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[PP. 0001-0500]

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

(Capital PCR: 2005-CP-18-1368)

The Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2014-000387

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S.C. Supreme Court

Kenneth Simmons, #5066,

Respondent/Petitioner,

v.

State of South Carolina,

Petitioner/Respondent.

APPENDIX

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INDEX

INDEX	i

RECORD ON APPEAL FROM DIRECT APPEAL 1-3253

TRIAL TRANSCRIPT	1
INTRODUCTION OF CASE BY THE COURT	17
JURY QUALIFICATION	21
JURY <i>VOIR DIRE</i>	63
INDIVIDUAL JURY QUALIFICATION	74
RAY NASH	
Direct Examination by the Court	180
QUALIFICATION	194
FELIX ROSS	
Examination by the Court	212
QUALIFICATION	215
WILLIAM L. SILVERS, JR.	
Examination by the Court	220
Direct examination by the Solicitor	229
Cross examination by the Defense	231
Re-Direct examination by the Solicitor	239
QUALIFICATION	241
CHRISTOPHER BARTON	
Examination by the Court	246
Direct Examination by the Defense	255
Cross Examination by the Solicitor	257
Additional Examination by the Court	260
QUALIFICATION	263
PAUL RANDOLPH	
Examination by the Court	265
Direct Examination by the Solicitor	275
Cross Examination by the Defense	277

QUALIFICATION	280
HERBERT SIMMONS, JR.	
Examination by the Court	285
Direct Examination by the Defense	295
Cross Examination by the Solicitor	299
Re-Direct Examination by the Defense	302
QUALIFICATION	308
MARYANNE VALENTINO	
Examination by the Court	310
Direct Examination by the Solicitor	319
Cross Examination by the Defense	322
QUALIFICATION	325
DELORES EVANS	
Examination by the Court	327
Direct Examination by the Defense	335
Cross Examination by the Solicitor	340
Re-Direct Examination by the Defense	342
Re-Cross Examination by the Solicitor	344
QUALIFICATION	346
SHIRLEY PRINGLE	
Examination by the Court	349
Direct Examination by the Defense	355
Cross Examination by the Solicitor	358
QUALIFICATION	361
HUGH K. LESLEY, JR.	
Examination by the Court	363
Direct Examination by the Defense	368
Cross Examination by the Solicitor	369
Re-Direct Examination by the Defense	373
QUALIFICATION	374
EXCUSAL OF TWO JURORS	382

TONYA DENNIS	
Examination by the Court	385
Direct Examination by the Defense	391
Cross Examination by the Solicitor	394
QUALIFICATION	400
BENJAMIN J. DURHAM, III	
Examination by the Court	401
Direct Examination by the Defense	407
Cross Examination by the Solicitor	409
QUALIFICATION	413
J. SCOTT FIELDS	
Examination by the Court	414
Direct Examination by the Defense	419
Cross Examination by the Solicitor	421
QUALIFICATION	425
JAMES R. VANDELL	
Examination by the Court	425
Direct Examination by the Defense	433
Cross Examination by the Solicitor	435
Re-Direct Examination by the Defense	439
Re-Cross Examination by the Solicitor	440
QUALIFICATION	443
GREGORY M. ALLEN	
Examination by the Court	445
QUALIFICATION	446
ALICE POSTELL	
Examination by the Court	450
Direct Examination by the Solicitor	456
Cross Examination by the Defense	460
QUALIFICATION	464
MILTON HANDLER, JR.	
Examination by the Court	467
Direct Examination by the Defense	474
Cross Examination by the Solicitor	479

QUALIFICATION	483
BERNARD LEWIS	
Examination by the Court	485
Direct Examination by the Solicitor	491
Cross Examination by the Defense	494
QUALIFICATION	502
THEODORE M. ANZELL	
Examination by the Court	503
Direct Examination by the Defense	510
QUALIFICATION	516
RAY GREEN	
Examination by the Court	517
Direct Examination by the Solicitor	524
Cross Examination by the Defense	528
Re-Direct Examination by the Solicitor	534
Re-Cross Examination by the Defense	535
QUALIFICATION	537
REBADELL AHL	
Examination by the Court	540
Direct Examination by the Defense	545
Cross Examination by the Solicitor	548
QUALIFICATION	550
DEBORAH SHUFORD	
Examination by the Court	555
Direct Examination by the Defense	561
Cross Examination by the Solicitor	564
QUALIFICATION	567
SANDRA MALONE	
Examination by the Court	569
Direct Examination by the Solicitor	574
Cross Examination by the Defense	576
QUALIFICATION	577

EDWARD LIVINGSTON	
Examination by the Court	578
Direct Examination by the Solicitor	584
Cross Examination by the Defense	587
QUALIFICATION	589
PAUL T. MOORE	
Examination by the Court	592
Direct Examination by the Defense	597
Cross Examination by the Solicitor	601
Re-Direct Examination by the Defense	603
QUALIFICATION	607
MARK S. WILLIAMSON	
Examination by the Court	615
Direct Examination by the Solicitor	620
Cross Examination by the Defense	624
QUALIFICATION	629
LINDA WETHERELL	
Examination by the Court	631
Direct Examination by the Defense	639
QUALIFICATION	642
BRYAN SULLIVAN	
Examination by the Court	644
Direct Examination by the Solicitor	647
Cross Examination by the Defense	651
QUALIFICATION	655
DONALD SHORT	
Examination by the Court	657
Direct Examination by the Defense	658
Cross Examination by the Solicitor	667
QUALIFICATION	669
CHRISTOPHER CAMPEAU	
Examination by the Court	671
Direct Examination by the Solicitor	675
Cross Examination by the Defense	678

QUALIFICATION	682
JAMES A. BROOKS, JR.	
Examination by the Court	685
Direct Examination by the Defense	689
Cross Examination by the Solicitor	691
QUALIFICATION	692
SHARON T. MCSWAIN	
Examination by the Court	694
Direct Examination by the Solicitor	698
Cross Examination by the Defense	703
Re-Direct Examination by the Solicitor	705
QUALIFICATION	706
JAN H. WHITMORE	
Examination by the Court	708
Direct Examination by the Defense	714
Cross Examination by the Solicitor	717
QUALIFICATION	719
BRYAN R. TALLENT	
Examination by the Court	722
Direct Examination by the Solicitor	727
Cross Examination by the Defense	730
QUALIFICATION	733
AMY L. ARNONE	
Examination by the Court	735
Direct Examination by the Defense	742
Cross Examination by the Solicitor	745
QUALIFICATION	748
RONALD D. BOLES	
Examination by the Court	754
Direct Examination by the Solicitor	756
Examination by the Court	757
Cross Examination by the Defense	762
Re-Direct Examination by the Defense	765
QUALIFICATION	770

CAROLYN K. MCKNIGHT	
Examination by the Court	772
ALBERT S. NETTLES, JR.	
Examination by the Court	775
Direct Examination by the Defense	780
Cross Examination by the Solicitor	784
QUALIFICATION	787
PETER A. ARMSTRONG	
Examination by the Court	789
Direct Examination by the Solicitor	794
Cross Examination by the Defense	796
QUALIFICATION	799
ROBERT S. HUGHES	
Examination by the Court	802
Direct Examination by the Defense	807
Cross Examination by the Solicitor	812
QUALIFICATION	814
MILFORD E. CARTER	
Examination by the Court	815
Direct Examination by the Solicitor	821
Cross Examination by the Defense	823
QUALIFICATION	827
JOHN A. WASHINGTON	
Examination by the Court	829
Direct Examination by the Defense	833
Cross Examination by the Solicitor	838
QUALIFICATION	843
CURTIS J. TSAI	
Examination by the Court	850
Direct Examination by the Solicitor	855
Cross Examination by the Defense	859
QUALIFICATION	862

CARLESS B. TOMPKINS	
Examination by the Court	865
QUALIFICATION	867
MARTIN G. ROBERTSON	
Examination by the Court	868
QUALIFICATION	871
MICHAEL S. BRYANT	
Examination by the Court	872
Direct Examination by the Defense	881
Cross Examination by the Solicitor	885
QUALIFICATION	889
MELISSA BOUTEN	
Examination by the Court	889
Direct Examination by the Solicitor	894
Cross Examination by the Defense	897
QUALIFICATION	901
JOYCE W. EDDY	
Examination by the Court	902
QUALIFICATION	906
LEON A. COOK	
Examination by the Court	907
Direct Examination by the Solicitor	913
Cross Examination by the Defense	916
QUALIFICATION	918
MARK ZEIGLER	
Examination by the Court	920
Direct Examination by the Defense	926
QUALIFICATION	929
RICHARD L. DUBOSE	
Examination by the Court	931
Direct Examination by the Solicitor	936
Cross Examination by the Defense	939

QUALIFICATION	942
CHERL M. SIGWALD	
Examination by the Court	944
QUALIFICATION	945
RICHARD LARSON	
Examination by the Court	946
Direct Examination by the Defense	952
QUALIFICATION	953
JAMES MCCRAE	
Examination by the Court	957
QUALIFICATION	960
COLLOQUY.....	962
GUILT/INNOCENT PHASE	
JURY SELECTION.....	969
REMARKS TO THE JURY BY THE COURT	1006
OPENING STATEMENT BY THE SOLICITOR.....	1032
OPENING STATEMENT BY THE DEFENSE	1044
INSTRUCTIONS TO THE JURY.....	1058
<u>IN CAMERA</u> COLLOQUY	1064
REMARKS TO THE JURY BY THE COURT	1071
DEBBIE S. BROWN	
Direct Examination by the Solicitor	1075
Cross Examination by the Defense	1079
VIRGINJA WILSON	
Direct Examination by the Solicitor	1083
Cross Examination by the Defense	1097

WILLIAM A. PENN, JR.	
Direct Examination by the Solicitor	1106
Cross Examination by the Defense	1111
JOHNNY BROOKE NEALY	
Direct Examination by the Solicitor	1112
Cross Examination by the Defense	1120
GEORGE MURRAY	
Direct Examination by the Solicitor	1122
Cross Examination by the Defense	1125
MICHAEL ALLEN TURNER	
Direct Examination by the Solicitor	1127
Cross Examination by the Defense	1130
RONALD BRUCE MANCHESTER	
Direct Examination by the Solicitor	1132
Cross Examination by the Defense	1156
Re-Direct Examination by the Solicitor	1187
CLAY ALLEN NICHOLS	
Direct Examination by the Solicitor	1193
Cross Examination by the Defense	1219
Re-Direct Examination by the Solicitor	1229
STEVEN M. DERRICK	
Direct Examination by the Solicitor	1261
EVERETT D. HOWARD	
Direct Examination by the Solicitor	1288
Cross Examination by the Defense	1298
MARGARET ANN BUSH	
Direct Examination by the Solicitor	1300
Cross Examination by the Defense	1303
SAMUEL JACKSON	
Direct Examination by the Solicitor	1304
NATHAN PERRYMAN	
Direct Examination by the Solicitor	1306
Cross Examination by the Defense	1309

EVERETT HOWARD	
Direct Examination by the Solicitor	1310
Cross Examination by the Defense	1318
ANN REESE	
Direct Examination by the Solicitor	1321
Cross Examination by the Defense	1328
<u>IN CAMERA</u> HEARING ON THE LAW	1333
CONTAINED CROSS-EXAMINATION	1353
MAYBELLE HENDRICKS	
Direct Examination by the Solicitor	1357
KENNETH M. MEARS	
Direct Examination by the Solicitor	1362
Cross Examination by the Defense	1396
ANN REESE	
Direct Examination by the Solicitor	1406
Cross Examination by the Defense	1408
MARY JOHNSON	
Direct Examination by the Solicitor	1416
IRA JEFFCOAT	
Direct Examination by the Solicitor	1419
MICHAEL LEONARD BAIRD	
Direct Examination by the Solicitor	1443
LAUREN CRANE	
Direct Examination by the Solicitor	1457
Cross Examination by the Defense	1471
MICHAEL LEONARD BAIRD	
Direct Examination by the Solicitor Cross Examination by the Defense	1482
Re-Direct Examination by the Solicitor	1483
Re-Cross Examination by the Defense	1484
Re-Direct Examination by the Solicitor	1484
Re-Cross Examination by the Defense	1485

DR. JOHN MICHAEL FOXWORTH	
Direct Examination by the Defense	1493
Cross Examination by the Solicitor	1505
Re-Direct Examination by the Defense	1511
Re-Cross Examination by the Solicitor	1547
Re-Direct Examination by the Defense	1597
DR. CHARLES BARTON SAYLOR	
Direct Examination by the Defense	1600
Cross Examination by the Solicitor	1611
Re-Direct Examination by the Defense	1627
DR. THOMAS WILLIAM BEHRMANN	
Direct Examination by the Defense	1631
Cross Examination by the Solicitor	1653
Re-Direct Examination by the Defense	1673
Re-Cross Examination by the Solicitor	1674
DR. JEFFREY VIDIC	
Direct Examination by the Defense	1676
<u>IN CAMERA</u> HEARING ON LAW (FIFTH AMENDMENT AND RIGHT TO COUNSEL).....	
	1691
DR. JEFFREY VIDIC	
Direct Examination by the Defense continued	1699
Cross Examination by the Solicitor	1703
Re-Direct Examination by the Defense	1709
DR. LESLIE N. SANDLER	
Direct Examination by the Defense	1712
Cross Examination by the Solicitor	1735
DR. LEWIS RANDOLPH WAID	
Direct Examination by the Defense	1747
Cross Examination by the Solicitor	1751
<u>IN CAMERA</u> HEARING	1758
DR. LEWIS RANDOLPH WAID (<u>IN CAMERA</u>)	
Direct Examination by the Defense	1775
Cross Examination by the Solicitor	1791
Re-Direct Examination by the Defense	1826

CAPTAIN BUTCH POLK (<u>IN CAMERA</u>)	
Examination by the Court	1835
KENNETH SIMMONS (<u>IN CAMERA</u>)	
Examination by the Court	1855
DR. RANDY WAID	
Direct Examination by the Defense	1866
Cross Examination by the Solicitor	1889
DR. LESLIE SANDLER	
Direct Examination by the Solicitor	1917
Cross Examination by the Defense	1921
Re-Direct Examination by the Solicitor	1922
CLOSING ARGUMENT BY THE SOLICITOR	1951
CLOSING ARGUMENT BY THE DEFENSE	2027
CHARGE TO THE JURY	2063
EXCEPTIONS/ADDITIONS	2094
ADDITIONAL CHARGE TO THE JURY	2103
COLLOQUY	2105
VERDICT	2111
POLLING OF THE JURY	2114
COLLOQUY	2117
PENALTY PHASE	
REMARKS TO THE JURY BY THE COURT	2133
OPENING STATEMENTS BY THE SOLICITOR	2137
KATHERINE GUILLIARD	
Direct Examination by the Solicitor	2142
VIRGINIA WILSON	
Direct Examination by the Solicitor	2151

RONALD BRUCE MANCHESTER	
Direct Examination by the Solicitor	2159
GLADYS SUDDETH	
Direct Examination by the Solicitor	2164
DR. CLAY ALLEN NICHOLS	
Direct Examination by the Solicitor	2170
JESSIE MAE WILSON	
Direct Examination by the Solicitor	2180
<u>IN CAMERA COLLOQUY</u>	2186
KENNETH SIMMONS	
Examination by the Court	2190
COLLOQUY	2198
OPENING REMARKS BY THE DEFENSE	2200
CALVIN LINNING, SR.	
Direct Examination by the Defense	2202
Cross Examination by the Solicitor	2212
CHARLIE WILSON	
Direct Examination by the Defense	2215
Cross Examination by the Solicitor	2223
GENE ALEX SIMMONS	
Direct Examination by the Defense	2229
Cross Examination by the Solicitor	2241
ANNETTE S. GEDDIS	
Direct Examination by the Defense	2242
Cross Examination by the Solicitor	2250
SANDRA FRANKLIN	
Direct Examination by the Defense	2252
Cross Examination by the Solicitor	2261
ROBIN BEECH SCHMIEDING	
Direct Examination by the Defense	2263

DORIS V. RUSSELL	
Direct Examination by the Defense	2277
Cross Examination by the Solicitor	2285
COLLOQUY.....	2288
KENNETH SIMMONS	
Examination by the Court	2290
CHARGE CONFERENCE.....	2292
CLOSING ARGUMENTS BY THE SOLICITOR	2301
CLOSING ARGUMENTS BY DEFENSE COUNSEL THEOS	2343
CLOSING REMARKS BY THE DEFENDANT.....	2347
CLOSING ARGUMENTS BY DEFENSE COUNSEL BELL.....	2348
CHARGE TO THE JURY	2359
COLLOQUY.....	2387
REQUESTS TO CHARGE CONFERENCE	2397
TESTIMONY REPLAYED.....	2407
EXCEPTIONS/ ADDITIONS TO CHARGES	2411
MOTIONS	2424
VERDICT	2454
POLLING OF THE JURY.....	2455
COLLOQUY.....	2458
SENTENCE	2467
COLLOQUY.....	2469
CERTIFICATE OF COURT REPORTER.....	2475
COMPETENCY HEARING (FEBRUARY 11-12, 1999).....	2476

PAULA WALSH	
Direct Examination by the Solicitor	2488
Cross Examination by the Defense	2491
Re-Direct Examination by the Solicitor.....	2496
JAN HILTON	
Direct Examination by the Solicitor	2497
Cross Examination by the Defense	2501
Re-Direct Examination by the Solicitor.....	2510
PRISCILLA JOHNSON	
Direct Examination by the Solicitor	2511
Cross Examination by the Defense	2527
SIDNEY JACKSON	
Direct Examination by the Solicitor	2544
Cross Examination by the Defense	2557
Re-Direct Examination by the Solicitor.....	2576
EMMETT MCKINNEY, JR.	
Direct Examination by the Solicitor	2578
Cross Examination by the Defense	2581
LESLIE SANDLER	
Direct Examination by the Solicitor	2593
Cross Examination by the Defense	2597
Re-Direct Examination by the Solicitor.....	2604
Re-Cross Examination by the Defense	2632
DR. THOMAS MCABEE	
Direct Examination by the Defense	2673
Cross Examination by the Solicitor	2698
DR. THOMAS BEHRMANN	
Direct Examination by the Defense	2704
Cross Examination by the Solicitor	2724
DR. JEFFREY VIDIC	
Direct Examination by the Defense	2727
COLLOQUY.....	2741

<u>JACKSON V. DENNO HEARING</u>	2783
MARGARET BUSH (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2783
Cross Examination by the Defense	2786
SAMUEL JACKSON (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2789
Cross Examination by the Defense	2790
SGT. NATHAN PERRYMAN (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2791
Cross Examination by the Defense	2793
EVERETT HOWARD (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2798
Cross Examination by the Defense	2813
ANN REESE (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2832
Cross Examination by the Defense	2839
MAYBELLE HENDRICKS (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2857
Cross Examination by the Defense	2862
KENNY MEARS (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2873
MOTIONS/JURY QUESTIONNAIRES	2916
APRIL 30, 1998, PRE-TRIAL TRANSCRIPT	3009
FEBRUARY 17, 1999, PRE-TRIAL TRANSCRIPT	3070
INDICTMENTS	3153
ORDER FOR EVALUATION AS TO COMPETENCY AND CRIMINAL RESPONSIBILITY ..	3163
REPORT OF FINDING MENTAL CAPACITY	3166
STATE'S EXHIBIT #17 (FIRST TAPED INTERVIEW WITH APPELLANT)	3170
STATE'S EXHIBIT #29 (HANDWRITTEN STATEMENT OF APPELLANT)	3198
STATE'S EXHIBIT #18 (TAPED INTERVIEW WITH APPELLANT)	3200

STATE'S EXHIBIT #19 (THIRD TAPED INTERVIEW WITH APPELLANT).....	3211
DEFENDANT'S REQUEST TO CHARGE #16-A (ROBBERY).....	3221
POST-TRIAL MOTION TO SET ASIDE JURY'S RECOMMENDATION OF SENTENCE, OR IN THE ALTERNATIVE A NEW SENTENCING TRIAL.....	3222
ORDER.....	3225
NOTICE OF INTENT TO SEEK DEATH PENALTY	3234
JURY'S FINDING AS TO AGGRAVATING CIRCUMSTANCE.....	3235
RECOMMENDATION OF SENTENCE DEATH PENALTY.....	3237
AFFIRMATION OF DEATH SENTENCE	3238
SENTENCE	3239
TRIAL JUDGE'S REPORT.....	3240
CERTIFICATE OF COUNSEL FOR APPELLANT.....	3253

DIRECT APPEAL DOCUMENTS:

FINAL BRIEF OF APPELLANT (MAY 7, 2002)	3254
FINAL BRIEF OF RESPONDENT (MAY 7, 2002)	3310
FINAL REPLY BRIEF OF APPELLANT (MAY 7, 2002).....	3369
PETITION FOR WRIT OF CERTIORARI (<i>FRANKLIN, ET AL</i> ; JULY 17, 2002).....	3379
RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI (<i>FRANKLIN, ET AL</i> ; AUGUST 27, 2002)	3397
MOTION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>ATKINS V. VIRGINIA</u> (JULY 26, 2002)	3424
RESPONDENT'S RESPONSE TO MOTION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>ATKINS V. VIRGINIA</u> (AUGUST 26, 2002).....	3429
SOUTH CAROLINA SUPREME COURT ORDER DENYING WITHOUT PREJUDICE MOTION TO ALLOW SUPPLEMENTAL BRIEFING (SEPTEMBER 19, 2002)	3439

PETITION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>FRANKLIN V. MAYNARD</u> (DECEMBER 12, 2003)	3440
ORDER DENYING PETITION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>FRANKLIN V. MAYNARD</u> (JANUARY 28, 2004)	3446
<u>STATE V. SIMMONS</u> , OPINION NO. 25838	3447
PETITION FOR REHEARING (JULY 15, 2004)	3459
ORDER DENYING PETITION FOR REHEARING (AUGUST 9, 2004)	3465
REMITTITUR (AUGUST 9, 2004)	3467
PETITION FOR STAY OF EXECUTION (AUGUST 12, 2004)	3468
RETURN TO PETITION FOR STAY OF EXECUTION (AUGUST 25, 2004)	3472
ORDER GRANTING PETITION FOR STAY OF EXECUTION (SEPTEMBER 9, 2004)	3476
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (NOVEMBER 8, 2004)	3478
BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF SOUTH CAROLINA (DECEMBER 15, 2004)	3547
SUPREME COURT OF THE UNITED STATES LETTER (JANUARY 24, 2005)	3581
 <u>POST CONVICTION RELIEF DOCUMENTS:</u>	
PETITION FOR STAY OF EXECUTION (JANUARY 27, 2005)	3582
RETURN TO PETITION FOR STAY OF EXECUTION (JANUARY 31, 2005)	3587
ORDER GRANTING PETITION FOR STAY OF EXECUTION (FEBRUARY 2, 2005)	3592
ORDER APPOINTING COUNSEL (MARCH 14, 2005)	3594
MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (MAY 4, 2005)	3597
RETURN TO MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (AUGUST 10, 2005)	3604
POST-CONVICTION RELIEF APPLICATION (AUGUST 29, 2005)	3611

ORDER DENYING MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (SEPTEMBER 8, 2005).....	3617
APPLICANT’S REQUEST FOR RECONSIDERATION OF APPLICANT’S MOTION TO SEEK FUNDING BY EX PARTE PROCEEDINGS/OR IN THE ALTERNATIVE, MOTION TO ALTER/AMEND THE JUDGMENT (SEPTEMBER 14, 2005).....	3624
RESPONDENT’S RETURN TO INITIAL APPLICANT FOR POST-CONVICTION RELIEF; MOTION TO DISMISS; MOTION FOR MORE DEFINITE STATEMENT; MOTION FOR STATUS CONFERENCE (NOVEMBER 7, 2005)	3632
ORDER DENYING APPLICANT’S REQUEST FOR RECONSIDERATION OF APPLICANT’S MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (FEBRUARY 3, 2006)	3652
APPLICANT’S MOTION TO COMPEL DISCOVERY FROM RESPONDENT (DECEMBER 12, 2006)	3658
RESPONSE TO APPLICANT’S MOTION TO COMPEL (DECEMBER 21, 2006).....	3693
ORDER DENYING MOTION TO COMPEL DISCOVERY FROM RESPONDENT (JANUARY 11, 2007)	3705
MOTION TO SUBSTITUTE COUNSEL (JANUARY 18, 2007)	3709
RESPONSE TO APPLICANT’S MOTION TO SUBSTITUTE COUNSEL (JANUARY 26, 2007)	3712
ORDER RELIEVING COUNSEL (MAY 14, 2007)	3715
FORM 4 ORDER APPOINTING COUNSEL (JUNE 5, 2007).....	3721
MOTION TO SUBSTITUTE COUNSEL (JULY 21, 2008)	3722
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (DECEMBER 21, 2009)	3731
NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE (JANUARY 14, 2010)	3736
APPLICANT’S PRE-HEARING BRIEF (JANUARY 21, 2010).....	3784

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 1-4, 2010	3817
STIPULATIONS	3820
TESTIMONY	
MARJORIE HAMMOCK	
Direct Examination by Ms. Paavola	3823
Cross Examination by Mr. Zelenka	3846
Re-Direct Examination by Ms. Paavola.....	3904
DR. MARC TASSE	
Direct Examination by Ms. Paavola	3916
Cross Examination by Mr. Zelenka	3971
Re-Direct Examination by Ms. Paavola.....	4014
Re-Cross Examination by Mr. Zelenka	4021
JAMES EVANS AIKEN	
Direct Examination by Ms. Paavola	4025
Cross Examination by Mr. Zelenka	4037
Re-Direct Examination by Ms. Paavola.....	4047
R. WALTER BAILEY	
Direct Examination by Mr. Zelenka	4049
Cross Examination by Mr. Morton	4071
STEVE LAMBERT	
Direct Examination by Mr. Young	4073
Cross Examination by Mr. Zelenka	4125
Re-Direct Examination by Mr. Young.....	4136
JERRY THEOS	
Direct Examination by Mr. Zelenka	4138
Cross Examination by Mr. Morton	4169
CERTIFICATE OF COURT REPORTER	4177
EXHIBITS FROM FEBRUARY 1-4, 2010 PCR HEARING:	
APPLICANT'S EXHIBIT #1 (PSYCHIATRIC EVALUATION)	4178
APPLICANT'S EXHIBIT #2 (PACKET, 14 DOCUMENTS – AFFIDAVITS).....	4190
APPLICANT'S EXHIBIT #3 (HAMMOCK, CURRICULUM VITAE)	4254

APPLICANT’S EXHIBIT #4 (SIMMONS FAMILY HISTORY).....	4257
APPLICANT’S EXHIBIT #5 (DR. TASSE, CURRICULUM VITAE).....	4258
APPLICANT’S EXHIBIT #6 (SUMMARY SIMMONS I.Q. TEST RESULTS).....	4281
APPLICANT’S EXHIBIT #7 (JAMES AIKEN, CURRICULUM VITAE).....	4282
APPLICANT’S EXHIBIT #8 (STEPHEN LAMBERT, CURRICULUM VITAE).....	4291
APPLICANT’S EXHIBIT #9 (LIFECODES FILE)	4295
APPLICANT’S EXHIBIT #10 (GULLIKSEN AFFIDAVIT).....	4456
APPLICANT’S EXHIBIT #13 (POWERPOINT PRESENTATION, APPLICANT).....	4457
APPLICANT’S EXHIBIT #15 (DQAI RESULTS – 3 PAGES)	4461
APPLICANT’S EXHIBIT #16 (SWAB RESULTS)	4464
APPLICANT’S EXHIBIT #18 (LIFECODE LETTER, 2/04/99).....	4465
STATE’S EXHIBIT #1 (LETTER/REPORT, 1/23/98)	4466
STATE’S EXHIBIT #2 (LETTER/WHITEHEAD, 2/02/98).....	4470
STATE’S EXHIBIT #3 (LETTER BAILEY/BEARD, 10/22/98)	4475
STATE’S EXHIBIT #4 (SANDLER CURRICULUM VITAE).....	4478
STATE’S EXHIBIT #5 (PSYCHIATRIC EVALUATION, 2/10/99)	4485
STATE’S EXHIBIT #6 (TIME LINE).....	4491
STATE’S EXHIBIT #7 (SUPPLEMENTAL MOTION).....	4515
STATE’S EXHIBIT #8 (LETTER).....	4518
STATE’S EXHIBIT #9 (LETTER).....	4519
STATE’S EXHIBIT #10 (LETTER).....	4520
STATE’S EXHIBIT #11 (LETTER).....	4521
STATE’S EXHIBIT #12 (LETTER).....	4522

STATE'S EXHIBIT #13 (LETTER, 2 PAGES)	4523
STATE'S EXHIBIT #14 (YUNGMAN REPORT).....	4525
STATE'S EXHIBIT #15 (LIST OF DEFENDANTS)	4531
STATE'S EXHIBIT #16 (LIST)	4534
STATE'S EXHIBIT #17 (LETTER, SIMMONS)	4535
ORDER TO COMPEL ATTENDANCE AND AUTHORIZING FUNDS FOR EXPERT SERVICES (MAY 18, 2010).....	4536
NOTICE OF INTENT TO RELY ON AFFIDAVIT OF DR. CHARLOTTE WORD & DR. ROBIN COTTON AS EVIDENCE IN REPLY (MARCH 17, 2011).....	4537
MEMORANDUM IN SUPPORT OF REPLY AFFIDAVIT (MARCH 17, 2011)	4596
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 15, 2011	4626
JAMES A. BELL	
Direct Examination by Mr. Zelenka	4633
Cross Examination by Mr. Morton	4644
WALTER M. BAILEY	
Direct Examination by Ms. Brown	4645
Cross Examination by Mr. Young	4655
Re-Direct Examination by Ms. Brown	4680
CERTIFICATE OF COURT REPORTER.....	4704
EXHIBITS FROM DECEMBER 15, 2011 PCR HEARING:	
APPLICANT'S EXHIBIT #19 (12/21/98 LETTER)	4705
APPLICANT'S EXHIBIT #20 (DNA INFORMATION).....	4706
APPLICANT'S EXHIBIT #21 (DNA INFORMATION).....	4707
STATE'S EXHIBIT #18 (DEPOSITION – MICHAEL LEONARD BAIRD).....	4708
(ORIGINAL, SEALED EXHIBIT ON FILE WITH THE CLERK'S OFFICE)	
STATE'S EXHIBIT #19 (DEPOSITION – LAUREN CRANE).....	4786
(ORIGINAL, SEALED EXHIBIT ON FILE WITH THE CLERK'S OFFICE)	

COURT’S EXHIBIT #1 (DEPOSITION – RICHARD LEO)	4873
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 2, 2012	4921
CHARLOTTE WORD	
Direct Examination by Ms. Paavola	4923
Cross Examination by Mr. Zelenka	4976
Re-Direct Examination by Ms. Paavola.....	4995
ROBIN COTTON	
Direct Examination by Ms. Paavola	4999
Cross Examination by Mr. Zelenka	5017
Re-Direct Examination by Ms. Paavola.....	5021
CERTIFICATE OF COURT REPORTER.....	5025
EXHIBITS FROM JULY 2, 2012 PCR HEARING:	
PLAINTIFF’S EXHIBIT A (C.V. OF DR. WORD).....	5026
PLAINTIFF’S EXHIBIT B (AFFIDAVIT OF DR. WORD).....	5044
PLAINTIFF’S EXHIBIT C (SUPPLEMENTAL AFFIDAVIT)	5099
PLAINTIFF’S EXHIBIT D (UPDATED/CORRECTED CHART)	5105
PLAINTIFF’S EXHIBIT E (P.M. TYPES).....	5106
PLAINTIFF’S EXHIBIT F (C.V. OF DR. COTTON).....	5110
APPLICANT’S POST-HEARING BRIEF (SEPTEMBER 19, 2012).....	5118
RESPONDENT’S POST-HEARING BRIEF (SEPTEMBER 20, 2012).....	5175
REPLY TO RESPONDENT’S POST-HEARING BRIEF (OCTOBER 11, 2012)	5233
RESPONDENT’S POST-HEARING REPLY BRIEF (OCTOBER 12, 2012).....	5251
ORDER GRANTING POST-CONVICTION RELIEF PURSUANT TO <u>ATKINS V.</u> <u>VIRGINIA</u> , 536 U.S. 304 (2002) (OCTOBER 15, 2013)	5293
RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 1, 2013)	5312
RESPONSE IN OPPOSITION TO RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 5, 2013).....	5335

RESPONDENT'S AMENDED MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 15, 2013).....	5340
LETTER FROM PAAVOLA IN RESPONSE TO RESPONDENT'S AMENDED MOTION TO ALTER (NOVEMBER 19, 2013)	5365
MOTION FOR RECONSIDERATION HEARING TRANSCRIPT DATED DECEMBER 4, 2013	5366
PROPOSED ORDER GRANTING RESPONDENT'S AMENDED MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (DECEMBER 31, 2013)	5395
PROPOSED ORDER DENYING RESPONDENT'S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (DECEMBER 31, 2013)	5423
ORDER DENYING RESPONDENT'S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (JANUARY 22, 2014)	5436

ADDITIONAL COURT DOCUMENTS:

INDICTMENTS AND SENTENCING SHEETS	5452

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #18a (CD 1 OF 2) [VIDEO DEPOSITION]
STATE'S EXHIBIT #18b (CD 2 OF 2) [VIDEO DEPOSITION]**

1 STATE OF SOUTH CAROLINA) IN THE
2) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT

3 STATE OF S.C.,)
4)
PLAINTIFF,)
5)
- VS -)
6 KENNETH SIMMONS,)
7)
DEFENDANT.)
8 _____)

VOLUME I

TRANSCRIPT OF RECORD
#98-GS-18-0075 THRU 079

ST. GEORGE, S.C.
FEBRUARY 22-28, 1999
MARCH 1-2, 1999

B E F O R E:

HON. RODNEY A. PEEPLES; JUDGE, AND A JURY

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I N D E X**PAGE**

TITLE PAGE	<u>1</u>
INDEX.	2-14
EXHIBITS	15-16
JURY QUALIFICATION	21-61
JURY VOIR DIRE	63-73

RAY NASH

EXAMINATION BY THE COURT	180

FELIX ROSS

EXAMINATION BY THE COURT.	212

WILLIAM L. SILVERS, JR.

EXAMINATION BY THE COURT.	220
DIRECT EXAMINATION BY MR. BAILEY.	229
CROSS-EXAMINATION BY MR. THEOS.	231
RE-DIRECT EXAMINATION BY MR. THEOS.	239

CHRISTOPHER BARTON

EXAMINATION BY THE COURT.	246
DIRECT EXAMINATION BY MR. THEOS	255
CROSS-EXAMINATION BY MR. BAILEY	257

PAUL RANDOLPH

EXAMINATION BY THE COURT.	265
DIRECT EXAMINATION BY MR. BAILEY.	275
CROSS-EXAMINATION BY MR. THEOS.	277

HERBERT SIMMONS, JR.

EXAMINATION BY THE COURT.	285
DIRECT EXAMINATION BY MR. THEOS	295
CROSS-EXAMINATION BY MR. THEOS	299
RE-DIRECT EXAMINATION BY BAILEY	302

MARYANNE VALENTINO

EXAMINATION BY THE COURT.	310
DIRECT EXAMINATION BY MR. BAILEY.	319
CROSS-EXAMINATION BY MR. THEOS.	322

(CONTINUED)

1 INDEX (CONTINUED)

2 DELORES EVANS

3	EXAMINATION BY THE COURT.	327
4	DIRECT EXAMINATION BY MR. THEOS	335
5	CROSS-EXAMINATION BY MR. BAILEY	340
6	RE-DIRECT EXAMINATION BY MR. THEOS.	342
7	RE-CROSS EXAMINATION BY MR. BAILEY.	344

8 SHIRLEY PRINGLE

9	EXAMINATION BY THE COURT.	349
10	DIRECT EXAMINATION BY MR. BAILEY.	355
11	CROSS-EXAMINATION BY MR. THEOS.	358

12 HUGH K. LESLEY, JR.

13	EXAMINATION BY THE COURT	363
14	DIRECT EXAMINATION BY MR. THEOS	368
15	CROSS-EXAMINATION BY MR. BAILEY	369
16	RE-DIRECT EXAMINATION BY MR. THEOS.	373

17 TONYA DENNIS

18	EXAMINATION BY THE COURT	385
19	DIRECT EXAMINATION BY MR. BAILEY.	391
20	CROSS-EXAMINATION BY MR. THEOS.	394

21 BENJAMIN J. DURHAM, III

22	EXAMINATION BY THE COURT.	401
23	DIRECT EXAMINATION BY MR. THEOS	407
24	CROSS-EXAMINATION BY MR. BAILEY	409

25 J. SCOTT FIELDS

26	EXAMINATION BY THE COURT	414
27	DIRECT EXAMINATION BY MR. BAILEY.	419
28	CROSS-EXAMINATION BY MR. THEOS	421

29 JAMES R. VANDELL

30	EXAMINATION BY THE COURT.	425
31	DIRECT EXAMINATION BY MR. THEOS	433
32	CROSS-EXAMINATION BY MR. BAILEY	435
33	RE-DIRECT EXAMINATION BY MR. THEOS.	439
34	RE-CROSS EXAMINATION BY MR. BAILEY.	440

35 (CONTINUED)

INDEX (CONTINUED)

PAGEALICE POSTELL

EXAMINATION BY THE COURT	450
DIRECT EXAMINATION BY MR. BAILEY.	456
CROSS-EXAMINATION BY MR. THEOS.	460

MILTON HANDLER, JR.

EXAMINATION BY THE COURT	467
DIRECT EXAMINATION BY MR. THEOS	474
CROSS-EXAMINATION BY MR. BAILEY	479

BERNARD LEWIS

EXAMINATION BY THE COURT.	485
DIRECT EXAMINATION BY MR. BAILEY	491
CROSS-EXAMINATION BY MR. THEOS.	494

THEODORE M. ANZELL

EXAMINATION BY THE COURT.	503
DIRECT EXAMINATION BY MR. THEOS	510

RAY GREEN

EXAMINATION BY THE COURT	517
DIRECT EXAMINATION BY MR. BAILEY	524
CROSS-EXAMINATION BY MR. THEOS.	528
RE-DIRECT EXAMINATION BY MR. BAILEY	534
RE-CROSS EXAMINATION BY MR. THEOS	535

REBADELL AHL

EXAMINATION BY THE COURT.	540
DIRECT EXAMINATION BY MR. THEOS	545
CROSS-EXAMINATION BY MR. BAILEY	548

DEBORAH SHUFORD

EXAMINATION BY THE COURT.	555
DIRECT EXAMINATION BY MR. THEOS	561
CROSS-EXAMINATION BY MR. BAILEY	564

SANDRA MALONE

EXAMINATION BY THE COURT	569
DIRECT EXAMINATION BY MR. BAILEY.	574
CROSS-EXAMINATION BY MR. THEOS.	576

INDEX (CONTINUED)

PAGEEDWARD LIVINGSTON

EXAMINATION BY THE COURT.	578
DIRECT EXAMINATION BY MR. BAILEY.	584
CROSS-EXAMINATION BY MR. THEOS.	587

PAUL T. MOORE

EXAMINATION BY THE COURT.	592
DIRECT EXAMINATION BY MR. THEOS.	597
CROSS-EXAMINATION BY MR. BAILEY.	601
RE-CROSS EXAMINATION BY MR. THEOS.	603

MARK S. WILLIAMSON

EXAMINATION BY THE COURT.	615
DIRECT EXAMINATION BY MR. BAILEY.	620
CROSS-EXAMINATION BY MR. THEOS.	624

LINDA WETHERELL

EXAMINATION BY THE COURT.	631
DIRECT EXAMINATION BY MR. THEOS.	639

BRYAN SULLIVAN

EXAMINATION BY THE COURT.	644
DIRECT EXAMINATION BY MR. BAILEY.	647
CROSS-EXAMINATION BY MR. THEOS.	651

DONALD SHORT

EXAMINATION BY THE COURT.	657
DIRECT EXAMINATION BY MR. THEOS.	658
CROSS-EXAMINATION BY MR. BAILEY.	667

CHRISTOPHER CAMPEAU

EXAMINATION BY THE COURT.	671
DIRECT EXAMINATION BY MR. BAILEY.	675
CROSS-EXAMINATION BY MR. THEOS.	678

JAMES A. BROOKS, JR.

EXAMINATION BY THE COURT.	685
DIRECT EXAMINATION BY MR. THEOS.	689
CROSS-EXAMINATION BY MR. BAILEY.	691

INDEX (CONTINUED)

PAGE

SHARON T. MCSWAIN

EXAMINATION BY THE COURT	694
DIRECT EXAMINATION BY MR. BAILEY.	698
CROSS-EXAMINATION BY MR. THEOS.	703
RE-DIRECT EXAMINATION BY MR. BAILEY	705

JAN H. WHITMORE

EXAMINATION BY THE COURT	708
DIRECT EXAMINATION BY MR. THEOS	714
CROSS-EXAMINATION BY MR. BAILEY	717

BRYAN R. TALLENT

EXAMINATION BY THE COURT.	722
DIRECT EXAMINATION BY MR. BAILEY.	727
CROSS-EXAMINATION BY MR. THEOS.	730

AMY L. ARNONE

EXAMINATION BY THE COURT.	735
DIRECT EXAMINATION BY MR. THEOS	742
CROSS-EXAMINATION BY MR. BAILEY	745

RONALD D. BOLES

EXAMINATION BY THE COURT.	754
DIRECT EXAMINATION BY MR. BAILEY.	756
EXAMINATION BY THE COURT.	757
CROSS-EXAMINATION BY MR. BAILEY	762
RE-DIRECT EXAMINATION BY MR. THEOS.	765

CAROLYN K. MCKNIGHT

EXAMINATION BY THE COURT.	772

ALBERT S. NETTLES, JR.

EXAMINATION BY THE COURT.	775
DIRECT EXAMINATION BY MR. THEOS	780
CROSS-EXAMINATION BY MR. BAILEY	784

PETER A. ARMSTRONG

EXAMINATION BY THE COURT	789
DIRECT EXAMINATION BY MR. BAILEY.	794
CROSS-EXAMINATION BY MR. THEOS.	796

INDEX (CONTINUED)

PAGE

ROBERT S. HUGHES

EXAMINATION BY THE COURT.	802
DIRECT EXAMINATION BY MR. THEOS	807
CROSS-EXAMINATION BY MR. BAILEY	812

MILFORD E. CARTER

EXAMINATION BY THE COURT.	815
DIRECT EXAMINATION BY MR. BAILEY.	821
CROSS-EXAMINATION BY MR. THEOS.	823

JOHN A. WASHINGTON

EXAMINATION BY THE COURT.	829
DIRECT EXAMINATION BY MR. THEOS	833
CROSS-EXAMINATION BY MR. BAILEY	838

CURTIS J. TSAI

EXAMINATION BY THE COURT.	850
DIRECT EXAMINATION BY MR. BAILEY.	855
CROSS-EXAMINATION BY MR. THEOS.	859

CARLESS B. TOMPKINS

EXAMINATION BY THE COURT.	865

MARTIN G. ROBERTSON

EXAMINATION BY THE COURT.	868

MICHAEL S. BRYANT

EXAMINATION BY THE COURT.	872
DIRECT EXAMINATION BY MR. THEOS	881
CROSS-EXAMINATION BY MR. BAILEY	885

MELISSA BOUTEN

EXAMINATION BY THE COURT.	889
DIRECT EXAMINATION BY MR. BAILEY.	894
CROSS-EXAMINATION BY MR. THEOS.	897

JOYCE W. EDDY

EXAMINATION BY THE COURT.	902

(CONTINUED)

INDEX (CONTINUED)

PAGE

LEON A. COOK

EXAMINATION BY THE COURT.	907
DIRECT EXAMINATION BY MR. BAILEY.	913
CROSS-EXAMINATION BY MR. THEOS.	916

MARK ZEIGLER

EXAMINATION BY THE COURT.	920
DIRECT EXAMINATION BY MR. THEOS.	926

RICHARD L. DUBOSE

EXAMINATION BY THE COURT.	931
DIRECT EXAMINATION BY MR. BAILEY.	936
CROSS-EXAMINATION BY MR. THEOS.	939

CHERYL M. SIGWALD

EXAMINATION BY THE COURT.	944

RICHARD LARSON

EXAMINATION BY THE COURT.	946
DIRECT EXAMINATION BY MR. THEOS.	952

JAMES MCCRAE

EXAMINATION BY THE COURT.	957

* * * * *

WEDNESDAY, FEBRUARY 24, 1999

GUILT PHASE

JURY SELECTION	969
REMARKS TO THE JURY BY THE COURT	1006
OPENING STATEMENT BY MR. BAILEY.	1032
OPENING STATEMENT BY MR. THEOS.	1044

DEBBIE S. BROWN

DIRECT EXAMINATION BY MR. BAILEY.	1075
CROSS-EXAMINATION BY MR. THEOS.	1079

VIRGINIA WILSON

DIRECT EXAMINATION BY MR. BAILEY.	1083
CROSS-EXAMINATION BY MR. THEOS.	1097

INDEX (CONTINUED)

PAGEWILLIAM A. PENN, JR.

DIRECT EXAMINATION BY MR. BAILEY. . . . 1106
 CROSS-EXAMINATION BY MR. THEOS. . . . 1111

JOHNNY BROOKE NEALY

DIRECT EXAMINATION BY MR. BAILEY . . . 1112
 CROSS-EXAMINATION BY MR. THEOS. . . . 1120

GEORGE MURRAY

DIRECT EXAMINATION BY MR. BAILEY. . . . 1122
 CROSS-EXAMINATION BY MR. THEOS. . . . 1125

MICHAEL ALLEN TURNER

DIRECT EXAMINATION BY MR. BAILEY. . . . 1127
 CROSS-EXAMINATION BY MR. THEOS. . . . 1130

RONALD BRUCE MANCHESTER

DIRECT EXAMINATION BY MR. BAILEY. . . . 1132
 CROSS-EXAMINATION BY MR. THEOS. . . . 1156
 RE-DIRECT EXAMINATION BY MR. BAILEY . . 1187

CLAY ALLEN NICHOLS

DIRECT EXAMINATION BY MR. BAILEY. . . . 1193
 CROSS-EXAMINATION BY MR. THEOS. . . . 1219
 RE-DIRECT EXAMINATION BY MR. BAILEY . . 1229

THURSDAY, FEBRUARY 25, 1999

STEVEN M. DERRICK

DIRECT EXAMINATION BY MR. BAILEY. . . . 1261

EVERETT D. HOWARD

DIRECT EXAMINATION BY MR. BAILEY. . . . 1288
 CROSS-EXAMINATION BY MR. THEOS 1298

MARGARET ANN BUSH

DIRECT EXAMINATION BY MR. BAILEY. . . . 1300
 CROSS-EXAMINATION BY MR. THEOS. . . . 1303

(CONTINUED)

INDEX (CONTINUED)

PAGESAMUEL JACKSON

DIRECT EXAMINATION BY MR. BAILEY. . . . 1304

NATHAN PERRYMAN

DIRECT EXAMINATION BY MR. BAILEY. . . . 1306

CROSS-EXAMINATION BY MR. THEOS. . . . 1309

EVERETT HOWARD

DIRECT EXAMINATION BY MR. BAILEY. . . . 1310

CROSS-EXAMINATION BY MR. THEOS. . . . 1318

ANN REESE

DIRECT EXAMINATION BY MR. BAILEY. . . . 1321

CROSS-EXAMINATION BY MR. THEOS. . . . 1328

MAYBELLE HENDRICKS

DIRECT EXAMINATION BY MR. BAILEY. . . . 1357

KENNETH M. MEARS

DIRECT EXAMINATION BY MR. BAILEY. . . . 1362

CROSS-EXAMINATION BY MR. THEOS. . . . 1396

ANN REESE

DIRECT EXAMINATION BY MR. BAILEY. . . . 1406

CROSS-EXAMINATION BY MR. THEOS. . . . 1408

MARY JOHNSON

DIRECT EXAMINATION BY MR. BAILEY. . . . 1416

IRA JEFFCOAT

DIRECT EXAMINATION BY MR. BAILEY. . . . 1419

MICHAEL LEONARD BAIRD

DIRECT EXAMINATION BY MR. BAILEY . . . 1443

(CONTINUED)

INDEX (CONTINUED)

PAGELAUREN CRANE

DIRECT EXAMINATION BY MR. BAILEY. . . .	1457
CROSS-EXAMINATION BY MR. THEOS. . . .	1471

MICHAEL LEONARD BAIRD

DIRECT EXAMINATION BY MR. BAILEY. . . .	1474
CROSS-EXAMINATION BY MR. THEOS. . . .	1482
RE-DIRECT EXAMINATION BY MR. BAILEY . . .	1483
RE-CROSS EXAMINATION BY MR. THEOS . . .	1484
RE-DIRECT EXAMINATION BY MR. BAILEY . . .	1484
RE-CROSS EXAMINATION BY MR. THEOS . . .	1485

* * * * *

FRIDAY, FEBRUARY 26, 1999JOHN MICHAEL FOXWORTH, M.D.

DIRECT EXAMINATION BY MR. THEOS	1493
CROSS-EXAMINATION BY MR. BAILEY	1505
CONT'D DIRECT EXAM. BY MR. THEOS. . . .	1511
CROSS-EXAMINATION BY MR. BAILEY	1547
RE-DIRECT EXAMINATION BY MR. THEOS. . . .	1597

DR. CHARLES BARTON SAYLOR

DIRECT EXAMINATION BY MR. THEOS	1600
CROSS-EXAMINATION BY MR. BAILEY	1611
RE-DIRECT EXAMINATION BY MR. THEOS. . . .	1627

DR. THOMAS WILLIAM BEHRMANN

DIRECT EXAMINATION BY MR. THEOS	1631
CROSS-EXAMINATION BY MR. BAILEY	1653
RE-DIRECT EXAMINATION BY MR. THEOS. . . .	1673
RE-CROSS EXAMINATION BY MR. BAILEY. . . .	1674

DR. JEFFREY VIDIC

DIRECT EXAMINATION BY MR. THEOS	1676
CROSS-EXAMINATION BY MR. BAILEY	1699
RE-DIRECT EXAMINATION BY MR. THEOS. . . .	1709

(CONTINUED)

INDEX (CONTINUED)

DR. LESLIE N. SANDLER

DIRECT EXAMINATION BY MR. THEOS 1747
 CROSS-EXAMINATION BY MR. BAILEY 1751

DR. LEWIS RANDOLPH WAID

DIRECT EXAMINATION BY MR. THEOS 1747
 EXAMINATION BY MR. BAILEY 1751
 CONT'D DIRECT EXAMINATION BY MR. THEOS. 1752

(THE FOLLOWING IS PROFFERED TESTIMONY OUT OF THE
 PRESENCE OF THE JURY.)

DR. LEWIS RANDOLPH WAID

DIRECT EXAMINATION BY MR. THEOS 1775
 CROSS-EXAMINATION BY MR. BAILEY 1791
 RE-DIRECT EXAMINATION BY MR. THEOS. . . 1826

CAPTAIN BUTCH POLK

EXAMINATION BY THE COURT. 1835

SATURDAY, FEBRUARY 27, 1999KENNETH SIMMONS

EXAMINATION BY THE COURT 1855

DR. RANDY WAID

DIRECT EXAMINATION BY MR. THEOS 1866
 CROSS-EXAMINATION BY MR. BAILEY 1889

DR. LESLIE N. SANDLER

DIRECT EXAMINATION BY MR. BAILEY. . . . 1917
 EXAMINATION BY MR. THEOS. 1921
 CONT'D DIRECT EXAMINATION BY MR. BAILEY 1922

CLOSING ARGUMENT BY MR. BAILEY 1951
 CLOSING ARGUMENT BY MR. THEOS. 2027
 CHARGE TO THE JURY 2063

SUNDAY, FEBRUARY 28, 1999

JURY IN WITH VERDICT 2111
 POLLING OF THE JURY. 2114

KATHERINE GUILLIARD

DIRECT EXAMINATION BY MR. BAILEY. . . . 2142

VIRGINIA WILSON

DIRECT EXAMINATION BY MR. BAILEY. . . . 2151

RONALD BRUCE MANCHESTER

DIRECT EXAMINATION BY MR. BAILEY. . . . 2159

GLADYS SUDDETH

DIRECT EXAMINATION BY BAILEY. 2164

DR. CLAY ALLEN NICHOLS

DIRECT EXAMINATION BY MR. BAILEY. . . . 2170

JESSIE MAE WILSON

DIRECT EXAMINATION BY MR. BAILEY. . . . 2180

OPENING REMARKS BY MR. BELL. 2200

CALVIN LINNING, SR.

DIRECT EXAMINATION BY MR. BELL. 2202

CROSS-EXAMINATION BY MR. BAILEY 2212

CHARLIE WILSON

DIRECT EXAMINATION BY MR. BELL. 2215

CROSS-EXAMINATION BY MR. BAILEY 2223

GENE ALEC SIMMONS

DIRECT EXAMINATION BY MR. BELL. 2229

CROSS-EXAMINATION BY MR. BAILEY 2241

ANNETTE S. GEDDIS

DIRECT EXAMINATION BY MR. BELL. 2242

CROSS-EXAMINATION BY MR. BAILEY 2250

(CONTINUED)

INDEX (CONTINUED)

PAGESANDRA FRANKLIN

DIRECT EXAMINATION BY MR. BELL.	2252
CROSS-EXAMINATION BY MR. BAILEY	2261

ROBIN BEECH SCHMIEDING

DIRECT EXAMINATION BY MR. BELL.	2263

DORIS V. RUSSELL

DIRECT EXAMINATION BY MR. BELL.	2277
CROSS-EXAMINATION BY MR. BAILEY	2285
CLOSING ARGUMENT BY MR. BAILEY	2301
CLOSING ARGUMENT BY MR. THEOS	2343
CLOSING ARGUMENT BY MR. SIMMONS	2347
CLOSING ARGUMENT BY MR. BELL	2348
CHARGE TO THE JURY	2359

THURSDAY, MARCH 2, 1999

SENTENCING	2465
COURT REPORTER CERTIFICATE	2475

E X H I B I T S

		<u>ID</u>	<u>PAGE</u> <u>EV</u>
	<u>GUILT PHASE</u>		
	S-5 (CRIME SCENE SKETCH)		1140
	S-6 (HOSE)		1142
	S 7 (BLACK ROPE-LIKE MATERIAL)		1142
	S-8 (ROPE-LIKE MATERIAL)		1144
	S-14 (PHOTO)	1147	
	S-15 (PHOTO)	1147	1275
	S-6 (F.B.I. REPORT)		1174
	S 7 & 9 (PHOTOS)		1177
	S 10-14 (PHOTOS)		1183
	S-16 (PIECE OF KITCHEN FLOORING)		1191
	S-14 (SHOES)		1275
	S-15 (PHOTOGRAPHIC CHART)		1275
	S-20 (TAPE (12/5/97)		1367
	S-17 (TAPE (12/5/97)		1367
	S-28 (MIRANDA CARD)	1371	1373
	S-12 (WAIVER FORM)		1386
	S-21 (SECOND TAPE (12/5/97)	1389	1389
	S-13 (STATEMENT)		1394
	S-22 (TAPE #3)		1394
	S-19 (TRANSCRIPT)		1395
	S-23 (BANK ENVELOPE)		1418
	S-24 (CHART)		1464
	S 25 & 26 (CHARTS)		1479
	S-30 (I.Q. TEST SCORES)		1598
	<u>PENALTY PHASE</u>		
	S 1 & 2 (RECORDS OF KENNETH SIMMONS)		2150
	S-9 (PHOTO)	2157	2158
	S-3 (PORTION OF VIDEO)		2160
	S-4 (PHOTO)		2162
	S-5 (PHOTO)		2162
	S-6 (PHOTO)		2163
	S 7 & 8 (PHOTOS)		2170

PAGE

DEFENDANT'S EXHIBITS

	<u>ID</u>	<u>EV</u>
D-1 (PHOTO)		1165
D 2 & 3 (LIFTS FROM PHONE)		1166
D 4 & 5 (LIFTS FROM PHONE)		1167
D-15 (AFFIDAVIT)	1338	

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THE COURT: GOOD MORNING, LADIES.

GOOD MORNING, GENTLEMEN. MAY I PLEASE THANK YOU FOR BEING HERE PRESENT WITH US TODAY. MY NAME IS RODNEY PEOPLES. I AM THE RESIDENT JUDGE OF THE SECOND JUDICIAL CIRCUIT COMPRISED OF BAMBERG, AIKEN, AND BARNWELL COUNTIES PURSUANT TO THE CONSTITUTIONAL MANDATE AND THE SOUTH CAROLINA CONSTITUTIONAL AUTHORITY. THE CHIEF JUSTICE ASSIGNS THE CIRCUIT JUDGES TO GET ON THEIR HORSE AND RIDE; SO WE RIDE CIRCUIT. AND IN MY TWENTY-FIVE YEARS AS A CIRCUIT JUDGE, I'VE HAD THE PLEASURE AND OPPORTUNITY OF PRESIDING IN EACH OF THE FORTY-SIX COUNTIES OF SOUTH CAROLINA. I HAVE BEEN ASSIGNED TO PRESIDE HERE THIS WEEK FOR GENERAL SESSIONS COURT. AND I NEED TO INTRODUCE YOU AT THIS TIME TO A NUMBER OF PERSONS THAT WILL BE PARTICIPATING IN THE PROCEEDINGS HERE THIS WEEK. (AT THIS TIME THE COURT INTRODUCES COURTROOM STAFF.) LADIES AND GENTLEMEN, AS THIS TRIAL UNFOLDS AND PROGRESSES, WE ARE GOING TO MAKE AN EXERTED EFFORT TO BE ON SCHEDULE. AND I SAY THAT AFTER GETTING OFF TO A POOR START THIS MORNING. YOU WERE SUMMONED TO BE HERE AT TEN O'CLOCK. I WAS HERE AT NINE O'CLOCK AS WERE THE ATTORNEYS FOR THE STATE AND THE DEFENDANT. BUT THERE ARE CERTAIN

1 MATTERS, LADIES AND GENTLEMEN, THAT MUST
2 NECESSARILY BE HANDLED OUTSIDE OF YOUR PRESENCE.
3 AND I ASSURE YOU, ALTHOUGH I'M A BIG U.S.C.
4 GAMECOCK FAN, WE WERE NOT IN CHAMBERS TELLING
5 CLEMSON JOKES. WE WERE GOING OVER SOME JUROR
6 REQUESTS THAT CAME IN LATE. FOR EXAMPLE, WE HAD TO
7 SUMMONS 350 JURORS. I HOPE THAT WE HAVE AT LEAST
8 100 REMAINING. BUT, FOR EXAMPLE, ONE OF THE JURORS
9 THAT WAS EXCUSED BY AGREEMENT THIS MORNING WAS NOT
10 A UNITED STATES CITIZEN. THEY HAD A GREEN CARD.
11 SO THAT PERSON IS NOT ELIGIBLE TO SERVE. SO
12 THERE'S NO NEED TO BURDEN YOU, LADIES AND
13 GENTLEMEN, WITH CALLING OUT OF 350 NAMES TO GO
14 THROUGH THE LITANY OF WHETHER SOMEONE IS CARING FOR
15 AN ELDERLY PARENT WHO'S ON THEIR DEATH BED, OR FOR
16 WHATEVER REASON, AND YOU HAVE SOMEWHAT OF A TRANSIT
17 POPULATION OF PEOPLE MOVING IN. BUT THEY'RE ALSO
18 MOVING OUT. AND WE DID ON WEDNESDAY OF LAST WEEK,
19 FEBRUARY THE 17TH, SPEND A BETTER PART OF A DAY
20 GOING THROUGH THESE JURY QUESTIONNAIRES THAT YOU'VE
21 RETURNED AND THE JURY INFORMATION. AND ALSO THIS
22 MORNING WE SPENT THE BETTER PART OF AN HOUR
23 REVIEWING THAT. BUT ALL OF THAT, LADIES AND
24 GENTLEMEN, IS AN EFFORT TO SAVE YOUR TIME. SO I
25 APOLOGIZE TO YOU THAT WE DID NOT START PROMPTLY AT

1 TEN O'CLOCK THIS MORNING; AND I DO THANK EACH OF
2 YOU FOR BEING HERE TODAY FOR THE PURPOSE OF
3 QUALIFICATION, POTENTIAL QUALIFICATION, IN REGARD
4 TO THE CASE THAT IS FOR TRIAL. SO, MADAM CLERK, AT
5 THIS TIME I AM GOING TO HAVE YOU CALL THE ROLL.
6 THERE'S NO NEED TO STATE YOUR NUMBER OF MILES FROM
7 YOUR HOME TO THE COURT HOUSE. FORTUNATELY
8 DORCHESTER MORE THAN DOUBLED THEIR JURY PAY FROM
9 TEN TO TWENTY-FIVE DOLLARS A DAY. THEY'RE STILL
10 PAYING TEN A DAY IN THAT RICH METROPOLIS OF
11 CHARLESTON COUNTY; AND IN COLUMBIA THEY PAY TEN A
12 DAY. THEY PAY TEN A DAY IN GREENVILLE. BUT YOUR
13 COUNTY COUNCILMAN AND COURT OFFICIALS -- I WISH YOU
14 WERE PAID A HUNDRED DOLLARS A DAY; THEN YOU WOULD
15 BE GLAD TO BE HERE. BUT I DON'T PAY TAXES IN
16 DORCHESTER COUNTY, SO WHEN YOU GET YOUR TAX BILL,
17 NOBODY WANTS TO PAY HIGHER TAXES. SO I APPRECIATE
18 THE FACT THAT YOU ARE PAID THE TWENTY-FIVE DOLLARS
19 A DAY. WE REALIZE THAT'S NOT ENOUGH. BUT THEY
20 ELIMINATED THE MILEAGE ASPECT OF IT AS HAVE MOST
21 OTHER COUNTIES. SO WHEN YOUR NAME IS CALLED, IT IS
22 UNNECESSARY FOR YOU TO STATE YOUR MILEAGE FROM YOUR
23 HOME TO THE COURT HOUSE. FURTHER, LADIES AND
24 GENTLEMEN, IT'S UNNECESSARY -- NOT NECESSARY -- TO
25 STATE YOUR AGE. WE HAVE A PRINTOUT OF INFORMATION

1 SETTING FORTH YOUR DATE OF BIRTH. SO WE ALREADY
2 KNOW THAT. PLEASE, LADIES AND GENTLEMEN; WE DO NOT
3 NEED TO KNOW WHETHER YOU'RE MARRIED, WHETHER YOU
4 ARE SINGLE, WHETHER YOU ARE DIVORCED, WHETHER YOU
5 HAVE A SIGNIFICANT OTHER, A SPOUSE OR THE
6 EQUIVALENT. THAT'S YOUR PRIVATE BUSINESS; AND WE
7 ARE NOT CONCERNED WITH THAT. SO WE'RE AT THIS ROLL
8 CALL. SINCE WE HAVE THESE QUESTIONNAIRES,
9 GENTLEMEN, I WOULD SUBMIT TO YOU THAT IT IS
10 UNNECESSARY TO STATE WHERE THEY WORK, WHERE THEIR
11 SPOUSE WORKS, BUT RATHER JUST TO SAY PRESENT. IS
12 THAT AGREEABLE WITH THE STATE?

13 MR. BAILEY: YES, SIR.

14 THE COURT: IS THAT AGREEABLE WITH
15 THE DEFENDANT?

16 MR. THEOS: THAT'S FINE, YOUR HONOR.

17 THE COURT: SO, MADAM CLERK, MAY I
18 PLEASE, MA'AM, ASK THAT YOU CALL THE ROLL, AND
19 THOSE PERSONS WHO THE SHERIFF HAS BEEN UNABLE TO
20 LOCATE, THE MAILINGS THAT WENT OUT, THE SUMMONS
21 THAT HAVE BEEN RETURNED, THE PERSONS THAT HAVE BY
22 CONSENT OF THE PARTIES WITH THE APPROVAL OF THE
23 COURT, IT'S UNNECESSARY TO CALL THE NAMES OF THOSE
24 PERSONS WHO WE DO NOT ANTICIPATE SHOULD BE HERE
25 PRESENT IN THE COURTROOM. THE JURY INFORMATION IS

ROLL CALL

1 A MATTER OF PUBLIC RECORD AND SHALL CONTINUE TO BE
2 A MATTER OF PUBLIC RECORD. SO, NOW, LADIES AND
3 GENTLEMEN, I PLEASE ASK THAT AS YOUR NAME IS CALLED
4 PLEASE STAND AND INDICATE YOUR PRESENCE. AND I
5 ASSUME, MADAM CLERK, I NOTE THE NICE GREEN, ST.
6 PATRICK'S DAY JUROR BADGES ON THE FRONT TWO OR
7 THREE ROWS ON MY RIGHT. AND AM I CORRECT THAT TO
8 THE LEFT SIDE OF THE COURTROOM ARE THOSE ONLY
9 JURORS SEATED IN THAT AREA. IS THAT CORRECT?

10 MR. MOULTRIE: THAT'S CORRECT, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. SO, LADIES
13 AND GENTLEMEN, YOU MAY PROCEED AT THIS TIME AND
14 CALL THE ROLL.

15 THE CLERK: NUMBER ONE, TERESA W.
16 ADAMS?

17 MRS. ADAMS: PRESENT.

18 THE CLERK: NUMBER FOUR, REBADELL B.
19 AHL?

20 MRS. AHL: PRESENT.

21 THE CLERK: NUMBER FIVE, GREGORY M.
22 ALLEN?

23 MR. ALLEN: PRESENT.

24 THE CLERK: NUMBER 10, THEODORE M.
25 ANZELL?

ROLL CALL

1 MR. ANZELL: PRESENT.

2 THE CLERK: NUMBER 11, AMY L.

3 ARMONE?

4 MS. ARMONE: PRESENT.

5 THE CLERK: NUMBER 12, PETER A.

6 ARMSTRONG?

7 MR. ARMSTRONG: PRESENT.

8 THE CLERK: NUMBER 16, CHRISTOPHER

9 BARTON?

10 MR. BARTON: PRESENT.

11 THE CLERK: NUMBER 20, CATHERINE L.

12 BIERLING?

13 MRS. BIERLING: PRESENT.

14 THE CLERK: NUMBER 25, RONALD D.

15 BOLES?

16 MR. BOLES: PRESENT.

17 THE COURT: EXCUSE ME, MA'AM?

18 MR. BOLES: EXCUSE ME. I HAVE A

19 DOCTOR'S APPOINTMENT THAT I HAVE TO BE AT AT 3:15.

20 I HAD SURGERY LAST TUESDAY, AND I HAVE A FOLLOW-UP.

21 I NEED TO BE THERE.

22 THE COURT: ALL RIGHT, MR. BOLES.

23 WE NEED -- WE'LL TAKE THAT UP BEFORE THREE O'CLOCK.

24 IS YOUR DOCTOR WITHIN A FORTY MILE RADIUS?

25 MR. BOLES: AT THE MEDICAL

ROLL CALL

UNIVERSITY, DOWNTOWN CHARLESTON.

THE COURT: ALL RIGHT. THANK YOU,
SIR. LADIES AND GENTLEMEN, I'M SURE THAT SOME OF
YOU HAVE A REQUEST TO BE EXCUSED OR TRANSFERRED. I
KNOW THAT THERE ARE AT LEAST THREE SCHOOL TEACHERS
THAT HAVE THAT REQUEST. AND PLEASE DO NOT AT THIS
TIME SHARE INFORMATION. I'LL GET TO THAT AS
QUICKLY AS WE CAN. NUMBER 21, MA'AM, IS KAREN
BISHOP?

THE CLERK: UNABLE TO LOCATE.

THE COURT: DO YOU GENTLEMEN HAVE
THAT OFF YOUR LIST, MR. SOLICITOR?

MR. BAILEY: I DO NOW, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. THEOS: WE DO NOW.

THE CLERK: NUMBER 27, BETTY J.
BOONE?

MRS. BOONE: PRESENT.

THE CLERK: NUMBER 35, HOWARD S.
BRIDGMAN, III?

MR. BRIDGMAN: PRESENT.

THE COURT: EXCUSE ME, MADAM CLERK.
APPROACH THE BENCH, PLEASE.
(AT THIS TIME BENCH CONFERENCE IS HELD.)

THE COURT: ALL RIGHT, MR.

ROLL CALL

1 SOLICITOR. THE CLERK INDICATES THAT NUMBER 29,
2 ELIZABETH R. BOYD HAS MOVED FROM THE COUNTY.

3 MRS. BOYD: I AM RIGHT HERE. I AM
4 SEPARATED AND MOVED.

5 THE COURT: ALL RIGHT. SO, MA'AM,
6 PLEASE NOW; I HAD ASKED MY LAW CLERK AND YOUR
7 CLERK TO GO OVER THIS LIST. AND I'M JUST GOING TO
8 HAVE TO CALL YOUR ATTENTION TO THOSE THAT YOU'RE
9 MISSING. SO WOULD YOU GO BACK TO NUMBER 29,
10 PLEASE?

11 THE CLERK: OKAY. NUMBER 29,
12 ELIZABETH R. BOYD?

13 MRS. BOYD: PRESENT.

14 THE CLERK: NUMBER 35, HOWARD S.
15 BRIDGMAN, III?

16 MR. BRIDGMAN: PRESENT.

17 THE CLERK: NUMBER 37, JAMES A.
18 BROOKS, JR.?

19 THE COURT: EXCUSE ME. THIRTY-SIX,
20 MA'AM.

21 THE CLERK: NOTHING. SHE'S SENDING
22 HER PAPER BACK TO US. AND SHE DID NOT REQUEST TO
23 BE EXCUSED.

24 THE COURT: CALL THE NAME, THEN, FOR
25 36 BECAUSE I HAVE BEEN GIVEN NO INFORMATION FROM

ROLL CALL

1 THE CLERK'S OFFICE FOR THAT JUROR TO BE EXCUSED.

2 THE CLERK: SHE JUST DIDN'T APPEAR
3 BECAUSE WE HAVE A CHECK-MARK THAT SHE SENT HER
4 PAPER BACK TO US. WE HAVE NOTHING TO SHOW THAT SHE
5 SENT ANYTHING BACK.

6 THE COURT: MA'AM, I APOLOGIZE. BUT
7 JUST CALL THE LADY'S NAME. NUMBER 36, SHIRLEY P.
8 BRITT. IF SHE'S NOT HERE, WE'LL SEND THE SHERIFF
9 FOR HER.

10 MRS. BRITT: I'M HERE.

11 THE COURT: SHE'S RIGHT THERE.

12 (INDICATING.)

13 MRS. BRITT: I'M SHIRLEY B. BRITT.

14 THE COURT: SHIRLEY B. AND NOT P.?

15 MRS. BRITT: RIGHT.

16 THE COURT: EVEN THOSE COMPUTERS
17 MAKE MISTAKES, MRS. BRITT. WE'RE GLAD TO HAVE YOU.
18 THANK YOU.

19 THE CLERK: NUMBER 37, JAMES A.
20 BROOKS, JR.?

21 MR. BROOKS: PRESENT.

22 THE CLERK: NUMBER 38, GEORGE L.
23 BROWN? (NO RESPONSE.) THAT WAS SENT TO THE
24 SHERIFF'S DEPARTMENT. NUMBER 39, LINDA G. BROWN?

25 THE COURT: ALL RIGHT. WELL, LET'S

ROLL CALL

1 HEAR FROM THE SHERIFF WHILE WE'RE GOING OVER THEM.
2 WHO FROM THE SHERIFF'S DEPARTMENT HAS INFORMATION
3 ON GEORGE L. BROWN? (NO RESPONSE.) ALL RIGHT.
4 WE'LL COME BACK TO THAT.
5 THE CLERK: NUMBER 39, LINDA G.
6 BROWN?
7 MS. BROWN: PRESENT.
8 THE CLERK: NUMBER 40, RHEA E.
9 BRYAN?
10 MS. BRYAN: RIGHT HERE.
11 THE CLERK: NUMBER 42, LINDA C.
12 BRYANT?
13 MS. BRYANT: PRESENT.
14 THE CLERK: NUMBER 43, MICHAEL J.
15 BRYANT?
16 MR. BRYANT: PRESENT.
17 THE CLERK: NUMBER 44, RICHARD A.
18 BRYANT?
19 MR. BRYANT: PRESENT.
20 THE CLERK: NUMBER 46, DAVID P.
21 BURNETTE?
22 MR. BURNETTE: PRESENT.
23 THE CLERK: NUMBER 50, CHRISTOPHER
24 P. CAMPEAU?
25 MR. CAMPEAU: PRESENT.

1 THE CLERK: NUMBER 51, MICHAEL D.
2 CANTRELL?

3 MR. CANTRELL: PRESENT.

4 THE CLERK: NUMBER 52, JOHN S.
5 CARACCILO? (NO RESPONSE.)

6 THE COURT: ALL RIGHT. WAS THERE A
7 RETURN ON THAT ONE, MADAM CLERK?

8 THE CLERK: NO, SIR.

9 THE COURT: ALL RIGHT. AND WAS IT
10 TURNED OVER TO THE SHERIFF?

11 THE CLERK: IT WAS RETURNED. IT
12 SAYS HE WAS NOT HERE.

13 THE COURT: ALL RIGHT. WELL, WHERE
14 IS THE REPRESENTATIVE OF THE SHERIFF'S DEPARTMENT
15 THAT I CAN BE SEARCHING HIM OUT? GO GET HIM. WE'RE
16 GOING TO BE THROUGH WITH THE ROLL CALL IN ABOUT
17 FIVE MINUTES; SO GO SEND FOR HIM NOW, PLEASE;
18 WHOEVER FROM THE SHERIFF'S DEPARTMENT IS GOING TO
19 SEARCH THEM OUT.

20 THE CLERK: NUMBER 55, MILFORD E.
21 CARTER? RONALD L. CARPENTER?

22 MR. CARTER: PRESENT.

23 THE CLERK: NUMBER 57, KELLY L.
24 CHILDREE?

25 THE COURT: SHE WAS EXCUSED. HAS A

ROLL CALL

1 THREE YEAR OLD CHILD. WE HAD GONE OVER THAT.
2 NUMBER 57 IS NOT EXPECTED TO BE HERE.

3 THE CLERK: NUMBER 58, CLARENCE A.
4 CLARK, JR.?

5 MR. CLARK: PRESENT.

6 THE CLERK: NUMBER 59, RICHARD W.
7 CLEEVE, III?

8 MR. CLEEVE: PRESENT.

9 THE CLERK: NUMBER 64?

10 THE COURT: EXCUSE ME; 61, THOMAS
11 COGGINS?

12 THE CLERK: HE'S MOVED.

13 THE COURT: I HAVE NO INFORMATION ON
14 THAT AND WAS NOT PROVIDED. WE'VE NOT DISCUSSED IT,
15 SO WE'LL HAVE TO SEND THE SHERIFF TO LOOK FOR HIM
16 UNLESS YOU'VE GOT SATISFACTORY EVIDENCE. AND MADAM
17 COURT REPORTER, YOU ARE MAKING A RECORD OF ALL
18 THIS, NOW?

19 THE COURT REPORTER: YES, SIR.

20 THE CLERK: WE'VE GOT SOMETHING FROM
21 THE SHERIFF'S DEPARTMENT ON THAT.

22 THE COURT: YOU JUST IT IN THE LAST
23 FIFTEEN MINUTES SINCE WE WERE IN CHAMBERS?

24 MS. GRAHAM: NO, SIR.

25 THE COURT: WHEN DID YOU GET IT?

1 MS. GRAHAM: I CANNOT ANSWER THAT.
2 BUT I HAVE HE MOVED, AND IT CAME IN FROM THE
3 SHERIFF.

4 THE COURT: WHAT SAYS THE STATE?

5 MR. BAILEY: YOUR HONOR, I WOULD
6 JUST ACCEPT THAT THEY MOVED AND EXCUSE THEM.

7 THE COURT: FOR THE DEFENSE?

8 MR. BELL: YES, SIR.

9 THE CLERK: NUMBER---

10 THE COURT: JUST A MINUTE, MA'AM. I
11 NEED TO GET THE INFORMATION THAT YOU HAVE THAT
12 THEY'VE MOVED AND GIVE THAT TO THE COURT REPORTER
13 SO THAT IT CAN BE MADE A PART AND PARCEL OF THE
14 RECORD. IN A CASE OF THIS NATURE, THERE MUST BE A
15 DEFINITIVE EXPLANATION AS TO THE PRESENCE OR
16 ABSENCE OF EACH JUROR ON THE RECORD, PLEASE. GIVE
17 IT TO THE COURT REPORTER, PLEASE. MARK THERE ON IT
18 "AGREED MOVED OUT OF COUNTY." (CLERK COMPLIES.)

19 THE CLERK: NUMBER 64, RITA E.
20 CONFER? (NO RESPONSE.)

21 THE COURT: DO YOU HAVE A RETURN ON
22 64, MADAM CLERK?

23 THE DEPUTY CLERK: YES, SIR.

24 THE COURT: OKAY. WE'LL HAVE THE
25 SHERIFF LOOK FOR HER.

ROLL CALL

1 THE CLERK: NUMBER 65, LEON A. COOK?
2 MR. COOK: PRESENT.
3 THE CLERK: NUMBER 67, RON W.
4 COPELAND?
5 MR. COPELAND: PRESENT.
6 THE CLERK: NUMBER 74, BETH M.
7 CUNNINGHAM?
8 MS. CUNNINGHAM: PRESENT.
9 THE CLERK: NUMBER 76, RICHARD A.
10 CUSHMAN, JR.?
11 MR. CUSHMAN: PRESENT.
12 THE CLERK: NUMBER 81, TONYA C.
13 DENNIS?
14 THE COURT: NUMBER 79; JERRY DAVIS.
15 THE DEPUTY CLERK: SHERIFF IS UNABLE
16 TO LOCATE.
17 THE COURT: DO YOU AGREE, GENTLEMEN,
18 THAT THAT JUROR, THE SHERIFF IS UNABLE TO LOCATE,
19 AND THEY NEED SEARCH NO FURTHER?
20 MR. BAILEY: THE STATE WOULD AGREE,
21 YOUR HONOR.
22 THE COURT: THE DEFENSE?
23 MR. BELL: YES, SIR.
24 THE CLERK: NUMBER 81, TONYA C.
25 DENNIS?

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MS. DENNIS: PRESENT.

THE CLERK: NUMBER 87, STACY A.

DRAWDY?

THE COURT: THAT WAS FAILURE TO
LOCATE THAT WE PREVIOUSLY HAD REVIEWED.

THE CLERK: WE HAD SOMETHING SENT TO
THE SHERIFF'S DEPARTMENT, BUT IT HAS NOT RETURNED.

THE COURT: ARE YOU ON NUMBER 87?

THE CLERK: YES, SIR.

THE COURT: IS THAT STILL ACTIVE ON
YOUR LIST?

MR. BAILEY: YOUR HONOR, I HAD
EXCUSED ON MY LIST.

THE COURT: I HAD EXCUSED ON MINE.
FOR THE DEFENSE?

MR. BELL: YES, SIR.

THE COURT: ALL RIGHT. THAT WAS A
FAILURE TO LOCATE; SENT TO THE SHERIFF'S
DEPARTMENT. NUMBER 87, STACY DRAWDY IS EXCUSED.

THE CLERK: NUMBER 90, RICHARD L.
DUBOSE?

MR. DUBOSE: PRESENT.

THE CLERK: NUMBER 93, BENJAMIN J.
DURHAM, III?

MR. DURHAM: PRESENT.

ROLL CALL

1 THE CLERK: NUMBER 95, JOYCE W.

2 EDDY?

3 MS. EDDY: PRESENT.

4 THE CLERK: NUMBER 98, WANDA M.

5 ELLIS?

6 THE COURT: THAT WAS AN EXCUSED THIS
7 MORNING; COLLEGE STUDENT? (JUROR STANDS.) OH, IS
8 THAT MS. ELLIS? MA'AM, WE HAD YOU DOWN AS A
9 COLLEGE STUDENT.

10 MS. ELLIS: NO, SIR; I'M A TEACHER.

11 THE COURT: WELL, WE'LL UN-EXCUSE
12 YOU. WE'RE GLAD TO HAVE YOU, AND WE'LL TAKE YOURS
13 UP AT THE PROPER TIME.

14 THE CLERK: NUMBER 100, ANNIS M.
15 ENCARNACION?

16 MS. ENCARNACION: PRESENT.

17 THE COURT: DID SHE ANSWER PRESENT?

18 THE CLERK: YES, SHE DID. NUMBER
19 104, DELORES EVANS?

20 MS. EVANS: PRESENT.

21 THE CLERK: NUMBER 105, MICHAEL H.

22 FAHS?

23 MR. FAHS: PRESENT.

24 THE CLERK: NUMBER 106, THOMAS L.

25 FEDRICK?

1 MR. FEDRICK: PRESENT.

2 THE CLERK: NUMBER 107, J. SCOTT
3 FIELDS?

4 MR. FIELDS: PRESENT.

5 THE CLERK: NUMBER 110, HEATHER S.
6 FOUCHECOURT?

7 MS. FOUCHECOURT: (NO RESPONSE.)

8 THE CLERK: THAT WAS ALSO SENT TO
9 THE SHERIFF'S DEPARTMENT.

10 THE COURT: WE'LL HAVE THE SHERIFF
11 LOOK FOR HER. I HAVE NO INFORMATION ON FAILURE TO
12 LOCATE.

13 THE CLERK: NUMBER 115, ANNE W.
14 GAITHER?

15 THE COURT: EXCUSE ME. GO BACK TO
16 112, PLEASE.

17 THE CLERK: UNABLE TO LOCATE ON
18 NUMBER 112.

19 THE COURT: DID YOU HAVE THAT
20 INFORMATION?

21 MR. BAILEY: NO, SIR, YOUR HONOR;
22 BUT WE'LL EXCUSE HER.

23 MR. BELL: EXCUSE HER, YOUR HONOR.

24 THE COURT: THAT'S FINE. BUT WE'RE
25 GOING TO HAVE TO GET THAT INFORMATION AND PUT IT

ROLL CALL

1 WITH THE CLERK OF COURT BECAUSE THAT WAS NEVER
2 CALLED TO MY ATTENTION THAT THE SHERIFF SAID THEY
3 WERE UNABLE TO LOCATE. SO PULL IT OUT, PLEASE, MS.
4 FOOTMAN.

5 THE CLERK: NUMBER 115, ANNE W.
6 GAITHER? (NO RESPONSE.)

7 THE COURT: HAVE THE SHERIFF LOOK
8 FOR HER.

9 THE CLERK: NUMBER 116, SUZANNE L.
10 GALENIAN?

11 MS. GALENIAN: PRESENT.

12 THE CLERK: NUMBER 122, PERVIS C.
13 GLOVER, JR.?

14 MR. GLOVER: PRESENT.

15 THE CLERK: NUMBER 125, VERNELL
16 GRANT? (NO RESPONSE.)

17 MS. FOOTMAN: UNABLE TO LOCATE.

18 THE COURT: WHEN DID YOU GET THAT
19 INFORMATION FROM THE SHERIFF'S DEPARTMENT; THIS
20 MORNING?

21 MS. FOOTMAN: YES, SIR.

22 THE COURT: ALL RIGHT, GENTLEMEN,
23 CAN YOU AGREE THAT THE SHERIFF'S DEPARTMENT THIS
24 MORNING REPORTED TO THE CLERK OF COURT THAT THEY'VE
25 SEARCHED THE COUNTY AND CANNOT FIND 125, VERNELL

ROLL CALL

1 GRANT?

2 MR. BAILEY: THE STATE AGREES, YOUR
3 HONOR.

4 MR. BELL: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. PULL THAT
6 INFORMATION AND HAND IT ON OVER TO THE CLERK OF
7 COURT BECAUSE WE'VE GOT TO DOCUMENT THE RECORD ON
8 THIS.

9 MS. FOOTMAN: THEY'VE CALLED THIS
10 INFORMATION INTO ME. THEY HAVE NOT ACTUALLY GOT
11 THE SUMMONS BACK YET. BUT I HAVE A LIST THAT I CAN
12 GO TO.

13 THE COURT: ALL RIGHT. WELL, NOTIFY
14 WHOEVER CALLED IN AND BRING THEM UP HERE AND PUT
15 THEM UNDER OATH UNLESS THEY HAVE AN AFFIDAVIT OF
16 FAILURE TO LOCATE OR UNLESS THEY SWEAR IN OPEN
17 COURT THAT THEY CAN'T LOCATE THEM. WE CAN'T JUST
18 ACCEPT A PHONE CALL BECAUSE I DON'T KNOW WHO CALLED
19 AND WHAT THEY SAID, AND WE NEED TO HAVE DOCUMENTED
20 PROOF OF WHAT HAPPENS WITH EACH JUROR. SO NOTIFY
21 THE PERSON FROM THE SHERIFF'S DEPARTMENT THAT GAVE
22 YOU THAT INFORMATION TO BE UP HERE AND BE PREPARED;
23 TO PUT IT IN THE RECORD.

24 THE CLERK: NUMBER 128, MICHAEL J.
25 GREEN? THAT WAS ALSO SENT TO THE SHERIFF'S

ROLL CALL

36

1 DEPARTMENT.

2 THE COURT: WHAT'S THE RESPONSE TO
3 THE SHERIFF'S DEPARTMENT?

4 THE CLERK: NO RESPONSE.

5 THE COURT: SO WE'LL JUST HAVE THE
6 SHERIFF KEEP LOOKING MAJOR; SMITTY?

7 THE DEPUTY: YES, SIR.

8 THE COURT: WHOEVER WITH THE
9 SHERIFF'S DEPARTMENT IS THE RESPONSIBLE PERSON FOR
10 SENDING THESE FAILING TO LOCATES IN BECAUSE WE NEED
11 THEM UP HERE, PLEASE. THANK YOU.

12 THE DEPUTY: YES, SIR.

13 THE CLERK: NUMBER 129, RAY N.
14 GREENE?

15 MR. GREENE: PRESENT.

16 THE CLERK: NUMBER 132, ANGELA M.
17 GRUSETSKIE? (NO RESPONSE.) WE HAD IT CHECKED THAT
18 SHE WOULD BE HERE. NUMBER 137, MILTON J. HANDLER,
19 JR.?

20 MR. HANDLER: PRESENT.

21 THE CLERK: NUMBER 139, MILDRED F.
22 HARNESS?

23 MS. HARNESS: PRESENT.

24 THE CLERK: NUMBER 143, ANNIE M.
25 HENDERSON? THAT WAS ALSO SENT TO THE SHERIFF.

ROLL CALL

37

1 NUMBER 146, NANCY B. HILL?

2 MS. HILL: PRESENT.

3 THE CLERK: NUMBER 149, JANIE M.

4 HODGES?

5 MS. HODGES: PRESENT.

6 THE COURT: ALL RIGHT. NUMBER 148

7 NOW.

8 THE CLERK: NUMBER 148.

9 MS. FOOTMAN: UNABLE TO LOCATE.

10 U.S. MILITARY, GEORGIA.

11 MR. BAILEY: YOUR HONOR, WE HAD THAT
12 ONE. HE HAS MOVED OUT OF STATE.

13 THE COURT: AGREED BY THE DEFENSE?

14 MR. BELL: YES, YOUR HONOR.

15 THE COURT: IN THE MILITARY;

16 EXCUSED.

17 THE CLERK: NUMBER 154, ROBERT S.

18 HUGHES?

19 MR. HUGHES: PRESENT.

20 THE CLERK: NUMBER 159, JIMI

21 JACKSON?

22 MR. JACKSON: PRESENT.

23 THE CLERK: NUMBER 162. IT WAS ALSO
24 SENT TO THE SHERIFF'S DEPARTMENT.

25 THE COURT: ANY RETURN, MA'AM?

ROLL CALL

1 MS. FOOTMAN: NO, SIR.

2 THE COURT: ALL RIGHT.

3 THE CLERK: NUMBER 165, MARTHA A.

4 JOHNSON.

5 MS. JOHNSON: PRESENT.

6 THE CLERK: NUMBER 169, BRENDA L.

7 JONES?

8 MS. JONES: PRESENT.

9 THE CLERK: NUMBER 172, SENICA D.

10 JONES?

11 MS. JONES: PRESENT.

12 THE CLERK: NUMBER 187. HE'S THE
13 ONE WHO COULDN'T FIND HIS CAR KEYS.

14 THE COURT: DO YOU WANT TO CALL HIS
15 NAME IN CASE HE'S HERE?

16 THE CLERK: RICHARD H. LARSON? (NO
17 RESPONSE.)

18 THE COURT: WELL, WE'LL PUT HIM ON
19 THE SHERIFF'S LIST. WHO IS THE SHERIFF AT THIS
20 TIME FOR THIS COUNTY?

21 THE CLERK: RAY NASH.

22 MR. MOULTRIE: HE'S HERE, YOUR
23 HONOR.

24 THE COURT: HE IS?

25 MR. MOULTRIE: YES, SIR.

ROLL CALL

39

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LESLEY, JR.?

LEWIS?

LINCOLN?

LIVINGSTON?

LYNCH?

MAJEWSKI?

MALONE?

THE COURT: WHERE IS HE?

MR. MOULTRIE: HE'S IN THE BACK.

THE CLERK: NUMBER 194, HUGH K.

MR. LESLEY: PRESENT.

THE CLERK: NUMBER 195, BERNARD R.

MR. LEWIS: PRESENT.

THE CLERK: NUMBER 197, JOE LEWIS?

MR. LEWIS: PRESENT.

THE CLERK: NUMBER 198, LEWIS

MR. LINCOLN: PRESENT.

THE CLERK: NUMBER 199, EDWARD A.

MR. LIVINGSTON: PRESENT.

THE CLERK: NUMBER 201, SHARON R.

MS. LYNCH: PRESENT.

THE CLERK: NUMBER 204, NORBERT L.

MR. MAJEWSKI: PRESENT.

THE CLERK: NUMBER 205, SANDRA A.

MS. MALONE: PRESENT.

ROLL CALL

1 THE CLERK: NUMBER 211, JEFFERSON L.
2 MAXEY?
3 MR. MAXEY: PRESENT.
4 THE CLERK: NUMBER 214, RONALD J.
5 MCELLIOGOTT?
6 THE COURT: THAT WAS A FAILURE TO
7 LOCATE WE HAD REVIEWED PREVIOUSLY. AGREED, MR.
8 SOLICITOR?
9 MR. BAILEY: WHICH ONE WAS THAT,
10 JUDGE?
11 THE COURT: 214.
12 MR. BAILEY: YES, SIR.
13 THE COURT: I HAD IT MARKED OFF,
14 FAILURE TO LOCATE, BY AGREEMENT EXCUSED.
15 MR. BAILEY: YES, SIR.
16 THE CLERK: NUMBER 216, CAROLYN K.
17 MCKNIGHT?
18 MS. MCKNIGHT: PRESENT.
19 THE CLERK: NUMBER 219, JOSEPH W.
20 MCRAE?
21 MR. MCRAE: PRESENT.
22 THE CLERK: NUMBER 223, CAROL G.
23 MITCHELL?
24 MS. MITCHELL: PRESENT.
25 THE CLERK: NUMBER 226, PAUL P.

ROLL CALL

1 MOORE?

2 MR. MOORE: PRESENT.

3 THE COURT: EXCUSE ME, MA'AM.

4 NUMBER 221, KEVIN MILLER?

5 THE CLERK: KEVIN MILLER.

6 MS. FOOTMAN: UNABLE TO LOCATE.

7 THE CLERK: UNABLE TO LOCATE.

8 THE COURT: WHAT DO YOU SAY,

9 SOLICITOR?

10 MR. BAILEY: WE AGREE TO EXCUSE HIM.

11 THE COURT: DEFENDANT?

12 MR. BELL: WE'LL EXCUSE HIM.

13 THE COURT: NUMBER 223 AND 224,

14 MA'AM?

15 THE CLERK: UNABLE TO LOCATE; UNABLE
16 TO LOCATE.

17 THE COURT: BUT DID Y'ALL GET ALL
18 THAT INFORMATION JUST THIS MORNING, MA'AM?

19 MS. FOOTMAN: NO, SIR. WE WENT OVER
20 THESE BEFORE.

21 THE COURT: I DON'T HAVE CAROL
22 MITCHELL MARKED OFF; DO YOU, MR. SOLICITOR?

23 MR. BAILEY: I HAVE 223 MARKED OFF
24 BUT NOT 224.

25 THE COURT: WHAT SAY THE DEFENDANT

ROLL CALL

1 ON 223, CAROL MITCHELL?

2 MR. BELL: I HAVE HER MARKED OFF AS
3 UNABLE TO LOCATE, YOUR HONOR.

4 THE COURT: I'M SORRY?

5 MR. THEOS: SHE'S BACK HERE.

6 THE CLERK: WHAT'S YOUR NAME?

7 THE COURT: CAROL G. MITCHELL,
8 PLEASE?

9 MS. MITCHELL: PRESENT.

10 THE COURT: THANK YOU. I HAD YOU AS
11 NOT MARKED -- ALL RIGHT. THEN WE COME TO 224,
12 CHARLES E. MONKS?

13 THE CLERK: LEFT THE COUNTY. DO
14 Y'ALL HAVE THAT?

15 MR. BAILEY: NO, MA'AM.

16 THE COURT: NO, MA'AM. BUT WHO'S
17 INFORMATION IS IT, AND WHEN WAS IT RECEIVED WHEN
18 THEY LEFT THE COUNTY?

19 MS. FOOTMAN: THIS WAS JUST BROUGHT
20 TO ME THIS MORNING.

21 THE COURT: ALL RIGHT. SO PLEASE
22 TAKE 223, GIVE IT TO SMITTY, AND GET SMITTY TO GO
23 MAKE FOUR COPIES OF IT. YOU'VE ALREADY GOT THE
24 COPIES? WELL, THEN MA'AM, GIVE ONE TO THE
25 DEFENDANT, ONE TO THE STATE, ONE TO THE COURT, AND

ROLL CALL

1 PUT IT IN CHRONOLOGICAL SEQUENCE, PLEASE, MICHAEL.
2 NUMBER 224, CHARLES MONKS. WHAT'S THE INFORMATION,
3 MADAM CLERK?

4 MS. FOOTMAN: SHERIFF'S DEPARTMENT
5 SENT THAT IN THIS MORNING; UNABLE TO LOCATE.

6 THE COURT: WHAT SAYS THE STATE?

7 MR. BAILEY: THE STATE WOULD AGREE
8 TO EXCUSE HIM.

9 THE COURT: DEFENDANT?

10 MR. THEOS: AGREE TO EXCUSE HIM.

11 THE COURT: ALL RIGHT. AND AGAIN,
12 GENTLEMEN; AND THIS IS ON THE RECORD, NOW, PLEASE.
13 IF ANY OF THESE PEOPLE THAT YOU WANT THE SHERIFF TO
14 LOOK FOR FURTHER, WE'RE GOING TO HAVE TO GET
15 SOMEBODY TO COME IN HERE AND SWEAR THAT THEY LOOKED
16 FOR THEM AND COULDN'T FIND THEM BECAUSE IT MUST BE
17 DOCUMENTED EVIDENCE AS TO WHAT HAPPENED WITH THE
18 JURORS. SO NUMBER 224, BY AGREEMENT, THE SHERIFF
19 HAS FAILED TO LOCATE AND EXCUSES; AND NUMBER 225 IS
20 A FAILURE TO LOCATE. AND PAUL MOORE, 226, IS
21 PRESENT?

22 THE CLERK: YES, SIR.

23 THE COURT: THEN WE GO TO 227.

24 THE CLERK: DERRICK MOORER?

25 MR. MOORER: PRESENT.

ROLL CALL

44

1 THE CLERK: NUMBER 230, ELISE M.

2 MUSCOTT?

3 MS. MUSCOTT: PRESENT.

4 THE COURT: ALL RIGHT. GO BACK TO
5 228, MA'AM.

6 THE CLERK: DONALD MORRIS; UNABLE TO
7 LOCATE.

8 THE COURT: WE DIDN'T GO OVER THAT
9 IN CHAMBERS THIS MORNING, MA'AM.

10 MS. FOOTMAN: IT'S ON THE LIST.

11 THE COURT: WHAT SAY THE STATE?

12 MR. BAILEY: YOUR HONOR, I WOULD
13 AGREE TO EXCUSE HIM.

14 THE COURT: DEFENSE?

15 MR. BELL: WE AGREE TO EXCUSE HIM.

16 THE CLERK: NUMBER 232, KENNETH E.
17 NEDROW, JR.?

18 THE COURT: I HAD THAT MARKED OUT
19 FOR ELLIS OR---

20 THE CLERK: I HAD THAT, TOO. NUMBER
21 234, ALBERT S. NETTLES, JR.?

22 MR. NETTLES: PRESENT.

23 THE CLERK: NUMBER 237, OTIS NORRIS,
24 JR.?

25 MR. NORRIS: PRESENT.

ROLL CALL

1 THE COURT: THAT'S ONE WE WENT OVER
2 LAST WEDNESDAY AND WAS EXCUSED, MADAM CLERK. Y'ALL
3 WERE TO NOTIFY HIM. COME FORWARD, PLEASE, MR.
4 NORRIS. (THE JUROR COMPLIES.) YOU'VE GOT THE
5 DOCUMENTATION ON THAT, MR. SOLICITOR?

6 MR. BAILEY: YES, SIR.

7 THE COURT: SO 237 WAS EXCUSED --
8 WAS DISQUALIFIED ON LAST WEDNESDAY.

9 THE CLERK: HE DIDN'T RESPOND.
10 NUMBER 239, DEAN L. OAKLEY?

11 THE COURT: THAT WAS AN EXCUSED THIS
12 MORNING; NOT A UNITED STATES CITIZEN; GREEN CARD.
13 WE MARKED IT OFF THE LIST THIS MORNING.

14 THE CLERK: NUMBER 240, ROBERT R.
15 OLIN, JR.? (NO RESPONSE.) THAT WAS SENT TO THE
16 SHERIFF'S DEPARTMENT. NUMBER 245, WILHEMENA BERRY?

17 THE COURT: FORMERLY PALMER?

18 MRS. PALMER: PRESENT.

19 THE COURT: AND YOUR CURRENT LAST
20 NAME NOW, MA'AM, IS WHAT?

21 MRS. BERRY: BERRY.

22 THE COURT: CONGRATULATIONS.

23 THE CLERK: NUMBER 247, MICHAEL J.
24 PEAY?

25 MR. PEAY: PRESENT.

ROLL CALL

46

1 THE COURT: EXCUSE ME. THAT WAS
2 247, MICHAEL PEAY?
3 THE CLERK: YES.
4 THE COURT: THANK YOU.
5 THE CLERK: NUMBER 249, BARBARA C.
6 PENDER?
7 MS. PENDER: PRESENT.
8 THE CLERK: NUMBER 253, KACEY M.
9 PHILLEY?
10 MS. PHILLEY: PRESENT.
11 THE CLERK: NUMBER 254, GEORGE F.
12 PLOTH?
13 MR. PLOTH: PRESENT.
14 THE CLERK: NUMBER 255, NANCY
15 PORTER?
16 MS. PORTER: PRESENT.
17 THE CLERK: NUMBER 254, ALICE T.
18 POSTELL?
19 MS. POSTELL: PRESENT. THAT'S 256.
20 THE CLERK: I'M SORRY; 256.
21 THE COURT: THANK YOU, MS. POSTELL.
22 YOU'RE CORRECT.
23 THE CLERK: NUMBER 258, SHIRLEY M.
24 PRINGLE?
25 MS. PRINGLE: PRESENT.

1

THE CLERK: NUMBER 261, PAUL

2

RANDOLPH?

3

MR. RANDOLPH: PRESENT.

4

THE CLERK: NUMBER 263, ISACK JAMES

5

RHETT?

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MR. RHETT: PRESENT.

7

THE CLERK: NUMBER 264, EUGENE C.

8

RHINE, JR.?

9

MR. RHINE: PRESENT.

10

THE CLERK: NUMBER 266, GEORGE H.

11

RITTER?

12

MS. FOOTMAN: UNABLE TO LOCATE.

13

THE CLERK: UNABLE TO LOCATE.

14

THE COURT: THAT'S ONE WE WENT OVER

15

IN CHAMBERS THIS MORNING. ALL AGREE THAT THE

16

SHERIFF EXHAUSTED ALL EFFORTS AND COULD NOT LOCATE

17

HIM, AND HE WAS EXCUSED?

18

MR. BAILEY: THAT'S CORRECT, YOUR

19

HONOR.

20

MR. BELL: CORRECT, YOUR HONOR.

21

THE CLERK: NUMBER 269, STEVEN A.

22

ROBERTS?

23

MR. ROBERTS: PRESENT.

24

THE CLERK: NUMBER 270, MARTIN G.

25

ROBERTSON?

ROLL CALL

1 MR. ROBERTSON: PRESENT.

2 THE CLERK: NUMBER 271, RICHARD M.
3 ROBINSON?

4 MR. ROBINSON: PRESENT.

5 THE CLERK: NUMBER 279, BRIAN J. SHAW?

6 MR. SHAW: PRESENT.

7 THE COURT: GO BACK TO 274.

8 THE CLERK: THAT WAS ANOTHER ONE
9 THAT WAS UNABLE TO LOCATE.

10 THE COURT: YOU'D BETTER CHECK THAT.

11 THE CLERK: 274? OVER 65.

12 THE COURT: THANK YOU. BUT, AGAIN,
13 THOSE THAT ARE OVER 65, MA'AM, WERE REQUIRED TO BE
14 HERE. SO I DIDN'T EXCUSE THEM. WE HAVEN'T MARKED
15 OFF THE LIST. AND, YOU KNOW, WE TRY AND CONVINCE
16 THEM TO STAY IF THEY CAN. SO LOOK AND SEE IF 274
17 IS IN THERE, MIKE. (AT THIS TIME LAW CLERK REVIEWS
18 RECORDS.)

19 THE CLERK: NO; THAT'S NOT ONE THAT
20 WE PREVIOUSLY MARKED OFF THE LIST.

21 THE COURT: I AGREE; IT'S NOT. AND
22 THE QUESTIONNAIRE AND THE PRINT-OUT REFLECTS HER
23 DATE OF AGE; AND SHE IS ELIGIBLE; BUT THAT IS NOT
24 AN AUTOMATIC DISQUALIFICATION. AND, SO, HAS
25 ANYBODY NOTIFIED HER NOT TO BE HERE?

1 THE CLERK: NO, SIR.

2 THE COURT: WELL, YOU NEED TO BACK
3 UP AND -- THE FOUR OF Y'ALL ARE HERE; AND I ASSUME
4 TEN OF YOU DOWNSTAIRS. SO SOMEBODY NEEDS TO
5 CONTACT MRS. SARVY TO GET HER HERE, PLEASE. SHE'S
6 NOT BEEN EXCUSED BY THE COURT OR BY THE ATTORNEYS.

7 THE CLERK: NUMBER 281, RONALD F.
8 SHORT, JR.?

9 MR. SHORT: PRESENT.

10 THE CLERK: NUMBER 282, DEBORAH K.
11 SHUFORD?

12 MS. SHUFORD: PRESENT.

13 THE CLERK: NUMBER 283, CHERYL M.
14 SIGWALD?

15 MS. SIGWALD: PRESENT.

16 THE CLERK: NUMBER 284, WILLIAM L.
17 SILVERS, JR.?

18 MR. SILVERS: PRESENT.

19 THE CLERK: NUMBER 285, HERBERT
20 SIMMONS, JR.?

21 MR. SIMMONS: PRESENT.

22 THE CLERK: NUMBER 294, JOANN S.
23 SPEARMAN?

24 THE COURT: EXCUSE ME. ON 289 THERE
25 WAS A QUESTION ABOUT THAT DISQUALIFIED OR NOT,

ROLL CALL

1 GENTLEMEN. HAVE Y'ALL REVIEWED THAT FURTHER?

2 MR. BAILEY: WE HAVE NOT. I'VE GOT
3 A HOUSEBREAKING CONVICTION.

4 MR. BELL: I THOUGHT WE ACCEPTED
5 THAT AS THE INFORMATION I RECEIVED.

6 THE COURT: ALL RIGHT. I'VE NOT
7 MARKED IT OFF. BUT YOU NEED TO CALL THE NAME TO
8 SEE IF THEY'RE PRESENT.

9 THE CLERK: NUMBER 289, RUDOLPH L.
10 SMITH, JR.?

11 MR. SMITH: PRESENT.

12 THE COURT: ALL RIGHT. WHY DON'T
13 YOU COME FORWARD, MR. SMITH, PLEASE; AND PULL THE
14 DOCUMENTATION, PLEASE, MA'AM. RUDOLPH L. SMITH,
15 JR., NUMBER 289.

16 (THE FOLLOWING TAKES PLACE AT THE BENCH OUT OF THE
17 PRESENCE OF THE JURY PANEL.)

18 THE COURT: MR. LEE SMITH, JR.; IT
19 WAS DISCUSSED LAST WEEK THAT YOU HAD A CONVICTION
20 FOR HOUSEBREAKING ON JANUARY THE 17TH OF 1973 IS
21 WHEN YOU WERE ARRESTED. AND YOU WERE CONVICTED AND
22 SENTENCED TO 18 MONTHS SUSPENDED TO TWO YEARS ON A
23 GUILTY PLEA; IS THAT CORRECT?

24 MR. SMITH: I GUESS.

25 THE COURT: WELL, WE---

1 MR. SMITH: THAT'S CLOSE.

2 THE COURT: THE DATE IS CLOSE? AND
3 THEN YOU HAVE A PISTOL CHARGE. HAVE YOU RECEIVED A
4 PARDON OR HAD YOUR CIVIL RIGHTS RESTORED?

5 MR. SMITH: NOT TO MY KNOWLEDGE.

6 THE COURT: ALL RIGHT. YOU ARE
7 EXCUSED. THANK YOU FOR BEING WITH US. SORRY FOR
8 ANY INCONVENIENCE.

9 THE COURT: ALL RIGHT, LADIES AND
10 GENTLEMEN. ON THE LAST JUROR, NUMBER 289, HE IS
11 DISQUALIFIED BECAUSE OF HIS SITUATION WHICH I'VE
12 PLACED IN THE RECORD. AGREED, MR. SOLICITOR?

13 MR. BAILEY: YES, SIR.

14 THE COURT: AGREED GENTLEMEN FOR THE
15 DEFENSE?

16 MR. BELL: YES, YOUR HONOR.

17 THE COURT: THANK YOU.

18 THE CLERK: NUMBER 299, LINDA W.
19 WETHERELL?

20 THE COURT: SHE'S CHANGED HER NAME?
21 IT USED TO BE STOESSEL?

22 MRS. WETHERELL: YES, SIR; PRESENT.

23 THE CLERK: NUMBER 300, ERNEST L.
24 STOKES?

25 MR. STOKES: PRESENT.

ROLL CALL

52

1 THE CLERK: NUMBER 301, FRED

2 STROBLE?

3 MR. STROBLE: PRESENT.

4 THE CLERK: NUMBER 302, BROOKS W.

5 STYLES?

6 MR. STYLES: PRESENT.

7 THE CLERK: NUMBER 303, BRYAN L.

8 SULLIVAN?

9 MR. SULLIVAN: PRESENT.

10 THE CLERK: NUMBER 307, BRYAN R.

11 TALLENT?

12 MR. TALLENT: PRESENT.

13 THE COURT: EXCUSE ME. NUMBER 304,

14 MA'AM?

15 THE CLERK: SHE'S GOT UNABLE TO

16 LOCATE.

17 THE COURT: WHAT SAY THE STATE?

18 MR. BAILEY: THE STATE AGREES THAT

19 SHE'S EXCUSED, YOUR HONOR.

20 MR. BELL: EXCUSED, YOUR HONOR.

21 THE COURT: FAILURE TO LOCATE ON

22 NUMBER 304. MR. SOLICITOR, HAVE SOMEONE FROM YOUR

23 STAFF PLEASE CALL MR. JIM HILL AND TELL HIM I WON'T

24 MEET HIM AT A QUARTER 'TIL ONE. IT WILL BE MORE

25 LIKE 1:30. I JUST DON'T WANT TO KEEP PEOPLE

ROLL CALL

1 WAITING IF I CAN AVOID IT.

2 THE CLERK: NUMBER 309, PATRICIA W.

3 TAYLOR?

4 MS. TAYLOR: PRESENT.

5 THE CLERK: NUMBER 311, ROSA G.

6 THOMPSON?

7 MS. THOMPSON: PRESENT.

8 THE CLERK: NUMBER 312, ROBERT J.

9 TILIDETZKE?

10 MR. TILIDETZKE: PRESENT.

11 THE CLERK: NUMBER 313, SHANNON L.

12 TOFT?

13 MRS. MCSWAIN: IT'S MCSWAIN NOW.

14 THE COURT: AND YOU SPELL THAT HOW,

15 PLEASE?

16 MRS. MCSWAIN: M-C-S-W-A-I-N.

17 THE COURT: THANK YOU, MRS. MCSWAIN.

18 THAT'S JUROR 313, GENTLEMEN, IS NOW SHANNON

19 MCSWAIN.

20 THE CLERK: NUMBER 314, CARLISS B.

21 TOMPKINS?

22 MR. TOMPKINS: PRESENT.

23 THE CLERK: NUMBER 316, CURTIS J.

24 TSAI?

25 MR. TSAI: PRESENT.

ROLL CALL

54

1 THE CLERK: NUMBER 318, THEREL J.
2 UTSEY?
3 MR. UTSEY: PRESENT.
4 THE CLERK: NUMBER 319, MARYANN
5 VALENTINO?
6 MS. VANENTINO: PRESENT.
7 THE CLERK: NUMBER 320, JAMES R.
8 VANDELL?
9 MR. VANDELL: PRESENT.
10 THE CLERK: NUMBER 322, MICHAEL A.
11 VIGOTTY?
12 MR. VIGOTTY: PRESENT.
13 THE CLERK: NUMBER 328, JOHN A.
14 WASHINGTON?
15 MR. WASHINGTON: PRESENT.
16 THE CLERK: NUMBER 334, DAVID F.
17 WHITE?
18 MR. WHITE: PRESENT.
19 THE CLERK: NUMBER 334, DAVID S.
20 WHITE?
21 MR. WHITE: PRESENT.
22 THE CLERK: NUMBER 335, JAN H.
23 WHITMORE?
24 MS. WHITMORE: PRESENT.
25 THE COURT: GO BACK TO 333, PLEASE.

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THE CLERK: UNABLE TO LOCATE.

THE COURT: WHAT SAYS THE STATE?

MR. BAILEY: EXCUSED, YOUR HONOR.

THE COURT: DEFENSE?

MR. BELL: WE AGREE, YOUR HONOR.

THE COURT: ALL OF THESE, GENTLEMEN,
WE'RE GOING TO HAVE SOMEONE FROM THE SHERIFF'S
DEPARTMENT PUT UNDER OATH AND GET ON THE WITNESS
STAND AND TESTIFY THAT THEY WERE UNABLE TO LOCATE
JUROR NUMBER 492, NAMED JOE SIX PACK, OR WHATEVER.
THERE'S GOT TO BE EVIDENCE IN THE RECORD.

THE CLERK: NUMBER 341, MARK S.
WILLIAMSON?

MR. WILLIAMSON: PRESENT.

THE COURT: EXCUSE ME. WAS THAT
335; WAS THAT A FAILURE TO LOCATE THAT WE JUST
TALKED ABOUT?

MS. GRAHAM: NUMBER 333 WE TALKED
ABOUT.

THE COURT: HOW ABOUT 335?

THE CLERK: UNABLE TO LOCATE.

MS. WHITMORE: I'M 335.

