

VOLUME II OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Lee S. Alford, Circuit Court Judge

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S.C. Supreme Court

JAMES ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-205909

APPENDIX

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1 ISSUE; ANGELA LEWIS BECAUSE OF A CHILD; AND THIS IS WHERE
2 THE HALF COMES IN, I HAVE PUT DOWN ON MY RECAP AND MY
3 REASONS I HAVE EXCUSED MS. ROZSAK BOTH FOR PRE-TRIAL
4 PUBLICITY BECAUSE I WOULD HAVE EXCUSED HER ON THAT ALONE.
5 I ALSO FIND THAT SHE IS NOT DEATH PENALTY QUALIFIED.

6 I KNOW I DO HAVE A MOTION PENDING CONCERNING
7 CHANGE OF VENUE, AND I THINK THAT I MUST PUT DOWN HER AS
8 SOMEONE WHO WOULD HAVE BEEN DISQUALIFIED FOR PRE-TRIAL
9 PUBLICITY EVEN IF SHE HAD BEEN DEATH PENALTY QUALIFIED.

10 DO YOU FOLLOW THAT?

11 MR. HANCOCK: YES, SIR.

12 THE COURT: SO, THAT'S MY SIX AND A HALF. DOES
13 ANYBODY HAVE ANYTHING DIFFERENT ON THAT?

14 MR. POPE: ON 138, YOUR HONOR, I HAD A HEALTH
15 ISSUE. YOU KNOW, THAT WAS THE FELLOW THAT HAD SEVERAL
16 DIFFEENT THINGS. THAT WAS THE ONE THAT NEEDED THE BED AND
17 TO STAND UP. ---

18 THE COURT: BUT I EXCUSED HIM BECAUSE HE SAID --
19 WE'D ALREADY TAKEN CARE -- I TOLD HIM HE COULD GET UP AND
20 STRETCH. HE TOLD ME THAT HE STAYED AT MOTELS AND WAS A
21 TRAVELING SALESMAN AND IF HE COULD DO THAT, HE COULD STAY
22 IN THE BED WHEREVER WE PUT HIM UP. AND AS FAR AS A SPECIAL
23 CHAIR, I NEVER GOT TO THAT BECAUSE OF PRE-TRIAL. BUT HE
24 WAS A TRAVELING SALESMAN AND I THINK HE COULD SIT FOR A FEW
25 HOURS AND I WAS GOING TO LET HIM STRETCH. I HAD HIS HEALTH

1 ISSUES TAKEN CARE OF IN MY MIND, MAYBE NOT IN HIS.

2 MR. POPE: I'M SORRY, YOUR HONOR, THEN THAT WAS
3 BECAUSE OF?

4 THE COURT: PRE-TRIAL PUBLICITY.

5 MR. POPE: THANK YOU.

6 THE COURT: ALL RIGHT, I'LL SEE Y'ALL AT 9:00 IN
7 THE MORNING. I APPRECIATE EVERYBODY'S PATIENCE.
8 MARCH 16, 1999:

9 THE COURT: IS THE STATE READY?

10 MR. POPE: YES, SIR, YOUR HONOR.

11 THE COURT: IS THE DEFENSE READY?

12 MR. BOYD: NO, SIR. MR. ROBERTSON IS NOT IN
13 HERE.

14 THE COURT: OH, OKAY.

15 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR?

16 THE COURT: WELL, LET'S WAIT UNTIL HE GETS IN
17 HERE SO THAT WE CAN HAVE EVERYTHING ON THE RECORD WITH HIM
18 PRESENT.

19 (THE DEFENDANT CAME INTO THE COURTROOM)

20 THE COURT: ALL RIGHT, LET THE RECORD REFLECT
21 THAT EVERYONE IS NOW PRESENT. YES, SIR, MR. POPE?

22 MR. POPE: YOUR HONOR, THE FIRST JUROR, JUROR 79,
23 WE HAD A QUESTION YESTERDAY CONCERNING A CRIMINAL RECORD.
24 WE HAVE RESEARCHED THAT FURTHER. HE DOES IN FACT HAVE A
25 CONVICTION FOR GRAND LARCENY. AN OFFICER ALSO HAS A

1 WARRANT FOR HIS ARREST WHEN HE ENTERS THE COURTROOM.

2 THE COURT: WELL, LET'S DON'T ARREST HIM IN THE
3 COURTROOM.

4 MR. POPE: I'M JUST CALLING THAT TO THE COURT'S
5 ATTENTION BEFORE WE WASTE TIME.

6 THE COURT: WELL, LET'S GET HIM IN AND I'LL TELL
7 HIM HE'S DISQUALIFIED AND THEN Y'ALL CAN TAKE CARE OF THAT
8 OUTSIDE.

9 MR. POPE: YOUR HONOR, THE CLERK HAS THE RECORD
10 OF THE CONVICTION; SHE BROUGHT IT UPSTAIRS IF YOU NEED IT.

11 THE COURT: ALL RIGHT, BRING MR. FAILE IN PLEASE.

12 MASSEY FAILE, JR., JUROR NUMBER 79, WHITE MALE,
13 WAS QUESTIONED AS FOLLOWS:

14 QUESTIONS BY THE COURT:

15 Q. MR. FAILE, WE'VE CHECKED YOUR RECORD AND FIND
16 THAT YOU DO HAVE A GRAND LARCENY CONVICTION.

17 (THE JUROR SHOOK HIS HEAD IN THE AFFIRMATIVE.)

18 Q. YOU DO? WELL, THAT WOULD DISQUALIFY YOU. AND
19 IT'S ALSO MY UNDERSTANDING THAT THEY HAVE A
20 CURRENT WARRANT OUTSTANDING FOR YOU. A
21 SHERIFF'S OFFICER IS GOING TO TALK TO YOU ABOUT
22 THAT, BUT WE ARE GOING TO EXCUSE YOU FROM
23 SERVING ON THIS JURY.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: ROBIN PARKER, 205.

1 ROBIN PARKER, JUROR NUMBER 205, WHITE FEMALE, WAS
2 QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. MS. PARKER, IF YOU'LL JUST COME UP HERE AND HAVE
5 A SEAT. HOW ARE YOU THIS MORNING?

6 A. FINE, THANK YOU.

7 Q. I'LL REMIND YOU THAT I AM JOHN HAYES, I
8 INTRODUCED MYSELF YESTERDAY. I'M SORRY I'M SORT
9 OF LOOKING DOWN, BUT THIS IS THE WAY THIS THING
10 IS SET UP. I TRIED STANDING UP YESTERDAY BUT
11 THAT DIDN'T WORK EITHER BECAUSE I HAD TOO MUCH
12 MATERIAL I HAD TO LOOK AT.

13 FIRST LET ME REMIND YOU THAT YOU ARE UNDER OATH.

14 DURING THE COURSE OF THE TRIAL YOU MAY SEE

15 CAMERAS IN THE COURTROOM. THEY ARE ALLOWED NOW,

16 PHOTOGRAPHERS. THEY WON'T BE TAKING YOUR

17 PICTURE, THEY ARE NOT ALLOWED TO; IT'S AGAINST

18 THE LAW. SO, DON'T BE DISTRACTED BY THEM.

19 NOW, YOU HANDED US A QUESTIONNAIRE. IS IT

20 CORRECT OR IS THERE ANYTHING YOU NEED TO CHANGE

21 ON IT?

22 A. I DON'T KNOW. I THINK EVERYTHING IS THE SAME.

23 Q. HAS ANYTHING SIGNIFICANT CHANGED SINCE YOU SENT

24 IT IN, I KNOW IT'S BEEN A WHILE.

25 A. I DON'T THINK THERE'S ANYTHING.

1 Q. OKAY. NOW, IN THE JURY ROOM THERE WERE
2 WITNESSES LISTED ON SOME SHEETS OF PAPER.

3 A. YES, SIR.

4 Q. DID YOU HAVE A CHANCE TO REVIEW IT?

5 A. YES. I DIDN'T GET TO THE LAST PAGE.

6 Q. ALL RIGHT, I'LL GIVE YOU A MOMENT TO LOOK AT
7 THAT.

8 (AFTER A BRIEF PAUSE.)

9 A. OKAY.

10 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR A CLOSE
11 PERSONAL FRIEND OR ACQUAINTANCE OF ANY OF THE
12 INDIVIDUALS YOU SEE LISTED?

13 A. THE ONLY TWO PEOPLE -- I LIVE NEXT DOOR TO DEAN
14 SHILLINGLAW.

15 Q. OKAY.

16 A. WE DON'T SPEND TIME TOGETHER BUT WE DO LIVE NEXT
17 DOOR TO ONE ANOTHER. AND I WENT TO SCHOOL WITH
18 RONALD DEAL.

19 Q. WOULD THE FACT THAT YOU ARE IN THOSE SITUATIONS
20 INVOLVING THOSE TWO WITNESSES, WOULD THAT AFFECT
21 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE
22 TRIAL OF THIS CASE?

23 A. I DON'T THINK SO.

24 Q. IN SPITE OF THAT RELATIONSHIP -- I'LL CALL IT
25 RELATIONSHIP, BUT SITUATION, COULD YOU STILL BE

1 FAIR AND IMPARTIAL TO THE STATE AND THE
2 DEFENDANT IN THE TRIAL OF THIS CASE?

3 A. I FEEL I COULD.

4 Q. OKAY. HAVE YOU HEARD ANYTHING ABOUT THIS CASE
5 FROM ANY SOURCE WHATSOEVER, TALKED ABOUT IT,
6 HEARD ABOUT IT, SEEN ANYTHING IN THE NEWS?

7 A. I HAVE SEEN STUFF IN THE PAPER.

8 Q. WOULD WHAT YOU HAVE SEEN IN THE PAPER AFFECT
9 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE
10 TRIAL OF THIS CASE?

11 A. I THINK I COULD.

12 Q. DO YOU THINK YOU COULD PUT THAT OUT OF YOUR MIND
13 AND DO AS THE LAW REQUIRES; THAT IS, LISTEN TO
14 THE EVIDENCE, APPLY THE LAW SOLELY AS IT IS
15 PRESENTED IN THIS COURTROOM AND RETURN A FAIR
16 AND IMPARTIAL VERDICT?

17 A. YES, SIR.

18 Q. ALL RIGHT. IN THE JURY ROOM THERE WERE THREE
19 JUROR TYPES LISTED ON A SHEET OF PAPER. DID YOU
20 HAVE A CHANCE TO REVIEW IT YET?

21 A. YES, SIR.

22 Q. DID YOU FIND YOURSELF TO BE IN ONE OF THOSE
23 JUROR TYPES?

24 A. I FEEL LIKE I'M IN THE THIRD.

25 Q. ALL RIGHT. THIS TRIAL WILL TAKE PLACE IN TWO

1 STAGES. THE FIRST WILL BE TO DETERMINE WHETHER
2 OR NOT MR. ROBERTSON IS OR IS NOT TO BE FOUND
3 GUILTY OF MURDER.

4 HE IS PRESUMED INNOCENT AND THE FACT THAT WE ARE
5 GOING TO BE TALKING ABOUT THE SECOND PART WHICH
6 IS CALLED THE PENALTY PART IS NO INDICATION
7 REGARDING WHAT THAT VERDICT SHOULD BE.

8 IF HE'S FOUND NOT GUILTY, THE CASE WILL BE OVER.

9 IF HE IS FOUND GUILTY, WE WOULD MOVE INTO THE
10 SECOND PART, THE PENALTY PHASE. BUT HE IS
11 PRESUMED INNOCENT AND IS SO PRESUMED UNTIL A
12 JURY WERE CONVINCED BY THE STATE OF HIS GUILT
13 BEYOND A REASONABLE DOUBT.

14 SO, THE FACT THAT WE ARE TALKING ABOUT THE
15 SECOND PART BEFORE WE DO THE FIRST PART, IT
16 SHOULDN'T BE CONFUSING, BUT IT'S A LITTLE
17 DIFFERENT BUT I WANT YOU TO UNDERSTAND THAT IT
18 DOESN'T PRESUPPOSE THAT WE WILL EVEN REACH THE
19 SECOND PART. DO YOU UNDERSTAND THAT?

20 A. I UNDERSTAND.

21 Q. NOW, IN THE TYPE OF JUROR YOU LISTED OR
22 INDICATED, THERE WERE CERTAIN WORDS USED,
23 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
24 THOSE MEAN -- AGGRAVATION MEANS CIRCUMSTANCES
25 ATTENDING THE COMMITTING OF A CRIME OR THE

1 COMMISSION OF A CRIME WHICH INCREASE ITS
2 ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCES
3 BUT ARE THINGS THAT ARE ABOVE AND BEYOND THE
4 ESSENTIAL ELEMENTS THAT CONSTITUTE THE CRIME.
5 AND MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES
6 WHICH WOULD NOT JUSTIFY OR EXCUSE THE COMMISSION
7 OF A CRIME BUT ARE THINGS WHICH IN FAIRNESS AND
8 MERCY MAY BE CONSIDERED AS EXTENUATING OR
9 REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO
10 YOU UNDERSTAND THAT'S THE WAY THOSE TERMS ARE
11 USED?

12 A. YES, SIR.

13 Q. IF YOU TELL ME THAT YOU FEEL LIKE YOU ARE THE
14 THIRD TYPE, THEN AS I UNDERSTAND THAT YOU'RE
15 TELLING ME THAT IF WE REACH THAT SECOND PART OF
16 THE TRIAL AND MR. ROBERTSON HAS BEEN FOUND
17 UNANIMOUSLY BEYOND A REASONABLE DOUBT GUILTY OF
18 MURDER, THAT YOU WOULD NOT HAVE MADE UP YOUR
19 MIND AT THAT POINT CONCERNING PUNISHMENT. IS
20 THAT CORRECT?

21 A. I GUESS.

22 Q. LET ME PHRASE IT LIKE THIS. AS I SAID EARLIER,
23 WHEN WE REACH THE END OF THAT PART IF HE'S FOUND
24 GUILTY, THE STATE WILL HAVE A CHANCE TO PRESENT
25 AT THE SECOND STAGE WHAT ARE CALLED AGGRAVATING

1 CIRCUMSTANCES.

2 A. RIGHT.

3 Q. AND THE DEFENSE WILL HAVE THE RIGHT IF THEY WISH
4 TO PRESENT WHAT ARE CALLED MITIGATING
5 CIRCUMSTANCES.

6 A. UH HUH.

7 Q. WOULD YOU BE THE TYPE OF JUROR WHO WOULD WANT TO
8 HEAR ALL OF THAT BEFORE YOU DETERMINED WHAT
9 PUNISHMENT WOULD BE APPROPRIATE OR WOULD YOU
10 HAVE EVEN PRIOR TO HEARING THAT DECIDED ---

11 A. NO, I WOULD HAVE TO HEAR IT.

12 Q. SO YOU WOULD NOT HAVE MADE UP YOUR MIND IN
13 ADVANCE BUT WOULD WANT TO HEAR WHAT'S PRESENTED
14 IN THAT SECOND PART BEFORE YOU MAKE A
15 DETERMINATION AS TO THE APPROPRIATE PUNISHMENT.
16 IS THAT CORRECT?

17 A. YES.

18 Q. SO, YOU'RE TELLING ME THAT YOU WOULD LIKE TO
19 HEAR -- NEED TO HEAR THE FACTS AND CIRCUMSTANCES
20 IN BOTH AGGRAVATION AND MITIGATION AND THAT YOU
21 WOULD BE ABLE TO LISTEN AND FOLLOW THE LAW AS I
22 AS TRIAL JUDGE WOULD CHARGE IT TO YOU BEFORE YOU
23 WOULD BE ABLE TO MAKE A DECISION REGARDING
24 PUNISHMENT. IS THAT CORRECT?

25 A. YES, SIR.

1 Q. AND ARE YOU TELLING ME THAT IN THIS SECOND PART
2 IF THE FACTS PRESENTED SO WARRANTED, THAT YOU
3 COULD IF YOU FELT IT APPROPRIATE, IMPOSE THE
4 PENALTY OF LIFE IMPRISONMENT UPON MR. ROBERTSON?

5 A. YES, SIR.

6 Q. ARE YOU TELLING ME THAT IF YOU FELT THAT THE
7 FACTS PRESENTED AT THE SECOND PART OF THE TRIAL
8 WARRANTED, THAT YOU COULD IMPOSE THE DEATH
9 PENALTY ON MR. ROBERTSON?

10 A. YES, SIR.

11 Q. I WANT TO ALLOW YOU NOW TO ANSWER ANY QUESTIONS
12 THAT THE ATTORNEYS HAVE. THESE QUESTIONS DON'T
13 HAVE YES OR NO OR RIGHT OR WRONG ANSWERS. SOME
14 OF THEM MAY BE YES OR NO, I SHOULDN'T SAY THAT.
15 BUT THEY ARE NOT QUESTIONS THAT HAVE RIGHT AND
16 WRONG ANSWERS AND THEY ARE NOT INTENDED TO
17 INVAD E YOUR PRIVACY. THEY ARE SIMPLY TO FIND
18 OUT HOW YOU FEEL ABOUT CERTAIN ASPECTS OF THINGS
19 I'VE ALREADY GONE OVER WITH YOU.

20 A. OKAY.

21 THE COURT: MR. BOYD?

22 QUESTIONS BY MR. BOYD:

23 Q. GOOD MORNING, MS. PARKER.

24 A. HI.

25 Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS

1 SEATED RIGHT THERE. AND BILL HANCOCK IS MY CO-
2 COUNSEL. IN THIS CASE.

3 Q. WHAT I WOULD LIKE TO DO IS ASK YOU A FEW
4 QUESTIONS. LIKE THE JUDGE SAYS, THIS ISN'T TO
5 EMBARRASS YOU OR ANYTHING OF THAT NATURE. IN
6 FACT, THESE AREN'T GOING TO BE PERSONAL
7 QUESTIONS. AND DON'T FEEL LIKE YOU ARE ON TRIAL
8 OR ANYTHING. I KNOW SITTING IN THAT WITNESS
9 CHAIR IS KIND OF SCARY.

10 A. IT IS.

11 Q. THE JUDGE ASKED YOU A FEW QUESTIONS ABOUT THE
12 CASE CONCERNING THE GUILT OR NOT GUILTY PHASE OF
13 THE TRIAL AND THEN THE PENALTY PHASE OF THE
14 TRIAL IF IT GOES THAT FAR.

15 YOU UNDERSTAND THE FIRST PART -- IF YOU'RE
16 SELECTED AS A JUROR, IN THE FIRST PART OF THIS
17 CASE YOU WILL HEAR EVIDENCE ON WHETHER OR NOT
18 JIMMY ROBERTSON IS GUILTY OF THE CRIMES HE'S
19 CHARGED WITH IN THE INDICTMENTS.

20 A. RIGHT.

21 Q. AND THE JURY WOULD MAKE A DECISION AS TO WHETHER
22 OR NOT HE SHOULD BE FOUND GUILTY OR NOT GUILTY
23 OF THOSE CHARGES OR ANY COMBINATION OF THEM.
24 YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. OKAY. AND ONLY IF HE IS FOUND GUILTY OF THE
2 MURDER WOULD IT GO INTO A SECOND PHASE OF THE
3 TRIAL WHICH WOULD BE CALLED THE PENALTY PHASE.
4 AND THERE THE JURY WOULD BE MAKING A DECISION OF
5 WHETHER OR NOT TO SENTENCE HIM TO LIFE IN PRISON
6 OR THE DEATH PENALTY.

7 A. YES.

8 Q. YOU'VE GOT ALL THAT?

9 A. I'VE GOT THAT.

10 Q. OKAY. NOW THE QUESTIONS I WANT TO ASK YOU ABOUT
11 CONCERN THE PENALTY PHASE IF IT GETS THAT FAR.
12 YOU JUST TOLD THE JUDGE THAT YOU COULD CONSIDER
13 ALL OF THE EVIDENCE BUT A MINUTE AGO YOU SAID "I
14 GUESS". WHAT DID YOU MEAN WHEN YOU SAID "I
15 GUESS"?

16 A. I'M VERY NERVOUS. AND I WASN'T REALLY SURE WHAT
17 TO SAY AT THAT POINT BECAUSE I AM VERY NERVOUS.

18 Q. OKAY; I UNDERSTAND, I AM, TOO. LET ME JUST ASK,
19 IN THAT CONTEXT THAT YOU'RE A JUROR IN THE
20 PENALTY PHASE OF THE TRIAL, WOULD YOU BE WILLING
21 TO CONSIDER THE MITIGATING EVIDENCE THAT MAY BE
22 PRESENTED. AND AT THAT PHASE OF THE TRIAL, YOU
23 UNDERSTAND, HE WOULD ALREADY HAVE BEEN CONVICTED
24 OF MURDER.

25 A. UH HUH.

1 Q. YOU WOULD BE CONSIDERING JUST PENALTY AT THAT
2 PHASE. THAT IS, THERE WOULDN'T BE ANY QUESTION
3 ABOUT WHETHER OR NOT HE DID IT. THERE WOULDN'T
4 EVEN BE ANY QUESTION ABOUT WHETHER IT WAS
5 ACCIDENT OR SELF-DEFENSE OR JUSTIFIED IN DOING
6 IT. AT THAT POINT HE'S BEEN CONVICTED OF
7 MURDER, THE KILLING OF OTHER PEOPLE WITH MALICE
8 AFORETHOUGHT, DELIBERATELY, THE WHOLE WORKS.

9 A. RIGHT.

10 Q. SO, UNDER THOSE CIRCUMSTANCES CAN YOU STILL
11 CONSIDER A LIFE SENTENCE?

12 A. YES.

13 Q. AND YOU CAN STILL CONSIDER THE DEATH PENALTY?

14 A. YES.

15 Q. OKAY. AND IN THE EVENT THAT -- WHAT YOU ARE
16 TELLING ME THEN IS YOU ARE ABLE TO CONSIDER --
17 JUST BECAUSE HE WAS CONVICTED OF MURDER, YOU
18 WOULDN'T AUTOMATICALLY ASSUME THAT THE DEATH
19 PENALTY IS THE APPROPRIATE PUNISHMENT?

20 A. OH, NO.

21 Q. ALL RIGHT. AND IF YOU DID FIND THAT THE DEATH
22 PENALTY WAS THE APPROPRIATE PUNISHMENT, YOU
23 COULD VOTE FOR THAT. IS THAT CORRECT?

24 A. YES.

25 Q. AND IF YOU VOTE FOR THE DEATH PENALTY -- IF ALL

1 THE JURORS VOTE FOR THE DEATH PENALTY, THE
2 JURORS HAVE TO ALL SIGN A FORM STATING THAT THEY
3 HAD VOTED FOR THE DEATH PENALTY. AND YOU COULD
4 SIGN THAT FORM?

5 A. YES.

6 Q. YOU COULD SIGN THAT FORM KNOWING THAT BECAUSE
7 YOU SIGNED THAT WITH THE OTHER JURORS THAT HE'S
8 GOING TO BE SENTENCED TO DEATH?

9 A. YES, SIR.

10 Q. NOW, YOU AS A JUROR -- I JUST HAVE A FEW MORE
11 QUESTIONS. YOU UNDERSTAND THAT AS A JUROR -- I
12 KNOW YOU'RE NERVOUS -- THAT YOU HAVE A RIGHT TO
13 HAVE YOUR OPINION IN THE JURY ROOM.

14 A. RIGHT.

15 Q. YOU UNDERSTAND THAT. AND OTHER JURORS MAY
16 DISAGREE WITH YOU AND THEY HAVE A RIGHT TO THEIR
17 OPINION. AND THERE'S NOTHING WRONG WITH HAVING
18 DIFFERENT OPINIONS, YOU UNDERSTAND THAT?

19 A. OH, YES.

20 Q. AND THE OTHER JURORS HAVE TO RESPECT YOUR
21 OPINION. YOU UNDERSTAND THAT.

22 A. YES, SIR.

23 Q. AND LIKEWISE, YOU HAVE TO RESPECT THEIR OPINION.
24 SO, WOULD YOU CHANGE YOUR VERDICT OR YOUR
25 DECISION JUST BECAUSE OTHER JURORS WERE

1 INTIMIDATING YOU OR BECAUSE YOU WERE NERVOUS OR
2 ANY OF THAT?

3 A. NO.

4 Q. YOU SAID YOU ARE A NEIGHBOR OF DEAN SHILLINGLAW?

5 A. UH HUH.

6 Q. DO Y'ALL -- ARE YOU FRIENDS, DO YOU TALK?

7 A. WE SEE EACH OTHER OUT IN THE YARD AND WAVE HELLO
8 AND THINGS LIKE THAT.

9 Q. OKAY.

10 A. WE DON'T GO OUT SOCIALIZING TOGETHER OR
11 ANYTHING.

12 Q. OKAY, ALL RIGHT. YOU ALSO MENTIONED TIM ---

13 A. NO, RONALD DEALS.

14 Q. HUH?

15 A. RONALD DEALS.

16 Q. RONALD DEALS, OKAY. DO YOU SOCIALIZE WITH HIM?

17 A. NO, I HAVEN'T SEEN HIM SINCE HIGH SCHOOL.

18 Q. YOU PUT ON HERE NEIGHBOR OF DEAN SHILLINGLAW AND
19 TIM BUCHANAN.

20 A. NO, THAT'S MY BEST FRIEND'S BROTHER. HE DOES
21 SOMETHING HERE, AND I'M NOT SURE WHAT, BUT I
22 KNEW HE WORKED HERE.

23 Q. OKAY. THANK YOU. THAT'S ALL THE QUESTIONS I
24 HAVE.

25 QUESTIONS BY MR. BRACKETT:

1 Q. GOOD MORNING, MS. PARKER; HOW ARE YOU DOING
2 TODAY?

3 A. FINE.

4 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
5 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. MYSELF
6 ALONG WITH TOMMY POPE OVER THERE WILL BE
7 PROSECUTING MR. ROBERTSON IN THIS CASE AND I
8 JUST WANT TO FOLLOW UP ON A COUPLE OF THINGS
9 THAT MR. BOYD AND THE JUDGE HAVE ALREADY ASKED
10 YOU ABOUT JUST TO CLARIFY A COUPLE OF THINGS.
11 YOU UNDERSTAND THAT WE DON'T EVEN GET TO THE
12 SECOND PHASE UNTIL WE FIND WHETHER HE'S GUILTY
13 OR NOT?

14 A. YES, SIR.

15 Q. AND WHAT YOU HAVE SAID IS THAT YOU COULD LISTEN
16 TO THE EVIDENCE IN THE FIRST PART AND DECIDE
17 FAIRLY, BASED ON THE EVIDENCE YOU HEAR IN THIS
18 COURTROOM AND THE LAW AS THE JUDGE TELLS YOU
19 WHETHER OR NOT THE DEFENDANT IS GUILTY?

20 A. YES, SIR.

21 Q. AND THEN IF YOU DETERMINE THAT THE DEFENDANT IS
22 GUILTY, THE JURY CONCLUDES THAT AND THEY FIND
23 HIM GUILTY, THEN WE GO TO THE SECOND PHASE. AND
24 DID YOU UNDERSTAND ABOUT THE AGGRAVATING AND
25 MITIGATING CIRCUMSTANCES?

1 A. YES.

2 Q. AGGRAVATING TENDING TO MAKE THE MURDER MORE
3 SERIOUS OR WORSE; AND MITIGATING TENDING TO
4 LESSEN THE DEFENDANT'S RESPONSIBILITY.

5 A. RIGHT.

6 Q. YOU COULD WEIGH BOTH OF THOSE AND DETERMINE
7 WHETHER OR NOT -- YOU COULD ASSIMILATE ALL OF
8 THE INFORMATION FROM THAT AND THEN MAKE YOUR OWN
9 DETERMINATION OF WHAT THE PENALTY SHOULD BE?

10 A. YES, SIR.

11 Q. AND IF AFTER HEARING ALL THAT YOU THOUGHT LIFE
12 WAS THE APPROPRIATE SENTENCE, YOU COULD RENDER A
13 VERDICT OF LIFE?

14 A. YES, SIR.

15 Q. AND IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU
16 COULD RENDER A VERDICT OF DEATH?

17 A. YES, SIR.

18 Q. MR. BOYD ASKED YOU SOME QUESTIONS ABOUT WHETHER
19 OR NOT YOU WOULD CHANGE YOUR OPINION TO GO WITH
20 THE FLOW OR WHETHER OR NOT -- YOU'RE YOUR OWN
21 PERSON, YOU UNDERSTAND THAT.

22 A. YES.

23 Q. AND YOU WOULD KEEP YOUR OWN OPINIONS, RIGHT?

24 A. YES.

25 Q. BUT WOULD THAT MEAN YOU WOULDN'T EVEN LISTEN TO

1 THE OTHER JURORS?

2 A. NO.

3 Q. YOU WOULD LISTEN TO WHAT THEY HAD TO SAY AND
4 TAKE INTO ACCOUNT WHAT THEY HAD TO SAY.

5 A. YES.

6 Q. AND IF IT WAS REASONABLE, YOU MIGHT CHANGE YOUR
7 MIND?

8 A. UH HUH.

9 Q. OKAY. ONE OF THE REQUIREMENTS OF A CAPITAL
10 JUROR, A JUROR IN A CAPITAL MURDER CASE THAT
11 MAKES IT DIFFERENT FROM ANY OTHER TYPE OF CASE
12 IN THE WORLD IS THE SIGNING REQUIREMENT WHICH
13 MR. BOYD TOUCHED ON BRIEFLY AND I'LL GO INTO A
14 LITTLE MORE DETAIL.

15 IN MOST CASES THE FOREPERSON IS THE ONLY PERSON
16 THAT HAS TO SIGN THE VERDICT FORM. THEY JUST
17 SIGN THEIR NAME AND WHAT THE VERDICT WAS AND
18 THAT'S ALL THERE IS TO IT.

19 IN A CAPITAL MURDER CASE IF THE JURY RETURNS A
20 VERDICT OF LIFE, THE FOREPERSON IS STILL THE
21 ONLY PERSON TO SIGN IT. IF THE JURY RETURNS A
22 VERDICT OF DEATH, THEN EACH JUROR HAS TO SIGN
23 THEIR NAME INDICATING THAT THAT'S THE SENTENCE
24 THAT THEY IMPOSED.

25 A. UH HUH.

1 Q. IS IT YOUR TESTIMONY HERE TODAY THAT IF THAT
2 CAME TO PASS AND THE JURY VOTED FOR DEATH FOR
3 MR. ROBERTSON, VOTED TO SEND HIM TO HIS DEATH,
4 THAT YOU COULD TAKE THE PEN IN YOUR HAND AND
5 SIGN YOUR NAME ROBIN PARKER SENDING MR.
6 ROBERTSON TO DEATH?

7 A. YES, SIR.

8 Q. OKAY. THANK YOU VERY MUCH.

9 A. THANK YOU.

10 THE COURT: MS. PARKER, I'M GOING TO LET YOU STEP
11 OUTSIDE JUST FOR A MOMENT.

12 (THE JUROR LEFT THE COURTROOM.)

13 THE COURT: WHAT SAYS THE DEFENSE?

14 MR. BOYD: SHE'S QUALIFIED.

15 MR. BRACKETT: I SUBMIT SHE'S QUALIFIED.

16 THE COURT: ALL RIGHT, I FIND THAT SHE IS
17 QUALIFIED. BRING HER BACK IN FOR JUST A MINUTE.

18 (THE JUROR CAME BACK INTO THE COURTROOM.)

19 THE COURT: YOU CAN JUST STAND RIGHT THERE. MS.
20 PARKER, YOU WILL BE PART OF THE POOL FROM WHICH THE JURY
21 WILL BE DRAWN. THAT DOES NOT NECESSARILY MEAN THAT YOU
22 WILL ULTIMATELY BE ON THE JURY. BUT I AM GOING TO ASK YOU
23 TO CALL BACK TONIGHT TO THAT 1-800 NUMBER AFTER 6:00
24 O'CLOCK AND THEY WILL GIVE YOU INSTRUCTIONS.

25 NOW, KEEP IN MIND THAT YOU ARE NOT TO DISCUSS

1 THIS CASE. IF ANYONE TRIES TO DISCUSS IT WITH YOU, REPORT
2 THAT BACK TO ME. AND DO NOT LET YOURSELF BE EXPOSED TO ANY
3 NEWS COVERAGE.

4 WHEN YOU COME, BE PREPARED TO BE SEQUESTERED AND
5 STAY WITH US UNTIL THE DURATION OF THE TRIAL.

6 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT YOU
7 ARE AWARE OF THAT WOULD PROHIBIT YOU FROM DOING THAT?

8 THE JUROR: NOT THAT I KNOW OF.

9 THE COURT: ALL RIGHT, WELL CALL BACK TONIGHT
10 AFTER 6:00 AND FOLLOW THOSE INSTRUCTIONS. THANK YOU A LOT.

11 THE JUROR: THANK YOU.
12 (THE JUROR LEFT THE COURTROOM.)

13 THE COURT: ALL RIGHT, 132, ALICE JOHNSON.

14 ALICE JOHNSON, JUROR NUMBER 132, BLACK FEMALE,
15 WAS QUESTIONED AS FOLLOWS:

16 QUESTIONS BY THE COURT:

17 Q. MS. JOHNSON, JUST HAVE A SEAT UP THERE. MS.
18 JOHNSON, I'LL REMIND YOU THAT I'M JOHN HAYES;
19 I'M THE JUDGE PRESIDING OVER THIS TRIAL, AND
20 REMIND YOU THAT YOU'RE STILL UNDER OATH.
21 IF YOU END UP BEING ON THIS JURY, I WANT YOU TO
22 KNOW IN ADVANCE THAT YOU MAY SEE CAMERAS OR
23 PHOTOGRAPHERS IN THE COURTROOM. THEY ARE
24 ALLOWED BY LAW, BUT THEY ARE NOT ALLOWED TO TAKE
25 YOUR PICTURE OR REPORT THAT YOU'RE ON THE JURY.

