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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 TWO 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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1 Q Thank you very much.

2 MR. ARIAIL: All I have, Your Honor.

3 THE COURT: Any motions from either party?

4 MR. ARIAIL: None from the state.

5 THE COURT: The defendant?

6 MR. NETTLES: None, Your Honor.

7 THE COURT: The court finds Mr. Johnson qualified.

8 Mr. Johnson, what we're doing is drawing approximately 43
9 jurors that are qualified, and from those 43 we will
10 strike 12 jurors plus four alternates. You're part of
11 that panel. Please don't discuss anything with anyone,
12 watch anything, read anything in the paper about it.

13 The bailiff is going to give you a slip of paper. On
14 that paper is a phone number. Call that number after 8:00
15 tonight.

16 PROSPECTIVE JUROR: Tonight?

17 THE COURT: There will be a message -- there will be
18 a message sometime tonight, I don't know if it will be on
19 there after eight tonight; but there will be a message
20 giving you instructions to either call back tomorrow,
21 night or it may be report at a certain time. Follow those
22 instructions on the number we give you. Okay?

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Thank you very much.

25 THE WITNESS: Thank you, judge.

1 MR. ARIAIL: With the court's permission step out to
2 meet with a witness? Be back in about ten minutes. If
3 that's all right.

4 THE COURT: All right.

5 MR. ARIAIL: Mr. Moyer and Miss Strom will be
6 representing us.

7 THE COURT: That's fine.

8 MR. ARIAIL: Thank you.

9 (prospective juror Haaker enters courtroom.)

10 THE COURT: Is it Mr. Haaker?

11 PROSPECTIVE JUROR: Haaker.

12 THE COURT: Mr. Haaker, would you please raise your
13 right hand please, sir.

14 JOHN R. HAAKER, (white
15 male), having been previously duly sworn, testified as
16 follows:

17 EXAMINATION

18 BY THE COURT:

19 Q I'm going to ask you some questions. And the
20 attorneys will probably also ask you some questions. Do
21 you understand?

22 A Yes, sir.

23 Q You filled out this questionnaire either last month
24 or the month before. Do you remember that?

25 A Yes, sir.

1 Q When you filled it out, was the questionnaire
2 accurate?

3 A The questions accurate?

4 Q The answers you gave to the questions?

5 A Yes, sir.

6 Q All right. Just hang on to that. I'm going to ask
7 you a couple questions about the questionnaire or your
8 answers on the questionnaire. If you will look at page
9 six, question number 44. Number 44 says, "have you" --
10 have you found page six?

11 A On page six.

12 Q Page six.

13 A Okay.

14 Q Question 44 says, "have you or any member of your
15 immediate family, or a close friend ever been a victim of
16 a crime."

17 You said, "yes," you have. "My daughter, Some girl
18 did assault and battery on her. She's still missing."

19 A Yes. The girl who committed A and B on my daughter,
20 they cannot find her. But it's still pending with the
21 court, magistrate or civil court, something.

22 Q When did this happen?

23 A This was like about two years ago.

24 Q Two years ago?

25 A Yes, sir.

1 Q How seriously was your daughter hurt?

2 A She ended up in the emergency room and more or less
3 knocked unconscious. The girl had something in her hand.
4 I don't know what.

5 Q How old is your daughter?

6 A Like 23, I guess, 23 -- 22 or 23.

7 Q Was a warrant taken out for someone?

8 A Yes, sir. Yes.

9 Q Because of your experience with that, do you have any
10 bias or prejudice towards law enforcement as a result of
11 failure to find this person?

12 A No, sir. No.

13 Q How is your daughter doing now?

14 A She lives in Virginia beach, happily married.

15 Q Doing fine?

16 A Yes.

17 Q This happen in Virginia or South Carolina?

18 A South Carolina, by -- off Darby Trailer Park or
19 something.

20 Q Okay. Now question 49, have you looked at question
21 49? It talks about your son in 2000 --

22 A Yes.

23 Q -- did damage to personal property and six months
24 YOA. Is that correct?

25 A Yes, sir.

1 Q Did that happen in Greenville?

2 A Yes, sir.

3 Q All right. And the solicitor's office here locally
4 prosecuted that case?

5 A Yes, sir.

6 Q Do you recall which assistant solicitor handled that
7 case?

8 A You mean solicitor?

9 Q The prosecutor.

10 A No, not at all.

11 Q Were you involved in it at all?

12 A I just showed up for the court date. The second
13 court day, I guess. I didn't for the first one, the first
14 one was -- wait a minute, the first one was a, had a lady
15 magistrate down here at Greenville detention center where
16 they released him on a YOA. And he had to pay restitution
17 and --

18 Q Did he go to jail?

19 A He didn't go to jail the first time.

20 Q The second time?

21 A The second time they found -- he was on probation,
22 they found him violated --

23 Q Violated probation.

24 A -- probation.

25 Q And they put him in jail?

1 A Yes, sir. And he went in February of last -- it may
2 be two years ago or whatever.

3 Q All right. As a result of that experience do you
4 have any bias or prejudice towards law enforcement?

5 A No, sir.

6 Q You have any bias or prejudice towards the solicitor?
7 Now, the solicitor in South Carolina is the prosecutor as
8 you see on television, the state's attorney or D.A. In
9 South Carolina is called the solicitor, do you understand?

10 A Yes, sir.

11 Q Do you have any bias or prejudice towards the
12 solicitor's office as a result of that?

13 A No, sir. He wasn't even present. No, sir.

14 Q All right. I'll have you refer to question number 54
15 on page ten. Question 54 says, "briefly describe your
16 attitudes and beliefs concerning capital punishment."

17 You said, "100 percent for it."

18 A Okay. Yes, sir, absolutely.

19 Q Is that your belief on the death penalty?

20 A Yes, sir.

21 Q 100 percent for it?

22 A 100 percent.

23 Q Are you 100 percent for it in all circumstances?

24 A Depends on circumstances, you know, that are given,
25 you know. It depends on the circumstances, of course.

1 But I don't want to contradict myself.

2 Q Okay. All right. On --

3 A We made the law and that's the way we're going to
4 have it. If we're going to have the death penalty -- if
5 we're going to have the death penalty, if you're not going
6 to have the death penalty, do away with it; but I'm all
7 for it. Yes, sir, 100 percent.

8 Q Question 56 said, "what is your opinion for death
9 penalty?"

10 You said, "strongly favor"?

11 A That's right.

12 Q You need some glasses?

13 A I have glasses. I don't have them with me.

14 Q I have a couple right here you can try on for size if
15 that will help you. Got reading glasses, see which one
16 magnifies it for you appropriately.

17 A Okay. Give me a minute, let me clean this off.

18 Q Your arms just aren't quite long enough, is that the
19 problem?

20 A I'm running out of length, Yes, sir.

21 Q Does that help you?

22 A Yeah. That's better.

23 Q All right. Referring to question 68. The question
24 is, "With reference to the death penalty, which of the
25 following statements best represents your opinion?" You

1 circled number two.

2 A Can you find the question? Oh, this thing is all
3 backwards whoever stapled these things. Sixty-eight?

4 Q Question 68.

5 A Absolutely.

6 Q And your answer was, "I believe the death penalty is
7 the appropriate form of punishment in some murder cases
8 and i could return a verdict of death if I believe it was
9 warranted in a particular case, depending upon the
10 evidence and the law and what I learned about the
11 defendant." Is that your statement, still your statement
12 here today?

13 A Whatever the case is, yes, sir.

14 Q Let me ask you this. Have you heard anything about
15 this case, either through television, newspaper, radio, or
16 anyone talking about the case?

17 A No.

18 Q Have you heard anything at all about the case?

19 A The name came up with my wife and me, and it was like
20 I wasn't watching TV, I didn't see anything on the TV to
21 let me know what was going on or any -- No. It's, you
22 know, Greenville County we have a few murders that go on
23 in Greenville County, I don't -- and it's like I don't
24 keep track of it.

25 Q You don't know anything about the facts of this

1 particular case?

2 A No. No, sir.

3 Q All right. Do you know of any physical or mental
4 reasons as to why you could not serve on this jury?

5 A No, sir.

6 Q Do you have any personal hardships as to why you
7 could not serve?

8 A No, sir.

9 Q Do you know the victim in the case who is Maranda
10 Williams?

11 A No, sir.

12 Q Do you know the defendant in the case, who is James
13 [sic] Christopher Williams, who sits to the right in the
14 light blue shirt or the white shirt?

15 A No, sir.

16 Q Do you know any of the attorneys that are sitting to
17 the right representing Mr. Williams at the table to the
18 right? Do you know any of those attorneys?

19 A No, sir.

20 Q All right. To the left is the solicitor. Do you
21 know any of the solicitors?

22 A No, sir.

23 Q Do you have Any personal relationship with anyone in
24 the solicitor's office here in Greenville?

25 A No, sir.

1 Q I'm going to give you a list of names. Would you put
2 on the glasses and read that list of names and tell me if
3 you recognize any of those names.

4 A (complies) No, sir.

5 Q I'm going to give you a second list of names. Do you
6 recognize any of the names on that list?

7 A Nobody.

8 Q Thank you, sir. I'm going to read a question to you.
9 I would like you to answer the question. Okay?

10 A Yes, sir.

11 Q In this case the defendant is black and the victim is
12 white. It is undisputed the black defendant and white
13 victim engaged in interracial dating. Would the fact the
14 black defendant and white victim engaged in interracial
15 dating make it difficult for you to be fair to either the
16 state or the defendant?

17 A My grandson is black and white, my grandson. So, no,
18 not at all. I have no problem.

19 Q Thank you very much. All right. If you would put on
20 your glasses and turn to page 10 I believe. We've already
21 gone over that briefly. I want to explain to you the
22 process, ask you a couple of questions.

23 A Page 10?

24 Q Yes, sir -- page 11. In this particular situation
25 this question is not on it, just may refer to that later.

1 You can take your glasses off and put them back on if you
2 need to read something. Okay?

3 A Okay.

4 Q In this case the state has charged the defendant with
5 murder and kidnapping. It is the state's responsibility
6 and obligation to prove that the defendant, prove the
7 defendant guilty beyond a reasonable doubt of murder and
8 kidnapping. This case would be divided up into possibly
9 two parts. The first part or first phase is commonly
10 referred to as the guilty phase. Now, if the jury
11 unanimously believes that the state has proven that the
12 defendant was guilty beyond a reasonable doubt, and finds
13 the defendant guilty of murder and kidnapping, we will go
14 to the second phase. And they are two separate trials.
15 Do you understand?

16 A Yes, sir.

17 Q And in the second phase, which is commonly referred
18 to as the penalty phase, the state would produce
19 additional evidence which we would call aggravating
20 circumstances. Now, the jury's responsibility in the
21 second phase would be to determine whether the defendant
22 receive death or life. That is the jurors responsibility
23 in this case. It's not up to the state, not up to the
24 court. The jury would decide one or the other in the
25 second phase, do you understand?

1 A Yes, sir.

2 Q All right. Now, the state would be required to prove
3 these aggravating circumstances beyond a reasonable doubt.
4 Now, if the jury believes that the state proved the
5 aggravating circumstances beyond a reasonable doubt, the
6 jury could give the, a defendant death. Do you
7 understand?

8 A Yes, sir.

9 Q But even if the jury found the aggravating
10 circumstance has been proven, the jury would not have to
11 give death. They could also give life. They could give
12 life just as an act of mercy, do you understand?

13 A Yes, sir.

14 Q Now, the defendant does not have to offer any
15 testimony. But generally a defendant will offer
16 mitigating circumstances, and the mitigating circumstances
17 are facts about the case or facts about the defendant that
18 would indicate to the jury that he would be entitled to
19 life rather than death. Would you be able to consider the
20 mitigating circumstances prior to making a decision as to
21 whether to give the defendant life or death?

22 A Sure. You should.

23 Q Let's assume the defendant did not put up any
24 mitigating circumstances and all you heard was the penalty
25 phase --

1 A Right.

2 Q -- and the guilty phase. Could you still consider
3 life rather than death?

4 A With all the testimony and all the --

5 Q After all the testimony has been taken?

6 A I'd have to, I don't know -- I don't know.. Hard to
7 say. We don't know -- I don't know nothing, I don't know
8 the circumstances or anything.

9 Q But you would consider the circumstances and the
10 facts before making a decision?

11 A Oh, absolutely. I'd have to hear all the facts and
12 everything.

13 Q That's what I wanted to ask you.

14 A I just can't make a decision.

15 Q Can you be fair and impartial to both the state and
16 defendant?

17 A Absolutely.

18 Q Do you know of any personal reasons as to why you
19 cannot serve on this jury?

20 A I have none, no.

21 Q All right. Whose turn?

22 MS. STROM: Our turn, Your Honor.

23 THE COURT: Okay.

24 BY MS. STROM:

25 Q Good evening, sir.

1 A Good evening.

2 Q My name is Betty Strom. I'm the deputy solicitor for
3 Greenville and Pickens Counties. I know it's late. I'll
4 try not to be repetitive.

5 A Take your time.

6 Q I want to make sure I understand what you're saying.
7 Okay? As the judge told you, if you were selected on any
8 capital case, that it's two phases. The first phase you
9 can sort of think of it like a box, you will hear evidence
10 as to whether the defendant actually committed the crime.
11 And that will be the sole issue at that phase. You
12 understand that?

13 A Okay.

14 Q The defendant, in order for us to go to the second
15 phase, which is the penalty phase, the jury would have to
16 find the defendant guilty of murder. If they find him not
17 guilty, we don't go to the second phase. It's over. But
18 if the jury finds him guilty of murder, then we go to the
19 second phase. And in that second phase, you may hear
20 additional evidence, evidence in aggravation things that
21 may make it worse; you may or may not hear things in
22 mitigation, things that tend to lean towards a life
23 sentence.

24 My understanding, please correct me if I'm wrong,
25 what I'm hearing from you is you would not go into that

1 second phase with your mind already made up. You would
2 want to hear what comes out in that second phase?

3 A Yeah.

4 Q Okay.

5 A Because we would have made the decision already for
6 the first phase.

7 Q You make the decision on the first phase as to
8 whether the defendant is guilty or not guilty, not as to
9 sentence.

10 A Oh, okay.

11 Q Before you make that determination as to which
12 sentence to impose, either life imprisonment or death, you
13 would want to hear additional information?

14 A Okay.

15 Q Is that correct?

16 A The second phase?

17 Q Yes.

18 A So, would you repeat what you did at the first phase,
19 at the second phase?

20 Q You would still be able to consider what you heard in
21 the first phase. Okay? In the first phase we've heard
22 about whether the defendant committed the crime or not.
23 You're going to hear about the facts of the crime, what
24 happened.

25 A Okay.

1 Q If the jury finds him guilty, then we go to the
2 second phase. You can still consider what you heard in
3 the first phase, but you may hear additional evidence,
4 things that you weren't told in the first phase. It could
5 be anything, things that make it worse, things that make
6 it less.

7 A All right. I see what you're saying. Okay.

8 Q Okay?

9 A All right.

10 Q My understanding, what you're telling me, you will
11 not make up your mind until you have heard all the
12 evidence?

13 A That's the way, yes. That would be the best advice.

14 Q Right? You're not going to go in with a preconceived
15 idea one way or the other?

16 A Pre what?

17 Q Preconceived idea, preformed idea.

18 A No.

19 Q And that second phase, penalty phase, we're
20 determining whether the defendant should receive life
21 imprisonment or the death penalty. And let's assume for a
22 minute the defendant does not put up any evidence. You
23 know, the judge told you he's not required to put up any
24 evidence. The state always -- the burden is always on the
25 state, excuse me. Assuming the defendant did not put up

1 anything but you still felt that the appropriate sentence
2 was life imprisonment, would you still vote life
3 imprisonment, even if the defendant did not bring you any
4 evidence, if you thought that was the appropriate
5 sentence?

6 A Huh, I don't know. Kind of hard to --

7 Q Kind of hard to talk about?

8 A -- to say, you know. Because, you know, I hate to go
9 by speculations or hearsay, what you're just telling me,
10 until I hear all the facts.

11 Q So, you would -- you wouldn't know what you would do
12 until you heard all the facts?

13 A Everything would have to happen, because that's --
14 you talking something serious if you're going to go death.

15 Q Sure.

16 A Even life, you know. So, we need to know what it's
17 all about. You know, but it does help if they got
18 something else to say at the second round, you know.

19 Q Sure.

20 A That would help.

21 Q I think what I'm trying to get to, I may just be
22 confusing -- if the judge told you they're not required to
23 put up anything, you're not going to hold that against
24 them?

25 A No.

1 Q All right. Okay. One of the requirements in South
2 Carolina is if a jury determines that the death sentence
3 is the appropriate sentence, if they make that
4 determination back in the jury room, the defendant
5 deserves the death penalty and they render that verdict,
6 each and every juror must sign a verdict form which says
7 we find the appropriate verdict is death.

8 A Okay.

9 Q So, you physically have to sign that document.

10 A Okay.

11 Q If that were your decision in the jury room, to
12 impose death, would the fact that you had to sign that
13 document that the jury comes back to the court with, would
14 the mere signing of that document or the physical act of
15 signing that document cause you in any way to hesitate to
16 impose the death penalty or impair your ability to impose
17 the death penalty?

18 A Not at all. Not at all. That's the way it is.

19 MS. STROM: Court's indulgence, Your Honor.

20 Q We've been talking about it a lot. It's not on the
21 questionnaire, so you won't need to put the glasses back
22 on. We've been talking about murder and these two phases
23 of the trial. And I want to make sure you understand that
24 in South Carolina murder means an intentional act. It's
25 not just any killing of another person. It's the

1 intentional killing of another person with malice
2 aforethought. Okay?

3 A Right. Right.

4 Q And, so, I just want to make sure that when -- we're
5 still talking about the second phase, the sentencing
6 phase -- you understand that the defendant has already
7 been convicted of an intentional killing? It's not
8 accident, it's not self-defense. It's not insanity,
9 anything such as that, you understand that?

10 A Yes, ma'am.

11 Q And your answer's still the same? You would want to
12 keep an open mind, want to hear everything?

13 A Right.

14 Q If I may check with Mr. Ariail, make sure I haven't
15 missed anything. Thank you so much.

16 A Okay. Thank you.

17 MS. STROM: Thank you.

18 THE COURT: Is that it solicitor Strom? Any more
19 questions?

20 MS. STROM: No more questions. I'm sorry.

21 THE COURT: Mr. Nettles.

22 BY MR. NETTLES:

23 Q I'll be candid with you, I wasn't paying attention
24 when you pronounced your last name.

25 A Haaker.

1 Q Mr. Haaker?

2 A John is fine.

3 Q Jim?

4 A No, John.

5 Q John. The solicitor, deputy solicitor, went through
6 something a little quick and I wanted to make sure we
7 understand something.

8 A Sure.

9 Q You know when you were asked about the death penalty,
10 right? On the questionnaire -- you don't have to go back
11 to it -- but my understanding, you said you were 100
12 percent for it?

13 A Right.

14 Q When you say 100 percent for it, do you mean
15 you're -- and towards the end what she was talking about
16 is that the death penalty in South Carolina, they can't
17 seek it for accident or for manslaughter. I mean, it's
18 got to be a murder.

19 A Okay.

20 Q Is that clear to you?

21 A Okay.

22 Q And what's, in your mind, what is a murder?

23 A In my mind?

24 Q What is your understanding of the legal definition of
25 murder?

1 A Legal definition of murder, when someone commits an
2 act premeditated or unpremeditated and kills somebody
3 either by choking, by suffocation, by drowning, by
4 shooting. It just goes down the line, you know. But then
5 there's accidental murders. It may be involuntary or
6 where someone driving in a car with you, you know, and you
7 accidentally hit a wall and you kill your friend. That
8 would be like involuntary manslaughter, I guess.

9 Q Well, it would be a manslaughter, don't really know
10 to get into whether it's voluntary or involuntary. It's
11 manslaughter. In a manslaughter, if you were in a trial
12 and you found the person guilty of manslaughter, you could
13 not go to the death penalty phase -- to the penalty phase.
14 You follow me on that? It's got to be a murder.

15 You said premeditated. In all candor, South Carolina
16 what it means is a heart devoid of all social duty,
17 fatally bent on mischief. In short, you killed somebody,
18 meant to do it.

19 A Exactly.

20 Q That's a murder, just so we're on that page.

21 A Right.

22 Q If you're on a jury and the person is found -- the
23 other thing for it to be a death penalty case is that --
24 or to be eligible for death penalty, not only is there a
25 murder, but there's another really serious crime, like a

1 murder and a rape or a murder and a kidnapping or murder
2 and armed robbery.

3 A Right.

4 Q Got to be two serious charges, murder and another
5 one.

6 A Right.

7 Q If you were on a jury and --

8 A Okay.

9 Q -- at the conclusion of the first phase you have
10 found the person beyond a reasonable doubt, and this isn't
11 a maybe, they're competent. Okay? It's not a, they
12 weren't competent at the time.

13 A Right. Right.

14 Q They're guilty of murder and guilty of another
15 serious crime, you found beyond a reasonable doubt. At
16 that point you're 100 percent for the death penalty?

17 A What would the other serious crime be? The other
18 serious crime?

19 Q In South Carolina they're listed. In this case I'll
20 have you know it's kidnapping.

21 A Let me answer that, then. The murder came first,
22 first you kidnap the person or whatever, then you murder
23 them, right? Is that what you just asked?

24 Q This case or any case where there was a kidnapping or
25 murder, that would be the situation, or it could be a

1 armed robbery and a murder, you know, something.

2 A So, you robbed them and killed them?

3 Q Right. They're not separate events.

4 A I didn't really follow you on that question, then.
5 Because you lost me.

6 Q What point did I lose you?

7 A The second one, you said he committed a second
8 offense or committed a second crime.

9 Q I'm not talking --

10 A In all actuality, he was -- they, those, or whoever,
11 they were doing it all at once, at the same time.

12 Q Exactly.

13 A Regardless, yes; 100 percent.

14 Q In that case?

15 A The person had the person in their hands, I
16 understand that. In other words, they had their life in
17 their hands.

18 Q And they killed them?

19 A For robbery, yeah.

20 Q For robbery.

21 A So why would you want to worry about the robbery
22 part?

23 Q Because you have to have both to get in the penalty
24 phase.

25 A Ain't doing the other guy any good, robbery and kill

1 them.

2 Q But my question to you is, when you found that person
3 murder and another serious crime, any of those we just
4 listed, the --

5 A Right.

6 Q -- only appropriate punishment is death?

7 A For both crimes?

8 Q Yes. Is that what you believe when you say you're
9 100 percent for it?

10 A Yeah, Absolutely. It was premeditated.

11 Q Premeditated.

12 A Yeah, on a robbery, yeah.

13 Q Meant to do it, and another serious crime.

14 A This is an example, right?

15 Q Yeah.

16 A Sure.

17 Q If you're the person in that case, if you're the
18 juror on that case and you come back on both of those,
19 when you get into the penalty phase, you're like, look
20 guys, don't come to me --

21 A Second thought.

22 Q -- with any mitigation. The only appropriate
23 punishment for this person is death? Is that right?

24 A Medication?

25 Q Mitigation.

1 A Mitigation? What kind of mitigation?

2 Q Mitigation. Yeah, the -- I mean the only appropriate
3 punishment for that person in your mind is death?

4 A Eleven other jurors probably, too. Yes.

5 Q And you understand, I don't get to question all 12 of
6 you at one time. I can only question you. Right now I
7 can only ask what you think. And that makes sense, right?

8 A Yes.

9 Q And so, getting back to just you.

10 A Okay.

11 Q We're not talking about garden variety murder, okay?
12 Talking about a murder, serious crime. When we get right
13 down to it, serious crime. Your mind, the only
14 appropriate punishment, somebody done both of those, meant
15 to do it, is death in your mind?

16 A Okay, yes. Yes. In my mind it would be, yes.

17 Q And you feel pretty strongly about that?

18 A Yes.

19 Q And the reason you feel strongly about that, you just
20 feel like that some people, just because if they've
21 committed two crimes like that and have taken another
22 person's life the only appropriate remedy for us as a
23 society is to give them death, correct?

24 A I don't know. It depends on the circumstances when
25 it comes down to society. Not everybody is for that.

1 Q I'm Not worried about anybody else.

2 A In my mind, yes. That's what we're brought up on.

3 Q That's sort of the way you were brought up?

4 A The Way everybody's brought up I thought.

5 Q I don't know about everybody. Again, I can only
6 worry about you. Right? That's the way you were brought
7 up?

8 A For the Most part, right.

9 Q As a matter of fact if we were in the penalty phase
10 for someone like that and you were on the jury, okay,
11 you're going to say, "look, all this stuff about
12 mitigation, all this other stuff, you know, I can't -- I
13 just can't in good conscience give that person life. This
14 taking a life and committed another serious crime." I
15 mean, That's just the way you feel; isn't that right?

16 A Oh, well, but -- It would really have to depend on
17 the circumstances towards it all. I just wouldn't be
18 sitting here, you know, and guarantee 100 percent I'm
19 going to say death.

20 Q Well, i'm Not asking you to commit to anything. But,
21 it would be very -- I'm not saying 100 percent now. But
22 if all of that were brought to you?

23 A Yeah.

24 Q The defense would have a really tough row to hoe to
25 get you to change your mind?

1 MS. STROM: I object, your honor.

2 THE COURT: I'll sustain the objection.

3 PROSPECTIVE JUROR: I meant --

4 THE COURT: Hold on a second.

5 MR. NETTLES: You would -- I just ask he be excused
6 for a second and address something with the court.

7 THE COURT: No, sir. Just go ahead with your
8 question. When you finish your questions, I'll hear you.
9 I'll send him out.

10 MR. NETTLES: I'd like to be heard on that objection.

11 THE COURT: All right. Mr. Haaker, would you step
12 out?

13 PROSPECTIVE JUROR: Sure, yes, sir. Should I bring
14 my stuff?

15 THE COURT: No, you got the glasses?

16 PROSPECTIVE JUROR: Yeah. They're right there.

17 THE COURT: Thank you. I got to keep up with my
18 glasses.

19 (prospective juror exits.)

20 THE COURT: All right. Hear you on the objection.

21 MR. NETTLES: What's the basis they just objected? I
22 don't know what the basis is.

23 THE COURT: What's the basis?

24 MS. STROM: The proper standard is not defense have a
25 tough row to hoe, sometimes we all have a tough row to

1 hoe. The question is, he's sitting here saying the
2 defense is going to have a tough row to hoe when the
3 standard is, would you consider it -- he said four or five
4 times it depends on the circumstances. I don't know how
5 many times he has said it depends on the circumstances.
6 That's Not the proper standard.

7 THE COURT: Let me tell you. I sustained the
8 objection primarily because it was getting repetitive and
9 you were getting argumentative with the witness. One time
10 he would say he went along with you, then you would back
11 up and say depends on the circumstances. You would come
12 back at him again, and it was getting extremely
13 argumentative between you and the witness. That's the
14 reason I sustained the objection.

15 MR. NETTLES: I got to be candid with the court.
16 Okay? And I beg the court's indulgence. I wasn't being
17 argumentative. We were all here. This guy is not
18 answering anybody's questions. He thinks he's cute. I
19 have got to -- i have got to, in order to determine
20 whether he can sit on this jury, He's got to answer
21 questions. Like one time I asked him -- "well, I think
22 everybody on the jury would." Well, none of us care what
23 the other people on the jury do.

24 THE COURT: Well, let's do it this way. And I don't
25 want to be too harsh with him since he's a juror. If he's

1 not being responsive to the questions, call it to my
2 attention, I'll try to get him to do that. Okay? I Won't
3 do it as harsh as I would in a trial, but I'll try to
4 steer him in that direction.

5 Quite frankly, he's been all over the courtroom with
6 his answers to me, Miss Strom, and with you. How much
7 more do you want to ask him? You've made your point, What
8 else do you want to ask him?

9 MR. NETTLES: This guy, in addition to being
10 automatic death penalty, is also mitigation impaired.

11 THE COURT: All right. Bring him back, please.

12 (prospective juror enters courtroom.)

13 Q Let me tell you where we were. You were on a jury
14 and you had found somebody guilty of murder and you found
15 him guilty of another significant crime, armed robbery,
16 rape, kidnapping, something of that nature. Guilty beyond
17 a reasonable doubt of both of those. Penalty phase has
18 started and at that point what you're going to decide is
19 punishment, life or death, you follow me?

20 A I followed you there, yes.

21 Q My question to you is this. Understanding that
22 person has been convicted of both of these things, your
23 mind satisfied it's been done beyond a reasonable doubt,
24 all right?

25 A Okay.

1 Q You're kind of starting off leaning towards death,
2 right?

3 A Are you telling me or --

4 Q No, I'm asking.

5 A No.

6 Q What are you leaning towards?

7 A What am I leaning towards?

8 Q Yeah.

9 A I'm leaning towards the completion of the case.

10 Q What do you mean by that?

11 A Leaning towards completion of the case, such as
12 hearing all the facts and everything you got to say. But
13 I think we went this way already once before. Okay. Yes,
14 I'm for it 100 percent. He's going to die, yeah.

15 Q And that's what you feel?

16 A Yeah. That's what I feel from the start, okay.
17 Yeah.

18 Q And there's just nothing in terms of, you know, mamby
19 pamby --

20 A That could be anybody, you know, that's just a woman
21 or whatever, you know.

22 Q What you mean by that?

23 A You just told me this is an example of an armed
24 robbery and a murder case. And it's not a he or she, it's
25 just an example.

1 Q That's right.

2 A So, I would say yeah, 100 percent.

3 Q That's the only appropriate punishment in your mind?

4 A The perfect punishment.

5 Q Or appropriate?

6 A Gees, for the robbery and all, I'd like to hear it;
7 the murder, I'd like to hear before I really set out and
8 said, "hey, yeah, man, this is definitely going to be a,
9 you know, a death penalty."

10 Q Okay. Let me ask you about this.

11 A Sure.

12 Q Do you have any opinions on the issue of mental
13 illness?

14 A Doesn't that have to be, you know, proven?

15 Q Okay.

16 A I don't know. I don't have no issues with it.

17 Q What are your thoughts? I mean, Some people just
18 believe mental illness is a bunch of voodoo?

19 A Well, you know, if someone is sick, they're sick.
20 You know. See what I'm saying?

21 Q Is that something that you can consider, give
22 meaningful consideration as a mitigator in a death penalty
23 case?

24 A Not in all cases, no.

25 Q Okay.

1 A I don't stand jury trial all the time either, you
2 know, I don't know nothing about them. But what I hear,
3 what you're telling me, you know, some people have
4 problems, yeah, and some don't. You know, some of them
5 use that as an excuse, you know. I mean, come on, think
6 about it.

7 Q What makes you think some people use that as an
8 excuse?

9 A To get out from under their crime that they
10 committed.

11 Q Okay. I have no further questions.

12 THE COURT: Would you step out in the hall just a
13 second.

14 PROSPECTIVE JUROR: All right, sir.

15 THE COURT: Leave my glasses. Thank you so very
16 much.

17 (prospective juror exits.)

18 THE COURT: Any motions?

19 MR. NETTLES: Yes, sir. He's not qualified.

20 THE COURT: Very briefly. It's getting late, we have
21 one more.

22 MR. NETTLES: I understand. He's not qualified for
23 any number of reasons. First of all, he doesn't take the
24 whole proceeding seriously. The Record may not reflect
25 it, but I will tell you this guy thinks this is a joke.

1 And His demeanor on the witness stand, he didn't take any
2 questions to start with, seriously, just that as an
3 umbrella issue.

4 Secondly, specifically, he doesn't believe in mental
5 health issues. He Believes people use it to get out of
6 under things. That's a direct violation of Eddings versus
7 Arizona. He has vacillated all over the place. And that
8 makes him Not qualified. And, your honor, If I could say
9 some people vacillate because they're followers. You
10 know, you get up, ask them a question, they're just going
11 to tell you what you want to hear. There's Some people
12 that vacillate because they don't take it seriously. They
13 don't care what answer they give. That's exactly the
14 problem this guy has. And if this guy gets on this jury,
15 we're going to have a problem. We're going to have a
16 problem. He's Not going to take his oath seriously. He's
17 Not going to take his duty seriously, and it's going to be
18 a problem for somebody.

19 THE COURT: Okay. Solicitor Strom?

20 MS. STROM: Thank you, Your Honor. I very much
21 disagree. Counsel's characterization that this juror does
22 not take it seriously. I think he does take it seriously.
23 I think he's trying to be as honest as he can given the
24 facts and circumstances that we're talking, where he has
25 not been in this situation before. He's trying to give us

1 as much information as possible. So, I'd strongly
2 disagree with the characterization that he does not take
3 it seriously, I think he takes it very seriously.

4 Furthermore, as to his qualification, he has
5 consistently said over and over again, yeah, he says he's
6 100 percent for death penalty; but he has never said, I
7 would give the death penalty in every murder case. He has
8 not said that. He has simply said I'm 100 percent for
9 death penalty. In fact his questionnaire and all his
10 other questions have said he would listen to all the
11 evidence before he gave it. He consistently says, "I
12 would have to consider everything, have to hear the
13 facts."

14 Specifically as to the issue of mental illness, I
15 would submit he does not reject it. He simply said that
16 some people use it as an excuse. He did not say all of
17 them. And he specifically said that when it's proven, if
18 someone is sick, they are sick, which goes to show you
19 that he does see it as a valid illness. He's not sitting
20 here throwing it out the window. He says if someone is
21 sick, they're sick. So, I would submit to you that he is
22 qualified.

23 And especially going back to Miss Glenda Fuller, if
24 she's qualified in this panel, then Mr. Haaker should also
25 be.

1 THE COURT: We Don't need to be playing one juror
2 against the other. Okay.

3 MS. STROM: On his own, I submit he's qualified.

4 THE COURT: Basing it on his own, not comparison with
5 other jurors. I don't think that's appropriate. And i'm
6 not going to allow that. Okay?

7 MS. STROM: Yes, sir.

8 THE COURT: Anything else you want to tell me?

9 MS. STROM: No, sir. I Just wanted to refer back to
10 the examples that I used, were all his responses, not
11 anyone else's. And other than that last comment i made, i
12 did not refer back to any other juror. So, all of my
13 reasons submitted to the court were based upon his
14 responses and his demeanor in the courtroom.

15 THE COURT: Thank you very much. I'm going to grant
16 the motion to excuse this juror. Bring Mr. Haaker in,
17 please.

18 (prospective juror enters courtroom.)

19 THE COURT: Mr. Haaker, I'm going to find you're not
20 qualified to sit on this particular jury, so you're
21 excused. Thank you for your services. Okay?

22 PROSPECTIVE JUROR: Thank you so very much. Thank
23 you.

24 THE COURT: Next is Mark Hagen. Before we bring in
25 the next juror, I would like to put on the record part of

1 this court's decision in excusing Mr. Hagen was his
2 demeanor on the witness stand. I felt like he was very
3 flippant about some of his answers and some of his
4 answers, wasn't taking them seriously. That went into the
5 court's decision in observing his demeanor during the
6 questioning by the court, the state, and the defendant.
7 Would you bring us Mr. Mark R. Hagen, please?

8 (prospective juror enters courtroom.)

9 Mr. Hagen, please raise your right hand.

10 MARK R. HAGEN, (white
11 male), having been previously duly sworn, testified as
12 follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Hagen, you filled out a questionnaire either
16 last month or the month before. Do you remember filling
17 out the questionnaire?

18 A Yes, I do.

19 Q At the time you filled out the questionnaire, was the
20 questions, or the answers accurate?

21 A Yes.

22 Q All right. I'm going to ask you a couple of
23 questions in the questionnaire. If you would turn to page
24 five.

25 A Okay.

1 Q All right. You stated that your wife is an ex-police
2 officer.

3 A Yes.

4 Q Where was she a police officer?

5 A In Tampa, the airport police department.

6 Q How long did she work in that capacity?

7 A From -- I believe four years, but I'm not sure about
8 that. That was before we were married.

9 Q You said your wife had been a victim in a crime. Is
10 that correct?

11 A Yes.

12 Q Was that during her service as a --

13 A No.

14 Q -- police officer?

15 A No, it was not.

16 Q Was that before or since then?

17 A It was before.

18 Q Before. What happened to her?

19 A She was sexually abused by her grandfather.

20 Q Did that case go to trial --

21 A Yes, It did -- well.

22 Q -- or do you know?

23 A I know that her grandfather killed himself before.

24 Q How long ago was that, do you know?

25 A Either 19 or 20 years ago.

1 Q All right. Do you have any bias or prejudice towards
2 defendants in general as a result of your wife being a
3 police officer and conversations you've had with your wife
4 about police work?

5 A I've had conversations with my wife about it because
6 I was intrigued about it, but I don't have any bias.

7 Q Towards defendants in general?

8 A No, I don't.

9 Q How about law enforcement in general?

10 A No, I don't.

11 Q You have any bias or prejudice towards the court
12 system in general?

13 A I do not.

14 Q All right. Mr. Hagen, in this case the defendant is
15 charged, Mr. Charles Christopher Williams, is charged with
16 murder and kidnapping. And this occurred on September 3,
17 2003 at the Bi-Lo here in Greenville. Have you heard
18 anything on TV, the radio, or read anything in the paper
19 or heard anyone talking about this case, either when it
20 occurred or since then?

21 A When it occurred. I mean, I live right off East
22 North Street so I was very aware of what was happening
23 around the Bi-Lo because it was all blocked off when I
24 tried to go home.

25 Q Okay.

1 A There was a little bit of coverage I believe during
2 that period, but I have not seen any news on it since. I
3 didn't --

4 Q Did you watch television that night?

5 A That night, Yes, I did.

6 Q Did you read the paper the next day?

7 A I did not.

8 Q Have you read anything or heard anything about it
9 since then?

10 A No, I really haven't. I was trying to think if there
11 was any -- I have been watching like national news, not
12 local news.

13 Q All right. Based upon going by and being in your
14 neighborhood, have you formed or expressed an opinion as
15 to the defendant's innocence or guilt?

16 A No, I have not.

17 Q Okay. All right. Do you have any physical or mental
18 problems that would prevent you from serving on this jury?

19 A No, I do not. I do need to let you know about
20 something because I don't know how it will affect it.

21 Q Okay. Do you have any personal hardships that will
22 prevent you from serving on this jury?

23 A My sister has got cancer, and they've asked me to do
24 a bone marrow test. Supposedly sent some Fedex package
25 for me to have the bone marrow test done.

1 Q When was this sent to you?

2 A I was told about it last night, and it was supposed
3 to have been Fedexed to me. I have not seen it at this
4 point, so I don't know.

5 Q Where is your sister?

6 A My sister right now is in Nashville, Tennessee, and a
7 bone marrow transplant needs to happen. It's supposed to
8 happen five weeks from now. So the test is the only real
9 issue I have, real issue right now.

10 Q What do you have to do to subject yourself to that
11 test?

12 A I don't know exactly. I think they're supposed to
13 draw either blood or fluid. And I can go, supposedly go
14 to a doctor's office and have that done. But I guess
15 since I don't know exactly what will play out here, I need
16 to have that done quickly.

17 Q Okay. Well, do you know if it would incapacitate you
18 in any fashion?

19 A I don't think so.

20 Q Just taking of blood?

21 A Taking of blood.

22 Q So, if you could have that done tomorrow, you would
23 have that behind you if you get the package; is that
24 correct?

25 A That's correct.

1 Q All right. I'm going to ask you, do you know the
2 victim in this case, who is Maranda Williams?

3 A I do not know her.

4 Q Do you know the defendant in this case, Charles
5 Christopher Williams, who sits in the courtroom to my
6 right?

7 A No.

8 Q Do you know the defendant's attorneys in the case
9 that represents Mr. Williams, who also sits to my right?

10 A No, I do not.

11 Q Do you know the solicitor, anyone in his office or
12 have a personal relationship with anyone in his office
13 here in Greenville or Pickens?

14 A No, I do not.

15 Q I'm going to give you a witness list, potential
16 witness list. Would you look at this list and see if you
17 recognize any names on it.

18 A (complies) No, I do not.

19 Q I'm going to give you a second list. Would you look
20 at that list and see if you recognize any names on it.

21 A (complies) No.

22 Q Thank you, sir. I'm going to read a question to you,
23 ask you to please answer. Okay?

24 A Okay.

25 Q In this case the defendant is black and the victim is

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

6 A No, it would not.

7 Q Could you listen to all the testimony in this case
8 before you arrive at a decision as to the defendant's
9 innocence or guilt?

10 A Could you repeat that?

11 Q Let me rephrase it. In this particular case we are
12 in, the defendant is charged with murder and with
13 kidnapping. Okay.

14 A Okay.

15 Q This case will be divided into two sections or two
16 phases or two parts, however you want to refer to it. The
17 first phase, the state will present facts concerning the
18 criminal charges, i.e. the murder and kidnapping. It's
19 the state's responsibility to prove the defendant guilty
20 beyond a reasonable doubt as to those two crimes. You
21 understand?

22 A Yes, I do.

23 Q All right. Assuming that the jury agrees that the
24 state has found -- the state has proven the defendant
25 guilty beyond a reasonable doubt, then we would go to the

1 second phase, which is generally referred to as the
2 penalty phase. Additional evidence or testimony would be
3 presented by the state in that phase. Do you understand?

4 A Yes.

5 Q The state would also have the responsibility of
6 proving the aggravating circumstances beyond a reasonable
7 doubt.

8 Now, if the jury finds that the state has proven the
9 aggravating circumstances, then the jury would make a
10 decision as to whether or not the defendant should receive
11 life or death. Do you understand?

12 A I do.

13 Q Now, even if the jury should agree that the state has
14 proven the aggravating circumstances beyond a reasonable
15 doubt, the jury could still give life. Do you understand?

16 A I do.

17 Q It's up to the jury to determine life or death in the
18 second phase of the trial. Now, the jury would consider
19 everything that came out of the first phase, plus whatever
20 comes out in the second phase. Do you understand?

21 A I do.

22 Q Now, during this trial either in the first phase,
23 which is the guilt phase, and the second phase, the
24 penalty phase -- the defendant is not obligated does not
25 have to testify. That would have been his decision, Do

1 you understand?

2 A Yes.

3 Q The defendant never has to prove his innocence. It's
4 up to the state to prove the guilt. Now, generally the
5 state will offer mitigating circumstances in the second
6 phase, in the penalty phase.

7 A Okay.

8 Q And these mitigating circumstances would be facts
9 which would indicate or persuade the jury that he is
10 entitled to life rather than death. Now, my question to
11 you, would you consider all the aggravating circumstances
12 and the mitigating circumstances if they were offered?

13 A Yes.

14 Q And all the facts in the first phase before you
15 decided life or death?

16 A Yes, I would.

17 Q Let's assume the defendant chose not to offer any
18 mitigating circumstances, would you consider all of the
19 facts offered in the guilt phase and the penalty phase
20 before you made a decision as to life or death?

21 A Yes, I would.

22 Q Could you be fair and impartial to both the state and
23 the defendant?

24 A I think I could.

25 Q Can you make your -- do you have any personal reasons

1 why you cannot serve on this jury, other than what you've
2 already told the court?

3 A I do not.

4 Q Whose turn?

5 BY MR. NETTLES:

6 Q How you doing? I'm Bill Nettles, one of the lawyers,
7 Mr. Hagen. There's some that aren't here, but I am.

8 A Okay.

9 Q So, I've got to ask you some questions. Okay?

10 A That's fine.

11 Q Okay. Let me go straight to -- and the judge talked
12 to you about it a little bit. A couple of questions on
13 the questionnaire you were kind enough to do for us that
14 involved death penalty, obviously, because this is a case
15 where the government is seeking the death penalty. That
16 makes sense, right?

17 A Yes.

18 Q One of the things is what we would call an open-ended
19 question, where it says on page 10, says "Briefly describe
20 your attitudes and beliefs concerning capital punishment."
21 And in parentheses it says the death penalty, you have
22 there, "I believe in certain circumstances there is merit
23 for the death penalty, in particularly brutal murders"?

24 A Yes.

25 Q I'd like to talk about that for a second. It's one

1 of the things that drives people crazy about lawyers. I
2 know you knew exactly what you meant when you wrote this.
3 Let me ask you this -- or do you want to expand on that?

4 A Sure. Well, I think what I meant by that, in every
5 single case I believe has to ride on its own merit for
6 that kind of a decision of life or death.

7 Q I understand.

8 A And a brutal murder I think is -- how should I say,
9 it's one of the reasons that one might consider death.

10 Q Okay. Okay. So, and let me clear up one thing
11 before we go any further.. I can't remember whether the
12 judge talked with you about it. In South Carolina when we
13 say murder, and some states are different; but in murder
14 in South Carolina the legal definition is a heart devoid
15 of all social duty, fatally bent on mischief. It can be
16 said to be a dark and depraved heart.

17 So, i'm not talking about, you know, somebody that
18 you hear about people sometimes go out get drunk; maybe
19 not get drunk, driving too fast or something and hit
20 somebody in their car.

21 A Right.

22 Q Or not talking about somebody catching their wife in
23 bed. I'm talking about murder, did it, meant to do it.
24 So, I guess it's kind of hard to imagine a murder that's
25 not brutal.

1 A Okay. I see your point. I think when I -- I'd think
2 brutal, I'd also be thinking heartless. Heartless, not
3 caring what the result of what they're doing.

4 Q Okay. But let me ask you this, then. And this is a
5 very critical question. Is every murder that's done
6 heartless? And there's some people say --

7 MR. ARIAIL: I'm going to object.

8 THE COURT: Let him finish the question.

9 MR. ARIAIL: I'm just saying --

10 THE COURT: Let me hear the question.

11 MR. ARIAIL: I'm not objecting to the question
12 specifically.

13 MR. NETTLES: Your definition of a heartless murder,
14 is every heartless murder, is the only appropriate
15 punishment death?

16 THE COURT: All right. Mr. Hagen, hold on. Do you
17 have an objection, legal objection?

18 MR. ARIAIL: My objection is that we're staking out
19 the juror on an issue that has nothing to do with his
20 ability to serve as to whether or not he is impaired as a
21 juror. We're seeking for him now to define what he will
22 be looking for.

23 THE COURT: I think we're just expounding upon his
24 answer in 46, and I'll overrule the objection. Go ahead.
25 If you remember the question, answer it. If you don't, I

1 can get it read back to you. Mr. Hagen, do you remember
2 the question?

3 Donna, can you read it back to him?

4 COURT REPORTER: "Your definition of a heartless
5 murder is every heartless murder, is the only appropriate
6 punishment death?"

7 A My response to that is that I think every case needs
8 to be decided individually.

9 Q That's fine, that's fair enough. So, is the flip
10 side of that would be, is that someone who is convicted of
11 a -- convicted beyond a reasonable doubt of a brutal
12 murder, you could also give them life in prison?

13 A That is correct.

14 Q I think what you just -- you mentioned in your
15 question was that there are two phases to that.

16 A That's right. And that the second phase of that
17 could have some merit in convincing me otherwise.

18 Q Okay. Now, in that, in making those decisions, do
19 you understand that just to sort of expand a little bit on
20 what the judge was talking about. Before you get into
21 this second phase, that the person has been convicted of
22 murder and another very serious crime, not all murders are
23 death eligible.

24 A Right.

25 Q You're clear on that. It's got to be murder and

1 armed robbery, rape, some other serious crime. So, when
2 the second phase starts, one side has got to go first, and
3 the government goes first. And they would bring you
4 information that they believe, evidence in aggravation.
5 In other words, it makes this murder worse because just a
6 murder and another crime isn't enough. You got me?

7 A I understand.

8 Q That would include such things as they would bring in
9 some truly heart-wrenching testimony from the victim's
10 family. Would you agree with me that in order to be a
11 fair juror, that a fair juror would have to recognize that
12 the decision about the appropriate punishment should not
13 be made until the defense had had an opportunity if they
14 chose to, to put up mitigation?

15 A I would agree with that. Yes.

16 Q Because it would be unfair to decide just based on
17 one side?

18 A Absolutely.

19 Q Do you think that's something you can do?

20 A Yes, I can.

21 Q Okay. Now, I got to tell you that, in question
22 number 60, you kind of -- I was talking to the gentleman
23 at the table with me. You have a brother who is a
24 psychologist, a brother who is a minister, and wife who is
25 a police officer. You pretty much covered all the bases,

1 don't you? Those are the three issues in a capital case,
2 aren't they?

3 A They are.

4 Q Let me ask you this, while talking about psychology.
5 You close at all with your brother?

6 A I am.

7 Q And do you, just as we've asked you to tell us in
8 general terms briefly what you found about -- your
9 thoughts about the death penalty, can you share with me
10 what your understanding or belief is of the issue of
11 mental illness?

12 A My understanding is that mental illness in the
13 perspective of a crime committed, that the person could
14 not understand their -- the difference between right and
15 wrong.

16 Q Now, that is a little bit different. That is if the
17 person didn't understand right from wrong and the court
18 decided that he didn't understand right from wrong, we
19 wouldn't be here. We wouldn't even have the trial.

20 MR. ARIAIL: Your Honor, I object. He asked him what
21 his understanding is, then we're going to get into a
22 dissertation about that. I'm going to object. It's Asked
23 and answered. We don't need to go any further?

24 THE COURT: He gave a definition of McNaughten.
25 That's not an issue he's trying to ask him about. I think

1 he can explain the difference between examination for
2 Mcnaughten and mental illness on the other hand.

3 Q You understand it may be you don't -- that if he
4 didn't understand right from wrong, could be -- would be a
5 separate proceeding if that was proven, there wouldn't
6 even be a trial. But what I'm talking about, can you give
7 meaningful consideration to mental illness as a mitigator?
8 In other words, a reason to give someone convicted of
9 murder and another very serious crime a penalty less than
10 death?

11 A I can consider that.

12 Q Can you give it -- not talking about just hearing it,
13 but can you give it meaningful consideration?

14 A Yes.

15 Q Okay. Now --

16 THE COURT: Mr. Nettles, why do we have to go any
17 further?

18 MR. NETTLES: One more issue and I'm done.

19 THE COURT: Let's get to it. It's getting awful
20 late.

21 Q If you were in a jury and you felt one way and the
22 rest of the jury, in terms of punishment, in terms of
23 hearing all the evidence, the closing arguments and
24 everything, you have to wait until the very end; but
25 you're back in the jury room, it's time to make up your

1 mind. And you felt one way about the appropriate
2 punishment and 11 other people felt the other way. In
3 South Carolina in order to give death, you've got to sign
4 your name to a piece of paper that goes to the clerk's
5 office so they know you wrote. And that piece of paper
6 came around, all other 11 signed. It got to you, but you
7 just felt for whatever reason that death was not the
8 appropriate punishment for this person on this day. Can
9 you look at those 11 people say, "look, I respect your
10 opinion, I'm asking you to respect mine. And I'm not
11 going to sign that, not this person, not this day." Or
12 would you change your mind just to go with everybody else?

13 A Generally, I'm not going to change my mind to go with
14 everybody else.

15 Q When you say generally --

16 A I say generally because I don't know, you know,
17 there's a process I think -- I've never been a juror --
18 but there's a process, I think, of deliberation that would
19 potentially change my mind.

20 Q That's right. But that's part of give and take,
21 that's a different thing. I'm talking about change your
22 mind just to go along?

23 A I'm not going to do that.

24 Q And if someone else was in the same position, the
25 minority, would you be willing to respect their opinion,

1 listen to their opinions?

2 A I would.

3 Q Hear it, give it meaningful consideration?

4 A I would.

5 Q I think I'm done. No further questions. Thank you.

6 BY MR. ARIAIL:

7 Q My name is Bob Airial, solicitor for the 13th
8 circuit. In this state solicitor is the prosecutor, the
9 district attorney, if you watch TV. And my responsibility
10 is to represent the state in any criminal case that occurs
11 within Greenville and Pickens Counties. In this case I'll
12 be assisted by my deputy, Betty Strom, and Mark Moyer, who
13 is one of my assistants in this case we're selecting the
14 jury. We don't have any questions. Thank you for being
15 here.

16 THE COURT: Any motions from either party?

17 MR. NETTLES: None.

18 THE COURT: All right. Mr. Hagen, we're going
19 through a process to qualify 43 jurors. From those 43
20 jurors, we're going to draw 12 jurors and four alternates.
21 You're part of that 43 group. Okay?

22 PROSPECTIVE JUROR: Okay.

23 THE COURT: The bailiff has a little slip of paper.
24 On that slip of paper is a phone number for you to call.
25 Call that phone number and there will be a message on that

1 phone telling you probably to call back tomorrow night.
2 Whatever the message is, follow those instructions. Okay?
3 At some point in time, after we have got the 43 jurors,
4 there will be a message telling you when to come back to
5 court. So, keep up with the message. Don't talk about
6 the case with your wife or anyone else. Don't read
7 anything about the case or watch TV about the case. Okay?

8 PROSPECTIVE JUROR: Thank you.

9 THE COURT: Thank you, Mr. Hagen. Good luck with
10 your sister. Hope she gets well.

11 PROSPECTIVE JUROR: Thank you.

12 (prospective juror exits.)

13 THE COURT: Yes, sir. Thank you very much.

14 All right. We will adjourn until 9:00 in the
15 morning.

16 MR. NETTLES: One thing briefly. I've been handed a
17 message from my co-counsel. Can we meet and discuss
18 Mr. Bott's race issue tomorrow morning? We will have some
19 law on this.

20 THE COURT: What time do you want to start? We're
21 not going to get a late start. We didn't start until 9:30
22 this morning. We're going to start at 9:00.

23 MR. NETTLES: That's fine.

24 THE COURT: How long will it take to listen to
25 argument?

1 MR. NETTLES: They're going to have it briefed. It
2 shouldn't take long.

3 THE COURT: Well, tell me.

4 MR. NETTLES: 8:45.

5 THE COURT: 8:45. Solicitor, 8:45?

6 MR. ARIAIL: I'm not going to be here at 8:45.
7 Miss Strom will be here.

8 THE COURT: Miss Strom is perfectly capable of making
9 the argument.

10 MR. ARIAIL: Well, I mean, I don't know what we're
11 going to do. If they're going to Hand us up a memorandum
12 five minutes beforehand and expect us to argue, I don't
13 see how we can do that.

14 THE COURT: Let me say this. If you need some more
15 time to respond to it, I'll give you some more time.

16 MR. ARIAIL: I'd just say let them give it to us in
17 the morning, let us argue at lunch.

18 MR. NETTLES: Yes, sir. That's fair.

19 THE COURT: Get here a few minutes before nine so we
20 can start at nine.

21 MR. NETTLES: Yes, sir.

22 THE COURT: See you in the morning.

23 (Whereupon, at 8:30 p.m. the proceedings are
24 adjourned to the following day:)

25

* * * * *

1 Wednesday, February 9, 2005

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

5 THE COURT: Is the state ready to proceed? Let me
6 find a bailiff.

7 Please bring Mr. Miles in, tell him to let's get
8 started. Mr. Miles.

9 (Nelson C. Miles, II, white male, enters courtroom.)

10 NELSON C. MILES, II, (white
11 male), having been previously duly sworn, testified as
12 follows:

13 EXAMINATION

14 BY THE COURT:

15 Q I'm going to ask you some questions and the attorneys
16 are going to ask you some questions. Okay?

17 A Okay.

18 Q Just answer those questions the best you can.

19 There's no right or wrong answer. Just we're going to be
20 asking you about your thoughts on certain issues and I'll
21 ask you some and then the attorneys will ask you some.

22 And just be as truthful as you can with them on the
23 answers. And if you don't understand the answer, please
24 tell us you don't understand. Okay?

25 A Yes, sir.

1 Q We'll to try to rephrase the question. Okay?

2 A All right.

3 Q Do you have any physical or mental problems as to why
4 you could not serve on this jury?

5 A No, sir.

6 Q Do you have any personal hardships as to why you
7 cannot serve on this jury?

8 A No, sir.

9 Q You filled out this questionnaire either last month
10 or the month before. When you filled it out, was it
11 accurate?

12 A Yes, sir.

13 Q I'm going to hand you the questionnaire you filled
14 out. Do you remember if there's any changes you would
15 like to make in the questionnaire?

16 A No, sir, not right offhand. No, sir.

17 Q Okay. All right. This is a case where the state has
18 charged Charles Christopher Williams, who sits with the
19 blue sweater on.

20 A Okay.

21 Q He is charged with murder and kidnapping and it
22 occurred on September 3 2003 at Bi-Lo here in Greenville.
23 Have you heard anything about the case, read anything
24 about the case?

25 A No, sir.

1 Q Do you know anything at all about the case?

2 A I heard something that happened out at Bi-Lo, but I
3 didn't know the circumstances.

4 Q What do you hear that happened?

5 A I just heard there had been a shooting at a Bi-Lo is
6 all I heard.

7 Q All right. Based on that knowledge did you form or
8 express an opinion about the innocence or guilt of the
9 defendant?

10 A No, sir. I didn't know anything else other than the
11 case, there had been a shooting at a Bi-Lo.

12 Q The victim in the case is Maranda Williams. Do you
13 know Maranda Williams?

14 A No, sir.

15 Q All right. The defendant, as I pointed out to you
16 earlier, is Mr. Williams. Do you know him?

17 A No, sir.

18 Q Do you know any of the attorneys that represent
19 Mr. Williams? Mr. Mauldin or Mr. Nettles to my right?

20 A No, sir.

21 Q Do you know the solicitor or do you have a personal
22 relationship with anyone in the solicitor's office, being
23 a bail bondsman?

24 A Marilyn Bowyer is who I usually deal with.

25 Q Marilyn Bowyer --

1 A Yes, sir.

2 Q -- is who you generally deal with?

3 A Yes, sir.

4 Q Do you know anyone else?

5 A No, sir.

6 Q All right. I'm going to give you a witness list.

7 I'd Like you to look at the list and see if you recognize
8 any of the names on that list.

9 A No, sir, I do not.

10 Q I'm going to give you a second list, hand you that
11 list, and see if you recognize any of the names on the
12 list.

13 A No, sir.

14 Q You don't recognize any names? I'm going to read you
15 a question and I'm going to ask you if you would respond
16 to this question.

17 In this case the defendant is black and the victim is
18 white. It is undisputed the black defendant and white
19 victim engaged in interracial dating. Would the fact the
20 black defendant and white victim engaged in interracial
21 dating make it difficult for you to be fair to either the
22 state or to the defendant?

23 A Absolutely not.

24 Q All right. Mr. Miles, if you would look at your
25 questionnaire, please, sir.

- 1 A Yes, sir.
- 2 Q And if you would turn to page five. Turn to page
3 six, if you would. All right? You work as a bail
4 bondsman; is that correct?
- 5 A Yes, sir.
- 6 Q Who do you work for?
- 7 A CM bonding.
- 8 Q Cm bonding. Is that your own company?
- 9 A Yes, sir.
- 10 Q Are you a sole employee or do you have anybody else
11 working for you?
- 12 A Sole -- I have people working for me, secretaries and
13 stuff like that.
- 14 Q How long have you been in the bonding business?
- 15 A Roughly about five years.
- 16 Q About five years. Do you -- are you involved in
17 going out and bringing defendants to court or do you hire
18 someone to do that for you?
- 19 A Yes, sir, I do it myself.
- 20 Q You go yourself?
- 21 A Yes, sir.
- 22 Q Have you had any bonds estreated by the solicitor's
23 office?
- 24 A One.
- 25 Q One. For how much?

1 A I think it was for \$3,000.

2 Q \$3,000?

3 A Yes, sir.

4 Q All right. Do you have any bias or prejudice towards
5 the solicitor's office as a result of that bond
6 estreatment or any other potential bond estreatment?

7 A Absolutely not.

8 Q You understand that's part of the risk in your
9 business?

10 A Yes, that's fine. Yes, that's fine; and No, I do not
11 mind.

12 Q Having dealt with, assuming a lot of defendants as
13 well as their families and anyone else trying to locate
14 fugitives from justice when they don't appear in court, do
15 you have any bias or prejudice towards defendants in
16 general?

17 A No, sir.

18 Q All right. If you would, would you turn to page ten
19 on your questionnaire, line ten. Did you find ten?

20 A Yes, sir.

21 Q Look at question 64. Question 64 says, "briefly
22 describe your attitudes and beliefs concerning capital
23 punishment."

24 And you said, "depends on the circumstances."

25 A Yes, sir.

1 Q Can you sort of tell me what you mean when you put
2 down, "depends on the circumstances"?

3 A Well, a death, you know, I guess capital punishment
4 is something not taken lightly to start with. I would
5 have to know the facts and circumstances before I could
6 say whether I would or wouldn't. I'd have to know the
7 facts. I have really no problem with it, judging, if it's
8 justified.

9 Q All right. Question 65 says, "What is your opinion
10 of the death penalty?"

11 You say, "Somewhat favor." Is that still your
12 opinion today?

13 A Yes, sir.

14 Q Question 68 on the next page. Do you see question
15 68?

16 A Yes, sir.

17 Q And you marked number two; is that correct?

18 A Yes, sir.

19 Q And number two says, "I believe the death penalty is
20 an appropriate form of punishment in some murder cases and
21 I can 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." Is that still your opinion here today?

25 A Yes, sir.

1 Q Mr. Miles, first I want to explain something to you,
2 then I'm going to ask a couple of questions. In this
3 particular case the solicitor has requested the death
4 penalty against the defendant. The defendant is charged
5 with murder and kidnapping.

6 As I told you previously, the trial portion would be
7 broken up into two parts; there would be a first phase and
8 a second phase. In the first phase, which is commonly
9 referred to as the guilt phase, the state would be
10 required to prove the defendant guilty beyond a reasonable
11 doubt of murder and kidnapping. The facts surrounding the
12 charge would be brought out by the state. A defendant is
13 never obligated to come into court and prove his
14 innocence. The burden is on the state to prove the
15 defendant's guilt beyond a reasonable doubt. Do you
16 understand?

17 A Yes, sir. Innocent until proven guilty.

18 Q All right. Now, if all 12 jurors unanimously agree
19 that the defendant is guilty of murder and kidnapping,
20 then you would go to the second phase, which is commonly
21 referred to as the penalty phase. The trial would be
22 broken up into two parts.

23 A Right.

24 Q In the penalty phase the state would produce
25 aggravating circumstances and would be required to prove

1 those beyond a reasonable doubt. And those aggravating
2 circumstances would be offered for purposes of convincing
3 the jury that the defendant should receive death. Do you
4 understand?

5 A Yes, sir.

6 Q The jury makes the decision of life or death. It's
7 not up to the court, not up to the state. The jury makes
8 that decision. When I say life without parole, I mean
9 life without parole. The person will be in jail until
10 they die. Do you understand?

11 A Yes, sir.

12 Q The defendant in most cases will offer what is
13 referred to as mitigating circumstances. The mitigating
14 circumstances will be some fact or some facts about the
15 defendant or about the case to convince the jury he should
16 receive life without parole rather than death.

17 So, my question to you is, can you listen to all the
18 aggravating circumstances and mitigating circumstances
19 before you reach a decision as to life or death?

20 A Yes, sir.

21 Q Let me give you one more situation. Let's assume
22 that the defendant does not offer any testimony at all, no
23 mitigating circumstances at all. And the defendant is not
24 obligated to do that.

25 A Right.

1 Q It's still the state's responsibility to convince the
2 jury beyond a reasonable doubt that the defendant should
3 receive death. Could you listen to all the testimony
4 before you made a decision --

5 A Yes, sir.

6 Q -- as to whether to give life or death?

7 A Absolutely. Yes.

8 Q In the second phase of the trial the jury could
9 consider everything that occurred in the first phase plus
10 what occurred in the second phase, do you understand?

11 A Right.

12 Q The second phase is the penalty portion because
13 that's the time the jury decides life or death. Do you
14 understand?

15 A Right. I think so.

16 Q Could you be fair and impartial to both the state and
17 defendant?

18 A Absolutely.

19 Q Do you have any personal reasons as to why you could
20 not serve on this jury?

21 A No, sir.

22 Q I think Mr. Nettles you were last, last night,
23 weren't you?

24 MR. NETTLES: I usually am.

25 EXAMINATION

1 By Mr. Ariail:

2 Q Mr. Miles, I'm Bob Ariail, the solicitor for the
3 13th circuit. I was a little late. I was over at my
4 office. But Miss Strom tells me you're a bail bondsman,
5 works within the system, has some knowledge of it.

6 A Yes, sir.

7 Q And I assume the judge asked you, I think he did,
8 that the fact that sometimes in that situation you would
9 be in what you may perceive as an adversary relation with
10 the solicitor's office, we would be trying to take your
11 money?

12 A Yes, sir.

13 THE COURT: Solicitor, you weren't here. You all
14 estreated \$3,000.

15 MR. ARIAIL: That's what Mrs. Strom told me. I
16 assume you went over with him, it wouldn't create any
17 problems with him sitting on the jury?

18 A No.

19 Q That wouldn't create any problem?

20 A No, sir. That's very fair.

21 THE COURT: He says that's part of the risk of the
22 business.

23 MR. ARIAIL: Right.

24 Q I'll ask you, I'll tell you something about that.
25 You thought the -- you checked on the death penalty that

1 you thought the death penalty was the appropriate form of
2 punishment in some murder cases and you could return a
3 verdict of death if you believe it was warranted in a
4 particular case?

5 A Yes.

6 Q And you would be looking at the circumstances; that
7 is, it's not something that just because you had found a
8 defendant guilty of murder, you were going to
9 automatically impose the death penalty?

10 A Right.

11 Q Let me give you a little background about this just
12 in case you're not aware of this. The state can only seek
13 the death penalty in very limited circumstances under our
14 law. They can only seek it in a case that involves murder
15 and only in a case where the legislature says there's an
16 aggravating circumstance, which is usually some other sort
17 of heinous crime or a serious crime. Murder, accompanied
18 by rape, or murder accompanied by armed robbery, two
19 murders; just more than murder.

20 And murder is also in this state the intentional
21 killing with malice aforethought. It's not an accident.
22 It's not a wreck. It's not a manslaughter. Not somebody
23 got excited. It's a premeditated planned act to kill
24 somebody.

25 A Right.

1 Q So, if you sat on the first jury, which is the guilt
2 phase jury, when you go to the sentencing phase, the
3 second little box -- and there's a day in between you
4 won't be doing anything. So, they are physically
5 separated. You will have already convicted someone of
6 intentional murder accompanied by some other aggravating
7 act.

8 A Right.

9 Q At that phase, to be a fair and impartial juror,
10 you're going to have to be able to consider any kind of
11 new evidence that is presented, and you'll have to be able
12 to look into that evidence regardless where it comes from
13 or doesn't come from. You have to look at what's in front
14 of you to determine if a life-in-prison sentence is
15 appropriate or a death sentence is appropriate. Can you
16 do that?

17 A Yes.

18 Q Even if the defendant doesn't present anything, he
19 doesn't have to present anything; but if he doesn't, you
20 still have to be -- and the judge will tell you, you still
21 have to look to make sure there are no circumstances that
22 might would entitle the defendant to a life imprisonment
23 sentence.

24 A Right.

25 Q Can you do that?

1 A Yes.

2 Q Likewise, you would do the same for determining the
3 death penalty?

4 A Correct.

5 Q Make a decision based upon the facts, whether it was
6 appropriate?

7 A Right.

8 Q There may be all types of evidence presented.
9 There may be evidence present of the defendant's mental
10 condition. Would you be able to listen to that type of
11 evidence?

12 A I would listen to all the evidence.

13 Q All the evidence, and you'd give it all
14 consideration?

15 A Yes.

16 Q And if you were on the jury and the jury had
17 deliberated, fully deliberated, and been going at this
18 where everybody's been, had been heard, and all the
19 decisions had taken place and you were in the minority,
20 you felt for it to be -- this sentence ought to be this
21 way and the majority felt it ought to be another way,
22 there had been give and take, there wasn't any reason for
23 any more give and take, would you change your verdict just
24 to go along with the majority?

25 A Absolutely not.

1 Q Now, at the end of this case if in fact you were
2 picked on the jury and the jury deliberations resulted in
3 the conclusion that the appropriate sentence should be
4 death, the judge -- law requires and the judge would
5 instruct you, you would have to sign your name to an
6 individual document reporting that verdict back to the
7 court. Would you have any hesitancy signing that document
8 which would come back to the court, reporting what the
9 verdict was --

10 A No, sir.

11 Q -- if that had been your verdict?

12 A If that had been my verdict, No, sir, your Honor.

13 THE COURT: Mr. Mauldin?

14 MR. MAULDIN: Thank you, judge.

15 Examination by Mr. Mauldin:

16 Q Mr. Miles, I'm John Mauldin. I'm the public
17 defender. And I, along with Mr. Nettles, represent Chris
18 in this case. I want to first of all make sure that you
19 understand that when questions are being asked of you,
20 we're not talking about Chris' case because that's really
21 not fair to you.

22 A Right.

23 Q I mean, you'd be speculating on something you don't
24 know anything about.

25 A Correct.

1 Q So, I want you to understand that the questions
2 about -- would you consider this. Would you consider that
3 we are kind of like in a vacuum. We're having to give you
4 hypothetical or kind of made-up questions, and we're
5 talking about John Doe or something, not Chris Williams.

6 A Right.

7 Q Okay?

8 A Yeah.

9 Q Now, one other thing before I get into specific
10 questions for you. What I'd like to do is kind of change
11 the environment here. You are sitting on the witness
12 stand under oath, lawyers and judges and all. I want to
13 act like we're just kind of sitting around in the coffee
14 shop something, having a conversation.

15 It's necessary for the judge to know as much about
16 you as he can before he decides whether you are eligible
17 for this case. Maybe you're not eligible on this one.
18 You may be eligible for some other one. He's the one that
19 has got to make that decision and got to know it from you,
20 not us.

21 A Yes. All right.

22 Q Kind of taking the cart before the horse. There
23 hasn't even been a trial yet. Talking about penalty and
24 having the case we haven't even had yet. So, we kind of
25 have to make some assumptions to get to the questions.

1 A All right.

2 Q I will tell you, when you came in, I was looking at
3 your questionnaire, saw you were in the bonding business,
4 I immediately felt nervous. I'm a lawyer. Young man
5 charged with a crime, you get people out of jail on bond,
6 you have to chase them around if they try to get away from
7 you.

8 A On some cases. Yes, sir.

9 Q And that's money.

10 A Well, that's the business.

11 Q That's right. And then if you don't find them, this
12 fellow here has got to go try to get the money from you.

13 A Right.

14 Q So, there are all kinds of issues about the bonding
15 business and a criminal case. I want to feel completely
16 satisfied on behalf of Chris that you feel like nothing
17 like that would distract you or have any effect on your
18 ability. Because if it would, you can be on some other
19 case.

20 A Right.

21 Q You understand that? You're not on trial. But how
22 do you feel about that, Mr. Miles?

23 A I guess plain and simple, easiest way to say it, I
24 stand by the belief you are innocent until proven guilty,
25 no matter what. I mean, that's the only way the law

1 works. I do have a belief in the judicial system. I do
2 think it works most of the time. Sometimes things squeak
3 through, sometimes things don't; but nobody is perfect.
4 But the fact of my, I guess my relationships with the
5 solicitor's office, those laws are very cut and dry. I
6 knew that when I got in the business.

7 We have to go through several education courses to
8 know the laws for bail bonding for the state of South
9 Carolina. So, that has nothing, I mean I have no bias on
10 that for this case whatsoever. That has nothing,
11 absolutely nothing, to do with this.

12 I thought about this when I found out that I was
13 picked for this, you know, to do jury. I was like, well
14 you know, and I thought about basically what you said in,
15 you know, you said, "you're a bail bondsman." I thought
16 pretty much that's pretty much the whole premise of being
17 a bail bondsman, you pretty much have to believe people
18 are innocent until proven guilty. If you don't, you're in
19 the wrong business. So, that's pretty much where I stand
20 on that.

21 Q Okay. And so it does not give like, at the penalty
22 phase after a person has been convicted and you were
23 deciding the penalty, you don't feel like you would be
24 improperly affected or distracted --

25 A Absolutely not.

1 Q -- by your connections?

2 A Absolutely not.

3 Q I want to talk to you a minute about your views on
4 the death penalty. The judge asked you in your
5 questionnaire, page 64, you said, "depends on the
6 circumstances." That was your basic view of capital
7 punishment.

8 And then you circled number two, "Which of the
9 statements best represents your view?" Let me follow up a
10 little bit on those if you don't mind, Mr. Miles.

11 A Yes, sir.

12 Q Let's do it this way. What would you say or describe
13 that would describe for us what you believe the purpose of
14 the death penalty is. What would you say?

15 MR. ARIAIL: Objection, Your Honor.

16 THE COURT: I'll sustain the objection.

17 MR. MAULDIN: Is that to the form of the question?

18 THE COURT: No, to the subject matter. I don't think
19 he can tell you what the purpose of the death penalty is
20 okay? I don't think he's qualified to do that. You can
21 ask him about his opinion of death penalty if you want to,
22 not what the purpose is.

23 MR. MAULDIN: All right. What -- in your opinion
24 Mr. Miles, what do you think the purpose of the death
25 penalty is.

1 MR. ARIAIL: Objection, Your Honor, same question.

2 THE COURT: I'll sustain the objection.

3 MR. MAULDIN: All right. In your opinion, Mr. Miles,
4 what do you believe are the reasons why we would have the
5 death penalty?

6 MR. ARIAIL: Same objection. Asking the witness to
7 give an answer to something he knows nothing about.

8 THE COURT: I'll sustain the objection. Let's deal
9 with his opinions about the death penalty, don't get into
10 legal aspects of why we have to, et cetera, et cetera, et
11 cetera. Okay?

12 MR. MAULDIN: I'm not asking Mr. Miles anything about
13 any legals.

14 THE COURT: I think you are. So, let's move on to
15 his opinions about that. All right?

16 MR. MAULDIN: What, Mr. Miles, how would you describe
17 your opinion about the death penalty in our system?

18 A The death penalty if it's justified, and that's what
19 the facts of the case prove, I guess it would be
20 warranted.

21 Q Can you give me a little description or explanation
22 about when you say justified? Just explain that to me.

23 A I guess it would be in the second part of the trial,
24 at the sentencing part I believe is what it's called. If
25 facts and everything was proven that that would be

1 justified, then I guess that's what would be covered.

2 Q All right. And I want to talk to you a little bit
3 now about that second phase if it's okay.

4 A Okay.

5 Q You said that you were a strong believer of the
6 concept of innocent until proven guilty?

7 A Yes, sir.

8 Q Now, in our system when the prosecution decides they
9 want to seek the death penalty, the judge in his questions
10 to you described a two-phase process. The first phase of
11 the process is as to guilt or innocence. That's the
12 innocent until proven guilty part of the trial.

13 A Right.

14 Q The prosecution would call witnesses, testimony,
15 evidence, photographs, any physical evidence about whether
16 or not the person on trial should be convicted of murder
17 and any aggravating factor --

18 A Right.

19 Q -- of the crime. The jury would hear all that
20 testimony, go in the jury room, come out with a verdict.
21 And the judge described the different types of verdicts.
22 But what I'm going to do, we're going to have to make an
23 assumption in order for this process to work. We have to
24 assume the jury has done that, you're a member of this
25 jury. The jury has reviewed all the evidence and you, as

1 an individual member of that jury, have decided that the
2 person on trial, clearly is guilty beyond a reasonable
3 doubt in your view. So, the innocent until proven is
4 gone.

5 A That's taken care of, first part.

6 Q That's right. That's right. That's over. So, now
7 we have a person who is convicted of premeditated murder,
8 murder with malice aforethought. Planned murder, right?

9 A Okay.

10 Q Means there's no self-defense, accident, duress, or
11 any such thing. You're then going to hear additional
12 information. The prosecution is entitled to bring
13 aggravating evidence, anything that would make the crime
14 worse, even though the person has already been convicted
15 of guilt.

16 A Okay.

17 Q The defense, if he chose, would have the right to
18 bring in information and seek -- and ask the jury to
19 impose life instead of death on a convicted murderer.

20 Now, here is my -- so, that's the process. Same
21 jury. So you, if you were one of those, you'd be sitting
22 in the same jury box. That being the circumstance,
23 Mr. Miles, I need or the judge needs to know whether or
24 not you actually could consider both penalties. Could
25 you, for a person convicted of murder, give consideration

1 to the penalty of death if the prosecution asked you to?

2 And your answer is?

3 A I mean, judging on what was brought up in that part
4 of the trial, I'd have to either consider it or not
5 consider it.

6 Q All right. Could you, likewise, even if the
7 defendant in that circumstance presented -- he has been
8 convicted at the first phase and he brought you no
9 additional information, none, could you still give real, I
10 mean, not just, I thought about it and I --

11 A Right.

12 Q I'm talking about really consider.

13 A This is a very serious matter. I wouldn't take it
14 lightly.

15 Q That's right. Could you give meaningful
16 consideration to the request of a defense in a case that a
17 life in prison without possibility of parole be imposed at
18 that second phase?

19 A Absolutely.

20 Q All right.

21 A Yes.

22 Q Okay. Do you consider life without parole for a
23 person convicted of murder a serious penalty?

24 A Yes.

25 Q All right. Let me check with my folks over here and

1 make sure I'm done. Thank you.

2 One additional question. The prosecutor asked you
3 during that deliberation process, at the second phase, he
4 asked you if during that process the jury was split in
5 their decision, they had a heavy majority, maybe 10, 11 on
6 one side and you were over here on the other side and he
7 asked you if you'd give up your view. And you I think
8 said, no, I think you'd stick with it?

9 A That's correct.

10 Q Let me ask you this follow up. If you were on the --
11 if you were on the side of the 10 or 11 and there was one
12 or two who also heard the same evidence and had come to
13 their personal decision about how they felt about the
14 penalty, would you attempt to force them to come to your
15 side on that penalty phase? Or would you respect their
16 view?

17 A I don't think I could force someone to do it. No. I
18 mean, I guess that would be part of deliberation
19 because -- as far as what, physically force them? Explain
20 that a little more.

21 Q Right. And full deliberations would have occurred.
22 I'm just trying to make sure you would respect the other
23 jurors' view just like you would expect them to respect
24 you.

25 A Absolutely.

1 THE COURT: Anything further?

2 MR. ARIAIL: No, Your Honor.

3 THE COURT: From the defendant?

4 MR. MAULDIN: None, Your Honor.

5 THE COURT: Mr. Mills.

6 PROSPECTIVE JUROR: Actually Mr. Miles.

7 THE COURT: Sorry, Mr. Miles. Excuse me. Would you
8 hand me your questionnaire please, sir? We're going to
9 qualify 43 jurors, from that draw 12 jurors and four
10 alternates. Okay?

11 A Yes, sir.

12 Q And you're part of that group of 43. I don't know
13 when we're going to get to the 43. The bailiff has a
14 phone number. Call that number tonight and there will be
15 a message for you. Call back Thursday night, maybe report
16 Thursday afternoon or Friday morning. Follow the
17 instruction on that message. All right? Thank you so
18 much. Don't forget your hat.

19 A I won't. Thank you, sir.

20 THE COURT: All right. Thank you.

21 All right. Solicitor? Mr. Nettles, you going to do
22 the next one or Mr. Mauldin?

23 MR. NETTLES: I am.

24 THE COURT: That juror took 35 minutes. That's too
25 long. I covered certain questions, the solicitor covered

1 certain questions. You covered the same questions, went
2 over the same questions three times. We're going to have
3 to shorten this process down, eliminate some duplication.
4 If I have to, I'm going to start putting time restraints
5 on you. Instead of coming up and asking the same
6 questions I've asked the man repeatedly, he said he could
7 consider all the facts, even if you didn't offer
8 mitigating circumstances or not. To me that's the same
9 thing the solicitor and you went up and asked, hammered
10 him another seven or eight minutes on the same subject
11 matter. Stop the repetitive questions from both sides.
12 Does everybody understand? Get up there, ask new material
13 or ask things that aren't clear from his answer instead of
14 being cumulative and repetitive. Does everybody
15 understand?

