPROPRIATE PUNISHMENT IS DEATH, IS
3 THAT A VERDICT THAT YOU ARE CAPABLE OF RENDERING?

4 MS. WARBURTON: AH, I THINK SO.

5 MR. WAPNER: DO YOU THINK YOU MIGHT GET IN THE JURY
6 ROOM AND SAY TO YOURSELF "GEE, I KNOW I SAID ALL OF THOSE
7 THINGS BUT AFTER ALL IS SAID AND DONE, I JUST CAN'T PUT MY-
8 SELF IN THE POSITION OF BEING RESPONSIBLE FOR TAKING SOMEONE
9 ELSE'S LIFE"?

10 MS. WARBURTON: NO.

11 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT, BOTH SIDES HAVE PASSED FOR
14 CAUSE. WHAT THAT MEANS IS -- AND THE COURT FEELS THE SAME
15 WAY -- YOU WILL MAKE A VERY QUALIFIED JUROR IN THIS CASE,
16 ALL RIGHT?

17 MS. WARBURTON: OKAY.

18 THE COURT: YOU ARE ACCEPTABLE TO BOTH SIDES FOR THAT
19 PURPOSE IF YOU ARE SELECTED, SO WHAT I WILL ASK YOU TO DO IS
20 TO COME BACK ON MONDAY MORNING AT 10:30.

21 MS. WARBURTON: 10:30?

22 THE COURT: TO THE JURY ASSEMBLY ROOM AND THEN WE WILL
23 HAVE YOU ALL IN HERE.

24 MS. WARBURTON: OKAY. THANK YOU.

25 THE COURT: WITH ALL THE OTHER JURORS.

26 MS. WARBURTON: THANK YOU.

27 THE COURT: GOOD NIGHT AND HAVE A NICE WEEKEND.

28 (PROSPECTIVE JUROR WARBURTON EXITS THE

1 COURTROOM.)

2 THE COURT: DO YOU WANT A RECESS?

3 MR. BARENS: THERE IS ONLY ONE JUROR REMAINING, YOUR
4 HONOR.

5 THE COURT: LET'S GET THE OTHER ONE IN.

6 (PROSPECTIVE JUROR YOUNG ENTERS THE
7 COURTROOM.)

8 THE COURT: GOOD AFTERNOON, MR. YOUNG.

9 WHERE DO YOU LIVE?

10 MR. YOUNG: TORRANCE.

11 THE COURT: IT IS TOO BAD, YOUR NAME SHOULD HAVE BEEN
12 ALTSCHULER OR SOMETHING LIKE THAT AND THEN YOU WOULD HAVE
13 BEEN FIRST IN LINE. YOUR NAME IS YOUNG AND YOU ARE ON THE
14 BOTTOM OF THE LIST.

15 WHERE DID YOU SAY YOU LIVE, AGAIN?

16 MR. YOUNG: I LIVE IN TORRANCE.

17 THE COURT: HAVE YOU HEARD ANYTHING AT ALL ABOUT THIS
18 CASE, EXCEPT WHAT I TOLD YOU IN COURT, OR HAVE YOU READ
19 ANYTHING ABOUT IT?

20 MR. YOUNG: ONLY WHAT YOU SAID HERE IN COURT, YES.

21 THE COURT: YOU HAVEN'T SPOKEN TO ANYBODY OR HEARD
22 ANYTHING AT ALL ABOUT IT?

23 MR. YOUNG: NO, I HAVE NOT.

24 THE COURT: JUST TO REPEAT, TO GIVE YOU A REFERENCE
25 FOR THE QUESTIONS I AM GOING TO ASK YOU TOUCHING UPON YOUR
26 THOUGHTS AND OPINIONS AND ATTITUDES TOWARD THE DEATH PENALTY,
27 I JUST WANT TO REVIEW SOME OF THE FACTS OF THE CASE.

28 FIRST, YOU HEARD ME EXPLAIN TO THE PROSPECTIVE

1 JURORS THAT THIS IS A CASE WHERE THE DEFENDANT IS CHARGED
2 WITH THE COMMISSION OF THE CRIME OF MURDER IN THE FIRST
3 DEGREE AND THAT THAT MURDER WAS COMMITTED IN THE COURSE OF
4 A ROBBERY.

5 MR. YOUNG: YES, I HAVE.

6 THE COURT: IN THE COURSE OF A ROBBERY, AS I POINTED
7 OUT TO YOU, HAS GREAT SIGNIFICANCE.

8 IT IS NOT EVERY MURDER THAT CALLS FOR THE
9 IMPOSITION OF THE -- FOR CONSIDERATION OF THE DEATH PENALTY.
10 IT IS ONLY THOSE MURDERS WHICH THE LEGISLATURE HAS SAID
11 COMMITTED UNDER CERTAIN SPECIAL CIRCUMSTANCES THAT QUALIFY
12 THE CASE.

13 IN OTHER WORDS, A MAN WHO HAS DELIBERATELY,
14 INTENTIONALLY, PREMEDITATEDLY AND WANTONLY COMMITTED A
15 MURDER, THAT DOESN'T NECESSARILY CALL FOR THE IMPOSITION OF
16 THE DEATH PENALTY; DO YOU UNDERSTAND?

17 MR. YOUNG: YES, SIR.

18 THE COURT: IT IS ONLY WHERE IT IS ACCOMPANIED BY
19 CERTAIN SPECIAL CIRCUMSTANCES THAT THEN IT DOES QUALIFY
20 FOR THE IMPOSITION OF THE DEATH PENALTY.

21 NOW FOR EXAMPLE, THE SPECIAL CIRCUMSTANCE OF
22 THIS CASE IS THAT THE MURDER WAS ALLEGEDLY COMMITTED DURING
23 THE COURSE OF A ROBBERY. IT WOULD BE THE SAME IF THE MURDER
24 WAS COMMITTED IN THE COURSE OF A BURGLARY OR A RAPE OR A
25 KIDNAPPING OR TORTURE OR A CHILD IS MOLESTED AND DIES OR
26 MULTIPLE MURDERS, THERE ARE 19 OF THOSE SPECIAL CIRCUMSTANCES
27 CASES WHERE THE IMPOSITION OF THE DEATH PENALTY MAY BE
28 WARRANTED. DO YOU UNDERSTAND?

1 (PROSPECTIVE JUROR YOUNG NODS HIS HEAD
2 UP AND DOWN.)

3 THE COURT: NOW, WHEN I TALK ABOUT THE DEATH PENALTY,
4 THERE ARE TWO ASPECTS OF THE DEATH PENALTY: ONE IS LIFE
5 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. THAT MEANS
6 EXACTLY THAT: THE MAN IS SENTENCED TO LIFE IN PRISON WITH-
7 OUT THE POSSIBILITY OF PAROLE AND HE STAYS THERE FOR LIFE
8 AND HE IS NEVER PAROLED, NEVER.

9 AND THE OTHER ASPECT IS DEATH IN THE GAS CHAMBER.

10 NOW, THE JURY SELECTED IN THIS CASE WILL FIRST
11 HAVE TO DETERMINE WHAT WE CALL THE GUILT PHASE OF THE TRIAL.
12 THE TRIAL IS IN TWO PARTS.

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1 THE GUILT PHASE OF THE TRIAL IS TO DETERMINE
2 WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE
3 COMMISSION OF THE CRIME OF MURDER AND IF HE IS FOUND GUILTY
4 OF THE COMMISSION OF THE CRIME OF MURDER IN THE FIRST DEGREE,
5 THEN THEY HAVE ANOTHER FINDING TO MAKE: IS IT TRUE OR IS
6 IT FALSE THAT IT WAS COMMITTED DURING THE COURSE OF A
7 ROBBERY?

8 IF IT WAS COMMITTED DURING THE COURSE OF A
9 ROBBERY, THEN THE SPECIAL CIRCUMSTANCE COMES INTO PLAY,
10 THEN THE POSSIBILITY OF THE DEATH PENALTY IS INVOLVED AND
11 THEN THAT SAME JURY LISTENS TO ADDITIONAL TESTIMONY THEY
12 HAVEN'T HEARD BEFORE.

