

VOLUME TWO OF ELEVEN

[PP. 0501-1000]

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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STATE’S EXHIBIT #18b (CD 2 OF 2) [VIDEO DEPOSITION]

BERNARD LEWIS - CROSS/MR. THEOS

1 THEY ALSO DO NOT HAVE TO TESTIFY. THEY'VE GOT A
2 CONSTITUTIONAL RIGHT NOT TO TESTIFY. DO YOU
3 UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. UNDERSTANDING THAT; MY QUESTION IS: IF MR. SIMMONS
6 DID NOT TESTIFY, WOULD YOU PRESUME GUILT BASED UPON
7 THE FACT THAT HE DID NOT TESTIFY?

8 A. NO, SIR.

9 Q. YOU WOULD BE WILLING TO APPLY THE LAW AS THE JUDGE
10 GIVES YOU RELATED TO MR. SIMMONS' RIGHT NOT TO
11 TESTIFY AND OFFER ANY DEFENSE?

12 A. YES, SIR.

13 Q. AND HOLD THE STATE TO THE BURDEN OF PROVING MR.
14 SIMMONS' GUILT BEYOND A REASONABLE DOUBT?

15 A. YES, SIR.

16 Q. REGARDLESS OF WHETHER OR NOT MR. SIMMONS TESTIFIED?

17 A. YES, SIR.

18 MR. THEOS: NO OTHER QUESTIONS, YOUR
19 HONOR.

20 THE COURT: ANY FURTHER QUESTIONS?

21 MR. BAILEY: NO, SIR.

22 THE COURT: ALL RIGHT. WOULD Y'ALL
23 LIKE FOR HIM TO STEP OUTSIDE, GENTLEMEN?

24 MR. BAILEY: NO, SIR.

25 MR. THEOS: NO, SIR.

1 THE COURT: ALL RIGHT. MR. BERNARD
2 LEWIS; THE COURT FINDS THAT YOU ARE QUALIFIED TO
3 SERVE AS A JUROR IN THIS CASE. THAT DOESN'T MEAN
4 THAT YOU WILL BE CALLED. WHAT TYPE WORK DO YOU DO,
5 SIR?

6 MR. LEWIS: I'M UNEMPLOYED RIGHT
7 NOW. I JUST GOT OUT OF THE MILITARY.

8 THE COURT: YOU WHAT?

9 MR. LEWIS: I JUST GOT OUT OF THE
10 MILITARY.

11 THE COURT: WHEN DID YOU GET OUT OF
12 THE MILITARY?

13 MR. LEWIS: NOVEMBER OF LAST YEAR.

14 THE COURT: NOVEMBER OF LAST YEAR?
15 AND WE'RE GOING TO HAVE THE JURORS WHO HAVE BEEN
16 FOUND QUALIFIED TO RETURN TOMORROW AT TWO O'CLOCK.
17 THERE'S A PHONE NUMBER ON THAT SHEET. AND IF WOULD
18 CALL THAT NUMBER AFTER SIX TODAY BECAUSE WE MAY BE
19 ON SCHEDULE. WE MAY BE OFF SCHEDULE. AND WE WANT
20 TO MINIMIZE ANY DOWN TIME OR WAITING TIME. SO YOU
21 ARE IN THE QUALIFIED JURY POOL. PLEASE DON'T
22 DISCUSS THIS CASE WITH ANYBODY OR LET ANYBODY
23 EXPOSE YOU TO ANYTHING ABOUT THIS CASE. DON'T READ
24 ABOUT IT IN THE PAPERS OR LISTEN TO T.V. AND
25 RADIO. AND WE'LL LOOK TO SEE YOU AT TWO O'CLOCK

THEODORE ANZELL - EXAMINATION BY THE COURT

1 EXPOSE YOU TO ANYTHING ABOUT THIS CASE. DON'T READ
2 ABOUT IT IN THE PAPERS OR LISTEN TO T.V. AND
3 RADIO. AND WE'LL LOOK TO SEE YOU AT TWO O'CLOCK
4 TOMORROW. THANK YOU, MR. LEWIS. ALL RIGHT, MA'AM.

5 IF YOU WOULD BRING THE NEXT JUROR IN WHICH WILL
6 BE THEODORE M. ANZELL, A-N-Z-E-L-L, PLEASE.

7 (JUROR NUMBER 10, A WHITE MALE, IS CALLED.)

8 THE COURT: THANK YOU FOR BEING HERE
9 PRESENT WITH US. THIS IS JUROR NUMBER TEN, MR.
10 THEODORE ANZELL.

11 - - - - -
12 WHEREUPON,

13 THEODORE M. ANZELL, WHO BEING PREVIOUSLY
14 SWORN TO TELL THE TRUTH, TESTIFIED AS
15 FOLLOWS:

16 EXAMINATION

17 BY THE COURT:

18 Q. MR. THEODORE ANZELL; I PLEASE THANK YOU FOR BEING
19 HERE PRESENT WITH US. THIS IS JUROR NUMBER 10.
20 AND MR. ANZELL, ON YESTERDAY YOU WERE GIVEN AN
21 OATH. AND YOU UNDERSTAND THAT OATH STILL APPLIES
22 TO YOU AT THIS TIME?

23 A. YES, SIR, I DO.

24 Q. AND HAVE YOU -- ARE THERE ANY CHANGES THAT YOU FEEL
25 NECESSARY ON THIS QUESTIONNAIRE THAT YOU HAD

THEODORE ANZELL - EXAM. BY THE COURT

1 Q. SURE. THAT'S A COPY OF IT.

2 A. IT'S BEEN A FEW DAYS. (JUROR REVIEWS DOCUMENT.)

3 NO, SIR; NO CHANGES.

4 Q. NOW, YOU HAD INDICATED DURING THE QUESTIONING ON
5 YESTERDAY; YOU STOOD WHEN ASKED IF YOU HAD HEARD OR
6 READ ANYTHING ABOUT THIS CASE. COULD YOU TELL US
7 WHAT INFORMATION YOU HAVE ABOUT THIS CASE, PLEASE?

8 A. JUST WHAT I READ IN THE POST AND COURIER AND WHAT
9 WAS ON T.V. IT'S BEEN SO LONG AGO; I JUST VAGUELY
10 REMEMBER IT.

11 Q. AND THE PURPOSE OF MY ASKING YOU THE QUESTION, MR.
12 ANZELL, IS TO INQUIRE: HAVE YOU EXPRESSED OR
13 FORMED AN OPINION IN THIS CASE?

14 A. NO, SIR.

15 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
16 THE STATE OR THE DEFENDANT?

17 A. NO, SIR.

18 Q. AND IF YOU WERE CHOSEN AS A JUROR IN THIS CASE, THE
19 COURT WOULD INSTRUCT YOU AS TO THE LAW APPLICABLE
20 TO THE FACTS OF THE CASE, AND THE JURY WOULD THEN
21 MAKE A FACTUAL DETERMINATION. DO YOU FEEL THAT YOU
22 COULD LISTEN TO THE INSTRUCTION OF THE LAW AND THEN
23 APPLY THAT LAW TO THE FACTS AS JURY MAY FIND THE
24 FACTS TO BE?

25 A. YES, SIR.

THEODORE ANZELL - EXAM. BY THE COURT

1 Q. AND PLEASE UNDERSTAND, MR. ANZELL, IT'S NECESSARY
2 THAT WE ASK THESE QUESTIONS. AND WE'RE NOT TRYING
3 TO INVADE YOUR PRIVACY. CERTAINLY EVERYBODY IS
4 ENTITLED TO THEIR VIEWS ON MATTERS. WE'RE JUST
5 TRYING TO UNDERSTAND WHAT YOUR VIEWS ARE AND TO
6 MAKE SURE THAT YOU COULD GIVE A FAIR TRIAL TO BOTH
7 THE STATE AND THE DEFENDANT. IN OTHER WORDS, WHEN
8 YOU START THE TRIAL OF THE CASE, YOU START WITH A
9 CLEAN SLATE. EVERY PERSON IS THE SUBJECT OF THEIR
10 ENVIRONMENT THROUGH THE YEARS AND HAS THEIR VIEWS
11 ON WHETHER THEY PULL FOR THE COLLEGE OF CHARLESTON
12 COUGARS OR THE CLEMSON TIGERS OR THE CAROLINA
13 PANTHERS OR THE JACKSONVILLE JAGUARS IF YOU'RE
14 DEALING WITH ANIMALS. BUT IN A TRIAL OF THE CASE,
15 YOU DON'T LEAVE YOUR COMMON SENSE IN THE PARKING
16 LOT, BUT YOU START WITH A CLEAN SLATE, AND THE
17 STATE HAS THE BURDEN OF PROVING GUILT OF THE
18 DEFENDANT BEYOND A REASONABLE DOUBT.

19 THE DEFENDANT IS PRESUMED OR
20 THOUGHT TO BE INNOCENT FROM THE TIME OF HIS ARREST
21 THROUGHOUT THE TRIAL AND UNTIL THE JURY BY A
22 UNANIMOUS VERDICT HAS REACHED A VERDICT OF GUILT
23 BEYOND A REASONABLE DOUBT. THE DEFENDANT DOES NOT
24 HAVE TO PROVE HIS INNOCENCE. THE DEFENDANT DOESN'T
25 HAVE TO TAKE THE WITNESS STAND OR OFFER ANY

1 EVIDENCE. AND IF THE DEFENDANT DECLINES TO
2 TESTIFY, THAT RAISES NO INFERENCE OR PRESUMPTION
3 FOR OR AGAINST THE GUILT OF THE DEFENDANT, AND THAT
4 FACT MUST NOT ENTER INTO YOUR DELIBERATIONS IN ANY
5 MANNER WHATSOEVER. SO WHAT I WANT TO ASK YOU IS IF
6 YOU COULD DECIDE THE CASE, ALBEIT THERE MAY OR MAY
7 NOT BE CONFLICTING TESTIMONY, BASED UPON THE
8 EVIDENCE IN THE CASE, AND ARRIVE AT A VERDICT
9 REGARDLESS OF WHAT THAT VERDICT MIGHT BE?

10 A. ARE YOU ASKING ME WOULD I KEEP AN OPEN MIND OR
11 WOULD I JUST COME IN HERE AND LISTEN TO THE STATE'S
12 CASE AND THEN FORM AN OPINION AND MAKE A DECISION?

13 Q. WELL, LISTEN TO THE STATE AND/OR THE DEFENDANT?

14 A. YES, I COULD DO THAT.

15 Q. LISTEN TO ALL THE TESTIMONY. COULD YOU BE
16 OPEN-MINDED ABOUT IT?

17 A. YES, I COULD DO THAT.

18 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND THE FACT THAT
19 SOMEONE IS CHARGED WITH A CRIME DOESN'T MEAN THAT
20 THEY'RE AUTOMATICALLY GUILTY BECAUSE OF THE
21 PRESUMPTION OF INNOCENCE?

22 A. YES, SIR, I UNDERSTAND THAT.

23 Q. NOW, NORMALLY IN THE TRIAL OF CRIMINAL CASES IN
24 THIS COURT, THE JURY WOULD RETURN A VERDICT OF NOT
25 GUILTY OR GUILTY, AND THEN THE COURT WOULD IMPOSE

THEODORE ANZELL - EXAM. BY THE COURT

1 SENTENCE. BUT IN A DEATH PENALTY CASE, THE LAW IS
2 THAT THE JURY MAKES A RECOMMENDATION OF EITHER THE
3 DEATH PENALTY OR EITHER LIFE IMPRISONMENT WITHOUT
4 PAROLE. THAT IS THE LAW. YOU'RE NOT TO BE PAROLED
5 IF THE COURT IMPOSED THE SENTENCE AS RECOMMENDED BY
6 THE JURY WHICH THE COURT WOULD DO. AND IN ANY
7 EVENT, THE STATE MUST PROVE BEYOND A REASONABLE
8 DOUBT ASSUME THAT THERE'S BEEN A FINDING OF GUILT
9 IN A MURDER CASE, JUST FOR PURPOSES OF THIS
10 DISCUSSION. AND THE STATE MUST THEN PROVE IN THE
11 SECOND PHASE OF THE TRIAL CALLED THE PENALTY PHASE
12 BEYOND A REASONABLE DOUBT THAT THERE WAS ONE OR
13 MORE STATUTORY AGGRAVATING CIRCUMSTANCES. AN
14 EXAMPLE OF THAT WOULD BE IF THE STATE PROVED TO
15 YOUR SATISFACTION BEYOND A REASONABLE DOUBT THAT
16 THE OFFENSE OF MURDER WAS COMMITTED WHILE IN THE
17 COMMISSION OF AN ARMED ROBBERY OR DURING A
18 BURGLARY, BREAKING AND ENTERING A HOUSE OF ANOTHER
19 IN THE NIGHTTIME WITH INTENT TO COMMIT A FELONY, OR
20 ANY CRIMINAL SEXUAL CONDUCT, JUST TO GIVE YOU SOME
21 EXAMPLES. ONLY THEN COULD THE JURY RETURN A
22 VERDICT OR RECOMMENDATION OF THE DEATH PENALTY
23 BECAUSE IF THE STATE FAILS TO PROVE A STATUTORY
24 AGGRAVATING CIRCUMSTANCE, THEN YOUR RECOMMENDATION
25 WOULD BE LIFE IMPRISONMENT WITHOUT PAROLE. THERE

THEODORE ANZELL - EXAM. BY THE COURT

1 ARE ONLY TWO CHOICES IN THE PENALTY PHASE. BUT
2 EVEN IF THE STATE PROVES A STATUTORY AGGRAVATING
3 CIRCUMSTANCE, THE LAW IS THAT THE JURY MAY CONSIDER
4 ANY MITIGATING OR LESSENING CIRCUMSTANCES SO THAT
5 THE DEATH PENALTY WOULDN'T BE IMPOSED AND LIFE
6 IMPRISONMENT WOULD BE; OR THE LAW PERMITS A JURY,
7 THE THIRD OPTION, OR THE THIRD CONSIDERATION --
8 BECAUSE THERE ARE ONLY TWO OPTIONS ON THE FORM OF
9 VERDICT OF RECOMMENDATIONS; AND THAT IS AN ACT OF
10 MERCY. THE JURY JUST FEELS THAT THE RECOMMENDATION
11 SHOULD BE LIFE IMPRISONMENT WITHOUT PAROLE. DO YOU
12 UNDERSTAND THOSE TWO PHASES THAT YOU GO THROUGH?
13 COULD YOU, DEPENDING ON THE FACTS IN THE CASE,
14 DEPENDING ON THE EVIDENCE; COULD YOU AS A JUROR
15 LISTEN TO BOTH SIDES EVEN THOUGH THE DEFENDANT IS
16 NOT REQUIRED TO PRODUCE ANY EVIDENCE; BUT ASSUMING
17 THAT THE DEFENSE DOES OFFER MITIGATING
18 CIRCUMSTANCES, COULD YOU LISTEN TO THE EVIDENCE AND
19 THEN DECIDE BASED ON THE FACTS A RECOMMENDATION OF
20 EITHER THE DEATH PENALTY OR EITHER LIFE
21 IMPRISONMENT WITHOUT PAROLE?

22 A. WELL, IN MY QUESTIONNAIRE AND AFTER LISTENING TO
23 THIS LAST NIGHT, I WENT HOME AND I REALLY THOUGHT
24 ABOUT IT. AND I REALLY DON'T THINK THAT I COULD
25 RECOMMEND THE DEATH PENALTY.

THEODORE ANZELL - EXAM. BY THE COURT

1 Q. AFTER LISTENING TO WHAT LAST NIGHT?

2 A. NO; AFTER LISTENING TO YOU YESTERDAY TELL US THAT
3 WE WERE GOING TO HAVE TO MAKE THIS DECISION; THAT
4 IF INDEED THE DEFENDANT WAS FOUND GUILTY THAT THERE
5 IS A POSSIBILITY THAT WE WOULD BE ASKED TO
6 CONSIDER---

7 Q. TO CONSIDER?

8 A. YES; CORRECT. SO I WENT HOME, AND I THOUGHT ABOUT
9 THIS, WHAT YOU SAID; AND I JUST DON'T THINK THAT IS
10 SOMETHING I COULD DO. I DON'T THINK I COULD
11 SENTENCE A MAN TO DEATH.

12 Q. YOU DON'T THINK THAT YOU COULD VOTE TO RECOMMEND
13 THE DEATH PENALTY BECAUSE THE COURT WOULD
14 ULTIMATELY IMPOSE THE SENTENCE, ALTHOUGH ASSUMING
15 ARGUENDO THAT THE STATE HAD -- IN OTHER WORDS THERE
16 ARE THREE TYPES OF JURORS ON THAT SHEET THAT I HAD
17 GIVEN YOU TO REVIEW?

18 A. YES, SIR.

19 Q. WHICH OF THOSE CATEGORIES DO YOU FEEL THAT YOU
20 WOULD FALL UNDER?

21 A. NUMBER TWO.

22 Q. NUMBER TWO? ALL RIGHT.

23 THE COURT: YOU MAY QUESTION THE
24 WITNESS, PLEASE.

25 DIRECT EXAMINATION

THEODORE ANZELL - DIRECT/MR. THEOS

BY MR. THEOS:

Q. GOOD MORNING, MR. ANZELL.

A. GOOD MORNING.

Q. I'M JERRY THEOS; AND JIM BELL AND I REPRESENT MR. SIMMONS SEATED NEXT TO MR. BELL. THANK YOU FOR COMING IN TODAY, FOR BEING SINCERE AND HONEST WITH US BECAUSE THAT'S WHY WE'RE HERE. THAT'S SOMEWHAT OF AN UNCOMFORTABLE SEAT THAT YOU'RE IN. WE CERTAINLY DON'T MEAN TO CAUSE YOU ANY -- WE DON'T WANT TO MAKE YOU FEEL AWKWARD. AND WE'RE NOT TRYING TO MAKE YOU FEEL UNCOMFORTABLE EITHER. WE'RE REALLY TRYING TO FIND OUT WHAT YOUR TRUE OPINIONS ARE ABOUT THESE SORTS OF MATTERS. IT'S A LITTLE UNUSUAL THAT WE'RE TALKING ABOUT PENALTIES BEFORE THERE'S A DETERMINATION AS TO WHETHER OR NOT MR. SIMMONS IS GUILTY OF WHAT HE'S BEEN CHARGED WITH. BUT AS THE JUDGE HAS INDICATED, THE STATE WOULD HAVE TO PROVE MR. SIMMONS GUILTY BEYOND A REASONABLE DOUBT IN THE GUILT PHASE OF THIS TRIAL BEFORE WE EVEN PROCEEDED TO CONSIDER WHAT PENALTY MIGHT BE APPROPRIATE. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND DO YOU UNDERSTAND THAT AS MR. SIMMONS SITS HERE, HE'S PRESUMED TO BE INNOCENT?

A. YES, SIR.

THEODORE ANZELL - DIRECT/MR. THEOS

- 1 Q. JUST BECAUSE HE'S BEEN CHARGED, JUST BECAUSE HE'S
2 BEEN INDICTED, JUST BECAUSE HE'S ON TRIAL, THAT
3 THAT DOES NOT HAVE ANY BEARING ON THAT PRESUMPTION
4 OF INNOCENCE?
- 5 A. CORRECT.
- 6 Q. AND YOU FEEL THAT IN THE GUILT PHASE OF THE CASE
7 YOU WOULD HOLD THE STATE TO ITS BURDEN---
- 8 A. YES, SIR, I WOULD.
- 9 Q. --OF PROVING MR. SIMMONS GUILTY BEYOND A REASONABLE
10 DOUBT?
- 11 A. YES, SIR.
- 12 Q. AND IF YOU FELT THAT MR. BAILEY WAS SUCCESSFUL IN
13 PERSUADING YOU AS A JUROR BEYOND A REASONABLE DOUBT
14 AS TO MR. SIMMONS' GUILT, WOULD YOU BE ABLE TO FIND
15 HIM GUILTY?
- 16 A. YES, I WOULD.
- 17 Q. AND BY THE SAME TOKEN, IF YOU WERE NOT PERSUADED
18 BEYOND A REASONABLE DOUBT AS TO THE GUILT OF MR.
19 SIMMONS, WOULD YOU BE ABLE TO FIND HIM NOT GUILTY?
- 20 A. YES, I WOULD.
- 21 Q. NOW WITH RESPECT TO THE POTENTIAL PENALTY, LET'S
22 ASSUME AS THE JUDGE SAID THAT WE'VE MOVED BEYOND
23 THE GUILT PHASE. LET'S ASSUME FOR ARGUMENT SAKE
24 THAT WE'RE NOW TRYING TO DETERMINE WHAT AN
25 APPROPRIATE SENTENCE IS. YOU'RE ON THE JURY, AND

THEODORE ANZELL - DIRECT/MR. THEOS

1 YOU'RE TRYING TO DETERMINE THE APPROPRIATE SENTENCE
2 WHETHER THAT WILL BE LIFE IMPRISONMENT OR WHETHER
3 THAT BE THE DEATH PENALTY. AND I UNDERSTAND YOU
4 INDICATED THAT YOU FEEL YOU'RE A JUROR NUMBER TWO
5 AS THAT GOES. AND I UNDERSTAND THAT YOU WENT HOME
6 LAST NIGHT AND THOUGHT ABOUT IT. HAVE YOU EVER
7 THOUGHT ABOUT THE DEATH PENALTY BEFORE YESTERDAY?

8 A. YES; QUITE OFTEN. YOU'RE READING THE PAPER, AND
9 YOU SEE SOME HEINOUS CRIME; AND YOU THINK GOD!
10 THAT PERSON SHOULD BE PUT TO DEATH. AND YOU JUST
11 THINK THAT. I MEAN, IMMEDIATELY THAT'S YOUR FIRST
12 THOUGHT.

13 Q. SO THERE ARE CASES, THEN, THAT YOU FEEL ARE SO
14 AGGRAVATED AND SO HEINOUS, SO BAD, THAT THE DEATH
15 PENALTY IS AN APPROPRIATE SENTENCE?

16 A. WELL, YOU THINK THAT. YOU THINK THAT INITIALLY.
17 AND I THINK UNTIL YOU GET IN THAT CHAIR, THEN IT
18 BECOMES A VERY PERSONAL DECISION. JUST BECAUSE THE
19 STATE OR THE FEDERAL GOVERNMENT SAYS THAT THE DEATH
20 PENALTY IS OKAY, I WOULD STILL HAVE TO LIVE WITH
21 MYSELF.

22 Q. WELL, IT IS A PERSONAL OPINION. BUT IT'S ALSO AN
23 OPINION OR CONCLUSION THAT YOU WOULD REACH A
24 VERDICT THAT YOU WOULD REACH WITH THE OTHER ELEVEN
25 JURORS THAT YOU WOULD BE SEATED WITH. SO IN ONE

THEODORE ANZELL - DIRECT/MR. THEOS

1 SENSE YOUR PERSONAL VOTE WOULD BE AN INDIVIDUAL
2 CONSENT. BUT THE ULTIMATE VERDICT WOULD BE THAT OF
3 THE ENTIRE JURY.

4 A. I UNDERSTAND.

5 Q. AND DO YOU THINK THAT IF THE FACTS PRESENTED IN THE
6 CASE BOTH IN THE GUILT PHASE AND THE PENALTY PHASE
7 WERE SEVERE AND AGGRAVATED ENOUGH THAT YOU COULD
8 CONSIDER THE DEATH PENALTY AS AN OPTION TO LIFE
9 IMPRISONMENT WITHOUT PAROLE ALONG WITH THE OTHER
10 ELEVEN JURORS THAT YOU WOULD BE DELIBERATING WITH?

11 A. I STILL DON'T THINK I COULD DO IT.

12 Q. EVEN IF THE CRIME WERE THAT SEVERE OR THAT BAD AS
13 YOU SAID THAT SOMETIMES THE FIRST BLUSH YOU READ
14 ABOUT?

15 MR. BAILEY: OBJECTION, YOUR HONOR;
16 ASKED AND ANSWERED.

17 THE COURT: YES, SIR.

18 Q. CAN YOU THINK OF ANY SITUATION---

19 MR. BAILEY: OBJECTION.

20 THE COURT: YOU'RE NOT ALLOWED TO
21 STAKE OUT A JUROR.

22 Q. MR. ANZELL, IF YOU WERE SEATED ON THIS JURY AND YOU
23 WERE TO FIND MR. SIMMONS GUILTY OF MURDER AND THE
24 OTHER CHARGES THAT WERE READ TO YOU IN THE
25 INDICTMENT, THE ARMED ROBBERY, THE CRIMINAL SEXUAL

THEODORE ANZELL - DIRECT/MR. THEOS

1 CONDUCT, THE KIDNAPPING, THE BURGLARY; COULD YOU
2 EVER CONSIDER THE DEATH PENALTY AS A POSSIBLE
3 SENTENCE?

4 MR. BAILEY: OBJECTION. YOUR HONOR,
5 HE'S TRYING TO STAKE HIM OUT AGAIN ON SPECIFIC
6 AGGRAVATING CIRCUMSTANCES.

7 MR. THEOS: YOUR HONOR, IF I MIGHT.

8 THE COURT: NO, SIR. REPHRASE THE
9 QUESTION. YOU'RE TRYING TO DO INDIRECTLY WHAT YOU
10 CAN'T DO DIRECTLY, MR. THEOS.

11 Q. MR. ANZELL, IF YOU WERE SEATED ON THAT JURY AND MR.
12 SIMMONS WERE FOUND GUILTY OF MURDER, WOULD YOU BE
13 ABLE TO CONSIDER THE DEATH PENALTY AS AN
14 APPROPRIATE PUNISHMENT ALONG WITH LIFE IMPRISONMENT
15 BASED UPON THE EVIDENCE IF YOU WERE OFFERED IN THE
16 PENALTY PHASE?

17 A. I WOULD CONSIDER IT; BUT I COULDN'T -- I MEAN, I
18 WOULD CONSIDER IT, BUT I PROBABLY WOULD NOT VOTE
19 FOR IT.

20 Q. AS THE JUDGE SAID WE CAN'T ASK YOU WHAT YOU MIGHT
21 PROBABLY VOTE FOR OR MOST PROBABLY NOT VOTE FOR.
22 THE QUESTION IS WHETHER OR NOT YOU COULD CONSIDER
23 IT. I UNDERSTAND IN THE PENALTY PHASE MR. BAILEY
24 WOULD BE PRESENTING TO YOU ALL OF THOSE REASONS WHY
25 HE FEELS THAT THE DEATH PENALTY WOULD BE AN

THEODORE ANZELL - DIRECT/MR. THEOS

1 APPROPRIATE SENTENCE. AND MR. BELL AND I WOULD BE
2 PRESENTING ALL THOSE REASONS WHY WE THINK LIFE
3 IMPRISONMENT WOULD BE APPROPRIATE. WOULD YOU BE
4 ABLE TO CONSIDER BOTH OF THOSE IN DETERMINING AN
5 APPROPRIATE SENTENCE FOR MR. SIMMONS?

6 MR. BAILEY: YOUR HONOR, I OBJECT TO
7 THE WAY THAT QUESTION IS PHRASED. HE WOULD HAVE TO
8 DO MORE THAN JUST CONSIDER IT. HE'D HAVE TO BE
9 ABLE TO CONSIDER AND IMPOSE IT IMPOSE AND CONSIDER
10 IT.

11 MR. THEOS: BUT, YOUR HONOR---

12 THE COURT: ALL RIGHT. ANSWER THE
13 QUESTION. WOULD YOU CONSIDER BOTH?

14 A. NO. I GUESS THE ANSWER TO YOUR QUESTION IS NO.

15 MR. THEOS: NO OTHER QUESTIONS, YOUR
16 HONOR.

17 MR. BAILEY: NOTHING FURTHER, YOUR
18 HONOR.

19 THE COURT: YOU HAD INDICATED IN THE
20 EARLIER QUESTION THAT KNEW ONE OR MORE OF THE
21 ATTORNEYS INVOLVED THIS CASE. I NOTE THAT YOU'RE
22 MARRIED TO AN ATTORNEY?

23 MR. ANZEL: OBVIOUSLY YOU HAVE NOT
24 DISCUSSED THE DEATH PENALTY WITH THAT LADY?

25 MR. BAILEY: IN ELEVEN YEARS, YES; I

THEODORE ANZELL - DIRECT/MR. THEOS

1 PROBABLY HAVE.

2 THE COURT: I'M TEASING. ALL
3 RIGHT. LET ME ASK YOU TO STEP OUTSIDE FOR JUST A
4 MINUTE, PLEASE.

5 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

6 THE COURT: YES, GENTLEMEN.

7 MR. BAILEY: YOUR HONOR, HE'S
8 CLEARLY A NUMBER TWO JUROR.

9 THE COURT: JUROR NOT QUALIFIED?

10 MR. THEOS: YES, SIR.

11 THE COURT: ALL RIGHT. BRING THE
12 JUROR IN.

13 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

14 THE COURT: MR. ANZELL, THAT
15 CONCLUDES YOUR SERVICE IN THIS MATTER. MAY I
16 PLEASE THANK YOU FOR BEING PRESENT HERE WITH US.
17 THANK YOU FOR YOUR CANDOR. WHATEVER YOUR VIEWS
18 ARE, DON'T APOLOGIZE FOR THEM. PEOPLE ARE ENTITLED
19 TO THEIR VIEWS. THIS IS AMERICA. AND PLEASE
20 UNDERSTAND THE QUESTIONS THAT WERE ASKED OF YOU IN
21 NO WAY WERE INTENDED TO BE CRITICAL OF YOUR VIEWS
22 BUT JUST TO TRY TO GET A CLEAR VIEW OF WHAT YOUR
23 VIEWS REALLY MIGHT BE. SO YOU'LL BE FORWARDED A
24 CHECK IN THE NEXT FEW DAYS FOR TWO DAYS' SERVICE.
25 YOU'RE EXCUSED TO RETURN TO YOUR BUSINESS. AND

THEODORE ANZELL - DIRECT/MR. THEOS

1 PLEASE DON'T DISCUSS WITH ANYONE ANY OF THE
2 QUESTIONS OF THE PROCEEDINGS THAT WERE CONDUCTED
3 HERE WITH ANY OF THE OTHER PROSPECTIVE JURORS I'M
4 SPEAKING OF.

5 MR. ANZELL: THANK YOU.

6 THE COURT: THANK YOU SO MUCH. AND
7 YOU HAVE A NICE DAY. ALL RIGHT. PLEASE BRING IN
8 MR. RAY GREEN, JUROR NUMBER 129.
9 (JUROR NUMBER 129, A WHITE MALE, IS CALLED.)

10 THE COURT: GOOD MORNING, MR. RAY
11 GREEN, JUROR NUMBER 129; MAY WE PLEASE THANK YOU
12 FOR BEING HERE PRESENT WITH US TODAY?

13 - - - - -
14 WHEREUPON,

15 RAY GREEN, WHO AFTER BEING FIRST DULY
16 SWORN TO TELL THE TRUTH, TESTIFIED AS
17 FOLLOWS:

18 EXAMINATION

19 BY THE COURT:

20 Q. MR. GREEN, YOU WERE GIVEN AN OATH ON YESTERDAY. DO
21 YOU UNDERSTAND, SIR, THAT YOU ARE STILL UNDER OATH
22 FOR THE PURPOSE OF THESE QUESTIONS BEING PUT TO YOU
23 TODAY?

24 A. YES, SIR.

25 Q. AND MR. GREEN, SINCE YOU FILLED OUT THE

1 QUESTIONNAIRE THAT YOU RETURNED EARLIER TO THE
2 COURT, DO YOU NEED TO UPDATE OR MAKE ANY CHANGES ON
3 THAT QUESTIONNAIRE?

4 A. WHEN THEY TALK ABOUT FAMILY, DO THEY MEAN LIKE A
5 STEPBROTHER OR HALF BROTHERS?

6 Q. SURE.

7 A. OKAY. THEN I NEED TO---

8 Q. AND COUSINS.

9 A. OKAY. I NEED TO CHANGE SOMETHING.

10 Q. OKAY. DO YOU WANT TO TELL US WHAT IT IS, OR DO YOU
11 WANT TO WRITE IT ON THERE?

12 A. WELL, THE PART ABOUT IF YOUR FAMILY MEMBERS HAVE
13 BEEN IN TROUBLE WITH THE LAW?

14 Q. YES, SIR?

15 A. MY HALF BROTHER HAS BEEN IN TROUBLE. THAT WAS
16 YEARS AGO.

17 Q. WHAT WAS THIS? WHAT KIND OF TROUBLE?

18 A. BURGLARY.

19 Q. WAS THAT IN DORCHESTER COUNTY?

20 A. NO, SIR. THAT WAS CHARLESTON.

21 Q. THAT WAS IN CHARLESTON?

22 A. YES, SIR.

23 Q. OKAY. HERE'S YOUR PRE-TRIAL QUESTIONNAIRE.

24 THE COURT: SO, GENTLEMEN, YOU
25 UNDERSTAND THAT HIS HALF BROTHER---

RAY GREEN - EXAM. BY THE COURT

1 Q. AND MR. GREEN, I DON'T KNOW ANYTHING ABOUT THE
2 FACTS OF THE CASE. I KNOW YOU DON'T GET TO PICK
3 YOUR FAMILY. YOU CAN PICK YOUR FRIENDS BUT NOT
4 YOUR FAMILY.

5 A. I MEAN, HE PAID HIS DEBT.

6 Q. I UNDERSTAND THAT. I HAVE NO PROBLEM WITH THAT.

7 A. I LEFT IT OUT. I SHOULDN'T HAVE, BUT I DID.

8 Q. WELL, THAT'S ALL RIGHT. I APPRECIATE YOUR
9 HONESTY. NOW HAVE YOU READ ANYTHING IN THE PAPER,
10 MR. GREEN, OR HEARD ANYTHING ON THE RADIO OR KNOW
11 ANYTHING ABOUT THIS CASE?

12 A. NO, SIR.

13 Q. AND IF YOU WERE A DRAWN AS A JUROR ON THIS CASE
14 COULD YOU FOLLOW THE LAW? BY THAT I MEAN THE COURT
15 WILL INSTRUCT YOU ON THE LAW. COULD YOU APPLY THE
16 LAW TO THE FACTS AS YOU FIND THOSE FACTS TO BE IN
17 THE CASE?

18 A. YES, SIR.

19 Q. AND YOU UNDERSTAND THAT THE STATE OF SOUTH CAROLINA
20 HAS THE BURDEN OF PROVING THE GUILT OF THE
21 DEFENDANT BEYOND A REASONABLE DOUBT. THERE'S NO
22 BURDEN ON THE DEFENDANT. HE'S THOUGHT OR PRESUMED
23 IN THE EYES OF THE LAW TO BE INNOCENT EVEN AFTER
24 THE TRIAL STARTS UNTIL THAT JURY REACHES A
25 UNANIMOUS VERDICT OF GUILT, HE'S PRESUMED

RAY GREEN - EXAM. BY THE COURT

1 INNOCENT. DO YOU UNDERSTAND THAT?

2 A. YES.

3 Q. THE DEFENDANT DOESN'T HAVE TO TAKE THE WITNESS
4 STAND. HE DOESN'T HAVE TO PROVE ANYTHING. HE'S
5 PRESUMED INNOCENT. THAT'S HIS CHOICE TO TAKE THE
6 STAND OR NOT. THAT CAN'T BE HELD AGAINST HIM. SO
7 HAVE YOU FORMED ANY VIEW ABOUT THE GUILT OR
8 INNOCENCE OF THE DEFENDANT OR ANYTHING ABOUT THE
9 FACTS OF THIS CASE? DO YOU HAVE ANY PRECONCEIVED
10 THOUGHTS ABOUT IT?

11 A. NO, SIR.

12 Q. AND YOU UNDERSTAND THAT THIS IS A TWO PART TRIAL IN
13 A MURDER CASE; AND IF THE DEFENDANT IS FOUND NOT
14 GUILTY OF MURDER, YOU WOULD NOT GO TO THE PENALTY
15 PHASE. BUT ASSUMING -- IF HE'S FOUND GUILTY OF
16 MURDER IN THE GUILT PHASE, YOU WOULD THEN GO TO THE
17 PENALTY PHASE; DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. AND BY ASKING THESE QUESTIONS ABOUT YOUR VIEWS ON
20 THE PENALTY PHASE, THAT IS NOT INTENDED TO IMPLY
21 ANYTHING OR TO SUGGEST TO YOU THE GUILT OF THE
22 DEFENDANT. PLEASE UNDERSTAND THAT. AND DURING
23 THAT PENALTY PHASE, MR. RAY GREEN, YOU UNDERSTAND,
24 PLEASE, THAT THE STATE HAS THE BURDEN OF PROVING
25 BEYOND A REASONABLE DOUBT A STATUTORY AGGRAVATING

RAY GREEN - EXAM. BY THE COURT

1 CIRCUMSTANCE IN ORDER TO RECOMMEND THE DEATH
2 PENALTY? THAT IS THE LAW. AND FURTHER THE JURY
3 WOULD BE GIVEN THE OPPORTUNITY TO HEAR ANY
4 MITIGATING OR LESSENING CIRCUMSTANCES. AND THE
5 JURY COULD, AS A RECOMMENDATION OF MERCY, RETURN A
6 RECOMMENDATION OF LIFE IMPRISONMENT. THEY DON'T
7 HAVE TO FIND A REASON FOR THAT. BUT YOU'VE GOT TO
8 FIND A REASON, A STATUTORY AGGRAVATING
9 CIRCUMSTANCE, TO RETURN THE DEATH PENALTY. AND
10 EVEN IF YOU FIND THAT STATUTORY AGGRAVATING
11 CIRCUMSTANCE BEYOND A REASONABLE DOUBT, THE JURY
12 COULD FIND MITIGATING CIRCUMSTANCES AND RECOMMEND
13 LIFE IMPRISONMENT WHICH MEANS WITHOUT PAROLE OR AS
14 A RECOMMENDATION OF MERCY COULD RECOMMEND TO THE
15 COURT LIFE IMPRISONMENT WITHOUT PAROLE. DO YOU
16 UNDERSTAND THAT PROCEDURE?

17 A. YES, SIR.

18 Q. DO YOU THINK AS A JUROR, DEPENDING ON THE EVIDENCE
19 IN THE CASE AND WHAT AND WHO YOU BELIEVE THAT YOU
20 COULD, DEPENDING ON THE EVIDENCE, RETURN A
21 RECOMMENDATION OF THE DEATH PENALTY OR RETURN LIFE
22 IMPRISONMENT WITHOUT PAROLE?

23 A. YES, SIR.

24 Q. AND YOU'VE READ THAT LITTLE SHEET OF PAPER THERE
25 ABOUT THE THREE TYPES OF JURORS. ONE IS SOME

RAY GREEN - EXAM. BY THE COURT

1 PERSON THAT SAYS "I DON'T CARE WHAT THE FACTS ARE
2 OR THE EVIDENCE; I'M GOING TO VOTE FOR THE DEATH
3 PENALTY." THE SECOND IS "IT DOESN'T MATTER TO ME
4 WHAT THE TESTIMONY OR EVIDENCE WAS, I'M NOT GOING
5 TO GIVE THE DEATH PENALTY; I'M GOING TO VOTE FOR
6 LIFE IMPRISONMENT WITHOUT PAROLE." THAT'S THE
7 SECOND JUROR. THE THIRD JUROR IS THAT JUROR WHO
8 WILL LISTEN TO THE TESTIMONY, BE OPEN-MINDED,
9 UNDERSTANDING THAT THE DEFENDANT WOULD HAD TO HAVE
10 BEEN FOUND GUILTY OF MURDER BY THAT SAME JUROR AND
11 A JUROR OF TWELVE BY A UNANIMOUS VERDICT. BUT THAT
12 THIRD JUROR WOULD DECIDE WHAT HIS OR HER
13 RECOMMENDATION WOULD BE BASED ON THE EVIDENCE AND
14 THE TESTIMONY AND THE LAW THAT THEY APPLY; BUT THEY
15 MUST APPLY THE LAW THE COURT GIVES. DO YOU
16 UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. WHICH OF THOSE THREE CATEGORIES, MR. GREEN, DO YOU
19 FEEL YOU WOULD FALL IN; A NUMBER ONE, A NUMBER TWO,
20 OR A NUMBER THREE?

21 A. I WOULD FALL UNDER NUMBER THREE.

22 Q. ALL RIGHT, SIR.

23 THE COURT: YOU MAY QUESTION THE
24 WITNESS, SOLICITOR. THESE GENTLEMEN ARE GOING TO
25 ASK YOU SOME QUESTIONS. AND MR. GREEN, AGAIN, THERE

RAY GREEN - DIRECT/MR. BAILEY

1 ARE NO WRONG OR RIGHT ANSWERS. EVERY ANSWER YOU
2 GIVE IS A CORRECT ANSWER BECAUSE THAT'S YOUR HONEST
3 OPINION ON IT. AND WE'RE JUST TRYING
4 TO FIND OUT YOUR VIEWS. SO YOU'RE GOING TO BE PAID
5 FOR COMING HERE TODAY. AND YOU'RE GOING TO MAKE 100
6 ON THIS TEST, SO DON'T LET THESE QUESTIONS BOTHER
7 YOU, OKAY?

8 MR. GREEN: YES, SIR.

9 THE COURT: THANK YOU.

10 DIRECT EXAMINATION

11 BY MR. BAILEY:

12 Q. MR. GREEN, YOU UNDERSTAND THAT WE WOULDN'T EVEN BE
13 GETTING INTO THE PENALTY PHASE UNLESS THE DEFENDANT
14 WAS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE
15 TRIAL?

16 A. YES, SIR.

17 Q. BUT IF HE WAS FOUND NOT GUILTY WE WOULD ALL GO
18 HOME, AND THAT WOULD BE THE END OF IT?

19 A. YES, SIR.

20 Q. SO ANY TIME THE JURY GETS INTO THE PENALTY PHASE,
21 THEY'RE DEALING WITH THE CONVICTED MURDERER?

22 A. YES, SIR.

23 Q. AND THE REASON WE HAVE THE PENALTY PHASE IS TO
24 ALLOW ADDITIONAL EVIDENCE TO COME OUT. THERE WOULD
25 BE EVIDENCE IN AGGRAVATION THAT I'D BE INTRODUCING.

RAY GREEN - DIRECT/MR. BAILEY

1 AND I'D BE TRYING TO PERSUADE THE JURY TO BRING
2 BACK THE DEATH PENALTY. THE DEFENSE WOULD PUT UP
3 EVIDENCE IN MITIGATION TO TRY TO LESSON THE
4 SEVERITY OF THE MURDER. THEY DON'T HAVE TO, BUT
5 THEY COULD. AND THEY WOULD ARGUE FOR A LIFE
6 WITHOUT PAROLE SENTENCE. AT THE END OF ALL THE
7 TESTIMONY JUDGE PEEPLES WOULD INSTRUCT THE JURY ON
8 THE LAW THAT APPLIED TO THAT PENALTY PHASE, AND THE
9 JURY WOULD HAVE TWO OPTIONS, LIFE WITHOUT PAROLE OR
10 THE DEATH PENALTY. AND WHATEVER THE JURY VOTES ON
11 WOULD BE THE SENTENCE OF THE COURT. IN OTHER
12 WORDS, THE JURY MAKES THAT DECISION, NOT THE
13 JUDGE. ALL THE JUDGE DOES IS ORDER THAT SENTENCE
14 TO BE CARRIED OUT. AND IT WOULD BE CARRIED OUT.
15 IF THE JURY DECIDES ON LIFE WITHOUT PAROLE, THAT
16 WILL BE THE JUDGE'S SENTENCE, AND THE DEFENDANT
17 WOULD SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES
18 ON THE DEATH PENALTY, THE JUDGE WOULD ORDER IT AND
19 THAT PERSON WOULD ACTUALLY BE EXECUTED. I JUST
20 WANTED TO MAKE SURE YOU UNDERSTAND THE PROCESS.

21 A. YES, SIR.

22 Q. ALL RIGHT, SIR. NOBODY IS GOING TO ASK YOU WHAT
23 YOU WOULD DO IN THIS CASE IF YOU WERE ON THE JURY
24 BECAUSE YOU HAVEN'T HEARD THE FACTS. BUT IF THE
25 FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH

RAY GREEN - DIRECT/MR. BAILEY

1 PENALTY KNOWING THAT SENTENCE WOULD ACTUALLY BE
2 CARRIED OUT?

3 A. I MEAN, I WON'T SAY I WOULDN'T GO WITH THE FLOW. I
4 WOULD DO THAT.

5 Q. WHEN YOU SAY "GO WITH THE FLOW?"

6 A. I'M TALKING ABOUT THE MAJORITY ON THE PANEL.

7 Q. ALL RIGHT, SIR. OF COURSE A JURY IS SUPPOSED TO
8 EXCHANGE VIEWS AND DISCUSS THE CASE. WOULD YOU
9 LISTEN TO THE OTHER JURORS TO EXPRESS THEIR VIEWS?

10 A. YES, SIR.

11 Q. WOULD YOU EXPRESS YOUR VIEWS TO THE OTHER MEMBERS
12 OF THE JURY?

13 A. YES, SIR.

14 Q. ALL RIGHT, SIR. AND WOULD YOU KEEP AN OPEN MIND
15 DURING THAT DELIBERATION PROCESS?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. IF YOU FELT LIKE THE CASE
18 WARRANTED IT, WOULD YOU VOTE FOR A LIFE SENTENCE
19 WITHOUT PAROLE?

20 A. YES, SIR.

21 Q. AND IF YOU FELT THE CASE WAS BAD ENOUGH, YOU'VE
22 ALREADY INDICATED YOU COULD VOTE FOR THE DEATH
23 PENALTY; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. ALL RIGHT, SIR. KNOWING THAT SENTENCE WOULD BE

RAY GREEN - DIRECT/MR. BAILEY

1 CARRIED OUT?

2 A. YES, SIR.

3 Q. ALL RIGHT, SIR. EACH ONE OF THE JURORS, IF THEY
4 VOTE FOR THE DEATH PENALTY, WOULD BE ASKED TO SIGN
5 THEIR NAMES TO A PIECE OF PAPER, A VERDICT FORM,
6 THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE.
7 IF YOU VOTED FOR THE DEATH PENALTY AND THE OTHER
8 ELEVEN JURORS ALSO VOTED FOR THE DEATH PENALTY,
9 COULD YOU SIGN YOUR NAME TO THAT PIECE OF PAPER
10 KNOWING THAT PERSON WOULD BE EXECUTED?

11 A. YES, SIR.

12 Q. ALL RIGHT, SIR. COULD YOU COME OUT HERE IN OPEN
13 COURT WHEN YOUR NAME IS CALLED, ANNOUNCE IT OUT
14 LOUD THAT THAT WAS YOUR VERDICT IF THAT WAS YOUR
15 VERDICT?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. THE JURY IS GOING TO BE PUT IN A
18 MOTEL FOR ABOUT A WEEK UNTIL THE TRIAL IS OVER.
19 THAT'S A HARDSHIP ON ANYBODY THAT YOU'VE GOT A JOB
20 AND A FAMILY. BUT WOULD IT BE ANY KIND OF AN UNDUE
21 HARDSHIP FOR YOU; ANY SPECIAL SITUATION?

22 A. I MIGHT NOT HAVE A FAMILY WHEN I GOT BACK.

23 Q. BUT LIKE I SAID, IT'S DIFFICULT FOR ANYBODY. BUT
24 IS THERE ANYTHING IN PARTICULAR ABOUT YOUR
25 SITUATION THAT WOULD BE UNUSUAL IF YOU WERE CHOSEN?

RAY GREEN - DIRECT/MR. BAILEY

1 A. WELL, I'M IN THE PROCESS OF MOVING, BUT I WILL DO
2 WHAT I HAVE TO DO. I CAN PUT THAT ON HOLD IF I HAD
3 TO.

4 Q. ALL RIGHT, SIR.

5 A. I'M GOING TO TRY TO MOVE THIS WEEKEND. SO IT'S A
6 PRETTY FAST MOVE.

7 Q. ALL RIGHT.

8 THE COURT: ARE YOU MOVING OUT OF
9 THE COUNTY?

10 MR. GREEN: NO, SIR.

11 THE COURT: BUT YOU UNDERSTAND THAT
12 IF YOU ARE QUALIFIED, IF YOU SERVE ON THIS JURY,
13 WE'D START THIS CASE ABOUT WEDNESDAY. AND IT LASTS
14 UP TO A WEEK. SO YOU WOULDN'T BE ABLE TO MOVE THIS
15 WEEKEND UNLESS YOU CAN MOVE THIS AFTERNOON OR IN
16 THE MORNING.

17 MR. GREEN: I DIDN'T KNOW IT WOULD
18 HAPPEN THAT FAST.

19 THE COURT: YES, SIR. WE HOPE TO
20 HAVE A JURY, 37 QUALIFIED JURORS, BY TWO O'CLOCK
21 TOMORROW. IT MAY BE FOUR O'CLOCK TOMORROW. IT MAY
22 BE THURSDAY MORNING. THEN WE'D START RIGHT INTO
23 THE TRIAL OF THE CASE AND YOU WOULD BE
24 SEQUESTERED. SO---

25 MR. GREEN: I COULD GET AN EXTENSION

RAY GREEN - CROSS/MR. THEOS

1 IF I HAD TO.

2 THE COURT: ALL RIGHT. IT'S NOT
3 LIKE -- IT NEEDS TO BE DONE, BUT IT DON'T NEED TO
4 BE DONE THIS WEEKEND.

5 THE COURT: THANK YOU.

6 MR. BAILEY: YOUR HONOR, THAT'S ALL
7 I HAVE OF THIS WITNESS.

8 THE COURT: WOULD YOU LIKE TO
9 QUESTION, MR. THEOS?

10 MR. THEOS: YES, SIR.

11 CROSS-EXAMINATION

12 BY MR. THEOS:

13 Q. MR. GREEN, HOW ARE YOU?

14 A. FINE.

15 Q. MY NAME IS JERRY THEOS. I AND JIM BELL AS THE
16 ATTORNEYS REPRESENT KENNETH SIMMONS. HE'S THE
17 DEFENDANT SEATED NEXT TO MR. BELL. DO YOU SEE HIM,
18 SIR?

19 A. YES, SIR.

20 Q. AND AGAIN, AS THE JUDGE SAID, WE ARE NOT PASSING
21 JUDGMENT ON ANY OF YOUR ANSWERS OR ANY OF YOUR
22 RESPONSES OR YOUR FEELINGS ABOUT THIS CASE. WE'RE
23 JUST TRYING TO FIND OUT WHAT YOUR TRUE FEELINGS ARE
24 ABOUT CERTAIN MATTERS, BUT SPECIFICALLY ABOUT
25 WHETHER OR NOT YOU COULD CONSIDER THE DEATH PENALTY

RAY GREEN - CROSS/MR. THEOS

- 1 AND LIFE IMPRISONMENT AS A POSSIBLE PUNISHMENT IF
2 WE GOT TO THAT. DO YOU UNDERSTAND THAT?
- 3 A. YES, SIR.
- 4 Q. OKAY. MR. GREEN, THE FIRST THING I WANT TO ASK YOU
5 ABOUT IS I WOULD JUST PLEASE ASK YOU TO BE HONEST
6 AND OPEN WITH US ABOUT ALL YOUR RESPONSES. YOU
7 INDICATED ON YOUR QUESTIONNAIRE THAT THE TYPE OF
8 RELIGION THAT YOU PRACTICE IS CALLED MYSTIC. CAN
9 YOU PLEASE EXPLAIN THAT?
- 10 A. MAYBE I SHOULDN'T HAVE PUT THAT DOWN. BUT I
11 BELIEVE IN THE SPIRIT. THAT'S HOW I EXPERIENCE
12 GOD. THAT'S WHY I PUT THAT DOWN. SOME PEOPLE
13 DON'T UNDERSTAND THAT ABOUT THE SPIRITUAL PART OF
14 IT.
- 15 Q. IS THAT A FORMAL---
- 16 A. NO. IT'S SOMETHING THAT I'M FAMILIAR WITH.
- 17 Q. IS THERE A CHURCH THAT YOU ATTEND, OR IS THERE A
18 GROUP THAT YOU ATTEND?
- 19 A. I'VE BEEN GOING TO A SYNAGOGUE ON SATURDAYS, BUT
20 I'M NOT JEWISH.
- 21 Q. AND THAT WOULDN'T HAVE ANYTHING TO DO WITH BEING
22 MYSTIC?
- 23 A. NOT REALLY.
- 24 Q. IS THERE ANYTHING ABOUT YOUR PRACTICE OF GOING TO A
25 SYNAGOGUE ON SATURDAY OR YOUR BEING A MYSTIC?

RAY GREEN - CROSS/MR. THEOS

1 A. SOME PEOPLE; THEY DON'T KNOW WHAT TO THINK WHEN I
2 TELL THEM THAT. THEY THINK I'M PROBABLY NOT ALL
3 HERE. BUT THEY HAVE A RIGHT TO THEIR OPINION.

4 Q. AND I'M NOT ASKING YOU TO PRY INTO YOUR BUSINESS.
5 I CERTAINLY DON'T WANT TO DO THAT. BUT MY QUESTION
6 TO YOU IS WHETHER OR NOT YOUR RELIGIOUS PRACTICES
7 CAUSE YOU TO BELIEVE ONE WAY OR THE OTHER ABOUT THE
8 DEATH PENALTY?

9 A. WELL, I HAVE AN OPEN MIND, SO I'M NOT SET ON ANY
10 ONE THING.

11 Q. WHAT DO YOU THINK ABOUT THE DEATH PENALTY?

12 A. I BELIEVE IF A PERSON IS GUILTY AS CHARGED AND
13 PERSONALLY -- I MEAN, I WOULD VOTE FOR IT -- IF IT
14 WAS JUST ME VOTING, I WOULD VOTE FOR IT. BUT---

15 Q. WOULD YOU VOTE FOR IT ANY TIME SOMEBODY WAS
16 CONVICTED OF A CRIME OF MURDER?

17 A. YES, SIR.

18 Q. WOULD YOU ALWAYS VOTE FOR IT IF SOMEBODY WAS
19 CONVICTED OF MURDER?

20 A. I MEAN IF IT WAS IN SELF-DEFENSE; NO, SIR.

21 Q. OTHER THAN THAT SCENARIO, WOULD YOU ALWAYS VOTE FOR
22 THE DEATH PENALTY IF SOMEBODY WERE CONVICTED OF
23 MURDER?

24 A. YES, SIR.

25 Q. NOW, AGAIN, I'M NOT ATTACKING YOU ON YOUR

RAY GREEN - CROSS/MR. THEOS

1 RESPONSES. EVERYBODY HAS GOT DIFFERENT RESPONSES
2 -- ALL THE JURORS -- AND WE'RE ASKING EVERYBODY
3 CERTAIN QUESTIONS ABOUT SOME OF THEIR RESPONSES.

4 A. I DIDN'T KNOW THAT PAPER WAS THAT IMPORTANT; BUT
5 I'M FINDING OUT.

6 Q. WELL, PLEASE DON'T READ ANYTHING INTO MY
7 QUESTIONS. I'M JUST SIMPLY ASKING THIS SO YOU CAN
8 CLARIFY. NUMBER 26, THE QUESTION WAS -- BECAUSE I
9 KNOW YOU DON'T HAVE IT IN FRONT OF YOU. DO YOU
10 HAVE STRONG PERSONAL, RELIGIOUS, OR PHILOSOPHICAL
11 FEELINGS ABOUT NARCOTICS, ILLEGAL DRUGS, A VIOLENT
12 CRIME. AND YOU RESPONDED YES. AND THEN IT STATES
13 IF YES, PLEASE EXPLAIN. AND YOU STATED CRIMES
14 AGAINST GOD OR CRIMES AGAIN HUMANITY. CAN YOU
15 EXPLAIN WHAT YOU MEAN BY THAT?

16 A. WELL, I MEAN, I FEEL -- I DON'T KNOW WHY -- I MUST
17 HAVE HAD A BAD DAY WHEN I PUT THAT DOWN. BUT I
18 BELIEVE IN THE LAW OF GOD, THOU SHALL NOT KILL.

19 Q. AND IF THOU KILLS, DO YOU BELIEVE THAT THOU SHALL
20 BE KILLED AS WELL?

21 A. WELL, I DO BELIEVE IN THE DEATH PENALTY.

22 Q. AN EYE FOR AN EYE?

23 MR. BAILEY: OBJECTION.

24 MR. THEOS: LET ME STRIKE THAT, YOUR
25 HONOR. LET ME ASK IT ANOTHER WAY. BECAUSE I

RAY GREEN - CROSS/MR. THEOS

1 UNDERSTAND THAT YOU BELIEVE THAT THOU SHALL NOT
2 KILL. DO YOU ALSO BELIEVE THAT IF THOU DOES KILL
3 THAT THOU SHALL BE KILLED? AGAIN, WE'RE NOT
4 TALKING ABOUT SELF-DEFENSE.

5 A. I MEAN, I BELIEVE IN THE DEATH PENALTY.

6 Q. THE ONLY OTHER QUESTION I HAVE FOR YOU, MR. GREEN,
7 IS RELATED TO ONE OTHER RESPONSE ON YOUR
8 QUESTIONNAIRE. AND I'M SORRY TO KEEP GOING BACK TO
9 THAT, AND I KNOW YOU MAY HAVE HAD A BAD DAY.
10 NUMBER SEVEN IT ASKS ABOUT YOUR SPOUSE. STATE THE
11 OCCUPATION OF YOUR SPOUSE, IF IT'S APPLICABLE FOR
12 THE PAST FIVE YEARS STARTING WITH THE MOST
13 CURRENT. I DON'T KNOW IF YOU RECALL THAT
14 RESPONSE. AND IT STATES AT THE TOP, MR. GREEN,
15 NUMBER SEVEN, THE FIRST QUESTION. SEE WHERE THOSE
16 LINES ARE RIGHT ABOVE THAT?

17 A. MY WIFE IS DISABLED.

18 THE COURT: D/A IS WHAT HE MEANS IS
19 DISABLED.

20 MR. GREEN: YES, SIR.

21 MR. THEOS: OKAY. I DIDN'T
22 UNDERSTAND THAT.

23 MR. GREEN: I SHOULD HAVE WROTE IT
24 OUT.

25 THE COURT: THAT'S ALL RIGHT. I

RAY GREEN - CROSS/MR. THEOS

1 UNDERSTOOD.

2 MR. THEOS: I DIDN'T, AND I

3 APOLOGIZE.

4 Q. MR. GREEN, YOUR WIFE IS DISABLED?

5 A. YES, SIR.

6 Q. HOW LONG HAS SHE BEEN DISABLED?

7 A. SHE'S ALWAYS HAD A MEDICAL CONDITION. SHE HAS
8 EPILEPSY. AND SHE TAKES MEDICATION FOR IT. BUT
9 SHE'S NOT ABLE TO WORK BECAUSE OF HER MEDICAL
10 CONDITION.

11 Q. DO Y'ALL HAVE ANYBODY ELSE IN THE HOME WITH YOU?

12 A. I HAVE TWO STEPCHILDREN. ONE IS 19; AND ONE IS
13 GOING ON 17. ONE IS A GIRL; ONE IS A BOY.

14 Q. ALL RIGHT. AND DOES -- DO YOU CARE FOR YOUR WIFE,
15 OR IS SHE ABLE TO CARE FOR HERSELF, OR DO YOU
16 PROVIDE SOLE CARE FOR HER?

17 A. (NO RESPONSE.)

18 Q. I UNDERSTAND SHE'S DISABLED. BUT DISABILITY IS
19 DIFFERENT. DO YOU---

20 A. COULD YOU REPEAT THAT?

21 Q. IS YOUR WIFE ABLE TO TAKE CARE OF HERSELF WITHOUT
22 YOU BEING IN THE HOME?

23 A. YES, SIR. WELL, SHE'S GOT TWO TEENAGERS WITH HER.
24 I MEAN, TWO YOUNG PEOPLE WITH HER. SO SHE'S ABLE
25 TO TAKE CARE OF HERSELF. I MEAN, I WORK. SHE'S

RAY GREEN - RE-DIRECT/MR. BAILEY

1 ABLE TO TAKE CARE OF HERSELF.

2 Q. THANK YOU. NO FURTHER QUESTIONS.

3 THE COURT: YES, SIR?

4 RE-DIRECT EXAMINATION

5 BY MR. BAILEY:

6 Q. FIRST OF ALL, MR. GREEN, I APOLOGIZE FOR DRAGGING
7 THIS THING OUT. BUT THIS IS THE ONLY CHANCE FOR
8 ANY OF US TO GET TO TALK TO JURORS BEFORE WE
9 ACTUALLY PICK A JURY SOME TIME TOMORROW OR
10 THURSDAY. SO I NEED TO UNDERSTAND -- WE ALL NEED
11 TO UNDERSTAND EXACTLY WHAT YOUR THOUGHTS AND
12 FEELINGS ARE. THERE ARE NO RIGHT OR WRONG ANSWERS
13 LIKE THE JUDGE SAID. BUT THERE ARE THREE BASIC
14 KIND OF JURORS IN A DEATH PENALTY CASE. THE NUMBER
15 ONE JUROR THAT WOULD ALWAYS VOTE FOR THE DEATH
16 PENALTY; NUMBER TWO JUROR THAT WOULD ALWAYS VOTE
17 FOR A LIFE SENTENCE WITHOUT PAROLE NO MATTER WHAT
18 THE CIRCUMSTANCES. THE NUMBER THREE JUROR THAT
19 WOULD KEEP AN OPEN MIND; WOULDN'T BE SOLD ONE WAY
20 OR THE OTHER; WOULD WANT TO LISTEN TO ALL THE FACTS
21 AND THE LAW AND THEN MAKE UP THEIR MIND AFTER THEY
22 HAD HEARD EVERYTHING. THERE'S NO RIGHT OR WRONG
23 ANSWER. NO ONE IS ANY BETTER THAN THE OTHER ONE.
24 BUT YOU HAD INDICATED YOU WERE THE NUMBER THREE
25 JUROR INITIALLY?

RAY GREEN - RE-CROSS/MR. THEOS

1 A. I STILL FEEL THAT WAY.

2 Q. ALL RIGHT, SIR. SO YOU WOULD NOT HAVE YOUR MIND
3 MADE FOR THE DEATH PENALTY UNTIL AFTER YOU HAD
4 HEARD ALL THE FACTS?

5 A. NO, SIR. MY MIND IS NOT MADE UP ABOUT DEATH.

6 Q. ALL RIGHT, SIR. AND IF YOU FELT LIKE THE FACTS AND
7 CIRCUMSTANCES WARRANTED A LIFE WITHOUT PAROLE
8 SENTENCE, COULD YOU VOTE FOR THAT?

9 A. YES, SIR.

10 Q. ALL RIGHT, SIR. THANK YOU, SIR. THAT'S ALL I
11 HAVE?

12 THE COURT: ANYTHING FURTHER, MR.
13 THEOS?

14 MR. THEOS: YES, SIR; JUST ONE
15 FOLLOW-UP QUESTION.

16 RE-CROSS EXAMINATION

17 BY MR. THEOS:

18 Q. MR. GREEN, DO YOU UNDERSTAND THAT AS MR. SIMMONS
19 SITS HERE, HE'S DEEMED TO BE INNOCENT? DO YOU
20 UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. DO YOU FEEL THAT BECAUSE MR. SIMMONS HAS BEEN
23 CHARGED WITH A CRIME AND IS HERE ON TRIAL FOR THE
24 CRIME OF MURDER AND THESE OTHER CHARGES; DOES THAT
25 SUGGEST TO YOU ANYTHING ABOUT HIS GUILT?

RAY GREEN - RE-DIRECT/MR. THEOS

1 A. I MEAN, HE'S PRESUMED INNOCENT UNTIL PROVEN GUILTY.

2 Q. ALL RIGHT. AND YOU UNDERSTAND THAT THE FIRST PART
3 OF THIS CASE WOULD BE TO DETERMINE WHETHER OR NOT
4 FIRST OF ALL MR. SIMMONS WAS GUILTY OF THOSE
5 CHARGES; CORRECT?

6 A. YES, SIR.

7 Q. AND I ASSUME, BASED UPON THAT UNDERSTANDING, THAT
8 IF MR. BAILEY WAS UNSUCCESSFUL IN PROVING MR.
9 SIMMONS GUILTY BEYOND A REASONABLE DOUBT THAT YOU
10 COULD FIND MR. SIMMONS NOT GUILTY?

11 A. YES, SIR.

12 Q. I ASSUME ALSO THAT IF HE WERE SUCCESSFUL IN
13 PERSUADING THIS JURY THAT HE WAS GUILTY, YOU COULD
14 FIND HIM GUILTY?

15 A. YES, SIR.

16 Q. NOW, IT'S ONLY THEN THAT WE WOULD MOVE INTO THE
17 SECOND PHASE?

18 THE COURT: THAT'S ALL BEEN
19 EXPLAINED TO HIM, MR. THEOS. SO PLEASE GET TO THE
20 POINT.

21 Q. MY QUESTION DO YOU, MR. GREEN, IS: IF MR. SIMMONS
22 WERE FOUND GUILTY OF MURDER, COULD YOU CONSIDER A
23 PENALTY OTHER THAN THE DEATH PENALTY?

24 A. YES, SIR.

25 MR. THEOS: NO OTHER QUESTIONS, YOUR

RAY GREEN - RE-DIRECT/MR. THEOS

HONOR.

THE COURT: ALL RIGHT. STEP OUTSIDE
FOR A MINUTE, PLEASE, SIR.
(AT THIS TIME JUROR RETIRES TO JURY ROOM.)

THE COURT: WHAT SAY THE STATE?

MR. BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAY THE DEFENSE?

MR. THEOS: YOUR HONOR, WE DON'T
THINK HE IS QUALIFIED. HE STATED THAT -- HE QUOTED
THE BIBLE AND SAID "THOU SHALL NOT KILL." AND I
THINK IT WAS CLEAR THAT HIS OPINION AS TO THE
APPROPRIATE PENALTY WHEN SOMEONE DOES KILL, THE
DEATH PENALTY SHOULD BE THE PENALTY. AND I THINK
THAT ALTHOUGH AGAIN THERE IS SOME EQUIVOCATION, I
THINK IT'S REAL CLEAR THAT IN HIS OPINION, BASED
UPON HIS RELIGIOUS AND PERHAPS MORAL BELIEFS, THAT
THE ONLY APPROPRIATE PUNISHMENT WOULD BE DEATH.

THE COURT: ALL RIGHT, SIR. I AM
GOING TO DEEM HIM TO BE QUALIFIED. AND REALLY, MR.
THEOS, IF THE LAW IS THAT THE DEATH PENALTY IS THE
LAW AND THE FACT THAT THEY BELIEVE IN THE DEATH
PENALTY, THAT DOESN'T MEAN THAT THEY'RE GOING TO
NECESSARILY IMPOSE THE DEATH PENALTY. AND THERE
ARE THOSE WHO WHEN YOU GET INTO THE RELIGIOUS AREA
OF THOU SHALL NOT KILL; THE FACT THAT SOMEONE

RAY GREEN - RE-DIRECT/MR. THEOS

1 BELIEVES THAT DOESN'T MEAN THAT THEY COULDN'T BE
2 OPEN-MINDED AND A FAIR AND IMPARTIAL JUROR AND
3 STILL VOTE LIFE IMPRISONMENT WITHOUT PAROLE AS THE
4 JUROR UNDER OATH INDICATED TO YOU. SO I POLITELY
5 DISAGREE WITH YOU, AND I FIND HIM QUALIFIED. BUT
6 PLEASE, MA'AM, NOTE THAT OBJECTION OF THE
7 DEFENDANT. AND LET THE OBJECTION BE PROTECTED
8 THROUGHOUT, PLEASE. ALL RIGHT. MA'AM, LET ME ASK
9 YOU NOW. CAN WE TAKE UP ONE MORE BEFORE BREAK? OR
10 IF YOU'D LIKE A BREAK NOW, WE CAN TAKE IT. WE'RE
11 FOUR OFF. IT'S ALMOST 10:15 RIGHT NOW. WE'VE GOT
12 FOUR MORE TO GO. SO CAN WE TAKE UP ONE MORE?

13 THE COURT REPORTER: ONE MORE.

14 THE COURT: ALL RIGHT. ONE MORE,
15 PLEASE. BRING MR. GREEN IN.

16 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

17 THE COURT: MR. GREEN, YOU'VE BEEN
18 FOUND QUALIFIED TO SERVE AS A JUROR IN THIS CASE.
19 AND THAT DOESN'T MEAN YOU'RE GOING TO BE SELECTED.
20 WHAT THAT MEANS, WHEN WE GET A PANEL OF 37
21 QUALIFIED JURORS -- RIGHT NOW WE'VE SET TWO O'CLOCK
22 ON WEDNESDAY, TOMORROW, FEBRUARY THE 24TH FOR THE
23 JURORS WHO WERE FOUND QUALIFIED TO COME BACK. BUT
24 THERE'S A PHONE NUMBER WRITTEN THERE. AND IF YOU'D
25 CALL THAT AFTER SIX BECAUSE IF THERE'S ANY CHANGE;

RAY GREEN - RE-DIRECT/MR. THEOS

1 IF WE GET TOO FAR OFF SCHEDULE, WE MAY HAVE TO WAIT
2 FOR YOU TO COME IN AT FOUR O'CLOCK OR FIVE O'CLOCK,
3 OR EVEN THURSDAY MORNING. WE'LL LET YOU KNOW. BUT
4 OTHERWISE, PLAN TO BE HERE AT TWO O'CLOCK TOMORROW.
5 BUT GO ON ABOUT YOUR BUSINESS AND WORK, AND DO
6 WHATEVER YOU CAN EVEN THOUGH WE'VE MESSED UP YOUR
7 DAY.

8 MR. GREEN: I GET PAID FOR IT.

9 THE COURT: SIR?

10 MR. GREEN: I GET PAID FOR IT.

11 THE COURT: IT'S YOUR COMPANY?

12 MR. GREEN: YES, SIR.

13 THE COURT: THAT'S GOOD. AND YOU
14 UNDERSTAND ABOUT PACKING YOUR CLOTHES FOR AS LONG
15 AS A WEEK. YOU'LL BE IN A MOTEL, AND THE COUNTY
16 WILL PAY FOR YOUR MEALS; AND YOU WON'T BE ABLE TO
17 COMMUNICATE OR TALK ON THE PHONE WITH YOUR FAMILY,
18 OR WHATEVER. BUT IF THERE'S ANY EMERGENCY,
19 CERTAINLY YOU'LL BE ABLE TO RECEIVE CALLS OR TO
20 MAKE CALLS IF THERE IS AN EMERGENCY. AND, PLEASE,
21 DON'T EXPOSE YOURSELF OR READ ANYTHING IN THE PAPER
22 OR DISCUSS THIS CASE WITH ANYBODY. KEEP AN OPEN
23 MIND, AND DON'T BE INFLUENCED ABOUT WHAT THE FACTS
24 ARE IN THE CASE, PLEASE; AND DON'T DISCUSS WITH THE
25 OTHER JURORS WHAT YOU WERE ASKED ABOUT IN HERE.

REBADELL AHL - EXAM. BY THE COURT

AND YOU'RE FREE TO GO. AND YOU HAVE A NICE DAY.

MR. GREEN: THANK YOU, SIR.

THE COURT: THANK YOU, MR. GREEN.

BRING MR. AHL IN, PLEASE.

(JUROR NUMBER 4, A WHITE FEMALE, IS CALLED.)

- - - - -

WHEREUPON,

REBADELL AHL, WHO AFTER BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD MORNING. HOW ARE YOU DOING TODAY, MA'AM?

A. FINE.

Q. MAY WE PLEASE THANK YOU FOR BEING HERE WITH US? WE
ARE ABOUT ONE HOUR OFF SCHEDULE. BUT WE WORKED
UNTIL NINE O'CLOCK LAST NIGHT AND STARTED AT 8:15
THIS MORNING. SO WE'RE WORKING HARD. PLEASE BEAR
WITH US. NOW, MRS. REBADELL AHL, YOU ARE JUROR
NUMBER FOUR; AND YOU WERE GIVEN AN OATH ON
YESTERDAY TO ANSWER THESE QUESTIONS. AND YOU
UNDERSTAND YOU'RE STILL UNDER OATH?

A. YES, SIR.

Q. AND, MA'AM, THAT QUESTIONNAIRE THAT YOU HAD SENT TO
THE COURT SOME WEEK OR SO AGO; HAS THERE BEEN ANY

REBADELL AHL - EXAM. BY THE COURT

1 CHANGES YOU NEED TO MAKE IN THAT, OR THAT'S STILL
2 CORRECT?

3 A. YES, SIR.

4 Q. MRS. AHL, ON YESTERDAY WHEN WE WERE QUESTIONING THE
5 GROUP AS A WHOLE IT WAS ASKED IF YOU HAD SEEN OR
6 HEARD OR READ ANYTHING ABOUT THIS CASE. COULD YOU
7 TELL US WHAT YOU KNOW ABOUT THIS CASE AND THE
8 SOURCE OF YOUR INFORMATION?

9 A. ALL I'VE READ IS WHEN THE TRIAL WAS BEING DONE.

10 Q. AND SO YOU KNOW NOTHING ABOUT THE ALLEGED FACTS OF
11 THE CASE?

12 A. NO; I KNOW NOTHING.

13 Q. AND YOU ALSO INDICATED THAT YOU KNEW ONE OR MORE OF
14 THE ATTORNEYS. AND THERE'S NOTHING WRONG WITH
15 THAT. IT'S A PRETTY GOOD IDEA TO KNOW AN
16 ATTORNEY. WHICH ATTORNEY DO YOU KNOW?

17 A. JIM BELL.

18 Q. JIM BELL? AND HOW DO YOU KNOW MR. BELL?

19 A. A DIVORCE CASE.

20 Q. HE REPRESENTED YOU OR A MEMBER OF YOUR FAMILY IN
21 SOME LAWSUIT?

22 A. YES, SIR.

23 Q. AND, MA'AM, WOULD THE FACT THAT YOU KNOW MR. BELL,
24 I WOULD HOPE THAT YOU WOULDN'T HOLD THAT AGAINST
25 YOUR CLIENT OR HIS CLIENT, OR THAT WOULDN'T

REBADELL AHL - EXAM. BY THE COURT

1 INFLUENCE YOUR FINDINGS OF THE CASE OR YOUR SERVICE
2 AS A JUROR IN ANY WAY?

3 A. NO.

4 Q. COULD YOU BE OPEN-MINDED ABOUT THE CASE AND NOT --
5 BECAUSE MR. BELL IS NOT ON TRIAL.

6 A. RIGHT.

7 Q. SO THAT WOULDN'T INFLUENCE YOU ONE WAY OR THE OTHER
8 AS I UNDERSTAND IT. AND FURTHER, MRS. AHL, HAVE
9 YOU FORMED OR EXPRESSED AN OPINION IN THIS CASE
10 ABOUT THE GUILT OR INNOCENCE OF THIS DEFENDANT? DO
11 YOU HAVE ANY VIEWS ON---

12 A. NO.

13 Q. BECAUSE YOU DON'T KNOW ANYTHING ABOUT THE FACTS OF
14 THE CASE AS I UNDERSTAND IT?

15 A. RIGHT.

16 Q. NOW, MRS. AHL, PLEASE UNDERSTAND IT IS NECESSARY
17 THAT CERTAIN QUESTIONS BE ASKED OF YOU TRYING TO
18 DECIDE -- LET THE LAWYERS BE INFORMED WHAT YOUR
19 VIEWS ARE. BUT YOUR VIEWS, WHATEVER THEY ARE, LET
20 ME TELL YOU AT THE OUTSET ARE ENTIRELY CORRECT.
21 THERE ARE NO RIGHT OR WRONG ANSWERS. SO YOU'RE
22 GOING TO MAKE 100 AND PASS THIS TEST. SO DON'T BE
23 CONCERNED ABOUT ANY QUESTIONS THAT MIGHT BE ASKED
24 OF YOU OR ANY ANSWERS THAT YOU HAVE TO GIVE. BUT
25 YOU UNDERSTAND, MA'AM, IN A TRIAL OF A CASE THAT

- 1 EVERY DEFENDANT, REGARDLESS OF THE NATURE OR
2 ENORMITY OF THE CHARGE MADE AGAINST HIM OR HER, IS
3 ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE
4 CHARGES UNTIL OR UNLESS THE STATE PROVES THEIR
5 GUILT BEYOND A REASONABLE DOUBT?
- 6 A. YES, SIR.
- 7 Q. AND DO YOU UNDERSTAND FURTHER THE DEFENDANT IS NOT
8 REQUIRED TO TAKE THE WITNESS STAND? IF HE DOES NOT
9 TAKE THE WITNESS STAND, THAT FACT CANNOT ENTER INTO
10 DELIBERATIONS. IT DOES NOT RAISE ANY INFERENCE FOR
11 OR AGAINST HIS GUILT OR INNOCENCE?
- 12 A. YES, SIR.
- 13 Q. AND YOU UNDERSTAND FURTHER, PLEASE MA'AM, THAT THE
14 COURT WILL CHARGE YOU AS TO THE LAW AND THAT THE
15 JURORS MUST APPLY THE LAW AS THE COURT STATES IT TO
16 BE. DO YOU UNDERSTAND THAT?
- 17 A. YES, SIR.
- 18 Q. AND COULD YOU APPLY THAT LAW EVEN IF YOU DISAGREED
19 WITH IT?
- 20 A. YES, SIR.
- 21 Q. AND, MA'AM, DEPENDING ON THE FACTS OF THE CASE IN A
22 MURDER CASE, IF THE EVIDENCE WARRANTED IT COULD YOU
23 RETURN A VERDICT OF NOT GUILTY?
- 24 A. YES, SIR.
- 25 Q. AND IF THE FACTS AND EVIDENCE WARRANTED IT, COULD

REBADELL AHL - EXAM. BY THE COURT

1 YOU RETURN A VERDICT OF GUILTY?

2 A. YES, SIR.

3 Q. AND YOU UNDERSTAND, PLEASE, MA'AM, THAT IN A DEATH
4 PENALTY CASE THAT THERE ARE TWO PHASES OF THAT
5 CASE. AND THE FIRST PHASE IS CALLED A GUILT
6 PHASE. AND PLEASE DERIVE NO INFERENCE FROM THE
7 FACT THAT WE'RE SPEAKING OF A PENALTY PHASE WHEN
8 THERE'S BEEN NO TESTIMONY IN THE CASE. BUT JUST
9 FOR PURPOSES OF THESE QUESTIONS, ASSUME THAT THE
10 JURY HAS FOUND BEYOND A REASONABLE DOUBT
11 UNANIMOUSLY THAT THE DEFENDANT WAS GUILTY OF
12 MURDER. YOU WOULD THEN MOVE TO THE PENALTY PHASE,
13 AND THERE THE STATE WOULD BE REQUIRED TO PROVE ONE
14 OR MORE STATUTORY AGGRAVATING CIRCUMSTANCES DURING
15 THE MURDER SUCH AS BURGLARY, BREAKING IN SOMEBODY'S
16 HOUSE IN THE NIGHTTIME WITH THE INTENT TO STEAL OR
17 COMMIT SOME CRIME, OR DURING AN ARMED ROBBERY, OR
18 DURING CRIMINAL SEXUAL CONDUCT THAT THE MURDER
19 OCCURRED. AND IF THE STATE PROVED A STATUTORY
20 AGGRAVATING CIRCUMSTANCE, COULD YOU RETURN A
21 VERDICT RECOMMENDING THE DEATH PENALTY?

22 A. YES, SIR.

23 Q. AND IF THE DEFENDANT PROVED MITIGATING
24 CIRCUMSTANCES -- AND MITIGATING MEANS LESS OF, NOT
25 TO -- TO DIMINISH THE CIRCUMSTANCES. COULD YOU

REBADELL AHL - DIRECT/MR. THEOS

1 RETURN A VERDICT OR RECOMMENDATION OF LIFE
2 IMPRISONMENT WITHOUT PAROLE?

3 A. YES, SIR.

4 Q. AND COULD YOU EVEN THOUGH YOU MAY HAVE FOUND THE
5 STATUTORY AGGRAVATING CIRCUMSTANCE, THE LAW PERMITS
6 THE JURY TO HAVE A RECOMMENDATION OF MERCY AND TO
7 EXTEND MERCY TO THE DEFENDANT REGARDLESS OF THE
8 FACTS OF THE CASE AND THEN RECOMMEND A VERDICT,
9 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT
10 PAROLE. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND, MA'AM, THAT SHEET THAT I GAVE TO YOU HAD ONE,
13 TWO, AND THREE EXAMPLES OF TYPES OF JURORS. DO YOU
14 UNDERSTAND THAT?

15 A. YES, SIR.

16 Q. WHICH TYPE OF JUROR DO YOU FEEL LIKE YOU WOULD BE
17 UNDER?

18 A. NUMBER THREE.

19 Q. NUMBER THREE?

20 A. YES, SIR.

21 Q. ALL RIGHT. THE LAWYERS MAY WANT TO ASK YOU SOME
22 QUESTIONS, MRS. AHL.

23 DIRECT EXAMINATION

24 BY MR. THEOS:

25 Q. MRS. AHL, GOOD MORNING. I'M JERRY THEOS. AND YOU

REBADELL AHL - DIRECT/MR. THEOS

1 KNOW MR. BELL. AND SEATED NEXT TO MR. BELL IS
2 KENNETH SIMMONS WHO IS OUR CLIENT. AS I UNDERSTAND
3 IT -- AND, AGAIN, I DON'T MEAN TO PUT YOU IN THE
4 HOT SEAT. AND I'M CERTAINLY NOT PASSING JUDGMENT
5 ON YOU BASED ON YOUR RESPONSES. BUT AS I
6 UNDERSTAND IT, YOU UNDERSTAND THE CONCEPT OF
7 PRESUMPTION OF INNOCENCE?

8 A. YES, SIR.

9 Q. YOU UNDERSTAND THAT AS MR. SIMMONS SITS HERE WITH
10 US THAT HE'S PRESUMED TO BE INNOCENT?

11 A. RIGHT.

12 Q. AND YOU UNDERSTAND THAT JUST BECAUSE THE STATE IS
13 SEEKING THE DEATH PENALTY AND BECAUSE WE'RE ASKING
14 YOU ALL THESE QUESTIONS ABOUT PENALTIES, YOU
15 UNDERSTAND THAT THAT DOESN'T INTERFERE, DOESN'T
16 IMPACT AT ALL, ON THAT PRESUMPTION OF INNOCENCE?

17 A. YES.

18 Q. YOU UNDERSTAND THAT MR. BAILEY AND HIS STAFF HAVE
19 THE BURDEN OF PROVING FIRST THAT MR. SIMMONS IS
20 GUILTY OF THE CHARGES THAT HE'S FACING?

21 A. RIGHT.

22 Q. AND THAT IF HE FAILS TO PROVE MR. SIMMONS' GUILT
23 BEYOND A REASONABLE DOUBT THAT THE JURY WOULD HAVE
24 TO RETURN A VERDICT OF NOT GUILTY?

25 A. RIGHT.

REBADELL AHL - DIRECT/MR. THEOS

1 Q. ARE YOU CAPABLE OF DOING THAT?

2 A. YES, SIR.

3 Q. WOULD YOU IN FACT HOLD MR. BAILEY AND HIS STAFF TO
4 THAT BURDEN?

5 A. YES, SIR.

6 Q. NOW, IT'S A LITTLE UNUSUAL TALKING ABOUT THE
7 PENALTY BEFORE WE TALK ABOUT THE GUILT OF SOMEBODY
8 THAT'S DETERMINED. BUT AS THE JUDGE SAID, WE HAVE
9 TO ASK YOU THOSE QUESTIONS. THERE JUST ISN'T ANY
10 OTHER WAY TO DO IT. BUT AS I UNDERSTAND YOUR
11 RESPONSES TO THE JUDGE'S QUESTIONS, YOU WOULD BE
12 ABLE TO WEIGH ALL THOSE THINGS, ALL OF THAT
13 EVIDENCE AND THOSE FACTORS OFFERED BY MR. BAILEY.
14 YOU WOULD BE ABLE TO WEIGH ALL THOSE FACTORS AND
15 THAT EVIDENCE OFFERED BY MR. BELL AND MYSELF AND
16 DETERMINE IN THE PENALTY PHASE, IF WE WERE TO REACH
17 IT, WHAT AN APPROPRIATE SENTENCE WOULD BE, WHETHER
18 THAT BE THE DEATH PENALTY OR WHETHER THAT BE LIFE
19 IN PRISON?

20 A. RIGHT.

21 Q. AND YOU WOULD BE ABLE TO DO THAT AGAIN BASED UPON
22 THE EVIDENCE THAT WAS OFFERED?

23 A. YES, SIR.

24 Q. THANK YOU.

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

REBADELL AHL - CROSS/MR. BAILEY

1 THE COURT: MR. BAILEY, ANY
2 QUESTIONS?

3 MR. BAILEY: YES, SIR.

4 CROSS-EXAMINATION

5 BY MR. BAILEY:

6 Q. MRS. AHL, I'M WALTER BAILEY. I'LL BE PROSECUTING
7 THE CASE. I NEED TO ASK YOU A FEW MORE QUESTIONS.
8 LET ME START OFF ASKING ABOUT WHAT RELATIONSHIP YOU
9 HAVE WITH MR. BELL. I THINK YOU TOLD THE JUDGE
10 THAT HE HAD DONE A DIVORCE FOR YOU?

11 A. YES, SIR.

12 Q. AND HOW LONG AGO WAS THAT?

13 A. AROUND '78.

14 Q. OKAY. DO YOU KNOW MR. BELL OR ANY MEMBERS OF HIS
15 FAMILY SOCIALLY, OR IS IT JUST THE FACT THAT HE
16 REPRESENTED YOU IN '78?

17 A. YES, SIR.

18 Q. ALL RIGHT. AND THE FACT THAT HE WAS YOUR LAWYER
19 BACK THEN, WOULD THAT HAVE ANY BEARING ON YOUR
20 ABILITY TO BE FAIR TO BOTH SIDES IN THIS CASE?

21 A. YES, SIR.

22 Q. THE JUDGE EXPLAINED TO YOU ABOUT THE TWO PART
23 PROCESS THAT WE GO THROUGH OR MAY BE GOING THROUGH
24 IN A DEATH PENALTY CASE WHERE WE HAVE THE GUILT
25 PHASE WHICH IS LIKE ANY OTHER TRIAL. THE JURY

REBADELL AHL - CROSS/MR. BAILEY

1 DETERMINES WHETHER OR NOT THE STATE CAN PROVE A
2 PERSON IS GUILTY OF WHAT THEY'RE CHARGED WITH
3 BEYOND A REASONABLE DOUBT. AND THAT IF WE CAN'T DO
4 THAT, THAT'S THE END OF IT. ON THE OTHER HAND, IF
5 WE CAN PROVE THE DEFENDANT GUILTY OF MURDER AND
6 WE'RE SEEKING THE DEATH PENALTY, THEN WE GO INTO
7 THAT SECOND PHASE. AND THE REASON WE HAVE THAT
8 SECOND PHASE IS TO LET THE JURY HEAR ADDITIONAL
9 EVIDENCE. I'D BE PUTTING UP EVIDENCE IN
10 AGGRAVATION. I'D BE ARGUING THAT THIS IS A CASE
11 THAT WARRANTS THE DEATH PENALTY. THE DEFENSE, IF
12 THEY WANT TO -- THEY DON'T HAVE TO -- CAN PUT UP
13 EVIDENCE IN MITIGATION. OF COURSE THEY WOULD ARGUE
14 FOR LIFE WITHOUT PAROLE. IN SOUTH CAROLINA THE
15 JURY, NOT THE JUDGE, DECIDES WHAT THE PENALTY IS
16 GOING TO BE. ALL THE JUDGE DOES IS HE ORDERS THAT
17 JURY'S VERDICT TO HAPPEN. IF THE JURY VOTES FOR
18 LIFE WITHOUT PAROLE, THE JUDGE WOULD ORDER IT, AND
19 HE'LL SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES
20 FOR THE DEATH SENTENCE, THE JUDGE WOULD ORDER IT,
21 AND THAT DEFENDANT WILL BE EXECUTED. NOW, MRS.
22 AHL, NOBODY IS GOING TO ASK YOU WHAT YOU WOULD DO
23 IN THIS CASE BECAUSE YOU HAVEN'T HEARD THE FACTS?

24 A. RIGHT.

25 Q. BUT IF THE CASE IS BAD ENOUGH, COULD YOU VOTE FOR

1 THE DEATH PENALTY KNOWING THAT SENTENCE WOULD
2 ACTUALLY BE CARRIED OUT?

3 A. YES, SIR.

4 Q. AND IF THE OTHER ELEVEN JURORS ALSO VOTED FOR THE
5 DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A
6 VERDICT FORM ALONG WITH THOSE OTHER JURORS THAT
7 WOULD RESULT IN THAT EXECUTION HAPPENING?

8 A. YES, SIR.

9 Q. AND COULD YOU COME OUT HERE AND SIT IN ONE OF THESE
10 CHAIRS WHEN YOUR NAME IS CALLED OUT LOUD THAT THAT
11 WAS YOUR VERDICT?

12 A. YES, SIR.

13 Q. THE JURORS ARE GOING TO BE PUT UP IN A MOTEL FOR
14 ROUGHLY A WEEK STARTING MAYBE WEDNESDAY OR
15 THURSDAY. THAT'S AN INCONVENIENCE FOR ANYBODY.
16 BUT IS THERE ANYTHING UNIQUE TO YOUR SITUATION,
17 HOME, WORK, OR WHATEVER, THAT WOULD CAUSE YOU ANY
18 UNUSUAL PROBLEMS IF YOU WERE PUT AWAY LIKE THAT?

19 A. NO.

20 Q. MRS. AHL, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

21 THE COURT: MRS. AHL, YOU HAVE BEEN
22 FOUND TO BE QUALIFIED TO SERVE AS A JUROR. THAT
23 DOESN'T MEAN THAT YOU'VE BEEN SELECTED. WE NEED TO
24 QUALIFY 37 JURORS, AND THEN WE'LL BRING THE JURORS
25 BACK AND HAVE A FORMAL STRIKE; AND WE'LL KEEP

REBADELL AHL - CROSS/MR. BAILEY

1 TWELVE PLUS TWO ALTERNATES. YOU'LL BE PUT UP AT
2 THE HOLIDAY INN. THE COUNTY WILL PAY THE
3 EXPERIENCE AND YOUR MEALS. DURING THE DAY YOU'LL
4 BE IN COURT, AND IN THE EVENING YOU'LL BE AT THE
5 MOTEL. CAN YOU THINK OF ANYTHING CONCERNING YOUR
6 HEALTH OR MEMBERS OF YOUR FAMILY THAT WOULD CAUSE A
7 PROBLEM IF YOU WERE SEQUESTERED FOR A WEEK?

8 MRS. AHL: NO, SIR.

9 THE COURT: SO, MA'AM, THERE'S A
10 PHONE NUMBER ON TOP OF THAT LITTLE SHEET. IF YOU
11 WOULD CALL THAT AFTER SIX. AND WE HOPE TO HAVE YOU
12 BACK TOMORROW AT TWO O'CLOCK. BUT IF NOT, WE'LL
13 LEAVE A MESSAGE AS TO WHEN THE QUALIFIED JURORS
14 SHOULD RETURN. SO PLEASE, DON'T EXPOSE YOURSELF TO
15 ANYTHING ABOUT THE CASE OR ALLOW ANYONE TO TALK TO
16 YOU OR IN YOUR PRESENCE FOR OBVIOUS REASONS. THAT
17 WOULD NOT BE PROPER. YOU HAVE A NICE DAY. WE'LL
18 SEE YOU TOMORROW.

19 MRS. AHL: THANK YOU.

20 THE COURT: WE'VE BEEN AT IT FOR TWO
21 HOURS, NOW, GENTLEMEN AND LADIES. LET'S TAKE ABOUT
22 A FIVE MINUTE RECESS. LET ME KNOW WHEN YOU'RE
23 READY.

24 (BRIEF RECESS.)

25 THE COURT: THE PAPERS ON THE

REBADELL AHL - CROSS/MR. BAILEY

1 TEACHERS TO BE EXCUSED; I THINK I HAD GIVEN YOU A
2 COPY ON YESTERDAY. PLEASE REFER TO YOUR SCHEDULE,
3 GENTLEMEN. IT APPEARS THAT I WAS IN ERROR IN
4 SCHEDULING THESE EVERY HOUR AND FIFTEEN MINUTES. I
5 THOUGHT ONCE WE GOT IN A GROOVE THAT THAT WOULD
6 END, OR IT WOULD BE SHORTER QUESTION, PERIOD. BUT
7 THAT'S MY MISTAKE, NOT YOURS. WHAT I SUGGEST AT
8 THIS TIME IS THAT THE JURORS THAT ARE LISTED HERE
9 FOR TWO O'CLOCK IF MAYBE WE ASK THEM TO COME IN AT
10 2:30. AND I WOULD SUGGEST WE JUST MAYBE ORDER
11 THREE OR FOUR PIZZAS FOR THE LAWYERS AND COURT
12 STAFF TO EAT AT LUNCH, AND WE COULD EAT IN THIRTY
13 MINUTES AND KEEP ON GOING. WOULD THAT BE AGREEABLE
14 WITH THE STATE?

15 MR. BAILEY: YES, SIR.

16 THE COURT: BY THE DEFENSE?

17 MR. THEOS: YES, SIR.

18 THE COURT: SO, MADAM CLERK, COULD
19 YOU NOTIFY THAT PANEL NUMBER SEVEN AND HAVE SOMEONE
20 DOWNSTAIRS? AND THEY'RE WELCOME TO USE THE PHONE
21 IN MY OFFICE IF THAT WILL HELP YOU TO TELL THEM WE
22 WON'T NEED THEM UNTIL 2:30. AND THEN PANEL EIGHT
23 IF WE PUT IT AT 3:15; SUPPOSE WE PUT THEM -- TWO
24 HOURS WOULD BE 4:30. LET'S SAY AN HOUR AND
25 FORTY-FIVE MINUTES. LET'S SAY 4:15 FOR PANEL

REBADELL AHL - CROSS/MR. BAILEY

1 EIGHT. AND THEN ON THE PANEL NINE, RATHER THAN
2 4:30, LET'S PUT THEM AT SIX O'CLOCK. AND THEN THE
3 PANEL THAT WE HAD COMING IN THIS EVENING AT 5:45 TO
4 CHANGE THOSE TO WEDNESDAY MORNING AT -- AGAIN,
5 Y'ALL WANT TO START AT NINE? DO YOU WANT TO START
6 AT 8:30? I'M FLEXIBLE.

7 MR. BAILEY: I'D JUST AS SOON START
8 EARLY, JUDGE.

9 THE COURT: WELL, MR. BELL SAID HE
10 WANTED TO START AT FIVE IN THE MORNING, BUT NOT
11 WORK AFTER SIX, BUT WE CAN'T DO THAT OBVIOUSLY. SO
12 WHAT FOR THAT PANEL? SHOULD WE WAIT UNTIL THIS
13 AFTERNOON ABOUT THREE TO SEE HOW WE'RE PROGRESSING,
14 OR SHOULD WE TRY AND CALL THAT PANEL ELEVEN NOW?

15 MS. GRAHAM: NUMBER TEN?

16 THE COURT: SO PANEL NUMBER TEN, YOU
17 WANT TO PUT THEM AT 8:30?

18 MR. THEOS: YOUR HONOR, I DON'T MEAN
19 TO BE THE STUMBLING BLOCK HERE. I'D ASK THAT WE
20 START AT NINE RATHER THAN 8:30. I THINK WE'RE
21 PROGRESSING AT A PRETTY GOOD PACE.

22 THE COURT: WELL, I'LL COMPROMISE.
23 I'LL PUT IT AT 8:45.

24 MR. THEOS: THANK YOU.

25 THE COURT: SO THAT WILL BE PANEL

REBADELL AHL - CROSS/MR. BAILEY

1 TEN; AND THEN THAT PANEL ELEVEN, LET'S JUST BRING
2 THEM IN AT 10:30 RATHER THAN AT O'CLOCK. AND I'M
3 HOPEFUL THAT WE'RE GOING TO HAVE ENOUGH JURORS.
4 AND DON'T CALL THAT PANEL TWELVE, THIRTEEN,
5 FOURTEEN, FIFTEEN AS OF YET, OKAY?

6 MS. GRAHAM: YES, SIR. PANEL ELEVEN
7 IS COMING IN AT 10:30?

8 THE COURT: LET'S JUST START BACK AT
9 THE TOP TO LET THE LAWYERS MAKE A NOTE THAT ON THE
10 PANEL SEVEN, WE'RE GOING TO WAIVE AND HAVE THEM
11 COME IN AT 2:30 TODAY. AND ON PANEL EIGHT AT 4:15
12 TODAY. AND PANEL NINE AT SIX O'CLOCK TODAY. AND
13 THEN PANEL TEN WEDNESDAY AT 8:45. AND PANEL ELEVEN
14 AT 10:30 ON WEDNESDAY. AND DON'T CALL PANELS
15 TWELVE THROUGH FIFTEEN YET BECAUSE HOPEFULLY WE
16 WILL NOT NEED THEM. IS THAT AGREEABLE WITH THE
17 STATE?

18 MR. BAILEY: YES, SIR.

19 THE COURT: IS THAT AGREEABLE WITH
20 THE DEFENSE?

21 MR. THEOS: YES, SIR.

22 THE COURT: ALL RIGHT. SO BRING
23 DEBORAH SHUFORD IN, PLEASE. AND GENTLEMEN, THE
24 RECORD SHOULD REFLECT, OF COURSE, THAT THE
25 DEFENDANT IS PRESENT. AND I DID, WITH PERMISSION

DEBORAH SHUFORD - EXAM. BY THE COURT

1 FROM THE STATE AND THE DEFENSE, WALK INTO THE JURY
2 ROOM WHERE THESE JURORS ARE WAITING EXPLAINING THAT
3 WE WERE ABOUT 45 MINUTES OFF SCHEDULE AND BEG THEIR
4 INDULGENCE.

5 (JUROR NUMBER 282, A WHITE FEMALE, IS CALLED.)
6 - - - - -

7 WHEREUPON,

8 DEBORAH SHUFORD, WHO BEING PREVIOUSLY
9 SWORN TO TELL THE TRUTH, TESTIFIED AS
10 FOLLOWS:

11 EXAMINATION

12 BY THE COURT:

13 Q. GOOD MORNING.

14 A. GOOD MORNING.

15 Q. MA'AM, YOU ARE MRS. DEBORAH KAY SHUFORD, JUROR
16 NUMBER 282. THANK YOU SO MUCH FOR BEING HERE
17 PRESENT WITH US TODAY. I APOLOGIZE THAT WE ARE
18 ABOUT AN HOUR OFF SCHEDULE, BUT NO ONE CAN
19 ACCURATELY GAUGE OR PREDICT HOW LONG IT WILL TAKE
20 DURING THIS MATTER; AND WE'RE JUST DOING THE BEST
21 WE CAN AND APPRECIATE YOUR COOPERATION AND
22 INDULGENCE. PLEASE RECALL, MRS. SHUFORD, THAT ON
23 YESTERDAY YOU WERE PLACED UNDER OATH, AND YOU
24 UNDERSTAND THAT THAT SAME OATH APPLIES TO THE
25 ANSWERS YOU GIVE NOW TO THE QUESTIONS ABOUT TO BE

DEBORAH SHUFORD - EXAM. BY THE COURT

1 PUT TO YOU?

2 A. YES.

3 Q. AND SINCE WE TALKED WITH YOU ON YESTERDAY, HAS
4 ANYBODY TALKED WITH YOU ABOUT THIS CASE? HAVE YOU
5 DISCUSSED IT WITH ANYONE OR BEEN EXPOSED TO ANY
6 ADDITIONAL INFORMATION ABOUT THIS CASE FROM ANY
7 SOURCE AT ALL?

8 A. NO, SIR.

9 Q. NOW ON YESTERDAY, MA'AM, YOU HAD INDICATED WHEN WE
10 QUESTIONED THE LARGE GROUP OF VENIRE THAT YOU HAD
11 SEEN OR HEARD OR READ SOMETHING ABOUT THIS CASE IN
12 THE PAST. COULD YOU PLEASE TELL US THE SOURCE OF
13 THE INFORMATION?

14 A. I READ AN ARTICLE IN THE SUMMERVILLE JOURNAL SAYING
15 THAT 350 PEOPLE WERE GOING TO BE SUMMONED TO THIS
16 CASE.

17 Q. AND, MA'AM, DID YOU READ ANYTHING ABOUT THE ALLEGED
18 FACTS OF THE CASE?

19 A. YES. THERE WERE THE INDICTMENTS THAT YOU READ OFF
20 THAT WERE IN THERE, AND SOMETHING ABOUT DNA. BUT I
21 DON'T RECALL EVERYTHING.

22 Q. AND, MA'AM, BASED UPON WHAT YOU HAVE READ, HAVE YOU
23 FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR
24 INNOCENCE OF THE DEFENDANT, KENNETH SIMMONS, IN
25 THIS CASE?

DEBORAH SHUFORD - EXAM. BY THE COURT

1 A. NO, SIR, I HAVE NOT.

2 Q. IF CHOSEN AS A JUROR, WOULD YOU BE WILLING AND ABLE
3 TO PUT ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR
4 READ AND DECIDE THE CASE BASED UPON THE EVIDENCE IN
5 THE TRIAL OF THE CASE?

6 A. YES, SIR, I BELIEVE I COULD.

7 Q. SINCE YOU SUBMITTED THAT QUESTIONNAIRE TO US
8 SEVERAL WEEKS AGO, HAS THERE BEEN ANY CHANGE IN
9 THAT THAT YOU NEED TO UPDATE IN ANY WAY?

10 A. NO, SIR.

11 Q. AND, MA'AM, PLEASE UNDERSTAND THE QUESTIONS THAT
12 ARE BEING ASKED OF YOU. WE'RE NOT ATTEMPTING TO
13 INVADE YOUR PRIVACY OR IN ANY WAY TO BE CRITICAL OF
14 YOUR VIEWS BECAUSE EVERY ANSWER THAT YOU GIVE WILL
15 BE A CORRECT ANSWER BECAUSE YOU'RE CERTAINLY
16 ENTITLED TO YOUR VIEWS WHATEVER THOSE VIEWS MAY
17 BE. SO THERE ARE NO RIGHT OR WRONG ANSWERS. SO
18 PLEASE BE AS RELAXED AND AS COMFORTABLE AS YOU CAN
19 AS WE PROCEED IN THIS MATTER. NOW, MA'AM, IF YOU
20 WERE CALLED AS A JUROR IN THIS CASE, WOULD YOU BE
21 WILLING TO LISTEN TO THE LAW AS INSTRUCTED BY THIS
22 COURT AND THEN TO APPLY THE LAW TO THE FACTS AS YOU
23 FIND THEM TO BE?

24 A. YES, SIR.

25 Q. IN OTHER WORDS, COULD YOU FOLLOW THE LAW IN THIS

1 CASE?

2 A. YES, SIR.

3 Q. ALL RIGHT. AND, MA'AM, LET ME EXPLAIN TO YOU THAT
4 IN A TRIAL OF A CRIMINAL CASE THAT EVERY DEFENDANT
5 IS PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE
6 CHARGES REGARDLESS OF WHAT THE CHARGE MIGHT BE.
7 AND THE DEFENDANT HAS NO BURDEN OF PROOF. THE
8 DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS STAND.
9 THE DEFENDANT DOES NOT HAVE TO CALL WITNESSES. AND
10 IF THE DEFENDANT DOES NOT TAKE THE WITNESS STAND,
11 THAT RAISES NO INFERENCE OF PRESUMPTION FOR OR
12 AGAINST HIS GUILT OR INNOCENCE AND MUST NOT ENTER
13 INTO THE DELIBERATIONS OF THE JURY IN ANY MANNER
14 WHATSOEVER. THE BURDEN OF PROOF, RATHER, IS UPON
15 THE STATE REPRESENTED BY THE SOLICITOR TO PROVE THE
16 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.
17 DO YOU UNDERSTAND THAT?

18 A. YES, SIR, I DO.

19 Q. DO YOU UNDERSTAND, MA'AM, THAT THE FIRST PHASE
20 WOULD BE WHAT'S CALLED A GUILT PHASE. THE
21 DEFENDANT IS CHARGED WITH MURDER AND FOUR OTHER
22 CHARGES. AND IF YOUR VERDICT WAS NOT GUILTY IN THE
23 MURDER CASE, THEN YOU WOULD NOT NEED TO GO INTO THE
24 PENALTY PHASE. BUT ASSUMING THAT THE VERDICT OF
25 THE JURY WOULD BE GUILTY, THAT THEY HAD FOUND

DEBORAH SHUFORD - EXAM. BY THE COURT

1 UNANIMOUSLY SO THAT THE STATE HAD PROVEN THE GUILT
2 OF THE DEFENDANT BEYOND A REASONABLE DOUBT, THEN WE
3 WOULD PROCEED TO THE PENALTY PHASE. AND DURING
4 THAT PENALTY PHASE, THE MURDER CASE IS THE ONLY
5 TYPE CASE WHERE THE JURY MAKES A RECOMMENDATION TO
6 THE COURT. AND YOU'LL BE TALKING ABOUT EITHER A
7 DEATH PENALTY OR EITHER LIFE IMPRISONMENT WITHOUT
8 PAROLE. AND THE STATE HAS THE BURDEN OF PROVING A
9 STATUTORY AGGRAVATING CIRCUMSTANCE BEFORE A
10 RECOMMENDATION OF DEATH COULD BE HAD FROM THE
11 JURY. IN OTHER WORDS, AN EXAMPLE OF A STATUTORY
12 AGGRAVATING CIRCUMSTANCE IS THE COMMISSION OF A
13 MURDER WHILE IN AN ARMED ROBBERY OR COMMITTING
14 MURDER WHILE IN A BURGLARY, BREAKING INTO
15 SOMEBODY'S HOME AT NIGHT AND COMMITTING A FELONY
16 WITH THE INTENT TO COMMIT A FELONY OR CRIMINAL
17 SEXUAL CONDUCT. AND, PLEASE MA'AM, DO NOT INFER BY
18 THESE QUESTIONS THAT THE COURT FEELS THAT THE
19 DEFENDANT IS GUILTY OR WHAT YOUR VERDICT SHOULD
20 BE. I'M MERELY ASKING QUESTIONS OF YOU AT THIS
21 TIME. BUT IF THE STATE PROVES A STATUTORY
22 AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT,
23 THEN THE JURY COULD -- THEY DON'T HAVE TO -- BUT
24 THEY COULD RETURN A RECOMMENDATION OF DEATH PENALTY
25 TO THE COURT, AND THE COURT WOULD ORDER THAT TO BE

DEBORAH SHUFORD - EXAM. BY THE COURT

1 CARRIED OUT. THE DEFENDANT WOULD BE GIVEN AN
2 OPPORTUNITY TO PRESENT MITIGATING CIRCUMSTANCES.
3 TO MITIGATE MEANS TO LESSEN. AND IF THE DEFENDANT
4 SATISFIES THE JURY OF MITIGATING CIRCUMSTANCES,
5 THEN THE JURY COULD -- IT WOULD BE THEIR OPTION --
6 TO RETURN A VERDICT OR A RECOMMENDATION OF LIFE
7 WITHOUT PAROLE. OR THE THIRD SITUATION IS FOR NO
8 REASON AT ALL IS A RECOMMENDATION OF MERCY. THE
9 JURY COULD RECOMMEND LIFE IMPRISONMENT WITHOUT
10 PAROLE ALTHOUGH THE STATE HAD PROVEN BEYOND A
11 REASONABLE DOUBT A STATUTORY AGGRAVATING
12 CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND DO YOU FEEL, MA'AM, THAT YOU COULD BE AN
15 OBJECTIVE JUROR; THAT YOU WOULD LISTEN TO THE
16 TESTIMONY, LISTEN TO THE EVIDENCE, REASON WITH YOUR
17 FELLOW AND SISTER JURORS, AND THEN ARRIVE AT A
18 UNANIMOUS VERDICT OF EITHER A DEATH PENALTY OR
19 EITHER LIFE IMPRISONMENT WITHOUT PAROLE DEPENDING
20 ON YOUR VIEW OF THE EVIDENCE?

21 A. YES, SIR.

22 Q. AND, MA'AM, YOU WERE GIVEN A SHEET OF PAPER THAT
23 HAD THREE TYPES OF JURORS ON THAT. AND YOU RECALL
24 THOSE THREE TYPES OF JURORS?

25 A. YES, SIR.

DEBORAH SHUFORD - DIRECT/MR. THEOS

1 Q. DO YOU FEEL THAT YOU WOULD FALL IN THE TYPE ONE,
2 TWO, OR THREE, PLEASE?

3 A. NUMBER THREE.

4 Q. NUMBER THREE?

5 A. YES, SIR.

6 Q. ALL RIGHT.

7 THE COURT: YOU MAY QUESTION,
8 PLEASE, IF THE ATTORNEYS WOULD LIKE; MR. SOLICITOR?

9 MR. THEOS: YES, SIR.

10 THE COURT: I BEG YOUR PARDON. MR.
11 THEOS.

12 DIRECT EXAMINATION

13 BY MR. THEOS:

14 Q. GOOD MORNING, MRS. SHUFORD. I'M JERRY THEOS. THIS
15 IS JIM BELL. JIM AND I ARE ATTORNEYS REPRESENTING
16 KENNETH SIMMONS WHO'S SEATED AT THE DEFENSE TABLE.
17 WE THANK YOU FOR COMING. WE APOLOGIZE. AS THE
18 JUDGE SAID, TRY TO BE RELAXED AND COMFORTABLE. AND
19 I SAW THAT BRING A LITTLE SMILE TO YOUR FACE. I
20 GUESS THAT'S EASIER SAID THAN DONE. YOU'RE SORT OF
21 SITTING IN AN AWKWARD SEAT. AND WE DON'T MEAN TO
22 PUT YOU UP IN A HOT SEAT, AND WE CERTAINLY AREN'T
23 TRYING TO PASS JUDGMENT ON YOU. WE REALLY ARE JUST
24 TRYING TO FIND OUT HOW YOU TRULY AND SINCERELY FEEL
25 ABOUT CERTAIN THINGS. WHAT WE'RE CONCERNED ABOUT

DEBORAH SHUFORD - DIRECT/MR. THEOS

1 PRIMARILY IS YOUR FEELINGS ABOUT THE DEATH PENALTY
2 AND WHETHER YOU CAN CONSIDER CERTAIN THINGS AND
3 CONSIDER OTHER THINGS BEFORE YOU RENDER THAT
4 DECISION. THERE'S A LITTLE BIT OF A PROBLEM WITH
5 THAT, AND THE JUDGE TALKED TO YOU ABOUT IT. I WANT
6 TO MAKE SURE THAT WE OVERCOME THAT PROBLEM, AND
7 THAT IS THAT, AS MR. SIMMONS SITS THERE RIGHT NOW,
8 HE'S PRESUMED TO BE INNOCENT.

9 A. YES, SIR.

10 Q. AND THE FACT THAT HE'S BEEN CHARGED, THAT HE'S BEEN
11 INDICTED AS THE JUDGE READ OUT EARLIER TO THE
12 ENTIRE JURY PANEL WHO WAS HERE; THE FACT THAT HE'S
13 DONE THAT, AND THE FACT THAT THE STATE IS SEEKING
14 THE DEATH PENALTY DOESN'T IN ANY WAY SUGGEST THAT
15 MR. SIMMONS IS ANYTHING OTHER THAN NOT GUILTY AT
16 THIS POINT; THAT HE IS IN FACT INNOCENT.