THE CLERK: OH, YOU ARE?

MS. WHITMORE: I'M HERE.

THE COURT: THANK YOU, MS. WHITMORE.

ROLL CALL

1 MS. JAN H. WHITMORE, JUROR NUMBER 335. THANK YOU
2 FOR BEING PRESENT. ALL RIGHT. DO YOU HAVE THE
3 QUESTIONNAIRE ON 335, LADIES AND GENTLEMEN? MADAM
4 CLERK, WOULD YOU GET THAT AND MAKE SOME COPIES?

5 MR. BAILEY: WE HAVE IT, YOUR HONOR.

6 THE COURT: THANK YOU SO MUCH. SO
7 THEN WE GO TO 338, MAGDALENE E. WILEY?

8 MS. FOOTMAN: UNABLE TO LOCATE.

9 THE COURT: WHAT DO YOU SAY, MR.
10 SOLICITOR?

11 MR. BAILEY: YOUR HONOR, WE WOULD
12 AGREE TO EXCUSE HER ON THAT BASIS.

13 MR. BELL: WE AGREE, YOUR HONOR.

14 THE COURT: ALL RIGHT. AGAIN, MS.
15 FOOTMAN, YOU'RE GOING TO HAVE TO GET WITH THE
16 SHERIFF'S REPRESENTATIVE. I ASSUME THEY'RE ON THE
17 WAY UP HERE. (AT THIS TIME SHERIFF ENTERS
18 COURTROOM.) WE HATE TO BOTHER YOU, BUT THIS IS A
19 NECESSARY THING, I ASSURE YOU.

20 MR. NASH: THAT'S FINE.

21 THE CLERK: THE NEXT ONE I HAVE IS
22 350, MARK A. ZEIGLER?

23 MR. ZEIGLER: PRESENT.

24 THE COURT: ALL RIGHT. YOU NEED TO
25 GO BACK WITH 341, THEN.

1 THE CLERK: WE HAVE THAT HE'S HERE.
2 341, MARK WILLIAMSON?

3 THE COURT: HE STOOD?

4 MR. BAILEY: YES, SIR.

5 THE COURT: THANK YOU, MR.

6 WILLIAMSON. IS THERE ANY MEMBER OF THE PROSPECTIVE
7 JURY PANEL WHO WAS SUMMONED TO BE PRESENT WHOSE
8 NAME WAS NOT CALLED, LADIES AND GENTLEMEN? IF SO,
9 PLEASE STAND? (JUROR STANDS.) YES, YOUR NAME,
10 PLEASE?

11 THE JUROR: MELISSA M. BOUTON.

12 THE COURT: D-A-L?

13 MS. BOUTON: B-O-U-T-O-N.

14 THE COURT: ALL RIGHT. MR. BOUTON,
15 WE REVIEWED THE LIST LAST WEDNESDAY, AND THE
16 SHERIFF SAID THEY WERE UNABLE TO LOCATE YOU. I'M
17 SO PLEASED THEY FOUND YOU.

18 MS. BOUTON: THEY FOUND ME, SIR.

19 THE COURT: OKAY. WE'RE GOING TO
20 LET YOU BET ON THE GEORGIA LOTTERY. ALL RIGHT, HAS
21 YOUR QUESTIONNAIRE BEEN RETURNED, MA'AM?

22 MS. BOUTON: I NEVER RECEIVED A
23 QUESTIONNAIRE, SIR.

24 THE COURT: ALL RIGHT. PLEASE
25 PROVIDE HER WITH A QUESTIONNAIRE, AND GIVE HER A

THE CORBY GROUP 1-800-233-3040
LASER STOCK FORM FNU

ROLL CALL

58

PEN. SHE MAY NOT HAVE BROUGHT ONE WITH HER. WOULD YOU BE FILLING THAT OUT, PLEASE, MA'AM?

MS. BOUTON: OKAY.

THE COURT: WHEN YOU FINISH FILLING IT OUT, PLEASE RAISE YOUR HAND AND THE CLERK WILL COME GET IT FOR ME. WE'LL HAVE THE BAILIFF MAKE COPIES TO GIVE TO THE STATE, THE DEFENDANT, AND THE COURT. THANK YOU, MS. BOUTON. (JUROR STANDS.) AND THE GENTLEMAN ON THE AISLE? YOUR NAME?

THE JUROR: RICHARD LARSON.

THE COURT: L-A-R-S-O-N, LARSON?

MR. LARSON: YES, SIR.

THE CLERK: HE'S THE ONE THAT LOST THE KEYS, YOUR HONOR.

THE COURT: I LOSE MY KEYS ALL THE TIME. I CERTAINLY UNDERSTAND. YOU FOUND THEM?

MR. LARSON: MY WIFE FOUND THEM.

THE COURT: AREN'T WIVES WONDERFUL? THANK YOU. THANK YOU FOR BEING WITH US, MR. LARSON. AND THERE'S NO PROBLEM WHATSOEVER. BUT THE FACT YOU'RE HERE IS AN IMPORTANT THING. (JUROR STANDS.) THE NEXT GENTLEMAN, PLEASE. YOUR NAME?

THE JUROR: LEWIS KITT.

THE COURT: SPELL YOUR LAST NAME.

MR. KITT: K-I-T-T.

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MS. FOOTMAN: HE'S NOT ON THIS
PAPER.

THE COURT: DO YOU HAVE A COPY OF
YOUR SUMMONS?

MR. KITT: YES, SIR.

THE COURT: COULD YOU BRING IT
FORWARD?

MR. KITT: YES, SIR.

THE COURT: YOU HAVEN'T CHANGED YOUR
NAME OR GOT MARRIED OR ANYTHING AND TOOK YOUR
WIFE'S NAME?

MR. KITT: NO, SIR.

THE COURT: THAT WAS K-I-T-T; KITT?

MR. KITT: YES, SIR.

THE COURT: ALL RIGHT, MA'AM. WHILE
THESE ARE NORMALLY PRINTED OUT, AND THIS ONE IS
HANDWRITTEN AND NOT ON THE COMPUTER PRINTOUT, COULD
YOU PLEASE SHARE INFORMATION WITH ME?

MR. KITT: I HAD MISPLACED THE FIRST
ONE. AND SHE JUST WROTE THIS ONE OUT FOR ME.

THE COURT: SHE BEING A LADY IN THE
CLERK'S OFFICE? WAS IT MS. FOOTMAN?

MR. KITT: NO, IT WASN'T HER. IT
WAS ANOTHER LADY DOWNSTAIRS.

THE COURT: ALL RIGHT. WHY WOULD

ROLL CALL

1 THIS NOT HAVE BEEN ON THE COMPUTER PRINTOUT, MA'AM?

2 THE CLERK: THEY BROUGHT IT BACK.

3 HE LOST HIS, AND SHE COPIED THIS ONE AND GAVE IT TO
4 HIM.

5 THE COURT: WELL, I KNOW; BUT IT
6 STILL WOULD HAVE HAD TO HAVE BEEN ON THE COMPUTER
7 PRINTOUT OF THE JURY DRAW IS MY CONCERN.

8 MS. FOOTMAN: HE MIGHT HAVE SUPPOSED
9 TO HAVE BEEN HERE ANOTHER TIME AND CAROLYN DIDN'T
10 INVESTIGATE IT TO SEE WHEN HE WAS SUPPOSED TO BE
11 HERE, I GUESS.

12 THE COURT: MR. KITT, DO YOU KNOW
13 WHEN YOUR ORIGINAL SUMMONS WAS FOR? WHAT TERM OF
14 COURT?

15 MR. KITT: THIS TERM.

16 THE COURT: BECAUSE THE EXPLANATION
17 THE CLERK GIVES IS THAT THE PERSON WHO WROTE THIS
18 OUT FOR YOU FAILED TO CHECK TO SEE WHICH OFFICIAL
19 LIST YOU WERE ON. ALL RIGHT, MA'AM. HAVE YOU GOT
20 THE OTHER COMPUTER LIST DOWNSTAIRS?

21 MS. FOOTMAN: YES, SIR.

22 THE COURT: SEND SOMEBODY DOWN THERE
23 AND CHECK IT. AND, MR. KITT, COULD I GET YOU --
24 YOU'RE ALL THE WAY ON THE BACK ROW. DO YOU MIND
25 BEING SEATED ON THE THIRD ROW RIGHT THERE? WE'RE

1 GOING DOWNSTAIRS TO---

2 THE CLERK: WAS HE TRANSFERRED FROM
3 ANOTHER TERM?

4 THE COURT: WERE YOU TRANSFERRED
5 FROM ANOTHER TERM? I WASN'T AWARE THAT THERE WERE
6 ANY TRANSFEREES ON HERE, MA'AM, BECAUSE YOUR LIST
7 HAS 350 ON IT, AND THOSE ARE THE AMOUNT THAT I
8 DIRECTED BY ORDER OF THE COURT TO DRAW. SO I'M NOT
9 AWARE THAT THERE ARE ANY TRANSFERS ON HERE, ARE
10 YOU?

11 THE CLERK: HE MAY HAVE BEEN
12 DRAWN---

13 THE COURT: MR. KITT, I PROMISE YOU
14 YOU'RE GOING TO GET PAID FOR BEING HERE TODAY. MAY
15 I ASK YOUR PATIENCE AND INDULGENCE?

16 MR. KITT: YES, SIR.

17 THE COURT: JUST BEAR WITH US A
18 MINUTE, PLEASE, SIR, UNTIL THE LADY GETS BACK. SO
19 I INQUIRE A FINAL CALL. IS ANYONE PRESENT WHO WAS
20 SUMMONED TO BE HERE WHOSE NAME WAS NOT CALLED? IF
21 SO, PLEASE STAND. IF ANYBODY IS HIDING IN THE
22 BUSHES, NOW, WE'RE GOING TO SEND THE SHERIFF
23 LOOKING FOR THESE PEOPLE, THE HIGH SHERIFF OF THE
24 LOW COUNTRY OF DORCHESTER. AND, SHERIFF, I
25 NEGLECTED TO INTRODUCE YOU BECAUSE YOU WERE NOT IN

ROLL CALL

1 THE COURTROOM; AND YOU ARE SHERIFF?

2 THE SHERIFF: NASH.

3 THE COURT: N-A-S-H? WOULD YOU
4 STAND AND BE RECOGNIZED, PLEASE? AND THANK YOU FOR
5 BEING HERE WITH US. AND DON'T BE DISMAYED ABOUT
6 THE DISCOMBOBULATED DISJUNCTION WE HAD HERE THIS
7 MORNING. IT'S SOMETHING THAT CAN BE CLARIFIED.
8 BUT IN A CASE OF THIS NATURE, THERE ARE SPECIFIC
9 RULES THAT MUST BE STRICTLY ADHERED TO. AND, I'M
10 SORRY, BUT WE HAVE TO DO WHAT WE HAVE TO DO. YOU
11 UNDERSTAND THAT, I'M SURE.

12 MR. NASH: YES, SIR.

13 THE COURT: LADIES AND GENTLEMEN,
14 THE QUESTIONS THAT YOU HAD UP TO NOW SHOULD HAVE
15 BEEN EASY BECAUSE ALL YOU HAD TO STATE WAS THAT YOU
16 WERE PRESENT. THE QUESTIONS THAT I WILL ASK YOU
17 AFTER, IT'S NECESSARY THAT YOU BE PLACED ON YOUR
18 VOIR DIRE. MADAM CLERK, WOULD YOU PLEASE PUT THE
19 JURY ON THEIR VOIR DIRE?

20 THE CLERK: PLEASE STAND. RAISE YOUR
21 RIGHT HAND AND BE SWORN.

22 (AT THIS TIME JURY PANEL IS SWORN.)

23 THE COURT: LADIES AND GENTLEMEN,
24 YOU'VE NOW BEEN PLACED ON YOUR VOIR DIRE. THAT
25 MEANS AN INDIVIDUAL OATH OR AN INDIVIDUAL TRUTH.

JURY VOIR DIRE.

1 PLEASE AS THESE QUESTIONS ARE PROPOUNDED TO YOU,
2 PLEASE SHARE ACCURATE AND CORRECT INFORMATION WITH
3 US. IS THERE ANYONE PRESENT WHO DID NOT RECEIVE
4 AND COMPLETE THE JUROR QUESTIONNAIRE THAT WAS
5 FORWARDED TO YOU? IF NOT, PLEASE STAND. (JUROR
6 STANDS.)

7 MS. GRAHAM: HE CAME UP HERE THIS
8 MORNING, UNDOUBTEDLY AND SOMEBODY GAVE HIM A GREEN
9 STICKER. THEN HE WENT DOWNSTAIRS AFTER RECEIVING
10 THE GREEN JUROR STICKER AND TOLD THE GIRL THAT HE
11 WAS ON JURY DUTY AND HE NEEDED IT, BUT HE IS NOT ON
12 THE MARKED DATE. THAT'S THE ONLY ONE OTHER THAN
13 THIS JURY PANEL THAT WE HAVE.

14 THE COURT: AND IT WASN'T A PREVIOUS
15 ONE?

16 MS. GRAHAM: NO, SIR. I MEAN, WE
17 DIDN'T GO THROUGH THEM ALL AND CHECK IT, BUT HE
18 CAME UP HERE AND WENT DOWNSTAIRS WITH THE GREEN
19 STICKER. THAT'S WHY SHE GAVE HIM A---

20 THE COURT: MR. KITT, PLEASE STAND.
21 (JUROR COMPLIES.)

22 MR. GRAHAM: IT COULD BE
23 MAGISTRATE'S COURT.

24 THE COURT: GENTLEMEN -- MR.
25 SOLICITOR AND DEFENSE COUNSEL -- THE CLERK TELLS ME

JURY VOIR DIRE.

1 THAT HE CAME IN THIS MORNING AND WENT DOWNSTAIRS
2 AND TOLD THE ASSISTANT, OR THE DEPUTY CLERK, THAT
3 HE WAS ON THE JURY AND NEEDED A FORM. SO THEY
4 FILLED OUT THIS LITTLE PINK SLIP, AND THEY GAVE HIM
5 A GREEN BADGE AND HE CAME UP. AS YOU KNOW, YOU
6 CANNOT DRAW THE JURY IN ADVANCE MORE THAN THIRTY
7 DAYS BY STATUTE. SO THE ONLY OUTSTANDING JURY THAT
8 HAS BEEN DRAWN AT THIS TIME IS THE JURY FOR MARCH
9 THE EIGHTH. I ASSUME THERE'S NOT A TERM MARCH THE
10 15TH, MA'AM?

11 MS. GRAHAM: YES, SIR, IT IS.

12 THE COURT: BUT YOU JUST HAVEN'T
13 DRAWN THE JURY YET?

14 MS. GRAHAM: WE HAVE ONE OUT.

15 THE COURT: IT'S BEEN SELECTED BUT
16 NOT SENT OUT?

17 MS. GRAHAM: YES, SIR.

18 THE COURT: SO HE COULDN'T HAVE
19 KNOWN THAT HE WAS ON THE MARCH 15TH IF HE HADN'T
20 RECEIVED THE NOTICE; RIGHT?

21 MS. GRAHAM: YES, SIR.

22 THE COURT: SO IT MAY BE, MR. KITT,
23 THAT YOU WERE SUMMONED TO BE ON THE MAGISTRATE'S
24 JURY. YOU'RE A RESIDENCE OF ST. GEORGE, THE CITY
25 OF ST. GEORGE. I DON'T RECKON THEY HAVE A

JURY VOIR DIRE.

1 MUNICIPAL COURT IN DURANGE OR HARLEYVILLE OR
2 RIDGEVILLE OR REESVILLE. BUT YOU'VE LOST YOUR
3 SUMMONS, SO I CAN'T ANSWER YOUR QUESTION AS TO
4 WHICH JURY YOU BELONG ON. ALL I CAN TELL YOU, MR.
5 KITT, IS THIS: THAT THERE WERE 350 NAMES SELECTED
6 AT RANDOM BY A COMPUTER, NOT BY A JURY COMMISSION.
7 THE COMPUTER WILL CLICK OUT A CERTAIN NUMBER, AND
8 THAT NUMBER IS CORRELATED TO THE VOTER REGISTRATION
9 LIST OF DORCHESTER COUNTY AND THE HIGHWAY
10 DEPARTMENT FOR THOSE WITH VALID SOUTH CAROLINA
11 DRIVER'S LICENSE. THAT'S HOW YOU LADIES AND
12 GENTLEMEN WERE SELECTED BY NUMBER AND COMPUTER, NOT
13 BY YOUR NAME. SO, IS IT AGREEABLE BY THE STATE
14 THAT I TELL THIS GENTLEMAN THAT HE'S NOT INVITED TO
15 THE PARTY AND THAT I CAN EXCUSE HIM?

16 MR. BAILEY: YES, SIR.

17 THE COURT: BY THE DEFENDANT?

18 MR. THEOS: THAT'S FINE, YOUR HONOR.

19 THE COURT: AND IF Y'ALL WOULD LIKE
20 TO QUESTION HIM, HE'S UNDER OATH. SO, MADAM CLERK,
21 HAND THIS TO THE COURT REPORTER TO BE MADE PART AND
22 PARCEL OF THE RECORD, AND PLEASE DIRECT YOUR
23 PERSONNEL DOWNSTAIRS NOT TO FILL OUT DUPLICATE
24 FORMS UNTIL THEY VERIFY THE FACT THAT THAT PERSON
25 WAS DRAWN ON THE OFFICIAL LIST SO WE CAN AVOID

JURY VOIR DIRE.

1 THIS.

2 THE CLERK: SHE THOUGHT HE WAS A
3 JUROR BECAUSE HE HAD A STICKER.

4 THE COURT: WELL, WHO GAVE HIM THE
5 STICKER? I DIDN'T.

6 THE CLERK: IT WAS GIVEN TO HIM AS
7 HE CAME IN.

8 THE COURT: OKAY. WELL, THE FACT
9 THEY GAVE HIM A STICKER DOESN'T PUT HIM ON THE
10 JURY, THOUGH MA'AM, AS YOU KNOW.

11 THE CLERK: I KNOW.

12 THE COURT: AND MADAM CLERK, I
13 DIRECT YOU TO PAY THAT SUM OF \$25. WE HAVE YOUR
14 CORRECT ADDRESS? READ IT OUT, MADAM COURT
15 REPORTER. IT'S ON THE PINK SLIP THERE. [REDACTED] [REDACTED]

16 [REDACTED], [REDACTED] [REDACTED]. WHAT IS IT?

17 THE COURT REPORTER: [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED].

19 THE COURT: [REDACTED] [REDACTED] [REDACTED] IS
20 YOUR MAILING ADDRESS?

21 MR. KITT: YES, SIR.

22 THE COURT: AND THOSE CHECKS WILL BE
23 MAILED OUT IN THE NEXT WEEK OR TEN DAYS, MADAM
24 CLERK?

25 THE CLERK: YES, SIR.

1 THE COURT: THANK YOU SO MUCH FOR
2 BEING WITH US. YOU ARE EXCUSED. IF YOU WOULD,
3 GIVE THE GREEN BADGE BACK TO THE GENTLEMAN AT THE
4 BACK DOOR. WE MIGHT RECYCLE IT. AND I'M SORRY FOR
5 ANY INCONVENIENCE, MR. KITT.

6 MR. KITT: THAT'S ALL RIGHT.

7 THE COURT: SO, MADAM CLERK, MS.
8 FOOTMAN, AS I'M GOING THROUGH, YOU HAVE COPIES OF
9 ALL THE QUESTIONNAIRES?

10 MS. FOOTMAN: YES, SIR.

11 THE COURT: ALL RIGHT. SO WHILE I'M
12 GOING THROUGH THIS LITANY OF QUESTIONS, I WANT YOU
13 TO VERIFY THE FACT THAT THERE IS A QUESTIONNAIRE IN
14 HAND FOR EACH OF THE PERSONS WHO HAVE NOT BEEN
15 MARKED OFF THE MASTER LIST. WOULD YOU BE DOING
16 THAT FOR ME, PLEASE?

17 MS. FOOTMAN: YES, SIR.

18 THE COURT: LADIES AND GENTLEMEN, IS
19 THERE ANY MEMBER OF THIS JURY PANEL WHO NEEDS TO,
20 OR WISHES TO CHANGE ANY INFORMATION THAT WAS SET
21 FORTH BY YOU ON YOUR INDIVIDUAL QUESTIONNAIRE? IF
22 SO, PLEASE STAND. (JUROR STANDS.) YES, MA'AM?

23 THE JUROR: MY NAME IS SPELLED
24 INCORRECTLY.

25 THE COURT: CERTAINLY.

JURY VOIR DIRE.

1 THE JUROR: IT'S SUPPOSED TO BE
2 A-R-N-O-N-E.

3 THE COURT: THAT'S JUROR NUMBER 11,
4 A-R-M-O-N-E?

5 THE JUROR: A-R-N-O-N-E.

6 THE COURT: A-R-N-O-N-E? THE M
7 SHOULD BE AN N?

8 THE JUROR: RIGHT. I ALSO HAVE AN
9 INCORRECT ADDRESS ON THERE.

10 THE COURT: ALL RIGHT. MAY WE
11 PLEASE PULL THAT, MICHAEL, AND LADY AND GENTLEMEN?
12 AND THE CORRECT ADDRESS, MRS. ARNONE, IS?

13 THE JUROR: IT'S [REDACTED]
14 [REDACTED]

15 THE COURT: AND IS THAT STILL
16 [REDACTED], S.C.?

17 THE JUROR: NO, SIR. IT'S [REDACTED]
18 [REDACTED].

19 THE COURT: [REDACTED]?

20 THE JUROR: YES, SIR.

21 THE COURT: AND THE ZIP, PLEASE?

22 THE JUROR: [REDACTED]

23 THE COURT: AND, MADAM CLERK, ARE
24 YOU MAKING A NOTATION OF THAT SO THAT -- I ASSUME
25 THE CLERK DOESN'T WRITE THE CHECKS ANY LONGER, THAT

JURY VOIR DIRE.

1 THOSE ARE MAILED BY---

2 THE CLERK: WE STILL DO IT THE SAME
3 WAY. (JUROR STANDS.)

4 THE COURT: YOUR NAME, PLEASE,
5 MA'AM?

6 THE JUROR: WILHEMENA PALMER BERRY.

7 THE COURT: AND YOUR JURY NUMBER?

8 THE JUROR: IT'S 245.

9 THE COURT: 245? AND?

10 THE JUROR: MY ADDRESS IS WRONG.

11 THE COURT: YES, MA'AM. AND THE
12 CORRECT ADDRESS IS?

13 THE JUROR: [REDACTED],
14 [REDACTED].

15 THE COURT: AND THE ZIP?

16 THE JUROR: [REDACTED].

17 THE COURT: THANK YOU SO MUCH.

18 (JUROR STANDS.) YES, MA'AM?

19 THE JUROR: IT'S SHIRLEY E. BRITT.

20 THE COURT: AND YOUR JURY NUMBER?

21 THE JUROR: 36.

22 THE COURT: JUROR NUMBER 36, SHIRLEY
23 B. BRITT?

24 THE JUROR: YES, MA'AM.

25 THE COURT: YES, MA'AM.

1 THE JUROR: RIGHT. AND THEN MY
2 ADDRESS IS ALSO WRONG.

3 THE COURT: AND MAY WE PLEASE HAVE
4 YOUR CURRENT ADDRESS?

5 THE JUROR: IT'S [REDACTED] [REDACTED] [REDACTED].
6 AND THAT IS IN [REDACTED] SOUTH CAROLINA.

7 THE COURT: THANK YOU, MRS. BRITT.
8 (JUROR STANDS.) YES, MA'AM?

9 THE JUROR: MY ADDRESS HAS CHANGED
10 ALSO.

11 THE COURT: AND YOUR JUROR NUMBER?

12 THE JUROR: 313.

13 THE COURT: 313? AND MS. SHANNON L.
14 MCSWAIN. YOUR CORRECT ADDRESS NOW IS?

15 THE JUROR: [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED].

17 THE COURT: ALL RIGHT. [REDACTED]

18 THE JUROR: YES, SIR.

19 THE COURT: YES, MA'AM?

20 THE JUROR: [REDACTED] [REDACTED]

21 THE COURT: YES, MA'AM?

22 THE JUROR: [REDACTED]

23 THE COURT: THANK YOU, MA'AM. (JUROR
24 STANDS.) YES, MA'AM?

25 THE JUROR: MY ADDRESS HAS CHANGED.

1 THE COURT: AND YOUR NUMBER, PLEASE?

2 THE JUROR: NUMBER 335.

3 THE COURT: JUROR NUMBER 335 IS MS.
4 JAN WHITMORE. AND, MA'AM, YOUR NEW ADDRESS IS?

5 THE JUROR: [REDACTED].

6 THE COURT: YES, MA'AM?

7 THE JUROR: EVERYTHING ELSE IS THE
8 SAME.

9 THE COURT: [REDACTED]?

10 THE JUROR: YES, SIR.

11 THE COURT: THANK YOU, MRS.
12 WHITMORE. (JUROR STANDS.) YES, SIR?

13 THE JUROR: JUROR NUMBER. MY
14 ADDRESS HAS CHANGED ALSO. 334.

15 THE COURT: MR. DAVID WHITE; YOUR
16 CORRECT ADDRESS AT THIS TIME IS?

17 THE JUROR: IT'S [REDACTED].
18 EVERYTHING ELSE IS THE SAME.

19 THE COURT: THANK YOU SO MUCH.
20 (JUROR STANDS.) YES, SIR? I'M SORRY TO KEEP YOU
21 STANDING SO LONG.

22 THE JUROR: JUROR NUMBER 300.

23 THE COURT: AND THAT IS ERNEST L.
24 STOKES?

25 THE JUROR: YES, SIR. I'VE GOT AN

LASER STOCK FORM FMU

THE CORBY GROUP 1-800-255-5040

JURY VOIR DIRE.

ADDRESS CHANGE.

THE COURT: OKAY.

THE JUROR: IT'S [REDACTED] [REDACTED] [REDACTED].

IT'S STILL THE SAME ZIP, [REDACTED].

THE COURT: THANK YOU, MR. STOKES.

(JUROR STANDS.) YES, MA'AM?

THE JUROR: JONES. I FORGOT MY

JUROR NUMBER. I'VE GOT AN ADDRESS CHANGE.

THE COURT: BRENDA JONES?

THE JUROR: SENICA.

THE COURT: SENICA. JUROR 172 IS
YOUR NUMBER. AND YOUR NEW ADDRESS, PLEASE MA'AM,
IS?

THE JUROR: [REDACTED] [REDACTED] [REDACTED],

[REDACTED] [REDACTED] IT'S STILL [REDACTED].

THE COURT: SAME ZIP?

THE JUROR: YES, SIR.

THE COURT: THANK YOU. (JUROR STANDS.) YOUR
NUMBER, MA'AM?

THE JUROR: 29.

THE COURT: ALL RIGHT. MADAM CLERK,
THE NEXT TIME WE HAVE A CASE OF THIS NATURE, I
DIRECT YOU TO THIRTY MINUTES BEFORE WE CONVENE
COURT TO BE INQUIRING OF JURORS OF ANY ADDRESS
CHANGES BECAUSE WE'RE KEEPING 100 PEOPLE WAITING TO

JURY VOIR DIRE.

1 DO SOMETHING WE COULD HAVE DONE EARLIER.

2 THE CLERK: YES, SIR.

3 THE COURT: THIRTY MINUTES
4 BEFOREHAND, PLEASE. NUMBER 29 IS MS. ELIZABETH
5 BOYD. AND YOUR NEW ADDRESS?

6 THE JUROR: [REDACTED],
7 FOLLY BEACH.

8 THE COURT: MA'AM, NO PART OF FOLLY
9 BEACH IS IN DORCHESTER COUNTY, IS IT?

10 THE JUROR: NO.

11 THE COURT: GENTLEMEN, WHILE I
12 DON'T TAKE UP INDIVIDUAL EXCUSES AT THIS TIME, I
13 WOULD SUBMIT TO YOU IF SHE TELLS ME SHE'S
14 PERMANENTLY A RESIDENT OF FOLLY BEACH NOW?

15 THE JUROR: YES, SIR.

16 THE COURT: AND HAVE BEEN SINCE
17 WHEN?

18 THE JUROR: NOT LONG.

19 THE COURT: YESTERDAY?

20 THE JUROR: NO; ABOUT A MONTH.

21 THE COURT: ABOUT A MONTH.

22 MR. BAILEY: THE STATE AGREES, YOUR
23 HONOR.

24 THE COURT: DEFENSE?

25 MR. THEOS: THAT'S FINE, YOUR HONOR.

JURY VOIR DIRE.

1 THE COURT: ALL RIGHT. SO MRS.
2 BOYD, AGAIN WE TRY TO WAIT ON THESE JUROR EXCUSES.
3 BUT SINCE YOU ASSURE US THAT YOU DO NOT LIVE IN
4 DORCHESTER COUNTY, YOU CAN TURN YOUR BADGE IN, AND
5 WE HAVE YOUR CORRECT MAILING ADDRESS. WE STILL
6 WANT TO PAY YOU FOR BEING HERE BECAUSE WE KNOW IT'S
7 BEEN AN IMPOSITION ON YOU. BUT WE DO THANK YOU FOR
8 BEING HERE. NOW, MICHAEL, AS WE'RE EXCUSING THESE
9 PEOPLE, YOU'RE PULLING THEIR INFORMATION OUT?

10 THE LAW CLERK: YES, SIR.

11 THE COURT: HAVE A NICE DAY, MRS.
12 BOYD. (JUROR STANDS.) MA'AM, YOUR NUMBER, PLEASE?

13 THE JUROR: JUROR NUMBER 104.

14 THE COURT: JUROR NUMBER 104. AND
15 THAT IS MS. DELORES EVANS?

16 MS. EVANS: MY ADDRESS IS WRONG.

17 IT'S [REDACTED], [REDACTED]

18 THE COURT: THANK YOU FOR SHARING
19 THAT INFORMATION WITH US. (JUROR STANDS.) AND YOUR
20 NAME AND NUMBER?

21 THE JUROR: JUROR 307, BRYAN
22 TALLENT. ON MY QUESTIONNAIRE I PUT THE CORRECT
23 ADDRESS. BUT THE SUMMONS WAS SENT TO MY OLD
24 ADDRESS. I JUST WANTED TO MAKE SURE Y'ALL HAD THE
25 CORRECT ADDRESS.

JURY QUALIFICATION

75

1 THE COURT: WHICH IS?

2 THE JUROR: [REDACTED],
3 [REDACTED].

4 THE COURT: THANK YOU, MR. TALLENT.
5 AND, LADIES AND GENTLEMEN, PLEASE UNDERSTAND THAT
6 WHEN YOU REGISTERED TO VOTE, YOU MAY HAVE HAD ONE
7 ADDRESS AND THEN YOU'VE SINCE MOVED, OR WHEN YOU
8 OBTAINED YOUR DRIVER'S LICENSE YOU HAD ONE ADDRESS,
9 BUT THEN YOU MOVED. AND THE INFORMATION THAT WE
10 HAVE CAME OFF THAT COMPUTER, EITHER FROM YOUR OLD
11 DRIVER'S LICENSE OR FROM YOUR OLD VOTER
12 REGISTRATION CARD. BUT I DO THANK YOU FOR SHARING
13 THAT INFORMATION ABOUT YOUR ADDRESS. LADIES AND
14 GENTLEMEN, I NEXT NEED TO ASK YOU SOME QUESTIONS
15 ABOUT YOUR QUALIFICATIONS TO SERVE AS JURORS IN
16 THIS CASE. IF YOU THINK SOMETHING MAY APPLY TO YOU
17 BUT YOU'VE GOT A QUESTION IN YOUR MIND AS TO
18 WHETHER THE QUESTION DOES APPLY TO YOU, PLEASE
19 STAND UP AND ASK THE COURT TO CLARIFY IT FOR YOU.
20 SO THE FIRST QUESTION I ASK OF YOU; LADIES AND
21 GENTLEMEN, IN ORDER TO SERVE AS A JUROR IN THE
22 COURTS OF THIS STATE, YOU EITHER HAVE TO HAVE A
23 VALID SOUTH CAROLINA DRIVER'S LICENSE OR A HIGHWAY
24 DEPARTMENT IDENTIFICATION CARD OR A VOTER
25 REGISTRATION CERTIFICATE. YOU MAY NOT HAVE BOTH OF

JURY QUALIFICATION

1 THOSE OR ALL THREE, BUT YOU MUST HAVE AT LEAST ONE
2 OF THOSE THREE. AND SOMETIMES PEOPLE LOSE THEIR
3 VOTER REGISTRATION CARD, AND IT'S UNNECESSARY -- DO
4 YOU AGREE, MR. SOLICITOR, AND FOR THE DEFENSE --
5 THAT WE DON'T NEED TO MAKE THEM PRODUCE THAT VOTER
6 CARD OR THEIR DRIVER'S LICENSE HERE TODAY?

7 MR. BAILEY: THE STATE AGREES, YOUR
8 HONOR.

9 MR. THEOS: THE DEFENSE AGREES.

10 THE COURT: SO IF THERE'S ANY MEMBER
11 OF THIS PROSPECTIVE JURY PANEL WHO AT THIS TIME
12 DOES NOT HAVE A VALID SOUTH CAROLINA DRIVER'S
13 LICENSE OR IS NOT A REGISTERED VOTER, PLEASE STAND.

14 AND, OBVIOUSLY, THAT VOTER REGISTRATION WOULD
15 NEED TO BE IN DORCHESTER COUNTY ALTHOUGH YOU MAY
16 HAVE MOVED HERE AND HAVE A VALID DRIVER'S LICENSE
17 BUT HAVEN'T HAD TIME TO REGISTER. AND I UNDERSTAND
18 THAT THAT COULD BE THE CASE. (NO RESPONSE.) HAS
19 ANY MEMBER OF THIS JURY PANEL NOT YET REACHED HIS
20 OR HER EIGHTEENTH BIRTHDAY? IF SO, PLEASE STAND.
21 (NO RESPONSE.) IS THERE ANY MEMBER OF THIS JURY
22 PANEL A CLERK OR A DEPUTY CLERK OF COURT, A
23 CONSTABLE, A SHERIFF, A DEPUTY SHERIFF, A PROBATE
24 JUDGE, A COUNTY COMMISSIONER, A MAGISTRATE, OR
25 OTHER COUNTY OFFICER, OR ANY PERSON EMPLOYED WITHIN

JURY QUALIFICATION

77

1 THE WALLS OF ANY COURT HOUSE? IF SO, PLEASE STAND.

2 (JUROR STANDS.) YES, SIR; YOUR NAME? UNITED

3 STATES MARSHALL?

4 THE JUROR: YES, SIR.

5 THE COURT: AND YOU ARE NOW RETIRED?

6 THE JUROR: YES, SIR.

7 THE COURT: AND DO YOU STILL HAVE A

8 COMMISSION?

9 THE JUROR: YES, SIR.

10 THE COURT: FROM WHO, SLED, A

11 CONSTABULARY, OR WHAT?

12 THE JUROR: I'M STILL EMPLOYED BY

13 THE FEDERAL COURT.

14 THE COURT: IN CHARLESTON?

15 THE JUROR: YES, SIR.

16 THE COURT: DO YOU KNOW MY FORMER

17 LAW PARTNER, JUDGE BLACK?

18 THE JUROR: VERY WELL.

19 THE COURT: HOW ABOUT JUDGE CHARLES

20 JONES?

21 THE JUROR: VERY WELL.

22 THE COURT: HE THINKS HE'S A JUDGE,

23 DOESN'T HE? HE'S A BAILIFF, BUT HE'S A FINE

24 GENTLEMAN. WHAT SAY THE STATE?

25 MR. BAILEY: YOUR HONOR, IF HE'S

JURY QUALIFICATION

1 COMMISSIONED NOW, I THINK HE'D HAVE TO BE EXCUSED.
2 THE COURT: WHAT SAY THE DEFENSE?
3 MR. THEOS: WE AGREE, YOUR HONOR.
4 THE COURT: Y'ALL PAY, WHAT, A
5 HUNDRED DOLLARS A DAY, IN FEDERAL COURT?
6 THE JUROR: FORTY.
7 THE COURT: FORTY?
8 THE JUROR: YES, SIR.
9 THE COURT: PLUS YOUR MILEAGE, PLUS
10 YOUR PER DIEM? WELL, I APOLOGIZE. ALL WE CAN PAY
11 YOU IS \$25. BUT -- AND YOUR NAME AGAIN; YOUR
12 NUMBER?
13 THE JUROR: 301; FRED STROBLE. IS
14 STILL AN ACTIVE U.S. MARSHALL; NOT RETIRED?
15 THE JUROR: YES; I'M RETIRED.
16 THE COURT: YOU'RE RETIRED? BUT YOU
17 STILL HOLD YOUR COMMISSION?
18 THE JUROR: YES, SIR.
19 THE COURT: AND THEY CAN CALL YOU
20 BACK IN?
21 THE JUROR: YES, SIR.
22 THE COURT: Y'ALL STILL AGREE THAT
23 HE'S TO BE EXCUSED?
24 MR. BAILEY: YES, SIR.
25 MR. THEOS: AS LONG AS HE'S

JURY QUALIFICATION

1 PRESENTLY COMMISSIONED, YOUR HONOR, I THINK HE
2 WOULD BE
3 EXCUSED.

4 THE COURT: ALL RIGHT, MARSHALL
5 STROBLE, WE WILL EXCUSE YOU. AND WE THANK YOU VERY
6 KINDLY FOR BEING HERE WITH US TODAY. KEEP UP THE
7 GOOD WORK IN THE FEDERAL COURT.

8 THE JUROR: THANK YOU, JUDGE.

9 THE COURT: THANK YOU. HAS RON
10 CARPENTER APPEARED? WE JUST RECEIVED A NOTE THAT
11 HIS WIFE CALLED AND SAID HE WAS HAVING CAR TROUBLE.
12 AND THAT'S UNDERSTANDABLE. SO, MR. SHERIFF, THAT
13 IS JUROR NUMBER 53; SO MAYBE HE'LL SHOW HERE
14 MOMENTARILY. DOES ANY MEMBER OF THIS PROSPECTIVE
15 JURY PANEL HOLD A LAW ENFORCEMENT COMMISSION,
16 EITHER WITH OR WITHOUT PAY, SUCH AS A CONSTABLE, A
17 CONSERVATION OFFICER, GAME WARDEN, DEPUTY SHERIFF,
18 HIGHWAY PATROLMAN OR THE LIKE? IN OTHER WORDS, IF
19 YOU'RE AUTHORIZED TO MAKE ARRESTS, IF YOU WOULD,
20 PLEASE STAND. (NO RESPONSE.) HAS ANY MEMBER OF THIS
21 JURY PANEL BEEN CONVICTED OR EVER PLED GUILTY TO
22 ANY CRIME IN ANY COURT; STATE, FEDERAL, OR
23 OTHERWISE, FOR WHICH HE
24 COULD HAVE BEEN IMPRISONED FOR MORE THAN ONE YEAR
25 AND WHO HAS NOT YET HAD YOUR CIVIL RIGHTS RESTORED

JURY QUALIFICATION

1 BY PARDON OR AMNESTY? IF SO, PLEASE STAND. (JUROR
2 STANDS.) YOUR NUMBER?

3 THE JUROR: NUMBER 245.

4 THE COURT: ALL RIGHT, MA'AM,
5 APPROACH. I DO NOT WANT TO EMBARRASS ANYONE. LET
6 ME CONFER WITH YOU. I MUST MAKE A RECORD OF WHAT
7 IS SAID. (JUROR COMPLIES.) I WAS CHARGED WITH
8 POSSESSION OF CRACK COCAINE; AND I RECEIVED FIVE
9 YEARS' OF PROBATION, BUT I GOT TWO-AND-A-HALF
10 YEARS.

11 THE COURT: WHAT WAS YOUR SENTENCE?

12 THE JUROR: FIVE YEARS' PROBATION.

13 THE COURT: I KNOW. BUT THEY WOULD
14 HAVE GIVEN YOU 18 MONTHS SUSPENDED ON FIVE YEARS.
15 WHO WAS THE JUDGE?

16 THE JUROR: OH, I CAN'T REMEMBER.

17 THE COURT: WHAT COUNTY WAS IT?

18 THE JUROR: RIGHT HERE.

19 THE COURT: YOU OUGHT TO BE WRITING
20 HIM LETTERS AND THANKING HIM FOR GIVING YOU
21 PROBATION.

22 THE JUROR: OH, I DID.

23 THE COURT: YOU WROTE THE JUDGE A
24 LETTER?

25 THE JUROR: YOUR HONOR, KENNETH IS

JURY QUALIFICATION

1 JUST LIKE A BROTHER TO ME; I'M DISQUALIFYING
2 MYSELF.

3 THE COURT: WELL, I'M THE ONLY ONE
4 WHO CAN DECIDE ON THAT, MA'AM. BUT, GENTLEMEN, SHE
5 TELLS ME THAT SHE HAS A PRIOR RECORD FOR POSSESSION
6 OF CRACK COCAINE, AND THE SENTENCE FOR A FIRST
7 OFFENSE IS FIVE YEARS AND \$5,000.

8 THE COURT: AND YOU HAVEN'T BEEN
9 PARDONED?

10 THE JUROR: NO, SIR.

11 THE COURT: ALL RIGHT.

12 MR. THEOS: WHEN WAS THAT
13 CONVICTION? I'M SORRY.

14 THE JUROR: 1992.

15 MR. BAILEY: I DON'T HAVE THAT IN MY
16 RECORD. THEY DIDN'T PUT IT IN HERE.

17 THE COURT: ALL RIGHT. I'LL EXCUSE YOU,
18 MA'AM. MADAM COURT REPORTER, LET THE RECORD
19 REFLECT THAT JUROR NUMBER 245 HAS STATED IN THE
20 RECORD STATUTORY DISQUALIFICATIONS. AND MR.
21 SOLICITOR, YOU CONCUR THAT SHE IS DISQUALIFIED?

22 MR. BAILEY: YES, SIR.

23 THE COURT: MR. THEOS FOR THE
24 DEFENDANT?

25 MR. THEOS: YES, SIR.

JURY QUALIFICATION

1 THE COURT: THANK YOU, GENTLEMEN.

2 IS THERE ANY MEMBER OF THIS PROSPECTIVE JURY PANEL
3 WHO IS UNABLE TO READ, WRITE, OR UNDERSTAND THE
4 ENGLISH LANGUAGE? IF SO, I WOULD ASK THAT YOU
5 PLEASE STAND. (JUROR STANDS.) YES, MA'AM; YOUR
6 JUROR NUMBER, PLEASE?

7 THE JUROR: 311.

8 THE COURT: YES, MA'AM; YOUR NAME,
9 PLEASE?

10 THE JUROR: ROSA THOMPSON.

11 THE COURT: MRS. THOMPSON, SOME
12 PERSONS HAVE HAD LESS OPPORTUNITY THAN OTHERS. SO
13 PLEASE, THERE ARE THOSE WHO MAY HAVE HAD TO DROP
14 OUT OF SCHOOL TO HELP CARE FOR A SICK PARENT OR
15 SUPPORT YOUR BROTHERS AND SISTERS AND START WORKING
16 AT AN EARLY AGE. BUT THERE ARE THOSE WHO HAVE
17 EDUCATED THEMSELVES, SO TO SPEAK. YOUR LIFE IS A
18 LEARNING EXPERIENCE FOR ALL OF US. PLEASE, DO YOU
19 READ THE MORNING NEWSPAPER? DO YOU WORK?

20 THE JUROR: I DON'T WORK. I TAKE
21 CARE OF MY HUSBAND WHO IS DISABLED. AND I HAVE TO
22 BE HOME WITH HIM.

23 THE COURT: ALL RIGHT. BUT ARE YOU
24 ABLE TO READ, WRITE, AND UNDERSTAND THE ENGLISH
25 LANGUAGE?

1 THE JUROR: I CAN UNDERSTAND; BUT I
2 HAVE PROBLEMS, YOU KNOW, READING BECAUSE MY EYE IS
3 SO BAD. AND I DON'T READ THE PAPER.

4 THE COURT: HOW FAR DID YOU GO IN
5 SCHOOL?

6 THE JUROR: FIFTH.

7 THE COURT: ALL RIGHT. WHAT SAY THE
8 STATE?

9 MR. BAILEY: YOUR HONOR, I WOULD
10 AGREE BECAUSE OF THE MULTIPLE PROBLEMS SHE'S
11 HAVING, EXCUSING HER.

12 THE COURT: WHAT SAY THE DEFENDANT?

13 MR. THEOS: YOUR HONOR, WE DON'T
14 OBJECT TO HER BEING EXCUSED.

15 THE COURT: ALL RIGHT. MA'AM, MAY I
16 PLEASE, MRS. ROSA THOMPSON, YOU WILL BE EXCUSED.
17 AND WE WISH FOR YOUR HUSBAND IMPROVED HEALTH. AND
18 GOOD LUCK TO YOU. AND WE HAVE YOUR CORRECT ADDRESS
19 AS [REDACTED]?

20 THE JUROR: RIGHT.

21 THE COURT: WE'LL MAIL YOU A LITTLE
22 PIECE OF MONEY.

23 THE JUROR: THANK YOU.

24 THE COURT: THANK YOU FOR BEING WITH
25 US. AND DRIVE CAREFULLY. HAVE A NICE DAY. DOES ANY

JURY QUALIFICATION

1 MEMBER OF THE JURY PANEL HAVE LESS THAN A SIXTH
2 GRADE EDUCATION OR ITS EQUIVALENT? IF SO, PLEASE
3 STAND. (NO RESPONSE.) DOES ANY MEMBER OF THIS
4 JURY PANEL HAVE EITHER A MENTAL OR PHYSICAL
5 INFIRMITY WHICH WOULD MAKE IT DIFFICULT FOR YOU TO
6 RENDER EFFICIENT JURY SERVICE? IF SO, PLEASE
7 IDENTIFY YOURSELF NOW; AND YOU'LL HAVE TO WAIT
8 UNTIL WE GET TO THE INDIVIDUAL VOIR DIRE TO GO INTO
9 THAT IN FURTHER DETAIL. THE COURT HAS ASKED FOR
10 AND RECEIVED MANY MEDICAL EXCUSES FROM A NUMBER OF
11 LADIES AND GENTLEMEN THAT WAS IN THAT SITUATION.
12 BUT THERE MAY BE SOME OF YOU WHO HAVE A MENTAL OR
13 PHYSICAL INFIRMITY THAT WOULD MAKE IT DIFFICULT FOR
14 YOU TO RENDER EFFICIENT JURY SERVICE OR INCAPABLE
15 OF RENDERING EFFICIENT JURY SERVICE. YOU CAN STAND
16 AND IDENTIFY YOURSELF AT THIS TIME.

17 THE COURT: LET THE RECORD REFLECT
18 THAT THERE WERE NO RESPONSES, AND ALL ARE HEALTHY,
19 WEALTHY, AND WISE. IS ANY MEMBER OF THIS
20 PROSPECTIVE JURY PANEL NOT NOW A RESIDENT OF
21 DORCHESTER COUNTY? IF SO, PLEASE STAND. IF YOU DO
22 NOT RESIDE OR LIVE IN DORCHESTER COUNTY, PLEASE
23 STAND. (JUROR STANDS.) YOUR NAME, PLEASE MA'AM?

24 THE JUROR: SHIRLEY BRITT.

25 THE COURT: DO YOU KNOW YOUR JURY

JURY QUALIFICATION

1 NUMBER?

2 THE JUROR: 36.

3 THE COURT: 36. ALL RIGHT. MRS.
4 BRITT, WE CHANGED YOUR -- SHIRLEY BRITT?

5 THE JUROR: RIGHT.

6 THE COURT: WE JUST CHANGED YOUR
7 MAILING ADDRESS TO RIDGEVILLE, [REDACTED]---

8 THE JUROR: YES, BUT I'M IN BERKELEY
9 COUNTY.

10 THE COURT: BUT THAT MAILING ADDRESS
11 -- PART OF RIDGEVILLE IS IN BERKELEY COUNTY?

12 THE JUROR: YES, SIR.

13 THE COURT: AND YOU'VE ALWAYS
14 RESIDED, OR HAVE FOR THE LAST FOUR OR FIVE YEARS,
15 AT THAT ADDRESS?

16 THE JUROR: I'VE BEEN THERE SIX
17 YEARS.

18 THE COURT: I JUST WASN'T AWARE THAT
19 THAT PART OF RIDGEVILLE WAS IN BERKELEY COUNTY.
20 GENTLEMEN, IT WOULD APPEAR THAT IF SHE RESIDES
21 ACROSS THE COUNTY LINE, SHE WOULD NOT BE ELIGIBLE.
22 WHAT SAY THE STATE?

23 MR. BAILEY: THE STATE AGREES, YOUR
24 HONOR.

25 THE COURT: DEFENSE?

JURY QUALIFICATION

1 MR. BELL: WE AGREE, YOUR HONOR.

2 THE COURT: AND I'M GLAD WE GOT YOUR

3 CORRECT MAILING ADDRESS, MRS. BRITT. WE WILL,

4 WITHIN THE WEEK, MAIL A CHECK TO YOU. AND WE

5 APOLOGIZE FOR ANY INCONVENIENCE. WE'RE GLAD TO

6 HAVE YOU HERE. AS HAPPENS IN A SMALL AREA LIKE

7 BARNWELL, YOU'LL HAVE A R.F.D. OLAR WHICH IS IN

8 BAMBERG COUNTY, BUT YOU ACTUALLY LIVE IN BARNWELL

9 COUNTY. AND IF THE CONVERSE OF THAT IS TRUE,

10 YOU'LL LIVE IN BAMBERG AND YET HAVE A RURAL ADDRESS

11 ON THE RURAL ROUTE IN BARNWELL. SO, I HOPE YOU

12 UNDERSTAND HOW THAT HAPPENS.

13 MR. BRITT: THAT'S ALL RIGHT.

14 THE COURT: THANK YOU. HAVE A NICE

15 DAY.

16 THE JUROR: ALL RIGHT. YOU DO THE

17 SAME. (JUROR STANDS.) YES, MA'AM, THE LADY IN THE

18 BACK. YOUR JUROR NUMBER?

19 THE JUROR: I DON'T KNOW MY NUMBER,

20 BUT MY NAME IS CARLISS TOMPKINS.

21 THE COURT: NUMBER 314. YES, MRS.

22 TOMPKINS?

23 THE JUROR: WELL, I STAY IN BERKELEY

24 COUNTY, BUT MY ADDRESS IS IN DORCHESTER COUNTY.

25 THE COURT: YES, MA'AM.

JURY QUALIFICATION

87

1 THE JUROR: I JUST NOTICED THE
2 ADDRESS WAS DIFFERENT.

3 THE COURT: WELL, MA'AM, LET ME
4 ASK---

5 THE JUROR: THE ADDRESS IS MY
6 MOTHER'S ADDRESS.

7 THE COURT: DO YOU WORK, MA'AM?

8 THE JUROR: YES, SIR.

9 THE COURT: WHERE DO YOU WORK?

10 THE JUROR: LINK IN SUMMERVILLE.

11 THE COURT: DO YOU HAVE A DRIVER'S
12 LICENSE?

13 THE JUROR: YES, SIR.

14 THE COURT: AND WHAT ADDRESS DO YOU
15 HAVE ON THAT?

16 THE JUROR: IT'S MY MOTHER'S
17 ADDRESS.

18 THE COURT: IN SUMMERVILLE?

19 THE JUROR: YES.

20 THE COURT: ARE YOU REGISTERED TO
21 VOTE?

22 THE JUROR: NO, SIR.

23 THE COURT: WELL, I WOULD ENCOURAGE
24 YOU. I DON'T ORDER YOU. BUT I WOULD JUST
25 ENCOURAGE YOU TO EXERCISE YOUR PRIVILEGE TO VOTE;

JURY QUALIFICATION

1 AND I ENCOURAGE YOU TO REGISTER. MS. TOMPKINS,
2 PLEASE UNDERSTAND THAT THE RESIDENCE IS DETERMINED
3 BY TWO THINGS; YOUR INTENT TO DO SOMETHING TO LIVE
4 A CERTAIN PLACE; AND SECOND, THE OVERT PHYSICAL ACT
5 OF HAVING A PRESENCE THERE. YOU DON'T HAVE TO HAVE
6 A CONTINUING PRESENCE. FOR EXAMPLE, SENATOR
7 HOLLINGS, HE'S IN WASHINGTON MORE THAN HE IS IN
8 CHARLESTON. BUT HE IS STILL A RESIDENT OF
9 CHARLESTON COUNTY. AND IF YOU RETURNED TO YOUR
10 RESIDENCE OR YOUR MOTHER'S ONE OR MORE TIMES A YEAR
11 AND PHYSICALLY STAY THERE OVER-NIGHT, OR WHEREVER.
12 IF YOU INTEND THAT TO BE YOUR OFFICIAL RESIDENCE,
13 YOU CAN BE A RESIDENT OF DORCHESTER COUNTY EVEN
14 THOUGH YOU LIVE IN BERKELEY MOST OF THE TIME. YOU
15 DON'T OWN YOUR OWN PROPERTY IN BERKELEY?

16 THE JUROR: NO, SIR.

17 THE COURT: YOU RENT?

18 THE JUROR: YES, SIR. I RENT TO
19 OWN.

20 THE COURT: RENT TO OWN?

21 THE JUROR: YES.

22 THE COURT: BUT, I MEAN, HAVE YOU
23 GOT LEGAL TITLE TO ANY PROPERTY THAT MIGHT BE
24 MORTGAGED? A LOT OF US RENT TO OWN IF THAT'S WHAT
25 YOU MEAN BY---

JURY QUALIFICATION

1 THE JUROR: NO, SIR.

2 THE COURT: --HAVING INDEBTEDNESS ON
3 YOUR HOME.

4 THE JUROR: NO, SIR.

5 THE COURT: SO YOU JUST PAY X
6 DOLLARS RENT PER WEEK OR MONTH?

7 THE JUROR: YES, SIR.

8 THE COURT: SO, MA'AM, I CAN GIVE
9 YOU A CLUE. IF YOUR DESIRE IS TO BE A RESIDENT OF
10 DORCHESTER COUNTY, WE'RE GOING TO KEEP YOU. IF
11 YOUR DESIRE TO BE A RESIDENT OF BERKELEY COUNTY,
12 WE'RE GOING TO LET YOU SLIDE, BUT YOU'RE GOING TO
13 HAVE TO GET YOUR -- I THINK THIRTY OR SIXTY DAYS
14 YOU HAVE TO GET THE CORRECT ADDRESS ON YOUR
15 DRIVER'S LICENSE ANY TIME YOU MOVE. SO WHAT'S YOUR
16 PLEASURE?

17 THE JUROR: I WOULD LIKE TO KEEP MY
18 MOTHER'S ADDRESS.

19 THE COURT: YOU'D LIKE TO CONTINUE
20 TO BE A RESIDENT OF DORCHESTER COUNTY?

21 THE JUROR: FINE. GENTLEMEN, I DEEM
22 HER TO BE QUALIFIED IF SHE WISHES FOR HER MAMMA'S
23 HOUSE TO BE HER HOUSE EVEN THOUGH SHE RENTS OVER IN
24 BERKELEY. WHAT SAYS THE STATE?

25 MR. BAILEY: NO OBJECTION, YOUR

JURY QUALIFICATION

HONOR.

THE COURT: WHAT SAY THE DEFENDANT?

MR. BELL: NO OBJECTION, YOUR HONOR.

THE COURT: WE'RE SO GLAD TO HAVE
YOU, MR. TOMPKINS. (JUROR STANDS.) MA'AM, YOUR
NUMBER, PLEASE?

THE JUROR: I DON'T KNOW MY NUMBER.

THE COURT: YOUR NAME, PLEASE?

THE JUROR: LINDA BROWN.

THE COURT: MS. LINDA BROWN. THAT,
LADIES AND GENTLEMEN, IS JUROR NUMBER 39. YES, MS.
BROWN? WHAT WOULD YOU LIKE TO TELL THE COURT?

THE JUROR: I WOULD LIKE TO LET THE
COURT KNOW THAT I'M DEAF IN ONE EAR, AND I DO NOT
HEAR VERY WELL. PLUS I HAVE SOME DIFFICULTIES
WHICH I FILLED OUT IN THE PAPERS I SENT IN. BUT I
DIDN'T GET ANY DOCTOR'S REPORTS.

THE COURT: ALL RIGHT. PULL THE
FORM, PLEASE. LADIES AND GENTLEMEN, DO YOU WANT TO
DOUBLE CHECK HER FORM, PLEASE?

THE JUROR: I HAVE A HARD TIME
WALKING BECAUSE MY LEGS ARE DYING; AND IT'S HARD
FOR ME TO GET BACK AND FORTH. AND THERE'S NOTHING
THE DOCTOR---

THE COURT: DO YOU HAVE A HEARING

JURY QUALIFICATION

1 AID, MA'AM?

2 THE JUROR: NO, I DON'T. I'VE BEEN
3 DEAF IN THAT EAR EVER SINCE I WAS A LITTLE BABY.

4 THE COURT: IF I TOLD YOU YOU WON
5 THE READERS DIGEST SWEEPSTAKES FOR A MILLION
6 DOLLARS, YOU COULD HEAR ME?

7 THE JUROR: I CAN HEAR SOME, BUT
8 IT'S MORE OR LESS ALL MANGLED UP. I CAN'T HEAR
9 CLEARLY.

10 THE COURT: ALL RIGHT, MA'AM.
11 GENTLEMEN, YOU CAN SEE THE WRITTEN STATEMENT THAT
12 SHE HAS THERE. WHAT SAYS THE STATE?

13 MR. BAILEY: YOUR HONOR, WE WOULD
14 AGREE TO EXCUSE HER.

15 THE COURT: WHAT SAY THE DEFENSE?

16 MR. THEOS: YOUR HONOR, THIS IS NOT
17 A JUROR THAT WE HAD PREVIOUSLY AGREED TO EXCUSE. I
18 THOUGHT THAT WE WOULD HANDLE THESE ON AN INDIVIDUAL
19 BASIS. I DON'T THINK SHE QUALIFIES UNDER ANY
20 STATUTORY EXEMPTION.

21 THE COURT: WELL---

22 MR. THEOS: WE CAN APPROACH THE
23 BENCH, THOUGH. (AT THIS TIME BENCH CONFERENCE IS
24 HELD.)

25 THE COURT: I'M SORRY. THE JURORS

JURY QUALIFICATION

1 JUST DISAPPEARED OUT THE BACK DOOR. ARE ALL OF
2 THEM BACK IN?

3 THE BAILIFF: YES, SIR.

4 THE COURT: WELL, I DON'T WANT TO
5 LOCK THOSE DOORS BECAUSE THIS IS A PUBLIC
6 COURTROOM, AND I KNOW PEOPLE HAVE TO POWDER THEIR
7 NOSE AND RESPOND TO THE CALLS OF NATURE. AND WE'RE
8 GOING TO DO THAT SHORTLY. BUT COULD I ASK YOU
9 PLEASE NOT TO LEAVE JUST YET BECAUSE ALL OF YOU
10 HAVE TO RESPOND TO THESE QUESTIONS ONE WAY OR THE
11 OTHER. ALL RIGHT. AS I UNDERSTAND IT, THE STATE
12 CONCURS THAT THIS JUROR SHOULD BE EXCUSED.

13 MR. BAILEY: THAT'S CORRECT, YOUR
14 HONOR.

15 THE COURT: AND AS I UNDERSTAND IT,
16 THE DEFENDANT CONCURS THAT THIS JUROR SHOULD BE
17 EXCUSED?

18 MR. THEOS: YES, SIR.

19 THE COURT: ALL RIGHT. MRS. BROWN,
20 IS YOUR CORRECT MAILING ADDRESS [REDACTED],

21 [REDACTED] [REDACTED]?

22 MRS. BROWN: YES, SIR.

23 THE COURT: AND BECAUSE OF YOUR
24 PHYSICAL CONDITION, WE WILL EXCUSE YOU. AND WE
25 WISH YOU WELL. AND THEY'LL MAIL A CHECK TO YOU.

JURY QUALIFICATION

1 YOU ARE EXCUSED. THANK YOU. ALL RIGHT. IS THERE
2 ANY MEMBER OF THIS JURY PANEL HERE WHO AT THE
3 PRESENT TIME IS NOT A CITIZEN OF THE UNITED STATES
4 OF AMERICA? IF NOT, PLEASE STAND. (NO RESPONSE.)
5 HAS ANY MEMBER OF THIS JURY PANEL SERVED ON A JURY
6 IN THE CIRCUIT COURTS OF OUR STATE IN THE LAST
7 CALENDAR YEAR? WHEN I SAY SERVED, THAT YOU CAME IN
8 ON MONDAY. I DON'T KNOW THAT YOU ACTUALLY HAVE TO
9 SIT, BUT I THINK IF YOU WERE SELECTED OR DRAWN TO
10 BE. IF SO, PLEASE STAND. (JUROR STANDS.) YOUR
11 NAME, PLEASE?

12 THE JUROR: BOB TILIDETZKE. THE
13 NUMBER IS 312.

14 THE COURT: YES, SIR. LAST FALL I
15 WAS CALLED FOR JURY DUTY IN SUMMERVILLE AND ASKED
16 THEM TO RECALL ME IN THE SUMMER.

17 THE COURT: WAS THAT IN THE CITY;
18 MUNICIPAL COURT?

19 THE JUROR: IT WAS A COUPLE OF
20 BLOCKS OFF OF MAIN STREET.

21 THE COURT: THAT WOULD HAVE BEEN THE
22 MUNICIPAL COURT. AND MY QUESTION WAS FOR THE
23 CIRCUIT COURT WHICH IS THIS COURT HERE. ALBEIT,
24 THANK YOU FOR RESPONDING. BUT THEY HAVE A FAMILY
25 COURT, I THINK, THAT SITS IN SUMMERVILLE ALTHOUGH

JURY QUALIFICATION

1 NOT WITH JURORS. GENTLEMEN AND LADIES, THINGS HAVE
2 NOT PROGRESSED AT THE PACE THAT I HAD DESIRED.
3 YOU'VE BEEN VERY PATIENT IN BEING SEATED SINCE TEN
4 O'CLOCK. AND I REALLY THINK, LADIES AND GENTLEMEN,
5 AT THIS TIME I NEED TO LET THE JURORS TAKE A
6 RECESS. AND I'LL MEET WITH THE CLERK AND THE
7 LAWYERS AND THE SHERIFF IN CHAMBERS, AND WE'LL
8 DISCUSS THESE FAILURE TO LOCATE; MAY WE, PLEASE?
9 SO, LADIES AND GENTLEMEN; WE'LL GO BY THE CLOCK ON
10 THE BACK WALL. IT'S TEN AFTER TWELVE BY THAT CLOCK
11 WHICH MIGHT BE A MINUTE OR TWO FAST. SO WHY DON'T
12 WE TAKE A FIFTEEN MINUTE RECESS? BY 12:25 PLEASE
13 BE BACK PRESENT IN THE COURTROOM. AND IF YOU'RE
14 STILL STANDING IN LINE AT THE POWDER ROOM, WE'LL
15 WAIT ON YOU.

16 THE COURT: MADAM COURT REPORTER, I
17 HAND TO YOU THE JURY QUESTIONNAIRES FOR JURORS
18 NUMBERS 36, 245, 301, AND 311. SO JERRY AND JIM
19 AND SOLICITOR; IF Y'ALL WOULD COME BACK IN CHAMBERS
20 WITH THE SHERIFF AND THE CLERK, PLEASE.

21 (BRIEF RECESS.)

22 THE COURT: GENTLEMEN OF THE BAR,
23 JUROR NUMBER 53, MR. CARPENTER, PLEASE STAND.
24 (JUROR COMPLIES.) PUT A GREEN TAG ON HIM. MR.
25 CARPENTER, LET ME GET YOU TO COME DOWN AND BE

JURY QUALIFICATION

1 SEATED ON THE SECOND OR THIRD ROW HERE, PLEASE.
2 AND GENTLEMEN OF THE BAR, AT THE TIME THAT WE HAVE
3 THE INDIVIDUAL VOIR DIRE, I DON'T WANT TO BELABOR
4 MY 107 FOLKS BY GOING THROUGH THE SAME QUESTIONS
5 I'VE BEEN THROUGH FOR THE LAST THIRTY OR FORTY-FIVE
6 MINUTES. IS IT AGREEABLE THAT FOR THIS JUROR AND
7 THE NEXT LADY THAT CAME IN THAT WE CAN DO IT AT
8 THAT TIME, MR. SOLICITOR?

9 MR. BAILEY: YES, SIR.

10 THE COURT: MR. THEOS AND MR. BELL?

11 MR. THEOS: YES, SIR.

12 MR. BELL: YES, SIR.

13 THE COURT: ALL RIGHT. AND THEN
14 JUROR NUMBER 274; THAT IS MRS. MARTHA SARVEY,
15 S-A-R-V-E-Y. THANK YOU FOR BEING HERE. WOULD YOU
16 GIVE HER A GREEN TAG, MR. BAILIFF, PLEASE? NOW
17 LADY AND GENTLEMEN OF THE JURY PANEL, PLEASE, THE
18 QUESTIONS THAT THE COURT HAS BEEN PROPOUNDING TO
19 YOU THUS FAR HAS BEEN WHAT WE CALL DISQUALIFYING
20 QUESTIONS THAT YOU MAY NOT SERVE AS A JUROR UNDER
21 THOSE QUESTIONS THAT WE HAVE ALREADY BEEN OVER.
22 BUT THERE ARE OTHER CLASSES OF PERSONS WHO FALL
23 INTO CERTAIN CATEGORIES SUCH AS SCHOOL TEACHERS,
24 AIDES, AND OTHER MATTERS I WILL NOW GO INTO WHERE
25 YOU HOLD AN EXEMPTION, BUT IT'S NOT AUTOMATIC. YOU

JURY QUALIFICATION

1 HAVE TO ASK FOR THAT, AND YOU HAVE TO BE FOR
2 EXAMPLE, A SCHOOL TEACHER. AND I APOLOGIZE TO THE
3 SCHOOL TEACHERS FOR NOT BEING ABLE TO ACCOMMODATE
4 YOU SO THAT YOU COULD BE AT SCHOOL TODAY. YOUR
5 FIRST PRIORITY IS BEING WITH THE YOUNG CHILDREN,
6 AND I UNDERSTAND THAT. BUT IF YOU ARE EXCUSED
7 BECAUSE YOU'RE A SCHOOL TEACHER, THEN YOU WOULD BE
8 ASSIGNED TO ANOTHER TERM OF COURT. WELL, WE CAN'T
9 ARBITRARILY PICK A WEEK IN THE SUMMER TIME WHEN YOU
10 MAY HAVE NON-REFUNDABLE TICKETS TO GO TO LOCKNESS
11 IN SCOTLAND OR THE ISLE OF SKY OR THE SOUTH OF
12 FRANCE. OR YOU MAY BE GOING TO THE COLLEGE OF
13 CHARLESTON OR OTHER INSTITUTIONS OF HIGHER LEARNING
14 FOR UPGRADING YOUR CERTIFICATE OR GETTING YOUR
15 MASTERS. AND THAT'S WHY -- AND I HAD CALLS FROM
16 TWO ATTORNEYS AND ONE FEDERAL JUDGE AND A FAX ON
17 FRIDAY ABOUT THOSE SAME THREE PERSONS, AND I'VE
18 EXPLAINED TO THEM EACH TIME WHY IT WAS NOT
19 POSSIBLE. BUT WE'RE GOING TO TAKE THAT UP AT THIS
20 TIME. SO, LADIES AND GENTLEMEN, FOR THOSE OF YOU
21 WHO HAVE OBTAINED AGE 65, THE COURT WILL NOT
22 MANDATE OR FORCE YOU TO SERVE ON THE JURY. WHEN
23 YOU BECOME A SENIOR CITIZEN, YOU SHOULD BE ALLOWED
24 TO DO WHAT YOU FEEL PHYSICALLY AND MENTALLY ABLE TO
25 DO WITHIN THE FRAMEWORK OF THE LAW AND THE MORAYS

JURY QUALIFICATION

1 OF SOCIETY. AND CERTAINLY WE WOULD ENCOURAGE YOU
2 TO REMAIN WITH US. I'VE FOUND IN MY EXPERIENCE AS
3 A JUDGE THAT SENIOR CITIZENS DO INDEED MAKE
4 EXCELLENT JURORS. AND WE ATTRIBUTE THAT TO THE
5 EXPERIENCE THEY'VE GAINED IN LIVING LIFE. AS YOU
6 GET OLDER -- I KNOW I FEEL LIKE I'VE LEARNED
7 SOMETHING NEW EVERY DAY, AND I LOOK BACK AT SOME OF
8 THE SILLY THINGS I DIDN'T KNOW OR SOME OF THE SILLY
9 THINGS I FAILED TO DO AT A YOUNGER AGE THAT I
10 RECKON IT'S LIKE WINE, YOU JUST MATURE WITH AGE.
11 BUT IF THERE'S ANYONE WHO IS 65 YEARS OF AGE OR
12 OLDER WHO WOULD LIKE TO BE EXCUSED BY VIRTUE OF
13 THAT FACT ALONE, PLEASE STAND. (JUROR STANDS.)
14 THANK YOU. AND THIS IS JUROR NUMBER 274 WHICH IS
15 MRS. MARTHA H. SARVEY, S-A-R-V-E-Y. YES, MA'AM?
16 YOU WOULD LIKE TO BE EXCUSED BECAUSE OF YOUR AGE?

17 THE JUROR: PLEASE.

18 THE COURT: WHAT SAY THE STATE?

19 MR. BAILEY: NO OBJECTION, YOUR
20 HONOR.

21 THE COURT: WHAT SAY THE DEFENDANT?

22 MR. BELL: NO OBJECTION, YOUR
23 HONOR.

24 THE COURT: MRS. SARVEY, IS YOUR
25 CORRECT MAILING ADDRESS [REDACTED] IN

JURY QUALIFICATION

1

2

THE JUROR: YES, SIR, IT IS.

3

THE COURT: PLEASE, THANK YOU FOR

4

BEING HERE WITH US TODAY. WE REGRET ANY

5

INCONVENIENCE. YOU WILL BE MAILED YOUR TWENTY-FIVE

6

DOLLAR CHECK. SPEND IT WISELY. YOU'RE EXCUSED.

7

DRIVE CAREFULLY. HAVE A PLEASANT DAY. THANK YOU.

8

(JUROR STANDS.) YES, SIR? YOUR NUMBER?

9

THE JUROR: I DON'T KNOW THE NUMBER.

10

THE COURT: YOUR NAME?

11

THE JUROR: LEWIS LINCOLN.

12

THE COURT: MR. LEWIS LINCOLN. AND

13

THAT WOULD BE JUROR NUMBER?

14

MS. GRAHAM: 198.

15

THE COURT: 198. AND YOUR BIRTHDAY

16

IS [REDACTED] THE [REDACTED]. I WON'T TELL THEM WHAT YEAR

17

AND WHAT YOU WANT TO TELL ME.

18

THE JUROR: I WOULD LIKE TO BE

19

EXCUSED.

20

THE COURT: ALL RIGHT. WHAT SAY THE

21

STATE?

22

MR. BAILEY: NO OBJECTION, YOUR

23

HONOR.

24

THE COURT: WHAT SAY THE DEFENDANT?

25

MR. BELL: NO OBJECTION, YOUR HONOR.

JURY QUALIFICATION

1 THE COURT: MR. LINCOLN. THANK YOU
2 SO MUCH. YOUR CORRECT MAILING ADDRESS IS [REDACTED]
3 [REDACTED] THEY EVEN NAMED THE STREET AFTER YOU.

4 THE JUROR: YES, SIR.

5 THE COURT: IN [REDACTED] HOME OF
6 SENATOR MATTHEWS. ALL RIGHT. YOU'RE EXCUSED.
7 WE'LL MAIL A CHECK. DRIVE CAREFULLY.

8 THE COURT: THAT'S JUROR NUMBER 198,
9 MADAM CLERK. (JUROR STANDS.) YES, SIR; ON THE BACK
10 ROW; YOUR NUMBER?

11 THE JUROR: 263.

12 THE COURT: YES, SIR? MR. ISAAC
13 JAMES RHETT; [REDACTED] THE [REDACTED] [REDACTED] [REDACTED]

14 THE JUROR: YES, SIR.

15 THE COURT: BORN IN [REDACTED] WHAT SAY
16 THE STATE?

17 MR. BAILEY: NO OBJECTION, YOUR
18 HONOR.

19 THE COURT: WHAT SAY THE DEFENDANT?

20 MR. THEOS: NO OBJECTION, YOUR
21 HONOR.

22 THE COURT: MR. RHETT, THANK YOU FOR
23 BEING WITH US. IF YOU'LL TURN THAT GREEN STICKER
24 IN, AND WE'LL MAIL YOU A CHECK. DRIVE CAREFULLY.
25 GENTLEMEN, PLEASE REFER TO YOUR LIST. NUMBER 143,

JURY QUALIFICATION

ANNIE M. HENDERSON, HAS INFORMED THE SHERIFF OF A
DEATH IN THE FAMILY. WE WOULD ASK THE POSITION OF
THE STATE.

MR. BAILEY: NO OBJECTION, YOUR
HONOR.

THE COURT: FOR THE DEFENSE?

MR. THEOS: NO OBJECTION, YOUR
HONOR.

THE COURT: JUROR NUMBER 143 IS
EXCUSED BECAUSE OF A DEATH IN THE FAMILY. IS THERE
ANY MEMBER OF THIS PERSPECTIVE JURY PANEL AN
OFFICER OR AN EMPLOYEE OF THE STATE DEPARTMENT OF
CORRECTIONS AND WISHES TO CLAIM HIS OR HER
EXEMPTION? BECAUSE YOU DO HAVE AN EXEMPTION UNDER
THE LAW IF YOU'RE EMPLOYED BY THE STATE DEPARTMENT
OF CORRECTIONS. IF SO, PLEASE STAND. (JUROR
STANDS.) YES, SIR; YOUR NUMBER?

THE JUROR: 58.

THE COURT: NUMBER 58.

THE JUROR: I'M A CARPENTER
INSTRUCTOR. I WORK AT MCDOUGAL CORRECTIONAL
INSTITUTE.

THE COURT: I'M SORRY. WHICH ONE?

THE JUROR: MCDOUGAL CORRECTIONAL.

THE COURT: MCDOUGAL. SURE. WHAT

1 SAY THE STATE?

2 MR. BAILEY: NO OBJECTION, YOUR
3 HONOR.

4 THE COURT: THE DEFENSE?

5 MR. BELL: NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. AND MR.

7 CLARENCE A. CLARK, JR. IS YOUR CORRECT MAILING
8 ADDRESS [REDACTED], SOUTH
9 CAROLINA?

10 THE JUROR: YES, SIR.

11 THE COURT: MAY I PLEASE THANK YOU
12 FOR BEING PRESENT TODAY. AND GOOD LUCK TO YOU.
13 WE'LL MAIL YOU A CHECK.

14 THE JUROR: YES, SIR.

15 THE COURT: IS THERE ANY MEMBER OF
16 THIS PERSPECTIVE JURY PANEL A WOMAN WHO HAS A CHILD
17 AT HOME UNDER THE AGE OF SEVEN AND YOU DO NOT WORK;
18 YOU STAY HOME AND TAKE CARE OF THAT CHILD; AND IT'S
19 YOUR CHILD OR EITHER YOU HAVE THE LEGAL CUSTODY OF
20 THE CHILD AND WISH TO BE EXCUSED. SO I'VE GOT TO
21 EXPLAIN TO YOU; YOU'VE GOT TO BE A FEMALE. IF
22 YOU'RE A MR. MOM, IT DOESN'T APPLY TO MEN. THE
23 LEGISLATURE WORDED THE STATUTE; NOT ME. SECOND,
24 THE CHILD HAS TO BE UNDER THE AGE OF SEVEN. THEN
25 YOU HAVE TO HAVE LEGAL CUSTODY AND YOU DON'T WORK

JURY QUALIFICATION

1 OUTSIDE THE HOME. IF THAT APPLIES TO ANY OF YOU
2 WHO WISH THAT EXEMPTION, PLEASE STAND. (JUROR
3 STANDS.) YOUR NUMBER, MA'AM?

4 THE JUROR: 146.

5 THE COURT: MRS. NANCY HILL? YES,
6 MA'AM. STATE YOUR CIRCUMSTANCES, PLEASE.

7 THE JUROR: I HAVE A FOUR YEAR OLD
8 AT HOME WITH MY HUSBAND WHO TOOK OFF OF WORK
9 TODAY.

10 THE COURT: AND YOU DO NOT WORK
11 OUTSIDE THE HOME?

12 THE JUROR: AS OF THREE WEEKS AGO.

13 THE COURT: ALL RIGHT, MA'AM. AND
14 YOU STAY AT HOME AND TAKE CARE OF YOUR FOUR YEAR
15 OLD CHILD?

16 THE JUROR: AFTER 11:15.

17 THE COURT: 11:15 A.M.?

18 THE JUROR: YES, SIR. SHE'S IN
19 KINDERGARTEN.

20 THE COURT: SURE. I UNDERSTAND.
21 WHAT SAY THE STATE?

22 MR. BAILEY: NO OBJECTION, YOUR
23 HONOR.

24 THE COURT: WHAT SAY THE DEFENSE?

25 MR. BELL: NO OBJECTION, YOUR HONOR.

1 THE COURT: NOW, MRS. HILL, IS YOUR
2 CORRECT MAILING ADDRESS [REDACTED],
3 [REDACTED]?

4 THE JUROR: YES, SIR.

5 THE COURT: MAY I PLEASE THANK YOU
6 FOR BEING HERE WITH US TODAY. AND I APOLOGIZE FOR
7 KEEPING Y'ALL SO LONG. AND YOU ARE EXCUSED. WE'LL
8 MAIL A CHECK TO YOU. THANK YOU, MA'AM. IS ANY
9 MEMBER OF THIS PROSPECTIVE JURY PANEL A STUDENT IN
10 HIGH SCHOOL OR AN INSTITUTION OF HIGHER LEARNING
11 INCLUDING A TECHNICAL SCHOOL WHOSE SERVICE AS A
12 JUROR THIS WEEK WOULD MAKE IT DIFFICULT FOR YOU TO
13 SERVE BECAUSE YOU WOULD HAVE TO BE MISSING CLASSES
14 IN ORDER TO SERVE AS A JUROR. WE CERTAINLY DON'T
15 WANT YOU TO MISS CLASS AND FAIL TO MAKE STRAIGHT
16 A'S. SO IF SO, PLEASE STAND. (NO RESPONSE.) ANY
17 MEMBER OF THIS PERSPECTIVE JUROR PANEL WHO ARE
18 TEACHERS OR PROFESSORS WHO WOULD HAVE TO MISS
19 CLASS; I SAY TO YOU THAT WE CAN'T OUTRIGHT EXCUSE
20 YOU. BUT THE STATUTE REQUIRES YOU TO A TERM OF
21 COURT WHERE YOU WOULD NOT HAVE THE CONFLICT. SO IF
22 THAT APPLIES TO YOU, MAY I ASK THAT YOU PLEASE
23 STAND. (JUROR STANDS.) ALL RIGHT. MRS. BRYANT,
24 BEING THAT YOU'RE FROM MY COUNTY OF BARNWELL, I'LL
25 START WITH YOU. AND YOU ARE JUROR NUMBER?

JURY QUALIFICATION

1 THE JUROR: FORTY.

2 THE COURT: AND YOU TEACH -- AND I
3 HAVE THIS STATEMENT SIGNED BY DR. LINDSEY, THE
4 SUPERINTENDENT. AND SOMETIMES, LADIES AND
5 GENTLEMEN, WHAT HAPPENS IS THE BOSS MAN WANTS YOU
6 THERE, BUT YOU WANT TO SERVE. NOT THAT WE QUESTION
7 THE INTEGRITY OF DR. LINDSEY BECAUSE I KNOW IT'S A
8 DIFFICULT PROPOSITION TO HAVE TO GET SUBSTITUTE
9 TEACHERS, AND YOU HATE TO MISS. BUT THE LAW
10 REQUIRES IT TO BE DONE THE WAY IT'S BEING DONE. I
11 DON'T LIKE THE LAW, BUT I'M HERE TO SEE THAT IT'S
12 CARRIED OUT TO THE LETTER. SO, MRS. BRYAN, WHERE
13 DO YOU TEACH?

14 THE JUROR: ALSTON MIDDLE SCHOOL.

15 THE COURT: AND THAT IS IN SCHOOL
16 DISTRICT NUMBER?

17 THE JUROR: TWO.

18 THE COURT: IS THAT IN SUMMERVILLE
19 OR RIDGEVILLE?

20 THE JUROR: SUMMERVILLE.

21 THE COURT: SUMMERVILLE? AND,
22 MA'AM, THE NEXT TERMS OF COURT THAT WE ARE HAVING
23 WOULD BE JUNE THE SEVENTH, CIVIL; JUNE THE
24 FOURTEENTH, CRIMINAL; JUNE THE 21ST, CRIMINAL.
25 WHAT BE YOUR PLEASURE?

1 THE JUROR: I'LL BE RETIRED JUNE THE
2 EIGHTH; SO I REALLY DON'T CARE.

3 THE COURT: GOSH! I HATE TO MAKE
4 YOU SERVE THE DAY AFTER YOU RETIRE. AGAIN, MA'AM,
5 YOU PICK SEVEN, FOURTEEN, OR TWENTY-ONE. IT'S YOUR
6 CHOICE.

7 THE JUROR: FOURTEEN.

8 THE COURT: JUNE THE FOURTEENTH. SO
9 THAT IS JUROR NUMBER 40; AND SHE IS A SCHOOL
10 TEACHER WHO WISHES TO CLAIM HER EXEMPTION BECAUSE
11 SHE IS GOING TO LOSE IT JUNE THE EIGHTH WHEN SHE
12 RETIRES, AND WE WILL TRANSFER HER TO THE JUNE THE
13 FOURTEEN TERM OF COURT. AND, MA'AM, WHILE THE
14 STATUTE DOES NOT REQUIRE YOU TO SEND ANOTHER
15 NOTICE, I FEEL THAT IT'S APPROPRIATE TO DO SO. MAY
16 I ASK YOU TO DO THAT? BECAUSE USUALLY ON THE FIRST
17 DAY OF CRIMINAL COURT YOU DON'T BRING THE JURY IN
18 UNTIL THE SECOND DAY. SO, MRS. BRYANT, WE'RE GOING
19 TO SEND YOU A CHECK FOR BEING HERE TODAY. AND I
20 KNOW THAT WON'T COVER YOUR SUBSTITUTE. AND YOU
21 NEED A STATEMENT CERTIFYING YOU'VE BEEN IN COURT TO
22 GIVE TO YOUR EMPLOYER BECAUSE I BELIEVE THE
23 DORCHESTER SCHOOLS, AS TO MOST SCHOOL DISTRICTS,
24 GIVE YOU YOUR REGULAR RATE OF PAY AND LET YOU KEEP
25 YOUR \$25; OR DO THEY MAKE YOU TURN IT IN?

JURY QUALIFICATION

1 THE JUROR: THEY KNOW WHERE WE ARE.

2 THE COURT: BUT WE ARE GOING TO PAY
3 YOU FOR BEING HERE. AND YOU ARE EXCUSED, MRS.
4 BRYANT. IT'S NICE TO SEE YOU.

5 THE JUROR: THANK YOU.

6 THE COURT: YOU'RE TRANSFERRED TO
7 JUNE THE 14TH. (JUROR STANDS.) NOW, THE LADY ON
8 THE FRONT ROW. YES, MA'AM?

9 THE JUROR: NUMBER 98, WANDA ELLIS.

10 THE COURT: NUMBER 98, MRS. WANDA
11 ELLIS. IS YOUR CORRECT MAILING ADDRESS [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]?

13 THE JUROR: YES, SIR.

14 THE COURT: AND, MA'AM, WHERE DO YOU
15 TEACH?

16 THE JUROR: AT SANGAREE ELEMENTARY
17 IN BERKELEY COUNTY.

18 THE COURT: AND YOUR PLEASURE IS?

19 THE JUROR: TO BE EXCUSED AND TO
20 SERVE DURING THE SUMMER.

21 THE COURT: WOULD IT BE MORE OR LESS
22 CONVENIENT FOR YOU TO SERVE THE WEEKS OF JUNE
23 SEVEN, FOURTEEN, OR TWENTY-ONE?

24 THE JUROR: I THINK THE FOURTEENTH
25 WOULD BE BETTER. I'M NOT SURE WHEN SCHOOL ENDS FOR

JURY QUALIFICATION

1 THE YEAR IN BERKELEY COUNTY.

2 THE COURT: ALL RIGHT, MA'AM. WE
3 WILL TRANSFER YOU TO JUNE THE FOURTEENTH. THERE
4 WILL BE TERMS OF COURT IN JULY AND AUGUST, BUT THEY
5 HAVE NOT BEEN OFFICIALLY DESIGNATED BY COURT
6 ADMINISTRATION THROUGH THE CHIEF JUSTICE, ETC. AT
7 THIS TIME. SO THAT'S WHY WE'RE LIMITED TO THOSE
8 THREE WEEKS IN JUNE. THAT IS YOUR CORRECT MAILING
9 ADDRESS. AND MELINDA MURKSON DOESN'T TEACH AT THAT
10 SCHOOL, DOES SHE?

11 THE JUROR: YES, SIR.

12 THE COURT: THAT'S MY SISTER-IN-LAW
13 FROM MONCKS CORNER. AND HER DAUGHTER JUST GAVE
14 BIRTH TO A NEW LITTLE BABY DAUGHTER LAST WEEK. SO
15 SHE WOULDN'T BE IN SCHOOL ANYWAY. THANK YOU, MRS.
16 ELLIS. YOU'RE EXCUSED. TRANSFERRED TO JUNE THE
17 14TH. WE'LL MAIL YOU A CHECK. (JUROR STAND.) THE
18 NEXT LADY THERE BY MRS. ELLIS.

19 THE JUROR: NUMBER 309, PATRICIA
20 TAYLOR.

21 THE COURT: NUMBER 309. IS YOUR
22 CORRECT MAILING ADDRESS [REDACTED],
23 [REDACTED], MA'AM?

24 THE JUROR: YES, SIR.

25 THE COURT: AND YOUR EMPLOYMENT IS

JURY QUALIFICATION

1 WHERE AND WHAT CAPACITY?

2 THE JUROR: I TEACH KINDERGARTEN AT
3 SANGAREE ELEMENTARY IN BERKELEY COUNTY.

4 THE COURT: IS IT YOUR DESIRE NOT TO
5 SERVE AT THIS TIME?

6 THE JUROR: I CHOOSE TO SERVE LATER
7 IN THE SUMMER.

8 THE COURT: WOULD JUNE THE SEVENTH,
9 FOURTEENTH, OR TWENTY-FIRST BE OF ANY INTEREST?

10 THE JUROR: I'D BETTER TAKE THE
11 FOURTEENTH BECAUSE I'M NOT SURE OF THE LAST WEEK OF
12 SCHOOL.

13 THE COURT: WHAT SAY THE STATE?

14 MR. BAILEY: NO OBJECTION, YOUR
15 HONOR.

16 THE COURT: DEFENSE?

17 MR. BELL: NO OBJECTION, YOUR HONOR.

18 THE COURT: TRANSFERRED TO JUNE THE
19 FOURTEENTH. AND MRS. TAYLOR, YOUR CHECK WILL BE
20 MAILED TO YOU. DRIVE CAREFULLY. HAVE A NICE DAY.

21 THE JUROR: THANK YOU, SIR.

22 THE COURT: MY WIFE TAUGHT SCHOOL,
23 MY MOTHER-IN-LAW, ONE OF MY DAUGHTERS; SO I HAVE AN
24 APPRECIATION FOR SCHOOL TEACHERS. I HOPE Y'ALL
25 UNDERSTAND WHY IT WAS NECESSARY TO BE HERE UNDER

JURY QUALIFICATION

1 THE LAW. THANK YOU, MA'AM. (JUROR STANDS.) YOUR
2 NAME, PLEASE, MA'AM?

3 THE JUROR: SUZANNE L. GALENIAN,
4 116.

5 THE COURT: YES, MA'AM? [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

7 THE JUROR: (NO RESPONSE.)

8 THE COURT: LADSON?

9 THE JUROR: YES, SIR.

10 THE COURT: AND, MRS. GALENIAN,
11 WHERE ARE YOU EMPLOYED?

12 THE JUROR: ALSTON MIDDLE SCHOOL.

13 THE COURT: AND THAT IS IN SCHOOL
14 DISTRICT?

15 THE JUROR: I'M IN THE SAME SCHOOL
16 AS THEM.

17 THE COURT: OKAY. YOU'RE ON THAT
18 LIST THAT DR. LINDSEY SENT IN AND SENATOR GOODSTEIN
19 CALLED ABOUT AND LAWYER ROSEN CALLED ABOUT. AND,
20 MA'AM, IS YOUR PLEASURE TO TRANSFER YOUR TIME TO
21 LATER?

22 THE JUROR: TRY THE 21ST.

23 THE COURT: TRANSFER HER TO JUNE THE
24 21ST. MA'AM, AGAIN WE THANK YOU FOR BEING HERE; AND
25 YOU ARE EXCUSED. WE'LL MAIL YOUR CHECK.

JURY QUALIFICATION

110

1 THE JUROR: THANK YOU.

2 THE COURT: THANK YOU, MA'AM. YOU
3 MAY GO AT THIS TIME. (JUROR STANDS.) YES, MA'AM,
4 NEXT LADY?

5 THE JUROR: NANCY PORTER.

6 THE COURT: NUMBER?

7 THE JUROR: I DON'T KNOW.

8 THE COURT: 255. YES, MRS. PORTER?
9 WHERE ARE YOU EMPLOYED?

10 THE JUROR: I TEACH OVER AT THE
11 ELEMENTARY SCHOOL IN DORCHESTER COUNTY.

12 THE COURT: IS YOUR PLEASURE TO
13 REMAIN WITH US OR TO BE TRANSFERRED TO JUNE SEVEN,
14 FOURTEEN, OR TWENTY-ONE?

15 THE JUROR: I'D LIKE TO BE
16 TRANSFERRED TO JUNE THE SEVENTH.

17 THE COURT: WHAT SAY THE STATE?

18 MR. BAILEY: NO OBJECTION, YOUR
19 HONOR.

20 THE COURT: DEFENSE?

21 MR. BELL: NO OBJECTION, YOUR
22 HONOR.

23 THE COURT: THANK YOU FOR BEING WITH
24 US, MRS. PORTER. YOU ARE EXCUSED. YOUR CHECK WILL
25 BE MAILED TO YOU. HAVE A NICE DAY. NEXT LADY,

JURY QUALIFICATION

1 PLEASE? (JUROR STANDS.)

2 THE JUROR: MARTHA JOHNSON, NUMBER
3 165. YES, MRS. JOHNSON?

4 THE JUROR: I'M A SCHOOL COUNSELOR
5 AT ROLLINS SCHOOL OF THE ART IN SUMMERVILLE.

6 THE COURT: AND YOUR PLEASURE IS TO
7 REMAIN WITH US OR TO BE TRANSFERRED?

8 THE JUROR: TO BE TRANSFERRED TO
9 JUNE THE 21ST.

10 THE COURT: YES, MA'AM. ANY
11 OBJECTION BY THE STATE?

12 MR. BAILEY: NO, SIR.

13 MR. BAILEY: NONE, YOUR HONOR.

14 THE COURT: IS YOUR CORRECT MAILING
15 ADDRESS [REDACTED]?

16 THE JUROR: YES, SIR.

17 THE COURT: THANK YOU, MRS. JOHNSON.
18 HAVE A NICE DAY. AND YOU ARE TRANSFERRED TO JUNE
19 THE 21. WE APPRECIATE YOUR PRESENCE. (JUROR
20 STANDS.) YES, SIR. YOUR NAME?

21 THE JUROR: I'M BOB TILIDETZKE,
22 NUMBER 312.

23 THE COURT: YES, SIR?

24 THE JUROR: I TEACH AT CHARLESTON
25 SOUTHERN UNIVERSITY. I'D LIKE TO BE TRANSFERRED TO

JURY QUALIFICATION

1 JUNE THE SEVENTH.

2 THE COURT: WHAT DO YOU TEACH, SIR?

3 THE JUROR: MATHEMATICS.

4 THE COURT: VERY GOOD. IS YOUR
5 CORRECT MAILING ADDRESS [REDACTED],

6 [REDACTED]?

7 THE JUROR: THAT'S CORRECT.

8 THE COURT: ANY OBJECTION BY THE
9 STATE?

10 MR. BAILEY: NO, SIR.

11 MR. BELL: NONE, YOUR HONOR.

12 THE COURT: AND PROFESSOR, YOU
13 UNDERSTAND THE NECESSITY FOR US HAVING YOU HERE
14 TODAY, I TRUST?

15 THE JUROR: YES, SIR.

16 THE COURT: THANK YOU. HAVE A NICE
17 DAY. THEY'LL MAIL YOUR CHECK TO YOU. JUROR NUMBER
18 312, PROFESSOR ROBERT L. TILIDETZKE IS TRANSFERRED
19 TO JUNE THE SEVENTH. (JUROR STANDS.) YES, MA'AM;
20 YOUR NAME?

21 THE JUROR: I AM A TEACHER. MY NAME
22 IS MRS. SIGWALD, BUT I'M NOT CLAIMING AN EXEMPTION.

23 THE ONLY REASON I STOOD IS BECAUSE YOU ASKED THE
24 OTHER LADIES IF THEY WERE STAYING OR ASKING FOR A
25 TRANSFER. SO I JUST WANTED YOU TO KNOW THAT I AM A

JURY QUALIFICATION

1 TEACHER, BUT I'M NOT ASKING FOR A TRANSFER. I'M
2 THREE HUNDRED AND SOMETHING.

3 THE COURT: CHERYL SIGWALD?

4 THE JUROR: YES, SIR.

5 THE COURT: WHERE DO YOU TEACH,
6 MA'AM?

7 THE JUROR: I TEACH AT WALTERBORO.
8 I TEACH SCIENCE, EIGHTH GRADE; AND I ALSO TEACH
9 MATH FOR CHILDREN WHO ARE UNDER 33 PERCENTILE.

10 THE COURT: WE'RE SO PLEASED, MA'AM,
11 TO YOUR EXPERIENCE IN DEALING WITH CHILDREN AND
12 YOUNG ADULTS. AND WE APPRECIATE YOUR WILLINGNESS
13 TO SERVE ON THE JURY. AND I'M SORRY FOR ANY
14 INCONVENIENCE. BUT I THANK YOU.

15 THE JUROR: I'LL BRING MY PILLOW FOR
16 THIS BENCH THE NEXT TIME.

17 THE COURT: THERE ARE NO PILLOWS ON
18 THE BENCHES?

19 THE JUROR: NO, SIR.

20 THE COURT: I TOLD YOU \$25 A DAY
21 WASN'T ENOUGH. THE CLERK TELLS ME THE SEWER SYSTEM
22 BROKE DOWN, AND THEY PUT THE CUSHIONS FROM THE
23 BENCHES IN THE SEWER SYSTEM FOR SOME REASON.

24 THE CLERK: THE MONEY.

25 THE COURT: OH, THEY PUT THE MONEY

JURY QUALIFICATION

1 TO FIX THE SEWER SYSTEM. OH! I WAS THINKING THOSE
2 CUSHIONS MUST HAVE BEEN WORN OUT. ANY FURTHER
3 SCHOOL TEACHERS WHO WISH TO CLAIM EXEMPTIONS? AND,
4 MADAM CLERK, LET ME PASS OVER TO YOU THIS
5 QUESTIONNAIRE ON NUMBER 40 AND A STATEMENT FROM DR.
6 LINDSEY TO PLACE WITH THE COURT REPORTER, PLEASE.
7 LADIES AND GENTLEMEN, I REALIZE THE SUN IS SHINING;
8 AND SURELY EVERYBODY HAS A FISHING HOLE OR SOME
9 PLACE THEY'D RATHER BE THAN OUT HERE WITHOUT
10 CUSHIONS ON THE BENCHES. AND I KNOW THAT YOU HAVE
11 WORK PROBLEMS AND FAMILY PROBLEMS AND MEDICAL
12 PROBLEMS. BUT I NEED TO KNOW IF ANY OF YOU KNOW OF
13 ANY REASON OF ANY KIND WHATSOEVER THAT WOULD
14 PREVENT YOU FROM BEING QUALIFIED TO SERVE AS A
15 JUROR IN THE COURTS OF OUR STATE? IF SO, PLEASE
16 STAND. (JUROR STANDS.) YOUR NAME, MA'AM?

17 THE JUROR: JUROR NUMBER ONE, TERESA
18 ADAMS.

19 THE COURT: YES, MS. ADAMS.

20 THE JUROR: I OWN MY OWN BUSINESS.
21 I HAVE ONE EMPLOYEE. AND I WORK FOR FOURTEEN
22 DIFFERENT DENTAL OFFICES. AND IF I CLOSE DOWN, I
23 CAN'T LEAVE THE BUSINESS. I'M REQUIRED BY THE
24 STATE TO BE THERE. AND WE ALWAYS CLOSE DOWN ONE
25 WEEK IN THE SUMMER. AND I WOULD BE WILLING TO

JURY QUALIFICATION

1 TRANSFER, USE MY VACATION THAT WEEK. BUT IF I
2 CLOSE DOWN, I GET SEQUESTERED -- FOR ANY TYPE THING
3 LIKE THAT, I CAN'T WORK.

4 THE COURT: WHEN YOU STOP,
5 PRODUCTION STOPS. NOW, GENTLEMEN AND LADIES, WHAT
6 I NORMALLY WOULD DO IS WRITE DOWN THE JUROR NUMBER
7 AND PUT HER UNDER THE COLUMN OF WORK HARDSHIP AND
8 TAKE THAT UP ON THE INDIVIDUAL VOIR DIRE. I'LL BE
9 GLAD TO FOLLOW THAT PROCEDURE; OR IF YOU'RE WILLING
10 TO CONFER AMONG YOURSELVES AND THEN COME UP HERE
11 AND TELL ME. I DO NOT WANT YOU TO ANNOUNCE OUT LOUD
12 BECAUSE I DON'T WANT THE JUROR TO BE POTENTIALLY
13 DISGRUNTLED FOR ANY REASON.

14 (AT THIS TIME BENCH CONFERENCE IS HELD.)

15 THE COURT: ALL RIGHT. BE SEATED,
16 PLEASE. (JUROR COMPLIES.) (JUROR STANDS.) NEXT
17 GENTLEMAN; YOUR NUMBER?

18 THE JUROR: 264, EUGENE RHINE.

19 THE COURT: 264, EUGENE RHINE. YES,
20 SIR?

21 THE JUROR: I WAS REPRESENTED ABOUT
22 EIGHT YEARS AGO BY MR. BELL IN MUNICIPAL COURT IN
23 NORTH CHARLESTON.

24 THE COURT: AND---

25 THE JUROR: I DON'T KNOW IF IT

JURY QUALIFICATION

1 APPLIES OR NOT.

2 THE COURT: NO, SIR. I APPRECIATE
3 YOU SHARING THAT WITH ME. EVERYBODY NEEDS A GOOD
4 LAWYER; AND I WON'T ASK YOU WHAT THE RESULT; BUT
5 WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY
6 TO GIVE A FAIR AND IMPARTIAL TRIAL TO BOTH THE
7 STATE AND THE DEFENDANT?

8 THE JUROR: I DON'T BELIEVE IT
9 WOULD.

10 THE COURT: SURE. I APPRECIATE YOU
11 SHARING THAT WITH ME. THAT'S JUROR 264, MR. RHINE.
12 AND I'M GOING TO GET AROUND TO THAT QUESTION
13 SHORTLY, BUT YOU'VE ANSWERED IT; AND I THANK YOU.
14 (JUROR STANDS.) THE NEXT GENTLEMAN, SIR?

15 THE JUROR: 322.

16 THE COURT: 322. AND HIS NAME,
17 MADAM COURT REPORTER, IS MICHAEL BIGOTTY,
18 B-I-G-O-T-T-Y. YES, SIR, MR. BIGOTTY?

19 THE JUROR: I'VE GOT A DOCTOR'S
20 EXCUSE.

21 THE COURT: DO YOU WANT TO BRING IT
22 FORWARD, PLEASE? (WITNESS COMPLIES.) GENTLEMEN,
23 WHY DON'T THE TWO OF Y'ALL LOOK AT IT BEFORE I LOOK
24 AT IT? (JUROR STANDS.) THE NEXT GENTLEMAN; YOUR
25 NAME?

1 THE JUROR: JUROR NUMBER 271.

2 THE COURT: JUROR NUMBER 271.

3 THAT'S MR. RICHARD ROBINSON?

4 THE JUROR: YES, SIR.

5 THE COURT: BE SEATED, MR. BIGOTTY.

6 ALL RIGHT, MR. ROBINSON? YOUR NUMBER WAS?

7 THE JUROR: 271.

8 THE COURT: AND WHAT DID YOU WANT TO
9 TELL ME?

10 THE JUROR: I HAVE A DEATH IN THE
11 FAMILY OUT OF TOWN.

12 THE COURT: APPROACH THE BENCH,
13 PLEASE.

14 (AT THIS TIME BENCH CONFERENCE IS HELD.)

15 THE COURT: LET HIM JUST TELL YOU
16 ABOUT IT; THEN Y'ALL CAN TELL ME. DO YOU KNOW WHEN
17 THE FUNERAL IS?

18 THE JUROR: IT'S GOING TO BE
19 THURSDAY.

20 (AT THIS TIME BENCH CONFERENCE IS HELD.)

21 THE COURT: THAT WAS YOUR UNCLE, MR.
22 RICHARDSON?

23 THE JUROR: YES, SIR.

24 THE COURT: MADAM COURT REPORTER,
25 JUROR NUMBER 271 REGRETFULLY LOST HIS UNCLE IN

JURY QUALIFICATION

1 SPARTANBURG, AND HE NEEDS TO BE WITH THE FAMILY
2 TONIGHT, AND THE FUNERAL IS ON THURSDAY. AND THE
3 STATE AND THE DEFENDANT AGREED TO EXCUSE HIM. IS
4 THAT CORRECT, MR. SOLICITOR?

5 MR. BAILEY: CORRECT, YOUR HONOR.

6 THE COURT: MR. RICHARDSON, IS YOUR
7 CORRECT MAILING ADDRESS [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

8 THE JUROR: YES, SIR.

9 THE COURT: WE'LL MAIL YOU A CHECK.
10 AND WE'RE SORRY ABOUT THE DEATH. (JUROR STANDS.)
11 YOUR NAME, MA'AM?

12 THE JUROR: KACEY PHILLEY.

13 THE COURT: YOUR NUMBER?

14 THE JUROR: 253.

15 THE COURT: YES; MS. KACEY PHILLEY?

16 THE JUROR: I OWN A WOMEN'S FITNESS
17 CENTER IN SUMMERVILLE; AND THEN I'M OPENING MY
18 SECOND LOCATION IN BARNWELL MARCH THE FIRST.

19 THE COURT: IN WHERE?

20 THE JUROR: BARNWELL.

21 THE COURT: WE NEED A FITNESS
22 CENTER. BUT IT OPENS MARCH THE FIRST, AND I'M THE
23 SOLE OPERATOR, ONLY EMPLOYEE; BASICALLY EVERYTHING.
24 AND I WOULD REALLY APPRECIATE IT IF MAYBE I COULD
25 TRANSFER MY SERVICE UNTIL -- MAYBE A MONTH DOWN THE

JURY QUALIFICATION

1 ROAD WOULD BE PERFECT; ANY TIME.

2 THE COURT: ALL RIGHT. THANK YOU.

3 SO GENTLEMEN, APPROACH THE BENCH, PLEASE.

4 (AT THIS TIME BENCH CONFERENCE IS HELD.)

5 THE COURT: IS THERE ANYONE ELSE,

6 LADIES AND GENTLEMEN, THAT WE INQUIRE OF YOU --

7 (JUROR STANDS.) WELL, THERE'S ONE RIGHT THERE.

8 YES, SIR, YOUR NUMBER?

9 THE JUROR: JUROR NUMBER 53, YOUR
10 HONOR.

11 THE COURT: MR. RONALD CARPENTER?

12 THE JUROR: YES, SIR,

13 THE COURT: WHAT DO YOU WANT TO TELL
14 ME?

15 THE JUROR: I'D LIKE TO APPROACH FOR
16 A PRIVATE HEARING, PLEASE.

17 THE COURT: CERTAINLY. THIS IS
18 JUROR NUMBER 53, PLEASE. MR. CARPENTER, WHEN YOU
19 SAY PRIVATE, DO YOU HAVE ANY OBJECTION TO THE STATE
20 AND THE DEFENSE LAWYER LISTENING IN?

21 THE JUROR: NO, SIR.

22 THE COURT: COME ON UP, PLEASE.

23 THE JUROR: I HAD FORMER FEDERAL
24 SECURITY CLASSIFICATIONS AND JOB RELATED DUTIES
25 WHICH I THINK COULD HAVE A POTENTIAL FOR CREATING A

JURY QUALIFICATION

1 CONFLICT AS BEING FOR WHICH I COULD BE A FAIR AND
2 IMPARTIAL JUROR. THESE ARE ITEMS WHICH I DID BRIEF
3 IN MY SEPARATION FORM FOR RETIREMENT FROM THE
4 MILITARY SERVICE. AND WHILE I WOULD LIKE TO FEEL
5 THAT I COULD DO MY BEST TO FULFILL THAT ROLL AS A
6 JUROR, AND I FEEL THAT I POSSIBLY COULD, I THINK
7 THAT THERE COULD ALSO BE THE POTENTIAL FOR SOME
8 AREAS THAT COULD COME INTO CONFLICT BEFORE THE
9 COURT WHICH WOULD CREATE A PROBLEM.

10 THE COURT: ARE YOU AT LIBERTY TO
11 DISCLOSE THE NATURE OF YOUR WORK? ARE YOU WITH THE
12 CIA OR NORTH AMERICAN ROCKWELL IN TRACKING POLARIS
13 MISSILES DEPENDING ON THE LOCATION OF THE SUBS
14 WHICH MY BROTHER-IN-LAW USED TO DO?

15 THE JUROR: I CAN ONLY USE A GENERIC
16 TERM BY SAYING THAT I WAS FULL-TIME ENROLLED IN
17 SPECIAL OPERATION AND RESPONSIBILITIES IN THE
18 MILITARY. AND I WOULD REQUIRE FURTHER HEARING OF
19 DETAILED INFORMATION TO HAVE ALL PARTIES CONCERNED
20 SIGN ON DISCLOSURE STATEMENTS BEFORE I COULD
21 PROCEED WITH SAYING THAT I MIGHT NOT COME INTO PLAY
22 AS A JUROR.

23 THE COURT: WHAT SAY THE STATE?

24 MR. BAILEY: CAN I CONFER WITH MR.
25 THEOS?

JURY QUALIFICATION

1 THE COURT: SURE.

2 (AT THIS TIME OFF-THE-RECORD DISCUSSION IS HELD AMONG
3 COUNSEL.)

4 THE COURT: ALL RIGHT, MR.

5 CARPENTER. YOUR CORRECT MAILING ADDRESS IS [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED]?

7 THE JUROR: YES, SIR.

8 THE COURT: ALL RIGHT. AND THE
9 STATE, BECAUSE OF THE DISCLOSURE MADE BY THE
10 SUBJECT JUROR; THE STATE HAS CONCLUDED THAT HE'S
11 SHOWN GOOD CAUSE FOR THE COURT TO EXCUSE HIM?

12 MR. BAILEY: YES, SIR.

13 THE COURT: AND THE DEFENSE?

14 MR. THEOS: YES, SIR.

15 THE COURT: ALL RIGHT. YOU ARE
16 EXCUSED. THANK YOU.

17 THE JUROR: THANK YOU, YOUR HONOR.

18 THE COURT: HOPE YOU GET YOUR CAR
19 FIXED.

20 THE JUROR: THANK YOU, SIR.

21 THE COURT: ALL RIGHT, MADAM CLERK.

22 Y'ALL ARE KEEPING UP WITH THESE PRECISELY SO WE
23 DON'T PUT THESE PEOPLE ON A PANEL IF THEY'VE BEEN
24 EXCUSED; CORRECT?

25 MS. GRAHAM: YES, SIR.

JURY QUALIFICATION

1 THE COURT: CAN I INTERRUPT Y'ALL,
2 PLEASE? I'M SO SORRY, BUT I'M KEEPING 100 PEOPLE
3 WAITING. EXCUSE ME, PLEASE. Y'ALL CAN GO OUTSIDE
4 AND DANCE AND SING. BUT, PLEASE LET ME CONTINUE.
5 THANK YOU. SO, MR. SOLICITOR AND MR. THEOS; COULD
6 I ASK Y'ALL TO APPROACH REGARDING JURORS ONE, 253
7 AND 322?

8 (AT THIS TIME BENCH CONFERENCE IS HELD.)

9 THE COURT: ALL RIGHT, GENTLEMEN OF
10 COUNSEL, AS I UNDERSTAND IT JUROR NUMBER ONE IS THE
11 LADY THAT DOES THE MOLDS AND DENTAL WORK FOR
12 FOURTEEN DENTISTS; A TERRIFIC RESPONSIBILITY AND A
13 DISTINCT HARDSHIP. AND JUROR NUMBER 253 WHO'S
14 GIVEN THE RESIDENT JUDGE OF THE SECOND JUDICIAL
15 CIRCUIT A ONE YEAR FREE MEMBERSHIP IN THE EXERCISE
16 -- I'M TEASING. I'M NOT ALLOWED TO ACCEPT THINGS
17 LIKE THAT. THIS OPENING OF A NEW BUSINESS COME
18 MONDAY; AND THEN THE GENTLEMAN, NUMBER 322, WITH
19 BACK PAIN. AND LET ME GIVE YOU THE NAMES; (1)
20 TERESA ADAMS; (2) NUMBER 253, THE LADY OPENING THE
21 FITNESS CENTER IN BARNWELL, MRS. PHILLEY; AND DO WE
22 HAVE YOUR CORRECT ADDRESS, MRS. PHILLEY, [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]?

24 THE JUROR: NO, SIR; IT'S [REDACTED].

25 THE COURT: [REDACTED]?

JURY QUALIFICATION

123

1

MRS. PHILLEY: [REDACTED] [REDACTED]

2

[REDACTED].

3

THE COURT: [REDACTED]?

4

THE JUROR: YES, SIR.

5

THE COURT: AND THEN JUROR ONE, MS.

6

ADAMS, [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

7

THE JUROR: YES, SIR.

8

THE COURT: AND THEN JUROR NUMBER

9

322, MR. MICHAEL BIGOTTY, WITH THE BACK PROBLEM?

10

STAND, PLEASE. (JUROR STANDS.) AND YOUR CORRECT

11

MAILING ADDRESS IS [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

12

THE JUROR: [REDACTED] [REDACTED] [REDACTED].

13

THE COURT: [REDACTED] [REDACTED] [REDACTED];

14

YES, SIR.

15

THE JUROR: [REDACTED] [REDACTED].

16

THE COURT: [REDACTED]?

17

THE JUROR: [REDACTED].

18

THE COURT: ALL RIGHT. THANK YOU.

19

THE THREE OF YOU, THE STATE AGREES THAT GOOD CAUSE

20

HAS BEEN SHOWN?

21

MR. BAILEY: YES, SIR.

22

MR. THEOS: YES, SIR.