1 THAT'S NOT PART OF THE THINGS THEY CAN REPORT.

2 SO, DON'T BE DISTRACTED IF YOU SEE THOSE THINGS
3 IN THE COURTROOM.

4 NOW, YOU HANDED IN A QUESTIONNAIRE, DO YOU NEED
5 TO MAKE ANY CHANGES ON IT OR DO YOU BELIEVE IT'S
6 STILL CORRECT?

7 A. I GUESS IT'S STILL CORRECT. I DON'T EVEN KNOW
8 THE PEOPLES ON THIS LIST.

9 Q. WELL, I'M TALKING ABOUT THE QUESTIONNAIRE THAT
10 YOU FILLED OUT AT SOME POINT. YOU FILLED OUT
11 SOME INFORMATION AND SENT IT IN; DO YOU NEED TO
12 MAKE ANY CHANGES ON THAT?

13 A. NO, I DON'T.

14 Q. NOW YOU MENTIONED THE LIST. THERE WAS IN THE
15 JURY ROOM A LIST OF WITNESSES. DID YOU HAVE A
16 CHANCE TO REVIEW IT?

17 A. THE WITNESSES? YES, SIR.

18 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY OF
19 THEM?

20 A. NO, SIR.

21 Q. DO YOU KNOW ANY OF THEM?

22 A. NO, SIR.

23 Q. HAVE YOU, PRIOR TO COMING HERE OR PRIOR TO YOUR
24 COMING HERE TODAY, HAVE YOU HEARD ANYTHING ABOUT
25 THIS TRIAL, ABOUT THIS CASE?

- 1 A. NO, I HAVEN'T.
- 2 Q. NOT ANYTHING FROM THE NEWS OR FROM PEOPLE
3 TALKING?
- 4 A. NO, I HAVEN'T.
- 5 Q. ALL RIGHT. NOW, IN THE JURY ROOM THERE WERE
6 THREE JUROR TYPES SET FORTH ON A LIST. WHAT WE
7 ARE TALKING ABOUT -- FIRST, THERE ARE NO RIGHT
8 OR WRONG ANSWERS TO THESE QUESTIONS. IN A CASE
9 OF THIS TYPE WHERE ONE IS CHARGED WITH MURDER
10 AND THE DEATH PENALTY IS SOUGHT, THERE ARE
11 ACTUALLY TWO SORT OF TRIALS. THE FIRST DEALS
12 ONLY WITH THE GUILTY OF THE DEFENDANT. AND SO
13 THE FACT THAT WE'RE TALKING ABOUT THE SECOND
14 PART IS NOT TO PRESUPPOSE THAT MR. ROBERTSON
15 WILL BE FOUND GUILTY OF MURDER. THAT WOULD BE
16 UP TO THE JURY. THE JURY MUST BE CONVINCED
17 BEYOND A REASONABLE DOUBT UNANIMOUSLY OF HIS
18 GUILT BEFORE WE GET INTO THE SECOND OR PENALTY
19 PHASE.
- 20 SO WHAT WE ARE TALKING ABOUT THOUGH IS HOW
21 JURORS WOULD APPROACH THE SECOND PART, THE
22 PENALTY PHASE.
- 23 DID YOU HAVE A CHANCE TO READ OVER THOSE LISTS
24 OF JUROR TYPES?
- 25 A. YES, SIR.

1 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

2 A. NO.

3 Q. NONE?

4 A. NO.

5 Q. ALL RIGHT, WELL LET ME ASK YOU THIS. IF MR.
6 ROBERTSON WERE FOUND GUILTY OF MURDER DURING THE
7 FIRST PART OF THE TRIAL, WOULD YOU AUTOMATICALLY
8 BELIEVE THAT HE SHOULD RECEIVE THE DEATH
9 PENALTY?

10 A. WELL, I DON'T KNOW, I DON'T BELIEVE IN DEATH
11 PENALTIES AND STUFF LIKE THAT, BUT I DON'T KNOW.

12 Q. DO YOU BELIEVE THAT IF HE WERE FOUND GUILTY OF
13 MURDER THAT HE SHOULD BE GIVEN LIFE
14 IMPRISONMENT?

15 A. YEAH, SOMETHING LIKE THAT.

16 Q. ALL RIGHT. DO YOU THINK IN THAT SECOND PART OF
17 THE TRIAL IF THE STATE -- WELL, THE STATE WOULD
18 BE ENTITLED TO PRESENT WHAT ARE CALLED
19 AGGRAVATING CIRCUMSTANCES; THAT IS, THINGS OVER
20 AND ABOVE JUST THE SIMPLE COMMISSION OF THE
21 CRIME, BUT THINGS THAT MAKE IT WORSE, MAKE WHAT
22 HAPPENED WORSE.

23 AND, OF COURSE, THE DEFENSE COULD PRESENT THINGS
24 TO CAST MR. ROBERTSON IN A FAVORABLE LIGHT IF
25 THEY WISHED; THAT IS, THINGS THAT WOULD IN

1 FAIRNESS AND MERCY SHOULD BE IN HIS FAVOR IN
2 ADDRESSING WHAT PENALTY SHOULD BE IMPOSED.

3 WHEN YOU HEARD THOSE THINGS, WOULD IT HELP YOU
4 MAKE UP YOUR MIND AS TO WHAT PENALTY YOU SHOULD
5 IMPOSE OR WOULD YOU AUTOMATICALLY DO LIFE
6 IMPRISONMENT AS OPPOSED TO DEATH?

7 A. WELL, IT WOULD BE LIFE IN PRISON.

8 Q. ARE THERE ANY CIRCUMSTANCES THAT YOU CAN IMAGINE
9 WHICH WOULD WARRANT YOUR DETERMINING THAT
10 SOMEONE OUGHT TO BE PUT TO DEATH FOR A MURDER?

11 A. NO, SIR.

12 Q. ALL RIGHT. ANSWER ANY QUESTIONS THESE LAWYERS
13 MAY HAVE.

14 QUESTIONS BY MR. POPE:

15 Q. MS. JOHNSON, MY NAME IS TOMMY POPE. I'M THE
16 SOLICITOR HERE IN YORK COUNTY. MR. BRACKETT IS
17 MY DEPUTY SOLICITOR.

18 Q. DO YOU KIND OF FEEL LIKE YOU'RE ON TRIAL UP
19 HERE?

20 A. I'M SCARED TO DEATH.

21 Q. WELL, IT'S NOTHING TO BE SCARED OF BECAUSE WHAT
22 WE ARE DOING HERE, THE JUDGE, THE DEFENSE
23 ATTORNEYS AND MYSELF, WE JUST WANT TO FIND OUT A
24 LITTLE BIT ABOUT MS. JOHNSON. AND THERE'S NO
25 RIGHT ANSWERS OR WRONG ANSWERS; YOU'RE JUST

1 TELLING US, YOU KNOW, LIKE THE JUDGE ASKING YOU
2 ABOUT THE DEATH PENALTY. HAVE YOU HAD TO SIT IN
3 A CHAIR AND ANSWER QUESTIONS LIKE THAT BEFORE
4 ABOUT THAT?

5 A. NO, SIR.

6 Q. OKAY. THIS IS JUST A CHANCE FOR YOU TO TELL US
7 HOW YOU FEEL ABOUT THINGS AND GIVES US AN
8 OPPORTUNITY TO KNOW A LITTLE MORE ABOUT YOU.
9 AND, AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS,
10 JUST WHAT COMES OUT OF YOUR HEART.

11 LET ME ASK YOU BEFORE WE GET STARTED -- OF
12 COURSE, WE HAVE YOUR QUESTIONNAIRE AND THE NOTE
13 THAT YOU SENT IN ABOUT YOUR EYESIGHT AND STUFF.
14 NOW I NOTICED WHEN WE WERE DOWNSTAIRS THE OTHER
15 DAY, YOU DIDN'T STAND UP ABOUT YOUR EYESIGHT.

16 A. I COULDN'T HEAR TOO GOOD BACK THERE. AND I
17 DIDN'T STAND UP ABOUT THE AGE EITHER.

18 Q. HOW OLD ARE YOU?

19 A. 64.

20 Q. THAT'S NOT VERY NICE FOR ME TO ASK; I APOLOGIZE.
21 WELL, OF COURSE, THE LAW ALLOWS 65 AND ABOVE TO
22 BE EXCUSED, SO YOU WOULDN'T BE EXCUSED BECAUSE
23 OF THAT.

24 BUT LET ME ASK YOU, AND NOT TO EMBARRASS YOU,
25 BUT AS FAR AS YOUR EYESIGHT, WERE YOU IN A

1 Q. AND THERE'S NOTHING WRONG WITH YOUR ANSWER; THIS
2 IS JUST LETTING US KNOW HOW YOU FEEL.

3 Q. LET ME TELL YOU, AT THE TAIL END OF THE TRIAL IF
4 YOU WERE ON THE JURY, THE JURORS ALL VOTE AND IF
5 THEY ALL VOTE LIFE -- AND, OF COURSE, YOU SAID
6 YOU COULD VOTE FOR LIFE, RIGHT?

7 A. UH HUH.

8 Q. IF ALL VOTE FOR LIFE, EVERYBODY RAISES THEIR
9 HAND AND THE FOREPERSON WOULD WRITE IT DOWN AND
10 THEY WOULD SEND IT BACK TO THE JUDGE.

11 Q. IF THEY ALL VOTE DEATH, AND OF COURSE FOR
12 STARTERS YOU'VE TOLD ME, ONE, YOU'RE NOT RAISING
13 YOUR HAND FOR DEATH, RIGHT?

14 A. NO.

15 Q. BUT IF THEY ALL VOTE DEATH, THE OTHER THING THEY
16 HAVE TO DO IS EVERYBODY HAS GOT TO WRITE THEIR
17 NAME. YOU KNOW, IF THEY HEARD AND THEY THOUGHT
18 DEATH, THEN EVERYBODY'S GOT TO WRITE THEIR NAME.
19 WHAT YOU'RE TELLING ME IS THERE IS NO WAY IN THE
20 WORLD THAT YOU'RE EVER GOING TO WRITE ALICE
21 JOHNSON ON A PIECE OF PAPER THAT'S GOING TO TAKE
22 THIS MAN'S LIFE, NO MATTER HOW HORRIBLE THE
23 CASE. IS THAT RIGHT?

24 A. THAT'S RIGHT.

25 Q. THANK YOU, MA'AM. I APPRECIATE YOUR HONESTY WITH

1 ME.

2 A. OKAY.

3 THE COURT: MR. HANCOCK?

4 QUESTIONS BY MR. HANCOCK:

5 Q. MS. JOHNSON, I'M BILL HANCOCK. I'M THE ATTORNEY
6 FOR JIMMY ROBERTSON WHO IS SITTING HERE. THIS
7 IS MR. BOYD WHO IS MY CO-COUNSEL. WE HAVE HAD A
8 LOT OF DISCUSSIONS AND THE JUDGE HAS ASKED YOU
9 QUESTIONS AND THE SOLICITOR HAS ASKED YOU
10 QUESTIONS, AND I'M JUST GOING TO ASK YOU A FEW
11 AND THEY ARE GOING TO BE ABOUT YOUR FEELINGS ON
12 THE DEATH PENALTY.

13 WE ARE IN A CASE IN WHICH THE DEATH PENALTY IS
14 BEING SOUGHT AGAINST JIMMY ROBERTSON WHO IS
15 SITTING HERE. WE HAVEN'T TRIED JIMMY YET, BUT
16 WE'LL DO THAT LATER AND THEN IF HE IS FOUND
17 GUILTY, THEN WE WOULD GO TO A SECOND PHASE OF
18 THE TRIAL WHICH IS THE DEATH PENALTY PHASE OR
19 SENTENCING PHASE OF THE TRIAL. DO YOU
20 UNDERSTAND WHERE WE ARE NOW?

21 WE'VE JUST PRESUMED OR WE'VE ASSUMED THAT HE HAS
22 BEEN FOUND GUILTY OF THE CRIMES AND WE ARE
23 TRYING TO DETERMINE HOW YOU WOULD FEEL ABOUT IT
24 WERE YOU SITTING ON THE JURY AND THE DEATH
25 PENALTY WERE PRESENTED TO YOU.

1 NOW, YOU TOLD THE SOLICITOR THAT YOU COULD NOT
2 SIGN YOUR NAME TO ANY DOCUMENT THAT SAID THAT
3 YOU WOULD IMPOSE THE DEATH PENALTY ON ANYONE.
4 IS THAT CORRECT, MA'AM?

5 A. UH UH.

6 Q. NOW WHEN WE BEGIN THIS TRIAL IF WE GOT TO THE
7 POINT WHERE YOU WOULD BE LOOKING AT THIS TRIAL,
8 THERE WOULD BE CERTAIN AGGRAVATING CIRCUMSTANCES
9 THAT WOULD MAKE THE CRIME VERY, VERY BAD, ALL
10 RIGHT?

11 AND DO YOU UNDERSTAND RIGHT NOW THAT WE'RE
12 TALKING ABOUT HE KILLED BOTH OF HIS PARENTS.
13 AND WHEN WE SAY AGGRAVATING CIRCUMSTANCES, IT
14 MAKES IT WORSE THAN JUST THE MERE KILLING OF
15 BOTH OF HIS PARENTS, AN UNLAWFUL KILLING. DO
16 YOU UNDERSTAND THAT?

17 A. UH HUH.

18 Q. AND SO WHEN WE GOT TO THE POINT, AND I'LL JUST
19 MAKE SURE YOU UNDERSTAND, WE'VE GOTTEN YOU TO
20 THE POINT THAT MR. ROBERTSON HAD BEEN CONVICTED
21 OF KILLING BOTH OF HIS PARENTS AND THEN YOU HAVE
22 BEEN GIVEN OTHER INFORMATION THAT MAKES IT WORSE
23 THAN JUST A NORMAL KILLING THAT YOU WOULD KNOW
24 ABOUT.

25 A. UH HUH.

STATE OF SOUTH CAROLINA	)	
COUNTY OF YORK	)	IN COURT OF GENERAL SESSIONS
THE STATE,	)	INDICTMENT NOS. 98-GS-46-1020
	)	1021, 1022, 1023
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF TRIAL AND
	)	PRE-TRIAL MOTIONS (7-17-98,
JAMES DEJARNETTE	)	9-22-98, 9-25-98, 11-2-98,
ROBERTSON,	)	AND 12-4-98)
	)	MARCH 15, 1999
DEFENDANT.	)	YORK, SOUTH CAROLINA

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1 Q. AND IN CONSIDERING THE FACT THAT HE MAY HAVE
2 KILLED BOTH OF HIS PARENTS IN A HORRIBLE WAY,
3 WHEN YOU'RE SITTING THERE COULD YOU THEN THINK
4 AND GO BY THE LAW AS THE JUDGE SAID IF YOU
5 THOUGHT HE SHOULD RECEIVE THE DEATH PENALTY?
6 COULD YOU DO THAT, MA'AM?

7 A. UH UH.

8 Q. YOU COULD NOT DO THAT?

9 A. UH UH.

10 Q. IN ANY SET OF CIRCUMSTANCES THAT MAY BE
11 PRESENTED TO YOU FROM THE FLOOR HERE, THE
12 EVIDENCE AND ALL OF THE EXHIBITS AND EVERYTHING
13 ELSE, YOU COULD NOT DO THAT MA'AM?

14 (THE JUROR SHOOK HER HEAD IN THE NEGATIVE.)

15 Q. THANK YOU.

16 THE COURT: ALL RIGHT, I'M GOING TO LET YOU STEP
17 OUTSIDE THE DOOR JUST FOR A MINUTE.

18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: WHAT SAYS THE STATE?

20 MR. POPE: WE WOULD SUBMIT THAT SHE IS NOT
21 QUALIFIED UNDER WITHERSPOON AND ALSO WE WOULD SUBMIT THAT
22 HER ABILITY OR INABILITY TO READ WOULD POSE A PROBLEM WITH
23 HER BEING A JUROR. BUT PRIMARILY SHE HAS MADE IT CLEAR
24 THAT SHE COULD NOT GIVE DEATH UNDER ANY CIRCUMSTANCE.

25 THE COURT: WHAT ABOUT THE DEFENSE?

1 MR. HANCOCK: I'M NOT GOING TO ARGUE WITH THAT,
2 YOUR HONOR.

3 THE COURT: ALL RIGHT. I FIND THAT SHE IS NOT
4 QUALIFIED. BRING HER BACK IN.
5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: MS. JOHNSON, WE APPRECIATE YOU COMING
7 AND WE APPRECIATE YOUR CANDOR, BUT WE ARE GOING TO EXCUSE
8 YOU FROM SERVICE. BUT WE WANT TO THANK YOU AN AWFUL LOT.
9 YOU CAN FEEL FREE TO LEAVE.

10 THE JUROR: OKAY. THANK YOU.
11 (THE JUROR LEFT THE COURTROOM.)

12 THE COURT: ALL RIGHT, WE ARE READY FOR MR.
13 GWINN, JERRY GWINN.

14 JERRY GWINN, JUROR NUMBER 101, BLACK MALE, WAS
15 QUESTIONED AS FOLLOWS:

16 QUESTIONS BY THE COURT:

17 Q. JUST COME UP HERE, MR. GWINN AND HAVE A SEAT.

18 I'M JOHN HAYES; I INTRODUCED MYSELF YESTERDAY,

19 BUT I WANT TO MAKE SURE YOU REMEMBER WHO I AM.

20 I'M THE JUDGE IN THIS CASE. AND YOU'RE STILL
21 UNDER OATH..

22 IF YOU SIT ON THIS CASE, YOU MAY SEE CAMERAS OR
23 PHOTOGRAPHERS IN THE COURTROOM, BUT THEY ARE NOT
24 ALLOWED TO TAKE YOUR PICTURE; THEY ARE NOT
25 ALLOWED TO REPORT ON YOU. THAT'S THE LAW. BUT

1 THEY ARE ALLOWED TO BE HERE.

2 YOU SENT IN A QUESTIONNAIRE AND I'VE GONE OVER
3 IT. DO YOU BELIEVE IT'S CORRECT OR IS THERE
4 ANYTHING YOU NEED TO CHANGE ABOUT IT?

5 A. AS FAR AS I KNOW, SIR, IT'S CORRECT.

6 Q. ALL RIGHT. DID YOU HAVE A CHANCE TO REVIEW THAT
7 LIST OF WITNESSES THAT WAS IN THE JURY ROOM?

8 A. YES, SIR.

9 Q. WAS THERE ANYBODY ON THERE THAT YOU'RE RELATED
10 TO BY BLOOD OR MARRIAGE, OR ANYBODY ON THERE
11 WHOM YOU KNOW?

12 A. MR. BRUCE BRYANT AND BOBBY STEVENSON.

13 Q. YOU KNOW THEM?

14 A. I DON'T KNOW THEM PERSONALLY, I JUST KNOW THEM.

15 Q. WOULD THE FACT THAT YOU KNOW THEM AFFECT YOUR
16 ABILITY TO BE FAIR AND IMPARTIAL?

17 A. NO SIR; NO, SIR.

18 Q. NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE
19 BEFORE YOU GOT HERE. HAVE YOU READ ANYTHING
20 ABOUT IT OR TALKED ABOUT IT OR FORMED ANY
21 OPINION OR HEARD ANYTHING ABOUT THE CASE BEFORE
22 YOU GOT HERE TODAY? OTHER THAN YESTERDAY HAVING
23 IT ANNOUNCED.

24 A. I READ ABOUT IT IN THE NEWSPAPER, IT WASN'T TOO
25 LONG AFTER IT HAPPENED. SOMETIME IN THAT TIME

1 PERIOD.

2 Q. ALL RIGHT. WOULD THE FACT THAT YOU HAVE READ
3 ABOUT IT, WOULD THAT AFFECT YOUR ABILITY TO BE
4 FAIR AND IMPARTIAL IN THE TRIAL OF THE CASE?

5 A. NO, SIR, IT WOULDN'T.

6 Q. COULD YOU DISASSOCIATE WHAT YOU HEARD EARLIER
7 AND BASE YOUR VERDICT SOLELY ON WHAT YOU HEAR IN
8 THIS COURTROOM? THE LAW REQUIRES THAT A VERDICT
9 BE BASED ON THE LAW AND THE EVIDENCE THAT'S
10 ESTABLISHED IN THE COURTROOM ITSELF, NOT
11 ANYTHING OUTSIDE. COULD YOU DO THAT?

12 A. YES, SIR.

13 Q. IN THE JURY ROOM WERE THREE JUROR TYPES. WE ARE
14 LOOKING AT TALKING TO YOU A LITTLE BIT, AND
15 THERE ARE NO RIGHT OR WRONG, YES OR NO TYPE
16 ANSWERS TO THESE -- THERE MIGHT BE YES OR NO,
17 BUT THERE ARE NOT RIGHT OR WRONG ANSWERS.

18 WE'RE TALKING ABOUT THE SECOND PART OF A TWO
19 PART TRIAL. THE FIRST PART OF THE TRIAL WOULD
20 BE TO DETERMINE WHETHER OR NOT MR. ROBERTSON WAS
21 GUILTY OR NOT OF THE MURDER WITH WHICH HE IS
22 CHARGED. IF HE'S FOUND NOT GUILTY, OF COURSE,
23 THE CASE WOULD BE OVER.

24 IF HE IS FOUND GUILTY BEYOND A REASONABLE DOUBT
25 UNANIMOUSLY BY THE JURY, WE WOULD MOVE INTO THE

1 SECOND PART OF THE TRIAL AND THAT WOULD HAVE TO
2 DO WITH WHAT PENALTY SHOULD BE IMPOSED.

3 WE'RE TALKING ABOUT THE SECOND PART EVEN THOUGH
4 WE HAVEN'T GOTTEN TO THE FIRST PART, BUT WE HAVE
5 TO DO IT BECAUSE OF THE NATURE OF THE
6 PROCEEDINGS. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. DID YOU HAVE A CHANCE TO LOOK AT THAT LIST OF
9 JUROR TYPES?

10 A. YES, SIR.

11 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE JUROR
12 TYPES?

13 A. YES, SIR.

14 Q. WHICH TYPE?

15 A. THE THIRD ONE.

16 Q. ALL RIGHT. IN THAT TYPE JUROR WE USED CERTAIN
17 WORDS. ONE WAS AGGRAVATION AND ONE WAS
18 MITIGATION.

19 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT
20 ATTEND THE COMMISSION OF A CRIME WHICH INCREASE
21 ITS ENORMITY OR ADD TO ITS INJURIOUS
22 CONSEQUENCES BUT ARE THINGS THAT ARE ABOVE AND
23 BEYOND THE ELEMENTS REQUIRED FOR A CONVICTION OF
24 THE CRIME.

25 MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE

1 THEY ARE NOT SUFFICIENT TO JUSTIFY A CRIME OR
2 EXCUSE A CRIME, THEY ARE THINGS THAT IN FAIRNESS
3 AND MERCY MAY BE CONSIDERED AS EXTENUATING OR
4 REDUCING THE DEGREE OF CULPABILITY OF AN
5 INDIVIDUAL. DO YOU UNDERSTAND THOSE TERMS?

6 A. YES, SIR.

7 Q. THEN I UNDERSTAND YOU'RE THE TYPE OF JUROR WHO
8 EVEN THOUGH MR. ROBERTSON HAD BEEN FOUND GUILTY
9 OF MURDER, AT THAT POINT YOU WOULD NOT HAVE MADE
10 UP YOUR MIND REGARDING WHAT WOULD BE THE
11 APPROPRIATE PUNISHMENT. IS THAT CORRECT?

12 A. THAT'S RIGHT, SIR.

13 Q. YOU'RE THE TYPE OF JUROR WHO WOULD WANT TO AND
14 NEED TO HEAR THE FACTS AND CIRCUMSTANCES IN BOTH
15 AGGRAVATION AND MITIGATION IN THAT SECOND PART
16 AND WOULD WANT TO LISTEN TO AND FOLLOW THE LAW
17 AS I CHARGE IT TO YOU BEFORE YOU MAKE A DECISION
18 REGARDING PUNISHMENT. IS THAT THE TYPE JUROR
19 YOU ARE?

20 A. YES, SIR.

21 Q. WHEN YOU HEARD THOSE FACTS IF YOU FELT THAT THEY
22 WARRANTED IT AND THAT IT WAS APPROPRIATE, COULD
23 YOU IMPOSE LIFE IMPRISONMENT ON MR. ROBERTSON?

24 A. COULD I POSE?

25 Q. COULD YOU FIND THAT LIFE IMPRISONMENT -- AFTER

1 YOU HEARD THE FACTS IN THAT SECOND PART AND YOU
2 FELT THE APPROPRIATE VERDICT WAS LIFE
3 IMPRISONMENT, COULD YOU VOTE FOR LIFE
4 IMPRISONMENT?

5 A. YES, SIR.

6 Q. IF, ON THE OTHER HAND, YOU FELT THOSE FACTS WERE
7 SUCH THAT IT WARRANTED THE PENALTY OF DEATH,
8 COULD YOU VOTE FOR DEATH?

9 A. YES, SIR.

10 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT THE
11 ATTORNEYS MY HAVE. MR. BOYD?

12 QUESTIONS BY MR. BOYD:

13 Q. GOOD MORNING, MR. GWINN.

14 A. YES, SIR.

15 Q. MY NAME IS JIM BOYD. I REPRESENT JIMMY ROBERTSON
16 SEATED THERE AND MY CO-COUNSEL IS BILL HANCOCK
17 WHO IS SEATED THERE AT THE END OF THE TABLE.

18 A. UH HUH.

19 Q. I NEED TO ASK YOU A FEW QUESTIONS. YOU'RE
20 PROBABLY NOT USED TO BEING IN A WITNESS CHAIR.
21 I KNOW IT'S NO FUN, I'VE BEEN THERE MYSELF. BUT
22 NOTHING I'M ASKING IS TRYING TO EMBARRASS YOU OR
23 ANYTHING AND I'M NOT GOING TO GET PERSONAL WITH
24 YOU ABOUT ANYTHING.

25 I NOTICED ON YOUR JURY FORM TO ANSWER THE

1 QUESTION DID YOU KNOW ANYBODY WHO LOST A FAMILY
2 MEMBER TO A HOMICIDE YOU PUT YES? WHO WAS THAT?

3 A. REPEAT THE QUESTION AGAIN NOW?

4 Q. THERE WAS A QUESTION ON THE JURY FORM THAT YOU
5 FILLED OUT ---

6 A. RIGHT.

7 Q. --- THAT YOU KNOW SOMEBODY WHO'S LOST A LOVE ONE
8 THROUGH A HOMICIDE?

9 A. RIGHT, RIGHT.

10 Q. WHO WAS THAT?

11 A. I THINK HIS NAME WAS WILLIAM SHERER. IT
12 HAPPENED IN THE EARLY 80'S OR SOMETHING LIKE
13 THAT.

14 Q. OKAY.

15 A. AS A MATTER OF FACT, HE WAS SHOT IN MY HOME
16 TOWN, HICKORY GROVE.

17 Q. ALL RIGHT. DID YOU KNOW THE PERSON WHO WAS
18 SHOT?

19 A. RIGHT.

20 Q. WAS HE A FRIEND OF YOUR'S?

21 A. WE GREW UP IN THE SAME NEIGHBORHOOD. I KNEW HIM
22 JUST BY NAME BUT NOT REALLY A FRIEND THOUGH.

23 Q. WERE YOU A WITNESS IN THAT?

24 A. NO; NO, SIR.

25 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO JUDGE

1 THIS CASE FAIRLY AT ALL?

2 A. NO, SIR.

3 Q. DID YOU ATTEND THE TRIAL -- DID SOMEBODY GET
4 CHARGED WITH THAT KILLING?

5 A. YES, SIR.

6 Q. DID YOU ATTEND THE TRIAL WHEN THEY WENT TO
7 COURT?

8 A. NO, SIR.

9 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THE
10 DEATH PENALTY BY THE JUDGE AND I JUST WANT TO
11 ASK YOU A FEW QUESTIONS ABOUT THAT.

12 YOU UNDERSTAND IN THIS TRIAL IT IS BASICALLY IN
13 TWO PHASES, POTENTIALLY AT LEAST.

14 IN THE FIRST PHASE THE JURY IS ASKED TO
15 DETERMINE WHETHER OR NOT MR. ROBERTSON SHOULD BE
16 FOUND GUILTY OR NOT GUILTY.

17 A. RIGHT.

18 Q. IF THE JURY IS UNABLE TO FIND THAT HE IS GUILTY
19 BEYOND A REASONABLE DOUBT, HE IS FOUND NOT
20 GUILTY AND THAT'S THE END OF THE TRIAL.

21 IF HE'S FOUND GUILTY BEYOND A REASONABLE DOUBT,
22 IT GOES TO A SECOND PHASE. THAT'S CALLED THE
23 SENTENCING PHASE OF THE TRIAL.

24 A. RIGHT.

25 Q. AND IN THAT PHASE THE JURY HEARS EVIDENCE IN

1 AGGRAVATION AND MITIGATION TO CONSIDER WHETHER
2 HE WILL GET THE DEATH PENALTY OR WHETHER HE WILL
3 GET LIFE IMPRISONMENT. DO YOU FOLLOW ME?

4 A. RIGHT.

5 Q. IF YOU ASSUME FOR A MINUTE THAT YOU'RE IN THE
6 SECOND PHASE OF THE TRIAL AND YOU'RE SITTING AS
7 A JUROR IN THAT PHASE OF THE TRIAL, NOW CAN YOU
8 CONSIDER, KNOWING THAT HE HAS ALREADY BEEN
9 CONVICTED OF MURDER IN THE FIRST PHASE OF THE
10 TRIAL, THAT HE'S BEEN CONVICTED OF KILLING BOTH
11 OF HIS PARENTS.

12 A. OKAY.

13 Q. CAN YOU STILL CONSIDER A LIFE SENTENCE UNDER
14 THOSE CIRCUMSTANCES?

15 A. YES, SIR.

16 Q. AND CAN YOU CONSIDER A DEATH SENTENCE UNDER
17 THOSE CIRCUMSTANCES?

18 A. YES, SIR.

19 Q. OKAY. SO, YOU COULD GO EITHER WAY, DEPENDING ON
20 THE EVIDENCE?

21 A. YES, SIR.

22 Q. BUT YOU WOULD BE WILLING TO LISTEN TO THE
23 MITIGATING CIRCUMSTANCES THAT WE PRESENT TO YOU
24 ABOUT HIM AND ABOUT OTHER FACTORS. YOU'D BE
25 WILLING TO CONSIDER THEM.

- 1 A. YES, SIR.
- 2 Q. IS THAT CORRECT?
- 3 A. YES, SIR.
- 4 Q. AND NOT JUST LISTEN TO THEM, BUT REALLY CONSIDER
- 5 THEM?
- 6 A. RIGHT; YES, SIR.
- 7 Q. NOW, YOU KNOW AS A JUROR YOU HAVE CERTAIN
- 8 RIGHTS. AND ONE OF THOSE IS THAT YOU HAVE THE
- 9 RIGHT TO YOUR OWN OPINION. DO YOU UNDERSTAND
- 10 THAT?
- 11 A. RIGHT.
- 12 Q. AND YOU UNDERSTAND, TOO, THAT OTHER JURORS MAY
- 13 HAVE DIFFERING OPINIONS THAN YOU?
- 14 A. RIGHT.
- 15 Q. OF COURSE YOUR OPINION IS ENTITLED TO BE
- 16 RESPECTED AND LISTENED TO BY THE OTHER JURORS.
- 17 YOU UNDERSTAND THAT.
- 18 A. RIGHT, SIR.
- 19 Q. AND LIKEWISE, YOU HAVE AN OBLIGATION TO RESPECT
- 20 THEIR OPINIONS.
- 21 A. RIGHT.
- 22 Q. EVEN IF THEY DIFFER WITH YOU.
- 23 A. RIGHT.
- 24 Q. WOULD YOU BE WILLING TO CHANGE YOUR OPINION -- I
- 25 KNOW YOU HAVE TO LISTEN TO OTHER PEOPLE AND, OF

1 COURSE, IF YOU CHANGE YOUR MIND, THAT'S ONE
2 THING. BUT WOULD YOU CHANGE YOUR VOTE OR YOUR
3 DECISION JUST BECAUSE THE OTHER JURORS WERE
4 PRESSURING YOU TO DO THAT?

5 A. NOT PRESSURING, ONLY IF THERE WAS SOMETHING THEY
6 BROUGHT TO MY ATTENTION THAT I HAD MISSED, I
7 MIGHT BE PERSUADED TO CHANGE MY MIND BUT
8 PRESSURE, NO.

9 Q. OKAY. AND THE JUDGE HAS PROBABLY TOLD YOU, I
10 THINK, BUT THE JURY IN THIS CASE, UNDER THE LAW
11 THE JURY HAS TO BE SEQUESTERED. THAT IS, Y'ALL
12 STAY TOGETHER; YOU'RE PUT IN A MOTEL; YOU DON'T
13 GET TO GO HOME UNTIL THE TRIAL IS OVER.

14 A. RIGHT.

15 Q. AND UNDER THOSE CIRCUMSTANCES WOULD YOU FEEL
16 PRESSURED TO GO AHEAD AND AGREE WITH THE
17 MAJORITY JUST TO REACH A VERDICT AND GET OUT OF
18 THERE?

19 A. I DON'T THINK SO; NO, SIR.

20 Q. THANK YOU, SIR; THAT'S ALL THE QUESTIONS I HAVE.

21 A. YES, SIR.

22 QUESTIONS BY MR. POPE:

23 Q. MR. GWINN, MY NAME IS TOMMY POPE; I'M THE
24 SOLICITOR HERE IN YORK COUNTY. KEVIN BRACKETT
25 IS MY DEPUTY SOLICITOR.