17 A. YES, SIR. I UNDERSTAND.

18 Q. AND YOU UNDERSTAND THAT BEFORE, ALTHOUGH WE'VE BEEN
19 TALKING ABOUT THE PENALTY PHASE AND WHAT MIGHT
20 HAPPEN IF THE JURY WERE TO RETURN A VERDICT OF
21 GUILTY; DO YOU UNDERSTAND BEFORE WE EVEN GET TO
22 THAT POINT, THE STATE IS REQUIRED -- MR. BAILEY
23 BAILEY AND HIS STAFF -- ARE REQUIRED TO PROVE TO
24 THE JURY BEYOND A REASONABLE DOUBT THAT MR. SIMMONS
25 IS GUILTY OF THOSE THINGS HE'S BEEN CHARGED WITH?

DEBORAH SHUFORD - DIRECT/MR. THEOS

1 A. YES, SIR.

2 Q. AND IF MR. BAILEY AND HIS STAFF FAIL TO PROVE THAT
3 TO A JURY'S SATISFACTION, THEN THE CASE WOULD END
4 RIGHT THEN AND THERE?

5 A. YES, SIR.

6 Q. WE WOULDN'T EVEN GO INTO THE PENALTY PHASE?

7 A. YES, SIR.

8 Q. AS THE JUDGE SAID A LITTLE EARLIER, IF WE ASSUME,
9 HOWEVER, JUST FOR ARGUMENT SAKE THAT WE GET TO THAT
10 POINT; THE JURY FINDS MR. SIMMONS GUILTY, AND WE
11 GET TO THAT POINT WHERE THE STATE OFFERS CERTAIN
12 EVIDENCE AND CERTAIN FACTORS RELATED TO WHY THEY
13 BELIEVE THAT THE DEATH PENALTY IS APPROPRIATE AND
14 MR. BELL AND I PRESENT EVIDENCE AND CERTAIN FACTORS
15 AS TO WHY WE THINK MR. SIMMONS SHOULD NOT BE
16 SENTENCED TO DEATH BUT SHOULD BE SENTENCED TO LIFE
17 WITHOUT PAROLE, YOU INDICATED THAT YOU WOULD
18 CONSIDER BOTH OF THOSE?

19 A. YES, SIR.

20 Q. BOTH OF THOSE THINGS?

21 A. YES, SIR.

22 Q. THOSE OFFERED BY MR. BAILEY, THOSE OFFERED BY US,
23 AND THEN ARRIVE AT A CONCLUSION AS TO WHAT YOU FEEL
24 IS AN APPROPRIATE SENTENCE?

25 A. YES, SIR.

DEBORAH SHUFORD - CROSS/MR. BAILEY

1 Q. AND YOU WOULD BE ABLE TO CONSIDER EITHER ONE OF
2 THOSE?

3 A. YES, SIR.

4 Q. DEPENDING ON WHAT CAME OFF OF THE WITNESS STAND?

5 A. YES, SIR.

6 Q. AND YOU WOULDN'T HAVE A PROBLEM DOING THAT?

7 A. NO, SIR.

8 Q. THANK YOU VERY MUCH, MRS. SHUFORD.

9 THE COURT: CROSS?

10 MR. BAILEY: YES, SIR.

11 CROSS-EXAMINATION

12 BY MR. BAILEY:

13 Q. MRS. SHUFORD, I'M WALTER BAILEY. I'LL BE
14 PROSECUTING THIS CASE ALONG WITH THESE OTHER
15 LAWYERS HERE. I WANT TO ASK JUST A FEW MORE
16 QUESTIONS. AND I APOLOGIZE IF I REPEAT SOMETHING
17 THE JUDGE SAID OR MR. THEOS SAID. BUT THIS IS THE
18 ONLY OPPORTUNITY WE HAVE TO TALK TO JURORS BEFORE
19 WE ACTUALLY PICK A JURY WHICH COULD POSSIBLY BE
20 TOMORROW.

21 A. I UNDERSTAND.

22 Q. IN REGARD TO THE DEATH PENALTY, IS THAT SOMETHING
23 THAT YOU'VE EVER GIVEN ANY THOUGHT TO BEFORE
24 YESTERDAY WHEN YOU FOUND OUT THAT YOU MIGHT BE A
25 JUROR ON THIS KIND OF A CASE?

DEBORAH SHUFORD - CROSS/MR. BAILEY

1 A. YES, SIR. I HAVE THOUGHT ABOUT BEING A JUROR
2 BEFORE AND THINGS LIKE THAT. BUT, YOU KNOW, LIKE I
3 SAID, YOU HAVE TO HAVE ALL OF THE EVIDENCE IN FRONT
4 OF YOU; AND, YOU KNOW, ALL THE CIRCUMSTANCES IN
5 ORDER TO DO ONE WAY OR THE OTHER.

6 Q. AND LIKE MR. THEOS SAID, WE WOULDN'T EVEN BE
7 GETTING INTO THESE QUESTIONS UNTIL OR UNLESS THE
8 DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST
9 PART OF THE TRIAL. SO ANY TIME THE JURY IS
10 CONSIDERING LIFE WITHOUT PAROLE OR THE DEATH
11 PENALTY, THAT MEANS HE'S ALREADY BEEN FOUND GUILTY
12 OF MURDER. AND YOU UNDERSTAND THAT IN SOUTH
13 CAROLINA THE JUDGE DOESN'T DECIDE WHAT THE PENALTY
14 IS IN A DEATH PENALTY CASE. IF WE GET TO THAT
15 POINT, THE JURY MAKES THAT DECISION. ALL THE JUDGE
16 DOES IS ORDER THAT JURY'S VERDICT TO BE CARRIED
17 OUT, AND IT WILL BE CARRIED OUT?

18 A. YES, SIR.

19 Q. IF THE JURY VOTES FOR LIFE WITHOUT PAROLE, HE WILL
20 SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES FOR
21 THE DEATH PENALTY, HE WILL GET THE DEATH PENALTY,
22 AND HE WOULD BE EXECUTED?

23 A. YES, SIR.

24 Q. WE'RE NOT GOING TO ASK YOU WHAT YOU WOULD DO IN
25 THIS CASE BECAUSE YOU HAVEN'T HEARD THE FACTS. AND

1 YOU SAID YOU WOULD WANT TO HEAR ALL THE FACTS
2 BEFORE YOU DECIDED. BUT IF THE FACTS WERE BAD
3 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
4 KNOWING THAT PERSON ACTUALLY WOULD BE EXECUTED?

5 A. YES, SIR.

6 Q. IF THE OTHER ELEVEN JURORS VOTED THE SAME WAY.
7 COULD YOU SIGN YOUR NAME TO A VERDICT FORM, A DEATH
8 VERDICT FORM, ALONG WITH THOSE ANOTHER JURORS
9 KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

10 A. YES, SIR.

11 Q. COULD YOU STAND UP AND ANNOUNCE THAT OUT LOUD AS
12 BEING YOUR VERDICT IF IT WAS YOUR VERDICT?

13 A. YES, SIR.

14 Q. THE JURY IS GOING TO BE PUT UP IN A MOTEL FOR
15 ROUGHLY A WEEK UNTIL THIS TRIAL IS OVER. DID YOU
16 KNOW THAT?

17 A. YES, SIR.

18 Q. AND THAT'S A HARDSHIP ON ANYBODY. BUT IS THERE --
19 DO YOU HAVE ANYTHING UNUSUAL GOING ON IN YOUR LIFE
20 OR FAMILY SITUATION THAT WOULD---

21 A. NOT AT THIS TIME.

22 Q. OKAY. AND CAN YOU THINK OF ANY REASON THAT WOULD
23 PREVENT YOU FROM SERVING AS A FAIR AND IMPARTIAL
24 JUROR FOR BOTH SIDES IN THIS CASE?

25 A. NO, SIR.

DEBORAH SHUFORD - CROSS/MR. BAILEY

1 Q. THANK YOU, MRS. SHUFORD. THAT'S ALL I'VE GOT.

2 THANK YOU VERY MUCH.

3 A. THANK YOU.

4 THE COURT: MR. THEOS?

5 MR. THEOS: NO QUESTIONS.

6 THE COURT: ALL RIGHT. MRS.

7 SHUFORD, YOU'VE BEEN FOUND QUALIFIED TO BE A
8 POTENTIAL JUROR IN THIS CASE. AND OF COURSE YOU'VE
9 NOT BEEN SELECTED AS YET. WE HAVE TENTATIVELY SET
10 THE SELECTION PROCESS FOR THOSE FOUND QUALIFIED TO
11 REPORT AT TWO O'CLOCK ON WEDNESDAY. WE HOPE WE CAN
12 MAINTAIN THAT SCHEDULE. BUT IF WE HAVE TO CHANGE
13 IT, WE'LL LET YOU KNOW. THERE'S A PHONE NUMBER ON
14 THAT FORM. CALL THAT AFTER SIX CLOCK TODAY, AND
15 WE'LL LET YOU KNOW IF THERE'S BEEN ANY CHANGE
16 BEYOND THE TWO O'CLOCK ON WEDNESDAY TO RETURN. AND
17 AT THAT TIME WE'LL STRIKE THE JURY. WE'LL HAVE
18 TWELVE JURORS PLUS TWO ALTERNATES. THEY WILL BE
19 TAKEN TO THE MOTEL WITH THEIR LUGGAGE AND TO GET
20 COMFORTABLE. IF YOU HAVE A CAR, YOU CAN LEAVE YOUR
21 CAR AT THE MOTEL, OR WE'LL KEEP THE KEYS UNTIL THE
22 TRIAL IS OVER, OR YOU CAN HAVE A FAMILY MEMBER COME
23 GET THE CAR, OR YOU CAN DRIVE THE CAR BACK AT THAT
24 TIME. AND YOU WILL NOT BE ALLOWED TO TALK WITH
25 ANYONE BY WAY OF TELEPHONE OR OTHERWISE EXCEPT IN

DEBORAH SHUFORD - CROSS/MR. BAILEY

1 CASE OF AN EMERGENCY; AND YOU CAN LEAVE THAT PHONE
2 NUMBER WITH MEMBERS OF YOUR FAMILY. DO YOU KNOW OF
3 ANY PARTICULAR HARDSHIP THAT YOU WOULD HAVE BY WAY
4 OF CHILD CARE OR PHYSICAL CONDITION THAT WOULD
5 CAUSE YOU NOT TO BE ABLE TO SERVE IF YOU WERE
6 REQUIRED TO BE SEQUESTERED OR CONFINED ON A LIMITED
7 BASIS FOR THE NEXT WEEK OR SO?

8 A. NOT RIGHT OFFHAND. I HAVE A 19 YEAR OLD THAT CAN
9 TAKE CARE OF MY YOUNGER DAUGHTER AT NIGHT BECAUSE
10 MY HUSBAND, HE WORKS FROM ELEVEN TO SEVEN IN THE
11 MORNING.

12 Q. YOU ARE A NATIVE OF MIDDLESEX, ENGLAND?

13 A. YES, SIR.

14 Q. IS THAT NEAR THE BORDER BETWEEN SCOTLAND THERE?

15 A. SIR; I DON'T KNOW. I WAS ONLY SIX WEEKS OLD WHEN I
16 LEFT.

17 Q. I SEE.

18 A. SO I'M A UNITED STATES CITIZEN.

19 Q. GOOD. WE'RE DELIGHTED TO HAVE YOU, MA'AM. YOU ARE
20 EXCUSED TO MAKE THAT CALL.

21 A. OKAY. THANK YOU.

22 Q. THANK YOU, MA'AM. BRING THE NEXT JUROR, SANDRA
23 MALONE IN, PLEASE.

24 (JUROR NUMBER 205, A BLACK FEMALE, IS CALLED.)

25 THE COURT: ALL RIGHT. PANEL SIX IS

SANDRA MALONE - EXAM. BY THE COURT

1 COMING IN, GENTLEMEN. IS THERE ANY OBJECTION TO
2 THEM BEING PLACED IN THE JURY ROOM WHERE ONLY
3 EDWARD LIVINGSTON FROM PANEL FOUR REMAINS?

4 MR. BAILEY: NO, SIR.

5 MR. THEOS: NO, SIR.

6 THE COURT: JUST PUT THEM IN WITH
7 THAT ONE. WE'RE ABOUT TO CLEAR THEM OUT, TOO.

8 - - - - -

9 WHEREUPON,

10 SANDRA MALONE, WHO BEING PREVIOUSLY
11 SWORN TO TELL THE TRUTH, TESTIFIED AS
12 FOLLOWS:

13 EXAMINATION

14 BY THE COURT:

15 Q. GOOD MORNING. HOW ARE YOU DOING, MRS. SANDRA
16 MALONE? MAY WE PLEASE THANK YOU FOR BEING HERE
17 PRESENT WITH US TODAY? YOU WERE GIVEN AN OATH ON
18 YESTERDAY, SO YOU'RE STILL UNDER OATH. DO YOU
19 UNDERSTAND THAT, PLEASE, MA'AM?

20 A. YES, SIR.

21 Q. AND, MRS. MALONE, HAS THERE BEEN ANY CHANGE IN THE
22 QUESTIONNAIRE THAT YOU HAVE RETURNED TO THE COURT?
23 WOULD YOU LIKE TO UPDATE THAT OR MAKE ANY CHANGES
24 IN ANY WAY ABOUT THAT FORM?

25 A. NO, SIR.

1 Q. ALL RIGHT. AND, MRS. MALONE, HAVE YOU READ OR
2 HEARD ANYTHING ABOUT THIS CASE?

3 A. NO, I HAVEN'T.

4 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
5 GUILT OR INNOCENCE OF THE DEFENDANT?

6 A. NO.

7 Q. DO YOU FEEL THAT YOU COULD GIVE A FAIR TRIAL, FAIR
8 TO THE STATE AND FAIR TO THE DEFENDANT?

9 A. YES, SIR.

10 Q. MA'AM, THERE ARE GOING TO BE CERTAIN QUESTIONS
11 ASKED ABOUT YOUR VIEWS ON VARIOUS MATTERS. PLEASE
12 UNDERSTAND THERE ARE NO RIGHT AND WRONG ANSWERS.
13 ALL OF THEM ARE RIGHT BECAUSE YOUR VIEWS ARE YOUR
14 VIEWS, AND YOU'RE ENTITLED TO THAT. AND NO ONE
15 MEANS TO PRY INTO YOUR PRIVACY. BUT IT'S NECESSARY
16 TO ASK THESE QUESTIONS AT THIS STAGE BECAUSE THIS
17 IS THE ONLY OPPORTUNITY THE LAWYERS AND THE COURT
18 WILL HAVE TO INQUIRE ABOUT YOUR VIEWS ON CERTAIN
19 MATTERS BECAUSE WE MUST MAKE SURE THAT THE JURORS
20 SELECTED ARE FAIR AND IMPARTIAL JURORS. SO DO YOU
21 UNDERSTAND, MA'AM, THAT IN A TRIAL OF A CASE WHEN A
22 PERSON IS CHARGED WITH A CRIME, THEY'RE PRESUMED
23 INNOCENT THROUGHOUT THE TRIAL UNTIL THE JURY BY A
24 UNANIMOUS VERDICT FINDS THE GUILT. THE STATE MUST
25 PROVE THEIR GUILT BEYOND A REASONABLE DOUBT. DO

SANDRA MALONE - EXAM. BY THE COURT

1 YOU UNDERSTAND THAT?

2 A. YES.

3 Q. AND THE STATE HAS THE BURDEN OF PROVING THE GUILT
4 OF THE DEFENDANT. THERE'S NO BURDEN UPON THE
5 DEFENDANT TO PROVE HIMSELF INNOCENT BECAUSE IN MANY
6 INSTANCES THAT MIGHT NOT BE POSSIBLE. DO YOU
7 UNDERSTAND THAT?

8 A. YES.

9 Q. AND DURING THE TRIAL THE DEFENDANT DOES NOT HAVE TO
10 TAKE THE WITNESS STAND. HE HAS A FIFTH AMENDMENT
11 PRIVILEGE. HE CANNOT BE COMPELLED TO TESTIFY. AND
12 THE FACT THE DEFENDANT DOES NOT TAKE THE WITNESS
13 STAND DOESN'T RAISE ANY INFERENCE OF GUILT, AND
14 THAT FACT MUST NOT BE DISCUSSED BY THE JURY IN
15 THEIR DELIBERATIONS OR CONSIDERED IN ANY MATTER.
16 DO YOU UNDERSTAND THAT?

17 A. YES.

18 Q. AND, MA'AM, IF THE EVIDENCE WARRANTED FINDING THE
19 DEFENDANT NOT GUILTY, ALTHOUGH IT WAS A MURDER
20 CASE, COULD YOU RETURN A VERDICT OF NOT GUILTY ON
21 THE GUILT PHASE FOR MURDER?

22 A. REPEAT THAT.

23 Q. DEPENDING UPON THE EVIDENCE IN THE CASE, COULD YOU
24 RETURN A VERDICT OF GUILTY OF MURDER DEPENDING ON
25 THE EVIDENCE?

SANDRA MALONE - EXAM. BY THE COURT

1 A. YES.

2 Q. AND DEPENDING ON THE EVIDENCE OR THE LACK OF
3 EVIDENCE BECAUSE THE DEFENDANT DOESN'T HAVE TO
4 PROVE ANYTHING, ARE YOU CAPABLE OF FINDING A NOT
5 GUILTY VERDICT ON THE MURDER CHARGE?

6 A. YES.

7 Q. AND, MA'AM, ASSUMING THAT THE FIRST PHASE OF THE
8 CASE HAS BEEN HELD, THAT THE JURY HAS FOUND THE
9 DEFENDANT GUILTY OF MURDER, BECAUSE IF THE JURY
10 FINDS HIM NOT GUILTY OF MURDER, YOU WOULDN'T GO
11 INTO THE PENALTY PHASE BECAUSE THE COURT WOULD THEN
12 SENTENCE, IF THERE WERE OTHER CONVICTIONS ON OTHER
13 CHARGES -- NOT TO IMPLY WHAT YOUR VERDICT WOULD BE
14 -- BUT IN THE PENALTY PHASE YOU WOULD HAVE TWO
15 CONSIDERATIONS. THE JURY WOULD BE ASKED TO MAKE A
16 RECOMMENDATION TO THE COURT, AND THE COURT WOULD
17 FOLLOW THAT RECOMMENDATION OF EITHER LIFE
18 IMPRISONMENT WITHOUT PAROLE OR EITHER THE DEATH
19 PENALTY. NOW, THE STATE MUST PROVE STATUTORY
20 AGGRAVATING CIRCUMSTANCE. ONE OR MORE EXAMPLES OF
21 THAT WOULD BE WHILE IN THE COMMISSION OF AN ARMED
22 ROBBERY BY FORCE -- TAKING SOMETHING FROM ANOTHER,
23 THREAT OR PUTTING THEM IN FEAR; THAT A MURDER WAS
24 COMMITTED -- OR DURING A BURGLARY, BREAKING AND
25 ENTERING OF SOMEONE'S HOME IN THE NIGHTTIME WITH

SANDRA MALONE - EXAM. BY THE COURT

1 THE INTENT TO COMMIT A FELONY, A GREAT WRONG, OR A
2 CRIME THEREIN A MURDER WAS COMMITTED OR CRIMINAL
3 SEXUAL CONDUCT DURING THAT OFFENSE THAT THE MURDER
4 WAS COMMITTED. IF THE STATE PROVES THAT, THEN THE
5 JURY COULD FIND AS A POSSIBLE VERDICT A
6 RECOMMENDATION OF DEATH. OR IF THE JURY FINDS THAT
7 THERE IS MITIGATING EVIDENCE -- LESSENING IS WHAT
8 MITIGATING MEANS -- THE JURY COULD RETURN A
9 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT
10 PAROLE. OR EVEN IF THE STATE HAS PROVEN A
11 STATUTORY AGGRAVATING CIRCUMSTANCE AND YOU DO NOT
12 FIND MITIGATING, THE JURY CAN AS A FURTHER OPTION
13 OF RECOMMENDING MERCY AND THEREBY RECOMMENDING LIFE
14 IMPRISONMENT WITHOUT PAROLE. DO YOU UNDERSTAND
15 THAT?

16 A. YES.

17 Q. AND DO YOU THINK, MRS. SANDRA MALONE, THAT YOU
18 COULD LISTEN CAREFULLY TO THE TESTIMONY AND
19 EXCHANGE VIEWS WITH OTHER JURORS AND ARRIVE AT
20 EITHER VERDICT; EITHER A RECOMMENDATION OF DEATH
21 PENALTY OR RECOMMENDATION OF LIFE IMPRISONMENT
22 WITHOUT PAROLE?

23 A. I COULDN'T RECOMMEND THE DEATH PENALTY.

24 Q. ALL RIGHT. SO THERE WERE THERE TYPES OF JURORS.
25 ONE IS SOMEBODY WHO SAYS "I ALWAYS WOULD VOTE FOR

SANDRA MALONE - DIRECT/MR. BAILEY

1 THE DEATH PENALTY." THE SECOND IS THAT "I CAN'T
2 IMPOSE THE DEATH PENALTY; THAT I'D RECOMMEND LIFE
3 IMPRISONMENT WITHOUT PAROLE." AND THE THIRD IS
4 THAT THEY'VE LISTEN TO THE EVIDENCE AND THEN
5 DECIDE. SO ARE YOU A TYPE ONE, TWO, OR THREE?

6 A. TWO.

7 THE COURT: ALL RIGHT, MR.
8 SOLICITOR. YOU MAY EXAMINE.

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. MRS. MALONE, BEFORE I ASK YOU ABOUT THE DEATH
12 PENALTY; I'M WALTER BAILEY. I'M THE PROSECUTOR IN
13 THIS CASE. BEFORE I ASK YOU ABOUT THE DEATH
14 PENALTY QUESTIONS, I NOTICED YOUR QUESTIONNAIRE.
15 YOU SAID YOU HAD SERVED IN THE LAST THREE YEARS?

16 A. WELL, SHE SAID IT WAS A CALENDAR YEAR. I THOUGHT I
17 HAD SERVED LIKE IN '97.

18 Q. OKAY.

19 A. BUT THEY SEARCHED AND SAID THEY DID NOT FIND IT.

20 Q. OKAY. AND, MRS. MALONE, PLEASE BELIEVE ME WHEN I
21 SAY THAT WE'RE NOT TRYING TO GET YOU TO CHANGE YOUR
22 MIND ABOUT ANY OPINIONS YOU MIGHT HAVE. THERE ARE
23 NO RIGHT OR WRONG WAYS TO VIEW THE DEATH PENALTY.
24 IT'S A MATTER OF JUST PERSONAL BELIEF. BUT WHAT I
25 WANT TO DO IS JUST ASK YOU A COUPLE MORE QUESTIONS

SANDRA MALONE - DIRECT/MR. BAILEY

1 TO MAKE SURE WE FULLY UNDERSTAND YOUR THOUGHTS ON
2 THE DEATH PENALTY; OKAY?

3 A. OKAY.

4 Q. YOU UNDERSTAND THAT IN SOUTH CAROLINA IF WE GET TO
5 THE PENALTY PHASE OF THE TRIAL, THAT WOULD MEAN
6 THAT WE HAD -- THE JURY CONVICTED SOMEBODY OF
7 MURDER IN THE FIRST PART OF THE TRIAL; AND THE JURY
8 THEN DETERMINES THE SENTENCE. NOT THE JUDGE; THE
9 JURY. AND THEY HAVE TWO OPTIONS, LIFE WITHOUT
10 PAROLE OR THE DEATH PENALTY. AND THE SECOND TYPE
11 OF JUROR FOR RELIGIOUS, PERSONAL REASONS, WHATEVER
12 DOES NOT BELIEVE IN THE DEATH PENALTY. SO IF THEY
13 HAD THE CHOICE BETWEEN LIFE WITHOUT PAROLE OR THE
14 DEATH PENALTY, REGARDLESS OF THE CIRCUMSTANCES THEY
15 WOULD ALWAYS VOTE FOR A LIFE SENTENCE. IS THAT
16 CORRECT?

17 A. YES, SIR.

18 Q. DOES THAT DESCRIBE YOU?

19 A. YES.

20 Q. ALL RIGHT. MRS. MALONE, HAVE YOU THOUGHT ABOUT
21 THAT BEFORE YESTERDAY WHEN YOU FOUND OUT THAT YOU
22 MIGHT BE A JUROR ON THIS CASE?

23 A. DID I THINK ABOUT IT?

24 Q. YES, MA'AM. HAVE YOU THOUGHT ABOUT IT IN THE PAST?

25 A. YES.

SANDRA MALONE - CROSS/MR. THEOS

1 Q. AND DO YOUR BELIEFS AGAINST THE DEATH PENALTY; ARE
2 THEY RELIGIOUS BELIEFS OR PERSONAL BELIEFS OR WHAT?

3 A. RELIGIOUS.

4 Q. RELIGIOUS. AND HAVE YOU FELT THAT WAY FOR SOME
5 TIME?

6 A. YES.

7 Q. AND THOSE ARE STRONGLY HELD BELIEFS?

8 A. YES.

9 Q. AND DUE TO THOSE RELIGIOUS AND PERSONAL BELIEFS,
10 YOU COULD NEVER IMPOSE THE DEATH PENALTY ON SOMEONE
11 KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

12 A. RIGHT.

13 Q. THANK YOU, MA'AM. THAT'S ALL I HAVE.

14 THE COURT: MR. THEOS, WOULD YOU
15 LIKE TO QUESTION THE LADY?

16 MR. THEOS: YES, SIR.

17 CROSS-EXAMINATION

18 BY MR. THEOS:

19 Q. MRS. MALONE, HOW ARE YOU? I'M JERRY THEOS. THIS
20 IS JIM BELL. AND THIS IS KENNETH SIMMONS. THANK
21 YOU FOR BEING HONEST WITH US. AND THAT'S EXACTLY
22 WHAT WE WANT. WE WANT YOUR HONEST OPINION. AS MR.
23 BAILEY SAID, AND AS THE JUDGE SAID, WE'RE NOT
24 LOOKING FOR ANY SPECIFIC ANSWER. WE REALLY WANT TO
25 KNOW WHAT YOUR TRUE, SINCERE OPINION IS. CAN YOU

SANDRA MALONE - CROSS/MR. THEOSA

1 THINK OF ANY SITUATION IN WHICH YOU WOULD FEEL THAT
2 THE DEATH PENALTY WOULD BE WARRANTED?

3 A. NO, I COULDN'T.

4 Q. REGARDLESS OF HOW BAD, HOW HORRIBLE, HOW HEINOUS A
5 CRIME MIGHT BE, YOU JUST DON'T FEEL THAT YOU COULD
6 EVER IMPOSE A DEATH PENALTY?

7 A. NO.

8 Q. UNDER ANY CIRCUMSTANCES?

9 A. NO.

10 Q. AND IN ANY SITUATION?

11 A. NO, SIR.

12 Q. THANK YOU, MA'AM.

13 THE COURT: GENTLEMEN, ANYTHING
14 FURTHER?

15 MR. BAILEY: NO, SIR.

16 MR. THEOS: NO, SIR.

17 THE COURT: ALL RIGHT, MA'AM. WE'RE
18 GOING TO EXCUSE YOU FROM FURTHER SERVICE IN THIS
19 CASE. AND WE APPRECIATE SO MUCH YOUR WILLINGNESS
20 TO SERVE AND YOUR PRESENCE HERE YESTERDAY AND
21 TODAY. AND WE'LL MAIL YOUR CHECK FOR YESTERDAY AND
22 TODAY. AND IF YOU NEED A STATEMENT TO GIVE YOUR
23 EMPLOYER, THE CLERK WILL GIVE THAT TO YOU. SO
24 YOU'RE EXCUSED AT THIS TIME. AND THANK YOU SO
25 MUCH; AND HAVE A NICE DAY.

MRS. MALONE: THANK YOU.

THE COURT: ALL RIGHT. FOR THE
RECORD, MR. SOLICITOR, THE JUROR NUMBER 205; YOUR
VIEW IS?

MR. BAILEY: NOT QUALIFIED.

THE COURT: AND MR. THEOS?

MR. THEOS: WE AGREE WITH THAT
VIEW.

THE COURT: ALL RIGHT. THANK YOU,
GENTLEMEN. I JUST THOUGHT I'D GO AHEAD AND LET
Y'ALL SOMEHOW INDICATE TO ME. BRING THE NEXT JUROR
IN, EDWARD LIVINGSTON, PLEASE.
(JUROR NUMBER 199, A WHITE MALE, IS CALLED.)

- - - - -

WHEREUPON,

EDWARD LIVINGSTON, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. MR. LIVINGSTON, PLEASE HAVE A SEAT THERE IN THE
WITNESS STAND. AND MAY I SHARE WITH YOU THE FACT
THAT YOU WERE GIVEN AN OATH ON YESTERDAY, AND

EDWARD LIVINGSTON - EXAM. BY THE COURT

1 YOU'RE STILL UNDER OATH AT THIS TIME. DO YOU
2 UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. AND MR. LIVINGSTON, SINCE YOU FORWARDED THIS
5 QUESTIONNAIRE TO THE CLERK OF COURT, HAVE THERE
6 BEEN ANY CHANGES THAT YOU NEED TO UPDATE OR SHARE
7 WITH US AT THIS TIME?

8 A. NO, SIR.

9 Q. AND, MR. LIVINGSTON, ON YESTERDAY WHEN I QUESTIONED
10 THE LARGE PANEL, YOU WERE ASKED IF YOU HAD READ OR
11 HEARD ANYTHING ABOUT THIS CASE, AND YOU STOOD.
12 COULD YOU PLEASE SHARE WITH US THE SOURCE OF THAT
13 INFORMATION AND WHAT YOU HEARD OR READ ABOUT IT?

14 A. YES. THE SUMMERVILLE JOURNAL SCENE. I REMEMBER
15 READING ABOUT THE MURDER A COUPLE OF YEARS AGO.
16 AND THEN I SAW -- I GUESS A MONTH OR TWO AGO THEY
17 HAD SOMETHING ABOUT THE TRIAL IN THERE.

18 THE COURT: IS BILL COLLINS STILL
19 THE EDITOR OF THE SUMMERVILLE JOURNAL?

20 MR. BAILEY: I'M AFRAID SO, JUDGE.

21 THE COURT: HE AND I WERE CLASSMATES
22 AND WORKED AS PAGES AT THE STATE HOUSE MANY YEARS
23 AGO.

24 MR. BAILEY: HE'S A NICE FELLOW.

25 THE COURT: TELL HIM I ASKED ABOUT

EDWARD LIVINGSTON - EXAM. BY THE COURT

1 HIM.

2 Q. IN ANY EVENT, MR. LIVINGSTON, IN SPITE OF WHAT YOU
3 HEARD, HAVE YOU FORMED AN OPINION ABOUT THE GUILT
4 OR INNOCENT OF THIS DEFENDANT AS A RESULT OF WHAT
5 YOU READ?

6 A. NO, SIR.

7 Q. AND DO YOU FEEL THAT YOU COULD GIVE A FAIR TRIAL TO
8 BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

9 A. YES, SIR.

10 Q. AND, MR. LIVINGSTON, IN THE TRIAL OF A CASE THE
11 JUDGE IS REQUIRED TO STATE THE LAW TO THE JURY. DO
12 YOU FEEL THAT YOU COULD ACCEPT THE LAW AS THE COURT
13 INSTRUCTS YOU THE LAW TO BE AND APPLY THAT LAW TO
14 THE FACTS AS YOU FIND THEM TO BE?

15 A. YES, SIR.

16 Q. AND I HOPE THAT YOU UNDERSTAND THAT THE COURT AND
17 THE ATTORNEYS ARE NOT TRYING TO BE PERSONAL OR
18 INVADE YOUR PRIVATE LIFE BY ASKING THESE VARIOUS
19 QUESTIONS, BUT IT'S A PROCEDURE THAT'S BEEN ADOPTED
20 TO TRY TO AID THE ATTORNEYS AND THE COURT IN
21 DETERMINING WHETHER OR NOT YOU WILL BE QUALIFIED AS
22 A JUROR. SO PLEASE BE UNDERSTANDING OF THIS
23 PROCEDURE. AND, MR. LIVINGSTON, IN SOUTH CAROLINA
24 EVERY DEFENDANT IS CHARGED WITH A CRIME, NO MATTER
25 HOW THE ENORMITY OF THE CHARGE MAY BE, IS ALWAYS

EDWARD LIVINGSTON - EXAM. BY THE COURT

1 THOUGHT OR PRESUMED TO BE INNOCENCE OF THOSE
2 CHARGES UNTIL OR UNLESS THE STATE PROVES THEIR
3 GUILT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND
4 THAT?

5 A. YES, SIR.

6 Q. AND DO YOU UNDERSTAND FROM THE TIME OF AN ARREST OF
7 A DEFENDANT, HE OR SHE IS PRESUMED OR THOUGHT TO BE
8 INNOCENT; AND THAT ROBE OF INNOCENCE REMAINS PLACED
9 AROUND THE DEFENDANT UNTIL OR UNLESS THE STATE
10 PROVES THAT GUILT BEYOND A REASONABLE DOUBT. DO
11 YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. AND THAT THERE'S NO BURDEN ON THE DEFENDANT TO
14 PROVE HIMSELF INNOCENT BECAUSE HE'S PRESUMED
15 INNOCENT. AND THE DEFENDANT DOESN'T HAVE TO TAKE
16 THE WITNESS STAND. DO YOU UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. AND IN A DEATH PENALTY CASE, THERE ARE TWO PHASES
19 IN A MURDER OR DEATH PENALTY CASE. ONE IS A GUILT
20 PHASE. THE OTHER IS A PENALTY PHASE. ASSUMING
21 THAT THE JURY DURING THE GUILT PHASE HAS FOUND THE
22 DEFENDANT GUILTY OF MURDER -- BECAUSE IF THEY FOUND
23 HIM NOT GUILTY, YOU WOULDN'T GO TO THE PENALTY
24 PHASE. BUT ASSUMING THE STATE HAD PROVEN BEYOND A
25 REASONABLE DOUBT THE GUILT OF THE DEFENDANT AND THE

EDWARD LIVINGSTON - EXAM. BY THE COURT

1 VERDICT OF MURDER WAS GUILTY, THEN WE WOULD GO TO
2 THE PENALTY PHASE. DURING THE PENALTY PHASE, THE
3 LAWYERS OFFER -- THE STATE WOULD ATTEMPT TO PROVE
4 BEYOND A REASONABLE DOUBT THAT THERE EXISTED ONE OR
5 MORE OF A STATUTORY AGGRAVATING CIRCUMSTANCE. AN
6 EXAMPLE OF THAT WOULD BE THE COMMISSION OF A MURDER
7 DURING BURGLARY. BURGLARY IS WHEN SOMEBODY BREAKS
8 IN THE HOME OF ANOTHER OR RESIDENCE IN THE
9 NIGHTTIME AND COMMITS A FELONY THEREIN, OR DURING
10 THE COMMISSION OF AN ARMED ROBBERY WHETHER BY
11 THREAT OR FORCE THAT SOMEONE STEALS SOMETHING, ROBS
12 ANOTHER PERSON, OR DURING CRIMINAL SEXUAL CONDUCT,
13 SEXUAL BATTERY OF A VICTIM. THEN IF ONE OR MORE OF
14 THOSE AGGRAVATING CIRCUMSTANCES EXISTS, THE JURY
15 MAY -- IT'S NOT OBLIGATORY OR MANDATORY -- MAY
16 RECOMMEND A SENTENCE OF DEATH TO THE COURT. AND
17 THEN THE COURT ORDERS THE SENTENCE FROM THERE. OR
18 DURING THIS PENALTY PHASE THE DEFENDANT WOULD BE
19 GIVEN AN OPPORTUNITY TO OFFER MITIGATING
20 CIRCUMSTANCES. TO MITIGATE MEANS TO LESSEN THE
21 PENALTY; OR THE JURY MAY IN THEIR MERCY RECOMMEND
22 MERCY AND RETURN A RECOMMENDATION TO THE COURT OF
23 LIFE IMPRISONMENT WITHOUT PAROLE EVEN THOUGH THE
24 STATE MAY HAVE PROVEN A STATUTORY AGGRAVATING
25 CIRCUMSTANCE. DO YOU UNDERSTAND THE PROCEDURE AND

EDWARD LIVINGSTON - EXAM. BY THE COURT

1 THOSE OPTIONS?

2 A. YES, SIR.

3 Q. COULD YOU AS A JUROR, DEPENDING UPON THE EVIDENCE,
4 RETURN A VERDICT OF LIFE IMPRISONMENT WITHOUT
5 PAROLE? AND COULD YOU RETURN A VERDICT OF
6 RECOMMENDATION OF DEATH PENALTY?

7 A. YES, SIR; I BELIEVE I COULD.

8 Q. YOU WERE GIVEN A SHEET OF PAPER, MR. EDWARD
9 LIVINGSTON, THAT'S LISTED THREE TYPES OF JURORS.
10 YOU ARE AWARE OF THOSE THREE TYPES?

11 A. YES, SIR.

12 Q. ONE BEING GOT TO GIVE THE DEATH PENALTY REGARDLESS
13 OF THE EVIDENCE; TWO, REFUSE TO GIVE THE DEATH
14 PENALTY AND INSIST ON LIFE IMPRISONMENT WITHOUT
15 PAROLE; OR THREE, WHILE YOU MAY BELIEVE IN THE
16 DEATH PENALTY OR NOT THAT YOU COULD, DEPENDING ON
17 THE EVIDENCE, AND AFTER EXCHANGING VIEWS WITH YOUR
18 FELLOW AND SISTER JURORS, YOU COULD MAKE A
19 RECOMMENDATION OF EITHER THE DEATH PENALTY OR A
20 RECOMMENDATION OF LIFE WITHOUT PAROLE. WHICH DO
21 YOU FIT INTO?

22 A. I BELIEVE I'D BE IN NUMBER THREE.

23 Q. ALL RIGHT, SIR.

24 THE COURT: AND I BELIEVE THAT IF
25 EITHER OF YOU GENTLEMEN WOULD LIKE TO QUESTION MR.

EDWARD LIVINGSTON - DIRECT/MR. BAILEY

LIVINGSTON, MR. BAILEY YOU GO FIRST.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. LIVINGSTON, I'M WALTER BAILEY. I'LL BE PROSECUTING THIS CASE ALONG WITH MR. ROBBINS AND THESE OTHER LAWYERS HERE. AND I NEED TO ASK YOU A FEW MORE QUESTIONS TO FOLLOW WHAT JUDGE PEEPLES ASKED YOU. AND LIKE HE SAID, THERE ARE NO RIGHT OR WRONG ANSWERS; AND NOBODY IS GOING TO GET YOU TO CHANGE YOUR OPINION. THIS IS THE ONLY CHANCE WE GET TO TALK TO JURORS BEFORE WE ACTUALLY PICK A JURY TOMORROW. DID YOU UNDERSTAND FROM WHAT THE JUDGE TOLD YOU THAT WE WOULDN'T EVEN BE GETTING INTO THE PENALTY PHASE CONSIDERATION UNLESS AND UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART BEYOND A REASONABLE DOUBT?

A. YES, SIR.

Q. AND THAT IF WE GET TO THAT SECOND PHASE, THE JURY HAS TWO CHOICES, LIFE WITHOUT PAROLE AND THE DEATH PENALTY. AND THE JURY DECIDES THE PUNISHMENT, NOT THE JUDGE. ALL THE JUDGE WOULD DO IS ORDER THE JURY SENTENCE TO BE CARRIED OUT, AND IT WOULD BE CARRIED OUT. THE JURY, AFTER HEARING ALL THE FACTS AND THE LAW WOULD VOTE FOR LIFE WITHOUT PAROLE. THE JUDGE WOULD ORDER THAT. THE DEFENDANT WOULD

EDWARD LIVINGSTON - DIRECT/MR. BAILEY

1 SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES FOR
2 THE DEATH PENALTY, THE JUDGE WOULD ORDER THAT, AND
3 HE WOULD ACTUALLY BE EXECUTED. NOW, I'M NOT GOING
4 TO ASK YOU WHAT YOU WOULD DO IN THIS CASE IF YOU
5 WERE PICKED BECAUSE YOU HAVEN'T HEARD THE FACTS,
6 AND IT WOULDN'T BE FAIR TO ASK YOU THAT. BUT IF
7 THE FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE
8 DEATH PENALTY KNOWING THAT SENTENCE WOULD ACTUALLY
9 BE CARRIED OUT?

10 A. I THINK UNDER A CERTAIN SET OF CIRCUMSTANCES I
11 THINK I COULD; YES.

12 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTE FOR
13 THE DEATH PENALTY, THEN EACH JUROR WOULD BE ASKED
14 TO SIGN THEIR NAME TO A VERDICT FORM THAT WOULD
15 RESULT IN THAT EXECUTION TAKING PLACE. COULD YOU
16 SIGN YOUR NAME TO A PAPER LIKE THAT KNOWING IT
17 WOULD RESULT IN SOMEONE BEING EXECUTED IF YOU HAD
18 ALREADY VOTED FOR IT?

19 A. YES; I BELIEVE I COULD.

20 Q. OKAY. NOW, WHEN YOU SAY "I BELIEVE I COULD," YOU
21 KIND OF QUALIFIED THAT. SO I NEED TO ASK YOU.
22 WE'RE ASSUMING THAT YOU HAD HEARD ALL THE FACTS AND
23 CIRCUMSTANCES. WHEN I SAY YOU, I MEAN YOU AND THE
24 OTHER JURORS?

25 A. YES, SIR.

1 Q. AND BASED ON WHAT YOU HAD HEARD DURING THAT PENALTY
2 PHASE VOTED FOR THE DEATH PENALTY. BUT THE NEXT
3 STEP IS TO SIGN THE VERDICT FORM?

4 A. YES, SIR, I COULD.

5 Q. ALL RIGHT, SIR. AND IF YOU VOTED FOR THE DEATH
6 PENALTY AND THE OTHER JURORS DID ALSO, ALL TWELVE
7 SIGNED THE PAPER, COULD YOU STAND UP IN OPEN COURT
8 AND ANNOUNCE THAT AS BEING YOUR DECISION?

9 A. YES, SIR.

10 Q. ALL RIGHT, SIR. BEFORE YESTERDAY WHEN YOU FOUND
11 OUT THAT YOU MIGHT BE A JUROR ON A DEATH PENALTY
12 CASE, HAD YOU EVER THOUGHT ABOUT THE DEATH PENALTY
13 IN ANY DETAIL?

14 A. YES.

15 Q. ALL RIGHT, SIR. AND COULD YOU TELL US -- NOT
16 RELATING TO THIS CASE BECAUSE YOU HAVEN'T HEARD THE
17 FACTS -- BUT IN GENERAL YOUR THOUGHTS OR BELIEFS ON
18 DEATH PENALTY WERE?

19 A. BASICALLY WHAT I SAID IS UNDER A CERTAIN SET OF
20 CIRCUMSTANCES, I COULD JUSTIFY IT.

21 Q. ALL RIGHT, SIR. AND DO YOU HAVE ANY RELIGIOUS
22 BELIEFS IN REGARD TO THE DEATH PENALTY? I NOTICE
23 THAT YOU ATTEND THE CATHOLIC CHURCH A COUPLE OF
24 TIMES A YEAR.

25 A. YES, SIR.

EDWARD LIVINGSTON - CROSS/MR. THEOS

1 Q. ALL RIGHT, SIR. SO WHATEVER POSITION THE CATHOLIC
2 CHURCH MIGHT TAKE ON THE DEATH PENALTY WOULD NOT
3 ENTER INTO YOUR DELIBERATIONS?

4 A. NO.

5 Q. THANK YOU. THAT'S ALL I HAVE.

6 THE COURT: MR. THEOS; WOULD YOU
7 LIKE TO QUESTION THE GENTLEMAN?

8 MR. THEOS: YES, SIR.

9 CROSS-EXAMINATION

10 BY MR. THEOS:

11 Q. MR. LIVINGSTON, GOOD MORNING. I'M JERRY THEOS.
12 THIS IS JIM BELL. THIS IS MR. SIMMONS. JIM BELL
13 AND I ARE THE ATTORNEYS REPRESENTING MR. SIMMONS.
14 THANK YOU FOR COMING. THANK YOU FOR ANSWERING THE
15 QUESTIONS. AS THE JUDGE INDICATED, WE'RE JUST
16 TRYING TO FIND OUT WHAT YOUR TRUE FEELINGS ARE
17 ABOUT THINGS. I SEE THAT YOU'VE GOT FOUR CHILDREN,
18 AND THEY'RE ABOUT THE SAME AGE AS MY FOUR
19 CHILDREN. AND I ASSUME THAT YOU CAN MAKE
20 ARRANGEMENTS TO MAKE -- YOUR WIFE IS A HOUSEWIFE.
21 I ASSUME THAT WOULD NOT POSE ANY GREAT DIFFICULTY
22 ANY MORE SO THAN ANY OTHER JURORS?

23 A. NO, SIR. SHE'S A HOUSE MOM AND TAKES CARE OF THE
24 HOUSE.

25 Q. NOW, AS MR. BAILEY AND THE JUDGE BOTH TOLD YOU, WE

EDWARD LIVINGSTON - CROSS/MR. THEOS

1 WOULD NOT EVEN ARRIVE AT THE PENALTY PHASE. I FEEL
2 LIKE WE'VE SORT OF PUT THE CART BEFORE THE HORSE A
3 LITTLE BIT HERE. BUT MR. SIMMONS FIRST HAS TO BE
4 TRIED ON THOSE CHARGES THAT THE JUDGE READ OUT TO
5 THE ENTIRE JURY PANEL BEFORE WE STARTED THIS
6 PROCESS. AND MR. SIMMONS, AS THE JUDGE INDICATED
7 TO YOU, IS PRESUMED TO BE INNOCENT. DO YOU
8 UNDERSTAND THAT CONCEPT?

9 A. YES, SIR.

10 Q. DO YOU UNDERSTAND THAT MR. BAILEY AND HIS LAWYERS
11 THAT ARE WITH HIM WOULD HAVE TO PROVE MR. SIMMONS'
12 GUILT BEYOND A REASONABLE DOUBT?

13 A. YES, SIR.

14 Q. SO THAT ALTHOUGH WE'RE TALKING ABOUT THE DEATH
15 PENALTY AND WHAT POTENTIAL PUNISHMENTS THERE MIGHT
16 BE, THE STATE WOULD FIRST HAVE TO MEET THAT BURDEN
17 IN PROVING MR. SIMMONS' GUILT BEYOND A REASONABLE
18 DOUBT BEFORE WE EVEN GOT TO THAT STAGE?

19 A. YES, SIR.

20 Q. OKAY. AND AS I UNDERSTAND IT, YOU COULD IN BOTH
21 THE GUILT PHASE AND THE PENALTY PHASE, IF WE GOT TO
22 THAT PART, YOU WOULD LISTEN TO EVERYTHING THAT MR.
23 BAILEY HAD TO OFFER ON BEHALF OF THE STATE AND
24 ANYTHING THAT MR. BELL AND I MIGHT OFFER ON BEHALF
25 OF MR. SIMMONS. UNDERSTAND THAT WE DON'T HAVE TO

1 OFFER ANYTHING BEFORE YOU RENDERED A DECISION?

2 A. YES, SIR.

3 Q. IS THAT CORRECT?

4 A. YES, SIR.

5 Q. BEFORE YOU RENDERED A DECISION AS TO THE GUILT OR
6 INNOCENCE OF MR. SIMMONS FIRST; IS THAT CORRECT?

7 A. YES, SIR.

8 Q. AND THEN BEFORE YOU RENDER A DECISION AS TO THE
9 PROPER PUNISHMENT FOR MR. SIMMONS IF HE WERE TO BE
10 CONVICTED; IS THAT CORRECT?

11 A. YES, I UNDERSTAND THAT.

12 Q. THANK YOU, SIR.

13 THE COURT: ANYTHING FURTHER?

14 MR. BAILEY: NO, SIR.

15 THE COURT: MR. LIVINGSTON, YOU'VE
16 BEEN FOUND QUALIFIED AS A PROSPECTIVE OR POTENTIAL
17 JUROR IN THE TRIAL OF THIS CASE. YOU HAVE NOT BEEN
18 SELECTED AS OF YET BECAUSE WE ANTICIPATE TO HAVE
19 THE STRIKE TOMORROW AT TWO O'CLOCK, ALBEIT,
20 DEPENDING ON THE PROGRESS WE MAKE TODAY AND IN THE
21 MORNING THAT COULD BE CHANGED TO A LATER TIME. SO
22 PLEASE, SIR, CALL THAT NUMBER THAT'S LISTED ON THAT
23 SHEET AND LATER THIS EVENING, AND IT WILL GIVE YOU
24 A RECORDING, AND IT WILL STATE FOR THE QUALIFIED
25 JURORS TO REPORT AT 2:00 P.M. WEDNESDAY, FEBRUARY

EDWARD LIVINGSTON - CROSS/MR. THEOS

1 THE 24TH, OR IT MAY CHANGE IT TO 4:30. IT MAY
2 CHANGE IT TO THURSDAY MORNING. WE'LL HAVE TO WAIT
3 AND SEE. BUT YOU WOULD BE SEQUESTERED OR CONFINED
4 IN A MOTEL FOR APPROXIMATELY A WEEK OR HOWEVER LONG
5 IT TAKES TO TRY THE CASE, AND YOU WOULD NOT BE
6 ALLOWED TO DIRECTLY COMMUNICATE WITH YOUR FAMILY,
7 BUT IN THE EVENT OF AN EMERGENCY, CERTAINLY IT
8 COULD BE AN ISSUE. BRING YOUR CAR IF YOU WANT TO,
9 AND LEAVE IT AT THE MOTEL OR PARKED HERE AT THE
10 COURT HOUSE, OR EITHER YOU CAN HAVE SOMEBODY TAKE
11 IT BACK HOME THEN OR AT A LATER TIME. BUT YOU'RE
12 GOING TO HAVE TO BRING YOUR CLOTHES AND PERSONAL
13 NEEDS FOR A WEEK. DO YOU UNDERSTAND THAT?

14 MR. LIVINGSTON: THAT WOULD BE ON
15 THIS DATE HERE?

16 THE COURT: CALL BACK AFTER 6:00
17 P.M. TODAY. REPORT WEDNESDAY AT 2:00 P.M. IF WE
18 STRIKE THE JURY THEN, AND IF YOU ARE SELECTED, WE
19 WOULD KEEP YOU UNTIL THE END OF THE TRIAL; YES,
20 SIR. SO ANY OTHER QUESTIONS?

21 MR. LIVINGSTON: NO, SIR.

22 THE COURT: ALL RIGHT. THANK YOU SO
23 MUCH. AND DON'T EXPOSE YOURSELF OR LET ANYONE TALK
24 TO YOU ABOUT THE CASE, AND DON'T READ ANYTHING
25 ABOUT IT. WE LOOK FORWARD TO SEEING YOU TOMORROW.

EDWARD LIVINGSTON - CROSS/MR. THEOS

1 THANK YOU SO MUCH. MR. THEOS, I KNOW IT'S NOT
2 INTENTIONAL, BUT PLEASE A LAWYER IS NOT ALLOWED TO
3 MAKE ANY PERSONAL APPEAL TO THE JURORS. SO TO TELL
4 HIM YOU HAVE FOUR CHILDREN THE SAME AGE AS MINE;
5 THAT'S FAVOR, AND THAT'S NOT PROPER. SO WE JUST AS
6 WELL STOP THAT NOW AND NOT GET INTO IT DURING THE
7 TRIAL OR FURTHER QUESTIONING.

8 MR. THEOS: I UNDERSTAND, YOUR
9 HONOR. BUT IF I COULD STATE FOR THE RECORD, THAT
10 WAS NOT MY INTENT. I SAW THAT HE HAD FOUR
11 CHILDREN. BUT THAT CERTAINLY WOULD POSE A HARDSHIP
12 WITH ME; AND I'M SIMPLY TRYING TO FIND OUT IF IT
13 WOULD POSE HIM A SIMILAR HARDSHIP.

14 THE COURT: ALL RIGHT, SIR. YOU CAN
15 JUST ASK HIM A DIRECT QUESTION; WOULD IT CAUSE YOU
16 A HARDSHIP. BUT I TELL YOU AGAIN YOU MUST FOLLOW
17 THE RULES, MR. THEOS. YOU'RE NOT ALLOWED TO DO
18 THAT; SO PLEASE DON'T. THANK YOU. ALL RIGHT.
19 BRING IN THE NEXT JUROR, PAUL T. MOORE.

20 (JUROR NUMBER 226, A WHITE MALE, IS CALLED.)

21 - - - - -

22 WHEREUPON,

23 PAUL T. MOORE, WHO BEING PREVIOUSLY
24 SWORN TO TELL THE TRUTH, TESTIFIED AS
25 FOLLOWS:

PAUL T. MOORE - EXAM. BY THE COURT

EXAMINATION

BY THE COURT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. HOW ARE YOU?

A. FINE; HOW ARE YOU?

Q. GOOD DAY, MR. PAUL MOORE. I'M FINE. THANK YOU SO MUCH FOR BEING HERE PRESENT WITH US TODAY.

THE COURT: LADIES AND GENTLEMEN, THIS IS JUROR NUMBER 226.

Q. NOW, ON YESTERDAY, MR. MOORE, YOU WERE GIVEN AN OATH. AND YOU UNDERSTAND, PLEASE, SIR, THAT YOU ARE STILL UNDER OATH FOR THESE QUESTIONS THAT ARE BEING PUT TO YOU AT THIS TIME?

A. YES, SIR.

Q. NOW, HAVE YOU AT ANY TIME HEARD OR READ OR KNOW ANYTHING ABOUT THE ALLEGED FACTS OF THIS CASE?

A. NO, SIR.

Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR INNOCENCE OF THE ACCUSED?

A. NO, SIR.

Q. DO YOU KNOW OF ANY REASON WHY YOU COULDN'T GIVE BOTH THE STATE AND THE DEFENDANT BOTH A FAIR AND IMPARTIAL TRIAL?

A. NO, SIR.

PAUL T. MOORE - EXAM. BY THE COURT

1 Q. SINCE THIS QUESTIONNAIRE WAS SENT BACK IN, DO YOU
2 NEED TO UPDATE OR CHANGE ANYTHING THAT'S LISTED
3 THERE ON THE FORM?

4 A. NO, SIR.

5 Q. AND, MR. MOORE, IN THE CRIMINAL COURTS OF THIS
6 STATE EVERY PERSON CHARGED WITH A CRIME IS PRESUMED
7 OR THOUGHT TO BE INNOCENT. THE STATE MUST PROVE
8 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
9 DOUBT. THE DEFENDANT HAS NO BURDEN. HE DOES NOT
10 HAVE TO TAKE THE WITNESS STAND. HE DOES NOT HAVE
11 TO PRESENT ANY TESTIMONY. IF HE DOESN'T TAKE THE
12 WITNESS STAND, THAT RAISES NO PRESUMPTION OF
13 INFERENCE FOR OR AGAINST HIS GUILT OR INNOCENCE.
14 AND THE FACT THAT HE DECIDED NOT TO TAKE THE
15 WITNESS STAND MUST NOT ENTER INTO THE DELIBERATIONS
16 OR DECISION OF THE JURY IN ANY MANNER WHATSOEVER.
17 DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. AND IF DURING THE TRIAL OF THE CASE THE JUDGE
20 INSTRUCTS THE JURORS TO THE LAW, COULD YOU ACCEPT
21 THE LAW AS BEING THE CORRECT LAW, EVEN IF YOU
22 DISAGREED WITH IT, AND APPLY THAT LAW TO THE FACTS
23 OF THE CASE?

24 A. YES, SIR.

25 Q. AND IN A DEATH PENALTY CASE FOR MURDER THERE ARE

PAUL T. MOORE - EXAM. BY THE COURT

1 TWO PHASES TO THAT TYPE CASE. ONE IS THE GUILT
2 PHASE. THE FACT THAT WE'RE TALKING ABOUT A GUILT
3 AND PENALTY PHASE, PLEASE DERIVE NO INFERENCE FROM
4 THAT AS TO THE GUILT OF THE DEFENDANT BECAUSE HE'S
5 PRESUMED INNOCENT. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. THESE QUESTIONS WE'RE GOING INTO WITH YOU, MR. PAUL
8 P. MOORE, THERE ARE NO RIGHT OR WRONG ANSWERS, SO
9 RELAX AND BE CONFIDENT. YOU'RE GOING TO GET A
10 PASSING GRADE OF 100. AND YOU'RE GOING TO BE PAID
11 YOUR JURY PAY YESTERDAY AND TODAY REGARDLESS OF
12 WHAT YOUR ANSWERS ARE. YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. BECAUSE THIS IS THE ONLY OPPORTUNITY THE LAWYERS
15 AND THE COURT WOULD HAVE TO QUESTION YOU ABOUT
16 CERTAIN VIEWS THAT YOU HAVE. BUT NONE OF US BY
17 THESE QUESTIONS INTEND TO INFER ANY CRITICISM OF
18 YOUR VIEWS, BUT WE JUST NEED TO HAVE AN IDEA OF
19 WHAT YOU THINK ABOUT CERTAIN THINGS, PLEASE. YOU
20 UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. SO IN THE EVENT THAT THE JURY HAD FOUND THE
23 DEFENDANT GUILTY OF MURDER IN THE GUILT PHASE, WE
24 WOULD HAVE A 24 HOUR WAITING PERIOD. THEN YOU
25 WOULD GO INTO WHAT'S CALLED THE PENALTY PHASE. IN

PAUL T. MOORE - EXAM. BY THE COURT

1 THERE THE STATE IS REQUIRED TO PROVE STATUTORY
2 AGGRAVATING CIRCUMSTANCES, AT LEAST ONE. EXAMPLES
3 OF THAT WOULD BE THE COMMISSION OF A MURDER DURING
4 AN ARMED ROBBERY; THE TAKING BY FORCE OR THREAT
5 PROPERTY OF ANOTHER. OR DURING A BURGLARY,
6 BREAKING AND ENTERING THE HOME OF ANOTHER WITH THE
7 INTENT TO COMMIT A FELONY THEREIN IN THE NIGHTTIME,
8 THE RESIDENCE OF SOMEONE. OR COMMITTING A CRIMINAL
9 SEXUAL CONDUCT WHILE IN THE COMMISSION OF MURDER.
10 THOSE ARE EXAMPLES OF AN AGGRAVATING CIRCUMSTANCE.
11 NOW, IF THE STATE PROVED ONE OF THOSE, THEN THE
12 JURY COULD RETURN A UNANIMOUS VERDICT OF A
13 RECOMMENDATION OF DEATH PENALTY. YOU WOULDN'T HAVE
14 TO, BUT COULD. THE DEFENDANT IS ALLOWED THE
15 OPPORTUNITY WHICH HE DOESN'T HAVE TO OPT TO DO OF
16 OFFERING MITIGATING OR LESSENING CIRCUMSTANCES TO
17 SHOW THE PENALTY SHOULD BE LESS THAN A DEATH
18 PENALTY, TO ENCOURAGE A RECOMMENDATION OF LIFE
19 IMPRISONMENT WITHOUT PAROLE, BECAUSE THOSE WOULD BE
20 THE ONLY TWO CHOICES OF A VERDICT AT THAT TIME.
21 THE JURY COULD, AS A RECOMMENDATION OF MERCY,
22 RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE ALTHOUGH
23 THE STATE MAY HAVE PROVEN BEYOND A REASONABLE DOUBT
24 A STATUTORY AGGRAVATING CIRCUMSTANCE. DO YOU
25 UNDERSTAND THAT?

PAUL T. MOORE - EXAM. BY THE COURT

1 A. YES, SIR.

2 Q. AND DO YOU FEEL, MR. JUROR PAUL P. MOORE, THAT YOU
3 COULD LISTEN TO THE TESTIMONY, LISTEN TO THE
4 EVIDENCE, NOT HAVE YOUR MIND MADE UP TO THE LEFT OR
5 THE RIGHT, BUT WAIT UNTIL YOU HEAR THE SWORN
6 TESTIMONY AND LISTEN TO THE ARGUMENTS OF THE
7 LAWYERS, AND LISTEN TO THE CHARGE OF THE COURT AND
8 THEN GO BACK TO YOUR JURY ROOM AND DELIBERATE. YOU
9 DON'T DELIBERATE YOUR CASE UNTIL THE COURT TELLS
10 YOU WHEN TO DO SO. YOU'RE NOT ALLOWED TO EVEN TALK
11 AMONG THE JURORS ABOUT IT UNTIL YOU'RE IN YOUR JURY
12 ROOM FOR DELIBERATIONS. BUT COULD YOU LISTEN
13 CAREFULLY TO THE TESTIMONY, THEN MAKE A FINDING OF
14 FACT? JURORS FIND THE FACTS -- THE COURT IS A
15 JUDGE OF THE LAW. YOU'RE A JUDGE OF THE FACTS --
16 AND THEN ARRIVE AT EITHER A DEATH PENALTY
17 RECOMMENDATION OR EITHER A LIFE IMPRISONMENT
18 WITHOUT PAROLE RECOMMENDATION. COULD YOU DO THAT?

19 A. YES, SIR.

20 Q. AND YOU READ THAT LITTLE SHEET WE GAVE TO YOU
21 SHOWING JUROR ONE, TWO, AND THREE?

22 A. YES, SIR.

23 Q. AND YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. WHICH OF THOSE THREE JURORS WOULD YOU CATEGORIZE

PAUL T. MOORE - DIRECT/MR. THEOS

1 YOURSELF?

2 A. NUMBER THREE.

3 Q. NUMBER THREE?

4 A. YES, SIR.

5 Q. ALL RIGHT. DO YOU KNOW OF ANYTHING IF YOU WERE
6 CHOSEN AS A JUROR THAT WOULD IN ANY WAY INTERFERE,
7 OTHER THAN IT'S A HARDSHIP AND INCONVENIENCE TO BE
8 AWAY FROM YOUR HOME, YOUR FAMILY, YOUR JOB FOR AS
9 LONG AS PERHAPS A WEEK. DO YOU KNOW OF ANY PROBLEM
10 IT WOULD CAUSE WITH YOUR FAMILY OR YOUR PHYSICAL
11 CONDITION?

12 A. NO, SIR.

13 THE COURT: ALL RIGHT, GENTLEMEN.
14 WOULD Y'ALL LIKE TO QUESTION, PLEASE?

15 MR. THEOS: YES, SIR. THANK YOU.

16 DIRECT EXAMINATION

17 BY MR. THEOS:

18 Q. MR. MOORE, I'M JERRY THEOS, AND THIS IS JIM BELL.
19 MR. BELL AND I ARE LAWYERS REPRESENTING KENNETH
20 SIMMONS. AND WE APPRECIATE YOU COMING. I JUST
21 WANT TO ASK YOU A FEW QUESTIONS AS A FOLLOW-UP TO
22 THE JUDGE, AND I APOLOGIZE IF IT'S A LITTLE
23 REPETITIVE. WE JUST WANT TO MAKE SURE WE
24 UNDERSTAND WHAT YOUR TRUE FEELINGS ARE. IT'S A
25 LITTLE UNUSUAL THAT WE'RE TALKING ABOUT PUNISHMENT

PAUL T. MOORE - DIRECT/MR. THEOS

1 OF SOMEONE BEFORE THE ISSUE OF GUILT IS
2 DETERMINED. IT'S SORT OF PUTTING THE CART BEFORE
3 THE HORSE. DO YOU HAVE ANY FEELINGS ABOUT THE
4 GUILT OF MR. SIMMONS BECAUSE WE ARE TALKING ABOUT
5 PUNISHMENT? BUT WE HAVEN'T TRIED THE CASE YET.

6 A. NO, SIR; I HAVE NO OPINIONS UNTIL I HEAR THE FACTS.

7 Q. OKAY. YOU UNDERSTAND, OF COURSE, THAT MR. SIMMONS
8 IS PRESUMED TO BE INNOCENT EVEN THOUGH HE'S BEEN
9 CHARGED WITH THESE CRIMES?

10 A. YES, SIR.

11 Q. EVEN THOUGH HE'S BEEN INDICTED FOR THESE CRIMES?

12 A. YES, SIR.

13 Q. EVEN THOUGH HE SITS HERE ON TRIAL FOR THESE CRIMES?

14 A. YES, SIR.

15 Q. DO YOU FEEL THAT THAT IN ANY WAY SUGGESTS ANYTHING
16 ABOUT HIS GUILT?

17 A. NO, SIR.

18 Q. WHAT IS YOUR OPINION ABOUT THE DEATH PENALTY?

19 A. I'M NOT IN FAVOR FOR OR AGAINST IT. I BELIEVE IT
20 SHOULD BE BASED ON THE CIRCUMSTANCES OF THE CASE
21 AND BASED ON THE CASE AND THE FACTS. I'M NOT A
22 PERSON THAT WOULD GO IN AND VOTE FOR THE DEATH
23 PENALTY RIGHT OFF. IF THEY'RE PROVEN GUILTY, I
24 BELIEVE IT SHOULD BE BASED ON THE WHOLE CASE.

25 Q. I'M NOT SURE IF THE JUDGE INDICATED TO YOU WHEN HE

PAUL T. MOORE - DIRECT/MR. THEOS

1 QUESTIONED YOU. BUT SOME OF THE JURORS HE SAID YOU
2 REALLY NEED TO -- HE DOESN'T WANT YOU TO LEAVE YOUR
3 COMMON SENSE AND YOUR LIFE EXPERIENCES BEHIND. BUT
4 WHEN YOU COME IN HERE AS A JUROR, YOU'RE REALLY
5 SUPPOSED TO WIPE THE SLATE CLEAN; JUST COME IN HERE
6 WITH A COMPLETELY OPEN MIND. DO YOU FEEL THAT YOU
7 CAN DO THAT?

8 A. YES, SIR.

9 Q. DO YOU FEEL THAT YOU CAN DO THAT BOTH WITH RESPECT
10 TO THE GUILT OF MR. SIMMONS?

11 A. YES, SIR.

12 Q. DECIDING WHETHER OR NOT HE'S GUILTY?

13 A. RIGHT.

14 Q. AND WITH RESPECT TO THE PENALTY PHASE?

15 A. RIGHT.

16 Q. NOW, IF MR. BAILEY AND HIS STAFF WERE UNSUCCESSFUL
17 IN PERSUADING YOU BEYOND A REASONABLE DOUBT AS TO
18 THE GUILT OF MR. SIMMONS, WHAT WOULD YOUR VERDICT
19 BE?

20 A. IF THEY COULDN'T PERSUADE ME, IF THE FACTS
21 PRESENTED HIM TO BE GUILTY; THEN IF I FELT LIKE IT
22 WAS A GUILTY, HE WOULD BE IN MY OPINION GUILTY.

23 Q. ALL RIGHT. AND IF THEY COULD NOT PERSUADE YOU
24 BEYOND A REASONABLE DOUBT AS TO THE GUILT OF MR.
25 SIMMONS?

PAUL T. MOORE - DIRECT/MR. THEOS

1 A. HE WOULD BE PRESUMED INNOCENT.

2 Q. AND WITH RESPECT TO THE ISSUE OF PUNISHMENT AND
3 PENALTIES; IF WE WERE TO GET TO THAT POINT. DO YOU
4 UNDERSTAND IF HE WERE NOT FOUND GUILTY, WE
5 WOULDN'T?

6 A. RIGHT; YES, SIR.

7 Q. IF WE WERE TO GET TO THAT POINT, DO YOU FEEL THAT
8 YOU COULD LISTEN TO BOTH THOSE THINGS OFFERED BY
9 MR. BAILEY IN HIS EFFORTS TO PERSUADE YOU AS A
10 JUROR TO VOTE FOR DEATH AS THE PENALTY?

11 A. YES.

12 Q. DO YOU ALSO FEEL THAT YOU COULD LISTEN TO THOSE
13 THINGS OFFERED BY MR. BELL AND MYSELF ON BEHALF OF
14 MR. SIMMONS TO VOTE FOR LIFE IMPRISONMENT WITHOUT
15 PAROLE?

16 A. YES, SIR.

17 Q. WOULD YOU SINCERELY CONSIDER BOTH OF THOSE BEFORE
18 YOU MADE YOUR DECISION?

19 A. YES, SIR.

20 Q. AND JUST BECAUSE MR. SIMMONS, IF HE WERE FOUND
21 GUILTY OF MURDER; JUST BECAUSE HE WAS FOUND GUILTY
22 OF MURDER, YOU WOULDN'T AUTOMATICALLY MAKE UP YOUR
23 MIND BASED ON THAT?

24 A. NO, SIR.

25 Q. AS TO WHAT THAT PUNISHMENT SHOULD BE?

PAUL T. MOORE - CROSS/MR. BAILEY

1 A. NO, SIR.

2 Q. ALL RIGHT. THANK YOU.

3 CROSS-EXAMINATION

4 BY MR. BAILEY:

5 Q. MR. MOORE, I'M WALTER BAILEY. I'LL BE PROSECUTING
6 THIS CASE. I NEED TO ASK YOU A FEW MORE QUESTIONS,
7 AND I'LL TRY NOT TO BE TOO REPETITIVE. BUT THIS IS
8 THE ONLY CHANCE WE GET TO TALK TO JURORS BEFORE WE
9 ACTUALLY PICK THE JURY SOME TIME TOMORROW. BEFORE
10 YESTERDAY WHEN YOU FOUND OUT THAT YOU MIGHT BE A
11 JUROR ON A DEATH PENALTY CASE, HAD YOU EVER GIVEN
12 ANY REAL THOUGHT TO THE DEATH PENALTY?

13 A. NO, SIR.

14 Q. ALL RIGHT, SIR. DO YOU THINK YOU'VE HAD ENOUGH
15 TIME SINCE YESTERDAY TO KIND OF FORMULATE YOUR
16 OPINION TO DECIDE THAT YOU'RE THE THIRD TYPE JUROR
17 THAT COULD VOTE FOR LIFE WITHOUT PAROLE?

18 A. YES, SIR.

19 Q. OR COULD VOTE FOR THE DEATH PENALTY DEPENDING ON
20 WHAT YOU HEARD?

21 A. YES, SIR.

22 Q. AND WE'RE NOT GOING TO ASK YOU, OF COURSE, TO
23 PREDICT WHAT YOU'D DO IN THIS CASE BECAUSE YOU
24 HAVEN'T HEARD ANY OF THE FACTS. BUT YOU UNDERSTAND
25 THAT IF WE GET TO THE SECOND PART OF THE TRIAL, IT

PAUL T. MOORE - CROSS/MR. BAILEY

1 WOULD MEAN THE DEFENDANT IS GUILTY OF MURDER. AND
2 THE JURY THEN JUST HAS TWO CHOICES, LIFE WITHOUT
3 PAROLE AND THE DEATH PENALTY?

4 A. YES, SIR.

5 Q. THE JURY, NOT THE JUDGE, MAKES THE DECISION. ALL
6 THE JUDGE DOES IS ORDERS THAT JURY VERDICT TO
7 HAPPEN. SO IF THE JURY VOTES FOR LIFE WITHOUT
8 PAROLE, THE JUDGE ORDERS THAT AND HE WILL GO TO
9 PRISON FOR THE REST OF HIS LIFE. IF THE JURY VOTES
10 FOR THE DEATH PENALTY, THAT WILL BE THE JUDGE'S
11 ORDER, AND HE'LL ACTUALLY BE EXECUTED. MY QUESTION
12 IS, BEARING IN MIND YOU HAVEN'T HEARD ANY OF THE
13 FACTS; IF THE FACTS ARE BAD ENOUGH, COULD YOUR VOTE
14 FOR THE DEATH PENALTY KNOWING THAT EXECUTION WOULD
15 ACTUALLY TAKE PLACE?

16 A. YES, SIR; BASED ON CERTAIN CIRCUMSTANCE OF THE CASE
17 AND I FELT LIKE IT WAS JUSTIFIABLE.

18 Q. ALL RIGHT, SIR. IF THE OTHER ELEVEN JURORS FELT
19 THE SAME WAY AND ALL TWELVE JURORS VOTE FOR THE
20 DEATH PENALTY, THEN EACH JUROR WOULD BE ASKED TO
21 SIGN THEIR NAME TO A VERDICT FORM, A DEATH VERDICT
22 FORM, WHICH WOULD RESULT IN THAT EXECUTION
23 HAPPENING. COULD YOU SIGN THAT PAPER IF THAT WAS
24 YOUR DECISION?

25 A. YES, SIR.

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 Q. COULD YOU COME OUT HERE IN OPEN COURT AND ANNOUNCE
2 THAT DECISION OUT LOUD WHEN YOUR NAME WAS CALLED?

3 A. YES, SIR.

4 Q. THE JURY IS GOING TO BE PUT IN A MOTEL FOR MAYBE A
5 WEEK UNTIL THIS TRIAL IS OVER. THAT'S A HARDSHIP
6 ON ANYBODY. BUT ANYTHING THAT YOU CAN'T HANDLE
7 ABOUT BEING PUT UP IN A MOTEL?

8 A. NO, SIR.

9 Q. OKAY. ANY REASON AT ALL THAT YOU CAN THINK OF THAT
10 WOULD KEEP YOU FROM BEING A FAIR JUROR TO BOTH
11 SIDES, THE STATE AND THE DEFENSE?

12 A. NO, SIR.

13 Q. MR. MOORE, THAT'S ALL I HAVE. THANK YOU VERY
14 MUCH.

15 A. THANK YOU.

16 THE COURT: ANYTHING FURTHER, MR.
17 THEOS?

18 MR. THEOS: YOUR HONOR, JUST ONE
19 QUESTION.

20 RE-DIRECT EXAMINATION

21 BY MR. THEOS:

22 Q. MR. MOORE, ON YOUR QUESTIONNAIRE -- AND AS THE
23 JUDGE SAID, WE DON'T GRADE YOU ON THESE RESPONSES,
24 AND WE'RE NOT PASSING ANY JUDGMENT ON YOU. BUT ON
25 YOUR QUESTIONNAIRE YOU INDICATED YOU HAD BEEN

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 ROBBED TWICE?

2 A. YES, SIR.

3 Q. CAN YOU TELL ME -- AND THEN YOU INDICATED THAT YOU
4 HAD SOME PERSONAL PROPERTY DESTROYED WITHIN THE
5 LAST YEAR-AND-A-HALF. CAN YOU TELL US ABOUT THAT?

6 A. SURE. START FROM THE BOTTOM?

7 Q. NO. JUST TELL US BRIEFLY.

8 A. WELL, I WAS ROBBED SEVERAL YEARS AGO. I MEAN, I
9 WASN'T THERE WHEN IT HAPPENED. I WAS AWAY.

10 Q. SO THIS WAS WHERE YOU WERE LIVING?

11 A. YES, SIR; THIS IS WHERE I WAS LIVING. AND THE MOST
12 RECENT HASN'T COME TO COURT YET. I'M STILL WAITING
13 FOR IT. IT WAS DONE WHILE I WASN'T THERE ALSO.

14 Q. WHERE WAS THAT?

15 A. IT WAS IN [REDACTED] WHERE I LIVE.

16 Q. HAS THE PERSON THAT ALLEGEDLY COMMITTED THE ROBBERY
17 BEEN ARRESTED?

18 A. HE HAS BEEN, I THINK, ARRESTED OR SERVED PAPERS.

19 Q. OKAY. AND DO YOU KNOW WHICH COURT THAT IS PENDING
20 IN?

21 A. IN THIS COURT HERE.

22 Q. GENERAL SESSIONS?

23 A. YES.

24 Q. AND DO YOU KNOW WHICH PROSECUTOR FROM THE
25 SOLICITOR'S OFFICE IS PROSECUTING THAT CASE?

PAUL T. MOORE - RE-DIRECT/MR. THEOS

- 1 A. WALTER BAILEY'S OFFICE; ROBBIE ROBBINS.
- 2 Q. HAVE YOU TALKED TO MR. ROBBINS ABOUT THAT?
- 3 A. I BRIEFLY SPOKE TO HIM ABOUT IT.
- 4 Q. DO YOU FEEL THAT MR. ROBBINS IS ACTING ON YOUR
- 5 BEHALF IN THAT CASE?
- 6 A. SO FAR. WE REALLY HAVEN'T GOTTEN ANYWHERE WITH
- 7 IT. IT'S STILL WAITING TO BE HEARD.
- 8 Q. DO YOU HAVE ANY IDEA WHEN THAT CASE MIGHT COME UP
- 9 FOR TRIAL?
- 10 A. I REALLY DON'T KNOW.
- 11 Q. DO YOU KNOW WHAT THAT PERSON WAS CHARGED WITH?
- 12 A. I SIGNED A WARRANT FOR MALICIOUS DAMAGE TO PERSONAL
- 13 PROPERTY.
- 14 Q. ALL RIGHT. AND THAT WOULD EXPLAIN THE SECOND PART
- 15 OF YOUR ANSWER, HAD SOME PERSONAL PROPERTY
- 16 DESTROYED WITHIN THE LAST YEAR-AND-A-HALF?
- 17 A. YES, SIR.
- 18 Q. HOW MANY TIMES WOULD YOU SAY YOU'VE MET WITH MR.
- 19 ROBBINS?
- 20 A. I SPOKE TO MR. ROBBINS ONCE HERE AND ONCE ON THE
- 21 PHONE.
- 22 Q. OKAY. THEN I'M NOT SURE IF YOU WERE HERE EARLIER
- 23 WHEN THE QUESTION WAS ASKED. I DIDN'T MAKE A NOTE
- 24 OF IT, AND I MAY HAVE JUST MISSED IT WHEN THE
- 25 QUESTION WAS ASKED ABOUT WHETHER OR NOT YOU HAD A

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 -- YOU KNEW ANY OF THE ATTORNEYS INVOLVED AND ANY
2 OF THE PEOPLE INVOLVED. I DON'T RECALL YOU
3 ANSWERING AT THE POINT ABOUT MR. ROBBINS.

4 A. I'LL BE HONEST WITH YOU. YESTERDAY WHEN I WAS HERE
5 -- I WORK A THIRD SHIFT JOB; AND I PROBABLY DIDN'T
6 CATCH EVERY LITTLE QUESTION.

7 Q. OKAY. I UNDERSTAND. AND I'M CERTAINLY NOT
8 FUSSING.

9 A. THAT'S PERFECTLY ALL RIGHT.

10 Q. AND AGAIN, THAT'S WHY YOU'RE HERE WITH US TODAY.

11 A. RIGHT.

12 Q. WHO IS THE INVESTIGATING OFFICER IN CHARGE OF YOUR
13 CASE?

14 A. OFFICER SLOOP.

15 Q. I'M SORRY?

16 A. OFFICER SLOOP.

17 Q. AND WHICH DEPARTMENT?

18 A. WITH THE DORCHESTER COUNTY SHERIFF'S OFFICE.

19 Q. ANY OTHER POLICE OFFICERS INVOLVED IN THAT CASE?

20 A. NO, SIR.

21 Q. HAVE YOU HAD AN OPPORTUNITY TO MEET WITH THIS
22 OFFICER ABOUT YOUR CASE?

23 A. HE WAS THERE AT THE TIME WHEN IT HAPPENED BRIEFLY.
24 HE WAS THERE WHEN THE PERSON ARRIVED BACK TO THE
25 PROPERTY. THE SUSPECT ARRIVED BACK TO THE

1 PROPERTY. THE OFFICER WAS THERE WAITING FOR HIM.

2 Q. SO HE WAS ARRESTED ON THE SCENE?

3 A. NO. HE WAS NOT. I DIDN'T FILE ANY CHARGES AT THE
4 BEGINNING BECAUSE WE HAD WORKED OUT AN AGREEMENT.

5 THE COURT: ANY FURTHER QUESTIONS,
6 GENTLEMEN?

7 MR. BAILEY: NONE FROM THE STATE,
8 YOUR HONOR.

9 MR. THEOS: NO FURTHER QUESTIONS,
10 YOUR HONOR.

11 THE COURT: WOULD Y'ALL LIKE FOR
12 THIS JUROR TO BE EXCUSED?

13 MR. BAILEY: YES, SIR.

14 MR. THEOS: YES, SIR.

15 THE COURT: LET ME GET YOU TO STEP
16 OUTSIDE. LOOK OVER THIS LITTLE SHEET THERE IF YOU
17 WOULD.

18 MR. MOORE: OKAY.

19 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

20 THE COURT: WHAT SAY THE STATE,
21 PLEASE?

22 MR. BAILEY: HE'S CLEARLY QUALIFIED.

23 THE COURT: WHAT SAY THE DEFENDANT,
24 PLEASE?

25 MR. THEOS: YOUR HONOR, THANK YOU

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 FOR EXCUSING HIM. YOUR HONOR, I THINK THAT
2 ALTHOUGH HE MAY BE QUALIFIED UNDER THE STANDARD FOR
3 THE DEATH PENALTY, I'M CONCERNED THAT FIRST OF ALL
4 THAT HE DIDN'T REVEAL YESTERDAY -- AND I UNDERSTAND
5 HIS EXPLANATION -- BUT I AM CONCERNED THAT HE
6 DIDN'T REVEAL HIS RELATIONSHIP WITH MR. ROBBINS.
7 SECONDLY, I'M CONCERNED, YOUR HONOR, THAT MR.
8 ROBBINS IS ACTING ON HIS BEHALF. HE IS THE
9 ATTORNEY THAT'S PROSECUTING HIS CASE. THERE IS A
10 RELATIONSHIP THERE. IF I OR MR. BELL WERE
11 REPRESENTING MR. MOORE, I THINK IT WOULD BE
12 COMPLETELY INAPPROPRIATE FOR MR. MOORE TO SERVE AS
13 A JUROR. AND I THINK SIMILARLY, SINCE MR. ROBBINS
14 IS REPRESENTING THE INTEREST OF MR. MOORE IN THIS
15 CRIMINAL CASE THAT HE IS A VICTIM OF A CRIME IN
16 THIS COUNTY AND THAT MR. ROBBINS IS AN ATTORNEY FOR
17 THE STATE IN THIS CASE, I THINK IT WOULD BE
18 INAPPROPRIATE FOR HIM TO SERVE AS A JUROR. AND I
19 THINK HE SHOULD BE STRUCK FOR CAUSE. NOT BECAUSE
20 HE IS DISQUALIFIED UNDER THE STANDARDS, BUT BECAUSE
21 OF HIS RELATIONSHIP WITH THE SOLICITOR'S OFFICE IN
22 THAT CASE.

23 THE COURT: WHAT DO YOU SAY, MR.
24 BAILEY?

25 MR. BAILEY: YOUR HONOR, OF COURSE

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 THERE'S A BIG DIFFERENCE IN A DEFENSE LAWYER
2 REPRESENTING A DEFENDANT PERSONALLY AND THE STATE
3 HANDLING A CASE IN WHICH THIS MAN IS A VICTIM. I
4 DON'T SEE THE CORRELATION MR. THEOS HAS POINTED
5 OUT. I THINK HE'S QUALIFIED. I BELIEVE HE SAID IT
6 WOULDN'T MAKE ANY DIFFERENCE AS FAR AS HIS ABILITY
7 TO BE FAIR AND IMPARTIAL IN THIS CASE. YOUR HONOR,
8 THAT'S WHY THEY'VE GOT TEN STRIKES AND WE'VE GOT
9 FIVE, I GUESS.

10 MR. THEOS: YOUR HONOR, I DIDN'T
11 REALIZE---

12 THE COURT: AND LET ME COMMENT,
13 GENTLEMEN, THAT DURING THIS PROCEEDING, MR. BELL,
14 I'M HAPPY TO HEAR -- I'LL LET TWO LAWYERS SPEAK.
15 WE KNOW WHEN THE COURT IS NORMALLY IN A TRIAL, ONLY
16 ONE LAWYER CAN SPEAK. BUT JUST IN THE AID OF TIME;
17 I DON'T MIND YOU TELLING ME AND THEN YOU TELLING
18 MR. THEOS AND THEN MR. THEOS REPEATING IT, PLEASE.
19 PLEASE; THAT GOES FOR THE STATE AND THE DEFENSE.

20 MR. THEOS: YOUR HONOR---

21 THE COURT: I'LL HEAR FROM EITHER OR
22 BOTH OF YOU.

23 MR. THEOS: YOUR HONOR, MR. BELL
24 JUST INFORMED ME -- AND HE COULDN'T HELP BUT BLURT
25 IT OUT. WE APOLOGIZE. BUT HE IS THE LAWYER

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 REPRESENTING THE DEFENDANT IN THAT CASE WHICH
2 CLOUDS THE ISSUE EVEN MORE. WE THINK UNDER THOSE
3 CIRCUMSTANCES, SINCE HE REPRESENTS THE DEFENDANT IN
4 MR. MOORE'S CASE AND MR. ROBBINS REPRESENTS THE
5 STATE IN HIS INTEREST THAT---

6 THE COURT: WELL, SUPPOSE THAT WE BRING
7 HIM BACK IN AND ASK HIM IF HE KNOWS WHO THE LAWYER
8 IS FOR THE DEFENDANT BECAUSE HE MAY NOT KNOW THAT.

9 MR. THEOS: YOUR HONOR, OUR POSITION
10 WOULD BE THAT EVEN IF HE DOESN'T KNOW THAT, BECAUSE
11 OF THE RELATIONSHIP AND THE ARGUMENTS I PRESENTED
12 EARLIER, THAT WOULD HAVE PROVED THAT IT WAS
13 INAPPROPRIATE. AND I THINK IT WOULD BE PROVED NOT
14 TO ALLOW HIM TO SIT---

15 THE COURT: YOU TOLD ME THAT.

16 MR. THEOS: OR A COMBINATION OF
17 THOSE BECAUSE MR. BELL IS HIS ATTORNEY.

18 THE COURT: ALL RIGHT. AND WHAT IS
19 THE DEFENDANT'S NAME?

20 MR. BELL: MR. WATSON HORNE. I
21 BELIEVE THAT WAS THE ONE.

22 THE COURT: AND AS A MATTER OF FACT,
23 YOU AND MR. ROBBIE ROBBINS USED TO BE LAW
24 PARTNERS?

25 MR. BELL: THAT'S RIGHT.

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 THE COURT: SO DOES THAT MEAN, MR.
2 THEOS, THAT WE CAN'T LET THEM BE ON OPPOSING SIDES
3 IN THIS CASE?

4 MR. THEOS: YOUR HONOR---

5 THE COURT: I DON'T NEED AN ANSWER
6 TO THAT. ALL RIGHT. DO YOU WANT ME TO INQUIRE ON
7 THE RECORD IF HE KNOWS WHO THE DEFENSE ATTORNEY
8 IS? I'M NOT GOING TO TELL HIM IT'S MR. BELL IF HE
9 DOESN'T KNOW IT BECAUSE EVEN THE CLERK OF COURT AND
10 SOLICITOR MORE, OFTEN THAN NOT, WHEN YOU HAVE A
11 ROLL CALL DOESN'T KNOW WHO THE LAWYERS ARE
12 DEFENDING BECAUSE PEOPLE DON'T COMMUNICATE LIKE
13 THEY'RE SUPPOSED TO. DO YOU WANT THAT QUESTION
14 ASKED FOR THE DEFENSE?

15 MR. BELL: I THINK THERE IS NO
16 QUESTION IN MY MIND HE KNOWS WHO IT IS. AND I
17 THINK HE WOULD SAY THE SAME THING BECAUSE, YOU
18 KNOW, THERE HAVE BEEN COMMUNICATIONS. AND, I MEAN,
19 HE MAY NOT REMEMBER NOW. BUT HE HAS BEEN TOLD IN
20 THE PAST.

21 THE COURT: HAVE YOU COMMUNICATED
22 WITH THIS JUROR ABOUT THE CASE?

23 MR. BELL: NO, SIR; THROUGH THE
24 SOLICITOR'S OFFICE.

25 THE COURT: ABOUT THE PENDING---

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 MR. BELL: YES, SIR; NOT THIS CASE.
2 NO; WE'RE TALKING ABOUT THE ONE---

3 THE COURT: YES, SIR. HE SAID THAT
4 HE HAD TALKED TO THE SOLICITOR. DID THE SOLICITOR
5 TELL HIM MR. BELL WAS DEFENDING HIM?

6 MR. ROBBINS: YOUR HONOR, I THINK HE
7 DOES UNDERSTAND THAT MR. BELL IS THE LAWYER BECAUSE
8 HE WAS INQUIRING ABOUT THE PRELIMINARY HEARING.
9 AND I HAD TO EXPLAIN TO HIM THAT MR. BELL WAS UNDER
10 AN ORDER OF PROTECTION AND THAT'S WHY WE COULDN'T
11 HAVE THE PRELIMINARY HEARING.

12 THE COURT: SOME REASON THAT JUDGE
13 PROTECTED HIM FROM JANUARY FOURTH OF 1999 UNTIL
14 MARCH THE FIFTEENTH. SO I EXPECT MR. BELL TO BE
15 WELL PREPARED. BRING THE JUROR IN.

16 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

17 THE COURT: MR. MOORE, DO YOU KNOW
18 WHO THE ATTORNEY IS FOR THE DEFENDANT IN THE CHARGE
19 THAT YOU HAVE MADE THE MALICIOUS INJURY TO PERSONAL
20 PROPERTY?

21 MR. MOORE: MY LAWYER IS ROBBIE
22 ROBBINS HANDLING THE CASE.

23 THE COURT: DO YOU KNOW WHO'S
24 REPRESENTING THE DEFENDANT?

25 MR. MOORE: I HAD HEARD AT ONE TIME

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 IT WAS JIM BELL. I DON'T KNOW IF IT STILL IS.

2 THE COURT: LET ME ASK YOU THIS:

3 REGARDLESS OF WHETHER MR. BELL DOES OR DOES NOT
4 REPRESENT HIM, WOULD THE FACT THAT MR. ROBBINS IS
5 WITH THE STATE AND MR. BELL FROM TIME TO TIME
6 PRACTICES DEFENSE LAW, AND MAY OR MAY NOT BE
7 REPRESENTING THE DEFENDANT IN THE CHARGE THAT YOU
8 BROUGHT. WOULD THAT IN ANY WAY INTERFERE WITH YOUR
9 ABILITY TO GIVE A FAIR TRIAL TO THE STATE AND A
10 FAIR TRIAL TO THE DEFENDANT?

11 MR. MOORE: NO, SIR; NOT A BIT.

12 THE COURT: ALL RIGHT. I'M
13 SATISFIED AS TO THE CORRECTNESS OF WHAT YOU SAID,
14 AND YOU'RE FOUND TO BE QUALIFIED MR. PAUL MOORE.
15 PLEASE REPORT BACK AT TWO O'CLOCK TOMORROW. AND IN
16 THE EVENT WE GET OFF SCHEDULE OR DON'T GET BACK ON
17 SCHEDULE, THERE'S A PHONE NUMBER THERE. PLEASE
18 CALL THAT NUMBER TO DETERMINE IF THERE'S ANY CHANGE
19 FROM TWO O'CLOCK TOMORROW. AND FOLLOW THAT
20 INSTRUCTION SHEET AND BE READY TO BE SEQUESTERED
21 FOR A WEEK OR SO AT THE HOLIDAY INN. THE COUNTY
22 WILL PAY YOUR EXPENSES AND WHAT HAVE YOU. AND
23 PLEASE DON'T ALLOW YOURSELF TO BE EXPOSED TO
24 ANYTHING ABOUT THIS CASE. I DON'T SEE ANY
25 NEWSPAPER PEOPLE PRESENT. BUT IF ANYTHING SHOULD

PAUL T. MOORE - RE-DIRECT/MR. THEOS

1 BE IN THE PAPER, PLEASE DON'T READ IT. DON'T
2 LISTEN TO ANYTHING ON THE RADIO OR T.V. BECAUSE
3 THAT WOULD BE IMPROPER. HAVE A NICE DAY. THANK
4 YOU NOW. MADAM COURT REPORTER, OBVIOUSLY PLEASE
5 NOTE FOR THE RECORD THE DEFENDANT'S OBJECTION TO
6 JUROR NUMBER 226. THE COURT OBSERVED THE Demeanor
7 OF THE WITNESS OF THE PROSPECTIVE JUROR; LISTENED
8 CAREFULLY TO HIS ANSWERS; AND THE COURT IS
9 SATISFIED THAT HE IS AN IMPARTIAL JUROR AND COULD
10 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
11 TRIAL. SO, GENTLEMEN AND LADIES, LET'S TAKE A
12 FOUR MINUTE BREAK.

13 (BRIEF RECESS.)

14 THE COURT: ALL RIGHT. BRING IN
15 MARK WILLIAMSON, PLEASE. AND, GENTLEMEN AND
16 LADIES, WE HAVE FIVE ON THIS PANEL AND SIX ON THE
17 NEXT PANEL, AND WE EXTENDED THE SEVENTH PANEL UNTIL
18 2:30. SO I'VE ORDERED THE PIZZAS TO BE HERE AT TWO
19 O'CLOCK.

20 MR. THEOS: JUDGE, MAY MR. BAILEY
21 AND I APPROACH, PLEASE?

22 THE COURT: OH, CERTAINLY.

23 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

24 (JUROR NUMBER 341, A WHITE MALE, IS CALLED.)

25 THE COURT: AND GENTLEMEN, IF Y'ALL

MARK S. WILLIAMSON - EXAM. BY THE COURT

1 SEE ON THESE QUESTIONNAIRES SOMETHING THAT YOU
2 THINK WOULD BE DISQUALIFYING, BRING IT TO MY
3 ATTENTION SO WE CAN START WITH THAT.

4 (JUROR NUMBER 341, A WHITE MALE, IS CALLED.)
5 - - - - -

6 WHEREUPON,

7 MARK S. WILLIAMSON, WHO BEING PREVIOUSLY
8 DULY SWORN TO TELL THE TRUTH, TESTIFIED
9 AS FOLLOWS:

10 EXAMINATION

11 BY THE COURT:

12 Q. GOOD AFTERNOON. IT'S A FEW MINUTES AFTER TWELVE,
13 MR. MARK S. WILLIAMSON. THANK YOU SO MUCH FOR
14 BEING HERE PRESENT WITH US. LADIES AND GENTLEMEN,
15 FOR THE RECORD, THIS IS JUROR NUMBER 341. MR.
16 WILLIAMSON, ON YESTERDAY YOU WERE PLACED UNDER
17 OATH. DO YOU UNDERSTAND, SIR, THAT YOU ARE STILL
18 UNDER OATH?

19 A. I DO.

20 Q. AND THAT QUESTIONNAIRE THAT YOU WERE KIND ENOUGH TO
21 RETURN TO THE CLERK SOME WEEKS AGO; IS THAT STILL
22 CORRECT INFORMATION? IS THERE ANY NEED TO UPDATE
23 IT IN ANY WAY?

24 A. NO, SIR.

25 Q. ALL RIGHT, SIR. AND I NOTE, MR. WILLIAMSON THAT ON

MARK S. WILLIAMSON - EXAM. BY THE COURT

1 YESTERDAY THAT YOU STOOD AND INDICATED THAT YOU HAD
2 SEEN OR HEARD OR READ SOMETHING ABOUT THE CASE.
3 COULD YOU GIVE US THE SOURCE OF THAT INFORMATION?

4 A. THE CHARLESTON POST AND COURIER.

5 Q. AND WHAT WAS THE INFORMATION THAT YOU READ; AND
6 WHEN APPROXIMATELY?

7 A. PROBABLY ANYTHING THEY'VE PRINTED ON IT SIMPLY
8 BECAUSE I READ THE PAPER DAILY.

9 Q. AS A RESULT OF HAVING READ SOMETHING IN THE PAPER
10 ABOUT IT, HAVE YOU FORMED OR EXPRESSED AN OPINION
11 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

12 A. NO.

13 Q. IN OTHER WORDS, COULD YOU GIVE A FAIR TRIAL BOTH TO
14 THE STATE AND TO THE DEFENDANT?

15 A. YES, SIR.

16 Q. AND DO YOU UNDERSTAND, PLEASE, THAT IN THE TRIAL OF
17 CASES IN THIS COURT AND THIS STATE THAT EVERY
18 DEFENDANT THAT COMES INTO COURT, REGARDLESS OF WHAT
19 HE'S CHARGED WITH, HOWEVER SERIOUS OR BRUTAL OR
20 HORRIFIC IT MAY BE, THAT EVERY PERSON, EVERY
21 DEFENDANT, IS PRESUMED OR THOUGHT TO BE INNOCENT.
22 DO YOU UNDERSTAND THAT?

23 A. YES, I DO.

24 Q. AND YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN
25 TO PROVE HIMSELF INNOCENT. HE DOESN'T HAVE TO TAKE

MARK S. WILLIAMSON - EXAM. BY THE COURT

- 1 THE WITNESS STAND. IF THE DEFENDANT DOESN'T TAKE
2 THE WITNESS STAND, THAT FACT CANNOT BE USED AGAINST
3 HIM IN ANY WAY. IT MUST NOT ENTER INTO THE
4 DELIBERATIONS OF THE JURY BECAUSE THAT'S HIS RIGHT
5 TO REMAIN SILENT. DO YOU UNDERSTAND THAT?
- 6 A. YES, SIR.
- 7 Q. AND THERE IS TO BE NO INFERENCE AS TO GUILT OR
8 INNOCENCE BECAUSE HE DOESN'T TAKE THE STAND; DO YOU
9 UNDERSTAND?
- 10 A. YES, SIR.
- 11 Q. AND YOU UNDERSTAND FURTHER, PLEASE MR. MARK S.
12 WILLIAMSON, THAT THE STATE HAS THE BURDEN OF
13 PROVING THE GUILT OF THE DEFENDANT BEYOND A
14 REASONABLE DOUBT?
- 15 A. THAT'S CORRECT.
- 16 Q. AND THAT DURING THE TRIAL OR SITTING AS A JUROR
17 THAT YOU WOULD LISTEN TO THE TESTIMONY AND
18 EVIDENCE. THE COURT WOULD INSTRUCT YOU AS TO THE
19 LAW APPLICABLE TO THE FACTS OF THE CASE AS YOU AS A
20 JUROR MAY FIND THOSE FACTS TO BE. AND THEN YOU
21 WOULD BE ASKED TO RETURN A VERDICT. THE WORD
22 VERDICT IS DERIVED FROM THE LATIN PHRASE MEANING TO
23 SPEAK THE TRUTH. AND COULD YOU APPLY THE LAW AS
24 THE COURT GIVES THAT LAW TO YOU AND ACCEPT THAT LAW
25 AS BEING CORRECT AND THEN ARRIVE AT A TRUE VERDICT

MARK S. WILLIAMSON - EXAM. BY THE COURT

1 BASED UPON THE PARTICULAR FACTS OF THE CASE?

2 A. YES, SIR.

3 Q. AND, MR. WILLIAMSON, PLEASE UNDERSTAND THERE ARE NO
4 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE DO
5 NOT MEAN TO BE PERSONAL. YOU'RE ENTITLED TO YOUR
6 VIEWS. WE APPRECIATE YOU SHARING THOSE VIEWS. SO
7 YOU'RE GOING TO MAKE 100. WHATEVER ANSWERS YOU
8 GIVE ARE CORRECT ANSWERS BECAUSE THAT'S YOUR HONEST
9 VIEW OF WHAT YOU FEEL IN A MATTER. SO PLEASE DON'T
10 FEEL THAT -- DON'T BE CONCERNED ABOUT WHAT YOUR
11 ANSWERS ARE, PLEASE.

12 A. ALL RIGHT.

13 Q. NOW, ASSUMING THAT THE STATE PROVES THE GUILT OF
14 THE DEFENDANT BEYOND A REASONABLE DOUBT AND IN THE
15 GUILT PHASE OF THE TRIAL A JURY RETURNS A VERDICT
16 OF GUILTY OF MURDER. ASSUME THAT. BECAUSE IF THE
17 VERDICT IS NOT GUILTY, THE JURY WOULD NOT GO INTO
18 THE PENALTY PHASE FOR A RECOMMENDATION BECAUSE THE
19 COURT HAS THE RESPONSIBILITY OF IMPOSING A
20 SENTENCE. BUT IN A DEATH PENALTY OR MURDER CASE,
21 THE JURY IS REQUIRED TO MAKE A RECOMMENDATION. DO
22 YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. AND THE FACT WE'RE NOW TALKING ABOUT THE PENALTY
25 PHASE, AND YOU'VE HEARD NOTHING ABOUT THE FACTS,

MARK S. WILLIAMSON - EXAM. BY THE COURT

1 PLEASE DO NOT INFER ANYTHING FROM THAT. BUT WE
2 HAVE TO ADDRESS YOUR QUALIFICATIONS AT THIS TIME
3 RATHER THAN AT THE CLOSE OF THE GUILT PHASE. AND
4 THAT'S WHY WE'RE PROCEEDING AS WE ARE. NOW DURING
5 THE PENALTY PHASE THE STATE IS REQUIRED TO PROVE
6 BEYOND A REASONABLE DOUBT A STATUTORY AGGRAVATING
7 CIRCUMSTANCE, ONE OR MORE. THERE ARE SEVERAL
8 ALLEGED HERE SUCH AS ARMED ROBBERY, BURGLARY,
9 CRIMINAL SEXUAL CONDUCT, KIDNAPPING. IF THE STATE
10 DOES NOT PROVE A STATUTORY AGGRAVATING
11 CIRCUMSTANCE, THE JURY COULD NOT MAKE A
12 RECOMMENDATION OF A DEATH PENALTY. DO YOU
13 UNDERSTAND THAT?

14 A. YES.

15 Q. AND DURING THE TRIAL, EVEN IF THE STATE HAS PROVEN
16 TO THE SATISFACTION OF THE JURY BEYOND A REASONABLE
17 DOUBT A STATUTORY MITIGATING CIRCUMSTANCE, THE
18 DEFENDANT IS OFFERED THE OPPORTUNITY -- DOESN'T
19 HAVE TO -- BUT MAY OFFER EVIDENCE IN MITIGATION OR
20 IN LESSENING OF THE PENALTY TO BE RECOMMENDED. AND
21 THE JURY HAS THE OPTION OF RETURNING A
22 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT PAROLE
23 EVEN THOUGH THE STATE MAY HAVE PROVEN BEYOND A
24 REASONABLE DOUBT A STATUTORY AGGRAVATING
25 CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

MARK S. WILLIAMSON - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. AND EVEN IF THE DEFENDANT DOES NOT OFFER EVIDENCE
3 TO YOUR SATISFACTION, OR ANY AT ALL, ABOUT A
4 MITIGATING CIRCUMSTANCE, IT'S IN THE PROVINCE OR
5 THE AUTHORITY OF THE JURY TO, BY WAY OF
6 RECOMMENDATION OF MERCY FOR NO REASON AT ALL OTHER
7 THAN TO EXTEND MERCY TO THE DEFENDANT, THE JURY CAN
8 AS AN OPTION RECOMMEND LIFE IMPRISONMENT WITHOUT
9 PAROLE. DO YOU UNDERSTAND THAT?

10 A. I DO NOW.

11 Q. AND DO YOU HAVE THAT FORM IN YOUR HAND YOU'VE READ
12 OVER ABOUT JURORS ONE, TWO, AND THREE TYPES?

13 A. YES, SIR.

14 Q. WHICH OF THOSE THREE, MR. WILLIAMSON, DO YOU FEEL
15 THAT YOU WOULD FIT UNDER?

16 A. NUMBER THREE.

17 Q. NUMBER THREE?

18 A. YES, SIR.

19 Q. ALL RIGHT. THANK YOU.

20 THE COURT: GENTLEMEN, WOULD YOU
21 LIKE TO QUESTION THIS PROSPECTIVE JUROR?

22 MR. BAILEY: YES, SIR.

23 DIRECT EXAMINATION

24 BY MR. BAILEY:

25 Q. MR. WILLIAMSON, I'M WALTER BAILEY. I WANT TO ASK

MARK S. WILLIAMSON - DIRECT/MR. BAILEY

1 YOU A FEW MORE QUESTIONS TO FOLLOW UP ON WHAT JUDGE
2 PEEPLER HAD ASKED YOU. AND I'LL TRY NOT TO BE
3 REPETITIVE, BUT THIS IS THE ONLY CHANCE WE GET TO
4 QUESTION JURORS BEFORE WE PICK A JURY TOMORROW.
5 AND LIKE HE SAID, THERE ARE NO RIGHT OR WRONG
6 ANSWERS. AND DO YOU UNDERSTAND THAT WE WOULDN'T
7 EVEN BE GETTING TO THE PENALTY PHASE, THE SECOND
8 PART OF THE TRIAL, UNLESS AND UNTIL THE DEFENDANT
9 IS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE
10 TRIAL?

11 A. YES, SIR.

12 Q. ALL RIGHT, SIR. AND THE REASON WE HAVE THE SECOND
13 PHASE IS TO ALLOW THE INTRODUCTION OF ADDITIONAL
14 EVIDENCE AND ADDITIONAL INSTRUCTIONS FROM THE JUDGE
15 TO HELP THAT JURY DECIDE BETWEEN THOSE TWO CHOICES,
16 LIFE WITHOUT PAROLE AND THE DEATH PENALTY?

17 A. YES, SIR.

18 Q. AND IN THAT SECOND PART OF THE TRIAL I'D BE PUTTING
19 UP EVIDENCE IN AGGRAVATION. AND I'D BE ARGUING OR
20 TRYING TO PERSUADE THE JURY TO BRING BACK THE DEATH
21 PENALTY. THE DEFENSE, IF THEY WISHED TO, COULD PUT
22 UP EVIDENCE IN MITIGATION. AND, OF COURSE, THEY'D
23 BE ARGUING FOR LIFE WITHOUT PAROLE. JUDGE PEEPLER
24 WOULD THEN INSTRUCT THE JURY. THE JURY WOULD
25 DELIBERATE, AND THEY WOULD MAKE THAT DECISION.

MARK S. WILLIAMSON - DIRECT/MR. BAILEY

1 WHATEVER THE JURY DECIDES WILL BE THE ORDER OF THE
2 COURT, AND IT WILL BE CARRIED OUT. IN OTHER WORDS,
3 IT REALLY ISN'T A RECOMMENDATION. IT IS WHAT'S
4 GOING TO HAPPEN. THE JUDGE WILL ORDER LIFE WITHOUT
5 PAROLE. IF THE JURY SAYS THAT'S THE SENTENCE,
6 HE'LL SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES
7 FOR THE DEATH PENALTY, THE JUDGE WILL ORDER IT, AND
8 HE'LL BE EXECUTED. NOW, NOBODY IS GOING TO ASK YOU
9 FOR A PREDICTION OF WHAT YOU'D DO IN THIS CASE
10 BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. BUT IF
11 THE FACTS ARE BAD ENOUGH, THE CASE IS BAD ENOUGH,
12 COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT
13 SENTENCE WOULD ACTUALLY GET CARRIED OUT?

14 A. I COULD.

15 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTED FOR
16 THE DEATH PENALTY, THEY'D BE ASKED TO SIGN THEIR
17 NAMES TO A VERDICT FORM THAT WOULD RESULT IN THAT
18 EXECUTION TAKING PLACE. COULD YOU SIGN YOUR NAME
19 TO THAT FORM IF YOU AND THE OTHER JURORS VOTED FOR
20 THE DEATH PENALTY?

21 A. YES, SIR. IF I WAS REQUIRED TO SIGN MY NAME, I
22 COULD.

23 Q. ALL RIGHT, SIR. AND COULD YOU COME OUT IN OPEN
24 COURT AND ANNOUNCE THAT AS BEING YOUR DECISION?

25 A. YES, SIR.

MARK S. WILLIAMSON - DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. THE JURY IS GOING TO BE PUT UP IN
2 A MOTEL FOR ABOUT A WEEK UNTIL THIS TRIAL IS OVER.
3 THAT'S A HARDSHIP ON EVERYBODY, BUT IS IT ANYTHING
4 YOU CAN'T HANDLE?

5 A. THIS IS CREATING A GREAT DIFFICULTY FOR ME AT WORK.

6 Q. ALL RIGHT, SIR. AND I THINK YOU'RE SELF-EMPLOYED
7 IN INSURANCE?

8 A. THAT'S CORRECT. ME AND MY MOM ARE AGENTS IN OUR
9 OFFICE ON MAIN STREET. AND IT IS CREATING A GREAT
10 DIFFICULTY TO ME NOW. I WAS PLANNING ON WORKING IN
11 THE EVENINGS WHEN I GOT HOME. I DIDN'T KNOW ABOUT
12 BEING SEQUESTERED.

13 Q. ALL RIGHT. AS I SAID -- AND I THINK THE JUDGE SAID
14 EARLIER -- THAT IS GOING TO BE A HARDSHIP ON
15 ANYBODY NO MATTER WHAT THE SITUATION IS. BUT IS IT
16 A SITUATION UNIQUE TO YOU? I MEAN, IS THIS LIKE A
17 PARTICULARLY BUSY TIME OF THE YEAR?

18 A. EXTREMELY BUSY TIME OF YEAR. MARCH ONE WE'RE
19 CHANGING AUTO INSURANCE AS A RESULT OF COMPUTER
20 PROBLEMS. AND ONE OF OUR PRIMARY STAFF, A FOUR
21 YEAR LICENSE AGENT, LEFT OUR EMPLOYMENT LAST
22 MONDAY. PRIOR TO THAT I WAS ANTICIPATING BEING
23 ABLE TO HANDLE JUST WHATEVER CAME THIS WAY. BUT
24 THAT HAS MADE IT EXTREMELY DIFFICULT.

25 Q. OBVIOUSLY A CASE LIKE THIS IS AS SERIOUS AS IT

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 GETS. IF YOU WERE SEQUESTERED FOR ROUGHLY A WEEK,
2 WOULD YOU BE ABLE TO CONCENTRATE ON THE FACTS OF
3 THE CASE, OR WOULD YOUR MIND BE AT WORK?

4 A. I WOULD BE CONCERNED BECAUSE MY MOTHER IS IN
5 SEMI-RETIREMENT. SHE MOSTLY DOES ADMINISTRATIVE
6 TYPE WORK. AND ONCE AGAIN, MY ANTICIPATION OF
7 BEING ABLE TO GO BY THE OFFICE IN THE EVENING TIMES
8 WAS GOING TO LESSEN THAT ANXIETY. BUT HER HEALTH
9 IS NOT -- I'M NOT GOING TO SAY SHE'S EXTREMELY ILL.
10 BUT IT WOULD PROBABLY BE DETRIMENTAL TO HER
11 STRESSING OUT, IF YOU KNOW WHAT I MEAN.

12 Q. ALL RIGHT. MR. WILLIAMSON, I BELIEVE THAT'S ALL
13 I'VE GOT RIGHT NOW. THANK YOU VERY MUCH.

14 THE COURT: MR. THEOS, WOULD YOU
15 LIKE TO QUESTION THIS GENTLEMAN??

16 MR. THEOS: YES, SIR.

17 CROSS-EXAMINATION

18 BY MR. THEOS:

19 Q. MR. WILLIAMSON, BEFORE I ASK YOU ANY QUESTIONS
20 RELATED TO ISSUES OF GUILT AND INNOCENCE AND WHAT
21 YOU MIGHT BE ABLE TO DO IF WE REACHED THE SECOND
22 PHASE OF THIS CASE. I WANT TO MAKE SURE THAT I
23 UNDERSTAND YOUR RESPONSES TO MR. BAILEY'S LAST FEW
24 QUESTIONS. AND I CERTAINLY DON'T MEAN TO BE
25 FUSSING WITH YOU. WE'RE NOT CONDEMNING YOU FOR

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 BEING HONEST WITH US. BUT DO YOU REALLY FEEL THAT
2 BECAUSE OF YOUR WORK AND THE FACT THAT YOU DON'T
3 HAVE ANYBODY ELSE THERE OTHER THAN YOUR MOTHER; DO
4 YOU FEEL THAT THAT WOULD IMPACT ON YOUR ABILITY TO
5 SERVE AS A JUROR IN THIS CASE?