23

THE COURT: FOR THE STATE AND FOR

24

THE DEFENDANT? SO Y'ALL ARE ALL EXCUSED. YOUR

25

CHECK WILL BE MAILED TO YOU. Y'ALL HAVE A PLEASANT

THE CORBY GROUP 1-800-233-3040 LASER STOCK FORM FMD

MOTIONS

1 DAY; AND THANK YOU FOR BEING SO PATIENT WITH US.
2 NOW, MR. SOLICITOR, IF YOU WOULD PLEASE CALL THE
3 CASES. I THINK YOU'VE PASSED UP -- DO YOU HAVE
4 PROPER COPIES?

5 MR. BAILEY: YES, SIR. THE STATE
6 CALLS INDICTMENT 98-GS-18-75, THE STATE VS. KENNETH
7 SIMMONS, CHARGED WITH MURDER; 98-GS-18-76, CHARGES
8 KENNETH SIMMONS WITH BURGLARY IN THE FIRST DEGREE;
9 98-GS-18-77, CHARGES KENNETH SIMMONS WITH ARMED
10 ROBBERY; 98-GS-18-78, CHARGES KENNETH SIMMONS WITH
11 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE;
12 98-GS-18-79, CHARGES KENNETH SIMMONS WITH
13 KIDNAPPING.

14 THE COURT: THANK YOU. NOW, LADIES
15 AND GENTLEMEN, THE SOLICITOR HAS CALLED FOR TRIAL
16 FIVE SPECIFIC INDICTMENTS. AND I'M GOING TO READ
17 PORTIONS OF THOSE INDICTMENTS TO YOU AT THIS TIME,
18 NOT INTENDING TO COMMENT UPON THE FACTS OF THIS
19 CASE BECAUSE I TELL YOU, LADIES AND GENTLEMEN, THE
20 INDICTMENTS ARE NOT EVIDENCE OF THE FACTS. THEY'RE
21 NOT PROOF OF ANY OF THE CHARGES. THEY'RE SIMPLY
22 THE LEGAL FORMAL CHARGING PAPERS WHICH CONTAIN THE
23 NUMBERS OF THE CHARGES, TELL YOU AND ME ABOUT, AND
24 ANYONE ELSE WHO READS THE INDICTMENT. SO PLEASE
25 UNDERSTAND THAT AS I READ THESE INDICTMENTS TO YOU;

MOTIONS

1 AND THEY ARE AS FOLLOWS: IN 98-GS-18-0075; FOR
2 MURDER, IT'S ALLEGED THAT KENNETH SIMMONS, THE
3 DEFENDANT, DID IN DORCHESTER COUNTY ON OR ABOUT
4 SEPTEMBER ONE, 1996, FELONIOUSLY, WILLFULLY, AND
5 WITH MALICE AFORETHOUGHT KILL ONE LILLY, L-I-L-L-Y
6 BELL, B-E-L-L, BOYD, B-O-Y-D, BY MEANS OF BEATING
7 HER ABOUT THE HEAD AND STRANGLING HER, AND THE SAID
8 LILLY BELL BOYD DID DIE AS A PROXIMATE RESULT
9 THEREOF ON THE SAME DATE, SEPTEMBER 1, 1996, IN
10 DORCHESTER COUNTY. AND THE NEXT INDICTMENT,
11 98-GS-18-0076, CHARGES THE DEFENDANT, KENNETH
12 SIMMONS, WITH BURGLARY IN THE FIRST DEGREE IN THAT
13 IT IS ALLEGED THAT THE SUBJECT, KENNETH SIMMONS,
14 DID IN DORCHESTER COUNTY VIOLATE CODE SECTION
15 16-11-311 OF OUR SOUTH CAROLINA CODE OF LAWS ON OR
16 ABOUT SEPTEMBER ONE OF 1996. IT'S ALLEGED HE DID
17 WILLFULLY AND UNLAWFULLY ENTER THE DWELLING OF
18 LILLY BELL BOYD WITHOUT CONSENT WITH THE INTENT TO
19 COMMIT A CRIME THEREIN, TO WIT: ARMED ROBBERY,
20 CRIMINAL SEXUAL CONDUCT, AND KIDNAPPING. AND THE
21 DEFENDANT WHILE IN EFFECTING ENTRY OR WHILE IN THE
22 DWELLING OR IN IMMEDIATE FLIGHT THEREFROM WAS ARMED
23 WITH A DEADLY WEAPON CAUSING PHYSICAL INJURY TO
24 LILLY BELL BOYD WHO WAS NOT A PARTICIPANT IN THE
25 CRIME AND USED OR THREATENED TO USE A DANGEROUS

MOTIONS

INSTRUMENT, AND/OR ENTERED SAID DWELLING IN THE
NIGHT TIME. THE NEXT INDICTMENT, LADIES AND
GENTLEMEN, 98-GS-18-077, ALLEGES THAT THE SUBJECT,
KENNETH SIMMONS, DID IN DORCHESTER COUNTY ON OR
ABOUT SEPTEMBER ONE, 1996, WHILE ARMED WITH A
DEADLY WEAPON, TAKE FROM THE PERSON OR PRESENCE OF
THE VICTIM, LILLY BELL BOYD BY MEANS OF FORCE OR
INTIMIDATION GOODS OR MONIES OF THE SAID VICTIM.
AND INDICTMENT NUMBER 98-GS-18-0078 ALLEGES SUBJECT
COMMITTED THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN
THE FIRST DEGREE IN VIOLATION OF CODE SECTION
16-3-652 OF OUR CODE OF LAWS. AND IT IS ALLEGED
THAT KENNETH SIMMONS DID IN DORCHESTER COUNTY ON OR
ABOUT THE SAME DATE, TIME, AND PLACE, SEPTEMBER
ONE, 1996, WILLFULLY AND UNLAWFULLY ENGAGE IN
CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IN THAT
KENNETH SIMMONS ENGAGED IN SEXUAL BATTERY WITH
LILLY BELL BOYD, THE VICTIM, AND DID USE AGGRAVATED
FORCE TO ACCOMPLISH SUCH SEXUAL BATTERY, AND/OR
THAT THE SAID LILLY BELL BOYD SUBMITTED TO SEXUAL
BATTERY BY THE SAID KENNETH SIMMONS UNDER
CIRCUMSTANCES WHERE LILLY BELL BOYD WAS ALSO THE
VICTIM OF FORCIBLE CONFINEMENT, ROBBERY, EXTORTION,
AND/OR BURGLARY. AND LASTLY, INDICTMENT
98-GS-18-0079. AND IT IS ALLEGED THAT KENNETH

MOTIONS

1 SIMMONS VIOLATED CODE SECTION 16-3-910 IN
2 DORCHESTER COUNTY ON OR ABOUT SEPTEMBER ONE, 1996;
3 HE WILLFULLY AND UNLAWFULLY SEIZED, CONFINED,
4 INVEIGLED, DECOYED, KIDNAPPED, ABDUCTED, OR CARRIED
5 AWAY LILLY BELL BOYD WITHOUT AUTHORITY OF THE LAW
6 WHICH IN ESSENCE IS A CHARGE OF KIDNAPPING. NOW,
7 LADIES AND GENTLEMEN, I REMIND YOU AGAIN THAT THE
8 INDICTMENTS THAT I JUST READ TO YOU ARE NOT PROOF
9 OF THOSE CHARGES. THEY ARE SIMPLE LEGAL DOCUMENTS
10 THAT HAVE THE CHARGES WRITTEN UPON THEM. NOW TO
11 EACH OF THESE CHARGES CONTAINED IN THE INDICTMENTS,
12 THE DEFENDANT, KENNETH SIMMONS, HAS ENTERED A PLEA
13 OF NOT GUILTY AND HAS REQUESTED A JURY TRIAL AT
14 YOUR HANDS. MR. SIMMONS, WOULD YOU PLEASE STAND,
15 FACE THE AUDIENCE, PLEASE. (WITNESS COMPLIES.)
16 THANK YOU. BE SEATED, PLEASE. IS THERE ANY MEMBER
17 OF THIS JURY PANEL RELATED BY BLOOD, CONNECTED BY
18 MARRIAGE, OR HAVE ANY BUSINESS OR SOCIAL OR
19 FAMILIAR RELATIONSHIP WITH KENNETH SIMMONS? IF SO,
20 PLEASE STAND. (JUROR STANDS.)

21 THE COURT: YES, SIR? YOUR NAME,
22 YOUR NUMBER?

23 THE JUROR: LEON COOK, NUMBER 65.

24 THE COURT: ALL RIGHT, MR. COOK.

25 NOW, IT'S ALREADY TWENTY AFTER ONE. AND,

MOTIONS

1 GENTLEMEN, I SUBMIT TO YOU THAT RATHER THAN
2 QUESTIONING THESE FOLKS ABOUT THEIR RESPONSE, THAT
3 WE DO THAT ON INDIVIDUAL VOIR DIRE. AGREED?
4 MR. BAILEY: NO OBJECTION, YOUR
5 HONOR.
6 THE COURT: MR. THEOS, OUT OF AN
7 ABUNDANCE OF CAUTION?
8 MR. THEOS: YES, SIR.
9 THE COURT: AND I'M GOING TO MAKE A
10 NOTE IN RELATION TO DEFENDANT. THANK YOU. BE
11 SEATED, PLEASE.
12 THE JUROR: YOUR HONOR---
13 THE COURT: NO, SIR; NO, SIR; I
14 CAN'T LET YOU LEAVE, AND I CAN'T LET YOU TELL ME
15 WHAT YOU WANT. I'M SORRY. WE'RE GOING TO BRING
16 YOU BACK IN, AND EACH JUROR IS GOING BE
17 INDIVIDUALLY SEATED ON THE WITNESS STAND. THE
18 COURT WILL QUESTION YOU. THEN THE LAWYERS CAN
19 QUESTION YOU. WE'LL GO INTO IT AT THAT TIME. BUT
20 WE JUST NEED THAT INFORMATION ON A LIMITED BASIS
21 FOR THE MOMENT. ARE ANY MEMBER OF THIS JURY PANEL
22 FRIENDS, CASUAL ACQUAINTANCES, BUSINESS ASSOCIATES,
23 OR SOCIAL ACQUAINTANCE OF PEOPLE WHO HAVE ANY
24 DIRECT OR INDIRECT CONTACT WITH THE DEFENDANT,
25 KENNETH SIMMONS? IF SO, PLEASE STAND. (JUROR

MOTIONS

1 STANDS.)

2 THE COURT: YES, SIR? THE FIRST
3 GENTLEMAN. YOUR NUMBER?

4 THE JUROR: 247.

5 THE COURT: 247?

6 THE JUROR: MICHAEL PEAY.

7 THE COURT: THANK YOU. BE SEATED.

8 (JUROR STANDS.) YES, MA'AM?

9 THE JUROR: BRENDA JONES.

10 THE COURT: AND YOUR NUMBER?

11 THE JUROR: 169. THANK YOU. (JUROR
12 STANDS.)

13 THE COURT: YES, MA'AM?

14 THE JUROR: NUMBER 20, KATHERINE
15 GOODWIN.

16 THE COURT: THANK YOU, MA'AM.

17 LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF THIS
18 JURY PANEL WHO WAS RELATED BY BLOOD OR CONNECTED BY
19 MARRIAGE TO THE ALLEGED VICTIM IN THIS CASE, MRS.
20 LILLY BELL BOYD; OR ANY OF YOU FRIENDS OR CASUAL
21 ACQUAINTANCES, BUSINESS ASSOCIATES, OR SOCIAL
22 ACQUAINTANCES OR PEOPLE WHO HAVE ANY DIRECT OR
23 INDIRECT CONTACT WITH THE SURVIVING MEMBERS OF HER
24 FAMILY? IF SO, PLEASE STAND. (JUROR STANDS.)

25 THE JUROR: JUROR NUMBER 27, BETTY

1 J. BOONE.

2 THE COURT: NUMBER 27. AND THAT HAS
3 TO DO WITH MRS. BOYD?

4 THE JUROR: YES, SIR.

5 THE COURT: THANK YOU SO MUCH,
6 MA'AM. (JUROR STANDS.) YES, SIR?

7 THE JUROR: NUMBER 50, CHRISTOPHER
8 CAMPEAU.

9 THE COURT: YES, SIR. THANK YOU.
10 LADIES AND GENTLEMEN, I'VE CALLED OUT THE NAMES OF
11 VARIOUS PARTIES WITH THE SOLICITOR'S OFFICE;
12 SOLICITOR WALTER BAILEY, YOUR DULY ELECTED
13 SOLICITOR FOR THE FIRST CIRCUIT. WOULD YOU STAND,
14 MR. SOLICITOR, PLEASE? (MR. BAILEY COMPLIES.)
15 THANK YOU. BE SEATED. HE WILL BE TRYING THIS CASE
16 WITH THE ASSISTANCE OF ROBBIE ROBBINS, MATAI
17 MURPHY, AND HARRISON BELL. AND, OF COURSE, MRS.
18 TEAL ETHERIDGE IS A VALUABLE HELPER IN THE OFFICE.
19 MA'AM, WOULD YOU STAND, PLEASE?

20 MR. BAILEY: THIS IS DARLENE
21 SIMMONS, YOUR HONOR.

22 THE COURT: THAT'S DARLENE SIMMONS.
23 I APOLOGIZE. SO, WOULD YOU STAND, MRS. DARLENE
24 SIMMONS? (MRS. SIMMONS STANDS.) SO, IS THERE ANY
25 MEMBER OF THE PERSPECTIVE JURY PANEL WHO IS RELATED

MOTIONS

1 BY BLOOD OR CONNECTED BY MARRIAGE WITH THE STATE'S
2 ATTORNEYS? AND LET ME GO AHEAD AND INCLUDE THAT.
3 MR. JERRY THEOS, WOULD YOU STAND, PLEASE? (MR.
4 THEOS STANDS.) MR. JAMES BELL, WOULD YOU STAND,
5 PLEASE? (MR. BELL STANDS.) THANK YOU. BE SEATED.
6 SO, IS ANY MEMBER OF THE PROSPECTIVE PANEL RELATED
7 BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THE
8 ATTORNEYS WHO WILL BE PRESENTING THE CASE ON BEHALF
9 OF THE CASE OR THE COUNSEL FOR THE DEFENDANT? IF
10 SO, PLEASE STAND. (NO RESPONSE.)

11 MR. BAILEY: YOUR HONOR, COULD YOU
12 INQUIRE AS TO MR. THEOS' LAW PARTNERS ALSO?

13 THE COURT: IF I HAVE A LIST. I
14 KNOW SOME OF THEM, BUT I DO NOT KNOW ALL OF THEM.
15 I KNOW THAT MR. BARRY KRELL, MR. ARTHUR HOWE, MR.
16 PAUL UREKIO, MR. JERRY THEOS, AND THEN THE LAWYER
17 THAT WAS APPOINTED?

18 MR. THEOS: ALLEN TOPOREK.

19 THE COURT: GO AHEAD.

20 MR. TOPOREK: ALLEN TOPOREK, CARL
21 JACOBSON, GREGG KEITH, CARMEN TEVIS.

22 THE COURT: THANK YOU. SO IF ANY OF
23 YOU ARE RELATED BY BLOOD OR CONNECTED BE MARRIAGE
24 WITH ANY OF THOSE ATTORNEYS, PLEASE STAND. (NO
25 RESPONSE.) NOW, ARE ANY OF YOU FRIENDS, CASUAL

MOTIONS

1 ACQUAINTANCES, BUSINESS ASSOCIATES, SOCIAL
2 ACQUAINTANCE OF PEOPLE WHO HAVE HAD ANY DIRECT OR
3 INDIRECT CONTACT WITH ANY OF THE STATE'S ATTORNEYS
4 OR THE DEFENSE ATTORNEYS OR MEMBERS OF THEIR FIRM?
5 IF SO, PLEASE STAND. (JUROR STANDS.) ALL RIGHT.
6 AND I SHOULD INCLUDE IN THAT IF ANY MEMBER OF ANY
7 OF THOSE FIRMS OR ANY OF THE LAWYERS NOW, OR ANY
8 TIME IN THE PAST, REPRESENTED YOU OR MEMBERS OF
9 YOUR FAMILY. PLEASE STAND. (JUROR STANDS.)

10 THE COURT: YOUR NAME, MA'AM?

11 THE JUROR: REBADELL AHL, NUMBER
12 FOUR.

13 THE COURT: AND THIS HAS TO DO WITH
14 WHOM?

15 THE JUROR: JIM BELL. (JUROR
16 STANDS.)

17 THE COURT: YES, SIR?

18 THE JUROR: NUMBER 264, EUGENE
19 RHINE; JIM BELL.

20 THE COURT: THANK YOU, SIR. (JUROR
21 STANDS.) YES, SIR?

22 THE JUROR: NUMBER 93, BENJAMIN
23 DURHAM; AND MR. BELL REPRESENTED ME IN A CIVIL
24 CASE.

25 THE COURT: THANK YOU, SIR. (JUROR

MOTIONS

1 STANDS.) MA'AM?

2 THE JUROR: I'M NUMBER 230; WALTER
3 BAILEY.

4 THE COURT: THANK YOU SO MUCH.
5 (JUROR STANDS.) YES, SIR?

6 THE JUROR: NUMBER TEN, THEODORE
7 ANZELL. MR. BELL AND MR. ROBBINS.

8 THE COURT: THANK YOU, SIR. (JUROR
9 STANDS.) SIR?

10 THE JUROR: NUMBER 302, YOUR HONOR.
11 BROOKS STYLES. I'M AN ATTORNEY. I'M ACQUAINTED
12 WITH MR. BAILEY AND MR. BELL.

13 THE COURT: WOULD YOU REPEAT THAT?
14 YOU'RE WHAT?

15 THE JUROR: BROOKS STYLES. I'M AN
16 ATTORNEY. I'M ACQUAINTED WITH MR. BAILEY AND MR.
17 BELL.

18 THE COURT: THANK YOU, SIR. IS ANY
19 MEMBER OF THIS JURY PANEL -- THE COURT NEEDS TO
20 KNOW IF ANY OF YOU HAVE SEEN OR HEARD OR READ
21 ANYTHING ABOUT THIS CASE. THIS CASE MAY HAVE
22 ATTRACTED SOME PUBLICITY. I DON'T WANT TO KNOW
23 WHAT YOU'VE HEARD OR WHAT YOU'VE SEEN. I JUST WANT
24 TO KNOW IF YOU'VE SEEN OR HEARD OR READ ANYTHING
25 ABOUT THAT CASE. WHEN I INQUIRE OF YOU

MOTIONS

1 INDIVIDUALLY WHEN WE GET A CHANCE TO TALK WITH YOU
2 INDIVIDUALLY, WE'LL MAKE FURTHER INQUIRY ABOUT WHAT
3 YOU'VE SEEN OR HEARD. DO YOU UNDERSTAND WHAT THE
4 CHARGES ARE AND WHERE THEY OCCURRED? THIS WAS
5 SEPTEMBER ONE OF '96. AND WHAT'S THE ADDRESS OF
6 LILLY BELL BOYD'S HOME IN SUMMERVILLE?

7 MR. BAILEY: IT'S [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED].

9 THE COURT: [REDACTED] [REDACTED] [REDACTED] [REDACTED],

10 [REDACTED] [REDACTED]. LADIES AND GENTLEMEN, IF YOU'VE
11 SEEN OR HEARD OR READ ANYTHING ABOUT THIS CASE; IF
12 YOU'LL STAND AT THIS TIME, PLEASE. (JUROR STANDS.)
13 ALL RIGHT. LET ME DO THIS: LET THE FOLKS ON MY
14 LEFT BE SEATED, ON THE RIGHT, AND I'LL START WITH
15 THE OUTSIDE. IF YOU'LL JUST GIVE ME YOUR JURY
16 NUMBER, SIR.

17 THE JUROR: NUMBER 199. (JUROR
18 STANDS.) MA'AM?

19 THE JUROR: NUMBER 335.

20 THE COURT: THANK YOU. YOU MAY BE
21 SEATED. (JUROR STANDS.) THE NEXT GENTLEMAN?

22 THE JUROR: NUMBER 334. (JUROR
23 STANDS.)

24 THE COURT: YES, SIR?

25 THE JUROR: NUMBER 16. (JUROR

MOTIONS

1 STANDS.)

2 THE COURT: THANK YOU. (JUROR

3 STANDS.) MA'AM?

4 THE JUROR: NUMBER 201.

5 THE COURT: THANK YOU. (JUROR

6 STANDS.)

7 THE JUROR: NUMBER 247. (JUROR

8 STANDS.)

9 THE JUROR: NUMBER 95. (JUROR

10 STANDS.)

11 THE JUROR: NUMBER 27. (JUROR

12 STANDS.)

13 THE JUROR: NUMBER 300.

14 THE COURT: 300?

15 THE JUROR: YES, SIR. (JUROR

16 STANDS.)

17 THE JUROR: 169.

18 THE COURT: ALL RIGHT. THEN I WANT

19 TO START WITH THE FIRST TWO ROWS, PLEASE. PLEASE

20 STAND IF YOU'VE SEEN OR HEARD SOMETHING. I'LL

21 START WITH THE GENTLEMAN OVER HERE.

22 THE JUROR: NUMBER 318.

23 THE COURT: 318?

24 THE JUROR: YES, SIR. (JUROR

25 STANDS.)

MOTIONS

136

1 THE JUROR: NUMBER 137.

2 THE JUROR: J. SCOTT FIELDS. I
3 DON'T KNOW MY NUMBER.

4 THE COURT: 107, PLEASE. TRY TO
5 REMEMBER YOUR NUMBER. (JUROR STANDS.) YES, MA'AM?

6 THE JUROR: 216. (JUROR STANDS.)

7 THE COURT: NEXT LADY?

8 THE JUROR: NUMBER 258.

9 THE COURT: 258?

10 THE JUROR: YES, SIR.

11 THE COURT: YES, MA'AM. (JUROR
12 STANDS.) YES, MA'AM?

13 THE JUROR: NUMBER 256. (JUROR
14 STANDS.) YES, SIR?

15 THE JUROR: NUMBER 211. (JUROR
16 STANDS.)

17 THE COURT: YES, MA'AM?

18 THE JUROR: 319.

19 THE COURT: THANK YOU. (JUROR
20 STANDS.) YES, MA'AM?

21 THE JUROR: NUMBER 20.

22 THE COURT: THANK YOU. (JUROR
23 STANDS.) NEXT SEVERAL ROWS, PLEASE.

24 THE JUROR: NUMBER 364.

25 THE COURT: THANK YOU. (JUROR

MOTIONS

1 STANDS.)

2 THE JUROR: NUMBER 4.

3 THE COURT: FOUR?

4 THE JUROR: YES, SIR. (JUROR

5 STANDS.)

6 THE JUROR: NUMBER 139.

7 THE COURT: YES, MA'AM. (JUROR

8 STANDS.) YES, SIR?

9 THE JUROR: NUMBER 67.

10 THE COURT: YES, SIR. (JUROR

11 STANDS.)

12 THE JUROR: NUMBER 254. (JUROR

13 STANDS.)

14 THE JUROR: NUMBER 204.

15 THE COURT: THANK YOU. (JUROR

16 STANDS.)

17 THE JUROR: NUMBER 59.

18 THE COURT: THANK YOU. (JUROR

19 STANDS.)

20 THE JUROR: NUMBER 59.

21 THE COURT: THANK YOU. (JUROR

22 STANDS.)

23 THE JUROR: NUMBER 261.

24 THE COURT: THANK YOU. (JUROR

25 STANDS.)

MOTIONS

138

1 THE JUROR: NUMBER 299.

2 THE COURT: THANK YOU. (JUROR

3 STANDS.)

4 THE JUROR: NUMBER 46.

5 THE COURT: THANK YOU. (JUROR

6 STANDS.)

7 THE JUROR: NUMBER 282.

8 THE COURT: THANK YOU. (JUROR

9 STANDS.)

10 THE JUROR: NUMBER 223.

11 THE COURT: THANK YOU. (JUROR

12 STANDS.)

13 THE JUROR: NUMBER 100.

14 THE COURT: YES, MA'AM. (JUROR

15 STANDS.)

16 THE JUROR: NUMBER 320.

17 THE COURT: THANK YOU. (JUROR

18 STANDS.)

19 THE JUROR: NUMBER 154.

20 THE COURT: YES, SIR. (JUROR

21 STANDS.)

22 THE JUROR: NUMBER 350.

23 THE COURT: YES, SIR. (JUROR

24 STANDS.)

25 THE JUROR: NUMBER 93.

MOTIONS

139

1 THE COURT: YES, SIR. (JUROR
2 STANDS.)
3 THE JUROR: NUMBER TEN.
4 THE COURT: THANK YOU. (JUROR
5 STANDS.)
6 THE JUROR: NUMBER 194.
7 THE COURT: THANK YOU. (JUROR
8 STANDS.)
9 THE JUROR: NUMBER 230.
10 THE COURT: YES, MA'AM. (JUROR
11 STANDS.)
12 THE JUROR: NUMBER 42.
13 THE COURT: YES, MA'AM. (JUROR
14 STANDS.)
15 THE JUROR: NUMBER 12.
16 THE COURT: THANK YOU. (JUROR
17 STANDS.)
18 THE JUROR: NUMBER 12.
19 THE COURT: THANK YOU. (JUROR
20 STANDS.)
21 THE JUROR: NUMBER 50.
22 THE COURT: THANK YOU. (JUROR
23 STANDS.)
24 THE JUROR: NUMBER 227.
25 THE COURT: YES, SIR. (JUROR

MOTIONS

140

1 STANDS.)

2 THE JUROR: NUMBER 74.

3 THE COURT: YES, SIR. (JUROR

4 STANDS.)

5 THE JUROR: NUMBER 302.

6 THE COURT: YES, SIR. (JUROR

7 STANDS.)

8 THE JUROR: NUMBER 44.

9 THE COURT: YES, SIR. (JUROR

10 STANDS.)

11 THE JUROR: NUMBER 106.

12 THE COURT: ALL RIGHT. (JUROR

13 STANDS.)

14 THE JUROR: NUMBER 294.

15 THE COURT: THANK YOU. (JUROR

16 STANDS.)

17 THE JUROR: NUMBER 314.

18 THE COURT: THANK YOU. (JUROR

19 STANDS.)

20 THE JUROR: NUMBER 279.

21 THE COURT: THANK YOU. (JUROR

22 STANDS.)

23 THE JUROR: NUMBER 122.

24 THE COURT: YES, SIR. (JUROR

25 STANDS.)

MOTIONS

141

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THE JUROR: NUMBER 328.

THE COURT: YES, SIR. (JUROR
STANDS.)

THE JUROR: NUMBER 321.

THE COURT: YES, SIR. (JUROR
STANDS.)

THE JUROR: NUMBER 065.

THE COURT: 065?

THE JUROR: YES, SIR.

THE COURT: THANK YOU. (JUROR
STANDS.)

THE JUROR: NUMBER 187.

THE COURT: 187?

THE JUROR: YES, SIR.

THE COURT: LADIES AND GENTLEMEN,
BASED ON WHAT YOU HAVE SEEN OR HEARD OR READ, HAVE
ANY OF YOU FORMED OR EXPRESSED ANY OPINION AS TO
THE GUILT OR INNOCENCE OF THE DEFENDANT? I DON'T
WANT TO KNOW WHAT YOUR OPINION IS. I JUST WANT TO
KNOW IF YOU'VE FORMED OR EXPRESSED AN OPINION AS TO
THE GUILT OR INNOCENCE OF THE DEFENDANT BASED UPON
WHAT YOU HAVE READ OR HEARD OR SEEN. IF SO, PLEASE
STAND. (NO RESPONSE.)

THE COURT: THANK YOU. LET THE
RECORD REFLECT NO ONE STOOD. NOW, LADIES AND

MOTIONS

1 GENTLEMEN, THE PURPOSE OF THE PROCESS WE'RE
2 INVOLVED IN AT THIS POINT AND TIME IS TO IMPANEL A
3 JURY THAT'S CAPABLE OF LISTENING TO THE EVIDENCE
4 AND THE TESTIMONY IN THE CASE AND TO DETERMINE WHAT
5 IS THE BELIEVABLE EVIDENCE AND TESTIMONY IN THE
6 CASE. JURORS WHO ARE CAPABLE OF APPLYING THE
7 TESTIMONY AND THE EVIDENCE IN THE CASE TO THE LAW
8 THAT I WILL INSTRUCT YOU AT THE CONCLUSION OF THE
9 TRIAL, AND THEREFORE CAPABLE OF RETURNING A FAIR
10 VERDICT SHOULD THE NEED ARISE, AND A RECOMMENDATION
11 OF A SENTENCE IN THE CASE. AND GENTLEMEN AND
12 LADIES, WHEN WE BRING YOU BACK FOR THE PANEL
13 MEETING, WE WILL HAVE SOME SHEETS IN THE JURY ROOM
14 THERE THAT WILL HAVE THREE TYPES OF JURORS. AND AT
15 THAT TIME I WOULD ASK YOU TO READ THAT SHEET SO
16 THAT WHEN YOU DO COME IN, YOU'LL BE PREPARED TO
17 ANSWER QUESTIONS. AND PLEASE UNDERSTAND, LADIES
18 AND GENTLEMEN, ALL OF WHAT WE'RE DOING IS
19 IMPERATIVE. IT'S NECESSARY. THERE ARE NO RIGHT,
20 NO WRONG, ANSWERS. JUST PLEASE SHARE WITH US THE
21 TRUTH AS TO THE ANSWERS OF THOSE QUESTIONS. IN
22 OTHER WORDS, LADIES AND GENTLEMEN, A QUALIFIED
23 JUROR IS ONE WHO WILL CONSCIENTIOUSLY APPLY THE LAW
24 AND FIND THE FACTS OF THE CASE. A QUALIFIED JUROR
25 IS ONE WHO'S CAPABLE OF RETURNING A VERDICT AND A

MOTIONS

1 RECOMMENDATION OF SENTENCE BASED UPON THE EVIDENCE
2 AND THE LAW AND ONE WHO'S CAPABLE OF SETTING ASIDE
3 HIS OR HER OPINIONS AND DECIDING THE MATTER BASED
4 UPON THE LAW AND THE EVIDENCE. ON THE OTHER HAND,
5 A JUROR IS NOT QUALIFIED IF THAT JUROR'S VIEWS
6 WOULD PREVENT OR SUBSTANTIALLY IMPAIR THE
7 PERFORMANCE OF THAT JUROR IN HIS OR HER DUTIES IN
8 ACCORDANCE WITH THE OATH THAT YOU AS JURORS HAVE
9 TAKEN, AND THE FURTHER OATH THAT YOU WILL BE GIVEN
10 IF YOU ARE SELECTED. SO THE QUESTION THAT'S BEING
11 ASKED OF YOU, AND WILL CONTINUE TO BE ASKED OF YOU,
12 ARE DESIGNED TO ENSURE THAT WE WILL GET A QUALIFIED
13 JURY MADE UP OF THOSE TYPES OF PEOPLE WHO HAVE BEEN
14 DESCRIBED TO YOU. NOW, I'VE ASKED YOU IF YOU'VE
15 FORMED OR EXPRESSED ANY OPINION; AND I WILL
16 INDIVIDUALLY ASK MORE ABOUT THOSE THINGS AT A LATER
17 TIME. BUT I NEED TO KNOW IF ANY OF YOU ARE
18 CONSCIOUS; THAT IS TO SAY, IF YOU ARE AWARE OF ANY
19 BIAS OR PREJUDICE FOR OR AGAINST THE STATE OR FOR
20 OR AGAINST THE DEFENDANT IN THIS CASE. IF YOU ARE
21 AWARE OF ANY BIAS OR PREJUDICE WHICH YOU MIGHT HOLD
22 IN THIS REGARD FOR OR AGAINST EITHER SIDE, EITHER
23 THE STATE OR THE DEFENDANT, OR AGAINST EITHER SIDE.
24 IT WORKS BOTH WAYS. I WOULD ASK THAT YOU PLEASE
25 STAND. (JUROR STANDS.) YES, MA'AM, YOUR JURY

MOTIONS

1 NUMBER?

2 THE JUROR: NUMBER 11.

3 THE COURT: THANK YOU. BE SEATED,
4 PLEASE. DOES ANY MEMBER OF THIS JURY PANEL KNOW AT
5 THIS POINT AND TIME ANY REASON THAT WOULD PREVENT
6 YOU FROM GIVING BOTH THE STATE AND THE DEFENDANT A
7 FAIR AND IMPARTIAL TRIAL IN THIS CASE? IF YOU'RE
8 AWARE OF ANY SUCH REASON, PLEASE STAND. (NO
9 RESPONSE.) LADIES AND GENTLEMEN, YOU'VE HEARD THE
10 ALLEGATIONS OF THE INDICTMENTS. I HAVE READ THOSE
11 TO YOU. BUT I NEED TO KNOW IF ANY OF YOU OR ANY
12 MEMBER OF YOUR IMMEDIATE FAMILY HAS EVER BEEN THE
13 VICTIM OF ANY CRIME OR PERSONAL VIOLENCE, OR IF
14 YOU'VE EVER BEEN A DEFENDANT IN A CRIME OF PERSONAL
15 VIOLENCE OR BEEN A WITNESS IN A CRIME OF PERSON
16 VIOLENCE. IF YOU HAVE, I WANT YOU TO IDENTIFY
17 YOURSELF FOR THE MOMENT. AND IT APPLIES TO YOU AS
18 WELL AS ANY FAMILY MEMBERS. IF YOU'VE EVER HAD ANY
19 CONNECTION WITH A CRIME EITHER AS A DEFENDANT OR A
20 VICTIM OR A WITNESS. AND PERSONAL VIOLENCE CRIMES
21 ARE SUCH AS MURDER. IT'S NOT LIMITED TO THESE;
22 ASSAULT, ASSAULT AND BATTERY, KIDNAPPING, ROBBERY,
23 ARMED ROBBERY, CRIMINAL SEXUAL CONDUCT. SO IF YOU
24 OR ANY MEMBER OF YOUR FAMILY HAVE BEEN INVOLVED, AS
25 I'VE STATED, PLEASE STAND. (JUROR STANDS.)

MOTIONS

145

1 STARTING ON YOUR LEFT, MY RIGHT. YES, MA'AM?

2 THE JUROR: NUMBER 335.

3 THE COURT: THANK YOU. (JUROR
4 STANDS.)

5 THE COURT: NEXT LADY?

6 THE JUROR: NUMBER 313. (JUROR
7 STANDS.)

8 THE COURT: YES, SIR?

9 THE JUROR: NUMBER 269. (JUROR
10 STANDS.)

11 THE COURT: YES, MA'AM?

12 THE JUROR: NUMBER 11.

13 THE JUROR: NUMBER 43.

14 THE JUROR: NUMBER 264.

15 THE JUROR: NUMBER 59.

16 THE JUROR: NUMBER 37.

17 THE JUROR: NUMBER 270.

18 THE JUROR: NUMBER 261.

19 THE JUROR: NUMBER 282.

20 THE COURT: THANK YOU. (JUROR
21 STANDS.)

22 THE JUROR: NUMBER 223. (JUROR

23 STANDS.)

24 THE COURT: YES, MA'AM?

25 THE JUROR: NUMBER 100.

MOTIONS

146

1 THE COURT: YES, MA'AM. (JUROR
2 STANDS.)

3 THE JUROR: NUMBER 154.

4 THE COURT: YES, SIR. (JUROR
5 STANDS.)

6 THE JUROR: NUMBER 104.

7 THE COURT: YES? (JUROR STANDS.)

8 THE JUROR: HERMAN SIMMONS, JR. I
9 THINK IT'S 287.

10 THE COURT: WE'LL DOUBLE CHECK.
11 HERBERT SIMMONS, JR.; YOUR NUMBER IS 285. THANK
12 YOU, SIR. (JUROR STANDS.) YES?

13 THE JUROR: NUMBER 106. (JUROR
14 STANDS.)

15 THE JUROR: NUMBER 314.

16 THE JUROR: NUMBER 187.

17 THE JUROR: NUMBER 284.

18 THE COURT: THANK YOU.

19 THE JUROR: I DON'T KNOW MY NUMBER.
20 I KNOW IT'S ABOVE 320. IT'S SIGWALD.

21 THE COURT: MRS. SIGWALD. WE'LL
22 CHECK IT FOR YOU, MA'AM.

23 THE JUROR: JUST TELL ME, AND I'LL
24 WRITE IT DOWN.

25 THE COURT: IT'S NOT 320. THAT'S

MOTIONS

1 MR. JAMES---

2 THE JUROR: NO; IT'S ABOVE THE---

3 THE COURT: NUMBER 283; MRS. CHERYL
4 SIGWALD. 283, PLEASE. THANK YOU. (JUROR STANDS.)
5 YES, SIR?

6 THE JUROR: CLARIFICATION ON YOUR
7 DEFINITION THERE. WAS THAT IN RELATION TO A
8 PERSONAL TYPE CRIME OR ONE THAT'S PROPERTY THAT YOU
9 OWN?

10 THE COURT: NO, SIR. IT WOULD BE
11 AGAINST A PERSONAL VIOLENCE. OF COURSE BREAKING
12 INTO YOUR HOME WHICH WOULD BE BURGLARY; THAT WOULD
13 INVOLVE A TANGIBLE PHYSICAL THING.

14 THE JUROR: OKAY. NUMBER 247.

15 THE COURT: THANK YOU, SIR. LADIES
16 AND GENTLEMEN, AS I TOLD YOU THE DEFENDANT HAS
17 ENTERED A PLEA OF NOT GUILTY TO THE CHARGES IN THE
18 INDICTMENT. AND THAT PLEA REQUIRES THE STATE TO
19 PROVE THAT HE'S GUILTY. THE DEFENDANT DOES NOT
20 HAVE TO PROVE HIS INNOCENCE. HE IS PRESUMED
21 INNOCENT UNDER THE LAW. THE STATE HAS TO PROVE HIS
22 GUILT BEYOND A REASONABLE DOUBT. NOW IF AFTER
23 HEARING AND CONSIDERING THE EVIDENCE AND TESTIMONY
24 IN THIS CASE, THE JURY HAS A REASONABLE DOUBT AS TO
25 HIS GUILT, THEN THAT REASONABLE DOUBT WILL BE

MOTIONS

1 RESOLVED IN FAVOR OF THE DEFENDANT AND HE WOULD BE
2 ACQUITTED. IF AFTER HEARING AND CONSIDERING THE
3 EVIDENCE AND TESTIMONY IN THE CASE, IF THE JURY HAS
4 NO REASONABLE DOUBT OF HIS GUILT, THE DEFENDANT MAY
5 FIND HIM GUILTY OF THE CHARGES IN THIS CASE.

6 LADIES AND GENTLEMEN, THIS PARTICULAR CASE WE HAVE
7 A TWO PART OR BIFURCATED PROCEDURE BECAUSE IN THIS
8 CASE THE STATE IS SEEKING TO IMPOSE THE DEATH
9 PENALTY AGAINST THE DEFENDANT. SO THE TRIALS ARE
10 THEREFORE DIVIDED, BROKEN INTO TWO PARTS. THE
11 FIRST PART IS WHAT WE CALL THE GUILT PHASE, AND
12 DURING THIS PHASE OF THE TRIAL THE JURY WILL DECIDE
13 WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE CRIME
14 OR CRIMES CHARGED. AND IF THE DEFENDANT IS FOUND
15 GUILTY OF MURDER IN THE GUILT PHASE, THEN AND ONLY
16 THEN WOULD WE MOVE INTO THE SECOND PART OF THE
17 TRIAL; THAT IS THE PENALTY PHASE. AND IN THAT
18 PENALTY PHASE OF THE TRIAL, THE JURY WILL BE ASKED
19 TO DECIDE WHETHER THE DEFENDANT SHOULD RECEIVE A
20 PENALTY OF LIFE IMPRISONMENT WITHOUT PAROLE OR A
21 PENALTY OF DEATH BY EITHER LETHAL INJECTION OR
22 ELECTROCUTION. SO, LADIES AND GENTLEMEN, I REMIND
23 YOU THE FACT THAT I'M MENTIONING PENALTY AT THIS
24 VERY EARLY STAGE OF THE TRIAL BEFORE IT'S EVEN
25 BEGUN; THAT INDICATES NOTHING ABOUT THE GUILT OF

1 THE DEFENDANT BECAUSE HE IS PRESUMED INNOCENT OF
2 THE CHARGES. IT SIMPLY MEANS WE MUST DISCUSS
3 PENALTY NOW AS A CONVENIENT MEANS OF EXPLAINING
4 THIS PROCESS TO YOU. SO, LADIES AND GENTLEMEN, THE
5 NEXT PHASE OF THE QUESTIONING WILL BE INDIVIDUALLY
6 WHEN YOU ARE IN PANELS. BUT FIRST LET ME INQUIRE
7 ON BEHALF OF THE STATE. ARE THERE ANY OTHER
8 FURTHER QUESTIONS WHICH YOU WOULD HAVE THE COURT
9 PROPOUND TO THE JURY VENIRE OR JURY GROUP AT THIS
10 TIME, MR. SOLICITOR?

11 MR. BAILEY: NOT AT THIS TIME.

12 THE COURT: I UNDERSTAND YOU'RE NOT
13 WAIVING ANYTHING. I JUST SEEK YOUR HELP IN
14 COUNSEL. AND, MR. THEOS, AND MR. BELL; I WOULD
15 SEEK YOUR HELP IF YOU CAN THINK OF ANYTHING FURTHER
16 WE SHOULD ASK AT THIS TIME.

17 MR. THEOS: NOTHING FURTHER AT THIS
18 POINT.

19 THE COURT: ALL RIGHT. SO, LADIES
20 AND GENTLEMEN, AT THIS TIME THE CLERK IS GOING TO
21 DRAW PANELS. HOW MANY JURORS ARE WE DOWN TO?

22 THE CLERK: NINETY.

23 THE COURT: NINETY?

24 THE CLERK: YES, SIR.

25 THE COURT: ALL RIGHT. AND WE'RE

MOTIONS

1 GOING TO HAVE PANELS OF SIX. AND SIX TIMES FIFTEEN
2 IS NINETY. SO WHAT'S GOING TO HAPPEN, LADIES AND
3 GENTLEMEN, IS THAT THE CLERK WILL -- THERE'S A
4 CYLINDER HERE. AND THESE LITTLE SLIPS OF PAPER
5 WITH A NUMBER -- DOES IT HAVE A NUMBER AND A NAME
6 OR JUST THE NUMBER? IT HAS A NUMBER AND A NAME.
7 IT'S PUT IN THAT CAPSULE, AND THERE'S A SCREW TOP
8 ON IT. AND THOSE CAPSULES WITH NINETY NAMES ARE
9 PLACED IN THIS CYLINDER; AND THE CLERK WILL TURN
10 IT. AND THE LAWYERS HAVE WAIVED ANY NECESSITY FOR
11 A BLIND PERSON OR YOUNG CHILD TO DRAW IT AND HAVE
12 AGREED ON THE RECORD LAST WEDNESDAY FOR THE CLERK
13 TO PULL THE NAMES. CORRECT, MR. SOLICITOR?

14 MR. BAILEY: YES, SIR.

15 THE COURT: CORRECT, MR. THEOS AND
16 BELL?

17 MR. THEOS: YES, SIR.

18 THE COURT: AND THEY WILL DRAW OUT A
19 CAPSULE. THEY'LL UNSCREW THE TOP. AND THEN ON
20 PANEL NUMBER ONE, THEY'RE GOING TO DRAW SIX
21 DIFFERENT NAMES. AND WHAT WE ARE GOING TO DO,
22 RATHER THAN KEEP ALL OF YOU WAITING IN THE HALLS OR
23 OUT IN THE YARD, OR WHEREVER, WHILE WE GO THROUGH
24 THIS INDIVIDUAL VOIR DIRE WITH THE JURORS -- AND
25 Y'ALL GO AHEAD AND BE WRITING, PLEASE, AND WRITING

MOTIONS

1 ON SLIPS WHILE I'M TALKING TO THEM. GO AHEAD. SO,
2 LADIES AND GENTLEMEN, WHAT WE'RE GOING TO DO NOW IS
3 ONCE WE GET THE PANEL ONE OF SIX PERSONS -- AND
4 WHERE, MADAM CLERK, DO YOU KEEP THOSE SIX? DO THEY
5 REPORT TO A JURY ROOM IN THE REAR HALL HERE, OR
6 WHERE DO THOSE SIX REPORT?

7 THE CLERK: IN THE JURY ROOM ON THE
8 RIGHT.

9 THE COURT: ALL RIGHT, MAJOR. SO DO
10 YOU WANT THEM TO COME BACK UP THE BACK STEPS, MADAM
11 CLERK; COME THROUGH THE COURTROOM?

12 THE CLERK: IT DOESN'T MATTER.

13 THE COURT: IT DOESN'T MATTER?

14 THE CLERK: MAYBE UP THE BACK STEPS.

15 THE COURT: YES, BECAUSE WE'LL BE ON
16 THE RECORD HERE. SO, LADIES AND GENTLEMEN, WHEN
17 YOU REPORT BACK, ASSUME THAT YOU ARE THE THIRD
18 PERSON ON PANEL NUMBER ONE. IT'S NOW A QUARTER
19 'TIL TWO. AND THAT FIRST PANEL; LET'S JUST ASSUME
20 THAT WE START WITH THEM AT THREE 3:30, MR.
21 SOLICITOR. DOES THAT SOUND REASONABLE?

22 MR. BAILEY: YES, SIR.

23 THE COURT: BECAUSE IT'S GOING TO
24 TAKE THIRTY OR FORTY MINUTES TO DRAW THESE PANELS.
25 AND THEN I HAVE THAT MOTION TO BE HEARD. BUT, WHEN

MOTIONS

1 YOU REPORT BACK, LADIES AND GENTLEMEN, COME IN THE
2 REAR DOOR OF THE COURT HOUSE; OR EITHER IF YOU COME
3 IN THE FRONT OR SIDE DOOR THROUGH THE CLEMSON
4 EXTENSION, GO TO THE BACK END OF THE HALL AND COME
5 UP THOSE BACK STEPS. YOU'LL STILL HAVE YOUR GREEN
6 JURY BADGE ON; AND THEY'LL RECOGNIZE YOU BY THAT.
7 IF YOU'VE LOST YOUR BADGE, GET ANOTHER ONE. WE
8 ONLY CHARGE 59 CENTS FOR EACH OF THEM. AND THEN
9 REPORT TO THE JURY ROOM. THE BAILIFF WILL BE OUT
10 THERE. AND THEY HAVE NICE GARNET COLORED COATS ON,
11 THE BAILIFFS DO. AND YOU'LL GO INTO THAT JURY
12 ROOM, AND THEN YOU WILL GO AHEAD AND BE DRAWING THE
13 NEXT ONE IF YOU'RE THROUGH WITH THE FIRST ONE.
14 AND, YOU KNOW, THOSE SHEETS OF PAPER THERE THAT
15 HAVE JURY ONE TYPE, TWO, AND THREE WILL BE ON
16 THERE. THEN BE READING THAT OVER SO WHEN WE BRING
17 YOU BACK INTO THE COURTROOM WE WILL BE ABLE TO
18 QUESTION YOU ABOUT THAT AND ABOUT VARIOUS OTHER
19 MATTERS; FOR EXAMPLE, THE ONES THAT STOOD UP IN
20 REGARD TO WHETHER YOU'VE READ, SEEN, OR HEARD OR
21 MIGHT BE RELATED BY BLOOD OR MARRIAGE. THE ONE
22 THING I HAVE NOT DONE, GENTLEMEN, IS TO GO THROUGH
23 THIS WITNESS LIST. AND WHILE THEY ARE DRAWING
24 THOSE NAMES FOR THOSE PANELS, I WOULD SUBMIT THAT
25 IT WOULD BE A GREAT TIME SAVER IF I READ THROUGH

MOTIONS

1 THESE 50 PLUS NAMES NOW ONE TIME RATHER THAN
2 REPEATING IT NINETY TIMES. DO YOU AGREE?

3 MR. BAILEY: YES, SIR. SO, LADIES
4 AND GENTLEMEN, GIVE ME YOUR ATTENTION, PLEASE. AND
5 Y'ALL PROCEED WITH THE PANEL. DON'T LET ME
6 INTERFERE. THE PROSPECTIVE OR POTENTIAL WITNESSES
7 IN THIS CASE -- AND I THINK WHAT I MIGHT DO IS COME
8 DOWN EVEN THOUGH I WON'T HAVE A MICROPHONE. BUT
9 I'LL HAVE THE CAPSULE PANEL BEHIND ME. MAYBE I'LL
10 GET HERE WHERE YOU CAN HEAR ME A LITTLE BETTER IF I
11 MAY. SO, LADIES AND GENTLEMEN, THE PROSPECTIVE OR
12 POTENTIAL WITNESSES IN THIS CASE I'M NOW GOING TO
13 READ OUT TO YOU. IF YOU'RE RELATED BY BLOOD OR
14 MARRIAGE; IF YOU HAVE ANY BUSINESS OR SOCIAL OR
15 OTHER ACQUAINTANCE WITH ANY OF THE PROSPECTIVE
16 WITNESSES, I WANT YOU TO STAND. AND WE'RE NOT
17 GOING TO GO INTO ANY DETAIL ABOUT IT NOW. BUT I'M
18 GOING TO HAVE TO START ANOTHER SHEET HERE AND PUT
19 THE WITNESS. AND I'M NOT GOING TO WRITE THE NAME
20 OF THE WITNESS DOWN BECAUSE AS YOU MAY KNOW OF
21 THREE OF THE WITNESSES -- AND LET ME GET THE FACTS
22 OF THE INDIVIDUALS. I'LL ASK YOU WHO THOSE
23 WITNESSES ARE THAT YOU KNOW AND IF THAT WOULD IN
24 ANY WAY INTERFERE WITH YOUR ABILITY TO GET A FAIR
25 TRIAL FOR BOTH THE STATE AND THE DEFENDANT.

1 THEY'RE NOT GOING TO BE ANY TRICK QUESTIONS. AND
2 EVERYBODY PASSES. NOBODY FLUNKS. SO YOU STILL GET
3 THAT \$25 A DAY WITHOUT CUSHIONS ON THE CHAIRS.
4 BUT, PLEASE, BE PATIENT WITH US. NOW, LADIES AND
5 GENTLEMEN, THE PROSPECTIVE OR POTENTIAL WITNESSES
6 ARE AS FOLLOWS: DR. MICHAEL BAIRD, B-A-I-R-D. AND,
7 MADAM COURT REPORTER, WE'VE PROVIDED YOU WITH A
8 COPY OF THIS LIST. ALSO THE CLERK HAS ONE. DR.
9 THOMAS BEHRMANN, B-E-H-R-M-A-N-N? DEBBIE BROWN?
10 MARGARET BUSH? LAURIN CRANE, C-R-A-N-E? STEVE
11 DERRICK, D-E-R-R-I-C-K? DERRICK DUGGINS,
12 D-U-G-G-I-N-S? CHARLES FERGUSON? KATHERINE
13 GAILLARD, G-A-I-L-L-A-R-D? LILLY GALLMON,
14 G-A-L-L-M-O-N? GERALD GRETSCH, G-R-E-T-S-C-H?
15 MAYBELLE HENDRICKS? JAN HILTON? EVERETT HOWELL?
16 SAMUEL JACKSON? SIDNEY JACKSON? MARGARET JAMES?
17 IRA JEFFCOAT? MARY JOHNSON? PRISCILLA JOHNSON?
18 BARBARA JONES? STEVE LAMBERT? DR. WILLIAM LOMAX,
19 L-O-M-A-X? RON MANCHESTER? MATA MASON, M-A-T-A
20 MASON? DR. THOMAS MCIVEY? EMMETT MCKINNEY? KENNY
21 MEARS, M-E-A-R-S? GEORGE MURRAY? JOHNNY B. NEALY,
22 N-E-A-L-Y? DR. CLAY NICHOLS, N-I-C-H-O-L-S? DR.
23 WILLIAM L. KINN? NATHAN TERRYMAN, ONE NAME,
24 T-E-R-R-Y-M-A-N? ANN REESE, R-E-E-S-E? DR. ROGER
25 RUSSELL? DR. LESLEY SANDLER, S-A-N-D-L-E-R?

MOTIONS

1 NICHOLAS SARJI, S-A-R-J-I? RONDELL SMITH? RON
2 THOMASON? MIKE TURNER? DR. JEFFREY VIDIC,
3 V-I-D-I-C? PAUL ROTH? ROSEZEATEA,
4 R-O-S-E-Z-E-A-T-E-A WELLS? ROY WHITEHEAD? JESSIE
5 MAE WILSON? STEVEN WILSON? VIRGINIA WILSON? EARL
6 LARSON? ETHEL SUDDETH, S-U-D-D-E-T-H? MELISSA
7 HESS, H-E-S-S? WANDA ALSTON? JULIA TRICE,
8 T-R-I-C-E? DR. JEAN CAVE? DR. RANDY WAID,
9 W-A-I-D? DR. BART SAYLOR, S-A-Y-L-O-R? DR.
10 MICHAEL FOXWORTH? DR. ALEX MORTON? DR. DENNIS
11 KEYS, K-E-Y-S? JEFF YOUMAN, Y-O-U-M-A-N? SAM
12 YARBOROUGH? RON OSPROSKI, O-S-P-R-O-S-K-I? LT.
13 JOE MEANS? JEAN SIMMONS? ANNETTE GEDDIS,
14 G-E-D-D-I-S? BRENDA WASHINGTON? BRENDA JOHNS?
15 ANGIE SIMMONS? SANDY FRANKLIN? CHARLES WILSON?
16 GEORGE MCCAIN? SINCLAIR MAZYCK, M-A-Z-Y-C-K? DORIS
17 RUSSELL? ROBIN SCHMIETING, S-C-H-M-I-E-T-I-N-G?
18 PAUL DUCETTI, D-U-C-E-T-T-I? GLENN YOUNGBLOOD?
19 FELIX ROSS? TROY WALTZ, W-A-L-T-Z? HAMPTON MCLOVE?
20 DANNY BATES? CHERLY BASS? CHRIS HEINTZ,
21 H-E-I-N-T-Z? GENTLEMEN AND LADY, I ATTEMPTED NOT
22 TO REPEAT THEM TWICE. DO YOU CONCUR THAT WE
23 COVERED THE PERSPECTIVE OR POTENTIAL WITNESSES?

24 MR. BAILEY: WE DO, YOUR HONOR.

25 MR. THEOS: YES, SIR.

1 THE COURT: SO, LADIES AND GENTLEMEN
2 OF THE JURY PANEL, PERSPECTIVE JURY PANEL; IS THERE
3 ANY MEMBER OF THE PERSPECTIVE PANEL WHO'S RELATED
4 BY BLOOD OR CONNECTED BY MARRIAGE OR HAVE ANY
5 BUSINESS, SOCIAL, OR OTHER RELATIONSHIP WITH ANY OF
6 THE PROSPECTIVE OR POTENTIAL WITNESSES IN THE TRIAL
7 OF THE CASE? LET ME JUST START OVER HERE SINCE
8 THEY'RE ALREADY STANDING. (JUROR STANDS.)

9 THE JUROR: NUMBER 334.

10 THE COURT: THANK YOU. LADIES AND
11 GENTLEMEN, I CAN HEAR YOU, BUT PLEASE; I'M STANDING
12 IN FRONT OF THE LAWYERS; AND THEY NEED TO HEAR YOU;
13 SO SPEAK UP.

14 THE JUROR: NUMBER 149.

15 THE COURT: THANK YOU.

16 THE JUROR: NUMBER 201.

17 THE COURT: YES, MA'AM.

18 THE JUROR: NUMBER 247.

19 THE JUROR: NUMBER 300.

20 THE JUROR: ELEVEN.

21 THE JUROR: NUMBER 169.

22 MR. THEOS: JUDGE; I'M SORRY. WE
23 DIDN'T HEAR THAT.

24 THE COURT: IT'S NUMBER 11, 27, AND
25 169. THE FIRST SET OF ROWS, PLEASE? (JUROR

1 STANDS.) YES, MA'AM?

2 THE JUROR: NUMBER 176.

3 THE COURT: THANK YOU. (JUROR

4 STANDS.)

5 THE JUROR: NUMBER 55. (JUROR

6 STANDS.)

7 THE JUROR: NUMBER 76. (JUROR

8 STANDS.)

9 THE JUROR: NUMBER 320. (JUROR

10 STANDS.)

11 THE COURT: THANK YOU.

12 THE JUROR: NUMBER 159. (JUROR

13 STANDS.)

14 THE COURT: THANK YOU.

15 THE JUROR: TWELVE. (JUROR STANDS.)

16 THE COURT: THANK YOU.

17 THE JUROR: NUMBER 42. (JUROR

18 STANDS.)

19 THE COURT: YES, MA'AM?

20 THE JUROR: NUMBER 230. (JUROR

21 STANDS.)

22 THE COURT: YES, MA'AM?

23 THE JUROR: NUMBER 230. (JUROR

24 STANDS.)

25 THE COURT: YES, MA'AM?

MOTIONS

1 THE JUROR: NUMBER 234. (JUROR
2 STANDS.)

3 THE COURT: THANK YOU. (JUROR
4 STANDS.) YES, SIR?

5 THE JUROR: NUMBER 50. (JUROR
6 STANDS.)

7 THE JUROR: NUMBER 227. (JUROR
8 STANDS.)

9 THE JUROR: NUMBER 302.

10 THE COURT: LADIES AND GENTLEMEN,
11 WHEN YOU COME BACK AS AN INDIVIDUAL PANEL MEMBER,
12 AS I MENTIONED, COME IN THE REAR ENTRANCE AND
13 REPORT TO THE JURY ROOM. AND THEN WE'LL TAKE YOU
14 UP IN THE ORDER, GENTLEMEN, IN WHICH YOU WERE DRAWN
15 ON THE SPECIFIC PANEL. AND YOU WILL WAIT THERE IN
16 THE INDIVIDUAL PANELS BEFORE YOU COME INTO THE
17 COURTROOM WHERE WE'LL HAVE A CHANCE TO TALK WITH
18 YOU PRIVATELY. AND WE'LL GO THREW THIS PROCESS
19 UNTIL WE HAVE QUALIFIED ENOUGH JURORS THAT WE NEED
20 TO OBTAIN TO EFFECT THE TRIAL OF THIS CASE IN AN
21 ORDERLY MANNER. NOW, IT'S VERY IMPORTANT THAT YOU
22 PLEASE, PLEASE, COOPERATE WITH THIS PROCESS. THAT
23 MEANS IF YOU'VE GOT A GIVEN TIME THAT YOU'RE
24 SUPPOSED TO BE BACK, I URGE YOU TO PLEASE BE BACK
25 AT THAT TIME. IF FOR SOME REASON YOU HAVE AN

MOTIONS

1 EMERGENCY WHICH KEEPS YOU FROM COMING BACK, YOU'VE
2 GOT TO LET US KNOW, AND IT HAS TO BE AN EMERGENCY.
3 AND, MA'AM, IS THAT THE PHONE NUMBER FOR THE
4 CLERK'S OFFICE ON THESE INDIVIDUAL SLIPS FOR WHEN
5 THEY'RE SUPPOSED TO REPORT?

6 THE CLERK: NO.

7 THE COURT: ALL RIGHT. WELL, CAN
8 YOU AT THIS TIME GIVE THEM THAT NUMBER THAT THEY
9 NEED TO CALL?

10 THE CLERK: CALL AT NIGHT?

11 THE COURT: NO, MA'AM. IN THE EVENT
12 OF AN EMERGENCY THAT THEY CAN'T REPORT BACK AT THE
13 DESIGNATED TIME WHEN THAT PANEL REPORTS. IT'S 843
14 AREA CODE.

15 THE CLERK: IT'S (843) 563-0121.

16 THE COURT: 563-0121?

17 THE CLERK: YES. OR EITHER
18 832-0121. WE'VE GOT SOME PEOPLE IN THE SUMMERVILLE
19 AREA.

20 THE COURT: IT'S 563-0121 OR
21 832-0121. DOES ANYONE NEED A PENCIL AND PAPER TO
22 WRITE THAT ON? SUPPOSE WE DO THIS. WHEN WE CALL
23 YOU TO COME FORWARD TO GET YOUR LITTLE PANEL SLIPS;
24 PUT THAT NUMBER DOWN IF YOU WISH IT TO BE WRITTEN
25 DOWN ON YOUR LITTLE PANEL SLIPS. AND IN THE

MOTIONS

1 FUTURE, LET'S ALWAYS HAVE THE CLERK'S NUMBERS ON
2 THE INDIVIDUAL'S SLIPS, PLEASE MA'AM.

3 THE CLERK: HOW ABOUT ME GIVING THEM
4 ANOTHER NUMBER?

5 THE COURT: A THIRD NUMBER, YOU
6 MEAN?

7 THE CLERK: YES, SIR. IT'S 563-0183
8 AND 832-0183.

9 THE COURT: THANK YOU. SO, LADIES
10 AND GENTLEMEN, AFTER WE GO THROUGH A CERTAIN NUMBER
11 OF THESE PANELS -- AND I CAN'T TELL YOU WHETHER
12 WE'LL NEED ALL OF THE PANELS BECAUSE OUT OF THE
13 FIRST TEN PANELS OF SIX EACH; THAT'S 60 JURORS.
14 AND IF WE HAVE 37 THAT ARE DEEMED QUALIFIED, THEN
15 WE COULD STOP AT THAT POINT. BUT WE MAY HAVE TO GO
16 THROUGH THE ENTIRE 90 PERSONS. OR AGAIN, WE MAY
17 HAVE TO GET THOSE JURY COMMISSIONS TO CRANK UP THE
18 COMPUTER AND CALL MORE JURORS. I HOPE THAT'S NOT
19 THE CASE BECAUSE THAT WOULD JUST DELAY THE THING
20 FURTHER AND FURTHER. BUT WE WILL SELECT TWELVE
21 JURORS AND HAVE AT LEAST TWO ALTERNATES WHO WILL BE
22 SWORN TO HEAR THAT CASE. AND AGAIN, LADIES AND
23 GENTLEMEN, I ASK YOUR PATIENCE IN THIS MATTER.
24 THIS PANEL NUMBER WILL TELL YOU THE TIME TO COME
25 BACK. AND EVERYONE HAS TURNED IN A QUESTIONNAIRE.

MOTIONS

1 AND ONE OF THE FIRST QUESTIONS YOU'RE GOING TO BE
2 ASKED WHEN YOU COME BACK AND GET IN THE COURTROOM
3 INDIVIDUALLY IS WHETHER THERE'S BEEN ANY CHANGE IN
4 YOUR CIRCUMSTANCES OR ANY CHANGE IN THE
5 QUESTIONNAIRE THAT HAS BEEN SENT IN. SO, LADIES
6 AND GENTLEMEN, FINALLY AND MOST IMPORTANTLY, I NEED
7 TO EMPHASIZE TO YOU DURING THESE CAUTIONARY
8 INSTRUCTIONS, YOU CANNOT, YOU MUST NOT, READ ANY
9 ACCOUNT OR VIEW ANY ACCOUNT OR T.V. OR LISTEN TO
10 ANY ACCOUNT OF THESE PROCEEDINGS FROM THIS POINT OR
11 DURING YOUR INVOLVEMENT AS A JUROR, EITHER A REAL
12 JUROR OR A PROSPECTIVE OR POTENTIAL JUROR IN THIS
13 PARTICULAR CASE. THIS INCLUDES RADIO, NEWSPAPER,
14 OR TELEVISION ACCOUNTS. YOU CANNOT DISCUSS THIS
15 MATTER WITH ANYONE; NOT WITH YOUR FELLOW JURORS
16 UNTIL I TELL YOU SO TO DO WHICH WOULD BE YOUR FINAL
17 DELIBERATIONS. AND YOU MAY ONLY DISCUSS IT DURING
18 THE COURSE OF YOUR DELIBERATIONS IN THE JURY ROOM.
19 IF ANYONE TRIES TO DISCUSS THIS CASE OR ANY ASPECT
20 OF IT, WILL YOU TELL THAT PERSON YOU ARE A POSSIBLE
21 JUROR IN THIS CASE; YOU'VE BEEN INSTRUCTED BY THE
22 COURT NOT TO TALK WITH THEM ABOUT IT? IF THEY
23 PERSIST IN THEIR EFFORTS AFTER YOU'VE MADE THAT
24 PLAIN TO THEM, PLEASE FIND OUT WHO THEY ARE,
25 SEPARATE YOURSELF FROM THEM AS DISCRETELY AS YOU

MOTIONS

1 CAN. WHEN YOU GET BACK TO THIS COURTROOM, TELL ME
2 AND WE WILL SEE THAT THOSE FOLKS ARE PROPERLY DEALT
3 WITH BECAUSE WHAT WE'RE TRYING TO DO IN THIS
4 PROCESS, LADIES AND GENTLEMEN, IS TO SECURE A PANEL
5 OF QUALIFIED JURORS AS I HAVE PREVIOUSLY DEFINED
6 THAT TERM TO YOU. AND IF YOU ALLOW YOURSELVES FROM
7 THIS POINT ON TO BE EXPOSED TO ANY INFORMATION
8 ABOUT THIS CASE OR TALK WITH ANYBODY ABOUT THIS
9 CASE OR ALLOW ANYONE TO TALK WITH YOU ABOUT IT,
10 THAT MAY VERY POSSIBLY AFFECT YOUR ABILITY TO BE A
11 FAIR AND IMPARTIAL JUROR IN THE CASE. SO AGAIN,
12 MR. SOLICITOR, IS THERE ANY FURTHER QUESTIONS
13 DURING THIS PRELIMINARY QUALIFICATION PROCESS FROM
14 THE STATE OR THE DEFENSE?

15 MR. BAILEY: NO, YOUR HONOR.

16 MR. THEOS: NOTHING, YOUR HONOR.

17 THE COURT: ALL RIGHT. AND,
18 GENTLEMEN, IT'S FIVE AFTER TWO; AND THE JURORS NEED
19 TO EAT; AND Y'ALL NEED TO EAT. IS IT AGREEABLE TO
20 BRING THE FIRST PANEL IN AT 3:30?

21 MR. BAILEY: YES, SIR.

22 THE COURT: DO YOU THINK WE COULD
23 BRING THEM IN ANY SOONER THAN THAT?

24 MR. BAILEY: WELL---

25 THE COURT: I DON'T MIND BRINGING

1 THEM IN AT THREE OR 3:15.

2 MR. BAILEY: I DON'T THINK THEY CAN
3 ALL EAT AND GET BACK BY THEN.

4 THE COURT: WELL, I'M ONLY BRINGING
5 SIX. BUT I'LL LEAVE IT 3:30 UNLESS Y'ALL THINK --
6 DO Y'ALL WANT TO PRIVATELY CONFER?

7 MR. BAILEY: YES, SIR.

8 (AT THIS TIME OFF-THE-RECORD DISCUSSION IS HELD.)

9 THE COURT: ARE WE ON PANEL THREE
10 NOW?

11 THE CLERK: WE'RE ON PANEL 14.

12 MS. GRAHAM: PANEL 14.

13 THE COURT: PANEL 14. SIX FOURTEENS
14 IS 84. SO WE'VE ONLY GOT ONE MORE TO GO.

15 MS. GRAHAM: WE HAVEN'T FILLED THE
16 TIME IN YET.

17 THE COURT: ALL RIGHT. THEN PANEL
18 ONE, GENTLEMEN; MAY WE AGREE THAT PANEL ONE WILL
19 REPORT AT 3:30 TODAY, FEBRUARY THE 22ND. THAT WILL
20 BE SIX JURORS. AND MY EXPERIENCE, GENTLEMEN, IS
21 THAT IT TAKES THE FIRST PANEL TO REALLY GET SET IN
22 YOUR FEEL AND FLOW FOR YOUR QUESTIONING AND YOUR
23 OBJECTIONS. DO YOU THINK YOU CAN DO IT IN AN
24 HOUR-AND-A-HALF; OR DO YOU PREFER TWO HOURS? WHAT
25 SAY THE STATE?

MOTIONS

1 MR. BAILEY: AN HOUR-AND-A-HALF,
2 YOUR HONOR.

3 THE COURT: WHAT SAY THE DEFENDANT?

4 MR. THEOS: THAT'S PROBABLY FINE,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT. PANEL NUMBER
7 TWO, THEN, WE WOULD BRING IN AT FIVE. AND DO YOU
8 WISH AN HOUR-AND-A-HALF FOR THAT PANEL; BRING PANEL
9 NUMBER THREE IN AT 6:30?

10 MR. BAILEY: YES, SIR.

11 THE COURT: AGREED?

12 MR. THEOS: YES, SIR.

13 THE COURT: NOW, GENTLEMEN; AS YOU
14 ALL KNOW, THE MORE YOU DO TODAY, THE LESS YOU'VE
15 GOT TO DO TOMORROW. BUT AS I TELL THE JURORS, AS
16 THE LAWYERS UNDERSTAND; IT'S NOT THE SPEED OR HASTE
17 IN WHICH YOU DO THINGS. IT IS THE QUALITY THAT IS
18 DONE. SO WE DON'T WANT TO SLOW YOU DOWN. WE DON'T
19 WANT TO SPEED YOU UP. WE WANT TO GO AT A REASONABLE
20 PACE. BUT IF IT TAKES AN HOUR-AND-A-HALF FOR A
21 PANEL AND ONE PANEL COMES IN AT 6:30; THAT WILL BE
22 EIGHT O'CLOCK. DOES THE STATE WISH TO PROCEED
23 BEYOND THAT POINT BECAUSE YOU'RE NOT GOING TO
24 OUT-WORK ME. YOU MIGHT OFFEND SOME JURORS. BUT
25 I'M HERE FOR A LONG HAUL. I'VE PACKED CLOTHES FOR

1 TWO WEEKS.

2 MR. BAILEY: JUDGE, I'LL GO AS LONG
3 AS MR. THEOS CAN GO.

4 MR. THEOS: JUDGE, WE'D PREFER TO
5 STOP AT THAT POINT.

6 THE COURT: I WOULD, TOO; BUT I JUST
7 WANT TO KNOW. ALL RIGHT. SO PANEL NUMBER THREE
8 WILL COME IN AT 6:30. AND THAT'S TODAY, FEBRUARY
9 THE 22ND. AND THEN, GENTLEMEN, PANEL NUMBER FOUR;
10 IS IT AGREEABLE TO START AT 9:00, OR DO YOU WISH TO
11 START EARLIER?

12 MR. BAILEY: NINE O'CLOCK, YOUR
13 HONOR.

14 THE COURT: MR. THEOS?

15 MR. THEOS: THAT'S FINE, YOUR
16 HONOR.

17 THE COURT: DO YOU THINK WE CAN CUT
18 IT DOWN TO AN HOUR? OR DO YOU THINK IT WILL STILL
19 TAKE AN HOUR-AND-A-HALF?

20 MR. BAILEY: I THINK WE COULD TRY AN
21 HOUR, YOUR HONOR.

22 MR. THEOS: YOUR HONOR, I THINK IF
23 WE CUT BACK FROM TWO HOURS TO AN HOUR-AND-A-HALF.
24 I'M CONCERNED THAT WE MAY HAVE SOME JURORS WAITING
25 OUT HERE.

MOTIONS

1 THE COURT: WE HAVEN'T HAD SOME FOR
2 TWO YET. WE'RE AN HOUR-AND-A-HALF WITH ALL THREE
3 WE'VE BROUGHT. WE HAVEN'T GIVEN TWO HOURS TO ANY
4 OF THEM.

5 MR. THEOS: I UNDERSTAND. BUT WE
6 CAN---

7 THE COURT: I WILL GIVE YOU TWO
8 HOURS IF YOU WANT IT.

9 MR. THEOS: WELL, WE HAD DISCUSSED
10 EARLIER TWO HOURS; AND WE DECIDED THAT WE COULD --
11 WE AGREED THAT WE COULD TRY TO DO IT IN AN
12 HOUR-AND-A-HALF. BUT IT ALL HINGES ON HOW THINGS
13 GO TODAY. BUT I THINK JUST TO BE -- WE'LL LEAVE IT
14 TO YOUR DISCRETION, YOUR HONOR.

15 THE COURT: ONE THING FOR CERTAIN; Y'ALL
16 ARE GOING TO BREAK ME FROM SMOKING. I'VE HAD ONE
17 RECESS SINCE 10:30. BUT, THERE AGAIN, MAYBE THAT
18 WILL BE A GOOD THING. ALL RIGHT, LET'S DO THIS:
19 LET'S BRING NUMBER FIVE IN AT 10:15, MA'AM, ON THE
20 23RD WHICH WILL BE TUESDAY. WE'LL TRY AN HOUR AND
21 FIFTEEN MINUTES. AND THEN PANEL NUMBER SIX WE'LL
22 BRING IN AT 11:30. THEN IT WILL BE 12:45. THEN
23 WE'LL START BACK AT -- PANEL NUMBER SEVEN WE'LL
24 BRING IN AT 2:00.

25 MS. GRAHAM: THAT WILL BE PANEL

MOTIONS

1 EIGHT.

2 THE COURT: WE'RE GOING TO BREAK FOR
3 LUNCH. THAT'S JUST ANTICIPATING. NUMBER SEVEN
4 COMES IN AT TWO. NUMBER SIX AT 11:30. WE'VE GOT
5 TO HAVE EATING TIME. SEVEN AT TWO.

6 MS. GRAHAM: SEVEN AT 2:00 P.M.

7 THE COURT: AND EIGHT AT 3:15. AND
8 NUMBER NINE WOULD BE AT 4:30. NUMBER TEN WOULD BE
9 AT 5:45. AGAIN, MA'AM, STARTING ON WEDNESDAY, THE
10 24TH, PLEASE, PANEL ELEVEN AT 9:00 A.M.; PANEL 12
11 AT 10:15; THIRTEEN AT 11:30; FOURTEEN AT 2:00;
12 FIFTEEN AT 3:15; AND WE ONLY HAVE FIFTEEN PANELS OF
13 SIX BECAUSE THERE ARE NINETY; CORRECT?

14 THE CLERK: YES, SIR.

15 THE COURT: SO, LADIES AND
16 GENTLEMEN, THE FIRST PANEL, PANEL NUMBER ONE, WILL
17 REPORT AT 3:30 TODAY. AND THERE ARE SIX PEOPLE PER
18 PANEL. PANEL TWO WILL COME AT FIVE O'CLOCK; AND
19 PANEL THREE AT 6:30. THEY'RE WRITING THESE
20 INDIVIDUAL SLIPS WITH YOUR JURY NUMBER ON IT AND
21 THE DATE AND THE HOUR AND THE PANEL NUMBER. SO
22 DON'T WORRY ABOUT COMMITTING IT TO MEMORY BECAUSE
23 THEY'RE MAKING A REPORT OF THAT. AND AS I STATED,
24 YOU'LL HAVE THAT TYPE JUROR A, B, AND C TO REVIEW
25 WHILE YOU ARE IN THE JURY ROOM WAITING THERE. AND

MOTIONS

1 PLEASE, LADIES AND GENTLEMEN, LET ME ASK YOU; DON'T
2 BRING ANY BEEPERS OR ANY CELL PHONES. WE HAVEN'T
3 HAD ANY GO OFF SO FAR. BUT DON'T BRING ANY CELL
4 PHONES OR BEEPERS BACK WITH YOU. NOW, LADIES AND
5 GENTLEMEN, UNDERSTAND THAT IF WE QUALIFY ENOUGH
6 JURORS AFTER PANEL NUMBER NUMBER NINE AT 4:30 ON
7 TUESDAY, THEN WE WILL NOTIFY YOU. WE HAVE ALL YOUR
8 PHONE NUMBERS. WE'LL NOTIFY YOU NOT TO REPORT IF
9 YOU DON'T NEED TO BECAUSE I WANT TO MINIMIZE THE
10 DISRUPTION OF YOUR NORMAL LIVES TO THE EXTENT THAT
11 WE'RE ABLE TO DO SO WITH THIS NECESSARY PROCESS.
12 YOU DON'T THINK, MADAM CLERK, THAT IT WOULD HELP --
13 DO YOU HAVE A RECORDING WHERE THE JURORS WHO ARE
14 SUPPOSED TO COME IN ON WEDNESDAY COULD CALL TUESDAY
15 AFTER SIX O'CLOCK AND THOSE SAME NUMBERS?

16 THE CLERK: NO.

17 MR. THEOS: THEY'RE DIFFERENT
18 NUMBERS?

19 THE CLERK: THEY'RE DIFFERENT
20 NUMBERS.

21 THE COURT: ALL RIGHT. SO FOR
22 PERSONS ON PANELS 11, 12, 13, 14 AND 15, WHEN YOU
23 COME FORWARD GET A LITTLE SLIP OF PAPER THAT TELLS
24 YOU WHAT TIME AND WHAT PANEL ON WEDNESDAY. WE WANT
25 YOU TO GET THE NUMBER FROM THE CLERK FOR THE

MOTIONS

1 RECORDING MACHINE. SO YOU CAN CALL TUESDAY AFTER
2 SIX O'CLOCK TO MAKE SURE THAT IT'S NECESSARY FOR
3 YOU TO COME IN ON WEDNESDAY.

4 THE CLERK: I BELIEVE WE'VE GIVEN
5 THEM THAT NUMBER.

6 THE COURT: YOU'VE GIVEN THEM THAT
7 NUMBER?

8 THE CLERK: YES, SIR.

9 THE COURT: SO EVERYONE HAS THAT
10 NUMBER, THEN? (NO RESPONSE.) DOES ANYONE NOT HAVE
11 THE NUMBER FOR THE RECORDING MACHINE? GENTLEMEN OF
12 THE BAR, I DON'T SEE ANY NEED FOR THEM TO CALL THIS
13 AFTERNOON.

14 MR. BAILEY: NO, SIR.

15 THE COURT: BECAUSE WE'RE ONLY
16 GETTING THREE PANELS OF SIX. THAT'S EIGHTEEN; AND
17 WE NEED 37 IN ORDER TO STRIKE. WE'RE SETTING THE
18 TIMES NOW. YOU DON'T WANT TO CUT OFF THE FOOT TO
19 FIT THE SHOE. WE WANT TO MAKE SURE THAT SHE GETS
20 THE FOOT.

21 THE JUROR: JUDGE?

22 THE COURT: YES, SIR?

23 THE JUROR: YOUR HONOR, I STILL NEED
24 TO GO TO THAT DOCTOR APPOINTMENT IF THAT'S ALL
25 RIGHT.

MOTIONS

170

1 THE COURT: AND YOU ARE JUROR
2 NUMBER?

3 THE JUROR: TWENTY-FIVE.

4 THE COURT: WHAT PANEL IS HE ON,
5 MA'AM? ARE YOU ABLE TO TELL?

6 THE CLERK: IT'S---

7 THE COURT: AND YOUR NAME IS?

8 THE JUROR: RONALD BOLES.

9 MS. GRAHAM: HE'S NUMBER NINE.

10 THE COURT: YOU'RE ON PANEL NINE?

11 MS. GRAHAM: NO; NOT NINE.

12 THE COURT: I'M FROM DOWN IN THE
13 SWAMPS, TOO. I WAS BORN AND RAISED IN HAMPTON.
14 USED TO OPEN UP A FOOTBALL SEASON IN SUMMERVILLE;
15 WOULD RIP US 66 TO NOTHING OR 75 TO NOTHING OR 100
16 TO NOTHING. BUT MY SENIOR YEAR WE FINALLY BEAT
17 SUMMERVILLE SEVEN TO SIX. I THOUGHT IT WOULD NEVER
18 HAPPEN. THEY'VE HAD A WONDERFUL TRADITION THERE
19 AND GREAT ATHLETES.

20 MS. GRAHAM: PANEL SIX.

21 THE COURT: YOU'RE ON PANEL SIX TO
22 REPORT AT 11:30 TOMORROW. WHAT TIME IS YOUR
23 APPOINTMENT?

24 THE JUROR: TODAY? I'VE GOT TO BE
25 THERE AT 3:15.

1 THE COURT: SURE. COME FORWARD AND
2 LET US GIVE YOU YOUR INFORMATION NOW BECAUSE HE IS
3 ON CRUTCHES NOW. SO MADAM CLERK, CAN WE
4 ACCOMMODATE THIS GENTLEMAN WHO'S GOT A 3:15
5 DOCTOR'S APPOINTMENT? IT'S 2:15. WE'LL GET YOU A
6 PASS IF YOU GET STOPPED. THAT'S TODAY, NOW, NOT
7 TOMORROW.

8 THE JUROR: THANK YOU.

9 THE COURT: SPEEDING TO THE DOCTOR'S
10 OFFICE.

11 THE JUROR: I'VE GOT TO GO ALL THE
12 WAY TO THE MEDICAL UNIVERSITY. SO I'VE GOT A GOOD
13 RIDE.

14 THE COURT: GEE WHIZ; THAT'S GOING
15 TO CUT IT CLOSE. DO Y'ALL HAVE THE SLIP YOU CAN
16 GIVE THIS GENTLEMAN WHO'S ON PANEL SIX?

17 MS. GRAHAM: YES, SIR.

18 THE CLERK: WE'VE GOT IT NOW.

19 THE COURT: DO YOU MIND TAKING IT TO
20 HIM? HE'S ON CRUTCHES. DON'T MAKE HIM COME GET
21 IT.

22 THE CLERK: I'M NOT.

23 THE COURT: THANK YOU; AND GOOD LUCK
24 WITH YOUR DOCTOR'S APPOINTMENT. I'M SORRY WE'VE
25 TAKEN SO LONG.

MOTIONS

1 THE JUROR: THAT'S ALL RIGHT. THANK
2 YOU, SIR. ALL RIGHT. MADAM CLERK, ARE YOU READY
3 TO CALL PANEL NUMBER ONE AND LET THEM COME FORWARD
4 AND GIVE THEM THEIR SIX SLIPS?

5 THE CLERK: WILLIAM SILVERS, JR.

6 THE COURT: NO, MA'AM' I ASKED YOU
7 IF YOU ARE READY. DO YOU HAVE THE SIX SLIPS TO
8 GIVE THEM?

9 THE CLERK: YES.

10 THE COURT: ALL RIGHT. PANEL ONE;
11 COME FORWARD AS YOUR NAME IS CALLED.

12 THE CLERK: NUMBER 284. NUMBER 16,
13 CHRISTOPHER BARTON.

14 THE COURT: LET ME JUST ASK YOU
15 THIS: WOULDN'T IT BE EASIER JUST TO GO STAND AT THE
16 GATE WITH THE SIX NUMBERS AND HAND THEM TO THEM,
17 AND THEY CAN JUST -- YOU CAN GO OUT THE BACK DOOR
18 OR FRONT DOOR OR THE BACK DOOR. JUST DON'T JUMP
19 OUT THE WINDOW. I MEAN, YOU'VE GOT THE TIME TO BE
20 HERE. GO AHEAD UP TO THE GATE.

21 THE CLERK: PAUL RANDOLPH, NUMBER
22 261. NUMBER 285, HERBERT SIMMONS. NUMBER MARY ANN
23 VALENTINE, NUMBER 319. DELORES EVANS, NUMBER 104.
24 SHIRLEY PRINGLE, NUMBER 258. JUROR NUMBER 194,
25 HUGH LESLEY, JR. NUMBER 81, TONYA DENNIS. NUMBER

MOTIONS

1 93, BENJAMIN DURHAM. NUMBER 107, SCOTT FIELDS.
2 NUMBER 320, JAMES R. VANDELL. NUMBER 51, MICHAEL
3 CANTRELL. NUMBER 256, ALICE POSTELL. NUMBER 122,
4 CURTIS GLOVER. NUMBER 137, MILTON HANDLER, JR.
5 NUMBER 195, BERNARD LEWIS. AND NUMBER 5, GREGORY
6 M. ALLEN. NUMBER 10, THEODORE ANZELL. NUMBER 129,
7 RAY GREEN. NUMBER FOUR, REBADELL AHL. NUMBER 282,
8 DEBORAH SHUFORD. NUMBER 205, SANDRA A. MALONE.
9 NUMBER 199, EDWARD LIVINGSTON. NUMBER 303, BRYAN
10 SULLIVAN. NUMBER 281, DONALD SHORT, JR. NUMBER
11 50, CHRISTOPHER CAMPEAU. NUMBER 226, PAUL MOORE.
12 NUMBER 341, MARK WILLIAMSON. NUMBER 299, BRENDA
13 LINDA WITHERELL. NUMBER 11, AMY ARMONE. NUMBER 307,
14 BRYAN TALLENT. NUMBER 335, JAN WHITMORE. NUMBER
15 313, SHANNON MCSWAIN. NUMBER 37, JAMES BROOKS, JR.
16 NUMBER 328, JOHN A. WASHINGTON.

17 MR. BELL: I ONLY HAVE FIVE NAMES.
18 DO Y'ALL HAVE SIX?

19 MR. BAILEY: WE ONLY HAVE FIVE. I
20 HAVE 11, 307. DID YOU CALL THREE OUT AT ONE TIME?

21 THE CLERK: NUMBER 37, JAMES BROOKS.

22 MR. BAILEY: OKAY.

23 THE CLERK: SHANNON MCSWAIN, NUMBER
24 313. JAN WHITMORE, NUMBER 335; RYAN TALLENT, NUMBER
25 307. NUMBER 11, AMY ARMONE. AND NUMBER 25, RONALD

MOTIONS

BOLES.

MR. BAILEY: NOW YOU'VE GOT SEVEN.

THE CLERK: NUMBER 328, JOHN A.

WASHINGTON.

MR. BAILEY: WHOA! WHOA! WHAT PANEL

ARE YOU ON?

THE CLERK: SEVEN.

MR. BAILEY: OKAY.

MR. THEOS: I THOUGHT IT WAS SIX.

THE CLERK: ON PANEL NUMBER SEVEN,
WILLIFORD CARTER, NUMBER 55. PANEL NUMBER SEVEN,
NUMBER 154, ROBERT HUGHES. PANEL NUMBER SEVEN,
NUMBER 12, PETER ARMSTRONG. PANEL NUMBER SEVEN,
ALBERT NETTLES, JR., NUMBER 234. PANEL SEVEN,
NUMBER 216, CAROLYN MCKNIGHT.

MR. BAILEY: THAT'S FIVE.

THE CLERK: ALL RIGHT. 216? 234?
12? 154? 55? AND 328?

THE COURT: MR. THEOS; ON THE
RECORD, PLEASE. AFTER THE JURORS HAVE GOTTEN THEIR
LITTLE SLIPS; AND WHEN WE RETURN; I'M GOING TO HAVE
THE CLERK OF COURT MAKE COPIES FOR THE STATE AND
FOR THE DEFENSE AND FOR THE COURT -- TWO COPIES FOR
THE DEFENSE -- SHOWING PANEL ONE AND LISTING THE
JURORS AND THE TIME AND DATE SO THAT -- BECAUSE YOU

MOTIONS

1 MAY BE INTERESTED IN THAT INFORMATION. Y'ALL HAVE
2 THAT; AND YOU CAN MAKE THOSE COPIES, PLEASE. LET ME
3 SEE; BECAUSE I GAVE Y'ALL A FORM. TO BE A GOOD
4 JUDGE, YOU'VE GOT TO HAVE FOUR THINGS: PATIENCE,
5 PATIENCE, PATIENCE, PATIENCE, AND GOODBYE. Y'ALL
6 BEAR WITH US, PLEASE.

7 THE CLERK: ON PANEL NUMBER EIGHT;
8 JOYCE EDDY, NUMBER 95. PANEL NUMBER EIGHT, MELISA
9 BOUTON, NUMBER 28. PANEL NUMBER EIGHT, MICHAEL
10 BRYANT, NUMBER 43. PANEL NUMBER EIGHT, MARTIN
11 ROBERTSON, NUMBER 270. PANEL NUMBER EIGHT, CARLISS
12 TOMPKINS, NUMBER 314. PANEL NUMBER EIGHT, NUMBER
13 316, CURTIS J. TSAI. PANEL PANEL NUMBER NINE,
14 JOSEPH MCRAE, 219. NUMBER NINE IS CHERYL SIGWALD,
15 NUMBER 283. PANEL NUMBER NINE, NUMBER 187, RICHARD
16 LARSON. PANEL NUMBER NINE, RICHARD DUBOSE, NUMBER
17 90. PANEL NUMBER NINE, JUROR NUMBER 350, MARK
18 ZIEGLER. NUMBER NINE, LEON A. COOK, NUMBER 65.
19 PANEL NUMBER TEN, NUMBER 139, MILDRED HARNESS.
20 NUMBER TEN, NUMBER 269, STEVEN ROBERTS. PANEL
21 NUMBER TEN, NUMBER 197, JOE LEWIS. PANEL NUMBER
22 TEN, NUMBER 294, JOANN SPEARMAN. PANEL NUMBER TEN,
23 NUMBER 27, BETTY BOONE. PANEL NUMBER TEN, DAVID
24 WRIGHT, NUMBER 334. PANEL NUMBER ELEVEN, NUMBER 44,
25 RICHARD BRYANT. PANEL NUMBER ELEVEN, NUMBER 279,

MOTIONS

1 BRIAN SHAW. PANEL NUMBER ELEVEN, NUMBER 169,
2 BRENDA JONES. PANEL NUMBER ELEVEN, NUMBER 302,
3 BROOKS STYLES. PANEL NUMBER ELEVEN, JIMMY JACKSON,
4 NUMBER 159. PANEL NUMBER ELEVEN, NUMBER 44,
5 RICHARD BRYANT. PANEL NUMBER TWELVE, NUMBER 35,
6 HOWARD S. BRIDGMAN, III. PANEL NUMBER TWELVE,
7 NUMBER 105, MICHAEL H. FAHS. PANEL NUMBER TWELVE,
8 NUMBER 100, ANNIS M. ENCARNACION. PANEL NUMBER
9 TWELVE, THEREL J. UTSEY, NUMBER 318. PANEL NUMBER
10 TWELVE, SHARON LYNCH, NUMBER 201. PANEL NUMBER
11 TWELVE, JEFFERSON MAXEY, NUMBER 211. PANEL NUMBER
12 THIRTEEN, NUMBER 204, NORBERT L. MAJEWSKI. PANEL
13 NUMBER THIRTEEN, NUMBER 223, CAROL MITCHELL.
14 PANEL NUMBER THIRTEEN, JANIE HODGES, NUMBER 149.
15 PANEL THIRTEEN, NUMBER 42, LINDA C. BRYANT. PANEL
16 THIRTEEN, NUMBER 227, DERRICK MOORER. PANEL NUMBER
17 THIRTEEN, NUMBER 254, GEORGE PLOTH. PANEL NUMBER
18 FOURTEEN, NUMBER 247, MICHAEL PEAY. PANEL NUMBER
19 FOURTEEN, NUMBER 249, BARBARA PENDER. PANEL NUMBER
20 FOURTEEN NUMBER 300, ERNEST L. STOKES. PANEL
21 FOURTEEN, NUMBER 76, RICHARD A. CUSHMAN, JR. PANEL
22 NUMBER FOURTEEN, ELISE M. MUSCOTT, NUMBER 230.
23 PANEL NUMBER FIFTEEN, NUMBER 67, RON COPELAND.
24 PANEL NUMBER FIFTEEN, NUMBER 172, SENICA JONES.
25 PANEL NUMBER FIFTEEN, NUMBER 74, BETH CUNNINGHAM.

MOTIONS

1 PANEL FIFTEEN, NUMBER 106, THOMAS FEDRICK. PANEL
2 NUMBER FIFTEEN, DAVID BURNETTE, NUMBER 46. PANEL
3 FIFTEEN, NUMBER 59, RICHARD CLEEVE, III.

4 THE COURT: SO, LADIES AND
5 GENTLEMEN, AT THIS TIME ALL THE PANELS HAVE BEEN
6 ASSIGNED. WE WILL RECESS UNTIL 3:30 WHERE WE WILL
7 CONVENE THE COURT FOR PURPOSE OF THE INDIVIDUAL
8 VOIR DIRE. I WOULD SUGGEST TO YOU, PLEASE MR.
9 SOLICITOR, MY LAW CLERK HAS A LIST OF THE NUMBERS
10 REGARDING THE VARIOUS CATEGORIES IN WHICH SOME
11 PERSON STOOD SUCH AS FOR CRIMES OF VIOLENCE,
12 KNOWING THE WITNESSES, OR KNOWING THE LAWYERS. AND
13 IF YOU AND JIM BELL ARE REPRESENTATIVE OF THE
14 DEFENSE, IF Y'ALL COULD GET TOGETHER AND PUT THAT
15 IN CHRONOLOGICAL SEQUENCE, I SUBMIT THAT IT'S
16 EASIER TO FIND NUMBER 70 OUT OF SIXTY NUMBERS IF
17 YOU'VE GOT THEM IN CHRONOLOGICAL SEQUENCE. AND, IF
18 Y'ALL COULD, TIME PERMITTING, GO AHEAD AND GET YOUR
19 PANEL ONE, PULL YOUR QUESTIONNAIRES FOR THOSE SIX
20 NUMBERS ON THAT. AND, MADAM CLERK, SOMEONE IS
21 GOING NOW TO MAKE COPIES OF THE PANELS AND THE
22 JUROR NUMBERS AND THE TIME AND DATE THEY'RE TO
23 REPORT. AND WOULD YOU PLEASE GIVE THOSE TWO COPIES
24 TO THE DEFENDANT AND TWO COPIES TO THE STATE, AND
25 GET ME TWO COPIES AND Y'ALL HOWEVER MANY COPIES YOU

MOTIONS

1 NEED. AND WE STILL NEED TO HEAR THIS MATTER WITH
2 MR. HILL WHO'S BEEN HERE IN COLUMBIA, AND DR.
3 SANFORD IS HERE FROM COLUMBIA. THEY'VE BEEN HERE
4 SINCE 12:30. AND IT'S TIME TO BREAK; AND Y'ALL
5 HAVE TO HAVE TIME TO EAT. IF Y'ALL NEED SOMEBODY
6 TO GO BRING YOU SOMETHING, I'LL BE GLAD TO HAVE A
7 DEPUTY SHERIFF OR A HIGHWAY PATROLMAN DO IT. DO
8 Y'ALL WANT TO TAKE A RECESS BEFORE WE GET INTO THE
9 HEARING MATTER?

10 MR. THEOS: THAT'S FINE.

11 THE COURT: I'D JUST LIKE TO BE
12 THROUGH WITH IT BY 3:30; PLUS, WE NEED TO GET THE
13 SHERIFF ON THE RECORD BECAUSE, AS I UNDERSTAND IT,
14 HE IS THE PERSON WHO IS ASSIGNED TO THE WARRANT
15 DIVISION OR THE PROCESS OF SERVICE DIVISION TO BE
16 PREPARED TO TAKE THE STAND AND TESTIFY THAT THOSE
17 PERSONS ARE UNDER HIS SUPERVISION. SO IS THERE
18 ANYTHING ELSE Y'ALL CAN THINK OF AT THIS TIME THAT
19 WE NEED TO DO? THE FOOD ISN'T HERE YET,
20 IS IT?

21 THE CLERK: NO, SIR.

22 THE COURT: WELL, Y'ALL CAN GO.
23 I'LL SWEAR THE WITNESSES. I'LL NEED YOU ABOUT THE
24 SHERIFF TESTIFYING. Y'ALL CAN GO AHEAD AND GO TO
25 LUNCH SO Y'ALL CAN BE BACK AT 3:30. ALTHOUGH I

MOTIONS

1 DON'T NEED ALL OF YOU. I CAN SWEAR THOSE WITNESSES
2 DURING VOIR DIRE.

3 (LUNCH RECESS.)
4

5 THE COURT: EARLIER THIS MORNING I
6 HAD FILED WITH THE CLERK OF COURT A REQUEST FOR
7 ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF THE
8 JUDICIAL PROCEEDINGS IN REGARD TO STATE VS. KENNETH
9 SIMMONS FROM NEWS CHANNEL 2 IN CHARLESTON. I FILED
10 THAT WITH THE CLERK AND GAVE COPIES TO COUNSEL FOR
11 THE STATE AND THE DEFENSE, AND I RECEIVED ANOTHER
12 REQUEST HERE. THIS IS CLOCKED IN AT 12:30, A
13 CERTIFIED COPY FROM CHANNEL 4 IN CHARLESTON WHICH I
14 HAVE APPROVED AND SIGNED AND FILED WITH THE CLERK
15 AND GAVE COPIES TO COUNSEL. THE RECORD WILL SO
16 REFLECT, PLEASE.

17 THE COURT REPORTER: YES, SIR.

18 THE COURT: LET THE RECORD REFLECT,
19 MADAM COURT REPORTER, THAT THE DEFENDANT IS HERE
20 WITH HIS TWO COUNSEL ARE PRESENT AS IS THE
21 SOLICITOR. WE THANK SHERIFF RAY NASH, THE
22 HONORABLE SHERIFF OF DORCHESTER COUNTY FOR BEING
23 WITH US TODAY. AND, SHERIFF, AT THIS TIME, MAY I
24 ASK YOU TO PUT YOUR LEFT HAND ON THE BIBLE AND
25 RAISE YOUR RIGHT HAND TO TAKE THE OATH? (WITNESS

RAY NASH - EXAMINATION BY THE COURT

WHEREUPON,

RAY NASH, WHO AFTER BEING FIRST DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. SIR, IT'S MY UNDERSTANDING THAT YOU ARE THE DULY
ELECTED AND QUALIFIED SHERIFF OF DORCHESTER COUNTY?

A. THAT'S CORRECT.

Q. AND YOU HAVE BEEN SINCE WHEN?

A. SINCE JANUARY OF '97.

Q. AND IN YOUR CAPACITY AS A SHERIFF OF DORCHESTER
COUNTY, DO YOU HAVE A DIVISION WITHIN YOUR
DEPARTMENT THAT IS RESPONSIBLE FOR SERVICE OF
PROCESS OF CIVIL, FAMILY COURT, PAPERS, JURY
SUMMONS, AND COURT RELATED DOCUMENTS?

A. WE DON'T HAVE A SEPARATE DIVISION, YOUR HONOR. WE
DO HAVE DEPUTIES THAT ARE ASSIGNED TO THAT
RESPONSIBILITY.

Q. ARE THEY UNDER YOUR DIRECT SUPERVISION AND CONTROL?

A. YES, SIR.

Q. AND YOU ARE KNOWLEDGEABLE AS TO THE EXTENT OF THEIR
DUTIES KEPT IN THE NORMAL COURSE OF THEIR BUSINESS?

A. YES, SIR.

Q. AND HAVE YOU SINCE JANUARY THE 25TH ON VARIOUS

RAY NASH - EXAMINATION BY THE COURT

1 OCCASIONS HAD YOUR DEPARTMENT RECEIVE VARIOUS
2 COMMUNICATIONS FROM THE CLERK OF COURT'S OFFICE FOR
3 DORCHESTER COUNTY WHERE CERTAIN JURORS WHO WERE
4 MAILED SUMMONS WITH PROPER POSTAGE AFFIXED HAS BEEN
5 RETURNED FOR VARIOUS REASONS WHETHER IT BE UNABLE
6 TO LOCATE, ADDRESSEE MOVED AND NO FORWARDING
7 ADDRESS AND NO ONE KNOWN AT THAT ADDRESS?

8 A. YES, SIR, WE HAVE.

9 Q. AND UPON RECEIVING THESE DOCUMENTS AND
10 NOTIFICATIONS OF NAMES AND ADDRESSES OF THE VARIOUS
11 JURORS WHO WERE SUMMONED TO APPEAR HERE ON MONDAY,
12 FEBRUARY THE 22ND, 1999, FOR THE PURPOSE OF THIS
13 TERM OF GENERAL SESSIONS COURT AND MORE PARTICULAR
14 FOR THE TRIAL SET FOR DATE CERTAIN, THE STATE VS.
15 KENNETH SIMMONS, A DEATH PENALTY CASE, PLUS FOUR OR
16 FIVE OTHER INDICTMENTS AGAINST THE SUBJECT; DID
17 YOUR OFFICERS MAKE DUE AND DILIGENT SEARCH AND
18 EXHAUST EVERY POSSIBLE AVENUE IN ORDER TO LOCATE OR
19 ASCERTAIN THE WHEREABOUTS OF THESE JURORS SO THAT
20 YOU COULD EFFECT SERVICE THEREUPON?

21 A. YES, SIR, THEY DID.

22 Q. AND AS A MATTER OF FACT, THE RECORD WILL REFLECT
23 THAT THERE HAVE BEEN A NUMBER OF JURORS THAT YOUR
24 DEPARTMENT HAS BEEN SUCCESSFUL IN NOTIFYING THAT
25 HAD MOVED WITHIN THE COUNTY BUT HAD NOT LEFT A

RAY NASH - EXAMINATION BY THE COURT

1 FORWARDING ADDRESS, AND THE COURT WISHES TO EXPRESS
2 ITS APPRECIATION TO YOU AND YOUR DEPARTMENT FOR
3 YOUR FINE EFFORTS OF YOU AND YOUR MEN IN THAT
4 REGARD. BUT MORE PRECISELY, ARE THERE CERTAIN
5 JURORS THAT YOUR DEPARTMENT OR YOU, YOUR ASSIGNED
6 DEPUTIES, HAVE BEEN UNABLE TO LOCATE?

7 A. YES, SIR; THERE ARE A FEW.

8 Q. ALL RIGHT, SIR. WELL, IN ADDITION TO THOSE THAT
9 ARE ALREADY IN THE RECORD, MAY I ASK THAT YOU
10 PLEASE SET FORTH IN THE RECORD THE NAMES AND THE
11 JUROR NUMBERS AND THE ADDRESSES OF THOSE PERSONS.
12 AND WE HAVE THE SOLICITOR REPRESENTING THE STATE,
13 MR. THEOS AND BELL HERE. AND THEY'LL BE GIVEN THE
14 OPPORTUNITY TO EXAMINE YOU IF THEY SO PLEASE.

15 A. YES, SIR. I'LL BE GLAD TO -- WOULD YOU ALSO LIKE
16 THE REASON WHY THEY WERE UNABLE TO LOCATE?

17 Q. YES, SIR.

18 A. WE HAVE JUROR NUMBER 29, ELIZABETH BOYD, [REDACTED]
19 [REDACTED]; HAS MOVED TO FOLLY BEACH.

20 Q. WHICH IS OUTSIDE OF DORCHESTER COUNTY?

21 A. THAT'S CORRECT.

22 Q. YES, SIR.

23 A. WE HAVE JUROR 79, JERRY DAVIS. OUR DEPUTY
24 RESPONDED TO THIS ADDRESS AND FOUND THAT THE
25 RESIDENT THERE HAD LIVED THERE FOR THE PAST FIVE

RAY NASH - EXAMINATION BY THE COURT

1 YEARS AND WAS NOT FAMILIAR WITH A JERRY DAVIS. SO
2 WE WERE UNABLE TO LOCATE MR. DAVIS AT THAT
3 ADDRESS. WE HAVE JUROR NUMBER 112, JOYCE BARNWELL
4 FRAZIER, [REDACTED]; DOES NOT LIVE AT THAT
5 ADDRESS ANY MORE. HAS NOT LIVED THERE FOR THE LAST
6 TWO YEARS. WE HAVE JUROR NUMBER 125, BURNELL
7 GRANT, [REDACTED],
8 [REDACTED]. THE INDIVIDUAL HAS MOVED TO AN
9 UNKNOWN LOCATION. JUROR NUMBER 155, GREGORY -- IT
10 APPEARS TO BE [REDACTED] -- [REDACTED],
11 [REDACTED] HAS MOVED TO AN UNKNOWN LOCATION.
12 JUROR NUMBER 213, AMOS MCDUFFEY. WE HAVE BEEN
13 UNABLE TO FIND MR. MCDUFFY AT HOME OR CONTACT HIM
14 BY TELEPHONE.

15 Q. AND THE COURT HAS RECEIVED INFORMATION MR. MCDUFFEY
16 IS DECEASED, HIS DATE OF BIRTH BEING [REDACTED]
17 HE WOULD HAVE BEEN 79 THIS YEAR. BUT THAT
18 GENTLEMAN IS DECEASED IS THE INFORMATION THE COURT
19 RECEIVED.

20 A. THAT WOULD EXPLAIN WHY HE DIDN'T ANSWER HIS PHONE.
21 JUROR NUMBER 221, MR. KEVIN MILLER, [REDACTED]
22 [REDACTED]. THAT WAS A GOOD ADDRESS, BUT HE
23 HAS MOVED APPROXIMATELY ONE YEAR AGO TO AN UNKNOWN
24 LOCATION.

25 Q. SHERIFF, I HATE TO INTERRUPT YOU; BUT THERE ARE

RAY NASH - EXAMINATION BY THE COURT

1 NINE THAT I WAS PARTICULARLY INTERESTED IN. A
2 NUMBER OF THESE FAILING TO LOCATE HAVE ALREADY BEEN
3 PLACED IN THE RECORD. BUT DO YOU HAVE THEM IN
4 NUMERICAL SEQUENCE?

5 A. I BELIEVE THAT THEY'RE IN NUMERICAL ORDER.

6 Q. BECAUSE NUMBER 38, THE COURT NEEDS TO HAVE
7 INFORMATION AS TO THAT ONE. GEORGE L. BROWN, [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED].

9 A. JUDGE, WAS THIS ONE THAT WE WERE UNABLE TO LOCATE
10 OR ONE THAT DID NOT SHOW UP AFTER HAVING BEEN
11 SERVED.

12 Q. I DON'T KNOW IF THE CLERK RECEIVED A RETURN. I'VE
13 GOT QUESTION, POSSESSION OF CRACK COCAINE, A FIVE
14 YEAR SENTENCE. SOLICITOR, DOES THAT RING A BELL?
15 MR. THEOS?

16 MR. BAILEY: YES, SIR.

17 MR. THEOS: YES, SIR.

18 MR. BAILEY: THAT'S MY NOTATION THAT
19 HE HAS A CONVICTION FOR POSSESSION OF CRACK.

20 MR. THEOS: YES, SIR.

21 THE COURT: SO IT'S AGREED THAT
22 JUROR NUMBER 38 WAS EXCUSED BECAUSE OF HIS PRIOR
23 CRIMINAL RECORD, GENTLEMEN?

24 MR. THEOS: YES, SIR, THAT'S FINE.

25 MR. BAILEY: YES, SIR.

RAY NASH - EXAMINATION BY THE COURT

1 Q. ALL RIGHT. THEN WE COME TO NUMBER 52 WHICH IS JOHN
2 F. CARACISSIOLO, C-A-R-A-C-C-I-O-L-O, [REDACTED]
3 [REDACTED]?

4 A. I'M NOT SHOWING A RECORD ON HIM, JUDGE. AGAIN,
5 THESE ARE THE ONES THAT WE WERE UNABLE TO LOCATE.
6 THERE WAS A NO-SHOW. I DON'T HAVE THOSE IN THIS---

7 Q. WELL, I HAVE A CHECK-MARK BY THAT WHICH MEANS THAT
8 WE DID HAVE A QUESTIONNAIRE RETURNED ON HIM.

9 THE COURT: DO YOU HAVE A RETURN ON
10 HIM, MR. SOLICITOR?

11 MR. BAILEY: MAJOR, I DON'T WANT TO
12 DISTURB THE CLERK OF COURT, BUT IF THEY'RE THROUGH
13 EATING LUNCH, I'D LIKE TO HAVE ONE UP HERE WHO'S
14 KNOWLEDGABLE ABOUT THESE QUESTIONNAIRES.

15 MR. BAILEY: WE'VE GOT IT, JUDGE.

16 THE COURT: ALL RIGHT. SO THAT'S
17 ONE THAT WAS SERVED THAT DID NOT SHOW. NOW,
18 GENTLEMEN WOULD YOU LIKE FOR THE SHERIFF TO SUMMONS
19 AND BRING THEM IN? I DON'T KNOW WHETHER IT WAS AN
20 EMERGENCY OR A CAR WRECK OR A DEATH IN THE FAMILY
21 OR WHAT HAPPENED. WE CAN TRANSFER THEM TO ANOTHER
22 TERM, OR EITHER WE CAN HAVE THEM SUMMONSED TO BE
23 HERE AT 8:30 IN THE MORNING.

24 MR. BAILEY: YOUR HONOR, THE STATE
25 IS SATISFIED WITH THE JURY PANEL AS CONSTITUTED. I

RAY NASH - EXAMINATION BY THE COURT

1 THINK IT'S A GOOD CROSS SECTION OF THE COMMUNITY,
2 AND WE'VE GOT PLENTY OF JURORS, I BELIEVE, TO GO
3 AHEAD AND PICK A JURY.

4 THE COURT: SO THE STATE'S WILLING
5 TO TRANSFER THE JURORS?

6 MR. BAILEY: YES, SIR.

7 MR. THEOS: THE DEFENSE AGREES, YOUR
8 HONOR.

9 THE COURT: THE COURT: ALL RIGHT,
10 MADAM CLERK, WOULD YOU MAKE A NOTE THAT JUROR
11 NUMBER 52 IS TRANSFERRED TO THE JUNE TERM OF
12 COURT. I BELIEVE THAT WAS JUNE THE EIGHTH, WAS IT
13 NOT?

14 THE CLERK: JUROR NUMBER?

15 THE COURT: JUROR NUMBER 52.

16 THE CLERK: ALL RIGHT. TRANSFERRED
17 TO JUNE.

18 THE COURT: WHAT ARE YOUR TERMS IN
19 JUNE?

20 THE CLERK: JUNE THE SEVENTH, JUNE
21 THE FOURTEEN, AND JUNE THE 21ST.

22 THE COURT: TRANSFER HER TO JUNE THE
23 SEVENTH, PLEASE, WITH THE APPROVAL OF ALL COUNSEL.
24 THE NEXT ONE WOULD BE JUROR NUMBER 53, MR. RONALD
25 CARPENTER. GENTLEMEN, YOU REMEMBER THAT BECAUSE OF

RAY NASH - EXAMINATION BY THE COURT

1 HIS MILITARY SERVICE AND WHATEVER THAT BOTH THE
2 STATE AND THE DEFENSE, HE HAD HAD CAR TROUBLE AND
3 DIDN'T SHOW. THEN RITA E. CONFER, C-O-N-F-E-R, [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED]. THE QUESTIONNAIRE
5 WAS RETURNED IN THAT ONE.

6 THE CLERK: WHAT NUMBER?

7 THE COURT: 64, RITA A. CONFER,
8 C-O-N-F-E-R.

9 MR. BAILEY: WE HAVE A QUESTIONNAIRE
10 ON THAT.

11 THE COURT: SO WHAT'S YOUR PLEASURE,
12 MR. SOLICITOR?

13 MR. BAILEY: THE SAME AS THE OTHER
14 ONE, YOUR HONOR, JUST TO TRANSFER.

15 THE COURT: TO THAT TERM JUNE?

16 MR. BAILEY: YES, SIR.

17 THE COURT: AGREEABLE WITH THE
18 DEFENSE?

19 MR. THEOS: THAT'S FINE, YOUR HONOR.

20 THE COURT: JUNE THE SEVENTH
21 TRANSFER; PLEASE GIVE THEM NOTICE.

22 THE CLERK: YES, SIR, WE DID.

23 THE COURT: JUROR NUMBER 110, KEVA
24 S. FOUCHECOURT, F-O-U-C-H-E-C-O-U-R-T? DO YOU HAVE
25 A QUESTIONNAIRE FOR JUROR 110?

RAY NASH - EXAMINATION BY THE COURT

1 Q. SHERIFF, DO YOU HAVE INFORMATION ON THAT?

2 THE COURT: CLERK, WERE THEY SERVED?

3 WAS THERE A RETURN?

4 THE CLERK: YES, WE DO.

5 Q. ALL RIGHT, SHERIFF. MAY I HEAR FROM YOU?

6 A. YES, SIR. I DON'T HAVE A RECORD ON JUROR 110. I
7 DO NOT HAVE THAT IN MY STACK OF THOSE THAT WERE
8 UNABLE TO LOCATE. THERE WAS NO QUESTIONNAIRE
9 RETURNED ON THAT ONE?