16 MR. ARIAIL: Yes, sir.

17 THE COURT: Do you understand, Mr. Mauldin?

18 MR. MAULDIN: One moment, Your Honor.

19 THE COURT: I didn't ask you one moment, I said Do
20 you understand what I'm telling you?

21 MR. MAULDIN: I understand what you have told us,
22 judge, I want to make sure we get on the record anything
23 we need to get on the record as a result of your direction
24 to us. So, one moment, Your Honor.

25 (pause.)

1 Nothing at this time, Your Honor.

2 THE COURT: Thank you very much. Will you bring us
3 Elizabeth Daniel.

4 Mr. Mauldin, I'm not trying to cut you off. I want
5 to hear new material or if there's a conflict, I want that
6 explored. You want to rehash the same thing. I'm not
7 trying to limit you, I'm trying to direct where you're
8 going, do you understand?

9 MR. MAULDIN: Yes, sir. And I want to -- I'm not
10 trying to ask repetitive questions. I'm trying to make
11 distinctions in my questions. I think the record will
12 show there are characteristics about the answer and my
13 subsequent question.

14 THE COURT: I told you, and I'm going to start
15 listening carefully, okay? We're not going to rehash the
16 things over and over and over.

17 MR. MAULDIN: All right, sir.

18 (Elizabeth C. Danel, white female, enters courtroom.)

19 THE COURT: Miss Danel, how you doing today?

20 PROSPECTIVE JUROR: Good, thank you.

21 ELIZABETH DANIEL, (white
22 female), having been previously duly sworn, testified as
23 follows:

24 EXAMINATION

25 BY THE COURT:

1 Q Do you remember filling out this questionnaire?

2 A I remember I did.

3 Q At the time you filled it out, was it accurate?

4 A Yes.

5 Q Do you know if there's any change that you need to
6 make?

7 A I don't think so.

8 Q Okay. I'm going to ask you some questions about the
9 answers on your questionnaire. Would you turn to page 10,
10 please.

11 A Yes. (complies.)

12 Q Question 64.

13 A Okay.

14 Q Do you see 64? "Describe your attitudes and beliefs
15 concerning capital punishment."

16 You answered, "I think it's just as much a punishment
17 to stay in jail, could be wrong person, expensive, but
18 some cases could warrant it situationally"?

19 A Uh-huh.

20 Q And then in 65 you said, "somewhat opposed." Is that
21 still your opinion here today?

22 A Yes.

23 Q Would you turn over to question number 68?

24 A Okay.

25 Q It says, "With reference to the death penalty, which

1 of the following statements would best represent your
2 opinion?"

3 And you said, "I believe the death penalty is the
4 appropriate form of punishment in some murder cases. I
5 could return a verdict of death if I believe it was
6 warranted in a particular case, depending upon the
7 evidence and the law and what I learned about the
8 defendant." Is that still your opinion here today?

9 A Yes, it is.

10 Q You also put on there, page 11, you seen some 26 news
11 shows about people cleared later because of DNA, et
12 cetera. To you --

13 A Uh-huh.

14 Q -- how does that play a factor in your opinion about
15 the death penalty?

16 A I think that the death penalty is a very serious
17 consideration. And for me to sentence someone to the
18 death penalty, I would need to see what I would consider
19 to be very definite proof that I felt could not be
20 overturned with something later, like DNA evidence, that
21 would exclude them from the crime at some time in the
22 future. It's just a serious consideration that in some
23 cases I feel like it's warranted. But the decision to
24 make in that is just crucial. I mean --

25 Q Let me ask you this. This is the case of state

1 versus Charles Christopher Williams, and he's charged with
2 murder and kidnapping which occurred on September 3 2003
3 in a Bi-Lo here in Greenville. Have you heard anything
4 about the case?

5 A The only thing I've heard about the case is that the
6 gentleman was accused of killing someone at Bi-Lo. That's
7 all I know about it. I've tried to think if I remember
8 seeing it on the news, and I really don't know enough
9 about it to even have a reference to remember if I saw it.

10 Q Okay. Based upon what you've heard, have you formed
11 an opinion as to the defendant's innocence or guilt?

12 A No.

13 THE COURT: All right. Solicitor, your witness on
14 these issues. On the death penalty issue very briefly.

15 MR. ARIAIL: It's their turn.

16 THE COURT: Mr. Nettles, your witness on that issue.

17 MR. NETTLES: Thank you.

18 BY MR. NETTLES:

19 Q Miss Daniel, my name is Bill Nettles. I'm one of the
20 lawyers representing Chris Williams.

21 A Hi.

22 Q How you doing? Let me ask you this. My question is,
23 you know some people say I am -- that they have concerns.
24 And the judge sort of talked about it, that you clearly
25 have some concerns about the death penalty for people who

1 are later proven to be innocent?

2 A Uh-huh.

3 Q My question to you is this. One thing all us can
4 agree on in this courtroom, the prosecution, the defense,
5 everybody, is it's wrong for innocent people to be
6 sentenced to death. What I want to ask you is this. If
7 you were a juror in a case, even applying a very, you
8 know, your verdict interpretation of beyond a reasonable
9 doubt, if the person was guilty of murder, okay, not
10 manslaughter, not accident; but murder, heart devoid of
11 all social duty and fatally bent on mischief." Once you
12 have been satisfied beyond a reasonable doubt in your mind
13 that person was guilty of murder, is the punishment then
14 pretty much a foregone conclusion?

15 A I don't think so.

16 Q Okay.

17 A The people that I definitely feel like I would be
18 able to sentence to the death penalty are people like the
19 Oklahoma bomber, the terrorist; serial killers. Others
20 would be so situational I don't know.

21 Q I understand. And I just wanted to let you know, I
22 just wanted to clear that up because some people, once
23 it's proven they're guilty, like they're against the death
24 penalty until the guy is proven guilty all the way. But
25 you're not one of those people?

1 A I don't think so.

2 Q Let me ask it to you this way. Then I think I'll be
3 done on this issue. If you, in your mind, had found
4 someone was guilty beyond a reasonable doubt, just no two
5 ways about it, of murder and an aggravating
6 circumstance -- because I don't know whether you know this
7 or not -- all murders are not death penalty eligible.
8 It's got to be like murder and armed robbery, murder and
9 rape, or in this case the second one is kidnapping. So,
10 before you got to the second phase, you would have had to
11 found the person guilty of murder, not accident, not
12 insanity; did it, meant to do it, and another serious
13 crime. Could you consider, give meaningful consideration,
14 to making that person spend the rest of their life in
15 prison.

16 A Yes, I could consider that. That was my statement.

17 Q Okay. I just needed to make sure.

18 A Sometimes, and I hate to sound wishy-washy, but
19 sometimes I think life in prison may be a satisfactory
20 punishment. I -- how I would react to the details of the
21 crime I would have to see at that point.

22 Q Okay. I think I may be finished on this issue, but
23 let me touch base.

24 MR. NETTLES: Hang on one second, Your Honor. We're
25 going to possibly come back. You just want me to question

1 on that issue?

2 THE COURT: Solicitor, on that issue.

3 MR. ARIAIL: No questions.

4 THE COURT: All right.

5 Q Mrs. Daniel, do you know of any physical or mental
6 problems as to why you could not serve on this jury?

7 A No, I don't.

8 Q Do you have any personal hardships as to why you
9 could not serve on this jury?

10 A I do not.

11 Q All right. Do you know the victim in this case which
12 is Maranda Williams?

13 A No.

14 Q Do you know the defendant, Charles Christopher
15 Williams, who sits with the sweater to my right?

16 A No.

17 Q Do you understand -- do you know any of the
18 attorneys, Mr. Mauldin and Mr. Nettles to my right,
19 sitting at the table the grey suit and blue suit? Do you
20 know them?

21 A I don't recognize them.

22 Q Sitting to my left is the solicitor or state's
23 attorney, commonly referred to on television as the
24 district attorney. In South Carolina it's called the
25 Solicitor. Do you have any personal relationship with

1 anyone in his office?

2 A I don't recognize them. I don't know if I would
3 recognize anyone in his office.

4 Q I'm going to give you a list of witnesses. I'd like
5 you to look at it and see if you know anyone on that list.

6 A I know someone by the name of David Williams. He
7 should be about 30. He was in my daughter's school class
8 at Wade Hampton.

9 Q David Williams. He works for the Greenville County
10 Sheriff's Office.

11 A No.

12 Q That's a different person?

13 A That's a different person.

14 Q All right.

15 A I don't recognize any of the other names.

16 Q Thank you, ma'am. Let me give you a second list, see
17 if you recognize any of those names.

18 A Huh-uh.

19 Q Thank you, ma'am. I'm going to read you a question,
20 ask you to please respond to the question if you would
21 please, ma'am. In this case the defendant is black, the
22 victim is white. It is undisputed the black defendant and
23 white victim engaged in interracial dating. Would the
24 fact the black defendant and white victim engaged in
25 interracial dating make it difficult for you to be fair to

1 either the state or the defendant?

2 A No.

3 Q Could you listen to the testimony and base your
4 decision on the testimony you hear from the witness stand,
5 in the courtroom?

6 A Yes.

7 Q Can you be fair to both the state and the defendant?

8 A Yes.

9 Q All right. In this trial it would be -- the
10 defendant is charged with murder and kidnapping.

11 A Uh-huh.

12 Q And the state has requested the death penalty. The
13 trial would be divided up into two parts. The first part
14 is commonly referred to as the guilt portion. And the
15 first portion or first phase the state would be required
16 to prove the defendant guilty beyond a reasonable doubt of
17 murder and kidnapping. Do you understand?

18 A Yes.

19 Q All right. Let's assume the jury found the defendant
20 guilty of kidnapping and murder. Then you would go to the
21 second phase or the second part. Do you understand?

22 A Uh-huh.

23 Q That is commonly referred to as the penalty phase.
24 The penalty phase, the purpose of that phase would be for
25 the jury to decide either life or death. It's the jury's

1 decision, not the court's or the state's, the jury makes
2 that decision. The court is obligated to follow the
3 jury's findings. Do you understand?

4 A Uh-huh. Yes.

5 Q In that phase the state would be required to
6 introduce aggravating circumstances.

7 A All right.

8 Q Also in that stage the jury could consider all the
9 evidence that was presented in the first phase.

10 A In the guilty phase?

11 Q In the guilty phase, plus whatever aggravating
12 circumstances or any other evidence the state would
13 produce. The state would be required to prove those
14 aggravating circumstances beyond a reasonable doubt.

15 A Okay.

16 Q Even though the jury believes that the state proved
17 the aggravating circumstances, the jury still does not
18 have to give death. The jury can give life.

19 A Okay.

20 Q The jury can give life just purely as an act of mercy
21 if they so choose.

22 A Yes.

23 Q Do you understand?

24 A Yes.

25 Q The defendant generally will offer mitigating

1 circumstances. Mitigating circumstances would be
2 circumstances that the defendant will offer as to why he
3 should receive life rather than death.

4 A Okay.

5 Q Now, can you consider all the mitigating
6 circumstances, all the aggravating circumstances before
7 you make a decision as to death or life?

8 A Yes, I think I can.

9 Q All right. Let's assume that the defendant does not
10 offer any mitigating circumstances. The defendant is not
11 obligated to do that, do you understand?

12 A Yes.

13 Q Let's assume the defendant does not offer any
14 testimony either in the first phase or the second phase.
15 Could you consider all the testimony in the first phase
16 and the second phase before you make a decision as to the
17 defendant's -- excuse me, make a decision as to penalty of
18 life or death?

19 A Yes. I think I could.

20 Q Let me ask two more questions. Can you be fair and
21 impartial to both the state and defendant?

22 A Yes.

23 Q Do you know of any personal reasons why you could not
24 serve on this jury?

25 A I don't have any personal reasons. My employer might

1 have an employer reason, but I do not have a personal
2 reason.

3 THE COURT: All right. Whose turn?

4 BY MR. NETTLES:

5 Q If they give you a hard time, tell them I'll take my
6 \$400 out of their bank. How about that?

7 Let me follow up on what the judge has said about the
8 penalty phase. Let me start by talking about, you know,
9 if you find yourself in the penalty phase, just to kind of
10 break it down just a little bit. The government will
11 bring you -- and I see you've got a number of children.
12 The government will bring you evidence which is called
13 victim impact evidence, okay? Which is the family members
14 of the victim will get up and will give you what is truly
15 heart-wrenching testimony. And everybody agrees they
16 certainly have the right to do that. Okay? Would you
17 agree with me that a fair juror would be someone that,
18 understanding that all this heart-wrenching testimony
19 that's coming, before they made up their mind about what
20 punishment to give, they would recognize that there may be
21 some additional information coming from, for instance, the
22 defense if they chose to put something up?

23 A Yes, I recognize it's not over until it's over.

24 Q Okay. All right. To Quote Yogi Berra, anyway. So,
25 you think you could do That? You could absorb that

1 testimony? I'm not asking you not to give it any weight,
2 that would be unfair to them; but out of a sense of
3 fairness, no decision should be made until you heard what
4 we had to say as well.

5 A Yes.

6 Q Let me ask you about that, about this. Just as we've
7 asked you some general questions about the death penalty,
8 allow me to ask you what your thoughts are. If just you
9 and I bumped into each other some place and I said, "what
10 do you think about mental illness, the topic of mental
11 illness?" What would your response to that be?

12 A I think mental illness is a real illness. I know
13 there are lots of different types of mental illness. I
14 don't know a lot about different ones.

15 Q Okay. That's what, now?

16 A I'm trying to think if I -- if I've known truly
17 mentally ill people. I've known people with maybe
18 substance problems, which sometimes they call a mental
19 illness. I've known people who've taken what is it, the
20 depression drug?

21 Q Zoloft? Xanax?

22 A No.

23 Q I haven't taken any of those by the way.

24 A None -- one of those depression drugs, I've known
25 people who have taken that, watching their behavior before

1 and after, it seems to help. So, that leads me to think
2 that something, perhaps medication helps. I don't know.

3 Q So, you would be someone that could give meaningful
4 consideration to mental illness as a mitigator, or in
5 other words a reason to give someone less than death in a
6 capital case?

7 A I will say I definitely thought that woman who killed
8 her, all her children in the bathtub should not have had
9 the death penalty.

10 Q Okay. Okay. Now, I think I've got one more topic,
11 and then I believe I'm done. All right? If you were in
12 the jury room, all right, and you had heard all the
13 evidence -- let's be clear. You've heard both sides,
14 found you were guilty -- not you, the person was guilty
15 beyond a reasonable doubt of murder and another crime; and
16 then you heard the penalty phase, you heard this
17 heart-wrenching impact testimony, you heard all the
18 evidence in aggravation about the person; and if the
19 defense chose to put up evidence, you know, evidence in
20 mitigation and you got up there, felt like this was the
21 person that deserved death penalty in your mind,
22 obviously, wouldn't come back easily, but something you
23 came to.

24 A Uh-huh.

25 Q And if it got to be time and because you felt it was

1 the right thing that needed to be done, you could sign
2 your name on the piece of paper sentencing that person to
3 death if's what you felt needed to be done, right?

4 A Yes, I could.

5 Q Now, conversely, if you were in the room and there
6 were 11 other people in there who felt like death was the
7 appropriate punishment, and the piece of paper came
8 around, you know, you heard all the same evidence they
9 did, and one of the reasons we're having this discussion
10 is because we recognize this is an issue that reasonable
11 people can disagree on. You would agree with me on that,
12 right? You felt like based on your experiences and what
13 you brought to the table, you felt death was not the
14 appropriate punishment for this person at this time, could
15 you say, "Look, you all, I respect your opinion and I'll
16 discuss our opinions with you, but I'm asking you to
17 respect mine; and I'm just saying not this person, not
18 today." Could you do that?

19 A Definitely.

20 Q I believe I'm done. Let me ask the people at my
21 table if you don't mind. Is that fair? Thank you, ma'am.

22 (pause.)

23 I have nothing else. Thank you very much,
24 Miss Daniel.

25 THE COURT: Solicitor?

1 BY MR. ARIAIL:

2 Q Miss Daniel, my name is Bob Ariail. The judge
3 introduced me, the solicitor for the 13th circuit. That
4 means I'm the DA if you watch on T.V. In south Carolina
5 it's called the solicitor. I'll be representing the state
6 in this case along with deputy Betty Strom and one of my
7 assistants, Mark Moyer.

8 Going back to the last question he was talking about,
9 the eleven-to-one on one side or the other, hypothetical,
10 you also realize that jury service, it's a responsibility
11 to give and take and negotiate.

12 A Uh-huh.

13 Q You say things, you express your views, the others
14 express their views, the goal, which the court will tell
15 you, is to reach a common consensus, not to take a
16 position and not discuss it with anybody; but to have give
17 and take?

18 A Definitely. I understand discussion and give and
19 take, but also if I have a strong opinion, I will say that
20 is definitely what my opinion is.

21 Q And you'll express it?

22 A Yes.

23 Q And if others differ with you, you'll listen to what
24 they say and vice versa. They may have a strong opinion
25 too; but it may be wrong, and you would discuss with them

1 why you think they're wrong, and they would discuss it and
2 be back and forth?

3 A Yes.

4 Q All right. Now, the question I had on number 64,
5 just to clarify, you said, "I think it is just as much
6 expensive to stay in jail."

7 A Actually, I thought it was more expensive for the
8 death penalty.

9 Q Okay. Tell me, explain to me what you were saying
10 there. "I think it is just as much punishment to stay in
11 jail, could be wrong person, expensive."

12 A Yeah. Meaning that the process of the death penalty,
13 as a taxpayer, to me seems more expensive than to keep
14 somebody in jail with just the court process and appeals
15 and the length of time that it takes to do that. That
16 just was what I meant by expensive. The first comment, I
17 think it's just as much punishment to stay in jail, and
18 that's looking at it from my point of view to be
19 incarcerated every single day, I'm thinking about what I
20 did and the guilt that I feel about it.

21 Q All right. Now, let's assume, number one, from the
22 expensive standpoint, there's not going to be any
23 testimony about whether or not it's more expensive one way
24 or the other. Would you still allow that to creep in,
25 that opinion you have, to creep into your decision as to

1 what the appropriate punishment should be?

2 A No, not into my decision in that situation; but if it
3 were a political discussion, it would come into my
4 discussion.

5 Q I want to be sure if you were in the jury box, that
6 wouldn't be something that would be bothering you or you
7 were thinking about?

8 A No, sir. I think it is just as much punishment to
9 stay in jail; that is, the idea it is as much punishment
10 for somebody to stay in jail and think about what they
11 did.

12 Q If you're on this jury and you get to the penalty
13 phase; that is, the defendant's already been convicted and
14 the state is asking you to impose the death penalty --

15 A Uh-huh.

16 Q -- we're telling you in essence we don't agree with
17 that. We don't think it's appropriate to put this
18 defendant in prison for the rest of his life, we want you
19 to impose the death penalty for reasons we were to
20 outline; would you be able to give our position fair
21 consideration or would this opinion that you have impair
22 your ability to fairly consider imposition of the death
23 penalty?

24 A No, I think that it is so situational that I would
25 have to hear the details before I could make my decision.

1 Q And this may apply in some instances, the death
2 penalty may apply in other situations?

3 A Yes.

4 Q And that's based on the facts and circumstances --

5 A Yes.

6 Q -- that we would present or the defense would
7 present? The whole case?

8 A Yes.

9 Q Now, one last question. The judge will tell you, if
10 you're on the jury, if you vote for the death penalty and
11 all your other jurors vote for the death penalty and you
12 all concluded it is the appropriate sentence, you under
13 our law would be required to sign a document with your
14 name to bring it back to the court and give it to the
15 judge indicating that the death penalty is your verdict.

16 MR. NETTLES: Objection.

17 THE COURT: I'll sustain the objection. That's
18 already been asked and answered.

19 MR. ARIAIL: Sorry. I didn't know it had been asked.

20 THE COURT: Mr. Nettles, asked it and she said,
21 "yes."

22 MR. NETTLES: Right. She said she could.

23 THE COURT: Thank you. Any motions from the state?
24 Do you have any motions?

25 MR. ARIAIL: None.

1 THE COURT: Any from the defendant?

2 MR. NETTLES: No, sir.

3 MR. MAULDIN: No, sir.

4 THE COURT: I'm going to find you qualified and the
5 bailiff is going to give you a sheet. On that sheet is a
6 phone number. On that phone number, call it in, there
7 will be instructions on the message. Okay? Thank you so
8 very much.

9 PROSPECTIVE JUROR: Thank you.

10 MR. ARIAIL: May I be heard on the last objection?
11 That's not the question he asked.

12 MR. NETTLES: Yes, it was.

13 MR. ARIAIL: May I be heard?

14 THE COURT: Yes, sir.

15 MR. ARIAIL: He asked it in the context of when that
16 piece of paper comes around, and you're 11 to one, are you
17 going to be able to say, "No, I'm not going to be able to
18 sign that Paper." She can go back and read it. I had it,
19 we take notes over there. That's not what he asked. It's
20 a different question, and I think I'm entitled to ask
21 that, didn't get to ask it. I don't want to go back and
22 do it, but I think that's not a repetition.

23 THE COURT: I'll listen to the question more
24 carefully. The only thing I'm trying to eliminate is the
25 repetitive questions.

1 MR. ARIAIL: I know it, and I agree.

2 THE COURT: And I want to congratulate both of you,
3 you did a fine job with that witness. Thank you so very
4 much.

5 Would you bring Miss Bradberry, please.

6 (Mary Bradberry, white female, enters courtroom.)

7 MARY A. BRADBERRY, (white
8 female), having been previously duly sworn, testified as
9 follows:

10 EXAMINATION

11 BY THE COURT:

12 Q Miss Bradberry, you filled out that questionnaire
13 either last month or the month before; is that correct?

14 A Yes.

15 Q At the time you filled it out, was it accurate to the
16 best of your ability?

17 A Yes.

18 Q Okay. Miss Bradberry, if you'd turn to page 10
19 please on the questionnaire. On question 64 you said
20 "voted for the death penalty, but not sure that I could
21 give someone the death penalty." Can you tell me what you
22 mean by that? I'm not sure I understand exactly what you
23 mean.

24 A Okay. I do believe in the death penalty but I would
25 have to be absolutely positive --

1 Q You would have to be absolutely --

2 A -- that the person actually did the crime.

3 Q You would have to be absolutely positive that the
4 person was guilty of the crime?

5 A Yes.

6 Q All right. Then you put in paragraph 65 that you
7 strongly favor the death penalty. Is that correct?

8 A That's correct.

9 Q Now, on question 68, you said -- you said, "I believe
10 the death penalty is the appropriate form of punishment in
11 some murders cases; but I could never return a verdict of
12 death." That's sort of in conflict about what you just
13 told me about you would have to be absolutely positive as
14 to the defendant's guilt.

15 A I probably should not have circled that.

16 Q Which one do you think would be more appropriate? If
17 you would read one through six.

18 A Okay. Number two would be more appropriate. Uh-huh.

19 Q All right. Let me ask you this. When you made the
20 comment that the person, you would have to be absolutely
21 positive that the person was guilty, let me explain to you
22 the process that we will go through. Okay?

23 A Okay.

24 Q This trial will be divided up into two parts.

25 A Okay.

1 Q The defendant is charged with murder and kidnapping.
2 Okay? The first part of the trial is commonly referred to
3 as the guilt phase. In that phase the state has the
4 burden of proving the defendant guilty beyond a reasonable
5 doubt. All 12 jurors would have to unanimously agree that
6 the state has proven the defendant guilty beyond a
7 reasonable doubt. Do you understand?

8 A Uh-huh.

9 Q Now, at that point in time, I'd assume if you were on
10 the jury you would believe that the defendant was
11 absolutely guilty?

12 A Right.

13 Q Is that correct?

14 A That's correct.

15 Q All right. After that you would go to the second
16 stage.

17 A Uh-huh.

18 Q The second stage or the second portion would be
19 commonly referred to as the penalty phase. The purpose of
20 the penalty phase is for the jury to decide whether the
21 defendant should receive death or life. Now, that's the
22 jury's decision, no one else but the jury. Do you
23 understand?

24 A Uh-huh.

25 Q When I say life, I mean life without parole. I mean

1 that the defendant will spend the rest of his life in
2 jail. He will die in jail. Do you understand?

3 A Uh-huh.

4 Q In that phase the jury can consider everything that
5 was said or offered in evidence in the first phase. The
6 state would also produce aggravating factors in the
7 penalty phase. The state's going to be required to prove
8 those aggravating factors beyond a reasonable doubt. Do
9 you understand? I don't know what those aggravating
10 circumstances are, but they would be facts and factors to
11 convince the jury to give the defendant death.

12 A Uh-huh.

13 Q Normally the defendant will offer what is referred to
14 as mitigating circumstances. Mitigating circumstances are
15 facts about the case or facts about the individual to
16 convince -- offered to convince the jury to give the
17 defendant life. Now, even though you had already decided
18 in the guilty phase he was absolutely guilty, could you
19 listen to the aggravating circumstances, the mitigating
20 circumstances, and give them meaningful consideration
21 before you made a decision as to life or death?

22 A Yes.

23 Q All right. Let me ask you this. Let's assume that
24 the defendant does not offer any mitigating circumstances,
25 the defendant is not required in the penalty phase nor the

1 guilt phase to offer testimony. The burden is on the
2 state. The defendant never has to prove his innocence.
3 Do you understand?

4 A Right.

5 Q Let's assume the defendant does not offer any
6 mitigating circumstances in the second phase, i.e. the
7 penalty phase. Could you at that time consider all the
8 testimony in the first phase, all the testimony in the
9 second phase, before you made a decision as to life or
10 death?

11 A Yes.

12 Q Now, it would not be automatic with you that you
13 would choose the death penalty if you were absolutely
14 totally convinced of the defendant's guilt; is that right
15 or is that wrong?

16 A Yes.

17 THE COURT: Who wants to go?

18 MR. NETTLES: I think he's first.

19 THE COURT: On the death penalty issue alone at this
20 point.

21 BY MR. ARIAIL:

22 Q Mrs. Bradberry, my name is Bob Ariail. I'm the
23 13th -- solicitor for the 13th circuit. That means that
24 I'm the state's prosecutor. On TV we're called the D.A.
25 Here we're called the solicitor. I represent the state

1 and my office represents the state in any criminal case.
2 In This particular case we're focussing on, I will be
3 representing the state along with my deputy seated here,
4 Betty Strom, and along with one of my assistants, Mark
5 Moyer.

6 Let me go back to one of the judge's questions. He
7 asked you at the end of the guilt phase if you would
8 convict the defendant; and if in your mind the defendant
9 was absolutely, as you said, you were absolutely positive
10 he was the person who had committed the crime --

11 THE COURT: Excuse me, Mr. Ariail, let me interrupt
12 you just a second.

13 Let me see the attorneys up here just a second.

14 (Bench conference.)

15 MR. ARIAIL: All right. I'm going to see if I can
16 get my train of thought back.

17 Q Miss Bradberry, we're at the stage where the
18 defendant has been found guilty in this first trial.
19 There's actually two sections, there's a 24-hour period
20 between the two where nothing takes place. Actually,
21 we're here a day, gone a day, and there's a break. The
22 judge was asking you at the end, after you had convicted,
23 found the defendant guilty and you had determined that he
24 was in your mind the person who was absolutely, positively
25 the person who committed the crime, could you wait until

1 the second phase to determine the appropriate punishment?
2 That is, wait until the penalty phase, hear all of the
3 information that is provided in that phase, and then
4 consider all of that along with all you heard in the first
5 phase before deciding punishment? Could you do that?

6 A Yes.

7 Q You would not make up your mind just because
8 absolutely positively he's the one that did it, that he's
9 going to get the death penalty, before you heard the
10 second part?

11 A No, because I look at life imprisonment as a death
12 sentence as well.

13 Q So, you think that life imprisonment could be a death
14 sentence?

15 A Yes.

16 Q Let me go back again and ask, in the second phase the
17 state would be -- the state would be asking for the death
18 penalty, in other words, saying life in prison is not
19 enough in this case. Having that thought, or having that
20 concept that you just expressed, could you give meaningful
21 consideration to the state's request to impose the death
22 penalty?

23 A Yes.

24 Q All right. And you think the death penalty is an
25 appropriate punishment under our law --

1 A Yes.

2 Q -- in certain circumstances?

3 A Yes.

4 Q Do you think you personally would have too much
5 difficulty being the person to impose that sentence, 'that
6 it would impair your ability to be a fair juror?

7 A No.

8 Q You think you could do it --

9 A Uh-huh.

10 Q -- if the circumstances were right?

11 A Yes.

12 Q Because both sides are entitled to a fair juror who
13 doesn't have any preconceptions going in. Otherwise,
14 you're putting one side at a disadvantage.

15 A Uh-huh.

16 Q You have to be open minded. You have to be fair, be
17 able to listen to everything.

18 A Right.

19 Q Even though the defendant doesn't put up anything, no
20 testimony, because the law says he's not required to do
21 that, he's not obligated to. You can't hold that against
22 him the judge will tell you. You can still give a life
23 sentence, do you understand that? You can give it for
24 mercy, but you can also give a death sentence depending
25 upon the circumstances.

1 A Uh-huh.

2 Q Let me go back to one point just so we understand.
3 The standard of proof in the guilty phase is not
4 absolutely positive proof. All right?

5 A Uh-huh.

6 Q It's proof beyond a reasonable doubt. Do you
7 understand the difference, that there is a difference
8 there?

9 A Yes.

10 Q Will you follow the judge's instruction? In other
11 words, not holding the state to prove absolutely
12 positively we may do that?

13 A Uh-huh.

14 Q But I'm saying that's not the legal standard, do you
15 understand that?

16 A Yes, I do.

17 Q That's what you're defining as your comfort level for
18 imposing the death penalty?

19 A Right.

20 THE COURT: Mr. Mauldin, Nettles, whoever is next.

21 MR. NETTLES: Just on that narrow issue.

22 Q Miss Bradberry, there are, as you can understand --
23 the fact that we're having this conversation, you probably
24 knew before you came in here, that the death penalty,
25 people are probably for and against for any number of

1 reasons. Some people are for or against because of
2 religion, some people are for or against it because they
3 just feel like, as you've put down here, that sometimes
4 they get the wrong person.

5 A Uh-huh.

6 Q Okay?

7 A Uh-huh.

8 Q Am I correct of my reading of you on that?

9 A Uh-huh. Uh-huh.

10 Q I hate to be difficult, but she's trying to write
11 down what you say.

12 A Yes.

13 Q Actually she can write nods head, but you understand?
14 You with me?

15 A Yes. Yes.

16 Q My question to you is just going to be pretty brief,
17 very brief actually. That you know there are some people
18 that say "look, I'm against the death penalty in the
19 abstract because I think that other juries get it wrong
20 too much." If you follow what I'm saying?

21 A Yes.

22 Q I hear about a story on TV or something like that.
23 But if I were on the jury and I were convinced beyond a
24 reasonable doubt that he did it, once that hurdle had been
25 cleared, quite frankly, the only real punishment I could

1 consider is death. Do you follow what I'm saying?

2 A Yes.

3 Q Are you one of those people?

4 A No.

5 Q Okay. So, and so you could feel comfortable in your
6 heart, your conscious, and feel you had done your duty as
7 a juror and by sentencing -- let's understand one other
8 thing, too. Talking about murder in South Carolina, let
9 me be clear about what we're not talking about.

10 A Okay.

11 Q We're not talking about accident, somebody hunting,
12 gun goes off. Not talking about heat of passion, somebody
13 loses their mind, just does something. Okay? We're not
14 talking about crazy, you know, didn't know what they were
15 doing.

16 A Right.

17 Q We're talking about someone who killed somebody, did
18 it, meant to do it, they got the right guy; and -- because
19 murder is not enough for the death penalty in South
20 Carolina -- and another very serious crime at the same
21 time. So, it's like a murder during the course of an
22 armed robbery, a murder during the course of a rape. In
23 this case it's a murder during the course of a kidnapping.

24 My question to you is this. Someone who's guilty of
25 murder and a serious offense, armed robbery, rape,

1 kidnapping, you'd be convinced beyond a reasonable doubt
2 that they did it. Okay?

3 A Yes.

4 Q Could you still give that person life in prison
5 without the possibility of parole?

6 A Yes.

7 Q I believe that's all I got on this issue. I believe.
8 Hang on one second.

9 THE COURT: Anything else? Is that it?

10 MR. NETTLES: You're going to do some more?

11 THE COURT: That's right. Mrs. Bradberry, if you
12 would pick up your questionnaire, I want to ask you a
13 couple more questions if you would, please. Turn, if you
14 would, turn to question number 37. Who is the police
15 officer, police chief, that you're family or friends --

16 A Family.

17 Q Who in the family?

18 A Jack Aiken Jr. and Jack Aiken Sr.

19 Q What relation to you?

20 A Cousins.

21 Q First cousin?

22 A Police chief is my first cousin; police officer,
23 second cousin.

24 Q And where are they? The second cousin, police
25 officer?

- 1 A Actually the police chief is deceased now. He was in
2 Easley. And the police office is in Greenville County.
- 3 Q Works for Greenville County Sheriff's office?
- 4 A Uh-huh.
- 5 Q How often do you see him? What are their names?
- 6 A Jack Aiken.
- 7 Q How often do you see Mr. Aiken?
- 8 A Not very often. I haven't seen him now in probably
9 two years.
- 10 Q You saw him approximately two years ago?
- 11 A Probably.
- 12 Q Do you have a close relationship with him?
- 13 A No.
- 14 Q Have you ever discussed with him his views on law
15 enforcement?
- 16 A No.
- 17 Q Would that interfere with your ability to sit on this
18 jury?
- 19 A No.
- 20 Q The next question says you have a friend or family
21 member who works at Perry. Who would that be?
- 22 A That's also a cousin.
- 23 Q Also a cousin. Another first cousin?
- 24 A No, this is actually, I don't even know --
- 25 Q Second or third?

1 A -- the man's name.

2 Q You don't even know his name.

3 A It's a cousin that married this fellow. I don't know
4 his name. I'm sorry.

5 Q Question 44, who is the victim of the drunk driver
6 and burglary?

7 A It was the police officer's wife was killed by a
8 drunk driver.

9 Q How long ago did that occur?

10 A About five years.

11 Q About five years. Were you involved in that at all?

12 A No.

13 Q Do you have any physical or mental problems as to why
14 you cannot serve on this jury?

15 A I don't think so.

16 Q Do you have any personal hardships why you can't
17 serve on the jury?

18 A No.

19 Q Have you heard anything about the case? As was said
20 earlier, the defendant is charged with kidnapping and
21 murder, and it occurred on September 3 2003 at a local
22 Bi-Lo here in Greenville. Have you heard anything about
23 the case or read anything about the case?

24 A No.

25 Q Do you know anything at all about the case?

1 A No, I was just going through the stations the other
2 night and I did see he was, I guess where they had
3 arrested --

4 Q You saw it on TV the other night?

5 A But I flipped it immediately. All I saw was him in
6 his little orange jumpsuit.

7 Q Have you formed an opinion as a result of seeing him
8 in the orange jumpsuit?

9 A No. I don't know anything about the case.

10 Q An opinion as to his innocence or guilt?

11 A No.

12 Q Do you know the victim, Maranda Williams, in this
13 case?

14 A No.

15 Q Do you know the defendant, who sits with the blue
16 sweater to my right? Do you know him?

17 A No.

18 Q Do you know either of the attorneys, Mr. Mauldin or
19 Mr. Nettles sitting to my right?

20 A No.

21 Q The solicitor already introduced himself. Do you
22 know anyone else in the solicitor's office here in
23 Greenville?

24 A No.

25 Q I'm going to give you a list of witnesses. Would you

1 read that witness list and tell me if you recognize any of
2 the names on that list.

3 A (complies.) No.

4 Q I'm going to give you a second list and would you
5 look at that list and see if you recognize any of the
6 names on that list.

7 A (complies.) No, sir.

8 Q Thank you, ma'am. I'm going to read you a question.
9 I want to ask you if you would respond to it please,
10 ma'am. In this case the defendant is black and the victim
11 is white. It is undisputed the black defendant and the
12 white victim engaged in interracial dating. Would the
13 fact that the defendant and the victim engaged in
14 interracial dating make it difficult for you to be fair to
15 either the state or the defendant?

16 A No.

17 Q Do you know of any reason why you could not be fair
18 and impartial to both the state and defendant?

19 A No.

20 Q Could you listen to testimony from the witness stand,
21 if you were chosen, and base your decision on the
22 testimony you heard from the witness stand?

23 A Yes.

24 Q Do you have any personal reason as to why you could
25 not serve on this jury?

1 A No.

2 THE COURT: All right. Any questions from -- is the
3 solicitor going first?

4 MR. ARIAIL: It was mine, but the only question I
5 have is about the signing, if you want to ask her that.

6 THE COURT: Go ahead and ask her. I want to make
7 sure you know how you ask it so I can listen to him when
8 he asks it.

9 BY MR. ARIAIL:

10 Q If you were sitting on the jury and you had been
11 selected and the jury deliberated and come to the decision
12 that the appropriate punishment was that the death penalty
13 should be imposed, the law requires that each and every
14 juror, if that's their verdict, sign that document. Would
15 you, if you had determined that the appropriate sentence
16 was death, would you be able to sign that document or have
17 any hesitancy in signing that document?

18 A Yes. If I made my decision, I could sign it.

19 Q You could sign it. All right. Thank you.

20 BY MR. NETTLES:

21 Q I'm going to talk to you about three topics. Okay?
22 And the last time I was up here, I talked to you about
23 your ability to consider the death penalty and the ability
24 to consider the possibility of a sentence of life without
25 parole. Just let me ask you this question. If you and I

1 just bumped into each other someplace and I said, what's
2 your opinion of the death penalty, what you would you say?

3 A I'm for it.

4 MR. ARIAIL: I thought we had already been over this
5 part of the case.

6 THE COURT: I sustain the objection. You may
7 rephrase it. We covered it. I covered it, you covered
8 it, the solicitor covered it.

9 MR. NETTLES: Your honor, here is the problem. I
10 wanted one question. She answered --

11 THE COURT: Rephrase.

12 MR. NETTLES: He just wants to object because he
13 wants to stand up. I did not get to ask that question.

14 THE COURT: Well, he's been sitting a long time. He
15 may need the exercise.

16 Rephrase the question. Solicitor, wait until I hear
17 the question before you object please.

18 MR. NETTLES: She's already answered it, that's all I
19 wanted to know.

20 Q Let me ask you this -- are you also for life in
21 prison without the possibility of parole?

22 A Yes.

23 Q Are you for one more than the other?

24 A Probably not, no.

25 Q Okay. Okay. All right. Let me ask you this, then.

1 On the issue of -- just like we've asked you, sort of
2 broad topic about capital punishment, which I realize is
3 very difficult because we don't give you any facts. Let
4 me ask you something else. Let's just say you and I were
5 talking and I said, "you know, what do you think about
6 mental illness?" What would be your response to that?

7 A What do I think about mental illness?

8 Q Yeah.

9 A Can you tell me exactly what you're --

10 Q No. Let me put it in a little bit of context for
11 you. Let me just tell you this. Some people say mental
12 illness is a very real problem.

13 A Yes, it is. That's the way I feel about it.

14 Q Okay.

15 A It makes me ill, really ill, if somebody says
16 somebody is crazy, because that's not the way I feel. If
17 they have a mental problem, they need to see a doctor.

18 Q Okay. And then you recognize that as something that
19 is a legitimate mitigator or legitimate reason?

20 MR. ARIAIL: I object to that question. He's staking
21 her out.

22 THE COURT: Let him finish the question.

23 MR. NETTLES: No, staking out is --

24 THE COURT: Finish the question.

25 Q Can you give legitimate consideration to mental

1 illness as a mitigator or reason to give less than death
2 in a capital case?

3 MR. ARIAIL: My objection is the same.

4 THE COURT: Let me hear you on the objection.

5 MR. NETTLES: Staking out is this. If I ask her, "If
6 I bring you mental illness, will you give him life?"

7 I didn't ask that. I asked could she give meaningful
8 consideration to a defense of mental illness.

9 MR. ARIAIL: He needs to put it in context.

10 THE COURT: Overruled. I'll listen to your argument
11 when the juror is out of the courtroom.

12 MR. NETTLES: If you'd like me to ask more questions,
13 put it in context, I'd be happy to.

14 THE COURT: No. No. We're not going any further
15 than you've already gone.

16 Q This is the last topic I'd like to talk to you about.
17 The solicitor asked you about the whole signing and
18 signing a piece of paper down in the clerk's office. My
19 question to you is this. Let's say the piece of paper
20 went around and you were the last person, and the piece of
21 paper came around with -- piece of paper came around.

22 Now, you heard everything, 11 people had signed it;
23 and, you know, you thought this isn't the right person for
24 this. You know, this isn't the person that deserves that.
25 The only thing that I can give them is the single most

1 severe punishment this society has to offer, that I
2 believe this person, the appropriate punishment is for
3 them to spend the rest of their life in prison. Could you
4 say to those 11 people, "Look, you all, I respect your
5 opinion, but I'm asking you to respect mine. And I've got
6 to live with this decision and I'm not signing this piece
7 of paper about this person today. Bring me another person
8 I might sentence them to death, but not this person
9 today." Could you do that?

10 A Yes.

11 Q If you were in the majority and there's somebody in
12 the minority, would you be willing to, just because
13 they're in the minority, still give their opinion weight
14 that it deserves?

15 A Yes.

16 Q And respect their opinion?

17 A Yes.

18 Q And with respect that, one of the reasons we're
19 having this decision is that this is an issue reasonable
20 people can disagree.

21 A Yes.

22 Q I believe that's it. Let me go touch base. Thank
23 you very much.

24 (pause.)

25 MR. NETTLES: I have no further questions.

1 THE COURT: Any motions from the state or defendant?

2 MR. ARIAIL: None from the state.

3 MR. MAULDIN: None.

4 THE COURT: Mrs. Bradberry, we're going to draw a
5 panel of 43 jurors. From that we'll strike 12 jurors and
6 four alternates. You're part of that 43. The bailiff has
7 a slip of paper with a phone number on it. Call that
8 number tonight. There will be a message on it to either
9 call back tomorrow night or such and such a time. But
10 keep calling back on that phone number to get the
11 instructions and follow the instruction.

12 Don't talk to anybody about the case. Don't read
13 anything in the paper, and don't watch television. Okay?

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Thank you very much. Do you need this
16 back? All right. We'll take about a ten-minute break.

17 (Whereupon, a recess was taken.)

18 Q May I see the original questionnaire on this? We're
19 missing page four or five.

20 THE COURT: Solicitor, I'll be glad to hear you
21 whatever you were going to argue. Whether you want to do
22 it now or you want to do it later, I don't know what you
23 were going to say about staking out and his question. You
24 said you wanted to -- if you want to do it now, we can.

25 MR. ARIAIL: My specific objection, he's not putting

1 it in context that she is going to be instructed to
2 consider the mitigating factors. And they're going to
3 be -- specifically told to her what they are. This is not
4 in the abstract. This is in the specific. I don't have
5 any objection if he stands up and says, the judge is going
6 to instruct you to consider mental illness. Will you be
7 willing to give that reasonable and meaningful --

8 THE COURT: You don't have any objection to that
9 question?

10 MR. NETTLES: I do. Here's the problem. If he wants
11 to come back up and try to clean it up --

12 THE COURT: No, we're not cleaning anything up. Once
13 you sit down, you're through.

14 MR. NETTLES: But my situation is this, though. If
15 she had said no, then the court is free to follow up.
16 What if I instructed -- I just need to know where she is.
17 If she said, no, my follow-up question to put it in
18 context, if I hadn't been interrupted -- so, what if the
19 court told you, even if the court told you, that's just
20 something that's the way you believe.

21 That's right.

22 So, I very well may have put it in context because of
23 the answer I Got, it doesn't matter. She said yes, she'd
24 give meaningful consideration. That's what it is I want
25 to know.

1 MR. ARIAIL: My response to that is the same it's
2 been throughout. We're not here, those types of questions
3 are not aimed at finding out whether the juror's ability
4 to fairly consider the evidence is somehow significantly
5 impaired. It's -- the questions are directed at trying to
6 create problems, not solve them. And here the question is
7 directed at trying to stake out this witness and get her
8 on the issue of mental illness and how she specifically
9 feels about it. Because they know that's going to be the
10 thrust of their case, and that's why I say it's staking
11 out. It is going to be what you are going to hear from
12 them.

13 THE COURT: But he's entitled to probe about her
14 thoughts on mental illness if the lady says, "Hey, I think
15 it's all voodoo." He's entitled to know that.

16 MR. ARIAIL: I agree to that. I haven't objected to
17 that. It's when he gets specific out of the context of,
18 are you going to do this outside the context of where
19 she's going to be doing it.

20 THE COURT: We all asked them that same question.
21 Can you give meaningful consideration to the aggravating
22 circumstances and mitigating circumstances. All he's
23 asking is as a follow-up question.

24 MR. ARIAIL: But he doesn't tell him that's what it
25 is he's asking.

1 THE COURT: Well, if he goes about it that way, I'm
2 going to allow it. First, he asks them about the mental
3 health; and if they say yes or no, he can follow up.
4 Okay? If they say Yes, he can follow up, "Can you give it
5 meaningful consideration?" Then we're going to limit it
6 to that. Understand?

7 MR. ARIAIL: I don't have any objection to him asking
8 her, can you give as a juror, meaningful consideration to
9 the presentation or any presentation regarding mental
10 illness. But just to ask her, "What are your thoughts on
11 mental illness?" And, "You believe it's voodoo?"

12 THE COURT: Solicitor, you and I both know when
13 you're dealing with these jurors, you can probably get a
14 better response and more fruitful response if you ask them
15 an open-ended question. You and I both know and both of
16 you are skilled enough to stand up here, lead people
17 through cross examination, suggest the answer, most of
18 them are going to go along with them. If you want to get
19 a true response, you have to ask open-ended questions,
20 allow open-ended questions. I'll just have to deal with
21 it as the questions are asked. I understand your
22 argument. I understand the objection. I agree it's
23 extremely close to staking out the juror.

24 MR. ARIAIL: Just trying to promote the judge's
25 agenda to move things on.

1 THE COURT: We're trying. Too bad we can't do it by
2 video. We got the video man in the back.

3 (brief recess.)

4 THE COURT: Could you bring us Mrs. White?

5 REBEKAH WHITE, (white
6 female), having been previously duly sworn, testified as
7 follows:

8 EXAMINATION

9 BY THE COURT:

10 Q You filled out this questionnaire last month or the
11 month before last. When you filled it out, was it
12 accurate to the best of your knowledge?

13 A To my knowledge, yes.

14 Q Would you take it, please?

15 A Yes, sir.

16 Q Would you turn to page eight, if you would, question
17 number 57.

18 A Uh-huh.

19 Q The question was, "How much attention do you pay to
20 specific criminal cases that occurred anywhere in South
21 Carolina?"

22 You said, "A little." And you got, "Girl shot and
23 kidnapped at Bi-Lo, Greenville, South Carolina."

24 A Uh-huh.

25 Q Tell me what you know about that case.

1 A I just, when it happened. I remember seeing it on
2 TV. I don't really get the paper, but I just remember
3 seeing it on TV, and I just remember that. I don't
4 remember the details.

5 Q What do you remember seeing on TV about it?

6 A I just remember the standoff. I remember the SWAT
7 team going in. I remember the girl being shot and killed.
8 I remember that the boyfriend was the one that did kill
9 her and that she worked at the bakery at the Bi-Lo.

10 Q Have you read anything else about it or seen anything
11 else about it since it occurred?

12 A Not since it occurred.

13 Q It occurred on September 3 2003. This is that case.

14 A I thought it might be. I thought I might recognize
15 the name.

16 Q Have you seen anything in the paper, seen anything on
17 TV, read anything in the paper since it occurred?

18 A Not since it occurred.

19 Q Based on your recollection of what you saw on TV,
20 read in the newspaper, have you formed or expressed an
21 opinion on the guilt or innocence of the defendant,
22 Mr. Williams?

23 A Well, he was caught. To me he's guilty because he
24 was caught.

25 Q All right. Well, everyone is caught or they wouldn't

1 be before the court.

2 A Right?

3 Q Okay?

4 A Yes, sir.

5 Q Now, the obligation in South Carolina is even though
6 he was caught, the prosecutor in this case, the solicitor,
7 Solicitor Ariail in the 13th circuit, the state has the
8 obligation to prove a defendant in a court of law guilty
9 beyond a reasonable doubt. Okay?

10 A Yes, sir.

11 Q And it would take all 12 jurors to make the finding
12 that the defendant was guilty.

13 A Uh-huh.

14 Q Now, is your opinion of the case, i.e. Mr. Williams
15 was caught, therefore, he's guilty; can you set that aside
16 and listen to the testimony? Or is your opinion so strong
17 that you cannot set that aside?

18 A I would like to think that I could set it aside,
19 but -- I would like to think I could do that.

20 Q Well, we all would. We all like to think we're not
21 prejudiced and biased, but we all are. Sometimes it's
22 very difficult to get rid of those biases or prejudices or
23 those opinions.

24 A It might be difficult, just based on what I read.
25 But I don't know all the circumstances.

1 Q I understand. All right. Does either party want to
2 question her on this particular issue?

3 MR. MAULDIN: No, Your Honor.

4 THE COURT: Solicitor?

5 MR. ARIAIL: Yeah.

6 THE COURT: Solicitor, can I ask her about one more
7 subject area before we get to it, if I could?

8 Mrs. White, on the back page of your questionnaire
9 you wrote about your father who is in assisted living. I
10 believe he recently had a heart attack.

11 A Yes, sir.

12 Q How often do you see him?

13 A Well, I go every week. Usually Wednesdays are my
14 days off. And if he has doctor's appointments, i usually
15 take him to on Wednesdays. I go maybe two or three times
16 a week to see him.

17 Q If you were chosen on this jury and you were
18 sequestered for maybe five or six days. Would that
19 interfere with your ability to care for your father?

20 A I'm the main one that takes him to the doctor.

21 Q He's mobile enough to go to the doctor, don't take
22 him by ambulance or anything?

23 A Not by ambulance but he is in a wheelchair. What I
24 have to do is --

25 Q The people in assisted living can't take him?

1 A I don't know. They've never volunteered because I've
2 always been able to take him. They might would take him
3 for a fee. I don't know that.

4 THE COURT: Okay. Solicitor?

5 BY MR. ARIAIL:

6 Q Ms. White, my name is Bob Ariail and I'm the
7 solicitor for the 13th circuit of the State of South
8 Carolina, Greenville and Pickens Counties. Solicitor is
9 the old name we retain for district attorney. Our job is
10 to prosecute criminal cases. In this case I'll be
11 representing the state with my deputy, Betty Strom, and
12 Mark Moyer, one of my assistants.

13 I am sure you are aware that what you read in the
14 newspaper, what you see on TV may not be accurate?

15 A Uh-huh.

16 Q Are you aware of that?

17 A Yeah. I'm aware of that.

18 Q Well, if you're not aware of that, let me tell you,
19 that is correct. It is not always accurate. And for that
20 reason, we don't settle criminal cases in the media based
21 on what the media reports. We settle them based upon
22 proof from a witness stand to 12 jurors. And that's the
23 way the system is designed to work, to ensure that people
24 get a fair and impartial trial from a fair and impartial
25 jury.

1 A Uh-huh.

2 Q Now, people have opinions about things all the time
3 in court. And there's nothing wrong with having those
4 opinions unless those opinions are so strong that they
5 can't be set aside in order for the jury to render
6 efficient and effective jury service; that is, the juror
7 sitting in the jury box saying, "Well, I heard witnesses
8 say this, but that's not what I heard on TV and I'm going
9 with what I had on TV." We can't have that. You have to
10 base it on the discussions from the witness stand.

11 So, what the judge was asking you is, could you set
12 that opinion aside and put aside, even if it comes back
13 there in your deliberations, say, "I can't base anything
14 on that, I have to base it from this witness stand and
15 make my decision based upon what I believe the evidence is
16 from this witness stand"? And that's all he's asking.
17 And if you can't do that, then you can't be a fair and
18 impartial juror.

19 A Right.

20 Q If you can do that, then you certainly are qualified.
21 But that's the question. And even though it's
22 difficult -- you said it's difficult?

23 A I'd like to think I'm fair.

24 Q Right.

25 A But that might, you know, that might be a big -- just

1 because of what I saw, you know, I don't know that I could
2 put that totally aside.

3 Q I'm going to let you think about that and then give
4 us an answer.

5 A Okay.

6 Q I know it would be difficult, it's difficult for
7 everyone. But you got to be able to do it. It's not
8 just, "I think I can do it." You got to give the judge
9 assurance that you can do it. Otherwise it's not fair to
10 the defendant, it's not fair to the state. You understand
11 that?

12 A Right. I do. I just don't know that I could.

13 THE COURT: All right. I'll excuse you from service
14 on this jury. Hope your father gets better and you take
15 care of him. All right.

16 (prospective juror exits.)

17 THE COURT: I assume the defendant made the motion?

18 MR. MAULDIN: Yes, sir. And I do have a matter I
19 believe before we bring the next juror.

20 THE COURT: All right.

21 MR. MAULDIN: Your honor, with regard to juror on the
22 list 29, listed as Shields Cochran, and regarding juror
23 33, Robert Ellis, I did want in the interest of, if you
24 will, disclosure, let you and the -- the court and
25 solicitor know I am acquainted with both of those

1 gentlemen.

2 THE COURT: You're what?

3 MR. MAULDIN: I am acquainted very casually. I know
4 them and I did want to bring that out. Mr. Cochran is
5 attorney Alan Cochran's brother. I know Mr. Cochran
6 through, I was introduced to him through my wife, who has
7 known him a lot longer than I have. With regard to mister
8 -- and it's nothing beyond just an acquaintance --
9 Mr. Ellis is in the Rotary Club with me. I know him, but
10 we're not close. We've never been out together or
11 anything. But I am acquainted with those two gentlemen.

12 THE COURT: Thank you, Mr. Mauldin. Anything else
13 before we bring in Mr. Cochran?

14 MS. STROM: No, sir.

15 MR. MAULDIN: He may say he doesn't know me.

16 THE COURT: Would you bring in Mr. Cochran, please?
17 I won't give him that option. I'll say, "Mr. Mauldin told
18 the court that he knows you. What's the relationship?" I
19 won't give him that option. Okay?

20 MR. MAULDIN: Thank you, judge.

21 MR. ARIAIL: Solicitor, while we're waiting, anything
22 you want to tell me about Robert E. Ellis? If he comes
23 through that door, I'll tell you.

24 THE COURT: He's listed you as one of his friends.

25 MR. ARIAIL: References.

1 MR. MAULDIN: Perhaps he shouldn't be brought through
2 that door.

3 THE COURT: I don't know. We'll see. How well do
4 you know him?

5 MR. ARIAIL: Not well. I mean, I know him to speak
6 to him. I'm not in his rotary club, I can tell you that.
7 So, I don't know him as well as Mr. Mauldin. I may be in
8 another organization with him. I'm not sure.

9 THE COURT: Which one is that?

10 MR. ARIAIL: We'll have to ask him.

11 MR. MAULDIN: What's the hide-the-ball deal?

12 THE COURT: Nobody's hiding the ball.

13 (prospective juror Cochran, white male, enters
14 courtroom.)

15 SHIELDS M. COCHRAN, (white
16 male), having been previously duly sworn, testified as
17 follows:

18 EXAMINATION

19 BY THE COURT:

20 Q All right, Mr. Cochran, you filled out a
21 questionnaire either last month or the month before. When
22 you filled it out, was it accurate?

23 A As far as I know, yes.

24 Q As far as you know. Do you remember if you have any
25 changes you would like to make to the questionnaire?

1 A I don't believe so, sir.

2 Q All right. I'm going to ask you a couple of
3 questions about the questionnaire if I may, please, sir.

4 A Yes.

5 Q Would you turn to page 10. Now, first of all, I'm
6 going to be asking you some questions and the attorneys
7 are going to be asking you some questions. There's no
8 right or wrong answer. Okay?

9 A Okay.

10 Q Just answer the question the best you can. We're
11 going to be asking your opinion about certain matters
12 about death penalty and possibly some other matters. Just
13 give us your opinion and be honest about it. Okay?

14 A Yes, sir.

15 Q Can you do that?

16 A Yes, sir.

17 Q All right. If you would look at question 64. The
18 question says, "Briefly describe your attitudes and
19 beliefs concerning capital punishment or death penalty."

20 And you said, "Open, but see it case by case." Could
21 you expound upon that and tell me what you mean?

22 A I guess what I was thinking by that, I'd be very
23 reluctant to just take somebody's life unless I felt real
24 good about it; but it depends on what the case involved,
25 how this case was or how bad the situation was that the

1 person committed the crime.

2 Q So, you would look at all the circumstances --

3 A Yes, sir.

4 Q -- before you made a decision?

5 A Yes, sir.

6 Q All right. Question number 65 says, "Somewhat favor
7 the death penalty."

8 A Yeah, that would be, I'd just case by case, again.

9 Q Okay. All right. Then, if you would flip over to
10 question 68. I believe it gives you six choices
11 concerning which best represents your opinion. And you
12 chose number three; is that correct?

13 "With reference to the death penalty, which of the
14 following statements would best represent your opinion?"
15 And you picked number three; is that correct?

16 A Yes, sir.

17 Q Number three says, "Although I do not believe that
18 the death penalty ever ought to be imposed, as long as the
19 law provided for it, I could vote to impose it if I
20 believe it was warranted in a particular case, depending
21 upon the evidence, the law, and what I learned about the
22 defendant." Is that still your opinion?

23 A Yes, sir.

24 Q And that goes along with what you said on the other
25 two questions?

1 A On a case-by-case basis.

2 Q Okay.

3 A All right.

4 Q I understand that you know Mr. Mauldin; is that
5 correct?

6 A Yes, sir. I know who he is.

7 Q How do you know Mr. Mauldin?

8 A Just been around Greenville 61 years. He's not that
9 old.

10 THE COURT: I don't know, looking at that hair.

11 MR. MAULDIN: I've got a driver's license.

12 THE COURT: How well -- how often do you see him?

13 PROSPECTIVE JUROR: Occasionally, once or twice a
14 year, something like that.

15 BY THE COURT:

16 Q In this particular case he's defending the defendant
17 in this case, Charles Christopher Williams. Would that
18 interfere with your ability to sit on a jury with Mr.
19 Mauldin representing the defendant?

20 A We aren't big friends or anything, I mean social
21 friends or anything.

22 Q You don't think it would interfere with your ability
23 to sit on the jury?

24 A No, because we don't go -- haven't been out, don't go
25 to the same clubs or anything together.

1 Q You could set that aside, listen to the testimony,
2 and base your decision on the testimony you hear in the
3 courtroom?

4 A Yes, sir.

5 Q I'm going to ask you some additional questions. Do
6 you have any physical or mental condition as to why you
7 could not serve on this jury?

8 A Not that I know of.

9 Q Do you have any personal hardships as to why you
10 could not sit on this jury?

11 A Not that I know of, no.

12 Q All right. The defendant is charged with murder and
13 kidnapping, an alleged crime that occurred on September 3
14 2003 at a Bi-Lo here in Greenville. Have you read
15 anything in the paper, heard anything on TV, or heard
16 anyone talking about this case?

17 A Just when it first happened.

18 Q What did you see or hear when it first happened?

19 A About where it was, because I live not too far behind
20 there. I just caught -- I don't remember any of the
21 details.

22 Q Did you see it on television?

23 A Yes, sir.

24 Q Do you remember any of the details at all?

25 A I think there was some domestic detail in it, I don't

1 remember the details.

2 Q From what you remember or what you saw or heard about
3 the case, have you formed or expressed an opinion as to
4 the defendant's innocence or guilt?

5 A I don't think so. No.

6 Q All right. Do you know the victim in the case, Mary
7 Ann Williams?

8 MR. MAULDIN: Maranda.

9 Q Maranda Williams, excuse me, Maranda Williams.

10 A No, sir.

11 Q Do you know the defendant, Charles Christopher
12 Williams, who sits to my right?

13 A No.

14 Q We've already covered Mr. Mauldin. The other
15 attorney representing Mr. Williams is Mr. Nettles. Do you
16 know him?

17 A I've seen him around.

18 Q All right. The solicitor sits to my left, solicitor
19 Bob Ariail, and two of his staff. Do you know anybody in
20 his office or do you have a personal relationship with
21 anybody in his office?

22 A I know Bob is all.

23 Q The solicitor?

24 A Yeah. My wife and he finished high school together.

25 Q How often do you see him?

1 A Reunions.

2 Q High school reunions?

3 A Yes, sir.

4 Q How often is that?

5 A Twice in a lifetime.

6 Q Okay. Knowing Solicitor Ariail, would that cause you
7 any difficulty sitting on this jury?

8 A I don't think so. We don't know each other well.

9 Q All right. I'm going to give you a list of
10 witnesses. Would you read over this list of witnesses and
11 tell me if you can identify any names from that list.

12 A (Complies.) I don't know any of them.

13 Q I'm going to give you a second list. Would you look
14 at that list and see if you can identify any names on that
15 list?

16 A I don't believe so.

17 Q Thank you, sir. Mr. Cochran, I'm going to ask you a
18 question. I'd like you to respond to it if you would,
19 please, sir. In this case the defendant is black and the
20 victim is white. It is undisputed the black defendant and
21 white victim engaged in interracial dating. Would the
22 fact that the defendant and victim engaged in interracial
23 dating make it difficult for you to be fair to either the
24 state or the defendant?

25 A I don't believe so, sir.

1 Q I believe your answer was, "no." Is that correct?

2 A No.

3 Q All right. This case, as I told you earlier, the
4 defendant is charged with murder and kidnapping. The case
5 would be divided up into two phases. The first phase or
6 first part of the trial is commonly referred to as the
7 guilt phase. In the first phase the state is required to
8 prove the defendant guilty beyond a reasonable doubt.

9 If the jury agrees that the state has proven the
10 defendant guilty beyond a reasonable doubt of murder and
11 kidnapping, then you would go to the second phase. The
12 second phase is commonly referred to as the penalty phase.
13 Now, if in the first phase, the jury found the defendant
14 innocent of murder and kidnapping, the trial would be
15 over. If in the first phase the jury found the defendant
16 innocent of kidnapping and guilty of murder, the trial
17 would be over.

18 But let's assume for my questions and my explanation
19 that the jury finds the defendant guilty of murder and
20 kidnapping. Then we would move to the second phase, which
21 is referred to as the penalty phase, do you understand?

22 A Yes.

23 Q All right. In the penalty phase the state would be
24 required to prove beyond a reasonable doubt aggravated
25 circumstances surrounding the crime. The jury would have

1 to find the state proved the aggravating circumstances
2 beyond a reasonable doubt. And the reason the aggravating
3 circumstances are offered by the state is to convince the
4 jury to give the defendant death.

5 A Uh-huh.

6 Q Now, normally the defendant will offer mitigating
7 circumstances. And mitigating circumstances are offered
8 to persuade the jury by the defendant that he is entitled
9 to life. The mitigating circumstances can be facts about
10 the case or facts about the individual. Now, my question
11 to you, would you give meaningful consideration to the
12 mitigating circumstances and the aggravating circumstances
13 before you made a decision as to life or death?

14 A Yeah, I'm sure I would.

15 Q Speak up, I can't hear you.

16 A Yeah. I'm sure I would.

17 Q Do you understand in the penalty phase the jury makes
18 the decision of life or death, not the court, not the
19 state?

20 A Yes.

21 Q The court is obligated to follow the jury's findings,
22 either death or life. Do you understand?

23 A Yes.

24 Q Now, life is life in jail without parole, which means
25 that the defendant will die in jail. Do you understand

1 that?

2 A Yes.

3 Q Now, let's assume that the defendant does not offer
4 any mitigating circumstances. The defendant is never
5 required to testify or offer mitigating circumstances in
6 the guilt phase nor the penalty phase. When the jury gets
7 to the guilt phase, you can consider all the facts that
8 were entered into -- excuse me, when the jury gets to the
9 penalty phase, you can consider all the facts in the first
10 phase, the guilt phase, plus all the evidence that's
11 presented in the second phase.

12 Now, let's assume that the defendant does not offer
13 any mitigating factors, could you wait until you heard all
14 of the facts in the case, in the first phase,
15 consideration of those facts and whatever is offered in
16 the second phase, before you made a decision as to
17 innocence or guilt?

18 A Yes, sir.

19 Q You would not automatically find the defendant should
20 receive the death penalty merely because he was found
21 guilty in the first phase; is that correct?

22 A Yes, sir.

23 Q Okay. All right. Can you listen to the testimony
24 and be fair to both the state and the defendant?

25 A Yes, sir.

1 Q Do you know of any personal reasons as to why you
2 could not serve on this jury?

3 A Not really.

4 Q Okay. Whose turn?

5 MR. ARIAIL: We were just discussing that. What I've
6 been doing is, since we began, just to restate each time,
7 even though one of us didn't ask a question. The last one
8 was theirs and they waived asking questions because it was
9 the circumstance, and I did question; so then I had it
10 marked this time. That's what I was telling John, to make
11 sure we're on the same page.

12 MR. MAULDIN: I understood if neither one of us asked
13 any questions, it just rolled down to the next one. If
14 one or the other asks questions, then we stay on the same
15 rotation. So, I guess that means you all would take
16 first.

17 MR. ARIAIL: I'll change my system if we don't.

18 MR. MAULDIN: If neither asks questions?

19 THE COURT: However you all rotate it, you keep up
20 with it. I'm not.

21 BY MR. ARIAIL:

22 Q Mr. Cochran, I'm Bob Ariail. You said you know me.
23 This is my deputy, Betty Strom, who will be assisting me
24 in this case, and Mark Moyer, one of my assistants. Also,
25 i think for the record, I believe you have a brother that

1 practiced law here, that we all had dealings with --

2 A Yes.

3 Q -- and throughout the practice. Let me -- the judge
4 has explained to you the process of this bifurcated trial;
5 the first part dealing with guilt, the second part dealing
6 with penalty. Normally, in this state the judge would
7 sentence somebody after a conviction. But in the death
8 penalty case where the state is seeking the death penalty,
9 those are rare; But in murder cases, and only select
10 murder cases, the state can seek the death penalty.

11 So, that means that the jury has to decide the
12 punishment. So, obviously we're looking for people who
13 can be fair and impartial, Because you've got to fill the
14 role of the judge. And that's, under our law, that's
15 obviously a pretty big responsibility. So, you need to
16 know that. And it's not that -- we're not in all our
17 questions, not suggesting you'd do anything wrong. We're
18 just concerned about getting you in a situation where you
19 may find yourself in over your head or some other problem
20 develops that you weren't thinking about. So, we're going
21 to ask questions that, to make sure you were aware of
22 those things.

23 The first thing I want to explore is your
24 relationship or friendship with John. And your answer to
25 question 68, number three, which starts off, "Although I

1 do not believe that the death penalty ever ought to be
2 imposed." All right? Having that feeling as your
3 beginning point, I want to place you in the jury box
4 hypothetically. In the jury box, death penalty case, the
5 state's up there presenting its case, giving its evidence,
6 victims are testifying. And then at the end of that case
7 Mr. Mauldin stands up in front of you, obviously a friend
8 of yours and says, "My client deserves life in prison."

9 With your predisposition to do not believe the death
10 penalty ought to be imposed. Would the fact that Mr.
11 Mauldin personally is there in front of you asking not to
12 impose the death penalty, significantly impair your
13 ability to fairly consider the state's request? And I'm
14 not saying -- I'm not arguing it would. I'm just
15 broaching the question so you can think about it and give
16 us the answer. And your answer is what we will abide by.

17 A I'd think about that a minute. We're assuming he's
18 already guilty and everything?

19 Q He's guilty, now. He's guilty and we're to the
20 penalty phase.

21 A Okay. I don't think that would make a big influence
22 on me at all.

23 Q Would it make a small influence on you?

24 A Like I say, it's a casual friendship, so we're not
25 friends-friends.

1 Q Let me carry it one step further. And I accept that
2 answer.

3 A Okay.

4 Q Would you, while you were in the jury box or while
5 you were deliberating, be thinking, "I'm going to have to
6 see John when I leave here, and I don't know exactly how
7 to deal with that?" How what situation that may put you
8 in, would that creep into your thought process?

9 A No, I don't think so.

10 Q He would understand this is a decision you've been
11 asked to make and you're going to make it to the best of
12 your ability?

13 A Yeah.

14 Q Good. All right. Would you in the penalty phase
15 consider kidnapping as an aggravating factor?

16 A Yeah, I believe I would.

17 Q So, if there was evidence of kidnapping in
18 conjunction with the murder, you would see that as, under
19 the law, as an aggravating factor?

20 A Yeah.

21 Q And you stated in your answer, I'll go to the end, "I
22 could vote to impose it if I believe it was warranted in a
23 particular case, depending upon the evidence, the law, and
24 what I learned about the defendant." I believe you told
25 the judge in your question to him following up on that,

1 "being able to consider the death penalty and oppose it,
2 depending on how bad the case would be." Can you explain
3 that further to me? What you would be --

4 A I guess how violent it was or how terrible it was,
5 yeah.

6 Q So, you would look -- you would be looking to those
7 things, violence, how aggravated?

8 A Yeah.

9 Q Would you be able to after, or when you enter the
10 penalty phase, would you mind, because of your answer in
11 number three, would you mind -- be preconceived after
12 that, that life was the appropriate sentence?

13 A Well, I would just feel like in that situation that
14 that's more of a punishment than just taking somebody's
15 life and then not having to suffer like the victim
16 suffered.

17 Q That's one way to look at it. Let me go back to my
18 question. I believe I'm poorly phrasing it. You've
19 convicted the defendant and now you've entered the second
20 phase. The judge is going to instruct you and the law
21 will instruct you, you need to have an open mind for both
22 sides, life imprisonment and also for the death penalty.
23 Based on your statement that you put in your answer number
24 68, "I do not believe the death penalty ever ought to be
25 imposed," would you have an open mind to consider the

1 death penalty? Or would you already have a preconceived
2 idea that life would be the appropriate sentence?

3 A Like I said, case by case. I'd have an open mind.

4 Q You would keep your mind open?

5 A Yes.

6 Q Until you heard what the state had to offer as to the
7 death penalty?

8 A Yeah.

9 Q Now, the -- assuming at the end of the case you've
10 been on the jury, and all 12 jurors have voted,
11 deliberated and voted -- because deliberation is a
12 process, it's expected you would give and take, discuss
13 other ideas. You may have an idea somebody else thinks
14 it's wrong, you all discuss, and that's the process. All
15 that vote comes down to death penalty is the appropriate
16 sentence. The judge will instruct you this. You must
17 find in that sentence a form is given to you, record your
18 name as being one of the members of the jury voting for
19 the death penalty. Would you be able to sign that form if
20 that was your verdict?

21 A Like I say, I have to see what the case was. I don't
22 know if that's a good answer for you or not.

23 Q I'm skipping past that. I'm only on, focusing on the
24 physical aspect, having to sign, putting your name on
25 something that's going to be put in a court document

1 voting on the death sentence. If you had the facts
2 appropriate, you decided on the death verdict, would that
3 in any way impair you?

4 A Probably give me heartburn, I guess.

5 Q Would it give you heartburn to the extent that you
6 couldn't fairly consider imposing the death penalty?

7 A I guess when it comes down to signing your name to
8 it, my name, it would be very tough. Rephrase what you
9 just said again, Bob. I'm sorry.

10 Q Would the fact that you knew you had to sign your
11 name to it interfere with your ability to consider the
12 death penalty? In other words, when you're back in the
13 jury room, you're saying, I don't think I want to go with
14 the death penalty idea because I'm going to have to sign
15 that form. I don't want that on record. I don't want the
16 judge putting that in the courthouse records. Is that
17 going to impair your ability as a juror?

18 A I'd have to think about it. Yeah.

19 Q We'll let you think about it. The judge will give
20 you time to think about it.

21 A It would be very difficult to do.

22 Q To sign the form?

23 A Yeah.

24 Q Perhaps it would help speed things up if the court
25 shared with him the law on this particular issue.

1 THE COURT: Mr. Cochran, the law is that if all 12
2 jurors vote to give the death penalty, then the law
3 requires all 12 jurors to sign a form, which the court
4 would give to the foreman and to the jury to do. The
5 question he's driving at, if all 12 jurors had voted to
6 give the death penalty, would you sign the form?

7 PROSPECTIVE JUROR: It would be very difficult
8 probably.

9 THE COURT: I understand it would be difficult.
10 Would you sign the form? That's the question.

11 PROSPECTIVE JUROR: I'd probably have difficulty. I
12 don't know how to answer it any other way. You need a yes
13 or no, is that what you're --

14 THE COURT: I need a yes or no. In other words,
15 we're at the end of the trial and when I give you the
16 charge, I give you a form, one piece of paper, it's got 12
17 lines on it. And I will tell the jury that if the jury
18 unanimously decides that the defendant should receive
19 death, and all 12 jurors are required to sign this form.

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: So, the question now, would you sign the
22 form? And I need a yes or no.

23 PROSPECTIVE JUROR: All right. I'd probably have a
24 hard time doing it. No would probably be the answer.

25 THE COURT: I understand you'd have a hard time.

1 With all 11 you could not sign the form?

2 PROSPECTIVE JUROR: Probably my best answer would be
3 no.

4 THE COURT: Okay. Thank you very much. Do you want
5 to ask --

6 MR. NETTLES: I do.

7 THE COURT: If you would, limit it to that particular
8 issue. Because that's the qualifying/unqualifying issue
9 right now. Let's --

10 MR. NETTLES: I understand.

11 Mr. Cochran, let me try to make this pretty succinct.
12 Let's be clear that the law presumes life. All right?
13 And the question is not whether you will sign it, as you
14 sit there right now.

15 A All right.

16 Q The question is not, will you sign it on this case?
17 The question is, if the government brought you a case,
18 okay, and I would hope that it -- everyone would. I'd
19 hope that it would be difficult for anybody to sign
20 something to kill somebody. But the question is if the
21 government brought you the right case and in that case you
22 felt that applying the facts to the law, and presuming
23 life, but just in this particular case or that particular
24 case, that the only appropriate punishment for that person
25 under those facts was death, in your heart you felt that,

1 I mean the government had brought you, had brought you
2 such evidence that there was no other conclusion you could
3 come to, do you follow me?

4 A Yes. .

5 Q That person, you sat there and wrestled with it
6 internally; but you're like, you know, this guy, he's the
7 reason we've got the death penalty. He's the reason we've
8 got it. And, you know, I feel like this is the person
9 that needs to be sentenced to death. For that person
10 could you sign your name sentencing to death?

11 A I'd still have difficulty signing for anybody in that
12 case.

13 Q Go ahead.

14 A No, you go ahead.

15 Q No, i was going to say, difficult, a lot of things
16 are difficult, trying these cases are difficult, but we do
17 them.

18 A Exactly.

19 Q And the question is, you know, difficult is different
20 from never.

21 A Uh-huh.

22 Q My question is, are you saying you could never sign
23 one or it's something you could do, but it would require a
24 lot of soul searching and the right case?

25 A Yeah. The latter. It would be extremely difficult

1 to do.

2 Q But you could?

3 A It still -- it would be hard to sign.

4 Q I understand that. But what's the difference between
5 hard to sign and in the case where you felt it was the
6 right punishment, saying, even though I think that's the
7 right thing, I just can't sign it?

8 A I guess it goes back to what I said earlier, I just
9 feel like that in a violent case death is too easy. I
10 feel like having to suffer is worse than that, than the
11 instant -- I don't know if that, answers.

12 THE COURT: Let me intercede just a second.

13 MR. NETTLES: Okay.

14 THE COURT: Mr. Cochran, in this particular instance
15 the lawyers and I will ask you about, all 12 jurors have
16 made the decision that the defendant should receive death.
17 Okay?

18 A Yeah.

19 Q That's over. All 12 of you have decided, we think
20 the defendant should receive death. Okay? Now, there's a
21 form required by the law that all 12 jurors have to sign
22 that form. So, the decision on death has been made. The
23 question is, after the jury has voted unanimously for
24 death, then would you sign the form? And I need a yes or
25 no.

1 A Okay. Like I said --

2 Q And I know it's hard. I know it's difficult, but I
3 need a yes or no.

4 A I'd probably say no --

5 Q Okay. Thank you very much.

6 A -- if that helps.

7 THE COURT: Thank you very much. I'm going to find
8 the juror unqualified. I don't think he could comply with
9 the law and sign the form.

10 Thank you, Mr. Cochran. I want to thank you for your
11 honesty.

12 PROSPECTIVE JUROR: I don't mean to be difficult.

13 THE COURT: I understand, and I sympathize with you.
14 I understand where you're coming from. It's not that
15 you're wrong, the law requires you do it, if you couldn't,
16 I can't qualify you for the jury. Okay? Thank you very
17 much.

18 (prospective juror excused.)

19 THE COURT: All right. Bring us Kyle Browning,
20 please. For the record, juror number 389 did not appear
21 for roll call Monday. He was in bed with the flu. And I
22 instructed the court, I mean the clerk, at that time to
23 draw him on a panel and tell him to report at the
24 appropriate time. He has reported this morning. He is
25 still sick with the flu. I am going to excuse him

1 primarily so he doesn't spread the flu over the rest of
2 the jurors as well as this courtroom. Does anybody have
3 any objection to that?

4 MS. STROM: No objection from the state.

5 MR. MAULDIN: No objection.

6 THE COURT: Thank you very much. Mr. Browning how
7 you doing today?

8 PROSPECTIVE JUROR: Fine, sir. Thank you.

9 KYLE BROWNING, (white
10 male), having been previously duly sworn, testified as
11 follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Do you remember filling out the questionnaire last
15 month or the previous month?

16 A Yes, sir.

17 Q All right. When you filled it out, was it accurate?

18 A Let's see --

19 Q When you filled it out -- you don't need to look at
20 it right now.

21 A Oh, yes, sir. Yes, sir.

22 Q When you filled it out, it was accurate to the best
23 of your ability; is that correct?

24 A Yes, sir.

25 Q All right. Would you please raise your right hand?

1 (Court administers oath.)

2 I May have already done that. Apologize if I did it
3 twice.

4 A That's fine.

5 Q Do you have any physical or mental problems that
6 would prevent you from being on this jury?

7 A No, sir.

8 Q Do you have any hardships that would prevent you from
9 being on this jury?

10 A No, sir.

11 Q This case is the State versus Charles Christopher
12 Williams, and he's charged with murder and kidnapping.
13 And this occurred on September 3 2003 at the Bi-Lo here in
14 Greenville. Have you read in the newspaper, seen anything
15 or heard anything on TV or radio talking about the case?

16 A Not recently. No, sir.

17 Q How about at the time it occurred?

18 A Worked right down the road from where it happened. I
19 saw the copters and turned on the TV.

20 Q You saw it at the time?

21 A Yes, sir.

22 Q What facts -- what do you remember seeing on
23 television?

24 A I remember it was a hostage situation, the SWAT team
25 had been called in.

- 1 Q Do you remember anything else?
- 2 A I remember the, after it happened, the fact of it
3 being a murder after it happened.
- 4 Q Did you read that in the paper?
- 5 A To be honest with you, I'm not sure if I read it or
6 whether I seen it on the news that night or what.
- 7 Q Let me ask you this. Based upon what you saw on
8 television and you read in the paper, have you formed or
9 expressed an opinion as to the defendant's innocence or
10 guilt?
- 11 A No, sir.
- 12 Q Can you set aside what you saw on TV and what you
13 read in the paper and listen to the facts from the jury --
14 from the witness stand in this courtroom?
- 15 A Yes, sir. Absolutely.
- 16 Q Can you base your decision on what you hear in the
17 courtroom, not what you previously saw on television?
- 18 A Yes, sir. Absolutely.
- 19 Q All right. Do you know the victim, Maranda Williams?
- 20 A No, sir.
- 21 Q Do you know the defendant, Charles Christopher
22 Williams, who sits to my right in the blue sweater?
- 23 A No, sir.
- 24 Q Do you know either of the attorneys, Mr. Mauldin or
25 Mr. Nettles, who sits with Mr. Williams?

