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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-001945

Charles Christopher
Williams,

Petitioner

v.

The State of South
Carolina,

Respondent.

APPENDIX
VOLUME ONE OF ELEVEN

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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FEBRUARY 7, 2005
ANDERSON, SOUTH CAROLINA

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15 THE HONORABLE J.C. NICHOLSON, JR, JUDGE.

17 A P P E A R A N C E S:

20 JOHN MAULDIN, PUBLIC DEFENDER
WILLIAM N. NETTLES, ESQUIRE
21 ATTORNEYS FOR THE DEFENDANT

23

24

DONNA M. BRADY
CIRCUIT COURT REPORTER

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1 MONDAY, FEBRUARY 7, 2005

2 (WHEREUPON, court convened with all parties present,
3 when the following proceedings were had:)

4 MR. MAULDIN: Your Honor, the position of the defense
5 at this point is, as long as -- I wrote down probably
6 eight or ten motions you probably at least need to
7 revisit, but I felt like those would be premature for me
8 to mention those until you issued a ruling regarding the
9 hearings Wednesday the week before last.

10 THE COURT: As far as my ruling on the supression of
11 Dr. Pam Crawford's testimony as well as the journal that
12 resulted from her testimony, I'm going to deny your motion
13 to suppress that. I think Estell can be distinguished
14 from the facts in this case in that Estell was a
15 court-ordered examination.

16 There was no Miranda rights given at all in Estell,
17 and in this particular situation a death-penalty notice
18 had not been served. Death penalty was not even on the
19 table, and if you take the first two or three pages of
20 Dr. Crawford's testimony, I think taking that in its total
21 information, she did give a Miranda rights and the
22 warnings are sufficient.

23 The question in my mind was whether or not she
24 sufficiently told the defendant that anything he said
25 would be used against him in a court of law. I think if

1 you take what she said at the top of page two at the
2 transcript and part of the way down on the transcript,
3 taking that together, I think she did give a proper
4 Miranda right. And on those bases I'm going to deny your
5 motion to suppress.

6 MR. MAULDIN: One moment, Your Honor.

7 THE COURT: All right. What motions do you want to
8 hear in light of the court's ruling on your motion to
9 suppress?

10 MR. MAULDIN: Yes, Your Honor. What I will do at
11 this point is refer back to motions that have been either
12 held in abeyance or actually ruled upon by you that we
13 would like to have you either reconsider or make a ruling
14 on it at this time. And I'll just go down the motions.

15 THE COURT: That will be fine.

16 MR. MAULDIN: The first one, Your Honor, is the
17 motion to quash the death notice that was filed on
18 August 30th of '04. The hearing was November the 2nd of
19 '04, where you took this motion under advisement. This is
20 the motion that I will just kind of encapsulize for you,
21 Judge.

22 This is the motion involving the statutory
23 requirement that the defendant enter a plea of not guilty
24 in order to have a jury impose sentence. But it also is a
25 motion that alleges that the indictments in this case must

1 contain aggravators in the indictment. I guess for
2 purposes of this hearing this morning, or this afternoon,
3 I understand that there have been recent South Carolina
4 Supreme Court cases that have ruled against the position
5 that we now take. I have all respect for that, but I want
6 on the record's clarity regarding the nature of our
7 objection, and so I'll take one moment.

8 THE COURT: Yes, sir.

9 MR. MAULDIN: The statutory scheme that requires an
10 entry of a not guilty plea in order to have a jury decide
11 penalty, we believe is violative of the sixth and
12 fourteenth amendments. The state in their response, the
13 most recent case they cited prior to these cases that have
14 come out in the last six months was 1984. Ring of course
15 was a United States Supreme Court case of course of 2002.
16 And we do enter the objection, we believe that it was
17 adequately described in the memorandum submitted for the
18 court's consideration that was filed October 27th.

19 THE COURT: Let me ask you this. For purposes of
20 clarity you want to mark the memorandum court's exhibit 1,
21 and make it a part of the record?

22 MR. MAULDIN: Your honor, the original was filed with
23 the clerk.

24 THE COURT: I understand, but that doesn't make it
25 part of this record for appellate purposes just because

1 it's filed with the clerk's office. Instead of sitting
2 there regurgitating what's in the memorandum, just mark it
3 as a court's exhibit whatever the next court's exhibit
4 would be. Then I don't think there will be any question
5 what your position is on that issue. Is that correct?

6 MR. MAULDIN: I did not bring a copy with me to do
7 that. So, I will provide the clerk with a court's exhibit
8 in support of this position.

9 THE COURT: And the reason I say that, I've had the
10 Court of Appeals remand things back to the circuit court
11 to determine whether or not you consider such and such,
12 because it was never part of the record. Just filing it
13 with the clerk, in my opinion, doesn't necessarily mean
14 that's going to be considered on the appellate level. I
15 have no problem marking anything throughout this trial or
16 pretrial as court's exhibit so we can make sure it's part
17 of the record. And I may be wrong on that; but, either
18 way, at least it's marked.

19 MR. MAULDIN: One matter, Your Honor, it has been
20 months since I read this memorandum.

21 THE COURT: Basically your motion is denied.

22 MR. MAULDIN: Yes. The additional point, though, is
23 also under the Oprende ring analogy is the question of
24 whether or not aggravators must be contained in the
25 indictment under the -- and, of course, South Carolina has

1 always been very, very strong and specific about the
2 contents of indictments, the form of the indictment is a
3 critical matter in our state jurisprudence.

4 And I recognize, once again, recent cases that have
5 decided against this position; but we say that the
6 indictments that were served on us, I believe it was
7 November the second when they were actually delivered to
8 us and we acknowledged receipt, those indictments on their
9 face and the ones which the state will use to call this
10 case for trial are defective if they're seeking the death
11 penalty. Because the aggravators under which they will
12 allege the right to seek the death penalty are not
13 contained in the face of the indictment.

14 We believe that those aggravators constitute an
15 element of the offense in this case, separates it from a
16 non-capital homicide case, and it is defective; and
17 therefore, flawed. And we object to that form of the
18 indictment, wish the indictment be quashed.

19 THE COURT: But from a standpoint of how it's
20 handled, the indictment is handed down as a true bill for
21 the charge of murder, and then the solicitor makes the
22 decision at a later time whether he's going to serve
23 notice of the death penalty. So, when that indictment's
24 handed down, the death penalty wasn't even decided by the
25 prosecutor. Is that correct, Solicitor?

1 MR. ARIAIL: Well, I don't know, at the time we may
2 have decided it, but we certainly --

3 THE COURT: But you haven't served it yet?

4 MR. ARIAIL: I don't know. We may have served it
5 prior to that, but I don't remember in this particular
6 case. But irrespective whether it has been or not, the
7 State obviously can't seek the death penalty until the
8 indictment for murder is returned. There's no other crime
9 for which we can proceed.

10 THE COURT: Right.

11 MR. ARIAIL: And the law anticipates that and
12 requires that a separate and more detailed notice be given
13 to the defendant rather than an allegation in an
14 indictment. And we've given a separate statement of
15 notice to him in this case, Your Honor. And your honor
16 even directed us to give more detail than the law
17 required. So, his argument, obviously, is that somehow if
18 we don't announce it in the indictment, you can't correct
19 it thereafter.

20 There's no question they've had ample notice of the
21 aggravators and what they're going to be and the factual
22 underlying of the aggravators. The indictment clearly is
23 not -- I think our courts have ruled that that is not a
24 fatal defect in the indictment not to include the
25 aggravators, particularly in a situation where the

1 aggravators are added as specifically stated in a form
2 we're required to produce under the law. And we couldn't
3 go forward without specifying the aggravating
4 circumstance.

5 THE COURT: I understand. All right. That motion is
6 denied.

7 MR. MAULDIN: Next one, Your Honor, is the motion
8 that we filed on August the 30th requesting that the
9 court bar cameras from this proceeding. We are, once
10 again, renewing that motion. You took it under advisement
11 on November 2nd but you also cited some specifications
12 in the event you --

13 THE COURT: Let me tell you, I'm going to deny that
14 motion. However, I am not going to have -- allow a live
15 broadcast. Okay? They can have one camera in the
16 courtroom. They can feed off that for recording purposes.
17 When I say live, we're not going to have a camera where
18 somebody can turn on channel 4 at 3:00 in the afternoon
19 and watch the trial; but we will have cameras in the
20 courtroom. They can record anything they want, and all
21 the other news agencies have to feed off that one camera.

22 I don't have anybody in the news media, but there are
23 three requests here already. The way we're going to
24 operate that, I see a camera sitting up over there -- I
25 probably will tell them to set it up so it's out of

1 everybody's view.

2 Now, whether the news media uses the same connotation
3 of live as I do, I don't know. But I think you
4 understand. I'm not going to have a live broadcast of
5 this trial going live on the television from the
6 courthouse. They can record what they want, report it at
7 a later date. Okay? I don't know if that addresses your
8 motion or not, but I guess yes and no. Basically your
9 motion is denied as far as allowing cameras in the
10 courtroom. I am going to put certain restrictions on the
11 camera man. Okay?

12 MR. MAULDIN: Your Honor, the next motion that I want
13 to make sure we understand how the court intends to
14 proceed -- hold one moment, Your Honor. Your Honor, the
15 next motion was filed October 29th. The court ruled on
16 this motion December the 15th. And this was a motion
17 regarding prohibition against the introduction of
18 unadjudicated charges.

19 THE COURT: Prohibition against what?

20 MR. MAULDIN: Prohibiting the state from introducing
21 unadjudicated charges.

22 THE COURT: Let me say this. In the state's response
23 to that motion, they stated they would not go into that at
24 all until the penalty phase. So, as far as the guilt
25 phase, I'm assuming the state's not going into that.

1 That's what was in his response to your motion. Why don't
2 we take that up when we take up the victim impact
3 statements during the 24-hour cooling-off period, if they
4 get a conviction.

5 MR. MAULDIN: And I tell you the practical reason,
6 Judge. Let's be straight up. If they're proposing -- I'm
7 not even sure -- I've been led to believe that they do
8 intend to go into it.

9 THE COURT: All I know is what was in his memorandum,
10 Solicitor. What I read in his response -- what are you
11 planning on doing?

12 MR. ARIAIL: That's correct. We don't intend to go
13 into the specifics of that crime.

14 THE COURT: You're talking about whether he was
15 charged with assault and battery with intent to kill five
16 months prior to his killing, correct?

17 MR. ARIAIL: About six weeks.

18 THE COURT: Whenever it was. He responded in his
19 memorandum, not going to consider that until the penalty
20 phase.

21 MR. ARIAIL: There's one inadvertent reference to
22 that -- two. In the 911 tape where Mandy is calling in to
23 the 911 dispatcher, that is recorded, transcribed. We're
24 going to play that. We're going to play that tape because
25 it identifies the circumstances, what's going on, who the

1 parties are, where they're located, and the whole thing.

2 In that conversation, with the 911, in the background
3 at one point she begins a conversation with the defendant
4 where he is giving her some sort of grief about the fact
5 that she charged him with trying to kill her.

6 And she's saying "I didn't try to kill you -- I mean,
7 I didn't tell you they tried to kill me, that's what they
8 came up with; but you did hit me ten times in the face and
9 knock me out."

10 So, there's reference in there in the conversation
11 going on between Mandy, the victim; and the defendant.
12 And that's all transcribed, it's all been given to them,
13 they've seen it. It's been in there.

14 THE COURT: You say two instances. What's the
15 second?

16 MR. ARIAIL: The second was in the negotiator's tape
17 after the 911. The sheriff's office negotiator, Tony Lee,
18 takes over with a conversation with Mandy in trying to
19 engage Mr. Williams. During the course of that
20 conversation there is a mention of the prior assault
21 charge and the altercation they had. But, other than
22 that, we have carefully schooled all our witnesses not to
23 mention it, not to talk about it, not to give details
24 about it, nothing until we get to the penalty phase.
25 That's the way we plan to go.

1 THE COURT: Mr. Nettles, who's arguing this motion?

2 MR. NETTLES: Well, if I could just take over. I'm
3 pretty sure -- maybe I'm getting older than I thought.
4 I'm pretty sure when we argued this the first time -- I
5 remember arguing it -- all I cared about and they talked
6 about this stuff that's going to come in, and we said we
7 knew it was going to come in. The only thing that we
8 wanted to keep out was the "with intent to kill." There
9 was assault, it was the "with intent to kill" part that
10 caused us an enormous amount of concern.

11 I was under the impression we had settled this, that
12 it was coming in. We knew we couldn't stop it from coming
13 in. And that the only part -- we didn't want anybody
14 standing up saying, "and he was charged with assault and
15 battery with intent to kill."

16 He was charged with assault. He was on bond. We
17 agreed they could get into all that. The only part that
18 caused us heartache was "with intent to kill" part. I
19 thought we reached an agreement on that.

20 MR. ARIAIL: As I recall what we were talking about
21 your concern was we were going to stand up with
22 indictments or a warrant and say, they got this warrant.
23 We're not going to stand up with any warrants.

24 MR. NETTLES: Okay. That's fine.

25 MR. ARIAIL: The only thing that's going to happen,

1 it's going to be this conversation, and we aren't even
2 going into the facts.

3 MR. NETTLES: That's fine. That's fine.

4 THE COURT: Only thing, only mentions conversation on
5 the 911 tape and the hostage tape.

6 MR. NETTLES: That's coming in and we know it.
7 There's nothing we can do about it. Just as long as
8 nobody stands up and says he was charged with assault and
9 battery with intent to kill.

10 THE COURT: Let's make it clear, the solicitor said
11 that's the way he's going to try his case. I take him at
12 his word. Solicitor, if you change your mind, let me
13 know; I'll listen to it in camera and I'll rule at that
14 time on that piece of evidence. If you change your mind
15 during the process, let me know, we'll stop, have an
16 in-camera hearing on that issue. Okay? Other than that,
17 I'll take your word for it. And if it comes up, make your
18 objection.

19 MR. MAULDIN: The next matter is motion for change of
20 venue.

21 THE COURT: We'll hear you again in the penalty
22 phase. That's when I think you're planning on holding up
23 the warrant, and the indictment, all that stuff.

24 MR. NETTLES: And we didn't have any reason to
25 believe that they weren't going to follow through on what

1 we talked about before. To tell you the truth, just the
2 defense team beating their -- we had a disagreement.
3 Quite frankly, I was right about what had been ruled. We
4 wanted to make sure we were getting that cleared up and so
5 we're clear.

6 THE COURT: Good. Thank you.

7 MR. MAULDIN: On the matter involving change of
8 venue --

9 THE COURT: That's under advisement. I'll continue
10 to take it under advisement until we go through voir dire
11 with the jury. If we get to the point where we've
12 exhausted the jury panel and can't get 43 jurors, we'll
13 talk about moving it somewhere.

14 MR. MAULDIN: Thank you, Judge.

15 THE COURT: Okay?

16 MR. MAULDIN: Yes, sir.

17 THE COURT: I just don't think under the law in South
18 Carolina you can do that in advance except by agreement of
19 the parties.

20 MR. MAULDIN: Yes, sir. I'm not necessarily agreeing
21 with you. I'm just saying I understand that to be your
22 position, Judge.

23 THE COURT: That's my position. Whether you agree
24 with me or not, that's my position. Okay?

25 MR. ARIAIL: Let me respond to that venue for the

1 court's edification. A number of months ago, which is not
2 unusual for me, but a number of months ago I had
3 legitimate concerns about whether or not we would be able
4 on February 7th to draw a fair and impartial jury as
5 they had voiced concerns. I wasn't sure what the impact
6 would be of all the publicity.

7 I commissioned a sampling poll to gauge the result of
8 people in the community as to what knowledge they had
9 about the case. Was it -- do they have residual
10 knowledge, had they retained it and formed an opinion?
11 And what percentage of people fell in each one of those
12 categories? The results are not relevant here because it
13 showed exactly what I thought it would, that nobody
14 remembers anything because of the length of time.

15 But the point of the issue is we have taken the juror
16 list and the sampling list and compared them to ensure
17 that there are no jurors, potential jurors, that are on
18 the sampling list for the survey we took through a
19 professional company. We would like to introduce that as
20 an exhibit just so in the future if there's any issue
21 raised about that, we can show what names are on the jury
22 list.

23 THE COURT: We can mark it as a court's exhibit.

24 MR. ARIAIL: And I'll mark it as a court's exhibit.
25 We'll also provide them a copy so as we're going through

1 in alphabetical order, everybody can follow along. I'll
2 be glad to provide the court a copy of the sample if you
3 wish. I think you'll find the proof in the pudding
4 anyway.

5 MR. MAULDIN: Certainly him putting whatever he wants
6 to in as an exhibit is fine with us. We certainly think
7 we're entitled to this poll he's talking about. He's the
8 one standing up saying he did it, and he wants it in the
9 record. Now we want it.

10 THE COURT: When he produces, you can look at it.

11 MR. MAULDIN: I mean we want a copy of whatever he's
12 putting in the record produced to us.

13 MR. ARIAIL: I didn't offer to put the poll in the
14 record. The poll is work product. I paid for it. It's
15 ours and that's what we're using it for --

16 THE COURT: Just putting the results of the poll
17 compared to the present jury panel. Is that correct,
18 Solicitor? You're going to put in the people that you
19 polled cross referenced against this jury panel?

20 MR. ARIAIL: Correct.

21 THE COURT: That's what he's going to put in
22 evidence. You're welcome to that.

23 MR. ARIAIL: I'll be glad to give him that, Your
24 Honor.

25 MR. MAULDIN: One moment, Your Honor, while we

1 converse.

2 (attorneys confer.)

3 Mark will speak for us regarding this.

4 MR. MACDOUGALL: The solicitor's reference to work
5 product is incorrect. The survey that he conducted is
6 reaching out in the community, asking the community which
7 will form the venire that comprises the jury, questions
8 about the case. The solicitor is releasing a portion of
9 that work product; that is, the names of people contacted.
10 He can't release a part of that work product that's
11 beneficial and not the other part.

12 THE COURT: What conceivable reason do you want it
13 for?

14 MR. MACDOUGALL: He's contacting the community with
15 questions about the case. And the question of venue and
16 what the community knows about it -- I mean, if he had a
17 private polling company sponsored by a newspaper doing
18 that, the court wouldn't have an objection to us asking
19 for it.

20 THE COURT: I just -- what do you want it for? How
21 can it conceivably, unless some of those people that you
22 poll are on this jury panel, how can you conceivably --
23 you want it to support your motion for change of venue?

24 MR. MACDOUGALL: A lot of those people have wives,
25 children, neighbors, you know, that they're walking across

1 the street, saying, "I just got a call from a survey
2 company asking about the Bi-Lo killing. I had forgot all
3 about that. Do you remember that?"

4 THE COURT: You're not going to know that by looking
5 at his survey report without talking to each one? I just
6 don't understand the practicality why you want it. I
7 don't know how it's going to benefit you in drawing this
8 jury, in making the change of venue at all.

9 MR. MACDOUGALL: Your Honor, I have the misfortune of
10 living in Washington and hearing terms about push poll.
11 And a push poll, your honor, we heard about it in the last
12 election, where instead of trying to solicit opinions --

13 THE COURT: Let's do this. Mr. Ariail, supply it to
14 me. If I think it's appropriate, I'll give it to you.
15 Okay? If he claims work product, I'll look at it. If I
16 think it's appropriate, I'll release it to you. Okay?
17 I'll take it under advisement.

18 MR. MAULDIN: The next motions are two. And you
19 granted our request that jurors not located then be
20 personally served by the sheriff. We do believe that
21 there needs to be some sort of ultimate report regarding
22 what was done by the sheriff and whether subpoenas were
23 served or not.

24 THE COURT: What we said on that is whatever the
25 clerk can make available to you, we'll make available.

1 Judy, can you address that, please, ma'am?

2 THE CLERK: Yes, sir. We've given them a list.

3 THE COURT: Just stand up, tell him.

4 THE CLERK: The list we gave you of all the
5 unavailable, unable to locate jurors, is that not --

6 MR. MAULDIN: We have gotten information from the
7 clerk about the jurors unable to locate. But we don't
8 know -- what I'm saying, Judge, we don't know what steps
9 have been taken to attempt to locate. We know on
10 January 13th we argued for you and you granted that any
11 juror who had not responded needed to be personally
12 served. And all we're saying is --

13 THE COURT: I don't know what the clerk has done.
14 Judy, have they been personally served?

15 THE CLERK: Yes, sir. They have been, those letters
16 they came in. They have all the questionnaires.

17 THE COURT: Can you get a list together of the ones
18 that were personally served and a list together of the
19 ones we couldn't locate and supply that to him? We don't
20 need it right this minute or today, but some point in time
21 supply that.

22 THE CLERK: Yes, I can do that.

23 MR. MAULDIN: And that needs to go into the record.

24 THE COURT: That's fine. As soon as she gets it
25 compiled, we'll put it in the record. At this point in

1 time, I don't know what they've done, other than the
2 sheriff served the people they located. We'll provide
3 that to you. As I said when we heard this motion a month
4 ago, whatever the clerk can provide to you, they will
5 provide.

6 MR. MAULDIN: And I'm not just dreaming up stuff,
7 even though I suspect, Judge, some judges believe I do.

8 THE COURT: No, I don't think you're dreaming up
9 stuff. You probably want to question, challenge the
10 makeup of the jury panel.

11 MR. MAULDIN: What happens is in previous cases,
12 there's been an affidavit from the sheriff's deputy. And
13 he said, "I did serve them, he couldn't find them,"
14 something, something, something is attached to that
15 summons, that he couldn't find them. And that's what we
16 want into this record.

17 THE CLERK: Would you like a copy of both affidavits?

18 THE COURT: Yes. And attach it to the particular
19 juror. Now, for purposes of the record, the last time we
20 met, we went through some jurors that the court excused,
21 some the court did not. There have been two jurors the
22 court has excused since that time.

23 One juror is working in Panama out of the country. I
24 excused him. Another juror had an airline ticket leaving
25 today, flying to California and she had planned that for

1 quite a while. I excused her. And I think Judy has
2 probably given that to both parties. Is that correct?

3 THE CLERK: I've given you everything I have.

4 MR. MAULDIN: We're getting regular information from
5 Judy's office.

6 THE COURT: I don't remember the name, but I did
7 dismiss those two jurors.

8 MR. MAULDIN: Your Honor, the next motion involves
9 the courtroom security issue.

10 THE COURT: We've already talked about that.

11 MR. MAULDIN: Right. And one thing that you had
12 mentioned from the bench that we wanted you to at least
13 reconsider is whether from the beginning Chris needs to
14 wear this belt.

15 THE COURT: I told you at the motion hearing, I'll
16 tell you now, if this gentleman here feels like it's
17 appropriate, he wants it on there, it will go on there.
18 If he doesn't, that's the courtroom security's decision,
19 not mine. If they want to put the electronic belt on him,
20 please do. If you don't think it's necessary, don't.
21 Okay? That's their decision, not mine.

22 MR. MAULDIN: Yes, sir. And that's fine with us,
23 Your Honor.

24 THE COURT: Do you understand what we're talking
25 about? That electronic belt. If you all think it's

1 necessary, put it on him. If you don't, don't.

2 OFFICER: Yes, sir.

3 MR. MAULDIN: The next motion, Your Honor, our motion
4 requesting additional peremptory challenges, that motion
5 was denied on January 13th. We ask you reconsider that
6 or at least remain open to that possibility as we go into
7 voir dire to determine whether or not that's appropriate.

8 THE COURT: That motion is denied.

9 MR. MAULDIN: The next motion, Your Honor, is a
10 motion you also ruled upon on January 13th. This is a
11 motion regarding the shifting of responsibility from the
12 jury. At that time we expressed our concern about the
13 statutory language in the use of the word
14 "recommendation." It is so easy to simply take that
15 recommendation word out of this process to the extent that
16 means your instructions to the jury deviate from the
17 written statute, we waive any objection to that because
18 we're begging you to do that. Recommendation --

19 THE COURT: Solicitor, what it is your position on
20 that? In other words, what he's saying, I think you
21 submit to the jury the aggravating circumstances, the form
22 where they recommend life or death at the top, it says
23 recommendation, whereas I charge the jury it's not a
24 recommendation, it's mandatory and binding on the court in
25 the charge. He's suggesting I take that off the form; is

1 that correct, Mr. Mauldin?

2 MR. MAULDIN: Yes, sir.

3 THE COURT: And he'll waive that statute, the statute
4 says recommendation where in truth it's not a
5 recommendation. What's the state's position?

6 SOLICITOR: I don't think he can waive that. I think
7 we have to be -- I know John's not trying to do anything
8 here, but I just think in review of these cases it's --
9 any time you create an appellate issue doing something
10 like that, you're just asking for trouble. I think it's
11 simpler and easier to do it the way you're talking about.
12 You can explain to them, it says recommendation, but --

13 THE COURT: I don't have any problem taking the word
14 recommendation off the form when it's submitted to the
15 jury if the state consents to it. If you don't consent to
16 it, that's fine.

17 MR. ARIAIL: No, I don't consent to it.

18 THE COURT: If you're not going to consent --
19 nonetheless, if both parties agree, Mr. Mauldin, I agree
20 with you, it's stupid language to have in the statute, but
21 it is in the statute.

22 MR. ARIAIL: I'll agree with that.

23 MR. MAULDIN: We all agree to that. It just doesn't
24 have any effect on your ruling. That's the concern I
25 have, Judge.

1 THE COURT: I understand. All right. As far as the
2 solicitor making that argument in closing argument, I will
3 prohibit him from doing that; although I don't anticipate
4 him doing that.

5 MR. ARIAIL: Doing what?

6 THE COURT: Trying to shift the burden.

7 MR. ARIAIL: No. I'm going to tell them it's their
8 decision, it's theirs alone. I'll make that perfectly
9 clear.

10 THE COURT: From that standpoint, Mr. Mauldin, the
11 solicitor is not going to make the argument, shifting the
12 burden from the jury.

13 MR. ARIAIL: He knows that. He's had enough with me.

14 MR. MAULDIN: The next matter is a matter that has
15 not been submitted to you in writing, but is a matter that
16 has been discussed in reference to other motions we've
17 been talking about; and that is, the sequestration of the
18 trial jury. We oppose the court sequestering this jury.
19 We believe that the sequestration should take place when
20 the, if at all, and we in fact concede that it should take
21 place during deliberations at the first trial phase and
22 subsequently at the phase involving penalty if that
23 becomes necessary. Sequestration should occur during the
24 time the jury is under your instructions for deliberation,
25 not during the testimony in the case. And we oppose

1 sequestration of this trial jury.

2 THE COURT: Why?

3 MR. MAULDIN: The reason that we find sequestration
4 to be objectionable are essentially practical reasons,
5 Judge. One reason is because it creates an extraordinary
6 amount of pressure on the court and all the participants
7 because we are conscious of the fact that these jurors are
8 being extraordinarily inconvenienced to do their civic
9 responsibility as a citizen.

10 They have to come in and have to bring their
11 suitcases and bring days of clothing. They have to be
12 asked where they want us to take them to church, do they
13 want to go to church, do they want to have a preacher in
14 their room, and it's all unnecessary. We don't -- when a
15 judge in a trial in this state instructs the jury not to
16 read the newspapers about a case, not to watch TV about a
17 case. We do that all the time. Every single case that
18 carries forward over an evening, in every case I've ever
19 seen.

20 All of a sudden, we got this capital case where we
21 think, "oh, we got to change the rules, do something
22 completely new and different." It's not that judges have
23 no faith in the jury, otherwise, we'd be sequestering
24 every overnight trial. It is -- some reason the capital
25 environment changed the rules, and I submit that just

1 doesn't make any sense. So, that's one practical reason.
2 It's just an extraordinary -- it's a pressure cooker
3 designed --

4 THE COURT: I think I said this last time I heard it.
5 And I'll say it again. That's absolutely a contradiction
6 to your request for change of venue, that argument. I
7 mean, you're concerned about pretrial publicity. The
8 publicity is going to be raising when the trial starts. A
9 camera is already set up in here. That's just absolutely
10 contradictory to your argument for change of venue.
11 You're exposing the jury to more exposure on TV,
12 television, radio, people talking, whatever.

13 MR. MAULDIN: No, it isn't.

14 THE COURT: Tell me why.

15 MR. MAULDIN: Number one, when a juror comes in here
16 unconnected with this case, as a result of juror summons,
17 he may have read everything published about this case, and
18 he may have formed an opinion, some right, some wrong,
19 about this case. That's why you need changes of venue to
20 be taken into consideration. But once a juror is chosen,
21 you tell the juror, in fact you, when you sent the
22 letter --

23 THE COURT: I already told them.

24 MR. MAULDIN: That's right. You already told them
25 not to. Once they become juror material, by becoming a

1 member of the venire or a juror in fact, they are under a
2 direct sanction from you not to do that.

3 THE COURT: The whole reason for sequestering the
4 juror, the jury, is to prevent exposure to news media
5 reporting of the case during the trial.

6 MR. MAULDIN: So, I mean --

7 THE COURT: Yeah, I can tell them. I don't know if
8 they're going to follow it or not. I can make sure they
9 do if I got them sequestered.

10 MR. MAULDIN: And to the extent that is --

11 THE COURT: What happens when I walk in every
12 morning, I'm going to have to ask every juror every
13 morning, has any juror talked to anybody, anybody watched
14 any television, read anything in the paper about it. What
15 if two of them stand up and say, "Yes, I've read something
16 in the paper," then where are we?

17 MR. MAULDIN: First of all, if you sequester or not
18 you have to ask them that.

19 THE COURT: Not necessarily, but go ahead.

20 MR. MAULDIN: But I'm going to ask you to ask them
21 that.

22 THE COURT: I might or might not, but go ahead.

23 MR. MAULDIN: Two, that's why we have alternate
24 jurors. You said you were going to, I think, have four
25 alternates, I believe. Let's pick six and be extra

1 careful. But the point is that the -- if they are not
2 going to listen to your instructions, then we need to
3 reevaluate what we do on every overnight trial in the
4 state of South Carolina. Because that's all we ever do is
5 instruct them. I mean we got --

6 THE COURT: All right. I understand your argument.
7 Anything else as to why?

8 MR. MAULDIN: Yes, sir. A second practical reason is
9 what is sometimes referred to as a Stockholm syndrome.
10 What that is, is where people are kept in, essentially, in
11 the custody of others. For example, I assume this would
12 be some SLED outfit would come in and carry this jury
13 around in a little van. And what happens is that jury
14 panel becomes to some extent, bonded with the people who
15 are guarding them. And that's why it's called the
16 Stockholm syndrome.

17 What happens in this particular situation is, this is
18 the government, this is the government and so are SLED,
19 and so are these white vans, and so are these meals being
20 brought to these jurors, so are the motel rooms.
21 Everything is being managed and monitored for these
22 people. And they essentially lose their objectivity
23 regarding jury service.

24 Obviously, I don't have a witness to put on the
25 witness stand to testify to it, Judge, but I guarantee

1 you, you give me the opportunity, I would have one.
2 Because that person is in fact available. He's not
3 available on short notice, but that is the kind
4 of consideration I believe you need to take in deciding
5 whether to sequester this jury. We oppose it.

6 THE COURT: Okay. Any other reasons?

7 MR. MAULDIN: Money. Money. We passed on the \$2.50
8 a page, appreciate the opportunity there. But, I mean,
9 you want to save money? Why don't we just quit putting
10 people up in motel rooms? Why don't we quit making them
11 leave the rest of their lives to come do jury duty? I
12 don't know what the clerk says. I believe the clerk's
13 responsible for doing all this. I don't know how much
14 that's going to cost; but it just seems like we certainly
15 could save a whole lot of money if we didn't give them a
16 motel room for the next two weeks.

17 THE COURT: Probably won't be two weeks, more like
18 six or seven days, I hope. Anything else?

19 MR. MAULDIN: I believe that's it, Your Honor. Thank
20 you.

21 THE COURT: Solicitor, let me hear you.

22 SOLICITOR: We, of course, are supportive of
23 sequestration, recognizing that's your call; but the state
24 would want sequestration, and for obvious reasons. The
25 reason that the defense has such a hard time arguing that

1 motion and giving a reason is the real reason is not any
2 of the ones they mentioned. The real concern you have in
3 any of these cases is intentional or direct contact by
4 people in the community.

5 The first, and you're absolutely correct, I don't
6 think Mr. Mauldin appreciates what your statement is, but
7 the motion for change of venue is by it's very nature a
8 recognition that this is a high profile case known in the
9 community. It's known out there. You mention it, people
10 are going to know about it. And they're going -- some
11 people will have opinions, others not, but they're going
12 to be willing to talk about it. And it, unfortunately
13 what happens in these cases, he knows that as well as I,
14 we have guarded against this in cases over and over with
15 jurors being touched by members of the community after
16 members of the community find out they are on the jury.

17 And there is a concentrated effort. It is a public
18 effort. And there are people out there who do it
19 intentionally. It is for the sole purpose of jury
20 nullification. That's what it is all about. If you turn
21 this jury out, I'll guarantee you somebody will have a
22 contact with one of these members on the jury whether they
23 intend to, whether they inadvertently know them through
24 some other avenue.

25 But the point is, that you enhance the possibility

1 that a juror will be infected because the community is
2 already out there. And you take the sampling -- I'm not
3 going to introduce my sampling, but the sampling indicates
4 broad cross section of the community knows about this case
5 and somebody is going to say something to somebody at
6 work, whether it be the juror's wife who works there, and
7 he comes home or, "I heard your husband is on the jury,"
8 et cetera, et cetera. Those type of things.

9 They don't mean it, but it happens. And that's the
10 kind of direct conflict, I mean direct contact that we
11 need to avoid. Not that people are going to come up and
12 say, "Oh, I hear your husband's on the jury, I want to
13 give you a hundred dollars," buy his vote. Not talking
14 about that kind of stuff. Talking about people. It
15 happens all the time.

16 You'll run into it. Once we pick the jury, some of
17 them go back to work after they're qualified but before
18 they've been picked, somebody at work or somebody in the
19 family will say something to them, somebody in church will
20 say something about it. Not because they want to do
21 anything about it, just people are inquisitive by nature
22 and know about the case because it got all this publicity.
23 The whole purpose I see of sequestration, see, those 12
24 when they get picked got a job to do, insulated from
25 outside contact.

1 THE COURT: What about his argument about the
2 Stockholm theory?

3 MR. MAULDIN: Stockholm syndrome is what I call it.

4 THE COURT: What is your thought on that?

5 MR. ARIAIL: I got a lot of thoughts.

6 THE COURT: Don't give me a lot, just the most
7 important.

8 MR. ARIAIL: The most important is, from experience,
9 since Betty and I started doing these in 1977, we have
10 always debriefed the jury at some point after the trial is
11 over, given them some opportunity to come in and talk with
12 you, have lunch, dinner, or something. I find the bonding
13 aspect of that is true, they do bond. They become friends
14 for the most part.

15 Some of them, they hate each other. One particular
16 juror just hated each other. It's not always a positive
17 bonding, it can be very negative, also. They bond but
18 bond in a hatred. They still reached a verdict but they
19 came in and did it. But none of them I ever detected lost
20 their sense of absolute responsibility to -- they're
21 intimidated by the magnitude of the job they have to do.
22 And you talk to these jurors over and over again, that's
23 what they'll tell you.

24 And the degree of proof and the things they talk
25 about are indications of that. And they take these cases

1 extremely, extremely seriously, and look at every detail.
2 So, I don't think there's anybody out there who, because
3 12 of them are riding in a car together and they're driven
4 by somebody in plain clothes that happens to be a SLED
5 agent; all of a sudden they're going to say the state took
6 care of me, fed me meals, put me up in a hotel, take them
7 away from their family for a week; therefore, I'm going to
8 vote to impose the death penalty. In our experience it
9 doesn't happen. In our experience, it doesn't happen.

10 THE COURT: You want to say anything?

11 MR. NETTLES: I don't know whether the court
12 remembers or not, but at the conclusion of our discussion
13 on assault and battery with intent to kill, I said, "Look,
14 we want to bring this up again, not because we in any way
15 impugned anything we felt the government was doing."

16 The last time we had a hearing, on two occasions the
17 government stood up at the conclusion of our arguments and
18 said, "Your Honor what they know and they're not telling
19 the court is" -- okay? We can disagree on things and they
20 can have a position and we can have a position; but I
21 would ask the court to share with the government that we
22 are being truthful here; and when we tell you why we want
23 jurors sequestered, is because we honestly believe this.

24 The government begins their argument by implying that
25 we're playing hide the ball with the government -- with

1 the court, and we're not. We're being truthful with the
2 court. The government, if they want to start their
3 argument by impugning our character, first of all, it's
4 not civil; second of all, it's a bad way to start a long
5 trial. Okay.

6 I can understand we can have differing opinions, but
7 that doesn't mean they're hiding the ball from the court,
8 at least the impression I'm under. I would ask the
9 government afford us that same privilege and civility.
10 Secondly, as goes to this argument once again the
11 government has referenced this study in their argument and
12 so as it relates to it being work product this is twice
13 now that he's relied on the study.

14 THE COURT: I think you're talking -- he's talking
15 about two different studies. What he said is after a
16 trial he will invite the jurors to come in and discuss the
17 case. I don't think that goes to the polling to see the
18 exposure people had to this particular case. I think it's
19 two different studies and two different approaches; is
20 that correct, Solicitor? Two different areas. I don't
21 think it's a -- go ahead.

22 MR. NETTLES: We're kind of in the dark. We don't
23 have it. So, it's kind of like asking why do you want
24 information? I don't know, I haven't seen it yet.

25 THE COURT: Just like you after a trial, if you want

1 to call a juror and discuss the case with him and they
2 wanted to discuss the case. You've done that in the past
3 I'm sure. I think that's what he's talking about.

4 MR. NETTLES: I understand that, but I --

5 THE COURT: I'm sure you all have done the same
6 thing.

7 MR. NETTLES: Based on the context, I was under the
8 impression he was addressing as it was relating to
9 insignificant component of his argument, another component
10 based on --

11 THE COURT: I didn't take it the way you're taking
12 it. Maybe I'm wrong, but I did not take it that way.

13 MR. NETTLES: I understand.

14 THE COURT: Anything else?

15 MR. NETTLES: That's all.

16 THE COURT: Now, they tried one last month in
17 Columbia without sequestering a jury.

18 MR. NETTLES: Yes, sir. They're getting ready to
19 start.

20 THE COURT: What was the name of it?

21 MR. NETTLES: It starts the end of the month, I
22 think. It hasn't started yet. They decided not to
23 sequester.

24 THE COURT: Didn't try it last month?

25 MR. NETTLES: No, sir. I think it starts the end of

1 this month. But the clerk submitted an affidavit stating
2 it was going to save the county about \$50,000.

3 THE COURT: I do know they're starting one in
4 Columbia without sequestration. Mr. Mauldin, I think on
5 that particular motion, I'm going to deny the
6 sequestration of the jury. Okay. What's next?

7 MR. MAULDIN: Well, I did want to mention we do
8 believe it is actually to the prejudice of the defendant.
9 Because it's the State versus Hill. And the jury who is
10 sequestered then blames the defendant for this
11 inconvenience of their lives. I want to make sure the
12 court made note, and the record reflected, the prejudice
13 we believe relates directly to our client.

14 THE COURT: Okay. I understand. Anything else?

15 MR. MAULDIN: Your Honor, last two matters that we
16 have is, one, we're going to hand up to the court a motion
17 and serve the state with it. It has not been filed with
18 the clerk, and there's a reason. Because we didn't know
19 until right now what your ruling was on the Crawford
20 issues. You issued those from the bench. This is a
21 motion that we had to wait for you to rule before we then
22 could submit this motion. So, for timeliness, Your Honor,
23 we do offer that as an explanation.

24 The other motion I'll be handing up to you as well is
25 a motion to compel production of certain telephone

1 records. I'm going to ask others on this team to argue in
2 support of these two motions; but I did want you to know
3 why they are only being provided to you now.

4 In that regard, when you came in the room a few -- an
5 hour ago, as you walked in and the bailiff said for us to
6 rise, I was handed a motion right then regarding -- and I
7 handed it to Mr. Nettles -- regarding the state's motion
8 to prohibit the defendant from staking out jurors. Well,
9 if we're going to start voir dire in an hour, we need time
10 to respond. This is important. This is critical.

11 THE COURT: Well, why can't we respond to it as we go
12 through the voir dire process? If he has an objection,
13 I'll be glad for you respond to it.

14 MR. MAULDIN: I've been standing here talking the
15 whole time. I haven't had a chance to even read this
16 motion.

17 THE COURT: Read it. And we can respond at the
18 appropriate time. If you need time to review it, I'll
19 give you time. The same thing applies on the motions
20 you're getting ready to hand up.

21 Solicitor, you seen the motions he's getting ready to
22 hand the court? If you need time to respond, I'll give
23 you time to respond. Is it one or two motions?

24 MR. MAULDIN: There are two, Your Honor.

25 THE COURT: What's the second one?

1 MR. MAULDIN: Here is the first one that involves the
2 telephone records' issue. And this one involves a
3 furtherance of our objection regarding admissibility of
4 information from Dr. Crawford. And that is the original
5 of that motion as well.

6 With regard, Your Honor, while you're -- before we
7 get into those two, my proposal, because I have not had an
8 opportunity to even look at this motion regarding voir
9 dire that we bring, when you draw your panels, that we
10 bring the panels, panel number one, back tomorrow morning
11 instead of trying to get panels done this afternoon. That
12 way I can respond, we can have rulings and know exactly
13 what I have to try to respond in the hearing today. But
14 we can't have respond to hearing and have voir dire going
15 on at the same time. I haven't even had a chance to read
16 it.

17 MR. ARIAIL: Your Honor, I don't think this motion
18 needs --

19 THE COURT: Hold on just a second, Solicitor. I'll
20 listen to you. Have a seat. I want to ask him some
21 questions about his motion real quick. Defendant's
22 memorandum of law regarding defendant's objection to
23 admissibility of Crawford interview tapes and transcript,
24 I thought I ruled on that. What's different about this
25 memorandum? And there's no motion attached to it. Well,

1 I'm sorry, it is a motion. How is this different from
2 what we just ruled on, motion to suppress?

3 MR. MACDOUGALL: Your Honor, that relates to the
4 transcript itself. Dr. Crawford in her testimony
5 testified, as the transcript reflects, there were
6 significant parts that were inaudible. It's essentially a
7 partial recording what was said that day in the
8 conversation. The purpose of this motion is asking the
9 court to consider excluding that transcript because it is
10 incomplete and may very well not include important
11 statements, important questions and answers. And some
12 case law is cited in there in support of it.

13 THE COURT: Are you planning on introducing the
14 transcript itself or just testimony from Dr. Crawford?

15 MR. ARIAIL: Both.

16 THE COURT: Are you planning on doing it in the
17 pen' -- excuse me, the innocent or guilt phase? I will
18 try to get used to that language, innocent or guilt phase.

19 MR. ARIAIL: No, sir.

20 THE COURT: Is there any reason we can't hear this
21 motion at the same time we're hearing the victim impact?
22 Any reason we got to hear it before --

23 MR. MACDOUGALL: No, sir.

24 THE COURT: -- before we got the innocent or the
25 guilt phase?

1 MR. MACDOUGALL: The state's not going to introduce
2 it in the innocence phase. May I just --

3 THE COURT: Okay.

4 MR. MACDOUGALL: Your Honor, there's no reason the
5 court can't consider that after the --

6 THE COURT: I'm not trying to cut you off, glad to
7 hear it. I just don't know why we got to hear it at this
8 point in time.

9 MR. MAULDIN: Well, the concern is it could come up
10 earlier. As long as you have it under advisement, will
11 rule on it at the time it's appropriate.

12 THE COURT: I'll take it under advisement. If it
13 comes up, I'm sure you'll jump through the ceiling, make
14 any objection. We'll deal with it at the time. All
15 right.

16 All right. Now, compel the production of phone
17 records.

18 MR. ARIAIL: We'll consent to that if we have them.
19 I don't think we have them.

20 THE COURT: The state will consent to that.
21 Mr. Nettles, first of all, let's find out what exactly
22 what he wants. He's been very specific here.

23 MR. NETTLES: And it could be -- this is where we
24 are, just so nobody gets up saying we're trying to play
25 hide the ball: We got a subpoena from the government of

1 what they asked for in terms of phone records.

2 THE COURT: From Verizon?

3 MR. NETTLES: From Verizon. And the subpoena request
4 is for a period prior to the records they got. Now, one
5 explanation of that is, that's all Version could give
6 them. If that's it, we'll live with it. The other
7 explanation is, maybe they didn't give us all the records.
8 That's all we wanted to know from the government is, by
9 way of this, have we got all the records they've got? And
10 if the reason that the records that they didn't get they
11 asked for is that Verizon said they can't come up with it,
12 that's all we want to know.

13 THE COURT: Solicitor, you hiding the ball?

14 MR. NETTLES: I'm not insinuating --

15 MR. ARIAIL: He just accused me of hiding the ball.

16 MR. NETTLES: Let's be clear about what you're doing.
17 These guys over here got these records, they don't want to
18 give them to us.

19 THE COURT: Hold on a second, both of you. Let me
20 tell you something real quick. This real time will not
21 work at all with both of you talking at the same time.
22 Please hold your patience. I'll listen to all of you but
23 one at a time. Okay, Solicitor?

24 MR. ARIAIL: I can't, I don't know. I don't know
25 what we got in response specifically, not standing right

1 here. I don't know.

2 THE COURT: Will you find out, provide them whatever
3 you got from Verizon.

4 MR. ROBERTSON: Yes. We already provided everything
5 we have. What I'll be looking for is the reason, find out
6 why we didn't get the other records we asked for. Then if
7 the other records are available, that goes to their next
8 question, they want us to issue a subpoena to Verizon. I
9 think it would be more appropriate you issue an order
10 directing because we don't have subpoena power.

11 THE COURT: Who doesn't have subpoena power?

12 MR. ARIAIL: Neither one of us come to trial.

13 THE COURT: You can request it from the clerk.

14 MR. ARIAIL: I can request an order to get records.

15 THE COURT: I understand. Let's see what he tells
16 you. If you still want it, I'll issue an order ordering
17 them to produce the records.

18 MR. NETTLES: That's fine. If he will reference to
19 them, we put the dates here so he can ask. That's fine.

20 THE COURT: All right. How soon do you need this?

21 MR. NETTLES: Yesterday.

22 THE COURT: Solicitor, so this doesn't drag out, when
23 can you make that information available to the defense?

24 MR. ARIAIL: Judge, I mean, come on. They had this
25 thing a year. I'll do my best, when I step out of here;

1 but we're going to step out of here do voir dire. As soon
2 as I get a break, I'll call Paul or Mike McNamara get on
3 the phone find out the explanation. Give me five minutes
4 I'll find it out.

5 THE COURT: All right. Just didn't want it dragging
6 on two or three days.

7 Mr. Mauldin anything else? I got the state's motion
8 I haven't looked at, something about the voir dire.

9 MR. MAULDIN: What I'm asking is real simple. In
10 fact, this would give the state the opportunity to try to
11 figure out where his phone records went, did or didn't,
12 whatever. What I'm asking the court consider doing is
13 this. There's no reason for us to get in a big, big rush.
14 It seems to me.

15 We go down and do the general qualifications of the
16 jurors, find out who wants transfers, who had things come
17 up since they sent the subpoena and whatever, and they
18 line up, whatever. We do that. And after we got the
19 final group, we draw the panels, draw the numbers that
20 show the people in each panel. The clerk then provides
21 those to us. We then get those files together. So, there
22 is a little bit of a mechanical process of getting this
23 done. We take that first group tomorrow morning. I mean,
24 that just seems so simple.

25 THE COURT: What's the state's position?

1 MR. ARIAIL: The state's position is, number one,
2 it's not a good practice to let all those people line up
3 on the wall take an hour and a half to listen to the --

4 THE COURT: Hold on. Let me say something,
5 Mr. Mauldin. Mr. Mauldin, I was not planning on asking
6 this jury panel everything you normally ask as far as
7 personal problems. I was going to deal with that
8 individually. Because for one reason, primarily, when one
9 person stands up with a personal problem, they hear it,
10 the next thing you know 15 are standing up. And we'll be
11 there two hours.

12 MR. MAULDIN: I'm not suggesting that.

13 THE COURT: I wasn't planning on asking that until we
14 dealt with them individually. And to be perfectly honest
15 with you all, all I'm going to go through are the general
16 questions and the exceptions, with the exclusion of
17 personal problems and also with the exclusion of any
18 mental or physical problems. I was going to leave those
19 to individual. I could probably do the voir dire in 15
20 minutes.

21 MR. MAULDIN: You talking about the general pool?

22 THE COURT: The general pool, voir dire. And then go
23 into individual questions. If I start opening Pandora's
24 box, we'll be there for two hours.

25 MR. MAULDIN: And I agree with that. Ordinarily we

1 go through the exemptions and --

2 THE COURT: I'm going to go through the general
3 questioning, whether or not they're a resident of
4 Greenville County, over 65, and all the exemptions, the
5 schools, et cetera, et cetera, et cetera. Leave it at
6 that, and then go to individual voir dire.

7 How much time? I'm not inclined to wait until the
8 morning. I'll give you some time to respond. What I
9 would like to do is go downstairs, do the general voir
10 dire, and give you as much time as you need to respond to
11 his motions. I set it up for 3:00. We can put it off for
12 however long you feel is necessary. But I'm not inclined
13 to put it off until tomorrow.

14 MR. MAULDIN: An alternative would be instead of
15 having three and 4:30, how about drop the first group down
16 to 4:30. That will give me time to figure out what our --

17 THE COURT: That will give you enough time?

18 MR. MAULDIN: That will give us one panel tonight.
19 We'll be willing to work with that.

20 THE COURT: Now, don't wait until 4:30 to start your
21 arguments.

22 MR. MAULDIN: No, I'm going to try to do that. Okay.

23 MR. ARIAIL: We taking about giving him a time to
24 respond to this? We don't need to argue about that.

25 THE COURT: I'm going to give him time to respond.

1 MR. ARIAIL: I'm going to raise it with each juror,
2 every time he asks these questions, I'm going to jump up
3 and object, get the ruling then. We don't need to argue
4 about it now, hypothetical.

5 THE COURT: All he wants is time to review it. I'm
6 going to give him time to review it.

7 MR. ARIAIL: That's fine.

8 I'll hand them a copy of the list of the people on
9 the survey and hand one to the clerk, hand one to the
10 court reporter for marking it as a court's exhibit. I
11 have another if you'd like one to follow along.

12 THE COURT: No. Just get me the other results. I'll
13 review it and see if it should be produced.

14 (Court's Exhibit Number 7 is marked for
15 identification.)

16 MR. MAULDIN: Now, Judge, and we just continue to
17 take the same position we've taken. I've been handed a
18 list, the survey, it's got last names and first names, no
19 addresses. We don't know if these people are the next
20 door neighbors. That was the whole point of the --

21 THE COURT: I said he's going to give me the rest of
22 it. I'm going to review it.

23 MR. MAULDIN: He's going to give you the whole thing?

24 THE COURT: Right.

25 MR. MAULDIN: And you give it to us if you think it's

1 something we might need to know about?

2 THE COURT: That's correct. You understand,
3 Solicitor? Give it to me tonight.

4 MR. ARIAIL: There are no more details about names
5 that's all I have.

6 THE COURT: Give me what you got.

7 MR. ARIAIL: I will. Solicitor's survey list.

8 THE COURT: Mr. Mauldin, can I see you and
9 Mr. Nettles and the solicitor up here very briefly?

10 MR. MAULDIN: Yes, sir.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: All right. The news media, who all is
13 here? Come forward if you would. All right. I've got
14 two here, one from Greenville News and one for WHNS. Who
15 is who?

16 REPORTER: I'm with WSPA. They told me they faxed it
17 in. I don't know.

18 THE COURT: I tell you what I'm going to do.
19 I don't know whose camera that is over there set up.

20 REPORTER: It's a pool situation.

21 THE COURT: I'm going to let one camera in the
22 courtroom. You'll have to all pull off that same camera.
23 Now, one request was for live. I'm not sure what you mean
24 when you say "live." I don't care what you record. What
25 I don't want, is that camera broadcasting live where

1 somebody can turn on the television, watch the trial.
2 Record whatever you want to, except I don't want any
3 pictures of any jurors. You can all pull off one camera
4 set up out of the way of the jury. Anybody got any
5 problems with anything?

6 REPORTER: Still cameras okay?

7 THE COURT: Yeah, still camera is fine. Just get
8 over there where you're out of the way of the jury. No
9 flashes. Take whatever pictures you want, record whatever
10 you want. I don't care. I just don't want the broadcast
11 going to a live television channel where someone can turn
12 on the TV, watch it on television. And no pictures of
13 jurors. Okay? Everybody understand?

14 (No negative response elicited.)

15 Thank you very much.

16 All right. You all ready to go downstairs?

17 MR. ARIAIL: Yes, sir.

18 (WHEREUPON, a recess is taken, after which the
19 proceedings reconvene in the jury assembly room, when
20 the following proceedings were had:)

21 THE COURT: All right, ladies and gentlemen, the
22 first thing we're going to do is the clerk is going to
23 call out a list, and all I want you to do is stand and say
24 you're here. We want to see who's here and who is not
25 here. As soon as I can find the clerk.

1 While we're waiting on the clerk anybody in the
2 courtroom that cannot hear me? If you cannot hear me,
3 please raise your hand.

4 (WHEREUPON, The clerk of court calls the roll of the
5 jury venire.)

6 Ladies and gentlemen of the jury, I'm Judge
7 Nicholson, resident judge over in Anderson, South
8 Carolina. And we're going to be holding general sessions
9 this week.

10 PROSPECTIVE JUROR: We can't hear you.

11 THE COURT: Okay. I'm sorry, because I had the
12 microphone turned off. Is that better?

13 (No response elicited.)

14 I couldn't help but think while you all were standing
15 here raising your hands and standing saying "here" about
16 being in grammar school. That was the last time I think I
17 saw a group of people do that was in grammar school.

18 I'm going to ask you certain questions I'm required
19 to ask by state law. The questions are not -- some of the
20 questions may embarrass you. If you do not want to stand
21 up in front of the group and answer the questions, then
22 I'll receive you here in front and discuss the question
23 with you in private if you do not want to stand up in
24 front of the crowd and answer the questions.

25 The first group of questions will be concerning your

1 qualifications. The second group of questions are
2 concerning exemptions. If you want to exercise your
3 exemption or if we want to transfer you to another term of
4 court.

5 The first question, has any member of the jury panel
6 not reached his or her 18th birthday? If so, please
7 stand. The next question, is any member of the jury panel
8 a clerk, deputy clerk, constable, sheriff, probate judge,
9 or employed within the four walls of the courthouse? If
10 so, please stand.

11 Yes, sir. Your name?

12 PROSPECTIVE JUROR 372: Douglas Way, W-A-Y.

13 THE COURT: Mr. Way, which one are you?

14 PROSPECTIVE JUROR 372: I'm a police officer with the
15 city of Mauldin.

16 THE COURT: Police officer with the city of Mauldin,
17 okay. All right. I'll excuse you from jury duty. Thank
18 you very much. You may go.

19 Does any member of the jury panel hold a law
20 enforcement commission with or without pay, such as a
21 constable, game warden, or deputy sheriff? If so, please
22 stand.

23 Has any member of the jury been convicted or pled
24 guilty in a state or federal court of a crime punishable
25 by more than a year in prison and has not been granted a

1 pardon or amnesty? That doesn't mean you received a year,
2 but possibly could have received a year. If you meet that
3 qualification, please stand. Someone raised their hand,
4 what is your name?

5 PROSPECTIVE JUROR 278: My name is Clark Peden.

6 THE COURT: Peden.

7 PROSPECTIVE JUROR 278: Yes, sir.

8 THE CLERK: Juror 278, Mr. Peden.

9 THE COURT: What was the charge?

10 PROSPECTIVE JUROR 278: Possession of marijuana.

11 THE COURT: Where did you plead, in magistrate court,
12 big court, or where?

13 PROSPECTIVE JUROR 278: Superior court, Transylvania
14 County, North Carolina.

15 THE COURT: Do you recall the maximum time you could
16 receive?

17 PROSPECTIVE JUROR 278: No, sir, I don't.

18 THE COURT: Solicitor, you got a list? All right.
19 Mr. Peden, if you'll just have a seat for right now. All
20 right?

21 PROSPECTIVE JUROR 278: All right.

22 THE COURT: Any member of the jury panel unable to
23 read, write, speak, or understand the English language?
24 If so, please stand. I often wondered why you had to ask
25 that question. Because if you didn't understand the

1 English language, you wouldn't know to stand. It's there,
2 I have to ask it. It's required by state law.

3 Does any member of the jury panel have less than a
4 sixth-grade education or it's equivalent? If so, please
5 stand. Is any member of the jury panel not now a resident
6 of Greenville County? If so, please stand.

7 Is there any member of the jury panel who is not now
8 a citizen of the United States? If so, please stand. Has
9 any member of the jury panel actually served as a juror in
10 the last calendar year? If so, please stand.

11 And the next group of questions are concerning
12 exemptions where we may transfer you or you may exercise
13 your exemption, depending upon the situation.

14 Has any member of the jury panel reached his or her
15 65th birthday? If so, please stand.

16 Yes, ma'am, your name?

17 PROSPECTIVE JUROR 330: Patricia Spencer.

18 THE COURT: Sorry?

19 PROSPECTIVE JUROR 330: Spencer.

20 THE COURT: Mrs. Spencer, we would be glad to have
21 you if you would like to serve.

22 PROSPECTIVE JUROR 330: I would like to serve.

23 THE COURT: Okay. Thank you very much.

24 Is any member of the jury panel an officer or
25 employed with the state Department of Corrections? If so,

1 please stand.

2 PROSPECTIVE JUROR 133: I don't know if this, but I
3 were -- I was.

4 THE COURT: You were?

5 PROSPECTIVE JUROR 133: Yeah.

6 THE COURT: What is your name?

7 PROSPECTIVE JUROR 133: Denise Glenn.

8 THE COURT: Glenn. Juror number, 133. What did you
9 do?

10 PROSPECTIVE JUROR 133: Correctional officer.

11 THE COURT: How long ago?

12 PROSPECTIVE JUROR 133: Five years ago.

13 THE COURT: Okay. Thank you very much.

14 The next question has three parts. First of all, you
15 have to be a woman, you have to have a child under the age
16 of seven, and do not work; you have legal custody of the
17 children and no one to care for the children. Does
18 anybody meet that criteria? If so, please stand.

19 Yes, ma'am. Your name?

20 PROSPECTIVE JUROR 149: La tern Griffin.

21 THE CLERK: Number 149.

22 THE COURT: Miss Griffin, why don't you come around
23 so I can hear you. I know I won't be able to hear you
24 from back there.

25 (Prospective juror steps forward.)

1 Why don't you have a seat in this chair right on the
2 front row there. Tell me, are your children at home?

3 PROSPECTIVE JUROR 149: I just have one.

4 THE COURT: You have one child. How old is the
5 child?

6 PROSPECTIVE JUROR 149: Five.

7 THE COURT: Do you have anybody that can care for the
8 child?

9 PROSPECTIVE JUROR 149: (Shakes head from side to
10 side.)

11 THE COURT: Who normally cares for the child?

12 PROSPECTIVE JUROR 149: Well, daycare.

13 THE COURT: Daycare. What time do you take the child
14 to daycare?

15 PROSPECTIVE JUROR 149: I work from 12 to 12. Twelve
16 midnight to 12 the next day.

17 THE COURT: Who cares for the child from --

18 PROSPECTIVE JUROR 149: A friend. I mean, you know,
19 different people. I get different people to do it.

20 THE COURT: Can't you use those same people this
21 week?

22 PROSPECTIVE JUROR 149: Yeah.

23 THE COURT: What time does the child go to daycare?

24 PROSPECTIVE JUROR 149: He's going to school.

25 THE COURT: Goes to school. What grade?

1 PROSPECTIVE JUROR 149: He's just in five-years old
2 kindergarten.

3 THE COURT: In what, prekindergarten?

4 PROSPECTIVE JUROR 149: Uh-huh.

5 THE COURT: What hours does he go to school?

6 PROSPECTIVE JUROR 149: From eight in the morning
7 until two. See, when I get off at 12, I wait around and
8 pick him up at 2:30.

9 THE COURT: Do you have anybody who can pick him up
10 at two and take him to your friend's or whoever cares for
11 him?

12 PROSPECTIVE JUROR 149: Yeah.

13 THE COURT: Brother-in-law? Sister? Mother-in-law?
14 Father?

15 PROSPECTIVE JUROR 149: I have a mother.

16 THE COURT: Can your mother help you do that?

17 PROSPECTIVE JUROR 149: (Nods head up and down.)

18 THE COURT: Okay. Thank you very much.

19 Is any member of the jury panel a student either in
20 high school or an institution of higher learning, that
21 would include a tech school, and cannot serve this week?

22 PROSPECTIVE JUROR 103: I'm a tech student.

23 THE COURT: What's your name?

24 PROSPECTIVE JUROR 103: Mikell Dunlap.

25 THE COURT: Juror number 103.

1 PROSPECTIVE JUROR 103: Yes, sir.

2 THE COURT: Mr. Dunlap, you go to school full time.

3 PROSPECTIVE JUROR 103: Yes, sir. Criminal justice
4 student.

5 THE COURT: What time are your hours, your classes?

6 PROSPECTIVE JUROR 103: Eight -- 9:05 until 12:05.

7 THE COURT: Do you want to exercise your exemption or
8 do you want to serve?

9 PROSPECTIVE JUROR 103: Either way, don't matter to
10 me.

11 THE COURT: I'll give you your choice.

12 PROSPECTIVE JUROR 103: If court is going to be
13 during school time, I'd rather go to school.

14 THE COURT: Court will be during school time.

15 PROSPECTIVE JUROR 103: I'd rather go to school.

16 THE COURT: I'll let you exercise your exemption.
17 What I'll do, instead of exercising the exemption, we'll
18 transfer you.

19 PROSPECTIVE JUROR 103: That's fine.

20 THE COURT: When are you out for spring break?

21 PROSPECTIVE JUROR 103: Ask the girl in the pink. I
22 don't know. Don't really get a break, get a week off then
23 start back.

24 THE COURT: What week is it?

25 PROSPECTIVE JUROR 103: I have no clue.

1 THE CLERK: What week is it?

2 PROSPECTIVE JUROR 103: End of May.

3 PROSPECTIVE JUROR 355: Spring break is in the middle
4 of March.

5 THE COURT: Transfer you to spring break unless you
6 want to stay this week and next week.

7 PROSPECTIVE JUROR 103: That's fine. I'll do
8 whatever you need me to.

9 THE COURT: All right. Have a seat.

10 Yes, ma'am, your name?

11 PROSPECTIVE JUROR 355: Katherine Thompson.

12 THE COURT: Mrs. Thompson, juror 355. What's your
13 situation?

14 PROSPECTIVE JUROR 355: I go to school at night, work
15 40 hours a week, and I have five classes. And I don't
16 know when I would do homework because I usually do
17 homework in my lunch break and stuff at work.

18 THE COURT: You'll have some time to do your
19 homework. You just have to collect it before you get
20 here, find out what it is. I can transfer if you want me
21 to. What do you want to do? You tell me. I'll let you
22 make the decision.