6 A. I WOULD TAKE WHATEVER I HAVE TO DO AND MAKE THE
7 BEST OF ANY SITUATION, NOT ONLY HERE BUT ANYWHERE
8 IN TIME. THESE DISQUALIFICATIONS YOU WENT THROUGH
9 YESTERDAY AT THAT POINT JUST WAS PART OF MY
10 THOUGHTS THAT MAYBE I COULD DISQUALIFY MYSELF.
11 AND, AGAIN, THERE ARE PEOPLE IN MY OFFICE. I MEAN,
12 IT'S A HARDSHIP. BUT IN ANSWER TO YOUR QUESTION,
13 IF I'VE GOT TO DO A JOB, I'LL DO WHATEVER IT IS
14 I'VE GOT TO DO.

15 Q. OKAY. YOU DIDN'T ASK TO BE EXCUSED. I GUESS
16 THAT'S WHY MR. BAILEY AND I WANTED A LITTLE MORE
17 DETAIL.

18 A. WELL, I WAS NOT ANTICIPATING BEING SEQUESTERED
19 WHICH ONCE AGAIN WOULD HAVE MADE IT WHERE I COULD
20 HAVE CONTINUED MY JOB IN THE EVENING HOURS.

21 Q. YOU UNDERSTAND, HOWEVER, BECAUSE OF SEQUESTRATION
22 AND THE RULES ASSOCIATED WITH THAT THAT YOU
23 WOULDN'T BE ABLE TO USE THE PHONE OR CONDUCT
24 BUSINESS AND ALL THOSE THINGS; TALK WITH YOUR
25 MOTHER ABOUT BUSINESS? YOU WOULDN'T BE ABLE TO DO

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 ANY OF THOSE THINGS.

2 A. I UNDERSTAND. THAT WOULD MAKE IT VERY DIFFICULT.

3 Q. ARE YOU -- WOULD YOU LIKE TO RECONSIDER, I GUESS,
4 WHETHER OR NOT YOU'RE REQUESTING TO BE EXCUSED FROM
5 THIS JURY BASED ON THAT HARDSHIP; OR WOULD YOU LIKE
6 US TO GO FORWARD?

7 A. IF MY CIRCUMSTANCES WOULD ALLOW IT, I WOULD LIKE TO
8 BE EXCUSED. I WOULD REQUEST IT.

9 MR. THEOS: YOUR HONOR, I COULD GO
10 FORWARD AND ASK THOSE FEW QUESTIONS.

11 THE COURT: PLEASE GO FORWARD.

12 Q. MR. WILLIAMSON, I JUMPED RIGHT IN. I'M JERRY
13 THEOS, AND THIS IS JIM BELL. WE REPRESENT KENNETH
14 SIMMONS; AND WE APPRECIATE YOU BEING SINCERE AND
15 HONEST WITH US. WE KIND OF JUMPED AHEAD OF
16 OURSELVES A LITTLE BIT. WE BEGAN TALKING ABOUT
17 POTENTIAL PENALTIES IN THIS CASE, AND MR. SIMMONS
18 IS SITTING HERE AN INNOCENT MAN AT THIS POINT. DO
19 YOU UNDERSTAND THAT?

20 A. I UNDERSTAND THAT.

21 Q. AND YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF
22 PROVING MR. SIMMONS GUILTY FIRST IN THE FIRST PHASE
23 OF THE TRIAL BEFORE WE WOULD EVEN BEGIN TO CONSIDER
24 WHAT THE APPROPRIATE PENALTY MIGHT BE?

25 A. YES, I DO.

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 Q. DO YOU HAVE AN OPINION AS TO THE GUILT OF MR.
2 SIMMONS BASED UPON THE FACT THAT HE'S BEEN CHARGED
3 AND THE FACT THAT HE'S ON TRIAL AND THE FACT THAT
4 THE STATE IS SEEKING THE DEATH PENALTY IN THIS
5 CASE?

6 A. NO, I DO NOT.

7 Q. DO YOU FEEL THAT YOU DO -- DO YOU HAVE AN OPINION,
8 GENERALLY, IF SOMEONE IS CONVICTED OF MURDER, WHAT
9 THE APPROPRIATE PUNISHMENT WOULD BE?

10 A. AN OPINION IN LINE WITH JUROR NUMBER THREE AS IN
11 THIS PAMPHLET THAT IT WOULD DEPEND ON THE FACTS AND
12 THE CIRCUMSTANCES AROUND IT.

13 Q. SO YOU'RE NOT ONE OF THOSE THAT FEEL IF SOMEONE IS
14 CONVICTED OF MURDER THAT THAT AUTOMATICALLY MEANS
15 THAT PERSON SHOULD BE SENTENCED TO DEATH?

16 A. NO, I DO NOT.

17 Q. YOU TRULY BELIEVE THAT YOU COULD CONSIDER BOTH
18 SIDES AND WEIGH BOTH SIDES, BOTH WHAT MR. BAILEY
19 MIGHT HAVE TO OFFER ON BEHALF OF THE STATE AND WHAT
20 MR. BELL AND I MIGHT HAVE TO OFFER ON BEHALF OF MR.
21 SIMMONS AND SENTENCE -- IF WE GET TO THAT POINT --
22 SENTENCE MR. SIMMONS APPROPRIATELY BASED UPON
23 EVERYTHING YOU'VE HEARD?

24 A. I CAN LISTEN TO THE EVIDENCE; YES.

25 Q. OKAY. AND YOU WOULD BE ABLE TO CONSIDER BOTH

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 POSSIBLE PUNISHMENTS?

2 A. YES.

3 Q. WHAT IS YOUR OPINION ABOUT THE DEATH PENALTY?

4 A. I'M IN FAVOR OF THE DEATH PENALTY IN CERTAIN
5 CIRCUMSTANCES.

6 Q. I'M SORRY?

7 A. I'M IN FAVOR OF THE DEATH PENALTY IN CERTAIN
8 CIRCUMSTANCES.

9 Q. HAVE YOU TALKED TO ANYBODY ABOUT YOUR OPINION OF
10 THE DEATH PENALTY? HAVE YOU EVER HAD A CHANCE TO
11 TALK TO PEOPLE ABOUT IT IN CONVERSATION?

12 A. NOT A NORMAL CONVERSATION; NO.

13 Q. DID YOU EVER REALLY THINK ABOUT IT BEFORE YOU WERE
14 SUMMONSED TO BE HERE AS A JUROR?

15 A. DEFINITELY.

16 Q. YOU HAVE THOUGHT ABOUT IT?

17 A. YES.

18 Q. HAS YOUR OPINION STAYED THE SAME, OR HAS IT CHANGED
19 OVER TIME?

20 A. MY OPINION HAS BEEN CONSISTENT FOR MOST OF MY ADULT
21 LIFE.

22 MR. THEOS: NO OTHER QUESTIONS, YOUR
23 HONOR.

24 THE COURT: SOLICITOR?

25 MR. BAILEY: NO OTHER QUESTIONS,

MARK S. WILLIAMSON - CROSS/MR. THEOS

1 YOUR HONOR.

2 THE COURT: ALL RIGHT. LET ME ASK
3 YOU TO STEP OUTSIDE JUST A MINUTE, PLEASE, SIR.

4 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

5 THE COURT: WHAT SAY THE STATE?

6 MR. BAILEY: QUALIFIED, YOUR HONOR.

7 THE COURT: WHAT SAY THE DEFENDANT?

8 MR. THEOS: I THINK HE'S QUALIFIED,
9 YOUR HONOR.

10 THE COURT: ALL RIGHT. BRING HIM
11 IN.

12 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

13 THE COURT: MR. WILLIAMSON, I WANT
14 YOU TO PLEASE UNDERSTAND THAT THE COURT APPRECIATES
15 THE COST OF BUYING GRITS AND GROCERIES. THE COURT
16 UNDERSTANDS THAT WHEN YOU'RE IN BUSINESS WITH THE
17 PUBLIC YOU NEED TO ACCOMMODATE THEIR NEEDS. I KNOW
18 IT'S A HARDSHIP FOR ANY PERSON TO BE AWAY FROM
19 THEIR FAMILY, FROM THEIR JOBS, THEIR OTHER
20 RESPONSIBILITIES WHETHER LITTLE LEAGUE BASEBALL
21 COACH OR WHETHER A CHURCH CHOIR LEADER OR WHETHER
22 PUTTING ON A SEMINAR FOR INSURANCE ADJUSTORS;
23 WHATEVER THE CASE MAY BE. BUT WE CAN'T HAVE JURY
24 TRIALS WITHOUT JURORS. AND YOU'VE BEEN FOUND
25 QUALIFIED. AND PLEASE UNDERSTAND THAT THE COURT IS

1 AWARE OF YOUR WORK SITUATION. AND THE COURT WOULD
2 LIKE TO EXCUSE YOU. BUT WE NEED QUALIFIED JURORS;
3 AND YOU'VE BEEN FOUND QUALIFIED. SO I DIDN'T WANT
4 YOU TO THINK THAT EITHER OF THE LAWYERS OR THE
5 COURT WAS DISREGARDING THE HARDSHIP THAT WOULD BE
6 CAUSED YOU IF YOU ARE SELECTED ON THIS JURY. SO
7 YOU'VE BEEN FOUND QUALIFIED. TOMORROW AT TWO
8 O'CLOCK, WEDNESDAY THE 24TH, THE QUALIFIED JURORS
9 ARE TO REPORT AT TWO. IF THERE'S ANY CHANGE IN
10 THAT, THERE'S A PHONE NUMBER THERE. PLEASE CALL
11 THAT PHONE NUMBER AFTER SIX TODAY, AND WE'LL PUT A
12 RECORDING ON THERE THAT THE TIME IS STILL AT TWO
13 O'CLOCK ON WEDNESDAY. OR EITHER WE MAY HAVE TO
14 MOVE IT TO FIVE O'CLOCK WENESDAY OR ELEVEN O'CLOCK
15 IN THE MORNING, OR WE HAVE TO CHANGE IT TO
16 THURSDAY. IT'S ANTICIPATED THIS TRIAL WILL TAKE
17 ABOUT SEVEN DAYS. IT COULD TAKE LESS. IT COULD
18 TAKE LONGER. BUT PLEASE FOLLOW THAT INSTRUCTION
19 LIST AND COME PREPARED TO VISIT WITH US FOR A WHILE
20 AT THE HOLIDAY INN AT THE COUNTY EXPENSE IN THE
21 EVENT THAT YOU ARE SELECTED. AND PLEASE DO NOT
22 EXPOSE YOURSELF OR ALLOW ANYONE TO TALK TO YOU THE
23 ABOUT THE FACTS OF THIS CASE. IF THERE'S ANY --
24 THERE ARE NO NEWSPAPER OR T.V. OR RADIO PEOPLE IN
25 THE COURTROOM. BUT IF THERE SHOULD BE SOME MENTION

LINDA WHETHERELL - EXAM. BY THE COURT

OF IT, PLEASE DISREGARD IT. THANK YOU; AND YOU
HAVE A NICE DAY. BRING IN JUROR NUMBER 299,
PLEASE.

(JUROR NUMBER 299, A WHITE FEMALE, IS CALLED.)

- - - - -

WHEREUPON,

LINDA WETHERELL, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD AFTERNOON. THANK YOU SO MUCH FOR BEING HERE
PRESENT WITH US TODAY. IS IT WETHERELL?

A. YES, SIR.

Q. YOU'RE JUROR NUMBER 299. AND, MA'AM, YOU WERE
PLACED UNDER OATH ON YESTERDAY. YOU'RE STILL UNDER
OATH TODAY. IN REVIEWING THIS QUESTIONNAIRE, I
NOTE THAT YOU ARE A SINGLE PARENT, A DIVORCED
PARENT; THAT YOU HAVE AN EIGHT YEAR OLD; AND HE'S
IN THE THIRD GRADE. AND I NOTED FURTHER, MA'AM,
THAT YOU STATED THAT YOUR SON GOES TO DAY CARE
AFTER SCHOOL, AND IT CLOSSES AT SIX O'CLOCK. DO YOU
HAVE ANY FAMILY OR FRIENDS THAT YOU COULD RELY UPON
TO HELP YOU WITH YOUR CHILD IF YOU WERE SELECTED ON
THIS JURY?

LINDA WHETHERELL - EXAM. BY THE COURT

1 A. TRUTHFULLY; YES.

2 Q. BECAUSE PLEASE UNDERSTAND, MA'AM, THAT GOSH! THE
3 LAST GENTLEMAN THAT WAS IN HERE WORKS WITH
4 ALLSTATE; AND HE'S GOING TO HAVE TO BE AWAY FROM
5 HIS BUSINESS. THIS CASE COULD TAKE AS LONG AS A
6 WEEK TO TRY; AND YOU WOULD BE CONFINED OR
7 SEQUESTERED -- NOT UNDER ARREST -- BUT YOU WOULD BE
8 PUT AT THE HOLIDAY INN WITH THE OTHER JURORS, AND
9 YOU WOULD BE LIVING THERE, SO TO SPEAK, FOR AT
10 LEAST FIVE, SIX, SEVEN, PERHAPS EIGHT DAYS. THE
11 COUNTY WOULD PAY FOR YOUR MEALS AND YOUR EXPENSES
12 AND YOU'D BE IN THE COURTROOM DURING THE DAY
13 HEARING TESTIMONY AND IN THE EVENING YOU'D GO BACK
14 TO THE HOLIDAY INN UNLESS WE COULD FIND A MOVIE OR
15 SOME TYPE OF ENTERTAINMENT THAT YOU COULD GO TO.
16 YOU WOULD NOT BE ALLOWED TO TALK TO -- PEOPLE
17 COULDN'T COMMUNICATE WITH YOU EXCEPT IN CASE OF
18 EMERGENCY. I WOULD PROBABLY REQUEST OF THE LAWYERS
19 IF YOU HAD AN EIGHT YEAR OLD SON THAT YOU WANTED TO
20 CALL TO TELL GOOD NIGHT THAT I WOULD ASK -- I'D SEE
21 IF WE COULD GET THAT AGREEMENT. I CAN'T PROMISE
22 YOU I COULD, BUT I WOULD TRY BECAUSE CERTAINLY YOU
23 WOULDN'T TALK TO YOUR SON ABOUT THE CASE. AND HE
24 WOULDN'T BE IN A POSTURE TO ATTEMPT TO INFLUENCE
25 YOU ABOUT THE CASE. BUT WHAT I'M ASKING YOU,

LINDA WHETHERELL - EXAM. BY THE COURT

1 MA'AM, IS IF YOU ARE FOUND QUALIFIED AND IF YOU ARE
2 SELECTED AS A JUROR IN THE CASE, CAN YOU MAKE
3 SATISFACTORY ARRANGEMENTS FOR THAT MOST IMPORTANT
4 MAN IN YOUR LIFE, THAT BEING YOUR SON?

5 A. I COULD.

6 Q. YOU COULD. ALL RIGHT; THANK YOU. NOW, MA'AM, HAS
7 THERE BEEN IN CHANGE IN THIS QUESTIONNAIRE SINCE
8 YOU WERE KIND ENOUGH TO RETURN IT SOME WEEKS AGO?

9 A. NO, SIR.

10 Q. YOU DON'T NEED TO UPDATE IT IN ANY WAY?

11 A. NO, SIR.

12 Q. AND, MA'AM HAVE YOU READ OR HEARD ANYTHING ABOUT
13 THIS CASE? YOU STOOD ON YESTERDAY AND INDICATED
14 THAT YOU HAD. AND IF SO, WHAT WAS THE SOURCE OF
15 THAT INFORMATION, AND WHAT DID YOU READ OR HEAR?

16 A. I HEARD ON THE NEWS A LITTLE BIT ABOUT THE CASE.
17 IT CAUGHT MY EAR BECAUSE WE DON'T HAVE THAT MUCH
18 VIOLENT CRIME IN SUMMERVILLE. I DIDN'T PAY VERY
19 CLOSE ATTENTION TO IT. I ALSO KNOW THE COUNTY
20 CORONER, CHRIS NESBITT; AND I REMEMBER HEARING HIM
21 TALK A LITTLE BIT ABOUT IT WAY BACK IN 1996.

22 Q. AND DID THE FACT THAT YOU HEARD SOMETHING ON T.V.
23 OR HAD SOME PASSING CONVERSATION WITH THE CORONER;
24 DID YOU FORM OR EXPRESS AN OPINION AT THAT TIME
25 ABOUT THE FACTS OF THE CASE?

LINDA WHETHERELL - EXAM. BY THE COURT

1 A. NO.

2 Q. DO YOU FEEL, MA'AM, THAT YOU COULD GIVE A FAIR
3 TRIAL TO THE STATE AND JUST AS EQUALLY GIVE A FAIR
4 TRIAL TO THE DEFENDANT?

5 A. YES.

6 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
7 THE STATE OR THE DEFENDANT?

8 A. NO.

9 Q. HAS ANYONE APPROACHED OR ATTEMPTED TO INFLUENCE YOU
10 ABOUT WHAT YOUR VERDICT SHOULD BE IN THIS CASE IF
11 YOU'RE SELECTED TO SERVE ON THE JURY?

12 A. NO.

13 Q. AND, MA'AM, PLEASE UNDERSTAND UNDER OUR SYSTEM OF
14 LAW IN SOUTH CAROLINA AND THIS UNITED STATES THAT
15 EVERY DEFENDANT THAT COMES INTO COURT, REGARDLESS
16 THE NATURE OR ENORMITY OF THE CHARGE THAT MAY BE
17 PLACED AGAINST HIM OR HER, IS ALWAYS PRESUMED OR
18 THOUGHT TO BE INNOCENT OF THOSE CHARGES UNTIL OR
19 UNLESS THE STATE REMOVES THAT PRESUMPTION OF
20 INNOCENCE BY EVIDENCE SATISFYING THE JURY BEYOND A
21 REASONABLE DOUBT OF THE GUILT. DO YOU UNDERSTAND
22 THAT?

23 A. YES, SIR.

24 Q. AND, PLEASE MA'AM, FURTHER IT'S OUR LAW THAT A
25 DEFENDANT IS PRESUMED INNOCENT FROM THE TIME OF HIS

LINDA WHETHERELL - EXAM. BY THE COURT

1 ARREST THROUGHOUT THE TRIAL AND UNTIL THE JURY
2 ENTERS THEIR DELIBERATIONS AND UNTIL THE JURY IN
3 THAT DELIBERATION ARRIVES AT A VERDICT OF GUILTY
4 BEYOND A REASONABLE DOUBT. AND THE DEFENDANT HAS
5 NO BURDEN TO PROVE HIMSELF INNOCENT BECAUSE IN MANY
6 INSTANCES THAT MAY NOT BE POSSIBLE; AND THE
7 DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS STAND.
8 IF HE DOES NOT, I WILL INSTRUCT THE JURY AS A
9 MATTER OF LAW THAT THE FAILURE OF A DEFENDANT TO
10 TESTIFY RAISES NO INFERENCE OR PRESUMPTION OF GUILT
11 OR INNOCENCE. THAT FACT MUST NOT ENTER INTO THE
12 DELIBERATIONS IN ANY MANNER WHATSOEVER. DO YOU
13 UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. AND FURTHER, MA'AM, ASSUMING THAT THE JURY OF
16 TWELVE IN THE GUILT PHASE FOUND THE DEFENDANT
17 GUILTY BEYOND A REASONABLE DOUBT OF MURDER, IF IT
18 WERE A NOT GUILTY VERDICT YOU WOULD NOT BE
19 CONCERNED WITH THE PENALTY PHASE BECAUSE THE JUDGE
20 WOULD IMPOSE SENTENCE IN ANY CASE EXCEPT WHERE
21 GUILTY OF MURDER IN A CAPITAL DEATH PENALTY TYPE
22 CASE. AND UNDERSTAND THERE ARE NO RIGHT OR WRONG
23 ANSWERS TO THESE QUESTIONS. YOU'RE ENTITLED TO
24 YOUR VIEWS. AND YOU'RE GOING TO MAKE 100 PLUS.
25 YOU'RE GOING TO GRADUATE SUMMA CUM LAUDE WITH

LINDA WHETHERELL - EXAM. BY THE COURT

1 HIGHEST OF HONORS. SO PLEASE DON'T FEEL THAT WE'RE
2 INFRINGING UPON YOUR RIGHT TO PRIVACY OR TRYING TO
3 BE PERSONAL WITH YOU BECAUSE WE'RE NOT. BUT THIS
4 IS THE ONLY SYSTEM THAT WE KNOW WHERE THE COURT AND
5 THE LAWYERS CAN GET A FEEL FOR WHETHER OR NOT THEY
6 WOULD LIKE FOR YOU TO SERVE ON A JURY. SO PLEASE
7 DO NOT LET ME OR THE LAWYERS IN ANY WAY OFFEND YOU
8 BY THESE QUESTIONS. BUT IF THE JURY RETURNS A
9 VERDICT OF GUILTY IN THE FIRST GUILT PHASE, THEN WE
10 WOULD HAVE A 24 HOUR WAITING PERIOD AND GO TO THE
11 PENALTY PHASE. THERE WOULD BE TWO OPTIONS FOR
12 RECOMMENDATIONS TO THE COURT. THOSE OPTIONS WOULD
13 BE; (1) LIFE IMPRISONMENT WITHOUT PAROLE; OR (2)
14 THE IMPOSITION OF THE DEATH PENALTY. AND THAT'S A
15 RECOMMENDATION. AND THEN THE COURT WOULD DO THAT
16 WHICH WAS NECESSARY TO ORDER THOSE TO BE DONE. BUT
17 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ONE
18 OR MORE STATUTORY AGGRAVATING CIRCUMSTANCES. THERE
19 ARE FOUR ALLEGED IN THIS CASE; MURDER WHILE IN THE
20 COMMISSION OF A BURGLARY, ONE; ARMED ROBBERY,
21 SECOND; KIDNAPPING, THIRD; CRIMINAL SEXUAL CONDUCT,
22 FOURTH. AND IF THE STATE PROVES ONE OR MORE OF
23 THOSE, THE JURY MAY -- NOT OBLIGATORY OR MANDATORY
24 BUT PERMISSIVELY SO -- MAY RETURN A VERDICT BY WAY
25 OF RECOMMENDATION OF THE DEATH PENALTY. DO YOU

LINDA WHETHERELL - EXAM. BY THE COURT

1 UNDERSTAND THAT?

2 A. YES.

3 Q. AND THE JURY MAY -- AGAIN, THE DEFENDANT IS OFFERED
4 THE OPPORTUNITY TO PRESENT EVIDENCE IN MITIGATION.
5 MITIGATION MEANS A LESSENING OF WHAT THE
6 RECOMMENDATIONS OF THE COURT WOULD BE BY WAY OF
7 SENTENCE. A JURY COULD RECOMMEND LIFE IMPRISONMENT
8 WITHOUT PAROLE. AND EVEN IN THE ABSENCE OF
9 MITIGATING CIRCUMSTANCES, THE JURY CAN AS AN ACT OF
10 MERCY ON THEIR PART RECOMMEND TO THE COURT LIFE
11 IMPRISONMENT WITHOUT PAROLE. DO YOU UNDERSTAND
12 THAT PROCEDURE?

13 A. YES, SIR.

14 Q. DO YOU, MRS. WETHERELL, FEEL THAT YOU COULD BE AN
15 OPEN MINDED JUROR; THAT YOU WOULD LISTEN TO THE
16 TESTIMONY OF THE STATE AND OF THE DEFENDANT IF THE
17 DEFENDANT DECIDED TO OFFER TESTIMONY? AND YOU
18 COULD LISTEN TO THE INSTRUCTION OF THE COURT AS TO
19 THE LAW AND THEN GO BACK TO YOUR JURY ROOM AND ONLY
20 THEN COMMENCE YOUR DELIBERATIONS AND EXCHANGE VIEWS
21 AND INTELLIGENTLY DISCUSS WITH YOUR FELLOW AND
22 SISTER JURORS THE EVIDENCE AND ARRIVE AT A
23 VERDICT. THE WORD "VERDICT" IS DERIVED FROM A
24 LATIN PHRASE VEREDICTO MEANING TO SPEAK THE TRUTH
25 AND THEN ARRIVE AT A FAIR VERDICT; FAIR TO THE

LINDA WHETHERELL - EXAM. BY THE COURT

1 STATE, THE CITIZENS OF DORCHESTER COUNTY, FAIR TO
2 THE DEFENDANT. DO YOU FEEL YOU COULD DO THAT?

3 A. YES, SIR.

4 Q. AND, MA'AM, HAVE YOU HAD THE OPPORTUNITY TO REVIEW
5 THE THREE TYPES OF JURORS; ONE, TWO AND THREE, ON
6 THAT SHEET THAT WAS SHARED WITH YOU?

7 A. YES.

8 Q. AND, MA'AM, UNDER WHICH CATEGORY DO YOU FEEL YOU
9 WOULD FALL?

10 A. NUMBER TWO.

11 Q. NUMBER TWO?

12 A. YES.

13 Q. YOU FEEL THAT YOU WOULD RECOMMEND LIFE IMPRISONMENT
14 WITHOUT PAROLE?

15 A. WITH SOME HARD WORK.

16 Q. WITH SOME HARD WORK?

17 A. YES, SIR.

18 Q. YES, MA'AM. AND ARE YOU SAYING THAT REGARDLESS OF
19 THE FACTS OF THE CASE THAT YOU ALWAYS WOULD VOTE
20 FOR THAT?

21 A. CORRECT.

22 Q. ALL RIGHT. THANK YOU.

23 THE COURT: ALL RIGHT, GENTLEMEN,
24 YOU MAY EXAMINE THE LADY IF YOU WISH.

25 MR. THEOS: THANK YOU, YOUR HONOR.

LINDA WHETHERELL - DIRECT/MR. THEOS

DIRECT EXAMINATION

BY MR. THEOS:

Q. THANK YOU, MRS. WETHERELL, I'M JERRY THEOS. THIS IS JIM BELL. SEATED NEXT TO HIM IS MR. KENNETH SIMMONS. MR. BELL AND I ARE LAWYERS WHO REPRESENT MR. SIMMONS. AND AS THE JUDGE INDICATED TO YOU EARLIER, THERE ARE NO RIGHT OR WRONG ANSWERS, AND YOU'RE NOT BEING GRADED. WE'RE JUST REALLY TRYING TO FIND OUT WHAT YOUR TRUE AND HONEST THOUGHTS AND FEELINGS ARE ABOUT THE DEATH PENALTY. AND IT'S A LITTLE UNUSUAL BECAUSE THE GUILT OF MR. SIMMONS HAS NOT YET BEEN DETERMINED. SO WE'RE SORT OF PUTTING THE CART BEFORE THE HORSE. BUT DO YOU UNDERSTAND -- FIRST OF ALL YOU INDICATED YOU UNDERSTOOD THAT MR. SIMMONS IS PRESUMED TO BE INNOCENT; CORRECT?

A. CORRECT.

Q. AND REGARDLESS OF THE FACT THAT HE'S BEEN CHARGED, THE FACT THAT HE'S SITTING HERE ON TRIAL, THE FACT THAT THE STATE IS SEEKING THE DEATH PENALTY, THAT THAT IN NO WAY SHOULD SUGGEST TO YOU ANYTHING ABOUT HIS GUILT?

A. CORRECT.

Q. AND THAT THE STATE WOULD HAVE THE BURDEN OF PROVING MR. SIMMONS GUILTY OF ONE OR MORE OF THOSE CHARGES THAT YOU HEARD ABOUT EARLIER BEYOND A REASONABLE

LINDA WHETHERELL - DIRECT/MR. THEOS

1 DOUBT; CORRECT?

2 A. YES.

3 Q. DO YOU FEEL THAT IN THE GUILT PHASE -- DETERMINING
4 WHETHER OR NOT, FIRST OF ALL, THAT MR. SIMMONS WAS
5 GUILTY. DO YOU FEEL THAT YOU WOULD LISTEN TO
6 WHATEVER THE STATE HAD TO OFFER AND WHATEVER THE
7 DEFENSE MIGHT HAVE TO OFFER?

8 A. YES, SIR.

9 Q. AND MAKE A DETERMINATION BASED UPON THAT OFFERING
10 AS TO WHETHER OR NOT THE STATE HAD MET ITS BURDEN?

11 A. YES.

12 Q. AND IF THE STATE HAD NOT MET ITS BURDEN IN PROVING
13 TO YOU AS A JUROR BEYOND A REASONABLE DOUBT THAT
14 MR. SIMMONS WAS GUILTY OF ONE OR MORE OF THESE
15 CHARGES, WHAT WOULD YOUR VERDICT BE IF THEY HAD NOT
16 MET THAT BURDEN?

17 A. THEN HE WOULD HAVE TO BE INNOCENT.

18 Q. OKAY. AND BY THE SAME TOKEN, IF THEY HAD PROVED TO
19 YOUR SATISFACTION BEYOND A REASONABLE DOUBT THAT HE
20 WAS GUILTY, YOUR VERDICT SIMILARLY WOULD BE GUILTY?

21 A. IT WOULD BE GUILTY.

22 Q. NOW, IT'S ONLY AT THAT POINT -- OF COURSE IF MR.
23 SIMMONS WERE FOUND NOT GUILTY, WE WOULD NOT PROCEED
24 TO THE NEXT PHASE WHICH IS CALLED THE PENALTY
25 PHASE. BUT, OF COURSE, ON THE OTHER HAND, IF MR.

LINDA WHETHERELL - DIRECT/MR. THEOS

1 SIMMONS WERE FOUND GUILTY, THAT'S WHEN WE WOULD
2 MOVE INTO THE PENALTY PHASE. MR. BAILEY WOULD BE
3 OFFERING YOU VARIOUS FACTS AND FACTORS AND
4 CIRCUMSTANCES AS THE JUDGE ADVISED YOU IN
5 AGGRAVATION, SO TO SPEAK, TRYING TO PERSUADE YOU
6 THAT THE DEATH PENALTY IS THE APPROPRIATE
7 SENTENCE. AND MR. BELL AND I WOULD BE OFFERING
8 THINGS ON BEHALF OF MR. SIMMONS ATTEMPTING TO
9 PERSUADE YOU THAT THE DEATH PENALTY IS NOT THE
10 APPROPRIATE SENTENCE, BUT LIFE IMPRISONMENT WITHOUT
11 PAROLE IS. NOW, I UNDERSTAND THAT YOU
12 CHARACTERIZED YOURSELF AS A NUMBER TWO JUROR; AND
13 THE JUDGE HAS GONE OVER THAT WITH YOU. CAN YOU
14 THINK OF ANY SITUATION THAT WOULD BE SO AGGRAVATED,
15 ANY CRIME THAT WOULD BE SO AGGRAVATED, THE FACTS
16 AND CIRCUMSTANCES, WITHOUT GETTING INTO WHAT THOSE
17 FACTS AND CIRCUMSTANCES MIGHT BE. BUT CAN YOU
18 THINK OF ANY SCENARIO FACTUALLY OR CIRCUMSTANTIALY
19 THAT WOULD BE SO BAD, SO UGLY, SO AGGRAVATED, THAT
20 YOU WOULD CONSIDER IMPOSING THE DEATH PENALTY?

21 A. THAT I WOULD CONSIDER IMPOSING?

22 Q. YES.

23 A. NO.

24 THE COURT: DID YOU SAY IMPOSING OR
25 OPPOSING?

LINDA WETHERELL - DIRECT/MR. THEOS

1 MR. THEOS: IMPOSING.

2 MRS. WETHERELL: I DO NOT BELIEVE IN
3 THE DEATH PENALTY.

4 Q. UNDER ANY CIRCUMSTANCES?

5 A. UNDER ANY CIRCUMSTANCES.

6 Q. THANK YOU VERY MUCH.

7 MR. BAILEY: NO QUESTIONS. YOUR
8 HONOR.

9 THE COURT: ALL RIGHT. SO, MA'AM,
10 IS WHAT YOU'RE TELLING ME THAT REGARDLESS OF THE
11 EVIDENCE, YOU COULD NOT UNDER ANY CIRCUMSTANCE VOTE
12 FOR THE DEATH PENALTY?

13 MRS. WETHERELL: I PERSONALLY COULD
14 NOT.

15 THE COURT: OKAY. WELL, THEN, WE'RE
16 GOING TO HAVE TO EXCUSE YOU FROM FURTHER SERVICE IN
17 THIS CASE. AND WE THANK YOU FOR YOUR CANDOR. WE
18 THANK YOU FOR BEING AWAY FROM WORK AND BEING WITH
19 US TODAY AND BEING WILLING TO SERVE ON THE JURY.
20 AND YOU'LL BE SENT A CHECK FOR YESTERDAY AND
21 TODAY. DO YOU NEED A CERTIFICATE TO GIVE TO YOUR
22 EMPLOYER?

23 MRS. WETHERELL: NO, SIR.

24 THE COURT: SO, MA'AM, DON'T DISCUSS
25 THE QUESTIONS OR ANSWERS WITH ANYONE ELSE, WITH THE

LINDA WHETHERELL - DIRECT/MR. THEOS

1 OTHER JURORS. THANK YOU SO MUCH. AND WE WISH YOU
2 WELL.

3 MRS. WETHERELL: THANK YOU.

4 THE COURT: YES, MA'AM. MAYBE,
5 FELLOWS, I OUGHT TO START WITH THE THREE TYPES OF
6 JURORS RATHER THAN GOING THROUGH ALL THE LITANY.
7 WE COULD GET DOWN TO THE SHORT ROAD.

8 MR. BAILEY: WE WERE JUST TALKING
9 ABOUT THAT.

10 THE COURT: WOULD YOU LIKE FOR ME
11 TO?

12 MR. BAILEY: WE CAN TRY IT AND SEE
13 HOW IT GOES.

14 MR. THEOS: YOUR HONOR, WE HAD
15 TALKED ABOUT WHETHER OR NOT THAT MIGHT SAVE A
16 LITTLE BIT OF TIME, AND ALSO KIND OF GET TO THE
17 HEART OF THE MATTER QUICKLY. THAT MIGHT NOT BE A
18 BAD IDEA.

19 THE COURT: WOULD YOU LIKE FOR ME TO
20 START WITH THE THREE TYPES FIRST?

21 MR. BAILEY: YES, SIR. WE COULD TRY
22 IT THAT WAY AND SEE HOW IT GOES.

23 THE COURT: ALL RIGHT. Y'ALL TELL
24 ME IF YOU WANT TO CHANGE IT. AND, GENTLEMEN, I
25 SHARED WITH YOU A COUPLE OF SHEETS OF PAPER. I HAD

BRYAN SULLIVAN - EXAM. BY THE COURT

1 CIRCLED SOME THINGS. THAT'S JUST A MATTER OF
2 INFORMATION. I'LL TALK WITH YOU ABOUT THAT LATER,
3 PLEASE. SO BRING IN BRYAN SULLIVAN, PLEASE.
4 (JUROR NUMBER 303, A WHITE MALE, IS CALLED.)

5 - - - - -

6 WHEREUPON,

7 BRYAN SULLIVAN, WHO BEING PREVIOUSLY DULY
8 SWORN TO TELL THE TRUTH, TESTIFIED AS
9 FOLLOWS:

10 EXAMINATION

11 BY THE COURT:

12 Q. HOW ARE YOU, SIR?

13 A. FINE.

14 Q. THANK YOU SO MUCH, MR. SULLIVAN, FOR BEING HERE
15 PRESENT WITH US TODAY. AND WE HAVE GOTTEN SOMEWHAT
16 OFF SCHEDULE. BUT I THANK YOU FOR YOUR PATIENCE
17 AND YOUR INDULGENCE. YOU'RE STILL UNDER OATH THAT
18 YOU WERE GIVEN ON YESTERDAY. MR. SULLIVAN, TO GET
19 IMMEDIATELY DOWN TO THE ULTIMATE ISSUE AT HAND, YOU
20 HAVE THAT SHEET THAT DESCRIBES THE THREE TYPES OF
21 JURORS?

22 A. YES, SIR.

23 Q. AND YOU UNDERSTAND ONE, TWO AND THREE?

24 A. YES, SIR.

25 Q. AND WHAT CATEGORY WOULD YOU PLACE YOURSELF IN;

BRYAN SULLIVAN - EXAM. BY THE COURT

1 CATEGORY ONE, TWO, OR THREE?

2 A. CATEGORY THREE.

3 Q. AND HAVE YOU READ OR HEARD ANYTHING -- I DON'T SEE
4 ON MY LIST HERE WHERE YOU HAD STOOD. YOU HAVE NO
5 INFORMATION ABOUT THIS CASE?

6 A. NO, SIR.

7 Q. AND DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR
8 AGAINST THE STATE OR THE DEFENDANT?

9 A. NO, SIR.

10 Q. DO YOU FEEL YOU COULD GIVE A FAIR TRIAL TO ALL
11 PARTIES?

12 A. YES, SIR.

13 Q. AND YOU UNDERSTAND THAT EVERY DEFENDANT THAT COMES
14 INTO COURT IS PRESUMED INNOCENT. THE STATE MUST
15 PROVE THEIR GUILT BEYOND A REASONABLE DOUBT. THE
16 DEFENDANT HAS NO BURDEN TO PROVE HIMSELF INNOCENT.
17 AND MANY TIMES THAT MAY NOT BE POSSIBLE. THE
18 DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS STAND.
19 AND IF HE DOESN'T TAKE THE WITNESS STAND, THE JURY
20 SHOULD NOT ALLOW THAT TO ENTER INTO THEIR
21 DELIBERATIONS IN ANY MANNER WHATSOEVER. DO YOU
22 UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. AND IN A MURDER CASE SEEKING THE DEATH PENALTY,
25 THERE ARE TWO PHASES. AND ASSUMING IN PHASE ONE

BRYAN SULLIVAN - EXAM. BY THE COURT

1 THE JURY OF TWELVE HAD FOUND BEYOND A REASONABLE
2 DOUBT THAT THE DEFENDANT WAS GUILTY, THEN YOU WOULD
3 WAIT 24 HOURS, HAVE A LITTLE BREAK BEFORE YOU
4 STARTED THE SECOND PHASE CALLED THE PENALTY PHASE
5 WHERE THE JURY WOULD BE ASKED TO MAKE A
6 RECOMMENDATION OF SENTENCE TO THE COURT. THOSE TWO
7 OPTIONS FOR RECOMMENDATION WOULD BE; (1) LIFE
8 IMPRISONMENT WITHOUT PAROLE; OR (2) THE DEATH
9 PENALTY. NOW THE STATE MUST PROVE BEYOND A
10 REASONABLE DOUBT ONE OR MORE STATUTORY AGGRAVATING
11 CIRCUMSTANCES BEFORE YOU COULD RECOMMEND THE DEATH
12 PENALTY. AND THESE WOULD BE WRITTEN ON A SHEET OF
13 PAPER AND GIVEN TO THE JURY WHEN YOU COMMENCE YOUR
14 DELIBERATIONS AFTER THE CASE IS OVER. BUT ARMED
15 ROBBERY, BURGLARY, KIDNAPPING, CRIMINAL SEXUAL
16 CONDUCT WHILE IN THE COMMISSION OF ONE OR MORE OF
17 THOSE CRIMES OF MURDER WAS COMMITTED. THAT WOULD
18 BE A STATUTORY AGGRAVATING CIRCUMSTANCE. AND THE
19 JURY MAY -- IT'S NOT MANDATORY -- BUT MAY RECOMMEND
20 THE DEATH PENALTY IF THE STATE PROVES ONE OF THOSE
21 FOUR DURING MURDER. DO YOU UNDERSTAND?

22 A. YES.

23 Q. THE DEFENDANT IS AFFORDED THE OPPORTUNITY, ALTHOUGH
24 HE DOESN'T HAVE TO USE IT, TO OFFER CIRCUMSTANCES
25 OF MITIGATION EVIDENCE. MITIGATION MEANS LESSENING

BRYAN SULLIVAN - DIRECT/MR. BAILEY

1 OF THE PENALTY TO BE RECOMMENDED. THE JURY CAN, AS
2 AN ACT OF MERCY RECOMMEND LIFE IMPRISONMENT WITHOUT
3 PAROLE. IT DOESN'T HAVE TO BE A REASON FOR DOING
4 IT. YOU CAN IGNORE A STATUTORY AGGRAVATING
5 CIRCUMSTANCE THAT THE STATE MAY HAVE PROVEN BEYOND
6 A REASONABLE DOUBT. YOU COULD IGNORE THE
7 MITIGATING CIRCUMSTANCE AND FOR NO REASON AT ALL
8 RECOMMEND THAT. DO YOU UNDERSTAND?

9 A. YES, SIR.

10 Q. AND DO YOU FEEL THAT, BASED ON THE EVIDENCE, THAT
11 YOU CAREFULLY LISTEN; NOT GO IN WITH A CLOSED MIND
12 OR A MIND SET OF CONCRETE, AND ARRIVE AT A FAIR
13 VERDICT, WHICHEVER THAT RECOMMENDATION MAY BE,
14 ASSUMING THAT THERE'S BEEN A VERDICT OF GUILTY IN A
15 MURDER CASE?

16 A. YES, SIR.

17 THE COURT: ALL RIGHT. MR.
18 SOLICITOR?

19 DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. MR. SULLIVAN, I'M WALTER BAILEY. I'LL BE
22 PROSECUTING THE CASE. I WANT TO ASK YOU A FEW MORE
23 QUESTIONS. I'LL TRY NOT TO BE TOO REPETITIVE, BUT
24 THIS IS THE ONLY CHANCE WE HAVE TO TALK TO JURORS
25 BEFORE WE PICK A JURY TOMORROW IN THIS CASE. AND

1 LIKE THE JUDGE SAID, THERE ARE NO RIGHT OR WRONG
2 ANSWERS. BEFORE YESTERDAY WHEN YOU FOUND OUT THAT
3 YOU MIGHT BE A JUROR ON A DEATH PENALTY CASE, HAD
4 YOU EVER THOUGHT ABOUT THE DEATH PENALTY JUST IN
5 GENERAL TERMS?

6 A. JUST THOUGHT ABOUT IT?

7 Q. YES, SIR.

8 A. AS IN BEING GOOD OR BAD?

9 Q. YES.

10 A. YES.

11 Q. COULD YOU TELL US JUST IN YOUR OWN WORDS BRIEFLY
12 WHAT YOUR THOUGHTS WERE?

13 A. WELL, I BELIEVE IN IT WHENEVER IT'S CALLED FOR. I
14 MEAN, NOT JUST AS IN FOR ANYBODY WHO'S EVER DONE
15 ANYTHING WRONG; I DON'T THINK IT'S RIGHT. BUT, I
16 MEAN, WHENEVER THE REASONS CALL FOR IT, I BELIEVE
17 IN IT.

18 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND WE WOULDN'T
19 EVEN BE GETTING TO THAT POINT UNLESS AND UNTIL THE
20 DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST
21 PART OF THE TRIAL?

22 A. CORRECT.

23 Q. AND DURING THAT SECOND STAGE, THERE WOULD BE
24 ADDITIONAL EVIDENCE CALLED EVIDENCE IN AGGRAVATION
25 THAT I WOULD INTRODUCE THROUGH WITNESSES; AND I'D

BRYAN SULLIVAN - DIRECT/MR. BAILEY

1 BE ARGUING FOR A DEATH SENTENCE. THE DEFENSE CAN
2 PUT UP EVIDENCE IN MITIGATION ALTHOUGH THEY DON'T
3 HAVE TO. AND THEY WOULD BE ARGUING FOR LIFE
4 WITHOUT PAROLE. JUDGE PEEPLES WOULD INSTRUCT THE
5 JURY ON WHAT THE LAW WAS THAT PERTAINED TO THAT
6 SECOND PART OF THE TRIAL, AND THE JURY WOULD HAVE
7 ONE OF TWO DECISIONS, LIFE WITHOUT PAROLE OR THE
8 DEATH PENALTY. AND EVEN THOUGH WE REFER TO IT AS A
9 RECOMMENDATION, IT REALLY ISN'T A RECOMMENDATION
10 BECAUSE THE JUDGE IS GOING TO DO WHATEVER THE JURY
11 SAYS. SO IF THE JURY SAYS LIFE WITHOUT PAROLE, THE
12 JUDGE WOULD ORDER THAT AND THAT DEFENDANT WOULD
13 SERVE LIFE WITHOUT PAROLE. IF THE JURY SAYS DEATH
14 PENALTY, THE JUDGE WOULD ORDER IT, AND THAT
15 DEFENDANT ACTUALLY WOULD BE EXECUTED. NOW, I'M NOT
16 GOING TO ASK YOU TO PREDICT WHAT YOU'D DO IN THIS
17 CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS.

18 A. RIGHT.

19 Q. BUT MY QUESTION IS IF THE FACTS WERE BAD ENOUGH.
20 COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT
21 SENTENCE WOULD BE CARRIED OUT?

22 A. YES, SIR.

23 Q. AND IF THE OTHER ELEVEN JURORS ALSO VOTED FOR IT,
24 THEN THERE'S A PAPER, A DEATH VERDICT FORM, THAT
25 EACH JUROR WOULD BE ASKED TO SIGN THEIR NAMES TO

BRYAN SULLIVAN - DIRECT/MR. BAILEY

1 THAT WOULD RESULT IN THAT EXECUTION HAPPENING.

2 COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT?

3 A. YES, SIR.

4 Q. KNOWING IF YOU HAD ALREADY VOTED FOR THE DEATH
5 PENALTY?

6 A. YES, SIR.

7 Q. KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

8 A. YES, SIR.

9 Q. A FINAL THING THE JURY WOULD BE ASKED TO DO IS TO
10 COME OUT INTO OPEN COURT -- EACH JUROR'S NAME WOULD
11 BE CALLED OUT ONE AT A TIME, AND THEY'D HAVE TO SAY
12 OUT LOUD IF THAT WAS THEIR VERDICT. COULD YOU DO
13 THAT IF THAT WAS YOUR VERDICT?

14 A. YES, SIR.

15 Q. THE JURY IS GOING TO BE PUT UP IN A MOTEL, THE
16 HOLIDAY INN HERE IN ST. GEORGE, FOR ROUGHLY A WEEK
17 UNTIL THIS TRIAL IS OVER. THAT'S A HARDSHIP ON
18 EVERYBODY. BUT IS THAT SOMETHING YOU CAN HANDLE?

19 A. COULD I HANDLE IT?

20 Q. YES, SIR.

21 A. YES, SIR.

22 Q. NO BUSINESS OR PERSONAL PROBLEMS THAT WOULD KEEP
23 YOU FROM DOING THAT?

24 A. NO, SIR.

25 Q. ALL RIGHT, SIR. CAN YOU THINK OF ANY REASON AT ALL

BRYAN SULLIVAN - CROSS/MR. THEOS

1 THAT WE MAY NOT HAVE MENTIONED YET THAT WOULD
2 PREVENT YOU FROM BEING FAIR TO BOTH SIDES, THE
3 STATE AND THE DEFENSE?

4 A. NO, SIR.

5 Q. THANK YOU, SIR. THAT'S ALL I HAVE.

6 THE COURT: ANY QUESTIONS, MR.
7 THEOS?

8 MR. THEOS: YES, SIR, YOUR HONOR.

9 CROSS-EXAMINATION

10 BY MR. THEOS:

11 Q. MR. SULLIVAN, HOW ARE YOU DOING?

12 A. FINE.

13 Q. I'M JERRY THEOS. THIS IS JIM BELL. HE AND I ARE
14 ATTORNEYS, LAWYERS FOR MR. KENNETH SIMMONS SEATED
15 NEXT TO HIM. THANK YOU FOR BEING HERE. AS MR.
16 BAILEY TRIED -- AND NOT TO BE REPETITIVE -- I JUST
17 WANT TO ASK YOU A FEW QUESTIONS. THE PURPOSE OF US
18 BEING HERE IS TO REALLY -- IT'S THE FIRST CHANCE
19 WE'LL GET TO SPEAK WITH YOU FREELY ABOUT YOUR
20 OPINIONS AND YOUR VIEWS ON THINGS. AND WE WANT TO
21 MAKE SURE THAT WE UNDERSTAND EXACTLY WHAT THOSE
22 OPINIONS ARE. SO PLEASE BEAR WITH ME. DO YOU HAVE
23 AN OPINION ABOUT WHETHER OR NOT SOMEBODY IS GUILTY
24 BASED ON THE FACT THAT THEY'VE BEEN CHARGED AND MAY
25 BE ON TRIAL IN A CASE?

BRYAN SULLIVAN - CROSS/MR. THEOS

1 A. DO I AUTOMATICALLY FORM AN OPINION?

2 Q. I'M SORRY.

3 A. DO I AUTOMATICALLY FORM AN OPINION?

4 Q. YES. DO YOU SORT OF REACH AN OPINION---

5 A. JUST BECAUSE THAT THEY WERE CHARGED WITH IT?

6 Q. BASED UPON THE FACT THAT THEY WERE CHARGED AND THEY
7 MAY BE INDICTED OR ON TRIAL FOR IT?

8 A. NO, SIR.

9 Q. OKAY. WHY DO YOU NOT REACH THAT?

10 A. I WASN'T GIVEN ANY FACTS OF KNOWING. JUST BECAUSE
11 SOMEBODY IS CHARGED WITH IT. I MEAN, THERE ARE
12 LOTS OF PEOPLE CHARGED THAT ARE TOTALLY INNOCENT.
13 JUST BECAUSE THERE'S A LACK OF COMMUNICATION OR
14 WHATEVER REASON THAT COULD HAVE GOT THEM IN THAT
15 PREDICAMENT. BUT IF THEY'RE NOT PROVEN GUILTY, I
16 DON'T SEE HOW YOU CAN AUTOMATICALLY FORM AN
17 OPINION.

18 Q. AND IN THIS PARTICULAR CASE WITH THESE QUESTIONS
19 WE'RE ASKING YOU -- I FEEL LIKE WE'VE SORT OF
20 JUMPED AHEAD OF OURSELVES IN THAT SORT OF ASKING
21 YOU ABOUT POSSIBLE PENALTIES AND WHAT YOU COULD OR
22 COULD NOT DO BASED UPON CERTAIN THINGS. BUT YOU
23 UNDERSTAND THAT WE DON'T GET TO THAT STAGE IF MR.
24 SIMMONS IS FOUND TO BE NOT GUILTY?

25 A. RIGHT.

BRYAN SULLIVAN - CROSS/MR. THEOS

1 Q. DOES THE FACT THAT THE STATE IS SEEKING THE DEATH
2 PENALTY AGAINST MR. SIMMONS; DOES THE FACT THAT
3 THEY'RE SEEKING THE DEATH PENALTY AND WE'VE BEEN
4 TALKING ABOUT THE DEATH PENALTY, SUGGEST ANYTHING
5 TO YOU ABOUT MR. SIMMONS' GUILT?

6 A. NO. I MEAN, THAT SHOULD BE A COMMON THING; NOT
7 JUST BECAUSE IT'S A PARTICULAR PERSON. IT SHOULD
8 JUST BE A COMMON THING IN THIS TYPE OF A CASE, I
9 BELIEVE.

10 Q. WOULD YOU BE ABLE TO LISTEN TO THE FACTS AND THE
11 EVIDENCE AS IT WOULD BE PRESENTED IN THE FIRST
12 STAGE. AS THE JUDGE SAID THERE ARE TWO STAGES. IN
13 THE FIRST STAGE -- AND IN SPITE OF THE FACT THAT
14 THE STATE IS SEEKING THE DEATH PENALTY, WOULD YOU
15 BE IN FACT CAPABLE OF BEING IMPARTIAL AS TO THE
16 GUILT OR INNOCENT OF MR. SIMMONS IN THE GUILT
17 PHASE?

18 A. YES, SIR. I WOULD COME IN WITH AN OPEN MIND.

19 Q. NOW MR. BAILEY ASKED YOU IF YOU HAD PRIOR THOUGHTS
20 ABOUT THE DEATH PENALTY GENERALLY AND WHAT THOSE
21 THOUGHTS WERE. AND I HEARD THOSE THOUGHTS. WHAT
22 DO YOU THINK THE APPROPRIATE PUNISHMENT IS FOR
23 SOMEBODY FOUND GUILTY OF MURDER?

24 A. IT'S LIKE WHAT THE JUDGE WAS TELLING ME JUST NOW IS
25 IT ALSO DEPENDS ON WHAT WAS ALONG WITH IT. I KNOW

BRYAN SULLIVAN - CROSS/MR. THEOS

1 I WOULD THINK THE MINIMUM, FOR A MINIMUM FOR
2 MURDER, WOULD BE LIFE. IN MY MIND, I WOULD THINK
3 THAT. BUT IF THERE WERE OTHER THINGS ALONG WITH
4 IT, THEN I THINK IT SHOULD BE MORE AGGRAVATED
5 DISCIPLINE TAKEN AS IN THE DEATH PENALTY.

6 Q. SO IF YOU WERE SITTING AS A JUROR IN A CASE AND YOU
7 WERE TO FIND A DEFENDANT GUILTY OF MURDER AND THEN
8 FOUND SOME ADDITIONAL AGGRAVATING FACTORS---

9 MR. BAILEY: OBJECTION.

10 MR. THEOS: I HAVEN'T FINISHED
11 ASKING THE QUESTION YET.

12 THE COURT: BUT YOU'RE ALREADY DOWN
13 THE CROOKED PATH. STRAIGHTEN UP.

14 Q. THE JUDGE PREVIOUSLY INSTRUCTED YOU THAT THE JURY
15 COULD CONSIDER, AND SHOULD CONSIDER, AGGRAVATING
16 FACTORS AS WELL AS MITIGATING FACTORS. WHAT I'M
17 TRYING TO FIND OUT FROM YOU, BASED UPON YOUR LAST
18 RESPONSE, IS IF THERE WAS A FINDING OF GUILT IN THE
19 FIRST STAGE, AND IF THERE WAS A PRESENTATION OF
20 AGGRAVATING FACTORS AS MR. BAILEY SAID HE WOULD BE
21 OFFERING YOU, WOULD YOU BE ABLE TO CONSIDER
22 ANYTHING OTHER THAN THE DEATH PENALTY?

23 A. YES, IT COULD BE CONSIDERED; YES. I'M NOT SAYING I
24 WOULD DEFINITELY GO FOR THE DEATH PENALTY. BUT I
25 KNOW THAT'S ONE OF THE OPTIONS ALONG WITH, YOU

BRYAN SULLIVAN - CROSS/MR. THEOS

1 KNOW, ANYTHING MINOR BECAUSE THE JUDGE WAS TELLING
2 ME THAT IS UP TO THE JURY TO DO WHAT WE FEEL SHOULD
3 BE DONE AS A JUROR. BUT I'M NOT SAYING THAT I
4 WOULD DEFINITELY GO TO IT BECAUSE THERE ARE ALSO
5 DIFFERENT DEGREES OF AGGRAVATION, I GUESS, THAT
6 COULD GO WITH THE MURDER THAT COULD SWAY THE
7 DECISION ONE WAY OR THE OTHER.

8 Q. AND JUST AS THE JUDGE SAID, THERE ARE AGGRAVATING
9 FACTORS AND CIRCUMSTANCES. YOU UNDERSTAND THAT
10 THERE MAY BE MITIGATING OR MINIMIZING FACTORS AND
11 CIRCUMSTANCES?

12 A. YES, SIR.

13 Q. WOULD YOU BE JUST AS OPEN-MINDED IN LISTENING TO
14 THOSE BEFORE MAKING THAT DECISION AS YOU WOULD BE
15 IN LISTENING TO THE AGGRAVATING FACTORS?

16 A. YES, SIR.

17 Q. THANK YOU. NO FURTHER QUESTIONS.

18 THE COURT: ANYTHING FURTHER, MR.
19 BAILEY?

20 MR. BAILEY: NO, SIR.

21 THE COURT: ALL RIGHT. HAND HIM THE
22 SHEET WITH THE INSTRUCTIONS TO MR. SULLIVAN. MR.
23 SULLIVAN, WE FIND THAT YOU ARE QUALIFIED TO SERVE
24 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT
25 YOU HAVE BEEN SELECTED BECAUSE THE SELECTION

BRYAN SULLIVAN - CROSS/MR. THEOS

1 PROCESS WILL TAKE PLACE WHEN WE STRIKE. WE HOPE TO
2 DO THAT AT TWO O'CLOCK TOMORROW. BUT, AGAIN,
3 DEPENDING ON THE LENGTH OF THE QUESTIONS AND
4 WHETHER WE'RE ABLE TO MAINTAIN A SIMILANCE OF
5 SCHEDULE THAT I'VE PLACED US ON, I WOULD ASK THAT
6 YOU CALL AFTER SIX O'CLOCK TODAY. WE'RE GOING TO
7 HAVE A WORKING LUNCH SO TO SPEAK. WE'RE NOT
8 LETTING UP. AND WE'LL HAVE ON THAT RECORDING THAT
9 THE QUALIFIED JURORS SHOULD RETURN AT TWO O'CLOCK
10 TOMORROW OR SHOULD RETURN AT FOUR O'CLOCK TOMORROW
11 OR ELEVEN O'CLOCK TOMORROW OR PERHAPS EVEN
12 THURSDAY. YOU GO AHEAD ABOUT YOUR BUSINESS TODAY.
13 YOU'RE WELCOME TO TALK TO YOUR FRIENDS OR FAMILY
14 MEMBER ABOUT THE FACT THAT PROSPECTIVELY, POSSIBLY,
15 YOU WILL BE SEQUESTERED AT THE HOLIDAY INN HERE FOR
16 FIVE OR SIX, SEVEN, OR EIGHT DAYS. AND THE COUNTY
17 WILL BEAR THE COST OF THAT AND YOUR MEALS. AND
18 THEY WON'T BE ALLOWED, NOR CAN YOU COMMUNICATE WITH
19 ANYONE EXCEPT IN AN EMERGENCY SITUATION. DO YOU
20 UNDERSTAND THAT?

21 MR. SULLIVAN: YES.

22 THE COURT: ALL RIGHT. SO, PLEASE,
23 YOU HAVE A PLEASANT DAY, AND CALL BACK LATE THIS
24 AFTERNOON. WE LOOK TO SEE YOU TOMORROW. THANK YOU
25 SO MUCH. ALL RIGHT. GO AHEAD AND BRING THE NEXT

DONALD SHORT - EXAM. BY THE COURT

JUROR IN; DONALD SHORT. WE'RE AT THE HUMP, FELLOWS,
LADIES; NINETEEN OUT OF THIRTY-SEVEN.
(JUROR NUMBER 281, A WHITE MALE, IS CALLED.)

- - - - -

WHEREUPON,

DONALD SHORT, WHO BEING PREVIOUSLY DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HOW ARE YOU, SIR?

A. PRETTY GOOD.

Q. COME IN, PLEASE, MR. SHORT, AND HAVE A SEAT. WE
THANK YOU FOR BEING HERE PRESENT WITH US TODAY.
MR. SHORT, YOU WERE GIVEN AN OATH ON YESTERDAY. DO
YOU UNDERSTAND YOU'RE STILL UNDER OATH?

A. YES, SIR.

Q. NOW, MR. SHORT, HAVE YOU HAD AN OPPORTUNITY TO
REVIEW THE THREE TYPES OF JURORS; TYPES ONE, TWO,
AND THREE?

A. YES, SIR.

Q. UNDER WHICH CATEGORY DO YOU FEEL LIKE YOU WOULD
BELONG?

A. NUMBER THREE.

Q. NUMBER THREE?

DONALD SHORT - DIRECT/MR. THEOS

1 A. YES.

2 Q. HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?

3 A. NO, SIR.

4 Q. HAVE YOU FORMED OR EXPRESSED AN OPINION ABOUT THE
5 CASE?

6 A. NO, SIR.

7 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
8 THE STATE OR FOR OR AGAINST THE DEFENDANT?

9 A. NO, SIR.

10 Q. DO YOU FEEL YOU COULD GIVE A FAIR TRIAL BOTH TO THE
11 STATE AND TO THE DEFENDANT?

12 A. YES, SIR.

13 THE COURT: ALL RIGHT. YOU MAY
14 QUESTION.

15 DIRECT EXAMINATION

16 BY MR. THEOS:

17 Q. MR. SHORT, I'M JERRY THEOS. THIS IS JIM BELL. HE
18 AND I ARE LAWYERS REPRESENTING MR. SIMMONS. THANK
19 YOU FOR COMING IN. AND WE APOLOGIZE FOR HAVING TO
20 ASK YOU THESE QUESTIONS. WE DON'T MEAN TO PUT YOU
21 ON THE HOT SEAT. WE'RE NOT POINTING A FINGER AT
22 YOU. YOU'RE NOT BEING GRADED ON YOUR RESPONSES; SO
23 PLEASE UNDERSTAND THAT. AND HOPEFULLY WE WON'T
24 OFFEND YOU IN ASKING THESE QUESTIONS. THE PURPOSE
25 OF OUR QUESTIONING YOU IS JUST TO FIND OUT FROM YOU

DONALD SHORT - DIRECT/MR. THEOS

1 WHAT YOUR TRUE FEELINGS ARE ABOUT CERTAIN THINGS.
2 THE FIRST THING I WANT TO TALK TO YOU ABOUT IS THE
3 FACT THAT WE'RE HERE ASKING YOU QUESTIONS ABOUT THE
4 POSSIBLE PENALTIES IN A CASE IN WHICH THE GUILT OF
5 MR. SIMMONS HAS NOT YET BEEN DETERMINED. DO YOU
6 HAVE ANY FEELINGS ABOUT THAT FACT?

7 A. NO. BUT THE WAY YOU SAID THAT, YOU MADE IT SOUND
8 LIKE HE'S GUILTY, OR WHATEVER. AND YOU HAVEN'T
9 EVEN LISTED ANY MORE FACTS. JUST SAYING THAT THE
10 GUILT -- I MEAN, I DON'T KNOW. I'D LIKE TO HEAR
11 BOTH SIDES OF THE STORY; AND THEN I CAN GIVE YOU AN
12 ANSWER ON HOW I FEEL ABOUT IT.

13 Q. I GUESS MY QUESTION IS: DO YOU UNDERSTAND THAT --
14 LET ME ASK YOU THIS: HOW DO YOU FEEL WHEN YOU FIND
15 OUT THAT SOMEONE HAS BEEN CHARGED WITH A CRIME?
16 WHAT ARE YOUR FEELINGS AT THAT POINT; JUST WHEN YOU
17 LEARN THAT SOMEONE HAS BEEN CHARGED WITH A CRIME?

18 A. NOT KNOWING THE INDIVIDUAL, I COULDN'T DETERMINE IT
19 BECAUSE I WOULDN'T KNOW THE PERSON PERSONALLY. SO
20 I COULDN'T SAY, OH I THINK HE DID IT OR THERE'S NO
21 WAY HE COULD HAVE DONE THAT.

22 Q. SO YOU DON'T PRE-JUDGE SOMEBODY JUST BASED UPON THE
23 FACT THAT THEY'VE BEEN CHARGED?

24 A. NOT KNOWING THE PERSON; NO.

25 Q. AND WHAT ABOUT WHEN SOMEONE IS ON TRIAL IN A CASE?

DONALD SHORT - DIRECT/MR. THEOS

1 DO YOU PRESUME ANYTHING ABOUT THEIR GUILT OR
2 INNOCENCE BEFORE YOU'VE ACTUALLY HEARD ANY FACTS?

3 A. NO, SIR.

4 Q. DOES THE FACT THAT THE STATE OR MR. BAILEY ARE
5 ASKING FOR THE DEATH PENALTY IN THIS CASE; DOES
6 THAT IMPACT ON YOUR FEELING OF GUILT OR INNOCENCE
7 AT THIS POINT?

8 A. NO, SIR. DO YOU NEED A REASON?

9 Q. YES.

10 A. THE REASON BEING IS MY THING ON THE DEATH PENALTY
11 IS IT'S NOT FOR EVERY CASE. YOU KNOW, IF YOU STEAL
12 SOMETHING OR WHATEVER, I MEAN, IT SHOULDN'T BE
13 ANYTHING LIKE THAT. IF YOU RUN OVER SOMEBODY; I
14 MEAN, YOU'VE GOT TO HEAR ALL THE FACTS. I MEAN,
15 THERE'S NO WAY -- YOU KNOW, I'M NOT AGAINST IT, AND
16 I'M NOT FOR IT EITHER. IT JUST DEPENDS ON THE
17 CIRCUMSTANCE.

18 Q. DO YOU HAVE A FEELING OR AN OPINION ABOUT WHAT THE
19 APPROPRIATE PUNISHMENT SHOULD BE IF SOMEONE WERE
20 CONVICTED OF MURDER?

21 A. NO; BECAUSE THERE AGAIN IT DEPENDS ON THE
22 CIRCUMSTANCE. I MEAN, IT COULD HAVE BEEN AN ACT OF
23 PASSION OR RAGE OR -- YOU KNOW, I MEAN -- THERE'S A
24 LOT OF INFLUENCE THAT CAN DETERMINE EITHER WAY HOW
25 IT GOES.

DONALD SHORT - DIRECT/MR. THEOS

1 Q. NOW, I'VE BEEN TALKING WITH YOU JUST BRIEFLY ABOUT
2 POSSIBLE PENALTIES. BUT YOU UNDERSTAND IN THIS
3 PARTICULAR CASE THAT THE STATE HAS A BURDEN OF
4 PROVING MR. SIMMONS' GUILT BEYOND A REASONABLE
5 DOUBT IN THE FIRST PHASE OF THIS TRIAL?

6 A. RIGHT.

7 Q. AND THAT FIRST PHASE IS CALLED THE GUILT PHASE.
8 AND YOU UNDERSTAND THAT IF THE STATE DOES NOT PROVE
9 MR. SIMMONS' GUILT BEYOND A REASONABLE DOUBT THAT
10 MR. SIMMONS -- WE WOULDN'T EVEN GET TO THE SECOND
11 PHASE OF THE TRIAL. DO YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. NOW, DO YOU FEEL THAT YOU WOULD HOLD THE STATE TO
14 ITS BURDEN OF PROOF, PROVING TO YOU SATISFACTORILY
15 BEYOND A REASONABLE DOUBT THE GUILT?

16 A. IF THE STATE DID THEIR HOMEWORK AND GOT EVERYTHING
17 IN LINE AND IT SOUNDS REALISTIC, I CAN GO THAT
18 WAY. IF YOU DID YOUR HOMEWORK AND YOU SOUNDED
19 REALISTIC, I'D GO ON YOUR SIDE. YOU'D HAVE TO
20 CONVINCE ME ONE WAY OR THE OTHER. I CAN'T GIVE YOU
21 AN ANSWER UNTIL I HEAR SOMETHING ELSE. IT'S JUST
22 THE WAY I AM.

23 Q. DO YOU FEEL LIKE SOMEBODY IN A CRIMINAL TRIAL
24 SHOULD PUT TO THE TASK OF PROVING THEIR INNOCENCE?

25 A. YOU SHOULD HAVE A CHANCE TO PROVE YOUR INNOCENCE.

1 Q. WELL, UNDERSTANDING THAT THE LAW IN THIS STATE IS
2 THAT THERE'S A PRESUMPTION OF INNOCENCE AS WE
3 TALKED ABOUT, THERE'S OTHER AREAS OF THE LAW THAT
4 INDICATE AND STAND FOR THE PROPOSITION THAT A
5 DEFENDANT IN A CASE, MR. SIMMONS, THE DEFENDANT IN
6 A CASE, DOES NOT HAVE TO PROVE THEIR INNOCENCE. IN
7 FACT THEY DON'T EVEN HAVE TO OFFER A DEFENSE?

8 A. I DON'T UNDERSTAND---

9 Q. UNDERSTANDING THAT, DO YOU STILL FEEL THAT YOU
10 WOULD LOOK TO MR. SIMMONS OR A CRIMINAL DEFENDANT
11 TO PROVE INNOCENCE? UNDERSTANDING THEY'RE NOT
12 LEGALLY REQUIRED TO.

13 A. NO.

14 Q. THIS ISN'T A TRICK QUESTION.

15 A. RIGHT. I'VE GOT YOU. I MEAN, IF HE'S GOT TO PROVE
16 HIMSELF INNOCENT BEFORE YOU GET TO THE DEATH
17 PENALTY -- I MEAN, THAT SEEMS TO GO AHEAD AND SET
18 IT FOR THE SECOND PHASE. SO YOU SHOULDN'T EVEN
19 HAVE TO HAVE THE REST OF THE SENTENCING FOR THE
20 REST OF IT IF YOU'VE ALREADY PROVED THAT PART IN
21 THE FIRST PART, WHETHER IT'S DEATH SENTENCE VERSUS
22 LIFE IMPRISONMENT OR, YOU KNOW, FREE OR WHATEVER.
23 I DON'T KNOW.

24 Q. AGAIN, THESE AREN'T TRICK QUESTIONS. I JUST WANT
25 TO MAKE SURE I UNDERSTAND. ARE YOU SAYING -- AND

DONALD SHORT - DIRECT/MR. THEOS

1 YOU CORRECT ME IF I'M WRONG -- ARE YOU SAYING THAT
2 IF SOMEBODY'S FOUND GUILTY THAT YOU DON'T FEEL THE
3 NEED TO MOVE INTO THE SECOND PHASE; OR ARE YOU
4 SAYING THAT IF SOMEBODY IS FOUND NOT GUILTY THERE'S
5 AN OBVIOUS REASON NOT TO---

6 A. WHAT I'M SAYING IS IF ALL THE FACTS COME OUT AND
7 THEY'RE FOUND GUILTY AND YOU WANT THE DEATH PENALTY
8 RIGHT THERE; I MEAN, THERE'S NO SENSE IN GOING TO
9 PART TWO BECAUSE THEY'VE ALREADY ESTABLISHED IT.
10 IF I DID SOMETHING AND I COME TO YOU AND I SAID I'M
11 GUILTY, I DID IT OR WHATEVER; IT SHOULDN'T
12 CONTINUE. THAT SHOULD BE THE END OF THE STORY
13 RIGHT THERE. AND WHAT YOU'RE SAYING IS YOU WANT ME
14 TO BE GUILTY, NON-GUILTY ON ONE PART AND THEN
15 LISTEN TO PART TWO AND THEN GIVE ANOTHER
16 CONCLUSION. AND I'D LIKE TO HEAR -- I CAN'T SAY
17 THE MAN IS INNOCENT. I CAN'T SAY HE'S GUILTY. HOW
18 I FEEL IN A DEATH SENTENCE, YOU KNOW, I'LL LISTEN
19 TO WHAT YOU PRESENT, AND THEN I'LL DETERMINE
20 WHETHER IT SHOULD GO THAT WAY OR, YOU KNOW, JUST
21 HOWEVER.

22 Q. LET'S ASSUME FOR ARGUMENT SAKE THAT THERE'S A
23 FINDING OF GUILT BY THE JURY OF MURDER.

24 A. OKAY.

25 Q. LET'S ASSUME THAT. DO YOU FEEL THAT YOU COULD

DONALD SHORT - DIRECT/MR. THEOS

1 CONSIDER A SENTENCE OTHER THAN THE DEATH PENALTY IF
2 THERE IS A FINDING OF GUILT?

3 A. I COULD.

4 Q. AND IN THE PENALTY PHASE, IF WE WERE TO GET TO THAT
5 POINT, MR. BAILEY WOULD BE TRYING TO PERSUADE YOU
6 TO SENTENCE MR. SIMMONS TO DEATH, OKAY? AND MR.
7 BELL AND I WOULD BE ATTEMPTING TO PERSUADE YOU THAT
8 DEATH IS NOT THE APPROPRIATE SENTENCE. NOW MR.
9 BAILEY WOULD BE OFFERING YOU WHAT'S CALLED
10 AGGRAVATING CIRCUMSTANCES OR EVIDENCE RELATED TO
11 SOME AGGRAVATING FACTORS AND WHY HE THINKS THE
12 DEATH PENALTY IS APPROPRIATE. AND MR. BELL AND I
13 WOULD BE OFFERING YOU CIRCUMSTANCES IN EVIDENCE
14 THAT ARE CALLED MITIGATING FACTORS; FACTORS THAT
15 TEND TO LESSON OR MINIMIZE. DO YOU THINK THAT YOU
16 COULD ACTUALLY CONSIDER BOTH OF THOSE IN REACHING A
17 VERDICT; OR DID YOU THINK THAT YOU WOULD ALWAYS
18 FIND THAT THE DEATH PENALTY WERE APPROPRIATE IF YOU
19 GOT TO THAT POINT?

20 A. LIKE I SAID BEFORE, THE DEATH PENALTY IS NOT FOR
21 EVERY CASE. IT DEPENDS ON, YOU KNOW, WHAT YOU HAVE
22 TO OFFER ON HOW YOU PRESENT IT TO ME. YOU KNOW, IF
23 YOU COME OUT AND HAVE, YOU KNOW, WELL THIS, THIS,
24 THIS AND THAT; THEN HE SAYS NO, NO, NO, HE DIDN'T
25 HAVE NONE OF THAT. YOU KNOW, IT'S GOING TO BE HARD

DONALD SHORT - DIRECT/MR. THEOS

1 TO GO WITH A DEATH SENTENCE WHEN BOTH OF Y'ALL
2 DIDN'T CONVINCE ME.

3 Q. SO I TAKE IT FROM YOUR ANSWER THAT YOU WOULD LISTEN
4 TO BOTH OF THESE AND HAVE TO BE CONVINCED IN YOUR
5 OWN MIND BEYOND ANY REASONABLE DOUBT THAT THAT WAS
6 THE APPROPRIATE SENTENCE BEFORE YOU WOULD---

7 A. YES. I'D HAVE TO HEAR ALL THE FACTS BEFORE I COULD
8 -- SENTENCING SOMEONE TO DEATH; I MEAN, THAT
9 WOULD BE MY DECISION; NOT YOURS AND NOT HIS. YOU
10 KNOW, IF I'M GOING TO DO THAT, I WANT TO MAKE SURE
11 I MADE THE RIGHT DECISION, AND THAT'S THE ONE I'VE
12 GOT TO LIVE. IF I TAKE THE DEATH SENTENCE, YOU
13 KNOW, AND I FIND OUT FIVE YEARS DOWN THE ROAD, THAT
14 WOULD BE ON ME. IF I GO THE OTHER WAY, LIFE
15 IMPRISONMENT, YOU KNOW, AND SAY THE GUY ESCAPES OR
16 SOMETHING AND DOES IT AGAIN, I'D BE LIKE "DAMN, I
17 SHOULD HAVE WENT THE OTHER WAY." SO, I MEAN, I'D
18 LIKE TO LISTEN, AND THEN HOPEFULLY I'VE MADE THE
19 RIGHT CHOICE AT THAT TIME. THAT'S ALL I CAN SAY.

20 Q. THE LAST THING I WANT TO TELL YOU IS THAT THE JUDGE
21 DIDN'T GO THROUGH THIS WITH YOU. BUT, AS I SAID,
22 THERE ARE CERTAIN AGGRAVATING FACTORS OR
23 CIRCUMSTANCES THAT MR. BAILEY MAY OFFER AND CERTAIN
24 MITIGATING FACTORS MR. BELL AND I MAY OFFER. AND
25 IF YOU FIND THE EXISTENCE OF SOME OF THOSE

DONALD SHORT - DIRECT/MR. THEOS

1 AGGRAVATING FACTORS THAT YOU CAN VOTE FOR THE DEATH
2 PENALTY; BUT IF YOU DON'T FIND THE EXISTENCE OF ANY
3 OF THOSE AGGRAVATING FACTORS, THEN YOU'RE NOT
4 ALLOWED TO VOTE FOR THE DEATH PENALTY. DO YOU
5 UNDERSTAND THAT?

6 A. RIGHT.

7 Q. IF YOU FIND, HOWEVER, THAT THOSE AGGRAVATING
8 FACTORS EXIST BUT THAT YOU HAVE BEEN PERSUADED BY
9 WHAT MR. BELL AND I HAVE TO OFFER YOU REGARDING
10 THOSE MITIGATING FACTORS, YOU CAN STILL FIND THAT
11 LIFE IMPRISONMENT IS THE APPROPRIATE SENTENCE. DO
12 YOU UNDERSTAND THAT?

13 A. YES.

14 Q. DO YOU AGREE THAT THAT -- DOES THAT SOUND
15 REASONABLE AND LOGICAL, AND CAN YOU DO THAT?

16 A. YES, I CAN.

17 Q. AND THE LAST THING I WILL TELL YOU IS THAT EVEN IF
18 YOU FIND AGGRAVATING FACTORS AND YOU DON'T FIND ANY
19 MITIGATING FACTORS, YOU JUST FIND THAT MR. BELL AND
20 I HAVEN'T PRESENTED ANYTHING REALLY THAT SWAYS YOU
21 ONE WAY OR THE OTHER THAT YOU AS A JUROR, AS A PART
22 OF THAT JURY, CAN FIND THAT LIFE IMPRISONMENT IS
23 THE APPROPRIATE SENTENCE AS AN ACT OF MERCY?

24 A. YES, I COULD DO THAT, TOO.

25 Q. THAT'S NOT JERRY THEOS' LAW. THAT'S THE LAW THAT

DONALD SHORT - CROSS/MR. BAILEY

1 THE JUDGE WILL CHARGE YOU AT SOME POINT IF YOU'RE
2 SELECTED AS A JUROR?

3 A. ALL RIGHT.

4 Q. IS THAT SOMETHING THAT YOU FEEL THAT YOU COULD
5 APPLY? CAN YOU CONSIDER THAT AS AN OPTION?

6 A. YES; I COULD APPLY EITHER OR.

7 Q. THANK YOU VERY MUCH.

8 CROSS-EXAMINATION

9 BY MR. BAILEY:

10 Q. MR. SHORT, I'LL TRY TO BE VERY SHORT, VERY QUICK.
11 I THINK MOST OF THE QUESTIONS HAVE BEEN ASKED. BUT
12 I JUST WANT TO MAKE SURE THAT THIS IS THE LAST
13 CHANCE WE GET TO TALK TO JURORS BEFORE WE PICK THE
14 JURY TOMORROW TO UNDERSTAND EXACTLY WHAT YOU THINK
15 ABOUT THE DEATH PENALTY. YOU UNDERSTAND THAT IF WE
16 GET TO THAT SECOND PHASE OF THE TRIAL, THE JURY HAS
17 TWO OPTIONS, LIFE WITHOUT PAROLE AND THE DEATH
18 SENTENCE. AND IT'S THE JURY'S CHOICE, NOT THE
19 JUDGE'S. ALL THE JUDGE IS GOING TO DO IS ORDER
20 THAT JURY'S VERDICT TO BE CARRIED OUT. THE JURY
21 SAYS LIFE WITHOUT PAROLE. THE JUDGE WILL ORDER
22 THAT. HE'LL SERVE LIFE WITHOUT PAROLE. IF THE
23 JURY VOTES FOR THE DEATH SENTENCE, THE JUDGE WILL
24 ORDER IT. THAT DEFENDANT WILL ACTUALLY BE
25 EXECUTED. NOW, I'M NOT GOING TO ASK YOU FOR A

DONALD SHORT - CROSS/MR. BAILEY

1 PREDICTION, WHAT YOU WOULD DO IN THIS CASE IF YOU
2 GOT ON THE JURY BECAUSE YOU HAVEN'T HEARD THE
3 FACTS. AND YOU SAID YOU'D WANT TO HEAR THE FACTS
4 BEFORE YOU DECIDED. BUT MY QUESTION IS: IF THE
5 FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH
6 PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO
7 BE CARRIED OUT BASED ON THAT JURY'S VOTE?

8 A. I COULD.

9 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTE
10 UNANIMOUSLY FOR THE DEATH PENALTY, THEY'RE THEN
11 ASKED TO SIGN THEIR NAME TO A DEATH VERDICT FORM
12 THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE.
13 COULD YOU SIGN THAT PAPER IF YOU HAD ALREADY VOTED
14 FOR THE DEATH PENALTY?

15 A. COULD I SIGN IT IF I HAD ALREADY VOTED FOR THE
16 DEATH PENALTY?

17 Q. YES, SIR; ASSUMING THE JURY VOTES FOR THE DEATH
18 PENALTY; YOU'RE ON THE JURY; -- ALL TWELVE VOTE FOR
19 IT. COULD YOU THEN SIGN YOUR NAME TO A PIECE OF
20 PAPER SAYING YOU VOTED FOR THE DEATH PENALTY?

21 A. I COULD.

22 Q. COULD YOU COME OUT HERE IN OPEN COURT AND ANNOUNCE
23 THAT DECISION WHEN YOUR NAME IS CALLED OUT; SAY IT
24 OUT LOUD IF THAT'S WHAT YOUR VERDICT WAS?

25 A. IF THAT WAS THE CHOICE I MADE; YES, I COULD SIGN MY

1 NAME.

2 Q. ALL RIGHT, SIR. CAN YOU THINK OF ANY REASON THAT
3 WE MIGHT NOT HAVE MENTIONED YET THAT WOULD IN ANY
4 WAY PREVENT YOU FROM SERVING AS A FAIR JUROR TO
5 BOTH SIDES, THE STATE AND THE DEFENSE?

6 A. NO, SIR.

7 Q. MR. SHORT, THAT'S ALL I'VE GOT. THANK YOU.
8 THAT'S?

9 MR. THEOS: NOTHING, YOUR HONOR.

10 THE COURT: THERE'S A SHEET OF
11 PAPER. IF YOU WOULD HAND THAT TO HIM, PLEASE.
12 SIR, YOU'VE BEEN FOUND QUALIFIED TO SERVE ON THIS
13 JURY, BUT YOU HAVE NOT BEEN SELECTED. WE HAVE
14 TENTATIVELY SET TOMORROW, WEDNESDAY, FEBRUARY THE
15 24TH AT 2:00 P.M. WE HOPE TO BE ABLE TO HAVE THE
16 JURY STRIKE. SO I'M GOING TO EXCUSE YOU AT THIS
17 TIME UNTIL THEN. BUT PLEASE CALL THAT NUMBER THAT
18 HAS A RECORDING MACHINE THAT WILL TELL YOU. IF
19 WE'VE HAD TO CHANGE THE TIME, WE'LL TRY AND NOTIFY
20 YOU OR THAT MACHINE THAT WILL LEAVE A MESSAGE.
21 PLEASE DON'T ALLOW YOURSELF TO BE EXPOSED TO
22 ANYTHING ABOUT THIS CASE. DON'T GO OUT AND MAKE
23 INDEPENDENT INVESTIGATION. DON'T ALLOW ANYONE TO
24 TALK TO YOU ABOUT THE CASE; AND DO NOT TALK TO THE
25 OTHER JURORS ABOUT THE QUESTIONS OR ANSWERS YOU'VE

DONALD SHORT - CROSS/MR. BAILEY

1 GIVEN HERE. AND WE THANK YOU. YOU HAVE A NICE
2 DAY.

3 MR. SHORT: I APPRECIATE IT.

4 THE COURT: WE'LL TAKE A FIVE MINUTE
5 BREAK. BE BACK IN THE COURTROOM READY TO GO IN
6 FIVE MINUTES.

7 (BRIEF RECESS.)

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CHRISTOPHER CAMPEAU - EXAM. BY THE COURT

(JUROR NUMBER 50, A WHITE MALE, IS CALLED.)

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WHEREUPON,

CHRISTOPHER CAMPEAU, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. THANK YOU SO MUCH FOR BEING WITH US, MR. CAMPEAU.
YOU WILL RECALL ON YESTERDAY YOU WERE GIVEN AN
OATH; AND YOU UNDERSTAND YOU'RE STILL UNDER OATH?

A. YES, SIR.

Q. AND, MR. CAMPEAU, YOU HAVE KINDLY PROVIDED US WITH
A QUESTIONNAIRE. IS THERE ANY INFORMATION THAT
NEEDS TO BE UPDATED RELATIVE TO THAT QUESTIONNAIRE?

A. NO, SIR; NOT TO MY KNOWLEDGE.

Q. AND I NOTE ON MY LIST HERE THAT ON YESTERDAY WHEN
WE HAD THE GENERAL QUESTION AND YOU HAD INDICATED
THAT YOU HAD SEEN, HEARD, OR READ SOMETHING ABOUT
THE CASE; COULD YOU TELL US THE SOURCE OF THAT
INFORMATION?

A. SUMMERVILLE JOURNAL SCENE.

Q. COULD YOU TELL US WHEN?

A. UM---

Q. HAS IT BEEN IN THE LAST WEEK, OR WAS IT BACK IN

CHRISTOPHER CAMPEAU - EXAM. BY THE COURT

1 '96?

2 A. IT WAS BACK WHEN IT HAPPENED. LAST WEEK THEY HAD
3 SOMETHING IN THE PAPER. AND I KNEW THAT I WAS
4 GOING IN FRONT OF A JURY, SO I DIDN'T READ THE
5 ARTICLE.

6 Q. ALL RIGHT. SO, DO YOU HAVE ANY OPINION, OR HAVE
7 YOU EXPRESSED ANY OPINION AS TO THE GUILT OR
8 INNOCENCE OF THE FACTS OF THIS CASE?

9 A. NO, SIR.

10 Q. AND COULD YOU GIVE A FAIR TRIAL TO BOTH THE STATE
11 AND THE DEFENDANT?

12 A. YES, SIR.

13 Q. DO YOU UNDERSTAND, PLEASE, THAT EVERY DEFENDANT,
14 REGARDLESS OF THE CRIME THEY ARE CHARGED WITH IS
15 PRESUMED INNOCENT? THERE IS NO BURDEN UPON A
16 DEFENDANT TO PROVE THEMSELVES NOT GUILTY BECAUSE IN
17 MANY INSTANCES THAT MAY NOT BE POSSIBLE. THE
18 DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS STAND.
19 THAT'S ENTIRELY UP TO THE DEFENDANT. AND IF THE
20 DEFENDANT DOES NOT TAKE THE WITNESS STAND, THE JURY
21 WOULD BE INSTRUCTED THAT FACT MUST NOT ENTER INTO
22 THE DELIBERATIONS IN ANY MANNER WHATSOEVER. IT
23 RAISES NO INFERENCE AS TO GUILT OR INNOCENCE. DO
24 YOU UNDERSTAND THAT?

25 A. RIGHT.

CHRISTOPHER CAMPEAU - EXAM. BY THE COURT

1 Q. AND DO YOU UNDERSTAND THE STATE OF SOUTH CAROLINA
2 HAS THE BURDEN OF PROVING THE GUILT BEYOND A
3 REASONABLE DOUBT?

4 A. RIGHT.

5 Q. AND ASSUMING THAT IN THE GUILT PHASE, BECAUSE IN A
6 MURDER DEATH PENALTY CASE THERE ARE TWO PARTS TO A
7 TRIAL. ONE IS THE GUILT PHASE. IF YOU RETURN A
8 VERDICT OF NOT GUILTY ON MURDER, THEN THE COURT
9 WOULD HANDLE THE SENTENCING OF THE OTHER FOUR
10 INDICTMENTS UNLESS ALL OF THEM WERE GUILTY. BUT
11 THERE'S ONLY A RECOMMENDATION FROM THE JURY WHEN
12 THERE IS A MURDER CAPITAL DEATH PENALTY CASE. DO
13 YOU UNDERSTAND?

14 A. RIGHT.

15 Q. BUT ASSUMING ARGUENDO THAT THE TWELVE JURORS HAD
16 FOUND THE STATE HAD PROVEN THE GUILT OF THE
17 DEFENDANT BEYOND A REASONABLE DOUBT, WE WOULD THEN
18 HAVE A 24 HOUR WAITING PERIOD; THEN WE WOULD MOVE
19 INTO THE PENALTY PHASE, AND THE STATE WOULD BE
20 REQUIRED TO PROVE A STATUTORY AGGRAVATING
21 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. AN EXAMPLE
22 OF THAT WOULD BE IF THE MURDER WAS COMMITTED WHILE
23 IN THE COMMISSION OF A CRIME OF ARMED ROBBERY OR
24 BURGLARY OR KIDNAPPING OR CRIMINAL SEXUAL CONDUCT.
25 AND IF THE STATE SO PROVED THAT BEYOND A REASONABLE

CHRISTOPHER CAMPEAU - DIRECT/MR. BAILEY

1 DOUBT, THE JURY MAY -- PERMISSIVE COULD; NOT
2 MANDATORY -- RETURN A RECOMMENDATION OF THE DEATH
3 PENALTY. AND THE DEFENDANT IS AFFORDED THE
4 OPPORTUNITY TO PRESENT OR OFFER MITIGATING WHICH
5 MEANS DIMINIMUS, LESSENING OF THE PENALTY
6 RECOMMENDATION DURING THAT PENALTY PHASE. AND THE
7 JURY COULD, EVEN THOUGH THERE'S A FINDING BEYOND A
8 REASONABLE DOUBT OF A STATUTORY AGGRAVATING
9 CIRCUMSTANCE; A JURY COULD RETURN A VERDICT BY WAY
10 OF RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT
11 PAROLE BECAUSE OF EVIDENCE IN MITIGATION OR FOR NO
12 REASON AT ALL BY WAY OF AN ACT OF MERCY. DO YOU
13 UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. HAVE YOU HAD THE OPPORTUNITY TO READ THAT SHEET I
16 SHARED WITH YOU WITH THE TYPES ONE, TWO, AND THREE
17 JURORS?

18 A. YES, I HAVE.

19 Q. DO YOU UNDERSTAND IT?

20 A. YES, SIR.

21 Q. WHICH OF THE CATEGORIES DO YOU FEEL YOU FALL INTO?

22 A. NUMBER THREE.

23 Q. NUMBER THREE?

24 THE COURT: ALL RIGHT, MR.

25 SOLICITOR, YOU MAY QUESTION THIS WITNESS.

CHRISTOPHER CAMPEAU - DIRECT/MR. BAILEY

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. CAMPEAU, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW MORE QUESTIONS TO FOLLOW UP ON WHAT JUDGE PEEPLES ASKED YOU. AND I'LL TRY NOT TO TAKE ANY MORE TIME THAT I'VE GOT TO. THIS IS THE LAST TIME WE GET TO TALK TO JURORS -- OR THE ONLY TIME, ACTUALLY -- BEFORE WE PICK THE JURY TOMORROW. SO WE NEED TO ASK YOU A FEW MORE QUESTIONS HERE. AS THE JUDGE TOLD YOU, IF WE GET INTO THE SECOND PHASE OF THE TRIAL, THAT WILL MEAN THE DEFENDANT WAS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL BECAUSE OBVIOUSLY IF HE'S NOT GUILTY, THAT'S THE END OF THE PROCESS. AND YOU UNDERSTAND THAT IN SOUTH CAROLINA, IF WE GET TO THAT SECOND PHASE, THE PURPOSE OF HAVING THAT ADDITIONAL SECOND PHASE OF THE TRIAL IS TO ALLOW ADDITIONAL EVIDENCE TO COME IN. I'D BE INTRODUCING EVIDENCE IN AGGRAVATION TO TRY TO PERSUADE THE JURY TO BRING BACK THE DEATH PENALTY. THE DEFENSE, IF IT WANTS TO, CAN PUT UP EVIDENCE IN MITIGATION. THEY'D BE ARGUING FOR LIFE WITHOUT PAROLE. THE JURY MAKES THE DECISION, NOT THE JUDGE, IN THE PENALTY PHASE. IF THE JURY VOTES ON LIFE WITHOUT PAROLE, THAT'S WHAT THE JUDGE WOULD ORDER. THE DEFENDANT WOULD SERVE OUT THAT

CHRISTOPHER CAMPEAU - DIRECT/MR. BAILEY

1 SENTENCE. IF, ON THE OTHER HAND, THE JURY VOTES
2 FOR THE DEATH PENALTY, THE JUDGE WOULD ORDER IT AND
3 HE ACTUALLY WOULD BE EXECUTED. NOW I'M NOT GOING
4 TO ASK YOU TO PREDICT WHAT YOU'D DO IN THIS CASE
5 BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. BUT IF
6 THE FACTS WERE BAD ENOUGH AND THE DEFENDANT HAD
7 BEEN CONVICTED OF MURDER, AND WE GET INTO THAT
8 SECOND PART OF THE TRIAL; IF THOSE FACTS WERE BAD
9 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
10 KNOWING THAT SENTENCE IS ACTUALLY GOING TO BE
11 CARRIED OUT?

12 A. IT'S NOT A DECISION I WOULD MAKE EASILY, BUT I
13 COULD MAKE THAT DECISION.

14 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS
15 UNANIMOUSLY VOTE FOR THE DEATH PENALTY, THEY'D BE
16 ASKED TO SIGN THEIR NAMES TO A DEATH VERDICT FORM
17 THAT WOULD RESULT IN THAT EXECUTION HAPPENING.
18 COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT IF
19 YOU VOTED FOR THE DEATH PENALTY?

20 A. CERTAINLY.

21 Q. COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE
22 THAT OUT LOUD WHEN YOUR NAME WAS CALLED OUT?

23 A. YES, I COULD.

24 Q. THE JURY IS GOING TO BE PUT IN A MOTEL FOR ABOUT
25 SEVEN DAYS UNTIL THIS TRIAL IS OVER. THAT'S A

CHRISTOPHER CAMPEAU - DIRECT/MR. BAILEY

1 HARDSHIP ON EVERYBODY. BUT WOULD IT BE ANY UNDUE
2 HARDSHIP ON YOU?

3 A. NO, SIR.

4 Q. ALL RIGHT, SIR. YESTERDAY THE JUDGE CALLED OUT THE
5 NAMES OF POTENTIAL WITNESSES AND ALL THAT. AND I
6 CAN'T RECALL WHETHER YOU STOOD UP OR NOT. DID YOU
7 KNOW ANYBODY INVOLVED IN THIS CASE?

8 A. YES, I DID.

9 Q. WHO DID YOU KNOW?

10 A. I KNOW MRS. WILSON.

11 Q. OKAY. THAT'S VIRGINIA WILSON?

12 A. YES, SIR.

13 Q. AND THAT'S MRS. BOYD'S SISTER; IS THAT CORRECT?

14 A. I HAVE MET HER IN THE PAST. I DON'T KNOW IF SHE
15 WOULD REMEMBER ME OR NOT.

16 Q. OKAY. WOULD THE FACT THAT YOU HAD MET THE VICTIM'S
17 SISTER; WOULD THAT HAVE ANY BEARING ON YOUR ABILITY
18 TO SIT AS A FAIR AND IMPARTIAL JUROR FOR BOTH
19 SIDES?

20 A. NO, SIR.

21 Q. EITHER IN THE GUILT PHASE OR THE PENALTY PHASE?

22 A. NO, SIR.

23 Q. MR. CAMPEAU, THAT'S ALL I'VE GOT. THANK YOU VERY
24 MUCH.

25 A. THANK YOU.

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 THE COURT: ANY QUESTIONS, PLEASE,
2 MR. THEOS?

3 MR. THEOS: YES, SIR. THANK YOU,
4 YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. THEOS:

7 Q. MR. CAMPEAU, JERRY THEOS, AND THIS IS JIM BELL. HE
8 AND I ARE THE ATTORNEYS REPRESENTING KENNETH
9 SIMMONS. THANK YOU FOR COMING IN. THANK YOU FOR
10 ANSWERING THE QUESTIONS THE JUDGE HAS POSED AND MR.
11 BAILEY. I'M GOING TO JUST ASK YOU A FEW QUESTIONS
12 IF YOU DON'T MIND. AND AGAIN, THE REASON FOR US
13 ASKING THESE QUESTIONS IS TO TRY TO FIND OUT WHAT
14 YOUR TRUE FEELINGS ARE ABOUT CERTAIN THINGS. THE
15 FACT THAT WE'VE BEEN ASKING YOU ABOUT WHAT YOU
16 COULD OR COULD NOT DO, MIGHT OR MIGHT NOT DO,
17 RELATED TO PENALTY AND PUNISHMENT IN THIS CASE IF
18 THE JURY WERE TO COME BACK WITH A GUILTY VERDICT.
19 YOU UNDERSTAND THAT WE'RE NOT ANYWHERE NEAR THAT
20 POINT?

21 A. YES, SIR.

22 Q. DO YOU UNDERSTAND THAT BEFORE THAT COULD HAPPEN
23 THERE WOULD HAVE TO BE A FINDING OF GUILT?

24 A. YES, SIR.

25 Q. AND YOU UNDERSTAND, OF COURSE, AS THE JUDGE

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 INDICATED TO YOU THAT THE STATE HAS THE BURDEN OF
2 PROVING GUILT?

3 A. YES, SIR.

4 Q. DO YOU LOOK TO MR. SIMMONS OR ANY CRIMINAL
5 DEFENDANT IN ANY CASE TO PROVE THEIR INNOCENCE?

6 A. SAY IT AGAIN.

7 Q. DO YOU LOOK TO---

8 A. NO, SIR, I DO NOT.

9 Q. YOU UNDERSTAND THAT THEY DON'T HAVE TO PROVE
10 ANYTHING AS THE JUDGE TOLD YOU A LITTLE WHILE AGO?

11 A. CORRECT.

12 Q. YOU UNDERSTAND THAT THE DEFENSE; THEY DON'T HAVE TO
13 PROVE ANYTHING?

14 A. RIGHT.

15 Q. THAT BURDEN IS ENTIRELY UP TO THE STATE?

16 A. YES, SIR.

17 Q. DO YOU FEEL THAT YOU COULD HOLD THE STATE TO THAT
18 BURDEN?

19 A. SAY THAT AGAIN, PLEASE.

20 Q. DO YOU FEEL, AND WOULD YOU HOLD THE STATE TO THAT
21 REQUIREMENT OF THE LAW?

22 A. YES, SIR.

23 Q. NOW WITH RESPECT -- LET ME ASK YOU JUST A COUPLE OF
24 QUESTIONS ABOUT YOUR RESPONSES. YOU RESPONDED ON
25 THE QUESTIONNAIRE -- AND I DON'T KNOW IF YOU NEED

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 TO SEE IT. BUT ON THE QUESTIONNAIRE YOU SAID THAT
2 YOUR WIFE AND YOUR MOTHER-IN-LAW WERE MUGGED. AND
3 I'M SORRY THAT HAPPENED. BUT I JUST WANT TO ASK
4 YOU A COUPLE OF QUESTIONS ABOUT IT. CAN YOU TELL
5 US WHEN THAT HAPPENED?

6 A. UM---

7 Q. ROUGHLY.

8 A. I DON'T BELIEVE I PUT ON THE QUESTIONNAIRE THAT
9 THEY WERE MUGGED. I THOUGHT I HAD PUT THAT THEY
10 WERE INVOLVED IN A -- OKAY. IT COMES BACK TO ME
11 NOW. IT WAS BEFORE I MET MY WIFE. IT ONLY
12 HAPPENED EIGHT YEARS AGO, BUT I DIDN'T KNOW HER AT
13 THE TIME.

14 Q. OKAY. DOES THE FACT THAT THAT HAPPENED TO YOUR
15 WIFE AND MOTHER-IN-LAW; DOES THAT CAUSE YOU TO FEEL
16 ANY CERTAIN WAY ABOUT CRIME IN GENERAL?

17 A. NO.

18 Q. AND IN RESPONSE TO ITEM 26, THE QUESTION WAS: DO
19 YOU HAVE STRONG PERSONAL RELIGIOUS OR PHILOSOPHICAL
20 FEELINGS ABOUT NARCOTICS, ILLEGAL DRUGS, OR VIOLENT
21 CRIMES; AND YOU RESPONDED YES. CAN YOU EXPLAIN
22 THAT; EXPLAIN WHY YOU HAVE THAT FEELING, WHAT THAT
23 FEELING IS, AND WHAT IS IT RELATED TO?

24 A. MY BEST RECOLLECTION WOULD BE MY FEELING WAS THE
25 PUNISHMENT SHOULD FIT THE CRIME. IF THAT PERSON IS

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 FOUND GUILTY, PUNISHMENT SHOULD FIT THE CRIME.

2 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT? I'M NOT
3 TRYING TO PUT YOU ON THE SPOT. THIS ISN'T A QUIZ
4 OF ANY SORT. BUT WE'RE JUST TRYING TO UNDERSTAND
5 YOUR THOUGHTS ON IT.

6 A. CERTAINLY.

7 Q. IF YOU CAN?

8 THE COURT: I DON'T MEAN TO
9 INTERFERE. BUT I THINK THAT'S A VERY INTELLIGENT
10 ANSWER THAT DOESN'T REQUIRE ANY FURTHER QUESTIONS,
11 MR. THEOS.

12 Q. MR. CAMPEAU, YOU'VE HEARD WHAT THE CHARGES ARE
13 AGAINST MR. SIMMONS. YOU UNDERSTAND HE'S ON TRIAL
14 AS THE JUDGE INDICATED FOR MURDER. AND AS THE
15 JUDGE INDICATED, WE COULDN'T PROCEED TO THE SECOND
16 STAGE UNLESS HE WAS FOUND GUILTY OF MURDER. MY
17 QUESTION IS: IF HE WERE FOUND GUILTY OF MURDER,
18 COULD YOU CONSIDER ANY SENTENCE OTHER THAN THE
19 DEATH PENALTY?

20 A. YES, I COULD; DEPENDING -- WELL, AS THE JUDGE READ,
21 IT'S GOT TO BE -- IT HAS TO BE A CRIME THAT MEETS
22 CERTAIN CRITERIA, OF A VIOLENT NATURE; SOMETHING
23 LIKE THAT. I DON'T FEEL THAT BECAUSE A MURDER HAS
24 BEEN COMMITTED THAT THAT AUTOMATICALLY MEANS THE
25 DEATH PENALTY. IT DEPENDS ON THE CIRCUMSTANCES.

1 Q. COULD YOU LISTEN TO THE CIRCUMSTANCES PRESENTED BY
2 MR. BAILEY AS WELL AS ANY FACTORS HE MIGHT PRESENT
3 TO TRY TO PERSUADE YOU TO VOTE FOR THE DEATH
4 PENALTY? COULD YOU ALSO CONSIDER ANYTHING THAT MR.
5 BELL AND I MIGHT OFFER IN MITIGATION TO TRY TO
6 PERSUADE YOU THAT A LIFE SENTENCE WITHOUT PAROLE
7 WOULD BE A MORE APPROPRIATE SENTENCE?

8 A. I WOULD LISTEN TO EACH SIDE EQUALLY.

9 Q. AND THEN RENDER A DECISION THAT YOU FELT TO BE
10 APPROPRIATE?

11 A. CORRECT.

12 Q. THANK YOU, MR. CAMPEAU.

13 THE COURT: ANYTHING FURTHER?

14 MR. BAILEY: NO, SIR.

15 THE COURT: MR. CAMPEAU, YOU'VE BEEN
16 FOUND QUALIFIED TO SERVE AS A JUROR IN THIS CASE.
17 THAT DOES NOT MEAN YOU'VE BEEN SELECTED. THE
18 STRIKING OR SELECTION PROCESS WE HOPE TO DO
19 TOMORROW AFTERNOON AND WEDNESDAY, FEBRUARY THE 24TH
20 AT 2:00 P.M. IT DEPENDS ON THE PROGRESS WE MAKE
21 THIS AFTERNOON, THIS EVENING, AND IN THE MORNING.
22 THERE'S A PHONE NUMBER LISTED THERE. AND THERE
23 SHOULD BE A RECORDING AFTER SIX O'CLOCK. IF AT
24 THAT TIME THERE ARE CHANGES, WE'LL LEAVE A MESSAGE
25 THEREON. ALSO PLEASE, SIR, DO NOT EXPOSE YOURSELF

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 TO ANY PUBLICITY OR ALLOW ANYONE TO TALK TO YOU
2 ABOUT THIS CASE. THAT WOULD BE IMPROPER. DO NOT
3 DISCUSS WITH THE OTHER JURORS ANY QUESTIONS ASKED
4 OR ANSWERS GIVEN. AND WE'LL LOOK TO SEE YOU
5 TOMORROW AFTERNOON.

6 MR. CAMPEAU: YES, SIR.

7 THE COURT: THANK YOU SO MUCH.

8 MR. CAMPEAU: THANK YOU.

9 THE COURT: ALL RIGHT. BRING THE
10 FIRST JUROR ON PANEL SIX, PLEASE.

11 MS. GRAHAM: JUDGE?

12 THE COURT: YES, MA'AM?

13 MS. GRAHAM: I WAS ASKED THIS
14 MORNING TO RUN SOME QUESTIONNAIRES, AND THEY WERE
15 ALL OUT OF PANEL SIX.

16 THE COURT: YES, MA'AM.

17 MS. GRAHAM: I DIDN'T KNOW IF YOU
18 HAD THEM; 313, 335, AND 11. AND THE NUMBER 37, THE
19 VERY FIRST ONE, PAGE THREE AND FOUR WAS MISSING OUT
20 OF THE QUESTIONNAIRE.

21 THE COURT: ALL RIGHT. WELL, LET'S
22 DON'T TALK ABOUT ELEVEN, NOW, BECAUSE WE'VE GOT
23 THIS JUROR COMING IN. BUT IN REGARD TO PANEL
24 NUMBER SIX.

25 MS. GRAHAM: THESE ARE ALL PANEL

CHRISTOPHER CAMPEAU - CROSS/MR. THEOS

1 SIX. JUROR NUMBER ELEVEN; NOT PANEL NUMBER ELEVEN.

2 THE COURT: SURE. I HAVE -- THE
3 FIRST QUESTIONNAIRE, I HAVE 37, 335, 307, 11, AND
4 25. ARE THOSE RIGHT?

5 MS. GRAHAM: YES, SIR. BUT PAGE
6 THREE AND FOUR ARE MISSING OUT OF THIS ONE RIGHT
7 HERE. (INDICATING.)

8 THE COURT: OUT OF NUMBER 37, PAGES
9 THREE AND FOUR ARE MISSING?

10 MS. GRAHAM: THAT WAS MY
11 UNDERSTANDING.

12 THE COURT: THAT'S CORRECT. AND
13 THANK YOU FOR BRINGING THAT TO OUR ATTENTION,
14 CHERYL.

15 (JUROR NUMBER 37, A WHITE MALE, IS CALLED.)

16 THE COURT: HOW ARE YOU THIS
17 AFTERNOON?

18 MR. BROOKS: FINE.

19 THE COURT: MR. JAMES A. BROOKS, JR.
20 THIS IS JUROR NUMBER 37 WHICH IS THE FIRST JUROR
21 ON PANEL NUMBER SIX, LADIES AND GENTLEMEN.

22 - - - - -

23 WHEREUPON,

24 JAMES A BROOKS, JR., WHO BEING PREVIOUSLY
25 SWORN TO TELL THE TRUTH, TESTIFIED AS

JAMES A. BROOKS, JR. - EXAM. BY THE COURT

FOLLOWS:

EXAMINATION

BY THE COURT:

Q. AND, MR. BROOKS, ON YESTERDAY YOU WERE GIVEN AN OATH AS A JUROR. YOU UNDERSTAND, PLEASE, SIR THAT YOU ARE STILL UNDER OATH IN REGARD TO THESE QUESTIONS THAT ARE BEING PROPOUNDED TO YOU?

A. I AM, SIR.

Q. AND YOU HAD INDICATED DURING THE GROUP VOIR DIRE THAT YOU OR SOME MEMBER OF YOUR FAMILY HAD BEEN A VICTIM OF A VIOLENT CRIME OR IN SOME WAY INVOLVED WITH A VIOLENT CRIME. COULD YOU TELL US ABOUT THAT, PLEASE?

A. NO, SIR. I INDICATED THAT I HAD TESTIFIED BEFORE IN A VIOLENT CRIME.

Q. ALL RIGHT. WELL, TELL US ABOUT THAT.

A. WHEN I WAS ON THE CHARLESTON COUNTY POLICE DEPARTMENT AND THE NORTH CHARLESON POLICE DEPARTMENT. I HAVE TESTIFIED AT A NUMBER OF CRIMES.

Q. ALL RIGHT, SIR. THANK YOU. AND HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?

A. NOT RECENTLY. I REMEMBER A LITTLE BIT ABOUT IT, AND THAT'S IT.

Q. FROM WHAT YOU REMEMBER ABOUT IT EARLIER, HAVE YOU

1 FORMED OR EXPRESSED ANY OPINION FOR OR AGAINST THE
2 STATE OR THE DEFENDANT?

3 A. NO.

4 Q. COULD YOU GIVE A FAIR TRIAL TO BOTH THE STATE AND
5 THE DEFENDANT?

6 A. YES, SIR.

7 Q. DOES THIS QUESTIONNAIRE IN ANY WAY, ANY OF THE
8 ANSWERS YOU PREVIOUSLY SUBMITTED, NEED TO BE
9 CHANGED IN ANY WAY?

10 A. NO.

11 Q. AND YOU UNDERSTAND, MR. BROOKS, THAT UNDER THE LAW
12 ANY DEFENDANT, REGARDLESS OF THE ENORMITY OF THE
13 CHARGES MADE AGAINST HIM OR HER, IS ALWAYS PRESUMED
14 OR THOUGHT TO BE INNOCENT OF THOSE CHARGES UNTIL OR
15 UNLESS THE STATE REMOVES THAT PRESUMPTION OF
16 INNOCENCE BY EVIDENCE SATISFYING THE JURY OF THE
17 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.
18 DO YOU UNDERSTAND THAT?

19 A. I UNDERSTAND THAT.

20 Q. DO YOU FURTHER UNDERSTAND THAT THE DEFENDANT HAS NO
21 BURDEN OF PROOF. THAT IS THE DEFENDANT DOES NOT
22 HAVE TO PROVE HIMSELF INNOCENT OR NOT GUILTY
23 BECAUSE IN INSTANCES THAT MIGHT NOT BE POSSIBLE.
24 AND THE DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS
25 STAND. HE OR SHE WOULD HAVE A FIFTH AMENDMENT

JAMES A. BROOKS, JR. - EXAM. BY THE COURT

1 PRIVILEGE AND WOULD NOT BE REQUIRED TO TAKE THE
2 WITNESS STAND. AND IF THE DEFENDANT ELECTED OR
3 OPTED NOT TO TAKE THE WITNESS STAND, THEN IN THAT
4 EVENT THE JURY WOULD BE INSTRUCTED THAT THE FAILURE
5 OF THE DEFENDANT TO TESTIFY RAISES NO PRESUMPTION
6 FOR OR AGAINST THE GUILT OR INNOCENCE OF THE
7 DEFENDANT. DO YOU UNDERSTAND THAT, PLEASE?

8 A. I UNDERSTAND THAT.

9 Q. AND WE DO NOT MEAN TO INVADE YOUR PRIVACY OR IN ANY
10 WAY OFFEND YOU BY ASKING YOU THESE QUESTIONS; BUT
11 THIS IS THE ONLY OPPORTUNITY THE COURT AND THE
12 LAWYERS WOULD HAVE TO QUESTION YOU PRIOR TO THE
13 COMMENCEMENT OF THE TRIAL. AND THIS IS A MURDER
14 CASE IN WHICH THE STATE SEEKS THE DEATH PENALTY.
15 AND ASSUMING ARGUENDO, PLEASE DERIVE NO INFERENCE
16 FROM THE FACT THAT WE'RE GOING TO TALK ABOUT A
17 PENALTY PHASE WHEN YOU'VE HEARD NO TESTIMONY
18 WHATSOEVER IN THE GUILT PHASE. BUT ASSUMING THAT
19 THE JURY OF TWELVE UNANIMOUSLY RETURNED A VERDICT
20 OF GUILTY TO THE MURDER CASE, THEN WE WOULD HAVE A
21 24 HOUR WAITING PERIOD AFTER WHICH THE STATE WOULD
22 BE REQUIRED TO PROVE BEYOND A REASONABLE DOUBT THE
23 STATUTORY AGGRAVATING CIRCUMSTANCES. IN THIS CASE
24 THERE ARE FOUR ALLEGED, THOSE BEING ARMED ROBBERY,
25 BURGLARY, MURDER, AND KIDNAPPING. AND BEFORE THE

JAMES A. BROOKS, JR. - EXAM. BY THE COURT

1 JURY COULD MAKE A RECOMMENDATION AS TO THE DEATH
2 PENALTY, THE STATE WOULD HAVE TO PROVE BEYOND A
3 REASONABLE DOUBT ONE OR MORE OF THOSE STATUTORY
4 AGGRAVATING CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

5 A. YES, SIR, I DO.

6 Q. AND THE DEFENDANT WOULD BE AFFORDED AN OPPORTUNITY
7 TO PRESENT SUCH EVIDENCE AS THEY DEEM PROPER IN
8 MITIGATION OR LESSENING OR MINIMIZING OF THE
9 RECOMMENDATION OF SENTENCE FOR MURDER. AND THE
10 JURY COULD IGNORE ANY FINDING OF STATUTORY
11 AGGRAVATING CIRCUMSTANCE AND COULD MAKE A
12 RECOMMENDATION TO THE COURT OF A SENTENCE OF LIFE
13 IMPRISONMENT WITHOUT PAROLE BECAUSE OF MITIGATING
14 CIRCUMSTANCES. AND EVEN IF NO MITIGATING
15 CIRCUMSTANCES FOR NO REASON AT ALL OTHER THAN
16 MERCY. DO YOU UNDERSTAND THAT, SIR?