21A

13 THE TESTIMONY THAT IS TENDERED FOR THE PURPOSE
14 BY THE DEFENDANT, FOR EXAMPLE, TO SHOW, AND YOU MUST
15 CONSIDER, THE FACTORS OF HIS AGE, HIS BACKGROUND, HIS
16 EDUCATION, THE ABSENCE OF ANY PRIOR VIOLENT CRIME, HIS MENTAL
17 AND PHYSICAL CONDITION, ANYTHING THAT RELATES TO THE PERSONA,
18 YOU WILL HEAR FROM THE DEFENDANT, AND THE PURPOSE OF THIS
19 TESTIMONY WHICH WILL BE FAVORABLE TO HIM IS TO PERSUADE THE
20 JURY TO IMPOSE THE LESSER OF THE TWO PENALTIES THAT I HAVE
21 DESCRIBED TO YOU.

22 THAT IS CALLED MITIGATION AND EXTENUATING
23 CIRCUMSTANCES.

24 THE PROSECUTION, ON THE OTHER HAND, WILL SHOW
25 AGGRAVATING CIRCUMSTANCES, THAT HE IS NOT SUCH A GOOD
26 PERSON, THAT HE IS BAD; UNFAVORABLE ASPECTS, AS I SAID,
27 OF HIM. AND THE PURPOSE, AS I SAID, OF THAT IS NOT TO HAVE
28 YOU VOTE THE LESSER OF THE PENALTIES BUT TO VOTE THE GREATER

1 OF THE TWO PENALTIES, DO YOU UNDERSTAND THAT?

2 MR. YOUNG: YES.

3 THE COURT: THEN YOU HEAR ALL OF THAT --

4 AND REMEMBER THAT ON THE FIRST PHASE OF THE TRIAL,
5 THE GUILT OR INNOCENCE, YOU DON'T CONSIDER IN ANY WAY ANY
6 QUESTION OF PENALTY TO BE LATER IMPOSED, IF THERE IS ONE;
7 DO YOU UNDERSTAND?

8 MR. YOUNG: ALL RIGHT.

9 THE COURT: YOU MUST CONSIDER THE MERITS OF THE
10 COMMISSION OF THE CRIME AND THAT IS ALL.

11 IT IS ONLY ON THE PENALTY PHASE OF IT THAT YOU
12 CONSIDER IT.

13 SO THAT IN MAKING UP YOUR MIND AS TO WHETHER
14 OR NOT IT IS GUILTY OR NOT GUILTY, YOU SHOULDN'T TAKE INTO
15 CONSIDERATION WHAT MIGHT HAPPEN LATER ON IF HE IS FOUND TO
16 BE GUILTY. OKAY?

17 NOW I AM GOING TO ASK YOU SOME QUESTIONS WHICH
18 DEAL WITH YOUR STATE OF MIND, AS I SAID, ON THE QUESTION OF
19 THE DEATH PENALTY.

20 THAT IS A LONG WAY OF COMING AROUND TO IT BUT I
21 AM COMING TO IT.

22 I WILL ASK YOU FIVE QUESTIONS. THE FIRST TWO
23 QUESTIONS TOUCH ON THE GUILT PHASE OF THE TRIAL THAT I TOLD
24 YOU ABOUT.

25 FIRST: DO YOU HAVE AN OPINION AS TO THE DEATH
26 PENALTY, WHATEVER THAT OPINION MAY BE, WHICH WILL PREVENT
27 YOU FROM REACHING AN IMPARTIAL DECISION AS TO THE GUILT OR
28 INNOCENCE OF THE DEFENDANT?

1 MR. YOUNG: THAT IS REALLY A HARD QUESTION.

2 THE COURT: NO, NO, IT ISN'T. IT IS VERY SIMPLE.

3 MR. YOUNG: YOU CAN --

4 THE COURT: YOU MIGHT HAVE AN OPINION AS TO THE DEATH
5 PENALTY, LET'S ASSUME THAT YOU BELIEVE STRONGLY IN THE
6 DEATH PENALTY, DOES THAT MEAN BECAUSE OF YOUR OPINION AS
7 TO THE DEATH PENALTY --

8 MR. YOUNG: NO.

9 THE COURT: THAT IS WHAT I MEAN.

10 MR. YOUNG: YES.

11 THE COURT: SO YOUR ANSWER IS NO; IS THAT IT?

12 MR. YOUNG: RIGHT.

13 THE COURT: ALL RIGHT, NOW SIMILARLY WITH RESPECT TO
14 THE SPECIAL CIRCUMSTANCE, WAS IT COMMITTED IN THE COURSE OF
15 A ROBBERY: DO YOU HAVE AN OPINION AS OF THE DEATH PENALTY,
16 WHATEVER IT MAY BE, WHICH WOULD PREVENT YOU FROM REACHING
17 AN IMPARTIAL DECISION AS TO WHETHER OR NOT THAT MURDER WAS
18 COMMITTED IN THE COURSE OF A ROBBERY?

19 MR. YOUNG: I VOTED FOR IT, SO --

20 THE COURT: YES, ALL RIGHT.

21 MR. YOUNG: IF THAT MAKES AN OPINION, THEN YES. BUT,
22 NO, I WOULD NOT --

23 THE COURT: YOU WOULDN'T VOTE FOR IT BECAUSE YOU WANT
24 HIM TO GO TO THE GAS CHAMBER?

25 MR. YOUNG: RIGHT.

26 THE COURT: YOU ARE NOT SUPPOSED TO DO THAT.

27 MR. YOUNG: NO, NO, I WOULDN'T. NO, NO.

28 THE COURT: ALL RIGHT, THE NEXT TWO QUESTIONS

1 PRESUPPOSE THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER IN
2 THE FIRST DEGREE AND YOU FOUND IT WAS IN THE COURSE OF A
3 ROBBERY AND NOW WE ARE ON THE PENALTY PHASE: DO YOU HAVE
4 AN OPINION AS TO THE DEATH PENALTY THAT YOU WOULD AUTOMATICALLY
5 VOTE TO IMPOSE THE DEATH PENALTY, IRRESPECTIVE OF OR
6 REGARDLESS OF THE EVIDENCE YOU HEARD ON THE PENALTY PHASE OF
7 THE TRIAL?

8 MR. YOUNG: NO, I WOULD NOT.
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1 THE COURT: GOOD.

2 AND SIMILARLY, DO YOU HAVE AN OPINION AS TO THE
3 DEATH PENALTY WHICH WOULD -- IN WHICH YOU WOULD AUTOMATICALLY
4 VOTE FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
5 PAROLE, REGARDLESS OF OR IRRESPECTIVE OF THE EVIDENCE THAT
6 YOU HEARD ON THE PENALTY?

7 MR. YOUNG: NO, NO.

8 THE COURT: NOW, YOU KNOW THAT THE ISSUE OF THE DEATH
9 PENALTY MAY OR MAY NOT TAKE PLACE IN THIS CASE; DO YOU UNDER-
10 STAND THAT?

11 MR. YOUNG: YES.

12 THE COURT: THESE QUESTIONS HAVE BEEN ASKED ONLY IN
13 THE EVENT WE REACH THAT PHASE OF THE TRIAL.

14 MR. YOUNG: RIGHT.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 GOOD AFTERNOON, MR. YOUNG.

17 MR. YOUNG: HOW DO YOU DO?

18 MR. BARENS: I AM ARTHUR BARENS AND I REPRESENT JOE
19 HUNT.

20 AND I AM GOING TO ASK YOU HOW YOU FEEL ABOUT THE
21 DEATH PENALTY. I MAY EVEN KNOW ALREADY.

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

24 MR. YOUNG: WELL, IT IS A SHAME WE HAVE IT BUT I
25 BELIEVE THAT WE NEED SOMETHING TO DETER WHAT IS GOING ON.

26 MR. BARENS: OKAY. AND COULD YOU TELL ME WHEN YOU
27 THINK WHEN WE OUGHT TO IMPOSE THE DEATH PENALTY?

28 MR. YOUNG: WELL, I FEEL WHEN ANYBODY GETS SHOT, WE

1 OUGHT TO CONSIDER IT, THAT IS FOR SURE, GETS KILLED BY --
2 MR. BARENS: ALL RIGHT. YOU FEEL FOR THE DEATH
3 PENALTY TO BE -- FOR A DEATH PENALTY TO BE EFFECTIVE THAT --
4 AND IT IS OKAY FOR YOU TO FEEL THIS WAY, TOO, BY THE WAY --
5 THAT IF SOMEONE IS KILLED, YOU KNOW, SHOT TO DEATH DURING
6 A ROBBERY AND, YOU KNOW, ALL THAT IS GOING ON, A GUY THAT
7 IS CONVICTED OF IT, SHOT AND KILLED SOMEBODY SO HE COULD
8 STEAL HIS MONEY, WHAT DO YOU THINK WE OUGHT TO DO WITH
9 THOSE DEFENDANTS?