23 PROSPECTIVE JUROR 355: I don't know. I don't know
24 that I can do it. I have five classes at school.

25 THE COURT: Do you want to exercise your exemption?

1 PROSPECTIVE JUROR 355: Yes.

2 THE COURT: Okay. I'll excuse you, Mrs. Thompson.

3 Thank you very much.

4 Yes, sir, your name?

5 PROSPECTIVE JUROR 21: Brian Beesley.

6 THE COURT: Yes, sir, Mr. Beesley?

7 PROSPECTIVE JUROR 21: I take classes on line.

8 THE COURT: On-line classes where?

9 PROSPECTIVE JUROR 21: Limestone college.

10 THE COURT: Where?

11 PROSPECTIVE JUROR 21: Limestone.

12 THE COURT: Are you working anywhere?

13 PROSPECTIVE JUROR 21: Yeah. I work full time, also.

14 THE COURT: When do you work at your computer on your
15 classes?

16 PROSPECTIVE JUROR 21: When I have spare time at
17 night.

18 THE COURT: In the evening?

19 PROSPECTIVE JUROR 21: Yeah.

20 THE COURT: I think we probably can accommodate you
21 on that.

22 PROSPECTIVE JUROR 21: I didn't know what the policy
23 was as far as sequestering.

24 THE COURT: I think we can probably accommodate you
25 on that. Thank you very much.

1 All right, the next question. Is any member of the
2 jury panel a school employee who cannot serve this week?
3 That includes teachers, bus drivers, anyone who works
4 within the school system and cannot serve this week, would
5 like to be transferred, I'll be glad for you to stand.

6 Yes, sir, your name?

7 PROSPECTIVE JUROR 298: My name is John Roberts.

8 THE COURT: Yes, sir, Mr. Roberts?

9 PROSPECTIVE JUROR 298: I'm an employee at Furman
10 University. I'm not on the faculty there, but I do tutor
11 some students. And I also coach 35 young men.

12 THE COURT: What do you coach?

13 PROSPECTIVE JUROR 298: Rugby.

14 THE COURT: When is the rugby season?

15 PROSPECTIVE JUROR 298: We're right in the heart of
16 the season actually, the spring.

17 THE COURT: Do you have an assistant coach?

18 PROSPECTIVE JUROR 298: No. I do not, not this year.

19 THE COURT: Just you?

20 PROSPECTIVE JUROR 298: Just me.

21 THE COURT: When would be a good time to transfer you
22 to?

23 PROSPECTIVE JUROR 298: Anytime after June,
24 commencement is early June.

25 THE COURT: Any time after June. We'll transfer you

1 to June, unless you want to stay.

2 PROSPECTIVE JUROR 298: June would be great.

3 THE COURT: All right. Yes, ma'am, your name?

4 PROSPECTIVE JUROR 20: I'm Laurie Beck, and I'm a
5 teaching assistant and bus driver at the Myers Center
6 preschoolers. And we have a summer session. I'd like
7 to -- I could -- in July, 4th of July we have two weeks
8 off then.

9 THE COURT: Who is doing your work? You can't get a
10 substitute?

11 PROSPECTIVE JUROR 20: Not -- they had to -- no.

12 THE COURT: Pardon?

13 PROSPECTIVE JUROR 20: I don't think so. I mean,
14 they covered me today but they couldn't for a long time.

15 THE COURT: All right. I'll transfer you to July.
16 Okay?

17 PROSPECTIVE JUROR 20: Okay.

18 THE COURT: Yes, ma'am?

19 PROSPECTIVE JUROR 267: Anna Nelson, I teach. I
20 don't want to be transferred to the summer.

21 THE COURT: You want to serve?

22 PROSPECTIVE JUROR 267: Yeah, may as well.

23 THE COURT: Juror number 267. Thank you, ma'am.

24 Has any member of the jury panel previously served in
25 circuit court within the last three calendar years? If

1 so, please stand.

2 Yes, ma'am, your name?

3 PROSPECTIVE JUROR 284: My name is Irene Ponce.

4 THE COURT: Where did you serve?

5 PROSPECTIVE JUROR 284: I really don't know.

6 THE COURT: What building was it in?

7 PROSPECTIVE JUROR 284: It was down on 85, it was
8 down south.

9 THE COURT: It wasn't in this building?

10 PROSPECTIVE JUROR 202: No.

11 THE COURT: It wouldn't count, but thank you for
12 standing. Anybody else? One other person looked like
13 they were standing or thinking about standing.

14 Yes, sir, your name?

15 PROSPECTIVE JUROR 345: John Sullivan.

16 THE COURT: John what?

17 PROSPECTIVE JUROR 345: John Sullivan. They called
18 me to Judge Cagle, but they didn't pick me as a juror.

19 THE COURT: Where did you go?

20 PROSPECTIVE JUROR 345: Court over on White Horse
21 Road, Judge Cagle.

22 THE COURT: That wouldn't count. Thank you,
23 Mr. Sullivan, juror 345.

24 Has any member of the jury panel previously served as
25 a member of the grand jury within the last five calendar

1 years? If so, please stand.

2 PROSPECTIVE JUROR 202: I'm not sure.

3 THE COURT: What's your name?

4 PROSPECTIVE JUROR 202: Patricia Keener, and I served
5 here for a week and I think it's been three, maybe four
6 years ago. But I --

7 THE COURT: You say it was three or four years ago?

8 PROSPECTIVE JUROR 202: I believe so.

9 THE CLERK: Your Honor, I can get that?

10 THE COURT: Assuming it was within the three years
11 under the statute? Do you want to serve or exercise your
12 exemption? She's going to check and see when it was.

13 PROSPECTIVE JUROR 202: I'm afraid I couldn't serve
14 on this jury anyway because of circumstances.

15 THE COURT: Let's don't go into the circumstances
16 right now. The question is, do you want to serve if it
17 was not within the last three years?

18 PROSPECTIVE JUROR 202: No, not in this case I don't.

19 THE COURT: Well, this case doesn't interfere with
20 that decision, do you understand? So, have a seat. We're
21 going to find out when it was.

22 MR. MAULDIN: What was the number on that?

23 THE CLERK: 202.

24 THE COURT: 202. Ladies and gentlemen of the jury,
25 what we're going to do now, it's 3:25. We're going to

1 divide you into groups of six. And we're going to have
2 different times for the six people to come in. All
3 hundred and I believe -- there's about 138 left or 137,
4 will be divided up into groups of six.

5 And the clerk will do that division, and the clerk
6 will tell you what time to be back. That time may be
7 tomorrow, it may be Wednesday, it may be Thursday, it may
8 be even Friday. They'll tell you an exact time to be
9 back. And after we get the groups divided up into six,
10 we'll bring you up individually in the courtroom upstairs,
11 and ask you certain questions individually. And that's
12 the process we're going to take.

13 And it will probably take anywhere from two to three
14 days to go through that process. So, as far as any
15 personal problems you have serving, as far as any medical
16 problems you have serving or any individual problems that
17 you have in serving, that will be taken up individually
18 when we go through the six. Does everybody understand?
19 We're not going to take them up today. We'll take them up
20 when we get to your name in the groups of six. We're
21 going to try to do the first group of six this afternoon
22 at 4:30.

23 Now, Ms. Keenan, the jury service was four years ago,
24 so you won't come within the exemption on the statute.

25 Any member of the jury panel not filled out the

1 questionnaire that was sent to you in the mail? If you
2 have not filled it out, please stand.

3 (No response elicited.)

4 THE COURT: With that questionnaire was a letter from
5 myself telling you not to read anything in the paper,
6 listen to anything on the TV about this particular case we
7 are going to try this week. And I will tell you verbally,
8 if you're not coming in until Wednesday or Thursday, I do
9 not want you reading anything in the paper about the case
10 or listening to anything on TV about this case while you
11 are awaiting your turn to come in as the group of six.
12 That will continue until we get the jury drawn and
13 throughout the trial. If it comes on television, just
14 change the channel. Don't discuss the case with any
15 girlfriends, boyfriends, husband, wife, or anyone else.

16 Mrs. Annie Fuller and Glenda Fuller? Are you all
17 related to each other?

18 PROSPECTIVE JUROR 126: I'm Fuller, F-U-L-L-E-R.

19 THE COURT: F-U-L-L-E-R? Okay. They had it spelled
20 the same way on the jury list. I guess the reason I ask
21 that question is -- well, I'll ask anybody else on the
22 jury panel related to each other? No relation. I was
23 trying a case over in Lancaster, South Carolina about
24 three years ago. We had been trying it for three and a
25 half days. The bailiff said, "Judge, this juror has got

1 to talk with you."

2 I said, "fine."

3 The juror came out and said, "Judge, I've been
4 sitting in this room off and on for three and a half days
5 with my older sister. She has been telling me what to do
6 all my life and I can't stay in that jury room with her."

7 So, I wound up excusing that juror and I've been
8 asking jurors if you're related, and if you're related can
9 you get along. I've been surprised at how many people are
10 related on jury panels, especially in some of the smaller
11 counties. I just didn't want that to happen again.

12 Now, the clerk will call out the first group. There
13 will be a number attached to each group, one through eight
14 or nine, depending on how many groups we're going to have.
15 Is there anybody who does not understand the process we're
16 going to go through for the next two or three days? If
17 you do not, raise your hand.

18 MR. MAULDIN: Judge, I understand.

19 (Attorneys approach bench.)

20 THE COURT: Mr. Peden, will you come forward please,
21 sir? Will you come up here?

22 And anyone else that did not want to stand during the
23 questions that I asked because they felt like they may be
24 embarrassed, please come up at this time. I'm not talking
25 about people who have problems that don't want to serve.

1 I'm talking about the questions I've asked you. Does
2 everybody understand that?

3 (Prospective juror 278 approaches bench.)

4 THE COURT: You were charged with maintaining drug --
5 drug paraphernalia, manufacturing marijuana, what did you
6 plead to?

7 PROSPECTIVE JUROR 278: I pled to possession of
8 marijuana. And I got, I mean, it was two years supervised
9 probation, which I served down here because I had moved
10 back to Greenville.

11 THE COURT: Do you remember what sentence the judge
12 gave you with the probation?

13 PROSPECTIVE JUROR 278: Not right off. I probably
14 got the paperwork at home somewhere.

15 MR. MAULDIN: Have you served any in Greenville?

16 THE COURT: Served the probation. Go ahead, have a
17 seat. If he fits a year or more I have no way of knowing.
18 Simple possession is less than a year. Why don't you
19 check with probation and parole and find out. Anybody
20 else on this panel?

21 MS. STROM: I don't know with the questionnaire, but
22 I can go through tonight after we do this first panel.
23 I'll know in the first panel if they come up. I'll always
24 make the court aware of that immediately.

25 THE COURT: Yes, ma'am, come around.

1 (Prospective juror 291 steps forward.)

2 PROSPECTIVE JUROR 291: I have surgery scheduled.
3 And I don't want to get charged with contempt of court.
4 I'll come back tomorrow, but --

5 THE COURT: Surgery scheduled, surgical biopsy.
6 When?

7 PROSPECTIVE JUROR 291: Wednesday morning, 11:30.

8 THE COURT: This doesn't say when.

9 PROSPECTIVE JUROR 291: Wednesday morning at 11:30.
10 I have to be there and I sure don't want to be charged
11 with contempt of court.

12 THE COURT: You have to be there 11:30 Wednesday
13 morning?

14 PROSPECTIVE JUROR 291: Yes, sir. I have to have
15 this done. I've been having problems for two months.

16 THE COURT: How long is it going to take you to
17 recover? Is it done by local or what?

18 PROSPECTIVE JUROR 291: I have no idea. I don't know
19 what all he's going to do.

20 THE COURT: So, you don't have any idea?

21 PROSPECTIVE JUROR 291: Not at this moment, sir.

22 THE COURT: Just go have a seat.

23 MR. MAULDIN: You need to give her that payment.

24 THE COURT: You all want to excuse her now or you
25 want me to put her on the panel after Wednesday? She may

1 go under general anesthesia, she don't know. What do you
2 all want to do?

3 MS. STROM: I don't have a problem excusing her.

4 MR. MAULDIN: Excuse her. What number? 291.

5 THE COURT: Ms. Propst, do you want to come back up,
6 please, ma'am?

7 (prospective juror complies.)

8 I hope your surgery goes real well. I'm going to
9 excuse you.

10 PROSPECTIVE JUROR 291: Thank you, sir.

11 THE COURT: Good luck to you. Have a good day.

12 While we're doing this one, can she be pulling the
13 first group?

14 (Prospective juror 311 steps forward.)

15 THE COURT: Yes, sir, what is your name?

16 PROSPECTIVE JUROR 311: Elisha Shaw.

17 THE COURT: Hang on, let me find your name. Juror
18 number 311.

19 PROSPECTIVE JUROR 311: Back in '92 I was arrested.

20 THE COURT: In '92 what were you arrested for?

21 PROSPECTIVE JUROR 311: 2002.

22 THE COURT: What for?

23 PROSPECTIVE JUROR 311: Distribution.

24 THE COURT: Distribution of crack?

25 PROSPECTIVE JUROR 311: Yes, sir.

1 THE COURT: Crack cocaine?
2 PROSPECTIVE JUROR 311: Yes, sir.
3 THE COURT: What happened to the charge?
4 PROSPECTIVE JUROR 311: Preliminary hearing, got
5 dismissed.
6 THE COURT: Never came to court on it?
7 PROSPECTIVE JUROR 311: No, sir.
8 THE COURT: And also I think it was 2002, I have
9 arrested for simple possession, 2002?
10 PROSPECTIVE JUROR 311: Yes, sir.
11 THE COURT: Did you go to court on those?
12 PROSPECTIVE JUROR 311: Yes, sir.
13 THE COURT: Neither one of those disqualify you.
14 Have a seat. Thank you, Mr. Shaw.
15 Yes, ma'am, if you'll come forward.
16 They were all nonconvictions.
17 MS. STROM: I verified --
18 (prospective juror 340 seps forward.)
19 THE COURT: What's your name?
20 PROSPECTIVE JUROR 340: Margaret Stewart and my
21 husband --
22 THE COURT: Hold on just a second. Okay?
23 PROSPECTIVE JUROR 340: Okay.
24 THE CLERK: 340.
25 THE COURT: Okay.

1 PROSPECTIVE JUROR 340: My husband was convicted of a
2 federal crime.

3 THE COURT: What was he convicted of?

4 PROSPECTIVE JUROR 340: Trafficking.

5 THE COURT: How long ago?

6 PROSPECTIVE JUROR 340: That was in '81 or '82.

7 THE COURT: Did he serve time?

8 PROSPECTIVE JUROR 340: Yes, he did.

9 THE COURT: How much?

10 PROSPECTIVE JUROR 340: Two years and a half.

11 THE COURT: Okay. But you've never been convicted?

12 Okay. Thank you, Ms. Stewart. Appreciate you coming
13 forward.

14 (Prospective juror 318 steps forward.)

15 THE COURT: Yes, sir, your name?

16 PROSPECTIVE JUROR 318: Travis Simms.

17 THE CLERK: 318.

18 THE COURT: Okay, Mr. Simms.

19 PROSPECTIVE JUROR 318: Serving on jury duty is like,
20 there's no way I'm going to be able to do it. I work at
21 Applebee's in Simpsonville Tuesday, Wednesday, and
22 Saturdays. Tuesday and Wednesday I work from 5:00 to
23 9:00.

24 THE COURT: Mr. Simms, everybody out there works.
25 Everybody out there has the same problem. I'm not going

1 to excuse you for that reason. Do you understand?

2 PROSPECTIVE JUROR 318: Yes.

3 THE COURT: I expect you to be here.

4 PROSPECTIVE JUROR 318: Okay.

5 THE COURT: All right. Thank you very much.

6 All right, ladies and gentlemen of the jury, I told
7 you not to talk to your girlfriends, boyfriends, husbands,
8 wives, or anybody else? That also includes talking to
9 anyone at work. Somebody comes up to you at work, "hey, I
10 understand you're on such and such a case," turn around
11 and walk away. If they persist on bothering you, please
12 get their names and I'll take care of that individual.
13 Okay? What I'm telling you, don't discuss the case with
14 anyone. If anyone persists on talking to you, get their
15 name and I'll be happy to deal with that individual.

16 Now, when the clerk gives you a time to be back
17 between now and Friday, I expect you to be back at that
18 time. I don't want to have to send any deputy sheriffs
19 after you. Have a good evening. Everybody else sit
20 tight. The clerk, hopefully, will quickly have the first
21 six come upstairs and be able to tell the rest of you when
22 to come back.

23 But for your information we will be starting at 9:00
24 each morning. We will run until 1:00. We'll take a lunch
25 break between one and two. We'll start back at two and

1 we'll run until 6:30 or 7:00 every day. So, for your
2 plans, that's the schedule we'll be running until we get
3 the jury drawn in this case.

4 All right. We'll meet you upstairs as soon as we --
5 about sometime between four-thirty and quarter until five.
6 As far as portable phones are concerned, I don't want them
7 in the courtroom. Leave them at home or give them to the
8 bailiff when you're coming in the courtroom, and he can
9 return them. I have a large collection of them in a box
10 and I really don't want any more. So, leave them at home
11 or in your car or give them to the bailiff, especially if
12 you are on the jury.

13 All right. If everybody will just sit tight until
14 the clerk is ready to give you information on what group
15 you're in, when to bring you back. We'll see the first
16 six in probably about an hour from now.

17 (WHEREUPON, the proceedings reconvened at 4:30 p.m.
18 in the main courtroom.)

19 Debra Rollins, Michael Wright, Betty Jo Branyon,
20 Camilo Olmeda, Vernon Merchant, Rufus Hafer. Those are
21 the six on the first panel, the six on the first panel.
22 Debra Rollins, Michael Wright, Betty Jo Branyon, Camilo
23 Olmeda, Vernon Merchant.

24 First of all, let me see the attorneys up here real
25 quick.

1 (Bench Conference.)

2 MR. MAULDIN: Your Honor, if I may, at least put on
3 the record what we --

4 THE COURT: Just hang on a second. He's typing it up
5 so I can read it. Do you have better handwriting?

6 MR. MAULDIN: I have better handwriting than that
7 chicken scratch.

8 THE COURT: All right, Solicitor. You filed a motion
9 to prohibit jurors, staking out the jurors during voir
10 dire. I am familiar with State v. Powers. I have read
11 your motion. I will rule on the motions when you make
12 your objections. I would suggest you make your objection,
13 I'll either overrule or sustain it. Do you have any
14 comment on that at all?

15 MR. MAULDIN: The only comment I would have, Your
16 Honor, is we are going -- we may want to ask that the
17 juror step out in the hall if it's going to become a
18 serious objection. Don't --

19 THE COURT: Let me say this about all objections with
20 the jury or a juror present. I don't want either party to
21 use it as an opportunity to have a mini closing argument.
22 Stand up, make your legal objection. If you want to go
23 into the facts, tell me. You can come up here or we can
24 excuse the juror in the hall or the jury panel if we're in
25 the trial. I'll leave that up to you. But tell me you're

1 going to start commenting on the facts, and we'll excuse
2 the juror so we can do it at the bench. Be hard to do it
3 with the juror sitting right there, but as far as the jury
4 panel.

5 Now, the issue as to asking jurors questions about
6 race, and this is the proposed question, "In this case the
7 defendant is black and the victim is white. It is
8 undisputed the black defendant and white victim engaged in
9 interracial dating. Would the fact that the defendant and
10 victim engaged in interracial dating make it difficult for
11 you to be fair to either the state or defense?"

12 My understanding the defense asked the court ask that
13 question of each potential juror. The state consented to
14 that question of the first six jurors; is that correct,
15 Solicitor?

16 MR. ARIAIL: Yes, your honor.

17 THE COURT: I will ask that of the first six jurors,
18 as far as the court is concerned, do you want the court to
19 follow up as far as yes or no? Or do you want to follow
20 up on that? I'm not prohibiting anyone from following up
21 on that question.

22 MR. MAULDIN: I would say, Your Honor, if the juror
23 says no, I don't think the court then would be compelled
24 to follow up. I think that we certainly could.

25 THE COURT: I'm not worried about the nos, worried

1 about the yeses.

2 MR. MAULDIN: If the person says Yes, I think the
3 court must ask the juror to explain the answer and see
4 what happens.

5 THE COURT: We'll handle it that way but I'm not
6 prohibiting either party from follow-up questions.
7 Anything else before we bring the jurors?

8 MS. STROM: Yes, sir. I informed the court
9 downstairs that if a member of a panel had a criminal
10 record, I would bring it to the court's attention before
11 the panel came. It is juror number 273, defense counsel
12 has a copy of the criminal record. And I was going to
13 provide it to you.

14 THE COURT: Just tell me what it is.

15 MS. STROM: Your Honor, it shows a bank fraud.

16 THE COURT: In federal court?

17 MR. ARIAIL: It could be a state court.

18 MS. STROM: A bank fraud in '93, defendant was
19 convicted, three years suspended on five years probation.

20 THE COURT: Why don't we just bring him in first and
21 excuse him?

22 MS. STROM: And he also had a trafficking in cocaine.

23 THE COURT: Does the defense agree that he's
24 disqualified?

25 MR. MAULDIN: I think he ought to be asked if that's

1 him.

2 THE COURT: I'm going to ask, make sure it's him.

3 MS. STROM: I have his record, which shows his date
4 of birth and social security number. They're highlighted.

5 THE COURT: All right. Bailiff, will you bring in
6 Mr. Camilo Olmeda?

7 MR. ARIAIL: I'm also going to hand up for your
8 review the document entitled Thirteenth Circuit
9 Solicitor's Office research, community awareness opinion
10 survey.

11 THE COURT: Thank you. Give me something to read
12 tonight.

13 MR. NETTLES: One other thing. The solicitor's been
14 kind enough to provide on the issue we discussed about the
15 phone records. They got a magistrate to issue an order
16 for Verizon to turn those records over. Verizon did not.
17 I would just like some time before the actual trial of the
18 case starts for us to have a rule to show cause.

19 THE COURT: Why didn't Verizon turn it over?

20 MR. NETTLES: I don't know.

21 THE COURT: Do you know, Solicitor?

22 MR. ARIAIL: This is a chronic problem with them.
23 This was issued September 18th. It's still under
24 investigation. Normally when it gets to our office we're
25 more aggressive to get a circuit court order. The police

1 got this.

2 THE COURT: Who wants to prepare a rule to show
3 cause?

4 MR. NETTLES: We'll do it.

5 MR. ARIAIL: We'll consent to it.

6 THE COURT: Get me a rule to show cause when you've
7 got time to, serve it, and get them in here.

8 MR. ARIAIL: We'll check with Paul Silvaggio, who
9 that was served on when it was sent.

10 THE COURT: All right. Mr. Olmeda, have a seat right
11 here if you would. Please raise your right hand.

12 CAMILA OLMEDA, (Hispanic male) after
13 being duly sworn, testified as follows:

14 By the Court:

15 Q Is it Olmeda?

16 A Yes.

17 Q What's your date of birth?

18 A January 8th 1960.

19 Q And your social security number?

20 A 584-15-7918.

21 Q Okay. Mr. Olmeda, I have looked at your criminal
22 record and you apparently were charged with bank fraud and
23 got three years suspended upon five years probation back
24 in '94. Is that correct?

25 A Yes.

1 Q Have you received an amnesty or a pardon?

2 A Yes, sir.

3 Q You have received a pardon?

4 A Well --

5 Q A pardon comes from the governor.

6 A After the -- after my probation, get a pardon?

7 Q When you go off probation they don't automatically
8 give you a pardon. That's a special process you have to
9 go through with the Governor's office. Have you gone
10 through the Governor's office?

11 A No, sir.

12 Q That's something you might ought to consider. Okay.
13 Any questions from the state or defendant?

14 MR. ARIAIL: None.

15 MR. MAULDIN: None.

16 Q That conviction is going to disqualify you from jury
17 service. Okay? So, I'm going to excuse you from jury
18 service. Okay? Thank you very much.

19 (prospective juror Olmeda excused.)

20 THE COURT: For the record that was the same date of
21 birth and same social security number on the document.

22 (prospective juror Rollins, white female, enters
23 courtroom.)

24 Ms. Rollins, if you'll come forward, have a seat
25 please, ma'am.

1 DEBRA ROLLINS, (white female) after
2 being duly sworn, testified as follows:

3 EXAMINATION BY THE COURT:

4 Q Okay. I'm going to ask you a few questions and the
5 attorneys will probably also have an opportunity to ask
6 you some questions. First of all, I want to ask you, do
7 you have any physical or mental problems as to why you
8 think you may not be able to serve on the jury?

9 A I think I can probably serve. I had both of my knees
10 replaced. I'm still in therapy. I need to be able to
11 still stretch and do things.

12 Q How do you stretch with your knees? How do you
13 normally stretch?

14 A I have a chair that I bend back on, and I walk
15 around. I have exercises I have to do. And I go to
16 physical therapy twice a week.

17 Q How often do you have to do this?

18 A I'm supposed to do it every day, I go to physical
19 therapy twice -- I try to do it at least a couple times a
20 week.

21 Q You can do it before you come to court?

22 A (nods head up and down.)

23 Q Does it bother you if you have to sit for long
24 time?

25 A No, I can sit better than I can stand.

1 Q You can sit better than you can stand. So you can
2 sit for an hour and a half, two hours at any one time
3 without any difficulty?

4 A Uh-huh.

5 Q Are you having any pain from it?

6 A Only if I don't stretch, I'll get real tight muscles.

7 Q All right. This is the case of the state versus
8 Williams, I believe it's Charles Christopher Williams,
9 that occurred on September 3rd 2003. And Mr. Williams
10 is charged with murder. And have you -- it occurred in a
11 Bi-Lo here locally. Have you heard anything about this
12 case? When I say heard it, I mean newspaper, radio, TV,
13 or anything?

14 A Well, when it happened -- and my husband doesn't
15 work, he does some work for a lady I think who is a
16 witness, I'm not sure. She said some things when it first
17 happened.

18 Q Did your husband tell you what the woman said?

19 A (witness nods head up and down.)

20 Q What did your husband say that the woman told him?

21 A She had -- he said that when all this first happened
22 she said, yeah, she had seen him in the parking lot with
23 her having an argument. And I think the lady said he
24 needed to leave her alone, whatever. And they told her to
25 go away. Whatever she said, she circled the parking lot,

1 came back to check on it, and it was in Bi-Los when it
2 happened.

3 Q Other than that, have you heard anything else? Did
4 you read about it in the newspapers?

5 A Just when it happened.

6 Q Do you remember what you read?

7 A I remember that. I remember when I saw the picture
8 of the girl I thought she looked familiar. Looks like
9 somebody I know, and thought, "no, I don't know anybody on
10 that side of town, she probably just looks familiar."

11 Q Other than that, how about recently? You seen
12 anything recently?

13 A No, sir.

14 Q I sent you a letter not to read anything or discuss
15 it. Have you done that?

16 A No, sir.

17 Q All right. Based upon the statement that the woman
18 that was in the store told your husband and your husband
19 relating it to you, have you formed any opinion about the
20 case?

21 A Well, I guess you'd have to say, yeah, sort of.

22 Q Tell me what opinion you have formed.

23 A I guess sort of more you feel that it's probably
24 guilty. But I guess what I was thinking, it was guilty
25 but it's not necessarily whether he's guilty or innocent,

1 but what punishment he'll receive.

2 Q In your opinion you think based on what you've heard,
3 he would be guilty?

4 A (witness nods head up and down.)

5 Q Have you expressed that opinion to anyone else other
6 than here today?

7 A Well, probably at the beginning, you know, when all
8 this was going on. At the beginning but not since.

9 Q You express it to your husband?

10 A I don't know if I did him or not. I might have just
11 listened to what he told me and thought that. It's been a
12 while, so it's hard to remember.

13 Q It's been a while. Okay. I guess -- what would it
14 take for you to -- I don't want to say undo that opinion,
15 but if -- what would it take for you to listen to the
16 evidence in the case and base your decision on the
17 evidence when you feel like you've already made up your
18 mind?

19 A I would want to be fair. But I don't know if I can
20 honestly say. I haven't made up my mind on one aspect of
21 it.

22 Q What aspect have you not made up your mind?

23 A What the sentence should be.

24 Q But you've made up mind as far as innocence or guilt?

25 A If I have to be totally honest, I guess I'd have to

1 say, yes, sir.

2 THE COURT: Any questions from the state?

3 MR. ARIAIL: No.

4 MR. MAULDIN: None, Your Honor.

5 THE COURT: All right. I'm going to find she's
6 substantially impaired to perform services as a juror and
7 excuse her. I want to thank you so very much for being
8 here. Okay?

9 PROSPECTIVE JUROR: Thank you.

10 (prospective juror Rollins excused.)

11 MR. MAULDIN: Not for voir dire, Your Honor. We
12 agree.

13 THE COURT: Can you just unplug it?

14 THE BAILIFF: Yes, sir.

15 THE COURT: Just unplug it.

16 (bailiff complies.)

17 THE COURT: Thank you.

18 (prospective juror Wright, white male, enters
19 courtroom.)

20 Mr. Wright, if you'll please raise your right hand.

21 MICHAEL WRIGHT, (white male)

22 after being duly sworn, testified as follows:

23 EXAMINATION BY THE COURT:

24 Q Mr. Wright, do you have any physical or mental
25 problems or conditions that prevent you from serving on a

1 jury?

2 A No, sir.

3 Q This case occurred September 3rd 2003 at a Bi-Lo.

4 And the defendant, Charles Christopher Williams, is
5 charged with murder in this case. Have you heard anything
6 about this case? Have you heard anyone talking about the
7 case?

8 A I mean, I have before I was summoned to court. What
9 I've read in the paper and everything like that..

10 Q When did you read it in the paper?

11 A I guess after it happened.

12 Q Do you remember what you read in the paper?

13 A Pretty much just the story, what you just said.
14 That's all I remember though.

15 Q Do you remember anything factually about what you
16 read?

17 A No, sir. It's been a while.

18 Q All right. Do you recall when you read it?

19 A No, sir. I was trying -- I mean, I was trying to
20 remember. I guess it was the day of, when I got the paper
21 in the morning, but I can't remember. I can't recall the
22 date, though.

23 Q Having read, let's say you read it after it occurred,
24 did you form an opinion as to Mr. Williams' innocence or
25 guilt after you read the article in the paper?

1 A I assumed he was guilty; but like I said, it's been a
2 while so.

3 Q All right. What do you mean when you say "assumed he
4 was guilty"?

5 A The way it came out in the Greenville News, the --
6 when I read the article in the paper, first thing that
7 comes to your mind is, you know, he's guilty.

8 Q Have you seen anything on television about it?

9 A No, sir.

10 Q Have you expressed your opinion about the case to
11 anyone?

12 A No, sir.

13 Q Have you heard anybody else talking about it?

14 A No, sir.

15 Q All right. Do you think that opinion would interfere
16 with you sitting on this jury?

17 A No, sir. I don't think so. I mean --

18 Q Why not?

19 A I mean, whatever information is coming out of --

20 Q Do you think you can set aside what you read in the
21 paper and listen to the testimony from the witness stand
22 and in the courtroom?

23 A Yes, sir.

24 Q Can you base your decision on what you hear in the
25 courtroom, not what you read in the Greenville paper over

1 a year ago?

2 A Yes, sir.

3 Q Do you think you can be fair to both the state and
4 defendant?

5 A I think so.

6 Q Does either party want to get on this issue at this
7 time before we go any further on voir dire?

8 MR. MAULDIN: I would, Your Honor.

9 THE COURT: Okay. Please proceed.

10 EXAMINATION BY MR. MAULDIN:

11 Q Mr. Wright, I'm John Mauldin. I am representing
12 Chris Williams along with Colleen Coyle and Bill, Mr.
13 Nettles. I want to ask you a couple of quick questions.
14 When you said, "I assumed he was guilty," the question I
15 would have is, if you go into the case as a juror, just
16 any case, and you have assumed the person was guilty
17 beforehand which is what I think you told the judge you
18 would do --

19 A Yes, sir.

20 Q -- or you had done? Would you expect or look for the
21 defendant or the person on trial to bring evidence to you
22 that would change your mind?

23 MR. ARIAIL: I'm going to object to that question,
24 Your Honor.

25 THE COURT: What's your legal objection?

1 MR. ARIAIL: Legal objection is he is asking this
2 witness to provide him a specific answer to a question.

3 THE COURT: All right. I'll sustain the objection as
4 to how the question was phrased.

5 MR. ARIAIL: All right.

6 THE COURT: Rephrase it, Mr. Mauldin.

7 Q During the trial of a case, Mr. Wright, whether you
8 have -- you told us you had formed an opinion at the time
9 that you assumed he was guilty. And you haven't had any
10 reason to change that mind prior to today, right?

11 A Right.

12 THE COURT: If you would, Mr. Wright, just answer yes
13 or no, please, sir.

14 A Right.

15 Q So, when the case begins, when the case gets started,
16 are you going to expect the defense side of the case, the
17 person charged, to present information that would change
18 your opinion?

19 MR. ARIAIL: Same objection.

20 THE COURT: I'll overrule it on that question, Mr.
21 Mauldin.

22 Q All right. Would you answer that, Mr. Wright?

23 A Yeah. Yes, sir, I would.

24 Q All right. Thank you.

25 MR. MAULDIN: No further questions, Your Honor.

1 EXAMINATION BY MR. ARIAIL:

2 Let me ask, see if I can do this. If the judge told
3 you that sitting as a juror, sitting in that box in the
4 jury, that you had to set aside whatever preconceived --
5 not even preconceived, just assumption that you may have
6 had when you read an article a year ago, and you had to
7 base your decision solely on the facts presented in this
8 courtroom, regardless of who presents them, the state, the
9 defense, whoever presents what, could you do that based on
10 the evidence presented to you out of the courtroom?

11 A I think so. Yes, sir.

12 Q All right. Assuming that, if the judge also told you
13 that the defense doesn't have to present any evidence,
14 that the burden of proof to show the defendant's guilt
15 beyond a reasonable doubt is on the state and that you, as
16 a juror under an oath, must hold the state to that burden,
17 could you do that?

18 A Yes, sir.

19 Q All right. That's all I have.

20 MR. MAULDIN: I need to be heard, Your Honor.

21 THE COURT: All right.

22 BY THE COURT:

23 Q Mr. Wright, I guess what the parties want to know and
24 the court also, this opinion that you had after you read
25 this article, can you set that aside, listen to the

1 testimony, and be fair and impartial in arriving at a
2 decision? Or is that opinion so strong that you can't set
3 it aside?

4 A I mean, I think I'm pretty sure I can set that aside.

5 Q Can't be pretty sure.

6 A Yes, sir. I'm sure.

7 Q You can or you can't?

8 A I'm going to remember what I read, I'm sure that's
9 going to take into effect.

10 Q Let me ask you specifically, what you specifically
11 remember what about what you read, other than forming an
12 opinion about the article?

13 A I remember the story, the article in the paper.

14 Q What facts do you remember about the story?

15 A Like I said I just, I remember a murder, where it
16 took place, that sort of thing.

17 Q Do you remember any details?

18 A No, sir. I just remember pretty much what the
19 headline of the article and all, and the article.

20 Q When you read an article in the paper about any
21 crime, do you automatically assume that person is guilty
22 based on what the newspaper article says?

23 A Well, no, sir.

24 Q Okay. All right. Any follow-up questions? I don't
25 mean to belabor the point. Any follow up questions?

1 MR. MAULDIN: Just need to be heard on that matter,
2 Your Honor.

3 SOLICITOR: None, Your Honor.

4 THE COURT: Mr. Wright, I want you to step out in the
5 hall just a second. Okay?

6 PROSPECTIVE JUROR: Okay.

7 (prospective juror Wright excused.)

8 THE COURT: Glad to hear from you, Mr. Mauldin.

9 MR. MAULDIN: Judge, the court asked the juror if he
10 could set aside this predetermined opinion and be fair and
11 impartial. And he did say, "I think I could." And I
12 think you made him clarify. The question is more, not
13 just whether or not he can be fair and impartial, but
14 whether he has a burden shifting preconception of the
15 case. In other words, the question is not whether he can
16 set aside his opinion at this point. The question is
17 whether he's going to be sitting there waiting on us to
18 present something to change his preconceived opinion. We
19 can't overcome that.

20 That is impossible. We don't even have that burden.
21 And I appreciate him trying to figure out whether he's
22 supposed to answer these questions. But until the
23 prosecutor got up there gave him quick criminal justice
24 education, he was being perfectly honest with you and with
25 me. I asked that question as clearly and simply as I

1 could. And he said "yes." That just came right off the
2 top. He is a burden-shifting juror.

3 God bless him, he's as nice as he can be, but he's a
4 burden-shifting juror. We ask he be excused.

5 THE COURT: Solicitor?

6 MR. ARIAIL: Your Honor, he is like every other
7 American that reads an article in a newspaper. The
8 assumption goes along with an article in the newspaper,
9 but that's not a burden-shifting assumption. It's just an
10 opinion somebody has when they read a newspaper, when he
11 comes into this courtroom, you put a different burden,
12 different responsibility on him. He's going to follow
13 that responsibility.

14 He is not a burden-shifting individual. He is a
15 person who read an article, has an opinion, and I venture
16 to say if you keep asking the same question, the same
17 juror is going to answer the same way. "Sure, I read the
18 thing."

19 "Did you have an opinion when you read it?"

20 "Yes, I did."

21 Because most people are going to form an opinion.
22 But it's not a strong opinion, nor is it an opinion that's
23 likely to interfere with the ability to be fair and
24 impartial. So, I would say this individual, I objected
25 once to start with, the way that question is asked is so

1 out of context when you say, "are you going to require
2 something from the defendant?"

3 Before you ask that question, the jury has to be
4 explained that that's not the way it's going to happen;
5 and can you be fair under that circumstance, whether the
6 defendant has no burden of proof, can you be fair under
7 that circumstance?

8 He says he can. So, I say he's qualified.

9 MR. MAULDIN: One final word. I'm not talking about
10 in every case, every particular juror. I'm talking about
11 that particular juror, words came out of his mouth about
12 "Chris Williams' guilt." So, we reaffirm the fact he's a
13 burden-shifting juror.

14 THE COURT: I'm going to deny your motion to excuse
15 him on forming prior opinion. Bring him back in, please.

16 (prospective juror returns.)

17 BY THE COURT:

18 Q Thank you, Mr. Wright. I'm going -- I want to ask
19 you some more questions. Do you have any personal
20 problems you have that you could not serve on this jury,
21 as a juror this week?

22 A No, sir.

23 Q All right. I'm going to read you a question, I want
24 you to please respond to it. In this case the defendant
25 is black and the victim is white. It is undisputed the

1 black defendant and white victim engaged in interracial
2 dating. Would the fact that the defendant and victim
3 engaged in interracial dating make it difficult for you to
4 be fair to either the state or the defendant?

5 A No, sir.

6 Q All right. You filled out a questionnaire. Do you
7 remember filling out the questionnaire?

8 A Yes, sir.

9 Q I'm going to ask you a few questions about the
10 questionnaire. If you need to look at the questionnaire
11 to refresh your memory, let me know and I'll hand it to
12 you. Okay?

13 A All right.

14 Q Question number 36, you said that you have a family
15 member or close friend employed by law enforcement. Who
16 is that?

17 A I have a couple of friends that are policemen in the
18 city of Greer.

19 Q Are they personal friends of yours?

20 A Yes, sir.

21 Q You went to high school with them? How do you know
22 them?

23 A Yes, sir, high school. Also my sister's boyfriend is
24 a policeman there.

25 Q Is that your sister?

1 A Yes, sir. No, sir. My sister's boyfriend works
2 there.

3 Q Have you ever discussed with law enforcement in Greer
4 about their viewpoint, law enforcement in general? You
5 had a discussion with them?

6 A No.

7 Q Have you ever discussed anything about the court
8 system or the judicial system with these individuals?

9 A No, sir.

10 Q Would it cause you any difficulty sitting on the jury
11 with these friends working as police officers?

12 A No, sir.

13 Q Can you listen to the testimony, be fair to both the
14 state and the defendant?

15 A I think so.

16 Q And base your decision on the testimony you hear in
17 the courtroom?

18 A Yes, sir.

19 Q You're a member of MADD; is that correct?

20 A Oh, my mother is.

21 Q Your mother, not you?

22 A Oh, No, sir.

23 Q Everybody puts this thing together different after
24 they mail it out. You stated you strongly favor the death
25 penalty in question number 65. Is that correct?

1 A Yes, sir.

2 Q And then in question number 67 you stated with
3 reference to the death penalty, "which of the following
4 statements best represents your opinion?"

5 You said, "I believe that the death penalty is the
6 appropriate form of punishment in some murder cases and I
7 could return a verdict of death if I believe it was
8 warranted in a particular case depending upon the
9 evidence, the law, and what I learned about the
10 defendant."

11 If your opinion is strongly in favor of the death
12 penalty, you still think you could listen to testimony and
13 base your decision on testimony you hear in the courtroom?

14 A I think so. Yes, sir.

15 Q I see you're very sensitive to criticism. Is that --
16 question number 75. Nobody is trying to criticize you
17 today. Everybody is just asking you questions to see what
18 your opinion is about various things. All right?

19 A Yes, sir.

20 Q Do you know the victim in this case, Maranda
21 Williams?

22 A No, sir.

23 Q Do you know the defendant, Charles Christopher
24 Williams?

25 A No, sir.

1 Q Do you think you could be fair and impartial and base
2 your decision on the evidence?

3 A Yes, sir.

4 Q Who wants to go first? Solicitor, I think -- you
5 want to alternate, or how do you want to do it?

6 MR. MAULDIN: You know what our pretrial motion was,
7 Judge.

8 THE COURT: Come on, Solicitor.

9 MR. MAULDIN: I certainly can understand why he would
10 want to go first at this particular moment.

11 THE COURT: Do you want to go first?

12 MR. MAULDIN: Yes, sir.

13 THE COURT: Okay. Go first, Mr. Mauldin.

14 MR. MAULDIN: Thank you, Judge.

15 EXAMINATION BY MR. MAUDLIN:

16 Q Mr. Wright, I want to try to change the environment a
17 little bit. Instead of sitting in the witness stand
18 testifying, I'd like for you to act like we're having a
19 conversation. Just, I'm going to ask some general
20 questions and I'd like for you to do more talking, if this
21 is possible, than me. Just tell me, you know, how you
22 feel about these subjects.

23 In the questionnaire it said, "briefly describe your
24 attitude or belief toward capital punishment."

25 And you answered, "an eye for an eye. I believe that

1 if you commit a crime, you can pay the consequences." Eye
2 for an eye; commit the crime, pay the consequences. At
3 the time you got the questionnaire and read that question
4 and you wrote that answer, can you tell the judge what you
5 mean by that response or how you feel about that?

6 A I feel, you know, if you take a life, I feel that if
7 you're guilty --

8 THE COURT: I'm sorry, I didn't hear what you said.

9 A I feel that, you know, if you take a life and if
10 you're found guilty, then I think if you're found
11 guilty -- I think if you come up for like for capital
12 murder or whatever the penalty is, you should serve that
13 penalty. If that's the death penalty, it's the death
14 penalty.

15 Q Okay. So, your concern going in would be whether or
16 not the person would be found guilty? In other words,
17 you'd want to be absolutely sure that the person was
18 guilty. Is that right? Do you follow me?

19 A Yeah, I'm following you. So, if I go into a case,
20 it's not whether it's guilty or not guilty. You said
21 whether he's guilty, right?

22 Q Let's spin forward and say the jury has already found
23 him guilty, guilty of murder.

24 A Right.

25 Q Is that what you mean by an eye for an eye?

1 A Right. Yes, sir.

2 Q So, you would be concerned, you'd want to make sure
3 he was guilty; but once you found out he was guilty or
4 decided he was guilty, then the penalty under those
5 circumstances would be death for you, under the eye for an
6 eye principle. Is that right?

7 A Yes, sir.

8 Q And at that point when you were deciding the penalty,
9 would you expect the person who had been convicted -- and
10 let's don't talk about Chris' case, let's talk about just
11 a general case. Found him guilty, eye for an eye, you're
12 assuming that it's going to be the death penalty at that
13 point. Would you expect the defendant, the person who had
14 been convicted, to bring you evidence why it should not be
15 death?

16 A Yes, sir.

17 Q So, you would be looking for the defendant to respond
18 to that conviction; is that right?

19 A Uh-huh.

20 Q Nothing further.

21 THE COURT: Solicitor?

22 EXAMINATION BY MR. ARIAIL:

23 Q Mr. Wright, let me talk to you a little bit about the
24 circumstances. Let's assume in this hypothetical case
25 that you were picked on this jury and you were serving on

1 a jury involving capital murder; that is, a case in which
2 the state is seeking the death penalty. The state can
3 only seek the death penalty in certain cases. So, if
4 you're on this hypothetical jury and the state presents
5 its case and the jury determines that the defendant is
6 guilty, then there's a day break period, a break, and then
7 the second period of the trial begins. There are actually
8 two stages. The second part of the case deals with
9 penalty. All right?

10 Now, the purpose of having two -- two stages to a
11 trial is because the penalty is not automatic. All right?
12 Under our law in the state of South Carolina as
13 interpreted by the United States Supreme Court, as the
14 judge will instruct you, the jury will have a choice in
15 the second phase to determine what the appropriate
16 punishment may be. It may be death under certain
17 circumstances, it may be life under other circumstances.
18 The defendant may present some information to you, he may
19 not. The state is, has the burden of carrying all of
20 that.

21 Now, under those circumstances if you were on that
22 jury and you had already convicted the defendant, he was
23 guilty and the issue before you, the judge charged you,
24 was to determine which penalty was appropriate, could you
25 consider fairly, I'm talking about meaningful -- give

1 meaningful consideration, and fairly consider imposing a
2 life sentence on a defendant?

3 A Yes, sir.

4 Q And would you be willing to consider that? I'm not
5 just asking you to say that. I'm talking about meaningful
6 consideration, going to consider to impose a life
7 sentence?

8 A Right. Yes, sir.

9 Q And do you believe, even though you've convicted the
10 defendant and even though the defendant has not presented
11 to you any evidence, could you as a part of a hypothetical
12 jury say, "the state hasn't met it's burden of proof, this
13 case doesn't rise to the level of a death penalty"?

14 A Uh-huh.

15 Q And the judge would charge you as a juror you would
16 have to be able to follow that instruction or you couldn't
17 sit on this jury. Could you follow that instruction?

18 A Yes, sir.

19 Q And could you work within those parameters to
20 determine what the appropriate sentence would be?

21 A Yes, sir.

22 Q Listening to all the evidence?

23 A (witness nods head up and down.)

24 Q Okay. That's all.

25 MR. ARIAIL: Thank you, Your Honor.

1 BY THE COURT:

2 Q Mr. Wright, the trial is two parts. There will be an
3 innocence and a guilty portion of the trial.

4 A Uh-huh.

5 Q And if the defendant's found innocent, that would be
6 the end of it. If the defendant is found guilty, then
7 there would be a second part of the trial, and that would
8 address the issue of penalty. And the choices of the jury
9 at that time will be either death or life imprisonment
10 without parole. And based upon your answer to question
11 number 64, where you said, "an eye for an eye. I believe
12 you if you commit a crime, you should pay the
13 consequences."

14 So, the consequences after the innocence or guilt
15 phase would be a choice between life without parole and
16 death. Now, the defendant, if he so chooses, can offer
17 certain mitigating circumstances, mitigating circumstances
18 depending upon the individual case. Would you consider
19 those mitigating circumstances before you made a decision
20 as to death or life without parole?

21 A Yes, sir.

22 Q So, you would not automatically choose the death
23 penalty just primarily because there had been a conviction
24 in the first part?

25 A If they presented it.

1 Q Pardon?

2 A If they present it, present the case and I thought he
3 would, I guess, he would -- I guess he would get, you
4 know, a life sentence instead of a death penalty, I would
5 pick a life sentence rather than death penalty, depending
6 upon the information.

7 Q Depending upon what information is put before you in
8 the penalty phase. Is that correct?

9 A Yes, sir.

10 Q Any short questions of either party, based upon the
11 court's questions?

12 MR. ARIAIL: None.

13 THE COURT: Mr. Wright, if you'll step out in the
14 hall just a second, please.

15 (prospective juror exits.)

16 Any motions?

17 MR. MAULDIN: Your Honor, this is the juror who began
18 as a burden shifter on the guilt issue and we objected and
19 you ruled on that. And we have now gone forward. He now
20 is a clear burden shifter on mitigation. Here is the
21 point. Your own question was, "at the second phase would
22 you consider those mitigating factors in deciding what the
23 penalty was?"

24 And he said, "Yes."

25 The defendant does not have to present one single

1 ounce of mitigating evidence. He doesn't have to say a
2 word. We don't have to say a word. This juror wants to
3 know what we've got to say about it.

4 THE COURT: You misquoted me. I said, "if the
5 defendant presented mitigating circumstance, would you
6 consider it?"

7 MR. MAULDIN: Right. Right. But the point is that
8 the defendant does not have to. So, what he's going to
9 do, he's going to be guilt impaired. He's going to be
10 sitting there expecting us to put up something or find us
11 guilty because he's already formed an opinion about it.
12 Once we get past that phase, he's going to sit in the
13 penalty phase, do the same thing, sit over here and expect
14 the defendant to present information that would convince
15 him a life sentence is appropriate.

16 There is no such burden. In fact, the law in our
17 state is that in order to get the death penalty, you have
18 to have 12 unanimous votes. One off of that, it's a life
19 sentence, which means there's a presumption of life, not
20 death. So, we say he just simply is impaired at both
21 phases of the trial, and it's come out.

22 He said in his questionnaire so clear, it's just --
23 he said, "I'm an eye for an eye juror." And that was
24 before the prosecutor got up there and tried to teach him
25 what to say.

1 THE COURT: Mr. Mauldin, he wrote it in black and
2 white.

3 MR. ARIAIL: I thought we were going to be civil.

4 MR. MAULDIN: I asked him if that's what he meant.
5 He said, "Yeah. That's what I mean."

6 THE COURT: For purpose of argument, Mr. Mauldin,
7 question 16 he didn't say that for purposes of argument.
8 He said, "it would depend upon the evidence, the law, and
9 what I learned about the defendant." Question number 68.

10 MR. MAULDIN: Yeah.

11 THE COURT: I'm going to deny your motion. Now, let
12 me ask this. On these questionnaires that they have
13 filled out, do you want them all, part, the clerk to keep
14 all of them or just the ones we excuse? The ones we don't
15 excuse, excuse me.

16 MR. MAULDIN: Keep all the ones we do not excuse.

17 THE COURT: The ones that you make a motion on that
18 the court denies, we'll keep those.

19 MR. MAULDIN: Anybody qualified I think should be
20 kept.

21 THE COURT: Anybody qualified, we'll keep that
22 questionnaire. Is that correct? Does the state agree
23 with that?

24 SOLICITOR: I would like to suggest in the question
25 you ask if the information they presented in the

1 questionnaire is accurate or has anything changed since.

2 THE COURT: All right. I'll be happy to do that.

3 MR. MAULDIN: We agree with that, Your Honor.

4 THE COURT: If you would, bring us Betty Jo Branyon.

5 MR. MAULDIN: Do you want us to put on the record,
6 Your Honor, we do ask he be disqualified. I wasn't sure
7 whether the record --

8 THE COURT: You asked to excuse and I denied the
9 motion. Motion denied. It can't be any plainer than
10 that. What else you want me to put?

11 MR. MAULDIN: That's good, Your Honor.

12 (prospective juror returns.)

13 THE COURT: Mr. Wright, you are qualified for the
14 jury and you will receive a phone call at the appropriate
15 time. Okay?

16 PROSPECTIVE JUROR: All right. Yes, sir.

17 THE COURT: Thank you very much.

18 (prospective juror Branyon enters courtroom.)

19 BETTY JO BRANYON, (white female) after being
20 duly sworn, testified as follows:

21 EXAMINATION BY THE COURT:

22 Q Mrs. Branyon, how are you doing today?

23 A Good.

24 Q I'm going to ask you a few questions. Your attorney
25 is probably going to be asking -- the attorneys are going

1 to ask you some questions. Okay?

2 A Okay.

3 Q You filled out a questionnaire. Do you remember
4 filling out the questionnaire?

5 A Uh-huh.

6 Q And you sent it back to the clerk?

7 A Uh-huh.

8 Q Is it accurate?

9 A I think so.

10 Q Is there anything that you would like to change in
11 the questionnaire that you recall?

12 A I don't guess.

13 Q Okay. Do you have any physical or mental problems
14 that would prevent you from serving on this jury?

15 A No.

16 Q All right. This case or this alleged killing took
17 place, or murder took place on September 3 2003 at Bi-Lo.
18 The victim is Maranda Williams. Have you heard anything
19 about the case?

20 A The only thing I heard was when it happened, a little
21 of the news and what somebody told me that's all I heard.

22 Q What did somebody tell you?

23 A Somebody got shot at Bi-Lo. That's all.

24 Q Do you remember what you read in the paper?

25 A I haven't read anything in the paper.

1 Q Somebody just told you?

2 A Uh-huh.

3 Q Is that Bi-Lo in your neighborhood?

4 A I don't think so. I live in Piedmont, so I'd say no.

5 Q Did that stimulate your interest in the case? Did
6 you find out anything else about the case after they told
7 you?

8 A No. I had no idea what the case was when I got the
9 letter from the court.

10 Q Have you expressed or formed an opinion about the
11 case based upon what someone told you?

12 A No, sir.

13 Q Do you remember what she told you other than someone
14 was killed at Bi-Lo?

15 A I think it was the day that it happened and somebody
16 just said that some girl got shot in Bi-Lo. And that's
17 all I know.

18 Q And -- all right. Do you know the victim, Maranda
19 Williams?

20 A No.

21 Q Do you know the defendant, James [sic] Christopher
22 Williams?

23 A No.

24 THE COURT: I'm going to ask you a question. In this
25 case the defendant is black and the victim is white. It

1 is undisputed the black defendant and white victim engaged
2 in interracial dating. Would the fact that the victim and
3 defendant engaged in interracial dating make it difficult
4 for you to be fair to either the state or the defendant?

5 A No, sir.

6 Q It says your family member or close friend was
7 charged with DUI in '83 in North Carolina. Who was that?

8 A That was me.

9 Q Oh, that was you. Okay. All right.

10 A That was me. Sorry. I've been sober 12 years now.

11 Q Well, that's good. All right.

12 You answered question 24, it said, "describe your
13 attitude and beliefs concerning the death punishment.

14 "I agree with the death penalty, especially for
15 horrendous crimes against another human."

16 What do you classify as horrendous crime? What type
17 of facts?

18 A Well, horrendous meaning to me would be keeping
19 somebody maybe kidnapped and tortured and murdered or
20 something of that nature; and then, you know, sending the
21 person to prison, them doing -- letting them out, doing
22 the same thing over again, to me is horrendous.

23 Q On the questionnaire on question 69, you didn't
24 answer that, question 69. Can you give me a response to
25 it please, ma'am? It's right at the very top sheet.

1 A Number 69?

2 Q Yes, ma'am.

3 A Oh, I don't even know why I left it out. Do you want
4 me to fill it out now? That's about right.

5 Q About right.

6 A Yeah.

7 Q All right. In this particular case it will be in
8 basically two parts. We'll start with one part and that
9 part will be the innocence or guilt phase. And if the
10 jury finds the defendant innocent, that will be the end of
11 it. If the jury finds the defendant guilty, there will be
12 a second phase which will be referred to as the penalty
13 phase. At that time the jury would make a decision as to
14 whether the defendant should receive life imprisonment
15 without parole or death by either lethal injection or
16 electrocution. That would be the jury's decision in the
17 second phase.

18 This defendant does not have to offer any testimony
19 in either phase. But if the defendant offers testimony in
20 the second phase, referred to as mitigating circumstances,
21 the reasons why he should receive life imprisonment rather
22 than death, would you be able to consider those mitigating
23 circumstances before you made a decision on life or death?

24 A Yes.

25 Q Would you merely, because you found the defendant

1 guilty, automatically give the death penalty?

2 A I don't know. Would I automatically? No. It would
3 depend on the circumstances.

4 Q Can you be fair and impartial, base the decision on
5 the evidence you hear in the courtroom?

6 A Yes, sir.

7 Q Whoever's turn. Mr. Mauldin?

8 MR. MAULDIN: Thank you.

9 THE COURT: Mr. Mauldin. Do you want him to go first
10 all the time?

11 MR. ARIAIL: No, sir, alternate.

12 MR. MAULDIN: Alternate, Your Honor.

13 THE COURT: Well you all keep up with it.

14 EXAMINATION BY MR. ARIAIL:

15 Q Miss Branyon, my name is Bob Ariail. I'm the
16 solicitor for the 13th circuit, which is Greenville and
17 Pickens Counties. And as such, if you watch TV, I'm the
18 DA. In this case assisting me will be Betty Strom, my
19 deputy solicitor, and Mark Moyer over here. Let me ask
20 you do you know any of the lawyers? Do you know me? Mrs.
21 Strom? Mr. Moyer? Mr. Mauldin? Mr. Nettles?

22 A I don't know anybody in here.

23 THE COURT: Let me get you to identify the others.

24 MR. MAULDIN: This is Colleen Coyle and Bill Nettles.
25

1 BY MR. ARIAIL:

2 Q Do you understand that the judge is asking you about
3 a hypothetical situation? If you were on a jury, you were
4 chosen on a jury that in this state, when the state seeks
5 the death penalty there are potentially two phases -- if
6 you're picked on the jury, you could potentially serve on
7 both phases. The first phase is where the defendant is
8 proven guilty beyond a reasonable doubt. And the burden
9 is on the state to prove that. The state always has that
10 burden in every criminal case. And if the jury found him
11 not guilty, then there would be no second phase.

12 However, if the jury finds guilty, the second phase
13 of a case which the state seeks to impose capital
14 punishment is for the jury to administer or to review the
15 evidence to determine what the appropriate punishment
16 should be, life imprisonment or death. Those are the
17 choices. When we say life, we mean life, life forever; or
18 death, whatever those two mean.

19 Now, in that process you, as a juror, would have to
20 be a fair juror, have to consider both evidence of
21 mitigation; that is, evidence that mitigated against the
22 death penalty; and evidence in aggravation; that is,
23 evidence that aggravated the case, that made it more
24 likely to impose the death penalty. Would you, as a
25 juror, be able to fairly and meaningfully consider both of

1 those types of evidence?

2 A I think so. Yes.

3 Q And to review those evidence, I mean those pieces of
4 evidence and all of the evidence before you came to a
5 decision through the collective reasoning of your fellow
6 jurors as to what the appropriate penalty should be, life
7 or death?

8 A I think so, yes.

9 Q Do you know of any reason, either in your background
10 or whether it be religious, moral, professional, community
11 related, whatever, that would impinge on your ability to
12 be a fair juror?

13 A No, sir.

14 Q And consider both sentences life or death?

15 A No, sir.

16 Q And I believe the judge asked you earlier, that you
17 would -- and you responded you would not automatically be
18 inclined to impose the death penalty simply because you
19 found the defendant guilty?

20 A That's correct.

21 Q You would wait until the second phase to hear
22 whatever evidence came?

23 A That is correct.

24 Q And do you understand that in neither phase of this
25 case does the defendant have any obligation to present any

1 evidence, that under our constitution the burden is always
2 on the state?

3 A Uh-huh.

4 Q No burden upon the defendant, you understand?

5 A Uh-huh.

6 Q Can you live with that? Do you believe in that
7 principle?

8 A I do.

9 Q Now, let me ask you -- let's assume you were in the
10 jury box in this hypothetical case and you and all your
11 fellow jurors had concluded that the appropriate
12 punishment in this case was death. The law requires that
13 you, as jurors, individually, 12 of you, sign a form with
14 your individual names, that imposes that sentence. And
15 that form would then be returned to the judge to be used
16 to carry out the sentence to follow the defendant to the
17 department of corrections to carry that sentence out
18 accordingly. Would you have any problem in signing that
19 form if you had in fact reached that verdict?

20 MR. NETTLES: I object based upon -- I object based
21 on State versus Hill.

22 THE COURT: I'll sustain the objection. Go ahead.

23 MR. ARIAIL: Would you have any problem to the
24 question of signing the form?

25 MR. NETTLES: Uh-huh.

1 MR. ARIAIL: Let me look at what you're talking
2 about. Excuse me. You cited State versus Hiller?

3 MR. NETTLES: Hill, H-I-L-L.

4 THE COURT: We can look at it later, Solicitor. I'll
5 revisit it.

6 MR. ARIAIL: That's my final question.

7 THE COURT: Pull the case out, give it to me. If I'm
8 wrong, I'll correct it.

9 MR. ARIAIL: I think since we're not going to argue,
10 but I think that's important we cross that line before --

11 THE COURT: I understand. Just find the case, let me
12 look at it. Mr. Mauldin.

13 MR. NETTLES: In time I'll do it.

14 THE COURT: All right. Please proceed. I'll revisit
15 it, Solicitor, if I'm wrong.

16 EXAMINATION BY MR. NETTLES:

17 Q How are you doing, Miss Branyon? Please pronounce
18 your name for me.

19 A Branyon.

20 Q I figured I'd get off on the wrong foot if I called
21 you by the wrong name. Nothing good could come of that.

22 A Well, it happens all the time.

23 Q I'd like to ask you, and you've already been very
24 candid with us, shared a good bit; and based on what you
25 already told us, I'd like to ask you a couple of

1 questions. One of them is this. It seems that based on
2 some of the questions you already answered, that if
3 someone's convicted of murder and then the judge asked you
4 what you considered to be a heinous murder, and you said,
5 if someone was kidnapped and then there was, and murdered,
6 right?

7 A Tortured.

8 Q Let me ask you this. Let's be sure you and I have an
9 understanding, we understand murder in the same way.
10 Okay? In South Carolina murder is not accident. So, in
11 other words, if I were hunting with somebody and the gun
12 went off, shot somebody, that's not murder. That's
13 accident.

14 And murder is not sort of the classic example a man
15 comes home and catches his wife in bed with another man,
16 that's heat of passion. The court recognizes that. But
17 murder is defined as a killing of heart devoid of social
18 duty and fatally bent on mischief. In other words, not
19 accident, not self-defense, not somebody that was out of
20 their mind. It's somebody that killed somebody and meant
21 to do it. Okay? Do you understand that to be murder?

22 A Uh-huh.

23 Q Let's just talk about that a minute. If someone's
24 convicted of murder, as you and I just discussed it, is
25 their punishment already sort of in your mind decided and

1 that being between life imprisonment without possibility
2 of parole?

3 A No, it's not already decided, because I have to put
4 myself in the other person's shoes, because I've been man
5 enough to, you know, want to kill somebody before.

6 Q I understand. We might have to get you a lawyer if
7 you keep this up.

8 A I know, but I'm being honest.

9 Q I understand. I understand. But let me ask you
10 this, then. Take it one more step, then, because in this
11 case the charge is murder and kidnapping. All right? And
12 before we got into the second phase, the jury would have
13 had to have decided that Chris is guilty.

14 MR. ARIAIL: Your Honor, I'm going to object, the
15 ground is case specific.

16 A I think --

17 MR. NETTLES: I think we already kind of --

18 THE COURT: Hold on a second. Overruled. Go ahead.

19 Q Thank you. In this particular case, let's be clear.
20 Before we even got into the second case, Chris -- and I'm
21 putting the cart a little before the horse here, but this
22 is the only chance I get to talk to you -- would have had
23 to have been found guilty of both murder and kidnapping.
24 Okay? In your mind is the punishment already set, knowing
25 that you're entering the phase with a conviction of murder

1 and kidnapping?

2 A No.

3 Q What would help you to make a decision between these
4 two serious punishments?

5 MR. ARIAIL: I'm going to object, Your Honor. That
6 is staking out the juror as to what evidence they want to
7 hear, and I think the cases are clear on that.

8 THE COURT: I understand the staking out. I'm not
9 sure that question is staking out a juror.

10 MR. ARIAIL: What she wants to hear?

11 MR. NETTLES: If we're going to go any further, I'm
12 going to have to ask Miss Branyon --

13 THE COURT: Overrule the objection at this point in
14 time. Let me see where we're headed. Okay?

15 Q Do you remember my question? Or do you want me go
16 back and ask you again?

17 A Is my mind made up?

18 Q No. I think I had moved on past that.

19 THE COURT: Do you want me to read the question back?
20 What would help you to make a decision -- well, it's gone
21 off the screen.