17 A. I UNDERSTAND THAT.

18 Q. AND HAVE YOU READ THAT SHEET OF PAPER THAT WAS
19 GIVEN TO EACH OF THE JURORS WHEN YOU CAME INTO THE
20 JURY ROOM TODAY DESCRIBING TYPES ONE, TWO, AND
21 THREE OF PROSPECTIVE JURORS?

22 A. YES, SIR, I HAVE.

23 Q. AND YOU UNDERSTAND IT?

24 A. I UNDERSTAND IT.

25 Q. WHICH OF THOSE THREE CATEGORIES WOULD YOU PLACE

JAMES A. BROOKS, JR. - DIRECT/MR. THEOS

1 YOURSELF?

2 A. NUMBER THREE.

3 THE COURT: ALL RIGHT. YOU MAY
4 EXAMINE IF YOU PLEASE, MR. THEOS.

5 MR. THEOS: THANK YOU.

6 DIRECT EXAMINATION

7 BY MR. THEOS:

8 Q. MR. BROOKS, I'M JERRY THEOS. THIS IS JIM BELL. HE
9 AND I ARE THE LAWYERS REPRESENTING KENNETH
10 SIMMONS. THANK YOU FOR BEING HERE. JUST A FEW
11 QUESTIONS, BRIEF QUESTIONS. WHAT DO YOU THINK
12 ABOUT THE DEATH PENALTY?

13 A. I THINK WE NEED THE DEATH PENALTY TODAY TO DETER
14 CERTAIN CRIMES. AND I AM A PROPONENT. I BELIEVE
15 IN THE DEATH PENALTY. I BELIEVE IF CERTAIN
16 CRITERIA IS MET; I AGREE.

17 Q. AND IF THAT CERTAIN CRITERIA IS MET, COULD YOU
18 CONSIDER ALSO THE IMPOSITION OF A LIFE IMPRISONMENT
19 WITHOUT PAROLE SENTENCE EVEN IF THAT CRITERIA WERE
20 MET? COULD YOU STILL CONSIDER A LIFE---

21 A. IN CERTAIN CIRCUMSTANCES, I COULD CONSIDER THAT;
22 YES.

23 Q. NOW, I UNDERSTAND YOU WERE A POLICE OFFICER FOR
24 SOME TIME?

25 A. YES.

JAMES A. BROOKS, JR. - DIRECT/MR. THEOS

1 Q. BASED UPON YOUR EXPERIENCE AS A POLICE OFFICER AND
2 YOUR CONTACTS AS A POLICE OFFICER, DO YOU HAVE ANY
3 RELATIONSHIPS WITH ANY OF THE POLICE OFFICERS OR
4 LAW ENFORCEMENT OFFICERS THAT WERE CALLED OUT BY
5 THE JUDGE YESTERDAY?

6 A. NO, I DON'T.

7 Q. NOW, YOU'RE NO LONGER IN LAW ENFORCEMENT?

8 A. I LEFT LAW ENFORCEMENT IN 1977.

9 Q. DO YOU FEEL THAT YOU COULD SET ASIDE WHATEVER BIAS
10 YOU MAY HAVE HAD AT THAT TIME IF YOU HAD ANY AS A
11 POLICE OFFICER BECAUSE YOU WERE IN LAW
12 ENFORCEMENT? DO YOU FEEL LIKE YOU COULD SET THAT
13 ASIDE BASED UPON HOW LONG AGO IT WAS AND THE THINGS
14 YOU'VE BEEN DOING SINCE THEN AND REALLY LISTEN TO
15 EVERYTHING THAT THE STATE HAS TO OFFER AS WELL AS
16 EVERYTHING THAT MR. SIMMONS MIGHT HAVE TO OFFER?

17 A. YES.

18 Q. WHY DO YOU CONSIDER YOURSELF A JUROR NUMBER THREE
19 RATHER THAN A NUMBER ONE OR A NUMBER TWO?

20 A. BECAUSE -- WELL, WITHOUT GOING BACK AND JUST
21 LOOKING OVER IT LINE BY LINE, IT SEEMED TO FIT MY
22 WAY OF THINKING MORE. IT LEFT ME SOME VARIATION OF
23 WHAT MY FINDINGS WOULD BE. I'M GUESS I'M NOT QUITE
24 SURE WHICH YOU'RE LOOKING FOR ON THAT, BUT NUMBER
25 THREE SEEMED TO FIT ME MORE THAN NUMBER ONE AND

JAMES A. BROOKS, JR. - CROSS/MR. BAILEY

1 NUMBER TWO.

2 Q. THANK YOU, MR. BROOKS. NO FURTHER QUESTIONS.

3 CROSS-EXAMINATION

4 BY MR. BAILEY:

5 Q. MR. BROOKS, VERY BRIEFLY, IF WE REACH THE SECOND
6 PHASE OF THE TRIAL, THE PENALTY PHASE; DO YOU
7 UNDERSTAND THE JURY AND NOT THE JUDGE DECIDES THE
8 SENTENCE. ALL THE JUDGE DOES IS IMPOSES THAT
9 SENTENCE THAT WILL BE CARRIED OUT?

10 A. YES.

11 Q. AND IF THE CASE WAS BAD ENOUGH, COULD YOU VOTE FOR
12 THE DEATH PENALTY?

13 A. IF CERTAIN CIRCUMSTANCES OR SITUATIONS WAS MET IN
14 MY MIND WHERE I BELIEVE THAT WAS THE RIGHT WAY TO
15 GO; YES, I COULD.

16 Q. OKAY. AND I UNDERSTAND YOU'D WANT TO HEAR ALL THE
17 FACTS AND THE LAW BEFORE YOU REACHED THAT DECISION?

18 A. OH, YES.

19 Q. BUT ASSUMING THAT YOU AND THE OTHER JURORS DID VOTE
20 FOR THE DEATH PENALTY, COULD YOU THEN SIGN THE
21 DEATH VERDICT FORM ALONG WITH THE OTHER JURORS?

22 A. YES.

23 Q. COULD YOU ANNOUNCE THAT DECISION IN OPEN COURT IF
24 THAT WAS YOUR DECISION?

25 A. YES, I COULD.

JAMES A. BROOKS, JR. - CROSS/MR. BAILEY

1 Q. THE JURY IS GOING TO BE PUT IN A MOTEL FOR ABOUT A
2 WEEK WHICH IS A HARDSHIP ON EVERYBODY. IS THAT
3 SOMETHING THAT YOU CAN HANDLE?

4 A. YES.

5 Q. THANK YOU, SIR. THAT'S ALL I HAVE.

6 THE COURT: ANYTHING ELSE?

7 MR. THEOS: NOTHING, YOUR HONOR.

8 THE COURT: WAS MICKEY WATLEY THE
9 CHIEF WHEN YOU WERE IN NORTH CHARLESTON?

10 MR. BROOKS: YES, HE WAS; BUT HE WAS
11 THE DEPUTY CHIEF.

12 THE COURT: DID YOU APPEAR IN MY
13 COURT IN THE FALL OF 1975 WHEN I HELD CIRCUIT COURT
14 IN CHARLESTON?

15 MR. BROOKS: I MAY HAVE, SIR; I
16 DON'T REMEMBER.

17 THE COURT: JUST CURIOUS. ALL
18 RIGHT, MR. BROOKS; YOU HAVE BEEN FOUND QUALIFIED AS
19 A JUROR. YOU'VE NOT BEEN SELECTED BECAUSE THE
20 STRIKE WE HOPE WILL TAKE PLACE AT TWO O'CLOCK
21 TOMORROW OR WEDNESDAY, FEBRUARY THE 24TH. BUT
22 WE'LL HAVE TO SEE WHAT PROGRESS WE MAKE BETWEEN NOW
23 AND THEN. IF YOU'D CALL THAT NUMBER AFTER SIX
24 TODAY THERE WILL BE A RECORDING. AND IF NOT WE
25 KNOW THEN, WE'LL TELL YOU WHEN TO REPORT. IF NOT,

JAMES A. BROOKS, JR. - CROSS/MR. BAILEY

1 WE'LL LEAVE IT AT THAT SAME TIME UNLESS WE GIVE YOU
2 A DIFFERENT TIME. PLEASE COME PREPARED TO VISIT
3 WITH US A FEW DAYS.

4 MS. GRAHAM: NOW, WILL THEY LET ME
5 KNOW BY NAME OR NUMBER IF I CALL THIS NUMBER?

6 THE COURT: THAT RECORDING WILL HAVE
7 ON IT "ALL PERSONS WHO HAVE BEEN DETERMINED TO BE
8 QUALIFIED AS JURORS AT THIS POINT, PLEASE REPORT."
9 AND WE CAN, CHERYL, READ OUT THOSE NUMBERS. THAT
10 MIGHT BE A GOOD THOUGHT BECAUSE THOSE WHO HAVEN'T
11 BEEN QUALIFIED HAVE BEEN EXCUSED.

12 MR. BROOKS: OKAY.

13 THE COURT: BUT THERE MAY BE OTHERS
14 SOME OTHERS WHO ARE ON LATER PANELS THAT ARE
15 CALLING IN. SO MAYBE WE SHOULD ADD THE NUMBERS.
16 BUT SPEAK GOOD ENGLISH. DON'T SPEAK THAT GEECHY
17 (PHONETICALLY SPELLED) LIKE ME. THANK YOU. YOU
18 HAVE A NICE DAY. ALL RIGHT. BRING IN SHANNON
19 MCSWAIN, PLEASE.
20 (JUROR NUMBER 313, A WHITE FEMALE, IS CALLED.)

21 - - - - -

22 WHEREUPON,

23 SHANNON T. MCSWAIN, WHO BEING PREVIOUSLY
24 SWORN TO TELL THE TRUTH, TESTIFIED AS
25 FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HI. HOW ARE YOU, MRS. MCSWAIN?

A. FINE; HOW ARE YOU DOING?

Q. FINE. THANK YOU SO MUCH FOR BEING WITH US. WE APOLOGIZE FOR ANY INCONVENIENCE AS WELL AS THE LATENESS OF THE HOUR. THIS IS MRS. SHANNON LEE MCSWAIN WHO IS JUROR NUMBER 313. MA'AM, DO YOU UNDERSTAND, PLEASE, THAT YOU ARE STILL UNDER OATH THAT WAS GIVEN TO YOU ON YESTERDAY?

A. YES.

Q. AND, MA'AM, IS THERE ANY INFORMATION THAT YOU NEED TO UPDATE ON THIS QUESTIONNAIRE YOU SO KINDLY RETURNED?

A. NO.

Q. AND, MRS. MCSWAIN, ON YESTERDAY DURING A GENERAL QUESTIONING OF THE VENIRE, YOU INDICATED THAT YOU HAD EITHER BEEN A VICTIM OF A CRIME OF VIOLENCE OR IN SOME WAY INVOLVED. COULD YOU TELL US ABOUT THAT?

A. IN 1990 MY SISTER WAS KILLED IN A DRUNK DRIVING ACCIDENT, AND I WAS A WITNESS, AND IT WAS HERE.

Q. I'M SO SORRY. THAT WAS IN 1990?

A. RIGHT.

Q. AND, MA'AM, HAVE YOU READ OR HEARD ANYTHING ABOUT

SHANNON T. MCSWAIN - EXAM. BY THE COURT

1 THIS CASE FROM ANY SOURCE?

2 A. NO.

3 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
4 THE STATE OR THE DEFENDANT?

5 A. NO.

6 Q. HAVE YOU FORMED OR EXPRESSED AN OPINION AS TO THE
7 GUILT OR INNOCENCE OF THE DEFENDANT?

8 A. NO.

9 Q. AND, MA'AM, PLEASE UNDERSTAND I'VE ALREADY GRADED
10 YOUR PAPER. YOU'RE SUMMA CUM LAUDE, A+, EXCELLENT
11 ANSWERS. THERE ARE NO RIGHT OR WRONG ANSWERS, AND
12 WE DON'T MEAN TO DELVE INTO YOUR PRIVATE, PERSONAL
13 VIEWS; BUT IT'S NECESSARY BEFORE WE STRIKE THIS
14 JURY THAT WE HAVE SOME NOTION ABOUT YOUR
15 QUALIFICATIONS AND YOUR VIEWS ON CERTAIN THINGS.
16 SO PLEASE UNDERSTAND THIS IS A NECESSARY EVIL YOU
17 MIGHT SAY.

18 A. OKAY.

19 Q. NOW, MRS. MCSWAIN, THE LAW IN THIS STATE IS THAT
20 EVERY DEFENDANT THAT COMES INTO THIS COURT,
21 REGARDLESS OF THE NATURE OR ENORMITY OF THE CHARGE
22 MADE AGAINST HIM OR HER IS ALWAYS THOUGHT OR
23 PRESUMED TO BE INNOCENT OF THOSE CHARGES UNTIL OR
24 UNLESS THE STATE REMOVES THAT PRESUMPTION OF
25 INNOCENCE BY EVIDENCE SATISFYING THE JURY OF THE

SHANNON T. MCSWAIN - EXAM. BY THE COURT

1 GUILT BEYOND A REASONABLE DOUBT OF THE DEFENDANT.
2 DO YOU UNDERSTAND THAT?

3 A. YES.

4 Q. AND, PLEASE MA'AM, A DEFENDANT IS NEVER REQUIRED TO
5 PROVE HIMSELF INNOCENT. THE DEFENDANT IS NEVER
6 REQUIRED TO TAKE THE WITNESS STAND. AND IF THE
7 DEFENDANT DOES NOT TAKE THE WITNESS STAND, THE JURY
8 WILL BE INSTRUCTED THAT THEY MUST NOT CONSIDER THAT
9 IN ANY MANNER WHATSOEVER. IT RAISES NO INFERENCE
10 OF PRESUMPTION FOR OR AGAINST THE GUILT OR INNOCENT
11 OF THE DEFENDANT. AND THAT FACT OF NOT TAKING THE
12 WITNESS STAND BY THE DEFENDANT MUST NOT ENTER INTO
13 THE DISCUSSIONS OR DELIBERATIONS IN ANY MANNER
14 WHATSOEVER. NORMALLY THE JUDGE IN EVERY CASE
15 EXCEPT IN A DEATH PENALTY CASE HAS THE
16 RESPONSIBILITY FOR SENTENCING. BUT IN A DEATH
17 PENALTY MURDER CASE, THE JURY IS ASKED FOR A
18 RECOMMENDATION. THERE ARE TWO RECOMMENDATIONS.
19 ONE IS THAT OF LIFE IMPRISONMENT WITHOUT PAROLE OR
20 THE DEATH PENALTY EITHER ELECTROCUTION OR LETHAL
21 INJECTION. AND A DEFENDANT HAS THAT CHOICE IF YOU
22 GET TO THAT POINT. BUT AT THE CLOSE OF THE GUILT
23 PHASE, THERE WILL BE A 24 HOUR WAITING PERIOD.
24 THEN WE WOULD START THE PENALTY PHASE. THE STATE
25 REPRESENTED BY THE SOLICITOR WOULD BE REQUIRED TO

SHANNON T. MCSWAIN - EXAM. BY THE COURT

1 PROVE BEYOND A REASONABLE DOUBT STATUTORY
2 AGGRAVATING CIRCUMSTANCES. AND THOSE THAT YOU WILL
3 BE ALLOWED TO CONSIDER WOULD BE FOR ARMED ROBBERY,
4 BURGLARY, KIDNAPPING, OR CRIMINAL SEXUAL CONDUCT.
5 AND THE STATE MUST PROVE THAT THE MURDER WAS
6 COMMITTED WHILE IN THE COURSE OF COMMITTING ONE OF
7 THOSE FOUR CRIMES; THAT THE DEFENDANT COMMITTED
8 MURDER UPON THE VICTIM IN THIS CASE, MRS. LILLY
9 BELL BOYD. NOW, IF THE STATE PROVES BEYOND A
10 REASONABLE DOUBT A STATUTORY AGGRAVATING
11 CIRCUMSTANCE, THE JURY BY UNANIMOUS VERDICT MAY
12 RECOMMEND THE DEATH PENALTY. AND THE DEFENDANT IS
13 ALLOWED TO OFFER MITIGATING OR LESSENING OR
14 MINIMIZING THE RECOMMENDATION FROM A DEATH PENALTY
15 DOWN TO LIFE IMPRISONMENT WITHOUT PAROLE. THE
16 DEFENDANT DOESN'T HAVE TO PUT UP ANY TESTIMONY.
17 THE OPTION IS HIS. THE JURY MAY FURTHER, MA'AM,
18 RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE AS AN
19 ACT OF MERCY. IT DOESN'T HAVE TO BE A REASON WHY
20 THE JURY CONCLUDED THAT WAS THE APPROPRIATE
21 SENTENCE. BUT OTHER THAN THE TWELVE OF THEM
22 COLLECTIVELY AND UNANIMOUSLY CAME TO THAT
23 CONCLUSION. DO YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. NOW, MRS. SHANNON LEE MCSWAIN, YOU WERE GIVEN A

SHANNON T. MCSWAIN - DIRECT/MR. BAILEY

1 DOCUMENT WHEN YOU WENT INTO THE JURY ROOM EARLIER
2 TODAY, AND IT LISTED TYPES ONE, TWO, AND THREE OF
3 JURORS. HAVE YOU HAD AN OPPORTUNITY TO REVIEW AND
4 DIGEST THAT?

5 A. YES.

6 Q. AND DO YOU, MA'AM -- WHICH OF THOSE THREE TYPES
7 WOULD YOU PLACE YOURSELF?

8 A. NUMBER THREE.

9 Q. NUMBER THREE?

10 A. YES, SIR.

11 Q. ALL RIGHT. THANK YOU.

12 THE COURT: YOU MAY EXAMINE.

13 DIRECT EXAMINATION

14 BY MR. THEOS:

15 Q. MRS. MCSWAIN, GOOD AFTERNOON. I'M JERRY THEOS.

16 MR. BAILEY: EXCUSE ME. I BELIEVE
17 IT'S MY TURN. GO AHEAD. IT DOESN'T MATTER.

18 MR. THEOS: I'M SORRY. GO AHEAD,
19 MR. BAILEY.

20 MR. BAILEY: THANK YOU.

21 MR. THEOS: SORRY, YOUR HONOR. I
22 APOLOGIZE IF I WENT OUT OF TURN.

23 DIRECT EXAMINATION

24 BY MR. BAILEY:

25 Q. MRS. MCSWAIN, I'M WALTER BAILEY. I WANT TO ASK YOU

SHANNON T. MCSWAIN - DIRECT/MR. BAILEY

1 A COUPLE OF QUESTIONS BEFORE I ASK YOU ABOUT THE
2 DEATH PENALTY QUESTIONS. I NOTICE IN YOUR
3 QUESTIONNAIRE YOU'VE GOT A TEN WEEK OLD SON?

4 A. HE'S THREE-AND-A-HALF MONTHS.

5 Q. OKAY. WHEN YOU FILLED IT OUT, TEN WEEKS?

6 A. YES.

7 Q. THE JURY WILL BE PUT IN A MOTEL FOR ABOUT A WEEK
8 UNTIL THIS TRIAL IS OVER. IS THAT SOMETHING THAT
9 YOU CAN ACCOMMODATE WITH YOUR SON THAT AGE?

10 A. IT WOULD BE DIFFICULT. BUT, I MEAN, IF I HAD TO I
11 COULD. I HAVE LOT OF FAMILY THAT LIVES HERE.

12 Q. ALL RIGHT.

13 THE COURT: MA'AM, I HAVE A
14 GRANDDAUGHTER SEVEN MONTHS OLD. MY DAUGHTER IS
15 NURSING. ARE YOU NURSING THE CHILD?

16 MRS. MCSWAIN: NO.

17 THE COURT: EXCUSE ME. I DIDN'T
18 MIND ASKING THAT, BUT THESE YOUNGER LAWYERS MAY NOT
19 HAVE WANTED TO ASK YOU.

20 Q. MRS. MCSWAIN, AS FAR AS THE DEATH PENALTY
21 QUESTIONS; YOU UNDERSTAND WE WOULDN'T EVEN GET TO
22 THAT POINT UNLESS AND UNTIL THE DEFENDANT IS FOUND
23 GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL?

24 A. YES, SIR.

25 Q. AND THE PURPOSE OF HAVING THAT SECOND PHASE, THE

SHANNON T. MCSWAIN - DIRECT/MR. BAILEY

1 PENALTY PHASE, IS TO ALLOW ADDITIONAL EVIDENCE TO
2 COME OUT. I'D BE INTRODUCING EVIDENCE IN
3 AGGRAVATION ON BEHALF OF THE STATE TRYING TO
4 PERSUADE THE JURY THAT THE DEATH PENALTY WAS THE
5 APPROPRIATE SENTENCE. THE DEFENSE, IF THEY WISHED
6 TO, CAN PUT UP EVIDENCE IN MITIGATION. THEY DON'T
7 HAVE TO, BUT THEY CAN. THEY'D BE ARGUING FOR LIFE
8 WITHOUT PAROLE. JUDGE PEEPLES WOULD INSTRUCT THE
9 JURY, TELL THEM WHAT THE LAW IS THAT APPLIES TO
10 THAT PART OF THE PROCESS. AND THE JURY WOULD THEN
11 GO BACK AND DELIBERATE, AND THEY WOULD VOTE FOR
12 LIFE WITHOUT PAROLE OR THE DEATH PENALTY. AND EVEN
13 THOUGH WE USE THE WORD "RECOMMENDATION," IT ISN'T
14 REALLY A RECOMMENDATION BECAUSE THE JUDGE IS GOING
15 TO DO WHATEVER THE JURY'S VOTE IS. IF THE JURY
16 VOTES FOR THE DEATH PENALTY, THAT DEFENDANT WILL BE
17 EXECUTED. IF THEY VOTE FOR LIFE WITHOUT PAROLE,
18 HE'LL GO TO PRISON FOR THE REST OF HIS LIFE. NOW,
19 NOBODY IS GOING TO ASK YOU TO PREDICT WHAT YOU
20 WOULD DO IF YOU WERE PICKED AS A JUROR IN THIS CASE
21 BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. BUT IF
22 THE FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE
23 DEATH PENALTY KNOWING THAT SENTENCE ACTUALLY WOULD
24 BE CARRIED OUT; THAT PERSON WOULD BE EXECUTED?

25 A. I WAS THINKING ABOUT THAT YESTERDAY. I REALLY

1 WOULD HAVE TO HEAR IT.

2 Q. OKAY. AND AGAIN I'M NOT ASKING YOU TO GIVE US ANY
3 KIND OF AN INDICATION WHAT YOU WOULD DO IN THIS
4 CASE. MY QUESTION IS IF THE CASE WERE BAD ENOUGH,
5 COULD YOU VOTE FOR THE DEATH PENALTY?

6 A. YES.

7 Q. IF ALL TWELVE JURORS VOTE FOR THE DEATH PENALTY,
8 THERE'S A VERDICT FORM, A DEATH VERDICT FORM, THAT
9 EACH JUROR IS ASKED TO SIGN THEIR NAMES TO. IF ALL
10 TWELVE JURORS VOTED FOR THE DEATH PENALTY AND YOU
11 WERE ONE OF THOSE TWELVE JURORS, COULD YOU SIGN
12 THAT PAPER?

13 A. DO WE HAVE TO SIGN IT; IS THAT WHAT YOU'RE SAYING;
14 WE HAVE TO SIGN IT?

15 Q. WELL, YOU DON'T HAVE TO DO ANYTHING. BUT IF THE
16 JURY VOTES FOR THE DEATH PENALTY, IN ORDER TO PUT
17 THAT VOTE INTO EFFECT, THE NEXT STEP IN THE PROCESS
18 IS THERE WOULD BE A DEATH VERDICT FORM THAT EACH
19 JUROR WOULD BE ASKED TO SIGN THEIR NAMES TO AFTER
20 THE VOTE?

21 A. YES; IF WE HAD TO.

22 Q. AND, AGAIN, YOU DON'T HAVE TO DO ANYTHING. IT'S
23 JUST PART OF THE PROCESS.

24 A. OKAY.

25 Q. THE OTHER PART OF THE PROCESS WOULD BE IF THE

JURORS VOTE FOR THE DEATH PENALTY, SIGN THE PAPER,
THE DEATH VERDICT FORM. THEY'D COME OUT HERE, AND
THEY'D BE SEATED OUT HERE; AND EACH JUROR'S NAME
WOULD BE CALLED OUT ONE AT A TIME, AND THEY'RE
ASKED TO AFFIRM OUT LOUD IF THAT'S THEIR VERDICT.
COULD YOU DO THAT IF IT WAS YOUR VERDICT?

A. YES; I GUESS I COULD. I REALLY DON'T KNOW.

Q. I'M NOT ASKING YOU WHAT YOU WOULD DO IN THIS CASE
BECAUSE YOU HAVEN'T HEARD THE FACTS. BUT IF YOU
VOTED FOR THE DEATH PENALTY; IF IT WAS BAD ENOUGH
FOR THE DEATH PENALTY IN YOUR OPINION, AND YOU
SIGNED THE VERDICT FORM; COULD YOU ALSO SAY OUT
LOUD THAT'S WHAT YOU HAD DONE?

A. YES.

Q. ALL RIGHT. IS THERE ANY REASON THAT YOU CAN THINK
OF, ANY REASON AT ALL THAT YOU THINK MIGHT PREVENT
YOU FROM SITTING AS A FAIR AND IMPARTIAL JUROR FOR
BOTH SIDES, THE STATE AND THE DEFENDANT?

A. NO.

Q. MRS. MCSWAIN, THAT'S ALL I'VE GOT. THANK YOU VERY
MUCH.

THE COURT: MR. THEOS, WOULD YOU
LIKE TO QUESTION THIS LADY?

MR. THEOS: YES; JUST A COUPLE OF
QUESTIONS.

CROSS-EXAMINATIONBY MR. THEOS:

Q. MRS. MCSWAIN, I'M SORRY FOR JUMPING UP EARLIER. I'M JERRY THEOS. THIS IS JIM BELL. HE AND I ARE THE LAWYERS REPRESENTING MR. SIMMONS. THANK YOU FOR COMING, AND THANK YOU FOR BEING HONEST. THIS IS OUR ONLY OPPORTUNITY TO TALK TO YOU, TO TALK TO ANY OF THE JURORS, TO FIND OUT WHAT YOUR TRUE FEELINGS ARE. SO WE APPRECIATE YOUR BEING CANDID AND HONEST WITH US. AS THE JUDGE TOLD YOU, IT'S A LITTLE AWKWARD TALKING ABOUT PENALTY BEFORE THE GUILT OR INNOCENCE. IN THIS CASE AS MR. SIMMONS SITS HERE, YOU OF COURSE UNDERSTAND THAT HE'S PRESUMED TO BE INNOCENT IN SPITE OF THE FACT HE'S BEEN CHARGED, INDICTED, AND IS ON TRIAL? DO YOU UNDERSTAND THAT HE'S INNOCENT?

A. YES, SIR.

Q. AND YOU UNDERSTAND THAT JUST BECAUSE THE STATE IS SEEKING THE DEATH PENALTY AGAINST MR. SIMMONS THAT THAT IN NO WAY SUGGESTS ANYTHING ABOUT HIS GUILT OR INNOCENCE. THAT PRESUMPTION OF INNOCENCE IS STILL THERE. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND BEFORE WE COULD GET TO THIS STAGE -- AND YOU WERE ADVISED THAT THERE WERE TWO PHASES, TWO

SHANNON T. MCSWAIN - CROSS/MR. THEOS

1 POTENTIAL PHASES. ONE WOULD BE THE GUILT PHASE.
2 AND THAT IS WHERE THE GUILT OR INNOCENCE OF MR.
3 SIMMONS WOULD BE DETERMINED AND THEN THE PENALTY
4 PHASE. BUT BEFORE WE COULD GET TO THE PENALTY
5 PHASE, MR. SIMMONS WOULD HAVE TO BE DETERMINED
6 GUILTY. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. AND OBVIOUSLY IF HE WERE FOUND NOT GUILTY, WE
9 WOULDN'T PROCEED TO THAT STAGE.

10 A. RIGHT.

11 Q. NOW, THE STATE HAS THE BURDEN OF PROVING MR.
12 SIMMONS GUILTY BEYOND A REASONABLE DOUBT. DO YOU
13 FEEL THAT YOU COULD AND YOU WOULD HOLD THE STATE TO
14 THAT BURDEN OF PROVING TO YOU AS A JUROR BEYOND A
15 REASONABLE DOUBT THAT MR. SIMMONS, OR ANY CRIMINAL
16 DEFENDANT, WERE GUILTY?

17 A. YES.

18 Q. OKAY. NOW, ONCE WE -- ASSUMING FOR ARGUMENT SAKE
19 THAT MR. SIMMONS WERE FOUND GUILTY, WE WOULD THEN
20 MOVE INTO THE SECOND PHASE. AND AS I UNDERSTAND
21 YOUR RESPONSES TO THE JUDGE'S QUESTIONS AND MR.
22 BAILEY'S, YOU WOULD LISTEN TO ALL OF THE
23 AGGRAVATING FACTORS THAT MR. BAILEY MIGHT OFFER TO
24 TRY TO PERSUADE YOU THAT THE DEATH PENALTY WAS MORE
25 APPROPRIATE. AND YOU WOULD LISTEN TO ALL THOSE

SHANNON T. MCSWAIN - RE-DIRECT/MR. BAILEY

1 MITIGATING FACTORS THAT MR. BELL AND I MIGHT OFFER
2 ON BEHALF OF MR. SIMMONS; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. NOW, MITIGATION IS KIND OF A FUNNY WORD AND A
5 SOMEWHAT UNUSUAL WORD. BUT ALL IT REALLY MEANS IS
6 THAT MR. BELL AND I WOULD BE OFFERING EVIDENCE TO
7 TRY TO PERSUADE YOU AND THE OTHER JURORS WHY LIFE
8 IMPRISONMENT WITHOUT PAROLE WOULD BE MORE
9 APPROPRIATE THAN THE DEATH PENALTY. DO YOU FEEL
10 THAT COULD CONSIDER THOSE THINGS THAT WE MIGHT
11 OFFER YOU AS WELL AS THOSE THINGS THAT MR. BAILEY
12 MIGHT OFFER YOU BEFORE YOU MAKE A DECISION AS TO
13 WHAT SENTENCE IS THE MOST APPROPRIATE ONE?

14 A. YES.

15 Q. THANK YOU VERY MUCH.

16 MR. BAILEY: YOUR HONOR, CAN I ASK
17 ONE MORE QUESTION THAT I FORGOT TO ASK INITIALLY?

18 THE COURT: SURE.

19 RE-DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. MRS. MCSWAIN, I NOTICE IN YOUR QUESTIONNAIRE YOU
22 ATTEND THE CATHOLIC CHURCH WEEKLY?

23 A. YES.

24 Q. DO YOU HAVE ANY RELIGIOUS BELIEFS ABOUT THE DEATH
25 PENALTY?

SHANNON T. MCSWAIN - RE-DIRECT/MR. BAILEY

1 A. I GUESS I WOULD JUST HAVE TO HEAR ALL THE FACTS OF
2 A CASE.

3 Q. OKAY.

4 A. I MEAN I DO HONESTLY HAVE THOUGHTS THAT WHO ARE WE
5 TO DECIDE SOMEONE'S, YOU KNOW, DEATH. BUT THEN I
6 ALSO THINK THAT I WOULDN'T LIKE TO BE RESPONSIBLE
7 IF IT HAPPENED AGAIN. SO I GUESS I WOULD JUST
8 REALLY HAVE TO HEAR THE CASE. I DON'T HAVE -- I
9 KNOW THE CATHOLIC CHURCH IS AGAINST THE DEATH
10 PENALTY. BUT, YOU KNOW, I'M NOT STRICTLY---

11 Q. THAT'S REALLY WHAT I WAS TRYING TO GET AT; WHETHER
12 OR NOT THE CATHOLIC CHURCH'S POSITION ON THE DEATH
13 PENALTY WOULD IN ANY WAY AFFECT YOUR ABILITY TO
14 FAIRLY CONSIDER THAT SENTENCE AN OPTION.

15 A. ARE YOU ASKING ME?

16 Q. YES, MA'AM.

17 A. NO, I WOULDN'T.

18 Q. THANK YOU VERY MUCH. THAT'S ALL I HAVE.

19 THE COURT: MRS. MCSWAIN, I WANT TO
20 THANK YOU FOR YOUR WILLINGNESS TO SERVE ON A JURY
21 WITH A TEN WEEK OLD CHILD. I JUST THINK THAT'S A
22 NOBLE SACRIFICE ON YOUR PART. YOU HAVE BEEN FOUND
23 TO BE QUALIFIED. WHETHER OR NOT YOU'LL BE SELECTED
24 WILL BE DETERMINED HOPEFULLY TOMORROW AT TWO
25 O'CLOCK. THAT'S WHEN I'M GOING TO HAVE ALL THE

SHANNON T. MCSWAIN - RE-DIRECT/MR. BAILEY

1 QUALIFIED JURORS REPORT BACK UNLESS WE GET BOGGED
2 DOWN TODAY AND DON'T MAKE PROGRESS THAT I HOPE WE
3 WILL MAKE BECAUSE WE STILL HAVE A NUMBER OF
4 PANELS. I THINK THE LAST PANEL IS COMING IN AT
5 SIX O'CLOCK. SO WE'RE GOING TO WORK LATE THIS
6 EVENING. BUT YOU GO AHEAD ABOUT YOUR BUSINESS
7 TODAY AND MAKE THOSE ARRANGEMENTS. AND YOU CALL
8 THAT NUMBER, AND WE'LL LET YOU KNOW IF IT'S A
9 DIFFERENT TIME FOR YOU TO REPORT. AND IF IT IS, IF
10 YOU ARE SELECTED, YOU WILL REMAIN WITH US AND WE'LL
11 SEND YOU TO YOUR MOTEL, THE HOLIDAY INN, TO GET
12 COMFORTABLE. AND THEN WE'LL START THE TRIAL OF THE
13 CASE. AND IT COULD LAST FIVE, SIX, OR SEVEN DAYS.
14 I'M NOT SURE. THANK YOU SO MUCH. PLEASE DON'T
15 DISCUSS THE CASE OR READ ANYTHING ABOUT IT OR ALLOW
16 ANYONE TO INFLUENCE YOU AS TO WHAT YOUR FAIR AND
17 JUST VERDICT SHOULD BE. THANK YOU. ALL RIGHT,
18 GENTLEMEN; LET'S DO ONE MORE. IS THE FOOD HERE?

19 THE BAILIFF: YES, SIR.

20 THE COURT: LET'S SQUEEZE ONE MORE
21 IN BEFORE WE BREAK. MAY WE?

22 MR. BAILEY: YES, SIR.

23 THE BAILIFF: JAN WHITMORE?

24 THE COURT: YES, MA'AM.

25 (JUROR NUMBER 335, A WHITE FEMALE, IS CALLED.)

JAN H. WHITMORE - EXAM. BY THE COURT

1

- - - - -

2

WHEREUPON,

3

JAN H. WHITMORE, WHO BEING PREVIOUSLY

4

SWORN TO TELL THE TRUTH, TESTIFIED AS

5

FOLLOWS:

6

EXAMINATION

7

BY THE COURT:

8

Q. HOW DO YOU DO, MA'AM. THANK YOU VERY KINDLY FOR
BEING WITH US, MRS. JAN HARPER WHITMORE, JUROR
NUMBER 335. MRS. WHITMORE, WE ORDERED FOOD. IT
CAME AT TWO O'CLOCK. AND WE'RE ALL READY TO EAT.
BUT WE THOUGHT WE'D TAKE YOU UP SO YOU COULD GO
ABOUT YOUR BUSINESS. YOU'RE STILL UNDER OATH. YOU
WERE GIVEN AN OATH ON YESTERDAY. DO YOU UNDERSTAND
THAT?

16

A. YES, SIR.

17

Q. AND, MA'AM, IS THERE ANYTHING ABOUT THIS
QUESTIONNAIRE THAT YOU WOULD LIKE TO UPDATE OR
CHANGE? IS IT STILL ACCURATE AND CORRECT?

19

20

A. I BELIEVE SO.

21

Q. AND, MA'AM, I NOTED YESTERDAY THAT YOU STOOD WHEN
THE INQUIRY WAS MADE AS TO WHETHER YOU HAD SEEN,
HEARD, OR READ ANYTHING ABOUT THIS CASE. DO YOU
WANT TO TELL US ABOUT THAT?

22

23

24

25

A. SHORTLY ABOUT THE TIME WE MOVED HERE THERE WAS SOME

JAN H. WHITMORE - EXAM. BY THE COURT

1 -- AND I'M NOT EVEN SURE IT'S THE SAME CASE -- I
2 VAGUELY REMEMBER AN ELDERLY WOMAN; AND I THINK HER
3 NAME WAS LILLY OR LILLIAN IN A LITTLE WHITE HOUSE.
4 AND THAT'S ALL I CAN REMEMBER.

5 Q. ALL RIGHT. AND, MA'AM, AS A RESULT OF YOUR -- AND
6 I COMMEND YOU FOR YOUR RECOLLECTION BECAUSE THAT
7 WAS IN DECEMBER OF '96, I BELIEVE. BUT AS A RESULT
8 OF ANYTHING YOU MAY HAVE READ OR HEARD ABOUT THIS
9 CASE, HAVE YOU FORMED AN OPINION AS TO THE GUILT OR
10 INNOCENCE OF THE DEFENDANT?

11 A. NO, SIR.

12 Q. HAVE YOU EXPRESSED OR DO YOU HAVE ANY BIAS OR
13 PREJUDICE FOR OR AGAINST THE STATE OR THE
14 DEFENDANT?

15 A. NO, SIR.

16 Q. AND DO YOU THINK YOU COULD GIVE A FAIR TRIAL,
17 MA'AM, BOTH TO THE STATE AND TO THE DEFENDANT?

18 A. YES, SIR.

19 Q. AND YOU INDICATED FURTHER DURING THE QUESTIONING,
20 MA'AM, THAT YOU HAD BEEN INVOLVED WITH SOME FRIEND
21 OR MEMBER OF YOUR FAMILY WITH A CRIME INVOLVING
22 VIOLENCE. AND I NOTE ON YOUR RETURN IN ANSWER TO
23 QUESTION NUMBER TWELVE: "HAVE YOU OR A MEMBER OF
24 YOUR FAMILY OR CLOSE FRIEND BEEN A VICTIM OF A
25 CRIME?" YOU CHECKED YES. BUT THEY HAVE NOT BEEN

JAN H. WHITMORE - EXAM. BY THE COURT

1 BROUGHT TO TRIAL. COULD YOU TELL US ABOUT THAT,
2 PLEASE?

3 A. I FEEL KIND OF SILLY. IT'S BEEN YEARS AGO. AND MY
4 HUSBAND'S CAR WAS STOLEN FROM ARBY'S. AND THERE
5 WAS A CAR THIEF RING THAT WAS GOING AROUND; AND THE
6 CAR WAS RECOVERED FOUR YEARS LATER RIGHT BEFORE WE
7 MOVED HERE.

8 Q. WAS THAT IN [REDACTED], [REDACTED]?

9 A. NO; IT WAS IN [REDACTED] [REDACTED]; AND IT TOOK FOUR
10 YEARS FOR THEM TO FIND THE CAR. AND THEY PULLED IT
11 FROM THE BOTTOM OF A LAKE. AND THEY SUSPECT THE
12 SAME THREE BOYS; BUT IT'S JUST KIND OF AN ONGOING
13 INVESTIGATION. SO THAT WAS WHAT THAT WAS.

14 Q. WOULD THE FACT THAT YOUR HUSBAND'S CAR HAD BEEN
15 STOLEN AND THE CULPRITS NEVER CAUGHT, WOULD THAT IN
16 ANY WAY INTERFERE WITH YOUR ABILITY TO GIVE A FAIR
17 TRIAL TO BOTH THE STATE AND THE---

18 A. NO. HE SHOULDN'T HAVE LEFT THE KEYS IN THE CAR.

19 Q. I HOPE YOU REMINDED HIM OF THAT.

20 A. YES.

21 Q. I BET YOU DID. AND, MA'AM, PLEASE UNDERSTAND THAT
22 UNDER OUR SYSTEM IN SOUTH CAROLINA AND THESE UNITED
23 STATES THAT EVERY DEFENDANT, REGARDLESS OF THE
24 ENORMITY OF THE CHARGE MADE AGAINST HIM OR HER IS
25 ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE

JAN H. WHITMORE - EXAM. BY THE COURT

1 CHARGES UNTIL OR UNLESS THE STATE REMOVES THAT
2 PRESUMPTION OF INNOCENCE BY EVIDENCE SATISFYING THE
3 JURY UNANIMOUSLY OF THEIR GUILT BEYOND A REASONABLE
4 DOUBT. FURTHERMORE, A DEFENDANT DOES NOT HAVE TO
5 PROVE HIMSELF INNOCENT BECAUSE EVERY DEFENDANT IS
6 PRESUMED OR THOUGHT IN THE EYES OF THE LAW TO BE
7 INNOCENT. THE DEFENDANT DOES NOT HAVE TO TAKE THE
8 WITNESS STAND. IF THE DEFENDANT DECIDED NOT TO
9 TAKE THE WITNESS STAND, THE JURY WOULD BE
10 INSTRUCTED THAT THE FAILURE OF A DEFENDANT TO
11 TESTIFY RAISES NO INFERENCE OR PRESUMPTION FOR OR
12 AGAINST THE GUILT OR INNOCENCE OF THE DEFENDANT,
13 AND THE JURY MUST NOT ALLOW THAT FACT TO ENTER INTO
14 THEIR DELIBERATIONS IN ANY MANNER WHATSOEVER. DO
15 YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. AND, MA'AM, THIS IS A CAPITAL MURDER CASE WHERE
18 THERE ARE TWO OPTIONS. ONE OF THE OPTIONS WOULD BE
19 A RECOMMENDATION OF DEATH EITHER BY LETHAL
20 INJECTION OR ELECTROCUTION. THE DEFENDANT, IF IT
21 GETS TO THAT POINT, WOULD MAKE THAT DECISION. THE
22 JURY RECOMMENDATION WOULD BE ONE FOR DEATH PENALTY
23 OR A RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT
24 PAROLE. NOW IT'S ODD THAT HERE WE ARE SPEAKING OF
25 PENALTIES WHEN THERE'S BEEN NO TESTIMONY IN THIS

JAN H. WHITMORE - EXAM. BY THE COURT

1 TRIAL. BUT, MA'AM, THIS IS THE ONLY OPPORTUNITY
2 THAT THE ATTORNEYS AND THE COURT WOULD HAVE TO
3 INQUIRE AS TO YOUR VIEWS ON CERTAIN MATTERS.
4 PLEASE UNDERSTAND YOU ARE SUMMA CUM LAUDE GRADUATE,
5 ALL A'S. ALL YOUR ANSWERS ARE CORRECT. THERE'S NO
6 SUCH THING AS A RIGHT OR WRONG ANSWER BECAUSE
7 WHATEVER YOUR VIEW IS, YOU'RE CERTAINLY ENTITLED TO
8 THAT VIEW. AND WE, THE COURT, AND THE LAWYERS
9 RESPECT YOUR VIEWS ON ANY SUBJECT BECAUSE THAT'S
10 THE FREEDOM THAT WE ALL HAVE IN AMERICA AMONG
11 OTHERS. SO, MA'AM, IN THE EVENT THAT THE STATE
12 PROVES THE GUILT OF THE DEFENDANT BEYOND A
13 REASONABLE DOUBT IN A MURDER CASE, THAT'S CALLED
14 THE GUILT PHASE. WE WOULD HAVE A 24 HOUR HIATUS,
15 THEN WE WOULD GO TO THE PENALTY PHASE. IN THE
16 PENALTY PHASE THE STATE IS REQUIRED TO PROVE BEYOND
17 A REASONABLE DOUBT THAT THE MURDER OCCURRED DURING
18 ONE OR MORE OF FOUR OPTIONS OF STATUTORY
19 AGGRAVATING CIRCUMSTANCES OF A MURDER WHILE IN THE
20 COMMISSION OF A BURGLARY, BREAKING AND ENTERING IN
21 THE PERSONAL HOME OF ANOTHER IN THE NIGHTTIME WITH
22 THE INTENT TO COMMIT A CRIME OR KIDNAPPING OR ARMED
23 ROBBERY OR CRIMINAL SEXUAL CONDUCT. NOW, IF THE
24 JURY SHOULD FIND BEYOND A REASONABLE DOUBT ONE OR
25 MORE OF THOSE STATUTORY AGGRAVATING CIRCUMSTANCES,

JAN H. WHITMORE - EXAM. BY THE COURT

1 THEN THE JURY COULD RECOMMEND -- MAY -- THAT'S
2 PERMISSIVE; NOT MANDATORY -- YOU MAY VOTE AND
3 RECOMMEND THE DEATH PENALTY. DURING THE PENALTY
4 PHASE THE DEFENDANT IS AFFORDED THE OPPORTUNITY TO
5 OFFER MITIGATING EVIDENCE, LESSENING OF THE
6 RECOMMENDATION. AND YOU MAY FIND THAT THERE ARE
7 MITIGATING CIRCUMSTANCES AND MAY RECOMMEND LIFE
8 IMPRISONMENT WITHOUT PAROLE. YOU MAY AS A
9 RECOMMENDATION OF MERCY RECOMMEND AS A JUROR LIFE
10 IMPRISONMENT WITHOUT PAROLE EVEN THOUGH THE STATE
11 HAD PROVEN BEYOND A REASONABLE DOUBT ONE OR MORE OF
12 THE STATUTORY AGGRAVATING CIRCUMSTANCES. DO YOU
13 UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. AND, MA'AM, HAVE YOU HAD THE OPPORTUNITY TO REVIEW
16 THAT FORM THAT LISTS THE JUROR TYPES ONE, TWO, AND
17 THREE, MRS. WHITMORE?

18 A. YES, SIR.

19 Q. UNDER WHICH CATEGORY DO YOU FEEL THAT YOU WOULD
20 BELONG?

21 A. NUMBER THREE.

22 Q. NUMBER THREE?

23 A. YES, SIR.

24 Q. AND, MA'AM, IF YOU ARE SELECTED TO SERVE ON THIS
25 JURY, IS THERE ANY SITUATION THAT YOU SHOULD SHARE

JAN H. WHITMORE - DIRECT/MR. THEOS

1 WITH US THAT WOULD CAUSE AN UNDUE UNTENABLE
2 HARDSHIP? WE REALIZE THAT YOU'D BE AWAY FROM YOUR
3 FIVE CHILDREN AND YOUR HUSBAND AND YOUR FAMILY AND
4 YOUR FRIENDS AND YOUR WORK. IT'S A TERRIBLE
5 IMPOSITION AND INCONVENIENCE, BUT WE CAN'T HAVE A
6 JURY TRIAL WITHOUT LADIES AND GENTLEMEN WHO ARE
7 CIVIC-MINDED AND ACKNOWLEDGE THEIR DUTY TO SERVE IN
8 THE THIRD BRANCH OF GOVERNMENT AS A JUROR DURING A
9 TRIAL OF THE CASE WHETHER CRIMINAL OR CIVIL. BUT
10 IS THERE ANYTHING ABOUT YOUR HEALTH OR YOUR
11 BUSINESS OR YOUR FAMILY SITUATION THAT YOU NEED TO
12 BRING TO OUR ATTENTION THAT WOULD JUST RENDER IT
13 IMPOSSIBLE FOR YOU TO SERVE ON THE JURY?

14 A. NO, SIR.

15 Q. ALL RIGHT. THANK YOU.

16 THE COURT: ALL RIGHT, GENTLEMEN;
17 BRIEFLY.

18 DIRECT EXAMINATION

19 BY MR. THEOS:

20 Q. MRS. WHITMORE, I'M JERRY THEOS. AND THIS IS JIM
21 BELL. HE AND I ARE THE LAWYERS FOR MR. KENNETH
22 SIMMONS WHO'S SEATED NEXT TO MR. BELL. AND WE
23 THANK YOU FOR BEING HERE, AND WE'RE SORRY IF WE
24 KEPT YOU WAITING. AS THE JUDGE SAID, WE JUST WANT
25 TO TALK WITH YOU ABOUT A FEW THINGS AND FIND OUT

JAN H. WHITMORE - DIRECT/MR. THEOS

1 WHAT YOUR FEELINGS ARE ABOUT CERTAIN THINGS BEFORE
2 A DECISION IS MADE AS TO WHICH JURORS SHOULD BE
3 SEATED IN THE CASE. AND AS THE JUDGE SAID, IT IS A
4 LITTLE BIT ODD. IT'S A LITTLE BIT ODD THAT WE'RE
5 TALKING WITH YOU ABOUT PENALTIES WHEN THE ISSUE OF
6 GUILT HASN'T BEEN DETERMINED YET. DO YOU
7 UNDERSTAND -- AND I KNOW YOU DO -- BUT DO YOU
8 ATTACH ANY SIGNIFICANCE TO THE FACT THAT WE'RE
9 TALKING ABOUT PENALTY BEFORE A DECISION IS MADE AS
10 TO GUILT?

11 A. I UNDERSTAND WHY THAT WOULD -- IN MY OPINION, THERE
12 IS NO WAY TO SAY NUMBER ONE IF HE'S GUILTY OR
13 INNOCENT UNTIL YOU HEAR THE FACTS. NUMBER TWO; TO
14 IMPOSE EITHER SENTENCE, YOU COULDN'T DO UNTIL YOU
15 HEARD EVERYTHING ANYWAY.

16 Q. RIGHT. AND THE ONLY OTHER WAY -- I DON'T KNOW HOW
17 ELSE WE COULD DO IT EXCEPT ASK YOU BEFORE THE TRIAL
18 STARTS. BUT PLEASE DON'T DETACH ANY SIGNIFICANCE
19 TO THE ISSUE OF GUILT BECAUSE OF THE FACT THAT I
20 TOLD YOU ABOUT THE PENALTY. NOW, DO YOU FEEL THAT
21 A PERSON CHARGED WITH A CRIME, A CRIMINAL
22 DEFENDANT, MR. SIMMONS IN THIS CASE, HAS THE DUTY
23 OF PROVING INNOCENCE OR PROVING THAT HE OR SHE IS
24 NOT GUILTY OF A CRIME?

25 A. IT NEEDS TO BE -- I HAVE SERVED ON TWO TRIALS

JAN H. WHITMORE - DIRECT/MR. THEOS

1 BEFORE. I FEEL THEY NEED PROVE THAT HE IS
2 DEFINITELY GUILTY WITHOUT A REASONABLE DOUBT. AND
3 I FEEL---

4 Q. SO THEN YOU WOULD NOT LOOK TO THE DEFENDANT IN ANY
5 CRIMINAL CASE TO PROVE THEIR INNOCENCE OR TO PROVE
6 THAT THEY WERE NOT GUILTY?

7 A. THAT'S RIGHT.

8 Q. IS THAT RIGHT?

9 A. YES, SIR.

10 Q. YOU WOULD LOOK TO THE STATE TO PROVE IT TO YOU
11 BEYOND A REASONABLE DOUBT?

12 A. CORRECT.

13 Q. WHAT IS YOUR OPINION ABOUT THE DEATH PENALTY JUST
14 GENERALLY?

15 A. I WOULD HAVE TO HEAR THE WHOLE CASE. EVERY CASE IS
16 DIFFERENT.

17 Q. NOW, AGAIN, IF WE GET TO THAT -- OBVIOUSLY IF MR.
18 SIMMONS IS FOUND NOT GUILTY, WE WOULD NOT MOVE ON
19 TO THAT SECOND PHASE. BUT IF WE DO GET TO THAT
20 SECOND PHASE; AND AS THE JUDGE SAID, ASSUMING FOR
21 ARGUMENT SAKE THAT MR. SIMMONS WERE FOUND GUILTY;
22 CAN YOU THINK OF A PENALTY OTHER THAN THE DEATH
23 PENALTY IF MR. SIMMONS WERE CONVICTED OF MURDER?
24 WOULD YOU CONSIDER A PENALTY OTHER THAN THE DEATH
25 PENALTY?

JAN H. WHITMORE - CROSS/MR. BAILEY

1 A. OH, YES.

2 Q. AND MR. BAILEY WILL BE PRESENTING YOU WITH WHAT THE
3 JUDGE CALLED AGGRAVATING FACTORS OR CIRCUMSTANCES
4 TO TRY TO PERSUADE YOU THAT THE DEATH PENALTY IS
5 MORE APPROPRIATE. MR. BELL AND I WILL BE
6 PRESENTING YOU ON BEHALF OF MR. SIMMONS WITH
7 MITIGATING FACTORS. IN OTHER WORDS, WE'LL BE
8 TRYING TO PERSUADE YOU AT THAT POINT, IF WE GET TO
9 THAT POINT, THAT THE DEATH PENALTY IS NOT AN
10 APPROPRIATE SENTENCE BASED UPON THOSE CERTAIN
11 CIRCUMSTANCES AND FACTS. WOULD YOU LISTEN TO WHAT
12 MR. BELL AND I WOULD HAVE TO OFFER JUST AS MUCH AS
13 YOU LISTEN TO WHAT MR. BAILEY WOULD HAVE TO OFFER?

14 A. YES.

15 Q. AND YOU WOULDN'T MAKE YOUR MIND UP UNTIL YOU'VE
16 HEARD EVERYTHING IF WE DO GET TO THAT POINT?

17 A. THAT'S CORRECT.

18 Q. THANK YOU VERY MUCH, MRS. WHITMORE.

19 CROSS-EXAMINATION

20 BY MR. BAILEY:

21 Q. MRS. WHITMORE, I'M WALTER BAILEY. I'M GOING TO TRY
22 TO BE VERY BRIEF BECAUSE I THINK THAT MR. THEOS AND
23 THE JUDGE HAVE ASKED MOST OF THE QUESTIONS. BUT I
24 JUST WANTED TO MAKE SURE THAT IF WE GET TO THE
25 SECOND PHASE OF THE TRIAL, THE JURY AND NOT THE

JAN H. WHITMORE - CROSS/MR. BAILEY

1 JUDGE MAKES THE DECISION ON PUNISHMENT. IT ISN'T
2 REALLY A RECOMMENDATION BECAUSE THE JUDGE IS GOING
3 TO PUT INTO EFFECT WHATEVER THAT JURY VERDICT IS.
4 IF THE JURY VOTES FOR LIFE WITHOUT PAROLE, THAT
5 WILL BE THE JUDGE'S ORDER, AND HE WILL SERVE THAT
6 SENTENCE. IF THE JURY VOTES FOR THE DEATH PENALTY,
7 THE JUDGE WILL ORDER THAT DEATH PENALTY TO TAKE
8 EFFECT AND THAT PERSON WILL ACTUALLY BE EXECUTED.
9 AND I'M NOT GOING TO ASK YOU TO PREDICT WHAT YOU'D
10 DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF
11 THE FACTS, AND YOU SAID YOU WANTED TO WAIT AND HEAR
12 ALL OF THE FACTS BEFORE YOU DECIDED. BUT IF THE
13 FACTS WERE BAD ENOUGH, COULD YOU AS A JUROR VOTE
14 FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS
15 ACTUALLY GOING TO BE CARRIED OUT BASED ON THAT
16 JURY'S VOTE?

17 A. IF IT IS MALICIOUS AND IT HAS BEEN PROVEN, YOU
18 KNOW, WITHOUT A DOUBT. IT WOULD HAVE TO BE, YOU
19 KNOW, A VICIOUS ACT. AND I DO BELIEVE IN THE DEATH
20 PENALTY FOR CERTAIN CRIMES.

21 Q. ALL RIGHT. IF THE JURY VOTES FOR THE DEATH
22 PENALTY, THE NEXT THING THEY'RE ASKED TO DO IS SIGN
23 THEIR NAME TO A VERDICT FORM THAT WOULD RESULT IN
24 THAT PERSON BEING EXECUTED. ASSUMING THAT YOU HAD
25 HEARD ALL THE FACTS AND THE LAW FROM THE JUDGE, AND

JAN H. WHITMORE - CROSS/MR. BAILEY

1 YOU AND THE OTHER ELEVEN JURORS VOTED FOR THE DEATH
2 PENALTY, COULD YOU THEN SIGN YOUR NAME TO THAT
3 PAPER THAT WOULD RESULT IN THAT EXECUTION TAKING
4 PLACE?

5 A. YES.

6 Q. COULD YOU STAND UP IN OPEN COURT AND ANNOUNCE THAT
7 AS BEING YOUR VERDICT IF IT WAS YOUR VERDICT?

8 A. YES.

9 Q. MRS. WHITMORE, THAT'S ALL I'VE GOT. THANK YOU VERY
10 MUCH.

11 THE COURT: ANYTHING FURTHER?

12 MR. THEOS: NOTHING, YOUR HONOR.

13 THE COURT: GIVE MRS. WHITMORE A
14 SHEET OF INSTRUCTIONS. MA'AM, YOU HAVE BEEN FOUND
15 TO BE QUALIFIED IN THIS CASE. THAT DOES NOT MEAN
16 THAT YOU HAVE BEEN SELECTED. TOMORROW AFTERNOON
17 AT TWO O'CLOCK WE HAVE TENTATIVELY SET A TIME FOR
18 THE STRIKING OR FINAL SELECTION. WE WILL NEED
19 TWELVE JURORS PLUS TWO ALTERNATES FOR A TOTAL OF
20 FOURTEEN TO BE HOUSED IN THE HOLIDAY INN AT THE
21 EXPENSE OF THE COUNTY. DURING THE DAY YOU WILL BE
22 HEARING THE TESTIMONY AND EVIDENCE. IN THE EVENING
23 YOU'D BE AT THE MOTEL. YOU WOULD BE ALLOWED TO
24 WATCH T.V. OR READ PAPERS, BUT NOT ANYTHING ABOUT
25 THE TRIAL. AND, OF COURSE, IN AN EMERGENCY WE

JAN H. WHITMORE - CROSS/MR. BAILEY

1 WOULD PERMIT COMMUNICATION BETWEEN YOU AND YOUR
2 FAMILY IF NECESSARY. SO PLEASE DO NOT ALLOW
3 YOURSELF TO BE EXPOSED TO ANYTHING ABOUT THIS
4 CASE. DO NOT GO OUT AND MAKE ANY INVESTIGATION.
5 DO NOT ALLOW ANYONE TO TALK TO YOU ABOUT THE CASE.
6 AND PLEASE DON'T TALK TO THE OTHER JURORS ABOUT --
7 DON'T GIVE THEM THE QUESTIONS OR THE ANSWERS. AND
8 WE'LL LOOK FORWARD TO SEEING YOU, MA'AM, TOMORROW
9 AT TWO O'CLOCK. CALL THAT NUMBER AFTER SIX TODAY
10 BECAUSE IT'S POSSIBLE THAT TIME WILL CHANGE; AND
11 WE'LL TRY TO KEEP YOU POSTED.

12 A. DO I NEED THESE?

13 Q. YOU CAN LEAVE THAT WITH US, OR YOU CAN TAKE IT WITH
14 YOU. IT DOESN'T MATTER.

15 A. OKAY.

16 Q. PUT IT IN YOUR SCRAPBOOK.

17 A. THANK YOU.

18 Q. THANK YOU.

19 THE COURT: ALL RIGHT, GENTLEMEN.

20 SHALL WE BREAK FOR LUNCH NOW?

21 MR. BAILEY: YES, SIR.

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

23 THE COURT: WE STILL HAVE THREE
24 JURORS FROM THIS PANEL NUMBER SIX THAT WE'RE ON.
25 AND WE HAVE QUALIFIED AT THIS TIME 23 JURORS. AND

JAN H. WHITMORE - CROSS/MR. BAILEY

1 WE STILL HAVE---

2 MR. BAILEY: I'VE GOT 24, YOUR
3 HONOR.

4 THE COURT: GOOD FOR Y'ALL. WELL, I
5 LEFT ONE OFF, THEN. I'LL CHECK MY LIST. AND I'M
6 NOT MEANING TO INDICATE WHAT'S GOING TO HAPPEN. WE
7 STILL HAVE 21 JURORS TO TALK TO TODAY.

8 MR. BAILEY: YES, SIR.

9 THE COURT: THREE PANELS OF SIX PLUS
10 THREE. SO THERE'S A REASONABLE PROSPECT WE COULD
11 HAVE THE -- 37 THAT WE AGREED UPON?

12 MR. BAILEY: YES, SIR.

13 THE COURT: SO, GENTLEMEN, Y'ALL
14 ENJOY YOUR LUNCH. AND WE HOPE TO START BACK IN THE
15 NEXT FIFTEEN OR TWENTY MINUTES.

16 MR. BAILEY: YOUR HONOR, I'VE GOT
17 ALL MY WITNESSES ON STANDBY. AND I NEED TO GIVE
18 THEM TIME TO COME IN. AND I WAS TENTATIVELY
19 THINKING THAT SINCE ALL THESE JURORS HAVE BEEN TOLD
20 TWO O'CLOCK THAT IT WOULDN'T START BEFORE THEN.
21 THERE'S A CHANCE THAT YOU MAY MOVE FASTER, BUT---

22 THE COURT: I DON'T THINK SO; BUT
23 I'LL KNOW BETTER BY FIVE O'CLOCK TODAY. STAND AT
24 EASE, PLEASE.

25 (LUNCH RECESS.)

BRYAN R. TALLENT - EXAM. BY THE COURT

THE COURT: ANYTHING FROM THE STATE?

MR. BAILEY: NOTHING FROM THE STATE,
YOUR HONOR.

MR. THEOS: NOTHING FROM THE
DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. BRING BRYAN
TALLENT IN, PLEASE. LET THE RECORD ALWAYS REFLECT
THE DEFENDANT AND HIS COUNSEL ARE PRESENT, MA'AM,
ON EACH OCCASION THAT WE COMMENCE.
(JUROR NUMBER 307, A WHITE MALE, IS CALLED.)

WHEREUPON,

BRYAN R. TALLENT, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HI.

A. HELLO.

Q. HOW ARE YOU, MR. TALLENT?

THE COURT: MADAM COURT REPORTER,
PLEASE MA'AM, THIS IS JUROR NUMBER 307, BRYAN R.
TALLENT.

Q. MR. TALLENT, YOU WERE GIVEN AN OATH ON YESTERDAY.

BRYAN R. TALLENT - EXAM. BY THE COURT

1 DO YOU UNDERSTAND, PLEASE, SIR, THAT YOU'RE STILL
2 UNDER OATH?

3 A. YES, SIR.

4 Q. AND, MR. TALLENT, THE QUESTIONNAIRE THAT YOU
5 PROVIDED TO THE COURT; ARE THERE ANY CORRECTIONS OR
6 UPDATE OF THAT THAT YOU WOULD LIKE TO MAKE?

7 A. NO, SIR; NOT THAT I KNOW OF.

8 Q. ALL RIGHT. MR. TALLENT, HAVE YOU HEARD OR READ
9 ANYTHING ABOUT THIS CASE?

10 A. NO, SIR; OTHER THAN WHEN THEY TOLD WHAT THE CASE
11 WAS YESTERDAY, I REMEMBER A YEAR OR SO AGO HEARING
12 SOMETHING ABOUT CRIME STOPPERS ON THE TELEVISION.

13 Q. AND ANYTHING THAT YOU MAY HAVE HEARD ON T.V. OR
14 OTHERWISE ON THE STREET; WOULD THAT IN ANY WAY
15 INTERFERE WITH YOUR ABILITY TO GIVE A FAIR AND
16 IMPARTIAL TRIAL, FAIR TO THE STATE AND FAIR TO THE
17 DEFENDANT?

18 A. NO, SIR.

19 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
20 GUILT OR INNOCENCE OF THE DEFENDANT?

21 A. NO, I HAVEN'T.

22 Q. AND YOU UNDERSTAND THE DEFENDANT IS PRESUMED
23 INNOCENT. HE HAS NO BURDEN OF PROVING NOT GUILTY
24 OR INNOCENT, BUT RATHER THE BURDEN OF PROOF IS UPON
25 THE STATE TO PROVE THE GUILT OF THE DEFENDANT

BRYAN R. TALLENT - EXAM. BY THE COURT

1 BEYOND A REASONABLE DOUBT?

2 A. YES, SIR, I UNDERSTAND THAT.

3 Q. AND PLEASE UNDERSTAND THAT THE STATE OF SOUTH
4 CAROLINA IN WHAT'S CALLED THE GUILT PHASE OF THE
5 TRAIL WOULD BE REQUIRED TO PROVE THE GUILT BEYOND A
6 REASONABLE DOUBT. THE DEFENDANT WOULD NOT HAVE TO
7 TAKE THE WITNESS STAND; AND HE DOES NOT HAVE TO
8 OFFER EVIDENCE. AND IF HE DOESN'T TAKE THE WITNESS
9 STAND, THAT FACT MUST NOT BE HELD AGAINST HIM IN
10 ANY MANNER WHATSOEVER. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND PLEASE UNDERSTAND THESE QUESTIONS ARE NOT
13 INTENDED TO INVADE YOUR PRIVACY IN ANY WAY, BUT
14 RATHER THIS IS THE ONLY OPPORTUNITY THAT THE
15 ATTORNEYS AND THE COURT WILL HAVE TO QUESTION YOU
16 RELATIVE TO YOUR VIEWS ON CERTAIN MATTERS. THERE
17 ARE NO RIGHT OR WRONG ANSWERS. AND YOU WILL GRADE
18 OUT A+ OR 100 ON THIS TEST BECAUSE WHATEVER THE
19 ANSWERS ARE, AS LONG AS THEY'RE YOUR HONEST
20 TRUTHFUL ANSWERS, THEN THEY ARE CORRECT ANSWERS.
21 AND IF AT THE CONCLUSION OF THE GUILT PHASE, IF THE
22 JURORS SHOULD FIND THE DEFENDANT NOT GUILTY, THEN
23 IT WOULD BE UNNECESSARY TO HAVE A HEARING RELATIVE
24 TO THE PUNISHMENT PHASE BECAUSE THE COURT IN ALL
25 CASES EXCEPT THE DEATH PENALTY MURDER CASE, OR

BRYAN R. TALLENT - EXAM. BY THE COURT

1 CAPITAL MURDER CASE WE'LL CALL IT, ONLY IN THAT
2 INSTANCE DOES THE JURY MAKE A RECOMMENDATION OF
3 EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A DEATH
4 PENALTY. NOW, OF NECESSITY WE'RE GOING TO DISCUSS
5 THE PENALTY PHASE BEARING IN MIND YOU'VE HEARD NO
6 TESTIMONY. AND PLEASE DO NOT INFER ANYTHING FROM
7 THE QUESTIONS ASKED BY THE COURT OR BY THE
8 ATTORNEYS THAT MAY INFER THE GUILT OF THE DEFENDANT
9 BECAUSE HE IS PRESUMED INNOCENT THROUGHOUT THIS
10 TRAIL UNTIL DURING THE DELIBERATIONS IF THE JURY
11 SHOULD FIND HIM GUILTY BEYOND A REASONABLE DOUBT.
12 DO YOU UNDERSTAND THAT?

13 A. YES, SIR, I DO.

14 Q. NOW, DURING THE GUILT PHASE WHEN THAT IS CONCLUDED,
15 IF THERE IS A VERDICT OF GUILTY IN THE GUILT PHASE
16 OF MURDER, THEN THERE WOULD A 24 HOUR WAITING
17 PERIOD AFTER WHICH THE STATE WOULD BE REQUIRED TO
18 PROVE BEYOND A REASONABLE DOUBT THAT ONE OR MORE
19 STATUTORY AGGRAVATING CIRCUMSTANCES ALLEGED IN
20 THESE INDICTMENTS -- THERE ARE FOUR SUCH STATUTORY
21 AGGRAVATING CIRCUMSTANCES WHICH ARE KIDNAPPING,
22 ARMED ROBBERY, BURGLARY, AND CRIMINAL SEXUAL
23 CONDUCT. AND THE STATE WOULD BE REQUIRED TO PROVE
24 ONE OR MORE OF THOSE BEFORE A JURY COULD BY
25 UNANIMOUS VERDICT RECOMMEND THE DEATH PENALTY.

BRYAN R. TALLENT - EXAM. BY THE COURT

1 NOW, THE STATE WHEN THEY CONCLUDE THEIR TESTIMONY
2 AS TO AGGRAVATING CIRCUMSTANCES; THE DEFENDANT
3 WOULD BE GIVEN AN OPPORTUNITY TO OFFER ANY EVIDENCE
4 AS MITIGATING OR LESSENING CIRCUMSTANCES. AND THE
5 JURY WOULD BE ASKED TO MAKE A RECOMMENDATION OF ONE
6 OF THE TWO FORMS OF VERDICT OF A DEATH SENTENCE OR
7 LIFE IMPRISONMENT WITHOUT PAROLE. BUT THE JURY
8 CAN, AS AN ACT OR MATTER OF MERCY, CAN RECOMMEND TO
9 THE COURT A PUNISHMENT OF LIFE IMPRISONMENT WITHOUT
10 PAROLE WITHOUT FINDING A REASON THEREFOR; JUST THAT
11 THERE'S AN ACT OF MERCY. DO YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. COULD YOU, MR. BRYAN TALLENT, FOLLOW THE LAW THAT
14 THE COURT WOULD INSTRUCT YOU AS BEING THE CORRECT
15 AND APPLICABLE LAW AND THEN EXCHANGE YOUR VIEWS
16 WITH THE OTHER JURORS AND THEN VOTE YOUR CONSCIENCE
17 AS TO WHAT VERDICT YOU THINK SHOULD BE RECOMMENDED
18 TO THE COURT?

19 A. YES, SIR.

20 Q. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THAT
21 QUESTIONNAIRE WITH TYPES ONE, TWO, AND THREE JURORS
22 THEREON?

23 A. YES, I HAVE.

24 Q. DO YOU UNDERSTAND IT?

25 A. YES, SIR.

BRYAN R. TALLENT - DIRECT/MR. BAILEY

1 Q. WHICH CATEGORY WOULD YOU PUT YOURSELF IN?

2 A. I CIRCLED NUMBER THREE.

3 Q. YOU CIRCLED NUMBER THREE?

4 A. YES, SIR.

5 THE COURT: ALL RIGHT, GENTLEMEN,
6 YOU MAY PROCEED WITH YOUR QUESTIONS. THE STATE
7 PROCEEDS.

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q. MR. TALLENT, I'M WALTER BAILEY. I'LL BE
11 PROSECUTING THIS CASE. I NEED TO ASK YOU JUST A
12 FEW MORE QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE
13 HAD ASKED YOU. AND I'LL TRY NOT TO REPEAT WHAT
14 HE'S ALREADY SAID. BUT I MIGHT HAVE TO. SO I
15 APOLOGIZE FOR THAT. YOU UNDERSTAND THAT IF WE GET
16 TO THE SECOND PART OF THE TRIAL, THE PENALTY PHASE,
17 THAT WOULD MEAN THE DEFENDANT HAD BEEN FOUND GUILTY
18 OF MURDER IN THE FIRST PART OF THE TRIAL; AND THAT
19 THE PURPOSE OF THAT SECOND PHASE IS TO ALLOW THE
20 INTRODUCTION OF ADDITIONAL EVIDENCE THAT MAY NOT
21 HAVE COME OUT IN THE FIRST PART. I'D BE PUTTING UP
22 EVIDENCE IN AGGRAVATION. I'D BE ARGUING FOR THE
23 DEATH PENALTY. THE DEFENSE CAN PUT UP EVIDENCE IN
24 MITIGATION IF THEY WANT TO. THEY DON'T HAVE TO.
25 BUT THEY WOULD BE ARGUING THAT LIFE WITHOUT PAROLE

BRYAN R. TALLENT - DIRECT/MR. BAILEY

1 IS THE APPROPRIATE SENTENCE. THE JUDGE WOULD
2 INSTRUCT THE JURY ON THE PENALTY PHASE JUST LIKE
3 YOU WOULD IN THE FIRST PART OF THE TRIAL AND TELL
4 YOU ALL WHAT THE LAW IS THAT APPLIES TO THAT PART
5 OF THE PROCESS. AND THE JURY WOULD THEN GO BACK,
6 AND THEY WOULD MAKE A DECISION, EITHER LIFE WITHOUT
7 PAROLE OR THE DEATH PENALTY. THE JUDGE DOES NOT
8 DECIDE THE PUNISHMENT. THE JURY DECIDES IT IN
9 SOUTH CAROLINA. ALL HE DOES IS ORDERS THAT JURY
10 VERDICT TO HAPPEN. SO IF THE JURY VOTES FOR LIFE
11 WITHOUT PAROLE, THE JUDGE WOULD ORDER THAT. HE
12 WOULD SERVE LIFE WITHOUT PAROLE. IF THE JURY VOTES
13 FOR THE DEATH PENALTY, HE WOULD ORDER THAT AND THAT
14 DEFENDANT WOULD BE EXECUTED BASED ON THAT JURY'S
15 VERDICT. I'M NOT GOING TO ASK YOU TO PREDICT WHAT
16 YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD
17 ANY OF THE FACTS. AND YOU'VE INDICATED YOU WANTED
18 TO HEAR ALL THOSE FACTS BEFORE YOU DECIDED. BUT MY
19 QUESTION IS: IF THE FACTS WERE BAD ENOUGH, COULD
20 YOU VOTE FOR THE DEATH PENALTY KNOWING THAT
21 SENTENCE WOULD BE CARRIED OUT?

22 A. DEPENDING ON THE CASE; YES, SIR, I COULD.

23 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTE FOR
24 THE DEATH PENALTY, THERE'S A PAPER, A DEATH VERDICT
25 FORM, THAT EACH JUROR IS ASKED TO SIGN THEIR NAMES

BRYAN R. TALLENT - DIRECT/MR. BAILEY

1 TO. COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT
2 IF YOU HAD ALREADY VOTED FOR THE DEATH PENALTY?

3 A. IF THAT NEED BE THE CASE.

4 Q. COULD YOU OUT IN OPEN COURT AND ANNOUNCE THAT
5 DECISION IF IT WAS YOUR DECISION?

6 A. YES, SIR.

7 Q. ALL RIGHT, SIR. NOW, THE JURY IS GOING TO BE PUT
8 UP IN A MOTEL FOR ABOUT A WEEK, AND THAT'S AN
9 INCONVENIENCE FOR EVERYBODY ESPECIALLY IF YOU WORK.
10 IS THAT SOMETHING THAT YOU CAN ACCOMMODATE WITH
11 YOUR WORK SCHEDULE AND FAMILY LIFE AND ALL THAT?

12 A. YES, SIR, IT IS.

13 Q. ALL RIGHT, SIR. DO YOU KNOW OF ANY REASON AT ALL
14 THAT WE MIGHT NOT EVEN HAVE MENTIONED THAT WOULD
15 KEEP YOU FROM BEING A FAIR AND IMPARTIAL JUROR TO
16 BOTH SIDES?

17 A. NO.

18 Q. I NOTICE FROM YOUR QUESTIONNAIRE THAT YOU WERE A
19 CORRECTIONAL OFFICER AT ONE TIME?

20 A. YES, SIR.

21 Q. WOULD THAT HAVE ANY BEARING ON YOUR ABILITY TO BE A
22 FAIR JUROR TO THE DEFENSE AND TO THE STATE?

23 A. NO.

24 Q. ALL RIGHT, SIR. MR. TALLENT, THAT'S ALL I'VE GOT
25 RIGHT NOW. THANK YOU VERY MUCH.

BRYAN R. TALLENT - CROSS/MR. THEOS

1 THE COURT: WOULD YOU LIKE TO
2 QUESTION, MR. THEOS?

3 MR. THEOS: YES, SIR; PLEASE.

4 CROSS-EXAMINATION

5 BY MR. THEOS:

6 Q. MR. TALLENT, I'M JERRY THEOS. THIS IS JIM BELL
7 SEATED AT THE TABLE WITH US. THIS IS MR. SIMMONS.
8 JUST A FEW QUESTIONS, MR. TALLENT. WHEN YOU WERE A
9 CORRECTIONAL OFFICER AT LIEBER CORRECTIONAL
10 INSTITUTE -- THAT'S JUST DOWN THE ROAD, ISN'T IT?

11 A. THAT'S CORRECT.

12 Q. DID YOU HAVE ANY CASE WITH MR. BAILEY OR HIS
13 OFFICE?

14 A. NOT THAT I CAN RECALL; NO, SIR.

15 Q. I KNOW THAT A CERTAIN POINT INMATES EVEN GET
16 ARRESTED FOR DOING THINGS THAT ARE CRIMINAL IN
17 NATURE, SO Y'ALL HAVE TO WORK HAND IN HAND WITH THE
18 SOLICITOR'S OFFICE. CAN YOU RECALL ANY CASES?

19 A. NO. I NEVER HAD ANY CASES WHEN I WAS THERE.

20 Q. OKAY. ON YOUR QUESTIONNAIRE THAT YOU FILLED OUT,
21 QUESTION TWENTY WAS WHETHER OR NOT YOU BELONGED TO
22 ANY GROUPS OR ORGANIZATIONS; AND YOU LISTED TWO.
23 AND I'M JUST GOING TO ASK YOU WHAT THEY ARE BECAUSE
24 I JUST DON'T KNOW MYSELF. SONS OF CONFEDERATE
25 VETERANS?

BRYAN R. TALLENT - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. AND THEN THE ELLIS -- I COULDN'T READ THE SECOND
3 ONE.

4 THE COURT: ELLIS CASPER CHAMP?
5 (PHONETICALLY SPELLED)

6 A. ELLIS CAPERS.

7 Q. CAPERS; EXCUSE ME. CAN YOU TELL US WHAT BOTH OF
8 THOSE ARE?

9 A. WELL, THEY'RE ONE IN THE SAME.

10 Q. OKAY.

11 A. RIGHT NOW I'M PRESENTLY NOT A MEMBER BECAUSE I
12 DIDN'T PAY MY DUES THIS YEAR. BUT IN THE YEARS
13 PAST I HAVE BEEN A MEMBER. MY FATHER IS A HIGH
14 RANKING OFFICIAL IN THE ORGANIZATION HERE IN SOUTH
15 CAROLINA. SONS OF CONFEDERATE VETERANS IS A
16 SOUTHERN HERITAGE CONSERVATION GROUP. THEY DO
17 CIVIL WAR REENACTMENTS LIKE SUCCESSION DEALS OUT
18 THERE AT WINN-ALL PLANTATION (PHONETICALLY
19 SPELLED). AND JUST TO PROTECT THE GOOD NAME OF THE
20 CONFEDERATE SOLDIERS.

21 Q. DO YOU GO TO THAT CONFEDERATE -- I GUESS IT'S CIVIL
22 WAR SEMINAR OR SYMPOSIUM THEY HAVE EVERY YEAR DOWN
23 IN CHARLESTON?

24 A. NO, I DON'T.

25 Q. HAVE YOU EVER HEARD OF IT?

BRYAN R. TALLENT - CROSS/MR. THEOS

1 A. NO. LIKE I SAID, I DON'T PARTICIPATE AND GO TO
2 MANY OF THEIR MEETINGS BECAUSE OF MY JOB. MY JOB
3 DOESN'T ALLOW ME TO HAVE MUCH TIME FOR MUCH OF
4 ANYTHING.

5 Q. OKAY. TWO OTHER QUESTIONS. WHAT IS YOUR OPINION
6 ABOUT THE DEATH PENALTY IN GENERAL?

7 A. I KIND OF RIDE THE FENCE WITH IT. I'M NOT TOTALLY
8 FOR IT; I'M NOT TOTALLY AGAINST IT. I THINK IT
9 DEPENDS UPON THE CASE.

10 Q. AND THEN ONE LAST QUESTION: WHAT DO YOU THINK THE
11 APPROPRIATE PUNISHMENT IS IN A MURDER CASE IF
12 SOMEONE WERE CONVICTED OF MURDER?

13 THE COURT: NOW YOU'RE GOING TO HAVE
14 TO GIVE HIM WHAT THE OPTIONS ARE. UNDER THE LAW
15 HE'S ENTITLED TO KNOW WHAT THE OPTIONS ARE. DO YOU
16 WANT TO TELL HIM OR DO YOU WANT ME TO TELL HIM?

17 MR. THEOS: I'LL TELL HIM.

18 THE COURT: OKAY.

19 A. UNDER THE LAW THERE ARE TWO OPTIONS. ONE IS LIFE
20 IMPRISONMENT WITHOUT PAROLE. THE OTHER IS THE
21 DEATH PENALTY. WHICH DO YOU THINK IS THE MORE
22 APPROPRIATE SENTENCE?

23 MR. BAILEY: OBJECTION, YOUR HONOR.
24 HE COULDN'T POSSIBLY ANSWER WHICH IS THE MORE
25 APPROPRIATE WITHOUT HEARING THE FACTS OF THE

BRYAN R. TALLENT - CROSS/MR. THEOS

1 INITIAL CASE.

2 MR. THEOS: I'M NOT ASKING ABOUT
3 THIS INDIVIDUAL CASE; JUST GENERALLY, YOUR HONOR;
4 WHAT IS HIS OPINION RELATIVE TO THE PUNISHMENT FOR
5 SOMEBODY CONVICTED OF MURDER.

6 THE COURT: I THINK YOUR OBJECTION
7 IS WELL TAKEN. BUT I THINK HE CAN PROPERLY ANSWER
8 THE QUESTION. HE'S AN INTELLIGENT PERSON.

9 A. I THINK IT ALL -- LIKE I WROTE ON HERE, IT ALL
10 DEPENDS ON THE CASE AND THE FACTS OF -- YOU KNOW,
11 I'M SURE EACH CASE DIFFERS, YOU KNOW. I'M SURE NO
12 CASE IS THE SAME AS FAR AS, YOU KNOW, THE WAY IT
13 TURNS OUT AND ALL. BUT MOST OF THE TIME I PROBABLY
14 WOULD SAY A LIFE SENTENCE UNLESS, YOU KNOW -- IT
15 DEPENDS ON THE CIRCUMSTANCES OF THE CASE.

16 Q. OKAY. THANK YOU, MR. TALLENT.

17 THE COURT: ANYTHING, MR.
18 SOLICITOR?

19 MR. BAILEY: NO, SIR.

20 MR. THEOS: NOTHING FURTHER, YOUR
21 HONOR.

22 THE COURT: MR. TALLENT, YOU'VE BEEN
23 DEEMED QUALIFIED TO SERVE AS A JUROR IN THIS CASE.
24 YOU'VE NOT BEEN SELECTED. THAT PROCESS HOPEFULLY
25 WILL TAKE PLACE AT TWO O'CLOCK TOMORROW, WEDNESDAY,

BRYAN R. TALLENT - CROSS/MR. THEOS

1 FEBRUARY THE 24TH. IF THERE'S ANY CHANGE IN THAT
2 TIME, WE'RE GOING TO HAVE IT ON THE ANSWER MACHINE.
3 CALL THAT NUMBER AFTER SIX O'CLOCK TODAY. AND
4 PLEASE COME PREPARED TO STAY WITH US SIX OR SEVEN
5 OR EIGHT DAYS. AND THE COUNTY WILL COVER THE
6 EXPENSE OF THE HOLIDAY INN. YOU WILL NOT BE
7 ALLOWED TO COMMUNICATE WITH YOUR FAMILY OR FRIENDS
8 EXCEPT IN CASE OF AN EMERGENCY. PLEASE DO NOT
9 ALLOW YOURSELF TO BE EXPOSED TO ANY ALLEGED FACTS
10 ABOUT THIS CASE. DO NOT READ ANYTHING OR DISCUSS
11 IT WITH ANYONE OTHER THAN PERHAPS WITH YOUR FAMILY
12 ABOUT THE SEQUESTRATION. DO YOU HAVE ANY
13 QUESTIONS?

14 MR. TALLENT: OTHER THAN I HAVE TO
15 BE BACK HERE TOMORROW AT TWO?

16 THE COURT: YES, SIR.

17 MR. TALLENT: ALL RIGHT.

18 THE COURT: ALL RIGHT. THANK YOU,
19 MR. TALLENT.

20 MR. TALLENT: THANK YOU, SIR.

21 THE COURT: ALL RIGHT. BRING THE
22 NEXT JUROR IN.

23 (JUROR NUMBER 11, A WHITE FEMALE, IS CALLED.)
24 - - - - -
25

WHEREUPON,

AMY ARNONE - EXAM. BY THE COURT

AMY L. ARNONE, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HI.

A. HI.

Q. HOW ARE YOU THIS AFTERNOON, MA'AM?

A. FINE.

Q. MRS. AMY L. ARNONE, A-R-N-O-N-E. THANK YOU SO
MUCH, MA'AM, FOR BEING HERE PRESENT WITH US TODAY.
THIS IS JUROR NUMBER ELEVEN ON THE MASTER SHEET.
ON YESTERDAY, MA'AM, YOU WERE GIVEN AN OATH.
PLEASE UNDERSTAND THAT YOU CONTINUE TO BE UNDER
OATH WHILE YOU ARE ASKED THESE VARIOUS QUESTIONS,
OKAY?

A. OKAY.

Q. AND, MA'AM, ON YESTERDAY IN RESPONSE TO A QUESTION
OF THE ENTIRE GROUP OF JURORS YOU INDICATED THAT
YOU OR A MEMBER OF YOUR FAMILY HAVE BEEN A VICTIM
OF A CRIME OF VIOLENCE OR IN SOME WAY INVOLVED WITH
A CRIME OF VIOLENCE. COULD YOU TELL US ABOUT THAT,
PLEASE?

A. I WAS ASSAULTED.

Q. HOW LONG AGO WAS THAT?

AMY ARNONE - EXAM. BY THE COURT

1 A. WHEN I WAS EIGHTEEN.

2 Q. AND I DON'T WANT TO GET INTO YOUR AGE. LET'S SEE,
3 YOU'RE NOW THIRTY-TWO. SO THAT WOULD HAVE BEEN
4 SOME FOURTEEN YEARS AGO?

5 A. YES, SIR.

6 Q. AND WHERE DID THAT HAPPEN, PLEASE, MA'AM?

7 A. BACK HOME IN ILLINOIS.

8 Q. WAS THAT PERSON PROSECUTED?

9 A. NO.

10 Q. HE WAS NOT?

11 A. NO.

12 Q. DID THEY EVER FIND HIM?

13 A. YES.

14 Q. BUT HE WAS NOT PROSECUTED?

15 A. NO.

16 Q. ALL RIGHT. THAT CERTAINLY ANSWERS THE QUESTION.
17 AND THEN, MA'AM, I WOULD ASK YOU; YOU INDICATED
18 THAT YOU WERE FAMILIAR WITH OR KNEW ONE OR MORE
19 WITNESSES. WHAT WITNESSES DID YOU KNOW?

20 A. I WORK AT TRIDENT HOSPITAL, SO I KNOW SEVERAL OF
21 PHYSICIANS THAT YOU NAMED.

22 Q. DO YOU REMEMBER WHICH THOSE WERE?

23 A. I KNOW DR. BAIRD; AND I CAN'T REMEMBER WHO THEY ALL
24 WERE.

25 Q. AND, MA'AM, YOU'RE A SUPERVISOR IN THE RADIOLOGY

AMY ARNONE - EXAM. BY THE COURT

1 DEPARTMENT?

2 A. YES, SIR.

3 Q. DO YOU WORK DIRECTLY UNDER ANY OF THE PROSPECTIVE
4 WITNESSES?

5 A. NO, SIR.

6 Q. IN OTHER WORDS, THEY HAVE STAFF OR HOSPITAL
7 PRIVILEGES. AND YOU SEE THEIR NAME OR MIGHT SEE ON
8 AN X-RAY OR SEE THEM, BUT YOU DO NOT HAVE A CLOSE
9 WORKING RELATIONSHIP ON A DAY TO DAY BASIS WITH
10 THEM?

11 A. NO, SIR.

12 Q. AND, MA'AM, YOU ALSO INDICATED THAT YOU FELT THAT
13 YOU MIGHT HAVE SOME BIAS IN REGARD TO THIS CASE.
14 CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

15 A. I JUST FEEL LIKE I COULDN'T BE OBJECTIVE BEING THAT
16 I HAVE BEEN THROUGH AN ASSAULT BEFORE AND SOME
17 OTHER THINGS THAT HAVE HAPPENED. MY GRANDPARENT'S
18 HOUSE GOT BROKEN INTO AND THAT KIND OF THING.

19 Q. ALL RIGHT. WELL, MA'AM, LET ME STRESS TO YOU IT'S
20 IMPORTANT THAT EACH JUROR BE ABLE TO CAREFULLY
21 LISTEN TO THE STATE'S TESTIMONY, THE DEFENDANT'S
22 TESTIMONY, EVEN THOUGH THE DEFENDANT MAY OFFER NO
23 TESTIMONY. HE'S NOT REQUIRED TO. AND ALL OF US
24 ARE CREATURES OF HABIT. ALL OF US ARE CREATURES OF
25 THE RESULT OF OUR ENVIRONMENT. I WAS JUST TELLING

AMY ARNONE - EXAM. BY THE COURT

1 SOMEBODY AT THE LUNCH BREAK I DON'T GO TO THE
2 HAMPTON WATERMELON FESTIVAL ANY MORE BECAUSE ON
3 SUMMER WORK AT THE HIGHWAY DEPARTMENT, I HAD TO
4 SWEEP BOTH SIDES OF THE STREET WITH A PUSH-BROOM
5 FOR TEN MILES; FIVE DOWN AND FIVE BACK UP. SO I
6 JUST DON'T GO TO THE WATERMELON FESTIVAL ANY MORE
7 BECAUSE -- EVEN THOUGH THAT'S MY HOME. SO ALL OF
8 US HAVE VARIOUS -- A BURNT CHILD IS SCARED OF
9 FIRE. WE ALL HAVE PRIOR EXPERIENCES. BUT IT'S
10 IMPORTANT IF YOU SERVE AS A JUROR TO BE ABLE TO PUT
11 THOSE ASIDE. AND MY SITTING AS A JUDGE, SOMETIMES
12 I'M REQUIRED UNDER THE LAW TO MAKE A RULING THAT I
13 DISAGREE WITH. BUT SITTING IN THE JUDICIAL BRANCH
14 OF THE GOVERNMENT WHERE I INTERPRET THE LAW, I DO
15 NOT MAKE THE LAW. THAT'S DONE IN THE LEGISLATIVE
16 BRANCH. SO I NECESSARILY AND RESPECTFULLY SO
17 ADHERE TO THEIR RIGHT TO ENACT CERTAIN LAWS. SO
18 USING THAT ANALOGY, MA'AM, IF IN THE TRIAL OF THIS
19 CASE -- AND THERE IS A CHARGE OF CRIMINAL SEXUAL
20 CONDUCT WHICH WOULD INVOLVE VIOLENCE UPON THE BODY
21 OF THE ALLEGED FEMALE VICTIM, MRS. LILLY BELL BOYD,
22 AN ELDERLY LADY, ALLEGEDLY BY THE DEFENDANT,
23 KENNETH SIMMONS, IN THIS CASE. SO WOULD YOU BE
24 ABLE, MA'AM, TO GIVE A FAIR TRIAL TO THE STATE AND
25 A FAIR TRAIL TO THE DEFENDANT IRRESPECTIVE OF

AMY ARNONE - EXAM. BY THE COURT

1 ANYTHING THAT MAY HAVE HAPPENED TO YOU FOURTEEN OR
2 FIFTEEN OR MORE YEARS AGO?

3 A. I ABSOLUTELY WOULD TRY, BUT I CAN'T PROMISE THAT.

4 Q. AND, MA'AM, HAVE YOU READ THAT JUROR ONE, TWO,
5 THREE CATEGORY?

6 A. YES.

7 Q. WHICH CATEGORY DO YOU FALL IN?

8 A. NUMBER THREE, I BELIEVE.

9 Q. ONE IS WHERE THE JUROR WOULD INSIST EVERY TIME FOR
10 THE DEATH PENALTY. THAT'S NOT YOU?

11 A. NO.

12 Q. AND THEN THE SECOND IS ONE WOULD INSIST EVERY TIME
13 FOR LIFE IMPRISONMENT WITHOUT PAROLE?

14 A. NO.

15 Q. THAT'S NOT YOU?

16 A. NO.

17 Q. THE THIRD IS YOU WOULD LISTEN TO THE TESTIMONY AND
18 APPLY THE LAW TO THE FACTS AS YOU AND THE OTHER
19 JURORS FOUND THOSE FACTS TO BE?

20 A. YES, SIR.

21 Q. NOW, MRS. ARNONE, IN THE TRIAL OF CASES IN THIS
22 COURT AND UNDER OUR LAW, EVERY DEFENDANT IS CHARGED
23 WITH A CRIME. HE IS PRESUMED OR THOUGHT TO BE
24 INNOCENT UNTIL THE STATE OF SOUTH CAROLINA THROUGH
25 COMPETENT ADMISSIBLE EVIDENCE PROVES HIS GUILT

AMY ARNONE - EXAM. BY THE COURT

1 BEYOND A REASONABLE DOUBT. EVEN AS HE SITS HERE
2 NOW THE DEFENDANT, KENNETH SIMMONS, IS CLOAKED OR
3 ROBED WITH A PRESUMPTION OF INNOCENCE. AND THAT
4 REMAINS WITH EVERY DEFENDANT; A SERIOUS CASE, A
5 MINOR CASE, DEATH PENALTY CASE; FROM THE TIME OF
6 HIS ARREST THROUGHOUT THE TRIAL UNTIL AND UNLESS
7 THE JURY DURING THEIR DELIBERATIONS, AFTER ALL THE
8 TESTIMONY AND EVIDENCE, SHOULD FIND BEYOND A
9 REASONABLE DOUBT, THAT BEING THE STATE'S BURDEN OF
10 HIS GUILT. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. THE DEFENDANT ISN'T REQUIRED TO TAKE THE WITNESS
13 STAND. YOU CAN'T HOLD THAT AGAINST HIM. HE HAS NO
14 BURDEN TO PROVE HIMSELF INNOCENT; RATHER THE BURDEN
15 IS ON THE STATE. NOW ASSUMING THAT THE CASE WAS
16 TRIED IN THE GUILT PHASE BECAUSE THE DEATH PENALTY
17 IS DIVIDED INTO TWO PHASES; THE GUILT PHASE, THE
18 PENALTY PHASE. AND PLEASE DERIVE NO INFERENCE BY
19 THIS ILLUSTRATION TO ASSUME THAT THE JUROR HAS
20 FOUND HIM GUILTY BEYOND A REASONABLE DOUBT. THE
21 STATE IN THE PENALTY PHASE WHICH WOULD START 24
22 HOURS AFTER THE COMPLETION OF THE GUILT PHASE, ONE
23 OR MORE STATUTORY AGGRAVATING CIRCUMSTANCES WERE
24 PROVEN, THOSE BEING KIDNAPPING, ARMED ROBBERY,
25 CRIMINAL SEXUAL CONDUCT, OR BURGLARY; ANY ONE OF

AMY ARNONE - EXAM. BY THE COURT

1 THOSE FOUR, WHILE THE DEFENDANT WAS IN THE ACT OR
2 COMMISSION OF THOSE CRIMES HE COMMITTED MURDER. IF
3 THE STATE PROVES THAT BEYOND A REASONABLE DOUBT,
4 THEN THE JURY COULD, OR MAY -- NOT THAT YOU MUST OR
5 SHALL -- IT'S PERMISSIVE, NOT MANDATORY -- RETURN A
6 VERDICT RECOMMENDING THE DEATH PENALTY. THE
7 DEFENDANT WILL BE GIVEN AN OPPORTUNITY TO PRESENT
8 MITIGATING WHICH MEANS MINIMIZING OR LESSENING OF
9 THE RECOMMENDATION. AND THE JURY COULD, AFTER
10 HEARING THOSE MITIGATING CIRCUMSTANCES, OR IF THE
11 STATE FAILS TO MEET THEIR BURDEN TO PROVE THE FACTS
12 SURROUNDING THE CIRCUMSTANCES, THE JURY COULD MAKE
13 A RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT THE
14 POSSIBILITY OF PAROLE. OR FINALLY THE JURY COULD
15 AS AN ACT OF MERCY, FOR NO REASON AT ALL, RETURN A
16 RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT PAROLE
17 EVEN THOUGH THE STATE MAY HAVE PROVEN BEYOND A
18 REASONABLE DOUBT ONE OR MORE STATUTORY AGGRAVATING
19 CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND, MA'AM, IF YOU ARE SELECTED IN THIS CASE, I ASK
22 YOU AGAIN, NOW, CAN YOU START WITH A CLEAN SLATE,
23 DISABUSE YOUR MIND OF ANY PRECONCEIVED BAD THINGS
24 THAT MAY HAVE HAPPENED TO YOU MANY YEARS AGO AND
25 GIVE THE STATE AND THE DEFENDANT A FAIR TRIAL AND

AMY ARNONE - DIRECT/MR. THEOS

1 DECIDE THIS CASE ON THE FACTS AS ALLOWED INTO
2 EVIDENCE THROUGH WITNESSES TESTIFYING UNDER OATH ON
3 THE WITNESS STAND?

4 A. I COULD TRY.

5 Q. WELL, HOW HARD WOULD YOU TRY?

6 A. I WOULD TRY VERY HARD.

7 Q. ALL RIGHT. I BELIEVE AT THIS TIME THAT THE
8 DEFENDANT MAY QUESTION YOU.

9 A. YES, SIR.

10 THE COURT: YOU MAY EXAMINE, MR.
11 THEOS.

12 DIRECT EXAMINATION

13 BY MR. THEOS:

14 Q. MRS. ARNONE?

15 A. YES, SIR.

16 Q. GOOD AFTERNOON. I'M JERRY THEOS, AND THIS IS JIM
17 BELL. JIM AND I ARE THE ATTORNEYS REPRESENTING
18 KENNETH SIMMONS.

19 A. YES, SIR.

20 Q. AND WE THANK YOU FOR COMING UP, AND WE APOLOGIZE
21 THAT YOU HAVE TO SIT ON THAT WITNESS STAND AND BE
22 QUESTIONED BY ALL OF US. BUT WHAT WE'RE REALLY
23 TRYING TO DO IS MAKE SURE THAT WE UNDERSTAND YOUR
24 FEELINGS AND YOUR OPINIONS BECAUSE WHAT WE'RE
25 TRYING TO DO ULTIMATELY IS TO FIND THOSE JURORS WHO

A. I JUST KNOW THAT I WOULD TRY. I HAVE ALSO SOME GOOD FRIENDS THAT HAVE BEEN THROUGH SIMILAR CIRCUMSTANCES OF WHAT HAPPENED TO ME. AND I JUST CAN'T PROMISE THAT THAT WOULDN'T COME UP IN MY HEAD.

Q. DO YOU THINK THAT -- AND, AGAIN, WE'RE NOT PASSING JUDGMENT ON YOU BASED UPON YOUR ANSWERS. AND THERE AREN'T ANY RIGHT OR WRONG ANSWERS. YOU'RE NOT BEING GRADED ON THAT IN ANY WAY. BUT DO YOU THINK THAT THAT REALLY WOULD INTERFERE WITH YOUR ABILITY

AMY ARNONE - DIRECT/MR. THEOS

1 TO BE COMPLETELY IMPARTIAL; AND TO USE YOU OWN
2 WORDS MIGHT HAVE COME INTO PLAY AT SOME POINT?

3 A. I'M NOT NORMALLY AN EXTREMELY JUDGMENTAL KIND OF
4 PERSON. BUT IN THESE KIND OF SITUATIONS I GUESS
5 BECAUSE OF WHAT HAPPENED TO ME, I DON'T FEEL LIKE
6 I'M VERY FAIR ABOUT THAT. AND I WOULD JUST HATE TO
7 IMPOSE THAT ON SOMEONE ELSE THE WAY THAT I FEEL.

8 Q. OKAY. AND AGAIN, ALTHOUGH CERTAINLY THIS IS A
9 SERIOUS MATTER BECAUSE THE STATE IS SEEKING THE
10 DEATH PENALTY AGAINST MR. SIMMONS. SO IT IS
11 IMPORTANT THAT WE UNDERSTAND EXACTLY WHAT YOUR
12 THOUGHT PROCESS IS?

13 A. RIGHT.

14 Q. IN GOING THROUGH THE TRIAL ITSELF, THE JUDGE TOLD
15 YOU WHAT THE CHARGES, A NUMBER OF CHARGES?

16 A. RIGHT.

17 Q. IN GOING THROUGH THE TRIAL ITSELF IN THE GUILT
18 PHASE, DO YOU THINK THAT WOULD BE DIFFICULT FOR
19 YOU?

20 A. I THINK ANY TIME YOU GO THROUGH SOMETHING LIKE THAT
21 AND YOU HEAR SOMEONE ELSE'S STORY, I KNOW WHEN I
22 TALK TO MY FRIENDS IT BRINGS A LOT BACK; IT REALLY
23 TRULY DOES.

24 Q. THEN PASSING JUDGMENT BASED UPON THAT---

25 A. I MEAN, I WOULD TRY TO BE FAIR. I'M NOT SAYING I

AMY ARNONE - CROSS/MR. BAILEY

1 WOULD'N'T. EVERYONE DESERVES A FAIR TRIAL. I JUST
2 CAN'T SIT HERE AND TELL YOU BEYOND ANY
3 REASONABLENESS THAT I COULD FORGET THAT IT WOULD
4 NEVER COME UP.

5 Q. THANK YOU VERY MUCH, MRS. ARNONE.

6 MR. BAILEY: IF IT PLEASE THE COURT?

7 THE COURT: YES, SIR.

8 CROSS-EXAMINATION

9 BY MR. BAILEY:

10 Q. MRS. ARNONE, I'M WALTER BAILEY. I'M REPRESENTING
11 THE STATE HERE. IS IT A ARNONE OR ARNOME?

12 A. IT'S ARNONE.

13 Q. ALL RIGHT. THANK YOU. LET ME ASK YOU JUST A
14 COUPLE OF QUESTIONS ABOUT YOUR FEELINGS. AND,
15 AGAIN, LIKE MR. THEOS, I'M NOT GOING TO ASK YOU
16 ABOUT WHAT OCCURRED BACK WHEN YOU WERE EIGHTEEN BUT
17 JUST THE POSSIBLE EFFECT THAT MAY HAVE ON YOU AS A
18 JUROR. AND OF COURSE JURORS DON'T OPERATE IN A
19 VACUUM. THEY BRING THEIR LIFE EXPERIENCES IN THE
20 JURY ROOM, THEIR COMMON SENSE, AND ALL THAT. AS A
21 JUROR, ALL THE JURORS WILL BE SWORN TO TAKE THE LAW
22 FROM THE JUDGE, TO TAKE THE FACTS FROM THE WITNESS
23 STAND. AND ONE OF THE THINGS THE JUDGE WOULD
24 ADVISE THE JURY IS THEY WOULD HAVE TO MAKE THEIR
25 DECISION ON THE FACTS STRICTLY FROM THAT TESTIMONY

AMY ARNONE - CROSS/MR. BAILEY

1 IN COURT. THAT WOULDN'T MEAN THAT YOUR MIND GOES
2 BLANK ON EVERYTHING ELSE, BUT YOU'D HAVE TO SET
3 THAT ASIDE, KIND OF COMPARTMENTALIZE AND BASE YOUR
4 DECISION ON THE FACTS FROM THE WITNESS STAND. DO
5 YOU BELIEVE YOU COULD DO THAT?

6 A. I BELIEVE I CAN TRY.

7 Q. OKAY.

8 A. LIKE I SAID, WE ALL BRING EVERYTHING WITH US.

9 Q. RIGHT.

10 A. THAT'S WHO WE ARE.

11 Q. OKAY. AND YOU CAN'T FORGET WHAT'S IN YOUR MIND.

12 BUT MY QUESTION IS WHETHER OR NOT YOU CAN PUT THAT
13 ASIDE AND BASE YOUR DECISION OF GUILT OR INNOCENCE
14 ON THE FACTS OF THE CASE AS PRESENTED FROM THE
15 WITNESS STAND.

16 A. I CAN SIT HERE AND TELL YOU, YES I ABSOLUTELY WOULD
17 TRY TO DO THAT.

18 Q. OKAY. NOW IF THE DEFENDANT IN A CAPITAL CASE IS
19 FOUND GUILTY OF MURDER IN THE FIRST PART OF THE
20 TRIAL, THEN AND ONLY THEN DO WE DO MOVE TO THE
21 SECOND PHASE, THE PENALTY PHASE, WHICH IS AN
22 OPPORTUNITY TO PUT UP ADDITIONAL EVIDENCE. I'D BE
23 PUTTING UP EVIDENCE IN AGGRAVATION ARGUING FOR THE
24 DEATH PENALTY AS THE MOST APPROPRIATE PUNISHMENT.
25 THE DEFENSE, IF THEY WISH TO, CAN PUT UP EVIDENCE

AMY ARNONE - CROSS/MR. BAILEY

1 IN MITIGATION. THEY'D ARGUE FOR A LIFE SENTENCE,
2 LIFE WITHOUT PAROLE. THE JURY MAKES THE DECISION,
3 NOT THE JUDGE. THE JUDGE JUST ORDERS INTO EFFECT
4 WHATEVER THE JURY DECIDES. SO IF THE JURY VOTES
5 FOR LIFE WITHOUT PAROLE, THE JUDGE WOULD ORDER
6 THAT. HE WOULD SERVE THAT SENTENCE. IF THE JURY
7 VOTES FOR THE DEATH PENALTY, HE WOULD ORDER THAT
8 AND THAT DEFENDANT WOULD BE EXECUTED. NOW AGAIN,
9 I'M NOT ASKING YOU TO PREDICT WHAT YOU'D DO IN THIS
10 CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS AT
11 ALL, NONE OF THEM. BUT IF THE FACTS WERE BAD
12 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
13 KNOWING THAT SENTENCE WOULD ACTUALLY BE IMPOSED ON
14 THE DEFENDANT?

15 A. I BELIEVE I COULD.

16 Q. OKAY. IF ALL TWELVE JURORS VOTE FOR THE DEATH
17 PENALTY, THEN THEY'LL BE ASKED TO SIGN THEIR NAMES
18 TO A PIECE OF PAPER, A DEATH VERDICT FORM, THAT
19 WOULD RESULT IN THAT EXECUTION TAKING PLACE. IF
20 YOU VOTED FOR THE DEATH PENALTY AND THE OTHER
21 JURORS ALSO VOTED FOR IT, COULD YOU SIGN YOUR NAME
22 TO THAT PAPER ALONG WITH THE REST OF THE JURORS IF
23 THAT WAS YOUR VOTE?

24 A. YES, SIR.

25 Q. COULD YOU STAND UP AND ANNOUNCE THAT OUT LOUD IN

AMY ARNONE - CROSS/MR. BAILEY

1 COURT IF THAT WAS YOUR DECISION?

2 A. YES, SIR.

3 Q. THERE'S A PROCESS CALLED POLLING THE JURY WHERE
4 WHEN THE VERDICT COMES IN EACH JUROR MAY BE ASKED
5 TO STAND UP AND AFFIRM THAT VERDICT OUT LOUD WHEN
6 THEIR NAMES ARE CALLED. COULD YOU DO THAT IF THAT
7 WAS THE VERDICT?

8 A. YES.

9 Q. I THINK THAT'S ALL I HAVE. THANK YOU VERY MUCH.

10 THE COURT: MA'AM, IF THE FACTS AND
11 EVIDENCE WARRANTED IT, EVEN THOUGH YOU HAD FOUND,
12 THE JURY FOUND, STATUTORY AGGRAVATING CIRCUMSTANCES
13 BEYOND A REASONABLE DOUBT, COULD YOU RETURN A
14 VERDICT OF LIFE IMPRISONMENT WITHOUT PAROLE IF
15 THAT'S WHAT THE FACTS WARRANTED?

16 MRS. ARNONE: YES, SIR.

17 THE COURT: ALL RIGHT. THANK YOU.
18 ANYTHING ELSE?

19 MR. THEOS: NO FURTHER QUESTIONS.

20 THE COURT: LET ME ASK YOU TO STEP
21 OUTSIDE FOR JUST A MINUTE, PLEASE, MA'AM.

22 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

23 THE COURT: WHAT SAY THE STATE?

24 MR. BAILEY: YOUR HONOR, THE STATE
25 CONTENDS THAT SHE IS QUALIFIED.

AMY ARNONE - CROSS/MR. BAILEY

1 THE COURT: WHAT SAYS THE
2 DEFENDANT?

3 MR. THEOS: YOUR HONOR, WE CONTEND
4 BECAUSE OF HER RESPONSES ABOUT HER INABILITY TO BE
5 COMPLETELY OBJECTIVE THAT SHE WOULD NOT BE
6 QUALIFIED TO SIT ON A JURY BECAUSE OF WHAT'S
7 HAPPENED TO HER, WHAT HAPPENED TO HER
8 GRANDPARENTS. SHE WAS TRYING PAINFULLY HARD TO
9 INDICATE IN EVERY WAY THAT SHE COULD DO HER BEST IF
10 SHE TRIED BUT SHE JUST COULDN'T SET THAT ASIDE.
11 AND SHE INDICATED REPEATEDLY THAT SHE COULD NOT BE
12 COMPLETELY OBJECTIVE.

13 THE COURT: ALL RIGHT, SIR. JUST AS
14 HER RESPONSE TO SOLICITOR BAILEY AS TO WHETHER SHE
15 COULD RETURN A VERDICT OF RECOMMENDING THE DEATH
16 PENALTY IF STATUTORY AGGRAVATING CIRCUMSTANCES WERE
17 PROVEN BEYOND A REASONABLE DOUBT; SHE SAID I
18 BELIEVE SO. THIS LADY IS INTELLIGENT SUPERVISING
19 RADIOLOGY, THIRTY-TWO YEARS OF AGE. AND AS MR.
20 BAILEY INDICATED ALL OF US BRING OUR LIFE
21 EXPERIENCES INTO THE COURTROOM. AND I'M SATISFIED
22 WITH HER CANDOR AND HER SINCERITY THAT SHE WILL TRY
23 HARD. SHE SAID THAT MORE THAN ONE TIME. AND THE
24 COURT FINDS HER QUALIFIED. NOTE THE OBJECTION OF
25 THE DEFENDANT, PLEASE. BRING THE LADY IN.

AMY ARNONE - CROSS/MR. BAILEY

(AT THIS TIME JUROR RETURNS TO OPEN COURT.)

THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED TO SERVE AS A JUROR IN THIS CASE. BEAR IN MIND YOU HAVE NOT BEEN SELECTED BECAUSE THAT PROCESS WILL TAKE PLACE WE HOPE TOMORROW AFTERNOON AT TWO O'CLOCK, WEDNESDAY, FEBRUARY THE 24TH. THERE'S A PHONE NUMBER WRITTEN AT THE TOP OF THAT SHEET OF PAPER. AND IF YOU'D CALL THAT AFTER SIX TODAY, WE HOPE IN THE NEXT -- IT'S NOW 3:30. HOPEFULLY YOU'LL KNOW BY SIX WHERE WE STAND, BUT WE MAY. BUT IF THERE'S ANY CHANGE, WE'LL PUT IT ON THAT MACHINE. DO YOU KNOW OF ANY PARTICULAR SITUATION -- I KNOW IT WOULD BE AN INCONVENIENCE AND SOME HARDSHIP ON EVERYBODY BEING AWAY FROM YOUR FAMILY AND YOUR JOB AND FRIENDS FOR FIVE OR SIX OR SEVEN DAYS. BUT YOU WOULD BE SEQUESTERED AND PLACED WITH THE OTHER JURORS AT THE HOLIDAY INN. THE COUNTY WOULD PAY FOR YOUR MEALS AND YOUR LODGING. IS THERE ANYTHING YOU'D LIKE TO SHARE WITH US RELATIVE TO ANY MEDICAL CONDITION OR FAMILY SITUATION THAT WOULD CAUSE JUST TERRIBLE HARDSHIPS?