1 A No, sir.

2 Q Do you know the solicitor or anyone in the
3 solicitor's office?

4 A No, sir.

5 Q The solicitor is the district attorney, state's
6 attorney, prosecuting attorney in South Carolina.

7 A No, sir.

8 Q I want to give you a list of witnesses. Can you look
9 at that list and tell me if you recognize any names on
10 that list?

11 A To the best of my knowledge I don't recognize any of
12 the names.

13 Q Let me give you a second list. Do you recognize any
14 of the names on that list?

15 A No, sir.

16 Q Thank you, sir. Mr. Browning, I'm going to read a
17 question to you. I'd like for you to respond to it if you
18 could please, sir.

19 A Yes, sir.

20 Q In this case the defendant is black and the victim is
21 white. It is undisputed the black defendant and the white
22 victim engaged in interracial dating. Would the fact that
23 the defendant and the victim engaged in interracial dating
24 make it difficult for you to be fair to either the state
25 or defendant?

1 A No, sir.

2 Q If you would, Mr. Browning, would you take your
3 questionnaire and turn to page six, please, sir? Question
4 number 37.

5 A Yes, sir.

6 Q You say you have a close friend who is a Simpsonville
7 police officer. First of all, who is that?

8 A Matt Smith.

9 Q Did you grow up with him or how do you know him?

10 A I knew him through work. We started working together
11 a couple of years ago. He was in the Marines and we
12 developed a close friendship. I think he got called back
13 up; and after he got out, he became a police officer.
14 Been doing that now close to a year I think.

15 Q How often do you see him?

16 A Sometimes once a week, but usually less frequently.
17 Because I live in Simpsonville as well, sometimes when he
18 gets off, he'll stop by just come sit at the house a
19 little bit.

20 Q Have you ever had a discussion with him about his
21 viewpoints on law enforcement?

22 A No, sir, not really. Not as far as viewpoints. Just
23 tells me some stories and things like that, as far as
24 things he seen.

25 Q Are they funny stories, gruesome stories? What kind

1 of things has he told you?

2 A Just stuff, Simpsonville is not the small innocent
3 town we think it is.

4 Q The fact he's a police officer, would that interfere
5 with your jury duty here?

6 A No, sir.

7 Q You think you could set that aside?

8 A Oh, Yes, sir.

9 Q And question number 38, who works at Perry
10 correctional institution that you know?

11 A Well, my mother-in-law is a nurse in the Navy
12 Reserves, she's worked at Perry Correctional because she's
13 a psychiatric nurse I think, works mental health.

14 Q Works there now?

15 A No, sir. Doesn't work there now.

16 Q How long ago?

17 A I been with my wife now seven years. I don't
18 remember a time since we were together. I think it was
19 before we were together since she worked there.

20 Q On page 7, question number 46, the question "have you
21 known anyone who died resulting from a violent act?"

22 A Yes, sir.

23 Q Tell me who you know and what occurred.

24 A A girl I dated back in high school, her uncle down in
25 Moonville was plowing his field and was shot in the back

1 by a neighbor and died from that. But that was before I
2 dated her. I just kind of knew after the fact.

3 Q You weren't involved in it at all?

4 A No, sir.

5 Q Other than you just had knowledge of it?

6 A I just had knowledge of it. Yes, sir.

7 Q Question number 59, "do you have a close friend or
8 member of your family or yourself who has abused alcohol?
9 Who in the family?

10 A You said 59?

11 Q Yes, sir.

12 A My grandfather was an alcoholic, but he died before I
13 was born.

14 Q And someone just told you?

15 A Yes, sir. It definitely changed the way my Mom views
16 alcohol.

17 Q All right. Question number 64 on page 10. You
18 stated in that answer, question says, "Briefly describe
19 your attitudes and beliefs concerning capital punishment."

20 "Depending upon the facts, I think someone convicted
21 of first-degree murder could face the death penalty." Is
22 that still your view here today?

23 A Yes, sir. I don't think it should be a blanket-type
24 deal. I think there should be circumstances surrounding
25 it, whether the crime justifies the death penalty.

1 Q And how about number 65, what's your opinion, you
2 said, "Somewhat favor." Is that correct?

3 A Yes, sir.

4 Q Then in number 68 on the next page. You say, "I
5 believe the death penalty is the appropriate form of
6 punishment in some murder cases. I could return a verdict
7 of death if I believe it was warranted in a particular
8 case, depending upon the evidence, the law, and what I've
9 learned about the defendant." Is that still your opinion
10 here today?

11 A Yes, sir.

12 Q All right. I'm going to explain to you the process,
13 what we're attempting to do or going to do. As I said
14 earlier, the defendant is charged with murder and
15 kidnapping. And the trial is broken up into two parts or
16 two phases. I want to talk to you about the first part of
17 the trial or the first phase, and that's commonly referred
18 to as the guilt phase.

19 Now, in the first phase the state will be presenting
20 facts concerning the crime. The state's obligation and
21 responsibility is to prove the defendant guilty beyond a
22 reasonable doubt. The defendant does not have to offer
23 any testimony. The defendant never has to prove himself
24 innocent. It's the state's obligation to prove him
25 guilty. That's the first phase.

1 Let's assume that the jury believes that the state
2 has proven their case and all 12 jurors have decided that
3 the defendant was guilty. At that point in time he is
4 guilty of murder and kidnapping. The jury has made that
5 decision. That is part of the -- that part of the trial
6 is over. Okay?

7 Now, the second part is referred to as the penalty
8 phase. In the penalty phase the jury has to decide
9 whether to give the defendant life or death; and that's
10 the jury's decision, no one else but the jury. The court
11 is obligated to follow the jury's decision. Do you
12 understand?

13 A Yes, sir.

14 Q Now, when I say life without parole, I mean life
15 without parole, literally what it says. The defendant
16 will die in jail. He's never eligible for parole, do you
17 understand?

18 A Yes, sir.

19 Q All right. In the second phase or the penalty phase
20 the state will produce evidence of aggravating
21 circumstances. That may be facts about the murder and the
22 kidnapping, it may be facts about the individual. The
23 defendant has the opportunity to offer what is referred to
24 as mitigating circumstances. Mitigating circumstances
25 will be reasons that the defendant believes that he should

1 receive life in prison.

2 Now, the state is obligated to prove the aggravating
3 circumstances beyond a reasonable doubt. Now, my question
4 to you, before you made up your mind as for death or life,
5 would you consider all the mitigating circumstances and
6 all the aggravating circumstances before you made up your
7 mind?

8 A Yes, sir. I'd approach it with an open mind.

9 Q Let's assume the defendant does not offer any
10 mitigating circumstances. He is not required under the
11 law to do that. Could you consider all the aggravating
12 circumstances and all the facts that came out in the first
13 phase of the trial before you made a decision for life or
14 death?

15 A Yes, sir.

16 Q All right. Do you think you could be fair and
17 impartial to both the state and defendant?

18 A Yes, sir.

19 Q Do you know of any personal reasons as to why you
20 could not serve on this jury?

21 A No, sir.

22 Q Who's next? Mr. Mauldin.

23 BY MR. MAULDIN:

24 Q Mr. Browning, My name is John Mauldin, the public
25 defender for Greenville County. And I along with Bill

1 Nettles represent Chris in this case. I think the first
2 thing should be cleared up, these questions are not about
3 this case because there has been no evidence. We're just
4 talking about kind of in a vacuum?

5 A Yes, sir.

6 Q I want to ask you a few follow-up questions from the
7 questionnaire that the judge -- the question I had, you
8 work for C. H. Robinson, and you're in logistics sales.
9 What kind of business is C. H. Robinson?

10 A I guess we're called third-party logistics. That's a
11 fancy term for saying basically we're a freight broker.
12 We have customers that give us freight, ranging from over
13 the road, truck, to rail, to ocean freight, to air
14 Freight. We're responsible for finding the carrier,
15 setting up tracking. Basically the customer gives us
16 their information to load, and then we handle everything
17 else for them.

18 Q So, it's a general commercial business. It's not
19 connected to law enforcement or --

20 A No, sir. Yes, sir. It's a general commercial
21 business.

22 Q You also in the questionnaire said, question number
23 68, the question was, "Have you ever discussed your
24 opinion of the death penalty with anyone?"

25 And your answer, "I will discuss it in a

1 conversation."

2 What I want to do for the next few minutes is have a
3 conversation. Let's just assume we're having it instead
4 of you being in a witness box. Let's just talk about your
5 views on capital punishment. How do you feel? What are
6 your opinions on capital punishment?

7 A Honestly, I don't oppose the death penalty. I think
8 in some situations it's warranted and it's justified. It
9 can't just be a blanket. You can't say, "well, this
10 person is found guilty, so, yeah they have to be sentenced
11 to death." I think a lot of it also has to go around the
12 facts of the case, the facts preceding things. It's got
13 to be an individual basis rather than just a blanket-type
14 deal.

15 Q All right. Can you -- if you want, if you were asked
16 to give a reason for having capital punishment in our
17 justice system, what would your reason be?

18 MR. ARIAIL: Objection. He doesn't need to have a
19 reason.

20 THE COURT: I sustain the objection.

21 MR. MAULDIN: Your Honor, if i could, if he has an
22 opinion as to the reason, I think he should be allowed to
23 express it.

24 THE COURT: Ask him about his opinion.

25 MR. MAULDIN: All right.

1 Q If you were asked your opinion as to the reason for
2 capital punishment, what would your opinion be?

3 A I think sometimes it's justified. If taking a
4 person's life in cold blood, per se, really just
5 maliciously hurt someone, hurt their family, I think. It
6 should be used as a deterrent to other crimes. Is it
7 always successful? I don't know that it's proven it is.
8 But at the same time, I think it's something that we must
9 have. I mean, any little bit helps. If it works as a
10 deterrent in just one case and saves one person's life,
11 then obviously it's effective.

12 Q All right. Now, the judge described for you how the
13 system in South Carolina has two separate trials. The
14 first trial phase involves the facts and circumstances,
15 was it intentional, vicious, intentional so forth? That
16 kind of information comes out in the first trial. And
17 there is deliberation. And if the jury finds the
18 defendant in that case guilty of murder, only then would
19 there be a second trial.

20 So, in order to determine your view with regard to
21 these possible penalties, we need to assume or kind of put
22 the cart before the horse that there has been a conviction
23 of murder. The judge would charge you that it was
24 intentional or premeditated, malice aforethought, murder.
25 And then you go into the second phase. And the question I

1 got, assuming you had found a person beyond a reasonable
2 doubt guilty, would you go into that second phase leaning
3 one way or the other or predetermined one way or the other
4 about how that person should be penalized, death penalty
5 or life imprisonment without parole?

6 A No, sir. I'd have no predetermined.

7 Q Even though he was guilty of murder?

8 THE COURT: Mr. Mauldin, he already --

9 MR. MAULDIN: Yes, sir.

10 THE COURT: -- answered the question, don't ask it
11 again and again and again. He answered it.

12 MR. MAULDIN: At that second phase, Mr. Browning, the
13 jury would be brought by the prosecutor what is called the
14 aggravating evidence. The defendant, whoever that
15 defendant might be, would be brought -- would bring to the
16 jury mitigating information; but there's no requirement
17 that he do that. And my question is, if you were in the
18 second phase and the prosecutor brought you information
19 that made it worse, that justified their request for
20 death; and the defendant brought nothing, would you give
21 meaningful consideration to a life sentence under those
22 circumstances?

23 A Just because the defense didn't have anything, say
24 the prosecution brings something, the defense doesn't have
25 anything, I wouldn't lean in favor of the prosecution just

1 because they brought something and the defense did not.
2 You still have to weigh what the prosecution brings as far
3 as everything else that's gone on as well. I wouldn't
4 just form an opinion because they've got something you
5 don't.

6 Q All right. I have two other questions.

7 The first is, during the period of deliberation for
8 the penalty you'll have, and let's assume for a moment you
9 had been chosen as a juror and you were in the jury room
10 in this deliberation and there were 12 people; and those
11 12 jurors had deliberated fully, discussed everything
12 about the case, and it was time to vote. Plenty of time,
13 everybody had had their say. And the jury voted, let's
14 say eleven for one penalty and one for the other penalty,
15 whichever it was, and you were that one. The question is,
16 would you change your vote in order to side with the heavy
17 majority?

18 A Absolutely not.

19 Q Absolutely not. And, conversely, if you were one of
20 the eleven and there was one person on the other side or
21 two, a small minority, would you attempt to -- and we
22 understand, you're deliberating; but would you attempt to
23 force those jurors to release their view and come to the
24 majority?

25 A Wouldn't try to force, try to explain your view over

1 again and the facts. You never, like, as far as force by
2 threat or say, "come on, we're all ready to get out of
3 here." No, everybody is entitled to their opinion until
4 you form a majority to hash it out and figure out what's
5 right.

6 Q Last question is, I see in your questionnaire that
7 your mother-in-law is involved in mental health. Is that
8 right?

9 A Yes, sir.

10 Q I want to ask you a couple of questions about your
11 view on mental health in general. Regarding mental
12 illness or mental health, can you give us your general
13 view about that subject?

14 A My wife is a psychiatric major, I guess. I used to
15 hear about it all the time. As far as mental health, I
16 mean, in one instance I want to believe I'm a strong
17 willed person; I believe whatever is coming at you, you
18 can defeat yourself. On the other hand, there are other
19 cases, just hearing about others things, that there's
20 medicines certain people need to be taking because it's
21 considered disease in some cases.

22 I'm not strong on one side or the other, you know. I
23 think sometimes it's a cop out. It's an easy way out for
24 some people to say, you know, I've got this, I'm
25 depressed, rather than just pulling yourself up and

1 getting over it. On the other hand, some people can't
2 combat it, some people need some medication or counseling,
3 to help. Not everybody is strong enough to defeat
4 something that's going on. There's a lot of internal
5 struggles.

6 And I guess it's a -- it's just a case by case type
7 deal, whether or not, you know, it's something that's a
8 true disease or whether or not someone's using it to get
9 out of some work or whatever it might be that they use it
10 for.

11 Q In your determination -- final question. In your
12 determination of the appropriate penalty, whichever it
13 was, would you be able to give meaningful consideration to
14 the subject of mental health or mental illness as a
15 mitigating factor?

16 A Yes, sir. I think just depending on what the facts
17 are, just the surrounding, I wouldn't rule it out,
18 absolutely not; but I'll hear it and form my opinion about
19 it.

20 Q All right. Thank you.

21 THE COURT: Solicitor?

22 BY MR. ARIAIL:

23 Q Mr. Browning, my name is Bob Ariail and I'm the, as
24 the judge said, the solicitor. That's an old-time term
25 for the district attorney. The new term is district

1 attorney. But my responsibility is to represent the state
2 in the 13th circuit, which is Greenville and Pickens
3 counties. And on this case Betty Strom, my deputy, will
4 be assisting me; and one of my assistants, Mark Moyer.
5 Law, I have no questions about any of that. You answered
6 all my questions. My question is, do I know your name
7 because you played football at Clemson?

8 A No, sir. I used to get a lot of his Emails, though.
9 I started in '99. He came in from 2000, 2001. He came
10 from Union. I came from Mauldin, so I used to get a lot
11 of his Emails.

12 Q Thank you.

13 THE COURT: Any motions?

14 MR. ARIAIL: None from the state.

15 THE COURT: Mr. Browning, we're going to draw a panel
16 of 43 jurors. You're now part of that panel. The bailiff
17 has a slip of paper with a phone number on it. Call this
18 phone number tonight. There will be a message telling you
19 to call in the following night or tell you when to come
20 in. Call in each night and follow the instruction on the
21 message. Don't talk to anybody about the case, read
22 anything in the paper about the case, don't watch anything
23 on television. All right?

24 A Yes, sir.

25 Q Have a good day.

1 THE COURT: Thank You. Have you all looked at
2 Mr. Mullinax' questionnaire?

3 MR. MAULDIN: We'll take an opportunity to do that,
4 judge.

5 THE COURT: Okay.

6 MR. MAULDIN: Any particular reference you making,
7 judge?

8 THE COURT: Yeah, 64 and 68.

9 (Prospective juror Mullinax enters courtroom.)

10 JESSE S. MULLINAX, (white
11 male), having been previously duly sworn, testified as
12 follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Mullinax, you filled out this questionnaire
16 either last month or the previous month. Do you remember?

17 A Yes, sir.

18 Q When you filled it out, was it accurate at the time
19 you filled it out?

20 A Yes, sir.

21 Q Will you take it, please, sir? Would you turn to
22 page 11 on the questionnaire, please, sir? Just pull it
23 back. Do you have question 68?

24 A Yes, sir.

25 Q "With reference to the death penalty, which of the

1 following statements would best describe your opinion?"

2 You say, "I believe the death penalty is the
3 appropriate form of punishment in all murder cases." Is
4 that still your opinion today?

5 A Yes, sir.

6 Q Question number 67, "Have you ever discussed your
7 opinions about the death penalty?"

8 You say, "I have argued that it is fair."

9 A Yes, sir.

10 Q What is your opinion about the death penalty?

11 A It's fair any time that murder can be proven.

12 Q Okay. All right. Would you go over to page 10,
13 question 64. And it says "Briefly describe your attitudes
14 and beliefs concerning capital punishment."

15 And you said, "if you --

16 A Wrongfully.

17 Q Were what? "If you wrongfully take a life for any
18 reason you deserve to have yours taken from you." Is that
19 correct? Is that still your --

20 A Yes, sir.

21 Q -- opinion today?

22 A Yes, sir.

23 Q Question 65, "What is your opinion about the death
24 penalty?"

25 You say you strongly favor?

1 A Yes, sir.

2 Q When you make that statement, I guess it's commonly
3 referred to as an eye for an eye. Is that correct?

4 A Yes, sir.

5 Q So, you feel like anyone that kills someone else,
6 their life should be taken. Is that correct?

7 A Yes, sir. I don't believe in the insanity or
8 anything like that.

9 Q We're not talking about insanity. You believe anyone
10 that kills anyone else should ever receive life
11 imprisonment?

12 A If it's in a wrongful nature, if they killed them
13 with the purpose, the intent of killing them, then they
14 should have their life taken from them, yes.

15 Q Would you ever consider life imprisonment under those
16 circumstances you just described to the court?

17 A If they wrongfully murder the person and had intent.

18 Q You would not consider life?

19 A No. They deserve to go.

20 Q Any questions from -- who's turn it is?

21 MR. ARIAIL: I just have one.

22 THE COURT: Okay.

23 Q Do you understand you may not, that life imprisonment
24 in this state means exactly that, that the defendant would
25 go to prison for the rest of his life, never to come out?

1 All right: So, under those circumstances knowing that
2 fact that a defendant, when you're talking about no
3 parole, no getting out on probation, the only way he's
4 coming out, he's coming out when he dies. That's what
5 life imprisonment means in this state.

6 Knowing that, would you consider that as an option
7 for sentence in a murder case where a defendant had been
8 convicted of murder and the murder was, murder in this
9 state is the intentional killing with malice. So,
10 assuming you have intentional killing with malice, because
11 that's what the state has to prove, knowing that the
12 penalty -- life imprisonment means life imprisonment
13 without parole, serving day-to-day, be there forever --
14 would that be a viable option for you to consider if you
15 want a jury to determine which punishment would be
16 appropriate?

17 A No, sir. I don't think that it would be.

18 Q Okay.

19 A Because the laws continuously change.

20 Q I'm sorry?

21 A The laws continuously change.

22 THE COURT: Does anybody want to be heard?

23 MR. MAULDIN: Yes, sir.

24 THE COURT: You have a motion? The defendant has a
25 motion?

1 MR. MAULDIN: Yes, sir.

2 THE COURT: Does the state want to be heard?

3 MR. ARIAIL: No.

4 THE COURT: Mr. Mullinax, based upon what we're doing
5 here, I'm going to find you don't qualify for this jury.
6 Thank you for being here. Your views on death penalty do
7 not necessarily make you incorrect, just make you
8 unqualified for this particular jury, not another jury,
9 but this particular jury. I want to thank you for being
10 here. If you would give me the questionnaire back,
11 please, sir.

12 A Thank you so very much.

13 THE COURT: Mrs. Dixon, please raise your right hand.

14 STEPHANIE DIXON, (white
15 female), having been previously duly sworn, testified as
16 follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Thank you, ma'am. We're going to ask you certain
20 questions today. I'm going to ask you some questions and
21 the attorneys will ask you some questions. There's not
22 necessarily any right or wrong answer. Okay? We're just
23 going to ask you your viewpoint on certain issues. Just
24 answer those questions truthfully. Can you do that?

25 A Yes, sir.

1 Q All right. Mrs. Dixon, you filled out a
2 questionnaire --

3 A Yes, sir.

4 Q -- either last month or the month before?

5 A Yes, sir.

6 Q Do you recall that?

7 A Yes, sir.

8 Q When you filled it out, was it accurate?

9 A Yes, sir.

10 Q Would you mind taking the form, please, ma'am? And
11 could you turn to page eight please, ma'am, and question
12 number, I believe 57.

13 A Yes, sir.

14 Q At the bottom, where you talk about describing --
15 cases caught your attention in South Carolina, you have
16 "Man killing girlfriend at Bi-Lo."

17 A Uh-huh.

18 Q What do you mean about "that situation"?

19 A I remember that day I was getting my car cleaned at
20 Nicks car wash on Haywood Road and I was driving that way
21 and I remember seeing all the cops and the helicopters and
22 the road blocked off. I think that's the biggest thing,
23 because I was actually driving through that area when it
24 was going on.

25 I previously had some problems with an ex-boyfriend.

1 I was dating a new man at the time who is now my husband.
2 He called me kind of joking a little bit, "You're not in
3 Bi-Lo?" Because I had some domestic disputes with the
4 ex-boyfriend. I think that's why that rings a bell.

5 Q Did you see anything on television on it?

6 A No. Well, maybe briefly. There's not a lot that I
7 recall about it.

8 Q Have you read anything in the paper about it?

9 A No, sir.

10 Q Have you heard anybody talking about it?

11 A No, sir.

12 Q This is a case where the state has charged Charles
13 Christopher Williams with murder and kidnapping. And it
14 occurred on September 3 2003 at the Bi-Lo. Okay?

15 A Uh-huh.

16 Q Other than what you told me, do you remember hearing
17 anything else about the case?

18 A All I knew is that it was a young man and his
19 girlfriend. This is just what I'm assuming that it is, a
20 young man and his girlfriend, and there had been problems
21 before where she tried to get a restraining order,
22 something to that effect. Next thing you know, he shows
23 up at Bi-Lo and kills her. That's about all I can tell
24 you.

25 Q In your domestic difficulty with your prior

1 boyfriend, did you get a restraining order against him?

2 Did you have any difficulty?

3 A Yes. In fact, Mark Moyer, I remember speaking with
4 him about that as well. But, Yes, I had been dating a guy
5 for about five years and he had had a drinking problem and
6 I had some problems with him, finally left him, and he
7 came back one night and actually broke into my apartment.
8 That's when I called the cops.

9 I asked for a restraining order, but they told me I
10 had to have so many incidents or reports within a certain
11 period of time, that I could not get a restraining order
12 unless I had those documented cases. I didn't qualify for
13 a restraining order, but I did ask about that.

14 Q Was he charged with a crime?

15 A I think he was charged with breaking and entering.

16 Q Did Mark Moyer handle that case for the solicitor's
17 office?

18 A Yes.

19 Q What happened to that case?

20 A I know we did not -- it was settled out of court.

21 Q It never went to court?

22 A No, not that I'm aware of.

23 Q All right. Do you know Mr. Moyer from any other
24 source other than being involved in that case?

25 A No. That was it, when I had --

1 Q Have you seen him since?

2 A No. Not until now, or yesterday -- or Monday, was
3 it?

4 Q All right. Based upon what you saw and your prior
5 experience with your ex-boyfriend and what you saw and
6 heard, know about this particular case, have you formed an
7 opinion or expressed an opinion as to the innocence or
8 guilt of the defendant, Charles Christopher Williams?

9 A I don't feel that I know enough to make that
10 decision. I don't know any circumstances. Everything
11 that I know is hearsay.

12 Q Well, based on the hearsay, have you formed an
13 opinion as to innocence or guilt?

14 A Seems to me, he went in, killed his girlfriend, seems
15 to me he would be guilty.

16 Q Based on the hearsay, as you would call it, have you
17 formed the opinion he is guilty? Is that a correct
18 statement?

19 A Yes, sir.

20 Q Let me ask you one more question. Would you be able
21 to set that aside and listen to the testimony here in the
22 courtroom?

23 A Yes, sir.

24 Q And independently reach a decision as to the
25 defendant's innocence or guilt?

1 A Yes, sir.

2 Q You think you can set that prior opinion aside?

3 A Yes, sir.

4 Q Let me tell you the state's responsibility is to find
5 the defendant guilty beyond a reasonable doubt from facts
6 that are presented in the courtroom and evidence presented
7 in the courtroom. Do you understand?

8 A Yes, sir.

9 Q But you think you can put that out of your mind --

10 A Uh-huh.

11 Q -- and listen to what occurred in the courtroom?

12 A Definitely.

13 Q All right. Let me direct you, if you would -- if you
14 would, go to page 10 in your questionnaire. Question 64.

15 A Oh, page 10.

16 Q Page 10, question 64. It's front and back. So, it
17 gets confusing.

18 A I know. And it's upside down.

19 Q And it gets very confusing. I guess the clerk's
20 saving paper by putting it on both sides. You answered
21 question four, and the question says, "Briefly describe
22 your attitudes and beliefs concerning capital punishment."

23 Says, "I am a believer of the death penalty. I
24 believe in an eye for an eye." Is that still your opinion
25 today?

1 A Yes, sir. Of course, that does depend on, you know,
2 everything that is accounted for, which I'm not aware of
3 in this case. But, Yes. I feel if somebody does take the
4 life of somebody knowingly, then Yes, sir.

5 Q How about number 65, where you say, "What is your
6 opinion of the death penalty?"

7 You strongly favor, is that still your opinion?

8 A I would say somewhat favor.

9 Q So, you would say somewhat favor, not strongly?

10 A Somewhat.

11 Q You would change it to somewhat; is that correct?

12 A Yes, sir.

13 Q Looking at question 68, on the next page, page 11.
14 Flip it over.

15 A Yes, sir.

16 Q Question with reference to the death penalty, "Which
17 of the following statements best represents your opinion?

18 You say, "I believe the death penalty is the
19 appropriate form of punishment in some murder cases. I
20 could return a verdict of death if I believe it was
21 warranted in a particular case, depending upon the
22 evidence and the law and what I learned about the
23 defendant." Is that still your opinion here today?

24 A Yes, sir.

25 Q All right. I'm going to try to explain to you

1 briefly the process we're going to go through in this
2 particular case. The case is divided up into two parts.
3 The first part is referred to as the guilt phase. In the
4 guilt phase the state would be required to prove the
5 defendant guilty beyond a reasonable doubt of murder and
6 kidnapping.

7 Assuming the jury agrees that the state has proven
8 the defendant guilty of murder and kidnapping, you would
9 go to the second phase, which is referred to as the
10 penalty phase. Now, when you get to the second phase, the
11 decision has been made by the jury that there was an
12 intentional killing. They use the words "intentional."
13 Okay? Murder is an intentional killing. The law says
14 with malice aforethought, do you understand?

15 A Uh-huh.

16 Q That decision has been made. Then you go to the
17 second phase, which is referred to as the penalty phase.
18 And the purpose of the penalty phase is for the jury to
19 decide whether the defendant gets life imprisonment or
20 death. When I say life imprisonment, I mean what the
21 words say. He will die in prison. He's not eligible for
22 parole. Do you understand?

23 A Yes, sir.

24 Q With your beliefs concerning the death penalty and
25 with you on the jury having made the decision that this

1 was an intentional killing, could you give meaningful
2 consideration to life imprisonment in the second phase of
3 the trial?

4 A Yes, sir.

5 Q All right. Why do you -- do you understand that
6 when -- your belief is an eye for an eye?

7 A I Just don't feel like I know all the facts in order
8 to make that final decision.

9 Q You would have heard enough facts in the first case
10 to decide he was guilty beyond a reasonable doubt.

11 A Right.

12 Q And you're entitled to consider those facts in the
13 second phase. The question, would all those facts in the
14 first case predispose you to the death penalty because of
15 your belief in the death penalty?

16 A I would believe so. Yes, sir.

17 Q All right. You don't think you could consider all
18 the factors that were offered in the second phase? And
19 let me tell you what factors would be offered. The state
20 would offer aggravating circumstances, additional reasons
21 the defendant should receive death. The defendant will
22 generally offer what is referred to as mitigating
23 circumstances. Mitigating circumstances would be
24 circumstances surrounding the crime or about the
25 individual person that would indicate and persuade the

1 jury that the jury should give life without parole. Do
2 you understand?

3 A Uh-huh.

4 Q Now, could you consider all those aggravating
5 circumstances and those mitigating circumstances in the
6 second phase before you made a decision? Or is your view
7 on the death penalty so strong that you would still give
8 death and not consider the aggravating and mitigating
9 circumstances? Which would it be?

10 A I would consider the circumstances you're speaking
11 of.

12 Q All right. That -- let's assume that the defendant
13 does not offer any testimony in the first phase or the
14 second phase. The defendant never has to prove himself
15 innocent, nor is he required to offer any testimony. The
16 only thing you'd hear is what the state produces in the
17 first phase, the guilty phase, and whatever the state
18 introduced in the second phase, the penalty phase. In
19 that situation would you be able to give meaningful
20 consideration to life without parole?

21 A Could you repeat that again? I'm sorry.

22 Q Let's assume that the defendant, that the defendant
23 does not offer any mitigating circumstances --

24 A Okay.

25 Q -- as I explained to you previously.

1 A Right.

2 Q And all you've heard is what the state produced in
3 the first phase, the guilt phase. And in the second
4 phase, where the aggravating circumstances were
5 introduced, under that situation, would you be able to
6 give any meaningful consideration to life?

7 A I just don't think I'm understanding you. I am so
8 sorry.

9 THE COURT: Okay. I'm going to give whoever's turn
10 it is a shot at it.

11 BY MR. NETTLES:

12 Q How you doing, Miss Dixon? I guess you figured out,
13 based on where I'm sitting, I am one of Chris's lawyers.

14 A Yes, sir.

15 Q And I guess -- do you want me to just limit it to
16 this, Your Honor?

17 THE COURT: And if you want to go into the pretrial
18 publicity.

19 MR. NETTLES: Yes, sir.

20 Q I guess what we're kind of after is sometimes we get
21 the sense that this is not a referendum, or this
22 questioning is not to determine if you are a fair person.
23 You know, very few people who come in here are people you
24 would just consider across the board as being unfair. Do
25 you see what I'm saying? So, when we ask, can you be

1 fair, the question is, if you think about it, nobody is
2 going to sit up here and say, "I'm just not a fair guy."
3 people just don't say that. The question is this. Okay?

4 You've been kind enough to share this with us, and a
5 lot of information in here and some of it is very
6 personal, and I recognize that, and we appreciate that.
7 And you've been kind enough to share with us your beliefs
8 on a very personal issue, that's the death penalty.

9 A Uh-huh.

10 Q And, more importantly, you've been kind enough to
11 share with us a very traumatic experience that happened in
12 your life. I got to imagine that an ex-boyfriend breaking
13 into your house -- is that what he did?

14 A (nods head up and down.)

15 Q Was something that profoundly affected you
16 emotionally?

17 A Yes, sir.

18 Q Because there's few places in this world -- it's one
19 thing to feel safe at the mall, whenever you come home,
20 close the door, you're supposed to be able to be safe,
21 right?

22 A Right.

23 Q We also have safe workplace laws in this country.
24 So, the question is not whether you're a fair person, the
25 question is -- you understand because of the publicity,

1 and you shared with us, you know, that Chris had been
2 arrested for, involving an ex-girlfriend -- you can
3 understand the concern we've got. Because it's kind of
4 something based on what you've told us, you know, you've
5 got some powerful experiences with. And you already know
6 that because you've read it. Okay?

7 And it seems to us that Chris took kind of your
8 fear -- or is accused of taking your fear one step
9 further. Do you follow me? I mean, you had to have been
10 concerned that that guy is going to kill you?

11 A Yes.

12 Q I mean, that was the basis of your concern.

13 A Uh-huh.

14 Q And so the question is not whether you're a fair
15 person. The question is, and giving your views on the
16 death penalty -- okay? And you need to know we been doing
17 this since Monday and intelligent people fall on either
18 side of this. Doesn't have anything to do with
19 intelligence, it just has to do with the way people feel
20 about things.

21 Given your views on the death penalty and given the
22 experience and how it's closely related to this case, do
23 you believe in your heart of hearts, that there's ever any
24 way that if you had convicted someone under these facts,
25 as you've heard in the media, of murder -- let's be clear,

1 murder is not accident, it's not you're insane, it's
2 murder. And there's got to be another circumstance, like
3 armed robbery, burglary, okay? In this case it's
4 kidnapping.

5 If you had convicted somebody of murder and another
6 one of those very serious experiences, given what you
7 heard about this case and the experiences you bring to
8 this case, I mean, do you really think you could ever give
9 meaningful consideration to a sentence of life?

10 A No, sir.

11 Q And that's not because you're not a fair person, just
12 because the day -- and maybe other death penalty cases you
13 could, right?

14 A (nods head up and down.)

15 Q But just because of the facts you already heard in
16 this case --

17 A (nods head up and down.)

18 Q -- right?

19 A (nods head up and down.)

20 Q Right?

21 A Yes.

22 Q Not trying to beat you up, just she's got to write it
23 down?

24 A Got you. Sorry.

25 Q Just because of the facts you bring. And if they

1 called you on another death penalty case, it might be
2 different, right?

3 A Right.

4 Q But in this case, because of the damage that's
5 already been done to you, you're just not able to consider
6 a sentence of life, right?

7 A Yes, sir. I don't believe so.

8 Q Okay. Let me touch base, but I don't think I have
9 anything else. Thank you.

10 MR. NETTLES: Not on this issue, Your Honor.

11 THE COURT: Solicitor, you have any questions on this
12 issue?

13 MR. ARIAIL: Excuse me just a second. No, Your
14 Honor.

15 THE COURT: Do you want to make any arguments,
16 solicitor, on the motion that the defense will make?

17 MS. STROM: No, sir.

18 MR. ARIAIL: No.

19 BY THE COURT:

20 Q All right. Mrs. Dickson, I appreciate your views and
21 appreciate you sharing them with us. I'm awful sorry you
22 had that bad experience with your ex-boyfriend. Thankful
23 you didn't get hurt.

24 Not because you're not a fair person, good person or
25 bad person; but because of the case we're trying, I'm

1 going to excuse you from jury service on this jury. Okay?

2 A Okay.

3 Q Thank you for being here. And thank you for sharing
4 part of your life with us. Okay?

5 A Thank you.

6 THE COURT: For the record, defendant made a motion.
7 I grant that motion to excuse the juror.

8 MR. ARIAIL: Judge, before Mr. Ellis comes, he's our
9 next one you asked me about.

10 THE COURT: I just saw on there Mr. Ellis says he
11 knows you.

12 MR. ARIAIL: I didn't -- why I didn't feel I needed
13 to, I will tell the court I do recall apparently he called
14 last week, like Friday or something, and left a message at
15 my house to call him back. My wife gave me the message.
16 I think I called him back on Saturday or something, left a
17 message on his phone, cell phone. He wasn't there. We
18 never talked about anything. That was the end of it.

19 When I walked in Monday, I saw him sitting over
20 there. I figured it was typical calling, like everybody
21 else does, want some kind of take care of jury duty. I
22 normally get these calls from so-called friends. I see
23 he's on the jury. I never had a conversation about that.
24 I don't know what he was calling about. I do know him,
25 wouldn't say he's a social friend, never been out to

1 dinner with he and his wife. As a matter of fact, we've
2 never done anything together except maybe in a group
3 setting.

4 Q What kind of group setting?

5 A If he's a member of like the Poinsette Club or
6 something like that. I'm a member of a dance club, got a
7 couple hundred members in it. I think he's in that, I
8 will say that. I did see him in church at the Christmas
9 Eve service at Saint Helen's Episcopal Church in Beaufort,
10 South Carolina, sitting there on Christmas Eve. He and
11 his wife had a child out there.

12 THE COURT: I understand. Reading his questionnaire
13 that may be a minor problem. Would you bring Mr. Ellis
14 in?

15 MR. MAULDIN: Yes. Fifty-seven, I guess you looked
16 at that?

17 THE COURT: I'm more concerned about question 73,
18 Mr. Mauldin.

19 MR. MAULDIN: Yes, sir. It's the same reference.

20 THE COURT: Mr. Ellis, how you doing today?

21 PROSPECTIVE JUROR: I'm okay. Thank you.

22 THE COURT: Would you please raise your right hand?

23 ROBERT E. ELLIS, JR., (white
24 male), having been previously duly sworn, testified as
25 follows:

EXAMINATION

BY THE COURT:

Q Mr. Ellis, you filled out this questionnaire recently, either last month or the month before that. Is that correct?

A That's correct.

Q Do you remember filling it out?

A I do.

Q Would you take it please, sir? When you filled it out, was it accurate to the most of your knowledge?

A For the most part. I did make one error.

Q What was that?

A Question about a firearm, do I own a firearm; I said I did. I do not.

Q If you would, would you turn to the back of the questionnaire, page 12, question number 73. Would you take a look at that question?

A Okay.

Q All right. Now, would you also look at question 57 on page eight. At the bottom it says, "Bi-Lo grocery store killing, son was working at CCB in the store at the time."

A That's correct.

Q And that's also in reference to question 73?

A I think its right. Yes.

1 Q First of all, let me ask you. Did you see anything
2 -- this is the Bi-Lo case. Okay?

3 A Okay.

4 Q Let me ask you. Did you see anything on television
5 about what occurred at the Bi-Lo?

6 A I did. But what day are you referencing?

7 Q When it occurred.

8 A Yes. When it occurred I had, sure did.

9 Q Watched the entire thing?

10 A Parts of it I did.

11 Q You knew your son was at work there, the Bi-Lo store?

12 A Oh, yes.

13 Q So, you showed a great deal of interest in what was
14 taking place I'm sure, didn't you?

15 A Very much so. I was concerned obviously for his
16 safety.

17 Q I Understand. And in question 73 you state that you
18 have discussed in depth details of the crime on numerous
19 occasions with your son?

20 A That's correct.

21 Q Tell me what you've been told about the case.

22 A He told me some things that he saw that day. Some of
23 the employees and things that he talked with, his
24 employees afterwards, things they had experienced and they
25 shared with him.

1 Q What did he share with you? What did he tell you
2 factually about the case?

3 A About when the, the defendant came in with a gun and
4 approached the store manager. He was telling me about
5 that. And he was telling me about another incident when
6 he was parked out front, I don't know if it was the same
7 day or an earlier time when he was parked out front. I
8 don't know whether he -- I don't think he knew the
9 defendant. He just knew the victim and some friends, and
10 said he was -- some strange behavior. And that's all I
11 know.

12 Q What else did he tell you factually occurred that he
13 saw or heard about inside the store?

14 A Inside the store? I'm trying to think what else. It
15 Would be hearsay I guess.

16 Q I don't care whether it's hearsay or not. I want to
17 know whether what you've been told, whether hearsay or
18 what, I want to know what you know, what you were told.

19 A Just that he was upset by what happened and talking
20 to other employees. I don't know who all the employees
21 were he talked with.

22 Q Did he tell you what employees told him?

23 A Yeah.

24 Q What did he tell you?

25 A About the manager, he approached him with a gun and

1 threatened him, said "If you don't get out of my way, I'll
2 shoot you." "Or, "if you move, I won't harm you," or
3 something. So the manager did move.

4 Q Did he see the killing, or the shooting?

5 A No, I don't think -- no. He was -- I think all these
6 employees exited, were allowed to exit. So, he exited
7 before that actually occurred.

8 Q All right. Based upon your extensive knowledge of
9 the facts in this case, have you formed an opinion as to
10 the defendant's guilt or innocence?

11 A I'm afraid I have.

12 Q Is there any way you could set that opinion aside?

13 A Well, I -- no, because my son told me at about
14 another instance before this.

15 Q Concerning the same individual?

16 A Yes.

17 Q Does anybody have any questions?

18 MR. MAULDIN: No, Your Honor.

19 THE COURT: Mr. Ariail?

20 MR. ARIAIL: No, Your Honor. I think you need to
21 tell them, we all disclosed our connections with him.

22 PROSPECTIVE JUROR: Sorry guys.

23 MR. ARIAIL: That's all right.

24 THE COURT: I Told the solicitor don't ask that. I
25 was going to ask you -- was that a detriment that you know

1 him or an asset that you know him?

2 PROSPECTIVE JUROR: It's a detriment I know both of
3 them, yes. Off the record.

4 MR. ARIAIL: I did tell them I saw you at church on
5 Christmas eve, too.

6 PROSPECTIVE JUROR: I prayed for you, too..

7 MR. ARIAIL: I need it.

8 THE COURT: Appreciate your honesty, but because of
9 the knowledge you have, I find you disqualified for this
10 particular jury.

11 PROSPECTIVE JUROR: I thought you would.

12 THE COURT: Thank you so very much. Mr. Mauldin,
13 that was made on your motion --

14 MR. MAULDIN: Yes, sir.

15 THE COURT: -- is that correct?

16 MR. MAULDIN: Yes, sir.

17 MR. ARIAIL: We'll join in that one.

18 THE COURT: All right. That brings us up to our six
19 that were supposed to be here at 11:00. Do you want --
20 it's 10 minutes until one. Do you want to take a lunch
21 break now and start back at 2:00 with the next group?

22 MR. MAULDIN: Can I ask a question because of the
23 asterisk?

24 THE COURT: Actually, we don't have but five in the
25 next group. I excused five, Larry Wright, because of the

1 flu. The asterisks are the ones that did not show Monday.

2 MR. MAULDIN: So, we have until two?

3 THE COURT: Judy, would you tell them just to be back
4 at two?

5 THE CLERK: Yes, sir.

6 THE COURT: We'll break for lunch until 2:00.

7 (WHEREUPON, a lunch break was taken at 12:55 p.m.)

8 Afternoon session

9 (WHEREUPON, pursuant to the adjournment for the
10 luncheon recess, court was again in session at 2:00
11 p.m. when the following proceedings were had:)

12 THE COURT: Mr. Crisp, how you doing today?

13 PROSPECTIVE JUROR: All right. You, sir?

14 THE COURT: Fine. I was looking at your
15 questionnaire you filled out either last month or the
16 month before that. Do you remember filling it out?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: There's a lot of questions on here that
19 you have not answered. What I'm going to do is ask you to
20 go in the jury room and answer those questions on this
21 questionnaire for me. And then when we call you back,
22 we'll have completed answers on all questions.

23 PROSPECTIVE JUROR: Maybe it was something I didn't
24 understand is why I couldn't answer.

25 THE COURT: The one that lists your job, occupation

1 they're blank. They're simple questions. You may have
2 overlooked them. So, go answer that. We'll get you back
3 shortly. Go back where you were. If you need a pen, the
4 bailiff will get you one.

5 Solicitor, I wasn't going to go through all those
6 questions. If there were other questions concerning the
7 death penalty, I would have, but I'm going to let him fill
8 it out and come back. Would you bring us Frances Elmore,
9 please? I'm sorry, Stacy Gonick.

10 (Prospective juror Stacy Gonick, white female, enters
11 courtroom.)

12 You pronounce your name -- how do you pronounce your
13 last name?

14 PROSPECTIVE JUROR: Gonick.

15 STACY S. GONICK, (white
16 female), having been previously duly sworn, testified as
17 follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Do you remember filling out this questionnaire last
21 month or the month before that?

22 A Yes, sir.

23 Q Was it accurate at the time you filled it out?

24 A Yes, sir.

25 Q I'm going to hand you that questionnaire. If you

1 would please, ma'am, the first thing I would like to ask
2 you, you did not show up Monday.

3 A Correct.

4 Q Why not?

5 A This letter was delivered to me on the 26th that
6 told me not to appear.

7 Q I understand. I don't know why it was delivered to
8 you, but it was delivered in error.

9 A That's a shame.

10 Q I understand that's a shame, but I don't know why
11 that occurred. Miss Gonick, I'm going to ask you some
12 questions and the attorneys are going to ask you some
13 questions. There's no right or wrong answers to those
14 questions. Just give the best answer you can. Okay?

15 A Okay.

16 Q And I would ask you to answer the questions
17 truthfully. All right?

18 A Yes, sir.

19 Q The first thing I wanted to ask you, do you have any
20 physical or mental problems as to why you could not serve
21 on a jury or this jury?

22 A No, sir.

23 Q Do you have any personal hardships that would prevent
24 you from serving on this jury?

25 A I am a single parent.

1 Q We'll probably have a few of those on the jury panel.

2 A Yes.

3 Q How would that prevent you from serving on the jury?

4 A If we were sequestered, if my son could come with me,
5 it wouldn't be that big of a hardship, but --

6 Q How old is your son?

7 A Eight.

8 Q And he's in school?

9 A Yes, sir.

10 Q Does he go to daycare after school?

11 A Yes.

12 Q Whereabouts?

13 A Up on Croft.

14 Q Do you have anybody here in Greenville that could
15 help care for him?

16 A I could see about making arrangements. I have a
17 mother-in-law and ex-husband.

18 Q Your mother and ex-husband, your mother probably
19 would love to spend time with her grandson?

20 A Yes.

21 Q Would that be a difficulty?

22 A She's not in great health.

23 Q Can she drive?

24 A Yes.

25 Q Can probably pick him up at school?

1 A Yes.

2 Q For you for five or six days?

3 A Yes.

4 Q Let me ask you this. In this case the defendant is
5 charged with murder and kidnapping that occurred on
6 September 3 2003 and it was at one of the Bi-los here in
7 Greenville. Do you remember hearing anything about it
8 when it occurred? Have you heard anything on TV, the
9 radio, or heard anybody talking on the radio or anybody
10 talking about the case?

11 A Just what I seen on the news.

12 Q What have you seen on the news?

13 A Because I thought I was excused from the jury, I
14 didn't not listen. The letter said Don't watch anything;
15 but since I thought I was excused, I was interested. Just
16 the news report, and it was kind of talking about I think
17 her name is Maranda and the law they're trying to pass,
18 that kind of thing.

19 Q What specifically did they say about the case itself
20 factually, do you recall?

21 A No.

22 Q Did you hear this on television or read it?

23 A Television.

24 Q Specifically what did you hear on television?

25 A Just that he was charged for the crime and apparently

1 there had been some domestic violence; and a lot of people
2 think she wasn't attended to as well as she could have
3 been or something. It could have been prevented if she
4 had been --

5 Q Let me ask you this. As a result of having listened
6 to that information on television, have you formed an
7 opinion about the defendant's innocence or guilt?

8 A No. I mean, I don't know the facts of the case.

9 Q Okay. All right. Let me ask you. Do you know the
10 victim, Maranda Williams?

11 A No, sir.

12 Q Do you know the defendant, Charles Christopher
13 Williams, who sits to my right with the blue sweater?

14 A No, sir.

15 Q Do you know either one of the attorneys that
16 represent Mr. Williams, Mr. Mauldin or Mr. Nettles sitting
17 to my right, the gray suit, shirt; blue suit, yellow tie?

18 A No, sir.

19 Q Do you know the solicitor sitting to my left with the
20 glasses and gray suit?

21 A No, sir.

22 Q Do you know either one of his assistants?

23 A No, sir.

24 Q Do you have a personal relationship with anyone else
25 in the solicitor's office?

1 A Know his daughter.

2 Q Know whose daughter? Mr. Ariail?

3 A Yes.

4 Q Have you ever known him?

5 A No, sir.

6 Q How do you know his daughter?

7 A Through work.

8 Q Work?

9 A Southeastern Telecom.

10 BY THE COURT:

11 Q I'm going to give you a list of names and I would ask
12 you if you would look at these names and see if you can
13 recognize anybody on that list.

14 A (complies.) No, sir.

15 Q I'm going to give you a second list, ask you to read
16 that list and see if you recognize any of the names.

17 A (complies.) No. No, sir.

18 Q Thank you very much.

19 A Uh-huh.

20 Q I'm going to read you a question, ask you to respond
21 if you would please, ma'am. In this case the defendant is
22 black and the victim is white. It is undisputed the black
23 defendant and white victim engaged in interracial dating.
24 Would the fact that the defendant and the victim engaged
25 in interracial dating make it difficult for you to be fair

1 to either the state or the defendant?

2 A No, sir.

3 Q If you would take your questionnaire. Do you have
4 your questionnaire? Would you look on page five, please,
5 ma'am. And question number 33. It says you served in
6 state court in a criminal case where -- it says "against
7 me" the assault and battery. Were you the victim in the
8 case or were you on the jury?

9 A I was the victim.

10 Q Did it go to trial or do you remember?

11 A Yes. It went to trial.

12 Q Did you testify at trial?

13 A Yes.

14 Q When did this occur?

15 A Around '88, '89.

16 Q Around '88, '89.

17 A Yes, sir.

18 Q Do you remember the name of the prosecutor, the
19 attorney that handled the case?

20 A No, sir, I don't. My attorney or hers?

21 Q Your attorney. Who do you classify as your attorney?

22 A My attorney, gosh, I don't remember the name. It's
23 been a long time.

24 Q All right. Having gone through that process as a
25 victim of a crime that was prosecuted and actually tried

1 in court which resulted in a guilty verdict from the jury.
2 Do you have any preconceived notions for or against
3 defendants in general?

4 A No.

5 Q Do you have any bias or prejudice for or against
6 defendants in general?

7 A No.

8 Q Do you have any bias or prejudice for or against the
9 prosecutor as a result of having experienced the judicial
10 system as a victim?

11 A No.

12 Q All right. If you would look at page 10 on the
13 questionnaire, question 64. It says "describe your
14 attitudes and beliefs concerning capital punishment, i.e.
15 the death penalty."

16 You wrote down the word "mixed"?

17 A Yes.

18 Q Please explain to me what you mean by mixed.

19 A It would depend on the case and the evidence, that
20 sort of thing. I don't have any preconceived notion one
21 way or the other whether I agree with it or not.

22 Q You don't have any preconceived notions for the death
23 penalty or against the death penalty?

24 A Right.

25 Q Do you have any preconceived notions about death

1 penalty versus life imprisonment?

2 A It would depend on the case.

3 Q When I say life imprisonment, I mean with life
4 without parole, the defendant would die in jail, do you
5 understand?

6 A Yes, sir.

7 Q All right. Then 65 you answer the same way as you
8 just answered, it depends on the circumstances of the
9 crime. Is that correct.

10 A Yes.

11 Q And if you look forward to 68, question 68. It says,
12 "I believe that the death penalty is the appropriate form
13 of punishment in some murder cases. I could return a
14 verdict of death if I believe it was warranted in a
15 particular case, depending upon the evidence and the law
16 and what I learned about the defendant." Is that still
17 your opinion here today?

18 A Yes, sir, it is.

19 Q I'm going to briefly describe to you the process of
20 this trial we're drawing the jury for. Okay?

21 As I told you previously, the defendant is charged
22 with murder and kidnapping. The trial will be broken up
23 into two parts. The first part is commonly referred to as
24 the guilt phase. The second part is commonly referred to
25 as the penalty phase.

1 In the guilt phase, the state would be responsible
2 for proving the defendant guilty of murder and
3 manslaughter beyond a reasonable doubt. It would be the
4 state's responsibility. The defendant does not have to
5 prove himself innocent, nor does the defendant have to
6 testify if he so chooses. Do you understand?

7 A Yes.

8 Q Let's assume all 12 jurors decide the defendant is
9 guilty of murder and kidnapping. And then we would go to
10 a second phase, which would be referred to as the
11 sentencing phase. And the sentencing phase, the purpose
12 of that phase is for the jury to decide whether the
13 defendant should receive life or death. And, as I said,
14 life means life without parole, means what it says.

15 Now, in the sentencing phase the state would be
16 offering what is legally referred to as aggravating
17 circumstances. I don't know what those aggravating
18 circumstances are that would be presented, because I
19 haven't heard the case. But they would be circumstances
20 and facts about the defendant, possibly the victim, and
21 the facts themselves to convince the jury that the jury
22 should return a sentence of death. Do you understand?

23 A Yes.

24 Q The state would be required to prove those
25 aggravating circumstances beyond a reasonable doubt. Now,

1 normally the defendant will offer mitigating
2 circumstances. Mitigating circumstances will be offered
3 to the jury to persuade the jury to return life rather
4 than death. Do you understand?

5 A Yes, sir, I do.

6 Q Now, the question I would like to ask you. Before
7 you made a decision as to whether you're going to choose
8 death or life, would you consider all the mitigation, all
9 the aggravating circumstances, plus all the evidence that
10 came in in the first phase before you made a decision as
11 to life or death?

12 A Absolutely, yes.

13 Q Assume in the second phase that the defendant did not
14 offer any mitigating circumstances and the only thing you
15 hear in the case would be the guilt phase and the
16 aggravating circumstances which the state would offer in
17 the penalty phase and the defendant did not offer anything
18 in mitigation, could you consider all the evidence that
19 you heard before you make a decision on life or death?

20 A Yes.

21 Q So, your position is you have to hear everything
22 about the case before you make up your mind as to life or
23 death. Is that correct?

24 A Yes, sir.

25 Q Do you know of any reason, personal or otherwise, why

1 you can't serve on this jury?

2 A No.

3 Q Do you think you can listen to the testimony, base
4 your decision on the testimony you hear in the courtroom?

5 A Yes.

6 Q Can you be fair and impartial to both the state and
7 the defendant?

8 A Yes.

9 Q Whose turn?

10 BY MR. ARIAIL:

11 Q Miss Gonick, my name is Bob Ariail, I've already been
12 introduced by the judge. Knowing my daughter's
13 personality and the fact that you know her, is that
14 positive or negative?

15 A My belief is that a leaf doesn't fall too far from a
16 tree, but I like her.

17 Q I Told her husband when she got married, "don't blame
18 me, I did the best I could." I also notice you're an
19 account executive. I assume that means related to sales?

20 A Yes, sir.

21 Q And knowing how this business is, following the books
22 a little bit, would the fact that you were -- if you were
23 picked on this jury, would the fact that you might be away
24 from your sales position for five or six days, not able to
25 necessarily make those calls that you need to, would that

1 be a distraction to you? Or could you set that aside and
2 realize unfortunately this is an interruption in life I
3 have to put up?

4 A I'd do my best to put it aside.

5 Q Okay. In this two-phase trial that we talk about, we
6 talk about the guilt phase and sentencing phase. They're
7 actually separated by a 24-hour period in between. At the
8 end of the guilt phase, assuming you're on this jury, you
9 would have convicted a defendant of murder. And under the
10 law of South Carolina, that means that the defendant has
11 committed an intentional and malicious act of killing
12 someone.

13 We're not talking about manslaughter, not talking
14 about accident, talking about under the law of this state,
15 at that point the issue would have been decided, he is
16 guilty of a malicious and intentional killing.

17 The second phase is reserved for determining what the
18 appropriate punishment for that is, because the law says
19 there's no automatic punishment. It's a choice for the
20 jury as to life imprisonment versus the death penalty.
21 When the state asks for the death penalty -- and we can
22 only ask for it in certain cases, this being one of them,
23 this hypothetical -- could you, after having convicted
24 somebody of intentional malicious murder, still maintain
25 an open mind and go into the penalty phase thinking I've

1 got to make a decision between these two punishments and I
2 can't have a preconceived idea as to what it should be
3 until I hear everything?

4 A I believe so. Yes.

5 Q That's what the judge will be asking you to do, and
6 that's what the process would ask you to do. Obviously,
7 you realize the importance of that because you're taking
8 the place of the judge. The judge normally sentences
9 people, but in a death penalty case the law gives that
10 function to the jury. So, you're stepping into the shoes
11 of a judge to impose a sentence. So, we have to make sure
12 you can be fair on both sides; that is, you can fairly
13 consider the death penalty and you can fairly consider a
14 life-Imprisonment sentence.

15 A Yes, sir.

16 Q And you believe you can do that?

17 A Yes, sir.

18 Q And also even though the defendant does not present
19 any evidence or any testimony, you can't hold that against
20 him. The judge will tell you that that's his right under
21 the law of this country, doesn't have to testify, give you
22 any evidence. Even under those circumstances, the law
23 allows you to return a punishment of life imprisonment.
24 You can do that for whatever reason you want, whether it's
25 the evidence or lack of evidence or strictly an act of

1 mercy. Do you understand that?

2 A Yes, sir.

3 Q Those choices would be open. And in that last phase
4 you may hear evidence about the defendant's mental
5 condition, the aggravating circumstances, victim impact,
6 the family of the victim, age, and the defendant, et
7 cetera, et cetera. Would you be able to consider all of
8 those mitigating and aggravating circumstances fully
9 before you reached your decision?

10 A Yes.

11 Q And would you be able to give them everything from
12 mental health issues to aggravating circumstances, could
13 you give all those meaningful consideration before you
14 reached your verdict?

15 A Yes.

16 Q Lastly, if you were on the jury, you've convicted,
17 gone to the jury room, you have determined that death is
18 the appropriate sentence, the law will require and the
19 judge will instruct you, each and every juror has to sign
20 a form, one form, but all 12 signature have to appear on
21 that form. Would the fact that you had to write your name
22 as confirming your verdict and give that to the judge give
23 you any hesitation and would you be able to do that?

24 A No hesitation, be able to do that.

25 Q If you reached that verdict?

1 A Right.

2 Q And you understand jury service in the jury room is a
3 matter of give and take? You have opinions, they'll have
4 opinions, people question your opinions, you question
5 their opinions, and that's how the situation works itself
6 out?

7 A Yes.

8 Q Okay. That's all I have, Your Honor. Thank you,
9 ma'am.

10 THE COURT: Defendant?

11 BY MR. MAULDIN:

12 Q Your last name, how do you pronounce your last name?
13 Gonick.

14 A Yes.

15 Q Miss Gonick, my name is John Mauldin. I'm the public
16 defender for Greenville County. Bill Nettles over here
17 working on this, Mr. Nettles, he and I represent Chris in
18 this case. I want to kind of change the context of this
19 moment by just having, instead of feeling like you're
20 testifying, I'd like you just to have a conversation.

21 A Okay.

22 Q And I am going to have to ask you a couple of
23 follow-up questions. I've got four areas I want to
24 question you on. The connection with Bob's daughter,
25 would be one. The previous assault would be one. Your

1 views on the death penalty and your views on mental
2 illness. Those are the four areas I want to cover with
3 you.

4 Now, Let's talk a minute about Bob's daughter. I
5 want to flash you forward and make sure I understand how
6 you feel about this. If you were on a jury and you were
7 in the jury box and Mr. Aerial, as is his responsibility,
8 were asking for the death penalty or asking for a
9 conviction or asking for whatever he was asking, I've got
10 to feel comfortable that you would be able to be not
11 affected by the fact you work, you know, the next day you
12 would be back at work; and we've got to feel comfortable
13 that you're going to be able to not be affected by that.
14 Now, can you describe how you feel about that?

15 A I'd be fine with it. She's not my supervisor in any
16 way. We're business associates, so I wouldn't feel
17 compelled to make him happy if that's what you're asking.

18 Q I always get nervous asking those kind of personal
19 questions, but I have a responsibility.

20 A I understand.

21 Q So, I want you to bear with me there. In your
22 questionnaire, and the judge asked you about question 44,
23 was the matter of you being assaulted, and then I think
24 you talked about the fact that there was an assault and
25 battery case against you and -- where you were the person

1 being assaulted?

2 A Yes, sir.

3 Q In a case of the nature we have here, obviously, it
4 involves a murder, it involves a homicide, which naturally
5 would be an assault that resulted in a death. I once
6 again asked you to search your mind to make sure that as
7 you're in the jury box and persons are testifying about an
8 assault on someone that resulted in their death, would
9 your ability to serve as a fair juror be affected by what
10 happened to you? You know, if it would distract you, make
11 you feel more sympathetic or compassionate of the
12 testimony of one witness over another, the court needs to
13 know that. Tell me how you feel about that.

14 A It was a female assaulted me, so it's not anywhere --
15 it's not the same. So, it wouldn't affect me one way or
16 the other.

17 Q You're comfortable with the fact it would not
18 distract you or affect you?

19 A Yes, sir.

20 Q The last two areas now, Miss Gonick, are the issue of
21 death penalty and the issue of mental health. Let me ask
22 you general, just open ended, how you feel about the death
23 penalty just in general.

24 A I think there are times when it's deserved and I
25 think there's times when it's not. There's a difference

1 in crimes of passion and things that are maliciously
2 planned and thought out with foresight. I think there's a
3 difference.

4 Q And the judge will tell you, I think he mentioned a
5 moment ago, that at the second trial or phase of this case
6 the person on trial or in a capital case, the person on
7 trial would have already been found guilty of a malice
8 aforethought, which involves some planning, even
9 momentarily planning. So, that would have already been
10 decided. So, that's kind of where I'm heading with this
11 line of questioning.

12 I want to make sure when you get into that second
13 phase, if after you found a person, if you were on that
14 jury, found a person guilty of that malicious killing,
15 intentional killing, would you still be able to give
16 meaningful consideration to some sentence other than
17 death? For example, life in prison without parole?

18 A Yes, I'd be able to consider that.

19 Q So, for a person convicted of murder, you believe
20 that life without parole could be an appropriate sentence?

21 A Yes, I do.

22 Q Do you think that life without parole is a serious
23 penalty?

24 A Yes.

25 Q Final question in that area. The prosecutor asked

1 you about signing the form.

2 A Uh-huh.

3 Q Let me put a little different spin on it. Kind of
4 similar question but not repetitive.

5 THE COURT: As long as it's not repetitive. That's
6 what I'm sitting here watching for.

7 MR. MAULDIN: Yes, sir. I'm not going to be
8 repetitive. Let's say you heard all the evidence in the
9 first trial and there was a conviction, then you had that
10 time break, you come back, you hear all of the evidence in
11 aggravation; and as the judge mentioned, you may get
12 evidence in mitigation, you may not even get any. But you
13 then go into the jury room to deliberate and the
14 deliberation is only on one of two things, life
15 imprisonment without the possibility of parole or death
16 penalty, the deliberations are very vocal and active.
17 Everybody is talking at some point.

18 You come down to time to vote, and let say they come
19 around to vote, eleven people say one penalty -- doesn't
20 matter which of the two -- and you say, nope, I'm
21 convinced the other penalty. What I want to know about
22 you is would you, you know, it could be late in the day,
23 might be several days, you never know. We don't know.
24 Would you vote with the majority? Would you give up your
25 view and go with the majority? Or would you commit with

1 what you thought was right in the case?

2 A I would remain committed to my own beliefs.

3 Q And vice versa, if you were in that majority and
4 there was a person who had fully deliberated, the same
5 evidence but just has a different view on a life or death
6 issue, would you give that juror respect and not try to
7 require them to go with the majority?

8 A Yes.

9 Q Last question, Miss Gonick, are questions involving
10 your view on mental health or mental illness. The reason
11 I ask this, it's kind of like the same vein about the
12 death penalty, we have no idea how you feel about issues.
13 Some people think mental illness is just hocus-pocus,
14 voodoo. Some people might think it's a very serious
15 issue. Can you give me an idea how you perceive or what
16 you perceive on mental illness in general?

17 A I believe some people have mental illness. I don't
18 know how else to answer that.

19 Q When you refer -- and you can think of those people,
20 you don't have to give us who they are; but keeping that
21 in mind, your own experiences in mind, do you think that
22 mental illness under those circumstances may very well be
23 a credible issue, a legitimate issue in a person's life?

24 A Yes.

25 Q And finally, Miss Gonick, with regard to a

1 presentation of mitigation or mitigating information, when
2 you as a juror were deciding between the two penalties,
3 would information such as mental illness be something you
4 could give meaningful consideration to?

5 A Yes.

6 MR. MAULDIN: Thank you, judge.

7 THE COURT: Where we are so far, anybody have a
8 motion as to this juror?

9 MR. MAULDIN: No, Your Honor.

10 MR. ARIAIL: None from the state.

11 BY THE COURT:

12 Q Miss Gonick, if -- since you weren't here yesterday,
13 I have to ask you some additional questions. Okay?

14 A Uh-huh.

15 Q You have reached your 18th birthday, right?

16 A Yeah. Uh-huh.

17 Q You're not employed within the four walls of the
18 courthouse; is that correct?

19 A Never been in this building before.

20 Q Do you own a law enforcement commission?

21 A No.

22 Q Never pled guilty to a state crime punishable by more
23 than one year?

24 A No.

25 Q You understand the English language?

1 A For the most part, yes.

2 Q And I've already asked you the next one. And you've
3 got more than a sixth-grade education; is that correct?

4 A Yes, sir.

5 Q You're now a resident of Greenville County?

6 A Yes.

7 Q Also a citizen of the United States; is that correct?

8 A Yes.

9 Q You're not over 65?

10 A No.

11 Q Not employed with the department of corrections?

12 A No.

13 Q Your child is eight years old; is that correct?

14 A Yes.

15 Q And you're not a student at tech school, are you?

16 A No.

17 Q Not employed with the school system?

18 A No.

19 Q Haven't previously served as a juror in the past
20 three calendar years?

21 A No.

22 Q And haven't served on the Greenville County grand
23 jury within the past five years?

24 A No.

25 Q Thank you very much. I'm going to find you

1 qualified. What that means, we're going to draw a panel
2 of 43 jurors. Out of that 43 jurors we will draw 12
3 jurors and four alternates. Now, the bailiff has a little
4 slip of paper with the phone number. Call that number
5 tonight. There will be a message for you to either call
6 back tonight, call back the machine and follow those
7 instructions. Okay? Don't listen to anything on TV, read
8 anything in the paper, talk to anybody about the case.
9 Sorry about the mix up, about being excused.

10 A Me too.

11 Q I'm sure you are. Have a good day. Thank you.
12 (prospective Juror Roy Crisp, white male, enters
13 courtroom.)

14 ROY A. CRISP, (white
15 male), having been previously duly sworn, testified as
16 follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Do you remember filling out this questionnaire last
20 month or the month before last?

21 A Yes, sir.

22 Q At the time you filled it out, was it accurate to the
23 best of your knowledge?

24 A Yes, sir.

25 Q I'm going to hand you that, please, sir. If you

1 would turn to page six, please, sir. Question 41.

2 A Yes, sir.

3 Q I understand your wife worked with the victim witness
4 program in the solicitor's office approximately 13 years.

5 Is that correct?

6 A That's correct.

7 Q Last worked in the solicitor's office in 1991?

8 A Yes, sir.

9 Q And was that under solicitor Joe Riley or solicitor
10 Ariail?

11 A Joe Riley.

12 MR. ARIAIL: Joe Watson.

13 Q Watson, excuse me. Joe Riley is the mayor in
14 Charleston. Would you flip to the back, page 12, question
15 number 73.

16 A (complies.) Yes, sir.

17 Q All right. You work at the detention center. Is
18 that correct?

19 A Yes, sir.

20 Q I believe you deliver food, prepare food orders for
21 the prisoners?

22 A Yes, sir, their basic living supplies.

23 Q You stated in your answer to number 73 you've
24 delivered canteen orders to Charles C. Williams on many
25 occasions, in so doing you may have formed an opinion of

1 him that may possibly keep me being completely objective
2 as a juror. What I want to ask you, have you formed an
3 opinion of Mr. Williams? You say here, "may."

4 A No, sir.

5 Q My question is, have you?

6 A No, sir, I have not.

7 Q You don't have any opinion at all, one way or the
8 other?

9 A Very slight opinion.

10 Q What is your slight opinion?

11 A He seems to be fairly a nice guy.

12 Q Been very courteous to you?

13 A Yes, sir.

14 Q Very cordial to you?

15 A Yes, sir.

16 Q Hasn't caused any problems?

17 A No.

18 Q You have a slight opinion he would be a nice guy?

19 A (witness nods head up and down.)

20 Q How do you think that would interfere with your
21 duties as a juror and your objectivity as a juror, or
22 would it?

23 A Well, possibly say after the trial, I'd have to go
24 back and work there and it's a possibility it could create
25 a bad situation for me working with the inmates in the

1 future. About me sitting on a jury and, you know, word
2 can get around.

3 Q Grapevine is real strong within the, I guess, the
4 jails as well as the prisons; is that correct?

5 A Right.

6 Q Now, does anybody want to ask him questions on this
7 particular point?

8 MR. MAULDIN: We don't, Your Honor. I mean, we
9 understand what he said. That's pretty clear.

10 THE COURT: I understand.

11 Does the solicitor?

12 MR. ARIAIL: No.

13 THE COURT: Would you step outside just a second,
14 Mr. Crisp?

15 (prospective juror exits.)

16 THE COURT: Now, I'm going to excuse him for cause
17 unless one of you have -- I'm not going to put him in that
18 position. Okay? That's fine, whether he's biased or not.
19 I'm not going to put him in a position to jeopardize him
20 at the county jail.

21 MR. ARIAIL: We'll consent to that.

22 MR. MAULDIN: We so move, Your Honor.

23 THE COURT: Bring Mr. Crisp back.

24 (prospective juror returns)

25 THE COURT: Mr. Crisp, I'm going to accede to your

1 desires and disqualify you from this jury. I don't want
2 to create any hardship on your job, cause any problems,
3 hardships on your job. Thank you for being here. Tell
4 your wife I said, "hello."

5 PROSPECTIVE JUROR: I will. Thank you, sir.

6 MR. ARIAIL: Could we point out Joseph Braswell
7 answered 48, "Have you or a member of your family or close
8 friend ever been charged with a crime?"

9 He answered, "no." He has a rap sheet in which he
10 had been charged in 1989 with driving under influence and
11 he was convicted.

12 THE COURT: '89 DUI?

13 MR. ARIAIL: Yeah. Now, granted, as you're aware,
14 DUI first, second?

15 THE COURT: Hold him out in the hall a second.

16 MR. ARIAIL: First -- and, as you're aware, that
17 would have expired off his record. So, he may not have
18 given us an incorrect answer. Technically that's
19 incorrect, but I'll just point that out to the court.

20 THE COURT: Okay. Would you bring him in, please?

21 (prospective juror enters courtroom.)

22 Q You play lacrosse?

23 A Used to in college, not any more.

24 Q How long did you play lacrosse?

25 A About four years.

1 Q Where? Play at the University of Kentucky?

2 A Yes, sir.

3 Q Please raise your right hand.

4 JOSEPH G. BRASWELL, (white
5 male), having been previously duly sworn, testified as
6 follows:

7 EXAMINATION

8 BY THE COURT:

9 Q You filled out this questionnaire either last month
10 or the month before last. Do you remember filling it out?

11 A Yes, sir.

12 Q When you filled it out, was it accurate at the time
13 you filled it out?

14 A Yes, sir.

15 Q To the best of your knowledge?

16 A Yes, sir.

17 Q If you would, take that questionnaire, please, sir.
18 We're going to ask you certain questions, it will be on
19 various subject matters. Not necessarily no correct yes
20 or no answers, okay?

21 A Okay.

22 Q Just answer the questions to the best of your ability
23 and answer the questions truthful. Okay?

24 A Yes, sir.

25 Q Solicitor, do you have a date of birth and social

1 security number on what you gave to me? Could you just
2 tell me what the date of birth is? Is it the same is what
3 I'm asking? His date of birth 7-19-71?

4 MR. ARIAIL: Yes. 250-63-9311.

5 Q Is your social security number 250-63-9311?

6 A Yes.

7 Q All right. If you would turn to page seven in your
8 questionnaire, question number 48. Are you on question
9 48?

10 A Yes, sir.

11 Q All right. My understanding that you do have a DUI
12 first back in '89 date. Is that correct?

13 A Yes.

14 Q My question is, why didn't you put it in question 48
15 when you filled out the questionnaire?

16 A I didn't -- I don't know. I guess I just didn't
17 think about it.

18 Q Okay. I mean, that was a long time ago.

19 A Yeah.

20 Q That was 10 -- 16 years ago?

21 A Yes, sir.

22 Q I just wanted to ask you that. Because it has been
23 brought to my attention that you did have that prior
24 criminal history. Okay?

25 A Okay.

1 Q Do you have any physical or mental problems that
2 would prevent you from serving on this jury?

3 A No, sir.

4 Q Do you know -- do you have any personal reasons or
5 difficulties whereby you could not serve on the jury?
6 Hardships in other words, some type of hardship?

7 A No, sir.

8 Q Okay. This -- in this particular case the state is
9 charging Charles Christopher Williams with murder,
10 kidnapping. It occurred on September 3rd 2003 in a
11 local Bi-Lo here in Greenville. Do you understand?

12 A Yes, sir.

13 Q And have you read anything in the paper, heard
14 anything on TV or radio, or heard anyone talking about the
15 case? When it occurred or since it occurred?

16 A Yes, when it occurred.

17 Q What do you remember seeing and hearing when it
18 occurred?

19 A I remember the ordeal on TV. I seen it on TV, and
20 family members -- because I live in that area, were
21 calling to see if all family members were okay.

22 Q You watched the whole process on TV?

23 A Yes, sir.

24 Q How long a time span was that?

25 A The particular incident?

1 Q Yes, sir.

2 A I think it was about maybe an hour, 30 minutes.

3 Q What do you recall factually from what you remember
4 seeing on television?

5 A I had -- that somebody was holding hostages in the
6 Bi-Lo center and the person had a gun. I remember seeing
7 SWAT team members, a lot of police around the area.

8 Q Do you remember anything else?

9 A No.

10 Q Did you read in the paper about it the next day?

11 A I do recall discussing, not reading in the paper, but
12 discussing with some coworkers.

13 Q What did you all discuss? What happened?

14 A They'd ask you, this thing happened so close to home
15 and can you believe -- sorry for the people, stuff like
16 that.

17 Q Did they give you any facts in conversation that you
18 weren't aware of when you had conversations with
19 coworkers?

20 A Yeah, gave me some knowledge.

21 Q What additional knowledge?

22 A Other than people knew each other. Know it was a
23 random act or something, but it's actually, the people
24 involved knew each other.

25 Q Okay. Anything else?

1 A Nope.

2 Q Have you read anything recently in the paper?

3 A Not recently. My wife was reading the paper maybe
4 before I got this information here about something, about
5 a journal that was involved.

6 Q Did she tell you anything that she read in the paper
7 or did you read it?

8 A She didn't read it. She read it and she was reading
9 out loud.

10 Q Oh, she was reading out loud?

11 A Yeah.

12 Q You Were listening to her?

13 A Yeah, she was reading it to me.

14 Q So, she read the whole article to you?

15 A No, she just gave me a paraphrase.

16 Q She gave you a highlight or word by word?

17 A Paraphrase.

18 Q Paraphrase. Okay. Based upon the knowledge that you
19 learned, you gained from the television and from the
20 coworkers and from your wife paraphrasing the article in
21 the newspaper recently, have you formed an opinion or
22 expressed an opinion as to the guilt or innocence of
23 Mr. Williams?

24 A Yeah, I do feel pretty much guilty.

25 Q Why do you feel that way?

1 A I just -- what I was presented with information that
2 there's prior knowledge of this, of the act that was going
3 to go forward with the journal that most recently had.

4 Q Do you understand that the friends that were talking
5 to you may have been misinformed as to the facts?

6 A Sure.

7 Q You also understand the article in the paper was the
8 reporter's interpretation and her viewpoint may be
9 accurate, may not be accurate? Do you understand that?

10 A Yes, sir.

11 Q All right. Is your opinion so strong that you could
12 not set that aside and sit on the jury and be objective as
13 to what you heard in the courtroom as to the innocence and
14 guilt of the defendant?

15 A I don't think it's that strong. I think I could be
16 objective.

17 Q Most people say they could be objective, we all want
18 to be objective, don't want to admit to biases,
19 prejudices, but we all have them. Once you form opinions,
20 sometimes it's hard to back off of it. Do you think you
21 could back off of your opinion?

22 A Probably not.

23 Q Whose turn on this issue?

24 MR. NETTLES: It's ours, but I don't think we have
25 any questions.

1 THE COURT: Okay. Does the state have any questions?

2 MR. ARIAIL: None.

3 THE COURT: Will it -- I assume the defendant has a
4 motion?

5 MR. NETTLES: Yes, sir.

6 THE COURT: Does the state want to make any argument?

7 MS. STROM: No, sir.

8 THE COURT: All right. Mr. Braswell, what I'm going
9 to do, because of your prior knowledge, I'm going to find
10 you're not qualified to serve on this particular jury.
11 You're qualified to serve on any other jury but not this
12 particular jury because you've basically already decided
13 based on your prior knowledge.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: Thank you for being here, appreciate your
16 services. I hope you have a good week.

17 PROSPECTIVE JUROR: Thank you. Would you bring us
18 James Williams, please? Solicitor, first what do you want
19 to say? And then I'll listen to you, Mr. Mauldin.

20 MR. ARIAIL: Just as to number 48, he said he had not
21 been charged with a crime. We have a rap sheet that the
22 pages thick, assume based on the last name, but there are
23 some references on there to George Edward Williams having
24 had --

25 THE COURT: He's James E. Williams.

1 MR. ARIAIL: Then the alias is James E.

2 THE COURT: What is the date of birth? Is it the
3 same?

4 MR. ARIAIL: The date of birth, he's got about nine
5 aliases. And there are about nine different birthdays.

6 THE COURT: Nine birthdays, okay.

7 MR. ARIAIL: 4-6-41, 4-16-42, 4-6, 6-3, 8-6-43,
8 3-4-43.

9 THE COURT: Are any of them 4-18-42?

10 MR. ARIAIL: 4-16-42.

11 THE COURT: His birthday is 4-16-42. Any of them
12 4-18-42? What is the social security number? And any
13 description? Is there a physical description?

14 MR. MAULDIN: There are 17 aliases on my copy.
15 Seventeen aliases, all kinds of combinations.

16 MR. ARIAIL: Here we got 4-17-42.

17 THE COURT: You have a social security number or a
18 physical description, how tall he is? How much does he
19 weigh?

20 MR. ARIAIL: 5'11", 154, that's -- got blue eyes and
21 sandy hair.

22 MR. MAULDIN: There's apparently a description for
23 each one of these aliases.

24 THE COURT: I think you're just going to have to ask
25 him.

1 MR. MAULDIN: Yeah. I think you're going to have to
2 find out from him.

3 MR. ARIAIL: This -- we can't say this -- not
4 suggesting it is him, just bringing it to the court's
5 attention.

6 THE COURT: So, there's a bunch of different
7 descriptions as far as different set of descriptions,
8 different height and weight?

9 MR. NETTLES: If i could say one other thing about
10 this juror when you get a second.

11 THE COURT: What you want to tell me?

12 MR. NETTLES: When you look at the question and
13 answer, he's somebody who says would never give death.

14 THE COURT: I understand.

15 MR. NETTLES: And all we were going to say, we were
16 going to offer if you brought him up, get that cleared up.
17 If you would let us go straight and ask him two questions,
18 if he doesn't get by, we'll quit.

19 MR. MAULDIN: Or you can ask him, just go right to
20 that issue.

21 THE COURT: That's what I was planning on doing,
22 this; then if there's a question about these people,
23 generally go right to that question without going to all
24 the rest of them.

25 Would you bring in Mr. Williams please, sir?

1 (prospective juror Williams, male, enters courtroom.)

2 THE COURT: Mr. Williams, how you doing today?

3 PROSPECTIVE JUROR: Fine sir, you?

4 THE COURT: Fine.

5 PROSPECTIVE JUROR: Great.

6 THE COURT: Mr. Williams, what I wanted to ask you,
7 we pulled up your name James C. Williams on NCIC report,
8 which is a criminal history report. And it shows a James
9 Edwards Williams, a Jimmy E. Williams, and a lot of
10 different names that individual is using. Okay? Do you
11 have any type of criminal history?

12 A Not as I know of.

13 Q Not that you know of.

14 A No, sir.

15 Q You probably need to know, somebody out there is
16 using your name.

17 MR. NETTLES: They're having a lot of fun.

18 Q Somebody out there is using your name as an alias for
19 criminal purposes. Okay? Just pass that on to you. Do
20 you remember -- if you would please raise your right hand.

