

ACT II, SCENE 5: OCT. 1995

(In Act II, Scenes 5 and 6 -- the last two scenes of this docudrama -- the stage becomes a court room. At center stage, back, the podium of the Judge rises above all other objects and persons. Beneath the Judge, at a desk a little to one side, sits his bailiff. In front of both Judge and bailiff, and at right angles to the front of the stage, is a table across which counsel for the prosecution and defense face one another. Twelve chairs for a jury are arranged to the right of center stage. Near the bailiff's desk is a witness stand in which each potential juror is examined by the Court and counsel. Jurors approach center stage from stage R.

Scene 5 depicts the selection of a "death-qualified jury." In capital cases, potential jurors conscientiously opposed to the death penalty are excluded from juries. Jurors who are disqualified exit stage L. Those who "pass" return to stage R.

It is the view of those who have prepared this docudrama that once the prosecution, proceeding under existing law, had obtained plea bargains from prisoners who would say what the prosecution wanted (Scenes 3 and 4) and had excluded from the jury persons conscientiously opposed to the death penalty (this scene), the trial of George Skatzes was essentially a formality with a predetermined outcome. Hence this docudrama will not portray the trial of George Skatzes.

As Scene 5 begins, the bailiff is seated at his desk, twelve prospective jurors are seated in their chairs, and two lawyers are seated on either side of the counsel table. George Skatzes sits next to his counsel.)

BAILIFF: All rise. (As the Judge in his black robes comes on stage and seats himself, the bailiff, the prospective jurors, and the lawyers rise to their feet. Skatzes rises more slowly. The audience should experience momentary indecision as to whether or not to stand.)

THE COURT:¹ You may be seated. I want to explain a little about what's going to happen in this case.

This case will be tried in two different parts. One part is where the jury hears all the evidence, takes the law from the Court, and decides whether the defendant is guilty or innocent. That's just like any normal case. The difference comes in the second phase of the case.

After you find the defendant guilty, assuming that you do,

¹All statements made from this point to the end of the scene are drawn verbatim from volumes 1 to 3 of the Skatzes trial transcript.

then you must proceed to the second phase of the case.

The defendant, having been found guilty, is entitled to present to the Court and jury what we call mitigating evidence, which the defendant claims should mitigate the severity of his sentence.

In an aggravated murder case, the possibilities are: number one, that he be sentenced to life with an eligibility for parole after twenty years; number two, that he be sentenced to life with no opportunity for parole for thirty years; the third one is that he is sentenced to death, capital punishment.

The jury does not actually do the sentencing. The Court does the sentencing, but your duty is to make some recommendation based upon the mitigating evidence.

You will now be taken outside the courtroom. Don't discuss these matters among yourselves or with anybody else. You will be brought in and questioned one by one [as to whether your views on the death penalty make it possible for you to be a member of this jury.]

(Eleven of the twelve jurors are conducted to chairs at stage R. The remaining juror is escorted to the witness stand.)

THE COURT: Your name, sir?

A: Richard Baughman.

THE COURT: Mr. Baughman, I have a question I want to ask you. My question is this: In a proper case where the facts warrant it and the law permits it, could you join with others in signing a verdict form that might recommend to the Court the imposition of the death penalty?

A: No, sir.

THE COURT: You don't believe you could do so?

A: I don't believe so.

THE COURT: Under any circumstances?

A: No.

THE COURT: Could you tell me why?

A: I had a brother who was murdered and I found it in my heart to forgive that man. I would not have found him guilty to the extent that his life would be taken.

THE COURT: In other words, you feel that if you didn't do it in your brother's case, you wouldn't do it in any other case, right?

A: Right.

THE COURT: Do you feel that this is a teaching of your church?

A: Not so much a teaching of my church as it is an understanding of mine that I do not create life. I am not giver of life, so I feel that it's not my responsibility or within reason to expect me to take a life.

THE COURT: You may step down.

(Mr. Baughman is escorted off stage at L. An unidentified young woman is brought in from stage R and takes the witness stand.)

THE COURT: In a proper case, where the facts warranted it and the law permitted, could you join with the rest of the jurors in signing a verdict recommending to the Court the imposition of the death penalty?