22 A The information that I'm giving during process --

23 Q What would help you make a decision about between
24 life in prison without the possibility of parole and
25 death?

1 A What -- what would make me make the decision one way
2 or another would be the information that I had.

3 Q Okay. Okay.

4 A Which, now I have no information.

5 Q Since -- I understand. Let me ask you this. If the
6 defense brought you no information whatsoever, would
7 that -- I mean, would you hold -- if the defense came in,
8 the government put up, you know, horrible very, very, very
9 graphic pictures, the government put up, you know, victims
10 who really, I mean, they've suffered a tremendous loss and
11 very compelling testimony on their part and the defense
12 put up nothing, would there only be one penalty in your
13 mind?

14 A Well, in that scenario, I would say yes.

15 Q Why is that?

16 A Well, if I'm presented with the evidence, the graphic
17 pictures, and nobody is going to defend themselves, then
18 yes.

19 Q Yes what?

20 A The death penalty would be acceptable.

21 Q Okay. Now, let's be clear about one thing. The
22 death penalty under the law is acceptable any time you get
23 a murder and kidnapping. Okay? So, I mean, but when you
24 say acceptable, you mean that's how you'd vote?

25 A Yeah. Yes.

1 Q And that's because you would be looking for, to the
2 defense in a case to bring you a reason to sentence him to
3 life?

4 A Absolutely right.

5 Q And in your mind, absent that, there's only one
6 appropriate punishment?

7 A That's right.

8 Q Now, do you have any -- what are your thoughts on
9 issues like mental health? Or mental illness more
10 specifically?

11 A What is my -- I don't understand the question.

12 Q Okay. Let me put it a little in context for you.
13 Some people, I'm sure you figured this out by now, we just
14 kind of have to figure out where you are on certain issues
15 important to this case.

16 MR. ARIAIL: I object. That's why I object, right
17 there, telling the juror --

18 MR.. NETTLES: I think now we're get into speaking
19 objection.

20 THE COURT: Don't -- both of you don't talk at once.
21 What is your legal objection?

22 MR. ARIAIL: Pandering to the jury process. It
23 started with the word Chris and continued through what she
24 wants to hear. Now, we're trying to figure out what
25 you're thinking. That's the pattern, and I object to

1 that.

2 THE COURT: Overrule.

3 Q That's why we were asking you questions about what
4 you think. You understand? And one of the questions you
5 shared with us, what you thought about the death penalty,
6 you shared with us what you thought about kidnapping. If
7 I were to say to you, you know, if I were to ask --
8 because some people come in and say, anybody ever
9 convicted of murder automatically death penalty. Okay.
10 So we just need to know that kind of thing. Some people
11 say, for instance, I just don't think there's anything to
12 mental illness, that it's all hocus pocus. Are you one of
13 those people?

14 A No, I'm not. I believe people are mentally ill. I
15 think that there's a temporary mental illness. I think
16 people can go, I'll say there, for lack of a better word,
17 at any given moment. It's a temporary insanity. I've
18 been there, you've probably been there, the judge has
19 probably been there; but real mental, yes, real mental
20 illness.

21 Q Something people have to live with?

22 A Oh, yeah.

23 Q And you would give meaningful consideration to
24 testimony about that?

25 A Yes.

1 Q Okay. Okay. I may -- let me ask you this. If you
2 were in a jury room and there was discussion going on,
3 would you be willing to listen to other peoples' opinions?

4 A Yes.

5 Q Likewise, would you require that they afford your
6 opinion?

7 A Yes.

8 Q Let me go back to talk to the other people at my
9 table, but I might be finished..

10 Yes, sir. I have no further questions. Thank you.

11 THE COURT: Mrs. Branyon, I have one, and I want to
12 explain something to you. As I explained to you earlier,
13 this is two parts, and the second part is, I'll refer to
14 as the penalty phase, the defendant has no obligation to
15 put up any evidence in that phase. The defendant may or
16 may not; however, the state does have a burden in that
17 phase to prove beyond a reasonable doubt that there was
18 some aggravating circumstances and those aggravating
19 circumstances are established by state law. Now, before
20 you made the decision to vote for death, would you listen
21 to that, evaluate that, and make a determination whether
22 or not the state had proven their case?

23 A Yes, sir.

24 Q Any questions from either party after the court's
25 questions?

1 MR. NETTLES: None from the defense.

2 THE COURT: Would you step outside in the hall just a
3 second please, ma'am?

4 (prospective juror exits courtroom.)

5 Any motions?

6 MR. ARIAIL: None from the state.

7 MR. NETTLES: None from the defense, Your Honor.

8 THE COURT: Bring Mrs. Branyon back in.

9 Are you going to give her the information?

10 THE BAILIFF: Yes, sir.

11 THE COURT: What is that information you're giving?

12 (prospective juror returns.)

13 You qualified for this jury and the bailiff is going
14 to give you a phone number to call. There will be a
15 message telling you when to come back. Check it every
16 night after six.

17 THE CLERK: Eight.

18 THE COURT: After eight? All right, after eight.
19 Let me get the story straight, how the clerk operates.

20 MR. ARIAIL: Your Honor, can we revisit this --

21 THE COURT: Just hand it up to me real quick before
22 we call Dr. Merchant. I'll read it.

23 MR. ARIAIL: I don't have anything to hand up.
24 Because Hill doesn't even talk about what they say, it
25 talks about. Hill is 11 to 1, I can see that. I can read

1 through this. The case that I'm aware of since 1987 is
2 State versus Drayton. State vs. Drayton, two, says the
3 trial judge did not err in excusing a juror who stated, "I
4 just don't want to sign my name on any document saying I
5 was a part of taking someone's life."

6 And that presupposes the right of the state to ask,
7 can you sign that. And I think State versus Drayton --
8 I'll make Your Honor a copy, that's 1987.

9 THE COURT: Let me hear from you, Mr. Nettles.

10 MR. NETTLES: Basically this State versus Hill, the
11 Supreme Court --

12 THE COURT: Does somebody have the State versus Hill
13 case I can read?

14 MR. ARIAIL: You talking about the one from 2004?

15 MR. NETTLES: Yeah, from like Aiken?

16 MR. ARIAIL: Yes.

17 MR. NETTLES: David Mark.

18 THE COURT: All right, Mr. Nettles.

19 MR. NETTLES: In State versus Hill the defense wanted
20 to ask, if you were back in a room and everybody, you
21 know, felt one way and you felt another, would you change
22 your vote just to go along? Okay? What he's asking is
23 the exact same question. What he's asking is basically,
24 you know, even if you thought that he deserved the death
25 penalty, would you change your mind just because you had

1 to sign? So, it seems to me it needs to be applied
2 fairly. What he's saying is this. He's asking a juror if
3 you believe the defendant should receive death, can you
4 sign? He's just telling the juror, "You're going to have
5 to sign the document presented to the jury. All 12 have
6 to sign."

7 That's right. But what if they thought the person
8 thought they deserved death and couldn't sign?

9 MR. ARIAIL: Then they're not qualified.

10 MR. NETTLES: So, if you take that and apply Hill, in
11 State versus Hill, they wanted to ask if you were back
12 there and you changed and everybody was one way and you
13 changed, and you changed your mind just to go along -- and
14 changed your mind to go along, changed your mind so you
15 wouldn't have to sign. I mean, if we're going to be
16 allowed to ask if you were back there, you felt one way
17 and everybody else felt another way, would you change your
18 mind to go along, then it's not a due process violation.

19 But if they get to ask -- if they get to ask would
20 you change just so you wouldn't have to sign, then it's
21 unfair for us not to be able to ask would you change just
22 to go along? Either way it's about changing your vote.

23 THE COURT: Let me hear you about the due process
24 argument.

25 MR. ARIAIL: I'm not asking the juror if it would

1 change their vote. That's not the question. The question
2 is, the way it was phrased and the way it's always been
3 phrased, if all 12 of you have decided that the death
4 penalty is the appropriate sentence, would you be able to
5 sign the form? All I'm asking about is the physical act
6 of being able to sign the form. And that's the only
7 question I'm asking. Would she -- and normally in the
8 past the judge has asked that question. So, I didn't have
9 to ask. That's one of the requirements of the law. The
10 statute requires the juror needs to be informed, "you have
11 to sign this form. You understand that?"

12 THE COURT: Mr. Nettles, as long as it's asked in --
13 As long as it's asked if the jury unanimously decides for
14 death, will you be able to sign the form because It's a
15 procedure that has to be done, I'll limit it to just that.

16 MR. NETTLES: Okay.

17 THE COURT: Not changing their minds or getting into
18 that, okay? Because it is a requirement. As a matter of
19 fact, that's in the judge's charge. As a matter of fact,
20 I will charge that to the jury. All he's asking them,
21 will he be able to sign; and as long as he asks that and
22 leaves it at that, I will allow it.

23 MR. NETTLES: Very well. Thank you.

24 THE COURT: Now, if he starts balancing off, would
25 you change your mind, that's different. Okay?

1 MR. NETTLES: I'll be ready.

2 THE COURT: I'm sure you will.

3 All right. Bring us Dr. Merchant.

4 (prospective juror enters courtroom.)

5 VERNON E. MERCHANT, III, after
6 being duly sworn, testified as follows:

7 EXAMINATION BY THE COURT:

8 Q Dr. Merchant, how are you doing today?

9 A Very well.

10 Q Let me ask you first, your sister Lynn Merchant, or
11 Lynn Powell, works for the PTI program in Greenville, I
12 mean Anderson; is that correct?

13 A That's correct.

14 Q I believe your father was a doctor in Anderson quite
15 a few years? Have you ever discussed Lynn's attitude
16 about law enforcement or anything such as that?

17 A No.

18 Q Have you ever discussed with your sister, Lynn,
19 anything about the judicial system?

20 A No.

21 Q Would her position as part of the solicitor's office
22 in Anderson working for the PTI program create a problem
23 for you sitting on this jury?

24 A No.

25 Q Do you have any physical or mental problems as to why

1 you could not serve on this jury?

2 A No.

3 Q All right. This was a -- the defendant is charged
4 with murder. The crime occurred on September 3rd 2003.
5 The name of the victim is Maranda Williams. Do you know
6 the victim, Maranda Williams?

7 A No, sir.

8 Q Do you know the defendant, Charles Christopher
9 Williams?

10 A No, sir.

11 Q All right. Have you heard anything about the alleged
12 crime, either on TV, read anything in the paper about it,
13 heard anybody talking about it?

14 A When I received your letter, I vaguely remembered the
15 name of the crime but I didn't discuss anything after
16 that.

17 Q Where do you remember it from, television? Radio?
18 Or someone talking about it?

19 A At work.

20 Q At work. What do you remember someone saying at work
21 about it?

22 A Where it occurred and they were nearby the scene of
23 the crime.

24 Q That individual was near the Bi-Lo when it allegedly
25 occurred?

1 A Yes, sir.

2 Q Based on that information, have you expressed or
3 formed an opinion as to Mr. Williams' innocence or guilt?

4 A No, I have not.

5 Q Can you set that aside, listen to the testimony, be
6 fair to both the state and defendant?

7 A Yes.

8 Q Can you base your decision on the testimony you hear
9 in the courtroom?

10 A Yes, sir.

11 Q Do you have any personal problems that would prevent
12 you from serving on this jury?

13 A No, sir.

14 Q All right. In this case the defendant is black and
15 the victim is white. It is undisputed the black defendant
16 and white victim engaged in interracial dating. Would the
17 fact the defendant and victim engaged in interracial
18 dating make it difficult for you to be fair to either the
19 state or the defendant?

20 A No, sir.

21 Q First of all, is the questionnaire you filled out
22 accurate?

23 A Yes, sir.

24 Q Is there any change you would like to make to the
25 questionnaire?

1 A No, sir.

2 Q All right. In the questionnaire, there was a
3 question about whether you had any close association with
4 anybody in the solicitor's office and did you know William
5 Nettles and Mr. Mauldin. They're sitting at counsel table
6 to my right. Solicitor Ariail and his assistant are
7 sitting with him. You answered no to both questions.
8 Having seen them, would you change that answer today? Do
9 you know any of the parties?

10 A No, sir.

11 Q Okay. This case will possibly be divided up into two
12 parts. The first part will be a determination as to the
13 defendant's innocence or guilt. Assuming the jury, all 12
14 jurors find the defendant guilty, then you would enter
15 into a penalty phase. And in the penalty phase the state
16 would be required to prove certain aggravating
17 circumstances beyond a reasonable doubt. The defendant
18 may offer testimony or may not. There's no requirement
19 for the defendant to offer any testimony in either phase
20 of the trial. If the defendant did offer what is referred
21 to legally as mitigating circumstances as to why he should
22 receive life rather than death, would you consider those
23 mitigating circumstances before you made a decision of
24 life or death?

25 A Yes, sir.

1 Q And you understand that that is the jury's decision?
2 When I say life, I mean life without parole. Do you
3 understand?

4 A Yes, sir.

5 Q All right. Would the mere fact that the jury had
6 found the defendant guilty in the innocence or guilt
7 phase, would you automatically tend to give the death
8 penalty?

9 A No, sir.

10 Q All right. Can you be fair and impartial to both the
11 state and the defendant and base your decision on the
12 evidence presented in the courtroom?

13 A Yes, sir.

14 THE COURT: Whose turn?

15 MR. NETTLES: I believe it's ours.

16 EXAMINATION BY MR. NETTLES:

17 Q How you doing doctor?

18 A Hello.

19 Q My name is Bill Nettles, one of the lawyers
20 representing Chris.

21 A How you doing?

22 Q We're going to, this is an interesting process in
23 that we have to talk to you about some things, what you
24 feel, how you think about things and stuff. Because what
25 we're dealing with here are some pretty difficult issues

1 in our society, as I hope you can appreciate. And we just
2 kind of need to know what you think about things. Okay?

3 A Okay.

4 Q Is that fair enough? It's not out of bizarre
5 curiosity we got, there's a reason for it. You follow me?

6 A Yes, sir.

7 Q Let me ask you this. I see you bird hunt. If you
8 and I were bird hunting and we were walking and I asked
9 you, you know, "So, I mean, what do you think about the
10 death penalty?" What would be your response?

11 A I would say that I would believe in the death
12 penalty. However, I would think that each case is going
13 to be different, different circumstances, different facts
14 in each case. And I would hope that the trial process
15 would meet out the appropriate punishment.

16 Q Okay. I recognize from your questionnaire or read in
17 your questionnaire I think you said something about you
18 believe in the death penalty when the proof was
19 irrefutable and sort of absolute, essentially. I guess
20 what I took from that was, was that you really wanted to
21 make sure that the person was guilty?

22 A That's correct.

23 Q Okay. And my question to you then becomes this. If
24 we're talking about a case where the person is guilty of
25 murder, and I don't know whether -- I mean, you

1 probably -- you can't get death penalty for stealing stuff
2 anymore. It's got to be murder.

3 Let's make sure you and I are on the same page in
4 terms of what murder is. Okay? Murder is not accident.
5 You and I bird hunt, the gun goes off, somebody gets shot.
6 That's an accident. It's tragic, but it's an accident.
7 Or a man comes home catching his wife in bed with another
8 man, gets crazy, mad crazy, upset, shoots somebody.
9 That's manslaughter, you can't get the death penalty for
10 that.

11 In South Carolina in order for you to be even
12 eligible for death penalty one of the things that has to
13 happen is you have to have been found guilty of murder.
14 Murder is defined in South Carolina law as a heart devoid
15 of social duty, fatally bent on mischief. A dark and
16 depraved heart, to kind of understand what we're talking
17 about, that's not accident, not self-defense. It's --
18 we're talking about murder.

19 Let's say in this murder case you're on the jury and
20 come in and it's absolutely no question the person did it.
21 Okay? They're guilty of murder. No question. It's on
22 video. In that case, is the only appropriate punishment
23 the death penalty?

24 A No.

25 Q Okay. Why not?

1 A Well, I would hope that whatever circumstances was
2 occurring, and the facts of the case would show whether or
3 not this individual understood what killing somebody
4 meant.

5 Q Okay. You understand we're not talking about
6 insanity either. I didn't leave that out. The person
7 knows right from wrong, and the person can appreciate
8 their actions. Because that's a good part -- if everybody
9 agreed he didn't know right from wrong for his actions,
10 that would be insanity, a different thing. We're talking
11 about all of that killing.

12 A If the individual knew what he or she was doing, yes,
13 I would think capital punishment would be appropriate.

14 Q And would it be the only, the only punishment?

15 A No.

16 Q What would you -- and you understand that once you
17 get to the penalty and in this case Chris has been charged
18 with murder and kidnapping. And before we even got into
19 the penalty phase the jury would have convicted him of
20 murder and of kidnapping. Okay? A murder during the
21 course of a kidnapping.

22 In that case, would your mind already be made up?
23 Convicted of both of those.

24 A I'm confused. If I'm asked to convict someone of
25 kidnapping and then murder, or murder and then kidnapping,

1 or the both at the same time?

2 Q Are you talking about, in other words, would there be
3 one trial for one and one trial for another?

4 A Yeah.

5 Q No. During the course of the same trial. There are
6 two charges that would be before you on indictments. One
7 of them would say he kidnapped this woman and he killed
8 the same woman and would be one trial for both of those
9 charges. So, at the end of that first phase, before we
10 even consider -- got into the second phase, he would have
11 had been found guilty of both of those. Once he's found
12 guilty of both of those, murder and kidnapping, is there
13 only one appropriate punishment in your mind?

14 A No, I would think -- I guess it would be -- there
15 would be a chance of someone kidnapping someone, someone
16 with no intent to kill them, and then something go awry.
17 So, they're guilty of kidnapping but are they guilty of
18 murder for capital punishment? That would be something I
19 hope a trial process would determine.

20 Q And I understand. But for us to even get into the
21 second phase, the jury would have had to decided, yes,
22 beyond a reasonable doubt --

23 A Okay.

24 Q -- he killed her. Yes, beyond a reasonable doubt, he
25 kidnapped her. All right. That's where we are, you

1 follow me?

2 A Uh-huh.

3 Q Okay. In your mind is there only one punishment for
4 that person?

5 MR. ARIAIL: Your Honor, I'm going to object. First,
6 asked and been answered three times.

7 THE COURT: I'll sustain the objection. It was
8 repetitive.

9 MR. NETTLES: I kind of felt like I got some
10 feedback.

11 THE COURT: I know, but it's almost the identical
12 same question. If you want to rephrase your question, I
13 think you've got him confused, but go ahead.

14 MR. NETTLES: If I rephrase the question, I'll only
15 confuse him worse is my fear. But, at any rate, okay.
16 There's no doubt in this case that I'm talking about, that
17 you and I are discussing here, hypothetically, that the
18 person did it. There's no doubt that the person meant to
19 kidnap. The same person he kidnapped, he killed.

20 A Okay.

21 Q All right.

22 A But in the trial process, I would hope that fact
23 would be brought out to say did he intend to kidnap her
24 and kill her? Did he intend to kidnap her and then a
25 murder occurred, and for me to answer -- if I were on the,

1 if I were a juror and we determined that he kidnapped her
2 and he meant to kill her, I would believe in capital
3 punishment. Yes.

4 Q Okay. That is my question. I appreciate that. Yes,
5 so, then -- actually, so then now when you say you would
6 consider, does that mean it would be the only punishment
7 for that person?

8 A Not knowing the circumstances?

9 Q Yeah.

10 A No.

11 Q So, you understand in that phase there's two possible
12 punishments, one is life without parole. What does that
13 mean to you?

14 A A person goes to jail, doesn't get out.

15 Q Forever?

16 A Forever.

17 Q You would accept that if the judge told you in South
18 Carolina life without the possibility, he never gets out,
19 they call it pine box life, you die in prison. Do you
20 consider that a significant punishment for murder and
21 kidnapping?

22 A No.

23 Q Why not?

24 A Because you've got a victim that's dead.

25 Q Okay. And if the government brought you evidence

1 that -- let's say you know there was -- I mean, they
2 brought in victim impact evidence and the victims came in
3 and told you about the loss that they had, okay? And left
4 behind family. As far as you're concerned, life without
5 parole just isn't a severe enough punishment for murder of
6 a kidnapper, is it?

7 A To say right off the top, you know, I would consider
8 both. I think I'm correct in that there would be -- after
9 the trial there's a sentencing phase, and in the
10 sentencing phase --

11 Q Right.

12 A -- there's going to be individuals speak on behalf,
13 behalf of both.

14 Q Teams?

15 A Whoever is involved. That would play a role in what
16 I decided.

17 Q What if no one from the defense said anything? They
18 just didn't bring you anything? No evidence.

19 A It would depend on what the victim's family felt.

20 Q Okay. So, if they came in and testified, pretty much
21 death?

22 A That would have an influence on my decision, yes.

23 Q Okay. I mean, you said it would have an influence
24 but --

25 A Is my mind made up, no.

1 Q Let me ask you this. You're a doctor. Have you
2 received any training in mental illness?

3 A No. Well, you say training, in your third year of
4 medical school you do a rotation in psychiatry. But I did
5 not do any, I don't do any ER work, I don't do any mental
6 health counseling. I'm an anesthesiologist. I don't see
7 any of that.

8 Q I understand. But what are you, just like you and I
9 are bird hunting, if I asked you about the death penalty,
10 what if I asked you about mental illness?

11 A I think it's an illness, a verifiable illness --

12 Q A verifiable illness?

13 A Uh-huh.

14 Q Is that in a death penalty case, if someone were
15 convicted and you were in the penalty phase, is mental
16 health something -- what kind of weight would you give
17 testimony about mental illness?

18 MR. ARIAIL: I'm going to object, Your Honor, as to
19 the question of weight.

20 THE COURT: I'll sustain that objection.

21 MR. NETTLES: Actually, could I be heard? I'll
22 actually move on the weight issue, but it's not staking
23 out. If the court's going to rule that's staking out, I'd
24 like to be heard.

25 THE COURT: No, I think it's a weight issue. I don't

1 think you're staking this witness out.

2 MR. NETTLES: I'll agree that was a poor choice of
3 words.

4 Q Okay. What kind of consideration would you give to
5 mental illness as a reason to lessen a sentence?

6 A I don't have any formal training in that. If I heard
7 some expert testimony, I would understand what they were
8 saying.

9 Q Right.

10 A That would play a role, the state of mind of the
11 individual at the time of the crime.

12 Q And would you be able to give it meaningful
13 consideration?

14 A Yes.

15 Q Really, I mean, you agree that -- I mean, because you
16 and I both know there are some people that think mental
17 illness is voodoo?

18 A I'm sure.

19 Q Do you believe that?

20 A No. I mean, I see it daily through the operating
21 room.

22 Q Okay. Okay. Now, assuming you're back in the jury
23 room, assuming you get on and there are -- you're back in
24 the jury room -- and we'll be frank with you, you're a
25 doctor and there's a certain amount of stature that comes

1 with that. Would you be willing -- I'm not saying, just
2 saying that people are going to look to you because you're
3 a doctor, would you be willing to allow everybody to voice
4 their thoughts on the appropriate --

5 A I respect everybody of their thoughts.

6 Q And you recognize that everybody, regardless of their
7 training, brings something into this process?

8 A Oh, yeah. There's no titles in the jury room.

9 Q Since, but you know --

10 A I'm not going to --

11 Q Yeah.

12 A -- manipulate someone.

13 Q Okay. And -- let me check with other people at my
14 table, but I might be finished.

15 A Okay.

16 Q One question I've got is this. If you were on a jury
17 panel -- I mean, in a jury and there was expert testimony
18 about mental health illness and you disagreed with it,
19 would you expect other jurors to afford more significance,
20 afford more significance to your disagreement with the
21 expert doctor testimony than theirs just because you're a
22 doctor?

23 A Oh, I'd hope not.

24 THE COURT: Solicitor?

25 MR. ARIAIL: Thank you, Judge.

1 EXAMINATION BY MR. ARIAIL:

2 Q Doctor, my name is Bob Ariail and I'm the solicitor
3 for the 13th circuit, which is Greenville and Pickens
4 County. That's an old-timey word for district attorney.
5 My job is to represent the state in all criminal charges
6 with my staff. In this case my deputy, Betty Strom, is
7 assisting me, along with one of my assistants, Mark Moyer.
8 I've heard all your answers. I know what you're saying.
9 I just want to make sure you understand the context.

10 We start off with the idea we're going to have a
11 trial involving the guilt of the defendant. We have to
12 assume for qualification purposes, asking jurors
13 questions, we may pass the guilt phase and get to the
14 sentencing phase, the second part. Any time the state
15 seeks the death penalty, our laws require that there be a
16 jury impaneled to consider both those issues, first guilt,
17 then penalty, the appropriate punishment. So, when you
18 return to the jury room, if you're considering punishment
19 in a capital case, then you have already found the
20 defendant guilty and you go to the jury room. And the
21 judge will instruct you as a matter of law, if you're
22 sitting on this jury, you have got to give consideration
23 to mitigating evidence and evidence in aggravation. And
24 he'll define that for you as our jury trial, our law sets
25 it out.

1 That evidence may, as the defense suggests, may not
2 come from the defendant. He may not put up anything
3 because the law says he has no burden. We have the
4 ultimate burden of guilt and punishment, to establish that
5 to your satisfaction. But as a juror you would be
6 required to look in the record everywhere for any evidence
7 of mitigation before reaching your decision. Could you
8 fairly do that?

9 A Yes, sir.

10 Q Meaningfully do that?

11 A Yes, sir.

12 Q After -- and after searching that record, looking in
13 there, if you decided the appropriate sentence under all
14 the circumstances, regardless who testified and who didn't
15 testify, that the appropriate sentence was life
16 imprisonment, could you impose life imprisonment in a case
17 which a defendant was convicted of murder and kidnapping
18 if the circumstances in your mind were such that that was
19 the appropriate sentence?

20 A Yes, sir.

21 Q So, you could fairly consider that sentence?

22 A Yes, sir.

23 Q And, likewise, you could fairly consider imposing the
24 death penalty if the circumstances you felt were
25 appropriate?

1 A That's correct.

2 Q In accordance with what you told us in answer 68, you
3 thought the death penalty was appropriate in certain
4 circumstances, depending upon the evidence and the -- what
5 you learned about the defendant and what the law said?

6 A That's correct.

7 Q All right. As a physician, would the hippocratic
8 oath that you have sworn to and abide by, would that in
9 any way impede your ability to consider and impose the
10 death penalty?

11 A No, sir.

12 Q All right. And if you and your 12 or 11 fellow
13 jurors had decided after all evaluation of the evidence
14 that the appropriate verdict or sentence was death, the
15 judge will tell you as a part of your duties you must sign
16 a form individually; that is, all 12 of you sign the same
17 form, would you have any difficulty after having reached
18 that decision of signing that particular form?

19 A No, sir.

20 Q All right.

21 THE COURT: Doctor, if you'll step out in the hall
22 just a second please, sir. Thank you very much.

23 (Prospective juror exits courtroom.)

24 Any motions?

25 MR. ARIAIL: None from the state.

1 THE COURT: Bring him back.

2 MR. NETTLES: Sorry, the only question we'd have, did
3 you share with him how long it's going to be?

4 THE COURT: No, I didn't. But he said he didn't have
5 any personal problems. I left it at that. Asked him if
6 he had any personal problems.

7 He said, "no."

8 MR. NETTLES: Okay. Just wanted to be sure.

9 THE COURT: Bring the doctor back. You keep opening
10 Pandora's box.

11 (Prospective juror returns.)

12 THE COURT: Doctor, you're going to be qualified.
13 The bailiff is going to give you a little pad that gives
14 you the phone number to call in after 8:00. Sometime this
15 week there will be a message to report at such and such a
16 time. Okay? If you could follow those instructions.
17 Thank you very much, Dr. Merchant.

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. NETTLES: Having seen the look in that man's eyes
20 at that moment, could we suggest maybe you tell them
21 you're qualified and explain to them that doesn't
22 necessarily mean you're on it? We're going to bring you
23 back -- if you don't want to go into that, that's fine. I
24 think he's figuring he's on it.

25 THE COURT: Let him worry about it for a few days.

1 Do you want to bring us Rufus Hafer?

2 THE BAILIFF: Yes.

3 (Prospective juror enters courtroom.)

4 Mr. Hafer, please raise your right hand.

5 RUFUS R. HAFER, after being
6 duly sworn, testified as follows:

7 Examination by the Court:

8 Q All right. Mr. Hafer, do you have any physical or
9 mental problems that would prevent you from serving on the
10 jury?

11 A No, sir.

12 Q All right. This case occurred on -- this alleged
13 murder occurred on September 3rd 2003. The state has
14 charged Charles Christopher Williams with the charge of
15 murder, and the victim was Maranda Williams. Have you
16 read anything in the paper about this case, heard anything
17 on TV, or have you heard anybody talking about this case?

18 A No, sir.

19 Q Have you heard anything at all?

20 A I had not. My wife said that name rings a bell. And
21 that's when I got the letter from you, and it referenced
22 the name. And I said, "Well, here's this thing and I've
23 got to fill out a form."

24 But she said, "I've heard of that." But that's all
25 she said.

1 Q And you hadn't heard of it?

2 A No, sir.

3 Q So, you all never did figure out. Did she ever
4 figure out where she heard about it?

5 A Seems to me she watches a lot more news than I do. I
6 just -- I don't get home in time.

7 Q Okay. All right. Do you know -- do you know the
8 victim, Maranda Williams?

9 A No, sir.

10 Q Do you know the defendant, Charles Christopher
11 Williams?

12 A No, sir.

13 Q Do you have any personal problems as to why you could
14 not serve on this jury?

15 A No.

16 Q All right. I'm going to read you a question. "In
17 this case the defendant is black and the victim is white.
18 It is undisputed that the black defendant and the white
19 victim engaged in interracial dating. Would the fact that
20 the defendant and the victim engaged in interracial dating
21 make it difficult for you to be fair to either the state
22 or the defendant?"

23 A No, sir.

24 Q All right. You filled out the questionnaire and
25 mailed it back to the clerk's office; is that correct?

1 A Yes, sir.

2 Q Is the questionnaire accurate?

3 A Yes, sir.

4 Q Is there anything you would like to change on the
5 questionnaire?

6 A No.

7 Q What's your best hobby, golf or astronomy?

8 A I have time for little of either, but probably golf
9 because I get a little more time, and plus it's cold out
10 there looking at the --

11 Q I would think that would be interesting.

12 A I love both.

13 Q My problem, I wouldn't know what I was looking at;
14 but it would be interesting to be looking, I guess.

15 All right. Mr. Hafer, in your answer to question
16 number 64 you said, "I believe it may be appropriate
17 punishment in the case of the most serious crimes of first
18 degree murder," where the question was:

19 "Briefly describe your attitudes and beliefs
20 concerning capital punishment."

21 Do you mean by that answer that if someone was guilty
22 of first-degree murder, they would be entitled to the
23 death penalty regardless of the facts and circumstances?

24 A No, sir.

25 Q So, you would consider the facts and circumstances in

1 whether someone should receive life without parole or
2 capital punishment?

3 A Sure. Yes, sir.

4 Q This case is a capital case, which means the state in
5 the first trial has to prove the defendant guilty beyond a
6 reasonable doubt, and the jury could find the defendant
7 innocent. If the jury finds the defendant innocent, there
8 would not be a second phase. If the jury finds the
9 defendant guilty, then there would be a second phase; and
10 the second phase would be for the jury to determine
11 whether the defendant receives life without parole -- and
12 when I say life without parole, I mean exactly what it
13 says, he would not be eligible for parole -- or death.

14 Now, my question to you, the defendant is never
15 required to prove anything in a trial. The burden is on
16 the state to prove the guilt, and in the second phase the
17 burden is on the state to prove the -- any aggravating
18 circumstances. If the defendant should put up testimony
19 concerning what we refer to as mitigating circumstances,
20 which would be circumstances as to why the jury should
21 find the defendant -- or excuse me, why the defendant
22 should receive life without parole rather than death,
23 would you be able to consider those mitigating
24 circumstances before you made up your mind as to life or
25 death?

1 A Yes, sir.

2 Q All right. Also in the sentencing phase the jury
3 will have an opportunity to consider all the evidence.
4 During the trial, during the penalty phase, the guilt
5 phase, would you consider all the evidence before you made
6 a decision as to life or death?

7 A I would.

8 Q Do you think you could be fair and impartial and base
9 your decision on the testimony you hear from the witness
10 stand?

11 A Yes, sir.

12 Q All right. In your questionnaire you stated you did
13 not know anyone in the solicitor's office nor did you know
14 Mr. Nettles or Mr. Mauldin, who's sitting at the table to
15 your right. After seeing these gentlemen and the
16 solicitor and the other two assistant solicitors, do you
17 know them?

18 A I don't. He looks vaguely familiar, but I don't know
19 why.

20 Q Is this the gentleman with the white hair? That's
21 Mr. Mauldin.

22 MR. MAULDIN: The gentleman with the white hair?

23 THE COURT: White hair -- gray hair and gray beard.

24 PROSPECTIVE JUROR: He just looked somewhat familiar.
25 I really don't know why though. Maybe he's just got one

1 of those faces. It's a good one.

2 THE COURT: Who's next, Solicitor?

3 EXAMINATION BY MR. ARIAIL:

4 Q Mr. Hafer, my name is Bob Ariail, and I am the
5 solicitor for the 13th judicial circuit, which is a fancy
6 word for district attorney. My responsibility is to
7 represent the state of South Carolina in all criminal
8 cases that occur in Greenville and Pickens County. I'll
9 be representing the state in this particular case with my
10 deputy, Miss Strom seated here, and Mr. Moyer, one of my
11 assistants.

12 We're talking about, even though we brought you in in
13 a specific case, the questions are about a hypothetical,
14 your situation being in a hypothetical or putting you in a
15 hypothetical situation. And the situation would be that
16 you would be, if you were selected on a jury in a capital
17 case, the state is responsible in any capital case to
18 prove the defendant's guilt beyond a reasonable doubt.
19 That applies in every case.

20 If you were selected on a jury and the state sought
21 to seek the death penalty and the state can only seek the
22 death penalty in very limited circumstances, very limited
23 types of crimes, and you had convicted the defendant; that
24 is, the evidence had proved to you beyond a reasonable
25 doubt and your other 11 jurors that the defendant was

1 guilty, in a capital setting, you then go to the second
2 phase of the case, which is called the sentencing phase.

3 Now, the judge will charge you in the sentencing
4 phase that it is strictly the jury's determination what
5 the appropriate sentence is. The two choices are life
6 imprisonment without parole -- and that means exactly what
7 it says, confinement for the rest of the defendant's
8 natural life. The other is the death sentence.

9 And the jury will be charged by the judge in that
10 phase that you must, to be a fair juror, consider both
11 forms of punishment meaningfully, not just say I'm going
12 to give it lip service; but you have to give meaningful
13 consideration whether or not the death penalty is
14 appropriate, whether or not a life sentence would be
15 appropriate under all the circumstances, the nature of the
16 crime, and all the evidence that comes in. You indicated
17 to the judge you can do that?

18 A Yes, sir.

19 Q And you feel you can do that?

20 A Yes.

21 Q If the defendant -- and the defendant has no
22 obligation to put up any evidence, no testimony. And the
23 judge will tell you that you cannot hold that against him.
24 You cannot consider it in any way against him. You would
25 still, as a juror, be obligated to consider mitigation,

1 look in the record for mitigation to determine whether or
2 not a life sentence is appropriate or a death sentence is
3 appropriate. Would you be able to do that?

4 A I could.

5 Q Based on all the record, whatever the record is,
6 you'd look at that record?

7 A Right.

8 Q And I understand -- and that's really an unfair
9 question to -- or difficult question, because you never
10 had that experience; but that's what his honor will charge
11 you that you've got to do. And what we're trying to make
12 sure is that to the best of your ability you think you can
13 do that?

14 A Yes, sir.

15 Q All right. And if you and your 11 jurors have
16 finished the case and you have decided that the death
17 sentence is the appropriate punishment in this
18 hypothetical case you're in, the law also mandates that
19 you do one other thing; that is, you would have to sign
20 your name with your other 11 jurors saying that you found
21 this to be the appropriate verdict and brought it back, or
22 the appropriate sentence, and bring it back to the court.
23 Would you have any hesitancy in signing the form if that
24 was the decision you made in the jury room?

25 A No.

1 MR. ARIAIL: That's all I have. Thank you.

2 THE COURT: Mr. Mauldin, Before you get there,
3 Mr. Hafer, in question 28 you said you're a member of CWA.
4 what's CWA?

5 PROSPECTIVE JUROR: Communications Workers of
6 America.

7 THE COURT: Please proceed.

8 EXAMINATION BY MR. MAULDIN:

9 Q I had that little sticker right there, CWA. That's
10 one less question. Mr. Hafer, pronounce your last name.

11 A It's Hafer. (phonetic)

12 Q Hafer. We obviously don't have very long in this
13 process to get to know what your views are, so I want to
14 try to change the environment a little. Let's act like
15 we're having a conversation instead of all this
16 interrogation that's going on. I want to hear you express
17 to me how you feel about some of these subjects. And
18 before we look at it, obviously, a person who would never
19 impose the death penalty under any circumstances is way
20 over here, that person is not qualified to be in the jury
21 panel. And the person equally who would always give the
22 death penalty in every case of murder every single time is
23 not qualified to be in the panel.

24 So, with that having been laid, what I want to do is,
25 I want to talk to you about how you feel about the death

1 penalty and our criminal justice system. What is your
2 view about the use of the death penalty in our criminal
3 justice system?

4 A Well, I believe that it's the most severe type of
5 penalty and probably be left as -- probably be left as the
6 ultimate penalty in certain cases; and you'd have to hear
7 the evidence and know the case to come up with a decision
8 about that.

9 Q Do you think -- you say that you believe the death
10 penalty is the ultimate penalty. I say pretty much
11 without dispute I can't imagine anything worse. Do you
12 believe that life in prison without possibility of parole
13 is also a very serious penalty?

14 A Yes, sir.

15 Q Do you believe that life in prison without parole is
16 a serious penalty for a person who had been convicted of
17 the offense of murder?

18 A I do.

19 Q All right. Now, let's talk a minute about what
20 murder means, make sure we're kind of understanding each
21 other. Murder basically means there's no accident,
22 there's no self-defense, there's no mistake, there's no
23 insanity defense, there's no alibi. It's not like if I
24 was somewhere else. Murder means someone is convicted,
25 proof beyond a reasonable doubt, absolute proof of killing

1 a person with malice aforethought, with a depraved heart.
2 They meant to do it. It's not an accident. So, we
3 following each other?

4 And in the proceeding that we're talking about, you
5 have a trial for the question of whether the person is
6 guilty of that offense. And the 12 jurors get in the jury
7 box and they listen to all of the evidence and they go
8 back in the jury room and they deliberate and they write a
9 verdict. "We, the jury, unanimously find that this person
10 is guilty of murder beyond a reasonable doubt."

11 Then they have a second trial. What I need to know,
12 Mr. Hafer, is when you enter into -- let's assume you were
13 in that situation -- when you enter into that second
14 trial, do you have a predetermined view of what penalty of
15 those two, life without parole or death, do you have a
16 predetermined penalty that you are inclined to believe
17 would be appropriate where a person's been convicted
18 beyond a reasonable doubt of murder?

19 A I don't. But I would say that if I was going to --
20 it's all hypothetical?

21 Q Exactly.

22 A So, it doesn't mean a whole lot. But if I was going
23 to lean one way or the another, I would say if in fact you
24 said premeditation, you said it was just something set out
25 to do, murder, that's what I wanted to do, that's what I

1 intended to do and I did it, I would say if you're going
2 to make a decision one way or another in a hypothetical, I
3 would say, you know, possibly I would lean in that
4 direction, towards death penalty.

5 Q When you say that you are leaning in that
6 direction --

7 MR. ARIAIL: I'm going to object, Your Honor. He
8 said possibly leaning that way.

9 Q Well, all right. I suspect you'll correct me if I
10 misstate. If you felt you would be possibly leaning in
11 that direction, you follow me?

12 A Given the hypothetical that you -- and I don't know
13 anything about, you know, any particular case.

14 Q Exactly.

15 A Not having that information, you're asking me to say
16 which side of a fence I would say flop, and I don't know.

17 Q All right. Then here is what would then happen. In
18 the second phase of the trial, the prosecutor, the
19 government, would come before this same jury and they
20 would present the most aggravating information they had
21 available about the case, about the person who had been
22 convicted, about the circumstances. They would bring in
23 the victim's family members or whatever to testify about
24 what happened to them or how they felt about it. So, it
25 would be the aggravating information.

1 The defendant then would have an opportunity to
2 present information to you; but he doesn't have to. He
3 wouldn't have to in the hypothetical. There's no
4 requirement that a defendant ever present anything. Under
5 those circumstances that I've described to you where the
6 government presents aggravating information and the
7 defendant chooses not to present anything, could you under
8 those circumstances give any consideration, legitimate
9 consideration, to a life sentence?

10 A Possibly.

11 Q What type of information -- when you say possibly,
12 what type of information would you want to hear or want to
13 know about that might lead you to consider a life sentence
14 under those circumstances?

15 A It could be I'm just -- I'm really searching out
16 there and --

17 Q I understand.

18 A And I don't know anything about an individual that
19 we're talking about or what led up to an incident. So
20 not -- I'm not expressing myself very well here. But I
21 guess the thing is, I would just have to hear, you know,
22 the information that's available as far as facts and go
23 from there. And I'd rather not just kind of pull a
24 decision out of the air based on such a hypothetical, you
25 know, illusion of information. I mean it's not there.

1 Q What about -- would you want to know or would you
2 give consideration to such information as, and I'll just
3 give you a couple of examples and you can say yes or no,
4 that type of information I might want to know that type, I
5 might not. Do you follow me?

6 A I do.

7 Q Would you want to know the circumstances under which
8 this person who has been convicted of murders in the first
9 phase of the trial, the circumstances under which he grew
10 up, his background information, would you want to know
11 that before you decided on the penalty?

12 A Probably.

13 Q Probably?

14 A Uh-huh.

15 Q Would you want to know the mental state or mental
16 condition of the person that you had convicted of murder
17 in considering a sentence; the mental condition or state,
18 the mental state of that person?

19 A Yes.

20 Q Would that be important to you?

21 A Yes.

22 Q Is it fair to say, Mr. Hafer, that you would be
23 willing to give consideration to information you heard in
24 that second trial, and that under certain circumstances
25 you could impose a sentence of life without parole on a

1 person who you had previously voted to convict of murder,
2 Is that fair to say?

3 A Could you state that again?

4 Q Yeah. Is it fair to say, and is it accurate that you
5 could sentence a person to life without parole, the same
6 person that you had convicted of murder, you could impose
7 a sentence of life without parole on that person. Is that
8 accurate?

9 A I believe that's accurate and that it's possible.

10 Q All right. Let me ask a couple more questions. And
11 then I'll -- again, we have to put the cart before the
12 horse here. We haven't had the first phase of the trial
13 yet. We haven't had a trial. But in order to determine
14 your eligibility to be in the pool from which the jury is
15 chosen, the judge will have to make a determination of
16 that based on your answers today.

17 A Okay.

18 Q We're going to spin the process forward again. We're
19 going to say we've already had the first phase of the
20 trial, you've already deliberated, you've already signed a
21 verdict of guilty, you've come into this same courtroom,
22 the government comes in and presents aggravating evidence.
23 The defendant, once again, would have the opportunity if
24 he so chose to present the mitigating evidence, evidence
25 that is presented for consideration of a life in prison

1 without parole sentence.

2 So, we're at that point, the jury goes out and the
3 jury begins deliberation. Let's say you've discussed all
4 the evidence, you've talked about it, you've taken votes,
5 you're kind of rocking along and there is a majority in
6 favor of one sentence and you are a minority in favor of
7 the other sentence, whichever way it is. One group says
8 one sentence, you say another. Would you -- would you be
9 willing to -- would you be inclined to give, inclined to
10 give up your view simply to side with the majority under
11 the circumstances I just described?

12 A No.

13 Q Would you be able to say, "this is what I think is
14 the right sentence," even though there was a heavy
15 majority on the other side?

16 A I'm confident if I heard the evidence of the case and
17 I had made the decision on guilty, I would be able to make
18 a decision on penalty and stay with that decision.

19 Q Then I'll change one more time. If you were one of
20 those in the 11 or the 10, heavy majority, and there were
21 others who had a different view, would you be willing to
22 allow them to have that personal conviction regarding
23 their view of that penalty? Or would you attempt to force
24 them to side with you?

25 A If I felt they were wrong, I probably would try to

1 convince them of why I believe the way I do. I mean, I
2 think that's what you have to do.

3 Q Would you be willing to respect them if they did not?

4 A It depends on what their positioning and the
5 reasoning behind it is.

6 Q Let me ask my folks at the table if we've got any
7 other questions for you.

8 MR. MAULDIN: Nothing further. Thank you.

9 THE COURT: Is either party going to have a motion?

10 MR. ARIAIL: None from the state.

11 THE COURT: Any from the defendant, Mr. Mauldin?

12 MR. MAULDIN: No, sir.

13 THE COURT: Mr. Hafer, I'm going to find you
14 qualified. We're going to draw a group of jurors and from
15 that group we will draw the 12 jurors plus some
16 alternates. So, the bailiff is going to give you a slip
17 of paper that has a phone number on it. So, call back
18 after 8:00 each night. There will be a message on that
19 machine telling you when to come back. Okay?

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Thank you very much. Don't discuss the
22 case with anyone.

23 PROSPECTIVE JUROR: I won't.

24 THE COURT: Thank you.

25 All right. Anything from the state or defendant

1 before we recess? I believe we've got four qualified
2 jurors from that panel.

3 MR. ARIAIL: Nothing from us.

4 MR. MAULDIN: One moment, Your Honor.

5 THE COURT: All right. If the attorneys -- do you
6 have the random strike sheet the clerk put out from
7 different groups?

8 MR. MAULDIN: No.

9 THE COURT: They didn't get one of these yet. All
10 right, give them a copy.

11 MR. MAULDIN: They don't get one of these. I think
12 we need one of these.

13 THE COURT: Look at group five on the front page when
14 you get it. And the fellow's name is, number 19, Charles
15 Bull. It's on the front page, Mr. Mauldin, number 19,
16 Charles Bull. I'm looking at a doctor's statement signed
17 by Dr. King that he is under the care of a doctor for
18 pneumonia. I'm going to excuse him, tell him not to come
19 tomorrow. Okay?

20 MR. MAULDIN: So, he's excused period, right?

21 THE COURT: Yes. Judy, anybody else?

22 MR. ARIAIL: What do the asterisks mean?

23 THE COURT: The ones that did not show today, they've
24 all been contacted by phone to be here at the appropriate
25 time. And if they do not show at the appropriate time,

1 we'll issue -- the sheriff will go pick them up and bring
2 them to court, Mr. Mauldin, pursuant to your request.

3 MR. MAULDIN: Yes, sir.

4 THE COURT: Anything else?

5 MR. ARIAIL: The only thing, two hours, two and a
6 half hours, four jurors, two automatically out, and we
7 took a long time to do four.

8 THE COURT: I understand. I don't know, how to
9 shorten it up other than not being so repetitive.

10 MR. ARIAIL: Could I make some suggestions?

11 THE COURT: Yeah. I mean, a lot of the questions
12 were repetitive. Now, I can't stop the repetitiveness
13 unless a motion is made. But what's your suggestion?

14 MR. ARIAIL: I'm going time to make a motion. But I
15 want to be fair to them, I don't want to be standing up
16 there.

17 THE COURT: We can try. If we have to expand the
18 time to two hours, we'll expand the time to two hours. I
19 said that.

20 MR. MAULDIN: That was my suggestion initially, set
21 it for two-hour blocks.

22 THE COURT: I understand. The only thing I ask,
23 think about the repetitive questions; okay, Mr. Mauldin,
24 if you would please?

25 MR. MAULDIN: Yes, sir.

1 THE COURT: And I'm going to try to cut back on the
2 questions that I ask them.

3 MR. MAULDIN: Quite frankly, I think you're asking
4 essentially the minimum.

5 THE COURT: I'm trying to. If there's some way of
6 speeding it up and I ask some additional questions, you
7 want me to ask, I'll be happy to do that. If that will
8 cut back on some of your questions.

9 MR. MAULDIN: We are not in a position of requesting
10 that from the court.

11 THE COURT: Okay. Thank you very much. See you in
12 the morning at 9:00.

13 (Whereupon, the proceedings are adjourned to the
14 following day:)

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1 Tuesday, February 8, 2005

2 (WHEREUPON, court is again in session, when the
3 following proceedings were had:)

4 THE COURT: Is the state ready to proceed?

5 Before we call our first juror, I would like to make
6 a statement to the parties if I may. The purpose of the
7 voir dire is to make a determination of whether or not a
8 witness has certain views about matters that would
9 substantially impair his ability to perform duties as
10 juror. That will entail prior knowledge, relationship to
11 various parties, various things.

12 In this particular case, their viewpoints on the
13 death penalty, life imprisonment. I would emphasize to
14 the parties, the law says substantial impairment, it
15 doesn't say impairment. I would emphasize the substantial
16 part that the law says. That's the relevancy of why we
17 are doing this. And I would ask the parties to keep their
18 questions to the relevant point of whether or not the
19 viewpoints of the jurors substantially impair their
20 ability to perform their duties. If the question is not
21 designed to address that issue, it's not relevant in these
22 proceedings.

23 Now, having said that, I would point out to you that
24 in State versus Smart, the Court says that the voir dire
25 should be addressed as to the issues in 14-7-1020, which

1 cover inquiry into the following matters: Related to
2 either party; interest in the cause; expressed or formed
3 an opinion, any bias, or prejudice. So, we're dealing
4 with the bias or prejudice. And it also says, "nothing in
5 that statutory provision lessens the authority and duty of
6 the trial judge to restrict voir dire to the areas
7 restricted in section 14-7-1020."

8 Now, in State versus South, the Court said that
9 jurors could not be asked hypothetical questions
10 concerning the death penalty. I think there's a factual
11 basis on hypothetical. No one has done that and the
12 court's not insinuating that.

13 Now, as far as the state versus Powers, where the
14 Supreme Court said the questions will not be designed to
15 stake out a juror, I think it's absolutely appropriate to
16 ask jurors if they understand the process; and if they
17 don't understand the process, try to ask questions where
18 they will understand the process. Get them to the area on
19 what conditions and when and how and where they will award
20 life sentence and when, how, and where they'll award death
21 penalty, staking out jurors.

22 Now, we did some staking out yesterday. And I sat
23 here and listened to it to sort of see what style of
24 questions the parties were going to ask. However, today
25 the court is going to take a more active role in following

1 the law in the questions we're going to ask these jurors.

2 Now, the first questionnaire that was proposed to the
3 court was very limited, very non detailed. The court
4 issued the questionnaire with 75 questions. Now, this
5 questionnaire was issued primarily to give the state and
6 defendant as much knowledge as possible about the jurors
7 to establish whether or not they wanted to make peremptory
8 strikes or whether they wanted to probe deeper into any
9 bias or prejudice that the juror may reveal in these
10 questionnaires.

11 It was also put out for the purpose of giving you
12 information and giving you some guidance as to where to go
13 on voir dire. Specifically, starting at question 64. It
14 asks questions, there are nine questions concerning the
15 death penalty on this questionnaire. Anybody should be
16 able to look at those nine questions and classify the
17 juror in one of three categories. Number one, he's going
18 to be qualified; number two, it's a question of whether
19 he's going to be qualified because there's some conflict
20 on the questionnaire; and, number three, he's not going to
21 be qualified.

22 Anybody should be able to look at those questions and
23 make a preliminary determination of the qualifications of
24 the juror because of the questionnaire. Now, the
25 questions need to be directed toward any information that

1 you need to expound upon their questions made in the
2 questionnaire.

3 Now, yesterday we dealt in a lot of hypotheticals.
4 It seemed like the same hypotheticals were asked of every
5 juror. I don't see the need for that. If you would look
6 at the questionnaires, determine what the juror is saying,
7 expound upon what they said in these questionnaires, I
8 think we can get to the relevant issue as to whether or
9 not their viewpoints concerning life imprisonment or their
10 viewpoint on death substantially impairs their ability to
11 perform their duties as a juror.

12 So, what I'm telling you, the Court is going to be
13 very active from this point on in controlling this
14 question and answer period. I've tried to tell you what
15 the relevant issue before the Court is. I'm asking you to
16 look at the questionnaires. If there's any, I guess,
17 inaccuracies you think in the questionnaire; if you think
18 there's any conflicts or anything else in the
19 questionnaire. But look at the questionnaire.

20 I got the impression yesterday from some of the
21 questions that were asked, that questionnaires, in
22 particular questions 61 through 72, had not even been
23 looked at. So, having said that, and I'm going to mark a
24 blank questionnaire sent out to the jurors as an exhibit,
25 so it will be available in the transcript.

1 (WHEREUPON, the juror questionnaire is marked as
2 state's Exhibit Number 8 is for identification only.)

3 THE COURT: Having said that, is the state ready to
4 proceed?

5 MR. ARIAIL: Yes, Your Honor.

6 THE COURT: Is the defendant?

7 MR. NETTLES: Yes, sir. But, Your Honor, may I be
8 heard?

9 THE COURT: I'll be glad to hear you. I'm not trying
10 to restrict your questioning, I'm trying to direct it
11 where we're supposed to be, for purposes we're here for.
12 This is not an adversarial witness on the witness stand.
13 And I think there was a lot of staking out yesterday. .
14 There's a difference between stake out and asking
15 questions. Do they understand the process? And maybe
16 that's a fine line in your mind. It's a fine line in my
17 mind, but that's the line you're either going to cross or
18 not cross.

19 MR. NETTLES: Yes, sir.

20 THE COURT: What is your question?

21 MR. NETTLES: Actually, I'd like to be heard on some
22 of the law. I would like to say you can know yesterday in
23 our meeting after voir dire was over, that's something we
24 were advised we were not doing enough of, starting with
25 the questionnaire. So, to that extent --

1 THE COURT: The questionnaire gives you a lot of
2 information if you would use it.

3 MR. NETTLES: And I think you'll see, we've already
4 incorporated that with what we're going to do today.

5 THE COURT: Yet, nobody used it.

6 MR. NETTLES: That was brought to our attention
7 before you.

8 THE COURT: A lot of effort was put in the
9 questionnaires for your benefit.

10 MR. NETTLES: I understand. I'd like to talk about
11 the law if you don't mind.

12 THE COURT: I'll be glad to hear you.

13 MR. NETTLES: First of all, I'd like to bring up the
14 Court relied on State versus Smart. I would hasten to
15 point out State versus Smart, is a pre Morgan versus
16 Illinois case.

17 THE COURT: I understand.

18 MR. NETTLES: But Morgan versus Illinois was very
19 clear on the fact dogmatic responses are not enough. Can
20 you follow the law is simply not enough as set forth by
21 Morgan, which actually addresses in a footnote some South
22 Carolina cases. Secondly, as it relates to Powers, Powers
23 is a very good case for us. And here is why. The central
24 issue in Powers was the defendant, Benji Powers, was 16
25 years old; and the issue in that case was, you know, how

1 they felt about--

2 THE COURT: About age.

3 MR. NETTLES: Age. The issue in this case is there's
4 no doubt the government expert agreed that our client has
5 mental illness. Everybody who has seen this guy believes
6 he's got mental illness. That's a central issue in this
7 case. Very much like Powers, we believe Powers instructed
8 all of us out of something that it would be wrong for us
9 not to voir dire on.

10 THE COURT: I don't have any question with you voir
11 diring on that, just get to the point.

12 MR. NETTLES: We will. Thank you.

13 THE COURT: Instead of some meaningless hypothetical.
14 You heard the old adage with trial lawyers, "Keep it
15 simple, stupid?"

16 MR. NETTLES: Yes, sir.

17 THE COURT: Anything else? And I agree with your
18 interpretation of the cases. Okay?

19 MR. ARIAIL: Thank you. Let me respond. I wasn't
20 going to get started, but I severely disagree with that,
21 the idea of Morgan. Because if you follow Morgan's
22 prodigy, in this circuit, going to the Fourth Circuit
23 case, United States versus Templeton, and our Supreme
24 Court decision after that, State v. Powers, you see
25 clearly the Court says they can't go into areas of

1 specific mitigating circumstances.

2 THE COURT: I understand that. But I think they can
3 go into his mental health as a, as a general mitigating
4 circumstance in the penalty phase. I don't think they can
5 go into what his IQ is, or whether he's bipolar or
6 whatever, or the specific facts; but I think they're
7 entitled to broach the subject as to whether or not the
8 juror understands that's a condition they need to consider
9 as a mitigating circumstance. Okay? In the right
10 context.

11 MR. ARIAIL: In the right context. Here's where I
12 object. And I'm not being uncivil here, because it's
13 their strategy.

14 MR. NETTLES: Wait a minute. Wait a minute. I'll
15 tell him what my strategy is.

16 THE COURT: Hold on just a second. Solicitor, the
17 only thing I can tell you, if you think it's in the wrong
18 context, object, okay? And I'll make a ruling at the
19 time. Because I think you're on the same wavelength.

20 MR. ARIAIL: I just think there's a lot of ground you
21 need to cover today to limit what happened yesterday.

22 THE COURT: I started out saying, I'm going to limit
23 it. I'm going to take a very active aggressive role in
24 this process. Okay? I can't be any plainer than that to
25 both sides. Now, if anybody has any objection, from both

1 sides, I'll be glad to hear from you. Now, do you want to
2 add something?

3 MR. NETTLES: I can't think of anything I can add.

4 THE COURT: You're up on your feet.

5 MR. NETTLES: Yesterday -- he cannot tell you what
6 our strategy is. If you want to know what our strategy
7 is, I'll tell you what our strategy is.

8 THE COURT: I'm not interested in your strategy,
9 that's your business.

10 MR. ARIAIL: I didn't tell you what strategy was
11 because he cut me off. But It's not his strategy, I'm
12 talking about the form of the questioning doesn't give the
13 juror the underpinning of knowledge that he needs to
14 answer the question properly.

15 THE COURT: I agree with you. That's why I said we
16 listened to a lot of meaningless hypotheticals that didn't
17 amount to anything yesterday. We're not going to do that
18 today. I can't be any blunter or plainer than I'm being.

19 MR. ARIAIL: Thank you.

20 THE COURT: All right. Is everybody ready to
21 proceed?

22 MR. ARIAIL: State's ready.

23 THE COURT: Bring us the first juror.

24 This first juror did not show yesterday. I'm going
25 to go through questions. Before I go through a general

1 qualifications of this juror to see if they're going to
2 qualify with the questions. At the end of that I'll go
3 through the general qualifications we went through
4 yesterday.

5 (prospective juror enters courtroom.)

6 EXAMINATION

7 BY THE COURT:

8 Q Mrs. Riley, how are you doing this morning?

9 A All right. How are you doing?

10 Q You weren't at jury call yesterday; is that correct?

11 A Well, yeah. You know, I had forgotten it because my
12 brother was in the hospital having heart surgery.

13 Q Your brother was having heart surgery?

14 A Yeah. He had a blockage.

15 Q When did he have the surgery?

16 A Yesterday morning.

17 Q How is he doing?

18 A I talked to him last night. He's doing fine. I
19 think he's coming home this evening.

20 Q Okay. And you can be with us today, tomorrow, and
21 the next day?

22 A I have to find a babysitter for my grandson. My
23 daughter goes to school and I keep my grandson every
24 morning.

25 Q Your daughter goes to school?

1 A Yes.

2 Q Are you -- you have custody of the child?

3 A No. I just watch him while she goes to school.

4 Q If you're required to be here, you're going to have
5 to find somebody to stay with the child. Okay?

6 A Yes.

7 Q We're going to ask you some questions. Okay? First
8 of all, I want you to please raise your right hand.

9 APRIL D. RILEY, (white
10 female), having been previously duly sworn, testified as
11 follows:

12 EXAMINATION

13 BY THE COURT:

14 Q I'm going to ask you some questions, the parties are
15 going to ask you some questions. There's no right or
16 wrong answer to these questions. Just answer the
17 questions truthfully and as correctly as you can. If you
18 don't understand the question, just tell the person asking
19 the question you don't understand. Okay? Can you to
20 that?

21 A Yes.

22 Q First of all, other than what we've just discussed,
23 do you have any physical or mental problems that would
24 prevent you from sitting on the panel?

25 A As long as I don't have to read anything, I need

1 glasses and I broke them.

2 Q Can you read at all without your glasses?

3 A It's hard, hurts my eyes.

4 Q You can get somebody to read for you if necessary,
5 right?

6 A Right. Right.

7 Q The foreman or forelady can read for you if
8 necessary. Do you have any personal problems, other than
9 what we've already discussed, in sitting on the jury? Did
10 you fill out a -- did you fill out a questionnaire?

11 A Yes.

12 Q Is that questionnaire you filled out accurate?

13 A Yes.

14 Q Are there any changes that you need to make with the
15 questionnaire?

16 A I don't think so.

17 Q Okay. Have you seen anything on television, read
18 anything in the paper, or heard anything on radio about
19 this case? This defendant, Charles Christopher Williams,
20 is charged with murder and kidnapping. This occurred
21 September 3rd 2003 at the Bi-Lo here in Greenville and
22 the victim is Maranda Williams?

23 A Uh-huh.

24 Q Have you heard anything about the case?

25 A I heard about it, yes.

1 Q What have you heard about it?

2 A You know, I seen the whole thing on TV.

3 Q Okay. When did you see the whole thing on TV?

4 A When it happened.

5 Q What do you remember seeing on TV?

6 A Well, I just remember seeing the polices all around,
7 and then I didn't think much of it until I heard that the
8 girl had got killed.

9 Q Okay. Since you saw it on TV, have you read anything
10 else about it?

11 A Huh-uh.

12 Q Have you heard anybody else talking about it?

13 A No, because I don't go that much, I stay around my
14 house.

15 Q All right. Based upon what you saw on television,
16 have you formed or expressed an opinion about
17 Mr. Williams' innocence or guilt as to the crime of murder
18 and kidnapping?

19 A No.

20 Q All right. Do you know the victim, Maranda Williams,
21 in the case?

22 A No, I don't.

23 Q Do you know the defendant, Mr. Williams, who sits to
24 your right? Can you see him without your glasses?

25 A I can see him. Uh-huh.

1 Q Do you know him?

2 A No, I don't know him.

3 Q Okay. On question 42 you stated you do not know
4 Mr. Nettles or Mr. Mauldin who represent Mr. Williams.

5 A No, I do not know him.

6 Q You also stated you do not know anyone in the
7 solicitor's office. The solicitor and his assistants are
8 sitting at the table. Do you know anyone in the
9 solicitor's office?

10 A No.

11 Q All right. Unfortunately, I was going to give you a
12 list of witnesses to look through to see if you know them.
13 Do you just have normal reading glasses?

14 A Just normal.

15 Q Do you know what power you have?

16 A No, huh-uh. I buy them from the drug store.

17 Q Anybody got a pair of reading glasses?

18 MR. MAULDIN: I have a pair of half glasses down at
19 the office. It's downstairs.

20 Q How about taking these two lists and see if these
21 glasses, these magnifying glasses, will help you read
22 them. I want you to read these lists and tell me if you
23 know anybody on those lists. Okay? Try both pair, see
24 which is best for you.

25 A I see Margaret Hammond.

- 1 Q You don't need to read the name, just read them to
2 yourself --
- 3 A Oh, okay.
- 4 Q -- and after you read them, tell me if there's
5 anybody on that list that you know or have a personal
6 relationship with. Okay?
- 7 A Uh-huh. I know Alfred Leeman.
- 8 Q All right. You know which one?
- 9 A Alfred Leeman.
- 10 Q Alfred Leeman.
- 11 A Uh-huh.
- 12 Q How do you know Mr. Leeman?
- 13 A He went to the same high school I did.
- 14 Q When is the last time you saw him?
- 15 A I seen him in the grocery store a couple of weeks
16 ago.
- 17 Q Are you close personal friends with him?
- 18 A Yeah. I stop and talked to him and we speak to each
19 other. He's the manager out there at Crestview or
20 Crestwood, yeah.
- 21 Q All right. Would that cause you any difficulty in
22 sitting on the jury, assuming he would testify in this
23 case?
- 24 A It shouldn't.
- 25 Q Can you listen to the testimony and base your

1 decision on the testimony you hear from the witness stand?