1 A. UH HUH.

2 Q. I KNOW YOU FEEL LIKE WE ARE INTERROGATING YOU OR
3 SOMETHING. I'M JUST GOING TO RUN THROUGH A FEW
4 QUESTIONS. A LOT OF THEM IS GOING TO BE THE
5 SAME THING THE JUDGE AND ---

6 A. OKAY.

7 Q. --- AND MR. BOYD TALKED ABOUT. ONE THING I WANT
8 TO FOLLOW UP ON THE TAIL END, AS I UNDERSTAND
9 WHAT YOU WERE SAYING IS YOU'RE THE TYPE OF JUROR
10 THAT YOU'RE GOING TO THINK ABOUT EVERYTHING,
11 GOING TO TAKE EVERYTHING INTO CONSIDERATION,
12 YOU'RE GOING TO VOICE YOUR OPINION BUT YOU'RE
13 GOING TO LISTEN TO THE OTHER JURORS.
14 AND I WROTE DOWN, YOU SAID IF THEY BROUGHT
15 SOMETHING TO YOUR ATTENTION, YOU'RE NOT GOING TO
16 BE SO HARDHEADED YOU WOULDN'T CONSIDER CHANGING,
17 YOU'D JUST WANT TO HEAR EVERYTHING AND DECIDE?

18 A. RIGHT; YES, SIR.

19 Q. OKAY. AND THAT'S THE KIND OF JURORS WE NEED
20 THAT WILL HEAR EVERYTHING AND THEN MAKE A
21 DETERMINATION.

22 AS I UNDERSTOOD, YOU'RE NOT GOING TO -- AS SOON
23 AS HE'S CONVICTED, YOU'RE NOT GOING TO DECIDE
24 WHAT THE PENALTY IS GOING TO BE. YOU'RE GOING
25 TO WAIT AND SEE WHAT WE PRESENT.

1 A. YES, SIR.

2 Q. AND THEY DON'T HAVE TO DO ANYTHING, BUT IF THEY
3 CHOOSE TO PRESENT SOMETHING, YOU'LL WAIT AND
4 HEAR THAT, TOO. IS THAT RIGHT?

5 A. YES, SIR.

6 Q. AND, AGAIN, I'M NOT GOING TO GO BACK THROUGH
7 THEM BECAUSE YOU UNDERSTAND. WE'RE TALKING
8 ABOUT THE SECOND STAGE OF THE TRIAL NOW ---

9 A. YES, SIR.

10 Q. --- BUT IN THE FIRST STAGE WE'VE GOT TO PROVE
11 THE CASE BEYOND A REASONABLE DOUBT.

12 A. YES, SIR.

13 Q. WHEN WE GET TO THE SECOND STAGE, AS I
14 UNDERSTOOD, YOU SAID THAT YOU'RE THE TYPE OF
15 JUROR THAT COULD GIVE LIFE?

16 A. YES.

17 Q. OR COULD GIVE DEATH?

18 A. YES.

19 Q. ONE OF THE REQUIREMENTS, ONCE YOU'VE HEARD IT
20 AND, YOU KNOW, WE RUN THROUGH IT SO QUICK IT
21 SOUNDS LIKE WE'RE MAKING LIGHT OF THE FACTORS,
22 BUT YOU'RE GOING TO HEAR DIFFERENT EVIDENCE THAT
23 WILL ALLOW YOU, AND THE JUDGE WILL INSTRUCT YOU
24 THE LAW THAT WILL ALLOW YOU TO MAKE YOUR
25 DECISION. IF ALL THE JURORS GET BACK THERE AND

1 AFTER HEARING EVERYTHING AND TALKING ABOUT AND
2 THEY DECIDE BASED ON EVERYTHING WE'VE HEARD,
3 HE'S BEEN CONVICTED, WE'RE NOW HEARING THE OTHER
4 EVIDENCE, BASED ON THAT WE DECIDE LIFE. YOU
5 KNOW, THAT'S WHAT THE JURORS DECIDE. Y'ALL TALK
6 ABOUT IT AND YOU VOTE. EVERYBODY RAISES THEIR
7 HAND OR WRITES ON A PIECE OF PAPER AND SAYS WE
8 DECIDE LIFE. THEN JUST THE FOREPERSON, MAYBE
9 FOREMAN, FORELADY OF THE JURY, THAT ONE PERSON
10 WOULD SAY WE VOTED UNANIMOUSLY FOR LIFE, AND
11 THEY WOULD SIGN THEIR NAME.

12 IF THEY VOTE DEATH -- IF Y'ALL VOTE DEATH, IT'S
13 A LITTLE BIT DIFFERENT. IF YOU VOTE DEATH,
14 EVERYBODY WOULD VOTE BUT THERE WOULD BE A SHEET
15 AND EVERYBODY SIGNS THEIR NAME.

16 OF COURSE, THE JUDGE WILL INSTRUCT YOU ALL THIS
17 LATER BUT I'M JUST SAYING THAT PART IS
18 DIFFERENT. IF YOU VOTE DEATH AFTER HEARING
19 EVERYTHING, THEN EVERYBODY SIGNS THEIR NAME.

20 IF YOU HEARD ALL THE FACTS IN THE CASE AND
21 THOUGHT THAT DEATH WAS THE APPROPRIATE DECISION,
22 COULD YOU SIGN JERRY GWINN TO A DOCUMENT THAT
23 WOULD TAKE THIS MAN'S LIFE IF YOU THOUGHT THAT
24 WAS THE RIGHT THING TO DO?

25 A. IF I THOUGHT IT WAS THE RIGHT THING TO DO, I

1 WOULD.

2 Q. THANK YOU, SIR.

3 THE COURT: ALL RIGHT, MR. GWINN, I'M GOING TO
4 LET YOU STEP OUTSIDE THE DOOR JUST ONE MINUTE.

5 THE JUROR: ALL RIGHT, SIR.
6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE DEFENSE?

8 MR. BOYD: I BELIEVE HE'S QUALIFIED.

9 MR. POPE: I SUBMIT HE'S QUALIFIED, YOUR HONOR.

10 THE COURT: I FIND HE IS QUALIFIED. BRING HIM
11 BACK IN FOR JUST A MINUTE.

12 (THE JUROR RETURNED TO THE COURTROOM.)

13 THE COURT: MR. GWINN, WE'RE GOING TO INCLUDE YOU
14 IN THE POOL FROM WHICH THE JURY IS GOING TO BE DRAWN. I'M
15 GOING TO ASK YOU TO CALL BACK TONIGHT AFTER 6:00 AND THEY
16 WILL TELL YOU WHEN TO REPORT. AND WHEN YOU DO, BRING STUFF
17 TO STAY BECAUSE YOU WILL BE HERE FOR A WHILE WHILE WE TRY
18 THE CASE AND YOU'LL BE SEQUESTERED.

19 ARE YOU AWARE OF ANY EXTENUATING CIRCUMSTANCES
20 THAT WOULD PROHIBIT YOU FROM DOING THAT?

21 THE JUROR: MY WIFE IS ALSO ON THE JURY.

22 THE COURT: YEAH, I KNOW, AND I'VE GOT TO WRESTLE
23 THROUGH AND FIGURE OUT WHAT TO DO BECAUSE I KNOW YOU'VE GOT
24 SOME CHILDREN; I BELIEVE THEY ARE HIGH SCHOOL AGE.

25 THE JUROR: RIGHT.

1 THE COURT: I'M VERY AWARE OF THE FACT THAT I'M
2 NOT GOING TO TAKE TWO PARENTS, I DON'T THINK, OUT OF THE
3 HOME. BUT OTHER THAN THAT, THERE IS NO PROBLEM?

4 THE JUROR: NO SIR.

5 THE COURT: NOW, DON'T TALK ABOUT THE CASE; DON'T
6 READ ABOUT IT. AND IF ANYONE DOES TRY TO TALK TO YOU ABOUT
7 THE CASE, REPORT THAT BACK TO ME. OKAY?

8 THE JUROR: ALL RIGHT, SIR.

9 THE COURT: THANK YOU A LOT.

10 THE JUROR: THANK YOU, SIR.

11 THE COURT: ALL RIGHT, 87, MARK FUDGE.

12 MARK FUDGE, JUROR NUMBER 87, WHITE MALE, WAS
13 QUESTIONED AS FOLLOWS:

14 QUESTIONS BY THE COURT:

15 Q. MR. FUDGE, IF YOU WILL JUST COME OVER HERE AND
16 HAVE A SEAT. I'M JOHN HAYES, AND I'M THE JUDGE
17 THAT'S PRESIDING OVER THIS CASE. YOU'RE STILL
18 UNDER OATH AND I WILL TELL YOU AT THIS POINT
19 THAT IF YOU ARE CHOSEN AS A JUROR ON THIS CASE,
20 YOU MAY ON OCCASION SEE A CAMERA OR PHOTOGRAPHER
21 IN THE COURTROOM. THEY WON'T BE TAKING YOUR
22 PICTURE, THEY'RE NOT ALLOWED TO. THEY ARE NOT
23 ALLOWED TO REPORT ABOUT JURORS. I JUST WANT YOU
24 TO BE AWARE OF THAT.

25 YOU HAD EARLIER FILLED OUT A QUESTIONNAIRE AND

1 SUBMITTED IT. DO YOU NEED TO MAKE ANY
2 CORRECTIONS TO IT OR DO YOU BELIEVE IT'S
3 CORRECT?

4 A. I BELIEVE IT'S CORRECT.

5 Q. DID YOU HAVE A CHANCE TO GO THROUGH THE
6 WITNESSES THAT WERE LISTED ON THOSE PIECES OF
7 PAPER IN THE JURY ROOM?

8 A. YES, SIR.

9 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR DO YOU
10 KNOW ANY OF THOSE INDIVIDUALS?

11 A. THERE'S ONE WITNESS ON HERE THAT I KNOW I KNOW,
12 SIR.

13 Q. WHO'S THAT?

14 A. THOMAS FLEISCHER.

15 Q. THE DOCTOR?

16 A. THE DOCTOR; I THINK HE'S AN ORTHOPAEDIC SURGEON.

17 Q. YES, HE IS. SINCE HE'S A WITNESS, WOULD THAT
18 AFFECT -- SINCE HE WILL POSSIBLY TESTIFY IN THIS
19 TRIAL, WOULD THE FACT THAT HE'S A WITNESS AFFECT
20 YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE
21 STATE AND THE DEFENDANT IN THE TRIAL OF THIS
22 CASE?

23 A. NO, SIR.

24 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
25 YOU CAME HERE TODAY, OTHER THAN WHEN IT WAS

1 ANNOUNCED YESTERDAY AND THE INDICTMENTS READ,
2 BUT HAVE YOU HEARD ANYTHING ABOUT IT, READ
3 ANYTHING ABOUT IT OR TALKED ABOUT IT?

4 A. NO, SIR.

5 Q. NOW, IN THE JURY ROOM THERE WERE THREE JUROR
6 TYPES SET FORTH ON A PIECE OF PAPER. A CASE OF
7 THIS TYPE IS TRIED IN TWO STAGES. THE FIRST HAS
8 TO DO WITH THE DETERMINATION OF WHETHER OR NOT
9 MR. ROBERTSON IS GUILTY OR NOT GUILTY OF MURDER.
10 IF HE IS FOUND NOT GUILTY BY THE JURY, THEN THE
11 CASE ENDS.

12 IF HE'S FOUND GUILTY BEYOND A REASONABLE DOUBT
13 UNANIMOUSLY BY THE JURY, THE CASE MOVES INTO THE
14 SECOND PART WHICH HAS TO DO WITH WHAT PENALTY
15 WOULD BE APPROPRIATE.

16 WE'RE TALKING ABOUT THAT SECOND PART EVEN THOUGH
17 THE FIRST PART HASN'T BEEN COMPLETED AND THE
18 FACT THAT WE'RE TALKING ABOUT THE SECOND PART
19 DOES NOT PRESUPPOSE THAT HE WOULD BE FOUND
20 GUILTY. DO YOU UNDERSTAND ALL OF THAT?

21 A. YES, SIR.

22 Q. DID YOU FIND ON THAT LIST OF JUROR TYPES ONE OF
23 THE TYPES IN WHICH YOU FELT YOU FIT?

24 A. YES, SIR. IT WOULD BE THE THIRD PARAGRAPH.

25 Q. OKAY. IN THAT THIRD PARAGRAPH WE USE PHRASES

1 AGGRAVATING AND MITIGATING. I JUST WANT TO MAKE
2 SURE YOU UNDERSTAND THAT WHEN WE TALK ABOUT
3 AGGRAVATION OR CIRCUMSTANCES IN AGGRAVATION,
4 WE'RE TALKING ABOUT CIRCUMSTANCES WHICH ATTEND
5 OR ACCOMPANY THE COMMISSION OF A CRIME WHICH
6 INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS
7 CONSEQUENCE BUT ARE THINGS THAT ARE ABOVE AND
8 BEYOND THE ACTUAL ELEMENTS OF THAT OFFENSE.
9 MITIGATING CIRCUMSTANCES ARE THOSE THINGS WHICH
10 WHILE NOT CONSTITUTING JUSTIFICATION OR EXCUSE
11 FOR THE OFFENSE, THEY ARE THINGS THAT IN
12 FAIRNESS AND MERCY MAY BE CONSIDERED AS
13 EXTENUATING OR REDUCING THE DEGREE OR MORAL
14 CULPABILITY OF AN INDIVIDUAL. DO YOU UNDERSTAND
15 THAT?

16 A. YES, SIR.

17 Q. I UNDERSTAND WHEN WE REACH THAT SECOND PART OF
18 THE TRIAL IF YOU WERE ON THE JURY AND THE JURY
19 HAD FOUND MR. ROBERTSON GUILTY, YOU WOULD NOT
20 HAVE AT THAT POINT MADE UP YOUR MIND IN ADVANCE
21 AS TO WHAT WOULD BE THE APPROPRIATE PUNISHMENT.
22 IS THAT CORRECT?

23 A. YES, SIR.

24 Q. I UNDERSTAND THAT YOU WOULD BE THE TYPE JUROR
25 WHO WOULD NEED TO HEAR THE FACTS AND

1 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND
2 WOULD WANT TO LISTEN TO AND FOLLOW THE LAW THAT
3 THE JUDGE CHARGES TO YOU BEFORE MAKING A
4 DECISION REGARDING PUNISHMENT. IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND IT IS MY UNDERSTANDING THAT YOU ARE THE TYPE
7 JUROR WHO IF THE FACTS PRESENTED WERE SUCH THAT
8 IT WOULD WARRANT IT, YOU COULD RETURN A VERDICT
9 OF LIFE IMPRISONMENT AGAINST MR. ROBERTSON. IS
10 THAT CORRECT?

11 A. YES, SIR.

12 Q. AND YOU ALSO WOULD BE THE TYPE OF JUROR THAT IF
13 THE FACTS PRESENTED SO WARRANTED, YOU COULD
14 IMPOSE A VERDICT OF THE DEATH PENALTY ON MR.
15 ROBERTSON. IS THAT CORRECT?

16 A. YES, SIR.

17 Q. ALL RIGHT. NOW I AM GOING TO ASK YOU TO ANSWER
18 ANY QUESTIONS THAT THE ATTORNEYS MAY HAVE.

19 QUESTIONS BY MR. BRACKETT:

20 Q. GOOD MORNING, MR. FUDGE.

21 A. YES, SIR.

22 Q. MY NAME IS KEVIN BRACKETT. I'M THE DEPUTY
23 SOLICITOR IN THE SIXTEENTH CIRCUIT. MYSELF AND
24 TOMMY POPE WHO IS SEATED AT COUNSEL TABLE WITH
25 ME, HE AND I ARE GOING TO BE PROSECUTING MR.

1 ROBERTSON OVER HERE FOR THE CHARGES OF MURDER,
2 ARMED ROBBERY AND FINANCIAL TRANSACTION CARD
3 FRAUD IN THIS TRIAL.

4 THE JUDGE HAS EXPLAINED SOME THINGS TO YOU, I
5 JUST WANT TO GO BACK OVER THEM BRIEFLY AND COVER
6 A COUPLE OF POINTS TO CLARIFY YOUR POSITION.
7 YOU UNDERSTAND THAT THIS IS A DEATH PENALTY CASE
8 AND THAT A DEATH PENALTY CASE HAS TWO PARTS.

9 A. YES, SIR.

10 Q. IN THE FIRST PART WE'RE JUST DETERMINING WHETHER
11 OR NOT HE'S GUILTY OR INNOCENT. IT DOESN'T HAVE
12 ANYTHING TO DO WITH THE DEATH PENALTY. IT'S
13 JUST LIKE A REGULAR MURDER TRIAL. THE STATE HAS
14 THE BURDEN OF PROOF. WE'VE GOT TO PROVE THAT
15 HE'S GUILTY; HE DOESN'T HAVE TO PROVE ANYTHING
16 AT ALL. YOU UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. AND WHAT YOU HAVE TOLD THE JUDGE IS THAT IN THAT
19 PART OF THE TRIAL YOU COULD LISTEN TO THE
20 EVIDENCE THAT WE PRESENT, ANY EVIDENCE THE
21 DEFENSE MAY CHOOSE TO PRESENT IF THEY CARE TO.
22 AND THEN TAKE THE LAW AS THE JUDGE CHARGES IT TO
23 YOU AND DECIDE WHETHER OR NOT HE'S GUILTY OF
24 THESE CRIMES.

25 A. YES, SIR.

1 Q. OKAY. NOW, IF THE JURY DECIDES THAT HE IS IN
2 FACT GUILTY OF THESE MURDERS, THEN WE PROCEED TO
3 THE NEXT PHASE OF THE TRIAL WHICH IS THE PENALTY
4 PHASE AND THERE, OF COURSE, WE ARE CONCERNED
5 WITH WHAT ARE WE GOING TO DO WITH HIM NOW THAT
6 HE HAS BEEN CONVICTED.

7 AND AT THAT STAGE OF THE TRIAL, THERE ARE ONLY
8 TWO POSSIBLE OPTIONS, LIFE OR DEATH.

9 IN THAT PHASE OF THE TRIAL, AGAIN, WE'VE GOT TO
10 PROVE THE AGGRAVATING CIRCUMSTANCES. WE HAVE TO
11 PROVE TO THE JURY THAT THERE ARE AGGRAVATING
12 CIRCUMSTANCES WHICH KIND OF MAKE THIS MURDER
13 WORSE THAN A REGULAR MURDER IF THERE IS SUCH A
14 THING AS A REGULAR MURDER; JUST KIND OF
15 AGGRAVATE THE MURDER AND MAKE IT MORE SERIOUS OR
16 MORE HEINOUS.

17 THE DEFENSE IF THEY CHOOSE, AND AGAIN THEY DON'T
18 HAVE TO PUT ANYTHING UP IN THAT PHASE EITHER,
19 BUT IF THEY CHOOSE, THEY CAN SHOW WHAT ARE
20 CALLED MITIGATING CIRCUMSTANCES WHICH LESSENS
21 THE DEFENDANT'S RESPONSIBILITY AS FAR AS THE
22 MURDER. DO YOU UNDERSTAND THE TWO TYPES OF
23 EVIDENCE THAT WILL BE PRESENTED?

24 A. YES, SIR.

25 Q. NOW WHAT YOU'VE SAID IS THAT IF YOU ARE A JUROR

1 IN THAT SECOND PHASE OF THE TRIAL THAT YOU COULD
2 LISTEN TO ALL OF THE EVIDENCE THAT WAS PRESENTED
3 AND MAKE UP YOUR OWN MIND AS TO WHAT THE
4 PUNISHMENT SHOULD BE. IS THAT RIGHT?

5 A. YES, SIR.

6 Q. OKAY. AND IF YOU DECIDED AFTER LISTENING TO ALL
7 OF THE EVIDENCE THAT THE VERDICT IN THIS CASE
8 SHOULD BE LIFE IN PRISON, YOU COULD IMPOSE A
9 SENTENCE OF LIFE IN PRISON?

10 A. YES, SIR.

11 Q. AND IF YOU HEARD ALL OF THE EVIDENCE AND YOU
12 DECIDED THAT THE NATURE AND THE CIRCUMSTANCES OF
13 THIS CASE WERE SUCH THAT YOU FELT THAT THE
14 DEFENDANT SHOULD BE PUT TO DEATH, YOU COULD VOTE
15 THAT HE SHOULD BE PUT TO DEATH?

16 A. YES, SIR.

17 Q. OKAY. AND UNDERSTAND I'M ASKING YOU THESE
18 QUESTIONS AND NOBODY HAS EVER TALKED TO YOU
19 ABOUT THIS LIKE THIS BEFORE HAVE THEY?

20 A. NO, SIR.

21 Q. OKAY. THERE ARE NO RIGHT OR WRONG ANSWERS; YOU
22 ARE JUST KIND OF TELLING ME HOW YOU FEEL ABOUT
23 THIS ISSUE AND WE NEED TO DISCUSS THIS BECAUSE
24 THESE ARE THE KINDS OF THINGS THAT WE NEED TO
25 KNOW IN ADVANCE OF PUTTING THE JURY IN THE JURY

1 BOX BECAUSE WE DON'T WANT YOU TO BE CAUGHT IN
2 THE POSITION WHERE YOU'RE HAVING TO DO SOMETHING
3 THAT YOU'RE NOT COMFORTABLE WITH. SO, WE NEED
4 TO KNOW THESE THINGS NOW.

5 A DEATH PENALTY CASE IS UNIQUE IN ONE OTHER
6 ASPECT. IN ANY OTHER CRIMINAL CASE WHEN THE
7 JURY COMES BACK WITH ITS VERDICT, ONLY THE
8 FOREPERSON HAS TO SIGN WHAT THE VERDICT IS,
9 GUILTY OR NOT GUILTY OR WHATEVER, AND THEY SIGN
10 THEIR NAME. AND THE ONLY PERSON THAT HAS TO
11 SIGN ANYTHING IS THE FOREPERSON.

12 NOW IF THE JURY FINDS THAT THE DEFENDANT SHOULD
13 RECEIVE LIFE, AGAIN ONLY THE FOREPERSON WOULD
14 SIGN.

15 IF THE JURY DECIDES THAT THE DEFENDANT SHOULD BE
16 SENTENCED TO DEATH, EACH AND EVERY JUROR HAS TO
17 SIGN THE SENTENCE SHEET. ALL TWELVE JURORS
18 WOULD HAVE TO SIGN.

19 COULD YOU IF YOU WERE A JUROR IN THE SECOND
20 PHASE OF THE TRIAL AND YOU DECIDED THAT THE
21 DEFENDANT SHOULD BE PUT TO DEATH, COULD YOU,
22 SIR, SIGN YOUR NAME MARK FUDGE ON A PIECE OF
23 PAPER THAT SENDS THIS MAN TO HIS DEATH?

24 A. YES, SIR, I COULD.

25 Q. OKAY, THANK YOU VERY MUCH.

1 THE COURT: MR. HANCOCK?

2 QUESTIONS BY MR. HANCOCK:

3 Q. MR. FUDGE, I'M BILL HANCOCK. I'M THE ATTORNEY
4 FOR JIMMY ROBERTSON WHO IS SEATED HERE. THIS IS
5 JIM BOYD WHO IS CO-COUNSEL IN THIS CASE. WE
6 REPRESENT HIM IN THE DEFENSE PORTION OF THE
7 CASE.

8 IT HAS BEEN EXPLAINED TO YOU AND I'M SURE YOU'RE
9 A LITTLE NERVOUS. ARE YOU NERVOUS?

10 A. YES, SIR, PRETTY NERVOUS.

11 Q. AND I WILL EXPLAIN TO YOU LIKE THESE OTHER
12 GENTLEMEN HAVE AND THE JUDGE HAS, THERE ARE NO
13 RIGHT AND WRONG ANSWERS TO YOUR QUESTIONS. WE'RE
14 NOT HERE TO TRY TO PIN YOU DOWN ON THINGS THAT
15 ARE IRRELEVANT TO THIS TRIAL. WE JUST NEED TO
16 KNOW SOME OF YOUR OPINIONS AND YOUR HEARTFELT
17 FEELINGS ABOUT THE DEATH PENALTY AND HOW IT
18 SHOULD BE APPLIED.

19 AND I AM GOING TO ASK YOU IF YOU HAVE UNDERSTOOD
20 SOME OF THESE QUESTIONS. WE HAVE NOT ENTERED
21 INTO ANY PORTION OF THE TRIAL AT THIS POINT, YET
22 WE ARE ASKING YOU ABOUT A SECOND PHASE. SO JUST
23 SO THAT I AM SURE THAT YOU UNDERSTAND, THERE ARE
24 TWO PHASES TO THE TRIAL.

25 WE WOULD START AND WE WOULD TRY AND YOU AS A

1 JUROR WOULD SIT IN THIS JURY BOX AND TRY MR.
2 ROBERTSON AND IF HE WERE FOUND GUILTY OF THE
3 CRIMES, THEN WE WOULD GO TO ANOTHER PHASE OF THE
4 TRIAL WHICH IS COMPLETELY SEPARATE AND DIFFERENT
5 AND THEN YOU WOULD DECIDE BETWEEN LIFE AND
6 DEATH.

7 DO YOU UNDERSTAND THAT THAT'S THE WAY IT WORKS?

8 A. YES, SIR.

9 Q. DO YOU ALSO UNDERSTAND THAT WHEN YOU WERE DOWN
10 IN THE JURY ROOM DOWNSTAIRS YESTERDAY THAT MR.
11 ROBERTSON IS CHARGED WITH KILLING BOTH OF HIS
12 PARENTS. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND SO WHEN YOU SIT IN THE PENALTY PHASE OF THIS
15 TRIAL, YOU WOULD BE JUDGING A PERSON THAT HAD
16 KILLED BOTH OF THOSE PARENTS. IS THAT CORRECT?

17 A. YES, SIR.

18 Q. AND YOU UNDERSTAND THAT?

19 A. YES, SIR, I UNDERSTAND.

20 Q. AND THEN DO YOU UNDERSTAND THAT THERE COULD ALSO
21 BE AGGRAVATING CIRCUMSTANCES THAT EVEN ABOVE AND
22 BEYOND KILLING BOTH OF HIS PARENTS, IT COULD BE
23 EVEN WORSE THAN THAT. DO YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. AND THOSE ARE CALLED AGGRAVATING CIRCUMSTANCES.

1 NOW THERE COULD ALSO BE MITIGATING CIRCUMSTANCES
2 ON BEHALF OF MR. ROBERTSON THAT WOULD TEND TO
3 EXPLAIN OR MAKE HIS CULPABILITY LESS. AND
4 YOU'RE SAYING THAT YOU COULD CONSIDER THOSE.
5 COULD YOU CONSIDER THEM IN LIGHT OF THE FACT
6 THAT HE WOULD HAVE ALREADY BEEN CONVICTED OF
7 KILLING HIS MOTHER AND FATHER AND POSSIBLY IN A
8 VERY HEINOUS WAY?

9 A. YES, I -- YES, SIR.

10 Q. NOW YOU HESITATE. YOU DON'T KNOW EXACTLY WHAT
11 THOSE MITIGATING CIRCUMSTANCES MIGHT BE, DO YOU?

12 A. NO, SIR, I DON'T.

13 Q. AND YOU DON'T HAVE ANY IDEA AT THIS POINT IN
14 TIME WHAT THOSE AGGRAVATING CIRCUMSTANCES MIGHT
15 BE?

16 A. NO, SIR, I DON'T.

17 Q. BUT NOT EVEN KNOWING WHAT THEY MAY OR MAY NOT
18 BE, YOU ARE TELLING ME THAT YOU COULD CONSIDER
19 THEM; IS THAT CORRECT, SIR?

20 A. YES, I THINK I COULD.

21 Q. AND YOU'RE TELLING ME THAT IF YOU FOUND THE
22 MITIGATING CIRCUMSTANCES WERE SUCH, WHATEVER
23 THEY MAY OR MAY NOT BE, THAT YOU COULD ACTUALLY
24 VOTE FOR A LIFE IMPRISONMENT FOR MR. ROBERTSON
25 SHOULD THE FACTS AND CIRCUMSTANCES SO WARRANTED

1 IT. IS THAT WHAT YOU'RE TELLING US?

2 A. YES.

3 Q. AND YOU UNDERSTAND THAT WE IN THIS COURTROOM,
4 I'M JUST ASKING YOU QUESTIONS, AND WE CERTAINLY
5 DO RESPECT YOUR OPINION AND RESPECT IT HIGHLY
6 BECAUSE YOU ARE POTENTIALLY A JUROR ON A DEATH
7 PENALTY CASE. DO YOU UNDERSTAND THAT YOU HAVE
8 THE RIGHT, SHOULD YOU BE PICKED AS A JUROR, FOR
9 THAT JURY AND EVERYBODY ON THAT JURY, EVERYBODY
10 IN THAT COURTROOM TO RESPECT YOUR OPINION
11 WHETHER IT IS THE DEATH PENALTY OR WHETHER IT IS
12 LIFE IN PRISON. YOU UNDERSTAND THAT.

13 A. YES, SIR.

14 Q. AND YOU HAVE THE RIGHT TO RESPECT ALL OTHER
15 JURORS AND THE DUTY TO RESPECT ALL OTHER JURORS'
16 OPINIONS IN ARRIVING AT WHAT IS A FAIR AND JUST
17 DECISION IN THIS CASE. DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. YOU HAVE INDICATED THAT YOU COULD SIGN AS A
20 MEMBER OF TWELVE THE VERDICT OF DEATH ON MR.
21 ROBERTSON. IS THAT CORRECT?

22 A. YES, SIR.

23 Q. COULD YOU ALSO -- COULD YOU ALSO IF IT WAS YOUR
24 OPINION AND YOUR OPINION ALONE VOTE FOR LIFE
25 AGAINST ALL OTHERS?

1 (AFTER A PAUSE.)

2 A. YES, SIR.

3 Q. YOU HESITATED A LONG TIME AND YOU GAVE THAT A
4 LOT OF THOUGHT.

5 A. I'M SORRY, THAT WOULD BE DIFFICULT.

6 Q. WELL LET ME ASK YOU IN THAT VEIN THEN, ARE WE
7 STARTING WITH THE PREMISE WITH YOU, SIR, THAT
8 AFTER HE WAS CONVICTED THEN YOU WOULD FEEL LIKE
9 HE SHOULD GET A DEATH SENTENCE AND THEN WE AS
10 THE DEFENSE HAVE TO CONVINCE YOU THAT HE SHOULD
11 GET LIFE?

12 A. YES, SIR.

13 Q. THAT'S THE WAY YOU FEEL? SO WHAT WE'RE SAYING,
14 AND I'M JUST TRYING TO CLARIFY, SO WHAT WE'RE
15 SAYING IS THAT ONCE MR. ROBERTSON WAS CONVICTED,
16 THEN YOU WOULD SAY, OKAY, I'LL VOTE FOR DEATH
17 BUT THEN I'M GOING TO LET THE DEFENSE SEE IF
18 THEY CAN'T CONVINCE ME THAT HE SHOULD GET A LIFE
19 SENTENCE. IS THAT WHERE WE ARE, SIR?

20 A. YES, SIR.

21 Q. I HAVE NO FURTHER QUESTIONS.

22 THE COURT: YOU CAN STEP OUT.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: WHAT SAYS THE STATE?

25 MR. BRACKETT: YOUR HONOR, I WOULD ASK THE COURT

1 TO INQUIRE OF HIM DUE TO THE CONFLICT. I THINK HE WAS VERY
2 EXPLICIT WHEN HE ANSWERED YOUR QUESTIONS AND HE WAS VERY
3 EXPLICIT -- I THINK MR. HANCOCK MIGHT BE CONFUSING HIM WITH
4 THE ISSUE ABOUT WOULD YOU HAVE TO HAVE THE DEFENSE CONVINCE
5 YOU BECAUSE I EXPLAINED TO HIM THAT THE DEFENSE DOESN'T
6 HAVE TO PUT UP ANYTHING AT ALL.

7 I BELIEVE THE JURORS, THIS JUROR AND I THINK
8 THERE WAS ANOTHER JUROR PRIOR TO THIS WHO KIND OF FELL
9 PREY TO THE SAME CONFUSION. I THINK THAT THEY ARE NOT
10 EXACTLY SURE WHAT HE IS TALKING ABOUT. AND I WOULD ASK THE
11 COURT TO INQUIRE TO CLEAR THAT UP. BECAUSE, OBVIOUSLY, IF
12 THAT'S THE WAY HE TRULY FEELS, THEN HE'S NOT QUALIFIED.
13 BUT I'M NOT SURE WE KNOW HOW HE TRULY FEELS. AND I THINK
14 THE COURT'S LINE OF INQUIRY AND MY LINE OF INQUIRY
15 ESTABLISHED CLEARLY THAT HE WAS QUALIFIED.

16 AND SO SINCE THERE IS A LITTLE BIT OF
17 UNCERTAINTY, I ATTRIBUTE IT TO CONFUSION, AND I WOULD ASK
18 THE COURT TO CLEAR THAT UP.

19 THE COURT: IF I BRING HIM IN AND ASK HIM MORE
20 QUESTIONS, DOES THAT GIVE EACH SIDE THE RIGHT TO ASK MORE?

21 MR. BRACKETT: I DON'T BELIEVE IT DOES. I THINK
22 THE COURT IS THE ONE THAT HAS TO MAKE THE DECISION.

23 THE COURT: WELL, I UNDERSTAND THAT.

24 MR. BRACKETT: I WOULDN'T NECESSARILY OBJECT TO
25 IT IF THAT'S WHAT DEFENSE COUNSEL WANTED TO DO. I REALLY

1 BELIEVE THE ISSUE NEEDS TO BE CLEARED UP.

2 THE COURT: ALL RIGHT, BRING HIM IN.

3 MR. HANCOCK: IF I MAY?

4 THE COURT: WAIT JUST A SECOND.

5 MR. HANCOCK: WE'VE HAD SEVERAL JURORS WHO HAVE
6 BEEN DISQUALIFIED BECAUSE THEY SAID THEY COULDN'T VOTE FOR
7 THE DEATH PENALTY. AND THEY WERE DISQUALIFIED, I BELIEVE
8 WITHOUT FURTHER QUESTIONING.

9 HERE BECAUSE, AND I QUOTE, THE SOLICITOR'S
10 EXAMINATION OF THE WITNESS SEEMS TO BE VERY ADROIT, YET
11 THEY HAVE DESCRIBED TO THE JUDGE THAT THIS WITNESS FELL
12 PREY TO OUR CROSS EXAMINATION.