10 MR. YOUNG: WELL, I CAN'T DECIDE JUST ON THAT BECAUSE
11 THERE IS PROBABLY A LOT OF THINGS THAT CAUSED IT THAT I WOULD
12 HAVE TO TAKE A LOT OF THINGS INTO CONSIDERATION.

13 MR. BARENS: WHAT DO YOU MEAN BY THAT? WHAT WOULD YOU
14 WANT TO KNOW ABOUT, SIR?

15 MR. YOUNG: OH, I WOULD HAVE TO KNOW A LITTLE BIT
16 ABOUT THE PERSON SUPPOSEDLY, PROBABLY.

17 MR. BARENS: YOU WANT TO KNOW A LITTLE ABOUT HIS
18 BACKGROUND?

19 MR. YOUNG: YES, WHERE HE CAME FROM, WHAT MAY HAVE
20 CAUSED IT.

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1 MR. BARENS: WHETHER OR NOT HE HAD ANY CRIMINAL RECORD
2 IN THE PAST?

3 MR. YOUNG: YES.

4 MR. BARENS: HIS AGE AT THE TIME HE COMMITTED THE CRIME?

5 MR. YOUNG: NO.

6 THE COURT: YES. THE COURT WILL INSTRUCT YOU THAT AS
7 ONE OF THE FACTORS YOU HAVE TO CONSIDER, IS THE AGE OF THE
8 DEFENDANT.

9 MR. YOUNG: OKAY.

10 THE COURT: YOU WILL ACCEPT THAT, WON'T YOU, AND FOLLOW
11 IT?

12 MR. YOUNG: YES.

13 THE COURT: GOOD.

14 MR. BARENS: WE ARE TALKING ABOUT HERE, IN THAT SECOND
15 PHASE OF A TRIAL, THIS ISSUE ABOUT LIFE OR DEATH, THAT YOU
16 WOULD BE CALLED UPON TO MAKE WHENEVER WE GET TO THAT. DO
17 YOU UNDERSTAND THAT?

18 MR. YOUNG: YES.

19 MR. BARENS: IS IT BELIEVABLE IN YOUR MIND AND HEART
20 SIR, THAT IF YOU TRULY BELIEVED BEYOND A REASONABLE DOUBT
21 THAT A DEFENDANT HAD COMMITTED A FIRST DEGREE, PREMEDITATED,
22 INTENTIONAL MURDER WHERE HE HAD SHOT SOMEBODY DURING A ROBBERY,
23 THAT YOU COULD EVER VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE
24 FOR THAT SORT OF A DEFENDANT?

25 MR. YOUNG: WELL, I AM NOT SURE WHAT YOU SAID.

26 MR. BARENS: WELL, IF YOU GOT THROUGH A GUILT PHASE
27 OF A TRIAL WHEREIN YOU WERE A JUROR AND YOU AND THE OTHER
28 JURORS BELIEVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT

22A
1 HAD IN FACT, COMMITTED A FIRST DEGREE, PREMEDITATED,
2 INTENTIONAL MURDER, LET'S SAY HE SHOT SOMEBODY TO DEATH DURING
3 A ROBBERY, DO YOU THINK THAT YOU COULD EVER GIVE THAT
4 DEFENDANT OR A DEFENDANT OF THAT NATURE, LIFE WITHOUT
5 POSSIBILITY OF PAROLE AS A SENTENCE?

6 MR. YOUNG: NO.

7 MR. BARENS: I DON'T THINK YOU COULD, EITHER. I THINK
8 IN EVERY INSTANCE, YOU WOULD BELIEVE THAT A DEFENDANT UNDER
9 THOSE CIRCUMSTANCES, SHOULD BE GIVEN THE DEATH PENALTY.

10 THE COURT: DOES THAT MEAN NO MATTER WHAT THE TESTIMONY
11 IS ON THE PENALTY PHASE OF THE TRIAL, ALL OF THE FACTORS THAT
12 YOU HEAR, NO MATTER WHAT YOU HEAR, YOU WOULD VOTE FOR THE
13 DEATH PENALTY?

14 MR. YOUNG: NO, NO.

15 THE COURT: THAT IS WHAT HE IS TELLING YOU.

16 MR. YOUNG: IF THAT IS WHAT YOU ARE SAYING, NO.

17 THE COURT: THAT IS THE IMPLICATION OF WHAT HE IS TELLING
18 YOU.

19 MR. BARENS: I ACTUALLY, MR. YOUNG, MEAN TO ASK YOU
20 SOMETHING, RATHER THAN TELL YOU ANYTHING. I TRIED TO
21 CREATE A SITUATION THAT WOULD EXIST, BECAUSE MR. YOUNG, LET
22 ME ASSURE YOU, THAT IF WE EVER COME TO THIS DECISION IN THIS
23 CASE, IT WILL ONLY ARISE WHEN YOU HAVE ALREADY DEVELOPED A
24 BELIEF SYSTEM THAT THE DEFENDANT COMMITTED AN INTENTIONAL,
25 FIRST DEGREE MURDER.

26 BECAUSE UNLESS YOU VOTED THAT WAY ALONG WITH THE
27 OTHER JURORS DURING THE GUILT PHASE, WE NEVER GET TO THE
28 PENALTY PHASE.

1 MR. YOUNG: RIGHT.

2 MR. BARENS: NOW, I ASK YOU TRUE, THAT ALTHOUGH YOU
3 WOULD BE WILLING TO CONSIDER ALL OF THOSE OTHER FACTORS,
4 ONCE YOU FORM A BELIEF BEYOND A REASONABLE DOUBT THAT A
5 DEFENDANT COMMITTED A FIRST DEGREE, INTENTIONAL, UNJUSTIFIABLE,
6 COLD-BLOODED HOMICIDE, DO YOU THINK THAT YOU COULD EVER VOTE
7 IN FAVOR OF LIFE WITHOUT POSSIBILITY OF PAROLE FOR THAT SORT
8 OF A PERSON?

9 MR. YOUNG: IT IS HARD TO BELIEVE. I DON'T KNOW WHETHER
10 I WOULD OR NOT.

11 MR. BARENS: WELL, WHAT DO YOU THINK AS YOU SIT HERE
12 TODAY, SIR?

13 MR. YOUNG: WELL, BASED ON ALL OF THE FACTS, IF IT CAME
14 OUT TO THE POINT WHERE IT WAS BEYOND A REASONABLE DOUBT THAT
15 THE PERSON DID SOMETHING, THAT HE KNEW HE WAS NOT SUPPOSED
16 TO DO IT, THEN I WOULD PROBABLY GO FOR THE DEATH PENALTY RATHER
17 THAN LIFE WITHOUT POSSIBILITY OF PAROLE.

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1 MR. BARENS: ALL RIGHT. WOULD IT BE A FAIR STATEMENT
2 TO SAY, THAT ALTHOUGH YOU COULD CONSIDER THESE BIOGRAPHICAL
3 DETAILS ABOUT BACKGROUND AND AGE AND WHETHER OR NOT HE HAD
4 DONE ANYTHING BEFORE, THAT YOUR BELIEF SYSTEM IS SUCH, THAT
5 YOU WOULD BE SUBSTANTIALLY IMPAIRED IN EVER BEING ABLE TO
6 VOTE FOR LIFE WITHOUT POSSIBILITY OF PAROLE?

7 MR. YOUNG: NO.

8 MR. BARENS: FOR SOMEONE THAT YOU HAD ALREADY DETERMINED
9 WAS GUILTY OF A COLD-BLOODED, FIRST DEGREE MURDER?

10 MR. YOUNG: NO. IT WOULD BE BASED ON THE FACTS.

11 MR. BARENS: WELL, I UNDERSTAND THAT IT WOULD BE BASED
12 ON THE FACTS, SIR, BUT WHAT I AM SAYING IS, DO YOU REALLY
13 BELIEVE THAT DEALING WITH A DEFENDANT YOU HAD ALREADY CONVICTED
14 OF A FIRST DEGREE MURDER, THAT YOU COULD VOTE FOR LIFE WITHOUT
15 POSSIBILITY OF PAROLE?