2 A Yeah.

3 Q Can you be fair to both the state and defendant?

4 A Uh-huh.

5 Q If you would, start with Mr. Leeman's name, go
6 through the rest of the names, if you would please, ma'am.

7 MR. ARIAIL: Sorry, judge, we didn't get the name.

8 THE COURT: Leeman.

9 MR. ARIAIL: First name?

10 THE COURT: Alfred Leeman.

11 A He's the only one I see I know of.

12 Q How about on the other sheet I handed you? Take a
13 look at those if you would please, ma'am.

14 A Okay.

15 Q Don't know anybody on either lists?

16 A Huh-uh.

17 Q I'm going to show you your questionnaire you filled
18 out, okay?

19 A Okay.

20 Q I'm going to ask you some questions about it.

21 Question 64 says, "briefly describe your attitudes and
22 beliefs concerning capital punishment, i.e. death
23 penalty." You didn't answer that for me. Can you answer
24 it for me verbally please, ma'am?

25 A I don't believe in capital punishment or the death

1 penalty.

2 Q So, question 65 says, "What is your opinion about the
3 death penalty?"

4 It says, "Strongly favor, somewhat favor, strongly
5 opposed, or somewhat opposed." What would be the right
6 answer?

7 A I would say somewhat opposed.

8 Q On question 68 says, "with reference to the death
9 penalty, which of the following statements would best
10 represent your opinion?"

11 You have circled number three, "I don't believe the
12 death penalty ought to be imposed. As long as the law
13 provided for it, I could vote for it, As long as it was
14 warranted in a particular case, depending upon the
15 evidence, the law, and what I learned about the defendant.
16 And you also circled number five, "I could never, under
17 any circumstances, return a verdict of death."

18 Which would suit you the best from your belief or
19 your view on the death penalty, number three or number
20 five?

21 A What did I have on number --

22 Q You want to look at them?

23 A Uh-huh.

24 Q Look at question number 68. You circled two of them.

25 A Oh, I did. I was bothered with the baby then.

1 Q No problem. Just which do you think would be your
2 view of the death penalty?

3 A I would say number five.

4 Q Five, "I could never under any circumstances return a
5 verdict of death." Is that correct?

6 A Yes.

7 Q Mrs. Riley, I want to ask you another question.
8 Okay? In this case the defendant is black, the victim is
9 white. It is undisputed the black defendant and white
10 victim engaged in interracial dating. Would the fact they
11 engaged in interracial dating make it hard for you to be
12 fair to either the state or defendant? You want to read
13 the question.

14 A Yeah.

15 Q You just read the question instead of me reading it
16 to you. All right?

17 A Okay, then. I think I could be fair.

18 Q You think you could be fair? It wouldn't interfere
19 with your decision-making process, sitting on the jury?

20 A No, I don't think so.

21 Q Okay. Thank you, ma'am.

22 THE COURT: Solicitor?

23 MR. ARIAIL: You were going to qualify her.

24 THE COURT: I will if we find her qualified on
25 everything else. Okay?

1 MR. ARIAIL: It's his turn.

2 THE COURT: Mr. Mauldin, Mr. Nettles, whoever wants
3 to go.

4 EXAMINATION

5 BY MR. MAULDIN:

6 Q Miss Riley, my name is John Mauldin, public defender
7 for Greenville County. I, along with Colleen Coyle and
8 Bill Nettles represent the defendant in this case. I
9 wanted to ask you a few follow-up questions about what the
10 judge asked you about your views of capital punishment.

11 When you had this questionnaire at your home and you
12 filled it out, you circled as the judge mentioned to you
13 this morning, you circled two responses on the question
14 about which one of these responses best reflects your
15 view. And I want to talk to you a minute about that. I
16 want you to go back to when you were filling out the
17 questionnaire.

18 The question was, and it's question 68, Your Honor,
19 of her questionnaire. The question was, "With reference
20 to the death penalty, which one of the following
21 statements best represents your opinion or your view?"

22 THE COURT: Here is your -- you can read along with
23 him on question 68, if you put on your glasses. If you'll
24 hand me those other glasses, I'll hold those for you.

25 Q Looking at question 68. What I want to do, I want to

1 talk to you a little bit about your initial response to
2 that and then what I have heard you tell the judge this
3 morning. Remember, the court, the law recognizes people's
4 reservations about this very important subject.

5 A Yeah.

6 Q In other words, your hesitation or your reservations
7 about capital punishment are not on trial here this
8 morning. What the court has to do is determine whether
9 you are qualified to be in the panel, the big group from
10 which the jurors will actually be chosen. That's kind of
11 what we're doing this morning with you. All right?

12 When you filled out the questionnaire, you circled
13 number three and number five. The difference, basically,
14 in number three and number five, it looks like in number
15 five it says, "Never under any circumstances would I
16 impose the death penalty, no matter how horrible or
17 terrible the crime was." That's basically what number
18 five says.

19 Number three says that, the person who answers number
20 three says, "I'm not in favor of the death penalty. I
21 don't want to consider the death penalty." But if the law
22 of -- the state of South Carolina makes that the law, if
23 that's the law that the death penalty is available in a
24 case, that you would follow that law. And under very
25 particular circumstances you would consider imposing the

1 death penalty. Now, that's what number three says. Do
2 you follow me?

3 A Uh-huh, yeah.

4 Q All right. Now, let's talk about that a second.
5 Hesitation to impose the death penalty is not what is the
6 issue. The issue is whether, if a case -- if you were on
7 a jury and a case came before you as a juror and the judge
8 instructed you that there were two possible penalties for
9 that case, either life in prison or death, those were the
10 two possible penalties; and if that case were brought to
11 you, was aggravated enough; that is, it was a serious
12 aggravated crime, a terrorist crime or a killing more than
13 one person or killing a child, or something like that that
14 was really horrible, the question is, could you give
15 consideration if you were told by the court two penalties
16 were either life or death, could you give serious and
17 meaningful consideration to the possibility of a death
18 penalty in that set of circumstances?

19 A I don't think I could.

20 Q You do not think you could?

21 A Huh-uh.

22 Q Can you think of a circumstances under which you
23 might impose --

24 MR. ARIAIL: I object.

25 THE COURT: I'll sustain the objection.

1 MR. MAULDIN: No further questions, Your Honor.

2 THE COURT: Thank you very much. Solicitor, you have
3 any questions?

4 A None.

5 Q All right. Mrs. Riley, would you step out in the
6 hall, please?

7 A Uh-huh.

8 THE COURT: Any motions?

9 MR. ARIAIL: I would submit she's not qualified. She
10 cannot give the death penalty, it's clear.

11 THE COURT: Any argument from the defendant?

12 MR. MAULDIN: No, Your Honor.

13 THE COURT: Thank you very much. Would you bring in
14 Miss Riley, please.

15 (prospective juror enters courtroom.)

16 Miss Riley, I want to thank you for being here. I'm
17 going to excuse you from jury service this week. Have a
18 good time with your grandson. I hope your brother gets
19 well.

20 PROSPECTIVE JUROR: Thank you very much.

21 THE COURT: All right. Would you bring in Gloria
22 Belcher, please?

23 (prospective juror enters courtroom.)

24 Miss Belcher, how you doing this morning?

25 PROSPECTIVE JUROR: Fine. How are you?

1 THE COURT: Fine. We're going to ask you some
2 questions. There are no right or wrong answers to these
3 questions. Just answer the questions the best you can.
4 I'm going to ask you some questions and the attorneys
5 representing the parties will be asking you some
6 questions. Okay?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: First thing I'd like to do, would you
9 please raise your right hand?

10 Gloria B. Belcher, (black female)
11 after being duly sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Mrs. Belcher, do you remember filling out this
15 questionnaire?

16 A Yes, I do, sir.

17 Q You filled it out at home. Is that correct?

18 A That is correct?

19 Q Is it accurate?

20 A I made a copy of it. I think I left some things off.

21 Q Is there anything you would like to change?

22 A There is one statement I think concerning employment.

23 Q Okay.

24 A And I think I didn't check anything, but I am a
25 housewife, plus I help my husband. So --

1 Q So, you'd like to add that or change that?

2 A I'd like to change that.

3 Q What I'm going to do is ask you some questions about
4 your questionnaire. I'm going to hand you the
5 questionnaire, refer you to question number 64. Okay?

6 On question 64 it says, "Briefly describe your
7 attitudes and beliefs concerning capital punishment."

8 It says, "I do not believe in capital punishment."
9 Was that your answer?

10 A That is correct.

11 Q Is that still your belief here today?

12 A Yes, sir.

13 Q Question number 65 says, "What's your opinion about
14 the death penalty?"

15 You say, "strongly opposed." Is that your opinion
16 about the death penalty?

17 A Right. That is correct.

18 Q And that hasn't changed here today?

19 A No, sir.

20 Q The next question says -- has it changed? And then
21 question 68, you have question 68? Go the other way, I'm
22 sorry. See question 68? Says, "with reference to the
23 death penalty, which of the following statements would
24 best represent your opinion?" Do you see that?

25 A Yes, sir.

1 Q You stated, "I could never under any circumstances
2 return a verdict of death."

3 A That's right, sir.

4 Q Let me ask you this. If the court in South Carolina
5 instructed you that the law was that certain aggravating
6 circumstances under the law gave the jury the right to
7 make a decision of life imprisonment versus death, could
8 you ever vote for the death penalty?

9 A No, sir.

10 THE COURT: Any questions as to this subject matter
11 from the state?

12 MR. ARIAIL: None.

13 THE COURT: Any from the defendant?

14 MR. MAULDIN: One moment, Your Honor.

15 THE COURT: Okay.

16 MR. MAULDIN: Your Honor, I've got just a couple.

17 BY MR. MAULDIN:

18 Q Miss Belcher.

19 A Yes, sir.

20 Q I want to ask you just a couple questions about your
21 opposition to the death penalty if you don't mind.

22 A Yes, sir.

23 Q The law in South Carolina, as the judge mentioned to
24 you, establishes a set of circumstances where under very
25 limited circumstances a jury has the obligation, the right

1 and the obligation to take into consideration the
2 government's request that a person be sentenced to death.
3 The law never requires or demands a death penalty. Do you
4 follow what I just said?

5 A I think so. I do.

6 Q In other words, under very certain circumstances
7 where there is a murder committed and the person has been
8 convicted of that murder and there are aggravating
9 circumstances, the judge mentioned that there's a list of
10 things in the law. If a murder is committed and if one of
11 these things exists in that case --

12 A Right.

13 Q -- the jury may be asked by the government to
14 consider imposition of the death penalty. So, it's a very
15 small group.

16 A Uh-huh.

17 Q That same jury also has the right to take into
18 consideration a life in prison sentence, at the same time,
19 one sentence or the other; and I think the critical
20 question here and your reservations, your views on the
21 death penalty, are to be respected. Nobody is trying to
22 get you to change them or put you on trial; but the
23 question is, if you were on a jury --

24 A Right.

25 Q -- and the government asked you to consider

1 imposition of the death penalty in a case where the person
2 has been convicted of murder and one of these aggravating
3 circumstances existed, would you be able to set aside the
4 view you have regarding capital punishment and consider
5 imposing it?

6 A No. No, sir.

7 Q All right. Thank you, ma'am.

8 MR. MAULDIN: Thank you, judge.

9 THE COURT: Miss Belcher, if you'll step out in the
10 hall. Thank you so very much for being here today.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Any motions?

13 MR. ARIAIL: State moves she is not qualified.

14 THE COURT: Any argument from the defendant?

15 MR. MAULDIN: No, sir.

16 THE COURT: Then the court would excuse Mrs. Fuller.

17 Would you bring Miss Fuller back in, please. Sorry

18 Mrs. Belcher, it's Mrs. Belcher.

19 (prospective juror enters courtroom.)

20 Miss Belcher, I'm going to excuse you from jury
21 service this week. I want to thank you for being here and
22 thank you very much for your help.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay?

25 PROSPECTIVE JUROR: Yes, sir. Thank you.

1 THE COURT: Thank you. Have the attorneys looked at
2 her letter at the end of the questionnaire? The next
3 juror, Mrs. Fuller. I'll read you the letter if you don't
4 have it.

5 MR. MAULDIN: Yes, sir. We got it.

6 THE COURT: I figured you would have it somewhere.
7 Just a question of getting your hands on the right piece
8 of paper. Obviously, my question, do you all want to
9 agree to excuse this lady? She says her husband can't
10 drive. I can bring her back here and expound upon that if
11 you want me to. I'll be happy to do that.

12 MR. MAULDIN: I think we would be compelled to ask
13 the court to have the juror actually testify that this is
14 in fact a hardship.

15 THE COURT: That's fine.

16 MR. MAULDIN: Can't do it any other way.

17 THE COURT: That's fine. That's all I wanted you to
18 tell me.

19 (prospective juror Fuller, black female, enters
20 courtroom.)

21 Miss Fuller, how are you doing today?

22 PROSPECTIVE JUROR: I'm good.

23 THE COURT: That's great. Would you please raise
24 your right hand?

25 GLENDA J. FULLER, (black female), after being

1 duly sworn, testified as follows:

2 BY THE COURT:

3 Q I understand your husband had open-heart surgery on
4 October 20th 2004. Is that correct?

5 A That's correct.

6 Q How has he been doing since he had the surgery?

7 A Well, he's doing okay, but he has trouble with his
8 hands. He can't open things and can't drive; and he's a
9 diabetic as well. And he has to have medications. I
10 poured up his medication last night for him. But I have
11 to remind him to take it.

12 Q Do you have any children in the area?

13 A All away from home.

14 Q All away from home. Do you have any brothers or
15 sisters?

16 A Not that I can depend on.

17 Q Do you have any close friends that you can depend on?

18 A They're working.

19 Q Pardon?

20 A Working. Our friends are working.

21 Q What I'm driving at, Mrs. Fuller, if there's someone
22 that can assist your husband if you're chosen on this
23 jury. And that's what I would like to find out from you,
24 whether we can find someone. Now, we can get the, you
25 know, sheriff's department to provide transportation or

1 anything that can be helpful. We can do that for you.

2 And I want to see if there's anything that we can do to
3 assist you in making sure your husband will be cared for
4 if you're chosen on this jury.

5 A Well, we thought about his 85 year old mother, but by
6 the time I got her over there --

7 Q How does she get along?

8 A Well, she walks with a stick.

9 Q Her mind okay?

10 A I think her mind is good.

11 Q Can she remind him to take his medication?

12 A She could call him.

13 Q Could she stay in the home with him?

14 A She could, but that means I have to go get her. She
15 wouldn't stay all night. She won't stay all night. I
16 know that.

17 Q We can make arrangements to bring her, pick her up,
18 take her home. That wouldn't be a major problem. Might
19 even get the police to turn the siren on for her.

20 A Pardon?

21 Q Get the police to turn the siren on for her.

22 A Great.

23 Q Any questions from the state?

24 MR. ARIAIL: No.

25 MR. MAULDIN: No, Your Honor.

1 BY THE COURT:

2 Q Would you be comfortable allowing your mother to care
3 for him during the day and remind him to take the
4 medication?

5 A Yes. Did you say someone could pick her up?

6 Q Yes, ma'am. We could make arrangements to do that,
7 have someone pick her up, take her home.

8 A Oh, I forgot. One day a week she stays with her
9 grandson who had a stroke before Thanksgiving. And I
10 don't know what day that will be. She has to go to the
11 doctor at times. I don't know when.

12 Q If you're chosen on the jury, I think we can work out
13 something to accommodate you, make sure your husband is
14 taken care of. Okay?

15 A All right.

16 Q Under those conditions, would you be comfortable
17 serving?

18 A Well, yes, if he's taken care of.

19 Q All right. Let me ask you, do you have any physical
20 or mental problems that would prevent you from serving on
21 the jury?

22 A No.

23 Q Now, you filled out a questionnaire.

24 A I did.

25 Q And is that questionnaire accurate?

1 A Oh, yes.

2 Q Is there any changes that you would like to make to
3 the questionnaire?

4 A No.

5 Q All right. This is a case where the defendant is
6 charged with murder and kidnapping, and the alleged crime
7 took place on September 3, 2003, at a Bi-Lo here in
8 Greenville. And the defendant is Charles Christopher
9 Williams. Do you remember seeing anything on TV or
10 reading anything in the paper?

11 A I did. I saw it on TV.

12 Q When did you see it on TV?

13 A When it happened.

14 Q What do you remember seeing on television?

15 A Well, I remember the store, the manager of the store
16 talking and police cars out there; and I think there was
17 somebody from, I can't remember, another store or
18 something that made a comment about it.

19 Q Have you seen anything or heard anything or read
20 anything about it since you saw it on TV a year and half
21 ago or so?

22 A I have to be truthful. I have last night, but it
23 wasn't anything different from what I already heard.

24 Q What did you hear last night?

25 A This young man you just mentioned, they were going to

1 be selecting the jury for him and what he had done.

2 Q Based upon what you saw on TV and what you heard last
3 night, have you formed or expressed any opinion about the
4 defendant's innocence or guilt? In other words, have
5 those facts made -- do you have an opinion about the
6 defendant's innocence or guilt?

7 A It was just the truth, that they said that was the
8 only thing, he actually did it.

9 Q Well, it may be the truth, it may not be the truth.
10 That's the news media's interpretation of the facts.

11 A Nothing else other than that.

12 Q But do you have an opinion whether he's guilty or not
13 guilty based on what you previously heard about the case?

14 A Well, I was thinking it was guilty.

15 Q All right. If the court instructs you that you're to
16 form your opinion based upon the testimony you hear in the
17 courtroom and base your decision on that testimony, can
18 you set what you heard aside and base your decision on
19 what you hear in the courtroom?

20 A I guess.

21 Q Do you think you could be fair to both the state and
22 the defendant?

23 A Sure. I'll try my best.

24 Q All right. Any party want to explore the fact issue
25 on this particular issue before we go any further?

1 MR. MAULDIN: (Shakes head from side to side.)

2 MR. NETTLES: But, I mean --

3 THE COURT: On this particular, before we go into
4 anything else?

5 MR. NETTLES: No, sir.

6 THE COURT: All right. Thank you very much. All
7 right. Mrs. Fuller, I'm going to give -- first of all,
8 let me ask you, do you know the victim in the case,
9 Maranda Williams?

10 A No, I do not.

11 Q Do you know the defendant, Charles Christopher
12 Williams, sitting at the table to your right?

13 A No.

14 Q Do you know the attorneys sitting to your right, the
15 gentleman in the gray coat, the man in the dark blue coat,
16 and the lady in the checkered coat?

17 A No, I don't.

18 Q Do you know the solicitor, or his two assistants or
19 anyone in the solicitor's office?

20 A I don't know him, but I seen him on TV.

21 Q Which one?

22 A The one with the glasses.

23 Q The one with the glasses and the bald head?

24 A The one with the glasses.

25 MR. ARIAIL: Thank you.

1 THE COURT: All right. I'm going to give you a list
2 of names and I want you to look at these names and tell me
3 if you know any of these individuals. All right?

4 A Okay. To the best of my knowledge, no.

5 Q I'm going to give you a second list. Look at that
6 list and see if you know any of those people or have a
7 relationship with them at all.

8 A I did know a Joe woods at one time, but I don't know
9 if that's the same one. I mean, for his wife, I don't
10 know if that's the same one or not.

11 Q Is that woodman?

12 A I thought I saw woods on there.

13 Q Let me find it. Yeah, I'm sorry, joe woods. He
14 works for the Greenville County Sheriff's Office.

15 A No, she was with J. P. Serrine at the time.

16 Q A different person?

17 A It must be.

18 Q All right. Mrs. Fuller, I'm going to ask you a
19 question, I want you to respond to it the best you can.
20 Okay? In this case the defendant is black and the victim
21 is white. It's undisputed the black defendant and white
22 victim engaged in interracial dating. Would the fact the
23 victim and the defendant engaged in interracial dating
24 make it difficult for you to be fair to either the state
25 or defendant?

1 A Not at all.

2 Q Not at all. All right. All right. I'm going to
3 give you your questionnaire. If you would look at
4 question Number 64, please, ma'am. Question: "Briefly
5 describe your attitudes and beliefs concerning capital
6 punishment."

7 You said, "the death penalty should be used in mass
8 murders or more than two murders if the person is proven
9 guilty."

10 A That's correct.

11 Q Is that still your opinion here today?

12 A Yes.

13 Q Flip over and look at question number 68. You've
14 sort of got to go the other way. It's back and front.

15 A All right.

16 Q Question number 68, "With reference to the penalty,
17 which of the following statements would best represent
18 your opinion."

19 You said, "I believe the death penalty is the
20 appropriate form of punishment in some murder cases and I
21 could return a verdict of death if I believe it was
22 warranted in a particular case depending upon the
23 evidence, the law, and what I learned about the
24 defendant."

25 Is that still your answer here today?

1 A Yes.

2 Q Do you know of any reason, personal or otherwise, as
3 to why you could not serve on this jury?

4 A No.

5 Q Could you be fair and impartial to both the state and
6 the defendant?

7 A I can.

8 THE COURT: Okay. Whose turn?

9 BY MR. NETTLES:

10 Q How you doing, Miss Fuller?

11 A I'm good. How are you?

12 Q Fine. I'm bill Nettles.

13 A Your name again?

14 Q Bill Nettles, N-E-T-T-L-E-S. And I'm one of the
15 lawyers representing the defendant, Chris Williams.

16 You've been kind enough to share with us a lot of
17 information. I'm going to ask you about some of it if you
18 don't mind. The judge talked to you about it briefly and
19 you -- the question was, "Briefly describe your attitudes
20 and beliefs concerning capital punishment."

21 And you've listed to be used, "mass murders or more
22 than two murders if the person is proven guilty," right?

23 A Uh-huh.

24 Q That's just two examples that you thought of there,
25 correct?

1 A Right. That's right.

2 Q So, would it be safe for us to say that if the state
3 brought you what you believed was the type of case --
4 these are just two examples of it, right?

5 A Okay.

6 Q In sort of a broader context, were you trying to
7 share with us that if the state brought you the
8 appropriate case, that the death penalty is something that
9 you could consider?

10 A Yes.

11 Q Okay. And then not only could you consider it, but
12 if it was the right case, not just any case but the right
13 case, that you could vote to give the death penalty?

14 A I could.

15 Q Now, share with us when -- share with us what it is
16 about mass murderers that caused you to choose that as an
17 example.

18 A I can't remember, but the man I think from -- Ohio,
19 the clown.

20 Q John Wayne Getz?

21 A Yes.

22 Q He drew clowns.

23 A The man that killed those boys, there's been
24 several -- been a lot of people killed, you know. I can't
25 think right now.

1 Q Okay. Let me ask you this. If it were a
2 particularly gruesome crime, one murder, but particularly
3 gruesome, you could still, if it was gruesome and maybe
4 torture you could still consider the death penalty, even
5 if it was just one murder?

6 A Well, I wouldn't like for a person just to torture a
7 person and then put them to death. If they were going to
8 kill them, you know what I'm saying? It could change my
9 thoughts somewhat.

10 Q And let's be clear about something right now. It
11 would be unfair for us to ask you what you would do. And
12 that's why we are only asking if you can consider. If
13 it's within the realm of your personal comfort, you know;
14 but it's something if the government brought you one
15 murder in the right circumstances, you know torture,
16 that's called an aggravator. You can't give the death
17 penalty for just a murder. They've got to also provide an
18 aggravator. It's got to be like a murder plus.

19 A Okay.

20 Q And if they brought you that, depending upon the
21 circumstances, you could consider life without the
22 possibility of parole, right?

23 A Oh, yes.

24 Q And you could consider the death penalty in the right
25 circumstances?

1 A Yes.

2 Q And what would make you pick one over the other would
3 be the facts of the case, correct?

4 A Sure.

5 Q And if the government brought you the correct case,
6 the correct set of facts, you know, you could, because you
7 felt like you followed the law, you could give that person
8 death, correct?

9 A I could.

10 Q Okay. And if you felt that was the appropriate thing
11 to do, what you could do is that if there was a sheet,
12 because in South Carolina in order for the death penalty
13 to be given, each one of the jurors has to sign their
14 name. If you felt like it was the appropriate case, when
15 the sheet came around to you, you could sign your name?

16 A I could.

17 Q Okay. But only if you felt like it was the
18 appropriate case?

19 A That's right.

20 Q Okay. Now, let's talk for a second about one other
21 thing you've got. And let me share with you this just a
22 moment. As we've asked you what your thoughts are,
23 beliefs about the death penalty are, would you share with
24 me your beliefs on mental illness? I see you're a nurse.

25 A Yes, that's true. If it was proved that the person

1 was really insane, I would have to have a soft spot in my
2 heart for that person.

3 Q Okay. But you would require somebody to prove that?

4 A Oh, yeah. Oh, yes.

5 Q Let's be clear about insane is different from mental
6 illness. Insane means, under the law -- not on the same
7 page -- insane means, like the person doesn't know right
8 from wrong, okay? That's not what we're talking about.
9 If he didn't know right from wrong, you really can't
10 even -- the death penalty is not an option. I'm just
11 talking about if you were on a jury, and there are two
12 phases. The first part is, did the person do it? The
13 Second part, what's the appropriate punishment. The same
14 jury makes both decisions.

15 If you were on the jury and in the sentencing part of
16 the case, already found a person guilty of murder and an
17 aggravating circumstances, and you were being asked to
18 decide the appropriate punishment. Okay? The government
19 would bring to you, for instance, the families of the
20 victims, what's called victim impact testimony, which
21 would be the victims's family. And they would bring you
22 every bad thing they could think about the defendant. All
23 right?

24 And then the defense, if they chose to, could present
25 you evidence. And one of those things might be, he

1 suffered from a mental illness, he knew right from wrong;
2 but he suffered from a mental illness. That's the context
3 I want to ask you about mental illness. What are your
4 thoughts about mental illness in that context?

5 A In all good judgment, I could not go for capital
6 punishment if it wasn't [sic] proven the person was
7 mentally ill.

8 Q But if they didn't bring you anything like that, you
9 could give the death penalty?

10 A Yes.

11 Q And you could sign your name?

12 A Right.

13 Q And follow the law?

14 A Right.

15 Q And do what the law requires?

16 A Right.

17 Q Let me touch base with the people at my table, but I
18 might be finished.

19 THE COURT: Solicitor.

20 MR. NETTLES: Just one second, Your Honor.

21 THE COURT: Oh, I'm sorry.

22 MR. NETTLES: Nothing further, Your Honor. Thank
23 you.

24 THE COURT: Solicitor, any questions?

25

1 BY MR. ARIAIL:

2 Q Yes, sir. Miss Fuller, my name is Bob Ariail. I'm
3 the solicitor for the 13th circuit, which on TV means
4 I'm the DA. In this case I'll be representing the state
5 with my deputy, Miss Strom, and one of my assistants,
6 Mr. Moyer.

7 Some of these questions it's going to sound like
8 we've asked you before, but i hope my style is a little
9 bit different. I don't want to suggest the answers to
10 you. I want to let you answer the question with what
11 information you have. Because what we're trying to find
12 out is, you don't really know much about this process --
13 we brought you in, and sat you here -- we know all about
14 this process. And what we're trying to do is identify
15 jurors who can be fair and impartial to both sides. And
16 most people can do that without any problem.

17 The problem comes when we put people in situations
18 that are more difficult for them than should be. Some
19 people have certain beliefs they just don't want to go
20 beyond.

21 Now, the death penalty is one of those areas. So we
22 ask a lot of questions about the death penalty, because
23 some people don't want to be put in a position where they
24 may be forced to make a decision. It's one thing to talk
25 about the death penalty and to be asked questions about

1 it; but it's another thing to be in the actual jury box
2 and have to make a decision.

3 For the judge to qualify you, we have to make sure
4 that you -- to get in that jury box -- can give a fair and
5 meaningful consideration to the state's request to impose
6 the death penalty. So, that's what we're looking for.

7 And in your questionnaire on number 68, you said --
8 excuse me, 64, you said that the death penalty should be
9 used in mass murders or more than two murders if the
10 person is proven guilty. Those are the situations you
11 gave. And Mr. Nettles asked, "that was just examples?"

12 I want to explore whether that was just an example or
13 if that is in your mind the extent to which the death
14 penalty would be applicable. Do you understand the
15 difference I'm talking about? In other words, if you were
16 involved in a case in which there is not a mass murder and
17 there are not two people dead; but under the law, under
18 the law of the state of South Carolina it is eligible for
19 the imposition of the death penalty, but it's not one of
20 the two you named but something the law said was eligible,
21 would you be able to fairly consider imposing the death
22 penalty or would you be thinking death penalty is really
23 just for these cases over here?

24 That's what I'm trying to find out. Would you have
25 sort of this restriction on yourself? The death penalty

1 should be over here; so, therefore, I'm not really going
2 to give consideration to the state's request?

3 A Some other things would have to come into play. I
4 would have to listen, I would have to know something about
5 both the defendant and the plaintiff -- whatever you
6 called, the plaintiff?

7 Q The victim.

8 A Victim, okay.

9 Q You would know those things, and you would learn
10 those things, and it still wouldn't be a mass murder, and
11 it still wouldn't be two people killed. Just be one
12 person killed with an aggravating circumstance. And there
13 are a number of those that could exist; but if it's just
14 that limited situation, are you going to be able to give
15 fair consideration to the imposition of the death penalty?

16 MR. NETTLES: Objection, Your Honor. That's staking
17 out --

18 THE COURT: I Sustain the objection.

19 PROSPECTIVE JUROR: I can answer.

20 THE COURT: No, don't answer the question. Let him
21 rephrase it.

22 MR. ARIAIL: Excuse me a minute, Your Honor.

23 Q Let me try it this way. Will you be able to fairly
24 consider imposing the death penalty in any case other than
25 a mass murder or a case which two people have been

1 murdered?

2 MR. NETTLES: Asked and answered.

3 THE COURT: I understand it probably has, but I'll
4 let her answer it one more time. She's already answered
5 twice.

6 MR. ARIAIL: Thank you.

7 A I think I could.

8 Q You think you could?

9 A Uh-huh.

10 Q Let's examine think.

11 A I think I could.

12 Q We're looking for more than just we think.

13 MR. NETTLES: Asked and answered.

14 THE COURT: Solicitor, she's answered that question
15 three times. Now, I don't mind you exploring what "think"
16 means.

17 MR. ARIAIL: I want to know think.

18 THE COURT: You feel things and you think things.
19 She thinks that.

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: But go ahead.

22 MR. ARIAIL: That's all right. That's all I have.

23 THE COURT: Anything else? Mrs. Fuller, would you
24 step out of the courtroom just a second?

25 PROSPECTIVE JUROR: Sure.

1 THE COURT: Thank you very much. Any motions from
2 the state?

3 MR. ARIAIL: None.

4 THE COURT: All right. Bring Mrs. Fuller back in
5 please.

6 (prospective juror enters courtroom.)

7 THE COURT: Ms. Fuller, I'm going to find you're
8 qualified to serve on this jury. That doesn't mean you're
9 going to be on the jury. What we're in the process of
10 doing is qualifying 43 or 45 jurors. From those 43 or 45
11 jurors we will strike 12 jurors and four alternates.

12 Now, the bailiff is going to give you a sheet; and on
13 that sheet is a phone number to call in after 8:00, and it
14 will have the instructions for the jury, when to come
15 back.

16 PROSPECTIVE JUROR: After 8:00 this evening?

17 THE COURT: After 8:00 this evening. If you're on
18 the jury, remind me to make sure your husband is taken
19 care of. Okay? Thank you very much.

20 PROSPECTIVE JUROR: Thank you.

21 (prospective juror excused.)

22 THE COURT: All right. Would you --

23 MR. ARIAIL: Could I respond to the stake out? I
24 don't want to do it in front of the juror. She staked
25 herself out. As a result of that I think I'm entitled to

1 go further. Any time you get a response from a juror that
2 specifically identifies what factors they're going to
3 consider, I think both sides are entitled -- I don't think
4 we're entitled to entice them into that; but I do think
5 once they stake themselves out, they are limited to what
6 they would consider, I think we're both entitled to go
7 into in depth. I think the objection of stake out is
8 inappropriate. But I'm not going to sit here and argue in
9 front of a juror. But I would say for future purposes I
10 would object to that being ruled staking out.

11 THE COURT: The only thing I can do is rule on
12 objections when they're made. I have to take them one at
13 a time. Bring Mr. Flemings in.

14 I appreciate your input, solicitor. I will seriously
15 consider it.

16 MR. ARIAIL: Thank you, sir.

17 (Prospective Juror Flemings enters courtroom)

18 THE COURT: Mr. Flemings, how you doing today?

19 PROSPECTIVE JUROR: Fine. How are you?

20 THE COURT: Okay. Please raise your right hand.

21 William M. Flemings, (white male) after being
22 duly sworn, testified as follows:

23 Q All right. Mr. Flemings, you may put your hand down.
24 I'm going to ask you some questions and the attorneys will
25 probably ask you some questions. Do you understand?

1 A Yes.

2 Q There's no right or wrong answer to these questions,
3 and I would just ask you to give the best answer you can
4 to the question. If you don't understand, just tell the
5 person asking the question you don't understand.

6 A Okay.

7 Q Can you do that?

8 A Yes.

9 Q Now, I understand you have post stress?

10 A PTSD, yes.

11 Q How does that affect you?

12 A I have nightmares and if someone walks up behind me
13 and I don't realize it, jump and swing at them. Just
14 jumpy, different things like that.

15 Q Do you think it would inhibit your ability to serve
16 on this jury?

17 A I really couldn't say. My attention -- i'd just say
18 my attention span is very limited.

19 Q How long can you sit and listen any one period of
20 time?

21 A Maybe about an hour, hour and a half, something like
22 that.

23 Q And then if you get up, do something else, can you
24 come back, sit another hour, hour and half?

25 A Perhaps so. I can't say for sure. I've never tried

1 it.

2 Q If you get to walk outside or stretch your legs,
3 would that help?

4 A Yes.

5 Q All right. The time sitting in the jury box probably
6 would not exceed over an hour and half or two hours at any
7 one time without a break. Do you think you would be able
8 to handle that?

9 A I can give it a try. Best I can do.

10 THE COURT: I understand. I appreciate that. All
11 right. I'm going to hand you your questionnaire you
12 filled out. Do you remember filling it out?

13 A Yes.

14 Q And is the questionnaire accurate?

15 A Yes. It's -- the best of my knowledge.

16 Q Any changes you would like to make in the
17 questionnaire?

18 A No.

19 Q All right. Mr. Flemings, if you would turn to
20 question number 64, it's the next to the last page. I
21 guess I should have flipped it for you. If you would hand
22 it to me. Question number 64. Do you see question 64?

23 A Uh-huh.

24 Q The question says, "briefly describe your attitudes
25 and beliefs concerning capital punishment and the death

1 penalty."

2 You said "knowing what has happened about the death
3 penalty, it would be hard to say yes to it."

4 A Yes.

5 Q Could you tell me what you mean when you say knowing
6 what is happening about the death penalty?

7 A Okay. As far as people being on the death -- death
8 row, I've seen where they have been found innocent. And
9 if someone is put to death, later on found innocent, you
10 can't bring them back to life. So, I just couldn't say I
11 believe in it. I'm against it.

12 Q Well, let me tell you how it operates in South
13 Carolina. Okay? We will basically have two trials.
14 We'll have a first trial. And in this particular case the
15 defendant is charged with murder and kidnapping. The
16 state would be responsible to prove the defendant guilty
17 of murder and kidnapping beyond a reasonable doubt. And
18 the death penalty would not be an issue in the first
19 trial. Do you understand?

20 The jury would then make a decision of the
21 defendant's innocence or guilt as to murder and
22 kidnapping. If the jury finds the defendant innocent of
23 murder and kidnapping, it would be over. If the jury
24 found the defendant guilty of murder and not kidnapping,
25 then there would be no second trial. If the jury finds

1 the defendant guilty of murder and kidnapping in the first
2 trial, then you would go to a second trial and that would
3 be a sentencing phase. Do you understand?

4 A I know what you're saying. Yes, sir.

5 Q And the state in that phase would be responsible to
6 prove beyond a reasonable doubt that the defendant should
7 be put to death. Now, it would be the jury's
8 responsibility and obligation to make a decision between
9 life imprisonment without parole -- and when I say life
10 imprisonment without parole, I mean exactly what it says,
11 they will not get out. They'll be in jail for their
12 natural life. Do you understand?

13 A Uh-huh.

14 Q The jury would make the decision whether it would be
15 life or death in the second trial.

16 A The same jury?

17 Q The same jury. Now, in the second trial you would
18 consider everything that came out in the first trial plus
19 additional information presented by the state such as
20 aggravating circumstances. One aggravating circumstance
21 in this case would be kidnapping, plus any other
22 aggravating circumstance that the state should come
23 forward with. Okay.

24 Now, the defendant never has to prove himself
25 innocent. It's the state's obligation to prove the

1 defendant guilty beyond a reasonable doubt and whether or
2 not he should receive the death sentence. Do you
3 understand?

4 A Yes.

5 Q Now, the defendant will have an opportunity to
6 present testimony, what we refer to as mitigating
7 circumstances, and those will be circumstances as to why
8 the defendant should receive life rather than death. Do
9 you understand?

10 A Yes, so far.

11 Q All right. Now, in the second phase could you listen
12 to the law as the court charged you, listen to the
13 arguments of the attorneys, listen to the facts, and make
14 a decision whether or not the defendant should receive
15 life or death based upon what you heard in the courtroom?

16 A I still couldn't go for death, even if it showed
17 where he was guilty, needed to be put to death, I couldn't
18 say death.

19 Q You could just never give death penalty?

20 A No. No.

21 Q Under any circumstance?

22 A No.

23 Q All right. Any questions from?

24 MR. ARIAIL: None from the state.

25 MR. NETTLES: I'll be very brief.

1 Examination by Mr. Nettles:

2 Q Mr. Flemings, my name is bill Nettles. I'm one of
3 the lawyers that represent Chris. And from reading your
4 questionnaire, you know, one of the things it seems, and
5 correct me if I'm wrong, is that you're very troubled by
6 the fact that there have been reports of people later
7 found to be innocent that were on death row?

8 A Uh-huh.

9 Q We can't agree with much in this courtroom, but one
10 thing I can agree with the solicitor, agree with
11 everybody, is that an innocent person should not be put to
12 death. Do you agree with that?

13 A Yes.

14 Q Follow me?

15 A Yes.

16 Q Everybody agrees with that, the solicitor, me,
17 everybody. The question though is this. If you're on a
18 jury and there's no doubt, this isn't an eyewitness
19 identification case, there's no doubt that the person who
20 was charged did it, committed the murder, committed the
21 aggravating circumstance, no doubt.

22 A Uh-huh.

23 Q Could you consider sentencing that person to death?

24 A No.

25 Q Okay. I think I'm done.

1 THE COURT: Okay. Thank you very much. No further
2 questions.

3 MR. ARIAIL: No questions from the state.

4 THE COURT: Mr. Flemings, if you would be careful
5 stepping down, wait out in the hall and I'll get you back
6 in just a second. Okay.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: Just be careful stepping down.

9 (outside presence of juror)

10 THE COURT: All right. Any motions as to
11 Mr. Flemings?

12 MR. ARIAIL: The state would submit he's not
13 qualified, as he cannot --

14 THE COURT: Any argument from the defendant?

15 MR. NETTLES: I can't think of one.

16 THE COURT: All right. I'm going to grant the
17 motion. Will you bring Mr. Flemings back?

18 (prospective juror enters courtroom.)

19 Mr. Flemings, I'm going to excuse you from service on
20 this jury. Thank you for being here. And I hope you get
21 better with your illness.

22 PROSPECTIVE JUROR: All right. Thank you.

23 THE COURT: Thank you very much. Okay. Bring us
24 Elisha Shaw, please.

25 (Prospective Juror Shaw enters courtroom)

1 THE COURT: Mr. Shaw, how you doing today? Please
2 raise your right hand, sir.

3 Elisha E. Shaw, (black male) after
4 being duly sworn, testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q All right. Mr. Shaw, we are going to ask you some
8 questions. The court is going to ask you some questions,
9 and the attorneys may ask you some questions. There's no
10 right or wrong answer to the questions. Okay?

11 A Okay.

12 Q I just want you to answer the question to the best of
13 your ability. If you don't understand the question,
14 please tell the person asking the question you don't
15 understand. Okay?

16 A Okay.

17 Q Do you think you can do that?

18 A Yes, sir.

19 Q Do you remember filling out your questionnaire?

20 A Yes, sir.

21 Q Is your questionnaire filled out accurately?

22 A Yes, sir. According to my ability.

23 Q Any changes you would like to make in the
24 questionnaire?

25 A No, sir.

1 Q I'm going to hand you your questionnaire that you
2 filled out. Okay?

3 A Okay.

4 Q You take a look at it and let me turn to page 11 for
5 you.

6 MR. MAULDIN: Having a little trouble hearing.

7 A Can you hear me better now?

8 MR. MAULDIN: Yes.

9 THE COURT: Okay. Mr. Shaw, I'm referring to page 11
10 on your questionnaire. Okay?

11 A Yes, sir.

12 Q I'm referring to question 68. If you would take a
13 look at that please, sir.

14 A Okay. Question 68.

15 Q Yes, sir. And I'll read the question to you. Do you
16 see question 68?

17 A Yes, sir.

18 Q Says, "With reference to the death penalty, which of
19 the following statements would best represent your
20 opinion?"

21 And you circled number six, which said "none of the
22 above. My opinion is" -- what is your opinion?

23 A My opinion is really uncertain to the situation.

24 Q Okay.

25 A I really don't know what the situation is at this

1 point.

2 Q Would it depend upon the facts in the situation, of a
3 particular crime or what situation are you talking about?

4 A Yeah, I guess it would have to be the facts of the
5 crime.

6 Q All right. Let me back up to the next page.

7 A All right.

8 Q Page ten, look at question 64. Now, before we do
9 that, I want to explain to you the process we're involved
10 in. The state has charged Charles Christopher Williams
11 with kidnapping and murder that occurred September 3,
12 2003, do you understand?

13 A Okay.

14 Q Now, in South Carolina we will have two trials.

15 A Okay.

16 Q The first trial will be done before the same jury.
17 The first trial in the first phase, the state will be
18 obligated to prove the defendant guilty beyond a
19 reasonable doubt as to murder and kidnapping. Do you
20 understand?

21 A Yes, sir.

22 Q Now, it will take all 12 jurors to find the defendant
23 guilty of murder and kidnapping. If the jury found the
24 defendant innocent of murder and kidnapping, it would be
25 over.

1 A Okay.

2 Q Do you understand?

3 A Yes, sir.

4 Q If the jury found the defendant guilty of murder and
5 kidnapping, we would go to the second phase or the second
6 trial. Do you understand?

7 A Yes, sir.

8 Q Or if the jury found the defendant guilty of murder
9 and innocent of kidnapping, we would not go to the second
10 phase, do you understand?

11 A Yes, sir.

12 Q Now, so the purpose of my question. Let's assume the
13 jury is -- the state has proven the defendant guilty
14 beyond a reasonable doubt and all 12 jurors agree that the
15 defendant is guilty of murder and kidnapping. Okay?

16 A Okay.

17 Q Then you would go to what is referred to as the
18 penalty phase. Now, in the penalty phase the state would
19 present testimony as to why the jury should put the
20 defendant to death.

21 Now, the jury would have the choice of death or, when
22 I say life without parole, I mean life without parole. He
23 will die in jail, do you understand?

24 A Yes, sir.

25 Q The jury makes that decision based upon the testimony

1 in the first phase of the first trial and the second
2 phase, do you understand?

3 A Yes, sir.

4 Q And it's the state's obligation to prove beyond a
5 reasonable doubt that the defendant should receive death,
6 do you understand?

7 A Yes, sir.

8 Q But it is still the jury's decision, not the state's
9 decision, do you understand?

10 A Yes, sir.

11 Q Now, the defendant has the right if he so chooses --
12 the defendant does not have to prove his innocence or the
13 defendant does not have to offer testimony in the guilty
14 phase; but the defendant can offer what we refer to as
15 mitigating circumstances. And those mitigating
16 circumstances are reasons that the defendant believes that
17 the defendant should receive life and not death. Do you
18 understand?

19 A Yes, sir.

20 Q All right. Will you look at question 64 and 65. You
21 said, "Briefly describe your attitudes and beliefs
22 concerning capital punishment."

23 You said, "I don't approve of it." Is that correct?

24 A Yes, sir.

25 Q Question 65, "What is your opinion about the death

1 penalty?"

2 You say, "strongly opposed."

3 A Okay.

4 Q Flip over to the next page, question 58. Would you
5 be able to set your opposition to the death penalty aside,
6 listen to the testimony, listen to the arguments of the
7 attorneys -- did you find the question?

8 A Okay.

9 Q Listen to me. I'm not going to go by the question,
10 just listen to me for a minute. Would you be able in the
11 penalty phase to listen to the testimony, listen to the
12 arguments of counsel, listen to the law that the judge
13 charges you?

14 A Yes, sir.

15 Q Would you be able, in light of your opposition to the
16 death penalty, would you be able to give the death penalty
17 if you felt like it was the appropriate punishment rather
18 than life without parole?

19 A It would be a hard decision.

20 Q I know it will be hard, it's going to be hard on 12
21 jurors. It's going to be hard on a juror who comes in and
22 says, "I strongly believe in the death penalty." It's
23 going to be very difficult. But my question is could you?

24 A No, sir. I don't think I could.

25 Q You don't think you could --

1 A No, sir.

2 Q -- under any circumstances?

3 A No, sir.

4 Q Okay. Any questions from the defendant?

5 MR. MAULDIN: Yes, sir.

6 Examination by Mr. Mauldin:

7 Q Mr. Shaw, my name is John Mauldin. I'm the public
8 defender. I along with Colleen Coyle and Bill, Mr.
9 Nettles, represent Chris Williams in this case. Chris is
10 seated there in the blue shirt. I want to make sure you
11 understand one thing from the very outset. Nobody is
12 asking you to decide the circumstances of this case before
13 we ever hear any evidence. Okay? What we're talking
14 about is your general views about capital punishment. Not
15 talking about Chris' case, because you haven't heard the
16 first witness.

17 A No, sir, I haven't.

18 Q So, you don't know anything about it.

19 A No, sir, I don't.

20 Q When I ask you the following questions, I want you to
21 remember I'm talking about just in general your view and
22 your ability to take into consideration certain penalties
23 under certain circumstances. Okay?

24 A Okay.

25 Q Not this case.

1 A All right.

2 Q Now, the judge asked you about question number 68
3 that was the question where you marked, "none of the
4 above." My question is, and then left it -- it was blank.

5 A Yes, sir.

6 Q He asked you what your opinion was. And I wrote
7 down, "I really don't know what the situation is, it would
8 depend upon the crime."

9 A Or the facts.

10 Q The facts. Depends upon the facts of the case. Not
11 this one, not any particular one, but whatever the case
12 was?

13 A Yes, sir.

14 Q Is that right?

15 A Yes, sir.

16 Q And I want to ask you a few questions about that
17 view. Because your view, your opinion is not on trial
18 here, Mr. Shaw.

19 A Okay.

20 Q We just -- the judge is going to have to make a
21 ruling about whether you're eligible to be in the big
22 group from which the jury would be chosen. Do you follow
23 me?

24 A I follow.

25 Q All right. The law recognizes people's reservations

1 about the death penalty. The death penalty is the most,
2 it's the harshest penalty known to man. So, your
3 reservations -- the fact, according to your questionnaire,
4 "do not approve of it," the law recognizes that -- the law
5 recognizes your hesitancy. Hesitation to impose the death
6 penalty is not really what we're questioning you about.

7 A Okay.

8 Q Now, let me give you a set of circumstances and ask
9 you under those circumstances you, as a juror, could give
10 consideration to imposing death. Let me just give you a
11 set of circumstances.

12 You're on a jury, you have listened to the evidence
13 about the crime, you have gone into the jury room and
14 deliberated and found the person charged guilty of murder.
15 Absolute, no question, the person was guilty in your view
16 and the other 11 jurors all agree, guilty of murder.

17 That same jury then would come back into the
18 courtroom, and the prosecution would be given an
19 opportunity to bring forth any aggravating information
20 they had, the type of crime it was, the circumstances
21 under which it was committed. The judge would instruct
22 the jury if there were aggravating factors -- and there's
23 a list of them -- if any one of those aggravating
24 circumstances is present, the jury can consider imposing
25 the death penalty.

1 A Okay.

2 Q Let's assume in that particular situation -- not in
3 this one, but in that particular situation -- the
4 defendant, as the judge said, chose not to present any
5 testimony. His guilt has been proven and he chose not to
6 present any testimony. The jury then goes back out and
7 starts talking about the penalty, death or life in prison
8 without parole.

9 The question about whether or not you're eligible to
10 be in the pool for this case is could you consider.
11 Doesn't mean you have to, because the law never says you
12 have to give the death penalty, never demands the death
13 penalty. Could you give real consideration, actual
14 consideration, to the state's request under those
15 aggravating circumstances if it warrants the death
16 penalty? Could you give consideration with your fellow
17 jurors to a penalty of death if it was the appropriate
18 case?

19 A No, sir, I couldn't.

20 Q Under no circumstances?

21 A No, sir.

22 Q Thank you, Judge.

23 THE COURT: All right. Mr. Shaw, would you step
24 outside in the hall please, sir?

25 Thank you, Mr. Shaw.

1 (prospective juror complies.)

2 THE COURT: Any motions?

3 MR. ARIAIL: State would submit he's not qualified.

4 THE COURT: Any argument from the defendant?

5 MR. MAULDIN: No, sir.

6 THE COURT: Grant the state's motion as to juror
7 Shaw, number 311. Would you bring in Mr. Shaw just
8 briefly?

9 (prospective juror enters courtroom.)

10 THE COURT: Mr. Shaw, I'm going to excuse you from
11 service on this jury. I want to thank you for being here.
12 I hope you have a good day. Thank you very much.

13 PROSPECTIVE JUROR: You too. Thank you very much.

14 THE COURT: Bring in Miss Todd.

15 (Prospective Juror Todd enters courtroom.)

16 Miss Todd, how you doing today?

17 PROSPECTIVE JUROR: I'm fine. How are you?

18 THE COURT: Would you please raise your right hand?

19 Laritha Ann Todd, (black female)
20 after being duly sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q You have a terrific kid, huh?

24 A Yes, sir.

25 Q How old is she?

1 A She's ten.

2 Q What grade is she in?

3 A She's in fifth.

4 Q Fifth, that's good. Mrs. Todd, I'm going to ask you
5 certain questions, the parties are going to ask you some
6 questions. There's no right or wrong answers to these
7 questions, just answer the best you can. And give us
8 truthful answers if you can. If you don't understand the
9 questions, just tell us. We'll try to rephrase. Okay?
10 Can you do that?

11 A Yes, I can.

12 Q Do you have any physical or mental problems why you
13 can't serve on this jury?

14 A No, I don't.

15 Q Do you have any personal hardships why you can't
16 serve on the jury panel?

17 A Concerning family members, anything like that?

18 Q Anything in your life concerning hardship, why you
19 feel you couldn't serve on this jury?

20 A I have an elderly mother I live with, help take care
21 of. She's diabetic, had open heart, pacemaker,
22 amputation.

23 Q Who else lives in the home?

24 A My father also and my ten-year old daughter.

25 Q Can your father help take care of your mother?

1 A He's up in his 70's, he still works full time. And
2 the way I work, 12 hour shifts, rotate days and nights.

3 Q How much attention does your mother need?

4 A Well, She's a real bad diabetic and hands are real
5 numb, she can't open her medicines. She takes like eight
6 medicines a day, takes two insulin shots that I give to
7 her and my father participates. He can't give the shots,
8 but he does the sticking of the finger. She has to have
9 that done twice a day, also.

10 Q Is there anybody else that can help do that if you're
11 not there for four, five, six days?

12 A I have sisters and brothers. One sister lives here
13 and a brother lives in Anderson.

14 Q Can your sister help you?

15 A Would have to take off her job, she works at a
16 doctor's office.

17 Q I understand, but could she help?

18 A She could.

19 Q This is a case where the defendant, Charles
20 Christopher Williams, has been charged with murder and
21 kidnapping. And the alleged crime occurred September 3,
22 2003 at a Bi-Lo here in Greenville. And the victim is
23 Maranda Williams. Have you read anything in the paper
24 about it or heard anything on TV or heard anybody talking
25 about the case?

1 A Not since it's come back up again. When it happened,
2 that's the only time.

3 Q What did you -- did you read about it when it
4 happened or see something on TV?

5 A I was looking at the news while it was going on.

6 Q What do you remember seeing on the news?

7 A I just remember the guy going in the store and I
8 think holding a lady hostage and end up shooting her.

9 Q Okay. All right. From what you've seen on TV, have
10 you formed an opinion about the defendant's innocence or
11 guilt?

12 A I feel like anybody who commits a crime is guilty.

13 Q Well, do you understand in our jurisprudence system
14 the state is required to prove the defendant guilty beyond
15 a reasonable doubt in the courtroom?

16 A Yes. Yes.

17 Q Not on TV, not in the newspaper.

18 A Yes.

19 Q TV and newspaper is reporter's interpretation of what
20 transpired. Do you understand?

21 A Yes.

22 Q That may be accurate, and it may not be accurate. Do
23 you understand?

24 A Yes, sir.

25 Q Can you sit in the courtroom and sit on a jury,

1 listen to the testimony and base your decision on the
2 testimony you hear in the courtroom?

3 A I could.

4 Q Can you set aside what you saw on television?

5 A Oh, yes. Yes.

6 Q And can you be fair to both the state and the
7 defendant?

8 A Yes, I can.

9 Q All right. Do you know the victim, Maranda Williams?

10 A No, I don't.

11 Q Do you know the defendant, James [sic] Christopher
12 Williams, who sits with the blue shirt to my right?

13 A No, I don't.

14 Q The attorneys representing Mr. Williams sit to his
15 right and left. Do you know either of these attorneys?

16 A No, I don't.

17 Q The solicitor and his assistant are sitting in front
18 of you. Do you know them or you have any personal
19 relationship with anyone in the solicitor's office?

20 A No, I don't.

21 Q I'm going to give you a list of names. I want you to
22 look at those names. Tell me if you recognize any of the
23 names on the list please, ma'am.

24 A No, I don't.

25 Q You don't?

1 A No, sir.

2 Q I'm going to hand you a second list. Do you
3 recognize any names on that list?

4 A I think I've heard of Mike McNamara. I think if
5 that's from South Carolina.

6 Q He works at the Greenville County Sheriff's Office.
7 Do you know him?

8 A I don't know him personally.

9 Q Where have you heard of him?

10 A I guess seeing his name in the newspaper or TV.

11 Q But you don't have a personal relationship with him?

12 A No, sir.

13 Q Mrs. Todd, I'm going to read a question to you and
14 I'm going to ask you if you would respond to it. "In this
15 case the defendant is black and the defendant is white.
16 It is undisputed that the black defendant and white victim
17 engaged in interracial dating. Would the fact the
18 defendant and the victim engaged in interracial dating
19 make it difficult for you to be fair to either the state
20 or the defendant?"

21 A No, it doesn't, because I don't have a problem with
22 interracial relationships.

23 Q You filled out your questionnaire previously. Do you
24 remember that?

25 A Uh-huh.

1 Q Was this accurate, your answers to the questionnaire?
2 Are the answers accurate?

3 A Yes, sir.

4 Q Any changes you would like to make in the
5 questionnaire?

6 A No, sir.

7 Q All right. I'm going to go through the questionnaire
8 and ask you a few questions about it.

9 A Okay.

10 Q Question number 38, if you would turn to that please,
11 ma'am, 37 and 38. It says, "Have you or any family
12 members, close friends, ever received any training in law
13 enforcement?"

14 It says, "Yes." Who received that training?

15 A My daughter's aunt works at the detention center.

16 Q Where has she -- how long has she worked at the
17 detention center?

18 A She's worked there ever since I've known her. At
19 least 15 years.

20 Q Have you ever had any conversation with her about
21 what transpires in the detention center?

22 A No.

23 Q About her job?

24 A No. No, sir.

25 Q I see you watch the soaps. What is your favorite?

1 A Days of our Lives and Passion.

2 Q You don't like The Bold and the Beautiful?

3 A No, sir.

4 Q Don't like that. Okay. Let's go to question, if you
5 would, question number 68. Up at the top, look at
6 question number 64 if you would please, ma'am. I'm going
7 to be asking questions about question 64, 65, and 68.

8 Okay?

9 A Okay.

10 Q But first, before I ask you the questions, I want to
11 explain to you the process. The defendant is charged with
12 murder and kidnapping. It's the state's obligation to
13 prove the defendant is guilty beyond a reasonable doubt of
14 murder and kidnapping. The defendant never has to come to
15 court and prove his innocence. It's the state's
16 obligation to prove the defendant guilty. Do you
17 understand?

18 A Uh-huh.

19 Q Now, this trial will involve two trials or two
20 phases. Okay? In the first phase or the first trial the
21 state will put up testimony concerning the innocence or
22 guilt of the defendant as to murder and kidnapping.

23 A Uh-huh.

24 Q Do you understand?

25 A Uh-huh.

1 Q If all 12 jurors believe the state has proven that
2 the defendant is guilty of murder and kidnapping, all 12
3 jurors find him guilty of murder and kidnapping, we would
4 go to the, a second phase or the second trial. Do you
5 understand?

6 A Uh-huh.

7 Q It would be done by the same jury.

8 A Okay.

9 Q If the jury found the defendant innocent of murder
10 and kidnapping, it would be over. If the defendant --
11 excuse me, if the jury found the defendant guilty of
12 murder and innocent of kidnapping, it would be over. But
13 let's assume for purposes of my question, let's assume all
14 12 jurors find the defendant guilty of murder and
15 kidnapping.

16 A Uh-huh.

17 Q Then the state would present aggravating
18 circumstances, and you could consider everything that
19 occurred in the first phase plus any additional testimony
20 and evidence that the state would prove about aggravation.
21 And there's a list of aggravating factors that the state
22 would prove. The state would be obligated to prove these
23 aggravating circumstances beyond a reasonable doubt to the
24 jury's satisfaction and in order to impose the death
25 penalty.

1 Even if the jury believes that the state has proven
2 the aggravating circumstances, the jury still could choose
3 to give life without parole. It's the jury's decision
4 whether to give the death penalty or life without parole;
5 it's not the state's, do you understand?

6 A Uh-huh.

7 Q When I say life without parole, I mean exactly what
8 it says, the person will be in jail until he dies, do you
9 understand?

10 A Uh-huh.

11 Q Now, question number 68 says "With reference to the
12 death penalty, which of the following statements would
13 best represent your opinion?"

14 And you said, number three, "although I do not
15 believe that the death penalty ever ought to be imposed,
16 as long as the law provided for it, I could vote to impose
17 it if I believe it was warranted in a particular case,
18 depending upon the evidence, the law, and what I learned
19 about the defendant."

20 Is that still your opinion here today?

21 A Uh-huh.

22 Q And you could listen to the testimony, you could
23 listen to the law as the court charged you, the arguments
24 of counsel; and if you felt like it was appropriate, you
25 could vote for the death penalty?

1 A I could.

2 Q Okay. Any questions? I don't know whose turn it is.

3 MR. ARIAIL: My turn.

4 THE COURT: Before we do that, let me just ask a
5 couple more questions real quick. Miss Todd, can you
6 listen to all the testimony and be fair to both the state
7 and defendant?

8 A Yes.

9 Q Do you know of any personal reasons as to why you
10 should not serve on this jury?

11 A No, other than --

12 Q Can you base your decision on the testimony here in
13 the courtroom?

14 A Uh-huh. Yes.

15 Q Solicitor, it's your turn.

16 BY MR. ARIAIL:

17 Q Miss Todd, my name is Bob Ariail. I'm the solicitor
18 for the 13th circuit, which means that I'm the district
19 attorney, if you watch TV. In South Carolina we still
20 call them solicitors. In that case, since I handle all
21 the criminal cases with my staff and we represent the
22 state prosecuting those cases. And We would be
23 representing the state in this case. My deputy,
24 Miss Strom, would be assisting me along with one of my
25 assistants, Mark Moyer.

1 As the judge told you, what we're looking for through
2 this process is to determine fair and impartial jurors.
3 Those who can sit not only in the guilty phase and
4 determine whether the defendant is guilty or not based on
5 the evidence; but in the event of a conviction on both
6 charges, a second phase in which the jury is asked to
7 impose the sentence. This is a rarity. In all other
8 cases in South Carolina the judge imposes a sentence. But
9 in those cases which the state seeks the death penalty,
10 certain limitations, they can -- the state law requires
11 that a jury do that. So, we're looking for jurors who can
12 consider both death and life.

13 So, that's where I want to focus my question. The
14 judge asked you, you can fairly consider death or life. I
15 noticed that the, in your questionnaire you said you
16 somewhat oppose. Your opinion about the death penalty is
17 that you somewhat oppose it. Is that a fair assessment,
18 that you're opposed to the death penalty? Or explain that
19 for me.

20 A Well, I don't really think the death penalty is the
21 answer. I would -- life without parole I'm more with.

22 Q All right. So, if you were on a jury and you had
23 that decision, you would lean more towards life in prison
24 as an appropriate punishment?

25 A More so, yeah.

1 Q All right. On the other hand, would you be able to
2 consider if the state is asking for the -- asking you to
3 consider the death penalty and the law allows us to ask
4 for it, the judge will tell you as a juror you have to
5 consider that. That consideration must be what we call
6 meaningful. In other words, it can't be "I thought about
7 that, but I want to stick with my original idea; but life
8 is the way I ought to go." You have to be able to give it
9 some meaningful consideration and give it consideration
10 that it could be the appropriate verdict.

11 A Uh-huh.

12 Q You think you could do that?

13 A I do.

14 Q You don't think the fact you lean towards life would
15 distract you from that duty?

16 A No.

17 Q Or somehow significantly impair you? What would you
18 be looking for in terms of evidence?

19 A Meaning?

20 Q In terms of evidence if you're more prone to imposing
21 life as a sentence, what would you be looking for in the
22 case to determine for you that death was the appropriate
23 sentence?

24 A I'm not really sure. I'm not sure. I'm just willing
25 to listen to all evidence.

1 Q Would you be willing -- would you want to hear about
2 the nature of the case?

3 A Sure.

4 Q Would you want to hear about how the crime was
5 committed, how much planning went into it?

6 A Yes.

7 Q Those type things?

8 A Yes.

9 Q Would you want to know about the background of the
10 defendant or background of the victim?

11 A Both of them.

12 Q So, you would want to hear and listen to all of that
13 before you made your decision?

14 A (witness nods head up and down.)

15 Q You understand if the judge qualifies you as a juror,
16 you would be under oath, you would be responsible, you
17 would have to do it?

18 A Yes. Yes.

19 Q That would be your duty?

20 A Yes.

21 Q Ask you one other question. If you are on the jury
22 and you come to the end of the case and all 12 of you have
23 deliberated, all 12 have decided, including you, that the
24 death penalty is the appropriate verdict. The law
25 requires, and the judge will charge you, you have to sign

1 your name on the law form, would the fact you have to sign
2 your name in any way impair your ability to be a fair
3 juror?

4 A No, sir.

5 THE COURT: Any questions from the defense?

6 MR. NETTLES: Two brief issues, yes, sir. Not two
7 brief questions, two brief issues.

8 THE COURT: Okay.

9 Examination

10 By Mr. Nettles:

11 Q Good morning, Miss Todd. How are you?

12 A I'm fine. How are you?

13 Q I'm fine considering the circumstances. As you can
14 tell, I'm one of the lawyers representing Chris. Just
15 going to talk to you about two areas, it ought to be
16 pretty quick. Okay.