13 I THINK THE CROSS EXAMINATION WAS VERY SUCCINCT.
14 THEY WERE ASKED ON TWO DIFFERENT OCCASIONS -- I ASKED THIS
15 GENTLEMAN -- I FEEL LIKE BRINGING HIM BACK IN, JUDGE, ALL
16 IT DOES IS THROW MORE DOUBT INTO WHAT HE SAYS AT A JUDICIAL
17 QUESTIONING RATHER THAN OUR QUESTIONING. AND I WOULD ASK
18 THAT THE MATTER BE DECIDED UPON OUR QUESTIONING.

19 THE COURT: GO AHEAD.

20 MR. BRACKETT: THAT PRESUPPOSES THAT THIS WITNESS
21 KNOWS THAT OTHER WITNESSES WEREN'T QUESTIONED. HE DOESN'T
22 KNOW WHAT THE REGULAR PROCEDURE IS AND WHETHER OR NOT
23 JURORS ARE QUESTIONED AGAIN.

24 THE COURT: WELL, I DON'T WANT THE COURT TO BE
25 PUT IN THE POSITION OF STARTING TO HAVING TO REHABILITATE

1 JURORS AND GET THEM FROM ONE CAMP INTO THE OTHER.

2 HE WAS VERY THOUGHTFUL IN HIS ANSWERS, AND I
3 DON'T THINK HE WAS CONFUSED. I'M GOING TO FIND THAT HE IS
4 NOT QUALIFIED. ALL RIGHT, BRING IN THE JUROR.
5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: MR. FUDGE, WE'RE GOING TO EXCUSE YOU
7 FROM ANY FURTHER SERVICE. WE APPRECIATE YOUR TIME AND YOUR
8 CANDOR. THANK YOU A LOT.
9 (THE JUROR LEFT THE COURTROOM.)

10 THE COURT: ALL RIGHT, WE WILL DO -- WELL, LET'S
11 GO AHEAD AND TAKE A BREAK BEFORE WE DO BETTY MCCURRY.
12 WE'VE BEEN GOING FOR ABOUT AN HOUR. SO, WE'LL TAKE ABOUT
13 A FIVE MINUTE BREAK.

14 AFTER THE BREAK:

15 THE COURT: MS. BETTY MCCURRY.

16 BETTY MCCURRY, JUROR NUMBER 173, WHITE FEMALE,
17 WAS QUESTIONED AS FOLLOWS:

18 QUESTIONS BY THE COURT:

19 Q. MS. MCCURRY, IF YOU WOULD JUST COME OVER HERE
20 AND HAVE A SEAT.

21 A. THANK YOU. I OUGHT TO BE EXCUSED, YOU'RE 30
22 MINUTES LATE.

23 Q. I'M SORRY. I'VE BEEN WORKING.

24 A. I KNOW YOU HAVE; I KNOW YOU HAVE.

25 Q. I'M JOHN HAYES, AND I'LL REMIND YOU THAT YOU'RE

1 UNDER OATH.

2 A. UH HUH.

3 Q. I WANT TO TELL YOU THAT DURING THE TRIAL OF THIS
4 CASE THERE MAY BE T.V. CAMERAS AND PHOTOGRAPHERS
5 IN THE COURTROOM. THEY ARE NOT HERE TO TAKE
6 YOUR PICTURE, THEY ARE NOT ALLOWED TO. SO,
7 DON'T BE INTIMIDATED OR DISTRACTED BY IT.

8 YOU TURNED IN A QUESTIONNAIRE; DO YOU NEED TO
9 MAKE ANY CORRECTIONS TO IT, OR IS IT ACCURATE?

10 A. AS FAR AS I KNOW I THINK IT'S ACCURATE.

11 Q. ALL RIGHT. HAVE YOU HAD A CHANCE TO REVIEW IN
12 THE JURY ROOM, SINCE YOU HAD THAT EXTRA HALF
13 HOUR, THE WITNESS LISTS?

14 A. I DID.

15 Q. DID YOU FIND ANYBODY ON THERE WHO YOU ARE
16 RELATED TO BY BLOOD OR MARRIAGE OR WHO YOU KNEW?

17 A. THE ONLY ONE I HAD WAS DR. FLEISCHER BUT HE DID
18 SURGERY ON MY HUSBAND ABOUT EIGHT YEARS AGO.

19 Q. WOULD THE FACT THAT HE MAY BE A WITNESS AFFECT
20 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS
21 CASE?

22 A. NO, IT WOULD NOT.

23 Q. HAVE YOU HEARD ABOUT THIS CASE, OTHER THAN WHEN
24 YOU GOT HERE YESTERDAY, HAVE YOU HEARD ABOUT IT
25 OR READ ABOUT IT OR KNOW ANYTHING ABOUT IT FROM

1 ANY SOURCE WHATSOEVER?

2 A. IT'S BEEN IN THE PAPER AND IT'S BEEN ON
3 TELEVISION BUT AS FAR AS REALLY LISTENING, I
4 DON'T THINK I'VE REALLY PAID THAT MUCH ATTENTION
5 TO IT.

6 Q. WOULD THE FACT THAT YOU HAD HEARD SOMETHING
7 ABOUT THE CASE BEFORE COMING, WOULD THAT AFFECT
8 YOUR ABILITY TO BE FAIR AND IMPARTIAL DURING THE
9 TRIAL?

10 A. I DON'T BELIEVE SO.

11 Q. COULD YOU DISMISS THAT FROM YOUR MIND AND DO AS
12 THE LAW REQUIRES; THAT IS, BASE YOUR VERDICT
13 SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
14 DEVELOPED IN THE TRIAL OF THE CASE?

15 A. I PROBABLY COULD.

16 Q. ALL RIGHT. DID YOU HAVE A CHANCE TO REVIEW --
17 WELL, YOU SAID YOU PROBABLY COULD. I NEED TO
18 FOLLOW UP AND ASK, ARE YOU PRETTY SURE YOU COULD
19 OR ARE YOU SURE YOU COULD BECAUSE THE LAW
20 REQUIRES THAT A JUROR AND A JURY MAKE ITS
21 DECISION BASED ON WHAT'S DEVELOPED IN THE TRIAL,
22 NOT ANYTHING THAT'S OUTSIDE BECAUSE, NOT TO
23 REFLECT ON NEWSPAPERS BUT THEY PRINT HEARSAY,
24 THEY PRINT WHAT THEY HEAR AND PEOPLE TALK ABOUT
25 THINGS THEY DON'T REALLY KNOW ABOUT, AND SO WE

1 CAN'T HAVE JURORS WHO USE THOSE THINGS IN THEIR
2 DELIBERATION.

3 DO YOU FEEL COMFORTABLE THAT YOU COULD DISABUSE
4 FREOM YOUR MIND AND NOT FACTOR IN ANYTHING
5 YOU'VE HEARD AND BASE YOUR VERDICT SOLELY ON
6 WHAT YOU HEAR DURING THE TRIAL?

7 A. YES, I COULD.

8 Q. A TRIAL OF THIS TYPE TAKES PLACE IN TWO
9 SEGMENTS. THE FIRST DEALING WITH WHETHER THE
10 DEFENDANT IS TO BE FOUND GUILTY OR NOT GUILTY.
11 AND IF HE IS FOUND NOT GUILTY, THEN OF COURSE
12 THE CASE IS OVER.
13 IF HE IS FOUND GUILTY BEYOND A REASONABLE DOUBT
14 BY THE MAJORITY -- I MEAN BY A UNANIMOUS JURY,
15 NOT A MAJORITY. IF HE'S FOUND UNANIMOUSLY
16 GUILTY BEYOND A REASONABLE DOUBT, THEN THE CASE
17 WOULD GO INTO THE SECOND PHASE WHICH WOULD DEAL
18 WITH THE PENALTY.

19 WE'RE TALKING ABOUT THAT SECOND PHASE BUT THAT'S
20 NOT TO PRESUPPOSE THAT HE WOULD BE FOUND GUILTY.
21 HE IS PRESUMED INNOCENT.

22 A. UH HUH.

23 Q. AND THAT PRESUMPTION OF INNOCENCE WOULD BE
24 REMOVED ONLY IF HE IS FOUND GUILTY. DO YOU
25 UNDERSTAND ALL OF THAT?

1 A. YES, SIR.

2 Q. DID YOU HAVE A CHANCE TO REVIEW THOSE JUROR
3 TYPES ON THAT LIST?

4 A. YES, I DID.

5 Q. AND DID YOU FIND YOURSELF TO BE ONE OF THOSE
6 TYPES?

7 A. YES, I DID; I'M NUMBER TWO.

8 Q. YOU'RE NUMBER TWO?

9 A. UH HUH.

10 Q. ALL RIGHT, NUMBER TWO IS THE TYPE OF JUROR WHO
11 WOULD DETERMINE THAT EVEN THOUGH ONE HAD BEEN
12 FOUND GUILTY OF MURDER THAT UNDER NO
13 CIRCUMSTANCES COULD THEY EVER GIVE THE DEATH
14 PENALTY. IS THAT CORRECT?

15 A. THAT'S RIGHT.

16 Q. YOU WOULD BE ONE WHO NO MATTER WHAT YOU HEARD AT
17 THAT SECOND STAGE, WHETHER IT WAS AGGRAVATING;
18 THAT IS, TO MAKE IT WORSE THAN JUST A SIMPLE
19 MURDER BUT MAKE IT MORE EGREGIOUS, NONE OF THAT
20 WOULD CHANGE YOUR MIND AS FAR AS WHAT
21 PUNISHMENT; THAT IS, YOU WOULD STILL BE FIXED ON
22 LIFE IMPRISONMENT AS OPPOSED TO DEATH?

23 A. THAT'S RIGHT, YES.

24 Q. I'LL ALLOW COUNSEL TO ASK YOU SOME QUESTIONS.

25 QUESTIONS BY MR. BOYD:

1 Q. MS. MCCURRY, I'M JIM BOYD. GOOD MORNING. THIS
2 IS JIMMY ROBERTSON SEATED THERE. AND MY CO-
3 COUNSEL, BILL HANCOCK.

4 A. UH HUH.

5 Q. I NOTICE ON YOUR JURY QUESTIONNAIRE THAT YOU
6 WERE A JUROR IN THE MAX CRAIG CASE?

7 A. YES, I WAS.

8 Q. YOU DON'T HAVE GOOD LUCK AS FAR AS BEING DRAWN
9 FOR JURY DUTY IT SOUNDS LIKE.

10 A. I DO NOT; I ALWAYS GET THE GOOD ONES IT SEEMS
11 LIKE.

12 Q. I NEED TO ASK YOU JUST A FEW QUESTIONS ABOUT
13 YOUR ANSWERS TO THE JUDGE'S QUESTIONS. YOU
14 UNDERSTAND THIS CASE IS A LITTLE DIFFERENT,
15 THAT'S WHY I ASKED ABOUT THE MAX CRAIG CASE
16 BECAUSE I KNOW THAT WAS A MURDER CASE, BUT THIS
17 CASE IS A LITTLE -- IT'S A MURDER CASE, TOO, BUT
18 IT'S A LITTLE DIFFERENT THAN THAT. IN THIS CASE
19 THE STATE IS SEEKING THE DEATH PENALTY.

20 A. UH HUH.

21 Q. AND IN A DEATH PENALTY CASE THERE ARE TWO PHASES
22 TO A TRIAL. THE FIRST PHASE IS THAT THE JURY IS
23 ASKED TO DETERMINE WHETHER A PERSON IS GOING TO
24 BE FOUND GUILTY OR NOT GUILTY. YOU UNDERSTAND
25 THAT.

1 A. OKAY.

2 Q. AND, OF COURSE, IF THE PERSON IS FOUND NOT
3 GUILTY, IT DOESN'T EVEN GO TO A PENALTY PHASE.
4 YOU UNDERSTAND THAT.

5 A. RIGHT.

6 Q. YOU'VE BEEN ON JURY DUTY AND YOU'VE BEEN THROUGH
7 THAT PROCESS BEFORE.

8 A. UH HUH.

9 Q. NOW IF MR. ROBERTSON -- IF JIMMY IS FOUND
10 GUILTY, YOU WOULD GO TO A SECOND PHASE OF THE
11 TRIAL AND AT THAT POINT YOU WOULD BE ASKED TO
12 DETERMINE WHETHER OR NOT HE SHOULD RECEIVE A
13 LIFE SENTENCE OR THE DEATH PENALTY.

14 A. UH HUH.

15 Q. OF COURSE, YOU'RE NEVER REQUIRED TO VOTE ONE WAY
16 OR THE OTHER. OF COURSE, IT'S IMPORTANT THAT
17 THE JURY BE MADE UP OF PEOPLE OF ALL BELIEFS AND
18 IDEAS. BUT WHAT I WANT TO ASK YOU IS COULD YOU
19 CONSIDER THE EVIDENCE THAT MAY BE PRESENTED IN
20 THAT CASE.

21 THE STATE WOULD PRESENT WHAT'S CALLED EVIDENCE
22 IN AGGRAVATION; THAT IS, THINGS THAT MAKE IT
23 WORSE THAN AN ORDINARY MURDER. AND COULD YOU
24 WEIGH THOSE FACTORS AND CONSIDER THAT AND IF YOU
25 FELT LIKE THE CASE WARRANTED THE DEATH PENALTY,

1 COULD YOU GIVE THE DEATH PENALTY UNDER THOSE
2 CIRCUMSTANCES?

3 A. NO, I DON'T. I WON'T.

4 Q. I KNOW WE KEEP COMING BACK TO THE SAME THING,
5 BUT I JUST WANT TO MAKE SURE BECAUSE THIS IS
6 IMPORTANT TO THE STATE AND THE DEFENSE. IF YOU
7 HEAR AGGRAVATING CIRCUMSTANCES, NOT SAYING
8 WHETHER YOU WILL GIVE THE DEATH PENALTY OR WILL
9 NOT GIVE THE DEATH PENALTY OR ANYTHING LIKE
10 THAT, COULD YOU CONSIDER DOING IT IF THE CASE
11 WAS APPROPRIATE?

12 A. NO.

13 Q. SO, YOU'RE PRETTY FIRM IN THAT BELIEVE, IS THAT
14 CORRECT?

15 A. UH HUH; THAT'S RIGHT.

16 Q. THANK YOU; I HAVE NO FURTHER QUESTIONS.

17 MR. BRACKETT: NO QUESTIONS.

18 THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE
19 THE DOOR PLEASE, MA'AM.

20 THE JUROR: OKAY.

21 (THE JUROR LEFT THE COURTROOM.)

22 THE COURT: WHAT SAYS THE DEFENSE?

23 MR. BOYD: YOUR HONOR, BASED ON HER ANSWERS,
24 SHE'S NOT QUALIFIED.

25 THE COURT: THE STATE.

1 MR. BRACKETT: THE STATE CONCURS.

2 THE COURT: I FIND THAT SHE'S NOT QUALIFIED.
3 HAVE HER COME BACK IN.
4 (THE JUROR RETURNED TO THE JURY ROOM.)

5 THE COURT: MS. MCCURRY, WE'RE GOING TO EXCUSE
6 YOU. WE APPRECIATE YOUR CANDOR AND APPRECIATE YOUR COMING,
7 BUT YOU ARE THROUGH WITH SERVING WITH US AT THIS TIME.
8 THANK YOU A LOT.
9 (THE JUROR LEFT THE COURTROOM.)

10 THE COURT: NOW LORRIE SIGLER..

11 LORRIE SIGLER, JUROR NUMBER 241, WHITE FEMALE,
12 WAS QUESTIONED AS FOLLOWS:

13 QUESTIONS BY THE COURT:

14 Q. COME ON UP HERE AND HAVE A SEAT. MS. SIGLER,
15 I'M JOHN HAYES. I INTRODUCED MYSELF YESTERDAY.
16 I'M THE JUDGE PRESIDING OVER THIS CASE, AND I
17 WANT TO REMIND YOU THAT YOU ARE STILL UNDER
18 OATH. DO YOU UNDERSTAND?

19 A. UH HUH.

20 Q. NOW, DURING THE TRIAL OF THIS CASE IF YOU ARE
21 SEATED ON THE JURY, YOU MAY NOTICE, THERE ARE
22 NOT ANY TODAY, BUT T.V. CAMERAS AND
23 PHOTOGRAPHERS IN THE COURTROOM. THEY ARE
24 ALLOWED BY LAW TO BE HERE BUT THEY ARE NOT
25 ALLOWED BY LAW TO TAKE PICTURES OR REPORT ON

1 JURORS. SO, IF YOU ARE ON THE JURY AND YOU SEE
2 CAMERAS AND THINGS, DON'T WORRY AND DON'T BE
3 DISTRACTED, OKAY? AND I'M GOING TO ASK YOU TO
4 ANSWER WITH WORDS.

5 A. OH.

6 Q. IF SOMEBODY COULD HAND HER A PIECE OF PAPER SO
7 SHE COULD TAKE THE GUM OUT, I THINK IT MIGHT
8 HELP US A LITTLE BIT.

9 (A KLEENEX WAS GIVEN TO THE JUROR.)

10 Q. NOW, YOU WERE GIVEN A QUESTIONNAIRE AND FILLED
11 IT OUT AND SENT IT IN. IS IT CORRECT OR IS
12 THERE ANYTHING YOU NEED TO CHANGE ON IT?

13 A. IT'S CORRECT.

14 Q. HAVE YOU HAD A CHANCE TO REVIEW IN THE JURY ROOM
15 THOSE LISTS OF WITNESSES?

16 A. YES.

17 Q. IS THERE ANYBODY ON THERE THAT YOU ARE RELATED
18 TO BY BLOOD OR MARRIAGE OR ANYONE WHO YOU ARE A
19 FRIEND OF OR KNOW?

20 A. TWO PEOPLE I KNOW.

21 Q. WHO ARE THEY?

22 A. CHARLENE AND MARIE HILL.

23 Q. WOULD THE FACT THAT YOU KNOW THEM AND THE FACT
24 THAT THEY MAY BE WITNESSES, WOULD THAT AFFECT
25 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE

1 TRIAL OF THIS CASE?

2 A. NO.

3 Q. PRIOR TO YOUR ARRIVING HERE AND BEING TOLD ABOUT
4 THIS CASE, HAD YOU HEARD ANYTHING ABOUT IT FROM
5 ANY SOURCE WHATSOEVER?

6 A. UH UH; NO, SIR.

7 Q. YOU HAVEN'T HEARD ANYTHING ABOUT IT?

8 A. NO.

9 Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES
10 LISTED ON A PIECE OF PAPER. NOW A CASE SUCH AS
11 THIS TAKES PLACE IN TWO STAGES. THAT IS, THE
12 FIRST PART OF THE TRIAL WOULD HAVE TO DO WITH
13 WHETHER OR NOT MR. ROBERTSON IS GUILTY OR NOT OF
14 THE MURDER WITH WHICH HE IS CHARGED.

15 A JURY WOULD HAVE TO UNANIMOUSLY FIND BEYOND A
16 REASONABLE DOUBT THAT HE WERE GUILTY OF MURDER
17 BEFORE WE WOULD MOVE INTO THE SECOND PART THAT
18 WE'RE MAINLY GOING TO BE TALKING ABOUT.

19 THE FACT THAT WE'RE TALKING ABOUT THIS SECOND
20 PART, THE PENALTY PART, DOES NOT PRESUPPOSE THAT
21 A JURY WOULD FIND HIM GUILTY. BUT WE'VE JUST
22 GOT TO DO IT -- WE NEED TO TALK ABOUT IT NOW
23 EVEN THOUGH IT MAY NEVER COME TO PASS. DO YOU
24 UNDERSTAND THAT?

25 A. YES.

1 Q. AND MR. ROBERTSON IS PRESUMED INNOCENT OF THE
2 CHARGES AND WOULD BE SO PRESUMED UNTIL, AS I
3 SAY, THE JURY WERE TO FIND HIM GUILTY.

4 DID YOU HAVE A CHANCE TO REVIEW THOSE JUROR
5 TYPES?

6 A. YES, SIR.

7 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

8 A. PROBABLY NUMBER THREE.

9 Q. ALL RIGHT. THAT TYPE JUROR -- IN THERE WE USE A
10 PHRASE THAT TALKS ABOUT AGGRAVATION AND
11 MITIGATION. I WANT YOU TO UNDERSTAND THAT WHEN
12 WE USE THOSE TERMS AGGRAVATING CIRCUMSTANCES ARE
13 THINGS THAT ATTEND OR HAPPEN OR ATTEND THE
14 COMMISSION OF A CRIME THAT INCREASE ITS ENORMITY
15 OR ADDS TO ITS INJURIOUS CONSEQUENCES. THAT IS,
16 THINGS WHICH ARE ABOVE AND BEYOND JUST THE
17 ACTUAL MURDER ITSELF OR THE CRIME ITSELF.

18 MITIGATING CIRCUMSTANCES ARE THINGS WHICH WHILE
19 THEY ARE NOT JUSTIFICATION OR EXCUSE FOR A
20 CRIME, THEY ARE THINGS WHICH IN FAIRNESS AND
21 MERCY OUGHT TO BE CONSIDERED OR MAY BE
22 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE
23 OF MORAL CULPABILITY OF AN INDIVIDUAL. DO YOU
24 UNDERSTAND THAT?

25 A. YES.

1 Q. SO YOU'RE TELLING ME THAT YOU ARE THE TYPE JUROR
2 WHO EVEN THOUGH A JURY HAD UNANIMOUSLY
3 DETERMINED MR. ROBERTSON TO BE GUILTY OF MURDER,
4 THAT YOU WOULD NOT HAVE AT THAT POINT MADE UP
5 YOUR MIND IN ADVANCE CONCERNING WHAT THE
6 APPROPRIATE PUNISHMENT SHOULD BE?

7 A. NO.

8 Q. YOU WOULD NOT HAVE?

9 (NO RESPONSE)

10 Q. YOU WOULD NOT HAVE MADE UP YOUR MIND IN ADVANCE
11 AS TO WHAT ---

12 A. RIGHT; NO, I WOULD NOT.

13 Q. OKAY. YOU WOULD BE A JUROR WHO WOULD WANT TO
14 HEAR THE FACTS AND CIRCUMSTANCES IN BOTH
15 AGGRAVATION AND MITIGATION AND LISTEN AND FOLLOW
16 THE LAW CHARGED BY THE JUDGE BEFORE YOU WOULD
17 MAKE A DECISION REGARDING PUNISHMENT.

18 A. YES.

19 Q. IS THAT YOUR TYPE?

20 A. YES.

21 Q. IF THE FACTS THAT WERE PRESENTED AT THAT SECOND
22 PART WARRANTED IT IN YOUR MIND, WOULD YOU BE
23 ABLE TO IMPOSE A PENALTY OF LIFE IMPRISONMENT?

24 A. YES.

25 Q. IF THOSE FACTS AS YOU DETERMINED APPROPRIATE

1 WARRANTED A PENALTY OF THE VERDICT OF DEATH,
2 COULD YOU IMPOSE THAT?

3 A. YES.

4 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
5 MAY HAVE.

6 QUESTIONS BY MR. POPE:

7 Q. IS IT SIGLE?

8 A. SIGLER.

9 Q. MS. SIGLER, I'M TOMMY POPE; I'M THE SOLICITOR
10 HERE IN YORK COUNTY. I SEE YOU'RE FROM WEST
11 VIRGINIA, I GUESS UP THERE YOU HAVE DISTRICT
12 ATTORNEYS, IS THAT RIGHT?

13 A. UH HUH.

14 Q. OKAY, WELL, I'M A SOLICITOR AND IT'S THE SAME
15 THING. KEVIN BRACKETT IS MY DEPUTY SOLICITOR.
16 HAVE YOU EVER HAD TO SIT IN A SITUATION LIKE
17 THIS BEFORE?

18 A. NO.

19 Q. ARE YOU A LITTLE NERVOUS ABOUT IT?

20 A. YEAH.

21 Q. OKAY. LET ME TELL YOU, YOU'RE NOT ON TRIAL, YOU
22 KNOW, SO YOUR ANSWERS ARE JUST WHATEVER, YOU
23 KNOW, YOU FEEL IN YOUR HEART. THIS IS A CHANCE
24 FOR US TO LEARN A LITTLE MORE ABOUT YOU.

25 WE HAVE YOUR QUESTIONNAIRE AND THERE ARE

1 DIFFERENT THINGS THAT I WAS GOING TO ASK, BUT
2 AGAIN TRY TO RELAX A LITTLE BIT. I KNOW IT'S
3 DIFFICULT FOR YOU.

4 TO START WITH, I WAS GOING THROUGH AND LOOKING,
5 YOU HAD MENTIONED CHARLENE AND MARIE HILL. HOW
6 LONG HAVE YOU KNOWN THEM?

7 A. PROBABLY SINCE 1985.

8 Q. OKAY AND HOW DO YOU KNOW THEM?

9 A. I'M SORRY, '95, '95.

10 Q. OKAY.

11 A. CHARLENE I USED TO WORK WITH, AND HER SISTER AS
12 WELL.

13 Q. THE JUDGE TOUCHED ON IT WITH YOU BEFORE AND I
14 WANT TO MAKE SURE I UNDERSTAND. THEY MAY
15 TESTIFY, THEY MAY NOT. YOU SAW TWO HUNDRED OR
16 MORE WITNESSES ON THERE.

17 A. RIGHT.

18 Q. IF THEY DID TAKE THE STAND, YOU'RE SAYING YOU
19 COULD SET THAT ASIDE -- IN OTHER WORDS, YOU
20 WOULDN'T BELIEVE THEM OVER ONE WITNESS OR VICE
21 VERSA OR ANYTHING. YOU DO KNOW THEM, BUT YOU'RE
22 GOING TO HEAR THE WHOLE THING BEFORE YOU DECIDE.
23 IS THAT RIGHT?

24 A. YES.

25 Q. SO YOU WOULDN'T PUT ANYMORE WEIGHT TO WHAT THEY

1 SAID OR ANY LESS, EITHER WAY?

2 A. RIGHT.

3 Q. OKAY, OKAY. THE JUDGE HAD TALKED ABOUT THE
4 TRIAL ITSELF AND THERE ARE A COUPLE OF THINGS --
5 HAVE YOU EVER BEEN IN A SITUATION AS FAR AS
6 BEING A JUROR ON A TRIAL?

7 A. NO.

8 Q. WELL, I'LL TELL YOU WHEN WE GET TO THE DIFFERENT
9 STAGES IN THE TRIAL, THE JUDGE WILL INSTRUCT YOU
10 AS TO THE LAW. YOU KNOW, THE JUDGE ASKED YOU A
11 BUNCH OF QUESTIONS ABOUT THE LAW AND THEN I HIT
12 YOU, SO DON'T WORRY AS MUCH NOW -- THE JUDGE
13 WILL TELL YOU AND YOU TAKE WHAT THE JUDGE SAYS
14 AS THE LAW.

15 BUT ONE THING I WILL TELL YOU AND I THINK YOU
16 PROBABLY ALREADY KNOW THIS, THE DEFENDANT IS
17 INNOCENT UNTIL PROVEN GUILTY. AND WE'VE GOT TO
18 PROVE THE CASE, THE STATE, BEYOND A REASONABLE
19 DOUBT. AND THAT'S WHAT THAT FIRST STAGE OF THE
20 TRIAL IS. IT'S REALLY LIKE TWO SEPARATE TRIALS.
21 IT'S THE SAME JURY AND EVERYTHING, BUT IT'S LIKE
22 TWO SEPARATE TRIALS.

23 THE FIRST STAGE IS US PROVING GUILT BEYOND A
24 REASONABLE DOUBT. AS I UNDERSTOOD FROM WHAT YOU
25 TOLD THE JUDGE, YOU'RE THE TYPE JUROR THAT YOU

1 DON'T COME IN, REGARDLESS OF WHAT'S BEEN IN THE
2 MEDIA OR THE PAPER OR ANYTHING ELSE, YOU'RE
3 GOING TO DECIDE IT BASED ON WHAT YOU HEAR FROM
4 THE WITNESS STAND AND WHAT YOU HEAR AND SEE AS
5 EVIDENCE IN THE COURTROOM; RIGHT?

6 A. YES.

7 Q. IF THE STATE PUTS UP EVIDENCE, YOU'LL CONSIDER
8 THAT. THE DEFENSE, THEY NEVER HAVE TO PUT UP
9 EVIDENCE, BUT IF THEY WANT TO, YOU'LL TAKE THAT
10 INTO CONSIDERATION, TOO?

11 A. YES.

12 Q. IF YOU FEEL HE'S GUILTY, YOU'LL SAY SO. IF YOU
13 FEEL HE'S NOT GUILTY, YOU'LL SAY SO?

14 A. YES.

15 Q. IF THE DEFENDANT IS FOUND GUILTY, THEN WE GET TO
16 THAT SECOND STAGE OF THE CASE AND THAT'S WHERE
17 IT IS REALLY DIFFERENT THAN ANY OTHER TYPE
18 TRIAL. YOU KNOW, A NORMAL TRIAL IF YOU'RE ON
19 THE JURY, YOU DECIDE AND THEN THE JUDGE
20 SENTENCES. IN THIS CASE THE JURY WOULD ACTUALLY
21 DECIDE THE SENTENCE.

22 IN THAT STAGE OF THE TRIAL, AS I UNDERSTAND,
23 WHEN YOU COME IN YOU'RE THE TYPE THAT YOU
24 WOULDN'T -- JUST BECAUSE IT'S A MURDER AND JUST
25 BECAUSE HE KILLED BOTH OF HIS PARENTS, YOU WOULD

1 WAIT UNTIL YOU HEARD EVERYTHING BECAUSE THERE
2 MAY BE A REASON TO GIVE LIFE OR THERE MAY BE A
3 REASON TO GIVE DEATH. IS THAT RIGHT?

4 A. CORRECT.

5 Q. SO YOU CAN'T SAY TODAY WHAT YOU WOULD GIVE HIM
6 BECAUSE YOU DON'T KNOW ANYTHING ABOUT THE FACTS
7 OR ANYTHING ABOUT THE CASE, IS THAT FAIR?

8 A. YES.

9 Q. LET ME TELL YOU AND THE JUDGE WILL INSTRUCT YOU
10 ON THIS, AND SEE IF YOU AGREE WITH THIS. THE
11 DEFENDANT IN THAT STAGE DOESN'T HAVE TO PROVE
12 ANYTHING. DO YOU BELIEVE THAT?

13 A. YES.

14 Q. WELL, IT'S THE LAW AND HE WILL TELL YOU THAT.
15 AS FAR AS, YOU KNOW, WE PUT UP WHAT'S CALLED
16 EVIDENCE IN AGGRAVATION AND FOR LACK OF A BETTER
17 TERM, THE BAD STUFF, THE STUFF THAT WOULD MAKE
18 IT MORE LIKELY TO BE A DEATH PENALTY..
19 THEY PUT UP EVIDENCE IN MITIGATION, BUT AGAIN
20 THEY DON'T HAVE TO. YOU COULD GIVE LIFE FOR ANY
21 REASON AT ALL. YOU KNOW, YOU CAN HEAR
22 EVERYTHING AND THEM NOT PUT UP ANYTHING AND YOU
23 CAN STILL GIVE LIVE. THEY DON'T HAVE ANY BURDEN
24 TO PROVE ANYTHING. DO YOU UNDERSTAND THAT?

25 A. YES.

1 Q. AND AS I UNDERSTAND FROM WHAT YOU SAID, YOU'RE
2 THE TYPE OF JUROR THAT YOU COULD APPLY THAT. IN
3 OTHER WORDS, THEY DON'T HAVE TO PROVE ANYTHING
4 TO YOU, WE'VE GOT TO PUT EVIDENCE FORWARD TO
5 YOU. IS THAT TRUE?

6 A. YES.

7 Q. OKAY. IF WE GET TO THAT STAGE AND YOU'VE HEARD
8 ALL THE BAD AND ANY OF THE GOOD THEY WANT TO PUT
9 IN OR MITIGATION, IF YOU THOUGHT THAT LIFE WAS
10 APPROPRIATE, AND AGAIN BEING FAIR TO YOU, YOU
11 DON'T KNOW THE FIRST THING ABOUT THIS CASE YET,
12 BUT IF YOU GOT TO THAT STAGE AND IN YOUR HEART
13 AFTER HEARING EVERYTHING YOU THOUGHT LIFE WAS
14 APPROPRIATE, YOU COULD SAY SO?

15 A. YES, SIR.

16 Q. AND, OF COURSE, THERE'S TWELVE JURORS. YOU
17 WOULD LISTEN TO THEIR OPINION; YOU WOULD TALK
18 ABOUT IT AND GO OVER THE EVIDENCE BUT YOU WOULD
19 ALSO SPEAK YOUR MIND, TOO; IS THAT CORRECT?

20 A. YES.

21 Q. IF YOU FELT STRONGLY THAT LIFE WAS APPROPRIATE,
22 YOU'D STICK WITH IT?

23 A. YES.

24 Q. LIKEWISE, IF YOU GET TO THE POINT AND YOU FELT
25 AFTER HEARING -- YOU THOUGHT, OKAY, I'VE HEARD

1 EVERYTHING, BASED ON WHAT THE JUDGE TOLD ME, THE
2 LAW AND EVERYTHING, I FEEL THAT DEATH IS
3 APPROPRIATE IN THIS CASE; THEN YOU COULD SAY SO?

4 A. YES, SIR.

5 Q. OKAY. ONE OF THE REQUIREMENTS AS FAR AS LIFE IS
6 THAT THE JURY -- OF COURSE, IT'S GOT TO BE
7 UNANIMOUS, LIFE OR DEATH, ONE WAY OR ANOTHER.
8 YOU KNOW, EVERYBODY HAS GOT TO VOTE THE SAME.
9 IF YOU'RE IN THE JURY ROOM AND YOU DECIDE LIFE,
10 EVERYBODY VOTES LIFE, THE FOREPERSON, ONE PERSON
11 WOULD SAY AND SAY WE ALL VOTED, WE TOOK A VOTE,
12 HERE IT IS, LIFE.
13 IF IT'S DEATH, IT'S DIFFERENT. IF YOU VOTE
14 DEATH, THEN EACH INDIVIDUAL JUROR -- YOU KNOW,
15 THIS WOULD BE AFTER YOU VOTED, AFTER YOU HEARD
16 ALL THE EVIDENCE AND EVERYTHING, EACH INDIVIDUAL
17 JUROR WOULD HAVE TO SIGN THEIR NAME GIVING THIS
18 MAN DEATH.