16 MR. YOUNG: YES. I THINK SO.

17 MR. BARENS: DO YOU THINK YOU COULD?

18 MR. YOUNG: SURE. THE REASON I SAY THAT IS, I WORK
19 IN THAT KIND OF A -- OR I DID WORK IN THAT KIND OF A SITUATION
20 WHERE YOU DETERMINE THROUGH FACTS, WHETHER THE PERSON IS
21 GUILTY OR NOT. THEN YOU MAKE A DETERMINATION. SO YES, I
22 THINK I CAN.

23 MR. BARENS: MR. YOUNG, REMEMBER THAT GUILT AND ITS
24 EXISTENCE BEYOND A REASONABLE DOUBT, HAS ALREADY BEEN
25 ESTABLISHED BEFORE WE COME TO THE PENALTY PHASE.

26 MR. YOUNG: YES.

27 MR. BARENS: BEFORE YOU WOULD EVER HAVE TO ENTERTAIN
28 THIS ISSUE OR DECIDE THIS ISSUE, YOU HAVE ALREADY DECIDED

1 THAT HE IS GUILTY OF -- AS GUILTY AS ALL GET-OUT. THERE IS
2 NO ISSUE OF GUILT ANY MORE.

3 MR. YOUNG: RIGHT.

4 MR. BARENS: GUILT IS AS FIRM AS COULD BE. NOW, I AM
5 ASKING YOU, DEALING WITH A DEFENDANT -- WHAT I REALLY NEED
6 TO KNOW IS, KNOWING THE FELLOW TO BE GUILTY IN YOUR OWN MIND
7 BEYOND A REASONABLE DOUBT, KNOWING THAT ALL OF THE OTHER JURORS
8 AGREED WITH YOU ON THAT POINT OF VIEW, COULD YOU EVER VOTE
9 FOR LIFE WITHOUT POSSIBILITY OF PAROLE OR WOULD YOU FEEL THAT
10 SINCE HE HAD INTENTIONALLY AND KNOWINGLY TAKEN A LIFE WITHOUT
11 JUSTIFICATION, THAT IS THE ONLY APPROPRIATE PENALTY, THE DEATH
12 PENALTY?

13 MR. YOUNG: NO. I DON'T THINK SO. I THINK I COULD
14 STILL EVALUATE ALL OF THE FACTS.

15 MR. BARENS: DO YOU THINK THAT YOU COULD?

16 MR. YOUNG: TO MAKE A DECISION.

17 MR. BARENS: DO YOU THINK WITH YOUR POINT OF VIEW, THAT
18 YOU COULD GIVE THE DEFENSE A FAIR TRIAL, IF WE EVER GOT TO
19 A PENALTY PHASE AND THE DEFENDANT WAS ASKING FOR LIFE WITHOUT
20 POSSIBILITY OF PAROLE?

21 DO YOU THINK THAT YOU COULD BE AS FAIR AND OPEN-
22 MINDED IN CONSIDERING EVIDENCE FOR THE DEFENSE AS YOU WOULD
23 BE FOR THE PROSECUTION?

24 MR. YOUNG: I THINK SO, YES.

25 MR. BARENS: DO YOU BELIEVE THAT?

26 MR. YOUNG: YES I DO.

27 MR. BARENS: NOW, WOULD YOU SAY THAT YOU SUBSCRIBE TO
28 A CONCEPT THAT MIGHT SIMPLISTICALLY BE REFERRED TO AS A LIFE

1 FOR A LIFE?

2 MR. YOUNG: NO.

3 MR. BARENS: YOU DON'T?

4 MR. YOUNG: NO.

5 MR. BARENS: THAT TYPE OF A CONCEPT WOULD NOT DOMINATE
6 YOUR THINKING IN DETERMINING THE SENTENCING FOR VIOLENT
7 CRIMES?

8 MR. YOUNG: NO.

9 MR. BARENS: ALL RIGHT, SIR. HAVE YOU ALWAYS FELT
10 PRETTY MUCH THE WAY YOU DO ABOUT THE DEATH PENALTY?

11 MR. YOUNG: YES I HAVE.

12 MR. BARENS: DID YOU FEEL THAT WAY BEFORE YOU HAD
13 THE TYPE OF JOB THAT YOU REFERENCED IN PASSING, THAT YOU HAD
14 JUST NOW?

15 MR. YOUNG: I WOULD SAY SO.

16 MR. BARENS: ALL RIGHT. NOTHING PARTICULARLY HAPPENED
17 IN YOUR LIFE THAT INFLUENCED THE WAY YOU FELT ABOUT THE
18 DEATH PENALTY, NO PARTICULAR INCIDENT?

19 MR. YOUNG: NO.

20 MR. BARENS: LET ME ASK YOU THIS, SIR. THE FACT THAT
21 I AM ASKING YOU QUESTIONS ABOUT THE DEATH PENALTY AND HIS
22 HONOR HAS AS WELL, WE HAVE GOT JOE HUNT SITTING DOWN THERE
23 AT THE END OF THE COUNSEL TABLE ACCUSED OF COMMITTING A FIRST
24 DEGREE MURDER. DOES THAT MAKE YOU BELIEVE THAT JOE HUNT HAS
25 DONE ANYTHING WRONG?

26 MR. YOUNG: YES.

27 MR. BARENS: WHY DO YOU FEEL THAT WAY?

28 MR. YOUNG: WELL, WE WOULDN'T BE HERE IF IT WAS NOT

1 TRUE.

2 MR. BARENS: IF IT WAS NOT TRUE THAT HE DID SOMETHING
3 WRONG?

4 MR. YOUNG: RIGHT.

5 MR. BARENS: WELL --

6 MR. YOUNG: OR ALLEGED, IF YOU WANT TO USE THAT TERM.
7 SOMETHING HAS CAUSED US TO BE HERE. WHATEVER WORDS YOU USE,
8 THAT IS THE WAY I AM TALKING ABOUT.

9 MR. BARENS: WELL, IT IS A REAL IMPORTANT DIFFERENCE,
10 MR. YOUNG BETWEEN SOMETHING ALLEGED TO HAVE HAPPENED AND
11 SOMETHING HAPPENING.

12 MR. YOUNG: OKAY. SO THEN, SORRY. I USED THE WRONG
13 WORDS.

14 MR. BARENS: YOU DON'T BELIEVE DO YOU, THAT BECAUSE
15 HE IS ACCUSED OF A CRIME, THAT HE HAS DONE SOMETHING WRONG.
16 DO YOU?

17 MR. YOUNG: NO. I CAN'T.
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1 MR. BARENS: WELL, QUITE SO. YOU UNDERSTAND THAT
2 WHETHER IT WAS YOU HERE AS A DEFENDANT OR ME OR ANYBODY ELSE,
3 JOE HUNT INCLUDED, THAT EVERY CITIZEN IN THIS COUNTRY, HAS
4 A PRESUMPTION OF INNOCENCE WHEN WE COME TO STAND FOR TRIAL?

5 MR. YOUNG: YES.

6 MR. BARENS: AND DO YOU BELIEVE IN THAT?

7 MR. YOUNG: I DO.

8 MR. BARENS: ARE YOU COMFORTABLE WITH THAT, SIR?

9 MR. YOUNG: YES.

10 MR. BARENS: ALL RIGHT. I REALLY APPRECIATE YOUR TIME
11 AND ANSWERS. THE DEFENSE WOULD RESERVE A CHALLENGE AT THIS
12 TIME, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER?

15 MR. WAPNER: THANK YOU.

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

18 WHAT IS THE JOB THAT YOU WERE TALKING ABOUT?

19 MR. YOUNG: I WORKED IN THE EMPLOYEE RELATIONS AREA
20 OF CIVIL SERVICE. AND DURING THAT TIME, I HAVE NOT TRIED
21 MURDER CASES, THANK GOD.

22 BUT I WAS INVOLVED IN SHOOTINGS AND KNIFINGS AND
23 THE PUNCHING OF SUPERVISORS OUT AND THOSE KINDS OF THINGS.

24 MR. WAPNER: SHOOTINGS OF ONE CIVIL SERVANT BY ANOTHER?

25 MR. YOUNG: YES.

26 MR. WAPNER: DO YOU HAVE ANY STRONGLY-HELD RELIGIOUS
27 OR MORAL BELIEFS THAT YOU THINK WOULD AFFECT YOUR ABILITY
28 TO DECIDE THIS QUESTION OF THE DEATH PENALTY?