17 A Okay.

18 Q One of them I'd like to talk to you is, as the
19 solicitor just talked to you about, your thoughts and
20 where you are on the death penalty. Could I ask you this,
21 tell me your thoughts on the issue of mental illness.

22 A Well, I feel like if it's proven that that person has
23 a mental state, then that could make a difference.

24 Q Okay. How is that?

25 A Depending on how severe.

1 MR. ARIAIL: I object, that's going to weight.

2 THE COURT: Overruled.

3 Q That means you get to answer. We talk in a little
4 language here, but I'll translate for you. Okay?

5 A It depends on how severe the state of the person is.
6 If that's shown to me, how severe it is, it may make a
7 difference.

8 Q But it's something you could give meaningful
9 consideration to?

10 A Yeah.

11 Q Because some people just say -- some people just say
12 I think all that mental illness stuff is voodoo.

13 A Yes.

14 Q Do you believe that?

15 A No. No, not really.

16 Q Okay. Let me talk to you about one other thing. The
17 solicitor wanted to know if you could sign if you felt
18 like death was the correct --

19 A Uh-huh.

20 Q Is it clear to you what life without parole means?

21 A Yes, sir.

22 Q What does that mean to you?

23 A To me, I mean, you're in jail for life.

24 Q That's right. Come out with your eyes closed?

25 A Come out with your eyes closed.

1 Q And if you were back in the jury room and let's say
2 that that piece of paper was coming around the table and
3 you were the last one, you heard all the evidence you all
4 talked about it and you felt that the appropriate
5 punishment was death, as you told the solicitor, you could
6 sign your name?

7 Let me ask you this. Let's say you're the last one,
8 comes around the table and gets to you and you don't think
9 it's the appropriate punishment, you think that life
10 without parole is the appropriate punishment for this
11 person on this day.

12 A Uh-huh.

13 Q Could you say, I'm sorry, you all, I'm not going
14 along just to get along?

15 A If it's proven to me that that's not what that person
16 deserves.

17 Q Right.

18 A Then I would -- I could let it pass by.

19 Q You wouldn't just cave in just to --

20 A No. Not to follow the crowd. No.

21 Q Let's say this. Let's say you were in the majority
22 and there was one person they just weren't being
23 difficult, they had reasons for it, they talked about it,
24 you listened to what they had to say, disagreed with you,
25 would you be willing to respect their opinion?

1 A Yes, of course. I want them to respect mine.

2 MR. ARIAIL: I object to that question, your honor.

3 THE COURT: Overruled.

4 MR. NETTLES: Thank you very much. I don't have any
5 questions.

6 THE COURT: Anybody have a motion as to this juror?

7 (No response elicited)

8 You don't have to tell me what your motion is. Just
9 asked you if you have a motion.

10 MR. MAULDIN: We have no motion, Your Honor.

11 MR. ARIAIL: No.

12 THE COURT: Mrs. Todd, if you'll give me your
13 questionnaire please, ma'am. What we're doing is drawing
14 a panel of probably 43 or 45 jurors, and from that we will
15 draw 12 people plus four alternates. You're going to be
16 on that panel of 43 or 45, depending on how many we
17 qualify. And don't read anything about the case in the
18 paper, don't watch anything on TV about the case. Make
19 some arrangements with your sister. Okay? The bailiff
20 has a little note he's going to give you with a phone
21 number on there, call in after 8:00, there will be a
22 message for the jury panel referred to as the qualified
23 jurors. Follow those instructions, it may be come in
24 tomorrow night, it may be come in Thursday. But follow
25 those instructions. Okay. Thank you very much.

1 (prospective juror excused)

2 THE COURT: What I want to know is how did two
3 questions turn into 22?

4 MR. NETTLES: Oh, no, I thought I started off, I said
5 two issues.

6 THE COURT: I see, two topics?

7 MR. NETTLES: I said two issues, is what i meant to
8 say. I don't know what I said.

9 THE COURT: You said two questions. I was counting
10 them on my realtime, it turned into 22. I understand, two
11 topics --

12 MR. NETTLES: Yeah, that's what I meant to say.

13 THE COURT: Okay. We're going to take about a
14 five-minute break. We're running about 35 minutes behind.

15 MR. ARIAIL: Could I voice an objection, point you to
16 the case I'm relying on?

17 THE COURT: Which objection?

18 MR. ARIAIL: The Last one, where they're asking the
19 majority, minority, that case question is improper.

20 THE COURT: Let me see the case.

21 MR. ARIAIL: I have it right here. It only applies
22 when the juror is either vacillating or is preconceived to
23 give the death penalty or life.

24 THE COURT: This is state versus Hill.

25 MR. ARIAIL: State versus Hill. It's on next to the

1 last page, bottom paragraph. Last two.

2 MR. NETTLES: If I might, Your Honor, this is yet
3 again where the government is trying to say --

4 THE COURT: Where you reading from, solicitor?

5 MR. ARIAIL: You can start at, what hill does is .
6 interprets Bennett. It's one where the guy goes with the
7 majority.

8 THE COURT: Tell me where you want me to read.

9 MR. ARIAIL: Start Halfway down, where it says "jury
10 voir dire," page 9 of 11, i'm not sure where he printed
11 his, Lexus nexus It will be number six headnote, jury voir
12 dire.

13 THE COURT: This copy doesn't have headnotes.

14 MR. ARIAIL: This -- mine has. I'm highlighting what
15 I want you to read.

16 THE COURT: I don't mind if you highlight, makes it
17 easier to read. Headnote what, now? Six?

18 MR. ARIAIL: Six.

19 THE COURT: You have it underlined?

20 MR. ARIAIL: Part of it. I didn't underline all of
21 it.

22 THE COURT: I'll read this during the break.

23 MR. NETTLES: Can I give you a copy of Bennett as
24 well?

25 THE COURT: Yes, sir. Give me anything you want.

1 MR. NETTLES: It was a three-two decision. All they
2 said, you get to make the shot, call.

3 THE COURT: I understand that. We'll take about a
4 five-minute break.

5 (brief recess)

6 THE COURT: Before we start, this basically, it was
7 an effort on the solicitor's part to see how many people
8 have strong opinions about innocence or guilt from what
9 they seen on TV and read in the paper. It came back about
10 14.5 percent. That's about what we're finding here today.
11 There's Nothing exculpatory. I think it's nothing but his
12 work product. I don't think it's work product as to
13 whether a venue should be granted or not granted. I'm not
14 going to discover it to the defendant. I don't
15 think there's no basis whatsoever, no addresses to look
16 at, basically a statistical analysis. The names of the
17 people interviewed are in there, but there's no addresses,
18 no nothing for the defense to compare whether there are
19 nextdoor neighbors or anything. I find nothing
20 exculpatory in there to turn over to the defense, and the
21 court does feel like it is work product.

22 MR. MAULDIN: Just for the record, because the
23 prosecutor did site that survey in support of certain
24 positions he was taking, we believe he thereby waived any
25 work product claim. So, we do take exception.

1 THE COURT: I still have that under advisement.
2 Motion for change of venue is still under advisement. I
3 haven't ruled on it yet.

4 MR. MAULDIN: And we don't know what's in the survey,
5 so we really don't know how --

6 THE COURT: I basically just told you. It's just a
7 random sampling to determine what type of knowledge the
8 general public had of this case and their opinion of the
9 defendant's innocence or guilt.

10 MR. MAULDIN: Your Honor, we would ask if the court
11 would retain a copy under seal in the record if you don't
12 mind. Obviously, on appeal --

13 THE COURT: That's fine. Betty, would you run a copy
14 of it, give it to the clerk's office, tell them to put it
15 under seal and mark it outside, what it is, please?

16 MS. STROM: Yes, sir.

17 MR. MAULDIN: Thank you, judge.

18 THE COURT: All right. Anything else before we get
19 started?

20 MR. MAULDIN: One other matter, judge.

21 MS. STROM: The copy you handed back to me through
22 the bailiff, is an extra copy, so we can actually put this
23 one in.

24 THE COURT: Give it to the Clerk, put it under seal
25 and mark what it is on it. Under seal, give it to the

1 court reporter under seal. Mark it as court's exhibit
2 whatever the next number is, Donna.

3 MR. ARIAIL: For the record, I consent to the
4 continuation of the interracial dating question.

5 THE COURT: Do what now?

6 MR. ARIAIL: I will consent. I had only consented
7 for its use in the first six. I'm going to clear it out
8 forever now.

9 THE COURT: All right. Thank you very much,
10 solicitor. Will you bring us Paul Fields, please?

11 PAUL FIELDS, a white male, after being
12 duly sworn, testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Fields, we're going to be asking you some
16 questions. There's no right or wrong answer. I'm going
17 to ask you some questions and the attorneys will probably
18 ask you some questions. And it's just to get some
19 clarification on the questionnaire you filled out. Or get
20 your viewpoints on some various issues. First of all, I
21 want to ask you, is the questionnaire you filled out
22 accurate?

23 A Yes, sir.

24 Q Is there anything that you need to change that you
25 remember that you would like to change in the

1 questionnaire?

2 A No, sir, not as I know of.

3 Q All right. I'm going to ask you about your
4 questionnaire. Going to hand you your questionnaire,
5 refer you to question number 64, please, sir. Did you
6 find question number 64?

7 A Yes, sir.

8 Q The question says, "briefly describe your attitudes
9 and beliefs concerning capital punishment.

10 "I am in favor of the death penalty. I feel if
11 someone takes someone's life, they should get the death
12 penalty if found guilty." Is that still your belief here
13 today?

14 A Yes.

15 Q Question 65 says, "What is your opinion about the
16 death penalty?"

17 You say you strongly favor.

18 A Yes, sir.

19 Q Is that still your opinion?

20 A Yes, sir.

21 Q If you would --

22 A Yes, sir.

23 Q All right. If you would go to question number 67,
24 you said when talking about crimes with friends about the
25 case we're here about. All right. Who did you talk to

1 and what did you talk to about this case today?

2 A Well, just when the process was going on at the time,
3 the day it happened.

4 Q What did you hear about the case on the day it
5 happened?

6 A You know, just that he had held his girlfriend
7 hostage in a store and had shot her. And that's pretty
8 much --

9 Q Apparently you discussed it with some friends in
10 conjunction with the death penalty. Is that correct?

11 A Yes, sir.

12 Q Tell me what you discussed and what you said to your
13 friends about the death penalty in conjunction with what
14 you saw on TV?

15 A The majority of people I work with hear something
16 going on the news like this, we just kind of feel like
17 everybody talks about death penalty and the majority of my
18 coworkers feel like in a case like this if someone's found
19 guilty, it should be death penalty.

20 Q Do you also agree with your coworkers?

21 A Yes, sir.

22 Q Did you all discuss the facts, what was on the news
23 media about that particular case?

24 A Just more or less, if I'm not mistaken, someone from
25 work came in and told us they heard about it on the radio,

1 and then we just kind of pretty much listened off and on,
2 talked about it during the first day. That was it as far
3 as that first day.

4 Q Did you hear anything on the radio about it?

5 A Just when we had it on at work, just that one day.

6 Q Did you read anything about it in the newspaper?

7 A The Next day, when it was published, that was it.

8 Q Did you see anything on television about it?

9 A I -- Yes, I did.

10 Q What did you see on television?

11 A Just showed the scene in front of the store and
12 everything and having it taped off.

13 Q Based upon what your friends said and what you heard
14 on radio, TV, and read in the paper, have you formed an
15 opinion as to the defendant's innocence or guilt?

16 A From what I've heard, I feel like I already formed an
17 opinion he's guilty.

18 Q Have you also formed an opinion as to his sentence?

19 A Yes, sir.

20 Q Any questions from either party?

21 MR. MAULDIN: No, sir.

22 THE COURT: About the subject matter we're dealing
23 with.

24 MR. ARIAIL: I would like to know what the opinion he
25 formed as to the sentence.

1 PROSPECTIVE JUROR: Pardon?

2 THE COURT: What sentence did you form an opinion
3 about?

4 PROSPECTIVE JUROR: Well, I felt like after a trial,
5 once he's found guilty, he should get the death penalty..

6 THE COURT: I was more concerned about the publicity
7 and the death penalty views if you want to talk about
8 that.

9 MR. ARIAIL: I'm not interested in going into
10 publicity at this point.

11 THE COURT: Does anybody want the court to go further
12 about the death penalty views?

13 MR. MAULDIN: One moment, Your Honor.

14 THE COURT: I'll go further into the death penalty
15 views. I'm just giving you an opportunity about the
16 publicity at this time.

17 MR. ARIAIL: I'm all right on that.

18 MR. MAULDIN: No questions at this time, Your Honor.

19 BY THE COURT:

20 Q Mr. Fields, let me explain to you the process we're
21 going to go through. The state has charged the defendant,
22 Charles Christopher Williams, with murder and kidnapping.
23 All right? In South Carolina the law states that a person
24 is presumed innocent when he is charged -- when he enters
25 the courtroom and until all 12 jurors have found him

1 guilty. Do you understand?

2 A Yes.

3 Q The defendant never has to prove he's innocent. The
4 state has the obligation of proving the defendant guilty
5 beyond a reasonable doubt. Do you understand?

6 A Yes, sir.

7 Q That's the state's obligation, to prove the defendant
8 guilty.

9 A Yes, sir.

10 Q Can you set aside your opinion as to the defendant's
11 innocence or guilt and listen to the testimony and base
12 your decision on the testimony you hear in the courtroom?
13 Or is your opinion so strong you don't think you could
14 change it?

15 A Probably hard to change, Yes, sir. I mean, I'm
16 willing to listen, Yes, sir, you know.

17 Q But it would be very difficult --

18 A Yes.

19 Q -- for you to change your opinion?

20 A Yes, sir.

21 Q Any further questions?

22 MR. MAULDIN: No, sir.

23 THE COURT: Any from the state?

24 MR. ARIAIL: None.

25 THE COURT: Okay. Would you step out in the hall

1 just a second, Mr. Fields?

2 (prospective juror excused.)

3 THE COURT: Any motions?

4 MR. MAULDIN: Move that he be disqualified.

5 THE COURT: Any argument from the state?

6 MR. ARIAIL: None.

7 THE COURT: Bring Mr. Fields back in.

8 (juror returns.)

9 THE COURT: Mr. Fields, I'm going to excuse you from
10 service on this particular jury. Okay? Thank you so very
11 much for being here. Thank you, Mr. Fields. Thank you.

12 (prospective juror excused.)

13 All right. The Next juror, Mr. Land, was not
14 qualified. Would you get the questionnaire from him,
15 please? Would you bring us Mr. Land. Mr. Land, was not
16 here yesterday. I'm going to withhold the general
17 qualifications until after the voir dire.

18 CLARENCE LAND, after being duly
19 sworn, testified as follows:

20 BY THE COURT:

21 Q Mr. Land, How you doing today? You didn't show up
22 yesterday for jury qualification. Why was that?

23 A I was working, lost track of time. Never gave it a
24 second thought. Never even looked at the clock.

25 Q What hours do you work?

- 1 A Seven-thirty until five-thirty, six o'clock.
- 2 Q Seven-thirty in the morning?
- 3 A I just totally forgot about it.
- 4 Q Do you sleep in the mornings or during the day?
- 5 A No, sir.
- 6 Q You work at nights or --
- 7 A No, I work in mornings.
- 8 Q You Go to work when?
- 9 A Seven-thirty.
- 10 Q Quit when?
- 11 A Whenever I'm done, I'm an IT technician.
- 12 Q Where do you work?
- 13 A Southeastern products.
- 14 Q Okay. I'm going to ask you some questions. There's
- 15 no right or wrong answer to these questions. All right?
- 16 A All right.
- 17 Q Just answer the questions the best you can. In this
- 18 particular case the state has charged the defendant,
- 19 Charles Christopher Williams, with murder and kidnapping.
- 20 This occurred on September 3, 2003, at a Bi-Lo here in
- 21 Greenville. Do you have any physical or mental problems
- 22 as to why you could not serve on the jury?
- 23 A No, sir.
- 24 Q Do you have any personal hardships why you could not
- 25 serve on the jury?

- 1 A I'm a single parent.
- 2 Q How old is your child?
- 3 A Seven.
- 4 Q Do you have anybody who can care for the child?
- 5 A My parents could, but they're in their 80's.
- 6 Q Anyone else who could help with the child?
- 7 A Possibly his mother if she could work it out.
- 8 Q She live in the area?
- 9 A Yes, sir.
- 10 Q She visit with the child on a regular basis?
- 11 A Every two weeks, on the weekend.
- 12 Q You filled out a questionnaire. Is your
- 13 questionnaire accurate?
- 14 A Yes.
- 15 Q Any changes you want to make?
- 16 A I don't recall the questions.
- 17 Q I'm going to hand you a copy of your questionnaire.
- 18 Have you heard anything about this case either on TV,
- 19 newspaper, or anybody talking about the case?
- 20 A I did hear a short clip on the news the other night.
- 21 Q When did you hear it?
- 22 A I believe it would have been Saturday evening news.
- 23 Q Do you remember what you heard?
- 24 A No, sir, just heard the name Williams.
- 25 Q You heard anything else about the case?

1 A No.

2 Q Have You formed or expressed any opinion about
3 Mr. Williams' innocence or guilt based upon what you heard
4 on television?

5 A No, sir.

6 Q Do you know the victim in this case, who is Maranda
7 Williams?

8 A No.

9 Q Do you know the defendant who sits in the shirt just
10 to my right?

11 A No, sir.

12 Q Charles Christopher Williams, you do not know him?

13 A No, sir.

14 Q All right. The attorneys representing Mr. Williams
15 are sitting to my right, Mr. Mauldin and Mr. Nettles and
16 Mrs. Coyle. Do you know any of these attorneys?

17 A No, sir.

18 Q The Solicitor Ariail and his two assistants sitting
19 to my left, do you have a personal relationship with
20 anyone in the solicitor's office?

21 A No, sir.

22 Q I'm going to give you a list of witnesses. I want
23 you to look at these names and see if you recognize any of
24 those names.

25 A No, sir, I do not. I do not recognize them.

1 Q I'm going to give you another list and ask you, do
2 you recognize any of the names on that list?

3 A No, sir, I do not.

4 Q Thank you, sir. I'm going to read a question to you
5 and ask you to respond to it. In this case the defendant
6 is black and the victim is white. It is undisputed the
7 black defendant and the white victim engaged in
8 interracial dating. Would the fact that the defendant and
9 the victim engaged in interracial dating make it difficult
10 for you to be fair to either the state or the defendant?

11 A Well, I don't approve of that, but I don't think I
12 could draw a conclusion that way.

13 Q Okay. All right. The fact you disapprove of it, how
14 would it affect you in looking at this particular case? I
15 know you don't know the facts of this particular case; but
16 how would that affect you, the way you would look at it?

17 A I'm usually pretty good, fair -- try to be a fair
18 judge of people, but I don't know. I can't really state
19 what I would do until after hearing the facts.

20 Q Let me explain to you the process. We're going to
21 have two trials or two phases of a trial, whichever way
22 you want to refer to it. In the first trial or the first
23 phase the state is required to prove the defendant,
24 Charles Christopher Williams, guilty beyond a reasonable
25 doubt. That's the state's responsibility. The defendant

1 is never required or obligated to prove that he is not
2 guilty. It would take all 12 jurors to find a defendant
3 guilty. It would take a unanimous jury verdict, do you
4 understand?

5 A Yes, sir.

6 Q The defendant is charged with murder and kidnapping.
7 Let's assume that the defendant finds the -- excuse me,
8 the jury finds the defendant innocent of murder and
9 kidnapping, then you would not go to the second phase.
10 Let's assume that the jury finds the defendant guilty of
11 murder and not kidnapping and you would not go to the
12 second phase. If the jury finds the defendant guilty of
13 murder and kidnapping, you would go to the second phase.
14 And then the second phase, the jury would have the option
15 of sentencing the defendant to death or life in prison.
16 when I say life in prison without parole, that means he
17 will die in jail. Do you understand?

18 A Yes, sir.

19 Q The state is also obligated in the second phase,
20 which we'll refer to as the penalty phase, of proving
21 beyond a reasonable doubt that the defendant should be put
22 to death, do you understand?

23 A Yes, sir.

24 Q The defendant does not have to offer any testimony.
25 However, in most cases the defendant will offer testimony

1 in relation to what we refer to as mitigating
2 circumstances. And those mitigating circumstances would
3 be reasons that the defendant would put into evidence as
4 to why the defendant should not be put to death but should
5 receive life. Do you understand?

6 A Yes, sir.

7 Q I don't know what those mitigating circumstances
8 would be. Now, would you consider those mitigating
9 circumstances and consider them relevant and important in
10 arriving at your decision as to whether to give death
11 penalty or life imprisonment?

12 A Yes, I would consider those.

13 Q How would your viewpoint of interracial dating affect
14 your decision on life or death?

15 A Probably be a negative effect I would think. But I
16 can't really -- until I hear the facts.

17 Q Negative effect towards the victim or negative effect
18 towards the defendant?

19 A To the defendant.

20 Q Okay. Would that have an overwhelming influence on
21 your decision-making process on life or death?

22 A No, sir. I would try to be fair.

23 Q If the court instructs you to the fact race, emotion
24 would not enter into your decision-making process, would
25 you respect that and put your viewpoints of interracial

1 dating aside?

2 A Yes, sir.

3 Q Can you do that?

4 A Yes, sir.

5 Q And you have -- this is a pretty strong word, but you
6 have a bias toward interracial dating. Can you put that
7 bias aside and be fair and objective towards the state and
8 the defendant?

9 A Yes, sir.

10 Q If you would look at your questionnaire. If you
11 would look at question number 59, please, sir. Do you see
12 59?

13 A Yes, sir.

14 Q It says -- Was this yourself or your family or a
15 close friend that had a DUI conviction in '89?

16 A That was myself.

17 Q Do you have any bias or prejudice towards police
18 officers in general as a result of that conviction?

19 A No, sir.

20 Q Any bias or prejudice towards the state in general as
21 a result of that conviction?

22 A No, sir.

23 Q Referring to question number 68, it says, "With
24 reference to the death penalty, which of the following
25 statements would best represent your opinion?"

1 "Two, I believe the death penalty is the appropriate
2 punishment in some cases and would be appropriate
3 depending upon" -- "it was warranted, depending upon the
4 evidence, the law, and what I learned about the
5 defendant."

6 Is that still your opinion here today?

7 A Yes, sir.

8 Q Can you be fair and impartial, set aside your bias of
9 interracial dating to the state and the defendant?

10 A Yes, sir.

11 Q Do you know of any personal reasons as to why you
12 could not serve on the jury, other than what you've
13 already told me about your daughter?

14 A No, sir.

15 Q Okay, whose turn? Whose turn?

16 MR. NETTLES: I believe it's ours.

17 MR. ARIAIL: No, you had the last one. You had
18 Mr. Fields.

19 MR. NETTLES: I don't remember.

20 MR. ARIAIL: The reason I'm talking to you, he told
21 us to do this together. My recollection is he had
22 Mr. Fields.

23 MS. STROM: My notes have that he had Mr. Fields.
24 I've kept up with them.

25 MR. MAULDIN: There were no questions to Mr. Fields.

1 Mr. Fields never was asked any questions by us, by either
2 side.

3 MR. ARIAIL: That's correct. But i mean all the ones
4 before, judge, in which we didn't ask questions --

5 THE COURT: It Doesn't really matter.

6 MR. NETTLES: If it makes him happy.

7 THE COURT: Okay, solicitor, have at it.

8 MR. ARIAIL: It Doesn't make me happy one way or the
9 other.

10 THE COURT: Okay. Have at it.

11 BY MR. ARIAIL:

12 Q Mr. Land, a couple of questions. The judge has
13 already explained to you the process, what we're here
14 doing today. And defense counsel will also ask you some
15 questions about your ability to be a fair juror,
16 particularly in phase two; that is, the sentencing phase.
17 And the concept is that we have to have jurors who can
18 fairly and meaningfully give consideration to both
19 imposing a life sentence and a death sentence based upon
20 the evidence that they get. And you've answered you could
21 do that.

22 There will be a number of types of different
23 information presented, could -- you know, circumstances of
24 the crime, background of the defendant, mental issues,
25 there could be a range of testimony. And when you enter

1 that phase, you need to be in a, such a state of mind that
2 you could consider all of that information without having
3 some preconception. Even though you convicted the
4 defendant, the guilt doesn't preconceive the punishment.
5 You have to have an open mind. Is that something you can
6 honestly do?

7 A I believe so, sir.

8 Q That's the type of person we're looking for. The
9 last thing I wanted to ask you, assuming that you're on
10 the jury and in fact you and 11 others convict and get to
11 the second phase and find the appropriate sentence is
12 death, the judge will tell you the law requires you sign a
13 document with your name recording that verdict. Would the
14 actual fact of having to sign your name in any way impair
15 your ability to be a fair juror?

16 A No, but I'd weigh that with utmost caution to sign
17 the death penalty.

18 Q Pardon?

19 A I'll weigh it with utmost caution to sign somebody's
20 life away.

21 Q You would weigh it in the process of the
22 consideration whether the death penalty was appropriate
23 under the circumstances?

24 A Correct.

25 Q And you told the judge earlier that you could impose

1 the death penalty if the circumstances and the facts were
2 such that you thought it was appropriate?

3 A Yes, sir.

4 Q And the same is true for a life sentence?

5 A Yes.

6 THE COURT: Defendant, Mr. Nettles?

7 MR. NETTLES: Thank you.

8 BY MR. NETTLES:

9 Q Mr. Land, I'm Bill Nettles, one of the lawyers that
10 represents Chris. One of the things that the court has
11 talked to you about that is not disputed here is that
12 Chris and the victim had a relationship, right? The court
13 told you that, right?

14 A Yes.

15 Q And you accept that as a fact?

16 A Yes.

17 Q And you accept the fact it was an interracial --

18 A Yes.

19 Q And you shared with us that just because of some
20 feeling you have -- nobody's here to judge them either
21 way -- that's something you have a little bit of a
22 personal problem with?

23 A I don't agree with it. Yes.

24 Q You don't agree with it, yes. And you don't agree
25 with it, and you've shared with us it is something you

1 would hold against the defendant, Chris?

2 A To a degree, yes.

3 Q Okay, to a degree. And to a degree you would hold it
4 against him. And when you say, "hold it against him,"
5 what do you mean by that?

6 A I've been taught in my life as a person that you
7 would not want to date somebody else outside of your own
8 race. That's just the way I was raised. But as a person
9 what they do, against human beings, I would have to hold
10 that aside I suppose.

11 Q Do you have any -- you mentioned religious faith. In
12 that way does your religious teaching teach anything about
13 the death penalty?

14 A Well, you are held accountable before God for your
15 actions here.

16 Q But how about as to you, as relates to death penalty?

17 A Well, I'm not sure I understand.

18 Q Let's put it this way. Some people believe that
19 religious, that religion, Christianity, teaches an eye for
20 an eye. And you've heard that before, right?

21 A Yes.

22 Q Do you believe that?

23 A No, sir. I do not hold that.

24 Q Excuse me?

25 A Revenge, I do not hold revenge against your fellow

1 neighbors.

2 Q Okay. Let me ask you this, then. You had said that
3 in your case that you believed -- and I believe it's a
4 question the judge has already talked to you about it, 68
5 on your questionnaire.

6 A Yes.

7 Q Said, "I believe death is the appropriate punishment
8 in some murders." Okay. Give me your definition of
9 murder as it applied to your answering that question.

10 A Probably like taking somebody in back of the house,
11 shoot them in the back of the head. I don't know. Would
12 be cold-blooded and premeditated I would think.

13 Q In that particular case you just discussed there, is
14 the appropriate punishment always death?

15 A It would seem appropriate.

16 Q And what do you mean by, "it would seem appropriate"?

17 A Well, they were totally disregarding another person's
18 demeanor or the person's future and just took their life.

19 Q So, what we're talking about here, just to be clear,
20 sometimes people -- it's kind of partly our fault, we
21 don't have a -- when we're talking about murder in a case
22 such as this we're asking these questions about, we're not
23 talking about self-defense, do you understand?

24 A Right.

25 Q And we're not talking about involuntary manslaughter.

1 A guy comes home, catches his wife in bed with another
2 man, kills one or two, or both of them. That's
3 involuntary or voluntary manslaughter. We're talking
4 about murder in South Carolina is defined as a heart
5 devoid of all social duty, fatally bent on mischief. In
6 other words, did it and meant to do it.

7 All right. If you find under that definition of
8 murder, if you were on a jury and found the person guilty
9 of murder, the only -- in your mind is the only
10 appropriate punishment death?

11 A I would think so. Yes.

12 Q That's kind of based on what?

13 A Their callous disregard for that person.

14 Q Okay. So -- I understand. But, I mean, your belief
15 that the death penalty is the only appropriate punishment
16 for murder is based on what in terms of you?

17 A I guess the way I would see that person treated, I
18 guess the end result.

19 Q Right. Right. So, if you're on a jury and you found
20 him guilty of murder, life without parole is not a
21 significant punishment in your mind?

22 A It would be a significant punishment but wouldn't be,
23 I guess it's enough.

24 Q Right. And in your mind you're not discounting life
25 without parole isn't a significant punishment, just saying

1 it's not enough?

2 A Right.

3 Q And the only thing that is enough in your mind for a
4 murder?

5 A Cold-blooded murder, yes.

6 Q Meant to do it?

7 A Yes.

8 Q Is death penalty?

9 A I would think so, yes.

10 Q And if you were in a case and you had found the
11 person guilty of murder, all right, and an aggravating
12 circumstance. So, we're talking about not just murder,
13 meant to do it, but something that made it even worse.
14 So, two crimes. In this case Chris is charged with murder
15 and kidnapping. And I'm not talking about Chris' case;
16 but if you were in a jury and you found the person guilty
17 of murder and kidnapping, murdered her and kidnapped her,
18 in your mind the only appropriate punishment is death?

19 A Yes.

20 Q That's right. And as a matter of fact, one of the
21 other things that you said in your questionnaire was that
22 you would have a difficult time with graphic pictures,
23 right?

24 A I don't recall that.

25 Q Did I see that? Question number 62, "somewhat."

1 A Somewhat, yes.

2 Q So, if we were talking about a case you found a
3 person guilty of murder and kidnapping then saw graphic
4 pictures, that would be something that would sort of start
5 to seal that death is the only appropriate punishment?

6 A It would be very -- I would say it would be very
7 persuasive. Yes..

8 Q And at that point you just couldn't give meaningful
9 consideration to the sentence of life imprisonment,
10 because it's just not enough?

11 A It would be possible, yes. I agree.

12 Q Excuse me?

13 A I agree.

14 Q You agree with that statement?

15 A Yes.

16 Q So, let's talk about this. In a capital case you
17 found a person guilty of murder, guilty of kidnapping,
18 there's been graphic pictures. Okay? All right? And if
19 the defense -- you would be looking to the defense to
20 convince you of why death isn't the appropriate
21 punishment, right?

22 A Yes, right.

23 Q Excuse me?

24 A Yes, sir.

25 Q And, in other words, if they didn't bring you

1 anything, if they couldn't bring you anything, like we
2 said before, a minute ago, you just couldn't give valuable
3 consideration to life without parole; is that right?

4 A Right.

5 Q Let me check with some people at the table; but I
6 might be done.

7 Thank you. I have no further questions. Thank you.

8 THE COURT: Motions?

9 MR. MAULDIN: Yes, sir.

10 THE COURT: Mr. Land, if you'll just step out in the
11 hall for a minute.

12 (prospective juror complies.)

13 THE COURT: All right. Let me hear your motions.

14 MR. NETTLES: Our motion, he's not qualified for a
15 number of different reasons. First of all --

16 THE COURT: I understand your reason. Let me hear
17 what the solicitor has to say, then I'll let you rebut
18 what he says.

19 Solicitor, what's the state's position on this juror?

20 MR. ARIAIL: Here again is the reason why I urge the
21 court to restrict the question. What we have here is a
22 guy who's obviously, on his questionnaire and after you
23 explained to him what the situation is, is obviously
24 qualified. Then, when you get into a situation of, in my
25 opinion, staking him out, staking him out on particular

1 points and not questions being asked, statements being
2 made to him: This is what you think, this is what you
3 would do, isn't this what you believe?

4 When you get to that point, then in a vacuum of not
5 being in the case and following the judge's instruction on
6 the law and setting these things aside, then you're
7 getting into his personal beliefs on things rather than
8 what his beliefs are going to be in the context of the
9 question and context of the case.

10 That's where I say when he responded, he responded
11 personally. But if you were to go back and ask him, I
12 could have stood back up, and gone back over it in the
13 context of your instructions and you're going to have to
14 follow these instructions. And regardless of what your
15 beliefs are, you're going to have to set those aside, can
16 you do that? That is the issue. Is there something here
17 that significantly impairs. And I say he is not
18 significantly impaired in the universal sense, that the
19 overall questioning indicates he can be fair. But When
20 you pin him down on the personal stuff and lead him into
21 it with a rope, saying, this is what you really mean, I
22 think you get another answer. But I don't think that's in
23 the context of the overall questioning. So, I say he's
24 qualified.

25 THE COURT: Mr. Nettles?

1 MR. NETTLES: Your honor, I say on two broad
2 categories he's not qualified. The government didn't even
3 address the race issue.

4 My understanding the government is asking this court
5 to qualify a man who, frankly has been candid about his
6 feelings about race. Media is one thing, setting aside
7 media and all that stuff. But race, and according to
8 Turner vs. Murray, which is the case we provided that
9 precipitated asking this question, the United States
10 Supreme Court has recognized that's a big deal. That's
11 Not a media bias or anything. That's a lot more
12 significant bias. And he's been kind enough to share that
13 with us. And I applaud him for being honest with us about
14 it. So, we've got that issue, first of all.

15 Then, secondly, what we've got is that, you know, I
16 asked him some leading questions. I'll agree to that.
17 But after he understood what murder meant, there was no
18 doubt in his mind that he was not going to be able to give
19 meaningful -- and I used the phrase that the court asked
20 us to use at the beginning of the day today, "meaningful
21 consideration" to the penalty of life, which means -- and
22 even before I started leading him, he offered us the
23 statement that for a murder, as he and I defined it. I
24 used the language of the law.

25 THE COURT: I've heard enough. Thank you very much.

1 Solicitor, if it was just the death penalty issue, I
2 would probably find him qualified; but coupled with his
3 race and opinion on race and couple that with the death
4 penalty, I'm going to excuse him.

5 MR. ARIAIL: Thank you, Your Honor.

6 THE COURT: Bring Mr. Land in, please.

7 (prospective juror Land returns.)

8 THE COURT: Mr. Land, I wanted to thank you for being
9 here. I'm going to excuse you from service on this jury.
10 Thank you for being here. Thank you so very much.

11 (Juror excused.)

12 THE COURT: Next is Brian Holmstrand.

13 (Prospective Juror Holmstrand enters courtroom)

14 THE COURT: Mr. Holmstrand, how you doing this
15 morning?

16 PROSPECTIVE JUROR: Doing well --

17 THE COURT: Please raise your right hand.

18 Brian Holmstrand, (white male) after
19 being duly sworn, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q We're going to ask you some questions this morning.
23 I'm going to ask you some, the attorneys will probably ask
24 you some. There's no right or wrong answer. Okay? Just
25 answer the question best you can, as truthful as you can.

1 Can you do that?

2 A Sure can.

3 Q First of all, I want to ask you, do you have any
4 mental or physical reasons as to why you cannot serve on
5 the jury?

6 A No, sir.

7 Q You have any personal problems that would interfere
8 with your jury duty?

9 A No, sir.

10 Q You filled out a questionnaire?

11 A Yes, I did.

12 Q Is that questionnaire you filled out accurate?

13 A Yes. Yes, it is.

14 Q Are there changes you would like to make to your
15 questionnaire?

16 A Not that I'm aware of.

17 Q Okay. This case the state has charged Charles
18 Christopher Williams with murder and kidnapping. And this
19 occurred on September 3, 2003, in a Bi-Lo here in
20 Greenville. Have you read anything on TV, heard anything
21 on TV or radio, read anything in the newspaper, heard
22 anyone talking about this case?

23 A No.

24 Q Do you remember when it occurred in September?

25 A The only thing I remember, when it came over the news

1 a short period of time the day it happened. Other than
2 that, nothing.

3 Q Based upon what you saw on television when it
4 happened, have you formed an opinion about the defendant,
5 Mr. Williams's, innocence or guilt?

6 A No.

7 Q The victim is Maranda Williams do you know her or any
8 member of her family?

9 A No, I don't.

10 Q The defendant is Charles Christopher Williams who
11 sits to my right in the middle chair. Do you know
12 Mr. Williams?

13 A No, I don't.

14 Q The attorneys, Mr. Mauldin, Miss Coyle, and Mr.
15 Nettles are sitting also with the defendant. Do you know
16 them?

17 A No, I do not.

18 Q And on my left is the solicitor and his two
19 assistants. Do you know anyone in the solicitor's office
20 or have a personal relationship with anyone in his office?

21 A No, I do not.

22 Q I'm going to give you a witness list. I want you to
23 review this list and tell me whether or not you know
24 anyone on that list.

25 A (Complies.) No, I don't.

1 Q All right. Here is a second list. If you will
2 review that list, please sir.

3 A (witness complies.) No, I don't.

4 Q Don't know anybody on that list? I'm going to ask
5 you a question and ask you to respond to it. In this case
6 the defendant is black and the victim is white. It is
7 undisputed that the black defendant and white victim
8 engaged in interracial dating. Would the fact that the
9 defendant and the victim engaged in interracial dating
10 make it difficult for you to be fair to either the state
11 or to the defendant?

12 A No, it won't.

13 Q I'm going to give you a copy of your questionnaire
14 and ask you a few questions about it. Okay?

15 A Okay.

16 Q On number nine you went to Cairo Medical American
17 College in Cairo, what were you doing in Cairo?

18 A My Dad was chief financial officer for general motors
19 at that time and they built a plant over there.

20 Q How long were you over there?

21 A From '83 to '87.

22 Q I understand you've taken paralegal litigation
23 training; is that correct?

24 A Yes, sir, I have a certificate in litigation.

25 Q When did you take that?

1 A In 2002.

2 Q Have you been working in that area?

3 A No, I have not.

4 Q Your brother is a lawyer in West Virginia. Is that
5 correct?

6 A Yes, he is.

7 Q What type of law does your brother practice?

8 A To be honest with you, I don't know. He does a lot
9 of corporate, corporate contracts.

10 Q All right. Based upon your training as a paralegal
11 litigator, do you have any prejudice for or against the
12 prosecutor in cases?

13 A No, I do not.

14 Q Do you have any bias or prejudice towards the
15 defendant in cases from what you learned in paralegal
16 college?

17 A No.

18 Q If you would look at question 64.

19 Briefly describe your attitudes and beliefs
20 concerning capital punishment. Says, "it depends on the
21 circumstances."

22 A I mean it all depends on what the case is. I have no
23 bias either way.

24 Q Would you listen to the facts?

25 A I will.

1 Q Would you base your decision on the facts?

2 A Solely on the facts.

3 Q In this case the defendant is charged with murder and
4 kidnapping. And the trial will be broken up into two
5 parts or two trials. The first part or the first phase
6 would be a penalty phase -- excuse me, would be a
7 innocence or guilty phase. The state would be required to
8 find the defendant guilty beyond a reasonable doubt. All
9 12 jurors would have to agree that the state had proven
10 the defendant guilty beyond a reasonable doubt. The
11 defendant never has to come into court to prove his
12 innocence. That's the state's responsibility. Do you
13 understand?

14 A Sure do.

15 Q All right. In this particular case let's assume that
16 the jury found the defendant innocent of murder and
17 kidnapping, then the case would be over.

18 A Right.

19 Q If the jury found the defendant guilty of murder and
20 innocent of kidnapping, the case would be over.

21 A Okay.

22 Q Now, if the jury found the defendant guilty of murder
23 and kidnapping, it would go to the second phase or the
24 second trial. In the second trial, you would consider all
25 the evidence, consider all the evidence introduced in the

1 first phase plus the state would also introduce evidence
2 of aggravation, and they're established by state law. And
3 the state would be required to prove beyond a reasonable
4 doubt that those aggravations or those aggravating
5 circumstances require the jury to find a defendant to
6 impose death. Do you understand?

7 A I do.

8 Q Now, it's the jury's responsibility and solely the
9 jury's responsibility to find the defendant or sentence
10 the defendant to either life or death. Do you understand?

11 A Yes, I do.

12 Q Now, life without parole means what it says. It
13 means the defendant will be in jail until he dies. Do you
14 understand?

15 A Yes, I do.

16 Q All right. Could you listen to the testimony, listen
17 to the closing arguments of the attorneys, listen to the
18 law and base your decision on what you hear in the
19 courtroom in arriving at a decision whether or not to
20 decide death or life?

21 A Yes, I could.

22 Q Do you understand even if the state has proven beyond
23 a reasonable doubt aggravating circumstances in the second
24 phase, the jury is not obligated to impose death. Do you
25 understand?

1 A Yes, I do.

2 Q The jury can still give life without parole. That is
3 strictly in the province of the jury. Do you understand?

4 A Yes, I do.

5 Q Can you be fair and impartial to both the state and
6 the defendant?

7 A Yes I could.

8 Q Do you know of any personal reason as to why you
9 could not serve on this jury?

10 A No, I do not.

11 Q In the second phase of the trial, the defendant could
12 possibly put up some mitigating circumstances. Mitigating
13 circumstances would be factors that the defendant believed
14 would indicate reasons as to why he should not be put to
15 death but be given life. Do you think those mitigating
16 factors would be relevant and important?

17 A It depends what those circumstances were. But I'm
18 sure, according to him, they would be relevant; But it
19 would be up to the facts.

20 Q But would you consider them before you made a
21 decision of death or life?

22 A Yes, I would.

23 Q Okay. Whose turn?

24 Examination by Mr. Mauldin

25 Q Make sure I got your name.

1 A Holmstrand.

2 Q Holmstrand?

3 A Correct.

4 Q Mr. Holmstrand, I'm John Mauldin. I, along with
5 Bill, Mr. Nettles, and Colleen Coyle, represent the
6 defendant in this case. I think the very first thing we
7 need to clear up is that the questions the court is asking
8 you, and I along with the prosecutor will ask you, we're
9 not talking about this particular case.

10 A Sure.

11 Q Because you haven't heard anything. And it wouldn't
12 be fair to ask you questions about something you didn't
13 know anything about.

14 A Right.

15 Q So, what I want to do is I want to talk to you in
16 general about your views about capital punishment and
17 about your views on a penalty of life in prison without
18 parole for a person convicted of murder. That's what
19 we'll spend a little time talking about.

20 A All right.

21 Q All right. The question 64 on your questionnaire,
22 you said with regard to your attitude regarding capital
23 punishment, "It depends on the circumstances." And I want
24 to follow up on that, Mr. Holmstrand, with you. The --
25 I'm assuming what you mean by that is the circumstances of

1 the crime, of the event or the incident?

2 A Yeah, of the incident, not of the person themselves,
3 just how it came about.

4 Q All right. So, the first thing you would look at is
5 the circumstances of the incident?

6 A Uh-huh.

7 Q Right?

8 A Yes, sir.

9 Q And in the situation -- in this situation this
10 hypothetical situation that the judge and all of us are
11 talking about, you would have served as a juror on a case
12 where you have already found the person charged guilty of
13 murder? In other words, you already heard the
14 circumstances of the event or the incident?

15 A Sure.

16 Q So, when you go into the penalty trial, the second
17 trial, you're looking at two different possible penalties.
18 And the question I have is, would you be able to consider
19 life in prison without parole for a person that you and
20 other jurors had already found guilty of murder?

21 A I could.

22 Q You could. Do you believe that life without parole
23 is a substantial penalty for a person convicted of murder
24 with an aggravating circumstance?

25 A I do.

1 Q You do. And when we say convicted of murder, that
2 means there's no manslaughter, no accident, self-defense,
3 mistake, anything like that. In other words, all that is
4 decided at the first phase. Do you follow me?

5 A Yes, I do.

6 Q Now, the judge mentioned to you at the second phase
7 of the trial, the second trial, the penalty phase, you may
8 hear what the judge described as mitigating circumstances.
9 And I want to talk to you a moment about the type of
10 information you might hear and what your response would
11 be.

12 Before I ask you that, Mr. Holmstrand, I want to ask
13 you a couple of questions about your view or your opinion
14 on mental illness. A lot of people think mental illness
15 is voodoo or hocus pocus or whatever. Can you describe
16 your feeling about the general idea of mental illness.

17 A Briefly, in my mind mental illness is just something
18 wrong with neurological neurons firing in the person's
19 mind just -- it's not a disease, it's not bad, it's just
20 something that people have to go through. And it could be
21 something happened in their life, could be traumatized by
22 it. And they could be --

23 Q All right. Do you think that the type of information
24 you would want to hear in the second phase of this trial
25 --

1 MR. ARIAIL: Objection. My basis is State versus
2 Powers.

3 THE COURT: I'll sustain the objection. Go ahead,
4 move on.

5 Q Mr. Holmstrand, you said in your questionnaire that
6 you believed that the death penalty was appropriate in
7 some murder cases?

8 A Yeah.

9 Q Do you believe or would you be able to consider,
10 meaningfully consider, a life in prison without parole
11 sentence in a case of murder?

12 MR. ARIAIL: Objection, he's asked and answered that
13 question.

14 THE COURT: We'll let him answer one more time.

15 PROSPECTIVE JUROR: I could.

16 MR. MAULDIN: You could. Hold on one moment. Let me
17 ask my --

18 Got one other issue, Your Honor. Mr. Holmstrand, the
19 judge mentioned to you during the deliberations on a
20 penalty phase, that you would be required to sign a form.
21 Didn't you ask that, judge?

22 THE COURT: No, sir. I didn't ask that.

23 Q All right. Just put it this way. The deliberations
24 in the second phase, there would be a time after lengthy
25 deliberations when the jury would have to make a

1 determination of what their sentence was.

2 A Correct.

3 Q And I want to give you a couple of circumstances and
4 just get an idea of what your reaction, your personal
5 reaction would be. Let's assume after lengthy
6 deliberations, full discussion of the case, you found that
7 11 jurors, 10 jurors or whatever, felt that one of the
8 penalties was appropriate and you felt the other penalty
9 was appropriate. Doesn't matter which penalty, but you
10 were in the minority. Would you change your opinion as to
11 the appropriate penalty simply to go along with the
12 majority?

13 A No.

14 MR. ARIAIL: Objection. State versus hill.

15 THE COURT: Overruled. Go ahead.

16 A No, I wouldn't change my views just depending upon
17 the pressure of the fellow jurors.

18 Q And if you were in the majority and a smaller number
19 felt differently about the appropriate penalty, would you
20 respect their decision concerning their penalty?

21 A Probably. Yes, sir.

22 THE COURT: Solicitor, you don't have any questions
23 of this juror, do you? Or do you?

24 MR. ARIAIL: I don't have any questions, just want to
25 introduce myself.

1 BY MR. ARIAIL:

2 Q I'm Bob Airial, solicitor representing the state.
3 This is my assistant, Mr. Mark Moyer, and deputy
4 solicitor, Betty Strom.

5 THE COURT: Any motions?

6 MR. NETTLES: None, Your Honor.

7 THE COURT: Mr. Holmstrand, you are going to be a
8 part of a panel of probably 43. From that panel of 43
9 we're going to choose the jurors. The bailiff is going to
10 give you a slip of paper. On that slip of paper is a
11 phone number. Call that number after 8:00, there will be
12 a message for you, call back tomorrow night, or report at
13 a certain time. Just follow those instructions. Okay?

14 PROSPECTIVE JUROR: Call that number tonight or
15 tomorrow?

16 THE COURT: Yeah, after 8:00 Tonight. There will be
17 a message. The message may say call back tomorrow night,
18 or the message may say, be here tomorrow at 3:00 or be
19 here Thursday at 10:00. Just follow the instructions.
20 Okay?

21 PROSPECTIVE JUROR: Okay, I will.

22 THE COURT: Thank you so very much.

23 (Prospective juror Holmstrand excused.)

24 THE COURT: Bring in Mrs. Pountney, please.

25 (Prospective Juror Pountney, enters courtroom.)

1 Is it Mrs. Pountney?

2 PROSPECTIVE JUROR: Pountney, yes.

3 THE COURT: Will you raise your right hand?

4 Jaqueline Pountney, (white female) after being
5 duly sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q We're going to ask you some questions. Okay?

9 A Okay.

10 Q I'm going to ask you to answer these questions as
11 truthfully as you can. If you don't understand, please
12 tell us you don't understand and we'll try to rephrase the
13 question. Can you do that?

14 A Yes.

15 Q And there's no right or wrong as answer to the
16 question, they're just questions to try to determine your
17 viewpoints on various issues.

18 A Okay.

19 Q Do you have any physical or mental problems that
20 would prevent you from sitting on this jury?

21 A No.

22 Q You have any personal hardships that would prevent
23 you from sitting on this jury?

24 A No.

25 Q You filled out this questionnaire?

1 A Yes.

2 Q Is the questionnaire accurate --

3 A Yes.

4 Q -- to the best of your understanding?

5 A Yes.

6 Q Are there any changes you would like to make to the
7 questionnaire?

8 A No.

9 Q I want to hand you a copy of the questionnaire. Will
10 you turn to the next to the last page please, ma'am? I'm
11 specifically referring to question number 64. Did you
12 find question 64?

13 A Right.

14 Q All right. The question saying "Briefly describe
15 your attitudes and beliefs concerning capital punishment,
16 i.e. the death penalty." You did not answer that
17 Question. Can you tell me verbally your attitudes and
18 beliefs concerning capital punishment?

19 A I believe capital punishment should be used fitting
20 the crime. I believe that it, if the crime says we should
21 use capital punishment, you know, we should use it.

22 Q Okay. All right. Let me ask you, question number 65
23 says, "What is your opinion about the death penalty?" You
24 did not answer that. And the choices, strongly favor,
25 somewhat oppose, somewhat favor, and strongly oppose.

1 A I favor the death penalty.

2 Q You strongly favor or somewhat favor?

3 A Somewhat favor.

4 Q As to question number 68 you state, "I believe the
5 death penalty is the appropriate form of punishment" --
6 sorry, you with me? Question 68?

7 A Okay.

8 Q Question 68, "with reference to the death penalty,
9 which of the following statements would best represent
10 your opinion?"

11 "I believe death penalty is the appropriate form of
12 punishment in some murder cases and I could return a
13 verdict of death if I felt it was warranted, depending
14 upon the evidence and the law and what I learned about the
15 defendant." Is that still your belief today?

16 A Yes.

17 Q All right. If you'll just hold on to that a few
18 minutes please, ma'am.

19 Have you -- this alleged crime occurred on September
20 3, 2003, at a local Bi-Lo here in Greenville. The
21 defendant is Charles Christopher Williams and he is
22 charged with murder and kidnapping. Have you read
23 anything on in the newspaper, heard anything on TV, radio,
24 or heard anyone talking about this case?

25 A I saw something in the paper just recently. The

1 minute I saw, I looked at my summons and I put the paper
2 away.

3 Q Do you remember when it came out on the television
4 and in the newspaper back when it occurred back in
5 September of '03?

6 A No, I don't.

7 Q And you heard nobody talking about the case since?
8 Either here or anyplace?

9 A No, I purposely didn't want to hear anything about
10 it.

11 Q Do you know the victim, Maranda Williams?

12 A No.

13 Q Do you know the defendant, Charles Christopher
14 Williams, who sits --

15 A No.

16 Q -- in the courtroom to my right?

17 A No, I don't.

18 Q Do you know any of the attorneys sitting with the
19 defendant --

20 A No, I don't know anybody here.

21 Q -- to your left? Or in front of you is the solicitor
22 and his assistants. Do you know anybody in the
23 solicitor's office?

24 A No.

25 Q Do you have Any personal relationship with anybody in

1 the solicitor's office?

2 A No.

3 Q I'm going to hand you a list of witnesses. Would you
4 look at those names and see if you recognize any of those
5 names.

6 A (complies.) No.

7 Q Okay. Thank you, ma'am.

8 A I've only been here a little over a year. I know
9 nobody.

10 Q I'm going to give you a second list. Would you look
11 at those and tell me if you recognize any of those.

12 A (complies.) No.

13 Q Okay. Thank you very much. I'm going to read you a
14 question and ask you to respond to the question. Okay?

15 A Okay.

16 Q In this case the defendant is black and the victim is
17 white. It's undisputed that the black defendant and white
18 victim engaged in interracial dating. Would the fact the
19 victim and the defendant engaged in interracial dating
20 make it difficult for you to be fair to either the state
21 or the defendant?

22 A No.

23 Q All right. "I've previously gone into your
24 questionnaire and asked you some questions about your
25 viewpoint on the death penalty. I'm Going to try to

1 explain to you briefly the process we are involved in.
2 The defendant, as I said earlier, is charged with murder
3 and kidnapping. It's the state's responsibility to prove
4 the defendant guilty beyond a reasonable doubt.

5 And we will have a trial. And in that trial the
6 state will produce evidence as to the defendant's
7 innocence or guilt. All 12 jurors would have to agree the
8 defendant is guilty before he is found guilty. The
9 defendant never has to prove himself innocent. Do you
10 understand?

11 A Yes.

12 Q Now, let's assume that the defendant is found
13 innocent of the murder and kidnapping, then the trial
14 would be over. And it's commonly referred to as the first
15 phase or the first trial, whatever terminology you want to
16 place on it. If he was found innocent, the trial would be
17 over.

18 Let's assume the defendant is found guilty of murder
19 but innocent of kidnapping. The trial would be over.
20 Let's assume he's found guilty of murder and kidnapping,
21 you would go to the second phase. Do you understand?

22 A Yes.

23 Q In the second phase, the purpose of that phase would
24 be for the jury to determine the penalty, and the penalty
25 choices would be death and life without parole. It's up

1 to the jury to make that decision. Do you understand?

2 A Yes.

3 Q And when I say life without parole, I mean the
4 defendant will die in jail. Do you understand?

5 A Yes.

6 Q Now, the state's obligation in the second phase is to
7 prove beyond a reasonable doubt that there were
8 aggravating circumstances that required the defendant to
9 receive death. Do you understand?

10 A Uh-huh. Yes, I do.

11 Q But it's still the jury's responsibility to decide
12 whether it's life or death. Even if the state does prove
13 beyond a reasonable doubt the aggravating circumstances,
14 the jury still does not have to give death. Do you
15 understand?

16 A Yes.

17 Q They can still choose to give life without parole, do
18 you understand?

19 A Yes.

20 Q It's strictly within the jury's prerogative --

21 A Yes.

22 Q -- do you understand? All right. In that second
23 phase, the defendant may offer some mitigating
24 circumstances. And what I mean by mitigating
25 circumstances, I mean that the defendant will offer

1 certain testimony and certain evidence to show why he
2 should receive life rather than death. Do you understand?

3 A Yes.

4 Q Now, before you make your decision on life or death,
5 would you consider the mitigating circumstances?

6 A Yes.

7 Q All right. In that second phase you can consider all
8 the circumstances in the first phase plus whatever is
9 offered into evidence and admitted into evidence in the
10 second phase. Do you understand?

11 A Yes.

12 Q Do you think you could be fair and impartial to the
13 state and the defendant?

14 A Yes.

15 Q Can you base your decision on the testimony you hear
16 from the witness stand in the courtroom?

17 A Yes.

18 Q Do you know of any personal reasons why you could not
19 serve on this jury?

20 A No.

21 Q Whose turn? Solicitor?

22 MR. ARIAIL: Your Honor, could we take a matter up
23 before I start questioning her?

24 THE COURT: Yes, sir. Do you want to excuse the
25 juror?

1 MR. ARIAIL: Please.

2 THE COURT: Miss Pountney, would you step out?

3 (the following proceedings are had outside the
4 presence of the juror:)

5 MR. ARIAIL: She has completed on her form about a
6 conviction in 1968.

7 THE COURT: I forgot to ask her about that. I'll ask
8 her.

9 MR. ARIAIL: We can't make a decision whether or not
10 it's a disqualifying crime because all she received is
11 three weekends in jail, 1966.

12 THE COURT: Sorry. I saw that and I meant to ask her
13 about that, unless you want to ask her.

14 MR. ARIAIL: No, I don't want to. You need a copy of
15 this?

16 THE COURT: What question was it? I'm trying to find
17 it.

18 MR. ARIAIL: Forty-eight.

19 THE COURT: I'll ask her. I'm sorry. I had that
20 circled and just missed it. Anything else before we bring
21 the juror back?

22 MR. ARIAIL: None from us.

23 THE COURT: All right. Would you bring the juror
24 back? Anything from the defendant? Mr. Mauldin, you got
25 anything before we --

1 MS. COYLE: No, Your Honor.

2 THE COURT: Thank you very much.

3 (Prospective juror returns.)

4 BY THE COURT:

5 Q I want to ask you a couple more questions. Do you
6 have your questionnaire?

7 A Yes, I do.

8 Q Would you turn to question 33.

9 A Yes.

10 Q You've apparently been in state court and federal
11 court on three occasions; is that correct?

12 A Yes.

13 Q And one was a civil action, and the other was a
14 criminal action. Is that correct?

15 A Yes.

16 Q And apparently the jury found the defendant guilty on
17 the criminal action. Is that correct?

18 A Yes.

19 Q How long ago was that?

20 A Probably a good 20 years ago.

21 Q Okay.

22 A It was in California.

23 Q You have any bias or prejudice as a result of
24 undergoing that process or being involved in that process?

25 A No.

1 Q All right. If you would flip over to page seven,
2 question 49 -- 48, excuse me.

3 It Says, "have you or a family member ever been
4 charged with a crime?"

5 You got, "oldest son, drugs." You have, "self" --
6 I'm not sure -- and you say, "theft '68, weekend time."
7 Was that you or your son?

8 A Myself when I was 21 years old. I got -- when I was
9 21, I got caught shoplifting at a K-Mart. I spent three
10 weekends in jail.

11 Q And your son?

12 A My oldest son is a problem child. He's 40 now. And
13 he served -- he's been in prison for drugs and he's out.
14 He's off probation, off of everything now. Hopefully,
15 he's cleaned his act up. But he's in California.

16 Q Have you ever been found guilty of shoplifting? One
17 time?

18 A Yes. Oh, yes. That was enough.

19 Q You Learned your lesson?

20 A Oh, yes.

21 Q Thank you very much. Whose turn?

22 BY MR. ARIAIL:

23 Q Is it Pounteney? (phonetic.)

24 A Pounetney is fine.

25 Q What's correct?

1 A Pountney.

2 Q Pountney. Miss Pountney, my name is Bob Ariail, and
3 I'm the solicitor for the 13th circuit in South
4 Carolina. That means, if you watch TV, I'm the district
5 attorney; along with my deputy, Betty Strom, and also Mark
6 Moyer, one of my assistants, we will be representing the
7 state in this case. And the judge is going to explain how
8 the system in this state works, having a bifurcated trial
9 dealing with the guilty or sentencing; and a second phase
10 dealing with the issue of what the appropriate punishment
11 is.

12 Because South Carolina law is if the state seeks the
13 death penalty, and the state can only seek it in very
14 limited circumstance, but those limited circumstance where
15 the state does seek the death penalty, the sentencing is
16 not with the judge, but with the jury. So, the jury has
17 to hear the evidence. Now, they have the evidence of
18 guilt. They make that decision and then they would move
19 to the area of sentencing.

20 As the judge told you, in the sentencing phase there
21 are a number of pieces of evidence that potentially could
22 come in addition to what came in the guilty phase. And a
23 juror, to be a qualified and a fair and impartial juror
24 for the penalty phase, must enter that phase with no
25 preconceptions. What that means is you're going to owe --

1 a fair juror in a hypothetical case of this nature would
2 be somebody who would be open minded to the imposition of
3 one or both of the penalties, life or death.

4 And by that, the judge will also instruct you, you
5 cannot have a preconception. Even though you convicted a
6 defendant of murder, even though this murder may have been
7 described as a heinous murder, premeditated murder, which
8 under our law, in South Carolina all murder has to be with
9 malice, accompanied by malice; and it has to have some
10 intention. Under those circumstances you would be
11 deciding the fate, the sentence of the individual you had
12 already convicted.

13 Now, could you truly and honestly consider, fairly,
14 giving both a life imprisonment sentence and/or a death
15 sentence based on the information presented to you?

16 A Yes, I could.

17 Q Do you believe you would have any difficulty
18 listening to all that evidence before making up your mind?

19 A No problem at all.

20 Q And do you believe that you would be able to
21 participate in a give and take discussion within the jury
22 room?

23 A Yes, I could.

24 Q Do you know of any reason that would prohibit you
25 from doing that?

1 A No.

2 Q And if the final decision of the jury, after going
3 through that process, was all 12 voted that the death
4 penalty was the appropriate sentence, the law would
5 require and the judge would instruct you, you would have
6 to sign a document with your individual name where all 12
7 jurors are listed, reporting that verdict back to the
8 court.

9 Under those circumstances would you have any
10 difficulty signing the document; that is, putting your
11 name on it?

12 A No.

13 Q Thank you.

14 THE COURT: Does the defendant have any questions?

15 MS. COYLE: We do, Your Honor.

16 THE COURT: Yes, ma'am, Miss Coyle.

17 BY MS. COYLE:

18 Q Good morning, Miss Pountney.

19 A Good morning.

20 Q How you doing? My name is Colleen Coyle. I'm
21 working with Mr. Mauldin and Mr. Nettles in representing
22 Chris Williams, the defendant. On your questionnaire for
23 question 64 you told the judge that you believed that the
24 death penalty should be used fitting the crime?

25 A Fitting the crime, yes.

1 Q Can you explain that to me, please?

2 A Well, there are some cases where a person maybe takes
3 a life that is not premeditated or it's not planned; yet,
4 they're guilty of taking a life. But they don't deserve
5 death for taking that life. They might go to jail or
6 prison, but not deserve to die for it.

7 Q Do you believe that if the person premeditated a
8 murder and intended to do it, that they deserve to die for
9 it?

10 A Depends on how heinous the crime is.

11 Q What types of circumstances would make it heinous
12 enough for you to believe the death penalty would be
13 warranted?

14 MR. ARIAIL: Objection.

15 THE COURT: I'll sustain the objection.

16 Q If there were aggravating factors in that scenario
17 for premeditated murder, would that be something that
18 would cause you to conclude that the death penalty would
19 be warranted in every situation?

20 A Well, is it torture, what? I don't know.

21 Q What if it was torture?

22 MR. ARIAIL: Objection, Your Honor, on the specific

23 --

24 THE COURT: But she --

25 PROSPECTIVE JUROR: Torture.

1 THE COURT: Hold on a second. She made that comment,
2 she's just following up on it. Overruled. The defendant
3 didn't initiate that comment.

4 A Torture is terrible.

5 Q How do you define torture?

6 A Pain.

7 Q Physical pain?

8 A Yes.

9 Q Emotional pain?

10 A Sometimes.

11 Q I asked you the question about death. What I mean is
12 it's not an accident, there is -- the defendant knows what
13 they're doing, they understand what they're doing is
14 wrong; but, yet, they kill somebody.

15 THE COURT: Miss Coyle, let me ask you this. Can you
16 explain to her what murder is in South Carolina? First,
17 of all, I want to say this. Ms. Pountney, in order for
18 someone to be found guilty of murder in South Carolina, it
19 is always premeditated.

20 If you would expound upon that. You asked her the
21 questions, she doesn't really understand what murder is.
22 Try to explain that first, if you would please.

23 Q Murder is not a mistake or accident. It is defined
24 as a heart devoid of all social duty, fatally bent on
25 mischief. So, it's not an accident. In that situation do

1 you believe every defendant guilty of murder should be
2 sentenced to death?

3 A It just depends on the circumstances, I believe. And
4 it would depend on the crime, I guess. You would have to
5 know what's going on.