19 IF AFTER HEARING ALL THE EVIDENCE YOU FELT THAT
20 DEATH WAS APPROPRIATE, COULD YOU SIGN LORRIE
21 SIGLER TO A DOCUMENT THAT WOULD GIVE THIS MAN
22 DEATH?

23 A. YES.

24 Q. OKAY. THANK YOU, MA'AM.

25 A. UH HUH.

1 QUESTIONS BY MR. HANCOCK:

2 Q. MS. SIGLER, I'M BILL HANCOCK. I'M DEFENDING
3 JIMMY ROBERTSON WHO IS SITTING RIGHT HERE. THIS
4 IS MR. BOYD, THIS IS MY CO-COUNSEL. HE AND I
5 ARE CO-COUNSEL IN THIS CASE AND WE HAVE THE DUTY
6 OF PUTTING ON A DEFENSE FOR JIMMY. AND YOU WERE
7 DOWNSTAIRS IN THE JURY ROOM YESTERDAY AND YOU
8 HEARD THE INDICTMENTS READ OUT THAT HE HAS BEEN
9 CHARGED WITH KILLING BOTH OF HIS PARENTS; YOU
10 UNDERSTAND THAT?

11 A. YES.

12 Q. AND THAT'S THE BASIC PREMISE. NOW HE HAS NOT
13 BEEN CONVICTED OF THAT. WE ARE KIND OF PUTTING
14 THE CART BEFORE THE HORSE, AND I THINK EVERYBODY
15 HAS EXPLAINED IT TO YOU AND I KNOW YOU'RE
16 NERVOUS BUT I JUST WANT TO GO OVER IT JUST TO
17 MAKE SURE THAT I UNDERSTAND YOUR ANSWERS.

18 THE WAY THIS TRIAL PROGRESSES IS THERE IS A
19 TRIAL FOR GUILT. THAT TRIAL IS WHETHER JIMMY
20 MURDERED HIS PARENTS OR NOT. IF HE IS CONVICTED
21 OF THAT, THEN WE GO INTO THE SECOND PHASE WHICH
22 IS TOTALLY AND DISTINCTLY SEPARATE. AND YOU
23 WOULD BE A JUROR IN THAT PHASE ALSO. AND THAT
24 PHASE IS THE PENALTY PHASE WHERE YOU DECIDE ONE
25 OF TWO THINGS. EITHER DEATH OR LIFE BECAUSE HE

1 HAS ALREADY BEEN FOUND GUILTY.

2 AND THAT WOULD BE YOUR DUTY TO DO THAT. NOW YOU
3 HAVE INDICATED TO THE JUDGE, AND TO MR. POPE,
4 THAT YOU COULD SIGN FOR DEATH.

5 NOW WITH THE REALIZATION THAT JIMMY HAS KILLED
6 BOTH OF HIS PARENTS, THAT HASN'T BEEN PROVEN,
7 BUT AT THAT TIME THAT WOULD BE THE FACT THAT YOU
8 WOULD BE WORKING UNDER, HE HAD KILLED BOTH OF
9 HIS PARENTS.

10 AND THEN THERE MAY BE CERTAIN THINGS THAT WERE
11 EVEN WORSE THAN JUST KILLING BOTH OF YOUR
12 PARENTS THAT MIGHT BE PRESENTED TO YOU BY THE
13 STATE AND THOSE ARE CALLED FACTORS IN
14 AGGRAVATION.

15 NOW GIVEN THAT, WITH THE DEFENDANT NOT PUTTING
16 ANYTHING UP FOR YOU TO LISTEN TO, COULD YOU VOTE
17 FOR A LIFE SENTENCE?

18 A. CAN YOU REPEAT IT?

19 Q. HUH?

20 A. CAN YOU REPEAT?

21 Q. THAT'S A LONG QUESTION.

22 A. I MEAN ---

23 Q. OKAY. ONCE YOU'RE IN THE JURY ROOM ---

24 A. UH HUH.

25 Q. --- YOU'RE THERE. THEN YOU HAVE TO VOTE FOR

1 EITHER THE DEATH PENALTY OR LIFE IN PRISON.

2 A. UH HUH.

3 Q. THE STATE MAY PUT UP AGGRAVATING CIRCUMSTANCES
4 THAT HIM KILLING HIS PARENTS IS EVEN WORSE THAN
5 JUST KILLING HIS PARENTS. OKAY? AND KNOWING
6 THAT, COULD YOU LISTEN TO ANYTHING THAT WOULD,
7 SAY, LESSEN HIS DEGREE OF CULPABILITY CALLED
8 MITIGATING CIRCUMSTANCES AND FIND FOR LIFE IN
9 JAIL?

10 A. OTHER THINGS OTHER THAN KILLING HIS PARENTS?

11 Q. YES.

12 A. COULD I LISTEN TO IT?

13 Q. RIGHT.

14 A. YES.

15 Q. AND WOULD YOU CONSIDER ALL OF THOSE
16 CIRCUMSTANCES?

17 A. YES.

18 Q. AND WOULD YOU GIVE THEM THE WEIGHT THAT YOU
19 WISHED TO GIVE THEM?

20 A. I MEAN I COULD ---

21 Q. IF THE JUDGE TOLD YOU THAT YOU COULD WEIGH THEM
22 IN ANY WAY, THAT YOU COULD WEIGH ANY MITIGATING
23 CIRCUMSTANCE TO A POINT THAT YOU COULD GIVE
24 JIMMY LIFE IN JAIL; COULD YOU DO THAT?

25 A. YES.

- 1 Q. YOU COULD?
- 2 A. I MEAN YOU'RE JUST SAYING LISTEN TO THEM.
- 3 Q. NO, I'M SAYING COULD YOU CONSIDER THEM TO A
- 4 POINT THAT YOU WOULD VOTE ---
- 5 A. OTHER THINGS THAT DO NOT INCLUDE WHAT, JUST
- 6 OTHER THINGS?
- 7 Q. UH HUH.
- 8 A. YES, YES.
- 9 Q. YOU UNDERSTAND WHAT I'M SAYING WHEN I SAY
- 10 MITIGATING CIRCUMSTANCES?
- 11 A. I'M GETTING CONFUSED.
- 12 Q. BUT IF I DON'T NAME THOSE MITIGATING
- 13 CIRCUMSTANCES FOR YOU, YOU DON'T KNOW WHAT TO
- 14 CONSIDER, DO YOU?
- 15 A. RIGHT.
- 16 Q. SO YOU REALLY DON'T KNOW WHAT I'M TALKING ABOUT.
- 17 AND WHEN I SAY AGGRAVATING CIRCUMSTANCES, YOU
- 18 REALLY DON'T KNOW WHAT I'M TALKING ABOUT, DO
- 19 YOU?
- 20 A. I GUESS YOU'RE JUST SAYING OTHER THINGS OTHER
- 21 THAN THE DEATH.
- 22 Q. RIGHT. BUT YOU DON'T KNOW EXACTLY WHAT I'M
- 23 TALKING ABOUT.
- 24 A. NO.
- 25 Q. OKAY. NOW HAVE YOU HAD ANY DISCUSSION WITH ANY

1 OTHER JURY MEMBERS CONCERNING THIS CASE?

2 A. NO.

3 Q. HAVE YOU HEARD ANY DISCUSSION?

4 A. NO.

5 Q. YOU WERE BROUGHT UP HERE THIS MORNING IN A
6 PANEL, I BELIEVE OF SIX?

7 A. SIX.

8 Q. AND THERE HAS BEEN NO DISCUSSION BETWEEN YOU AND
9 THEM; IS THAT CORRECT?

10 A. NO.

11 Q. I BEG THE INDULGENCE OF THE COURT ONE MOMENT,
12 YOUR HONOR.

13 (AFTER A BRIEF PAUSE.)

14 Q. I HAVE NO FURTHER QUESTIONS.

15 THE COURT: MS. SIGLER, IF YOU'LL STEP OUTSIDE
16 THE DOOR JUST A MOMENT.

17 (THE JUROR LEFT THE COURTROOM.)

18 THE COURT: WHAT SAYS THE STATE?

19 MR. POPE: WE SUBMIT SHE'S QUALIFIED, YOUR HONOR.

20 THE COURT: WHAT SAYS THE DEFENSE?

21 MR. HANCOCK: QUALIFIED, YOUR HONOR.

22 THE COURT: I FIND SHE'S QUALIFIED. BRING HER
23 BACK IN.

24 (THE JUROR RETURNED TO THE COURTROOM.)

25 THE COURT: MS. SIGLER, WE ARE GOING TO INCLUDE

1 YOU ON THE PANEL FROM WHICH THE JURY WILL BE DRAWN. WE
2 DON'T KNOW WHEN THAT'S GOING TO HAPPEN YET, SO I AM GOING
3 TO ASK YOU TO CALL BACK TONIGHT AFTER 6:00 AND YOU WILL
4 RECEIVE INSTRUCTIONS.

5 WHEN YOU DO REPORT, AFTER YOU FIND OUT THE TIME,
6 IT DOESN'T NECESSARILY MEAN YOU'LL BE ON THE JURY BECAUSE
7 WE'RE GOING TO DRAW FROM A LARGER POOL DOWN TO A SMALLER
8 ONE. BUT COME PREPARED TO STAY FOR SEVERAL DAYS BECAUSE
9 YOU WILL BE SEQUESTERED.

10 IS THERE ANYTHING THAT YOU CAN THINK OF, ANY
11 EXTENUATING CIRCUMSTANCES, THAT WOULD INTERFERE WITH YOUR
12 BEING SEQUESTERED?

13 THE JUROR: NO.

14 THE COURT: AND DON'T DISCUSS THE CASE WITH
15 ANYBODY. IF ANYONE TRIES TO DISCUSS THE CASE WITH YOU,
16 TELL THEM YOU CANNOT AND REPORT THAT BACK TO ME.

17 AND IF THERE IS ANYTHING IN THE PRESS,
18 TELEVISION, RADIO OR WHATEVER, DON'T LET YOURSELF BE
19 EXPOSED TO IT.

20 THE JUROR: OKAY.

21 THE COURT: CALL BACK TONIGHT AFTER 6:00.

22 THE JUROR: OKAY.

23 THE COURT: THANK YOU.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: JOHN SHACKELFORD.

1 JOHN SHACKELFORD, JUROR NUMBER 236, WHITE MALE,
2 WAS QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. JUST HAVE A SEAT THERE. IF YOU'LL HAND HIM A
5 PIECE OF PAPER SO HE CAN TAKE HIS GUM OUT. MR.
6 SHACKELFORD, I'M JOHN HAYES. I'M THE JUDGE
7 ASSIGNED TO THIS CASE AND YOU'RE STILL UNDER
8 OATH. DO YOU UNDERSTAND THAT?

9 A. YES.

10 Q. IF YOU ARE SEATED ON THIS TRIAL, THERE MAY BE
11 CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM, BUT
12 THEY CANNOT TAKE YOUR PICTURES. THEY CANNOT
13 REPORT ON YOU. YOU UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. SO, DON'T BE DISTRACTED IF THAT OCCURS. YOU
16 HANDED IN A QUESTIONNAIRE. DO YOU BELIEVE YOU
17 NEED TO MAKE ANY CHANGES OR DO YOU BELIEVE IT IS
18 ACCURATE AS HANDED IN?

19 A. I BELIEVE IT'S ACCURATE.

20 Q. HAVE YOU REVIEWED THE LIST OF WITNESSES?

21 A. YES, SIR.

22 Q. DO YOU KNOW ANYBODY ON THERE OR ARE YOU RELATED
23 BY BLOOD OR MARRIAGE TO ANYONE?

24 A. I KNOW FOUR.

25 Q. ALL RIGHT, WHO ARE THEY?

1 A. JOHNNY ARCHIE -- IS DR. HOOD THE DENTIST?

2 Q. YES.

3 A. OKAY, I KNOW HIM AND TONY HUGGINS AND ANN HOWE.

4 Q. WOULD THE FACT THAT YOU KNOW THEM AND THEY MAY
5 BE WITNESSES, WOULD THAT AFFECT YOUR ABILITY TO
6 BE FAIR AND IMPARTIAL TO MR. ROBERTSON IN THE
7 TRIAL OF THIS CASE?

8 A. YES, SIR, BECAUSE TWO OF THEM ARE PRETTY GOOD
9 FRIENDS.

10 Q. AND YOU THINK THAT WOULD AFFECT -- IF THEY
11 TESTIFIED, THAT WOULD AFFECT YOUR ABILITY?

12 A. YES, SIR.

13 Q. IN WHAT WAY?

14 A. PROBABLY NOT BEING FAIR. WELL, I CAN'T SAY
15 THAT, BUT ---

16 Q. WOULD YOU TEND TO BELIEVE THEM IN SPITE OF WHAT
17 OTHER PEOPLE TESTIFIED TO BECAUSE YOU KNEW THEM?

18 A. NO, I DON'T THINK SO.

19 Q. WELL, IN WHAT WAY WOULD IT AFFECT YOUR ABILITY
20 TO BE FAIR AND IMPARTIAL?

21 A. WELL, JUST KNOWING THE PEOPLE.

22 Q. SAY IF DR. HOOK TESTIFIED THAT "A" HAPPENED AND
23 THEN SOMEBODY THAT YOU DIDN'T KNOW TESTIFIED
24 THAT IT WAS ACTUALLY "B" THAT HAPPENED, WOULD
25 YOU AUTOMATICALLY BELIEVE DR. HOOK AS OPPOSED TO

1 THE OTHER PERSON SIMPLY BECAUSE YOU KNEW DR.
2 HOOK?

3 A. PROBABLY.

4 THE COURT: ALL RIGHT, LET ME LET YOU STEP OUT
5 JUST ONE MINUTE.
6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: DOES THE STATE HAVE ANY COMMENT?

8 MR. POPE: YOUR HONOR, I THINK WE'VE ENCOUNTERED
9 THIS, THE GUY THAT OWNS THE AUTO PARTS PLACE -- IF HE'S NOT
10 GOING TO BE ABLE TO SET IT ASIDE, WE WOULD JUST WASTE TIME
11 GOING THROUGH THE QUESTIONS WITH HIM. I DON'T HAVE ANY
12 OBJECTION TO HIM BEING EXCUSED.

13 THE COURT: WHAT ABOUT THE DEFENSE?

14 MR. HANCOCK: YOUR HONOR, I DON'T THINK WE'VE
15 GOTTEN FAR ENOUGH ALONG. I KNOW YOU ASKED ABOUT DR. HOOK
16 WHO IS A DEFENSE WITNESS, THE SAME THING WITH MR. ARCHIE
17 WHO IS A PROSECUTION WITNESS, THEN AREN'T WE BACK TO THE
18 SAME THING?

19 THE COURT: WELL, WHAT HE'S TELLING ME THOUGH IS
20 THAT HE CANNOT BE -- HE'S GOING TO NOT BE ABLE TO BE FAIR
21 AND IMPARTIAL -- HOW DOES THIS DIFFER FROM THE OTHER
22 FELLOW? AND Y'ALL ARE THE ONE WHO I THINK WANTED THE OTHER
23 PERSON EXCUSED.

24 MR. HANCOCK: YOUR HONOR, I THINK IT'S DIFFERENT
-25 BECAUSE THE PEOPLE ARE ON BOTH SIDES. THIS IS ON BOTH

1 SIDES OF THE COIN. I'D BELIEVE MR. ARCHIE OVER ALL OTHERS;
2 I'D BELIEVE MR. HOOK OVER ALL OTHERS. HE HAS NOT BEEN
3 ASKED ABOUT MR. ARCHIE.

4 THE COURT: I JUST USED THAT AS AN EXAMPLE. I
5 DIDN'T MEAN THAT TO BE SPECIFIC. THAT WAS JUST AN EXAMPLE
6 BECAUSE I KNOW DR. HOOK AND HE JUST CAME TO MIND.

7 MR. HANCOCK: YES, SIR, I KNOW THAT, BUT AGAIN
8 SINCE IT WAS POSITED IN THAT MANNER, THEN AGAIN ---

9 THE COURT: WHAT DO YOU WANT ME TO DO; DO YOU
10 WANT ME TO ASK HIM IF MR. ARCHIE SAYS IT'S "A" AND DR. HOOK
11 SAYS IT'S "B" WHICH ONE IS HE GOING TO BELIEVE?

12 MR. HANCOCK: I DON'T THINK HE SHOULD BE PUT TO
13 THAT POINT BUT I THINK THAT WE SHOULD ---

14 THE COURT: WELL, THAT'S THE ONLY WAY THAT WE CAN
15 RESOLVE WHAT YOU ARE PROPOSING.

16 MR. HANCOCK: I DON'T THINK THESE TWO ARE GOING
17 TO TESTIFY IN THE SAME ---

18 THE COURT: I UNDERSTAND THAT. WE'RE DEALING
19 WITH HYPOTHETICALS NOW. I'M GOING TO EXCUSE HIM.

20 MR. HANCOCK: YES, SIR. THAT WOULD BE ABOVE OUR
21 OBJECTIONS.

22 THE COURT: ABOVE YOUR OBJECTIONS?

23 MR. HANCOCK: YES.

24 THE COURT: YOU MEAN OVER YOUR OBJECTIONS?

25 MR. HANCOCK: OVER MY OBJECTIONS.

1 THE COURT: WELL, I GUESS ABOVE AND OVER ARE THE
2 SAME. ALL RIGHT.

3 (THE JUROR RETURNED TO THE COURTROOM.)

4 THE COURT: YOU CAN JUST STAND THERE, MR.
5 SHACKELFORD. I APPRECIATE YOUR CANDOR, AND WE'RE GOING TO
6 EXCUSE YOU FROM FURTHER SERVICE ON THIS. BUT THANK YOU AN
7 AWFUL LOT.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: ALL RIGHT, YANCEY SANDERS.

10 YANCEY SANDERS, JUROR NUMBER 232, BLACK MALE, WAS
11 QUESTIONED AS FOLLOWS:

12 QUESTIONS BY THE COURT:

13 Q. COME UP HERE AND HAVE A SEAT. I AM GOING TO
14 REINTRODUCE MYSELF. I'M JOHN HAYES, THE JUDGE
15 THAT'S BEEN ASSIGNED TO THIS TRIAL AND I WANT TO
16 REMIND YOU THAT YOU ARE STILL UNDER OATH. YOU
17 UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. AND I WANT TO TELL YOU THAT IF YOU ARE CHOSEN AS
20 A JUROR ON THIS CASE YOU MAY AT TIMES SEE A T.V.
21 CAMERA OR A PHOTOGRAPHER. I DON'T WANT YOU TO
22 BE DISTRACTED BY THAT BECAUSE THEY CAN'T TAKE
23 YOUR PICTURE AND THEY CAN'T REPORT ON YOU BEING
24 HERE. DO YOU UNDERSTAND THAT?

25 A. RIGHT.

1 Q. YOU HANDED UP A QUESTIONNAIRE. IS IT TO YOUR
2 BEST RECOLLECTION CORRECT OR DO YOU NEED TO MAKE
3 ANY CHANGES TO IT?
4 A. NO, SIR, NO CHANGES.
5 Q. NO CHANGES. HAVE YOU HAD A CHANCE TO REVIEW
6 THAT LIST OF WITNESSES?
7 A. YES, SIR.
8 Q. DID YOU KNOW ANYBODY ON THERE OR ARE YOU RELATED
9 TO ANYBODY?
10 A. NO, SIR.
11 Q. HAD YOU, PRIOR TO COMING HERE YESTERDAY, HEARD
12 ANYTHING ABOUT THIS CASE?
13 A. NO, SIR.
14 Q. YOU HADN'T HEARD ANYTHING ABOUT IT WHATSOEVER?
15 A. NO, SIR.
16 Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES
17 LISTED ON A SHEET OF PAPER. WHAT WE ARE TALKING
18 ABOUT IS HOW A JUROR WOULD LOOK AT THE SECOND
19 PHASE OF THIS TRIAL. THIS WOULD BE A TWO PART
20 TRIAL.
21 MR. ROBERTSON WOULD FIRST BE TRIED AS TO WHETHER
22 OR NOT HE IS GUILTY OR NOT OF THE CHARGE OF
23 MURDER. IF HE IS FOUND NOT GUILTY, THE CASE IS
24 OVER. IF HE'S FOUND GUILTY, THE CASE WILL
25 PROCEED TO WHAT'S CALLED THE PENALTY PHASE AND

1 THE JURY WOULD CONSIDER THE APPROPRIATE
2 PUNISHMENT.

3 BUT THAT WE'RE TALKING ABOUT THAT SECOND PHASE
4 DOES NOT PRESUPPOSE THAT HE WOULD BE FOUND
5 GUILTY. THAT WOULD BE UP TO THE JURY. DO YOU
6 UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. DID YOU FIND YOURSELF TO BE ON ONE OF THOSE
9 JUROR TYPES?

10 A. YES, SIR.

11 Q. WHICH ONE?

12 A. THE THIRD ONE.

13 Q. ALL RIGHT. NOW IN THAT JUROR TYPE WHERE WE USE
14 WORDS LIKE AGGRAVATION AND MITIGATION, I WANT
15 YOU TO UNDERSTAND THAT AGGRAVATING CIRCUMSTANCES
16 ARE CIRCUMSTANCES WHICH ATTEND THE COMMISSION OF
17 THE CRIME WHICH INCREASE ITS ENORMITY OR ADDS TO
18 ITS INJURIOUS CONSEQUENCE, BUT THEY ARE THINGS
19 THAT ARE ABOVE THE ESSENTIAL ELEMENTS OF THE
20 CRIME ITSELF.

21 MITIGATING CIRCUMSTANCES ARE THOSE THINGS THAT
22 DO NOT CONSTITUTE JUSTIFICATION OR EXCUSE FOR
23 THE OFFENSE HAVING BEEN COMMITTED BUT THEY ARE
24 THINGS WHICH IN FAIRNESS AND MERCY MAY BE
25 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE

1 OF MORAL CULPABILITY OF THE DEFENDANT. DO YOU
2 UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. SO YOU'RE TELLING ME THAT EVEN THOUGH -- WHEN WE
5 REACH THAT SECOND PART OF THE TRIAL, EVEN THOUGH
6 MR. ROBERTSON HAD BEEN FOUND GUILTY OF MURDER,
7 YOU WOULD NOT HAVE AT THAT TIME PRE-MADE UP YOUR
8 MIND AS TO THE APPROPRIATE PUNISHMENT?

9 A. NO, SIR.

10 Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR
11 ALL THE FACTS AND CIRCUMSTANCES IN AGGRAVATION
12 AND MITIGATION THAT WOULD BE PRESENTED AND THAT
13 YOU WOULD WANT TO LISTEN AND FOLLOW THE LAW AS
14 THE JUDGE CHARGES BEFORE YOU WOULD MAKE A
15 DECISION REGARDING PUNISHMENT?

16 A. YES, SIR.

17 Q. ARE YOU TELLING ME THAT IF THE FACTS WARRANTED
18 IT, THAT YOU COULD RETURN A VERDICT OF LIFE
19 IMPRISONMENT?

20 A. YES, SIR.

21 Q. ARE YOU TELLING ME THAT IF YOU FELT, AFTER
22 HEARING THE EVIDENCE, THAT THE FACTS WARRANTED
23 THE PENALTY OF DEATH, THAT YOU COULD IMPOSE THE
24 DEATH PENALTY?

25 A. YES, SIR.

1 Q. ALL RIGHT, ANSWER ANY QUESTIONS THESE ATTORNEYS
2 MAY HAVE:

3 QUESTIONS BY MR. BOYD:

4 Q. GOOD MORNING, MR. SANDERS.

5 A. GOOD MORNING.

6 Q. MY NAME IS JIM BOYD. I REPRESENT JIMMY
7 ROBERTSON WHO IS ON TRIAL IN THIS CASE. HE'S
8 SEATED OVER HERE. AND MY CO-COUNSEL IS BILL
9 HANCOCK AND HE'S SEATED RIGHT THERE.

10 I JUST WANT TO ASK YOU A FEW QUESTIONS TO FOLLOW
11 UP ON WHAT THE JUDGE ASKED YOU. YOU'VE NEVER
12 SERVED ON JURY DUTY BEFORE?

13 A. NO, SIR.

14 Q. OKAY. I KNOW IT'S UNUSUAL TO BE SITTING IN THAT
15 CHAIR AND YOU FEEL STRANGE.

16 A. UH HUH.

17 Q. LET ME ASK YOU CONCERNING WHAT THE JUDGE TOLD
18 YOU ABOUT AND FOLLOW UP ON THAT. THIS TRIAL IS
19 A TRIAL IN WHICH OUR CLIENT, JIMMY ROBERTSON, IS
20 FACING THE DEATH PENALTY IF HE IS CONVICTED.

21 NOW THE PROCEDURE THAT THE COURT USES IS THEY
22 HAVE TWO PHASES TO A TRIAL. THE FIRST PHASE IS
23 THE JURY DETERMINES WHETHER HE SHOULD BE FOUND
24 GUILTY OR NOT GUILTY.

25 OF COURSE, IF HE'S FOUND NOT GUILTY, IT DOESN'T

1 GO INTO A SECOND PHASE OF THE TRIAL BECAUSE, OF
2 COURSE, YOU'RE NOT PUNISHED AT ALL IF YOU ARE
3 FOUND NOT GUILTY.

4 AND I'M GOING TO ASK YOU SOME THINGS ABOUT THE
5 SECOND PHASE OF THE TRIAL AND I'M NOT TRYING TO
6 ASSUME OR INTIMATE TO YOU THAT HE'S GUILTY OF
7 THE FIRST PART, BUT FOR THE PURPOSE OF THESE
8 QUESTIONS WE'VE JUST GOT TO ASSUME THAT IT HAS
9 GONE INTO THE SECOND PHASE.

10 A. I UNDERSTAND.

11 Q. IN THE SECOND PHASE OF THE TRIAL THE JURY IS
12 ASKED TO DETERMINE BETWEEN TWO PUNISHMENTS. AT
13 THAT POINT, IF IT REACHES THAT PHASE, THE
14 DEFENDANT HAS ALREADY BEEN FOUND GUILTY OF
15 MURDER, SO THE JURY HAS FOUND THAT HE'S GUILTY
16 OF THE DELIBERATE KILLING OF ANOTHER PERSON
17 WITHOUT ANY EXCUSE; IT'S NOT SELF-DEFENSE, IT'S
18 NOT ACCIDENT, IT'S NOT ANYTHING LIKE THAT; IT'S
19 NOT JUSTIFIED.

20 SO, YOU ARE ASKED TO DETERMINE AT THAT POINT
21 BETWEEN TWO PUNISHMENTS. ONE PUNISHMENT BEING
22 LIFE IMPRISONMENT, THE OTHER PUNISHMENT BEING
23 THE DEATH PENALTY. NOW IN THAT CASE YOU WOULD
24 HEAR EVIDENCE FROM THE STATE AS TO REASONS IN
25 AGGRAVATION; THAT IS, REASONS YOU SHOULD GIVE

1 THE DEATH SENTENCE.

2 YOU WILL ALSO, POSSIBLY, HEAR EVIDENCE FROM THE
3 DEFENDANT AS TO REASONS YOU SHOULDN'T GIVE THE
4 DEATH PENALTY, THINGS IN MITIGATION.

5 NOW, IN YOUR QUESTIONS FROM THE JUDGE, YOU
6 HAVEN'T MADE-UP YOUR MIND EITHER WAY WHICH
7 SENTENCE WOULD BE MOST APPROPRIATE AT THIS
8 POINT. IS THAT CORRECT?

9 A. YES, SIR.

10 Q. YOU HAVE NOT?

11 A. NO, SIR.

12 Q. WOULD YOU, EVEN THOUGH HE HAS BEEN CONVICTED OF
13 MURDER, WOULD YOU GO AHEAD AND BE WILLING TO
14 LISTEN TO THE MITIGATING CIRCUMSTANCES, AND NOT
15 ONLY LISTEN TO IT BUT CONSIDER IT?

16 A. YES, SIR.

17 Q. COULD YOU DO THAT?

18 A. YES, SIR.

19 Q. AND COULD YOU ALSO IF YOU THOUGHT IT WAS
20 APPROPRIATE UNDER THE CIRCUMSTANCES, REACH A
21 VERDICT OF LIFE IMPRISONMENT EVEN THOUGH HE HAS
22 BEEN CONVICTED OF MURDER?

23 A. YES, SIR.

24 Q. OKAY. IN THIS CASE HE IS CHARGED WITH KILLING
25 BOTH OF HIS PARENTS. CAN YOU STILL CONSIDER A

1 LIFE SENTENCE AS OPPOSED TO A DEATH PENALTY
2 UNDER THOSE CIRCUMSTANCES?

3 (AFTER A PAUSE)

4 A. WOULD YOU REPEAT THAT AGAIN FOR ME, PLEASE?

5 Q. OKAY. IN THIS CASE HE IS ACCUSED OF KILLING
6 BOTH OF HIS PARENTS, OKAY? AND THERE IS NO
7 RIGHT OR WRONG ANSWER TO THIS, I JUST WANT YOU
8 TO TELL ME HOW YOU FEEL.

9 IF HE IS CONVICTED -- ASSUME AT THIS POINT JUST
10 FOR THE SAKE OF ARGUMENT THAT IT'S IN THE
11 PENALTY PHASE AND HE HAS BEEN CONVICTED OF
12 KILLING BOTH OF HIS PARENTS, MURDERING BOTH OF
13 HIS PARENTS. DO YOU ALREADY HAVE AN OPINION AS
14 TO WHAT THE SENTENCE SHOULD BE BETWEEN LIFE
15 IMPRISONMENT AND DEATH?

16 A. I DON'T HAVE AN OPINION, BUT MY FEELINGS WILL
17 CHANGE AS FAR AS LIFE IN PRISON.

18 Q. YOUR FEELINGS WHAT?

19 A. WILL CHANGE.

20 Q. WHAT DO YOU MEAN?

21 A. AS FAR AS HIM KILLING HIS PARENTS, BOTH OF HIS
22 PARENTS. I WOULD CHANGE FROM LIFE IN PRISON TO
23 THE DEATH PENALTY.

24 Q. ARE YOU SAYING YOU WOULD BE MORE LIKELY TO VOTE
25 FOR THE DEATH PENALTY UNDER THOSE CIRCUMSTANCES?

1 A. YES, SIR.

2 Q. UNDER THOSE CIRCUMSTANCES YOU WOULD BE INCLINED
3 TO VOTE FOR THE DEATH PENALTY; IS THAT CORRECT?

4 A. YES, SIR.

5 Q. AND IT WOULD TAKE SOME -- WOULD YOU DO THAT
6 REGARDLESS OF WHAT EVIDENCE WE PRESENTED IN
7 MITIGATION?

8 A. NO, I WOULD LISTEN TO MORE THINGS.

9 Q. COULD YOU REALLY CONSIDER IT THOUGH?

10 A. YES.

11 Q. OKAY. BUT IT WOULD TAKE EVIDENCE ON OUR PART TO
12 CHANGE YOUR MIND FROM THE DEATH PENALTY TO A
13 LIFE SENTENCE UNDER THOSE CIRCUMSTANCES?

14 A. YES, SIR.

15 Q. I'LL ASK YOU A FEW OTHER QUESTIONS. YOU HAVE
16 SOME OPINIONS ABOUT THINGS AND OTHER JURORS WILL
17 HAVE DIFFERENT OPINIONS. YOU UNDERSTAND THAT;
18 EVERYBODY HAS GOT THEIR OWN OPINION. YOU
19 UNDERSTAND THAT.

20 A. RIGHT.

21 Q. AND, OF COURSE, YOU ARE ENTITLED TO HAVE YOUR
22 OPINION RESPECTED BY ALL OTHER JURORS. YOU
23 UNDERSTAND THAT?

24 A. RIGHT.

25 Q. AND LIKEWISE YOU'RE ENTITLED OR YOU'RE REQUIRED

1 TO RESPECT THE OPINIONS OF OTHER JURORS. DO YOU
2 UNDERSTAND THAT?

3 A. RIGHT.

4 Q. SO, REGARDLESS OF WHETHER OTHER JURORS AGREE
5 WITH YOU OR NOT, YOU HAVE TO RESPECT THEIR
6 OPINIONS. YOU UNDERSTAND THAT.

7 A. YES, SIR.

8 Q. AND LIKEWISE, THEY HAVE TO RESPECT YOUR
9 OPINIONS.

10 A. YES, SIR.

11 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

12 QUESTIONS BY MR. BRACKETT:

13 Q. GOOD MORNING, MR. SANDERS, HOW ARE YOU?

14 A. GOOD, HOW ARE YOU DOING.

15 Q. FINE. MY NAME IS KEVIN BRACKETT. I'M THE DEPUTY
16 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. OVER
17 HERE IS TOMMY POPE. HE AND I ARE PROSECUTING MR.
18 ROBERTSON FOR THESE MURDERS.

19 I'M GOING TO KIND OF GO BACK THROUGH TO CLARIFY
20 A COUPLE OF POINTS THAT I MIGHT HAVE BEEN A
21 LITTLE BIT CONFUSED ABOUT.

22 A. OKAY.

23 Q. I'M GOING TO GO BACK THROUGH AND KIND OF EXPLAIN
24 BECAUSE IT SOUNDED LIKE YOU HESITATED A COUPLE
25 OF TIMES AND YOU MIGHT HAVE BEEN CONFUSED ABOUT

1 SOME THINGS, TOO. SO, IF THIS IS THE THIRD TIME
2 YOU'VE HEARD IT, I'M SORRY; I JUST WANT TO MAKE
3 SURE YOU UNDERSTAND.

4 A. YES, SIR.

5 Q. ALL RIGHT, THE FIRST PHASE OF THE TRIAL IS GUILT
6 OR INNOCENCE. WE HAVE TO PROVE THAT HE'S
7 GUILTY. IN NO PART OF THIS TRIAL DOES THIS
8 DEFENDANT OR HIS ATTORNEYS EVER HAVE TO SAY A
9 WORD. YOU UNDERSTAND THAT, DON'T YOU?