MRS. ARNONE: THE ONLY THING IS MY HUSBAND IS MILITARY; WITH THE CRAZINESS GOING ON RIGHT NOW, IF HE WOULD GET CALLED AWAY, WITH TWO SMALL CHILDREN, THAT WOULD BE HARD.

AMY ARNONE - CROSS/MR. BAILEY

1 THE COURT: HOW OLD ARE THOSE
2 CHILDREN?

3 MRS. ARNONE: SEVEN AND NINE.

4 THE COURT: BUT THEY'RE NOT UNDER
5 SEVEN. AND WHO CARES FOR THEM? DO YOU WORK?

6 MRS. ARNONE: YES, SIR.

7 THE COURT: WHO CARES FOR THEM WHILE
8 YOU WORK?

9 MRS. ARNONE: THEY GO TO SCHOOL, AND
10 THEN THEY GO TO THE AFTER SCHOOL PROGRAM TWO
11 YEARS.

12 THE COURT: AND THEN WHO PICKS THEM UP?

13 MRS. ARNONE: MY HUSBAND.

14 THE COURT: AND HE'S NORMALLY EIGHT
15 TO FIVE?

16 MRS. ARNONE: YES. HE'S OFF AT
17 4:30. SO---

18 THE COURT: SO HE'S ABLE TO DO
19 THAT?

20 MRS. ARNONE: YES, SIR.

21 THE COURT: AND WHEN -- DOES HE GET
22 CALLED OUT? DOES HE GO OVERSEAS, MA'AM, OR IS IT
23 JUST LOCAL?

24 MRS. ARNONE: IT JUST DEPENDS ON
25 WHAT HAPPENS.

AMY ARNONE - CROSS/MR. BAILEY

1 THE COURT: WHEN'S THE LAST TIME HE
2 WAS CALLED OUT?

3 MRS. ARNONE: HE HASN'T BEEN. HE'S
4 JUST BEEN ON STANDBY FOR WEEKS. SO---

5 THE COURT: TWO YEARS? EIGHTEEN
6 MONTHS?

7 MRS. ARNONE: NO.

8 THE COURT: I MEAN, IS HE CALLED UP
9 TO GO TO BOSNIA OR OVERSEAS?

10 MRS. ARNONE: HE NEVER HAS; NO.

11 THE COURT: THAT'S NOT THE AIR FORCE
12 LIFT?

13 MRS. ARNONE: HE'S NOT A PILOT OR
14 ANYTHING.

15 THE COURT: HE MAY BE CALLED TO GO
16 TO NORTH CAROLINA OR---

17 MRS. ARNONE: IF HE GETS CALLED, HE
18 MAY GO TO GERMANY.

19 THE COURT: TO GERMANY?

20 MRS. ARNONE: YES.

21 THE COURT: I SEE. AND FOR ANY
22 LENGTH OF TIME?

23 MRS. ARNONE: NINETY DAYS OR SO.

24 THE COURT: WHEN'S THE LAST TIME
25 HE'S BEEN CALLED TO GO TO GERMANY?

AMY ARNONE - CROSS/MR. BAILEY

1 MRS. ARNONE: HE HASN'T.

2 THE COURT: NEVER?

3 MRS. ARNONE: NO.

4 THE COURT: AND HE'S BEEN IN THE AIR
5 FORCE FOR HOW LONG?

6 MRS. ARNONE: SIXTEEN YEARS.

7 THE COURT: OH! WE CAN ROLL THE
8 DICE. WE CAN BET ON THE GEORGIA LOTTERY.

9 MRS. ARNONE: BUT HE'S NEVER BEEN ON
10 STANDBY BEFORE EITHER.

11 THE COURT: I UNDERSTAND. BUT HE'S
12 BEEN ON STANDBY FOR THE LAST SIX WEEKS OR TWO
13 YEARS?

14 MRS. ARNONE: OFF AND ON FOR A
15 WHILE.

16 THE COURT: WELL---

17 MRS. ARNONE: BUT CHANCES ARE; NO.

18 THE COURT: THANK YOU. YOU HAVE A
19 NICE DAY.

20 MRS. ARNONE: THANK YOU.

21 THE COURT: ALL RIGHT. BRING IN THE
22 NEXT JUROR, RONALD BOLES.

23 (JUROR NUMBER 25, A WHITE MALE, IS CALLED.)

24 - - - - -

25 WHEREUPON,

RONALD D. BOLES - EXAM. BY THE COURT

RONALD D. BOLES, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATIONBY THE COURT:

Q. MR. BOLES, HOW ARE YOU TODAY?

A. FINE; HOW ABOUT YOURSELF?

Q. FINE. DID YOU MAKE THAT DOCTOR'S APPOINTMENT ALL
RIGHT YESTERDAY?

A. YES, SIR; RIGHT ON TIME.

Q. WELL, I HOPE YOU GOT A GOOD REPORT. MR. BOLES, YOU
ARE JUROR NUMBER 25. AND YOU ARE STILL UNDER OATH
SINCE YESTERDAY, DO YOU UNDERSTAND, AS WE POSE
THESE QUESTIONS TO YOU?

A. YES, SIR.

Q. MR. BOLES, I NOTE THAT YOU HAVE A PAIR OF CRUTCHES
WITH YOU. WOULD YOU TELL US, PLEASE, THE NATURE OF
YOUR MEDICAL SITUATION?

A. YES, SIR. I GOT CAUGHT UP IN A DITCH WITCH TWELVE
YEARS AGO, AND I'M JUST HAVING SOME RECONSTRUCTIVE
BONE SURGERY DONE TO MY LEG. AND I OPTED TO DO
THAT LAST TUESDAY. SO THAT'S WHY I'M ON CRUTCHES.
I'M HAVING MY LEG REPAIRED.

Q. SO THEY DID THE SURGERY LAST TUESDAY?

A. YES.

RONALD D. BOLES - EXAM. BY THE COURT

- 1 Q. AND YOU HAD AN APPOINTMENT ON YESTERDAY, FEBRUARY
2 THE 22ND. WHEN IS YOUR NEXT APPOINTMENT?
- 3 A. I HAVE AN APPOINTMENT AT 4:15 NEXT MONDAY. I'M NOT
4 SURE OF THE DATE.
- 5 Q. MONDAY IS MARCH THE FIRST. AND THE SURGERY WAS
6 PERFORMED WHEN?
- 7 A. THAT WAS PERFORMED TUESDAY, THE 16TH.
- 8 Q. ALL RIGHT. BECAUSE WHY I ASKED YOU ABOUT THAT.
9 AND I'M GLAD THAT THEY DID THE SURGERY TO HELP
10 CORRECT WHATEVER THE SITUATION IS. THIS IS A DEATH
11 PENALTY CASE. IN DURATION IT WOULD PROBABLY -- IF
12 WE START TOMORROW AFTERNOON, IT MIGHT BE TUESDAY OR
13 WEDNESDAY OF NEXT WEEK OR EVEN THURSDAY OR FRIDAY
14 BEFORE IT IS COMPLETED. AND OBVIOUSLY YOU WOULDN'T
15 WANT TO KEEP TWELVE JURORS AND ONE ALTERNATE, IF
16 YOU WERE AN ALTERNATE, WAITING. IT TAKES YOU AN
17 HOUR TO GET TO CHARLESTON; AN HOUR TO GET BACK;
18 MAYBE AN HOUR FOR YOUR APPOINTMENT. AND WE
19 WOULDN'T WANT TO KEEP PEOPLE SEQUESTERED IN THE
20 MOTEL FOR YOU TO KEEP YOUR DOCTOR'S APPOINTMENT. I
21 INSIST THAT YOU KEEP YOUR DOCTOR'S APPOINTMENT.
22 DON'T MISUNDERSTAND ME. AND PLEASE UNDERSTAND THAT
23 YOUR HEALTH AND WELL-BEING IS PARAMOUNT. BUT I
24 DON'T KNOW -- I'M CONCERNED THAT MAY INTERFERE WITH
25 YOUR POTENTIAL JURY SERVICE.

RONALD D. BOLES - DIRECT/MR. BAILEY

- 1 A. YES, SIR. I MEAN, I HAVE NOT A PROBLEM. LIKE I
2 SAID, I HAVE THAT APPOINTMENT AT 4:15 NEXT MONDAY.
3 OTHER THAN THAT I'M FREE AS FAR AS THAT GOES.

4 THE COURT: MR. SOLICITOR?

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

- 7 Q. MR. BOLES; JUST VERY BRIEFLY. I'M WALTER BAILEY.
8 I'LL BE PROSECUTING THIS CASE.
9 A. YES, SIR.
10 Q. AND OUR MAIN CONCERN IS WHETHER OR NOT, I GUESS,
11 YOUR APPOINTMENT IS SOMETHING YOU COULD PUT OFF FOR
12 FOUR OR FIVE MORE DAYS PAST MONDAY, IF THAT WOULD
13 PUT YOU IN ANY DANGER MEDICALLY OR CREATE ANY
14 PROBLEMS?
15 A. IT SHOULDN'T. I'D HAVE TO CHECK WITH MY DOCTOR,
16 BUT IT SHOULD NOT.
17 Q. ALL RIGHT.

18 THE COURT: YOUR DOCTOR IS A GENERAL
19 SURGEON AT M.U.S.C.?

20 MR. BOLES: YES, SIR.

21 THE COURT: WHAT'S HIS NAME?

22 MR. BOLES: HE IS A DR. HARTZOG. HE
23 IS THE ASSISTANT PROFESSOR OF ORTHOPAEDICS.

24 THE COURT: EXCELLENT.

- 25 Q. JUST ONE OTHER THING. ARE YOU TAKING ANY KIND OF

RONALD D. BOLES - EXAMINATION BY THE COURT

1 PAIN KILLERS OR ANYTHING OF THAT NATURE THAT
2 MIGHT---

3 A. SOME TYLOX; THAT'S IT.

4 Q. OKAY. I'M NOT FAMILIAR WITH THAT. BUT DOES THAT
5 DO ANYTHING AS FAR YOUR CONCENTRATION OR ANYTHING
6 LIKE THAT?

7 A. NO, SIR.

8 Q. OKAY.

9 THE COURT: IT'S NOT AS STRONG AS A
10 DORAVON. IT'S NOT REAL STRONG.

11 Q. MR. BOLES, THAT'S ALL I HAVE AS FAR AS THE MEDICAL
12 CONDITION.

13 THE COURT: ON THE MEDICALS, MR.
14 THEOS, WOULD YOU LIKE TO QUESTION?

15 MR. THEOS: I DON'T THINK SO, YOUR
16 HONOR. I THINK WE UNDERSTAND WHAT HE'S SAYING.

17 EXAMINATION

18 BY THE COURT:

19 Q. ALL RIGHT. MR. BOLES, UNDERSTAND THAT IF YOU ARE
20 SELECTED ON THIS JURY, WE'RE NOT GOING TO BE ABLE
21 TO EXCUSE YOU TO GO TO THE DOCTOR ON MONDAY.
22 ALTHOUGH WE REALIZE THE IMPORTANCE OF IT. SO I
23 NEED YOU TO TELL US NOW THERE ARE SOME OTHER
24 QUESTIONS I'LL ASK OF YOU IF YOU THINK THAT YOU CAN
25 PUT THE DOCTOR'S APPOINTMENT OFF UNTIL PERHAPS

RONALD D. BOLES - EXAMINATION BY THE COURT

1 TUESDAY, WEDNESDAY, OR THURSDAY. BUT I FEEL
2 CERTAIN, GENTLEMEN, WE WON'T BE HERE AFTER FRIDAY A
3 WEEK. WOULD THAT BE---

4 MR. THEOS: I THINK THAT'S FAIR TO
5 SAY, YOUR HONOR.

6 MR. BAILEY: I HOPE YOU'RE CORRECT,
7 YOUR HONOR.

8 Q. WELL, DON'T FORGET THE SOUTHEASTERN CONFERENCE
9 BASKETBALL GAME STARTS THURSDAY. AND I HAVE TWO
10 TICKETS THAT I'M SELLING CHEAP IN ATLANTA. SO DO
11 YOU THINK THAT YOU COULD PUT THE APPOINTMENT OFF
12 FOR A COUPLE OF DAYS IF NECESSARY?

13 A. YES, SIR. I DON'T THINK THAT WOULD BE A PROBLEM
14 SETTING A NEW APPOINTMENT.

15 Q. WELL, IF WE HAVE TO WE'LL PAY HIM TO COME OVER HERE
16 IF WE CAN GET HIM HERE. I MEAN, WE'RE GOING TO
17 TAKE CARE OF YOUR HEALTH. WE'VE NEVER LOST A
18 JUROR, OKAY?

19 A. RIGHT. MY MAIN CONCERN WAS YESTERDAY TO MAKE SURE
20 I MADE THAT APPOINTMENT.

21 Q. SURE.

22 A. SO HE CAN SHOW ME SOME THINGS I NEEDED TO DO. I
23 HAVE SOME ADJUSTMENTS I HAVE TO MAKE TO THIS LEG
24 BRACE I HAVE. AND I HAVE NOT RECEIVED THAT YET
25 UNTIL YESTERDAY. BUT OTHER THAN THAT, I DON'T SEE

RONALD D. BOLES - EXAMINATION BY THE COURT

1 ANYTHING THAT WOULD BE PRESSING TO KEEP ME FROM
2 BEING A JUROR IF I WAS CHOSEN.

3 Q. FINE. AND, MR. BOLES, HAVE YOU READ OR HEARD
4 ANYTHING ABOUT THIS CASE?

5 A. NO, SIR. TO MY RECOLLECTION I CANNOT REMEMBER
6 ANYTHING ABOUT IT. I WAS INVOLVED IN A WRECK BACK
7 IN JULY, AND MY MEMORY ISN'T THE BEST AS FAR AS
8 PAST. SO I DO NOT RECOLLECT ANYTHING ABOUT IT.

9 Q. DID YOU HAVE AN ATTORNEY REPRESENTING YOU IN THAT
10 WRECK?

11 A. NO, SIR. I WAS---

12 Q. NO, SIR. YOU DON'T HAVE TO GO INTO THE FACTS.

13 A. OKAY.

14 Q. NOW, MR. BOLES, DO YOU HAVE ANY BIAS OR PREJUDICE
15 AGAINST THE STATE OR THE DEFENDANT IN THIS CASE?

16 A. NO, SIR, NOT AT ALL. I LOVE THIS STATE MYSELF.
17 AND I DON'T EVEN KNOW THE DEFENDANT AT ALL.

18 Q. EVEN THOUGH TENNESSEE WAS NUMBER ONE, AND YOU WERE
19 BORN IN KNOXVILLE. WE'RE GLAD TO HAVE YOU.

20 A. I DO LOVE MY STATE OF TENNESSEE ALSO.

21 Q. I UNDERSTAND. AND RIGHTFULLY SO. AND PLEASE
22 UNDERSTAND THESE QUESTIONS WE'RE ASKING OF YOU, MR.
23 BOLES, THAT THERE ARE NO RIGHT OR WRONG ANSWERS
24 BECAUSE THE COURT AND THE ATTORNEYS -- THIS IS THE
25 ONLY OPPORTUNITY WE'LL HAVE TO ASK QUESTIONS TO

RONALD D. BOLES - EXAMINATION BY THE COURT

1 OBTAIN YOUR VIEWS ON CERTAIN MATTERS. AND WHATEVER
2 YOUR VIEWS ARE, THEY'RE CORRECT VIEWS BECAUSE
3 THEY'RE YOURS. SO HAVE NO FEAR THAT YOU'RE GOING
4 TO FLUNK THE TEST. I TELL YOU NOW THAT YOU WILL
5 PASS THE TEST, I'M SURE. BUT IT'S IMPORTANT THAT
6 YOU UNDERSTAND IN THE CRIMINAL COURTS OF THIS
7 STATE, AND UNDER OUR CRIMINAL LAW IN SOUTH
8 CAROLINA, THAT EVERY DEFENDANT THAT IS CHARGED WITH
9 A CRIME, THE FACT HE'S CHARGED WITH A CRIME DOESN'T
10 MEAN HE'S GUILTY. EVERY DEFENDANT IS PRESUMED
11 INNOCENT UNTIL AND UNLESS THE STATE OF SOUTH
12 CAROLINA REMOVES THAT PRESUMPTION OF INNOCENCE BY
13 EVIDENCE SATISFYING YOU THE JURY OF HIS GUILT
14 BEYOND A REASONABLE DOUBT. THERE'S NO BURDEN UPON
15 THE DEFENDANT TO PROVE HIMSELF INNOCENT. THE
16 DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS STAND.
17 IT RAISES NO INFERENCE OR PRESUMPTION FOR OR
18 AGAINST THE GUILT OR INNOCENCE. IF HE DECLINES TO
19 TAKE THE WITNESS STAND, THAT'S HIS RIGHT. AND THE
20 COURT WILL INSTRUCT THE JURY NOT TO ALLOW THAT
21 FAILURE TO TAKE THE WITNESS STAND TO TESTIFY. THAT
22 SHOULDN'T ENTER AND MUST NOT ENTER INTO THE
23 DELIBERATIONS IN ANY MANNER WHATSOEVER. THE STATE
24 WILL BE REQUIRED TO PROVE THE GUILT DURING THE
25 GUILT PHASE OF THE DEFENDANT BEYOND A REASONABLE

RONALD D. BOLES - EXAMINATION BY THE COURT

1 DOUBT. AND ON THE MURDER CHARGE WHERE THE STATE IS
2 SEEKING THE DEATH PENALTY, IF THE VERDICT BE NOT
3 GUILTY, THEN THERE WOULD NOT BE A SECOND PHASE OF
4 THE SENTENCING PHASE BECAUSE THE COURT WILL HANDLE
5 THE SENTENCE IF THE DEFENDANT WERE CONVICTED ON ANY
6 OF THE OTHER FOUR INDICTMENTS THAT WILL BE BEFORE
7 THE COURT AND JURY FOR CONSIDERATION. NOW, IF YOU
8 GET TO THAT PENALTY PHASE OF THE CASE, ASSUMING
9 ARGUENDO, THAT THE STATE HAD PROVEN THE DEFENDANT
10 GUILTY BEYOND A REASONABLE DOUBT, THEN THE STATE
11 WOULD BE REQUIRED TO PROVE THE GUILT OF THE
12 DEFENDANT AGAIN BEYOND A REASONABLE DOUBT THAT AT
13 THE TIME OF THE COMMISSION OF THE MURDER BY THE
14 DEFENDANT THAT THERE WAS ONE OR MORE AGGRAVATING
15 CIRCUMSTANCE. THE ALLEGED AGGRAVATING
16 CIRCUMSTANCES IN THIS CASE ARE KIDNAPPING, ARMED
17 ROBBERY, BURGLARY, AND CRIMINAL SEXUAL CONDUCT.
18 AND IF THE JURY SHOULD FIND BY UNANIMOUS VERDICT
19 THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
20 ONE OR MORE OF THOSE STATUTORY AGGRAVATING
21 CIRCUMSTANCES, THEN THE JURY MAY, COULD, RETURN A
22 VERDICT RECOMMENDING THE DEATH PENALTY. DURING
23 THAT PENALTY PHASE OR PROCEEDING OF THIS TRIAL THE
24 DEFENDANT WOULD BE GIVEN THE OPPORTUNITY TO PRESENT
25 EVIDENCE OF MITIGATING CIRCUMSTANCES. BY THAT I

RONALD D. BOLES - RE-DIRECT/MR. BAILEY

1 MEAN TO MITIGATE IS TO LESSEN, TO MINIMIZE THE
2 RECOMMENDATION FROM A DEATH PENALTY TO A LIFE
3 SENTENCE WITHOUT PAROLE. NOW THE JURY CAN AS A
4 RECOMMENDATION OF MERCY OUT OF THE GOODNESS OF
5 THEIR HEARTS, THEY CAN RECOMMEND LIFE IMPRISONMENT
6 WITHOUT PAROLE ALTHOUGH THE STATE MAY HAVE PROVEN
7 BEYOND A REASONABLE DOUBT ONE OR MORE AGGRAVATING
8 STATUTORY CIRCUMSTANCES -- EXCUSE ME, MADAM COURT
9 REPORTER. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. AND DO YOU UNDERSTAND FURTHER THAT THERE ARE THREE
12 TYPES OF JURORS ON THAT SHEET? HAVE YOU HAD AN
13 OPPORTUNITY TO REVIEW IT?

14 A. YES, SIR.

15 Q. DO YOU UNDERSTAND IT?

16 A. YES, SIR.

17 Q. WHICH OF THE THREE CATEGORIES WOULD YOU FIT IN, DO
18 YOU THINK?

19 A. I FIND MYSELF IN CATEGORY THREE.

20 Q. ALL RIGHT, SIR.

21 THE COURT: THE STATE MAY PROCEED TO
22 EXAMINE.

23 RE-DIRECT EXAMINATION

24 BY MR. BAILEY:

25 Q. MR. BOLES, JUST A FEW QUESTIONS HERE. IN REGARD TO

RONALD D. BOLES - RE-DIRECT/MR. BAILEY

1 YOUR BELIEFS IN THE DEATH PENALTY, THERE ARE NO
2 RIGHT OR WRONG ANSWERS AS THE JUDGE SAID. IS THE
3 DEATH PENALTY SOMETHING YOU'VE EVER THOUGHT ABOUT
4 IN ANY DETAIL BEFORE YESTERDAY WHEN YOU FOUND OUT
5 YOU MIGHT BE ON THIS JURY?

6 A. I'VE HAD PROBABLY SOME SELF OPINIONS; NOT BEING IN
7 THIS TYPE OF CIRCUMSTANCE BEFORE. BUT, YOU KNOW,
8 DIFFERENT THINGS SAYING WELL MAYBE HE SHOULD HAVE
9 THE DEATH PENALTY OR MAYBE HE SHOULDN'T.

10 Q. ALL RIGHT, SIR.

11 A. BUT I'VE NEVER BEEN IN THE SITUATION TO ACTUALLY,
12 YOU KNOW, GIVE MY CHOICE OPINION.

13 Q. OKAY. AND NOBODY IS GOING TO ASK YOU TO PREDICT
14 WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T
15 HEARD THE FACTS. BUT YOU UNDERSTAND THAT WE WOULD
16 NOT EVEN GET TO THAT SECOND PART OF THE TRIAL
17 UNLESS THE DEFENDANT IS FOUND GUILTY OF MURDER IN
18 THE FIRST PART OF THE TRIAL?

19 A. CORRECT.

20 Q. SO ANY TIME THAT JURY IS CONSIDERING LIFE OR DEATH
21 WHEN DEALING WITH A CONVICTED MURDERER, AND THE
22 REASON WE HAVE THAT SECOND PHASE, THAT SECOND PART
23 OF THE TRIAL, IS TO ALLOW THE INTRODUCTION OF
24 ADDITIONAL EVIDENCE THAT DIDN'T COME OUT
25 PREVIOUSLY. I'D BE PUTTING UP EVIDENCE IN

RONALD D. BOLES - RE-DIRECT/MR. BAILEY

1 AGGRAVATION TRYING TO PERSUADE THE JURY OF THE
2 APPROPRIATE SENTENCE AS THE DEATH PENALTY. THE
3 DEFENSE CAN, IF THEY WANT TO -- THEY DON'T HAVE TO
4 -- THEY CAN PUT UP EVIDENCE IN MITIGATION. THEY'D
5 BE ARGUING FOR A LIFE SENTENCE. THE JUDGE WOULD
6 THEN INSTRUCT THE JURY ON THE LAW THAT APPLIES.
7 THE JURY, NOT THE JUDGE, MAKES THE DECISION. DO
8 YOU UNDERSTAND HOW THAT WORKS?

9 A. YES, SIR.

10 Q. ALL THE JUDGE DOES IS ORDER WHATEVER THE JURY SAYS
11 THE VERDICT SHOULD BE INTO EFFECT. NOW, IF THE
12 CASE WAS BAD ENOUGH COULD YOU AS A JURY VOTE FOR
13 THE DEATH PENALTY KNOWING THAT SENTENCE ACTUALLY BE
14 CARRIED OUT?

15 A. YES, SIR. I FEEL I COULD IF THE SITUATION THAT WAS
16 CALLED FOR; YES, SIR.

17 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTE FOR
18 THE DEATH PENALTY, THEN EACH ONE WOULD NEED TO SIGN
19 THEIR NAME TO A DEATH VERDICT FORM THAT WOULD
20 RESULT IN THAT EXECUTION TAKING PLACE. COULD YOU
21 SIGN YOUR NAME TO A PAPER LIKE THAT IF THAT WAS
22 YOUR DECISION?

23 A. YES, SIR.

24 Q. COULD YOU ANNOUNCE THAT DECISION IN OPEN COURT IF
25 YOU WERE ASKED TO?

RONALD D. BOLES - RE-DIRECT/MR. BAILEY

1 A. YES, SIR, I COULD.

2 Q. ALL RIGHT, MR. BOLES; THAT'S ALL I'VE GOT. THANK
3 YOU VERY MUCH.

4 THE COURT: WOULD YOU LIKE TO
5 QUESTION, MR. THEOS?

6 MR. THEOS: YES, SIR, YOUR HONOR.

7 RE-DIRECT EXAMINATION

8 BY MR. THEOS:

9 Q. MR. BOLES, I'M JERRY THEOS. THIS IS JIM BELL. HE
10 AND I ARE THE LAWYERS REPRESENTING KENNETH
11 SIMMONS.

12 A. YES, SIR.

13 Q. THANK YOU FOR BEING HERE. I UNDERSTAND YOU'VE GOT
14 THIS PROBLEM WITH YOUR LEG. ONE QUESTION THAT I
15 DIDN'T ASK, AND I DON'T KNOW IF IT WAS ASKED; IS
16 THERE ANY SORT OF SPECIAL TREATMENT OTHER THAN THIS
17 MEDICATION THAT YOU'RE TAKING, EXERCISES OR
18 EXERCISE EQUIPMENT THAT YOU NEED IF YOU ARE CHOSEN
19 AS A JUROR?

20 A. NO, SIR.

21 Q. JUST THE BRACE THAT YOU'RE WEARING?

22 A. JUST THE BRACE THAT I'M WEARING; AND I'VE GOT TO
23 ADJUST IT MYSELF.

24 Q. COULD YOU SIT IN ONE OF THESE JUROR'S CHAIRS FOR, I
25 GUESS, MAYBE AN HOUR TO TWO HOURS AT A TIME BEFORE

RONALD D. BOLES - RE-DIRECT/MR. THEOS

1 WE TAKE BREAKS WITHOUT TOO MUCH DIFFICULTY?

2 A. OH, YES; NO PROBLEM.

3 Q. NOW, AS THE JUDGE TOLD YOU AND MR. BAILEY TOUCHED
4 ON, IT'S A LITTLE UNUSUAL FOR US TO BE TALKING
5 ABOUT THE PENALTY THAT MIGHT BE IMPOSED IN A CASE
6 LIKE THIS BECAUSE WE HAVEN'T -- THE GUILT HAS NOT
7 BEEN DETERMINED AT THIS POINT.

8 A. CORRECT.

9 Q. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. MR. SIMMONS, AS THE JUDGE TOLD YOU, IS PRESUMED TO
12 BE INNOCENT. WHAT ARE YOUR FEELINGS ABOUT SOMEBODY
13 WHO HAS BEEN CHARGED, SOMEBODY WHO IS STANDING
14 TRIAL, IN A COURTROOM LIKE THIS? DO YOU HAVE ANY
15 FEELINGS ABOUT GUILT OR INNOCENCE BEFORE THE TRIAL
16 STARTS?

17 A. WELL, I BELIEVE THAT IF A MAN IS INNOCENT, THAT
18 HE'S INNOCENT. I MEAN, YOU KNOW, THE TRUTH IS THE
19 TRUTH. AND I DON'T THINK ANYBODY SHOULD HAVE ANY
20 HARD FEELINGS ABOUT IT. I MEAN, IF THE MAN IS
21 INNOCENT, HE'S INNOCENT. THAT'S HOW I LOOK AT IT.
22 I MEAN, IF YOU'RE GUILTY, YOU KNOW IN YOUR HEART AS
23 A MAN THAT YOU'RE GUILTY; AND IT'S GOING TO COME
24 OUT ONE WAY OR THE OTHER. THAT'S HOW I SEE IT.

25 Q. WOULD YOU, UNDERSTANDING WHAT THOSE FEELINGS ARE,

RONALD D. BOLES - RE-DIRECT/MR. THEOS

1 WOULD YOU REQUIRE SOMEBODY CHARGED WITH CRIME TO
2 PROVE THEIR INNOCENCE OR TO PROVE THAT THEY WERE
3 NOT GUILTY TO YOU AS A JUROR?

4 A. CAN YOU RESTATE THAT ONE MORE TIME?

5 Q. YES, SIR. UNDERSTANDING WHAT YOUR RESPONSE WAS A
6 SECOND AGO TO THAT OTHER QUESTION; IF A MAN IS
7 GUILTY, THE MAN'S GUILTY, HE KNOWS IN HIS HEART,
8 ETC. I UNDERSTAND THINGS ALONG THOSE LINES.

9 A. RIGHT.

10 Q. WOULD YOU REQUIRE -- DO YOU FEEL IT'S NECESSARY FOR
11 SOMEONE TO PRESENT A DEFENSE---

12 MR. BAILEY: JUDGE, I OBJECT TO THAT
13 UNLESS HE PREDICATES THAT AS TO WHAT THE LAW IS.

14 MR. THEOS: I THOUGHT YOU TOLD HIM
15 WHAT THE LAW WAS, YOUR HONOR. I THOUGHT YOU DID
16 TELL HIM THAT, BUT I'LL GO OVER IT AGAIN.

17 Q. MR. BOLES?

18 A. YES.

19 Q. I UNDERSTAND WHAT YOUR RESPONSES WERE. THE LAW
20 SAYS SOMETHING ALONG THESE LINES. IT'S NOT EXACTLY
21 VERBATIM BUT ESSENTIALLY THAT A PERSON ON TRIAL
22 DOES NOT HAVE TO PROVE ANYTHING?

23 A. CORRECT.

24 Q. HE DOES NOT HAVE TO PROVE ANYTHING; DOES NOT EVEN
25 HAVE TO TAKE THE STAND.

RONALD D. BOLES - RE-DIRECT/MR. THEOS

1 A. YES, SIR.

2 Q. THE BURDEN IS ON THE STATE TO PROVE SOMEBODY'S
3 GUILT BEYOND A REASONABLE DOUBT?

4 A. YES, SIR.

5 Q. NOW, MY QUESTION TO YOU IS, UNDERSTANDING WHAT YOUR
6 RESPONSE WAS TO THE PREVIOUS QUESTION; WOULD YOU
7 LOOK TO SOMEBODY ON TRIAL IN A CRIMINAL CASE TO
8 PROVE THEIR INNOCENCE TO YOU AS A JUROR?

9 A. NO, SIR. LIKE YOU SAID, THE STATE WOULD HAVE TO
10 PROVE THAT HE'S GUILTY TO START WITH. AS LONG AS
11 THE STATE PROVES THAT HE'S GUILTY, IN MY HEART I
12 WOULD SAY YES, YOU'RE GUILTY, AND YES, YOU SHOULD.

13 Q. OKAY. BUT YOU UNDERSTAND THAT IN THIS PARTICULAR
14 CASE IF THE STATE FAILED TO MEET ITS BURDEN OF
15 PROOF BEYOND A REASONABLE DOUBT THAT WE WOULDN'T
16 EVEN GO ON TO THIS NEXT STAGE THAT WE'VE BEEN
17 QUESTIONING YOU ABOUT?

18 A. CORRECT.

19 Q. NOW, IF WE DID, HOWEVER, GO ON TO THIS NEXT STAGE,
20 MR. BAILEY'S QUESTION TO YOU WAS: IF IT WERE BAD
21 ENOUGH, IF THE CASE WERE BAD ENOUGH, WOULD YOU BE
22 ABLE TO VOTE FOR THE DEATH PENALTY. AND I THINK
23 YOUR RESPONSE TO THAT WAS YES?

24 A. YES.

25 Q. MY QUESTION TO YOU IS: IF THE CASE WERE BAD

1 ENOUGH, WOULD YOU THINK THAT THERE WOULD BE ANY
2 OTHER PENALTY ASIDE FROM THE DEATH PENALTY; COULD
3 YOU CONSIDER ANY OTHER PENALTY ASIDE FROM THE DEATH
4 PENALTY?

5 A. OH, YES SIR, I WOULD. I'D THINK OF IT ALL --
6 DEPENDING ON, LIKE I SAY, ALL THE CIRCUMSTANCES
7 INVOLVED. I MEAN, PEOPLE DIE EVERY DAY. THAT
8 DON'T MEAN THAT SOMEBODY'S ALWAYS GUILTY ENOUGH TO
9 -- I WOULD SAY TO PUT THEM TO DEATH. YOU KNOW, I
10 MEAN, AS LONG AS YOU KNOW EXACTLY WHAT THE
11 CIRCUMSTANCES ARE. I'M NOT GOING TO PRE-JUDGE
12 SOMEBODY ON IT.

13 Q. UNDERSTANDING THERE ARE TWO POSSIBLE PUNISHMENTS --
14 AGAIN, IF WE REACH THAT STAGE -- UNDERSTANDING THAT
15 THOSE TWO POSSIBLE PUNISHMENTS ARE THE DEATH
16 PENALTY OR LIFE IMPRISONMENT WITHOUT PAROLE, MY
17 QUESTION TO YOU IS WOULD YOU BE ABLE TO -- IF MR.
18 SIMMONS WERE FOUND GUILTY OF MURDER, AND THE CASE
19 WERE BAD ENOUGH AS MR. BAILEY PUT IT, WOULD YOU BE
20 ABLE TO CONSIDER BOTH OF THOSE AS POSSIBLE
21 PUNISHMENT RATHER THAN JUST THE DEATH PENALTY IF HE
22 WERE CONVICTED?

23 A. RIGHT. IF HE WAS CONVICTED OF MURDER, BUT THEN AT
24 THE SAME POINT I THINK YOU'D HAVE TO LOOK AT ALL
25 THE CIRCUMSTANCES. I DON'T KNOW WHAT THE

RONALD D. BOLES - RE-DIRECT/MR. THEOS

1 CIRCUMSTANCES ARE; SO I COULDN'T HONESTLY SAY YES
2 OR NO.

3 Q. THANK YOU.

4 A. YES, SIR.

5 MR. BAILEY: NOTHING FURTHER, YOUR
6 HONOR.

7 THE COURT: HAND A SHEET TO THE
8 GENTLEMAN, PLEASE. MR. BOLES, I ADMIRE YOU FOR
9 YOUR GUMPTION OF BEING WILLING TO TRY TO SERVE ON
10 THIS JURY IN SPITE OF YOUR LEG SITUATION. AND YOU
11 CERTAINLY ARE QUALIFIED TO SERVE AS A JUROR ON THIS
12 CASE. YOU HAVE NOT BEEN SELECTED YET TO SERVE AS A
13 JUROR ON THIS CASE. YOU HAVE NOT BEEN SELECTED
14 YET. THAT PROCESS WE HOPE WILL TAKE PLACE AT TWO
15 O'CLOCK TOMORROW DEPENDING ON HOW MANY WE HAVE IN
16 THE JURY POOL AT THAT TIME. THERE'S A NUMBER ON
17 THAT INFORMATION SHEET THERE FROM THE CLERK. IF
18 YOU'LL CALL THAT AFTER SIX O'CLOCK. I HOPE EVEN
19 THOUGH THAT'S JUST TWO HOURS FROM NOW WE'LL BE IN A
20 POSTURE TO KNOW HOW MANY JURORS WE HAVE AND WHAT
21 TIME TOMORROW THAT PROCESS WILL TAKE PLACE. SO
22 PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE OR
23 ALLOW ANYONE TO DISCUSS IT WITH YOU. OBVIOUSLY
24 YOU'RE ALLOWED TO TALK TO YOUR FAMILY MEMBERS ABOUT
25 THE NEED FOR SEQUESTRATION AND PACKING YOUR CLOTHES

RONALD D. BOLES - RE-DIRECT/MR. THEOS

1 OR YOUR MEDICINE OR WHATEVER. SO WITH THAT, YOU
2 HAVE A PLEASANT DAY AND WE'LL LOOK FORWARD TO
3 SEEING YOU TOMORROW.

4 MR. BOLES: THANK YOU. DO I TAKE
5 THIS? (INDICATING.)

6 THE COURT: YOU CAN LEAVE THAT OR
7 TAKE IT; IT DOESN'T MATTER. GENTLEMEN, IF YOU
8 WOULD, LOOK AT THE FIRST JUROR ON PANEL SEVEN
9 BEFORE THEY COME IN.

10 MR. BAILEY: THE LETTER?

11 THE COURT: YES; THAT LADY HAS HIGH
12 BLOOD PRESSURE; DOESN'T RESPOND WELL IN GROUPS; AND
13 THEN SHE'S GOT A LETTER THERE; AND SHE CARES FOR A
14 TWO YEAR OLD EVEN THOUGH IT'S PROBABLY HER
15 GRANDCHILD OR A NEIGHBOR'S. BUT SHE SAYS SHE HAS
16 DIFFICULTY SITTING AND STANDING FOR LONG PERIODS OF
17 TIME; AND, YOU KNOW, SHE HAS A NINTH GRADE
18 EDUCATION. AND, YOU KNOW, LIKE YOUR RELIGION
19 PROSTANT, P-R-O-S-T-A-N-T. AND SHE SHOULD -- WOULD
20 Y'ALL LIKE FOR ME TO TALK TO HER BRIEFLY ABOUT HER
21 MEDICAL BEFORE WE START? HER BLOOD PRESSURE
22 READINGS WERE RATHER ELEVATED, 182 OVER 96; AND
23 THAT WAS IN A DOCTOR'S OFFICE. SHE SAID P.B.
24 READING. I IMAGINE THAT'S BLOOD PRESSURE, P.B,
25 PRESSURE OF BLOOD.

CAROLYN K. MCKNIGHT - EXAMINATION BY THE COURT

1 MR. BAILEY: YOUR HONOR, I THINK WE
2 CAN AGREE TO EXCUSE HER.

3 THE COURT: IS THAT AGREEABLE?

4 MR. THEOS: THAT'S FINE WITH US,
5 YOUR HONOR.

6 THE COURT: ASK MRS. CAROLYN
7 MCKNIGHT TO COME IN. ALL RIGHT, NOW, OUR
8 TWENTY-FIFTH JUROR WAS 307?

9 MS. GRAHAM: YES, SIR.

10 THE COURT: OUR TWENTY-SIXTH JUROR
11 IS?

12 MS. GRAHAM: NUMBER ELEVEN.

13 THE COURT: I HAVEN'T WRITTEN THAT
14 DOWN. NUMBER ELEVEN. AND OUR TWENTY-SEVENTH JUROR
15 IS NUMBER 25?

16 MS. GRAHAM: YES, SIR.

17 THE COURT: OKAY.

18 (JUROR NUMBER 216, A WHITE MALE, IS CALLED.)
19 - - - - -

20 WHEREUPON,

21 ~~CAROLYN K. MCKNIGHT, WHO BEING PREVIOUSLY~~
22 ~~SWORN TO TELL THE TRUTH, TESTIFIED AS~~
23 ~~FOLLOWS:~~

24 EXAMINATION

25 BY THE COURT:

CAROLYN K. MCKNIGHT - EXAMINATION BY THE COURT

1 Q. MRS. CAROLYN K. MCKNIGHT?

2 A. YES.

3 Q. HOW DO YOU DO, MA'AM?

4 A. FINE.

5 Q. HAVE A SEAT, PLEASE. YOU'RE JUROR NUMBER 216 ON
6 THE LIST. AND, MA'AM, WE HAVE CONSIDERED YOUR
7 WRITTEN REQUEST HERE. YOU STATED YOUR BLOOD
8 PRESSURE IN THE DOCTOR'S OFFICE JANUARY THE 25TH,
9 LESS THAN A MONTH AGO, WAS 182 OVER 96 AND THAT YOU
10 HAVE ARTHRITIS IN YOUR KNEES AND FEET, AND IT'S
11 HARD FOR YOU TO SIT AND STAND FOR A LONG PERIOD OF
12 TIME ALTHOUGH YOU DO GET A LITTLE EXERCISE TAKING
13 CARE OF THAT TWO YEAR OLD AND THE OTHERS THAT COME
14 HOME FROM SCHOOL. AND BY AGREEMENT, MA'AM, BECAUSE
15 OF YOUR REQUEST FOR MEDICAL REASONS, THE LAWYERS
16 AND THE COURT HAVE AGREED TO EXCUSE YOU. SO I WISH
17 FOR YOU GOOD HEALTH; AND SORRY TO KEEP YOU
18 WAITING.

19 A. THANK YOU.

20 Q. I JUST HOPE YOU UNDERSTAND THE PROCESS. IT'S A
21 NECESSARY THING TO DO. AND IT TAKES TIME. AND
22 UNTIL YOU ASK A QUESTION, YOU DON'T KNOW THE
23 ANSWER. YOU MAY ONLY GET 242 MORE QUESTIONS OR MAY
24 ONLY GET TWO MORE. SO NOBODY CAN ACCURATELY GAUGE
25 PRECISELY. THAT'S WHY YOU'VE HAD TO WAIT. SO

ALBERT S. NETTLES, JR. - EXAM. BY THE COURT

1 THANK YOU SO MUCH BEING HERE, AND GOOD HEALTH TO
2 YOU.

3 A. THANK YOU.

4 Q. THEY HAVE YOUR CORRECT ADDRESS NOW?

5 A. YES, SIR.

6 Q. IT'S [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

7 A. YES.

8 Q. GOOD LUCK TO YOU.

9 (AT THIS TIME JUROR NUMBER 216 IS EXCUSED FOR MEDICAL
10 REASONS.)

11 THE COURT: SO THIS IS THE SEVENTH
12 JUROR WE'VE EXCUSED, CHERYL?

13 MS. GRAHAM: WELL---

14 THE COURT: IF YOU'RE NOT KEEPING UP
15 WITH IT, IT DOESN'T MATTER. I MAY HAVE MISSED A
16 FEW.

17 MS. GRAHAM: TEN.

18 THE COURT: GOODNESS; I MISSED MORE
19 THAN A FEW. BRING IN ALBERT S. NETTLES, JR.
20 (JUROR NUMBER 234, A WHITE MALE, IS CALLED.)

21 - - - - -

22 WHEREUPON,

23 ALBERT S. NETTLES, JR., WHO BEING
24 PREVIOUSLY SWORN TO TELL THE TRUTH,
25 TESTIFIED AS FOLLOWS:

ALBERT S. NETTLES, JR. - EXAM. BY THE COURT

EXAMINATION

BY THE COURT:

Q. HI, MR. NETTLES; HOW ARE YOU TODAY?

A. HOW ARE YOU DOING?

Q. FINE.

THE COURT: THIS IS JUROR NUMBER

234.

Q. THANK YOU FOR BEING PRESENT WITH US; AND I ACCEPT THE RESPONSIBILITY FOR BEING AN HOUR-AND-A-HALF OFF SCHEDULE. WE'RE JUST DOING THE BEST WE CAN AND ASK FOR YOUR INDULGENCE AND UNDERSTANDING. NOW, YOU ARE STILL UNDER OATH, MR. NETTLES. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND IS THERE ANYTHING THAT YOU'VE READ OR HEARD ABOUT THIS CASE, MR. NETTLES? DO YOU KNOW ANYTHING ABOUT IT?

A. I REMEMBER HEARING ABOUT IT. IT'S BEEN A WHILE BACK.

Q. ANYTHING THAT YOU HEARD ABOUT IT; DID THAT CAUSE YOU TO FORM AN OPINION OF ANY KIND?

A. NOT REALLY.

Q. AND I NOTICE THAT YOU STOOD YESTERDAY AND SAID THAT YOU KNEW ONE OR MORE OF THE WITNESSES. WHICH WITNESSES WERE THOSE?

1 A. I KNOW QUITE A FEW OF THEM IF I SEE THEIR FACES. I
2 KNOW STAN YARBOROUGH. AND I KNOW OF ATTORNEY; LAST
3 NAME IS WHAN.

4 Q. HE'S NOT ON THE SHEET.

5 A. I THINK IT WAS THE SECOND NAME YOU CALLED ON THE
6 LIST.

7 Q. AND HOW DO YOU KNOW MR. YARBOROUGH?

8 A. MR. YARBOROUGH; THAT'S THE SUMMERVILLE HIGH SCHOOL
9 PRINCIPAL. WELL, RIGHT NOW HE'S NOT. HE'S THE
10 HEAD OF SOMETHING ELSE. BUT HE WAS A PRINCIPAL
11 WHEN I WAS---

12 Q. AT ONE TIME?

13 A. YEAH; AT ONE TIME.

14 Q. YOU WEREN'T THERE WHEN SUMMERVILLE BEAT MY HIGH
15 SCHOOL SO BAD IN '54, '55, '56, '57, AND '58?

16 A. I DON'T THINK SO. BUT MR. MCKISSICK WAS, THOUGH.

17 Q. HE SURE WAS. HE WAS A GREAT COACH. HE REALLY
18 WAS. AND WOULD THE LAWYERS NAME---

19 MR. BAILEY: YOUR HONOR, DR.
20 BEHRMANN WAS THE SECOND WITNESS ON MY LIST.

21 MR. NETTLES: THERE'S NO WHAN,
22 W-H-A-N?

23 MR. BAILEY: NO.

24 MR. NETTLES: OKAY. I THOUGHT I
25 REMEMBERED HEARING THAT.

ALBERT S. NETTLES, JR. - EXAM. BY THE COURT

1 Q. THE FACT THAT YOU KNOW MR. YARBOROUGH, WOULD THAT
2 INTERFERE WITH YOUR ABILITY TO FAIRLY LISTEN TO ALL
3 THE TESTIMONY AND ARRIVE AT A TRUE VERDICT?

4 A. NO.

5 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION ABOUT THIS
6 CASE?

7 A. HAVE I? NO; NOT YET. I HAVEN'T HEARD THE
8 TESTIMONY.

9 Q. COULD YOU -- CERTAINLY; YOU HAVEN'T HEARD THE
10 TESTIMONY. THAT'S A GOOD ANSWER. AND DO YOU HAVE
11 ANY BIAS OR PREJUDICE FOR OR AGAINST THE STATE OR
12 THE DEFENDANT?

13 A. NO, SIR.

14 Q. AND YOU UNDERSTAND THAT THE STATE OF SOUTH CAROLINA
15 THROUGH SOLICITOR BAILEY HAS THE BURDEN OF PROVING
16 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
17 DOUBT BECAUSE EVERY DEFENDANT, REGARDLESS OF THE
18 ENORMITY OF THE CHARGE MADE AGAINST HIM OR HER, IS
19 ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT OF THOSE
20 CHARGES UNTIL OR UNLESS THE STATE REMOVES THAT
21 PRESUMPTION OF INNOCENCE BY EVIDENCE SATISFYING THE
22 JURY OF THE GUILT BEYOND A REASONABLE DOUBT?

23 A. I UNDERSTAND.

24 Q. AND FURTHER DO YOU PLEASE UNDERSTAND THE DEFENDANT
25 HAS NO BURDEN OF PROOF. HE DOESN'T HAVE TO PROVE

ALBERT S. NETTLES, JR. - EXAM. BY THE COURT

1 HIMSELF INNOCENT. HE DOESN'T HAVE TO TAKE THE
2 WITNESS STAND. AND IF HE DECIDED NOT TO TAKE THE
3 WITNESS STAND, THE JURY WOULD BE INSTRUCTED BY THE
4 COURT AS A MATTER OF LAW THAT THEY CANNOT AND MUST
5 ALLOW THAT FACTOR IN ANY WAY TO ENTER INTO THEIR
6 DELIBERATIONS, MUST NOT HOLD IT AGAINST THE
7 DEFENDANT IN ANY MANNER WHATSOEVER. DO YOU
8 UNDERSTAND THAT?

9 A. YES, SIR.

10 Q. NOW, MR. NETTLES, THESE QUESTIONS WE'RE ASKING YOU,
11 THERE ARE NO RIGHT OR WRONG ANSWERS. WE'RE NOT
12 TRYING TO INVADE YOUR PRIVACY. THIS IS THE ONLY
13 OPPORTUNITY THE COURT AND THE ATTORNEYS WILL HAVE
14 TO QUESTION YOU ABOUT YOUR VIEWS SO THAT WE CAN
15 DETERMINE WHETHER OR NOT YOU'RE QUALIFIED OR SHOULD
16 BE SELECTED TO SERVE ON THIS JURY. SO YOU'RE GOING
17 TO MAKE 110, AN A+ GRADE, WHATEVER YOUR ANSWERS
18 ARE. SO DON'T BE CONCERNED ABOUT WHAT YOUR ANSWERS
19 MAY BE. JUST BE CONCERNED OF THE TRUTH OF THEM.
20 NOW, ASSUMING THAT THE STATE DURING THE GUILT PHASE
21 OF THE TRIAL AS OPPOSED TO THE SECOND PHASE OR
22 PENALTY PHASE, ASSUME THAT THE STATE HAD PROVEN THE
23 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT;
24 BECAUSE IF THE JURY HAD FOUND NOT GUILTY ON THE
25 MURDER, THERE WOULD BE NO NEED FOR THE SECOND PHASE

ALBERT S. NETTLES, JR. - EXAM. BY THE COURT

1 BECAUSE THE COURT AS A MATTER OF LAW WOULD HANDLE
2 THE SENTENCE, IF ANY, THERE BE CONVICTIONS ON THE
3 OTHER FOUR CHARGES. SO ASSUMING ARGUENDO THAT THE
4 JURY HAS DELIBERATED AND ARRIVED AT A UNANIMOUS
5 VERDICT BEYOND A REASONABLE DOUBT, GUILTY OF
6 MURDER; WE'D HAVE A 24 HOUR HIATUS OR WAITING
7 PERIOD AFTER WHICH THE STATE OF SOUTH CAROLINA
8 WOULD BE REQUIRED TO PROVE THE GUILT OF THE
9 DEFENDANT BEYOND A REASONABLE DOUBT; AND THE STATE
10 MUST PROVE ONE OR MORE OF THE FOUR ALLEGED
11 STATUTORY AGGRAVATING CIRCUMSTANCES, I.E. TO WIT;
12 BURGLARY, KIDNAPPING, ARMED ROBBERY, AND CRIMINAL
13 SEXUAL CONDUCT?

14 A. YES, SIR.

15 Q. IF THE STATE FAILS TO PROVE ANY ONE OF THOSE FOUR,
16 THEN YOUR VERDICT MUST BE LIFE IMPRISONMENT WITHOUT
17 PAROLE. BUT YOU MAY RETURN A VERDICT IF THE STATE
18 PROVES THOSE AGGRAVATING CIRCUMSTANCES, ONE OR
19 MORE, THE RECOMMENDATION OF THE DEATH PENALTY.
20 NOW, THE DEFENDANT DURING THAT PENALTY PHASE WOULD
21 BE GIVEN THE OPPORTUNITY TO PRODUCE ANY EVIDENCE
22 THEY DEEM PROPER IN THE TRIAL OF THE CASE IN
23 MITIGATION, IN LESSENING OR DIMINIMIZING THE
24 SEVERITY OF THE PENALTY RECOMMENDATION. AND IF
25 YOU, THE JURY, FIND BY UNANIMOUS VERDICT THERE ARE

ALBERT S. NETTLES, JR. - DIRECT/MR. THEOS

1 MITIGATING CIRCUMSTANCES, ALTHOUGH YOU MAY HAVE
2 FOUND AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE
3 DOUBT, YOU MAY RECOMMEND THE PENALTY OF LIFE
4 IMPRISONMENT WITHOUT PAROLE. OR, FINALLY, THE JURY
5 CAN AS AN ACT OF MERCY, OUT OF THE GOODNESS OF
6 THEIR HEARTS, RECOMMEND LIFE IMPRISONMENT WITHOUT
7 PAROLE JUST AS AN ACT OF MERCY. DO YOU UNDERSTAND
8 THAT?

9 A. YES, I DO.

10 Q. NOW, HAVE YOU, MR. ALBERT S. NETTLES, JR., OF [REDACTED]

11 [REDACTED] ---

12 A. [REDACTED].

13 Q. [REDACTED]. EXCUSE ME. COULD YOU -- HAVE YOU READ
14 THAT STATEMENT ABOUT THE THREE TYPES OF JURORS;
15 ONE, TWO, AND THREE?

16 A. YES.

17 Q. AND WHICH CATEGORY DO YOU FALL INTO?

18 A. THREE.

19 Q. THREE?

20 A. YES, SIR.

21 THE COURT: ALL RIGHT. MR. THEOS;
22 QUESTIONS?

23 MR. THEOS: YES, SIR.

24 DIRECT EXAMINATION

25 BY MR. THEOS:

ALBERT S. NETTLES, JR. - DIRECT/MR. THEOS

1 Q. MR. NETTLES, GOOD AFTERNOON. I'M JERRY THEOS. AND
2 THIS IS JIM BELL. WE'RE THE LAWYERS WHO REPRESENT
3 KENNETH SIMMONS WHO IS SEATED NEXT TO MR. BELL.

4 A. YES, SIR.

5 Q. THANK YOU FOR COMING. THANK YOU FOR ANSWERING THE
6 JUDGE'S QUESTIONS. AND I WILL TRY TO BE BRIEF; AND
7 I'LL TRY NOT TO REPEAT ANY QUESTIONS THE JUDGE
8 ASKED YOU. BUT IF I DO, PLEASE DON'T HOLD IT
9 AGAINST ME.

10 A. OKAY.

11 Q. THIS IS OUR ONLY CHANCE TO TALK WITH YOU TO FIND
12 OUT WHAT YOUR VIEWS ARE AND WHAT YOUR THOUGHTS ARE
13 ABOUT CERTAIN THINGS. AND IF YOU'RE CHOSEN ON THE
14 JURY WE WON'T GET THE CHANCE TO HEAR WHAT YOU HAVE
15 TO SAY ABOUT ANYTHING. AS THE JUDGE TOLD YOU THERE
16 ARE TWO PHASES. AND WE'RE SORT OF PUTTING THE CART
17 BEFORE THE HORSE BECAUSE WE'RE TALKING ABOUT
18 PENALTIES.

19 A. YES.

20 Q. AND IT'S A LITTLE AWKWARD BECAUSE MR. SIMMONS HAS
21 NOT BEEN DETERMINED TO BE GUILTY OF ANYTHING AT
22 THIS POINT. DO YOU READ ANYTHING INTO THAT, THE
23 FACT THAT WE'RE TALKING ABOUT PENALTIES ALTHOUGH WE
24 HAVEN'T EVEN HAD A TRIAL?

25 A. NOT REALLY. YOU KNOW, I HEAR IT ON T.V. ONCE IN A

ALBERT S. NETTLES, JR. - DIRECT/MR. THEOS

1 WHILE; BUT NOT REALLY.

2 Q. YOU UNDERSTAND WHAT THE JUDGE SAID?

3 A. YES.

4 Q. THAT AS HE SITS HERE, JUST BECAUSE HE'S BEEN
5 CHARGED, JUST BECAUSE HE'S BEEN INDICTED, AND JUST
6 BECAUSE HE'S ON TRIAL, AND JUST BECAUSE EVEN BEYOND
7 THAT THE SOLICITOR'S OFFICE IS SEEKING THE DEATH
8 PENALTY; THAT JUST BECAUSE OF THOSE THINGS, THAT
9 DOESN'T MEAN HE'S GUILTY?

10 A. YES.

11 Q. DO YOU UNDERSTAND THAT THE STATE AND MR. BAILEY
12 HAVE TO PROVE TO YOU AS YOU'RE SITTING ON THAT JURY
13 THAT MR. SIMMONS IS GUILTY BEYOND A REASONABLE
14 DOUBT?

15 A. YES.

16 Q. ALL RIGHT. AND DO YOU FEEL LIKE YOU WOULD HOLD THE
17 STATE TO THAT BURDEN?

18 A. YES, SIR.

19 Q. NOW, YOU UNDERSTAND, AS THE JUDGE TOLD YOU, THAT
20 MR. SIMMONS DOESN'T HAVE TO PRESENT A DEFENSE AT
21 ALL; DOESN'T HAVE TO TESTIFY IF HE DOESN'T WANT
22 TO. DO YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. WOULD YOU HOLD THAT AGAINST MR. SIMMONS IF THAT
25 WERE THE CASE?

ALBERT S. NETTLES, JR. - DIRECT/MR. THEOS

1 A. NO, SIR.

2 Q. DO YOU UNDERSTAND THAT HE DOESN'T HAVE TO DO
3 ANYTHING; EVERYTHING RESTS ON THE SHOULDERS OF THE
4 STATE?

5 A. YES, SIR.

6 Q. NOW, AS THE JUDGE TOLD YOU, IF MR. SIMMONS WERE
7 FOUND NOT GUILTY, THIS MATTER WOULD END. WE
8 WOULDN'T MOVE ON TO THE SECOND PHASE. IF ON THE
9 OTHER HAND HE WERE FOUND GUILTY AND WE DID MOVE ON
10 TO THE SECOND PHASE, YOU'D BE CALLED UPON TO MAKE A
11 DECISION. AND THAT DECISION WOULD BE WHICH
12 SENTENCE WOULD BE MOST APPROPRIATE FOR KENNETH
13 SIMMONS. WOULD IT BE THE DEATH PENALTY, OR WOULD
14 IT BE LIFE IMPRISONMENT WITHOUT PAROLE?

15 A. YES, SIR.

16 Q. AND YOU INDICATED TO THE JUDGE THAT YOU COULD
17 LISTEN TO WHATEVER EVIDENCE MR. BAILEY OFFERED TO
18 TRY TO PERSUADE YOU THAT THE DEATH PENALTY WAS THE
19 MOST APPROPRIATE. AND YOU ALSO SAID THAT YOU COULD
20 LISTEN TO THOSE THINGS THAT WE MIGHT OFFER. THE
21 WORD THAT THE JUDGE USED IS "MITIGATION." IT'S
22 KIND OF A FANCY WORD; BUT WHAT IT MEANS IS WE WOULD
23 OFFER YOU -- WE WOULD TRY TO PERSUADE YOU AND OFFER
24 ARGUMENTS, EXPLANATIONS, AND PERHAPS EVIDENCE, TO
25 PERSUADE YOU AND THE OTHER JURORS THAT THE DEATH

ALBERT S. NETTLES, JR. - CROSS/MR. BAILEY

1 PENALTY WAS NOT APPROPRIATE AND THAT LIFE
2 IMPRISONMENT WITHOUT PAROLE WAS MORE APPROPRIATE.
3 DO YOU FEEL THAT YOU COULD LISTEN TO BOTH BEFORE
4 YOU REACHED YOUR DECISION?

5 A. YES.

6 Q. AND ONE LAST QUESTION FOR YOU. WHAT IS YOUR
7 OPINION ABOUT THE DEATH PENALTY?

8 A. I'M KIND OF IFFY ABOUT IT, YOU KNOW. IF I CAN GET
9 INTO IT, I WOULD START TO UNDERSTAND A LITTLE BIT
10 MORE. AND THEN IF I THINK IT'S RIGHT, IT'S RIGHT;
11 AND IF IT'S NOT, IT'S NOT. YOU KNOW, WE ARE
12 TALKING ABOUT A HUMAN BEING HERE.

13 Q. THANK YOU VERY MUCH.

14 CROSS-EXAMINATION

15 BY MR. BAILEY:

16 Q. MR. NETTLES, I'M WALTER BAILEY. I'LL BE
17 PROSECUTING THIS CASE. I NEED TO ASK YOU A FEW
18 MORE QUESTIONS. MR. THEOS HAD ASKED YOU ABOUT YOUR
19 THOUGHTS ON THE DEATH PENALTY IN GENERAL. I NOTICE
20 IN THE QUESTIONNAIRE THAT YOU BELONG TO THE
21 CATHOLIC CHURCH, AND YOU GO ABOUT TWICE A MONTH?

22 A. YES.

23 Q. DO YOU HAVE ANY RELIGIOUS VIEWS ABOUT THE DEATH
24 PENALTY?

25 A. NOT REALLY; NO.

ALBERT S. NETTLES, JR. - CROSS/MR. BAILEY

1 Q. OKAY.

2 A. I'M LIKE, YOU KNOW, I KNOW THE POPE; I'M ROMAN
3 CATHOLIC; I KNOW THAT HE HAS THINGS ABOUT THE DEATH
4 PENALTY AND ALL THIS STUFF. BUT, YOU KNOW, I
5 HAVEN'T REALLY THOUGHT ABOUT IT REALLY.

6 Q. KNOWING THAT THE POPE DOES HAVE A POSITION ON THE
7 DEATH PENALTY, AND BEING A MEMBER OF THE CATHOLIC
8 CHURCH AND ATTENDING PRETTY REGULARLY. DO YOU
9 THINK THAT THE POPE'S OPINIONS ABOUT THE DEATH
10 PENALTY WOULD IN ANY WAY INFLUENCE YOUR ABILITY TO
11 SIT AS A JUROR ON A DEATH PENALTY CASE?

12 A. NO.

13 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND FROM WHAT THE
14 JUDGE SAID AND WHAT MR. THEOS SAID THAT WE WOULDN'T
15 EVEN GET INTO THIS PENALTY PHASE UNLESS THE
16 DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST
17 PART OF THE TRIAL?

18 A. YES.

19 Q. AND THE REASON WE HAVE THAT PENALTY PHASE, THAT
20 SECOND PART OF THE TRIAL, IS TO ALLOW THE JURY TO
21 HEAR ADDITIONAL EVIDENCE THEY HAVEN'T HEARD IN THE
22 FIRST PART OF THE TRIAL?

23 A. YES.

24 Q. I'D BE PUTTING UP EVIDENCE IN AGGRAVATION TO MAKE
25 THE MURDER WORSE; AND I'D BE ARGUING FOR THE DEATH

ALBERT S. NETTLES, JR. - CROSS/MR. BAILEY

1 PENALTY. THE DEFENSE, OF COURSE, IS GOING TO BE
2 ARGUING FOR LIFE WITHOUT PAROLE. THE JUDGE WOULD
3 INSTRUCT THE JURY ON THE LAW THAT APPLIES TO THAT
4 PART OF THE TRIAL. THE JURY WOULD THEN DECIDE WHAT
5 THE PUNISHMENT WOULD BE, NOT THE JUDGE. ALL THE
6 JUDGE CAN DO IS ORDER THAT SENTENCE TO BE CARRIED
7 OUT. SO IF THE JURY VOTES UNANIMOUSLY FOR LIFE
8 WITHOUT PAROLE, THAT'S WHAT HE GETS. HE SERVES
9 THAT SENTENCE. IF THE JURY VOTES FOR THE DEATH
10 PENALTY, THE JUDGE WOULD ORDER THAT, AND IT WOULD
11 HAPPEN. HE WOULD BE EXECUTED. I'M NOT GOING TO
12 ASK YOU WHAT YOU'D DO IN THIS CASE BECAUSE YOU
13 HAVEN'T HEARD ANY OF THE FACTS. BUT IF THE CASE IS
14 BAD ENOUGH, COULD YOU AS A JUROR VOTE FOR THE DEATH
15 PENALTY KNOWING THAT IT WOULD ACTUALLY RESULT IN
16 THAT EXECUTION TAKING PLACE?

17 A. I COULD.

18 Q. ALL RIGHT, SIR. COULD YOU SIGN YOUR NAME TO A
19 PIECE OF PAPER, A DEATH VERDICT FORM, WHERE IF ALL
20 THE JURORS VOTE FOR THE DEATH PENALTY, THEN EACH
21 ONE WOULD BE ASKED TO SIGN THEIR NAME TO THAT PAPER
22 THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE?

23 A. YES, I COULD.

24 Q. YOU COULD DO THAT?

25 A. YES, SIR.

ALBERT S. NETTLES, JR. - CROSS/MR. BAILEY

1 Q. COULD YOU COME IN HERE TO OPEN COURT AND IF YOUR
2 NAME IS CALLED OUT SAY OUT LOUD THAT THAT WAS YOUR
3 VERDICT IF IT WAS YOUR VERDICT?

4 A. COULD I SAY IT OUT LOUD?

5 Q. YES, SIR.

6 A. IF THE OTHER JURORS DID?

7 Q. YES, SIR.

8 A. YES, SIR.

9 Q. THERE'S A PROCESS CALLED POLLING THE JURY WHERE THE
10 JURY COMES OUT; EACH JUROR'S NAME WOULD BE CALLED,
11 AND THEY'D SAY IF THAT'S THEIR VERDICT OR NOT.

12 A. OKAY.

13 Q. COULD YOU DO THAT IF THAT WAS YOUR VERDICT?

14 A. YES.

15 Q. ALL RIGHT. THE JURY WILL BE PUT UP IN A MOTEL FOR
16 ABOUT A WEEK. THAT'S A HARDSHIP ON EVERYBODY. BUT
17 WOULD THAT BE ANY KIND OF AN UNUSUAL HARDSHIP TO
18 YOU?

19 A. NO; I COULD GET AWAY FROM THE HOUSE.

20 Q. THAT'S ALL I HAVE. THANK YOU VERY MUCH.

21 THE COURT: ANYTHING FURTHER, MR.
22 THEOS?

23 MR. THEOS: NOTHING, YOUR HONOR.

24 THE COURT: GIVE HIM A MAGIC SHEET.
25 YOU BEEN FOUND QUALIFIED TO SERVE ON THIS JURY.

ALBERT S. NETTLES, JR. - CROSS/MR. BAILEY

1 AND WE HAVE TENTATIVELY SET THE SELECTION TIME OR
2 THE FINAL DECISION OF WHO WOULD OR WOULD NOT BE ON
3 THE JURY FOR TWO O'CLOCK TOMORROW. WE HOPE THAT WE
4 WILL BE ON SCHEDULE AND CAN PROCEED AT THAT TIME.
5 BUT THERE'S A NUMBER WRITTEN THERE. AND IF YOU
6 WOULD, PLEASE CALL THAT NUMBER TONIGHT AFTER SIX.
7 I SHOULD BE TELLING THEM AFTER EIGHT O'CLOCK. IT
8 MAY BE EIGHT BEFORE WE KNOW IF WE'VE GOT THE
9 REQUISITE 37 IN THE POOL. BUT PLEASE IN THE
10 INTERIM, MR. NETTLES, DO NOT ALLOW YOURSELF TO BE
11 EXPOSED TO ANY PUBLICITY OR ANY ALLEGED FACTS OF
12 THIS CASE WHETHER BY FRIEND, NEIGHBOR, OR ANYONE
13 ELSE. AND DON'T READ THE PAPER OR LISTEN TO THE
14 RADIO OR T.V. IF ANYTHING ABOUT IT SHOULD COME ON.
15 DON'T GO BACK AND TELL THE OTHER JURORS THE RIGHT
16 AND WRONG ANSWERS TO THESE QUESTIONS. YOU HAVE A
17 NICE DAY; AND WE LOOK FORWARD TO SEEING YOU
18 TOMORROW.

19 MR. NETTLES: ALL RIGHT, GENTLEMEN.
20 WE'RE UP TO 28. WE'RE NINE AWAY FROM HAVING THAT
21 MAGIC POOL AND WINNING THE GEORGIA AND SOUTH
22 CAROLINA LOTTERY. Y'ALL, I DON'T GAMBLE. I JUST
23 JOKE ABOUT THE GEORGIA LOTTERY BECAUSE SO MANY
24 FOLKS IN BARNWELL WERE RIGHT THERE AT THE RIVER.
25 THEY DRIVE 100 MILES ROUND TRIP EVERY SATURDAY TO

PETER ARMSTRONG - EXAM. BY THE COURT

1 BUY SO MANY OF THOSE TICKETS. IT'S CRAZY. LET ME
2 CALL TO YOUR ATTENTION, GENTLEMEN, IN LOOKING AT
3 SOME OF THESE FURTHER -- WELL, WE'LL JUST WAIT TO
4 TALK ABOUT THOSE AS WE GET TO THEM. WE'RE GOING TO
5 TAKE A FIVE MINUTE RECESS, PLEASE.

6 (BRIEF RECESS.)

7 THE COURT: BRING THE NEXT JUROR IN,
8 PLEASE. WE'RE MAKING PROGRESS.

9 (JUROR NUMBER 12, A WHITE MALE, IS CALLED.)

10 THE COURT: THIS IS JUROR NUMBER 12;
11 AND HE INDICATED HE HAD SEEN OR HEARD OR READ AND
12 HE KNEW ONE OR MORE WITNESSES.

13 - - - - -

14 WHEREUPON,

15 PETER A. ARMSTRONG, WHO BEING
16 PREVIOUSLY SWORN TO TELL THE TRUTH,
17 TESTIFIED AS FOLLOWS:

18 EXAMINATION

19 BY THE COURT:

20 Q. MR. ARMSTRONG, HOW ARE YOU, SIR?

21 A. FINE.

22 Q. THANK YOU SO MUCH FOR BEING WITH US. AND I
23 APOLOGIZE AND ACCEPT RESPONSIBILITY FOR BEING OFF
24 SCHEDULE, BUT WE'RE DOING THE BEST WE CAN; AND
25 THANK YOU FOR YOUR INDULGENCE. YOU WERE GIVEN AN

PETER ARMSTRONG - EXAM. BY THE COURT

1 OATH ON YESTERDAY; AND YOU UNDERSTAND YOU ARE STILL
2 UNDER OATH FOR PURPOSES OF THESE VARIOUS INQUIRIES
3 THAT MAY BE MADE UPON YOU. DO YOU UNDERSTAND
4 FURTHER, PLEASE, THAT WE CERTAINLY WOULD NOT AND
5 ARE NOT ATTEMPTING TO INVADE YOUR PRIVACY OR GO
6 INTO PERSONAL MATTERS. BUT THIS IS THE ONLY
7 OPPORTUNITY THAT THE COURT AND THE ATTORNEYS WOULD
8 HAVE TO MAKE INQUIRY ABOUT YOUR VIEWS SO AS TO BE
9 IN A BETTER POSTURE TO DETERMINE THOSE THAT THE
10 STATE OR THE DEFENSE WOULD LIKE TO STRIKE. THERE
11 ARE NO RIGHT OR WRONG ANSWERS. JUST PLEASE BE
12 TRUTHFUL WITH US. ON YESTERDAY WHEN I QUESTIONED
13 THE LARGE GROUP OF JURORS, YOU INDICATED AT THAT
14 TIME THAT YOU HAD SEEN, HEARD, OR READ SOMETHING
15 ABOUT THIS CASE. COULD YOU TELL US THE SOURCE OF
16 THAT INFORMATION?

17 A. AN ARTICLE IN THE FRIDAY POST AND COURIER SAID THAT
18 A JURY WAS GOING BE CALLED AND THAT THE CASE HAD
19 GONE ON FOR A COUPLE OF YEARS AND THE F.B.I. WAS
20 CALLED IN; AND THAT WAS ABOUT IT.

21 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION RELATIVE
22 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

23 A. NO, SIR.

24 Q. AND DO YOU FEEL YOU COULD GIVE A FAIR TRIAL TO THE
25 STATE AND A FAIR TRIAL TO THE DEFENDANT?

PETER ARMSTRONG - EXAM. BY THE COURT

1 A. YES, SIR.

2 Q. YOU FURTHER RESPONDED THAT YOU KNEW OR WERE
3 FAMILIAR WITH OR A SOCIAL ACQUAINTANCE WITH ONE OR
4 MORE OF THE PROSPECTIVE WITNESSES IN THIS CASE.
5 COULD YOU PLEASE TELL US WHICH WITNESS; THE NAME?

6 A. IT WAS DR. WILLIAM LOMAX.

7 Q. HOW DO YOU KNOW DR. LOMAX?

8 A. I GO TO THE SAME CHURCH.

9 Q. AND WOULD THE FACT THAT A GENTLEMAN THAT GOES TO
10 THE SAME CHURCH AS YOU AND WOULD BE A WITNESS IN
11 THE CASE, WOULD THAT INTERFERE WITH YOUR ABILITY TO
12 CAREFULLY LISTEN TO THE TESTIMONY OF ALL WITNESSES
13 AND DECIDE THEIR BELIEVABILITY OR CREDIBILITY
14 REGARDLESS OF WHETHER OR NOT DR. LOMAX MIGHT ATTEND
15 YOUR CHURCH OR NOT?

16 A. NO.

17 Q. WOULD IT INTERFERE WITH YOUR ABILITY TO BE FAIR?

18 A. NO.

19 Q. ALL RIGHT, SIR. AND MR. ARMSTRONG, IN THE TRIAL OF
20 CASES IN THE COURTS OF SOUTH CAROLINA EVERY PERSON
21 CHARGED WITH A CRIMINAL OFFENSE IS PRESUMED OR
22 THOUGHT TO BE INNOCENT UNTIL OR UNLESS THE STATE
23 REMOVES THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
24 SATISFYING THE JURY BEYOND A REASONABLE DOUBT OF
25 THE GUILT OF THE DEFENDANT. AND THE DEFENDANT IS

PETER ARMSTRONG - EXAM. BY THE COURT

1 PRESUMED INNOCENT. THE DEFENDANT DOES NOT HAVE TO
2 PROVE ANYTHING. THE DEFENDANT DOES NOT HAVE TO
3 TAKE THE WITNESS STAND OR OFFER EVIDENCE. IF THE
4 DEFENDANT DOES NOT TAKE THE WITNESS STAND, THE JURY
5 WOULD BE INSTRUCTED THAT THE FAILURE OF THE
6 DEFENDANT TO TESTIFY RAISES WAS NO PRESUMPTION OR
7 INFERENCE FOR OR AGAINST THE GUILT OR INNOCENCE OF
8 THE DEFENDANT, AND THAT FACT MUST NOT ENTER INTO
9 THE DELIBERATIONS OR THE DECISION OF THE JURY IN
10 ANY MANNER. DO YOU UNDERSTAND THAT?

11 A. CERTAINLY.

12 Q. AND NECESSARILY WE HAVE TO AT THIS TIME TALK ABOUT
13 THE TWO PHASES OF A DEATH PENALTY CASE, ALBEIT
14 THERE'S BEEN NO TESTIMONY OR EVIDENCE. SO
15 OBVIOUSLY YOU COULDN'T MAKE UP YOUR MIND AS TO WHAT
16 YOU WOULD DO IN A CASE UNTIL YOU HAD HEARD AND
17 CONSIDERED THE EVIDENCE AS WELL AS THE CREDIBILITY
18 OF THOSE PERSONS OFFERING THAT EVIDENCE. BUT IN
19 THE FIRST OR GUILT PHASE OF THE CASE THE STATE
20 WOULD BE REQUIRED TO PROVE THE GUILT OF THE
21 DEFENDANT BEYOND A REASONABLE DOUBT. HE'S CHARGED
22 WITH MURDER ALONG WITH FOUR OTHER OFFENSES. NOW,
23 IF THE VERDICT BE NOT GUILTY, WE WOULD NOT GO TO
24 THE SECOND PHASE BECAUSE THE COURT WOULD, AS A
25 MATTER OF LAW HANDLE A SENTENCE OF ANY CONVICTION,

PETER ARMSTRONG - EXAM. BY THE COURT

1 IF ANY, AS TO THE FOUR OTHER CHARGES. BUT WHEN WE
2 GET TO THE PENALTY PHASE THE STATE OF SOUTH
3 CAROLINA, THROUGH THE SOLICITOR, MUST PROVE TO THE
4 SATISFACTION OF THE JURY BEYOND A REASONABLE DOUBT
5 ONE OR MORE STATUTORY AGGRAVATING CIRCUMSTANCES.
6 THERE ARE FOUR ADDITIONAL INDICTMENTS EACH OF WHICH
7 CHARGE RESPECTFULLY ARMED ROBBERY, BURGLARY, CSC,
8 CRIMINAL SEXUAL CONDUCT, AND KIDNAPPING. AND THE
9 STATE MUST PROVE AT LEAST ONE OF THOSE STATUTORY
10 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT
11 BEFORE THE JURY COULD RETURN A RECOMMENDATION OF
12 DEATH PENALTY. EVEN IF THE STATE PROVES THAT, THE
13 JURY MAY DO IT. IT'S NOT MANDATORY OR OBLIGATORY.
14 DURING THE PENALTY PHASE, THE DEFENDANT WILL BE
15 GIVEN THE OPPORTUNITY TO PRESENT SUCH EVIDENCE AS
16 HE DEEMS PROPER RELATIVE TO MITIGATING
17 CIRCUMSTANCES. TO MITIGATE MEANS TO LESSEN, TO
18 MINIMIZE THE PENALTY WHICH THE JURY WILL BE ASKED
19 TO RECOMMEND EITHER DEATH OR EITHER LIFE
20 IMPRISONMENT WITHOUT PAROLE. NOW THE JURY COULD GO
21 A STEP FURTHER AND AS AN ACT OF MERCY, WITHOUT
22 FINDING MITIGATING CIRCUMSTANCE, OR EVEN IF THE
23 STATE PROVES A STATUTORY AGGRAVATING CIRCUMSTANCE;
24 A JURY COULD, IN ITS DISCRETION, RECOMMEND THE
25 LESSER OF THE TWO PENALTIES, THAT IS LIFE

PETER ARMSTRONG - DIRECT/MR. BAILEY

1 IMPRISONMENT WITHOUT PAROLE. NOW, COULD YOU LISTEN
2 TO THE EVIDENCE AND FAIRLY AND OBJECTIVELY ARRIVE
3 AT ONE OF THOSE TWO VERDICTS?

4 A. YES, SIR.

5 Q. AND HAVE YOU HAD THE OPPORTUNITY, PLEASE MR. PETER
6 ALLEN ARMSTRONG, TO REVIEW THE THREE TYPES OF
7 JURORS?

8 A. YES, SIR.

9 Q. DO YOU UNDERSTAND EACH OF THOSE?

10 A. YES, SIR.

11 Q. WHICH OF THE TYPES WOULD YOU FEEL THAT YOU WOULD
12 COME UNDER; ONE, TWO, OR THREE?

13 A. THREE.

14 Q. ALL RIGHT, SIR.

15 THE COURT: YOU MAY PROCEED, MR.
16 SOLICITOR TO QUESTION THE WITNESS.

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. MR. ARMSTRONG, I'M WALTER BAILEY. I WANT TO ASK
20 YOU A FEW MORE QUESTIONS TO FOLLOW UP ON WHAT JUDGE
21 PEOPLES HAD ASKED YOU. AND JUDGE PEEPLES EXPLAINED
22 ABOUT THE POTENTIAL TWO-PART PROCESS BEFORE YOU
23 START OFF WITH THE GUILT PHASE. AND ONLY IF THE
24 DEFENDANT IS FOUND GUILTY OF MURDER IN THAT FIRST
25 PHASE DO WE MOVE INTO THE SECOND PHASE. AND THE

PETER ARMSTRONG - DIRECT/MR. BAILEY

1 SECOND PHASE IS AN OPPORTUNITY TO INTRODUCE
2 ADDITIONAL EVIDENCE THAT DIDN'T COME OUT
3 PREVIOUSLY. I'D BE INTRODUCING EVIDENCE IN
4 AGGRAVATION TO TRY TO WORSEN THE CRIME THAT WE
5 ALLEGE OCCURRED. AND I WOULD BE ARGUING THAT THE
6 APPROPRIATE SENTENCE WOULD BE THE DEATH PENALTY.
7 THE DEFENSE CAN, IF THEY WANT TO -- THEY DON'T HAVE
8 TO -- INTRODUCE EVIDENCE IN MITIGATION. AND, OF
9 COURSE, THEY'D BE ARGUING FOR LIFE WITHOUT PAROLE.
10 THE JURY, AFTER ALL THAT TESTIMONY IS IN AND THE
11 JUST INSTRUCTS THEM; THE JURY, NOT THE JUDGE, WOULD
12 DECIDE THE PUNISHMENT. IT ISN'T REALLY A
13 RECOMMENDATION. IT WILL BE THE SENTENCE THE COURT
14 IMPOSES. SO IF THE JURY DECIDES ON LIFE WITHOUT
15 PAROLE, THE JUDGE WOULD ORDER THAT AND THAT WOULD
16 BE CARRIED OUT. IF THE JURY DECIDES THE DEATH
17 PENALTY, THE JUDGE WOULD ORDER THAT AND THAT PERSON
18 WOULD BE EXECUTED. I'M NOT GOING TO ASK YOU TO
19 PREDICT WHAT YOU WOULD DO IF YOU SAT AS A JUROR ON
20 THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE
21 FACTS AT ALL. BUT IF THE FACTS WERE BAD ENOUGH,
22 COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT
23 SENTENCE WOULD BE CARRIED OUT?

24 A. YES.

25 Q. IF YOU AND THE OTHER ELEVEN JURORS FELT THE SAME

PETER ARMSTRONG - CROSS/MR. THEOS

1 WAY AND UNANIMOUSLY VOTE FOR THE DEATH PENALTY,
2 COULD YOU SIGN YOUR NAME TO A DEATH VERDICT FORM
3 ALONG WITH THE OTHER JURORS THAT WOULD RESULT IN
4 THAT EXECUTION TAKING PLACE?

5 A. YES, SIR.

6 Q. IF YOU DID THOSE TWO THINGS, COULD YOU THEN COME
7 OUT INTO OPEN COURT AND ANNOUNCE THAT VERDICT OUT
8 LOUD IF THAT WAS YOUR VERDICT?

9 A. YES, SIR.

10 Q. THE JURY IS GOING TO BE PUT IN A MOTEL, THE HOLIDAY
11 INN HERE IN ST. GEORGE, FOR ABOUT A WEEK UNTIL THIS
12 TRIAL IS OVER. AND NOBODY LOOKS FORWARD TO THAT.
13 BUT IS THAT SOMETHING THAT YOU CAN HANDLE WITH YOUR
14 PERSONAL LIFE, WORK LIFE, AND ALL?

15 A. WITH ANYTHING IT WOULD BE A HARDSHIP. BUT I COULD
16 ARRANGE IT; YES.

17 Q. ALL RIGHT, SIR. THANK YOU. THAT'S ALL I HAVE, MR.
18 ARMSTRONG.

19 THE COURT: WOULD YOU LIKE TO ANY
20 QUESTION, MR. THEOS?

21 MR. THEOS: YES, SIR.

22 CROSS-EXAMINATION

23 BY MR. THEOS:

24 Q. MR. ARMSTRONG, I'M JERRY THEOS. THIS IS JIM BELL.
25 KENNETH SIMMONS IS -- WE'RE THE ATTORNEYS FOR

PETER ARMSTRONG - CROSS/MR. THEOS

1 KENNETH SIMMONS. JUST A COUPLE OF QUESTIONS. I
2 SEE FROM YOUR QUESTIONNAIRE THAT YOU WERE A
3 COMMANDER IN THE NAVY?

4 A. YES, SIR.

5 Q. COULD YOU EXPLAIN OR DESCRIBE WHAT YOUR DUTIES
6 WERE, WHAT THAT ENTAILED?

7 A. A TWENTY-ONE YEAR CAREER. PEKING. AT ONE POINT I
8 WAS COMMANDING OFFICER OF A SHIP WHICH ENTAILED --
9 THAT PARTICULAR SHIP WENT THROUGH OVERHAUL OVER.
10 SO WE WERE IN THE CHARLESTON NAVAL SHIPYARD. ALSO
11 AS THE C.O. I ALSO HELD MY OWN JUDICIAL
12 PROCEEDINGS, NON-JUDICIAL PROCEEDINGS AS IT WAS
13 CALLED THEN. BUT I'M WELL FAMILIAR WITH MITIGATING
14 AND AGGRAVATING CIRCUMSTANCES AND WEIGHING EVIDENCE
15 ON CASES THAT WERE DISCIPLINARY CASES THAT WERE
16 BROUGHT BEFORE ME FOR RESOLUTION.

17 Q. AND JUST AS MR. BAILEY ASKED YOU IF YOU COULD
18 CONSIDER AGGRAVATING FACTORS OF EVIDENCE THAT HE
19 MIGHT PRESENT; COULD YOU ALSO CONSIDER THOSE THINGS
20 THAT WE MIGHT OFFER AND MR. BELL AND I MIGHT OFFER
21 IN MITIGATION AND THAT IS TO PERSUADE THE JURY --
22 IF WE REACH THAT POINT, OF COURSE.

23 A. I UNDERSTAND.

24 Q. IF WE REACH THAT POINT. NOW, WOULD THAT PERSUADE
25 YOU AS A JUROR THAT THE DEATH PENALTY WAS NOT THE

PETER ARMSTRONG - CROSS/MR. THEOS

1 APPROPRIATE PENALTY IN THE CASE?

2 A. YES, I COULD.

3 Q. OKAY. NOW, I SEE IN QUESTION NUMBER 26, "DO YOU
4 HAVE STRONG PERSONAL, RELIGIOUS, OR PHILOSOPHICAL
5 FEELINGS ABOUT NARCOTICS, ILLEGAL DRUGS, OR VIOLENT
6 CRIMES?" YOUR RESPONSE -- AND I DON'T KNOW IF YOU
7 RECALL WHAT YOU RESPONDED; BUT THE JUDGE IS GOING
8 TO SHOW IT TO YOU. I WOULD ASK YOU JUST TO TAKE A
9 LOOK AT IT, PLEASE. (WITNESS EXAMINES DOCUMENT.)

10 A. OKAY.

11 Q. CAN YOU OFFER -- I UNDERSTAND THAT WHAT YOU WROTE
12 WAS AN EXPLANATION FOR THE YES. BUT CAN YOU
13 EXPLAIN ANY FURTHER THAT STATEMENT THAT YOU MADE AS
14 THE EXPLANATION?

15 A. OTHER THAN I BELIEVE THAT EVERYBODY HAS A CHOICE.
16 REGARDLESS OF THE DOORS THAT THEY FEEL ARE OPEN OR
17 CLOSED TO THEM, THERE'S ALWAYS THE OPPORTUNITIES TO
18 OPEN AND CLOSE OTHER DOORS. OR THE PATH THAT YOU
19 TAKE IS THE PATH THAT YOU DECIDE TO CHOOSE WHETHER
20 YOU FEEL THAT ALCOHOL OR DRUG ADDICTION IS A
21 CHOICE, AND JUST THAT IT'S NOT AN EXCUSE; AND THAT
22 PEOPLE SHOULD BE HELD ACCOUNTABLE FOR THEIR
23 ACTIONS.

24 Q. OKAY. AND ONE LAST QUESTION. AND I APOLOGIZE IF
25 THIS WAS ASKED. I DON'T BELIEVE IT WAS. WHAT IS

PETER ARMSTRONG - CROSS/MR. THEOS

1 YOUR OPINION ABOUT THE DEATH PENALTY?

2 A. MY OPINION?

3 Q. YES, SIR. DO YOU HAVE AN OPINION GENERALLY ABOUT
4 THE DEATH PENALTY?

5 A. I'M NOT AGAINST IT. I'M NOT NECESSARILY IN FAVOR
6 OF IT. IT'S A CASE BY CASE BASIS IN TERMS OF, YOU
7 KNOW, CIRCUMSTANCES DICTATE YOUR CONSEQUENCES. AND
8 BE IT AGGRAVATING CIRCUMSTANCES OR BE THERE
9 MITIGATING CIRCUMSTANCES; THAT SHOULD DICTATE
10 WHETHER THE DEATH PENALTY IS USED OR NOT.

11 Q. THANK YOU VERY MUCH, MR. ARMSTRONG.

12 THE COURT: ANYTHING FURTHER?

13 MR. BAILEY: NO, SIR.

14 THE COURT: MR. ARMSTRONG, YOU ARE
15 DEEMED QUALIFIED AS A PROSPECTIVE MEMBER OF THIS
16 JURY PANEL. WE ARE HOPEFUL THAT WE CAN STRIKE THIS
17 JURY AT TWO O'CLOCK TOMORROW. PERHAPS WE CAN DO IT
18 EARLIER IF WE COMPLETE OUR WORK BY EIGHT OR NINE
19 TONIGHT. WOULD YOU PLEASE CALL THAT PHONE NUMBER
20 THERE AFTER SIX TO DETERMINE IF THERE'S BEEN A
21 CHANGE IN TIME? AND IF YOU WOULD, PLEASE, IF YOU
22 WOULD FOLLOW THE INSTRUCTIONS THERE BY MAKING
23 PREPARATIONS FOR YOUR RETURN TOMORROW JUST TO BE
24 PREPARED TO SO ADJOURN TO THE HOLIDAY INN FOR FIVE,
25 SIX, OR SEVEN DAYS AT THE EXPENSE OF THE COUNTY.

PETER ARMSTRONG - CROSS/MR. THEOS

1 AND YOU'LL BE IN THE COURTROOM DURING THE DAY FOR
2 TESTIMONY AND CONFINED TO THE MOTEL -- SEQUESTERED
3 IS THE WORD THAT'S USED. AND YOU COULD NOT HAVE
4 COMMUNICATION WITH YOUR FAMILY OR FRIENDS EXCEPT IN
5 AN EMERGENCY BASIS. DO YOU UNDERSTAND THAT?

6 MR. ARMSTRONG: YES.

7 THE COURT: AND LET ME SHARE WITH
8 YOU THAT -- AND IT HAS NO BEARING ON THIS CASE.
9 BUT I APPRECIATE YOUR ANSWER OF FREEDOM OF CHOICE,
10 SO TO SPEAK. THE LORD GAVE US AN UNFETTERED MIND
11 HOPEFULLY, AND PEOPLE MAKE CHOICES. AND THE LAW IS
12 -- THERE'S A CASE OF STATE VS. FURMAN VAUGHN, A
13 CASE I TRIED IN 1975 IN CHARLESTON IN WHICH OUR
14 SUPREME COURT OF THIS STATE HELD, AND IS STILL THE
15 LAW, THAT VOLUNTARY INTOXICATION BY USE OF DRUGS OR
16 ALCOHOL, WINE, BEER, OR WHATEVER, IS NO EXCUSE AND
17 NO DEFENSE TO ANY CRIME THAT MAY BE COMMITTED AND
18 PEOPLE RESPONSIBLE FOR THEIR ACTIONS UNLESS IT
19 CREATES PERMANENT INSANITY. AND YOU WERE JUST
20 SQUARE ON THE NAIL WHEN YOU GAVE YOUR REPLY "THAT
21 IS THE LAW OF THIS STATE;" AND I APPRECIATE A
22 REFRESHING VIEW AND UNDERSTANDINGS OF THE LAW
23 WITHOUT THE BENEFIT OF KNOWING PRECISELY HAVING
24 READ THAT CASE.
25 A. IT'S THE WAY I RAN MY SHIP.

ROBERT S. HUGHES - EXAM. BY THE COURT

1 Q. I UNDERSTAND. I THANK YOU. YOU HAVE A NICE DAY.

2 A. THANK YOU.

3 THE COURT: ALL RIGHT. PLEASE BRING
4 IN THE NEXT JUROR, ROBERT S. HUGHES. HOLD ON A
5 MINUTE, PLEASE. GO AHEAD.

6 MR. THEOS: YOUR HONOR, AGAIN, WITH
7 ALL DUE RESPECT; I MAKE THIS FOR THE RECORD. I
8 WOULD TAKE EXCEPTION TO THOSE COMMENTS THAT YOU
9 MADE TO MR. ARMSTRONG AT THE END. ALTHOUGH IT MAY
10 BE THE LAW IN THIS STATE, I THINK THAT IT MAY TEND
11 TO PREJUDICE MR. ARMSTRONG IN SOME WAY IF HE WERE
12 CHOSEN AS A JUROR. IF WE INTENDED TO OFFER ALCOHOL
13 OR SUBSTANCE ABUSE IN MITIGATION, I THINK THAT THAT
14 CONVERSATION YOU JUST HAD WITH MR. ARMSTRONG MAY
15 BIAS HIM AGAINST ANY SORT OF MITIGATION WE WOULD
16 TEND TO OFFER.

17 THE COURT: NOTE YOUR EXCEPTION.
18 THE COURT ONLY STATES WHAT THAT LAW IS. BRING THE
19 JUROR IN.

20 (JUROR NUMBER 154, A WHITE MALE, IS CALLED.)

21 - - - - -
22 WHEREUPON,

23 ROBERT S. HUGHES, WHO BEING PREVIOUSLY
24 SWORN TO TELL THE TRUTH, TESTIFIED AS
25 FOLLOWS:

ROBERT S. HUGHES - EXAM. BY THE COURT

EXAMINATION

BY THE COURT:

Q. HOW DO YOU DO, SIR?

A. ALL RIGHT.

Q. THANK YOU SO MUCH FOR BEING WITH US. YOU ARE JUROR
NUMBER 154, MR. ROBERT S. HUGHES?

A. YES, SIR.

Q. MR. HUGHES, YOU WERE GIVEN AN OATH ON YESTERDAY,
AND YOU UNDERSTAND, PLEASE, THAT YOU CONTINUE TO BE
UNDER OATH IN THIS QUESTIONING PERIOD AT THIS TIME?

A. YES, SIR.

Q. ON YESTERDAY WHEN THE GROUP OF JURORS WAS
QUESTIONED AS A WHOLE, YOU INDICATED YOU HAD SEEN,
HEARD, OR READ SOMETHING ABOUT THIS CASE. PLEASE
TELL US THE SOURCE OF YOUR INFORMATION.

A. I JUST BRIEFLY REMEMBER HEARING SOMETHING ON THE
TELEVISION BACK WHENEVER IT HAPPENED.

Q. BACK IN '96?

A. YES; WHENEVER IT WAS.

Q. YEARS AGO?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND AS A RESULT OF WHAT YOU MAY
HAVE HEARD OR SEEN, HAVE YOU FORMED OR EXPRESSED AN
OPINION ABOUT THE GUILT OR INNOCENCE OF THIS
DEFENDANT?

ROBERT S. HUGHES - EXAM. BY THE COURT

1 A. NO.

2 Q. HAVE YOU EXPRESSED ANY OPINION TO ANYONE?

3 A. NO.

4 Q. DO YOU HAVE ANY PREJUDICE OR BIAS FOR OR AGAINST
5 THE STATE OR THE DEFENDANT?

6 A. NO, SIR.

7 Q. COULD YOU GIVE A FAIR AND IMPARTIAL TRIAL BOTH TO
8 THE STATE AND TO THE DEFENDANT?

9 A. YES, SIR.

10 Q. AND HAVE THERE BEEN ANY CHANGES IN YOUR INFORMATION
11 SET FORTH ON THIS QUESTIONNAIRE SINCE YOU SENT IT
12 TO US SO KINDLY SEVERAL WEEKS AGO?

13 A. NO, SIR.

14 Q. AND PLEASE UNDERSTAND THAT THERE ARE NO RIGHT OR
15 WRONG ANSWERS TO THE QUESTIONS BEING PROPOUNDED TO
16 YOU; AND NECESSARILY THIS IS THE ONLY OPPORTUNITY
17 THE COURT AND THE ATTORNEYS WOULD HAVE TO QUESTION
18 YOU ON YOUR VIEWS SO THEY CAN MAKE A MORE INFORMED
19 JUDGMENT AS TO WHETHER THEY SHOULD ALLOW YOU TO BE
20 SEATED ON THIS JURY. AND WE ARE INDEED GOING TO
21 TALK TO YOU ABOUT THE TWO PHASES OF THE CASE IN A
22 DEATH PENALTY CASE, ALBEIT THERE'S BEEN NO
23 DECISION; THERE'S BEEN NO EVIDENCE IN THE CASE; NO
24 FACTS. BUT WE'RE JUST ASKING YOU TO ASSUME
25 ARGUENDO THAT THE STATE OF SOUTH CAROLINA DID IN

ROBERT S. HUGHES - EXAM. BY THE COURT

1 THE FIRST GUILT PHASE OF THE TRIAL FIND BEYOND A
2 REASONABLE DOUBT AS THE STATE, THAT IS THEIR BURDEN
3 OF PROOF, THE GUILT OF THE DEFENDANT IN REGARD TO
4 THE CHARGE OF MURDER. IF THERE WERE A NOT GUILTY
5 VERDICT ON MURDER, WE WOULD NOT NEED THE PENALTY
6 PHASE BECAUSE THE COURT WOULD HANDLE AS A MATTER OF
7 LAW ANY SENTENCE THAT MIGHT BE IMPOSED IN THE EVENT
8 OF A CONVICTION ON THE OTHER FOUR INDICTMENTS. DO
9 YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. DO YOU FURTHER, PLEASE, MR. ROBERT HUGHES,
12 UNDERSTAND THAT UNDER OUR LAW -- AND THIS IS THE
13 LAW OF EVERY STATE IN THE UNION -- THAT EVERY
14 DEFENDANT THAT COMES INTO COURT, REGARDLESS OF THE
15 NATURE OR ENORMITY OF THE CHARGE MADE AGAINST HIM
16 OR HER IS ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT
17 OF THOSE CHARGES UNLESS AND UNTIL THE STATE REMOVES
18 THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
19 SATISFYING THE JURY OF THE GUILT BEYOND A
20 REASONABLE DOUBT. AND THE DEFENDANT DOESN'T HAVE
21 TO TAKE THE WITNESS STAND. THE DEFENDANT DOES NOT
22 HAVE TO PROVE ANYTHING. AND IF THE DEFENDANT OPTED
23 OR ELECTED OR DECIDED NOT TO TAKE THE WITNESS
24 STAND, THEN THE JURY WOULD BE INSTRUCTED BY THE
25 COURT AS A MATTER OF LAW THE FACT THAT A DEFENDANT

ROBERT S. HUGHES - EXAM. BY THE COURT

1 DOES NOT TESTIFY IN HIS OWN BEHALF RAISES NO
2 PRESUMPTION OF INFERENCE FOR OR AGAINST THE GUILT
3 OR INNOCENCE OF THE DEFENDANT. AND THE FACT THAT
4 THE DEFENDANT DID NOT TESTIFY MUST NOT ENTER INTO
5 THE DELIBERATIONS AND DECISION OF THE JURY IN ANY
6 MANNER WHATSOEVER. AND YOU UNDERSTAND THAT,
7 PLEASE?

8 A. YES, SIR.

9 Q. IF WE GET TO THE PENALTY PHASE, THE SECOND PHASE OF
10 THE CASE, THE STATE IS REQUIRED TO PROVE BEYOND A
11 REASONABLE DOUBT ONE OR MORE OF THE FOUR ALLEGED
12 STATUTORY CIRCUMSTANCES OF AGGRAVATION IN THE OTHER
13 FOUR INDICTMENTS, I.E. BURGLARY, KIDNAPPING, ARMED
14 ROBBERY, OR CRIMINAL SEXUAL CONDUCT. NOW, IF THE
15 STATE PROVES THAT BEYOND A REASONABLE DOUBT, ONE OF
16 THOSE STATUTORY AGGRAVATING CIRCUMSTANCES, THE JURY
17 MAY -- THAT'S NOT MANDATORY OR OBLIGATORY -- YOU
18 DON'T HAVE TO; BUT THE JURY MAY RETURN A
19 RECOMMENDATION OF THE DEATH PENALTY. DURING THAT
20 PENALTY PHASE THE DEFENDANT WOULD BE GIVEN AN
21 OPPORTUNITY TO PRESENT ANY AND ALL EVIDENCE THEY
22 DESIRE SO TO DO OF MITIGATION OR LESSENING OF THAT
23 RECOMMENDATION OF THE SENTENCE TO THE COURT. THE
24 JURY MAY AS MATTER OF MERCY OUT OF THEIR HEART MAY
25 CONCLUDE THAT THEY, THE JURY, SHOULD RECOMMEND TO

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 THE COURT A RECOMMENDATION OF MERCY, BY THAT A
2 RECOMMENDED SENTENCE OF LIFE IMPRISONMENT WITHOUT
3 PAROLE, ALTHOUGH THE STATE MAY HAVE PROVEN BEYOND A
4 REASONABLE DOUBT ONE OR MORE STATUTORY AGGRAVATING
5 CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. AND DO YOU FEEL, MR. HUGHES, THAT YOU COULD BE
8 OPEN-MINDED AND NOT HAVE A FIXATION TO THE LEFT OR
9 TO THE RIGHT OR ABOUT ANYTHING AND START WITH A
10 CLEAN SLATE, LISTEN TO THE TESTIMONY, OR THE STATE
11 AND THE DEFENDANT IF THEY OFFER, ARRIVE AT A FAIR,
12 JUST, AND TRUE VERDICT, FAIR TO THE STATE AND FAIR
13 TO THE DEFENDANT?

14 A. YES, SIR.

15 Q. HAVE YOU, MR. HUGHES, HAD AN OPPORTUNITY TO REVIEW
16 THE THREE TYPES OF JURORS SET FORTH ON THAT SHEET?

17 A. YES, SIR.

18 Q. DO YOU UNDERSTAND THEM?

19 A. YES, SIR.

20 Q. AND WHICH OF THOSE THREE DO YOU FEEL THAT YOU WOULD
21 FIT INTO?

22 A. THE THIRD ONE.

23 Q. THE THIRD ONE?

24 A. YES, SIR.

25 Q. ALL RIGHT. THANK YOU, MR. HUGHES.

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 THE COURT: MR. THEOS; YOU MAY
2 QUESTION THE GENTLEMAN.

3 DIRECT EXAMINATION

4 BY MR. THEOS:

5 Q. MR. HUGHES, I'M JERRY THEOS. THIS IS JIM BELL.
6 THIS IS KENNETH SIMMONS. JIM BELL AND I ARE
7 LAWYERS WHO REPRESENT KENNETH SIMMONS. IT'S GOOD
8 TO SEE YOU AND GOOD TO HAVE YOU HERE. AS THE JUDGE
9 SAID, WE ARE TRYING TO FIND OUT WHAT YOUR TRUE
10 FEELINGS ARE ABOUT CERTAIN THINGS. WE'RE TRYING TO
11 DETERMINE WHETHER OR NOT YOU QUALIFY TO SIT AS A
12 JUROR IN THIS CASE. AND HOPEFULLY YOU WILL NOT
13 FEEL THAT WE'RE FORMING ANY JUDGMENT ABOUT YOU
14 BASED ON YOUR ANSWERS. AS THE JUDGE TOLD YOU,
15 THERE ARE NO WRONG OR RIGHT ANSWERS. YOU'RE
16 ENTITLED TO HAVE WHATEVER OPINIONS YOU WANT. WE
17 JUST NEED TO KNOW WHAT THOSE ARE TRUTHFULLY AND
18 SINCERELY. I SAW FROM YOUR QUESTIONNAIRE THAT
19 YOU'RE SELF-EMPLOYED AS A BILLBOARD SIGN MAKER?

20 A. YES, SIR.

21 Q. DO YOU HAVE ANY OTHER EMPLOYERS THAT WORK WITH YOU?

22 A. OCCASIONALLY; I DON'T HAVE ANYBODY FULL-TIME; NO.

23 Q. OKAY. AND I ALSO SEE THAT YOU'RE MARRIED AND HAVE
24 A COUPLE OF CHILDREN; IS THAT RIGHT?

25 A. YES.

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 Q. WOULD THIS POSE -- IS THIS SOMETHING THAT YOU CAN
2 WORK OUT WITH YOUR FAMILY AND WITH YOUR BUSINESS TO
3 SERVE AS A JUROR UNDERSTANDING THAT WE MAY GO
4 THROUGH WEDNESDAY OF NEXT WEEK AND POSSIBLY EVEN
5 FRIDAY AT THE MOST REMOTE TIME FRAME. BUT PROBABLY
6 AT LEAST THROUGH WEDNESDAY OF NEXT WEEK.

7 A. YES; THERE IS ONE THING THAT I WAS GOING TO TRY TO
8 DO TODAY IF IT'S NOT SLEETING WHEN I LEAVE. BUT
9 OTHERWISE, EVERYTHING ELSE, THAT'S THE LAST OTHER
10 LOOSE END THAT I NEED TO TIE UP.

11 Q. OKAY. OTHER THAN THAT ONE THING, YOU FEEL LIKE YOU
12 CAN SIT WITHOUT YOUR MIND BEING ELSEWHERE?

13 A. OH, YES, SIR.

14 Q. NOW, I ALSO SAW ON YOUR QUESTIONNAIRE SECOND TO THE
15 LAST QUESTION, I BELIEVE IT WAS -- AND AGAIN, I'M
16 NOT TESTING YOU.

17 A. I DON'T EVEN REMEMBER THE QUESTIONNAIRE TO TELL YOU
18 THE TRUTH.

19 Q. THE SECOND TO THE LAST QUESTION, YOU INDICATED THAT
20 YOU HAD ASSISTANCE IN COMPLETING THE QUESTIONNAIRE
21 FROM YOUR WIFE AND YOUR MOTHER?

22 A. YES.

23 Q. CAN YOU EXPLAIN WHAT YOU MEANT BY THAT AND HOW THEY
24 MAY HAVE ASSISTED YOU?

25 A. YES. LET ME LOOK THROUGH IT REAL QUICK. (WITNESS

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 REVIEWS DOCUMENT.) OH, WHERE I LIVED IN ANY OTHER
2 COUNTY OR STATE TO GET THE YEARS RIGHT.

3 Q. OKAY.

4 THE COURT: AT LEAST YOU DIDN'T HAVE
5 TO CALL YOUR MOTHER-IN-LAW.

6 A. AND HERE WHERE IT SAYS YOUR SPOUSE ATTENDED SCHOOL;
7 I HAD TO ASK HER THAT.

8 Q. OTHER THAN THOSE TECHNICAL THINGS.

9 A. OH, NO.

10 Q. I GUESS THE REASON I'M ASKING THOSE QUESTIONS; WE
11 WANT TO MAKE SURE THE OPINIONS THAT YOU EXPRESSED
12 OR THE VIEWS YOU MAY HAVE EXPRESSED WERE YOUR
13 OPINIONS AND NOT THOSE OF YOUR WIFE OR YOUR
14 MOTHER.

15 A. NO, SIR. I FILLED IT OUT, AND JUST THE LITTLE
16 THINGS LIKE THAT THAT I WASN'T SURE OF.

17 Q. ALL RIGHT. NOW, AS THE JUDGE INDICATED TO YOU,
18 THIS IS A LITTLE BIT UNUSUAL TO TALK TO YOU ABOUT A
19 PENALTY PHASE AND POSSIBLE PENALTIES FOR MR.
20 SIMMONS. AND WE HAVEN'T YET DETERMINED WHETHER OR
21 NOT MR. SIMMONS IS GUILTY OF THE CHARGES. DO YOU
22 HAVE ANY FEELINGS OR AN OPINION ABOUT SOMEONE'S
23 GUILT BASED UPON THE FACT THAT THEY'RE CHARGED AND
24 THEY'RE ON TRIAL IN THE COURTROOM?

25 A. ANY OPINIONS OF THEIR GUILT?

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 Q. DO YOU HAVE AN OPINION AS TO THE GUILT OF SOMEBODY
2 BECAUSE THEY'VE BEEN ARRESTED, CHARGED IN THEIR OWN
3 TRIAL?

4 A. NO, I DON'T. I'M PRETTY -- I'M OPEN. I MEAN---

5 Q. WELL, SOME PEOPLE PICK UP A NEWSPAPER AND SEE THAT
6 SOMEONE HAS BEEN ARRESTED; AND THEY IMMEDIATELY
7 FORM AN OPINION.

8 A. OH! NO; NOTHING LIKE THAT.

9 Q. YOU DON'T FEEL THAT WAY?

10 A. NO.

11 Q. DO YOU UNDERSTAND THAT AS MR. SIMMONS SITS HERE HE
12 IS INNOCENT OF THE CHARGES?

13 A. YES.

14 Q. AND YOU UNDERSTAND THAT HE DOES NOT HAVE TO
15 PRESENT, AS THE JUDGE SAID, ANY DEFENSE AT ALL, AND
16 HE DOESN'T HAVE TO TESTIFY IF THAT'S HIS CHOICE AND
17 OUR CHOICE?

18 A. YES.

19 Q. UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND YOU CERTAINLY WOULDN'T HOLD THAT AGAINST HIM IN
22 ANY WAY, WOULD YOU?

23 A. NO, SIR.

24 Q. OR READ ANYTHING INTO THAT?

25 A. NO, SIR.

ROBERT S. HUGHES - DIRECT/MR. THEOS

1 Q. NOW, ON THE OTHER HAND, MR. BAILEY AND HIS OFFICE
2 HAVE TO PROVE MR. SIMMONS GUILTY BEYOND A
3 REASONABLE DOUBT IN THE GUILT PHASE?

4 A. YES.

5 Q. AND YOU UNDERSTAND THAT IF THEY FAIL TO DO THAT, I
6 ASSUME YOUR VERDICT WOULD BE -- IF THEY FAILED TO
7 DO THAT -- THAT YOUR VERDICT WOULD BE NOT GUILTY?

8 A. YES.

9 Q. AND IF ON THE OTHER HAND THEY CONVINCE YOU BEYOND A
10 REASONABLE DOUBT, THEN AND ONLY THEN WOULD WE MOVE
11 INTO THE SECOND PHASE; AND AT THAT POINT MR. BAILEY
12 WOULD PRESENT TO YOU CERTAIN MITIGATING FACTORS AND
13 CIRCUMSTANCES AND TRY TO PERSUADE YOU AND THE OTHER
14 JURORS TO VOTE FOR THE DEATH PENALTY, TO DECIDE FOR
15 THE DEATH PENALTY AS PROPER PUNISHMENT. MR. BELL
16 AND I WILL PRESENT WHAT THE JUDGE LABELED TO YOU AS
17 MITIGATING CIRCUMSTANCES. WE WILL BE TRYING TO
18 PERSUADE YOU AT THAT POINT, IF WE GOT THERE, THAT
19 THE DEATH PENALTY WAS NOT THE APPROPRIATE SENTENCE;
20 THAT LIFE IMPRISONMENT WITHOUT PAROLE WOULD BE
21 APPROPRIATE. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. ALL RIGHT. NOW, DO YOU HAVE AN OPINION, AND HAVE
24 YOU EVER THOUGHT ABOUT IT BEFORE YOU WERE ASKED TO
25 SIT ON A JURY HERE WITH US IN THIS CASE; HAVE YOU

1 THOUGHT ABOUT THE DEATH PENALTY IN GENERAL AS A
2 FORM OF PUNISHMENT?

3 A. HAVE I THOUGHT ABOUT IT IN WHAT SENSE?

4 Q. AS A FORM OF PUNISHMENT.

5 A. NOT REALLY. I MEAN, SOME THINGS ARE MORE DRASTIC
6 THAN OTHERS. THERE MAY BE SOME OTHER CIRCUMSTANCES
7 THAT MAY BE FOR THE DEATH PENALTY. BUT, OTHERWISE,
8 THEY MAY NOT BE AS STIFF FOR THE DEATH PENALTY.

9 Q. DID YOU EVER HAVE A CHANCE TO -- HAVE YOU EVER
10 VOICED AN OPINION ABOUT THE DEATH PENALTY PRIOR TO
11 BEING CALLED TO THIS CASE AND US ASKING YOU ALL
12 THESE QUESTIONS?