21 JAMES WILLIAMS, (black
22 male), having being previously duly sworn, testified as
23 follows:

24 EXAMINATION

25 BY THE COURT:

1 Q Do you remember filling out this questionnaire?

2 A Sure. Yes.

3 Q When you filled it out, was it accurate to the best
4 you could determine?

5 A Best, yeah.

6 Q All right. Would you take it please, sir? Would you
7 look at the next to the last page, 11? The next to the
8 last page if you would, please, sir.

9 A Page 10?

10 Q Page 11, question number 68. Do you see the
11 question?

12 A Sure.

13 Q All right. The question was, "With reference to the
14 death penalty, which of the following statements would
15 best represent your opinion?"

16 And you circled number five. "Could never under any
17 circumstances, return a verdict of death." Is that still
18 your opinion here today?

19 A Yes.

20 Q All right. Can you think of any circumstance when
21 you would ever agree to give -- agree to give the death
22 penalty to anyone?

23 A Could I make a statement why?

24 Q Yes, sir. Tell me whatever you want to tell me. Let
25 me say this, I'm not trying to criticize your position.

1 You're entitled to your position. I'm not saying your
2 position is wrong. I'm just trying to find out what your
3 position is.

4 A Okay. I'm -- first of all, I'm a pastor.

5 Q Yes, sir.

6 A And I have problems living verdicts, you know,
7 sentences against individuals, whether it's a female or
8 male factor. I'm called to render service under Jesus in
9 the Biblical kind. So, I stands on that side of the
10 fence, because God set up the law of the land and the law
11 of God. So, I'm defending under the name of Jesus, rather
12 than the law of the land.

13 It could be guilty or not guilty, But I like to act
14 as a mediator. For instance, if a man was to be given an
15 injection or scheduled for electrocution, they would call
16 me, I would come representing repentance. Whether he's
17 guilty or not, I have a problem with it. I always have
18 had a problem with it and I still have a problem.

19 I really even don't like to swear, but I notice you
20 didn't put a bible up under my hand. I'm just against
21 that kind of stuff. That's just my opinion about it.

22 Q Does that mean you could never give a death penalty
23 in a court of law?

24 A I just can't.

25 Q Okay.

1 A I have problems with it.

2 THE COURT: Okay. Does anybody have any questions?

3 MR. NETTLES: None from the defendant.

4 THE COURT: State have any questions?

5 MR. ARIAIL: None.

6 THE COURT: I Assume, Mr. Mauldin, you have a motion?

7 MR. ARIAIL: We have. Defense has a motion,
8 defendants consent to it.

9 THE COURT: Do you want to argue the motion is my
10 question?

11 MR. MAULDIN: We do not want to argue the motion.

12 THE COURT: Does the state want to argue the motion?

13 MR. ARIAIL: No.

14 THE COURT: Mr. Williams, I want to thank you for
15 being honest with the Court. I respect your opinion. I'm
16 not saying your opinion is wrong. I think I understand
17 your position. But I want to again thank you for being
18 here and thank you for your services; but for purposes of
19 this particular jury, where the death penalty is involved,
20 you're not going to qualify. Okay? And thank you very
21 much. Keep doing good work for the Lord.

22 A Okay. Could I ask you one question?

23 Q No, sir. You have a good day. Thank you very much.

24 (prospective juror excused.)

25 MR. ARIAIL: Forty-eight, he answered he's never been

1 charged with a crime.

2 THE COURT: Let me get there.

3 MR. ARIAIL: The rap sheet with the birth date the
4 same as the 'defendants, indicates charges beginning in
5 1990 for assault and battery.

6 THE COURT: Simple or what? High and aggravated or
7 what?

8 MR. ARIAIL: Just says assault and battery and
9 pointing a firearm.

10 THE COURT: What was the disposition, can you tell?

11 MR. MAULDIN: Not guilty.

12 MR. ARIAIL: That's not the issue, judge. The issue
13 is the charge.

14 THE COURT: What else?

15 MR. ARIAIL: And assault with intent to commit sexual
16 conduct. That was in '92. That's a nonconviction.

17 THE COURT: What happened? Was it noll prossed or
18 what?

19 MR. ARIAIL: Just says, dismissed.

20 THE COURT: Okay.

21 MR. ARIAIL: Ninety-six he was charged with driving
22 under the influence first offense. There was no reported
23 disposition. 2000, driving under the influence, second
24 offense, convicted, six months, \$2,000. And those are the
25 charges. So, I mean, the issue with us is not the

1 charges. We're not talking about that. The Issue is he
2 didn't tell the truth.

3 THE COURT: I understand. The Issue is why he didn't
4 fill it out. Why he didn't mention it.

5 MR. NETTLES: I think we have a president of the
6 United States did the same thing, don't we?

7 THE COURT: Which one?

8 MR. ARIAIL: Former?

9 MR. NETTLES: No, the current.

10 THE COURT: Current or former or both?

11 MR. ARIAIL: The Current president has lied.

12 MR. NETTLES: He just didn't fill out a juror
13 questionnaire.

14 THE COURT: All right. We'll take about a
15 five-minute break while she's going to make copies of the
16 questionnaire. Do you need this? I'll ask him why he
17 didn't put it down and I'll let you explore that when you
18 have the opportunity. We'll take about a five-minute
19 break while she runs a copy of the questionnaire.

20 (Whereupon, a brief recess was taken.)

21 Mr. Sullivan, how you doing today? Please raise
22 your right hand, sir.

23 JOHN R. SULLIVAN, (black
24 male), having being previously duly sworn, testified as
25 follows:

EXAMINATION

BY THE COURT:

Q Mr. Sullivan, you filled out a questionnaire; is that correct, filled some out a month or so ago, and some today; is that correct?

A Yes.

Q At the time you filled it out a month ago and today, is it accurate to the best of your knowledge?

A Yes, sir.

Q Would you take your questionnaire, please, sir. And if you would turn to page 10, question number 64. Do you see question 64?

A Yeah.

Q At the bottom, 64, do you need some glasses? Put your glasses on so you can see. See 64? It's next to the bottom, page 10.

A Uh-huh. Sixty-four.

Q You got 64?

A Uh-huh.

Q The question is, "Briefly describe your attitudes and beliefs concerning capital punishment, i.e. the death penalty."

You said you disagree. Is that still your opinion today?

A Yes, sir. I don't believe in the death penalty.

1 Q Question number 65, what is your opinion? You say
2 you strongly oppose; is that correct?

3 A Yes.

4 Q Would you flip over to the next page?

5 A Which one?

6 Q Question 68, page 11. Do you want me to find it for
7 you? You're going the wrong direction. Flip over and
8 you'll find page 11. Let me see, maybe it's put together
9 wrong or something.

10 Missing 11 and 12 of the original. Let me give you
11 my copy, okay? And question 68, would you look at 68?
12 Question 68 says that you strongly disagree with the death
13 penalty and you could never give it, the death penalty.
14 Is that what you put on question 68?

15 A Yes.

16 Q Is that still your opinion here today?

17 A Yes, sir.

18 Q Could you under any circumstances give the death
19 penalty? In any case?

20 A No, sir.

21 Q Anybody want to ask any questions?

22 MR. MAULDIN: Before I ask, do you want to do the
23 NCIC thing first?

24 THE COURT: I'm not going to do that now.

25 MR. MAULDIN: Then I'll have a couple of questions.

1 Q Mr. Sullivan, I'm going to talk to you a couple of
2 minutes regarding your questions on the questionnaire
3 regarding the death penalty. I'm John Mauldin, and I,
4 along with William Nettles and Mark MacDougall represent
5 the defendant in this case, Charles Christopher Williams,
6 in this case. I have -- the judge indicated your opinion
7 on the death penalty; and you clearly indicated you
8 disagree with it.

9 You understand your opinions or your views are not on
10 trial? In other words, we're wanting candid and honest
11 answers. And that your views are to be respected and your
12 reluctance or hesitation or concern about the death
13 penalty is not, nobody is going to condemn you for it or
14 fuss at you for it. Do you understand that?

15 A Yes.

16 Q The question I've got for you is this. Can you think
17 of a case where a person had committed a murder or murders
18 where the prosecution asked you to consider giving that
19 person the death penalty, and this particular murder or
20 murders was, as you can imagine it, just as violent as you
21 wish, serious as you wish; but he's convicted of murder.
22 Can you imagine a case where you could give legitimate and
23 meaningful consideration to the sentence of death during
24 the penalty phase of his trial?

25 A No.

1 Q Thank you.

2 THE COURT: Let me see your -- I found your last
3 sheet. Apparently it was in the copy, Mr. Nettles. And
4 I'm going to staple it to your original. Okay,
5 Mr. Sullivan?

6 Any argument as to state's motion?

7 MR. ARIAIL: None from the state.

8 THE COURT: Any argument from the state's motion?

9 MR. MAULDIN: No argument, Your Honor.

10 THE COURT: Mr. Sullivan, I want to thank you for
11 being here. Your views on the death penalty are not
12 necessarily incorrect, not necessarily wrong, I'm not
13 insinuating they are wrong. You are entitled to your
14 opinion about the death penalty like anyone else.
15 However, for the purposes of this case, I'm going to find
16 you don't qualify. For another case you would probably
17 very well qualify, but not this particular case. Okay?

18 A Okay.

19 Q Thank you for being here. I hope you have a good
20 week.

21 PROSPECTIVE JUROR: Thank you, sir.

22 THE COURT: Thank you.

23 Solicitor?

24 MR. ARIAIL: Yes, sir.

25 THE COURT: The next jury member is Herman G. Kirven.

1 And I understand he is a County council, and we've
2 discussed this at the bench.

3 MR. ARIAIL: He is.

4 THE COURT: I understand you have researched the law
5 as to whether the law refers to the clerk of court, the
6 employee within the four walls of the courthouse, referred
7 to the old County commissioner, which is different from
8 the administrator, county council, government that
9 Greenville County presently has. Is that correct?

10 MR. ARIAIL: Yes, sir. I would say I have reviewed
11 the research. I think Mr. Moyer and Miss Strom were in
12 charge of that, and they submitted it to me, and that was
13 our collective reasoning that that's what it applied to,
14 along with commissioned deputies.

15 In addition, let me inform the court that Mr. Kirven
16 is chairman of the county council. He is originally from
17 Anderson County as I'm sure you're aware, has a brother
18 who still lives there.

19 THE COURT: Practices law there. He's an attorney in
20 Anderson.

21 MR. ARIAIL: That is correct. And Mr. Tucker, who is
22 my administrative assistant is a long-time acquaintance of
23 both Kirvens, this one and the other one. And as part of
24 the activities of my office, we invited Mr. Kirven, as we
25 do all county council members on various occasions, to

1 have lunch with us. And he had lunch with us probably
2 before he was sworn in a month or so or two before he was
3 sworn in. So, I have met him personally. He's had
4 lunch -- I don't think we talked.

5 THE COURT: Is this his first term on county council?

6 MR. ARIAIL: Yes, sir. First couple of months. I
7 don't think he went on until January. So, he's brand new.

8 THE COURT: Do you want Mr. Tucker to tell the court
9 anything about his association with Mr. Kirven?

10 MR. ARIAIL: I don't think so. Oh, is Mr. Tucker
11 here?

12 THE COURT: He's here.

13 MR. ARIAIL: No, he's not a witness.

14 MR. MAULDIN: Your Honor.

15 THE COURT: Mr. Mauldin?

16 MR. MAULDIN: On January 17th Judy Olson sent an
17 Email to both Betty and I saying that he stated in his
18 summons that he was a member of county council, been
19 elected chairman, does it disqualify him? And I sent an
20 Email at that time, can we excuse Butch Kirven by consent?

21 And Betty respectfully said, "No, I do not consent to
22 him being excused."

23 Now, I'm going to need to put on the record a matter
24 that involves the, you know, County council and the
25 relationship between county council and Bob's office,

1 county council and my office. And, so I do ask the court
2 for an opportunity to do that.

3 THE COURT: That's fine. I think you probably both
4 get money from county council. Do you?

5 MR. MAULDIN: We do not.

6 THE COURT: Public defender does not?

7 MR. MAULDIN: Zero.

8 THE COURT: Okay. Well, I'm sure the solicitor does.

9 MR. ARIAIL: Gets space in the courthouse.

10 THE COURT: But no funds?

11 MR. ARIAIL: Huh-uh.

12 THE COURT: There's No funds for assistant solicitor
13 from the county?

14 MR. ARIAIL: John doesn't get any money.

15 THE COURT: I understand, but he gets space in the
16 courthouse. You get money and space?

17 MR. ARIAIL: Yes, sir, lot of money.

18 THE COURT: A lot of money?

19 MR. MAULDIN: Lot of space.

20 MR. ARIAIL: Lot of money, lot of space.

21 MR. MAULDIN: May I?

22 THE COURT: Yes, sir.

23 MR. MAULDIN: And I'm going to make it brief; but I
24 want to make sure my position is clear. In 1981
25 Greenville county council took away the funding for the

1 Greenville county public defender's office. Now,
2 Mr. Kirven obviously wasn't on that council; but that's
3 the source of the funding at that time.

4 Since that time the Greenville county public
5 defender's office has operated on state funds only. We do
6 not get a dime from Greenville county council. We get
7 space in the Greenville County Courthouse. They attempted
8 to charge us rent for that space three or four years ago;
9 but the law prohibited them from doing so. So, they
10 couldn't collect rent from us.

11 On the other hand, Bob's office -- and he can
12 probably speak for himself regarding his relationship --
13 gets substantial funding from Greenville county council.
14 Greenville county council is chaired by this gentleman.
15 That means that this gentleman chairs the governance that
16 funds the great majority of Mr. Ariail's function,
17 including space and whatever. He can clarify it in terms
18 of dollars if he wishes.

19 What we would have is, Mr. Kirven, if he were
20 qualified and if he were seated, would be sitting on a
21 jury where Bob's office would be prosecuting a case to the
22 man who gives him the money to prosecute the case; and he
23 would be hearing from the defense side of a case that the
24 organization he is a chairman of, has for the last 23
25 years, 24 years, not given a dime to.

1 And I don't -- there's nothing legal about that
2 argument. It's just inconceivable he would be
3 appropriate, especially when he wants to be excused from
4 this case, he's expressed a request to be excused. I
5 think his request ought to be granted forthwith.

6 I wanted to be sure before he came in -- I would
7 imagine that Mr. Kirven is likely to be a qualified person
8 under the questioning we've gone through the last few
9 days. I think he'll try to be fair. But it is
10 unbelievable that the chairman of the funding organization
11 for the prosecutor would sit in judgment in a case that
12 that prosecutor prosecutes and is defended by people they
13 refuse to give money to. It's just inconceivable.

14 And it's not his fault. He hasn't been chairman for
15 the last 23 years, but he is now.

16 THE COURT: Solicitor, you got any comments to that?

17 MR. ARIAIL: The only comment I have is that
18 obviously -- short of that tirade, you can ask the man if
19 he feels he has a conflict; if he does, then he should be
20 disqualified.

21 THE COURT: I don't think it's up to him to determine
22 the conflict. I think It's up to the court to declare
23 whether it's a conflict or not. Let me hear you as to why
24 you think it's not in conflict. I'm Not going to sit here
25 and let him decide whether he has a conflict. I'll decide

1 that. Now, I'll ask him if we get to that point, what
2 does he think about that relationship, would it interfere
3 with his objectivity on the jury. As far as conflict,
4 that's a legal question. I'd like to hear you on that.

5 MR. ARIAIL: I'm not talking about a conflict. I'm
6 talking about a conflict in the sense that he feels it
7 would interfere with jury service.

8 THE COURT: Well, My question to you, do you think it
9 is a conflict for him to sit on a jury in Greenville
10 County when they do fund a major portion of your budget?
11 That's what Mr. Mauldin is raising. And I would like to
12 hear you on that point.

13 MR. ARIAIL: I haven't even thought about that in the
14 sense that it's --

15 THE COURT: Do you want a few minutes to think about
16 it?

17 MR. ARIAIL: No, not really. I will, but I'm
18 thinking that the issue is more can he serve -- whether I
19 think it's a conflict or not is not relevant. It's
20 whether he can serve fairly to this defendant and this
21 entity.

22 THE COURT: I don't think that's the issue I'm trying
23 to get you to address. I think Mr. Mauldin is basically
24 saying there's an inherent conflict between a council
25 member sitting on a jury in Greenville County. I think

1 that's Mr. Mauldin's position; is that correct,
2 Mr. Mauldin?

3 MR. MAULDIN: Based upon the funding for the two
4 offices involved.

5 THE COURT: That's his position. What I'd like to
6 hear from you -- and that Doesn't have anything to do with
7 whether he would make a good juror or not.

8 MR. ARIAIL: Can you give me about five minutes?

9 THE COURT: I'll be happy to give you as much time as
10 you want --

11 MR. ARIAIL: It won't take that Long.

12 THE COURT: -- now while he's talking. Do you, Mr.
13 nettles, or any of you legal beavers have a case anywhere
14 in the United States that supports that position?

15 MR. MAULDIN: I would cite the sixth, eighth, and
16 fourteenth amendments to the constitution.

17 THE COURT: I didn't ask you about the amendments,
18 I'm familiar with the amendments. Do you have a case
19 that's interpreting that question?

20 MR. MAULDIN: I don't. Thank you, judge.

21 THE COURT: Thank you. While he's talking, I'm going
22 to go make a phone call. I'll be right back.

23 MR. MAULDIN: Yes, sir.

24 (pause.)

25 THE COURT: Solicitor, glad to hear from you.

1 MR. ARIAIL: On the issue of conflict, Your Honor.
2 I'd point out my response is there's not a conflict in
3 this situation for several reasons. Number one, it's not
4 a conflict for me because both offices receive benefit for
5 the county. His may be in kind, mine may be in money and
6 kind; but, whatever, both are subsidized by the county.
7 The extent of that subsidy certainly wouldn't create a
8 conflict. The existence of the subsidy for both, from
9 that standpoint, that's equal.

10 I don't think it's any different also than allowing a
11 county employee like Mr. Crisp to serve on the jury. The
12 conflict would be Mr. Crisp; but certainly a county
13 employee working at the detention center, which my office
14 has dealings with 50 times a day, was not a conflict
15 between us. But it potentially was a conflict for him.
16 And i Say the same about anyone who's given -- I'll give
17 you another analogy -- people who have given money to my
18 re-election campaign from time to time. I've had those on
19 potential jurors. That is not a conflict for me. That is
20 a conflict for them as to whether or not they gave money,
21 would bear on their ability to be fair and impartial to
22 the defendant knowing they have supported me.

23 I think the conflict for me would be if I felt
24 somehow threatened in possibly getting myself into a
25 problem because he's chairman of county council, and

1 because of my prosecution of this case or pursuit of this
2 case or in making him sit on the jury may cause him to be
3 upset with me or in somehow think I was doing my job
4 improperly. But other than that, the fact that he sits on
5 my budget, the fact that he sits over part of John's
6 subsidy for office space, those are things that are a
7 natural part of government that I think would not be
8 relevant to this case. So that's why I don't think it's a
9 conflict.

10 I am concerned based upon his representations that he
11 may think he's got a conflict and would prefer not to be
12 involved, just like Mr. Crisp.

13 THE COURT: We're going to address that issue. I'm
14 going to address that issue.

15 MR. ARIAIL: And I'll Go back to the law part too.
16 I'm Not representing myself as a scholar. I don't think
17 that question is specifically answer, but it was passed
18 under the old commissioner-supervisor era; and I think
19 that's what it applied to. Whether or not you can
20 extrapolate that to the current form of government in this
21 county may be different. But I'm just representing we
22 don't have a case on point and it appears to be limited
23 not to include this form of government.

24 THE COURT: Anything, very briefly in rebuttal?

25 MR. MAULDIN: Yes. The conflict exists in 13th

1 circuit general sessions circuit court cases, not common
2 pleas.

3 THE COURT: Mr. Mauldin, but to take you a step
4 further, if what you're saying is correct, any state
5 legislator or any state senator would not be able to serve
6 on jury duty in this courtroom. If you take it to the
7 extent you want to take it.

8 MR. MAULDIN: I think if you drug it out to that
9 extreme, obviously the farther from right on the money,
10 the weaker the issue. But I'm saying we got the absolute,
11 we couldn't draw it up any clearer than that. This is
12 absolutely crystal clear. It's almost like if Ben Bowen,
13 God bless him, he's been my chairman for 24 years, chaired
14 Defender Corporation for 24 years, resigned this past
15 October because of his health. It was like if he was
16 going to be on jury duty and he writes my checks. That's
17 what we got here.

18 THE COURT: I don't think that's true. The solicitor
19 is a state employee. His salary comes from the state, not
20 the County. Now, his office is funded and assistants are
21 funded but not the solicitor personally. I think that's a
22 different situation. Your Board member hires and fires
23 you and pays your salary would be different.

24 MR. MAULDIN: The additional issue is not just his
25 funding boss, but he sits on the council that de-funded

1 the Defender corporation.

2 THE COURT: I understand that. I'm Going to deny
3 your motion based on inherent conflict. We're just going
4 to have to ask Mr. Kirven some questions and see what his
5 responses are. Okay? Would you bring Mr. Kirven,
6 please. Mr. Kirven, how you doing this afternoon?

7 PROSPECTIVE JUROR: Fine, sir.

8 THE COURT: Would you please raise your right hand?

9 HERMAN G. KIRVEN, (white
10 male), having been previously duly sworn, testified as
11 follows:

12 EXAMINATION

13 BY THE COURT:

14 Q All right. Do you remember filling out this
15 questionnaire last month and the month before?

16 A Yes, sir, I do.

17 Q When you filled it out, was it accurate to the best
18 of your ability?

19 A Yes, sir.

20 Q Would you take it please, sir?

21 A Okay.

22 Q First of all, I would like to ask you some questions.
23 It's been brought to the Court's attention you've recently
24 been elected to County Counsel and you're presently the
25 chairman of county counsel.

1 A That's correct.

2 Q Is that correct?

3 A Yes, sir.

4 Q I understand you never served on county council prior
5 to this past January or December whenever you took office?

6 A January 4th.

7 Q And you never served on county council prior to that
8 time?

9 A No.

10 Q In this particular case the county council funds the
11 solicitor's office through salaries for assistant
12 solicitors, provides space and whatever, I'm not going to
13 get specific into the funding; plus they provide space in
14 the courthouse for the public defender's office. From
15 your perspective, do you think that would affect your
16 objectivity or do you think you would have a conflict
17 sitting on this jury?

18 A The idea of cost did go through my mind. But I don't
19 think it would affect my objectivity personally.

20 Q Do you think you would have a conflict with the
21 solicitor and/or the public defender from sitting on the
22 jury?

23 A No, sir.

24 Q Okay. I want to ask you some questions about your
25 questionnaire if you don't mind please, sir. If you would

1 turn to page ten.

2 Before we get to that, I understand the clerk
3 approached myself and said that you wanted to be excused.
4 You wanted to be excused under the statute that refers to
5 the county commissioners; is that correct?

6 A On the questionnaire I saw the provision and I was a,
7 I made a mistake in thinking that was some sort of
8 automatic exemption or that I wasn't qualified. So, I
9 apologize to the court if I caused you any time.

10 Q No problem. That's a very valid point. But legally
11 I don't think that automatically disqualifies you. I
12 think the court has to make that determination whether
13 you're qualified or not.

14 A Yes, sir. I agree.

15 Q Do you understand? But the clerk did bring it to the
16 court's attention. And I appreciate you coming today.

17 A Yes, sir.

18 Q If you would, Would you look at page 10 on the
19 questionnaire, and question number 64. And the question
20 says, "briefly describe your attitudes and beliefs
21 concerning capital punishment and the death penalty."

22 You said, "it is an appropriate deterrence and
23 punishment when necessary."

24 A Yes, sir.

25 Q Can you expound upon that some and tell me when do

1 you think it would be necessary and how it would be a
2 deterrent?

3 A Well, the statement that I made is pretty simple and
4 direct. To elaborate, it's my feeling that I have no
5 qualms about the capital punishment when a person is found
6 guilty by a judicial body. So, I have no reservation
7 about that personally.

8 Q And the next question, number 65. You said, "What is
9 your opinion about the death penalty?"

10 You said, "strongly favor." Is that still your
11 opinion here today?

12 A Yes, sir.

13 Q If you'll flip over to page 11, question number 68.

14 A All right.

15 Q Question, "With reference to the death penalty, Which
16 of the following statements would best represent your
17 opinion?"

18 And you circled number two, which says, "I believe
19 the death penalty is the appropriate form of punishment in
20 some murder cases and I could return a verdict of death if
21 I believed it was warranted in a particular case,
22 depending upon the evidence, the law, and what I learned
23 about the defendant." Is that still your viewpoint today?

24 A Yes, sir, it is.

25 Q Would you turn to page four of the questionnaire if

1 you would. Question number 28. It says, "what societies,
2 unions, et cetera, organizations."

3 You said, "contacts with South Carolina department of
4 youth services, special programs for youthful offenders."
5 What are you involved in with the youthful offender
6 program?

7 A Sir, I serve on the upstate board of directors of the
8 associated Breen institutes, which has contractual
9 relationship with the Department of juvenile justice to
10 provide services of what they call wilderness camps for
11 selected youthful offenders throughout South Carolina.

12 Q Do you have direct contact with the participants,
13 i.e. the people serving time?

14 A Yes, sir. We have some of our board meetings on site
15 at some of these facilities and we usually have a
16 presentation as part of that from one of the students
17 there.

18 Q Okay. Through your participation in that program,
19 have you developed any bias or prejudice towards any
20 defendants, the criminal system in general. I know this
21 is juveniles, but towards defendants in general?

22 A No, sir.

23 Q For or against?

24 A No, sir, no prejudices. The program is to try to
25 prevent people continuing down the wrong path in life and

1 to return them to society as productive citizens. So, we
2 try to catch them at a young age through this program and
3 I believe it's very worthwhile.

4 Q And then question number 44. You said, your beach
5 house was broken into and several items were stolen; is
6 that correct?

7 A Yes, sir. That occurred several years ago.

8 Q When did that occur?

9 A In about 1999.

10 Q Were you involved in the arrest and conviction of the
11 person that broke in?

12 A No, sir. That was in Georgetown County. However, my
13 wife and I did meet with the, one of the people who were
14 apprehended and prosecuted in that case. We met with his
15 parents. And we participated in a program for the
16 victims, their rights and all that, too.

17 Q Was it juveniles that broke in?

18 A Yes, sir. I believe so.

19 Q Having gone through that process, do you have any
20 bias or prejudice towards the criminal justice system in
21 general?

22 A No, sir, I do not.

23 Q I would like to, Mr. Kirven, if I may explain to you
24 the process we're going through. The defendant in this
25 case, Charles Christopher Williams, is charged with murder

1 and kidnapping. The trial will be in two stages or two
2 phases. The first phase is commonly referred to as the
3 guilt phase. The state would be required to prove beyond
4 a reasonable doubt that the defendant was guilty of murder
5 and kidnapping. Okay?

6 A Yes, sir.

7 Q Assuming the state has proven their case and all 12
8 jurors agree the defendant is guilty of murder and
9 kidnapping, at that point in time, the defendant will have
10 been found guilty of murder and kidnapping.

11 Now, when I say murder, that's an intentional act,
12 it's not an accident or anything. That decision has been
13 made by the 12 jurors.

14 A Yes.

15 Q Once that decision is made, then you move to the
16 second phase. The second phase is the penalty phase.
17 Now, the purpose of the penalty phase is for the jury to
18 decide whether the defendant receives life imprisonment
19 without parole or death. Now, when I use the term life
20 imprisonment without parole, I mean what it says. It
21 means that the person will die in jail. He will not be
22 eligible for parole. Do you understand?

23 A I do.

24 Q All right. In that phase the state would be required
25 to produce certain or would produce certain aggravating

1 circumstances. And the state would be required to prove
2 those aggravating circumstances beyond a reasonable doubt.
3 The defendant normally would produce mitigating
4 circumstances which would be facts to convince the jury
5 that he should receive life imprisonment rather than
6 death.

7 Now, the purpose of the state presenting the
8 aggravating circumstances would be to show that the
9 defendant should receive death. All 12 of you would have
10 to agree that the state had proven the aggravating
11 circumstances beyond a reasonable doubt. At that point in
12 time the jury still would not have to give death, the jury
13 could give life if they so chose. Could give life as an
14 act of mercy if the jury decided to do that. Do you
15 understand?

16 A Yes, sir.

17 Q Now, my question is, after you've heard all of the
18 testimony in the first phase and we go to the second
19 phase, considering the testimony in the first phase,
20 considering the testimony in the second phase, which would
21 be the mitigating circumstances and the aggravating
22 circumstances, could you listen to all of that before you
23 made a decision on whether the defendant should receive
24 life imprisonment or death?

25 A Yes, sir.

1 Q Let's assume that the defendant did not put up any
2 testimony in the first phase or put up any testimony in
3 the second phase. The only thing you heard was the guilt
4 information in the first phase, the aggravating
5 circumstances in the second phase, and the defendant did
6 not put up any testimony. The defendant never has to
7 prove he's innocent, does not have to put up any
8 testimony. It's the state's burden to prove guilty and
9 state's burden to prove the aggravating circumstances that
10 they have for death. Do you understand?

11 A Yes, sir.

12 Q Now, all right. Under those circumstances could you
13 listen to all those facts, and before you made up your
14 mind as to life or death, could you consider all the facts
15 in the first phase and the second phase?

16 A Yes, sir, I could.

17 Q All right. The fact that the jury had unanimously
18 decided in the first phase that the defendant was guilty
19 of murder, which is an intentional act, premeditated
20 killing, okay? Would that alone, based on that alone,
21 would you give the death penalty?

22 A Probably so.

23 Q Okay. Now, would you make that decision before you
24 heard the evidence in the second phase or not?

25 A No, sir, I would hear the evidence.

1 Q Before you made a decision?

2 A Yes, sir.

3 Q Anybody want to question on this particular aspect?

4 MR. NETTLES: Yes, sir.

5 THE COURT: Mr. Kirven, the attorney is going to ask
6 you some questions. If you could answer them please, sir.

7 BY MR. NETTLES:

8 Q Is it general?

9 A Well.

10 Q I mean, My dad, you know --

11 A Retired.

12 Q Okay. I want to talk to you about one narrow issue.
13 A couple of questions, but one narrow issue. And, you
14 know, I see that you've got a fair involvement on a
15 community level in the criminal justice system, which is
16 good.

17 But let me ask you this. The judge just asked you,
18 you know, one of the things, when people talk about the
19 death penalty, some people say, you know, I -- you know,
20 some people are for it, some people are against it.
21 That's why we're having this questioning. And we only do
22 this in capital cases. And some people are just for it
23 all the time, and some people are against it all the time.
24 And some people say, you know, I'm against it unless it
25 was proven to me beyond a reasonable doubt that the person

1 was guilty of murder. All right? And that occurs because
2 some people have heard about people having been later
3 found innocent. So, their hesitancy about the death
4 penalty is because they believe other jurors didn't do it
5 right.

6 In South Carolina and in any capital case, before you
7 would be asked, before the case would even go to the
8 penalty phase, what would have had to have happened is
9 that you would have been on a jury, that you would have
10 been proven beyond a reasonable doubt that the person was
11 guilty of murder. All right? And as the judge said,
12 that's, I mean, it's a little more complicated than that,
13 but layman's terms it's premeditated. Technically, a
14 heart devoid of social duty, fatally bent of mischief.
15 And there has to be another very serious crime. Okay?
16 Armed robbery, rape, two of the most serious crimes that
17 that we've got. Murder and something else.

18 When you got into the second phase, if you were on
19 the jury in this jury box, you would have been proven to
20 you beyond a reasonable doubt that the person was guilty
21 of murder, okay? Not accident, not that they were insane.
22 If they were insane, we wouldn't even come to trial. But
23 they were guilty of murder and another serious crime.
24 And, you know, some people just say once that was proven
25 to me, the only appropriate punishment for that person is

1 death. Is that how you feel?

2 A Throughout my life and career I've had the
3 opportunity to make a lot of decisions and I size
4 situations up pretty quickly. And I form my own opinions
5 fairly quickly on the facts and everything else --

6 Q Yes, sir.

7 A -- that I see in the process.

8 Q Yes, sir.

9 A And my view in your answer, asking a question is a
10 fairly narrow one. I wouldn't say absolutely yes, but I
11 would tend to go that way.

12 Q And I appreciate that. And that's just sort of based
13 on beliefs that you have, I mean?

14 A Right.

15 Q Because it's got to be that, because I haven't given
16 you any facts, right?

17 A Well, that's right. Yeah.

18 Q I've told you what the law is. Now, when you say you
19 would tend to go that way, that would mean, if I'm
20 correct, that at the end of the case, at the first
21 phase -- as we said at the second phase he had been found
22 guilty of murder and another serious crime, you would be
23 looking to the defense. Now, you would listen, but in all
24 reality from where you're sitting, you would be looking to
25 the defense to change your mind?

1 A I would say that's accurate.

2 Q And, so, in other words, if they didn't bring you
3 something to change your mind, in your mind the
4 appropriate punishment for that person is death?

5 A Under the circumstances, that's correct.

6 Q I need to share with you something about the law.
7 The law says -- and before I say that, let me say this.
8 Normally, we don't get to go through all this, so you
9 don't need to worry about this going on in your county
10 every day. The only reason we go through this is because
11 the types of issues we're asking people about is types of
12 issues sometimes their personal beliefs are so strong, we
13 recognize they just really overcome their ability to
14 follow the law. I mean, the law says that at the end of
15 this first phase that a person that's on that jury should
16 be just right down the middle, it could go either way.
17 Okay? Wouldn't lean either way.

18 But the reason we can get to this question, we
19 recognize people are honest enough to say I recognize
20 that's the law, i'd try to follow the law; but because of
21 who I am, I would have a difficult time with that. Is
22 that you?

23 A I think we need to recognize what our duty would be
24 as jurors. And our duty would be to listen to all of the
25 testimony and the evidence and to weigh that impartially

1 and to come to a decision.

2 Q Yes, sir.

3 A And that's the way I would approach that, my duties
4 in this regard.

5 Q I think I understand. I mean would the defense,
6 notwithstanding what the law is, would the defense have a
7 burden in your view to overcomes?

8 A Definitely.

9 Q Okay. And that is notwithstanding -- you're just
10 being honest with us -- notwithstanding that, the law says
11 in theory they shouldn't.

12 A Well, I'm not schooled on legal theory.

13 Q I understand.

14 A But that's my position, is I would take a fairly
15 narrow view, given the situation that you've described.

16 Q Yes, sir. Yes, sir. Let me go check with my
17 generals, but I'll be right back with you. Okay?

18 A Okay.

19 Q I have nothing else. Thank you very much.

20 THE COURT: Solicitor, I'm going to ask two or three
21 questions before we go further.

22 I'll give you another chance to respond to these
23 questions. Mr. Kirven, I want to make one thing clear.
24 Okay? You said you would follow your duty as a juror
25 under the law. Let me tell you what the law says. Okay?

1 A Yeah.

2 Q The law says after the first phase, once you find the
3 defendant guilty, your obligation as a juror is to keep an
4 open mind and listen to the testimony in the second phase
5 before you make a decision. Do you understand that?

6 A Yes, sir.

7 Q All right. Also I told you in the first part the law
8 says that the defendant never has a burden to prove
9 anything. It's the state's obligation to prove the guilt
10 as well as the reason the defendant should receive death.
11 Do you understand that?

12 A Yes, sir, I do.

13 Q Now, you told, you said earlier you felt like the
14 defendant had the burden. Do you believe that or could
15 you follow your duty as a juror and follow the law?

16 A Well, in the absence of anything presented by the
17 defense, I would have to make an opinion based upon what
18 the prosecutor presented.

19 Q Right. But the only thing the law says, you don't
20 make that decision until you heard.

21 A Yes, sir.

22 Q You keep an open mind.

23 A Absolutely. I will do that.

24 THE COURT: Do you want to respond to that?

25 MR. NETTLES: Yes, sir.

1 THE COURT: I'll be glad for you to ask questions.

2 MR. NETTLES: I just want to talk about the law, and
3 my understanding is the law presumes life.

4 THE COURT: That's true.

5 MR. NETTLES: I don't think we discussed that.

6 THE COURT: I'm Sorry, that hasn't been said. In
7 capital cases the law presumes life. The burden is on the
8 state to prove that the defendant should be put to death.
9 Do you understand that about the law?

10 PROSPECTIVE JUROR: Okay. Yes, sir.

11 THE COURT: Now, if you want to ask any questions
12 based on my question, because I think he was confused
13 about the law when he was answering some of your
14 questions. I wanted to Clarify it. You're free to ask
15 any questions you want to ask after I've asked the
16 questions. Then we'll go to the solicitor.

17 BY MR. NETTLES:

18 Q Let me ask you this. I first want to say that if my
19 questioning confused you on the law, I want you to
20 understand I had no intention of trying to confuse
21 anybody. Mainly, if I did, he was going to straighten it
22 out anyway, so it wouldn't get me anywhere.

23 Let me ask you this. A person who is convicted of
24 murder and another serious crime and we're in the second
25 phase and the defense has brought you nothing, because

1 they just can't, you know, just like in a trial phase, you
2 know, sometimes the first phase the defense doesn't put up
3 anything, he's got a presumption of innocence. If we're
4 in the second phase, murder, another serious crime;
5 murder, you sat on a jury convinced beyond a reasonable
6 doubt, the defense gives you nothing, could you give
7 meaningful consideration to sentencing that person to
8 life?

9 A I understand and I would consider that.

10 Q I appreciate that. And I know you would consider it
11 because you seem like a reasonable person. The question
12 is, do you understand the difference between consideration
13 and meaningful consideration?

14 A Well, the thing that's going on in my mind is you
15 know, the state has authorized the death penalty under
16 certain circumstances.

17 Q Right.

18 A And the question posed, if this was proved true, you
19 know, would be hard pressed for me to do my duty not to
20 impose that sentence the way the situation has been
21 described here. That's as honest an answer as i can give.

22 Q Well, let me ask it to you this way. Could you see
23 yourself, Okay, ever sentencing someone to life under the
24 circumstances you and I just discussed?

25 A Well, I wouldn't rule that out.

1 THE COURT: What circumstance? You gave him two or
2 three.

3 MR. NETTLES: I didn't think you wanted me to go
4 through it again. You know, murder, another serious
5 crime, you sat on the jury, you're convinced beyond a
6 reasonable doubt and the defense brings you nothing and
7 the government brought you aggravation in the penalty
8 phase, they brought you victim impact evidence, and they
9 have said, you know, we believe this is the appropriate
10 punishment, here is our evidence, and the defense brought
11 you nothing.

12 A I would certainly weigh it in my mind, but I'll be
13 hard pressed to do anything other than the maximum penalty
14 there.

15 Q Which is death?

16 A Yes, sir.

17 MR. NETTLES: If I could touch base one more time.

18 THE COURT: All right.

19 MR. NETTLES: Thank you. I have no further
20 questions. Thank you.

21 BY MR. ARIAIL:

22 Q Mr. Kirven, just go over a couple of things. You and
23 I previously met and I informed the court that you and I
24 have had lunch. You're a friend of my administrative
25 assistant, Mr. Tucker; and we had lunch in our office. I

1 want to just ask the question if that meeting, or anything
2 we discussed that one time we have met in any way impair
3 your ability to be fair and impartial as a juror?

4 A No, sir. Not at all.

5 Q Let me ask just a follow-up question to all that
6 previous question. If you were on the jury and the case
7 had been decided, the defendant was guilty, it's an
8 intentional killing because that's what the law in this
9 state says; and the defendant had been convicted of
10 intentional murder with malice aforethought -- that's what
11 murder is -- and then the state presented evidence in
12 aggravation and the defense presented nothing and you
13 retired to the jury room and you began to deliberate with
14 your fellow jurors and you reached the conclusion, in your
15 own mind, that under the facts and circumstances of that
16 case, that the death penalty was not appropriate, could
17 you give, return a verdict of life imprisonment?

18 A Yes, I could.

19 Q And you understand the decision is your decision as a
20 member of the jury as to whether or not death or life is
21 the appropriate circumstance -- penalty for the
22 circumstance Of the crime? What the judge is telling you
23 is that the law requires you, and he'll instruct you, that
24 you've got to follow his instructions, that you can't make
25 that decision until you hear all the evidence. And he

1 asked you if you could follow that instruction. And I
2 guess the question to you is, after our prior questioning,
3 is it accurate that you can follow the judge's
4 instructions and listen to all the evidence --

5 A Yes, sir.

6 Q -- before making a decision?

7 A Yes, sir. Absolutely.

8 Q All right. If you were to decide that the death
9 penalty was the appropriate sentence and all other jurors
10 were to decide that, the law requires you sign a form with
11 your name and bring it back to the judge. Would you have
12 any problem putting your name on that form if that had
13 been your verdict in the jury room?

14 A No, sir.

15 Q Okay.

16 MR. ARIAIL: That's all I have. Thank you.

17 THE COURT: Mr. Kirven, would you step out in the
18 hall just a second, please, sir? I'll get you back in
19 just a few minutes.

20 (prospective juror exits.)

21 THE COURT: I have not gone through the entire
22 qualification, got off on the death penalty. Any motions
23 as to death penalty? Or you want me to do the entire
24 qualification?

25 MR. NETTLES: No, sir. I think at this point he's

1 not qualified. Here is why. He's a burden shifter, and
2 if we don't bring him something, it's going to be death.

3 THE COURT: I know he answered your question that
4 way; but he also qualified it and said he would follow his
5 duty as a juror. That's why I went back to try to explain
6 to him what the law was. He qualified it when he answered
7 that question.

8 MR. NETTLES: I kind of disagree and here's why. I
9 disagree and here's why.

10 THE COURT: All right.

11 MR. NETTLES: That was a dogmatic response. That was
12 a classic dogmatic response. Of course, he's going to try
13 to do his duty.

14 "Will you follow the law?"

15 "Yes."

16 And I didn't give him any hypotheticals, that was
17 just under the law, if we don't bring something to him,
18 he's going to give him death. That's what he said.

19 Now, the government got up and the closest they got
20 on their rehabilitation was, "Would you listen to the
21 evidence?" Of course he's going to listen to the
22 evidence. And There was no mention made on the
23 rehabilitation that came close to addressing that issue.
24 That's a serious issue. If he has told us that if we wind
25 up in the penalty phase and unless we bring him something

1 --

2 THE COURT: He told me just the opposite when I asked
3 him.

4 MR. NETTLES: I hasten to say, Your Honor, that he
5 told you he would do his duty. And that's kind of like
6 saying, "can you be fair?" Nobody is going to say you
7 can't be fair. Everybody is going to say they can do
8 their duty.

9 THE COURT: I would think with a brigadier general,
10 duty is probably more important than fair. Maybe I'm
11 wrong.

12 MR. NETTLES: I agree with you. But whenever the
13 facts are presented to him, he did his duty under oath and
14 told us that unless we bring him something, that he is
15 going to give this guy death. I mean, I asked him twice.
16 One time i asked it to him, you came in and explained the
17 law to him, I came back and I went with exactly the law
18 that was given to him. And he was candid with us. He
19 just said that, that if you don't bring me something and
20 it's a murder and a serious crime -- and I even went as
21 far as to say, your honor, i went as far as to say, "look,
22 now, the law says that you're supposed to be kind of down
23 the middle." That was his opportunity to say, "look, I'd
24 just follow the law, be right down the middle."

25 But he Just said candidly, "no, unless they bring me

1 something, I'm going to have to give him the maximum
2 sentence."

3 And I said, "that would be death."

4 And he said, "that's right."

5 Your Honor, the other thing we need to think about is
6 that whenever we look at this --

7 THE COURT: Hold on a second, I want to look at
8 something.

9 MR. NETTLES: It would have been about the last time
10 I was talking.

11 THE COURT: Donna, can I get you to go back and hold
12 it for a second. I want to see what his response is.

13 (pause)

14 Anyhow, the answer to your question, he said, "I
15 would consider all the facts, but I would be inclined to
16 give the death penalty." That was basically his words.
17 He said, "I would consider everything, but I would tend to
18 give the death penalty." Those were exact quotes. I was
19 trying to find the exact quote here.

20 MR. NETTLES: It was something like that. I mean,
21 I'll concede that. That's mitigation impaired. That's
22 mitigation impaired. He's looking for me to bring him
23 something. And, judge, let's be clear, this is exactly
24 what Morgan is about.

25 THE COURT: When you asked him about if the defendant

1 did not bring you anything, could you consider -- what
2 would you consider? And he said, "I would consider all
3 the facts, but I would be inclined to give death."

4 MR. NETTLES: That's right, your honor. And the
5 reason that was so potent is because we had twice, both
6 you and I had gone through, "look, the law doesn't require
7 it." Okay? The law requires in this phase, you know,
8 sort of like that cloak of innocence thing. Both you and
9 I had gone through that. So, he knew that if he were just
10 going to follow the law, he'd say, "well, you know, I'd be
11 right down the middle," like the law says. You and I both
12 explained that law. I explained it to him. Arguably, it
13 was convoluted.

14 You said, "Wait a minute, let me explain this to
15 you." And you took him and You explained to him exactly
16 what the law is. And He's a smart man. He Didn't get to
17 be where he is by being a dumb guy.

18 Your Honor, the United States supreme court has been
19 pretty clear. I mean --

20 THE COURT: I understand it says they got to
21 conscientiously consider the circumstances.

22 MR. NETTLES: Plus just a dogmatic response, to do my
23 duty is not enough to cure what he has said. The
24 government up -- they got to question him. The best they
25 could get him to say was he'd listen. Well, of course

1 he'd listen.

2 MR. ARIAIL: That's not what he said.

3 MR. NETTLES: That's exactly what he said. I wrote
4 it down.

5 THE COURT: Anything else?

6 MR. NETTLES: That's not good enough. That's Not
7 even close to good enough.

8 THE COURT: I understand. Solicitor, let me hear
9 from you.

10 MR. ARIAIL: First, his response was, the one I
11 think you went back to is, under those circumstances,
12 life -- I mean convicting murder and kidnapping, then he
13 asked him would he consider sentencing someone to life
14 under that with murder and another serious crime?

15 And he said clearly, "I would certainly weigh it in
16 my mind. But I would be hard pressed not to give death
17 where he hadn't presented anything." And earlier he said,
18 when they first tried to pin him down, the first series
19 through, before we took a break, he said he would consider
20 all in the second phase. And then he said, as to death,
21 he said, "that would not be an absolutely yes, but I would
22 tend to go that way."

23 So, what we have is -- we don't have a burden shifter
24 and don't have a mitigation impaired. What we have is
25 somebody who is more likely to give death than he is to

1 give life. But he still can consider it and he said he
2 would follow your direction. And he answered my last
3 question where I said, "if the defendant didn't bring any
4 evidence and the state presented everything, would you
5 still consider giving a life-in-prison sentence?"

6 And he said, "yes."

7 And then I said -- but let me just, I'm not sure I
8 follow all this. And maybe if I go home tonight I can
9 think about it clearly. What is the basis -- and I'm
10 asking a rhetorical question. "What is the basis for
11 dismissing a juror on the argument that he's mitigation
12 impaired on a hypothetical situation that is not in fact
13 going to be true? And that is, they're saying we're not
14 going to present you anything. So, therefore, you're
15 mitigation impaired when the truth is they are going to
16 present something. And it wouldn't become a reality until
17 that point. I don't have the answer to that, i'm just
18 throwing it out.

19 THE COURT: I understand. But I still think the law
20 is that they don't have to produce it. I still think he
21 has to give some meaningful consideration to the facts
22 before he makes a decision.

23 MR. ARIAIL: Right. I agree with that.

24 THE COURT: Okay. You're standing, do you want to
25 say anything?

1 MR. NETTLES: I agree with everything that he just
2 said about what the general said. And here is the
3 problem. Jurors that have been qualified have said things
4 like this. "Well, if at the end of it, if they didn't put
5 up anything, I could still consider both. I could give
6 life without parole, I could give death, what it is absent
7 from what this juror said was, he never said he could give
8 life without parole unless we brought something to him.
9 It was always, "well, yeah, I could listen to it." The
10 jurors that we have decided that have followed the law
11 have said i could give.

12 THE COURT: All right. I understand. Donna, quit
13 typing on that machine and come up here, please.

14 (pause)

15 Having reviewed the entire transcript and the
16 testimony from Mr. Kirven and his answers, I'm going to
17 grant the defendant's motion to excuse him based upon his
18 answers to the solicitor as well as the defense and to the
19 court. Having reviewed the exact contents of his answer
20 and the content of the questions, I'm going to grant the
21 motion.

22 MR. NETTLES: Thank you, Your Honor.

23 THE COURT: And before I read this I wasn't inclined
24 to do that. So, it has come in handy at least on this
25 particular occasion. I just got to learn how to use it.

1 MR. NETTLES: Thank you, your honor.

2 (prospective juror returns)

3 THE COURT: Mr. Kirven, I want to thank you for being
4 here. I appreciate your honesty in the answers from the
5 questions I heard and the answers that I've heard. And
6 I'm not trying to say that your view on the death penalty
7 is wrong. You're entitled to that right. But having
8 listened to it and reviewed it on the realtime here, I'm
9 going to find that you're not qualified for this
10 particular case. Okay?

11 PROSPECTIVE JUROR: Okay, sir.

12 THE COURT: Thank you very much. Nice to meet you.
13 Hope you enjoy your duties on County Council.

14 (prospective juror exits.)

15 MR. NETTLES: Your honor, one thing real quick. This
16 is not anything anybody contests. This is just the order
17 for the phone records, and I've given a copy to
18 Mrs. Strom, the phone records.

19 MR. MAULDIN: Your Honor, with regard to these
20 matters you handed to me on Mr. York, we consent that
21 these be accepted as what would be equivalent of a
22 doctor's excuse and excuse this juror.

23 THE COURT: Do you agree with that, Solicitor Strom?

24 MS. STROM: Yes, sir.

25 MR. ARIAIL: Yes, sir.

1 THE COURT: Would you tell him he may be excused
2 please, ma'am?

3 MR. MAULDIN: That's number 48?

4 THE COURT: Yeah, number 398, 48 on your list.

5 (prospective juror enters courtroom.)

6 THE COURT: Mrs. Elmore, how you doing today?

7 PROSPECTIVE JUROR: Fine. How are you?

8 FRANCES T. ELMORE, (white
9 female), having been previously duly sworn, testified as
10 follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Mrs. Elmore, do you remember filling out this
14 questionnaire either last month or the month before?

15 A Yes.

16 Q At the time you filled it out, was it accurate?

17 A Yes.

18 Q Could I give you -- if you would hold on to your
19 original questionnaire. Mrs. Elmore, I'm going to ask you
20 some questions. There's no right or wrong answer, just
21 give the best answer you can. Okay?

22 A Okay.

23 Q And answer the questions truthful. Can you do that?

24 A Yes.

25 Q Do you have any physical or mental reason why you

1 cannot serve on this jury?

2 A No.

3 Q Do you have any personal hardships as to why you
4 cannot serve on this jury?

5 A No.

6 Q This case is the State versus Charles Christopher
7 Williams, and he's charged with murder and kidnapping,
8 which occurred on September 3 2003 at a local Bi-Lo here
9 in Greenville. Have you heard anything on TV, radio, read
10 anything on -- heard anything on radio or anybody talking
11 about the case?

12 A I didn't know what the case was until two weeks ago.
13 They mentioned the name, but I actually turned the TV off
14 Monday evening because they were definitely covering it.

15 Q Who mentioned the name?

16 A The name was in the paper that I received and I
17 didn't know what case it was until two weeks ago.

18 Q So, you've heard no facts about the case?

19 A No.

20 Q From any source?

21 A No.

22 Q Is that correct?

23 A That's right.

24 Q All right. Do you know the victim in the case,
25 Maranda Williams?

1 A No.

2 Q Do you know the defendant, Charles Christopher
3 Williams, who sits to my right in the blue sweater?

4 A No.

5 Q Do you know either of Mr. Williams' attorneys,
6 Mr. Mauldin or Mr. Nettles, who sits on either side of Mr.
7 Williams?

8 A No, sir.

9 Q Do you know the solicitor or two assistant solicitors
10 sitting to my left? Or do you have a personal
11 relationship with anyone in the prosecutor's office?

12 A No.

13 Q I'm going to give you a list, ask you to read that
14 list and see if there's anybody on that list that you
15 recognize.

16 A (complies.) No.

17 Q Okay. Let me give you another list, see if you
18 recognize anybody on that list. And these are lists of
19 potential witnesses in the case.

20 All right. Mrs. Elmore, I'm going to read a question
21 to you and ask you to respond to it please, ma'am. In
22 this case the defendant is black and the victim is white.
23 It's undisputed that the black defendant and white victim
24 engaged in interracial dating. Would the fact that the
25 defendant and the victim engaged in interracial dating

1 make it difficult for you to be fair to either the state
2 or defendant?

3 A No.

4 Q Would you, Miss Elmore, take your questionnaire and
5 turn to page 10 please, ma'am? Question number 64.

6 A Yes.

7 Q The question says, "Briefly describe your attitudes
8 and beliefs concerning capital punishment."

9 You said, "if the crime is premeditated, I believe in
10 the death penalty."

11 A Yes.

12 Q Question 65, you said you somewhat favor the death
13 penalty; is that correct?

14 A Yes.

15 Q If you go to question 68 on the next page. You find
16 it? I think you got to go the other way. Flip back one
17 page. Look at, turn it around and you'll find it. Do you
18 see question 68, page 11?

19 A Oh, yes. Okay.

20 Q Do you see it?

21 A Yes.

22 Q The question with reference to the death penalty,
23 "Which of the following statements would best represent
24 your opinion?"

25 And you said, "I believe the death penalty is the

1 appropriate form of punishment in some murder cases. I
2 could return a verdict of death if I believe it was
3 warranted in a particular case, depending upon the
4 evidence, the law, and what I learned about the
5 defendant." Is that still your opinion here today?

6 A Yes, it is.

7 Q Mrs. Elmore, I'm going to try to explain to you the
8 process we're going through here today. Okay? And later
9 in the week.

10 A Okay.

11 Q First of all, I wanted to tell you on your question
12 where you gave your attitudes and beliefs about the
13 capital punishment, where you said if you believe the
14 crime was premeditated, you believe in the death penalty.
15 In order to be convicted of murder in South Carolina the
16 requirement is, it's a killing with malice aforethought.
17 Malice aforethought requires an intentional act for a
18 premeditation. So, any murder in South Carolina would be
19 premeditated. Do you understand that?

20 A Yes.

21 Q Now, knowing that about the law, do you still think
22 that you would give the death penalty to everybody that
23 was convicted of murder?

24 A No.

25 Q No.

1 A No.

2 Q Why not?

3 A I don't know. I just feel like I would have to hear
4 the reasoning that it happened. Do you know, like I
5 thought in accident, that's not murder?

6 Q No, we're not talking about accident, we're not
7 talking about self defense. We're talking about an
8 intentional killing.

9 A I think so.

10 Q Think so what?

11 A I still believe in it, but still would have to hear--

12 Q Let me tell you about the process of the trial. It
13 Would be broken up into two phases. The first phase is
14 referred to as the guilt phase, and in the guilt phase the
15 state would be required to prove the defendant guilty
16 beyond a reasonable doubt. And the defendant is charged
17 with murder and kidnapping.

18 Let's assume that the jury agreed that the state had
19 proven their case beyond a reasonable doubt and all 12
20 jurors believed the defendant was guilty of murder and
21 kidnapping.

22 A Yes.

23 Q Do you understand?

24 A Yes.

25 Q So, the jury now decided that was an intentional

1 premeditated killing.

2 A Yes.

3 Q That decision would be made in the first phase.

4 A Yes.

5 Q Then the jury goes to the second phase, referred to
6 as the penalty phase. The purpose of the penalty phase is
7 for the jury to make a decision whether the defendant
8 should receive life imprisonment or death. Do you
9 understand?

10 A Yes.

11 Q The state would introduce aggravating circumstances.

12 A Yes.

13 Q The aggravated circumstances would be designed to
14 convince the jury that the -- convince the jury that the
15 defendant should receive death. Do you understand?

16 A Yes.

17 Q The law presumes life in jail without parole. Life
18 without parole means what it says, that the person will
19 die there in jail. He will never get out. Do you
20 understand?

21 A Yes. Yes, sir.

22 Q The defendant generally would offer mitigating
23 circumstances and these circumstances would be facts about
24 the case or facts about the individual that would convince
25 the jury that the defendant would deserve life.

1 A Yes.

2 Q All right. Now, my question, since you stated that
3 you felt like any premeditated murder, premeditated murder
4 should receive death, would you make up your mind in the
5 guilt phase, which is the first phase? Or would you wait
6 until the end of the sentencing phase before you made up
7 your mind and listen to all the testimony in both phases
8 before you decided on death or life?

9 A The second.

10 Q You would wait until you heard everything?

11 A Possibly. I'm not going to say yes or no. I'm just
12 saying possibly.

13 Q Let me say this to you. The law says it requires you
14 to do that as a juror.

15 A Uh-huh.

16 Q Okay?

17 A Okay.

18 Q The law says you need to, are supposed to keep an
19 open mind. You're not supposed to make up your mind until
20 you hear everything, until the guilt phase and the
21 sentencing phase.

22 A Right.

23 Q Would you be able to do that based on your beliefs of
24 the death penalty?

25 A Yes.

1 Q You would be able to?

2 A After I heard everything, yes.

3 Q All right, everything. Could you make your decision
4 based on the testimony you hear in the courtroom from the
5 witness stand?

6 A Yes.

7 Q Can you be fair and impartial to both the state and
8 the defendant?

9 A Yes.

10 Q Do you know any personal reasons to why you should
11 not serve on this jury?

12 A No.

13 THE COURT: Whose turn? Solicitor?

14 BY MR. ARIAIL:

15 Q Miss Elmore, my name is Bob Ariail and I'm the
16 solicitor for the 13th circuit, which if you watch TV,
17 it's the -- I'm the district attorney, in South Carolina
18 we call it solicitor.

19 In this case I will be representing the state along
20 with my deputy, Miss Strom, and one of my assistants,
21 Mr. Moyer. The judge explained, I don't want to belabor
22 because he's already been over the process, there's two
23 phases to the death penalty trial. The state can only ask
24 for the death penalty in a murder case, and it has to be a
25 murder that is accompanied by an aggravating circumstance;

1 that is, another crime had been committed with it, such as
2 murder during the commission of armed robbery, murder
3 during burglary, but two crimes together committed at the
4 same time. Not two separate, not one today and one six
5 months down the road. They're at the same time.

6 A Yes. Yes.

7 Q So, under those circumstances, very limited, the
8 state can ask for the death penalty.

9 A Yes.

10 Q And if you were in a case which the state asked for
11 the death penalty, as a juror you would be seated and the
12 first phase of the trial would concentrate on whether the
13 defendant was guilty or whether or not he's not guilty.
14 After that phase and only after that phase where the
15 defendant had been convicted of both the murder and the
16 aggravating circumstance, could you consider the death
17 penalty. All right?

18 A Uh-huh.

19 Q So, you don't consider the death penalty in the first
20 phase.

21 A No.

22 Q And the judge will instruct you that to be an
23 appropriate and effective juror and fair, you can't make
24 up your mind about the penalty that's appropriate until
25 you hear all the evidence about the penalty. You can't

1 just say I'm going to give him life based on what I heard
2 in the guilt phase Or I have to give him death based on
3 the guilt phase. Do you understand that?

4 A Yes.

5 Q Do you believe you can keep an open mind after the
6 guilt phase and hear the evidence in the penalty phase
7 before making a decision?

8 A Yes.

9 Q All right. Now, in the penalty phase, the second
10 phase, one of the rules of court is that the defendant
11 does not have to present any evidence. He doesn't have to
12 testify. He doesn't have to present any witnesses. And
13 you cannot, the judge will tell you, you cannot hold that
14 against him. All right?

15 A All right.

16 Q So, let's assume that you are in a situation where
17 you have convicted somebody of murder. It's intentional
18 because that's the law. Murder has to be intentional and
19 it has to be with malice. Even after that, in the penalty
20 phase, you still have a right to give a sentence of life
21 imprisonment.

22 A Yes.

23 Q Regardless of what the evidence shows the
24 circumstances.

25 A Yes.

1 Q So, when you're considering that and the state brings
2 in evidence of aggravation and the defendant doesn't
3 present anything, you still have a right to return a
4 sentence of life in prison --

5 A Uh-huh.

6 Q -- based on what you heard. Do you believe you can
7 consider that sentence and return a verdict of life
8 imprisonment if you felt the facts justified that?

9 A Yes.

10 Q Yes.

11 A Yes.

12 Q I know you were nodding your head, but she needs to
13 take it down.

14 The judge will also instruct you that the -- after
15 you reach a verdict, say all you jurors get together and
16 you decide that the appropriate sentence is death, that's
17 your verdict, when you return to the jury room, you have
18 to bring with you a piece of paper. And on that piece of
19 paper you would have to sign your name along with your
20 other 11 jurors. If you had reached that verdict outside
21 in the jury room, would you be able to return and bring
22 that piece of paper and physically sign your name to it?

23 A Yes.

24 Q You wouldn't have any hesitation about doing that?

25 A No.

1 Q Let me go back to your questionnaire. The judge
2 asked you about number 64. You see that, on page 10?
3 It's kind of hard to do these things, probably best to
4 flip all the way to the back. It says, "If the crime is
5 premeditated, I believe in the death penalty."

6 So do I understand that correctly, if the crime is
7 premeditated, you believe in the death penalty --

8 A Yes.

9 Q -- can be an appropriate sentence not necessarily the
10 only sentence?

11 A Yes.

12 Q Is that a fair --

13 A Yes.

14 Q That's why you checked number two on 68? The next
15 page where it says, "I believe the death penalty is
16 appropriate in some murder cases."

17 A Yes.

18 Q So, if you're on a jury that has already convicted a
19 defendant of intentional murder, you'd still be able to
20 consider imposing a life sentence?

21 A Yes.

22 Q Even until you've heard all the evidence related to
23 it?

24 A Yes.

25 Q Okay.

1 THE COURT: Mr. Mauldin.

2 MR. ARIAIL: Thank you. That's all I have.

3 BY MR. MAULDIN:

4 Q Miss Elmore, I'm John Mauldin. I'm the public
5 defender. It's been a long day, so I'm going to try to
6 get right to the point. I appreciate you sending in the
7 questionnaire. And when I read this, I pretty well
8 thought I understood, now I'm not real sure; and I want to
9 make sure we're kind of together. It said if the crime
10 was premeditated, I believe in the death penalty.

11 A Uh-huh.

12 Q That's the 64 question, question 64. Then when the
13 judge was explaining to you the two --

14 A Yes.

15 Q -- two phase trial, where you have whether the person
16 is guilty of the first trial and then what we're going to
17 do about it in the second trial?

18 A Uh-huh.

19 Q You said -- he asked you if you could consider both
20 penalties, and I wrote the quote. "I'm not going to say
21 yes or no, but possibly."

22 A Yes.

23 Q And that, of course, renewed my concern.

24 A Uh-huh.

25 Q And, because what I had written down, and I -- about

1 you, was that you were what I call an eye for an eye type
2 juror. Do you know what I mean by that?

3 A I think so. Yes.

4 Q What do you think I meant when I wrote that down?

5 A What I think the bible, the eye for an eye is, you do
6 to them what they do to you, isn't that?

7 Q Right. That's what I thought I read in 64. That if
8 a person were convicted of murder and you were ---

9 A To me premeditation is planning, you planned that
10 murder.

11 Q Planned a murder. And the judge I think mentioned to
12 you that in South Carolina a murder, for a person to be
13 convicted of murder, the proof at that first phase would
14 have to be that it was intentional. That means no
15 accident, mistake, manslaughter. And it says with malice
16 aforethought.

17 A Right.

18 Q Which in layman's terms, as the court has defined,
19 essentially means premeditated, so planned would be a part
20 of pre --

21 MR. ARIAIL: I object to that characterization.
22 That's not correct.

23 MR. MAULDIN: If you want to clarify.

24 THE COURT: I don't want to clarify. If we're going
25 to get into the technical definition of premeditation,

1 you're going to have to explain to her the time frame can
2 be short, it can be long, it can be almost instantaneous.
3 All right?

4 MR. MAULDIN: Right.

5 THE COURT: If we're going to get into that.

6 MR. MAULDIN: Well, i think --

7 THE COURT: I Overrule the objection; if you properly
8 ask the question with regard to premeditation.

9 BY MR. MAULDIN:

10 Q Ms. Elmore, with regard to premeditation, and it was
11 coming out of 64.

12 THE COURT: And The reason I say that, I think this
13 lady thinks premeditation is something somebody plans and
14 plans and plans a long period of time. The law doesn't
15 require that.

16 MR. MAULDIN: All right.

17 THE COURT: If you're going to have to get in it,
18 explain it.

19 MR. MAULDIN: All right.

20 MR. ARIAIL: Can I have the record reflect she nodded
21 her head on that.

22 THE COURT: Yes. Yes, She did nod her head when I
23 said she thinks that's what premeditation is.

24 Q You get the law, the definitions of the law from the
25 judge in our courts. He would tell the jury that malice

1 is wickedness, evil.

2 A Yes.

3 Q Aforethought, means that it was intentional. He had
4 enough time, the person charged with murder, would have
5 had enough time to design his conduct to do an intentional
6 act. That Doesn't mean he planned it for weeks, he could
7 have planned it for only a moment. But it has to be
8 intentional conduct.

9 Your Honor?

10 THE COURT: That's fine. Go ahead, ask the question.

11 Q Now, the question I'm getting to, Miss Elmore, was at
12 the first phase the person would have been convicted --

13 A Yes.

14 Q -- of that. The jury has already decided. And if
15 you were a member of the jury beyond a reasonable doubt,
16 you've decided this person is guilty of murder, it was
17 intentional, with malice. And the question I've got is
18 then when you go into that second phase, have you
19 determined under an eye for an eye or any other rationale,
20 that the person deserves to die for being convicted of
21 murder?

22 A No.

23 Q You have not?

24 A No.

25 Q So, in the second phase --

1 A Yes.

2 Q -- you would be listening to the testimony?

3 A Yes.

4 Q The prosecutor would bring in evidence of
5 aggravation; that is, evidence that would make the offense
6 worse?

7 A Yes.

8 Q Any kind of information that would, in his request
9 that the person be sentenced to death. The defendant in
10 this case that we're talking about, not this particular
11 case but just in a capital case, may not bring in the
12 first witness or the first piece of evidence. And here is
13 my question. If that were the case, could you, knowing
14 how you feel about the death penalty, give meaningful
15 consideration to a sentence of life in prison?

16 THE COURT: Miss Elmore, before you answer this, I
17 don't know if I explained this before, I want to explain
18 this to you. The defendant never has an obligation to
19 prove his innocence or prove anything. He doesn't have to
20 testify under the law. It's the state's obligation to
21 present the case on guilt and on the sentence. Okay? Now
22 you may answer the question.

23 MR. MAULDIN: Do you follow the judge's instructions?
24 Can you remember the question?

25 PROSPECTIVE JUROR: Nope.

1 MR. MAULDIN: He's got a thing up there, he can read
2 the question.

3 THE COURT: Miss Elmore, the question was, any kind
4 of information that would be in his request that the
5 person be sentenced to death, the defendant in this case
6 that we're talking about -- not this particular case but
7 just in a capital case -- may not bring the first witness
8 or the first piece of evidence; and here is my question.
9 If that were the case, could you knowingly -- could you,
10 knowing how you feel about the death penalty, give
11 meaningful consideration to a sentence of life in prison?

12 A Yes.

13 Q Now, the final question with regard to this issue I
14 would have for you, Miss Elmore, the prosecutor used this
15 terminology. He said, "During the sentencing phase you
16 would have a right to consider a life sentence."

17 A Yes.

18 Q You would have the right.

19 A I would want that right. Yes.

20 Q And I guess what I'm getting at here is, the judge
21 would tell you that you must consider certain things, you
22 must.

23 A Yes.

24 Q But, you know, when you really boil it all down, it's
25 not just what you're told to do, it's what you feel. It's

1 What you really think you can or can't do.

2 A Right.

3 Q And that, and my question is, do you truly believe
4 that if you were in the second phase and a person had been
5 convicted -- not whether you got the right to consider,
6 whether the judge says you must -- the question is whether
7 you individually could give meaningful consideration to a
8 sentence other than death for a convicted murder?

9 A I don't --

10 MR. ARIAIL: I hate to interrupt. But that's been
11 asked three times and answered. I'd object.

12 MR. MAULDIN: Answer please.

13 THE COURT: I'll Overrule. Go ahead and answer. I
14 think she's answered two or three times. But Go ahead,
15 what is your answer?

16 A I was going to say death is not an easy thing to
17 consider at all. It's not.

18 MR. MAULDIN: All right. Thank you, ma'am.

19 THE COURT: Any motions from either party on this
20 juror?

21 MR. ARIAIL: None.

22 THE COURT: Mr. Mauldin you have a motion?

23 MR. MAULDIN: We have none, Your Honor.

24 THE COURT: Okay. Mrs. Gilmore.

25 PROSPECTIVE JUROR: Elmore.

1 THE COURT: I'm Sorry, Miss Elmore. It's been a long
2 day.

3 We're going to qualify 43 jurors. From those 43
4 jurors we're going to draw 12 jurors and four alternates.
5 You're a part of that 43 member pool. We don't have the
6 numbers yet, but you're part of it. The bailiff is going
7 to give you a slip of paper. There's a number on that
8 slip of paper, call that number tonight. There will be a
9 message on there for you, probably be call back tomorrow
10 night -- that's probably what it will be, call back
11 tomorrow night. Call back tomorrow night, there will be
12 an additional message. Don't read anything in the paper
13 don't watch TV, don't talk to anybody about the case.
14 Thank you very much.

15 (prospective juror exits.)

16 THE COURT: Could you bring in Margaret Stewart,
17 please.

18 (prospective juror stewart enters.)

19 THE COURT: Mrs. Stewart how you doing today?

20 PROSPECTIVE JUROR: Fine. How is everyone?

21 THE COURT: Fine.

22 MARGARET STEWART, (black
23 female), having been previously duly sworn, testified as
24 follows:

25 EXAMINATION

1 BY THE COURT:

2 Q All right, Mrs. Stewart, do you remember filling out
3 your questionnaire either last month or the month before
4 last?

5 A Yes, I do, pretty much.

6 Q That's your questionnaire you filled out. When you
7 filled it out, was it accurate to the best of your
8 ability?

9 A Yes, it was.

10 Q I'm going to ask you some questions about the
11 questionnaire and so are the attorneys.

12 A All right, sir.

13 Q Will be some other questions. If you don't
14 understand the question, tell me. We'll try to rephrase
15 it for you. Okay? All right?

16 A Yes, sir.

17 Q Can you do that?

18 A Yes, I can.

19 Q Answer the questions the best you can.

20 A Yes.

21 Q And answer the questions truthful, all right?

22 A Yes.

23 Q First of all, I want to ask you if you'll turn to
24 page three on the questionnaire. Where do you work? I
25 couldn't read, holiday something?

- 1 A Oh, that's years ago. I'm a homemaker.
- 2 Q You're a homemaker?
- 3 A Yes, sir.
- 4 Q One of those domestic engineers?
- 5 A Yes.
- 6 Q Have you worked anywhere?
- 7 A Yes, I worked at Holiday Inn. Mostly motels. I
8 worked in nursing homes.
- 9 Q And you been married 26 years?
- 10 A Yes, I have.
- 11 Q And you raised one son that works at Fed Ex. Is that
12 correct?
- 13 A That's correct.
- 14 Q Now, did you complete the sixth grade or did you go
15 to the sixth grade?
- 16 A No, fifth grade only.
- 17 Q Fifth grade only. Do you have any difficulty reading
18 and writing? I assume since you wear glasses you don't?
- 19 A No, some things, not many.
- 20 Q What do you have difficulty reading?
- 21 A I just have to look over it, read it, make sure I
22 understand it.
- 23 Q You have any problems with math?
- 24 A Sometimes.
- 25 Q What long division? Multiplication?

- 1 A Yes, sir, long division.
- 2 Q You can count change though, can't you?
- 3 A Oh, Yes, sir.
- 4 Q You can tell whether somebody is giving the right
- 5 change back to you.
- 6 A Yes, I can.
- 7 Q Did you have any difficulty understanding this
- 8 questionnaire?
- 9 A No, I didn't.
- 10 Q On page five, would you turn to page five, question
- 11 33. Did you find it, 33?
- 12 A Yes, i did.
- 13 Q Says you were a party to a lawsuit in state court.
- 14 When was that?
- 15 A That was 20 years ago.
- 16 Q Twenty years ago?
- 17 A Yes.
- 18 Q What was it about?
- 19 A I got hurt on a job.
- 20 Q You did.
- 21 A Yes, I did.
- 22 Q Okay. And was it a workers' comp claim?
- 23 A Yes, it were.
- 24 Q So, it was for workers comp commission?
- 25 A Yes, it were.

1 Q Would you go to page six, question 36. Your stepson
2 works with the Greenville City Police; is that correct?

3 A He don't work there any more. He used to.

4 Q When did he quit?

5 A I believe it's been about eight years now.

6 Q Where does he work now?

7 A That's the one that works at Fed Ex.

8 Q Oh, That's one works at Fed Ex.

9 A Yes. That's my stepson. I have a son and daughter,
10 and stepson and stepdaughter.

11 Q What do your son and daughter do?

12 A My son works with plastic and my daughter do domestic
13 work. And my stepdaughter stays in North Carolina.

14 Q Whereabouts in North Carolina?

15 A Charlotte.

16 Q Okay. Look on page seven, question number 49. Do
17 you see question 49? If you need some help finding those
18 pages, let me know.

19 A I found it.

20 Q Who in the family got charged with drug distribution
21 '79, got nine years?

22 A It was my husband, the time ran concurrent.

23 Q Your previous husband or present husband?

24 A My husband, period.

25 Q You did haven't a previous husband?

1 A No.

2 Q All right. This is your only husband. Got nine
3 years. When did he get out of jail?

4 A He's been out 22 years now.

5 Q Twenty-two years?

6 A Yes, sir.

7 Q I presume he's been getting along okay?

8 A Yes, sir.

9 Q Got out of the drug business?

10 A Yes, definitely.

11 Q Okay. If he had listened to you all along, he
12 probably wouldn't have been in trouble to begin with,
13 would he?

14 A That's true.

15 Q If you would turn to page 10, question 64. Did you
16 find it?

17 A Yes, I did.

18 Q It Says, "briefly describe your attitudes and beliefs
19 concerning capital punishment, the death Penalty." And in
20 question 65 you said you somewhat favor. Can you tell me
21 verbally your attitudes and beliefs about the death
22 penalty since you didn't answer that question on the
23 questionnaire?

24 A I believe in some cases the death penalty is required
25 and some cases I believe it's not.

1 Q Can you tell me what type of cases you think it would
2 be required?

3 A I believe in murder cases, unjust murder.

4 Q Well, do you understand in South Carolina every
5 murder case there would be a death?

6 A Yes, I do now.

7 Q Okay. On what type -- in other words, in order for
8 the state to ask for the death penalty, it would have to
9 be a murder and an additional serious type of -- murder
10 and in this case the other charge would be kidnapping. Do
11 you understand?

12 A Yes, I do.

13 Q Tell me on question 68, on the next page, says "With
14 reference to the death penalty, which of the following
15 statements would best represent your opinion?"

16 You said, "I believe the death penalty is an
17 appropriate form of punishment in some murder cases; and I
18 can return a verdict of death if I believe it was
19 warranted in a particular case, depending upon the
20 evidence, the law, and what I learned about the
21 defendant." Is that still your opinion here today?

22 A Yes, it is.

23 Q Have you heard anything about this case on TV, radio,
24 or read anything in the paper or heard anybody talking
25 about this case?

1 A No, I haven't.

2 Q All right. This is a case where the defendant, as I
3 said, was charged with murder and kidnapping, occurred on
4 September 3rd 2003 here in Greenville at a Bi-Lo. Do
5 you remember seeing anything on TV about it?

6 A When this first happened.

7 Q What do you remember seeing on TV?

8 A That it was a standoff at Bi-Lo and afterwards it was
9 a -- I don't watch too much news, it's a sad thing to me.

10 Q Sad isn't it? Don't ever have anything good on the
11 news, always about people's faults and their downfalls.

12 A That's true.

13 Q Do you remember any other facts that you saw on
14 television?

15 A No, I don't.

16 Q Let me ask you this. Based on what you saw on
17 television, have you formed an opinion as to the
18 defendant's innocence or guilt?

19 A No, I haven't.

20 Q I'm going to explain the process we're going to go
21 through. Before I get to that, I want to ask you one more
22 question. In this case the defendant is black and the
23 victim is white. It is undisputed the black defendant and
24 white victim engaged in interracial dating. Would the
25 fact the defendant and the victim engaged in interracial

1 dating make it difficult for you to be fair to either the
2 state or the defendant?

3 A No, it wouldn't.

4 Q Mrs. Stewart, in this case the trial is going to be
5 in two parts. There will be a first phase and a second
6 phase. The first phase is referred to as the guilt phase.
7 As I said earlier, the defendant is charged with murder
8 and kidnapping. The state has an obligation and a
9 responsibility to prove the defendant guilty beyond a
10 reasonable doubt. The defendant does not have to testify,
11 the defendant does not have to prove his innocence. But
12 it's the state's responsibility to prove the defendant
13 guilty. Do you understand?

14 A Yes, I do.

15 Q Let's assume that the jury, all 12 jurors, have
16 agreed at the end of the first phase of the trial that the
17 defendant is guilty of murder and kidnapping. You, having
18 made a decision that there is a murder and someone is
19 dead, do you understand?

20 A Yes, I do.

21 Q When I use the term murder, I mean there is an
22 intentional killing -- no question the jury has made that
23 decision. Do you understand?

24 A Yes, I do.

25 Q Then the second phase, which is referred to as the

1 penalty phase. The purpose of the penalty phase is for
2 the jury to decide whether the defendant receives life or
3 death. Do you understand?

4 A Yes, I do.

5 Q Now, when I say life, I mean life without parole.
6 And that means the defendant would die in jail. He would
7 never be eligible for parole. Do you understand that?

8 A Yes, I do.

9 Q In the penalty phase or the second phase the state
10 would also be required to prove aggravating circumstances.
11 Now, these aggravating circumstances would surround a
12 crime or other factors involving the individual or the
13 crime. I do not know what those specific facts are
14 because I haven't heard the case. But the state would be
15 required to prove those beyond a reasonable doubt. The
16 jury would have to believe those aggravating circumstances
17 beyond a reasonable doubt. Even though the jury believed
18 those aggravating circumstances beyond a reasonable doubt,
19 the jury still does not have to give the death penalty.
20 The jury can still give life imprisonment. Do you
21 understand?

22 A Yes, I do.

23 Q The jury the can give life in prison just as an act
24 of mercy, do you understand?

25 A Yes.

1 Q The law presumes life in prison, not death. Do you
2 understand that?

3 A Yes.

4 Q Now, normally the defendant will offer mitigating
5 circumstances. Many factors about the case or factors
6 about the defendant where the defendant is trying to
7 convince the jury that he should receive life rather than
8 death. Okay?

9 A Okay.

10 Q My question to you. Assuming that the defendant had
11 been found guilty and there is a death and it was an
12 intentional killing in the first phase; and you consider
13 everything in that phase, you consider everything in the
14 second phase which is the penalty phase, could you give
15 meaningful consideration to life or death?

16 A Yes, I could.

17 Q In other words, would you listen to everything and
18 give meaningful consideration to it before you made up
19 your mind to life or death?

20 A Yes, I would.

21 Q Now, that's sort of contrary to, or opposite to, what
22 you told me earlier, that you felt like if it was murder,
23 somebody was dead, they should get the death penalty. Why
24 you saying something different now?

25 A Because of the way you're explaining it. I can

1 understand it a lot better than just seeing it on paper.