10 Q. THERE IS NOT.

11 THE COURT: SO, GENTLEMEN, CAN YOU
12 AGREE FOR THE SHERIFF TO CONTINUE THE EFFORTS TO
13 SERVE HER FOR JUNE THE SEVENTH?

14 MR. BAILEY: YES, SIR.

15 THE COURT: FOR THE DEFENSE?

16 MR. THEOS: YES, SIR.

17 THE COURT: ALL RIGHT. NUMBER 110
18 IS TRANSFERRED TO JUNE SEVENTH. 115, ANN W.
19 GAITHER, G-A-I-T-H-E-R.

20 THE CLERK: SHE RESPONDED BUT THEN
21 SHE DIDN'T SHOW.

22 MR. BAILEY: YOUR HONOR, I KNOW MRS.
23 GAITHER. SHE'S A GUIDANCE COUNSELOR AT SCHOOL, AND
24 SHE MAY HAVE THOUGHT SHE DIDN'T HAVE TO COME
25 BECAUSE OF THAT. I DON'T KNOW.

RAY NASH - EXAMINATION BY THE COURT

1 THE COURT: WILL THE STATE AND
2 DEFENSE AGREE TO TRANSFER HER TO JUNE THE
3 FOURTEENTH?

4 MR. BAILEY: THE STATE DOES, YOUR.

5 MR. THEOS: THE DEFENSE DOES, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT, SHERIFF,
8 PLEASE EFFECT SERVICE ON JUNE THE FOURTEENTH. 128,
9 MICHAEL J. GREEN. ANYONE HAVE A RETURN WHERE THEY
10 SERVED?

11 THE CLERK: NO, SIR.

12 THE COURT: SHERIFF, DO YOU HAVE ANY
13 INFORMATION ON THAT?

14 MR. NASH: NO, SIR.

15 MR. BAILEY: WE'VE GOT NO RETURN.

16 THE COURT: WHAT SAY THE STATE?

17 MR. BAILEY: TRANSFER OR EXCUSE
18 HER.

19 THE COURT: DEFENSE?

20 MR. THEOS: THAT'S FINE WITH THE
21 DEFENSE, YOUR HONOR.

22 THE COURT: TRANSFERRED TO JUNE
23 21ST. 132, ANGELA M. GRUSETSKIE,

24 G-R-U-S-E-T-S-K-I-E, [REDACTED],

25 [REDACTED] NO RETURN, NO SERVICE.

RAY NASH - EXAMINATION BY THE COURT

1 Q. ANY INFORMATION FROM THE SHERIFF'S DEPARTMENT?

2 A. NO, SIR.

3 THE CLERK: I GAVE YOU AN AFFIDAVIT
4 AT THE SHERIFF'S DEPARTMENT STATING THAT SHE WAS
5 SERVED.

6 MR. NASH: OKAY, THEN. THEN I WOULD
7 NOT HAVE THAT INFORMATION IN FRONT OF ME IF SHE WAS
8 SERVED.

9 MR. BAILEY: YOUR HONOR, SHE'S OVER
10 65.

11 MR. NASH: WAIT A MINUTE. I'M
12 SORRY. WHAT WAS THAT NAME AGAIN, YOUR HONOR?

13 THE COURT: GRUTSETSKIE. HER DATE
14 OF BIRTH WAS [REDACTED].

15 A. I APOLOGIZE. I DO HAVE THAT RECORD, AND IT DOES
16 SHOW THAT SHE WAS SERVED.

17 THE COURT: GENTLEMEN, BECAUSE SHE'S
18 75 YEARS OF AGE, MAY I INQUIRE IF YOU WOULD AGREE
19 TO FOREGO FURTHER NOTICE TO HER FOR A LATER TERM?

20 MR. BAILEY: YES, SIR, THE STATE
21 AGREES.

22 MR. THEOS: THE DEFENSE AGREES, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT. SHE'S
25 EXCUSED OUTRIGHT. NUMBER 162, GENTLEMEN, JEWEL B.

RAY NASH - EXAMINATION BY THE COURT

1 JAMES, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. THE
2 COURT DOESN'T SHOW A QUESTIONNAIRE. ANY
3 INFORMATION ON THAT?

4 THE CLERK: NO RESPONSE.

5 THE COURT: HAS IT BEEN TURNED OVER
6 TO THE SHERIFF?

7 Q. SHERIFF, DO YOU HAVE ANYTHING ON THAT?

8 A. NO, SIR. I DON'T SEE THAT ONE REFLECTED HERE
9 EITHER.

10 THE COURT: SHALL WE TRANSFER HER TO
11 JUNE 21ST?

12 MR. BAILEY: THAT'S FINE.

13 THE COURT: AGREEABLE WITH THE
14 DEFENSE?

15 MR. THEOS: YES, SIR. NUMBER 240,
16 ROBERT R. OLIN, O-L-I-N, JR., [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED].

18 Q. ANY RETURN? ANY QUESTIONNAIRE? ANY INFORMATION,
19 SHERIFF?

20 A. NO, SIR. I'M NOT SHOWING NUMBER 240 ON MY LIST
21 EITHER.

22 THE COURT: WHAT SAY THE CLERK?

23 THE CLERK: WE HAVE IT WHERE WE SENT
24 IT TO THE SHERIFF, BUT WE DIDN'T GET ANYTHING BACK.

25 THE COURT: SO, GENTLEMEN, THE

RAY NASH - EXAMINATION BY THE COURT

1 SHERIFF DOESN'T HAVE A RETURN ON IT. AND IT COULD
2 BE THAT THE PEOPLE ARE STILL SEARCHING. BUT WHAT I
3 DON'T WANT TO HAPPEN IS FOR US TO GET A JUROR IN
4 HERE WEDNESDAY MID-DAY THAT WE HAVE TO START THE
5 QUALIFICATION PROCESS ANEW FROM AND ASK A LITANY
6 AND PLETHORA OF QUESTIONS.

7 MR. BAILEY: YOUR HONOR, THE STATE
8 WOULD MOVE TO TRANSFER HER TO ANOTHER TERM.

9 MR. THEOS: THAT'S FINE WITH THE
10 DEFENSE, YOUR HONOR.

11 THE COURT: ALL RIGHT. NUMBER 240
12 TRANSFERRED TO JUNE THE 21ST, PLEASE. NOW,
13 GENTLEMEN, FOR THE STATE AND FOR THE DEFENSE, THOSE
14 ARE THE ONLY ONES THAT I HAVE QUESTION MARKS BY AS
15 TO NO SHOWING OR FAILING TO LOCATE. I'M SURE THE
16 SHERIFF HAS -- I LOOK OVER, AND I SEE A STACK OF
17 ADDITIONAL INFORMATION. AND I THINK WHAT YOU JUST
18 NEED TO DO, SHERIFF, IS AT A TIME CONVENIENT TO YOU
19 AND THE COURT REPORTER IS JUST READ THAT INTO THE
20 RECORD. BUT I DON'T WANT TO KEEP YOU HERE NOW.
21 THE FIRST PANEL OF SIX HAS BEEN HERE SINCE 3:30;
22 AND I HAVE THESE GENTLEMEN FROM COLUMBIA. SO,
23 KATHI, WILL YOU AND THE SHERIFF TRY TO COMMUNICATE
24 AT SOME TIME DURING THE WEEK. BUT I WOULD ASK THE
25 STATE, ARE YOU SATISFIED WITH THE CORRECTNESS AND

MOTIONS

1 COMPLIANCE WITH LAW, MR. SOLICITOR, AS TO THE
2 JURORS THAT WE HAVE AMONG THESE NINETY THAT ARE IN
3 THE PANEL?

4 MR. BAILEY: YES, SIR.

5 THE COURT: AND MR. THEOS AND/OR
6 BELL ON BEHALF OF THE DEFENDANT, DO YOU HAVE ANY
7 OBJECTIONS OR ANY PROBLEMS WITH ANYONE WHO'S BEEN
8 TRANSFERRED OR AN ANSWER ON FAILURE TO LOCATE OR
9 ANYONE THAT'S BEEN EXCUSED? ARE YOU SATISFIED WITH
10 THE JURY AS BEING PROPERLY CONSTITUTED AT THIS
11 STAGE OF THE PROCEEDING?

12 MR. THEOS: AT THIS STAGE WE ARE,
13 YOUR HONOR.

14 THE COURT: THANK YOU. ANY
15 QUESTIONS OF THE SHERIFF BY THE SOLICITOR?

16 MR. BAILEY: NOTHING FROM THE STATE,
17 YOUR HONOR.

18 THE COURT: BY THE DEFENDANT?

19 MR. THEOS: NONE, YOUR HONOR.

20 THE COURT: THANK YOU SO MUCH. AND
21 I APPRECIATE THE HELP OF YOU AND YOUR STAFF. MADAM
22 COURT REPORTER, ON FRIDAY OF LAST WEEK, I WAS IN A
23 HEARING IN LEXINGTON, AND I RECEIVED A FAX ON
24 FEBRUARY THE 19TH FROM MR. JIM HILL. AND HE IS
25 GENERAL COUNSEL, JAMES R. HILL, JR., FOR THE

MOTIONS

1 DEPARTMENT OF DISABILITY AND SPECIAL NEEDS -- AND
2 FROM THE DEPARTMENT OF MENTAL HEALTH?

3 MR. HILL: NO, SIR; JUST THE
4 DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS.

5 THE COURT: THAT'S MORE THAN ANY TWO
6 PEOPLE CAN HANDLE. I UNDERSTAND. AND IT APPEARS
7 THAT THERE WAS A SUBPOENA ISSUED BY THE DEPARTMENT
8 IN THIS CASE WHICH IS ATTACHED IN THE STATE VS.
9 KENNETH SIMMONS. THE DATE OF THE SUBPOENA IS
10 FEBRUARY THE 17TH, SIGNED BY THE CLERK OF COURT
11 DIRECTING ON FEBRUARY THE 22ND, TODAY AT 9:00 A.M.
12 WITH DR. LESLIE SANDLER, S-A-N-D-L-E-R, TO BE
13 PRESENT AND TO PROVIDE REPORTS FOR ALL EVALUATIONS
14 CONDUCTED BETWEEN 1997 AND THE PRESENT. AND THOSE
15 EVALUATIONS WERE FOR COMPETENCY AND CRIMINAL
16 RESPONSIBILITY EVALUATIONS. AND MR. HILL AS
17 GENERAL COUNSEL FOR THE SOUTH CAROLINA DEPARTMENT
18 OF DISABILITIES AND SPECIAL NEEDS HAS FILED A
19 MOTION TO QUASH THOSE SUBPOENAS. MR. THEOS AND MR.
20 BELL AND THE DEFENDANT ARE PRESENT. GENTLEMEN, ARE
21 YOU PREPARED TO PROCEED WITH THIS MOTION AT THIS
22 TIME?

23 MR. HILL: YES, YOUR HONOR.

24 MR. THEOS: YES, SIR.

25 THE COURT: ALL RIGHT. MR. HILL,

MOTIONS

1 MAY I HEAR FROM YOU WITH AN APOLOGY FOR KEEPING YOU
2 WAITING. BUT WE HAD AN ABBREVIATED LUNCHEON, AND
3 WE'VE ALL BEEN HURRYING. AND I THANK YOU FOR YOUR
4 PATIENCE.

5 MR. HILL: THANK YOU, SIR. NO
6 PROBLEM. IT'S AN HONOR TO BE HERE, SIR, TO BRING
7 THIS MATTER TO THE ATTENTION OF THE COURT. I WOULD
8 LIKE TO DRAW THE ATTENTION OF THE COURT TO PAGE TWO
9 OF THE MOTION. I CITED A STATUTORY PROVISION. AT
10 THAT TIME TOP OF PAGE TWO OF THE MOTION YOU WILL
11 SEE I CITED SOUTH CAROLINA CODE ANNOTATED
12 44-20-100. IT SHOULD BE 44-22-100.

13 THE COURT: SCRIVNER'S ERROR; NO
14 PROBLEM. BUT I THANK YOU FOR SHARING THAT WITH
15 ME. 44-22-340 IN PARAGRAPH FOUR AND IN PARAGRAPH
16 THREE.

17 MR. HILL: PARAGRAPH THREE SHOULD
18 READ 44-22-100.

19 THE COURT: YES, SIR.

20 MR. HILL: PARAGRAPHS FOUR AND FIVE
21 ARE CORRECTLY CITED.

22 THE COURT: SO FOUR IS 44-23-40,
23 THEN?

24 MR. HILL: YES, SIR.

25 THE COURT: THANK YOU.

LASER STOCK FORM FMO

THE CORBY GROUP 1-800-255-5040

MOTIONS

1 MR. HILL: NUMBER FOUR AND NUMBER
2 FIVE ARE CORRECT.

3 THE COURT: THANK YOU. SCRIVNER'S
4 ERROR; NO PROBLEM.

5 MR. HILL: YOUR HONOR, THIS REQUEST
6 BY THE DEFENDANTS FOR EXAMINATIONS. I'VE CHECKED
7 WITH OUR STAFF, AND I'M INFORMED THAT IT IS WELL
8 OVER 150 SUCH EVALUATIONS. AND THAT'S A MERE
9 ESTIMATE. BUT MOREOVER, THE REQUEST IN OUR MIND
10 VIOLATES THE PRIVILEGE AND CONFIDENCE OF THE
11 INDIVIDUALS THAT WE'VE SERVED. AND I'VE CITED FOR
12 YOUR CONSIDERATION THREE STATUTORY PROVISIONS,
13 PARTICULARLY 44-22-100. THOSE PARTICULARLY APPLY
14 TO FORENSIC EVALUATIONS. THE OTHER TWO STATUTES
15 APPLY IN A GENERAL SENSE TO THOSE REPORTS OF
16 EVALUATION OF PERSONS THAT WE SERVED. AND, OF
17 COURSE, WE DID SERVE THE DEFENDANT FOR A BRIEF
18 AMOUNT OF TIME IN THE SENSE THAT HE WAS ORDERED TO
19 US FOR A COMPETENCY EVALUATION, AND OUR
20 PROFESSIONAL STAFF DID PROVIDE AN EVALUATION OF THE
21 DEFENDANT. MOREOVER, THE SUBPOENA DOES NOT ADDRESS
22 ANY PARTICULAR EVALUATIONS OTHER THAN FORENSIC
23 EVALUATIONS OR THOSE PERTAINING TO COMPETENCY AND
24 CRIMINAL RESPONSIBILITY FROM THE DEPARTMENT BETWEEN
25 SEPTEMBER OF '97 AND THE PRESENT. WE HAVE A NUMBER

MOTIONS

1 OF EVALUATORS IN THE DEPARTMENT. AND CONSEQUENTLY
2 THERE HAVE BEEN A NUMBER OF FORENSIC EVALUATIONS,
3 NOT JUST FROM DR. SANDLER OR DOCTOR MCABEE AS THIS
4 WOULD IMPLY. IN ADDITION, WE WOULD DRAW THE
5 COURT'S ATTENTION TO THE GREAT BURDEN THAT THIS
6 PLACES UPON THE DEFENDANT IN A SENSE THAT WE WOULD
7 HAVE TO SEARCH EACH INDIVIDUAL'S PERSONAL FILE
8 WITHIN OUR DEPARTMENT AND PULL THAT EVALUATION,
9 PULL THAT OUT. AND THEN AS I WOULD ASSUME WHITE
10 OUT ANY IDENTIFYING IDENTIFICATION SUCH AS NAME,
11 OTHER IDENTIFYING NUMBERS, AND SO FORTH, TO PROVIDE
12 THIS TO THE DEFENDANT. AND THAT WOULD BE IN OUR
13 MIND, I WOULD BRING THIS TO THE COURT'S
14 CONSIDERATION, A GREAT, GREAT BURDEN ON THIS
15 AGENCY. SO WITH THAT WE WOULD LIKE TO MOVE TO
16 QUASH THE DEFENDANTS REQUEST FOR THIS INFORMATION.

17 THE COURT: ALL RIGHT. MR.
18 SOLICITOR, I ASSUME YOU DON'T WANT TO BE HEARD ON
19 THAT?

20 MR. BAILEY: I WOULD JUST LIKE TO
21 ADD TO WHAT MR. HILL SAID, YOUR HONOR. OF COURSE
22 THIS IS HIS MOTION. BUT IT WOULD NOT APPEAR THAT
23 ANY OF THE INFORMATION THEY'RE SEEKING COULD BE OF
24 ANY POSSIBLE BENEFIT TO HIM IN THIS TRIAL. IT
25 APPEARS TO BE A FISHING EXPEDITION FOR OTHER

MOTIONS

1 PEOPLE'S EVALUATIONS. AND I DON'T KNOW WHAT THE
2 POSSIBLE RELEVANCY OF THAT IS.

3 THE COURT: THANK YOU, SIR. I'LL BE
4 GLAD TO HEAR FROM YOU, GENTLEMEN.

5 MR. THEOS: YES, SIR. MAY IT PLEASE
6 THE COURT? YOUR HONOR, FIRST OF ALL AS I -- LET ME
7 JUST ADDRESS THESE IN REVERSE ORDER. WITH RESPECT
8 TO THE BURDEN; YOUR HONOR, WE'RE NOT SEEKING ALL
9 EVALUATIONS CONDUCTED BY ANY AND ALL DOCTORS OR
10 EVALUATORS AT THE DEPARTMENT OF DISABILITIES AND
11 SPECIAL NEEDS; ONLY THOSE EVALUATIONS CONDUCTED BY
12 DOCTORS SANDLER AND MCAFEE. AND I THINK FROM THEIR
13 TESTIMONY---

14 THE COURT: I'M SORRY. IN READING
15 THE SUBPOENA, I DO NOT SEE THAT LIMITATION
16 THEREON. I REALIZE THE SUBPOENA IS DIRECTED TO DR.
17 SANDLER. BUT IT JUST SAYS REPORTS FOR ALL
18 EVALUATIONS. IT DOESN'T SAY THOSE LIMITED TO DR.
19 SANDLER OR DR. ZHEVAGO (PHONETICALLY SPELLED) OR
20 WHOM HAVE YOU.

21 MR. THEOS: YOUR HONOR, I DON'T
22 DISAGREE WITH THAT. IT APPEARS THAT HAS NOT BEEN
23 INCLUDED. BUT I WOULD ACCEPT THAT AS -- I WOULD
24 URGE THE COURT THAT THAT'S MORE THAN A SCRIVENER'S
25 ERROR THAN A DEFECTIVE---

1 THE COURT: NO PROBLEM. SO WHAT
2 YOU'RE SEEKING IF PRECISELY WHAT?

3 MR. THEOS: JUST THOSE EVALUATIONS
4 CONDUCTED BY DRS. SANDLER AND MCAFEE, THE SAME
5 DOCTORS THAT CONDUCTED THE EVALUATION OF MR.
6 SIMMONS. I HAVE NO IDEA HOW MANY THAT WOULD BE.
7 BUT, YOUR HONOR, IT'S OUR POSITION THAT THAT WOULD
8 NOT BE UNDULY BURDENSOME ON THE DEPARTMENT TO
9 PRODUCE THOSE EVALUATIONS. AND, AGAIN, NOT KNOWING
10 HOW MANY THERE ARE; I'M TRYING TO RECALL FROM THE
11 TESTIMONY. I THINK THERE WERE---

12 THE COURT: DR. MCAFEE'S BEEN
13 EMPLOYED THERE SINCE MARCH OF '80. AND YOU'RE
14 ASKING FOR THOSE REPORTS SINCE SEPTEMBER OF '97.
15 AND DR. SANDLER COMMENCED HIS EMPLOYMENT THERE
16 MARCH 17TH OF '98. GO AHEAD, PLEASE.

17 MR. THEOS: YES, SIR. AGAIN, NOT
18 KNOWING HOW MANY THERE ARE, YOUR HONOR; WE WOULD
19 URGE THE COURT THAT THIS IS NOT UNDULY BURDENSOME.
20 THE PRIMARY ISSUE TO ME, YOUR HONOR, SEEMS TO BE --
21 LET ME ADDRESS -- I APOLOGIZE. LET ME ADDRESS THE
22 NEXT ITEM AGAIN IN REVERSE ORDER WHICH WOULD BE "B"
23 IN THE CONCLUSION. YOUR HONOR, THESE RECORDS ARE
24 KEPT BY, I ASSUME, THE RECORDS CUSTODIAN OR THE
25 RECORDS DEPARTMENT. CERTAINLY IT'S WITHIN DR.

MOTIONS

1 SANDLER AND DOCTOR MCAFEE'S ABILITY TO RETRIEVE
2 THOSE RECORDS FROM THE RECORDS DEPARTMENT IF THAT'S
3 WHERE THEY'RE KEPT. I DON'T KNOW IF THEY KEEP
4 THEIR OWN FILES OR NOT. BUT CERTAINLY IT'S WITHIN
5 THEIR CONTROL AND WITHIN THEIR DOMINION. SO THEY
6 OUGHT TO BE ABLE TO GET THOSE RECORDS WITHOUT TOO
7 MUCH DIFFICULTY. AND, YOUR HONOR, WITH RESPECT TO
8 ITEM "A" CITED BY MR. HILL, I THINK THAT SEEMS TO
9 ME TO BE THE CRUX OF THE ISSUE WHETHER OR NOT THESE
10 STATUTORY PRIVILEGE RELATED TO CONFIDENTIALITY
11 WOULD PRECLUDE OR BAR THE TURNING OVER OF THESE
12 RECORDS.

13 THE COURT: WELL, EVEN BEFORE YOU
14 GET TO CONFIDENTIALITY, I'VE GOT TO HAVE SOME
15 RELEVANCE AS TO WHY YOU'RE ENTITLED TO IT.

16 MR. THEOS: YOUR HONOR, THESE
17 DOCTORS TESTIFIED UNDER OATH THAT THEY CONDUCTED AN
18 EVALUATION OF MR. SIMMONS. I ASSUME THAT THEY WILL
19 TESTIFY AT THE TRIAL. IT'S OUR CONTENTION. AND
20 WHAT WE WOULD LIKE TO DO IS LOOK AT THESE RECORDS
21 TO DETERMINE IF THERE'S ANY BIAS OR IF THERE'S ANY
22 PREJUDICE. THE MANNER IN WHICH THEY NORMALLY
23 CONDUCT THESE EVALUATIONS. THE FINDINGS, THE
24 CONCLUSIONS OF THE EVALUATIONS TO DETERMINE WHETHER
25 THIS IS SIMPLY A RUBBER STAMPING BY THE DEPARTMENT

MOTIONS

1 OR WHETHER IT'S A PATTERN. AND I THINK THE ONLY
2 WAY TO DETERMINE THAT IS TO REVIEW THOSE RECORDS
3 PERTAINING TO OTHER EVALUATIONS. CERTAINLY THAT
4 HAS NOTHING TO DO, YOUR HONOR, WITH THE
5 ADMISSIBILITY OF ANY OF THOSE RECORDS BECAUSE THAT
6 IS NOT WHAT'S AT ISSUE HERE, JUST THE PRODUCTION
7 OF THOSE DOCUMENTS FOR OUR REVIEW.

8 THE COURT: HOW DO YOU GET AROUND TO
9 CONFIDENTIALITY OF THESE THREE STATUTES?

10 MR. THEOS: YOUR HONOR, I BELIEVE
11 SUBSECTION TWO REFLECTS THAT THE---

12 THE COURT: OF WHICH STATUTE? HE
13 CITES THREE OF THEM?

14 MR. THEOS: 44-22-100, YOUR HONOR.

15 THE COURT: SUB-PART A-2, "A COURT
16 DIRECTS DISCLOSURE AS NECESSARY?" IS THAT THE
17 SUB-PART YOU'RE TALKING ABOUT?

18 MR. THEOS: WHEN NECESSARY FOR A
19 COURT PROCEEDING, YES, SIR.

20 THE COURT: YES, SIR. BUT YOU'VE
21 GOT TO SHOW ME WHY IT'S NECESSARY. I MEAN, I'M
22 SURE THAT IF I ORDERED THEM, THEY'D SHOW UP WITH
23 THEM. BUT, YOU KNOW, YOU'VE STILL GOT TO GET
24 BEYOND THE THRESHOLD ISSUE OF RELEVANCE.

25 MR. THEOS: YOUR HONOR, THESE

MOTIONS

1 DOCTORS ARE EMPLOYED BY THE DEPARTMENT OF
2 DISABILITIES AND SPECIAL NEEDS. IT'S A STATE
3 AGENCY. THE STATE IS PROSECUTING MR. SIMMONS
4 THROUGH THE DORCHESTER COUNTY SOLICITOR'S OFFICE.
5 THEY CONDUCT EVALUATIONS, NOT FOR THE GENERAL
6 PUBLIC, BUT FOR THE STATE. THEY CONDUCT COMPETENCY
7 AND CRIMINAL RESPONSIBILITY EVALUATIONS FOR THE
8 VARIOUS COUNTIES AND THE PROSECUTORS IN THOSE
9 COUNTIES. THEY DO NOT CONDUCT ANY OF THOSE
10 EVALUATIONS TO MY KNOWLEDGE FOR ANYBODY IN THE
11 PRIVATE BAR OR ANY PRIVATE INDIVIDUALS FOR CRIMINAL
12 HEARINGS EXCEPT THOSE THAT HAVE BEEN SOUGHT BY THE
13 STATE. IT'S OUR CONTENTION THAT THEY ARE IN EFFECT
14 EMPLOYEES OF THE STATE THAT ARE RESPONDING TO WHAT
15 THEY CONSIDER TO BE THEIR ROLE AND THEIR DUTY. AND
16 IN ORDER TO DETERMINE WHETHER IT'S UNBIASED,
17 WHETHER IT'S AN OBJECTIVE OPINION, I THINK IT'S
18 CRUCIAL THAT DEFENSE COUNSEL BE ALLOWED TO REVIEW
19 OTHER RECORDS TO DETERMINE WHETHER OR NOT THERE IS
20 A PATTERN OF BIAS OR A PATTERN OF OBJECTIVITY FOR
21 THAT MATTER.

22 THE COURT: WHAT YOU'RE SAYING IS
23 BECAUSE SLED DOES BALLISTICS FOR GREENVILLE COUNTY
24 AND DORCHESTER COUNTY, THIS WOULD BE ANALOGOUS TO
25 GET SLED THE RESULTS OF THEIR BALLISTICS TESTS

MOTIONS

1 THEY'VE CONDUCTED FOR A GIVEN TIME FRAME.
2 SEPTEMBER OF '97 IS WHAT YOU'RE ASKING FOR HERE SO
3 YOU CAN SEEK OUT OR ATTEMPT TO DISCERN ANY BIAS OR
4 PREJUDICE IN THEIR EXAMINATIONS OR CONCLUSIONS OR
5 RECOMMENDATIONS?

6 MR. THEOS: I DON'T THINK SO, YOUR
7 HONOR. I DON'T THINK WE CAN DRAW AN ANALOGY
8 BETWEEN A SCIENTIFIC TEST SUCH AS BALLISTICS OR A
9 FINGERPRINT OR---

10 THE COURT: DNA?

11 MR. THEOS: I WON'T MENTION DNA.
12 BUT I DON'T THINK WE CAN DRAW THAT COMPARISON AND
13 THAT ANALOGY WITH THOSE PIECES OF PHYSICAL CONCRETE
14 EVIDENCE. THIS IS AN OPINION. THIS IS AN OPINION
15 BASED UPON THESE DOCTORS EXPERIENCE. AND THAT
16 EXPERIENCE IS, AT LEAST IN THIS STATE, BASED UPON
17 THEIR EVALUATIONS THAT THEY'VE CONDUCTED IN SIMILAR
18 CASES FOR SIMILAR CRIMINAL DEFENDANTS. WE HAVE NO
19 DESIRE TO FIND OUT WHO THESE PEOPLE OR WHAT THE
20 FINDINGS WERE PERTAINING TO THEM AS INDIVIDUALS.
21 WE SIMPLY WANT TO DETERMINE WHETHER OR NOT THERE'S
22 ANY BIAS ON THE PART OF THE DOCTORS CONDUCTING
23 THESE EVALUATIONS FOR THE STATE.

24 THE COURT: ALL RIGHT. THANK YOU.
25 MR. BELL, DO YOU NEED TO ADD ANYTHING TO THAT?

1 MR. BELL: NO, SIR, YOUR HONOR.

2 THE COURT: MR. HILL?

3 MR. HILL: NO, SIR. I CANNOT
4 ADDRESS THE ISSUES OF RELEVANCY. ONLY THE
5 SOLICITOR CAN ADDRESS THOSE. WE GO BACK ONLY TO
6 THE POINT THAT THE POINT THAT THE GENERAL ASSEMBLY
7 HAS INDICATED BY THE MULTITUDE OF STATUTES HERE
8 THAT THIS INFORMATION IS CONFIDENTIAL AND ONLY
9 UNDER CERTAIN CONDITIONS MAY IT BE RELEASED. AND,
10 FURTHER, IF THE COURT DOES DECIDE TO RELEASE IT OR
11 JUST IS INCLINED THAT WAY, I WOULD DRAW THE COURT'S
12 ATTENTION THAT THAT DOES PLACE A GREAT BURDEN ON
13 THIS AGENCY TO PROCURE THAT INFORMATION.

14 THE COURT: ALL RIGHT. MR. BAILEY?

15 MR. BAILEY: YOUR HONOR, I HAVE
16 NOTHING TO ADD TO WHAT I'VE PREVIOUSLY SAID.

17 THE COURT: ALL RIGHT. OBVIOUSLY,
18 GENTLEMEN, AS REGARDS CONFIDENTIALITY, THE COURT
19 DOES GIVE GREAT WEIGHT TO THE DIRECTIONS OF THE
20 LEGISLATURE, BUT I THINK THAT COULD BE CURED SO TO
21 SPEAK BY OBLITERATING OR STRIKING OUT THE NAMES --
22 YES, SIR?

23 MR. HILL: I'M SORRY, SIR; I THOUGHT
24 YOU WERE ADDRESSING ME.

25 THE COURT: NO; I'M ADDRESSING

MOTIONS

1 EVERYBODY. I MEAN, DID YOU WANT TO SAY SOMETHING?

2 MR. HILL: NO, SIR.

3 THE COURT: BUT, YOU KNOW, THE

4 LEGISLATURE HAS SPOKEN ON THE CONFIDENTIALITY. SO

5 IF THE COURT WERE TO RULE THAT THEY WERE RELEVANT

6 AND PROPER, THEN I THINK WE COULD GET AROUND THE

7 CONFIDENTIALITY ASPECT; PERHAPS SO, PERHAPS NOT.

8 BUT IN REGARD TO YOUR EFFORTS TO SHOW BIAS OR

9 PREJUDICE OR LACK OF CREDIBILITY, MR. THEOS; WHEN

10 WE WERE HERE THURSDAY, THE ELEVENTH -- WE WERE HERE

11 ON FEBRUARY THE ELEVENTH AND TWELFTH AT A HEARING

12 ON THIS MATTER. AND YOU HAD AN OPPORTUNITY TO

13 CAUSES OF ACTION DR. SANDEL ON HIS QUALIFICATIONS

14 BEFORE HE QUALIFIED AS AN EXPERT AS WELL AS TO

15 CROSS-EXAMINE AFTER HIS TESTIMONY IN CHIEF. AND

16 YOU HAD THE OPPORTUNITY AT THAT TIME TO ADDRESS ANY

17 BIAS OR PREJUDICE. AND AGAIN, HE'S LISTED ON THE

18 WITNESS LIST HERE. AND IT MAY BE THAT YOU WOULD

19 WANT TO HAVE THIS IN LIMINE OUTSIDE THE PRESENCE OF

20 THE JURY TO SEE IF IT'S ADMISSIBLE -- I DON'T KNOW

21 -- OR IN THE PRESENCE OF THE JURY. BUT I ASSUME

22 YOU'RE GOING TO HAVE ANOTHER OPPORTUNITY TO

23 QUESTION HIM. BEFORE HE EVEN TESTIFIES AS TO ANY

24 FINDINGS, HE'S GOT TO QUALIFY AS AN EXPERT AND WHAT

25 WAS DONE OUTSIDE THE PRESENCE OF THE JURY. IT

MOTIONS

1 MIGHT BE REPETITIOUS, BUT YOU HAVE TO START FROM
2 SQUARE ONE BECAUSE THE JURY IS THE ONE THAT HAS TO
3 MAKE CERTAIN FINDINGS AND PASS UPON THE
4 CREDIBILITY. SO YOU AGAIN WOULD HAVE THE
5 OPPORTUNITY TO CROSS-EXAMINE DR. SANDEL AT THAT
6 TIME. ADDITIONALLY, I CAN CERTAINLY SEE THAT IT
7 WOULD PLACE AN UNDUE BURDEN UPON THE DEPARTMENT OF
8 DISABILITIES AND SPECIAL NEEDS TO BE REQUIRED TO
9 PRODUCE THESE THINGS ON MONDAY MORNING WHEN THE
10 NOTICE WAS DATED FEBRUARY THE 17TH. WHEN WAS IT
11 SERVED UPON YOU, MR. HILL?

12 MR. HILL: IT WAS SERVED ON THE
13 AFTERNOON OF THE EIGHTEENTH.

14 THE COURT: THURSDAY AFTERNOON, THE
15 18TH, FOR PRODUCTION ON MONDAY MORNING AT 9:00 A.M.

16 AND I JUST DON'T SEE HOW THAT WOULD HAVE BEEN
17 PHYSICALLY POSSIBLE IF YOU HAD WORKED ALL WEEKEND.
18 WOULD IT HAVE BEEN, DR. SANDEL?

19 DR. SANDEL: NO, YOUR HONOR; IT
20 WOULD NOT, SIR.

21 THE COURT: OKAY. SO FOR THOSE
22 REASONS, MR. THEOS, I GRANT THE MOTION TO QUASH THE
23 SUBPOENA FOR THE PRODUCTIONS OF THE EVALUATIONS.
24 AND DO YOU OTHERWISE WANT HIM UNDER SUBPOENA AS A
25 WITNESS BECAUSE YOU'VE CHECKED THE BOX TO TESTIFY

1 IN THE ABOVE ENTITLED CASE?

2 MR. THEOS: YES, SIR. AND I SPOKE
3 TO -- MR. BAILEY AND I SPOKE ABOUT SUBPOENAING
4 THOSE WITNESSES.

5 THE COURT: WHAT I HOPE Y'ALL WILL
6 DO, GENTLEMEN, IS TO AGREE AND TO SHARE PRECISE
7 INFORMATION; YES, I WILL HAVE JOE SIX PACK HERE AS
8 A WITNESS; YOU DON'T NEED TO SUBPOENA HIM. I WON'T
9 RELEASE HIM UNTIL YOU TELL ME THAT YOU DON'T NEED
10 HIM, AND THINGS OF THAT NATURE FOR BOTH SIDES. AND
11 I DON'T WANT DR. SANDEL SITTING HERE. I DON'T KNOW
12 IF HE'S GOING TO BE NEEDED THURSDAY, FRIDAY,
13 SATURDAY, SUNDAY, OR MONDAY IF AT ALL. SO, MR.
14 SOLICITOR, IS THAT GENERALLY THE COOPERATIVE EFFORT
15 THAT IS BEING DEMONSTRATED BY YOU AND THE DEFENSE?

16 MR. BAILEY: YES, SIR. WE'LL WORK
17 IN THAT DIRECTION, YOUR HONOR.

18 THE COURT: MR. THEOS?

19 MR. THEOS: THAT'S FINE, YOUR HONOR.

20 THE COURT: MR. BELL?

21 MR. BELL: YES, SIR.

22 THE COURT: ALL RIGHT. SO THE COURT
23 HAS SO RULED. THANK YOU. AND AGAIN MY APOLOGIES
24 FOR KEEPING YOU WAITING.

25 MR. HILL: THANK YOU, SIR.

MOTIONS

1 DR. SANDEL: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. GENTLEMEN,
3 MY LAW CLERK TELLS ME THAT SOME OF THESE
4 QUESTIONNAIRES ARE NOT HERE. PANEL ONE, WE HAVE
5 THE SIX. PANEL TWO, WHO ARE WE MISSING? IS THERE A
6 PANEL THREE? WE DON'T HAVE A QUESTIONNAIRE ON
7 NUMBER 195. DOES THE STATE HAVE IT? DOES THE
8 CLERK HAVE IT? DOES THE DEFENDANT HAVE IT?

9 THE CLERK: NO, SIR, WE DO NOT.

10 THE COURT: BERNARD R. LEWIS?

11 MR. BELL: NO, SIR.

12 THE COURT: ALL RIGHT; SO, MAJOR OR
13 SMITTY, THEN THAT PANEL IS TO REPORT AT 6:30. IT'S
14 6:30. I WANT THE BAILIFF TO HAVE A PEN AND PENCIL
15 AND THAT FORM TO TAKE TO BERNARD LEWIS TO FILL IT
16 OUT, AND THEN MAKE FOUR COPIES; ONE FOR THE
17 SOLICITOR, ONE FOR THE DEFENDANT, ONE FOR THE
18 COURT, THE ORIGINAL FOR THE CLERK. SO WE ONLY
19 WOULD NEED THREE COPIES ACTUALLY UNLESS Y'ALL WANT
20 DOUBLE COPIES.

21 MR. BELL: ONE IS ENOUGH, YOUR
22 HONOR.

23 MR. THEOS: YOUR HONOR, IF I COULD
24 REMIND THE COURT. I DON'T KNOW IF THIS NEEDS TO BE
25 ON THE RECORD.

MOTIONS

1 THE COURT: PLEASE.

2 MR. THEOS: REMEMBER THERE WERE A
3 COUPLE OF WITNESSES OUTSIDE THAT WERE SUBPOENAED
4 THAT YOU WERE GOING TO---

5 THE COURT: YES; BRING THEM DOWN AND
6 COME FORWARD. WHAT ARE THEIR NAMES, PLEASE? I HAVE
7 A LIST OF THEM HERE; BUT IF YOU'LL JUST TELL ME WHO
8 THEY ARE. ALL RIGHT, SIR; TAKE YOUR HAT OFF. WE
9 DON'T WEAR HATS IN THIS COURT HOUSE. ALL RIGHT,
10 MR. BAILIFF ON THE BACK DOOR, PLEASE DON'T LET
11 ANYBODY IN THE COURTROOM WEARING A HAT.

12 THE BAILIFF: YES, SIR.

13 THE COURT: AND NO TANK TOPS. NO
14 SANDALS OR FLIP-FLOPS, WHATEVER YOU WANT TO CALL
15 THEM, NO SHIRT, NO SERVICE, NO SHOES. NO SERVICE.
16 YOU KNOW, THIS IS A COURTROOM. AND NOBODY IN
17 SHORTS, MALE, FEMALE, OR OTHERWISE. WE'RE ALL
18 GOING TO OBSERVE PROPER DECORUM IN THIS COURTROOM.
19 ALL RIGHT. DERRICK DUGANS COME FORWARD. ANGIE
20 COME SIMMONS FORWARD. FELIX ROSS COME FORWARD.
21 (JURORS COMPLY.)

22 MR. THEOS: MR. ROSS IS THE ONLY ONE
23 THAT'S OBLIGED US. THE OTHER TWO LEFT.

24 THE COURT: WELL, WOULD YOU LIKE FOR
25 US TO SEND THE SHERIFF FOR THEM? I DIDN'T EXCUSE

MOTIONS

1 THEM.

2 MR. THEOS: NO, SIR. WE TOLD THEM
3 THAT YOU WANTED TO HAVE A WORD WITH THEM BEFORE
4 THEY LEFT.

5 THE COURT: SO WHAT ARE YOU GOING TO
6 DO IF THEY DON'T SHOW UP, THEN? I'M NOT GOING TO
7 LOOK FOR THEM THEN.

8 MR. THEOS: I'D ASK THAT THE SHERIFF
9 TRACK THEM DOWN. WE'LL PROVIDE THEM WITH AN
10 ADDRESS.

11 THE COURT: WERE THEY SUBPOENAED?

12 MR. THEOS: THEY WERE SUBPOENAED,
13 YOUR HONOR.

14 THE COURT: ALL RIGHT. WHO'S HERE
15 FROM THE SHERIFF'S DEPARTMENT? IS THERE A BAILIFF
16 ANYWHERE NEARBY? THERE'S ONE RIGHT THERE. MA'AM,
17 SEE IF YOU CAN GET SOMEBODY IN HERE FROM THE
18 SHERIFF'S DEPARTMENT. (AT THIS TIME SHERIFF COMES
19 INTO COURTROOM.) SHERIFF, EXCUSE ME FOR BOTHERING
20 YOU. MR. THEOS HAD THREE WITNESSES THAT WERE
21 SUBPOENAED TO BE HERE. AND ONE OF THEM, MR. FELIX
22 ROSS, IS HERE; AND I'M FIXING TO GIVE HIM A LITTLE
23 WEDNESDAY NIGHT PRAYER MEETING TALK. BUT THERE'S
24 ANOTHER ONE, DERRICK DUGGINS AND ANGIE SIMMONS.
25 MR. THEOS ASKED IF I'D TALK TO THEM BECAUSE THEY'RE

MOTIONS

1 RETICENT, RELUCTANT, AND DON'T KNOW IF THEY'RE
2 GOING TO COME BACK OR NOT. AND HE FEELS LIKE HE
3 NEEDS THEM IN THE PRESENTATION OF HIS CASE. SO
4 WILL YOU GIVE COPIES OF THE SUBPOENA THAT WERE
5 SERVED ON THEM AT THE SHERIFF'S DEPARTMENT. AND,
6 SHERIFF, IF YOU WOULD SEE IF YOU CAN FIND THOSE
7 PEOPLE AND PUT THEM -- NOT YOU PERSONALLY, BUT YOUR
8 OFFICE. GET THOSE PEOPLE, BRING THEM INTO CUSTODY,
9 AND THEN I'LL HAVE A LITTLE VISIT WITH THEM. AND
10 IF YOU CAN'T FIND THEM UNTIL AFTER WE RECESS COURT
11 FOR THE EVENING, YOU'LL JUST HAVE TO PLACE THEM IN
12 CUSTODY, AND I'LL HAVE TO TALK TO THEM FIRST THING
13 IN THE MORNING.

14 MR. THEOS: I THINK AMY SIMMONS WAS
15 IN THE COURT HOUSE THIS MORNING.

16 THE COURT: SHE WAS; AND DERRICK
17 DUGGINS. MR. THEOS TOLD THEM TO STAY BECAUSE I
18 NEEDED TO TALK TO THEM. AND SHE LEFT. THANK YOU
19 SO MUCH.

20 MR. THEOS: OUR INVESTIGATOR IS
21 BRINGING IT IN, A COPY OF IT, WITH THE ADDRESS.

22 THE COURT: FELIX ROSS, PLEASE COME
23 FORWARD. (JUROR COMPLIES.)

24 - - - - -

25 WHEREUPON,

FELIX ROSS - EXAMINATION BY THE COURT

FELIX ROSS, WHO AFTER BEING FIRST DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATIONBY THE COURT:

Q. MR. ROSS, HOW OLD ARE YOU?

A. THIRTY-SIX.

Q. ARE YOU EMPLOYED?

A. YES, SIR.

Q. WHERE?

A. COPE CONSTRUCTION.

Q. WHAT TYPE OF WORK DO YOU DO?

A. CONSTRUCTION.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. TWELFTH GRADE; AND A YEAR OF COLLEGE.

Q. YOU GRADUATED FROM WHAT HIGH SCHOOL?

A. HARLEYVILLE-RIDGEVILLE.

Q. HARLEYVILLE-RIDGEVILLE; AND ONE YEAR AT CLEMSON?

A. NO, SIR; AT JEROME CHOWAN COLLEGE IN MURPHREESBORO,
NORTH CAROLINA.

Q. C-H-O-W-A-N?

A. YES, SIR.

Q. CHOWAN JUNIOR COLLEGE?

A. YES, SIR.

Q. ALL RIGHT. NOW, MR. ROSS, PLEASE UNDERSTAND,

1 YOU'RE UNDER SUBPOENA BY THE DEFENDANT. I KNOW
2 NOTHING OF THE DEFENSE OF THE DEFENDANT. I KNOW
3 NOTHING ABOUT WHAT YOU MAY KNOW ABOUT THIS CASE. I
4 DO KNOW THIS: THAT WHEN YOU'RE UNDER SUBPOENA, YOU
5 MUST OBEY THE SUBPOENA OF THE COURT BECAUSE I CAN'T
6 KEEP FOURTEEN JURORS SEQUESTERED FROM THEIR
7 FAMILIES AND HOMES AND AVOCATIONS AND WHAT HAVE YOU
8 WHILE WE WAIT ON A WITNESS OR FOR THE SHERIFF TO
9 FIND A WITNESS. SO I DON'T WANT -- IT WILL TAKE US
10 AT LEAST UNTIL WEDNESDAY TO GET A JURY AND MAYBE
11 THURSDAY. AND I DON'T KNOW IF THE DEFENDANT WANTS
12 YOU HERE TO LISTEN TO THE STATE'S TESTIMONY OR WILL
13 NOT NEED YOU BEFORE FRIDAY, SATURDAY, SUNDAY,
14 MONDAY, TUESDAY OF NEXT WEEK. BUT YOU SEE MR.
15 THEOS OVER THERE? DO YOU KNOW HIM?

16 A. I HAVEN'T MET HIM.

17 Q. LOOK AT HIM. RAISE YOUR HAND, MR. THEOS. (COUNSEL
18 COMPLIES.) SEE MR. BELL SITTING BY HIM?

19 A. YES, SIR.

20 Q. NOW, I'M GOING TO ASK YOU TO GO OVER THERE. AND
21 YOU HAVE TWO CHOICES -- THREE CHOICES. YOU CAN SIT
22 IN THIS COURTROOM EVERY MINUTE COURT'S IN SESSION
23 UNTIL THEY DECIDE TO CALL YOU. I CAN PUT YOU IN
24 THE DORCHESTER COUNTY DETENTION CENTER SO THAT WHEN
25 THEY WANT YOU, THEY WON'T HAVE TO WAIT ON YOU OR

FELIX ROSS - EXAMINATION BY THE COURT

1 LOOK FOR YOU. OR YOU CAN GO OVER THERE AND TALK TO
2 MR. BELL AND THEOS AND ASK THOSE GENTLEMEN WHEN
3 THEY WOULD LIKE FOR YOU TO RETURN AND GIVE THEM A
4 PHONE NUMBER WHERE YOU CAN BE REACHED AT. AND MAKE
5 DOUBLY, TRIPLY SURE BECAUSE I MEAN WHAT I SAY, AND
6 I SAY WHAT I MEAN. AND I DON'T PUT UP WITH
7 FOOLISHNESS. BY THAT I MEAN IF YOU'RE NOT HERE
8 WHEN YOU'RE SUPPOSED TO BE, YOU'RE SUBJECT TO
9 CONTEMPT OF THIS COURT FOR UP TO SIX MONTHS WITHOUT
10 ANY CREDIT FOR GOOD TIME. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. WHAT'S YOUR PLEASURE?

13 A. I'LL TAKE THE THIRD CHOICE.

14 Q. TAKE THE THIRD CHOICE. WELL, GO OVER THERE AND
15 CONFER WITH THOSE NICE LAWYERS, THEN.

16 MR. THEOS: YOUR HONOR, HE PROVIDED
17 US WITH HIS NUMBER. WE'VE GOT IT. AND HE'S GOT
18 THE NUMBER OF OUR INVESTIGATORS.

19 THE COURT: SO YOU'RE SATISFIED WITH
20 THE COME TO JESUS MEETING TALK?

21 MR. THEOS: WE'RE SATISFIED.

22 THE COURT: THANK YOU. HAVE A NICE
23 DAY, MR. ROSS. AND IF YOU KNOW DERRICK DUGGINS AND
24 ANGIE SIMMONS? DO YOU KNOW THEM?

25 MR. ROSS: YES, SIR.

FELIX ROSS - EXAMINATION BY THE COURT

1 THE COURT: YOU MIGHT ENCOURAGE THEM
2 TO COME UP HERE BECAUSE THE HIGH SHERIFF IS LOOKING
3 FOR THEM; AND WHEN THEY FIND THEM, THEY'RE GOING TO
4 PUT THEM IN JAIL UNTIL I CAN CONFER WITH THEM.

5 THANK YOU. HAVE A NICE DAY. NOW, MADAM CLERK, I
6 WISH TO PLACE IN THE FILE THIS MOTION TO QUASH --
7 IT DOES NOT APPEAR TO HAVE BEEN CLOCKED IN -- WITH
8 THE ATTACHED SUBPOENA AND THE LETTER FROM MR. HILL.

9 MAKE THAT PART AND PARCEL OF THE RECORD, PLEASE.

10 THE CLERK: I DIDN'T GIVE YOU THESE
11 THIS MORNING. DO YOU WANT ME TO GIVE THESE---

12 THE COURT:

13 THE COURT: WHAT ARE THOSE? GIVE ME
14 WHAT?

15 THE CLERK: FOR CLOTHES AND SO
16 FORTH.

17 THE COURT: LET ME JUST KEEP A
18 COUPLE; SURE. AND HAVE YOU GIVEN A COPY TO THE
19 DEFENDANT AND THE STATE, AND DOES IT MEET WITH
20 THEIR APPROVAL? SHOW THEM AND MAKE SURE THEY HAVE
21 -- GENTLEMEN OF THE BAR, PLEASE REVIEW THIS MEMO
22 FROM THE CLERK. IN THE EVENT THAT A JUROR IS
23 QUALIFIED, TELL THEM WHAT PHONE NUMBER TO CALL AND
24 ABOUT BRINGING CLOTHES FOR SEVEN DAYS AND
25 MEDICATION AND EMERGENCY PHONE NUMBERS OR

FELIX ROSS - EXAMINATION BY THE COURT

1 WHATEVER. REVIEW THAT AND MAKE SURE IT MEETS WITH
2 THE APPROVAL. Y'ALL BEAR WITH ME FOR A MINUTE AND
3 LET ME CHECK WITH MY LAW CLERK ON SOMETHING HERE.
4 (OFF-THE-RECORD DISCUSSION.) GENTLEMEN, DID Y'ALL
5 GET THIS TYPED LIST THAT MY CLERK GOT FOR BIAS,
6 VIOLENCE, WITNESSES, ETC.?

7 MR. BAILEY: YES, SIR.

8 MR. THEOS: YES, SIR.

9 THE COURT: IT WAS ONE CORRECTION,
10 MIKE, YOU MENTIONED?

11 MR. BELL: YOUR HONOR, I HAD ONE --
12 I THOUGHT UNDER THE VIOLENCE WAS NUMBER 77. BUT I
13 STAND TO BE CORRECTED. I DIDN'T KNOW IF ANYBODY
14 ELSE GOT IT OR NOT.

15 THE COURT: I'VE GOT A 27. I DON'T
16 SEE A 77.

17 MS. AUSTIN: WE DIDN'T HAVE A 77.

18 MR. BELL: ALL RIGHT. WELL, I HAD
19 THAT BUT THAT WAS---

20 MR. THEOS: YOUR HONOR, I HAD A 77
21 AS WELL.

22 THE COURT: OKAY.

23 MR. THEOS: YOUR HONOR, I HAD A 77
24 AS WELL. WE DIDN'T DO IT TOGETHER, BUT I GUESS WE
25 COULD BOTH BE WRONG.

1 THE COURT: WELL, Y'ALL MAY HAVE
2 BEEN COPYING PAPERS. WHY DON'T WE DO THIS,
3 GENTLEMEN, TO BE ON THE SAFE SIDE. THAT WAS UNDER
4 VIOLENCE OR WITNESSES? WHY DON'T WE JUST PENCIL IN
5 77 BETWEEN 59 AND 100 AND PUT A QUESTION MARK BY
6 IT. IS THAT FAIR ENOUGH? AS A MATTER OF FACT,
7 Y'ALL TAKE A MINUTE TO LOOK AT THAT.

8 MR. BELL: YOUR HONOR, HE'S GOT 77
9 DOWN, TOO.

10 THE COURT: WELL, WE'VE ADDED 77.
11 HOW MANY TIMES DO YOU WANT US TO DO IT?

12 MR. BELL: THIS PERSON IS NOT EVEN
13 ON THE JURY LIST.

14 MS. AUSTIN: BRENDA DAVIS.

15 THE COURT: SHE WAS FAILING TO
16 LOCATE; EXCUSED. SO WE CAN ELIMINATE 77. IS IT
17 YOU AND MR. THEOS BEING IN ERROR?

18 MR. THEOS: I'M SURE THAT WILL BE
19 THE ONLY TIME DURING THE TRIAL, JUDGE.

20 THE COURT: THE COURT REFUSES TO
21 TAKE JUDICIAL NOTICE OF THAT. ALL RIGHT,
22 GENTLEMEN. NOW, ONE OTHER THING. MR. MARK HYLER.
23 WE APPRECIATE YOU BEING HERE. THIS IS A PUBLIC
24 TRIAL. I JUST WANTED TO ASK YOU. AND THIS ISN'T
25 AN ORDER. THIS IS A PRAYER FOR REQUEST. SOME

FELIX ROSS - EXAMINATION BY THE COURT

1 JURORS COULD GET EXTREMELY UPSET IF THEY READ THEIR
2 NAMES IN THE PAPER OR IF ANY SPECIFIC REFERENCE WAS
3 MADE TO THEM OUT OF CONCERN FOR THEIR FAMILY OR
4 OTHER THINGS. AND CAN I HAVE A GENTLEMAN'S
5 AGREEMENT THAT YOU CONCUR THAT IT WOULD NOT BE
6 PROTOCOL -- I'M NOT GOING TO SAY IT WOULDN'T BE
7 LAWFUL -- BUT THE COURTEOUS, POLITE THING TO DO,
8 WHILE YOU MAY MENTION A JUROR WHO ANSWERED A
9 QUESTION A CERTAIN WAY BUT NOT TO PRINT OR
10 DISSEMINATE ANYTHING THAT POSSIBLY COULD CRAVE
11 REFERENCE FOR THE IDENTITY OF THAT JUROR. WOULD
12 THAT BE REASONABLE?

13 MR. HYLER: ABSOLUTELY.

14 THE COURT: PLEASE. AND I
15 APPRECIATE THAT. IT'S BEEN BROUGHT TO THE COURT'S
16 ATTENTION THAT JUROR NUMBER 159, JIMI JACKSON WHO'S
17 ON THE PANEL FOR NINE O'CLOCK ON WEDNESDAY, THERE
18 IS NOT A QUESTIONNAIRE FOR THAT JUROR; IS THAT
19 CORRECT, MADAM CLERK?

20 THE CLERK: YES, SIR.

21 THE COURT: GENTLEMEN AND LADIES?
22 SO, MR. BAILIFF, AGAIN, AND MADAM CLERK, YOU CIRCLE
23 THAT ONE PROMPTLY BECAUSE THAT'S NUMBER TWO ON THE
24 LIST. PROMPTLY AT NINE O'CLOCK GIVE THAT
25 QUESTIONNAIRE TO JIMMY JACKSON SO WE CAN GET COPIES

FELIX ROSS - EXAMINATION BY THE COURT

1 OF IT MADE. AND AS SOON AS WE FINISH WITH ONE, WE
2 CAN GO TO TWO. AND IF YOU'RE MISSING ANY OTHER
3 QUESTIONNAIRES, LADIES AND GENTLEMEN, PLEASE CALL
4 IT TO OUR ATTENTION. SO ARE WE READY TO PROCEED?
5 IS ANYTHING FURTHER AT THIS TIME, LADIES AND
6 GENTLEMEN?

7 MR. BAILEY: NOT FROM THE STATE,
8 YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. THEOS: NO, SIR. YOUR HONOR, I
11 WOULD WANT TO MAKE SURE THERE AREN'T ANY OTHER
12 JURORS IN THE COURTROOM AT THIS POINT.

13 THE COURT: ARE THERE ANY MEMBERS OF
14 THE PROSPECTIVE JURY PANEL IN THE COURTROOM,
15 PLEASE? (NO RESPONSE.) IS ANY MEMBER OF THE PRESS
16 PRESENT OTHER THAN MARK HYLER, THE POST AND
17 COURIER? (NO RESPONSE.) IT APPEARS NOT. ANYTHING
18 ELSE?

19 MR. THEOS: NO, SIR.

20 THE COURT: NOW, GENTLEMEN AND
21 LADIES, THE JURORS WERE SWORN AS A WHOLE ON THEIR
22 VOIR DIRE. DOES ANYONE DEEM IT NECESSARY TO
23 INDIVIDUALLY HAVE THEM SWORN AGAIN?

24 MR. BAILEY: NO, SIR.

25 THE COURT: FOR THE DEFENSE? I

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

MEAN, I'LL REMIND THEM THEY'RE UNDER OATH, OF
COURSE. ALL RIGHT, THEN. THE FIRST JUROR ON PANEL
ONE APPEARS TO BE WILLIAM L. SILVERS, JR., JUROR
NUMBER 284. BRING HIM IN, PLEASE.

(JUROR NUMBER 284, A WHITE MALE, COMES INTO OPEN COURT)

- - - - -

WHEREUPON,

WILLIAM L. SILVERS, JR. WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD AFTERNOON, MR. WILLIAM LEE SILVERS, JR.

A. GOOD AFTERNOON, SIR.

Q. THANK YOU FOR BEING BACK PRESENT WITH US. WE
APOLOGIZE FOR ANY DELAY. YOU ARE JUROR NUMBER 284
ON THE MASTER LIST THAT WAS REVIEWED THIS MORNING
AND YOU WERE PUT UNDER OATH AT THAT TIME, MR.
SILVERS. SO MAY I PLEASE REMIND YOU THAT YOU ARE
STILL UNDER OATH TO THE ANSWERS YOU GIVE TO THE
QUESTIONS THAT ARE ABOUT TO BE PUT TO YOU. NOW, MR.
SILVERS, SINCE WE RECESSED FOR LUNCH AND YOU WERE
HERE EARLY THIS MORNING, HAS ANYBODY TALKED WITH
YOU ABOUT THIS CASE? HAVE YOU DISCUSSED IT WITH
ANYONE OR BEEN EXPOSED TO ANY ADDITIONAL

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT
1 INFORMATION ABOUT THIS CASE FROM ANY SOURCE AT ALL?

2 A. NO, SIR.

3 Q. AND WOULD YOU TELL ME WHAT YOU'VE HEARD IN THE PAST
4 ABOUT THE CASE, WHAT YOU'VE SEEN, READ, OR HEARD
5 ABOUT IT ANY TIME IN THE PAST, SOURCE OF
6 INFORMATION, PLEASE? IN OTHER WORDS, HAVE YOU SEEN
7 OR HEARD OR READ ANYTHING ABOUT IT?

8 A. NO, SIR. I CAN'T RECALL ANYTHING AT THIS TIME.

9 Q. BASED UPON WHAT YOU'VE HEARD AT THIS TIME OR SEEN
10 OR HEARD OR READ AT ANY TIME SINCE THAT TIME, HAVE
11 YOU FORMED OR EXPRESSED AN OPINION AS TO THE GUILT
12 OR INNOCENCE OF THE DEFENDANT, KENNETH SIMMONS IN
13 THIS CASE?

14 A. NO, SIR.

15 Q. IF YOU WERE CHOSEN AS A JUROR IN THIS CASE, IF YOU
16 DO HAVE A RECALL, OR DID HAVE A RECALL ABOUT
17 ANYTHING YOU HAD READ OR HEARD ABOUT THE CASE,
18 WOULD YOU BE ABLE TO DISREGARD THAT AND PUT IT
19 ASIDE?

20 A. YES, SIR.

21 Q. AND THE QUESTIONNAIRE THAT YOU SUBMITTED, HAVE
22 THERE BEEN ANY ANSWERS YOU NEED TO CHANGE IN THIS
23 FORM YOU SUBMITTED? IS EVERYTHING STILL ACCURATE
24 ON THAT FORM?

25 A. I THINK IT'S IN THERE, BUT I WANTED TO ADD THIS TO

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

IT; THAT I AM SELF-EMPLOYED. AND I HAVE SEVERAL GENTLEMEN THAT WORK FOR ME THAT I DO GIVE A RIDE INTO WORK AND THAT MY WIFE IS SEVEN MONTHS PREGNANT.

Q. CONGRATULATIONS!

A. THANK YOU. NUMBER THREE.

Q. AND IN REGARD TO THE -- YOU ARE EMPLOYED BY WHOM, SIR?

A. IT'S W.L. SILVERS, JR., CONSTRUCTION, INCORPORATED.

Q. SO YOU OWN AND OPERATE YOUR OWN -- IS IT RESIDENTIAL, COMMERCIAL?

A. RESIDENTIAL.

Q. RESIDENTIAL. AND YOU HAVE A NUMBER OF HOMES UNDER CONSTRUCTION NOW, OR DO YOU HAVE ONE HOME AT THE TIME?

A. ACTUALLY I'M A SUB-CONTRACTOR; AND I DO FRAMING. AND I'VE GOT ABOUT THREE HOUSES GOING ON NOW; TRYING TO FINISH UP EACH OF THE THREE.

Q. ALL RIGHT, SIR. NOW, I REALIZE IT'S A HARDSHIP FOR ANYBODY TO BE HERE. BUT IS THE FACT THOSE TWO OR THREE FOLKS THAT ARE REGULARLY EMPLOYED ON YOUR PAYROLL THAT YOU GIVE A RIDE TO WORK AND BACK IN THE AFTERNOON, DO YOU THINK THEY COULD MAKE SOME ARRANGEMENTS?

A. THEY MAY FOR SEVERAL DAYS, BUT I DON'T KNOW HOW

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT
1 LONG THEY COULD FOR A WEEK OR SO. THIS MORNING I
2 WENT AND PICKED THEM UP, THEN I CAME UP HERE.

3 Q. SURE. AND YOU UNDERSTAND THAT IF YOU ARE SELECTED
4 AS A JUROR IN THIS CASE YOU WOULD BE SEQUESTERED.
5 SO THAT MEANS CONFINED TO THE HOLIDAY INN, AND YOU
6 WOULDN'T BE ABLE TO TALK ON THE TELEPHONE TO YOUR
7 WORKERS. YOU WOULDN'T BE ABLE TO TALK TO MEMBERS
8 OF YOUR FAMILY EXCEPT IN AN EMERGENCY SITUATION.
9 YOU WOULDN'T BE ABLE TO GO PICK UP PEOPLE TO GO
10 BACK AND FORTH TO WORK. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND, MR. SILVERS, PLEASE, WE CERTAINLY DO NOT WANT
13 TO INVADE YOUR PRIVACY, BUT WE ARE TRYING TO GET
14 YOU TO IDENTIFY YOUR VIEWS ON CERTAIN THINGS.
15 AMONG THAT WE NEED TO KNOW HOW YOU FEEL ABOUT
16 PENALTIES, SPECIFICALLY ABOUT THE DEATH PENALTY,
17 BECAUSE THAT MAY BE AN ISSUE IN THE TRIAL OF THIS
18 CASE. AND THE FACT WE'RE ASKING ABOUT A PENALTY
19 NOW BEFORE THE TRIAL EVEN BEGINS DOESN'T INDICATE
20 ANYTHING ABOUT THE DEFENDANT IN THIS CASE OR HIS
21 GUILT OR INNOCENCE BECAUSE HE IS PRESUMED INNOCENT
22 UNTIL THE STATE REMOVES THAT PRESUMPTION OF
23 INNOCENCE FOREVER SATISFYING YOU, THE JURY, OF HIS
24 GUILT BEYOND A REASONABLE DOUBT BECAUSE IN THESE
25 VARIOUS INDICTMENTS HE HAS PLED NOT GUILTY. AND

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

1 THAT, OF COURSE, PLACES THE BURDEN OF PROOF UPON
2 THE STATE TO PROVE HIS GUILT. NOW, IF YOU WERE
3 SELECTED AS A JUROR IN THIS CASE, WOULD YOU BE
4 WILLING TO LISTEN TO THE LAW AS INSTRUCTED BY THE
5 JUDGE OR THE COURT?

6 A. YES, SIR.

7 Q. WOULD YOU BE WILLING TO ACCEPT THAT LAW AND APPLY
8 IT AS YOU WERE ASKED TO DO SO BY THE COURT?

9 A. YES, SIR.

10 Q. COULD YOU ACCEPT THAT LAW AND APPLY IT TO THE FACTS
11 OF THE CASE THAT YOU JURORS FIND THE TRUE FACTS TO
12 BE?

13 A. YES, SIR.

14 Q. AND EVEN IF YOU DISAGREE WITH THE TRIAL COURT AND
15 THE INSTRUCTIONS OF THE LAW, WOULD YOU STILL BE
16 WILLING TO FOLLOW IT IF YOU WERE TOLD CERTAIN LAW
17 BY THE JUDGE?

18 A. YES, SIR.

19 Q. WOULD YOU BE ABLE TO DECIDE THIS CASE SOLELY ON THE
20 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD
21 ANYTHING YOU MAY HAVE HEARD OR READ OR SEEN ABOUT
22 THIS CASE; IS THAT CORRECT?

23 A. THAT IS CORRECT.

24 Q. NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, ONCE
25 AGAIN COULD YOU, DEPENDING UPON THE FACTS AND

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

1 CIRCUMSTANCES OF THAT CASE AND THE LAW AS YOU WERE
2 INSTRUCTED, FIND SOMEONE NOT GUILTY OF THE CHARGE
3 IF THE EVIDENCE WAS SUCH THAT YOU SHOULD?

4 A. YES, SIR, I COULD.

5 Q. AND PUT ANOTHER WAY; DO YOU THINK THAT JUST BECAUSE
6 SOMEBODY IS CHARGED WITH A CRIME THEY MUST
7 AUTOMATICALLY BE GUILTY OF THE CRIME?

8 A. COULD YOU REPEAT THAT, PLEASE?

9 Q. THE FACT THAT SOMEBODY IS CHARGED WITH A CRIME, DO
10 YOU THINK THAT MEANS THEY'RE AUTOMATICALLY GUILTY?

11 A. NO, SIR.

12 Q. AND DEPENDING ON THE FACTS AND CIRCUMSTANCES, COULD
13 YOU FIND SOMEONE GUILTY OF THE CHARGE IF THE FACTS
14 WARRANTED IT?

15 A. THAT IS TRUE.

16 Q. SO YOUR DECISION AS TO WHETHER SOMEBODY IS GUILTY
17 OR NOT GUILTY IS BASED UPON THE EVIDENCE THAT YOU
18 HEAR IN A CASE?

19 A. YES, SIR.

20 Q. AND YOU DO NOT HAVE YOUR MIND MADE UP IN ADVANCE?

21 A. NO, SIR.

22 Q. NOW, MR. SILVERS, MOST OF THE TIME A JURY IS NOT
23 CONCERNED ABOUT THE PENALTY IN A CASE, THAT'S THE
24 JUDGE'S RESPONSIBILITY. BUT ONE TYPE OF CASE UNDER
25 OUR LAW IS A CASE SUCH AS HERE WHEN A JURY HAS TO

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

1 DETERMINE WHAT THE PENALTY OR PUNISHMENT IS GOING
2 TO BE FOR A CRIME. AND IT'S CALLED THE PENALTY
3 PHASE OF A CASE. AND IF -- AND I DON'T MEAN TO
4 INDICATE WHAT YOUR VERDICT IS OR SHOULD BE IN THE
5 CASE -- BUT IF THERE WAS A CASE WHERE YOU HAD TO
6 DECIDE IN A DEATH PENALTY CASE THE PENALTY PHASE;
7 THAT IS IF YOU HAD FOUND THE SUBJECT DEFENDANT,
8 KENNETH SIMMONS, GUILTY OF MURDER IN THE FIRST
9 GUILT PHASE, THEN YOU UNDERSTAND YOU MAY BE CALLED
10 UPON -- YOU WOULD BE CALLED UPON -- TO DECIDE
11 WHETHER AS A MEMBER OF THE JURY YOU WERE GOING TO
12 IMPOSE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
13 PAROLE OR THE DEATH PENALTY. DO YOU UNDERSTAND
14 THAT?

15 A. YES, SIR, I DO.

16 Q. NOW, MR. SILVERS, I WANT YOU TO PLACE YOURSELF IN A
17 SITUATION AS A JUROR WHO ALONG WITH THE OTHER
18 JURORS HAD JUST RETURNED A UNANIMOUS VERDICT OF
19 GUILTY FINDING THE DEFENDANT GUILTY OF THE CRIME OF
20 MURDER. AND THEN YOU WOULD NEED TO DECIDE WHAT
21 PUNISHMENT WOULD BE IMPOSED. YOU WOULD HEAR
22 ADDITIONAL EVIDENCE FROM THE STATE IN REGARD TO THE
23 PUNISHMENT. YOU MAY OR MAY NOT HEAR THE EVIDENCE
24 FROM THE DEFENDANT BECAUSE THE DEFENDANT DOES NOT
25 HAVE TO OFFER EVIDENCE IN THE GUILT PHASE OR IN THE

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

1 PENALTY PHASE. THAT IS ENTIRELY UP TO THE
2 DEFENDANT BECAUSE THERE IS NO BURDEN UPON THE
3 DEFENDANT TO PROVE HIMSELF INNOCENT BECAUSE IN MANY
4 INSTANCES THAT MIGHT BE POSSIBLE. SO DID YOU HAVE
5 AN OPPORTUNITY TO READ WHAT'S STYLED THE PRE-TRIAL
6 QUESTIONNAIRE WHERE THERE WERE THREE TYPES OF
7 JUROR; A TYPE ONE AND A TYPE TWO AND A TYPE THREE?

8 A. YES, SIR, I DID.

9 Q. AND ASSUMING THAT YOU'RE IN THE PENALTY PHASE OF A
10 TRIAL, UNDER WHICH CATEGORY WOULD YOU PLACE
11 YOURSELF AS A TYPE ONE, A TYPE TWO OR A TYPE THREE
12 JUROR?

13 A. I WOULD SAY NUMBER THREE.

14 Q. AND YOU UNDERSTAND THAT IT WOULD BE A SEPARATE PART
15 OF THE TRIAL IN THAT PENALTY PHASE?

16 A. YES, SIR.

17 Q. SO WOULD YOU, MR. SILVERS, BE ABLE TO KEEP AN OPEN
18 MIND AND NOT HAVE YOUR MIND MADE UP IN ADVANCE AND
19 LISTEN TO THE LAW AND LISTEN TO THE EVIDENCE AND
20 MAKE A FAIR FINDING BASED ON THE FACTS THAT WERE
21 PRESENTED BY THE STATE OR THE DEFENDANT EVEN THOUGH
22 THE DEFENDANT HAS NO BURDEN AND COME UP WITH THE
23 APPROPRIATE VERDICT IN THE CASE?

24 A. YES, SIR.

25 Q. AND IF THE EVIDENCE WAS SUCH THAT YOU WERE OF THE

WILLIAM L. SILVERS, JR. - EXAMINATION BY THE COURT

1 VIEW THAT IT SHOULD BE LIFE IMPRISONMENT, WOULD YOU

2 HAVE ANY PROBLEM VOTING FOR LIFE IMPRISONMENT

3 WITHOUT PAROLE?

4 A. NO, SIR.

5 Q. AND IF THE FACTS WERE SUCH THAT YOU CONCLUDED THAT

6 THE DEATH PENALTY SHOULD BE THE VERDICT, WOULD YOU

7 HAVE ANY PROBLEMS BASED ON THE EVIDENCE AND THE

8 CHARGE OF THE LAW IN FINDING THE DEATH PENALTY WAS

9 THE PROPER VERDICT?

10 A. NO, SIR.

11 Q. NOW MR. SILVERS, IF YOU'RE SELECTED AS A JUROR IN

12 THIS CASE, YOU AND THE OTHER JURORS WOULD BE HOUSED

13 AT THE LOCAL MOTEL. THEY'VE MADE ARRANGEMENTS FOR

14 YOU TO STAY AT THE HOLIDAY INN; AND OBVIOUSLY THE

15 COUNTY, OR THE STATE PAYS THOSE EXPENSES FOR YOUR

16 MEALS AND FOR YOUR LODGING. AND I CAN'T TELL YOU

17 WHETHER THIS CASE WILL TAKE FOUR DAYS OR SIX DAYS

18 OR SEVEN DAYS, OR PERHAPS EVEN LONGER. USUALLY

19 THERE'S A 24 HOUR WAITING PERIOD BETWEEN THE GUILT

20 PHASE. AND IT MIGHT BE THE VERDICT WILL BE NOT

21 GUILTY. I DON'T MEAN TO IMPLY WHAT THE VERDICT

22 WILL BE BY MENTIONING THE SECOND PHASE. BUT YOU

23 WOULD BE SEQUESTERED. YOU WOULD NOT BE ABLE TO

24 COMMUNICATE WITH YOUR FAMILY EXCEPT IN AN

25 EMERGENCY. AND WITH YOUR BEING SEQUESTERED; WOULD

WILLIAM L. SILVERS, JR. - DIRECT/MR. BAILEY

1 THAT IN ANY WAY CAUSE SERIOUS RISK OF DANGER TO
2 YOUR HEALTH OR WELL-BEING OR HEALTH OR WELL-BEING
3 OF ANY MEMBER OF YOUR FAMILY?

4 A. NO, SIR, NOT AT THIS TIME.

5 Q. OF COURSE WE HAVE TALKED ABOUT THE FACT THAT YOU DO
6 HAVE THOSE TWO OR THREE PERSONS WHO NEED RIDES AND
7 ARE WORKING FOR YOU IN THE MIDDLE OF A JOB?

8 A. YES, SIR.

9 THE COURT: MR. SOLICITOR, DID YOU
10 GENTLEMEN WANT TO ALTERNATE, OR DO YOU WANT TO GO
11 ON EACH OCCASION? STATE? DEFENDANT? IT MATTERS
12 NOT TO ME.

13 MR. BAILEY: I THOUGHT WE'D
14 ALTERNATE LAST TIME.

15 THE COURT: DOES THAT SUIT YOU?

16 MR. THEOS: YES, SIR.

17 THE COURT: SO SHALL WE START WITH
18 THE STATE AT THIS TIME AND GO TO THE DEFENDANT
19 NEXT? YOU MAY EXAMINE THE WITNESS, PLEASE.

20 DIRECT EXAMINATION

21 BY MR. BAILEY:

22 Q. MR. SILVERS, I'M WALTER BAILEY. I'LL BE
23 PROSECUTING THIS CASE. I'M GOING TO JUST ASK YOU A
24 FEW MORE QUESTIONS FOLLOWING UP ON WHAT JUDGE
25 PEEPLES ASKED YOU. BEFORE YOU FOUND OUT THAT YOU

WILLIAM L. SILVERS, JR. - DIRECT/MR. BAILEY

1 MIGHT BE A JUROR ON A DEATH PENALTY CASE, HAD YOU
2 EVER THOUGHT ABOUT THE DEATH PENALTY JUST IN
3 GENERAL TERMS?

4 A. BEFORE I HEARD THIS CASE?

5 Q. YES, SIR.

6 A. YES, SIR; I HAVE THOUGHT ABOUT IT IN THE PAST.

7 Q. COULD YOU TELL US BRIEFLY JUST WHAT YOUR VIEWS ARE
8 ON THE DEATH PENALTY IN YOUR OWN WORDS?

9 A. I THINK IF SOMEBODY DOES THE CRIME AND THE JURORS
10 FIND HIM GUILTY, THEN HE OR SHE MAY BE PUT TO
11 DEATH.

12 Q. ALL RIGHT, SIR. YOU'VE ALSO INDICATED TO THE JUDGE
13 THAT YOU WOULD LISTEN TO THE FACTS AND
14 CIRCUMSTANCES AND COULD VOTE FOR LIFE WITHOUT
15 PAROLE IF YOU THOUGHT THAT WAS APPROPRIATE ALSO?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. YOU UNDERSTAND THAT IN SOUTH
18 CAROLINA THE JUDGE DOESN'T DECIDE THE PENALTY. IF
19 WE GET TO THAT POINT, THE JURY MAKES THE DECISION,
20 AND THE JUDGE JUST PUTS THAT INTO EFFECT?

21 A. I UNDERSTAND THAT NOW.

22 Q. ALL RIGHT, SIR. AND IF YOU WERE ON A JURY IN A
23 DEATH PENALTY CASE AND ALL TWELVE JURORS VOTE FOR
24 THE DEATH PENALTY AFTER HEARING ALL THE LAW FROM
25 THE JUDGE AND THE EVIDENCE, THEY WOULD BE ASKED TO

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 SIGN THEIR NAMES TO A VERDICT FORM THAT WOULD
2 RESULT IN THAT EXECUTION ACTUALLY TAKING PLACE.
3 COULD YOU SIGN A PAPER LIKE THAT IF YOU HAD VOTED
4 FOR THE DEATH PENALTY AFTER HEARING ALL THE FACTS?

5 A. YES, SIR.

6 Q. COULD YOU COME YOU INTO OPEN COURT AND ANNOUNCE
7 THAT DECISION IF IT WAS YOUR DECISION?

8 A. I COULD DO THAT.

9 Q. THANK YOU. THAT'S ALL I HAVE.

10 THE COURT: CROSS, PLEASE?

11 MR. THEOS: YES, SIR.

12 CROSS-EXAMINATION

13 BY MR. THEOS:

14 Q. MR. SILVERS, I'M JERRY THEOS. THIS IS JIM BELL.
15 (INDICATING.)

16 A. YES, SIR.

17 Q. I UNDERSTAND THAT THE ANSWER TO MR. BAILEY'S
18 QUESTIONS IS THAT YOU SAID YOU HAD THOUGHT ABOUT
19 THE DEATH PENALTY?

20 A. YES, SIR; THAT'S CORRECT.

21 Q. HAVE YOU EVER TALKED ABOUT THE DEATH PENALTY TO
22 ANYBODY?

23 A. BRIEFLY. A CONVERSATION. I HAVEN'T MADE A POINT
24 OF BRINGING IT UP. BUT IN CONVERSATION IT HAS BEEN
25 BROUGHT UP.

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 Q. AND I DON'T MEAN -- NONE OF US MEAN TO PUT YOU ON
2 THE SPOT OR MAKE YOU FEEL UNCOMFORTABLE. WE'RE
3 JUST TRYING TO FIND OUT WHAT YOUR TRUE THOUGHTS
4 ARE.

5 A. I'M NOT TRYING TO LEAD INTO THE QUESTION. I'M JUST
6 TRYING TO ANSWER IT TRUTHFULLY AND TO THE BEST OF
7 MY KNOWLEDGE.

8 Q. DID YOU TALK WITH PEOPLE BEFORE YOU FOUND OUT YOU
9 WERE CALLED AS A JUROR IN THIS CASE?

10 A. NO, SIR.

11 Q. WAS IT ONLY AFTER THAT?

12 A. WELL, I HAVEN'T TALKED ABOUT THE DEATH PENALTIES.
13 I DIDN'T KNOW ANYTHING ABOUT THIS JURY OR WHAT IT
14 WAS GOING TO BE ABOUT UNTIL THIS MORNING.

15 Q. OKAY. TELL ME; WHAT SORTS OF -- YOU SAID A MINUTE
16 AGO THAT IF SOMEONE WERE FOUND GUILTY THAT YOU
17 WOULD HAVE NO TROUBLE WITH SENTENCING HE OR SHE TO
18 DEATH?

19 A. YES.

20 Q. ARE THOSE YOUR FEELINGS?

21 A. YES, SIR. FOR CERTAIN CRIMES I SHOULD ADD TO THAT.

22 Q. OKAY. TELL ME WHAT CRIMES YOU FEEL---

23 MR. BAILEY: OBJECTION.

24 THE COURT: I SUSTAIN THAT.

25 MR. THEOS: I'M NOT SURE WHICH

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 QUESTION HE'S OBJECTING TO. THE ONE I'M ABOUT TO
2 ASK?

3 THE COURT: AS TO WHICH CRIMES THAT
4 HE WOULD FEEL THE DEATH PENALTY WERE PROPER OR NOT
5 PROPER IF THAT WAS GOING TO BE YOUR QUESTION.

6 Q. WHAT CIRCUMSTANCES WOULD YOU FEEL WERE APPROPRIATE
7 TO WARRANT THE DEATH PENALTY---

8 MR. BAILEY: OBJECTION.

9 THE COURT: LET HIM ANSWER THE
10 QUESTION.

11 Q. --WOULD YOU FEEL WERE APPROPRIATE TO WARRANT THE
12 DEATH PENALTY?

13 MR. BAILEY: OBJECTION.

14 THE COURT: SUSTAINED.

15 A. WHAT KIND OF CRIMES---

16 THE COURT: HE'S NOT ALLOWED TO ASK
17 THAT. NOW, MR. THEOS, YOU HAD YOUR JUROR
18 CONSULTED. SHE'S WELCOME TO SIT UP AT THE TABLE
19 WITH YOU IF THAT WOULD AID YOU IN ANY WAY.

20 MR. THEOS: NO, SIR YOUR HONOR, IF
21 WE COULD APPROACH THE BENCH SINCE THIS IS GOING TO
22 BE A CONTINUING ISSUE.

23 THE COURT: SURE; OKAY.

24 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

25 THE COURT: SO, MR. THEOS, AFTER A

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 CONFERENCE WITH ALL COUNSEL IN CHAMBERS, DO YOU
2 HAVE ANY AUTHORITY WHICH WOULD PERMIT THAT QUESTION
3 TO BE ASKED?

4 MR. THEOS: NOT AT THIS POINT, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. SO AGAIN --
7 AND THE COURT'S REASON IS YOU'RE NOT ALLOWED TO
8 STAKE OUT A JUROR WHERE THE JUROR WOULD BE PUT IN A
9 POSITION OF SAYING A, B, OR C IS WHEN I WOULD FIND
10 THE DEATH PENALTY AND E, F, AND G IS WHEN I WOULD
11 NOT SUCH THAT THAT MAY OR MAY NOT FIT INTO THE MOLD
12 OF THIS EVIDENCE BECAUSE THE JURORS INDICATED TO
13 THE COURT UNDER OATH THAT HE WOULD BE FAIR MINDED
14 AND APPLY THE LAW AS THE JUDGE INSTRUCTED HIM TO DO
15 AND MAKE HIS FINDING AND RECOMMENDATION BASED ON
16 THE FACTS. BUT YOU MAY CONTINUE YOUR CROSS. AND,
17 PLEASE, NOTE HIS OBJECTION. I WANT TO PROTECT THE
18 RECORD.

19 Q. MR. SILVERS, I APOLOGIZE. I DON'T WANT TO PUT
20 WORDS IN YOUR MOUTH. BUT UNDERSTANDING YOUR LAST
21 RESPONSE, ARE YOU TELLING US THAT IN THOSE
22 SITUATIONS, IN THOSE CASES, YOU WOULD ALWAYS VOTE
23 FOR THE DEATH PENALTY? I CAN'T ASK YOU WHAT THOSE
24 SITUATIONS MIGHT BE.

25 A. IN THOSE CASES THAT I WOULD BELIEVE IN, I WOULDN'T

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 VOTE GUILTY. DOES THAT ANSWER YOUR QUESTION?

2 Q. I DON'T MEAN GUILTY BECAUSE WE'RE NOT TALKING ABOUT
3 BEYOND A GUILT PHASE. WE'RE TALKING ABOUT LIFE OR
4 DEATH?

5 A. YES, SIR.

6 Q. SO IS YOUR ANSWER THAT YOU WOULD ALWAYS VOTE FOR
7 THE DEATH PENALTY?

8 A. IN THOSE CIRCUMSTANCES THAT I BELIEVE IN, I WOULD.

9 Q. HOW DO YOU FEEL ABOUT DISCUSSING PENALTY IN A CASE
10 WHERE WE HAVEN'T YET DETERMINED WHETHER OR NOT MR.
11 SIMMONS IS GUILTY? AS THE JUDGE SAID, HE SITS HERE
12 PRESUMED TO BE INNOCENT.

13 A. HOW DO I FEEL ABOUT THAT?

14 Q. DOES THAT HAVE ANY BEARING ON YOUR THOUGHT PROCESS
15 REGARDING MR. SIMMONS' GUILT?

16 A. NO, SIR, I WOULDN'T THINK SO. I'M A LITTLE
17 CONFUSED AS TO WHY YOU'RE ASKING THIS. BUT I DON'T
18 THINK IT HAS ANY BEARING ON HIS CASE IN MY OPINION.

19 Q. DO YOU FEEL THAT IT'S CAUSED YOU TO QUESTION HIS
20 GUILT SINCE WE ARE TALKING ABOUT PRIOR TO?

21 A. NO, SIR, I DON'T THINK IT DOES.

22 Q. CAN YOU THINK OF ANY SITUATIONS, MR. SILVERS, WHERE
23 YOU WOULD NOT IMPOSE THE DEATH PENALTY IF IT MET
24 YOUR CRITERIA?

25 A. ANY CRIMES THAT WOULD NOT?

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 Q. I CAN'T ASK YOU WHAT THOSE CIRCUMSTANCES ARE, WHAT
2 THOSE CRIMES MIGHT BE. BUT UNDERSTANDING YOUR
3 RESPONSE THAT IN THOSE SITUATIONS YOU WOULD ALWAYS
4 VOTE FOR THE DEATH PENALTY?

5 A. YES, SIR.

6 Q. IS THAT YOUR RESPONSE?

7 A. YES, SIR.

8 Q. CAN YOU THINK OF ANY SITUATIONS, A SITUATION, WHERE
9 YOU WOULDN'T VOTE FOR THE DEATH PENALTY IF YOUR
10 CRITERIA WERE MET FOR IT?

11 A. SELF-DEFENSE.

12 Q. CAN YOU THINK OF ANY OTHER SITUATIONS?

13 THE COURT: AGAIN, SELF-DEFENSE -- I
14 SUPPOSE IT COULD BE IN MITIGATION ALSO. BUT THAT'S
15 REALLY ON THE GUILT PHASE RATHER THAN THE PENALTY.
16 IN THE PENALTY PHASE THERE ARE CERTAIN STATUTORY
17 AGGRAVATING CIRCUMSTANCES. AND THE JURY MUST
18 UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE
19 STATUTORY AGGRAVATING CIRCUMSTANCES BEFORE IT COULD
20 RECOMMEND THE DEATH PENALTY. ON THE OTHER HAND,
21 THE JURY CAN RECOMMEND LIFE IMPRISONMENT WHERE
22 THERE'S EVIDENCE OF MITIGATING CIRCUMSTANCES OR FOR
23 NO REASON AT ALL; JUST BECAUSE THERE'S A
24 RECOMMENDATION OF MERCY AND THE JURY MAY FIND THAT
25 THERE'S AN AGGRAVATING STATUTORY CIRCUMSTANCE BUT

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS
1 YET NOT RECOMMEND THE DEATH PENALTY. DO YOU
2 UNDERSTAND THAT?

3 MR. SILVERS: YES, SIR.

4 Q. AGAIN, CAN YOU THINK OF ANY SITUATION OTHER THAN
5 WHAT YOU'VE TOLD US ABOUT SELF-DEFENSE IN WHICH IF
6 THE CASE MET ALL OF YOUR CRITERIA THAT YOU WOULD
7 CONSIDER VOTING FOR LIFE IMPRISONMENT RATHER THAN
8 THE DEATH PENALTY?

9 A. NO, SIR.

10 THE COURT: IT'S NOT PROPER TO GO
11 INTO WHETHER IT'S SELF-DEFENSE OR THINGS OF THAT
12 NATURE BECAUSE THAT MAY OR MAY NOT BE AN ISSUE IN
13 THIS CASE. BUT ARE THERE CIRCUMSTANCES, MR.
14 SILVER, WHERE YOU FEEL THAT IF THEY EXISTED THAT
15 THE DEATH PENALTY WOULD BE JUSTIFIED? ON THE OTHER
16 HAND, THE CONVERSE OF THAT THAT IF THERE ARE NOT
17 CERTAIN CIRCUMSTANCES, YOU WOULD NOT FEEL THAT YOU
18 COULD RECOMMEND THE DEATH PENALTY. IS THAT WHAT
19 YOU'RE SAYING?

20 MR. SILVERS: YES, SIR.

21 THE COURT: GO AHEAD.

22 MR. THEOS: YOUR HONOR, I'M A LITTLE
23 CONFUSED. AND PLEASE DON'T TAKE THIS AS ME ARGUING
24 WITH THE JUDGE OR WITH YOU, MR. SILVERS. BUT
25 AGAIN, I JUST WANT TO BE CLEAR.

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 Q. ARE THERE ANY SITUATIONS IN WHICH YOU COULD IMPOSE
2 A LIFE SENTENCE WITHOUT PAROLE IF THE FACTS AND THE
3 CIRCUMSTANCES MET YOUR CRITERIA FOR THE DEATH
4 PENALTY?

5 A. COULD YOU REPEAT THAT ONE MORE TIME? I'M NOT
6 TRYING TO BE---

7 Q. WELL, THIS IS A LITTLE AWKWARD FOR ALL OF US.

8 A. IT IS FOR ME, TOO. I'M NOT USED TO BEING UP HERE.
9 I DON'T MEAN ANY JOKES BY IT.

10 THE COURT: THERE ARE NOT ANY RIGHT
11 OR WRONG ANSWERS.

12 MR. THEOS: WE'RE CERTAINLY NOT
13 TRYING TO JUDGE YOU. BUT BASED ON YOUR ANSWERS---

14 Q. BASED UPON YOUR PREVIOUS ANSWERS, CAN YOU THINK OF
15 ANY SITUATIONS IN WHICH YOU WOULD CONSIDER IMPOSING
16 A LIFE SENTENCE IF THE CASE MET YOUR CRITERIA FOR
17 THE DEATH PENALTY?

18 A. ARE YOU ASKING ME IF THE DEATH PENALTY; IF IT WAS
19 AN OPTION, WHICH ONE WOULD I TAKE? WOULD THERE BE
20 ANY CHOICES?

21 Q. YES.

22 A. I WOULD HAVE TO GO FOR THE DEATH PENALTY IF IT WAS
23 AN OPTION. DOES THAT ANSWER YOUR QUESTION?

24 Q. YES, SIR. IT CERTAINLY DOES. THANK YOU.

25 MR. BAILEY: YOUR HONOR, MAY I ASK

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

HIM SOME MORE QUESTIONS TO FOLLOW UP ON THAT?

THE COURT: SURE.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. SILVERS, AGAIN I APOLOGIZE. YOU'RE THE FIRST JUROR THAT'S COME UP HERE, SO WE'RE KIND OF FEELING OUR WAY THROUGH HERE. BUT WHAT I WANT TO DO IS BACK UP JUST A LITTLE BIT IF THE JUDGE ALLOWS ME AND EXPLAIN A LITTLE BIT MORE ABOUT THE POTENTIAL TWO-PART SYSTEM WE'VE GOT HERE. DO YOU UNDERSTAND THE FIRST PHASE IS THE GUILT PHASE?

A. YES; GUILTY OR NOT GUILTY.

Q. AND IF THE DEFENDANT IS NOT FOUND GUILTY OF MURDER, WE'D STOP RIGHT THERE?

A. YES.

Q. IF HE'S FOUND GUILTY OF MURDER, THEN WE GO ON TO THE SECOND PHASE AND THERE WOULD BE ADDITIONAL EVIDENCE THAT WOULD COME OUT IN THAT SECOND PHASE.

A. YES, SIR.

Q. EVIDENCE IN AGGRAVATION IN WHICH I'D BE TRYING TO PERSUADE THE JURY TO BRING BACK THE DEATH PENALTY BASED ON THAT ADDITIONAL EVIDENCE. AND THE DEFENSE MAY, IF IT WISHES -- THEY DON'T HAVE TO -- PUT UP EVIDENCE IN MITIGATION TO TRY TO ARGUE FOR A LIFE SENTENCE. NOW MY QUESTION IS WHETHER OR NOT IF

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 YOU'RE ON A JURY, YOU FIND THE DEFENDANT GUILTY OF
2 MURDER, WHETHER YOU'D HAVE YOUR MIND MADE UP AT
3 THAT POINT IN TIME THAT YOU'RE GOING TO BRING BACK
4 THE DEATH PENALTY NO MATTER WHAT YOU HEAR IN THAT
5 SECOND PHASE, OR WHETHER YOU'D KEEP AN OPEN MIND
6 AND LISTEN TO EVERYTHING THAT CAME OUT IN THAT
7 SECOND PART INCLUDING THE JUDGE'S INSTRUCTIONS
8 BEFORE YOU MADE UP YOUR MIND?

9 A. IF I FOUND THE GENTLEMAN GUILTY, THEN I WOULD HEAR
10 THE SECOND PART OF THE TRIAL.

11 Q. OKAY.

12 A. TO FIND OUT.

13 Q. AND BASED ON WHAT YOU HEARD IN THAT SECOND PART OF
14 THE TRIAL, COULD YOU VOTE FOR LIFE WITHOUT PAROLE
15 OR THE DEATH PENALTY DEPENDING ON WHAT YOU HEARD?

16 A. I COULD DO THAT; YES, SIR.

17 Q. ALL RIGHT, SIR. AND NOBODY IS GOING TO ASK YOU
18 WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T
19 HEARD THE FACTS. BUT YOU COULD LISTEN TO BOTH
20 SIDES, THEN MAKE UP YOUR MIND?

21 A. YES, SIR.

22 Q. ALL RIGHT, SIR. THANK YOU. THAT'S ALL I HAVE.

23 THE COURT: ANYTHING FURTHER?

24 MR. THEOS: NOTHING, YOUR HONOR.

25 THE COURT: ALL RIGHT. I'M GOING TO

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 ASK YOU TO STEP OUTSIDE FOR JUST A MINUTE. (AT THIS
2 TIME JUROR RETIRES TO JURY ROOM.) I'M SORRY.
3 BRING HIM BACK IN. (JUROR RETURNS TO COURTROOM.)
4 MR. SILVERS, I APOLOGIZE TO YOU. WHEN WE HAD THE
5 EARLIER QUALIFICATION THIS MORNING, YOU'RE JUROR
6 NUMBER 284, AND WE HAD THIS LITTLE LIST TYPED UP,
7 AND YOU STOOD UP WHEN YOU SAID IN RESPONSE TO THE
8 QUESTION "HAVE YOU OR ANY MEMBER OF YOUR FAMILY
9 EVER BEEN A VICTIM OF A CRIME OR EVER BEEN CHARGED
10 WITH A CRIME OR INVOLVED WITH A CRIME OF VIOLENCE."
11 COULD YOU TELL THE COURT YOU OR YOUR FAMILY'S
12 EXPERIENCES IN THAT REGARD?

13 MR. SILVERS: YES, SIR. I HAD A
14 GREAT UNCLE THAT WAS KILLED IN LIKE 1984.

15 THE COURT: WHAT COUNTY? WHAT
16 STATE?

17 MR. SILVERS: IN WAS IN THE UPPER
18 PART OF THE STATE. SPARTANBURG WAS THE AREA WHERE
19 HE WAS KILLED AT.

20 THE COURT: ALL RIGHT. AND WAS
21 THERE A MURDER TRIAL AS A RESULT OF THAT?

22 MR. SILVERS: YES, SIR.

23 THE COURT: DID THE STATE SEEK THE
24 DEATH PENALTY?

25 MR. SILVERS: NO, SIR.

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 THE COURT: THEY DID NOT?

2 MR. SILVERS: NO, SIR.

3 THE COURT: ALL RIGHT. GENTLEMEN,
4 DID YOU WANT TO QUESTION HIM ABOUT THAT?

5 MR. BAILEY: NO, SIR, YOUR HONOR.

6 THE COURT: MR. THEOS, WOULD YOU
7 LIKE TO QUESTION HIM ABOUT THAT?

8 MR. THEOS: WAS THE DEFENDANT
9 CONVICTED?

10 MR. SILVERS: YES, SIR, HE WAS.

11 THE COURT: STEP BACK DOWN. AND,
12 AGAIN, Y'ALL HELP ME LOOK AT THIS LIST TO REMIND ME
13 THAT WE NEED TO QUESTION FURTHER ABOUT THE
14 WITNESSES, VIOLENCE, BIAS, SEEN OR HEARD OR READ
15 ABOUT THE CASE. WHAT SAY THE STATE? DO YOU FIND
16 HIM QUALIFIED OR UNQUALIFIED?

17 MR. BAILEY: THE STATE WOULD CONTEND
18 THAT HE IS QUALIFIED. HE CAN FAIRLY CONSIDER BOTH
19 OPTIONS AND BASED ON WHAT HE HEARS TO BRING BACK
20 ONE OR THE OTHER.

21 THE COURT: ALL RIGHT. WHAT SAYS
22 THE DEFENDANT?

23 MR. THEOS: YOUR HONOR, THE
24 DEFENDANT ASSERTS THAT HE IS NOT QUALIFIED,
25 ALTHOUGH MR. BAILEY ATTEMPTED TO REHABILITATE HIM.

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 AND I THINK HE PROBABLY, WITH HIS LEADING
2 QUESTIONS, RESPONDED LIKE MR. BAILEY WANTED HIM TO.
3 HE CLEARLY STATED THAT HE WOULD VOTE FOR THE DEATH
4 PENALTY. THE FIRST THING HE SAID WAS THAT HE WOULD
5 -- IF SOMEONE WERE FOUND GUILTY, HE OR SHE OUGHT
6 TO BE PUT TO DEATH. AND WHEN I QUESTIONED HIM A
7 LITTLE BIT FURTHER, HE SAID THAT IF FOUND GUILTY
8 AND THE CASE MET HIS CRITERIA FOR A DEATH PENALTY,
9 WHATEVER THEY MAY BE -- BECAUSE WE WEREN'T ALLOWED
10 TO GO INTO THAT -- THAT HE WOULD VOTE FOR THE DEATH
11 PENALTY AND WOULD NOT CONSIDER A LIFE SENTENCE.
12 BASED UPON THAT, YOUR HONOR, WE DO NOT THINK HE'S
13 QUALIFIED.

14 THE COURT: ALL RIGHT. MR. THEOS,
15 THE MANNER IN WHICH THE QUESTIONS WERE ASKED OF HIM
16 WAS DIFFICULT FOR HIM TO UNDERSTAND WHAT YOU WERE
17 SPEAKING OF. BUT THE COURT IS SATISFIED FROM THE
18 COURT'S QUESTIONING AND FROM HIS RESPONSES THAT HE
19 COULD GIVE A FAIR AND IMPARTIAL TRIAL TO BOTH THE
20 STATE AND THE DEFENDANT AND TESTIFIED UNDER OATH
21 THAT HE WOULD FOLLOW THE LAW AND APPLY THE FACTS AS
22 THE JURY FOUND THEM TO BE TO THOSE FACTS. AND I
23 UNDERSTAND YOUR OBJECTION. AND I WILL NOTE THAT
24 THE DEFENDANT OBJECTS. BUT THE COURT IS GOING TO
25 FIND HIM TO BE QUALIFIED. SO BRING HIM BACK IN,

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

PLEASE. AND YOU'VE GOT THAT SHEET TO GIVE TO HIM,
MADAM CLERK?

THE CLERK: YES, SIR.

(AT THIS TIME JUROR RETURNS TO OPEN COURT.)

THE COURT: ALL RIGHT. MR. SILVERS,
YOU'VE BEEN FOUND TO BE QUALIFIED. THAT DOESN'T
MEAN THAT YOU WILL BE CHOSEN TO SERVE BECAUSE WE
STILL GO THROUGH A STRIKING PROCESS WHERE THE STATE
HAS A CERTAIN NUMBER OF STRIKES AND THE DEFENSE HAS
A CERTAIN NUMBER OF STRIKES. AND WE THINK,
GENTLEMEN, WE'RE GOING TO GET INTO THE STRIKING BY
WEDNESDAY AFTERNOON. IS THAT A FAIR ESTIMATE AT
THIS TIME?

MR. BAILEY: I THINK SO, YOUR
HONOR.

THE COURT: MADAM CLERK, YOU HAVE
HIS PHONE NUMBER OF MR. SILVERS WHERE HE CAN BE
REACHED?

THE CLERK: WE SHOULD HAVE IT ON HIS
PAPERWORK HERE.

THE COURT: WELL, HAVE HIS PAPERWORK
IN YOUR HAND SO YOU CAN HAVE AN ANSWER TO THAT
QUESTION BEFORE I EXCUSE HIM.

THE CLERK: WE HAVE TWO OR THREE
NUMBERS ON HERE.

WILLIAM L. SILVERS, JR. - CROSS/MR. THEOS

1 THE COURT: PANEL FIFTEEN AT 3:15.

2 I'M GOING TO HEDGE AND ESTIMATE TWO O'CLOCK ON
3 WEDNESDAY. BUT WE'LL PUT ON THAT RECORDING
4 MACHINE; WRITE THAT NUMBER DOWN. IF YOU'D CALL
5 TUESDAY AFTER FIVE O'CLOCK FOR ALL QUALIFIED JURORS
6 TO REPORT AT WHATEVER TIME, WE'LL KNOW BETTER WHERE
7 WE STAND.

8 MR. SILVERS: AFTER TWO?

9 THE COURT: AFTER TWO O'CLOCK. NOW,
10 THE CLERK HAS GIVEN YOU THAT SHEET OF PAPER. HAVE
11 YOU HANDED IT TO THEM, MADAM CLERK?

12 THE CLERK: YES, SIR.

13 THE COURT: YOU NEED TO READ THOSE
14 INSTRUCTIONS AND TO PREPARE FOR THE POSSIBILITY
15 THAT YOU MAY BE CALLED TO SERVE AS A JUROR. YOU'RE
16 FREE TO TALK ABOUT THE INSTRUCTIONS TO ANYBODY YOU
17 WANT TO BECAUSE YOUR FOLKS, YOUR FAMILY, YOUR
18 WORKERS, NEED TO KNOW ABOUT PREPARATION IN THAT
19 REGARD. BUT YOU CANNOT TALK ABOUT THIS CASE WITH
20 ANYBODY OR ALLOW ANYBODY TO TALK TO YOU ABOUT IT.
21 AND YOU CANNOT EXPOSE YOURSELF TO ANY PUBLICITY
22 ABOUT THE CASE FROM ANY SOURCE AT ALL. AND IF THAT
23 TIME CHANGES, YOU CHECK THAT NUMBER, AND WE'LL TRY
24 TO LET YOU KNOW. BUT RIGHT NOW WE'RE GOING TO TAKE
25 A WILD BILL HICKOCK GUESS. AND WHAT DID WE SAY,

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 TWO O'CLOCK ON THIS WEDNESDAY? AND IF YOU WOULD,
2 REPORT BACK TO THE COURTROOM AT THAT TIME, PLEASE,
3 UNLESS WE TELL YOU TO THE CONTRARY. YOU'RE EXCUSED
4 AT THIS TIME.

5 MR. SILVERS: ALL RIGHT, SIR.

6 THE COURT: THANK YOU, NOW. ALL
7 RIGHT. IF YOU'D BRING IN CHRISTOPHER BARTON,
8 NUMBER 16. IF YOU WOULD PROCEED WITH THE
9 QUESTIONING FIRST, MR. THEOS AFTER THE COURT
10 CONCLUDES. (AT THIS TIME JUROR COMES INTO OPEN
11 COURT.) HAVE A SEAT, PLEASE, MR. CHRISTOPHER
12 BARTON. MAY I PLEASE REMIND YOU, SIR, THAT YOU ARE
13 STILL UNDER OATH THAT YOU TOOK THIS MORNING TO THE
14 PLEASE TRUTHFULLY RESPOND TO ALL THE QUESTIONS THAT
15 ARE GIVEN TO YOU. NOW, THIS IS JUROR NUMBER 16 ON
16 THE ORIGINAL JURY DRAW, LADY AND GENTLEMEN.
17 (JUROR NUMBER 16, A BLACK MALE, IS CALLED.)

18 - - - - -

19 WHEREUPON,

20 CHRISTOPHER BARTON, WHO AFTER BEING FIRST
21 DULY SWORN TO TELL THE TRUTH, TESTIFIED
22 AS FOLLOWS:

23 EXAMINATION

24 BY THE COURT:

25 Q. AND, MR. BARTON, SINCE YOU LEFT THE COURT AFTER

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 LUNCH TODAY, HAS ANYBODY TALKED WITH YOU ABOUT THE
2 CASE, DISCUSSED IT WITH ANYBODY, OR BEEN EXPOSED TO
3 ANY ADDITIONAL INFORMATION ABOUT THIS CASE FROM ANY
4 SOURCE AT ALL?

5 A. NO.

6 Q. HAVE YOU READ OR HEARD ANYTHING IN THE PAST, RADIO,
7 T.V., NEWSPAPER, STREET TALK, OR HAD ANY
8 INFORMATION ABOUT THIS CASE, PLEASE?

9 A. I VERIFIED THIS MORNING THAT -- I GLANCED IT. I
10 PICKED UP A DORCHESTER EAGLE, AND I READ AN ARTICLE
11 THEY HAD IN THERE ABOUT IT.

12 Q. ALL RIGHT. AND AS A RESULT OF WHAT YOU READ IN THE
13 DORCHESTER -- THAT'S A COUNTY NEWSPAPER; IS THAT
14 CORRECT?

15 A. YES, SIR.

16 Q. AND AS A RESULT OF WHAT YOU HEARD OR READ, DID YOU
17 FORM OR EXPRESS ANY OPINION AS TO THE GUILT OR
18 INNOCENCE OF THE DEFENDANT, KENNETH SIMMONS?

19 A. I HAVE NOT.

20 Q. WOULD YOU BE WILLING AND ABLE IF YOU WERE CHOSEN AS
21 A JUROR TO PUT ASIDE ANYTHING THAT YOU MAY HAVE
22 HEARD OR READ ABOUT THE CASE AND TO DECIDE THIS
23 CASE BASED UPON WHAT IS ALLOWED INTO EVIDENCE BY
24 WAY OF TESTIMONY, EXHIBITS, OR OTHERWISE RATHER
25 THAN BASING IT OR WHAT YOU MAY HAVE SEEN OR HEARD?

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 A. YES, SIR.

2 Q. AND THAT QUESTIONNAIRE THAT YOU SUBMITTED SOME TIME
3 AGO; HAS THERE BEEN ANY ANSWERS THAT NEED TO BE
4 CHANGED IN THE FORM THAT YOU SUBMITTED? IN OTHER
5 WORDS, ARE THE ANSWERS STILL ACCURATE?

6 A. YES, SIR.

7 THE COURT: GENTLEMEN, I'VE MARKED
8 OFF NUMBER 16 OFF THIS SEEN, HEARD, OR READ ABOUT
9 CASE; AND I DO NOT SEE HIS NAME APPEARING ON ANY OF
10 THE OTHER CATEGORIES.

11 Q. NOW, MR. BARTON, I NEED TO ASK YOU SOME QUESTIONS
12 WE DON'T WANT TO INVADE YOUR PRIVACY. WE JUST NEED
13 TO KNOW YOUR OPINIONS ON CERTAIN THINGS, YOUR VIEWS
14 ABOUT CERTAIN THINGS. AND WE'RE NOT CHALLENGING
15 THE CORRECTNESS OF WHAT YOUR OPINION MAY BE. THERE
16 ARE NO RIGHT OR WRONG ANSWERS IN REGARD TO THE
17 ANSWERS THAT YOU GIVE TO US. BUT IN REGARD TO ANY
18 PENALTIES, THIS IS A DEATH PENALTY CASE. AND
19 PLEASE UNDERSTAND THE FACT THAT WE'RE ASKING ABOUT
20 PENALTY BEFORE THE TRIAL EVER BEGINS, THAT
21 CERTAINLY IS NOT INTENDED TO IMPLY THAT THE
22 DEFENDANT IS GUILTY BECAUSE THE CASE WOULD BE
23 DIVIDED INTO TWO PARTS. THE FIRST PART WILL BE THE
24 GUILT PHASE. AND THERE'S A PRESUMPTION OF
25 INNOCENCE CLOAKED ABOUT THE DEFENDANT FROM THE TIME

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 OF HIS ARREST, APPEARANCE IN COURT, THROUGHOUT THE
2 TRIAL, AND EVEN AFTER YOU GO TO YOUR JURY ROOM TO
3 DELIBERATE UNTIL SUCH TIME AS THE JURY MAY OR MAY
4 NOT FIND THAT THE DEFENDANT IS GUILTY BEYOND A
5 REASONABLE DOUBT, HE IS PRESUMED OR THOUGHT TO BE
6 INNOCENT. BUT IN ORDER TO DISCUSS YOUR VIEWS ON
7 CERTAIN THINGS, I HAVE TO EXPLAIN TO YOU THAT THERE
8 IS A GUILT PHASE. AND IF THE CHARGE OF MURDER --
9 IF HE'S FOUND NOT GUILTY ON THAT, YOU WOULDN'T GO
10 TO THE PENALTY PHASE ON MURDER. AND DEPENDING ON
11 WHAT YOUR VERDICTS WERE IN THE OTHER CASES AS TO
12 WHETHER HE'S GUILTY OR NOT GUILTY. AGAIN, HE'S
13 PRESUMED INNOCENT. BUT IF HE'S NOT FOUND GUILTY OF
14 MURDER IN THE GUILT PHASE, THEN THERE WOULD BE NO
15 NEED FOR THE SECOND PHASE WHICH IS CALLED THE
16 PENALTY PHASE. SO PLEASE UNDERSTAND THE COURT DOES
17 NOT MEAN TO IMPLY IN ANY WAY THAT THE DEFENDANT IS
18 GUILTY OF ANYTHING. BUT RATHER I'M JUST TRYING TO
19 EXPLAIN TO YOU WHY IT'S NECESSARY TO TRY AND GET
20 YOUR VIEWS ON THE VARIOUS SUBJECTS. NOW, MR.
21 BARTON, IF YOU WERE A JUROR IN ANY CRIMINAL CASE,
22 WOULD YOU BE WILLING TO LISTEN TO THE LAW AS YOU
23 ARE INSTRUCTED BY THE JUDGE AS TO WHAT THE CORRECT
24 LAW IS?

25 A. YES, SIR.

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 Q. WOULD YOU BE WILLING TO ACCEPT THAT LAW AND APPLY
2 IT TO THE FACTS AS YOU OR THE JURY MAY FIND THOSE
3 FACTS TO BE?

4 A. YES, SIR.

5 Q. AND ASSUMING ARGUENDO THAT YOU DISAGREED WITH THE
6 JUDGE ABOUT THE INSTRUCTION ON THE LAW, WOULD YOU
7 STILL BE WILLING TO FOLLOW THE LAW AS GIVEN TO YOU
8 BY THE COURT?

9 A. YES, SIR.

10 Q. AND IF YOU WERE SELECTED AS A JUROR IN THIS CASE,
11 WOULD YOU BE ABLE TO DECIDE THIS CASE BASED SOLELY
12 ON THE EVIDENCE PRESENTED IN THE COURTROOM AND
13 DISREGARD ANYTHING YOU MAY HAVE HEARD OR READ OR
14 SEEN ABOUT THIS CASE FROM ANY SOURCE AT ALL OUTSIDE
15 OF THIS COURTROOM?

16 A. YES, SIR.

17 Q. AND DO YOU UNDERSTAND, PLEASE, MR. BARTON, THAT THE
18 STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROOF OF
19 PROVING THE GUILT OF THE DEFENDANT BEYOND A
20 REASONABLE DOUBT? THE DEFENDANT HAS NO BURDEN TO
21 PROVE HIS INNOCENCE. THE DEFENDANT DOESN'T HAVE TO
22 TAKE THE WITNESS STAND. THE DEFENDANT DOESN'T HAVE
23 TO CALL THE WITNESSES OR PROVE ANY DEFENSES; RATHER
24 THE BURDEN OF PROOF IS UPON THE STATE. DO YOU
25 UNDERSTAND THAT?

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 A. YES, SIR.