6 Q And would you be able -- what is your opinion on
7 mental illness?

8 A I'm not a doctor.

9 Q Do you have any family members that suffer from a
10 mental illness?

11 A No.

12 Q Do you have any friends or neighbors that suffer from
13 a mental illness?

14 A No.

15 Q Do you know anyone that suffers from a mental
16 illness?

17 A No.

18 Q There are factors in considering the death penalty
19 that are in aggravation and factors that are in
20 mitigation. Would you be able to fairly consider a mental
21 illness and give it serious consideration in deciding
22 whether or not to inflict the death penalty on the
23 defendant?

24 MR. ARIAIL: Same objection.

25 THE COURT: Overruled.

1 A You would have to listen to what the doctors have to
2 say or the people have to say on the subject, then you
3 would know how to judge what they say.

4 Q So, would you be able to give it meaningful
5 consideration in your deliberation as to whether or not to
6 impose a death penalty or penalty of life without parole?

7 A Yes, depending on what they say.

8 Q And would you be able to consider -- give meaningful
9 consideration to a defendant's upbringing in determining
10 whether or not to impose the death penalty or life without
11 parole?

12 MR. ARIAIL: Same objection under State versus
13 Powers.

14 THE COURT: I'll sustain the objection on that.

15 Q You said that, I believe you told the solicitor that
16 if the facts warranted it, you could sign the paper
17 imposing the death penalty. Let me ask you a slightly
18 different question.

19 If you were in the majority of the people in the
20 jury -- say there were ten people in the jury who decided
21 they could sign that paper and would impose the death
22 penalty, and there were a few people against the death
23 penalty and wanted to impose life; would you be able to
24 respect the opinions of the minority in that situation?

25 A We have -- we'd have to talk about it and respect

1 each others opinions, yes.

2 Q Okay.

3 MS. COYLE: Thank you.

4 THE COURT: Thank you, Miss Coyle.

5 Any motions from either party?

6 MR. ARIAIL: None from the state.

7 THE COURT: Any from the defendant?

8 MS. COYLE: No.

9 THE COURT: All right. Mrs. Pountney, we're going to
10 draw a panel of 43 jurors. From that panel we're going to
11 choose 12 jurors and four alternates. You are part of
12 that panel of 43. Don't read anything about this case,
13 watch anything on TV or don't talk to anyone about the
14 case.

15 The bailiff is going to give you a little sheet of
16 paper. On that sheet of paper is a phone number. Call
17 that phone number after 8:00, there will be an instruction
18 for you. The instruction may be to call back tomorrow
19 night, the instruction may be, be here Thursday morning at
20 10:00. Follow those instructions. Okay?

21 A Thank you.

22 THE COURT: Thank you very much.

23 (prospective juror Pountney excused.)

24 Bring us Mr. Ellenburg, please.

25 (Prospective Juror Phillip Ellenburg enters

1 courtroom.)

2 Phillip Ellenburg, (white male)
3 after being duly sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q How you doing?

7 A Fine, sir. How are you?

8 Q All right. Mr. Ellenburg, you filled out this
9 questionnaire a while back. Do you remember?

10 A Yes, sir.

11 Q Is that questionnaire accurate?

12 A Yes, sir.

13 Q Any changes you would like to make to it?

14 A No, sir.

15 Q All right. If you would take your questionnaire
16 please, sir. I'm going to ask you some questions and then
17 I'm going to tell you there's no right or wrong answer,
18 just answer the questions the best that you can. And
19 prior to the questions there will be some explanations
20 what's going on and the law in South Carolina. Okay?

21 A All right.

22 Q If you don't know the questions, or don't understand
23 the question, please tell us. We'll try to rephrase it.

24 I'm going to ask you some questions and I'm sure the
25 attorneys will be asking you some questions. Do you

1 understand?

2 A Yes, sir.

3 Q The first thing I would like to ask you, if you would
4 turn to paragraph -- page ten, question number 64. Do you
5 see question 64? "Briefly describe your attitudes and
6 beliefs concerning capital punishment."

7 You say, "in favor of," then you have something
8 scratched out, and it says, "When guilt can be proven."
9 Guilt can be proven?

10 A Yes, sir.

11 Q What is your position about the death penalty? You
12 say, "strongly favor." Is that still your opinion today?

13 A Yes, sir.

14 Q All right. Now, before we get to question 68, I want
15 to explain something to you. In South Carolina -- let's
16 just talk about this case first. The defendant in this
17 case is charged with murder and kidnapping. Okay? And
18 this occurred on September 3rd of 2003 at a Bi-Lo here
19 locally. Before I get to that, have you heard anything
20 about the case, read anything about the case, or heard
21 anybody talking about the case?

22 A Since I received this?

23 Q No, prior.

24 A Prior, yes.

25 Q Any time.

1 A Yes.

2 Q What have you read or seen?

3 A I remember the news reports when it first came on,
4 things of that nature. Just general.

5 Q Specifically what do you remember about what you saw
6 in the news reports?

7 A My recollection there was some type of relationship,
8 I believe, some boyfriend-girlfriend type of relationship
9 and that that relationship had been broken off. That was
10 my recollection.

11 Q As a result of that, have you formed or expressed an
12 opinion as to the defendant's innocence or guilt?

13 A As a result of that, no, sir.

14 Q In South Carolina a defendant is never guilty until
15 the state has proven the defendant guilty beyond a
16 reasonable doubt. Okay?

17 A Yes, sir.

18 Q Now, in the process we're undergoing there will be
19 two phases. There will be a first phase concerning --
20 first phase concerning the defendant's innocence or guilt
21 on murder and kidnapping. The state would be required to
22 prove the defendant guilty beyond a reasonable doubt. All
23 12 jurors would have to agree that the defendant was --
24 the state has proven the defendant guilty beyond a
25 reasonable doubt.

1 Now, murder in South Carolina is premeditated. Okay?
2 It's intentional. The state would have to prove that to
3 the satisfaction of the jury. Do you understand?

4 A Yes, sir.

5 Q All right. In the second phase of the trial -- but
6 before I get to that, let's assume that the jury found the
7 defendant innocent of murder and kidnapping, then the case
8 would be over. Let's assume that the jury found the
9 defendant guilty of murder and innocent of kidnapping,
10 then the case would be over.

11 Let's assume that the jury found the defendant guilty
12 of murder and kidnapping, and then we would go to the
13 second phase, which is the penalty phase. And in that
14 phase the jury decides whether the defendant is guilty --
15 excuse me, not guilty, should receive life without parole
16 or death. When I say life without parole, I mean what it
17 says, he will die in jail. Do you understand?

18 A Yes.

19 Q He will not be eligible for parole. It's the jury's
20 prerogative, that's the jury's decision to state death or
21 life. Do you understand?

22 A Yes.

23 Q Now, in the second phase you would consider
24 everything that occurred on the first phase. The jury had
25 already found him guilty of premeditated intentional

1 murder, do you understand?

2 A Yes, sir.

3 Q And kidnapping.

4 A Right.

5 Q In the second phase the state would be required to
6 prove certain aggravating circumstances beyond a
7 reasonable doubt to the jury's satisfaction beyond a
8 reasonable doubt, do you understand?

9 A Yes.

10 Q Even if the jury should find that the state did prove
11 the aggravating circumstances beyond a reasonable doubt,
12 the jury still is not obligated to give death, the jury
13 can still give life without parole. Do you understand?

14 A Yes.

15 Q In that phase the defendant generally offers what we
16 refer to as mitigating circumstances. Now, mitigating
17 circumstances -- excuse me, those mitigating circumstances
18 are things that the defendant thinks and reasons that the
19 defendant should not receive death but should receive
20 life. Okay?

21 A Yes, sir.

22 Q Now, you have put in your answer to question 68 where
23 you state -- you have question 68?

24 A Yes, sir.

25 Q Where you state, "I believe the death penalty is the

1 appropriate form of punishment in all murder cases." Now,
2 the process I just explained to you in the penalty phase
3 you already found him guilty of murder, I've already
4 explained to you the aggravating circumstances, the
5 state's responsibility and the mitigating circumstances.

6 Now, understanding the law, as I have explained it to
7 you, would you consider any mitigating factors,
8 aggravating factors, and before you reach a decision of
9 death? Or would you automatically, as you say in question
10 seven, give the death penalty?

11 A Under the law, would be required to give mitigating
12 circumstances --

13 Q I understand, but under your beliefs can you set that
14 aside and base your decision on the death penalty --

15 A Yes, sir.

16 Q Because your beliefs are real strong?

17 A Yes, sir, they are; but, yes, sir, I could. If I saw
18 the circumstances to lead me to believe that he should
19 receive life, that's the way I would vote.

20 Q The question is, would you consider everything in the
21 second phase before you say, hey, this guy is going to get
22 death?

23 A Yes, sir. As strongly as I favor the death penalty,
24 it is not something that I take lightly. It is my strong
25 respect for life that I wish to protect life.

1 Q Let me ask you this. You, as a pastor -- you've
2 probably been a pastor quite a few years at Alton
3 Presbyterian -- Baptist Church?

4 A Alton Baptist Church. And currently at the First
5 Baptist Church in Greer.

6 Q Why are your opinions and viewpoints so strong for
7 the death penalty. Why?

8 A As I said, I value life and I honestly believe that
9 the scriptures teach when someone's life is taken by
10 murder, the murderer can be and at times should be put to
11 death himself, to protect the society as a whole.

12 Q So, it has biblical background?

13 A Yeah.

14 Q I'm not in a position to debate that with you, but I
15 know some people would.

16 A Some people would.

17 Q I'm not asking that question to do that, I just want
18 to hear your viewpoints.

19 THE COURT: Whose turn on this issue? Not the entire
20 ball game, just the issue on the death penalty.

21 BY MR. NETTLES:

22 Q Is it reverend?

23 A Yes, sir.

24 Q Reverend, when I look at question 68, I see that you
25 had originally marked number two?

1 A Yes, sir.

2 Q And scratched that out?

3 A Yes, sir.

4 Q And then marked number one?

5 A Yes, sir.

6 Q And my question, so, I mean you give some thought to
7 it?

8 A Yes, sir.

9 Q And as the judge has said there is some healthy
10 debate within the religious community about the position
11 of the death penalty and how it relates to scriptures?

12 A Yes, sir.

13 Q You would agree with me there's a healthy debate?

14 A Yes, sir.

15 Q And you believe you have come down that in cases of
16 murder, as the judge said, premeditated murder, that meant
17 to do it, that the appropriate punishment is death?

18 A Yes, sir.

19 Q Because that's what number one says. If it's a
20 murder and you're sure he did it, the appropriate
21 punishment is death, right?

22 A Yes, sir.

23 Q And you came to -- and that belief was founded before
24 you came in here and we talked to you about the law?

25 A Yes.

1 Q And your belief on that is when you mark number,
2 marked number one, was because of, I'm guessing, your
3 profound religious faith?

4 A Yes.

5 Q And I can see from reading your juror questionnaire,
6 this is something that's very pervasive in your life, your
7 religion is a big part of your life, right?

8 A It is my life.

9 Q And so, the question that we've got is, is that if
10 you were back in a jury room and there was a conflict
11 between the law, man's law and what you perceive to be
12 God's law, you would yield to God's law?

13 A Yes, sir.

14 Q Okay. So, and that's because of your faith?

15 A Yes, sir.

16 Q And because of your faith, you would -- while you
17 would give consideration to man's law; but if you decided
18 man's law inconsistent with God's law?

19 THE COURT: Mr. Nettles, let me say one thing. Don't
20 misquote what he said. He said he believed under certain
21 circumstances with his religious beliefs, should put
22 someone to death for protection of others. He said
23 certain circumstances is what he said.

24 MR. NETTLES: I understand.

25 THE COURT: Don't misquote him. Okay?

1 BY MR. NETTLES:

2 Q Apologize if I misquoted, but whatever situation --
 3 my point, though, was, was that even if -- I guess my
 4 point was this. While you would give meaningful
 5 consideration to the law, in a conflict -- I mean, you're
 6 going to give it meaningful consideration and you're
 7 aware, cognisant of man's law; but in a conflict you're
 8 going to go to God's law.

9 A If there was a conflict.

10 Q Right.

11 A If there was a conflict, Yes, sir, I would.

12 Q All right. Okay. I need to check with the people at
 13 my table. I think that may be all on that issue.

14 THE COURT: On that issue. We're not going into any
 15 other issues. Solicitor?

16 BY MR. ARIAIL:

17 Q Reverend Ellenburg, my name is Bob Airial. I'm the
 18 solicitor representing the state in this case.

19 As the judge asked you, and I have a different take
 20 on the questions, I don't want to be repetitive, but I
 21 heard a different answer, totally different answer. I
 22 heard you say, correct me if I'm wrong, but I heard you
 23 say that, number one, I believe the death penalty is the
 24 appropriate form of punishment in all murder cases; that
 25 is, all murder cases, it is an appropriate form of

1 punishment but it is not the only one?

2 A Correct.

3 Q What you're saying, when you said to the judge -- and
4 I wrote it down -- you said that death could be the
5 appropriate punishment, but not always the only
6 punishment?

7 A Yes.

8 Q Is that a fair statement?

9 A Yes, sir.

10 Q That if you were on the jury, and we're not getting
11 into faith versus --

12 MR. NETTLES: I object, Your Honor. I believe all
13 we're supposed to be voir diring on --

14 THE COURT: I think he asked him faith versus law,
15 you asked him that question. I think that's where he's
16 going.

17 MR. NETTLES: If that's where he's going --

18 THE COURT: You asked if there had been a conflict
19 between God's law and man's law.

20 MR. NETTLES: What he said, I'm not talking about
21 faith versus, I'm talking about --

22 THE COURT: Let me hear the question. I haven't
23 heard the entire question first, then I'll listen to your
24 objection. Solicitor, rephrase the question. Let me hear
25 the full question before he objects.

1 MR. ARIAIL: My question, when I form it, not to be a
2 discussion of your faith versus law, the question is
3 whether you, as a juror, under the law as the judge has
4 explained it, are going to be significantly impaired in
5 your ability to be a fair and impartial juror in
6 considering both sentences simply because of your beliefs
7 as you state?

8 THE COURT: Reverend, hold on just a second. Do you
9 have an objection?

10 MR. NETTLES: No.

11 THE COURT: Thank you. Reverend.

12 PROSPECTIVE JUROR: Now, if I can remember the
13 question.

14 THE COURT: Do you want it read back to you?

15 PROSPECTIVE JUROR: No, I can -- I think it's my
16 obligation as a Christian, as a pastor, to be fair and
17 objective and consider every aspect given. Because I am
18 accountable first and foremost to God, but also to man as
19 well, and I think I would have to be, give that as much
20 consideration.

21 I honestly don't see where there is a great conflict
22 between God's law and man's law right here. If I could
23 see where man's law would require life in prison, I would
24 have no problem giving that.

25 MR. ARIAIL: Thank you, sir.

1 THE COURT: Reverend Ellenburg, would you step out in
2 the hall just a second, please, sir.

3 PROSPECTIVE JUROR: Yes, sir.

4 (outside presence of the juror.)

5 THE COURT: Let me hear you. I assume you have a
6 motion?

7 MR. NETTLES: There is a way his faith could bump up
8 against -- he doesn't know the law that well. It's not
9 hard to imagine, he said he felt like -- and this is in
10 response to your question. If he felt like he had to do
11 it to protect society, there's only one punishment. Only
12 one punishment and that's based on God's law. You know
13 adaptability to prison is a big issue. In this case
14 that's what he's going to feel.

15 Secondly, I would point out the point that the most
16 important -- he answered the one on our questionnaire,
17 he'd give death all the time. On the questionnaire he
18 marked out number one and circled number two. I know he
19 would like to think about it, but he's very clear in this
20 case because of his religious beliefs, and he told me that
21 he would disregard -- he would have to disregard our law
22 if it bumped up against his law. And it's not hard to
23 imagine.

24 THE COURT: If there was a conflict; he also said he
25 didn't see any conflict in this situation between man's

1 law and God's law. He made that comment just before he
2 left.

3 MR. NETTLES: I understand that. But he doesn't know
4 what you know. He doesn't, just because he doesn't see.
5 But based on the limited information he's got, he
6 doesn't -- of course he doesn't have any information --
7 he's got no facts. But what he said was that, in response
8 to your question, was that if he felt like he had to do it
9 to protect society, God's law required giving the death
10 penalty.

11 THE COURT: He said under certain circumstances. He
12 may not have used the word "circumstances," but he said
13 under certain facts he would go with the death penalty to
14 protect society. In essence, what he said --

15 MR. NETTLES: The problem is because of his religious
16 beliefs, he disregards the law.

17 THE COURT: I understand. That's why I'm trying to
18 decide --

19 MR. NETTLES: That's the problem, which is not to say
20 he's a rule breaker, just to say he's a profoundly
21 religious man.

22 THE COURT: Anything else? He's already made his
23 argument.

24 Solicitor, let me hear you. The only thing that the
25 court's concerned with was, based on their argument, is

1 where he said, yes, if he found a conflict between God's
2 law and man's law, he would not follow the instructions in
3 essence of what the court give him.

4 MR. ARIAIL: I don't think he said he wouldn't follow
5 the instructions. I think the way the question was
6 phrased --

7 THE COURT: That's my concern.

8 MR. ARIAIL: What I heard him saying was the same, I
9 think, the same thing you're going to hear a lot of jurors
10 say when you ask them. When they're put into this
11 situation and they're asked to make this decision and
12 they're in a conflict, there are going to be a lot of them
13 that are going to be praying to a higher deity for Gods.
14 I think that's all he's saying. Because I think that's
15 what every Christian person on this jury is going to do if
16 you talked to them after a case is over. That becomes a
17 huge, huge part of deliberations.

18 THE COURT: I know this is not the average man off
19 the streets. He's made a conscious decision to say, "Hey,
20 the bible supports capital punishment through his learned
21 education and his reading of the scriptures and his
22 opinion." So, he's not the average man off the street,
23 solicitor.

24 MR. ARIAIL: I would disagree with that. Because I
25 think the founding fathers of this country and the

1 derivation of the death penalty is biblically based
2 throughout this entire country. It didn't come out of
3 thin air somewhere. It came from the founders who believe
4 --

5 THE COURT: Not trying to solicit that argument. I
6 know somebody on the other side will argue just as
7 effective against that. My point, he's not a man off the
8 streets who is not extremely familiar with the bible and
9 biblical findings. That's all I'm saying, not trying to
10 make that issue with you.

11 MR. ARIAIL: Last comment was, I had, this not first
12 he said death could be the appropriate punishment. Then
13 he said he talked about time, should be put to death. At
14 the end he said if man's law said I was to give life, then
15 I would. So, he's saying that he is going -- because I
16 think we're overreaching here a little bit in what he's
17 saying. He's pro life. This man is pro life. He's
18 sitting there telling you, I don't know many ministers who
19 aren't pro life. I know a lot of people heavily into
20 accountability. This man is saving lives what his
21 business is, why he was called into ministry.

22 THE COURT: Saving lives or souls?

23 MR. ARIAIL: Saving lives and saving souls, I think
24 they go together. I think that's what he said, "I am pro
25 life. And if I felt that the life sentence was

1 appropriate, I could definitely go that way.

2 THE COURT: Mr. Nettles, very briefly rebuttal.

3 MR. NETTLES: Very briefly, under which he's clearly
4 substantially --

5 THE COURT: Put in Mr. Mauldin's argument, please.

6 MR. NETTLES: It doesn't do quite the same justice
7 coming from me. Supposed to say -- I got it written down
8 here, he's got it written down here. "I would want to
9 have evidence to support life," which is burden shifting
10 evidence. He got, as a result -- as a result of his firm
11 religious convictions and obviously that he would yield to
12 God's law, And that --

13 MR. MAULDIN: You going to let me speak, judge?

14 THE COURT: No, just tell him what you want said.
15 It's his witness.

16 MR. NETTLES: And the last thing is he said he would
17 give life if the law required it. And the law doesn't
18 require it. So, I mean he is clearly substantially
19 impaired both -- on all those levels.

20 THE COURT: All right. It's 1:20, can everybody be
21 back at 2:00? Does that give you enough time to grab
22 something to eat, say 2:15? I'm going to bring him back
23 at 2:15. Think about it over lunch. I'll give you a
24 ruling at 2:15. And we'll continue with the jurors.

25 Judy, will you tell the jurors to be back at 2:15,

1 including Mr. Ellenburg.

2 All right. We'll adjourn until 2:15. All right.

3 We'll adjourn until 2:15.

4 (whereupon, the proceedings are adjourned at 1:25
5 p.m. for the luncheon recess.)

6 Afternoon Session.

7 (WHEREUPON, the proceedings reconvened at 2:15 p.m.
8 when the following proceedings were had:)

9 THE COURT: Is everybody ready to proceed?

10 MR. ARIAIL: State's ready.

11 THE COURT: All right as far as the motion of the
12 defendant on Phillip D. Ellenburg, juror 108, I'm going to
13 deny that motion as to the death penalty. Will you bring
14 Mr. Ellenburg back, please, sir.

15 I'll allow any other questions that are required and
16 further qualification.

17 (prospective juror Ellenburg returns.)

18 BY THE COURT:

19 Q Mr. Ellenburg, I want to ask you some additional
20 questions, please, sir. Do you have any physical or
21 mental problems as to why you could not serve on this
22 jury?

23 A No, sir.

24 Q Do you have any personal problems that would prevent
25 you from serving on this jury?

1 A No, sir.

2 Q And we may have touched on this before lunch, do you
3 have any prior knowledge about the case based upon what
4 you've seen on TV, heard on the radio, heard on TV, or
5 people talking, other than what you've told?

6 A No.

7 Q Do you know the victim, Maranda Williams?

8 A No, sir.

9 Q Do you know the defendant, Charles Christopher
10 Williams, who sits in the courtroom to my right?

11 A No, sir.

12 Q Do you know any of the attorneys sitting next to the
13 defendant?

14 A No, sir.

15 Q On my left is the solicitor and part of his staff.
16 Do you know anybody in the solicitor's office?

17 A No, sir.

18 Q I'm going to give you a list of names. Would you
19 look at those names, see if there's any names you
20 recognize on that list?

21 A No, sir.

22 Q I'm going to give you a second list. Would you look
23 at that list and see if you recognize any names on that
24 list.

25 A No, sir.

1 Q Okay. Thank you, sir. I'm going to read you a
2 question and ask you to respond to the question. In this
3 case the defendant is black and the victim is white. It
4 is undisputed the black defendant and the white victim
5 engaged in interracial dating. Would the fact that the
6 defendant and the victim engaged in interracial dating
7 make it difficult for you to be fair to either the state
8 or the defendant?

9 A No, sir.

10 Q Can you listen to all the testimony from the witness
11 stand in this courtroom and base your decision on the
12 testimony?

13 A Yes, sir.

14 Q Can you be fair and impartial to both the state and
15 the defendant?

16 A I believe so. Yes, sir.

17 Q Do you have any personal reasons as to why you cannot
18 serve on this jury? I know you got on your
19 questionnaire -- let me cover that with you. You said it
20 would be difficult on your wife and small children.

21 A I have four small children, seven year old twins, a
22 five year old, and four year old. To be sequestered would
23 be difficult; but outside of that, No, sir.

24 Q Okay. All right. I forget who was going first.

25 MR. ARIAIL: Mr. Mauldin.

1 THE COURT: Mr. Nettles.

2 BY MR. NETTLES:

3 Q Hello, Reverend, we talk again.

4 A Yes, sir.

5 Q Let's talk for a second about question number --
6 let's go back to question number 64. Yeah, 64. It says,
7 "briefly describe your attitudes and beliefs concerning
8 the capital punishment or the death penalty." Do you
9 still have your questionnaire?

10 A No, sir.

11 THE COURT: Here it is.

12 Q Sixty-four, it's on page ten.

13 A Yes, sir.

14 Q And there you said you're in favor of when guilt can
15 be proven?

16 A Yes, sir.

17 Q Share with me what you mean by that.

18 A Beyond a reasonable doubt that, I guess, to maybe
19 answer some of the prior discussions that we were having,
20 I believe it is understandable in a capital case if the
21 prosecution goes after the death penalty. Not that that
22 always happens. I'm not a lawyer, so I understand that
23 there are times when that does not happen. The law does
24 not require it, call for it, or whatever.

25 Q Right.

1 A I understand that. But I am in favor of the death
2 penalty when it can be proven. I believe in the appeal
3 system. I believe that it should be appealed. I believe
4 we ought to make sure as best as we possibly can as humans
5 to be sure it is guilt beyond a reasonable doubt.

6 Q Okay. Well, let's talk about this then. I think
7 that's something that everybody, as much as some of us
8 --not so much you and me, but defense and the state
9 everybody agrees, let's just sort of start with, everyone
10 would agree that if someone who got sentenced to death and
11 it wasn't proven beyond a reasonable doubt, that that's
12 wrong. I mean everybody can agree with that.

13 And maybe it's not clear, but in a capital case there
14 are essentially two trials, the same jury but two trials
15 held at the same time basically. And If someone gets
16 picked to be on a jury, they're on both juries, both the
17 trial phase and the punishment phase.

18 A Right.

19 Q The way it works is that the people on that jury,
20 they decide whether the government has proven their case
21 beyond a reasonable doubt. And if they prove murder and
22 an aggravator -- in this case Chris is charged with murder
23 and kidnapping of the same person. They're saying that he
24 murdered and kidnapped the victim. And before you would
25 even go into the second phase, the first hurdle that would

1 have to be crossed was whether the person did it beyond a
2 reasonable doubt. Okay? If it was proven to your
3 satisfaction to a reasonable -- beyond a reasonable doubt,
4 okay, that the person did it. You say you're in favor of
5 the death penalty?

6 A Yes, sir.

7 Q I guess what I'm after is what does in favor of mean?

8 A That I believe that that is a plausible penalty to be
9 carried out.

10 Q Okay. When you where choosing those words, what
11 would be the difference -- if in favor means plausible,
12 what would be the difference between saying you're in
13 favor of death penalty and saying you're in favor of life
14 imprisonment without parole.

15 A I'm not sure I understand.

16 Q Okay.

17 A When I look at this question, "describe your
18 attitudes and beliefs concerning capital punishment and
19 death penalty, I guess that I believe that there should be
20 capital punishment. That's what I mean here, I believe
21 there should be. Not necessarily that -- each and every
22 case has to be taken individually.

23 Q So. You're saying each and every case does need to
24 be taken individually?

25 A Yes.

1 Q But I guess my question is this. If in favor of
2 means plausible, as you and I have discussed it, in favor
3 of means it's a plausible result or a plausible
4 punishment?

5 A Applicable.

6 Q Is life without the possibility of parole a plausible
7 punishment?

8 A Yes.

9 Q Why?

10 MR. ARIAIL: Your honor, I'm going to object to going
11 any further than this. We've been over this ground before
12 and the question has been asked and answered. I don't
13 think he's entitled to ask the juror why. It either is or
14 isn't, that's as far as we need to go. I would object.

15 THE COURT: Overruled. Go ahead.

16 A I guess we're going into hypotheticals and going back
17 to the mitigating circumstances that the judge was
18 describing earlier. You would just have to take, look at
19 the whole case. So, I couldn't say that it would be or
20 wouldn't be.

21 Q Do you consider it a -- do you consider it a
22 significant punishment?

23 A Life imprisonment?

24 Q Yes, without parole?

25 A Yes.

1 Q Do you accept that if the judge tells you that life
2 imprisonment without parole, it means exactly that, that
3 you don't get out, you die in prison?

4 A Yes, sir.

5 Q Okay. When, you said that when you look at the whole
6 thing, okay, what do you mean by look at the whole thing?

7 A I guess once you sit through the trial and you hear
8 all the evidence and you weigh out all the circumstances
9 and you come to your conclusion.

10 Q Okay. When we talk about murder -- I don't know
11 whether you and I talked about it before, but we're not
12 talking about mistake, you know, like accidentally
13 shooting somebody. We're not talking about a man coming
14 home and catching your wife in bed with another man, going
15 crazy. And we're not talking about insanity.

16 What you and I are talking about here. We're not
17 talking about Chris' case, talking about someone who knows
18 right from wrong. And in South Carolina murder is, like
19 the judge said, premeditated. It doesn't have to be very
20 long, but they meant to do it. They did it and meant to
21 do it. Pretty clearly you're comfortable giving a death
22 sentence for that?

23 A Yes.

24 Q Are you equally or less comfortable giving a life
25 without possibility of parole sentence? That was my

1 question.

2 A I guess I would be equally as comfortable.

3 Q And How would you decide between the two?

4 MR. ARIAIL: Objection. This is clearly staking the
5 juror.

6 THE COURT: Overruled.

7 A And I truly don't know how to answer that question,
8 other than just saying I would just try to look at the
9 case itself and come to --

10 Q That's fair enough.

11 A -- come to the best conclusion I could come to.

12 Q Let me ask you this. If, let's say in a case there
13 was evidence -- and the reason we kind of have to ask
14 these things, for instance, just like some people come in
15 and say, you know, for whatever reason murder always means
16 death, you know, that an eye for eye, you take a life.
17 And let me ask you this. Do you believe that passage
18 has -- "an eye for an eye" sometimes, is often used for
19 people, for their basis for any time you kill you must
20 forfeit your life. Do you believe that?

21 A That oftentimes it is used?

22 Q No, no, no.

23 A Yes.

24 Q You do agree it's often used?

25 A It is oftentimes used.

1 Q Do you subscribe to that passage as a reason that if
2 you take a life you should be, you should forfeit your own
3 life?

4 A That passage is talking about just retribution.

5 Q Do you believe in retribution?

6 A Just retribution, yes.

7 Q Do you believe in revenge?

8 A No.

9 Q In a mitigation -- in a penalty phase the defense
10 can -- the defense doesn't have to do anything. All
11 right? If in a penalty phase case you had found somebody
12 guilty of murder and found him guilty of an aggravator,
13 kidnapping, robbery, there's a number of others. I mean,
14 they got to be serious crimes. It's got to be two,
15 essentially murder and another serious crimes is one of
16 the things that separates it out. You follow me?

17 And the government brought to you victim impact
18 evidence. In other words, people -- the victim's family
19 got up and talked about their loss. And they got up and
20 talked about every bad thing they could find out about the
21 defendant, and the defense brought you nothing, okay?
22 Would the fact that they brought you nothing leave you
23 nothing but death as the appropriate punishment?

24 A Again, hypothetically speaking, I would think the
25 answer would probably be yes.

1 Q Okay. Why is that?

2 A Murder is very, very serious.

3 Q Yes, sir.

4 A And if there was, if they had no answer to the
5 charges, then, yes, I think you would be left -- I would
6 be left with that scenario, that this is the alternative.

7 Q Okay. So, if the defense -- so, if you kind of think
8 about it this way. In that case, because murder is going
9 to be a murder before you get in there. Before you even
10 get into the penalty phase, you've got to convict him of
11 murder, got to convict him of a serious crime. It's then
12 up, in your mind, to the defense to convince you of why
13 life without possibility of parole is the appropriate
14 punishment?

15 A Again, it's difficult to answer on these types
16 hypotheticals that I am not familiar with that, that
17 you're very much familiar with. And not knowing the law,
18 but if it's up to us and the prosecution is asking for the
19 death penalty and the defense is asking you not to
20 sentence someone to death. I think it is up to the
21 defense also to, once guilt has been proven beyond a
22 reasonable doubt, to present a case for why this should
23 not happen. Yes, I do think that the defense would need
24 to present that case.

25 Q And let's be clear. It's not a hypothetical. For

1 you to get to the second phase, there is a conviction for
2 murder.

3 A Yes, sir.

4 Q And is that just sort of the way you feel about
5 things? I guess what I'm getting to is this. The law,
6 quite frankly, is this. The law is that the defendant
7 doesn't have to bring you anything. Under the law, it's
8 kind of like the defendant has got a right to remain
9 silent. Just like in the penalty phase, the defendant has
10 got the right to bring you nothing. And the law says, in
11 all candor to you, the law says that you can't hold that
12 against him if he brings you nothing.

13 But some people, just because of the gravity of all
14 this, just say look, I understand that's the law. But
15 I've got to be honest with you, some people -- i'm not
16 implying that you haven't been honest with us. But Some
17 people just say, i'm going to be honest with you, if you
18 don't bring me something, i mean, the law can say they
19 don't have to, but I'm going to hold it against them.

20 So, my question to you is now, understanding what the
21 law says, is that something that, are we going to have an
22 uphill battle, notwithstanding the law, if we don't bring
23 you anything?

24 A Sir, I value all life. And I would not flippantly,
25 without much thought, prayer, everything else I could put

1 into it, enter a death penalty verdict. It would be under
2 much -- a lot of thought would go into it before I would
3 do that.

4 You're asking me would I hold that against the
5 defense. If the law tells me not to hold that against the
6 defense, that's what I would do.

7 Q So, then you could consider, giving meaningful --
8 it's got to be meaningful, not just sort of a passing, you
9 know, to make yourself feel better at night. You could
10 give meaningful consideration to the possibility of life
11 without the possibility of parole even if the defense
12 provides you nothing in mitigation for murder?

13 A Yes.

14 Q Let me ask you this. And I think we're about done,
15 which you may be happy to know. Just like we asked you
16 about your opinion of the death penalty. This will
17 probably be a shorter discussion, but let me ask you this.
18 What are your thoughts on the topic of mental illness?

19 A That it's often times used as an excuse.

20 Q What do you mean by that?

21 A To be proven mentally ill to me, they would have to
22 be shown a history.

23 THE COURT: Mr. Ellenburg, I think he's asking you in
24 general what do you consider about mental illness, not
25 this particular case. Or if you have any opinions about

1 mental illness in general.

2 Q Let me put it this way. You said it's often an
3 excuse, sometimes an excuse. Does that belief that it's
4 sometimes an excuse cause you to have pause in your
5 ability to consider it as a --

6 MR. ARIAIL: Objection. Going away --

7 THE COURT: Overruled.

8 MR. ARIAIL: I'm Sorry?

9 THE COURT: Overruled.

10 MR. ARIAIL: The issue -- let me give you a second
11 ground, then. The issue is whether or not -- it's not
12 whether it gives him cause, it's whether or not it's going
13 to substantially impair your ability.

14 MR. NETTLES: Now, we're into a speaking objection.

15 THE COURT: I understand.

16 MR. ARIAIL: I didn't get that out.

17 THE COURT: Overrule the objection. Thank you very
18 much.

19 MR. NETTLES: Thank you.

20 THE COURT: Please proceed.

21 THE WITNESS: Would I consider that a defense? Yes,
22 I would consider that a defense.

23 Q Well, you understand, just to be candid with you,
24 it's not a defense. It --

25 A A reason.

1 Q Under the law there are, just like we've talked about
2 aggravators, the government presents you with aggravators
3 and the defense presents you with mitigators. One way to
4 describe a mitigator under the law, it is a reason to give
5 meaningful consideration to a penalty less than death.

6 A Yes, sir.

7 Q Some people just say, "I think all that stuff is
8 voodoo." Do you believe that?

9 A No, sir.

10 Q Okay. Barring some unforeseen circumstances, this is
11 sort of my last topic. All right?

12 If you, and there's no doubt anybody in this room
13 that you value life and you've made that abundantly clear.
14 Let's say for a second that you were in a situation
15 where -- and that's an opinion that is a strong belief,
16 that opinion that you have. And let's for a moment
17 consider that you're in a jury room and you have got an
18 opinion about what the appropriate sentence is. And I
19 don't care which one it is, because it will only be two.
20 One is death, the other is life without possibility of
21 parole. And you're in that room and you have one of those
22 opinions and somebody else in the room holds an equally
23 strong opinion that differs from yours. Okay? Would you
24 expect them to change their opinion? I mean, if you
25 talked about it and they just disagreed with you, would

1 you expect them to change their opinion just to agree with
2 you?

3 A No.

4 Q Okay. Conversely, I think I know the answer to this,
5 but just I have to ask. Just like there's a healthy
6 debate about religion in the death penalty, if you were
7 back in the room and there were people who had different
8 views of faith than you did. Okay? Would you expect them
9 to bend their views of faith to yours just because you're
10 a learned and ordained minister?

11 A No.

12 Q I may be done. Let me just touch base with the other
13 people at my table.

14 A Yes, sir.

15 Q Thank you. I have no further questions.

16 THE COURT: Any questions from the state?

17 MR. ARIAIL: None.

18 THE COURT: Thank you very much. I assume you don't
19 have any further motions?

20 MR. NETTLES: No, sir.

21 THE COURT: What we're going to do is qualify
22 approximately 43 people, and from those 43 people, twelve
23 jurors and four alternates will be drawn for the jury.
24 You're part of the 43. The bailiff will give you a piece
25 of paper with a phone number. Call that number after

1 8:00, it may be call back tonight, may say come back in
2 Thursday or Friday morning. But follow the instructions.
3 Make arrangements to assist your wife and taking care of
4 your children. Thank you very much. All right?

5 (prospective juror Ellenburg excused.)

6 THE COURT: Could I see the attorneys up here just a
7 second, please?

8 (bench conference held off the record.)

9 THE COURT: Next is Edward Thomas Babinski.

10 (prospective juror Babinski, white male, enters
11 courtroom.)

12 THE COURT: Babinski; is that correct?

13 PROSPECTIVE JUROR: Babinski.

14 THE COURT: Raise your right hand.

15 EDWARD THOMAS BABINSKI, (white
16 male), having been first duly sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q I'm going to ask you some questions and the attorneys
20 are going to ask you some questions. I'm going to ask you
21 to respond to the questions the best you can. If you
22 don't understand the question, please tell the person
23 asking the question you don't understand. They'll
24 rephrase it. Okay? There's no right or wrong answer.
25 It's just the best answer you can give to the question.

1 We're Going to be primarily initially talking to you about
2 your position on the death penalty.

3 You filled out a questionnaire. Was this
4 questionnaire you filled out accurate?

5 A Yes.

6 Q Are there Any changes you would like to make in the
7 questionnaire?

8 A Could I read it? Nothing that I can think of.

9 Q Okay. If there's nothing you can think of. Go
10 ahead, keep it. I'm going to let you hold it. If you
11 would, turn to page ten of the questionnaire. Question 64
12 says, "please describe your attitudes and beliefs
13 concerning capital punishment."

14 You stated, "in general against it, especially in
15 cases of youths since the brain is not mature but more
16 impulsive." Is that your general view?

17 A Yes.

18 Q You have in 65, you have "somewhat opposed." Is that
19 correct?

20 A Yeah.

21 Q All right. Now if you flip over to question number
22 68, considering the response -- do you see 68?

23 A Yes.

24 Q Considering your responses in 64 and 65, do you think
25 your response to question number 68, whereby you say, "I

1 believe that the death penalty is an appropriate form of
2 punishment in some murder cases, I could never return a
3 verdict of death." Is that consistent with your answers
4 in 64 and 65?

5 A Yeah, I'm speaking in general. Speaking about the
6 death penalty, somewhat opposed is in general. That's not
7 asking me could I personally do that.

8 Q All right. Could you, sitting on a jury, return a
9 verdict of death under any circumstances that you could
10 imagine?

11 A I was trying to think about that. I mean, if someone
12 set off a nuclear bomb, yeah, other than something like
13 that. I have a hard time with the death penalty.

14 Q All right. Why do you have a hard time with it?

15 A I can't see myself killing somebody and I can't see
16 myself even declaring somebody else should kill somebody,
17 let's say in a prison, injection, or pulling a switch or
18 something. I think it's wrong.

19 Q What makes it right if it's a nuclear weapon or
20 somebody drops a nuclear bomb? What makes it right about
21 that, the volume of the number of people you kill or what?

22 A I would think that would be a highly premeditated act
23 of mass destruction.

24 Q South Carolina murder, the legal requirement for
25 murder, is a premeditated intentional act. So, In order

1 to find someone guilty of murder in South Carolina, the
2 act has to be intentional and premeditated.

3 A And the penalty in that case is --

4 Q Well, the penalty in that case would be up to the
5 jury. Okay? Would that make a difference in your opinion
6 on the death penalty, knowing that any murder case would
7 be intentionally premeditated as you related to the
8 dropping of the explosion of a nuclear weapon.

9 A I still don't think I could return the death penalty.

10 Q Okay. Let me explain to you the process that we
11 would go through. All right? The state has charged the
12 defendant in this case with murder and kidnapping. The
13 state's responsibility -- the trial would be in two
14 phases. The first phase, the state's responsibility, is
15 to prove the defendant guilty beyond a reasonable doubt of
16 murder and kidnapping. And let's assume all 12 jurors
17 agree that the defendant's guilty of murder. And that
18 would be premeditated intentional murder and kidnapping.
19 Do you understand?

20 Then we would go to the penalty phase. And in the
21 penalty phase the jury would consider everything that came
22 in the first phase, plus any other evidence that the state
23 would produce. And normally it's referred to as
24 aggravating circumstances. And the state would have a
25 obligation to prove the aggravating circumstances beyond a

1 reasonable doubt. The jury would have to agree that the
2 state had proven the aggravating circumstances beyond a
3 reasonable doubt.

4 Even if the jury believes the state has proven that,
5 they still do not have to award the death penalty, they
6 can award life imprisonment. Life in prison means what it
7 says, you die in prison. The jury makes the determination
8 of whether it's life or whether it's death.

9 The defendant would offer, would generally offer --
10 he's not required to, but could offer mitigating
11 circumstances, the information to the jury that would
12 indicate or give the jury reason not to give death and to
13 give life. So, when you get to the second phase, the
14 intentional premeditated murder has already been ruled
15 upon by the jury. And the jury has to make a decision in
16 the second phase as to whether you're going to get life or
17 death.

18 Now, do you think your opposition to the death
19 penalty would prevent you from returning or seriously
20 considering or giving meaningful consideration to the
21 death penalty?

22 A Yes. I still would give meaningful consideration of
23 the death penalty in that situation. I wouldn't --

24 Q You would not?

25 A Life would be the ultimate sentence.

1 Q All right. Any questions from either party?

2 MR. NETTLES: Can I just ask one? Literally ask one
3 question. Is that all right? Can I go first, Bob?

4 MR. ARIAIL: Yes. Yes.

5 BY MR. NETTLES:

6 Q The law does not ever require the death penalty.
7 Okay? And the law doesn't require you to tell us what you
8 would do. Just to narrow it down, this is just the
9 question we need to know.

10 In order for a juror to serve, they have to be able
11 to give, upon having convicted someone of murder, I'm not
12 talking about self-defense, not talking about accident,
13 not talking about manslaughter, but murder and another
14 serious crime; in other words, not all murders are death
15 penalty eligible. But what we need to know is after you
16 were convinced beyond a reasonable doubt that someone had
17 committed murder and another serious crime, armed robbery,
18 kidnapping, whatever, could you give meaningful
19 consideration -- not would you give it, because it's never
20 required, but would you give meaningful consideration to
21 the penalty of death?

22 A I still find the idea of living your entire life
23 knowing what you had done to be a more meaningful
24 punishment than death.

25 Q And I understand. I mean it's a serious punishment.

1 But could you -- let me put it this way. Understanding
2 your belief about life imprisonment being a very serious
3 punishment, I -- let me repeat the question. I know it's
4 been asked, i'm just not sure it's been answered, could
5 you give meaningful consideration to the penalty of death?

6 A I don't see any meaning in killing another human
7 being.

8 MR. NETTLES: That's fair enough.

9 THE COURT: Solicitor, unless you have some argument,
10 I'm going to excuse the juror.

11 MR. ARIAIL: None. No argument.

12 THE COURT: Mr. Babinski, thank you for being here.
13 I'm going to excuse you from jury service on this
14 particular case. Okay. Thank you very much.

15 (prospective juror excused.)

16 THE COURT: Mr. Mikell Ardoin.

17 (prospective juror Ardoin, white male, enters
18 courtroom.)

19 MIKELL ARDOIN, after being duly
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q All right. I'm going to ask you certain questions
24 and the attorneys will probably ask you some questions.
25 Okay? There's no right or wrong answers, just answer the

1 questions the best you can. We're going to explore your
2 opinions on certain issues. The first area I'm going to
3 cover is your opinions about the death penalty.

4 And I would ask you to be as truthful as you can. If
5 you don't understand the questions, let me know. I'll try
6 to rephrase it. If you don't understand the attorneys'
7 questions. I'll ask them to rephrase it. All right? Can
8 you do that?

9 A All right.

10 Q You filled out this questionnaire. When you filled
11 it out, was it accurate?

12 A Yes, sir.

13 Q Do you remember or recall any changes that you would
14 like to make in the questionnaire? Do you remember the
15 questions and answers?

16 A I don't know if I remember all of them. It's pretty
17 lengthy.

18 Q All right. If you would, please turn to question
19 number 64. On page ten. The question is, "briefly
20 describe your attitudes and beliefs concerning capital
21 punishment."

22 I have, "the death penalty, I believe what the bible
23 states, is a life for a life." What do you mean by that
24 statement?

25 A If a person takes someone's life, their life ought to

1 be taken, also. That's why I believe in capital
2 punishment.

3 Q So, you think basically -- I think that's commonly
4 been referred to as an eye for an eye?

5 A Right.

6 Q You take that language literally out of the bible?

7 A Pretty much. Yes, sir.

8 Q Is there any deviation from that in your mind?

9 A I can't think of anything right off.

10 Q All right. If you'll flip over to question number
11 68. You stated in that question, "with reference to the
12 death penalty, which of the following statements would
13 best represent your opinion?"

14 And you said, "I believe the death penalty is the
15 appropriate form of punishment" -- you put, scratched out
16 some, put, "in most murder cases. I could return a
17 verdict of death if I believe it was warranted in a
18 particular case, depending upon the evidence and the law,
19 what I learned from the defendant."

20 That answer, number 68, is in direct contradiction to
21 your answer in 64.

22 A Right now I'm trying to think if something came to my
23 mind back then that may have kind of had me thinking
24 different. But, I mean, pretty much I can't think of a
25 case where I might change my mind.

1 I don't know, it's kind of a -- I guess I never been
2 in this type of situation, so I just can't really think of
3 where I would change my mind from, you know, like a life
4 for a life.

5 Q Can you think of any instance where you would not do
6 that?

7 A You talking more like premeditated or a drunk driver
8 hitting somebody or what?

9 Q In South Carolina -- any state is required to prove a
10 defendant guilty beyond a reasonable doubt of murder.
11 Murder is a premeditated, intentional act. The state
12 would have to prove that in all murder cases, regardless
13 of the factual situation. Do you understand?

14 A So, premeditated. All right.

15 Q Okay?

16 A Yeah. Then in that case something like that, then
17 I'll just say a life for a life.

18 Q Do you take the life for a life concept to the extent
19 if someone breaks your leg, you think the state should
20 break the leg of the person that broke your leg?

21 A I think they ought to pay.

22 Q Talking about eye for eye, life for life. What's any
23 different if this bailiff over here breaks your leg? You
24 think the state should come in break the bailiff's leg as
25 a form of punishment?

1 A Maybe not like that, no. I think something ought to
2 happen to him, but maybe not break his leg just because he
3 broke my leg.

4 Q Well, you're saying the same thing in the murder
5 situation, the killing situation.

6 A Well, I don't know. I'll still have to say if
7 someone takes someone's life, I just assume they be
8 executed to just have their life taken.

9 Q Okay. Any questions from either party?

10 MR. ARIAIL: I'd like to ask a couple just to clarify
11 what I heard.

12 THE COURT: Okay.

13 BY MR. ARIAIL:

14 Q Mr. Ardoin, I heard -- I'm Bob Airial, the solicitor
15 for the 13th circuit. In this case I would be
16 representing the state along with Ms. Strom, my deputy;
17 and Mr. Moyer, one of my assistants. What we're looking
18 for in this questioning process, to determine if we can
19 get a fair juror in the sense that both punishments in the
20 penalty phase can be considered, life and death.

21 Now, in reading your questionnaire and just listening
22 to your answers, you said that, number two, that the
23 appropriate form of punishment in most murder cases; and
24 the judge asked you a little bit about that. And then I
25 wanted to ask you on the eye-for-an-eye concept, where the

1 judge went off and was talking about breaking a leg, do
2 you consider life in prison without parole; that is, the
3 defendant being sentenced for the rest of his life to
4 confinement, to be the equivalent of life for life? Or is
5 your understanding of life for life mean that the
6 defendant has to be executed?

7 A Well, that's my concept of it. If someone takes
8 someone's life, then I think their life should be taken,
9 also.

10 Q All right. My question is, is the imposition of a
11 life without parole sufficient under your connotation of
12 that phrase to be the taking of their life and the fact
13 they're confined in prison for the rest of their life?

14 A Well, something like this, that's premeditated, I'd
15 just assume their life be taken.

16 Q You would say it wouldn't be?

17 A Yeah. I don't care for a life sentence.

18 THE COURT: Mr. Ardoin, appreciate it. Step outside
19 just a second, please. Just step right outside, please.

20 (prospective juror Ardoin exits courtroom.)

21 Any motions?

22 MR. NETTLES: I had to stop Mr. Mauldin questioning.
23 I do have a motion, if you don't mind. Suggest he's not
24 qualified.

25 THE COURT: Any argument from the state?

1 MR. ARIAIL: None.

2 THE COURT: State excuses. All right.

3 Would you bring in Cheryl L. Ashley, please.

4 (prospective juror Ardoin returns.)

5 THE COURT: Mr. Ardoin, I want to thank you for being
6 here and doing your civic duty, but I'm going to
7 disqualify you from sitting on this jury. Appreciate,
8 respect your opinions on the death penalty. You're not
9 necessarily wrong, just doesn't necessarily qualify you
10 for sitting on this jury. All right?

11 A All right.

12 Q Thank you so very much.

13 (prospective juror excused.)

14 MR. ARIAIL: I've Been meaning to bring this up the
15 last five. I'm not lecturing, but the law in this state
16 is not that murder is premeditated. It's a matter of law.

17 THE COURT: I understand that, but these jurors don't
18 understand matters of law, okay? Intentional.

19 MR. ARIAIL: Yes. Intentional act, but not
20 premeditated.

21 THE COURT: I understand that, the technicalities,
22 but for purposes of explaining it to the jury. If you
23 don't want me to use those words, I won't use those words
24 any more, solicitor.

25 MR. NETTLES: It just makes it go faster.

1 THE COURT: That's what I've been trying to
2 accomplish. If you don't want me to use those words, I
3 won't use them. Because I agree with you, technically
4 it's malice aforethought. And the only reason I have used
5 them, the jury is familiar with those words.

6 MR. ARIAIL: I just don't know what that's connoting
7 to that juror about premeditation.

8 THE COURT: I just asked you, do you want me not to
9 use those words?

10 MR. ARIAIL: I would prefer not.

11 MR. MAULDIN: We take exception to that, otherwise
12 you have to define aforethought, which is premeditation,
13 essentially going around in a circle.

14 THE COURT: I understand. I understand what you're
15 saying. Solicitor, I mean, you go to malice aforethought
16 and you say there's premeditation, do you want to go into
17 a long dissertation on that?

18 MR. ARIAIL: Never mind, I withdraw the objection.

19 THE COURT: Bring us Cheryl Lashley --

20 (Prospective juror Cheryl Lashley, white female,
21 enters courtroom.)

22 Q Miss Lashley, I'm going to ask you certain questions.
23 And first of all, before I do that, I want to swear you.

24 CHERYL L. LASHLEY, (white
25 female), having been previously duly sworn, testified as

1 follows:

2 EXAMINATION

3 BY THE COURT:

4 Q Thank you very much. You may put your hand down. If
5 you don't understand the question, please tell me you
6 don't understand. After I finish asking you questions,
7 the attorneys will probably ask you some questions. Okay?
8 And there's no right or wrong answer, just answer the
9 question the best you can. Okay?

10 And you filled out a questionnaire sometime last
11 month. Is that correct? Do you recall filling out that
12 questionnaire.

13 A Uh-huh.

14 Q And you mailed it into the court. Was that
15 questionnaire, when you filled it out, accurate?

16 A Yes.

17 Q I'm going to give you a copy of that questionnaire.
18 I'm going to ask you certain questions about the
19 questionnaire. Okay?

20 A Uh-huh.

21 Q If you would, turn to question 64 I believe. Okay,
22 64? Do you have 64?

23 A Uh-huh.

24 Q The question says, "briefly describe your attitudes
25 and beliefs concerning capital punishment."

1 Your response, "I believe in the death penalty. I do
2 not believe someone should be found not guilty by reason
3 of insanity; that is a cop out and an excuse. People need
4 to be held responsible. Like the bible says, 'an eye for
5 an eye, do unto others.'"

6 Is that still your opinion of the death penalty?

7 A Yes, sir, it is.

8 Q On the next page, question 68, you state -- let you
9 find 68.

10 A Uh-huh.

11 Q "I believe the death penalty is the appropriate form
12 of punishment in all murder cases." Is that still your
13 opinion?

14 A Yes, sir.

15 Q Now, if you would go to the back, question 73. "Is
16 there anything else you know about this case or you think
17 you know that you should bring to the court's attention?"

18 You said, "yes." And you stated, "I believe this is
19 the case where the guy shot his estranged girlfriend in
20 Bi-los. If so, that was cold blooded and someone needs to
21 take him to Bi-Lo and shoot him."

22 Is that still your opinion today?

23 A Yes.

24 Q Okay. Let me ask you to step out in the hall please,
25 ma'am. Would you step out in the hall?

1 (prospective juror exits.)

2 THE COURT: I can allow you to ask some questions, I
3 can ask some questions, but based on her answers, no way I
4 don't think this young lady can be rehabilitated.

5 MR. ARIAIL: I think you ought to put on the record
6 and ask her if under the law she can set aside those
7 opinions before you disqualify her.

8 MR. MAULDIN: Just, briefly, she just said that was
9 her opinion and reaffirmed it.

10 THE COURT: And she even went further and even
11 volunteered she knew about it, he needs to be taken to
12 Bi-Lo and shot. That wasn't even in response to a
13 question, just voluntary information. But I will bring
14 her back, ask her that one question. Any other questions
15 you want asked?

16 MR. MAULDIN: Not at this stage, Your Honor, with
17 regard to whether she can set aside her opinions on that.
18 We don't have any further questions other than just asking
19 her.

20 THE COURT: All right. Would you bring Miss Lashley
21 back, please.

22 (prospective juror enters courtroom.)

23 THE COURT: Mrs. Lashley, in this case the defendant
24 is charged with murder and kidnapping. The state would be
25 required to prove the defendant guilty beyond a reasonable

1 doubt. All 12 jurors would have to agree that the state
2 had proven their case. I've gone over what you put in the
3 questionnaire and your opinions on the death penalty
4 previously. Is there any way that you could put aside
5 your opinions on the death penalty, listen to the law, and
6 the evidence, and find -- and not give the defendant
7 death?

8 A No, sir, because I believe that should be the right
9 punishment.

10 Q Is there any way you could give any meaningful
11 consideration to a life without parole sentence?

12 A No. I don't believe in life without parole. That's
13 just a waste of taxpayers' money.

14 THE COURT: Any further questions?

15 MR. ARIAIL: None.

16 THE COURT: Any from the defendant?

17 MR. MAULDIN: No, Your Honor.

18 THE COURT: Miss Lashley, just stand out in the hall
19 just a second please, ma'am.

20 (prospective juror exits.)

21 THE COURT: Any motions?

22 MR. MAULDIN: Just disqualified.

23 THE COURT: Solicitor, any argument?

24 MR. ARIAIL: None.

25 THE COURT: I'm going to excuse Miss Lashley. If you

1 would bring her back, please.

2 (prospective juror enters courtroom.)

3 THE COURT: Mrs. Lashley, I appreciate your being
4 here. I appreciate your performing your civic duty,
5 appreciate your views on the death penalty. They're not
6 necessarily wrong, but it doesn't -- those views will not
7 qualify you to sit on this jury. Okay? I want to thank
8 you very much for being here. If I could have the
9 questionnaire back. Appreciate it. Thank you so very
10 much.

11 PROSPECTIVE JUROR: You're welcome. (excused)

12 (prospective juror Sharon Shumaker, white female,
13 enters courtroom.)

14 THE COURT: Miss Shumaker, how you doing today?

15 PROSPECTIVE JUROR: Fine.

16 THE COURT: Please raise your right hand --

17 SHARON SHUMAKER, (white female) after
18 being duly sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q Miss Shumaker, I'm going to ask you certain
22 questions, ask you to respond to those questions as
23 correctly and truthfully as you can.

24 A Okay.

25 Q And the attorneys will have an opportunity to ask you

1 questions. If you don't understand the questions, just
2 tell us, we'll try to rephrase the question. Okay? And
3 there's no right or wrong answer, just give the best
4 answer you can. Do you remember filling out your
5 questionnaire last month?

6 A Yes.

7 Q And when you filled it out, was it accurate?

8 A Yes.

9 Q Okay. Let me give you a copy of that questionnaire.

10 A Will I need to read something?

11 Q I'll refer you to it if you need to. Okay? The
12 question number and the page, on page three, you're a
13 legal secretary for Fenderlin, Robinson, and Bradshaw; is
14 that correct.

15 A I was.

16 Q You were. No longer?

17 A I quit in 1982.

18 Q I see '82. Now you own and operate Tried and True.
19 I was looking at it backwards.

20 A I don't own that any more, I'm retired.

21 Q All right. You served as a juror in 1977 in
22 Charlotte, North Carolina; is that correct?

23 A Right.

24 Q And there was a trial, someone charged with some type
25 of drug charge?

1 A Right.

2 Q He was found guilty. Is that correct?

3 A Correct.

4 Q Did that process taint you or create any bias or
5 prejudice towards or against police officers in general?

6 A No.

7 Q How about towards the prosecutor in general?

8 A No.

9 Q Did it create any bias or prejudice towards
10 defendants in general?

11 A No.

12 Q All right. Before we get to any more questions, on
13 the back of the questionnaire you said you're scheduled to
14 begin training as English as a second language volunteer
15 on 2-8 through 2-17; is that correct?

16 A I cancelled it.

17 Q You cancelled it. Okay. And you say you have four
18 parents, I guess in laws and your parents, over 80?

19 A Right.

20 Q And you visit, where do they live now?

21 A My 87 year old father in Charlotte I visit every
22 other week. My 85 year old mother-in-law we just put in a
23 nursing home last week. She was in CCU for the whole
24 month of January. My 80 year old mother is here, and my
25 92 year old stepfather is here.

1 Q Do you visit them several times a week?

2 A Yes.

3 Q Do they need in-home care or are they receiving that?

4 A I just have to visit my stepmother and do her laundry
5 every other day. But my husband can do that.

6 Q Your husband can take care of that?

7 A Yes.

8 Q Okay. Do you have any physical or mental problems
9 that --

10 A No.

11 Q -- would prevent you from serving on the jury?

12 A No.

13 Q Do you have any prior knowledge of this case? This
14 is a case where the defendant is charged with murder and
15 kidnapping that occurred on September 3 2003 at the Bi-Lo
16 here in Anderson -- excuse me, in Greenville. Have you
17 heard anything on TV, read anything in the paper, or
18 talked with anybody about it, heard anything about it?

19 A When it occurred, yes.

20 Q Did you read it in the paper or see it on television?

21 A Both.

22 Q Do you recall factually what you read about?

23 A Yes.

24 Q What do you recall about the facts you read about in
25 the paper?

1 A Someone went into Bi-Lo, I think it was near the
2 Fresh Market, that Bi-Lo I think, with a gun. And his
3 ex-girlfriend, held her hostage in the deli, and there
4 were police trying to talk him out, you know, get him to
5 come out. And she fled from him and he shot her in the
6 back.

7 Q Do you remember what you saw on television?

8 A A similar -- I mostly read it in the paper.

9 Q Mostly read it in the paper. Okay. As a result of
10 what you read in the paper and what you saw on television,
11 have you formed or expressed an opinion as to the
12 defendant's guilt?

13 A Yes.

14 Q What is that opinion?

15 A I think he did it. I think he's guilty.

16 Q Do you understand in South Carolina that the state is
17 required to prove the defendant guilty beyond a reasonable
18 doubt?

19 A Yes.

20 Q And it would take all 12 jurors to agree that the
21 state has proven the defendant guilty beyond a reasonable
22 doubt.

23 A Yes, I understand.

24 Q Not what was in the paper or what was on TV, that was
25 the reporters interpretation of the facts. That's not

1 evidence in the case. Now, is your opinion so strong as
2 to the defendant's guilt that you could not set that
3 aside, listen to the evidence, and base your decision on
4 evidence you hear in the courtroom, not what you read in
5 the paper or saw on television.

6 A I don't think I could.

7 Q You could what?

8 A I think he's guilty.

9 Q You don't think you could set it aside what you read
10 in the paper?

11 A No.

12 Q Okay. Any questions?

13 MR. MAULDIN: No questions.

14 MR. ARIAIL: None.

15 THE COURT: Solicitor, do you have any questions?

16 MR. ARIAIL: I said no.

17 THE COURT: Sorry, I didn't hear you say no.

18 Miss Shumaker, would -- if you would just step out in the
19 hall for a moment, please, ma'am.

20 (prospective juror complies.)

21 MR. MAULDIN: Move she's disqualified.

22 THE COURT: Solicitor, any argument?

23 MR. ARIAIL: No. None.

24 THE COURT: The court would find her disqualified.

25 If you'll bring Miss Shumaker back, please.

1 (prospective juror enters courtroom.)

2 Miss Shumaker, I want to thank you for being here.

3 I'm going to find that you're not qualified to serve on

4 this jury because of opinions you've already formed.

5 PROSPECTIVE JUROR: I understand.

6 THE COURT: All right. Thank you very much.

7 PROSPECTIVE JUROR: Thank you.

8 (prospective juror exits.)

9 MR. MAULDIN: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 (bench conference off the record.)

12 THE COURT: I understand you have something you would
13 like to put on the record; is that correct?

14 MR. MAULDIN: Yes, sir. We are going to have our
15 client taken out of the courtroom, and we do hereby waive
16 his presence for the time being. So, I did want to let
17 the court know he wouldn't be sitting at the table for the
18 next few jurors.

19 THE COURT: Okay. Mr. Williams, do you agree with
20 your attorneys' decision for you to be excused for a few
21 minutes.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions about that?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand you're entitled to be

1 here if you want to be here?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: But you're willing to follow your
4 attorneys' instructions and waive your presence. Is that
5 correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The officer will take you wherever you
8 need to go.

9 (defendant exits)

10 (prospective juror Debra Hall, female enters
11 courtroom.)

12 THE COURT: Miss Hall, how you doing today?

13 PROSPECTIVE JUROR: Fine, thank you.

14 THE COURT: Please raise your right hand.

15 ANGELA A. HALL, (black
16 female), having been previously duly sworn, testified as
17 follows:

18 EXAMINATION

19 BY THE COURT:

20 Q All right. Miss Hall, I'm going to ask you some
21 questions and the attorneys are going to ask you some
22 questions. And there's no right or wrong answer just
23 answer the questions the best you can. Okay?

24 A Okay.

25 Q And there will probably be questions concerning your

1 opinions about various subject matters. I don't know what
2 the attorneys are going to ask you, but I'm going to ask
3 you certain questions. Okay?

4 A Okay.

5 Q But before we get to that, I want to ask you, do you
6 have any physical or mental problems that would prevent
7 you from sitting on this jury?

8 A No, sir.

9 Q Do You have any personal hardships that would prevent
10 you from sitting on this jury?

11 A No, sir.

12 Q You filled out this questionnaire last month. Do you
13 recall doing that?

14 A Yes, sir.

15 Q When you filled it out, was it accurate?

16 A Yes, sir.

17 Q I'll give you a copy of that. Do you recall if
18 there's any changes you would like to make in the
19 questionnaire?

20 A No.

21 Q Okay. All right. Calm down, nobody is going to fuss
22 at you. Okay? Nobody is going to give you a hard time,
23 just going to ask you some questions. So, just relax and
24 calm down. Okay?