2 When someone is talking to you and explaining, you
3 understand a lot better than just reading on a piece of
4 paper.

5 Q Let me ask you this. The defendant is not obligated
6 to give any mitigating circumstances. So, let's assume we
7 have this situation. A defendant does not offer any
8 testimony. And as I explained to you earlier, the
9 defendant is not required to. So, the only thing you've
10 heard is the first phase, the guilt phase, all those facts
11 which you can consider and all the facts that the state
12 puts forth in the second phase, the penalty phase, about
13 aggravation and possibly impact on victims and other
14 information.

15 Could you wait and consider all that information
16 before you chose life or death?

17 A Yes, I would.

18 Q Do you have any physical or mental problems that
19 would prevent you from serving on the jury?

20 A No, I just have nerve damage, upper and lower back.

21 Q Do you take medicine for it?

22 A No, I don't. Nothing they can do for it.

23 Q Does it help you sit or stand?

24 A Sometimes.

25 Q How long can you sit or stand?

1 A Basically it's when I'm lying down when it bothers
2 me. Sitting doesn't bother me much.

3 Q What I could do if you're on the jury, put you on the
4 back row and you can sit and stand at your leisure. Would
5 that help you?

6 A Yes, it would.

7 Q Do you know the victim in this case, Maranda
8 Williams?

9 A No, I don't.

10 Q Do you know the defendant, Charles Christopher
11 Williams, who sits to my right with the blue sweater?

12 A No, I don't.

13 Q His attorneys, Mr. Mauldin and Mr. Nettles, are
14 sitting with him. Do you know those attorneys?

15 A No, I don't.

16 Q To my left is solicitor, prosecutor in this case,
17 with two of his assistants. Do you know any of them?

18 A No, I don't.

19 Q Do you know anyone in the solicitor's office here in
20 Greenville County or Pickens County?

21 A No, I don't.

22 Q I'm going to give you a list of names. Would you
23 look at those names and see if you recognize anybody.

24 A No, I don't.

25 Q Okay. Let me give you a second list and see if you

1 can recognize those names.

2 A No, I don't.

3 Q Thank you, ma'am. Mrs. Stewart, do you know of any
4 personal reasons you cannot serve on this jury?

5 A No, I don't.

6 Q Can you listen to the testimony from the witness
7 stand and base your decision on testimony you hear from
8 the witness stand?

9 A Yes, I can.

10 Q Can you be fair to both the state and defendant?

11 A Yes, I can.

12 Q Thank you very much. Before I turn over the
13 questions, the court's going to make a factual finding
14 that The defendant does not meet the prerequisite
15 education level of a sixth-grade education; however, our
16 law says or it's equivalent. The Court makes a finding
17 based upon her length of marriage, employment record, and
18 her questioning and answering during the voir dire
19 process, that she has equivalent, at least a sixth-grade
20 education. The court makes that factual finding, accepts
21 her on that basis. Whose turn? Mr. Nettles?

22 BY MR. NETTLES:

23 Q How you doing, Miss Stewart?

24 A Fine. How are you?

25 Q Doing all right. Thanks. Doing all right. I'm one

1 of Chris's lawyers. Chris is my client.

2 A All right.

3 Q One of the things I want to talk to you about -- I've
4 got, let's see, like four different areas I want to talk
5 to you about pretty quick.

6 A All right.

7 Q The first thing I want to make sure of is, kind of
8 went a little bit back and forth with the judge, not back
9 and forth but there was some little bit of discussion
10 about the death penalty.

11 A Yes.

12 Q What I want to be clear about is this. As the judge
13 told you, a murder in South Carolina, to be convicted of
14 murder, let's talk about what it's not. Okay? It's not
15 an accident. There's no such thing as accidental murder.
16 Do you follow me on that?

17 A Yes, I do.

18 Q So, that would be an accident. There's no such -- if
19 someone you know sort of the classic example is someone
20 comes home early from work, catches his wife in bed with
21 another man, gets really mad and shoots somebody. That's
22 like a manslaughter. Murder in South Carolina is the most
23 serious offense we have, and it's defined this way. A
24 heart devoid of all social duty, fatally bent on mischief.
25 A dark and depraved heart. In short means kill somebody,

1 not an accident, they meant to do it. Okay?

2 A All right.

3 Q And I want you to assume that they've got the right
4 person.

5 A Okay.

6 Q It's not an issue of maybe he didn't do it. Okay?
7 In that case, in your mind, is the death penalty the only
8 appropriate punishment?

9 A No, it's not.

10 Q Okay. Let me ask you this then. For someone that
11 we've just talked about, that example we just talked
12 about -- and let's add because in South Carolina for there
13 to be -- or for it to be a capital or death penalty case
14 there's got to be a murder and another really serious
15 crime kind of at the same time. So, it's like a murder
16 and an armed robbery or like a murder and a rape or a
17 murder and a kidnapping.

18 Let me ask it to you this way. If you sat on a jury
19 and the defendant that the government brought to you had
20 been proven to be guilty of murder as we defined it and
21 armed robbery, like he robbed the person and shot them or
22 raped the person and killed them, could you in your heart
23 of hearts see yourself sentencing that person to life in
24 prison?

25 MR. ARIAIL: Your Honor, I don't think that's a

1 proper question. I think the proper question is going
2 through the process, not would she, putting her in the
3 situation, you got to make a judgment.

4 MR. NETTLES: I think we can -- we kind of all
5 agreed, we weren't going to do speaking objections. 'Think
6 starting to get far afield on that.

7 THE COURT: I understand, but it's late in the day,
8 everybody is getting tired. I'll overrule the objection
9 at this point in time. But I'll -- let me say this,
10 Mr. Nettles. When you pull a question like that out of
11 the abstract, I think you're going to have to sort of tell
12 her where you're coming from. Okay?

13 I object to the form.

14 MR. NETTLES: Fair enough.

15 THE COURT: Excuse me. I will sustain the objection
16 to the form of the question. I think it's very difficult
17 for this lady to understand that question, the meaning of
18 that question. I'll sustain the objection as to the form.

19 MR. ARIAIL: Thank you, Your Honor.

20 MR. NETTLES: Thank you, Your Honor. I appreciate
21 it.

22 Q Then let's think about it this way. If you were in a
23 penalty phase case, okay? The second phase as the judge
24 said, there's two phases.

25 A Okay.

1 Q And just so you know, there are some people that just
2 say, you know, life in prison, I just don't think that's a
3 serious enough punishment. All right?

4 A All right.

5 Q And my question to you is this. When you're in the
6 second phase if we got to the second phase which means you
7 convicted the person beyond a reasonable doubt of murder,
8 serious offense.

9 A Okay.

10 Q And you're on that same jury, you're in the second
11 phase. Okay?

12 A All right.

13 Q And you got two choices of two punishments, one is
14 the death penalty, the other is life in prison, some
15 people just believe that, that life imprisonment is not a
16 serious enough punishment for a conviction of those two
17 crimes. Are you one of those people?

18 A I would say no.

19 Q Okay. Then let me ask you this. Life imprisonment,
20 do you consider that to be a serious punishment?

21 A Some cases.

22 Q Okay. Now, if the judge telling you -- well, do you
23 consider it a serious punishment for a murder and another
24 serious crime?

25 A Yes, I do.

1 Q And it would sort of depend on kind of the facts of
2 that crime?

3 A Yes.

4 Q I understand. That's fair enough. Let me ask you
5 this. When the judge tells you one sentence is death, and
6 you understand that the person gets put to death?

7 A Right.

8 Q The other sentence is life without possibility of
9 parole.

10 A Okay.

11 Q That's the two choices. What does life without the
12 possibility of parole mean to you?

13 A That he would spend the rest of his life in jail.

14 Q Come out with his eyes closed?

15 A Yes.

16 Q You've heard that phrase?

17 A Yes, I have.

18 Q Two more things I want to talk to you about. They're
19 going to be pretty brief. One is this. Just like we
20 talked about the broad issues on punishment; that is,
21 either life imprisonment without possibility of parole or
22 death. Let me ask you about one other general topic and
23 tell me what you think about it. That topic is this,
24 mental illness. Just so you know I'm asking everybody
25 that. There's Nothing about you causing -- okay?

1 A All right.

2 Q Nothing in your questionnaire or anything like that.
3 We've asked everybody that. All right?

4 A Okay.

5 Q Just so you know. I just need to know what, where
6 are your thoughts on that topic?

7 A Again, I would have to say it would have to do with
8 circumstances.

9 Q Okay. So, then if credible evidence of mental
10 illness is brought to you, it's not something you just
11 reject out of hand.

12 A No, it's not.

13 Q Could you give, they're talking aggravators, we talk
14 about in the second phase after somebody has been found
15 guilty of murder and other serious crimes, the government
16 brings you aggravation; in other words, reasons why it's
17 worse than just a plain old murder.

18 A Okay.

19 Q The defense, if they choose to, can bring you
20 mitigation. Okay? Mitigating factors.

21 A Okay.

22 Q Could you consider mental illness as a mitigator or a
23 reason to give somebody less than death?

24 A Again, I would have to say circumstance.

25 Q I guess what I'm getting at, some people just say,

1 look, I think all that mental illness stuff is just an
2 excuse.

3 A Not all of it, I would say.

4 Q Okay. Now, the last topic, and it won't take very
5 long, maybe three or four questions.

6 A All right.

7 Q That's this. If you were in the jury room and there
8 were 11 people, I mean, there's 12 people in the jury
9 room. Okay? And you felt one way, you listened to all
10 the evidence, you'd listened to the judge's law. You
11 listened to the argument from both sides, and you made up
12 your mind what the appropriate punishment was, okay, of
13 the two, life in prison without any possibility of parole
14 or death. And you had made up your mind.

15 A Okay.

16 Q And the other 11 felt differently from you. Okay?
17 Would you change your mind just to go along with the other
18 11?

19 A No, I wouldn't.

20 Q Let me just flip it the other way. Put it the other
21 way. If you were in the majority, there was one other
22 person who felt differently about what the appropriate
23 punishment was, would you expect them to change their
24 opinion just to go along?

25 A No, I wouldn't.

1 Q Because you recognize this issue we're talking about
2 is an issue people can disagree on?

3 A Yes.

4 Q The government in the aggravation, the second phase
5 would bring you heart-wrenching testimony from the family
6 about what loss they've gone through. Okay? The
7 government would bring you that.

8 A Okay.

9 Q And they've got a right to do that and the family has
10 a right to come up here and share with all of us the loss
11 they've been through. Would you be someone or would you
12 agree with me that a fair juror would be a juror that
13 would recognize they've got to wait to see if the defense
14 is going to bring them something before they made up their
15 mind?

16 A Yes, I would.

17 Q That it wouldn't be fair to us to decide after not
18 getting to hear our half, right?

19 A Right.

20 Q Miss Stewart, I believe that's it, but I'll go check
21 with everybody else.

22 A All right.

23 Q Thank you, Ma'am, I appreciate it.

24 Thank you, ma'am. I don't have any more questions.

25 I appreciate it.

1 THE COURT: Solicitor, do you have any questions?

2 BY MR. ARIAIL:

3 Q Miss Stewart, my name is Bob Ariail. Sorry, I was
4 consulting with my lawyer. She tells me what to do. I
5 listened to all your answers. And I am the solicitor in
6 the 13th circuit. What that means is that I'm the
7 prosecutor, the D.A.

8 A Yes, I understand that.

9 Q I'll be representing the state in this case, along
10 with my deputy, Miss Strom, and one of my assistants,
11 Mr. Moyer. That's our role. I have just a couple of
12 questions as a follow up on that last one he was talking
13 about, you being in the minority or majority in the jury
14 room and not changing your vote. You understand that jury
15 deliberation is just that, give and take?

16 A Yes, I do.

17 Q You'd have an opinion, you would want to know what
18 other people think of it, and you'd discuss it and vice
19 versa?

20 A Oh, yes.

21 Q And the questions that you answered earlier, you
22 don't have any preconceived idea that the death penalty is
23 not something that should be used as an appropriate
24 punishment under certain circumstances?

25 A That's true.

1 Q You believe that it has a place in our law under
2 certain circumstances?

3 A Oh, yes, I do.

4 Q Okay. And do you know of any either religious, or
5 moral, community, social, situation or belief that you
6 have that would interfere with your ability as a juror to
7 consider both of those punishments fairly?

8 A No, I don't.

9 Q Or to consider the guilty or the not guilty of the
10 defendant fairly?

11 A No, I don't.

12 Q It's something outside this courtroom, that's what
13 I'm asking.

14 A Yes.

15 Q Now, lastly, let's assume that you're on the jury and
16 you've been picked and the defendant's been found guilty
17 and the jury has gone back and deliberated and everybody
18 on the jury has decided that the appropriate punishment is
19 death.

20 A Okay.

21 Q All right. You've all voted, and you're ready to
22 come back to the court to announce to the judge what your
23 verdict is.

24 A Okay.

25 Q The procedure and the law requires that each one of

1 you jurors would have to sign your name to a form and
2 bring it back to the judge so that that piece of paper
3 could be delivered to the court and the clerk and
4 recorded. If that was your verdict, would you have any
5 problem in signing the document?

6 A No, I wouldn't.

7 Q Okay. That's all I have. Thank you very much.

8 THE WITNESS: You're welcome.

9 THE COURT: Does anybody have any motion as to this
10 witness?

11 MS. STROM: May we, Your Honor, we have one thing,
12 side bar very quickly.

13 THE COURT: You want her to step out.

14 MS. STROM: No, sir. I think we can do it right here
15 very quickly.

16 THE COURT: Miss Stewart, just step out in the hall
17 for a minute. I don't know what you're going to say. But
18 let's ask her to leave. Okay? She may overhear. I don't
19 want her to hear what you're saying. I just didn't know
20 if you swore her. I don't have a notation. I don't have
21 any idea. I'll go back and look.

22 This next one might be a member of the IRA, Irish
23 Republican Army.

24 Realtime says she was sworn.

25 MR. MAULDIN: Without asking the first question by

1 anybody, I move that she simply be excused.

2 THE COURT: Let's get Ms. Stewart back.

3 MR. MAULDIN: The Questionnaire is enough.

4 (prospective juror Stewart returns.)

5 THE COURT: Miss Stewart, thank you. I Find you
6 qualified. What is going to happen, we're going to draw a
7 panel of 43 jurors, from that we'll draw 12 jurors and
8 four alternates.

9 Now, The bailiff is going to give you a slip of
10 paper. On that paper is a phone number. Call that number
11 and there will be a message on it for the jury. Follow
12 those instructions and the instruction may be call
13 tomorrow night or it may be come in Friday morning. But
14 follow those instruction. All right?

15 PROSPECTIVE JUROR: All right.

16 THE COURT: Don't talk to anybody about the case,
17 don't listen to anything on TV or listen to anything on
18 the radio or read anything in the paper. Okay?

19 PROSPECTIVE JUROR: All right.

20 (prospective juror exits.)

21 MR. ARIAIL: I think unless that form is sworn to, I
22 think you got to bring her in.

23 THE COURT: I am.

24 Miss Stewart, apparently took her questionnaire with
25 her, substitute a copy for the original.

1 Bring in Miss Nelson, please.

2 (prospective juror Nelson, female, enters courtroom.)

3 THE COURT: Mrs. Nelson, please raise your right hand
4 please, ma'am.

5 ANNA NELSEN, (white
6 female), having been previously duly sworn, testified as
7 follows:

8 EXAMINATION

9 BY THE COURT:

10 Q All right. Miss Nelsen, you filled out this
11 questionnaire either last month or the month before, I'm
12 not sure.

13 A December.

14 Q Do you remember filling it out?

15 A Yeah.

16 Q At the time you filled it out, was it accurate to the
17 best you can determine?

18 A Yes.

19 Q Would you take the questionnaire please, ma'am. All
20 right. We're going to ask you some questions. Okay?

21 A Yes.

22 Q Probably no right -- yes or no answers, probably no
23 right or wrong answer. We're going to explore your
24 viewpoints on various subjects. Okay?

25 A Okay.

1 Q Please be truthful, give the best answer that you can
2 give. Can you do that?

3 A Yep.

4 Q All right. If you would go to page 11, please,
5 ma'am. Do you have page 11?

6 A Uh-huh.

7 Q All right. On question 68 you circled -- the
8 question was, "With reference to the death penalty, which
9 of the following statements would best represent your
10 opinion?"

11 You did not pick one through six but wrote out to the
12 side, it says "all depends upon my mood and the
13 circumstances."

14 A Correct.

15 Q Would you explain to me what you mean by my mood?
16 And I'm talking about whether or not you would give
17 someone the death penalty or life imprisonment.

18 A When I read these, I didn't like any of them, and so
19 that's why I wrote that.

20 Q Tell me what you mean when you say "my mood"?

21 A Well --

22 Q In other words, if you're on the jury in a good mood
23 give life, in a bad mood, give death? What do you mean?

24 A No, I just don't like anything hypothetical.

25 Q What is your opinion about the death penalty?

- 1 A Well, it's existing, it's used, fine.
- 2 Q It's fine?
- 3 A Yeah.
- 4 Q Do you have any problems with it?
- 5 A No.
- 6 Q No problems at all?
- 7 A No, it exists. I didn't create it, I wouldn't do
- 8 anything to get rid of it; but, you know, it's there.
- 9 Q Do you believe in the death penalty?
- 10 A I don't know.
- 11 Q I believe you said you haven't thought about it?
- 12 A Right.
- 13 Q Can you give it some thought and tell me whether
- 14 you're in favor of the death penalty, not in favor of it?
- 15 A I probably wouldn't vote for it.
- 16 Q Why not?
- 17 A I don't see any reason to. I think life in prison
- 18 would be worse.
- 19 Q No way you would ever vote for the death penalty?
- 20 A Probably not. No.
- 21 Q I Need something definite.
- 22 A Like I said, I don't do well on hypothetical.
- 23 Q Not dealing with hypothetical, talking about the
- 24 death penalty in general, we'll deal with some
- 25 hypothetical shortly. Okay?

1 A Well, I don't see any reason really to consider it.

2 Q Ever?

3 A No. I mean why?

4 Q You would never consider the death penalty?

5 A No.

6 Q Okay. Mr. Nettles.

7 BY MR. NETTLES:

8 Q Can I just ask two questions? Some people call me
9 Mr. Hypothetical.

10 A That's fine.

11 Q Going to ask you pretty quick, okay? This is not a
12 hypothetical, these are facts. All right? The facts are
13 like this. If you were on a jury, I realize that's
14 hypothetical. Let's assume you're on a jury and the
15 person in that jury, the first part, capital case, trial
16 for whether they got the right person or not, they call
17 that guilt or innocence phase. And then in the second
18 phase is the punishment phase.

19 A Right.

20 Q In the first phase the government brings the charges,
21 okay, of murder?

22 A Uh-huh.

23 Q The person is indicted?

24 A Yeah.

25 Q And the jury sits and they hear all the evidence and

1 they get to decide whether the person is guilty beyond a
2 reasonable doubt or not of murder.

3 A Right.

4 Q Now, for it to be a death penalty case, it can't just
5 be a murder. It's got to be a murder and like a rape or
6 murder and armed robbery, something like that. So, before
7 you even went into the second phase the jury heard the
8 first phase, same 12 people would have convicted the
9 person beyond a reasonable doubt of murder and another
10 serious crime. Could be more than one murder.

11 A Right.

12 Q But there's at least a murder and another aggravating
13 circumstance. My question to you is this. If you were in
14 that jury, is there a set of circumstances -- and I don't
15 want you to share them with me -- is there a set of
16 circumstances you could think of that would cause you to
17 be able to give meaningful consideration to a sentence of
18 death?

19 A Perhaps if it was someone that was close to me that
20 was the victim, but then I wouldn't be on that jury.

21 Q That's right. You see what I'm saying? But, I mean,
22 yeah, you got to take that out.

23 A That would be the only way probably.

24 Q That would be the only way?

25 A Yeah.

1 Q Is if you were on. Let me ask you this one last
2 question. All right? As I said, don't tell me what they
3 are, but other than somebody close to you, are there any
4 other cases, any other scenario under which you could give
5 meaningful consideration? The law doesn't ever say you
6 have to give the death penalty, but just give meaningful
7 consideration to a sentence of death.

8 A Probably not.

9 Q Nothing further, Your Honor, on this issue.

10 THE COURT: Solicitor, do you have any questions?

11 MR. ARIAIL: No, sir.

12 BY THE COURT:

13 Q Let me just ask you one question before you go. What
14 do you think Greenville County would have to do within the
15 next 10 or 15 years to join the 21st century?

16 A I feel there is an underlying problem here with
17 racial issues.

18 Q Okay. Anything else?

19 A No.

20 Q All right. If you step out in the hall just a
21 second, appreciate it.

22 A Do you want this back?

23 THE COURT: Yes, ma'am, thank you very much. Any
24 motions?

25 MR. ARIAIL: Your honor, i move she's not qualified.

1 THE COURT: Does the defense have any argument as to
2 that motion?

3 MR. ARIAIL: Well, I was going to say something else.

4 THE COURT: I don't want to hear it.

5 MR. NETTLES: We disagree, but I'm not going to
6 argue.

7 THE COURT: All right. I'll grant his motion. Bring
8 her back.

9 (prospective juror returns)

10 Miss nelson, I appreciate your views on the death
11 penalty. I'm not necessarily saying they're right or
12 wrong, they are your views and you're entitled to them.
13 That's perfectly fine. And I appreciate your commentary
14 on the race relations in Greenville County. I was just
15 curious when I read that. But for purposes of this case,
16 I'm going to excuse you from service on this case. Okay?

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Thank you very much.

19 MR. ARIAIL: Could I request that the court make a
20 finding, because they disagreed?

21 THE COURT: I said I grant your motion.

22 MR. ARIAIL: I understand that. They disagreed, and
23 i just want to make sure that the record is clear what
24 your basis for dismissal is. All of us here know what the
25 issue --

1 THE COURT: The record will speak for that. Do you
2 want me to make a factual finding every time i disqualify
3 somebody? I thought that's why we're sitting here with a
4 court reporter, solicitor. I mean, Tell me if you think
5 you want me to, and i will.

6 MR. ARIAIL: I just think when we have one that's
7 that brief; and then we've got a situation where they are
8 not consenting and are disagreeing, I just would feel more
9 comfortable, particularly from an appellate standpoint if
10 the court could make its own comments and findings about
11 the demeanor of the witness and the flippant nature, and
12 the questionnaire that she verified. The woman is not
13 qualified.

14 MR. MAULDIN: And if that be the case, the court
15 feels compelled to do that, we certainly believe it would
16 have to work both ways.

17 THE COURT: I'm not going to do that, but what i am
18 going to do, we've agreed at the start of this process,
19 the jurors that were qualified, we're saving these
20 questionnaires -- I'm going to mark this lady's
21 questionnaire as a court's exhibit. And I will find as a
22 matter of fact that she was very flippant in her demeanor
23 and seriousness about the death penalty, i think was on
24 the borderline of ridiculous. Okay? I will make that
25 factual finding. I think I made that same factual finding

1 on an earlier witness today. Okay.

2 I'll see you in the morning at 9:00.

3 (whereupon, the proceedings are adjourned to the
4 following day.)

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1 THURSDAY, FEBRUARY 10, 2005

2 (WHEREUPON, COURT CONVENED WITH ALL PARTIES PRESENT,
3 WHEN THE FOLLOWING PROCEEDINGS WERE HAD:)

4 THE COURT: ALL RIGHT. IS THE DEFENSE READY?

5 MR. MAULDIN: YES, SIR.

6 THE COURT: THE STATE READY?

7 MR. ARIAIL: YES, SIR.

8 THE COURT: JASON GUNTER, I BELIEVE.

9 MR. MAULDIN: WE NEED TO PUT ON THE RECORD THE RACE
10 ISSUE, YOUR HONOR. DO YOU WANT TO DO THAT?

11 THE COURT: I DON'T KNOW IF THE STATE'S READY TO DO
12 THAT.

13 MS. STROM: YES, SIR.

14 THE COURT: MR. MAULDIN, ON THE RACE ISSUE AS FAR AS
15 JUROR NUMBER 35, WHICH WAS JOHN A. BOTT.

16 MR. MAULDIN: YES, SIR.

17 THE COURT: IF I REMEMBER CORRECTLY, WE ASKED
18 MR. BOTT THE STANDARD INTERRACIAL DATING QUESTION, WHICH
19 HE RESPONDED TO AS, "NO."

20 AND YOU LATER WANTED TO GO INTO THE ISSUE BOB JONES
21 HAVING PROHIBITIONS AGAINST INTERRACIAL DATING AND EXPLORE
22 THAT WITH MR. BOTT.

23 MR. MAULDIN: NOT EXACTLY. THE QUESTION THAT I ASKED
24 MR. BOTT THAT WAS OBJECTED TO, I SAID, "YOU ANSWERED THE
25 JUDGE'S QUESTION REGARDING INTERRACIAL DATING, I'D LIKE TO

1 FOLLOW UP."

2 THE OBJECTION WAS THEN MADE AND THEN YOU ASKED ME
3 WHY.

4 THE COURT: ALL RIGHT. AND THE COURT TOOK THE
5 POSITION AT THAT TIME THAT THE CRIME ITSELF HAD TO BE
6 RACIALLY RELATED. I DO THINK THAT'S GOOD LAW. UNITED
7 STATES SUPREME COURT CASE HAS SAID IN CAPITAL CASES IF THE
8 VICTIM'S RACE IS DIFFERENT, THAT YOU CAN GO INTO RACIAL
9 ISSUES. I WAS WRONG ON THAT ISSUE AND I STAND TO BE
10 CORRECTED.

11 HOWEVER, HAVING READ THE CASE, I THINK THE COURT
12 STILL HAS THE DISCRETION WHAT QUESTIONS WILL BE ASKED, HOW
13 MANY QUESTIONS, WHETHER THE COURT'S GOING TO DO IT OR THE
14 COURT ALLOWS THE ATTORNEYS TO DO IT. IN LIGHT OF THAT,
15 LET ME HEAR YOU AS TO MR. BOTT AND I'LL HEAR FROM THE
16 STATE. DOES THE STATE AGREE WITH WHAT I JUST SAID AS FAR
17 AS ISSUE OF RACE IN THIS CASE?

18 MS. STROM: YES, SIR. THERE IS A RIGHT TO GO INTO IT
19 IF THERE IS A RACIAL BIAS, BUT THE COURT DOES HAVE THE
20 DISCRETION TO LIMIT THAT VOIR DIRE.

21 THE COURT: I THINK THAT'S TURNER VERSUS MURRAY,
22 ISN'T IT?

23 MR. MAULDIN: WE CERTAINLY AGREE EVERY AREA VOIR DIRE
24 THE COURT'S DISCRETION IS CONTROLLING. WE BELIEVE OUR
25 PLUMBING SETS OUT THE LEGAL POSITION THE FACT OUR FOLLOW

1 UP QUESTIONS TO MR. BOTT WERE NOT ALLOWED. WE DO NOT
2 BELIEVE THAT OBJECTION SHOULD HAVE BEEN SUSTAINED. SO, WE
3 TAKE THE SAME POSITION THAT THE QUESTION --

4 THE COURT: I STILL HAVE A PROBLEM THAT I HAD AT THE
5 TIME, IS WHAT BASIS DO YOU HAVE FOR GOING INTO RACE ANY
6 FURTHER WITH MR. BOTT? THAT'S THE COURT'S PROBLEM AT THIS
7 POINT.

8 MR. MAULDIN: RIGHT. WE BELIEVE, YOUR HONOR, THAT
9 THE CASES THAT WE'VE -- AND I WON'T GO THROUGH EXACTLY
10 EVERY CRITERIA THEY LAY OUT, BUT WITH WHAT THEY'RE SAYING
11 IS THAT IN A CAPITAL CASE, WHICH IS CONSIDERED ESSENTIALLY
12 UNDER INTERPRETATION OF THESE CASES, A SPECIAL
13 CIRCUMSTANCE CRITERIA, IF THERE IS A RACE DIFFERENCE
14 BETWEEN THE VICTIM AND THE DEFENDANT, THEN CERTAIN LIMITED
15 QUESTIONS REGARDING POTENTIAL RACIAL BIAS MUST BE ALLOWED
16 TO BE ASKED.

17 I DON'T THINK IT IS UPON THE INQUIRING PARTY A BURDEN
18 OF EXPLAINING TO THE COURT IN ADVANCE OF THOSE QUESTIONS A
19 JUSTIFICATION FOR THEM. IN OTHER WORDS, I DON'T THINK THE
20 CASES SAY THE QUESTIONER, THE INQUIRER, HAS AN OBLIGATION
21 TO PROVIDE ADDITIONAL SUPPORT, IF YOU HAVE THAT TWO
22 CRITERIA, THE VICTIM AND DEFENDANT ARE OF DIFFERENT RACES
23 AND IT'S A CAPITAL CASE.

24 THE COURT: BUT THE COURT HAS ASKED THE RACIAL
25 QUESTION. OKAY. THE QUESTION IS, ARE WE GOING FURTHER

1 THAN THAT? AND I THINK UNTIL -- I KNOW WHY YOU'RE GOING
2 THERE, I DON'T KNOW IF I'M GOING TO LET YOU GO IN. OKAY?
3 THAT'S WHERE I'M COMING FROM.

4 MR. MAULDIN: YES, SIR. AND I GUESS THE ONLY -- WE
5 DON'T --

6 THE COURT: IN OTHER WORDS, ARE WE ON AN EASTER EGG
7 HUNT OR IS THERE SOME BASIS FOR YOUR QUESTIONS?

8 MR. MAULDIN: I DON'T THINK A EASTER EGG HUNT IS A
9 FAIR DESCRIPTION. ON THE OTHER HAND, IF THERE, I DON'T
10 THINK THAT THE QUESTIONING CAN BE CONDITIONED UPON A
11 PREREQUISITE CRITERIA BEFORE THE QUESTION.

12 THE COURT: I AGREE WITH YOU, BUT I THINK THE SUBJECT
13 MATTER WE'RE GOING INTO HAS TO BE SOME RELEVANCY OF IT FOR
14 IT. THAT'S WHAT I'M TRYING TO GET YOU TO TELL ME. WHAT'S
15 THE RELEVANCE GOING ANY FURTHER THAN WHAT WE'VE ALREADY
16 ASKED?

17 MR. MAULDIN: AGAIN, I'M --

18 THE COURT: NOW, QUIT HIDING THE BALL AND TALK TO ME.

19 MR. MAULDIN: NO, I'M NOT HIDING THE BALL, WHAT I'M
20 SAYING IS I DON'T BELIEVE THE QUESTIONER SHOULD BE
21 REQUIRED TO SUPPLY IN ADVANCE SUPPORT TO RELY ON THE
22 QUESTIONS. IF THE QUESTIONS ARE INDEPENDENTLY
23 OBJECTIONABLE, THOSE OBJECTIONS WOULD BE SUSTAINED; BUT I
24 DON'T THINK THE INQUIRER SHOULD BE --

25 THE COURT: I SUSTAIN THE OBJECTION ON MR. BOTT ON

1 THE GROUNDS IT WAS NOT RELEVANT TO THE ISSUE OF RACE.

2 MR. MAULDIN: AND THAT --

3 THE COURT: UNLESS YOU WANTED TO GIVE ME SOME BASIS
4 OF WHERE YOU'RE GOING, MR. MAULDIN, AS TO WHY IT SHOULD BE
5 RELEVANT.

6 MR. MAULDIN: YES, SIR. I SEE, YOUR HONOR.. ONE
7 MOMENT, YOUR HONOR. I AM RELUCTANTLY RESPONDING BECAUSE I
8 DON'T THINK I SHOULD HAVE TO, BUT I'M GOING TO.

9 THE COURT: I THINK YOU DO. IF YOU'RE GOING TO GET
10 TO ASK THE QUESTION, YOU'RE GOING TO HAVE TO TELL ME.

11 MR. MAULDIN: YOU'RE GOING TO MAKE ME SO I DO TAKE
12 EXCEPTION BEING REQUIRED TO DO THIS.

13 THE COURT: THAT'S FINE.

14 MR. MAULDIN: WITH REGARD TO JUROR BOTTS, MR BOTTS
15 ATTENDED AND GRADUATED FROM BOB JONES BETWEEN '85 AND '89,
16 I THINK IT WAS. I HAVEN'T LOOKED AT HIS FORM NOW IN TWO
17 OR THREE DAYS, BUT IT WAS IN THE 80'S. BOB JONES HAD
18 HISTORICALLY, NOT A HIDE-THE-BALL POLICY, BUT A
19 PUBLICLY-PROFESSED, COMMITTED POLICY AGAINST INTERRACIAL
20 DATING. THEY HAD A PUBLIC POLICY REGARDING RACIAL --

21 THE COURT: WHAT TIME FRAME DID THEY HAVE THIS?

22 MR. MAULDIN: WELL, I CAME TO GREENVILLE IN THE MID
23 70'S, AND THEY ENDED UP IN THE UNITED STATES SUPREME COURT
24 WITH THE FINE LAWYER J. D. TODD REPRESENTING THEM WHERE
25 THEY LOST THEIR TAX-EXEMPT STATUS BECAUSE THEY REFUSED TO

1 CHANGE THAT POLICY.

2 THE COURT: WAS THAT POLICY IN EFFECT AT THE TIME OF
3 MR. BOTTS' ATTENDANCE AT BOB JONES?

4 MR. MAULDIN: I DON'T KNOW.

5 THE COURT: ALL YOU WANT TO DO IS ASK THAT QUESTION?
6 AND THEN IT DEPENDS ON WHAT IT SAYS. IS THAT WHERE YOU'RE
7 COMING FROM?

8 MR. MAULDIN: IF REQUIRED TO SUPPORT IT, YES, SIR.

9 THE COURT: I THINK YOU'RE GOING TO HAVE TO SUPPORT,
10 MR. MAULDIN. I'M TELLING YOU THAT. I TOLD YOU ONCE, I'M
11 GOING TO TELL YOU AGAIN. I'M JUST NOT GOING TO LET YOU GO
12 ON A WILD-GOOSE CHASE. I KNOW NOW WHERE YOU'RE COMING
13 FROM. I DIDN'T KNOW BOB JONES HAD THAT POLICY. STILL
14 BOILS DOWN TO, WAS THAT POLICY IN EFFECT AT THE TIME
15 MR. BOTT ATTENDED THERE.

16 MR. MAULDIN: AND I DON'T KNOW THAT AND I DON'T KNOW
17 THAT MR. BOTT WOULD KNOW THAT. THAT WAS THE REASON I WAS
18 GOING TO ASK HIM THAT QUESTION.

19 THE COURT: WE HAVE TO FIND OUT IF HE WAS EXPOSED TO
20 THAT POLICY BEFORE WE GO ANY FURTHER THAN THAT. OKAY?
21 WHAT'S THE STATE'S POSITION?

22 MS. STROM: I KNOW THE COURT READ TURNER VERSUS
23 MURRAY IN THAT THE COURT REFUSED ASKING EVEN THE SIMPLEST
24 OF QUESTIONS. I BELIEVE THE QUESTION WE HAVE AGREED UPON
25 GOES EVEN FURTHER; AND I THINK FERRETS OUT ANY RACIAL BIAS

1 OR PREJUDICE. AND IF THEY SAY, YES, I DO HAVE A RACIAL
2 BIAS OR I THINK WOULD AFFECT ME, I THINK THAT CAN BE
3 EXPLORED EVEN FURTHER, BUT IF THEY SAY NO--

4 THE COURT: LET ME ASK YOU, I DON'T KNOW HOW LONG YOU
5 BEEN IN GREENVILLE, IS MR. MAULDIN CORRECT THAT BOB JONES
6 HAD A BAN ON INTERRACIAL DATING AND ATTEMPTED TO ENFORCE
7 IT?

8 MS. STROM: I DIDN'T GET HERE UNTIL '97; BUT I CAN
9 ASK. MY UNDERSTANDING IS MR. MOYER WENT TO BOB JONES.

10 THE COURT: MR. MOYER, PLEASE ENLIGHTEN THE COURT.
11 I'M TOTALLY IGNORANT ON THE SUBJECT.

12 MR. MOYER: YEAH, THEY DID.

13 THE COURT: DO YOU KNOW WHEN IT STARTED AND WHEN IT
14 ENDED?

15 MR. MOYER: I DON'T.

16 THE COURT: WHAT I'M GOING TO DO, WE'LL BRING
17 MR. BOTT BACK. AND I'M GOING TO SEE IF THAT POLICY WAS IN
18 EFFECT AT THE TIME HE ATTENDED. IF IT WAS, I'LL LET HIM
19 EXPLORE IT FURTHER. IF IT WASN'T, WE'RE NOT GOING ANY
20 FURTHER THAN THAT.

21 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

22 THE COURT: OKAY. BECAUSE I DON'T THINK IT WOULD
23 EVEN BE RELEVANT IF THE POLICY WASN'T IN EFFECT AT THE
24 TIME OF HIS ATTENDANCE.

25 MR. MAULDIN: AM I IN THE RESPONDING POSITION?

1 THE COURT: WELL, I'LL BRING MR. BOTT BACK. YOU CAN
2 FIND OUT IF THAT POLICY WAS IN EFFECT AT THE TIME HE
3 ATTENDED THERE AND WE CAN GO FROM THERE.

4 MR. MAULDIN: WE DON'T THINK THAT'S AN APPROPRIATE
5 STEP NECESSARILY FOR THE COURT TO TAKE, AND WE OBJECT TO
6 THAT PROCESS.

7 THE COURT: DO YOU WANT ME TO BRING MR. BOTT BACK OR
8 NOT?

9 MR. MAULDIN: NO, SIR.

10 THE COURT: YOU DON'T WANT ME EVEN TO BRING HIM BACK?

11 MR. MAULDIN: DON'T WANT HIM BROUGHT BACK IN TWO DAYS
12 AFTER THAT OBJECTION WAS MADE TO MAKE A SPECIFIC INQUIRY
13 ABOUT HIM AT THAT POINT. AT THE CONCLUSION OF VOIR DIRE
14 IF OUR POSITION CHANGES, WE'LL LET THE COURT KNOW.

15 THE COURT: LET ME MAKE THE RECORD VERY CLEAR. I
16 WILL BRING MR. BOTT BACK, WE WILL MAKE INQUIRIES AS TO THE
17 POLICY OF BOB JONES' INTERRACIAL DATING WHEN HE ATTENDED
18 THAT COLLEGE. AND IF THE POLICY WAS IN EFFECT AT THE TIME
19 HE ATTENDED BOB JONES, HOW THAT AFFECTED HIM AND HOW DOES
20 IT AFFECT HIM TODAY AS FAR AS VIEWPOINTS ON INTERRACIAL
21 DATING. I WILL ALLOW THE DEFENSE TO DO THAT.

22 NOW, IF YOU WANT ME TO BRING HIM BACK AT SOME POINT
23 IN TIME, EITHER TODAY OR WHEN WE QUALIFY THE 43 JURORS, I
24 WILL DO THAT. I WANT TO MAKE THE RECORD VERY CLEAR ON
25 THAT. DO YOU UNDERSTAND? IF YOU WANT TO WAIVE THAT

1 OPPORTUNITY, THAT'S FINE.

2 MR. MAULDIN: THAT DECISION WILL HAVE TO BE MADE AT
3 THE TIME THE COMPLETED POOL IS --

4 THE COURT: LET ME MAKE SOMETHING ELSE REAL CLEAR.
5 AT SOME POINT IN TIME THE DEFENSE IS GOING TO HAVE TO PUT
6 IN THIS RECORD, YES, WE WANT HIM TO COME BACK; OR, NO, WE
7 DON'T. I DON'T CARE WHEN WE BRING HIM BACK. I'M NOT
8 TRYING TO SAY WE'RE GOING TO BRING HIM BACK TODAY OR
9 WHENEVER, BUT I WILL BRING HIM BACK. OKAY?

10 MR. MAULDIN: YES, SIR.

11 THE COURT: ANYTHING ELSE WE NEED TO COVER ON THAT?

12 MR. MAULDIN: NO.

13 THE COURT: IS EVERYBODY READY TO BRING IN
14 MR. GUNTER?

15 MS. STROM: I DO NEED TO BRING TO THE COURT'S
16 ATTENTION A MATTER WITH REGARD TO MR. GUNTER. HE ANSWERED
17 QUESTION 48, HE ANSWERED HE NOR A FAMILY MEMBER WAS
18 ARRESTED OR CHARGED WITH A CRIME. I SHOW A RAP SHEET
19 SHOWING HIS DATE OF BIRTH, SHOWING A FRAUDULENT CHECK
20 CONVICTION '95 IN GREENVILLE ALSO; BUT IT ALSO SHOWED THIS
21 OUT-OF-STATE RECORD FOR POSSESSION, MANUFACTURE,
22 DISTRIBUTION, ET CETERA, OF MARIJUANA IN THOMAS COUNTY
23 SUPERIOR COURT. HE RECEIVED PROBATION, FIVE YEARS, AND
24 FINE OF \$2,500. I DON'T KNOW WHAT HE COULD HAVE RECEIVED
25 ON THAT.

1 THE COURT: WHAT WAS HIS DATE OF BIRTH ON THE RAP
2 SHEET? SAME AS --

3 MS. STROM: 8-6-66. 8-6-66. SOCIAL SECURITY NUMBER,
4 590-14-0599.

5 THE COURT: 14-0599?

6 MS. STROM: YES, SIR.

7 THE COURT: DOES IT GIVE A PHYSICAL DESCRIPTION?

8 MS. STROM: SIX FOOT, 195 POUNDS, BLUE EYES, BROWN
9 HAIR.

10 THE COURT: HOW LONG AGO WAS THESE CHARGES? THE
11 CHECK IN GREENVILLE?

12 MS. STROM: THE FRAUDULENT CHECK WAS IN '95, THE
13 MARIJUANA CHARGE WAS IN '90.

14 THE COURT: OKAY. ALL RIGHT. WE'LL BRING HIM BACK.
15 I'LL ASK HIM ABOUT THAT FIRST.

16 MR. MAULDIN: AND THE QUESTION NOT ONLY RELATES TO
17 HIS ELIGIBILITY OR QUALIFICATION, BUT WHETHER OR NOT HE
18 MADE AN UNTRUE STATEMENT ON THE QUESTIONNAIRE. SO, THAT'S
19 A CONCERN AS WELL.

20 THE COURT: I UNDERSTAND. WOULD YOU BRING
21 MR. GUNTER, PLEASE?

22 (PROSPECTIVE JUROR GUNTER ENTERS COURTROOM.)

23 THE COURT: MR. GUNTER, HOW ARE YOU DOING TODAY?

24 PROSPECTIVE JUROR: GOOD. HOW YOU DOING?

25 THE COURT: WOULD YOU RAISE YOUR RIGHT HAND, PLEASE.

1 JASON GUNTER, (WHITE MALE) AFTER
2 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION

4 BY THE COURT:

5 Q MR. GUNTER, IS YOUR DATE OF BIRTH AUGUST 6th 1966?

6 A YES, SIR.

7 Q AND SOCIAL SECURITY NUMBER 590-14-0599?

8 A 0599, YES, SIR.

9 Q OKAY. AND ABOUT WHAT, 6 FEET?

10 A SIX-TWO.

11 Q HOW MUCH YOU WEIGH, ABOUT 200 POUNDS?

12 A ABOUT 215.

13 Q 215 AND YOU GOT BLUE EYES?

14 A YES, SIR.

15 Q WE LOOKED AT YOUR PRIOR HISTORY AND A PERSON MEETING
16 YOUR DESCRIPTION WITH THE SAME SOCIAL SECURITY NUMBER,
17 SAME DATE OF BIRTH, HAS A FRAUDULENT CHECK CHARGE IN '95
18 AND A MANUFACTURING MARIJUANA IN 1990 OUT OF STATE.

19 A YES. I THOUGHT THE CHECK CHARGE WAS DROPPED. I
20 THOUGHT THEY WERE GOING TO TAKE THAT OFF IS THE REASON I
21 DIDN'T SPEAK UP ON THAT ONE. AND THE OTHER --

22 Q DID YOU PLEAD ON THE CHECK CHARGE?

23 A YES.

24 Q WHAT COURT DID YOU PLEAD IN?

25 A HERE IN GREENVILLE.

1 Q IN THIS COURTHOUSE OR MAGISTRATE'S COURT OR WHERE?

2 A OVER OFF OF -- I'M TRYING TO THINK EXACTLY WHERE IT
3 WAS. IT WAS DOWN OFF CHURCH STREET.

4 Q OKAY. TELL ME ABOUT THE MANUFACTURING MARIJUANA.
5 THAT WAS OUT OF STATE, WHERE WAS THAT? THAT WAS IN
6 THOMASVILLE, GEORGIA.

7 A YES, SIR. THEY GAVE ME PROBATION ON THAT AND I PAID
8 A FINE. AND WHAT IT WAS, WAS BASICALLY, I KNEW A FRIEND
9 THAT ASKED ME TO -- I WAS BASICALLY TRAPPED. HE ASKED ME
10 COULD HE FIND SOME SOMEWHERE, AND I FOUND IT FOR HIM. AND
11 TOOK THE, YOU KNOW.

12 Q HOW MUCH MARIJUANA WAS IT?

13 A IT WAS PROBABLY A QUARTER OF AN OUNCE. QUARTER OF AN
14 OUNCE, AND TWO YEARS LATER --

15 Q DO YOU KNOW HOW MUCH TIME YOU WERE FACING ON THE
16 CHARGE?

17 A I CANNOT REMEMBER.

18 Q WHAT WAS THE SENTENCE, DO YOU REMEMBER?

19 A JUST PROBATION.

20 Q DO YOU REMEMBER HOW MANY YEARS YOU GOT SUSPENDED ON
21 PROBATION? IT WOULD HAVE BEEN SO MANY YEARS SUSPENDED TO
22 SO MANY YEARS PROBATION.

23 A FIVE YEARS PROBATION.

24 Q HOW MUCH ACTIVE TIME, DO YOU RECALL? A YEAR? TWO
25 YEARS? SIX MONTHS? OR DO YOU REMEMBER?

1 A I HONESTLY CAN'T REMEMBER. IT'S BEEN MANY YEARS AGO,
2 AND IT WAS LIKE -- I DIDN'T EVEN REMEMBER THAT IT
3 HAPPENED. IT WAS LIKE THEY CAME AFTER ME LIKE TWO YEARS
4 LATER AND I COULDN'T EVEN REMEMBER THE GUY THAT DID THAT.

5 Q HAVE YOU EVER RECEIVED A PARDON OR AMNESTY AS A
6 RESULT OF THAT?

7 A NO, SIR.

8 Q ALL RIGHT. THEN MY NEXT QUESTION IS WHY DIDN'T YOU
9 TELL ME ABOUT IT MONDAY?

10 A IT WAS, WHEN YOU SAID IT, I THOUGHT YOU SAID FEDERAL
11 COURT.

12 Q STATE OR FEDERAL COURT.

13 A I DID NOT HEAR THAT.

14 Q WOULD YOU STEP OUT IN THE HALL JUST A SECOND, PLEASE
15 SIR?

16 (PROSPECTIVE JUROR EXITS.)

17 THE COURT: WHAT'S THE STATE'S POSITION AS TO THE --
18 THE ONLY THING I KNOW TO DO, THE CHARGE OF MANUFACTURING
19 MARIJUANA EXCEEDS ONE YEAR. I DON'T KNOW HOW ELSE TO LOOK
20 AT IT. HE GOT FIVE YEARS PROBATION, I WOULD ASSUME THAT
21 THE CRIME COULD RECEIVE MORE THAN A YEAR.

22 MR. ARIAIL: THE ONLY THING I'M CONCERNED ABOUT IS
23 THE DISPOSITION, AND THE DISPOSITION IS UNDER THE FIRST
24 OFFENDER'S ACT. I KNOW THAT IN THIS STATE, I THINK IN
25 GEORGIA THAT'S THE SAME THING AS A CONDITIONAL DISCHARGE,

1 AND THAT THAT RECORD WOULD BE GONE. I MEAN, IT WOULD NOT
2 BE A CRIMINAL ACT ONCE A CERTAIN PERIOD OF TIME HAD
3 EXPIRED.

4 THE COURT: HE HAS TO TAKE THE STEPS TO HAVE IT TAKEN
5 OFF. YOU SIGN THEM EVERY DAY AND I SIGN THEM EVERY DAY.

6 MR. ARIAIL: I'M NOT GOING TO ARGUE ABOUT IT BECAUSE
7 IT APPEARS THAT WOULD BE --

8 THE COURT: DO YOU THINK IT DISQUALIFIES HIM OR NOT?

9 MR. ARIAIL: I DON'T KNOW. WHAT IT IS, THE
10 DEFENDANT'S -- WE CAN GO TRY TO CHECK THIS OUT.

11 THE COURT: I DON'T KNOW EITHER. THE ONLY THING I
12 KNOW TO DO IS TAKE THE CHARGE MANUFACTURING MARIJUANA,
13 LOOK AT SOUTH CAROLINA LAW. I DON'T KNOW WHAT THE GEORGIA
14 LAW WOULD BE.

15 MR. ARIAIL: THE OFFENSE IS POSSESSION,
16 MANUFACTURING, DISTRIBUTION, ET CETERA, WE DON'T KNOW WHAT
17 HE WAS CHARGED WITH OR WHAT PLED. HE MAY BE CHARGED WITH
18 POSSESSION, WHICH CLEARLY THAT WOULDN'T BE A VIOLATION,
19 BUT IF HE'S MANUFACTURING, IT WOULD BE.

20 THE COURT: WHAT IS THE DEFENSE'S POSITION?

21 MR. MAULDIN: WE CAN ONLY TAKE WHAT WE'VE BEEN GIVEN;
22 AND THAT IS THAT IT OCCURRED IN THOMAS COUNTY SUPERIOR
23 COURT, THAT HE GOT FIVE YEARS PROBATION; AND THAT HE JUST
24 DESCRIBED TO YOU CIRCUMSTANCES WHICH WOULD MAKE HIM, IF IT
25 WAS IN SOUTH CAROLINA, DISQUALIFIED. AND HE TOLD YOU HE

1 HADN'T GOTTEN ANY AMNESTIES OR PARDON. SO, WE BELIEVE HE
2 IS UNQUALIFIED. WE'LL DO WHATEVER THE COURT WISHES.

3 THE COURT: I THINK IF IT WAS SOMETHING LESS THAN A
4 YEAR HE WOULDN'T HAVE GOTTEN FIVE YEARS PROBATION.

5 MR. MAULDIN: AND THAT'S WHAT I MEAN.

6 MR. ARIAIL: THAT'S NOT NECESSARILY SO. HE COULD
7 PLEAD TO SOMETHING --

8 THE COURT: THE ONLY THING I CAN TELL YOU, IN SIX
9 YEARS I CAN'T REMEMBER GIVING SOMEBODY THAT HAS A MAXIMUM
10 OF SIX YEARS, FIVE YEARS PROBATION. THAT'S AMOUNT OF
11 PROBATION WHEN HE'S GOT SIX MONTHS HANGING OVER HIS HEAD.

12 MR. ARIAIL: I DIDN'T SAY IT WAS REASONABLE.

13 THE COURT: I JUST THINK IT'S ABSOLUTELY TOTALLY
14 UNREASONABLE.

15 MR. ARIAIL: LET ME APPROACH. WHY DON'T WE PUT HIM
16 AT THE END OF THE LINE, THIS GROUP. I'LL HAVE SOMEBODY
17 MAKE SOME CALLS.

18 THE COURT: I'D RATHER JUST GO AHEAD AND ASSUMING
19 MANUFACTURING MARIJUANA AND ASSUME THE SOUTH CAROLINA LAW
20 HE'S DISQUALIFIED.

21 MR. MAULDIN: WE SO MOVE.

22 THE COURT: NOW, IF YOU WANT TO GO MAKE SOME PHONE
23 CALLS, I'LL PUT HIM IN THE LINE AND I'LL RECONSIDER IT
24 BASED UPON WHAT INFORMATION YOU FIND OUT. BUT MY INTENT
25 RIGHT NOW IS TO DISQUALIFY.

1 MR. ARIAIL: THAT'S FINE. I DON'T MIND THAT INTENT,
2 JUST GIVE US, JUST TO MAKE SURE.

3 THE COURT: IF YOU WANT TO CHECK IT OUT, THAT'S FINE.
4 I'LL JUST TAKE IT UNDER ADVISEMENT UNTIL YOU CHECK IT OUT.
5 MY INCLINATION IS TO EXCUSE HIM FOR TWO REASONS. NUMBER
6 ONE IS THE CHARGE; AND, NUMBER TWO, HE DIDN'T REVEAL IT
7 MONDAY.

8 MR. ARIAIL: OKAY. I'LL FIND OUT.

9 THE COURT: WOULD YOU TELL MR. GUNTER JUST TO GO NEXT
10 STORE AND THEN BRING IN TRACIE SHOOK.

11 (PROSPECTIVE JUROR SHOOK, FEMALE, ENTERS COURTROOM.)

12 THE COURT: MRS. SHOOK, WOULD YOU PLEASE RAISE YOUR
13 RIGHT HAND, MA'AM.

14 TRACY SHOOK, AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 EXAMINATION

17 BY THE COURT:

18 Q WE'RE GOING TO ASK YOU SOME QUESTIONS AND THERE'S NO
19 RIGHT OR WRONG ANSWER, JUST ANSWER THE QUESTIONS THE BEST
20 YOU CAN. OKAY? CAN YOU DO THAT?

21 A YES.

22 Q THE FIRST QUESTION I WANT TO ASK YOU, DO YOU HAVE ANY
23 PERSONAL REASONS WHY YOU CANNOT SERVE ON THE JURY, ANY
24 HARDSHIPS?

25 A NO, SIR.

1 Q DO YOU HAVE ANY HEALTH REASONS AS TO WHY YOU COULD
2 NOT SERVE ON THE JURY?

3 A NO, SIR.

4 Q DO YOU HAVE ANY MENTAL REASONS AS TO WHY YOU COULD
5 NOT SERVE ON THE JURY, ANY MENTAL PROBLEMS?

6 A NO.

7 Q WE ALL HAVE MENTAL PROBLEMS. DO YOU HAVE ANY THAT
8 WOULD INTERFERE WITH YOUR ABILITY TO SERVE ON THE JURY?

9 IN THIS CASE THE DEFENDANT, CHARLES CHRISTOPHER
10 WILLIAMS, WAS CHARGED WITH MURDER AND KIDNAPPING; AND IT
11 OCCURRED ON SEPTEMBER THE 3rd 2003 AT A LOCAL BI-LO.
12 HAVE YOU READ ANYTHING IN THE PAPER, HEARD ANYTHING ON TV,
13 THE RADIO, OR HEARD ANYONE TALKING ABOUT THE CASE?

14 A SINCE IT HAPPENED?

15 Q WHEN IT HAPPENED OR SINCE IT HAPPENED.

16 A YES.

17 Q WHEN DID YOU HEAR IT AND WHAT DID YOU HEAR?

18 A THE DAY IT HAPPENED, MY CHILD GOES TO SCHOOL RIGHT
19 DOWN THE STREET. AND, SO, I KNEW IT HAPPENED DURING THE
20 DAY.

21 Q ALL RIGHT. HOW DID YOU FIND OUT?

22 A ON THE NEWS.

23 Q ON THE NEWS. DID YOU WATCH THE TELEVISION OR HEAR
24 TELEVISION OR HEAR THE RADIO?

25 A THE NEWS.

1 Q SO YOU SAW IT ON TV NEWS THAT NIGHT OR DURING THE
2 DAY?

3 A DURING THE DAY.

4 Q WHAT DO YOU REMEMBER FACTUALLY FROM WHAT YOU HEARD ON
5 TELEVISION?

6 A ABOUT NOT DRIVING DOWN EAST NORTH STREET BECAUSE THE
7 ROAD WAS BLOCKED OFF. I HAVE CAR POOL, SO I WAS KIND OF
8 CONCERNED ABOUT HOW I WAS GOING TO GET MY CHILDREN.

9 Q DO YOU REMEMBER ANYTHING ELSE ABOUT WHAT WAS SAID ON
10 TELEVISION ABOUT WHAT OCCURRED AT THE BI-LO?

11 A JUST THAT A GENTLEMAN WAS IN BI-LO AND THEY HAD LIKE
12 A SWAT TEAM OUTSIDE AND THAT YOU COULDN'T -- THAT'S IT.

13 Q OKAY. LET ME ASK YOU THIS. FROM WHAT YOU HEARD ON
14 TELEVISION -- FIRST OF ALL, LET ME ASK YOU ONE QUESTION I
15 ASKED EARLIER. HAVE YOU HEARD ANYBODY TALKING ABOUT THE
16 CASE? DID YOU DISCUSS IT THAT NIGHT WITH YOUR HUSBAND OR
17 KIDS OR ANYBODY?

18 A YES. MY HUSBAND DURING THAT DAY BECAUSE I CALLED
19 HIM.

20 Q WHAT DID YOUR HUSBAND SAY ABOUT IT?

21 A HE SAID, "CALL THE SCHOOL."

22 Q BASED ON WHAT YOU HEARD THAT DAY ON TELEVISION,
23 TALKING TO YOUR HUSBAND, WHAT YOU KNOW ABOUT IT, HAVE YOU
24 FORMED AN OPINION OR EXPRESSED AN OPINION AS TO THE
25 INNOCENCE OR GUILT OF MR. CHARLES CHRISTOPHER WILLIAMS?

1 A NO, SIR.

2 Q DO YOU KNOW THE VICTIM IN THE CASE, MARANDA WILLIAMS?

3 A NO, SIR.

4 Q DO YOU KNOW THE DEFENDANT WHO SITS TO MY RIGHT IN THE
5 DARK BLUE SWEATER?

6 A NO, SIR.

7 Q AND DO YOU KNOW HIS ATTORNEYS, MR. MAULDIN AND MR.
8 NETTLES, WHO ARE SITTING TO MY RIGHT?

9 A NO, SIR.

10 Q THE SOLICITOR SITS TO MY LEFT WITH THE BLUE TIE AND
11 HIS TWO ASSISTANTS. DO YOU KNOW EITHER OF THOSE PEOPLE?

12 A NO.

13 Q DO YOU HAVE A RELATIONSHIP WITH ANYONE ELSE HERE IN
14 THE PROSECUTOR'S OFFICE HERE IN GREENVILLE?

15 A NO, SIR.

16 Q I'M GOING TO GIVE YOU A WITNESS LIST. WOULD YOU LOOK
17 AT THIS LIST PLEASE, MA'AM, AND TELL ME IF YOU RECOGNIZE
18 ANYBODY ON THE LIST.

19 A (COMPLIES) NO, SIR.

20 Q THANK YOU, MA'AM. LET ME GIVE YOU A SECOND LIST AND
21 SEE IF YOU RECOGNIZE ANYBODY ON THAT LIST.

22 A NO, SIR.

23 Q THANK YOU, MA'AM. I'M GOING TO ASK YOU A QUESTION
24 AND ASK YOU TO RESPOND TO IT IF YOU WOULD, PLEASE, MA'AM.
25 IN THIS CASE THE DEFENDANT IS BLACK AND THE VICTIM IS

1 WHITE. IT IS UNDISPUTED THE BLACK DEFENDANT AND WHITE
2 VICTIM ENGAGED IN INTERRACIAL DATING. WOULD THE FACT THAT
3 THE BLACK DEFENDANT AND WHITE VICTIM ENGAGED IN
4 INTERRACIAL DATING MAKE IT DIFFICULT FOR YOU TO BE FAIR TO
5 EITHER THE STATE OR THE DEFENDANT? I STUMBLED THROUGH
6 THAT. DO I NEED TO READ IT AGAIN?

7 A UH-HUH.

8 Q IN THIS CASE THE DEFENDANT IS BLACK.

9 A UH-HUH.

10 Q AND THE VICTIM IS WHITE. IT IS UNDISPUTED THE BLACK
11 DEFENDANT AND THE WHITE VICTIM ENGAGED IN INTERRACIAL
12 DATING. WOULD THE FACT THAT THE BLACK DEFENDANT AND THE
13 WHITE VICTIM ENGAGED IN INTERRACIAL DATING MAKE IT
14 DIFFICULT FOR YOU TO BE FAIR TO EITHER THE STATE OR THE
15 DEFENDANT?

16 A NO, SIR.

17 Q MISS SHOOK, YOU FILLED OUT THIS QUESTIONNAIRE I
18 BELIEVE EITHER LAST MONTH OR THE MONTH BEFORE LAST.

19 A YES.

20 Q DO YOU REMEMBER FILLING THAT OUT?

21 A YES.

22 Q WHEN YOU FILLED IT OUT, WAS IT ACCURATE TO THE BEST
23 OF YOUR KNOWLEDGE?

24 A YES.

25 Q WOULD YOU OPEN UP YOUR QUESTIONNAIRE TO PAGE FIVE

1 PLEASE. QUESTION NUMBER 34. YOUR STEPFATHER WAS AN
2 ATTORNEY IN ILLINOIS; IS THAT CORRECT?

3 A YES, SIR.

4 Q AND HE APPARENTLY, HE DID TRUSTS AND WILLS AND
5 ESTATES?

6 A YES, SIR.

7 Q DID HE EVER HANDLE ANY CRIMINAL MATTERS?

8 A NO, NOT TO MY KNOWLEDGE.

9 Q DID HE EVER DISCUSS THE CRIMINAL SYSTEM OR CRIME OR
10 LAW ENFORCEMENT WITH YOU?

11 A NO.

12 Q IF YOU WOULD FLIP OVER TO PAGE NUMBER SIX, QUESTION
13 44.

14 A DO YOU WANT ME TO TELL YOU SOMETHING? MY STEPDAD
15 JUST RECENTLY PASSED AWAY.

16 Q SORRY TO HEAR THAT. PAGE SIX, IF YOU WOULD, QUESTION
17 44.

18 A OKAY.

19 Q YOUR HUSBAND HAS HAD TWO DUI'S?

20 A YES, SIR.

21 Q WHEN DID HE HAVE THEM?

22 A BEFORE I MET HIM.

23 Q HOW LONG AGO DID YOU MEET HIM?

24 A WE'VE BEEN MARRIED 13 YEARS.

25 Q YOU STRAIGHTENED HIM OUT?

1 A I GUESS SO.

2 Q THAT'S GOOD. HE PROBABLY NEEDED YOU 15 YEARS AGO,
3 RIGHT?

4 A I KNOW. I TOLD HIM, I SAID, "IF I KNEW YOU WERE LIKE
5 THAT, I WOULD HAVE NEVER DATED YOU."

6 Q OKAY. WELL, I'M GLAD HE'S DOING -- HASN'T HAD ANY
7 MORE SINCE YOU MARRIED?

8 A NO, SIR.

9 Q LOOK AT PAGE NINE, QUESTION NUMBER 59. SAYS YOUR
10 BROTHER HAS HAD A DRUG PROBLEM FOR MANY YEARS?

11 A YES, SIR.

12 Q HAS THE DRUG PROBLEM CAUSED HIM TO EVER HAVE ANY
13 CRIMINAL CHARGES AGAINST HIM?

14 A OH, YES.

15 Q HOW MANY CRIMINAL CHARGES?

16 A LOTS, TOO MANY TO COUNT.

17 Q HOW IS HE DOING NOW?

18 A AS OF THIS MOMENT HE IS SUPPOSEDLY IN A PROGRAM IN
19 STUART, FLORIDA.

20 Q AND RIGHT NOW, AS OF NOW, HE'S DOING OKAY?

21 A AS OF TODAY.

22 Q WERE YOU INVOLVED IN THE CRIMINAL PROCESS, ANY OF THE
23 CRIMINAL PROCESS WHEN HE WAS CHARGED AND WENT THROUGH THE
24 COURT SYSTEM?

25 A NO.

1 Q YOU JUST KNEW ABOUT IT?

2 A YES.

3 Q YOU WEREN'T PERSONALLY INVOLVED?

4 A NO. HE WAS AN ADULT. MY MOTHER --

5 Q FLIP OVER TO PAGE TEN, QUESTION 64. THE QUESTION
6 SAYS, "BRIEFLY DESCRIBE YOUR ATTITUDES AND BELIEFS
7 CONCERNING CAPITAL PUNISHMENT."

8 CAPITAL PUNISHMENT; YOU SAID, "I FEEL IF THE CRIME IS
9 DELIBERATE, THOUGHT OUT AND PLANNED, WHICH SOMEONE WAS
10 MURDERED, I FEEL THE DEATH PENALTY IS APPROPRIATE."

11 IS THAT STILL YOUR BELIEF TODAY?

12 A YES.

13 Q AND QUESTION 65, "WHAT IS YOUR OPINION OF THE DEATH
14 PENALTY"?

15 YOU SAID YOU SOMEWHAT FAVOR. IS THAT STILL YOUR
16 OPINION TODAY?

17 A YES.

18 Q FLIP OVER AND LOOK AT QUESTION NUMBER 68. QUESTION
19 68, YOU STATED, "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 EVIDENCE
23 AND THE LAW AND WHAT I LEARNED ABOUT THE DEFENDANT." IS
24 THAT STILL YOUR OPINION TODAY?

25 A YES.

1 Q LET'S GO BACK TO YOUR RESPONSE TO QUESTION 64.

2 A OKAY.

3 Q BUT BEFORE I GET TO THAT, I WANT TO EXPLAIN TO YOU
4 THE PROCESS OR THE PROCEDURE WE'RE GOING TO UNDERTAKE
5 HOPEFULLY IN A FEW DAYS, A COUPLE OF DAYS, OR WHENEVER WE
6 GET TO IT.

7 IN SOUTH CAROLINA, WHEN SOMEONE IS CHARGED WITH A
8 CAPITAL OFFENSE -- AND IN THIS CASE THE DEFENDANT IS
9 CHARGED WITH A CAPITAL OFFENSE, HE'S CHARGED WITH MURDER
10 AND KIDNAPPING -- WE WILL HAVE A TRIAL. AND THAT TRIAL
11 WILL BE MADE UP OF TWO PARTS. THE FIRST PART, THE FIRST
12 PHASE, IS REFERRED TO AS THE GUILT PHASE. IN THAT PHASE
13 THE STATE WOULD BE REQUIRED TO PROVE THE DEFENDANT GUILTY
14 BEYOND A REASONABLE DOUBT OF MURDER AND KIDNAPPING.

15 A OKAY.

16 Q IF THE JURY, ALL 12 JURORS BELIEVE THE STATE HAS
17 PROVEN THEIR CASE, THE JURY COULD FIND THE DEFENDANT
18 GUILTY OF MURDER AND KIDNAPPING. OKAY?

19 A OKAY.

20 Q NOW, AT THAT POINT IN TIME THE DEFENDANT WOULD BE
21 FOUND GUILTY BY THE JURY. NOW, YOU SAID IF THE CRIME IS
22 DELIBERATE, THOUGHT OUT, AND PLANNED. IN SOUTH CAROLINA,
23 IN ORDER TO HAVE MURDER, A PERSON HAS TO HAVE MALICE
24 AFORETHOUGHT. MALICE AFORETHOUGHT MEANS IT WAS
25 INTENTIONAL. IT WAS A DELIBERATE ACT. IT WAS

1 PREMEDITATED.

2 NOW, THE PREMEDITATION DOESN'T HAVE TO OCCUR OVER A
3 LONG PERIOD OF TIME. IT CAN OCCUR ALMOST INSTANTANEOUS.
4 SO, FROM YOUR DEFINITION, EVERY TIME A PERSON IS CONVICTED
5 OF MURDER, THEY MEET YOUR DEFINITION AS FAR AS
6 DELIBERATION, THOUGHT OUT, AND PLANNED. THE THOUGHT OUT
7 PERIOD, PLANNED PERIOD, CAN BE VERY QUICK. IT DOESN'T
8 HAVE TO BE A NUMBER OF DAYS OR WEEK. SO, MY QUESTION TO
9 YOU, WHEN YOU FILLED THAT OUT, WHAT DO YOU MEAN AS FAR AS
10 THOUGHT OUT AND PLANNED?

11 A MEANING THAT IF SOMEBODY WERE TO -- IT WOULD NOT BE
12 INSTANTANEOUS, IT WOULD BE THOUGHT OUT AND PLANNED.

13 Q OVER A TIME PERIOD.

14 A OVER A TIME PERIOD. I JUST KNOW THAT THERE'S THINGS
15 THAT CAN -- I DON'T KNOW.

16 Q SO, YOUR THOUGHTS WEREN'T THAT IT COULD BE OVER A
17 SHORT TIME SPAN; BUT WOULD HAVE TO BE OVER A LONG TIME
18 PERIOD.

19 A SOMETHING THAT WAS PLANNED.

20 Q WHERE THEY HAD TIME TO THINK ABOUT IT, DELIBERATE ON
21 IT.

22 A RIGHT. THAT YOU WERE DELIBERATELY GOING AFTER
23 SOMEBODY. IT WOULD HAVE TO BE ACTIONS THAT WERE, YOU
24 KNOW, SHOWN THAT IT WAS PLANNED, YOU KNOW, THEY HAD TALKED
25 ABOUT IT MAYBE TO SOMEBODY ELSE AND GOT IT.

1 Q AND THEN WENT AHEAD AND DID IT?

2 A AND DID IT. YES.

3 Q NOW, UNDER THOSE CIRCUMSTANCES YOU THINK YOU WOULD
4 ALWAYS GIVE THE DEATH PENALTY? DON'T ANSWER THAT
5 QUESTION. I WANT TO EXPLAIN THE SECOND PHASE OF THE
6 PROCESS TO YOU FIRST. OKAY?

7 A OKAY.

8 Q IN THE SECOND PHASE, COMMONLY REFERRED TO AS THE
9 GUILT PHASE, THE PURPOSE OF THAT PHASE IS FOR THE JURY TO
10 DECIDE WHETHER THE DEFENDANT RECEIVES LIFE OR DEATH.

11 MR. NETTLES: YOUR HONOR, I BELIEVE YOU SAID THE
12 GUILT PHASE.

13 Q I'M SORRY, EXCUSE ME. I SAID GUILT PHASE, THE SECOND
14 PHASE WOULD BE THE PENALTY PHASE. AND IN THE PENALTY
15 PHASE THE JURY WOULD MAKE A DETERMINATION OF WHETHER THE
16 DEFENDANT SHOULD RECEIVE LIFE OR DEATH. OKAY?

17 A OKAY.

18 Q THE STATE WOULD BE OBLIGATED TO PRESENT WHAT WE REFER
19 TO AS AGGRAVATING CIRCUMSTANCES.

20 A UH-HUH.

21 Q AGGRAVATING CIRCUMSTANCES WOULD BE FACTS INVOLVED
22 THAT WOULD MAKE THE CRIME WORSE THAN WHAT YOU HEARD IN THE
23 FIRST PHASE. OKAY?

24 A OKAY.

25 Q THE DEFENDANT GENERALLY WOULD HAVE AN OPPORTUNITY TO

1 OFFER MITIGATING CIRCUMSTANCES. MITIGATING CIRCUMSTANCES
2 WOULD BE EVIDENCE ABOUT THE DEFENDANT OR ABOUT THE CASE OR
3 WHATEVER, TO CONVINCE THE JURY THAT THE DEFENDANT SHOULD
4 RECEIVE LIFE.

5 NOW, THE LAW SAYS THAT THE JURY HAS TO CONSIDER THE
6 MITIGATING CIRCUMSTANCES, THE AGGRAVATING CIRCUMSTANCES
7 BEFORE THEY MAKE UP THEIR MIND AS TO LIFE OR MURDER [SIC].
8 OKAY?

9 A OKAY.

10 Q NOW, LET'S ASSUME FOR A MOMENT THAT THE CRIME THAT
11 YOU HEARD HYPOTHETICALLY, THE CASE YOU HEARD WAS
12 DELIBERATELY THOUGHT OUT AND PLANNED. YOU FOUND THAT OUT
13 IN THE FIRST PHASE, THE GUILT PHASE.

14 A IN THE FIRST PHASE. YES.

15 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO THE
16 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES IN
17 THE SECOND PHASE BEFORE YOU MADE UP YOUR MIND AS TO LIFE
18 OR DEATH?

19 A YES, SIR.

20 Q DO YOU WANT ME TO EXPLAIN?

21 A YES, SIR. ONLY BECAUSE THERE WOULD BE MAYBE
22 DIFFERENT CIRCUMSTANCES THAT I WOULD NOT KNOW ABOUT. AND
23 I JUST BELIEVE THAT THERE'S OTHER FACTORS.

24 Q LET ME GIVE YOU ANOTHER SCENARIO. OKAY? AND ASK YOU
25 ANOTHER QUESTION.

1 A OKAY.

2 Q THE DEFENDANT NEVER HAS TO PRESENT ANY TESTIMONY OR
3 TESTIFY.

4 A OKAY.

5 Q THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE.

6 A OKAY.

7 Q IT'S THE STATE'S RESPONSIBILITY TO PROVE HIS GUILT
8 AND THE STATE'S RESPONSIBILITY TO PROVE THAT HE SHOULD
9 RECEIVE DEATH. THE LAW PRESUMES LIFE. LET'S ASSUME
10 THAT -- LET'S ASSUME THAT.

11 A CAN YOU REPEAT THAT AGAIN? SORRY.

12 Q ALL RIGHT. IT'S THE STATE'S RESPONSIBILITY TO PROVE
13 MURDER. IT'S THE STATE'S RESPONSIBILITY TO PROVE THE
14 AGGRAVATING CIRCUMSTANCES --

15 A UH-HUH.

16 Q -- FOR THE JURY TO MAKE THE DECISION ON DEATH. THE
17 DEFENDANT NEVER HAS TO PROVE ANYTHING. THE DEFENDANT DOES
18 NOT HAVE TO PUT UP ANY TESTIMONY. DO YOU UNDERSTAND?

19 A UH-HUH. I UNDERSTAND THAT.

20 Q LET'S ASSUME THAT THE HYPOTHETICAL CASE, A MURDER
21 CASE, WAS DELIBERATELY THOUGHT OUT AND PLANNED.

22 A UH-HUH.

23 Q AND YOU DETERMINED THAT IN THE FIRST PHASE, THE GUILT
24 PHASE.

25 A YES.

1 Q THE STATE PRODUCES THE AGGRAVATING CIRCUMSTANCES IN
2 THE SECOND PHASE AND THE DEFENDANT DOESN'T PRODUCE
3 ANYTHING, DOESN'T TESTIFY. SO, ALL YOU HAVE BEFORE YOU IS
4 ALL THE STATE'S TESTIMONY IN THE FIRST PHASE AND THE
5 SECOND PHASE. NOW, CAN YOU LISTEN TO THE AGGRAVATING
6 CIRCUMSTANCES AND THE INFORMATION IN THE FIRST PHASE AND
7 GIVE MEANINGFUL CONSIDERATION FOR EITHER LIFE OR DEATH
8 BEFORE YOU MAKE A DECISION? IN OTHER WORDS, CAN YOU HEAR
9 EVERYTHING BEFORE YOU DECIDE WHETHER YOU'RE GOING TO GIVE
10 LIFE OR DEATH?

11 A YES.

12 Q OKAY. WHO'S NEXT OR WHOSE TURN IS IT?

13 SOLICITOR? LET ME ASK TWO QUESTIONS BEFORE YOU GO
14 ANY FURTHER, IF I MIGHT.

15 THE QUESTION TO YOU, CAN YOU MAKE A DECISION IF YOU
16 WERE ON THE JURY FROM THE WITNESS STAND AND THE TESTIMONY
17 GIVEN IN THE COURTROOM? WHAT YOU HEAR FROM THE WITNESS
18 STAND, CAN YOU MAKE YOUR DECISION BASED ON THAT AND ONLY
19 THAT? THE TESTIMONY THAT YOU HEAR IN THE COURTROOM
20 SITTING IN THE JURY BOX, CAN YOU MAKE YOUR DECISION ON
21 WHAT YOU HEAR FROM THE WITNESS STAND WHERE YOU'RE SITTING
22 TODAY?

23 DO YOU UNDERSTAND YOUR QUESTION?

24 A I DO. I'M THINKING.

25 Q LET ME EXPOUND UPON THAT. WHAT YOU HEAR ON THE

1 WITNESS STAND, WHAT YOU BELIEVE FROM THE WITNESS STAND,
2 AND HOW YOU INTERPRET THAT.

3 A COULD I MAKE A DECISION?

4 Q YES, FROM WHAT YOU HEAR FROM THE WITNESS STAND.

5 A YES.

6 Q DO YOU KNOW OF ANY PERSONAL REASONS AS TO WHY YOU
7 COULD NOT SERVE ON THIS JURY OTHER THAN YOU MAY NOT WANT
8 TO?

9 A NO.

10 THE COURT: OKAY. SOLICITOR.

11 MR. MAULDIN: I THINK IT'S OUR TURN, YOUR HONOR.

12 MR. ARIAIL: HERE'S WHAT HAPPENED. IT WAS OUR TURN
13 WITH THE WOMAN WHO -- LAST LADY LAST NIGHT. AND YOU SAID,
14 "DOES ANYBODY" -- THERE WAS NO QUESTIONS GOING TO BE
15 ASKED.

16 THE COURT: NEITHER PARTY ASKED QUESTIONS.

17 MR. ARIAIL: HE DID -- HE DECIDED HE WAS GOING TO TRY
18 TO ASK A COUPLE. I WAIVED MINE, HE JUMPED UP. BUT THE
19 WAY WE BEEN DOING IT, IF WE'RE GOING TO DO IT THAT WAY --

20 THE COURT: WHY DON'T WE DO THIS --

21 MR. ARIAIL: WE GET A DIFFERENT SET OF MONKEY BARS
22 FOR TODAY?

23 THE COURT: SOMEBODY FLIP A COIN. HEADS HE GOES,
24 TAILS YOU GO. CALL IT.

25 MR. ARIAIL: HEADS.

1 THE COURT: TAILS, THEY GO.

2 MR. NETTLES: JUSTICE PREVAILS.

3 BY MR. NETTLES:

4 Q HOW YOU DOING?

5 A GOOD.

6 Q I'M BILL NETTLES AND I'M ONE OF THE LAWYERS
7 REPRESENTING CHRIS WILLIAMS. AND I'LL ASK YOU A COUPLE OF
8 QUESTIONS.

9 A OKAY.

10 Q LET ME GO BACK TO THE QUESTION THE JUDGE ASKED YOU ON
11 YOUR QUESTIONNAIRE I THINK YOU GOT THERE. AND AS YOU CAN
12 IMAGINE, BECAUSE OF THE NATURE OF THIS CRIME, THIS IS AN
13 ISSUE THAT WE'RE BOTH INTERESTED IN. OKAY? AND JUST LET
14 ME SHARE WITH YOU THAT THERE'S, YOU KNOW, NOT THAT YOU'RE
15 NOT SPECIAL; BUT WE'VE DONE THIS WITH EVERYBODY, SO DON'T
16 THINK YOU'RE BEING SINGLED OUT OR PUT UNDER ANY
17 MICROSCOPE. YOU'RE BEING PUT UNDER A LITTLE OF A
18 MICROSCOPE, BUT EVERYBODY HAS. DO YOU FOLLOW ME ON THAT?

19 A I DO.

20 Q I GUESS THE QUESTION I WANT TO KNOW IS THIS. AS ONLY
21 LAWYERS CAN DO, WE'RE GOING TO TALK ABOUT SOME CHOICE OF
22 WORDS THAT YOU MADE AND WHAT THEY MEAN.