A: My religious beliefs do not support the death penalty, but in a case where there was complete evidence and there were no circumstances that would lead me to believe otherwise . . .

THE COURT: Is what you are trying to say, there could be situations in which you might be willing to sign a verdict imposing the death penalty?

A: That's correct.

THE COURT (to prosecuting attorney): You may inquire.

PROSECUTING ATTORNEY (rising and addressing the prospective witness): Do you recall anything about the Lucasville prison riot.

A: Yes, I do.

PROSECUTING ATTORNEY: Tell us what you remember.

A: During that time period I was a graduate student at Ohio State University in Columbus. I was a member of the negotiation class. As part of our class work, we had some in-depth discussion about the riot.

PROSECUTING ATTORNEY: Did you personally come to a feeling that the thing was handled properly or improperly?

A: Yes, I did. I feel that some things could have been handled differently and that lives did not need to be lost, especially in the situation of the guard. My godfather is a

prison guard. One of my ex-boyfriends is a prison guard. I understand what they go through every day. My heart went out to that guard and his family.

PROSECUTING ATTORNEY: Did you arrive at the opinion that the state somehow blew this thing, they screwed it up?

A: Yes, I did. I don't think they took the inmates' demands seriously. They took away water, electricity, tried to starve them out. They are prisoners, but they have human rights also. I just think it should have been handled a little differently and maybe those people would not have gotten killed.

PROSECUTING ATTORNEY: Do you think you can be fair and impartial in this case?

A: I don't know how to answer that. The Judge has made the point you need to keep the riot separate from the murders. In my mind it's kind of hard to keep them separate because one resulted in the other.

THE COURT: This particular juror is completely unable to be the kind of objective juror which the law requires. The Court will dismiss her.

(The juror is escorted off stage at L. Mr. Gary Wachter takes the stand.)

THE COURT: In a proper case, if the facts warrant it and the law permits it, would you be willing to sign a jury verdict along with other jurors which might recommend the death penalty to the Judge?

A: Yes, your Honor.

PROSECUTING ATTORNEY: We brought you here because we want to discuss with you your views on capital punishment. Can you share them with us, please?

A: I strongly believe in it. I wish it was enforced more often.

PROSECUTING ATTORNEY: Do you believe the death penalty is the only appropriate penalty in all cases of an intentional killing?

A: Pretty much.

PROSECUTING ATTORNEY: Does that mean?

A: Yes.

PROSECUTING ATTORNEY: What we need to know is whether you could set aside your thoughts as to what you think the law should be and follow the law that the Judge gives you?

A: Yes, sir.

PROSECUTING ATTORNEY: If you found someone guilty of a horrible, horrible crime, as bad as you can think of, would you be willing to keep an open mind and listen to the evidence at the second phase before making a decision as to which penalty is appropriate?

A: Yes.

PROSECUTING ATTORNEY: No matter how bad the crime?

A: Yes.

PROSECUTING ATTORNEY: Do you see how under Ohio law you could do the exact same crime and get a different penalty?

A: Yeah, because of the circumstances and the aggravating and mitigating factors.

DEFENSE ATTORNEY: You mentioned in your questionnaire you have a friend, Bob Green, who works in the sheriff's department?

A: He used to. He's a Kettering police officer now.

THE COURT: We want you back for the next phase. (Wachter returns to stage R.)

BAILIFF: Number 38, Wagenspach. (Ms. Wagenspach takes the stand.)

THE COURT: In a proper case, where the facts warrant it, and the law permits it, could you join fellow jurors in signing a verdict that might recommend to the Court the imposition of the death penalty?

A: I don't believe that I could.

PROSECUTING ATTORNEY (rising): Can you expand upon your feelings?

A: My problem is my children. I think in the end, I would be looking at another woman's child and I don't think that I could ever be the person to say there's no good there at all. I just don't think I could do that. I can't imagine any instance.

PROSECUTING ATTORNEY: It's not a question of does he deserve death or does he deserve life. It's which way does the

balance come out between aggravating circumstances and mitigating factors.