10 A. RIGHT.

11 Q. HE HAS THE RIGHT TO REMAIN SILENT.

12 A. RIGHT.

13 Q. YOU UNDERSTAND THAT.

14 A. YES, SIR.

15 Q. HE HAS NOTHING TO PROVE. WE, THE STATE, MR.
16 POPE AND I, WE HAVE THE RESPONSIBILITY OF
17 PROVING EVERYTHING IN THIS CASE. IN EITHER
18 PHASE. WE HAVE TO PROVE HE'S GUILTY AND THEN
19 PROVE THAT THERE ARE AGGRAVATING CIRCUMSTANCES.
20 YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. OKAY. NOW IN THE FIRST PHASE WE BRING IN ALL OF
23 OUR EVIDENCE AND OUR WITNESSES SIT RIGHT WHERE
24 YOU'RE SITTING NOW AND THEY TESTIFY TO THE JURY
25 AND THEY TELL YOU ABOUT WHAT THEY SAW AND THEY

1 TELL YOU ABOUT WHAT THEY KNOW ABOUT THE CASE AND
2 WE PUT IN OUR PHYSICAL EVIDENCE, PHOTOGRAPHS OR
3 PHYSICAL OBJECTS, AND WE PUT IN THOSE THINGS.
4 WE PUT ALL THAT UP AND THEN IF THE DEFENSE WANTS
5 TO, THEY CAN PUT UP WITNESSES, TOO. THEY DON'T
6 HAVE TO THOUGH BECAUSE THEY HAVE THE RIGHT TO
7 REMAIN SILENT. THEY DON'T HAVE TO DO ANYTHING
8 IF THEY DON'T CHOOSE TO. BUT IF THEY DO, THEY
9 CAN IF THEY WANT TO.

10 SO, THEY WILL PUT UP WHATEVER THEY CHOOSE TO AND
11 THE CASE IS OVER, AND THEN THE JUDGE OVER HERE,
12 HE TELLS THE JURY WHAT THE LAW IS. HE SAYS THE
13 LAW IS THAT IT'S AGAINST THE LAW TO DO THIS,
14 THAT AND THE OTHER AND THIS IS WHAT ALL THAT
15 MEANS, AND HE EXPLAINS ALL OF THAT.

16 AND THEN THE JURY GOES BACK AND THEY DELIBERATE.
17 THEY THINK ABOUT THE EVIDENCE THAT THEY HEARD
18 AND THEY THINK ABOUT THE LAW AND THEN THEY
19 DECIDE WHETHER OR NOT THE DEFENDANT IS GUILTY.
20 YOU'RE SAYING YOU COULD DO ALL OF THAT?

21 A. YES, SIR.

22 Q. AND YOU DON'T COME INTO THIS COURTROOM WITH ANY
23 KIND OF NOTION ONE WAY OR ANOTHER WHETHER HE'S
24 GUILTY BECAUSE YOU DON'T KNOW ANYTHING ABOUT
25 THIS CASE, RIGHT?

1 A. NO, SIR.

2 Q. OKAY, GREAT. NOW, ASSUME THAT YOU'VE BEEN ON
3 THIS JURY AND YOU'VE HEARD ALL THIS EVIDENCE AND
4 YOU FIND THAT HE IS GUILTY. NOW WE GO TO THE
5 PENALTY PHASE, THE SECOND PART OF THE TRIAL.
6 OKAY?

7 AGAIN, IN THIS PHASE WE HAVE TO PROVE WHAT ARE
8 CALLED AGGRAVATING CIRCUMSTANCES. IN OTHER
9 WORDS, WE HAVE TO SHOW YOU AS A JUROR THAT THIS
10 IS NOT JUST A REGULAR MURDER, THAT THIS IS AN
11 AGGRAVATED MURDER, IT'S WORSE IN SOME WAY. WE
12 HAVE TO PROVE THAT BEFORE YOU CAN GIVE MR.
13 ROBERTSON THE DEATH PENALTY. YOU UNDERSTAND
14 THAT.

15 A. YES, SIR.

16 Q. WE, AGAIN, BEAR THAT BURDEN OF PROOF. THE
17 DEFENSE, IF THEY CHOOSE, CAN PUT UP WHAT ARE
18 CALLED MITIGATING CIRCUMSTANCES. AND THEY DON'T
19 HAVE TO PUT UP MITIGATING CIRCUMSTANCES BECAUSE
20 AS A JUROR YOU CAN GIVE HIM LIFE FOR NO REASON
21 AT ALL IF YOU CHOOSE. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. YOU DON'T HAVE TO HAVE A REASON TO GIVE LIFE.
24 YOU CAN JUST SAY I WANT TO GIVE HIM LIFE, THAT'S
25 JUST THE WAY I FEEL ABOUT THE WHOLE SITUATION.

1 I'M GOING TO GIVE HIM LIFE AND I DON'T HAVE TO
2 HAVE A REASON. YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. IN THAT SECOND PHASE OF THE TRIAL, DO YOU COME
5 INTO THE TRIAL WITH ANY PRE-NOTION ONE WAY OR
6 THE OTHER WHETHER HE SHOULD HAVE LIFE OR DEATH?
7 YOU DON'T KNOW ANYTHING ABOUT THE AGGRAVATING
8 CIRCUMSTANCES AND YOU DON'T KNOW WHETHER THEY
9 ARE GOING TO PUT UP ANY MITIGATING
10 CIRCUMSTANCES. DO YOU HAVE ANY NOTION ONE WAY
11 OR THE OTHER WHAT THE SENTENCE SHOULD BE?

12 A. NO, SIR.

13 Q. OKAY. YOU'RE GOING TO WAIT AND LISTEN?

14 A. YES, SIR.

15 Q. OKAY. NOW ASSUMING THAT WE PUT UP OUR
16 AGGRAVATING CIRCUMSTANCES, WE PUT ALL THAT IN,
17 AND THE DEFENSE CHOOSES TO PUT UP SOME
18 MITIGATING CIRCUMSTANCES TO SHOW HE IS NOT --
19 IT'S NOT AS BAD AS WE THINK IT IS. WOULD YOU
20 LISTEN TO WHAT THE DEFENSE HAD TO SAY?

21 A. YES, SIR.

22 Q. WOULD YOU CONSIDER THAT?

23 A. YES, SIR.

24 Q. AND IF YOU THOUGHT THAT WHAT THEY HAD TO SAY
25 RESULTED IN A LIFE SENTENCE, COULD YOU GIVE HIM

1 LIFE?

2 A. YES, SIR.

3 Q. OKAY. YOU DON'T KNOW WHAT THEY'RE GOING TO PUT
4 UP, DO YOU?

5 A. NO, SIR.

6 Q. IF THEY ARE GOING TO PUT ANYTHING UP AT ALL?

7 A. NO, SIR.

8 Q. BUT YOU COULD GIVE HIM LIFE?

9 A. YES, SIR.

10 Q. IF YOU THOUGHT THAT THAT WAS THE RIGHT THING TO
11 DO?

12 A. YES, SIR.

13 Q. AND LIKEWISE, IF YOU THOUGHT THAT DEATH WAS THE
14 RIGHT VERDICT, COULD YOU GIVE HIM DEATH?

15 A. YES, SIR.

16 Q. OKAY. NOW IN MOST CASES -- IN ALMOST ANY OTHER
17 CASE IN ANY COURTROOM IN THIS COUNTRY WHEN THE
18 JURY HAS THEIR VERDICT, THE ONLY PERSON THAT HAS
19 TO SIGN ANYTHING IS THE FOREPERSON OF THE JURY,
20 THE FOREPERSON HAS TO SIGN WHAT THE VERDICT WAS,
21 GUILTY, NOT GUILTY, WHATEVER AND THEN SIGN THEIR
22 NAME.

23 A DEATH PENALTY IS UNIQUE. IF THE JURY DECIDES
24 TO GIVE MR. ROBERTSON LIFE IN PRISON, THEN ONLY
25 THE FOREMAN HAS TO SIGN, WRITES LIFE, AND THEN

1 SIGNS HIS NAME.

2 BUT IF THE JURY DECIDES TO GIVE HIM DEATH, EACH
3 JUROR HAS TO SIGN THE SENTENCING SHEET SAYING
4 MR. ROBERTSON SHOULD BE PUT TO DEATH. EACH AND
5 EVERY JUROR HAS TO SIGN THEIR NAME. IF YOU ARE
6 IN THE JURY ROOM, YOU'VE HEARD THE AGGRAVATING
7 CIRCUMSTANCES, YOU'VE HEARD ANYTHING THEY WANT
8 TO PUT UP ABOUT THE CASE, YOU'VE WEIGHED IT ALL
9 IN YOUR MIND ABOUT WHAT THE RIGHT SENTENCE
10 SHOULD BE AND THE CIRCUMSTANCES OF THE CRIME,
11 AND YOU DECIDE THAT DEATH IS THE RIGHT SENTENCE,
12 COULD YOU TAKE THE PEN IN YOUR HAND AND SIGN
13 YANCEY SANDERS SENDING THIS MAN TO HIS DEATH?

14 A. YES, SIR.

15 Q. ALL RIGHT, THANK YOU VERY MUCH, MR. SANDERS.

16 A. UH HUH.

17 THE COURT: MR. SANDERS, LET ME CLARIFY ONE
18 THING. IN THE SECOND PART OF THE TRIAL, YOU ORIGINALLY
19 TOLD ME THAT YOU WOULD NOT HAVE ANY -- SAY HE HAD BEEN
20 FOUND GUILTY OF KILLING HIS PARENTS.

21 THE JUROR: YES.

22 THE COURT: ARE YOU TELLING ME THAT YOU
23 AUTOMATICALLY WOULD START OFF FEELING THAT HE SHOULD
24 RECEIVE THE DEATH PENALTY OR WOULD YOU BE OPEN-MINDED AND
25 LISTEN TO WHAT WAS PRESENTED BEFORE YOU MADE YOUR

1 DETERMINATION?

2 THE JUROR: I WOULD BE OPEN-MINDED AND LISTEN.

3 THE COURT: ALL RIGHT. I AM GOING TO ASK YOU TO
4 STEP OUTSIDE; THANK YOU.

5 THE JUROR: THANK YOU, SIR.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE DEFENSE?

8 MR. BOYD: YOUR HONOR, WE SUBMIT THAT HE IS NOT
9 QUALIFIED, THAT HE WOULD REQUIRE -- HE STARTS WITH THE
10 PRESUMPTION OF DEATH FOR A DEFENDANT WHO KILLED BOTH OF HIS
11 PARENTS, THAT IT WOULD TAKE MITIGATING EVIDENCE TO CHANGE
12 HIS MIND.

13 IN ANSWER TO THE COURT'S QUESTION WOULD YOU BE
14 OPEN-MINDED, NOBODY IS GOING TO ADMIT NOT TO BEING OPEN-
15 MINDED.

16 THE TRUE FEELINGS, I THINK, WERE BROUGHT OUT
17 PRETTY CLEARLY IN MY EXAMINATION OF HIM, THAT HE STARTS
18 WITH THE PRESUMPTION OF DEATH FOR KILLING BOTH OF HIS
19 PARENTS AND IT WOULD TAKE EVIDENCE TO CHANGE HIS MIND.

20 MR. BRACKETT: YOUR HONOR, THEN MR. BOYD FOLLOWED
21 IT UP WITH SOME QUESTIONS ABOUT WOULD YOU CONSIDER ANY
22 EVIDENCE THE DEFENSE PUT UP AND HE SAID OF COURSE I WOULD
23 AND HE WOULD LISTEN TO THE EVIDENCE THEY PUT UP AND MAKE
24 HIS OWN DECISION BASED ON ALL OF THAT.

25 HE ANSWERED MY QUESTIONS THE SAME WAY, AND HE

1 ANSWERED YOUR FOLLOW-UP QUESTION THE SAME WAY.

2 I SUBMIT UNDER THE TOTALITY OF THE CIRCUMSTANCES
3 THAT HE IS QUALIFIED.

4 THE COURT: I FIND THAT HE IS DEATH PENALTY
5 QUALIFIED. BRING HIM IN.

6 (THE JURY RETURNED TO THE COURTROOM.)

7 THE COURT: MR. SANDERS, YOU'RE GOING TO BE A
8 PART OF THE POOL FROM WHICH THE JURY IS DRAWN. WE DON'T
9 KNOW WHEN THAT'S GOING TO BE. CALL BACK TONIGHT AFTER 6:00
10 AND YOU WILL BE GIVEN FURTHER INSTRUCTIONS. CALL THAT 1-
11 800 NUMBER.

12 WHEN YOU DO COME BACK, BRING SOME CLOTHING AND
13 TOILETRY ITEMS BECAUSE YOU WILL BE KEPT WITH THE JURY AND
14 STAY IN A HOTEL UNTIL THE CASE IS OVER.

15 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT
16 WOULD INTERFERE WITH THAT?

17 THE JUROR: NO, SIR.

18 THE COURT: NOW DON'T DISCUSS THIS CASE WITH
19 ANYONE. IF ANYONE TRIES TO DISCUSS IT WITH YOU, REPORT
20 THAT BACK TO ME.

21 AND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
22 COVERAGE AT ALL IN ANY WAY WHATSOEVER ABOUT THIS CASE. DO
23 YOU UNDERSTAND THAT?

24 THE JUROR: YES, SIR.

25 THE COURT: ALL RIGHT, CALL BACK TONIGHT AFTER

1 6:00.

2 THE JUROR: THANK YOU.

3 (THE JUROR LEFT THE COURTROOM.)

4 THE COURT: ALL RIGHT, FRANK DEATON.

5 MR. POPE: YOUR HONOR, BEFORE THAT WITNESS COMES
6 IN, I HAVE AN ISSUE ON THE PRIOR JUROR, MR. SHACKELFORD
7 AGAIN. THAT WAS THE ONE THAT MR. HANCOCK SAID IT WAS ABOVE
8 HIS OBJECTION OR OVER HIS OBJECTION. I WOULD ASK THE
9 DEFENSE TO CLARIFY THE NATURE OF THEIR OBJECTION AS TO THAT
10 WITNESS BEING EXCUSED FOR THE RECORD. IT WAS JUST A
11 GENERAL OBJECTION.

12 MR. HANCOCK: YOUR HONOR, THE NATURE IS THAT WE
13 DIDN'T GET A CHANCE TO QUESTION HIM.

14 THE COURT: WELL, IF I DIDN'T LET Y'ALL QUESTION
15 HIM, THEN I MADE A HUGE MISTAKE. I THOUGHT I HEARD Y'ALL
16 ASK HIM A BUNCH OF QUESTIONS. NO, NOT SHACKELFORD, I'M
17 THINKING ABOUT ANOTHER -- NO, YOU DID NOT GET TO QUESTION
18 HIM BECAUSE I WAS CONVINCED, THE SAME WAY WITH THE OTHER
19 GENTLEMAN, THAT HE CAME IN WITH THE INABILITY TO JUDGE
20 CREDIBILITY FAIRLY. BUT GO AHEAD AND PUT YOUR GROUNDS ON
21 THE RECORD.

22 MR. HANCOCK: MY OBJECTION WAS THAT I DIDN'T GET
23 A CHANCE TO QUESTION HIM AS TO WHETHER HE WOULD GIVE MORE
24 CREDIBILITY TO MR. HOOK OR TO MR. ARCHIE. AND THEY ARE
25 TESTIFYING ON EITHER SIDE AND, THEREFORE, I DIDN'T SEE THAT

1 AT THAT POINT HE SHOULD BE EXCUSED JUST BECAUSE HE SAID HE
2 MIGHT LISTEN TO DR. HOOK, ESPECIALLY WHEN DR. HOOK IS GOING
3 TO BE WELL DOWN THE LINE, AND POSSIBLY ON A MERCY WITNESS.

4 I DON'T KNOW WHAT MR. ARCHIE MIGHT BE CALLED TO
5 SAY. AS I LISTENED TO THE QUESTIONS, I DIDN'T HEAR HIM SAY
6 THAT I WOULD FAIL TO GIVE HIM THE DEATH PENALTY BECAUSE I
7 WOULD LISTEN TO DR. HOOK MORE AND GIVE HIM MORE WEIGHT AND
8 CREDIBILITY THAN ANY OTHER WITNESS AND EXCLUDE ALL OTHER
9 EVIDENCE.

10 I DIDN'T THINK THE QUESTION, YOUR HONOR, WENT TO
11 THE ACTUAL POINT. SO, THEREFORE, I THOUGHT THAT WE SHOULD
12 HAVE GONE FURTHER IN HIS QUESTIONING TO DETERMINE EXACTLY
13 WHAT HIS POSITION WAS, SIR.

14 MR. POPE: MAY IT PLEASE THE COURT --

15 THE COURT: WELL, I'VE ALREADY EXCUSED HIM. IF
16 YOU WANT TO TAKE UP SOME MORE TIME, GO AHEAD.

17 MR. POPE: YOUR HONOR, I THINK MY CONCERN IS MR.
18 HANCOCK AT FIRST WAS OBJECTING TO YOUR RULING BUT WASN'T
19 OBJECTING TO NOT HAVING THE OPPORTUNITY TO CROSS EXAMINE
20 HIM. NOW HE IS OBJECTING TO THE OPPORTUNITY TO CROSS
21 EXAMINE HIM WHICH I THINK COULD BE FATAL.

22 SO, I THINK IF MR. HANCOCK WANTS AN OPPORTUNITY
23 TO CROSS EXAMINE HIM, I THINK THAT WE'RE GOING TO HAVE TO
24 FIND HIM AND GIVE HIM AN OPPORTUNITY.

25 THAT WASN'T THE INITIAL OBJECTION; THAT'S WHAT

1 I'M TRYING TO CLARIFY.

2 THE COURT: ALL RIGHT, SEE IF WE CAN -- MADAM
3 CLERK, SEE IF WE CAN TRACK DOWN MR. SHACKELFORD. EVEN IF
4 HE CAN'T COME BACK UNTIL IN THE MORNING, THAT WILL BE FINE.

5 ALL RIGHT, MR. DEATON.

6 FRANK DEATON, JUROR NUMBER 73, WHITE MALE, WAS
7 QUESTIONED AS FOLLOWS:

8 QUESTIONS BY THE COURT:

9 Q. MR. DEATON, PLEASE COME UP HERE AND HAVE A SEAT.

10 MR. DEATON, YOU'RE STILL UNDER OATH; DO YOU
11 UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. AND I'M JOHN HAYES; I'M THE JUDGE FOR THIS
14 TRIAL. IF YOU ARE CHOSEN ON THIS JURY, YOU MAY
15 SEE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM.
16 THEY WON'T BE TAKING YOUR PICTURE, THEY ARE NOT
17 ALLOWED TO, OKAY? SO, DON'T BE DISTRACTED BY
18 THEM.

19 YOU TURNED IN A QUESTIONNAIRE AND I WANT TO KNOW
20 IF I COULD, DO YOU NEED TO MAKE ANY CHANGES TO
21 IT OR DO YOU THINK IT'S CORRECT?

22 A. I THINK IT'S CORRECT.

23 Q. YOU'VE HAD A CHANCE TO REVIEW THE LIST OF
24 WITNESSES. DID YOU FIND ANYBODY ON THERE THAT
25 YOU'RE RELATED TO BY BLOOD OR MARRIAGE OR ANYONE

1 WHO IS A CLOSE PERSONAL FRIEND OR ACQUAINTANCE
2 OF YOURS?

3 A. NO, SIR.

4 Q. HAVE YOU HEARD ANYTHING PRIOR TO COMING HERE,
5 OTHER THAN WHAT WAS ANNOUNCED IN COURT
6 YESTERDAY, HAVE YOU HEARD ANYTHING ABOUT THIS
7 CASE WHATSOEVER?

8 A. NO, SIR.

9 Q. WE ARE GOING TO TALK TO YOU IN JUST A MOMENT
10 ABOUT TYPES OF JURORS.

11 FIRST LET ME TELL YOU THAT A CASE OF THIS TYPE
12 IS BIFURCATED, IN TWO PARTS. THE FIRST PART
13 WOULD BE A TRIAL AS TO WHETHER OR NOT MR.
14 ROBERTSON IS GUILTY OR NOT OF THE CHARGE OF
15 MURDER. IF HE'S FOUND NOT GUILTY, THEN THE CASE
16 WOULD BE OVER.

17 IF THE JURY WERE TO UNANIMOUSLY FIND BEYOND A
18 REASONABLE DOUBT THAT HE WAS GUILTY OF THE
19 MURDERS, THEN THE CASE WOULD GO FARTHER INTO A
20 SECOND PHASE; THAT IS, A PENALTY PHASE.

21 AND WE'RE GOING TO BE TALKING ABOUT THE TYPE OF
22 JUROR, HOW ONE WOULD APPROACH THAT SECOND PART,
23 BUT THAT'S NOT TO PRESUPPOSE THAT WE WOULD EVER
24 REACH THAT, BUT WE HAVE TO TALK ABOUT IT AT THIS
25 POINT. DO YOU UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. DID YOU HAVE A CHANCE TO REVIEW THE JUROR TYPE
3 LIST?

4 A. YES, SIR.

5 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES
6 OF JURORS?

7 A. POSSIBLY THE THIRD ONE.

8 Q. ALL RIGHT, THE THIRD TYPE JUROR, IN THAT
9 PARAGRAPH WE USED THE WORDS AGGRAVATING AND
10 MITIGATING CIRCUMSTANCES.

11 WHAT WE ARE TALKING ABOUT THERE AS FAR AS
12 AGGRAVATING CIRCUMSTANCES ARE THINGS ATTENDANT
13 TO THE COMMISSION OF A CRIME WHICH INCREASE THE
14 CRIME'S ENORMITY OR ADDS TO ITS INJURIOUS
15 CONSEQUENCE BUT THEY ARE THINGS WHICH ARE ABOVE
16 AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE
17 OFFENSE ITSELF.

18 MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT
19 CONSTITUTE JUSTIFICATION OR EXCUSE FOR THE CRIME
20 BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY
21 BE CONSIDERED AS REDUCING THE DEGREE OF MORAL
22 CULPABILITY OF THE INDIVIDUAL.

23 DO YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. NOW ARE YOU TELLING ME THAT YOU ARE THE TYPE OF

1 JUROR WHO WHEN YOU STARTED INTO THAT SECOND
2 PHASE, EVEN THOUGH HE HAD BEEN FOUND GUILTY OF
3 MURDER, THAT YOU WOULD BE OPEN-MINDED; THAT IS,
4 THAT YOU WOULD NOT HAVE MADE UP YOUR MIND IN
5 ADVANCE CONCERNING PUNISHMENT, IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. ARE YOU TELLING ME THAT YOU WOULD WANT TO HEAR
8 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
9 MITIGATION AND THAT YOU WOULD WANT TO LISTEN AND
10 FOLLOW THE LAW AS THE JUDGE CHARGES IT BEFORE
11 YOU WOULD MAKE A DECISION REGARDING PUNISHMENT?

12 A. YES, SIR.

13 Q. IF THE FACTS WARRANTED IT, WOULD YOU BE ABLE TO
14 BRING IN A VERDICT OF LIFE IMPRISONMENT IF
15 THAT'S WHAT YOU THOUGHT THE FACTS SUPPORTED?

16 A. YES, SIR.

17 Q. IF YOU THOUGHT THE FACTS SUPPORTED A VERDICT OF
18 IMPOSING THE DEATH PENALTY, COULD YOU RETURN A
19 VERDICT FOR THE DEATH PENALTY?

20 A. I BELIEVE I COULD.

21 Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT THE
22 ATTORNEYS MAY HAVE.

23 QUESTIONS BY MR. BRACKETT:

24 Q. MR. DEATON, GOOD MORNING; MY NAME IS KEVIN
25 BRACKETT, I'M THE DEPUTY SOLICITOR HERE IN THE

1 SIXTEENTH CIRCUIT. SEATED AT COUNSEL TABLE WITH
2 ME IS TOMMY POPE WHO IS THE SOLICITOR AND HE AND
3 I ARE PROSECUTING MR. ROBERTSON FOR THE CHARGES
4 THAT BRING YOU IN COURT HERE TODAY.

5 I AM BASICALLY GOING TO GO QUICKLY BACK OVER
6 WHAT THE JUDGE ASKED YOU IN A LITTLE BIT MORE
7 DETAIL AND CLARIFY A COUPLE OF POINTS, BUT AT
8 THE OUTSET I JUST WANT TO TELL YOU, WE'RE NOT
9 INTERROGATING YOU, THERE AREN'T RIGHT OR WRONG
10 ANSWERS, THIS ISN'T A QUIZ AND WE'RE NOT ALL
11 GOING TO GRADE YOU WHEN YOU WALK OUT OF HERE.

12 WE JUST NEED TO KNOW HOW YOU FEEL ABOUT THESE SO
13 THAT WE CAN DO OUR JOB PROPERLY.

14 AS THE JUDGE TOLD YOU, THIS IS A TWO PART TRIAL.
15 THE FIRST PART OF THE TRIAL INVOLVES ONLY THE
16 QUESTION OF GUILT OR INNOCENCE.

17 IF MR. ROBERTSON IS NOT GUILTY, THEN THERE IS NO
18 SECOND PART OF THE TRIAL. YOU'RE NOT GOING TO
19 BE PUNISHED FOR SOMETHING THAT YOU'RE NOT GUILTY
20 OF.

21 SO, AT THE FIRST PART OF THE TRIAL WE NEED TO
22 ESTABLISH GUILT. IN THAT PHASE THE STATE BEARS
23 THE BURDEN OF PROOF. DO YOU UNDERSTAND WHAT
24 THAT MEANS?

25 A. YES, SIR.

1 Q. BASICALLY WE HAVE TO BRING THE EVIDENCE INTO
2 COURT TO SHOW THAT HE'S GUILTY. HE HAS NO
3 BURDEN WHATSOEVER. THE DEFENSE DOES NOT NEED TO
4 PUT ANYTHING IN; THEY CAN STAND SILENT
5 THROUGHOUT THE ENTIRE TRIAL, AND PUT US TO THE
6 TEST, PUT OUR EVIDENCE TO THE TEST.
7 WE HAVE TO BRING THE EVIDENCE IN THAT SATISFIES
8 TWELVE JURORS BEYOND A REASONABLE DOUBT THAT
9 HE'S GUILTY OF ALL OF THESE CHARGES. THAT'S OUR
10 BURDEN.
11 THE JUDGE WILL THEN CHARGE YOU ON THE LAW AFTER
12 THE PRESENTATION OF EVIDENCE, INCLUDING ANY
13 EVIDENCE THAT THE DEFENSE MAY CHOOSE TO PUT UP.
14 THEY HAVE THAT RIGHT, BUT THEY DON'T HAVE TO.
15 BUT AFTER ALL OF THE EVIDENCE IS IN IN THE FIRST
16 PART OF THE TRIAL, THE JUDGE WILL THEN INSTRUCT
17 THE JURY ON WHAT THE LAW IS AND THE JURY THEN
18 APPLIES THE LAW TO THE EVIDENCE AS THEY BELIEVE
19 IT TO BE TRUE, AND COMES BACK WITH A VERDICT OF
20 GUILTY OR NOT GUILTY.
21 WHEN WE TALK ABOUT THE SECOND PHASE OF THE
22 TRIAL, IT'S ONLY IF THE JURY RETURNS VERDICTS OF
23 GUILTY ON THE MURDER CHARGES THAT WE EVEN REACH
24 THE SECOND PHASE OF THE TRIAL.
25 NOW, IN THAT FIRST PHASE, YOU COME TO COURT HERE

1 TODAY WITH AN OPEN MIND?

2 A. YES, SIR..

3 Q. YOU DON'T HAVE ANY PREDISPOSITION ONE WAY OR THE
4 OTHER, THE STATE OR THE DEFENSE, YOU HAVE NO
5 IDEA OF WHAT THIS CASE IS EVEN ABOUT?

6 A. NO.

7 Q. SO, YOU COULD BE A FAIR JUROR IN THAT FIRST
8 PHASE?

9 A. I BELIEVE SO.

10 Q. ASSUME THAT THE JURY DOES FIND THE DEFENDANT
11 GUILTY OF THESE MURDERS. ASSUME THAT WE'RE IN
12 THE SECOND PHASE OF THE TRIAL, AGAIN THE STATE
13 BEARS THE BURDEN OF PROOF. AGAIN THE STATE MUST
14 BRING THE EVIDENCE IN SHOWING THAT THIS IS MORE
15 THAN JUST AN AVERAGE MURDER, AND I HESITATE TO
16 SAY THAT BECAUSE THERE IS REALLY NO SUCH THING,
17 THEY ARE ALL BAD; BUT SOME MURDERS IN THE EYES
18 OF THE LAW ARE WORSE THAN OTHERS.

19 THOSE THINGS THAT MAKE IT WORSE THAN OTHERS ARE
20 WHAT ARE CALLED AGGRAVATING CIRCUMSTANCES. THE
21 STATE, AGAIN, HAS TO PROVE TO THE JURY THAT
22 THERE EXISTS IN THIS CASE THESE AGGRAVATING
23 CIRCUMSTANCES. YOU COULD LISTEN TO THE EVIDENCE
24 THAT WE BROUGHT FORWARD?

25 A. YES, SIR.

1 Q. ALL RIGHT, SIR. THE DEFENSE DOESN'T HAVE TO
2 PROVE ANYTHING IN THE SECOND PHASE OF THE TRIAL,
3 BUT IF THEY CHOOSE TO, THEY CAN BRING FORWARD
4 EVIDENCE OF WHAT ARE CALLED MITIGATING
5 CIRCUMSTANCES WHICH TEND TO LESSEN THE
6 DEFENDANT'S RESPONSIBILITY OR EXPLAIN HIS
7 CULPABILITY IN SOMEWHAT MORE DETAIL AND TRY TO
8 LESSEN HIS INVOLVEMENT OR EXPLAIN THE CRIME AND
9 THE CIRCUMSTANCES IN A MANNER FAVORABLE TO HIM.
10 COULD YOU LISTEN TO THOSE?

11 A. YES, SIR.

12 Q. ALL RIGHT, SIR, AND COULD YOU TAKE ALL THAT IN
13 AND AFTER YOU HAD HEARD ALL OF THE EVIDENCE THAT
14 WE DO BRING FORWARD AND ANY EVIDENCE THEY CHOOSE
15 TO BRING FORWARD, COULD YOU RENDER A VERDICT IN
16 THE PENALTY PHASE OF LIFE IN PRISON IF YOU
17 THOUGHT THAT THAT WAS APPROPRIATE?

18 A. YES, I COULD.

19 Q. AND IF YOU THOUGHT THAT THE APPROPRIATE PENALTY
20 WAS DEATH, COULD YOU RETURN A VERDICT OF DEATH?

21 A. YES, I COULD.

22 Q. ALL RIGHT, SIR. THE ONLY OTHER THING I HAVE TO
23 ASK YOU ABOUT, SIR, IS A DEATH PENALTY CASE IS
24 UNIQUE IN ONE ASPECT, ONE OTHER ASPECT. IN
25 EVERY OTHER CRIMINAL CASE, EVERY OTHER CIVIL

1 CASE THAT COMES BEFORE ANY COURT IN THIS STATE
2 THE ONLY PERSON ON A JURY THAT HAS TO SIGN
3 ANYTHING ATTESTING THAT THIS IS THEIR VERDICT IS
4 THE FOREPERSON. THE FOREPERSON TYPICALLY SIGNS
5 THE VERDICT, GUILTY, NOT GUILTY, AND THEN THEIR
6 NAME.

7 IN A DEATH PENALTY CASE IN THE SECOND PHASE OF
8 THE TRIAL IF THE JURY RETURNS A VERDICT OF LIFE,
9 THE FOREPERSON, AGAIN, IS THE ONLY PERSON THAT
0 SIGNS. THEY WRITE LIFE AND SIGN THEIR NAME, AND
1 THAT'S THE VERDICT.

2 IF THE VERDICT IS DEATH, HOWEVER, EACH JUROR HAS
3 TO SIGN THE SENTENCING SHEET INDICATING THAT
4 THAT WAS THEIR VERDICT.

5 IF WE REACH THAT SECOND PHASE, YOU HEAR ALL THE
6 EVIDENCE, YOU DECIDE THAT DEATH IS THE
7 APPROPRIATE VERDICT AND THE PEN COMES AROUND,
8 COULD YOU SIGN YOUR NAME TO A SHEET OF PAPER
9 THAT SENT THIS MAN TO HIS DEATH?

0 A. YES, SIR.

1 Q. THANK YOU VERY MUCH, MR. DEATON.

2 QUESTIONS BY MR. HANCOCK:

3 Q. MR. DEATON, I'M BILL HANCOCK. I REPRESENT JIMMY
4 ROBERTSON WHO IS SEATED RIGHT HERE, AND SO DOES
5 MR. BOYD WHO IS CO-COUNSEL AND HE'S SEATED RIGHT

1 HERE.

2 MR. DEATON, WE SEEM TO BE DELVING INTO WHAT YOU
3 THINK AND WHAT YOU FEEL, BUT IT IS NECESSARY FOR
4 US TO ARRIVE AT WHAT WE THINK IS A PROPER JURY
5 IN THIS CASE.

6 IF YOU'RE NERVOUS, PLEASE JUST SETTLE DOWN. I'M
7 NOT GOING TO ASK YOU ANYTHING THAT HOPEFULLY
8 WILL MAKE YOU NERVOUS. WE ARE JUST TRYING TO
9 GET ANSWERS THAT WE CAN EVALUATE AND GO FORWARD
10 FROM THERE.

11 HAVE YOU EVER SERVED ON A JURY BEFORE?

12 A. NO, SIR.

13 Q. YOU HAVE NEVER HAD THE OPPORTUNITY?

14 A. NEVER HAVE.

15 Q. AND YOU WERE DOWNSTAIRS YESTERDAY AND YOU
16 UNDERSTAND THAT THIS JURY IS TO JUDGE JIMMY
17 ROBERTSON ON THE DEATH PENALTY FOR THE DEATH OF
18 BOTH OF HIS PARENTS. DO YOU UNDERSTAND THAT,
19 SIR?