2 Q. NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
3 YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES OF
4 THAT CASE AND THE LAW AS YOU WERE INSTRUCTED, COULD
5 YOU FIND SOMEONE NOT GUILTY OF A CHARGE?

6 A. REPEAT.

7 Q. IF, BASED UPON THE EVIDENCE IN THE CASE AND THE LAW
8 OF THE CASE, COULD YOU FIND SOMEBODY NOT GUILTY IN
9 A CASE IF THE FACTS WARRANTED A NOT GUILTY VERDICT?

10 A. YES, SIR.

11 Q. ON THE OTHER SIDE OF THE FENCE, IF THE FACTS
12 WARRANTED IT AND YOU APPLIED THE LAW, ACCEPTED THE
13 LAW AS THE COURT GAVE IT TO YOU AS BEING THE
14 CORRECT LAW, COULD YOU FIND SOMEONE GUILTY OF THE
15 FACTS IF THE STATE PROVED THE GUILT BEYOND A
16 REASONABLE DOUBT?

17 A. YES, SIR.

18 Q. AND SO, IN OTHER WORDS, YOUR DECISION AS TO WHETHER
19 SOMEBODY IS GUILTY OR NOT GUILTY IS BASED UPON THE
20 EVIDENCE THAT YOU HEAR; IS THAT RIGHT?

21 A. THE EVIDENCE; YES, SIR.

22 Q. SO YOU DON'T HAVE YOUR MIND MADE UP THAT SOMEONE IS
23 AUTOMATICALLY GUILTY OR NOT GUILTY?

24 A. NO.

25 Q. NOW, MOST OF THE TIME IN CRIMINAL TRIALS EXCEPT IN

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 A DEATH PENALTY, MR. CHRISTOPHER BARTON, THE
2 SENTENCE OR THE PENALTY IMPOSED IS THE
3 RESPONSIBILITY OF THE COURT. BUT UNDER THE LAW
4 WHERE THE DEATH PENALTY IS BEING SOUGHT IN A MURDER
5 CASE, THERE'S A TWO-PART TRIAL, A GUILT PHASE. IF
6 YOU FIND THE DEFENDANT NOT GUILTY, THAT ENDS THE
7 MATTER AS FAR AS THE MURDER CHARGE OR THE DEATH
8 PENALTY OR WHAT HAVE YOU. BUT IF HE IS FOUND
9 GUILTY BY A UNANIMOUS VERDICT OF TWELVE JURORS
10 BEYOND A REASONABLE DOUBT WHERE THE STATE HAS THE
11 BURDEN OF PROVING THAT, THEN YOU WOULD GO TO WHAT'S
12 CALLED THE PENALTY PHASE WHERE YOU WOULD HAVE
13 SEVERAL OPTIONS. ONE WOULD BE THE STATE IS
14 REQUIRED TO PROVE AGGRAVATING STATUTORY
15 CIRCUMSTANCES. AND YOU MUST -- THE JURY, ALL
16 TWELVE, MUST FIND ONE OF THOSE STATUTORY
17 AGGRAVATING CIRCUMSTANCES BEFORE A VERDICT COULD BE
18 RETURNED RECOMMENDING THE DEATH PENALTY. ON THE
19 OTHER HAND THE DEFENDANT, IF HE SO CHOOSES, BECAUSE
20 THERE IS NO BURDEN ON THE DEFENDANT TO PRODUCE ANY
21 EVIDENCE EVEN IN THE PENALTY PHASE; YOU MAY
22 INTRODUCE EVIDENCE IN MITIGATION OR LESSENING. YOU
23 MAY FIND THAT THE DEFENDANT HAS PROVEN THAT THERE
24 ARE THE EXISTENCE, WE'LL SAY, OF MITIGATING
25 CIRCUMSTANCES, OR YOU MAY NOT FIND ANY MITIGATING

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 CIRCUMSTANCES. YOU CAN RECOMMEND, YOU OR THE
2 TWELVE JURORS, CAN RECOMMEND BY WAY OF MERCY, LIFE
3 IMPRISONMENT WITHOUT PAROLE EVEN IF YOU FIND A
4 STATUTORY AGGRAVATING CIRCUMSTANCE. OR IF YOU DO
5 OR DO NOT FIND A MITIGATING CIRCUMSTANCE, OR FOR NO
6 REASON AT ALL YOU CAN RETURN A VERDICT WITH A
7 RECOMMENDATION OF LIFE WITHOUT PAROLE. DO YOU
8 UNDERSTAND THAT?

9 A. YES.

10 Q. COULD YOU FOLLOW THAT INSTRUCTION IN THE LAW?

11 A. YES, I CAN.

12 Q. NOW, YOU HAVE BEEN GIVEN A LITTLE SHEET THERE THAT
13 HAS THREE TYPES OF JURORS IN THERE. HAVE YOU HAD
14 AN OPPORTUNITY TO READ OVER THAT DOCUMENT?

15 A. YES, YOUR HONOR.

16 Q. DO YOU UNDERSTAND WHAT IT SAYS?

17 A. YES, SIR.

18 Q. AND THERE'S A TYPE ONE AND A TYPE TWO AND A TYPE
19 THREE JUROR. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND A TYPE ONE IS WHERE A JUROR, ONCE THE STATE HAS
22 PROVEN MURDER BEYOND A REASONABLE DOUBT, THEN YOU
23 CONSIDER THE PUNISHMENT. JUROR ONE WOULD JUST VOTE
24 FOR THE DEATH PENALTY IN EVERY CASE ONCE A MURDER
25 IS COMMITTED. IT DOESN'T MATTER WHAT THE

CHRISTOPHER BARTON - EXAMINATION BY THE COURT

1 MITIGATING OR AGGRAVATING CIRCUMSTANCES; THEY WOULD
2 ALWAYS VOTE FOR THE DEATH PENALTY. DO YOU
3 UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. THEN THERE'S A SECOND TYPE JUROR, ONE THAT ALTHOUGH
6 THE GUILT OF THE DEFENDANT HAS BEEN DETERMINED,
7 UNDER NO CIRCUMSTANCES COULD THAT SECOND TYPE JUROR
8 EVER GIVE THE DEATH PENALTY. THAT JUROR WOULDN'T
9 NEED TO HEAR WHAT THE FACTS AND CIRCUMSTANCES AND
10 AGGRAVATION TO THE PARTICULAR CASE WERE, IF ANY,
11 BECAUSE THE JUROR WOULD HAVE HIS OR HER MIND MADE
12 UP CONCERNING PUNISHMENT NO MATTER WHAT SHE OR HE
13 HAD HEARD. DO YOU UNDERSTAND THAT TYPE TWO?

14 A. YES, SIR.

15 Q. AND THEN THERE'S A THIRD TYPE WHO ALTHOUGH THE
16 GUILT OF THE DEFENDANT HAD BEEN DETERMINED WOULD
17 NOT HAVE HIS OR HER MIND MADE UP IN ADVANCE
18 CONCERNING PUNISHMENT, AND THIS JUROR WOULD HAVE TO
19 HEAR ABOUT THE FACTS AND CIRCUMSTANCES OF
20 AGGRAVATION AND IN MITIGATION WOULD WANT TO LISTEN
21 TO AND FOLLOW THE LAW AS THE JUDGE CHARGED THE JURY
22 BEFORE HE OR SHE COULD MAKE THE DECISION REGARDING
23 PUNISHMENT. AND IF THE FACTS PRESENTED BY THE
24 STATE OR THE DEFENDANT SO WARRANTED, THAT JUROR
25 COULD BRING IN A VERDICT OF LIFE IMPRISONMENT OR A

CHRISTOPHER BARTON - DIRECT/MR. THEOS

1 VERDICT FOR THE DEATH PENALTY. NOW, DO YOU
2 UNDERSTAND THAT THIRD TYPE JUROR?

3 A. YES, SIR.

4 Q. NOW, WHICH ONE OF THOSE THREE DO YOU FEEL THAT YOU
5 FALL INTO BEARING IN MIND THERE'S NO MAGIC ANSWER?
6 AND YOU'RE GOING TO PASS REGARDLESS OF WHAT YOUR
7 ANSWER IS. WHICH WOULD YOU BE; A JUROR ONE, A
8 JUROR TWO, OR A JUROR THREE?

9 A. JUROR THREE.

10 Q. SO YOU WOULD BE ABLE TO SENTENCE SOMEONE TO DEATH
11 OR LIFE IMPRISONMENT DEPENDING UPON THE FACTS AND
12 CIRCUMSTANCES THAT YOU WOULD HEAR IN THAT PART OF
13 THE CASE; IS THAT CORRECT?

14 A. YES, SIR.

15 Q. ALL RIGHT.

16 THE COURT: YOU MAY PROCEED, MR.
17 THEOS.

18 DIRECT EXAMINATION

19 BY MR. THEOS:

20 Q. MR. BARTON, HOW ARE YOU DOING?

21 A. FINE.

22 Q. I'M JERRY THEOS. THIS IS JIM BELL. WE REPRESENT
23 KENNETH SIMMONS. WE WERE INTRODUCED TO YOU
24 BEFORE. JUST AS THE JUDGE SAID, UNDERSTAND WE'RE
25 NOT TRYING TO PUT YOU ON THE SPOT. WE'RE NOT

CHRISTOPHER BARTON - DIRECT/MR. THEOS

1 TRYING TO MAKE YOU FEEL AWKWARD IN ANY WAY. AND
2 WE'RE NOT PASSING JUDGMENT ON WHAT YOUR RESPONSES
3 ARE, OKAY? WE'RE JUST TRYING TO FIND OUT
4 TRUTHFULLY WHAT YOUR ANSWERS ARE. AND AS I
5 UNDERSTAND IT, WHAT YOU'VE TOLD JUDGE PEEPLES IS
6 THAT YOUR DECISION FIRST OF ALL AS TO GUILT OR
7 INNOCENCE WOULD DEPEND ON WHAT WAS PRESENTED TO YOU
8 IN THE COURTROOM DURING THE CASE?

9 A. THAT'S CORRECT.

10 Q. AND BASED UPON WHAT WAS PRESENTED, IF YOU FELT THAT
11 THE STATE HAD PROVEN THEIR CASE BEYOND A REASONABLE
12 DOUBT THAT YOU COULD FIND MR. SIMMONS GUILTY?

13 A. THAT'S CORRECT.

14 Q. ON THE OTHER HAND, IF THE STATE DID NOT PROVE THEIR
15 CASE BEYOND A REASONABLE DOUBT, YOU COULD ALSO FIND
16 MR. SIMMONS NOT GUILTY?

17 A. THAT'S CORRECT.

18 Q. AND AS THE JUDGE HAS INDICATED TO YOU, JUST BECAUSE
19 WE'RE TALKING ABOUT PUNISHMENT AND PENALTIES AT
20 THIS POINT, THAT IS IN NO WAY AN INDICATION THAT
21 MR. SIMMONS IS GUILTY OF ANYTHING?

22 A. THAT'S CORRECT.

23 Q. YOU UNDERSTAND HE SITS HERE PRESUMED TO BE
24 INNOCENT; IS THAT RIGHT?

25 A. CORRECT.

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 Q. AND I ASSUME BASED UPON YOUR ANSWER TO JUDGE
2 PEEPLE'S QUESTION THAT YOU CONSIDER YOURSELF A
3 NUMBER THREE JUROR; THAT YOUR DECISION IN THE
4 PENALTY PHASE, JUST AS IT WOULD BE IN THE GUILT
5 PHASE, WOULD HINGE UPON WHAT WAS PRESENTED IN THE
6 COURTROOM?

7 A. THAT'S CORRECT.

8 Q. AND BASED UPON WHAT WAS PRESENTED, YOU WOULD
9 LISTEN, CAREFULLY CONSIDER IT, AND THEN VOTE FOR
10 EITHER LIFE OR DEATH DEPENDING ON THE
11 CIRCUMSTANCES?

12 A. THAT'S CORRECT.

13 Q. AND THE EVIDENCE AS IT WAS PRESENTED; IS THAT
14 RIGHT?

15 A. THAT'S CORRECT.

16 MR. THEOS: NO FURTHER QUESTIONS,
17 YOUR HONOR.

18 THE COURT: CROSS, MR. SOLICITOR?

19 MR. BAILEY: IF IT PLEASE THE COURT?

20 CROSS-EXAMINATION

21 BY MR. BAILEY:

22 Q. MR. BARTON, I'M WALTER BAILEY. I WANT TO ASK YOU
23 JUST A FEW MORE QUESTIONS. I NOTICE THAT YOU
24 ATTEND THE BAPTIST CHURCH. YOU GO ABOUT ONCE A
25 MONTH?

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 A. THAT'S CORRECT.

2 Q. ALL RIGHT, SIR. AND DO YOU DO KNOW WHETHER OR NOT
3 YOUR PARTICULAR CHURCH HAS ANY BELIEFS ON THE DEATH
4 PENALTY ONE WAY OR THE OTHER?

5 A. NO.

6 Q. DO YOU HAVE ANY STRONGLY HELD PERSONAL BELIEFS
7 ABOUT THE DEATH PENALTY, EITHER FOR IT OR AGAINST
8 IT, THAT YOU THINK MIGHT MAKE A DIFFERENCE IN YOUR
9 MIND IF YOU WERE PICKED ON A CASE SUCH AS THIS?

10 A. NO.

11 Q. ALL RIGHT, SIR. IS THE DEATH PENALTY SOMETHING
12 THAT YOU'VE EVER HAD OCCASION TO REALLY THINK ABOUT
13 BEFORE TODAY?

14 A. NO.

15 Q. AND YOU UNDERSTAND FROM WHAT JUDGE PEEPLES TOLD YOU
16 A FEW MINUTES AGO THAT IN SOUTH CAROLINA THE JUDGE
17 DOESN'T DECIDE WHAT THE PENALTY IS IF WE GET TO
18 THAT POINT. IF THE DEFENDANT IS FOUND GUILTY OF
19 MURDER AND WE GO TO THE SECOND PHASE OF THAT TRIAL,
20 THAT WHATEVER THE JURY DECIDES THE SENTENCE OUGHT
21 TO BE WILL BE THE SENTENCE. IN OTHER WORDS, IF THE
22 JURY, AFTER HEARING ALL OF THE FACTS, DECIDES ON
23 LIFE WITHOUT PAROLE, THAT'S WHAT JUDGE PEEPLES IS
24 GOING TO ORDER. ON THE OTHER HAND, IF THEY HEAR
25 ALL THOSE FACTS AND THINK THAT THE DEATH PENALTY IS

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 APPROPRIATE, THAT'S WHAT THE JUDGE IS GOING TO
2 ORDER, AND THAT'S WHAT'S ACTUALLY GOING TO HAPPEN.
3 IN OTHER WORDS, THE JURY'S DECISION IS GOING TO BE
4 CARRIED OUT NO MATTER WHAT IT IS. DO UNDERSTAND
5 THAT?

6 A. YES.

7 Q. ALL RIGHT, SIR. NOW, NOBODY IS GOING TO ASK YOU TO
8 PREDICT WHAT YOU'D DO IN THIS CASE BECAUSE YOU
9 HAVEN'T HEARD ANY OF THE FACTS. AND YOU'VE SAID
10 YOU WANTED TO WAIT UNTIL YOU HEAR THE FACTS BEFORE
11 YOU MAKE A DECISION. BUT IF THE FACTS WERE BAD
12 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
13 KNOWING THAT SENTENCE IS ACTUALLY GOING TO GET
14 CARRIED OUT BASED ON THAT JURY'S VERDICT?

15 A. IF IT'S PROVEN TO BE GUILTY; THEN, YES.

16 Q. ALL RIGHT, SIR. AND GUILTY, OF COURSE, JUST
17 RELATES TO THE FIRST PART OF THE TRIAL. AND IF THE
18 DEFENDANT IS FOUND GUILTY OF MURDER, THEN AND ONLY
19 THEN DO WE GO INTO THAT SECOND PHASE?

20 A. YES, SIR.

21 Q. ALL RIGHT, SIR. AND IF ALL THE JURORS IN THE
22 SECOND PHASE OF THE TRIAL DECIDE THAT BETWEEN LIFE
23 WITHOUT PAROLE AND THE DEATH PENALTY, THE DEATH
24 SENTENCE IS THE APPRECIATE SENTENCE, THEN EACH
25 PERSON WOULD HAVE TO SIGN THEIR NAME TO A VERDICT

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 FORM THAT WOULD RESULT IN THAT EXECUTION TAKING
2 PLACE. COULD YOU SIGN YOUR NAME TO A PAPER LIKE
3 THAT ALONG WITH THE ELEVEN OTHER JURORS IF THAT WAS
4 YOUR DECISION?

5 A. IF THE DECISION WAS MADE; YES, SIR.

6 Q. ALL RIGHT, SIR. AND THE LAST THING THE JURY WOULD
7 BE ASKED TO DO IF THEY CAME BACK WITH A DEATH
8 VERDICT WOULD BE TO COME OUT HERE IN OPEN COURT
9 WHEN THEIR NAMES ARE CALLED OUT ONE AT A TIME.
10 THEY WOULD ASK TO AFFIRM THAT VERDICT OUT LOUD.
11 COULD YOU DO THAT IF THAT WAS YOUR VERDICT?

12 A. YES.

13 Q. CAN YOU THINK OF ANY REASON AT ALL, MR. BARTON,
14 THAT WE HAVEN'T EVEN MENTIONED YET THAT YOU THINK
15 WOULD IN ANY WAY PREVENT YOU FROM SERVING AS A FAIR
16 AND IMPARTIAL JUROR FOR BOTH SIDES, THE STATE AND
17 THE DEFENSE?

18 A. NO.

19 Q. THAT'S ALL I HAVE. THANK YOU VERY MUCH.

20 THE COURT: ANYTHING ON RE-DIRECT,
21 PLEASE?

22 MR. THEOS: NOTHING, YOUR HONOR.

23 THE COURT: NOW, MR. BARTON, YOU
24 UNDERSTAND THAT IF YOU ARE SELECTED AS A JUROR IN
25 THIS CASE, AND WE'LL PROBABLY HAVE THE JURORS

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 DRAWN, WE HOPE, BY TWO O'CLOCK ON WEDNESDAY -- WE
2 DON'T KNOW YET. IT DEPENDS ON HOW THIS QUESTIONING
3 GOES -- THAT YOU WILL BE SEQUESTERED AND KEPT IN A
4 LOCAL HOLIDAY INN MOTEL. THE COUNTY WOULD PAY THE
5 VARIOUS EXPENSES, AND YOU WOULD BE FED. YOU
6 WOULDN'T BE ALLOWED TO SEE YOUR FAMILY OR GO TO
7 WORK OR TALK TO ANYONE EXCEPT YOUR FELLOW JURORS.
8 AND, YOU KNOW, YOU MIGHT SPEAK TO A WAITRESS IN THE
9 DINING ROOM; BUT YOU WOULDN'T BE ALLOWED TO TALK TO
10 ANYBODY ABOUT THIS CASE. AND IF YOU WERE ALLOWED
11 TO READ A NEWSPAPER, IT WOULDN'T COVER ANYTHING
12 ABOUT THIS CASE. AND IF YOU WERE ALLOWED TO WATCH
13 TELEVISION DURING CERTAIN TIMES THAT YOU WOULD NOT
14 BE ABLE TO WATCH ANY NEWS ACCOUNT OF THIS. NOW, IS
15 THERE ANYTHING ABOUT YOUR WORK SITUATION OR ABOUT
16 YOUR PHYSICAL HEALTH THAT WOULD CAUSE A PROBLEM IF
17 YOU WERE SELECTED AS A JUROR AND YOU WERE
18 SEQUESTERED OR KEPT AWAY FROM THE WORLD, SO TO
19 SPEAK, DURING THE TRIAL OF THIS CASE? CAN YOU
20 THINK OF ANY HARDSHIP OR PROBLEM THAT YOU WOULD
21 HAVE?

22 MR. BARTON: NONE.

23 THE COURT: AND, MR. BARTON, JUST AS
24 THE SOLICITOR ASKED YOU, IF THE EVIDENCE WARRANTED
25 FINDING THE DEATH PENALTY AND THE STATE PROVED IT

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 BEYOND A REASONABLE DOUBT, ON OTHER HAND YOU
2 REALIZE THAT YOU CAN RETURN A VERDICT OF LIFE
3 IMPRISONMENT FOR NO REASON AT ALL AS AN ACT OF
4 MERCY EVEN THOUGH YOU MAY HAVE FOUND THE STATUTORY
5 AGGRAVATING CIRCUMSTANCES. DO YOU UNDERSTAND
6 THAT?

7 MR. BARTON: YES.

8 THE COURT: AND REGARDLESS OF THE
9 FACTS OF THE CASE, HOW SERIOUS A NATURE THEY MAY
10 APPEAR TO BE. IF YOU WERE FOUND GUILTY OF MURDER,
11 AND IF THE FACTS WARRANTED RETURNING A LIFE
12 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE,
13 COULD YOU DECIDE THAT IF THE FACTS WARRANTED IT?

14 MR. BARTON: IF THE FACTS WARRANTED
15 IT.

16 THE COURT: AND, LIKEWISE, COULD YOU
17 FIND THE DEATH PENALTY BY ELECTROCUTION OR LETHAL
18 INJECTION? THAT'S NOT UP TO THE JURY. IT'S JUST
19 THE DEATH PENALTY. HOW WOULD BE UP TO THE
20 DEFENDANT TO MAKE THAT ELECTION. BUT COULD YOU IF
21 THE FACTS WARRANTED IT AND IF THE STATE PROVED IT
22 BEYOND A REASONABLE DOUBT, UNDER YOUR OATH YOU
23 COULD RETURN A VERDICT OF THE DEATH PENALTY
24 RECOMMENDATION AND SIGN YOUR NAME TO THE VERDICT
25 AND AFFIRM IT IN OPEN COURT?

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 MR. BARTON: YES.

2 THE COURT: ALL RIGHT. THANK YOU.

3 LET ME ASK YOU TO STEP OUTSIDE FOR A MINUTE,
4 PLEASE. HAND HIM THAT PIECE OF PAPER, MADAM CLERK,
5 TO LET HIM BE LOOKING OVER. DON'T LEAVE YET. JUST
6 STAND OUTSIDE THERE, PLEASE. (AT THIS TIME JUROR
7 RETIRES TO JURY ROOM.) WHAT SAY THE STATE?

8 MR. BAILEY: HE'S QUALIFIED, YOUR
9 HONOR.

10 THE COURT: WHAT SAY DEFENDANT?

11 MR. THEOS: HE'S QUALIFIED, JUDGE.

12 THE COURT: ALL RIGHT. THE COURT
13 AGREES IN FINDING JUROR NUMBER 16 TO BE QUALIFIED
14 WITHOUT OBJECTION. AND, MADAM COURT REPORTER,
15 FORTUNATELY THERE SHOULD NOT BE AN ISSUE OF RACE IN
16 THIS CASE. AND I'M ASKING THE COURT REPORTER TO
17 MAKE A NOTATION THAT JUROR NUMBER 16 IS A BLACK
18 MALE, AND JUROR NUMBER ONE WHICH WAS 284 WAS A
19 WHITE MALE. AND MADAM CLERK, YOU NEED TO KEEP UP
20 WITH THAT, TOO, OKAY? AND YOU'RE MAKING A SHEET,
21 NOW, NUMBERED ONE THROUGH THIRTY-SEVEN FOR Q,
22 QUALIFIED, AND THEN A RIGHT-HAND COLUMN FOR EXCUSED
23 ONE THROUGH FIFTY -- ACTUALLY 53, IF WE ADDED 53 TO
24 37, AND YOU'RE PUTTING THE JUROR'S RACE AND GENDER
25 AND THE JUROR NUMBER. AND IF YOU'D LOOK, PLEASE

CHRISTOPHER BARTON - CROSS/MR. BAILEY

1 MADAM CLERK, IF YOU DON'T HAVE A PHONE NUMBER FOR
2 HOME OR BUSINESS OR WORK OR PLAY, THEN BRING IT TO
3 THE ATTENTION AND LET'S GET IT FILLED OUT.

4 THE CLERK: I'M CHECKING NOW.

5 THE COURT: PLEASE DO. THANK YOU.

6 ALL RIGHT, BRING THE JUROR IN, PLEASE.

7 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

8 THE COURT: JUST REMAIN STANDING

9 THERE, PLEASE, MR. CHRISTOPHER BARTON. YOU'VE BEEN
10 FOUND QUALIFIED AS A POTENTIAL JUROR IN A TRIAL OF
11 THE CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY
12 YET. IT JUST MEANS YOU'RE A POTENTIAL JUROR. WE
13 BEGIN THE JURY SELECTION PROCESS WHICH WE HOPE TO
14 DO AT TWO O'CLOCK WEDNESDAY. YOU HAVE THAT PHONE
15 NUMBER TO CALL BACK AFTER SIX O'CLOCK TUESDAY,
16 TOMORROW; AND WE'LL HAVE A MESSAGE THERE FOR THE
17 QUALIFIED JURORS AS TO WHAT TIME TO RETURN. IF YOU
18 WOULD, CALL THAT NUMBER AFTER SIX TOMORROW. YOU'RE
19 FREE TO TALK ABOUT THESE INSTRUCTIONS THAT YOU'VE
20 JUST BEEN HANDED THE SHEET ABOUT BEING AT THE
21 HOLIDAY INN AND BRINGING ENOUGH CLOTHES FOR SEVEN
22 DAYS, BRINGING YOUR MEDICINE WITH YOU; AND WE CAN
23 PARK YOUR CAR AT THE HOLIDAY INN AND TAKE YOUR KEYS
24 AND KEEP THEM, OR ELSE YOU CAN LET SOMEBODY ELSE
25 DRIVE YOUR CAR HOME IF YOUR BUSINESS OR OTHER

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 FAMILY MEMBERS NEEDED TO DO IT. NOW, PLEASE, DON'T
2 TALK TO ANYBODY ABOUT THIS CASE OR ALLOW ANYONE TO
3 TALK TO YOU ABOUT IT. AND PLEASE DON'T EXPOSE
4 YOURSELF TO ANY PUBLICITY. DON'T READ ANYTHING IN
5 THE PAPER OR LISTEN TO RADIO OR WATCH T.V. ABOUT
6 IT. AND FURTHER AS YOU LEAVE HERE, DON'T GO BACK
7 AND TALK TO ANYONE, ANY OF THESE OTHER PROSPECTIVE
8 JURORS ABOUT WHAT TRANSPIRED, WHAT QUESTIONS WERE
9 ASKED OF YOU IN HERE. SO, THANK YOU, AND YOU HAVE
10 A NICE EVENING. WE LOOK FORWARD TO SEEING YOU ON
11 WEDNESDAY. LADY BAILIFF, IF YOU WOULD, PLEASE BRING
12 THE NEXT JUROR IN WHICH WILL BE PAUL RANDOLPH,
13 JUROR NUMBER 261.

14 (JUROR NUMBER 261, A BLACK MALE, IS CALLED.)
15 - - - - -

16 WHEREUPON,

17 PAUL RANDOLPH, WHO BEING PREVIOUSLY
18 SWORN TO TELL THE TRUTH, TESTIFIED AS
19 FOLLOWS:

20 EXAMINATION

21 BY THE COURT:

22 Q. WE APOLOGIZE FOR BEING OFF OF SCHEDULE. AND
23 PLEASE, WE ASK YOUR INDULGENCE. THIS IS JUROR
24 NUMBER 261, LADY AND GENTLEMEN. AND, MR. RANDOLPH,
25 I WOULD REMIND YOU, PLEASE SIR, THAT YOU'RE STILL

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 UNDER OATH IN RESPONSE TO ANY QUESTIONS THAT MIGHT
2 BE ASKED OF YOU. AND SINCE YOU LEFT THE COURTROOM
3 EARLIER TODAY, HAS ANYBODY TALKED WITH YOU ABOUT
4 THIS CASE; HAVE YOU DISCUSSED IT WITH ANYONE OR
5 BEEN EXPOSED TO ANY ADDITIONAL INFORMATION ABOUT
6 THIS CASE?

7 A. NO, SIR.

8 Q. AND LET ME LOOK ON THIS SHEET HERE FOR NUMBER 261.
9 IT APPEARS THAT YOU HAD INDICATED THAT YOU HAD
10 SEEN, READ, OR HEARD SOMETHING ABOUT THIS CASE IN
11 THE PAST PRIOR TO TODAY. TELL ME WHAT YOU MAY HAVE
12 HEARD OR READ OR SEEN ABOUT IT, PLEASE.

13 A. YOUR HONOR, WHEN IT FIRST HAPPENED SOME YEARS BACK,
14 THERE WAS SOMETHING ON THE NEWS, TELEVISION, MAYBE
15 THE PAPER. I REMEMBER VAGUELY HEARING SOMETHING
16 ABOUT IT.

17 Q. AND BASED UPON WHAT YOU MAY HAVE HEARD AT THE TIME
18 OR SEEN OR READ, DID YOU FORM OR EXPRESS ANY
19 OPINION AS TO THE GUILT OR INNOCENCE OF THE
20 DEFENDANT, KENNETH SIMMONS?

21 A. NO, SIR.

22 Q. AND WOULD YOU BE WILLING AND ABLE IF YOU WERE
23 CHOSEN AS A JUROR IN THIS CASE TO PUT ASIDE
24 ANYTHING YOU MAY HAVE HEARD OR READ AND BASE ANY
25 DECISION AS A JUROR UPON THE EVIDENCE IN THE TRIAL

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 OF THE CASE RATHER THAN WHAT YOU HAD READ OR HEARD
2 OR SEEN?

3 A. YES, SIR.

4 Q. AND THE QUESTIONNAIRE THAT YOU HAD SUBMITTED TO THE
5 COURT, DOES THAT NEED UPDATING OR CHANGING IN ANY
6 WAY?

7 A. NO, SIR. IT'S ACCURATE.

8 Q. AND I NOTE THAT YOU STOOD IN RESPONSE TO THE
9 QUESTION OF WHETHER YOU OR ANY MEMBER OF YOUR
10 FAMILY HAVE EVER BEEN A VICTIM OF A CRIME OF
11 VIOLENCE OR INVOLVED IN ANY WAY WITH THE CRIMINAL
12 PROCESS WITH A VIOLENT CRIME. COULD YOU TELL US
13 ABOUT THAT?

14 A. I MADE AN ERRONEOUS STATEMENT. I KIND OF GOT AHEAD
15 OF YOU WHEN YOU SAID SOMETHING ABOUT THE CRIME
16 ITSELF. I NEVER WAS A PARTY TO ANY TYPE OF
17 AGGRESSION. AS I EXPLAINED, THERE WAS A BURGLARY
18 AT MY HOME BUT THERE WAS NO ONE THERE. THAT WAS
19 JUST A MISSTATEMENT ON MY PART.

20 Q. WHEN WAS THE BURGLARY OF YOUR HOME? IN WHAT COUNTY
21 AND STATE?

22 A. DORCHESTER COUNTY IN JUNE OF LAST YEAR.

23 Q. AND HAD THE PERSON WHO BROKE IN; DID THEY -- WAS IT
24 FORCIBLE ENTRY?

25 A. YES, SIR.

PAUL RANDOLPH - EXAMINATION BY THE COURT

- 1 Q. WAS ANYTHING STOLEN?
- 2 A. SOME JEWELRY.
- 3 Q. HAS IT BEEN RECOVERED?
- 4 A. NO, SIR.
- 5 Q. AND PLEASE UNDERSTAND, MR. RANDOLPH, THAT WE'RE NOT
- 6 TRYING TO INVADE YOUR PRIVACY IN ANY WAY. PLEASE
- 7 DON'T BE THREATENED BY THESE QUESTIONS. YOU'RE NOT
- 8 GOING TO FLUNK. THERE ARE NO RIGHT OR WRONG
- 9 ANSWERS BECAUSE YOU'RE ENTITLED TO YOUR OPINIONS
- 10 AND YOUR VIEWS. BUT THIS PROCEDURE IS NECESSARY IN
- 11 ORDER TO GIVE THE STATE AND DEFENSE ATTORNEYS SOME
- 12 ADDITIONAL INFORMATION ABOUT YOU TO AID THEM IN
- 13 WHETHER OR NOT THEY SHOULD ACCEPT OR REJECT YOU AS
- 14 A MEMBER OF THE JURY. BUT WE'RE NOT TRYING TO
- 15 CHANGE YOUR VIEWS OR SAY THAT THEY'RE RIGHT OR
- 16 THEY'RE WRONG. AND WE'RE GOING TO HAVE TO TALK TO
- 17 YOU ABOUT PENALTIES IN THIS CASE BECAUSE THERE WILL
- 18 BE NO OTHER OPPORTUNITY THAT THE LAWYERS WOULD HAVE
- 19 TO OBTAIN INFORMATION ABOUT YOUR VIEWS ONCE THE
- 20 JURY HAS BEEN SWORN. BUT IN A CAPITAL MURDER CASE,
- 21 THE TRIAL IS IN TWO PARTS. THE FIRST PART IS
- 22 WHAT'S CALLED THE GUILT PHASE. BEAR IN MIND THAT
- 23 THE BURDEN IS UPON THE STATE TO PROVE THE DEFENDANT
- 24 GUILTY BEYOND A REASONABLE DOUBT. THERE'S NO
- 25 BURDEN UPON THE DEFENDANT. HE'S NOT REQUIRED TO

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 PROVE HIMSELF INNOCENT BECAUSE IN MANY INSTANCES
2 THAT MIGHT NOT BE POSSIBLE. HE DOESN'T HAVE TO
3 PRESENT EVIDENCE. HE DOESN'T HAVE TO TAKE THE
4 WITNESS STAND. HE HAS VARIOUS CONSTITUTIONAL
5 PRIVILEGES AND RIGHTS UNDER THOSE GUARANTEES OF THE
6 LAW; AND THE VERDICT MUST BE UNANIMOUS. AND THAT
7 GUILT PHASE, IF YOU FIND THE DEFENDANT NOT GUILTY
8 OF MURDER, THERE WOULD BE NO PENALTY PHASE ON THE
9 CHARGE OF MURDER FOR DEATH PENALTY BECAUSE HE WOULD
10 HAVE BEEN FOUND NOT GUILTY. AND THAT'S ENTIRELY UP
11 TO THE JURY. THIS COURT DOES NOT MEAN TO IMPLY BY
12 INQUIRING ABOUT PENALTY PHASE; PLEASE DERIVE NO
13 INFERENCE WHATSOEVER THAT THE COURT IS OF THE VIEW,
14 OR ANYBODY IS OF THE VIEW, THAT THE DEFENDANT IS
15 GUILTY BECAUSE HE RATHER SITS HERE PRESUMED
16 INNOCENT, AND THAT PRESUMPTION OF INNOCENCE WILL
17 CONTINUE THROUGHOUT THE TRIAL AND UNTIL THE STATE
18 HAS PROVEN HIS GUILT BEYOND A REASONABLE DOUBT. DO
19 YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND THEN, OF COURSE, IF HE'S FOUND GUILTY OF
22 MURDER, WE WOULD THEN HAVE A 24 HOUR WAITING PERIOD
23 IN ALL PROBABILITY. AND THEN THE STATE WOULD BE
24 ALLOWED TO -- THE SAME TWELVE JURORS WOULD LISTEN
25 TO EVIDENCE THAT THE STATE MIGHT OFFER AS TO

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 STATUTORY AGGRAVATING CIRCUMSTANCES. THE JURY
2 COULD NOT RECOMMEND THE DEATH PENALTY UNLESS THEY
3 FOUND A STATUTORY AGGRAVATING CIRCUMSTANCE, AND A
4 LIST OF THOSE WOULD BE GIVEN TO YOU. IF YOU DID
5 RECOMMEND THE DEATH PENALTY, EACH OF THE TWELVE
6 JURORS WOULD HAVE TO SIGN THEIR NAME. YOU'D BE
7 BROUGHT BACK INTO COURT, AND THE JURY WOULD BE
8 POLLED, AND THE CLERK WOULD ASK YOU IF THAT WAS
9 YOUR VERDICT SO INDICATE BY RAISING YOUR HAND OR
10 WHATEVER THE MODE OR MANNER THE CLERK MAY USE. ON
11 THE OTHER HAND, YOU WOULD ALSO CONSIDER ANY
12 MITIGATING CIRCUMSTANCE, STATUTORY OR OTHERWISE,
13 WHICH MITIGATING MEANS LESSENING BY WHICH BECAUSE
14 YOU, THE JURY, FIND AS A FACT THAT LESS OF A
15 PENALTY SHOULD BE IMPOSED, YOU RECOMMEND TO THE
16 COURT. THE COURT IS THE ONE THAT ACTUALLY ORDERS
17 THE PENALTY CARRIED OUT WHETHER IT'S LIFE
18 IMPRISONMENT WITHOUT PAROLE OR THE DEATH PENALTY BY
19 ELECTROCUTION OR LETHAL INJECTION. THE DEATH
20 PENALTY OPTION WOULD BE UP TO THE DEFENDANT AS TO
21 WHICH HE MAY PREFER IF THE VERDICT BE FOR THE DEATH
22 PENALTY. BUT YOU COULD FIND A STATUTORY
23 AGGRAVATING CIRCUMSTANCE BUT YET MAKE A
24 RECOMMENDATION, YOU AND THE OTHER JURORS, OF
25 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT PAROLE

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 BECAUSE THAT'S WHAT THE LAW IS IF THE
2 RECOMMENDATION IS LIFE IMPRISONMENT; THE LAW IS
3 IT'S WITHOUT PAROLE. AND YOU COULD DO THAT FOR NO
4 REASON WHATSOEVER, JUST AS A MATTER OF MERCY ON THE
5 PART OF THE JURORS. SO, DEPENDING ON THE FACTS OF
6 THE CASE, DO YOU FEEL THAT YOU COULD APPLY THE LAW
7 BOTH IN THE GUILT PHASE AND THE PENALTY PHASE;
8 COULD YOU APPLY THE LAW AS THE COURT MAY INSTRUCT
9 YOU TO THE LAW BASED UPON THE FACTS AS YOU OF THE
10 JURY MAY FIND THOSE FACTS TO BE?

11 A. YES, SIR.

12 Q. AND HAVE YOU, MR. RANDOLPH; DO YOU HAVE ANY BIAS OR
13 PREJUDICE FOR OR AGAINST THE STATE OR THE
14 DEFENDANT?

15 A. NO, SIR.

16 Q. WOULD YOU LISTEN TO THE INSTRUCTION OF THE LAW BY
17 THE COURT?

18 A. YES, SIR.

19 Q. AND WOULD YOU APPLY THAT LAW TO THE FACTS, AND IF
20 THE FACTS WARRANTED IT RETURN A VERDICT OF NOT
21 GUILTY OR A VERDICT OF GUILTY DEPENDING ON YOUR
22 VIEW OF THE EVIDENCE?

23 A. YES, SIR.

24 Q. AND YOU HAVE HAD AN OPPORTUNITY TO READ THOSE THREE
25 TYPES OF JURORS SCENARIO SHEET THAT WAS GIVEN TO

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 YOU?

2 A. YES, SIR.

3 Q. AND YOU HAVE THAT IN YOUR HAND WHICH IS GOOD, AND
4 IT'S NOT INTENDED THAT YOU SHOULD MEMORIZE THAT.
5 BUT, OF COURSE, THE STATE IS CHARGING THE DEFENDANT
6 WITH MURDER. AND IF THEY PROVE BEYOND A REASONABLE
7 DOUBT THE DEFENDANT COMMITTED THE CRIME, THEN WE'D
8 GO INTO A SEPARATE PROCEEDING OF THE PENALTY
9 PHASE. AND THEN THE ULTIMATE PUNISHMENT OF THE
10 DEFENDANT WOULD BE IN THE HANDS OF THE MEMBERS OF
11 THE JURY, THE SAME MEMBERS THAT ALLEGEDLY FOUND HIM
12 GUILTY OF MURDER. AND LIKE I SAY, THERE'S NO RIGHT
13 ANSWERS OR WRONG ANSWERS BECAUSE THE DEFENDANT IS
14 ALWAYS PRESUMED INNOCENT UNTIL THE STATE REMOVES
15 THAT PRESUMPTION OF INNOCENCE. BUT YOU UNDERSTAND
16 TYPE ONE JUROR, REGARDLESS OF THE EVIDENCE, THAT
17 THAT JUROR WOULD JUST FEEL IF YOU FOUND HIM GUILTY
18 OF MURDER, THEY'D HAVE TO IMPOSE THE DEATH PENALTY.
19 DO YOU UNDERSTAND THAT'S JUROR ONE?

20 A. YES, SIR.

21 Q. AND BY THE SAME TOKEN, JUROR TWO IS THAT JUROR THAT
22 ALBEIT THEY FOUND THE DEFENDANT GUILTY OF MURDER
23 BEYOND A REASONABLE DOUBT THAT REGARDLESS OF THE
24 EVIDENCE THAT THE STATE MAY OFFER, REGARDLESS OF
25 THE PROOF THEREOF, THAT UNDER NO CIRCUMSTANCES

PAUL RANDOLPH - EXAMINATION BY THE COURT

1 WOULD THEY VOTE FOR THE DEATH PENALTY BUT IT JUST
2 WOULD BE AN AUTOMATIC LIFE IMPRISONMENT WITHOUT
3 PAROLE. DO YOU UNDERSTAND THAT'S JUROR TWO?

4 A. YES, SIR.

5 Q. JUROR THREE, YOU UNDERSTAND, IS THAT JUROR WHO
6 WOULD LISTEN TO THE TESTIMONY, BE OPEN-MINDED AND
7 BE FAIR, HAVE NO BIAS OR PREJUDICE FOR OR AGAINST
8 EITHER THE STATE OR THE DEFENDANT, WOULD LISTEN TO
9 THE LAW AS CHARGED BY THE COURT, AND THEN APPLY
10 THAT LAW TO THE FACTS AS THE JURY MAY FIND THOSE
11 FACTS TO BE, THEN COME OUT WITH A FAIR VERDICT OF
12 EITHER DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT
13 PAROLE DEFENDING ON THE CIRCUMSTANCES BEFORE THE
14 JURY?

15 A. YES, SIR.

16 Q. AND I RECOGNIZE THAT IT'S INCONVENIENT FOR
17 EVERYBODY TO BE HERE. BUT IS THERE ANYTHING ABOUT
18 YOUR HEALTH WHERE IF YOU WERE SELECTED TO SERVE ON
19 THIS JURY YOU WOULD BE, WHEN YOU REPORT BACK ON
20 WEDNESDAY FOR THE JURY STRIKE -- WE HOPE TO BE
21 READY FOR IT BY THEN -- THAT WE HAVE AN INSTRUCTION
22 SHEET FOR YOU TO TAKE WITH YOU. BRING CLOTHES FOR
23 A WEEK. BRING MEDICATION. YOU WON'T BE ALLOWED TO
24 TALK TO MEMBERS OF YOUR FAMILY EXCEPT IN AN
25 EMERGENCY SITUATION. THEY WON'T BE ABLE TO TALK TO

PAUL RANDOLPH - DIRECT/MR. BAILEY

1 YOU; AND YOU'RE NOT TO DELIBERATE OR DECIDE THE
2 CASE UNTIL ALL THE EVIDENCE AND TESTIMONY IS IN.
3 THE COUNTY WOULD PAY THE EXPENSES OF YOUR MEALS AND
4 THE SEQUESTRATION AT THE HOLIDAY INN. IS THERE
5 ANYTHING ABOUT YOUR STATE OF HEALTH THAT WOULD
6 CAUSE A PHYSICAL OR MENTAL PROBLEM TO YOU IF YOU
7 WERE SELECTED AS A JUROR AND SEQUESTERED?

8 A. NO, SIR.

9 Q. IN REGARD TO YOUR FAMILY AND YOUR BUSINESS OR YOUR
10 WORK; I REALIZE THAT IT'S CERTAINLY NOT PLEASANT
11 BEING AWAY FROM YOUR HOME, YOUR FAMILY, AND FRIENDS
12 FOR ANY LENGTH OF TIME AND FOR BEING CUT OFF FROM
13 COMMUNICATION FROM THE OUTSIDE WORLD IN ANYTHING
14 THAT REGARDS THIS PARTICULAR CASE, ALTHOUGH YOU
15 COULD READ A NEWSPAPER BUT THEY WOULD BE REDACTING
16 ANY REPORT OF THE TRIAL. ANY REPORT OF THE TRIAL
17 WOULD BE EXCLUDED FROM ANY NEWSPAPER THAT YOU
18 READ. WOULD THAT CAUSE YOU ANY PROBLEMS?

19 A. NO, SIR.

20 Q. ALL RIGHT. THANK YOU SO MUCH.

21 THE COURT: AT THIS TIME, MR.
22 SOLICITOR; WOULD YOU LIKE TO POSE ANY QUESTIONS OF
23 THIS SUBJECT?

24 MR. BAILEY: YES, SIR. THANK YOU,
25 YOUR HONOR.

PAUL RANDOLPH - DIRECT/MR. BAILEY

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. RANDOLPH, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW MORE QUESTIONS TO FOLLOW UP ON WHAT JUDGE PEEPLES HAD ASKED YOU. BEFORE TODAY WHEN YOU FOUND OUT THAT YOU MIGHT BE A JUROR ON A DEATH PENALTY CASE, HAD YOU REALLY FORMULATED YOUR THOUGHTS ON THE DEATH PENALTY IN GENERAL? NOT THIS CASE; BUT JUST IN GENERAL?

A. NOT REALLY. I MEAN, KNOW IT EXISTS, AND I KNOW SOMETHING ABOUT THE APPLICATION OF IT; BUT NO HARD LINE POSITIONS.

Q. I NOTICE IN YOUR QUESTIONNAIRE YOU GO TO THE A.M.E. AME CHURCH?

A. YES, SIR.

Q. DOES THAT CHURCH HAVE A POSITION ON THE DEATH PENALTY THAT YOU'RE AWARE OF?

A. NO, SIR; IT'S NOT A HARD LINE ISSUE; NO, SIR.

Q. OKAY. AND YOU UNDERSTAND THAT WE WOULDN'T EVEN GET TO THAT POINT UNLESS AND UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL?

A. YES, SIR.

Q. IF HE'S FOUND GUILTY, THAT'S THE END OF IT?

A. YES, SIR.

PAUL RANDOLPH - DIRECT/MR. BAILEY

1 Q. IF HE'S FOUND GUILTY, WE GO INTO THAT SECOND PART
2 OF THE TRIAL WHERE ADDITIONAL EVIDENCE COMES OUT TO
3 HELP THAT JURY DECIDE BETWEEN TWO OPTIONS, THE
4 DEATH PENALTY AND LIFE WITHOUT PAROLE. AND I THINK
5 THE JUDGE TOLD YOU THIS; THAT THE JURY MAKES THE
6 DECISION, WHATEVER IT IS, IF WE GET TO THE PENALTY
7 PHASE. AND ALL THE JUDGE DOES IS ORDER THAT
8 SENTENCE CARRIED OUT. SO IF THE JURY VOTES FOR
9 LIFE WITHOUT PAROLE, IF WE GET TO THAT POINT,
10 THAT'S WHAT WILL HAPPEN. IF THE JURY VOTES FOR THE
11 DEATH PENALTY, THEN THAT'S WHAT WILL HAPPEN. AND
12 THE JUDGE WENT OVER THE THREE TYPES OF JURORS; THE
13 FIRST TYPE JUROR THAT WOULD ALWAYS VOTE FOR THE
14 DEATH SENTENCE WITH A CONVICTED MURDERER. THE
15 SECOND TYPE WOULD ALWAYS VOTE FOR LIFE WITHOUT
16 PAROLE IF HE HAD A CHOICE. THE THIRD TYPE THAT
17 COULD VOTE EITHER WAY. WHERE WOULD YOU PLACE
18 YOURSELF IN THOSE THREE CATEGORIES?

19 A. NUMBER THREE.

20 Q. OKAY. AND THE NUMBER THREE JUROR WOULD, IF WE GOT
21 TO THAT SECOND PART OF THE TRIAL, WOULD LISTEN TO
22 WHATEVER CAME OUT IN THAT SECOND PART OF THE TRIAL,
23 LISTEN TO THE JUDGE'S INSTRUCTIONS; COULD VOTE FOR
24 LIFE; COULD VOTE FOR DEATH DEPENDING ON WHAT YOU
25 HEARD. AND THAT WOULD DESCRIBE YOU?

PAUL RANDOLPH - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. IF THE CASE WERE BAD ENOUGH, YOU COULD VOTE FOR THE
3 DEATH PENALTY KNOWING THAT SENTENCE IS GOING TO GET
4 CARRIED OUT?

5 A. YES, SIR.

6 Q. I THINK YOU ANSWERED THIS WITH THE JUDGE ALSO. BUT
7 IF THE JURY VOTES FOR THE DEATH SENTENCE, EACH
8 JUROR IS ASKED TO SIGN THEIR NAME TO A PIECE OF
9 PAPER, THE DEATH VERDICT FORM, WHICH WOULD RESULT
10 IN THAT SENTENCE BEING CARRIED OUT. COULD YOU SIGN
11 THAT VERDICT IF THAT WAS YOUR VOTE?

12 A. YES, SIR.

13 Q. AND YOU COULD GET UP HERE AND ANNOUNCE THAT IF THAT
14 WAS YOUR VOTE?

15 A. YES, SIR.

16 Q. THANK YOU, SIR. THAT'S ALL I HAVE.

17 THE COURT: MR. THEOS?

18 CROSS-EXAMINATION

19 BY MR. THEOS:

20 Q. MR. RANDOLPH, HOW ARE YOU DOING?

21 A. FINE.

22 Q. I'M JERRY THEOS. THIS IS JIM BELL. WE REPRESENT
23 KENNETH SIMMONS.

24 A. YES, SIR.

25 Q. IT'S A LITTLE HARD FOR YOU TO SEE US WITH THAT

PAUL RANDOLPH - CROSS/MR. THEOS

1 PITCHER OF WATER THERE. AND, AGAIN, WE'RE NOT
2 PASSING ANY SORT OF JUDGMENT ON YOU BASED ON YOUR
3 RESPONSES. WE'RE JUST TRYING TO GET SOME NEW
4 INFORMATION THAT WILL HELP US DETERMINE ALONG WITH
5 THESE OTHER JURORS WHO WOULD MAKE GOOD, FAIR, AND
6 IMPARTIAL JURORS. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. DO YOU UNDERSTAND THE IMPORTANCE OF BEING TRUTHFUL
9 AND HONEST?

10 A. YES, SIR.

11 Q. UNDERSTANDING THAT, AND UNDERSTANDING WHAT YOUR
12 RESPONSES WERE TO JUDGE PEEPLE'S QUESTIONS AND MR.
13 BAILEY'S QUESTIONS. YOU CORRECT ME IF I'M WRONG.
14 BUT YOU UNDERSTAND JUST BECAUSE MR. SIMMONS SITS
15 HERE ON TRIAL THAT BECAUSE OF THAT FACT ALONE, HE
16 IS NOT GUILTY?

17 A. YES, SIR.

18 Q. SO YOU UNDERSTAND THE PRESUMPTION OF INNOCENCE AS
19 JUDGE PEEPLES WENT OVER WITH YOU BRIEFLY?

20 A. YES, SIR.

21 Q. AND YOU UNDERSTAND CERTAINLY THAT JUST BECAUSE
22 SOMEBODY IS CHARGED WITH SOMETHING AND BEEN
23 INDICTED WITH SOMETHING AS WE READ THOSE
24 INDICTMENTS OUT EARLIER, THAT THEY'RE STILL
25 PRESUMED TO BE INNOCENT?

PAUL RANDOLPH - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. AND THAT'S NOT EVIDENCE?

3 A. YES, SIR.

4 Q. AND AS I UNDERSTAND YOUR RESPONSES, YOU WOULD SIT
5 IN THIS JUROR'S BOX OVER HERE TO YOUR RIGHT, AND
6 YOU WOULD LISTEN TO EVERYTHING THAT CAME OFF OF THE
7 WITNESS STAND; THE SAME STAND YOU'RE SITTING ON?

8 A. YES, SIR.

9 Q. LISTEN TO EVERYTHING THAT CAME OFF OF IT. AND YOU
10 WOULD MAKE A DECISION BASED UPON THAT EVIDENCE AS
11 TO WHETHER OR NOT THE STATE MET ITS BURDEN IN
12 PROVING WHETHER OR NOT THEY PROVED MR. SIMMONS
13 GUILTY IN THIS CASE, WOULD YOU NOT?

14 A. YES, SIR.

15 Q. AND YOU UNDERSTAND THAT THE STATE DOES HAVE THE
16 BURDEN?

17 A. YES, SIR, I DO.

18 Q. AND IF THEY WERE UNABLE TO PROVE TO YOUR
19 SATISFACTION BEYOND A REASONABLE DOUBT MR. SIMMONS'
20 GUILT, WHAT WOULD BE YOUR VERDICT?

21 A. NOT GUILTY.

22 Q. AND YOU UNDERSTAND JUST BECAUSE WE'VE BEEN IN HERE
23 TALKING ABOUT PENALTY AND ASKING YOU WHETHER YOU
24 COULD IMPOSE A DEATH PENALTY OR LIFE DEATH
25 IMPRISONMENT THAT THAT HAS ABSOLUTELY NO BEARING ON

PAUL RANDOLPH - CROSS/MR. THEOS

1 THE PRESUMPTION OF INNOCENCE; THAT MR. SIMMONS SITS
2 HERE AN INNOCENT MAN?

3 A. YES, SIR.

4 Q. NOW, I ASSUME THAT IF WE DID MAKE IT TO THE PENALTY
5 PHASE; IF YOU WERE A MEMBER OF THIS JURY; AND IF
6 THE VERDICT WAS GUILT IN THE FIRST PHASE OF THE
7 TRIAL, I ASSUME IN THE SECOND PHASE THAT YOU WOULD
8 LISTEN TO EVERYTHING THAT THE STATE HAD TO OFFER
9 AND EVERYTHING THAT THE DEFENSE HAD TO OFFER BEFORE
10 REACHING A DECISION AS TO LIFE IMPRISONMENT WITHOUT
11 PAROLE OR THE INSTITUTION OF THE DEATH PENALTY?

12 A. YES, SIR, I WOULD.

13 Q. AND YOU WOULD FEEL GOOD ABOUT YOUR DECISION,
14 WHATEVER THAT MIGHT BE, AS AN INDIVIDUAL?

15 A. YES, SIR.

16 MR. THEOS: NO OTHER QUESTIONS, YOUR
17 HONOR.

18 MR. BAILEY: NO FURTHER QUESTIONS,
19 YOUR HONOR.

20 THE COURT: HAND HIM THE SHEET,
21 PLEASE MA'AM, ABOUT THE MOTEL. MR. RANDOLPH, MAY I
22 ASK YOU TO PLEASE STEP OUTSIDE FOR JUST A MINUTE?
23 (AT THIS TIME JUROR RETIRES TO JURY ROOM.) ALL
24 RIGHT. AS TO JUROR NUMBER 261, MR. PAUL RANDOLPH;
25 WHAT SAY THE STATE?

PAUL RANDOLPH - CROSS/MR. THEOS

1 MR. BAILEY: QUALIFIED, YOUR HONOR.

2 THE COURT: WHAT SAY THE DEFENDANT?

3 MR. THEOS: HE'S QUALIFIED, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT. BRING HIM
6 IN, PLEASE. (AT THIS TIME JUROR RETURNS TO OPEN
7 COURT.) MR. RANDOLPH, YOU'VE BEEN FOUND QUALIFIED
8 AS A JUROR IN THE TRIAL OF THIS CASE. THAT DOESN'T
9 MEAN YOU'RE ON THE JURY YET. THEY STILL HAVE A
10 CERTAIN NUMBER OF STRIKES, AND WE NEED TO GO
11 THROUGH A STRIKE. WE'RE ANTICIPATING, HOPING THAT
12 WE'RE NOT OVERLY PRESUMPTUOUS, THAT WE WOULD HAVE A
13 POOL OF SOME 37 QUALIFIED JURORS BY TWO O'CLOCK ON
14 WEDNESDAY. WE'RE HOPEFUL; BUT THAT'S NOT SOMETHING
15 THAT MUST BE DONE. BUT THAT'S JUST A GOAL THAT
16 HOPEFULLY IS ATTAINABLE. AND I'M GOING TO ASK YOU
17 TO CALL AFTER SIX O'CLOCK TOMORROW. THE CLERK WILL
18 GIVE YOU THAT NUMBER. YOU MAY ALREADY HAVE IT.
19 AND UNLESS WE TELL YOU TO THE CONTRARY; UNLESS WE
20 CALL YOU WITH THAT ANNOUNCEMENT ON THE RECORDING
21 THAT SAYS TO BE BACK AT TWO O'CLOCK ON WEDNESDAY,
22 BE BACK THEN UNLESS YOU GET A MESSAGE TO THE
23 CONTRARY. PLEASE DON'T DISCUSS THIS CASE WITH
24 ANYONE OR ALLOW ANYONE TO DISCUSS IT WITH YOU OR IN
25 YOUR PRESENCE. PLEASE DO NOT LISTEN TO ANY NEWS

PAUL RANDOLPH - CROSS/MR. THEOS

1 ACCOUNT. DO NOT EXPOSE YOURSELF TO ANY PUBLICITY
2 ABOUT THIS CASE FROM ANY SOURCE. AND OBVIOUSLY
3 IT'S ALL RIGHT FOR YOU TO DISCUSS WITH YOUR FAMILY
4 THE FACT THAT YOU MAY BE SEQUESTERED AS A JUROR.
5 BUT PLEASE JUST DON'T DISCUSS THE ALLEGED FACTS OF
6 THIS CASE OR ANYTHING ABOUT IT WITH ANY FAMILY
7 MEMBER OR ANYONE ELSE. PLEASE WHEN YOU LEAVE THE
8 COURTROOM DON'T GO BACK AND TALK TO ANY OF THE
9 OTHER JURORS THAT WE HAVEN'T QUESTIONED YET ABOUT
10 WHAT WE HAVE DISCUSSED. SO WITH THAT, PLEASE HAVE
11 A PLEASANT EVENING AND TEND TO YOUR BUSINESS
12 TOMORROW. AND GET YOUR REGULAR WORK DAY IN AS BEST
13 YOU CAN. AND WE LOOK FORWARD TO SEEING YOU
14 WEDNESDAY AT TWO UNLESS YOU'RE NOTIFIED TO THE
15 CONTRARY.

16 MR. RANDOLPH: THANK YOU, SIR.

17 THE COURT: THANK YOU SO MUCH.

18 GENTLEMEN, MAY I INQUIRE BECAUSE WE'RE REALLY OFF
19 SCHEDULE. WE'VE ONLY GONE THROUGH THREE JURORS.
20 THE 3:30 WE DIDN'T GET STARTED UNTIL 4:30. THAT
21 WAS NOT ANY FAULT OF THE ATTORNEYS, BUT WE HAD TO
22 HAVE THE SHERIFF TESTIFY ABOUT THE FAILURE TO
23 LOCATE. AND WE HAD TO HAVE THE STATE HOSPITAL
24 DISABILITY OF SPECIAL NEEDS TESTIFY. BUT WE HAVE
25 SIX THAT ARE OUT THERE FOR NUMBER TWO. I WOULD

PAUL RANDOLPH - CROSS/MR. THEOS

1 PROPOSE -- IT'S A QUARTER 'TIL SIX -- TO HAVE THE
2 CLERK ATTEMPT TO CONTACT THOSE THAT WERE COMING IN
3 AT 6:30 AND ASK THEM IF THEY COULD COME IN AT 8:30
4 IN THE MORNING AND LEAVE THE OTHERS AS SCHEDULED.
5 IF WE GET THREE OF THEM, WE'LL DO WELL BECAUSE THEY
6 MAY HAVE ALREADY LEFT TO COME BACK TO THE COURT
7 HOUSE. DO YOU HAVE ANY OBJECTION TO STARTING AT
8 8:30, MADAM COURT REPORTER?

9 THE COURT REPORTER: NO, SIR.

10 THE COURT: ISN'T THAT BETTER THAN
11 STAYING HERE UNTIL 9:30 TONIGHT?

12 THE COURT REPORTER: YES, SIR; I'M
13 GETTING KIND OF TIRED.

14 THE COURT: MR. SOLICITOR, DOES THAT
15 SUIT YOU?

16 MR. BAILEY: THAT'S FINE.

17 THE COURT: AND MR. THEOS AND MR.
18 BELL; PLEASE, NOW. I REALLY DON'T WANT TO WEAR ANY
19 OF THE COURT PERSONNEL OR THE BAILIFFS OR SECURITY
20 OR THE LAWYERS OR ANYONE ELSE OUT. I WANT YOU TO
21 MAINTAIN YOUR VITALITY, YOUR ALERTNESS, AND YOUR
22 STRENGTH. BUT Y'ALL PLEASE FEEL FREE TO QUIETLY
23 COME FORWARD AND DISCUSS WITH ME IF YOU THINK THAT
24 WE NEED TO SLOW DOWN A LITTLE BIT. I'M TRYING TO
25 SLOW DOWN AS BEST I CAN UNDER THE CIRCUMSTANCES.

PAUL RANDOLPH - CROSS/MR. THEOS

1 DOES THAT MEET WITH YOUR APPROVAL TO LET THEM TRY
2 TO CALL THOSE THAT WERE FOR 6:30. AND IF THEY CAN
3 REACH THEM, TELL THEM 8:30 IN THE MORNING? IF THEY
4 CANNOT; IF THEY COME IN, WE'LL QUESTION THEM AS
5 LONG AS EVERYBODY FEELS HEALTHY, WEALTHY AND WISE.

6 MR. THEOS: THAT'S FINE, YOUR HONOR.

7 THE COURT: ALL RIGHT. AND AGAIN,
8 MADAM COURT REPORTER, YOU'RE KIND OF THE LEADER OF
9 THE BAND. IF YOU NEED TO TAKE A LEG STRETCH, YOU
10 LET ME KNOW. DO YOU WANT TO TAKE ONE NOW?

11 THE COURT REPORTER: I BELIEVE I
12 COULD USE FIVE MINUTES.

13 THE COURT: ALL RIGHT. LET'S TAKE A
14 FIVE MINUTE RECESS, THEN. AND, GENTLEMEN, MAY I
15 HAVE YOUR PERMISSION TO WALK BACK TO THE ROOM WHERE
16 THE JURORS ARE AND KIND OF APOLOGIZE TO THEM FOR
17 BEING OFF SCHEDULE AND LET ME ACCEPT THAT
18 RESPONSIBILITY; NOT Y'ALL. AND OBVIOUSLY I WILL
19 NOT MENTION THE CASE OR ANYTHING ABOUT IT. IS THAT
20 OKAY? MR. SOLICITOR?

21 MR. BAILEY: THAT'S FINE.

22 THE COURT: DEFENSE?

23 MR. THEOS: THAT'S FINE.

24 THE COURT: ALL RIGHT. WE'LL TAKE A
25 FIVE MINUTE RECESS.

HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

(BRIEF RECESS.)

THE COURT: ALL RIGHT. PLEASE BRING

IN HERBERT SIMMONS, JR.

(AT THIS TIME JUROR NUMBER 285, A BLACK MALE, IS
CALLED.)

THE COURT: MADAM COURT REPORTER,

THIS IS JUROR NUMBER 285, HERBERT SIMMONS, JR.

- - - - -

WHEREUPON,

HERBERT SIMMONS, JR., WHO BEING

PREVIOUSLY SWORN TO TELL THE TRUTH,

TESTIFIED AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q. MR. SIMMONS, YOU WERE GIVEN AN OATH THIS MORNING,
PLEASE. YOU UNDERSTAND THAT SAME OATH APPLIES TO
ANY ANSWERS YOU NOW GIVE TO THE QUESTIONS
PROPOUNDED TO YOU?

A. YES, SIR.

Q. SINCE YOU LEFT THE COURTROOM THIS MORNING HAS
ANYBODY TALKED WITH YOU ABOUT THIS CASE, DISCUSSED
IT WITH ANYBODY, OR BEEN EXPOSED TO ANY ADDITIONAL
INFORMATION?

A. NO, SIR, THEY HAVEN'T.

Q. HAVE YOU AT ANY TIME IN THE PAST BEEN EXPOSED TO OR

HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

1 READ OR HEARD OR TALKED ABOUT ANYTHING INVOLVING
2 THIS CASE? I NOTE FROM THESE SHEETS HERE THAT WE
3 HAVE THAT YOU HAD INDICATED THAT YOU OR A MEMBER OF
4 YOUR FAMILY HAD EITHER BEEN A VICTIM OF A CRIME OF
5 VIOLENCE OR SOMEHOW INVOLVED IN A CRIME OF
6 VIOLENCE. CAN YOU TELL US ABOUT THAT?

7 A. I THINK IT WAS IN 1984, MY GRANDFATHER WAS MURDERED
8 BY ONE OF -- WE THOUGHT IT WAS A FAMILY FRIEND.
9 BUT I DON'T REALLY KNOW THE DETAILS BECAUSE THEY
10 SAID IT MIGHT HAVE HAPPENED. I WAS ADMITTED TO THE
11 HOSPITAL BECAUSE I HAD A MOTORCYCLE ACCIDENT. BUT
12 THEY FOUND HIM GUILTY OF MURDER. AND HE'S SERVING
13 A LIFE SENTENCE IN PRISON RIGHT NOW.

14 Q. THE PERSON WHO ALLEGEDLY KILLED YOUR GRANDFATHER?

15 A. YES, SIR.

16 Q. AND THEY WERE FOUND GUILTY OF THAT MURDER?

17 A. YES, SIR.

18 Q. WOULD THE FACT THAT YOUR GRANDFATHER WAS A VICTIM
19 OF A VIOLENT CRIME OF MURDER; WOULD THAT IN ANY WAY
20 INTERFERE WITH YOUR ABILITY TO HONESTLY AND FAIRLY
21 LISTEN TO THE TESTIMONY AND ARRIVE AT A FAIR, JUST,
22 AND TRUE VERDICT FAIR TO THE STATE AND FAIR TO THE
23 DEFENDANT IN THIS CASE REGARDLESS OF WHAT THAT
24 VERDICT MAY BE?

25 A. I DON'T THINK IT WOULD.

1 Q. AND, NOW, HAVE YOU READ OR HEARD ANYTHING ABOUT
2 THIS CASE IN THE NEWSPAPERS PREVIOUSLY, RADIO OR
3 T.V.?

4 A. NO, I HAVEN'T. TODAY DAY IS THE FIRST TIME I'VE
5 HEARD ABOUT IT DAY.

6 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
7 GUILT OR INNOCENCE OF THE DEFENDANT, KENNETH
8 SIMMONS?

9 A. NO, I HAVEN'T.

10 Q. AND YOU UNDERSTAND THAT EVERY PERSON THAT COMES
11 INTO THIS COURT, REGARDLESS OF THE NATURE OR
12 ENORMITY OF THE CHARGE MADE AGAINST HIM OR HER IS
13 ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE
14 CHARGES UNTIL OR UNLESS THE STATE REMOVES THAT
15 PRESUMPTION OF INNOCENCE BY EVIDENCE SATISFYING
16 YOU, THE JURY, OF THEIR GUILT BEYOND A REASONABLE
17 DOUBT?

18 A. YES; I DO UNDERSTAND THAT.

19 Q. AND YOU UNDERSTAND THE STATE HAS THE BURDEN OF
20 PROVING THE DEFENDANT GUILTY. THERE'S NO BURDEN
21 UPON THE DEFENDANT. THE DEFENDANT DOESN'T HAVE TO
22 TAKE THE WITNESS STAND. AND HE'S PRESUMED INNOCENT
23 THROUGHOUT THE PROCEEDING UNTIL THE JURY IN THEIR
24 DELIBERATIONS AT THE PROPER TIME MAY FIND THE
25 DEFENDANT GUILTY IF THE FACTS ARE SUCH THAT HE

HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

1 SHOULD BE FOUND GUILTY?

2 A. YES, YOUR HONOR; I UNDERSTAND THAT.

3 Q. AND THAT QUESTIONNAIRE YOU SUBMITTED SOME FEW DAYS
4 AGO; THOSE ANSWERS; DO ANY OF THEM NEED TO BE
5 CHANGED IN ANY WAY? ARE THOSE STILL CORRECT
6 ANSWERS?

7 A. NO, SIR.

8 Q. YOU DON'T NEED TO UPDATE IT IN ANY WAY?

9 A. NO, SIR.

10 Q. AND UNDERSTAND, PLEASE, THERE ARE NO RIGHT OR WRONG
11 ANSWERS THAT WE'RE ASKING YOU. WE'RE NOT TRYING TO
12 INVADE YOUR PRIVACY. OPINIONS ARE LIKE ELBOWS.
13 EVERYBODY HAS ONE. YOU'RE ENTITLED TO YOUR
14 OPINIONS; AND WE'RE NOT TRYING TO BE PERSONAL BY
15 THESE QUESTIONS. BUT IN ORDER FOR THE LAWYERS TO
16 MAKE AN INTELLIGENT DECISION AS TO WHETHER TO
17 ACCEPT YOU AS A JUROR IN THIS CASE, THEY'RE TRYING
18 TO DETERMINE YOUR VIEWS ON CERTAIN THINGS AND
19 WHETHER OR NOT YOU COULD BE A FAIR AND IMPARTIAL
20 JUROR. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. AND THE FACT THAT WE NECESSARILY AT THIS TIME HAVE
23 TO TALK ABOUT THE GUILT PHASE AND THE PENALTY PHASE
24 IN ORDER TO DETERMINE THOSE VIEWS, YOU UNDERSTAND
25 YOU'RE NOT TO INFER IN ANY WAY THAT THE DEFENDANT

1 IS GUILTY BECAUSE HE IS PRESUMED INNOCENT?

2 A. YES, SIR.

3 Q. AND YOU UNDERSTAND THAT WHERE A DEATH PENALTY IS
4 BEING SOUGHT THERE IS BIFURCATED, A TWO-PART TRIAL,
5 WHERE DURING THE FIRST PHASE, THE GUILT PHASE, THE
6 STATE IS REQUIRED TO PROVE THE DEFENDANT GUILTY
7 BEYOND A REASONABLE DOUBT. AND IF YOU FIND HIM NOT
8 GUILTY OF MURDER, THAT WOULD END THE DEATH PENALTY
9 PROCEEDINGS BECAUSE HE COULDN'T GET THE DEATH
10 PENALTY FOR THESE OTHER CHARGES FOR WHICH HE IS
11 PRESUMED INNOCENT. AND THE STATE WOULD STILL HAVE
12 THE BURDEN OF PROVING HIS GUILT BEYOND A REASONABLE
13 DOUBT?

14 A. YES, SIR; I UNDERSTAND THAT.

15 Q. AND YOU UNDERSTAND, OF COURSE, THAT DURING THAT
16 GUILT PHASE, IF HE'S FOUND GUILTY OF MURDER, THEN
17 THERE WOULD BE A 24 HOUR WAITING PERIOD IN ALL
18 PROBABILITY. AND THEN THE STATE WOULD OFFER
19 EVIDENCE AS TO STATUTORY AGGRAVATING
20 CIRCUMSTANCES. THE DEFENDANT DOES NOT HAVE TO TAKE
21 THE WITNESS STAND IN EITHER PHASE OF THE TRIAL.
22 AGAIN, THERE'S NO BURDEN UPON THE DEFENDANT, BUT
23 THE DEFENDANT CAN OFFER MITIGATING OR LESSENING
24 EVIDENCE. AND DEFENDING UPON THE FINDING OF THE
25 JURY, IF THE JURY FOUND A STATUTORY AGGRAVATING

HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

1 CIRCUMSTANCE BEYOND A REASONABLE DOUBT, THE JURY
2 MAY, BUT WOULD NOT BE MANDATORILY OBLIGATED TO
3 RETURN A RECOMMENDATION OF THE DEATH PENALTY. THEY
4 MAY OR MAY NOT. EVEN IF THE JURY DOES NOT FIND
5 MITIGATING CIRCUMSTANCES WHICH THEY MAY --
6 MITIGATING MEANS TO LESSON OR LIGHTEN UP -- THAT
7 THE JURY CAN AS A RECOMMENDATION OF MERCY WITHOUT
8 ANY FINDING OF ANY MITIGATING CIRCUMSTANCE; AND
9 EVEN THOUGH THEY MAY FIND A STATUTORY AGGRAVATING
10 CIRCUMSTANCE, IT IS NOT AUTOMATICALLY MANDATORY
11 THAT YOU RETURN A DEATH PENALTY RECOMMENDATION.
12 YOU MAY RETURN -- DEFENDING UPON THE UNANIMOUS VIEW
13 OF THE JURY, YOU MAY FIND A RECOMMENDATION OF LIFE
14 SENTENCE WITHOUT PAROLE WITHOUT FINDING A
15 MITIGATING CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

16 A. YES, SIR; I DO UNDERSTAND THAT.

17 Q. AND IF YOU DO, AND YOU AND THE OTHER ELEVEN MEMBERS
18 OF THE JURY UNANIMOUSLY FIND THE DEATH PENALTY
19 SHOULD BE RECOMMENDED, THEN THE COURT WOULD IMPOSE
20 THE RECOMMENDATION OF THE JURY AND THAT YOU WOULD
21 BE REQUIRED, AS WOULD THE OTHER ELEVEN JURORS, TO
22 SIGN YOUR NAME TO THAT FINDING OF RECOMMENDATION OF
23 THE DEATH SENTENCE. YOU'D HAVE TO SIGN YOUR NAME
24 INDIVIDUALLY. AND THEN YOU'D BE IN OPEN COURT
25 POLLED. YOU WOULD BE ASKED IF THAT WAS YOUR

1 VERDICT, AND YOU'D HAVE TO AFFIRM THAT IT WAS OR
2 THAT IT WAS NOT. DO YOU UNDERSTAND THAT?

3 A. YES, I DO.

4 Q. DO YOU UNDERSTAND THAT?

5 A. YES, SIR, I DO.

6 Q. NOW, WOULD YOU BE WILLING TO LISTEN TO THE LAW AS
7 INSTRUCTED BY THE COURT TO YOU AND THEN APPLY THAT
8 LAW TO THE FACTS AS FOUND BY YOU? DO YOU
9 UNDERSTAND THE JUDGE'S RESPONSIBILITY UNDER MY OATH
10 IS TO CHARGE THE LAW?

11 A. YES, SIR, I UNDERSTAND.

12 Q. AND IF THE COURT CHARGED THE LAW, EVEN IF YOU
13 DISAGREED WITH THAT LAW, WOULD YOU APPLY THAT LAW
14 TO THE FACTS AS YOU, THE JURY, MAY FIND?

15 A. YES, I WOULD.

16 Q. HAVE YOU HAD AN OPPORTUNITY TO READ THE DOCUMENT
17 LEFT IN THE JURY ROOM THERE WITH YOU AS TO THE
18 THREE TYPES OF JURORS?

19 A. YES, SIR, I HAVE.

20 Q. AND I WOULD ASK YOU, DEFENDING ON THE FACTS AND THE
21 CIRCUMSTANCES OF THE CASE AND THE CHARGE OF THE
22 LAW, COULD YOU FIND SOMEONE NOT GUILTY OF THE
23 CHARGE IF THE FACTS WARRANTED IT?

24 A. YES, SIR, I COULD.

25 Q. COULD YOU FIND THEM GUILTY IF THE STATE PROVES IT

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HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

1 BEYOND A REASONABLE DOUBT?

2 A. YES, SIR, I COULD.

3 Q. AND COULD YOU, IF THE FACTS OF THE CASE WARRANTED
4 IT AND THE FINDING OF THE JURY, COULD YOU VOTE FOR
5 THE DEATH PENALTY?

6 A. YES, SIR, I COULD.

7 Q. AND IF THE FACTS OF THE CASE WARRANTED IT, OR EVEN
8 IF THEY DIDN'T AS A RECOMMENDATION OF MERCY, COULD
9 YOU RETURN A RECOMMENDATION OF LIFE IMPRISONMENT
10 WITHOUT PAROLE?

11 A. YES, SIR, I COULD.

12 Q. AND YOU UNDERSTAND NORMALLY IT'S THE JUDGE'S
13 RESPONSIBILITY TO SENTENCE A DEFENDANT IN A
14 CRIMINAL CASE. BUT IN A DEATH PENALTY, THAT
15 FUNCTION IS GIVEN TO THE JURY TO MAKE A
16 RECOMMENDATION OF EITHER THE DEATH PENALTY OR A
17 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT
18 PAROLE. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND YOU UNDERSTAND THAT FIRST TYPE OF JUROR, THAT
21 REGARDLESS OF WHAT THE EVIDENCE MIGHT BE UNDER
22 EVERY CIRCUMSTANCE OR LACK OF CIRCUMSTANCE OF FACTS
23 OR EVIDENCE, THAT JUROR ONE WOULD ALWAYS VOTE FOR
24 THE DEATH PENALTY REGARDLESS OF THE FACTS. DO YOU
25 UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. AND DO YOU UNDERSTAND JUROR NUMBER TWO IS THE TYPE
3 JUROR THAT REGARDLESS OF THE STATUTORY AGGRAVATING
4 CIRCUMSTANCES OR REGARDLESS OF WHAT THE EVIDENCE
5 WAS, THAT UNDER NO CIRCUMSTANCE COULD THEY GIVE A
6 DEATH PENALTY RECOMMENDATION BUT WOULD ALWAYS VOTE
7 FOR LIFE IMPRISONMENT WITHOUT PAROLE?

8 A. YES, SIR; I UNDERSTAND.

9 Q. AND YOU UNDERSTAND THE THIRD TYPE JUROR IS A JUROR
10 WHO WILL BE OPEN-MINDED AND FAIR AND LISTEN TO THE
11 EVIDENCE OFFERED BY BOTH THE STATE AND THE
12 DEFENDANT ALBEIT THE DEFENDANT DOESN'T HAVE TO TAKE
13 THE WITNESS STAND. YOU CAN'T HOLD THAT AGAINST
14 HIM. AND IF THE DEFENDANT ELECTS NOT TO TESTIFY OR
15 ELECTS NOT TO OFFER EVIDENCE, THERE'S NO BURDEN
16 UPON THE DEFENDANT WHATSOEVER TO PROVE HIMSELF
17 INNOCENT BECAUSE IN MANY INSTANCES THAT MIGHT NOT
18 BE POSSIBLE, BUT RATHER THE BURDEN IS UPON THE
19 STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A
20 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. AND YOU UNDERSTAND THAT THIRD TYPE JUROR, DEPENDING
23 ON THE FACTS IN EVIDENCE AND THE FINDING OF FACT BY
24 THE UNANIMOUS JURY THAT THE JURY WOULD MAKE A
25 RECOMMENDATION BASED UPON THE EVIDENCE AND THE LAW

HERBERT SIMMONS, JR. - EXAMINATION BY THE COURT

1 REGARDSLESS OF WHETHER IT BE FOR LIFE IMPRISONMENT
2 OR WHETHER IT BE A DEATH PENALTY?

3 A. YES, SIR, I UNDERSTAND.

4 Q. WHICH OF THOSE THREE JURORS DO YOU FEEL THAT YOU
5 WOULD FIT INTO?

6 A. I THINK I WOULD FIT IN NUMBER THREE.

7 Q. AND IF YOU ARE FOUND QUALIFIED AND SELECTED AND
8 AGREED TO BY BOTH THE STATE AND THE DEFENDANT, IS
9 THERE ANY PARTICULAR HARDSHIP THAT WOULD BE CAUSED
10 TO YOU BY BEING AWAY FROM YOUR FAMILY OR BECAUSE OF
11 YOUR PHYSICAL CONDITION; ANY MEDICINE YOU HAVE TO
12 TAKE OR DOCTOR'S APPOINTMENTS OR BY BEING
13 SEQUESTERED OR PLACED IN A MOTEL FOR SIX OR SEVEN
14 OR EIGHT OR NINE DAYS DURING THE TRIAL OF THIS
15 CASE?

16 A. THE ONLY CONDITION I HAVE IS GASTRITIS EVERY ONCE
17 IN A WHILE. AS OF LATELY, I HAVEN'T HAD A FLARE-UP
18 OR ANYTHING LIKE THAT. SO EVERYTHING ELSE WOULD BE
19 OKAY.

20 Q. IS THAT IN THE LAST YEAR OR THREE YEARS? WHEN WAS
21 THE OCCASION OF YOUR LAST BOUT?

22 A. PROBABLY IN THE LAST YEAR.

23 Q. IN THE LAST YEAR? AND DO YOU HAVE SOME MEDICINE
24 YOU COULD BRING WITH YOU IN THE EVENT YOU NEEDED
25 THAT?

HERBERT SIMMONS, JR. - DIRECT/MR. THEOS

1 A. YES, SIR.

2 Q. ALL RIGHT.

3 THE COURT: YOU MAY QUESTION, MR.
4 THEOS, PLEASE.

5 DIRECT EXAMINATION

6 BY MR. THEOS:

7 Q. MR. SIMMONS, HOW ARE YOU DOING?

8 A. ALL RIGHT.

9 Q. I'M JERRY THEOS. THIS IS JIM BELL, AND THIS IS
10 KENNETH SIMMONS. THANK YOU FOR COMING. I WANT TO
11 ASK YOU A FEW QUESTIONS. THIS IS THE ONLY TIME THE
12 LAWYERS, AND THE JUDGE FOR THAT MATTER, WILL HAVE A
13 CHANCE TO TALK BACK AND FORTH WITH YOU. THE REST
14 OF THE TIME IF YOU'RE CHOSEN AS A JUROR, YOU'LL
15 JUST BE LISTENING. WE WANT TO MAKE SURE THAT WE
16 UNDERSTAND YOUR POSITION RELATED TO CERTAIN THINGS
17 AND THE JUDGE'S ASKING YOU PRIMARILY RELATED TO
18 YOUR FEELINGS ABOUT THE DEATH PENALTY. I WANT TO
19 MAKE SURE WE DON'T PUT THE CART BEFORE THE HORSE,
20 THOUGH. DO YOU UNDERSTAND THAT JUST BECAUSE WE'RE
21 TALKING ABOUT THE DEATH PENALTY THAT THAT DOES NOT
22 MEAN THAT KENNETH SIMMONS IS GUILTY OF THIS CHARGE?

23 A. RIGHT.

24 Q. DO YOU UNDERSTAND THAT?

25 A. I UNDERSTAND THAT.

HERBERT SIMMONS, JR. - DIRECT/MR. THEOS

1 Q. DO YOU UNDERSTAND THAT THE STATE, MR. BAILEY AND
2 HIS STAFF, HAVE THE OBLIGATION AND THE DUTY TO
3 PROVE THE GUILT OF MR. SIMMONS LIKE ANYBODY ELSE
4 BEYOND A REASONABLE DOUBT?

5 A. YES, SIR; I UNDERSTAND THAT.

6 Q. AND AS I UNDERSTAND YOUR RESPONSES TO JUDGE
7 PEEPLES' QUESTIONS, IF MR. BAILEY FAILS TO PROVE
8 MR. SIMMONS' GUILT IN THE FIRST STAGE BEYOND A
9 REASONABLE DOUBT THAT YOU COULD FIND MR. SIMMONS
10 NOT GUILTY? YOU WOULD FIND MR. SIMMONS NOT GUILTY?

11 A. YES, SIR, I COULD.

12 Q. AND YOU WOULD IF YOU FOUND THAT HE DID NOT---

13 A. YES, SIR; IF HE DID NOT PRESENT EVIDENCE, I COULD.

14 Q. OKAY. I ALSO UNDERSTAND FROM YOUR QUESTIONNAIRE
15 AND FROM YOUR RESPONSES TO THE JUDGE'S QUESTIONS --
16 AND I'M SORRY TO HEAR ABOUT IT -- BUT I UNDERSTAND
17 YOUR GRANDFATHER WAS KILLED IN 1984?

18 A. YES, SIR.

19 Q. DO YOU THINK THAT THAT IN ANY WAY WOULD AFFECT YOUR
20 ABILITY TO BE COMPLETELY NEUTRAL AND UNBIASED IN
21 THIS CARE?

22 A. I DON'T THINK SO.

23 Q. DO YOU FEEL THAT IN SPITE OF THAT YOU COULD SIT
24 HERE AND JUDGE FIRST OF ALL GUILT OR INNOCENCE
25 BASED UPON THE CASES PRESENTED TO YOU?

HERBERT SIMMONS, JR. - DIRECT/MR. THEOS

1 A. YES, SIR, I COULD.

2 Q. AND THEN I UNDERSTAND THAT THE PERSON THAT KILLED
3 YOUR GRANDFATHER WAS SENTENCED TO LIFE
4 IMPRISONMENT; IS THAT CORRECT

5 A. YES, SIR.

6 Q. AND I DON'T KNOW WHAT YOUR FEELINGS WERE ABOUT LIFE
7 IMPRISONMENT OR WHETHER THE DEATH PENALTY WAS
8 SOUGHT. CAN YOU TELL US IN THAT CASE WAS THE DEATH
9 PENALTY SOUGHT?

10 A. YES, IT WAS.

11 Q. WHAT WERE YOUR FEELINGS OR ARE YOUR FEELINGS
12 RELATED TO THE SENTENCE THAT WAS IMPOSED IN THAT
13 CASE? DID YOU THINK IT WAS APPROPRIATE, OR DID YOU
14 THINK THAT THE DEATH PENALTY WAS APPROPRIATE?

15 A. WELL, THE VERDICT WAS THAT, YOU KNOW, HE BE PUT IN
16 PRISON FOR LIFE. AND, YOU KNOW, WHATEVER THE
17 VERDICT IS, I THINK THAT'S WHAT YOU SHOULD GO
18 WITH. I MEAN, WHETHER YOU LIKE IT OR NOT, I MEAN,
19 THAT'S WHAT YOU'VE GOT TO LIVE WITH.

20 Q. YOU ACCEPTED THAT VERDICT AS BEING APPROPRIATE?

21 A. YES, SIR, I DID.

22 Q. AND YOU FELT THAT WAS THE APPROPRIATE PUNISHMENT
23 BASED ON THAT VERDICT?

24 A. YES, SIR.

25 Q. NOW, THE ONLY OTHER QUESTION THAT I WANT TO ASK YOU

HERBERT SIMMONS, JR. - DIRECT/MR. THEOS

1 -- OR A COUPLE OF QUESTIONS. I DON'T KNOW IF YOU
2 RECALL YOUR QUESTIONNAIRE. THERE WAS A NUMBER 26
3 THAT SAID -- IN RESPONSE TO QUESTION 26, YOU WROTE
4 IN "IF YOU DO THE CRIME, DO THE TIME."

5 A. YES, SIR.

6 Q. CAN YOU EXPLAIN WHAT YOU MEANT BY THAT, PLEASE?

7 A. I THINK IF THE EVIDENCE POINTS TO THE FACT THAT
8 YOU'RE FOUND GUILTY OF A CRIME. I MEAN, WHATEVER
9 MANDATORY PUNISHMENT IS NECESSARY, I THINK THAT'S
10 THE LAW. YOU SHOULD ABIDE BY THE LAW.

11 Q. DO YOU UNDERSTAND IN THIS CASE IF THERE IS NO
12 MANDATORY PUNISHMENT THERE IS A CHOICE IF MR.
13 SIMMONS IS FOUND GUILTY?

14 A. RIGHT. I UNDERSTAND IT IS A CHOICE.

15 Q. DO YOU FEEL THAT YOU WOULD CONSIDER, IF WE GOT TO
16 THAT POINT, BOTH OF THOSE OPTIONS, LIFE OR LIFE
17 IMPRISONMENT WITHOUT PAROLE AND THE DEATH PENALTY?

18 A. YES, I COULD. ACCORDING TO THE EVIDENCE, I
19 PROBABLY COULD.

20 Q. DO YOU LEAN MORE IN FAVOR OF ONE THAN THE OTHER?

21 A. I DON'T THINK SO.

22 Q. DO YOU REALLY FEEL LIKE YOU'RE RIGHT IN THE MIDDLE;
23 THAT IT JUST DEPENDS ON WHAT'S PRESENTED TO YOU?

24 A. I THINK SO.

25

MR. THEOS: NO OTHER QUESTIONS, YOUR

HERBERT SIMMONS, JR. - CROSS/MR. BAILEY
HONOR.

THE COURT: ANYTHING FURTHER?

MR. BAILEY: YES, SIR, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MR. SIMMONS, I'M WALTER BAILEY. I WANT TO ASK YOU
A FEW MORE QUESTIONS. WHO WAS YOUR GRANDFATHER?

A. JOHN SIMMONS.

Q. DO YOU KNOW THE NAME OF THE PERSON WHO WAS CHARGED
WITH HIS MURDER AND CONVICTED?

A. BILLY COX.

Q. OKAY. AND DID YOU -- I THINK YOU SAID YOU HAD A
MOTORCYCLE ACCIDENT. DID YOU FOLLOW THE TRIAL?
DID YOU COME TO COURT?

A. YES, SIR; I SAT IN ON THE TRIAL.

Q. AND I KNOW THAT THIS QUESTION WAS ASKED; AND I
DON'T THINK YOU STOOD UP. BUT YOU HAVE THE SAME
LAST NAME AS THE DEFENDANT, SIMMONS. IS THERE ANY
RELATIONSHIP THAT YOU KNOW ABOUT, FAMILY
RELATIONSHIP, BETWEEN YOU AND---

A. IT'S THE FIRST TIME I'VE MET HIM OR SEEN HIM OR
EVEN HEARD OF HIM WAS TODAY.

Q. OKAY. YOU DON'T KNOW ANYBODY IN HIS FAMILY OR
ANYBODY KIN TO HIM OR CLOSE TO HIM?

A. NO.

HERBERT SIMMONS, JR. - CROSS/MR. BAILEY

- 1 Q. ALL RIGHT. NOW, YOU UNDERSTAND, MR. SIMMONS, FROM
2 THE QUESTIONS THE JUDGE ASKED AND THE EXPLANATION
3 HE GAVE THAT IF WE GET TO THAT SECOND PART OF THE
4 TRIAL, THE PENALTY PHASE, THE JURY WOULD HAVE TWO
5 CHOICES, LIFE WITHOUT PAROLE OR THE DEATH PENALTY.
6 AND WHATEVER THE JURY DECIDED THE SENTENCE SHOULD
7 BE WILL BE THE SENTENCE OF THE COURT. IN OTHER
8 WORDS, IF THE JURY SAYS LIFE WITHOUT PAROLE, THE
9 JUDGE WOULD GIVE HIM THAT. HE'LL SERVE LIFE
10 WITHOUT PAROLE. IF THE JURY VOTES FOR THE DEATH
11 SENTENCE, THE JUDGE WOULD ORDER THAT, AND HE'LL
12 ACTUALLY BE EXECUTED BASED ON THAT JURY'S VERDICT.
13 NOW, IF THE CASE IS BAD ENOUGH, COULD YOU VOTE FOR
14 THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY
15 GOING TO BE CARRIED OUT?
16 A. YES, SIR, I COULD.
17 Q. COULD YOU SIGN YOUR NAME TO THE VERDICT FORM IF YOU
18 AND THE OTHER ELEVEN JURORS DECIDED THAT OUT OF
19 THOSE TWO CHOICES THE DEATH PENALTY WAS THE
20 APPROPRIATE PENALTY FOR THAT CASE?
21 A. YES, SIR, I COULD.
22 Q. AND YOU TOLD THE JUDGE YOU COULD COME OUT AND SIGN
23 YOUR NAME; IS THAT CORRECT?
24 A. YES, SIR.
25 Q. WHEN YOUR NAME IS CALLED OUT, YOU COULD ANNOUNCE

HERBERT SIMMONS, JR. - CROSS/MR. BAILEY

1 THAT OUT LOUD?

2 A. YES, SIR, I COULD.

3 Q. I KNOW THAT -- YOU KNOW, I WOULD ASSUME THAT SINCE
4 YOUR GRANDFATHER WAS MURDERED AND THERE WAS A DEATH
5 PENALTY TRIAL THERE, YOU'VE HAD A CHANCE TO THINK
6 ABOUT THE DEATH PENALTY IN CONNECTION WITH THAT
7 EARLIER TRIAL?

8 A. YES, SIR.

9 Q. COULD YOU TELL US JUST IN YOUR OWN WORDS WHAT YOUR
10 THOUGHTS ARE ON THE DEATH PENALTY? I'M NOT TALKING
11 ABOUT THIS CASE OR YOUR GRANDFATHER'S CASE BUT JUST
12 IN GENERAL.

13 A. WELL, I THINK IF THE EVIDENCE, YOU KNOW, WAS
14 POINTING TO THE FACT THAT THIS PERSON DID COMMIT
15 THE CRIME, AND ACCORDING TO THE CONDITIONS, YOU
16 KNOW, THE MOTIVATIONS THAT LED TO THE CRIME ALL HAS
17 TO BE TAKEN INTO CONSIDERATION. BUT I THINK THAT
18 IF THE EVIDENCE SHOWS THAT ALL THIS TOOK PLACE, I
19 COULD VOTE FOR THE DEATH PENALTY. OR IF IT DIDN'T,
20 I COULD VOTE FOR LIFE IMPRISONMENT.

21 Q. YOU UNDERSTAND NOBODY IS GOING TO ASK YOU WHAT
22 YOU'D DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY
23 OF THE FACTS? BUT JUST IN GENERAL THAT'S WHAT YOUR
24 BELIEF IS?

25 A. YES, SIR; I UNDERSTAND.

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 Q. BUT IF IT'S BAD ENOUGH, YOU COULD VOTE FOR IT
2 KNOWING IT'S GOING TO HAPPEN?

3 A. YES, I COULD.

4 Q. ALL RIGHT. THANK YOU, SIR. THAT'S ALL I HAVE.

5 THE COURT: ANYTHING FURTHER ON
6 RE-DIRECT, MR. THEOS?

7 MR. THEOS: JUST A COUPLE OF
8 QUESTIONS, YOUR HONOR.

9 THE COURT: PLEASE.

10 RE-DIRECT EXAMINATION

11 BY MR. THEOS:

12 Q. MR. SIMMONS, DO YOU FEEL THAT ANYBODY CONVICTED OF
13 MURDER, OR EVERYBODY CONVICTED OF MURDER SHOULD
14 RECEIVE THE DEATH PENALTY?

15 A. NO. JUST LIKE I SAID, IT ALL DEPENDS ON THE
16 CIRCUMSTANCES.

17 Q. ALL RIGHT. AND ONE OTHER THING THAT I DIDN'T ASK
18 YOU BEFORE. I DON'T KNOW WHAT WAS PRESENTED IN
19 THAT TRIAL THAT YOU SAT THROUGH WITH YOUR
20 GRANDFATHER. BUT ARE YOU LOOKING TO -- DO YOU FEEL
21 THAT THE DEFENDANT, MR. SIMMONS, NIOT IN THIS CASE
22 BUT IN ANY CASE, OUGHT TO BE PUT TO THE TASK OF
23 PROVING INNOCENCE IN A COURTROOM? THEY SHOULD BE
24 REQUIRED TO PROVE THAT THEY'RE NOT GUILTY OF A
25 CHARGE?

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 A. YES, SIR; I THINK THEY SHOULD BE.

2 Q. WHY IS THAT?

3 A. JUST LIKE I SAID; I MEAN, YOU KNOW, I MEAN IT'S
4 INNOCENT UNTIL PROVEN GUILTY. I MEAN, IF THE FACTS
5 SHOW THAT HE'S GUILTY, HE'S GUILTY.

6 Q. ALL RIGHT. AND IF YOU FELT THAT AT THE CONCLUSION
7 OF THE STATE'S CASE, MR. BAILEY'S CASE, THAT THEY
8 HAD PRESENTED A PRETTY CONVINCING CASE AS TO MR.
9 SIMMONS' GUILT, WOULD YOU THEN LOOK TO MR. SIMMONS
10 TO PROVE TO YOU AS THE JUROR THAT HE WAS NOT
11 GUILTY?

12 A. WITH THE EVIDENCE CLOSELY EXAMINED AND LOOKED OVER,
13 I THINK I COULD JUST GO WITH THE EVIDENCE AND COME
14 OUT WITH A LIFE IMPRISONMENT SENTENCE OR EITHER A
15 DEATH SENTENCE.

16 Q. I UNDERSTAND THAT. BUT LET'S BACK UP. BEFORE WE
17 GET TO THE ISSUE OF PENALTY AND PUNISHMENT?

18 THE COURT: I THINK YOU NEED TO
19 EXPLAIN TO HIM, MR. THEOS, THAT HE'S NOT ALLOWED TO
20 DELIBERATE OR DECIDE THE CASE UNTIL HE'S HEARD ALL
21 THE EVIDENCE FROM BOTH THE STATE AND THE DEFENDANT,
22 ALTHOUGH THE DEFENDANT ISN'T REQUIRED TO PUT UP ANY
23 EVIDENCE BECAUSE UNDER YOUR ILLUSTRATION, YOU HAD
24 MR. BAILEY'S EVIDENCE PROVING TO HIM THAT HE WAS
25 GUILTY BEYOND A REASONABLE DOUBT. BUT YOU DIDN'T

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 NECESSARILY TELL HIM THAT ALL THE EVIDENCE WASN'T
2 IN YET.

3 MR. THEOS: I'LL TRY TO CLEAR THAT
4 UP.

5 THE COURT: PLEASE.

6 Q. MR. SIMMONS, BEFORE WE GET TO THE ISSUE OF
7 PUNISHMENT WHICH I THINK YOU'VE EXPRESSED YOUR
8 VIEWS ABOUT; I'M TALKING ABOUT THE ISSUE OF GUILT
9 VERSUS -- GUILT VERSUS NOT GUILTY. IT'S TWO
10 POSSIBLE VERDICTS IN THE FIRST PHASE OF THE TRIAL.
11 NOW, MAYBE I MISUNDERSTOOD, AND YOU CORRECT ME IF
12 I'M WRONG. I THOUGHT YOUR RESPONSE WAS YOU WOULD
13 BE LOOKING TO THE DEFENDANT, TO MR. SIMMONS, TO
14 PROVE TO YOU THAT HE WAS NOT GUILTY. MAYBE THAT'S
15 WHERE WE SHOULD START. ARE YOU LOOKING TO MR.
16 SIMMONS TO PROVE ANYTHING TO YOU AS A JUROR?

17 A. NO, SIR.

18 Q. DO YOU FEEL THAT MR. SIMMONS HAS A DUTY OR THE
19 BURDEN TO PROVE ANYTHING?

20 MR. BAILEY: OBJECTION. ASKED AND
21 ANSWERED, YOUR HONOR.

22 THE COURT: YES, SIR; ASKED AND
23 ANSWERED. HE SAID NO.

24 Q. JUST TO MAKE SURE THAT WE'RE CLEAR, MR. SIMMONS; DO
25 YOU UNDERSTAND THAT THIS MR. SIMMONS, KENNETH

1 SIMMONS, DOES NOT HAVE TO PROVE ANYTHING? DO YOU
2 UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. DO YOU UNDERSTAND THAT MR. SIMMONS DOES NOT HAVE TO
5 PRESENT A DEFENSE AT ALL IF HE CHOOSES NOT TO?

6 A. HE DOES NOT HAVE TO---

7 Q. PRESENT A DEFENSE AT ALL IF HE CHOOSES NOT TO?

8 A. I UNDERSTAND THAT HE DON'T HAVE TO GET UP AND
9 REALLY TESTIFY. I UNDERSTAND THAT PART OF IT.
10 BUT, I MEAN, THE LAWYERS ARE SUPPOSED TO BE IN HIS
11 DEFENSE; RIGHT.

12 Q. YES, SIR.

13 A. BUT HIMSELF; I KNOW THAT HE DON'T HAVE TO GET ON
14 THE STAND AND TESTIFY HIMSELF. I UNDERSTAND THAT.
15 YES, I DO.

16 Q. ALL RIGHT. DO YOU UNDERSTAND THAT MR. SIMMONS,
17 THROUGH HIS LAWYERS, DOES NOT HAVE TO PRESENT A
18 DEFENSE AT ALL?

19 A. THROUGH HIS LAWYERS?

20 Q. THROUGH HIS LAWYERS.

21 A. NO, I DON'T UNDERSTAND THAT.

22 Q. DO YOU FEEL THAT EVERY CRIMINAL DEFENDANT IN EVERY
23 CASE SHOULD PRESENT A DEFENSE?

24 MR. BAILEY: JUDGE, I'M GOING TO
25 OBJECT BECAUSE HE'S QUIZZING THIS POTENTIAL JUROR

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 ON THE LAW BEFORE HE'S BEEN INSTRUCTED ON THE
2 SPECIFIC DETAILS OF THE LAW.

3 THE COURT: I NOTE HIS OBJECTION.

4 Q. WHAT IS IT, MR. SIMMONS, THAT YOU DON'T -- AND,
5 AGAIN, I'M NOT TRYING TO PUT YOU ON THE SPOT. I'M
6 JUST TRYING TO UNDERSTAND WHAT YOUR RESPONSES ARE
7 SO THAT WE CAN PROPERLY REPRESENT MR. SIMMONS. SO
8 PLEASE DON'T FEEL THAT WE'RE DOING THAT. WE'RE NOT
9 POINTING A FINGER AT YOU. LIKE THE JUDGE SAYS,
10 YOU'RE NOT GETTING GRADED ON ANY OF THIS. WHAT IS
11 IT THAT YOU DON'T UNDERSTAND ABOUT MR. SIMMONS NOT
12 BEING REQUIRED TO PUT UP A DEFENSE THROUGH HIS
13 ATTORNEYS?

14 A. WELL, LISTENING TO THE JUDGE, THE ONLY THING THAT I
15 CAN GET OUT OF THIS IS THAT HE, HIMSELF, DON'T HAVE
16 TO GET ON THE WITNESS STAND AND TESTIFY. BUT, I
17 MEAN, THROUGH HIS LAWYERS Y'ALL HAVE GOT TO PRESENT
18 A CASE. I MEAN, THAT'S MY UNDERSTANDING OF WHAT
19 HAPPENS HERE IN THE COURTROOM.

20 Q. AND IF HIS LAWYERS, MR. BELL AND I, DID NOT PRESENT
21 A DEFENSE---

22 THE COURT: FINISH YOUR QUESTION.

23 Q. IF HIS LAWYERS DID NOT PRESENT A DEFENSE, AND YOU
24 WERE NOT SATISFIED THAT MR. BAILEY AND THE STATE
25 HAD PROVEN HIS GUILT BEYOND A REASONABLE DOUBT,

1 WOULD YOU FIND MR. SIMMONS GUILTY OR NOT GUILTY?

2 A. I'D HAVE TO FIND HIM NOT GUILTY IF HE DIDN'T PROVE
3 HIS GUILT.

4 Q. OKAY. SO WOULD IT BE FAIR TO SAY, THEN, THAT
5 DEFENDING ON WHAT MR. BAILEY PRESENTED, YOU WOULD
6 THEN WAIT TO SEE---

7 MR. THEOS: LET ME STRIKE THAT, YOUR
8 HONOR. I'M GETTING A LITTLE CONFUSED MYSELF.

9 Q. WOULD IT BE FAIR TO SAY, THEN, THAT YOU IN ALL
10 CIRCUMSTANCES WOULD NOT VOTE FOR MR. SIMMONS TO
11 PREVENT A DEFENSE?

12 A. YES, SIR.

13 Q. BECAUSE JUST AS YOU SAID, IF YOU FELT AT THE
14 CONCLUSION OF THE STATE'S CASE THAT MR. BAILEY HAD
15 NOT PROVEN THE CASE BEYOND A REASONABLE DOUBT THAT
16 THERE WOULD BE NO REASON FOR MR. SIMMONS TO PRESENT
17 A DEFENSE?

18 A. THAT'S RIGHT.

19 MR. THEOS: NO OTHER QUESTIONS, YOUR
20 HONOR.

21 THE COURT: ANYTHING FURTHER FROM
22 THE STATE?

23 MR. BAILEY: NO, SIR.

24 THE COURT: ALL RIGHT. MR. SIMMONS,
25 IF YOU ARE ASKED TO SERVE AS A JUROR IN THIS CASE,

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 YOU AND THE OTHER JURORS WOULD BE HOUSED AT THE
2 HOLIDAY INN MOTEL DURING THE TRIAL. AND IT COULD
3 TAKE FIVE OR SIX OR SEVEN DAYS. WE HOPE TO GET
4 STARTED BY WEDNESDAY. AND THE COUNTY WILL TAKE
5 CARE OF THE HOTEL AND MEAL EXPENSES. YOU'LL BE
6 HERE DURING THE DAY IN THE COURT HEARING TESTIMONY
7 AND EVIDENCE. AND THEN IN THE EVENINGS YOU'LL BE
8 AT THE MOTEL WITH THE OTHER JURORS. AND DO YOU
9 KNOW ANY -- I KNOW IT WOULD BE INCONVENIENT FOR YOU
10 AND EVERYBODY UNDER THOSE CIRCUMSTANCES. BUT OTHER
11 THAN THE INCONVENIENCE, WOULD IT CAUSE ANY TYPE OF
12 SERIOUS RISK OF DANGER TO YOUR HEALTH OR WELL-BEING
13 OF YOU OR ANYBODY DEPENDANT ON YOU IF YOU WERE
14 SELECTED AS A JUROR?

15 MR. SIMMONS: NO, SIR.

16 THE COURT: ALL RIGHT. GIVE HIM
17 THAT SHEET. LET ME ASK YOU TO STEP OUTSIDE FOR
18 JUST A MINUTE, PLEASE. (AT THIS TIME JUROR RETIRES
19 TO JURY ROOM.) WHAT SAY THE DEFENDANT?

20 MR. BAILEY: QUALIFIED, YOUR HONOR.

21 THE COURT: YOU'RE THE STATE.

22 MR. BAILEY: EXCUSE ME?

23 THE COURT: YOU'RE THE STATE.

24 MR. BAILEY: OH, I'M SORRY.

25 MR. THEOS: WE THINK HE'S

HERBERT SIMMONS, JR. - RE-DIRECT/MR. THEOS

1 QUALIFIED.

2 THE COURT: AND WHAT SAY THE STATE?

3 MR. BAILEY: QUALIFIED.

4 THE COURT: BRING THE JUROR OUT,
5 PLEASE. (AT THIS TIME JURY RETURNS TO OPEN COURT.)
6 MR. SIMMONS, YOU'VE BEEN FOUND QUALIFIED TO BE
7 AMONG THOSE WHO WILL BE SELECTED SUBJECT TO CERTAIN
8 PREEMPTORY CHALLENGES BY THE STATE AND THE
9 DEFENDANT. PLEASE DON'T DISCUSS THIS CASE WITH
10 ANYONE. DON'T ALLOW ANYONE TO DISCUSS IT WITH YOU
11 IN YOUR PRESENCE FOR OBVIOUS REASONS. THAT WOULD BE
12 IMPROPER. PLEASE DO NOT READ ANYTHING IN THE PAPER
13 OR LISTEN TO ANY RADIO OR T.V. DON'T ALLOW
14 YOURSELF TO BE EXPOSED TO ANYTHING ABOUT THIS
15 CASE. YOU CAN DISCUSS WITH YOUR FAMILY MEMBERS THE
16 PROSPECT OF PERHAPS BEING SEQUESTERED AS A JUROR
17 FOR A WEEK OR SO. BUT PLEASE DON'T DISCUSS THE
18 FACTS WITH ANYONE. DO YOU UNDERSTAND THAT YOU'RE
19 UNDER AN OATH TO ABIDE BY THAT?

20 MR. SIMMONS: YES, SIR.

21 THE COURT: SO WITH THAT, I'M GOING
22 TO EXCUSE YOU UNTIL TWO O'CLOCK ON WEDNESDAY. BUT
23 CALL THAT NUMBER, THE ANSWERING MACHINE, TOMORROW
24 AFTER SIX. IF THERE'S BEEN ANY CHANGE IN THE TIME,
25 WE MIGHT ASK YOU TO COME BACK EARLIER WEDNESDAY OR

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 LATER WEDNESDAY. BUT WE HOPE TO BE ABLE TO STRIKE
2 BY WEDNESDAY. THANK YOU. AND YOU HAVE A NICE
3 EVENING.

4 MR. SIMMONS: OKAY. THANK YOU. ALL
5 RIGHT. PLEASE BRING IN THE NEXT JUROR.

6 (JUROR NUMBER 319, A WHITE FEMALE, IS CALLED.)

7 - - - - -

8 WHEREUPON,

9 MARYANNE VALENTINO, WHO BEING
10 PREVIOUSLY SWORN TO TELL THE TRUTH,
11 TESTIFIED AS FOLLOWS:

12 EXAMINATION

13 BY THE COURT:

14 Q. MRS. VALENTINE, WE APOLOGIZE TO YOU FOR THE LONG,
15 HARD DAY; AND SORRY TO HAVE KEPT YOU WAITING. IT
16 WAS NOT INTENTIONAL. PLEASE UNDERSTAND, MA'AM,
17 THAT YOU'RE STILL UNDER OATH THAT YOU TOOK THIS
18 MORNING TO RESPOND TO THESE QUESTIONS TRUTHFULLY.

19 A. YES, SIR.

20 Q. AND SINCE YOU LEFT THE COURTROOM EARLIER TODAY, HAS
21 ANYONE TALKED WITH YOU ABOUT THIS CASE? HAVE YOU
22 BEEN EXPOSED IN ANY WAY TO ANY FACTS OR INFORMATION
23 ABOUT THIS CASE?

24 A. NO, I HAVE NOT.

25 Q. HAVE YOU AT ANY TIME IN THE PAST HEARD ON THE

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 STREET OR RADIO, T.V., OR READ IN THE NEWSPAPER
2 ANYTHING ABOUT THIS CASE?

3 A. I REMEMBER HEARING ABOUT IT AT THE TIME THAT IT
4 HAPPENED. I READ THE NEWSPAPER ACCOUNT.

5 Q. DID YOU FORM AN OPINION AT THAT TIME AS TO THE
6 GUILT OR INNOCENCE OF THE DEFENDANT?

7 A. NO, I DID NOT.

8 Q. AND YOU UNDERSTAND, OF COURSE, THAT EVERY PERSON ON
9 TRIAL IN THIS COURT, REGARDLESS OF THE NATURE AND
10 ENORMITY OF THE CHARGE, PARTICULARLY IN A DEATH
11 PENALTY MURDER CASE, THAT EVERY DEFENDANT IS
12 PRESUMED INNOCENT UNTIL THE STATE HAS REMOVED THAT
13 PRESUMPTION OF INNOCENCE BY EVIDENCE SATISFYING THE
14 TWELVE JURORS OF THE GUILT OF THE DEFENDANT BEYOND
15 A REASONABLE DOUBT?

16 A. YES, SIR I DO.

17 Q. YOU UNDERSTAND FURTHER THERE'S NO BURDEN ON THE
18 DEFENDANT TO PROVE HIMSELF NOT GUILTY OR INNOCENT
19 BECAUSE IN MANY INSTANCES THAT MIGHT NOT BE
20 POSSIBLE AND THE DEFENDANT IS NOT REQUIRED TO TAKE
21 THE WITNESS STAND. HE IS NOT REQUIRED TO PUT UP
22 ANY DEFENSE IF THEY SO DECIDE?

23 A. YES, SIR.

24 Q. AND HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO
25 THE GUILT OR INNOCENT OF THE DEFENDANT, KENNETH

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 SIMMONS, IN THIS CARE?

2 A. NO, I HAVE NOT.

3 Q. AND WHATEVER YOU MAY HAVE HEARD OR READ ABOUT IN
4 THE NEWSPAPER, ARE YOU WILLING TO SET THAT ASIDE
5 AND DECIDE THE CASE BASED ON THE SWORN TESTIMONY OF
6 THE WITNESSES AND ANY EVIDENCE OR EXHIBITS THAT
7 MIGHT BE ALLOWED INTO EVIDENCE DURING THE TRIAL OF
8 THE CASE?