25 A Uh-huh.

1 Q First of all, if you look on the back of your
2 questionnaire, question 75 says your ex-husband works for
3 Bi-Lo?

4 A Yes.

5 Q Why do you feel that was important for the court to
6 know?

7 A Because I know details about the case.

8 Q Okay. Let's go into those details. What details do
9 you know about the case and who told you those details?

10 A I saw it on the news.

11 Q You saw it on the news?

12 A Yes.

13 Q Have you seen anything, did you read anything in the
14 paper about it?

15 A No, I did read online about it.

16 Q You read online about it?

17 A Yes.

18 Q When did you read online about it?

19 A When it happened.

20 Q Do you remember factually what you remember that was
21 in the paper?

22 A Yes.

23 Q What facts do you remember?

24 A Am I allowed to give names?

25 Q Whatever you remember.

1 A I remember the gentleman's name was, I believe,
2 Charles Christopher Williams. And he held his girlfriend
3 hostage in Bi-Lo for two hours. And allegedly he killed
4 her.

5 Q Why do you use the words allegedly, you been seeing
6 that on television?

7 A Court TV, I guess.

8 Q All right. What else do you remember about what you
9 read online?

10 A I know that it was basically the same thing I saw on
11 television.

12 Q All right. From having seen it on television and
13 read about it online, have you formed or expressed an
14 opinion as to the defendant's innocence or guilt?

15 A Yes, I have.

16 Q What is that opinion?

17 A That he is guilty.

18 Q All right. Do you understand that in South Carolina
19 the state is required to prove the defendant guilty beyond
20 a reasonable doubt?

21 A Yes, sir.

22 Q And the fact that you saw it on TV and you saw it in
23 the newspaper, that was the TV reporters' interpretation
24 of the facts and the news reporters' interpretation. It
25 may be accurate, it may not. Do you understand?

1 A Yes.

2 Q All right. Is your opinion so strong as to the
3 defendant's guilt you cannot set it aside, listen to
4 the testimony in the case that comes from the witness
5 stand, and make a decision based on that evidence that you
6 hear as to the defendant's innocence or guilt.

7 A Would you repeat that again?

8 Q Is your opinion about the defendant's guilt based
9 upon what you read in the paper and seen on television so
10 strong that you cannot set that aside, listen to the
11 testimony here in the courtroom, and base your decision on
12 the testimony you hear from the witness stand, where
13 you're sitting in the courtroom.

14 A That's correct.

15 Q You could not set it aside?

16 A That's correct.

17 Q Any questions from the defendant or the state?

18 MR. MAULDIN: No, sir.

19 MR. ARIAIL: No questions.

20 THE COURT: Miss Hall, would you step out in the hall
21 just a second please?

22 PROSPECTIVE JUROR: Would you like this back?

23 THE COURT: Yes, thank you. Any motions?

24 MR. MAULDIN: Move to disqualify.

25 THE COURT: Any argument from the state?

1 MR. ARIAIL: None.

2 THE COURT: The court finds Miss Hall -- will excuse
3 Miss Hall because of prior knowledge. Would you ask
4 Miss Hall to come back in please.

5 (prospective juror returns.)

6 THE COURT: Miss Hall, I appreciate your honesty in
7 answering the questions. I appreciate your civic duty in
8 being here. But because you already formed an opinion as
9 to the defendant's guilt, I'm going to have to excuse you
10 from service on this case. Thank you so much.

11 PROSPECTIVE JUROR: Thank you for being so nice.

12 (prospective juror Glenda Fuller, black female,
13 enters courtroom.)

14 THE COURT: Mrs. Fuller, how are you doing today?

15 PROSPECTIVE JUROR: Fine, I think.

16 THE COURT: You think?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Would you please raise your right hand.

19 GLENDA J. FULLER, (black
20 female), having been previously duly sworn, testified as
21 follows:

22 EXAMINATION

23 BY THE COURT:

24 Q Do you remember filling out your questionnaire a few
25 months ago?

- 1 A Yes.
- 2 Q Did anyone help you fill that out or did you fill it
- 3 out yourself?
- 4 A I didn't do the writing, I told them what to put on
- 5 there.
- 6 Q Who did the writing for you?
- 7 A Wilma Anderson.
- 8 Q Is that a friend of yours?
- 9 A My cousin.
- 10 Q Would you take the questionnaire?
- 11 MR. MAULDIN: I'm having trouble hearing.
- 12 THE COURT: Come up front and listen. Stand right up
- 13 here and listen if you're having trouble hearing.
- 14 Q Mrs. Fulmer -- Fuller, on -- I see on the
- 15 questionnaire the last grade you attended was seventh. Is
- 16 that correct?
- 17 A That's correct.
- 18 Q Did you complete the seventh grade?
- 19 A Yes.
- 20 Q Do you have any difficulty in reading?
- 21 A No, sir.
- 22 Q You can read okay?
- 23 A Yes, sir.
- 24 Q Can you do math okay?
- 25 A Not too good.

- 1 Q You can count change, can't you?
- 2 A Oh, Yes, sir.
- 3 Q You can count change when they give you money back
- 4 from these automatic cash registers now?
- 5 A Oh, yes.
- 6 Q I notice some of these cashiers can't count change.
- 7 If the machine doesn't tell them how much, they have
- 8 difficulty doing it.
- 9 A Yes.
- 10 Q And you are able to read the questionnaire. Is that
- 11 correct?
- 12 A Yes.
- 13 Q No difficulty?
- 14 A No, sir.
- 15 Q Do you understand the questions on the questionnaire?
- 16 A Yes.
- 17 Q Didn't have any problem understanding the questions?
- 18 A No, sir.
- 19 Q All right. Do you have any physical or mental
- 20 problems that would prevent you from serving on this jury?
- 21 A I'm a diabetic.
- 22 Q Do you take insulin shots?
- 23 A I take Glucol, the tablets.
- 24 Q You take it once or twice a day?
- 25 A Two a day.

- 1 Q In the morning?
- 2 A Supper.
- 3 Q At supper?
- 4 A Yes.
- 5 Q Do you have to eat anything periodically during the
- 6 day?
- 7 A Yeah, sometimes.
- 8 Q What do you normally eat, crackers or what?
- 9 A According to how I'm feeling.
- 10 Q How you feel?
- 11 A Yes.
- 12 Q Do you keep that with you?
- 13 A I try to.
- 14 Q Okay. All right. If you're sitting on the jury
- 15 you'll be able to eat whatever you need to keep your blood
- 16 sugar under control.
- 17 A All right, sir.
- 18 Q Hand me the questionnaire, I'll find the question for
- 19 you. Okay?
- 20 A All right.
- 21 Q Mrs. Fuller, would you look at question number 64.
- 22 Do you see it?
- 23 A Yes, sir.
- 24 Q Can you read that question for me?
- 25 A Yes. "Briefly describe your attitude and beliefs

1 concerning capital punishment and the death penalty."

2 Q All right. Now you didn't answer that question on
3 your questionnaire; is that correct?

4 A No.

5 Q Can you tell me orally what your attitudes and
6 beliefs concerning capital punishment are?

7 A I don't believe in capital punishment.

8 Q Pardon?

9 A I don't believe -- I just don't feel good about it.

10 Q Well, a lot of people don't feel good about it.

11 Okay?

12 A It makes me nervous.

13 Q I understand. It makes me nervous, too.

14 A And upset about it.

15 Q Makes me upset, too, that's a normal reaction. Okay?

16 A Yes.

17 Q Look at your second question, number 65, can you read
18 that question to me?

19 A "What is your opinion about the death penalty?"

20 Q And you marked, "strongly favor."

21 A I didn't mean to do that.

22 Q You've said today -- you strongly favor, now you're
23 saying you got problems with the death penalty. Is that
24 correct?

25 A Yeah. I meant to do -- I'm sorry. I got mixed up.

1 Q Okay. All right.

2 A I apologize.

3 Q No problem. Like I said, there's no right or wrong
4 answer. You just tell it like it is. All right?

5 A All right, sir.

6 Q Can you look at question number 68? I believe it may
7 be on the next page if you'll flip over. Do you see
8 question 68? Did you find it?

9 A Okay.

10 Q Would you read along with me on that question. Okay?

11 A All right, sir.

12 Q Question says, "with reference to the death penalty,
13 which of the following statements would best represent
14 your opinion."

15 I'm going to read one through six for you. Okay?
16 After I read one through six, I want you to give me your
17 opinion, which best describes your opinion about the death
18 penalty. Can you do that?

19 A All right.

20 Q Question number one says, "I believe the death
21 penalty is the appropriate form of punishment in all
22 murder cases."

23 Number two, I believe the death penalty is the
24 appropriate form of punishment in some murder cases and I
25 can return a verdict of death if you believe it was

1 warranted in a particular case, depending upon the
2 evidence, the law, and what I learned about the defendant.

3 Number three, although I do not believe that the
4 death penalty ever ought to be imposed, as long as the law
5 provided for it, I could vote to impose it if I believe it
6 was warranted in a particular case, depending upon the
7 evidence, the law, and what I learned about the defendant.

8 Number four, I believe the death penalty is the
9 appropriate form of punishment in some murder cases; but I
10 could never return a verdict of death.

11 Number five, I could never under any circumstances
12 return a verdict of death.

13 Number six, would be, "none of the above, my opinion
14 is."

15 Now, which one of those do you think you would fit
16 into, one through six?

17 A Five.

18 Q Five.

19 A (nods head up and down.)

20 Q Okay. Well, number five says, "I could never under
21 any circumstances return a verdict of death." Let me ask
22 you this. In this particular case the defendant is
23 charged with murder and kidnapping. Do you understand?

24 A Yes.

25 Q Now, the state's responsibility in this case or the

1 state's obligation under the law is to prove that the
2 defendant was guilty beyond a reasonable doubt of the
3 murder and the kidnapping.

4 A Yes.

5 Q Now, if all 12 jurors believe that the state has
6 proven the defendant guilty beyond a reasonable doubt and
7 the jury finds the defendant guilty of murder and
8 kidnapping, you would go to a second phase of the trial.
9 Do you understand?

10 A All right.

11 Q And the second phase the state would present
12 aggravating circumstances. The jury could consider
13 everything that occurred in the first phase and whatever
14 the state brings forward in the second phase. The state
15 would be obligated to prove the aggravating circumstances
16 beyond a reasonable doubt. Do you understand?

17 A All right, sir.

18 Q Even if the jury found that the state had proven the
19 defendant -- the aggravating circumstances and the
20 defendant should receive death, the jury could still give
21 life without parole. Life without parole means the person
22 would die in jail. It's the jury's decision to either
23 give life or give death. That's strictly the jury's
24 decision, not the state, not the court. Do you
25 understand?

1 A All right.

2 Q Now, could you set aside your strong beliefs against
3 the death penalty, listen to the testimony, and give some
4 meaningful consideration to any mitigating circumstances
5 which the defendant could present that would mean that the
6 defendant would receive life?

7 A Yes, sir.

8 Q All right. At the same time the state would be
9 asking for the death penalty. Could you listen to all the
10 testimony in the first phase and the second phase and give
11 any meaningful consideration to the state's request for
12 the death penalty, or could you just never under any
13 circumstances give the death penalty?

14 A It would be hard.

15 Q I know it would be hard. I understand that. It
16 would be hard for everybody. The question I'm trying to
17 get you to address, you have very strong opinions against
18 the death penalty. Can you put those aside, listen to the
19 testimony, consider the testimony before you make up your
20 mind to give the defendant death or life?

21 A Yes, I could listen. Yes.

22 Q I know it's one thing to listen; but would you
23 meaningfully give consideration to it, not giving or
24 giving the defendant death?

25 A Yes, I guess I could.

1 Q Why do you say you guess you could? Why have you
2 changed your mind?

3 A I don't know. Maybe I don't understand.

4 Q Okay. Well, why do you feel like you guess you
5 could?

6 A I guess because you can listen to someone, you know,
7 and there might be something that would change your mind.

8 Q You would be receptive to something changing your
9 mind about the death penalty?

10 A Yes, I probably would. Yes, sir.

11 Q And there could be something that would change your
12 mind and you would vote to give the death penalty if you
13 thought it was the proper thing to do?

14 A If deep down inside I thought it was the proper thing
15 to do, I could do it.

16 Q All right. Any questions? Whose turn is it?

17 Examination by Mr. Mauldin:

18 Q Miss Fuller, my name is John Mauldin, the public
19 defender. I, along with Bill Nettles, the gentleman
20 sitting over there with the dark suit on, represent Chris
21 Williams in this matter. The first thing we need to make
22 sure you understand is that the questions that are going
23 to come from the prosecutor and me and the judge are not
24 about this case because you haven't heard the first
25 witness. So, we're not talking about this case. We're

1 just talking about any case. That's the first thing we
2 need to know.

3 A Yes.

4 Q Now, you said from the beginning, when the judge
5 asked me to come up so I could be sure I heard it, said
6 you didn't feel good about it and that it makes you
7 nervous?

8 A Yes.

9 Q Let me assure you, Ms. Fuller, your convictions,
10 beliefs and feelings are not on trial here. We're not
11 trying to put you on trial. And your hesitation, your
12 reluctance -- this is a serious matter, and we understand
13 that. Everybody in this courtroom understands how serious
14 this is. So, your reluctance or hesitation to impose the
15 death penalty is certainly appropriate.

16 The law in this state never requires that a jury
17 impose death. It's never a requirement, no matter how bad
18 the case is, no matter how horrible the evidence is.
19 There is never a requirement that a jury sentence a
20 particular person to death for murder. Do you understand
21 that, that there would never be a requirement?

22 A Yes.

23 Q What the law requires and what the judge has
24 described to you is, a two-trial proceeding where the
25 first trial you have the evidence of the incident of the

1 crime, the specific witness' testimony, any type of
2 evidence that comes in and the jury deliberates about
3 whether or not they believe murder has been proven.

4 And if they decide there was no murder, of course,
5 the case is over. You follow that?

6 A Yes.

7 Q But if that jury decided that a murder has been
8 committed and the proof was beyond a reasonable doubt, in
9 other words, that jury was satisfied with the testimony,
10 satisfied with the evidence, that it was the right person,
11 that it was -- the crime has been committed, then that
12 jury would find that defendant guilty in the first trial.
13 You follow me?

14 A Okay.

15 Q Nothing to do with the penalty. You follow me?

16 A All right, sir.

17 Q All right. That same jury, as the judge mentioned to
18 you a moment ago, that same jury would come back and
19 listen to additional testimony, additional testimony from
20 the prosecutor. He would bring in evidence that would be
21 evidence, what the court has called evidence in
22 aggravation, which means it would make it worse. A person
23 has been convicted of murder, this evidence comes in and
24 the prosecutor says this is the evidence that makes me ask
25 you to sentence the person to death.

1 The defendant would have an opportunity, if he chose,
2 to bring in information that would say this information
3 about me is why I would like for you to sentence me to
4 life. Are you following me?

5 A All right, sir.

6 Q So, now that jury has a choice. And the law says
7 that the juror, to be qualified, must give meaningful
8 consideration to both penalties. They can't go in saying
9 I would always give death or I would always give life.
10 They have to say to this court, "I would consider both
11 penalties, give meaningful consideration to both life or
12 death. And then I would decide based upon the discussions
13 in the jury room." You follow that?

14 A Okay.

15 Q All right. Now, if the jury -- and I understand from
16 your feelings about the death penalty, I understand that
17 you may be inclined to give a life sentence, and that's
18 fine. The question is, if you and those jurors, after
19 full discussion, after hearing all the testimony, looking
20 at all of the evidence, all of the information in
21 aggravation, if you and the other 11 jurors agreed that in
22 that particular case the defendant should be sentenced to
23 death, could you in fact vote for the death penalty under
24 those circumstances where you fully deliberated the case?
25 And the other jurors have been deliberating with you and

1 the time is now to decide. What I understand is that you
2 would consider --

3 MR. ARIAIL: Your Honor, could she answer the
4 question?

5 THE COURT: I think she's just saying it so low.
6 She's speaking so low. If you would move up to the
7 microphone and speak into it so we can hear you.
8 Solicitor, I think she's answering but it's hard to hear.

9 MR. ARIAIL: I don't think she answered could you
10 vote because he didn't let her. He just kept talking.

11 THE COURT: Give her a chance to answer the question.

12 Q All right, you understand the question?

13 A Yes, sir.

14 Q And could you give consideration, meaningful
15 consideration, to the imposition of both penalties, death
16 penalty or life in prison?

17 A Yes, sir.

18 Q All right. Now, if you chose -- and not this
19 particular case but kind of this imaginary case we made up
20 for these questions -- if you and your jurors had all
21 agreed that the appropriate penalty in that particular
22 murder case was death, would you sign the verdict form
23 along with every other juror, saying that that was the
24 penalty if you decided that was appropriate?

25 A Yes, sir.

1 Q All right. Thank you, ma'am.

2 MR. MAULDIN: Thank you, judge.

3 THE COURT: Any questions from the state?

4 MR. ARIAIL: Yes, sir. Could -- I have something I'd
5 like to talk about before I start questioning. I'll go
6 ahead and question her if you want me to.

7 THE COURT: Miss Fuller, be careful stepping down.
8 I'm going to ask you to step in the hall just a second,
9 please. You could leave that up by the microphone.

10 (prospective juror exits.)

11 MR. ARIAIL: Your Honor, I would like to at this
12 point move for the court to strike her for cause without
13 going through on the following grounds. Number one, she
14 didn't complete her questionnaire. Somebody else did it
15 for her.

16 THE COURT: She said somebody wrote it for her, she
17 told them what to put down.

18 MR. ARIAIL: Obviously the answers that she gave or
19 she thought she gave were incorrect because of the fact
20 that on number 65 she gave -- it's not her answer. She
21 contradicted that. Then she didn't answer any of the
22 questions relating to the death penalty. Then you asked
23 her, she clearly is opposed to the death penalty, said
24 that -- her statement was that she could never return a
25 verdict of guilt when you read it to her.

1 Now, after you questioned her, it's obvious to me
2 that she is a very nice person and that she wants to tell
3 or say whatever it is in this sort of power-filled
4 environment, what it is, is the right thing that she's
5 perceiving. I don't think, regardless what we ask or
6 where we go, that we're going to get the real answers out
7 of her, because even with the last answer to Mr. Mauldin,
8 her face was so wrenched up about what her answer was
9 going to be, i'm just concerned with this juror is in a
10 situation where we're not getting the right answers. And
11 regardless which way it goes, we're getting not an
12 accurate response.

13 MR. MAULDIN: Absolutely, no question this lady is
14 agonizing over this process, and it's clear to everybody.
15 We've seen plenty of those and we will see plenty of
16 those. This is a difficult process. She's answered
17 questions that literally make her qualified. I mean, we
18 can't go into her mind to determine if she's in fact
19 answering what she really means. We can only take the
20 answers that come out of her mouth.

21 THE COURT: Solicitor, I'm not going to disqualify
22 her at this point. I'll give you an opportunity to ask
23 questions. And I'll take it under advisement.

24 Would you ask Miss Fuller to come back, please?

25 (prospective juror returns to courtroom.)

1 THE COURT: Be careful, have a seat.

2 MR. ARIAIL: Can I defer my questions until you
3 finish your examination?

4 THE COURT: I would prefer you dispose of this issue
5 first.

6 MR. ARIAIL: On the death penalty?

7 THE COURT: Yeah, on death penalty right. I really
8 would, because I haven't made up my mind. I'm listening
9 to you argue, I heard their argument. But I haven't made
10 up my mind yet. I want to hear your questions and i want
11 to hear the answers.

12 BY MR. ARIAIL:

13 Q Miss Fuller, my name is Bob Airial, and i'm the
14 solicitor for the 13th circuit, which means i'm the
15 state's prosecutor. If you watch TV, they call it the
16 D.A. And I would be responsible for prosecuting the case
17 along with Miss Strom, my deputy, and Mr. Moyer, who is
18 one of my assistants.

19 And what we are in the process of doing is making
20 sure that jurors who are qualified can fairly and
21 meaningfully consider two punishments if we get to that
22 phase. And the judge has explained how the process works.
23 You have a trial and the defendant is found guilty.
24 You've already found him guilty of the crime.

25 A Yes.

1 Q The question now comes, can you fairly and
2 meaningfully consider two penalties, death and life.
3 Also, there's another component, but let's talk about it
4 before I get there. Meaningfully consider means not just
5 that I'll say I'll consider it, but you've got to be able
6 to give it true and valid consideration. Can you do that,
7 to the death penalty?

8 A Could I give it consideration?

9 Q True and valid consideration, not just consideration.

10 A Yeah. I can be true, you know, considering
11 something.

12 Q All right. Let me ask it another way. Once you've
13 given it consideration and you're back in the jury room in
14 this case we've placed you on, could you vote, vote to
15 impose the death penalty?

16 A Could I answer the question, do I think I can or do
17 it have to be yes or no?

18 THE COURT: You can answer the question any way you
19 want to.

20 A I think I can.

21 Q You think you can. Why do you think you can as
22 opposed to why you're not sure you can?

23 A It just a hard question to me.

24 Q Hard in what way? How can I make it easier?

25 A I don't think you can.

1 Q Can't make it easier. All right. If you were on the
2 jury and you were back in the jury room, and 11 of your
3 jurors had voted that the death penalty was the
4 appropriate sentence. Let's say they voted -- it was a
5 life sentence and that you thought the appropriate
6 sentence was death. Would you switch your vote and go
7 with the majority since the majority had 11 and you were
8 only one, or would you stay with your own conviction?

9 A I'd stay with my own opinion.

10 Q And if you were on the other side, would you also
11 respect the opinions of the minority; that is, those that
12 didn't believe the punishment was the same as you believe
13 it should be? Or would you discuss it with them and try
14 to force them to change their mind?

15 A I would try to weigh out both issues to see what, you
16 know, consider both issues to find out what I would do.
17 But I would try to stick to my own thing, you know. But
18 like I say, I never been in that predicament, so I don't
19 know.

20 Q All right. When the judge asked you the question
21 about which is one of the following statements best
22 represents your opinion, you said about the death penalty,
23 "I could never under any circumstances return a verdict of
24 death."

25 A Yes, sir, I said that.

1 Q And is there something that's changed since you told
2 him that at the beginning?

3 A Maybe I'm not understanding completely what I
4 supposed to be understanding. But death to me is just
5 something that's --

6 THE COURT: It's what?

7 A Death to me is just, any circumstances is wrong.
8 It's wrong to go out and murder somebody, it's also
9 wrong -- it just, I don't know.

10 Q It would be wrong, you think it would be wrong for
11 you to impose the death penalty?

12 A That would make me a murderer, too, seems like.

13 Q Okay. Thank you.

14 THE COURT: Okay. Miss Fuller, if you would step out
15 in the hall just a second. Any arguments? I'll be glad
16 to hear any arguments that you want to make.

17 MR. MAULDIN: Qualified.

18 MR. ARIAIL: I Renew my motion she's not qualified.
19 She'll give you the answer that she thinks you want to
20 hear.

21 THE COURT: I think --

22 MR. MAULDIN: I don't know if you need me to speak,
23 but I'd be glad to if the court wished.

24 THE COURT: I'm Going to deny your motion. She may
25 be impaired, but I don't think she's substantially

1 impaired. And lack of -- I'm going to deny your motion.

2 Would you bring Miss Fuller back?

3 (prospective juror enters courtroom.)

4 BY THE COURT:

5 Q Miss Fuller, have a seat. We're giving you some
6 exercise today. Crawl back up in that chair.

7 Miss Fuller, do you have any physical or mental reasons
8 you could not serve on this jury?

9 A I'm mentally unstable.

10 Q Pardon?

11 A Right now I feel mentally unstable.

12 Q I understand that. After listening to all these
13 questions I do too, I been listening to them a day and
14 half and I feel the same way. I can understand that. Do
15 you know of any personal reasons as to why you cannot
16 serve on this jury that would create a hardship?

17 A For me?

18 Q Yes, ma'am.

19 A Yeah. I have some personal reasons.

20 Q All right. Let me hear them. Not about the death
21 penalty, but what personal reasons do you think would
22 create a hardship that you could not serve on this jury?

23 A I just have some personal reasons at home.

24 Q All right. What are they?

25 A I take care of my sister-in-law with Alzheimers. I

1 left her in care yesterday, it didn't work out too good.

2 Also take care of another sister who has --

3 Q Who normally takes care of her when you --

4 A My cousin does, but she thought I left her. A person
5 with Alzheimer, different kinds of, you know --

6 Q Can your cousin take care of her for you?

7 A Oh, yeah, she can taken care of, but makes it hard.

8 Q I understand it makes it hard. Have you heard
9 anything about the case on TV or read anything in the
10 paper about the case?

11 A Not really. You know I'm not a news person.

12 Q Do you watch TV?

13 A Yeah, I'm a movie person.

14 Q Movie person. What movies do you like?

15 A All of them. My son and I look at the gladiator and
16 different movies he have.

17 Q What type of movies do you like?

18 A Action movies.

19 Q I call that explosions?

20 A Western movies, all that.

21 Q Okay. All right. Do you know the victim in this
22 case, Maranda Williams.

23 A No, I don't.

24 Q Do you know the defendant in this case, Charles
25 Christopher Williams?

1 A No, I don't.

2 Q Do you know any of the attorneys sitting to my right?

3 A No, sir.

4 Q Do you know the solicitor or any of the people
5 sitting at the solicitor's table? Do you have a personal
6 relationship with anybody sitting in the solicitor table?

7 A No, I don't.

8 Q I'm going to give you a list of witnesses. Can you
9 look at that witness list and see if there's any name that
10 you recognize?

11 A No, sir, not as I know of, not by name.

12 Q Let me give you a second list. Can you look at that
13 and see if you recognize any of those names.

14 A No, sir.

15 Q Okay. I'm going to read you a question. I want you
16 to respond to that question if you could, Mrs. Fuller. In
17 this case the defendant is black and the victim is white.
18 It is undisputed that the black defendant and the white
19 victim engaged in interracial dating. Would the fact that
20 the defendant and the victim engaged in interracial dating
21 make it difficult for you to be fair to either the state
22 or the defendant?

23 A No, sir.

24 Q All right. Can you listen to all the testimony in
25 the case from the witness stand and base your decision on

1 the testimony you hear from the witness stand?

2 A Can I listen to it?

3 Q Yes, make your decision on what you hear in the
4 courtroom.

5 A Yes, sir.

6 Q Can you be fair and impartial to both the state and
7 the defendant?

8 A Yes, sir.

9 Q Do you have any other personal reasons as to why you
10 could not serve on the jury other than what we've already
11 discussed, your hardship?

12 A No, sir.

13 Q All right. Mrs. Fuller, I'm going to find you
14 qualified. The bailiff is going to give you a slip of
15 paper with a phone number. Call that phone number after
16 8:00, there will be a message on the recorder for you.
17 Follow the instructions. It may be call back Wednesday
18 night, may say be here Thursday morning. But follow those
19 instructions okay?

20 A All right, sir.

21 Q Follow the bailiff. He'll give you that little slip
22 of paper. All right.

23 We're going to take about a five- or ten-minute
24 break.

25 (brief recess.)

1 THE COURT: Next juror would be Michael Dunlap, juror
2 number 103, Michael Dunlap. Check the Fullers, see if one
3 of them is Fulmer.

4 (prospective juror Michael Dunlap, white male, enters
5 courtroom.)

6 THE COURT: How you doing, sir?

7 PROSPECTIVE JUROR: Pretty good.

8 THE COURT: Okay. Mister, Is it Dunlap?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Would you raise your right hand?

11 MICHAEL J. DUNLAP, (white
12 male), having been previously duly sworn, testified as
13 follows:

14 EXAMINATION

15 BY THE COURT:

16 Q Could you pull up a little so we can hear you in the
17 microphone, please, sir?

18 A Yes, sir.

19 Q All right. We're going to ask you some questions.
20 Okay?

21 A Yes, sir.

22 Q I would ask you to answer those questions best you
23 can.

24 A Yes, sir.

25 Q There are no right or wrong answers, just answer the

1 questions best you can. If you don't understand the
2 questions, please tell us you don't understand the
3 question, we'll try to rephrase it.

4 A Yes, sir.

5 Q As I said a minute ago, there is no right or wrong
6 answer, just give the best answer you can. We're going to
7 ask you certain questions about your opinions on certain
8 matters.

9 A Yes, sir.

10 Q And the first thing I want to ask you, do you have
11 any physical or mental problems that would prevent you
12 from sitting on the jury?

13 A No, sir.

14 Q Do you have any personal problems or personal
15 hardships that would prevent you from sitting on the jury?

16 A No, sir.

17 Q You filled out the questionnaire last month or the
18 month before last?

19 A Probably last month.

20 Q Do you recall filling it out?

21 A Yes, sir.

22 Q I'm going to give you a copy, or your original.
23 Okay?

24 A Yes, sir.

25 Q Do you remember or do you recall the questions? Do

1 you think there's any changes you would like to make in
2 the questionnaire?

3 A Maybe.

4 Q What would you like to change?

5 A Any way I could talk to you in private about that?

6 Q I'm sorry there is no -- just point me to the
7 question, which question. Give me the number of the
8 question.

9 A I'm trying to find it.

10 Q Okay. Well take your time.

11 A Okay. I'm sorry. Does it ask anything about crime
12 committed? Because I got pulled over two nights ago.

13 Q Okay. That's the only thing? Let me find where it
14 is and find the question. Look at question number 44.
15 That's the wrong question, excuse me. Look at question
16 48. Look at question 48.

17 A I have not been charged yet.

18 Q Okay, you were pulled over?

19 A Yes, sir.

20 Q By the highway patrol?

21 A Sheriff's.

22 Q Why were you pulled over?

23 A I got simple possession of marijuana.

24 Q Simple possession of marijuana?

25 A Yes. It was two nights ago.

1 Q But the case is still pending, right?

2 A Yes, sir. That's the only thing that could have
3 changed.

4 Q Okay. Other than that?

5 A There is no, there is no problems.

6 Q Everything else is accurate. Is that correct?

7 A Yes, sir.

8 Q Okay.

9 A I just thought you might need to know that.

10 Q Okay. Thank you very much. The defendant in this
11 case, Mr. Charles Christopher Williams, has been charged
12 with murder and kidnapping and it occurred on September 3
13 2003 and the victim is Maranda Williams. Do you
14 understand?

15 A Yes.

16 Q You read anything in the paper, heard anything on TV
17 or radio, or talk to anybody about this case?

18 A I've heard some talk in school.

19 Q All right. That's at Tech school?

20 A Yes, sir.

21 Q When did you hear the talk?

22 A During some of my classes.

23 Q How long ago?

24 A Probably last week.

25 Q Last week?

1 A Yes, sir.

2 Q What was said in your classes? Do you recall?

3 A Nothing important. Mainly that it was -- I don't
4 know that it was a major case, I had a better word. It
5 was just a big case, kind of they were talking about that.

6 Q Did anybody tell you any facts about the case? Do
7 you recall any facts about the case?

8 A No real facts, No, sir.

9 Q No real facts. Just that it was a major case and it
10 was an important case?

11 A Yes, sir.

12 Q How did that affect you when you heard that
13 information?

14 A Not a bit.

15 Q Did you tell them you were on the possible jury
16 panel?

17 A Yes, sir.

18 Q What did they say to you when you told them that?

19 A That I don't need to talk about it any more.

20 Q Okay. All right. Based on that, have you formed or
21 expressed an opinion as to the defendant's innocence or
22 guilt in this case?

23 A No, sir.

24 Q All right. Do you know the victim in the case,
25 Maranda Williams?

1 A No, sir.

2 Q Do you know the defendant, Mr. Charles Christopher
3 Williams?

4 A No, sir.

5 Q Do you know the attorneys representing Mr. Williams
6 to my right here?

7 A No, sir. I don't know --

8 Q Do you know the solicitor or anyone in his office?

9 A I don't think so.

10 Q I'm going to give you a list of witnesses. Would you
11 look at this list of witnesses and see if you recognize
12 any of those names.

13 A (complies) Not that I can recall.

14 Q Okay. Would you look at this second list and see if
15 you recognize any of those names.

16 A (complies) Huckaby stands out in my memory. I can't
17 recall nothing about it. I kind of recall that name.

18 Q Daisy Huckaby?

19 A Yeah. I think I know some Huckabys.

20 Q Where is Daisy Huckaby from or how old is she?

21 MR. NETTLES: She's our client's mother. She's
22 probably 50.

23 MR. MAULDIN: In her 40's, judge.

24 THE COURT: In her 40's. Would that be the same
25 person?

1 A I doubt it.

2 Q Do you know a Daisy Huckaby?

3 A I don't know a Daisy Huckaby, but I know the Huckaby
4 name through my grandparents.

5 Q But you don't know Daisy Huckaby?

6 A Not that I can recall.

7 Q I'm going to ask you a question. Okay?

8 A Yes, sir.

9 Q In this case the defendant is black and the victim is
10 white. It is undisputed the black defendant and white
11 victim engaged in interracial dating. Would the fact that
12 the black defendant and white victim engaged in
13 interracial dating make it hard for you to be fair to
14 either the state or defense?

15 A No, sir.

16 Q I'm going to ask you to look at your questionnaire,
17 please, sir.

18 A Yes, sir.

19 Q And would you look at the question 23. Do you see
20 question number 23?

21 A Yes, sir.

22 Q "what type of training, if any, have you received
23 beyond high school?"

24 You have "law and police."

25 A Yes, sir. I'm a criminal justice student.

1 Q You're a criminal justice student? I believe in
2 question 34 --

3 A Yes, sir.

4 Q -- you have one semester left?

5 A This is my last semester.

6 Q This is your last semester?

7 A Yes, sir.

8 Q Having been a criminal justice major, do you have any
9 bias or prejudice for or against the police?

10 A No, sir.

11 Q All right. Do you have any bias or prejudice towards
12 or against defendants in general as a result of being a
13 criminal justice major?

14 A No, sir.

15 Q All right. If you would, look at question 64, that's
16 on page 10.

17 A Yes, sir.

18 Q All right. "QUESTION: Briefly describe your
19 attitudes and beliefs concerning capital punishment, death
20 penalty."

21 A Yes, sir.

22 Q You said, "some cases require the death penalty but I
23 do not believe most do." Is that correct?

24 A Yes, sir.

25 Q And then question 65 you say, "What is your opinion

1 about the death penalty?"

2 You say, "somewhat favor"?

3 A Yes, sir.

4 Q All right. Now, if you'll flip over to the next
5 page, you state that you've discussed your opinions about
6 the death penalty with everyone in school. What have you
7 discussed about the death penalty with other students in
8 school?

9 A We just discussed what is required for it, you know,
10 it's part of class.

11 Q Okay. Part of your courses you take?

12 A Yeah, discussed the requirements for it, reasons, you
13 know. I don't know how to say --

14 Q Part of your curriculum?

15 A Yes, sir.

16 Q And part of your courses you're taking?

17 A Yes, sir.

18 Q Okay. Now, look at question 68. Says, "With
19 reference to the death penalty" -- I'm sorry.

20 A That's okay, go ahead.

21 Q "With reference to the death penalty, which of the
22 following statements would best represent your opinion?"
23 You circled number two.

24 A Yes, sir.

25 Q "I believe that the death penalty is the appropriate

1 form of punishment in some murder cases. I could return a
2 verdict of death if I believe it was warranted in a
3 particular case, depending upon the evidence and the law,
4 and what I learned about the defendant"?

5 A Yes, sir.

6 Q Is that your opinion here today?

7 A Yes, sir.

8 Q Has that changed?

9 A No, sir.

10 Q Okay. All right. I'm going to describe briefly to
11 you the process that we're undergoing. The defendant in
12 this case is charged with murder and kidnapping.

13 A Uh-huh.

14 Q It's the state's obligation, responsibility, to prove
15 the defendant guilty beyond a reasonable doubt. All 12
16 jurors would be required to find the defendant's guilt.
17 Do you understand?

18 A Yes, sir.

19 Q The defendant would never have to come into court and
20 prove his innocence.

21 A I understand.

22 Q This case would be tried in two stages or two phases.
23 Okay?

24 A Uh-huh.

25 Q And the first phase, the state would be required to

1 prove the defendant guilty of murder and kidnapping beyond
2 a reasonable doubt?

3 A Yes, sir.

4 Q Let's assume that the state -- excuse me, the jury
5 finds a defendant innocent of both charges.

6 A Yes, sir.

7 Q And that would be the end of the case.

8 A Yes, sir.

9 Q Let's assume that the jury finds the defendant guilty
10 of murder but innocent of kidnapping. That would be the
11 end of the case.

12 A Okay.

13 Q Do you understand?

14 A Okay.

15 Q Now, let's assume that the jury finds the defendant
16 guilty of both charges, murder and kidnapping.

17 A Yes, sir.

18 Q Then we would go to the second phase.

19 A Yes, sir.

20 Q Or the second trial. In that phase, the jury would
21 consider everything that was put into evidence in the
22 first trial; but the state would be obligated to prove
23 beyond a reasonable doubt the aggravating circumstance
24 whereby they're asking for the death penalty. Do you
25 understand?

1 A Yes, sir.

2 Q Now, the jury would have to decide whether the state
3 has proven their case beyond a reasonable doubt as to
4 those aggravating circumstances. Now, even if the jury
5 believes that the state proved the aggravating
6 circumstances beyond a reasonable doubt, the jury still
7 does not have to give the death penalty.

8 A Yes, sir.

9 Q It's strictly up to the jury to decide whether the
10 defendant receives the death penalty or life in prison
11 without parole.

12 A Yes, sir.

13 Q What does life in prison without parole mean to you?

14 A It's a lot of waiting.

15 Q Pardon?

16 A A lot of sitting and waiting.

17 Q Do you understand that it means that the --

18 A Yeah.

19 Q -- person will be in jail until he dies?

20 A Yes, sir.

21 Q He will not make parole?

22 A Yes, sir.

23 Q All right. The defendant would also be able to offer
24 mitigating factors or mitigating circumstances. These
25 factors or mitigating circumstances would be offered to

1 try to convince the jury that the defendant should not
2 receive the death penalty but should receive life in
3 prison.

4 A Yes, sir.

5 Q Would you consider those mitigating circumstances
6 before you made up your mind as to whether the defendant
7 should receive life or death?

8 A Yes, sir.

9 Q Do you think you could be fair and impartial to both
10 the state and defendant?

11 A Absolutely.

12 Q Do you think you can base your decision on the
13 testimony you hear from the witness stand?

14 A Yes, sir.

15 Q And do you know of any personal reason as to why you
16 could not serve on this jury?

17 A None other than what I've already told you.

18 THE COURT: Okay. Whose turn?

19 MR. ARIAIL: Mine.

20 Q Let me say one thing. While the solicitor is getting
21 papers together. You understand it's the jury's decision
22 whether the defendant receives death or life? Nobody --

23 A Yes, sir.

24 Q Nobody elses but the jury?

25 A Completely.

1 THE COURT: Solicitor.

2 MR. ARIAIL: Thank you, judge. Examination, Bill.

3 BY MR. ARIAIL:

4 Q Mr. Dunlap, my name is Bob Airial. I'm the solicitor
5 for the 13th circuit. The solicitor in this state is
6 that person that you may, if you watch TV, referred to as
7 the D.A. But in South Carolina we're still known as the
8 solicitor. As the solicitor, i'm responsible for
9 prosecution of all criminal along with my staff. In this
10 case my deputy, Betty Strom, is assisting me along with
11 one of my assistants, Mark Moyer.

12 The Judge talked to you about this hypothetical
13 situation, if you were placed on a jury which the death
14 penalty was to be decided, you have two stages. The First
15 stage, guilt; the second stage, punishment. The key that
16 is important for both ourselves and the defense is if you
17 are on the jury --

18 A Yes, sir.

19 Q -- and you and your fellow jurors reach a verdict;
20 that is, that the defendant is guilty and he's guilty of
21 kidnapping and he's guilty of murder.

22 A Yes, sir.

23 Q You then go to the second phase; and that is, the
24 penalty; but the law requires and the judge will require
25 and the judge will charge you that you've got to enter

1 that second phase with an open mind.

2 A Yes, sir.

3 Q You cannot go into the second phase either with a
4 preconceived idea to impose life or preconceived idea to
5 impose death. As a juror you've got to be able to fairly
6 weigh and be able to vote for both punishments..

7 A Yes, sir.

8 Q All right. Do you feel that you are such a person
9 that could do that?

10 A I could. I'm very open minded I feel. Yes, sir.

11 Q All right. Well, it would be -- but at that time
12 even though you may be open minded, you've got to realize
13 you will have already heard a big part of the case as to
14 guilt, and you will have already reached a verdict that
15 the defendant is guilty.

16 A Yes, sir.

17 Q But to be a qualified juror, you have got to be able
18 to have an open mind to consider whether or not life in
19 prison is an appropriate sentence.

20 A Yes, sir.

21 Q And your questionnaire indicates you feel the death
22 penalty is appropriate in some cases but not most?

23 A Yes, sir.

24 Q And you believe that you could impose the death
25 penalty?

1 A Yes, sir.

2 Q Do you believe that you would also, in entering that
3 second phase, that penalty phase of the trial, have an
4 open mind to consider the imposition of the death penalty
5 if you thought the evidence supported that verdict?

6 A Only if the evidence supported it.

7 Q And if the evidence supported it, do you believe that
8 you could vote to impose the death penalty?

9 A Yes, sir.

10 Q At the time you finished your deliberations in the
11 second phase, you and your fellow jurors have discussed
12 and come to your decision as a group, assuming you're on
13 this jury and assuming this is the case, assuming you all
14 voted and decide for the imposition of the death penalty.
15 The judge will instruct you and the law requires that you
16 actually sign a document that records that as your verdict
17 and bring that back to the judge.

18 A Yes, sir.

19 Q Would you have any hesitancy or problems in signing
20 that document if you had reached the verdict that the
21 death penalty was the appropriate --

22 A No, sir.

23 Q All right. Excuse me just a minute, let me ask ---

24 MR. ARIAIL: That's all I have, Your Honor. Thank
25 you.

1 Thank you, Mr. Dunlap.

2 THE COURT: Do you have any questions?

3 MR. NETTLES: I do.

4 THE COURT: All right. Come on.

5 Examination by Mr. Nettles.

6 Q Mr. Dunlap, how you doing?

7 A Kind of tense, man.

8 Q Kind of tense, Man. I hear you.

9 A Sitting in that room all day and then a bunch of
10 questions.

11 Q Make you crazy, won't it? I hear you. Let me start
12 off with this. You were asked about the death penalty and
13 your response was, "some cases require the death penalty
14 but I do not believe most do."

15 A Yes, sir.

16 Q What do you mean by that?

17 A Just what the questions ask. I mean, it's not
18 something to be taken lightly, I guess is kind of what I
19 mean.

20 Q And when you say that -- when you said that most,
21 some cases require death penalty, but I do not believe
22 most do, does that mean you heard or read about death
23 cases where somebody got death you didn't think they
24 should have got death?

25 A No -- when I read the questionnaire, I felt like it

1 was taking it too lightly. It's not something that you
2 should take lightly. I just felt like it was, like it was
3 more opinionated than it could have been -- or not really
4 opinionated, but it didn't give you the kind of choices
5 you could have made.

6 Q What kind of choices would you have made?

7 A It just -- it seemed cut and dry, either way. And
8 it's not always cut and dry either way. It just didn't
9 feel like it was showing the real light of it.

10 Q Let me ask you this. And we talked a lot about
11 death, let me talk about the other penalty, the other
12 white meat. There is -- no, two penalties out there. And
13 the other is life without possibility of parole. And you
14 and the judge had a brief conversation about that. Do you
15 accept the law, that the law is, okay, that it's either
16 death which it's certain what happens there, or life
17 without parole and is certain what happens there, also?

18 A Yes, sir.

19 Q And what is that?

20 A You sit in prison the rest of your life.

21 Q Until you die?

22 A Yeah.

23 Q Do you consider that a substantial punishment?

24 A I didn't really know what it meant until two nights
25 ago. I sat in prison four hours. That's horrible.

1 Q Do you consider?

2 A It's a substantial -- yes.

3 Q For the rest of your life?

4 A Yes.

5 Q Do you -- and do you consider that a substantial
6 punishment for a murder, life without parole?

7 A It's more about what the evidence -- about what the
8 evidence shows.

9 Q Just so you know?

10 A Yeah. I would consider it, yeah, but it's more what
11 the evidence shows.

12 Q Let me ask you one other thing. Then I think -- two
13 other areas, then I'm done. One of them is this. Just
14 like we asked what your opinion is about the death
15 penalty, just asked you give us sort of broad strokes,
16 some people come in and say somebody killed somebody,
17 always get death penalty. Some people come in say some
18 people killed somebody, never get the death penalty. We
19 kind of need to figure out where they are on that issue.

20 Let me ask you this. On the issue of mental illness,
21 some people say, look, I think that stuff is a bunch of
22 voodoo. Some people say, No, mental illness is a very
23 real thing. Some people are kind of in between. Where do
24 you fit in on all that?

25 A I don't know, can be kind of in between. I feel like

1 I'm not educated enough to judge it.

2 Q But if somebody, an expert came in and talked to you
3 about it and tried to educate you about it, would you be
4 willing to accept it as a mitigator or reason for giving
5 someone less than death as an appropriate sentence for
6 murder?

7 A I'd more definitely be able to listen to what they
8 have to say, then be able to form my opinion.

9 Q I believe this is the last topic I'm going to need to
10 talk to you about, is this. If you were in the jury
11 room -- and, you know, I got to tell you, you're one of
12 the younger people we have, you were in that room.

13 A Yeah, I think I am the youngest.

14 Q If there were -- you were in that room and there were
15 a number of people older than you and you had an opinion
16 about the appropriate punishment, and I don't care which
17 one it is -- obviously, I do care, but just for purposes
18 of this conversation -- and you were in the minority,
19 being a younger person, would you change your opinion just
20 to go along with the older people?

21 A Absolutely not.

22 Q Let me flip that for a second. If you were in the
23 majority and someone else was in the minority, would you
24 expect them to change their opinion because it was
25 different from yours?

1 A No.

2 Q Would you be able to engage in healthy debate about
3 appropriate punishment?

4 A Yes.

5 Q Let me check with the other lawyers, I might be done.

6 THE COURT: Take a deep breath and relax. .

7 MR. NETTLES: Nothing else.

8 THE COURT: Any motions?

9 MR. ARIAIL: None.

10 MR. NETTLES: None.

11 BY THE COURT:

12 Q Mr. Dunlap, what we're going to do is qualify about
13 43 or 45 jurors. And from that 43 or 45, we will draw 12
14 jurors plus four alternates.

15 A Yes, sir.

16 Q You're going to be part of that group. Okay?

17 A Okay.

18 Q Now, the bailiff is going to give you a slip of
19 paper. On that slip of paper is a phone number. Call in
20 after 8:00 that number. There will be a message. It may
21 say call back tomorrow night, Wednesday night. It May say
22 call back Wednesday night, come in Friday at 9:00. But
23 follow the directions on the recording.

24 Now, in the meantime don't listen to anything on TV
25 about this case, don't read anything in the paper.

1 A Yes, sir.

2 MR. NETTLES: Before you completely excuse him, could
3 we bring up one thing quick about this juror? It's not
4 about qualification. I promise you, you'll want to hear
5 it.

6 THE COURT: Excuse me. Stand out in the hall a
7 second.

8 (Outside presence of juror.)

9 MR. NETTLES: I just have information that part of
10 his curriculum for tomorrow, for his class is going to be
11 from one of the sergeants who may -- is at least at the
12 sheriff's department.

13 THE COURT: Sorry, what now?

14 MR. NETTLES: Part of curriculum for his class
15 tomorrow at Greenville Tech is going to be involved
16 discussion about this case. I'd hate for him to go to
17 class.

18 THE COURT: Who is going to be discussing it?

19 MR. NETTLES: A sergeant.

20 THE COURT: Who is sergeant --

21 MR. NETTLES: Sgt. White.

22 THE COURT: Of what Department?

23 MR. NETTLES: Greenville county sheriff's
24 department -- city.

25 THE COURT: The city?

1 MR. NETTLES: Yes, sir.

2 THE COURT: And does anybody know what the absentee
3 requirements are for the students at Tech?

4 MR. NETTLES: I don't know that.

5 THE COURT: I've got one of two choices. Either tell
6 the gentleman not to go to class or call up Sgt. White,
7 tell him to put off his agenda until this jury is drawn.

8 MR. MAULDIN: I've got a suggestion.

9 THE COURT: Unless somebody else has a suggestion.

10 MR. MAULDIN: My suggestion is that this particular
11 individual is just not -- even the most harmless presence
12 over there could cause a problem. I mean, you don't --

13 THE COURT: I understand. But you want him to get in
14 trouble at Tech by being absent from class?

15 MR. MAULDIN: Surely they couldn't do that if it was
16 under a judge's orders.

17 THE COURT: I don't know what their rules and
18 regulations are.

19 MR. NETTLES: I Apologize, there was some
20 miscommunication on my part. Apparently, just ask him,
21 would you just bring him back in, ask him as a part of his
22 class to not talk about it. I think that will -- don't go
23 into class and talk about. Obviously, it's something
24 that's been talked about in his class before.

25 THE COURT: What if they're talking about it?

1 MR. NETTLES: I Think the people in his class are
2 talking about it. He can tell them he can't talk about
3 it.

4 THE COURT: But if it's a presentation from Sgt.
5 White?

6 MR. NETTLES: I was wrong about that.

7 THE COURT: Oh, you were wrong?

8 MR. NETTLES: I have been straightened out on that.

9 THE COURT: All right.

10 MR. MAULDIN: But the problem still exists, judge.

11 THE COURT: I understand the problem. It's a
12 different problem now.

13 MR. NETTLES: That's right. Not if the court just
14 tells him don't talk about it in class.

15 THE COURT: That's a different problem than the first
16 one you posed.

17 MR. NETTLES: Yes, sir. And I apologize.

18 THE COURT: Yes, sir. Would you bring Mr. Dunlap,
19 please?

20 (prospective juror enters courtroom.)

21 You can just stand right there. When you go to
22 school tomorrow, don't discuss the case with anyone. If
23 someone tries to discuss the case to you, what happened
24 today, any questions asked, please turn around walk away.
25 Now, if they insist on bothering you about it, please get

1 the name. I'll take care of that individual.

2 A Yes, sir.

3 Q Okay?

4 A Yes, sir.

5 Q Thank you.

6 (prospective juror exits.)

7 THE COURT: Bring us Mr. John Bott.

8 (Prospective juror Bott, white male, enters
9 courtroom.)

10 EXAMINATION

11 THE COURT: Mr. Bott, how you doing today? Can
12 you --

13 PROSPECTIVE JUROR: Very good.

14 THE COURT: Turn around, face these people if you
15 would. Please raise your right hand.

16 JOHN A. BOTT, after being duly sworn,
17 testified as follows:

18 Q Mr. Bott, do you remember filling out your
19 questionnaire?

20 A Yes, sir.

21 Q Was the questionnaire at the time you filled it out
22 accurate as best you can determine?

23 A I admit that I hastily filled it out because I had no
24 idea what it was about, still don't. So, I did it
25 quickly.

1 Q All right. Well, take a look at it. What areas do
2 you feel like you may want to change? Do you recall?

3 A I don't think anything, sir. I don't recall
4 everything that was on it.

5 Q Probably don't remember the questions?

6 A I remember it was in November or December.

7 Q Okay. All right. Take your questionnaire. All
8 right?

9 A Okay.

10 Q All right. If you would, turn to page 10, question
11 number 64, says, "briefly describe your attitudes and
12 beliefs concerning capital punishment."

13 You said, "I am for the death penalty if a person
14 intentionally murders a another human being." Is that
15 still your opinion today?

16 A I'll have to say it is. With a heavy heart, I would
17 say it is. Yes, sir.

18 Q Look at question 65. Says, "What is your opinion
19 about the death penalty?"

20 You say, "strongly favor." Is that still your
21 opinion today?

22 A If number 64 is in fact the case, Yes, sir, I have to
23 say it would be.

24 Q Look at question 68 on the next page.

25 A Okay.

1 Q Did you find it?

2 A Yes, sir.

3 Q Question 68 says, "with reference to the death
4 penalty, which of the following statements best represents
5 your opinion?"

6 And you circle number two, which says, "I believe the
7 death penalty is the appropriate form of punishment in
8 some murder cases, and I can return a verdict of death if
9 I believe it was warranted in a particular case, depending
10 upon the evidence, the law, and what I've learned about
11 the defendant." Is that still your opinion today?

12 A Yes, sir. It sure is.

13 Q Now, referring back to question number 64. I'm going
14 to specifically talk to you about the intentional murder
15 of another human being. In South Carolina in order for a
16 defendant to be found guilty, the state would be required
17 to prove beyond a reasonable doubt that the murder was
18 done intentionally. Do you understand?

19 A Okay.

20 Q In other words, all murders by definition would be
21 intentional. Do you understand? And that intent can come
22 from various sources, but that's another issue.

23 A I got to be honest with you. I Lost my train of
24 thought about ten seconds ago. I would greatly appreciate
25 if you'd back up just a little bit. And I don't want to

1 answer something not knowing what I'm saying.

2 Q All right. Basically, any murder in South Carolina
3 would be intentional. Do you understand?

4 A No, I don't understand that.

5 Q That's the law.

6 A Any murder in South Carolina is intentional.

7 Q If they're guilty of murder, the state would be
8 required to prove that it was an intentional act. That
9 can be proven by various means of evidence. But I'm not
10 going to get into that at this point, do you understand?

11 A Pretty much.

12 Q Now, the process that we would go through in this
13 situation is it would be a dual phase trial, in two
14 stages. The first stage of the trial would be -- excuse
15 me, the first stage of the trial the state would be
16 responsible or required to prove the defendant guilty of
17 murder and manslaughter [sic] beyond a reasonable doubt.

18 A Okay.

19 Q Do you understand?

20 A Yes, sir.

21 Q If the jury should find the defendant innocent of
22 those charges, that would be the end of the trial.

23 A Okay.

24 Q If the jury should find the defendant guilty of
25 murder, but innocent of kidnapping, that would be the end

1 of the trial. Do you understand? Yes or no?

2 A If they found him guilty of murder, innocent of
3 kidnapping?

4 Q That would be the end of the trial. Do you
5 understand?

6 A Yes, I guess so.

7 Q Now, if the jury finds the defendant guilty of murder
8 and manslaughter [sic], we would go to the second phase of
9 the trial. Do you understand?

10 A Yes, sir.

11 MR. ARIAIL: Not manslaughter.

12 THE COURT: Did I say manslaughter? I'm sorry, I
13 meant murder and kidnapping, do you understand?

14 A Yes, sir.

15 Q If the jury finds the defendant guilty of murder and
16 kidnapping, you would go to the second phase. Now, in the
17 second phase the state would be required to find the
18 defendant guilty -- excuse me, let me back up. Okay? In
19 the second phase of the trial the state would introduce
20 evidence of aggravating circumstances. They would be
21 required to prove the circumstances beyond a reasonable
22 doubt. Do you understand?

23 A Yes.

24 Q Now, the jury would have to determine that the state
25 had proven the aggravating circumstances beyond a

1 reasonable doubt. Even if the jury determines that the
2 state has proven the aggravating circumstances, the jury
3 still does not have to give the death penalty. The jury
4 has a choice between life without parole or death. That's
5 strictly the jury's decision, not the state or the judge
6 or the court or anyone else. That's the jury's decision.

7 A Okay.

8 Q And the second stage the jury would decide life or
9 death. Now, the defendant would generally introduce
10 mitigating circumstances. And mitigating circumstances
11 would be reasons that the defendant believes that he
12 should receive life rather than death.

13 Now, in this phase you can consider everything that
14 occurred in the first phase or the first stage and the
15 second phase. Do you understand?

16 A Yes, sir.

17 Q Based upon your description of the death penalty,
18 could you give meaningful consideration to the mitigating
19 circumstances or would you automatically give death
20 because it was an intentional act of murder?

21 A I'm going to answer you, and I hope that I understand
22 the question correctly.

23 Q If you don't understand the question, I'll try to
24 rephrase it.

25 A Okay.

1 Q Do you understand the question?

2 A Well, I think you're asking me if it is proved that
3 there's guilt.

4 Q That was proven in the first trial.

5 A During the first one. Now, we're saying that --

6 Q Would determine the penalty for the defendant in the
7 second phase.

8 A Are you asking would I listen to things that would
9 make the defendant say here are some extenuating
10 circumstances behind this, why I should receive life?

11 Q Either about the facts or about the individual, yes.
12 And my question, would you consider those and give those
13 meaningful consideration? Or would you automatically give
14 the death penalty because you already found him guilty in
15 the penalty or the guilt phase?

16 A Well, if I understand correctly, we found him guilty
17 yes, but there are circumstances that would be brought in.
18 I would certainly listen to them. If it meant life or
19 death, I would certainly listen to whatever it was,
20 whatever evidence is --

21 Q Would you consider those mitigating circumstances
22 before you made up your mind to give death or would you
23 automatically give death?

24 A Like if he was crazy?

25 Q I don't know, whatever it may be. I don't know what

1 it's going to be. But whatever it would be.

2 A I would certainly say I would have to listen to those
3 things before I would say this man deserves to die.

4 Q It's one thing to listen to it. It's something else
5 to consider it before you make up your mind. My question
6 is, will you consider it before you make up your mind?

7 A Oh, yes, absolutely. I would certainly think so.
8 Yes, sir. Yes, I would.

9 Q Okay. Whose turn?

10 BY MR. MAULDIN:

11 Q And it's Bott?

12 A Yes, sir, Bott.

13 Q Mr. Bott, my name is John Mauldin. I'm the public
14 defender for Greenville County. And Bill Nettles and I
15 represent Chris Williams in this matter.

16 A Okay.

17 Q And what I want to do is follow up essentially on
18 exactly the line of questions the judge is talking about,
19 the meaningful consideration of the two penalties.

20 A Okay.

21 Q Before I ask my question, I want to make sure we're
22 kind of on the same wavelength?

23 A I'm sorry. I've given you doubts.

24 Q No, you prefaced some of your answers, "if I
25 understand the question," that's good, you want to make

1 sure you're understanding. I want to make sure I'm
2 understanding as well. First of all, you got to
3 understand we're not talking, the judge nor any of us are
4 talking about this particular case, because you haven't
5 heard anything yet.

6 A Right.

7 Q What we're trying to do is determine whether you, and
8 it's okay, you're not on trial. Your beliefs and views
9 are not on trial. We're just trying to determine whether
10 in this case, you're a qualified potential juror on this
11 case or should you be on some other case.

12 A Yes, sir.

13 Q All right. Now, so the first thing we say, we're not
14 talking about this case, we're just talking about in
15 general. The second thing and this point I would make
16 because the judge made the statement to you, "any murder
17 in South Carolina must be intentional." And you said that
18 you didn't know that. So I want to kind of follow up a
19 little bit on that.

20 A Yes, sir. I didn't know it, but it just totally took
21 me by surprise, like, what did you say? Any murder is
22 intentional. What if I hit somebody with my car, I had no
23 intention of doing that, and they died. That's why the
24 question mark came up in my --

25 Q So maybe it wouldn't be called murder. And what I

1 think the best thing to do is start essentially by what we
2 mean by a conviction of murder. Because that's that first
3 phase of the trial the judge was talking about. Let's
4 make sure we all are kind of on the same wavelength.

5 At the first phase any testimony in -- and the
6 example you gave would be perfect -- testimony that it was
7 an accident or testimony that the person did not mean to
8 hit the other person with the car or that it was -- the
9 act that led to the death was committed under some sort of
10 duress; that it was self-defense, anything like that, any
11 information about whether the act was intentional, whether
12 it was premeditated murder, aforethought is what they call
13 it. Intentional killing, that issue would be decided in
14 the first phase of the trial. The jury would hear all the
15 testimony. They would go out, they could talk about any
16 accident and all this other stuff. But if they came back
17 in guilty, that means all those other things are out of
18 the window. Do you follow me?

19 A Okay.

20 Q So, now, that same jury then must decide one of two
21 penalties. I guess I'm going to cut right to it. Because
22 there is, what I -- when I read your questionnaire, I
23 appreciate you filling it out, "I am for the death penalty
24 if the person intentionally murders another human being."
25 To me that was real clear. If a person is convicted of

1 murder, then I am for the death penalty for that person.

2 That's what I interpreted in that answer.

3 A Yes.

4 Q A little bit different now that you've talked about
5 considering a life sentence. Let me give you this
6 scenario and you tell me how you feel.

7 A Okay.

8 Q You go through the first phase, you're one of the
9 jurors, you vote guilty, you're satisfied beyond a
10 reasonable doubt this person committed a murder. He meant
11 to, no defenses, intentional murder.

12 A Okay. I'm glad you said that, because I did not
13 think we were there in the first trial.

14 Q That's where you would have to be to have a
15 conviction for murder.

16 A We would have to say basically what I said on 64, we
17 were convinced that it was done, it was intentional, and
18 at this point any of the other things, like A, B, or C,
19 why he may or may not have done it. We've heard all that
20 and we're saying you did this, you meant to do it, you are
21 guilty of this, we determined that in the first trial.

22 Q That's correct. I think the judge would say that's
23 correct.

24 MR. ARIAIL: I don't think that is correct. I think
25 you need to correct him about those other things.

1 MR. MAULDIN: All right, judge.

2 THE COURT: All right. The other things that I was
3 referring to in the second phase, which I referred to as
4 aggravation and mitigation would not come up in the first
5 phase, just the facts surrounding the murder and
6 kidnapping itself. So, you wouldn't have heard everything
7 after the first phase. It's referred to as the guilty
8 phase. The second phase is referred to as the sentencing
9 phase. So, no, you haven't heard everything. Do you
10 understand?

11 A I apologize. I know you guys have been here all day
12 long, and I apologize up front.

13 THE COURT: Solicitor, any other explanation you want
14 to give?

15 MR. ARIAIL: No, that's fine.

16 THE COURT: Mr. Mauldin, please proceed. Or talk to
17 Mr. Nettles and please proceed.

18 MR. MAULDIN: You want me to continue, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. MAULDIN:

21 Q So, the first phase you heard all the issues about
22 guilt or innocence. You all of the circumstances around
23 the incident, the event that lead to this.

24 A The first phase we hear all the evidence, we hear why
25 he's guilty or why he is not guilty?

1 Q Right.

2 A And we hear everything and we come up with, we've
3 heard it all.

4 Q A verdict.

5 A A verdict, yes.

6 Q And, as the judge mentioned, if you reach a verdict
7 of guilty of murder and guilty of kidnapping, that means
8 beyond a reasonable doubt you all are satisfied that this
9 particular person was guilty of those offenses beyond a
10 reasonable doubt, then and only then would there be a
11 second phase.

12 A Okay.

13 Q You got me?

14 A Yeah.

15 Q And that's where I think question 64 really comes in.

16 A Okay.

17 Q I need to know, Mr. Bott, if you went into that
18 second phase and you heard from the prosecutor the
19 additional aggravating information about the situation,
20 anything they wanted to bring in that they said supported
21 their claim for a death penalty, you hear all that, then
22 the person who has been convicted did not offer any
23 testimony or evidence because there's no obligation to, no
24 requirement to, could you give meaningful consideration to
25 the imposition of a life sentence to that person?

1 A Sir, I am very sorry. I thought all the extra
2 information was given the first time, and then you said
3 any extra information.

4 THE COURT: Let me explain it to you, if I may. The
5 defendant does not have to testify. The defendant doesn't
6 have to put up anything in the guilt phase or the penalty
7 phase if he so chooses. That's the scenario. In the
8 event he presented to you -- when I was talking to you, I
9 made the comment "in most cases the defendant will put up
10 mitigating circumstances and would you consider those."
11 The defendant is not obligated under the law to do that.

12 A Okay.

13 Q That's the scenario he's presenting to you.

14 Mr. Mauldin.

15 BY MR. MAULDIN:

16 Q All right. Under that scenario as explained by the
17 judge, could you, in your heart of hearts, give meaningful
18 consideration to a life sentence or would you
19 automatically vote for death under those circumstances?

20 A Well, at the risk of being called stupid by everybody
21 in this room when I walk out, I'm going to tell you if --
22 the first trial, if the evidence was brought forth against
23 this young man and he did whatever he did, he meant to do
24 it, he was totally with it, it was planned and the
25 evidence overwhelmingly showed that, that there's no doubt

1 this man did that and he meant to do it, then going into
2 the second trial, if that was already proved, I could not
3 be open to considering life in prison.