1 MR. YOUNG: NO.

2 MR. WAPNER: WHEN IT CAME TO ACTUALLY MAKING THE
3 DECISION AS TO WHAT THE PENALTY SHOULD BE, IT WOULD BE AN
4 INDIVIDUAL DECISION ON YOUR PART IN CONJUNCTION WITH 11 OTHER
5 PEOPLE. DO YOU UNDERSTAND THAT?

6 MR. YOUNG: YES I DO.

7 MR. WAPNER: AND IF YOU FEEL THAT THE APPROPRIATE
8 PUNISHMENT IS DEATH, ARE YOU CAPABLE OF RENDERING THAT VERDICT?

9 MR. YOUNG: YES I AM.

10 MR. WAPNER: IF YOU FEEL THAT THE APPROPRIATE VERDICT
11 IS LIFE WITHOUT POSSIBILITY OF PAROLE, ARE YOU CAPABLE OF
12 RENDERING THAT VERDICT?

13 MR. YOUNG: YES I AM.

14 MR. WAPNER: I WILL PASS FOR CAUSE.

15 THE COURT: ALL RIGHT. THERE ARE SOME LEGAL QUESTIONS --

16 MR. BARENS: JUST A MOMENT. I MIGHT SAVE YOU SOME TIME.

17 (PAUSE.)

18 MR. BARENS: THE DEFENSE WILL WITHDRAW ANY RESERVATIONS
19 AND PASS FOR CAUSE.

20 THE COURT: ALL RIGHT. THANK YOU. MR. YOUNG, BOTH
21 SIDES HAVE PASSED FOR CAUSE. WHAT THAT MEANS IS THAT THEY
22 FIND YOU ENTIRELY ACCEPTABLE AS A PROSPECTIVE JUROR IN THIS
23 CASE. WHAT I WILL ASK YOU TO DO IS TO COME BACK ON MONDAY
24 MORNING WITH ALL OF THE OTHER JURORS IN THE JURY ASSEMBLY
25 ROOM.

26 WE WILL HAVE YOU COME BACK INTO THIS COURTROOM
27 AND WE WILL PROCEED WITH THE TRIAL. ALL RIGHT? THANK YOU
28 VERY MUCH.

1 THAT WILL BE MONDAY MORNING AT 10:30 IN THE JURY
2 ASSEMBLY ROOM. ALL RIGHT?

3 (PROSPECTIVE JUROR YOUNG EXITED THE
4 COURTROOM.)

5 MR. BARENS: WE MADE IT.

6 THE COURT: MIRABILE DICTU.

7 MR. WAPNER: FOR THE RECORD, ALL ALONG DURING THIS
8 PROCESS, COUNSEL HAS BEEN SAYING THAT THE ONLY WAY THAT YOU
9 COULD GET TO THE QUESTION OF THE DEATH PENALTY IS IF YOU FIND
10 THAT IT IS A PREMEDITATED MURDER. I THINK ONLY FOR THE RECORD,
11 OUT OF AN ABUNDANCE OF CAUTION, FOR SOME POSSIBLE APPELLATE
12 ISSUE SOMEWHERE, I THINK THAT IN THE TECHNICAL SENSE, THAT THE
13 LAW IS THAT THEY COULD FIND THIS WAS A ROBBERY/MURDER, TO WIT:
14 A FIRST DEGREE, FELONY MURDER WITHOUT DETERMINING THAT IT
15 WAS PREMEDITATED.

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1 AND THEREFORE, COME IN WITH A VERDICT OF FIRST
2 DEGREE MURDER AND STILL GET TO THE DEATH PENALTY QUESTION.

3 THE REASON THERE WAS NEVER ANY OBJECTION IS
4 THAT AS A PRACTICAL MATTER IN THIS PARTICULAR CASE, UNDER
5 THE FACTS OF THIS CASE, IT SEEMS TO ME UNLIKELY, IF NOT
6 IMPOSSIBLE, THAT THEY WOULD COME IN WITH A VERDICT OF GUILT
7 AND NOT FIND IT WAS PREMEDITATED. I JUST MAKE THAT STATEMENT
8 FOR THE RECORD.

9 MR. BARENS: I DO NOT DISAGREE. I WOULD STATE FOR THE
10 RECORD, I JOIN IN MR. WAPNER'S COMMENTARY.

11 THE REASON I SAID IT, AND SO DID MR. WAPNER, IS
12 IT WOULD BE WELL NIGH IMPOSSIBLE WITH WHAT WE HAVE TO DEAL WITH
13 HERE, TO GET TO THE SECOND PHASE IF YOU DON'T THINK IT IS
14 PREMEDITATED.

15 THE COURT: THAT IS TRUE.

16 NOW WHAT ARE WE GOING TO DO ABOUT THIS OTHER
17 QUESTION, BECAUSE I AM CONCERNED ABOUT IT.

18 MR. BARENS: I AM, QUITE SO.

19 THE COURT: I DON'T WANT TO HAVE ANY DELAY IN THIS TRIAL
20 BECAUSE OF THAT FACT.

21 MR. BARENS: WELL, WE HAVE TO CONFERENCE SERIOUSLY
22 OVER THE NEXT COUPLE OF DAYS AND STUDY THE IMPACT OF WHAT
23 HAS BEEN REMOVED, THAT IT IS GOING TO HAVE ON THE DEFENSE.

24 THE COURT: WHAT HAS BEEN REMOVED?

25 MR. BARENS: WELL, WE HAVE AN INVENTORY OF SORTS.
26 WE DON'T KNOW UNTIL MR. HUNT GOES HOME TODAY AND INVENTORIES
27 WHAT REMAINS, WHAT IS NOT THERE ANYMORE.

28 THE COURT: WHAT DID THEY SEEK?

1 MR. BARENS: WELL, THEY TOOK FIVE BOXES IDENTIFIED
2 AS "MISCELLANEOUS LEGAL PAPERS" AND THAT IS HOW THEY ARE
3 IDENTIFIED.

4 THE COURT: WHY DON'T YOU FIND OUT WHAT IS MISSING
5 THAT YOU NEED FOR THIS TRIAL? LET ME KNOW WHAT IT IS AND
6 IF I CAN GET IT FROM THE POLICE.

7 MR. BARENS: WELL, I AM GOING TO ASK MR. HUNT, WHICH
8 I HAVE DISCUSSED WITH HIM OVER THE --

9 YOU SEE, MR. CHIER WENT TO THE HOUSE AND MR.
10 HUNT WENT TO THE CAFETERIA WITH THIS COUNSEL AND I ASKED HIM
11 TO PREPARE AS DETAILED A REVERSE INVENTORY AS HE CAN ABOUT
12 WHAT IS MISSING.

13 ALL I KNOW FROM MR. CHIER IS THAT BY THE TIME HE
14 HAD GOTTEN THERE, THEY HAD BEEN THERE ABOUT OVER AN HOUR AND
15 A HALF AND HAD REMOVED FIVE BOXES MARKED "MISCELLANEOUS
16 LEGAL PAPERS".

17 MR. CHIER: MISCELLANEOUS PAPERS.

18 MR. BARENS: MISCELLANEOUS PAPERS.

19 THE COURT: DID THEY INCLUDE ANY OF YOUR PAPERS?

20 MR. BARENS: WELL, I DON'T KNOW, YOUR HONOR BUT --

21 (UNREPORTED COLLOQUY BETWEEN MR. CHIER AND
22 MR. BARENS.)

23 MR. BARENS: I AM BEING TOLD THEY DID ACCESS --

24 THE COURT: WHERE ARE THOSE PAPERS NOW?

25 MR. BARENS: I DON'T HAVE ANY IDEA.

26 MR. CHIER: IN THE POSSESSION OF OSCAR --

27 MAY I SPEAK, YOUR HONOR?

28 THE COURT: POSSESSION OF OFFICER WHO?

1 MR. CHIER: THEY ARE IN THE POSSESSION OF AGENT OSCAR
2 BRILLING OF THE CALIFORNIA DEPARTMENT OF JUSTICE, WHO IS THE
3 INVESTIGATOR WORKING CLOSELY WITH MR. JOHN VANCE, IN FACT.