23 A OKAY.

24 Q WHEN YOU WERE ASKED ON 64, "BRIEFLY DESCRIBE YOUR
25 ATTITUDES AND BELIEFS CONCERNING CAPITAL PUNISHMENT."

1 YOU WROTE, "I FEEL IF THE CRIME WAS DELIBERATE,
2 THOUGHT OUT AND PLANNED." YOU AND THE JUDGE TALKED ABOUT
3 ALL THAT.

4 A RIGHT, CORRECT.

5 Q BUT IN THAT CASE YOU HAD IN YOUR MIND, ONE WHERE IT
6 WAS DELIBERATE, THOUGHT OUT, PLANNED.

7 A RIGHT.

8 Q YOU WERE ON THE JURY. OKAY?

9 A RIGHT.

10 Q AND THE GOVERNMENT PRESENTED YOU WITH THAT EVIDENCE?

11 A RIGHT.

12 Q AND YOU BELIEVED BEYOND A REASONABLE DOUBT IT WAS
13 MURDER AS SET FORTH UNDER SOUTH CAROLINA LAW.

14 A CORRECT.

15 Q NOW, NOT ALL MURDERS ARE DEATH PENALTY CASES.

16 BECAUSE THERE HAS TO BE WHAT'S CALLED AN AGGRAVATING

17 CIRCUMSTANCE, ARMED ROBBERY, RAPE, KIDNAPPING, MORE THAN
18 ONE PERSON --

19 A OKAY.

20 Q -- FOR IT TO BE CONSIDERED FOR A DEATH PENALTY CASE.

21 AND THEN IN ORDER, AT THE END OF THE FIRST PHASE IF YOU'RE

22 ON THE JURY, IF YOU FIND IN THE SECOND PHASE WHAT THAT

23 MEANS IS THIS. IS THAT THE JURY UNANIMOUSLY FOUND THAT

24 THE PERSON IS GUILTY OF MURDER, AS WE TALKED ABOUT IT NOW,

25 NOT ACCIDENT, NOT MANSLAUGHTER. AND THE OTHER THING YOU

1 NEED TO KNOW IS THIS. THE PERSON IS NOT INSANE BECAUSE IF
2 SOMEBODY IS INSANE, THERE'S A HEARING THE COURT CAN DECIDE
3 HE'S INSANE AND DOESN'T GO FORWARD. SO, THEY'RE
4 COMPETENT, THEY KNEW RIGHT FROM WRONG. AND YOU FOUND
5 SOMEBODY WHO KNEW RIGHT FROM WRONG GUILTY OF MURDER AND
6 ANOTHER -- KIDNAPPING, ARMED ROBBERY; ALL THAT BEYOND A
7 REASONABLE DOUBT. DO YOU FOLLOW ME?

8 A UH-HUH.

9 Q YOU WROTE THE DEATH PENALTY WAS APPROPRIATE.

10 A UH-HUH.

11 Q LET ME ASK YOU THIS. WHEN YOU SAY APPROPRIATE, YOU
12 MEAN THAT IS THE ONLY APPROPRIATE SENTENCE FOR THAT
13 PERSON?

14 A I WOULD HAVE TO SAY NO, ONLY BECAUSE OF I GUESS
15 DIFFERENT CIRCUMSTANCES, I GUESS YOU WOULD HAVE TO TAKE IN
16 THE DIFFERENT FACTORS OF HOW MALICIOUS.

17 Q I UNDERSTAND. ALL MURDERS ARE MALICIOUS. OKAY? DO
18 YOU UNDERSTAND WHAT I'M SAYING?

19 A I REALIZE THAT. BUT SOME I FEEL TO ME ARE JUST MORE
20 MALICIOUS THAN OTHERS.

21 Q OKAY.

22 A AND I GUESS JUST TO ME I WOULD HAVE TO SEE AND KNOW
23 ALL MY FACTS, HONESTLY.

24 Q AND I HAVE EVERY REASON TO BELIEVE YOU'VE BEEN
25 NOTHING BUT TOTALLY HONEST. NOW, LET ME ASK YOU THIS

1 THEN. THIS PERSON YOU AND I JUST TALKED ABOUT, I'LL GO
2 THROUGH AGAIN, COULD YOU GIVE MEANINGFUL CONSIDERATION TO
3 SENTENCING THAT PERSON THAT YOU AND I JUST TALKED ABOUT,
4 KNEW RIGHT FROM WRONG, MURDER, BEYOND A REASONABLE DOUBT
5 ANOTHER REALLY SERIOUS CRIME TO SENTENCING THEM TO LIFE IN
6 PRISON?

7 A I WOULD HAVE TO SAY YES.

8 Q WHAT DOES LIFE IMPRISONMENT MEAN TO YOU? THE
9 SENTENCE OF LIFE IMPRISONMENT MEAN TO YOU?

10 MR. ARIAIL: I OBJECT. LET'S JUST TELL HER WHAT IT
11 MEANS.

12 Q WHAT'S YOUR UNDERSTANDING? LET --

13 A LIFE IN PRISON.

14 Q EASY ENOUGH, WASN'T IT?

15 A YEAH.

16 Q AND YOU UNDERSTAND IT TO MEAN UNTIL YOU'RE DEAD?

17 A YES.

18 Q NO PAROLE?

19 A RIGHT.

20 Q IF THE JUDGE TOLD YOU, WHICH IF YOU SERVE ON THIS
21 JURY HE WILL, THAT LIFE IMPRISONMENT MEANS EXACTLY THAT,
22 YOU DIE IN PRISON, WOULD YOU ACCEPT THAT AS BEING THE LAW?

23 A YES.

24 Q AND YOU WOULD ACCEPT THAT THAT PERSON NEVER LEAVES
25 PRISON?

1 A YES.

2 Q DO YOU CONSIDER THAT A, A SIGNIFICANT PUNISHMENT FOR
3 A MURDERER AND ANOTHER SIGNIFICANT CRIME?

4 A YES.

5 Q OKAY. OKAY.

6 A ONLY BECAUSE --

7 Q EXCUSE ME?

8 A ONLY BECAUSE YOU WOULD BE LIVING, ACTUALLY YOU'RE
9 LIVING WITH THE GUILT VERSUS --

10 Q AND SOME PRETTY BAD PEOPLE?

11 A YES.

12 Q YOU WOULD AGREE WITH ME ON THAT?

13 A OH, YES.

14 Q LET ME ASK YOU THIS. I GOT LIKE TWO OTHER TOPICS I'D
15 LIKE TO TALK ABOUT.

16 YOUR HONOR, WERE WE JUST DOING ON THAT ISSUE?

17 THE COURT: THE WHOLE ISSUE, EVERYTHING.

18 MR. NETTLES: OKAY.

19 LET ME ASK YOU ABOUT THIS, IF YOU DON'T MIND. THE
20 JUDGE HAS TALKED TO YOU ABOUT THE PENALTY PHASE, WHICH WE
21 WOULD GET TO IF THE PERSON WAS GUILTY.

22 A RIGHT.

23 Q AND IN THAT PENALTY PHASE, JUST LIKE IN THE -- YOU'RE
24 PROBABLY A LITTLE MORE FAMILIAR WITH THIS. YOU KNOW LIKE
25 IN THE FIRST PHASE, SOMEBODY HAS GOT TO GO FIRST. IN

1 TERMS OF EITHER THE DEFENSE OR THE GOVERNMENT?

2 A OKAY.

3 Q BECAUSE THE GOVERNMENT BROUGHT THE CHARGES AND THE
4 BURDEN IS ON THEM, THEY GO FIRST AND PUT UP EVIDENCE. THE
5 WAY IT WORKS, THEY PUT UP ALL THEIR STUFF, THEN THERE'S A
6 BREAK, THEN WE PUT UP ALL OUR STUFF.

7 A RIGHT.

8 Q JUST LIKE IN THE FIRST PHASE, YOU'RE FAMILIAR WITH
9 THAT, YOU HAVE TO WAIT. IN THE SECOND PHASE THEY GO FIRST
10 AGAIN. THEY WOULD PUT UP -- AND I SEE THAT YOU'RE A
11 MOTHER -- THEY WOULD PUT UP VICTIM IMPACT WITNESS. WHAT
12 THAT IS, IS THIS. FAMILY MEMBERS OF THE VICTIM AND THEY
13 WILL COME IN, YOU CAN ACCEPT THESE PEOPLE BRING IN
14 EXCEEDINGLY POWERFUL AND HEART-WRENCHING TESTIMONY ABOUT
15 THE LOSS. AND THEY'RE ENTITLED TO THAT AND SHOULD BE ABLE
16 TO DO THAT. WOULD YOU BE ABLE TO, AS HEART WRENCHING AND
17 POWERFUL AS THIS LOSS THESE PEOPLE HAVE, WOULD YOU AGREE
18 WITH ME, A FAIR JUROR WOULD BE SOMEONE WHO COULD ACCEPT
19 ALL THAT AND ALLOW PEOPLE TO DO THAT. BUT ALSO WAIT TO
20 SEE.

21 NOW, WE CAN'T CONTRADICT VICTIM IMPACT WITNESSES,
22 RIGHT? WE CAN'T CONTRADICT THAT. BUT WE WOULD PERHAPS
23 PUT UP EVIDENCE OF MITIGATION. WOULD YOU BE WILLING AND
24 ABLE AND WOULD YOU AGREE WITH ME A FAIR JUROR WOULD WAIT
25 AND SEE WHAT EVIDENCE OF MITIGATION THE DEFENSE PUT UP

1 BEFORE MAKING A DECISION ABOUT LIFE IMPRISONMENT WITHOUT
2 POSSIBILITY OF PAROLE OR DEATH?

3 A YES.

4 Q DO YOU UNDERSTAND MY QUESTION ON THAT?

5 A YES.

6 Q FOLLOW WHY THAT'S IMPORTANT TO US?

7 A YES.

8 Q AND THAT THAT ONLY SEEMS FAIR, RIGHT?

9 A YES.

10 Q NOW, LET ME ASK YOU THIS. JUST LIKE -- I'VE GOT TWO
11 MORE TOPICS, BOTH PRETTY QUICK AND I THINK WE'LL BE DONE.
12 JUST LIKE WE ASKED YOU WHAT'S A BROAD DEFINITION OF YOUR
13 VIEW ON THE DEATH PENALTY. LET ME ASK YOU THIS. IF YOU
14 AND I WERE JUST TALKING AND I SAID, YOU KNOW, "WHAT DO YOU
15 THINK ABOUT THIS WHOLE BROAD SUBJECT OF MENTAL ILLNESS?"

16 WHAT WOULD BE YOUR RESPONSE? ALSO KNOW THIS. WE
17 ASKED EVERYBODY THAT. NOTHING ABOUT YOU THAT WE'RE
18 ASKING, BUT WHAT WOULD BE YOUR VIEW ON MENTAL ILLNESS?

19 A THAT IT DOES HAVE AN IMPACT AND THAT I KNOW THAT --
20 I'VE SEEN IT FIRSTHAND WHERE MENTAL ILLNESS JUST MAKES A
21 PERSON NOT REALLY THEMSELVES. I ALSO KNOW MEDICATION CAN
22 DO THAT.

23 Q THAT'S RIGHT.

24 A THAT'S RIGHT.

25 Q GO AHEAD.

1 A I JUST KNOW THAT I WOULD HAVE TO WAIT.

2 Q I UNDERSTAND. BUT BASED ON WHAT YOU'VE TOLD ME,
3 YOU'RE NOT SOMEONE -- BECAUSE SOME PEOPLE SAY THIS, "ALL
4 THAT MENTAL ILLNESS STUFF IS VOODOO." CLEARLY THAT'S NOT
5 YOU, RIGHT?

6 A NO.

7 Q OKAY. AND I APPRECIATE THAT. I APPRECIATE WHAT YOU
8 TOLD ME. LET ME ASK YOU, THE LAST TOPIC I'M GOING TO ASK
9 YOU ABOUT, AND I THINK WE'LL BE DONE, IS THIS. ALLOW ME
10 FOR A SECOND TO PUT YOU IN THE JURY ROOM, 11 OTHER PEOPLE,
11 YOU ALL HEARD ALL THE EVIDENCE. YOU'RE IN THE JURY ROOM.

12 A UH-HUH.

13 Q AND YOU BELIEVE THAT ONE OF THE TWO PUNISHMENTS IS
14 APPROPRIATE, EITHER FORCING HIM TO SPEND THE REST OF HIS
15 LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE OR DEATH.

16 A UH-HUH.

17 Q AND YOU'VE PICKED ONE OF THOSE TWO?

18 A UH-HUH.

19 Q AND YOU'RE IN THE MINORITY. OKAY? AND IN SOUTH
20 CAROLINA IN ORDER TO GIVE SOMEBODY DEATH, YOU HAVE TO SIGN
21 A PIECE OF PAPER. IT'S GOT 12 LINES ON IT, SO THEY KNOW
22 IT REALLY WAS UNANIMOUS BECAUSE IT'S REALLY IMPORTANT IT
23 BE UNANIMOUS. NOW, IF YOU THOUGHT DEATH WAS THE
24 APPROPRIATE PUNISHMENT, AFTER EVERYTHING WAS DONE, YOU
25 COULD SIGN YOUR NAME THERE?

1 A I WOULD BE THE ONLY ONE?

2 Q NO, BUT YOU HAD ALL TALKED ABOUT IT AND BEFORE
3 SOMEONE COULD BE SENTENCED, ALL 12 WOULD HAVE TO SIGN.

4 A I GOT YOU.

5 Q YOU WOULD BE ONE OF 12. IF YOU BELIEVE IT WAS THE
6 APPROPRIATE THING, AFTER YOU HEARD ALL THE EVIDENCE, YOU
7 COULD SIGN YOUR NAME?

8 A UH-HUH.

9 Q AM I RIGHT ABOUT THAT?

10 A YES.

11 Q IF YOU WERE -- IF ALL THE OTHER 11 HAD DECIDED,
12 YOU'RE SITTING AT A TABLE, PICTURE A ROUND TABLE -- I
13 DON'T KNOW WHETHER IT IS OR NOT -- FIRST PERSON SIGNS,
14 COMES AROUND, THE 11TH PERSON SIGNS, IT COMES TO YOU, THEY
15 GO, "TRACY, IT'S YOUR TURN." AND YOU DIDN'T BELIEVE THAT
16 WAS THE APPROPRIATE PUNISHMENT FOR THAT PERSON ON THAT DAY
17 ON THOSE FACTS.

18 THE COURT: LET ME INTERJECT SOMETHING. IF I THINK
19 THE CHARGE IS GOING TO BE THAT THEY MAKE UP THEIR MIND,
20 ALL 12, AND THEN THEY SIGN.

21 MR. NETTLES: THAT'S FINE.

22 THE COURT: I MEAN, UNLESS 11 SIGN AND 12 CHANGES
23 THEIR MIND. I DON'T THINK THAT'S GOING TO BE THE PROCESS.
24 BUT GO AHEAD. THAT'S NOT GOING TO BE IN THE CHARGE
25 ANYHOW.

1 MR. NETTLES: I UNDERSTAND. LET'S SAY THAT ONE OF
2 THE PEOPLE SAID, "I MADE UP MY MIND, LET'S START SIGNING
3 THE SHEET." IT COMES TO YOU AND YOU DON'T BELIEVE THAT
4 DEATH IS THE APPROPRIATE PUNISHMENT, COULD YOU TELL THEM,
5 "I'M NOT SIGNING IT"?

6 A YES.

7 Q I MEAN, YOU COULD HOLD TO YOUR CONVICTIONS?

8 A I HAVE PRETTY STRONG --

9 Q I HAVE EVERY REASON TO BELIEVE THAT.

10 A -- OPINIONS.

11 Q I BELIEVE I'M DONE, BUT LET ME BE RIGHT BACK.

12 I HAVE NO FURTHER QUESTIONS. THANK YOU VERY MUCH.

13 THE COURT: SOLICITOR?

14 BY MR. ARIAIL:

15 Q MISS SHOOK, MY NAME IS BOB ARIAIL. I'M THE SOLICITOR
16 FOR THE 13th CIRCUIT, WHICH ON TV MEANS THE D.A. I
17 NOTICE YOU WATCH CSI. IT MIGHT BE MORE LIKE LAW AND
18 ORDER.

19 A I WATCH THAT, TOO.

20 Q I NOTICE THAT. IT MIGHT BE CLOSER TO THAT. BUT IN
21 THIS CASE I'LL BE REPRESENTING THE STATE. I GUESS MY
22 EQUIVALENT IS THAT GUY, WATERS, SAM WATERS.

23 A HE'S THE -- YES.

24 Q THIS IS MY DEPUTY, THE LITTLE BLOND-HEADED LADY. AND
25 THIS IS MARK MOYER, ONE OF MY ASSISTANTS. AND I

1 UNDERSTOOD YOUR QUESTIONNAIRE, THE WORD APPROPRIATE USED.
2 I MEAN I UNDERSTOOD THAT FROM THE BEGINNING, SO I'M NOT
3 GOING BACK OVER ALL OF THAT. THE QUESTION I WANT TO ASK
4 IS, WHEN YOU WERE BEING ASKED BY MR. NETTLES ABOUT MENTAL
5 ILLNESS SPECIFICALLY, I NOTICED YOU HAD SOMEWHAT, WHAT
6 APPEARED TO BE AN EMOTIONAL RESPONSE. MY QUESTION, IS
7 THERE SOMETHING RELATED TO YOU PERSONALLY WITH MENTAL
8 ILLNESS, EITHER WITH YOU OR YOUR FAMILY THAT MAY CAUSE YOU
9 TO BE PARTICULARLY MINDFUL OF THAT PROBLEM?

10 MR. NETTLES: I OBJECT. I JUST WANT TO REGISTER MY
11 OBJECTION TO THAT QUESTION.

12 THE COURT: OVERRULED. GO AHEAD.

13 A I DO NOT HAVE ANY -- WELL, I SHOULDN'T SAY I DON'T
14 HAVE ANY MENTAL -- I DO HAVE AN AUNT WHO HAS MENTAL
15 ILLNESS, BUT THAT'S NOT WHAT I WAS REFERRING TO IF YOU SAW
16 ANYTHING IN MY ANSWER. I'VE BEEN IN NURSING FOR 13 YEARS.

17 Q I SEEN THAT.

18 A SO, I'VE SEEN A LOT OF MENTAL ILLNESS. AND IT IS,
19 I'VE DONE MY INTERN AT CHARTER, AND IT'S AMAZING ABOUT THE
20 BODY AND HOW IT WORKS AND HOW A PERSON CAN COMPLETELY
21 CHANGE.

22 Q DO YOU THINK THAT WITH THAT BACKGROUND THAT IT WOULD
23 IN ANY WAY IMPAIR YOUR ABILITY TO BE A FAIR AND IMPARTIAL
24 JUROR? OR IS IT JUST ANOTHER EXPERIENCE IN YOUR LIFE?

25 A I WOULD HAVE TO SAY IT WAS AN EXPERIENCE IN MY LIFE

1 OF LEARNING. NOT BEING SO, I DON'T WANT TO SAY NAIVE; BUT
2 IN THAT SENSE OF NOT -- HAVING LACK OF KNOWLEDGE ABOUT
3 DIFFERENT MENTAL DISEASES. SO, YEAH, I WOULD HAVE TO SAY
4 IT WAS AN EXPERIENCE. I'VE BEEN -- I'M NOT IN NURSING
5 NOW. I HAVEN'T BEEN FOR THREE YEARS.

6 Q RIGHT. YOU USED TO BE IN DIALYSIS, AND THOSE ARE
7 SICK PEOPLE?

8 A VERY SICK PEOPLE. YES, SIR.

9 THE COURT: ANY MOTIONS, EITHER PARTY?

10 MR. MAULDIN: NO, SIR.

11 MR. ARIAIL: NO, SIR.

12 THE COURT: MISS SHOOK, WHAT WE'RE GOING TO DO IS
13 QUALIFY 43 JURORS. FROM THAT WE'RE GOING TO DRAW 12
14 JURORS AND FOUR ALTERNATES. YOU'RE GOING TO BE PART OF
15 THAT 43 GROUP. THE BAILIFF HAS A SLIP OF PAPER. ON THAT
16 SLIP OF PAPER IS A PHONE NUMBER. CALL THAT NUMBER
17 TONIGHT, THERE WILL BE A MESSAGE FOR THOSE PEOPLE. IT MAY
18 BE CALL IN TOMORROW NIGHT. IT MAY BE COME IN IN THE
19 MORNING. BUT DON'T TALK TO ANYBODY, DON'T WATCH ANYTHING
20 ON TV, DON'T READ ANYTHING IN THE PAPER ABOUT THIS CASE.
21 ALL RIGHT?

22 PROSPECTIVE JUROR: ALL RIGHT.

23 THE COURT: WOULD YOU BRING PAMELA BLACKWELL, PLEASE?

24 MR. MAULDIN: JUDGE, AMONG THE OTHER THINGS, 62.

25 THE COURT: I SAW 62. WE GOT TWO READING THEM, MY

1 LAW CLERK AND MYSELF, MR. MAULDIN.

2 (PROSPECTIVE JUROR BLACKWELL, ENTERS COURTROOM.)

3 THE COURT: MRS. BLACKWELL, HOW YOU DOING TODAY?

4 PROSPECTIVE JUROR: I'M FINE. HOW ARE YOU?

5 PAMELA BLACKWELL, (WHITE
6 FEMALE), HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 EXAMINATION

9 BY THE COURT:

10 Q MISS BLACKWELL, DO YOU REMEMBER FILLING OUT THIS
11 QUESTIONNAIRE LAST MONTH OR THE MONTH BEFORE LAST?

12 A YES.

13 Q WHEN YOU FILLED IT OUT, WAS IT ACCURATE TO THE BEST
14 OF YOUR KNOWLEDGE?

15 A YES.

16 Q WOULD YOU PLEASE TAKE IT PLEASE, MA'AM? I'M GOING TO
17 ASK YOU SOME QUESTIONS ABOUT IT. THERE'S NO RIGHT OR
18 WRONG ANSWER, JUST ANSWER THE QUESTIONS THE BEST YOU CAN.
19 CAN YOU DO THAT?

20 A YES, SIR.

21 Q IF YOU WOULD PLEASE, MA'AM, WOULD YOU TURN TO PAGE
22 SIX, QUESTION NUMBER 44. YOUR BROTHER-IN-LAW, YOU STATE,
23 WAS MURDERED NINE YEARS AGO; IS THAT CORRECT?

24 A YES, SIR.

25 Q WAS ANYONE EVER ARRESTED FOR THAT?

- 1 A YES, SIR.
- 2 Q WAS SOMEONE TRIED?
- 3 A TRIED.
- 4 Q WAS IT A TRIAL OR A GUILTY PLEA?
- 5 A A TRIAL.
- 6 Q WERE YOU INVOLVED IN THE TRIAL YOURSELF?
- 7 A NO, I DIDN'T EVEN GO.
- 8 Q YOU DIDN'T GO?
- 9 A NO.
- 10 Q DID YOU KNOW A LOT ABOUT IT?
- 11 A NOT REALLY BECAUSE THIS WAS FROM A PREVIOUS MARRIAGE.
- 12 Q FROM A PREVIOUS MARRIAGE?
- 13 A YES, SIR. SO, I KNEW AT THE TIME WHAT HAPPENED, BUT
- 14 I WASN'T INVOLVED.
- 15 Q YOU WEREN'T INVOLVED IN IT AT ALL?
- 16 A NO.
- 17 Q IF YOU WOULD, WOULD YOU TURN TO PAGE SEVEN, QUESTION
- 18 NUMBER 49. WHICH FAMILY MEMBER PLED GUILTY TO CONSPIRACY
- 19 TO VIOLATE THE DRUG LAW ON PAGE SEVEN. CAN YOU FIND IT?
- 20 A THAT WAS MY EX-HUSBAND.
- 21 Q SO, IT WAS YOUR EX-HUSBAND?
- 22 A AND IT WAS HIS BROTHER --
- 23 Q AND IT WAS HIS BROTHER?
- 24 A -- THAT WAS MURDERED.
- 25 Q OKAY. IF YOU WOULD GO TO PAGE TEN, QUESTION 62. THE

1 QUESTION SAYS, "THE EVIDENCE IN THIS CASE MAY INCLUDE
2 GRAPHIC DETAILS OF THE INJURIES TO THE VICTIM." HOW
3 DIFFICULT DO YOU THINK IT WOULD BE FOR YOU TO
4 DISPASSIONATELY EVALUATE THIS EVIDENCE?

5 AND YOU CHECKED, "I DON'T THINK I COULD BE FAIR IN A
6 CASE INVOLVING GRAPHIC EVIDENCE LIKE THIS." IS THAT STILL
7 YOUR OPINION HERE TODAY?

8 A GRAPHIC MEANING PICTURES AND THAT TYPE OF THING?

9 Q THAT WAS MY NEXT QUESTION. THAT'S WHAT I WAS GOING
10 TO ASK YOU. WHAT DO YOU VIEW AS GRAPHIC? WHAT WOULD BE
11 OFFENSIVE TO YOU TO THE EXTENT THAT YOU COULDN'T BE FAIR?

12 A I DON'T THINK THAT I COULDN'T BE FAIR. I'M THINKING
13 THAT IF I SEE GRAPHICS, IT WOULD PROBABLY UPSET ME.

14 Q IT WOULD UPSET ANYBODY.

15 A THAT'S WHAT I WAS THINKING ON THE QUESTION.

16 Q LET ME ASK YOU THIS. WHAT DO YOU MEAN WHEN YOU
17 CHECKED AND SAID, "I COULD NOT BE FAIR." WHAT DO YOU MEAN
18 BY THAT? WHAT WAS YOUR INTERPRETATION OF THAT?

19 A THAT IT WOULD UPSET ME TO SEE GRAPHIC PICTURES.

20 Q WOULD THE PICTURES THEMSELVES UPSET YOU TO THE EXTENT
21 YOU WERE GOING TO AUTOMATICALLY THINK THAT THE DEFENDANT
22 WAS GUILTY?

23 A NO, NO.

24 Q HOW WOULD IT AFFECT YOU AS FAR AS THE INNOCENCE OR
25 GUILT CONCERNING THE DEFENDANT?

1 A IT SHOULDN'T AFFECT ME AT ALL.

2 Q JUST SORT OF MAKE YOU NAUSEATED, SICK TO YOUR
3 STOMACH, AND DISGUSTED?

4 A RIGHT.

5 Q THAT --

6 A THAT'S WHAT I MEANT.

7 Q I THINK IT WOULD PROBABLY MAKE EVERYBODY IN THE
8 COURTROOM THAT WAY. BUT DEPENDING UPON THE PICTURE
9 ITSELF.

10 IF YOU WOULD, LOOK AT QUESTION NUMBER 64.

11 A UH-HUH.

12 Q AND 64 WHERE IT'S ASKED ABOUT YOUR ATTITUDES AND
13 BELIEFS ABOUT CAPITAL PUNISHMENT, YOU SAID PROVEN MURDER
14 SHOULD RECEIVE THE DEATH PENALTY.

15 A YES.

16 Q IS THAT YOUR OPINION STILL TODAY?

17 A YES.

18 Q SIXTY-FIVE, "WHAT IS YOUR OPINION ABOUT THE DEATH
19 PENALTY?"

20 YOU SAID, "STRONGLY FAVOR."

21 AND 68, "WITH REFERENCE TO THE DEATH PENALTY, WHICH
22 OF THE FOLLOWING STATEMENTS BEST DESCRIBES YOUR OPINION?"

23 YOU SAY, "I BELIEVE THE DEATH PENALTY IS THE
24 APPROPRIATE FORM OF PUNISHMENT IN ALL MURDER CASES." TELL
25 ME A LITTLE BIT ABOUT WHY YOU THINK THAT WAY OR FEEL THAT

1 WAY OR HOWEVER YOU WANT TO PHRASE IT.

2 A I'M NOT REALLY SURE HOW TO ANSWER THAT. I CAN'T
3 ANSWER THAT IN ANY WORDS.

4 Q ON WHAT BASIS DO YOU THINK ALL MURDERERS SHOULD
5 RECEIVE THE DEATH PENALTY? I MEAN, HOW DID YOU ARRIVE AT
6 THAT CONCLUSION?

7 A I CAN'T PUT IT IN WORDS. IT'S JUST A FEELING.

8 Q DOES IT HAVE ANYTHING TO DO WITH THE BIBLICAL
9 PASSAGES?

10 A PROBABLY "AN EYE FOR AN EYE." YEAH.

11 THE COURT: WHOSE TURN? LET'S DO THE ISSUE ON DEATH
12 PENALTY.

13 MR. ARIAIL: MISS BLACKWELL, MY NAME IS BOB ARIAIL.
14 I'M THE SOLICITOR. THAT'S THE PROSECUTOR OR D.A. FOR
15 GREENVILLE COUNTY. THE PROCESS WE'RE GOING THROUGH IS TO
16 DETERMINE IF WE QUALIFY JURORS IN A CASE IN WHICH THE --
17 WE TALK ABOUT THIS IN A HYPOTHETICAL SITUATION TO SEE IF
18 JURORS CAN BE SEATED ON A CAPITAL CASE; THAT IS, A CASE IN
19 WHICH THE STATE IS SEEKING THE DEATH PENALTY. IN THAT
20 SITUATION LET ME TELL YOU WHAT THE LAW IS.

21 THE LAW, NUMBER ONE, IS THAT THE STATE CANNOT SEEK
22 THE DEATH PENALTY IN ANY CASE BUT MURDER. AND ONLY IN
23 LIMITED MURDER CASES; THAT IS, SELECTED ONES THAT HAVE
24 BEEN CHOSEN BY THE LEGISLATURE. AND THOSE CASES WHICH
25 THERE HAS BEEN A MURDER, WHILE AT THE SAME TIME AND IN THE

1 SAME CIRCUMSTANCE THERE'S BEEN ANOTHER CRIME COMMITTED.
2 FOR EXAMPLE, MURDER DURING THE COMMISSION OF AN ARMED
3 ROBBERY, MURDER DURING THE COMMISSION OF RAPE, MURDER
4 DURING THE COMMISSION OF BREAKING INTO SOMEONE'S HOME.
5 THINGS LIKE THAT. AND IN THOSE CIRCUMSTANCES THE STATE
6 CAN SEEK THE DEATH PENALTY IF IT SO CHOOSES.

7 AND IF YOU WERE PICKED ON A JURY IN ONE OF THOSE
8 CASES -- THERE ARE TWO TRIALS, IN ESSENCE. THEY'RE THE
9 SAME JURY, BUT THEY SIT IN TWO DIFFERENT TRIALS.. THE
10 FIRST TRIAL DEALS WITH GUILT, DID THE DEFENDANT COMMIT THE
11 ACT? AND IN SOUTH CAROLINA, THE MURDER IS THE INTENTIONAL
12 KILLING WITH MALICE. THAT'S THE ISSUE IN THE FIRST TRIAL.
13 DID THE DEFENDANT KILL THE VICTIM WITH MALICE, MEANNESS,
14 AND AS A RESULT OF THAT, THE JURY DECIDES.

15 AND IF THE JURY CONVICTS, FINDS THE DEFENDANT IS
16 GUILTY, THEN WE GO TO THE SECOND PHASE. THERE'S A DAY IN
17 BETWEEN. AND WE GO TO THE SECOND PHASE, WHICH IS THE
18 SENTENCING PHASE. NORMALLY IN THIS STATE THE JUDGE
19 SENTENCES, BUT IN THIS CASE THE JURY SENTENCES. SO THE
20 JURY, IN ESSENCE, BECOMES THE JUDGE AS TO THE APPROPRIATE
21 SENTENCE. SO, WE HAVE TO HAVE, IN THAT SITUATION, YOU CAN
22 SEE WE HAVE TO HAVE PEOPLE WHO CAN BE FAIR AND IMPARTIAL.

23 A RIGHT.

24 Q AND LISTEN TO THE EVIDENCE. SO, WHAT THE JUDGE WAS
25 TELLING YOU IS, IF YOU BELIEVE AFTER THE FIRST PHASE THAT

1 THE DEFENDANT'S GUILTY, THAT HE'S COMMITTED AN INTENTIONAL
2 ACT AND BEEN CONVICTED OF THAT INTENTIONAL ACT WITH
3 MALICE -- BECAUSE THAT'S WHAT WE HAVE TO PROVE -- IF YOU
4 BELIEVE THE DEATH PENALTY IS THE ONLY SENTENCE IN THAT
5 CASE, YOU COULDN'T BE A FAIR JUROR, BECAUSE YOU GOT TO GO
6 TO THE SECOND PHASE, AND YOU GOT TO BE ABLE TO LISTEN TO
7 THE EVIDENCE THAT RELATES TO SENTENCING. WHAT ARE THE
8 OTHER CIRCUMSTANCES THAT A JURY, AS JUDGE IMPOSING
9 SENTENCE, SHOULD TAKE INTO CONSIDERATION BEFORE THEY
10 IMPOSE SENTENCE?

11 NOW, MY QUESTION TO YOU IS COULD YOU, REGARDLESS OF
12 WHAT YOU STATED IN THIS QUESTIONNAIRE, COULD YOU FOLLOW
13 THE LAW AS THE JUDGE INSTRUCTS YOU AND PUT ASIDE ANY
14 PRECONCEIVED IDEA WHEN THE DEATH PENALTY SHOULD APPLY AND
15 WHEN IT SHOULDN'T APPLY AND FOLLOW THE LAW AS TO WHAT YOUR
16 ROLE AS A JUROR SHOULD BE?

17 MR. MAULDIN: I OBJECT TO THE FORM OF THAT QUESTION
18 REGARDING FOLLOWING THE LAW TWICE STATED IN THAT QUESTION.

19 THE COURT: JUST REPHRASE THE QUESTION.

20 MR. ARIAIL: COULD YOU FOLLOW THE JUDGE'S
21 INSTRUCTIONS AS A JUROR AND GO INTO THE SECOND PHASE WITH
22 AN OPEN MIND AS TO WHAT THE APPROPRIATE SENTENCE SHOULD
23 BE, LIFE IMPRISONMENT OR DEATH?

24 MR. MAULDIN: OBJECTION, YOUR HONOR, AGAIN. SAME
25 OBJECTION.

1 THE COURT: OVERRULED.

2 Q COULD YOU?

3 A YES, I COULD.

4 Q THE ANSWER IS, YES, YOU COULD. NOW, YOU UNDERSTAND
5 THAT THAT IS CONTRARY TO WHAT YOU WERE TALKING ABOUT WHEN
6 YOU CAME IN HERE?

7 A UH-HUH.

8 Q NOW, SO THERE WILL BE SOME QUESTIONING ABOUT -- WE'LL
9 HAVE TO DO SOME FURTHER QUESTIONING ABOUT THAT TO MAKE
10 SURE THAT YOU CAN PUT THAT ASIDE. AND IF AT ANY TIME YOU
11 FEEL THAT'S GOING TO BE TOO BIG A BURDEN FOR YOU TO DO,
12 YOU NEED TO TELL US. BUT THE IDEA IS YOU HAVE TO BE FAIR
13 IN THAT SECOND PHASE, YOU HAVE TO LISTEN TO WHAT EVIDENCE
14 THE STATE PRESENTS. YOU HAVE TO LISTEN TO ALL OF THE
15 EVIDENCE. AND THE DEFENDANT MAY NOT PUT UP ANY EVIDENCE,
16 MAY NOT TESTIFY; BECAUSE THE LAW SAYS HE DOESN'T HAVE TO.
17 THE LAW FURTHER SAYS IF HE DOESN'T, YOU CAN'T HOLD THAT
18 AGAINST HIM.

19 A RIGHT.

20 Q YOU STILL HAVE AN ABSOLUTE RIGHT IN THAT SECOND
21 PHASE, REGARDLESS OF WHETHER THE DEFENDANT PUTS UP
22 EVIDENCE OR HOW AGGRAVATED THE STATE'S EVIDENCE IS. YOU
23 CAN STILL IMPOSE A SENTENCE OF LIFE IN PRISON FOR NO
24 REASON AT ALL, SIMPLY AS AN ACT OF MERCY, BECAUSE YOU ARE
25 THE JUDGE IMPOSING THE APPROPRIATE SENTENCE. DO YOU

1 UNDERSTAND YOUR ROLE? DO YOU THINK YOU CAN BE A FAIR
2 JUROR WITHIN THAT SCHEME AND LISTEN TO ALL THE EVIDENCE?

3 A YES, SIR.

4 Q ALL RIGHT. THANK YOU.

5 BY MR. NETTLES:

6 Q MISS BLACKWELL, I'M BILL NETTLES. LET ME ASK YOU
7 THIS. THE SOLICITOR HAS TALKED TO YOU A LITTLE BIT ABOUT
8 MURDER, AS DID THE JUDGE. AND LET ME ASK YOU THIS
9 QUESTION. YOU KNOW, ON YOUR QUESTIONNAIRE WHEN YOU'RE IN
10 THE PRIVACY OF YOUR OWN HOME, YOU WERE ASKED ABOUT HOW
11 YOU, ABOUT HOW YOU FEEL ABOUT THE DEATH PENALTY. YOU TOLD
12 US ON THAT QUESTIONNAIRE THAT IF SOMEONE IS CONVICTED OF
13 MURDER, THAT THE ONLY APPROPRIATE PUNISHMENT IS DEATH,
14 RIGHT, IN YOUR MIND?

15 A YES. THAT'S WHAT I ANSWERED.

16 Q AND YOU JUST TOLD THE JUDGE JUST A SECOND AGO THAT
17 SOMEONE -- YOU KIND OF WENT ONE STEP FURTHER AND YOU SAID
18 IF SOMEONE'S CONVICTED OF MURDER -- AND LET'S BE CLEAR
19 ABOUT SOMETHING, WE'RE TALKING ABOUT MURDER AND ANOTHER
20 VERY SERIOUS CRIME. SO, WE'RE TALKING ABOUT YOU SAT ON A
21 JURY, THIS PERSON WAS CONVICTED OF MURDER AND ARMED
22 ROBBERY, MURDER AND RAPE, MURDER AND KIDNAPPING. OKAY?
23 AND WHEN THE JUDGE ASKED YOU, YOU SAID THE ONLY
24 APPROPRIATE PUNISHMENT OR SOMETHING TO THAT EFFECT IS
25 DEATH, RIGHT? IN YOUR MIND, RIGHT?

1 A AT THAT TIME? YES.

2 Q YOU TOLD THE JUDGE THAT. YES, MA'AM.

3 AS A MATTER OF FACT, YOU BASE THAT ON, ACCORDING TO
4 WHAT YOU TOLD THE JUDGE UNDER OATH, YOU BASE THAT ON THE
5 FACT THIS TEACHING THAT SOME PEOPLE THE BIBLE, THE BOOK
6 RIGHT THERE THAT YOU SWORE ON WHEN YOU CAME IN, AN EYE FOR
7 AN EYE, RIGHT?

8 A I DID.

9 Q AND YOU KNOW YOU'RE STILL UNDER OATH, RIGHT?

10 A YES.

11 Q LET ME ASK YOU THIS QUESTION. IF YOU SAT ON A JURY
12 AND A PERSON HAS BEEN CONVICTED OF MURDER AND ANOTHER VERY
13 SERIOUS CRIME, WHILE YOU WOULD LIKE TO BE FAIR, WE'D ALL
14 LIKE TO BE FAIR, WHEN YOU LISTEN TO EVIDENCE, YOU'RE NOT
15 GOING TO BE ABLE TO SENTENCE THAT PERSON TO LIFE, ARE YOU?

16 A YES. YES. I FEEL THAT AS A CHRISTIAN, I'M OBLIGATED
17 TO FOLLOW THE LAWS.

18 Q I UNDERSTAND.

19 A YOU SEE?

20 Q I UNDERSTAND. BUT HERE IS THE SITUATION WE'VE GOT.
21 THE REASON WE ASK YOU THESE QUESTIONS IS BECAUSE SOME OF
22 THESE ISSUES ARE SO WEIGHTY THAT WE RECOGNIZE -- YOU KNOW,
23 THE LAW IS MORE THAN YOU JUST GOT TO BE FAIR. AND WE
24 RECOGNIZE SOME PEOPLE, BECAUSE OF THEIR BELIEFS, SOME --
25 YOU NEED TO KNOW SOME PEOPLE THAT COME IN, HAVE TAKEN THAT

1 SEAT WHERE YOU ARE RIGHT NOW, THEY SAID, "I'D LIKE TO BE
2 FAIR AND ALL, I JUST NEVER COULD GIVE DEATH." AND SOME
3 PEOPLE COME IN AND HAVE TAKEN YOUR SEAT AND -- YOU
4 WOULDN'T BE BREAKING THE LAW BY TELLING US SUCH, THAT IF
5 SOMEONE IS CONVICTED OF MURDER, THAT REALISTICALLY, I
6 BELIEVE THAT THE ONLY APPROPRIATE PUNISHMENT IS DEATH. DO
7 YOU FOLLOW ME?

8 A YES, SIR.

9 Q IT SEEMS TO ME THAT'S WHAT YOU TOLD US ON YOUR
10 QUESTIONNAIRE.

11 A CORRECT.

12 Q IT SEEMS TO ME THAT'S WHAT YOU TOLD THE JUDGE.

13 A CORRECT.

14 Q LET'S BE CLEAR. YOU'RE NOT BREAKING THE LAW BY
15 COMING IN HERE AND TELLING US HOW YOU FEEL ABOUT THAT. IS
16 THAT HOW YOU FEEL ABOUT IT?

17 A I BELIEVE IN THE DEATH PENALTY, YES.

18 Q IT'S KIND OF ONE STEP FURTHER THAN THAT. OKAY? WHEN
19 SOMEONE IS CONVICTED OF MURDER AND ANOTHER SERIOUS CRIME
20 AND YOU'RE CONVINCED BEYOND A REASONABLE DOUBT THEY DID
21 IT, BASED UPON WHAT YOU TOLD US IN THE QUESTIONNAIRE AND
22 BASED UPON WHAT YOU TOLD THE JUDGE, YOU BELIEVE THE ONLY
23 APPROPRIATE PUNISHMENT IS THE DEATH PENALTY, RIGHT?

24 MR. ARIAIL: OBJECTION. ASKED AND ANSWERED TWICE.

25 THE COURT: OVERRULED.

1 Q IS THAT RIGHT, MA'AM?

2 A I'M SORRY.

3 Q OVERRULED, KIND OF OUR TALK.

4 THE COURT: YOU GET TO ANSWER THE QUESTION.

5 MR. NETTLES: YOU GET TO ANSWER THE QUESTION.

6 A OKAY.

7 Q DO YOU REMEMBER THE QUESTION?

8 A KIND OF. NOT THE WHOLE THING.

9 Q DO YOU WANT ME TO ASK IT AGAIN?

10 A PLEASE.

11 Q WE WERE TALKING ABOUT THIS WHOLE ISSUE AS THERE'S NO
12 SUCH THING AS BREAKING THE LAW.

13 A RIGHT.

14 Q AND, REMEMBER, WE TALKED ABOUT THE FACT THAT IN YOUR
15 MIND AND YOUR BELIEFS AND BASED UPON WHAT YOU'VE TOLD US
16 IN YOUR QUESTIONNAIRE, AND BASED UPON WHAT YOU TOLD THE
17 JUDGE UNDER OATH THAT IF SOMEONE WAS CONVICTED OF MURDER
18 AND YOU SAT ON THAT JURY AND YOU KNOW THEY'RE GUILTY
19 BEYOND A REASONABLE DOUBT OF MURDER AND ANOTHER VERY
20 SERIOUS CRIME, THAT IN YOUR MIND, THE ONLY APPROPRIATE
21 PUNISHMENT FOR THAT PERSON IS DEATH. IS THAT RIGHT?

22 A THAT'S WHAT I STATED.

23 Q OKAY. AND THAT'S WHAT YOU BELIEVE, RIGHT?

24 A I CAN'T SAY THAT NOW THAT I HEAR THE ARGUMENTS FOR --

25 Q WELL, WHAT'S CHANGED?

1 A -- THE CIRCUMSTANCES. LIKE YOU WERE SAYING, IF IT'S
2 PROVED BEYOND A SHADOW OF A DOUBT TWO, LIKE MURDER AND
3 KIDNAPPING, AND MURDER AND ARMED ROBBERY, I'M NOT SURE.

4 Q YOU'RE NOT SURE WHAT?

5 A I'M NOT SURE THAT I COULD VOTE ANY OTHER WAY THAN
6 DEATH PENALTY.

7 Q YOU JUST TELLING US BECAUSE YOU WANT TO BE FAIR THE
8 BELIEFS YOU HAVE, DEATH IS THE ONLY APPROPRIATE PUNISHMENT
9 IN YOUR MIND, RIGHT?

10 A YEAH.

11 Q OKAY. I'LL TOUCH BASE, BUT I DON'T THINK I HAVE ANY
12 OTHER QUESTIONS.

13 THE COURT: MRS. BLACKWELL, WOULD YOU STEP OUT IN THE
14 HALL JUST A SECOND, PLEASE? JUST STAND RIGHT IN THE HALL
15 PLEASE, MA'AM.

16 (PROSPECTIVE JUROR EXITS.)

17 THE COURT: ALL RIGHT. ANY MOTIONS?

18 MR. NETTLES: YES, SIR. I MOVE NOT QUALIFIED.

19 THE COURT: SOLICITOR, LET ME HEAR FROM YOU.

20 MR. ARIAIL: MY RESPONSE IS THAT WE HAVE, IN THE PAST
21 I CAN REMEMBER ONE PARTICULAR JUROR THAT CHANGED THEIR
22 ANSWER ON THE QUESTIONNAIRE, AND THE ANSWER WAS CHANGED
23 BASED ON QUESTIONING AND LEARNING ABOUT THE PROCESS. AND
24 AS THEY WENT THROUGH THE PROCESS, THEY LEARNED MORE ABOUT
25 IT AND SAID MY ORIGINAL ANSWER WAS IN THE VACUUM.

1 THE COURT: I THINK THE PREVIOUS WITNESS, MRS. SHOOK,
2 DID THAT.

3 MR. ARIAIL: THAT'S RIGHT.

4 THE COURT: BUT MRS. SHOOK, TO BEGIN WITH, WASN'T AT
5 THE EXTREME.

6 MR. ARIAIL: BUT MISS FULLER WAS. SHE WAS ALWAYS ON
7 HER QUESTIONNAIRE.

8 THE COURT: I UNDERSTAND. BUT, MISS FULLER, YOU ALL
9 LED HER AROUND EVERYWHERE SHE WANTED TO GO.

10 MR. ARIAIL: NOBODY LED THIS WOMAN AROUND. SHE WAS
11 ABLE TO SAY, "I COULD FOLLOW THE LAW," WHEN SHE LEARNED
12 WHAT THE LAW IS, THAT'S WHAT SHE WANTS TO DO. AND YOU'RE
13 RIGHT, SHE MAY BE PARTICULARLY DEATH PRONE BASED ON
14 CIRCUMSTANCES, BUT SHE'S STILL ABLE TO GIVE THAT
15 CONSIDERATION. THIS IS NOT A JUROR FOR THE COURT TO
16 STRIKE FOR CAUSE.

17 THIS MAY BE A JUROR THAT ONE OF THE PARTIES MAY NOT
18 WANT, JUST LIKE SOME OF THE OTHERS WHO HAVE GOTTEN
19 QUALIFIED BUT JUST KEEP STRIKING SOMEONE WHO ONCE THEY
20 LEARN WHAT THE LAW IS AND SAYS THEY CAN FOLLOW THE LAW IS
21 NOT IN CONFORMITY WITH WHAT OUR LAW SAYS, REGARDLESS OF
22 THEIR VIEWS COMING IN HERE. IF THEY SAY THEY CAN SET
23 THOSE ASIDE AND FOLLOW THE LAW, THEY'RE QUALIFIED. WE MAY
24 NOT LIKE THEM AND MAY HAVE TO STRIKE THEM, BUT THEY ARE
25 QUALIFIED.

1 THE COURT: OKAY, THANK YOU. BRIEFLY.

2 MR. NETTLES: BRIEFLY, HE'S RIGHT. AND HERE IS THE
3 PROBLEM. WHEN SHE FOUND OUT WHAT THE LAW WAS, MURDER AND
4 ANOTHER SERIOUS CRIME, SHE SAID NOW THAT I HEAR THAT, I'D
5 ALWAYS GIVE DEATH.

6 THE COURT: I'M GOING TO FIND SHE'S SUBSTANTIALLY
7 IMPAIRED. I'M GOING TO EXCUSE HER. DO YOU WANT TO BRING
8 HER BACK JUST A SECOND PLEASE? (JUROR RETURNS.)

9 MISS BLACKWELL, I WANT TO THANK YOU FOR BEING HERE
10 AND I APPRECIATE YOUR VIEWS ON THE DEATH PENALTY AND YOUR
11 VIEWS MAY BE CORRECT, YOUR PERSONAL VIEWS; BUT FOR THE
12 PURPOSES OF THIS JURY, I'M GOING TO FIND THAT YOU'RE NOT
13 QUALIFIED. OKAY?

14 PROSPECTIVE JUROR: OKAY.

15 THE COURT: THANK YOU SO VERY MUCH.

16 WOULD YOU BRING IN MICHAEL FOWLER, PLEASE? LET ME
17 SEE, 11:00. YOU ALL WANT TO TAKE ABOUT A TEN-MINUTE
18 BREAK.

19 MR. ARIAIL: I WILL. BUT I CAN TELL YOU WHAT I FOUND
20 OUT AND GIVE IT TO YOU TO READ.

21 THE COURT: ABOUT MR. GUNTER?

22 MR. ARIAIL: MR. GUNTER WAS SENTENCED UNDER FIRST
23 OFFENDER ACT, AND THE FIRST OFFENDER ACT IN GEORGIA IS TO
24 A NON-CONVICTION. IF HE IS PUT UNDER FIVE YEARS PROBATION
25 UNDER FIRST OFFENDER ACT, AND IF HE COMPLETES THE FIRST

1 OFFENDER ACT, PROBATION, IT'S A NONADJUDICATION.

2 THE COURT: BASED ON THAT ---

3 MR. ARIAIL: LET ME GIVE IT TO YOU.

4 THE COURT: I UNDERSTAND, BUT BASED ON THAT, WE'LL GO
5 THROUGH A QUALIFICATION PROCESS. YOU DON'T HAVE TO HAND
6 IT UP.

7 MR. ARIAIL: I'D LIKE FOR YOU TO READ IT.

8 THE COURT: I DON'T WANT TO READ IT UNLESS YOU'RE NOT
9 TELLING ME WHAT IT SAYS.

10 MR. ARIAIL: NO, I THINK I AM.

11 THE COURT: I'LL TAKE YOUR WORD FOR IT.

12 MR. MAULDIN: THE ONLY THING I WOULD ASK, JUDGE, IS
13 PRIOR TO THE ACTUAL STRIKING OF THE JURY, IF WE COULD
14 ACTUALLY GET SOME REAL CONVERSATION. I UNDERSTAND THIS
15 HAS BEEN BY PHONE.

16 MR. ARIAIL: NO, I JUST LOOKED IT UP IN THE STATUTE.

17 THE COURT: IT'S THE STATUTE FROM GEORGIA.

18 MR. MAULDIN: BEFORE JURY SELECTION DOWN THE ROAD
19 ACTUALLY SHOWING SOMETHING THIS GUY DID IN COURT. I
20 UNDERSTAND THE DEFINITION.

21 THE COURT: HE SAYS HE GOT FIVE YEARS PROBATION,
22 WHICH IS IN CONFORMITY WITH THE STATUTE.

23 MR. MAULDIN: WELL --

24 THE COURT: WHAT DO YOU WANT ME TO DO? TELL ME.

25 MR. MAULDIN: I WANT YOU TO DO EXACTLY WHAT WE HAVE

1 TO DO IF WE HAVE THE SAME SITUATION ON OUR SIDE; THAT IS,
2 I UNDERSTAND WHAT THE SOLICITOR IS HANDING YOU IS A
3 DESCRIPTION OF THE FIRST OFFENDER ACT IN GEORGIA. I
4 HAVEN'T SEEN IT, BUT I ASSUME THAT'S WHAT IT IS. WE'RE
5 LOOKING AT AN UNOFFICIAL NCIC, AND THE GUY -- IT'S
6 INDICATED GOT FIVE YEARS PROBATION FOR SOMETHING. STILL
7 DON'T KNOW WHAT HE GOT IT FOR. I DON'T KNOW WHETHER WHAT
8 HE PLED TO -- I DON'T KNOW WHETHER HE WAS TRIED FOR IT.
9 IF IT WAS REFERRED THE REVERSED, WE WOULD HAVE TO AT LEAST
10 PUT SOMETHING IN THE RECORD THAT VERIFIED WHAT IT WAS.
11 WAS IT A GUILTY PLEA IN 13th CIRCUIT JUDICIAL COURT OR
12 WHAT? I'M JUST SAYING BEFORE WE END UP EXERCISING
13 PREEMPTORIES, WE VERIFY THE SITUATION.

14 MR. ARIAIL: HE GOT CONVICTION UNDER FIRST OFFENDER,
15 COULD HAVE GOT IT FOR MURDER.

16 THE COURT: I UNDERSTAND. WE'LL GO THROUGH THAT WHEN
17 WE GET INTO THE QUALIFICATION. BUT RIGHT NOW WE'RE GOING
18 TO TAKE A TEN-MINUTE BREAK.

19 (BRIEF RECESS TAKEN)

20 MS. STROM: YOUR HONOR, AS TO MR. FOWLER, HE ALSO
21 ANSWERED QUESTION NUMBER 48 THAT HE HAS NEVER BEEN
22 ARRESTED. AND HE WAS ARRESTED IN '88 FOR ATTEMPTING TO
23 MAINTAIN MARIJUANA, BUT THERE WAS NO CONVICTION.

24 THE COURT: NO CONVICTION?

25 MS. STROM: NO, SIR. SO, IT WOULDN'T BE

1 DISQUALIFYING. DO YOU WANT THE BIRTH DATE AND SOCIAL?

2 THE COURT: YES. LET'S MAKE SURE IT'S THE SAME
3 PERSON.

4 MS. STROM: 3-21-54, AND SOCIAL IS 249-15-0242.

5 THE COURT: OKAY.

6 MS. STROM: THANK YOU. BRING US MR. FOWLER.

7 (PROSPECTIVE JUROR FOWLER ENTERS COURTROOM.)

8 THE COURT: MR. FOWLER, HOW YOU DOING?

9 THE WITNESS: GOOD MORNING.

10 MICHAEL FOWLER, (BLACK
11 MALE), HAVING BEING PREVIOUSLY DULY SWORN, TESTIFIED AS
12 FOLLOWS:

13 EXAMINATION

14 BY THE COURT:

15 Q MR. FOWLER, DO YOU REMEMBER FILLING OUT THIS
16 QUESTIONNAIRE?

17 A I DO.

18 Q I BELIEVE YOU FILLED IT OUT A MONTH OR SO OR
19 WHENEVER?

20 A YES.

21 Q AT THE TIME YOU FILLED IT OUT, WAS IT ACCURATE TO THE
22 BEST OF YOUR KNOWLEDGE?

23 A TO THE BEST MY OF KNOWLEDGE, YES, SIR.

24 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. THERE'S NO
25 RIGHT OR WRONG ANSWERS, JUST ANSWER THE BEST YOU CAN. CAN

1 YOU DO THAT?

2 A INDEED.

3 Q PLEASE ANSWER TRUTHFULLY. WILL YOU DO THAT?

4 A YES, SIR.

5 Q TURN TO PAGE SEVEN IF YOU WOULD, PLEASE, SIR?

6 A ALL RIGHT.

7 Q WHAT'S YOUR SOCIAL SECURITY NUMBER?

8 A 249-13-0242.

9 Q 249-13-WHAT?

10 A 0242.

11 Q LET ME ASK YOU THIS. WERE YOU EVER CHARGED WITH
12 ATTEMPT TO PURCHASE MARIJUANA?

13 A YES.

14 Q HOW LONG AGO?

15 A TEN YEARS AGO.

16 Q THE CHARGES WERE DROPPED; IS THAT CORRECT?

17 A THAT'S RIGHT.

18 Q YOU WEREN'T IN COURT MONDAY?

19 A THAT'S CORRECT.

20 Q WHY DIDN'T YOU COME MONDAY?

21 A IT SLIPPED MY MIND. I'M A CONTRACTOR, I WAS ON A
22 ROOF AND FELL, AND I WAS HAVING PROBLEMS WITH MY GRANDSON
23 BEING PUT OUT OF SCHOOL.

24 Q JUST GOT A LOT OF PERSONAL PROBLEMS GOING ON?

25 A YES, SIR.

1 Q WHAT TYPE OF CONTRACTING WORK DO YOU DO?

2 A I'M IN THE PAINTING AND ROOFING BUSINESS. PAINTING,
3 ROOFING, GENERAL WORK.

4 Q I SEE YOU'RE WALKING WITH A CANE. IS THAT FROM
5 FALLING OFF THE ROOF?

6 A INDEED. YES, SIR.

7 Q DID YOU BREAK YOUR LEG?

8 A NO, SIR, IT'S NOT BROKE, JUST SPRUNG REAL BAD.

9 Q HOW LONG AGO DID THIS HAPPEN?

10 A ABOUT FIVE DAYS AGO.

11 Q DO YOU HAVE ANY OTHER PHYSICAL PROBLEMS AS TO WHY YOU
12 CANNOT SERVE ON THE JURY?

13 A NO, SIR.

14 Q YOU HAVE ANY MENTAL PROBLEMS AS TO WHY YOU CAN'T
15 SERVE ON THE JURY?

16 A NO, SIR.

17 Q DO YOU HAVE ANY HARDSHIPS, PERSONAL HARDSHIPS, WHY
18 YOU CAN'T SERVE ON THE JURY?

19 A NO MORE THAN MY WIFE-TO-BE, SHE HAVE SEIZURES, AND I
20 HAVE TO DRIVE HER BACK AND FORTH TO DOCTORS AND THINGS OF
21 THAT NATURE.

22 Q HOW OFTEN DOES SHE HAVE SEIZURES?

23 A AT LEAST TWICE A WEEK. SHE'S SEEING A NEUROLOGIST
24 RIGHT NOW.

25 Q IS SHE TAKING MEDICATION?

1 A YES, SIR.

2 Q HOW OFTEN DOES SHE GO TO THE DOCTOR?

3 A SHE SEES A NEUROLOGIST TWICE A WEEK. AND I THINK
4 ATTORNEY CAROL MULQUIS IS HANDLING HER CASE.

5 Q SOCIAL SECURITY CASE?

6 A YES, DISABILITY.

7 Q IS THERE ANYBODY ELSE THAT CAN POSSIBLY DRIVE HER?

8 A NOT THAT -- NOT IMMEDIATELY. I KNOW OF NO ONE. I'M
9 HAVING MY MOTHER STAY WITH HER TODAY; BUT SHE'S UP IN AGE
10 AND CAN'T CONTINUE TO DO IT AFTER TODAY. OTHER THAN THAT,
11 EVERYTHING IS FINE.

12 Q LET'S ASSUME YOU'RE CHOSEN ON THIS JURY AND YOU'RE
13 GOING TO BE CONFINED FOR FOUR OR FIVE DAYS. IS THERE
14 ANYBODY THAT YOU COULD GET THAT COULD HELP YOUR FIANCEE TO
15 AND FROM THE DOCTOR? DOES SHE HAVE A SISTER, A BROTHER,
16 OR MOTHER?

17 A HER MOTHER IS IN SIMPSONVILLE, BUT SHE'S ON
18 DISABILITY HERSELF. SO, THERE'S NO ONE I COULD REALLY
19 TRUST TO BE ON TIME AND THINGS OF THIS NATURE. IT'S BEEN
20 ABOUT TWO YEARS NOW SINCE I BEEN GOING THROUGH IT WITH HER
21 BACK AND FORTH.

22 Q DOES SHE HAVE ANY APPOINTMENTS NEXT WEEK?

23 A SHE GOT ONE. SHE HAD ONE EARLIER THIS WEEK.

24 Q HOW ABOUT NEXT WEEK? ARE THESE DONE ON APPOINTMENT
25 BASIS OR JUST ROUTINE?

1 A APPOINTMENTS.

2 Q DOES SHE HAVE AN APPOINTMENT NEXT WEEK?

3 A I'M NOT SURE.

4 Q LET'S -- DID HE EVER FIND OUT IF SHE'S GOT AN
5 APPOINTMENT NEXT WEEK? CAN YOU PULL UP A LITTLE SO
6 EVERYBODY CAN HEAR IN THE MICROPHONE. JUST SLIDE UP A
7 LITTLE BIT.

8 THE DEFENDANT IN THIS CASE, CHARLES CHRISTOPHER
9 WILLIAMS, HAS BEEN CHARGED WITH MURDER AND KIDNAPPING.
10 THIS OCCURRED ON SEPTEMBER THIRD 2003 AT A BI-LO HERE IN
11 GREENVILLE. HAVE YOU HEARD ANYTHING ON TV ABOUT IT, HEARD
12 ANYTHING ON THE RADIO, OR HEARD ANYBODY TALKING ABOUT IT?

13 A ABOUT A YEAR AGO OR SO MY MOTHER-IN-LAW AND I TALKED
14 ABOUT IT. SHE SAW IT ON TELEVISION. OTHER THAN THAT WE
15 DIDN'T GO INTO ANY DETAIL.

16 Q WHAT DID YOUR MOTHER TELL YOU WAS ON TELEVISION?

17 A JUST TYPICAL OLDER WOMAN, SAYING IT WAS SAD SOMETHING
18 LIKE THIS HAPPENED.

19 Q DID SHE TELL YOU ANYTHING ABOUT WHAT HAPPENED OR WHAT
20 SHE SAW ON TELEVISION?

21 A NO, NO MORE THAN JUST HEARSAY. ABOUT SOMEONE WENT
22 INTO --

23 Q TELL ME THE HEARSAY. WHAT DID SHE SAY?

24 A THAT A YOUNG MAN HAD WENT INTO THE BI-LO AREA AND HAD
25 SHOT HIS GIRLFRIEND OR WIFE, SOMETHING OF THIS NATURE.

1 AND --

2 Q LET ME ASK YOU THIS. BASED UPON THAT KNOWLEDGE FROM
3 YOUR MOTHER, HAVE YOU FORMED OR EXPRESSED AN OPINION AS TO
4 THE INNOCENCE OR GUILTY OF MR. WILLIAMS?

5 A NO, SIR. I HADN'T REALLY -- HADN'T CONTEMPLATED THAT
6 MUCH. NO MORE THAN, YOU KNOW, WHAT WAS THE -- MIGHT HAVE
7 BEEN A MOTIVE, AND THAT WAS IT.

8 Q OKAY. ALL RIGHT. DO YOU KNOW THE VICTIM IN THE
9 CASE, MARANDA WILLIAMS?

10 A NO, SIR.

11 Q DO YOU KNOW MR. CHARLES CHRISTOPHER WILLIAMS WHO SITS
12 TO MY RIGHT?

13 A NO, SIR.

14 Q DO YOU KNOW THE ATTORNEYS THAT REPRESENT
15 MR. WILLIAMS, MR. MAULDIN AND MR. NETTLES?

16 A NO, SIR, I SURE DON'T.

17 Q DO YOU KNOW THE SOLICITOR, WHO SITS TO MY LEFT WITH
18 THE BLUE TIE AND HIS TWO ASSISTANTS?

19 A NO. WHAT WAS THE WOMAN'S NAME?

20 MS. STROM: I'M BETTY STROM.

21 PROSPECTIVE JUROR: NO, NO.

22 Q DO YOU HAVE A PERSONAL RELATIONSHIP WITH ANYONE HERE
23 IN THE SOLICITOR'S OFFICE IN GREENVILLE?

24 A OH, I'VE DONE WORK FOR CHUCK SIMMONS, JUDGE SIMMONS
25 AND C. B. SIMMONS, HIS FATHER. I KNOW DAN BALLENGER, I

1 DID WORK FOR THEM, BUT IT'S BEEN YEARS AGO.

2 Q I'M GOING TO GIVE YOU A LIST OF NAMES. WOULD YOU
3 LOOK AT THOSE NAMES AND TELL ME IF YOU RECOGNIZE ANYBODY
4 ON THAT LIST.

5 A NO, SIR, NOT AT THIS PRESENT MOMENT.

6 Q I'M GOING TO GIVE YOU A SECOND LIST. WOULD YOU LOOK
7 AT THAT LIST AND SEE IF YOU RECOGNIZE ANY NAMES. DO YOU
8 NEED SOME GLASSES? I SEE YOU SQUINTING.

9 A NO, SIR, I'M OKAY. NO ONE THAT I RECOGNIZE, JUDGE.

10 Q DID YOU LOOK AT THE SECOND PAGE? LOOK AT THE SECOND
11 PAGE.

12 A NO ONE HERE AS WELL.

13 Q THANK YOU, SIR. ALL RIGHT. MR. FOWLER, I'M GOING TO
14 READ A QUESTION TO YOU. IF YOU WOULD LISTEN TO THE
15 QUESTION AND RESPOND TO IT PLEASE, SIR.

16 A YES, SIR.

17 Q DO YOU WANT TO LISTEN?

18 A I'M LISTENING.

19 Q PUT THAT DOWN. YOU CAN'T READ THAT AND LISTEN TO ME
20 AT THE SAME TIME. OKAY?

21 A OKAY.

22 Q ALL RIGHT. IN THIS CASE THE DEFENDANT IS BLACK AND
23 THE VICTIM IS WHITE. IT IS UNDISPUTED THAT THE BLACK
24 DEFENDANT AND THE WHITE VICTIM ENGAGED IN INTERRACIAL
25 DATING. WOULD THE FACT THAT THE VICTIM AND THE DEFENDANT

1 ENGAGED IN INTERRACIAL DATING MAKE IT DIFFICULT FOR YOU TO
2 BE FAIR TO EITHER THE STATE OR THE DEFENDANT?

3 A NO, SIR.

4 Q MR. FOWLER, IF YOU WOULD TAKE THAT QUESTIONNAIRE
5 PLEASE, SIR. I MIGHT ASK YOU A COUPLE OF QUESTIONS ABOUT
6 IT.

7 A OKAY.

8 Q IF YOU WOULD TURN TO PAGE TEN, IT'S THE NEXT TO THE
9 LAST PAGE.

10 A ALL RIGHTY.

11 Q QUESTION 64 SAYS, "BRIEFLY DESCRIBE YOUR ATTITUDES
12 AND BELIEFS CONCERNING CAPITAL PUNISHMENT."

13 YOU PUT DOWN, "DEPENDS ON THE CRIME?" WHAT DO YOU
14 MEAN WHEN YOU SAY, "IT DEPENDS ON THE CRIME"?

15 A WELL, THE EVIDENCE AND/OR LACK OF EVIDENCE.

16 Q THE EVIDENCE OR LACK OF EVIDENCE?

17 A YES, SIR.

18 Q OKAY. THEN FLIP OVER TO THE NEXT PAGE, QUESTION 68.
19 YOU SAID, "I BELIEVE THE DEATH PENALTY IS THE APPROPRIATE
20 FORM OF PUNISHMENT IN SOME MURDER CASES AND I COULD RETURN
21 A VERDICT OF DEATH DEPENDING UPON THE PARTICULAR CASE,
22 DEPENDING UPON WHAT I LEARNED ABOUT THE EVIDENCE, THE LAW,
23 AND THE PARTICULAR VICTIM [SIC]." IS THAT STILL YOUR
24 OPINION?

25 A IN ALL MURDER CASES? YES, SIR.

1 Q LOOK AT QUESTION NUMBER 71. THAT'S AT THE BOTTOM OF
2 THE PAGE WE WERE LOOKING AT.

3 A IT'S -- I JUST GOT 70.

4 Q DOESN'T HAVE A 71? THAT'S 71. THAT'S IT, THE VERY
5 LAST QUESTION.

6 QUESTION: "DO YOU THINK THE CRIMINAL JUSTICE SYSTEM
7 IS" --

8 YOU PUT DOWN, "TOO STRICT"?

9 A YES, SIR.

10 Q TELL ME WHAT YOU MEAN BY THAT.

11 A WELL, IT GOES BACK TO THE QUESTION YOU ASKED ME
12 EARLIER, ABOUT THE, ABOUT QUESTION 64, DO YOU BELIEVE --
13 THE ATTITUDES AND BELIEFS CONCERNING CAPITAL PUNISHMENT,
14 DEATH. I PUT DOWN, "DEPENDS ON THE CRIME." BOTH OF THOSE
15 I'M CONNECTED WITH IT A LITTLE BIT, EITHER LACK OF
16 EVIDENCE OR TAMPERED EVIDENCE.

17 Q TAMPERED EVIDENCE?

18 A YES, SIR.

19 Q LET ME EXPLAIN TO YOU THE PROCESS WE'RE GOING TO GO
20 THROUGH IN THIS CASE. IN THIS CASE THE DEFENDANT IS
21 CHARGED WITH MURDER AND KIDNAPPING. AND HE'S ALSO, THE
22 STATE IS ALSO REQUESTING THE DEATH PENALTY IN THIS CASE,
23 DO YOU UNDERSTAND?

24 A YES, SIR.

25 Q NOW, THE CASE WILL BE DIVIDED UP INTO TWO PARTS AND

1 WE'LL REFER TO THE FIRST PART AS THE FIRST PHASE, WHICH IS
2 ALSO REFERRED TO AS THE GUILT PHASE. AND IN THE GUILT
3 PHASE THE STATE IS OBLIGATED TO PROVE THE DEFENDANT GUILTY
4 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND?

5 A YES, SIR.

6 Q AND THERE'S NO QUESTION -- WELL, LET ME REPHRASE
7 THAT. LET'S ASSUME THAT THE JURY BELIEVES, ALL 12 JURORS,
8 THAT THE STATE HAS PROVEN THE CASE BEYOND A REASONABLE
9 DOUBT.

10 A YES, SIR.

11 Q NOW, AT THAT TIME THE GUILT PHASE WOULD BE OVER. THE
12 JURY HAS MADE UP THEIR MIND THAT THE DEFENDANT IS GUILTY
13 OF MURDER AND KIDNAPPING, DO YOU UNDERSTAND?

14 A YES, SIR.

15 Q THEN YOU WOULD GO TO A SECOND PHASE. THE SECOND
16 PHASE IS REFERRED TO AS THE PENALTY PHASE. THE PURPOSE OF
17 THE SECOND PHASE IS FOR THE JURY TO DECIDE WHETHER THE
18 DEFENDANT SHOULD RECEIVE LIFE IN PRISON OR DEATH.

19 A YES, SIR.

20 Q LIFE IN PRISON MEANS WHAT I SAID, THE PERSON WOULD
21 DIE IN JAIL. OKAY? NOW, IN THAT PHASE, THE STATE WILL
22 ALSO BE OBLIGATED TO INTRODUCE AGGRAVATING CIRCUMSTANCES,
23 FACTS -- OTHER FACTS THAT YOU DIDN'T HEAR IN THE FIRST
24 PHASE TO PERSUADE YOU TO GIVE THE DEATH PENALTY. THE
25 STATE IS OBLIGATED TO PROVE THOSE AGGRAVATING

1 CIRCUMSTANCES BEYOND A REASONABLE DOUBT. DO YOU
2 UNDERSTAND?

3 A YES, SIR. YES, SIR.

4 Q THE DEFENDANT NEVER HAS TO PROVE HIMSELF INNOCENT.
5 THE DEFENDANT DOESN'T HAVE TO OFFER ANY TESTIMONY IN THE
6 FIRST PHASE OR THE SECOND PHASE, DO YOU UNDERSTAND?

7 A YES, SIR.

8 Q LET'S ASSUME THAT THE DEFENDANT DOES NOT OFFER ANY
9 TESTIMONY. THE ONLY THING YOU HEAR IS WHAT YOU HEARD IN
10 THE FIRST PHASE, THE GUILT PHASE, AND WHAT YOU HEARD IN
11 THE SECOND PHASE, THE AGGRAVATING CIRCUMSTANCES.

12 A YES, SIR.

13 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO LIFE OR
14 DEATH AND NOT MAKE UP YOUR MIND UNTIL YOU'VE HEARD ALL THE
15 FACTS IN THE FIRST PHASE AND THE SECOND PHASE AS TO LIFE
16 OR DEATH? IN OTHER WORDS, COULD YOU HEAR EVERYTHING AND
17 LISTEN TO EVERYTHING BEFORE YOU MADE UP YOUR MIND?

18 A NO, SIR. I WOULD WANT TO HEAR ALL THE --

19 Q YOU WOULD WANT TO HEAR EVERYTHING BEFORE YOU MADE UP
20 YOUR MIND AS TO LIFE OR DEATH?

21 A YES, SIR.

22 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO DEATH?

23 A IT WOULD BE DEATH, BUT I COULD UNDERSTAND IN CERTAIN
24 CASES, YES.

25 Q COULD YOU GIVE MEANING CONSIDERATION TO LIFE?

1 A YES, SIR. IN BOTH CASES.

2 Q IN BOTH CASES.

3 A CONSIDERATION.

4 Q ALL RIGHT. YOU SAID IN CERTAIN CASES YOU COULD GIVE
5 MEANINGFUL CONSIDERATION TO DEATH. IN THIS CASE THE
6 DEFENDANT WILL HAVE BEEN FOUND GUILTY OF MURDER AND
7 KIDNAPPING. AND IN THE SECOND PHASE WE'RE TALKING ABOUT
8 HIS PUNISHMENT. DO YOU UNDERSTAND?

9 A YES, SIR.

10 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO DEATH AS A
11 PUNISHMENT?

12 A I COULD, YES, SIR. I COULD.

13 Q JOHN?

14 BY MR. MAULDIN:

15 Q MR. FOWLER, I'M JOHN MAULDIN. I'M THE PUBLIC
16 DEFENDER. AND I, ALONG WITH BILL NETTLES OVER HERE,
17 REPRESENT CHRIS. AND I WANT TO ASK YOU QUESTIONS IN THREE
18 AREAS. WHEN I ASK YOU QUESTION NUMBER ONE ABOUT JURY
19 SERVICE; NUMBER TWO, FOLLOW UP THE QUESTIONS THAT THE
20 JUDGE HAD ABOUT THE ISSUE OF THE DEATH PENALTY; AND THEN
21 THE THIRD AREA WOULD BE ON MENTAL ILLNESS. SO, THOSE ARE
22 THE THREE AREAS. AND WE ASK ALL THESE QUESTIONS THE SAME
23 OF THE JURORS. SO, I'M NOT JUST PICKING ON YOU.

24 FIRST OF ALL, THE JUDGE DID TALK TO YOU A LITTLE BIT
25 ABOUT THE FACT THAT ARRANGEMENTS WOULD HAVE TO BE MADE

1 REGARDING I THINK IT WAS YOUR GRANDMOTHER?

2 A MY FIANCEE.

3 Q AND THAT YOU WERE SATISFIED THAT YOU'D BE ABLE TO
4 MAKE THOSE ARRANGEMENTS, THAT THINGS COULD BE TAKEN CARE
5 OF. AND YOU UNDERSTAND THE COURT WOULD ASSIST YOU TO MAKE
6 ANY SORT OF ARRANGEMENTS? DO YOU FOLLOW ME? WHILE YOU'RE
7 ON JURY SERVICE.

8 A OH, YES. OKAY.

9 Q THE REASON I BRING THAT UP TO YOU NOW IS BECAUSE WHEN
10 YOUR JURORS --

11 THE COURT: LET ME INTERJECT ONE THING. MR. FOWLER,
12 IF YOU'RE ON THAT JURY AND YOUR FIANCEE HAS TO GO TO THE
13 DOCTOR, WE'LL GET YOUR FIANCEE TO THE DOCTOR. PLEASE
14 PROCEED.

15 Q THAT'S WHEN I SAID THE JUDGE, OR OUR COURT, WOULD
16 HELP YOU. WHEN A JUROR IS SITTING IN THE JURY ROOM THE
17 LAST THING THE DEFENSE, THE GOVERNMENT, ANYBODY ELSE WANTS
18 A JUROR TO BE THINKING ABOUT IS SOMETHING OUTSIDE THE
19 COURTHOUSE?

20 A GOT THAT RIGHT.

21 Q DON'T WANT ANY DISTRACTIONS. SO, YOU'RE COMFORTABLE
22 YOU WOULDN'T HAVE ANY DISTRACTIONS?

23 A MAY I INTERJECT ONE THING?

24 Q YES, SIR.

25 A I'M SELF-EMPLOYED, I GOT ONE PERSON WHO WORKS WITH

1 ME. I GOT TWO-THIRDS THIS JOB I'M PRESENTLY ON. AND I
2 GOT A ROOF HALFWAY TORN OFF. THERE'S NO ONE TO DO THE
3 JOB. I DON'T WANT NO PROBLEM BEING SUED, WE GOT RAIN
4 COMING THIS WEEKEND.

5 THE COURT: YOU'LL GET THROUGH HERE IN ABOUT TEN
6 MINUTES, YOU BETTER HUSTLE.

7 BY MR. MAULDIN:

8 Q IN OTHER WORDS, YOU WOULDN'T START RIGHT NOW, YOU
9 WOULD HAVE TIME TO FINISH.

10 A I UNDERSTAND.

11 Q THE QUESTION -- I HAVE A QUESTION ON ABOUT THE
12 JUDGE'S DESCRIPTION -- ABOUT THE PROCESS WHERE SOUTH
13 CAROLINA ALLOWS FOR CONSIDERATION OF THE IMPOSITION OF THE
14 DEATH PENALTY.

15 A YES, SIR.

16 Q THE COURT HAS DESCRIBED FOR YOU A TWO-STEP PROCESS.
17 YOU HAVE THE TRIAL WHERE YOU HEAR THE FACTS OF THE CASE,
18 THE CIRCUMSTANCES OF THE CRIME, THE CIRCUMSTANCES OF THE
19 ACTIONS BY THE PERSON CHARGED, THEN THAT JURY GOES OUT AND
20 DELIBERATES AND DECIDES WHETHER THE PERSON IS GUILTY OR
21 INNOCENT.

22 NOW, IF THE PERSON IS FOUND INNOCENT, OF COURSE, THE
23 PROCESS ENDS. BUT IF THE PERSON IS FOUND GUILTY OF
24 MURDER, YOU KNOW, AND THE COURT WOULD DESCRIBE THAT TO YOU
25 AS AN INTENTIONAL ACT, A PLANNED ACT, A PREMEDITATED ACT

1 OF MURDER.

2 A YES, SIR.

3 Q ONLY THEN WOULD THE JURY BE ASKED TO CONSIDER OR EVEN
4 THINK ABOUT PENALTY. AND THERE WOULD BE TWO POSSIBLE
5 PENALTIES FOR THAT JURY TO TAKE INTO CONSIDERATION. AND
6 WHAT WE HAVE TO DO IS MAKE SURE THAT YOU UNDERSTAND THAT
7 PROCESS.

8 A YES, SIR.

9 Q ALL RIGHT. ONE OF THOSE PENALTIES IN THE EVENT THE
10 PERSON HAS BEEN CONVICTED, WOULD BE THE PENALTY OF DEATH.
11 ANOTHER WOULD BE THE PENALTY OF LIFE IMPRISONMENT WITHOUT
12 PAROLE. THAT'S WHAT'S ON THE TABLE. IN ORDER TO BE
13 QUALIFIED, OF COURSE, YOU NEED TO BE ABLE TO GIVE
14 MEANINGFUL CONSIDERATION TO BOTH POSSIBLE PENALTIES,
15 DEPENDING UPON THE EVIDENCE AND THE CIRCUMSTANCES THAT YOU
16 HEAR AT THAT SECOND PHASE AND AS WELL AS THE FIRST PHASE.
17 DO YOU FOLLOW THAT?

18 A YES, SIR.

19 Q AND I HAVE UNDERSTOOD YOU TO SAY THAT YOU WOULD GIVE
20 CONSIDERATION TO BOTH PENALTIES.

21 A YES, SIR.

22 Q YOU'RE COMFORTABLE WITH THAT?

23 A YES, SIR.

24 Q YOU UNDERSTAND THE PROCESS. NOW, IN THAT REGARD,
25 MR. FOWLER, I'M GOING TO KIND OF SPIN THE CLOCK FORWARD.

1 WE GOT THE CART BEFORE THE HORSE, BUT KIND OF SPIN THE
2 CLOCK FORWARD. GOING TO ASSUME THERE'S BEEN A CONVICTION
3 FOR MURDER, THAT YOU WERE ONE OF THE JURORS. YOU'VE GOT A
4 CONVICTION FOR MURDER. COME BACK A DAY LATER, THE
5 PROSECUTOR BRINGS IN WHAT HE CLAIMS TO BE THE AGGRAVATING
6 INFORMATION, JUSTIFIES HIS REQUEST THAT YOU CONSIDER THE
7 DEATH PENALTY.