20 A. YES, SIR.

21 Q. AND I KNOW EVERYBODY HAS EXPLAINED IT TO YOU BUT
22 I NEED TO DO IT JUST SO I CAN MAKE SURE THAT I
23 KNOW WHAT YOUR ANSWERS WERE AND WHAT YOU FEEL IN
24 THIS MATTER.

25 WHEN WE SPEAK WITH YOU, EACH AND EVERY ONE OF

1 US, THEN WHAT WE HAVE DONE IS WE HAVE TAKEN,
2 HAVE THE LEGAL FICTION, WE'VE SAID THAT THE
3 TRIAL FOR GUILT IS OVER, THAT JIMMY ROBERTSON
4 HAS BEEN FOUND GUILTY OF KILLING HIS MOTHER AND
5 HIS FATHER, AND YOU ARE THEN IN A COURTROOM AS A
6 JUROR TO DETERMINE WHETHER HE WILL GET THE DEATH
7 PENALTY OR LIFE IN JAIL. DO YOU UNDERSTAND
8 THAT?

9 A. YES, SIR.

10 Q. AND THAT WOULD BE YOUR ONLY TWO DECISIONS,
11 NOTHING IN BETWEEN, EITHER THE DEATH PENALTY OR
12 LIFE IN JAIL, AND YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND YOU ALONG WITH TWELVE OTHER PEOPLE WOULD
15 HAVE TO MAKE THAT DECISION. DO YOU UNDERSTAND
16 THAT, SIR?

17 A. YES, SIR.

18 Q. AND THERE MAY BE AGGRAVATING CIRCUMSTANCES
19 PRESENTED TO YOU THAT ARE EVEN WORSE THAN JUST
20 KILLING YOUR PARENTS, THAT IT WOULD MAKE THE
21 CRIME EVEN WORSE THAN THAT. AND YOU'VE
22 INDICATED THAT EVEN THOUGH YOU HAVE BEEN
23 PRESENTED THOSE AGGRAVATING CIRCUMSTANCES --
24 WHEN YOU ARE PRESENTED THEM YOU COULD CONSIDER
25 THEM; IS THAT RIGHT?

1 A. YES, SIR.

2 Q. AND THEN ON THE OTHER HAND THAT THE DEFENDANT,
3 ALTHOUGH HE DOES NOT HAVE TO, WE COULD PRESENT
4 TO YOU WHAT YOU CALL MITIGATING CIRCUMSTANCES
5 WHICH WOULD LESSEN HIS MORAL CULPABILITY. DO
6 YOU UNDERSTAND MORAL CULPABILITY?

7 A. YES, SIR.

8 Q. BUT WOULD LESSEN HIS MORAL CULPABILITY AS FAR AS
9 THIS CRIME IS CONCERNED. AND YOU HAVE INDICATED
10 THAT YOU COULD CONSIDER THOSE?

11 A. YES, SIR.

12 Q. AND IN CONSIDERING THOSE YOU SAID THAT YOU COULD
13 RENDER A LIFE SENTENCE ALSO?

14 A. YES, SIR.

15 Q. AND YOU COULD DO THAT -- COULD YOU DO THAT EVEN
16 THOUGH THE OTHER ELEVEN PEOPLE WANTED TO VOTE
17 FOR DEATH?

18 A. YES, SIR.

19 Q. DO YOU FEEL YOU HAVE THAT MORAL CERTITUDE, SIR?

20 A. I DO.

21 Q. SO YOU WOULD NOT CHANGE YOUR OPINION JUST TO BE
22 WITH THE MAJORITY; IS THAT WHAT YOU ARE TELLING
23 US?

24 A. THAT'S WHAT I'M TELLING YOU.

25 Q. NOW HAVE YOU HEARD ANYTHING ABOUT THIS CASE?

1 A. I HEARD ABOUT THE CASE WHEN IT FIRST HAPPENED;
2 OTHER THAN THAT, I HADN'T HEARD ANYTHING ABOUT
3 IT UNTIL I GOT THE JURY NOTICE.

4 Q. AND WHAT DID YOU HEAR ABOUT IT?

5 A. JUST WHAT I READ IN THE PAPER AND THE NEWS WHEN
6 IT HAPPENED.

7 Q. WHEN IT HAPPENED?

8 A. YES, SIR.

9 Q. AND WOULD THAT INFLUENCE YOU IN YOUR DECISION IF
10 YOU HAD TO RENDER IT IN THE NEXT VIEW DAYS?

11 A. NO, BECAUSE NEWSPAPERS AND NEWS STATIONS TEND TO
12 MAKE IT -- THEY CAPTURE YOUR ATTENTION. THEY
13 DON'T NECESSARILY GIVE YOU ALL THE FACTS. SO I
14 DON'T PUT A LOT OF STOCK IN WHAT I READ IN THE
15 PAPER OR WATCH ON TELEVISION.

16 Q. AND YOU COULD PUT THAT ASIDE AND LISTEN TO THE
17 FACTS AND EVIDENCE PRESENTED TO YOU IN A
18 COURTROOM, SIR?

19 A. YES, SIR.

20 Q. AND ARRIVE AT A FAIR VERDICT IN YOUR OWN MIND?

21 A. YES, SIR.

22 Q. WHICH COULD INCLUDE DEATH OR IT COULD INCLUDE
23 LIFE IN PRISON?

24 A. YES, SIR.

25 Q. THANK YOU.

1 THE COURT: STEP OUT FOR JUST A MINUTE IF YOU
2 DON'T MIND.

3 (THE JUROR LEFT THE COURTROOM.)

4 THE COURT: WHAT SAYS THE STATE?

5 MR. BRACKETT: WE SUBMIT HE'S QUALIFIED, YOUR
6 HONOR.

7 THE COURT: THE DEFENSE?

8 MR. HANCOCK: HE'S QUALIFIED, YOUR HONOR.

9 THE COURT: ALL RIGHT, LET'S BRING HIM BACK IN.
10 (THE JUROR RETURNED TO THE COURTROOM.)

11 THE COURT: MR. DEATON, YOU WILL BE PART OF THE
12 POOL FROM WHICH THE JURY IS DRAWN. WE DON'T KNOW WHEN THAT
13 WILL BE YET. SO, CALL BACK TONIGHT AFTER 6:00 O'CLOCK AND
14 THEY WILL TELL YOU WHAT THE INSTRUCTIONS ARE.

15 PLEASE WHEN YOU COME BRING YOUR TOILETRY ITEMS
16 AND CLOTHING SO THAT YOU CAN STAY WITH US THROUGHOUT THE
17 DURATION OF THE TRIAL.

18 ARE YOU AWARE OF ANY EXTENUATING CIRCUMSTANCES
19 THAT WOULD INTERFERE WITH THAT?

20 THE JUROR: NO, SIR.

21 THE COURT: DON'T DISCUSS THIS CASE WITH ANYONE.
22 DON'T LET ANYONE DISCUSS IT WITH YOU OR IF ANYONE TRIES,
23 REPORT THAT BACK TO ME, HOPEFULLY IDENTIFYING THAT PERSON
24 BECAUSE I WOULD HAVE TO TAKE ACTION AGAINST THEM.

25 AND DO NOT LET YOURSELF BE EXPOSED TO ANY NEWS

1 COVERAGE OF THIS CASE. ALL RIGHT?

2 THE JUROR: YES, SIR.

3 THE COURT: CALL BACK TONIGHT AFTER 6:00. THANK
4 YOU.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: BEFORE WE GET THE NEXT WITNESS IN, SO
7 I CAN BE GIVING SOME THOUGHT, SOLICITOR WHY DO YOU FEEL
8 THAT NOT ALLOWING THE DEFENDANT TO CROSS EXAMINE ---

9 MR. POPE: I TRIED TO PULL SOME CASES, YOUR
10 HONOR, AND I THINK THE TRUTH IS IT'S KIND OF GRAY BECAUSE
11 IT GETS INTO ---

12 THE COURT: WELL, I'M JUST LOOKING AT A HEADNOTE
13 AND I'VE SENT FOR STATE VERSUS IVEY.

14 MR. POPE: I'VE GOT STATE VERSUS IVEY ALSO.

15 THE COURT: WELL, I'LL DO MY RESEARCH THEN. I
16 THOUGHT YOU HAD SOMETHING RIGHT AT HAND. WE CAN DO IT.

17 MR. POPE: NO, SIR. MY CONCERN, YOU KNOW, THE
18 STATUTE ALLOWS THEM TO CROSS AND I REALIZE IT'S REALLY
19 ABOUT THE WITHERSPOON ISSUES BUT SINCE MR. HANCOCK MADE AN
20 OBJECTION AND THEN CAME BACK AND SAID SPECIFICALLY HE WAS
21 OBJECTING BECAUSE HE DIDN'T GET A CHANCE TO CROSS, I JUST
22 WOULDN'T WANT OUR WORK FROM HENCEFORTH TO BE OVERTURNED ON
23 ONE WITNESS.

24 THE COURT: WELL, ALSO ALONG THOSE LINES AND
25 BEFORE WE GO ANY FURTHER, LET'S TAKE A LOOK AND SEE IF

1 THERE HAS BEEN ANY CHANGE TO STATE VERSUS SYLVESTER ADAMS,
2 JUNE 29, 1983. THAT CASE STATES THAT A JUROR SHOULD NOT
3 PRIOR TO TRIAL BE REQUIRED TO ASSERT WHICH WITNESSES HE
4 WILL BELIEVE NOR WHAT TYPE OF WITNESSES HE WILL BELIEVE.
5 THIS IS TRUE BECAUSE A JUROR SHOULD BELIEVE THOSE WITNESSES
6 WHOSE CREDIBILITY APPEAL TO HIM AFTER HE HAS HEARD ALL OF
7 THE TESTIMONY. THE QUESTION INVADES THE PROVINCE OF THE
8 JURY TO DETERMINE INDIVIDUAL CREDIBILITY IN THE CONTEXT OF
9 THE ENTIRE CASE.

10 THAT CASE WAS A LITTLE DIFFERENT BECAUSE THEY
11 WERE NOT TALKING ABOUT SPECIFIC WITNESSES. THEY WERE
12 SAYING THE OLD STANDARD SORT OF THING OF WOULD YOU BELIEVE
13 A POLICE OFFICER AS OPPOSED TO OTHER PEOPLE.

14 I THINK WE NEED TO RESOLVE WHETHER WE CAN BE
15 GOING INTO THOSE ISSUES.

16 MR. BOYD: YOUR HONOR, THAT WAS A DIFFERENT
17 ISSUE. THAT'S A HYPOTHETICAL ---

18 THE COURT: I UNDERSTAND THAT, BUT THAT'S WHY I
19 AM LOOKING AT HEADNOTE 5.

20 MR. BOYD: I MEAN THAT QUESTION WAS ABOUT A
21 POLICE OFFICER. I TRIED THAT CASE. WE TRIED TO QUESTION
22 JURORS AS TO WHETHER OR NOT THEY WOULD TAKE A POLICE
23 OFFICER'S CREDIBILITY OVER A REGULAR PERSON. AND THE COURT
24 SAID YOU CAN'T DO THAT.

25 THE COURT: RIGHT.

1 MR. BOYD: BUT THAT'S A PARTICULAR CLASS OF
2 WITNESSES. IN THIS CASE YOU'RE GOING TO THE BIAS OF A
3 PARTICULAR PERSON ---

4 THE COURT: BUT I'M LOOKING AT HEADNOTE 5. IT
5 SAYS THAT A JUROR SHOULD NOT PRIOR TO TRIAL BE REQUIRED TO
6 ASSERT WHICH WITNESSES HE WILL BELIEVE NOR WHAT TYPE OF
7 WITNESSES. THEY'RE TALKING ABOUT TWO DIFFERENT THINGS.
8 THEY'RE TALKING ABOUT A TYPE, A POLICE OFFICER BUT IT ALSO
9 SAYS WHICH WITNESSES.

10 MR. BOYD: I DON'T THINK THAT'S GOING INTO A CASE
11 WHERE THE JUROR KNOWS THE WITNESS. THAT'S MY POINT. I
12 MEAN WE CAN LOOK THAT UP. I MEAN OBVIOUSLY IF A JUROR
13 COMES IN AND SAYS I KNOW A CERTAIN WITNESS, I WOULD BELIEVE
14 EVERYTHING THEY SAY.

15 THE COURT: I'M INCLINED TO AGREE BUT -- ALL
16 RIGHT; WE ARE GOING TO GET MR. SHACKELFORD BACK AND WE'LL
17 DEAL WITH THAT, BUT ALSO I'M GOING TO LOOK AT STATE VERSUS
18 IVEY.

19 CALL IN -- WE'LL CONTINUE ALONG THAT LINE. OF
20 COURSE I HAVE BEEN ASKING WHETHER OR NOT THAT WOULD IMPACT
21 THEIR DECISION MYSELF, SO MAYBE I STARTED IT. JEFFREY
22 HALL, 105.

23 MR. POPE: YOUR HONOR, AT SOME POINT I WAS
24 LOOKING AT OUR LIST LIKE THIS AFTERNOON, I KNOW AT SOME
25 POINT THE CLERK HAS THEM CALLING IN. JUST THE WAY WE'RE

1 GOING, WE'RE GOING TO END UP FINISHING THE 12:00'S ABOUT
2 2:00 O'CLOCK THE WAY IT'S HEADING, AND THEN WE'VE GOT THE
3 OTHER CROWD COMING IN. I MEAN, YOU KNOW, AT SOME POINT,
4 5:00 O'CLOCK OR 4:00 O'CLOCK YOU MAY WANT TO ---

5 THE COURT: ALL RIGHT, WHAT PANEL IS THE FIRST
6 ONE CALLING IN?

7 MR. POPE: IT LOOKS LIKE THE 4:00 O'CLOCK FROM
8 THE LIST, JUDGE, PANEL K.

9 THE COURT: WELL, WE'LL PROBABLY HAVE TO SEE
10 WHERE WE ARE AND MOVE THOSE TO LATER OR EVEN TO IN THE
11 MORNING. COME ON UP HERE AND HAVE A SEAT PLEASE, SIR.

12 JEFFREY HALL, JUROR NUMBER 105, WHITE MALE, WAS
13 QUESTIONED AS FOLLOWS:

14 QUESTIONS BY THE COURT:

15 Q. MR. HALL, YOU ARE STILL UNDER OATH AND I'M JOHN
16 HAYES. I WANT TO TELL YOU THAT IF YOU ARE
17 CHOSEN TO SIT ON THIS JURY PANEL YOU MAY SEE
18 T.V. CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM.
19 THEY WON'T BE TAKING YOUR PICTURE, THEY'RE NOT
20 ALLOWED TO AND DON'T BE DISTRACTED BY THEM.
21 YOU TURNED IN A QUESTIONNAIRE AT AN EARLIER
22 TIME. FROM YOUR RECOLLECTION IS IT OKAY OR DO
23 YOU NEED TO MAKE ANY CHANGES TO IT?

24 A. I'M NOT REAL SURE, BUT I THINK IT IS.

25 Q. DO YOU WANT TO LOOK AT IT?

1 A. YES.

2 (THE QUESTIONNAIRE FORM WAS GIVEN TO THE JUROR.)

3 Q. SEE IF THERE IS ANYTHING YOU NEED TO CHANGE.

4 (AFTER A PAUSE.)

5 Q. YES OR NO?

6 A. NO.

7 Q. ALL RIGHT. THERE WERE LISTS OF WITNESSES IN THE
8 JURY ROOM, DID YOU REVIEW IT?

9 A. YES, SIR.

10 Q. DID YOU KNOW ANYBODY ON THERE OR WERE YOU
11 RELATED TO ANYBODY ON THERE?

12 A. MAGISTRATE LYNN BENFIELD.

13 Q. YOU KNOW MAGISTRATE BENFIELD?

14 A. YES.

15 Q. IS THE FACT THAT SHE IS A WITNESS, WOULD THAT
16 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO
17 THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS
18 CASE?

19 A. I THINK IT MIGHT.

20 Q. IT MIGHT? AND WHY WOULD THAT BE?

21 A. SHE'S MY -- WELL, MY GRANDMA AND HER HUSBAND ARE
22 FIRST COUSINS.

23 THE COURT: DO YOU WANT TO ASK ANY QUESTIONS FROM
24 THE STATE?

25 MR. POPE: I THINK THE DEFENSE GOES FIRST ON THIS

1 ONE.

2 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS
3 YOU WANT TO ASK?

4 MR. BOYD: ONE SECOND, YOUR HONOR.

5 (AFTER A BRIEF PAUSE.)

6 MR. BOYD: YES, SIR, I'D LIKE TO ASK A FEW
7 QUESTIONS.

8 THE COURT: ALL RIGHT.

9 Q. MR. HALL, I JUST WANT TO ASK YOU ABOUT YOUR
10 RELATIONSHIP TO LYNN BENFIELD. NOW YOU SAID SHE
11 IS YOUR GRANDMOTHER'S ---

12 A. NO, MY GRANDMOTHER AND HER HUSBAND ARE FIRST
13 COUSINS.

14 Q. YOUR GRANDMOTHER AND HER HUSBAND ARE FIRST
15 COUSINS?

16 A. YES, SIR.

17 Q. YOU'RE ACTUALLY NO RELATION TO HER THEN; IS THAT
18 CORRECT?

19 A. NO, JUST TO HER HUSBAND AND TWO SONS.

20 Q. OKAY. DID YOU KNOW ANYONE ELSE ON THAT LIST?

21 A. BRUCE BRYANT.

22 Q. WHAT'S YOUR RELATIONSHIP WITH HIM?

23 A. I'VE JUST KNOWED HIM SINCE I WAS A KID. MY
24 DADDY WAS IN THE NATIONAL GUARDS WITH HIM. I'VE
25 KNOWN HIM SINCE I WAS YOUNG.

1 Q. ARE YOU A FRIEND OF HIS?

2 A. YES.

3 Q. WHO ELSE?

4 A. HIS DAUGHTER, BETH, AND BOBBY STEVENSON.

5 Q. ARE YOU FRIENDS WITH ALL OF THOSE INDIVIDUALS?

6 A. YES.

7 Q. AND DO YOU KNOW ANYONE ELSE?

8 A. NO.

9 Q. OKAY. LET ME ASK YOU, DOES YOUR RELATIONSHIP
10 WITH ANY OF THESE OTHER PEOPLE, WOULD THAT
11 AFFECT YOUR ABILITY TO LISTEN TO THEM AND FAIRLY
12 WEIGH THE EVIDENCE?

13 A. MAYBE.

14 Q. OF THOSE PARTICULAR PEOPLE?

15 A. NO. I'M SORRY, I DIDN'T UNDERSTAND YOUR
16 QUESTION.

17 Q. TO THOSE PARTICULAR PEOPLE YOU WOULD TEND TO
18 GIVE CREDIBILITY TO, IS THAT CORRECT?

19 A. YEAH.

20 Q. NO FURTHER QUESTIONS.

21 THE COURT: DOES THE STATE HAVE ANY QUESTIONS?

22 MR. POPE: I BEG THE COURT'S INDULGENCE.

23 (AFTER A BRIEF PAUSE.)

24 MR. POPE: AS TO THE WITNESS ISSUE, I HAVE NO
25 QUESTIONS. IF WE END UP GOING FURTHER, CERTAINLY I WOULD.

1 THE COURT: LET ME LET YOU STEP OUT JUST ONE
2 MINUTE.

3 (THE JURY LEFT THE COURTROOM.)

4 THE COURT: WHAT DO YOU HAVE TO SAY, MR. BOYD?

5 MR. BOYD: YOUR HONOR, WE HAVE NO PROBLEMS WITH
6 HIM BASED ON THOSE ANSWERS.

7 THE COURT: WHAT ABOUT THE STATE? SINCE THEY
8 DON'T, Y'ALL DO?

9 MR. POPE: NO, SIR, I DON'T. WE NEED TO PURSUE,
10 TOO -- HE'S THE SAME ONE THAT STOOD UP YOU REMEMBER WHEN
11 YOU FIRST QUESTIONED THEM, STANDING RIGHT ACROSS FROM YOU
12 DOWNSTAIRS AND SAID HE'D BEEN IN TROUBLE WITH POLICEMEN AND
13 HE WOULD HAVE PROBLEMS WITH THAT, TOO. I THINK WHAT WE'VE
14 GOT, HONESTLY, IS A CASE OF SOMEBODY WHO DOESN'T WANT TO
15 BE HERE. SO, WE'LL HAVE TO DEAL WITH THAT.

16 THE COURT: ALL RIGHT, BRING HIM BACK IN.
17 (THE JUROR RETURNED TO THE COURTROOM.)

18 THE COURT: ALL RIGHT, JUST COME ON UP HERE AND
19 HAVE A SEAT.

20 QUESTIONS BY THE COURT:

21 Q. YOU ALSO STOOD UP YESTERDAY AND SAID YOU MIGHT
22 HAVE SOME TROUBLE BECAUSE ---

23 A. MY GRANDFATHER WAS A FORMER POLICEMAN.

24 Q. WHERE?

25 A. IN HICKORY GROVE.

1 Q. HE WASN'T INVOLVED, OF COURSE, IN THIS
2 PARTICULAR CASE?

3 A. NO, NO.

4 Q. WELL, WHAT BEARING, IF ANY, WOULD THAT HAVE ON
5 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE
6 TRIAL OF THIS CASE?

7 A. JUST BECAUSE HE WAS A POLICEMAN, I GUESS.

8 Q. ALL RIGHT. HAVE YOU HEARD ANYTHING ABOUT THIS
9 CASE BEFORE YOU CAME TO COURT?

10 A. YEAH, A LITTLE BIT ON T.V.

11 Q. WOULD THE FACT THAT YOU HAD HEARD ABOUT IT
12 BEFORE YOU CAME TO COURT, WOULD THAT AFFECT YOUR
13 ABILITY TO BE FAIR AND IMPARTIAL OR COULD YOU
14 PUT ---

15 A. YEAH, I THINK IT WOULD.

16 Q. IT WOULD AFFECT YOUR ABILITY? I'M SORRY?

17 A. YES, SIR.

18 Q. WOULD YOU NOT BE ABLE TO GET THAT OUT OF YOUR
19 MIND?

20 A. NO, SIR.

21 Q. AND HOW WOULD IT AFFECT YOUR ABILITY?

22 A. IT JUST WOULD.

23 THE COURT: ANY QUESTIONS AT THIS POINT?

24 MR. BOYD: NO, SIR.

25 THE COURT: ANY QUESTIONS FROM THE STATE?

1 MR. POPE: NO, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT, LET ME LET YOU STEP BACK
3 OUT AGAIN.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: MR. BOYD, WHAT DO YOU HAVE TO SAY
6 ABOUT THAT LATEST EPISODE?

7 MR. BOYD: BASED ON THOSE ANSWERS, I DON'T
8 BELIEVE HE IS QUALIFIED.

9 THE COURT: WHAT DO YOU SAY?

10 MR. POPE: I THINK WE OUGHT TO PUT HIM AT THE
11 TAIL END OF THE JURY AND ADDRESS HIM AT THE END, HAVE HIM
12 STAY WITH US UNTIL THEN. I DON'T THINK HE'S QUALIFIED,
13 YOUR HONOR.

14 THE COURT: ALL RIGHT, HAVE HIM COME BACK IN AND
15 JUST STAND AT THE DOOR.

16 (THE JUROR RETURNED TO THE COURTROOM.)

17 THE COURT: MR. HALL, I'M GOING TO EXCUSE YOU
18 FROM SERVICE. WE APPRECIATE YOU COMING AND APPRECIATE YOUR
19 CANDOR. THANK YOU A LOT.

20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: ALL RIGHT, THE NEXT IS BARBARA
22 WRIGHT, 296.

23 BARBARA WRIGHT, JUROR NUMBER 296, WHITE FEMALE,
24 WAS QUESTIONED AS FOLLOWS:
25 QUESTIONS BY THE COURT:

1 Q. MS. WRIGHT, IF YOU'LL JUST COME UP HERE AND HAVE
2 A SEAT. MS. WRIGHT, I'M JOHN HAYES AND I WANT
3 TO REMIND YOU THAT YOU'RE STILL UNDER OATH.

4 A. YES, SIR.

5 Q. IF YOU ARE DRAWN ON THIS CASE, YOU MAY SEE T.V.
6 CAMERAS OR PHOTOGRAPHERS HERE IN THE COURTROOM,
7 BUT I WANT YOU TO KNOW THAT YOU WON'T BE THE
8 SUBJECT OF THEIR VIDEOING OR PHOTOGRAPHING.
9 THEY ARE ALLOWED TO BE IN COURT BUT THEY ARE NOT
10 ALLOWED TO DO ANYTHING AS FAR AS REPORTING ON OR
11 TAKING PICTURES OF JURORS. DO YOU UNDERSTAND
12 THAT?

13 A. UH HUH.

14 Q. THERE HAS BEEN TURNED IN BY YOU A QUESTIONNAIRE.
15 DO YOU BELIEVE IT IS ACCURATE OR DO YOU NEED TO
16 MAKE ANY CHANGES?

17 A. AS FAR AS I CAN REMEMBER, IT'S ACCURATE.

18 Q. THERE WERE A LIST OF WITNESSES IN THE JURY ROOM.
19 DID YOU HAVE A CHANCE TO REVIEW IT?

20 A. YES, SIR, I DID.

21 Q. WAS THERE ANYBODY ON THERE WHO YOU ARE RELATED
22 TO BY BLOOD OR MARRIAGE OR WHO IS A CLOSE
23 PERSONAL FRIEND OR ACQUAINTANCE OF YOUR'S?

24 A. ACQUAINTANCES.

25 Q. WHO?

1 (THE JUROR GAVE THE COURT A PAPER.)

2 Q. ALL RIGHT, SHE HAS MADE A LIST. I'LL MAKE IT
3 PART OF THE RECORD. IT SAYS: KATHY BIGHAM,
4 OWNER OF THURSDAYS TOO; THOMAS D. FLEISCHER,
5 M.D. PERFORMED THREE OPERATIONS ON HER DAUGHTER
6 15 YEARS AGO; LOUIS RIDINGER, FATHER OF ONE OF
7 THE ATTORNEYS IN THEIR CHARLOTTE OFFICE,
8 KENNEDY, COVINGTON, LOBDELL AND HICKMAN; JULIUS
9 MEYER WAS HER MARRIAGE FAMILY COUNSELOR 13 YEARS
10 OR SO AGO AND THEY HAD ABOUT FIVE VISITS.

11 ALL RIGHT, WOULD THE FACT THAT THESE INDIVIDUALS
12 MAY TESTIFY IN THIS CASE WOULD THAT AFFECT YOUR
13 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE
14 AND THE DEFENDANT IN THE TRIAL OF THE CASE?

15 A. NO, SIR.

16 Q. NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE
17 BEFORE YOU CAME?

18 A. YES, SIR.

19 Q. WOULD THE FACT -- WOULD YOU BE ABLE TO TAKE THAT
20 OUT OF YOUR MIND OR WOULD THE FACT THAT YOU HAD
21 HEARD THINGS ABOUT IT AFFECT YOUR ABILITY TO BE
22 FAIR AND IMPARTIAL DURING THE TRIAL?

23 A. I FEEL LIKE I COULD BE FAIR AND IMPARTIAL.

24 Q. ALL RIGHT. NOW, CASES OF THIS TYPE ARE TRIED IN
25 TWO STAGES. ONE DEALING WITH THE GUILT OR

1 INNOCENCE OF A DEFENDANT, HERE MR. ROBERTSON.
2 IF HE'S FOUND INNOCENT DURING THAT FIRST PHASE,
3 THEN OF COURSE THE CASE IS OVER.
4 IF THE JURY WERE TO UNANIMOUSLY FIND HIM GUILTY
5 BEYOND A REASONABLE DOUBT, THEN THE CASE WOULD
6 PROCEED INTO A SECOND PHASE, THE PENALTY PHASE.
7 THE FACT THAT WE ARE TALKING ABOUT THE PENALTY
8 PHASE IS NOT TO PRESUPPOSE THAT WE WOULD EVER
9 GET THERE. THAT WOULD ONLY HAPPEN IF HE IS
10 FOUND GUILTY. BUT WE HAVE TO, BECAUSE OF THE
11 NATURE OF THESE PROCEEDINGS, DISCUSS THAT AT
12 THIS POINT. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. NOW, IN THE JURY ROOM THERE WERE THREE JUROR
15 TYPES LISTED ON A SHEET OF PAPER. DID YOU
16 REVIEW IT?

17 A. YES, SIR. I WOULD BE THE THIRD.

18 Q. OKAY. IN THAT WE USE THE TERMS AGGRAVATING AND
19 MITIGATING CIRCUMSTANCES AND THESE ARE
20 CIRCUMSTANCES, AGGRAVATING ARE, CIRCUMSTANCES
21 THAT ATTEND THE COMMISSION OF A CRIME WHICH
22 WOULD INCREASE THE ENORMITY OF THE CRIME OR ADD
23 TO ITS INJURIOUS CONSEQUENCE BUT THEY ARE NOT
24 PART OF THE CRIME, THEY ARE SORT OF OVER AND
25 ABOVE THE CRIME.

1 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT
2 WHILE NOT CONSTITUTING JUSTIFICATION OR EXCUSE
3 FOR A CRIME ARE THINGS WHICH IN FAIRNESS AND
4 MERCY MAY BE CONSIDERED AS EXTENUATING OR
5 REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO
6 YOU UNDERSTAND THOSE TERMS?

7 A. YES, SIR.

8 Q. SO, YOU ARE TELLING ME THAT AFTER MR. ROBERTSON
9 WERE FOUND GUILTY, IF HE WERE, THAT AT THAT
10 POINT YOU WOULD NOT HAVE MADE UP YOUR MIND AS TO
11 WHAT PUNISHMENT SHOULD BE IMPOSED. IS THAT
12 CORRECT?

13 A. THAT'S RIGHT.

14 Q. YOU'RE TELLING ME THAT YOU WOULD HAVE TO HEAR
15 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
16 MITIGATION AT THAT SECOND PHASE AND WOULD LISTEN
17 TO AND FOLLOW THE LAW AS CHARGED BY THE JUDGE
18 BEFORE YOU WOULD MAKE A DECISION REGARDING THE
19 PUNISHMENT.

20 A. YES, SIR.

21 Q. ARE YOU TELLING ME THAT'S THE TYPE JUROR YOU
22 ARE?

23 A. YES, SIR.

24 Q. NOW, IF THE FACTS WERE SUCH AT THAT POINT THAT
25 YOU BELIEVED THE APPROPRIATE PENALTY WARRANTED

1 WAS THAT OF A VERDICT OF LIFE IMPRISONMENT,
2 COULD YOU IMPOSE A VERDICT OF LIFE IMPRISONMENT?

3 A. YES, SIR.

4 Q. IF YOU FELT THE FACTS WARRANTED AT THAT POINT A
5 VERDICT FOR THE DEATH PENALTY, COULD YOU IMPOSE
6 THE DEATH PENALTY?

7 A. YES, SIR.

8 Q. I'M GOING TO ASK YOU TO ANSWER QUESTIONS POSED
9 BY COUNSEL.

10 QUESTIONS BY MR. POPE:

11 Q. MS. WRIGHT, MY NAME IS TOMMY POPE. I'M THE
12 SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN
13 BRACKETT, MY DEPUTY SOLICITOR, AND WE REPRESENT
14 THE STATE.

15 Q. I HAVE READ ON YOUR JURY QUESTIONNAIRE YOU HAVE
16 BEEN ON JURY SERVICE BEFORE?

17 A. YES, SIR.

18 Q. YOU'VE NEVER BEEN IN THIS SITUATION?

19 A. NO, SIR.

20 Q. WELL, I THINK THE JUDGE PROBABLY INDICATED TO
21 YOU, YOU'RE NOT ON TRIAL HERE. SO, YOU KNOW,
22 YOUR ANSWERS -- WHAT WE ARE TRYING TO DO IS JUST
23 TO FIND OUT A LITTLE BIT ABOUT YOU AND YOUR
24 FEELINGS.

25 A. UH HUH

1 Q. I THINK I SAW FROM EITHER YOUR QUESTIONNAIRE OR
2 DOWNSTAIRS, YOU WORK AT KENNEDY COVINGTON; IS
3 THAT RIGHT?

4 A. THAT'S RIGHT.

5 Q. HAVE YOU DISCUSSED THE CASE WITH ANYBODY AT WORK
6 ONE WAY OR ANOTHER OR ABOUT THE DEATH PENALTY
7 ONE WAY OR ANOTHER?

8 A. NO.

9 Q. YOU ALSO INDICATED THAT THERE WERE A NUMBER OF
10 PEOPLE, AND YOU'VE BROUGHT THE LIST FOR THE
11 JUDGE THAT YOU KNEW, AND YOU SAID BASICALLY THAT
12 YOU'RE THE TYPE OF JUROR YOU COULD SET THAT
13 ASIDE -- I MEAN THE FACT THAT YOU KNEW THEM, YOU
14 WOULDN'T BELIEVE THEM ANYMORE OR ANY LESS THAN
15 ANYBODY ELSE. IS THAT CORRECT?

16 A. I FEEL I COULD BE IMPARTIAL TO WHAT THEY HAVE TO
17 SAY, TO WHAT THEIR TESTIMONY IS.

18 Q. OKAY. SO, IF SOMEBODY TAKES THE STAND THAT YOU
19 DON'T KNOW, YOU WILL LISTEN TO THEIR TESTIMONY
20 JUST THE SAME AS SOMEBODY YOU DO?

21 A. OF COURSE, OF COURSE.

22 Q. AND, AGAIN, I DON'T WANT TO PUT WORDS IN YOUR
23 MOUTH, IT'S JUST UNDERSTANDING HOW YOU FEEL. I
24 NOTICED ON YOUR QUESTIONNAIRE THERE WERE A
25 COUPLE OF LITTLE THINGS THAT, LIKE THE BOX THAT

1 SAID SOMETHING ABOUT A VIOLENT CRIME OR KNOWING
2 LOVED ONES WITH A VIOLENT CRIME, I THINK YOU
3 CHECKED YES. IS THAT RIGHT? I HAVE IT BACK
4 HERE, BUT SOMETHING ABOUT KNOWING SOMEONE THAT
5 HAD BEEN THE VICTIM OF A SERIOUS ACT OF VIOLENCE
6 OR UNLAWFUL KILLING AND YOU SAID YOU DID KNOW
7 SOMEBODY?