4 THE COURT: JOHN WHO?

5 MR. CHIER: JOHN VANCE, THE DEPUTY ATTORNEY GENERAL WHO
6 IS PROSECUTING THE NORTHERN CALIFORNIA CASE. AND AT TIMES,
7 THERE IS ALMOST A --

8 THE COURT: DID YOU MAKE ANY EFFORT TO FIND OUT WHAT
9 THE SEIZED?

10 MR. WAPNER: YOUR HONOR, I SPOKE TO MR. BRILLING OVER
11 THE LUNCH HOUR IN MR. BARENS' PRESENCE, AND I ASKED HIM
12 SPECIFICALLY ABOUT WHETHER THEY WERE TAKING ANYTHING THAT
13 PERTAINED TO THE DEFENSE IN THIS CASE.

14 NOW, I REALIZE THAT THIS IS A VERY BROAD CATEGORY.

15 BUT MR. BRILLING ASSURED ME THAT HE WAS VERY
16 FAMILIAR WITH THE CASE. HE HAS BEEN ON THE CASE FOR A COUPLE
17 OF YEARS. AND THAT HE ONLY WOULD MAKE A CURSORY REVIEW OF
18 THINGS, TO MAKE SURE THEY DIDN'T HAVE TO DO WITH THIS CASE
19 AND IF THEY DID HAVE TO DO WITH THE DEFENSE OF THIS CASE, THAT
20 HE WAS NOT GOING TO SEIZE THEM.

21 OBVIOUSLY, THAT DOESN'T ANSWER A SPECIFIC
22 QUESTION. BUT ALL I CAN TELL YOU RIGHT NOW IS THAT THEY WERE
23 BEING CAREFUL, OR AT LEAST ATTEMPTING TO BE CAREFUL NOT TO
24 TAKE THINGS THAT WERE PREPARED FOR THE DEFENSE IN THIS CASE.

25 THEY WERE LOOKING FOR DOCUMENTS --

26 MR. BARENS: YOUR HONOR --

27 MR. WAPNER: MIGHT I JUST FINISH, PLEASE?

28 THE COURT: YES, GO AHEAD.

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1 MR. WAPNER: I WAS TOLD BY MR. BRILLING THEY WERE
2 LOOKING FOR DOCUMENTS THAT WERE EVIDENCE THAT HAD BEEN
3 PRODUCED, IF YOU WILL, DURING THE TIME THAT MR. HUNT AND
4 VARIOUS OTHER PEOPLE WERE INVOLVED WITH THE ONGOING
5 OPERATIONS OF THE ORGANIZATION THAT HAS COME TO BE KNOWN AS
6 THE BBC AND NOT THE THINGS THAT WERE PREPARED IN PREPARATION
7 FOR THE DEFENSE.

8 MR. BARENS: WELL, MR. CHIER, AS A MEMBER OF THE BAR,
9 HAS ADVISED ME THAT HE PERSONALLY WITNESSED MEMBERS OF THE
10 LOS ANGELES POLICE DEPARTMENT, MEMBERS OF THE BEVERLY HILLS
11 POLICE DEPARTMENT PRESENT THERE, INCLUDING LES ZOELLER, THE
12 PRIMARY INVESTIGATING OFFICER FOR MR. WAPNER IN THIS CASE,
13 WHO DIDN'T EVEN HAVE THE COURTESY TO TELL THE GUY HE WORKS
14 FOR, MR. WAPNER, THAT HE WAS GOING TO DO THIS SEARCH TODAY,
15 READING THE DEFENSE MATERIALS, SPECIFIC LITIGATION DIGESTS
16 OF THE DEFENSE IN THE ROBERTS RESIDENCE.

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1 THEY SAID THEY DIDN'T TAKE ANYTHING FOR THE
2 DEFENSE?

3 I AM LOOKING AT A RECEIPT THEY TENDERED TO US,
4 THE LAST ITEM OF WHICH SAYS MISCELLANEOUS LEGAL DOCUMENTS
5 RELATING TO BBC'S COMPANY, I.E., MICROGENESIS.

6 THIS TRIAL IS ALL ABOUT A MILLION FIVE HUNDRED
7 THOUSAND DOLLAR MICROGENESIS CHECK AND INVESTMENT PURPORTEDLY
8 MADE BY MR. LEVIN -- WHAT ARE WE TALKING ABOUT HERE? AND IN
9 ORDER FOR THEM --

10 YOUR HONOR, THEY WERE AT RANDOM RUMMAGING THROUGH
11 DEFENSE MATERIAL AND THEN SAYING, AFTER HAVING ACCESSED THEM
12 AND READ THEM, SAYING, "WELL, WE WON'T TAKE THAT NOW THAT WE
13 HAVE READ IT. IT MUST BE A DEFENSE EXHIBIT, WE WON'T TAKE
14 IT." BUT THEY HAVE READ IT.

15 THAT IS WHY THERE IS A NEW YORK V. MASSIAH
16 PROBLEM AND A GOOD FAITH PROBLEM UNDER LEON THAT IS
17 APPARENT HERE.

18 THE COURT: THIS WASN'T DONE BY THE PROSECUTOR IN
19 THIS CASE OR UNDER HIS DIRECTION OR CONTROL.

20 MR. CHIER: YOUR HONOR --

21 THE COURT: TELL HIM TO SHUT UP.

22 MR. BARENS: YES.

23 THE COURT: I TOLD HIM -- WHAT'S MORE, HE MADE IT A
24 POINT TO GO UP TO THE COURT OF APPEALS WHEN HE DELIBERATELY
25 MAKES IT A POINT TO INTERRUPT. WHEN I TOLD HIM TO BE QUIET,
26 WHEN I TOLD HIM TO SHUT UP, I MEAN FOR HIM TO SHUT UP AND
27 NOT INTERRUPT A CONVERSATION THAT I AM HAVING WITH YOU.

28 MR. BARENS: YES, I AM QUITE WELL PAYING ATTENTION,

1 YOUR HONOR.

2 THE COURT: OTHERWISE, HE IS GOING TO GO UP TO THE COURT
3 OF APPEALS AGAIN.

4 MR. BARENS: NO, HE ISN'T, YOUR HONOR, I DON'T BELIEVE
5 SO.

6 LET'S PROCEED WITH WHAT IS CRITICAL TO THE
7 DEFENSE NOW.

8 THE COURT: YES.

9 WHAT I SAID THAT SHOULD BE DONE, IF THERE ARE ANY
10 RECORDS THAT YOU NEED IN ORDER TO PREPARE YOUR CASE, FIRST
11 OF ALL, I WILL ENJOIN ANYBODY FROM COMMUNICATING TO THE
12 DISTRICT ATTORNEY AND TELLING HIM, DIVULGING INFORMATION,
13 CONFIDENTIAL INFORMATION WHICH THEY ARE NOT SUPPOSED TO DO
14 AND I AM ENJOINING THE DISTRICT ATTORNEY NOT TO ACCEPT OR USE
15 OR LOOK AT ANY INFORMATION WHICH IS CONFIDENTIAL TO THE
16 DEFENDANT.

17 SO WHAT I WOULD SUGGEST THAT YOU DO IS YOU BOTH
18 EXAMINE THE MATERIAL WHICH THEY HAVE, NOT TO READ IT ALL, BUT
19 TO EXAMINE IT AND SEE WHETHER OR NOT THE CATEGORY IS SUCH THAT
20 IT CAN BE RELEASED TO THEM AND THEY CAN USE IT FOR WHATEVER
21 PURPOSES THEY WANT SO IT IS PROVIDED TO THEM AND IT DOESN'T
22 INTERFERE IN ANY WAY WITH YOUR PREPARATION OF YOUR CASE HERE.

23 MR. BARENS: YOUR HONOR, LET ME GIVE YOU AN EXAMPLE OF
24 A THING I AM REALLY CONCERNED ABOUT NOW. FROM THE TIME OF --

25 THE COURT: THE MICROGENESIS, I CAN UNDERSTAND, IS AN
26 ITEM IN THIS CASE.

27 MR. BARENS: THEY HAVE GOT ALL OF OUR STUFF.

28 THE COURT: THEN YOU MUST GET THEM BACK.

1 MR. BARENS: I DON'T KNOW HOW TO GET THEM BACK.

2 THE COURT: I WILL ISSUE AN ORDER TELLING THEM TO
3 RETURN IT.

4 MR. WAPNER: MAY I SUBMIT, I AM SURE, ALTHOUGH I AM NOT
5 CLAIRVOYANT, THAT THE DEFENSE WILL PRODUCE A WRITTEN MOTION
6 ON THIS MATTER THAT IS GOING TO BE THE SUBJECT OF EXTENSIVE
7 LITIGATION. I DON'T -- I THINK WE ARE KIND OF FLAPPING IN
8 THE WIND HERE BECAUSE I KNOW WE ARE GOING TO TALK ABOUT THIS
9 AT LENGTH AND PROBABLY HAVE TO TAKE SOME TESTIMONY ON IT.