8 THE DEFENSE WOULD HAVE THE OPPORTUNITY TO BRING IN
9 BEFORE YOU MITIGATING INFORMATION IF THEY SO CHOOSE TO ASK
10 FOR LIFE IN PRISON. YOU HEAR ALL THAT, YOU GET THE
11 INSTRUCTION FROM THE JUDGE ABOUT DELIBERATING, ABOUT
12 MEANINGFUL CONSIDERATION TO EACH PENALTY AND YOU GO IN THE
13 JURY ROOM. YOU DELIBERATE, FULLY DISCUSS THE CASE
14 COMPLETELY.

15 NOW, I WANT TO GIVE YOU THREE KINDS OF SCENARIOS
16 ABOUT WHAT WOULD HAPPEN AT THE CONCLUSION OF THOSE
17 DELIBERATIONS. EVERYBODY HAS TALKED AND THOUGHT ABOUT IT.
18 THE FIRST ONE IS THIS. LET'S ASSUME FOR A MOMENT THAT YOU
19 AND THE 11 OTHER JURORS ALL UNANIMOUSLY AGREE THAT THE
20 APPROPRIATE PENALTY FOR THIS AGGRAVATED CASE, AGGRAVATED
21 MURDER, THAT YOU HAVE FOUND THE PERSON GUILTY OF, THE ONLY
22 APPROPRIATE PENALTY WOULD BE THE DEATH PENALTY. GOING TO
23 ASSUME THAT.

24 IN ORDER -- THE JUDGE, I DON'T KNOW THAT THE JUDGE
25 MENTIONED THIS; BUT I'LL MENTION IT, AND HE'LL CORRECT ME

1 IF I DON'T SAY IT RIGHT. THIS IS THE VERDICT FORM, THE
2 VERDICT FORM HAS 12 LINES ON IT, AND EACH JUROR MUST SIGN
3 THEIR NAME SHOWING TO THE JUDGE THAT ALL 12 AGREE TO THAT
4 SENTENCE. I NEED TO MAKE SURE IN GIVING CONSIDERATION TO
5 THAT PENALTY THAT YOU WOULD BE ABLE TO SIGN YOUR NAME ON
6 THE VERDICT FORM ALONG WITH THE OTHER 11 JURORS. IF THAT'S
7 WHAT YOU THOUGHT WAS THE APPROPRIATE PENALTY.

8 A YES, COUNSEL.

9 Q ALL RIGHT. NOW, LET'S ASSUME THAT AFTER FULL
10 DELIBERATION 11 OF THE JURORS THOUGHT THE RIGHT PENALTY
11 WAS ONE AND THE ONE OTHER JUROR THOUGHT -- LET'S SAY THAT
12 WAS YOU, YOU HAD A DIFFERENT VIEW. ELEVEN PEOPLE ON ONE
13 SIDE, YOU ON ONE SIDE, WOULD YOU GIVE UP YOUR VIEW ON WHAT
14 YOU THOUGHT WAS RIGHT JUST TO VOTE WITH THE MAJORITY?

15 A NO, SIR.

16 Q AND THE LAST QUESTION ON THAT IS IF YOU WERE IN THAT
17 11 AND THERE WAS SOMEBODY OVER THERE THAT HAD A DIFFERENT
18 VIEW, AND AFTER FULL DELIBERATIONS, WOULD YOU AT THE END
19 FORCE THAT JUROR TO CHANGE THEIR MIND OR RESPECT THEIR
20 VIEW ON THAT LIFE AND DEATH QUESTION?

21 A THE LATTER, COUNSEL, RESPECT THEIR VIEW.

22 Q THE LAST QUESTION I'LL ASK YOU, AND WE'VE ASKED YOU
23 QUESTIONS REGARDING CAPITAL PUNISHMENT AND JURY SERVICE.
24 I WANTED TO ASK YOU ABOUT YOUR VIEW ON MENTAL HEALTH OR
25 MENTAL ILLNESS. AND I KNOW THAT'S KIND OF A BROAD

1 QUESTION; BUT CAN YOU GIVE ME A GENERAL IDEA ABOUT HOW YOU
2 FEEL ABOUT MENTAL ILLNESS?

3 A WELL, WHAT LITTLE BIT I KNOW ABOUT IT -- AND I GUESS
4 SOMETIMES A PERSON, ONE WOULD GO THROUGH A MENTAL CASE,
5 YOU KNOW SITUATION, DEPENDING ON THE BACKGROUND AND THE
6 HISTORY INVOLVED AND WHAT'S BEING IN CONSIDERATION OF
7 SOMETHING LIKE THAT.

8 Q I GUESS -- AND MY FINAL QUESTION WOULD BE. YOU KNOW,
9 SOME PEOPLE THINK MENTAL ILLNESS IS JUST LIKE VOODOO,
10 WITCH DOCTORS, THAT KIND OF STUFF. OTHER PEOPLE THINK IT
11 CAN BE VERY REAL.

12 A YES, SIR.

13 Q DO YOU AGREE WITH THAT?

14 A YES, SIR. YES, SIR.

15 THE COURT: SOLICITOR?

16 BY MR. ARIAIL:

17 Q MR. FOWLER, GOOD MORNING TO YOU. MY NAME IS BOB
18 ARIAIL AND I'M THE SOLICITOR FOR THE 13th CIRCUIT. THAT
19 MEANS I'M THE STATE PROSECUTOR. ON TV THEY CALL THEM
20 DA'S, HERE WE'RE CALLED THE SOLICITOR. SO, I'M
21 RESPONSIBLE FOR PROSECUTING CRIMINAL CASES IN GREENVILLE
22 COUNTY. IN THIS PARTICULAR CASE I'D BE ASSISTED BY MY
23 DEPUTY IN THE RED COAT AND MR. MOYER, ONE OF MY
24 ASSISTANTS. LET ME GO BACK TO A COUPLE OF THE QUESTIONS
25 THAT THE JUDGE ASKED YOU.

1 YOU SAID IN ANSWER TO THE JUDGE THAT YOUR CONCERN
2 ABOUT THE DEATH PENALTY WAS LACK OF EVIDENCE AND TAMPERED
3 EVIDENCE?

4 A LEADING UP TO THE ACTUAL -- YES, I DO SOMETIMES.

5 Q IN SOME OF THE CASES THAT'S GIVEN YOU CONCERN?

6 A YES, I SEEN SEVERAL, YOU KNOW, LIKE CSI PROGRAMS LIKE
7 SO, KIND OF FOLLOW THEM, YOU KNOW.

8 Q WELL, NOW THIS ISN'T GOING TO BE LIKE CSI.

9 A OH, YEAH.

10 Q OH, YOU UNDERSTAND THAT?

11 A YEAH.

12 Q YOU PUT ON YOUR QUESTIONNAIRE IN NUMBER 66 THAT OVER
13 THE PAST -- GOT A HOLE IN IT, I DON'T KNOW HOW MANY YEARS,
14 OVER THE PAST BLANK YEARS -- 66, YOURS GOT A HOLE, MINE
15 HAS A HOLE IN IT. RIGHT THERE AT THE TOP. IN THE PAST
16 FEW YEARS, YOUR OPINION -- YOU'RE LESS IN FAVOR OF THE
17 DEATH PENALTY?

18 A YES.

19 Q TELL ME WHY.

20 A FOR THE REASON YOU JUST ASKED ME EARLIER ABOUT THE
21 MENTAL HEALTH OF A SITUATION, I CONSIDER THAT OF THE DEATH
22 PENALTY LESS IN FAVOR BECAUSE OF THE MENTAL HEALTH OF THE
23 PERSON IN CONSIDERATION.

24 Q AND HOW ABOUT TAMPERED EVIDENCE?

25 A SOMETIMES. SOMETIMES EVIDENCE CAN BE MISLEADING.

1 SOMETIMES.

2 Q ALL RIGHT. SOMETIMES. AND ONE THING WE'RE ALL IN
3 THIS COURTROOM GOING TO AGREE ON IS, IT CERTAINLY IS NOT
4 SOMETHING THAT WE WANT AND WE ALL AGREE IS INAPPROPRIATE,
5 WRONG THAT SOMEBODY INNOCENT BE CONVICTED OF A CRIME
6 SENTENCED TO DEATH?

7 A YES, SIR.

8 Q THAT'S NOT WHAT THIS IS ABOUT. WHAT I WANT TO ASK,
9 MY QUESTION IS, BASED ON YOUR CHANGE IN THE LAST FEW YEARS
10 AND THE REASONS FOR THAT CHANGE, COULD YOU SEE YOURSELF IF
11 YOU'RE ON A JURY, COULD YOU SEE YOURSELF ACTUALLY VOTING
12 TO IMPOSE THE DEATH PENALTY?

13 A YES.

14 Q YOU COULD?

15 A YES, COUNSELOR.

16 Q YOU THINK CIRCUMSTANCES STILL EXIST THAT IF THERE
17 WASN'T ANY TAMPERED EVIDENCE AND ANY LACK OF QUESTION OF
18 THE DEFENDANT'S GUILT, OVERWHELMING PROOF, THAT YOU WOULD
19 BE WILLING TO CONSIDER THE DEATH PENALTY AS THE
20 APPROPRIATE SENTENCE?

21 A I WOULD CONSIDER IT.

22 Q AND NOT ONLY WOULD YOU CONSIDER IT, DO YOU BELIEVE
23 YOU COULD VOTE FOR IT UNDER CERTAIN CIRCUMSTANCES?

24 A YES, COUNSELOR.

25 Q TELL ME ABOUT THE MENTAL HEALTH THING, HOW THAT

1 AFFECTED OR WHY THAT MADE YOU LESS IN FAVOR OF THE DEATH
2 PENALTY.

3 A WELL, GIVEN SOCIETY, THE PRESENT DAY SOCIETY AND THE
4 PROBLEMS THAT EXIST IN SOCIETY IN THE FAMILIES AND
5 STRUCTURES AND THINGS LEADING UP TO THE PRESENT DAY, I
6 THINK BECAUSE OF THE TELEVISION, THE PROGRAMS THAT'S ON
7 TELEVISION CAN CAUSE, YOU KNOW, REACTION TO A LOT OF
8 THINGS.

9 Q AND DO YOU SEE THAT AS A REASON THAT IS A REASON NOT
10 TO GIVE THE DEATH PENALTY OR A REASON TO --

11 A TO CONSIDER IT.

12 Q TO CONSIDER THE DEATH PENALTY OR CONSIDER THOSE
13 FACTS?

14 A CONSIDER THOSE FACTS.

15 Q AND HOW THEY MAY HAVE IMPACTED SOMEBODY?

16 A TRUE, SIR.

17 Q ALL RIGHT. NOW, MR. MAULDIN ASKED YOU A SERIES OF
18 QUESTIONS ABOUT A CASE. LET'S ASSUME YOU'RE ON THIS
19 HYPOTHETICAL JURY AND THE DEFENDANT, YOU AND THE OTHER 12
20 JURORS HAVE GONE BACK TO THE JURY ROOM AND VOTED THAT THE
21 DEFENDANT IS GUILTY OF MURDER AND, AN INTENTIONAL
22 MALICIOUS PREMEDITATED MURDER.

23 A YES, COUNSELOR.

24 Q HE'S GUILTY AND THE PROOF IS BEYOND ANY DOUBT.

25 YOU'RE CERTAIN OF THAT. YOU RENDER YOUR VERDICT AND AT

1 THE SAME TIME -- YOU RENDER YOUR VERDICT THAT AT THE TIME
2 OF THAT MURDER THE DEFENDANT IS ALSO GUILTY OF THE CRIME
3 OF KIDNAPPING.

4 A YES, COUNSELOR.

5 Q BOTH.

6 A YES.

7 Q AND YOU VOTED AND YOU'RE GUILTY. THEN YOU GO OVER TO
8 THE PENALTY PHASE. BASED ON THAT SET OF CIRCUMSTANCES
9 HAVING ALREADY CONVICTED THE DEFENDANT OF THOSE CRIMES,
10 COULD YOU CONSIDER AND VOTE FOR IMPOSING THE DEATH
11 PENALTY?

12 A YES, COUNSELOR.

13 Q OKAY. YOU ALSO UNDERSTAND WHEN YOU GO BACK TO THE
14 JURY ROOM, MR. MAULDIN WAS ASKING THE QUESTION ABOUT 11 TO
15 ONE, AND THEY'RE ON ONE SIDE, YOU ON THE OTHER. YOU
16 UNDERSTAND JURY SERVICE REQUIRES GIVE AND TAKE. YOU
17 DISCUSS YOUR OPINIONS, OTHERS DISCUSS THEIR OPINIONS.
18 EVERYBODY CRITIQUE EVERYBODY ELSE'S OPINIONS, PEOPLE
19 CHANGE OPINIONS, YOU LISTEN TO REASONS WHY YOUR OPINION
20 MAY BE RIGHT OR YOUR OPINION MAY BE WRONG. YOU
21 UNDERSTAND?

22 A YES, SIR.

23 Q THEN YOU GET TO THE END, YOU MAY HAVE A DIFFERENCE OF
24 OPINION. BUT IT WOULD BE AFTER YOU HAD ALL DELIBERATED?

25 A YES, COUNSELOR.

1 Q I HOPE YOU GET THAT ROOF DONE. NOT BECAUSE YOU NEED
2 TO DO IT, BUT BECAUSE THE PERSON MIGHT GET RAINED ON.

3 JUST ONE SECOND, YOUR HONOR.

4 APOLOGIZE. JUST ONE MORE QUESTION. IF AFTER YOU'VE
5 CONVICTED THIS HYPOTHETICAL DEFENDANT WE'RE TALKING ABOUT
6 AND WE'RE IN THE GUILT PHASE CONVICTED OF MURDER,
7 KIDNAPPING, AND YOU'RE GOING OVER TO THE PENALTY PHASE.
8 WOULD YOU BE LOOKING FOR THE DEFENDANT TO GIVE YOU
9 INFORMATION OR TO BRING YOU EVIDENCE AS TO WHAT THE
10 APPROPRIATE SENTENCE WOULD BE?

11 A YES, TRUE.

12 Q THANK YOU VERY MUCH.

13 PROSPECTIVE JUROR: YOU'RE WELCOME.

14 BY THE COURT:

15 Q MR. FOWLER, I'M GOING TO ASK YOU A COUPLE MORE
16 QUESTIONS SINCE YOU WEREN'T IN COURT THIS PAST MONDAY?

17 A YES, SIR.

18 Q THEN YOU CAN GO TAKE CARE OF THAT ROOF. HOW OLD ARE
19 YOU?

20 A I'M 50 YEARS OLD.

21 Q YOU DON'T WORK IN THE COURTHOUSE, DO YOU?

22 A NO, SIR.

23 Q YOU WORK OUTSIDE, RIGHT?

24 A YES, SIR.

25 Q YOU DON'T HAVE A LAW ENFORCEMENT COMMISSION, DO YOU?

1 A COULD YOU CLARIFY THAT?

2 Q LAW ENFORCEMENT COMMISSION. YOU A LAW ENFORCEMENT
3 OFFICER?

4 A NO, SIR.

5 Q OTHER THAN WHAT WE TALKED ABOUT ON THAT PRIOR
6 CRIMINAL CHARGE THAT WAS DROPPED, HAVE YOU EVER PLED
7 GUILTY OR BEEN CONVICTED IN A STATE OR FEDERAL COURT OF
8 ANY CRIME?

9 A NO, SIR.

10 Q OBVIOUSLY, YOU CAN UNDERSTAND, SPEAK, THE ENGLISH
11 LANGUAGE AND WRITING THE ENGLISH LANGUAGE; IS THAT
12 CORRECT?

13 A COMPRENDE.

14 Q YOU DON'T HAVE ANY MENTAL OR PHYSICAL INFIRMITY, DO
15 YOU?

16 A NO, SIR, YOUR HONOR.

17 Q HOW FAR DID YOU GO IN SCHOOL?

18 A I DIDN'T FINISH HIGH SCHOOL. AND I TOOK A COURSE IN
19 COMMERCIAL ART AND FINE ART.

20 Q AND YOU'RE A RESIDENT OF GREENVILLE COUNTY?

21 A YES, SIR.

22 Q YOU'RE A CITIZEN OF THE UNITED STATES?

23 A YES, SIR.

24 Q HAVE YOU EVER SERVED AS A JUROR IN THE LAST CALENDAR
25 YEAR?

1 A NO, SIR.

2 Q AND YOU'RE NOT 65 YET, ARE YOU?

3 A NO, SIR.

4 Q I DON'T -- YOU'RE NOT AN EMPLOYEE OF THE DEPARTMENT
5 OF CORRECTIONS, ARE YOU?

6 A NO, SIR.

7 Q NOT A STUDENT AT TECH SCHOOL?

8 A NO, SIR.

9 Q NOT AN EMPLOYEE WITH THE SCHOOL, ARE YOU?

10 A NO, SIR.

11 Q HAVEN'T SERVED AS A JUROR IN CIRCUIT COURT IN THE
12 LAST THREE YEARS, HAVE YOU?

13 A NO, SIR.

14 Q HAVE YOU EVER SERVED ON THE GRAND JURY IN GREENVILLE
15 COUNTY?

16 A NO, SIR.

17 Q THANK YOU VERY MUCH. ANY MOTIONS AS TO THIS
18 DEFENDANT?

19 MR. NETTLES: NONE.

20 THE COURT: DOES THE STATE HAVE ANY MOTIONS AS TO
21 THIS DEFENDANT?

22 MR. ARIAIL: NONE.

23 THE COURT: ALL RIGHT. MR. FOWLER, THE BAILIFF HAS A
24 SLIP OF PAPER. THERE'S A NUMBER ON THAT SLIP OF PAPER.
25 CALL IT TONIGHT AND THERE WILL BE INSTRUCTIONS FOR YOU TO

1 CALL BACK THE NEXT NIGHT OR WHEN TO REPORT. OKAY?

2 PROSPECTIVE JUROR: YES, SIR.

3 THE COURT: FOLLOW THOSE INSTRUCTIONS AND FIND OUT
4 ABOUT YOUR WIFE'S APPOINTMENT SO THE NEXT TIME I SEE YOU,
5 WE'LL WORK OUT SOMETHING GETTING YOUR WIFE TO THE DOCTOR.

6 PROSPECTIVE JUROR: VERY WELL.

7 THE COURT: THANK YOU VERY MUCH.

8 PROSPECTIVE JUROR: YOU HAVE A GREAT DAY.

9 (PROSPECTIVE JUROR EXITS.)

10 THE COURT: MR. MAULDIN, ARE WE READY TO BRING HIM
11 IN? OR DO YOU WANT TO PUT ANYTHING ELSE ON THE RECORD
12 ABOUT THE CRIMINAL MATTER, ON MR. GUNTER?

13 MR. MAULDIN: I DON'T THINK I NEED TO PUT ANYTHING ON
14 THE RECORD OTHER THAN -- IF THIS IS A PRETRIAL
15 INTERVENTION PROGRAM, FOR EXAMPLE, THEN THAT CLEARLY WOULD
16 NOT CONSTITUTE A DISQUALIFICATION, DEPENDING ON HOWEVER
17 THEY RUN IT. BUT IF IT IS A GUILTY PLEA, UNDER A FIRST
18 OFFENDER PROGRAM THAT THEN PLACES HIM IN A SUPERVISED
19 CAPACITY UNDER THE SUPERVISION OF THE COURT WHERE THERE'S
20 NO EXPUNGEMENT OF HIS RECORD.

21 THE COURT: ACCORDING TO THE STATUTE THE ARREST
22 RECORD SHOULD HAVE BEEN SEALED. THE RECORD IS NOT
23 AUTOMATICALLY SEALED BASED ON THE LAPSE OF PROBATION
24 SENTENCE. SO, APPARENTLY -- IT'S SORT OF, APPARENTLY
25 READING THE STATUTE, IT'S KIND OF LIKE SOUTH CAROLINA, THE

1 FORM HAS TO BE SENT TO SOLICITOR'S OFFICE, THEY GOT TO
2 APPROVE IT. THE CIRCUIT COURT HAS TO SIGN IT IN ORDER TO
3 GET IT EXPUNGED. THE BURDEN IS ON THE DEFENDANT TO GET IT
4 EXPUNGED IN GEORGIA AS WELL AS SOUTH CAROLINA.

5 MR. MAULDIN: ALL I'M SAYING IS BEFORE WE ACTUALLY --
6 AND I DON'T HAVE ANY PROBLEM, YOUR HONOR, GOING THROUGH
7 THE PROCESS OF QUALIFYING HIM, THAT MAY SOLVE THE PROBLEM;
8 BUT INTO THE RECORD BEFORE HE ACTUALLY TAKES A SEAT IN THE
9 JURY, WE HAVE TO MAKE SURE HE IS TECHNICALLY QUALIFIED.
10 SO, I'M ASKING THAT SOME SORT OF CERTIFIED RECORD OR
11 SOMETHING BE FAXED FROM GEORGIA.

12 THE COURT: MR. MAULDIN, I THINK THE NCIC RECORD WILL
13 BE SUFFICIENT. YOU DO NOT THINK SO?

14 MR. MAULDIN: LET ME LOOK AT WHAT WE HAVE.

15 THE COURT: I MEAN, IT'S AN OFFICIAL BUSINESS RECORD.
16 I'M NOT GOING TO REQUIRE SOMEBODY TO GO TO GEORGIA AND
17 BRING BACK A CERTIFIED CONVICTION SLIP. WE'VE GOT AN NCIC
18 REPORT AND YOU HAVE THAT.

19 MR. MAULDIN: WELL, WE'VE GOT IT AT THIS TABLE
20 SOMEWHERE. I DON'T HAVE IT IN MY HANDS.

21 THE COURT: ARE YOU TELLING THE COURT YOU DO NOT
22 THINK THAT IS SUFFICIENT TO MAKE A DETERMINATION AS TO THE
23 CHARGE?

24 MR. MAULDIN: IT -- I'M GOING TO SAY, "YES." I AM
25 UNEASY, YOU KNOW.

1 THE COURT: LET ME TELL YOU WHAT WE'RE GOING TO DO
2 BEFORE I FINALLY RULE. MR. ARIAIL OR SOMEONE IS GOING TO
3 HAVE TO GET ON WEST LAW. I'LL GET MY LAW CLERK TO GET ON
4 WEST LAW AND WE'LL FIND OUT WHAT THIS CHARGE ENTAILS AS
5 FAR AS SENTENCING. THAT'S THE ISSUE, IF IT'S ONE YEAR OR
6 MORE, MORE THAN ONE YEAR, HE'S NOT QUALIFIED. GOING TO
7 HAVE MY LAW CLERK GET ON WEST LAW FIND OUT WHAT THE
8 GEORGIA STATUTE COVERS AS FAR AS THE TIME IS CONCERNED.
9 THAT -- I THINK THAT'S THE ISSUE. WHAT I'M TRYING TO GET
10 YOU TO TELL ME, ARE YOU ALSO MAKING AN ISSUE THAT NCIC IS
11 NOT PROPER IN DETERMINING HIS CRIMINAL RECORD?

12 MR. MAULDIN: IT IS NOT SUFFICIENT TO ESTABLISH
13 ELIGIBILITY TO SERVE AS A JUROR. IT PUTS US ON NOTICE
14 MATTERS HAVE TO BE INQUIRED TO. AND THAT'S EXACTLY WHAT
15 WE'RE DOING.

16 THE COURT: I DON'T KNOW IF I AGREE WITH YOU ON THAT.
17 THAT'S NEITHER HERE NOR THERE. I DON'T THINK THE BURDEN
18 IS ON THE STATE COURT TO RUN ALL OVER THE UNITED STATES
19 AND GET CERTIFIED COPIES FROM A CLERK OF COURT AS TO A
20 GUILTY PLEA, JURY TRIAL, OR WHATEVER. THAT'S WHAT YOU ARE
21 ACTUALLY ASKING THE COURT TO DO, RIGHT?

22 MR. MAULDIN: I DON'T KNOW IF THAT'S --

23 THE COURT: WHAT IF IT'S IN CALIFORNIA?

24 MR. MAULDIN: IT'S IN THOMASVILLE, GEORGIA, JUDGE.

25 THE COURT: WHAT DIFFERENCE DOES IT MAKE, IF IT'S IN

1 GEORGIA, OR NORTH CAROLINA, OR CALIFORNIA. IF THAT'S THE
2 REQUIREMENT, I THINK THAT'S A RIDICULOUS REQUIREMENT.

3 MR. MAULDIN: GUNTER IS THE JUROR AND IT'S IN
4 THOMASVILLE, GEORGIA. THAT'S ALL I'M SAYING.

5 THE COURT: I UNDERSTAND. BUT IF YOU HAVE TO HAVE IT
6 IN GEORGIA, YOU GOT TO HAVE IT IN CALIFORNIA. I THINK THE
7 ISSUE IS WHAT CHARGE WOULD IT CARRY.

8 MR. MAULDIN: EXACTLY. I DO, TOO.

9 THE COURT: WE'RE GOING TO RESOLVE THAT. OKAY?

10 MR. MAULDIN: AND WHILE WE'RE DOING THAT, YOU ALSO
11 HAVE TO DETERMINE THE AMOUNT OF THE CHECK CASHED TO
12 DETERMINE IN THE CHECK FRAUD CASE.

13 THE COURT: THAT WAS DISMISSED, WASN'T IT?

14 MR. MAULDIN: NO, HE SAID HE PAID RESTITUTION. I
15 DON'T KNOW WHETHER THAT WAS THROUGH THE COURT OR NOT.

16 THE COURT: WHAT DOES THE NCIC RECORD SAY ON THE
17 CHECK? IT WAS HANDLED IN MAGISTRATE'S COURT ACCORDING TO
18 THE DEFENDANT.

19 MR. ARIAIL: YES, COULDN'T POSSIBLY BE, HE SAID HE
20 PLED IN MAGISTRATE COURT.

21 MR. MAULDIN: LET ME SAY I APOLOGIZE FOR BEING SO
22 MUCH TROUBLE, BUT THIS IS SERIOUS LITIGATION.

23 THE COURT: I UNDERSTAND IT'S SERIOUS. I'M NOT
24 DISPUTING THAT. YOU'RE NOT BEING TROUBLE. I ENJOY YOUR
25 PRESENCE. I ENJOY YOUR ARGUMENTS. I JUST DON'T AGREE

1 WITH YOU ALL THE TIME. JUST BECAUSE I DON'T AGREE WITH
2 YOU DOESN'T MEAN I'M MAD AT YOU OR DISLIKE YOU.

3 MR. MAULDIN: I CAN'T SEE MY NCIC. CAN I JUST LOOK
4 AT YOURS?

5 THE COURT: MR. MAULDIN, THE ONLY PLEASURE SITTING IN
6 THIS POSITION SOMETIMES IS ARGUING WITH LAWYERS? OKAY.

7 MR. MAULDIN: OKAY. PERHAPS -- CAN I GET THE NCIC
8 REPORT?

9 MR. ARIAIL: MAY I GET MY STATUTE BACK? AND I MAY BE
10 ABLE TO FIND OUT WHAT HAPPENED WITH THE SPECIFIC CASE.

11 THE COURT: MR. ARIAIL, MAY I GET THE NCIC REPORT SO
12 I CAN GET MY LAW CLERK LOOKING.

13 MR. ARIAIL: MAY I GET MY STATUTE BACK? AND I MAY BE
14 ABLE TO FIND OUT WITH THIS SPECIFIC CASE.

15 THE COURT: HOW ABOUT FINDING OUT ABOUT THE CHECK
16 CHARGE.

17 MR. ARIAIL: I CAN DEFINITELY.

18 THE COURT: APPARENTLY HE PLED DOWN AT THE LAW
19 ENFORCEMENT CENTER, WHICH WOULD BE MAGISTRATE'S COURT,
20 CITY RECORDER. ALL RIGHT. ARE WE READY TO BRING HIM IN,
21 MR. MAULDIN? DO YOU WANT TO PUT ANYTHING ELSE ON THE
22 RECORD CONCERNING THE CRIMINAL MATTER ON MR. GUNTER?

23 MR. NETTLES: COULD I -- CONSIDER THIS, WOULD THE
24 COURT CONSIDER THIS, ASKING HIM AS A PRELIMINARY MATTER ON
25 THE MARIJUANA CHARGE DID HE GO IN FRONT OF A JUDGE. OKAY?

1 BECAUSE --

2 THE COURT: IT WENT BEFORE THE SUPERIOR COURT IN
3 GEORGIA.

4 MR. NETTLES: AND ESTABLISH WHAT WAS THERE WAS --
5 BECAUSE WHAT THAT WILL LET US KNOW IS WHETHER IT WAS A
6 TRUE PRETRIAL DIVERSION TYPE THING. BECAUSE, AS WE
7 CONCEDED, IF IT WAS A PRETRIAL DIVERSION --

8 THE COURT: I DON'T THINK IT WAS LOOKING AT THE
9 STATUTE. IT'S JUST THE FIRST OFFENDER WHERE IT CAN BE
10 EXPUNGED.

11 MR. NETTLES: SO, WHAT I'M GOING TO SUGGEST AS A
12 ROUTE FOR US ON THIS. I HOPE IT -- HE'S ALREADY
13 ESTABLISHED THAT HE PLED GUILTY. IF IT COMES BACK THAT
14 WHEN HE PLED GUILTY. WHAT I'M GUESSING IS THIS. HE'S GOT
15 TO COMPLETE AS A PART OF THIS LITTLE DEAL.

16 THE COURT: FINISH HIS PROBATION. AND THEN HE'S
17 ELIGIBLE TO HAVE IT EXPUNGED.

18 MR. NETTLES: IF HE DIDN'T FINISH HIS PROBATION,
19 HE'LL HAVE TO GO TO DO SOME TIME.

20 THE COURT: RIGHT.

21 MR. NETTLES: SO, WE ESTABLISHED HE'S PLED AND UNDER
22 WHAT HE WAS LOOKING AT, HAD HE NOT BEEN ABLE TO GET INTO
23 THAT PROGRAM, IT'S OVER A YEAR. I SUBMIT HE'S NOT
24 QUALIFIED.

25 THE COURT: OKAY. LET'S FIND OUT WHAT THE PENALTY

1 WAS. I THINK THAT WILL ADDRESS EVERYTHING. DO YOU WANT
2 TO PUT OFF MR. GUNTER UNTIL AFTER LUNCH?

3 MR. ARIAIL: YES, SIR, I THINK SO.

4 THE COURT: AND THEN BRING IN MARCUS GREENE, PLEASE.
5 GENTLEMEN, BRINGING IN MR. GREENE. I TOLD MR. GUNTER TO
6 COME IN AT 2:00 TO GIVE THE SOLICITOR TIME TO MAKE SURE
7 HE'S RIGHT.

8 (PROSPECTIVE JUROR GREENE ENTERS COURTROOM)

9 MARCUS L. GREENE, (WHITE
10 MALE), HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 EXAMINATION

13 BY THE COURT:

14 Q DO YOU RECALL FILLING OUT THE QUESTIONNAIRE --

15 A YES, SIR.

16 Q -- SEVERAL MONTHS AGO?

17 A YES, SIR.

18 Q WHEN YOU FILLED IT OUT, WAS IT ACCURATE THE BEST YOU
19 COULD DETERMINE?

20 A YES, SIR.

21 Q WOULD YOU PLEASE TAKE IT. AND ON PAGE THREE, YOU
22 DIDN'T FILL OUT YOUR EMPLOYMENT HISTORY. WHERE HAVE YOU
23 WORKED?

24 A I WORK AT, USED TO BE RYOBI, NOW THE TI GROUP IN
25 ANDERSON.

1 Q HOW LONG YOU WORKED THERE?

2 A THIRTEEN YEARS.

3 Q WHAT DO YOU DO THERE?

4 A QUALITY ENGINEER.

5 Q AND I SEE YOU FINISHED CLEMSON UNIVERSITY?

6 A NO, SIR, I DID NOT FINISH. I ATTENDED CLEMSON.

7 Q YOU ATTENDED CLEMSON?

8 A YES, SIR.

9 Q IF YOU WOULD, WOULD YOU TURN TO PAGE TEN ON YOUR
10 QUESTIONNAIRE, PLEASE. QUESTION 64, "BRIEFLY DESCRIBE
11 YOUR BELIEFS AND ATTITUDES CONCERNING CAPITAL PUNISHMENT."

12 YOU WROTE, "IF A JURY, CONVICTION BY A JURY OF HIS
13 PEERS TO BE CONVICTED OF A CAPITAL OFFENSE, THE DEATH
14 PENALTY SHOULD BE USED AND INSTITUTED QUICKLY." IS THAT
15 YOUR OPINION HERE TODAY?

16 A YES, SIR.

17 Q QUESTION 65, "WHAT IS YOUR OPINION ABOUT THE DEATH
18 PENALTY?"

19 SAYS YOU STRONGLY FAVOR; IS THAT CORRECT?

20 A CORRECT.

21 Q QUESTION NUMBER 70, DO YOU THINK THE DEATH PENALTY IS
22 CARRIED OUT, YOU SAID "TOO SELDOM." IS THAT CORRECT?

23 A LET ME FIND QUESTION 70.

24 Q QUESTION 70 ON PAGE 11.

25 A YES, SIR.

1 Q LOOK AT QUESTION 68. IN QUESTION 68 SAYS, "WITH
2 REFERENCE TO THE DEATH PENALTY, WHICH OF THE FOLLOWING
3 STATEMENTS BEST REPRESENTS YOUR OPINION?"

4 AND YOU SAID, "I BELIEVE THE DEATH PENALTY IS THE
5 APPROPRIATE FORM OF PUNISHMENT IN SOME MURDER CASES AND I
6 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."

10 NOW, THAT OPINION SORT OF RUNS CONTRARY TO YOUR OTHER
11 QUESTIONS, ESPECIALLY QUESTION 64. OKAY. NOW, I'M GOING
12 TO EXPLAIN THE LAW TO YOU IN A COUPLE OF AREAS AND I'M
13 GOING TO ASK YOU SOME MORE QUESTIONS ABOUT 64. ALL RIGHT?

14 A OKAY.

15 Q FIRST OF ALL, THE ONLY OFFENSE IN SOUTH CAROLINA
16 WHERE YOU CAN HAVE A CAPITAL CASE WOULD BE A MURDER CASE.
17 OKAY?

18 A CORRECT.

19 Q NOW, IN THIS CASE THE DEFENDANT IS CHARGED WITH
20 MURDER AND KIDNAPPING. NOW, IN SOUTH CAROLINA A MURDER
21 CASE WITH NO OTHER AGGRAVATING CIRCUMSTANCES YOU CANNOT
22 ASK FOR THE DEATH PENALTY. DO YOU UNDERSTAND?

23 A YES, SIR.

24 Q SO, EVERY MURDER IN SOUTH CAROLINA DOES -- IS NOT
25 ENTITLED TO THE SOLICITOR ASKING FOR THE DEATH PENALTY.

1 A CORRECT.

2 Q YOU HAVE TO HAVE ANOTHER AGGRAVATING CIRCUMSTANCE.
3 DO YOU UNDERSTAND?

4 A UH-HUH.

5 Q NOW, THOSE CIRCUMSTANCES ARE SPECIFIED BY LAW. IT
6 COULD BE DURING THE COMMISSION OF A ROBBERY OR THERE'S A
7 WHOLE LIST OF AGGRAVATING CIRCUMSTANCES. DO YOU
8 UNDERSTAND?

9 A YES, SIR.

10 Q NOW, THIS CASE OCCURRED SEPTEMBER 3 2003 AND THE
11 DEFENDANT IS CHARLES CHRISTOPHER WILLIAMS. IT OCCURRED AT
12 A BI-LO HERE IN GREENVILLE. DO YOU RECALL SEEING ANYTHING
13 ON THE TV ABOUT IT, READING ANYTHING IN THE PAPER ABOUT
14 IT, HEAR ANYTHING ON RADIO OR TALKING ABOUT THE CASE,
15 EITHER WHEN IT OCCURRED OR SINCE THAT TIME?

16 A WHEN IT OCCURRED I SAW IT ON TV, BUT IT DIDN'T STICK
17 IN MY MIND. IN FACT, WHEN I RECEIVED THIS QUESTIONNAIRE I
18 WAS IN CHINA. I DO A LOT OF TRAVELING -- OR DID. MY WIFE
19 CALLED, SAID, "YOU GOT A QUESTIONNAIRE." I DIDN'T
20 PREMEDITATEDLY THINK I KNOW WHO IT IS, THEREFORE, I'LL
21 ANSWER THESE QUESTIONS. I HAD NO IDEA UNTIL SOMETIME THIS
22 PAST WEEK.

23 Q HOW DID YOU MAKE THAT DETERMINATION?

24 A I WOKE UP ON MONDAY MORNING AND IT SAID THEY WERE
25 PULLING THE JURY FOR THIS DEFENDANT. I TURNED IT OFF, BUT

1 IT CLICKED IN MY HEAD, THAT'S THE SAME GUY WE'RE SUPPOSED
2 TO GO FOR THE JURY POOL.

3 Q DO YOU REMEMBER SEEING ANYTHING ON TV BACK WHEN IT
4 OCCURRED SEPTEMBER 2003?

5 A NOT THAT I REMEMBER, SIR.

6 Q DON'T REMEMBER ANYTHING THAT OCCURRED ON A FACTUAL
7 BASIS?

8 A VERY VAGUELY, LIKE I SAID, I WAS GONE FROM OCTOBER TO
9 DECEMBER.

10 Q VAGUELY WHAT DO YOU REMEMBER?

11 A I JUST REMEMBER IT WAS AT THE BI-LO OVER TOWARDS EAST
12 NORTH STREET.

13 Q ALL RIGHT. BASED ON WHAT YOU'VE HEARD, HAVE YOU
14 FORMED AN OPINION AS TO THE INNOCENCE OR GUILT OF THE
15 DEFENDANT?

16 A I DON'T KNOW ANY OF THE PARTICULARS OF THE CASE.

17 Q THIS CASE WILL BE DIVIDED UP INTO TWO PHASES. IT
18 WILL BE A PHASE ONE, WHICH WAS REFERRED TO AS THE GUILT
19 PHASE; AND PHASE TWO, WHICH WAS REFERRED TO AS THE PENALTY
20 PHASE. DO YOU UNDERSTAND?

21 A YES, SIR.

22 Q IN PHASE ONE THE STATE IS RESPONSIBLE FOR PROVING
23 THAT THE DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT OF
24 MURDER AND KIDNAPPING.

25 A CORRECT.

1 Q ASSUME THAT ALL 12 JURORS AGREE THAT THE STATE HAS
2 PROVEN THE DEFENDANT GUILTY OF MURDER AND KIDNAPPING AND
3 FIND HIM GUILTY OF MURDER AND KIDNAPPING. THEN WE WOULD
4 GO TO THE SECOND PHASE, DO YOU UNDERSTAND?

5 A UH-HUH.

6 Q NOW, AT THAT POINT IN TIME THE DEFENDANT WOULD HAVE
7 BEEN FOUND GUILTY OF, BY HIS PEERS, OF A CAPITAL OFFENSE.
8 DO YOU UNDERSTAND?

9 A UH-HUH.

10 Q NOW, AT THAT TIME WE WOULD GO TO THE PENALTY PHASE.
11 AND IN THE PENALTY PHASE, THE STATE WOULD OFFER
12 AGGRAVATING CIRCUMSTANCES, WHICH WOULD INDICATE TO THE
13 JURY THAT THE DEFENDANT SHOULD RECEIVE DEATH. THE
14 DEFENDANT MAY OFFER MITIGATING CIRCUMSTANCES OR MAY NOT.
15 BUT MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES BROUGHT
16 INTO EVIDENCE BY THE DEFENDANT TO INDICATE TO THE JURY
17 THAT HE SHOULD RECEIVE LIFE RATHER THAN DEATH. DO YOU
18 UNDERSTAND?

19 A YES.

20 Q THE DEFENDANT NEVER HAS TO PROVE HIMSELF GUILTY, THE
21 DEFENDANT DOES NOT HAVE TO OFFER ANY MITIGATING
22 CIRCUMSTANCES. IT'S UP TO THE STATE TO PROVE HIM GUILTY
23 BEYOND A REASONABLE DOUBT. IT'S UP TO THE STATE TO PROVE
24 THE AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT.
25 DO YOU UNDERSTAND THE PROCESS SO FAR?

1 A YES, SIR.

2 Q NOW, THE LAW PRESUMES LIFE. THE LAW SAYS THAT A
3 JUROR HAS TO CONSIDER ALL THE FACTORS AND IN THE SECOND
4 PHASE BEFORE A DECISION IS MADE AS TO LIFE OR DEATH. DO
5 YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q NOW, CONSIDERING YOUR ANSWER TO 64 WHERE YOU SAID IF
8 A PERSON IS CONVICTED BY HIS PEERS OF A CAPITAL OFFENSE,
9 THAT OCCURRED IN THE FIRST PHASE, WOULD YOU AUTOMATICALLY
10 AT THAT POINT DECIDE TO GIVE HIM DEATH?

11 A WHEN I SAID CAPITAL OFFENSE, I GUESS I ASSUMED THAT
12 THE NEXT PHASE HAD ALREADY BEEN DECIDED THAT, YES, HE HAS
13 BEEN FOUND GUILTY OF THE CAPITAL OFFENSE; THEREFORE, HE
14 ASSUMED THE DEATH PENALTY. NOT THAT IT HAD GONE THROUGH
15 THE NEXT STAGE, I KIND OF SKIPPED A PHASE IN 64.

16 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO THE SECOND
17 PHASE BEFORE YOU MADE A DECISION AS TO LIFE OR DEATH?

18 A YES.

19 Q ALL RIGHT. LET'S ASSUME THAT THE DEFENDANT DID NOT
20 OFFER ANYTHING, DID NOT OFFER ANY MITIGATING CIRCUMSTANCES
21 AND HE DOESN'T HAVE TO. COULD YOU GIVE MEANINGFUL
22 CONSIDERATION TO LIFE AND DEATH BEFORE YOU MADE UP YOUR
23 MIND TO -- EXCUSE ME, COULD YOU GIVE MEANING CONSIDERATION
24 TO LIFE OR DEATH IN THE SECOND PHASE BEFORE YOU MADE UP
25 YOUR MIND?

1 A IT'S A LITTLE -- I GUESS THEN IT FALLS ON THE
2 PROSECUTION TO PRESENT THEIR CASE TO SAY WHY THEY WANT TO
3 INSTITUTE THE DEATH PENALTY.

4 Q THAT'S RIGHT.

5 A SO, BE LIKE PLAYING FOOTBALL WITH NO DEFENSE, BE
6 PRETTY HARD TO LOOSE THE GAME?

7 Q THAT'S TRUE.

8 A BUT THE PROSECUTION WOULD STILL HAVE TO SAY WHY AND
9 IT WOULD HAVE TO BE A GOOD REASON.

10 Q UNDER THAT SCENARIO, COULD YOU GIVE ANY MEANINGFUL
11 CONSIDERATION TO LIFE?

12 A YES, BUT IT WOULD BE DIFFICULT.

13 Q I UNDERSTAND. IT WOULD BE DIFFICULT FOR ALL 12.

14 A CORRECT.

15 Q BUT YOU COULD GIVE CONSIDERATION?

16 A YES.

17 Q LET ME ASK YOU THIS. READING YOUR QUESTIONNAIRE I
18 UNDERSTAND THAT YOU FAVOR THE DEATH PENALTY. BUT READING
19 YOUR QUESTIONNAIRE ENTIRELY, IT APPEARS THAT PART OF YOUR
20 PROBLEM IS CARRYING OUT THE DEATH PENALTY AFTER THE TRIAL
21 PHASE?

22 A CORRECT.

23 Q IS THAT YOUR MAJOR PROBLEM WITH THE JUDICIAL SYSTEM
24 AS FAR AS THE LENIENCY, ET CETERA, ET CETERA, ET CETERA?

25 A YES. THAT'S A LOT OF IT, YES.

1 Q HOW DO YOU RELATE THAT TO THE TRIAL PHASE WE'RE DOING
2 AS FAR AS DECIDING HIS INNOCENCE OR GUILT AFTER THE
3 PENALTY?

4 A YOU CAN'T.

5 Q I MEAN, THEY'RE TWO SEPARATE THINGS.

6 A I AGREE.

7 THE COURT: WHOSE TURN?

8 MR. ARIAIL: YOU GOING THROUGH THE REST?

9 THE COURT: NO. I'M GOING TO LET YOU GO THROUGH THE
10 DEATH PENALTY ISSUE HERE.

11 BY MR. ARIAIL:

12 Q MR. GREENE, MY NAME IS BOB ARIAIL AND I'M THE
13 SOLICITOR FOR THE 13th CIRCUIT, WHICH IS GREENVILLE AND
14 PICKENS COUNTY. AND IN THAT CAPACITY I AM THE PERSON
15 RESPONSIBLE FOR PROSECUTING ALL CRIMINAL CASES IN THOSE
16 COUNTIES. IN THIS CASE, THIS PARTICULAR CASE, I'LL BE
17 ASSISTED BY MY DEPUTY BETTY STROM AND ONE OF MY ASSISTANTS
18 MARK MOYER.

19 LET ME GO BACK TO YOUR ANSWER YOU GAVE ON THE
20 QUESTIONNAIRE THE JUDGE ASKED YOU ABOUT. I DON'T WANT TO
21 BE REDUNDANT, BUT I WANT TO MAKE SURE YOU'RE UNDERSTANDING
22 THE PROCESS BECAUSE THAT'S THE WAY I READ YOUR ANSWER,
23 THAT CAPITAL OFFENSE, YOU CAN'T DECIDE IT'S A CAPITAL
24 OFFENSE UNTIL YOU'VE GONE THROUGH THE WHOLE PROCESS. THE
25 JUDGE HAS TOLD YOU THE GUILT PHASE IS THIS FIRST BOX UP

1 HERE WHERE YOU TALK ABOUT GUILT. IS THE DEFENDANT GUILTY
2 OF THE CRIMES?

3 IN THIS STATE MURDER IS THE INTENTIONAL AND MALICIOUS
4 KILLING OF ANOTHER HUMAN BEING. KIDNAPPING IS, KIDNAPPING
5 IS A SEPARATE CHARGE, OCCURRED IN THE SAME CIRCUMSTANCES,
6 NOT SOMETHING THAT HAPPENED SIX YEARS AGO OR THREE MONTHS
7 LATER, IT ALL HAPPENED AT THE SAME TIME. SO, WE'RE
8 TALKING ABOUT ONE SET OF CHARGES, AND ONLY UNDER CERTAIN
9 CIRCUMSTANCES CAN THE STATE ASK FOR OR SEEK THE DEATH
10 PENALTY.

11 A CORRECT.

12 Q A LOT OF MURDER CASES THE STATE SAYS YOU CAN'T EVEN
13 ASK FOR IT. BUT WHEN YOU HAVE A SITUATION WHERE THERE'S
14 AN ACCOMPANYING AGGRAVATING CIRCUMSTANCE, THE STATE CAN
15 SEEK IT.

16 NOW, THAT DOESN'T MEAN WE'RE AUTOMATICALLY ENTITLED
17 TO IT.

18 A CORRECT.

19 Q ALL THAT MEANS, WE'RE ENTITLED TO HAVE A JURY DECIDE
20 THE -- WE'RE ENTITLED TO IT. NOW, THE JUDGE EXPLAINED IT
21 TO YOU, THE GUILT PHASE, NOW WE'RE PAST THAT, WE'RE ON THE
22 JURY CONVICTED THIS HYPOTHETICAL DEFENDANT. GOING OVER
23 HERE TO THE SECOND PHASE OCCURS, WITH A DAY BREAK IN
24 BETWEEN, YOU START THIS SECOND TRIAL. THE STATE IS
25 REQUIRED TO BRING IN AND PROVE BEYOND A REASONABLE DOUBT

1 AGGRAVATING CIRCUMSTANCES WHICH THE LAW DEFINES FOR YOU.

2 A CORRECT.

3 Q AND AS THE JUDGE SAYS, EVEN THOUGH THE STATE PROVES
4 AGGRAVATING CIRCUMSTANCES, THE LAW ALLOWS THE JURY TO
5 IMPOSE A LIFE SENTENCE. IT IS NOT AUTOMATIC, EVEN IF WE
6 PROVE THE AGGRAVATING CIRCUMSTANCES. DO YOU UNDERSTAND
7 THAT?

8 A YES.

9 Q NOW, CAN YOU FOLLOW THAT PROCESS AND WHEN YOU ENTER
10 THE SECOND PHASE, CAN YOU HAVE AN OPEN MIND AS TO BOTH
11 IMPOSING THE DEATH SENTENCE OR IMPOSING LIFE AND WEIGHING
12 ALL THE EVIDENCE TO DECIDE WHETHER THE APPROPRIATE
13 SENTENCE IS LIFE OR DEATH?

14 A YES.

15 Q NOW, THE JUDGE ASKED YOU IF YOU WOULD BE ABLE IN THAT
16 CIRCUMSTANCE TO SET ASIDE THE PREVIOUS CONVICTION AND SIT
17 AS A JUROR WITHOUT ANY PREDISPOSITION ONE WAY OR THE
18 OTHER. THAT'S WHAT THE LAW REQUIRES, WHAT THE JUDGE WOULD
19 INSTRUCT YOU TO DO. DO YOU THINK YOU CAN FOLLOW THAT
20 INSTRUCTION?

21 A LET ME MAKE SURE I UNDERSTAND THIS. YOU GO TO THE
22 NEXT PHASE, YOU ACT LIKE YOU NEVER WERE IN THE TRIAL
23 PART -- THE GUILT PHASE, YOU DON'T USE ANY OF THAT
24 EVIDENCE INTO THE NEXT PHASE?

25 Q NO, IT'S NOT THAT. IT'S NOT THAT YOU THROW THAT OUT,

1 BECAUSE YOU ARE GOING TO BE ABLE TO CONSIDER THAT. BUT
2 THE LAW REQUIRES THAT YOU -- YOU'RE SERVING AS A JUDGE.
3 NORMALLY PEOPLE ARE SENTENCED BY JUDGES. IN CAPITAL CASES
4 WHERE WE SEEK THE DEATH PENALTY, THAT'S NOT THE CASE.
5 THAT RESPONSIBILITY IS TURNED OVER TO JURORS. SO, JURORS
6 HAVE TO ACT AS A JUDGE. SO, THE OPERATION, THE PROCESS IS
7 THAT YOU HAVE TO REMAIN OPEN MINDED. AND THAT'S WHAT
8 WE'RE LOOKING FOR.

9 AND IF YOU CAN BE OPEN MINDED BECAUSE YOU HAVE THIS
10 PREDISPOSITION YOU THINK IF SOMEBODY IS CONVICTED OF
11 MURDER AND THEY'RE CONVICTED OF KIDNAPPING AUTOMATICALLY
12 GETS THE DEATH PENALTY, YOU ARE NOT QUALIFIED TO SERVE.
13 THERE'S NOTHING WRONG WITH THAT. THERE'S A LOT OF PEOPLE
14 LIKE THAT. THERE'S NOTHING WRONG WITH IT. BUT WE WANT TO
15 IDENTIFY THAT SO WE DON'T HAVE THAT PROBLEM. YOU WOULD
16 HAVE TO SAY, WELL, I UNDERSTAND WHAT HAPPENED BEFORE, BUT
17 THERE STILL MAY BE REASONS WHY LIFE IMPRISONMENT IS
18 APPROPRIATE. EVEN IF IT'S JUST AN ACT OF MERCY. YOU
19 DON'T HAVE TO GIVE THE DEATH PENALTY.

20 A CORRECT.

21 Q ALL RIGHT. SO, YOU WOULD BE SITTING THERE LISTENING
22 FOR THIS INFORMATION. NOW, THE JUDGE THREW ANOTHER LITTLE
23 CIRCUMSTANCE IN THERE THAT THE DEFENDANT, HE MAY NOT
24 PRESENT ANYTHING. NOW, I HEARD YOUR COMMENT THAT GOOD
25 OFFENSE IS, YOU KNOW, BETTER HAVE A GOOD DEFENSE WITH IT.

1 NOW, THE POINT IS, I WANT TO KNOW IF, ASSUMING THE
2 DEFENDANT DOESN'T PRESENT ANYTHING, BECAUSE HE DOESN'T
3 HAVE TO. AND THE LAW WILL TELL YOU, YOU CAN'T HOLD THAT
4 AGAINST HIM. THE JUDGE WILL TELL YOU THAT HE'S ABSOLUTELY
5 ENTITLED NOT TO PUT UP ANY EVIDENCE, NOT TO TESTIFY. AND,
6 AS A JUDGE, YOU HAVE TO CONSIDER ONLY WHAT IS BEFORE YOU.
7 AND YOU NEED TO BE ABLE TO NOT ONLY, AS A FAIR JUROR, BE
8 ABLE TO CONSIDER EVERYTHING BEFORE YOU; BUT UNDER THE
9 CIRCUMSTANCES TO SEARCH THAT RECORD AND BE ABLE TO VOTE TO
10 IMPOSE THE LIFE SENTENCE EVEN THOUGH HE HASN'T PRESENTED
11 ANYTHING. IT WOULD JUST BE WHAT WE PRESENTED AND YOU
12 WOULD SAY, AS A JUDGE, HAVE THEY PRESENTED ENOUGH? IF WE
13 HAVEN'T, YOU GOT TO BE ABLE TO IMPOSE A LIFE SENTENCE.

14 A CORRECT. AND BY ME SAYING THAT, YOU KNOW, SOMEBODY
15 GIVES YOU TWO PACKAGES BUT ONLY ONE SHOWS UP. IT'S GOING
16 TO BE HARD TO DO THAT UNLESS SOMETHING IS SAID. SO, THAT
17 WAS MY THOUGHT WHEN I SAID THAT. IT'S GOING TO BE HARD.

18 Q AND I UNDERSTAND --

19 A EVEN THOUGH YOU HAD TO BE -- IT WOULD BE A MERCY
20 THING.

21 Q WELL, THE JUDGE WOULD BE -- AND THE JUDGE IS GOING TO
22 INSTRUCT YOU IT'S GOING TO BE DIFFICULT; BUT YOU MAY ALSO
23 CONCEIVABLY, LET'S ASSUME YOU MAY ALSO FIND SOMETHING IN
24 THE STATE'S PRESENTATION OR IN THE CASE, IN THE BEGINNING
25 THAT CAME UP THAT THE DEFENDANT DIDN'T PUT UP. BUT IT'S

1 JUST THIS, THAT YOU SAY THAT IS WHAT I BELIEVE IS THE
2 APPROPRIATE SENTENCE- IS LIFE BECAUSE OF THAT.

3 A CORRECT.

4 Q BUT YOU'VE GOT TO BE ABLE, AS A JUROR, TO DO THAT.
5 DO YOU THINK YOU'RE A FAIR PERSON? THAT YOU --

6 A YES.

7 Q I KNOW YOU'RE FAIR, THAT'S NOT THE ISSUE. WE ALL
8 KNOW YOU'RE FAIR. IT'S A DIFFICULT THING TO DO.

9 A YES, IT IS.

10 Q NO QUESTION. DO YOU BELIEVE WE PUT YOU IN A
11 CIRCUMSTANCE YOU CAN'T DO THAT, OR DO YOU BELIEVE YOU
12 WOULD BE ABLE TO DO THAT?

13 A I THINK I WOULD BE ABLE TO DO IT.

14 Q ALL RIGHT. NOW, LET'S ASSUME THAT EVERYBODY HAS
15 DELIBERATED AND YOU'VE COME TO THE DECISION THAT THE
16 DEFENDANT IS GUILTY AND HE ALSO DESERVES TO RECEIVE THE
17 DEATH SENTENCE, ALL 12 JURORS HAVE DISCUSSED THIS. AT
18 THAT TIME THE LAW REQUIRES, THE JUDGE WILL INSTRUCT YOU,
19 YOU MUST SIGN A FORM ALONG WITH THE OTHER 11 JURORS THAT
20 CONVEYS BACK TO THE COURT IN WRITTEN FORM THAT THE
21 APPROPRIATE SENTENCE IS DEATH. WOULD YOU, HAD YOU REACHED
22 THAT VERDICT, BE ABLE TO SIGN THAT FORM?

23 A YEAH.

24 Q ALL RIGHT. IN THE DELIBERATION PROCESS, YOU
25 UNDERSTAND IT IS A GIVE AND TAKE? PEOPLE'S OPINION, YOU

1 QUESTION THEIRS, THEY QUESTION YOURS, YOU TALK AS A GROUP
2 TO COME TO A GENERAL CONSENSUS, AND THAT'S WHAT
3 DELIBERATIONS IS ALL ABOUT. ALL RIGHT?

4 NOW, ALSO THE JUDGE MENTIONED A COUPLE OF THINGS,
5 MITIGATION, TALKED ABOUT MITIGATING CIRCUMSTANCES. THE
6 DEFENDANT MAY PRESENT TO YOU EVIDENCE OF MENTAL OR
7 EMOTIONAL DISTURBANCE OR MENTAL ILLNESS OR MENTAL
8 CONDITION. IS THAT SOMETHING THAT YOU COULD ALSO FAIRLY
9 AND FULLY CONSIDER IN DELIBERATING AS TO WHAT PUNISHMENT
10 WOULD BE APPROPRIATE?

11 A YES. IF THE EVIDENCE WAS PRESENTED THAT THAT WAS THE
12 CASE, YES.

13 Q NO, I'M ASSUMING IT'S PRESENTED.

14 A OKAY.

15 Q YOU COULD CONSIDER THAT?

16 A YES.

17 Q THANK YOU. JUST A SECOND.

18 MR. ARIAIL: NOTHING. THANK YOU, SIR.

19 THE COURT: MR. MAULDIN?

20 MR. MAULDIN: YES, SIR.

21 EXAMINATION BY MR. MAULDIN.

22 BY MR. MAULDIN:

23 Q MR. GREENE, MY NAME IS JOHN MAULDIN. I'M THE PUBLIC
24 DEFENDER FOR GREENVILLE COUNTY, AND I, ALONG WITH BILL,
25 MR. NETTLES, AND MARK MACDOUGALL REPRESENT CHRIS. FIRST

1 OF ALL, LET ME ASK YOU A QUESTION FROM YOUR QUESTIONNAIRE.
2 I DON'T THINK ANYBODY HAS ASKED -- AND SEE IF I CAN GET A
3 RESPONSE FROM YOU. ON QUESTION 67, WHICH IS ON PAGE 11.

4 A YES.

5 Q IT SAYS, "HAVE YOU EVER DISCUSSED YOUR OPINIONS ON
6 THE DEATH PENALTY WITH ANYONE?"

7 IT SAYS, "YES."

8 AND THEN IT SAYS, "IF YES, PLEASE EXPLAIN."

9 I OBVIOUSLY DON'T NEED A LONG EXPLANATION, GIVEN WHAT
10 YOU SAID; BUT JUST GIVE ME SOME IDEA WHAT YOUR DISCUSSIONS
11 HAVE BEEN ABOUT.

12 A I THINK MY GENERAL THOUGHT IS ONCE EVERYONE HAS COME
13 TO THAT CONCLUSION FROM THE JURY AND IT GOES THROUGH TEN
14 YEARS OF APPEALS, I THINK THAT'S THE BIGGEST HANG UP, YOU
15 KNOW. AND AFTER TEN YEARS OF APPEALS IT GOES ON AND ON,
16 12 YEARS FROM NOW STILL HEARING ABOUT THE TRIAL, SUPPOSED
17 TO HAVE BEEN DECIDED, AND SEEMS LIKE IT GOES ON FOREVER.

18 Q SO, IF YOU HAD FILLED IT IN THAT DAY, THAT'S
19 BASICALLY WHAT --

20 A YES.

21 Q -- I WANT TO TALK TO YOU A FEW MINUTES ABOUT, THE
22 DEATH PENALTY VIEW THAT THE SOLICITOR HAS GONE THROUGH AT
23 GREAT LENGTH WITH YOU AS WELL AS THE JUDGE, JUST ASK YOU A
24 FEW QUESTIONS. AND I WANT TO PREFACE MY QUESTION WITH
25 THIS. WHEN THE SUBPOENAS FOR SERVICE FORMS THAT YOU HAD

1 TO FILL OUT FOR JURY DUTY WENT OUT, IT WENT OUT TO
2 HUNDREDS OF PEOPLE. YOU WERE HERE MONDAY, I THINK, WHEN
3 THE ROOM HAD 150 PEOPLE IN THERE?

4 A YES.

5 Q THERE'S A REASON WHY ALL THOSE PEOPLE WERE SUMMONED.
6 THAT'S BECAUSE A LOT OF PEOPLE ARE EXPECTED NOT TO BE
7 QUALIFIED FOR ONE CASE OR ANOTHER FOR ONE REASON OR
8 ANOTHER. THAT'S WHY WE HAVE SO MANY MORE THAN WE NEED.

9 A CORRECT.

10 Q THAT'S WHY WE'RE GOING THROUGH THIS PROCESS, TO MAKE
11 SURE THAT THE JURORS, YOU KNOW, A LOT OF TIMES WE WONDER
12 IF OUR VIEWS ARE ON TRIAL. AND I WANT TO ASSURE YOU THAT,
13 YOU KNOW, WE -- FOR THE LAST FOUR DAYS PEOPLE HAVE BEEN
14 COMING IN, SITTING IN THAT SAME CHAIR EXPRESSING TO US
15 INFORMATION ABOUT THEIR VIEWS. AND THE PROSECUTOR KEPT
16 LOOKING, KEPT TALKING ABOUT FAIR, FAIR, FAIR. WELL,
17 NOBODY WANTS TO GET UP AND SAY, "I'M JUST UNFAIR." AND
18 THAT REALLY IS NOT THE POINT.

19 THE QUESTION IS WHETHER YOUR VIEWS THAT YOU HAD
20 BEFORE YOU EVEN GOT THE JURY SUMMONS, WOULD CREATE AN
21 IMPAIRMENT, A PERSONAL IMPAIRMENT, YOU KNOW. THE JUDGE CAN
22 INSTRUCT YOU THIS AND THE PROSECUTOR CAN TELL YOU THAT;
23 BUT THE QUESTION IN YOUR HEART OF HEARTS IS HOW YOU REALLY
24 FEEL ABOUT SOME OF THESE ISSUES. THAT'S WHAT WE REALLY
25 NEED TO KNOW, WHAT WE WANT TO KNOW. IT'S AN AWESOME

1 RESPONSIBILITY BOTH SIDES HAVE IN THIS CASE. AND WE WANT
2 TO MAKE SURE THE PEOPLE IN THIS JURY BOX ARE THE PEOPLE
3 THAT JUDGE FINDS LEGITIMATELY CAN EVALUATE BOTH SENTENCES.

4 A CORRECT. BUT AS A JUROR YOU HAVE A BIG
5 RESPONSIBILITY AS WELL.

6 Q INCREDIBLE RESPONSIBILITY. AND THE LAST PERSON WE
7 WOULD WANT TO PUT ON THE JURY IS A PERSON HAD THAT
8 INABILITY.

9 A YES.

10 Q YOU FOLLOW ME?

11 A YES. AND I COULDN'T LIVE WITH MYSELF EITHER WAY.

12 Q ALL RIGHT. NOW, WITH THAT IN MIND, LET ME ASK YOU
13 ABOUT A COUPLE OF YOUR ANSWERS. IN YOUR QUESTIONNAIRE YOU
14 SAID "IF THE PERSON WERE CONVICTED BY A JURY OF HIS PEERS,
15 TO BE GUILTY OF A CAPITAL OFFENSE," WHICH I'M ASSUMING YOU
16 UNDERSTOOD TO BE MURDER?

17 A CORRECT. CAPITAL AS BEING MURDER AND.

18 Q WITH AGGRAVATING --

19 A CORRECT.

20 Q EXACTLY. AND YOU'RE RIGHT ABOUT THAT. MAYBE NOT ON
21 EVERY DETAIL.

22 A I KNEW YOU COULDN'T BE FOUND GUILTY OF THE DEATH
23 PENALTY OR WITH DEATH PENALTY JUST FOR MURDER.

24 Q OKAY.

25 A I KNEW THAT ALREADY.

1 Q SO, WHEN YOU FILLED OUT THE FORM, YOU KIND OF KNEW
2 CAPITAL PUNISHMENT WAS FOR CERTAIN TYPES OF MURDER?

3 A CORRECT.

4 Q THAT'S PRESENTLY WHERE WE ARE. LET ME SPIN IT
5 FORWARD FOR YOU JUST A MINUTE. LET'S ASSUME YOU'VE BEEN
6 CHOSEN AS A JUROR AND WE'VE HAD WHAT THE JUDGE DESCRIBED
7 AS THE FIRST TRIAL. ASSUME THE FIRST TRIAL IS OVER, THE
8 JURY GOES OUT AND THEY DELIBERATE AND THEY HAVE CONCLUDED
9 BEYOND A REASONABLE DOUBT THAT THE PERSON ON TRIAL IS
10 GUILTY OF A MURDER AND OF A PREMEDITATED INTENTIONAL ACT,
11 NOT SOME SORT OF ACCIDENT OR SELF-DEFENSE OR MANSLAUGHTER.
12 MURDER WITH MALICE, WITH A WICKED HEART. AND THAT PERSON
13 HAS ALSO BEEN CONVICTED OF ANOTHER SERIOUS OFFENSE, ARMED
14 ROBBERY, RAPE, KIDNAPPING, MURDER OF MORE THAN ONE PERSON,
15 YOU KNOW, THERE ARE A LIST OF THEM. AND THAT HAPPENS AT
16 THE FIRST TRIAL. JURY COMES BACK IN.

17 AND THE QUESTION I'VE GOT FOR YOU, MR. GREENE, IS
18 THIS. AT THAT POINT WHEN I READ YOUR QUESTIONNAIRE, I SAY
19 MR. GREENE, UNDER THOSE CIRCUMSTANCES WOULD HAVE
20 DETERMINED, IN HIS OWN HEART, THAT THE APPROPRIATE
21 PUNISHMENT FOR THAT COULD ONLY BE DEATH. THAT'S WHAT I
22 READ.

23 NOW, IS THAT RIGHT?

24 A YOU'RE SAYING, SO I GO INTO THE SECOND PHASE OF IT
25 ALREADY WITH THAT IN MIND?

1 Q DECIDED THAT THE PERSON HAD BEEN CONVICTED OF MURDER,
2 AGGRAVATED MURDER.

3 A I STILL THINK YOU WOULD HAVE TO GO IN AS A JUROR, AS
4 SOMEONE SITTING ON THE OUTSIDE, IT'S EASY TO SAY, "WELL,
5 HE OUGHT TO BE GUILTY AND HE OUGHT TO BE PUT TO DEATH."
6 BUT SITTING AS A JUROR, YOU WOULD HAVE TO GO INTO IT WITH
7 A MORE OPEN MIND JUST BECAUSE THAT'S -- THE WEIGHT OF THAT
8 WOULD STILL BE ON YOU FOR THE REST OF YOUR LIFE.

9 Q AND I UNDERSTAND IT'S AN AWESOME RESPONSIBILITY. NO
10 DOUBT ABOUT IT. BUT THE DETERMINATION OF ELIGIBILITY TO
11 SERVE IS HOW YOU ACTUALLY FEEL ABOUT THE ISSUE. IT'S NOT
12 A PREVIEW OF AN AWESOME RESPONSIBILITY, WHILE IT CERTAINLY
13 HAS TO BE TAKEN INTO ACCOUNT.

14 A IF DURING THE WHOLE TRIAL, DURING THE GUILT PHASE,
15 THE MALICE WAS SHOWN; AND IN THE SECOND PHASE THE MALICE
16 WAS SHOWN AGAIN, BUT IN WITH THAT, YOU SAW SOMETHING THAT
17 YOU DETERMINED NEED MERCY THAT YOU FELT MERCY FOR THE
18 PERSON OR THAT THERE WAS OTHER CIRCUMSTANCES INVOLVED,
19 THEN YOU COULD GO EITHER WAY.

20 Q YOU SAID IN YOUR ANALOGY, I THINK WHEN THE JUDGE
21 DESCRIBED THAT TO YOU WAS, "IT WAS LIKE A FOOTBALL GAME,
22 YOU HAVE OFFENSE, NO DEFENSE ON THE FIELD, IT'S KIND OF
23 HARD TO WIN THAT GAME."

24 A THAT'S CORRECT.

25 Q THAT'S EXACTLY WHAT YOU SAID.

1 A THAT'S CORRECT.

2 Q AND I AGREE WITH THAT. I AGREE WITH THAT. AND THE
3 FOLLOW UP IS, THE FOLLOW UP IS THIS. IN THE SECOND PHASE
4 WHERE THE PROSECUTOR HAS PRESENTED HIS ENTIRE TRIAL
5 EVIDENCE, HE THEN HAS AN OPPORTUNITY TO BRING IN
6 ADDITIONAL AGGRAVATING INFORMATION. THIS IS A CONVICTION
7 OF A SECOND OFFENSE, WHICH ALLOWS HIM TO ASK FOR THE DEATH
8 PENALTY AND THE DEFENDANT OR DEFENSE SIDE OF THE CASE
9 PRESENTED NO TESTIMONY.

10 CAN YOU IMAGINE IN YOUR WILDEST IMAGINATION A
11 CIRCUMSTANCE LIKE THAT WHERE YOU WOULD ACTUALLY SENTENCE A
12 CONVICTED MURDERER TO LIFE IN PRISON INSTEAD OF DEATH?

13 A IT WOULD HAVE TO BE LIKE MR. ARIAIL SAID, IT WOULD BE
14 SOMETHING THAT CAME UP EARLIER IN THE TRIAL, THAT YOU FELT
15 MERCY FOR HIM, THAT SOMETHING CLICKED IN YOUR HEART OR IN
16 YOUR HEAD OR WHATEVER, SOMETHING YOU SAW. OTHERWISE, YOU
17 WOULD HAVE TO GO WITH DEATH.

18 Q WOULD YOU BE LOOKING TO THE DEFENDANT TO MAKE SOME
19 KIND OF RESPONSE OR PRESENT SOME OF THIS TYPE OF
20 INFORMATION?

21 A THAT'S HARD TO ANSWER.

22 Q OH, I KNOW THIS IS HARD TO ANSWER.

23 A I GUESS YOU WOULD BE WANTING THEM TO IF YOU GO TO
24 THAT STAGE.

25 Q YOU WOULD BE WANTING THEM TO, EXPECTING TO?

1 MR. ARIAIL: I'LL OBJECT TO THAT CHARACTERIZATION,
2 EXPECTING TO, WANTING IS THE CORRECT PHRASE.

3 THE COURT: I WOULD SUSTAIN THE OBJECTION. REPHRASE
4 YOUR QUESTION. HE SAID HE WOULD WANT. OKAY.

5 MR. MAULDIN: YOU SAID YOU WOULD BE WANTING TO?

6 THE COURT: AND I THINK HE UNDERSTANDS THERE IS NO
7 OBLIGATION. I'VE EXPLAINED IT TO HIM.

8 BY MR. MAULDIN:

9 Q WOULD YOU BE EXPECTING THE DEFENDANT TO?

10 A I DON'T KNOW ABOUT THAT. I WOULD EXPECT THEM TO, UP
11 TO A POINT. BUT I GUESS IF THEY DIDN'T, YOU WOULD STILL
12 WANT THEM TO. YOU WOULD WANT TO SEE THE OTHER SIDE SO
13 THAT YOU COULD MAKE SURE WHAT YOU WERE DOING WAS CORRECT.
14 SO, YOU STILL FELT CORRECT WITH THAT.

15 Q WHEN THE JUDGE ASKED YOU THAT, HE ASKED YOU IF YOU
16 COULD GIVE MEANINGFUL CONSIDERATION TO BOTH PENALTIES
17 UNDER THE CIRCUMSTANCE I JUST GIVEN YOU. YOUR ANSWER WAS
18 YES, BUT IT WOULD BE DIFFICULT.

19 A CORRECT.

20 Q THE FINAL -- AND IN THE FINAL ANALYSIS, I GUESS,
21 MR. GREENE, IS APPROXIMATELY THE JUDGE HAS TOLD YOU THAT
22 YOU CAN'T HOLD THAT AGAINST A DEFENDANT, NOT PRESENTATION
23 OF EVIDENCE. AND YOU UNDERSTOOD THAT?

24 A CORRECT.

25 Q BUT THE QUESTION IS, AND YOU SAID YOU'D BE WANTING,

1 WOULD YOU FEEL INCLINED TO, AND LISTEN TO THIS. WOULD YOU
2 BE INCLINED TO SENTENCE A DEFENDANT TO DEATH WHERE THE
3 CONVICTION OF AGGRAVATED MURDER HAS BEEN HAD AT THE FIRST
4 PHASE? WOULD YOU BE INCLINED TO SENTENCE A DEFENDANT TO
5 DEATH UNLESS SOMETHING WAS PRESENTED TO YOU TO ATTEMPT TO
6 CHANGE YOUR VIEW?

7 MR. ARIAIL: OBJECT. SAME QUESTION, FORM IS JUST THE
8 SAME.

9 THE COURT: HE'S ASKED IT THREE, FOUR TIMES, THIS IS
10 JUST IN A DIFFERENT FORM. BUT I'LL OVERRULE. GO AHEAD
11 AND ANSWER IT IF YOU CAN, MR. GREENE. IF YOU CAN, PLEASE
12 ANSWER IT. DO YOU UNDERSTAND THE QUESTION? GO THROUGH IT
13 ONE MORE TIME. YOU TWISTED IT AROUND THREE TIMES.

14 Q GONE THROUGH THE FIRST TIME YOU BEEN ON THE JURY,
15 WE'RE IN THE SECOND PHASE, AND THE SECOND PHASE, AND THE
16 QUESTION IS, WOULD YOU BE INCLINED -- INCLINATION I KNOW,
17 BUT WOULD IT BE YOUR INTENTION OF SENTENCING THE DEFENDANT
18 TO DEATH UNLESS SOME INFORMATION WAS PROVIDED TO YOU BY
19 THE DEFENDANT THAT WOULD PERSUADE YOU TO CONSIDER A LIFE
20 SENTENCE? THAT'S THE QUESTION.

21 A SO, WHAT YOU'RE WANTING TO KNOW BY WHAT THE JUDGE
22 SAID AND WHAT MR. ARIAIL SAID, THE LAW SAYS IT'S SUPPOSED
23 TO BE DEATH, EXCUSE ME, LIFE UNDER CERTAIN SITUATIONS
24 YOU'RE WANTING -- YOU WANT TO KNOW IF I GOT IT BACKWARDS?

25 Q RIGHT, EXACTLY.

1 A NO.

2 Q YOU DO NOT FEEL YOU HAVE?

3 A NO.

4 Q ALL RIGHT.

5 MR. MAULDIN: THAT'S ALL ON THAT SUBJECT, YOUR HONOR.

6 THE COURT: OKAY. ANY MOTIONS?

7 MR. ARIAIL: NONE FROM THE STATE.

8 THE COURT: ANY MOTIONS FROM THE DEFENDANT?

9 MR. MAULDIN: NO, YOUR HONOR. AT THIS POINT --

10 THE COURT: ALL RIGHT.

11 Q MR. GREENE, UNFORTUNATELY I'M GOING TO HAVE TO ASK

12 YOU A FEW MORE QUESTIONS. OKAY?

13 A OKAY.

14 Q I'VE ASKED YOU ABOUT YOUR PRIOR KNOWLEDGE OF THE

15 CASE. DO YOU KNOW THE VICTIM IN THIS CASE, MARANDA

16 WILLIAMS?

17 A NO.

18 Q ALL RIGHT. DO YOU KNOW THE DEFENDANT, CHARLES

19 CHRISTOPHER WILLIAMS, WHO IS SITTING TO MY RIGHT IN THE

20 SWEATER?

21 A NO, SIR.

22 Q DO YOU KNOW THE ATTORNEYS, MR. MAULDIN, AND MR.

23 NETTLES, WHO JUST LEFT THE COURTROOM, REPRESENTING

24 MR. WILLIAMS?

25 A NO, SIR.

1 Q DO YOU KNOW SOLICITOR ARIAIL OR HIS TWO ASSISTANTS
2 THAT ARE SITTING TO MY LEFT?

3 A NO. I DON'T ACTUALLY KNOW HIM, BUT ACTUALLY I THINK
4 SOME DISTANT RELATION, WE'RE ACTUALLY KIN.

5 Q BUT YOU DON'T KNOW HIM?

6 A NO.

7 Q DO YOU HAVE A PERSONAL RELATIONSHIP WITH ANYONE IN
8 HIS OFFICE?

9 A NO.

10 Q I'M GOING TO GIVE YOU A LIST OF NAMES. I'M GOING TO
11 ASK YOU TO LOOK AT THAT LIST AND SEE IF YOU RECOGNIZE ANY
12 OF THE NAMES ON THAT LIST.

13 A NO, SIR.

14 Q I'M GOING TO GIVE YOU A SECOND LIST. LOOK AT THAT
15 AND SEE IF YOU RECOGNIZE ANY NAMES ON THAT LIST.

16 A NO, SIR.

17 Q THANK YOU, SIR. I'M GOING TO READ A QUESTION TO YOU,
18 I WOULD LIKE FOR YOU TO RESPOND TO IT IF YOU WOULD PLEASE,
19 SIR. IN THIS CASE THE DEFENDANT IS BLACK AND THE VICTIM
20 IS WHITE. IT IS UNDISPUTED THE BLACK DEFENDANT AND THE
21 WHITE VICTIM ENGAGED IN INTERRACIAL DATING. WOULD THE
22 FACT THAT THE DEFENDANT AND THE VICTIM ENGAGED IN
23 INTERRACIAL DATING MAKE IT DIFFICULT FOR YOU TO BE FAIR TO
24 EITHER THE STATE OR THE DEFENDANT?

25 A NO, SIR, NO PROBLEM.

1 Q ALL RIGHT. CAN YOU LISTEN TO THE TESTIMONY THAT
2 COMES FROM THE WITNESS STAND AND BASE YOUR DECISION ON THE
3 TESTIMONY AND EVIDENCE THAT'S PRESENTED IN THE COURTROOM?

4 A YES, SIR.

5 Q CAN YOU BE FAIR AND IMPARTIAL TO BOTH THE STATE AND
6 THE DEFENDANT?

7 A YES, SIR.

8 Q DO YOU KNOW OF ANY PERSONAL REASONS AS TO WHY YOU
9 CANNOT SERVE ON THIS JURY?

10 A NO, NOT REALLY. I BEEN DOING A LOT OF TRAVELING.

11 Q I KNOW YOU WOULD PROBABLY PREFER NOT --

12 A CORRECT.

13 Q -- BUT DO YOU HAVE ANY PERSONAL REASONS?

14 A NO.

15 Q THANK YOU VERY MUCH. ANY MOTIONS EITHER PARTY? ANY
16 FURTHER QUESTIONS PURSUANT TO THE ONES I ASKED?

17 MR. MAULDIN: I'D ASK THE COURT TO FOLLOW UP, HE DID
18 MENTION HE HAS SOME RELATION TO MR. ARIAIL, DISTANT
19 RELATION.

20 THE COURT: HE SAID HE DIDN'T EVEN KNOW HIM. HE SAID
21 THEY MAY BE DISTANT RELATED, BUT HE DOESN'T KNOW HIM.
22 WHAT DO YOU WANT ME TO ASK HIM?