9 A. YES, I AM.

10 Q. AND THAT QUESTIONNAIRE, MRS. VALENTINO, THAT YOU
11 HAD PREVIOUSLY SUBMITTED; HAS THERE ANY BEEN CHANGE
12 IN THE ANSWERS SINCE YOU SUBMITTED THAT THAT YOU
13 WOULD LIKE TO ALTER AT THIS TIME?

14 A. NO; THERE'S BEEN NO CHANGE.

15 Q. PLEASE UNDERSTAND, MRS. VALENTINO, WE DID NOT
16 INVADE YOUR PRIVACY. EVERYONE IS ENTITLED TO THEIR
17 OPINIONS. I TELL YOU NOW YOU'RE GOING TO MAKE 100,
18 A PERFECT GRADE ON ANSWERING ALL THESE QUESTIONS
19 BECAUSE THERE IS NO RIGHT OR WRONG ANSWER. BUT OF
20 NECESSITY THE LAWYERS, IN ORDER TO BE IN A BETTER
21 POSTURE TO STRIKE JURORS OR TO AGREE UPON WHO SHALL
22 BE SEATED, THAT THEY NECESSARILY -- WE HAVE TO GO
23 THROUGH THIS PROCEEDING UNDER THE LAW IN A DEATH
24 PENALTY CASE. AND YOU UNDERSTAND FURTHER, MA'AM,
25 THAT THERE'S TO BE NO INFERENCE DEPRIVED WHATSOEVER

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 FROM THE FACT THAT YOU'RE NOW GOING TO TALK ABOUT
2 THE PENALTY PHASE OF THE CASE BEARING IN MIND THAT
3 A DEATH PENALTY CASE UNDER THE LAW IS DIVIDED INTO
4 TWO PARTS OR BIFURCATED. THERE IS A GUILT PHASE
5 WHERE THE STATE IS REQUIRED TO PROVE THE GUILT OF
6 THE DEFENDANT BEYOND A REASONABLE DOUBT. IF ON THE
7 MURDER CHARGE THE DEFENDANT IS FOUND NOT GUILTY,
8 THAT WILL END ANY CONSIDERATION OF A DEATH PENALTY
9 OR RECOMMENDATION OF LIFE WITHOUT PAROLE AND
10 DEPENDING ON WHAT WAS FOUND IN THE OTHER CASES AS
11 TO WHAT THE SENTENCE WOULD BE. BUT THE COURT WOULD
12 IMPOSE THE SENTENCE IF -- AND I DO NOT MEAN TO
13 IMPLY OR INFER THAT THE DEFENDANT IS GUILTY OF
14 ANYTHING -- BUT IF THERE BE GUILTY VERDICTS ON ANY
15 OF THE COMPANION INDICTMENTS; DO YOU UNDERSTAND
16 THAT?

17 A. YES, SIR, I DO.

18 Q. AND IN A CRIMINAL TRIAL SUCH AS THIS, MA'AM, ARE
19 YOU WILLING AS A JUROR TO BE OPEN-MINDED AND FAIR
20 IN WHATEVER THE COURT CHARGES THE JURY AS TO THE
21 LAW IN THE CASE, COULD YOU ACCEPT THAT LAW EVEN IF
22 YOU DISAGREED WITH IT AND APPLY IT TO THE FACTS AS
23 THE JURY FOUND THEM TO BE BECAUSE THE JUDGE HAS THE
24 RESPONSIBILITY OF CHARGING THE LAW?

25 A. YES; I BELIEVE I COULD.

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 Q. AND IF YOU WERE SELECTED AS A JUROR IN THIS CASE,
2 MA'AM, WOULD YOU BE ABLE TO DECIDE THE CASE BASED
3 SOLELY ON THE EVIDENCE PRESENTED IN THE COURTROOM
4 AND DISREGARD ANYTHING ELSE ABOUT THE CASE YOU MAY
5 HAVE HEARD OR READ?

6 A. YES, SIR.

7 Q. AND FURTHER, MA'AM, I WOULD INQUIRE; IF THE FACTS
8 WERE SUCH THAT THE STATE FAILED TO MEET THEIR
9 BURDEN OF PROVING THE GUILT BEYOND A REASONABLE
10 DOUBT, COULD YOU AS A JUROR RETURN A NOT GUILTY
11 VERDICT?

12 A. YES, SIR, I COULD.

13 Q. AND IF THE STATE PROVED THE GUILT OF THE DEFENDANT
14 BEYOND A REASONABLE DOUBT, CONVERSELY SO, COULD YOU
15 RETURN A VERDICT OF GUILTY?

16 A. YES, SIR, I COULD.

17 Q. AND, MA'AM, IF THE VERDICT WAS GUILTY IN THE GUILT
18 PHASE ON THE MURDER CHARGE, THERE WOULD BE A 24
19 HOUR WAITING PERIOD BEFORE YOU WOULD GO INTO THE
20 SECOND PHASE OF WHAT'S CALLED A PENALTY PHASE. AND
21 THERE THE STATE HAS THE BURDEN OF PROVING BEYOND A
22 REASONABLE DOUBT ONE OR MORE STATUTORY AGGRAVATING
23 CIRCUMSTANCES WITHOUT WHICH THE JURY COULD NOT MAKE
24 A RECOMMENDATION TO THE DEATH SENTENCE. AND THERE
25 WILL BE A VERDICT FORM THAT WILL HAVE LISTED THE

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE. AND IF
2 THE JURY FOUND BEYOND A REASONABLE DOUBT,
3 UNANIMOUSLY SO, AND IF THEY VOTED TO RECOMMEND THE
4 DEATH PENALTY, EACH OF THE TWELVE JURORS WOULD HAVE
5 TO SIGN THEIR NAME TO THE VERDICT FORM RECOMMENDING
6 THE DEATH PENALTY. AND WOULD YOU BE ABLE TO DO
7 THAT IF THE EVIDENCE SO WARRANTED?

8 A. YES; I THINK SO.

9 Q. AND FURTHER YOU WOULD BE BROUGHT BACK INTO THE
10 COURTROOM. THE JURY WOULD BE POLLED. IF THAT,
11 MA'AM, IS YOUR VERDICT COULD YOU SIGN IT YES OR
12 NO? YOU WOULD UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND ON THE OTHER HAND, WHILE THE DEFENDANT HAS NO
15 BURDEN TO PROVE MITIGATING CIRCUMSTANCES --
16 MITIGATING MEANING LESS OF -- THAT IF YOU JURORS
17 FIND THAT THERE ARE MITIGATING CIRCUMSTANCES WHICH
18 WOULD WARRANT A RECOMMENDATION OF LIFE IMPRISONMENT
19 WITHOUT PAROLE, THERE WOULD BE NO OPTION. IF THERE
20 IS LIFE IMPRISONMENT, IT WOULD BE WITHOUT PAROLE
21 UNDER THE EXISTING LAW THAT WE HAVE IN THIS STATE.
22 AND COULD YOU RETURN THAT LIFE IMPRISONMENT VERDICT
23 IF THE EVIDENCE WARRANTED IT?

24 A. YES, SIR.

25 Q. COULD YOU RETURN IT AS A RECOMMENDATION OF MERCY

MARYANNE VALENTINO - EXAMINATION BY THE COURT

- 1 EVEN IF THERE WERE NO MITIGATING CIRCUMSTANCES?
2 YOU UNDERSTAND THAT EVEN THOUGH THE JURY MAY HAVE
3 FOUND THE STATUTORY AGGRAVATING CIRCUMSTANCE AND
4 DIDN'T FIND A MITIGATING CIRCUMSTANCE, THE JURY
5 STILL, AS A RECOMMENDATION OF MERCY, COULD
6 RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE. IS
7 THAT CORRECT?
- 8 A. YES.
- 9 Q. AND YOU UNDERSTAND, MA'AM, THAT ONLY THE FOREMAN
10 WOULD SIGN THE VERDICT FOR A RECOMMENDATION OF LIFE
11 WITHOUT PAROLE?
- 12 A. YES, SIR.
- 13 Q. NOW, MA'AM, HAVE YOU HAD THE OPPORTUNITY TO READ
14 THE THREE TYPES OF JURORS ON THAT SHEET THAT WAS
15 HANDED TO YOU WHILE YOU'VE BEEN WAITING IN THE JURY
16 ROOM?
- 17 A. YES, SIR, I HAVE.
- 18 Q. AND YOU UNDERSTAND, MA'AM, THE FACT AGAIN THAT
19 WE'RE SPEAKING OF PENALTY, THAT DOES NOT IN ANY WAY
20 INFER THAT THE DEFENDANT IS GUILTY. YOU SHOULD
21 DERIVE NO INFERENCE THEREFROM?
- 22 A. YES, SIR.
- 23 Q. AND YOU UNDERSTAND THE FIRST TYPE JUROR IS ONE THAT
24 REGARDLESS OF WHAT THE EVIDENCE, THEY'RE ALWAYS
25 GOING TO VOTE THE DEATH PENALTY. AND YOU

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 UNDERSTAND JUROR NUMBER TWO IS, REGARDLESS OF THE
2 FINDINGS OF FACT OR THE EVIDENCE, THEY WOULD NEVER
3 VOTE FOR THE DEATH PENALTY. THEY'D ALWAYS VOTE FOR
4 LIFE IMPRISONMENT WITHOUT PAROLE?

5 A. YES.

6 Q. AND YOU UNDERSTAND, MRS. VALENTINO, THAT THE THIRD
7 TYPE OF JUROR IS A JUROR WHO WOULD NOT GO IN WITH
8 THEIR MIND MADE UP BUT RATHER WOULD LISTEN TO THE
9 EVIDENCE OFFERED BY THE STATE, LISTEN TO THE
10 EVIDENCE OFFERED BY THE DEFENDANT. AND THE
11 DEFENDANT IS UNDER NO BURDEN TO TAKE THE WITNESS
12 STAND. YOU MUST NOT HOLD THAT AGAINST HIM. AND HE
13 DOESN'T EVEN HAVE TO OFFER ANY EVIDENCE. BUT YOU
14 WOULD EVALUATE THE TESTIMONY OF BOTH THE STATE AND
15 THE DEFENDANT IN A FAIR AND OBJECTIVE MANNER AND
16 ARRIVE AT A VERDICT AND MAKE A RECOMMENDATION BASED
17 UPON THAT EVIDENCE AND APPLYING THE LAW AS THE
18 COURT WOULD GIVE IT TO THE JURY AS BEING APPLICABLE
19 TO THE FACTS AS THE JURY MAY FIND THOSE FACTS TO
20 BE. YOU UNDERSTAND THAT'S THE THIRD TYPE OF JUROR?

21 A. YES, SIR, I DO.

22 Q. AND, MA'AM; IN WHICH CATEGORY DO YOU FEEL THAT YOU
23 WOULD BE JURY ONE, TWO, OR THREE?

24 A. I THINK I WOULD BE THREE.

25 Q. ALL RIGHT. AND, MA'AM, IF YOU WERE SELECTED TO BE

MARYANNE VALENTINO - EXAMINATION BY THE COURT

1 ON THIS JURY, YOU UNDERSTAND THAT TODAY IS THE
2 ISSUE OF WHETHER YOU'RE QUALIFIED OR NOT. AND IF
3 YOU'RE FOUND TO BE QUALIFIED, YOU'D BE REQUIRED TO
4 RETURN ON WEDNESDAY AT TWO O'CLOCK. I HOPE THAT AT
5 THAT TIME WE WILL HAVE AS MANY AS 37 QUALIFIED
6 JURORS SO THAT THEN THE STATE AND THE DEFENDANT CAN
7 THEN UTILIZE THEIR PREEMPTORY CHALLENGES OR
8 STRIKES, AND WE WOULD ATTEMPT TO SEAT TWELVE JURORS
9 PLUS TWO ALTERNATES. BUT YOU WOULD BE DURING THE
10 DAY TIME IN THE COURSE OF THE TRIAL HERE IN THE
11 COURTROOM. IN THE EVENINGS YOU'D BE SEQUESTERED
12 WITH THE OTHER JURORS UNDER THE DIRECTION OF
13 CERTAIN BAILIFFS OR SLED LAW ENFORCEMENT OFFICERS.
14 AND THE COUNTY WOULD PAY FOR YOUR MOTEL AND YOUR
15 MEALS. BUT YOU WOULD NOT BE ALLOWED TO USE THE
16 TELEPHONE TO CALL MEMBERS OF YOUR FAMILY. THEY
17 COULD NOT CALL YOU EXCEPT IN CASES OF EMERGENCY.
18 YOU WOULD NOT BE ALLOWED TO READ THE NEWSPAPER
19 ABOUT AND THIS TRIAL OR WATCH T.V. ABOUT THIS TRIAL
20 OR RADIO WHICH COULD OTHERWISE READ THE NEWSPAPERS
21 OR WATCH TELEVISION. WOULD THAT, MA'AM, IN ANY WAY
22 -- I KNOW IT'S GOING TO BE AN INCONVENIENCE TO
23 ANYBODY IN THAT SITUATION. BUT WOULD IT IN ANY WAY
24 POSE A SERIOUS RISK OF DANGER TO YOUR HEALTH OR
25 WELL-BEING OR TO THE HEALTH OR WELL-BEING OF

MARYANNE VALENTINO - DIRECT/MR. BAILEY

1 ANYBODY WHO IS DEPENDANT UPON YOU?

2 A. NO, IT WOULD NOT.

3 Q. ALL RIGHT. THANK YOU.

4 THE COURT: YOU MAY EXAMINE, MR.

5 SOLICITOR.

6 MR. BAILEY: THANK YOU, YOUR HONOR.

7 DIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q. MRS. VALENTINO, I'M WALTER BAILEY. I'LL BE
10 PROSECUTING THIS CASE. AND I WANT TO ASK JUST A
11 FEW MORE QUESTIONS TO FOLLOW UP ON WHAT JUDGE
12 PEEPLES HAD ASKED YOU. I NOTICE FROM YOUR
13 QUESTIONNAIRE YOU ATTEND THE CATHOLIC CHURCH AND GO
14 EVERY WEEK?

15 A. YES, SIR.

16 Q. DO YOU HAVE ANY RELIGIOUS BELIEFS IN REGARD TO THE
17 DEATH PENALTY THAT YOU THINK MIGHT AFFECT YOUR
18 SERVICE ON THIS CASE?

19 A. NO. I DON'T BELIEVE I DO.

20 Q. OKAY. AND ANY PERSONAL BELIEFS? ANY DEEP HELD
21 PERSONAL BELIEFS ON THE DEATH PENALTY THAT YOU
22 THINK WOULD IMPACT YOUR ABILITY TO FAIRLY CONSIDER
23 AND IMPOSE EITHER PUNISHMENT AS THE CASE WARRANTED?

24 A. I DON'T THINK SO; NO.

25 Q. OKAY. AND YOU UNDERSTAND THAT THIS IS THE ONLY

MARYANNE VALENTINO - DIRECT/MR. BAILEY

1 CHANCE WE HAVE TO TALK TO JURORS ABOUT THE PENALTY
2 PHASE UNTIL WE ACTUALLY PICK A JURY. AND WE WOULD
3 NOT ARRIVE AT THE PENALTY PHASE UNLESS THE
4 DEFENDANT'S CONVICTED OF MURDER IN THE FIRST PART
5 OF THE TRIAL. IF HE'S NOT CONVICTED, THAT'S THE
6 END OF IT. IF HE IS CONVICTED, THEN WE GO INTO
7 THAT PENALTY PHASE AFTER A 24 HOUR WAITING PERIOD.
8 AND AT THAT SECOND PART OF THE TRIAL, THE JURY
9 WOULD HEAR ADDITIONAL EVIDENCE, ADDITIONAL
10 INSTRUCTIONS FROM THE JUDGE, AND WOULD THEN DECIDE
11 ON LIFE WITHOUT PAROLE OR THE DEATH PENALTY.
12 WHATEVER THAT JURY DECIDES THE SENTENCE OUGHT TO BE
13 WILL BE ORDERED BY THE JUDGE AND WILL BE CARRIED
14 OUT. DO YOU UNDERSTAND THAT?

15 A. YES, SIR, I DO.

16 Q. AND WE'RE NOT GOING TO ASK YOU; NOBODY WOULD ASK
17 YOU IN PARTICULAR WHAT YOU'D DO IN THIS CASE
18 BECAUSE YOU HAVEN'T HEARD THE FACTS. BUT IF THE
19 FACTS WERE BAD ENOUGH, COULD YOU IMPOSE THE DEATH
20 PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO
21 BE CARRIED OUT AND THAT PERSON WOULD ACTUALLY BE
22 EXECUTED?

23 A. IF THE FACTS WERE BAD ENOUGH, I BELIEVE I COULD;
24 YES.

25 Q. OKAY. AND IF THE OTHER ELEVEN JURORS VOTED THE

MARYANNE VALENTINO - DIRECT/MR. BAILEY

1 SAME WAY FOR THE DEATH PENALTY AFTER HEARING ALL
2 THE FACTS AND CIRCUMSTANCES, COULD YOU SIGN YOUR
3 NAME TO A VERDICT FORM KNOWING THAT VERDICT FORM
4 WOULD RESULT IN THAT EXECUTION TAKING PLACE?

5 A. YES, SIR, I COULD.

6 Q. COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE
7 THAT VERDICT IF IT WAS YOUR VERDICT?

8 A. I THINK SO.

9 Q. OKAY. I'M GOING TO HAVE TO ASK YOU ABOUT THAT ONE
10 AGAIN BECAUSE YOU SORT OF QUALIFIED THAT BY "I
11 THINK SO."

12 A. WELL---

13 Q. IF YOU VOTED FOR IT.

14 A. YES, I WOULD.

15 Q. THANK YOU. ALL RIGHT. IS THIS ANY REASON AT ALL
16 THAT YOU THINK WOULD IN ANY WAY PREVENT YOU FROM
17 SITTING AS A FAIR AND IMPARTIAL JUROR BOTH FOR THE
18 STATE AND THE DEFENSE?

19 A. I DON'T BELIEVE SO.

20 Q. FOR BOTH THE GUILT AND PENALTY PHASE IF WE REACHED
21 THE PENALTY PHASE?

22 A. I DON'T BELIEVE SO.

23 Q. OKAY. COULD YOU TELL US JUST IN YOUR OWN WORDS,
24 NOT RELATING TO THIS CASE, BUT IN GENERAL WHAT YOUR
25 THOUGHTS AND BELIEFS ARE ON THE DEATH PENALTY?

MARYANNE VALENTINO - CROSS/MR. THEOS

1 A. WELL, I THINK FOR ANYONE TO TAKE ANOTHER HUMAN LIFE
2 IS A TERRIBLE THING. BUT I ALSO BELIEVE THAT THERE
3 ARE SOME PEOPLE AND SOME ACTS THAT THEY COMMIT THAT
4 ARE SO AWFUL THAT THAT PENALTY MIGHT BE
5 APPROPRIATE.

6 Q. OKAY. ALL RIGHT. I BELIEVE THAT'S ALL I HAVE,
7 MRS. VALENTINO. THANK YOU?

8 THE COURT: MR. THEOS?

9 CROSS-EXAMINATION

10 BY MR. THEOS:

11 Q. MRS. VALENTINO, HI; I'M JERRY THEOS. I DON'T KNOW
12 IF YOU CAN SEE MR. BELL, JIM BELL -- AND THIS IS
13 KENNETH SIMMONS SITTING RIGHT NEXT TO MR. BELL.
14 HOW ARE YOU?

15 A. FINE; THANK YOU.

16 Q. AS MR. BAILEY SAID, THIS IS THE ONLY CHANCE WE'LL
17 HAVE TO TALK BACK AND FORTH WITH YOU. BUT WE
18 APPRECIATE YOU TALKING WITH US. AND CERTAINLY
19 WE'RE NOT TRYING TO GRADE YOU AS THE JUDGE SAID AND
20 PASS JUDGMENT ON ANY OF YOUR RESPONSES. AND WE
21 APPRECIATE---

22 A. I UNDERSTAND.

23 Q. --YOU BEING TRUTHFUL AND CANDID WITH US. YOU
24 UNDERSTAND THAT JUST BECAUSE MR. SIMMONS HAS BEEN
25 CHARGED WITH A CRIME DOES NOT MEAN THAT HE'S

MARYANNE VALENTINO - CROSS/MR. THEOS

1 GUILTY?

2 A. YES, SIR, I DO.

3 Q. YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. AND YOU UNDERSTAND BECAUSE MR. SIMMONS HAS BEEN
6 INDICTED ON THESE VARIOUS CRIMES THAT THE COURT
7 READ OUT EARLIER THAT HE IS STILL PRESUMED TO BE
8 INNOCENT OF THOSE CHARGES?

9 A. YES, I DO.

10 Q. AND YOU UNDERSTAND THAT BECAUSE MR. SIMMONS IS
11 SITTING HERE WITH US TODAY; JUST BECAUSE OF THAT
12 FACT DOESN'T MEAN THAT MR. SIMMONS IS GUILTY. MR.
13 SIMMONS IS STILL PRESUMED TO BE INNOCENT?

14 A. YES; I UNDERSTAND THAT.

15 Q. AND WE'VE BEEN TALKING A LOT ABOUT POSSIBLE
16 PENALTIES; AND THAT ALWAYS CONCERNS ME THAT A JUROR
17 MIGHT FIND THAT TO BE A LITTLE AWKWARD TALKING
18 ABOUT THE PENALTY BEFORE WE'VE ACTUALLY FOUND
19 SOMEBODY GUILTY OR NOT GUILTY IN A CASE. BUT YOU
20 UNDERSTAND AS THE JUDGE TOLD YOU, AND MR. BAILEY AS
21 WELL, THAT THERE IS A PRESUMPTION OF INNOCENCE.
22 AND JUST BECAUSE WE'RE TALKING ABOUT IT DOESN'T
23 MEAN THAT WE'VE ALL SORT OF MOVED ON TO THE NEXT
24 STAGE?

25 A. I UNDERSTAND THAT.

MARYANNE VALENTINO - CROSS/MR. THEOS

1 Q. YOU UNDERSTAND THAT?

2 A. YES, SIR, I DO.

3 Q. AND YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF
4 ATTEMPTING TO PROVE MR. SIMMONS GUILTY BEYOND A
5 REASONABLE DOUBT?

6 A. YES, I DO.

7 Q. OKAY. AND I ASSUME FROM ALL THE ANSWERS TO YOUR
8 QUESTIONS THAT YOU'RE GOING TO LISTEN TO ALL OF THE
9 EVIDENCE THAT IS OFFERED AND MAKE A DETERMINATION
10 AT THE END OF THE CASE AS TO WHETHER OR NOT THE
11 STATE HAS MET ITS BURDEN?

12 A. YES, SIR.

13 Q. AND AS I UNDERSTAND YOUR RESPONSES, IF YOU FEEL
14 THAT THEY HAVE FAILED TO MEET THE BURDEN OF PROVING
15 HIS GUILT BEYOND A REASONABLE DOUBT THAT YOU WILL
16 FIND MR. SIMMONS NOT GUILTY?

17 A. OH, YES.

18 Q. AND IN THAT EVENT WE WOULD NOT EVEN GO ON TO THE
19 NEXT PHASE?

20 A. I UNDERSTAND THAT.

21 Q. ON THE OTHER HAND, HOWEVER, IF BASED UPON THE
22 DELIBERATIONS OF THE JURY AND MR. SIMMONS WERE
23 FOUND GUILTY, WE WOULD MOVE INTO THAT SECOND PHASE;
24 DO YOU UNDERSTAND THAT?

25 A. I UNDERSTAND THAT.

MARYANNE VALENTINO - CROSS/MR. THEOS

1 Q. OKAY. AND, AGAIN, AS I UNDERSTAND YOUR TESTIMONY,
2 YOU COULD CONSIDER EVERYTHING THAT MIGHT BE OFFERED
3 IN AGGRAVATION RELATED TO THE AGGRAVATING FACTORS
4 OF THE CASE AS WELL AS THE MITIGATING FACTORS AND
5 WEIGH ALL OF THAT AND DETERMINE AN APPROPRIATE
6 PENALTY FOR MR. SIMMONS?

7 A. YES, SIR.

8 Q. IF WE GOT TO THAT STAGE?

9 A. YES, SIR.

10 MR. THEOS: NO OTHER QUESTIONS, YOUR
11 HONOR.

12 THE COURT: ANYTHING ON RE-DIRECT?

13 MR. BAILEY: NO, SIR.

14 THE COURT: ALL RIGHT. MA'AM, LET
15 ME ASK YOU TO STEP OUTSIDE FOR JUST A MOMENT. AND
16 IF YOU WOULD, PLEASE HAND HER THAT INSTRUCTION
17 SHEET ABOUT PREPARATIONS FOR POSSIBLE
18 SEQUESTRATION. (AT THIS TIME JURY RETIRES TO JURY
19 ROOM.) ALL RIGHT, MR. SOLICITOR; WHAT SAY THE
20 STATE AS TO JUROR NUMBER 319, MRS. MARYANNE
21 VALENTINO?

22 MR. BAILEY: QUALIFIED, YOUR HONOR.

23 THE COURT: WHAT SAY THE DEFENDANT?

24 MR. THEOS: SHE APPEARS TO BE
25 QUALIFIED, YOUR HONOR.

MARYANNE VALENTINO - CROSS/MR. THEOS

1 THE COURT: ALL RIGHT. ASK THE LADY
2 TO STEP BACK IN, PLEASE. (AT THIS TIME JUROR
3 RETURNS TO OPEN COURT.) MRS. VALENTINO, YOU'VE
4 BEEN FOUND QUALIFIED AS A POTENTIAL JUROR IN THE
5 TRIAL OF THIS CASE. THAT DOESN'T MEAN THAT YOU'VE
6 BEEN SELECTED TO SIT ON THE JUROR BECAUSE THE STATE
7 HAS FIVE STRIKES AND THE DEFENDANT TEN STRIKES. WE
8 ANTICIPATE, HOPING THAT WE'LL BE IN A POSTURE TO
9 STRIKE A JURY BY TWO O'CLOCK ON WEDNESDAY. MAY I
10 ASK YOU, PLEASE, TO READ THAT INSTRUCTION SHEET
11 CAREFULLY THERE. AND YOU'RE FREE TO DISCUSS WITH
12 ANY MEMBER OF YOUR FAMILY OR FRIENDS THIS POTENTIAL
13 SEQUESTRATION. BUT, PLEASE, YOU'RE UNDER YOUR
14 OATH. I'D ADMONISH YOU NOT TO DISCUSS THE
15 PROSPECTIVE FACTS OR ANYTHING ABOUT THIS CASE WITH
16 ANYONE. PLEASE DO NOT EXPOSE YOURSELF TO ANYONE
17 WHO WOULD DISCUSS IT OR ANY NEWSPAPER OR RADIO OR
18 T.V. ARTICLES. DO YOU UNDERSTAND THAT, PLEASE,
19 MA'AM?

20 MR. VALENTINO: YES, SIR.

21 THE COURT: THEN MA'AM, THERE'S A
22 PHONE NUMBER. IF YOU WOULD, CALL THAT AFTER SIX,
23 AND WE'LL KNOW BETTER WHERE WE STAND TOMORROW
24 AFTERNOON AFTER SIX AS TO WHETHER TWO O'CLOCK IS
25 THE TIME TO COME. YOU CAN DRIVE YOUR OWN CAR. WE

DELORES EVANS - EXAMINATION BY THE COURT

1 CAN LEAVE YOUR CAR AT THE MOTEL WITH YOUR KEYS, OR
2 WE CAN HAVE SOME MEMBER OF YOUR FAMILY DROP YOU
3 OFF. AND YOUR FAMILY CAN ONLY CONTACT YOU IN AN
4 EMERGENCY, OF COURSE.

5 MRS. VALENTINO: OKAY.

6 THE COURT: DO YOU HAVE ANY
7 QUESTIONS?

8 MR. VALENTINO: NO, SIR.

9 THE COURT: ALL RIGHT. PLEASE,
10 MA'AM, DRIVE CAREFULLY. AND THANK YOU FOR YOUR
11 INDULGENCE AND PATIENCE. WE APOLOGIZE FOR KEEPING
12 YOU SO LATE. THANK YOU, MA'AM.

13 MRS. VALENTINO: I UNDERSTAND.

14 THE COURT: THANK YOU, MA'AM. ALL
15 RIGHT. PLEASE BRING IN JUROR MRS. DELORES EVANS,
16 NUMBER 104. AND MR. THEOS, YOU CAN GO FIRST ON THE
17 QUESTIONING AFTER THE COURT.

18 (JUROR NUMBER 104, A BLACK FEMALE, IS CALLED.)

19 - - - - -

20 WHEREUPON,

21 DELORES EVANS, WHO BEING PREVIOUSLY
22 SWORN TO TELL THE TRUTH, TESTIFIED AS
23 FOLLOWS:

24 EXAMINATION

25 BY THE COURT:

DELORES EVANS - EXAMINATION BY THE COURT

1 Q. PLEASE, MA'AM, IN REGARD TO THESE QUESTIONS THAT
2 ARE ABOUT TO BE ASKED OF YOU, PLEASE UNDERSTAND
3 THERE ARE NO RIGHT OR WRONG ANSWERS. OR, I TELL
4 YOU NOW, YOU'LL PASS WITH AN A+ 100 PERCENT GRADE
5 BECAUSE YOU'RE ENTITLED TO YOUR VIEWS, WHATEVER
6 THEY MAY BE. NOW, YOU WILL RECALL, PLEASE, MRS.
7 DELORES EVANS, THAT EARLIER THIS MORNING YOU WERE
8 GIVEN AN OATH AS A JUROR?

9 A. RIGHT.

10 Q. AND THAT STILL APPLIES AT THIS TIME. YOU'RE STILL
11 UNDER OATH DURING THIS QUESTIONING, PLEASE. NOW,
12 SINCE YOU LEFT THE COURTROOM EARLIER THIS MORNING,
13 HAS ANYBODY TALKED WITH YOU ABOUT THE FACTS OF THIS
14 CASE? HAVE YOU DISCUSSED IT WITH ANYONE OR BEEN
15 EXPOSED TO ANY INFORMATION ABOUT THIS CASE FROM ANY
16 SOURCE?

17 A. NO.

18 Q. AND, MA'AM, WE HAVE THIS SHEET HERE WHICH PERSONS
19 STOOD AND RESPONDED IF THEY HAD BEEN INVOLVED IN
20 CERTAIN SITUATIONS. AND I NOTE FROM THIS SHEET
21 THAT YOU INDICATE AS JUROR NUMBER 104 THAT YOU OR
22 YOUR FAMILY HAD BEEN A VICTIM OF A VIOLENT CRIME OR
23 IN SOME MANNER INVOLVED WITH A VIOLENT CRIME.
24 COULD YOU EXPLAIN THAT TO US, PLEASE?

25 A. I HAVE A NEPHEW. HE'S IN ALLENDALE CORRECTIONAL

1 FOR MURDER.

2 Q. YES, MA'AM. DID THAT HAPPEN HERE IN DORCHESTER
3 COUNTY?

4 A. YES, IT DID.

5 Q. HOW OLD IS HE?

6 A. HE'S 27.

7 Q. WHAT IS HIS NAME?

8 A. SHERWIN HEYWOOD.

9 Q. WAS HE CONVICTED IN THIS COURT, OR DID HE PLEAD
10 GUILTY?

11 A. THIS COURT RIGHT HERE.

12 Q. A JURY TRIAL?

13 A. YES, SIR.

14 Q. AND DID YOU IN ANY WAY RAISE UP THIS YOUNG MAN?

15 A. I'VE BEEN AROUND HIM, BUT I DIDN'T RAISE HIM.

16 Q. I UNDERSTAND. AND YOU MENTIONED THE VICTIM WAS
17 WHO?

18 A. SHERWIN HEYWOOD.

19 Q. SHERWIN HEYWOOD IS THE PERSON THAT WAS ALLEGEDLY
20 MURDERED?

21 A. YES. NO; HE WAS THE MURDERER.

22 Q. HE WAS THE DEFENDANT?

23 A. YES.

24 Q. AND WHO WAS THE VICTIM IN THE CASE?

25 A. RIGHT.

DELORES EVANS - EXAMINATION BY THE COURT

1 Q. WHO WAS THE PERSON THAT WAS KILLED?

2 A. BRYAN WEAMER.

3 Q. AND MA'AM, WOULD THE FACT THAT YOU HAVE A NEPHEW
4 WHO UNFORTUNATELY WAS INVOLVED IN THOSE
5 CIRCUMSTANCES; WOULD THAT IN ANY WAY, MRS. EVANS,
6 INTERFERE WITH YOUR ABILITY TO CAREFULLY LISTEN TO
7 THE TESTIMONY AND DECIDE THIS CASE ON THE FACTS
8 THAT WERE INTRODUCED INTO EVIDENCE UNDER OATH FROM
9 THE WITNESS STAND AND ANY EXHIBITS THAT MAY BE
10 INTRODUCED. COULD YOU DISABUSE YOUR MIND OF ANY
11 FEELINGS YOU MIGHT HAVE ABOUT A MURDER CASE OR
12 GUILT OR INNOCENCE AND UNDERSTANDING THAT EVERY
13 DEFENDANT THAT COMES INTO THIS COURT IS INNOCENT
14 UNTIL THE STATE PROVES THEIR GUILT BEYOND A
15 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

16 A. YES, I DO.

17 Q. DO YOU UNDERSTAND FURTHER THE DEFENDANT IS NOT
18 REQUIRED TO TAKE THE WITNESS STAND?

19 A. YES, SIR.

20 Q. YOU UNDERSTAND FURTHER THAT THE DEFENDANT IS
21 PRESUMED INNOCENT. HE DOESN'T HAVE TO PRODUCE ANY
22 WITNESSES. HE DOESN'T HAVE TO PROVE ANY DEFENSES;
23 BUT RATHER THE STATE MUST PROVE HIM GUILTY BEYOND A
24 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

25 A. YES, I DO.

DELORES EVANS - EXAMINATION BY THE COURT

1 Q. AND, MA'AM, HAVE YOU HEARD OR READ ANYTHING IN THE
2 PAPERS OR RADIO OR T.V. ABOUT THIS CASE?

3 A. NO.

4 Q. HAVE YOU FORMED ANY OPINION AS TO GUILT OR
5 INNOCENCE OF THIS DEFENDANT?

6 A. NO.

7 Q. AND DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR
8 AGAINST THE STATE OR THE DEFENDANT?

9 A. NO.

10 Q. AND SINCE YOU SUBMITTED YOUR QUESTIONNAIRE FORM,
11 ARE THERE ANY CHANGES THAT SHOULD BE MADE IN THAT,
12 MA'AM?

13 A. NO, SIR.

14 Q. AND, MA'AM, YOU UNDERSTAND THAT WE'RE NOT TRYING TO
15 INVADE YOUR PRIVACY, BUT THIS IS THE ONLY
16 OPPORTUNITY THAT THE LAWYERS WILL HAVE TO QUESTION
17 YOU ABOUT YOUR VIEWS ON CERTAIN THINGS. AND THE
18 FACT WE TALK ABOUT A TWO PHASE TRIAL, A GUILT PHASE
19 AND A PENALTY PHASE, THAT INFERS OR DERIVES NO
20 INFERENCE. THAT MUST NOT INDICATE TO YOU THAT THE
21 DEFENDANT IS GUILTY BECAUSE YOU UNDERSTAND HE'S
22 PRESUMED INNOCENT?

23 A. RIGHT.

24 Q. AND YOU UNDERSTAND FURTHER, MA'AM, THAT IF BASED
25 UPON THE FACTS AS YOU FIND THEM TO BE, IF THE COURT

DELORES EVANS - EXAMINATION BY THE COURT

1 INSTRUCTED YOU THE LAW OF THE CASE THAT YOU ARE
2 BOUND UNDER YOUR OATH TO APPLY THE LAW?

3 A. YES, SIR.

4 Q. AND WOULD YOU ACCEPT THE LAW AS THIS COURT GIVES IT
5 TO YOU AS BEING THE CORRECT LAW EVEN IF YOU
6 DISAGREED WITH IT?

7 A. YES, SIR.

8 Q. AND, MA'AM, IF THE EVIDENCE WAS SUCH THAT YOU FELT
9 YOU SHOULD RETURN A VERDICT OF NOT GUILTY, HOWEVER
10 BAD THE FACTS MAY LOOK TO BE; COULD YOU RETURN A
11 NOT GUILTY VERDICT?

12 A. YES, SIR.

13 Q. AND IF THE FACTS WERE SUCH THAT THE STATE HAD
14 PROVEN THE DEFENDANT GUILTY BEYOND A REASONABLE
15 DOUBT, COULD YOU RETURN A VERDICT OF GUILTY OF
16 MURDER?

17 A. YES, SIR.

18 Q. AND, MA'AM, IF YOU ARE SELECTED AS A JUROR IN THIS
19 CASE, ARE YOU WILLING TO MAKE A FAIR DECISION BASED
20 ON THE EVIDENCE PRESENTED IN THE COURTROOM AND
21 DISREGARD ANY OTHER FEELINGS YOU MAY HAVE ABOUT
22 MURDER OR THE DEATH PENALTY OR WHAT HAVE YOU?

23 A. YES, SIR.

24 Q. AND, MA'AM, YOU UNDERSTAND THAT THIS WOULD BE A
25 TWO-PHASE CASE THAT THE DEFENDANT IS CHARGED WITH

DELORES EVANS - EXAMINATION BY THE COURT

1 MURDER. IF THE JURY FINDS THE DEFENDANT NOT
2 GUILTY, WELL THAT WOULD BE THE END OF THE MURDER
3 CONSIDERATION AND NO DEATH PENALTY AND NO LIFE
4 IMPRISONMENT WITHOUT PAROLE. AND, OF COURSE, IT
5 WOULD DEPEND ON WHAT THE FINDING WAS ON THE OTHER
6 FOUR CHARGES FOR ARMED ROBBERY OR KIDNAPPING OR
7 WHATEVER. DO YOU UNDERSTAND THAT?

8 A. YES, SIR, I DO.

9 Q. BUT IF THE STATE PROVES THE DEFENDANT GUILTY BEYOND
10 A REASONABLE DOUBT AND THE JURY RETURNS A UNANIMOUS
11 VERDICT OF GUILTY OF MURDER, THEN YOU UNDERSTAND
12 THERE WOULD BE A 24 HOUR WAITING PERIOD; AND WE
13 WOULD THEN GO INTO THE PENALTY PHASE. AND IN THE
14 PENALTY PHASE OF THE CASE, THE STATE WOULD BE
15 REQUIRED TO PROVE AT LEAST ONE STATUTORY
16 AGGRAVATING CIRCUMSTANCES, AND A LIST OF THOSE IN
17 PRINTED FORM WOULD BE GIVEN TO THE JURY BEFORE YOU
18 WOULD GO FOR YOUR FINAL DELIBERATIONS. AND IF THE
19 STATE FAILED TO PROVE ANY ONE OF THOSE STATUTORY
20 AGGRAVATING CIRCUMSTANCE, THEN YOUR VERDICT COULD
21 NOT BE FOR THE DEATH PENALTY BUT WOULD HAVE TO BE
22 LIFE IMPRISONMENT WITHOUT PAROLE. DO YOU
23 UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. DO YOU UNDERSTAND THAT EVEN IF THE STATE PROVES

DELORES EVANS - EXAMINATION BY THE COURT

1 BEYOND A REASONABLE DOUBT ONE OR MORE STATUTORY
2 AGGRAVATING CIRCUMSTANCES THAT IF THE DEFENDANT
3 PRODUCES EVIDENCE OF MITIGATING OR LESSENING
4 CIRCUMSTANCES, YOU MAY CONSIDER THAT. OR EVEN IF
5 THE DEFENDANT HAS NO EVIDENCE OF MITIGATING
6 CIRCUMSTANCES OR YOU DON'T ACCEPT HIS EVIDENCE AS
7 MITIGATING, THE JURY CAN AS A THIRD ALTERNATIVE,
8 BASED ON A RECOMMENDATION OF MERCY IN THEIR HEARTS,
9 MIND AND SOUL, THEY CAN RECOMMEND LIFE IMPRISONMENT
10 WITHOUT PAROLE EVEN IF THERE'S A STATUTORY
11 AGGRAVATING CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. AND YOU UNDERSTAND FURTHER, MA'AM, THAT THERE ARE
14 THREE TYPES OF JURORS ON THAT SHEET THAT I HAD
15 GIVEN TO YOU EARLIER. ONE IS WHEN THE JUROR,
16 REGARDLESS OF THE EVIDENCE IN THE CASE, THEY'RE
17 GOING TO GIVE THE DEATH PENALTY REGARDLESS OF
18 ANYTHING. AND THE SECOND TYPE JUROR IS A JUROR WHO
19 WOULD IGNORE THE EVIDENCE IF THE STATE PROVES THE
20 GUILT BEYOND A REASONABLE DOUBT AND THE STATUTORY
21 AGGRAVATING CIRCUMSTANCE THEY'RE GOING TO FIND LIFE
22 IMPRISONMENT WITHOUT PAROLE AND WOULD UNDER NO
23 CIRCUMSTANCE GIVE THE DEATH PENALTY. DO YOU
24 UNDERSTAND THAT'S THE SECOND TYPE JUROR?

25 A. YES.

DELORES EVANS - DIRECT/MR. THEOS

1 Q. AND THE THIRD TYPE JUROR, YOU UNDERSTAND, MA'AM, IS
2 A JUROR WHO WILL BE OPEN-MINDED AND FAIR, DOESN'T
3 HAVE THEIR MIND MADE UP AHEAD OF TIME, BUT THEY
4 WILL LISTEN TO THE EVIDENCE OF THE STATE; LISTEN TO
5 THE EVIDENCE OF THE DEFENDANT AND OBJECTIVELY
6 ARRIVE AT A FAIR, JUST, AND TRUE VERDICT, FAIR TO
7 THE STATE, FAIR TO THE DEFENDANT, REGARDLESS OF
8 WHETHER IT IS LIFE IMPRISONMENT WITHOUT PAROLE OR
9 THE DEATH PENALTY?

10 A. YES, SIR, I UNDERSTAND THAT.

11 Q. SO UNDERSTAND THOSE BEING THREE TYPES OF JURORS.
12 WHICH OF THOSE THREE WOULD YOU PLACE YOURSELF; ONE,
13 TWO, OR THREE?

14 A. TWO.

15 Q. SO, MA'AM, BY THAT DO YOU MEAN UNDER NO
16 CIRCUMSTANCE COULD YOU RETURN A VERDICT OF DEATH
17 PENALTY IN THIS CASE?

18 A. NO, I COULDN'T.

19 Q. OKAY.. THANK YOU.

20 THE COURT: IT'S YOUR TURN TO CROSS.

21 DIRECT EXAMINATION

22 BY MR. THEOS:

23 Q. MRS. EVANS, HOW ARE YOU?

24 A. ALL RIGHT.

25 Q. I'M JERRY THEOS. THIS IS JIM BELL. AND THIS IS

DELORES EVANS - DIRECT/MR. THEOS

1 KENNETH SIMMONS SEATED NEXT TO MR. BELL. I
2 UNDERSTAND IN ANSWERING THE JUDGE'S QUESTIONS THAT
3 YOU HAVE INDICATED THAT YOU FELT YOU WERE JUROR
4 NUMBER TWO; IS THAT RIGHT?

5 A. RIGHT.

6 Q. DON'T YOU FEEL THAT IF THE CASE WERE BAD ENOUGH,
7 THE FACTS AGGRAVATED ENOUGH, THE CRIME EXTREME
8 ENOUGH, THAT UNDER CERTAIN SITUATIONS WHERE IT WAS
9 JUST SO AGGRAVATED, SO HORRIBLE, THAT YOU COULD
10 IMPOSE THE DEATH PENALTY? CAN'T YOU THINK OF SOME
11 SITUATIONS IN YOUR OWN MIND IN WHICH YOU WOULD FEEL
12 THAT IT WAS AN APPROPRIATE PUNISHMENT?

13 A. IN A WAY I THINK IT'S A PUNISHMENT. BUT SEE, JUST
14 LIKE I SAID, I JUST -- WE WENT THROUGH THAT. AND
15 MY NEPHEW NOW IS SERVING LIFE.

16 Q. LET ME ASK YOU A FEW QUESTIONS ABOUT THAT. AND,
17 PLEASE; WE DON'T WANT YOU TO FEEL UNCOMFORTABLE.
18 WE'RE NOT TRYING TO PUT YOU IN A HOT SEAT. WE'RE
19 REALLY JUST TRYING TO FIND OUT WHAT YOU HONESTLY
20 THINK ABOUT ALL THESE ISSUES. AND YOU UNDERSTAND
21 THAT AS MR. SIMMONS SITS HERE, WE'RE TALKING ABOUT
22 PENALTIES?

23 A. RIGHT.

24 Q. BUT HE SITS HERE PRESUMED TO BE INNOCENT. WE'RE
25 SORT OF JUMPING THE GUN A LITTLE BIT SO TO SPEAK.

DELORES EVANS - DIRECT/MR. THEOS

1 HE'S FIRST GOT TO BE FOUND GUILTY. YOU UNDERSTAND
2 THAT?

3 A. YES, SIR.

4 Q. OKAY. AND IF THE STATE DOESN'T PROVE MR. SIMMONS
5 TO BE GUILTY, WE WOULDN'T EVEN GO ON TO THAT SECOND
6 PHASE. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. NOW, ON THE OTHER HAND, IF THE STATE PROVED MR.
9 SIMMONS TO BE GUILTY, WE WOULD GO TO THAT SECOND
10 STAGE, AND A DECISION WOULD HAVE TO BE MADE AS TO
11 WHETHER NOT MR. SIMMONS WOULD BE SENTENCED TO LIFE
12 IMPRISONMENT OR HE WOULD BE SENTENCED TO THE DEATH
13 PENALTY. NOW, BEFORE I ASK YOU ABOUT THAT
14 SPECIFICALLY -- AND I DON'T MEAN TO OPEN UP A
15 WOUND, A FAMILY WOUND. BUT YOU SAID WE JUST WENT
16 THROUGH THAT. WHEN WAS YOUR -- YOU SAID YOUR
17 NEPHEW WAS CONVICTED OF MURDER?

18 A. YES.

19 Q. CAN YOU TELL US WHEN THAT WAS?

20 A. I THINK THAT WAS '89.

21 Q. AND DO YOU REMEMBER WHETHER HE WAS FACING THE DEATH
22 PENALTY?

23 A. YES; HE WAS, I THINK.

24 Q. DID YOU ATTEND THE TRIAL?

25 A. NO; THEY WOULDN'T LET US ATTEND THE TRIAL.

DELORES EVANS - DIRECT/MR. THEOS

- 1 Q. OKAY. AND WHO WOULDN'T LET YOU ATTEND?
- 2 A. THEY TOLD US WE COULDN'T COME IN; NOT THE IMMEDIATE
- 3 FAMILY.
- 4 Q. WERE YOU ALLOWED IN THE TRIAL AT ANY TIME?
- 5 A. NO.
- 6 Q. NOT---
- 7 A. THE MOTHER EITHER.
- 8 Q. NOW, AFTER YOUR NEPHEW, SHERMAN HEYWOOD, WAS
- 9 CONVICTED, THE JURY CAME BACK AND ANNOUNCED THAT HE
- 10 WAS GUILTY?
- 11 A. RIGHT.
- 12 Q. WAS THERE A SECOND PHASE OF THE TRIAL WHICH THE
- 13 JURY WAS ASKED TO CONSIDER LIFE IMPRISONMENT OR
- 14 DEATH; OR DID IT END WITH THE JURY'S CONVICTION OF
- 15 GUILTY?
- 16 A. I THINK IT ENDED WITH THAT.
- 17 Q. IS IT POSSIBLE, THEN, THAT THE JUDGE SENTENCED --
- 18 DO YOU KNOW WHETHER THE JUDGE SENTENCED HIM?
- 19 A. NO, I DON'T.
- 20 Q. IS IT POSSIBLE THAT SINCE IT ENDED WITH THE JURY'S
- 21 GUILT FINDING THAT THE JUDGE SENTENCED HIM AT THAT
- 22 POINT?
- 23 A. I GUESS. I'M NOT SURE.
- 24 Q. DO YOU REMEMBER WHO HIS LAWYER WAS?
- 25 A. NO.

DELORES EVANS - DIRECT/MR. THEOS

1 Q. DO YOU REMEMBER WHO THE PROSECUTOR WAS?

2 A. NO.

3 Q. WAS IT MR. BAILEY?

4 A. NO; I DON'T THINK SO.

5 Q. NOW AGAIN, GETTING BACK TO THIS PENALTY PHASE, IF
6 WE WERE TO GET TO THAT POINT IN MR. SIMMONS' CASE;
7 DON'T YOU FEEL THAT YOU COULD LISTEN TO WHAT THE
8 STATE HAD TO OFFER AND WHAT THE DEFENSE HAD TO
9 OFFER AND SENTENCE MR. SIMMONS BASED UPON A
10 WEIGHING OF---

11 MR. BAILEY: OBJECTION; LEADING.

12 THE COURT: I'LL ALLOW THE
13 QUESTION. GO AHEAD.

14 Q. DON'T YOU THINK THAT YOU COULD WEIGH EVERYTHING
15 OFFERED BY THE STATE AND EVERYTHING OFFERED BY MR.
16 SIMMONS, BY ME AND MR. BELL, AND REACH A DECISION
17 AS TO LIFE IMPRISONMENT OR THE DEATH PENALTY
18 DEPENDING ON WHICH ONE YOU FELT WAS APPROPRIATE
19 UNDER THE CIRCUMSTANCES?

20 A. YES.

21 Q. SO THERE ARE SITUATIONS IN WHICH YOU FEEL THAT A
22 CASE IS SO BAD, SO UGLY, SO HORRIBLE, THAT THE
23 DEATH PENALTY CAN BE ADMINISTERED?

24 A. YES.

25 Q. AND IN THOSE CASES, MRS. EVANS, YOU COULD RETURN A

DELORES EVANS - CROSS/MR. BAILEY

1 VERDICT FOR THE DEATH PENALTY; CORRECT?

2 A. THAT'S CORRECT; YES, SIR.

3 MR. THEOS: I DON'T HAVE ANY FURTHER
4 QUESTIONS, YOUR HONOR.

5 THE COURT: GENTLEMEN, OBVIOUSLY
6 SINCE THE COURT IS STARTING OUT WITH THE QUESTIONS,
7 I'M ALLOWING EACH SIDE TO LEAD. I THINK THAT'S
8 OBVIOUS. AND Y'ALL UNDERSTAND THAT?

9 MR. THEOS: YES, SIR; I UNDERSTAND.
10 THANK YOU, YOUR HONOR.

11 THE COURT: YOU MAY FURTHER QUESTION
12 THE WITNESS.

13 CROSS-EXAMINATION

14 BY MR. BAILEY:

15 Q. MRS. EVANS, I'M WALTER BAILEY. I'LL BE PROSECUTING
16 THIS CASE. AND I THINK THE JUDGE TOLD YOU THIS
17 BEFORE; BUT I WANT TO SAY IT AGAIN. THERE ARE NO
18 WRONG OR RIGHT ANSWERS. WE ALL RESPECT YOUR
19 OPINION. AND THE ONLY WRONG ANSWER WOULD BE FOR
20 YOU TO TELL ME AN ANSWER OR THE JUDGE, MR. THEOS,
21 AN ANSWER JUST BECAUSE YOU THINK WE WANT TO HEAR
22 IT; OKAY? SO WE WANT TO KNOW WHAT'S COMING FROM
23 YOUR HEART, OKAY?

24 A. OKAY.

25 Q. YOU UNDERSTAND FROM WHAT THE JUDGE TOLD YOU THAT IN

DELORES EVANS - CROSS/MR. BAILEY

1 SOUTH CAROLINA, IF WE REACH THE PENALTY PHASE, THE
2 JUDGE DOES NOT DECIDE WHETHER THAT DEFENDANT GETS
3 LIFE WITHOUT PAROLE OR THE DEATH PENALTY. THE JURY
4 MAKES THAT DECISION. ALL THE JUDGE DOES IS ORDER
5 THAT TO HAPPEN. IF THE JURY VOTES UNANIMOUSLY FOR
6 LIFE WITHOUT PAROLE, THE JUDGE WOULD ORDER IT.
7 HE'LL GO TO PRISON AND SERVE THE REST OF HIS LIFE
8 WITHOUT PAROLE. IF THE JURY SAYS WE THINK THIS
9 CASE IS A DEATH PENALTY CASE AND SIGN THE FORM AND
10 ANNOUNCE THE DECISION, THE JUDGE WOULD ORDER THAT;
11 AND THAT PERSON IS ACTUALLY GOING TO BE EXECUTED
12 BASED ON THAT JURY'S VOTE. NOW, IF YOU AS A JUROR
13 IN A CASE LIKE THIS GOT TO THE SECOND PART OF THE
14 TRIAL, MEANING THE DEFENDANT IS FOUND GUILTY OF
15 MURDER, AND YOU HAD THAT CHOICE BETWEEN LIFE
16 WITHOUT PAROLE AND THE DEATH PENALTY; YOU SAID TO
17 THE JUDGE YOU WOULD ALWAYS VOTE FOR LIFE. IS THAT
18 STILL YOUR POSITION?

19 A. YES.

20 Q. IF YOU HAD YOUR CHOICE?

21 A. YES.

22 Q. COULD YOU EVER, UNDER ANY CIRCUMSTANCES, SIGN YOUR
23 NAME TO A PIECE OF PAPER THAT WOULD RESULT IN
24 SOMEBODY GETTING EXECUTED?

25 A. NO.

DELORES EVANS - RE-DIRECT/MR. THEOS

1 MR. BAILEY: THAT'S ALL I HAVE, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. MR. THEOS,
4 DO YOU WANT TO QUESTION HER FURTHER?

5 MR. THEOS: YES, SIR. JUST A COUPLE
6 OF BRIEF QUESTIONS, YOUR HONOR.

7 RE-DIRECT EXAMINATION

8 BY MR. THEOS:

9 Q. MRS. EVANS, PLEASE DON'T THINK I OR MR. BAILEY OR
10 ANYBODY IS PICKING ON YOU BECAUSE WE'RE NOT. I
11 JUST WANT TO MAKE SURE I'M CLEAR. YOU ANSWERED
12 CERTAIN QUESTIONS BY THE JUDGE, AND YOU JUST
13 ANSWERED MR. BAILEY'S QUESTIONS. BUT WHEN I WAS
14 QUESTIONING YOU BEFORE YOU SAID THERE WERE CERTAIN
15 SITUATIONS THAT YOU FELT IF THEY WERE BAD ENOUGH,
16 IF THE FACTS WERE BAD ENOUGH IN THE CASE; IF THE
17 CASE WAS AGGRAVATED ENOUGH AND THE CRIME HORRIBLE
18 ENOUGH, YOU COULD IN FACT VOTE FOR THE DEATH
19 PENALTY AS AN OPTION TO LIFE IMPRISONMENT -- IF THE
20 CASE WERE BAD ENOUGH?

21 A. YES; IF THAT CASE WAS BAD ENOUGH.

22 Q. OKAY. AND IS THAT YOUR ANSWER, THEN?

23 A. YES; THAT'S MY ANSWER.

24 Q. YOU COULD DO THAT IN MR. SIMMONS' CASE AS WELL;
25 CORRECT?

1 A. YES.

2 MR. THEOS: NO QUESTIONS.

3 THE COURT: ALL RIGHT. MA'AM,
4 PLEASE UNDERSTAND THAT WE'RE NOT TRYING TO PROLONG
5 THIS THING. BUT WE JUST NEED TO KNOW, MA'AM,
6 WHETHER IN THE TRIAL OF THIS CASE IF YOU ARE
7 SELECTED AS A JUROR, DEPENDING ON THE FACTS OF THE
8 CASE, THE LAW AS THE COURT GIVES IT TO YOU, COULD
9 YOU IMPOSE LIFE IMPRISONMENT IF THE FACTS AND
10 EVIDENCE WARRANTED IT?

11 MRS. EVANS: YES, SIR.

12 THE COURT: AND DEPENDING UPON THE
13 FACTS AND THE EVIDENCE IN THE CASE, COULD YOU VOTE
14 FOR THE DEATH PENALTY AND SIGN YOUR NAME AS ALL
15 TWELVE JURORS MUST SIGN IF THERE WAS A
16 RECOMMENDATION OF THE DEATH PENALTY?

17 MRS. EVANS: YES, SIR; I COULD DO
18 THAT, TOO.

19 THE COURT: ALL RIGHT. AS I
20 UNDERSTAND IT FROM MR. THEOS' QUESTIONING,
21 DEPENDING ON HOW BAD THE FACTS ARE AS TO WHETHER
22 YOU WOULD VOTE FOR THE DEATH PENALTY OR NOT BEARING
23 IN MIND THAT THE DEFENDANT IS PRESUMED INNOCENT;
24 AND THE STATE HAS THE BURDEN OF PROVING HIS GUILT
25 AND STATUTORY AGGRAVATING CIRCUMSTANCES BEYOND A

DELORES EVANS - RE-CROSS/MR. BAILEY

1 REASONABLE DOUBT. THERE'S NO BURDEN ON THE
2 DEFENDANT. DO YOU UNDERSTAND THAT?

3 MRS. EVANS: I UNDERSTAND THAT.

4 THE COURT: ALL RIGHT. ANYTHING
5 FURTHER, GENTLEMEN?

6 MR. BAILEY: YES, SIR.

7 THE COURT: GO AHEAD.

8 RE-CROSS EXAMINATION

9 BY MR. BAILEY:

10 Q. MRS. EVANS, I APOLOGIZE. AND I REALIZE WE DO THIS
11 ALL THE TIME, AND THIS IS YOUR FIRST TIME. WHAT
12 I'M TRYING TO DO IS TO GET ONE ANSWER OUT OF YOU NO
13 MATTER WHO IS ASKING THE QUESTIONS, OKAY? I WANT TO
14 BACK UP AGAIN. AND I'M GOING TO ASK AGAIN, OR
15 REMIND YOU AGAIN; THERE'S NO RIGHT OR WRONG
16 ANSWERS. NOBODY IS JUDGING YOU. WE WANT TO KNOW
17 WHAT COMES FROM YOUR HEART; HOW YOU REALLY FEEL.
18 AND WE'RE NOT GOING TO ASK YOU WHAT YOU'D DO IN
19 THIS CASE BECAUSE YOU HAVEN'T HEARD THE FACTS OF
20 THIS CASE.

21 A. RIGHT.

22 Q. BUT IF YOU WERE ON A JURY, AS A JUROR, FIND THAT
23 DEFENDANT GUILTY OF MURDER, GO INTO THE SECOND
24 PHASE OF THE TRIAL WHERE THE JURY MAKES A DECISION
25 YOU'RE SAYING, LIFE WITHOUT PAROLE OR THE DEATH

DELORES EVANS - RE-CROSS/MR. BAILEY

1 PENALTY. AND WHATEVER THAT JURY DECIDES IS GOING
2 TO HAPPEN, EITHER LIFE WITHOUT PAROLE OR THE DEATH
3 SENTENCE; COULD YOU, IF YOU HAD YOUR CHOICE, VOTE
4 FOR THE DEATH PENALTY KNOWING THAT PERSON IS GOING
5 TO BE EXECUTED; OR IF YOU HAD THE CHOICE, WOULD YOU
6 ALWAYS VOTE FOR LIFE WITHOUT PAROLE?

7 A. YOU WANT ME TO CHOOSE BETWEEN THE TWO? THAT'S WHAT
8 YOU'RE SAYING; RIGHT?

9 MR. THEOS: YOUR HONOR---

10 THE COURT: DEPENDING UPON THE
11 EVIDENCE, MA'AM, COULD YOU VOTE LIFE IMPRISONMENT
12 WITHOUT PAROLE, OR COULD YOU VOTE FOR THE DEATH
13 PENALTY; OR WOULD YOU ALWAYS VOTE FOR THE DEATH
14 PENALTY? WOULD YOU ALWAYS VOTE FOR LIFE
15 IMPRISONMENT?

16 MRS. EVANS: JUST HOW SERIOUS THAT
17 CASE IS, I WILL VOTE FOR THE DEATH PENALTY.

18 Q. OKAY. AND IF YOU VOTED FOR THE DEATH PENALTY, AND
19 THE OTHER ELEVEN JURORS VOTED FOR IT, COULD YOU
20 SIGN YOUR NAME TO A VERDICT FORM THAT WOULD RESULT
21 IN THAT PERSON BEING EXECUTED?

22 A. YES.

23 Q. AND COULD YOU COME OUT HERE WHEN YOUR NAME WAS
24 CALLED OUT AND SAY OUT LOUD THAT WAS YOUR VERDICT
25 KNOWING THAT VERDICT IS GOING TO BE CARRIED OUT?

DELORES EVANS - RE-CROSS/MR. BAILEY

1 A. RIGHT.

2 Q. OKAY.

3 THE COURT: ANYTHING FURTHER, MR.
4 THEOS?

5 MR. THEOS: NOTHING, YOUR HONOR.

6 THE COURT: THANK YOU, MA'AM. WE
7 NEED YOU TO STEP OUTSIDE FOR A MINUTE, PLEASE.

8 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

9 THE COURT: WHAT SAY THE DEFENDANT?

10 MR. THEOS: YOUR HONOR, SHE'S
11 QUALIFIED.

12 THE COURT: WHAT SAY THE STATE?

13 MR. BAILEY: YOUR HONOR, MRS. EVANS
14 IS A NICE LADY. I THINK SHE WOULD ANSWER ANY
15 QUESTION TO TRY TO SATISFY WHOEVER ASKS THE
16 QUESTION. SHE CLEARLY TOLD YOU SHE COULDN'T VOTE
17 FOR THE DEATH PENALTY INITIALLY. SHE TOLD MR.
18 THEOS SHE COULD. SHE TOLD ME SHE COULDN'T. SHE
19 TOLD YOU -- I'M NOT SURE WHETHER SHE DOESN'T
20 UNDERSTAND THE PROCESS OR WHAT THE PROBLEM IS. BUT
21 I DON'T KNOW WHERE SHE STANDS, JUDGE. I DON'T THINK
22 SHE'S QUALIFIED.

23 THE COURT: WELL, AGAIN, THERE WAS
24 SOME EVIDENCE DEFENDING ON WHO ASKED THE QUESTION
25 LAST AS TO WHAT ANSWER WOULD BE GIVEN. AND JUST AS

DELORES EVANS - RE-CROSS/MR. BAILEY

1 JUROR NUMBER ONE, NUMBER 284, EQUIVOCATED TO A
2 LESSER DEGREE, I THINK THERE IS SOME EQUIVOCATION
3 ON THE PART OF THIS JUROR. BUT THE COURT IS GOING
4 TO FIND HER QUALIFIED. AND I'LL NOTE THE STATE'S
5 OBJECTION.

6 MR. BAILEY: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT. BRING THE
8 LADY BACK IN, PLEASE.

9 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

10 THE COURT: MRS. EVANS, YOU'VE BEEN
11 QUALIFIED AS A POTENTIAL JUROR IN THIS CASE. IT
12 DOESN'T MEAN YOU'RE ON THE JURY YET. WE'RE GOING
13 TO TRY TO BE READY TO STRIKE BY TWO O'CLOCK ON
14 WEDNESDAY. WE MAY NOT BE. BUT YOU CAN TAKE THAT
15 SHEET HOME. AND YOU CAN TALK TO YOUR FRIENDS AND
16 FAMILY ABOUT IT. BUT, PLEASE MA'AM, DO NOT TALK TO
17 ANYONE ABOUT THIS CASE OR ALLOW ANYONE TO ATTEMPT
18 TO APPROACH YOU IN ANY WAY ABOUT THIS CASE. AND DO
19 YOU KNOW ANYTHING ABOUT YOUR HEALTH THAT WOULD
20 EFFECT YOU IF YOU WERE SEQUESTERED AT THE HOLIDAY
21 INN FOR FIVE OR SIX OR SEVEN OR EIGHT DAYS, OR
22 ANYBODY DEPENDENT ON YOU, YOUR BEING AWAY FROM
23 HOME? CAN EVERYBODY GET BY WITHOUT YOU BEING
24 THERE?

25 MRS. EVANS: YES, SIR.

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

1 THE COURT: AND, SO MA'AM, YOU'VE
2 GOT THAT PHONE NUMBER. CALL AFTER SIX O'CLOCK
3 TOMORROW. AND IF THERE'S ANY CHANGE ABOUT BEING
4 READY FOR TWO O'CLOCK ON WEDNESDAY, WE'LL LET YOU
5 KNOW.

6 THE JUROR: OKAY.

7 THE COURT: THANK YOU SO MUCH.
8 PLEASE DON'T READ ANYTHING ABOUT THE CASE OR TALK
9 TO ANYBODY ABOUT IT OR WATCH T.V.

10 MRS. EVANS: OKAY.

11 THE COURT: ALL RIGHT, GENTLEMEN.
12 WE NOW MOVE TO PANEL TWO. LET'S GET THE FIRST
13 PERSON ON PANEL TWO, PLEASE. THAT'S SHIRLEY
14 PRINGLE.

15 (JUROR NUMBER 258, A BLACK FEMALE, COMES INTO OPEN
16 COURT.)

17 THE COURT: THIS IS JUROR NUMBER
18 258. AND EARLIER IN THE DAY, MA'AM, YOU HAD BEEN
19 PLACED UNDER YOUR VOIR DIRE OR UNDER YOUR OATH TO
20 TELL THE TRUTH IN RESPONSE TO QUESTIONS. AND
21 YOU'RE STILL UNDER THAT OATH, PLEASE, MA'AM, TO
22 TELL THE TRUTH. DO YOU UNDERSTAND?

23 THE JUROR: YES, SIR.

24 - - - - -

25 WHEREUPON,

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

SHIRLEY PRINGLE, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATIONBY THE COURT:

Q. IF YOU WOULD, PLACE PULL YOUR CHAIR UP A LITTLE BIT
AND TOUCH THAT MICROPHONE. I WANT TO MAKE SURE
THAT EVERYBODY CAN HEAR WHAT YOU'RE SAYING. YOU'RE
A SOFT-SPOKEN LADY. I COMMEND YOU FOR THAT. NOW
SINCE YOU WERE HERE THIS MORNING, HAS ANYBODY TRIED
TO TALK TO YOU ABOUT THIS CASE, OR HAVE YOU BEEN
EXPOSED TO ANYTHING ABOUT IT?

A. NO, SIR.

Q. HAVE YOU IN THE PAST READ ANYTHING IN THE PAPER OR
HEARD ANYTHING ON THE STREET OR OTHERWISE ABOUT
THIS CASE; HEARD ON THE RADIO OR T.V. ABOUT IT;
HEARD ANYTHING ABOUT IT?

A. WELL, I JUST BRIEFLY HEARD IT ON THE T.V. YEARS AGO
IN THE NEWSPAPER. BUT I DON'T EVEN REMEMBER WHAT I
READ. IT WAS SUCH A LONG TIME AGO.

Q. YES, MA'AM. AND BASED ON WHAT YOU MAY HAVE HEARD
OR READ OR HEARD ON T.V., HAVE YOU FORMED ANY
OPINION AS TO THE GUILT OR INNOCENCE OF THE
DEFENDANT, KENNETH SIMMONS?

A. NO, SIR.

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

1 Q. AND ANYTHING THAT COMES TO YOUR RECOLLECTION THAT
2 YOU HAD HEARD OR READ ABOUT THIS CASE, YOU'RE
3 WILLING TO PUT THAT ASIDE AND TO DECIDE THE CASE
4 SOLELY ON THE SWORN TESTIMONY AND THE EVIDENCE THAT
5 MAY BE INTRODUCED INTO THE TRIAL OF THIS CASE?

6 A. YES.

7 Q. AND, MA'AM, THAT QUESTIONNAIRE THAT YOU SENT BACK
8 IN; HAVE THERE BEEN ANY CHANGES? DO THE ANSWERS
9 NEED TO BE ALTERED IN ANY MANNER WHATSOEVER? IN
10 OTHER WORDS, IS IT STILL ACCURATE, THE
11 QUESTIONNAIRE THAT YOU SENT IN?

12 A. YES, SIR.

13 Q. AND NOW, MA'AM, YOU UNDERSTAND THAT EVERY DEFENDANT
14 THAT COMES INTO THIS CASE IS ALWAYS PRESUMED OR
15 THOUGHT TO BE INNOCENT; AND THE DEFENDANT DOESN'T
16 HAVE TO PROVE HIS INNOCENCE. THE DEFENDANT DOESN'T
17 HAVE TO TAKE THE WITNESS STAND. BUT THE STATE HAS
18 TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT. DO
19 YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. DO YOU UNDERSTAND FURTHER, MA'AM, WE'RE NOT TRYING
22 TO INVADE YOUR PRIVACY BY ASKING YOU ANY OF THESE
23 QUESTIONS BUT RATHER TO LEARN WHAT YOUR VIEWS ARE
24 ON A NUMBER OF THINGS SO THAT THE JURY, THE
25 LAWYERS, COULD BE AIDED IN MAKING A DECISION TO

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

1 STRIKE OR ACCEPT YOU IN THE CASE? DO YOU
2 UNDERSTAND THAT?

3 A. WOULD YOU PLEASE REPEAT THE QUESTION?

4 Q. DO YOU UNDERSTAND THAT BY ASKING YOU THESE
5 QUESTIONS THAT NOBODY IS TRYING TO INVADE YOUR
6 PRIVACY OR GO INTO YOUR PERSONAL MATTERS BECAUSE
7 ANY ANSWERS YOU GIVE US ARE GOING TO BE RIGHT
8 ANSWERS BECAUSE YOU'RE NOT GOING TO FAIL THIS TEST
9 BECAUSE YOU'RE ENTITLED TO YOUR OPINION ON ANYTHING
10 AND EVERYTHING. DO YOU UNDERSTAND THAT?

11 A. YES.

12 Q. AND YOU UNDERSTAND, MA'AM, THAT IF YOU WERE A JUROR
13 IN A CASE, WOULD YOU BE WILLING TO LISTEN TO THE
14 LAW AS INSTRUCTED BY THE COURT; THE JUDGE?

15 A. YES, SIR.

16 Q. AND COULD YOU APPLY THAT LAW TO THE FACTS AS FOUND
17 BY YOU AND ARRIVE AT A TRUE AND FAIR VERDICT?

18 A. YES, SIR.

19 Q. AND YOU UNDERSTAND, MA'AM, THAT IN A CRIMINAL CASE
20 IF YOU FOUND THE EVIDENCE TO BE THAT THE STATE'S
21 FAILED TO PROVE THE GUILT OF THE DEFENDANT BEYOND A
22 REASONABLE DOUBT, COULD YOU VOTE TO RETURN A NOT
23 GUILTY VERDICT ON THE MURDER AND THE OTHER CHARGES?

24 A. YES, SIR.

25 Q. AND ON THE OTHER HAND, IF THE EVIDENCE WAS SUCH

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

1 THAT THE STATE HAD PROVEN THE GUILT OF THE
2 DEFENDANT BEYOND A REASONABLE DOUBT, COULD YOU
3 BASED ON THE EVIDENCE AND THE LAW, RETURN A VERDICT
4 OF GUILTY?

5 A. YES, SIR.

6 Q. AND, MA'AM, NORMALLY THE SENTENCING OF A DEFENDANT
7 IN CRIMINAL COURT IS A FUNCTION OF THE COURT, NOT
8 THE JURY. BUT IN A DEATH PENALTY CASE THE JURY IS
9 CALLED UPON TO MAKE A RECOMMENDATION BEARING IN
10 MIND THAT THE STATE MUST FIRST IN THE GUILT PHASE
11 OF THE CASE PROVE THE GUILT OF THE DEFENDANT BEYOND
12 A REASONABLE DOUBT. AND IF THE DEFENDANT IS FOUND
13 GUILTY BEYOND A REASONABLE DOUBT OF MURDER, ONLY
14 THEN WOULD YOU GO TO THE SECOND PENALTY PHASE OF
15 THE CASE. IF THE DEFENDANT IS FOUND NOT GUILTY,
16 THEN THAT WOULD END THE CASE INSOFAR AS A
17 RECOMMENDATION OF A SENTENCE ON THE MURDER; DO YOU
18 UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND DO YOU UNDERSTAND THAT THE FACT WE'RE TALKING
21 ABOUT THE SECOND PHASE DOES NOT IN ANY WAY -- YOU
22 SHOULDN'T INFER THAT THE COURT OR ANYONE ELSE
23 THINKS THAT THE DEFENDANT IS GUILTY BECAUSE HE IS
24 PRESUMED INNOCENT. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

1 Q. AND YOU UNDERSTAND, MA'AM, THAT THERE ARE -- THE
2 STATE, DURING THE PENALTY PHASE, IS REQUIRED TO
3 PROVE BEYOND A REASONABLE DOUBT STATUTORY
4 AGGRAVATING CIRCUMSTANCES. AND YOU AND THE OTHER
5 JURORS; YOUR VERDICT MUST BE UNANIMOUS. AND YOU
6 COULD NOT MAKE A RECOMMENDATION AS TO THE DEATH
7 PENALTY UNLESS THE STATE DID PROVE BEYOND A
8 REASONABLE DOUBT THE STATUTORY AGGRAVATING
9 CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

10 A. WHAT DO YOU MEAN? DO I BELIEVE IN THE DEATH
11 PENALTY?

12 Q. NO, MA'AM. I ASK YOU AGAIN; YOU UNDERSTAND THE LAW
13 IS THAT THE DEATH PENALTY COULD NOT BE RECOMMENDED
14 BY THE JURY UNLESS THE STATE PROVED A STATUTORY
15 AGGRAVATING CIRCUMSTANCE? FOR EXAMPLE, THE MURDER
16 OCCURRED DURING THE COMMISSION OF AN ARMED
17 ROBBERY. THAT WOULD BE A STATUTORY AGGRAVATING
18 CIRCUMSTANCE. THE STATE WOULD HAVE TO PROVE THAT
19 BEFORE YOU COULD RECOMMEND THE DEATH PENALTY AS A
20 JUROR. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. AND YOU UNDERSTAND THAT EVEN IF YOU FIND THAT
23 STATUTORY AGGRAVATING CIRCUMSTANCE, THE JURY AS A
24 RECOMMENDATION OF MERCY OR BECAUSE THERE'S EVIDENCE
25 OF MITIGATING CIRCUMSTANCES, THEY COULD RECOMMEND

SHIRLEY PRINGLE - EXAMINATION BY THE COURT

- 1 LIFE IMPRISONMENT WITHOUT PAROLE EVEN THOUGH THE
2 STATE HAD PROVEN A STATUTORY AGGRAVATING
3 CIRCUMSTANCE. YOU AS A JUROR WOULDN'T BE BOUND BY
4 THAT. DO YOU UNDERSTAND THAT?
- 5 A. YES, SIR.
- 6 Q. DO YOU UNDERSTAND FURTHER, MA'AM, FROM THAT SHEET
7 THAT I HAD GIVEN TO YOU THERE WERE THREE TYPES OF
8 JURORS. ONE IS A JUROR WHO REGARDLESS OF THE
9 EVIDENCE AND THE FACTS ALWAYS WOULD WANT TO RETURN
10 THE DEATH PENALTY. TYPE TWO IS ANOTHER CLOSED
11 MINDED JUROR THAT JUST DOESN'T BELIEVE IN THE DEATH
12 PENALTY. AND THAT'S ALL RIGHT IF YOU DON'T BELIEVE
13 IN THE DEATH PENALTY. WHETHER YOU DO OR NOT,
14 THAT'S YOUR BUSINESS. BUT THAT JUROR NUMBER TWO,
15 REGARDLESS OF THE EVIDENCE, WOULD ALWAYS WANT TO
16 VOTE FOR THE LIFE IMPRISONMENT WITHOUT PAROLE. DO
17 YOU UNDERSTAND THAT?
- 18 A. YES, SIR.
- 19 Q. THEN THE THIRD TYPE JUROR IS THE JUROR WHO WOULD
20 LISTEN TO THE TESTIMONY OFFERED BY THE STATE AND
21 THE DEFENDANT, ALTHOUGH THE DEFENDANT DOESN'T HAVE
22 TO OFFER ANY TESTIMONY OR EVIDENCE; AND WOULD
23 LISTEN TO THE INSTRUCTION OF THE LAW OF THE COURT
24 AND APPLY THAT LAW TO THE FACTS AS THE JURY MAY
25 FIND THOSE FACTS TO BE AND ARRIVE AT A TRUE

SHIRLEY PRINGLE - DIRECT/MR. BAILEY

1 VERDICT. THAT'S WHAT THE WORD "VEREDICTO" MEANS,
2 TO SPEAK THE TRUTH, A LATIN PHRASE. AND YOU COULD
3 RETURN THE DEATH PENALTY IF THE EVIDENCE WARRANTED
4 IT, OR YOU COULD RETURN LIFE IMPRISONMENT WITHOUT
5 PAROLE IF THAT'S WHAT THE EVIDENCE YOU FOUND IT TO
6 BE. NOW, WHICH OF THOSE THREE WOULD YOU FALL
7 INTO? WHICH CATEGORY?

8 A. NUMBER TWO.

9 Q. NUMBER TWO?

10 A. YES, SIR.

11 Q. ALL RIGHT.

12 THE COURT: MR. SOLICITOR.

13 MR. BAILEY: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. MRS. PRINGLE, I WANT TO ASK YOU A FEW MORE
17 QUESTIONS. FIRST OF ALL I WANT TO ASK YOU ABOUT
18 THE ANSWERS TO SOME OF THE QUESTIONS IN YOUR
19 QUESTIONNAIRE. I NOTICE THAT YOU GO TO THE
20 METHODIST CHURCH; AND YOU GO EVERY SUNDAY AND EVERY
21 WEDNESDAY NIGHT?

22 A. YES, SIR.

23 Q. DO YOUR BELIEFS ABOUT THE DEATH PENALTY HAVE A
24 RELIGIOUS BASIS?

25 A. WELL, I JUST DON'T BELIEVE IN THE DEATH PENALTY.

SHIRLEY PRINGLE - DIRECT/MR. BAILEY

1 Q. AND IS THAT A STRONGLY HELD BELIEF?

2 A. YES.

3 Q. HAVE YOU FELT THAT WAY FOR SOME TIME?

4 A. YES.

5 Q. IT'S SOMETHING YOU'VE THOUGHT ABOUT BEFORE TODAY,
6 THEN?

7 A. YES, SIR.

8 Q. OKAY. AND LIKE THE JUDGE SAID, THERE ARE NO RIGHT
9 OR WRONG ANSWERS. WE JUST WANT TO KNOW HOW YOU
10 REALLY FEEL ABOUT THESE ISSUES. AND ONE OF THE
11 PAGES THAT I'VE GOT WASN'T FILLED OUT. BUT DO YOU
12 WORK?

13 A. I'M A HOUSEWIFE.

14 Q. OKAY. AND I NOTICE THAT YOU'VE BEEN ON A JURY
15 BEFORE; AND YOU'VE GOT THAT Y'ALL CAME BACK WITH A
16 NOT GUILTY VERDICT?

17 A. YES, SIR.

18 Q. DO YOU RECALL WHAT KIND OF A CASE THAT WAS?

19 A. WELL, IT WASN'T A MURDER CASE. IT WAS A -- I DON'T
20 KNOW THE NAME OF IT. BUT IT WAS ABOUT TWO OR THREE
21 YEARS AGO.

22 Q. OKAY.

23 A. IT WAS IN A CIVIL COURT.

24 Q. OH; CIVIL COURT?

25 A. YES.

SHIRLEY PRINGLE - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. DO UNDERSTAND THAT WE WOULDN'T EVEN GET
2 TO THE PENALTY PHASE AT ALL UNLESS AND UNTIL THE
3 DEFENDANT WAS FOUND GUILTY OF MURDER IN THE FIRST
4 PART OF THE TRIAL?

5 A. BEG YOUR PARDON?

6 Q. YOU UNDERSTAND THAT WE WOULDN'T EVEN BE GETTING
7 INTO THE LIFE WITHOUT PAROLE OR DEATH PENALTY
8 SITUATION UNLESS THE DEFENDANT WAS FOUND GUILTY OF
9 MURDER IN THE FIRST PART OF THE TRIAL? DO YOU
10 UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND YOU UNDERSTAND FROM WHAT JUDGE PEEPLES TOLD YOU
13 THAT IN SOUTH CAROLINA THE JURY, NOT THE JUDGE,
14 MAKES THE DECISION ON LIFE WITHOUT PAROLE OR THE
15 DEATH PENALTY IF WE GET TO THAT POINT?

16 A. YES.

17 Q. AND YOU TOLD THE JUDGE YOU WERE THE NUMBER TWO TYPE
18 JUROR THAT DIDN'T BELIEVE IN THE DEATH PENALTY?

19 A. YES, SIR.

20 Q. AND IF YOU HAD YOUR CHOICE BETWEEN LIFE WITHOUT
21 PAROLE OR THE DEATH PENALTY THAT YOU WOULD ALWAYS
22 PICK LIFE WITHOUT PAROLE; IS THAT CORRECT?

23 A. YES, SIR.

24 Q. AND YOU COULD NEVER, NO MATTER HOW BAD THE CASE
25 WAS, SIGN YOUR NAME TO A VERDICT FORM THAT WOULD

SHIRLEY PRINGLE - CROSS/MR. THEOS

1 RESULT IN SOMEBODY BEING EXECUTED; IS THAT CORRECT?

2 A. YES, SIR.

3 Q. THANK YOU.

4 MR. BAILEY: THAT'S ALL I HAVE RIGHT
5 NOW, JUDGE.

6 THE COURT: MR. THEOS?

7 MR. THEOS: YES, SIR.

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. MRS. PRINGLE, HOW ARE YOU?

11 A. FINE, THANK YOU.

12 Q. I'M JERRY THEOS. THIS IS JIM BELL. AND THIS IS
13 KENNETH SIMMONS. AND WE THANK YOU FOR COMING AND
14 SHARING YOUR THOUGHTS WITH US. AND AS MR. BAILEY
15 AND THE JUDGE SAID, IT'S IMPORTANT THAT YOU ARE
16 COMPLETELY TRUTHFUL OR CANDID WITH US AND THAT WE
17 UNDERSTAND WHAT YOUR THOUGHTS ARE. NOW, ONE THING
18 THAT ALWAYS CONCERNS ME, AND IT CONCERNS THE JUDGE
19 BECAUSE HE'S ASKED YOU THIS QUESTION, IS JUST
20 BECAUSE WE'VE TALKED ABOUT THE POTENTIAL PENALTY IN
21 THIS CASE DOESN'T MEAN THAT MR. SIMMONS IS GUILTY.
22 DO YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. AND YOU UNDERSTAND THAT WE'RE JUMPING AHEAD OF
25 OURSELVES QUITE A BIT TO TALK ABOUT PENALTY BEFORE

SHIRLEY PRINGLE - CROSS/MR. THEOS

1 MR. SIMMONS IS EVEN TRIED ON THE CHARGES THAT HE'S
2 FACING?

3 A. YES, SIR.

4 Q. AND YOU UNDERSTAND HE'S PRESUMED TO BE INNOCENT?

5 A. YES, SIR.

6 Q. DO YOU THINK THAT IN THE GUILT PHASE OF THE TRIAL
7 THAT YOU COULD LISTEN TO THE EVIDENCE THAT WAS
8 OFFERED BY THE STATE AND LISTEN TO THE EVIDENCE
9 OFFERED BY THE DEFENSE. AND IF YOU FELT THAT THE
10 STATE HAD MET ITS BURDEN AND PROVEN TO YOU AS A
11 JUROR BEYOND A REASONABLE DOUBT THAT MR. SIMMONS
12 WAS GUILTY, DO YOU FEEL THAT YOU COULD FIND HIM
13 GUILTY OF THE CHARGES?

14 A. YES, SIR.

15 Q. AND ON THE OTHER HAND, IF THE STATE HAD NOT MET ITS
16 BURDEN AND NOT PROVEN TO YOU AS A JUROR BEYOND A
17 REASONABLE DOUBT THAT MR. SIMMONS WAS GUILTY OF THE
18 CHARGES, I ASSUME THEN YOU COULD FIND MR. SIMMONS
19 NOT GUILTY?

20 A. YES, SIR.

21 Q. I ALSO UNDERSTAND THAT YOU'VE INDICATED YOU WERE A
22 JUROR NUMBER TWO TYPE?

23 A. YES, SIR.

24 Q. NOW, CAN'T YOU THINK OF SOME SITUATIONS THAT ARE SO
25 AGGRAVATED AND SO BAD IN YOUR OWN MIND, SO HORRIBLE

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SHIRLEY PRINGLE - CROSS/MR. THEOS

1 IN YOUR OWN MIND, THAT THE DEATH PENALTY MAY BE
2 CALLED FOR AS PUNISHMENT IN A CASE?

3 A. EXCUSE ME? WOULD YOU REPEAT THE QUESTION?

4 Q. YES, MA'AM. CAN'T YOU THINK OF SOME CASES IN YOUR
5 OWN MIND THAT YOU MIGHT THINK ARE SO BAD, SO UGLY,
6 SO AGGRAVATED, SO HORRIBLE, THE FACTS; AND SO
7 AGGRAVATED THAT YOU MIGHT FIND THAT THE DEATH
8 PENALTY WOULD BE THE APPROPRIATE CASE IN THOSE
9 EXTREME CASES?

10 A. I STILL DON'T BELIEVE IN THE DEATH PENALTY.

11 Q. CAN YOU THINK OF ANY SITUATION IN WHICH---

12 MR. BAILEY: ASKED AND ANSWERED,
13 YOUR HONOR.

14 THE COURT: SUSTAINED. ASK YOUR
15 QUESTION, BUT DON'T ASK THE SAME ONE BECAUSE YOU
16 HAD ABOUT A FOUR PRONG QUESTION. BUT GO AHEAD,
17 COUNSELOR.

18 Q. CAN YOU THINK OF ANY CIRCUMSTANCES IN WHICH YOU
19 COULD IMPOSE THE DEATH PENALTY?

20 MR. BAILEY: OBJECTION.

21 Q. WITHOUT TELLING US WHAT THOSE CIRCUMSTANCES ARE.

22 THE COURT: I SUSTAIN THE
23 OBJECTION.

24 A. I STILL DON'T BELIEVE IN THE DEATH PENALTY.

25 Q. JUST TO MAKE SURE, MRS. PRINGLE, WE UNDERSTAND YOU

SHIRLEY PRINGLE - CROSS/MR. THEOS

1 COMPLETELY; THAT'S REGARDLESS OF WHAT THE JUDGE
2 WOULD INSTRUCT YOU AS THE LAW IF YOU WERE SITTING
3 IN THE PENALTY PHASE EVEN IF HE INSTRUCTED YOU THAT
4 THE LAW WERE THAT YOU WOULD HAVE TO LISTEN TO
5 EVERYTHING THAT WAS BEING OFFERED BY THE STATE IN
6 AGGRAVATION AND EVERYTHING BEING OFFERED BY THE
7 DEFENDANT, BY MR. SIMMONS, IN MITIGATION. YOU
8 STILL DON'T FEEL THAT YOU COULD CONSIDER THE DEATH
9 PENALTY AS A POTENTIAL PUNISHMENT?

10 A. THEY CAN'T MAKE ME BELIEVE IN THE DEATH PENALTY;
11 RIGHT?

12 Q. I UNDERSTAND THAT.

13 THE COURT: NOBODY CAN MAKE YOU.

14 Q. NO; PLEASE DON'T THINK I'M FINDING FAULT WITH YOUR
15 RESPONSES.

16 A. OKAY.

17 Q. I JUST WANT TO MAKE SURE I'M CLEAR.

18 A. NO; I DON'T BELIEVE IN THE DEATH PENALTY.

19 MR. THEOS: NO OTHER QUESTIONS, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. STEP OUTSIDE
22 FOR JUST A MINUTE IF YOU WOULD, PLEASE, MRS.
23 PRINGLE.

24 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

25 THE COURT: ALL RIGHT. WHAT SAY THE

HUGH K. LESLEY, JR. - EXAMINATION BY THE COURT

STATE?

MR. BAILEY: YOUR HONOR, THE STATE
WOULD CONTEND SHE'S CLEARLY NOT QUALIFIED UNDER
WAYNEWRIGHT VS. WOODS.

THE COURT: WHAT SAY THE DEFENDANT?

MR. THEOS: SHE DOESN'T APPEAR TO BE
QUALIFIED, YOUR HONOR.

THE COURT: ALL RIGHT. ASK THE LADY
TO STEP BACK IN.

(AT THIS TIME JUROR RETURNS TO OPEN COURT.)

THE COURT: NOW, MA'AM, THAT IS
GOING TO COMPLETE YOUR SERVICE IN THE TRIAL OF THIS
PARTICULAR CASE. AND SO I WANT YOU TO KNOW YOU'RE
FREE TO GO. YOU DON'T HAVE TO COME BACK TOMORROW
OR THE NEXT DAY. AND YOU'LL BE MAILED A CHECK --
MADAM CLERK -- FOR YOUR ATTENDANCE HERE TODAY. AND
PLEASE LET ME THANK YOU. AND GOOD HEALTH. AND
DRIVE CAREFULLY. HAVE A NICE EVENING.

THE JUROR: THANK YOU.

THE COURT: THANK YOU FOR YOUR
CANDOR. ALL RIGHT. BRING THE NEXT ONE IN, PLEASE.
(JUROR NUMBER 194, A WHITE MALE, IS CALLED.)

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WHEREUPON,

HUGH K. LESLEY, JR., WHO BEING PREVIOUSLY

1 SWORN TO TELL THE TRUTH, TESTIFIED AS
2 FOLLOWS:

3 EXAMINATION

4 BY THE COURT:

5 Q. HOW ARE YOU THIS EVENING, SIR?

6 A. I'M FINE.

7 Q. THANK YOU FOR BEING WITH US.

8 THE COURT: THIS IS JUROR NUMBER

9 194, MR. HUGH K. LESLEY, JR.

10 Q. AND MR. LESLEY, MAY I PLEASE REMIND YOU THAT YOU
11 ARE STILL UNDER OATH THAT YOU WERE GIVEN THIS
12 MORNING. DO YOU UNDERSTAND THAT, SIR?

13 A. YES, SIR.

14 Q. AND SINCE YOU LEFT THE COURT HOUSE EARLIER IN THE
15 DAY, HAS ANYBODY TALKED TO YOU ABOUT THE CASE?
16 HAVE YOU DISCUSSED IT WITH ANYBODY OR BEEN EXPOSED
17 TO ANY ADDITIONAL INFORMATION?

18 A. NO, SIR.

19 Q. ALL RIGHT, SIR. AND I NOTE THAT YOU RESPONDED
20 EARLIER TODAY DURING THE GROUP VOIR DIRE THAT YOU
21 HAD SEEN OR READ SOMETHING ABOUT THIS CASE. AND SO
22 COULD YOU TELL US WHAT THOSE CIRCUMSTANCES WERE?

23 A. WELL, BEING FROM SUMMERVILLE, I JUST REMEMBER THE
24 INCIDENT AND PROBABLY READ THE NEWSPAPERS AND
25 WATCHED THE NEWS REPORTS AND THINGS LIKE THAT. I

HUGH K. LESLEY, JR. - EXAMINATION BY THE COURT

1 WAS WELL AWARE OF THE CASE FROM THAT.

2 Q. DID YOU FORM ANY OPINION AS TO THE GUILT OR
3 INNOCENCE OF THE DEFENDANT, KENNETH SIMMONS?

4 A. NO, SIR.

5 Q. IF YOU WERE CHOSEN AS A JUROR IN THIS CASE, COULD
6 YOU PUT ASIDE ANYTHING THAT YOU MAY RECOLLECT ABOUT
7 YOUR READING IT IN THE SUMMERVILLE NEWSPAPER OR
8 RADIO OR T.V. AND DECIDE THE CASE BASED ON THE
9 TESTIMONY AND EVIDENCE UNDER OATH ADDUCED IN THIS
10 TRIAL?

11 A. WELL, YOU KNOW, THE CASE BROUGHT TO LIGHT A LOT OF
12 GRUESOME THINGS, YOU KNOW.

13 Q. YES, SIR.

14 A. SO I'M ASSUMING SOME OF THOSE THINGS I MIGHT NOT
15 FORGET. I'M NOT SAYING IN PARTICULAR TO HIM. BUT,
16 I MEAN, FOR SOMETHING LIKE THAT TO HAPPEN TO AN
17 ELDERLY LADY LIKE THAT.

18 Q. YES, SIR. AND DO YOU FEEL THAT YOU HAVE ANY BIAS
19 OR PREJUDICE FOR OR AGAINST THE STATE OR THIS
20 DEFENDANT BECAUSE OF WHAT YOU MAY HAVE READ IN THE
21 NEWSPAPERS BEING GRUESOME AND AN ELDERLY LADY BEING
22 SUBJECTED TO CERTAIN THINGS?

23 A. NO, SIR.

24 Q. AND DO YOU FEEL THAT YOU COULD GIVE BOTH THE STATE
25 AND THE DEFENDANT A FAIR TRIAL?

1 A. YES, SIR.

2 Q. AND YOU UNDERSTAND WE'RE NOT TRYING TO INVADE YOUR
3 PRIVACY. THERE ARE NO RIGHT ANSWERS. YOU'RE GOING
4 TO MAKE AN A+ AND GET PAID FOR BEING HERE TODAY
5 REGARDLESS OF THE ANSWERS YOU GIVE BECAUSE YOU'RE
6 CERTAINLY ENTITLED TO YOUR OPINION IN THE CASE.
7 AND IF DURING THE TRIAL OF THE CASE YOU'RE SELECTED
8 AS A JUROR, IF THE COURT WAS TO INSTRUCT YOU AS TO
9 THE LAW, COULD YOU FOLLOW THE LAW AS THE JUDGE GAVE
10 IT TO YOU AS BEING THE CORRECT LAW?

11 A. YES, SIR.

12 Q. AND WOULD YOU APPLY THAT LAW TO THE FACTS AS FOUND
13 BY YOU AND ARRIVE AT A FAIR AND JUST VERDICT, FAIR
14 TO THE STATE AND FAIR TO THE DEFENDANT?

15 A. YES, SIR.

16 Q. AND DO YOU UNDERSTAND THAT WE NECESSARILY HAVE TO
17 DISCUSS YOUR VIEWS AT THIS TIME EVEN THOUGH THE
18 STATE HAS NOT PROVEN THE DEFENDANT GUILTY BECAUSE
19 IT WON'T BE ANOTHER OPPORTUNITY TO GO INTO THESE
20 QUESTIONS WITH YOU ONCE YOU'RE SELECTED IN THE
21 JURY. AND IT WOULD BE A BIFURCATED TYPE TRIAL
22 WHERE IN THE FIRST GUILT PHASE THE STATE IS
23 REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND
24 A REASONABLE DOUBT BECAUSE EVERY PERSON THAT COMES
25 INTO COURT, REGARDLESS OF THE ENORMITY OR NATURE OF

HUGH K. LESLEY, JR. - EXAMINATION BY THE COURT

1 THE CHARGE MADE AGAINST HIM OR HER IS ALWAYS
2 PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE
3 CHARGES. AND THERE'S NO BURDEN UPON THE DEFENDANT
4 TO PROVE HIMSELF INNOCENT BECAUSE IN MANY INSTANCES
5 THAT MIGHT NOT BE POSSIBLE. DO YOU UNDERSTAND
6 THAT?

7 A. YES, SIR.

8 Q. AND THE FACT THAT A PERSON IS CHARGED WITH A CRIME,
9 DO YOU FEEL THAT THAT MAKES THEM AUTOMATICALLY
10 GUILTY OF THE CRIME?

11 A. NO, SIR.

12 Q. AND DEPENDING ON THE FACTS AND CIRCUMSTANCES, YOU
13 COULD FIND HIM NOT GUILTY OR GUILTY; IS THAT
14 CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND YOU UNDERSTAND THAT DURING THE GUILT PHASE OF
17 THE TRIAL THAT IF YOU FIND HIM NOT GUILTY AS TO
18 MURDER, THAT WOULD END THE PROCEEDING RELATIVE TO
19 ANY PENALTY PHASE BECAUSE THE JURY IS CONCERNED
20 ONLY WITH THE DEATH PENALTY RECOMMENDATION OR LIFE
21 IMPRISONMENT WITHOUT PAROLE RECOMMENDATION. DO YOU
22 UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. AND YOU UNDERSTAND THAT IF THE JURY FOUND BEYOND A
25 REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY OF

MURDER, THEN THERE WOULD BE A 24 HOUR WAITING PERIOD, AND THEN THERE WOULD BE A SECOND PHASE OF THE TRIAL CALLED THE PENALTY PHASE. AND THE STATE WOULD HAVE THE BURDEN OF PROVING STATUTORY AGGRAVATING CIRCUMSTANCES WITHOUT WHICH THE JURY COULD NOT RECOMMEND THE DEATH PENALTY. AND EVEN IF THE JURY SHOULD FIND BEYOND A REASONABLE DOUBT THAT THERE WERE STATUTORY AGGRAVATING CIRCUMSTANCES, THE JURY COULD ELECT OR DECIDE OR OPT TO RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE WHICH IS THE LAW AT THIS TIME BECAUSE OF MITIGATING CIRCUMSTANCES THAT WERE IN EVIDENCE OR FOR NO REASON AT ALL; JUST AS A RECOMMENDATION OF MERCY. THAT WOULD BE IN THE PROVINCE OF THE JURY TO EITHER RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE OR TO RECOMMEND A DEATH SENTENCE. DO YOU UNDERSTAND THAT?

A. IF HE'S FOUND GUILTY, I TOTALLY SUPPORT THE DEATH PENALTY.

Q. ALL RIGHT, SIR. WELL, THAT COMES TO THE NEXT QUESTION. AND THAT IS YOU HAVE THAT QUESTIONNAIRE ABOUT THOSE THREE TYPES OF JURORS WHERE NUMBER ONE IS A JUROR THAT REGARDLESS OF THE FACTS AND EVIDENCE THAT HE OR SHE WOULD ALWAYS VOTE FOR THE DEATH PENALTY IF THE DEFENDANT HAD BEEN FOUND GUILTY OF MURDER BY A UNANIMOUS VERDICT BEYOND A

HUGH K. LESLEY, JR. - DIRECT/MR. THEOS

1 REASONABLE DOUBT. THEN THERE'S A SECOND TYPE JUROR
2 THAT REGARDLESS OF THE EVIDENCE INTRODUCED THAT
3 THAT SECOND TYPE JUROR WOULD ALWAYS VOTE FOR LIFE
4 IMPRISONMENT WITHOUT PAROLE. OR THERE'S A NUMBER
5 THREE TYPE JUROR WHO, DEFENDING UPON THE EVIDENCE
6 THAT WAS INTRODUCED AND DEPENDING UPON WHO THEY
7 BELIEVED AND WHAT THEY BELIEVED THAT THE JUROR
8 WOULD BE OPEN-MINDED AND COULD VOTE TO RECOMMEND
9 LIFE IMPRISONMENT WITHOUT PAROLE OR COULD VOTE FOR
10 THE DEATH PENALTY. NOW, THAT'S JUROR ONE, TWO, AND
11 THREE. UNDER WHICH OF THOSE THREE DO YOU FEEL YOU
12 WOULD PUT YOURSELF?

13 A. NUMBER ONE.

14 Q. NUMBER ONE? ALL RIGHT.

15 THE COURT: YOU GO FIRST THIS TIME,
16 MR. THEOS.

17 DIRECT EXAMINATION

18 BY MR. THEOS:

19 Q. I APPRECIATE YOUR HONESTY. THIS IS ONLY TIME WE
20 HAVE TO TALK TO JURORS FACE TO FACE IN A TRIAL.
21 AND WE CERTAINLY DO WANT TO KNOW WHAT YOUR HONEST
22 OPINIONS ARE. I TAKE IT FROM YOUR RESPONSE TO
23 THOSE LAST COUPLE OF QUESTIONS THAT REGARDLESS OF
24 WHAT MIGHT BE PRESENTED TO YOU THAT BASED UPON THE
25 FACT THAT MR. SIMMONS -- IF MR. SIMMONS WERE FOUND

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1 GUILTY, AS YOU PUT IT OF SUBJECTING AN ELDERLY LADY
2 TO THESE SORTS OF THINGS THAT YOU WOULD VOTE FOR
3 THE DEATH PENALTY?

4 A. ABSOLUTELY.

5 MR. THEOS: NO OTHER QUESTIONS, YOUR
6 HONOR.

7 MR. BAILEY: PLEASE THE COURT?

8 THE COURT: YES, YES.

9 CROSS-EXAMINATION

10 BY MR. BAILEY:

11 Q. MR. LESLEY, I'M WALTER BAILEY. I WANT TO ASK YOU A
12 FEW MORE QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE
13 ASKED YOU AND WHAT MR. THEOS ASKED YOU. I WANT TO
14 TALK TO YOU ABOUT THE FIRST STAGE OF THE TRIAL
15 FIRST WHICH IS LIKE ANY OTHER TRIAL; DUI TRIALS,
16 BURGLARY, ANYTHING ELSE, WHERE THE JURY IS JUST
17 THERE TO DECIDE GUILT OR INNOCENCE. DURING THE
18 FIRST PHASE OF THE TRIAL, WOULD YOU HAVE ANY
19 DIFFICULTY IN GIVING THE DEFENDANT THE PRESUMPTION
20 OF INNOCENCE AND REQUIRING THE STATE TO PROVE HIM
21 GUILTY BEYOND A REASONABLE DOUBT?

22 A. I'M SORRY? REPEAT THAT AGAIN.

23 Q. IN THE FIRST PART OF THIS TRIAL, IF YOU WERE PICKED
24 ON A JURY IN THIS KIND OF A CASE, WOULD YOU HAVE
25 ANY DIFFICULTY IN GIVING THE DEFENDANT THE

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1 PRESUMPTION OF INNOCENCE AND REQUIRING STATE TO
2 PROVE HIM GUILTY OF WHATEVER WE SAY HE DID BEYOND A
3 REASONABLE DOUBT?

4 A. NO; I WOULD NOT HAVE A PROBLEM.

5 Q. AND YOU UNDERSTAND THAT WE WOULD NEVER GET INTO THE
6 SECOND PART OF THE TRIAL UNLESS THE DEFENDANT HAD
7 ALREADY BEEN FOUND GUILTY OF MURDER IN THE FIRST
8 PART OF THE TRIAL?

9 A. SURE.

10 Q. AND THE PURPOSE OF THAT SECOND PHASE IS TO ALLOW
11 THE STATE TO INTRODUCE EVIDENCE IN AGGRAVATION IN
12 WHICH I'D BE TRYING TO PUT UP EVIDENCE TO PERSUADE
13 THE JURY THIS CASE IS BAD ENOUGH FOR THE DEATH
14 PENALTY. AND THE DEFENSE, IF IT WANTS TO -- IT
15 DOESN'T HAVE TO -- CAN PUT UP EVIDENCE IN
16 MITIGATION TO TRY TO LESSON THE SEVERITY OF THE
17 MURDER. NOW, WOULD YOU ALREADY HAVE YOUR MIND MADE
18 UP AT THE END OF THE GUILT PHASE; OR WOULD YOU BE
19 ABLE TO KEEP AN OPEN MIND AND LISTEN TO THE
20 TESTIMONY AS IT CAME UP IN THE SECOND PART OF THE
21 TRIAL?

22 A. I COULD KEEP AN OPEN MIND.

23 Q. OKAY. AND COULD YOU FAIRLY CONSIDER BOTH OPTIONS,
24 LIFE WITHOUT PAROLE MEANING, OF COURSE, HE'D GO TO
25 PRISON FOR THE REST OF HIS LIFE OR THE DEATH

1 PENALTY AND RESERVE MAKING THAT DECISION UNTIL YOU
2 HEARD ALL THE FACTS AND IN ADDITION HEARD THE JUDGE
3 TELL YOU WHAT THE LAW WAS?

4 A. UNDER THE CIRCUMSTANCES OF THE CASE, I'M PRETTY
5 SURE MY MIND WOULD BE MADE UP.

6 Q. OKAY. NOW, I'M NOT TAKING ABOUT THIS CASE BECAUSE
7 YOU HAVEN'T HEARD THE FACTS; BUT IN GENERAL?

8 A. YES.

9 Q. COULD YOU DO THAT IN GENERAL?

10 A. I WOULD BE OPEN MINDED ON THE GENERAL CASE.

11 Q. AND AS OF RIGHT NOW AS YOU SIT HERE, AS THE JUDGE
12 TOLD YOU THIS MORNING WHEN HE READ THE INDICTMENTS;
13 THOSE ARE NOT EVIDENCE. YOU HAVEN'T HEARD ANY
14 EVIDENCE IN THIS CASE?

15 A. THAT'S TRUE.

16 Q. WHAT YOU READ IN THE PAPER IS NOT EVIDENCE?

17 A. ABSOLUTELY.

18 Q. WOULD YOU BE WILLING AS A JUROR TO TAKE THE CASE,
19 TO TAKE THE EVIDENCE, FROM THAT WITNESS STAND AND
20 SET ASIDE WHATEVER ELSE YOU HAD HEARD ABOUT IT?

21 A. YES.

22 Q. COULD YOU DO THAT IN BOTH PARTS OF THE TRIAL?

23 A. YES.

24 Q. SO YOU WOULD HAVE AN OPEN MIND IN THE FIRST STAGE?

25 A. YES.

HUGH K. LESLEY, JR. - CROSS/MR. BAILEY

1 Q. AN OPEN MIND IN THE SECOND STAGE?

2 A. YES.

3 Q. COULD YOU FAIRLY CONSIDER BOTH ALTERNATIVE
4 SENTENCES, LIFE WITHOUT PAROLE AND THE DEATH
5 PENALTY?

6 A. I'M NOT SURE.

7 Q. OKAY. CAN TELL US WHY YOU'RE NOT SURE?

8 A. WELL, JUST THE SEVERITY OF THIS CASE.

9 Q. OKAY. BUT YOU HAVEN'T HEARD THE FACTS OF THIS
10 CASE. YOU HAVEN'T HEARD THE SINGLE FIRST FACT.

11 A. WELL, YOU'RE SAYING WE'RE GOING TO THE SECOND PHASE
12 ALREADY. WE WOULDN'T GO TO THE SECOND PHASE IF HE
13 WASN'T GUILTY?

14 Q. RIGHT.

15 A. SO THE SECOND PHASE I'VE PRETTY MUCH MADE UP MY
16 MIND IF WE MAKE IT THAT FAR.

17 Q. OKAY.

18 A. THE FIRST PHASE YOU WOULD HAVE ALL MY ATTENTION AS
19 TO THE CASE YOU BROUGHT FORWARD.

20 Q. OKAY. AND IF BASED ON THE EVIDENCE THAT CAME OUT
21 IN THE FIRST PART OF THE TRIAL YOU AND THE OTHER
22 JURORS FOUND THE DEFENDANT GUILTY OF MURDER, WOULD
23 YOU HAVE YOUR MIND MADE UP? IT DOESN'T MATTER WHAT
24 I HEAR IN THIS SECOND PHASE, I'M GOING TO COME BACK
25 WITH THE DEATH PENALTY. OR WOULD YOU SIT THERE AND

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1 LISTEN TO THE TESTIMONY AND LISTEN TO THE JUDGE'S
2 INSTRUCTIONS, THEN MAKE UP YOUR MIND IN CONJUNCTION
3 WITH THE OTHER JURORS?

4 A. I'M SURE I WILL.

5 Q. ALL RIGHT, SIR.

6 MR. BAILEY: THAT'S ALL I HAVE AT
7 THIS TIME, YOUR HONOR.

8 THE COURT: YOU SURE YOU WILL WHAT?

9 THE JUROR: COME TO MY FINAL
10 CONCLUSION AFTER THEIR DELIBERATIONS IN THE SECOND
11 TRIAL. DOES THAT ANSWER THE QUESTION, YOUR HONOR?

12 THE COURT: YES, SIR. ANYTHING
13 FURTHER, MR. THEOS?

14 MR. THEOS: YES, SIR.

15 RE-DIRECT EXAMINATION

16 BY MR. THEOS:

17 Q. MR. LESLEY, JUST TO MAKE SURE I UNDERSTAND. IN MY
18 MIND THERE'S BEEN A LITTLE CONFUSION, AND I
19 APOLOGIZE. BUT I JUST WANTED TO MAKE SURE---

20 A. MINE, TOO.

21 Q. I DO UNDERSTAND. AND AGAIN, WE'RE NOT -- NONE OF
22 US ARE TRYING TO POINT A FINGER AT YOU.

23 A. I UNDERSTAND.

24 Q. WE DON'T NEED TO HAVE YOU ON A HOT SEAT; AND YOU'RE
25 NOT BEING JUDGED MORALLY OR OTHERWISE BASED ON YOUR

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1 RESPONSES. WHAT WE'RE REALLY TRYING TO FIND OUT IS
2 THE TRUTH AND YOUR HONEST FEELINGS. AND IF WE GOT
3 TO THE GUILT PHASE, WOULD YOU SENTENCE MR. SIMMONS
4 TO DEATH WITHOUT CONSIDERATION OF ANYTHING. AND
5 THOUGHT YOUR RESPONSE EARLIER WAS "IF WE GOT TO
6 THAT POINT, I WOULD IMPOSE THE DEATH PENALTY."

7 A. THAT'S WHAT I SAID.

8 Q. OKAY. IS THAT YOUR RESPONSE?

9 A. THAT'S MY RESPONSE.

10 Q. OKAY. OF COURSE I UNDERSTAND THAT YOU WOULD KEEP
11 AN OPEN MIND BEFORE WE GOT TO THAT STAGE RELATED TO
12 GUILT OR INNOCENCE. BUT AGAIN, IF MR. SIMMONS WERE
13 FOUND GUILTY, THE DEATH PENALTY WOULD BE YOUR
14 VERDICT?

15 A. IT PROBABLY WOULD BE.

16 MR. THEOS: I DON'T HAVE ANY FURTHER
17 QUESTIONS, YOUR HONOR.

18 THE COURT: SOLICITOR?

19 MR. BAILEY: NOTHING ELSE AT THIS
20 TIME, YOUR HONOR.

21 THE COURT: LET ME ASK YOU TO STEP
22 OUTSIDE FOR A MINUTE. WHAT SAY THE STATE?

23 MR. BAILEY: YOUR HONOR, I THINK
24 THAT THIS POTENTIAL JUROR IS THE EXACT OPPOSITE OF
25 MRS. EVANS THAT WAS JUST QUALIFIED. AND I JUST

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1 CITE STATE VS. RICKY GEORGE FOR THE AUTHORITY THAT
2 A JUROR IS PROPERLY QUALIFIED IN THAT CASE ALTHOUGH
3 HE INITIALLY STATED THAT HE COULD NOT VOTE FOR A
4 LIFE SENTENCE WITHOUT AN AGGRAVATING CIRCUMSTANCE.
5 HE LATER SAID THAT HE COULD. AND THIS WITNESS HAS
6 GIVEN DIFFERENT ANSWERS JUST LIKE MRS. EVANS DID.
7 THE LAST THING HE SAID WAS, IN RESPONSE TO MY
8 QUESTIONS, THAT HE COULD LISTEN AND NOT MAKE UP HIS
9 MIND UNTIL HE HEARD EVERYTHING. AND HE COULD
10 QUALIFY HIS RESPONSE TO MR. THEOS. I THINK HE
11 DEFINITELY LEANS TOWARDS NUMBER ONE; BUT I CONTEND
12 HE IS QUALIFIED.