10 THE COURT: THEN I WANT TO CUT THROUGH ALL OF THIS.
11 IF THEY HAVE GOT DOCUMENTS, I WANT YOU AND MR. BARENS TO TAKE
12 A LOOK AT AND SEE WHETHER OR NOT THOSE DOCUMENTS, WHETHER
13 IF MR. BARENS IS DEPRIVED OF THEM, IT WILL AFFECT HIS CONDUCT
14 OF THE DEFENSE IN THIS PARTICULAR CASE.

15 I DON'T WANT ANY DOCUMENTS -- THEY ARE HERE IN
16 CALIFORNIA, AREN'T THEY?

17 MR. BARENS: WELL, IN SAN MATEO BY NOW.

18 THE COURT: IN SAN MATEO NOW?

19 MR. BARENS: THEY WERE ON THEIR WAY TO SAN MATEO.

20 MR. WAPNER: YOUR HONOR, I WILL DISCUSS IT WITH MR.
21 BARENS.

22 I APPRECIATE EXACTLY WHAT THE COURT IS SAYING BUT
23 BECAUSE OF THE PRECISE REASONS THAT THE COURT GAVE, I DON'T
24 THINK I SHOULD BE GOING THROUGH THE DOCUMENTS, LEST I READ
25 SOMETHING THAT MAYBE I SHOULDN'T BE READING. I WILL TALK
26 TO --

27 THE COURT: HOW CAN WE DETERMINE WHETHER OR NOT THESE
28 DOCUMENTS ARE RELEVANT IN THIS PARTICULAR CASE AND WHETHER

23-8

1 OR NOT THEY ARE CONFIDENTIAL?

2 MR. WAPNER: WELL, I GUESS IT IS CATCH-22.

23B

3 THE COURT: WHY DON'T YOU SEE WHAT THEY HAVE TAKEN?

4 MR. BARENS: I AM GOING TO.

5 THE COURT: WHY DON'T YOU SEE IF IT IS ANY OF THE
6 PREPARATION YOU HAVE MADE IN THIS CASE.

7 MR. BARENS: I HAVE ENDEAVORED TO DO SO FIRST BY
8 ASKING MR. HUNT.

9 THE COURT: TELL ME WHAT IT IS THAT THEY HAVE THAT YOU
10 NEED IN ORDER TO PREPARE THIS CASE.

11 MR. BARENS: YOUR HONOR, LET ME MAKE A STATEMENT ABOUT
12 FAIR PLAY FOR A MOMENT, BECAUSE THAT IS REALLY WHAT WE GET
13 BACK TO TALKING ABOUT, ALL RIGHT, YOUR HONOR?

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1 YOUR HONOR, LET ME REPRESENT TO THE COURT THAT
2 SINCE THE DATE IN THIS CASE THAT THE ARREST WAS MADE OF JOE
3 HUNT, THE ARREST WAS MADE BY A GUY NAMED LES ZOELLER FOR
4 RON LEVINS' MURDER CASE (SIC) -- THIS THING HAS GOTTEN ME
5 A BIT DISTRACTED TODAY, YOUR HONOR.

6 THE COURT: I CAN UNDERSTAND.

7 MR. BARENS: FROM THAT DAY, LES ZOELLER, A DETECTIVE
8 IN THE BEVERLY HILLS POLICE DEPARTMENT, HAS BEEN THE
9 PRIMARY POLICE OFFICER WORKING WITH THE DISTRICT ATTORNEY IN
10 THIS CASE, IN THE PREPARATION OF THIS CASE.

11 THAT SAME INVESTIGATOR WAS PRESENT FROM THE
12 START TODAY AT THE ROBERTS' RESIDENCE IN THE EXERCISE OF
13 THIS SEARCH WARRANT.

14 HE NEVER, IN FAIR PLAY, TOLD FRED WAPNER THAT HE
15 WAS GOING TO BE THERE TODAY AND, IN FACT, WHEN FRED WAPNER
16 BECAME ADVISED OF IT, TOLD LES ZOELLER TO LEAVE THE PREMISES,
17 BECAUSE IT WAS SUCH AN OBVIOUS VIOLATION OF ANY FAIR TRIAL
18 PLAY IMAGINABLE IN THIS STATE. THAT TYPE OF CONDUCT BY AN
19 OFFICER OF THE BEVERLY HILLS P.D., TO SURREPTITIOUSLY GO UP
20 THERE AND LOOK AT DEFENSE MATERIALS, TO PREPARE HIMSELF TO
21 TESTIFY AT TRIAL AND TO PREPARE HIMSELF TO WORK WITH THE
22 PROSECUTION WITNESSES THAT ARE GOING TO COME INTO COURT AND
23 TESTIFY AND HAVE AN OPPORTUNITY TO CORRUPT AND PREPARE AND
24 POLLUTE EVERY ONE OF THOSE WITNESSES, I SUBMIT, IS ABSOLUTELY
25 THE MOST UNCONSCIONABLE THING I HAVE EVER HEARD OF IN 18 YEARS
26 OF PRACTICE, THAT HE WOULDN'T EVEN TELL MR. WAPNER THAT HE
27 WAS GOING TO GO UP THERE TO DO THIS TODAY.

28

24A-1
1 HE KNEW HE WAS WORKING WITH EVERY, BLOODY,
2 SUBPOENAED PROSECUTION WITNESS IN THIS CASE. DOES THAT VIOLATE
3 A SENSE OF FAIR PLAY? I SUBMIT THAT THAT IS TOTALLY
4 REPREHENSIBLE IN THIS COUNTRY.

5 MR. WAPNER: MAY I JUST RESPOND?

6 THE COURT: MR. WAPNER, I DON'T WANT TO HAVE ANY OF
7 THESE RECORDS WITHHELD WHICH WILL IN ANY WAY, INTERFERE WITH
8 THE TRIAL OF THIS CASE.

9 MR. WAPNER: NEITHER DO I.

10 THE COURT: THAT IS, THE EXPEDITIOUS TRIAL OF THIS CASE.
11 I MEAN, I ENJOIN YOU TO TAKE A LOOK, TOGETHER WITH MR. BARENS,
12 AT WHAT THEY HAVE. I WANT YOU TO SEE WHETHER OR NOT THERE
13 IS ANYTHING NEEDED BY THE DEFENSE, IN ORDER TO GO FORWARD
14 WITH THE DEFENSE.

15 MR. BARENS: I WOULD LIKE MR. WAPNER ENJOINED FROM EVEN
16 SPEAKING TO LES ZOELLER AND I WOULD LIKE LES ZOELLER ENJOINED
17 FROM SPEAKING TO ANY PROSECUTION WITNESS UNTIL FURTHER ORDER
18 OF THE COURT.

19 THE COURT: WELL, I WILL -- MR. WAPNER, IT IS REALLY
20 HIS OBLIGATION AS A MEMBER OF THE BAR AND ALSO AS A DISTRICT
21 ATTORNEY HERE, THAT HE WILL NOT USE OR EXAMINE ANY MATERIALS
22 WHICH IN ANY WAY REPRESENT CONFIDENTIAL MATTERS WHICH HAVE
23 BEEN TAKEN AS A RESULT OF THIS PARTICULAR SUBPOENA.

24 MR. BARENS: I WOULD LIKE YOUR HONOR TO MAKE AN ORDER
25 THROUGH MR. WAPNER, TO MR. ZOELLER THAT HE IS NOT TO SPEAK
26 TO ANY PROSECUTION WITNESSES THAT WE PLAN TO CROSS-EXAMINE
27 UNTIL THERE HAS BEEN A FURTHER ORDER OF COURT.

28 THE COURT: I DON'T KNOW HOW I CAN DO THAT. DO YOU

4A-2
1 PLAN TO USE ANY OF THE INFORMATION OR MATERIALS?

2 MR. BARENS: QUITE SO, YOUR HONOR.

3 THE COURT: I WILL RESTRAIN HIM FROM USING ANY MATERIAL
4 THAT HE HAS GOTTEN, SOURCES OF INFORMATION AND TALKING TO
5 THEM ABOUT MATTERS THAT HE HAD BEFORE HE STARTED EXAMINING
6 THOSE RECORDS, AND -- YES?