13 A. NOT TO MY KNOWLEDGE, I DON'T REALLY.

14 Q. ALL RIGHT. I DON'T THINK I HAVE ANY OTHER
15 QUESTIONS. THANK YOU.

16 MR. BAILEY: IF IT PLEASE THE COURT?

17 CROSS-EXAMINATION

18 BY MR. BAILEY:

19 Q. JUST VERY BRIEFLY. I'M WALTER BAILEY. I'LL BE
20 PROSECUTING THE CASE ALONG WITH THESE OTHER LAWYERS
21 HERE. I THINK MOST OF THE QUESTIONS THAT I WAS
22 GOING TO ASK HAVE ALREADY BEEN ASKED. BUT I JUST
23 WANTED TO TOUCH ON ONE AREA. IF WE GET INTO THAT
24 SECOND PHASE OF THE TRIAL, THAT WOULD MEAN THAT MR.
25 SIMMONS WOULD HAVE BEEN FOUND GUILTY OF MURDER IN

ROBERT S. HUGHES - CROSS/MR. BAILEY

1 THE FIRST PART OF THE TRIAL. AND AT THAT POINT AND
2 TIME ADDITIONAL EVIDENCE COMES OUT. I'LL BE
3 INTRODUCING EVIDENCE IN AGGRAVATION AND ARGUING FOR
4 THE DEATH SENTENCE AS THE MOST APPROPRIATE
5 SENTENCE. THE DEFENSE, OF COURSE, WOULD BE
6 ADVOCATING FOR A LIFE WITHOUT PAROLE SENTENCE AS
7 THE MOST APPROPRIATE SENTENCE. THE JUDGE WOULD
8 INSTRUCT THE JURY ON THE LAW THAT APPLIES TO THAT
9 PART OF THE TRIAL. THEN THE JURY WOULD DETERMINE
10 THE PUNISHMENT; NOT THE JUDGE. ALL THE JUDGE DOES
11 IS ORDER THE JURY'S VERDICT TO HAPPEN. SO IF THE
12 JURY VOTES FOR LIFE WITHOUT PAROLE, THE JUDGE WOULD
13 ORDER THAT AND THAT WOULD BE THE SENTENCE THAT
14 WOULD BE CARRIED OUT. IF THE JURY VOTES FOR THE
15 DEATH PENALTY, THE JUDGE WOULD ORDER THAT, AND HE
16 WOULD BE EXECUTED. NOW, I'M NOT GOING TO ASK YOU
17 FOR A PREDICTION OF WHAT YOU WOULD DO IN THIS CASE
18 BECAUSE YOU HAVEN'T HEARD THE FACTS. BUT IF THE
19 FACTS AND CIRCUMSTANCES THAT CAME OUT IN THE CASE
20 WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH
21 PENALTY KNOWING THAT SENTENCE WOULD BE CARRIED OUT?
22 A. IF THE FACTS WERE SERIOUS ENOUGH?
23 Q. YES, SIR.
24 A. YES, SIR.
25 Q. ALL RIGHT, SIR. AND IF ALL TWELVE JURORS VOTE FOR

ROBERT S. HUGHES - CROSS/MR. BAILEY

1 THE DEATH PENALTY, THEY'RE THEN ASKED TO SIGN THEIR
2 NAMES TO A VERDICT FORM THAT WOULD RESULT IN THAT
3 EXECUTION TAKING PLACE. COULD YOU SIGN YOUR NAME
4 TO A PAPER LIKE THAT IF YOU HAD ALREADY VOTED FOR
5 THE DEATH PENALTY?

6 A. YES, SIR.

7 Q. COULD YOU ANNOUNCE THAT DECISION IN OPEN COURT IF
8 THAT WAS YOUR DECISION?

9 A. YES, SIR.

10 Q. ALL RIGHT. MR. HUGHES, THAT'S ALL I HAVE. THANK
11 YOU VERY MUCH.

12 THE COURT: NOW, GENTLEMEN, HAND MR.
13 HUGHES A COPY OF THE INSTRUCTION SHEET. MR.
14 HUGHES, I CONGRATULATE YOU. YOU HAVE BEEN FOUND
15 QUALIFIED AS A PROSPECTIVE JUROR IN THIS CASE.
16 WE'LL HAVE THE JURY STRIKE AT TWO O'CLOCK
17 TOMORROW. WE MAY HAVE IT IN THE MORNING DEPENDING
18 ON WHETHER WE FIND SEVEN MORE QUALIFIED JURORS
19 BETWEEN NOW AND QUITTING TIME TODAY. BUT PLEASE
20 CALL THAT NUMBER THERE SO THAT YOU CAN CHECK TO SEE
21 IF THE TIME HAS CHANGED FROM TWO O'CLOCK TOMORROW
22 UNTIL EARLIER TOMORROW. AND FOLLOW THOSE
23 INSTRUCTIONS. BRING YOUR CLOTHES FOR FIVE OR SIX
24 OR SEVEN OR EIGHT DAYS. AND YOU WILL NOT BE ABLE
25 TO COMMUNICATE WITH FOLKS EXCEPT ON AN EMERGENCY

MILFORD E. CARTER - EXAM. BY THE COURT

1 BASIS NOR THEY WITH YOU. AND PLEASE DO NOT ALLOW
2 YOURSELF TO BE EXPOSED TO ANYTHING ABOUT THIS CASE
3 BY THE PRINT, ELECTRONIC, MEDIA, OR OTHERWISE,
4 FRIENDS, OR PEOPLE ON THE STREET. AND DON'T GO
5 BACK AND GIVE THE RIGHT ANSWERS TO THE REMAINING
6 JURORS AS YOU LEAVE. SO WITH THAT, MR. HUGHES, WE
7 THANK YOU SO MUCH. DRIVE CAREFULLY. AND WE LOOK
8 FORWARD TO SEEING YOU TOMORROW. THANK YOU. ALL
9 RIGHT. BRING MILFORD E. CARTER IN, PLEASE.

10 (JUROR NUMBER 55, A WHITE MALE, IS CALLED.)

11 - - - - -

12 WHEREUPON,

13 MILFORD E. CARTER, WHO BEING PREVIOUSLY
14 SWORN TO TELL THE TRUTH, TESTIFIED AS
15 FOLLOWS:

16 EXAMINATION

17 BY THE COURT:

18 Q. MR. MILFORD E. CARTER?

19 A. YES, SIR.

20 Q. THANK YOU SO MUCH FOR BEING WITH US. YOU ARE JUROR
21 NUMBER 55 ON THE LARGE PANEL NUMBERING SYSTEM. AND
22 YOU'RE STILL UNDER OATH FROM YESTERDAY. DO YOU
23 UNDERSTAND THAT, PLEASE?

24 A. YES, SIR.

25 Q. ON YESTERDAY YOU STOOD WHEN INQUIRED -- THE COURT

MILFORD E. CARTER - EXAM. BY THE COURT

1 INQUIRED IF YOU KNEW ANY OF THE WITNESSES. WOULD
2 YOU PLEASE TELL US WHICH OF THE WITNESSES YOU KNOW
3 OR RELATED BY BLOOD OR MARRIAGE OR HAVE ANY
4 BUSINESS OR SOCIAL ACQUAINTANCE WITH?

5 A. I HAD DEALINGS WITH DR. LOMAX. HE HAD TREATED ME
6 FOR A SINUS INFECTION.

7 Q. AND HOW LONG AGO? IS HE A GENERAL PRACTITIONER OR
8 A DOCTOR OF INTERNAL MEDICINE?

9 A. E.N.T.

10 Q. E.N.T.?

11 A. YES, SIR.

12 Q. AND WOULD THE FACT THAT HE MAY BE A WITNESS IN THIS
13 CASE; WOULD BE ABLE TO FAIRLY JUDGE THE CREDIBILITY
14 OF ALL THE WITNESSES, NOT ANY MORE, NOT ANY LESS
15 THAN DR. LOMAX, THE FACT THAT YOU KNOW HIM?

16 A. YES, SIR.

17 Q. MR. CARTER, HAVE THERE BEEN ANY CHANGES IN THIS
18 QUESTIONNAIRE THAT YOU SO KINDLY RETURNED TO US
19 SOME FEW WEEKS AGO?

20 A. NO, SIR; NO CHANGES.

21 Q. AND DO YOU -- I NOTE HERE UNDER QUESTION TWELVE
22 "HAVE YOU OR A MEMBER OF YOUR FAMILY BEEN A VICTIM
23 OF A CRIME." YOUR ANSWER WAS YES; YOUR HOUSE WAS
24 BROKEN INTO WHEN YOU WERE IN HIGH SCHOOL. WAS THAT
25 YOUR MOTHER AND FATHER'S HOUSE?

MILFORD E. CARTER - EXAM. BY THE COURT

1 A. YES.

2 Q. AND HOW LONG AGO WAS THAT? YOU ARE NOW 38. YOU
3 WERE IN HIGH SCHOOL. FIFTEEN OR EIGHTEEN?

4 A. TWENTY SOMETHING YEARS AGO.

5 Q. WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY
6 TO GIVE BOTH A FAIR AND IMPARTIAL TRIAL BOTH TO THE
7 STATE AND THE DEFENDANT?

8 A. NO, SIR.

9 Q. HAVE YOU FORMED OR EXPRESSED AN OPINION AS TO THE
10 EVIDENCE IN THIS CASE OR AS TO THE GUILT OR
11 INNOCENCE OF THE ACCUSED?

12 A. NO, SIR.

13 Q. DO YOU HAVE ANY BIAS OR PREJUDICE FOR OR AGAINST
14 THE STATE OR FOR THE DEFENDANT?

15 A. NO, SIR.

16 Q. HAVE YOU BEEN APPROACHED BY ANYONE OR HAD THIS CASE
17 DISCUSSED WITH YOU IN ANY MANNER WHATSOEVER?

18 A. NO, SIR.

19 Q. DO YOU KNOW OF ANY REASON YOU COULD NOT GIVE A FAIR
20 TRIAL TO THE STATE OF SOUTH CAROLINA AND THE
21 CITIZENS OF DORCHESTER COUNTY AS WELL AS TO THE
22 DEFENDANT, KENNETH SIMMONS?

23 A. NO, SIR.

24 Q. AND PLEASE UNDERSTAND THESE QUESTIONS ARE BEING
25 ASKED OF YOU AT THIS TIME ALBEIT THERE'S BEEN NO

MILFORD E. CARTER - EXAM. BY THE COURT

1 TESTIMONY OR EVIDENCE OR FINDING IN THE CASE. BUT
2 THIS IS THE ONLY OPPORTUNITY UNDER OUR LAW THAT THE
3 LAWYERS AND THE COURT WOULD HAVE TO MAKE INQUIRY
4 ABOUT CERTAIN MATTERS TO TRY AND OBTAIN A VIEW OF
5 WHAT YOUR OPINIONS ARE ON VARIOUS MATTERS. AND
6 THERE ARE NO RIGHT OR WRONG ANSWERS. SO YOU WILL
7 PASS WITH AN A+. AND HAVE NO FEAR; YOU WILL
8 GRADUATE ON TIME WITH THE REST OF YOUR CLASS. AND
9 I ASK YOU, MR. MILFORD IF YOU'RE AWARE OF THE FACT
10 THAT IN SOUTH CAROLINA THAT A DEFENDANT IS NEVER
11 REQUIRED TO PROVE HIMSELF OR HERSELF INNOCENT
12 BECAUSE IN INSTANCES THAT MIGHT NOT BE POSSIBLE;
13 AND THE DEFENDANT DOES NOT HAVE TO TAKE THE WITNESS
14 STAND, DOES NOT HAVE TO OFFER ANY EVIDENCE, AND IF
15 THE DEFENDANT OPTED OR ELECTED NOT TO TAKE THE
16 WITNESS STAND, THE JURY WOULD BE INSTRUCTED THAT
17 THE FAILURE OF THE DEFENDANT TO TESTIFY RAISES NO
18 PRESUMPTION FOR OR AGAINST THE GUILT OR INNOCENCE
19 OF THE DEFENDANT BECAUSE HE IS PRESUMED INNOCENT.
20 AND IF DURING THE FIRST -- THERE ARE TWO PHASES IN
21 THIS CASE WHICH IS A MURDER CASE WHERE THE STATE IS
22 SEEKING THE DEATH PENALTY. IF THE JURY UNANIMOUSLY
23 FOUND THAT THE STATE HAD PROVEN THE GUILT OF THE
24 DEFENDANT BEYOND A REASONABLE DOUBT AS TO MURDER,
25 THEN WE WOULD GO TO THE SECOND PENALTY PHASE. IF

MILFORD E. CARTER - EXAM. BY THE COURT

1 THE JURY FOUND THE DEFENDANT NOT GUILTY, THEN THAT
2 WOULD END THE CASE INsofar AS ANY PENALTY PHASE
3 BECAUSE THE COURT, AS A MATTER OF LAW, IS
4 RESPONSIBLE FOR IMPOSING SENTENCE WITHOUT A
5 RECOMMENDATION IN THE EVENT THE DEFENDANT WERE
6 FOUND GUILTY ON ANY OF THE FOUR OTHER INDICTMENTS.
7 NOW DURING THE PENALTY PHASE THE STATE WOULD BE
8 REQUIRED TO PROVE TO THE SATISFACTION OF THE PETIT
9 JURY BEYOND A REASONABLE DOUBT ONE OR MORE OF
10 STATUTORY AGGRAVATING CIRCUMSTANCES. AND THOSE
11 ALLEGED IN THE OTHER FOUR INDICTMENTS; CRIMINAL
12 SEXUAL CONDUCT, BURGLARY, KIDNAPPING, AND ARMED
13 ROBBERY. AND IF THE STATE PROVED ANY ONE OF THOSE
14 BEYOND A REASONABLE DOUBT, THEN THE JURY COULD MAKE
15 A RECOMMENDATION OF THE IMPOSITION OF THE DEATH
16 PENALTY TO THE COURT. THE DEFENDANT WOULD GIVE AN
17 OPPORTUNITY TO OFFER EVIDENCE IN MITIGATION DURING
18 THE PENALTY PHASE. AND THE JURY MAY FIND
19 MITIGATING CIRCUMSTANCES WHICH WOULD LESSEN THE
20 RECOMMENDATION FROM THAT OF A DEATH PENALTY
21 SENTENCE TO THAT OF LIFE IMPRISONMENT WITHOUT
22 PAROLE; OR THE JURY COULD OUT OF THE GOODNESS OF
23 THEIR HEART AS AN ACT OF MERCY RECOMMEND TO THE
24 COURT THAT THE COURT IMPOSE A SENTENCE OF LIFE
25 IMPRISONMENT WITHOUT PAROLE ALTHOUGH THE STATE MAY

MILFORD E. CARTER - EXAM. BY THE COURT

1 HAVE PROVEN BEYOND A REASONABLE DOUBT STATUTORY
2 AGGRAVATING CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. HAVE YOU PLEASE, MR. MILFORD E. CARTER, HAD THE
5 OPPORTUNITY TO REVIEW THE THREE TYPES OF JURORS
6 THAT ARE LISTED ON THAT SHEET?

7 A. YES, SIR.

8 Q. AND WHICH OF THOSE THREE DO YOU FEEL YOU WOULD FALL
9 UNDER?

10 A. TYPE THREE.

11 Q. WHAT KIN ARE YOU TO REX CARTER?

12 A. HE'S MY UNCLE.

13 Q. IS HE REALLY?

14 A. YES, SIR.

15 Q. WHAT'S YOUR COUSIN'S NAMES THAT'S IN THE CAR
16 DEALERSHIP THAT SELLS CARS UP THERE?

17 A. WELL, I'VE GOT A BUNCH OF THEM.

18 Q. YOU'VE GOT A BUNCH OF THEM?

19 A. YES, SIR.

20 Q. THAT'S ALL RIGHT. I WAS JUST CURIOUS. MY DAUGHTER
21 USED TO DATE ONE OF THEM TEN OR TWELVE YEARS AGO.
22 BUT THAT'S ALL RIGHT. SHE'S SINCE BEEN MARRIED TO
23 SOMEBODY ELSE. IN ANY EVENT, YOU FEEL THAT YOU
24 FALL UNDER CATEGORY NUMBER THREE?

25 A. YES, SIR.

MILFORD E. CARTER - DIRECT/MR. BAILEY

1 Q. ALL RIGHT.

2 THE COURT: AND YOU MAY PROCEED, MR.
3 SOLICITOR, WITH THE QUESTIONING.

4 DIRECT EXAMINATION

5 BY MR. BAILEY:

6 Q. MR. CARTER, I'M WALTER BAILEY. I'LL BE PROSECUTING
7 THE CASE. I NEED TO ASK YOU A FEW MORE QUESTIONS.
8 IS THE DEATH PENALTY SOMETHING YOU'VE EVER HAD AN
9 OCCASION TO REALLY THINK ABOUT BEFORE YESTERDAY
10 WHEN YOU FOUND OUT YOU MIGHT BE ON THIS JURY?

11 A. NO, SIR.

12 Q. ALL RIGHT, SIR. DO YOU THINK YOU'VE HAD ENOUGH
13 TIME SINCE YESTERDAY WHEN YOU FOUND OUT WHAT KIND
14 OF CASE THIS IS TO PRETTY WELL PUT YOURSELF IN THAT
15 THIRD CATEGORY?

16 A. YES, SIR.

17 Q. ALL RIGHT, SIR. AND THAT THIRD CATEGORY JUROR
18 COULD VOTE FOR THE DEATH PENALTY; COULD VOTE FOR
19 LIFE IMPRISONMENT, DEPENDING ON WHAT YOU HEARD IN
20 THE CASE?

21 A. YES, SIR.

22 Q. AND YOU HAVEN'T HEARD ANY FACTS YET, SO NOBODY IS
23 GOING TO ASK YOU TO PREDICT WHAT YOU WOULD DO IN
24 THIS CASE. BUT I WANT TO JUST BRIEFLY EXPLAIN THE
25 PROCESS TO YOU IF WE GET INTO THE SECOND PART OF

MILFORD E. CARTER - DIRECT/MR. BAILEY

1 THE TRIAL, THE PENALTY PHASE. THAT WOULD MEAN THE
2 DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST
3 PART OF THE TRIAL. AND THE ONLY CHOICE THE JURY
4 HAS IN THE SECOND PART IS LIFE WITHOUT PAROLE OR
5 THE DEATH PENALTY. THERE WILL BE ADDITIONAL
6 EVIDENCE THAT WILL COME OUT. I'LL BE INTRODUCING
7 EVIDENCE IN AGGRAVATION TO TRY TO PERSUADE THE JURY
8 THAT THE APPROPRIATE PUNISHMENT IS THE DEATH
9 PENALTY. THE DEFENSE WOULD BE ARGUING IN FAVOR OF
10 LIFE WITHOUT PAROLE. THE JUDGE WOULD GIVE THE JURY
11 INSTRUCTIONS. THEY'D GO BACK AND DELIBERATE. THEY
12 WOULD REACH A VERDICT, LIFE WITHOUT PAROLE OR THE
13 DEATH PENALTY. AND THAT VERDICT WOULD BE THE ORDER
14 OF THE COURT. IN OTHER WORDS, IT'S NOT A
15 RECOMMENDATION. IT IS THE ORDER. THE JUDGE WOULD
16 ORDER INTO EFFECT WHATEVER THAT JURY VERDICT IS.
17 SO IF THE JURY VOTES FOR LIFE WITHOUT PAROLE,
18 THAT'S WHAT HE GETS. IF THE JURY VOTES FOR THE
19 DEATH PENALTY, THE JUDGE COULD ORDER THAT, AND HE
20 WOULD BE EXECUTED. NOW, IF THE FACTS AND
21 CIRCUMSTANCES THAT CAME OUT IN THAT TRIAL WERE BAD
22 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
23 KNOWING THAT SENTENCE WOULD ACTUALLY BE CARRIED OUT
24 BASED ON THAT JURY'S VOTE?

25 A. YES, SIR.

MILFORD E. CARTER - CROSS/MR. THEOS

1 Q. COULD YOU SIGN YOUR NAME TO A DEATH VERDICT FORM
2 ALONG WITH THE OTHER ELEVEN JURORS IF THEY ALL
3 VOTED THE SAME WAY?

4 A. YES, SIR.

5 Q. COULD YOU STAND UP IN OPEN COURT OUT HERE AND
6 ANNOUNCE THAT VERDICT IF THAT WAS YOUR VERDICT?

7 A. YES, SIR.

8 Q. THE JURY IS GOING TO BE PUT IN A MOTEL UNTIL THIS
9 TRIAL IS OVER, PROBABLY STARTING TOMORROW. THAT'S
10 AN INCONVENIENCE FOR EVERYBODY, BUT IS THAT
11 SOMETHING THAT YOU CAN WORK AROUND?

12 A. YES, SIR.

13 Q. MR. CARTER, I THINK THAT'S ALL I HAVE. THANK YOU
14 VERY MUCH.

15 A. THANK YOU.

16 THE COURT: YOU MAY QUESTION, MR.
17 THEOS.

18 CROSS-EXAMINATION

19 BY MR. THEOS:

20 Q. MR. HUGHES, HOW ARE YOU DOING? I'M JERRY THEOS.
21 THIS IS JIM BELL. JIM AND I ARE THE ATTORNEYS FOR
22 KENNETH SIMMONS WHO IS SEATED NEXT TO
23 MR. BELL. THANK YOU FOR COMING IN. THANK YOU FOR
24 BEING HONEST AND CANDID WITH US IN YOUR RESPONSES.
25 THE JUDGE AND MR. BAILEY WENT THROUGH MOST OF THE

MILFORD E. CARTER - CROSS/MR. THEOS

- 1 QUESTIONS THAT I WOULD HAVE WANTED TO ASK YOU, SO I
2 WILL NOT GO INTO ALL OF THOSE. I WANT TO ASK YOU A
3 COUPLE OF QUESTIONS IF YOU DON'T MIND. YOU
4 MENTIONED IN YOUR QUESTIONNAIRE THAT YOUR HOUSE WAS
5 BROKEN INTO. CAN YOU TELL US WHEN THAT HAPPENED
6 AND WHAT THE CIRCUMSTANCES AND FACTS WERE, PLEASE?
7 A. IT WAS PROBABLY 1975; AND IT WAS KIDS THAT I WENT
8 TO HIGH SCHOOL WITH. THEY KNEW WE WENT AWAY ON
9 VACATION.
10 Q. OTHER THAN THAT, I ASSUME YOU HAVEN'T BEEN THE
11 VICTIM OF ANY TYPE OF CRIME?
12 A. NO, SIR.
13 Q. YOU OR ANYBODY IN YOUR FAMILY?
14 A. NO, SIR.
15 Q. NOW, AS MR. BAILEY TOLD YOU, AND AS THE JUDGE TOLD
16 YOU, WE'VE BEEN TALKING TO YOU ABOUT PENALTIES
17 HERE; AND I SAW FROM YOUR QUESTIONNAIRE YOU TOOK
18 SOME CRIMINAL LAWS COURSES, OR MAYBE JUST ONE
19 CLASS. BUT IT'S A LITTLE UNUSUAL THAT WE'RE
20 TALKING TO YOU ABOUT WHAT THE POSSIBLE PENALTIES
21 ARE FOR MR. SIMMONS. AND NO DECISION HAS BEEN MADE
22 AS TO HIS GUILT. SO WE'RE SORT OF JUMPING THE GUN
23 HERE TO GET TO THE PENALTY PHASE. BUT WE DON'T
24 KNOW OF ANY OTHER WAY TO DO IT. WE'VE GOT TO ASK
25 YOU YOUR VIEWS ON THOSE THINGS. BUT YOU CERTAINLY

MILFORD E. CARTER - CROSS/MR. THEOS

1 HAVEN'T IN ANY WAY ASSIGNED ANY SIGNIFICANCE TO
2 THAT AS IT MAY RELATE TO MR. SIMMONS' GUILT OR
3 INNOCENCE, HAVE YOU?

4 A. NO, SIR.

5 Q. OKAY. YOU UNDERSTAND THAT BEFORE WE COULD GET TO
6 THAT POINT IN THE CASE WHERE YOU MIGHT BE ASKED AS
7 A JUROR TO CONSIDER WHICH PUNISHMENT MAY BE THE
8 MORE APPROPRIATE, LIFE IMPRISONMENT WITHOUT PAROLE
9 OR THE DEATH PENALTY, THAT THE JURY WOULD FIRST
10 HAVE TO CONSIDER THE EVIDENCE AND DETERMINE THAT
11 MR. SIMMONS WAS GUILTY. DO YOU UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. AND THAT IF THE STATE FAILED IN ITS BURDEN, FAILED
14 IN ITS EFFORTS TO PROVE BEYOND A REASONABLE DOUBT
15 THAT MR. SIMMONS WAS GUILTY, THEN WE WOULDN'T GET
16 TO THIS SECOND PHASE. DO YOU UNDERSTAND THAT?

17 A. YES.

18 Q. AND I'M SURE YOU UNDERSTAND BASED ON YOUR
19 EXPERIENCE AND LIFE AND YOUR HAVING TAKEN THIS
20 COURSE THAT MR. SIMMONS SITS HERE INNOCENT. JUST
21 BECAUSE HE'S BEEN CHARGED AND INDICTED AND HE'S ON
22 TRIAL HERE, AND JUST BECAUSE THE STATE IS SEEKING
23 THE DEATH PENALTY, THAT IN NO WAY INDICATES
24 ANYTHING RELATED TO HIS GUILT?

25 A. YES, SIR.

MILFORD E. CARTER - CROSS/MR. THEOS

1 Q. NOW, I BELIEVE THAT THE JUDGE TOLD YOU THAT IN THIS
2 STATE THAT A DEFENDANT, SOMEBODY THAT'S ON TRIAL IN
3 A CRIMINAL CASE, IS CALLED A DEFENDANT; AND A
4 DEFENDANT DOESN'T HAVE ANY DUTY OR BURDEN AT ALL TO
5 PUT UP A DEFENSE OR EVEN TO TESTIFY. DO YOU
6 UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. OKAY. DO YOU FEEL THAT THAT IS SOMETHING THAT YOU
9 WOULD HOLD AGAINST MR. SIMMONS OR AGAINST ANY
10 DEFENDANT IF NO DEFENSE OR NO TESTIMONY WAS
11 PRESENTED?

12 A. NO.

13 Q. WOULD YOU LOOK TO A CRIMINAL DEFENDANT TO PRESENT A
14 CASE?

15 A. NO, SIR.

16 Q. NOW I UNDERSTAND FINALLY IN ANSWERING MR. BAILEY'S
17 PLEASE QUESTIONS THAT YOU WOULD BE ABLE TO CONSIDER
18 BOTH THE AGGRAVATING FACTORS THAT MR. BAILEY MIGHT
19 PRESENT IN AN EFFORT TO PERSUADE YOU AND THE OTHER
20 JURORS TO SENTENCE MR. SIMMONS TO DEATH. MR. BELL
21 AND I WOULD SIMILARLY PRESENT WHAT THE JUDGE CALLED
22 MITIGATING FACTORS. WE WOULD BE PRESENTING
23 EVIDENCE AND TESTIMONY AND THOSE FACTORS AND
24 CIRCUMSTANCES THAT WE WOULD HOPEFULLY PERSUADE YOU
25 AS A JUROR, IF WE GOT TO THAT STAGE, TO FIND THAT

MILFORD E. CARTER - CROSS/MR. THEOS

1 LIFE IMPRISONMENT WITHOUT PAROLE WAS THE MOST
2 APPROPRIATE PENALTY. WOULD YOU LISTEN TO US AS
3 MUCH AS YOU WOULD LISTEN TO MR. BAILEY AND THE
4 STATE AT THAT STAGE?

5 A. YES, SIR.

6 Q. OKAY. AND WOULD YOU THEN, BASED UPON WHAT WE BOTH
7 PRESENTED, WOULD YOU MAKE A DECISION AS TO WHAT YOU
8 THOUGHT WAS THE MOST APPROPRIATE SENTENCE FOR MR.
9 SIMMONS?

10 A. YES, SIR.

11 Q. THANK YOU, SIR.

12 MR. THEOS: NO FURTHER QUESTIONS,
13 YOUR HONOR.

14 THE COURT: MR. BAILEY?

15 MR. BAILEY: NO FURTHER QUESTIONS,
16 JUDGE.

17 THE COURT: PLEASE GIVE A COPY OF
18 THE INSTRUCTION SHEET. YOU'RE A STEP AHEAD OF ME
19 EVERY TIME. THANK YOU SO MUCH, MR. MILFORD CARTER.

20 YOU'VE BEEN FOUND QUALIFIED AS A POTENTIAL OR
21 PROSPECTIVE JUROR IN THIS CASE. THE JURY STRIKE
22 WILL NOT TAKE PLACE UNTIL EITHER TOMORROW MORNING
23 OR EITHER TWO O'CLOCK TOMORROW AFTERNOON. IT'S TEN
24 AFTER FIVE NOW. CALL THAT RECORDING MACHINE AFTER
25 EIGHT O'CLOCK TONIGHT BECAUSE WE'LL KNOW BY THEN

MILFORD E. CARTER - CROSS/MR. THEOS

1 WHAT TIME WE'RE GOING TO NEED YOU BACK TOMORROW.
2 IN THE MEANTIME DON'T DISCUSS THIS CASE WITH ANYONE
3 OR ALLOW ANYONE TO DISCUSS IT WITH YOU OR IN YOUR
4 PRESENCE. DO NOT GO OUT AND MAKE ANY INDEPENDENT
5 INVESTIGATION. DO NOT ALLOW YOURSELF TO BE EXPOSED
6 TO ANYTHING ABOUT THE CASE. BY THAT I MEAN DON'T
7 LISTEN TO RADIO, T.V., READ NEWSPAPERS, EVEN THOUGH
8 I HAVE NOT SEEN ANY NEWSPAPERS IN THE COURTROOM
9 TODAY. BUT IT IS A PUBLIC PROCEEDING. AND PLEASE
10 MAKE THE NECESSARY ARRANGEMENTS RELATIVE TO YOUR
11 CLOTHES AND MEDICATIONS OR OTHER THINGS FOR THE
12 NEXT FIVE, SIX, SEVEN, OR EIGHT DAYS. DO YOU KNOW
13 OF ANY PARTICULAR HARDSHIP OR MEDICAL CONDITION OR
14 ANYTHING THAT WOULD MAKE IT IMPOSSIBLE FOR YOU TO
15 SERVE ON THIS JURY?

16 MR. CARTER: NO, SIR.

17 THE COURT: ALL RIGHT. MAY I PLEASE
18 THANK YOU; AND YOU HAVE A NICE DAY. BYE, NOW.
19 PLEASE BRING IN THE NEXT JUROR.

20 (JUROR NUMBER 328, A WHITE MALE, IS CALLED.)
21 - - - - -

22 WHEREUPON,

23 JOHN A. WASHINGTON, WHO AFTER BEING FIRST
24 DULY SWORN TO TELL THE TRUTH, TESTIFIED
25 AS FOLLOWS:

JOHN A. WASHINGTON - EXAM. BY THE COURT

EXAMINATION

BY THE COURT:

Q. HOW ARE YOU THIS AFTERNOON, MR. JOHN A. WASHINGTON?

A. I'M DOING FINE, THANK YOU.

Q. MAY I PLEASE THANK YOU FOR BEING HERE WITH US. YOU ARE JUROR NUMBER 328. AND, MR. WASHINGTON, YOU ARE STILL UNDER OATH THAT YOU HAD GIVEN ON YESTERDAY, MAY I REMIND YOU. AND AT THE TIME ON YESTERDAY WHEN THE ENTIRE GROUP OF PROSPECTIVE JURORS WERE QUESTIONED, YOU INDICATED AT THAT TIME THAT YOU HAD SEEN, HEARD, OR READ SOMETHING ABOUT THE CASE. COULD YOU PLEASE TELL US THE SOURCE OF THAT INFORMATION AND WHAT IT WAS?

A. WELL, THE SOURCE OF THAT INFORMATION WOULD HAVE BEEN THE POST AND COURIER AND ALSO MAYBE ON THE NEWS MEDIA. I TEND TO WATCH THE NEWS AND ALSO READ THE NEWSPAPER FAIRLY RELIGIOUSLY.

Q. OKAY; GOOD. AND WAS THERE ANYTHING THAT YOU HEARD ON T.V. OR READ IN THE PAPER THAT WOULD IN ANY WAY INTERFERE WITH YOUR ABILITY TO GIVE A FAIR AND IMPARTIAL TRIAL IN THIS CASE, FAIR TO THE STATE AND FAIR TO THE DEFENDANT?

A. I WOULD SAY NO BECAUSE I GUESS WHEN I UNDERSTOOD YOUR QUESTION IT WOULD SAY DID I READ ANYTHING ABOUT IT.

JOHN A. WASHINGTON - EXAM. BY THE COURT

1 Q. SURE.

2 A. AND I TOOK THAT AS SAYING I'M SURE THAT I READ
3 SOMETHING ABOUT IT. BUT THE PARTICULAR CRIME, OR
4 WHATEVER, IT DIDN'T COME TO MY HEAD. I DIDN'T
5 RECOGNIZE THE ACTUAL SCENE OR WHATEVER. SO I JUST
6 KNEW THEY I HAD READ ABOUT IT, BUT I DIDN'T
7 REMEMBER ANY SPECIFICS.

8 Q. YOU DIDN'T REMEMBER ANY SPECIFICS OR PARTICULARS?

9 A. NO.

10 Q. NOW, MR. WASHINGTON, THESE QUESTIONS THAT WE'RE
11 ASKING OF YOU, PLEASE, WE DO NOT INTEND TO INVAD
12 YOUR PRIVACY OR TO BE PERSONAL ABOUT IT. BUT THIS
13 IS THE ONLY OPPORTUNITY UNDER OUR PROCEDURE WHERE
14 THE ATTORNEYS AND THE COURT WOULD BE ALLOWED TO ASK
15 YOU QUESTIONS SO THAT THEY COULD GET A BETTER FEEL
16 AS TO WHETHER OR NOT THEY WISH TO SELECT YOU AS A
17 FINAL JUROR IN THE TRIAL OF THIS CASE. FURTHER,
18 WE'LL BE TALKING ABOUT THE TWO PHASES OF THE TRIAL
19 EVEN THOUGH WE'RE PREMATURE TO THE EXTENT THAT
20 THERE'S BEEN NO TESTIMONY UNDER OATH. THERE'S NO
21 EVIDENCE INTRODUCED IN THE CASE. BUT WE HAVE TO
22 ASSUME ARGUENDO CERTAIN THINGS IN ORDER TO ASK YOU
23 THESE QUESTIONS. DO YOU UNDERSTAND PLEASE, MR.
24 WASHINGTON, THAT IT IS THE LAW OF THIS STATE THAT
25 EVERY DEFENDANT THAT COMES INTO THIS COURT,

JOHN A. WASHINGTON - EXAM. BY THE COURT

1 REGARDLESS OF THE NATURE OF ENORMITY OF THE CHARGE
2 MADE AGAINST HIM OR HER, IS ALWAYS PRESUMED OR
3 THOUGHT TO BE INNOCENT OF THOSE CHARGES REGARDLESS
4 OF THE NATURE OR ENORMITY OF THE CHARGE UNTIL AND
5 UNLESS THE STATE REMOVES THAT PRESUMPTION OF
6 INNOCENCE BY EVIDENCE SATISFYING THE JURY OF THE
7 UNANIMOUS VERDICT OF ALL TWELVE BEYOND A REASONABLE
8 DOUBT?

9 A. I WOULD AGREE WITH THAT STATEMENT AS FAR AS
10 UNDERSTANDING THE CONSTITUTION.

11 Q. THANK YOU. AND IN THE EVENT THAT THE JURY SHOULD
12 IN THE GUILT PHASE FIND THE DEFENDANT GUILTY OF
13 MURDER, WE WOULD HAVE TO GO TO THE SECOND PHASE OR
14 PENALTY PHASE. THERE WOULD BE A 24 HOUR WAITING
15 PERIOD BEFORE THE END OF THE GUILT PHASE AND THE
16 PENALTY PHASE. ON THE OTHER HAND, IF THE JURY
17 FOUND NOT GUILTY ON THE MURDER, THERE WOULD NO NEED
18 FOR A PENALTY PHASE BECAUSE THE COURT WOULD AS A
19 MATTER OF LAW HANDLE THE SENTENCING IN ANY OF THE
20 OTHER FOUR INDICTMENTS IF, IN FACT, THERE WOULD BE
21 A GUILTY VERDICT ON ANY OF THE OTHER FOUR. I HAVE
22 NO IDEA WHAT IT WOULD BE BECAUSE I KNOW NOTHING OF
23 THE EVIDENCE MYSELF. SO DURING THAT PENALTY PHASE,
24 THE STATE REPRESENTED BY SOLICITOR BAILEY WOULD BE
25 REQUIRED TO PROVE ONE OR MORE AGGRAVATED

JOHN A. WASHINGTON - EXAM. BY THE COURT

1 CIRCUMSTANCES PURSUANT TO OUR STATE LAW OR
2 STATUTORY LAW. THE FOUR OTHER INDICTMENTS HAVE
3 CHARGES FOR CRIMINAL SEXUAL CONDUCT, BURGLARY,
4 ARMED ROBBERY, AND KIDNAPPING. AND IF THE STATE
5 PROVES BEYOND A REASONABLE DOUBT ANY ONE OF THOSE
6 FOUR THAT OCCURRED DURING THE MURDER, THEN THE JURY
7 MAY -- NOT MANDATORY, MUST OR SHALL -- BUT MAY
8 RETURN A RECOMMENDATION OF DEATH PENALTY. BUT THE
9 DEFENDANT IS ALLOWED TO OFFER MITIGATING OR
10 LESSENING, MINIMIZING CIRCUMSTANCES, TO WHERE THE
11 RECOMMENDATION WOULD GO FROM THE EXTREME OF THE
12 DEATH PENALTY OVER TO THE RECOMMENDATION OF LIFE
13 IMPRISONMENT WITHOUT PAROLE. AND THE JURY MAY, AS
14 AN ACT OF MERCY, WITHOUT ANY FINDING OF MITIGATING
15 CIRCUMSTANCE; AND EVEN IF THE JURY FOUND A
16 STATUTORY AGGRAVATING CIRCUMSTANCE, ONE OR MORE,
17 THE JURY MAY OUT OF THE GOODNESS OF THEIR HEARTS OR
18 IN A MERCIFUL ACT RECOMMEND LIFE IMPRISONMENT
19 WITHOUT THE POSSIBILITY OF PAROLE. DO YOU
20 UNDERSTAND THOSE FUNCTIONS OF A JURY IN A DEATH
21 PENALTY CASE AS I'VE NOW EXPLAINED THEM TO YOU?
22 A. WOULD YOU LIKE ME TO ELABORATE ON THAT?
23 Q. NO, SIR. BUT YOU UNDERSTAND WHAT I'VE SAID BECAUSE
24 I'VE GIVEN YOU A LOT OF LAW AND PROCEDURE HERE IN A
25 FEW MINUTES. AND I HOPE I'M NOT SPEAKING TOO

JOHN A. WASHINGTON - DIRECT/MR. THEOS

1 FAST. HAVE YOU UNDERSTOOD WHAT I'VE SAID TO YOU?

2 A. YES, SIR.

3 Q. AND, MR. WASHINGTON, HAVE YOU HAD THE OPPORTUNITY
4 TO REVIEW THE FORM THAT LISTS THE THREE TYPES; ONE,
5 TWO, AND THREE OF JURORS?

6 A. YES, SIR.

7 Q. WHICH CATEGORY DO YOU FEEL THAT YOU WOULD FALL
8 INTO, SIR?

9 A. I WOULD FALL INTO THE NUMBER THREE CATEGORY.

10 Q. ALL RIGHT, SIR.

11 THE COURT: MR. THEOS, WOULD YOU
12 LIKE TO QUESTION THIS WITNESS, PLEASE?

13 MR. THEOS: YES, SIR.

14 DIRECT EXAMINATION

15 BY MR. THEOS:

16 Q. MR. WASHINGTON, MY NAME IS JERRY THEOS. THIS IS
17 JIM BELL. JIM AND I ARE REPRESENTING, ARE THE
18 LAWYERS FOR KENNETH SIMMONS WHO'S ON TRIAL HERE.
19 MR. WASHINGTON, JUST AS THE JUDGE HAS TOLD YOU IN
20 TALKING WITH YOU ABOUT YOUR VIEWS AND YOUR
21 PERCEPTIONS OF THE DEATH PENALTY; AND IT'S A LITTLE
22 UNUSUAL BECAUSE MR. SIMMONS HAS NOT BEEN FOUND
23 GUILTY OF ANYTHING AT THIS POINT. I TAKE IT FROM
24 THE MANNER IN WHICH YOU RESPONDED TO THESE
25 QUESTIONS THAT YOU UNDERSTAND THAT THAT'S JUST A

1 NECESSITY BEFORE WE CAN -- DO YOU UNDERSTAND THAT?

2 A. I GUESS -- WHAT I WANT TO SAY, I GUESS, WAS I
3 UNDERSTAND THAT THE WAY THE LAW GOES IF YOU ARE
4 GUILTY OF OTHER THINGS ALONG WITH AN OFFENSE, THAT
5 THAT MAY JUSTIFY THE SENTENCING OF, SAY, THE DEATH
6 PENALTY. BUT I WOULD THINK THAT MY ASSESSMENT
7 WOULD BE -- IT WOULD HAVE TO BE PROVEN BIG TIME
8 BEFORE I WOULD EVEN REALLY CONSIDER THAT.

9 Q. WHEN YOU SAY PROVEN BIG TIME, YOU OF COURSE ARE
10 TALKING ABOUT THIS SECOND PHASE?

11 A. IT WOULD HAVE TO BE OVERWHELMING EVIDENCE, I THINK,
12 OF THE FIRST PHASE.

13 Q. LET'S BACK UP JUST FOR A SECOND. THE FIRST PHASE,
14 OF COURSE, DEALS WITH WHETHER OR NOT MR. SIMMONS
15 WOULD BE FOUND GUILTY OF THE CHARGE.

16 A. YES, SIR.

17 Q. AND OBVIOUSLY IF HE WERE FOUND NOT GUILTY, WE
18 WOULDN'T EVEN GO INTO THAT SECOND PHASE; CORRECT?

19 A. CORRECT.

20 Q. AND I DON'T THINK -- I THINK JUST FROM THE WAY YOU
21 RESPONDED, I DON'T THINK WE NEED TO GO THROUGH THE
22 PRESUMPTION OF INNOCENCE AND THOSE SORTS OF
23 THINGS. YOU CERTAINLY UNDERSTAND THAT AS MR.
24 SIMMONS SITS HERE AN INNOCENT MAN AND UNTIL OR
25 UNLESS PROVEN GUILTY BY THE STATE BEYOND A

JOHN A. WASHINGTON - DIRECT/MR. THEOS

1 REASONABLE DOUBT---

2 A. RIGHT.

3 Q. --THAT HE WOULD CONTINUE TO BE GUILTY. AND THE
4 VERDICT OF NOT GUILTY WOULD HAVE TO BE RETURNED;
5 CORRECT?

6 A. CORRECT.

7 Q. NOW LET'S ASSUME JUST FOR ARGUMENT SAKE THAT A JURY
8 RETURNED A VERDICT OF GUILTY IN THE FIRST PHASE OF
9 THE TRIAL; GUILTY OF THOSE CHARGES THAT THE JUDGE
10 JUST TALKED TO YOU ABOUT; MURDER, THE OTHER CHARGES
11 THAT WERE READ IN THE INDICTMENT, CRIMINAL SEXUAL
12 CONDUCT, BURGLARY, KIDNAPPING, ALL THOSE THINGS.
13 THE QUESTION WOULD THEN BECOME IN THE SECOND
14 PHASE. IT WOULD ACTUALLY BE SORT OF A NEW TRIAL AT
15 THAT POINT. THE QUESTION WOULD BECOME WHAT WOULD
16 BE THE MORE APPROPRIATE SENTENCE; LIFE IMPRISONMENT
17 WITHOUT PAROLE OR THE DEATH PENALTY. I JUST WANT
18 TO MAKE SURE I UNDERSTAND THE RESPONSE YOU GAVE ME
19 A COUPLE OF MINUTES AGO. ARE YOU SAYING---

20 A. I UNDERSTAND WHAT YOU'RE TALKING ABOUT NOW.

21 Q. OKAY.

22 A. I'D SAY I'D BE ON THE FENCE. I GUESS IT WOULD
23 DEPEND ON MAYBE THE SEVERITY OF OTHER EVIDENCE
24 BROUGHT INTO THIS TRIAL WHETHER I WOULD VOTE ONE
25 WAY OR THE OTHER.

JOHN A. WASHINGTON - DIRECT/MR. THEOS

1 Q. ALL RIGHT. I GUESS WHAT WE WANT TO MAKE SURE IS
2 CLEAR IS WOULD YOU NECESSARILY CONCLUDE THAT THE
3 DEATH PENALTY WOULD BE THE ONLY APPROPRIATE
4 SENTENCE IF MR. SIMMONS WERE FOUND GUILTY IN THE
5 FIRST PHASE OF THE MURDER IN THESE OTHER CHARGES;
6 OR COULD YOU STILL CONSIDER LIFE IMPRISONMENT
7 WITHOUT PAROLE?

8 A. I COULD CONSIDER LIFE IMPRISONMENT WITHOUT PAROLE.

9 Q. OKAY. NOW, JUST BEAR WITH US ONE SECOND, PLEASE.
10 PLEASE DON'T TAKE THIS AS A SIGN OF IGNORANCE ON MY
11 PART. IN YOUR QUESTIONNAIRE, YOU INDICATED THAT
12 YOU WERE A LIBERTARIAN. AND IN RESPONSE TO
13 QUESTION 26 IT ASKED IF YOU HAD ANY STRONG VIEWS,
14 EITHER PERSONAL, RELIGIOUS, PHILOSOPHICAL, RELATED
15 TO NARCOTICS, ILLEGAL USE OF DRUGS, AND VIOLENT
16 CRIME. AND YOUR RESPONSE WAS "I BELIEVE IN THE
17 LIBERTARIAN PHILOSOPHY CONCERNING THE ABOVE.
18 AGAIN, DON'T TAKE IT AS A SIGN OF IGNORANCE ON MY
19 PART; AND I'M NOT TRYING TO PUT YOU ON THE SPOT. I
20 DON'T KNOW WHAT THAT LIBERTARIAN PHILOSOPHY IS.
21 WOULD YOU PLEASE TELL US WHAT YOUR UNDERSTANDING OF
22 IT IS?

23 A. WELL, THE LIBERTARIAN PRINCIPLE THAT I HOLD TO IS
24 BASICALLY SELF-OWNERSHIP OF YOUR BODY AND YOUR
25 MIND. IT WOULD BE GETTING RID OF -- GETTING RID OF

JOHN A. WASHINGTON - DIRECT/MR. THEOS

1 SOME OF THESE CRIMES THAT ARE VICTIMLESS. IT WOULD
2 ALSO GET RID OF CRIMES THAT WOULD BE CONSIDERED TO
3 BE THOUGHT CRIMES. SO AGAIN, IT'S KIND OF A
4 DIFFERENT SPECTRUM OF THE POLITICAL POINT AS
5 NEITHER REPUBLICAN OR DEMOCRAT. DOES THAT ANSWER
6 YOUR QUESTION?

7 Q. I THINK SO. BUT ONE FINAL QUESTION, IF YOU DON'T
8 MIND. THE LIBERTARIAN PHILOSOPHY; IS THERE ANY
9 PHILOSOPHY RELATED TO THE DEATH PENALTY? DOES THE
10 LIBERTARIAN PHILOSOPHY TAKE ANY FIRM STANCE ONE WAY
11 OR THE OTHER?

12 A. NOT THAT I KNOW OF.

13 Q. DO YOU TAKE ANY STANCE ONE WAY OR THE OTHER THAN
14 WHAT YOU'VE ALREADY TOLD US?

15 A. WELL, I WOULD SAY FROM MY OWN FEELINGS, I DON'T
16 THINK THE DEATH PENALTY IS A DETERRENT TO CRIME. I
17 GUESS THAT'S PROBABLY REALLY WHAT MY MAIN VIEW
18 POINT IS ON THAT IS I DO NOT THINK IT'S A DETERRENT
19 TO CRIME.

20 Q. BUT AS YOU SAID BEFORE, YOU WOULD CONSIDER WHATEVER
21 MR. BAILEY OFFERED AND WHATEVER WE OFFERED IN
22 MITIGATION IN DETERMINING WHAT WOULD BE
23 APPROPRIATE. I THINK YOUR WORDS WERE YOU WOULD BE
24 ON THE FENCE, AND THEN YOU WOULD LISTEN TO
25 EVERYTHING THAT WAS OFFERED TO DETERMINE WHAT WOULD

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 BE THE APPROPRIATE SENTENCE IF WE GOT TO THAT
2 STAGE?

3 A. IF WE GOT TO THAT STAGE; YES, SIR.

4 Q. THANK YOU, MR. WASHINGTON.

5 MR. BAILEY: IF IT PLEASE THE COURT?

6 THE COURT: PLEASE, SIR.

7 CROSS-EXAMINATION

8 BY MR. BAILEY:

9 Q. MR. WASHINGTON, I JUST WANT TO ASK YOU A COUPLE
10 MORE QUESTIONS TO FOLLOW UP ON WHAT MR. THEOS
11 ASKED. AND I KNOW YOU THINK WE'RE PICKING YOUR
12 BRAIN, AND WE ARE IN A WAY. BUT THIS IS THE ONLY
13 CHANCE WE GET TO TALK TO JURORS BEFORE WE PICK A
14 JURY. IN REGARD TO YOUR PERSONAL FEELINGS ABOUT
15 THE DEATH PENALTY, I UNDERSTAND YOU DON'T THINK
16 IT'S A DETERRENT; IS THAT CORRECT?

17 A. YES, SIR.

18 Q. OTHER THAN THAT, DO YOU HAVE ANY GENERAL THOUGHTS
19 ON THE DEATH PENALTY THAT YOU COULD SHARE WITH US?
20 NOT PERTAINING NECESSARILY TO THIS CASE, BUT JUST
21 IN GENERAL HOW YOU FEEL ABOUT IT?

22 A. I GUESS IN A WAY I KNOW THAT IF A CRIMINAL HAS BEEN
23 SENTENCED TO DEATH AND THEY'RE ACTUALLY PUT TO
24 DEATH, THEN THEY CAN'T COMMIT MORE CRIMES. BUT I
25 BELIEVE THAT TO BE REALLY THE -- YOU KNOW, THAT'S

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 THE ONLY THING ABOUT, YOU KNOW, PUTTING SOMEBODY TO
2 DEATH, I GUESS.

3 Q. ALL RIGHT, SIR.

4 A. DOES THAT MAKE SENSE?

5 Q. YES, SIR. ALL RIGHT, SIR. WOULD IT BE FAIR -- AND
6 I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH -- THAT
7 YOU WOULD BE IN FAVOR OF THE DEATH PENALTY UNDER
8 SOME CIRCUMSTANCES AND NOT THE OTHERS?

9 A. I BELIEVE THAT WOULD BE A FAIR ASSESSMENT.

10 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND THAT'S THE
11 PURPOSE OF PART TWO OF A DEATH PENALTY TRIAL TO
12 ALLOW THE STATE TO INTRODUCE ADDITIONAL EVIDENCE
13 THAT DIDN'T COME OUT IN THE FIRST PART OF THE TRIAL
14 EVIDENCE IN AGGRAVATION IN WHICH I'D BE TRYING TO
15 PERSUADE THE JURY THAT THE DEATH SENTENCE WAS THE
16 APPROPRIATE SENTENCE; AND THEN THE DEFENDANT, THE
17 DEFENSE, WOULD HAVE AN OPPORTUNITY TO BRING OUT
18 EVIDENCE IN MITIGATION IF THEY WANTED TO -- THEY
19 WOULDN'T HAVE TO -- AND THEY WOULD ARGUE FOR LIFE
20 WITHOUT PAROLE. THE JUDGE WOULD THEN INSTRUCT THE
21 JURY ON THE LAW THAT APPLIED TO THAT PART OF THE
22 CASE, AND THE JURY WOULD THEN DECIDE WHAT THE
23 SENTENCE WOULD BE. IT ISN'T REALLY A
24 RECOMMENDATION BECAUSE THE JUDGE IS GOING TO GO
25 AHEAD AND ORDER WHATEVER VERDICT THE JURY COMES UP

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 WITH TO GO INTO EFFECT. SO YOU UNDERSTAND THE JURY
2 MAKES THAT DETERMINATION?

3 A. YES, SIR.

4 Q. AND I'M NOT GOING TO ASK YOU WHAT YOU WOULD DO IN
5 THIS CASE IF YOU WERE ON THE JURY BECAUSE YOU
6 HAVEN'T HEARD ANY OF THE FACTS. BUT IF THE FACTS
7 WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH
8 PENALTY KNOWING THAT IT'S GOING TO ACTUALLY HAPPEN
9 BASED ON THAT JURY'S VERDICT?

10 A. IF THE FACTS PRESENTED, I GUESS, WERE SEVERE
11 ENOUGH; YES, I THINK I PROBABLY COULD.

12 Q. ALL RIGHT, SIR. AND IF YOU AND THE OTHER ELEVEN
13 JURORS ALSO FELT THE SAME WAY, ALL TWELVE VOTED FOR
14 THE DEATH PENALTY; EACH JUROR WOULD BE ASKED TO
15 SIGN THEIR NAME TO A DEATH VERDICT FORM THAT WOULD
16 RESULT IN THAT EXECUTION TAKING PLACE. COULD YOU
17 SIGN YOUR NAME TO A PAPER LIKE THAT KNOWING IT
18 WOULD RESULT IN THAT EXECUTION?

19 A. I'M SORRY, BUT THAT'S KIND OF A TOUGH ONE. I DON'T
20 KNOW.

21 Q. OKAY. IS THERE ANYTHING ABOUT THE PHYSICAL ACTS OF
22 SIGNING THAT PAPER AS OPPOSED TO TAKING THE VOTE
23 THAT WOULD CAUSE YOU TO KIND OF HANG UP AT THAT
24 POINT?

25 A. I GUESS NOT BECAUSE I GUESS IF I WAS UP THERE AND,

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 YOU KNOW, IF I WAS THAT FAR ALONG INTO IT, I GUESS
2 I WOULD BE -- YOU KNOW, I GUESS IF THAT'S WHAT I
3 THOUGHT IN MY MIND, I GUESS I COULD.

4 Q. ALL RIGHT, SIR.

5 A. BUT I WON'T TELL YOU THAT THAT WOULDN'T, YOU KNOW,
6 BE DIFFICULT.

7 Q. YOU'D HAVE DIFFICULTY SIGNING THE DEATH VERDICT
8 FORM?

9 A. AGAIN, I DON'T KNOW, YOU KNOW, IF IT'S
10 HYPOTHETICAL.

11 Q. YES, SIR. AND, AGAIN, I'M NOT ASKING YOU FOR A
12 PREDICTION BECAUSE YOU HAVEN'T HEARD THE FACTS.
13 BUT MY QUESTION IS: IF THE FACTS WERE BAD ENOUGH,
14 COULD YOU VOTE FOR THE DEATH PENALTY KNOWING IT
15 WOULD ACTUALLY HAPPEN BASED ON YOUR VOTE AND THE
16 OTHER ELEVEN VOTES?

17 A. YES, SIR.

18 Q. AND IF YOU VOTED FOR THE DEATH PENALTY, COULD YOU
19 THEN SIGN YOUR NAME TO A DEATH VERDICT FORM THAT
20 WOULD RESULT IN THAT EXECUTION TAKING PLACE?

21 A. I GUESS I'D HAVE TO.

22 Q. YOU WOULDN'T HAVE TO DO ANYTHING. I MEAN, NOBODY
23 WOULD EVER TELL YOU WHAT YOUR VERDICT WOULD HAVE TO
24 BE. IT WOULD BE UNDER THE GUIDANCE OF THE COURT'S
25 INSTRUCTIONS, THE JURY WOULD MAKE A DECISION. BUT

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 THERE WOULD NEVER BE ANY KIND OF MANDATORY ONE OR
2 THE OTHER. DOES THAT HELP ANY, OR IS IT FURTHER
3 CONFUSING?

4 A. NO. I GUESS THE ACTUAL PHYSICAL SIGNING OF THE
5 PAPER, I GUESS, LIKE I SAID, IF I GOT THAT FAR, I
6 GUESS I COULD DO IT.

7 Q. IF YOU DID THAT, COULD YOU STAND UP HERE IN OPEN
8 COURT AND ANNOUNCE THAT AS BEING YOUR VERDICT WHEN
9 YOUR NAME IS CALLED?

10 A. I'M NOT GREAT IN FRONT OF PEOPLE; BUT I GUESS
11 THAT'S WHAT I'D HAVE TO DO.

12 Q. ALL RIGHT, SIR. I THINK THAT'S ALL I HAVE AT THIS
13 TIME.

14 THE COURT: THAT LAST QUESTION WOULD
15 HAVE TO DO WITH POLLING OF THE JURY IN WHICH TIME
16 THE CLERK OF COURT WOULD INQUIRE OF THE JUROR;
17 THEY'D CALL THE NAME AND SAY "MR. JUROR, IS THAT
18 YOUR VERDICT; DO YOU STILL AGREE THERETO." AND
19 THEY'D EITHER SAY YES OR EITHER SAY NO. THAT'S
20 CALLED POLLING THE JURY.

21 MR. WASHINGTON: OKAY.

22 THE COURT: ANYTHING FURTHER, MR.
23 THEOS?

24 MR. THEOS: NOTHING, YOUR HONOR.

25 MR. BAILEY: YOUR HONOR, I DO HAVE A

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 MATTER.

2 THE COURT: LET ME GET YOU TO STEP
3 OUT A MOMENT, PLEASE. AND GIVE HIM ONE OF THOSE
4 FORMS TO LOOK AT.

5 (AT THIS TIME JUROR RETIRES TO JURY ROOM.)

6 THE COURT: WHAT SAY THE STATE?

7 MR. BAILEY: YOUR HONOR, MY CONCERN
8 WITH MR. WASHINGTON IS THAT HE NEVER DID COME OUT
9 AND SAY THAT HE COULD SIGN THE VERDICT FORM. HE
10 SEEMED TO HANG UP ON THAT. AND I THINK THAT UNDER
11 STATE VS. GRATE AND STATE VS. JORDAN AND STATE VS.
12 ELMORE AND STATE VS. HOLMES AND STATE VS. TUCKER
13 THAT THE INABILITY OF THE JUROR TO SAY THAT HE
14 COULD SIGN THE FORM WOULD BE A DISQUALIFICATION.

15 THE COURT: MR. BAILEY, I'M SURE
16 YOU'VE STUDIED THESE DEATH PENALTY CASES IN MORE
17 DETAIL THAN I BECAUSE I HAVE TO HANDLE PRODUCTS
18 LIABILITY, MEDICAL MALPRACTICE, EMPLOYMENT
19 DISCRIMINATION, WORKER'S COMP APPEALS. YOU JUST
20 DEAL WITH THE CRIMINAL LAW WHICH IS INVOLVED ENOUGH
21 IN ITSELF. BUT TO ANY ONE OF THOSE CASES, ON ALL
22 FOURS WHERE THIS MAN HAS ANSWERED THAT HE WOULD
23 HAVE DIFFICULTY SIGNING THE DEATH PENALTY FORM. HE
24 DID STATE THREE TIMES "I SUPPOSE I WOULD HAVE TO; I
25 SUPPOSE I COULD." ARE ANY OF THEM ON ALL FOURS

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1 WITH THAT CASE?

2 MR. BAILEY: YOUR HONOR, I THINK
3 STATE VS. LEROY DRAYTON AND STATE VS. RICKY JORDAN
4 ARE AT LEAST ON THREE, NOT FOUR; BUT THEY'RE
5 CLOSE. AND DRAYTON; THE COURT HELD THE TRIAL JUDGE
6 DID ERR IN EXCUSING A JUROR. THE STATE -- AND I
7 QUOTE: "I JUST DON'T WANT TO SIGN MY NAME ON ANY
8 DOCUMENT SAYING I COULD TAKE SOMEONE'S LIFE. AND
9 IN STATE VS.---

10 THE COURT: BUT THAT'S A LOT
11 STRONGER THAN SAYING -- I DON'T MEAN TO BE
12 ARGUMENTATIVE.

13 MR. BAILEY: YES, SIR.

14 THE COURT: BUT HE DIDN'T SAY HE
15 WOULD NOT. HE JUST SAID HE WOULD HAVE DIFFICULTY
16 IN DOING IT.

17 MR. BAILEY: YES, SIR. AND THAT'S
18 STATE VS. GEORGE. IN THAT CASE, YOUR HONOR, THE
19 JUDGE PROMPTLY DISQUALIFIED A JUROR -- MORE THAN
20 ONE JUROR, I THINK -- BECAUSE THEY STATED THEY
21 DIDN'T THINK THAT THEY COULD SIGN THE DEATH VERDICT
22 FORM; AND THE COURT HELD QUOTE "IT WOULD HAVE BEEN
23 EXTREMELY DIFFICULT" FOR THE JURY TO VOTE FOR THE
24 DEATH PENALTY.

25 THE COURT: THE COURT SAID IT WOULD

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 HAVE BEEN EXTREMELY DIFFICULT OR THE JUROR DID?

2 MR. BAILEY: THE COURT SAID IT WOULD
3 BE EXTREMELY DIFFICULT FOR THE JURY TO VOTE FOR THE
4 DEATH PENALTY. AND THE JUROR SAID THEY DIDN'T
5 "THINK" THAT THEY COULD SIGN IT WHICH IS JUST WHAT
6 HE JUST SAID; THAT HE DIDN'T THINK HE COULD DO IT.

7 THE COURT: I BEG YOUR PARDON.
8 MAYBE I MIS-HEARD HIM. I THOUGHT HE SAID THAT HE
9 COULD DO IT; HE SUPPOSED HE WOULD HAVE TO. I NEVER
10 DID HEAR HIM SAY THAT HE DIDN'T THINK HE COULD.
11 DID I MISUNDERSTAND HIM, GENTLEMEN?

12 MR. THEOS: I DON'T BELIEVE SO,
13 JUDGE.

14 THE COURT: MADAM COURT REPORTER?

15 THE COURT REPORTER: I'M NOT SURE,
16 JUDGE.

17 MR. BAILEY: WELL---

18 THE COURT: AND, OF COURSE, WE COULD
19 GO BACK AND---

20 MR. BAILEY: I STAND TO BE
21 CORRECTED, YOUR HONOR.

22 THE COURT: OH, NO. LISTEN; WE'RE
23 ALL GIVING OUR -- PUTTING OUR BEST FOOT FORWARD. I
24 DON'T MEAN TO QUESTION WHAT YOU RECALL. I JUST
25 QUESTION WHAT I RECALL. I JUST DIDN'T HEAR HIM SAY

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1 THAT HE DIDN'T THINK HE COULD SIGN IT. THE ONLY
2 THING I HEARD HIM SAY WAS "I SUPPOSE I WOULD HAVE
3 TO, AND I WOULD HAVE DIFFICULTY SIGNING IT." HE
4 DIDN'T SAY EXTREME DIFFICULTY OR THAT HE WOULDN'T
5 DO IT OR COULDN'T DO IT.

6 MR. BAILEY: YES, SIR.

7 THE COURT: LET ME HEAR FROM MR.
8 THEOS.

9 MR. THEOS: YOUR HONOR, I DIDN'T
10 HEAR IT THE SAME WAY MR. BAILEY DID EITHER. I
11 THINK WHAT HE SAID IS HE SUPPOSED THAT HE COULD DO
12 IT ALTHOUGH HE APPEARED TO EXPRESS SOME
13 RELUCTANCE. HE ULTIMATELY SAID "I COULD DO IT; I
14 SUPPOSE I COULD DO IT." AND CERTAINLY HE DIDN'T
15 HAVE ANY QUALMS OR HESITATION SAYING HE COULD VOTE
16 FOR THE DEATH PENALTY. AND I THINK HIS WORDS ARE
17 "IF I GOT TO THAT STAGE OR IF WE GOT TO THAT
18 POINT," WHATEVER THAT WORD WAS THAT I SUPPOSE THAT
19 I COULD DO IT.

20 THE COURT: I'M GLAD TO HEAR THAT
21 THE LIBERTARIAN PARTY DOESN'T HAVE A STANCE ON THE
22 DEATH PENALTY. I DID NOT KNOW. AND I WAS GLAD TO
23 HEAR THAT THEY BELIEVE IN SELF-CONTROL OVER BODY
24 AND MIND. THAT'S ALWAYS A GOOD THING TO HAVE AND
25 THE STEERING OF YOUR AUTOMOBILE OR YOUR MOTORCYCLE

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 OR WHATEVER.

2 MR. THEOS: JUDGE, I WOULD URGE THE
3 COURT TO QUALIFY THIS JUROR. I THINK THAT THE CASE
4 -- AND I DON'T HAVE THOSE CASES IN FRONT OF ME,
5 AND I'M NOT AS FAMILIAR WITH THEM AS MR. BAILEY
6 IS. BUT I THINK THEY CAN BE DISTINGUISHED, THE
7 RESPONSES OF THE JURORS COULD BE DISTINGUISHED AND
8 HE WOULD BE QUALIFIED.

9 THE COURT: ALL RIGHT, MR. BAILEY.
10 I AM GOING TO RESPECTFULLY OVERRULE YOUR OBJECTION;
11 AND I'M GOING TO FIND HIM QUALIFIED. AND YOU KNOW
12 THE OLD FOOT IN THE CORNER; I RULE FOR YOU THERE;
13 I'VE GOT TO RULE FOR JOHN HAMILTON SMITH TOMORROW.
14 I NOTE HERE THAT THE DEFENSE HAS OBJECTED TO JURORS
15 NUMBER ONE, 17, AND 25; AND THE STATE HAS OBJECTED
16 TO JURORS SIX AND ONE. SO, YOU KNOW, IT'S THREE TO
17 TWO RIGHT NOW. THAT'S YOUR OPINION, MR. THEOS.
18 YOU'RE LEADING THREE TO TWO IN FAVOR OF JOHN FORCE
19 YOUR READING THREE TO TWO. I JUST WANTED YOU TO
20 KNOW I'M KIND OF BALANCING THINGS UP.

21 MR. THEOS: IT'S NICE TO HEAR THAT
22 WE'RE LEADING AT SOME POINT AND TIME.

23 THE COURT: I SAY THAT IN GIST.
24 BRING THE GENTLEMAN IN.

25 (AT THIS TIME JUROR RETURNS TO OPEN COURT.)

1 THE COURT: BE SEATED, PLEASE, MR.
2 WASHINGTON. YOU HAVE BEEN FOUND QUALIFIED TO SERVE
3 ON THIS JURY. THAT DOESN'T MEAN YOU'LL BE
4 SELECTED. THE STATE HAS FIVE STRIKES AND THE
5 DEFENSE TEN. AND IN REGARD TO THE ALTERNATES OF
6 WHICH WE'LL HAVE TWO, THE STATE HAS ONE, THE
7 DEFENSE HAS TWO; WE WILL HAVE TWO ALTERNATES AND
8 THERE ARE ONE AND TWO STRIKES RESPECTFULLY. WE'VE
9 SET TWO O'CLOCK TOMORROW FOR JURY STRIKING; BUT WE
10 ONLY NEED FIVE MORE JURORS TO HAVE OUR 37 MINIMUM.
11 SO PLEASE CALL ON THE TELEPHONE AFTER EIGHT O'CLOCK
12 TONIGHT. WE'LL LET YOU KNOW WHAT TIME TO REPORT
13 TOMORROW. IT MAY BE TWO O'CLOCK TOMORROW. BUT I
14 ANTICIPATE IT BEING 9:30 OR MAYBE EVEN TEN O'CLOCK
15 IN THE MORNING. AND FOLLOW THAT INSTRUCTION, TOO,
16 ABOUT BRINGING YOUR NECESSARY CLOTHES OR MEDICINE.
17 AND YOUR FAMILY CAN'T COMMUNICATE WITH YOU UNLESS
18 AND IN CASE OF EMERGENCY. AND I FAILED TO ASK YOU,
19 MR. WASHINGTON; IS THERE ANY CIRCUMSTANCE, WHETHER
20 MEDICAL CONDITION, FAMILY SITUATION, THAT WOULD
21 CAUSE JUST AN IMPOSSIBLE SITUATION IF YOU WERE
22 CALLED TO BE SEQUESTERED AWAY FROM YOUR FAMILY FOR
23 A PERIOD OF SIX TO SEVEN DAYS?

24 MR. WASHINGTON: WELL, THIS MIGHT BE
25 UNUSUAL. BUT I WAS GOING TO SAY THAT I'VE ONLY GOT

JOHN A. WASHINGTON - CROSS/MR. BAILEY

1 ONE CAR. BUT I BELIEVE MY WIFE COULD DRIVE THE CAR
2 FOR THE TIME I WAS SEQUESTERED. AS LONG AS WE'RE
3 GETTING TRANSPORTATION BACK AND FORTH FROM THE---

4 THE COURT: OH, SURE. WE'RE NOT
5 GOING TO MAKE YOU WALK TO THE HOLIDAY INN. WE'LL
6 HAVE A VAN. THEY'VE GOT A BRAND NEW VAN THE
7 BAILIFFS HAVE TOLD ME. THE SPARE HAS NEVER BEEN ON
8 THE GROUND; LOW MILEAGE; AM-FM CASSETTE, READY TO
9 GO. SO IF YOU WOULD, PLEASE---

10 MR. WASHINGTON: CALL BACK AFTER
11 EIGHT?

12 THE COURT: CALL BACK AFTER EIGHT
13 TONIGHT. AND WE'RE GOING TO SAY TWO O'CLOCK
14 TOMORROW, BUT I ANTICIPATE WE'RE GOING TO FINISH
15 HERE TONIGHT BECAUSE WE STILL HAVE TWELVE JURORS TO
16 QUESTION. I BELIEVE WE CAN FIND FIVE OUT OF
17 TWELVE. WE'LL LET YOU KNOW. BUT THANK YOU. AND
18 DON'T EXPOSE YOURSELF TO ANYTHING ABOUT THIS CASE.
19 DON'T TALK TO ANYBODY ABOUT THE FACTS OF THE CASE.
20 YOU'RE WELCOME TO TALK TO YOUR FAMILY OR FRIENDS
21 ABOUT THE SEQUESTRATION. THANK YOU.

22 MR. WASHINGTON: THANK YOU.

23 THE COURT: ALL RIGHT, MR. BELL. I
24 GRANT YOUR MOTION FOR A FIVE MINUTE RECESS.

25 MR. BELL: THANK YOU, YOUR HONOR.

CURTIS J. TSAI - EXAM. BY THE COURT

(BRIEF RECESS.)

THE COURT: CURTIS TSAI, T-S-A-I.

(JUROR NUMBER 316, AN ORIENTAL MALE, IS CALLED.)

THE COURT: LET THE RECORD REFLECT
THAT DEFENDANT AND HIS COUNSEL ARE PRESENT AS WELL
AS THE STATE REPRESENTED BY THE SOLICITOR.

- - - - -

WHEREUPON,

CURTIS J. TSAI, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD AFTERNOON, SIR.

A. GOOD AFTERNOON.

Q. COULD YOU PLEASE TELL ME HOW TO PRONOUNCE YOUR LAST
NAME?

A. TSAI, T-S-A-I.

Q. LIKE MY TIE HERE? (INDICATING.)

A. A LITTLE BIT. ACTUALLY LIKE SI.

Q. SI?

A. YES.

Q. SI. OKAY. MR. TSAI, ON YESTERDAY YOU WERE GIVEN
AN OATH AS A JUROR?

A. YES, YOUR HONOR.

CURTIS J. TSAI - EXAM. BY THE COURT

1 Q. AND YOU ARE STILL TODAY UNDER OATH IN REGARD TO
2 THESE QUESTIONS, PLEASE? DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. AND MR. TSAI, HAVE YOU READ OR HEARD ANYTHING ABOUT
5 THIS CASE FROM ANY SOURCE?

6 A. NO, SIR.

7 Q. AND HAVE YOU FORMED OR EXPRESSED AN OPINION ABOUT
8 THE GUILT OR INNOCENCE OF THE DEFENDANT?

9 A. NOT NOW.

10 Q. AND COULD YOU GIVE BOTH THE STATE AND THE DEFENDANT
11 A FAIR AND IMPARTIAL TRIAL?

12 A. THAT'S MY BELIEF.

13 Q. AND PLEASE UNDERSTAND THERE ARE NO RIGHT AND WRONG
14 ANSWERS. EVERY ANSWER THAT YOU GIVE WILL BE A
15 CORRECT ANSWER BECAUSE WE'RE JUST TRYING, THE
16 LAWYERS AND THE COURT, TO DETERMINE YOUR VIEWS ON
17 CERTAIN MATTERS. AND WE NECESSARILY HAVE TO TALK
18 ABOUT THE TWO PHASES OF A MURDER CASE IN WHICH THE
19 STATE SEEKS THE DEATH PENALTY. THERE'S BEEN NO
20 EVIDENCE IN THIS CASE. SO PLEASE DO NOT INFER OR
21 DERIVE AN INFERENCE THAT EITHER THE COURT OR ANYONE
22 ELSE BELIEVES THIS DEFENDANT GUILTY BECAUSE THE LAW
23 IS EVERY PERSON, MALE, FEMALE, OR OTHERWISE, THAT'S
24 CHARGED WITH A CRIME IN SOUTH CAROLINA IS THOUGHT
25 OR PRESUMED TO BE INNOCENT UNTIL THE STATE REMOVES

CURTIS J. TSAI - EXAM. BY THE COURT

1 THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
2 SATISFYING THE TWELVE LADIES AND GENTLEMEN OF THE
3 JURY OF HIS OR HER GUILT BEYOND A REASONABLE
4 DOUBT. DO YOU UNDERSTAND THAT?

5 A. YES, SIR, I UNDERSTAND THAT.

6 Q. DO YOU, PLEASE, FURTHER UNDERSTAND THAT THERE'S NO
7 OBLIGATION OR REQUIREMENT OF THE DEFENDANT TO PROVE
8 ANYTHING. THE DEFENDANT IS PRESUMED OR THOUGHT TO
9 BE INNOCENT. THE DEFENDANT DOES NOT HAVE TO TAKE
10 THE WITNESS STAND. THE DEFENDANT DOES NOT HAVE TO
11 PRESENT ANY EVIDENCE. IF THE DEFENDANT DECIDED NOT
12 TO TAKE THE WITNESS STAND, THE COURT WOULD INSTRUCT
13 THE JURY THE LAW WAS THAT THE JURY MUST NOT TALK
14 ABOUT OR TAKE INTO CONSIDERATION OR EVEN DISCUSS
15 THE FACT THAT THE DEFENDANT DID NOT TAKE THE
16 WITNESS STAND BECAUSE THAT RAISES NO PRESUMPTION
17 FOR OR AGAINST HIS GUILT OR INNOCENCE. DO YOU
18 UNDERSTAND THAT?

19 A. YES, SIR, YOUR HONOR.

20 Q. AND FURTHER, PLEASE, THE STATE DURING THE FIRST
21 PHASE OF THE CASE WHICH IS CALLED THE GUILTY PHASE
22 MUST PROVE THE GUILT OF THE DEFENDANT BEYOND A
23 REASONABLE DOUBT. AND IF SO, WE WOULD THEN TAKE A
24 24 HOUR RECESS OR WAIT 24 HOURS BETWEEN THE
25 CONCLUSION OF THE GUILT PHASE AND THE COMMENCEMENT

CURTIS J. TSAI - EXAM. BY THE COURT

1 OR BEGINNING OF THE PENALTY PHASE. BUT IF THE JURY
2 SHOULD FIND THE DEFENDANT NOT GUILTY OF MURDER,
3 THEN THAT WOULD END THE CASE INSOFAR AS THE JURY IS
4 CONCERNED BECAUSE THE JUDGE ALONE WOULD SENTENCE
5 THE DEFENDANT IN THE OTHER FOUR INDICTMENTS IF IN
6 FACT THERE WERE GUILTY VERDICTS BECAUSE THE
7 RECOMMENDATION OF THE JURY ON SENTENCING APPLIES
8 ONLY TO THE MURDER CASE. DO YOU UNDERSTAND THAT?

9 A. YES, YOUR HONOR.

10 Q. AND DURING THAT PENALTY PHASE, THE STATE WOULD BE
11 REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND
12 A REASONABLE DOUBT, THAT THERE WERE STATUTORY
13 AGGRAVATING CIRCUMSTANCES. AS AN EXAMPLE OF THAT,
14 THE DEFENDANT IS CHARGED IN FOUR SEPARATE
15 INDICTMENTS IN ADDITION TO THE MURDER INDICTMENT.
16 IN ONE INDICTMENT BURGLARY; THE OTHER ARMED
17 ROBBERY; THEN KIDNAPPING; THEN CRIMINAL SEXUAL
18 CONDUCT. AND IN ORDER FOR THE JURY TO RETURN A
19 RECOMMENDATION OF THE DEATH PENALTY, THE STATE MUST
20 PROVE TO THE SATISFACTION OF THE TWELVE JURORS
21 BEYOND A REASONABLE DOUBT ONE OF THOSE AGGRAVATING
22 STATUTORY CIRCUMSTANCES. BUT EVEN SO, IF THE JURY
23 SHOULD CONCLUDE THE STATE HAS PROVEN ONE OR MORE OF
24 THE STATUTORY AGGRAVATING CIRCUMSTANCES, THE JURY
25 WOULD BE ALLOWED TO CONSIDER ANY EVIDENCE THAT THE

CURTIS J. TSAI - EXAM. BY THE COURT

1 DEFENDANT MIGHT PRESENT DURING THE MITIGATION PART
2 OF THE PENALTY PHASE. AND TO MITIGATE MEANS TO
3 LESSEN, TO LIGHTEN UP ON. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. AND AS A FURTHER ALTERNATIVE TO THE JURY IN THE
6 PENALTY PHASE, THE JURY COULD AS AN ACT OF MERCY,
7 OUT OF THE GOODNESS OF THEIR HEARTS, RECOMMEND LIFE
8 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE EVEN
9 IF THE STATE HAS PROVEN A STATUTORY AGGRAVATING
10 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. DO YOU
11 UNDERSTAND THAT, PLEASE, MR. TSAI?

12 A. YES, YOUR HONOR.

13 Q. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE THREE
14 TYPES OF JURORS SET FORTH ON THE DOCUMENT WHICH WAS
15 GIVEN TO YOU FOR YOUR REVIEW EARLIER TODAY?

16 A. YES.

17 Q. AND WHICH OF THOSE THREE TYPES; ONE, TWO, OR THREE
18 WOULD YOU PLACE YOURSELF IN?

19 A. NUMBER THREE.

20 Q. ALL RIGHT.

21 THE COURT: GENTLEMEN, YOU MAY
22 PROCEED TO QUESTION MR. TSAI. THE STATE GOES
23 FIRST.

24 DIRECT EXAMINATION

25 BY MR. BAILEY:

CURTIS J. TSAI - DIRECT/MR. BAILEY

- 1 Q. MR. TSAI, I'M WALTER BAILEY. I'LL BE PROSECUTING
2 THIS CASE. I NEED TO ASK YOU JUST A FEW MORE
3 QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE HAS ASKED
4 YOU. THERE ARE NO RIGHT OR WRONG ANSWERS. THIS IS
5 THE ONLY OPPORTUNITY WE HAVE TO TALK TO JURORS
6 ABOUT THEIR THOUGHTS ON THE DEATH PENALTY. COULD
7 YOU TELL US IN YOUR OWN WORDS WHAT YOUR THOUGHTS
8 ARE ON THE DEATH PENALTY, NOT RELATING TO THIS CASE
9 BECAUSE YOU HAVEN'T HEARD THE FACTS, BUT JUST IN
10 GENERAL?
- 11 A. DEATH PENALTY IS THE PUNISHMENT REGARD THE CRIME.
12 I BELIEVE ANY CRIME HAVE TO PAY THEIR DUES.
- 13 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND THAT IN THIS
14 CASE THE STATE ALLEGES AMONG OTHER OFFENSES THAT
15 THE DEFENDANT COMMITTED THE ACT OF MURDER. AND
16 IT'S UP TO THE STATE TO PROVE HIS GUILT BEYOND A
17 REASONABLE DOUBT IN THE FIRST PART OF THE TRIAL.
18 AND IF WE DO SO TO THE SATISFACTION OF THE JURY,
19 THEN WE MOVE INTO PHASE TWO. AND THE REASON WE
20 HAVE THAT SECOND PHASE IS TO ALLOW ADDITIONAL
21 EVIDENCE TO COME IN?
- 22 A. YES.
- 23 Q. I WOULD BE INTRODUCING EVIDENCE IN AGGRAVATION AND
24 ARGUING FOR A DEATH SENTENCE. THE DEFENSE, IF THEY
25 WANT TO, CAN PUT UP EVIDENCE IN MITIGATION AND ASK

CURTIS J. TSAI - DIRECT/MR. BAILEY

1 THE JURY TO BRING BACK A LIFE SENTENCE. THE JUDGE
2 WOULD INSTRUCT THE JURY AS TO THE LAW THAT APPLIED
3 TO THAT PART OF THE TRIAL. THEN THE JURY MAKES THE
4 DECISION ON THE PENALTY, NOT THE JUDGE. I JUST
5 WANT TO MAKE SURE YOU UNDERSTAND THAT PROCESS AND
6 HOW IT WORKS.

7 A. YES, I UNDERSTAND.

8 Q. THIS DEATH PENALTY CASE IS UNUSUAL BECAUSE IT IS
9 THE ONLY CASE WHERE THE JURY IS THE ONE THAT
10 DECIDES THE PUNISHMENT. AND ALL THE JUDGE DOES IS
11 ORDER THAT PUNISHMENT INTO EFFECT. ALL RIGHT,
12 SIR. NOW, I'M NOT GOING TO ASK YOU WHAT YOU WOULD
13 DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF
14 THE EVIDENCE. BUT IF THE EVIDENCE WAS BAD ENOUGH,
15 COULD YOU IMPOSE THE DEATH PENALTY AS A JUROR
16 KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

17 A. YOU SAY THAT YOU CAN PRESENT EVIDENCE CLEARLY ON
18 WHAT THE -- I DIDN'T UNDERSTAND.

19 Q. ALL RIGHT, SIR. I WOULD PUT UP EVIDENCE ON BEHALF
20 OF THE STATE IN BOTH PHASES OF THE TRIAL. THE
21 FIRST PART OF THE TRIAL TO TRY TO CONVINCE THE JURY
22 THAT HE'S GUILTY. THE SECOND PART OF THE TRIAL
23 WOULD BE ADDITIONAL EVIDENCE?

24 A. YES. I UNDERSTAND THAT.

25 Q. ALL RIGHT, SIR. AND I CAN'T GET INTO WHAT THAT

CURTIS J. TSAI - DIRECT/MR. BAILEY

1 EVIDENCE WOULD CONSIST OF. BUT IF THAT EVIDENCE
2 WAS BAD ENOUGH, IT SHOWED A CASE THAT WAS BAD
3 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY
4 KNOWING THAT BASED ON THAT VOTE THAT PERSON WOULD
5 ACTUALLY BE EXECUTED?

6 A. NO.

7 Q. IS THAT DUE TO A RELIGIOUS BELIEF OR A PERSONAL
8 BELIEF OR WHAT?

9 A. MY PROFESSION IS SCIENTIST.

10 Q. ALL RIGHT, SIR.

11 A. I ANALYZE THE EVIDENCE. THE EVIDENCE IS MY
12 CONSCIENCE JUST LIKE AN EXPERIMENT.

13 Q. OKAY. I MAY NOT BE ASKING -- I DIDN'T MEAN TO CUT
14 YOU OFF.

15 A. YES, SIR.

16 Q. I MAY NOT BE ASKING THE QUESTION TOO WELL. BUT
17 WHAT I'M GOING TO DO IS I'M ASKING YOU TO ASSUME
18 THAT THE CASE -- THE EVIDENCE THAT THE CASE
19 PRESENTS IS VERY SERIOUS.

20 A. THAT'S A GOOD WORD, SERIOUS.

21 Q. ALL RIGHT, SIR.

22 A. THE GOOD WORD SERIOUS BECAUSE YOU MENTIONED THAT
23 BAD EVIDENCE. IT IS EVIDENCE THAT IS VERY BAD;
24 VERY SERIOUS. YES, I UNDERSTAND THAT.

25 Q. ALL RIGHT, SIR. IF THE EVIDENCE WAS SERIOUS ENOUGH

1 TO IN YOUR OPINION JUSTIFY THE DEATH PENALTY, COULD
2 YOU VOTE FOR THAT DEATH PENALTY KNOWING THAT
3 SENTENCE ACTUALLY WOULD BE CARRIED OUT; THAT PERSON
4 WOULD BE EXECUTED?

5 A. YES, SIR.

6 Q. ALL RIGHT, SIR. AND ON THE OTHER HAND IF YOU FELT
7 LIKE THE SENTENCE WAS -- THE EVIDENCE WAS
8 APPROPRIATE FOR A LIFE SENTENCE, COULD YOU VOTE FOR
9 A LIFE SENTENCE?

10 A. YES, SIR.

11 Q. ALL RIGHT, SIR. AND IF YOU VOTED FOR THE DEATH
12 PENALTY, AFTER HEARING ALL OF THE EVIDENCE, IF IT
13 WAS THAT SERIOUS, AND ALL TWELVE JURORS VOTE FOR
14 THE DEATH PENALTY, THEY'RE THEN ASKED TO SIGN THEIR
15 NAMES TO A PIECE OF PAPER, A DEATH VERDICT FORM.
16 AND AS A RESULT OF SIGNING THAT PAPER THAT PERSON
17 WOULD BE EXECUTED. COULD YOU SIGN A PAPER LIKE
18 THAT IF THAT WAS YOUR DECISION?

19 A. YES, SIR.

20 Q. COULD YOU ANNOUNCE THAT AS BEING YOUR DECISION WHEN
21 YOUR NAME IS CALLED OUT? COULD YOU ANNOUNCE THAT
22 OUT LOUD?

23 A. YES, SIR.

24 Q. ALL RIGHT, SIR. MR. TSAI, THAT'S ALL I'VE GOT.
25 THANK YOU VERY MUCH.

CURTIS J. TSAI - CROSS/MR. THEOS

1 THE COURT: MR. THEOS, COULD YOU
2 PLEASE PROCEED IF YOU DESIRE?

3 MR. THEOS: YES, SIR.

4 CROSS-EXAMINATION

5 BY MR. THEOS:

6 Q. MR. TSAI, MY NAME IS JERRY THEOS. THIS IS JIM
7 BELL. HE AND I ARE THE LAWYERS THAT REPRESENT MR.
8 KENNETH SIMMONS WHO'S SITTING NEXT TO HIM. MR.
9 TSAI, I UNDERSTAND YOUR RESPONSES TO THE JUDGE'S
10 QUESTIONS AND TO MR. BAILEY'S. AND I WANT TO JUST
11 FOLLOW THAT UP WITH A COUPLE OF QUESTIONS. AND I
12 DON'T MEAN TO ASK YOU THE SAME QUESTIONS. BUT AS I
13 UNDERSTAND YOUR RESPONSES TO MR. BAILEY'S
14 QUESTIONS, IF A CRIME WERE SERIOUS ENOUGH, THEN YOU
15 COULD VOTE FOR THE DEATH PENALTY?

16 A. NOT EXACTLY. THE CRIME IS SERIOUS, BUT YOU HAVE TO
17 HAVE EVIDENCE TO SUPPORT THE CRIME.

18 Q. IF THAT EVIDENCE WERE SERIOUS ENOUGH, AS I
19 UNDERSTAND IT, THEN YOU COULD VOTE FOR THE DEATH
20 PENALTY?

21 A. YES, SIR.

22 Q. OKAY. NOW, UNDERSTANDING THAT WE'RE TALKING ABOUT
23 THE PENALTY RATHER THAN THE GUILT OF MR. SIMMONS
24 BECAUSE GUILT HAS TO COME FIRST; DO YOU UNDERSTAND
25 THAT?

1 A. YES.

2 Q. THERE ARE TWO TRIALS?

3 A. YES; I UNDERSTAND. WE TALKED ABOUT IT YESTERDAY.

4 Q. SO IF MR. SIMMONS WERE FOUND NOT GUILTY, WE WOULD
5 GO NO FURTHER?

6 A. THAT'S CORRECT.

7 Q. IF MR. SIMMONS WERE FOUND GUILTY OF THE MURDER,
8 THEN WE WOULD GO FURTHER INTO THIS NEXT STAGE;
9 CORRECT?

10 A. YES; 24 HOURS.

11 Q. RIGHT. AFTER 24?

12 A. YES.

13 Q. NOW, MY QUESTION TO YOU IS: IF SOMEONE WERE
14 CONVICTED OF MURDER, COULD YOU CONSIDER -- AND THE
15 FACTS AND THE EVIDENCE WERE SERIOUS ENOUGH OR BAD
16 ENOUGH, COULD YOU CONSIDER THE OTHER SENTENCE OTHER
17 THAN THE DEATH PENALTY, COULD YOU ALSO CONSIDER
18 LIFE IMPRISONMENT, OR WOULD YOU AUTOMATICALLY VOTE
19 FOR THE DEATH PENALTY?

20 A. I DON'T WANT TO VOTE AUTOMATICALLY. I HAVE TO WAIT
21 FOR ALL THE EVIDENCE.

22 Q. YOU WOULD WAIT ON THAT EVIDENCE IN THIS SECOND
23 TRIAL AS WELL?

24 A. YES, SIR.

25 Q. WOULD YOU MAKE YOUR DECISION AS TO THE PENALTY

CURTIS J. TSAI - CROSS/MR. THEOS

1 BASED UPON THE GUILT OR INNOCENCE OF THE FIRST
2 PHASE?

3 A. YES, SIR.

4 Q. MAYBE I DIDN'T ASK THAT QUESTION RIGHT. I MAY NOT
5 HAVE BEEN CLEAR.

6 A. OKAY.

7 Q. WOULD YOU MAKE YOUR DECISION AS TO THE PENALTY
8 BASED UPON WHETHER OR NOT SOMEBODY WERE FOUND
9 GUILTY -- MR. SIMMONS WERE FOUND GUILTY IN THE
10 FIRST PHASE?

11 A. YES.

12 THE COURT: THAT'S NOT A PROPER
13 QUESTION. THAT'S NOT UNDERSTANDABLE. YOU'RE GOING
14 TO HAVE TO REPHRASE THAT QUESTION BECAUSE THE ISSUE
15 IN THE FIRST TRIAL IS GUILT OR NOT GUILT. THE
16 ISSUE IN THE SECOND TRIAL IS RECOMMENDATION OF A
17 DEATH PENALTY OR A RECOMMENDATION OF THE OTHER.
18 YOU'RE GOING TO HAVE TO REPHRASE THAT QUESTION, MR.
19 THEOS.

20 MR. THEOS: THAT'S OKAY, YOUR HONOR.
21 I DON'T HAVE ANY FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT. ANYTHING ON
23 RE-DIRECT?

24 MR. BAILEY: NO, SIR.

25 MR. THEOS: NO OTHER QUESTIONS.

1 THE COURT: HAND A SHEET THERE TO
2 MR. TSAI. NOW, MR. TSAI, YOU'VE BEEN FOUND
3 QUALIFIED AS A POTENTIAL JUROR IN THIS CASE.
4 YOU'VE NOT BEEN SELECTED YET.

5 MR. TSAI: I UNDERSTAND.

6 THE COURT: TOMORROW MORNING AT
7 10:00 A.M. IN THE MORNING IF YOU WOULD PLEASE
8 REPORT TO COURT HOUSE; AND WE'LL HAVE THE STRIKES
9 THEN. HERE'S A PEN FOR YOU IF YOU WOULD LIKE TO
10 WRITE IT DOWN.

11 MR. TSAI: OKAY.

12 THE COURT: AND PLEASE DO NOT EXPOSE
13 YOURSELF TO ANYTHING ABOUT THIS CASE. BY THAT I
14 MEAN THERE ARE NO NEWS PEOPLE HERE TODAY. I DON'T
15 THINK THERE WILL BE ANYTHING ON THE T.V. OR RADIO
16 OR NEWSPAPER. BUT IF SO, PLEASE DON'T READ
17 ANYTHING ABOUT IT BECAUSE YOU'RE TO DECIDE THE CASE
18 BASED ON THE EVIDENCE FROM THE WITNESS STAND, NOT
19 FROM WHAT SOMEBODY ELSE OUTSIDE THE ENVIRONMENT OF
20 THIS COURTROOM MAY THINK ABOUT IT. YOU'RE FREE TO
21 TALK WITH YOUR FAMILY ABOUT THE SEQUESTRATION OR
22 THE CONFINEMENT BY YOU. YOU WON'T BE UNDER ARREST,
23 BUT YOU WILL HAVE NO CONTACT WITH YOUR FRIENDS OR
24 FAMILY EXCEPT IN A CASE OF AN EMERGENCY. BRING
25 ENOUGH CLOTHES FOR FIVE OR SIX OR SEVEN DAYS. WE

CURTIS J. TSAI - CROSS/MR. THEOS

1 DON'T KNOW EXACTLY HOW LONG THE TRIAL WILL TAKE.
2 IS THERE ANYTHING CONCERNING A MEDICAL CONDITION OF
3 YOU OR YOUR FAMILY THAT YOU NEED TO TELL US ABOUT
4 THAT WOULD CAUSE YOU JUST A TERRIBLE SITUATION AS
5 REGARDS YOUR BEING INVOLVED IN THIS CASE AND OUT OF
6 CIRCULATION FOR SEVEN OR EIGHT DAYS?

7 A. YES, SIR, YOUR HONOR. I HAVE A SCHEDULED MINOR
8 SURGERY ON MARCH THE SECOND. IT IS PERIODONTAL. I
9 THINK I CAN CHANGE THE SCHEDULE.

10 THE COURT: COULD I ASK YOU TO DO
11 THAT? I HAVE A PERIODONTIST. AND, YOU KNOW, IT'S
12 A PREVENTIVE TYPE THING, IS IT NOT? YOU'RE NOT
13 GOING IN FOR DENTAL SURGERY?

14 MR. TSAI: NO.

15 THE COURT: SEE IF YOU COULD HAVE
16 THAT DELAYED BECAUSE WE IN ALL PROBABILITY WILL
17 STILL BE IN THIS TRIAL ON TUESDAY, MARCH THE
18 SECOND. AND THAT'S WHEN YOUR APPOINTMENT IS.

19 MR. TSAI: CORRECT.

20 THE COURT: PLEASE.

21 MR. TSAI: WAIT UNTIL TOMORROW.

22 THE COURT: I'M SORRY?

23 MR. TSAI: WAIT UNTIL TOMORROW AT
24 TEN O'CLOCK? I'M NOT A JUROR YET?

25 THE COURT: THAT'S RIGHT. WAIT

CURTIS J. TSAI - CROSS/MR. THEOS

1 UNTIL AFTER TEN O'CLOCK. AND, GENTLEMEN, THERE
2 WOULD NO PROHIBITION AGAINST HIM USING A PHONE TO
3 GO TO THE HOLIDAY INN TO CALL TO CHANGE THAT
4 APPOINTMENT WHEN HE GOES TO CHECK IN IN THE
5 MORNING?

6 MR. BAILEY: NO, SIR.

7 MR. THEOS: NO, SIR.

8 THE COURT: ALL RIGHT. SO, MR.
9 TSAI, YOU DRIVE CAREFULLY. HAVE A NICE EVENING;
10 AND WE LOOK TO SEE YOU TOMORROW.

11 MR. TSAI: ALL RIGHT.

12 THE COURT: THANK YOU, NOW.

13 MR. TSAI: OKAY; GOOD NIGHT.

14 THE COURT: ALL RIGHT. CALL MRS.
15 TOMPKINS NEXT, PLEASE, MRS. LADY BAILIFF.

16 MR. THEOS: YOUR HONOR, WOULD YOU
17 PUT MRS. TOMPKINS, NUMBER 314; IF YOU WOULD JUST
18 NOTE HER RESPONSES TO A COUPLE OF QUESTIONS, NUMBER
19 TWO AND NUMBER 21?

20 THE COURT: SURE.

21 (JUROR NUMBER 314, A BLACK FEMALE, IS CALLED.)
22 - - - - -

23 WHEREUPON,

24 CARLESS B. TOMPKINS, WHO AFTER BEING
25 FIRST DULY SWORN TO TELL THE TRUTH,

CARLESS B. THOMPkins - EXAM. BY THE COURT

TESTIFIED AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q. GOOD AFTERNOON, MA'AM.

A. GOOD AFTERNOON.

Q. ARE YOU STILL LIVING IN DORCHESTER BUT GOING TO
BERKELEY OCCASIONALLY; IS THAT RIGHT, MRS.
TOMPKINS?

A. YES.

Q. NOW, MRS. CARLESS B. TOMPKINS, YOU ARE JUROR NUMBER
214. AND I ACCEPT THE FULL RESPONSIBILITY FOR US
BEING OFF SCHEDULE; NOT THE ATTORNEYS AND NOT THE
DEFENDANT. BUT WE'RE MAKING PROGRESS. NOW, MA'AM,
YOU'RE STILL UNDER OATH FROM YESTERDAY, PLEASE.

A. YES, SIR.

Q. IS THERE ANYTHING YOU WANT TO DO BY WAY OF UPDATING
THIS QUESTIONNAIRE THAT YOU GAVE TO US?

A. NO. I DON'T EVEN REMEMBER WHAT I PUT ON THERE TO
TELL THE HONEST TRUTH.

Q. WELL, LET ME ASK YOU THIS, MA'AM. YOU HAD STATED
IN RESPONSE TO QUESTION TWO "DO YOU HAVE ANY HEALTH
PROBLEMS WHICH MIGHT AFFECT YOUR SERVICE AS A
JUROR?" AND YOU WROTE EMOTIONAL; GOING THROUGH A
DIVORCE?

A. YES, SIR.

CARLESS B. THOMPkins - EXAM. BY THE COURT

1 Q. IS IT A HIGHLY CONTESTED DIVORCE, OR TO WHAT EXTENT
2 -- OBVIOUSLY IF YOU'VE BEEN MARRIED TO SOMEONE, I
3 CAN UNDERSTAND. MY DAUGHTER WENT THROUGH A DIVORCE
4 AFTER FIVE YEARS OF MARRIAGE. SO I APPRECIATE AND
5 UNDERSTAND WHAT A PERSON GOES THROUGH SOMEWHAT FROM
6 THAT. BUT WOULD THAT IN ANY WAY INTERFERE WITH
7 YOUR ABILITY TO PARTICIPATE IN AND BE A GOOD
8 LISTENER AND A STABLE JUROR IN THIS CASE?

9 A. YES; RIGHT NOW, YES. I CAN SAY THAT.

10 Q. YES YOU COULD, OR NO, YOU COULDN'T?

11 A. YES, I COULD SAY THAT.

12 Q. YOU COULD SAY WHAT?

13 A. YES; IT WILL BOTHER ME.

14 Q. WELL, I KNOW IT WOULD BOTHER YOU. BUT WOULD IT
15 BOTHER YOU TO THE EXTENT THAT YOU DON'T FEEL YOU
16 COULD SIT AS A JUROR?

17 A. YES, SIR.

18 Q. AND I NOTE THAT YOU HAVE TWINS, FOUR AND FOUR?

19 A. YES, SIR.

20 Q. AND WHO KEEPS THOSE CHILDREN?

21 A. WELL, RIGHT NOW MY MOTHER IS KEEPING THEM.

22 Q. BUT THAT'S BECAUSE YOU'RE HERE?

23 A. YES, SIR.

24 Q. BUT YOU WORK DURING THE DAY?

25 A. YES. WELL, I WORK ALTERNATING SHIFTS.

CARLESS B. THOMPkins - EXAM. BY THE COURT

1 Q. SWING SHIFTS?

2 A. YES, SIR.

3 Q. BUT WHEN YOU'RE NOT WORKING, YOU KEEP THE CHILDREN?

4 A. YES, SIR.

5 Q. IS THAT IN BERKELEY COUNTY OR DORCHESTER?

6 A. IN BERKELEY COUNTY.

7 Q. OKAY.

8 THE COURT: GENTLEMEN, THE LADY
9 STATES IN 21 "I'M A SINGLE MOTHER, AND I LIKE TO
10 SPEND AS MUCH TIME WITH THE CHILDREN." COULD I ASK
11 Y'ALL TO COME OVER TO THE SIDE RAIL HERE FOR A
12 MOMENT?

13 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

14 THE COURT: ALL RIGHT, MRS.
15 TOMPKINS, BY AGREEMENT WE'RE GOING TO EXCUSE YOU
16 AND NOT CAUSE YOU TO HAVE TO SERVE ON THIS JURY.
17 YOU WILL BE MAILED A CHECK FOR TWO DAYS' SERVICE.
18 AND MAY WE PLEASE THANK YOU FOR BEING WILLING TO
19 SERVE; AND WE WISH FOR YOU GOOD HEALTH. AND GOOD
20 LUCK.

21 MRS. TOMPKINS: THANK YOU.

22 THE COURT: ALL RIGHT. THE NEXT ONE
23 IS MARTIN ROBERTSON.

24 (JUROR NUMBER 270, A WHITE MALE, IS CALLED.)

25 THE COURT: THANK YOU FOR BRINGING

MARTIN G. ROBERTSON - EXAM. BY THE COURT

1 THAT TO MY ATTENTION, MR. THEOS. THAT GOT US TO THE
2 BOTTOM LINE.

3 - - - - -

4 WHEREUPON,

5 MARTIN G. ROBERTSON, WHO BEING
6 PREVIOUSLY SWORN TO TELL THE TRUTH,
7 TESTIFIED AS FOLLOWS:

8 EXAMINATION

9 BY THE COURT:

10 Q. HOW ARE YOU, SIR?

11 A. PRETTY GOOD.

12 Q. THANK YOU FOR BEING WITH US. AND WE APOLOGIZE FOR
13 THE LATENESS OF THE HOUR. MR. MARTIN G. ROBERTSON,
14 JUROR NUMBER 270. YOU'RE STILL UNDER OATH THAT YOU
15 WERE GIVEN YESTERDAY. PLEASE MAY I REMIND YOU --
16 AND MR. ROBERTSON, ON YESTERDAY WHEN YOU WERE
17 ANSWERING THE GENERAL QUESTIONS, YOU HAD RESPONDED,
18 AND WE WROTE YOUR NUMBER 270 DOWN IN RESPONSE TO
19 THE INQUIRY OF WHETHER YOU OR ANY MEMBER OF YOUR
20 FAMILY HAD EVER BEEN INVOLVED IN A CRIME OF
21 VIOLENCE. AND COULD YOU PLEASE TELL US ABOUT THAT?

22 A. MY SON WAS INVOLVED IN SOME, I WOULD SAY IRREGULAR
23 ACTIVITIES. AND IT CAME DOWN TO WHERE WHEN WE WENT
24 TO COURT WITH THE THING, AND WHEN IT WAS OVER WITH,
25 WE WERE CALLED LIARS IN THE COURT.

MARTIN G. ROBERTSON - EXAM. BY THE COURT

1 Q. BY WHOM?

2 A. BY THE JUDGE AND BY HIS PAROLE OFFICER.

3 Q. WHO WAS THE JUDGE?

4 A. I DON'T HAVE THE FOGGIEST IDEA, SIR.

5 Q. WHAT COUNTY?

6 A. IT WAS DORCHESTER COUNTY.

7 Q. HOW LONG AGO?

8 A. IT WAS OVER TWO YEARS AGO.

9 Q. YES, SIR.

10 A. AND BECAUSE OF WHAT WE WERE TRYING TO PRODUCE OUT
11 OF WHAT HAPPENED, AND FROM WHAT HIS PAROLE OFFICER
12 AND HER ASSISTANT AND HER SUPERVISOR SAID, HE WENT
13 UP FOR EIGHTEEN MONTHS.

14 Q. IS HE OUT NOW?

15 A. HE IS OUT NOW; YES, SIR.

16 Q. AND I NOTE THAT YOU DESCRIBED THE CONDITION OF YOUR
17 HEALTH AS FAIR; THAT YOU HAVE LUNG DISEASE?

18 A. YES, I DO.

19 Q. PLEASE TELL US ABOUT THAT.

20 A. I RETIRED AT TWENTY YEARS. BACK IN '89 THEY FOUND
21 OUT THAT I HAD SOME KIND OF GROWTH IN MY LUNGS.
22 AND SO I'M TAKING MEDICINE CONSTANTLY. AS A MATTER
23 OF FACT, I WAS SUPPOSED TO GO SEE THE DOCTOR THIS
24 WEEK BUT I HELD OFF SO I COULD GET THROUGH THIS.

25 Q. HOW OFTEN DO YOU GO TO THE DOCTOR?

MARTIN G. ROBERTSON - EXAM. BY THE COURT

1 A. I'M SUPPOSED TO GO EVERY MONTH.

2 Q. AND SO YOU NEED TO GO NEXT WEEK OR THE LATTER PART
3 OF THIS WEEK?

4 A. I SHOULD BE GOING; YES. BUT I'VE BEEN PUTTING IT
5 OFF TO GET THIS OVER WITH FIRST. THEY'VE GOT ME --
6 I'M SUPPOSED TO BE ON STEROIDS EVERY DAY WHICH I
7 HAVEN'T BEEN TAKING BECAUSE THEY TOOK ME OFF
8 BECAUSE THEY'RE TRYING ME ON SOME NEW MEDICINE.
9 AND THAT'S ABOUT WHERE I STAND RIGHT NOW.

10 Q. AND YOU WORK EIGHTEEN OR TWENTY HOURS A DAY WITH
11 YOUR LUNG CONDITION?

12 A. YES, I DO. I'M HYPERACTIVE. I WORK AT OFFICE
13 DEPOT FROM FIVE IN THE MORNING UNTIL ONE O'CLOCK IN
14 THE AFTERNOON. I HAVE TO REPORT TO MY SECOND JOB
15 BY 1:30, AND I'M THERE UNTIL ELEVEN O'CLOCK AT
16 NIGHT.

17 Q. WHERE IS YOUR SECOND JOB?

18 A. LAB CORP OF AMERICA.

19 Q. WELL, I COMMEND YOU FOR YOUR INDUSTRY. AND, OF
20 COURSE, IF YOU WERE SELECTED ON THIS JURY -- AND
21 WE'RE GOING TO MAKE THE FINAL SELECTION AT 10:00
22 A.M. IN THE MORNING AND THEN GO INTO THE TRIAL.
23 YOU COULD BE SEQUESTERED OR CONFINED TO THE HOLIDAY
24 INN ALONG WITH THE OTHER THIRTEEN JURORS, SO WE'LL
25 HAVE TWELVE PLUS TWO ALTERNATES FOR AS LONG AS

A. BECAUSE MY WIFE DOESN'T WORK, AND I HAVE A KID THAT'S SIXTEEN YEARS OLD THAT'S ON RITALIN BECAUSE HE'S HYPERACTIVE. I'M THE SOUL BREAD WINNER IN THE FAMILY RIGHT NOW BECAUSE I WAS CALLED IN HERE YESTERDAY. OF COURSE I'M GETTING PAID TWENTY-FIVE DOLLARS A DAY. I HAVE TO PRODUCE A RECEIPT FOR THE MONEY THAT WAS GIVEN TO ME FROM THE COURTS YESTERDAY TO BOTH JOBS. THAT MEANS THEY DEDUCT FROM MY PAY TWENTY-FIVE DOLLARS ON BOTH JOBS. THAT MEANS I'VE LOST TWENTY-FIVE DOLLARS OF MY PAY ON ONE OF THEM JOBS BECAUSE I'M NOT GETTING PAID FIFTY DOLLARS. I'M ONLY GETTING PAID TWENTY-FIVE.

A. YES, IT IS. BUT THAT'S WHAT'S GOING TO HAPPEN.

(AT THIS TIME BENCH CONFERENCE WAS HELD.)

Q. MR. ROBERTSON, THE ATTORNEYS ARE RECOGNIZED, WITHOUT EVEN QUESTIONING YOU, YOUR DUE DILIGENCE AND EXCELLENT WORK HABITS. AND IT WOULD JUST BE AN UNDUE HARDSHIP FOR YOU TO BE AWAY FROM THOSE JOBS FOR SEVEN OR EIGHT OR NINE DAYS AND YOUR NEED TO GO

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 TO THE DOCTOR. SO WE'RE GOING TO EXCUSE YOU FROM
2 FURTHER SERVICE. AND WE WISH WE COULD PAY YOU MORE
3 THAN TWENTY-FIVE DOLLARS A DAY, BUT IF YOU WERE IN
4 CHARLESTON YOU'D ONLY BE GETTING TEN DOLLARS A
5 DAY. SO PRAISE THE LORD, HALLELUJAH YOU'RE IN A
6 HIGH RENT DISTRICT. IN ANY EVENT YOUR CHECK FOR
7 YESTERDAY AND TODAY WILL BE MAILED TO YOU. IF YOU
8 NEED A STATEMENT OR CERTIFICATE FROM THE CLERK, I
9 THINK THEY'RE STILL DOWNSTAIRS. YOU CAN CHECK AND
10 SEE IF THEY CAN GET IT. BUT YOU'RE EXCUSED FROM
11 FURTHER SERVICE. AND YOU PLEASE DRIVE CAREFULLY.
12 AND WE WISH FOR YOU GOOD HEALTH. AND THANK YOU SO
13 MUCH FOR YOUR COOPERATION.

14 A. ALL RIGHT. THANK YOU, SIR.

15 THE COURT: BRING IN MICHAEL J.
16 BRYANT. (JUROR NUMBER 43, A WHITE MALE, IS CALLED.)

17 - - - - -
18 WHEREUPON,

19 MICHAEL J. BRYANT, WHO BEING
20 PREVIOUSLY SWORN TO TELL THE TRUTH,
21 TESTIFIED AS FOLLOWS:

22 EXAMINATION

23 BY THE COURT:

24 Q. HI.

25 A. HEY; HOW ARE YOU DOING?

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 Q. I'M FINE. AND I HOPE YOU ARE AT THIS LATE IN THE
2 AFTERNOON, MR. MICHAEL J. BRYANT, JUROR NUMBER 43.
3 MAY I PLEASE REMIND YOU THAT PURSUANT TO THE OATH
4 YOU TOOK ON YESTERDAY, YOU ARE STILL UNDER OATH FOR
5 THE PURPOSE OF THE QUESTIONING BY THE COURT AT THIS
6 TIME. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. AND I NOTED ON YESTERDAY IN RESPONSE TO A QUESTION
9 BY THIS COURT THAT YOU STOOD WHEN ASKED IF YOU OR
10 ANY MEMBER OF YOUR FAMILY HAD EVER BEEN INVOLVED IN
11 A CRIME, A VICTIM OF A CRIME, OR A CRIME OF
12 VIOLENCE. COULD YOU TELL US ABOUT THAT, PLEASE?

13 A. I DON'T KNOW MUCH ABOUT IT. I HAVE A BROTHER
14 THAT'S IN LIEBER CORRECTIONAL CENTER.

15 Q. YES, SIR.

16 A. I DON'T KNOW THE DETAILS BEHIND IT. BUT HE WAS IN
17 THERE FOR -- I THINK THEY SENTENCED HIM TO
18 SOMETHING LIKE FIFTEEN YEARS.

19 Q. WHAT COUNTY?

20 A. I THINK IT HAPPENED IN BEAUFORT. I DON'T KNOW.

21 Q. BEAUFORT COUNTY? WAS HE PROSECUTED BY SOLICITOR
22 BAILEY OR BY SOLICITOR MURDOCH?

23 A. I HAVE NO IDEA.

24 Q. DON'T KNOW?

25 A. NO, SIR.

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 Q. ALL RIGHT. AND HAVE YOU READ OR HEARD ANYTHING
2 ABOUT THIS CASE?