A: I understand what you've said, but I believe I would be hanging on to those mitigating things for life. Based on my personal moral compass, I would be trying very hard never to put anyone with a death sentence because I would be afraid of the weight that would give me for many years.

THE COURT: Under the circumstances, ma'm, we are going to excuse you.

(Ms. Wagenspach is escorted off stage at L. Mr. Slusher takes the stand.)

THE COURT: In a proper case, where the facts warrant it and the law permits it, could you sign your name with other jurors to a verdict form which might recommend to the Court the imposition of the death penalty?

A: I don't think so.

THE COURT: Do you mean under no circumstances could you do that?

A: I don't believe in it. Is that what you are asking?

THE COURT: Under the circumstances, with the way you feel about things, we are going to let you off. You are dismissed.

(Mr. Slusher exits and Mr. Brooks takes the stand.)

THE COURT: In a proper case, where the facts warrant it and the law permits it, could you, along with fellow jurors, sign a verdict form which might recommend to the Court the imposition of the death penalty?

A: I would say not. I cannot imagine circumstances in which I would sign something like that.

PROSECUTING ATTORNEY: Can you envision circumstances under which you would pick up a pen and sign your name in ink on a verdict form saying that a person should be put to death?

A: Let me answer that by saying that I spend most of my free time doing things for people, not to people, and it would be a contradiction in what I do outside of this room on a regular basis to do something like that, so the answer is I cannot imagine myself signing that.

THE COURT: You are going to have to step down, sir.

(Mr. Brooks is escorted off stage at L. Mr. Hoke takes the stand.)

THE COURT: Mr. Hoke, in a proper case, if the facts warrant it and the law permits it, would you be willing to sign a jury verdict along with other jurors which might recommend the death penalty to the Judge?

A: Yes, sir.

PROSECUTING ATTORNEY: We brought you in individually to discuss your personal views on capital punishment. You tell us how you feel.

A: I do believe in it. I think there should be more of it.

PROSECUTING ATTORNEY: Do you understand that under Ohio law there is no such thing as an automatic death penalty?

A: Yes, sir.

PROSECUTING ATTORNEY: Would you be willing to keep an open mind and listen to everything before choosing among the penalties?

A: Yes, sir.

THE COURT: Come back Wednesday morning. (Mr. Hoke returns to stage R. Ms. Crosby takes the stand.)

THE COURT: In a proper case where the facts warrant it and the law permits it, could you sign your name on a verdict form with other members of the jury which might recommend to the Court the imposition of the death penalty?

A: No, sir.

THE COURT: Is this a personal or religious belief?

A: Both.

THE COURT: I will let you be dismissed. (Ms. Crosby leaves stage at L. Mr. Kiser takes the stand.)

THE COURT: In a proper case where the facts warrant it and the law permits it, could you sign your name to a verdict form along with other members of the jury that might recommend to the Court the imposition of the death penalty?

A: Yes, sir.

PROSECUTING ATTORNEY: Do you recall anything about the

Lucasville prison riot?

A: Yes. I worked close to there about a year before that happened. I was a psychologist supervisor at Ross Correctional Institution.

THE COURT: Sir, we are going to have you come back tomorrow at nine. (Mr. Kiser returns to stage R. Mr. Gray takes the stand.)

THE COURT: In a proper case where the facts warrant it and the law permits it, would you be able to sign the verdict form with other jurors which might recommend the imposition of ythee death penalty?

A: Yes, I would.

DEFENSE ATTORNEY: If you found the defendant guilty, even though the Judge would tell you to consider the alternative of a life sentence, the truth is you really couldn't; isn't that correct?

A: Well, no, I guess I couldn't.

THE COURT: I want you to come back at nine tomorrow. (Mr. Gray returns to stage R. Amy Palmer takes the stand.)

THE COURT: In a proper case where the facts warrant it and the law permits it could you sign a verdict form along with other members of the jury that might recommend to the Court the imposition of the death penalty?

A: Yes.

PROSECUTING ATTORNEY: Your husband is a police officer?

A: Yeah.

THE COURT: Ms. Palmer, we were short a juror. We may need you. I am going to ask you to come back Monday morning at nine o'clock.

END OF ACT II, SCENE 5

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