7 MR. BARENS: THAT IS WHAT I AM ASKING.

8 THE COURT: NOT THE RESULT OF HAVING EXAMINED THE
9 RECORDS.

10 MR. WAPNER: YOUR HONOR, MAY I RESPOND JUST BRIEFLY?

11 THE COURT: I DON'T UNDERSTAND WHY IF YOU HAVE A
12 DETECTIVE ASSOCIATED WITH THIS PARTICULAR CASE, THAT HE DIDN'T
13 ADVISE YOU AS TO WHAT WAS BEING DONE.

14 MR. WAPNER: WELL, I DON'T UNDERSTAND WHY THE WHOLE
15 OPERATION -- WHY I WAS NOT ADVISED OF THE ENTIRE OPERATION.
16 BUT THAT IS WATER UNDER THE BRIDGE AT THIS POINT.

17 THE POINT IS, THAT NOBODY INVOLVED IN THE
18 EXECUTION OF THAT SEARCH WARRANT, KNEW -- OR I SUBMIT HAD
19 ANY REASON TO KNOW THAT DOCUMENTS USED IN THE PREPARATION
20 OF THIS DEFENSE WOULD BE AT THAT RESIDENCE.

21 THE COURT: THAT'S RIGHT. WHY DID YOU KEEP DOCUMENTS
22 THERE? WHAT SURPRISES ME IS WHY DID YOU KEEP DOCUMENTS AT
23 SOMEBODY ELSE'S RESIDENCE, WHICH HAD TO DO WITH THE CASE YOU
24 ARE TRYING?

25 MR. BARENS: YOUR HONOR, I HAVE FILED MULTIPLE PUBLIC
26 DECLARATIONS IN THIS COURTROOM, SAYING THAT JOE HUNT WAS
27 WORKING IN MY LAW OFFICE ON A DAILY BASIS IN THE PREPARATION
28 OF HIS DEFENSE.

24A-3
1 THE COURT: THAT DOESN'T MEAN THESE DOCUMENTS SHOULD
2 BE UP IN SOMEBODY ELSE'S HOUSE.

3 MR. BARENS: WELL, IT IS A REASONABLE ASSUMPTION TO
4 BELIEVE THAT THE MAN IS WORKING AT HOME ON HIS OWN DEFENSE.

5 THE COURT: WELL, YOU ARE THE ONE RESPONSIBLE FOR YOUR
6 OWN PAPERS. WHY LEAVE THEM UP IN A HOUSE WHERE YOU HAVE NO
7 CONTROL?

8 MR. BARENS: WELL YOUR HONOR, THEY ARE EVERY BIT AS
9 MUCH HIS PAPERS AS MINE.

10 THE COURT: THEY ARE YOUR PAPERS AND THE PREPARATION
11 THAT YOU NEED.

12 MR. BARENS: I SUBMIT THE DOCUMENTATION TO HIM TO
13 SUPPLEMENT CROSS-EXAMINATION, QUESTIONING THAT I HAVE
14 PREPARED.

15 I MEAN, ALL OF OUR DOCUMENTATION IS UP THERE IN
16 THAT HOUSE. THAT HOUSE HAD EVERYTHING --

17 THE COURT: EVERYTHING THAT YOU HAD?

18 MR. BARENS: COPIES OF WHAT I HAVE IN MY OFFICE ARE
19 UP THERE, AS WELL AS IN MY OFFICE.

20 THE COURT: I AM NOT TALKING ABOUT COPIES. YOU HAVE
21 THE ORIGINALS IN YOUR OWN OFFICE, HAVE YOU NOT?

22 MR. BARENS: I PRESUME SO. I CANNOT CONFIRM THAT AT
23 THIS MOMENT.

24 THE COURT: WELL THEN, WHAT I THINK I WANT TO RESTRAIN
25 IS THE USE OF YOUR DOCUMENTS, COPIES OF YOUR DOCUMENTS IN
26 THIS PARTICULAR TRIAL.

27 MR. BARENS: AND ANY DOCUMENTS GENERATED BY MR. HUNT
28 IN HIS OWN DEFENSE. HE WROTE A LOT OF QUESTIONING MATERIAL

24A-4
24B
1 FOR MY USE.

2 THE COURT: I WOULD LIKE TO KNOW WHAT THAT IS.

3 MR. BARENS: THEY HAVE MY ENTIRE FILES THAT MR. HUNT
4 PREPARED FOR ME. HE HAD COPIES IN HIS HOME.

5 MR. WAPNER: YOUR HONOR, I DON'T KNOW WHAT THEY HAVE
6 OR DON'T HAVE. WE ARE JUST TALKING IN THE DARK.

7 THE COURT: IF THERE WAS ANY COLLEGIALLY, I WOULD CALL
8 UP THE JUDGE AND TELL HIM THAT I WOULD LIKE TO SEE WHAT THE
9 RECORDS ARE AND EXAMINE THEM AND THAT EVERYTHING THAT DOESN'T
10 BELONG IN THIS CASE, HE COULD KEEP AND EVERYTHING THAT THEY
11 DON'T NEED, WE COULD GET.

12 MR. WAPNER: OBVIOUSLY, THERE WILL BE A RETURN PREPARED
13 AND A SEARCH WARRANT RETURN THAT WILL LIST WHAT THEY TOOK.
14 AND WHEN WE GET A COPY OF THE SEARCH WARRANT, I WILL PROVIDE
15 IT TO THE COURT AND WE CAN DETERMINE WHAT IT IS.

16 MR. BARENS: FOR THE RECORD, TO BE CLEAR NOW, THE
17 DEFENSE SPECIFICALLY RESERVES THE RIGHT TO ASSERT WHAT
18 SANCTION IF ANY, IS APPROPRIATE AT A LATER TIME, PURSUANT
19 TO SOME WRITTEN MOTIONS, AFTER WE HAVE HAD A PROPER TIME TO
20 ASSESS WHAT IS HAPPENING.

21 THE COURT: ALL RIGHT. WE WILL HAVE THAT.

22 MR. BARENS: AGAIN YOUR HONOR, IT GOES BEYOND -- I WOULD
23 LIKE TO SAY TO MAKE THIS CLEAR, IT GOES BEYOND THE TAKING
24 OF DOCUMENTS. IT GOES TO THE ISSUE OF THE PROSECUTION
25 PERSONNEL READING DEFENSE MATERIALS AND BECOMING EDUCATED
26 BY THOSE MATERIALS, EVEN IF THEY HAVE LEFT THEM ON THE
27 PREMISES.

28 THE COURT: WELL, IF THEY DID OR DIDN'T, PROVIDED IT

24B-2
1 IS NOT GOING TO BE USED AGAINST THE DEFENDANT, THAT IS ALL
2 I AM CONCERNED ABOUT, ANYWAY. SO, I WILL ENJOIN UPON THE
3 DISTRICT ATTORNEY TO TELL DETECTIVE ZOELLER IN NO WAY, TO
4 USE ANY OF THE INFORMATION THAT HE HAD GOTTEN FROM THAT SOURCE
5 IN INTERROGATING WITNESSES OR ADVISING THEM AS TO WHAT TO
6 DO, WHAT THE TESTIMONY IS THAT IS GOING TO BE.

7 WHAT ELSE CAN I DO?

8 MR. BARENS: AT THIS POINT, UNTIL THERE IS FURTHER
9 LITIGATION ON THIS SUBJECT, WHICH I ASSURE YOU THERE WILL
10 BE, THERE IS NOTHING YOUR HONOR CAN DO, AS WE ARE OPERATING
11 IN A FACTUAL VACUUM, AT LEAST.

12 THE COURT: AT ANY RATE, AS SOON AS POSSIBLE, CAN YOU
13 EXPEDITE IT? I WOULD LIKE TO GET A COPY OF THE RETURN. YOU
14 GET A COPY OF THE RETURN ON THE SEARCH WARRANT.

15 MR. WAPNER: AS SOON AS IT IS PREPARED, I WILL ATTEMPT
16 TO GET ONE.

17 THE COURT: I THINK YOU SHOULD GET THIS AS SOON AS YOU
18 CAN, IMMEDIATELY.

19 MR. BARENS: THANK YOU.

20 (AT 3:55 P.M. AN ADJOURNMENT WAS TAKEN
21 UNTIL MONDAY, JANUARY 12, 1987, AT 10:30 A.M.)
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