3 A. LAST NIGHT.

4 Q. WHAT DID YOU HEAR ABOUT IT AND WHERE?

5 A. JUST ON T.V. ON CHANNEL FOUR.

6 Q. WAS THERE ANYTHING THAT YOU HEARD THAT WOULD CAUSE
7 YOU TO MAKE UP YOUR MIND AHEAD OF TIME?

8 A. NO, SIR.

9 Q. AND HAVE YOU EXPRESSED AN OPINION OR FORMED AN
10 OPINION AS TO THE GUILT OR INNOCENT OF THE
11 DEFENDANT?

12 A. NO, SIR.

13 Q. AND YOU UNDERSTAND, OF COURSE, THAT THIS DEFENDANT,
14 MR. KENNETH SIMMONS, IS PRESUMED INNOCENT ON ALL
15 CHARGES AGAINST HIM AS IS EVERY DEFENDANT THAT
16 COMES INTO THIS COURT AND THAT AN OBLIGATION OF THE
17 JUROR WOULD BE TO GIVE A FAIR TRIAL TO THE STATE
18 AND A FAIR TRIAL TO THE DEFENDANT?

19 A. YES, SIR.

20 Q. DO YOU FEEL THAT YOU COULD GIVE A FAIR TRIAL TO
21 BOTH THE STATE AND TO THE DEFENDANT?

22 A. YES, SIR.

23 Q. PLEASE UNDERSTAND, MR. MICHAEL BRYANT, THERE ARE NO
24 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. EVERY
25 ANSWER YOU GIVE IS A CORRECT ANSWER BECAUSE THEY'RE

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 YOUR VIEWS, AND THAT'S YOUR BUSINESS WHAT YOUR
2 VIEWS ARE. IT'S NOT ANY CORRECT OR INCORRECT
3 ANSWERS; YOU UNDERSTAND THAT. AND PLEASE FURTHER
4 UNDERSTAND, SIR, THAT OF NECESSITY; THIS IS THE
5 ONLY TIME THAT THE COURT AND THE ATTORNEYS FOR THE
6 STATE AND THE DEFENDANT WOULD HAVE THE OPPORTUNITY
7 TO QUESTION YOU ABOUT YOUR VIEWS, NOT MEANING TO
8 INVADE YOUR PRIVACY OR TO INTERFERE WITH YOUR
9 PERSONAL BUSINESS, BUT TO BETTER AID THE COURT AND
10 THE LAWYERS TO MAKE THE SELECTIONS IN AN
11 APPROPRIATE MANNER FOR THOSE TWELVE JURORS AND TWO
12 ALTERNATE JURORS THAT WILL BE SELECTED AT TEN
13 O'CLOCK IN THE MORNING TO SERVE ON THIS JURY. NOW
14 THIS TRIAL MAY TAKE FIVE, SIX, SEVEN, OR EIGHT
15 DAYS, AND YOU'D BE SEQUESTERED OR CONFINED AT THE
16 HOLIDAY INN OUT BY 26 AND I-95 -- I-95 AND 78 --
17 AND YOU WOULDN'T BE ALLOWED TO TALK TO YOUR FAMILY
18 OR FRIENDS, AND THEY COULDN'T CONTACT YOU EXCEPT IN
19 A CASE OF AN EMERGENCY. AND YOU'D BE HERE DURING
20 THE DAY AT THE TRIAL, AND AT NIGHT YOU'D GO THERE.
21 AND WE'LL TRY AND FEED YOU DECENTLY AND FIND SOME
22 ACTIVITIES, IF POSSIBLE, FOR YOU. WOULD THAT CAUSE
23 ANY PARTICULAR HARDSHIP BY WAY OF MEDICAL OR WORK
24 OR OTHERWISE UPON YOU OR YOUR FAMILY?

25 A. I NEED TO WORK.

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 Q. WE ALL NEED TO WORK. I HOPE I GET PAID THIS WEEK.
2 BUT EVERYBODY HAS TO MAKE THAT SACRIFICE. AND THE
3 TYPE WORK -- YOU ARE IN A METAL BUILDING ERECTOR
4 BRANCH OF CONSTRUCTION IN CHARLESTON?

5 A. YES, SIR.

6 Q. AND YOU'RE A JOB SUPERINTENDENT?

7 A. YES, SIR.

8 Q. DO YOU TRAVEL IN YOUR WORK ABOUT THE TRIDENT AREA?

9 A. I'M IN PARIS ISLAND RIGHT NOW.

10 Q. YES, SIR. AND DO YOU HAVE SOMEONE WHO CAN TAKE
11 OVER -- NOT AS WELL AS YOU, I'M SURE, BUT CAN SEE
12 THAT THE WORK GOES ON. IN OTHER WORDS, ARE THERE
13 TEN FOLKS THAT ARE GOING TO BE OFF WORK IF YOU ARE
14 NOT THERE AS THEIR SUPERINTENDENT?

15 A. NO, SIR.

16 Q. AND MOST CONSTRUCTION JOBS HAVE A DEADLINE. AND
17 SOMETIMES A PENALTY CLAUSE AND SOMETIMES A BONUS
18 CLAUSE. BUT CAN THE WORK PROCEED -- NOT
19 NECESSARILY AS GOOD AS IF YOU WERE THERE -- BUT
20 WITHOUT YOU? IS IT SOMETHING YOU CAN LIVE WITH?

21 A. YES, SIR.

22 Q. AND YOU'RE NOT GOING TO LOSE YOUR JOB BECAUSE OF
23 THIS?

24 A. I HOPE NOT.

25 Q. YOU'RE THAT VALUABLE TO THEM AND EXPERIENCED, AND

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 THEY RECOGNIZE YOUR ABILITIES?

2 A. YES, SIR.

3 Q. AND UNDERSTAND THAT IN THE TRIAL OF CRIMINAL CASES
4 IN THE COURTS OF THIS STATE THAT EVERY DEFENDANT
5 THAT COMES INTO THIS COURT, REGARDLESS OF THE
6 NATURE OR ENORMITY OR SERIOUSNESS OF THE CHARGE;
7 EVERY DEFENDANT IS PRESUMED OR THOUGHT TO BE
8 INNOCENT OF THE CHARGE. DO YOU UNDERSTAND THAT
9 BASIC, IMPORTANT PRECEPT OF THE LAW? AND FURTHER
10 LET ME EXPLAIN TO YOU, MR. MICHAEL J. BRYANT, THAT
11 A DEFENDANT DOESN'T HAVE TO PROVE ANYTHING. THE
12 STATE'S GOT TO PROVE THE GUILT OF THE DEFENDANT
13 BEYOND A REASONABLE DOUBT. AND THE DEFENDANT
14 DOESN'T HAVE TO TAKE THE WITNESS STAND, DOESN'T
15 HAVE TO TESTIFY, DOESN'T HAVE TO CALL ANY
16 WITNESSES. AND IF THE DEFENDANT DECLINED -- AND
17 THAT'S HIS OPTION TO TAKE THE WITNESS STAND -- THE
18 JURY WOULD BE INSTRUCTED THE LAW IS THAT THE
19 FAILURE OF THE DEFENDANT TO TESTIFY RAISES NO
20 PRESUMPTION OF INFERENCE FOR OR AGAINST THE GUILT
21 OR INNOCENT OF THE DEFENDANT. AND THE FACT THE
22 DEFENDANT DOESN'T TAKE THE WITNESS STAND TO TESTIFY
23 IN HIS OWN BEHALF MUST NOT BE DISCUSSED IN ANY WAY
24 UNLESS OR MUST NOT ENTER INTO THE DELIBERATIONS OF
25 THE JURY. DO YOU UNDERSTAND THAT?

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 A. NOT ALL OF IT, BUT---

2 Q. WELL, LET ME REPEAT IT. AND I APOLOGIZE. MAYBE I
3 SPOKE TOO QUICKLY. THE LAW IS THAT A DEFENDANT
4 DOES NOT HAVE TO TAKE THE WITNESS STAND.

5 A. RIGHT.

6 Q. AND IF THAT DEFENDANT DECIDED -- AND THAT'S HIS
7 CHOICE NOT TO TAKE THE WITNESS STAND -- THEN THE
8 COURT WOULD INSTRUCT THE JURY OF TWELVE THAT THE
9 LAW IS THE FACT THAT HE DECIDED NOT TO TAKE THE
10 WITNESS STAND, YOU CAN'T HOLD THAT AGAINST HIM.
11 THAT RAISES NO INFERENCE OR PRESUMPTION THAT HE'S
12 GUILTY OF ANYTHING.

13 A. RIGHT.

14 Q. AND THE JURY IN THEIR DELIBERATIONS, AND THE JURY
15 ONLY, DELIBERATES AT THE CLOSE OF ALL THE EVIDENCE
16 AND WHEN THE COURT INSTRUCTS THEM TO AT THE END OF
17 THE CASE BECAUSE YOU'VE GOT TO HEAR BOTH SIDES. I
18 WOULD TELL THE JURY THAT THE FACT THAT HE DIDN'T
19 TESTIFY, YOU CAN'T EVEN TALK ABOUT IT IN YOUR
20 DELIBERATIONS IN THE JURY ROOM. THAT'S GOT NOTHING
21 TO DO WITH THE CASE. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. ALL OF IT?

24 A. YES, SIR.

25 Q. ALL RIGHT. I APOLOGIZE IF I SPOKE TOO QUICK. NOW,

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 MR. BRYANT, WE HAVEN'T HEARD ANY EVIDENCE IN THIS
2 CASE. SO IT WOULD APPEAR TO BE PREMATURE TO
3 DISCUSS THE TWO PHASES OF A DEATH PENALTY CASE OF
4 MURDER. BUT WE HAVE TO DO IT NOW OR WE WON'T HAVE
5 A CHANCE TO QUESTION YOU ABOUT YOUR VIEWS INVOLVING
6 THE SECOND PHASE. SO YOU UNDERSTAND THE STATE HAS
7 TO PROVE THE GUILT DURING THE FIRST PHASE BEYOND A
8 REASONABLE DOUBT?

9 A. YES, SIR.

10 Q. AND IF THAT JURY FINDS THE DEFENDANT GUILTY OF
11 MURDER, WE WOULD TAKE A 24 HOUR HIATUS OR WAITING
12 PERIOD. AND THEN WE WOULD COMMENCE THE TRIAL OF
13 THE PENALTY PHASE?

14 A. YES.

15 Q. AND DURING THAT PENALTY PHASE THE STATE WOULD BE
16 REQUIRED TO PROVE STATUTORY AGGRAVATING
17 CIRCUMSTANCES BEYOND A REASONABLE DOUBT. AND A
18 STATUTORY AGGRAVATING CIRCUMSTANCE IN THIS CASE
19 WOULD BE ONE OF THE FOUR, ONE OR MORE, OF THE FOUR
20 SEPARATE CHARGES CONTAINED IN THE OTHER
21 INDICTMENTS. IF YOU RECALL ON YESTERDAY, I READ
22 OUT THE INDICTMENTS, ALTHOUGH THEY'RE NOT EVIDENCE,
23 OF THE ADDITIONAL CHARGE OF BURGLARY, KIDNAPPING,
24 CRIMINAL SEXUAL CONDUCT, AND ARMED ROBBERY. AND IF
25 THE STATE PROVES THAT THIS MURDER WAS COMMITTED

MICHAEL J. BRYANT - EXAM. BY THE COURT

1 WHILE IN THE ACT OF ONE OF THOSE OTHER FOUR CRIMES
2 BEYOND A REASONABLE DOUBT, THAT'S A STATUTORY
3 AGGRAVATING CIRCUMSTANCE. AND THE JURY MAY -- IT
4 DOESN'T HAVE TO -- BUT DOESN'T HAVE TO BUT MAY --
5 RETURN A RECOMMENDATION TO THE COURT THAT THE DEATH
6 PENALTY BE IMPOSED. NOW, THE DEFENDANT IS GIVEN AN
7 OPPORTUNITY TO PRESENT WHAT'S CALLED MITIGATING
8 CIRCUMSTANCE OR LESSENING. IN OTHER WORDS TO
9 REDUCE THE RECOMMENDATION FROM A DEATH PENALTY DOWN
10 TO LIFE IMPRISONMENT WITHOUT PAROLE. AGAIN, THE
11 DEFENDANT DOESN'T HAVE TO TAKE THE WITNESS STAND.
12 THE SAME PRINCIPLE OF LAW WOULD APPLY. AND IF THE
13 DEFENDANT PROVES THOSE, THE JURY CAN CONSIDER
14 THEM. BUT EVEN IF THE DEFENDANT DOESN'T PROVE ANY
15 MITIGATING CIRCUMSTANCE THE JURY OF TWELVE, AS A
16 RECOMMENDATION OF MERCY, OR OUT OF THE GOODNESS OF
17 THEIR HEART, OR FOR NO REASON AT ALL, CAN MAKE A
18 RECOMMENDATION TO THE COURT OF LIFE IMPRISONMENT
19 WITHOUT PAROLE EVEN THOUGH THE STATE MAY HAVE
20 PROVEN BEYOND A REASONABLE DOUBT A STATUTORY
21 AGGRAVATING CIRCUMSTANCE. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. NOW, MR. MICHAEL BRYANT, HAVE YOU HAD AN
24 OPPORTUNITY TO REVIEW THE THREE TYPES OF JURORS ON
25 THAT DOCUMENT YOU HOLD IN YOUR HAND THAT WAS GIVEN

MICHAEL J. BRYANT - DIRECT/MR. THEOS

1 TO YOU AN HOUR OR TWO AGO?

2 A. YES, SIR.

3 Q. DO YOU UNDERSTAND IT?

4 A. YES, SIR.

5 Q. AND WHICH OF THE THREE TYPES; ONE, TWO, OR THREE
6 WOULD YOU FALL INTO AS A JUROR?

7 A. I'D SAY THREE.

8 Q. THREE? ALL, RIGHT SIR. I ACCEPT THAT.

9 THE COURT: MR. THEOS, WOULD YOU
10 LIKE TO QUESTION THIS WITNESS?

11 MR. THEOS: YES, SIR.

12 DIRECT EXAMINATION

13 BY MR. THEOS:

14 Q. MR. BRYANT, HOW ARE YOU?

15 A. FINE.

16 Q. I'M JERRY THEOS, AND THIS IS JIM BELL. WE'RE THE
17 LAWYERS THAT REPRESENT MR. SIMMONS IN THIS CASE.

18 A. YES, SIR.

19 Q. SORRY -- AS THE JUDGE SAID, IT IS SO LATE. WE'RE
20 SORRY FOR KEEPING YOU HERE. I UNDERSTAND WHEN YOU
21 TALK WITH THE JUDGE ABOUT YOUR EMPLOYMENT THAT YOU
22 FELT IT WAS A HARDSHIP BUT YOU WOULD DO YOUR DUTY
23 AND COME SERVE?

24 A. YES, SIR.

25 Q. I JUST WANT TO MAKE SURE THAT WE'RE CLEAR. AND

MICHAEL J. BRYANT - DIRECT/MR. THEOS

1 CERTAINLY I'M NOT POINTING A FINGER AT YOU OR
2 ANYTHING. WE'RE JUST TRYING TO MAKE SURE THAT
3 WE'VE GOT PEOPLE HERE WHOSE MINDS ARE ON THE CASE
4 AND NOTHING ELSE AND ARE THE BEST THAT THEY CAN
5 BE. DO YOU THINK YOU COULD FORGET ABOUT YOUR JOB
6 AND WHAT YOU MIGHT HAVE TO DO FOR THAT?

7 A. YES, SIR. AS LONG AS IT'S ALL RIGHT WITH MY BOSS.
8 YOU KNOW, I HAVE A BOSS, AND I HAVE TO DO WHAT HE
9 SAYS, YOU KNOW.

10 Q. OKAY.

11 THE COURT: WE'VE ALL GOT THOSE.

12 MR. BRYANT: YES, SIR; I KNOW THAT.
13 WE'RE MARRIED, AREN'T WE?

14 THE COURT: YES, SIR.

15 Q. IF I UNDERSTAND WHAT YOUR RESPONSES WERE TO THE
16 JUDGE'S QUESTIONS, YOU CONSIDER YOURSELF TO BE
17 JUROR NUMBER THREE?

18 A. YES, SIR.

19 Q. AND THAT'S A JUROR THAT COULD LISTEN TO EVERYTHING
20 THAT MR. BAILEY AND THE STATE HAD TO OFFER IN
21 AGGRAVATION, AND ALSO YOU COULD LISTEN TO
22 EVERYTHING MR. BELL AND I WOULD HAVE TO OFFER TO
23 TRY TO PERSUADE YOU NOT TO SENTENCE MR. SIMMONS TO
24 DEATH?

25 A. YES, SIR.

MICHAEL J. BRYANT - DIRECT/MR. THEOS

1 Q. IS THAT CORRECT?

2 A. YES, SIR.

3 Q. NOW, YOU UNDERSTAND THOUGH, THAT WE'RE NOT QUITE
4 THERE. AND I KNOW THE JUDGE DID A REAL GOOD JOB OF
5 EXPLAINING IT TO YOU. BUT WE FIRST WOULD HAVE TO
6 GET TO THAT POINT?

7 A. YES, SIR.

8 Q. AS WE ALL SIT HERE, MR. SIMMONS IS PRESUMED TO BE
9 GUILTY -- OR PRESUMED TO INNOCENT; I'M SORRY. IT'S
10 GETTING LATE AND I'M GETTING TIRED OF TALKING. SO
11 I'LL TRY TO KEEP IT SHORT. YOU UNDERSTAND THAT MR.
12 SIMMONS IS PRESUMED TO BE INNOCENT?

13 A. YES, SIR.

14 Q. AND I THINK EVERYBODY WOULD APPRECIATE IT IF I KEPT
15 IT SHORT. WHY DON'T YOU TELL US JUST YOUR GENERAL
16 OPINION ABOUT THE DEATH PENALTY?

17 A. WELL, I THINK IF YOU DO A CRIME, YOU SHOULD -- I
18 AGREE WITH THE DEATH PENALTY; YES, SIR.

19 Q. NOW, AS WE SAID, WE WOULD ONLY GET TO THE DEATH
20 PENALTY IN THIS SECOND PHASE IF MR. SIMMONS WERE
21 FOUND GUILTY IN THE FIRST PHASE.

22 A. YES, SIR.

23 Q. OF COURSE IF HE WERE FOUND NOT GUILTY, WE WOULDN'T
24 MOVE INTO THAT SECOND PHASE.

25 A. YES.

MICHAEL J. BRYANT - DIRECT/MR. THEOS

1 Q. NOW, IF MR. SIMMONS WERE FOUND GUILTY OF MURDER, AS
2 THE JUDGE TOLD YOU, AND THESE OTHER CHARGES THAT
3 THE JUDGE WENT OVER WITH YOU, WOULD YOU BE ABLE TO
4 CONSIDER THE OTHER SENTENCE OTHER THAN DEATH
5 PENALTY, THAT OTHER SENTENCE BEING LIFE
6 IMPRISONMENT? OR WOULD YOU, BASED UPON THAT
7 FINDING OF GUILT AS TO MURDER AND THOSE OTHER
8 CHARGES, FEEL THAT THE ONLY APPROPRIATE SENTENCE
9 WAS THE DEATH PENALTY?

10 A. I HAVE TWO OPINIONS ON THAT. I MEAN---

11 Q. GIVE US BOTH OF THEM.

12 A. I GUESS IF HE WAS GUILTY OF EITHER ONE OF THEM,
13 WHATEVER HE WAS CALLED TO DO, IF HE DID IT, YOU
14 KNOW, WHAT YOU'RE CHARGING HIM WITH, I WOULD SAY
15 THE DEATH PENALTY. BUT, IF YOU HAVE A REASON NOT
16 TO BELIEVE HIM, IF THERE WAS A DOUBT SOMEWHERE,
17 THEN I'D SAY IF HE WAS STILL I GUESS SENTENCED TO
18 SOMETHING, THEN LIFE IN PRISON WOULD BE IT.

19 Q. NOW, THAT DOUBT THAT YOU'RE TALKING ABOUT; WHEN YOU
20 SAY IF THERE'S A DOUBT OF HIS GUILT, THEN YOU COULD
21 VOTE FOR LIFE IMPRISONMENT?

22 A. YES, SIR.

23 Q. SO ONCE GUILT WAS DETERMINED IN A CASE -- AND,
24 AGAIN, BASED ON THE CHARGES THAT THE JUDGE WENT
25 OVER WITH YOU -- THEN YOUR DECISION WOULD BE MADE

MICHAEL J. BRYANT - CROSS/MR. BAILEY

1 AS TO WHAT THE ONLY APPROPRIATE PUNISHMENT WOULD
2 BE?

3 A. YES, SIR.

4 Q. AND THAT WOULD BE THE DEATH PENALTY?

5 A. YES, SIR.

6 Q. THANK YOU VERY MUCH. NO FURTHER QUESTIONS.

7 CROSS-EXAMINATION

8 BY MR. BAILEY:

9 Q. MR. BRYANT, I'M WALTER BAILEY. I'LL BE PROSECUTING
10 THIS CASE.

11 A. YES, SIR.

12 Q. THIS IS THE ONLY CHANCE THAT ANY OF US GET TO TALK
13 TO THE JURORS BEFORE WE ACTUALLY PICK A JURY
14 TOMORROW. SO WE NEED TO FIND OUT EXACTLY HOW
15 YOU'RE THINKING ABOUT THE DEATH PENALTY AND TO MAKE
16 SURE YOU UNDERSTAND THE PROCESS THAT WE MAY BE
17 GOING THROUGH HERE. WE START OFF WITH THE GUILT
18 PHASE WHERE IT'S LIKE ANY OTHER CASE. IT COULD BE
19 A D.U.I. TRIAL OR ANY OTHER CRIMINAL CASE WHERE THE
20 JURY IS JUST THERE TO DETERMINE WHETHER OR NOT THE
21 STATE COULD PROVE A DEFENDANT GUILTY OF WHATEVER
22 HE'S CHARGED WITH BEYOND A REASONABLE DOUBT.

23 A. ALL RIGHT.

24 Q. IF WE CAN'T DO IT, THEN THE JURY WILL FIND HIM NOT
25 GUILTY. AND IF WE CAN PROVE HIM GUILTY BEYOND A

MICHAEL J. BRYANT - CROSS/MR. BAILEY

1 REASONABLE DOUBT -- IN THIS CASE THE CHARGE IS
2 MURDER -- THEN AND ONLY THEN DO WE MOVE INTO THAT
3 SECOND PART OF THE TRIAL?

4 A. ALL RIGHT.

5 Q. SO ANY TIME A JURY IN A MURDER CASE GETS TO PART
6 TWO OF THE TRIAL, IT MEANS THAT FELLOW HAS ALREADY
7 BEEN CONVICTED OF MURDER IN THE FIRST PART?

8 A. YES, SIR.

9 Q. ALL RIGHT, SIR. NOW THE PURPOSE IN HAVING THAT
10 SECOND PART OF THE TRIAL IS TO LET ADDITIONAL
11 EVIDENCE IN TO HELP THAT JURY DECIDE WHAT THE
12 APPROPRIATE SENTENCE OUGHT TO BE, LIFE WITHOUT
13 PAROLE OR THE DEATH PENALTY.

14 A. ALL RIGHT.

15 Q. IF YOU WERE PICKED AS A JUROR IN A CASE LIKE THIS.
16 AND LET'S ASSUME THAT YOU HEARD ALL THE EVIDENCE IN
17 THE FIRST PART OF THE TRIAL AND FOUND THAT
18 DEFENDANT GUILTY OF MURDER BEYOND A REASONABLE
19 DOUBT, WOULD YOU RESERVE JUDGMENT ON THE SENTENCE
20 UNTIL YOU HEARD EVERYTHING THAT CAME OUT IN PART
21 TWO, OR WOULD YOU ALREADY HAVE YOUR MIND MADE UP?

22 A. I WOULD RESERVE.

23 Q. ALL RIGHT, SIR. AND IN THAT SECOND PART OF THE
24 TRIAL ON BEHALF OF THE STATE, I'D BE PUTTING UP
25 EVIDENCE IN AGGRAVATION. THAT'S EVIDENCE IN WHICH

MICHAEL J. BRYANT - CROSS/MR. BAILEY

1 I WOULD BE TRYING TO SEEK THE DEATH PENALTY. I'D
2 BE ASKING YOU FOR THE DEATH PENALTY, AND I'D BE
3 PUTTING UP EVIDENCE IN SUPPORT OF THAT REQUEST.
4 THE DEFENSE, IF THEY WANT TO, CAN PUT UP EVIDENCE
5 IN MITIGATION TO TRY TO LESSEN THE SEVERITY OF THE
6 MURDER. THEY DON'T HAVE TO DO THAT, BUT THEY CAN.
7 AND, OF COURSE, THEY'D BE ARGUING FOR A LIFE
8 SENTENCE WITHOUT PAROLE. THE JUDGE WOULD INSTRUCT
9 THE JURY AS TO THE LAW THAT APPLIED TO THAT PART OF
10 THE TRIAL, AND THEY'D GO BACK AND DELIBERATE AND
11 COME BACK WITH A LIFE SENTENCE OR A DEATH SENTENCE.
12 COULD YOU FAIRLY CONSIDER BOTH POSSIBILITIES EVEN
13 THOUGH YOU'RE DEALING WITH A CONVICTED MURDERER?

14 A. YES, SIR; I PROBABLY COULD.

15 Q. ALL RIGHT, SIR.

16 A. EVEN THOUGH I FEEL STRONGLY TOWARDS THE DEATH
17 PENALTY.

18 Q. I UNDERSTAND THAT. BUT MY QUESTION IS, AND I THINK
19 WHAT MR. THEOS AND THE JUDGE PROBABLY WANT TO KNOW
20 ALSO, IS WHETHER OR NOT YOU WOULD KEEP AN OPEN MIND
21 AND LISTEN TO EVERYTHING, ALL THE EVIDENCE AND ALL
22 THE LAW THE JUDGE GAVE YOU BEFORE YOU MADE UP YOUR
23 MIND?

24 A. YES, I WOULD.

25 Q. AND IF YOU THOUGHT THAT THE CASE JUSTIFIED A LIFE

MICHAEL J. BRYANT - CROSS/MR. BAILEY

1 WITHOUT PAROLE SENTENCE, COULD YOU VOTE FOR THAT?

2 A. YES, SIR.

3 Q. IF YOU FEEL LIKE IT DESERVED THE DEATH PENALTY,
4 COULD YOU VOTE FOR THAT KNOWING THAT SENTENCE WOULD
5 BE CARRIED OUT?

6 A. YES, SIR.

7 Q. IF YOU VOTED FOR THE DEATH PENALTY, COULD YOU SIGN
8 YOUR NAME ONTO A PAPER SAYING THAT WAS WHAT YOUR
9 VERDICT WAS?

10 A. NO, SIR.

11 Q. CAN YOU TELL ME WHAT WOULD BE THE PROBLEM WITH THE
12 PAPER?

13 A. I JUST WOULDN'T WANT TO DO IT.

14 Q. OKAY. ALL RIGHT.

15 MR. BAILEY: YOUR HONOR, COULD YOU
16 INDULGE ME ONE SECOND WHILE I CONFER WITH MR.
17 THEOS?

18 THE COURT: YES, SIR. MR. BRYANT,
19 WHAT WAS THE QUESTION YOU SAID YOU DIDN'T WANT
20 TO---

21 MR. BRYANT: SIGN MY NAME ON A
22 PAPER.

23 THE COURT: BUT YOU UNDERSTAND THE
24 LAW IS THAT THE TWELVE JURORS HAVE TO SIGN THEIR
25 NAME IF IT'S A VERDICT OF THE DEATH PENALTY. I

MELISSA BOUTEN - EXAM. BY THE COURT

1 MEAN, THAT'S THE LAW.

2 MR. BRYANT: I WOULDN'T WANT TO DO
3 THAT.

4 MR. BAILEY: YOUR HONOR, MR. THEOS
5 AND I HAVE CONFERRED, AND I THINK WE CAN AGREE ON
6 THIS JUROR.

7 THE COURT: ALL RIGHT, MR. MICHAEL
8 BRYANT, WE'RE GOING TO EXCUSE YOU FROM FURTHER
9 SERVICE IN THIS CASE. THANK YOU SO MUCH FOR BEING
10 HERE WITH US. AND PLEASE DON'T DISCUSS WITH THE
11 OTHER JURORS ANY QUESTIONS OR ANSWERS THAT HAVE
12 BEEN ASKED. AND YOU'LL BE PAID FOR THE LAST TWO
13 DAYS. A CHECK WILL BE MAILED TO YOU. THANK YOU SO
14 MUCH. HAVE A NICE DAY. ALL RIGHT. NEXT ONE? HAVE
15 YOU GOT THE NAME?

16 THE BAILIFF: MELISSA BOUTEN.

17 THE COURT: MELISSA BOUTEN.

18 (JUROR NUMBER 28, A WHITE FEMALE, IS CALLED.)

19 - - - - -

20 WHEREUPON,

21 MELISSA BOUTEN, WHO BEING PREVIOUSLY
22 SWORN TO TELL THE TRUTH, TESTIFIED AS
23 FOLLOWS:

24 EXAMINATION

25 BY THE COURT:

MELISSA BOUTEN - EXAM. BY THE COURT

1 Q. HI.

2 A. HI.

3 Q. HOW DO YOU DO, MA'AM?

4 A. FINE.

5 Q. PLEASE MS. MELISSA BOUTEN, THANK YOU FOR BEING
6 PRESENT HERE WITH US THIS EVENING. MAY I PLEASE
7 REMIND YOU THAT YOU ARE STILL UNDER OATH THAT YOU
8 WERE GIVEN ON YESTERDAY, OKAY?

9 A. YES, SIR.

10 Q. AND MS. BOUTEN, WE APOLOGIZE FOR THE LATENESS OF
11 THE HOUR, BUT THE MORE WE DO TODAY, THE LESS WE'VE
12 GOT TO DO TOMORROW. AND RIGHT NOW IT APPEARS WE'RE
13 GOING TO STRIKE THE JURY AT TEN IN THE MORNING.
14 SO YOU'LL KNOW IN A FEW MINUTES WHETHER YOU NEED TO
15 BE BACK TOMORROW OR WHETHER YOU'RE THROUGH NOW.
16 HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?

17 A. NO, SIR.

18 Q. DO YOU HAVE ANY OPINION OR EXPRESSED ANY OPINION AS
19 TO THE GUILT OR INNOCENCE OF THE DEFENDANT?

20 A. NO.

21 Q. DO YOU UNDERSTAND, PLEASE MA'AM, THAT UNDER THE LAW
22 EVERY PERSON CHARGED WITH A CRIME IN SOUTH CAROLINA
23 IS PRESUMED OR THOUGHT TO BE INNOCENT UNTIL THE
24 STATE PROVES THEIR GUILT BEYOND A REASONABLE DOUBT?

25 A. YES, SIR.

MELISSA BOUTEN - EXAM. BY THE COURT

- 1 Q. AND YOU UNDERSTAND FURTHER THE DEFENDANT DOES NOT
2 HAVE TO PROVE ANYTHING. THEY HAVE NO BURDEN OF
3 PROOF. THE DEFENDANT DOES NOT HAVE TO TAKE THE
4 WITNESS STAND. AND IF THIS DEFENDANT DECIDED NOT
5 TO TAKE THE WITNESS STAND, I WOULD INSTRUCT THE
6 JURY THAT THE FACT THE DEFENDANT DOES NOT TAKE THE
7 WITNESS STAND TO TESTIFY RAISES NO INFERENCE OR
8 PRESUMPTION OR THOUGHT OF HIS GUILT OR INNOCENCE.
9 THAT MUST NOT BE DISCUSSED IN ANY MANNER
10 WHATSOEVER. DO YOU UNDERSTAND?
- 11 A. YES.
- 12 Q. AND, PLEASE MA'AM, THERE ARE NO RIGHT OR WRONG
13 ANSWERS. WE SEEK THE TRUTH. AND IT WOULD APPEAR
14 TO BE PREMATURE FOR THESE QUESTIONS TO BE ASKED AT
15 THIS TIME, ALBEIT THERE'S BEEN NO TESTIMONY ABOUT
16 THE ALLEGED FACTS OF THIS CASE. BUT THIS PROCEDURE
17 IS THE ONLY OPPORTUNITY, MA'AM, WHERE THE ATTORNEYS
18 FOR THE STATE AND THE DEFENDANT AND THIS COURT WILL
19 BE ALLOWED TO ASK YOU CERTAIN OF YOUR VIEWS. AND
20 WE DON'T MEAN TO INVADE YOUR PRIVACY OR TO GET INTO
21 YOUR PERSONAL BUSINESS. AND HOPEFULLY YOU WON'T
22 FEEL THAT WE'RE DOING SO BECAUSE THAT CERTAINLY IS
23 NOT THE INTENT. NOW, MA'AM, IN A DEATH PENALTY
24 MURDER CASE THERE ARE TWO PHASES. THE FIRST PHASE
25 IS WHAT'S CALLED THE GUILT PHASE. AT THAT TIME THE

MELISSA BOUTEN - EXAM. BY THE COURT

1 STATE MUST PROVE THE GUILT OF THE DEFENDANT BEYOND
2 A REASONABLE DOUBT. AND IF THE JURY HAS A
3 UNANIMOUS VERDICT OF GUILT ON THAT, WE WOULD WAIT
4 24 HOURS AND THEN GO INTO WHAT'S CALLED THE PENALTY
5 PHASE. IF IT'S NOT GUILTY ON MURDER, THEN THE JURY
6 WOULD NOT BE CONCERNED WITH THE SECOND PENALTY
7 PHASE BECAUSE THE COURT WOULD HANDLE ANY CONVICTION
8 IF AT ALL ON THE OTHER FOUR INDICTMENTS THAT WERE
9 READ OR EXPLAINED TO YOU, AND THE INDICTMENTS ARE
10 NOT EVIDENCE. AND DURING THAT PENALTY PHASE, THE
11 STATE REPRESENTED BY SOLICITOR BAILEY WOULD BE
12 REQUIRED TO PROVE BEYOND A REASONABLE DOUBT THAT TO
13 THE SATISFACTION OF THE TWELVE JURORS SEATED IN THE
14 BOX ONE OR MORE STATUTORY AGGRAVATING
15 CIRCUMSTANCES. THOSE OTHER FOUR INDICTMENTS EACH
16 CHARGE A SEPARATE OFFENSE; ONE BURGLARY, BREAKING
17 IN SOMEBODY'S HOUSE IN THE NIGHTTIME WITH THE
18 INTENT TO COMMIT A FELONY THEREIN; OR CRIMINAL
19 SEXUAL CONDUCT; OR KIDNAPPING; OR ARMED ROBBERY,
20 TAKING SOMETHING FROM SOMEBODY BY THREAT OR FORCE.
21 AND IF THE STATE PROVES ONE OR MORE PENALTIES, THE
22 JURY COULD -- THEY DON'T HAVE TO -- IT'S
23 PERMISSIVE; IT'S NOT MANDATORY; THE JURY MAY
24 RECOMMEND THE DEATH PENALTY. BUT THE DEFENDANT IS
25 ALSO ALLOWED THE OPPORTUNITY TO PRESENT MITIGATING

MELISSA BOUTEN - EXAM. BY THE COURT

1 WHICH MEANS LESS PUNISHMENT RATHER THAN THE DEATH
2 PENALTY. THE DEFENDANT WOULD URGE UPON THE JURY
3 AND THE COURT TO IMPOSE LIFE IMPRISONMENT WITHOUT
4 PAROLE ASSUMING THERE WAS A CONVICTION. YOU HAVE
5 TO ASSUME THAT ALTHOUGH THERE IS NO EVIDENCE OF HIS
6 BEING GUILTY. HE'S PRESUMED INNOCENT AS WE'VE
7 STATED. SO IF THE JURY FOUND MITIGATING
8 CIRCUMSTANCES, EVEN THOUGH THEY HAD FOUND STATUTORY
9 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE
10 DOUBT, THE JURY COULD MAKE A RECOMMENDATION TO THE
11 COURT OF A SENTENCE OF LIFE IMPRISONMENT WITHOUT
12 PAROLE. NOW EVEN SO, THERE'S A THIRD CONSIDERATION
13 FOR YOU AND THAT IS THE JURY CAN, JUST BECAUSE THEY
14 WANT TO, OUT OF MERCY, OUT OF THE GOODNESS OF THEIR
15 HEART, COULD MAKE A RECOMMENDATION OF LIFE
16 IMPRISONMENT WITHOUT PAROLE, ALTHOUGH THERE MAY
17 HAVE BEEN STATUTORY AGGRAVATING CIRCUMSTANCES
18 FOUND. DO YOU UNDERSTAND THAT?

19 A. YES.

20 Q. AND, MA'AM, HAVE YOU HAD AN OPPORTUNITY TO READ
21 THOSE THREE TYPES OF JURORS THAT WERE ON THAT
22 SHEET?

23 A. YES, SIR.

24 Q. DO YOU UNDERSTAND THOSE?

25 A. YES, SIR.

MELISSA BOUTEN - DIRECT/MR. BAILEY

1 Q. WHICH OF THOSE THREE DO YOU FEEL YOU WOULD FALL
2 INTO?

3 A. NUMBER THREE.

4 Q. NUMBER THREE?

5 A. YES, SIR.

6 Q. ALL RIGHT. THANK YOU.

7 THE COURT: MR. SOLICITOR, YOU MAY
8 QUESTION THIS LADY.

9 MR. BAILEY: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION

11 BY MR. BAILEY:

12 Q. MS. BOUTEN, I NOTICE YOU'RE IN THE ARMY RESERVES?

13 A. YES, SIR.

14 Q. DO YOU HAVE A DRILL WEEKEND COMING UP THIS WEEKEND?

15 A. NO, SIR.

16 Q. OKAY. NOW LET ME ASK YOU JUST IN GENERAL. NOT
17 TALKING ABOUT THIS CASE BECAUSE YOU DON'T KNOW
18 ANYTHING ABOUT IT YET. BUT JUST IN GENERAL, HAVE
19 YOU EVER HAD OCCASION TO THINK ABOUT THE DEATH
20 PENALTY AND TALK ABOUT IT WITH FAMILY AND FRIENDS
21 BEFORE YESTERDAY?

22 A. NO.

23 Q. OKAY. AND DO YOU UNDERSTAND HOW THE PROCESS WORKS;
24 WHAT THE JUDGE TOLD YOU ABOUT THE TWO-PART PROCESS?

25 A. RIGHT.

MELISSA BOUTEN - DIRECT/MR. BAILEY

1 Q. WE WOULDN'T EVEN GET INTO PHASE TWO UNLESS AND
2 UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN
3 THE FIRST PART OF THE TRIAL?

4 A. YES; I UNDERSTAND THAT.

5 Q. SO ANY TIME A JURY IN SOUTH CAROLINA IS CONSIDERING
6 LIFE IN PRISON OR THE DEATH PENALTY, THEY'RE
7 ALREADY DEALING WITH A CONVICTED MURDERER OR YOU
8 WOULDN'T BE THERE?

9 A. COULD YOU REPEAT THAT QUESTION?

10 Q. ANY TIME A JURY IS FACED WITH LIFE WITHOUT PAROLE
11 OR THE DEATH PENALTY, THEY'RE DEALING WITH A
12 CONVICTED MURDERER THAT THEY'VE ALREADY CONVICTED?

13 A. RIGHT.

14 Q. OKAY. AND THE PURPOSE OF HAVING THAT SECOND PART
15 OF THE TRIAL IS TO ALLOW THE JURY TO HEAR
16 ADDITIONAL EVIDENCE THAT THEY DIDN'T HEAR IN THE
17 FIRST PART OF THE TRIAL. I'D BE PUTTING UP
18 EVIDENCE IN AGGRAVATION TO TRY TO PERSUADE THE JURY
19 TO COME BACK WITH THE DEATH PENALTY?

20 A. OKAY.

21 Q. THE DEFENSE COULD PUT UP EVIDENCE IN MITIGATION IF
22 THEY WANTED TO. THEY'D BE ARGUING FOR A LIFE
23 WITHOUT PAROLE SENTENCE. THE JUDGE WOULD INSTRUCT
24 THE JURY ON THE LAW THAT APPLIED TO THAT PART OF
25 THE TRIAL. THEN THE JURY, NOT THE JUDGE, MAKES

MELISSA BOUTEN - DIRECT/MR. BAILEY

1 THAT DECISION.

2 A. RIGHT.

3 Q. IN OTHER WORDS, THE JUDGE ONLY ORDERS WHATEVER THE
4 JURY VERDICT IS TO HAPPEN.

5 A. OKAY.

6 Q. I'M NOT GOING TO ASK YOU WHAT YOU WOULD DO IN THIS
7 CASE IF YOU'RE ON THE JURY---

8 A. OKAY.

9 Q. --BECAUSE YOU HAVEN'T HEARD THE FACTS.

10 A. NO.

11 Q. BUT IF THE FACTS WERE BAD ENOUGH, AND YOU WERE ON
12 THE JURY, COULD YOU VOTE FOR THE DEATH PENALTY
13 KNOWING THAT SENTENCE ACTUALLY WOULD BE CARRIED OUT
14 AND THAT PERSON WOULD BE EXECUTED?

15 A. IF THE FACTS WERE PROVEN, YES.

16 Q. ALL RIGHT. AND COULD YOU SIGN YOUR NAME ALONG WITH
17 THE OTHER JURORS IF THAT WAS THE UNANIMOUS VOTE---

18 A. YES.

19 Q. --TO A FORM THAT WOULD RESULT IN THAT EXECUTION
20 TAKING PLACE?

21 A. YES.

22 Q. COULD YOU ANNOUNCE THAT DECISION IN OPEN COURT IF
23 THAT WAS YOUR DECISION?

24 A. WOULD I ANNOUNCE IT?

25 Q. THERE'S A PROCESS CALLED POLLING THE JURY WHERE

MELISSA BOUTEN - CROSS/MR. THEOS

1 EACH JUROR MIGHT BE ASKED -- THEY MAY EVEN BE
2 CALLED OUT ONE AT A TIME, AND YOU'D HAVE TO SAY OUT
3 LOUD THAT THAT WAS YOUR VERDICT.

4 A. YES. I WOULD SAY IT OUT LOUD.

5 Q. OKAY. IS THERE ANY REASON THAT YOU CAN THINK OF
6 THAT WE MAY NOT HAVE EVEN TALKED ABOUT YET THAT
7 WOULD PREVENT YOU FROM SITTING AS A FAIR JUROR TO
8 BOTH SIDES, THE STATE AND THE DEFENSE?

9 A. NO, SIR.

10 Q. ALL RIGHT. MS. BOUTEN, THAT'S ALL I'VE GOT. THANK
11 YOU VERY MUCH.

12 A. YOU'RE WELCOME.

13 THE COURT: YOU MAY QUESTION, MR.
14 THEOS.

15 CROSS-EXAMINATION

16 BY MR. THEOS:

17 Q. MS. BOUTEN, JUST A FEW QUESTIONS. I'M JERRY THEOS.
18 I AND JIM BELL REPRESENT KENNETH SIMMONS. WE'RE
19 THE LAWYERS FOR MR. SIMMONS. AND IT'S GETTING
20 LATE, AND I'LL TRY TO BE REAL BRIEF WITH YOU.

21 A. OKAY.

22 Q. I THINK THE JUDGE AND MR. BAILEY ASKED JUST ABOUT
23 ALL THE QUESTIONS THAT WE NEEDED TO ASK OF YOU. I
24 WANT TO POINT OUT JUST A COUPLE OF THINGS AND THEN
25 ASK YOU A QUESTION OR TWO, AND THAT IS THAT EVEN

MELISSA BOUTEN - CROSS/MR. THEOS

1 THOUGH WE'RE TALKING ABOUT PENALTY AS THE JUDGE
2 TOLD YOU, THE GUILT OF MR. SIMMONS HAS NOT BEEN YET
3 DETERMINED...

4 A. CORRECT.

5 Q. AND YOU UNDERSTAND THAT BEFORE WE COULD EVEN GET TO
6 THAT PHASE, MR. SIMMONS WOULD HAVE TO BE FOUND
7 GUILTY?

8 A. RIGHT.

9 Q. AND I UNDERSTAND JUST FROM YOUR LIFE EXPERIENCES,
10 PROBABLY, AND FROM THE JUDGE'S INSTRUCTIONS THAT
11 YOU'RE FAMILIAR WITH THAT CONCEPT. BUT I ALSO SEE
12 IN YOUR QUESTIONNAIRE THAT YOU'VE TAKING SOME
13 CRIMINAL JUSTICE COURSES?

14 A. I'M TRYING TO GET THAT FAR. I HAVEN'T GOT THERE
15 YET.

16 Q. YOU HAVEN'T?

17 A. NO.

18 Q. OKAY. BUT IF WE WERE TO GET TO THAT POINT, AS MR.
19 BAILEY SAID, HE WOULD BE TRYING TO PERSUADE YOU AND
20 THE OTHER JURORS THAT LIFE IMPRISONMENT WAS NOT THE
21 APPROPRIATE SENTENCE. HE WOULD BE TRYING TO
22 PERSUADE YOU THAT DEATH WAS THE ONLY APPROPRIATE
23 SENTENCE. WE, ON THE OTHER HAND, MR. BELL AND I,
24 WOULD BE PRESENTING YOU WITH ALL THE REASONS THAT
25 WE COULD PRESENT TO YOU IN MITIGATION, EVIDENCE,

MELISSA BOUTEN - CROSS/MR. THEOS

1 TESTIMONY, AND OTHER THINGS TO TRY PERSUADE YOU
2 THAT THE DEATH PENALTY WAS NOT THE APPROPRIATE
3 SENTENCE IN THIS PARTICULAR CASE.

4 A. OKAY.

5 Q. DO YOU UNDERSTAND?

6 A. I UNDERSTAND THAT.

7 Q. OKAY. AND AS I UNDERSTAND YOUR RESPONSES, YOU
8 WOULD LISTEN TO EVERYTHING THAT MR. BAILEY HAD TO
9 PRESENT IF WE GOT TO THAT SECOND STAGE?

10 A. YES.

11 Q. AND YOU WOULD LISTEN TO EVERYTHING THAT MR. BELL
12 AND I MIGHT PRESENT ON BEHALF OF MR. SIMMONS BEFORE
13 YOU MADE ANY DECISION AS TO PENALTY?

14 A. CORRECT.

15 Q. NOW, ONE FINAL QUESTION: WHAT IS YOUR OPINION
16 REGARDING THE DEATH PENALTY IN GENERAL? IT MAY BE
17 A HARD QUESTION.

18 A. IT IS HARD.

19 Q. BUT IF YOU COULD TELL US WHAT THAT OPINION IS AND
20 EXPLAIN IT.

21 A. REALLY I HAVEN'T FORMED AN OPINION ON IT BECAUSE
22 I'VE NEVER HAD ANYTHING TO DEAL WITH HAVING TO
23 THINK OF IT OR ANYTHING. BUT LIKE IN HERE, HOW IT
24 PROVES THAT IF YOU ARE PROVEN GUILTY AND THE DEATH
25 PENALTY SHOULD BE SERVED, THEN YES I WOULD GO FOR

MELISSA BOUTEN - CROSS/MR. THEOS

1 IT, BUT OTHER THAN THAT I WOULDN'T THINK THAT THE
2 DEATH PENALTY WOULD BE APPROPRIATE.

3 Q. NOW YOU UNDERSTAND, OF COURSE, THAT IF SOMEONE IS
4 PROVEN GUILTY---

5 A. RIGHT.

6 Q. --THAT THAT'S ANOTHER STEP BEYOND---

7 A. YES.

8 Q. JUST BECAUSE SOMEBODY MAY HAVE BEEN PROVEN GUILTY?

9 A. WELL, IF SOMEBODY HAS BEEN PROVEN GUILTY AND THE
10 DEATH PENALTY IS ONE OF THE, I GUESS YOU COULD SAY
11 OPTIONS, THEN IF THAT'S ONE OF THE OPTIONS, THEN I
12 PROBABLY WOULD SAY YES FOR THE DEATH PENALTY. BUT
13 AS FOR THIS, I DON'T KNOW ANYTHING ABOUT THIS CASE,
14 SO I WOULDN'T---

15 Q. I UNDERSTAND THAT. AND AS MR. BAILEY SAID, WE'RE
16 NOT GOING TO ASK WHAT YOU MIGHT DO IN THIS CASE
17 BECAUSE YOU DON'T KNOW ANYTHING ABOUT IT.

18 A. OKAY; I DON'T KNOW ANYTHING.

19 Q. BUT IN GENERAL YOU SAID -- YOU CORRECT ME IF I'M
20 WRONG -- YOU SAID YOU WOULD MOST PROBABLY CHOOSE
21 THE DEATH PENALTY?

22 A. YES. THAT IS IF THE FACTS AFFIRM -- WHAT I SEE IF
23 THE FACTS ARE PROVEN, THAT WAY THEN, YES, I WOULD.
24 BUT IF I DON'T SEE THAT THE FACTS ARE SHOWING FOR
25 THE DEATH PENALTY, THEN NO I WOULDN'T PICK IT.

MELISSA BOUTEN - CROSS/MR. THEOS

1 THE COURT: YOU'VE MADE AN A+.

2 MS. BOUTEN: THANK YOU, SIR.

3 MR. THEOS: THANK YOU.

4 MR. BAILEY: NO OTHER QUESTIONS,
5 YOUR HONOR, AT THIS TIME.

6 THE COURT: YOU DID SO GOOD, MA'AM,
7 THAT YOU'VE BEEN QUALIFIED AS A PROSPECTIVE JUROR
8 IN THE TRIAL OF THIS CASE. AND PLEASE, MA'AM, YOU
9 NEED TO REPORT BE AT TEN O'CLOCK IN THE MORNING,
10 AND COME PREPARED WITH LUGGAGE AND MEDICINE, OR
11 WHATEVER YOU MIGHT NEED, FOR FIVE, SIX, SEVEN, OR
12 EIGHT DAYS. YOU'LL BE AT THE HOLIDAY INN. YOUR
13 FAMILY AND FRIENDS CAN'T CONTACT YOU EXCEPT IN A
14 CASE OF EMERGENCY. PLEASE DO NOT ALLOW YOURSELF TO
15 BE EXPOSED TO ANY ALLEGED FACTS ABOUT THIS CASE.
16 YOU DECIDE THE CASE BASED ON THE TESTIMONY FROM THE
17 SWORN WITNESSES WHO TESTIFY, NOT FROM WHAT SOMEBODY
18 ON THE STREET TELLS YOU OR WHAT YOU MAY READ IN THE
19 NEWSPAPER OR HEAR ON THE RADIO OR T.V. AND, MA'AM,
20 IS THERE ANYTHING THAT -- WE REALIZE THAT IT'S A
21 HARDSHIP BEING AWAY FROM YOUR FAMILY AND FRIENDS
22 AND FROM YOUR WORK. BUT IS THERE ANYTHING
23 CONCERNING YOUR PHYSICAL CONDITION, YOU OR YOUR
24 FAMILY OR YOUR WORK OR ANY OTHER THING, THAT WOULD
25 JUST CAUSE A TERRIBLE PROBLEM FOR YOU IF YOU WERE

JOYCE W. EDDY - EXAM. BY THE COURT

REQUIRED TO SERVE ON THIS JURY?

MS. BOUTEN: NO. THERE'S NOTHING
THAT I'M WORRIED ABOUT.

THE COURT: THANK YOU. YOU DRIVE
CAREFULLY, AND HAVE A NICE EVENING.

MS. BOUTEN: OKAY. THANK YOU.

THE COURT: GOOD NIGHT. ALL RIGHT.
JOYCE EDDY IS THE NEXT JUROR, IS IT?

THE BAILIFF: YES, SIR.

THE COURT: THIS IS NUMBER 34,
FELLOWS? HAVE I FORGOTTEN TO WRITE ANY DOWN?

MR. BAILEY: YES, SIR; THIRTY-FOUR.

MR. THEOS: THAT'S CORRECT.

(JUROR NUMBER 95, A WHITE FEMALE, IS CALLED.)

- - - - -

WHEREUPON,

JOYCE W. EDDY, WHO AFTER BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HOW DO YOU DO, MA'AM?

A. HOW DO YOU DO?

Q. I APOLOGIZE TO YOU, MA'AM, FOR THE LATENESS OF THE
HOUR. AND I HAVE TO ACCEPT THE RESPONSIBILITY

JOYCE W. EDDY - EXAM. BY THE COURT

1 BECAUSE I RUN THIS RAILROAD FOR HAVING
2 INCONVENIENCED YOU. I RECKON WE COULD HAVE HAD YOU
3 COME IN IN THE MORNING, BUT THE MORE WE DO TODAY
4 THE LESS WE DO TOMORROW; PLUS WE NEED TO GET TO THE
5 POINT WHERE WE CAN RELEASE SOME FORTY OTHER JURORS
6 WHO NEED TO BE CONCERNED WITH CAR POOLING AND
7 JOBS. SO THERE IS A REASON WHY WE PUSH AS WE DO,
8 AND WE HOPE THAT YOU ARE UNDERSTANDING OF THAT.
9 NOW, MRS. EDDY, YOU ARE JUROR NUMBER 95. AND YOU
10 WERE GIVEN AN OATH ON YESTERDAY. AND MAY I PLEASE
11 REMIND YOU THAT YOU'RE STILL UNDER OATH AT THIS
12 TIME IN REGARD TO ANY QUESTIONS THAT MAY BE
13 PROPOUNDED TO YOU BY THE COURT OR BY THE ATTORNEYS.
14 AND, MA'AM, ON YESTERDAY IN RESPONSE TO THE GENERAL
15 QUESTION OF THE VENIRE, YOU STOOD AND INDICATED
16 THAT YOU HAD SEEN, HEARD, OR READ SOMETHING ABOUT
17 THIS CASE. COULD YOU PLEASE TELL US WHAT YOU HEARD
18 ABOUT IT OR READ ABOUT IT AND FROM WHAT SOURCE?

19 A. IT WAS THE NEWSPAPER TWO YEARS AGO, I READ IT ABOUT
20 A WOMAN THAT HAD BEEN KILLED. SHE WAS 89 YEARS
21 OLD; KILLED BY THIS GENTLEMAN.

22 Q. YES, MA'AM. AND AS A RESULT OF THAT, MA'AM, HAVE
23 YOU FORMED OR EXPRESSED AN OPINION AS TO THE GUILT
24 OR INNOCENCE OF THE DEFENDANT?

25 A. NO.

JOYCE W. EDDY - EXAM. BY THE COURT

1 Q. AND COULD YOU, MA'AM, GIVE A FAIR TRIAL TO THE
2 STATE OF SOUTH CAROLINA AND THE CITIZENS OF
3 DORCHESTER COUNTY AS WELL AS A FAIR TRIAL TO THE
4 DEFENDANT, KENNETH SIMMONS?

5 A. NO.

6 Q. YOU COULD NOT?

7 A. NO.

8 Q. WHY NOT?

9 A. BECAUSE I HAVE AN 81 YEAR OLD MOTHER THAT I TAKE
10 CARE OF EVERY TWO WEEKS IN NORTH CAROLINA.

11 Q. YES, MA'AM.

12 A. AND SHE IS LEGALLY BLIND IN ONE EYE. AND I GO
13 EVERY TWO WEEKS. SHE CANNOT DRIVE. IN THE STATE
14 OF NORTH CAROLINA YOU CANNOT DRIVE UNLESS YOU'RE
15 ABLE TO SEE.

16 Q. WELL, I HOPE THAT'S THE LAW IN SOUTH CAROLINA, TOO.

17 A. NO; BUT, I MEAN, BUT---

18 Q. WELL, YOU WORK AT PALMETTO FORD. YOU KNOW
19 THAT'S---

20 A. EXCUSE ME! I DO NOT.

21 Q. I BEG YOUR PARDON. RAVENEL FORD; OFFICE MANAGER?

22 A. RIGHT.

23 Q. EXCUSE ME. BUT GO AHEAD. I'M NOT GOING TO ARGUE
24 WITH YOU.

25 A. BUT---

JOYCE W. EDDY - EXAM. BY THE COURT

1 Q. GO AHEAD.

2 A. SINCE MAY OF LAST YEAR WHEN SHE LOST HER DRIVER'S
3 LICENSE. THERE ARE FIVE KIDS IN MY FAMILY, AND I'M
4 THE ONE THAT'S CLOSEST TO HER, SO I HAVE TO GO
5 EVERY TWO WEEKS AND GET GROCERIES FOR HER. SHE
6 LIVES IN A NEIGHBORHOOD BY HERSELF IN AN ELDERLY
7 HOME.

8 Q. WHEN IS THE NEXT TIME YOU ARE DUE TO BE THERE?

9 A. I WAS THERE THIS WEEKEND.

10 Q. SO YOU DON'T HAVE TO GO BACK FOR TWO WEEKS?

11 A. TWO WEEKS.

12 Q. GO AHEAD.

13 A. SO THIS CASE KIND OF HITS HOME WITH MY MOTHER.

14 BUT, I MEAN, IF IT HAD BEEN ANY OTHER CASE, I COULD
15 PROBABLY GIVE A FAIR TRIAL. BUT BEING RELATED, IT
16 IS KIND OF HITTING HOME WITH MY MOTHER LIVING BY
17 HERSELF. DAD HAS BEEN DEAD FOR TWELVE YEARS.

18 Q. WELL, MA'AM, I HAVE A 90 YEAR MOTHER-IN-LAW WHO'S
19 STILL DRIVING AND IN GOOD HEALTH. AND HOPEFULLY
20 ALL PERSONS WILL HAVE IN-LAWS AND PARENTS WHO LIVE
21 TO BE A HEALTHY RIPE OLD AGE. BUT WE'RE ALL
22 CREATURES OF ENVIRONMENT AND BRING OUR LIFE
23 EXPERIENCES TO THIS COURTROOM.

24 A. THAT'S TRUE.

25 Q. BUT WE CANNOT ALLOW OR PERMIT THINGS SUCH AS WHAT

JOYCE W. EDDY - EXAM. BY THE COURT

1 YOU'VE JUST EXPRESSED TO US TO ENTER INTO THE TRIAL
2 OF THE CASE. THAT WOULDN'T BE FAIR TO MR.
3 SIMMONS.

4 A. NO, IT WOULDN'T BE.

5 Q. YOU UNDERSTAND THAT?

6 A. I UNDERSTAND THAT.

7 Q. SO DO THINK YOU COULDN'T BE FAIR TO MR. SIMMONS?

8 A. I DON'T THINK IT WOULD BE RIGHT FOR HIM.

9 Q. WHAT WOULDN'T BE RIGHT FOR HIM?

10 A. FOR ME TO BE ON THE JURY CASE.

11 Q. WHY NOT?

12 A. BECAUSE I WOULD BE THINKING OF MY OWN MOTHER AT THE
13 TIME.

14 THE COURT: GENTLEMEN, COULD I SEE
15 YOU FOR A MOMENT AT THE SIDE BAR?

16 (AT THIS TIME BENCH CONFERENCE IS HELD.)

17 THE COURT: MRS. JOYCE EDDY OF
18 RAVENEL FORD; THE ATTORNEYS HAVE AGREED WITH THE
19 COURT TO EXCUSE YOU. AND WE WISH YOU WELL. AND
20 WE'LL SEND YOU A CHECK FOR TWO DAYS' PAY. YOU HAVE
21 A NICE EVENING AND DRIVE CAREFULLY.

22 MRS. EDDY: I WILL, SIR.

23 THE COURT: GOOD NIGHT.

24 MRS. EDDY: GOOD NIGHT.

25 THE COURT: ALL RIGHT. WE'VE GOT

LEON A. COOK - EXAM. BY THE COURT

1 THREE TO GO. BUT LET'S TAKE A FIVE MINUTE RECESS.
2 (BRIEF RECESS.)

3 THE COURT: ALL RIGHT. CALL THE
4 NEXT JUROR, PLEASE.
5 (JUROR NUMBER 65, A BLACK MALE, IS CALLED.)

6 - - - - -
7 WHEREUPON,

8 LEON A. COOK, WHO BEING PREVIOUSLY
9 SWORN TO TELL THE TRUTH, TESTIFIED AS
10 FOLLOWS:

11 EXAMINATION

12 BY THE COURT:

13 Q. COME IN THE HOUSE. HOW ARE YOU THIS EVENING?

14 A. JUST FINE; AND YOU, SIR?

15 Q. FINE. WE APOLOGIZE TO YOU FOR THE LATENESS OF THE
16 HOUR, MR. LEON COOK, JUROR NUMBER 65. AND I SHARE
17 WITH YOU THAT IT'S MY DOINGS; I RUN THIS RAILROAD.
18 DON'T GET MAD AT THE LAWYERS OR THE STATE OR THE
19 DEFENDANT. MR. COOK, I'LL REMIND YOU, SIR, THAT
20 YOU ARE STILL UNDER OATH FROM YESTERDAY. AND I
21 NOTE HERE THAT YOU STOOD UP AND SAID THAT YOU KNEW
22 THE DEFENDANT, KENNETH SIMMONS. IS THAT CORRECT?

23 A. THAT'S CORRECT, SIR.

24 Q. WOULD THE FACT THAT YOU KNOW HIM -- AND IT'S NOT
25 UNUSUAL FOR A JUROR TO KNOW SOMEBODY. THE

LEON A. COOK - EXAM. BY THE COURT

1 IMPORTANT THING IS WHETHER YOU COULD BE FAIR TO
2 BOTH THE STATE AND THE DEFENDANT REGARDLESS OF
3 WHETHER YOU KNEW A WITNESS FOR THE STATE OR FOR THE
4 DEFENDANT OR A DEFENDANT'S WITNESS. SO, HOW DO YOU
5 KNOW KENNETH SIMMONS?

6 A. HIS BROTHER AND I WENT TO HIGH SCHOOL TOGETHER,
7 SIR. I KNOW HIM THAT WELL, BUT I KNOW HIS BROTHER.

8 Q. YES, SIR. BUT YOU, LIKE ME, YOU WERE BORN IN THE
9 EARLY FORTIES. SO THERE'S A DIFFERENCE IN THE AGE
10 THERE?

11 A. YES, SIR.

12 Q. SO HAVE YOU EVER MET KENNETH SIMMONS BEFORE?

13 A. NO, SIR; NOT REALLY, SIR.

14 Q. WOULD THE FACT THAT YOU WENT TO SCHOOL WITH KENNETH
15 SIMMONS' BROTHER, WOULD THAT -- BECAUSE THE BROTHER
16 IS NOT ON TRIAL. WOULD THAT IN ANY WAY INTERFERE
17 WITH YOUR ABILITY TO GIVE A FAIR TRIAL TO BOTH THE
18 STATE AND THE DEFENDANT?

19 A. NO, SIR. YOU KNOW, I JUST WANTED TO LET YOU KNOW.

20 Q. OH, SURE. I APPRECIATE YOUR HONESTY. AND, MR.
21 COOK, IS ANY CHANGES IN THIS QUESTIONNAIRE YOU WERE
22 KIND ENOUGH TO SEND US SEVERAL WEEKS AGO? IS IT
23 STILL CORRECT INFORMATION? YOU DON'T NEED TO
24 UPDATE IT?

25 A. I THINK JUST THE HOUSE NUMBER. I THINK IT'S [REDACTED].

LEON A. COOK - EXAM. BY THE COURT

1 I'VE GOT MAIL AT [REDACTED], BUT IT'S [REDACTED] [REDACTED].

2 Q. IT'S [REDACTED] [REDACTED] [REDACTED]

3 A. YES, SIR.

4 Q. ALL RIGHT. I'LL CALL THAT TO THE ATTENTION OF THE
5 CLERK BECAUSE WE'LL BE MAILING YOUR CHECK OUT TO
6 YOU. NOW MR. COOK, HAVE YOU READ OR HEARD, OR DO
7 YOU KNOW ANYTHING ABOUT THIS CASE?

8 A. NO, SIR; NOT REALLY, SIR.

9 Q. AND YOU UNDERSTAND THE LAW IS THAT JURORS MUST BE
10 FAIR TO THE STATE AND FAIR TO THE DEFENDANT,
11 EQUALLY SO?

12 A. YES, SIR.

13 Q. AND DO YOU HAVE ANY BIAS OR PREJUDICE OR ILL WILL
14 AGAINST THE STATE OR THE DEFENDANT?

15 A. NO, SIR.

16 Q. IS THERE ANY REASON YOU CAN THINK OF WHY YOU
17 COULDN'T HONESTLY AND FAIRLY GIVE A FAIR TRIAL TO
18 THE STATE AND TO THE DEFENDANT?

19 A. NO, SIR, I CAN'T THINK OF ANY REASON.

20 Q. NOW, MR. COOK, IT'S UNUSUAL FOR JUDGES AND LAWYERS
21 TO BE TALKING TO A PROSPECTIVE JUROR BEFORE THE
22 CASE EVEN STARTS ABOUT WHAT THEY MAY OR MAY NOT BE
23 INCLINED TO DO DURING THE SECOND PHASE OF THE
24 CASE. BUT THAT'S THE ONLY WAY THAT IT CAN BE
25 DONE. SO PLEASE DERIVE NO INFERENCE OR REACH NO

LEON A. COOK - EXAM. BY THE COURT

1 CONCLUSIONS ABOUT THE GUILT OF THIS DEFENDANT
2 BECAUSE OF WHAT WE'RE ABOUT TO SAY, BUT RATHER BEAR
3 IN MIND THE LAW IS THAT EVERY PERSON THAT'S CHARGED
4 WITH A CRIME IN THIS STATE IS THOUGHT OR PRESUMED
5 TO BE INNOCENT. THEY HAVE A ROBE OF INNOCENCE
6 WRAPPED ABOUT THE SHOULDERS FROM THE TIME OF THEIR
7 ARREST AND UNTIL AND UNLESS THE JURY BY A UNANIMOUS
8 VERDICT FIND THAT THE DEFENDANT IS GUILTY AS
9 CHARGED BEYOND A REASONABLE DOUBT. THAT'S THE
10 BURDEN OF PROOF OF THE STATE. DO YOU UNDERSTAND?

11 A. YES, SIR.

12 Q. AND FURTHER PLEASE UNDERSTAND THAT THE DEFENDANT
13 HAS CERTAIN RIGHTS ONE OF WHICH IS THAT HE CANNOT
14 BE FORCED TO TAKE THE WITNESS STAND. IF MR.
15 SIMMONS DECIDED NOT TO TESTIFY, THEN HE DOESN'T
16 HAVE TO TESTIFY. AND HE DOESN'T HAVE TO PUT UP ANY
17 EVIDENCE. THE BURDEN OF PROOF IS ON THE STATE, NOT
18 ON THE DEFENDANT. FURTHER, IF THE DEFENDANT,
19 KENNETH SIMMONS, DECIDES NOT TO TAKE THE WITNESS
20 STAND, HE'S CERTAINLY ALLOWED TO DO THAT. AND THE
21 FACT HE DIDN'T TAKE THE WITNESS STAND, THAT MUST
22 NOT ENTER INTO THE DELIBERATIONS OR THE DECISION OF
23 THE JURY IN ANY WAY WHATSOEVER. DO YOU UNDERSTAND
24 THOSE FACTORS?

25 A. YES, SIR.

LEON A. COOK - EXAM. BY THE COURT

1 Q. AND IN A DEATH PENALTY MURDER CASE THERE ARE TWO
2 PHASES OR TWO PARTS TO THE TRIAL. THE FIRST PART
3 IS WHAT'S CALLED A GUILTY PHASE. AND THERE THE
4 STATE MUST PROVE BEYOND A REASONABLE DOUBT THE
5 GUILT OF THE DEFENDANT. AND IF THAT WERE THE
6 VERDICT OF THE UNANIMOUS JURY, THEN WE WOULD HAVE A
7 24 HOUR HIATUS OR WAITING PERIOD AND THEN GO INTO
8 WHAT'S CALLED THE PENALTY PHASE. THE FIRST PHASE,
9 AS I TOLD YOU, IS THE GUILT PHASE. AND THEN THE
10 STATE WOULD BE REQUIRED; THEY HAVE THE BURDEN OF
11 PROVING BEYOND A REASONABLE DOUBT ONE OR MORE
12 STATUTORY -- THAT MEANS THE LAW PASSED BY THE
13 LEGISLATURE -- AGGRAVATING CIRCUMSTANCE. AN
14 EXAMPLE OF THAT IS THERE ARE FOUR COMPANION
15 INDICTMENTS; AND THE DEFENDANT IS CHARGED WITH
16 SEPARATE CRIMES IN EACH OF THOSE FOUR. ONE WITH
17 ARMED ROBBERY; ANOTHER WITH KIDNAPPING; ANOTHER
18 WITH BURGLARY; ANOTHER WITH CRIMINAL SEXUAL
19 CONDUCT. AND IF THE JURY BY UNANIMOUS VERDICT
20 FINDS THAT THE STATE HAS PROVEN BEYOND A REASONABLE
21 DOUBT ONE OR MORE OF THOSE AGGRAVATING
22 CIRCUMSTANCES, THEN THE JURY COULD OR MAY --
23 DOESN'T HAVE TO -- BUT THEY COULD RETURN A
24 RECOMMENDATION OF DEATH AS A SENTENCE TO BE IMPOSED
25 BY THE COURT. DO YOU UNDERSTAND THAT?

LEON A. COOK - EXAM. BY THE COURT

1 A. YES, SIR, I UNDERSTAND.

2 Q. AND FURTHER DURING THAT PENALTY PHASE OF THE TRIAL,
3 THE DEFENDANT, MR. KENNETH SIMMONS, WOULD BE GIVEN
4 THE OPPORTUNITY TO PRESENT TESTIMONY OR EVIDENCE BY
5 WAY OF MITIGATION OR LESSENING OR SOFTENING, OR
6 MAKING IT LESS OF A RECOMMENDATION RATHER THAN
7 DEATH TO RECOMMEND A SENTENCE TO THE COURT OF LIFE
8 IMPRISONMENT WITHOUT PAROLE, OR THE JURY OF TWELVE
9 BY UNANIMOUS VERDICT COULD AS A RECOMMENDATION OF
10 MERCY OR OUT OF THE GOODNESS OF THEIR HEARTS COULD
11 MAKE A RECOMMENDATION TO THE COURT OF LIFE
12 IMPRISONMENT WITHOUT PAROLE, ALTHOUGH THE STATE MAY
13 HAVE PROVEN AN AGGRAVATING CIRCUMSTANCE. DO YOU
14 UNDERSTAND THAT?

15 A. YES, SIR.

16 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE SHEET OF
17 PAPER, THE TWO PAGE SHEET, THAT ILLUSTRATED OR SET
18 FORTH TYPES ONE, TWO AND THREE OF JURORS?

19 A. YES, SIR.

20 Q. AND WHICH CATEGORY DO YOU FEEL, MR. LEON COOK, THAT
21 YOU WOULD FALL UNDER?

22 A. I THINK IT WOULD BE THE THIRD ONE, SIR.

23 Q. YOU THINK IT WOULD BE THE THIRD ONE?

24 A. YES, SIR; I'M CERTAIN IT WOULD BE THE THIRD ONE.

25 Q. ALL RIGHT.

LEON A. COOK - DIRECT/MR. BAILEY

1 THE COURT: MR. SOLICITOR, WOULD YOU
2 LIKE TO QUESTION THIS GENTLEMAN?

3 DIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q. MR. COOK, I'M WALTER BAILEY. I'LL BE PROSECUTING
6 THIS CASE FOR THE STATE. I NEED TO ASK YOU A FEW
7 MORE QUESTIONS. FIRST OF ALL, LET ME START OUT
8 WITH ASKING YOU ABOUT YOUR RELATIONSHIP WITH MR.
9 SIMMONS' BROTHER. THAT'S HIS OLDER BROTHER; IS
10 THAT CORRECT?
11 A. THAT'S RIGHT, SIR.
12 Q. WHAT'S THAT BROTHER'S NAME?
13 A. LEGREE.
14 Q. AND Y'ALL WENT HIGH SCHOOL TOGETHER?
15 A. YES, SIR.
16 Q. WERE YOU FRIENDS IN HIGH SCHOOL?
17 A. YES, SIR. WE WERE FOOTBALL TEAMMATES, BASKETBALL
18 TEAMMATES. REMEMBER THERE WAS ONLY ONE HIGH SCHOOL
19 IN SUMMERVILLE AT THE TIME, SIR, FOR BLACKS.
20 Q. RIGHT. AND THAT WAS ALSTON; RIGHT?
21 A. RIGHT, SIR.
22 Q. AFTER Y'ALL GRADUATED FROM ALSTON, DID YOU STAY IN
23 SUMMERVILLE?
24 A. YES, SIR.
25 Q. AND MR. SIMMONS, LEGREE SIMMONS, STAYED HERE ALSO?

LEON A. COOK - DIRECT/MR. BAILEY

1 A. I HAVEN'T SEEN HIM IN YEARS.

2 Q. OKAY. ALL RIGHT. DO YOU STILL CONSIDER HIM A
3 FRIEND OF YOURS?

4 A. YES, SIR. I WOULD SAY.

5 Q. OKAY. NOW, BEARING IN MIND THIS IS A CASE IN WHICH
6 THE STATE IS SEEKING THE DEATH PENALTY AGAINST
7 KENNETH SIMMONS. WOULD YOU HAVE ANY PROBLEM
8 SITTING AS A JUROR IN THIS CASE?

9 A. NO, SIR, I WOULDN'T HAVE ANY PROBLEMS.

10 Q. ALL RIGHT, SIR. AND YOU UNDERSTAND -- I'LL TRY TO
11 BE AS BRIEF AS I CAN -- BUT THIS IS POTENTIALLY A
12 TWO-PART PROCESS WHERE THE FIRST PART IS JUST THE
13 GUILT PHASE WHERE IT'S LIKE ANY OTHER TRIAL. IF
14 THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE
15 FIRST PART OF THE TRIAL, WE GO INTO PHASE TWO IN
16 WHICH WE CAN PUT UP ADDITIONAL EVIDENCE THAT DIDN'T
17 COME OUT IN THE FIRST PART OF THE TRIAL. I'D BE
18 PUTTING UP EVIDENCE IN AGGRAVATION TO TRY TO
19 PERSUADE THE JURY THE DEATH PENALTY WAS THE
20 APPROPRIATE SENTENCE. THE DEFENSE COULD PUT UP
21 EVIDENCE IN MITIGATION TO TRY TO LESSEN THE IMPACT
22 OF THAT MURDER. THEY DON'T HAVE TO PUT UP ANY
23 EVIDENCE, BUT THEY CAN. THEY'D BE ARGUING, OF
24 COURSE, FOR A LIFE SENTENCE. THE JUDGE WOULD GIVE
25 INSTRUCTIONS TO THE JURY. THEY'D GO BACK AND

LEON A. COOK - DIRECT/MR. BAILEY

1 DELIBERATE, AND THEY'D COME UP WITH ONE OR TWO
2 CHOICES, LIFE WITHOUT PAROLE OR THE DEATH PENALTY.
3 WHATEVER THAT JURY DECIDES THE VERDICT IS WILL BE
4 THE SENTENCE OF THE COURT. IN OTHER WORDS, IT
5 ISN'T REALLY A RECOMMENDATION BECAUSE THAT'S WHAT
6 THE JUDGE IS GOING TO DO. SO IF THE JURY VOTES FOR
7 LIFE, THE JUDGE WOULD SENTENCE HIM TO LIFE, AND HE
8 WOULD DO LIFE WITHOUT PAROLE. IF THE JURY VOTES
9 FOR THE DEATH SENTENCE, THE JUDGE WOULD ORDER THAT,
10 AND HE WOULD BE EXECUTED. NOW, IF THE CASE WAS BAD
11 ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY?

12 A. YES, I CAN, SIR.

13 Q. ALL RIGHT. AND IF YOU AND THE OTHER ELEVEN JURORS
14 VOTED FOR THE DEATH PENALTY, THEN EACH JUROR WOULD
15 BE ASKED TO SIGN THEIR NAME TO A VERDICT FORM, A
16 DEATH VERDICT FORM, THAT WOULD RESULT IN THAT
17 EXECUTION TAKING PLACE. COULD YOU SIGN YOUR NAME
18 TO A PAPER LIKE THAT IF THAT WAS YOUR VERDICT?

19 A. YES, SIR; THERE'S NO PROBLEM.

20 Q. AND COULD YOU ANNOUNCE THAT VERDICT OUT LOUD IF
21 THAT WAS YOUR VERDICT?

22 A. YES, SIR.

23 Q. NOW, HAVE YOU READ ANYTHING OR SEEN ANYTHING ON
24 TELEVISION OR BEEN EXPOSED TO ANY PUBLICITY ABOUT
25 THIS CASE OR HEARD STREET TALK ABOUT IT OR

LEON A. COOK - CROSS/MR. THEOS

1 ANYTHING?

2 A. WELL, NO MORE THAN WHAT I HEAR, SIR. I GO TO WORK
3 EARLY IN THE MORNING, GET OFF LATE IN THE EVENING,
4 SO I DON'T EVEN BOTHER TO READ THE PAPERS.

5 Q. ALL RIGHT. AND WHATEVER YOU MIGHT HAVE HEARD,
6 COULD YOU PUT THAT ASIDE AND BASE YOUR DECISION ON
7 THE EVIDENCE IN THE CASE?

8 A. YES, SIR.

9 Q. ALL RIGHT. MR. COOK, I THINK THAT'S ALL I HAVE.
10 THANK YOU VERY MUCH.

11 A. THANK YOU, SIR.

12 THE COURT: MR. THEOS, WOULD YOU
13 LIKE TO QUESTION THIS GENTLEMAN?

14 MR. THEOS: JUST VERY BRIEFLY, YOUR
15 HONOR.

16 CROSS-EXAMINATION

17 BY MR. THEOS:

18 Q. MR. COOK, I'M JERRY THEOS. THIS IS JIM BELL. JIM
19 AND I ARE THE ATTORNEYS WHO REPRESENT KENNETH
20 SIMMONS. AND WE THANK YOU FOR COMING IN. AND I
21 WILL TRY TO ASK YOU JUST A COUPLE OF QUESTIONS.

22 A. ALL RIGHT, SIR.

23 Q. AND WE THANK YOU FOR BEING HONEST WITH US IN YOUR
24 RESPONSES, OKAY?

25 A. ALL RIGHT.

LEON A. COOK - CROSS/MR. THEOS

1 Q. YOU UNDERSTAND BECAUSE MR. BAILEY HAS ASKED YOU
2 QUESTIONS REGARDING WHETHER OR NOT YOU COULD IMPOSE
3 THE DEATH PENALTY. AND THE JUDGE HAS TOLD YOU
4 CERTAIN THINGS ABOUT THE DEATH PENALTY AND THE LAW
5 THAT APPLIES. YOU UNDERSTAND THAT WE'RE NOT AT
6 THAT POINT?

7 A. YES, SIR; I UNDERSTAND.

8 Q. YOU UNDERSTAND THAT BEFORE WE COULD GET TO THAT
9 POINT IN THIS CASE, A JURY, AND YOU AS A JUROR,
10 WOULD HAVE TO FIND THAT MR. SIMMONS WAS GUILTY
11 FIRST. DO YOU UNDERSTAND THAT?

12 A. YES, SIR; I UNDERSTAND THAT, SIR.

13 Q. YOU UNDERSTAND THAT THERE'S NO PRESUMPTION OR NO
14 SIGNIFICANCE TO THE FACT RELATED TO HIS GUILT?

15 A. NO, SIR.

16 Q. BASED UPON WHAT WE'RE TALKING ABOUT?

17 A. YES, SIR; I UNDERSTAND.

18 Q. DO YOU FEEL THAT YOU COULD IN FACT HOLD THE STATE
19 TO THEIR BURDEN OF PROVING MR. SIMMONS GUILTY
20 BEYOND A REASONABLE DOUBT?

21 A. YES, SIR.

22 Q. AND IF THEY FAILED TO MEET THAT BURDEN, YOU WOULD
23 FIND MR. SIMMONS NOT GUILTY?

24 A. YES, SIR.

25 Q. ON THE OTHER HAND, IF THEY MET THAT BURDEN, YOU

LEON A. COOK - CROSS/MR. THEOS

1 WOULD FIND HIM GUILTY, AND THEN WE WOULD MOVE ON TO
2 THAT SECOND PHASE?

3 A. YES, SIR.

4 Q. NOW, YOU INDICATED YOU COULD LISTEN TO BOTH WHAT
5 MR. BAILEY HAD TO OFFER AS WELL AS WHAT MR. BELL
6 AND I WOULD HAVE TO OFFER. AND WHAT WE WOULD HAVE
7 TO OFFER IN MITIGATION IS JUST ANOTHER WAY OF
8 SAYING THAT WE WOULD BE TRYING TO PERSUADE YOU THAT
9 THE DEATH PENALTY IS NOT THE APPROPRIATE CASE; NOT
10 THE APPROPRIATE PUNISHMENT IN THIS CASE?

11 A. I UNDERSTAND, SIR.

12 Q. AND YOU WOULD LISTEN TO WHAT WE WOULD HAVE TO SAY
13 AS WELL AS WHAT MR. BAILEY WOULD HAVE TO SAY?

14 A. OH, YES, SIR. I WOULD LISTEN. THAT'S A MIGHTY BIG
15 DECISION, SO I WOULD LISTEN.

16 Q. IT IS, MR. COOK. THANK YOU VERY MUCH.

17 THE COURT: ANYTHING FURTHER?

18 MR. BAILEY: NO, SIR.

19 THE COURT: NOW, MR. LEON COOK; WE
20 FIND YOU QUALIFIED TO SERVE ON THIS JURY; HOWEVER,
21 YOU'VE NOT BEEN SELECTED YET. WE'RE GOING TO HAVE
22 THE SELECTION IN THE MORNING AT TEN O'CLOCK,
23 WEDNESDAY, PRAYER MEETING DAY. SO YOU NEED TO BE
24 BACK HERE AT TEN O'CLOCK IN THE MORNING. AND YOU
25 NEED TO FOLLOW THAT SHEET THERE AND BRING ENOUGH

LEON A. COOK - CROSS/MR. THEOS

1 CLOTHES FOR FIVE, SIX, SEVEN DAYS. AND YOU CAN
2 TALK TO YOUR FAMILY ABOUT THE FACT THAT YOU'RE
3 GOING TO BE PUT IN THE HOLIDAY INN AT NIGHT AND BE
4 DOWN HERE DURING THE DAY IN THE TRIAL OF THE CASE.
5 BUT YOU'RE NOT GOING TO BE ALLOWED TO MAKE PHONE
6 CALLS OR GO TO WORK OR OTHER PLACES YOU MAY RATHER
7 GO TO BECAUSE WE'RE GOING TO BE INVOLVED IN THIS
8 CASE, AND WE NEED TO SEQUESTER YOU. YOU'RE NOT
9 UNDER ARREST. BUT WE'LL HAVE SOME BAILIFFS AND
10 PEOPLE WATCHING OUT OVER YOU TO HELP YOU WITH YOUR
11 NEEDS SO TO SPEAK. AND THE COUNTY WILL PAY FOR
12 YOUR FOOD AND YOUR ROOM AND BOARD. AND PLEASE
13 DON'T GO OUT AND TALK TO ANYBODY ABOUT THIS CASE.
14 DON'T LET ANYBODY TALK TO YOU ABOUT IT. THAT WOULD
15 BE A VIOLATION OF THE LAW. DON'T EXPOSE YOURSELF
16 TO ANY INFORMATION ABOUT IT. BY THAT I MEAN DON'T
17 LISTEN TO THE RADIO OR T.V. OR READ THE PAPER. AND
18 WE'LL JUST LOOK FORWARD TO SEEING YOU IN THE
19 MORNING. AND WE'LL DETERMINE THEN WHETHER YOU'RE
20 SELECTED AS A JUROR BECAUSE WE'RE GOING TO QUALIFY
21 37, AND WE'RE GOING TO KEEP 14. SO THAT'S 14 OUT
22 OF 37. YOU'VE GOT ABOUT ONE OUT OF A THREE CHANCE
23 OF BEING PICKED. AND WE'RE JUST WAITING TO SEE HOW
24 THE COOKIE CRUMBLES, OKAY?

25 MR. COOK: YES, SIR.

MARK ZEIGLER - EXAM. BY THE COURT

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THE COURT: YOU DRIVE CAREFULLY, AND
YOU HAVE A NICE EVENING. THANK YOU, SIR.

MR. COOK: THANK YOU, SIR. ALL
RIGHT. BRING IN MARK ZEIGLER.
(JUROR NUMBER 350, A WHITE MALE, IS CALLED.)

- - - - -

WHEREUPON,

MARK ZEIGLER, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. HOW ARE YOU, SIR?

A. FINE.

Q. MR. MARK ZEIGLER, WE APOLOGIZE FOR THE LATENESS OF
THE HOUR, BUT YOUR NAME BEGINS WITH Z, AND YOU'RE
NUMBER 350 JUROR; SO---

A. WELL, I KNEW I WAS LAST. I'M USED TO BEING LAST
EVERYWHERE.

Q. THAT'S RIGHT. GOOD. SO, PLEASE, WE'LL MOVE ALONG
AS BEST WE CAN IN THIS MATTER. AND MAY I REMIND
YOU, PLEASE, MR. ZEIGLER, THAT YOU ARE STILL UNDER
OATH FROM YESTERDAY WHEN YOU WERE SWORN AS A JUROR;
AND YOU UNDERSTAND THAT, PLEASE?

A. YES, I DO, SIR.

MARK ZEIGLER - EXAM. BY THE COURT

1 Q. AND IS THERE ANYTHING ABOUT THIS QUESTIONNAIRE THAT
2 YOU NEED TO UPDATE OR CHANGE ANY INFORMATION WHICH
3 YOU HAD PREVIOUSLY GIVEN TO THE COURT?

4 A. NO; I DON'T THINK SO.

5 Q. ALL RIGHT. MR. MARK ZEIGLER, ON YESTERDAY IN
6 RESPONSE TO THE QUESTION AS TO WHETHER YOU HAVE
7 SEEN, HEARD, OR READ ANYTHING ABOUT THIS CASE, YOU
8 STOOD UP. MAY I ASK YOU THE SOURCE OF YOUR
9 INFORMATION?

10 A. THE NEWSPAPER.

11 Q. WHICH PAPER?

12 A. THE POST AND COURIER.

13 Q. AND WHEN?

14 A. PROBABLY A WEEK DURING WHEN IT HAPPENED THAT YEAR.
15 I COULDN'T REALLY TELL YOU. I MEAN, I READ ABOUT
16 IT AFTER.

17 Q. SEVERAL YEARS AGO?

18 A. OH, YES, OF COURSE; YES.

19 Q. DO YOU REMEMBER ANY OF THE DETAILS OF WHAT YOU READ
20 IN THE PAPER?

21 A. WELL, IT'S PROBABLY NOT THAT MUCH NOW.

22 Q. WHY I ASK YOU THAT IS I WISH TO EMPHASIZE TO YOU
23 THAT THE RADIO, NEWSPAPER, T.V., THEY'RE ENTITLED
24 TO THEIR OPINIONS. BUT THOSE OPINIONS ARE JUST
25 THAT. UNLESS YOU'RE AN EXPERT QUALIFIED UNDER

MARK ZEIGLER - EXAM. BY THE COURT

1 SPECIAL RULES YOU'RE NOT ALLOWED TO GIVE AN
2 OPINION. AND YOU AND EVERY JUROR MUST DECIDE THIS
3 AND EVERY OTHER CASE BASED UPON THE SWORN TESTIMONY
4 ALLOWED IN THERE THAT'S UNDER THE SPECIAL CERTAIN
5 RULES OF EVIDENCE FOR TRIALS IN CRIMINAL CASES IN
6 THE COURTS OF THE SOUTH CAROLINA; DO YOU UNDERSTAND
7 THAT?

8 A. YES, SIR.

9 Q. SO HAVE YOU, PLEASE, MR. ZEIGLER, FORMED OR
10 EXPRESSED AN OPINION AS TO THE GUILT OR INNOCENCE
11 OF THE DEFENDANT, KENNETH SIMMONS, IN THIS CASE?

12 A. FROM WHAT I'VE READ, YOU MEAN?

13 Q. YES, SIR; OR FROM ANY SOURCE. DO YOU HAVE ANY
14 OPINION AS TO THE GUILT OR INNOCENCE?

15 A. NO.

16 Q. DO YOU UNDERSTAND, PLEASE, THAT EVERY JUROR IS
17 EXPECTED TO GIVE A FAIR AND IMPARTIAL TRIAL TO THE
18 STATE AND EQUALLY TO THE DEFENDANT, AND FURTHER
19 NORMALLY WE WOULD NOT BE ASKING THESE QUESTIONS OF
20 YOU BEFORE ANY TESTIMONY IS TAKEN. BUT BECAUSE OF
21 THE NATURE OF THE TRIAL, WE MUST QUESTION YOU AT
22 THIS TIME REGARDING CERTAIN OF YOUR VIEWS, NOT
23 MEANING TO BE PERSONAL, NOT MEANING TO INVADE YOUR
24 PRIVACY. AND EVERY ANSWER YOU GIVE WILL BE A
25 CORRECT ANSWER BECAUSE THAT'S YOUR HONEST PERSONAL

MARK ZEIGLER - EXAM. BY THE COURT

1 VIEW, AND YOU'RE ENTITLED TO THAT. SO NOBODY IS
2 TRYING TO CHANGE WHAT YOUR VIEWS ARE BUT TO TRY TO
3 UNDERSTAND TO A LIMITED EXTENT WHAT THOSE MAY BE.
4 IT IS AN IMPORTANT AXIOM OF THE LAW THAT EVERY
5 DEFENDANT THAT COMES INTO THIS COURT IS PRESUMED OR
6 THOUGHT TO BE INNOCENT UNTIL OR UNLESS THE STATE
7 REMOVES THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
8 SATISFYING THE JURY PANEL BY A UNANIMOUS VERDICT OF
9 THE GUILT BEYOND A REASONABLE DOUBT. FURTHER, THE
10 DEFENDANT HAS NO BURDEN OF PROOF. HE DOESN'T NEED
11 TO PROVE HE'S INNOCENT. HE DOESN'T HAVE TO PROVE
12 HE'S NOT GUILTY BECAUSE THE LAW PUTS ABOUT HIM A
13 ROBE OF INNOCENCE. AND THAT REMAINS WITH HIM FROM
14 THE TIME OF HIS ARREST, THROUGHOUT THE TRIAL, AND
15 UNTIL THE JURY COMMENCES THEIR DELIBERATIONS AND
16 UNTIL THE JURY FINDS THE STATE HAS PROVEN THE GUILT
17 OF THAT DEFENDANT BEYOND A REASONABLE DOUBT. THOSE
18 ARE IMPORTANT. DO YOU UNDERSTAND THAT?

19 A. YES, SIR, I DO.

20 Q. AND THE DEFENDANT DOESN'T HAVE TO TAKE THE WITNESS
21 STAND. IF HE DECIDES NOT TO TAKE THE WITNESS
22 STAND, I WOULD INSTRUCT THE JURY THEY MUST NOT
23 ALLOW THAT TO ENTER INTO THEIR DELIBERATIONS OR
24 DECISION IN ANY MANNER WHATSOEVER BECAUSE THAT'S
25 HIS RIGHT NOT TO TAKE THE WITNESS STAND. AND THAT

MARK ZEIGLER - EXAM. BY THE COURT

1 RAISES NO INFERENCE FOR OR AGAINST THE DEFENDANT'S
2 GUILT OR INNOCENCE. NOW, A DEATH PENALTY MURDER
3 CASE IS DIVIDED INTO TWO PARTS. THE FIRST PART IS
4 WHAT'S CALLED THE GUILT PHASE. THERE THE STATE OF
5 SOUTH CAROLINA THROUGH SOLICITOR BAILEY WOULD BE
6 REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND
7 A REASONABLE DOUBT THAT HE WAS GUILTY OF MURDER.
8 IF THAT VERDICT BE NOT GUILTY, THEN THE JURY WOULD
9 NOT BE CONCERNED WITH THE SECOND PHASE OF PENALTY
10 BECAUSE THOSE OTHER FOUR INDICTMENTS, IF ANY OF
11 THEM WERE A GUILTY VERDICT, THE COURT WOULD HANDLE
12 THE SENTENCE IN ITS DISCRETION AND NOT RELY UPON A
13 RECOMMENDATION OF A JURY. BUT IF WE GET TO THAT
14 SECOND PHASE OF THE PENALTY, THERE THE STATE IS
15 REQUIRED TO PROVE BEYOND A REASONABLE DOUBT, BY A
16 REASONABLE DOUBT, THAT THERE WAS ONE OR MORE
17 STATUTORY AGGRAVATING CIRCUMSTANCES. STATUTORY
18 MEANS AS PASSED BY THE LEGISLATURE OF THIS STATE
19 COVERING THE STATUTE OF STATE LAW. THE FOUR OTHER
20 INDICTMENTS CHARGE CRIMINAL SEXUAL CONDUCT IN ONE,
21 BURGLARY IN ANOTHER, ARMED ROBBERY IN ANOTHER,
22 KIDNAPPING IN ANOTHER. AND IF THE STATE PROVES
23 BEYOND A REASONABLE DOUBT ONE OR MORE OF THOSE
24 STATUTORY AGGRAVATING CIRCUMSTANCES, THE JURY
25 COULD, OR MAY, RETURN A VERDICT CONTAINING A

MARK ZEIGLER - EXAM. BY THE COURT

1 RECOMMENDATION OF THE DEATH SENTENCE. HOWEVER,
2 DURING THAT PENALTY PHASE THE DEFENDANT HAS THE
3 RIGHT TO OFFER ANY EVIDENCE BY WAY OF MITIGATION OR
4 LESSENING THE RECOMMENDED SENTENCE FROM A DEATH
5 PENALTY DOWN TO LIFE IMPRISONMENT WITHOUT PAROLE
6 WHICH IS THE OTHER VIABLE OPTION AVAILABLE TO THE
7 JURY. NOW, THE JURY COULD -- THERE'S A THIRD THING
8 THE JURY COULD DO. AND THAT IS OUT OF THE GOODNESS
9 OF THEIR HEART OR BY WAY OF RECOMMENDATION OF
10 MERCY, EVEN THOUGH THE STATE MAY PROVEN BEYOND A
11 REASONABLE DOUBT ONE OR MORE STATUTORY AGGRAVATING
12 CIRCUMSTANCES, THE JURY COULD BY A UNANIMOUS
13 VERDICT, FOR NO REASON AT ALL, RECOMMEND A SENTENCE
14 TO THE COURT OF LIFE IMPRISONMENT WITHOUT PAROLE.
15 AND I TELL YOU THAT THE COURT WILL FOLLOW THE
16 RECOMMENDATION OF THE JURY IF WE GET TO THAT STAGE
17 WHETHER IT BE ONE SENTENCE OR THE OTHER SENTENCE.
18 AND DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND, OF COURSE, IF WE GET TO THAT STAGE AND YOU'RE
21 A JUROR, THE COURT WILL INSTRUCT YOU IN MORE
22 PRECISE DETAILS AS TO THE LAW; BUT THAT'S A
23 THUMB-NAIL SKETCH OF WHAT MIGHT BE EXPECTED AND
24 WHAT MAY TAKE PLACE. NOW, YOU HAVE IN YOUR HAND A
25 COPY OF A TWO PAGE DOCUMENT DETAILING THE

1 EXPLANATION OF JUROR ONE, TWO, OR THREE. HAVE YOU
2 READ THAT AND UNDERSTAND IT?

3 A. I UNDERSTAND IT.

4 Q. UNDER WHICH CATEGORY, PLEASE MR. ZEIGLER, WOULD YOU
5 THINK THAT YOU WOULD FALL?

6 A. I THINK I WOULD FALL UNDER NUMBER TWO.

7 Q. ALL RIGHT. AND WITH THAT, THAT IS THE CATEGORY
8 WHERE YOU FEEL THAT YOU WOULD VOTE AS A JUROR, LIFE
9 IMPRISONMENT WITHOUT PAROLE REGARDLESS OF WHAT THE
10 FACTS MIGHT BE IN THE CASE; THAT YOU WOULD NOT
11 IMPOSE THE DEATH PENALTY; IS THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT.

14 THE COURT: YOU MAY QUESTION, MR.
15 THEOS.

16 MR. THEOS: THANK YOU.

17 DIRECT EXAMINATION

18 BY MR. THEOS:

19 Q. MR. ZEIGLER, I'M JERRY THEOS. THIS IS JIM BELL.
20 THIS IS KENNETH SIMMONS. JIM BELL AND I ARE
21 KENNETH SIMMONS' LAWYER. AND I KNOW IT'S LATE; AND
22 I WILL TRY TO BE BRIEF. AND I WILL THEREFORE GO
23 RIGHT TO THE HEART OF THE MATTER. YOU'RE BEING
24 QUESTIONED ABOUT YOUR VIEWS RELATED TO THE DEATH
25 PENALTY AND WHETHER OR NOT YOU WOULD BE ABLE TO

MARK ZEIGLER - DIRECT/MR. THEOS

1 IMPOSE IT IN THE RIGHT OR THE WRONG TYPE OF CASE.
2 YOU INDICATED TO JUDGE PEEPLES THAT YOU FELT YOU
3 SHOULD BE CATEGORIZED AS A JUROR NUMBER TWO. CAN
4 YOU TELL ME WHY?

5 A. WELL, I KIND OF LIKE WOULD HAVE A HARD TIME. IN MY
6 OPINION -- I'M KIND OF INTO THE CATHOLIC FAITH.
7 AND I'VE REALLY KIND OF MORE OR LESS BECOME MORE
8 INTO MY FAITH STRONGER THAT I WAS YEARS AGO. AND I
9 JUST DON'T BELIEVE I COULD LIVE WITH THE IDEA THAT
10 I'M THE PERSON THAT EITHER PUT A MAN TO DEATH OR
11 NOT. I JUST DON'T THINK I COULD LIVE WITH THAT.
12 I'VE NEVER BEEN INVOLVED -- THIS IS THE FIRST TIME
13 I'VE ACTUALLY BEEN INVOLVED WITH HAVING TO DO
14 THIS. AND IN MY OPINION I JUST DON'T THINK I COULD
15 DO THAT THAT EASILY.

16 Q. WELL, CERTAINLY IT WOULDN'T BE AN EASY THING FOR
17 ANYBODY TO DO REGARDLESS OF THEIR RELIGIOUS
18 CONVICTIONS OR PERSONAL OPINIONS. IT'S JUST A
19 DIFFICULT TASK.

20 A. IT IS.

21 Q. I GUESS THE QUESTION IS: IF WE GOT TO THAT POINT
22 OF THE TRIAL -- AND, OF COURSE, THE JUDGE TOLD YOU
23 THAT WE MIGHT NOT GET TO THAT POINT.

24 A. RIGHT.

25 Q. THAT MR. SIMMONS MIGHT BE FOUND NOT GUILTY. AND,

MARK ZEIGLER - DIRECT/MR. THEOS

1 OF COURSE, IF THAT WERE THE CASE WE WOULDN'T GO ANY
2 FURTHER. BUT IF MR. SIMMONS WERE FOUND GUILTY OF
3 MURDER, WE WOULD MOVE ON TO THAT PHASE. NOW,
4 UNDERSTANDING THAT IT MAY BE DIFFICULT; DO YOU FEEL
5 THAT THERE ARE SITUATIONS IN WHICH THE CRIME WAS SO
6 AGGRAVATED OR THE STATE MIGHT PRESENT TO YOU SUCH
7 EVIDENCE IN AGGRAVATION AND SUCH THAT THE CRIME WAS
8 SO HEINOUS AND JUST BAD THAT YOU MIGHT CONSIDER THE
9 DEATH PENALTY AS A POSSIBLE VERDICT, UNDERSTANDING
10 THAT YOU HAVE DIFFICULTY WITH IT?

11 A. I STILL DON'T THINK I COULD BECAUSE I JUST BELIEVE
12 THAT, YOU KNOW, WHAT A PERSON DOES HERE, LIKE I
13 SAID, TO ME, I MEAN, YOU CAN'T -- BY KILLING
14 SOMEONE, YOU CAN'T BRING THE PERSON BACK
15 REGARDLESS. AND I GUESS I JUST DON'T BELIEVE -- I
16 THINK THAT IN MY OPINION, YOU KNOW, THE PERSON IS
17 GOING TO SUFFER AT THE END OF HIS LIFE AND BE
18 JUDGED BY A HIGHER SOURCE THAN I AM. AND I JUST
19 DON'T FEEL LIKE I WOULD WANT TO BE IN THAT POSITION
20 TO JUDGE THAT PERSON.

21 Q. SO YOU CAN'T THINK OF ANY SITUATION IN WHICH YOU
22 WOULD EVER CONSIDER---

23 MR. BAILEY: OBJECTION, YOUR HONOR;
24 ASKED AND ANSWERED.

25 MR. THEOS: I DON'T THINK I'VE ASKED

MARK ZEIGLER - DIRECT/MR. THEOS

1 THIS QUESTION, YOUR HONOR.

2 THE COURT: REPHRASE IT A LITTLE

3 BIT.

4 Q. IN YOUR OPINION, YOU COULD NEVER CONSIDER THE
5 ALTERNATIVE TO LIFE IMPRISONMENT WITHOUT PAROLE,
6 THAT BEING THE DEATH PENALTY? IS THAT WHAT YOU'RE
7 TELLING US? AND, AGAIN, I'M NOT FUSSING AT YOU OR
8 POINTING MY FINGER AT YOU.

9 A. YES; I KNOW; I UNDERSTAND. I JUST DON'T THINK I
10 COULD LIVE WITH THAT EITHER WAY. I MEAN, YOU KNOW,
11 I'VE NEVER BEEN IN THAT SITUATION, AND I REALLY
12 WOULDN'T WANT TO BE. BUT IF I HAD TO BE, I STILL
13 DON'T THINK I COULD CONDEMN SOMEONE TO DEATH OR BE
14 A PART OF A DECISION TO DO THAT.

15 Q. THANK YOU, MR. ZEIGLER.

16 THE COURT: CAN WE AGREE, GENTLEMEN?

17 MR. BAILEY: YES, SIR.

18 MR. THEOS: YES, SIR.

19 THE COURT: ALL RIGHT. MR. ZEIGLER,
20 MAY I THANK YOU FOR YOUR PARTICIPATION YESTERDAY
21 AND TODAY, AND THANK YOU FOR YOUR PRESENCE. AND IN
22 THIS INSTANCE WE'RE GOING TO EXCUSE YOU FROM
23 FURTHER SERVICE IN THE TRIAL OF THIS CASE OR FOR
24 THIS TERM OF COURT. YOU'LL BE FORWARDED A CHECK
25 FOR TWENTY-FIVE DOLLARS A DAY FOR YESTERDAY AND

MARK ZEIGLER - DIRECT/MR. THEOS

1 TODAY. AND WE RECOGNIZE THAT YOUR SERVICE IS FAR
2 MORE VALUE THAN THAT. BUT WE JUST DON'T HAVE MORE
3 MONEY TO PAY YOU.

4 MR. ZEIGLER: I UNDERSTAND, SIR.

5 THE COURT: BUT WE DO THANK YOU FOR
6 YOUR PARTICIPATION AND WISH YOU WELL; AND YOU ARE
7 EXCUSED. THANK YOU, NOW. GOOD NIGHT.

8 MR. ZEIGLER: GOOD NIGHT.

9 THE COURT: ALL RIGHT, IF YOU WOULD
10 HAVE RICHARD DUBOSE COME IN NOW. ON THE RECORD,
11 MR. SOLICITOR, AS TO MARK A. ZEIGLER, THE STATE'S
12 POSITION IS?

13 MR. BAILEY: NOT QUALIFIED, YOUR
14 HONOR.

15 THE COURT: THE DEFENSE'S POSITION?

16 MR. THEOS: YOUR HONOR, WE WOULD
17 AGREE WITH THAT.

18 THE COURT: THANK YOU. GENTLEMEN,
19 WE'RE DOWN TO THE SHORT ROWS. WE'VE GOT FOUR MORE
20 COMING IN, AND WE NEED TWO MORE.

21 MR. BAILEY: JUDGE, WE WERE TALKING
22 ABOUT THAT EARLIER. WE ACTUALLY DON'T NEED TWO
23 MORE IF THEY ALL SHOW. WE CAN STILL EXERCISE ALL
24 OUR STRIKES AND GET TWO ALTERNATES.

25 THE COURT: BUT TO BE ON THE SAFE

RICHARD L. DUBOSE - EXAM. BY THE COURT

1 SIDE.

2 (JUROR NUMBER 90, A WHITE MALE, IS CALLED.)

3 - - - - -

4 WHEREUPON,

5 RICHARD L. DUBOSE, WHO BEING PREVIOUSLY

6 SWORN TO TELL THE TRUTH, TESTIFIED AS

7 FOLLOWS:

8 EXAMINATION

9 BY THE COURT:

10 Q. HOW ARE YOU THIS EVENING, MR. DUBOSE?

11 A. GOOD.

12 Q. MR. DUBOSE, IT'S MY BLAME IF ANY IS TO BE CAST FOR
13 THE LATENESS OF THE HOUR. WE'RE TRYING TO FINISH
14 UP THIS EVENING. BUT WE HAVE FORTY MORE JURORS ON
15 STAND-BY; AND WE'RE GOING TO FINISH UP HERE WITHIN
16 THE HOUR. WE'RE TRYING TO ACCOMMODATE THOSE OTHER
17 FORTY SO THEY CAN KNOW ABOUT CAR POOLING AND CHILD
18 CARE AND JOBS. AND THANK YOU FOR YOUR
19 UNDERSTANDING. MR. DUBOSE, JUROR NUMBER 90, ON
20 YESTERDAY YOU WERE GIVEN AN OATH AS A JUROR IN THIS
21 CASE. YOU UNDERSTAND THAT YOU ARE STILL UNDER
22 OATH, PLEASE, SIR?

23 A. YES, SIR.

24 Q. AND FURTHER, MR. DUBOSE, HAS THERE BEEN ANY CHANGE
25 IN YOUR CIRCUMSTANCES SUCH THAT YOUR QUESTIONNAIRE

RICHARD L. DUBOSE - EXAM. BY THE COURT

1 THAT YOU WOULD LIKE TO IN ANY WAY AMEND OR ALTER
2 THAT?

3 A. NO, SIR.

4 Q. HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?

5 A. NO, SIR.

6 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
7 GUILT OR THE INNOCENCE OF THE DEFENDANT, KENNETH
8 SIMMONS?

9 A. NO, I HAVEN'T. I MIGHT WANT TO TAKE THAT BACK. I
10 MIGHT HAVE READ SOMETHING, BUT I DON'T REMEMBER
11 ANYTHING ABOUT THE CASE.

12 Q. BE IF YOU READ ANYTHING, YOU DON'T REMEMBER ENOUGH
13 DETAILS TO HAVE FORMED AN OPINION?

14 A. I DON'T EVEN REMEMBER -- WHAT I'M TRYING TO TELL
15 YOU I MIGHT HAVE READ IT, BUT I DON'T REMEMBER
16 ANYTHING ABOUT IT NOW.

17 Q. SO COULD YOU GIVE A FAIR TRIAL TO BOTH THE STATE
18 AND THE DEFENDANT?

19 A. I BELIEVE SO.

20 Q. AND UNDERSTAND, PLEASE MR. DUBOSE, WE'RE NOT TRYING
21 TO INVADE YOUR PRIVACY OR BEING PERSONAL BY ASKING
22 YOU CERTAIN QUESTIONS. BUT THIS IS THE ONLY
23 PROCEDURE THAT WE HAVE WHEREIN BEFORE THE JURY IS
24 STRUCK THAT THE COURT AND THE ATTORNEYS ARE GIVEN
25 THE OPPORTUNITY TO QUESTION YOU ON CERTAIN OF YOUR

RICHARD L. DUBOSE - EXAM. BY THE COURT

- 1 VIEWS. THERE ARE NO RIGHT OR WRONG ANSWERS. ANY
2 ANSWERS YOU GIVE ARE RIGHT. YOU'RE GOING TO GRADE
3 OUT A+ AND STILL GET YOUR TWENTY-FIVE DOLLARS A DAY
4 FOR YESTERDAY AND TODAY WITHOUT ANY BONUS OR
5 COMMISSION. SO PLEASE DON'T BE OFFENDED BY ANY OF
6 THESE QUESTIONS. IT'S IMPORTANT THAT YOU
7 UNDERSTAND, MR. DUBOSE, THAT IN THE CASES FOR TRIAL
8 IN THE COURTS OF THIS STATE, EVERY PERSON CHARGED
9 WITH A CRIMINAL OFFENSE IS ALWAYS PRESUMED OR
10 THOUGHT TO BE INNOCENT OF THOSE CHARGES UNTIL OR
11 UNLESS THE STATE REMOVES THAT PRESUMPTION OF
12 INNOCENCE BY EVIDENCE SATISFYING THE JURY BEYOND A
13 REASONABLE DOUBT. DO YOU UNDERSTAND?
- 14 A. YES, SIR, I DO.
- 15 Q. AND IN A MURDER CASE WHERE THE STATE IS SEEKING THE
16 DEATH PENALTY, THERE ARE TWO PARTS OR TWO PHASES TO
17 THAT TRIAL. THERE IN THE FIRST PHASE, THE STATE
18 MUST PROVE THE GUILT OF THE DEFENDANT BEYOND A
19 REASONABLE DOUBT OF MURDER. AND IF THE VERDICT OF
20 THE JURY IS THAT OF GUILTY OF MURDER, THEN WE WOULD
21 PROCEED TO THE SECOND STAGE OR SECOND PHASE OF THE
22 PROCEEDING, AND THE JURY WOULD BE ASKED TO MAKE A
23 RECOMMENDATION AS TO A SENTENCE TO THE COURT. AND
24 THOSE TWO RECOMMENDATIONS WOULD BE ONE, LIFE
25 IMPRISONMENT WITHOUT PAROLE; OR TWO, A DEATH

RICHARD L. DUBOSE - EXAM. BY THE COURT

1 PENALTY. NOW THE STATE HAS THE BURDEN OF PROVING
2 ONE OR MORE STATUTORY -- THAT MEANS LAW PASSED BY
3 THE LEGISLATURE BY MEANS OF A STATUTE --
4 AGGRAVATING CIRCUMSTANCES BEFORE THE JURY COULD
5 RECOMMEND THE DEATH PENALTY. AND IF THEY SO FIND
6 BEYOND A REASONABLE DOUBT BY WAY OF A UNANIMOUS
7 VERDICT, THEN THE JURY MAY OR COULD, NOT MUST OR
8 SHALL; NOT OBLIGATORY OR MANDATORY; BUT MAY BRING
9 IN A RECOMMENDATION OF THE DEATH PENALTY. DURING
10 THIS SENTENCING PHASE OF THE TRIAL, THE PENALTY
11 PHASE OF THE TRIAL, THE DEFENDANT WOULD BE GIVEN
12 THE OPPORTUNITY TO OFFER EVIDENCE IN MITIGATION OR
13 LESSENING OF ANY PENALTY THAT MAY BE IMPOSED OR
14 RECOMMENDED BY THE JURY. AND IF THE JURY FINDS
15 THAT MITIGATING CIRCUMSTANCES, EVEN THOUGH THE
16 STATE HAS PROVEN BEYOND A REASONABLE DOUBT A
17 STATUTORY AGGRAVATING CIRCUMSTANCE, THEN THE JURY
18 COULD RECOMMEND LIFE IMPRISONMENT WITHOUT PAROLE.
19 AND EVEN IN THE ABSENCE OF THE DEFENDANT PROVING TO
20 YOUR SATISFACTION MITIGATING CIRCUMSTANCES, THE
21 JURY COULD AS A MATTER OF MERCY, THE GOODNESS OF
22 THEIR HEARTS, RECOMMEND LIFE IMPRISONMENT WITHOUT
23 PAROLE. DO YOU UNDERSTAND THAT PROCEDURE?