23 MR. MAULDIN: WELL, I'LL ASK HIM. MR. GREENE, IN
24 TERMS --

25 THE COURT: WE MIGHT ALL BE DISTANTLY RELATED.

1 MR. MAULDIN: I HOPE NOT, JUDGE.

2 THE COURT: ALL RIGHT.

3 MR. MAULDIN: THE TERMS OF OUR SEARCH FOR AS FAIR AS
4 JUROR AS WE CAN FIND, YOU MENTIONED JUST A MINUTE AGO THAT
5 YOU FELT YOU HAD SOME DISTANT RELATION BUT DIDN'T ACTUALLY
6 KNOW MR. ARIAIL. I GUESS MY QUESTION IS THIS. IF I WERE
7 STANDING IN FRONT OF YOU AS ONE OF THE 12 JURORS AND I
8 WERE SAYING TO YOU AS A JUROR, I WOULD LIKE FOR YOU TO
9 CONSIDER A LIFE SENTENCE, AND MR. ARIAIL STOOD BEFORE YOU
10 AND SAID HE WOULD LIKE FOR YOU TO CONSIDER A DEATH
11 SENTENCE, THE ONLY CONCERN I WOULD HAVE IS IF YOU WOULD
12 FEEL SOME SENSE THAT YOU MIGHT GIVE HIM MORE CREDIT THAN
13 ME.

14 A NO.

15 MR. MAULDIN: THAT'S ALL, YOUR HONOR.

16 MR. ARIAIL: LIKE TO FOLLOW THAT UP.

17 Q SOME RELATIONSHIP MIGHT GIVE ME LESS CREDIT THAN
18 MR. MAULDIN BECAUSE WE THOUGHT WE MIGHT BE RELATED.

19 THE COURT: ANY MOTIONS?

20 MR. MAULDIN: NO, YOUR HONOR.

21 THE COURT: THE BAILIFF WILL GIVE YOU A PHONE NUMBER,
22 A LITTLE SLIP OF PAPER WITH THE PHONE NUMBER. CALL IN
23 TONIGHT, FOLLOW THE INSTRUCTIONS. IT MAY BE REPORT IN
24 TOMORROW NIGHT, WHATEVER; BUT FOLLOW THOSE INSTRUCTIONS.
25 WE'RE GOING TO QUALIFY A PANEL OF 43, OUT OF THAT 43,

1 WE'LL DRAW 12 JURORS AND FOUR ALTERNATES. OKAY? DON'T
2 READ ANYTHING ABOUT THE CASE, DON'T WATCH ANYTHING ON
3 TELEVISION, FOLLOW THOSE INSTRUCTIONS. OKAY? THANK YOU.

4 PROSPECTIVE JUROR: THANK YOU.

5 (PROSPECTIVE JUROR HILL ENTERS COURTROOM)

6 CONSTANCE HILL, (WHITE
7 FEMALE), HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 EXAMINATION

10 BY THE COURT:

11 Q MRS. HILL, DO YOU REMEMBER FILLING OUT A
12 QUESTIONNAIRE A FEW WEEKS AGO?

13 A UH-HUH.

14 Q WHEN YOU FILLED IT OUT, WAS IT ACCURATE THE BEST YOU
15 CAN DETERMINE?

16 A YEAH. I THINK SO.

17 Q PROBABLY GOING TO ASK YOU SOME QUESTIONS ABOUT IT AND
18 SOME QUESTIONS ABOUT SOME OTHER THINGS. OKAY? THERE'S
19 NOT NECESSARILY ANY RIGHT OR WRONG ANSWER TO ANY OF THE
20 QUESTIONS. JUST GIVE US THE BEST ANSWER YOU CAN.

21 A ALL RIGHT.

22 Q AND BE TRUTHFUL ABOUT THE ANSWER. OKAY?

23 A YES, SIR.

24 Q IF YOU WOULD, I WANT TO ASK YOU A COUPLE OF QUESTIONS
25 ABOUT YOUR QUESTIONNAIRE REAL QUICK.

1 A OKAY.

2 Q IF YOU WOULD TURN TO PAGE FIVE, QUESTION 33. YOU
3 WERE A JUROR IN A CASE. IS THAT CORRECT?

4 A YES.

5 Q APPARENTLY IT WAS A CIVIL CASE?

6 A YES.

7 Q DID IT COMPLETE THE TRIAL, GO ALL THE WAY THROUGH?

8 A NO, SIR. IT SETTLED.

9 Q DURING THE MIDDLE OF THE TRIAL?

10 A YES, SIR.

11 Q OKAY. IS THAT THE ONLY JURY YOU SERVED ON THAT WEEK?

12 A YES.

13 Q HOW LONG AGO WAS THAT?

14 A OH, GOSH, PROBABLY EIGHT OR NINE YEARS AGO.

15 Q EIGHT OR NINE YEARS AGO?

16 A YES, SIR.

17 Q HAVING GONE THROUGH THAT PROCESS, DO YOU HAVE ANY
18 BIAS OR PREJUDICE AGAINST OR FOR THE SYSTEM IN GENERAL?

19 A NO, SIR.

20 Q NOW, GO DOWN TO QUESTION 35.

21 A OKAY.

22 Q WHO IS THE MEMBER OF ACLU?

23 A MY HUSBAND AND I BOTH ARE.

24 Q YOU BOTH ARE. OKAY. NOW, ON PAGE SEVEN, YOUR
25 DAUGHTER WAS CHARGED WITH A CRIME. IS THAT CORRECT?

1 A YES, SIR.

2 Q MALICIOUS DAMAGE TO PROPERTY, GRAFFITI, IN 2000. IS

3 THAT CORRECT?

4 A YES, SIR.

5 Q WAS THAT TAKEN CARE OF IN MAGISTRATE'S COURT OR DO

6 YOU KNOW?

7 A YES.

8 Q IT WAS?

9 A YES.

10 Q OKAY. WAS THE SOLICITOR'S OFFICE INVOLVED IN THAT

11 CASE?

12 A I GUESS SO, YES.

13 Q THEY WERE. DO YOU HAVE ANY BIAS OR PREJUDICE TOWARDS

14 THE SOLICITOR'S OFFICE AS A RESULT OF YOUR DAUGHTER HAVING

15 BEEN CHARGED -- DID SHE PLEAD GUILTY OR WAS IT A TRIAL?

16 A NO, SHE PLED GUILTY AND GOT COMMUNITY SERVICE.

17 Q YOU HAVE ANY BIAS OR PREJUDICE AGAINST THE

18 SOLICITOR'S OFFICE AS A RESULT OF YOUR DAUGHTER BEING

19 CHARGED?

20 A NO, SIR.

21 Q MRS. HILL, DO YOU HAVE ANY PHYSICAL PROBLEMS THAT

22 WOULD PREVENT YOU FROM SERVING ON THE JURY?

23 A NO, SIR.

24 Q ANY MENTAL PROBLEMS THAT WOULD PREVENT YOU SERVING ON

25 THE JURY?

1 A NOT THAT I KNOW OF.

2 Q YOU HAVE ANY HARDSHIPS THAT WOULD PREVENT YOU FROM
3 SERVING ON THE JURY?

4 A NO, SIR.

5 Q THIS CASE AROSE ON SEPTEMBER 3 2003 AND THE STATE HAS
6 CHARGED CHARLES CHRISTOPHER WILLIAMS WITH MURDER AND
7 KIDNAPPING, AND IT OCCURRED AT ONE OF THE LOCAL BI-LOS
8 HERE IN GREENVILLE. HAVE YOU HEARD ANYTHING ON TV OR
9 ANYTHING IN THE PAPER OR ANYONE TALKING ABOUT THE CASE
10 EITHER WHEN IT OCCURRED ON SEPTEMBER 3rd OR SINCE THAT
11 TIME?

12 A YES, I REMEMBER IT WHEN IT OCCURRED.

13 Q WHAT -- DO YOU REMEMBER IT FROM TELEVISION OR
14 NEWSPAPER OR WHAT?

15 A TELEVISION, NEWSPAPERS.

16 Q ALL OF IT?

17 A ALL OF IT.

18 Q TELL ME WHAT FACTS YOU REMEMBER SEEING ON TELEVISION,
19 WHAT FACTS YOU REMEMBER READING IN THE PAPER.

20 A I JUST REMEMBER THEM SAYING IT WAS AT A BI-LO ON EAST
21 NORTH STREET. A MAN HAD SHOT HIS GIRLFRIEND AND I BELIEVE
22 THEY HAD A CHILD.

23 Q DO YOU REMEMBER ANYTHING ELSE?

24 A NO, NOT REALLY DETAILS.

25 Q NO DETAILS. ALL RIGHT. FROM WHAT YOU SAW ON

1 TELEVISION AND WHAT YOU READ IN THE PAPER, HAVE YOU FORMED
2 OR EXPRESSED AN OPINION ABOUT THE INNOCENCE OR GUILT OF
3 MR. WILLIAMS?

4 A NO, SIR.

5 Q THE VICTIM IN THE CASE IS MARANDA WILLIAMS. DO YOU
6 KNOW HER?

7 A NO.

8 Q MR. WILLIAMS SITS IN THE COURTROOM WITH THE SWEATER
9 TO MY RIGHT. DO YOU KNOW MR. WILLIAMS?

10 A NO, SIR.

11 Q MR. WILLIAMS' ATTORNEYS ARE SITTING BESIDE HIM AT THE
12 SAME TABLE. DO YOU KNOW ANY OF THEM?

13 A NO, SIR.

14 Q SOLICITOR ARIAIL SITS TO MY LEFT AND TWO ASSISTANTS.
15 DO YOU KNOW ANY OF THOSE FOLKS?

16 A NO, SIR.

17 Q DO YOU HAVE A PERSONAL RELATIONSHIP WITH ANYBODY ELSE
18 IN THE SOLICITOR'S OFFICE HERE IN GREENVILLE?

19 A NO, SIR.

20 Q I'M GOING TO GIVE YOU A LIST OF NAMES. WOULD YOU
21 LOOK AT THAT LIST OF NAMES AND TELL ME WHETHER OR NOT YOU
22 RECOGNIZE ANY OF THOSE NAMES.

23 A (COMPLIES.) NO. NO, SIR.

24 Q ALL RIGHT. LET ME GIVE YOU A SECOND LIST. DO YOU
25 RECOGNIZE ANY OF THOSE NAMES?

1 A (COMPLIES.) NO, SIR.

2 Q THANK YOU, MA'AM. I'M GOING TO READ YOU A QUESTION
3 AND I WOULD ASK YOU TO RESPOND TO IT IF YOU WOULD PLEASE,
4 MA'AM.

5 A OKAY.

6 Q IN THIS CASE THE DEFENDANT IS BLACK AND THE VICTIM IS
7 WHITE. IT IS UNDISPUTED THAT THE BLACK DEFENDANT AND THE
8 WHITE VICTIM ENGAGED IN INTERRACIAL DATING. WOULD THE
9 FACT THAT THE DEFENDANT AND THE VICTIM ENGAGED IN
10 INTERRACIAL DATING MAKE IT DIFFICULT FOR YOU TO BE FAIR TO
11 EITHER THE STATE OR THE DEFENDANT?

12 A NO, SIR.

13 Q ALL RIGHT. MRS. HILL, IF YOU WOULD TAKE YOUR
14 QUESTIONNAIRE AGAIN, PLEASE, MA'AM, AND TURN TO PAGE TEN.
15 QUESTION 64 SAYS, "BRIEFLY DESCRIBE YOUR ATTITUDES AND
16 BELIEFS CONCERNING CAPITAL PUNISHMENT."

17 AND YOU SAID "I BELIEVE THERE ARE SOME CASES WHERE
18 THE DEATH PENALTY SHOULD BE USED." IS THAT STILL YOUR
19 OPINION HERE TODAY?

20 A YES, SIR.

21 Q CAN YOU TELL ME WHAT TYPE OF CASES YOU THINK THE
22 DEATH PENALTY, WHEN IT SHOULD BE USED?

23 A I THINK IN A CASE WHERE THERE IS NO DOUBT, AND I
24 DON'T MEAN REASONABLE DOUBT, I MEAN NO DOUBT THAT THIS
25 PERSON DID IT, SUCH AS IN THE CASE OF A SERIAL KILLER

1 WHERE THEY HAVE DNA OR, YOU KNOW, EXTENUATING
2 CIRCUMSTANCES. I THINK THERE ARE CRIMES THAT ARE VIOLENT
3 ENOUGH THAT DESERVE THE DEATH PENALTY.

4 Q LET ME TELL YOU THE PROCESS WE'LL GO THROUGH IN THIS
5 CASE. THE CASE IS GOING TO BE DIVIDED UP INTO TWO PARTS.
6 AND I'LL REFER TO THEM AS THE FIRST PHASE AND THE SECOND
7 PHASE.

8 A OKAY.

9 Q THE FIRST PHASE THE STATE WILL BE PRODUCING EVIDENCE
10 TO THE JURY TO PROVE THE DEFENDANT GUILTY BEYOND A
11 REASONABLE DOUBT AS TO MURDER AND KIDNAPPING. THIS --
12 LET'S ASSUME THAT THE JURY BELIEVES THE STATE HAS PROVEN
13 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND ALL 12
14 JURORS AGREE. THE DEFENDANT IS GUILTY OF MURDER AND
15 KIDNAPPING. NO QUESTION ABOUT IT. OKAY? HE'S GUILTY.
16 THE JURY HAS MADE THAT DECISION.

17 THEN WE GO TO THE SECOND PHASE. AND IN THE SECOND
18 PHASE THE STATE WILL OFFER AGGRAVATING CIRCUMSTANCES,
19 ADDITIONAL FACTORS CONCERNING THE DEFENDANT OR THE FACTS
20 IN THE CASE OR VICTIM IMPACT, HOW IT IMPACTED UPON THE
21 VICTIM'S FAMILY. I DON'T KNOW WHAT THEY'RE GOING TO OFFER
22 BECAUSE I HAVEN'T HEARD THE CASE. BUT THAT TYPE OF
23 EVIDENCE WILL BE OFFERED. THE STATE WOULD BE REQUIRED TO
24 PROVE THE AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE
25 DOUBT.

1 THE DEFENDANT NEVER HAS TO TESTIFY. A DEFENDANT DOES
2 NOT HAVE TO PRODUCE ANY EVIDENCE THROUGHOUT THE TRIAL.
3 IT'S THE STATE'S BURDEN OF PROOF. NOW, THE DEFENDANT MAY
4 OR MAY NOT OFFER WHAT IS REFERRED TO AS MITIGATING
5 CIRCUMSTANCES. AND THESE WILL BE CIRCUMSTANCES ABOUT THE
6 CASE, ABOUT THE DEFENDANT OR WHATEVER --

7 A UH-HUH.

8 Q -- THAT WOULD TEND TO BE OFFERED FOR PURPOSES OF
9 CONVINCING THE JURY, THE JURY SHOULD RECEIVE LIFE -- OR
10 GIVE LIFE. WHEN I SAY LIFE, I MEAN LIFE WITHOUT PAROLE.
11 THE DEFENDANT WILL NOT GET OUT ON PAROLE. HE WILL DIE IN
12 JAIL. DO YOU UNDERSTAND?

13 A YES, SIR.

14 Q IT MEANS WHAT IT SAYS, LIFE WITHOUT PAROLE. SO, IN
15 THE SECOND PHASE OR THE PENALTY PHASE IT'S THE JURY'S
16 DETERMINATION OR DECISION, OR THE PURPOSE OF THE SECOND
17 PHASE IS TO DETERMINE EITHER LIFE OR DEATH. OKAY?

18 NOW, MY QUESTION TO YOU AFTER YOU HEARD ALL THE
19 TESTIMONY IN THE FIRST PHASE AND THE SECOND PHASE, THE
20 MITIGATION AND AGGRAVATION OR MITIGATION IF IT'S OFFERED,
21 COULD YOU GIVE MEANINGFUL CONSIDERATION TO DEATH?

22 A YES.

23 Q COULD YOU GIVE MEANINGFUL CONSIDERATION TO LIFE?

24 A YES, SIR.

25 Q WOULD YOU WAIT AND HEAR ALL THE TESTIMONY IN THE

1 FIRST PHASE AND THE SECOND PHASE BEFORE YOU MADE UP YOUR
2 MIND AS TO LIFE OR DEATH?

3 A I BELIEVE SO, YES.

4 Q WELL, WE DON'T NEED TO BELIEVE, YOU EITHER WILL OR
5 YOU WON'T.

6 A I WILL.

7 Q THE LAW SAYS THAT AND I WILL INSTRUCT YOU TO THAT
8 EFFECT.

9 A OKAY.

10 Q CAN YOU DO THAT? IT'S DIFFICULT. CAN YOU DO THAT?

11 A YES, I CAN DO IT.

12 Q ALL RIGHT. LET ME COVER A COUPLE MORE THINGS. PAGE
13 TEN, QUESTION 65, "WHAT IS YOUR OPINION ABOUT THE DEATH
14 PENALTY?"

15 YOU SAID "SOMEWHAT FAVOR." IS THAT STILL YOUR
16 OPINION HERE TODAY?

17 A YES, SIR.

18 Q QUESTION NUMBER 66, YOU SAID -- CAN YOU FIND IT?
19 PAGE 11, QUESTION 66, AT THE VERY TOP. THE STAPLE IS
20 PROBABLY COVERING IT UP.

21 A OKAY.

22 Q "HOW HAVE YOUR OPINIONS ABOUT THE DEATH PENALTY
23 CHANGED OVER THE PAST FEW YEARS?"

24 YOU SAID, "LESS THAN FAVORABLE." I GOT TO PRESUME
25 YOU'RE LESS IN FAVOR NOW THAN YOU WERE PREVIOUSLY. WHAT'S

1 TRANSPIRED, OCCURRED TO MAKE YOU HAVE THAT OPINION?

2 A I'VE SEEN A LOT OF MEDIA COVERAGE RECENTLY, IN THE
3 PAST FOUR OR FIVE YEARS, THAT PEOPLE ARE FOUND TO BE
4 SENTENCED AND PUT TO DEATH THAT WERE INNOCENT.

5 Q THROUGH DNA EVIDENCE?

6 A YEAH. SO, I THINK IT'S BEEN APPLIED LIBERALLY IN THE
7 PAST. SO I'M LESS IN FAVOR OF THAT AS AN OPTION THAN I
8 USED TO BE.

9 Q HOW WOULD THAT AFFECT YOU SITTING ON THIS JURY?

10 A I WOULD WANT TO BE ABSOLUTELY SURE THAT THIS PERSON
11 WAS GUILTY.

12 Q DO YOU UNDERSTAND THE STANDARD THE STATE HAS IS
13 BEYOND A REASONABLE DOUBT? IT DOES NOT HAVE TO BE TO A
14 ABSOLUTE CERTAINTY?

15 A YES.

16 Q THERE'S NOTHING IN THIS WORLD THAT'S AN ABSOLUTE
17 CERTAINTY. IT'S BEYOND A REASONABLE DOUBT. CAN YOU LOOK
18 AT THAT STANDARD IN YOUR DUTY?

19 A I DON'T KNOW.

20 Q YOUR DIFFICULTY WITH THE DEATH PENALTY IS MAKING SURE
21 THE DEFENDANT IS GUILTY, IS THAT YOUR DIFFICULTY WITH IT?

22 A YES.

23 Q THAT'S PROBABLY DIFFICULT WITH LOT OF AMERICAN PUBLIC
24 WITH WHAT'S BEEN GOING ON WITH THE DNA TESTING IN THE LAST
25 FOUR, FIVE OR SIX YEARS. I THINK THAT PROBABLY RUNS

1 THROUGHOUT OUR SOCIETY. I THINK EVERYBODY IN THIS
2 COURTROOM WOULD AGREE, AN IMPORTANT ISSUE THAT NEEDS TO BE
3 RESOLVED. NOBODY WANTS TO FIND SOMEBODY GUILTY THAT'S NOT
4 GUILTY. ALL RIGHT.

5 A RIGHT.

6 Q NOW, QUESTION NUMBER 68 YOU ANSWERED TWO, I BELIEVE.
7 "THE DEATH PENALTY IS THE APPROPRIATE FORM OF PUNISHMENT
8 IN SOME MURDER CASES AND I COULD RETURN A VERDICT OF DEATH
9 IF I BELIEVE IT WAS WARRANTED IN A PARTICULAR CASE,
10 DEPENDING UPON THE EVIDENCE, THE LAW, AND WHAT I LEARNED
11 ABOUT THE DEFENDANT."

12 IS THAT STILL YOUR OPINION HERE TODAY?

13 A YES, SIR.

14 Q LET ME ASK YOU TWO MORE QUESTIONS. CAN YOU BE FAIR
15 AND IMPARTIAL TO BOTH THE STATE AND THE DEFENDANT?

16 A YES, SIR.

17 Q CAN YOU BASE YOUR DECISION ON THE TESTIMONY YOU HEAR
18 FROM THE WITNESS STAND AND THE EVIDENCE PRESENTED IN THE
19 COURTROOM, NOT SOMETHING OUTSIDE THE COURTROOM?

20 A YES, SIR.

21 Q ALL RIGHT. IT'S 1:00. WE'RE GOING TO TAKE A LUNCH
22 BREAK AND WE'LL COME BACK AND --

23 (WHEREUPON, THE PROCEEDINGS ARE ADJOURNED FOR THE
24 LUNCHEON RECESS.)

25 AFTERNOON SESSION

1 (COURT WAS AGAIN IN SESSION AT 2:25 P.M, WHEN THE
2 FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE PRESENCE
3 OF PROSPECTIVE JURORS:)

4 THE COURT: THE REASON I ASKED YOU IF YOU DON'T WANT
5 ME TO ASK IT, I WON'T. MISS STROM, YOU HAVE ANY POSITION
6 ON IT?

7 MS. STROM: I DON'T CARE ONE WAY OR THE OTHER, JUDGE.

8 THE COURT: I DON'T CARE IF YOU ASK IT OR I ASK IT.
9 I THINK SOMEBODY NEEDS TO COVER IT.

10 MR. NETTLES: WE THINK IT'S ANALOGOUS TO THE BOB
11 JONES ISSUE.

12 THE COURT: I AGREE WITH YOU. THAT'S WHY I WAS GOING
13 TO ASK HER WAS SHE AWARE. IF SHE SAYS, "NO," I'LL LEAVE
14 IT AT THAT. I'LL BE HAPPY TO ASK OR YOU CAN.

15 MR. NETTLES: I'LL ASK.

16 THE COURT: BUT WHEN YOU GO INTO THE ACLU, IF SHE
17 SAYS, NO, I'M NOT AWARE OF THEIR POSITION, THEN THAT'S THE
18 END OF IT.

19 MR. NETTLES: I'M NOT GOING TO MENTION IT.

20 THE COURT: OKAY. I'LL LET YOU DO IT.

21 MR. NETTLES: ALL RIGHT.

22 THE COURT: BRING MS. HILL IN.

23 (PROSPECTIVE JUROR ENTERS COURTROOM.)

24 THE COURT: WHOSE TURN?

25 MR. NETTLES: MINE.

1 Q HOW YOU DOING, MISS HILL?

2 A I'M FINE. HOW ARE YOU?

3 Q I'M DOING PRETTY GOOD. I CAN SAY THAT. I'M BILL
4 NETTLES, ONE OF THE LAWYERS FOR CHRIS -- I'VE BEEN

5 INTRODUCED BEFORE -- YOU CAN TELL BY WHERE I'M SITTING.
6 LET ME ASK YOU A COUPLE OF QUESTIONS IF YOU DON'T MIND.

7 I'VE GOT A COUPLE OF TOPICS I'M GOING TO TALK ABOUT AND WE
8 WILL KIND OF SEE WHERE IT GOES FROM THERE.

9 THE FIRST THING I'D LIKE TO TALK TO YOU ABOUT, IN
10 YOUR DISCUSSION WITH THE JUDGE ABOUT CAPITAL PUNISHMENT,
11 YOU SEEM TO HAVE SOME CONCERN ABOUT CAPITAL PUNISHMENT.
12 AND IT SEEMED TO ME YOUR POSITION ON CAPITAL PUNISHMENT
13 HAD MOVED BECAUSE YOU HAD CONCERNS ABOUT INNOCENT PEOPLE
14 HAVING BEEN CONVICTED?

15 A YES.

16 Q NOW, I WANT TO SHARE WITH YOU -- AND ULTIMATELY IT
17 TURNED OUT THAT OTHER JURORS HAD WRONGFULLY CONVICTED
18 SOMEBODY.

19 A I DON'T KNOW IF IT WAS THE JURY OR DEFENSE THAT IT
20 HAD OR WHAT, BUT SOMEHOW THEY ENDED UP THERE.

21 Q THE QUESTION I WANT TO ASK YOU IS THIS. I WANT YOU
22 TO PLACE YOURSELF ON A JURY WHERE YOU FELT THE DEFENSE DID
23 A VERY GOOD JOB. THE DEFENSE WAS FAIR, THE JUDGE WAS
24 FAIR, AND SOMETIMES THEY GET THE RIGHT GUY. AND THERE ARE
25 TIMES WHEN THE PERSON DID IT, AND THERE'S NO QUESTION

1 ABOUT IT. AND, YOU KNOW, YOU APPLY THE LAW BEYOND A
2 REASONABLE DOUBT. AND, IN FACT, THE PERSON DID IT.
3 THAT'S THE PERSON I WANT YOU TO THINK ABOUT FOR A SECOND.

4 A OKAY.

5 Q THAT PERSON, WOULD YOU BE ABLE TO SENTENCE THAT
6 PERSON IF YOU BELIEVED IT WAS THE CORRECT PUNISHMENT TO
7 DEATH?

8 A YES.

9 Q OKAY. NOW, LET ME ASK YOU THIS. IF IN YOUR MIND YOU
10 FELT THAT BEYOND A REASONABLE DOUBT THE PERSON HAD DONE
11 IT, WOULD THE ONLY PUNISHMENT BE IN YOUR MIND THAT OF
12 DEATH?

13 A NO.

14 Q YOU COULD SENTENCE SOMEONE CONVICTED OF A CAPITAL
15 CASE TO EITHER LIFE IMPRISONMENT WITHOUT POSSIBILITY OF
16 PAROLE --

17 A UH-HUH.

18 Q -- OR THE DEATH PENALTY?

19 A YES.

20 Q DEPENDING ON THE FACTS?

21 A YES.

22 Q AND THE CIRCUMSTANCES?

23 A YES.

24 Q LET ME ADD ONE THING, THEN I'LL MOVE ON. ARE YOU
25 AWARE TO BE A DEATH PENALTY CASE -- NOT ALL MURDERS ARE

1 DEATH PENALTY CASES. IN ORDER TO GET INTO THE SECOND
2 PHASE, THE JURY HAS TO BELIEVE BEYOND A REASONABLE DOUBT
3 THAT THE INDIVIDUAL IS GUILTY OF BOTH A MURDER AND ANOTHER
4 VERY SERIOUS OFFENSE.

5 A OKAY.

6 Q WILL YOU ACCEPT THAT IF I TELL YOU THAT'S THE LAW?

7 A YES.

8 Q SO, IF YOU WERE ON A JURY AND YOU BELIEVED BEYOND A
9 REASONABLE DOUBT THE PERSON WAS GUILTY OF MURDER AND
10 EITHER A SECOND MURDER OR ARMED ROBBERY OR RAPE, ANY
11 NUMBER OF HORRIBLE CRIMES, YOU COULD STILL CONSIDER EITHER
12 DEATH OR LIFE DEPENDING ON THE FACTS AND CIRCUMSTANCES?

13 A YES.

14 Q NOW, UNDER THE LAW OF SOUTH CAROLINA, AND LET'S BE
15 CLEAR THAT THE LAW OF SOUTH CAROLINA DOES NOT EVER REQUIRE
16 FOR YOU TO RETURN A DEATH VERDICT; BUT IF YOU'RE IN A CASE
17 WHERE YOU FELT LIKE THAT WAS THE APPROPRIATE PUNISHMENT,
18 COULD YOU SIGN YOUR NAME UNDER THE LAW ONLY IF YOU THOUGHT
19 THAT THE DEATH PENALTY WAS APPROPRIATE?

20 A UH-HUH.

21 Q AND ALL 12 OF YOU FELT IT WAS APPROPRIATE AND HAD TO
22 SIGN YOUR NAME, YOU COULD DO THAT, COULDN'T YOU? IF YOU
23 FELT LIKE IT WAS THE ULTIMATE PUNISHMENT?

24 A YES.

25 Q AND WHAT DOES LIFE -- WHAT'S YOUR UNDERSTANDING OF

1 WHAT LIFE WITHOUT PAROLE MEANS?

2 A THAT THEY NEVER GET OUT OF JAIL.

3 Q DIE IN PRISON?

4 A YES.

5 Q AND YOU COULD IN THE CORRECT CIRCUMSTANCES, IF YOU
6 FELT IT WAS APPROPRIATE, YOU COULD GIVE THE DEATH PENALTY,
7 KNOWING THAT THE ALTERNATIVE WAS LIFE WITHOUT POSSIBILITY
8 OF PAROLE?

9 A YES.

10 Q IF YOU FELT LIKE YOU HAD TO?

11 A YES.

12 Q OKAY. NOW, WE NOTICED YOU'RE A MEMBER OF THE ACLU?

13 A YES.

14 Q I'M SURE YOU'RE AWARE OF THEIR POSITION ON THAT?

15 A YES.

16 Q YOU CERTAINLY DIDN'T TAKE ANY OATH TO FOLLOW ALL
17 THEIR POSITIONS.

18 A NO.

19 Q NOTWITHSTANDING THE FACT YOU BELONG TO THAT
20 ORGANIZATION, YOU COULD STILL CONSIDER EITHER OF THESE
21 PUNISHMENTS IN THE CORRECT CIRCUMSTANCES?

22 A YES.

23 Q ALL RIGHT. NOW, I GOT TWO MORE AREAS AND I THINK I'M
24 DONE. ONE OF THEM IS THIS. LET ME ASK YOU YOUR QUESTION,
25 AND I KNOW IT'S DIFFICULT, BUT WE'VE ASKED YOU SOME

1 QUESTIONS ABOUT THE DEATH PENALTY. I'M GOING TO ASK YOU
2 ABOUT THIS TOPIC. JUST TELL ME WHAT YOUR THOUGHTS ARE.
3 IF I -- SAY YOU AND I WERE JUST TALKING AND I SAID, "WHAT
4 DO YOU THINK ABOUT MENTAL ILLNESS?"

5 WHAT WOULD YOU SAY?

6 A I THINK IT CAN BE DEVASTATING TO SOME PEOPLE'S LIVES.

7 Q AND THE REASON I SAY THAT IS -- WE DON'T HAVE
8 ANYTHING ON YOU.

9 A MIGHT NOT SURPRISE ME.

10 Q WE MIGHT HAVE SOMETHING IN COMMON. BUT THAT THERE
11 ARE SOME PEOPLE THAT JUST BELIEVE THAT MENTAL ILLNESS IS
12 NOTHING BUT AN EXCUSE AND NOTHING BUT VODOO. YOU'RE NOT
13 ONE OF THOSE PEOPLE?

14 A I DON'T BELIEVE THAT, NO.

15 Q THE LAST THING I'M GOING TO ASK YOU, TWO THINGS REAL
16 QUICK, NOT THE LAST QUESTION. DO YOU BELIEVE LIFE
17 IMPRISONMENT WITHOUT ANY POSSIBILITY OF PAROLE TO BE A
18 SERIOUS PUNISHMENT FOR SOMEONE CONVICTED OF BOTH MURDER
19 AND ANOTHER VERY SERIOUS OFFENSE?

20 A I THINK IT COULD BE.

21 Q DEPENDING ON?

22 A THE CIRCUMSTANCES.

23 Q NOW, IN -- ONE OF THE THINGS YOU WOULD FIND OUT, YOU
24 PROBABLY ALREADY KNOW THIS JUST FROM COMMON KNOWLEDGE, IS
25 THAT IN TRIALS THE GOVERNMENT GOES FIRST. THEY PRESENT

1 THE EVIDENCE. AND THAT'S FOR A REASON. BECAUSE, QUITE
2 FRANKLY, THE DEFENSE DOESN'T HAVE TO PUT UP ANYTHING.
3 SOMETIMES THEY COULD PUT UP THEIR EVIDENCE AND THE JURY
4 JUST LOOKS AT IT AND GOES, YOU KNOW, "THAT'S NOT ENOUGH."

5 THE SAME THING IN A CAPITAL CASE, THEY GO FIRST.
6 THEY GO FIRST IN THE TRIAL PHASE AND PENALTY PHASE. AND
7 I'D LIKE TO TALK ABOUT PENALTY PHASE FOR JUST A SECOND.
8 IF YOU WERE SELECTED TO SIT ON A CAPITAL CASE, ONE OF THE
9 THINGS THAT YOU WOULD FIND OUT IS THAT DURING THE COURSE
10 OF THE CASE, THE GOVERNMENT WOULD INTRODUCE VICTIM IMPACT
11 TESTIMONY. WHAT THAT IS, IT IS HEART-WRENCHING TESTIMONY
12 FROM PEOPLE WHO HAVE BEEN, THEIR LIVES HAVE BEEN LITERALLY
13 TORN APART. AND THEY'VE GOT A RIGHT TO DO THAT AND NONE
14 OF US WOULD STOP THAT.

15 BUT MY QUESTION IS, WOULD YOU AGREE WITH ME THAT A
16 FAIR JUROR WOULD BE ABLE TO LISTEN TO THAT, GIVE IT
17 CREDENCE, BUT WILL NOT MAKE UP THEIR MIND UNTIL THE
18 DEFENSE HAD AN OPPORTUNITY TO TALK AS WELL?

19 A I AGREE.

20 Q THAT'S JUST KIND OF FAIR, RIGHT?

21 A YEAH.

22 Q NOW, THIS IS THE LAST TOPIC. IF YOU WERE IN THE JURY
23 ROOM AND YOU FELT THAT ONE PUNISHMENT OR THE OTHER WAS
24 APPROPRIATE AND THE OTHER 11 PEOPLE DISAGREED WITH YOU,
25 OKAY? WOULD YOU CHANGE YOUR MIND JUST TO GO ALONG?

1 A NO, I WOULD NOT.

2 Q NOW, LET ME ASK YOU THIS. IF YOU HAPPENED TO BE IN
3 THE MAJORITY AND THERE WAS SOMEONE IN THE MINORITY, ONE OF
4 THE REASONS WE'RE HAVING THIS CONVERSATION, YOU PROBABLY
5 ALL AGREE THE DEATH PENALTY, ONE OF THOSE ISSUES
6 REASONABLE MINDS CAN DISAGREE ON. WOULD YOU BE WILLING TO
7 RESPECT THE OTHER PERSON'S OPINION?

8 A YES.

9 Q I BELIEVE I'M DONE. BUT LET ME GO TOUCH BASE WITH MY
10 PEOPLE. THANK YOU VERY MUCH. I HAVE NOTHING ELSE.

11 THE COURT: SOLICITOR?

12 MR. ARIAIL: THANK YOU, JUDGE.

13 Q MISS HILL, MY NAME IS BOB ARIAIL. I'M THE SOLICITOR
14 FOR THE 13th CIRCUIT, GREENVILLE AND PICKENS COUNTIES.
15 THAT MEANS I'M THE DISTRICT ATTORNEY ON TV. GREENVILLE
16 IT'S CALLED SOLICITOR. WITH ME IS MY DEPUTY, MISS STROM,
17 AND ALONG WITH ONE OF ANY ASSISTANTS, MR. MOYER.

18 MR. NETTLES ASKED YOU A QUESTION -- I'M NOT AWARE OF
19 THE POLICY ACLU HAS ON DEATH PENALTY. WHAT IS THE --
20 MAYBE YOU ALL ARE -- WHAT IS THEIR POSITION?

21 A OVERALL THEY DON'T SUPPORT IT. WELL, THEY DON'T
22 SUPPORT IT AT ALL.

23 Q KNOWING THEY DON'T SUPPORT IT AT ALL AND BEING A
24 MEMBER OF THE ACLU, WILL THAT IMPACT OR HAVE ANY BEARING
25 ON YOUR ABILITY TO FAIRLY CONSIDER THE DEATH PENALTY?

1 A NO. I'M A MEMBER OF THAT ORGANIZATION BECAUSE THEY
2 FIGHT FOR THE RIGHTS OF US. I MEAN WHEN THE GOVERNMENT
3 TRIES TO MAKE LAWS, TAKE AWAY OUR LIVES, THEY FIGHT FOR
4 THAT. THAT'S THE REASON I'M A MEMBER.

5 Q JUST TO TAKE THAT ONE STEP FURTHER, IF YOU WERE
6 SITTING ON THE JURY DECIDING WHETHER OR NOT THE DEATH
7 PENALTY SHOULD BE IMPOSED, YOU'RE IN THAT SECOND PHASE,
8 WOULD YOU BE THINKING OR WOULD THE THOUGHT CROSS YOUR
9 MIND, I'M GOING BACK TO AN ACLU MEETING OR I'M GOING TO
10 TALK TO MY FRIENDS WHO ARE MEMBERS OF THE ACLU AND WHETHER
11 OR NOT YOUR VOTE ON THAT ISSUE, IF IT WERE TO VOTE FOR THE
12 DEATH PENALTY, MAY SOMEHOW CAUSE YOU SOME PROBLEMS?

13 A NO, I HAVE FRIENDS WHO ARE MEMBERS WITH ME WHO
14 BELIEVE IN THE DEATH PENALTY.

15 Q SO, YOU DON'T SEE THAT AS AN ISSUE?

16 A NO.

17 Q MR. NETTLES WAS TALKING TO YOU ABOUT MENTAL ILLNESS.
18 DO YOU ALSO BELIEVE, HE WAS SAYING NOT VODOO, BUT REAL
19 STUFF, DO YOU ALSO BELIEVE IT CAN ALSO BE USED AS AN
20 EXCUSE?

21 A ANYTHING CAN BE USED AS EXCUSE.

22 Q JUST BECAUSE THERE'S EVIDENCE OF MENTAL ILLNESS,
23 DOESN'T MEAN THAT IT'S ABSOLUTELY SOMETHING YOU ALWAYS
24 TAKE AS A GIVEN?

25 A NO.

1 Q YOU WOULD TAKE THAT AND WEIGH IT?

2 A AND IT WOULD DEPEND ON WHETHER I THOUGHT IT WAS
3 PROVEN.

4 Q RIGHT. OKAY. MR. NETTLES ASKED YOU ALSO THAT AS A
5 FAIR JUROR YOU COULD WAIT UNTIL THE END AND HEAR ALL THE
6 EVIDENCE AND CONSIDER AND VOTE FOR A LIFE SENTENCE. HE
7 ASKED IF YOU COULD DO THAT. YOU SAID, YES, YOU COULD.
8 LIKEWISE, I ASK YOU, AS A FAIR JUROR CAN YOU ALSO WAIT
9 UNTIL THE END, HEAR ALL THE EVIDENCE, AND CONSIDER AND
10 VOTE FOR A DEATH SENTENCE IF YOU FELT THAT THE PENALTY WAS
11 APPROPRIATE UNDER THE EVIDENCE PRESENTED?

12 A YES.

13 Q I BELIEVE MR. NETTLES ASKED THIS, BUT LET ME JUST
14 MAKE SURE. YOU UNDERSTAND IF YOU VOTE, YOU ALL
15 DELIBERATE, ALL 12 OF YOU COME TO THE DECISION THAT YOU
16 HAVE TO -- EXCUSE ME, ALL 12 COME TO THE DECISION THAT THE
17 APPROPRIATE PENALTY IS DEATH. YOU HAVE TO SIGN A FORM
18 WITH ALL THE OTHER JURORS, NOT AN INDIVIDUAL FORM, THAT
19 RECORDS YOUR NAME AS THAT BEING YOUR RECOMMENDED
20 PUNISHMENT BRINGING THAT TO THE COURT. WOULD YOU HAVE ANY
21 PROBLEM SIGNING THAT FORM --

22 A NO.

23 Q -- IF THAT WAS YOUR VERDICT?

24 A NO.

25 Q THANK YOU VERY MUCH. ALL WE HAVE, YOUR HONOR.

1 THE COURT: ANY MOTIONS FROM EITHER PARTY?

2 MR. MAULDIN: NO, YOUR HONOR.

3 MR. ARIAIL: NONE FROM THE STATE. NO, SIR.

4 THE COURT: MRS. HILL, THE BAILIFF IS GOING TO GIVE
5 YOU A SLIP OF PAPER. AND ON THAT SLIP OF PAPER IS A PHONE
6 NUMBER. CALL THAT NUMBER TONIGHT, THERE MAY BE A MESSAGE.
7 CALL THAT NUMBER AND FOLLOW THE INSTRUCTIONS. IT MAY BE
8 REPORT TOMORROW. CALL THAT NUMBER, MAY EVEN BE REPORT
9 SATURDAY. I DON'T KNOW. JUST FOLLOW THOSE INSTRUCTIONS.
10 OKAY?

11 A OKAY.

12 Q THANK YOU VERY MUCH.

13 THE COURT: SOLICITOR, BEFORE WE BRING THE NEXT
14 INDIVIDUAL IN, HAVE YOU BEEN ABLE TO GET ANY INFORMATION?

15 MR. ARIAIL: YES, SIR, WE HAVE.

16 THE COURT: HAVE YOU GOT ANY INFORMATION ON MISTER --

17 MR. ARIAIL: MR. GUNTER, YES. WE HAVE NO FINAL
18 INFORMATION; BUT WE HAVE LEARNED THAT THE CLERK OF COURT
19 IN THOMASVILLE IS VERY BUSY AND VERY UNCOOPERATIVE. BUT
20 WE ARE PURSUING AND WE'VE COMMUNICATED TO THIS WOMAN ONCE
21 AGAIN THAT THE JUDGE WOULD LIKE TO HAVE IT. AND SHE HAS
22 ASSURED US SHE'LL GET RIGHT ON IT. THAT WAS ABOUT A
23 QUARTER OF TWO. I'M EXPECTING SOMETHING REAL SOON.

24 THE COURT: ANY REASON I CAN'T TELL MR. GUNTER TO
25 COME BACK AT 4:00? HE'S BEEN SITTING IN THE ROOM SINCE

1 THIS MORNING. ANY OPPOSITION TO THAT?

2 MR. MAULDIN: WE MIGHT HAVE A SOLUTION.

3 MR. MACDOUGALL: YOUR HONOR, THE COUNTY ATTORNEY IN
4 THOMASVILLE IS APPARENTLY MORE COOPERATIVE THAN THE CLERK
5 OF COURT. OUR OFFICE HAS SPOKEN TO TWO ASSISTANTS IN THAT
6 OFFICE; JIM HARDY AND ROY ALMOND. THEY REPORT THAT, WHAT
7 WE ALREADY KNOW, THAT MANUFACTURING REGARDLESS OF THE
8 AMOUNT, CARRIES A MINIMUM OF A YEAR TO MAXIMUM TEN YEARS.
9 UNDER THE FIRST OFFENDER STATUTE, WHILE IN FACT IF A
10 CONVICTION IS A FIRST OFFENSE, MAY INFLUENCE THE AMOUNT OF
11 THE SENTENCE, THE FIRST OFFENDER STATUTE DOES NOT REDUCE
12 THE SENTENCE, ALLOWS YOU TO EXPUNGE THE RECORD AFTER A
13 TIME OR BEING ON PROBATION. AND THE FACT IT'S STILL
14 CARRIED IN THE NCIC SUGGESTS IT'S NOT BEEN EXPUNGED, IT'S
15 STILL ON RECORD.

16 THE COURT: THE BURDEN WOULD BE ON THE DEFENDANT TO
17 MOVE FORWARD TO HAVE IT EXPUNGED I WOULD THINK. SO, IT
18 WOULD CARRY ANYWHERE FROM ONE YEAR TO TEN YEARS?

19 MR. MACDOUGALL: ONE TO TEN YEARS UNDER THE OFFENSE
20 WHICH --

21 MR. ARIAIL: WE AGREE WITH ALL THAT. THE PROBLEM IS,
22 WE DON'T KNOW WHAT HE PLED TO. THAT'S WHY WE'RE TRYING TO
23 GET THE PLEA DOCUMENT.

24 THE COURT: I KNOW WHAT IS ON THE NCIC REPORT. I
25 DON'T THINK HE KNOWS WHAT HE PLED TO.

1 MR. ARIAIL: HE DOESN'T. WE UNDERSTAND IT'S ONE TO
2 TEN IF HE PLED UNDER THAT STATUTE. IF HE PLED UNDER
3 SOMETHING ELSE --

4 THE COURT: WELL, THE CLERK DOESN'T WANT TO GO LOOK
5 UP INFORMATION.

6 MR. ARIAIL: NO, SIR. SHE SAID HE WAS GOING.

7 THE COURT: I'M GOING TO RELEASE HIM UNTIL 4:00. SEE
8 WHAT THE CLERK SAYS. IF THAT DOESN'T WORK, WE'LL GO WITH
9 WHAT WE HAVE.

10 MR. MAULDIN: IF BY 4:00, WE'RE JUST GOING TO GIVE
11 UP. WE'LL JUST FLIP A COIN, JUDGE.

12 THE COURT: YOU TALKED TO THE COUNTY ATTORNEY?

13 MR. MACDOUGALL: YES, SIR, YOUR HONOR.

14 THE COURT: I DON'T HAVE ANY PROBLEMS, IF YOU WANT TO
15 CALL THE COUNTY ATTORNEY, SEE IF HE'LL BE SO KIND TO WALK
16 OVER TO THE CLERK'S OFFICE AND LOOK IT UP. IF THE CLERK
17 WON'T DO IT, MAYBE HE WILL DO IT.

18 MR. ARIAIL: TRYING TO GET THE DOCUMENTS FAXED UP
19 HERE.

20 THE COURT: I'LL TAKE HIS WORD ON THE PHONE. I DON'T
21 NEED THE DOCUMENT PER SE, I MEAN I'LL TAKE HIS WORD.
22 MAYBE HE'LL DO IT INSTEAD OF THE CLERK.

23 MR. MACDOUGALL: WE'LL TELL HIM YOU WOULD LIKE TO
24 TALK TO HIM.

25 MR. ARIAIL: NO, NO. JUST GET HIM TO TELL YOU

1 WHATEVER IT IS.

2 THE COURT: JUST ASK HIM IF HE'LL CHECK WHAT THE MAN
3 ACTUALLY PLED TO. AND WHATEVER HE TELLS YOU, THAT'S FINE
4 WITH ME. I'M NOT GOING TO QUESTION THAT.

5 MR. MACDOUGALL: IT'S ON THE WAY.

6 THE COURT: BRING US ROBERT MINA. AND TELL MR.
7 GUNTER TO COME BACK AT 4:00.

8 (PROSPECTIVE JUROR ROBERT MINA ENTERS COURTROOM)

9 ROBERT MINA, (WHITE
10 MALE), HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 EXAMINATION

13 BY THE COURT:

14 Q MR. MINA, YOU FILLED OUT A QUESTIONNAIRE LAST MONTH
15 OR THE MONTH BEFORE LAST. DO YOU REMEMBER THAT?

16 A YES.

17 Q WHEN YOU FILLED IT OUT, WAS IT ACCURATE TO THE BEST
18 OF YOUR KNOWLEDGE?

19 A ONE THING I RECALL, I LISTED UNDER FAMILY, I HAVE
20 STEPCHILDREN. I GUESS IN HASTE TO FILL THIS OUT, I
21 INADVERTENTLY LISTED TRAVIS, MY STEPSON, AS THE OLDEST.
22 HE IS THE SECOND OLDEST.

23 Q ALL RIGHT. WHILE WE'RE TALKING ABOUT YOUR CHILDREN,
24 WOULD YOU TURN TO PAGE TWO ON THE QUESTIONNAIRE. BEFORE
25 WE GET THERE, I WANT TO TELL YOU THIS. THIS IS A CASE

1 WHERE THE STATE HAS CHARGED CHARLES CHRISTOPHER WILLIAMS
2 WITH MURDER AND KIDNAPPING. AND THIS OCCURRED ON
3 SEPTEMBER THE THIRD 2003 AT A BI-LO HERE IN GREENVILLE.
4 AND I NOTICE ON PAGE TWO, WHAT YOU HAVE LISTED IS CHILD
5 NUMBER THREE IS 22 YEARS OLD. HE'S A CLERK AT A BI-LO IN
6 GREENVILLE?

7 A THAT'S CORRECT. YES, SIR.

8 Q MY QUESTION TO YOU, WHAT TYPE OF INFORMATION HAVE YOU
9 RECEIVED CONCERNING THIS CASE THROUGH YOUR SON OR THROUGH
10 ANY OTHER SOURCE, TV, RADIO, OR WHATEVER?

11 A NONE.

12 Q YOUR SON DIDN'T KNOW ANYTHING ABOUT IT?

13 A WE HAVEN'T TALKED ABOUT IT AT ALL.

14 Q SO, YOU NEVER DISCUSSED IT WITH HIM?

15 A THAT IS CORRECT.

16 Q YOU HAVEN'T SEEN ANYTHING ON TELEVISION?

17 A NO.

18 Q ON PAGE FIVE YOU TALKED ABOUT YOU IN A LAWSUIT OVER
19 FAULTY WORKMANSHIP; IS THAT CORRECT? YOU WERE A WITNESS
20 TO THE LAWSUIT?

21 A THAT IS CORRECT. THAT WAS, OH, ABOUT 20 YEARS AGO.

22 Q AND YOU JUST TESTIFIED IN THE CASE?

23 A THAT'S CORRECT. YES, SIR.

24 Q YOU WEREN'T A PARTY, ANYTHING LIKE THAT?

25 A NO, SIR.

1 Q TELL ME ABOUT YOUR FRIEND THAT'S PUBLIC DEFENDER IN
2 OMAHA, NEBRASKA.

3 A HE WAS A COLLEGE FRIEND. WE ATTENDED ST. MICHAEL'S
4 COLLEGE IN WHISKEY, VERMONT. WHEN HE WAS A YEAR AHEAD OF
5 ME, HE WENT TO CRAYTON/CREIGHTON LAW SCHOOL OUT IN OMAHA
6 AND TOOK A POSITION WITH THE PUBLIC DEFENDER'S OFFICE.

7 Q HE STILL THERE?

8 A TO THE BEST OF MY KNOWLEDGE HE IS. I REALLY DON'T
9 KEEP IN TOUCH ANY MORE.

10 Q DON'T KEEP IN TOUCH?

11 A PROBABLY NOT IN 12 OR 15 YEARS.

12 Q SO, YOU HAVEN'T SEEN HIM IN 12 OR 15 YEARS?

13 A YES, SIR.

14 Q IF YOU WOULD, LOOK AT PAGE SIX. PAGE SIX, YOU HAVE
15 IT LISTS YOUR FAMILY MEMBER OR CLOSE FRIEND, PUBLIC SAFETY
16 OFFICER IN AIKEN, SOUTH CAROLINA. WHO WOULD THAT BE?

17 A A SECOND COUSIN. HIS NAME IS TOM DILARDI. HE'S NOW
18 RETIRED. BUT HE WAS WITH THE PUBLIC SAFETY DEPARTMENT,
19 POLICE DEPARTMENT WITH AIKEN.

20 Q WERE YOU CLOSE TO HIM?

21 A NOT VERY CLOSE. NO.

22 Q HOW OFTEN DID YOU SEE HIM?

23 A ONCE A YEAR.

24 Q ONCE A YEAR?

25 A YEAH.

1 Q NOW, IF YOU'LL TURN TO PAGE TEN ON YOUR
2 QUESTIONNAIRE, PLEASE, SIR, QUESTION 64. DID YOU FIND IT,
3 PAGE TEN? IT'S EASIER COMING FROM THE BACK. RIGHT AT THE
4 BOTTOM, QUESTION 64.

5 A YES.

6 Q ALL RIGHT. THE QUESTION SAYS, "BRIEFLY DESCRIBE YOUR
7 ATTITUDES AND BELIEFS CONCERNING CAPITAL PUNISHMENT." YOU
8 SAID, "I DO FAVOR CAPITAL PUNISHMENT IF IT IS FAIRLY
9 APPLIED AND APPROPRIATELY FITS THE CRIME AND IS PROVED
10 WITHOUT A REASONABLE DOUBT."

11 IS THAT YOUR BELIEF CONCERNING CAPITAL PUNISHMENT?

12 A YES, IT IS, JUDGE.

13 Q AND THEN THE NEXT QUESTION, "WHAT IS YOUR OPINION
14 ABOUT THE DEATH PENALTY?"

15 YOU SAID, "STRONGLY FAVOR." IS THAT CORRECT?

16 A YES.

17 Q IS THAT STILL YOUR OPINION TODAY?

18 A YES.

19 Q IF YOU'LL FLIP IT OVER TO QUESTION NUMBER 68. DO YOU
20 SEE 68?

21 A YES.

22 Q RESPONSE TO 68, "WHICH STATEMENT BEST STATES YOUR
23 OPINION?"

24 "I BELIEVE THE DEATH PENALTY IS AN APPROPRIATE FORM
25 OF PUNISHMENT IN SOME MURDER CASES AND I COULD RETURN A

1 VERDICT OF DEATH IF I BELIEVE IT WAS WARRANTED IN A
2 PARTICULAR CASE, DEPENDING UPON THE EVIDENCE, THE LAW, AND
3 WHAT I LEARNED ABOUT THE DEFENDANT." IS THAT STILL YOUR
4 OPINION HERE TODAY?

5 A YES, JUDGE.

6 Q I'M GOING TO TRY TO EXPLAIN TO YOU THE PROCEDURE
7 WE'RE GOING THROUGH. OKAY? AS I TOLD YOU EARLIER, THE
8 DEFENDANT IS CHARGED WITH MURDER AND KIDNAPPING AND THE
9 TRIAL WILL BE BROKEN UP INTO POSSIBLY TWO PHASES. THE
10 FIRST PHASE IS COMMONLY REFERRED TO AS GUILT PHASE, AND
11 IN THE GUILT PHASE THE STATE WOULD BE REQUIRED TO PROVE
12 THAT THE DEFENDANT WAS GUILTY BEYOND A REASONABLE DOUBT.
13 THE JURY WOULD MAKE A DECISION WHETHER OR NOT THE STATE
14 HAS PROVEN THEIR CASE IN THE FIRST PHASE. DO YOU
15 UNDERSTAND?

16 A YES, SIR.

17 Q NOW, LET'S ASSUME ALL 12 JURORS BELIEVE THE STATE HAS
18 PROVEN THEIR CASE AND THE DEFENDANT IS GUILTY BEYOND A
19 REASONABLE DOUBT AS TO MURDER AND KIDNAPPING. THAT'S THE
20 ASSUMPTION I WANT YOU TO MAKE IN A HYPOTHETICAL WE'RE
21 DEALING WITH. NOW, AFTER THAT DECISION, THE JURY HAS
22 FOUND THE INDIVIDUAL GUILTY OF MURDER AND KIDNAPPING, WE
23 WOULD GO TO THE SECOND PHASE.

24 THE PURPOSE OF THE SECOND PHASE IS FOR THE JURY TO
25 DECIDE WHETHER THE DEFENDANT SHOULD RECEIVE DEATH OR LIFE.

1 WHEN I SAY LIFE, IT'S LIFE WITHOUT PAROLE. IN OTHER
2 WORDS, THE DEFENDANT WILL DIE IN JAIL. DO YOU UNDERSTAND?

3 A YES.

4 Q NOW, IN THE SECOND PHASE, THE STATE WILL OFFER
5 AGGRAVATING CIRCUMSTANCES, SOMETHING THAT MAKES IT WORSE
6 THAN WHAT YOU HEARD IN THE FIRST PHASE TO CONVINCE THE
7 JURY THAT THE DEFENDANT SHOULD RECEIVE DEATH. OKAY?

8 A YES.

9 Q I DON'T KNOW WHAT THOSE AGGRAVATING CIRCUMSTANCES ARE
10 BECAUSE I HAVEN'T HEARD THE CASE. IN THIS PARTICULAR
11 CASE -- I'M TALKING IN A HYPOTHETICAL -- THE DEFENDANT MAY
12 OFFER MITIGATING CIRCUMSTANCES OR THE DEFENDANT MAY NOT.
13 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES SURROUNDING AN
14 INDIVIDUAL OR THE CRIME ITSELF, CERTAIN FACTS OFFERED IN
15 COURT FOR THE PURPOSE OF CONVINCING THE JURY THAT HE
16 SHOULD RECEIVE LIFE RATHER THAN DEATH. DO YOU UNDERSTAND?

17 A YES.

18 Q NOW, THE LAW SAYS THAT THE JURIES ARE NOT SUPPOSED TO
19 MAKE UP THEIR MIND UNTIL THEY'VE HEARD ALL THE TESTIMONY
20 IN THE FIRST PHASE AND ALL THE TESTIMONY IN THE SECOND
21 PHASE. KEEP AN OPEN MIND AS TO LIFE OR DEATH. THE LAW
22 PRESUMES LIFE. AND, AS I SAID, THE STATE HAS THE BURDEN
23 OF PROVING THE AGGRAVATING CIRCUMSTANCES BEYOND A
24 REASONABLE DOUBT.

25 NOW, MY QUESTION TO YOU, BASED UPON YOUR ANSWER IN 64

1 AND 65, WHERE YOU SAID IT WAS PROVEN WITHOUT A -- BEYOND A
2 REASONABLE DOUBT, THE JURY ALREADY DECIDED REASONABLE
3 DOUBT -- COULD YOU GIVE MEANINGFUL CONSIDERATION TO LIFE
4 IN THE SECOND PHASE?

5 A YES.

6 Q COULD YOU GIVING MEANINGFUL CONSIDERATION TO DEATH?

7 A YES.

8 Q NOW, WHAT IF THE DEFENDANT DOES NOT OFFER ANY
9 MITIGATING CIRCUMSTANCES, ALL YOU WOULD HEAR IS WHAT THE
10 STATE OFFERED IN THE FIRST PHASE AND WHAT THE STATE OFFERS
11 IN THE SECOND PHASE. AND IN THE SECOND PHASE YOU CAN
12 CONSIDER EVERYTHING THAT CAME OUT IN THE FIRST PHASE. THE
13 DEFENDANT IS NEVER REQUIRED TO TESTIFY. HE DOESN'T HAVE
14 TO TESTIFY. BUT IF HE DOES NOT, IN THAT HYPOTHETICAL,
15 COULD YOU GIVE MEANINGFUL CONSIDERATION TO LIFE?

16 A YES.

17 Q COULD YOU ALSO GIVE MEANINGFUL CONSIDERATION TO
18 DEATH?

19 A I DON'T THINK SO.

20 Q YOU COULD NOT GIVE MEANINGFUL CONSIDERATION TO DEATH?

21 A IF THE DEFENDANT DIDN'T SPEAK, IT WOULD BE DIFFICULT.

22 Q BE DIFFICULT TO GIVE DEATH?

23 A YES.

24 Q WHY DO YOU SAY THAT?

25 A I WOULD NEED TO HEAR HIS TESTIMONY.

1 Q OKAY.

2 A I WOULD CONSIDER HIM A WITNESS.

3 Q ALL RIGHT. BUT AS I SAID, HE DOESN'T HAVE TO
4 TESTIFY. IT'S THE STATE'S RESPONSIBILITY TO PROVE THAT
5 THE DEFENDANT SHOULD RECEIVE DEATH. HE DOESN'T HAVE TO
6 DISPROVE ANYTHING. SO, CONSIDER ALL THE TESTIMONY IN THE
7 FIRST PHASE AND ALL THE TESTIMONY IN THE SECOND PHASE AND
8 THE DEFENDANT DOES NOT OFFER ANYTHING, YOU ALREADY SAID
9 YES TO LIFE. COULD YOU GIVE MEANINGFUL CONSIDERATION TO
10 DEATH BASED ON EVERYTHING YOU HEARD IN THE FIRST PHASE AND
11 THE SECOND PHASE?

12 A IF THE EVIDENCE WAS CONVINCING TO ME, I WOULD SAY
13 YES.

14 Q TELL ME HOW IN YOUR MIND, YOU STATE YOU STRONGLY
15 FAVOR THE DEATH PENALTY, BUT YOU'RE NOT SURE YOU COULD
16 GIVE THE DEFENDANT DEATH IF HE DOESN'T TESTIFY, HOW DO YOU
17 RECONCILE THAT?

18 A WELL, I WOULD LIKE TO HEAR HIS TESTIMONY.

19 Q I UNDERSTAND YOU WOULD LIKE TO, WE ALL WOULD, BUT
20 SITTING HERE TODAY HE HAS THE RIGHT NOT TO TESTIFY.

21 MR. NETTLES: YOUR HONOR, MAY -- CAN I BE EXCUSED
22 JUST A SECOND? IF YOU DON'T, CAN I ASK HE BE EXCUSED?

23 THE COURT: YEAH. WE CAN DO THAT. MR. MINA, COULD
24 YOU STEP OUTSIDE IN THE HALL JUST A SECOND?

25 (PROSPECTIVE JUROR EXITS.)

1 THE COURT: AS MANY WITNESSES AS I HAVE EVER TALKED
2 TO, I HAVE NEVER HEARD THAT RESPONSE.

3 MR. NETTLES: I'M STILL TRYING TO PROCESS IT ALL.
4 BUT I WANTED TO ASK IF THE COURT WILL CONSIDER, YOU KNOW,
5 YOU WERE TALKING ABOUT YOU'D LIKE TO HEAR THE DEFENDANT
6 TESTIFY AND THE COURT IN ALL CANDOR, YOUR RESPONSE, "WE
7 WOULD ALL LIKE TO HEAR HIM TESTIFY." I WOULD ASK YOU TO
8 CLEAR THAT UP. JUST COMING FROM YOU, IT'S A LITTLE
9 DIFFERENT TO HEAR HIM SAY WE WOULD ALL LIKE TO HEAR HIM
10 TESTIFY.

11 THE COURT: I UNDERSTAND. WHEN HE ANSWERED THE
12 QUESTION, I'M NOT SURE IF HE UNDERSTOOD WHAT I WAS TELLING
13 HIM. I'M STILL NOT SURE IF HE'S NOT CONFUSED. I DON'T
14 KNOW. WE'LL SEE. WILL YOU BRING HIM BACK?

15 (PROSPECTIVE JUROR ENTERS COURTROOM.)

16 THE COURT: MR. MINA, EARLIER WHEN I SAID WE WOULD
17 ALL LIKE TO HEAR THE DEFENDANT TESTIFY, THE COURT DOESN'T
18 CARE WHETHER HE TESTIFIES OR NOT, THAT'S A RIGHT THE
19 DEFENDANT HAS. AND ONLY HE CAN DECIDE WHETHER HE'S GOING
20 TO TESTIFY OR NOT. BUT I WANT YOU TO UNDERSTAND HE'S NOT
21 OBLIGATED TO. SO, WHERE -- I'M ASKING YOU UNDER THE
22 CIRCUMSTANCES WHERE HE CHOOSES NOT TO TESTIFY, AND ALL
23 YOU'VE HEARD IS FROM THE STATE, DO YOU UNDERSTAND? AND
24 I'VE ALREADY ASKED YOU, I THINK, THAT QUESTION TWO OR
25 THREE TIMES. YOU ANSWERED IT TWICE. I'M NOT GOING TO GO

1 ANY FURTHER WITH IT THAN THAT. WHOSE TURN IS IT?

2 MR. ARIAIL: YOU WANT TO, AS -- AS TO THIS ISSUE?

3 THE COURT: YEAH.

4 BY MR. ARIAIL:

5 Q MR. MINA.

6 A YES.

7 Q MY NAME IS BOB ARIAIL. AND MOST PEOPLE CAN'T GET
8 THAT RIGHT THE FIRST TIME EITHER. IT TAKES THEM A WHILE.
9 I AM THE PROSECUTOR, THE SOLICITOR FOR THE 13th CIRCUIT
10 OF SOUTH CAROLINA, WHICH MEANS IN TV I'M THE D.A. AND
11 WE'RE RESPONSIBLE FOR PROSECUTING CRIMINAL CASES. IN THIS
12 CASE I WILL BE PROSECUTING THE CASE WITH MY DEPUTY,
13 MISS STROM, AND ONE OF MY ASSISTANTS, MR. MARK MOYER. AND
14 I WANT TO TALK JUST A SECOND ABOUT THE QUESTIONNAIRE. YOU
15 PUT ON NUMBER 67, DO YOU SEE THAT ANSWER?

16 A YES.

17 Q "FROM A BIBLICAL PERSPECTIVE."

18 A YES.

19 Q I JUST WANT TO MAKE SURE WE'RE NOT TALKING ABOUT AN
20 EYE FOR AN EYE.

21 A NO.

22 Q WE'RE JUST TALKING ABOUT BIBLICAL FOUNDATIONS FOR THE
23 IMPOSITION OF THE DEATH PENALTY?

24 A NO, SIR.

25 Q SOME PEOPLE TALK ABOUT EYE FOR AN EYE. THAT'S

1 SOMETHING DIFFERENT. YOUR ANSWER CERTAINLY DOESN'T FOLLOW
2 THAT NUMBER TWO WOULD BE PART OF AN EYE FOR AN EYE. LET'S
3 GO BACK TO THE LAST LITTLE SECTION WHERE THE JUDGE WAS
4 ASKING YOU ABOUT, YOU'VE BEEN ON THIS FIRST JURY.
5 ACTUALLY THERE'S JUST ONE JURY BUT THERE ARE TWO PHASES.
6 THE FIRST PHASE IS GUILT. IS THE DEFENDANT GUILTY OF THE
7 CRIMES THAT STATE HAS CHARGED HIM WITH?

8 LET'S ASSUME IN THAT HYPOTHETICAL THAT THE JURY HAS
9 CONVICTED THE DEFENDANT, THEY HAVE FOUND HIM GUILTY OF AN
10 INTENTIONAL MALICIOUS MURDER. THAT'S WHAT MURDER IS IN
11 THIS STATE. IT'S INTENTIONAL AND MALICIOUS. NOT AN
12 ACCIDENT, NOT MANSLAUGHTER, GUN DIDN'T GO OFF BY ACCIDENT
13 OR SOMETHING. IT'S INTENDED TO DO WHAT HE DID, AND HE DID
14 IT WITH MALICE IN HIS HEART. THAT'S WHAT THE DEFINITION
15 IS. SO, THAT IS WHERE YOU ARE.

16 AFTER THAT, WE GO TO THE SECOND PHASE. WE HAVE A
17 24-HOUR WAITING PERIOD IN BETWEEN. THE SECOND PHASE COMES
18 UP. THE STATE PUT UP CERTAIN EVIDENCE, THE DEFENSE MAY
19 BUT THEY'RE CERTAINLY NOT REQUIRED TO. THE JUDGE WILL
20 TELL YOU IF THEY DON'T, YOU CAN'T HOLD THAT AGAINST THEM.
21 IT'S HIS ABSOLUTE CONSTITUTIONAL RIGHT. IT'S THE BURDEN
22 OF THE STATE. NOW, THE STATE IN THIS HYPOTHETICAL CASE IN
23 THE SENTENCING PHASE IS GOING TO BE ASKING FOR THE DEATH
24 PENALTY. THEY'RE GOING TO BE ARGUING TO YOU AND
25 SUBMITTING EVIDENCE TO INDICATE THEY THINK THAT IS THE

1 PROPER SITUATION. THAT'S THE PROPER PUNISHMENT UNDER THE
2 FACTS AND CIRCUMSTANCES.

3 NOW, ASSUMING THE DEFENDANT PUTS UP NO EVIDENCE,
4 ASSUMING THE DEFENDANT DOESN'T TESTIFY, WHICH IS HIS
5 RIGHT, WOULD THAT FACT IMPAIR YOUR ABILITY TO FAIRLY
6 CONSIDER THE STATE'S REQUEST FOR THE DEATH PENALTY?
7 BECAUSE OF WHAT YOU STATED EARLIER, THAT YOU WOULD WANT TO
8 HEAR WHAT HE HAD TO SAY?

9 AND I UNDERSTAND EXACTLY WHAT YOU'RE SAYING. I
10 UNDERSTAND EXACTLY WHERE YOU'RE COMING FROM. BUT LET'S
11 ASSUME THAT DOESN'T HAPPEN. THERE'S NOTHING WE CAN DO TO
12 MAKE IT HAPPEN. THAT'S HIS ABSOLUTE RIGHT. HE DOESN'T
13 HAVE TO DO THAT. IS THAT GOING TO PUT YOU IN A SITUATION
14 WHERE YOU WOULD BE IMPAIRED, YOUR ABILITY TO FAIRLY
15 CONSIDER AND FULLY CONSIDER THE DEATH PENALTY WOULD BE
16 IMPAIRED?

17 A NO.

18 Q YOU THINK YOU COULD STILL CONSIDER IT?

19 A I THINK SO, UNDERSTANDING THAT NOW.

20 Q UNDERSTANDING NOW HOW THE CIRCUMSTANCE WORKS. OKAY.
21 ALL I HAVE. THANK YOU VERY MUCH.

22 BY MR. MACDOUGALL:

23 Q MR. MINA. I'M SORRY, I WAS HIDING BEHIND THE COURT
24 REPORTER THERE. I HAVEN'T SEEN YOU BEFORE. MY NAME IS
25 MARK MACDOUGALL AND I'M ONE OF THE LAWYERS ALONG WITH BILL

1 NETTLES AND JOHN MAULDIN REPRESENTING CHRIS WILLIAMS HERE
2 IN THIS CASE.

3 I'D LIKE TO GO BACK TO YOUR QUESTION 64. DO YOU HAVE
4 THE QUESTIONNAIRE IN FRONT OF YOU? THE JUDGE TALKED TO
5 YOU ABOUT THAT. SAID THIS IN RESPONSE TO YOUR QUESTION
6 ABOUT THE ATTITUDES AND BELIEFS CONCERNING CAPITAL
7 PUNISHMENT. "I DO FAVOR CAPITAL PUNISHMENT IF IT IS
8 FAIRLY APPLIED AND APPROPRIATELY FITS THE CRIME." DO YOU
9 SEE THAT?

10 A YES.

11 Q WHAT I'D LIKE YOU TO DO, TAKE THE QUESTION, TAKE THE
12 WORDS CAPITAL PUNISHMENT OUT AND INSERT THE WORDS LIFE
13 WITHOUT PAROLE. IS THE SAME STILL TRUE? DO YOU FAVOR
14 LIFE WITHOUT PAROLE IF IT'S FAIRLY APPLIED AND
15 APPROPRIATELY FITS THE CRIME?

16 A YES.

17 Q AND YOU UNDERSTAND, BECAUSE MR. ARIAIL TALKED ABOUT
18 IT AND THE JUDGE HAS TALKED TO YOU ABOUT IT, THAT THE CASE
19 HERE WILL BE TRIED IN TWO PHASES; AND THE FIRST, GUILT OR
20 INNOCENCE PHASE, ENDS WHEN THE JURY, WHICH YOU MAY BE A
21 MEMBER OF, REACHES A VERDICT; AND THE VERDICT WOULD EITHER
22 BE GUILTY OR NOT GUILTY ON A QUESTION OF PREMEDITATED
23 MURDER. YOU UNDERSTAND PREMEDITATED MURDER IS NOT AN
24 ACCIDENT OR HEAT OF PASSION CRIME. IT IS, YOU KNOW, AN
25 ACT BY A HEART DEVOID OF ALL SOCIAL DUTY, DARK AND

1 DEPRAVED HEART. AND IF THE VERDICT IS ONE OF GUILT, THE
2 JURY WHICH YOU'RE A MEMBER, WOULD HAVE REACHED THAT
3 CONCLUSION BEYOND A REASONABLE DOUBT. ARE YOU WITH ME ON
4 THAT?

5 A YES.

6 Q ONCE THAT HAPPENS, THE SECOND PHASE OF THE TRIAL
7 HAVING TO DO WITH PUNISHMENT, BEGINS. AND IN THAT SECOND
8 PHASE YOU WOULD LISTEN TO THE STATE'S EVIDENCE AND
9 WHATEVER EVIDENCE THE DEFENSE CHOSE TO PRESENT. AND MY
10 QUESTION IS, EVEN IF YOU HAVE FOUND THE DEFENDANT GUILTY
11 AND HAVING THAT DEPRAVED HEART AND HAVING COMMITTED THAT
12 MURDER, WOULD YOU STILL BE IN A POSITION TO CONSIDER A
13 LIFE SENTENCE WITHOUT PAROLE AS WELL AS A DEATH SENTENCE
14 SIDE BY SIDE, DEPENDING UPON WHAT THE EVIDENCE WAS?

15 A YES.

16 Q I'D LIKE YOU TO TELL ME, WHAT DOES LIFE -- SAID LIFE
17 WITHOUT POSSIBILITY OF PAROLE -- MAKE IT SHORT. YOU
18 UNDERSTAND IN SOUTH CAROLINA THAT MEANS THAT THE CONVICTED
19 PERSON DIES IN PRISON?

20 A CORRECT.

21 Q NO OPPORTUNITY TO GET OUT EVER?

22 A YES.

23 Q ONE OTHER QUESTION I HAVE, ON YOUR QUESTIONNAIRE, AND
24 THEN I THINK WE'LL BE DONE. NUMBER 67, AND IN RESPONSE TO
25 THAT QUESTION YOU WERE -- LET ME GIVE YOU THE QUESTION

1 FIRST. HAVE YOU DISCUSSED YOUR OPINIONS ABOUT THE DEATH
2 PENALTY WITH ANYONE?

3 YOU SAY, "YES." AND YOU SAY, "FROM A BIBLICAL
4 PERSPECTIVE." CAN YOU TELL ME A LITTLE ABOUT WHAT THAT
5 MEANS?

6 A WELL, I LOOK AT IT FROM A -- SCRIPTURE IS VERY
7 IMPORTANT TO ME, MY FAITH, AND THROUGHOUT SCRIPTURE WE
8 HAVE A GUIDE TO LIVING OUT HOW WE APPLY JUSTICE. I LOOK
9 AT IT WEIGHING ALL CIRCUMSTANCES USING WISDOM, NOT BASED
10 ON HEARSAY OR GOSSIP, A DECISION IN THIS CASE WOULD, WITH
11 CLEAR EVIDENCE, PREFERABLY WITNESSES, TWO OR MORE
12 WITNESSES, I WOULD SEE THAT CERTAINLY A GUIDELINE. YOU
13 KNOW THE TRUTH, REALLY, TRUTHFUL IN YOUR THOUGHTS AND IN
14 YOUR DELIBERATIONS AND THE EVIDENCE THAT'S PRESENTED IN
15 THE CASE.

16 Q ONE PHRASE THAT GETS KNOCKED AROUND A LOT, "AN EYE
17 FOR AN EYE, TOOTH FOR A TOOTH." ONE OF THOSE PHRASES THAT
18 HAS WORKED ITS WAY INTO PUBLIC DISCUSSION. OFTEN PEOPLE
19 HAVE NEVER OPENED A BIBLE IN THEIR LIFE, DON'T KNOW WHERE
20 IT APPEARS AND WHAT CONTEXT. WHAT IS YOUR VIEW OF THE
21 COMMON PHRASE, "EYE FOR AN EYE, TOOTH FOR A TOOTH"?

22 A YOU'RE CORRECT. IT IS MISSTATED, MISQUOTED. PEOPLE
23 USE THAT AS VENGEANCE. THAT'S NOT WHAT SCRIPTURE TEACHES.
24 THE PUNISHMENT WOULD FIT THE CRIME. THAT'S HOW I LOOK AT
25 IT, NOT AS VENGEANCE.

1 MR. MACDOUGALL: NO FURTHER QUESTIONS.

2 THE COURT: ANY MOTIONS ON THIS PARTICULAR ISSUE?

3 MR. ARIAIL: AT THIS POINT?

4 THE COURT: RIGHT, AT THIS POINT.

5 MR. ARIAIL: NO, NO, NO, NO.

6 MR. MACDOUGALL: NOTHING.

7 THE COURT: ALL RIGHT.

8 Q MR. MINA, DO YOU HAVE ANY PHYSICAL OR MENTAL PROBLEMS
9 WHY YOU COULD NOT SERVE ON THIS JURY?

10 A NO, YOUR HONOR.

11 Q DO YOU HAVE ANY MEDICAL PROBLEMS AS TO WHY YOU
12 COULDN'T SERVE ON THIS JURY?

13 A NO.

14 Q DO YOU HAVE ANY PERSONAL HARDSHIPS AS TO WHY YOU
15 COULD NOT SERVE ON THE JURY?

16 A NO.

17 Q DO YOU KNOW THE VICTIM IN THIS CASE, WHO IS MARANDA
18 WILLIAMS?

19 A NO, I DON'T.

20 Q OKAY. DO YOU KNOW MR. CHARLES CHRISTOPHER WILLIAMS,
21 WHO SITS TO MY RIGHT WITH THE SWEATER ON?

22 A NO, I DON'T.

23 Q DO YOU KNOW EITHER ONE -- ANY OF THE THREE ATTORNEYS
24 THAT SIT WITH MR. WILLIAMS?

25 A NO, YOUR HONOR.

1 Q DO YOU KNOW SOLICITOR ARIAIL OR HIS TWO ASSISTANTS OR
2 ANYONE ELSE IN HIS OFFICE?

3 A I DON'T KNOW SOLICITOR ARIAIL. THE NAME IS FAMILIAR
4 TO ME.

5 Q I'M GOING TO GIVE YOU A WITNESS LIST. WOULD YOU LOOK
6 AT THAT LIST AND TELL ME IF YOU RECOGNIZE ANY NAMES ON
7 THAT LIST.

8 A (COMPLIES) NO, YOUR HONOR.

9 Q THERE'S A SECOND LIST. WOULD YOU LOOK AT THAT LIST,
10 PLEASE SIR.

11 A (COMPLIES) NO, YOUR HONOR.

12 Q DON'T RECOGNIZE ANYBODY?

13 A NO.

14 Q THANK YOU VERY MUCH. I'M GOING TO READ YOU A
15 QUESTION, MR. MINA, ASK YOU TO PLEASE RESPOND TO IT.
16 OKAY. IN THIS CASE THE DEFENDANT IS BLACK AND THE VICTIM
17 IS WHITE. IT IS UNDISPUTED THAT THE BLACK DEFENDANT AND
18 THE WHITE VICTIM ENGAGED IN INTERRACIAL DATING. WOULD THE
19 FACT THAT THE DEFENDANT AND THE VICTIM ENGAGED IN
20 INTERRACIAL DATING MAKE IT DIFFICULT FOR YOU TO BE FAIR TO
21 EITHER THE STATE OR THE DEFENDANT?

22 A NO, YOUR HONOR.

23 Q DO YOU KNOW OF ANY REASON, PERSONAL OR OTHERWISE, AS
24 TO WHY YOU COULD NOT SERVE ON THIS JURY?

25 A NO.

1 Q ALL RIGHT. CAN YOU LISTEN TO THE TESTIMONY FROM THE
2 WITNESS STAND AND THE EVIDENCE PRESENTED IN THE COURTROOM
3 AND BASE YOUR DECISION ON THE EVIDENCE AND THE TESTIMONY
4 YOU HEAR HERE IN THE COURTROOM?

5 A YES.

6 Q ALL RIGHT. ANY FURTHER QUESTIONS FROM, I BELIEVE THE
7 SOLICITOR WENT FIRST. SOLICITOR, ANY FURTHER QUESTIONS?

8 MR. ARIAIL: JUST ONE.

9 THE COURT: OKAY.

10 BY MR. ARIAIL:

11 Q PAGE 2, I HAD THIS QUESTION. YOUR FIRST CHILD YOU
12 LIST AS, IS THAT A STEP CHILD?

13 A YES, THEY'RE ALL STEPCHILDREN.

14 Q THAT HE IS MENTALLY RETARDED, RESIDES AT WHITEN
15 VILLAGE?

16 A WHITEN CENTER. YES.

17 Q I'M NOT INTERESTED IN PROBING INTO ALL THAT. THAT'S
18 NOT WHAT I'M AFTER; BUT JUST SO WE COULD COVER ALL THE
19 BASES. IF THERE WERE EVIDENCE OF MENTAL ILLNESS PRESENTED
20 OR EMOTIONAL DISTURBANCE PRESENTED IN THIS CASE, WOULD THE
21 FACT THAT YOU HAVE A STEPSON THAT HAS A MENTAL
22 RETARDATION, WOULD THAT BE A, SUCH AN ISSUE THAT WOULD
23 CAUSE YOU DIFFICULTY IN BEING ABLE TO CARRY OUT YOUR
24 DUTIES, CARRY OUT YOUR DUTIES AS A JUROR?

25 A NO.