4 Q Thank you. Appreciate it.

5 THE COURT: Solicitor?

6 BY MR. ARIAIL:

7 Q Mr. Bott, let me try to see if I can do this.

8 A I'm sorry.

9 Q Okay. No, no, you're doing fine. You're trying your
10 hardest. All we ask for.

11 THE COURT: Mr. Bott, nobody is going to consider you
12 stupid.

13 PROSPECTIVE JUROR: I know, and I answer that
14 question with a very heavy heart, I want you to know.
15 It's not just a --

16 THE COURT: Listen to the solicitor's questions and
17 answer his question.

18 Q That's what I want to explore, the heavy heart
19 comment, first of all. Let me introduce myself. I'm Bob
20 Ariail, solicitor for Greenville County, and I represent
21 the state. We would be the ones representing or bringing
22 the case to you if you were on the jury. And I'm working
23 on this case with my deputy, Betty Strom; and Mark Moyer,
24 one of my assistants. And we've been through this
25 process, but I'm going to see if I can put it in a square

1 box.

2 The first phase concerns guilt or innocence.

3 A Okay.

4 Q That's all it concerns.

5 A Okay.

6 Q The second phase concerns penalty. And they're
7 separated. They're physically separated in actuality by
8 law by a 24-hour period. One ends, the next starts 24
9 hours later. So, they are what we call bifurcated,
10 clearly bifurcated. Evidence in one is different from
11 evidence in the other. All right?

12 A Okay.

13 Q The first one deals with did the defendant commit the
14 crime of murder as defined in the law of the State of
15 South Carolina. We don't talk about why he did it
16 necessarily.

17 A Oh, this is really clear now.

18 Q Yes, sir. Thank you. Don't talk about why he did
19 it, don't necessarily talk about all of the issues we will
20 talk about over here when we talk about what is the
21 appropriate punishment.

22 A Okay.

23 Q All right? So, when you come out of the first phase,
24 like Mr. Mauldin said, you come out of it, you've
25 convicted him, he's guilty and guilty under the law.

1 Still other stuff is going to come 24 hours later dealing
2 with penalty.

3 Now, normally the law makes this individual, the
4 judge, the sentencer. But when we seek the death penalty
5 in South Carolina that responsibility is transferred to
6 the jury.

7 A Okay.

8 Q And if you were on this hypothetical jury, then it
9 would be your job to act as the judge. All right?

10 A (nods head up and down.)

11 Q And impose a sentence that conforms to the crime and
12 to all of the evidence.

13 A Okay.

14 Q All the evidence you heard in guilt, all the evidence
15 you heard in sentencing. Now, do you understand what your
16 role is? You're the judge, you're imposing the sentence.
17 To be an appropriate juror, obviously, you have to be fair
18 and you have to be open minded.

19 A Yes.

20 Q And the question that Mr. Mauldin was asking you, is
21 the ultimate question we need to know. When you have
22 found the defendant guilty but before you have heard the
23 sentencing evidence, would you still have an open mind to
24 listen to the sentencing evidence and consider it before
25 you made the decision of what sentence was appropriate?

1 A Yes, absolutely.

2 Q And that's what I heard you say the first time you
3 answered, when you said I certainly would consider all
4 before I decided to impose the death penalty.

5 A Yes, sir.

6 Q So, now you know when you're going to get those two.
7 All right. This is what we want to guard against. We
8 don't want a juror who is going to say after he finds him
9 guilty, that's it. He's going to get life. Or that's it,
10 regardless what they bring in, we're going to give death.

11 A Right.

12 Q We want somebody who will consider all that in this
13 box over here. And can you do that?

14 A Yes, sir.

15 Q Now. You indicated also that you may be --
16 MR. ARIAIL: Doesn't only happen just to you.

17 THE COURT: Betty can probably read it.

18 MR. ARIAIL: She can. Do you remember?

19 MS. STROM: I don't know, I've got two issues.

20 MR. ARIAIL: When you get old, you have to have help.

21 Mr. Mauldin asked you about -- we're in this second
22 phase now -- let me make sure you understand the defendant
23 doesn't have to do anything. He doesn't have to testify.
24 He doesn't have to present evidence. He doesn't have to
25 give you a thing. Okay?

1 A Okay.

2 Q But as a juror making the decisions, you'll have an
3 obligation, he'll tell you, you have an obligation, you
4 have got to search that record to make sure you find any
5 possible mitigating factor that could be in his benefit so
6 that you could fairly consider imposing death -- life
7 imprisonment sentence.

8 A Yes, sir.

9 Q You understand that?

10 A Yes, I do.

11 Q And the question is, can you do that after you
12 already convicted this defendant of murder? Can you
13 search the record for him to find those types of things?

14 A Yes.

15 Q All right. Now, the fact this heavy heart, you used
16 that twice. We understand that. You're not alone in
17 that. Let's assume we're all in the jury room together.
18 I can't go in there, but the rest of you are in there.
19 You voted that the death sentence is the appropriate
20 sentence, all 12 of you. You've discussed it, everybody
21 had their say and you all are unified. The law will
22 require and judge will tell you, you have to sign a
23 document that says the death penalty is appropriate under
24 this case and sign your name with all the other jurors.
25 Would you be able to sign that document if you determined

1 that was the appropriate sentence?

2 A Yes.

3 Q You could?

4 A Yes.

5 Q All right. That's all I have.

6 Thank you, judge.

7 THE COURT: Thank you, Mr. Bott.

8 MR. MAULDIN: Any motions?

9 THE COURT: Do you have a motion? I'm not asking you
10 to make it now. Do you have a motion?

11 MR. MAULDIN: Yes, sir.

12 THE COURT: Mr. Dunn, [sic] would you step out in the
13 hall just a minute, please. We'll Get you back shortly.

14 PROSPECTIVE JUROR: Mr. Who?

15 THE COURT: Mr. Bott, excuse me. It's been a long
16 day. Excuse me.

17 PROSPECTIVE JUROR: I know.

18 (prospective juror exits.)

19 THE COURT: All right. Mr. Mauldin, let me hear you.
20 Let me hear you, Mr. Mauldin.

21 MR. MAULDIN: Your Honor, the juror was asked and was
22 as clear and specific as he possibly could have been. He
23 was asked if he would consider a life sentence where the,
24 in a second proceeding, where the defendant offered no
25 evidence. That was so crystal clear, made clear by you.

1 Crystal clear in both directions, by both parties. And he
2 said if proved beyond a reasonable doubt, I would not be
3 able to give consideration to a life sentence. It was
4 just -- that was his word, couldn't have been any clearer
5 than that.

6 When the prosecutor attempted to rehabilitate --

7 THE COURT: He previously told me the same thing he
8 told the prosecutor before you asked questions. He talked
9 about -- he told one thing twice, told something else one
10 time. But go ahead.

11 MR. MAULDIN: If you look back at your question,
12 you're the one who just said it, your question involves
13 the presentation of mitigation evidence.

14 THE COURT: I understand. So, my question was
15 different from yours. I'll concede that to you.

16 MR. MAULDIN: Yes. Yes. And the point is this
17 juror, trying hard as he can to be fair to everybody, and
18 I appreciate that. But when he is told all the
19 evidence -- and if that's what the prosecutor said when he
20 hears all this sentencing evidence, you going to take that
21 into consideration?

22 Sure he is going to take that into consideration.
23 But he has said unequivocally if the defendant does not
24 present any mitigating evidence, he would not consider a
25 life sentence. That's what makes him disqualified. You

1 can't change those words that came out of his mouth. He
2 said it so clear I quit asking him questions when he said
3 it. Couldn't have said it any clearer than that. So, I
4 just, you know -- Mr. Airial is skilled at this and the
5 fact is that he had him say that after he heard all of the
6 sentencing evidence from wherever -- would you search the
7 record for sentencing evidence?

8 Well, the question is if the defendant doesn't
9 present any mitigation, he's not going to consider a life
10 sentence as an option. And he said that clear. So he's
11 disqualified, period.

12 The final thing, judge, that I would mention to you,
13 if you somehow feel he is still qualified, he hasn't been
14 asked the interracial question.

15 THE COURT: I haven't got to any of that, yet. I
16 haven't got to any of those questions. We'll have to go
17 through those if I overrule your motion.

18 MR. MAULDIN: Yes.

19 THE COURT: Solicitor, very briefly, please, sir. If
20 you have something to say.

21 MR. ARIAIL: I don't have much, but if Glenda Fuller
22 is qualified, this man is clearly qualified. If that's
23 the standard we're using, where she passed muster, then I
24 say this individual clearly passed muster far exceeding
25 what she did. And she was clear. The only problem this

1 guy had, he didn't understand the process, couldn't figure
2 out what he was -- once he understood, He made that answer
3 to you, I thought most telling, he said, "Oh, certainly I
4 would consider all the evidence before imposing the death
5 sentence."

6 THE COURT: I'm Going to overrule the motion as far
7 as qualification. Would you call Mr. Bott back, please?

8 (prospective juror enters courtroom.)

9 Q Mr. Bott, I'm going to ask you some additional
10 questions. Okay? Do you have any physical or mental
11 problems that would prevent you from serving on this jury?

12 A No.

13 Q Do you have any personal hardships that would prevent
14 you from serving on this jury?

15 A No.

16 Q Do you have any prior knowledge? Have you heard
17 anything on TV, heard anything on the radio, read anything
18 in the paper, heard anybody talk about this case?

19 A I been the laughing stock because I know nothing. I
20 know nothing about it.

21 Q Who have you been the laughing stock with?

22 A People chatting over there. Not that it was a lot of
23 chat going on, but "you don't know anything about this?"

24 "No."

25 "Where you been?"

1 Q Did they tell you anything about it?

2 A No, sir.

3 Q Were they talking about the case?

4 A No, sir. They were just mainly talking about
5 yesterday and how interesting it was.

6 Q Okay. So, you don't have any prior knowledge of the
7 case?

8 A Just I want to be totally honest. I thought this
9 question might come up, thought about what I would say. I
10 went into work yesterday and I said, "I may be in and out,
11 I'm going to do jury duty."

12 One of the girls said, "who? That's that" --

13 I said, "stop, I can't hear it. I don't know what's
14 going on, I don't want to know."

15 And somebody else said something and I just said,
16 "stop, I can't talk about it."

17 And then today at first Baptist gym I play basketball
18 during the lunch hour with some lawyers and judges and
19 other people. And John Few is one of them. And a painter
20 said, "aren't you supposed to be at jury duty?"

21 And I was like, "Yeah, I went yesterday. I'm going
22 back today." And he started that, I said, "stop I don't
23 know anything."

24 And I can honestly say to you with this bible right
25 here, I do not know.

1 Q Okay. Let me ask you if you know the victim, Maranda
2 Williams.

3 A No, sir.

4 Q Do you know the defendant, Charles Christopher
5 Williams?

6 A I assume that was him in the courtroom yesterday, but
7 I had never even seen a picture. I have no idea.

8 Q Do you know the attorneys sitting to my right or your
9 right that represent Mr. Williams?

10 A No.

11 Q Do you have any personal friendship or relationship
12 with anyone in the solicitor's office who sits to my left?

13 A No, sir, never seen any of these people in my life.

14 Q Give you a list of witnesses' names. Do you
15 recognize any of those names?

16 A I know none of these people.

17 Q All right. I'm going to give you a second list. Do
18 you know any of -- do you recognize any of these names?

19 A I don't know any of these people.

20 Q Okay. Thank you, sir. I'm going to ask you a
21 question. I want you to give me your answer after I ask
22 you the question. Okay. In this case the defendant is
23 black and the victim is white. It is undisputed the black
24 defendant and white victim engaged in interracial dating.
25 Would the fact the victim and the defendant engaged in

1 interracial dating make it difficult for you to be fair to
2 either the state or the defendant?

3 A No.

4 Q All right. Can you base your decision on the
5 testimony you hear in the courtroom?

6 A Yes.

7 Q Can you be fair to both the state and the defendant
8 in arriving at your decisions?

9 A Yes.

10 Q Do you know of any reasons, personal or otherwise, as
11 to why you cannot serve on this jury?

12 A Other than my five and seven year old don't want me
13 to, I can't think of anything.

14 THE COURT: Any questions from the state or whoever's
15 next turn, or the defendant?

16 MR. MAULDIN: One moment, Your Honor.

17 THE COURT: We're not going to rehash --

18 MR. MAULDIN: Oh, I understand that.

19 THE COURT: -- the death penalty issue.

20 MR. MAULDIN: Right. One moment. I have a few
21 questions on another subject other than the one you've
22 already ruled.

23 THE COURT: Okay.

24 BY MR. MAULDIN:

25 Q Mr. Bott, I know it's been a long day for you,

1 certainly been a long day for us. I certainly ask for
2 your patience.

3 A Yes, You have it.

4 Q It's real important. The judge asked you the
5 question regarding whether or not the fact that the
6 defendant is a black male, the victim is a white female
7 and that they had -- everybody agrees and concedes there
8 was a interracial dating relationship. And i want to ask
9 you a few follow-up questions about that.

10 MR. ARIAIL: I object to that. I don't want to get
11 into a speaking --

12 THE COURT: Let me see the attorneys a minute.
13 Mr. Bott, would you step outside just a second. You don't
14 need to come up here.

15 PROSPECTIVE JUROR: Yes, sir.

16 (prospective juror exits.)

17 THE COURT: My understanding of the agreement as to
18 the question if they said no, that was the end of it. If
19 they said yes, we'd explore it further. That's the way we
20 been conducting it for the last 19 jurors. Why are we
21 changing now?

22 MR. MAULDIN: The -- and my understanding was this.
23 If the juror said yes, then the court would follow up on
24 it.

25 THE COURT: My understanding, if they said yes, the

1 court would follow up and I would allow you to follow up.
2 If they said no, that was the end of conversation.

3 MR. MAULDIN: And I certainly say to you --

4 THE COURT: That's the way we been dealing with all
5 the other 19 jurors. What's happened with this witness
6 that's going to change that?

7 MR. MAULDIN: You want me to answer?

8 THE COURT: Yeah. I wouldn't ask the question if I
9 didn't want you to answer it.

10 MR. MAULDIN: All right, sir. Hold on. Your Honor,
11 in the juror's questionnaire he states that he --

12 THE COURT: Please, tell me what page and number.

13 MR. MAULDIN: Question number 21, it's essentially
14 the lower portion of that question. The juror says that
15 he attended and I'm assuming graduated from Bob Jones from
16 1985 to 1989. His major was bible and his minor was,
17 looks like some kind of speech.

18 I have lived in this community 30 years or more and I
19 am fully aware of the -- at least the history where
20 interracial dating was not even -- they were, that there
21 were no minority students even admitted at Bob Jones
22 university and that interracial dating was in fact a
23 policy they expressed.

24 THE COURT: Mr. Mauldin, we have had several Bob
25 Jones graduates appear today. What is different about

1 this one?

2 MR. MAULDIN: We've had a number of Bob Jones
3 graduates that have been excused.

4 THE COURT: That may be, but what's different about
5 this one? What do you want to go into because he's a Bob
6 Jones graduate?

7 MR. MAULDIN: I don't want the court to make me look
8 like I'm beating on the Bob Jones graduate. You asked me
9 a question, I want to respond.

10 THE COURT: I want you to.

11 MR. MAULDIN: We are entitled to, under u.s. supreme
12 court, to make inquiry regarding race, bias, and
13 prejudice. We are entitled to do that. We submitted a
14 proposed question, the state was reluctant to agree to,
15 but finally did, finally did, that you would ask them. If
16 they said yes, you would follow up. If they said "No," I
17 never felt like that meant I couldn't follow up. If
18 that's the restriction, I withdraw my agreement.

19 THE COURT: Okay. Solicitor?

20 MR. ARIAIL: There's no basis in this record for
21 racial bias follow up.

22 THE COURT: The only reason he's given the court is
23 he's a Bob Jones graduate. I'm not sure I understand the
24 significance of that, whether he graduated from Bob Jones
25 or Furman university or where. I'm not sure I understand

1 the significance of that.

2 MR. ARIAIL: I will give you analogy. I'm a
3 methodist. The methodist church is on record and has a
4 policy opposed to the death penalty. My preacher talks
5 about it all the time. But that has nothing to do with
6 me. You don't think I'm opposed to the death penalty I
7 told him.

8 He said, "no, I don't think you do."

9 But to get into somebody's background, why they went
10 to college. Mark went to Bob Jones. That would be an
11 affront to the whole group of people that attended that
12 college. The man said he had no problem with the
13 question. I think it's inappropriate to further inject
14 the issue of race in this case.

15 THE COURT: Mr. Mauldin, i'm not going to restrict
16 you from going into the issue of race. And if that was
17 not the agreement, I guess I misstated the agreement, it
18 was Miscommunication between the court and you. However,
19 in this particular instance I have seen no issue that has
20 come up through questioning and answer that would justify
21 going into this man's college and his religious views or
22 wherever you're coming from as far as the Bob Jones
23 graduate. I'm not going to allow you to do that because I
24 find no basis for that.

25 MR. MAULDIN: So, I guess my question is his

1 objection to the question I posed to this juror sustained.

2 THE COURT: Yes, sir.

3 MR. MAULDIN: All right. Thank you, Your Honor. I
4 take exception.

5 THE COURT: I understand. Do you have anything else?
6 I understand when I sustain objections you always take
7 exception. And the state does, too --

8 MR. MAULDIN: Yes, sir.

9 THE COURT: -- too. That goes without saying.
10 Anything else now? If you have a legitimate basis for
11 going into race with this juror, other than being a Bob
12 Jones graduate, I'll be glad to hear it and reconsider it.
13 I'm not going to let you go into the race issue just
14 because he's a Bob Jones graduate or a Furman graduate or
15 a Clemson graduate or whatever.

16 MR. MAULDIN: I have no further questions of this
17 juror. I do reaffirm my motion that he is disqualified.

18 THE COURT: Motion denied.

19 MR. MAULDIN: All right.

20 THE COURT: Is there anything else that you want to
21 ask this juror before I bring him back?

22 MR. MAULDIN: No, sir.

23 THE COURT: All right. Bring him, Mr. Bott, back
24 please, sir.

25 (prospective juror enters courtroom.)

1 BY THE COURT:

2 Q Mr. Bott, we're going to draw approximately 43 names
3 and qualify 43 people. And from those 43 we're going to
4 draw a jury and four alternates. You're part of that
5 group of 43. Okay?

6 A Okay.

7 Q The bailiff is going to give you a little slip of
8 paper that has a phone number on it. Call that phone
9 number after 8:00 tonight. There will be a message for
10 you or for the jurors that have been qualified. It may
11 say, call in tonight, may say report Thursday; but follow
12 those instructions. Okay?

13 A Okay.

14 Q Do not discuss the case with anyone. If someone
15 tries to discuss it with you, please turn and walk away.

16 A Yes.

17 Q That includes wife, kids, anyone. Okay?

18 A Yes, sir.

19 Q Thank you. You may be excused, Mr. Bott.

20 (prospective juror exits.)

21 THE COURT: Let me cover one issue for the record,
22 Mr. Mauldin. For the record, we had a great deal of
23 discussion about the question I had been asking the jurors
24 about interracial dating. Okay. The court is of the
25 opinion that this is not a case where it's a race-related

1 crime. Therefore, the interracial issue is not an issue.

2 You stated on the record that you're withdrawing your
3 consent to ask this question. Do you want the question
4 asked or do you not? Because if you do, that's fine. But
5 I don't think that this case is appropriate to go into
6 racial issues. Now, I'll be happy to stop asking that.

7 MR. MAULDIN: My position is very simple. We have a
8 black defendant who is charged with killing a person of a
9 different race.

10 THE COURT: I understand that.

11 MR. MAULDIN: That raises a question of whether or
12 not prospective jurors are race biased. If you look at
13 the case law, the case law says there has to be a racial
14 type crime. And that doesn't meet this qualification, but
15 by agreement I have asked that question. Now, if we go
16 into all this racial issue, is the court going to stop
17 asking that question? Do you understand where I'm coming
18 from?

19 THE COURT: Just discuss it with your cohorts. But
20 for the next juror, do you want me to ask this question or
21 not?

22 MR. MAULDIN: Your Honor, we want that question asked
23 or we would not have submitted it with or without
24 agreement.

25 THE COURT: Earlier you stated that you didn't want

1 the court to ask that question any more. That's what I'm
2 trying to clarify.

3 MR. MAULDIN: But I believe what the court's doing,
4 with all due respect, I think what you're doing is putting
5 me kind of in a box. I want that question asked, but I
6 would like to be --

7 THE COURT: We'll address that issue later, after you
8 have a chance to research it and give me law whether
9 you're entitled to do that or not.

10 MR. MAULDIN: To follow up?

11 THE COURT: Yes, sir. For now I will continue to ask
12 the question. But, now, we're not going any further on
13 that. If you can do some research, show me a case where
14 you're entitled to do that, I will.

15 MR. MAULDIN: Thank you, judge. And I understand
16 that I'm going to withhold any additional questions until
17 you change your ruling.

18 THE COURT: All right. Bring us Mr. Moss.

19 (prospective juror Moss, white male, enters
20 courtroom.)

21 Please raise your right hand, please, sir.

22 JOEL MOSS, (white
23 male), having been previously duly sworn, testified as
24 follows:

25 EXAMINATION

1 BY THE COURT:

2 Q I'm going to ask you certain questions. Okay?
3 There's no right or wrong answer, just answer the
4 questions the best you can. I'm going to be asking you
5 some questions and the attorneys are going to be asking
6 you some questions. Do you understand?

7 A Yes.

8 Q Do you remember filling out the questionnaire?

9 A I remember it.

10 Q Mr. Moss, I'm going to hand you the questionnaire you
11 filled out. Do you remember filling it out?

12 A Yes, I do.

13 Q At the time you filled it out, did you feel it was
14 accurate?

15 A Yes, I do.

16 Q Do you recall any changes you would like to make in
17 your questionnaire?

18 A The only thing pertinent that may be about a layoff
19 in employment. That's about the only thing.

20 Q I'm Going to ask you some questions about your
21 questionnaire before we go into some other matters. First
22 of all, I want you to look on page 6, question number 36.
23 Says your wife's stepbrother used to be a cop?

24 A Uh-huh.

25 Q Where was he a police officer?

1 A Greenville County.

2 Q How long ago?

3 A Within a couple of years I'd say.

4 Q A couple of years?

5 A Yeah, probably about a year and half ago, two years.

6 Q Are you close to him?

7 A He's in Greenville, so family occasions, get
8 together, something like that.

9 Q How often do you see him?

10 A Probably every couple of months.

11 Q Have you ever discussed with him his attitudes or
12 opinions about the legal system in general?

13 A No.

14 Q You ever discuss with him the criminal justice
15 system?

16 A I don't think we ever got into it, no.

17 Q Have you ever talked to him about his work?

18 A That would come up from time to time.

19 Q What would come up about his work?

20 A Sometimes would have a friend over also in the same
21 line of work, may talk about something that happened in
22 the past, but it was very brief usually.

23 Q Would you look at question number 64, which is on
24 page ten. Answer to question 64 says, "I am for it, as
25 long as." As long as what?

1 A I guess if I was to finish it now, it would be the
2 same answer, I guess it wouldn't be 100 percent I'm for it
3 in every case, but certain cases i'm for it.

4 Q Certain cases you would be for it?

5 A Yeah, depending on the circumstances.

6 Q Yes. And then question 68, which is on the next
7 page, you state, "I believe that the death penalty is the
8 appropriate form of punishment in some murder cases. I
9 could return a verdict of death if I believe it was
10 warranted in a particular case, depending on the evidence,
11 the law, and what I learned about the defendant."

12 A I would say that still holds true.

13 Q All right. Do you have any physical or mental
14 problems that would prevent you from serving on this jury?

15 A No, sir.

16 Q You have any personal hardships that would prevent
17 you from serving on this jury?

18 A No.

19 Q Do you have any prior knowledge where you heard about
20 the case on TV, radio, read anything in the paper, heard
21 anyone talking about the case?

22 A That may be just a sentence or two in a flash before
23 I turned it off, that was it.

24 Q When did you hear it?

25 A Back when it happened. Just I walked in, somebody

1 said it's at the Bi-Lo down the street. I was working at
2 the time, so i didn't watch the show or what was going on.

3 Q You haven't formed or expressed an opinion about the
4 defendant's innocence or guilt?

5 A No, sir.

6 Q Do you know the victim in the case, Maranda Williams?

7 A Not to my knowledge.

8 Q Do you know the defendant, Charles Christopher
9 Williams?

10 A No, sir.

11 Q Do you know the attorneys representing the defendant,
12 who is sitting to my right at the table to my right?

13 A No. No, sir.

14 Q Do you know the solicitor and his two assistants or
15 do you know anyone in his office?

16 A No, not that I'm aware of.

17 Q All right. I'm going to give you a list of
18 witnesses. Would you look at those names and see if you
19 recognize any of those names.

20 A I don't believe so. .

21 Q Let me give you a second list. Would you look at
22 that list of names and see if you recognize any of the
23 names.

24 A Not that I'm aware of.

25 Q Thank you, sir. I'm going to read you a question. I

1 would like for you to answer it. "In this case the
2 defendant is black and the victim is white. It is
3 undisputed the black defendant and white victim engaged in
4 interracial dating. Would the fact the victim and the
5 defendant engaged in interracial dating make it difficult
6 for you to be fair to either the state or the defendant?"

7 A No.

8 Q Can you listen to the testimony and base your
9 decision on the testimony you hear from the witness stand?

10 A Yeah.

11 Q Can you be fair to both the state and the defendant?

12 A I believe so. Yes, sir.

13 Q All right. This case would be divided up into two
14 phases. The first phase is generally referred to as a
15 guilt phase. In the guilt phase the state would be
16 required to prove the defendant guilty beyond a reasonable
17 doubt. The defendant is charged with murder and
18 kidnapping. At the end of the guilt phase, if the jury
19 determines that the defendant is guilty of murder and
20 kidnapping, then you would go to the second phase, which
21 is commonly referred to as the sentencing phase. And the
22 sentencing phase, the state would present additional
23 evidence concerning what we refer to as aggravating
24 circumstances. I do not know what aggravating
25 circumstances the state would produce, but they would be

1 required to prove the aggravating circumstances beyond a
2 reasonable doubt to convince the jury to give the death
3 penalty. Do you understand?

4 A I do.

5 Q The defendant may or may not present testimony. A
6 defendant is not required to present any testimony in the
7 first phase or the second phase. The defendant possibly
8 could produce and present evidence, which I refer to as
9 mitigating circumstances. Now, these mitigating
10 circumstances would be facts that would be designed and
11 offered to show to the jury that the defendant should
12 receive life imprisonment without parole. Do you
13 understand?

14 A I understand.

15 Q Do you also understand life without parole means what
16 it says, means he would die in jail, no possibility of
17 parole, do you understand?

18 A I do.

19 Q And the second phase the jury's sole determination of
20 whether the defendant receives death or life. Now, before
21 you made a decision as to death or life, could you
22 consider all the evidence presented in the first phase and
23 the second phase before you made a decision as to life or
24 death?

25 A Not having experienced before, I'll say yes.

1 THE COURT: Whose turn, Solicitor?

2 BY MR. ARIAIL:

3 Q Mr. Moss, my name is Bob Ariail. I'm the solicitor
4 for the 13th circuit, that includes Greenville and
5 Pickens Counties. Solicitor is the old name, what the
6 state continues to use for what is now known as the
7 district attorney. And I will be working in the case with
8 my deputy, Betty Strom, and one of my assistants, Mark
9 Moyer.

10 The judge has explained the general process, concept.
11 We call this a bifurcated proceeding, two parts. And
12 they're actually divided. As the judge says, if the jury
13 in the first phase -- a box over here, we're going to talk
14 about guilt -- finds the defendant guilty of murder and
15 finds defendant guilty of kidnapping, would go to the
16 second phase. In between would be a 24-hour waiting
17 period. When we say bifurcated, physically is divided,
18 and it's physically divided, purposely divided. One
19 focusses on guilt, the other focusses on sentence.
20 Normally, in a criminal case the judge is the person who
21 is responsible for sentencing in all other cases other
22 than those where the state seeks the death penalty. Under
23 our law if the state elects to seek the death penalty --
24 and the state can only seek the death penalty in certain
25 murder cases -- not all, just certain ones, and no other

1 types of cases. But in that situation where the state
2 seeks the death penalty, the law says the jury must be the
3 determiner of what the appropriate punishment is. So, we
4 talk about this second phase as being the sentencing
5 phase.

6 Now, if you are picked on the jury, and you are in
7 the guilt phase, the law in this state is murder is
8 intentional killing with malice. If you found murder, you
9 found intent to do it and maliciousness, malice. Did it
10 with malice. Then you move to the second phase.

11 And what we're looking for is jurors who can be
12 opened minded in the second phase, regardless of the fact
13 they have already found the defendant guilty. And that
14 they can listen to all of the evidence before making a
15 decision as to punishment; that is, meaningfully listen
16 and consider, and vote for the appropriate sentence after
17 they have made a thorough analysis of all that. All
18 right? Do you feel that you fall in that category of
19 people could do that?

20 A I do.

21 Q Do you know of any reason that you may have that
22 would limit your ability or significantly impair your
23 ability to do that?

24 A Not that I'm aware, not that I can think of.

25 Q You recognize from that, you're assuming a role with

1 pretty high responsibility, because you have to act as a
2 judge acts, fairly and impartially. And already at that
3 time you --

4 A Yes.

5 Q -- would have convicted the defendant when you get to
6 that second phase. And at that time you will still be
7 able to have an open mind?

8 A Take in more information.

9 Q Yeah.

10 A Yes. That makes good sense.

11 Q And you understand the defendant doesn't have to
12 present any information? If he doesn't present any
13 information, you still have to have an open mind. You
14 still have to look in the record and see if there is a
15 reason to impose, if you find life imprisonment would be
16 appropriate sentence; and you can impose life imprisonment
17 for no reason, simply as an act of mercy. Simply because
18 there's no evidence or you don't find any evidence doesn't
19 prohibit you from imposing life imprisonment as an act of
20 mercy.

21 A I understand that.

22 Q Now, on the other hand, the state in a capital case
23 would be asking you to consider the death penalty if the
24 facts are appropriate in your consideration. Do you
25 believe you can vote to impose the death penalty if the

1 circumstances are appropriate as you determine?

2 A I believe so.

3 Q All right. And when you say, I believe so, is this
4 some particular thing gives you hesitancy about that,
5 other than the magnitude of the decision?

6 A Just I haven't been in this before. I haven't been
7 faced with it before.

8 Q And that's certainly a fair comment. If, when you
9 went back in the jury room, you and your fellow jurors
10 were to all decide, all 12 of you, that the defendant, the
11 appropriate punishment for the defendant was the death
12 sentence, the law requires and the judge would instruct
13 you that you have to sign, physically sign a document with
14 your name, saying that's your verdict to bring back to the
15 judge. Having made the decision, would there be any
16 hesitancy or problem you would have to actually physically
17 signing that document?

18 A If that was the process and the decision we came to,
19 I wouldn't have a problem signing it at that point.
20 Right.

21 Q You had already made decisions and the jurors, all 12
22 of you had agreed that death was the appropriate sentence,
23 talking about the physical act of signing it?

24 A Yeah, just part of the process to me at that point.

25 Q No hesitancy there?

1 A Huh-uh.

2 MR. ARIAIL: Your Honor, could I look at just one
3 other thing?

4 THE COURT: Yes, sir.

5 MR. ARIAIL: Thank you, sir. That's all I have.

6 THE COURT: Mr. Nettles, any questions?

7 MR. NETTLES: Yes, sir.

8 Q Mr. Moss, you've talked a lot about death. Here is
9 what I want to ask you. If you and I were, just bumped
10 into each other -- let me ask you this before we get
11 started. Do you ever miss Port Huron in about August?

12 A No, sir.

13 Q Well, Let me ask you this. If just you and I were
14 talking and we said, "look, somebody has been convicted"
15 because, because -- and I'll be honest with you, what
16 caused me a little bit of concern, you see and you given
17 us every reason to believe you're a very thorough person.
18 But in your answer to one of the most critical questions
19 we've got on here, it just sort of trailed off. "Describe
20 your attitudes and beliefs concerning capital punishment."

21 And it says, "I am for it as long as," and it looks
22 kind of like you've lost your pencil.

23 A I think I meant to put -- i was planning to come back
24 to it.

25 Q What were you going to put if you come back to it?

1 A The same thought that I put before, that it depends
2 on the circumstances. Causing death of another person is
3 an important act, so, I believe in certain cases there's
4 repercussions according to the facts. That's kind of the
5 concept that I meant to come back and put down. Some
6 people may have been in favor, but I'm probably one who
7 could be, but it depends on the facts. I'd Fall in that
8 half.

9 Q The Solicitor did a good job of asking, but it's very
10 important to us, that in every death penalty case in South
11 Carolina before the jury -- and if you were on that jury
12 -- is asked to decide life or death, the person they are
13 being asked to decide about has been proven beyond a
14 reasonable doubt, they're guilty of murder, okay? And you
15 understand what murder is? It's not self-defense, not
16 accident, not you're in a car and hit somebody. You know,
17 it's murder. For a murderer, someone who -- it's defined
18 in South Carolina as a heart devoid all social duty,
19 fatally bent on mischief. For a murder, if I told you
20 someone was a murderer, in your mind is there already a
21 punishment that is the appropriate punishment just kind of
22 off the bat?

23 A I would say no because, you know, my mother was a
24 social worker part of the rehabilitative and all that kind
25 of stuff, I don't know; but part of my personality I could

1 give that ruling, if the situation was right where some
2 people couldn't. I could feel sort of comfortable with it
3 in certain situations.

4 Q Let me ask you the flip side of that, which is this.
5 In this case if the person is charged with murder and
6 another -- not all murders are eligible for the death
7 penalty you have to be a murder and basically, to put it
8 easy, another really bad crime. It Could be armed
9 robbery, could be kidnapping, something significant. If
10 someone were convicted of murder -- did it, meant to do
11 it -- murder, okay, And another significant crime, armed
12 robbery, kidnapping; and you were on the jury, they were
13 convicted beyond a reasonable doubt of both of those,
14 could you also give meaningful consideration to the
15 sentence of life without possibility of parole?

16 A Yeah, because I -- not having been through this
17 process, I don't know what kind of information comes out.
18 I've watched it on TV. But if the information is there
19 enough, I could see any type of ruling on my behalf.

20 Q And you would feel comfortable in your soul with
21 either one of them?

22 A Yeah. Yeah.

23 Q Now, let me ask you this. And you mentioned your
24 mother was a social worker. And I think I already know
25 the answer to this, but it's something we need to ask. In

1 this second phase, okay, the penalty phase, the government
2 would bring you heart wrenching victim impact evidence.
3 And What that is, family members come in and talk about
4 the loss they've suffered. And they would bring in every
5 bad thing they could find about the defendant. That's
6 called aggravation. In other words, reasons to make that
7 murder and the other crime really worse.

8 At the conclusion of that, could you still give
9 meaningful consideration to mitigation evidence or reason
10 to not give death at that point? Or do you think you'd be
11 overwhelmed by the grief of it all, the magnitude of it
12 all?

13 A Just knowing myself, that the personality traits and
14 all I have, that I'm able to separate from emotional side
15 of it. I can go into that mode if I have to. Had to in
16 the past, I think I'm one could do that.

17 Q Recognizing while what you were witnessing was very
18 compelling, you really couldn't pass judgment until you've
19 heard if we decided to put something else up, too?

20 A Yeah, probably always have, but it's subject to be
21 changed.

22 Q Excuse me?

23 A I would always have an opinion at each point in time.
24 But it would be apt to be changed. In other words, I
25 would keep my mind open to the end.

1 Q Some people, just like on the death penalty issue,
2 some people just say they would always give death, some
3 people never give death. Mental illness is another thing.
4 Some people say mental illness, that's a bunch of hooey,
5 it's a bunch of stuff, people just trying to get out of
6 trouble. Some people say, no, you know, mental illness
7 really is something we need to consider when we're
8 deciding someone's culpability. Where do you fall into
9 all that?

10 A I think all the decisions are tough, but I would say
11 if there's a range of one to ten or whatever, mental
12 health come into the situation, I'd say it needs to play
13 strongly into it. I think you need to look at that.

14 Q Okay.

15 A Just at their faculties and resources and things.

16 Q So, you would be receptive to information if we chose
17 to bring you that? I mean, you recognize that as viable
18 information and as important information?

19 A Yeah. Just my mother actually had a masters in
20 mental health.

21 Q Right.

22 A Just here and there, I've seen and talked and heard
23 different aspects. So, so that's somewhat knowledge of
24 it.

25 Q The last subject I have to talk to you about, and

1 then I'm done. Okay. It's pretty quick. If after having
2 heard everything, you decided what the appropriate
3 punishment was, and obviously, I care, or wouldn't be
4 doing this. But Just for purposes of conversation, let's
5 say you picked a punishment and you were in the minority
6 and you came to your decision based on thinking about it
7 and listening to it and applying the facts to the evidence
8 and the law to the evidence, and you had heard
9 everything -- waited until the end and heard everything,
10 and you had a decision and you listened to everybody
11 elses, but you just disagreed with them, would you change
12 your opinion just to go along with everybody else?

13 A I haven't in the past.

14 Q Okay.

15 A I Usually have a strong instinct, logical thoughts,
16 stick to them.

17 Q So, in other words, the piece of paper the solicitor
18 talked about, that's passed around, it's passed all the
19 way around and it got to you, said okay, Joel, your turn.
20 You could say, "not this person, not today."

21 A I'd say, "I'm open, give me your best shot again, let
22 me hear you," but that's about it.

23 Q Okay. And, likewise, If you were the 11th person,
24 and the 12th person sitting next to you didn't want to
25 sign it, you'd talk to them about it; but you would

1 respect that this is the type of issue, this grave issue
2 that we're dealing with here, is something that reasonable
3 people can disagree on?

4 A I understand that.

5 Q I think I'm done. Let me touch base. Is that fair
6 enough?

7 A Fair enough.

8 Q All right. I have no further questions.

9 MR. NETTLES: Thank you, Your Honor. Appreciate it.

10 THE COURT: Any motions as to this juror?

11 MR. NETTLES: None.

12 THE COURT: Any motions from the state?

13 MR. ARIAIL: None.

14 THE COURT: All right. Mr. Moss, what we're going to
15 do is we're going to qualify approximately 43 jurors.
16 From the 43 we're going to draw 12 jurors and four
17 alternates. You're part of that 43 group. Please don't
18 discuss the case with anyone. Don't watch anything on TV.
19 Don't read anything in the newspaper about it. I want you
20 to make a decision based on what you hear in the
21 courtroom, not what some reporter has reported that is her
22 opinion of the facts. You understand?

23 The bailiff has a slip of paper for you that has a
24 phone number. Call that number after 8:00. There will be
25 a message for you to either call back tomorrow night,

1 report tomorrow, it may be report Thursday. But follow
2 the instructions on that recording. Okay? Thank you very
3 much.

4 (prospective juror exits courtroom.)

5 THE COURT: All right. Next juror is going to be
6 Joseph Daniel Johnson.

7 MR. ARIAIL: Your Honor, could I bring up one matter
8 before we get going too far? I have noticed that the --
9 Already taken care of it?

10 MS. STROM: Your honor, I got it. He's okay.

11 MR. NETTLES: Can we just put back on record that
12 Mr. Williams is back in the courtroom. We put on the
13 record he was out, like to put back on record he's back.

14 THE COURT: Okay. Mr. Williams is back in the
15 courtroom. I believe he was also present for mr. Joel
16 Moss, juror number 262. Is that correct, Mr. Williams?
17 You were here for the last juror?

18 MR. NETTLES: Yes, sir, he was.

19 THE COURT: Anything else?

20 MR. NETTLES: No, sir.

21 MR. ARIAIL: It is not addressed to my satisfaction,
22 so may I speak real quick? The clerk is amending the list
23 as we go along, taking people off who are not qualified.
24 I don't think we should be doing that. I think the list
25 should remain intact, Because I think --

1 THE COURT: I've got a list here.

2 MR. ARIAIL: I know you do, and we have four lists
3 now. And so to keep in order, we have the first from
4 yesterday that are not on this list. They're on a loose
5 paper list that's not part of this matter list. So we
6 have four qualified jurors need to go on top of the list,
7 and two that were included.

8 THE COURT: She was just giving it to you to make it
9 easier for you. If you don't want it that way.

10 MR. ARIAIL: Not a matter of making it easier, what
11 i'm concerned about, before we strike this jury, before we
12 do that, all of us are going to have to agree that in fact
13 those people the clerk has removed were in fact removed.
14 It's going to make it extremely difficult.

15 THE COURT: Don't you have the original list with
16 you? The list we started with Monday?

17 MR. ARIAIL: I have Original an original list i got
18 this morning.

19 THE COURT: That's the original list. Throw the
20 other one in the trash and you can use it.

21 MR. ARIAIL: No, because the one, the six people we
22 did yesterday are not on it.

23 THE COURT: You can add it. Take the little clip,
24 clip it together, you can keep it. And we won't give you
25 any more new lists.

1 MR. ARIAIL: Okay.

2 THE COURT: I think it's on the last page of your
3 master list, the list from yesterday.

4 THE CLERK: When we come down to the final, they will
5 all be on one list.

6 THE COURT: The clerk tells me when we get down to
7 the final, she'll issue a list with everybody's name on
8 it.

9 THE CLERK: That's been qualified.

10 THE COURT: If you want to use that list, that's
11 fine, just keep it.

12 MR. ARIAIL: Well, let me go back. I think the
13 clerk's record should reflect on this record who has been
14 not qualified.

15 THE COURT: I understand. I will keep a list, and we
16 will make a court's exhibit when this is over of the
17 complete list.

18 MR. ARIAIL: Because we are going to have to agree.

19 THE COURT: I understand. But for your purposes,
20 keep the original, put the new one in the trash can. Does
21 the defendant have any problem?

22 MR. NETTLES: No problem whatsoever.

23 THE COURT: Will you bring Johnson in now, please.

24 (prospective juror enters courtroom.)

25 THE COURT: Mr. Johnson, how you doing?

1 PROSPECTIVE JUROR: Good, Mr. Nicholson, how you
2 doing?

3 THE COURT: Please raise your right hand.

4 JOSEPH D. JOHNSON, (white
5 male), having been previously duly sworn, testified as
6 follows:

7 EXAMINATION

8 BY THE COURT:

9 Q I'm going to ask you certain questions and the
10 lawyers are going to ask you certain questions. Okay?

11 A Okay.

12 Q Just answer those questions to the best of your
13 ability. All right? And there's no right or wrong
14 answer. It's just questions to try to determine your
15 viewpoints on various issues.

16 A Got you.

17 Q Can you do that?

18 A Yes, sir.

19 Q All right. You filled out this questionnaire I
20 believe last month?

21 A Yes, sir.

22 Q Do you recall filling it out?

23 A Yes, sir, I do.

24 Q At the time you filled it out, did you consider it to
25 be accurate?

1 A Yes, sir.

2 Q Do you remember if there's anything you would like to
3 change on this questionnaire?

4 A No, sir, not that I recall.

5 Q Okay. I'm going to ask you a couple of questions
6 about your questionnaire. Okay? Would you turn to page
7 ten of your questionnaire and in particular question
8 number 64.

9 A Yes, sir.

10 Q Question number 64, "please briefly describe your
11 attitudes and beliefs concerning capital punishment."

12 You say, "despite my misgivings about taking any
13 human life to be improper, the reality of a civilized
14 society, some crimes are so heinous and result in lack of
15 remorse and propensity to commit the same crime, in very
16 few limited instances demand deterrent action on the part
17 of the government."

18 Is that your opinion today?

19 A Yes, sir.

20 Q In question 65 you say, "What is your opinion of the
21 death penalty?"

22 You said, "somewhat favorable." Is that correct?

23 A Yes, sir.

24 Q Question 68, which says, on page 11, "With reference
25 to the death penalty, which of the following statements

1 would best represent your opinion?" And you circle number
2 two. Have you -- did you find it?

3 A Yes, sir.

4 Q And number two says, "I believe the death penalty is
5 the appropriate form of punishment in some murder cases.
6 I could return a verdict of death if I believe it was
7 warranted in a particular case, depending upon the
8 evidence, the law, and what I learned about the
9 defendant." Is that still your opinion here today?

10 A Yes, sir, it still is.

11 Q All right. Do you know of any physical or mental
12 reason as to why you could not serve on this jury?

13 A No, sir, I do not.

14 Q Do you have any personal hardships as to why you
15 could not serve on the jury?

16 A No, sir, I do not.

17 Q Do you have any prior knowledge watching television,
18 listening to radio, reading newspaper, or anyone talking
19 about this case, which occurred on September 3rd 2003,
20 and the state charged Charles Christopher Williams with
21 murder and kidnapping? Have you heard anything about the
22 case from any source?

23 A I am aware of news accounts when it occurred
24 approximately a mile from my residence.

25 Q How many miles?

1 A Approximately a mile.

2 Q What do you remember factually from the news
3 accounts? Let's cover the TV first.

4 A Basically the stand off at the store and the news
5 accounts of what was transpiring at the store, and then
6 the subsequent entry into the store and them bringing
7 Mr. Williams out of the store.

8 Q You saw all that on television?

9 A Yes, sir, I did.

10 Q What -- do you read the newspaper?

11 A I don't take the newspaper. So, I do not recall
12 reading anything in the newspaper. The extent of what I
13 learned was from television.

14 Q Viewing television?

15 A Yes, sir.

16 Q All right. Based upon having viewed that on
17 television, have you seen anything since that time?

18 A No, sir.

19 Q Have you heard anybody talking about the case today?

20 A Not the case, No, sir.

21 Q Based upon your viewing of the television, have you
22 formed or expressed an opinion as to the defendant's guilt
23 or innocence?

24 A No, sir.

25 Q All right. Do you know the victim, Maranda Williams?

1 A No, sir.

2 Q Do you know the defendant, Mr. Charles Christopher
3 Williams, who is in the courtroom in the light blue shirt?

4 A No, sir, I do not.

5 Q Do you know Mr. Williams' attorneys who sit at the
6 table to my right?

7 A No, sir, I do not.

8 Q All right. To my left is the solicitor and two of
9 his assistants. Do you know anyone in the solicitor's
10 office?

11 A I do not know anyone personally. I'm Aware of who
12 Mr. Airial is, just from seeing him on the news.

13 Q Okay. I'm going to give you a list of names. Would
14 you look at that list of names and tell me if you
15 recognize anybody on that list.

16 A (complies) Tony Lee I recognize from news reports.

17 Q These news reports or other news reports?

18 A Other news reports. And I believe his father, who is
19 deceased, retired from the post office with my
20 father-in-law. That's the extent of any recognition I
21 have of any of those names.

22 Q Do you know him personally?

23 A No, I do not.

24 Q I'm going to give you a second list, and tell me if
25 you recognize any of those names. If you recognize --

1 A No, sir, I do not.

2 Q Thank you, sir. I'm going to ask you a question and
3 ask you to please respond to it, if you would. And the
4 question is this. In this case the defendant is black and
5 the victim is white. It's undisputed the black defendant
6 and white victim engaged in interracial dating.. Would the
7 fact that the defendant and victim engaged in interracial
8 dating make it difficult for you to be fair to either the
9 state or the defendant?

10 A No, sir, it would not.

11 Q Would you look at your questionnaire again, please,
12 sir. And on page five, question number 33, it says you
13 were a party to a lawsuit in a securities litigation class
14 action. Were you bringing the suit or were you the person
15 who was sued?

16 A I was a class representative for the plaintiff.
17 That's correct.

18 Q How long ago was that?

19 A Not specifically, judge, I want to say about seven or
20 eight years ago.

21 Q Having been involved -- and I see that was settled
22 before it went to trial; is that correct?

23 A It was Ross cosmetics and it was settled.

24 Q Having gone through that process, do you have any
25 bias or prejudice towards the judicial system in general?

1 A No, sir.

2 Q I want to explain to you briefly what we're involved
3 in in this particular trial. I'm not going to talk about
4 the facts of this particular case, other than what
5 Mr. Williams is charged with.

6 In South Carolina when the state is asking for the
7 death penalty, the trial is divided up into two parts, the
8 first phase and the second phase. In the first phase,
9 which is often referred to as the guilt phase, the state
10 would present evidence as to the defendant's guilt of the
11 crime, the murder and the kidnapping. It's the state's
12 responsibility to prove those charges beyond a reasonable
13 doubt. Now, if the jury finds the defendant guilty of
14 murder and the kidnapping, then we would go to the second
15 phase.

16 And in the second phase, it's commonly referred to as
17 the penalty phase, in that phase it's the jury's
18 responsibility to decide whether or not the defendant
19 should receive life or death. And I want to emphasize it
20 is the jury's decision, not the state nor the court. The
21 court is obligated to follow the jury's finding on that
22 issue. Do you understand?

23 A Yes, sir.

24 Q Now, in the second phase the state would present
25 evidence about aggravating circumstances. I don't know

1 what those facts will be because I haven't heard the case.
2 But the state would be required to prove those aggravating
3 circumstances beyond a reasonable doubt. Now, the jury
4 would also be required to find that the state has proven
5 those aggravating circumstances beyond a reasonable doubt.
6 Now, even if the jury finds that the state has proven the
7 aggravating circumstances, the jury still does not have to
8 give death. The jury could give life imprisonment just
9 for mercy purposes or mercy reasons. Do you understand?

10 A Yes, sir.

11 Q The defendant does not have to offer any testimony in
12 the penalty phase or the guilty phase. Now, in the second
13 phase, which is the penalty phase, the jury will consider
14 all the facts that came out in the first phase plus all
15 the facts that came out in the second phase. The
16 defendant may present testimony, he may not. He's never
17 required to prove his innocence and he's not required to
18 offer any testimony. That's the burden the state has to
19 bear.

20 Generally, the defendant will offer what is referred
21 to as mitigating circumstances. And these are facts about
22 the crime or facts about the individual that would tend to
23 make the jury or designed to make the jury consider life
24 in prison rather than death. Now, before you make up your
25 mind as to life or death, would you be able to give

1 meaningful consideration to mitigating circumstances?

2 A I think all facts should be considered.

3 Q All right. Now, do you understand all facts -- the
4 facts may be that the only facts you'd hear from the
5 state. Could you still consider life, or all the facts
6 before you give the death penalty?

7 A Yes, sir.

8 Q Could you also consider life before you make a
9 decision on life or death?

10 A Yes, sir.

11 Q All right. Can you be fair and impartial to both the
12 state and the defendant?

13 A Yes, sir.

14 Q Do you know of any personal reasons as to why you
15 should not serve on this jury?

16 A No, sir.

17 Q All right. Whose turn?

18 BY MR. NETTLES:

19 Q Mr. Johnson, I'm Bill Nettles, one of the lawyers who
20 represent Chris Williams. There are a couple more that
21 aren't here right now, but I'm one of them.

22 You gave a -- I'm going to go straight to -- the
23 judge has talked to you about it briefly on your
24 questionnaire, page ten I believe, number 64.

25 A Yes, sir.

1 Q And I'll tell you that you've given us one of the --
2 I mean, it's clearly a very thoughtful answer. Just
3 reading that, it seems like it's something that didn't
4 come to you quickly?

5 A No, it did not.

6 Q You thought about it a fair amount?

7 A Yes, I have.

8 Q And you start off with your first portion of the
9 sentence says, "despite my misgivings about taking any
10 human life being improper," Share with us a little about
11 that.

12 A I believe in the God-given sanctity of all life, and
13 only in extreme circumstances I feel are mandated, in very
14 few instances is it justified to extinguish that God-given
15 life.

16 Q Okay. I think you kind of went on and shared with us
17 a little bit about in your mind what it was that caused
18 one to have to extinguish the God-given life. Is that
19 what you meant when you said, that some crimes are so
20 heinous. What did you mean? It Just seems to me there
21 are two sort of areas, one of them is some folks believe
22 that the death penalty is only appropriate if it's to
23 protect society.

24 A The greater good. And that's my presumption, is that
25 only in instances where the greater good is served, is it

1 appropriate.

2 Q And what do you mean by the greater good?

3 A If it inhibits the taking of another life.

4 Q Okay. Okay. Well, let me ask you this. Because you
5 also said, you listed heinous, and I think you said,
6 heinous and the resulting lack of remorse and the
7 propensity to commit the same crime. Would you be looking
8 for all, are you say you're looking for all three of
9 those?

10 A I would say in order for me to view the taking of a
11 human life to be appropriate, I think all three would have
12 to be present for that individual to be a threat.

13 Q Okay. Okay. And, so in other words, your view of
14 the death penalty is that sometimes, if there's no other
15 place for the person to be put and no other way we can
16 keep them from hurting somebody else, it's something you
17 come to very difficultly, if that's a word properly used,
18 but we just have to have this death penalty thing?

19 A That's a good way to summarize it.

20 Q Okay. Now, conversely, and let me be sure what we're
21 talking about something. Not all murders -- and the judge
22 touched on it, I'd like to go a little further. Not
23 all -- I mean, let's be clear what we're talking about
24 when we're talking about murders. When we talk about
25 murder, we're talking about not mistake, not manslaughter,

1 guy comes home, catches his wife in bed with another
2 person. Not --

3 A Talking about murder.

4 Q Calculated taking of a life. Just is that fact, the
5 calculated taking of a life in and of itself, my
6 understanding in your mind; that person is not someone you
7 feel death penalty is appropriate?

8 A I believe I would have to know other circumstances to
9 determine it was appropriate. What the mind set was, if
10 there was any remorse for the taking of a life.

11 Q Okay. What would you look to determine remorse?

12 A Repentance, regret.

13 Q And would you agree with me that repentance and
14 regret sometimes is something that doesn't come for some
15 while?

16 A In some cases I would agree with that.

17 Q It's over time that we come to repentance and regret.
18 And that's just as valid as a repentance or regret that
19 comes instantaneously.

20 MR. ARIAIL: I don't want to interrupt him. I think
21 this is way far afield from whether this juror's ability
22 to -- this is profiling. I would object.

23 THE COURT: Oh, getting awful close, but I'll allow
24 it.

25 MR. NETTLES: I promise I'll leave.

1 THE COURT: Move onto something else after this
2 question.

3 MR. NETTLES: That's right. That's right.

4 Q Did you follow me on that?

5 A No, I didn't, basically.

6 Q Basically what I'm saying was you and I'd agree
7 repentance and regret sometimes, it's something, obviously
8 something that's powerful to you and something you want to
9 take into consideration. And it's something that -- and
10 what we were saying, you and I agreed that sometimes it
11 comes a while -- it takes somebody a while to come to
12 that. But I was asking you, in your mind, is a true
13 repentance and regret that comes after a period of
14 personal reflection, which it may be, you know, a long way
15 away, that that is just as important and powerful as one
16 that happens immediately?

17 A I would have to ponder that a little bit. I don't
18 know that I could agree with that right off the bat.

19 Q Okay. But you wouldn't rule it out?

20 A Wouldn't rule it out.

21 Q Okay. Now, in your mind, and I think I know the
22 answer to this question, but I have to know it. In your
23 mind, is life in prison -- life imprisonment, what does
24 life imprisonment without parole mean to you?

25 A Removed from society for the remainder of natural

1 life.

2 Q Sort of in the vernacular, sometimes call it 'pine box
3 life. And when you come out, you're in a pine box. Do
4 you consider that a serious, and possibly appropriate,
5 punishment for a murderer?

6 A Based on the given circumstances in a general sense,
7 in some cases, it might possibly be appropriate.

8 Q In what circumstances?

9 A In situations where there were mitigating factors.

10 Q So, as the judge told you, there's mitigation. What
11 if the defense brought you -- we're talking about a
12 murder, okay? And the defense brought you no mitigation.
13 But you're on the jury and the person has been convicted
14 of murder. And in a capital case in South Carolina it's
15 got to be a murder and another serious crime; and a
16 there's a list of them, armed robbery, stealing, something
17 pretty important, or kidnapping. In this case it's
18 kidnapping. If you were on the jury and the government
19 brought you a person and evidence in the first phase; at
20 conclusion of the first phase, you found him guilty of
21 murder and armed robbery or whatever the serious offense
22 is, and the defendant brought you not mitigation, could
23 you still consider life without possibility of parole as a
24 significant punishment for that person?

25 A I would consider it. I think it would depend on the

1 facts that were brought out during the trial as to
2 whether, the weight of the consideration. But,
3 obviously--

4 Q What do you mean by the weight of the consideration?

5 A What credence I gave to it, whether it was more of a
6 possibility or less of a possibility.

7 Q Okay. And are we back now to the -- is the point
8 where you thought the person was going to do it again,
9 where you felt like they had remorse, that sort of thing.

10 A That sort of thing. Obviously, it's difficult to
11 speak in a general sense because this is a difficult
12 subject and there are many different aspects to it that
13 have to be considered. So, in a general sense, I really
14 can't give you any definitive sense of what I would feel
15 until I was in that particular circumstance.

16 Q I have got one more question for you on that issue,
17 then we'll probably move on. My question to you probably
18 is this. Let's say I'm the lawyer on the defense and I
19 don't bring you anything. Are you going to be looking to
20 me to bring you something? And in the absence of that, is
21 the default sentence death?

22 A I couldn't definitively say that, not having been
23 through the trial.

24 Q All right. Let me ask you this, then. I got two
25 other areas we're going to talk about, then I think I'll

1 be done. This area is this. What are your thoughts on --
2 let me put it to you this way. Some feel on the issue of
3 mental illness, say this, especially in the context of a
4 death penalty case, say, "you know, just really sick of
5 hearing about that. I think it's an excuse. I think it's
6 something that people make up just because they don't want
7 to take responsibility for what they did. Now, that's one
8 end of the spectrum.

9 The Other end of the spectrum, people say, "look, you
10 know, mental illness, if it's proven, I mean, I can
11 understand. And they see how it relates, and mitigation,
12 I can see how that should be something that really needs
13 to be considered, and I would consider that. I would give
14 it a lot of consideration." Do you have any thoughts on
15 where you fall within that spectrum?

16 A I really don't because, obviously, I never been
17 involved in anything of this nature and I have not formed
18 an opinion either way.

19 Q Let me ask you this way. If you and I were just
20 talking and I said I had a friend who had a mental
21 illness, whatever it was; or if I said I had it, do you
22 recognize that people do suffer from mental illness?

23 A Yes.

24 Q And it's a very real -- you don't think it's voodoo?

25 A In a general broad sense, No, I don't.

1 Q Okay. And if it was brought to you as something you
2 could consider as a mitigator in a capital case, there was
3 a reason for less than death?

4 A Obviously, I would give it consideration.

5 Q Would you give it meaningful consideration?

6 A Yes, I would.

7 Q Now, the last subject I think is this. I think I
8 know the answer, but i just have to ask you, especially
9 this. If you were in a jury room, and you heard all the
10 evidence and heard closing arguments -- let me ask you
11 this. Will you agree that in order to be a fair juror and
12 a good juror, and an open-minded juror, that you need to
13 wait until the end to make up your mind?

14 A Yes, I agree with that statement.

15 Q So, you understand that throughout this trial just
16 because there has to be an order, the government gets to
17 go first in the trial phase, and we if we choose, we may
18 put up evidence but we may not. And then in the penalty
19 phase they're going to bring you some truly heart
20 wrenching victim impact testimony. And what that is,
21 people are going to get up and say because this person is
22 dead, this is what this means to me. And they're going to
23 talk about everything they can for aggravation against my
24 client. Will you promise us that you'll wait to hear what
25 we've got to say too before you make up your mind?

1 MR. ARIAIL: Your honor, I'm going to object to that.

2 THE COURT: Sustain the objection.

3 Q Would you agree with me that a fair juror would wait
4 until the end, until both sides got to speak before they
5 made up their mind?

6 A Yes.

7 Q Do you think you could do that?

8 A Yes.

9 Q Even to heart wrenching testimony?

10 A Yes.

11 Q Now, if you were back in the jury room, and there
12 was -- and you had chosen a punishment, because there are
13 only two, life without possibility of parole or death, and
14 you had chosen one, all right? And everybody else had
15 chosen another and you all talked about it. Okay? At the
16 end of that day, okay, in order to give death you have to
17 sign your name on a piece of paper that goes to the clerk
18 of court's office. It's forever that you've given death.
19 And say 12 people sitting around the table and you're the
20 last one and you thought about it, listened to everybody
21 else, but you just think that because this person is not
22 going to be a future danger and because of your personal
23 reasons, that life is the appropriate punishment that you
24 can live the rest of your life with, that life is the
25 appropriate punishment, could you say when the piece of

1 paper came to you, say, "look, guys, i'm respecting you
2 all's opinion, i'm asking you to respect mine. It's not
3 this person, not today." Could you do that?

4 A Yes.

5 Q Likewise, if you were one of the 11 and somebody had
6 a different opinion, you agree with me this is the type of
7 issue that reasonable people can disagree on, can you
8 respect someone's opinion who was different from the
9 majority?

10 A Yes.

11 Q I believe I'm done, let me go check. Fair enough?

12 A Fair enough.

13 Q Thank you. Thank you.

14 THE COURT: Solicitor?

15 PROSPECTIVE JUROR: Judge, this is pretty tough.

16 THE COURT: You're doing fine, just keep answering
17 the questions.

18 BY MR. ARIAIL:

19 Q Mr. Johnson, My name is Bob Ariail. I'm the
20 Solicitor for the 13th circuit, which includes Greenville
21 and Pickens Counties. The Solicitor is the chief
22 prosecutor, district attorney as they talk about on TV.
23 And I'll be Handling this case, along with my deputy,
24 Miss Strom, along with one of my assistants, Mr. Moyer.
25 I'm Going to go back, and i'm not going to belabor this,

1 but i just want to make sure I'm clear.

2 Your comments in number 64, down at the last line it
3 says, "propensity to commit the same crime." All right.
4 What I want to ask you to explain to me, let's assume that
5 the case has gone to the jury, found him guilty, and now
6 you're in the penalty phase and you're talking about what
7 the appropriate sentence should be. And life imprisonment
8 without parole is defined to you, which it is, that the
9 defendant will never, ever, leave a prison. Therefore, if
10 the state -- would that convey to you the definition that
11 he could no longer have a propensity to commit the crime?

12 A Without speaking too freely, I struggled when I gave
13 that response about the two aspects of capital punishment.
14 The punitive side and the deterrent side. I would have
15 great difficulty signing that piece of paper for the
16 execution of an individual solely for punitive reasons,
17 without any deterrent potential. Not to say that I would
18 not, based on the individual circumstances, be capable of
19 that, because I think there are circumstances where it is
20 warranted in very few instances.

21 Q All right. Here is the, I think the question I want
22 to get to, a little more defined than that. If after the
23 guilt phase you find the defendant guilty and you go to
24 penalties, if the choice is life in prison or death and
25 you know that life in prison means that he is going to

1 jail for the rest of his life; and, therefore, will never
2 be out in society again, does that pretty much foreclose
3 your meaningful consideration of the death penalty?

4 A No, it does not.

5 Q All right. So, it's not a prerequisite --

6 A No, sir.

7 Q -- that there be some outward society -- all right.
8 So, let's go to the next one. Because having been a
9 prosecutor for 34 years, this is one that's always
10 interesting. Let's assume that neither part presents any
11 evidence on the issue of deterrence and the only issue of
12 deterrence is whether or not by executing the defendant,
13 you deter him from any further action. But deterrence as
14 to other people, maybe committing similar acts in the
15 future, if that's not discussed in the case, does that
16 also foreclose your ability to consider meaningfully
17 imposing the death penalty?

18 A No, sir. It does not.

19 Q So, you're not bound by looking for the state to come
20 in and establish that we are somehow eradicating murder by
21 giving people the death penalty, deterrent?

22 A That's correct.

23 Q You're talking about deterrent in a more limited
24 fashion?

25 A Yes.