13 THE COURT: ALL RIGHT. MR. THEOS?

14 MR. THEOS: YOUR HONOR, I THINK THAT
15 HE CAN BE DISTINGUISHED FROM MRS. EVANS. MRS.
16 EVANS, ALTHOUGH INITIALLY EQUIVOCATED; SHE ALSO
17 NEVER RESPONDED TO ALL THREE OF US IN THE SAME
18 CONSISTENT FASHION; THAT IS SHE COULD CONSIDER
19 BOTH. CLEARLY MR. LESLEY STARTED OUT BY SAYING
20 THAT HE COULDN'T CONSIDER BOTH; THAT HE WOULD VOTE
21 FOR THE DEATH PENALTY. HIS RESPONSE IS RELATED TO
22 KNOWLEDGE ABOUT THE CASE, FAMILIARITY WITH SOME OF
23 THE FACTS. THERE WAS SOME HESITATION ON HIS PART
24 TO ANSWER THOSE QUESTIONS AS TO WHETHER OR NOT HE
25 COULD BE FAIR AND IMPARTIAL. NOW, MR. BAILEY DID A

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1 TERRIFIC JOB, I THOUGHT, OF ATTEMPTING TO
2 REHABILITATE HIM. BUT HE ULTIMATELY STATED THAT HE
3 WOULD KEEP AN OPEN MIND IN THE FIRST PART. BUT IF
4 MR. SIMMONS WERE FOUND GUILTY, HE WOULD IMPOSE THE
5 DEATH PENALTY. AND I THINK, YOUR HONOR, THAT
6 ALTHOUGH HE MAY HAVE EQUIVOCATED AT ONE POINT THAT
7 I THINK HIS RESPONSE IS CONSISTENT WITH WHAT HE
8 STATED INITIALLY AND THAT WAS THAT HE WAS A NUMBER
9 ONE AND THAT HE WOULD IMPOSE IT WITHOUT
10 CONSIDERATION OF ANY OTHER CIRCUMSTANCES.

11 THE COURT: ALL RIGHT. THANK YOU.

12 GENTLEMEN, THIS IS A MARGINAL SITUATION. BUT I
13 THINK THAT -- I'M GOING TO RULE THAT HE IS NOT
14 QUALIFIED. THERE WAS SOME REHABILITATION OF HIM.
15 BUT I THINK HE IS MARGINAL ENOUGH THAT I'M GOING TO
16 FIND HIM NOT QUALIFIED, GENTLEMEN. AND FROM
17 LOOKING AT HIS QUESTIONNAIRE, IT MAKES IT FIVE
18 TIMES I'VE BEEN CALLED IN THE LAST TEN YEARS. I
19 DON'T THINK THAT FELLOW WANTS TO SERVE ANYWAY.
20 HE'S IN CONSTRUCTION MANAGEMENT. LET ME ASK YOU,
21 GENTLEMEN, IT'S TWENTY MINUTES OF EIGHT; AND I'M
22 NOT GOING TO SAY WE -- I'M GOING TO SAY THAT THE
23 COURT WAS JUST NOT CLAIRVOYANT ENOUGH TO HAVE
24 SUGGESTED OTHER TIMES TO COME IN. THERE ARE FIVE
25 JURORS ON THAT PANEL THREE. THEY WERE ONLY ABLE TO

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1 GET ONE OF THEM OF THE FIVE BECAUSE THEY HAD
2 ALREADY LEFT SUMMERVILLE OR WHEREVER TO COME HERE.
3 I BELIEVE GREGORY ALLEN, NUMBER SIX, WAS THE ONE,
4 MADAM CLERK, THAT YOU WERE ABLE TO GET AHOLD OF?

5 THE CLERK: BERNARD LEWIS.

6 THE COURT: I BEG YOUR PARDON. IT'S
7 NUMBER FIVE, BERNARD LEWIS?

8 THE CLERK: YES, SIR.

9 THE COURT: AND HE WAS TOLD TO COME
10 IN AT 8:30 IN THE MORNING, MA'AM?

11 THE CLERK: YES, SIR. THE OTHER
12 CLERK OF COURT, FLO; SHE'S THE ONE THAT TALKED WITH
13 THEM.

14 THE COURT: WELL, WHOEVER TALKED
15 WITH THEM. FLO CAN'T LEAVE HERE IF SHE'S GOT AN
16 ANSWER TO A QUESTION. AND FLO DOESN'T WORK FOR ME.

17 BUT I DON'T WANT TO BE SPECULATING. I NEED TO
18 KNOW THE ANSWER, MA'AM. SO IF FLO MAKES A CALL
19 BEFORE FLO LEAVES, WE NEED TO KNOW WHAT IT IS. I'M
20 SO SORRY. THE OTHER BAILIFF; THE ANSWER SHE GAVE ME
21 WAS THAT THAT WAS---

22 THE COURT: YES, SIR?

23 MR. THEOS: YOUR HONOR, MAY I
24 INTERJECT ON ANOTHER TOPIC? YOU'VE RULED HE WAS
25 NOT QUALIFIED. BUT HE IS STILL OUT THERE. I

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1 DIDN'T KNOW IF---

2 THE COURT: I UNDERSTAND THAT HE
3 IS. BUT WHAT I WAS GOING TO SUGGEST, GENTLEMEN, IS
4 WE HAVE FOUR MORE ON THIS OTHER PANEL; AND THAT WE
5 GO AHEAD AND TELL THAT PANEL OF FIVE THAT ARE IN
6 THERE THAT THEY CAN GO HOME FOR THE NIGHT ON NUMBER
7 THREE. IS THERE ANY OBJECTION TO THAT?

8 MR. BAILEY: NO, SIR.

9 THE COURT: MR. THEOS?

10 MR. THEOS: NONE, YOUR HONOR.

11 THE COURT: WHAT TIME WOULD YOU HAVE
12 THEM COME IN? ALL RIGHT; SO IT IS MR. LEWIS THAT'S
13 BEEN NOTIFIED TO BE HERE AT 8:30 IN THE MORNING.
14 AND WHAT TIME SHOULD WE TELL THOSE OTHER PEOPLE?

15 MR. BAILEY: JUDGE, EIGHT.

16 THE COURT: SIR?

17 MR. BAILEY: EIGHT.

18 THE COURT: EIGHT SUITS ME. I DON'T
19 KNOW. MR. THEOS IS DRIVING FROM CHARLESTON. I
20 DON'T KNOW IF THAT SUITS HIM. I'VE ENCOURAGED HIM
21 TO STAY WITH MR. BELL, BUT APPARENTLY MR. BELL
22 HASN'T INVITED HIM.

23 MR. THEOS: YOUR HONOR, I'M NOT SURE
24 WHAT TIME WE'RE GOING TO GO TO TONIGHT; BUT I
25 ASSUME WE'LL GO UNTIL WE FINISH THE SECOND PANEL.

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1 I WOULD PREFER THAT WE START AT NINE. I UNDERSTAND
2 THE COURT---

3 THE COURT: WE'VE ALREADY MOVED IT
4 TO 8:30. THAT'S NOT DEBATABLE. THE ONLY QUESTION
5 GOT IS WE LEAVE IT AT 8:30 OR MOVE IT TO 8:00.

6 MR. THEOS: 8:30, THEN, YOUR HONOR.

7 THE COURT: ALL RIGHT. BUT THEN,
8 GENTLEMEN, WE'VE GOT ANOTHER PANEL COMING IN AT
9 NINE AND ANOTHER ONE AT 10:15. THAT'S GOING TO
10 THROW US OUT OF KILTER ALL DAY LONG. AND I JUST
11 WONDERED WHAT WE MIGHT DO TO ADJUST THE TIMES. ANY
12 SUGGESTIONS?

13 MR. BAILEY: MAYBE CALLING THEM TWO
14 HOURS APART INSTEAD OF AN HOUR-AND-A-HALF.

15 THE COURT: SIX EVERY TWO HOURS?

16 MR. BAILEY: THAT'S KIND OF THE WAY
17 IT'S GOING NOW, I THINK. WE'VE DONE EIGHT SINCE---

18 THE COURT: 4:30. FROM 4:30 TO SAY
19 7:30, WE DID EIGHT. YOU'RE ABOUT RIGHT. SIX FOR
20 TWO HOURS. GENTLEMEN, DID Y'ALL WANT TO SHARE
21 ANYTHING WITH THE COURT OTHER THAN I'VE GOT A JUROR
22 WAITING OUTSIDE?

23 MR. THEOS: NO, SIR. IT SEEMS LIKE
24 WE ARE GOING ABOUT EVERY TWO HOURS. AND I JUST
25 THINK THAT WHILE WE CAN STILL CONTACT ALL THE

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JURORS, WE OUGHT TO.

THE COURT: WELL, HOW ABOUT IF WE
MOVE THAT PANEL NUMBER FOUR -- EITHER TAKE THE FIVE
THAT WE'VE GOT ON HERE; BRING ONE OF THEM BACK AT
8:30. THAT WOULD GIVE US TWO AT 8:30, AND THEN
LEAVE THE PANELS WHERE THEY ARE AND TAKE THESE
OTHER FOUR LATE TOMORROW AFTERNOON TO TRY TO AVOID
HAVING TO CALL EVERYBODY DOWN THE LINE; PANEL FOUR,
FIVE, SIX, SEVEN, EIGHT, NINE, AND TEN. IF WE
COULD SPLIT THIS PANEL THREE AND BRING THE FIRST
MEMBER OF PANEL THREE TO 8:30 ALONG WITH NUMBER
FIVE IN THE MORNING. DO ONE AND FIVE AT 8:30; AND
THEN THOSE OTHER FOUR, TELL THEM TO COME BACK
TOMORROW EVENING AT SEVEN O'CLOCK.

MR. BAILEY: JUDGE, IF YOU DO THAT,
WILL WE BE STRIKING IN THE ORDER THEY'RE QUALIFIED
OR THE ORDER IN THE ORIGINAL LIST?

THE COURT: THE ORDER THAT THEY'RE
QUALIFIED. BUT, AGAIN, I'LL LEAVE THEM IN THE SAME
ORDER THEY'RE IN. THEY'RE GETTING PAID. WE CAN
KEEP THEM WAITING. I JUST TRY TO ACCOMMODATE THEM
WHEN I CAN. YOUR PLEASURE BEING? I'M OPEN,
GENTLEMEN.

MR. THEOS: I'M NOT SURE THAT WE --
YOUR HONOR, THESE ARE THE JURORS THAT WERE PICKED.

HUGH K. LESLEY, JR. - RE-DIRECT/MR. THEOS

1 AND THEY WERE PICKED IN A CERTAIN ORDER. I DON'T
2 KNOW THAT WE CAN TAKE THEM OUT OF ORDER UNLESS WE
3 AGREE THAT THE -- I THINK MR. BAILEY'S QUESTION WAS
4 APPROPRIATE. IF WE'RE BASING IT ON WHEN THEY'RE
5 QUALIFIED, I DON'T THINK THAT WOULD BE
6 APPROPRIATE.

7 MR. BAILEY: BUT WE CAN DO THEM IN
8 ANY ORDER WE WANT TO AND THEN RE-DRAW THEM IN
9 RANDOM ORDER AND ALWAYS PUT THEM BACK IN THE
10 CAPSULE.

11 THE COURT: NO, SIR. IF Y'ALL
12 OBJECT TO TAKING THEM OUT OF THE ORDER IN WHICH
13 THEY'RE DRAWN, I CERTAINLY WILL NOT DO THAT. DO
14 Y'ALL WANT TO LEAVE THEM IN THE ORDER IN WHICH THEY
15 WERE DRAWN?

16 MR. THEOS: YES, SIR.

17 THE COURT: ALL RIGHT. BRING THE
18 JUROR IN, PLEASE.

19 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

20 THE COURT: MR. HUGH K. LESLEY, JR.;
21 MAY I PLEASE THANK YOU FOR YOUR SERVICE IN THE
22 TRIAL OF THIS CASE. AND WE'RE GOING TO EXCUSE YOU
23 FROM FURTHER CONSIDERATION. AND WE'LL MAIL YOU A
24 CHECK. AND WE WISH YOU WELL. AND DRIVE CAREFULLY.
25 NICE TO SEE YOU, SIR.

HUGH K. LESLEY, JR. - RE-DIRECT/MR. THEOS

(AT THIS TIME JUROR NUMBER 194, A WHITE MALE, IS
EXCUSED.)

THE COURT: ALL RIGHT, GENTLEMEN.

I'M GOING TO TAKE ABOUT A FIVE MINUTE RECESS FOR
THE PURPOSE OF TELLING THESE OTHER FOUR JURORS ON
PANEL TWO THAT WE WILL QUESTIONED TONIGHT. AND
I'LL JUST TELL THE OTHER FIVE THAT THEY CAN GO
AHEAD HOME AND TO BE BACK IN THE MORNING AT 8:15.
WE'LL COMPROMISE BETWEEN THE 8:00 AND 8:30. SO
LET'S TAKE A LITTLE LEG STRETCH. THANK YOU.

(BRIEF RECESS.)

THE COURT: ALL RIGHT; GENTLEMEN OF
THE BAR. THERE WERE TWO JURORS WHO FELT THEY HAD
COMPELLING REASONS TO BE EXCUSED FROM FURTHER
SERVICE IN THE CASE. MR. SOLICITOR AND MR. THEOS;
DID Y'ALL HAVE A CHANCE TO TALK WITH THE FELLOW WHO
WAS A STUDENT AT NIGHT?

MR. BAILEY: YES, SIR, WE DID.

THE COURT: AND HIS NAME WAS?

MR. BAILEY: CANTRELL.

THE COURT: THAT'S JUROR NUMBER 51,
MICHAEL CANTRELL. WHAT SAY THE STATE?

MR. BAILEY: YOUR HONOR, WE'VE
AGREED TO EXCUSE HIM, IF IT PLEASE THE COURT.

THE COURT: WHAT SAY THE DEFENDANT?

HUGH K. LESLEY, JR. - RE-DIRECT/MR. THEOS

1 MR. THEOS: YOUR HONOR, WE'VE
2 AGREED.

3 THE COURT: ALL RIGHT. AGREED TO
4 EXCUSE. AND HAVE YOU TOLD HIM? CAN YOU BRING HIM
5 IN HERE AND LET ME TELL HIM THAT? HE'S IN PANEL
6 THREE, MA'AM; MICHAEL CANTRELL.

7 THE BAILIFF: OKAY.

8 THE COURT: THAT'S ONE WAY TO GET US
9 BACK ON SCHEDULE. THAT'S ONE LESS QUESTION
10 TOMORROW. HOW ABOUT OTHER GENTLEMAN WHO SAID HE
11 WORKED ALL NIGHT AND HAD TO PICK UP CHILDREN?

12 (AT THIS TIME JUROR COMES INTO OPEN COURT.)

13 MR. BAILEY: YOUR HONOR, HE HAS A
14 MEDICAL CONDITION ALSO; RECENT HEART SURGERY.
15 WE'VE AGREED ON THAT BASIS TO EXCUSE HIM.

16 THE COURT: ALL RIGHT. MR. MICHAEL
17 CANTRELL; BOTH THE STATE AND THE DEFENDANT HAVE
18 AGREED TO EXCUSED YOU PROVIDED YOU MAKE STRAIGHT
19 A'S IN YOUR COURSES IN CLASS. AND WE'RE SORRY FOR
20 ANY INCONVENIENCE. I WISH YOU'D SHARED THAT WITH
21 US THIS MORNING. SO THE CLERK WILL MAIL YOU A
22 CHECK. AND YOU CAN LEAVE HERE. YOU ARE EXCUSED
23 FROM FURTHER SERVICE, PLEASE. THANK YOU, AND GOOD
24 LUCK. AND WHAT WAS THE OTHER GENTLEMAN'S NAME?

25 MR. BAILEY: MR. PERVIS GLOVER,

HUGH K. LESLEY, JR. - RE-DIRECT/MR. THEOS

1 NUMBER 122.

2 THE COURT: BRING HIM IN, PLEASE,
3 MA'AM.

4 (AT THIS TIME JUROR NUMBER 122, A BLACK MALE, RETURNS TO
5 OPEN COURT.)

6 THE COURT: THAT WAS A HEART
7 CONDITION, SOLICITOR?

8 MR. BAILEY: YES, SIR.

9 THE COURT: AND THE STATE AND THE
10 DEFENSE HAVE AGREED?

11 MR. BAILEY: YES, SIR.

12 THE COURT: MR. THEOS?

13 MR. THEOS: YES, SIR.

14 THE COURT: MR. PERVIS C. GLOVER,
15 JR., JUROR NUMBER 122; THE STATE, MR. BAILEY AND
16 THE DEFENSE, MR. THEOS, HAVE BOTH AGREED BECAUSE OF
17 YOUR PREVIOUS HEART CONDITION TO EXCUSE YOU AT YOUR
18 REQUEST FROM FURTHER SERVICE IN THE TRIAL OF THIS
19 CASE. THANK YOU KINDLY FOR BEING WITH US. YOU'LL
20 BE MAILED A CHECK FOR \$25. DRIVE CAREFULLY. GOOD
21 LUCK TO YOU. SO THAT LEAVES US THREE AT 8:15,
22 NUMBERS TWO, FOUR, AND SIX, AND NUMBER FIVE AT 8:30
23 ON PANEL THREE IN THE MORNING. MAYBE WE CAN GET A
24 LITTLE CLOSER BACK TO SCHEDULE. WE STARTED OUT ON
25 A ROLL; THE FIRST SIX WERE FOUND QUALIFIED. THE

TONYA DENNIS - EXAMINATION BY THE COURT

1 NEXT TWO NOT QUALIFIED. SO BRING IN, PLEASE TONYA
2 DENNIS, NUMBER 81.

3 (JUROR NUMBER 81, A BLACK FEMALE, IS CALLED.)

4 - - - - -

5 WHEREUPON,

6 TONYA DENNIS, WHO BEING PREVIOUSLY
7 SWORN TO TELL THE TRUTH, TESTIFIED AS
8 FOLLOWS:

9 EXAMINATION

10 BY THE COURT:

11 Q. GOOD EVENING, MS. TONYA DENNIS. THANK YOU KINDLY
12 FOR BEING HERE WITH US, MA'AM.

13 THE COURT: THIS IS JUROR NUMBER
14 81.

15 Q. MS. DENNIS, YOU WERE PLACED UNDER OATH EARLIER IN
16 THE DAY. DO YOU UNDERSTAND, MA'AM, THAT YOU'RE
17 STILL UNDER OATH?

18 A. YES, I DO.

19 Q. AND, MA'AM, SINCE YOU WERE EXCUSED EARLIER TODAY
20 HAS ANYBODY TALKED WITH YOU ABOUT THE FACTS OF THIS
21 CASE OR ANY ADDITIONAL INFORMATION BEEN EXPOSED TO
22 YOU OR BROUGHT TO YOUR ATTENTION?

23 A. NO.

24 Q. AND, MA'AM, IN THE PAST HAVE YOU READ OR HEARD
25 ANYTHING ABOUT THIS CASE FROM ANY SOURCE WHETHER

TONYA DENNIS - EXAMINATION BY THE COURT

1 RADIO, TELEVISION, NEWSPAPER, ON THE STREET, GARDEN
2 CLUB, BRIDGE CLUB, OR WHEREVER?

3 A. NO I HAVEN'T; NO.

4 Q. HAVE YOU FORMED OR EXPRESSED AN OPINION AS TO THE
5 GUILT OR INNOCENCE OF THE DEFENDANT IN THIS CASE,
6 MA'AM?

7 A. NO, I HAVEN'T.

8 Q. WOULD YOU BE WILLING IF YOU WERE SELECTED AS A
9 JUROR TO PUT ASIDE ANY PRECONCEIVED NOTION OR
10 OPINION YOU HAVE ABOUT THE CASE AND DECIDE THE CASE
11 BASED ON THE FACTS THAT COME INTO EVIDENCE UNDER
12 OATH, THE EXHIBITS THAT ARE ALLOWED INTO EVIDENCE,
13 AND APPLY THE LAW AS THE COURT CHARGES IT TO YOU TO
14 THE FACTS AS FOUND BY YOU AND THE OTHER JURORS AND
15 ARRIVE AT A TRUE VERDICT?

16 A. YES, I WOULD.

17 Q. IS THE QUESTIONNAIRE THAT YOU FILED WITH THE COURT
18 EARLIER; IS THAT STILL TRUE AND CORRECT? DO YOU
19 WISH AT THIS TIME TO MAKE ANY AMENDMENTS TO THAT?

20 A. NO, I DON'T.

21 Q. AND PLEASE UNDERSTAND, MS. TONYA DENNIS, THERE ARE
22 NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS.
23 YOU'RE GOING TO MAKE 100 AND PASS AND MAKE AN A+;
24 AND WE'RE NOT TRYING TO PRY INTO YOUR PERSONAL
25 VIEWS. BUT THE LAWYERS NEED TO HAVE THE BENEFIT OF

TONYA DENNIS - EXAMINATION BY THE COURT

1 KNOWING YOUR OPINIONS ON CERTAIN THINGS SO IT WILL
2 AID THEM IN REGARD TO THEIR PREEMPTORY CHALLENGES.
3 TO YOU UNDERSTAND THAT?

4 A. I UNDERSTAND.

5 Q. AND, MA'AM, IF YOU WERE SELECTED AS A JUROR IN THIS
6 CASE, COULD YOU FOLLOW THE INSTRUCTIONS OF THE
7 COURT AS TO THE LAW AND APPLY THAT TO THE FACTS AS
8 THE JURY MAY FIND THEM TO BE?

9 A. YES, I COULD.

10 Q. AND, MA'AM, HAVE YOU BEEN APPROACHED BY ANYONE OR
11 HAD THIS CASE DISCUSSED WITH YOU IN ANY MANNER
12 WHATSOEVER?

13 A. NO, I HAVEN'T.

14 Q. AND YOU UNDERSTAND, MA'AM, THAT EVERY DEFENDANT
15 THAT COMES INTO THIS COURT THAT THEY'RE PRESUMED
16 INNOCENT; THE STATE MUST PROVE THEIR GUILT BEYOND A
17 REASONABLE DOUBT. AND THERE'S NO BURDEN UPON THE
18 DEFENDANT TO PROVE HIMSELF INNOCENT. THERE'S NO
19 BURDEN TO PROVE HIMSELF NOT GUILTY. THE LAW
20 PROTECTS HIM. HE DOES NOT HAVE TO TAKE THE WITNESS
21 STAND. HE DOES NOT HAVE TO PUT UP ANY EVIDENCE;
22 BUT RATHER THE BURDEN IS UPON THE STATE. DO YOU
23 UNDERSTAND THAT?

24 A. YES, I DO.

25 Q. AND DEFENDING ON THE FACTS AND CIRCUMSTANCES AND

TONYA DENNIS - EXAMINATION BY THE COURT

1 THE EVIDENCE IN THE CASE, COULD YOU AS A JUROR FIND
2 THE DEFENDANT NOT GUILTY IF THE EVIDENCE WARRANTED
3 IT?

4 A. YES, I COULD.

5 Q. COULD YOU AS A JUROR IF THE EVIDENCE WARRANTED IT;
6 COULD YOU FIND HIM GUILTY OF MURDER?

7 A. YES, I COULD.

8 Q. AND, MA'AM, YOUR MIND IS NOT AUTOMATICALLY MADE UP,
9 THEN, AS TO GUILTY OR NOT GUILTY?

10 A. NO, IT ISN'T.

11 Q. AND YOU UNDERSTAND THAT HE'S PRESUMED INNOCENT?

12 A. YES; I UNDERSTAND THAT.

13 Q. AND YOU UNDERSTAND FURTHER, PLEASE MA'AM, THAT
14 NORMALLY IN A CRIMINAL CASE THE JUDGE WOULD IMPOSE
15 A SENTENCE; BUT WE'D NECESSARILY HAVE TO TALK ABOUT
16 THE CAPITAL MURDER CASE TO EXPLAIN TO YOU NOW THAT
17 THERE'S A TWO-PHASE PART OF THE TRIAL; THAT THERE'S
18 A GUILT PHASE. IF THE DEFENDANT IS FOUND NOT
19 GUILTY OF MURDER, THEN WE WOULD NOT GO INTO THE
20 SECOND PHASE AS TO THE PENALTY BECAUSE THERE WOULD
21 BE NO PENALTY IF HE WERE NOT GUILTY OF MURDER. DO
22 YOU UNDERSTAND THAT?

23 A. YES, I DO.

24 Q. AND IF THE JURY FOUND BEYOND A REASONABLE DOUBT
25 THAT THE DEFENDANT IN THE FIRST GUILT PHASE, OR

TONYA DENNIS - EXAMINATION BY THE COURT

1 GUILT PHASE, OF THE MURDER CASE THAT HE WAS GUILTY,
2 THEN IT WOULD BE A 24 HOUR WAITING PERIOD, AND THEN
3 THE STATE AND THE DEFENDANT WOULD PROCEED IN REGARD
4 TO THE PENALTY PHASE, AND YOUR OPTIONS IN THAT
5 WOULD BE A RECOMMENDATION TO THE COURT WHICH THE
6 COURT WOULD CARRY OR YOUR RECOMMENDATION, WHATEVER
7 THAT MAY BE. AND THE FIRST RECOMMENDATION, IF THE
8 STATE PROVES AN AGGRAVATING STATUTORY CIRCUMSTANCE
9 SUCH FOR EXAMPLE, AND FOR EXAMPLE ONLY; THE
10 DEFENDANT IS GUILTY OF MURDER DURING THE COMMISSION
11 OF AN ARMED ROBBERY OR DURING THE COMMISSION OF
12 CRIMINAL SEXUAL CONDUCT; THEN THE JURY COULD IF THE
13 STATE PROVED BEYOND A REASONABLE DOUBT A STATUTORY
14 AGGRAVATING CIRCUMSTANCE, THE JURY COULD RECOMMEND
15 TO THE COURT THE IMPOSITION OF THE DEATH PENALTY.
16 DO YOU UNDERSTAND THAT?

17 A. I UNDERSTAND THAT.

18 Q. AND IF THE JURY FOUND THE STATUTORY AGGRAVATING
19 CIRCUMSTANCE BUT ALSO FOUND MITIGATING, WHICH MEANS
20 LESSENING CIRCUMSTANCES, OR FOR NO REASON AT ALL BY
21 WAY OF A RECOMMENDATION OF MERCY, THE JURY COULD
22 RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE BECAUSE
23 THAT IS THE LAW. LIFE IMPRISONMENT MEANS WITHOUT
24 PAROLE. DO YOU UNDERSTAND THAT?

25 A. I UNDERSTAND THAT.

TONYA DENNIS - EXAMINATION BY THE COURT

- 1 Q. AND, MA'AM; THERE ARE THREE TYPES OF JURORS THAT
2 YOU'VE NOTICED ON THAT SHEET. ONE IS WHERE A JUROR
3 IN NUMBER ONE AUTOMATICALLY, REGARDLESS OF THE
4 FACTS OF THE CASE, JUST INSISTS ON THE DEATH
5 PENALTY BEING IMPOSED. NUMBER TWO IS WHERE THE
6 JUROR, REGARDLESS OF THE FACTS IN THE CASE,
7 AUTOMATICALLY FEELS IT SHOULD BE LIFE IMPRISONMENT
8 WITHOUT PAROLE. AND THEN THERE IS A THIRD TYPE OF
9 JUROR THAT WOULD BE OPEN-MINDED, THAT WOULD LISTEN
10 TO THE EVIDENCE, AND DOES NOT HAVE A FIXATION
11 EITHER AS TO LIFE IMPRISONMENT WITHOUT PAROLE OR A
12 SET IN CONCRETE POSITION OF THE DEATH PENALTY; AND
13 DEPENDING UPON THE EVIDENCE IN THE CASE WOULD
14 REASON WITH THE OTHER JURORS AND COULD ARRIVE AT A
15 VERDICT OF EITHER LIFE IMPRISONMENT WITHOUT PAROLE
16 OR THE DEATH PENALTY. THAT WOULD BE A JUROR NUMBER
17 THREE. WHICH OF THOSE THREE DO YOU FEEL YOU WOULD
18 FIT IT?
- 19 A. PROBABLY NUMBER THREE.
- 20 Q. MA'AM, DO YOU HAVE ANY PRECONCEIVED OPINION OR
21 NOTION ABOUT THE GUILT OF THIS DEFENDANT?
- 22 A. NO, I DON'T.
- 23 Q. AND YOU UNDERSTAND THE FACT THAT WE HAVE TO NOW AT
24 THIS TIME TALK ABOUT THE PENALTY PHASE BECAUSE
25 THERE WON'T BE ANOTHER OPPORTUNITY TO DISCUSS IT

TONYA DENNIS - DIRECT/MR. BAILEY

1 WITH YOU BEFORE THE JURY IS SELECTED. AND
2 CERTAINLY BY DISCUSSING IT, IT SHOULD NOT INFER OR
3 IMPLY THAT THE DEFENDANT IS GUILTY OR NOT GUILTY
4 BECAUSE HE IS CLOAKED WITH THE PRESUMPTION OF
5 INNOCENCE. DO YOU UNDERSTAND THAT?

6 A. I UNDERSTAND THAT.

7 Q. ALL RIGHT. AND, MA'AM, IF YOU WERE SELECTED AS A
8 JUROR IN THIS CASE, IS THERE ANYTHING ABOUT YOUR
9 MEDICAL CONDITION OR PERSONAL SITUATION THAT WOULD
10 CAUSE A HARDSHIP ON THE PEOPLE, MEMBERS OF YOUR
11 FAMILY, OR IS YOUR HEALTH OKAY IF YOU WERE TO BE
12 SEQUESTERED IN A MOTEL FOR SEVEN OR EIGHT DAYS?
13 WOULD YOU BE ABLE TO DO THAT EXCEPT IN THE CASE OF
14 EMERGENCY NO ONE WOULD BE ABLE TO CONTACT YOU, AND
15 YOU COULDN'T CONTACT OR DISCUSS ANYTHING WITH
16 THEM. DO YOU UNDERSTAND THAT?

17 A. I UNDERSTAND THAT.

18 Q. ALL RIGHT.

19 THE COURT: GENTLEMEN; THIS
20 CROSS-EXAMINATION, I BELIEVE, STARTS WITH THE
21 SOLICITOR.

22 MR. BAILEY: THANK YOU, YOUR HONOR.

23 DIRECT EXAMINATION

24 BY MR. BAILEY:

25 Q. MS. DENNIS, I'M WALTER BAILEY. I WANT TO ASK A FEW

TONYA DENNIS - DIRECT/MR. BAILEY

1 MORE QUESTIONS; AND THERE ARE NO WRONG OR RIGHT
2 ANSWERS. WE JUST WANT TO KNOW HOW YOU FEEL ABOUT
3 SOME OF THESE ISSUES WE MAY HAVE REACHED IN THE
4 TRIAL. AND I WANT TO ASK ABOUT YOUR THOUGHTS AND
5 BELIEFS ON THE DEATH PENALTY. BEFORE TODAY WHEN
6 YOU FOUND OUT THAT YOU MIGHT BE A JUROR ON A DEATH
7 PENALTY CASE, HAD YOU EVER GIVEN ANY THOUGHT TO THE
8 DEATH PENALTY?

9 A. YES, I HAVE.

10 Q. OKAY. AND CAN YOU TELL US WHAT YOUR THOUGHTS WERE?

11 A. BASICALLY MY THOUGHTS HAVE BEEN IF -- I KIND OF
12 LOOK AT IT AS A PERSONAL THING; THAT IF IT WAS
13 SOMEBODY IN MY FAMILY I WOULD OBVIOUSLY PROBABLY
14 WANT THE DEATH PENALTY. OTHER THAN THAT, JUST
15 DEFENDING ON WHAT THE CRIME IS; YOU KNOW, HOW
16 BRUTAL THE CRIME WAS. THOSE ARE BASICALLY MY
17 THOUGHTS. I'M NOT TOTALLY FOR IT OR NOT TOTALLY
18 AGAINST IT.

19 Q. OKAY. DO YOU HAVE ANY RELIGIOUS BELIEFS ABOUT THE
20 DEATH PENALTY ONE WAY OR THE OTHER THAT MIGHT
21 IMPACT YOUR DECISION IF YOU WERE PICKED AS A JUROR?

22 A. NO.

23 Q. OKAY. AND YOU UNDERSTAND FROM WHAT THE JUDGE TOLD
24 YOU THAT IN SOUTH CAROLINA, THE WAY THE SYSTEM
25 WORKS, IF A PERSON IS FOUND GUILTY OF MURDER IN THE

TONYA DENNIS - DIRECT/MR. BAILEY

1 FIRST PART OF THE TRIAL, THEN AND ONLY THEN DO WE
2 GO INTO THE SECOND PHASE. AND AT THAT POINT, IF WE
3 REACH THAT POINT, THE TWO OPTIONS, LIFE WITHOUT
4 PAROLE OR THE DEATH PENALTY ARE THE JURY'S
5 DECISION, NOT THE JUDGE'S. AND ALL THE JUDGE DOES
6 IS HE ORDERS INTO EFFECT WHATEVER THAT JURY VERDICT
7 IS. SO IF THE JURY VERDICT IS LIFE WITHOUT PAROLE,
8 IF THE JUDGE ORDERS THAT, THAT WILL BE THE SENTENCE
9 AND IT WILL BE CARRIED OUT. HE WILL GO TO PRISON
10 FOR THE REST OF HIS LIFE. IF THE JURY VOTES FOR
11 THE DEATH PENALTY, THE JUDGE WILL ORDER THAT. HE
12 WILL BE EXECUTED.

13 A. I UNDERSTAND THAT.

14 Q. NOW, NOBODY IS GOING TO ASK YOU IN PARTICULAR WHAT
15 YOU'D DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY
16 OF THE FACTS YET. BUT IF THE CASE WAS BAD ENOUGH,
17 COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT
18 SENTENCE WOULD BE CARRIED OUT?

19 A. I THINK THAT I COULD IF I THOUGHT THAT IT WAS BAD
20 ENOUGH; THE CRIME ITSELF WAS BAD ENOUGH.

21 Q. OKAY. AND COULD YOU SIGN YOUR NAME TO A VERDICT
22 FORM ALONG WITH THE OTHER JURORS IF THE VOTE WAS
23 UNANIMOUS FOR THE DEATH PENALTY?

24 A. YES; I BELIEVE THAT I COULD.

25 Q. WHEN YOU SAY YOU BELIEVE THAT YOU COULD; I NEED TO

TONYA DENNIS - CROSS/MR. THEOS

1 ASK YOU ABOUT THAT BECAUSE YOU KIND OF QUALIFIED IT
2 A LITTLE BIT.

3 A. YOU SAID -- I MEAN, I'M NOT GOING TO SAY FOR SURE;
4 BUT I THINK THAT I COULD.

5 Q. OKAY. WELL, WE'RE ASSUMING FOR THE PURPOSE OF THE
6 QUESTION THAT YOU HAD ALREADY VOTED FOR IT, AND
7 THAT ALL THE JURORS VOTED FOR IT.

8 A. IF THAT'S THE CASE, THEN I COULD.

9 Q. OKAY. COULD YOU COME OUT AND ANNOUNCE THAT
10 DECISION IN OPEN COURT IF THAT WAS YOUR DECISION?

11 A. YES, I COULD.

12 Q. THANK YOU. I BELIEVE THAT'S ALL I'VE GOT, MS.
13 DENNIS.

14 THE COURT: ANY QUESTIONS, MR.

15 THEOS?

16 CROSS-EXAMINATION

17 BY MR. THEOS:

18 Q. MS. DENNIS, HOW ARE YOU?

19 A. OKAY.

20 Q. I'M SORRY WE'RE HERE SO LATE. I'M JERRY THEOS.
21 THIS IS JIM BELL. THIS IS KENNETH SIMMONS. AND I
22 DON'T BELIEVE YOU ANSWERED THAT YOU KNEW ANY OF US
23 WHEN YOU WERE ASKED THOSE QUESTIONS; IS THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. I SEE THAT YOU'RE PRESENTLY EMPLOYED WITH

1 DORCHESTER COUNTY D.S.S.

2 A. CHARLESTON COUNTY D.S.S.

3 Q. I'M SORRY. YOU WERE PREVIOUSLY EMPLOYED WITH
4 DORCHESTER COUNTY D.S.S.?

5 A. NO. I THINK THAT WAS PROBABLY THE ANSWER FOR MY
6 SPOUSE.

7 Q. OKAY. I APOLOGIZE.

8 A. THAT'S OKAY.

9 Q. DOES YOUR SPOUSE STILL WORK FOR DORCHESTER COUNTY
10 D.S.S.?

11 A. NO, HE DOESN'T.

12 Q. HOW LONG WAS HE THERE?

13 A. PROBABLY NOT EVEN A YEAR; MAYBE TEN MONTHS OR
14 SOMETHING LIKE THAT.

15 Q. WHEN DID HE STOP WORKING WITH DORCHESTER COUNTY?

16 A. LAST MAY; MAY OF '98.

17 Q. OKAY. WHERE IS HE NOW EMPLOYED?

18 A. HE'S EMPLOYED WITH THE UNIVERSITY OF SOUTH
19 CAROLINA.

20 Q. AS AN INSTRUCTOR?

21 A. YES, SIR.

22 Q. WITH GRADUATE STUDIES?

23 A. YES.

24 Q. DID YOUR HUSBAND WORK CLOSELY WITH THE SOLICITOR'S
25 OFFICE IN DORCHESTER COUNTY?

TONYA DENNIS - CROSS/MR. THEOS

1 A. I CAN'T SAY. I'M NOT SURE.

2 Q. TELL ME WHAT YOU DO, IF YOU DON'T MIND, WITH
3 CHARLESTON COUNTY D.S.S.

4 A. INVESTIGATE REPORTS OF CHILD ABUSE AND NEGLECT.

5 Q. DO YOU HAVE THE POWER TO MAKE ARRESTS AS A D.S.S.
6 CASE WORKER IN THAT FIELD?

7 A. NO, WE DON'T.

8 Q. TELL ME WHAT YOU DO WHEN YOU FEEL A SITUATION
9 WARRANTS THE REMOVAL OF CHILDREN?

10 A. WE CONTACT LAW ENFORCEMENT, AND THEY REMOVE THE
11 CHILDREN.

12 Q. SEE DO Y'ALL WORK HAND IN HAND WITH LAW
13 ENFORCEMENT?

14 A. YES, WE DO.

15 Q. DO YOU ALSO WORK -- ARE Y'ALL REPRESENTED BY THE
16 SOLICITOR'S OFFICE IN CHARLESTON COUNTY?

17 A. NO. WE ARE REPRESENTED IN FAMILY COURT BY D.S.S.
18 STAFF ATTORNEY.

19 Q. MR. DURBAN?

20 A. YES, SIR.

21 Q. DO YOU FEEL THAT YOUR RELATIONSHIP BECAUSE YOU ARE
22 EMPLOYED BY A COUNTY AGENCY AND THE SOLICITOR'S
23 OFFICE IN THIS COUNTY -- ALTHOUGH IT'S A DIFFERENT
24 COUNTY -- DO YOU FEEL THAT BECAUSE YOU WORK HAND IN
25 HAND WITH STATE PROSECUTING AND COUNTY PROSECUTING

1 AGENCIES THAT THAT MIGHT AFFECT YOUR ABILITY TO BE
2 FAIR AND IMPARTIAL TO MR. SIMMONS?

3 A. NO, I DON'T.

4 Q. DO YOU THINK YOU COULD STILL HOLD THE STATE TO THE
5 BURDEN THAT THEY HAD?

6 A. YES; I KNOW THAT I COULD.

7 Q. NOW, DO YOU HAVE AN OPINION ABOUT MR. SIMMONS'
8 GUILT AS HE SITS HERE DUE TO THE FACT THAT HE'S
9 BEEN CHARGED WITH THESE CRIMES?

10 A. NO, I DON'T.

11 Q. DO YOU HAVE AN OPINION ABOUT TO MR. SIMMONS' GUILT
12 AS HE SITS HERE DUE TO THE FACT THAT HE'S BEEN
13 INDICTED OF ALL THOSE CRIMES THAT THE COURT READ
14 OUT EARLIER?

15 A. NO, I DON'T.

16 Q. WE'VE BEEN TALKING ABOUT THE DEATH PENALTY AND
17 PENALTIES. AND WE HAVEN'T -- WE'RE PUTTING THE
18 CART BEFORE THE HORSE SO TO SPEAK. WE HAVEN'T EVEN
19 DETERMINED WHETHER OR NOT MR. SIMMONS IS GUILTY.
20 HOW DO YOU FEEL ABOUT THAT; THE FACT THAT WE'RE
21 TALKING ABOUT PUNISHMENT, AND WE HAVEN'T MADE A
22 DECISION ABOUT GUILT?

23 A. I DON'T NECESSARILY HAVE A PROBLEM WITH THAT. I'D
24 RATHER KNOW WHAT THE PROCESS IS GOING TO ENTAIL. I
25 DON'T REALLY HAVE AN OPINION EITHER WAY.

TONYA DENNIS - CROSS/MR. THEOS

1 Q. DOES IT CAUSE YOU TO FEEL ONE WAY OR THE OTHER MORE
2 STRONGLY ABOUT MR. SIMMONS' GUILT?

3 A. NO; IT DOESN'T.

4 Q. NOW, YOU STATED BEFORE WHEN MR. BAILEY ASKED YOU
5 QUESTIONS ABOUT YOUR THOUGHTS ON THE DEATH PENALTY;
6 YOU SAID THAT IF IT WAS SOMEBODY IN YOUR FAMILY,
7 YOUR IMMEDIATE FAMILY, YOU PROBABLY WOULD VOTE FOR
8 THE DEATH PENALTY?

9 A. THAT'S CORRECT.

10 Q. AND THEN YOU SAID THAT DEPENDING ON HOW BRUTAL A
11 CRIME MIGHT BE THAT YOU WOULD VOTE FOR THE DEATH
12 PENALTY?

13 A. THAT'S CORRECT.

14 Q. TELL ME WHAT YOU MEAN BY BRUTAL.

15 MR. BAILEY: OBJECTION.

16 THE COURT: SUSTAINED.

17 Q. MS. DENNIS, IF YOU FOUND A CASE WERE BRUTAL ENOUGH
18 -- AND I'M NOT GOING TO ASK YOU BECAUSE I CAN'T
19 ASK YOU WHAT YOUR DEFINITION OR FEELINGS ABOUT WHAT
20 CONSTITUTES BRUTALISTIC. BUT IF A CASE WERE BRUTAL
21 ENOUGH AND WE AGAIN WENT BEYOND THE FIRST PHASE,
22 BECAUSE AS YOU SAID, MR. SIMMONS WOULD BE PRESUMED
23 TO BE INNOCENT. THE STATE'S GOT A BURDEN. AND LET
24 ME BACK UP FOR A MINUTE. IF THE STATE FAILED TO
25 PROVE MR. SIMMONS' GUILT BEYOND A REASONABLE DOUBT,

1 WHAT WOULD YOUR VERDICT BE IN THE GUILT PHASE?

2 A. IF THEY FAILED TO PROVE THE CASE BEYOND A
3 REASONABLE DOUBT?

4 Q. TO YOUR SATISFACTION.

5 A. TO MY SATISFACTION? I WOULD VOTE THAT HE WAS
6 INNOCENT.

7 Q. NOW, IF MR. SIMMONS WERE CONVICTED -- IF WE WENT
8 BEYOND THAT POINT AND HE WERE CONVICTED -- AND IF
9 THE CASE IN YOUR OPINION WERE BRUTAL ENOUGH, COULD
10 YOU EVER VOTE FOR LIFE IMPRISONMENT?

11 A. I BELIEVE THAT I COULD.

12 Q. OKAY. WHY DO YOU BELIEVE THAT YOU COULD?

13 A. I DON'T KNOW. I MEAN, I'M NOT SURE; BUT I BELIEVE
14 THAT I COULD. I COULD VOTE FOR LIFE IMPRISONMENT.
15 I DON'T KNOW THE CASE AND DETAILS AND ALL OF THOSE
16 THINGS.

17 Q. AGAIN, WE DON'T MEAN TO PUT YOU ON THE SPOT. AND
18 WE'RE CERTAINLY NOT JUDGING YOUR OPINION. BUT WE
19 JUST WANT TO FIND OUT JUST IN ALL SINCERITY AND
20 HONESTY WHAT THAT OPINION IS. DO YOU FEEL THAT
21 REGARDLESS IF YOU FOUND THAT IT WAS BRUTAL THAT YOU
22 COULD IMPOSE LIFE IMPRISONMENT?

23 MR. BAILEY: OBJECTION. YOUR HONOR,
24 SHE'S ALREADY ANSWERED THAT QUESTION.

25 THE COURT: I AGREE.

TONYA DENNIS - CROSS/MR. THEOS

1 MR. THEOS: NO OTHER QUESTIONS, YOUR
2 HONOR.

3 THE COURT: ANYTHING FURTHER?

4 THE COURT: STEP OUTSIDE FOR JUST A
5 MINUTE. GIVE HER THAT INSTRUCTION SHEET, PLEASE.
6 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

7 THE COURT: WHAT SAY THE STATE?

8 MR. BAILEY: QUALIFIED, YOUR HONOR.

9 THE COURT: WHAT SAY THE DEFENDANT?

10 MR. THEOS: SHE'S QUALIFIED.

11 THE COURT: THE CONCURS IN THAT.

12 BRING THE LADY BACK IN, PLEASE.

13 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

14 THE COURT: MRS. TONYA DENNIS; YOU
15 HAVE BEEN FOUND QUALIFIED BY ALL CONCERNED AS A
16 POTENTIAL JUROR IN THIS CASE. IT DOESN'T MEAN
17 YOU'RE ON THE JUROR YET. IT MEANS THERE'S JUST A
18 POSSIBILITY THAT WHEN YOU RETURN HERE. WE
19 TENTATIVELY SET THE TIME FOR TWO O'CLOCK WEDNESDAY,
20 BUT I COULD BE WRONG AGAIN. IF YOU WOULD, THERE'S
21 A NUMBER THERE YOU SHOULD HAVE TO CALL AFTER SIX
22 O'CLOCK TOMORROW, TUESDAY, AND WE'LL TELL YOU IF
23 THAT TIME HAS CHANGED. AND, OF COURSE, YOU ARE
24 UNDER INSTRUCTIONS NOT TO DISCUSS THE QUESTIONS
25 ASKED IN THIS PROCEEDING WITH THE OTHER JURORS,

BENJAMIN J. DURHAM - EXAMINATION BY THE COURT

1 PLEASE. YOU CAN TALK TO FAMILY MEMBERS ABOUT THE
2 POTENTIAL SEQUESTRATION, WHERE YOU WILL BE AND
3 WHO'S TO FEED THE CHILDREN OR THE PETS, OR
4 WHATEVER. BUT PLEASE DO NOT EXPOSE YOURSELF BY WAY
5 OF NEWSPAPER, T.V., RADIO OR OTHER COMMUNICATION OR
6 BY ANYONE. DON'T ALLOW ANYONE TO TALK TO YOU ABOUT
7 THIS CASE, PLEASE. SO WITH THAT, PLEASE DRIVE
8 CAREFULLY AND HAVE A PLEASANT EVENING. THANK YOU,
9 MA'AM. ALL RIGHT, PLEASE BRING IN THE NEXT JUROR.
10 BENJAMIN DURHAM, III, NUMBER 93.

11 (NUMBER 93, A WHITE MALE, IS CALLED.)

12 THE COURT: PLEASE BE SEATED, MR.
13 BENJAMIN J. DURHAM, III, JUROR NUMBER 93. WE
14 ACKNOWLEDGE THE LATENESS OF THE HOUR AND PREFER
15 THAT IT NOT BE THIS WAY. BUT I HOPE FOR YOUR
16 UNDERSTANDING IN THAT REGARD.

17 - - - - -
18 WHEREUPON,

19 BENJAMIN J. DURHAM, III, WHO BEING
20 PREVIOUSLY SWORN TO TELL THE TRUTH,
21 TESTIFIED AS FOLLOWS:

22 EXAMINATION

23 BY THE COURT:

24 Q. MR. DURHAM, YOU WERE PUT UNDER OATH EARLIER IN THE
25 DAY. YOU REALIZE YOU'RE STILL UNDER OATH?

BENJAMIN J. DURHAM - EXAMINATION BY THE COURT

1 A. YES, SIR.

2 Q. AND SINCE YOU WERE EXCUSED EARLIER TODAY, HAS
3 ANYBODY TALKED WITH YOU ABOUT THE FACTS OF THIS
4 CASE? HAVE YOU DISCUSSED IT WITH ANYONE?

5 A. NO, SIR.

6 Q. HAVE YOU, MR. DURHAM, READ ANYTHING IN THE
7 NEWSPAPER OR DISCUSSED THIS OR HEARD ANYTHING ABOUT
8 THE CASE? YOU HAD RESPONDED EARLIER IN THE DAY
9 THAT YOU HAD. WILL YOU TELL US ABOUT THAT, PLEASE?

10 A. THERE WAS AN ARTICLE IN THE NEWS AND COURIER EITHER
11 FRIDAY OR SATURDAY STATING THAT THIS TRIAL WAS
12 GOING TO START TODAY.

13 Q. AS A RESULT OF HAVING READ THAT ARTICLE, HAVE YOU
14 FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR
15 THE INNOCENCE OF THE DEFENDANT?

16 A. NO, SIR.

17 Q. AND WOULD YOU BE WILLING AND ABLE IF CHOSEN AS A
18 JUROR TO PUT ASIDE ANYTHING YOU MAY HAVE READ OR
19 HEARD AND DECIDE THIS CASE BASED UPON THE TESTIMONY
20 AND EVIDENCE RENDERED UNDER OATH DURING THE TRIAL
21 OF THE CASE?

22 A. YES, SIR.

23 Q. AND I NOTE, SIR, THAT IN THE QUESTIONING EARLIER
24 TODAY ABOUT IF YOU KNEW THE ATTORNEYS THAT YOU DID
25 STAND AND SAY THAT YOU KNEW ONE OR MORE ATTORNEYS.

1 AND GOSH! EVERYBODY NEEDS A DOCTOR OR A DENTIST OR
2 AN ATTORNEY, AND WHATEVER. SO TELL US WHAT YOU CAN
3 ABOUT YOUR KNOWLEDGE OF THE ATTORNEYS.

4 A. IT WAS EITHER FIVE OR SIX YEARS AGO, MR. BELL
5 REPRESENTED MYSELF IN A CIVIL CASE.

6 Q. WAS THAT A CONTRACT ACTION; OR WAS IT A TORT, AN
7 AUTOMOBILE WRECK?

8 A. A CONTRACT.

9 Q. BREACH OF CONTRACT?

10 A. YES, SIR.

11 Q. AND, MR. DURHAM, THE FACT THAT MR. BELL WHO WE ALL
12 RECOGNIZE IS A VERY COMPETENT ATTORNEY; THE FACT
13 THAT HE HAD REPRESENTED YOU, WOULD THAT IN ANY WAY
14 INTERFERE WITH YOUR ABILITY TO GIVE A FAIR TRIAL
15 BOTH TO THE STATE AND TO THE DEFENDANT?

16 A. I DON'T BELIEVE SO.

17 Q. ALL RIGHT. SINCE YOU SUBMITTED THAT QUESTIONNAIRE,
18 ARE THERE ANY CHANGES THAT NEED TO BE MADE?

19 A. NO, SIR.

20 Q. AND, OF COURSE, PLEASE UNDERSTAND WE'RE NOT TRYING
21 TO INVADE YOUR PRIVACY; BUT THE LAWYERS -- THIS IS
22 THE ONLY OPPORTUNITY THEY'LL HAVE TO QUESTION YOU
23 ABOUT THIS CASE. AND IF YOU WERE SELECTED AS A
24 JUROR IN THIS CASE, WOULD YOU BE WILLING TO LISTEN
25 TO THE EVIDENCE AND LISTEN TO THE LAW AS INSTRUCTED

BENJAMIN J. DURHAM - EXAMINATION BY THE COURT

1 BY THE JUDGE TO ACCEPT THE LAW AS BEING THE CORRECT
2 LAW AND APPLY IT TO THE FACTS AS FOUND BY YOU?

3 A. YES, SIR.

4 Q. AND THE OTHER JURORS, OF COURSE. AND IF THE
5 EVIDENCE WARRANTED -- IF THE STATE FAILED TO PROVE
6 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
7 DOUBT, COULD YOU RETURN A VERDICT OF NOT GUILTY IN
8 THE GUILT PHASE?

9 A. YES, SIR.

10 Q. AND IF THE EVIDENCE WARRANTED IT, COULD YOU RETURN
11 A VERDICT OF GUILTY IN THE MURDER PHASE OR THE
12 GUILT PHASE?

13 A. YES, SIR.

14 Q. AND YOU UNDERSTAND THE FACT THAT SOMEONE IS
15 AUTOMATICALLY CHARGED WITH A CRIME DOESN'T MEAN
16 THAT THEY'RE GUILTY OF THE CRIME. THEY HAVE NO
17 BURDEN TO PROVE THEMSELVES INNOCENT. THE STATE,
18 RATHER, HAS THE BURDEN OF PROVING THEIR GUILT
19 BEYOND A REASONABLE DOUBT?

20 A. YES, SIR.

21 Q. SO ANY VERDICT YOU RENDER WOULD BE BASED ON THE
22 EVIDENCE. AND YOU COULD RENDER A VERDICT OF EITHER
23 GUILTY OR NOT GUILTY?

24 A. YES, SIR.

25 Q. NOW, YOU UNDERSTAND THAT IN A DEATH PENALTY CASE

1 THERE ARE TWO PHASES. THE FIRST PHASE WOULD BE
2 THAT OF A GUILT PHASE. THE FACT THAT WE ARE GOING
3 TO TALK ABOUT THE PENALTY PHASE, PLEASE DERIVE NO
4 INFERENCE AS TO THE GUILT OR INNOCENCE OF THE
5 DEFENDANT BECAUSE THE DEFENDANT IS PRESUMED OR
6 INFERRED TO BE THOUGHT TO BE INNOCENT UNTIL THE
7 STATE REMOVES THAT PRESUMPTION OF INNOCENCE FOREVER
8 SATISFYING YOU AND THE OTHER JURORS OF HIS GUILT
9 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

10 A. YES, SIR, I DO.

11 Q. DO YOU UNDERSTAND THAT BEFORE YOU COULD RETURN A
12 VERDICT FOR RECOMMENDING THE DEATH PENALTY IN THE
13 SECOND PHASE OF THE CASE THAT THE STATE WOULD HAVE
14 TO PROVE BEYOND A REASONABLE DOUBT ONE OR MORE
15 STATUTORY AGGRAVATING CIRCUMSTANCES?

16 A. YES, SIR.

17 Q. AND YOU UNDERSTAND THAT THE DEFENDANT WOULD BE
18 GIVEN THE OPPORTUNITY IF HE ELECTED TO OFFER
19 TESTIMONY, ALTHOUGH HE'S NOT REQUIRED TO, BUT THE
20 DEFENSE CAN OFFER EVIDENCE IN MITIGATION DURING THE
21 PENALTY PHASE?

22 A. YES, SIR.

23 Q. AND YOU UNDERSTAND ALTHOUGH THE JURY MAY FIND THAT
24 THERE WAS ONE OR MORE STATUTORY AGGRAVATING
25 CIRCUMSTANCES, THE JURY COULD DECLINE TO RETURN A

BENJAMIN J. DURHAM - EXAMINATION BY THE COURT

1 RECOMMENDATION OF THE DEATH PENALTY AND COULD BY
2 REASON OF A RECOMMENDATION OF MERCY FOR NO REASON
3 AT ALL OTHER THAN THEY FELT MERCY SHOULD BE
4 AFFORDED TO THE DEFENDANT; THEY COULD MAKE A
5 RECOMMENDATION OF LIFE IMPRISONMENT WHICH UNDER OUR
6 PRESENT LAW IS WITHOUT PAROLE. DO YOU UNDERSTAND
7 THAT?

8 A. YES, SIR.

9 Q. AND YOU HAVE READ THOSE THREE TYPES OF JURORS ON
10 THAT SHEET. ONE, THE PERSON THAT FEELS A DEATH
11 PENALTY SHOULD BE APPLIED REGARDLESS OF THE FACTS
12 OR EVIDENCE. NUMBER TWO, JUROR THAT FEELS THAT
13 UNDER ALL CIRCUMSTANCES REGARDLESS OF THE EVIDENCE
14 THAT IT SHOULD BE LIFE IMPRISONMENT WITHOUT
15 PAROLE. OR THE THIRD JUROR WHO WOULD LISTEN TO THE
16 EVIDENCE, BE OPEN-MINDED, AND REASON WITH THE OTHER
17 JURORS AND RETURN A RECOMMENDATION OF EITHER LIFE
18 IMPRISONMENT WITHOUT PAROLE OR A RECOMMENDATION OF
19 THE DEATH SENTENCE, PENDING UNDER THE EVIDENCE
20 PENDING IN THE TRIAL OF THE CASE?

21 A. YES, SIR.

22 Q. AND WHICH OF THOSE THREE DO YOU FEEL YOU'D COME
23 UNDER?

24 A. I BELIEVE I'D FALL UNDER THE THIRD CATEGORY.

25 Q. ALL RIGHT, SIR.

1 THE COURT: YOU MAY QUESTION THE
2 WITNESS, MR. THEOS.

3 - - - - -
4 DIRECT EXAMINATION

5 BY MR. THEOS:

6 Q. MR. LANGLEY, HOW ARE YOU?

7 A. MY NAME IS DURHAM, SIR.

8 Q. I'M SORRY. I PULLED OUT THE WRONG QUESTIONNAIRE.
9 I APOLOGIZE. MR. DURHAM, IT'S LATE. I'M A LITTLE
10 TIRED, AND I APOLOGIZE FOR NOT GETTING YOUR NAME
11 RIGHT. PLEASE FORGIVE ME. IT'S LATE FOR YOU. AND
12 AGAIN, WE APOLOGIZE FOR BEING HERE SO LATE. I
13 UNDERSTAND IN RESPONSE TO THE JUDGE'S QUESTION THAT
14 YOU FEEL THAT YOU WOULD WEIGH THE EVIDENCE IF WE
15 REACHED THE PENALTY PHASE AND MAKE A DECISION ON
16 WHETHER YOU FELT LIFE IMPRISONMENT OR THE DEATH
17 PENALTY WERE APPROPRIATE; CORRECT?

18 A. YES, SIR.

19 Q. WHAT I'M CONCERNED ABOUT, THOUGH, IS PRE-JUDGING
20 MR. SIMMONS BECAUSE WE SORT OF JUMPED INTO THAT
21 PENALTY PHASE. YOU, OF COURSE, DON'T -- HAVE YOU
22 FORMED ANY OPINIONS ABOUT THE GUILT OF MR. SIMMONS
23 BECAUSE WE'VE BEEN DISCUSSING THE ISSUE OF PENALTY?

24 A. NO, SIR, I HAVE NOT.

25 Q. DO YOU UNDERSTAND, OF COURSE, THAT MR. BAILEY AND

BENJAMIN J. DURHAM - DIRECT/MR. THEOS

1 HIS OFFICE, THE SOLICITOR'S OFFICE, HAS TO PROVE
2 MR. SIMMONS GUILTY FIRST?

3 A. YES.

4 Q. OF ANY OF THESE CRIMES BEFORE WE WOULD EVEN BEGIN
5 TO CONSIDER MOVING TO THE SECOND PHASE?

6 A. YES, SIR.

7 Q. AND IF YOU, OF COURSE, FOUND THAT MR. BAILEY AND
8 THE SOLICITOR'S OFFICE DID NOT SATISFY THAT BURDEN
9 OF PROOF BEYOND A REASONABLE DOUBT, YOU WOULD OF
10 COURSE FIND MR. SIMMONS NOT GUILTY?

11 A. THAT'S CORRECT.

12 Q. MR. DURHAM, ON YOUR QUESTIONNAIRE YOU RELATED YOU
13 WERE A MEMBER OF AN ORGANIZATION. AND I THINK IT'S
14 A.O.P.A.?

15 A. YES, SIR.

16 Q. CAN YOU TELL ME WHAT THAT IS?

17 A. THAT'S THE ASSOCIATION OF AIRCRAFT OWNERS AND
18 PILOTS.

19 Q. OKAY.

20 A. AIRCRAFT OWNERS AND PILOTS ASSOCIATION.

21 Q. OKAY. AND THEN AMERICAN YANKEE ASSOCIATION?

22 A. YES, SIR. THAT'S A GROUP OF PEOPLE THAT OWN THAT
23 TYPE OF AIRCRAFT.

24 Q. AND AGAIN, ALTHOUGH YOU'VE HEARD SOMETHING OR SEEN
25 SOMETHING IN THE NEWSPAPER ABOUT THIS CASE, ARE YOU

BENJAMIN J. DURHAM - CROSS/MR. BAILEY

1 AWARE OF ANY OF THE SPECIFIC FACTS RELATED TO THE
2 CASE?

3 A. NO, SIR. I VAGUELY REMEMBER READING ABOUT IT WHEN
4 IT OCCURRED IN THE PAPER. BUT, TO BE HONEST WITH
5 YOU, I HAD TOTALLY FORGOTTEN ABOUT IT UNTIL THE
6 ARTICLE WAS IN RECENTLY ABOUT THE TRIAL.

7 Q. OKAY. AND SINCE YOU DON'T REALLY RECALL IT, YOU
8 WOULD BE PREPARED TO JUST SET WHATEVER IT WAS YOU
9 HEARD ASIDE AND LISTEN TO THE CASE AS IT WAS
10 PRESENTED FROM THE WITNESS STAND WHERE YOU'RE
11 SITTING ON?

12 A. I BELIEVE SO; YES, SIR.

13 Q. OKAY.

14 MR. THEOS: I DON'T HAVE ANY OTHER
15 QUESTIONS, YOUR HONOR.

16 THE COURT: ANYTHING ON CROSS,
17 SOLICITOR?

18 MR. BAILEY: YES,

19 CROSS-EXAMINATION

20 BY MR. BAILEY:

21 Q. MR. DURHAM, I'M WALTER BAILEY. I WANT TO ASK YOU A
22 FEW MORE QUESTIONS TO FOLLOW UP ON MR. THEOS AND
23 WHAT THE JUDGE HAD ASKED YOU. YOU TESTIFIED THAT
24 MR. BELL HAD REPRESENTED YOU A FEW YEARS BACK IN A
25 CONTRACT MATTER OF SOME TYPE?

BENJAMIN J. DURHAM - CROSS/MR. BAILEY

1 A. YES, SIR.

2 Q. DO YOU KNOW MR. BELL SOCIALLY?

3 A. NO, SIR.

4 Q. ANY CIVIC CLUBS OR ANYTHING OF THAT NATURE?

5 A. NO, SIR.

6 Q. JUST STRICTLY ATTORNEY-CLIENT RELATIONSHIP?

7 A. YES, SIR.

8 Q. ALL RIGHT, SIR. HAS ANY FAMILY MEMBER OF YOURS
9 BEEN REPRESENTED BY MR. BELL THAT YOU'RE AWARE OF?

10 A. I THINK HE'S DONE SOME WORK FOR MY PARENTS-IN-LAW,
11 MAINLY IN REGARD TO REAL ESTATE.

12 Q. ALL RIGHT, SIR. AND YOU SAID THAT WOULD HAVE NO
13 BEARING ON YOUR DELIBERATIONS IF YOU SAT AS A JUROR
14 IN THIS CASE; IS THAT CORRECT, EITHER IN THE GUILT
15 PHASE OR THE PENALTY PHASE IF WE GET THERE?

16 A. NO, SIR.

17 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND THAT WE
18 WOULDN'T EVEN GET TO THE PENALTY PHASE UNLESS AND
19 UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN
20 THE FIRST PART OF THE TRIAL?

21 A. YES, SIR.

22 Q. AND THAT IF WE GET INTO THAT PENALTY PHASE THE JURY
23 HAS THOSE TWO CHOICES, LIFE WITHOUT PAROLE OR THE
24 DEATH PENALTY. AND THAT THE JURY, NOT THE JUDGE,
25 DECIDES WHAT THE PENALTY IS GOING TO BE?

1 A. YES, SIR.

2 Q. THE JUDGE WILL IMPOSE THE DEATH PENALTY. THEY CALL
3 IT A RECOMMENDATION, BUT IT WILL BE THE SENTENCE OF
4 THE COURT?

5 A. YES, SIR.

6 Q. ALL RIGHT, SIR. NOBODY IS GOING TO ASK YOU TO
7 PREDICT WHAT YOU'D DO IN THIS CASE BECAUSE YOU
8 HAVEN'T HEARD THE FACTS. BUT IF THE FACTS WERE BAD
9 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
10 KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

11 A. YES, SIR.

12 Q. ALL RIGHT, SIR. AND IF THE OTHER ELEVEN JURORS
13 FELT THE SAME WAY AND UNANIMOUSLY VOTED FOR THE
14 DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A
15 VERDICT FORM THAT WOULD RESULT IN THAT SENTENCE
16 BEING PUT INTO EFFECT AND THAT PERSON EXECUTED?

17 A. YES, SIR; IF ALL THE PREREQUISITES WERE MET THAT
18 WE'VE DISCUSSED.

19 Q. ALL RIGHT. AND IF ALL THOSE PREREQUISITES WERE
20 MET, COULD YOU STAND UP IN OPEN COURT WHEN YOUR
21 NAME WAS CALLED OUT AND ANNOUNCE THAT VERDICT OUT
22 LOUD?

23 A. YES, SIR.

24 Q. IS THERE ANY REASON YOU CAN THINK OF THAT WE MAY
25 NOT HAVE EVEN MENTIONED YET THAT YOU FEEL LIKE

BENJAMIN J. DURHAM - CROSS/MR. BAILEY

1 MIGHT PREVENT YOU FROM SITTING AS A FAIR AND
2 IMPARTIAL JUROR TO BOTH SIDES; THE STATE AND THE
3 DEFENSE?

4 A. NO, SIR.

5 Q. THANK YOU. THAT'S ALL I HAVE.

6 THE COURT: ANYTHING FURTHER, MR.
7 THEOS?

8 MR. THEOS: NOTHING, YOUR HONOR.

9 THE COURT: MR. DURHAM, IF YOU ARE
10 SELECTED AS A JUROR IN THIS CASE, YOU AND THE OTHER
11 JURORS WOULD BE HOUSED AT THE HOLIDAY INN. OF
12 COURSE THE COUNTY OR STATE WOULD PICK UP THE
13 EXPENSES FOR YOUR FOOD, AND YOU'D BE HERE DURING
14 THE DAY IN THE TRIAL AND THERE AT NIGHT. AND YOU
15 WOULDN'T BE ABLE TO HAVE CONTACT WITH YOUR FAMILY
16 OR THEM WITH YOU EXCEPT IN A CASE OF EMERGENCY.
17 AND I KNOW THAT'S AN INCONVENIENCE TO YOU, YOUR
18 BUSINESS, AND YOUR FAMILY. BUT WOULD IT POSE ANY
19 SERIOUS RISK OF DANGER TO YOUR HEALTH AND
20 WELL-BEING OR THE HEALTH AND WELL-BEING OF ANYBODY
21 WHO DEPENDS ON YOU IF YOU HAD TO SERVE AS A JUROR
22 AND BE SEQUESTERED?

23 MR. DURHAM: NO, SIR. IT WOULD
24 PROBABLY HURT MY BUSINESS SOME.

25 THE COURT: OKAY. GIVE HIM THAT

1 INSTRUCTION SHEET. LET ME GET YOU TO STEP OUTSIDE
2 FOR ONE MINUTE, PLEASE, MR. DURHAM.

3 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

4 THE COURT: WHAT DO YOU SAY, MR.
5 THEOS?

6 MR. THEOS: YOUR HONOR, HE'S
7 QUALIFIED.

8 THE COURT: STATE?

9 MR. BAILEY: QUALIFIED.

10 THE COURT: ALL RIGHT. BRING HIM
11 IN, PLEASE.

12 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

13 THE COURT: MR. DURHAM, YOU'VE BEEN
14 DETERMINED TO BE QUALIFIED BY ALL CONCERNED LAWYERS
15 AND THE COURT. THAT MEANS YOU ARE ELIGIBLE TO BE
16 ON THE STRIKE SHEET. WE HOPE TO BE ABLE TO STRIKE
17 AT TWO O'CLOCK THIS COMING WEDNESDAY. SO PLEASE
18 CALL THAT NUMBER THAT THEY SHOULD HAVE GIVEN TO YOU
19 AFTER SIX O'CLOCK TOMORROW. GO ABOUT YOUR NORMAL
20 BUSINESS TOMORROW. AND OTHERWISE YOU REPORT IN FOR
21 THAT JURY STRIKE. BRING YOUR LUGGAGE IN THE EVENT
22 THAT YOU ARE SELECTED. PLEASE DON'T DISCUSS THIS
23 CASE WITH ANYONE OR ALLOW YOURSELF TO BE EXPOSED TO
24 ANY NEWS ACCOUNTS BE IT PRINT, ELECTRONIC, MEDIA OR
25 OTHERWISE. AND DON'T ALLOW ANYONE TO DISCUSS THE

J. SCOTT FIELDS - EXAMINATION BY THE COURT

1 CASE WITH YOU IN ANY WAY. YOU'RE WELCOME TO TALK
2 WITH YOUR FAMILY OR CO-WORKERS ABOUT YOUR
3 SEQUESTRATION DIFFICULTIES. THAT'S
4 UNDERSTANDABLE. ALL RIGHT, SIR. THANK YOU. HAVE
5 A PLEASANT EVENING. ALL RIGHT. BRING THE NEXT
6 JUROR IN, PLEASE. AND THAT WOULD BE SCOTT FIELDS.
7 (JUROR NUMBER 107, A WHITE MALE, IS CALLED.)

8 THE COURT: MR. J. SCOTT FIELDS,
9 JUROR NUMBER 107. THANK YOU FOR YOUR PATIENCE AND
10 ATTENTIVENESS IN STILL HANGING IN THERE WITH US
11 THIS LATE IN THE AFTERNOON.

12 - - - - -
13 WHEREUPON,

14 J. SCOTT FIELDS, WHO BEING PREVIOUSLY
15 SWORN TO TELL THE TRUTH, TESTIFIED AS
16 FOLLOWS:

EXAMINATIONBY THE COURT:

17
18
19 Q. YOU WERE GIVEN AN OATH EARLIER IN THE DAY. AND DO
20 YOU UNDERSTAND THAT YOU ARE STILL AT THIS TIME
21 UNDER OATH?

22 A. YES, SIR.

23 Q. AND HAVE YOU SINCE WE TALKED WITH YOU EARLIER, HAS
24 ANYBODY -- SINCE YOU LEFT THE COURTROOM EARLIER
25 TODAY, HAS ANYBODY DISCUSSED THIS CASE WITH YOU OR

J. SCOTT FIELDS - EXAMINATION BY THE COURT

1 ATTEMPTED TO INFLUENCE YOU IN ANY WAY ABOUT IT?

2 A. NO, SIR.

3 Q. AND THIS MORNING DURING THE GROUP VOIR DIRE, YOU
4 INDICATED YOU HAD SEEN OR READ OR HEARD SOMETHING
5 ABOUT THIS CASE. PLEASE TELL US WHAT YOU HEARD,
6 FROM WHAT SOURCE, AND WHEN.

7 A. I GUESS I READ ABOUT IT SHORTLY AFTER IT HAPPENED.
8 BUT I CAN'T REALLY REMEMBER THE DETAILS. AND THEN
9 THE SUMMERVILLE PAPER I SAW A COUPLE OF DAYS AGO.
10 BUT I KNEW I WAS COMING UP HERE, SO I DIDN'T READ
11 IT.

12 Q. AND, SO, BASED UPON WHAT YOU MAY HAVE HEARD OR READ
13 SOME TIME IN THE PAST, HAVE YOU FORMED OR EXPRESSED
14 ANY OPINION AS TO THE GUILT OR INNOCENCE OF THE
15 DEFENDANT, KENNETH SIMMONS?

16 A. NO, SIR.

17 Q. AND IF YOU WERE CHOSEN AS A JUROR, COULD YOU FAIRLY
18 LISTEN TO THE TESTIMONY AND DECIDE THE CASE BASED
19 UPON THE EVIDENCE, NOT ABOUT ANYTHING YOU MAY HAVE
20 HEARD OR READ?

21 A. YES, SIR.

22 Q. AND THAT QUESTIONNAIRE THAT YOU SENT IN EARLIER; IS
23 THAT STILL CORRECT INFORMATION? IS THERE ANYTHING
24 THAT YOU NEED TO CHANGE ON THAT AT THIS TIME?

25 A. NO, SIR; IT'S CORRECT.

J. SCOTT FIELDS - EXAMINATION BY THE COURT

- 1 Q. AND DO YOU UNDERSTAND, PLEASE SIR, THAT WE'RE NOT
2 TRYING TO INVADE YOUR PRIVACY, BUT THE LAWYERS ARE
3 INTERESTED, AS IS THE COURT, ABOUT YOUR VIEWS ON
4 CERTAIN THINGS AND YOUR ABILITY TO SERVE AS A JUROR
5 IN THIS CASE. AND WE NECESSARILY HAVE TO SPEAK OF
6 GUILT AND THE PENALTY PHASE ALBEIT THE DEFENDANT IS
7 PRESUMED INNOCENT AND HAS NO BURDEN OF PROVING
8 HIMSELF NOT GUILTY BECAUSE THE BURDEN REMAINS ON
9 THE STATE TO PROVE HIM GUILTY BEYOND A REASONABLE
10 DOUBT?
- 11 A. YES, SIR.
- 12 Q. AND IF YOU WERE DRAWN AS A JUROR IN THIS CASE,
13 WOULD YOU BE WILLING TO LISTEN TO THE LAW AS
14 INSTRUCTED BY THE COURT AND APPLY THE FACTS AS
15 FOUND BY YOU?
- 16 A. YES, SIR.
- 17 Q. AND IF THE EVIDENCE WARRANTED FINDING A NOT GUILTY
18 VERDICT, WOULD YOU FIND A NOT GUILTY VERDICT?
- 19 A. YES, SIR.
- 20 Q. AND IF THE EVIDENCE WARRANTED FINDING A GUILTY
21 VERDICT, COULD YOU FIND A GUILTY VERDICT?
- 22 A. YES, SIR.
- 23 Q. SO AS I UNDERSTAND IT, YOU WOULD LISTEN TO THE
24 EVIDENCE AND THEN DECIDE WHAT YOUR VERDICT WOULD
25 BE?

J. SCOTT FIELDS - EXAMINATION BY THE COURT

1 A. CORRECT.

2 Q. AND NORMALLY A JUROR IS NOT CONCERNED WITH THE
3 PENALTY BECAUSE THE COURT MUST SENTENCE PEOPLE; BUT
4 IN A SITUATION SUCH AS A CAPITAL MURDER OR DEATH
5 PENALTY CASE, THERE YOU HAVE A TWO PHASE BIFURCATED
6 TRIAL. ONE IS CALLED THE GUILT PHASE. THE OTHER
7 IS THE PENALTY PHASE. ONLY IF THERE'S A FINDING OF
8 GUILTY ON MURDER WOULD YOU EVEN GET TO THE PENALTY
9 PHASE. BUT ASSUMING THAT YOU DIDN'T, THAT THE
10 UNANIMOUS JURY VERDICT WAS GUILTY OF MURDER, THEN
11 YOU WOULD GO TO THE PENALTY PHASE. AND THERE THE
12 STATE CONTINUES TO HAVE THE BURDEN OF PROVING
13 BEYOND A REASONABLE DOUBT ONE OR MORE STATUTORY
14 AGGRAVATING CIRCUMSTANCES SUCH AS MURDER WHILE THE
15 ACT OF BURGLARY, BREAKING AND ENTERING A HOUSE IN
16 THE NIGHTTIME, INTENT TO COMMIT A FELONY THERE, OR
17 ARMED ROBBERY OR LARCENY, STEALING, OR CRIMINAL
18 SEXUAL CONDUCT. AND THE STATE WOULD HAVE TO PROVE
19 A STATUTORY AGGRAVATING CIRCUMSTANCE BEFORE THE
20 JURY COULD RECOMMEND THE DEATH PENALTY. BUT EVEN
21 SO, IF THE JURY FOUND AN AGGRAVATING STATUTORY
22 CIRCUMSTANCE, THEY WOULD NOT HAVE TO GIVE A
23 RECOMMENDATION OF THE DEATH PENALTY BECAUSE THEY
24 COULD FIND THAT THERE WERE MITIGATING CIRCUMSTANCES
25 TO LESSEN THE IMPACT OF WHAT HAPPENED BY WAY OF

J. SCOTT FIELDS - EXAMINATION BY THE COURT

- 1 SENTENCE. OR THEY COULD FOR NO REASON AT ALL, AS A
2 MATTER OF MERCY, RECOMMEND TO THE COURT A SENTENCE
3 OF LIFE IMPRISONMENT WITHOUT PAROLE WHICH IS THE
4 LAW. IF IT BE LIFE IMPRISONMENT, IT WILL BE
5 WITHOUT PAROLE. SO, DO YOU UNDERSTAND THAT?
- 6 A. YES, SIR.
- 7 Q. AND DO YOU FEEL THAT YOU COULD FOLLOW THE LAW AND,
8 DEPENDING UPON YOUR VIEW OF THE EVIDENCE, RETURN A
9 FAIR VERDICT?
- 10 A. YES, SIR.
- 11 Q. YOU'VE HAD AN OPPORTUNITY TO READ THE THREE TYPES
12 OF JURORS, ONE, TWO, AND THREE?
- 13 A. YES, SIR.
- 14 Q. WHICH CATEGORY DO YOU FEEL YOU FALL UNDER, SIR?
- 15 A. NUMBER THREE.
- 16 Q. NUMBER THREE?
- 17 A. YES, SIR.
- 18 Q. AND IF YOU WERE SELECTED AS A JUROR IN THIS CASE,
19 WOULD IT IMPOSE ANY HARDSHIP ON YOUR HEALTH OR
20 MEMBERS OF YOUR FAMILY IF YOU HAD TO BE SEQUESTERED
21 FOR SIX, SEVEN, OR EIGHT DAYS AT THE HOLIDAY INN?
22 I REALIZE IT TO BE AN INCONVENIENCE.
- 23 A. SOMEWHAT; BUT I CAN PROBABLY---
- 24 Q. YOU CAN SURVIVE?
- 25 A. YES, SIR.

1 THE COURT: ALL RIGHT. YOU MAY
2 CROSS, MR. SOLICITOR.

3 MR. BAILEY: THANK YOU, YOUR HONOR.

4 DIRECT EXAMINATION

5 BY MR. BAILEY.

6 Q. MR. FIELDS, I'M WALTER BAILEY. I WANT TO ASK YOU A
7 FEW MORE QUESTIONS. DO YOU HAVE ANY RELIGIOUS OR
8 PERSONAL BELIEFS IN REGARD TO THE DEATH PENALTY
9 THAT YOU THINK MIGHT IMPACT YOUR ABILITY TO SERVE
10 AS A JUROR IN THIS KIND OF A CASE?

11 A. NO, SIR.

12 Q. ALL RIGHT, SIR. THE POTENTIAL TWO-PART PROCESS,
13 SIR; YOU UNDERSTAND WE WOULDN'T GET TO PHASE TWO
14 UNLESS THE DEFENDANT IS FOUND GUILTY OF MURDER IN
15 THE FIRST PART OF THE TRIAL? AND THE REASON WE
16 HAVE THAT SECOND PHASE IS TO ALLOW ADDITIONAL
17 EVIDENCE TO COME OUT TO HELP THE JURY MAKE THEIR
18 DETERMINATION ON PUNISHMENT. AND WHATEVER
19 PUNISHMENT THE JURY DECIDES IS APPROPRIATE, EITHER
20 LIFE WITHOUT PAROLE OR THE DEATH SENTENCE, WILL BE
21 THE ORDER OF THE COURT?

22 A. YES, SIR.

23 Q. SO, IN OTHER WORDS, THE JURY DETERMINES THE
24 PUNISHMENT, NOT THE JUDGE?

25 A. YES, SIR.

J. SCOTT FIELDS - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND NOBODY IS GOING TO ASK YOU TO
2 PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU
3 HAVEN'T HEARD THE FACTS. BUT IF THE FACTS WERE BAD
4 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
5 KNOWING THAT SENTENCE ACTUALLY WOULD BE CARRIED
6 OUT; THAT PERSON WOULD BE EXECUTED?

7 A. YES, SIR.

8 Q. ALL RIGHT, SIR. AND IF THE OTHER ELEVEN JURORS
9 ALSO VOTE FOR THE DEATH PENALTY, COULD YOU SIGN
10 YOUR NAME TO A VERDICT FORM ALONG WITH THE OTHER
11 ELEVEN JURORS THAT WOULD RESULT IN THAT EXECUTION
12 TAKING PLACE?

13 A. NOW, SAY THAT AGAIN.

14 Q. THE PROCEDURE; IF THE JURY VOTES FOR THE DEATH
15 PENALTY UNANIMOUSLY, ALL TWELVE VOTE FOR IT; THEN
16 EACH JUROR WOULD BE ASKED TO SIGN THEIR NAME TO A
17 VERDICT FORM, AND THE END RESULT OF THAT WOULD BE
18 THAT PERSON WOULD BE EXECUTED. COULD YOU SIGN YOUR
19 NAME TO THAT FORM IF YOU HAD PREVIOUSLY VOTED FOR
20 THE DEATH PENALTY?

21 A. YES, SIR.

22 Q. ALL RIGHT, SIR. THE LAST THING THE JURY WOULD BE
23 ASKED TO DO IF THEY VOTE FOR THE DEATH PENALTY IS
24 TO COME OUT HERE IN OPEN COURT AND SIT OUT HERE,
25 AND THEIR NAMES ARE CALLED ONE AT A TIME. THEY'D

J. SCOTT FIELDS - CROSS/MR. THEOS

1 BE ASKED TO ANNOUNCE THAT VERDICT OUT LOUD. COULD
2 YOU DO THAT IF THAT WAS YOUR VERDICT?

3 A. YES, SIR.

4 Q. I BELIEVE THAT'S ALL I'VE GOT. THANK YOU VERY
5 MUCH.

6 THE COURT: ANYTHING ELSE, MR.
7 THEOS?

8 MR. THEOS: YES, SIR; JUST A COUPLE
9 OF QUESTIONS.

10 CROSS EXAMINATION

11 BY MR. THEOS:

12 Q. MR. FIELDS, I'M JERRY THEOS, THIS IS JIM BELL.
13 THIS IS MR. SIMMONS. WHAT DO YOU THINK ABOUT THE
14 DEATH PENALTY?

15 A. WELL, IF A CRIME -- YOU DO A CRIME THAT'S KILLING
16 SOMEONE, I THINK -- I WOULDN'T FEEL COMFORTABLE
17 WITH IT. I MEAN, IT'S THE WORST THING THAT COULD
18 POSSIBLY HAPPEN; BUT I DO BELIEVE IN IT.

19 Q. DO YOU BELIEVE IN THE DEATH PENALTY WHENEVER
20 SOMEBODY IS CONVICTED OF KILLING?

21 A. WELL, DEPENDING ON THE SITUATION, THE
22 CIRCUMSTANCES.

23 Q. OKAY. WITHOUT TELLING ME WHAT CIRCUMSTANCES THOSE
24 MIGHT BE, CAN YOU THINK OF ANY SITUATION WHERE IF
25 YOU WERE TO FIND SOMEBODY GUILTY OF MURDER, OF A

J. SCOTT FIELDS - CROSS/MR. THEOS

1 KILLING, CAN YOU THINK OF ANY SITUATION WHICH YOU
2 WOULD VOTE FOR ANYTHING OTHER THAN THE DEATH
3 PENALTY?

4 A. WELL, IF SOMEBODY KILLS SOMEONE BECAUSE OF SOME
5 ACCIDENT.

6 Q. I UNDERSTAND. AND, AGAIN PLEASE, I DON'T MEAN TO
7 HAVE -- HOPEFULLY YOU DON'T FEEL LIKE YOU'RE IN A
8 HOT SEAT ALTHOUGH YOU PROBABLY DO. WE APOLOGIZE
9 FOR THAT. THIS IS OUR ONLY CHANCE TO TALK WITH YOU
10 AND ASK YOU QUESTIONS AND FIND OUT WHAT YOU REALLY
11 FEEL ABOUT THINGS, SO PLEASE BEAR WITH US. WE'RE
12 JUST TRYING TO FIND OUT WHAT THOSE FEELINGS ARE,
13 WHAT THEY SINCERELY ARE. BUT WE'RE NOT TALKING
14 ABOUT AN ACCIDENTAL KILLING. WHAT WE'RE TALKING
15 ABOUT IS THE INTENTIONAL TAKING OF SOMEBODY'S LIFE;
16 A MURDER. IF YOU WERE TO FIND SOMEBODY GUILTY OF
17 MURDER, COULD YOU CONSIDER ANYTHING, ANY PENALTY,
18 OTHER THAN THE DEATH PENALTY?

19 A. YES.

20 Q. NOW, DO YOU HAVE AN OPINION ABOUT MR. SIMMONS'
21 GUILT BECAUSE WE'RE BEEN TALKING ABOUT THE DEATH
22 PENALTY. AND HE HASN'T EVEN BEEN -- WE HAVEN'T
23 EVEN TRIED THE CASE AT ALL?

24 A. NO OPINION. I MEAN, I HAVEN'T HEARD MUCH ABOUT
25 IT. I HAVEN'T FORMED AN OPINION.

J. SCOTT FIELDS - CROSS/MR. THEOS

1 Q. DO YOU HAVE AN OPINION BECAUSE THE STATE IS SEEKING
2 THE DEATH PENALTY AGAINST MR. SIMMONS?

3 A. NO.

4 Q. OKAY. AND I JUST WANT TO -- AGAIN, I DON'T MEAN TO
5 BE REDUNDANT; BUT I WANT TO MAKE SURE I UNDERSTAND
6 THE RESPONSES TO YOUR PREVIOUS QUESTION. IF YOU
7 WERE TO FIND MR. SIMMONS GUILTY OF THE KILLING OF
8 THIS PARTICULAR WOMAN, DO I UNDERSTAND YOUR
9 RESPONSE TO BE THAT YOU COULD CONSIDER DEATH
10 PENALTY AND LIFE IMPRISONMENT AS THE TWO
11 POSSIBILITIES?

12 A. YES, SIR; EITHER ONE; RIGHT.

13 MR. THEOS: NO OTHER QUESTIONS, YOUR
14 HONOR.

15 THE COURT: ANYTHING FURTHER,
16 SOLICITOR?

17 MR. BAILEY: NO, SIR.

18 THE COURT: MR. THEOS?

19 MR. THEOS: NO FURTHER QUESTIONS,
20 YOUR HONOR.

21 THE COURT: ALL RIGHT. HAND HIM ONE
22 OF THE FORMS THERE. MR. JUROR, YOU'VE BEEN FOUND
23 QUALIFIED TO BE A PROSPECTIVE JUROR IN THIS CASE.
24 PLEASE GO ABOUT YOUR USUAL WORK TOMORROW. THE
25 EARLIEST WE WOULD NEED YOU WOULD BE TWO O'CLOCK ON

J. SCOTT FIELDS - CROSS/MR. THEOS

1 WEDNESDAY. CALL THAT NUMBER AFTER SIX TOMORROW,
2 AND WE'LL DETERMINE -- IF WE CHANGE THE TIME, WE
3 HOPEFULLY CAN GET BACK ON A SCHEDULE WHERE WE CAN
4 START AT 8:15 IN THE MORNING. AND PLEASE, OTHER
5 THAN AN INCONVENIENCE TO BE AWAY FROM YOUR FAMILY
6 AND YOUR JOB, IS THERE ANYTHING YOU CAN THINK OF
7 THAT WOULD POSE A SERIOUS RISK OF DANGER TO YOUR
8 HEALTH OR THE WELL-BEING OF YOU OR YOUR FAMILY IF
9 YOU WERE SEQUESTERED IN A MOTEL?

10 A. ARE YOU TALKING ABOUT WEDNESDAY OR DURING THE
11 TRIAL?

12 Q. DURING THE TRIAL. YES, SIR; YOU'D BE SEQUESTERED
13 IF WE STRIKE THE JURY ON WEDNESDAY UNTIL THE
14 COMPLETION OF THE TRIAL WHICH COULD LAST AS LONG AS
15 A WEEK TO SEVEN OR EIGHT OR NINE DAYS; PERHAPS
16 LESS, AND PERHAPS LONGER.

17 A. I DON'T SEE ANY PROBLEM.

18 Q. ALL RIGHT. YOU HAVE A NICE EVENING AND A SAFE TRIP
19 HOME. WE'LL LOOK TO SEE YOU ON WEDNESDAY AT TWO
20 O'CLOCK UNLESS IT'S CHANGED. AND YOU CALL THAT
21 NUMBER, PLEASE SIR.

22 A. OKAY.

23 Q. THANK YOU, MR. FIELDS.

24 THE COURT: ALL RIGHT. YOU CAN
25 BRING IN JAMES R. VANDELL, NUMBER 320. SOLICITOR,

JAMES R. VANDELL - EXAMINATION BY THE COURT

1 YOU'RE WELCOME TO KEEP THE FOUR LAWYERS AT THE
2 TABLE. I CAN'T IMAGINE WHAT Y'ALL NEED ALL FOUR
3 FOR AND YOUR ASSISTANT. BUT THAT'S FINE. IF YOU
4 WANT TO KEEP THEM HERE, THEY'RE NOT BOTHERING ME.

5 MR. BAILEY: WE'VE JUST GOT ONE
6 MORE. THEY WANT TO STAY ANYWAY.

7 THE COURT: THEY'RE LIKE ME; THEY'RE
8 NOT ON A CLOCK. AND LET THE RECORD REFLECT THAT
9 THE LAWYERS AGREED THAT THE LAST JUROR WAS
10 QUALIFIED; THAT THEY SIGNALLED TO ME.

11 (JUROR NUMBER 320, A WHITE MALE, IS CALLED.)

12 THE COURT: GOOD EVENING, SIR.

13 MR. VANDELL: GOOD EVENING.

14 THE COURT: THANK YOU FOR YOUR
15 STAYING POWER, MR. JAMES R. VANDELL, JUROR NUMBER
16 320. YOU'RE THE LAST JUROR FOR THE EVENING. AND
17 IT'S REGRETTABLE; AND I'M SORRY THAT WE'RE ON SUCH
18 A SCHEDULE AS WE ARE.

19 - - - - -

20 WHEREUPON,

21 JAMES R. VANDELL, WHO BEING

22 PREVIOUSLY SWORN TO TELL THE TRUTH,

23 TESTIFIED AS FOLLOWS:

24 EXAMINATION

25 BY THE COURT:

JAMES R. VANDELL - EXAMINATION BY THE COURT

1 Q. PLEASE, MR. VANDELL, YOU UNDERSTAND THAT YOU ARE
2 STILL UNDER OATH FROM THIS MORNING WHEN IT WAS
3 GIVEN TO YOU, SIR?

4 A. YES, SIR.

5 Q. AND FURTHERMORE, THE QUESTIONNAIRE THAT YOU HAVE
6 PRESENTED TO THE COURT; ARE THERE ANY CHANGES THAT
7 YOU WOULD LIKE TO SHARE WITH THE COURT AT THIS
8 TIME?

9 A. NONE THAT I KNOW OF.

10 Q. AND YOU INDICATED THIS MORNING DURING THE GROUP
11 VOIR DIRE THAT YOU HAD SEEN OR HEARD OR READ
12 SOMETHING ABOUT THIS CASE, JUROR NUMBER 320. COULD
13 YOU TELL US, PLEASE, THE SOURCE OF THAT
14 INFORMATION, WHEN IT WAS, AND WHAT YOU RECALL FROM
15 IT, PLEASE?

16 A. THE LOCAL NEWSPAPER.

17 Q. IS THAT THE SUMMERVILLE---

18 A. SUMMERVILLE.

19 Q. ALL RIGHT, SIR.

20 A. MOST RECENTLY. I DON'T REMEMBER EXACTLY. I READ
21 ABOUT IT WHEN THE CASE WAS DEVELOPED. BUT I DON'T
22 REMEMBER WHICH PAPER.

23 Q. BACK IN '96?

24 A. YES, SIR.

25 Q. DECEMBER OR SO OF '96?

JAMES R. VANDELL - EXAMINATION BY THE COURT

1 A. YES, SIR.

2 Q. NOW, MR. VANDELL, HAVE YOU FORMED OR EXPRESSED AN
3 OPINION AS TO THE GUILT OR INNOCENCE OF THE
4 DEFENDANT, KENNETH SIMMONS, AS A RESULT OF WHAT
5 YOU'VE READ IN THE NEWSPAPER OR ANYTHING OTHERWISE?

6 A. NO.

7 Q. AND IF YOU ARE CHOSEN AS A JUROR, ARE YOU WILLING
8 TO PUT ASIDE ANY RECOLLECTION YOU MAY HAVE ABOUT
9 WHAT YOU HAVE READ OR HEARD AND DECIDE THE CASE ON
10 THE EVIDENCE ADDUCED DURING THE TRIAL OF THE CASE?

11 A. YES, SIR.

12 Q. DO YOU UNDERSTAND, PLEASE, THAT THE DEFENDANT IS
13 PRESUMED INNOCENT; HE HAS NO BURDEN TO PROVE HIS
14 INNOCENCE BUT RATHER THE STATE MUST PROVE BEYOND A
15 REASONABLE DOUBT THE ELEMENTS OF EVERY OFFENSE THAT
16 IS CHARGED IN ORDER FOR YOU OR THE JURORS TO RETURN
17 A VERDICT OF GUILTY?

18 A. YES, SIR.

19 Q. AND PLEASE UNDERSTAND THESE QUESTIONS WE'RE ASKING
20 YOU; THERE ARE NO RIGHT OR WRONG ANSWERS. ANYTHING
21 YOU TELL US IS 100 PERCENT CORRECT. IT'S JUST
22 NECESSARY THAT WE HAVE THE OPPORTUNITY TO INQUIRE
23 AS TO WHAT YOUR VIEWS ARE ON SEVERAL AREAS. AND IF
24 YOU ARE SERVING AS A JUROR IN THE TRIAL OF THE
25 CASE, WOULD YOU BE WILLING TO LISTEN TO THE LAW AS

JAMES R. VANDELL - EXAMINATION BY THE COURT

1 CHARGED BY THE COURT AND APPLY THAT LAW TO THE
2 FACTS AS FOUND BY YOU AND THE JURORS AND ARRIVE AT
3 A TRUE AND FAIR VERDICT IN THE CASE REGARDLESS OF
4 WHETHER IT WAS GUILTY OR NOT GUILTY?

5 A. YES, SIR.

6 Q. AND DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR
7 AGAINST THE STATE IN THIS CASE?

8 A. AGAINST THE STATE?

9 Q. THE STATE OF SOUTH CAROLINA; YES, SIR.

10 A. NO, SIR.

11 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
12 THE DEFENDANT IN THIS CASE?

13 A. NO, SIR, NOT PERSONALLY.

14 Q. AND DOES THE FACT SOMEONE IS AUTOMATICALLY CHARGED
15 WITH A CRIME; DOES THAT IN ANY WAY INDICATE TO YOU
16 THAT THEY'RE GUILTY OF THAT CRIME?

17 A. NO.

18 Q. IN OTHER WORDS, YOUR DECISION AS A JUROR WOULD BE
19 BASED ON THE EVIDENCE AS TO WHETHER THEY'RE GUILTY
20 OR NOT GUILTY; IS THAT CORRECT?

21 A. YES, SIR.

22 Q. AND YOU INDICATED EARLIER TODAY THAT YOU KNEW ONE
23 OR MORE OF THE WITNESSES IN THIS CASE. COULD YOU
24 PLEASE TELL US, IF YOU RECALL, WHICH OF THOSE
25 WITNESS THAT YOU WERE FAMILIAR WITH OR ACQUAINTED

1 WITH OR WHATEVER?

2 A. STAN YARBOROUGH.

3 Q. AND WHAT IS YOUR RELATIONSHIP WITH STAN YARBOROUGH?

4 A. I JUST KNOW HIM AS A FRIEND; NOT EXTREMELY A CLOSE
5 FRIEND, BUT SPEAKING.

6 Q. ALL RIGHT. THE FACT THAT YOU KNOW HIM, COULD YOU
7 DECIDE THE CASE BASED ON THE FACTS OF THE CASE
8 RATHER THAN ON YOUR FRIENDSHIP OR KNOWLEDGE OF STAN
9 YARBOROUGH?

10 A. I THINK SO. ALSO I AM NOT SURE, BUT I THINK ROBIN
11 SMITTING IS THE WIFE OF A FRIEND.

12 Q. WOULD THAT INTERFERE WITH YOUR ABILITY TO FAIRLY
13 AND HONESTLY JUDGE THE TESTIMONY OF ALL THE
14 WITNESSES?

15 A. NO, IT WOULDN'T INTERFERE.

16 Q. NOW MR. VANDELL, THERE ARE THE PHASES IN A MURDER
17 CASE WHERE THE DEATH PENALTY IS SOUGHT. THE FIRST
18 PHASE IS THE GUILT. THE SECOND PHASE IS THAT OF
19 PENALTY. AND PLEASE DERIVE NO INFERENCE THAT WE
20 ARE SPEAKING OF THE PENALTY PHASE EVEN BEFORE ANY
21 EVIDENCE HAS BEEN ADDUCED OR OFFERED IN THE TRIAL
22 OF THIS CASE. BUT IF THE JURY BY UNANIMOUS VERDICT
23 FINDS THE DEFENDANT GUILTY BEYOND A REASONABLE
24 DOUBT, THEN IT WOULD BE A 24 HOUR WAITING PERIOD
25 UNDER THE LAW AFTER WHICH THERE WOULD BE A PENALTY

JAMES R. VANDELL - EXAMINATION BY THE COURT

- 1 PHASE AT WHICH TIME THE STATE WOULD BE REQUIRED TO
2 PROVE ONE OR MORE STATUTORY AGGRAVATING
3 CIRCUMSTANCES SUCH AS GUILTY OF COMMISSION OF
4 MURDER DURING THE ACT OF BURGLARY; BREAKING IN IN
5 THE NIGHTTIME AND ENTERING ONE'S HOME WITH THE
6 INTENT TO COMMIT A FELONY THEREIN, OR ARMED
7 ROBBERY, OR CRIMINAL SEXUAL CONDUCT. AND IF THE
8 JURY FINDS BEYOND A REASONABLE DOUBT, THEN THEY MAY
9 RECOMMEND THE DEATH PENALTY. ON THE OTHER HAND,
10 EVEN THOUGH THEY MAY FIND BEYOND A REASONABLE DOUBT
11 A STATUTORY AGGRAVATING CIRCUMSTANCE, ONE OR MORE,
12 THE JURY MAY, IF THEY FIND A MITIGATING OR
13 LESSENING CIRCUMSTANCE OR FOR NO REASON AT ALL.
14 JUST AS WE SAY, CALL IT AN ACT OF MERCY. THE JURY
15 MAY RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE
16 BECAUSE THAT IS THE LAW. IF MR. SIMMONS IS FOUND
17 GUILTY OF MURDER AND THE JURY RECOMMENDS LIFE
18 IMPRISONMENT, IT WOULD BE WITHOUT PAROLE. AND DO
19 YOU HAVE ANY PROBLEM IN VOTING EITHER FOR THE DEATH
20 PENALTY OR VOTING EITHER FOR THE LIFE IMPRISONMENT
21 WITHOUT PAROLE DEPENDING ON THE FACTS OF THE CASE?
- 22 A. NO. I DON'T HAVE A PROBLEM EITHER WAY. TO BE
23 TRUTHFUL, I'VE PROBABLY FORMED SOME KIND OF OPINION
24 OF WHAT I THINK IT SHOULD BE.
- 25 Q. YOU HAVE FORMED AN OPINION?

1 A. YES, SIR; FROM WHAT I'VE READ ABOUT THE CASE.

2 Q. AND YOU UNDERSTAND, OF COURSE, THAT THERE WERE
3 THREE TYPES OF JURORS ON THAT SHEET THAT WE HAD
4 GIVEN TO YOU. AND DO YOU FEEL THAT YOU WOULD FALL
5 UNDER CATEGORY ONE, TWO, OR THREE?

6 A. UH---

7 Q. AND IF YOU WANT ME TO REMIND YOU, JUROR ONE WAS YOU
8 WOULD VOTE FOR THE DEATH PENALTY REGARDLESS OF THE
9 FACTS. AND NUMBER TWO IS YOU'D VOTE FOR LIFE
10 IMPRISONMENT REGARDLESS OF THE FACTS. AND NUMBER
11 THREE IS YOU'D KEEP AN OPEN MIND AND WEIGH THE
12 EVIDENCE OF THE PROS AND CONS, AND HAVE FULL AND
13 FREE DISCUSSION; AND BASED UPON THE EVIDENCE AND
14 THE LAW AS CHARGED BY THE COURT, YOU COULD ARRIVE
15 AT EITHER VERDICT DEPENDING UPON WHETHER THE STATE
16 HAD MET THE BURDEN OF PROOF, OR DEPENDING ON THE
17 VIEW OF THE JUROR?

18 A. WELL, IN SOME CASES I'D PROBABLY BE A THREE. BUT
19 FROM WHAT I'VE READ OF THIS CASE, I THINK IT WOULD
20 WARRANT A ONE.

21 Q. AN DO YOU FEEL THAT ALTHOUGH WHAT YOU READ IN THE
22 CASE THAT IT WOULD MERIT A ONE; WOULD THAT
23 INTERFERE WITH YOUR ABILITY TO LISTEN TO THE
24 TESTIMONY AND THEN DECIDE WHETHER INDEED IT DID
25 WARRANT A ONE OR WHETHER IT WARRANTED A TWO? IN

JAMES R. VANDELL - EXAMINATION BY THE COURT

1 OTHER WORDS, DO YOU HAVE A MIND-SET THAT---

2 A. I DON'T HAVE A MIND-SET THAT COULDN'T BE CHANGED IF
3 THAT'S WHAT YOU'RE ASKING.

4 Q. BUT YOU DO HAVE A MIND-SET?

5 A. I HAVE AN OPINION; YES, SIR.

6 Q. AN YOUR OPINION IS?

7 A. ONE.

8 Q. ONE? EVEN THOUGH YOU'VE HEARD NO EVIDENCE IN THE
9 CASE. AND YOU UNDERSTAND THAT---

10 A. I'M NOT SAYING THE PERSON BEING TRIED, WHOEVER DID
11 IT.

12 Q. YES, SIR. BUT YOU UNDERSTAND THAT WHAT YOU READ IN
13 THE NEWSPAPER IS NOT EVIDENCE THAT CAN ENTER INTO
14 YOUR DELIBERATIONS OF THE DECISION OF THE JURY?

15 A. THAT'S CORRECT. I UNDERSTAND THAT.

16 Q. AND THAT YOU HAVE TO DECIDE THE CASE BASED ON THE
17 SWORN TESTIMONY AND EVIDENCE THAT'S ADMITTED?

18 A. THAT'S CORRECT. BUT I FEEL IT'S MY DUTY TO TELL
19 YOU WHAT MY OPINION, ONCE I READ THAT, IS.

20 Q. CERTAINLY.

21 A. IT MAY NOT BE MY OPINION AFTER THE CASE IS TRIED.

22 Q. ALL RIGHT, SIR. WELL, WHAT WE NEED TO KNOW IS
23 WHETHER YOU CAN BE FAIR AND IMPARTIAL; FAIR TO THE
24 STATE AND FAIR TO THE DEFENDANT, AND WHETHER YOU
25 CAN SET ASIDE ANY VIEW THAT YOU MAY HAVE AFTER WHAT

JAMES R. VANDELL - DIRECT/MR. THEOS

1 YOU READ IN THE NEWSPAPER?

2 A. I COULDN'T ANSWER THAT UNTIL I HAD HEARD THE
3 CIRCUMSTANCES.

4 Q. ALL RIGHT, SIR.

5 A. I HAVE AN OPINION NOW, AND I CAN'T SAY WHETHER IT
6 WOULD CHANGE. IT WOULD DEPEND ON WHAT WAS
7 PRESENTED.

8 Q. ALL RIGHT, SIR.

9 THE COURT: WHO IS NEXT, GENTLEMEN?
10 MR. THEOS?

11 DIRECT EXAMINATION

12 BY MR. THEOS:

13 Q. MR. VANDELL, I'M JERRY THEOS.

14 A. YES, SIR.

15 Q. THIS IS JIM BELL; AND THIS IS MR. SIMMONS. WE'RE
16 HERE LATE; AND WE APOLOGIZE TO YOU. WE DO
17 APPRECIATE YOUR SINCERITY, YOUR HONESTY, BECAUSE
18 THAT'S WHAT THIS IS ALL ABOUT.

19 A. YES, SIR.

20 Q. WE'RE NOT TRYING TO HURRY UP AND QUALIFY A BUNCH OF
21 JURORS SO WE CAN GET THIS CASE TRIED. WE'RE REALLY
22 TRYING TO FIND OUT WHAT Y'ALLS TRUE OPINIONS ARE.
23 AND SO WE CERTAINLY APPRECIATE YOUR HONESTY. AND
24 AS I UNDERSTAND THE RESPONSES TO THE JUDGE'S
25 QUESTIONS, BASED UPON WHAT YOU'VE READ, YOU'VE

JAMES R. VANDELL - DIRECT/MR. THEOS

1 ALREADY FORMULATED YOUR OPINION AS TO WHAT THE
2 APPROPRIATE PUNISHMENT WOULD BE?

3 A. YES, SIR.

4 Q. AND IN LIGHT OF THAT, IF MR. SIMMONS WERE FOUND
5 GUILTY OF MURDER -- AND UNDERSTANDING, WE'RE
6 PUTTING THE CART BEFORE THE HORSE A LITTLE BIT.

7 A. YES, SIR.

8 Q. BUT UNDERSTANDING THAT, IF WE REACHED THAT STAGE
9 AND YOU WERE SITTING ON A JURY, THE STATE HAD
10 PROVEN TO YOU BEYOND A REASONABLE DOUBT MR.
11 SIMMONS' GUILT AS TO MURDER AND THE OTHER CHARGES
12 THAT THE JUDGE JUST TOLD YOU ABOUT, THE BURGLARY,
13 THE CRIMINAL SEXUAL CONDUCT, ALL THOSE THINGS THAT
14 HE JUST SAID; AS I UNDERSTAND IT THE ONLY PENALTY
15 THAT YOU COULD VOTE FOR UNDER THOSE CIRCUMSTANCES
16 WOULD BE THE DEATH PENALTY?

17 A. THAT IS MY OPINION RIGHT NOW UNLESS IT WAS CHANGED
18 DURING THE COURSE OF THE TRIAL, SIR.

19 Q. I UNDERSTAND. BUT AS YOU SIT HERE---

20 A. AS I SIT HERE RIGHT NOW, KNOWING ONLY WHAT I KNOW;
21 YES, SIR.

22 MR. THEOS: I DON'T HAVE ANY OTHER
23 QUESTIONS, YOUR HONOR.

24 THE COURT: ALL RIGHT. YOU MAY
25 QUESTION HIM, MR. BAILEY.

MR. BAILEY: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MR. VANDELL, I WANT TO ASK YOU A COUPLE OF QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU AND WHAT MR. THEOS ASKED YOU. I WANT TO ASK YOU FIRST OF ALL ABOUT THE GUILT PHASE OF THE TRIAL WHICH IS, OF COURSE, THE FIRST PART. IT'S LIKE ANY OTHER TRIAL WHERE THE JURY IS JUST THERE TO DETERMINE GUILT OR INNOCENCE.

A. YES, SIR.

Q. IF YOU WERE PICKED AS A JUROR IN THIS TRIAL, OR ANY OTHER TRIAL WHERE WE'RE JUST DEALING WITH GUILT OR INNOCENCE, WOULD YOU FOLLOW THE JUDGE'S INSTRUCTION THAT THE STATE HAD TO PROVE THAT DEFENDANT GUILTY BEYOND A REASONABLE DOUBT?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND IF THE STATE FAILED TO PROVE THAT DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, WOULD YOU HAVE ANY PROBLEM IN VOTING NOT GUILTY?

A. NO, SIR.

Q. ALL RIGHT, SIR. SO YOU WOULD LISTEN TO ALL THE EVIDENCE IN THE FIRST PART OF THE TRIAL TO DETERMINE WHETHER OR NOT THE STATE MET ITS BURDEN

1 OF PROOF?

2 A. YES, SIR.

3 Q. ALL RIGHT. IN A CASE WHERE THE STATE SEEKS THE
4 DEATH PENALTY AND THE DEFENDANT IS FOUND GUILTY OF
5 MURDER, WE'D GO INTO THE SECOND PHASE, THE PENALTY
6 PHASE. AND THE REASON FOR THAT PENALTY PHASE IS TO
7 ALLOW THE INTRODUCTION OF ADDITIONAL EVIDENCE. I'D
8 BE PUTTING UP EVIDENCE IN AGGRAVATION AS THE
9 PROSECUTOR TRYING TO PERSUADE THAT JURY TO COME
10 BACK WITH THE DEATH PENALTY. THE DEFENSE CAN, IF
11 THEY WANT TO -- THEY DON'T HAVE TO DO ANYTHING.
12 THEY CAN PUT UP EVIDENCE IN MITIGATION. THEY'D BE
13 ARGUING FOR A LIFE SENTENCE. WHATEVER SENTENCE THE
14 JURY VOTES FOR WILL BE THE SENTENCE OF THE COURT
15 AND WILL BE CARRIED OUT. NOW, IF YOU WERE ON A
16 JURY IN THIS KIND OF A CASE, THE DEFENDANT IS FOUND
17 GUILTY OF MURDER, WOULD YOU HAVE YOUR MIND MADE UP
18 AS TO THE PUNISHMENT AT THE END OF THAT GUILT PHASE
19 AND SIT BACK AND SAY NO MATTER WHAT COMES OUT IN
20 THE SECOND PHASE, I'M VOTING FOR THE DEATH
21 PENALTY? OR WOULD YOU RESERVE JUDGMENT, LISTEN TO
22 THAT ADDITIONAL TESTIMONY, LISTEN TO THE JUDGE GIVE
23 YOU FURTHER INSTRUCTIONS, AND THEN MAKE UP YOUR
24 MIND?

25 A. I WOULD PROBABLY DO THAT. BUT I -- MY OPINION

1 WOULD HAVE TO BE CHANGED SOMEWHERE ALONG DURING THE
2 TRIAL FROM WHAT IT IS AT THE MOMENT.

3 Q. ALL RIGHT. DO YOU HAVE A LEANING TOWARD THE DEATH
4 PENALTY IN THIS PARTICULAR CASE; IS THAT WHAT
5 YOU'RE SAYING?

6 A. YES, SIR.

7 Q. AND THAT'S BASED ON WHAT YOU'VE READ IN THE
8 SUMMERVILLE JOURNAL?

9 A. YES.

10 Q. HAVE YOU EVER READ STUFF IN THE NEWSPAPER THAT YOU
11 LATER FOUND OUT WAS INACCURATE?

12 A. CERTAINLY.

13 Q. THINGS YOU HAD PERSONAL KNOWLEDGE OF?

14 A. YES.

15 Q. HAS THAT HAPPENED ON MORE THAN ONE OCCASION?

16 A. IT HAD HAPPENED. I CAN'T REMEMBER HOW MANY TIMES.

17 Q. ALL RIGHT, SIR. AND YOU REALIZE THE INFORMATION IN
18 A NEWSPAPER OR TELEVISION IS NOT SUBJECT TO
19 CROSS-EXAMINATION; NOT SUBJECT TO THE RULES OF
20 EVIDENCE. AND THAT'S WHY THE JUDGE HAS TOLD JURORS
21 NOT TO READ ANYTHING ELSE IN THE PAPER; NOT TO
22 LISTEN TO ANY KIND OF OUTSIDE---

23 A. YES, SIR. BUT, YOU KNOW, WHEN I READ THAT I HAD NO
24 IDEA I WOULD BE IN THIS POSITION. I FORMED AN
25 OPINION---

JAMES R. VANDELL - CROSS/MR. BAILEY

1 Q. YES, SIR. I UNDERSTAND THAT?

2 A. --WITHOUT KNOWLEDGE OF ANY OF THE COURT
3 PROCEEDINGS.

4 Q. YES, SIR. BUT CAN YOU SET THAT OPINION ASIDE? I'M
5 NOT SAYING WIPE IT OUT OF YOUR MIND BECAUSE IT'S
6 THERE. CAN YOU SET IT ASIDE AND BASE YOUR DECISION
7 STRICTLY ON THE EVIDENCE FROM THE WITNESS STAND AND
8 THE JUDGE'S INSTRUCTIONS?