24 A. YES, I DO.

25 Q. AND HAVE YOU HAD AN OPPORTUNITY, PLEASE, TO REVIEW

RICHARD L. DUBOSE - EXAM. BY THE COURT

1 THAT TWO PAGE SHEET WHICH SETS FORTH TYPES ONE,
2 TWO, AND THREE JURORS?

3 A. YES, SIR.

4 Q. WHICH OF THE THREE CATEGORIES, PLEASE MR. RICHARD
5 DUBOSE, DO YOU FEEL THAT YOU WOULD FALL INTO?

6 A. WELL, I BELIEVE NUMBER THREE IS PROBABLY THE MORE
7 OF MY UNDERSTANDING AS BEING THE LAW FOR DEATH
8 PENALTIES.

9 Q. AND WOULD YOU BE ABLE TO SIT AS AN IMPARTIAL JUROR
10 STARTING OUT WITH A CLEAN SLATE -- DON'T LEAVE YOUR
11 COMMON SENSE IN THE PARKING LOT -- BUT WITH A CLEAR
12 UNDERSTANDING THAT THE DEFENDANT IS PRESUMED
13 INNOCENT OF THE CHARGES, AND THE STATE HAS TO PROVE
14 THE GUILT, AND CAREFULLY LISTEN TO ALL WITNESSES
15 WHETHER THE STATE OR DEFENDANT, AND THEN EXCHANGE
16 YOUR VIEWS WITH THE OTHER JURORS, AND THEN ARRIVE
17 AT A FAIR VERDICT TO BOTH THE STATE AND THE
18 DEFENDANT WHICH MAY BE DEATH PENALTY
19 RECOMMENDATION; MAY BE LIFE IMPRISONMENT WITHOUT
20 PAROLE. YOU COULD IMPOSE EITHER DEPENDING UPON THE
21 EVIDENCE?

22 A. I THINK SO.

23 Q. ALL RIGHT.

24 THE COURT: MR. SOLICITOR, WOULD YOU
25 LIKE TO QUESTION THE GENTLEMAN?

MR. BAILEY: YES, SIR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. DUBOSE, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW QUESTIONS HERE JUST TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU. BEFORE YESTERDAY WHEN YOU FOUND OUT THAT YOU MIGHT BE A JUROR ON A DEATH PENALTY CASE, HAD YOU EVER THOUGHT ABOUT THE DEATH PENALTY IN ANY DETAIL?

A. WHAT DO YOU MEAN BY -- THE SENTENCING OR---

Q. NOT RELATING TO THIS CASE BUT JUST IN GENERAL. HAVE YOU EVER TALKED ABOUT IT TO FRIENDS; HOW THEY COME UP AT CHURCH, SITTING AROUND THE TABLE EATING SUPPER, OR ANYTHING LIKE THAT?

A. I'VE HAD OCCASIONS THAT THERE HAVE BEEN A FEW DEATH PENALTIES THAT HAVE BEEN CARRIED OUT LATELY THAT I'VE SAID SOMETHING ONE WAY OR THE OTHER ABOUT.

Q. OKAY. WERE YOU GENERALLY IN FAVOR OF IT OR FOR IT IN SOME CASES, AGAINST IT IN SOME CASES?

A. I'D HAVE A HARD TIME MAKING A DECISION ON THAT. I'VE NEVER BEEN ON A TRIAL OR IN A JURY THAT ACTUALLY HAD TO DO THAT. SO I DON'T KNOW WHAT THESE PEOPLE HAD TO GO THROUGH TO MAKE THAT DECISION. AND I CAN'T ANSWER UNTIL I ACTUALLY HAVE TO BE CONFRONTED WITH IT.

RICHARD L. DUBOSE - DIRECT/MR. BAILEY

1 Q. YES, SIR.

2 A. SO I HAVEN'T BEEN ABLE TO MAKE A COMPLETE DECISION
3 ON THAT BECAUSE I DON'T KNOW ALL THE KNOWLEDGE
4 BEHIND IT.

5 Q. AND YOU UNDERSTAND THAT NOBODY IS GOING TO ASK YOU
6 FOR A PREDICTION ON WHAT YOU'D DO IN THIS CASE
7 BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS YET.
8 WE'RE JUST TALKING IN GENERAL TERMS.

9 A. RIGHT; I UNDERSTAND.

10 Q. ABOUT, YOU KNOW, ANY DEATH PENALTY CASE.

11 A. RIGHT.

12 Q. AND YOU UNDERSTAND THAT IF THE JURY GETS INTO THE
13 SECOND PHASE OF THE TRIAL, THAT WOULD MEAN THE
14 DEFENDANT WAS ALREADY CONVICTED OF MURDER IN THE
15 FIRST PART OF THE TRIAL?

16 A. YES.

17 Q. AND THE PURPOSE OF HAVING THAT SECOND PHASE IS TO
18 ALLOW THE INTRODUCTION OF ADDITIONAL EVIDENCE THAT
19 DIDN'T COME OUT IN THE FIRST PART OF THE TRIAL?

20 A. I UNDERSTAND.

21 Q. I'D BE PUTTING UP EVIDENCE IN AGGRAVATION TRYING TO
22 PERSUADE THE JURY THAT THE DEATH PENALTY WAS THE
23 APPROPRIATE SENTENCE. THE DEFENSE WOULD BE AT THAT
24 PART OF THE TRIAL FOR A LIFE SENTENCE WITHOUT
25 PAROLE. THE JUDGE WOULD INSTRUCT THE JURY ON WHAT

RICHARD L. DUBOSE - DIRECT/MR. BAILEY

1 THE LAW IS TO APPLY; AND THE JURY WOULD THEN GO
2 BACK AND DELIBERATE, AND THEY WOULD COME BACK WITH
3 A DECISION. AND LIKE THE JUDGE SAID, WHATEVER THE
4 DECISION OF THE JURY IS, HE WILL ACCEPT THAT, AND
5 THAT WILL BE THE ORDER OF THE COURT. SO THE JURY
6 AND NOT THE JUDGE DETERMINES THE PUNISHMENT. AND
7 THAT PUNISHMENT IS ACTUALLY CARRIED OUT.

8 A. I UNDERSTAND.

9 Q. IF THE JURY VOTES FOR THE DEATH SENTENCE, THEN THAT
10 PERSON WILL BE EXECUTED.

11 A. I UNDERSTAND.

12 Q. ALL RIGHT, SIR. AND BEARING IN MIND THERE ARE NO
13 RIGHT OR WRONG ANSWERS, COULD YOU TELL US JUST IN
14 ABSTRACT TERMS -- NOT RELATING TO THIS CASE -- BUT
15 IF THE CASE IS BAD ENOUGH, THE EVIDENCE INTRODUCED
16 WAS BAD ENOUGH, COULD YOU VOTE FOR THE DEATH
17 PENALTY KNOWING THAT SENTENCE WOULD BE CARRIED OUT?

18 A. I BELIEVE SO. LIKE I SAID, I'VE NEVER BEEN
19 CONFRONTED WITH THAT.

20 Q. YES, SIR.

21 A. SO I DON'T KNOW THAT FOR A FACT. BUT I WOULD TRY
22 TO MAKE A DECISION. AND IT WOULD BE CORRECT AT
23 LEAST FROM MY POINT OF VIEW.

24 Q. ALL RIGHT, SIR. AND DO YOU HAVE ANY STRONGLY HELD
25 PERSONAL OR RELIGIOUS BELIEFS IN REGARD TO THE

RICHARD L. DUBOSE - CROSS/MR. THEOS

1 DEATH PENALTY THAT YOU THINK MIGHT INTERFERE WITH
2 YOUR ABILITY TO FAIRLY CONSIDER THAT POSSIBLE
3 OPTION AS A PUNISHMENT?

4 A. NO, I DON'T.

5 Q. ALL RIGHT, SIR. IF ALL TWELVE JURORS UNANIMOUSLY
6 VOTE FOR THE DEATH PENALTY, THEN EACH JUROR WOULD
7 BE ASKED TO SIGN THEIR NAME TO A VERDICT FORM THAT
8 WOULD RESULT IN THAT EXECUTION TAKING PLACE. COULD
9 YOU SIGN THAT PAPER IF YOU HAD ALREADY HEARD ALL
10 THE EVIDENCE AND VOTED FOR THE DEATH PENALTY?

11 A. I THINK I WOULD BE OBLIGATED TO; YES, SIR.

12 Q. ALL RIGHT, SIR. COULD YOU ANNOUNCE THAT DECISION
13 IN OPEN COURT IF THAT WAS YOUR DECISION?

14 A. IF I WAS POLLED, YES.

15 Q. ALL RIGHT, SIR. MR. DUBOSE, THAT'S ALL I'VE GOT.
16 THANK YOU VERY MUCH.

17 THE COURT: ANY QUESTIONS PLEASE,
18 MR. THEOS?

19 MR. THEOS: JUST A COUPLE OF
20 QUESTIONS.

21 CROSS-EXAMINATION

22 BY MR. THEOS:

23 Q. MR. DUBOSE, I'M JERRY THEOS. I AND JIM BELL ARE
24 THE LAWYERS THAT REPRESENT KENNETH SIMMONS. AND WE
25 APPRECIATE YOU BEING HERE. WE KNOW WE'RE RUNNING

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1 LATE. I WILL KEEP MY QUESTIONS VERY BRIEF, AND I
2 WILL NOT BE REPETITIVE HOPEFULLY. I SEE THAT
3 YOU'RE A TEACHER IN DORCHESTER COUNTY?

4 A. RIGHT.

5 Q. CAN YOU TELL ME WHAT YOU TEACH, WHAT SUBJECT?

6 A. YES. I TEACH SCIENCE IN THE MIDDLE SCHOOL, AT
7 DUBOSE MIDDLE SCHOOL.

8 Q. OKAY. AND YOU'VE BEEN A TEACHER ALL YOUR CAREER?

9 A. YES.

10 Q. AND THAT'S -- YOU'VE NEVER DONE ANY OTHER SORT OF
11 WORK?

12 A. NO. WELL, JUST ALMOST ALL MY LIFE ANYWAY, 28, 29
13 YEARS, WHATEVER.

14 Q. THE ONLY COUPLE OF THINGS THAT I'D LIKE TO SHARE
15 WITH YOU AND POINT OUT WITH YOU AT THIS POINT IS
16 THE PART THAT WE'VE BEEN TALKING ABOUT POTENTIAL
17 PUNISHMENT AND POTENTIAL PENALTIES, YOUR VIEWS ON
18 THE DEATH PENALTY, WHETHER OR NOT YOU COULD IMPOSE
19 IT, WHETHER OR NOT YOU WOULD CONSIDER OTHER
20 SENTENCES. BUT I WANT TO MAKE SURE THAT WE'RE
21 CLEAR BEFORE YOU LEAVE THIS EVENING THAT AS MR.
22 SIMMONS SITS HERE, HE'S PRESUMED TO BE INNOCENT.
23 JUST BECAUSE THE STATE HAS CHARGED HIM, INDICTED
24 HIM, AND HE SITS HERE ON TRIAL AND THEY'RE SEEKING
25 THE DEATH PENALTY CERTAINLY ISN'T A COMMENT ON HIS

RICHARD L. DUBOSE - CROSS/MR. THEOS

1 GUILT OR INNOCENCE. DO YOU UNDERSTAND WE WOULDN'T
2 EVEN GET TO THAT SECOND PORTION OF THE TRIAL IF MR.
3 SIMMONS IS FOUND NOT GUILTY?

4 A. RIGHT; I UNDERSTAND.

5 Q. DO YOU BELIEVE THAT IN THE GUILT PHASE, AS THE
6 JUDGE PUT IT; IN THE GUILT PHASE OF MR. SIMMONS'
7 TRIAL YOU COULD LISTEN TO WHAT THE STATE HAD TO
8 OFFER, AND IF THEY FAILED TO MEET THEIR BURDEN OF
9 PROVING MR. SIMMONS' GUILT BEYOND A REASONABLE
10 DOUBT. DO YOU FEEL THAT YOU COULD FIND MR. SIMMONS
11 NOT GUILTY?

12 A. SURE.

13 Q. AND THEN ON THE OTHER HAND IF HE WERE FOUND GUILTY
14 AS MR. BAILEY SAID, YOU COULD LISTEN TO BOTH THOSE
15 THINGS THAT MR. BAILEY OFFERED AND THOSE THINGS
16 THAT MR. BELL AND I MIGHT OFFER ON MR. SIMMONS'
17 BEHALF AND CONSIDER WHAT SENTENCE WOULD BE THE MOST
18 APPROPRIATE?

19 A. I WOULD HOPE SO. I CAN'T TELL YOU FOR SURE, BUT I
20 WOULD HOPE SO.

21 Q. WELL, OF COURSE, YOU DON'T HAVE ANY OF THOSE FACTS,
22 AND YOU DON'T KNOW WHAT WE MIGHT PRESENT YOU, AND
23 WE'RE NOT REALLY AT LIBERTY TO DISCUSS THE CASE
24 WITH YOU AND THE SPECIFIC FACTS AT THIS POINT. BUT
25 YOU WOULD CERTAINLY LISTEN TO EVERYTHING MR. BAILEY

RICHARD L. DUBOSE - CROSS/MR. THEOS

1 HAD TO OFFER IN AGGRAVATION AND EVERYTHING MR. BELL
2 AND I WOULD HAVE TO OFFER IN MITIGATION BEFORE YOU
3 MADE A DECISION; IS THAT CORRECT?

4 A. CORRECT.

5 Q. THANK YOU VERY MUCH.

6 MR. BAILEY: NO FURTHER QUESTIONS,
7 YOUR HONOR.

8 THE COURT: MR. DUBOSE, I FIND YOU
9 QUALIFIED TO SERVE AS A JUROR IN THIS CASE;
10 HOWEVER, YOU HAVE NOT BEEN SELECTED AS YET. I
11 WOULD ASK THAT YOU PLEASE RETURN AT 10:00 A.M.
12 TOMORROW MORNING, WEDNESDAY, THE 24TH OF FEBRUARY,
13 AND AT THAT TIME FOURTEEN JURORS, TWELVE OF THE
14 FIRST, WOULD BE CONSIDERED THE JURY PANEL
15 OFFICIALLY. AND THEN THERE WOULD BE TWO
16 ALTERNATES, AND YOU WOULD BE CONFINED DURING THE
17 REMAINING TIME IT TAKES TO TRY THIS CASE AT THE
18 HOLIDAY INN. THERE'S A PHONE NUMBER THERE WHERE
19 YOUR FAMILY COULD REACH YOU IN THE EVENT OF AN
20 EMERGENCY BECAUSE YOU'RE NOT NORMALLY ALLOWED ANY
21 COMMUNICATION WITH THE OUTSIDE WORLD OTHER THAN
22 WATCHING T.V. AND READING NEWSPAPERS EXCLUDING, OF
23 COURSE, REDACTING ANY REPORT OF THIS TRIAL BECAUSE
24 YOU ARE TO DECIDE THE CASE BASED ON THE TESTIMONY
25 YOU HEAR UNDER OATH FROM THIS WITNESS STAND, NOT

1 THE OPINION OF SOME NEWS REPORTER WHICH MAY BE
2 COMPLETELY ACCURATE. BUT IT MAY BE, ON THE OTHER
3 HAND, NOT IN COMPLIANCE WITH THE RULES OF
4 EVIDENCE. AND YOU CERTAINLY UNDERSTAND THAT. CAN
5 YOU THINK OF ANY SITUATION REGARDING YOUR HEALTH OR
6 YOUR FAMILY'S HEALTH OR OCCUPATION OR WELL BEING
7 WHERE IT WOULD JUST RENDER IT TOTALLY IMPOSSIBLE
8 FOR YOU TO BE TAKEN AWAY FROM YOUR NORMAL LIFE THE
9 NEXT SEVEN OR EIGHT DAYS, MR. DUBOSE?

10 MR. DUBOSE: IT'S NOT SOMETHING I
11 LOOK FORWARD TO, BUT I WILL DO IT; YES, SIR.

12 THE COURT: OKAY. THANK YOU. WE
13 APPRECIATE IT, AND YOU'RE EXCUSED TO GO AT THIS
14 TIME. DON'T READ ANYTHING ABOUT IT, EXPOSE
15 YOURSELF. AND BRING YOUR CLOTHES AND RAZOR BLADES
16 PREPARED TO STAY; AND WE'LL KNOW TOMORROW WHETHER
17 YOU'RE SELECTED OR NOT.

18 MR. DUBOSE: AND I ONLY WILL STAY IF
19 I'M ONE OF THE FOURTEEN?

20 THE COURT: THAT'S RIGHT. WE'RE
21 QUALIFYING 37. SO YOU'VE GOT ABOUT TWO-AND-A-HALF
22 TO ONE ODDS.

23 MR. DUBOSE: THANK YOU.

24 THE COURT: THANK YOU. GOOD NIGHT.
25 ALL RIGHT. BRING THE NEXT ONE IN. CHERYL, LET ME

CHERYL M. SIGWALD - EXAM. BY THE COURT

1 ASK YOU THIS: RICHARD LARSON IS THE NEXT ONE.
2 WOULD Y'ALL LOOK AT NUMBER 283 QUICKLY? BUT I'M
3 NOT SURE WE SHOULDN'T GO AHEAD AND EXCUSE THAT
4 LADY. SHE'S EXTREMELY DIFFICULT; MORE THAN FORTY
5 MINUTES; SHE BROKE HER BACK; A PINCHED NERVE; AND
6 HERE I'VE GOT HER SITTING BACK IN A HARD CHAIR IN
7 THE JURY ROOM; AND IT'S TEN MINUTES OF EIGHT. DO
8 Y'ALL THINK THAT'S SOMEBODY THAT WE CAN EXCUSE BY
9 AGREEMENT? WE HAVE TWO MORE TO FIND ONE.

10 MR. BAILEY: YES, SIR; I AGREE.

11 MR. THEOS: YES, SIR, I THINK WE CAN
12 EXCUSE HER.

13 THE COURT: BRING MRS. SIGWALD IN,
14 PLEASE.

15 (JUROR NUMBER 283, A WHITE FEMALE, IS CALLED.)

16 - - - - -

17 WHEREUPON,

18 CHERYL M. SIGWALD, WHO BEING PREVIOUSLY
19 SWORN TO TELL THE TRUTH, TESTIFIED AS
20 FOLLOWS:

21 EXAMINATION

22 BY THE COURT:

23 Q. MRS. SIGWALD, WE JUMPED THE LINE WITH YOU. THERE'S
24 MR. LARSON AHEAD OF YOU, BUT IT'S BECAUSE OF THE
25 LATENESS OF THE HOUR, AND UPON REVIEWING YOUR

CHERYL M. SIGWALD - EXAM. BY THE COURT

1 SITUATION WHERE YOU TELL ME YOU HAVE EXTREME
2 DIFFICULTY SITTING MORE THAN FORTY MINUTES BECAUSE
3 YOU HAVE BROKEN YOUR BACK AND HAVE NERVES.

4 A. I APPRECIATE IT.

5 Q. AND WE JUST FELT THAT WE SHOULD EXCUSE YOU IN
6 REGARD TO THIS MATTER AS YOU REQUESTED. AND IF
7 YOU'VE GOT TIME, I CAN GO TO MY BRIEF CASE AND GET
8 YOU SOME STAMPS BECAUSE YOU COMPLAINED THAT THERE
9 SHOULD HAVE BEEN A STAMP. DO YOU WANT SOME STAMPS?
10 I'LL GO GET YOU SOME.

11 A. NO, SIR. IT JUST DIDN'T PUT AN ADDRESSED ENVELOPE
12 THAT WAS SELF-STAMPED. SO I WONDERED IF THERE
13 WASN'T ANY STAMPS.

14 Q. I FUSS ALL THE TIME. BUT LAWYERS; THEY SEND ME ALL
15 THIS STUFF THAT REQUIRES THREE AND FOUR DOLLARS
16 WORTH AND I HAVE TO SEND IT TO THE CLERK OF COURT.
17 AND THAT COMES OUT OF MY POCKET. IT'S CALLED AN
18 S.A.E., A SELF-ADDRESSED ENVELOPE. I DON'T LIKE TO
19 PAY THAT POSTAGE. THEY'RE CHARGING SOMEBODY FOR
20 IT. IN ANY EVENT, YOU'RE EXCUSED.

21 A. I APPRECIATE THAT.

22 Q. HAPPY DAYS FOR YOU; AND I HOPE YOUR HEALTH
23 IMPROVES, MA'AM.

24 A. THANK YOU.

25 THE COURT: BRING IN RICHARD

RICHARD LARSON - EXAM. BY THE COURT

LARSON.

(JUROR NUMBER 187, A WHITE MALE, IS CALLED.)

- - - - -

WHEREUPON,

RICHARD LARSON, WHO BEING PREVIOUSLY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

EXAMINATION

BY THE COURT:

Q. YOUR NAME, SIR, IS?

A. RICHARD LARSON.

Q. MR. LARSON, YOU'RE JUROR NUMBER 187. YOU'RE STILL
UNDER OATH. AND LET ME PLEASE APOLOGIZE TO YOU FOR
THE LATENESS OF THE HOUR. AS MY WIFE TELLS ME WHEN
I TELL HER TO HURRY UP TO WAIT, SHE SAYS "WELL, GET
TO KNOW WHAT YOU'RE DOING BETTER;" AND "DON'T
DON'T CALL ME TO BE THERE UNTIL I'M READY." SO WE
ARE TRYING VERY DILIGENTLY TO COMPLETE THE
QUALIFICATIONS TONIGHT SO WE CAN LET THESE OTHER
FORTY JURORS KNOW TO GO BACK TO THEIR JOBS AND CAR
POOLS AND THINGS. AND THAT'S WHY WE'RE WORKING SO
LATE. I'M NOT PAID ENOUGH TO WORK THIS LATE EVERY
NIGHT. BUT WE ARE DOING IT. AND THANK YOU FOR
YOUR PATIENCE. NOW, MR. LARSON, YOU WERE GIVEN AN
OATH ON YESTERDAY. MAY I REMIND YOU, PLEASE, THAT

RICHARD LARSON - EXAM. BY THE COURT

1 YOU ARE STILL UNDER OATH AT THIS TIME. AND FURTHER
2 ON YESTERDAY DURING THE GENERAL QUALIFICATIONS WHEN
3 THE INQUIRY WAS MADE OF THE ENTIRE PANEL AS TO
4 WHETHER YOU HAD SEEN, HEARD, OR READ ANYTHING ABOUT
5 THIS CASE, YOU INDICATED THAT YOU HAD. WHAT WAS
6 THE SOURCE OF YOUR INFORMATION, AND WHEN WAS IT?

7 A. WELL, JUST THE ARTICLES IN THE NEWSPAPERS, THE
8 SUMMERVILLE JOURNAL SCENE, AND---

9 Q. POST AND COURIER?

10 A. POST AND COURIER.

11 Q. AND ARE THOSE RECENT ARTICLES OR ARTICLES OF
12 SEVERAL YEARS AGO?

13 A. WELL, I'VE KIND OF JUST FOLLOWED THE CASE EVER
14 SINCE IT HAPPENED ACTUALLY.

15 Q. SURELY. AND AS A RESULT OF THOSE ARTICLES, MR.
16 LARSON, HAVE YOU EXPRESSED AN OPINION OR COME TO A
17 CONCLUSION ABOUT AN OPINION YOU HAD ABOUT THE FACTS
18 OF THE CASE?

19 A. NO.

20 Q. AND DO YOU UNDERSTAND, PLEASE, THAT UNDER THE LAW
21 BOTH THE STATE AND THE DEFENDANT ARE ENTITLED TO A
22 FAIR TRIAL WHERE A JUROR COMES IN, AND WHILE THEY
23 MAY HAVE SOME SMATTERING OR READ SOMETHING ABOUT
24 IT, YOU WIPE THE SLATE CLEAN. YOU DON'T LEAVE YOUR
25 COMMON SENSE IN THE PARKING LOT. BUT YOU COME IN,

RICHARD LARSON - EXAM. BY THE COURT

1 AND YOU LISTEN CAREFULLY TO THE TESTIMONY OF THE
2 STATE, TESTIMONY OF THE DEFENDANT. AND THEN YOU
3 LISTEN TO THE LAW THAT THE COURT INSTRUCTS YOU TO
4 FOLLOW. AND THEN YOU GO BACK AND EXCHANGE VIEWS
5 WITH THE JURORS WHEN I ALLOW YOU TO COMMENCE THE
6 DELIBERATIONS WHICH IS AT THE END OF ALL
7 TESTIMONY. AND THEN YOU ARRIVE AT A VERDICT. DO
8 YOU UNDERSTAND THAT PROCEDURE?

9 A. YES, SIR.

10 Q. AND, PLEASE, THE COURT -- NEITHER THE COURT NOR THE
11 ATTORNEYS INTEND TO INQUIRE INTO YOUR PRIVATE
12 AFFAIRS OR PERSONAL MATTERS. BUT WE DO WANT TO TRY
13 AND ASK A FEW QUESTIONS ABOUT YOUR VIEWS ON SOME
14 THINGS. AND WE HAVE TO DO IT AT THIS TIME ALTHOUGH
15 IT APPEARS PREMATURELY, BECAUSE THERE'S BEEN NO
16 EVIDENCE IN THIS CASE. IT HASN'T STARTED. BUT IF
17 WE DON'T ASK THESE QUESTIONS NOW, WE WON'T HAVE THE
18 OPPORTUNITY LATER. IT'S A BASIC PRECEPT AND
19 IMPORTANT IN OUR LAW THAT EVERY DEFENDANT THAT
20 COMES INTO THIS COURT REGARDLESS OF THE ENORMITY OF
21 THE CHARGE OR THE NATURE OR SERIOUSNESS OF THE
22 CHARGE IS ALWAYS PRESUMED OR THOUGHT TO BE INNOCENT
23 OF THOSE CHARGES UNTIL AND UNLESS THE STATE REMOVES
24 THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
25 SATISFYING THE JURY OF THE GUILT OF THE DEFENDANT

RICHARD LARSON - EXAM. BY THE COURT

1 BEYOND A REASONABLE DOUBT. THAT'S IN THE GUILT
2 PHASE. THERE ARE TWO PHASES IN A DEATH PENALTY
3 MURDER CASE, ONE BEING THE GUILT PHASE WHICH I'VE
4 JUST EXPLAINED TO YOU. THE SECOND BEING THE
5 PENALTY PHASE, BEARING IN MIND THAT THE DEFENDANT
6 IS PRESUMED OR THOUGHT TO BE INNOCENT IN THE EYES
7 OF THE LAW. AND THERE'S NO BURDEN OF PROOF UPON
8 THE DEFENDANT TO PROVE ANYTHING. THE DEFENDANT
9 DOESN'T HAVE TO TAKE THE WITNESS STAND. IF HE DOES
10 NOT TAKE THE WITNESS STAND, I WOULD INSTRUCT THE
11 JURY THE FAILURE OF THE DEFENDANT TO TESTIFY RAISES
12 NO PRESUMPTION OR INFERENCE FOR OR AGAINST THE
13 GUILT OR INNOCENCE OF THE DEFENDANT. AND THAT FACT
14 MUST NOT ENTER INTO THE DELIBERATIONS, DISCUSSIONS,
15 OR CONSIDERATIONS WITH THE JURY IN ANY MANNER
16 WHATSOEVER IF THE DEFENDANT OPTED OR ELECTED NOT TO
17 TAKE THE WITNESS STAND. NOW DURING -- ASSUMING
18 ARGUENDO FOR PURPOSES OF THIS DISCUSSION THAT THE
19 STATE HAD PROVEN TO THE SATISFACTION OF THE
20 UNANIMOUS JURY THE GUILT OF THE DEFENDANT ON THE
21 CHARGE OF MURDER; IN THAT EVENT THERE WOULD BE A 24
22 HOUR HIATUS OR WAITING PERIOD IN THE CONCLUSION OF
23 THE GUILT TRIAL UNTIL THE COMMENCEMENT OF THE
24 PENALTY PHASE. AND DURING THE PENALTY PHASE, THE
25 STATE WOULD HAVE THE BURDEN OF PROVING ONE OR MORE

RICHARD LARSON - EXAM. BY THE COURT

1 STATUTORY AGGRAVATING CIRCUMSTANCES TO THE
2 SATISFACTION OF THE JURY. AND THERE ARE FOUR
3 ADDITIONAL INDICTMENTS BESIDES THE INDICTMENT FOR
4 MURDER. THEY CHARGE IN EACH OF THE INDICTMENTS A
5 SEPARATE OFFENSE; ONE FOR CRIMINAL SEXUAL CONDUCT;
6 ANOTHER FOR BURGLARY; ANOTHER FOR KIDNAPPING;
7 ANOTHER ONE FOR ARMED ROBBERY. AND IF THE STATE,
8 THROUGH SOLICITOR BAILEY, PROVES TO THE
9 SATISFACTION OF THE JURY THAT THE DEFENDANT DID
10 COMMIT MURDER WHILE IN THE COMMISSION OF ONE OF
11 THESE FOUR OTHER CRIMES ALLEGED, THEN THE JURY MAY
12 OR COULD -- IT'S NOT MANDATORY -- RETURN A
13 RECOMMENDATION TO THIS COURT OF THE DEATH PENALTY.
14 DURING THAT PENALTY PHASE, THE DEFENDANT IS
15 AFFORDED OR ALLOWED AN OPPORTUNITY TO OFFER
16 EVIDENCE IN MITIGATION OR LESSENING OF WHAT THAT
17 RECOMMENDATION TO THE COURT MIGHT BE. AND THE
18 COURT WOULD CARRY OUT AN ORDER, WHATEVER IS
19 RECOMMENDED BY THE JURY, WHETHER IT BE DEATH
20 PENALTY OR WHETHER IT BE LIFE IMPRISONMENT WITHOUT
21 PAROLE. NOW THE JURY COULD, EVEN THOUGH THE STATE
22 MAY HAVE PROVEN BEYOND A REASONABLE DOUBT ONE OR
23 MORE STATUTORY AGGRAVATING CIRCUMSTANCES; THE JURY
24 COULD AS AN ACT OF MERCY, OUT OF THE GOODNESS OF
25 THEIR HEARTS, RECOMMEND LIFE IMPRISONMENT WITHOUT

RICHARD LARSON - EXAM. BY THE COURT

1 PAROLE. DO YOU UNDERSTAND THAT?

2 A. YES.

3 Q. NOW, MR. LARSON, YOU WERE GIVEN EARLIER IN THE DAY,
4 OR THIS AFTERNOON, A TWO PAGE DOCUMENT WHICH
5 CONTAINS THREE TYPES OF JURORS. TYPE ONE, TWO, AND
6 THREE. DO YOU RECALL THOSE AND UNDERSTAND THEM?

7 A. YES, SIR.

8 Q. AND WHICH OF THOSE THREE WOULD YOU FEEL THAT YOU
9 WOULD FALL INTO?

10 A. NUMBER TWO.

11 Q. NUMBER TWO?

12 A. YES, SIR.

13 Q. AND NUMBER TWO BEING A SITUATION WHERE THE JUROR
14 WOULD, REGARDLESS OF THE EVIDENCE, ALWAYS VOTE TO
15 SENTENCE TO LIFE IMPRISONMENT WITHOUT PAROLE AND
16 WOULD NOT CONSIDER THE EVIDENCE THAT THE STATE
17 MIGHT OFFER RELATIVE TO IMPOSING THE DEATH PENALTY;
18 IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. IS THAT AN UNALTERABLE POSITION? ARE YOU JUST
21 OPPOSED TO THE DEATH PENALTY?

22 A. I THINK IT'S GOD'S CHOICE, NOT MINE, WHETHER HE
23 LIVES OR DIES.

24 Q. AND YOU WOULD NOT, UNDER ANY CIRCUMSTANCES, VOTE
25 OTHERWISE?

1 A. NO.

2 THE COURT: ALL RIGHT. WHAT SAY THE
3 DEFENSE?

4 MR. THEOS: YOUR HONOR, I JUST HAVE
5 ONE QUESTION.

6 THE COURT: SURE. YOU'RE WELCOME TO
7 QUESTION HIM TO THE EXTENT YOU FEEL PROPER.

8 DIRECT EXAMINATION

9 BY MR. THEOS:

10 Q. CAN YOU TELL ME WHAT THE BASIS OF YOUR OPINION IS?

11 A. JUST THAT I THINK THAT'S GOD CHOICE IF SOMEBODY
12 LIVES OR DIES. IT'S NOT MY DECISION.

13 Q. CAN YOU THINK OF ANY SITUATION THAT MIGHT BE SO
14 AGGRAVATED, SO HORRIBLE, SO SERIOUS, SO AGGRAVATED
15 AGAIN THAT YOU MIGHT CONSIDER THE ALTERNATIVE TO
16 LIFE IMPRISONMENT, THAT WOULD BE THE DEATH
17 PENALTY? CAN YOU THINK OF ANY SCENARIO WHERE YOU
18 MIGHT CONSIDER IT AS AN OPTION?

19 A. I DON'T KNOW. I GUESS IF IT HAPPENED TO MY WIFE OR
20 MY CHILDREN. I DON'T KNOW; MAYBE I'D RECONSIDER.
21 BUT I JUST DON'T THINK THAT'S A DECISION I COULD
22 MAKE.

23 MR. BAILEY: I DON'T HAVE ANY
24 FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: MR. SOLICITOR?

RICHARD LARSON - DIRECT/MR. THEOS

1 MR. BAILEY: NOTHING FURTHER, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. DID YOU WANT
4 TO BE HEARD?

5 MR. THEOS: NO, SIR.

6 THE COURT: MR. LARSON, THE COURT IS
7 GOING TO EXCUSE YOU FROM FURTHER SERVICE IN THIS
8 CASE. AND THANK YOU SO MUCH FOR GIVING YOUR TIME
9 YESTERDAY AND TODAY. WE KNOW YOU'RE UNDER-PAID,
10 BUT WE CAN'T HAVE JURY TRIALS WITHOUT JURORS WHO
11 COME WITH AN OPEN MIND AND WILLING TO SACRIFICE
12 BEING AWAY FROM THEIR JOBS AND YOUR FAMILY. AND
13 YOUR CHECK FOR TWENTY-FIVE DOLLARS YESTERDAY AND
14 TWENTY-FIVE DOLLARS TODAY WILL BE MAILED TO YOU.
15 AND IF YOU NEED A STATEMENT TO GIVE YOUR EMPLOYER,
16 OFFICE DEPOT, THE LADY I THINK IS STILL
17 DOWNSTAIRS. SOME EMPLOYERS DO PAY THE DIFFERENCE
18 IN YOUR REGULAR PAY. MAY I THANK YOU. AND YOU
19 DRIVE SAFELY, AND HAVE A NICE EVENING.

20 MR. LARSON: THANK YOU.

21 THE COURT: ALL RIGHT. BRING IN THE
22 LAST ONE, JOSEPH MCCRAY. AND, GENTLEMEN, WE NEED
23 TO PUT ON THE RECORD, THOUGH, ABOUT MR. RICHARD
24 LARSON. WHAT SAY THE STATE?

25 MR. BAILEY: NOT QUALIFIED.

RICHARD LARSON - DIRECT/MR. THEOS

1 THE COURT: WHAT SAY THE DEFENDANT?

2 MR. THEOS: HE'S NOT QUALIFIED, YOUR
3 HONOR.

4 THE COURT: THANK YOU.

5 MR. THEOS: YOUR HONOR---

6 THE COURT: YOU KNOW, THE POPE WAS
7 IN ST. LOUIS AND HE RECOMMENDED TO THE GOVERNOR
8 CLEMENCY IN A DEATH PENALTY CASE WHICH WAS GRANTED.
9 AND I HAVE THE GREATEST RESPECT FOR THE CATHOLIC
10 RELIGION. BUT I NOTICE THIS LAST GENTLEMAN WE WERE
11 SPEAKING ABOUT THAT HIS WIFE'S COUSIN WAS
12 MURDERED. AND I STARTED TO ASK HIM THAT IF
13 SOMEBODY KILLED THE POPE WOULD HE THINK THEY SHOULD
14 GET THE DEATH PENALTY. BUT HE MIGHT THINK I WAS
15 INTERFERING WITH HIS RELIGION. BUT THE THOUGHT DID
16 OCCUR TO ME, JERRY. AND I KNOW YOU'RE A MEMBER OF
17 THE GREEK ORTHODOX CHURCH, AREN'T YOU?

18 MR. THEOS: MY WIFE IS CATHOLIC.

19 THE COURT: I UNDERSTAND.

20 MR. THEOS: SO I ALTERNATE.

21 THE COURT: YES, SIR.

22 MR. THEOS: JUDGE, IF I COULD JUST
23 POINT OUT TO YOU ON THIS NEXT JUROR -- I THINK IT'S
24 NUMBER 219. I ALMOST HATE TO DO THIS; BUT IF
25 YOU'LL LOOK AT NUMBER 21, HIS THOUGHTS.

RICHARD LARSON - DIRECT/MR. THEOS

1 THE COURT: LOOK AT NUMBER 219 AND
2 LOOK AT WHAT, PLEASE?

3 MR. THEOS: HIS RESPONSE TO NUMBER
4 21.

5 THE COURT: I'M LOOKING AT IT. I'M
6 74. MY WIFE IS 71 AND IN POOR HEALTH. I MAY OR
7 MAY NOT BE CALLED WHERE AT ANY TIME?

8 MR. THEOS: YES, SIR. I ALMOST
9 HESITATE TO POINT THAT OUT SINCE THIS IS THE LAST
10 -- I BELIEVE IT'S THE LAST JUROR WE HAVE. WE ONLY
11 NEED ONE MORE.

12 THE COURT: WELL, WE'VE GOT ONE
13 EXTRA RIGHT NOW.

14 MR. THEOS: YES, SIR.

15 THE COURT: BUT I ALWAYS, LIKE JUDGE
16 EPPES SAYS, YOU ALLOW FOR A LITTLE SLIPPAGE. WE
17 MAY JUST WANT TO GO RIGHT TO THAT QUESTION, THOUGH
18 BEFORE WE---

19 THE COURT: WELL, I MEAN IF YOU
20 GENTLEMEN WOULD LIKE TO AGREE, I WOULD ENCOURAGE
21 YOU TO AGREE TO EXCUSE THEM WITHOUT EVEN TALKING TO
22 THEM AND JUST STOP WHERE WE ARE AND GO WITH 36
23 BECAUSE WE'RE GOING TO SEAT TWELVE, AND FIVE OF THE
24 TEN STRIKES. AND EITHER OF YOU MAY NOT EXHAUST ALL
25 YOUR STRIKES. THAT'S UP TO YOU, OF COURSE. BUT 15

RICHARD LARSON - DIRECT/MR. THEOS

1 AND 12 WOULD BE 27. AND THEN WE NEED TO SEAT TWO
2 ALTERNATES WOULD BE 29. AND IF EACH OF YOU
3 EXHAUSTED YOUR STRIKES OF TWO AND ONE ON THE
4 ALTERNATE, THAT WOULD BE SIX AND 29 WOULD BE 35,
5 AND WE HAVE ONE FOR SLIPPAGE. SO, AGAIN GENTLEMEN,
6 I'M GOING TO HAVE THE CLERK -- AND I DON'T KNOW
7 WHAT WE CAN DO TO SHOW OUR APPRECIATION TO THE
8 DEVOTION TO DUTY OF TEAL AND CHERYL. BUT I'M GOING
9 TO ASK THEM TO GET ON THAT PHONE TONIGHT AND CALL
10 EACH OF THESE 35. THE LAST THREE OR FOUR WE TOLD
11 TEN O'CLOCK. BUT TO TRY TO MAKE SURE THAT THEY'RE
12 HERE BECAUSE WHAT WE REALLY NEED TO DO IS TO HAVE A
13 ROLL CALL TO MAKE SURE THAT THEY'RE ALL HERE.
14 . MAYBE WE'LL LET THEM REPORT TO THE COURTROOM
15 BECAUSE WE DON'T HAVE ROOM TO PUT THEM IN THE TWO
16 JURY ROOMS BACK THERE. AND WE CAN GO TO THE GRAND
17 JURY ROOM AND CONDUCT THE STRIKES UNLESS YOU'RE
18 WILLING TO WAIVE YOUR ENTOURAGE OF FOUR LAWYERS AND
19 ONE EXCELLENT HELPER OVER THERE. I DON'T KNOW IF
20 THEY CAN ALL GET IN THERE.

21 MR. BAILEY: I CAN WAIVE SOME OF
22 THEM OR ALL OF THEM.

23 THE COURT: I'M JUST TRYING TO
24 BALANCE THE PLAYING FIELD.

25 MR. BAILEY: WE'RE GOING TO MAKE UP

JAMES MCCRAE - EXAM. BY THE COURT

1 OUR MINDS BEFORE THAT.

2 THE COURT: SO GENTLEMEN, SHALL WE
3 STOP AT 36? DON'T LET ME TALK YOU INTO IT. WE CAN
4 START AT EIGHT O'CLOCK IN THE MORNING AND GO
5 THROUGH ANOTHER PANEL.

6 MR. BAILEY: I'M FINE WITH---

7 THE COURT: THAT'S NOT A THREAT;
8 THAT'S A PROMISE. GO AHEAD.

9 MR. THEOS: I'D JUST AS SOON STOP AT
10 WHAT WE HAVE, YOUR HONOR.

11 THE COURT: ALL RIGHT. BRING THE
12 JUROR IN. MR. JOSEPH MCCRAE; EXCUSED BY CONSENT,
13 MAY WE PUT ON THE RECORD?

14 MR. THEOS: YES, SIR.

15 (AT THIS TIME REMAINING JURORS ARE BROUGHT INTO
16 COURTROOM.)

17 (JUROR NUMBER 219, A WHITE MALE, IS CALLED.)

18 THE COURT: THANK YOU, LADY AND
19 GENTLEMEN FOR BEING UP HERE WITH US. I HOPE Y'ALL
20 ARE GETTING PAID OVER-TIME.

21 - - - - -

22 WHEREUPON,

23 JAMES MCCRAE, WHO BEING PREVIOUSLY
24 SWORN TO TELL THE TRUTH, TESTIFIED AS
25 FOLLOWS:

EXAMINATIONBY THE COURT:

Q. COME IN, MR. MCCRAE.

A. HOW ARE YOU, SIR?

Q. WELL, LOOK HERE. I'VE GOT A LOT TO BE THANKFUL FOR. MR. MCCRAE, LET ME PLEASE APOLOGIZE TO YOU FOR THE LATENESS OF THE HOUR. I HOPE YOU UNDERSTAND THAT THERE'S SOME FORTY ODD JURORS THAT WOULD HAVE COME IN AT DIFFERENT TIMES TOMORROW; AND THOSE PEOPLE HAVE JOBS AND FAMILIES AND CAR POOLING RESPONSIBILITIES. AND THAT'S ONE REASON WE WORKED SO HARD WITH THOSE WHO CAME IN YESTERDAY AND TODAY IS TO TRY TO MINIMIZE THE INCONVENIENCE AND BURDENS ON ALL THE OTHERS. AND YOU HAPPEN TO BE THE LAST GENTLEMAN ON THIS LIST. AND IN REVIEWING THIS QUESTIONNAIRE THAT YOU SENT IN, I NOTE THAT YOU ARE 74?

A. THAT'S CORRECT.

Q. I TELL YOU; YOU LOOK LIKE YOU'RE 64.

A. I FEEL LIKE I'M 64.

Q. YOU LOOK GOOD. AND WE NOTE THAT YOUR WIFE IS 71 AND NOT IN GOOD HEALTH. AND WE'LL BE GLAD TO QUESTION YOU IF YOU THINK THAT YOU WANT TO STAY. BUT IF YOU THINK THAT YOU WOULD LIKE TO BE EXCUSED, THE LAWYERS HAVE AGREED TO EXCUSE YOU BECAUSE WE

JAMES MCCRAE

1 HAVE 36.

2 A. IF YOU NEED ME, I'LL STAY. IF YOU DON'T NEED ME,
3 I'LL---

4 Q. BUT, I DECLARE, YOU'VE GOT SUCH A GOOD ATTITUDE. I
5 THANK YOU. THAT'S SO IMPORTANT; IT REALLY IS, MR.
6 MCCRAE.

7 THE COURT: AND, SO, GENTLEMEN,
8 WOULD Y'ALL LIKE FOR ME TO QUESTION HIM AND HAVE
9 HIM AS THE 37TH JUROR?

10 MR. BAILEY: YOUR HONOR, I'D JUST
11 DEFER TO HIM.

12 THE COURT: SURE. BECAUSE OF YOUR
13 AGE, YOU'RE ENTITLED TO STAND ON THAT. BUT, YOU
14 KNOW, SENIOR CITIZENS, THEY'VE LIVED LIFE. THEY
15 KNOW WHAT'S COMING AND GOING. AND I APPRECIATE
16 SENIOR CITIZENS.

17 MR. MCCRAE: I DIDN'T KNOW THAT AT
18 65 WE GAVE UP OUR CIVIC RESPONSIBILITIES, JUDGE.

19 THE COURT: WELL, YOU DON'T. IT'S
20 NOT MANDATORY, BUT IT'S AN OBJECTION THAT'S
21 AVAILABLE TO YOU, MR. MCCRAE. AND IF YOU'RE
22 INCLINED TO STAY, WE'LL PROCEED WITH THE
23 QUESTIONING.

24 MR. MCCRAE: THEN I WON'T STAY.

25 THE COURT: NO. I'LL LET YOU BE THE

1 JUDGE.

2 MR. MCCRAE: NO. SERIOUSLY, MY WIFE
3 IS UPSET ABOUT ME HAVING STAYED IN THE FIRST PLACE
4 AND HAS CANCELLED A COUPLE OF APPOINTMENTS. IT
5 LOOKS LIKE THIS CASE IS GOING TO GO FOR A LONG
6 TIME.

7 THE COURT: SIX OR SEVEN OR EIGHT
8 DAYS. YOU'D BE SEQUESTERED.

9 MR. MCCRAE: I'D DEFER TO THE
10 COURT. IT MAKES NO DIFFERENCE TO ME. IF YOU NEED
11 A JUROR, I WILL STAY. IF YOU DON'T, THEN I WILL GO
12 ON.

13 THE COURT: WELL, YOU'RE MORE THAN
14 KIND. AND I WISH ALL JURORS HAD YOUR POSITIVE
15 CIVIC DUTY ATTITUDE. BUT I'M CONCERNED THAT WE
16 MIGHT UPSET YOUR WIFE. AND, YOU KNOW, I UPSET
17 ENOUGH PEOPLE UNINTENTIONALLY. AND YOUR CHECK FOR
18 TWENTY-FIVE DOLLARS FOR YESTERDAY AND TODAY WILL BE
19 MAILED TO YOU.

20 MR. MCCRAE: AND YOU WON'T NEED THIS
21 SHEET OF PAPER?

22 THE COURT: WE WON'T NEED IT. THANK
23 YOU FOR YOUR GOOD ATTITUDE; AND GOOD HEALTH TO YOU.

24 MR. MCCRAE: THANK YOU VERY MUCH.

25 THE COURT: THANK YOU SO MUCH. GOOD

1 NIGHT, MR. MCCRAE. I INQUIRE OF SOLICITOR BAILEY.
2 MR. BAILEY, ARE YOU SATISFIED WITH THE PROCEDURE
3 AND FAIRNESS THAT WAS EXERCISED DURING THE JURY
4 QUALIFICATION?

5 MR. BAILEY: YES, YOUR HONOR.

6 THE COURT: AND BEARING IN MIND THAT
7 YOUR OBJECTION STILL STANDS. I'M NOT ASKING YOU TO
8 WAIVE YOUR OBJECTIONS TO TWO OF THE RULINGS OF THE
9 COURT. AND MR. THEOS AND MR. BELL, PLEASE; ARE YOU
10 DISSATISFIED OR HAVE ANY COMPLAINT ABOUT THE MANNER
11 IN WHICH THE PROCEDURE HAS EVOLVED FOR THE GENERAL
12 QUALIFICATION FOR THE JURY STRIKE OF 36 THAT WE
13 HAVE?

14 MR. THEOS: YOUR HONOR, OTHER THAN
15 THE OBJECTIONS THAT WE NOTED FOR THE RECORD AND THE
16 EXCEPTIONS THAT WE TOOK, WE'RE SATISFIED.

17 THE COURT: SURE. YOU WOULD BE
18 PROTECTED ON THAT. SO IS THERE ANYTHING,
19 GENTLEMEN, THAT NEEDS TO BE BROUGHT TO THE
20 ATTENTION OF THE COURT PREPARATORY TO THE STRIKING
21 IN THE MORNING?

22 MR. BAILEY: NOT FROM THE STATE,
23 YOUR HONOR.

24 MR. THEOS: I DON'T BELIEVE SO, YOUR
25 HONOR.

MOTIONS

1 THE COURT: AND I WANT TO THANK
2 Y'ALL FOR YOUR COOPERATION AND YOUR DEVOTION TO
3 DUTY, SO TO SPEAK. HAD WE NOT HAD ABOUT A TWO HOUR
4 MISHAP WITH THE HANDLING OF THE NOTIFICATION AND
5 EXCUSES, WE COULD HAVE STOPPED YESTERDAY AT AN
6 EARLIER TIME AND STOPPED AT AN EARLIER TIME. BUT
7 WE DIDN'T GET STARTED UNTIL 4:30 YESTERDAY
8 AFTERNOON, AS YOU KNOW, WITH THE JURY
9 QUALIFICATION. SO I THINK IT'S NOW 8:15. I JUST
10 COMMEND Y'ALL. AND HOPEFULLY WE CAN TRY TO SLOW
11 DOWN A LITTLE BIT AND MAYBE START AT NINE AND STOP
12 AT SIX BECAUSE I DON'T WANT TO WEAR YOU OUT. I
13 WANT YOU TO BE AT YOUR VERY BEST AS ADVOCATES FOR
14 YOUR RESPECTIVE CLIENTS. BUT TOMORROW MORNING THE
15 JURORS ARE GOING TO BE HERE AT TEN. DO Y'ALL THINK
16 IF WE ASSEMBLED AT 9:30 THAT THAT WOULD GIVE US
17 ENOUGH TIME TO HAVE A -- I CALL IT A MOCK STRIKE.
18 IT WILL REALLY BE A REAL STRIKE IN THE ABSENCE OF
19 THE PRESENCE OF THE JURORS TO WHICH ALL ATTORNEYS
20 HAVE AGREED.

21 MR. BAILEY: YES, SIR.

22 THE COURT: AND MR. SIMMONS
23 UNDERSTANDS THAT AND AGREES TO IT, MR. THEOS?

24 MR. THEOS: YOUR HONOR, WE HAVEN'T
25 DISCUSSED THAT WITH HIM.

1 THE COURT: DO YOU NEED TO DISCUSS
2 IT WITH HIM? I'LL WAIT ON YOU.

3 MR. THEOS: NO, SIR. WE'VE MADE
4 THAT DECISION. THAT'S FINE.

5 THE COURT: SO DO YOU THINK IF WE
6 CONVENED AT 9:30 IN THE MORNING THAT WOULD BE
7 CONVENIENT?

8 MR. BAILEY: YES, SIR.

9 THE COURT: AND LET ME JUST SUGGEST;
10 WHY DON'T WE JUST PLAN ON -- CAN YOU JUST SET UP
11 YOUR EQUIPMENT -- IS THE GRAND JURY ROOM THE LARGER
12 OF THE ROOMS?

13 MR. BAILEY: NO, SIR; THE PETIT
14 JURY.

15 THE COURT: THE PETIT JURY IS THE
16 LARGER?

17 MR. BAILEY: YES, SIR.

18 THE COURT: THAT'S THE ONE OVER ON
19 THAT SIDE? (INDICATING.)

20 MR. BAILEY: YES, SIR.

21 THE COURT: WE'LL JUST SET UP AT
22 9:30 IN THE JURY ROOM. AND I'VE HAD CHERYL
23 DOWNSTAIRS FOR THE LAST COUPLE OF HOURS TYPING UP
24 THE LIST THAT HAS ONE THROUGH 36 ON IT. AND THEN
25 IT WILL HAVE; FOR EXAMPLE, IT WILL HAVE NUMBER ONE,

MOTIONS

1 JUROR NUMBER 284. AND IT WILL HAVE THAT JUROR'S
2 NAME AND THE FACT THAT'S A WHITE MALE. AND THAT
3 GOES DOWN. AND THEN SHE'S PUTTING OVER ON THE
4 OTHER COLUMN THOSE EXCUSED FOR THE OFFICIAL RECORD.

5 BUT IF Y'ALL WANT THAT, YOU'RE WELCOME TO STAY TO
6 GET IT, OR EITHER GET HERE IN THE MORNING A LITTLE
7 EARLY. BUT YOU PROBABLY HAVE YOUR OWN NOTES
8 BECAUSE WE WILL STRIKE, GENTLEMEN, IN THE ORDER IN
9 WHICH THE JURORS WERE SELECTED AND QUALIFIED. BY
10 THAT I MEAN THE CLERK WILL CALL OUT THE NAME OF
11 JUROR 284, AND THE STATE WILL EXERCISE ITS OPTION
12 OF EITHER PRESENTING THE JUROR OR EXCUSING THE
13 JUROR. THEN WE GO TO THE DEFENDANT. BUT THE STATE
14 ALWAYS HAS TO STRIKE FIRST. WE'RE NOT GOING BACK
15 TO THIS ALTERNATE SITUATION LIKE WE HAD IN THE
16 QUALIFICATION. DOES THAT MEET WITH THE APPROVAL OF
17 THE STATE?

18 MR. BAILEY: YES, SIR.

19 THE COURT: DOES IT MEET WITH THE
20 APPROVAL OF THE DEFENDANT?

21 MR. THEOS: YES, SIR.

22 THE COURT: AND THEN, GENTLEMEN,
23 ASSUME THAT WE CAN HAVE THAT STRIKE BETWEEN 9:30
24 AND 10:00; THEN WE'LL CALL OUT THOSE FOURTEEN
25 NAMES. AND DORCHESTER COUNTY -- MAJOR HAS BOUGHT

1 HIM A NEW VAN WHICH CAN BE USED AND WILL SEAT
2 SIXTEEN. BUT WE MAY NOT CAN GET THEM ALL IN IT
3 BECAUSE OF THE LUGGAGE. BUT SOME OF THEM MAY WANT
4 TO KEEP THEIR CARS. AND WE'LL SEND -- TIM --
5 CAPTAIN TIM WAS KIND ENOUGH TO CALL THE HOLIDAY
6 INN. THEY SAID YOU COULD START CHECKING IN THE
7 JURORS AT 8:00 A.M. IN THE MORNING, AND I TOLD THEM
8 WE'RE NOT GOING TO BE THERE THAT EARLY. YOU KNOW,
9 MAYBE IT WILL TAKE THEM AN HOUR FOR THEM TO BE
10 CHECKED IN. AND HOPEFULLY BY ELEVEN O'CLOCK WE'LL
11 BE READY FOR THE OPENING STATEMENTS AND FOR
12 THEREAFTER THE PRESENTATION OR TESTIMONY?

13 MR. BAILEY: YES, SIR.

14 THE COURT: DOES THAT SOUND
15 REASONABLE, GENTLEMEN?

16 MR. BAILEY: YES, SIR.

17 MR. THEOS: YES, SIR.

18 THE COURT: THEN WE'LL JUST HAVE TO
19 WAIT AND SEE HOW LONG YOUR PRESENTATION TAKES. YOU
20 HAD INDICATED EARLIER ON AN INFORMAL MATTER, AND
21 STILL I'M NOT HOLDING YOUR FEET TO THE FIRE. BUT
22 JUST SO WE CAN COOPERATE EACH WITH THE OTHER IN AN
23 EFFORT TO TRY FOR OTHERS TO BE READY AND BE
24 PREPARED, YOU HAD INDICATED ONE AND A HALF DAYS IN
25 THE STATE'S GUILT PHASE TESTIMONY. SO BEAR THAT IN

MOTIONS

1 MIND AS FAR AS HAVING YOUR WITNESSES ON STANDBY AND
2 READY. AND YOU HAD INDICATED, MR. THEOS, THAT YOU
3 THOUGHT THAT YOUR TESTIMONY BY WAY OF DEFENSE WOULD
4 TAKE FROM TWO TO FOUR DAYS; IS THAT CORRECT?

5 MR. THEOS: YES, SIR.

6 THE COURT: AND, AGAIN, WE NEED TO
7 BE GIVING SOME THOUGHT AS TO WHAT TO DO ABOUT
8 SUNDAY. I HAVE EXPLAINED TO Y'ALL THAT IN
9 TWENTY-FIVE YEARS I'VE NEVER HELD COURT ON SUNDAY.
10 AND FRANKLY I DO NOT WANT TO HOLD COURT ON SUNDAY.
11 BUT IF WE HAVE TO, WE WILL. AND I'M NOT GOING TO
12 BE BOUND BY THE JURY'S RECOMMENDATION. BUT
13 OBVIOUSLY I'M GOING TO ALLOW THE JURY INPUT AS I
14 WOULD ALLOW YOU GENTLEMEN AND LADIES OF THE BAR
15 INPUT ON THAT. AND WE'LL JUMP OFF THAT BRIDGE WHEN
16 WE GET TO IT. BUT SURELY BY FRIDAY AFTERNOON WE
17 SHOULD DECIDE WHAT WE'RE GOING TO DO ABOUT SUNDAY
18 SO YOU CAN PREPARE FOR YOUR WITNESSES.

19 MR. BAILEY: YOUR HONOR, THE ONLY
20 THING I CAN THINK OF AT THIS POINT AND TIME, AND
21 I'VE MENTIONED THIS EARLIER. I'M STILL NOT CERTAIN
22 WHAT THE DEFENSE'S POSITION IS ON G.B.M.I. IF IT
23 IS GOING TO BE A DEFENSE -- AND THEY'VE SAID THEY
24 COULD TAKE TWO OR THREE DAYS FOR THEIR CASE -- I
25 THINK I NEED TO KNOW THAT PRIOR TO MY OPENING

1 STATEMENT SO I'LL KNOW HOW TO HANDLE IT.

2 THE COURT: YES, SIR. AND I THOUGHT
3 THAT MR. THEOS GAVE YOU THAT ANSWER IN CHAMBERS ON
4 YESTERDAY. YOU CAN ASK HIM ON THE RECORD AT THIS
5 TIME BECAUSE YOU DID SERVE NOTICES ON HIM, RELATIVE
6 DEFENSES OF ALIBI OR INSANITY OR WHATEVER. AND HE
7 IS UNDER AN OATH AND DUTY BOUND TO REVEAL THAT.

8 MR. THEOS: YES, SIR. I THOUGHT I
9 ANSWERED IT NEGATIVELY THAT WE WEREN'T PURSUING
10 THAT.

11 MR. BAILEY: ON BOTH OF THEM,
12 G.B.M.I. AND THE INSANITY.

13 THE COURT: SO THAT'S IN THE
14 RECORD. MR. THEOS AND MR. BELL, DO YOU CONCUR IN
15 THAT?

16 MR. BELL: CORRECT, YOUR HONOR.

17 THE COURT: ANYTHING ELSE I CAN DO
18 FOR YOU LADIES AND GENTLEMEN THIS EVENING?

19 MR. BAILEY: NO, SIR.

20 MR. THEOS: NO, SIR.

21 THE COURT: Y'ALL HAVE A PLEASANT
22 EVENING.

23 MR. BAILEY: THANK YOU, JUDGE.

24 THE COURT: THANK YOU ALL FOR YOUR
25 PATIENCE.

MOTIONS

(WHEREUPON AT 8:30 P.M. COURT WAS ADJOURNED FOR THE
DAY.)

* * * * *

(THE FOLLOWING TAKES PLACE IN CHAMBERS.)

THE COURT: HAVE YOU GENTLEMEN

JURY SELECTION

1 GOTTEN FROM THE CLERK -- CHERYL AND TEAL HAVE GONE
2 TO A LOT OF TROUBLE TO TYPE THIS NEW LIST WITH A
3 LOT OF SPACING. AND MADAM COURT REPORTER, LET THE
4 RECORD REFLECT THAT COURT IS IN SESSION. THE
5 DEFENDANT, KENNETH SIMMONS, IS PRESENT WITH HIS
6 COUNSEL. THE STATE IS PRESENT REPRESENTED BY
7 SOLICITOR WALTER BAILEY. AND AT THIS TIME WE WILL
8 PROCEED WITH THE JURY STRIKES. AND I WOULD INQUIRE
9 FIRST ON BEHALF OF THE STATE -- MR. SOLICITOR AND
10 MR. THEOS, ON BEHALF OF THE DEFENDANT; EACH OF YOU
11 HAVE RECEIVED THE TYPED LIST WHICH THE CLERK SO
12 KINDLY PREPARED LISTING THE NUMBERS OF JURORS ONE
13 THROUGH THIRTY-SIX AND THE ORDER IN WHICH THEY WERE
14 QUALIFIED STATING THE JUROR'S NAME, THE JUROR
15 NUMBER, AND THEIR SEX AND RACE. DO EACH OF YOU
16 HAVE THAT LIST?

17 MR. BAILEY: YES, SIR.

18 THE COURT: MR. THEOS?

19 MR. THEOS: YES, SIR.

20 THE COURT: AND DOES IT CONFORM TO
21 THAT INFORMATION WHICH YOU HAVE IN YOUR NOTES AS TO
22 QUALIFICATIONS?

23 MR. BAILEY: YES, SIR.

24 MR. THEOS: YES, SIR.

25 THE COURT: AND WE WILL PROCEED TO

JURY SELECTION

1 STRIKE. AND PURSUANT TO STATUTE, THE STATE HAS
2 FIVE STRIKES. THE DEFENSE HAS TEN STRIKES, AND AS
3 TO THE ALTERNATES, THE STATE WOULD HAVE ONE EACH.
4 THE DEFENDANT WOULD HAVE TWO EACH. WE'LL HAVE TWO
5 ALTERNATES. THE STRIKES AFFORDED FOR THE
6 ALTERNATES DO NOT CUMULATE, OR DO NOT ROLL OVER,
7 PLEASE. AND OBVIOUSLY, MA'AM, WE'RE PROCEEDING IN
8 REGARD TO THE CASE OF THE STATE VS. KENNETH
9 SIMMONS. SO GENTLEMAN AND LADIES, SHALL WE
10 PROCEED?

11 THE CLERK: SURE. WILLIAM L.
12 SILVERS, JR., NUMBER 284.

13 MR. BAILEY: PRESENT THE JUROR.

14 THE CLERK: DEFENSE?

15 MR. THEOS: EXCUSE THE JUROR,
16 PLEASE.

17 THE CLERK: CHRISTOPHER BARTON,
18 NUMBER 16. WHAT SAYS THE STATE?

19 MR. BAILEY: EXCUSE THE JUROR.

20 THE CLERK: PAUL RANDOLPH.

21 THE COURT: MADAM CLERK, YOU NEED TO
22 SLOW DOWN, PLEASE, BECAUSE WE NEED TO MAKE NOTES
23 HERE IN THE MARGIN AS TO STRIKES AND BY WHOM. SO
24 PLEASE SLOW DOWN A LITTLE BIT, PLEASE.

25 THE CLERK: OKAY. NUMBER 3,

JURY SELECTION

1 RANDOLPH PAUL, JUROR NUMBER 261. WHAT SAYS THE
2 STATE?

3 MR. BAILEY: PRESENT THE JUROR.

4 THE CLERK: DEFENSE?

5 MR. THEOS: PRESENT THE JUROR,
6 PLEASE.

7 THE CLERK: NUMBER FOUR, HERBERT
8 SIMMONS, JR., JUROR NUMBER 285. WHAT SAYS THE
9 STATE?

10 MR. BAILEY: PRESENT THE JUROR.

11 THE CLERK: DEFENSE?

12 MR. THEOS: PRESENT THE JUROR,
13 PLEASE.

14 THE CLERK: JUROR MARY ANNE
15 VALENTINO, NUMBER FIVE?

16 MR. BAILEY: EXCUSE THE JUROR.

17 THE CLERK: JUROR NUMBER---

18 THE COURT: JUST A MINUTE, MA'AM.

19 LOOK AT ME; AND WHEN I FINISH WRITING IT, THEN YOU
20 CALL THE NEXT NAME. THANK YOU.

21 THE CLERK: OKAY. NUMBER SIX,
22 DELORES EVANS, JUROR NUMBER 104. WHAT SAYS THE
23 STATE?

24 MR. BAILEY: EXCUSE THE JUROR.

25 THE CLERK: JUROR NUMBER SEVEN,

1 TONYA C. DENNIS, JUROR NUMBER 81.

2 MR. BAILEY: PRESENT THE JUROR.

3 THE CLERK: WHAT SAYS THE DEFENSE?

4 MR. THEOS: EXCUSE THE JUROR,
5 PLEASE.

6 THE CLERK: JUROR NUMBER EIGHT,
7 BENJAMIN DURHAM, III, NUMBER 93. WHAT SAYS THE
8 STATE?

9 MR. BAILEY: PRESENT THE JUROR.

10 THE CLERK: DEFENSE?

11 MR. THEOS: PRESENT THE JUROR,
12 PLEASE.

13 THE CLERK: NUMBER NINE, SCOTT J.
14 FIELDS, JUROR NUMBER 107. WHAT SAYS THE STATE?

15 MR. BAILEY: PRESENT THE JUROR.

16 THE CLERK: DEFENSE?

17 MR. THEOS: EXCUSE THE JUROR,
18 PLEASE.

19 THE COURT: GENTLEMEN, AT THIS TIME
20 I SHOW THE STATE AS HAVING EXHAUSTED THREE STRIKES,
21 THE DEFENSE THREE. IS THAT AGREED?

22 MR. BAILEY: YES, SIR.

23 MR. THEOS: YES, SIR.

24 THE CLERK: NUMBER TEN, ALICE T.
25 POSTELL, JUROR NUMBER 256. WHAT SAYS THE STATE?

JURY SELECTION

1 MR. BAILEY: PRESENT THE JUROR.

2 THE CLERK: DEFENSE?

3 MR. THEOS: PRESENT THE JUROR,

4 PLEASE.

5 THE CLERK: NUMBER ELEVEN, MILTON J.

6 HANDLER, JR., JUROR NUMBER 137. WHAT SAYS THE

7 STATE?

8 MR. BAILEY: PRINTS THE JUROR.

9 THE CLERK: DEFENSE?

10 MR. THEOS: PRESENT THE JUROR,

11 PLEASE.

12 THE CLERK: JUROR NUMBER TWELVE,

13 BERNARD R. LEWIS, JUROR NUMBER 195. WHAT SAYS THE

14 STATE?

15 MR. BAILEY: PRESENT THE JUROR.

16 THE CLERK: DEFENSE?

17 MR. THEOS: EXCUSE THE JUROR,

18 PLEASE.

19 THE CLERK: NUMBER THIRTEEN, RAY N.

20 GREEN, JUROR NUMBER 129. WHAT SAYS THE STATE?

21 MR. BAILEY: PRESENT THE JUROR.

22 THE CLERK: DEFENSE?

23 MR. THEOS: EXCUSE THE JUROR,

24 PLEASE.

25 THE CLERK: NUMBER---

JURY SELECTION

1 THE COURT: MA'AM, I'M SORRY, BUT
2 YOU'RE NOT LOOKING AT ME.

3 THE CLERK: ALL RIGHT. I'LL LOOK AT
4 YOU.

5 THE COURT: MR. GREEN WAS THE STRIKE
6 OF THE DEFENSE, GENTLEMEN; CORRECT?

7 MR. THEOS: YES, SIR.

8 THE COURT: THANK YOU. EXCUSE ME
9 FOR INTERRUPTING.

10 THE CLERK: NUMBER FOURTEEN,
11 RUBADELL B. AHL, JUROR NUMBER FOUR. WHAT SAYS THE
12 STATE?

13 MR. BAILEY: PRESENT THE JUROR.

14 THE CLERK: DEFENSE?

15 MR. THEOS: PRESENT THE JUROR,
16 PLEASE.

17 THE CLERK: NUMBER FIFTEEN, DEBORAH
18 K. SHUFORD, JUROR NUMBER 282. WHAT SAYS THE STATE?

19 MR. BAILEY: PRESENT THE JUROR.

20 THE CLERK: DEFENSE?

21 MR. THEOS: PRESENT THE JUROR,
22 PLEASE.

23 THE CLERK: NUMBER SIXTEEN, EDWARD
24 A. LIVINGTON, JUROR NUMBER 199. WHAT SAYS THE
25 STATE?

JURY SELECTION

1 MR. BAILEY: EXCUSE THE JUROR.

2 THE CLERK: NUMBER SEVENTEEN, PAUL

3 P. MOORE, JUROR NUMBER 26. WHAT SAYS THE STATE?

4 THE COURT: EXCUSE ME. JUROR NUMBER

5 226.

6 MR. BAILEY: PRESENT THE JUROR.

7 MR. THEOS: EXCUSE THE JUROR,

8 PLEASE. THIS IS FOR NUMBER SEVENTEEN?

9 THE COURT: THAT IS CORRECT.

10 THE CLERK: YES, SIR.

11 THE COURT: PLEASE, MA'AM.

12 THE CLERK: I'M WAITING. I'M NOT

13 TALKING. NUMBER EIGHTEEN, MARK S. WILLIAMSON,

14 JUROR NUMBER 341. WHAT SAYS THE STATE?

15 MR. BAILEY: PRESENT THE JUROR.

16 THE CLERK: DEFENSE?

17 MR. THEOS: EXCUSE ME ONE SECOND,

18 PLEASE.

19 THE COURT: TAKE YOUR TIME,

20 GENTLEMEN. WE'RE NOT IN A HURRY. CONFER AND

21 CONSULT AS YOU DEEM NECESSARY, PLEASE.

22 MR. THEOS: YOUR HONOR, IF WE COULD

23 JUST GET A COUNT ON THE STRIKES BECAUSE WE HAVE A

24 LITTLE DISAGREEMENT OVER HERE.

25 THE COURT: YES, PLEASE. IF MY

JURY SELECTION

1 RECORDS BE CORRECT, THE STATE HAS EXHAUSTED FOUR;
2 THE DEFENSE SIX. DO YOU AGREE, MR. SOLICITOR?

3 MR. BAILEY: YES, SIR.

4 THE COURT: DO YOU AGREE, GENTLEMEN?

5 MR. THEOS: THAT'S WHAT I HAVE.

6 THE COURT: THANK YOU.

7 MR. THEOS: ONE SECOND, PLEASE.

8 THE COURT: CERTAINLY. TAKE YOUR

9 TIME, SERIOUSLY. IS SOMEBODY OUTSIDE WITH THE
10 CLERK'S OFFICE CALLING THE ROLL OF THOSE 36 TO MAKE
11 SURE THAT ALL ARE PRESENT? BECAUSE NORMALLY WE
12 WOULD DO THAT BEFORE WE STARTED THE STRIKING
13 BECAUSE IF WE STRIKE AND THEN WE DON'T HAVE TEN OUT
14 OF THE FOURTEEN HERE.

15 THE CLERK: WELL, THEY AREN'T GOING
16 TO RETURN UNTIL TEN.

17 THE COURT: I KNOW; BUT THEY'LL BE
18 DRIBBLING IN. SO LET ME JUST STOP AND SEE IF Y'ALL
19 CAN GET SOMEBODY WITH THE CLERK'S OFFICE TO GO
20 OUTSIDE WITH THIS LIST HERE AND AS THEY'RE SEATED
21 CALL THEIR NAMES OR ASK THEM THEIR NAMES. AND JUST
22 CHECK OFF. CHERYL, DO YOU UNDERSTAND THE NEED FOR
23 THAT?

24 MS. GRAHAM: YES, SIR.

25 THE COURT: MR. THEOS AND MR. BELL,

JURY SELECTION

1 IF YOU GENTLEMEN WITH THE DEFENDANT NEED TO HAVE
2 PRIVACY TO GO TO MY OFFICE TO DISCUSS THE MATTER,
3 WE CERTAINLY---

4 MR. THEOS: CAN WE JUST HAVE A
5 MINUTE?

6 THE COURT: YES, SIR.
7 (BRIEF RECESS.)

8 THE COURT: ON THE RECORD, MA'AM
9 PLEASE; THE JURY STRIKES THROUGH NUMBER 17 ON THE
10 OUTSIDE LEFT-HAND MARGIN HAVE BEEN REVIEWED. AND
11 THE STATE HAS EXHAUSTED FOUR STRIKES; THE DEFENSE
12 SIX. DO YOU AGREE, MR. SOLICITOR?

13 MR. BAILEY: YES, SIR.

14 THE COURT: AGREE, MR. THEOS?

15 MR. THEOS: YES, SIR.

16 THE COURT: SO AS TO JUROR NUMBER
17 EIGHTEEN, MADAM CLERK, PROCEED.

18 THE CLERK: ALL RIGHT. NUMBER
19 EIGHTEEN, MARK S. WILLIAMSON, JUROR NUMBER 341.
20 WHAT SAYS THE STATE?

21 MR. BAILEY: PRESENT THE JUROR.

22 THE CLERK: DEFENSE?

23 MR. THEOS: PRESENT THE JUROR,
24 PLEASE.

25 THE CLERK: NUMBER NINETEEN, BRYAN

1 L. SULLIVAN, JUROR NUMBER 303. WHAT SAYS THE
2 STATE?

3 MR. BAILEY: PRESENT THE JUROR.

4 THE CLERK: PRESENT THE JUROR,
5 PLEASE.

6 THE CLERK: NUMBER TWENTY, DONALD F.
7 SHORT, JR., JUROR NUMBER 281. WHAT SAYS THE
8 STATE?

9 MR. BAILEY: PRESENT THE JUROR.

10 THE CLERK: DEFENSE?

11 MR. THEOS: PRESENT THE JUROR.

12 THE CLERK: NUMBER TWENTY-ONE,
13 CHRISTOPHER CAMPEAU, JUROR NUMBER 50. WHAT SAYS
14 THE STATE?

15 MR. BAILEY: PRESENT THE JUROR.

16 THE CLERK: DEFENSE?

17 MR. THEOS: PRESENT THE JUROR.

18 THE CLERK: NUMBER TWENTY-TWO, JAMES
19 A. BROOKS, JR., JUROR NUMBER 37. WHAT SAYS THE
20 STATE?

21 MR. BAILEY: PRESENT THE JUROR.

22 THE CLERK: DEFENSE?

23 MR. THEOS: EXCUSE THE JUROR. YOUR
24 HONOR, MY COUNT IS WE HAVE ELEVEN JURORS. COURT.

25 THE COURT: YOU'RE RIGHT; YES, SIR.

JURY SELECTION

1 AND THE STATE HAS EXHAUSTED FOUR STRIKES, THE
2 DEFENSE SEVEN. AGREED, GENTLEMEN, PLEASE?

3 MR. BAILEY: YES, SIR.

4 MR. THEOS: YES, SIR.

5 THE COURT: AND I DON'T MEAN TO BE
6 SO REPETITIVE. I'M MERELY TRYING TO HELP YOU.
7 PROCEED, PLEASE. AND, MADAM COURT REPORTER, LET
8 THE RECORD REFLECT THAT THE NUMBER THE CLERK FIRST
9 CALLS OUT IS THE ORDER IN WHICH THE JURORS WERE
10 QUALIFIED DURING THEIR VOIR DIRE. AND THE LAST
11 NUMBER THAT'S CALLED OUT IS THE NUMBER OF THE JUROR
12 ON THE ORIGINAL JURY COMMISSIONERS DRAW OF 350
13 JURORS TO BE SUMMONED. SO SOMEONE READING THE
14 RECORD CAN CORRELATE WHAT WE'RE SPEAKING ABOUT.

15 THE CLERK: NUMBER TWENTY-THREE,
16 SHANNON TOFT MCSWAIN, JUROR NUMBER 313. WHAT SAYS
17 THE STATE?

18 MR. BAILEY: EXCUSE THE JUROR.

19 THE CLERK: NUMBER TWENTY-FOUR, JANE
20 H. WHITMORE, JUROR NUMBER 335. WHAT SAYS THE
21 STATE?

22 MR. BAILEY: PRESENT THE JUROR.

23 THE CLERK: DEFENSE?

24 MR. THEOS: ONE SECOND, YOUR HONOR.

25 THE CLERK: ARE WE READY?

JURY SELECTION

1 THE COURT: WE'RE WAITING TO SEE IF
2 THE DEFENSE IS READY. WE'RE WAITING TO HEAR FROM
3 THE DEFENDANT.

4 MR. THEOS: YOUR HONOR, WE'RE
5 READY.

6 THE COURT: JUST ONE MINUTE, PLEASE.
7 YES, SIR, MR. THEOS?

8 MR. THEOS: WE'RE ON JUROR NUMBER
9 TWENTY-FOUR?

10 THE COURT: CORRECT.

11 MR. THEOS: WE WOULD ACCEPT THIS
12 JUROR.

13 THE COURT: NOW, GENTLEMEN, THAT
14 REFLECTS TWELVE OF THE INITIAL, THE REAL LIVE
15 TWELVE JURORS. AND WE WILL NOW PROCEED TO THE
16 ALTERNATES. AND, OF COURSE, THE RECORD SHOULD
17 REFLECT THAT THE STATE EXHAUSTED FIVE STRIKES; THE
18 DEFENSE EXHAUSTED SEVEN STRIKES ON THE INITIAL JURY
19 STRIKE. WE NOW MOVE TO THE ALTERNATE. AND THE
20 STATE, OF COURSE, WILL HAVE THE FIRST OPPORTUNITY
21 OR BE REQUIRED TO FIRST INDICATE, PRESENT, OR
22 EXCUSE. THE STATE WILL HAVE ONE STRIKE, THE
23 DEFENSE TWO, AS TO EACH ALTERNATE. AND THE STRIKES
24 DO NOT CARRY FORWARD. UNDERSTOOD, PLEASE,
25 GENTLEMEN?

1 MR. BAILEY: YES, SIR.

2 MR. THEOS: YES, SIR.

3 THE COURT: ALL RIGHT. PROCEED,
4 MADAM CLERK.

5 THE CLERK: NUMBER TWENTY-FIVE,
6 BRYAN R. TALLENT, JUROR NUMBER 307.

7 MR. BAILEY: PRESENT THE JUROR.

8 THE CLERK: DEFENSE?

9 MR. THEOS: MAY WE HAVE A MINUTE,
10 YOUR HONOR?

11 THE COURT: CERTAINLY. PLEASE,
12 AGAIN GENTLEMEN, TAKE AS MUCH TIME AS YOU NEED.
13 AND IF YOU NEED TO SPEAK IN PRIVATE WITH THE
14 DEFENDANT, YOU'RE WELCOME TO DO SO.

15 MR. THEOS: WE'RE READY, YOUR HONOR.

16 THE COURT: WHAT SAY THE DEFENDANT?

17 MR. THEOS: WE WILL EXCUSE HIM,
18 PLEASE.

19 THE COURT: ALL RIGHT.

20 THE CLERK: NUMBER TWENTY-SIX, AMY
21 L. ARNONE, JUROR NUMBER 11. WHAT SAYS THE STATE?

22 MR. BAILEY: PRESENT THE JUROR.

23 THE CLERK: DEFENSE?

24 MR. THEOS: YOUR HONOR, WITH RESPECT
25 TO JUROR NUMBER 26, MRS. ARNONE, I AGAIN WOULD

JURY SELECTION

1 RENEW MY OBJECTION RELATED TO HER. SHE IS THE
2 VICTIM OF THE ASSAULT. AND SHE STATED
3 UNEQUIVOCALLY, I BELIEVE, THAT SHE COULD NOT BE
4 IMPARTIAL IN THE CASE ALTHOUGH SHE MAY HAVE
5 QUALIFIED OTHERWISE. SHE STATED THAT SHE WOULD
6 BRING WITH HER THIS -- THE FACT THAT SHE WAS A
7 VICTIM OF THE ASSAULT AND THAT SHE COULDN'T HELP
8 BUT CONSIDER IT THROUGHOUT THE TRIAL, AND THAT SHE
9 COULD NOT BE IMPARTIAL. AND WE WOULD MOVE TO
10 STRIKE HER FOR CAUSE RATHER THAN THE UTILIZE A
11 PREEMPTORY STRIKE.

12 THE COURT: WHAT SAY THE STATE? MY
13 NOTES REFLECT SHE IS A JUROR THAT STATED SHE WOULD
14 TRY TO BE FAIR.

15 MR. BAILEY: YES, SIR. YOUR HONOR,
16 I THINK THAT WE'VE DISCUSSED THIS PREVIOUSLY. AND
17 YOUR HONOR'S RECORD DETERMINED THAT SHE WAS A
18 QUALIFIED JUROR DESPITE THE FACT THAT SHE HAD THAT
19 UNFORTUNATE INCIDENT AT THE AGE OF EIGHTEEN THAT
20 SHE COULD SET THAT ASIDE AND BASE HER DECISION ON
21 THE FACTS FROM THE WITNESS STAND.

22 THE COURT: ALL RIGHT. THE COURT
23 STANDS ON ITS INITIAL RULING. BUT PLEASE NOTE THE
24 OBJECTION OF THE DEFENDANT AND THE CHALLENGE FOR
25 CAUSE WHICH IS RESPECTFULLY DENIED BY THE COURT.

MOTIONS

1 SO YOUR PLEASURE BEING, MR. THEOS?

2 MR. THEOS: (NO RESPONSE.)

3 THE COURT: ALL RIGHT, GENTLEMEN.

4 PERHAPS I CAN ALLEVIATE YOUR SITUATION. THERE ARE
5 THREE JURORS WHO HAVE NOT SHOWN UP, AND THIS IS ONE
6 OF THE THREE. AND THE COURT IS GOING TO REVERSE
7 ITSELF AND EXCUSE THAT JUROR FOR CAUSE.

8 MR. THEOS: THANK YOU, YOUR HONOR.

9 THE COURT: GET SMITTY TO GO FIND
10 OUT THE NAMES OF THE OTHER THREE THAT HAVE NOT
11 SHOWN UP, JUST TO WRITE THEIR NUMBERS DOWN SO WE
12 CAN SEE WHETHER THOSE WERE SOME THAT WERE STRUCK
13 AND WHEREVER. ALL RIGHT, MA'AM. GO AHEAD.

14 THE CLERK: NUMBER TWENTY-SEVEN,
15 RONALD D. BOLES, JUROR NUMBER 25. WHAT SAYS THE
16 STATE?

17 MR. BAILEY: PRESENT THE JUROR.

18 THE CLERK: DEFENSE?

19 MR. THEOS: ONE SECOND, PLEASE.
20 WE'LL ACCEPT THAT JUROR.

21 THE COURT: GENTLEMEN, YOU DO
22 UNDERSTAND THAT IN THE EVENT THAT WE DO NEED AN
23 ALTERNATE, THE ALTERNATE WOULD BECOME THE TWELFTH
24 JUROR OR MEMBER OF THE PANEL IN THE ORDER IN WHICH
25 THE ALTERNATES WERE SELECTED. AGREED BY THE

1 STATE?

2 MR. BAILEY: I'M SORRY, JUDGE.

3 THE COURT: I SAID THAT IN THE EVENT
4 THAT THERE COMES A NEED TO USE ONE OR MORE OF THE
5 ALTERNATES, THE ALTERNATES WOULD BECOME PART OF THE
6 FULL TWELVE MEMBER JURY COMPROMIT IN THE ORDER IN
7 WHICH THEY WERE SELECTED.

8 MR. BAILEY: YES, SIR.

9 MR. THEOS: YES, SIR.

10 THE COURT: ALL RIGHT. SO RONALD D.
11 BOLES, JUROR NUMBER 25 ON THE ORIGINAL LIST, 27 ON
12 TODAY'S LIST, HAS BEEN ACCEPTED BY THE STATE AND
13 THE DEFENSE AS THE FIRST ALTERNATE. PROCEED.

14 THE CLERK: JUROR NUMBER
15 TWENTY-EIGHT, ALBERT S. NETTLES, JR., JUROR NUMBER
16 234.

17 MR. BAILEY: EXCUSE THE JUROR.

18 THE CLERK: NUMBER TWENTY-NINE,
19 PETER A. ARMSTRONG, JUROR NUMBER 12. WHAT SAYS THE
20 STATE?

21 MR. BAILEY: PRESENT THE JUROR..

22 THE CLERK: DEFENSE?

23 MR. THEOS: EXCUSE THE JUROR,
24 PLEASE.

25 THE CLERK: NUMBER THIRTY, ROBERT S.

MOTIONS

1 HUGHES, JUROR NUMBER 154. WHAT SAYS THE STATE?

2 MR. BAILEY: PRESENT THE JUROR.

3 THE CLERK: DEFENSE?

4 MR. THEOS: ONE SECOND.

5 THE COURT: LET THE RECORD REFLECT,
6 MADAM COURT REPORTER, THAT IN REGARD TO ALTERNATE
7 ONE WHO IS RONALD D. BOLES, THAT THE DEFENSE
8 EXHAUSTED ONE STRIKE; THE STATE NONE. AND ONE WAS
9 EXCUSED FOR CAUSE.

10 MR. THEOS: YOUR HONOR, WE WOULD
11 ACCEPT TO THIS JUROR -- I BELIEVE IT'S NUMBER
12 THIRTY.

13 THE COURT: WHICH IS ORIGINAL NUMBER
14 154, THE SIGN PAINTER? ALL RIGHT. THAT WILL BE
15 ALTERNATE NUMBER TWO. NOW, GENTLEMEN, WE STILL
16 HAVE FIVE PERSONS WHO HAVE BEEN DEEMED QUALIFIED
17 FOR PURPOSES OF STRIKING. AND I WOULD INQUIRE OF
18 THE STATE AND THE DEFENSE; WHILE WE WANT TO
19 MINIMIZE INCONVENIENCE AND HARDSHIP AND TRY TO KEEP
20 THE EXPENSES AT A REASONABLE AMOUNT, I HAVE NO
21 EXPERIENCE WITH THIS PARTICULAR JUROR JUST AS YOU
22 DO NOT. BUT USUALLY TWO ALTERNATES ARE DRAWN. BUT
23 WE DO HAVE THE OPTION OF THREE IF ANYONE FEELS THAT
24 NECESSARY. WHAT SAY THE STATE?

25 MR. BAILEY: JUDGE, I THINK WE'VE

MOTIONS

1 GOT ENOUGH TO DO IT. BUT JUST OUT OF AN ABUNDANCE
2 OF CAUTION, I'D LIKE TO DO IT.

3 THE COURT: CERTAINLY. AND DO YOU
4 CONCUR, MR. THEOS?

5 MR. THEOS: I THINK WE PROBABLY
6 WOULD APPROVE, JUDGE. JUST TO MAKE SURE ALL THE
7 JURORS HAVE NOW BEEN ACCOUNTED FOR WITH THE
8 EXCEPTION OF THOSE THAT YOU READ.

9 THE COURT: THOSE TWO THAT I
10 MENTIONED THAT HAVE BEEN STRUCK. THAT NUMBER
11 ELEVEN SHOWED UP IN THE INTERIM AFTER I HAD EXCUSED
12 HER FOR CAUSE.

13 MR. THEOS: SO THERE ARE THREE --
14 WELL, NUMBER ELEVEN, YOUR HONOR, WAS---

15 THE COURT: EXCUSED FOR CAUSE.

16 MR. THEOS: NUMBER ELEVEN ON THE --
17 THE OLD NUMBER ELEVEN?

18 THE COURT: THAT'S RIGHT.

19 MR. THEOS: OKAY.

20 THE COURT: ALL RIGHT. SO ON THE
21 SECOND ALTERNATE, PLEASE -- AND THAT'S NUMBER 154
22 -- WILL BE A-2. THE STATE EXHAUSTED ONE STRIKE;
23 THE DEFENDANT EXHAUSTED ONE OF ITS TWO STRIKES. WE
24 NOW PROCEED TO STRIKE THE THIRD ALTERNATE.

25 THE CLERK: NUMBER THIRTY-ONE,

1 MILFORD E. CARTER, JUROR NUMBER 55. WHAT SAYS THE
2 STATE?

3 MR. BAILEY: PRESENT THE JUROR.

4 THE CLERK: DEFENSE?

5 MR. THEOS: WE WOULD ACCEPT THIS
6 JUROR, YOUR HONOR.

7 THE COURT: ALL RIGHT. MADAM COURT
8 REPORTER, LET RECORD REFLECT THAT NEITHER THE STATE
9 NOR THE DEFENDANT EXERCISED ANY STRIKES AS TO THE
10 THIRD ALTERNATE. AS A MATTER OF FACTLY, THE JURORS
11 THAT WERE QUALIFIED, NUMBER THIRTY-TWO,
12 THIRTY-THREE, THIRTY-FOUR, THIRTY-FIVE, AND
13 THIRTY-SIX, WE HAVE FIVE REMAINING WHICH WOULD GIVE
14 US ENOUGH FOR ANOTHER ALTERNATE. BUT DO YOU SEE
15 ANY NECESSITY FOR THAT? MR. SOLICITOR?

16 MR. BAILEY: NO, SIR.

17 THE COURT: MR. THEOS?

18 MR. THEOS: NO, SIR.

19 THE COURT: ALL RIGHT. MAY I PLEASE
20 THANK YOU. ARE ALL Y'ALL PREPARED AT THIS TIME TO
21 GO INTO THE COURTROOM AND PROCEED?

22 MR. BAILEY: YES, SIR.

23 MR. THEOS: YES, SIR, YOUR HONOR.

24 THE COURT: GENTLEMEN, FIRST; IS
25 THERE ANYTHING FOR THE RECORD, PLEASE, BEFORE WE --

MOTIONS

1 DO YOU WANT THIS ON OR OFF THE RECORD?

2 MR. THEOS: I JUST WANTED TO MAKE
3 SURE THAT WE WERE -- IF WE COULD JUST GO THROUGH
4 THE LIST ONE MORE TIME, PLEASE.

5 THE COURT: CERTAINLY. ALL RIGHT.
6 AS TO THOSE JURORS THAT WILL BE SEATED -- AND I'M
7 GOING TO READ OUT THE NUMBER ON THE LEFT-HAND
8 PRINTED MARGIN IN CHRONOLOGICAL SEQUENCE. THREE,
9 FOUR, EIGHT, TEN, ELEVEN, FOURTEEN, FIFTEEN,
10 EIGHTEEN, NINETEEN, TWENTY, TWENTY-ONE, AND
11 TWENTY-FOUR. MAY WE CONCUR, SOLICITOR?

12 MR. BAILEY: YES, SIR.

13 THE COURT: FOR THE DEFENSE?

14 MR. THEOS: YES, SIR.

15 THE COURT: AND THE ALTERNATES WOULD
16 BE NUMBER TWENTY-SEVEN, THIRTY, AND THIRTY-ONE IN
17 THAT DESCENDING ORDER BUT ASCENDING AS FAR AS
18 REQUESTING IF NEED BE. AGREED, GENTLEMEN?

19 MR. BAILEY: YES, SIR.

20 MR. THEOS: YES, SIR.

21 THE COURT: IS THERE ANYTHING FOR
22 THE RECORD WE NEED TO TAKE UP BEFORE WE PROCEED?

23 MR. BAILEY: NOTHING FROM THE STATE,
24 YOUR HONOR.

25 MR. THEOS: NO, SIR.

MOTIONS

1 THE COURT: AND, AGAIN, PLEASE BE
2 VERY, VERY CAUTIOUS THAT WHEN THE DEFENDANT IS
3 TAKEN INTO THE COURTROOM IN THE PRESENCE OF THE
4 JURY THAT THERE'S NO INDICATION OF ANY KIND THAT
5 HE'S A PRISONER, SO TO SPEAK. JUST WALK IN IN A
6 NORMAL FASHION. AND WE HAVE NOT -- I HAVE DIRECTED
7 THE SHERIFF'S DEPARTMENT NOT TO PUT THE KNEE BRACES
8 ON HIM BECAUSE OF HIS COMFORT DURING THE TRIAL AND
9 BEING ABLE TO WALK IN A NORMAL MANNER. AND HE IS
10 DRESSED OUT IN A NICE LOOKING COAT AND TIE AND
11 PURPLE SHIRT AND MATCHING PURPLE AND NAVY BLUE TIE.

12 HE'S MATCHED UP BETTER THAN ME. SO SHALL WE
13 PROCEED, GENTLEMEN?

14 MR. BAILEY: YES, SIR.

15 MR. THEOS: YOUR HONOR, WE CAN TALK
16 ABOUT THIS AFTER---

17 THE COURT: ALL RIGHT. Y'ALL GO
18 AHEAD AND GO INTO THE COURTROOM.

19 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

20 THE COURT: LADIES AND GENTLEMEN,
21 THANK YOU KINDLY FOR BEING HERE PRESENT WITH US
22 TODAY. MADAM COURT REPORTER, LET THE RECORD
23 REFLECT WE ARE NOW PROCEEDING IN REGARD TO THE
24 STATE VS. KENNETH SIMMONS, THE DEFENDANT BEING
25 PRESENT WITH HIS COUNSEL IN REGARD TO INDICTMENTS

MOTIONS

1 98-GS-18-75, 76, 77, 78, AND 79. THE VARIOUS
2 CHARGES IN THE RESPECTIVE INDICTMENTS HAVE BEEN
3 READ INTO THE RECORD. THE SOLICITOR IS HERE
4 REPRESENTING THE STATE, MR. THEOS AND BELL
5 REPRESENTING THE DEFENDANT.

6 NOW, LADIES AND GENTLEMEN, PERMIT
7 ME TO EXPLAIN CERTAIN THINGS TO YOU. WHEN WE
8 CONVENED ON MONDAY AND I MET WITH THE LAWYERS AT
9 NINE THAT MORNING, YOU LADIES AND GENTLEMEN WERE TO
10 APPEAR AT TEN. IT WAS ANTICIPATED THAT THE TIME
11 REQUIRED FOR THE INDIVIDUAL VOIR DIRE WOULD BE TWO
12 TO THREE DAYS, AND BECAUSE OF CERTAIN COMPLICATIONS
13 RELATIVE TO OTHER MATTERS WHICH ARE REFLECTED IN
14 THE RECORD, IT WAS 4:30 IN THE AFTERNOON ON MONDAY
15 BEFORE WE STARTED QUESTIONING THE FIRST PANEL THAT
16 REPORTED AT 2:30. AND WITH THE COMPLETE
17 COOPERATION OF THE ATTORNEYS FOR THE STATE AND THE
18 DEFENDANT AND SOME LONG HOURS, PARTICULARLY BY MRS.
19 TEAL AND MS. CHERYL, WE WORKED UNTIL ALMOST NINE
20 O'CLOCK ON MONDAY EVENING, AND THEN WE STARTED AT
21 8:15 ON TUESDAY MORNING. AND WE COMPLETED OUR WORK
22 AT ABOUT EIGHT LAST EVENING WITH THE QUALIFICATION
23 OF SOME THIRTY-SIX JURORS IN THE POOL. AND IT WAS
24 ANTICIPATED THAT WE WOULD STRIKE A JURY AT TWO
25 O'CLOCK TODAY, WEDNESDAY, FEBRUARY THE 24TH. BUT

MOTIONS

1 BECAUSE OF THE COOPERATION OF ALL CONCERNED, THINGS
2 PROGRESSED WELL.

3 AND AS I HAVE MENTIONED
4 PREVIOUSLY, IT'S NOT THE SPEED AT WHICH THINGS ARE
5 DONE, BUT IT'S THE QUALITY OF THE PRESENTATION. SO
6 IT'S NOT THAT ANYONE IS IN A RACE FOR TIME FOR THIS
7 TRIAL TO BE COMPLETED. BUT WE MUST BE CONSIDERATE
8 OF THOSE 350 PERSONS WHO WERE SUMMONED, 90 THAT
9 APPEARED AND 90 THAT WERE ULTIMATELY REMAINING FOR
10 THE INDIVIDUAL VOIR DIRE. THEY WERE SET UP IN THE
11 PANELS TIMES THE FIFTEEN. WE DID NOT NEED TO GO
12 WITH THE LAST PANELS THAT WERE TO REPORT AT VARIOUS
13 TIMES TODAY. AND MADAM CLERK, Y'ALL STAYED HERE
14 UNTIL NINE OR TEN LAST NIGHT CALLING THOSE PEOPLE.
15 HOPEFULLY ALL OF THEM HAVE BEEN NOTIFIED. BUT IN
16 THE EVENT THEY WERE NOT NOTIFIED, I DIRECT YOU IF
17 THEY APPEAR TODAY TO GO AHEAD AND PAY THEM FOR
18 BEING HERE BECAUSE WE MUST BE CONSIDERATE OF THE
19 FACT THAT THE PROSPECTIVE JURORS ARE AWAY FROM
20 THEIR HOMES, THEIR FAMILIES, AND MORE PARTICULARLY
21 THEIR JOBS. AND AT TWENTY-FIVE DOLLARS A DAY, IT'S
22 DIFFICULT TO BUY GRITS AND GROCERIES IN TODAY'S
23 ECONOMY. IN ANY EVENT, WE COULDN'T PUT ON THE
24 RECORDING MACHINE UNTIL WE SAW THAT WE WERE GOING
25 TO FINISH LAST EVENING AS TO WHAT TIME FOR YOU TO

MOTIONS

1 BE HERE. SO AGAIN, TEAL AND CHERYL AND THE CLERK'S
2 OFFICE WERE VERY HELPFUL IN NOTIFYING YOU TO BE
3 HERE.

4 AND NOW THAT WE HAVE GONE THROUGH
5 THE NATION-ATIONS AND GYRATIONS OF THE JURY
6 QUALIFICATION AND THE VOIR DIRE, WE CERTAINLY HOPE
7 THINGS WILL SETTLE DOWN ON A MORE PRECISE SCHEDULE
8 BECAUSE I KNOW WE'VE GIVEN YOU ONE ANTICIPATED TIME
9 WHEN IN FACT WE HAD TO DELAY THAT TIME, AND WE KEPT
10 SOME OF YOU WAITING BECAUSE THE PANELS WERE GETTING
11 BACKED UP. AND WE CERTAINLY APOLOGIZE FOR ANY
12 INCONVENIENCE TO YOU. AND WE JUST THANK YOU SO
13 VERY MUCH FOR YOUR COOPERATION, FOR YOUR
14 TRUTHFULNESS IN REGARD TO YOUR QUESTIONNAIRES AND
15 MORE PARTICULAR IN THE CANDID ANSWERS THAT YOU GAVE
16 DURING THE VOIR DIRE BOTH TO THE COURT AND THE
17 SOLICITOR AND THE DEFENSE COUNSEL.

18 NOW, LADIES AND GENTLEMEN, WE
19 CONVENED COURT THIS MORNING AT 9:30. AND THE
20 RECORD SHOULD REFLECT, MADAM COURT REPORTER, THAT
21 THERE WERE THIRTY-SIX JURORS DEEMED QUALIFIED BY
22 THE STATE AND THE DEFENSE, PERHAPS WITH ONE OR MORE
23 SLIGHT OBJECTIONS BY EITHER THE STATE OR THE
24 DEFENSE. BUT THE COURT, OF COURSE, FEELS
25 COMFORTABLE IN ITS RULING RELATIVE TO THOSE. AND

MOTIONS

1 THE RECORD WILL SPEAK FOR ITSELF IN REGARD TO THOSE
2 OBJECTIONS AND THOSE RULINGS. BUT WE HAD ASKED
3 YOU, LADIES AND GENTLEMEN, TO BE HERE AT TEN
4 O'CLOCK THIS MORNING. NO ONE COULD ANTICIPATE THAT
5 THERE WOULD BE SNOWFLAKES FALLING ALBEIT THE ROADS
6 ARE PASSABLE IN THIS AREA. SO WHAT WE DID AGAIN,
7 LADIES AND GENTLEMEN, IN AN EFFORT TO TRY TO SAVE
8 TIME; UNFORTUNATELY WE DO NOT HAVE SIX COURTROOMS
9 IN THIS COURT HOUSE AS THEY MAY HAVE IN CHARLESTON,
10 COLUMBIA, OR GREENVILLE OR AIKEN COUNTY. SO WE
11 UTILIZED WHAT I DESIGNATED AS COURTROOM NUMBER TWO
12 THIS MORNING AT 9:30.

13 I HAD THE COURT REPORTER, THE
14 DEFENDANT, HIS ATTORNEYS, THE SOLICITORS, THE
15 CLERKS OF COURT, AND OUR COURTROOM NUMBER TWO WAS
16 INDEED THE PETIT JURY ROOM BECAUSE IF WE HAD
17 CONDUCTED THE JURY STRIKE HERE IN THE OPEN COURT.
18 I DIDN'T HAVE ANYWHERE THAT I COULD SEND YOU LADIES
19 AND GENTLEMEN EXCEPT OUT ON THOSE NICE PRETTY WHITE
20 SNOWFLAKES THAT WERE COMING DOWN. SO I WANT ALL
21 CONCERNED TO KNOW THAT THE JURY STRIKE, WHILE IT
22 WAS DONE IN SMALL COURTROOM NUMBER TWO, THAT THIS
23 IS A PUBLIC TRIAL, AND ALL PERSONS ARE INVITED AND
24 WELCOME TO ATTEND AND OBSERVE. AND I WOULD INQUIRE
25 AT THIS TIME, MR. SOLICITOR, IF THERE BE ANY

MOTIONS

OBJECTION TO THE COURTROOM NUMBER TWO HAVING BEEN
UTILIZED FOR THE JURY STRIKE TODAY?

MR. BAILEY: NOT AT ALL, YOUR HONOR.

THE COURT: ON BEHALF OF THE
DEFENDANT?

MR. THEOS: NONE, YOUR HONOR.

THE COURT: AND IT WAS NOT AN INVENTION OF NECESSITY BUT A CREATION OF NECESSITY, WE MIGHT SAY. AND FURTHER, MR. SOLICITOR AND MR. THEOS AND BELL, I BELIEVE WE PUT ON THE RECORD ON LAST EVENING THAT THE STATE, OTHER THAN ONE OR TWO OBJECTIONS, DID APPROVE OF AND CONCUR THAT THE THIRTY-SIX ON THE FINAL STRIKE SHEET WERE IN ACCORDANCE WITH LAW AND THERE WERE NO OBJECTIONS TO THAT PROCEDURE?

MR. BAILEY: THAT'S CORRECT.

THE COURT: FOR THE DEFENSE?

MR. THEOS: THAT'S CORRECT, YOUR HONOR.

THE COURT: AND FURTHER, GENTLEMEN,
NOW THAT WE HAVE CONDUCTED THE STRIKE, ARE THERE
ANY MOTIONS RELATIVE TO A JURY DRAW OR ANY OTHER
MOTIONS THAT NEED TO BE HEARD BEFORE THE JURY IS
CALLED TO COME FORWARD AND BE SEATED AND BE SWORN?

MR. BAILEY: NOT FROM THE STATE.

MOTIONS

1 YOUR HONOR.

2 MR. THEOS: NOT AT THIS TIME,
3 JUDGE.

4 THE COURT: ALL RIGHT. NOW, LADY
5 AND GENTLEMEN, I KNOW YOU JUST CAN'T WAIT TO SEE
6 WHO WON THE GEORGIA LOTTERY AND WHICH OF THE LUCKY
7 WINNERS THAT ARE HERE. THE RECORD SHOULD FURTHER
8 REFLECT THAT WHILE WE WERE CONDUCTING THE JURY
9 STRIKE IN COURTROOM TWO THAT I HAD THE
10 REPRESENTATIVE OF THE CLERK OF COURT'S OFFICE CHECK
11 TO MAKE SURE THAT THOSE 36 JURORS WERE PRESENT.
12 UNFORTUNATELY TWO OF THEM ARE NOT HERE. BUT THOSE
13 TWO WERE STRUCK. DO YOU HAVE THOSE NAMES, MA'AM,
14 OR NUMBERS OF THOSE TWO, PLEASE, SO I CAN INQUIRE
15 IF THEY'RE HERE?

16 MS. FOOTMAN: DELORES EVANS, NUMBER
17 104.

18 THE COURT: ALL RIGHT. NUMBER 104.
19 IS DELORES EVANS PRESENT BECAUSE SHE COULD HAVE
20 COME IN SINCE WE COMPLETED OUR ACTIVITIES IN
21 COURTROOM TWO. AND THE OTHER ONE, PLEASE, MS.
22 FOOTMAN?

23 MS. FOOTMAN: PAUL MOORE, NUMBER
24 226.

25 THE COURT: PAUL MOORE, NUMBER 226.

MOTIONS

1 IS PAUL P. MOORE PRESENT? (NO RESPONSE.) SO, MADAM
2 CLERK, IF YOU WOULD PLEASE HAVE SOMEONE ON YOUR
3 STAFF ATTEMPT TO CONTACT THOSE PEOPLE AND TELL THEM
4 THAT WE ATTEMPTED TO COMMUNICATE WITH THEM. WE
5 HOPE ALL IS WELL, THAT THERE'S NOT A TRAGIC REASON
6 WHY THEY DIDN'T APPEAR. THEY MAY JUST HAVE NOT
7 GOTTEN THE MESSAGE. BUT PLEASE CONTINUE EFFORTS TO
8 CONTACT THEM AT HOME OR WORK AND THANK THEM IN A
9 VERY CANDID AND POLITE WAY FOR HAVING PARTICIPATED
10 IN THE PROCESS HERE THIS WEEK AND THAT THEY ARE
11 EXCUSED FROM FURTHER SERVICE. BUT IF THEY DO SHOW
12 UP, I WANT THEM TO BE PAID. AND, OF COURSE, YOU
13 WOULD PAY THEM FOR MONDAY AND FOR TUESDAY.

14 AND MADAM CLERK, AS TO THOSE
15 JURORS THAT WILL NOT BE AMONG THE SELECTED CHOSEN
16 FIFTEEN, I ASSUME THAT WITHIN THE NEXT FEW DAYS
17 THAT THOSE CHECKS FOR THEIR SERVICE HERE MONDAY,
18 TUESDAY, AND WEDNESDAY WILL BE FORWARDED TO THEM;
19 AND FOR ANY JURORS THAT ARE NOT SELECTED IN THE
20 CHOSEN FIFTEEN THAT WILL REMAIN, WE RECOGNIZE THAT
21 THERE ARE SOME EMPLOYERS WHO DO PAY A REGULAR RATE
22 OF PAY WHEN YOU ARE AWAY FROM YOUR JOBS PERFORMING
23 YOUR CIVIC DUTY AS A MEMBER OF THE JURY PANEL, OR A
24 PROSPECTIVE MEMBER OF THE JURY PANEL. AND SOME OF
25 YOU MAY NEED THOSE TO TAKE BACK SO WHEN YOU GET

1 YOUR PAY THURSDAY OR FRIDAY OR WHENEVER THAT IT
2 WILL INCLUDE THE PAY FOR THE EARLIER PART OF THIS
3 WEEK. AND MADAM CLERK, MAY I SUGGEST THAT THEY GO
4 DOWNSTAIRS TO YOUR OFFICE TO GET THOSE WORK EXCUSES
5 IF THEY NEED THEM TODAY; OTHERWISE DO YOU, AS YOU
6 MAIL THEIR CHECKS, AUTOMATICALLY SEND A WORK EXCUSE
7 TO THEM?

8 THE CLERK: WHAT WE USUALLY DO IS
9 THEY STOP BY THE CLERK'S OFFICE.

10 THE COURT: BUT IN ANSWER TO MY
11 QUESTION; YOU DON'T USUALLY SEND IT TO THEM IF THEY
12 DON'T STOP BY?

13 THE CLERK: NO; IF THEY DON'T ASK
14 FOR IT. BUT IF THEY ASK FOR IT, WE SEND IT TO
15 THEM.

16 THE COURT: ALL RIGHT; NOT SEND IT
17 TO THEM IF THEY ASK FOR IT. YOU GIVE IT TO THEM
18 TODAY IF YOU WOULD, PLEASE, MA'AM. IT'S JUST A
19 MATTER OF FILLING OUT A SLIP AND SIGNING THEIR
20 NAMES. SO IF ANY OF YOU NEED WORK SLIPS GO
21 DOWNSTAIRS TO GET THOSE OTHER THAN MY CHOSEN
22 FIFTEEN, OF THE CHOSEN FIFTEEN. I DIDN'T SELECT
23 THEM; THE ATTORNEYS DID. AND, LADIES AND
24 GENTLEMEN, IF ANY OF YOU WORK IN A SUPERVISORY
25 MANAGERIAL CAPACITY, LET ME TAKE THIS OPPORTUNITY

MOTIONS

1 TO ENCOURAGE YOU TO CONSIDER ADOPTING A COMPANY
2 POLICY WHERE YOUR WORKERS WHEN THEY ARE AWAY FROM
3 THE JOB SERVING ON THE JURY TO CONSIDER PAYING THEM
4 THEIR REGULAR PAY BECAUSE THAT WOULD HAVE AN
5 ENCOURAGING, POSITIVE EFFECT ON JURY SERVICE RATHER
6 THAN A CHILLING, ECONOMIC LOSS OR EFFECT. AND WE
7 APPRECIATE YOU BEING HERE. WE CAN'T HAVE A JURY
8 TRIAL WITHOUT YOU LADIES AND GENTLEMEN BEING
9 WILLING TO SERVE. AND THIS IS A THIRD BRANCH OF
10 GOVERNMENT, THE JUDICIAL. WHEN THE LEGISLATURE
11 STARTS TO VOTE ON SOMETHING, THEY DON'T ASK EACH OF
12 YOU INDIVIDUALLY. BUT HERE IN THIS COURT YOU ARE
13 TRULY INDEED EXERCISING YOUR RIGHTS AND PRIVILEGES
14 OF THE JUDICIAL SYSTEM BECAUSE THE TWELVE JURORS IN
15 THIS CASE WILL BE MADE JUDGES OF THE FACTS IN THE
16 CASE. I AM A JUDGE OF THE LAW. BUT THE JURORS,
17 THOSE TWELVE, ULTIMATELY WILL ARRIVE AT THEIR
18 VERDICT AND THEY WILL INDEED BE PARTICIPATING IN
19 THE THIRD BRANCH OF GOVERNMENT; THAT IS THE
20 JUDICIAL SYSTEM.

21 SO MADAM CLERK YOU HAVE, AND I
22 WANT YOU TO PLACE WITH THE COURT REPORTER; MAKE
23 SURE IT IS A MATTER OF RECORD. MS. CHERYL GRAHAM
24 LATE LAST EVENING TYPED UP A REALLY NEAT NICE LIST,
25 AND ALL AGREED THAT NUMBERS ONE THROUGH THIRTY-SIX

MOTIONS

1000

1 WERE THE ORDER IN WHICH THE JURORS WERE QUALIFIED;
2 AND THEN THE STRIKE SHEET, WHILE THE COURT
3 REPORTER'S RECORD WILL REFLECT THAT, THE CLERK DOES
4 HAVE A STRIKE SHEET. MAKE SURE THAT THAT IS A PART
5 AND PARCEL OF THE RECORD. I HAVE ALREADY READ INTO
6 THE RECORD THE NUMBER OF STRIKES UTILIZED BY BOTH
7 THE STATE AND DEFENSE AS TO THE REGULAR JURORS AS
8 WELL AS THE ALTERNATE JURORS. SO, MADAM CLERK, AT
9 THE TIME IF YOU WOULD PLEASE, MA'AM, CALL THE ROLL
10 OF THE TWELVE JURORS THAT HAVE BEEN SELECTED TO
11 SERVE AS A MEMBER OF THIS JURY PANEL.

12 THE CLERK: PAUL RANDOLPH, NUMBER
13 ONE?

14 MR. RANDOLPH: HERE.

15 THE CLERK: NUMBER TWO, HERBERT
16 SIMMONS, JR.?

17 MR. SIMMONS: HERE.

18 THE CLERK: NUMBER THREE, BENJAMIN
19 BYRD, III?

20 MR. BYRD: HERE.

21 THE CLERK: NUMBER FOUR, ALICE T.
22 POSTELL?

23 MRS. POSTELL: HERE.

24 THE CLERK: NUMBER FIVE, MILTON J.
25 HANDLER, JR.?