9 A. I WOULD HAVE TO HEAR SOMETHING THAT CHANGED MY
10 OPINION.

11 Q. ALL RIGHT, SIR. BUT WOULD YOU KEEP AN OPEN MIND IN
12 LISTENING TO THAT TESTIMONY?

13 A. I WOULD; YES.

14 Q. ALL RIGHT, SIR. AND IF YOU FELT LIKE THE FACTS AND
15 CIRCUMSTANCES THAT CAME OUT IN THE SECOND PART OF
16 THE TRIAL WARRANTED A LIFE WITHOUT PAROLE SENTENCE,
17 COULD YOU IMPOSE A LIFE WITHOUT PAROLE SENTENCE?

18 A. YES, SIR.

19 Q. ALL RIGHT, SIR?

20 MR. BAILEY: YOUR HONOR, THAT'S ALL
21 I HAVE OF MR. VANDELL AT THIS POINT.

22 THE COURT: ANYTHING FURTHER, MR.
23 THEOS?

24 MR. THEOS: YES, SIR.

25 RE-DIRECT EXAMINATION

1 BY MR. THEOS:

2 Q. MR. VANDELL, JUST A COUPLE OF FOLLOW-UP QUESTIONS.
3 I DON'T MEAN TO BELABOR ANY POINTS. BUT
4 UNDERSTANDING YOU'VE ALREADY FORMULATED YOUR
5 OPINION. IF YOU WERE SITTING ON THIS JURY AND WERE
6 TO FIND MR. SIMMONS GUILTY OF THE MURDER AND
7 BURGLARY THAT THE JUDGE TOLD YOU ABOUT A COUPLE OF
8 MINUTES AGO, CRIMINAL SEXUAL CONDUCT---

9 MR. BAILEY: JUDGE, I'M GOING TO
10 OBJECT TO STAKING HIM OUT AND ASKING WHAT HE WOULD
11 DO IF HE FOUND CERTAIN AGGRAVATING CIRCUMSTANCES.

12 MR. THEOS: YOUR HONOR, I'M ONLY
13 REPEATING THOSE THINGS THAT YOU'VE ALREADY---

14 THE COURT: I KNOW. BUT BE CAREFUL,
15 NOW. DON'T CROSS THE LINE, MR. THEOS.

16 MR. THEOS: YES, SIR.

17 Q. IS THERE ANYTHING THAT MR. BELL AND I COULD TO DO
18 PERSUADE YOU NOT TO IMPOSE THE DEATH PENALTY IF
19 THAT WERE THE CASE?

20 MR. BAILEY: JUDGE, HE CAN'T ANSWER
21 THAT WITHOUT HEARING THE EVIDENCE.

22 THE COURT: SUSTAINED.

23 Q. JUST SO WE CAN BE CLEAR AGAIN; I APOLOGIZE. IT'S
24 LATE, AND I'M NOT THINKING REAL CLEAR.

25 THE COURT: HE SAID THAT'S EXACTLY

JAMES R. VANDELL - RE-CROSS/MR. BAILEY

1 RIGHT. THE SOLICITOR SAID HE CAN'T DECIDE THAT
2 UNTIL HE HEARS THE EVIDENCE.

3 Q. JUST SO WE CAN BE CLEAR, MR. VANDELL. YOU'VE
4 FORMULATED AN OPINION, AND THAT OPINION IS WHAT;
5 BASED UPON WHAT YOU'VE READ?

6 A. BASED UPON WHAT I'VE READ, I WOULD THINK THE
7 PERPETRATOR OF THIS CRIME DESERVED THE DEATH
8 PENALTY.

9 Q. NO OTHER QUESTIONS.

10 THE COURT: ANYTHING ELSE?

11 MR. BAILEY: CAN I HAVE A MOMENT,
12 YOUR HONOR?

13 THE COURT: SURE.

14 RE-CROSS EXAMINATION

15 BY MR. BAILEY:

16 Q. MR. VANDELL, I'LL BE VERY BRIEF HERE. WHEN YOU
17 INITIALLY TOLD THE JUDGE THAT YOU HAD READ
18 SOMETHING IN THE JOURNAL AND READ SOMETHING IN THE
19 NEWSPAPER BACK IN 1996, I BELIEVE YOU SAID YOU HAD
20 NO OPINION BASED ON WHAT YOU HAD READ?

21 A. NO, SIR; I DIDN'T SAY THAT.

22 Q. ALL RIGHT, SIR.

23 A. I DON'T REMEMBER SAYING THAT.

24 Q. ALL RIGHT, SIR.

25 A. I SAID I DON'T RECALL WHICH PAPER I READ IT IN.

1 Q. ALL RIGHT. AGAIN, DO YOU FEEL LIKE -- I KNOW YOU
2 CAN'T FORGET WHAT'S IN YOUR MIND. BUT CAN YOU SET
3 THAT ASIDE AND BASE AN OPINION STRICTLY ON THE
4 EVIDENCE AND THE LAW?

5 A. YES. BUT I HAVE THE OPINION; AND IF WHAT I HEARD
6 CHANGED THAT OPINION, I WOULD GO WITH THAT.

7 Q. BUT YOU WOULD WANT TO HEAR WHAT CAME OUT IN THAT
8 SECOND PART OF THE TRIAL BEFORE YOU MADE A FINAL
9 DECISION; IS THAT CORRECT?

10 A. YES, SIR.

11 Q. THANK YOU, SIR.

12 THE COURT: NOW, MR. VANDELL, YOU
13 ARE AN ENGINEER?

14 MR. VANDELL: YES, SIR.

15 THE COURT: COLLEGE DEGREE. WHERE
16 DID YOU GO TO UNDERGRADUATE?

17 MR. VANDELL: WEST VIRGINIA
18 INSTITUTE OF TECHNOLOGY.

19 THE COURT: PLUS YOU HAVE EXPERIENCE
20 IN THE WORK FIELD; AND THAT'S ALWAYS MORE
21 EDUCATION. PLEASE UNDERSTAND, MR. VANDELL THAT
22 YOU'RE ENTITLED TO YOUR OPINION, SO NOBODY IS BEING
23 ARGUMENTATIVE.

24 MR. VANDELL: WELL, I JUST WANT TO
25 BE HONEST WITH YOU ABOUT MY OPINION.

JAMES R. VANDELL - RE-CROSS/MR. BAILEY

1 THE COURT: I APPRECIATE YOUR
2 CANDOR. BUT WHAT WE NEED TO KNOW -- EVERYBODY HAS
3 GOT AN OPINION ABOUT EVERYTHING. I UNDERSTAND
4 THAT. AND EVERYBODY IS ENTITLED TO THAT OPINION.
5 BUT WHEN YOU START THE TRIAL OF A CASE, IN ORDER TO
6 BE ACCEPTABLE AS A JUROR -- AND I'M NOT TRYING TO
7 GET YOU TO TAILOR ANY OPINION THAT YOU MAY HAVE OR
8 TO REJECT ANY OPINION THAT YOU MAY HAVE. I JUST
9 WANT TO MAKE SURE YOU UNDERSTAND THAT A DEFENDANT,
10 FROM THE TIME OF HIS ARREST, IS PRESUMED OR THOUGHT
11 IN THE EYES OF THE LAW TO BE INNOCENT. AND THAT
12 PRESUMPTION OF INNOCENCE CONTINUES UNTIL THE STATE
13 REMOVES THAT ROBE OF RIGHTEOUSNESS, OUR SUPREME
14 COURT HAS CALLED IT, FROM THE SHOULDERS OF THE
15 DEFENDANT BY EVIDENCE PROVING TO YOUR SATISFACTION
16 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
17 DOUBT. SO IF YOU START OUT WITH AN OPINION ABOUT
18 SOMETHING AND THAT'S GOING TO REMAIN YOUR OPINION
19 UNTIL SOMEBODY PRESENTS EVIDENCE TO THE CONTRARY,
20 WELL THEN THAT WOULD NOT BE ACCEPTABLE AS A JUROR
21 IN MY VIEW.

22 MR. VANDELL: YES, SIR.

23 THE COURT: AND I DON'T ARGUE WITH
24 YOU ABOUT THAT BECAUSE YOU'RE ENTITLED TO YOUR
25 OPINION.

1 MR. VANDELL: YES, SIR. BUT MY
2 OPINION IS NOT OF GUILT OR INNOCENCE OF THIS PERSON
3 BEING TRIED. MY OPINION IS WHOEVER IS GUILTY, WHAT
4 THE SENTENCE SHOULD BE.

5 THE COURT: AND YOU FEEL FROM HAVING
6 READ THE ALLEGED CIRCUMSTANCES IN THE PAPER THAT IT
7 WAS OF SUCH A NATURE THAT IT WOULD WARRANT THE
8 DEATH PENALTY?

9 MR. VANDELL: THAT IS ABSOLUTELY
10 CORRECT.

11 THE COURT: ALL RIGHT. ANYTHING
12 FURTHER, MR. SOLICITOR?

13 MR. BAILEY: NO, SIR.

14 THE COURT: MR. THEOS?

15 MR. THEOS: NOTHING, YOUR HONOR.

16 THE COURT: STEP OUTSIDE FOR A
17 MOMENT, PLEASE.

18 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

19 THE COURT: ALL RIGHT. WHO GOES
20 FIRST?

21 MR. BAILEY: I CAN SHORTEN THIS BY
22 GOING FIRST, YOUR HONOR. I WOULD CONCEDE THAT I
23 THINK HE'S ALMOST THERE BUT NOT QUITE.

24 THE COURT: YOU CONCEDE HE'S NOT
25 QUALIFIED?

JAMES R. VANDELL - RE-CROSS/MR. BAILEY

1 MR. BAILEY: YES, SIR.

2 THE COURT: MR. THEOS?

3 MR. THEOS: WE AGREE.

4 THE COURT: ALL RIGHT. SO, BRING
5 THE JUROR BACK IN, PLEASE.

6 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

7 THE COURT: MR. VANDELL, WE ARE
8 GOING TO EXCUSE YOU FROM FURTHER SERVICE IN THIS
9 CASE. PLEASE, FOR YOUR PATIENCE AND UNDERSTANDING
10 AND LONG STANDING DURATION, FOR THE LONG HOURS, WE
11 THANK YOU; AND WE WISH YOU GOOD HEALTH. AND WE'LL
12 MAIL A CHECK TO YOU SOME TIME IN THE NEXT WEEK.
13 HAVE A SAFE TRIP.

14 MR. VANDELL: THANK YOU.

15 THE COURT: THANK YOU SO MUCH.
16 GENTLEMEN AND LADIES, IT'S PAST TIME TO QUIT. BUT
17 THE LADY BAILIFF TELLS ME THAT ONE OF THE JURORS,
18 JUROR NUMBER FIVE, SAYS HE WANTS TO TALK TO ME NOW
19 RATHER THAN BE HERE AT 8:30 IN THE MORNING. DO YOU
20 KNOW WHAT HE WANTS TO TALK TO ME ABOUT?

21 THE BAILIFF: I THINK ABOUT WHETHER
22 YOU'RE GOING TO QUALIFY HIM OR NOT. I'M NOT SURE.
23 I DIDN'T REALLY---

24 THE COURT: DO Y'ALL WANT TO JUST
25 BRING HIM IN AND BE ON THE RECORD HERE AND ASK HIM

1 WHAT HE'S TALKING ABOUT? OR DO Y'ALL WANT ME TO
2 STEP OUT THERE? I'LL DO IT ANY WAY YOU SAY. I
3 TOLD HIM TO GO HOME AN HOUR AGO.

4 MR. BAILEY: I NOTICE HE'S A
5 JEHOVAH'S WITNESS. HE GOES TO CHURCH THREE TIMES A
6 WEEK. SO HE MAY NEED TO GO TO CHURCH.

7 THE COURT: WHY DON'T YOU JUST BRING
8 HIM IN AND LET ME ASK HIM?

9 (JUROR NUMBER 5, A WHITE MALE, IS CALLED.)

10 THE COURT: MR. ALLEN, WE REALLY
11 HAVE HAD AN ABBREVIATED LUNCH AND SEVERAL SHORT
12 BREAKS. BUT IT'S TEN AFTER NINE, AND WE STARTING
13 AT 8:15 IN THE MORNING. THE BAILIFF SAID YOU WANT
14 TO TALK TO ME ABOUT SOMETHING?

15 MR. ALLEN: IF I MAY.

16 THE COURT: DID YOU WANT TO SPEAK IN
17 PRIVATE? YOU'RE WELCOME TO STAY RIGHT HERE IN OPEN
18 COURT.

19 MR. ALLEN: I DON'T MIND IF
20 EVERYBODY HEARS. I'M A SELF-EMPLOYED PERSON.

21 THE COURT: SURE.

22 MR. ALLEN: I CAME THAT WAY BECAUSE
23 I LOST MY JOB AND COULDN'T FIND ANOTHER ONE.

24 THE COURT: YES, SIR.

25 MR. ALLEN: AND WHEN I WORK, I

JAMES R. VANDELL - RE-CROSS/MR. BAILEY

1 CHARGE FOR MY TIME. SO IF I'M NOT THERE CHARGING
2 FOR MY SERVICES, I DON'T MAKE MONEY. AND BASICALLY
3 WE LIVE FROM MONTH TO MONTH. AND I JUST ASK THAT I
4 BE EXCUSED SO I CAN WORK AND SUPPORT MY FAMILY.
5 THIS IS A SERVICE I'D LOVE TO PERFORM, BUT I CAN'T
6 AFFORD IT.

7 THE COURT: I UNDERSTAND THAT. CAN
8 I GET YOU TO STEP OUTSIDE FOR A MOMENT? YOU HAVE
9 FOUR CHILDREN, AGES 16, 19, 21, AND 23?

10 MR. ALLEN: WELL, I ONLY HAVE ONE AT
11 HOME.

12 THE COURT: I MEAN, YOU'RE NOT
13 PAYING FOR THEIR EDUCATION?

14 MR. ALLEN: NO. I HAVE A GRANDCHILD,
15 THOUGH.

16 THE COURT: I'VE GOT TWO.

17 MR. ALLEN: I'VE GOT ANOTHER ONE ON
18 THE WAY.

19 THE COURT: GOOD FOR YOU.

20 MR. ALLEN: OKAY.

21 THE COURT: STEP OUTSIDE JUST ONE
22 MINUTE.

23 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

24 THE COURT: GENTLEMEN, OBVIOUSLY IT
25 WOULD BE IMPROPER FOR ME TO ASK YOU YOUR VIEW IN

1 HIS PRESENCE. I'LL BE GLAD TO EXCUSE HIM. I'LL BE
2 GLAD TO HAVE HIM COME BACK IN THE MORNING. WHAT
3 SAY THE STATE?

4 MR. BAILEY: YOUR HONOR, I WOULD
5 HAVE NO OBJECTION TO EXCUSING HIM BASED ON WHAT HIS
6 COMMENTS WERE IN REGARD TO HIS WORK SITUATION. I
7 DON'T THINK HE CAN CONCENTRATE ON A CASE OF THIS
8 MAGNITUDE WITH HIS MIND ELSEWHERE.

9 THE COURT: HIS WIFE DOES NOT WORK.
10 BUT I NOTICE HE'S A JEHOVAH'S WITNESS WHICH
11 CERTAINLY IS A RECOGNIZED VALID RELIGION. BUT I
12 DON'T KNOW WHETHER -- A GREAT MAJORITY OF JEHOVAH'S
13 WITNESS I'VE HAD TO TELL ME THEY JUST CAN'T PASS
14 JUDGMENT ON OTHER PEOPLE. WHAT YOU SAY, JERRY?

15 MR. THEOS: YOUR HONOR, I WOULD
16 AGREE. I THINK HIS MIND WOULD BE ELSEWHERE. I
17 THINK IT WOULD BE PRUDENT TO EXCUSE HIM.

18 THE COURT: ALL RIGHT. BRING HIM
19 IN.

20 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

21 THE COURT: MR. GREGORY M. ALLEN,
22 YOUR STAYING POWER HAS PAID OFF. THE ATTORNEYS
23 HAVE AGREED THAT IT WOULD BE A REAL HARDSHIP UPON
24 YOU; AND YOUR WIFE DOESN'T WORK, AND YOU NEED TO BE
25 WORKING. AND THEY HAVE AGREED TO EXCUSE YOU FROM

JAMES R. VANDELL - RE-CROSS/MR. BAILEY

1 FURTHER JURY SERVICE. AND THEY THANK YOU. AND I
2 THANK YOU. AND GOOD LUCK TO YOU.

3 MR. ALLEN: AND I THANK YOU ALL.

4 THE COURT: GOOD. GOODNIGHT, SIR.
5 WE'LL MAIL YOU A CHECK.

6 MR. ALLEN: OKAY; THANK YOU.

7 THE COURT: SO, MADAM COURT

8 REPORTER, I'M GOING TO HAND YOU THIS DOCUMENT HERE
9 THAT SAYS "WORK HARDSHIP" TO ADD TO THAT STACK THAT
10 SHE'S KEEPING. SO, AGAIN GENTLEMEN, WE'RE GETTING
11 CLOSER TO BEING ON SCHEDULE BECAUSE WE'RE STARTING
12 AT 8:15, AND WE ONLY HAVE THREE BECAUSE Y'ALL
13 AGREED TO EXCUSE NUMBER 51. YOU AGREED -- HE'S
14 NUMBER ONE ON THE PANEL FOR IN THE MORNING. YOU
15 AGREED TO EXCUSE NUMBER THREE, PRINTED NUMBER
16 THREE; AND YOU AGREED TO EXCUSE NUMBER SIX. SO WE
17 HAVE TWO COMING IN AT 8:15 AND NUMBER FIVE, BERNARD
18 LEWIS AT 8:30. AND HOPEFULLY IN 45 MINUTES WE CAN
19 TAKE UP THOSE THREE. BUT THAT'S NOT A DEADLINE.
20 I'M GOING TO GIVE YOU THE TIME THAT YOU NEED. SO,
21 GENTLEMEN, IS THERE ANYTHING FURTHER THIS EVENING?
22 MY LIST REFLECTS THAT WE HAVE NINE THAT HAVE BEEN
23 DEEMED TO BE QUALIFIED, ONE OF WHICH THE STATE
24 OBJECTED TO NUMBER 104, AND THE DEFENDANT OBJECTED
25 TO 284. SO THAT'S ALMOST 25 PERCENT. THAT'S ABOUT

1 24 PERCENT OF 37. IS THERE ANYTHING FURTHER FROM
2 THE STATE?

3 MR. BAILEY: NO, SIR.

4 THE COURT: ANYTHING FURTHER FROM
5 THE DEFENDANT, PLEASE?

6 MR. THEOS: NOTHING, YOUR HONOR.

7 THE COURT: ALL RIGHT, GENTLEMEN;
8 Y'ALL HAVE A PLEASANT EVENING. THANK YOU.
9 (WHEREUPON AT 9:15 P.M. COURT WAS ADJOURNED FOR THE
10 DAY.)

11 * * * * *

ALICE POSTELL - EXAM. BY THE COURT

TUESDAY, FEBRUARY 23, 1999

(JUROR NUMBER 256, A WHITE FEMALE, WAS CALLED.)

WHEREUPON,

ALICE POSTELL, WHO AFTER BEING FIRST DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. MAY I PLEASE THANK YOU KINDLY FOR BEING HERE
PRESENT AT 8:15 THIS MORNING. YOU WILL RECALL THAT
ON YESTERDAY YOU WERE GIVEN INDIVIDUAL OATH AS A
JUROR?

A. YES, SIR.

Q. MAY I PLEASE REMIND YOU THAT YOU ARE STILL UNDER
OATH. AND I APPRECIATE THESE GENTLEMEN AND LADIES
AT COUNSEL TABLE -- THE DEFENDANT IS PRESENT --
NEED TO HEAR WHAT YOU'RE SAYING. SO YOU MIGHT WANT
TO PULL YOUR CHAIR UP A LITTLE BIT AND SPEAK INTO
THAT MICROPHONE, AND THAT WAY YOU WON'T HAVE TO
SPEAK SO LOUD. NOW, MRS. POSTELL, THE
QUESTIONNAIRE THAT YOU RETURNED EARLIER TO THE
COURT; HAVE THERE BEEN ANY CHANGES IN THAT
QUESTIONNAIRE THAT YOU WOULD LIKE TO MAKE IN ANY
WAY?

1 A. NO, SIR.

2 Q. AND MA'AM, SINCE YOU WERE HERE ON YESTERDAY, HAS
3 ANY ADDITIONAL INFORMATION COME TO YOUR ATTENTION
4 REGARDING THIS CRIMINAL CASE?

5 A. NO, SIR.

6 Q. HAS ANYBODY DISCUSSED IT WITH YOU? HAVE YOU READ
7 ANYTHING IN THE NEWSPAPER OR HEARD ANYTHING ON
8 T.V.?

9 A. I HEARD SOMETHING YESTERDAY MORNING THAT IT WAS
10 GOING TO BE TRIED IN DORCHESTER COUNTY.

11 Q. WOULD WHAT YOU HEARD; WOULD THAT IN ANY WAY AFFECT
12 YOUR ABILITY IN THIS CASE TO GIVE A FAIR TRIAL TO
13 BOTH THE STATE AND THE DEFENDANT?

14 A. NO, SIR.

15 Q. NOW MRS. POSTELL, THERE ARE GOING BE CERTAIN
16 QUESTIONS THAT ARE ASKED OF YOU. PLEASE WE ASK
17 YOUR UNDERSTANDING. NO ONE IS TRYING TO INVADE
18 YOUR PRIVACY. EVERY PERSON IS ENTITLED TO THEIR
19 OPINIONS AND VIEWS ON VARIOUS THINGS. AND THERE
20 ARE NO RIGHT OR WRONG ANSWERS THAT YOU'LL BE GIVEN
21 TO US. WHATEVER YOU GIVE US WILL BE THE RIGHT
22 ANSWERS BECAUSE THEY ARE YOUR ANSWERS. SO PLEASE
23 DON'T HAVE ANY CONCERN. I PROMISE YOU YOU WILL
24 MAKE A 100 ON THIS QUIZ TODAY. AND I WANT YOU TO
25 RELAX AND TRUTHFULLY ANSWER THESE QUESTIONS AS THEY

ALICE POSTELL - EXAM. BY THE COURT

1 MAY BE ASKED OF YOU. NOW, MA'AM, IF YOU ARE
2 SELECTED AS A JUROR IN THE TRAIL OF THIS CASE, THE
3 JUDGES OF THE FACTS ARE THE JURORS. YOU PASS UPON
4 THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES
5 AND THE EVIDENCE INTRODUCED. THE JUDGE MUST CHARGE
6 YOU AS TO THE LAW. THEN YOU APPLY THAT LAW TO THE
7 FACTS AS A JUROR MAY FIND THOSE FACTS TO BE. DO
8 YOU UNDERSTAND THAT?

9 A. YES, SIR.

10 Q. AND IF, MA'AM, YOU WERE INSTRUCTED THAT THE LAW WAS
11 A CERTAIN THING, COULD YOU FOLLOW THAT LAW AND
12 APPLY THAT LAW TO THE FACTS AS YOU AND THE OTHER
13 LADIES AND GENTLEMEN OF THE JURY MAY FIND THE FACTS
14 TO BE IN THE CASE?

15 A. YES, SIR.

16 Q. AND, MA'AM, THE FACT THAT A DEFENDANT IS CHARGED
17 WITH A CRIME, YOU UNDERSTAND, PLEASE, THAT THAT HAS
18 NO BEARING OR INDICATION THAT HE'S GUILTY BECAUSE
19 THE PRESUMPTION OR INFERENCE OF INNOCENCE ABIDES
20 WITH THE DEFENDANT THROUGHOUT THIS TRIAL. HE IS
21 PRESUMED TO BE INNOCENT UNTIL THE STATE INTRODUCES
22 EVIDENCE THAT WILL SATISFY YOU AND THE OTHERS OF
23 THE JURY OF HIS GUILT BEYOND A REASONABLE DOUBT.
24 DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. AND DEPENDING ON THE FACTS IN THIS CASE AS THE JURY
2 MAY FIND THEM TO BE, COULD YOU RETURN A VERDICT OF
3 NOT GUILTY IN A MURDER CASE?

4 A. DEPENDING ON THE FACTS?

5 Q. YES, MA'AM; EXACTLY. AND IF THE FACTS ARE SUCH
6 THAT THE STATE PROVES HIS GUILT BEYOND A REASONABLE
7 DOUBT, I ASK YOU THE SAME. COULD YOU RETURN A
8 VERDICT OF GUILTY?

9 A. YES, SIR.

10 Q. AND, MA'AM, WE'RE AT THIS TIME TALKING ABOUT THE
11 TWO PHASES OF A DEATH PENALTY CASE. THE FIRST IS
12 WHAT IS CALLED THE GUILT PHASE. THE DEFENDANT
13 COMES INTO COURT PRESUMED INNOCENT. THE STATE PUTS
14 UP THEIR TESTIMONY. THE DEFENDANT CAN PUT UP
15 TESTIMONY OR DOES NOT HAVE TO. THE DEFENDANT DOES
16 NOT HAVE TO TAKE THE WITNESS STAND. THE DEFENDANT
17 DOES NOT HAVE TO PROVE HIS INNOCENCE BECAUSE HE IS
18 PRESUMED INNOCENT. NOW, IF AT THAT GUILT PHASE ON
19 THE MURDER CHARGE, IF HE'S FOUND NOT GUILTY, THAT
20 WILL END THE SECOND PHASE OF THE PENALTY. YOU
21 WOULDN'T NEED TO CONSIDER A PENALTY. BUT IF HE'S
22 FOUND GUILTY BEYOND A REASONABLE DOUBT, THEN THERE
23 WOULD BE A TWENTY-FOUR HOUR WAITING PERIOD IN
24 BETWEEN THE GUILT PHASE AND THE PENALTY PHASE UNDER
25 THE LAW, AND THEN THE STATE WOULD BE ALLOWED TO

ALICE POSTELL - EXAM. BY THE COURT

1 INTRODUCE EVIDENCE AS TO STATUTORY AGGRAVATING
2 CIRCUMSTANCES SUCH AS THE COMMISSION OF A MURDER
3 WHILE COMMITTING THE CRIME OF BURGLARY OR ARMED
4 ROBBERY, OR SUCH AS CRIMINAL CONDUCT, JUST TO GIVE
5 YOU EXAMPLES, NOT TO INDICATE THAT THE DEFENDANT IS
6 GUILTY. NOW, IF THE STATE PROVES BEYOND A
7 REASONABLE DOUBT ONE OR MORE OF THOSE STATUTORY
8 AGGRAVATING CIRCUMSTANCES WHICH WOULD BE WRITTEN ON
9 A SHEET OF PAPER, IT WOULD BE GIVEN TO THE LADIES
10 AND GENTLEMEN OF THE JURY; COULD YOU FIND THE DEATH
11 PENALTY, RETURN THAT AS A VERDICT, IF YOU ARE
12 CONVINCED BY THE STATE BEYOND A REASONABLE DOUBT OF
13 HIS GUILT OF MURDER WITH ONE OR MORE STATUTORY
14 AGGRAVATING CIRCUMSTANCES?

15 A. YOU'RE ASKING ME COULD -- HE'S GUILTY OF MURDER?

16 Q. YES, MA'AM?

17 A. YOU'VE ASKED ME THAT.

18 Q. ASSUMING THAT. BUT THEN YOU'RE IN THE PENALTY
19 PHASE OF EITHER A RECOMMENDATION OF LIFE
20 IMPRISONMENT WITHOUT PAROLE OR THE DEATH PENALTY?

21 A. YES, SIR.

22 Q. AND IF THERE WERE MITIGATING CIRCUMSTANCES,
23 LESSENING CIRCUMSTANCES, INTRODUCED INTO EVIDENCE
24 OR FOR NO REASON AT ALL JUST ON THE RECOMMENDATION
25 OF MERCY, COULD YOU ALTHOUGH THE DEFENDANT HAD BEEN

ALICE POSTELL - EXAM. BY THE COURT

1 FOUND GUILTY OF MURDER, ARRIVE AT A VERDICT AND
2 VOTE FOR A VERDICT OF LIFE IMPRISONMENT WITHOUT
3 PAROLE?

4 A. YES.

5 Q. NOW, MA'AM, YOU WERE GIVEN A SHEET OF PAPER EARLIER
6 THIS MORNING IN THE JURY ROOM, AND THREE TYPES OF
7 JURORS WERE DESCRIBED. TYPE ONE WOULD BE A JUROR
8 THAT IT DIDN'T MATTER WHAT THE EVIDENCE WAS, THAT
9 PERSON WAS JUST CONVINCED ANYBODY THAT COMMITTED
10 MURDER MUST RECEIVE THE DEATH PENALTY AND WOULD
11 VOTE EVERY TIME FOR THE DEATH PENALTY. A SECOND
12 TYPE OF JUROR IS THE PERSON REGARDLESS OF HOW
13 HORRENDOUS OR SERIOUS OR BRUTAL A MURDER MAY HAVE
14 BEEN, THEY JUST WOULDN'T GIVE THE DEATH PENALTY FOR
15 WHATEVER REASON; THEY ALWAYS FEEL THAT THAT SHOULD
16 BE LIFE IMPRISONMENT WITHOUT PAROLE WHICH WOULD BE
17 THE OTHER OPTION. OR THERE'S A THIRD JUROR WHO
18 WILL LISTEN TO THE EVIDENCE ON BEHALF OF THE STATE
19 AND ON BEHALF OF THE DEFENDANT IF THE DEFENDANT
20 DECIDES TO OFFER ANY TESTIMONY BECAUSE THE
21 DEFENDANT DOESN'T HAVE TO TAKE THE WITNESS STAND OR
22 TESTIFY OR PRESENT EVIDENCE AS I'VE TOLD YOU. AND
23 THEN THAT PERSON WOULD WEIGH THE VARIOUS ITEMS OF
24 EVIDENCE AND TESTIMONY AND THEN DECIDE BASED ON THE
25 FACTS WHAT THE RECOMMENDATIONS OF THE COURT WOULD

ALICE POSTELL - DIRECT/MR. BAILEY

1 BE; THE RECOMMENDATION OF EITHER LIFE IMPRISONMENT
2 WITHOUT PAROLE OR THE DEATH PENALTY WHICH WOULD BE
3 BY ELECTROCUTION OR LETHAL INJECTION WHICH WOULD BE
4 A CHOICE OF THE DEFENDANT IF THE CASE GOES THAT
5 FAR. SO DO YOU UNDERSTAND MY QUESTION?

6 A. YES, SIR.

7 Q. NOW WHICH OF THOSE THREE JURORS DO YOU FEEL --
8 WHICH CATEGORY DO YOU FEEL YOU WOULD BE; A ONE, A
9 TWO, OR A THREE?

10 A. A THREE.

11 Q. A THREE?

12 A. YES, SIR.

13 Q. ALL RIGHT, MA'AM.

14 THE COURT: ALL RIGHT, MR.
15 SOLICITOR. YOU MAY PROCEED.

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. MRS. POSTELL, I'M WALTER BAILEY. I'LL BE
19 PROSECUTING THIS CASE ALONG WITH THESE OTHER
20 LAWYERS HERE. (INDICATING.) I NEED TO ASK YOU A
21 FEW MORE QUESTIONS. ON THE QUESTIONNAIRE YOU
22 INDICATED THAT YOU ATTEND THE BAPTIST CHURCH?

23 A. YES, SIR.

24 Q. DO YOU HAVE ANY RELIGIOUS BELIEFS ABOUT THE DEATH
25 PENALTY ONE WAY OR THE OTHER?

1 A. NO.

2 Q. DO YOU HAVE ANY PERSONAL BELIEFS ABOUT THE DEATH
3 PENALTY THAT YOU THINK MIGHT AFFECT YOUR ABILITY TO
4 FAIRLY CONSIDER LIFE WITHOUT PAROLE AND THE DEATH
5 PENALTY?

6 A. YES, SIR.

7 Q. IS THE DEATH PENALTY SOMETHING THAT YOU'VE THOUGHT
8 ABOUT IN THE PAST BEFORE YESTERDAY WHEN YOU FOUND
9 OUT YOU MIGHT BE ON THIS JURY?

10 A. NOT REALLY.

11 Q. AND YOU DIDN'T LIST A JOB HERE. YOU'RE A
12 HOUSEWIFE?

13 A. THAT'S CORRECT.

14 Q. OKAY. MRS. POSTELL, JUDGE PEEPLES EXPLAINED HOW
15 THE PROCESS WORKS; THAT IT IS POTENTIALLY A
16 TWO-PART PROCESS WHERE WE START OFF WITH THE GUILT
17 PHASE WHICH IS LIKE ANY OTHER TRIAL. THE JURY IS
18 JUST THERE TO DECIDE WHETHER OR NOT THE PERSON IS
19 GUILTY BEYOND A REASONABLE DOUBT. IF THE DEFENDANT
20 IS FOUND NOT GUILTY, EVERYTHING STOPS. BUT IF THE
21 DEFENDANT IS FOUND GUILTY OF MURDER THEN WE HAVE A
22 SECOND PART OF THE TRIAL IN WHICH ADDITIONAL
23 EVIDENCE IS INTRODUCED AND ADDITIONAL INSTRUCTIONS
24 COME FROM THE JUDGE. AND BASED ON WHAT HAPPENS
25 DURING THAT SECOND PHASE OF THE TRIAL, THE JURY HAS

ALICE POSTELL - DIRECT/MR. BAILEY

1 TWO CHOICES; LIFE WITHOUT PAROLE OR THE DEATH
2 PENALTY. WHATEVER THE JURY DECIDES WILL BE THE
3 SENTENCE OF THE COURT. IN OTHER WORDS, THE JURY,
4 NOT THE JUDGE, MAKES THAT DECISION. AND THE JUDGE
5 WOULD ORDER IT CARRIED OUT, AND IT WOULD BE CARRIED
6 OUT. THE JURY VOTES FOR LIFE WITHOUT PAROLE. THAT
7 WILL BE JUDGE PEEPLES' ORDER. THE DEFENDANT WILL
8 RECEIVE LIFE WITHOUT PAROLE. IF THE JURY VOTES ON
9 THE DEATH SENTENCE, JUDGE PEEPLES WILL ORDER IT,
10 AND HE WILL BE EXECUTED BASED ON THAT JURY'S
11 VERDICT. DO YOU UNDERSTAND THE PROCESS?

12 A. I UNDERSTAND THAT.

13 Q. NOW, NOBODY IS GOING TO ASK YOU TO PREDICT WHAT
14 YOU'D DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD THE
15 FACTS. AND YOU'VE INDICATED THAT YOU'D WANT TO
16 HEAR ALL THE FACTS BEFORE YOU DECIDE; IS THAT
17 CORRECT?

18 A. YES, SIR.

19 Q. BUT IF THE FACTS WERE BAD ENOUGH, COULD YOU VOTE
20 FOR THE DEATH PENALTY KNOWING THAT SENTENCE WOULD
21 ACTUALLY BE CARRIED OUT?

22 A. I THINK SO.

23 Q. OKAY. NOW WHEN YOU SAID I THINK SO, I NEED TO KIND
24 OF ASK---

25 A. YOU NEED A YES OR NO, DON'T YOU?

ALICE POSTELL - DIRECT/MR. BAILEY

1 Q. YES, MA'AM. IF YOU COULD ANSWER IT YES OR NO.

2 A. I WOULD HAVE TO HEAR THE FACTS.

3 Q. OKAY. BUT IF THE FACTS WERE BAD ENOUGH, COULD YOU
4 DO IT?

5 A. YES, SIR.

6 Q. IF THE JURY UNANIMOUSLY VOTES FOR THE DEATH PENALTY
7 AFTER HEARING ALL THE FACTS, THE NEXT THING THAT
8 HAPPENS IS THEY WOULD EACH BE ASKED TO SIGN THEIR
9 NAME TO A VERDICT FORM. ALL TWELVE JURORS WOULD
10 HAVE TO SIGN THE FORM SAYING THEY VOTED FOR THE
11 DEATH PENALTY. COULD CAN YOU SIGN THAT KIND OF A
12 FORM IF YOU VOTED FOR THE DEATH PENALTY?

13 A. YES, SIR.

14 Q. OKAY. AND COULD YOU COME OUT HERE IN OPEN COURT
15 AND SIT OUT HERE WHEN YOUR NAME IS CALLED OUT LOUD
16 AND SAY THAT THAT IS YOUR VERDICT?

17 A. YES, I COULD.

18 Q. IS THERE ANY REASON AT ALL THAT YOU THINK MIGHT
19 PREVENT YOU FROM SERVING AS A FAIR AND IMPARTIAL
20 JUROR BOTH TO THE DEFENSE AND TO THE STATE?

21 A. NO, SIR.

22 Q. THE JURY WILL HAVE TO STAY IN A MOTEL FOR MAYBE A
23 WEEK DURING THE TRIAL. IS THAT GOING TO CAUSE ANY
24 UNDUE HARDSHIP TO YOU?

25 A. NO, SIR.

ALICE POSTELL - CROSS/MR. THEOS

1 Q. MRS. POSTELL, THAT'S ALL I'VE GOT. THANK YOU VERY
2 MUCH.

3 A. YOU'RE WELCOME.

4 THE COURT: YES, SIR?

5 CROSS-EXAMINATION

6 BY MR. THEOS:

7 Q. MRS. POSTELL, GOOD MORNING.

8 A. GOOD MORNING.

9 Q. I'M JERRY THEOS; AND THIS IS JIM BELL, AND THIS IS
10 KENNETH SIMMONS OVER HERE. (INDICATING.) WE THANK
11 YOU FOR COMING. AND OUR OBJECTIVE HERE IS NOT TO
12 PUT YOU ON THE SPOT AND NOT TO ASK YOU ANY
13 QUESTIONS TO MAKE YOU FEEL UNCOMFORTABLE. WE'RE
14 REALLY JUST TRYING TO FIND OUT TRUTHFULLY AND
15 HONESTLY HOW YOU FEEL, AND WE APPRECIATE YOU
16 ANSWERING THOSE QUESTIONS. I'D LIKE TO JUST ASK
17 YOU A FEW QUESTIONS.

18 A. OKAY.

19 Q. YOU UNDERSTAND AS THE JUDGE TOLD YOU, JUST BECAUSE
20 WE'RE TALKING ABOUT PENALTY AT THIS POINT,
21 POTENTIAL PENALTIES, AND WHAT YOU MIGHT THINK IN A
22 PENALTY SITUATION IN THE SECOND PHASE OF THIS CASE
23 IF IT WERE TO GO THAT WAY, BUT WE'RE FAR FROM THAT;
24 DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. DO YOU UNDERSTAND THAT BEFORE A JURY COULD EVEN
2 BEGIN TO CONSIDER WHAT PUNISHMENT MIGHT BE
3 APPROPRIATE FOR THE DEFENDANT, THE JURY WOULD FIRST
4 HAVE TO FIND HIM GUILTY?

5 A. YES, SIR; I UNDERSTAND THAT.

6 Q. AND YOU UNDERSTAND, OF COURSE, THAT THE BURDEN OF
7 PROVING MR. SIMMONS GUILTY AS WITH ANYBODY IN A
8 CRIMINAL COURTROOM, THE BURDEN IS ON THE STATE TO
9 PROVE MR. SIMMONS GUILTY BEYOND A REASONABLE DOUBT?

10 A. YES, SIR.

11 Q. AND YOU UNDERSTAND JUST BECAUSE THE FACT THAT MR.
12 SIMMONS IS HERE ON TRIAL AND THE STATE IS SEEKING
13 THE DEATH PENALTY, THAT MR. SIMMONS IS, AS THE
14 JUDGE SAID, PRESUMED TO BE INNOCENT?

15 A. YES, SIR.

16 Q. WOULD YOU IN FACT HOLD THE STATE TO THEIR BURDEN IN
17 THE GUILT PHASE? WOULD YOU HOLD THE STATE, MR.
18 BAILEY AND HIS STAFF, TO THEIR BURDEN OF PROOF?
19 WOULD YOU HOLD THEM TO THAT BURDEN OF PROVING MR.
20 SIMMONS GUILTY?

21 A. YES, I WOULD.

22 Q. NOW, THERE'S BEEN SOME TALK ABOUT AGGRAVATING
23 CIRCUMSTANCE. AND I THINK THOSE ARE SOMEWHAT
24 SELF-EXPLANATORY; THINGS THAT MAKE A CRIME
25 ESSENTIALLY WORSE. THERE'S ALSO BEEN A LITTLE BIT

ALICE POSTELL - CROSS/MR. THEOS

1 OF TALK ABOUT MITIGATING FACTORS. DO YOU
2 UNDERSTAND WHAT THAT MEANS?

3 A. MITIGATING?

4 Q. MITIGATING.

5 A. NO, SIR.

6 Q. OKAY. THE JUDGE EXPLAINED TO YOU THAT MITIGATING
7 FACTORS ARE THOSE FACTORS WHICH TEND TO LESSEN IN
8 YOUR MIND OR THE JURORS' MINDS, LESSEN THE SEVERITY
9 OF SOMETHING; OKAY?

10 A. OKAY.

11 Q. AND THE DEFENSE IN CASES LIKE THIS, AND MR.
12 SIMMONS' CASE IF WE WERE TO GET TO THAT STAGE,
13 MIGHT OFFER CERTAIN THINGS TO A JURY TO ATTEMPT TO
14 PERSUADE THEM THAT MR. SIMMONS SHOULD NOT BE PUT TO
15 DEATH. DO YOU UNDERSTAND THAT?

16 A. YES.

17 Q. WOULD YOU CONSIDER THOSE FACTORS AS YOU'VE
18 INDICATED YOU WOULD CONSIDER THE AGGRAVATING
19 FACTORS BEFORE YOU MADE A DECISION?

20 A. YES.

21 Q. AND, AGAIN, IT'S A LITTLE AWKWARD THAT WE'RE
22 TALKING ABOUT THE PENALTY BEFORE THE GUILT OF MR.
23 SIMMONS HAS BEEN DETERMINED. BUT YOU WOULD, OF
24 COURSE, NOT DETERMINE A PENALTY BASED UPON -- IF
25 YOU WERE ON A JURY AND THAT JURY WERE TO FIND MR.

1 SIMMONS GUILTY OF THE CHARGES THAT YOU HEARD THE
2 JUDGE READ OUT EARLIER, YOUR MIND WOULDN'T BE MADE
3 UP AT THAT POINT REGARDING THE PENALTY, WOULD IT?
4 A. NO. I MEAN, I WOULD HAVE TO HEAR ALL THE FACTS
5 BEFORE I WOULD PASS MY OPINION.

6 Q. THAT WOULD BE---

7 A. AND I WOULD HAVE TO REALLY BE CONVINCED.

8 Q. THAT THAT WERE THE APPROPRIATE SENTENCE?

9 A. EXACTLY; YES.

10 Q. THANK YOU VERY MUCH.

11 A. YOU'RE WELCOME.

12 THE COURT: MA'AM, IN QUESTIONING ON
13 YESTERDAY YOU WERE ONE OF THE JURORS OF MANY JURORS
14 WHO INDICATED THAT YOU HAD SEEN OR HEARD OR READ
15 SOMETHING IN THIS CASE. HAVE YOU FORMED OR
16 EXPRESSED ANY OPINION IN THIS CASE AS TO THE FACTS
17 OF THE CASE?

18 MRS. POSTELL: NO, I HAVEN'T. ALL
19 I'VE REALLY HEARD WAS ON T.V. YESTERDAY MORNING
20 THAT HE WAS GOING TO BE TRIED.

21 THE COURT: NOTHING ABOUT ANY
22 DETAILS OF ANY KIND?

23 MRS. POSTELL: NO.

24 THE COURT: ALL RIGHT. SO YOU HAVE
25 A CLEAR AND OPEN MIND ABOUT THE FACTS OF THE CASE?

ALICE POSTELL - CROSS/MR. THEOS

1 MRS. POSTELL: OH, YES.

2 THE COURT: THANK YOU. ANYTHING
3 FURTHER, MR. SOLICITOR?

4 MR. BAILEY: NO, SIR.

5 THE COURT: CAN I GET YOU TO STEP
6 OUTSIDE FOR ONE SECOND WHILE I INQUIRE OF THE
7 LAWYERS? WE'LL BE RIGHT BACK TO YOU, MA'AM.

8 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

9 THE COURT: WHAT SAY THE STATE?

10 MR. BAILEY: QUALIFIED, YOUR HONOR.

11 MR. THEOS: SHE'S QUALIFIED, YOUR
12 HONOR.

13 THE COURT: LET ME INQUIRE,
14 GENTLEMEN, JUST TO KEEP PEOPLE FROM HAVING TO WALK
15 OUT. WHERE IT APPEARS FROM THE QUESTIONS AND
16 ANSWERS GIVEN -- AND I DON'T WANT Y'ALL TO MAKE ANY
17 MANNERISM THAT THE JUROR CAN SEE. BUT COULD WE
18 MAYBE SAVE A FEW MINUTES BY---

19 MR. BAILEY: NODDING OUR HEADS?

20 THE COURT: NOD YES OR NO BECAUSE --
21 AND THEN PROCEED FROM THERE. BRING THE LADY BACK
22 IN, PLEASE.

23 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

24 THE COURT: MRS. POSTELL, YOU HAVE
25 BEEN FOUND QUALIFIED AS A POTENTIAL JUROR IN THE

ALICE POSTELL - CROSS/MR. THEOS

1 TRIAL OF THE CASE. THAT DOESN'T MEAN YOU'RE ON THE
2 JURY YET. WE'RE GOING TO ATTEMPT TO QUALIFY A POOL
3 OF 37 OTHER JURORS. WE ANTICIPATE BEING READY BY
4 TWO O'CLOCK TOMORROW OR WEDNESDAY. WE DON'T KNOW
5 YET; SOMETIMES THE QUESTIONS ARE LONG; SOMETIMES
6 THE QUESTIONS ARE SHORT. BUT ON WEDNESDAY WE HOPE
7 TO BE ABLE TO STRIKE, AND WE'LL KNOW AT THAT TIME
8 IF YOU ARE ON THE JURY. NOW IF YOU ARE SELECTED ON
9 THE JURY, MA'AM, WE WILL HAVE THE JURORS
10 SEQUESTERED AT THE HOLIDAY INN. THE COUNTY WILL
11 TAKE CARE OF YOUR EXPENSES, FOR YOUR ROOM, AND FOR
12 YOUR MEALS DURING THE DAY. YOU'LL BE HERE IN THE
13 COURTROOM LISTENING TO TESTIMONY. IN THE EVENING
14 YOU'LL BE OUT AT THE MOTEL. WE CAN'T LET YOU WATCH
15 T.V. WE CAN'T LET YOU WATCH THE NEWS IN THE EVENT
16 THAT THERE MAY BE SOME REPORT ON THE CASE BECAUSE
17 YOU DECIDE THE CASE BASED ON WHAT YOU HEAR IN THE
18 COURTROOM, NOT WHAT SOMEBODY SEES ON T.V. OR IN THE
19 NEWSPAPER. IS THERE ANYTHING THAT YOU CAN THINK OF
20 RELATIVE TO YOUR HEALTH OR THE HEALTH OF MEMBERS OF
21 YOUR FAMILY OR THE WELL-BEING OF YOUR FAMILY THAT
22 WOULD IN ANY WAY CAUSE A PROBLEM IN YOUR BEING
23 CONFINED, SO TO SPEAK, WITH THE OTHER JURORS AT THE
24 MOTEL FOR SEVEN OR EIGHT DAYS IF IT SHOULD TAKE
25 THAT LONG?

ALICE POSTELL - CROSS/MR. THEOS

1 MRS. POSTELL: NO, SIR.

2 THE COURT: ALL RIGHT, MA'AM. SO,
3 PLEASE, CONTINUE ABOUT YOUR BUSINESS TODAY. AND
4 THERE'S A PHONE NUMBER THAT'S ON THAT SHEET, IS
5 THERE NOT, MADAM BAILIFF?

6 THE BAILIFF: YES, SIR.

7 THE COURT: IF YOU'D CALL THAT AFTER
8 SIX CLOCK TODAY; WE'RE GOING TO HAVE A MESSAGE ON
9 THERE FOR THOSE JURORS FOUND TO BE QUALIFIED.
10 PLEASE REPORT BACK TO THE COURT HOUSE AT TWO
11 O'CLOCK WEDNESDAY. BUT IF IT CHANGES TO FIVE
12 O'CLOCK WEDNESDAY WE'LL PUT A MESSAGE BECAUSE WE'RE
13 TRYING AS BEST WE CAN TO RUN THIS RAILROAD. BUT IT
14 INVOLVES A LOT OF FACTORS. SO PLEASE UNDERSTAND
15 AND BE PATIENT WITH US. AND YOU HAVE YOUR
16 INSTRUCTIONS THERE RELATIVE TO YOUR CAR. IF YOU
17 WANT TO LEAVE YOUR CAR THERE; WE'LL HAVE TO KEEP
18 THE KEYS, BUT WE'LL RETURN THEM TO YOU, OR SOMEBODY
19 CAN BRING THEM TO THE COURT HOUSE AND DRIVE YOUR
20 CAR BACK HOME. AS SOON AS THE TRIAL IS OVER WE CAN
21 MAKE ARRANGEMENTS TO GET YOU BACK HOME OR WHATEVER
22 WE CAN DO TO HELP YOU.

23 MRS. POSTELL: SO IN OTHER WORDS,
24 SOMEBODY COULD DROP ME OFF. IS THAT WHAT YOU'RE
25 SAYING? YOU WOULD WANT SOMEBODY TO DROP ME OFF?

ALICE POSTELL - CROSS/MR. THEOS

1 THE COURT: THEY COULD. BUT THEN IF
2 YOU'RE NOT SELECTED TO SERVE, THEN YOU'D NEED A WAY
3 BACK HOME, AND YOU'D NEED TO HAVE YOUR CLOTHES AND
4 THINGS WITH YOU.

5 MRS. POSTELL: OKAY.

6 THE COURT: SO IT MIGHT BE WELL IF
7 SOMEBODY BRINGS YOU. BUT IF YOU DO ARRIVE, WE CAN
8 ACCOMMODATE YOU IF THAT NEED BE.

9 MRS. POSTELL: ALL RIGHT.

10 THE COURT: ALL RIGHT. THANK YOU SO
11 MUCH. AND YOU HAVE A NICE DAY, MA'AM.

12 MRS. POSTELL: YOU, TOO.

13 THE COURT: ALL RIGHT, IF YOU WOULD,
14 PLEASE BRING IN MILTON J. HANDLER, JR., JUROR 137.
15 AND AGAIN, WHEN THAT JUROR NUMBER 195 ARRIVES, HAVE
16 THEM FILL OUT THE QUESTIONNAIRE, MAKE COPIES OF IT,
17 AND GIVE COPIES TO THE COUNSEL IF YOU WOULD,
18 PLEASE, MA'AM.

19 (JUROR NUMBER 137, A WHITE MALE, WAS CALLED INTO
20 COURT.)

21 WHEREUPON,

22 MILTON HANDLER, JR., WHO BEING
23 PREVIOUSLY SWORN TO TELL THE TRUTH,
24 TESTIFIED AS FOLLOWS:

25 EXAMINATION

MILTON HANDLER, JR. - EXAM. BY THE COURT

BY THE COURT:

Q. THANK YOU FOR BEING HERE WITH US THIS MORNING. MR. MILTON J. HANDLER, SINCE YOU WERE IN COURT ON YESTERDAY HAS ANYBODY DISCUSSED THIS CASE WITH YOU OR ATTEMPTED TO INFLUENCE YOU IN ANY WAY ABOUT IT?

A. NO, SIR.

Q. HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE SINCE YESTERDAY?

A. NO, I HAVE NOT.

Q. ALL RIGHT. AND THE QUESTIONNAIRE THAT YOU HAVE PRESENTED TO THE COURT EARLIER; IS THE INFORMATION IN THAT CORRECT?

A. YES IT IS, YOUR HONOR.

Q. ALL RIGHT. AND MR. HANDLER, HAVE YOU FORMED ANY OPINION OR VIEW OF THIS CASE?

A. NO, I HAVE NOT, YOUR HONOR.

Q. DO YOU HAVE AN OPEN MIND AS TO WHAT THE FACTS OF THE CASE ARE OR SHOULD BE?

A. YES, SIR, I DO.

Q. AND IF YOU WERE CHOSEN AS A JUROR IN THIS CASE -- BECAUSE EVERYBODY, MIGHT WE SAY, IS A CREATURE OF THEIR OWN EXPERIENCES IN LIFE AND THEIR OWN ENVIRONMENTS. SO EVERYBODY HAS VIEWS ON VARIOUS MATTERS; OR SOME ARE MORE STRONG OR LESS STRONG IN THEIR VIEWS. BUT COULD YOU PUT ASIDE ANY

1 PRECONCEIVED NOTION OR IDEAS THAT YOU MAY HAVE AND
2 START WITH A CLEAN SLATE, DISABUSE YOUR MIND OF ANY
3 PRECONCEIVED IDEAS OR NOTIONS YOU HAVE? AND I
4 DON'T MEAN TO LEAVE YOUR COMMON SENSE IN THE
5 PARKING LOT, BUT BE AN OBJECTIVE JUROR. BY THAT I
6 MEAN LISTEN TO THE EVIDENCE OFFERED BY THE STATE.
7 LISTEN TO THE EVIDENCE OFFERED BY THE DEFENDANT
8 WITH THE UNDERSTANDING THE DEFENDANT IS PRESUMED
9 INNOCENT. THE BURDEN OF PROOF IS UPON THE STATE,
10 NOT UPON THE DEFENDANT. SO THE DEFENDANT DOESN'T
11 HAVE TO OFFER ANY TESTIMONY. THE DEFENDANT DOESN'T
12 HAVE TO TAKE THE WITNESS STAND. AND THAT IN FACT
13 CANNOT BE HELD AGAINST HIM IF HE DOES NOT TAKE THE
14 WITNESS STAND. BUT TO LISTEN TO THE EVIDENCE,
15 LISTEN TO THE CHARGE OF THE COURT, AND THEN WHEN
16 YOU ARE INSTRUCTED TO BEGIN YOUR DELIBERATIONS, TO
17 GO TO THE JURY ROOM AND CONSIDER EACH OTHER'S VIEWS
18 AND EXPRESS YOUR VIEWS AND THEN ARRIVE AT A TRUE
19 AND FAIR VERDICT WHETHER IT BE ONE OF NOT GUILTY OR
20 ONE OF GUILTY?

21 A. YES, I CAN.

22 Q. YOU UNDERSTAND THIS IS A MURDER CASE?

23 A. YES I DO, YOUR HONOR.

24 Q. YOU UNDERSTAND THAT WE NECESSARILY HAVE TO AT THIS
25 TIME DISCUSS WITH YOU THE GUILT AND THE PENALTY

MILTON HANDLER, JR. - EXAM. BY THE COURT

1 PHASE BECAUSE THERE WILL NOT BE ANOTHER OPPORTUNITY
2 FOR THE ATTORNEYS TO DISCUSS WITH YOU YOUR VIEWS
3 ABOUT VARIOUS MATTERS. AND PLEASE UNDERSTAND BY
4 ASKING THESE QUESTIONS, MR. HANDLER, THAT NO ONE
5 WILL INVADE YOUR PRIVACY. WE'RE NOT TRYING TO BE
6 PERSONAL. AND YOU'RE NOT GOING TO FLUNK THE TEST.
7 ALL OF YOUR ANSWERS ARE GOING TO BE CORRECT ANSWERS
8 BECAUSE THOSE ARE YOUR HONEST VIEWS ON THE
9 SUBJECT. AND YOU'RE CERTAINLY ENTITLED TO THOSE
10 WHETHER ONE MAY AGREE OR DISAGREE WITH YOU. SO PUT
11 YOURSELF AT EASE INsofar AS THAT. BUT AT THE CLOSE
12 OF THE CASE ON THE GUILT PHASE, YOU WOULD BE
13 INSTRUCTED ON THE LAW OF THE CASE. COULD YOU AS A
14 CONSCIENTIOUS JUROR APPLY THAT LAW THAT THE COURT
15 TELLS YOU IS THE LAW TO THE FACTS AS YOU OF THE
16 JURY MAY FIND THOSE FACTS TO BE?

17 A. I BELIEVE SO, SIR.

18 Q. AND IF THE EVIDENCE WARRANTED A FINDING OF GUILTY,
19 IF THE STATE PROVES THAT BEYOND A REASONABLE DOUBT
20 COULD YOU RETURN A VERDICT OF GUILTY?

21 A. YES, SIR.

22 Q. ON THE OTHER HAND, IF THE STATE FAILED TO MEET
23 THEIR BURDEN OF PROVING THE GUILT OF THE DEFENDANT
24 BEYOND A REASONABLE DOUBT, COULD YOU RETURN A
25 VERDICT OF NOT GUILTY?

1 A. YES, SIR.

2 Q. AND YOU UNDERSTAND THAT IN THE EVENT THAT THE
3 VERDICT IS NOT GUILTY IN THE MURDER CASE, THEN
4 THERE WOULD BE NO NEED FOR A PENALTY PHASE ON THE
5 MURDER CHARGE BECAUSE THAT IS THE ONLY CASE IN
6 WHICH THE JURY MAKES A RECOMMENDATION. THE JURY
7 DOESN'T MAKE A RECOMMENDATION ON THE OTHER
8 CHARGES. AND I KNOW NOT WHAT THE VERDICT WOULD ON
9 THOSE BECAUSE I DON'T KNOW WHAT THE EVIDENCE IS. I
10 HAVEN'T HEARD THE EVIDENCE AND NEITHER HAVE YOU.
11 BUT I DON'T VOTE ON THE EVIDENCE. YOU, LADIES AND
12 GENTLEMEN, CONSIDER THE EVIDENCE AND THE
13 CREDIBILITY OR THE WEIGHT THAT SHOULD BE GIVEN TO
14 YOU. SO IF THE FACT THAT SOMEONE IS CHARGED WITH A
15 CRIME IN YOUR VIEW, DOES THAT AUTOMATICALLY MEAN
16 THAT THEY'RE GUILTY OF THAT CRIME?

17 A. NO, SIR.

18 Q. ALL RIGHT. AND IN THAT SECOND PHASE OF THE CASE,
19 THE STATE WOULD HAVE TO PROVE A STATUTORY
20 AGGRAVATING CIRCUMSTANCE, A LIST OF WHICH THE
21 JURORS WOULD HAVE ON A FORM OF VERDICT. AND
22 EXAMPLES OF A STATUTORY AGGRAVATING CIRCUMSTANCE
23 WOULD BE THE COMMISSION OF A MURDER DURING A
24 BURGLARY, OR DURING THE COMMISSION OF BURGLARY THAT
25 YOU COMMIT A MURDER, OR CRIMINAL SEXUAL CONDUCT.

MILTON HANDLER, JR. - EXAM. BY THE COURT

1 AND IF THE STATE PROVED BEYOND A REASONABLE DOUBT
2 ONE OR MORE OF THOSE STATUTORY AGGRAVATING
3 CIRCUMSTANCES, AND THE EVIDENCE WARRANTED IT, COULD
4 YOU RETURN A DEATH PENALTY VERDICT?

5 A. I DON'T KNOW ON THAT. I HAVE NO IDEA. I HAVEN'T
6 BEEN PLACED IN THAT SITUATION BEFORE.

7 Q. DO YOU HAVE ANY PRECONCEIVED NOTIONS OR VIEWS IN
8 OPPOSITION TO OR IN FAVOR OF THE DEATH PENALTY?

9 A. I AM IN FAVOR OF THE DEATH PENALTY.

10 Q. IS THAT UNALTERABLY SO, OR WOULD YOUR BEING IN
11 FAVOR OF THE DEATH PENALTY BE DEPENDING UPON THE
12 FACTS OF THE CASE AS TO WHETHER OR NOT THE DEATH
13 PENALTY SHOULD APPLY?

14 A. YES, SIR.

15 Q. AND YOU UNDERSTAND EVEN THOUGH THE STATE MAY HAVE
16 PROVEN THE STATUTORY AGGRAVATING CIRCUMSTANCES
17 BEYOND A REASONABLE DOUBT, THE DEFENDANT HAS THE
18 OPTION OF OFFERING MITIGATING OR LESSENING
19 CIRCUMSTANCES FOR CONSIDERATION OF THE JURY. AND
20 THE JURY MAY FIND MITIGATING CIRCUMSTANCES WHICH
21 WOULD LEAD THE JURY TO CONCLUDE THAT THEY SHOULD
22 IMPOSE THE ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT
23 PAROLE. THAT IS THE OPTION THAT WOULD BE AVAILABLE
24 TO THE JURY BECAUSE THAT IS A CURRENT STATE OF THE
25 LAW THAT LIFE IMPRISONMENT MEANS LIFE IMPRISONMENT

1 WITHOUT THE PROSPECT OF PAROLE. OR THEN THERE'S A
2 THIRD CONSIDERATION, AND THAT IS THE JURY CAN,
3 UNDER OUR LAW, ENTERTAIN AND CONCLUDE TO HAVE A
4 RECOMMENDATION OF MERCY AND VOTE TO IMPOSE LIFE
5 IMPRISONMENT WITHOUT PAROLE ALTHOUGH THE STATE MAY
6 HAVE PROVEN BEYOND A REASONABLE DOUBT A STATUTORY
7 AGGRAVATING CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

8 A. YES I DO, YOUR HONOR.

9 Q. AND COULD YOU, DEPENDING ON THE FACTS THAT THE JURY
10 CONCLUDES TO BE THE TRUE FACTS OF THE CASE AFTER
11 PASSING UPON THE BELIEVABILITY OR CREDIBILITY;
12 COULD YOU, DEPENDING ON YOUR VIEW OF THE EVIDENCE
13 IN THE CASE, RETURN EITHER LIFE IMPRISONMENT
14 WITHOUT PAROLE OR THE DEATH PENALTY DEPENDING ON
15 WHAT THE FACTS ARE?

16 A. I BELIEVE I CAN.

17 Q. AND YOU UNDERSTAND, PLEASE, FROM THAT QUESTIONNAIRE
18 THAT YOU'VE HAD THERE WERE THREE TYPES OF JURORS;
19 TYPE ONE, TWO AND THREE. ONE IS WHERE A PERSON
20 JUST FAVORS THE DEATH PENALTY AND UNDER ALL
21 CIRCUMSTANCES WOULD VOTE FOR THE DEATH PENALTY.
22 THE SECOND IS WHERE THE JUROR JUST COULD NOT AND
23 WOULD NOT RETURN A DEATH PENALTY EVEN IF THE FACTS
24 WARRANTED IT AND ALWAYS WOULD VOTE FOR LIFE
25 IMPRISONMENT WITHOUT PAROLE; OR THE THIRD JUROR

MILTON HANDLER, JR. - DIRECT/MR. THEOS

1 THAT DOESN'T HAVE HIS OR HER MIND MADE UP BUT WOULD
2 LISTEN TO THE TESTIMONY AND EVIDENCE, PASS UPON THE
3 CREDIBILITY, REASON WITH THE OTHER LADIES AND
4 GENTLEMEN OF THE JURY, AND THEN ARRIVE AT A
5 UNANIMOUS VERDICT OF EITHER OF THOSE TWO SENTENCES?

6 A. I AM A THREE.

7 Q. YOU ARE A THREE?

8 A. YES, SIR.

9 Q. ALL RIGHT.

10 THE COURT: MR. THEOS, WOULD YOU
11 'LIKE TO QUESTION HIM, PLEASE?

12 MR. THEOS: YES, SIR.

13

14 DIRECT EXAMINATION

15 BY MR. THEOS:

16 Q. GOOD MORNING, MR. HANDLER.

17 A. GOOD MORNING, SIR.

18 Q. I'M JERRY THEOS. I, ALONG WITH JIM BELL, ARE THE
19 TWO ATTORNEYS REPRESENTING MR. SIMMONS. THIS IS
20 MR. KENNETH SIMMONS. (INDICATING.) THANK YOU FOR
21 COMING IN. AND CONTRARY TO WHAT YOU AND THE OTHER
22 JURORS MIGHT THINK, WE'RE REALLY NOT TRYING TO PUT
23 YOU ON A HOT SEAT. REALLY DURING THE
24 CROSS-EXAMINATION, WE REALLY ARE JUST TRYING TO
25 FIND OUT WHAT YOUR OPINIONS ARE AND WHAT THEY

MILTON HANDLER, JR. - DIRECT/MR. THEOS

1 TRUTHFULLY ARE. SO WE APPRECIATE YOUR
2 COOPERATION. THIS IS THE ONLY TIME THE LAWYERS,
3 MR. BAILEY AND MYSELF, WILL HAVE A CHANCE TO TALK
4 WITH YOU AND TO UNDERSTAND WHAT YOUR SENTIMENTS
5 REALLY ARE AND YOUR FEELINGS ARE. IF YOU'RE CHOSEN
6 ON A JURY, WE WILL NOT HAVE A CHANCE TO TALK WITH
7 YOU, ALTHOUGH YOU WOULD BE LISTENING TO WHAT WE
8 WOULD HAVE TO SAY. SO WE APPRECIATE YOUR HONESTY
9 AND SINCERITY. NOW, MR. HANDLER, AS I UNDERSTAND
10 THE RESPONSES TO JUDGE JUDGE PEEPLES' QUESTIONS,
11 THE FACT THAT MR. SIMMONS HAS BEEN CHARGED WITH A
12 CRIME AND IS SITTING HERE ON TRIAL FOR THE CHARGE
13 OF MURDER AND THESE OTHER CHARGES. AS JUDGE
14 PEEPLES TOLD YOU THAT IS NOT TO BE TAKEN AS AN
15 INDICATION OF HIS GUILT?

16 A. CORRECT.

17 Q. YOU UNDERSTAND, OF COURSE, THAT MR. SIMMONS IS
18 PRESUMED TO BE INNOCENT AS HE SITS HERE?

19 A. YES, I DO.

20 Q. AND YOU UNDERSTAND, OF COURSE, THAT MR. SIMMONS
21 WILL CONTINUE TO BE DEEMED INNOCENT UNLESS THE
22 STATE PROVES TO A JURY HIS GUILT BEYOND A
23 REASONABLE DOUBT?

24 A. YES.

25 Q. DO YOU UNDERSTAND THAT?

MILTON HANDLER, JR. - DIRECT/MR. THEOS

1 A. YES I DO, SIR.

2 Q. DO YOU FEEL THAT YOU CAN HOLD THE STATE TO THAT
3 BURDEN OF PROOF BEYOND A REASONABLE DOUBT?

4 A. YES.

5 Q. AND IT'S A LITTLE AWKWARD OR A LITTLE UNUSUAL THAT
6 WE'RE TALKING ABOUT POTENTIAL PENALTIES BEFORE
7 WE'VE ACTUALLY DETERMINED WHETHER OR NOT MR.
8 SIMMONS IS GUILTY. BUT THERE IS NO OTHER WAY TO DO
9 IT. AS THE JUDGE SAID, WE HAVE TO TALK ABOUT
10 POTENTIAL PENALTIES. BUT YOU, OF COURSE, AREN'T
11 READING INTO THAT ANYTHING RELATED TO MR. SIMMONS'
12 GUILT; THE FACT THAT WE'RE DISCUSSING PENALTIES AT
13 THIS POINT?

14 A. NO, I'M NOT.

15 Q. YOU UNDERSTAND THAT REGARDLESS OF THAT FACT, THE
16 JURY WOULD STILL HAVE TO LISTEN TO THE EVIDENCE IN
17 THE GUILT PHASE AND DETERMINE FIRST OF ALL WHETHER
18 OR NOT MR. SIMMONS WAS GUILTY OF ONE OR MORE OF
19 THESE CRIMES?

20 A. YES; I UNDERSTAND THIS.

21 Q. AND YOU UNDERSTAND THAT WE WOULDN'T EVEN MAKE IT TO
22 THIS SECOND PHASE IF THE JURY WOULD FIND MR.
23 SIMMONS GUILTY?

24 A. THAT'S CORRECT.

25 Q. YOU'VE INDICATED YOU COULD LISTEN IN THE GUILT

MILTON HANDLER, JR. - DIRECT/MR. THEOS

1 PHASE, YOU AS A JUROR, WOULD BE ABLE TO LISTEN TO
2 ALL THE FACTS AND ALL THE EVIDENCE THAT WOULD COME
3 FROM THAT WITNESS STAND AND MAKE A DECISION BASED
4 UPON ALL THOSE FACTS AS TO WHETHER OR NOT THE STATE
5 COULD PROVE TO YOU AS A JUROR BEYOND A REASONABLE
6 DOUBT AS TO THE GUILT OF MR. SIMMONS' GUILT;
7 CORRECT?

8 A. YES, SIR.

9 Q. AS I UNDERSTAND THE RESPONSES TO YOUR QUESTIONS
10 RELATED TO THE IMPOSITION OF THE SENTENCE, IF WE
11 WERE TO MAKE IT TO THE SECOND PHASE; IN OTHER WORDS
12 IF A JURY WERE TO FIND MR. SIMMONS GUILTY OF THE
13 MURDER ON ONE OR MORE OF THESE OTHER CHARGES; AS I
14 UNDERSTAND IT YOU'VE LABELED YOURSELF AS A JUROR
15 NUMBER THREE?

16 A. YES, SIR.

17 Q. AND LABELS ARE FUNNY SORTS OR THINGS. BUT, AGAIN,
18 THERE IS NO OTHER WAY TO DO THIS. BUT WHAT THAT
19 MEANS, AS THE JUDGE SAID, IS THAT AS THAT SORT OF
20 JUROR YOU CAN LISTEN TO ALL THE FACTS AND ALL OF
21 THE EVIDENCE IN THAT PENALTY PHASE BOTH IN
22 AGGRAVATION AND IN MITIGATION AS THE JUDGE
23 EXPLAINED THEM TO YOU. AND YOU UNDERSTAND WHAT
24 AGGRAVATION MEANS; THOSE AGGRAVATING FACTORS
25 WITHOUT GOING INTO WHAT THEY ARE SPECIFICALLY. DO

MILTON HANDLER, JR. - DIRECT/MR. THEOS

1 YOU UNDERSTAND WHAT AGGRAVATING FACTORS ARE IN
2 GENERAL?

3 A. I BELIEVE I DO.

4 Q. DO YOU UNDERSTAND THE CONCEPT OF MITIGATION?

5 A. YES.

6 Q. AND MITIGATING FACTORS?

7 A. YES, SIR.

8 Q. YOU'VE INDICATED THAT YOU WOULD BE ABLE TO LISTEN
9 TO BOTH?

10 A. YES, SIR.

11 Q. AND WEIGH THEM BOTH. AND BASED UPON THE SPECIFIC
12 FACTS THAT MIGHT BE OFFERED AND SPECIFIC EVIDENCE,
13 YOU COULD CONSIDER EITHER THE DEATH PENALTY AS AN
14 APPROPRIATE VERDICT OR LIFE IMPRISONMENT AS AN
15 APPROPRIATE VERDICT; CORRECT?

16 A. IT WOULD BE DIFFICULT; BUT YES.

17 Q. WELL, I GUESS ANY JUROR CONSIDERING THE GUILT OF
18 ANY PERSON RELATED TO ANY CRIME IS A DIFFICULT
19 TASK. DO YOU AGREE WITH THAT?

20 A. YES, SIR.

21 Q. AND CERTAINLY IN CONSIDERING THE PENALTY, THIS IS A
22 LITTLE UNUSUAL BECAUSE NORMALLY IN THE STATE OF
23 SOUTH CAROLINA THE JURY ONLY DETERMINES GUILT OR
24 INNOCENCE. AND IT'S LEFT TO THE JUDGE TO DETERMINE
25 WHAT AN APPROPRIATE SENTENCE SHOULD BE. THESE

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 CASES ARE A LITTLE UNUSUAL. THEY'RE LEFT IN THE
2 HANDS OF THE JURORS. AND, YES, THEY ARE DIFFICULT
3 DECISIONS CERTAINLY. BUT CONSIDERING HOW DIFFICULT
4 A DECISION IT IS, YOU'VE INDICATED THAT YOU'D BE
5 ABLE TO CONSIDER BOTH AND MAKE AN APPROPRIATE
6 DETERMINATION BASED UPON ALL OF THE EVIDENCE
7 OFFERED BOTH BY THE STATE AND THE DEFENDANT?

8 A. YES, SIR.

9 Q. AND IN CONSIDERING BOTH, YOU WOULD BE ABLE TO
10 RENDER AN APPROPRIATE SENTENCE WHETHER THAT BE THE
11 DEATH PENALTY OR WHETHER THAT BE LIFE IMPRISONMENT?

12 A. YES.

13 Q. THANK YOU, MR. HANDLER.

14 THE COURT: MR. BAILEY?

15 CROSS-EXAMINATION

16 BY MR. BAILEY:

17 Q. MR. HANDLER, I'M WALTER BAILEY. I'LL BE
18 PROSECUTING THE CASE. I'M GOING TO APOLOGIZE TO
19 YOU IN ADVANCE IF I ASK SOME OF THE SAME QUESTIONS
20 THAT THE JUDGE AND MR. THEOS DID. BUT AS MR. THEOS
21 SAID, THIS IS THE ONLY OPPORTUNITY WE HAVE TO TALK
22 TO JURORS BEFORE WE ACTUALLY PICK A JURY. SO WE
23 NEED TO MAKE SURE WE UNDERSTAND FULLY YOUR POSITION
24 ON THE DEATH PENALTY AND THESE OTHER ISSUES.

25 A. YES, SIR.

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 Q. ALL RIGHT, SIR. YOU UNDERSTAND THAT WE WOULD NOT
2 BE GETTING TO THE PENALTY PHASE UNLESS THE
3 DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST
4 PART OF THE TRIAL?

5 A. YES, SIR, I DO.

6 Q. THE REASON WE HAVE THE PENALTY PHASE IS TO ALLOW
7 THE INTRODUCTION OF ADDITIONAL EVIDENCE TO ASSIST
8 THAT JURY IN MAKING THE DECISION BETWEEN LIFE
9 WITHOUT PAROLE AND THE DEATH PENALTY. AND I WOULD
10 BE INTRODUCING EVIDENCE IN AGGRAVATION ON BEHALF OF
11 THE STATE TO TRY TO CONVINCE THE JURY TO BRING BACK
12 THE DEATH PENALTY. AND THE DEFENSE IF THEY WISHED
13 COULD INTRODUCE EVIDENCE IN MITIGATION TO TRY TO
14 PERSUADE THE JURY TO BRING BACK THE LIFE WITHOUT
15 PAROLE SENTENCE?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND THAT EVEN
18 THOUGH THE JUDGE AND THE LAWYER USES THE WORD
19 RECOMMENDATION AS FAR AS THE JURY'S DECISION IN THE
20 PENALTY STAGE, IT REALLY ISN'T A RECOMMENDATION
21 BECAUSE THE JUDGE IS GOING TO ORDER THAT TO BE
22 CARRIED OUT. IN OTHER WORDS THE JURY MAKES THE
23 DECISION. THE JUDGE WOULD ORDER THAT DECISION TO
24 BE PUT INTO EFFECT, AND IT WOULD BE CARRIED OUT.
25 SO IF THE JURY VOTES FOR LIFE WITHOUT PAROLE, JUDGE

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 PEEPLES WILL ORDER THAT. THAT DEFENDANT WILL SERVE
2 LIFE WITHOUT PAROLE. IF THE JURY VOTES FOR THE
3 DEATH SENTENCE, THE JUDGE WOULD ORDER IT AND MR.
4 SIMMONS WOULD BE EXECUTED. DO YOU UNDERSTAND THAT
5 PROCESS?

6 A. YES I DO, SIR.

7 Q. ALL RIGHT, SIR. AND YOU HAVE NOT HEARD ANY OF THE
8 FACTS OF THIS CASE, SO NOBODY IS GOING TO ASK YOU
9 TO PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE
10 YOU'D WANT TO HEAR EVERYTHING. BUT MY QUESTION IS
11 TO YOU, SIR; IF THE CASE IS BAD ENOUGH, COULD YOU
12 VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS
13 ACTUALLY GOING TO BE CARRIED OUT BASED ON THAT
14 JURY'S VOTE?

15 A. YES I CAN, SIR.

16 Q. IF THE JURY UNANIMOUSLY VOTES FOR THE DEATH
17 PENALTY, THEN EACH JUROR IS ASKED TO SIGN THEIR
18 NAME TO A VERDICT FORM THAT WOULD RESULT IN THAT
19 EXECUTION TAKING PLACE. COULD YOU SIGN THAT PAPER
20 IF YOU HAD VOTED ALONG WITH THE OTHER JURORS FOR
21 THE DEATH PENALTY?

22 A. IF I VOTED ON THAT; YES I COULD, SIR.

23 Q. AND COULD YOU COME OUT HERE IN COURT AFTER THE
24 DECISION WAS MADE BACK IN THE JURY ROOM?

25 A. SAY THAT AGAIN, SIR.

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 Q. COULD YOU COME OUT HERE ALONG WITH THE JURORS ONCE
2 THAT DECISION IS MADE IN THE JURY ROOM AND ANNOUNCE
3 IT OUT LOUD?

4 A. YES, I COULD.

5 Q. ALL RIGHT, SIR. DO YOU KNOW OF ANY REASON AT ALL
6 THAT WE MAY NOT HAVE EVEN TOUCHED ON YET THAT WOULD
7 PREVENT YOU FROM SERVING AS A FAIR AND IMPARTIAL
8 JUROR TO THE STATE AND TO THE DEFENSE?

9 A. NO.

10 Q. MR. HANDLER, THAT'S ALL I'VE GOT. THANK YOU VERY
11 MUCH.

12 THE COURT: ANYTHING FURTHER, MR.
13 THEOS?

14 MR. THEOS: NOTHING, YOUR HONOR.
15 MR. HANDLER, WHEN YOU WERE QUESTIONED ON YESTERDAY,
16 YOU HAD RESPONDED THAT YOU HAD -- YOU STOOD AND
17 WERE INQUIRED IF YOU HAD SEEN OR HEARD ANYTHING
18 ABOUT THIS CASE. HAVE YOU FORMED ANY OPINION ABOUT
19 THIS CASE?

20 MR. HANDLER: NO I HAVE NOT, YOUR
21 HONOR.

22 THE COURT: WHAT WAS THE SOURCE OF
23 YOUR INFORMATION?

24 MR. HANDLER: IT WAS IN THE
25 NEWSPAPER SATURDAY. AND BASICALLY ALL IT SAID WAS

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 WHAT THE DEFENDANT WAS CHARGED WITH AND THEY WERE
2 GOING TO SELECT A JURY MONDAY; A VERY SHORT LITTLE
3 ARTICLE IN THE PAPER.

4 THE COURT: ALL RIGHT. THANK YOU.

5 ALL RIGHT, MR. HANDLER; IF YOU WERE ASKED TO SERVE
6 AS A JUROR IN THIS CASE, YOU AND THE OTHER JURORS
7 WOULD BE HOUSED AT THE HOLIDAY INN, AND THE COUNTY
8 WOULD TAKE CARE OF YOUR EXPENSES FOR FOOD AND FOR
9 YOUR LODGING. AND I KNOW THAT'S GOING TO BE
10 INCONVENIENT TO ANYONE WHO IS AWAY FROM THEIR
11 FAMILY AND THEIR JOB. BUT OTHER THAN THE
12 INCONVENIENCE TO YOU, WOULD THAT TYPE OF SERVICE IN
13 ANY WAY POSE A SERIOUS RISK OF DANGER TO YOUR
14 HEALTH OR WELL-BEING OF THE HEALTH OR WELL-BEING OF
15 ANY MEMBER OF YOUR FAMILY?

16 A. NO, SIR.

17 Q. ALL RIGHT, SIR. SO, MR. HÄNDLER, I DEEM YOU TO BE
18 QUALIFIED AS A POTENTIAL JUROR IN THIS CASE. THAT
19 DOESN'T MEAN YOU'RE AUTOMATICALLY ON THE JURY. WE
20 HAVE ASKED THE OTHER JURORS WHO HAVE BEEN FOUND
21 QUALIFIED TO RETURN AT TWO O'CLOCK TOMORROW, ON
22 WEDNESDAY, TO THE COURTROOM HERE. WE ARE NOT
23 CERTAIN THAT WE'LL BE THROUGH WITH THE
24 QUESTIONING. WE WERE HERE UNTIL AFTER NINE LAST
25 NIGHT. AND WE HOPE THAT THINGS WILL STAY ON TRACK

MILTON HANDLER, JR. - CROSS/MR. BAILEY

1 BETTER TODAY. AND I DON'T SAY THAT -- IT'S NO
2 ONE'S FAULT. PLEASE UNDERSTAND, IT'S THE NATURE OF
3 THE BEAST. IN ANY EVENT, THERE'S A PHONE NUMBER
4 ATTACHED TO THIS DIRECTION SHEET HERE ABOUT
5 BRINGING ENOUGH CLOTHES FOR A WEEK OR SO AND
6 MEDICATIONS AND YOUR CAR AND CLOTHES. AND IF YOU'D
7 CALL THAT NUMBER AFTER SIX O'CLOCK TODAY, WE'RE
8 GOING TO ANTICIPATE AGAIN WHEN WE WOULD BE READY
9 FOR YOU. AND IF IT'S CHANGED FROM TWO O'CLOCK
10 TOMORROW, WE'LL HAVE A RECORDING ON THAT MACHINE.
11 SO UNLESS IT CHANGES, WE'LL LOOK FORWARD TO SEEING
12 YOU AT TWO TOMORROW. AND PLEASE DON'T DISCUSS WITH
13 OTHER JURORS ANY QUESTIONS THAT HAVE BEEN ASKED OF
14 YOU. PLEASE DON'T ALLOW YOURSELF TO BE EXPOSED TO
15 ANY PUBLICITY IN THIS CASE BECAUSE OBVIOUSLY YOU
16 DECIDE THE CASE BASED ON THE EVIDENCE IN THE
17 COURTROOM, NOT WHAT YOU MAY HEAR ON THE STREET OR
18 HEAR ON THE RADIO OR BROADCAST. THANK YOU. AND
19 YOU HAVE A NICE DAY.

20 MR. HANDLER: THANK YOU, SIR.

21 THE COURT: GENTLEMEN, HAVE YOU HAD
22 AN OPPORTUNITY TO REVIEW THE QUESTIONNAIRE FOR
23 JUROR NUMBER 195?

24 MR. BAILEY: YES, SIR.

25 THE COURT: WHICH WAS COMPLETED ONLY

BERNARD LEWIS - EXAM. BY THE COURT

1 THIS MORNING. SO IT OUGHT TO BE CURRENT
2 INFORMATION.

3 MR. BAILEY: YES, SIR.

4 THE COURT: AND ARE WE PREPARED AT
5 THIS TIME TO PROCEED?

6 MR. BAILEY: YES, SIR.

7 THE COURT: DEFENSE?

8 MR. THEOS: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. IF YOU WOULD
10 ASK THE JUROR WHOSE NAME IS MR. BERNARD LEWIS. HE
11 WENT TO DENMARK TECH OVER IN BAMBERG COUNTY.
12 (JUROR NUMBER 195, A BLACK MALE, IS CALLED.)

13 - - - - -

14 WHEREUPON,

15 BERNARD LEWIS, WHO BEING PREVIOUSLY
16 SWORN TO TELL THE TRUTH, TESTIFIED AS
17 FOLLOWS:

18 EXAMINATION

19 BY THE COURT:

20 Q. HAVE A SEAT THERE, MR. BERNARD LEWIS, JUROR NUMBER
21 195. GOOD MORNING TO YOU.

22 A. GOOD MORNING, SIR.

23 Q. MR. LEWIS, YOU WERE PUT UNDER OATH ON YESTERDAY;
24 AND YOU UNDERSTAND YOU'RE STILL UNDER OATH TO
25 ANSWER THESE QUESTIONS?

BERNARD LEWIS - EXAM. BY THE COURT

1 A. YES, SIR.

2 Q. SINCE WE VISITED WITH YOU ON YESTERDAY, HAS ANYBODY
3 TALKED TO YOU ABOUT THIS CASE? HAVE YOU DISCUSSED
4 IT WITH ANYONE OR BEEN EXPOSED TO ANY INFORMATION
5 ABOUT THE CASE?

6 A. NO, SIR.

7 Q. HAVE YOU READ ANYTHING IN THE NEWSPAPERS, HEARD ON
8 THE RADIO, OR KNOW ANYTHING ABOUT THIS CASE?

9 A. NO, SIR.

10 Q. HAVE YOU FORMED ANY OPINION OR VIEW ABOUT THE FACTS
11 OF THIS CASE?

12 A. NO, SIR.

13 Q. AND COULD YOU GIVE A FAIR TRIAL TO THE DEFENDANT
14 AND THE STATE IN THIS CASE?

15 A. YES, SIR.

16 Q. IF YOU WERE CHOSEN AS A JUROR IN THIS CASE, COULD
17 YOU LISTEN TO THE EVIDENCE AND DECIDE THE CASE
18 BASED ON THE EVIDENCE AND PUT ASIDE ANY VIEWS THAT
19 YOU MAY HAVE ABOUT ANYTHING OTHER THAN BASING IT ON
20 THE FACTS OF CASE?

21 A. YES, SIR.

22 Q. AND YOU UNDERSTAND WE'RE NOT TRYING TO INVADE YOUR
23 PRIVACY, BUT WE NEED TO FIND A LITTLE BIT ABOUT
24 YOUR VIEWS ON THINGS. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

BERNARD LEWIS - EXAM. BY THE COURT

1 Q. IF YOU WERE A JUROR IN THIS CASE AND YOU WERE
2 INSTRUCTED AS TO THE LAW BY THE COURT, COULD YOU
3 APPLY THE LAW OF THE CASE TO THE FACTS EVEN THOUGH
4 YOU MAY DISAGREE WITH THE LAW?

5 A. YES, SIR; ACCORDING TO THE FACTS.

6 Q. ACCORDING TO THE FACTS THAT YOU FIND. BUT WOULD
7 YOU ACCEPT THE LAW AS BEING THE CORRECT LAW?

8 A. YES, SIR.

9 Q. AND DO YOU THINK THAT JUST BECAUSE SOMEBODY IS
10 CHARGED WITH A CRIME THAT THEY'RE AUTOMATICALLY
11 GUILTY OF A CRIME?

12 A. YES, SIR.

13 Q. DO YOU UNDERSTAND THAT EVERY DEFENDANT, EVEN THOUGH
14 THEY'RE CHARGED WITH A CRIME, IS PRESUMED
15 INNOCENT? THEY'RE BELIEVED OR THOUGHT TO BE
16 INNOCENT UNTIL THE STATE PROVES THEIR GUILT. SO
17 HOW COULD THEY AUTOMATICALLY BE GUILTY OF A CRIME
18 IF THE STATE HASN'T PROVEN THEIR GUILT?

19 A. (NO RESPONSE.)

20 Q. IN OTHER WORDS, LET ME EXPLAIN TO YOU -- PERHAPS MY
21 QUESTION WASN'T CLEAR, MR. LEWIS. THE LAW IS THAT
22 EVERY PERSON IS THOUGHT OR BELIEVED TO BE INNOCENT
23 OF THE CRIME ALTHOUGH HE'S CHARGED WITH THE CRIME
24 UNTIL AND UNLESS THE STATE REMOVES THAT CLOAK OR
25 ROBE OF INNOCENCE BY EVIDENCE FROM THE WITNESS

BERNARD LEWIS - EXAM. BY THE COURT

1 STAND THAT'S ADMISSIBLE INTO EVIDENCE, THE STATE
2 HAS TO PROVE BEYOND A REASONABLE DOUBT A PERSON IS
3 GUILTY. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. AND THE FACT THAT SOMEBODY'S CHARGED WITH A CRIME
6 DOESN'T MAKE THEM AUTOMATICALLY GUILTY?

7 A. YES, SIR.

8 Q. AND YOU UNDERSTAND THAT THE DEFENDANT HAS NO
9 BURDEN, OR DOES NOT HAVE TO INTRODUCE EVIDENCE,
10 DOES NOT HAVE TO TAKE THE WITNESS STAND, BECAUSE
11 THEY ARE PRESUMED INNOCENT. DO YOU UNDERSTAND
12 THAT?

13 A. YES, SIR.

14 Q. THERE ARE TWO PHASES TO A CAPITAL MURDER, A DEATH
15 PENALTY CASE. ONE IS THE GUILT PHASE. THE OTHER
16 IS THE PENALTY PHASE ASSUMING THAT THESE QUESTIONS
17 THAT THE STATE HAS PROVEN GUILT BEYOND A REASONABLE
18 DOUBT, THE JURY HAS FOUND THE DEFENDANT GUILTY OF
19 MURDER. THEN WE'D GO TO THE PENALTY PHASE. IN
20 THAT PENALTY PHASE THE STATE WOULD HAVE THE BURDEN
21 OR THE RESPONSIBILITY TO PROVE THE GUILT OF THE
22 DEFENDANT BEYOND A REASONABLE DOUBT AND MUST PROVE
23 ONE OR MORE STATUTORY AGGRAVATING CIRCUMSTANCES
24 SUCH AS THE FACT THAT THE CRIME OF MURDER WAS
25 COMMITTED WHILE IN THE ACT OF AN ARMED ROBBERY OR

BERNARD LEWIS - EXAM. BY THE COURT

1 C.S.C., CRIMINAL SEXUAL CONDUCT, OR BURGLARY,
2 BREAKING AND ENTERING A HOUSE IN THE NIGHTTIME WITH
3 INTENT TO COMMIT A FELONY THEREIN. AND IF THE
4 STATE PROVES BEYOND A REASONABLE DOUBT ONE OF THOSE
5 STATUTORY AGGRAVATING CIRCUMSTANCES, COULD YOU
6 RETURN A VERDICT OF THE DEATH PENALTY?

7 A. DEPENDING ON THE CRIME AND THE CIRCUMSTANCES.

8 Q. ALL RIGHT.

9 A. DEPENDING ON THE CASE. IF IT'S -- LIKE FOR ME,
10 SOMETHING TO DO WITH KIDS OR MURDERS LIKE THAT, I'D
11 GO WITH THE DEATH PENALTY FOR THAT.

12 Q. NOW, IF THE DEFENDANT INTRODUCED EVIDENCE OF
13 MITIGATING WHICH MEANS TO LIGHTEN UP OR TO LESSON
14 THE CIRCUMSTANCES, OR THE LAW IS THAT THE JURY CAN
15 RECOMMEND MERCY AND RETURN A RECOMMENDATION OF LIFE
16 IMPRISONMENT WITHOUT PAROLE COULD YOU, IF THE
17 EVIDENCE WARRANTED IT, RETURN A LESSER PENALTY OF
18 LIFE IMPRISONMENT WITHOUT PAROLE? COULD YOU VOTE
19 AS A JUROR TO RETURN THAT VERDICT OF LIFE
20 IMPRISONMENT WITHOUT PAROLE ALTHOUGH IT WAS A
21 MURDER CASE?

22 A. YES, SIR.

23 Q. YOU'VE GOT A SHEET OF PAPER IN YOUR HAND THAT
24 EXPLAINS THREE TYPES OF JURORS. DO YOU UNDERSTAND
25 THOSE THREE TYPES?

BERNARD LEWIS - EXAM. BY THE COURT

1 A. YES, SIR.

2 Q. WHICH OF THOSE THREE DO YOU FALL UNDER?

3 A. (NO RESPONSE.)

4 Q. LET ME MAKE SURE YOU UNDERSTAND. JUROR NUMBER ONE
5 IS A JUROR WHO SAYS AND BELIEVES THAT THE DEATH
6 PENALTY SHOULD BE IMPOSED EACH AND EVERY TIME THAT
7 SOMEONE IS FOUND GUILTY OF MURDER. JUROR NUMBER
8 TWO, REGARDLESS OF THE CIRCUMSTANCES OF WHETHER
9 IT'S A HORRENDOUS OR BRUTAL OR TERRIBLE TYPE
10 MURDER, THAT JUROR NUMBER TWO WOULD ALWAYS VOTE FOR
11 LIFE IMPRISONMENT WITHOUT PAROLE. THEY'RE JUST
12 OPPOSED TO THE DEATH PENALTY UNDER ANY
13 CIRCUMSTANCE. AND THE THIRD JUROR IS THAT JUROR
14 WHO WOULD COME IN WITH AN OPEN MIND AND BE
15 OBJECTIVE AND DOES NOT HAVE EXTREME VIEWS ONE WAY
16 OR THE OTHER BUT IS WILLING TO LISTEN TO THE
17 TESTIMONY, TO LISTEN TO THE EVIDENCE. AND IF THEY
18 CONSCIENTIOUSLY AND HONESTLY FIND THAT THE
19 RECOMMENDATION SHOULD BE LIFE IMPRISONMENT WITHOUT
20 PAROLE, THAT'S WHAT THEY WOULD VOTE TO DO. IF THEY
21 FIND IT SHOULD BE A DEATH PENALTY, THAT'S WHAT THE
22 THIRD JUROR WOULD BE. NOW, DO YOU FALL IN CATEGORY
23 ONE, TWO, OR THREE? AND THERE'S NO WRONG ANSWER,
24 MR. LEWIS. YOU'RE GOING TO MAKE 100 ON THIS TEST
25 ANY WAY WE GRADE IT.

BERNARD LEWIS - DIRECT/MR. BAILEY

1 A. NUMBER THREE.

2 Q. YOU'RE NUMBER THREE?

3 A. YES, SIR.

4 THE COURT: ALREADY, GENTLEMEN. YOU
5 MAY PROCEED.

6 MR. BAILEY: THANK YOU, YOUR HONOR.

7 DIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q. MR. LEWIS, I'M WALTER BAILEY. I WANT TO ASK YOU A
10 FEW MORE QUESTIONS FOLLOWING UP ON WHAT THE JUDGE
11 ASKED YOU BECAUSE I'LL BE PROSECUTING THIS CASE ON
12 BEHALF OF THE STATE ALONG WITH THESE OTHER LAWYERS
13 HERE. AND LIKE THE JUDGE SAID, THERE ARE NO RIGHT
14 OR WRONG ANSWERS. WE JUST NEED TO KNOW HOW YOU
15 FEEL ABOUT THE DEATH PENALTY AND SOME OF THESE
16 OTHER ISSUES. DO YOU UNDERSTAND THAT THE FIRST
17 PART OF THE TRIAL IS LIKE ANY OTHER CRIMINAL CASE
18 WHERE THE JURY IS JUST THERE TO DETERMINE WHETHER
19 OR NOT THE STATE CAN PROVE THAT DEFENDANT GUILTY
20 BEYOND A REASONABLE DOUBT?

21 A. YES, SIR.

22 Q. AND IF FOR SOME REASON THE STATE CAN'T PROVE THAT
23 TO THE JURY'S SATISFACTION, THEY'D FIND HIM NOT
24 GUILTY AND THAT WOULD BE THE END OF IT?

25 A. YES, SIR.

BERNARD LEWIS - DIRECT/MR. BAILEY

1 Q. DO YOU UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. IF THE JURY, HEARING ALL THE FACTS, FINDS THAT
4 DEFENDANT GUILTY OF MURDER THEN WE GO INTO THE
5 SECOND PART OF THE TRIAL. AND THAT SECOND PART OF
6 THE TRIAL IS TO ALLOW THE INTRODUCTION OF
7 ADDITIONAL EVIDENCE THAT MAY NOT HAVE COME IN IN
8 THE FIRST PART OF THE CASE. I'D BE PUTTING UP
9 EVIDENCE IN AGGRAVATION TO TRY TO PERSUADE THE JURY
10 TO BRING BACK THE DEATH PENALTY. AND THE DEFENSE,
11 IF IT WANTS TO, CAN PUT UP EVIDENCE IN MITIGATION
12 TO TRY AND GET THE JURY TO COME BACK WITH LIFE
13 WITHOUT PAROLE. THE JUDGE WOULD GIVE THE JURY
14 INSTRUCTIONS TO FOLLOW WHEN THEY DELIBERATE. AND
15 THE JURY WOULD DECIDE WHETHER HE GETS THE DEATH
16 PENALTY OR LIFE WITHOUT PAROLE. IN OTHER WORDS, IT
17 ISN'T A RECOMMENDATION ALTHOUGH WE CALL IT THAT.
18 BUT THE JUDGE IS GOING TO ORDER WHATEVER THAT JURY
19 SAYS THE VERDICT IS TO BE CARRIED OUT. IF THE JURY
20 SAYS LIFE WITHOUT PAROLE, THE JUDGE WOULD ORDER
21 THAT. THE DEFENDANT SERVES LIFE WITHOUT PAROLE. IF
22 THE JURY VOTES FOR THE DEATH PENALTY, THE JUDGE
23 WOULD ORDER THAT, AND THAT PERSON IS ACTUALLY GOING
24 TO BE EXECUTED. SO I JUST WANTED TO MAKE SURE YOU
25 UNDERSTOOD THE TWO PART PROCESS WE'VE BEEN GOING

1 THROUGH HERE.

2 A. YES, SIR.

3 Q. ALL RIGHT, SIR. NOW NOBODY IS GOING TO ASK YOU TO
4 PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU
5 HAVEN'T HEARD ANY OF THE FACTS YET. BUT MY
6 QUESTION IS IF THE FACTS WERE BAD ENOUGH, COULD YOU
7 VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE
8 WOULD ACTUALLY BE CARRIED OUT?

9 A. YES, SIR.

10 Q. COULD YOU SIGN YOUR NAME TO A VERDICT FORM ALONG
11 WITH THE OTHER JURORS IF ALL TWELVE JURORS VOTED
12 FOR THE DEATH PENALTY KNOWING THAT SENTENCE WOULD
13 BE CARRIED OUT?

14 A. YES.

15 Q. AND THERE'S A PROCESS CALLED POLLING THE JURY WHERE
16 AFTER THE JURY REACHES THEIR DECISION, THEY WOULD
17 COME OUT HERE AND EACH JUROR'S NAME IS CALLED OUT,
18 AND THEY'D BE ASKED TO SAY OUT LOUD IF THAT WAS
19 THEIR VERDICT. COULD YOU DO THAT IF THAT WAS YOUR
20 VERDICT?

21 A. YES, SIR.

22 Q. THE JURY IS GOING TO BE PUT UP IN A MOTEL FOR
23 ROUGHLY A WEEK UNTIL THE TRIAL IS OVER. WOULD THAT
24 CREATE ANY KIND OF AN UNDUE HARDSHIP WITH YOU IN
25 YOUR SITUATION?

BERNARD LEWIS - DIRECT/MR. BAILEY

1 A. NO, SIR.

2 Q. OKAY. DO YOU KNOW OF ANY REASON AT ALL THAT WOULD
3 PREVENT YOU FROM SERVING AS A FAIR AND IMPARTIAL
4 JUROR BOTH TO THE DEFENSE AND TO THE STATE?

5 A. NO, SIR.

6 Q. THAT'S ALL I HAVE. THANK YOU.

7 THE COURT: MR. THEOS?

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. MR. LEWIS, MY NAME IS JERRY THEOS. I AND JIM BELL
11 ARE THE ATTORNEYS WHO REPRESENT MR. SIMMONS. AND
12 MR. SIMMONS IS SITTING NEXT TO MR. BELL. THANK YOU
13 FOR COMING. AS THE JUDGE STATED, WE ARE NOT HERE
14 TO PASS JUDGMENT ON YOU AND YOUR RESPONSES AND NOT
15 TO GRADE YOU IN ANY WAY ON THE ANSWERS TO THESE
16 QUESTIONS. WE REALLY ARE TRYING TO FIND OUT YOUR
17 TRUE FEELINGS ABOUT CERTAIN THINGS AND THE
18 PENALTIES; THE DEATH PENALTY AND LIFE IMPRISONMENT
19 WITHOUT PAROLE. AND AGAIN, AS THE JUDGE SAID, WE
20 DON'T PASS ANY JUDGMENT ON WHAT THOSE RESPONSES
21 ARE. ALL WE ASK IS THAT YOU WOULD BE COMPLETELY
22 HONEST WITH YOUR RESPONSES, OKAY?

23 A. YES, SIR.

24 Q. WHAT IS YOUR OPINION ABOUT THE DEATH PENALTY?

25 A. WELL, TO ME IT DEPENDS ON THE CRIME. YOU KNOW, I

1 THINK EVERYBODY DESERVES ANOTHER CHANCE. BUT SOME
2 CRIMES IT IS UNBEARABLE, YOU KNOW. THAT'S THE ONLY
3 WAY YOU CAN GET BY IS WITH THE DEATH PENALTY.

4 Q. DO YOU THINK IN THOSE SITUATIONS YOU COULD CONSIDER
5 A PENALTY OTHER THAN THE DEATH PENALTY?

6 MR. BAILEY: JUDGE, I'M GOING TO
7 OBJECT TO HIM. I THINK HE'S ASKING A
8 HYPOTHETICAL.

9 THE COURT: COUNSELOR, I'M GOING TO
10 SUSTAIN IT. YOU'RE GOING TO HAVE TO REPHRASE THE
11 QUESTION.

12 MR. THEOS: YES, SIR.

13 Q. MR. LEWIS, DO YOU UNDERSTAND WHAT MR. SIMMONS HAS
14 BEEN CHARGED WITH MURDER. AND YOU UNDERSTAND HE'S
15 BEEN INDICTED FOR THAT; IS THAT CORRECT?

16 A. YES, SIR.

17 Q. THE JUDGE ASKED YOU A QUESTION INITIALLY ABOUT
18 WHETHER OR NOT YOU FELT THAT BECAUSE SOMEONE WAS
19 CHARGED WITH A CRIME THEY WERE GUILTY; AND YOU
20 RESPONDED THAT YOU DID FEEL THEY WERE GUILTY
21 INITIALLY; IS THAT RIGHT?

22 A. YES, SIR.

23 Q. DO YOU HAVE AN OPINION AS TO THE GUILT OF MR.
24 SIMMONS BECAUSE HE'S BEEN CHARGED WITH MURDER AND
25 THESE OTHER CHARGES; CRIMINAL SEXUAL CONDUCT,

BERNARD LEWIS - CROSS/MR. THEOS

1 BURGLARY AND ARMED ROBBERY? DO YOU HAVE AN OPINION
2 AS TO MR. SIMMONS' GUILT BECAUSE HE'S BEEN CHARGED
3 WITH THOSE THINGS?

4 A. NO, SIR.

5 Q. DO YOU HAVE AN OPINION AS TO MR. SIMMONS' GUILT
6 BECAUSE HE IS SITTING HERE ON TRIAL?

7 A. NO, SIR.

8 Q. HAVE YOU FORMED AN OPINION ABOUT MR. SIMMONS' GUILT
9 IN LIGHT OF THE FACT WE'VE BEEN TALKING ABOUT
10 POSSIBLE PENALTIES OR POSSIBLE PUNISHMENT BECAUSE
11 MR. SIMMONS HASN'T BEEN TRIED AT THIS POINT?

12 A. NO, SIR.

13 Q. DO YOU UNDERSTAND THAT BEFORE WE COULD EVEN GET TO
14 THE STAGE OF THE CASE WHERE YOU AS A JUROR MIGHT BE
15 CALLED UPON TO CONSIDER PUNISHMENT, LIFE
16 IMPRISONMENT WITHOUT PAROLE OR THE DEATH PENALTY;
17 DO YOU UNDERSTAND THAT THE JURY WOULD FIRST HAVE TO
18 HEAR THE CASE TO DETERMINE WHETHER OR NOT MR.
19 SIMMONS WAS GUILTY FOR WHAT HE WAS CHARGED WITH?

20 A. YES, SIR.

21 Q. DO YOU FEEL THAT MR. SIMMONS WOULD HAVE TO PROVE
22 ANYTHING TO YOU AS A JUROR? DO YOU FEEL LIKE HE'D
23 HAVE TO PROVE HIS INNOCENCE?

24 A. YES.

25 Q. WHY DO YOU FEEL THAT WAY?

1 A. HE'S BEEN CHARGED WITH FIVE DIFFERENT THINGS. HE'D
2 HAVE TO PROVE HIS INNOCENCE.

3 Q. HOW WOULD YOU LOOK TO MR. SIMMONS TO TRY TO PROVE
4 THAT?

5 A. THE FACTS OF THE CASE.

6 Q. IF MR. SIMMONS WERE UNABLE TO PROVE HIS INNOCENCE,
7 WOULD YOU THEN FIND THAT HE WAS GUILTY OF WHAT THE
8 STATE HAD CHARGED HIM WITH?

9 A. THAT'S ACCORDING TO THE LAW; SO, YES, SIR.

10 Q. NOW YOU'VE HEARD WHAT THE CHARGES ARE AGAIN. AND I
11 WON'T GO THROUGH THEM. BUT I JUST MENTIONED WHAT
12 THEY ARE AND WHAT THEY WERE A LITTLE WHILE AGO;
13 CORRECT?

14 A. YES, SIR.

15 Q. NOW IF YOU WERE SITTING ON THAT JURY AND WE WERE IN
16 THE SECOND PHASE OF THE TRIAL; LET'S ASSUME FOR A
17 MINUTE THAT THE JURY HAD FOUND MR. SIMMONS GUILTY
18 OF THOSE CHARGES, OKAY? IF THE JURY AND YOU AS A
19 JUROR WERE SITTING ON THAT JURY AND MR. SIMMONS
20 WERE FOUND GUILTY, COULD YOU CONSIDER ANY SENTENCE
21 OTHER THAN THE DEATH PENALTY?

22 A. LIFE IMPRISONMENT.

23 Q. YOU COULD CONSIDER LIFE IMPRISONMENT?

24 A. YES, SIR.

25 Q. WHY IS THAT?

BERNARD LEWIS - CROSS/MR. THEOS

1 A. LIKE I SAID, IT'S DEPENDING ON THE CASE AND FACTS.

2 Q. IN SPITE OF THE FACT THAT MR. SIMMONS WOULD HAVE
3 BEEN CONVICTED OF MURDER---

4 MR. BAILEY: OBJECTION; ASKED AND
5 ANSWERED.

6 THE COURT: YES, SIR; ASKED AND
7 ANSWERED.

8 Q. YOU WOULD CONSIDER BOTH PENALTIES?

9 A. YES.

10 Q. YOU WOULD LISTEN TO EVERYTHING MR. BAILEY AND HIS
11 OFFICE OFFERED TO TRY TO PERSUADE YOU TO SENTENCE
12 MR. SIMMONS TO DEATH?

13 A. NO.

14 Q. AND YOU WOULD LISTEN TO EVERYTHING THAT MR. BELL
15 AND I OFFERED ON BEHALF OF MR. SIMMONS?

16 A. NO.

17 Q. YOU WOULD NOT?

18 A. NO.

19 Q. LET ME TRY TO CLARIFY IT. WOULD YOU LISTEN TO
20 EVERYTHING -- WHEN WE GET TO THE PHASE, THE PENALTY
21 PHASE, WOULD YOU---

22 THE COURT: HE UNDERSTANDS THE
23 QUESTIONS OF THE LAWYERS AREN'T EVIDENCE. HE'S
24 PRETTY SMART. ASK HIM ANOTHER WAY.

25 Q. WOULD YOU BE WILLING TO LISTEN TO BOTH SIDES AND

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1 CONSIDER EVERYTHING THE STATE HAD TO OFFER IN THE
2 PENALTY PHASE AS WELL AS WHAT MR. BELL AND I
3 OFFERED ON MR. SIMMONS' BEHALF ON THE PENALTY PHASE
4 BEFORE MAKING A DECISION?

5 A. YES.

6 Q. AS TO THE APPROPRIATE SENTENCE?

7 A. YES, SIR.

8 Q. THE ONLY THING I'M CONCERNED ABOUT, MR. LEWIS, IS
9 THE STATEMENT THAT YOU WOULD LOOK TO MR. SIMMONS TO
10 PROVE HIS INNOCENCE. THE JUDGE HAS INDICATED TO
11 YOU WHEN YOU RESPONDED PREVIOUSLY THAT MR. SIMMONS
12 DOESN'T HAVE TO PROVE ANYTHING. DO YOU UNDERSTAND
13 THAT?

14 A. YES, SIR.

15 Q. AND THE JUDGE HAS ALSO TOLD YOU THAT IF MR. SIMMONS
16 CHOOSSES, HE DOESN'T HAVE TO TAKE THE STAND. HE
17 DOESN'T HAVE TO TESTIFY. DO YOU UNDERSTAND THAT?

18 A. YES.

19 Q. WOULD YOU PRESUME MR. SIMMONS GUILTY IF HE DIDN'T
20 TESTIFY?

21 MR. BAILEY: YOUR HONOR, I OBJECT TO
22 THAT QUESTION. I THINK THAT WOULD IN PART DEPEND
23 ON WHAT CAME OUT IN THE FIRST PART OF THE TRIAL.

24 THE COURT: WELL, AND OF COURSE ALSO
25 THE COURT WOULD INSTRUCT THE JURY THAT THE FACT

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1 THAT A DEFENDANT DOES NOT TESTIFY RAISES NO
2 INFERENCE OF THE PRESUMPTION OF GUILT OR
3 INNOCENCE. THE FACT THE DEFENDANT DOES NOT TAKE
4 THE WITNESS STAND MUST NOT ENTER INTO THE
5 DELIBERATIONS IN ANY MANNER WHATSOEVER AND CAN'T BE
6 HELD AGAINST HIM BECAUSE THE DEFENDANT HAS A RIGHT
7 NOT TO TAKE THE WITNESS STAND AS WE KNOW THE LAW TO
8 BE. SO IT'S A DIFFICULT SITUATION, MR. THEOS,
9 WHERE BEFORE HE'S TOLD WHAT THE LAW IS, YOU KNOW,
10 YOU'RE ASKING HIM WHAT HE WOULD DO BASED ON THE
11 LAW. AND HE HASN'T HAD THE BENEFIT OF THE LAW
12 BEING EXPLAINED TO HIM.

13 MR. THEOS: YOUR HONOR, I GUESS MY
14 QUESTION IS DOES HE HAVE ANY PRECONCEIVED NOTIONS
15 IF SOMEBODY---

16 THE COURT: WELL, IF THAT BE YOUR
17 QUESTION, THEN WHAT YOU NEED TO DO, MR. COUNSELOR,
18 IS SAY THAT THE LAW IS A, B, AND C; COULD YOU
19 FOLLOW THAT LAW, OR YOU DON'T AGREE WITH THAT LAW.
20 BUT HE IS ENTITLED TO THE BENEFIT OF KNOWING WHAT
21 THE LAW IS. YOU'RE TRAINED IN THE LAW; YOU KNOW
22 IT. BUT---

23 Q. MR. LEWIS, AS THE JUDGE INDICATED TO YOU INITIALLY,
24 A PERSON ON TRIAL DOES NOT HAVE TO PRESENT A
25 DEFENSE. THEY DON'T HAVE TO PROVE ANYTHING, AND