8 A. WELL, MY NEPHEW WAS INVOLVED BUT NOT ACTUALLY IN
9 A MURDER, BUT HE WAS INVOLVED WITH THE USE OF A
10 CAR.

11 Q. WOULD THAT AFFECT YOU BEING FAIR AND IMPARTIAL
12 TO THE STATE OR THE DEFENSE?

13 A. NO.

14 Q. OKAY. THE JUDGE HAS EXPLAINED TO YOU AND AS YOU
15 UNDERSTAND HE WILL GIVE YOU -- LIKE YOU SAY,
16 YOU'RE A VETERAN NOW, YOU'VE BEEN IN A TRIAL
17 BEFORE -- HE WILL GIVE YOU THE LAW.

18 A. UH HUH.

19 Q. YOU WOULD DETERMINE THE FACTS, HE WOULD
20 DETERMINE THE LAW.

21 A. UH HUH.

22 Q. HE HAS EXPLAINED THAT IN THE FIRST STAGE THE
23 DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY AND WE
24 HAVE TO PROVE IT ALL BEYOND A REASONABLE DOUBT.

25 A. YES.

1 Q. IF WE DON'T, THEN WE DON'T CARRY OUR BURDEN AND
2 HE'S NOT GUILTY. DO YOU UNDERSTAND THAT?

3 A. I DO.

4 Q. YOU'RE THE TYPE JUROR YOU COULD LEAVE ALL THE
5 MEDIA AND EVERYTHING YOU'VE HEARD AND LEAVE IT
6 BEHIND AND MAKE A DECISION BASED ON WHAT COMES
7 FROM THAT CHAIR AND THE EVIDENCE THAT WOULD BE
8 PRESENTED. IS THAT CORRECT?

9 A. YES, SIR.

10 Q. YOU'D BE WILLING TO LISTEN TO WHAT WE SAY AND,
11 OF COURSE, THEY DON'T HAVE TO SAY ANYTHING BUT
12 IF THEY CHOSE TO, YOU WOULD LISTEN TO THAT, TOO?

13 A. OF COURSE.

14 Q. AND THEN AT THAT POINT IF THE VERDICT IS NOT
15 GUILTY, OBVIOUSLY IT'S OVER. IF THE VERDICT IS
16 GUILTY, THEN WE GO TO THE SECOND STAGE. AND
17 THAT'S WHERE IT WOULD BE A LITTLE DIFFERENT THAN
18 YOUR PREVIOUS EXPERIENCE. YOU KNOW, IN THE
19 PREVIOUS CASE THE JUDGE SENTENCES. YOU KNOW,
20 YOU DECIDE GUILTY OR NOT GUILTY AND THE JUDGE
21 SENTENCES.

22 IN THIS CASE YOU SAID YOU'D BE THE TYPE OF JUROR
23 JUST BECAUSE HE HAD BEEN CONVICTED -- OF COURSE,
24 YOU KNOW, HE'S INNOCENT NOW BUT IF HE IS
25 CONVICTED, HE WILL BE CONVICTED OF KILLING HIS

1 PARENTS, KILLING TWO PEOPLE.

2 YOU SAY YOU'RE THE TYPE OF JUROR THAT WOULD
3 STILL KEEP AN OPEN MIND, HEAR WHATEVER BAD
4 THINGS WE WANT TO BRING UP, AGGRAVATION, AND
5 WHATEVER GOOD THINGS THEY WANT TO BRING UP,
6 MITIGATION, BEFORE YOU DECIDED WHAT THE
7 APPROPRIATE PENALTY WOULD BE. IS THAT RIGHT?

8 A. THAT'S WHAT I BELIEVE.

9 Q. OKAY. AND, AGAIN, THE JUDGE IS GOING TO
10 INSTRUCT YOU ON THE LAW, BUT YOU UNDERSTAND EVEN
11 IN THAT PHASE THEY DON'T HAVE TO BRING FORTH
12 ANYTHING. YOU KNOW WHAT I MEAN, THEY DON'T HAVE
13 TO PROVE ANYTHING TO YOU TO MAKE YOU GIVE LIFE.
14 YOU CAN GIVE LIFE FOR ANY REASON OR NO REASON AT
15 ALL. DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. AGAIN, IT IS OUR BURDEN TO PROVE AGGRAVATING
18 CIRCUMSTANCES AND BRING THAT FORTH AND YOU
19 UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. OKAY. AND I'LL CUT TO THE CHASE. YOU'RE THE
22 TYPE OF JUROR, YOU DON'T KNOW WHAT YOU WOULD
23 GIVE BECAUSE YOU HAVEN'T HEARD THE FACTS, LIFE
24 OR DEATH, YOU DON'T KNOW BECAUSE YOU HAVEN'T
25 HEARD ANYTHING?

1 A. THAT'S RIGHT.

2 Q. YOU'D WAIT AND HEAR IT AND IF YOU HEARD IT AND
3 YOU THOUGHT THAT LIFE WAS THE APPROPRIATE
4 SENTENCE, YOU COULD VOTE AND SAY I GIVE LIFE?

5 A. YES, SIR.

6 Q. IN A DEATH PENALTY CASE -- YOU KNOW, LIKE IN THE
7 CASE YOU WERE ON BEFORE, EVERYBODY VOTES OR
8 WRITES ON A PIECE OF PAPER, THEY DECIDE AND
9 THAT'S IT AND THEN THE FOREPERSON BRINGS THE
10 VERDICT OUT. YOU KNOW, THEY SIGN AND SAY THIS
11 IS THE VERDICT.

12 IN A DEATH PENALTY CASE IF THE VERDICT IS DEATH,
13 AFTER HEARING EVERYTHING IF EVERYBODY VOTES
14 DEATH, THEN EACH INDIVIDUAL JUROR HAS TO SIGN
15 THEIR NAME INDIVIDUALLY, UNLIKE, YOU KNOW, JUST
16 THE FOREPERSON SIGNING IT; EACH PERSON HAS TO
17 SIGN.

18 IF YOU HEARD THE FACTS IN THE CASE AND YOU
19 THOUGHT AFTER HEARING EVERYTHING, AGGRAVATION,
20 MITIGATION AND TAKING IT ALL INTO CONSIDERATION
21 -- AND, OF COURSE, I'M TALKING FAST, BUT I'M NOT
22 MAKING LIGHT OF THE DECISION -- IF YOU HEARD
23 EVERYTHING AND YOU THOUGHT DEATH WAS APPROPRIATE
24 AND YOU HAD A DOCUMENT AND YOU HAD TO SIGN IT --
25 AND I SAY A DOCUMENT, BUT WHAT THE JURY SAYS IS

1 WHAT THE JUDGE IS GOING TO DO.

2 A. UH HUH.

3 Q. IF YOU HAD THAT DOCUMENT AND YOU FELT DEATH WAS
4 APPROPRIATE, COULD YOU SIGN BARBARA WRIGHT TO
5 THAT DEATH NOTICE, TO THAT DOCUMENT KNOWING THAT
6 IT WOULD GIVE THIS MAN DEATH?

7 A. I COULD IF I FELT HE DESERVED IT.

8 Q. THANK YOU, MA'AM.

9 QUESTIONS BY MR. HANCOCK:

10 Q. MS. WRIGHT, I'M BILL HANCOCK. EVERYBODY JUST
11 KEEPS COMING AT YOU TO QUESTION YOU, BUT IT'S
12 SOMETHING THAT WE HAVE TO DO TO TRY TO ARRIVE AT
13 A FAIR TRIAL IN THIS MATTER.

14 I REPRESENT JIMMY ROBERTSON WHO IS SITTING RIGHT
15 HERE. AND THIS IS CO-COUNSEL, MR. JIM BOYD,
16 SEATED RIGHT BESIDE HIM. AND I'M JUST THE ONE
17 CHOSEN TO ASK THE QUESTIONS HERE. SO, IF YOU
18 WILL, AS BEST YOU CAN -- ARE YOU NERVOUS?

19 A. A LITTLE.

20 Q. A LITTLE?

21 A. UH HUH.

22 Q. OKAY. WELL, YOU'RE FAMILIAR WITH THE LEGAL
23 FIELD BECAUSE YOU HAVE WORKED FOR KENNEDY,
24 COVINGTON, LOBDELL AND HICKMAN I BELIEVE.

25 A. I LIKE THE WAY YOU DO THE FOUR FINGERS THERE.

1 SOMETIMES I HAVE TO DO THE SAME THING.

2 Q. I'M DOING THAT, TOO, TO MAKE SURE I'VE GOT THEM
3 ALL. NONE WOULD WANT TO BE SLIGHTED.

4 A. THAT'S RIGHT.

5 Q. OKAY. NOW, YOU'VE BEEN ASKED BY THE JUDGE
6 CONCERNING YOUR RELATIONSHIP WITH CERTAIN
7 WITNESSES AND I BELIEVE THAT IN THAT QUESTIONING
8 YOU INDICATED THAT YOU KNEW A SKIP MEYER.

9 A. YES, SIR.

10 Q. HE IS A MARRIAGE COUNSELOR OR COUNSELOR; IS THAT
11 CORRECT?

12 A. THAT'S RIGHT.

13 Q. AND I BELIEVE YOU SAID THAT YOU HAD SOME CONTACT
14 WITH HIM SOME 13 YEARS AGO?

15 A. UH HUH, 13 OR SO, I'M NOT SURE OF THE NUMBER.

16 Q. AND WAS HE YOUR COUNSELOR AT THAT TIME?

17 A. HE WAS OUR MARRIAGE AND FAMILY COUNSELOR. WE
18 HAD ABOUT FIVE VISITS.

19 Q. ABOUT FIVE VISITS?

20 A. UH HUH.

21 Q. AND WERE YOU SATISFIED WITH HIS SERVICES?

22 A. YES.

23 Q. OKAY, LET ME ASK YOU THIS. WOULD YOU BECAUSE OF
24 THAT PUT MORE WEIGHT TO HIS TESTIMONY AND
25 BELIEVE HIM ABOVE SOMEONE ELSE?

1 A. NO, SIR.

2 Q. DO YOU THINK THAT YOU COULD LISTEN TO HIS
3 TESTIMONY AND SOMEONE ELSE'S TESTIMONY AND GIVE
4 IT PROPER WEIGHT?

5 A. YES, SIR.

6 Q. YOU WOULDN'T BELIEVE HIM JUST BECAUSE HE WAS
7 YOUR MARRIAGE COUNSELOR AND ---

8 A. NO.

9 Q. --- HOPEFULLY HE HELPED YOU GREATLY THROUGH A
10 DIFFICULT PERIOD?

11 A. NO, SIR.

12 Q. YOU WOULD NOT?

13 A. NO.

14 Q. NOW, I'M GOING TO REITERATE SOME OF THE THINGS,
15 DON'T GET BORED WITH US, I'M GOING TO REITERATE
16 SOME OF THE THINGS THAT HAVE BEEN SAID BECAUSE I
17 HAVE TO UNDERSTAND YOUR ANSWERS AND I'M TRYING
18 VERY HARD TO.

19 A. UH HUH.

20 Q. NOW, WE HAVE BROUGHT YOU IN AND YOU'RE SITTING
21 HERE AND YOU'RE BEING ASKED TO ANSWER QUESTIONS
22 CONCERNING THE DEATH PENALTY.

23 A. UH HUH.

24 Q. BEFORE WE GET INTO THE DEATH PENALTY, THERE
25 WOULD HAVE TO BE A COMPLETE TRIAL THAT YOU WOULD

1 LISTEN TO AS A JUROR THAT COULD OR COULD NOT,
2 BUT IT WOULD HAVE BEEN ESTABLISHED THAT JIMMY
3 SEATED HERE KILLED BOTH OF HIS PARENTS, OKAY?
4 THAT'S BEFORE YOU COULD EVER GET TO THE POINT
5 THAT WE ARE TALKING ABOUT NOW.

6 A. UH HUH.

7 Q. AND HAVING MADE THAT DECISION, THEN YOU WOULD
8 HAVE TO MAKE A DECISION AND IT WOULD ONLY BE YOU
9 AND ELEVEN OTHER PEOPLE, THERE WOULD ONLY BE TWO
10 DECISIONS. ONE WOULD BE THE DEATH PENALTY, THE
11 OTHER WOULD BE LIFE IN PRISON. ARE YOU PREPARED
12 TO MAKE EITHER ONE OR BOTH OF THOSE DECISIONS?
13 EITHER ONE OF THOSE DECISIONS. LET ME REPHRASE
14 THAT. ARE YOU PREPARED TO MAKE EITHER ONE OF
15 THOSE DECISIONS IF YOU WERE CALLED ON AS A
16 JUROR?

17 A. AFTER HEARING THE EVIDENCE, I BELIEVE I COULD.

18 Q. YOU BELIEVE YOU COULD. NOW YOU MAY HAVE TO
19 VOTE, AS THE SOLICITOR SAID, FOR THE DEATH
20 PENALTY.

21 A. YES, SIR.

22 Q. THAT WOULD REQUIRE YOU TO SIGN YOUR NAME.

23 A. UH HUH.

24 Q. AND YOU HAVE INDICATED THAT IF THE EVIDENCE WERE
25 SUCH, THAT YOU COULD DO THAT?

1 A. YES.

2 Q. NOW YOU UNDERSTAND THAT THE EVIDENCE IN
3 AGGRAVATION MAKES IT EVEN WORSE, SHOULD IT BE
4 PRESENTED TO YOU BY THE STATE, EVEN WORSE THAN
5 JUST KILLING BOTH OF YOUR PARENTS. AND YOU
6 WOULD HAVE TO CONSIDER THAT.

7 A. UH HUH.

8 Q. AND IT COULD BE PARTICULARLY GRAPHIC EVIDENCE
9 AND THIS SORT OF THING.

10 A. UH HUH.

11 Q. YET ON THE OTHER SIDE, THE DEFENDANT DOES NOT
12 HAVE TO PRESENT ANY EVIDENCE TO YOU.

13 A. UH HUH.

14 Q. BUT SHOULD JIMMY PRESENT TO YOU THAT THERE ARE
15 MITIGATING CIRCUMSTANCES -- DO YOU UNDERSTAND
16 THE CONCEPT OF MITIGATING CIRCUMSTANCES?

17 A. YES.

18 Q. THINGS THAT WOULD MAKE HIM LESS CULPABLE.

19 A. UH HUH.

20 Q. THEN COULD YOU CONSIDER THOSE AND GIVE THEM THE
21 WEIGHT NECESSARY AND VOTE FOR LIFE IN PRISON?

22 A. I BELIEVE SO.

23 Q. YOU BELIEVE SO OR COULD YOU DO IT, MA'AM?

24 A. I COULD DO IT.

25 Q. YOU COULD DO IT?

1 A. UH HUH.

2 Q. DO YOU HAVE ANY PREDISPOSITION ONE WAY OR THE
3 OTHER THAT I WOULD AUTOMATICALLY VOTE FOR LIFE
4 IN PRISON OR I WOULD AUTOMATICALLY VOTE FOR THE
5 DEATH PENALTY?

6 A. OF COURSE NOT.

7 Q. NO PREDISPOSITION ONE WAY OR THE OTHER?

8 A. NO, SIR.

9 Q. AND I WILL ASK YOU --- NOW WHEN YOU ARE A JUROR,
10 IF YOU ARE CHOSEN TO SIT ON THIS JURY, THEN YOU
11 HAVE A RIGHT TO HAVE YOUR OPINION AND YOUR
12 DECISION AND YOUR VERDICT RESPECTED BY ALL
13 OTHERS.

14 A. UH HUH.

15 Q. THE COURT AND ALL OTHER JURORS. AND YOU HAVE THE
16 DUTY AND OBLIGATION TO RESPECT THEIR OPINIONS,
17 AND YOU UNDERSTAND THAT?

18 A. YES.

19 Q. AND DO YOU FEEL THAT YOU HAVE A STRONG ENOUGH
20 OPINION THAT IF YOU FELT LIFE WAS PROPER THAT
21 YOU COULD VOTE IN THAT MANNER AGAINST ALL
22 OTHERS?

23 A. UH HUH.

24 Q. WHAT ABOUT IF ALL ELEVEN PEOPLE DECIDED THAT
25 THEY WANTED THE DEATH PENALTY AND YOU DECIDED

1 THAT YOU WANTED LIFE, COULD YOU STAND ON THAT?

2 A. OF COURSE.

3 Q. THANK YOU, MA'AM.

4 THE COURT: IF YOU WILL STEP OUTSIDE THE DOOR FOR
5 JUST A MINUTE.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE STATE?

8 MR. POPE: WE SUBMIT SHE'S QUALIFIED, YOUR HONOR.

9 THE COURT: THE DEFENSE?

10 MR. HANCOCK: SHE'S QUALIFIED, YOUR HONOR.

11 THE COURT: ALL RIGHT, HAVE HER COME BACK IN.
12 (THE JUROR RETURNED TO THE COURTROOM.)

13 THE COURT: MS. WRIGHT, YOU WILL BE INCLUDED IN
14 THE POOL. THAT DOESN'T MEAN THAT YOU NECESSARILY WILL BE
15 ON THE JURY, BUT IF YOU WILL CALL BACK TONIGHT AFTER 6:00
16 YOU WILL RECEIVE INSTRUCTIONS. THOSE INSTRUCTIONS WILL BE
17 FOR YOU TO RETURN AT A CERTAIN TIME AND WE'LL DRAW THE
18 JURY.

19 WHEN YOU COME AT THAT TIME BRING CLOTHING AND
20 WHATEVER YOU NEED IN ORDER TO SPEND SOME TIME WITH US WHILE
21 WE ARE TAKING CARE OF THE CASE; THAT IS, YOU WILL BE
22 SEQUESTERED DURING THE TERM OF THE CASE.

23 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
24 COVERAGE IF THERE IS ANY. AND DON'T DISCUSS THIS CASE WITH
25 ANYONE. IF ANYONE TRIES TO DISCUSS IT WITH YOU, REPORT

1 THAT BACK TO ME, OKAY?

2 THE JUROR: YES, SIR.

3 THE COURT: THANK YOU AN AWFUL LOT. CALL BACK
4 TONIGHT AFTER 6:00.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: LET'S TAKE A SECOND AND REGROUP ON
7 OUR TIMES. WE ARE NOW TO "G" WHICH WAS SUPPOSED TO START
8 AT 11:00 AND IT'S 12:00. WHAT WE'RE GOING TO DO IS WE WILL
9 DO "G" AND MOVE "H" TO 2:00 O'CLOCK, MOVE "I" TO 3:00
10 O'CLOCK; MOVE "J" TO 4:00 O'CLOCK AND LEAVE "K" ALONE FOR
11 RIGHT NOW. THEY ARE SUPPOSED TO -- NO, LET'S SAY 2:00
12 O'CLOCK FOR "H", 3:00 O'CLOCK FOR "I", 4:00 O'CLOCK FOR
13 "J", AND 5:00 O'CLOCK FOR "K", AND THEN WE'RE GOING TO
14 PROBABLY END UP MOVING "L" TO IN THE MORNING, BUT WE DON'T
15 HAVE TO DO THAT QUITE YET.

16 ALL RIGHT, LET'S TAKE ABOUT A TWO OR THREE MINUTE
17 BREAK AND THEN WE WILL START WITH PANEL "G".

18 AFTER THE BREAK:

19 THE COURT: ROBERT LONCARIC.

20 ROBERT LONCARIC, JUROR NUMBER 153, WAS QUESTIONED
21 AS FOLLOWS:

22 QUESTIONS BY THE COURT:

23 Q. COME ON UP HERE AND HAVE A SEAT. YOU'RE ROBERT
24 LONCARIC?

25 A. YES, SIR.

1 Q. I'M JOHN HAYES; I INTRODUCED MYSELF YESTERDAY.
2 I WILL REMIND YOU AT THIS TIME THAT YOU ARE
3 STILL UNDER OATH.

4 A. YES, SIR.

5 Q. IF YOU ARE CHOSEN AS A JUROR ON THIS CASE, I'LL
6 TELL YOU IN ADVANCE THAT YOU MAY SEE CAMERAS OR
7 PHOTOGRAPHERS IN THE COURTROOM. THEY ARE NOT
8 ALLOWED TO TAKE YOUR PICTURE THOUGH. I WANT YOU
9 TO BE AWARE OF THAT, SO DON'T BE DISTRACTED BY
10 THEM.

11 NOW, WE SENT YOU A QUESTIONNAIRE WHICH YOU
12 FILLED OUT AND RETURNED. IS THERE ANYTHING IN
13 THERE THAT YOU NEED TO CHANGE OR DO YOU BELIEVE
14 IT IS CORRECT?

15 A. I BELIEVE IT IS CORRECT, SIR.

16 Q. DID YOU HAVE A CHANCE TO GO OVER THAT LIST OF
17 WITNESSES IN THE JURY ROOM?

18 A. YES, SIR, I DID.

19 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY OF
20 THEM OR DO YOU KNOW ANY OF THEM?

21 A. NO, SIR.

22 Q. HAVE YOU HEARD ANYTHING PRIOR TO COMING TO THIS
23 COURT, ANYTHING ABOUT THIS CASE WHATSOEVER; DO
24 YOU KNOW ANYTHING ABOUT IT AT ALL?

25 A. NO, SIR.

1 Q. CASES OF THIS TYPE ARE SPLIT INTO TWO PARTS.
2 THE FIRST PART HAS TO DO WITH WHETHER OR NOT ONE
3 IS GUILTY OF THE CHARGE, HERE MURDER.

4 IF THEY ARE FOUND NOT GUILTY, OF COURSE, THE
5 CASE STOPS.

6 IF THEY WERE TO BE FOUND GUILTY BEYOND A
7 REASONABLE DOUBT BY A UNANIMOUS JURY, THE CASE
8 WOULD MOVE FORWARD AFTER THEY HAD FOUND
9 UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT HE IS
10 GUILTY OF MURDER INTO THE SECOND PHASE; THAT IS,
11 THE PART DEALING WITH THE PENALTY.

12 MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
13 CHARGES AND IS SO PRESUMED UNTIL A JURY WERE TO
14 DETERMINE HIS GUILT BEYOND A REASONABLE DOUBT.

15 SO THE FACT THAT WE ARE TALKING ABOUT THE
16 PENALTY PART OF THE CASE IS NOT TO PRESUPPOSE
17 THAT WE WOULD EVER GET THERE. DO YOU UNDERSTAND
18 THAT?

19 A. YES, SIR.

20 Q. NOW, IN THE JURY ROOM THERE WERE THREE JUROR
21 TYPES SET FORTH ON A LIST. DID YOU LOOK AT THAT
22 LIST?

23 A. YES, I DID.

24 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE THREE
25 JUROR TYPES?

1 A. YES.

2 Q. WHICH ONE?

3 A. THE THIRD TYPE.

4 Q. ALL RIGHT, THIS DEFINITION OR OUTLINE OF THIS
5 TYPE JUROR CARRIES WITH IT A COUPLE OF WORDS,
6 AGGRAVATING CIRCUMSTANCES AND MITIGATING
7 CIRCUMSTANCES.

8 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
9 WHICH ATTEND THE COMMISSION OF A CRIME WHICH
10 INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS
11 CONSEQUENCE. THEY ARE NOT ESSENTIAL ELEMENTS OF
12 THE CRIME ITSELF.

13 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
14 DO NOT CONSTITUTE JUSTIFICATION OR EXCUSE FOR A
15 CRIME, BUT ARE THINGS WHICH IN FAIRNESS AND
16 MERCY MAY BE CONSIDERED AS EXTENUATING OR
17 REDUCING ONES DEGREE OF MORAL CULPABILITY. DO
18 YOU UNDERSTAND THAT THAT'S WHAT WE ARE TALKING
19 ABOUT?

20 A. YES, SIR.

21 Q. YOU ARE TELLING ME THEN THAT AS THIS TYPE JUROR
22 YOU WOULD, EVEN AFTER YOU REACH THE POINT WHERE
23 MR. ROBERTSON HAS BEEN FOUND GUILTY, YOU WOULD
24 NOT AT THAT TIME HAVE MADE UP YOUR MIND
25 CONCERNING WHAT PUNISHMENT WOULD BE APPROPRIATE.

1 IS THAT CORRECT?

2 A. YES, SIR.

3 Q. ARE YOU TELLING ME THAT YOU WOULD WANT TO HEAR
4 THE FACTS AND CIRCUMSTANCES IN BOTH AGGRAVATION
5 AND IF ANY, IN MITIGATION, AND YOU WOULD WANT TO
6 LISTEN TO AND FOLLOW THE LAW AS THE JUDGE
7 CHARGES IT?

8 A. YES.

9 Q. AND YOU WOULD WANT TO MAKE YOUR DECISION BASED
10 ON WHAT YOU HEAR IN THAT SECOND PART OF THE
11 TRIAL; IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND COULD YOU IF THE FACTS WARRANTED IT, BRING
14 BACK A VERDICT OF LIFE IN PRISON?

15 A. YES, SIR.

16 Q. COULD YOU IF THE FACTS WARRANTED, RETURN A
17 VERDICT IMPOSING THE DEATH PENALTY?

18 A. YES.

19 Q. ALL RIGHT. I AM GOING TO ASK YOU TO ANSWER ANY
20 QUESTIONS THAT THESE ATTORNEYS MAY HAVE.

21 QUESTIONS BY MR. BOYD:

22 Q. GOOD MORNING.

23 A. GOOD MORNING.

24 Q. I'M JIM BOYD. I'M REPRESENTING JIMMY ROBERTSON
25 AND HE'S SEATED OVER THERE, AND THAT'S BILL

1 HANCOCK WHO IS ALSO REPRESENTING JIMMY
2 ROBERTSON.

3 Q. I NEED TO ASK YOU A FEW QUESTIONS JUST TO FOLLOW
4 UP ON WHAT THE JUDGE HAS ASKED YOU.

5 A. YES, SIR.

6 Q. I KNOW IT SEEMS SORT OF LIKE YOU ARE IN THE HOT
7 SEAT BEING IN THE WITNESS CHAIR AND ALL OF THAT.

8 A. YES, SIR.

9 Q. BUT I'M NOT TRYING TO CROSS EXAMINE YOU OR
10 EMBARRASS YOU OR ANYTHING LIKE THAT AND I HOPE
11 NONE OF MY QUESTIONS DO.

12 WHAT I WANT TO ASK YOU IS CONCERNING YOUR
13 ANSWERS ABOUT THE DEATH PENALTY. YOU UNDERSTAND
14 IN THIS CASE THERE ARE TWO PHASES TO A TRIAL,
15 POTENTIALLY AT LEAST.

16 THE FIRST PHASE IS TO DETERMINE WHETHER OR NOT
17 JIMMY WOULD BE FOUND GUILTY OR NOT GUILTY. YOU
18 UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. OF COURSE, IF HE'S FOUND NOT GUILTY OF THE
21 MURDER CHARGES, THEN YOU DON'T EVEN MOVE INTO A
22 SECOND PHASE OF THE TRIAL AT THAT POINT. IF
23 YOU'RE NOT GUILTY, OBVIOUSLY YOU'RE NOT PUNISHED
24 FOR IT. YOU UNDERSTAND THAT.

25 A. YES, SIR.

1 Q. BUT IF HE IS FOUND GUILTY, IT WILL MOVE INTO A
2 PENALTY PHASE AND WHAT I WANT TO ASK YOU ABOUT
3 NOW CONCERNS THE PENALTY PHASE IF IT GOES THAT
4 FAR AND I AM NOT BY ANY WAY TRYING TO SAY THERE
5 IS GOING TO BE A PENALTY PHASE BY ASKING THESE
6 QUESTIONS, BUT I JUST HAVE TO ASK ABOUT THEM.
7 IN THE PENALTY PHASE OF THE TRIAL YOU WOULD HEAR
8 EVIDENCE IN AGGRAVATION, AS THE JUDGE HAS TOLD
9 YOU, ABOUT THE MURDER, THINGS THAT MAKE IT
10 WORSE.

11 YOU WOULD HEAR MITIGATING EVIDENCE, POSSIBLY
12 FROM THE DEFENSE. WE DON'T HAVE TO PUT UP
13 ANYTHING AT ALL, BUT WE CAN PRESENT WHAT'S
14 CALLED MITIGATING EVIDENCE, THINGS ABOUT JIMMY
15 OR ABOUT THE SURROUNDING CIRCUMSTANCES THAT MAKE
16 HIS CULPABILITY LESS.

17 A. YES, SIR.

18 Q. WOULD YOU BE WILLING TO LISTEN TO ALL OF THAT
19 EVIDENCE AND CONSIDER ALL OF THAT EVIDENCE?

20 A. YES, I WOULD.

21 Q. LET ME ASK YOU NOW, IN THE PENALTY PHASE IF IT
22 GETS TO THAT POINT, IT WOULD BE AT THE POINT HE
23 HAS ALREADY BEEN CONVICTED OF KILLING BOTH OF
24 HIS PARENTS. THAT'S WHAT HE'S CHARGED WITH.

25 A. YES, SIR.

1 Q. YOU UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. AND EVEN THOUGH IF HE WAS CONVICTED OF KILLING
4 BOTH OF HIS PARENTS, CAN YOU STILL CONSIDER A
5 LIFE SENTENCE FOR HIM?

6 A. YES, SIR.

7 Q. AS OPPOSED TO A DEATH SENTENCE?

8 A. YES.

9 Q. OKAY. YOU DON'T HAVE ANY PROBLEMS WITH THAT?

10 A. NO.

11 Q. YOU'RE NOT GOING TO AUTOMATICALLY VOTE FOR DEATH
12 BECAUSE HE HAS BEEN CONVICTED OF KILLING BOTH OF
13 HIS PARENTS?

14 A. NO.

15 Q. AND UNDERSTAND AT THAT POINT HE HAS BEEN
16 CONVICTED OF IT, IT'S NOT A QUESTION OF WHETHER
17 IT WAS JUSTIFIED OR SELF-DEFENSE OR ACCIDENT OR
18 ANYTHING LIKE THAT. YOU KNOW, HE HAS BEEN
19 CONVICTED OF DELIBERATELY KILLING HIS PARENTS.

20 A. YES, SIR.

21 Q. YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. AND YOU CAN STILL CONSIDER A SENTENCE OF LIFE AT
24 THAT POINT?

25 A. YES.

1 Q. OKAY. NOW, LIKEWISE, YOU CAN CONSIDER A DEATH
2 SENTENCE UNDER CERTAIN CIRCUMSTANCES ---

3 A. YES.

4 Q. IS THAT CORRECT?

5 A. YES.

6 Q. AND IF YOU HAVE TO -- IF YOU DO VOTE FOR DEATH,
7 YOU ALONG WITH THE OTHER JURORS WOULD HAVE TO
8 SIGN YOUR NAME TO THE PAPER THAT SENTENCES HIM
9 TO DEATH. YOU UNDERSTAND -- WELL, I DON'T KNOW
10 IF YOU KNOW THAT, BUT THAT'S WHAT YOU WOULD HAVE
11 TO DO.

12 A. OKAY.

13 Q. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. AND YOU COULD DO THAT, SIGN YOUR NAME TO THAT
16 PAPER?

17 A. YES.

18 Q. NOW I JUST HAVE A FEW MORE QUESTIONS. YOU
19 UNDERSTAND, OF COURSE, IN THE JURY ROOM THERE
20 MAY BE, PROBABLY WILL BE DIFFERING OPINIONS
21 BETWEEN THE JURORS.

22 A. YES.

23 Q. YOU UNDERSTAND THAT?

24 A. YES.

25 Q. YOU'RE ENTITLED TO YOUR OPINION AND OTHER PEOPLE

1 ARE ENTITLED TO THEIR OPINION. YOU UNDERSTAND
2 THAT?

3 A. YES, I DO.

4 Q. YOU UNDERSTAND, OF COURSE, YOUR OPINION IS
5 ENTITLED TO BE RESPECTED BY THE OTHER JURORS,
6 EVEN IF THEY DISAGREE WITH IT.

7 A. YES, SIR.

8 Q. YOU DON'T HAVE TO GIVE UP YOUR OPINION JUST
9 BECAUSE THE MAJORITY OF THE JURORS OR EVEN ALL
10 ELEVEN OF THE OTHER JURORS MAY DISAGREE WITH
11 YOU.

12 A. YES, SIR.

13 Q. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. AND LIKEWISE, YOU ARE ENTITLED TO GIVE RESPECT
16 TO OTHER JURORS' OPINIONS EVEN IF THEY DISAGREE
17 WITH YOU.

18 A. YES.

19 Q. FOR EXAMPLE, IF YOU ARE WITH THE MAJORITY, YOU
20 HAVE TO RESPECT THE OPINIONS OF THE JURORS WHO
21 MAY BE IN THE MINORITY. YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. EVEN IF IT'S ONLY ONE OF THEM.

24 A. YES.

25 Q. AND SO YOU'RE WILLING TO DO THAT AND GIVE

1 RESPECT TO THE OPINIONS OF OTHER JURORS, AREN'T
2 YOU?

3 A. YES, I WOULD.

4 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.
5 QUESTIONS BY MR. BRACKETT:

6 Q. GOOD AFTERNOON, MR. LONCARIC.

7 A. GOOD AFTERNOON.

8 Q. MY NAME IS KEVIN BRACKETT; I AM THE DEPUTY
9 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT AND
10 MYSELF ALONG WITH SOLICITOR TOMMY POPE WHO IS
11 SEATED OVER THERE AT COUNSEL TABLE, HE AND I ARE
12 GOING TO BE PROSECUTING THIS CASE FOR THE STATE.

13 A. YES.

14 Q. TO BRIEFLY RECAP AND GO OVER A COUPLE OF THINGS
15 THAT MAYBE WEREN'T COVERED IN AS MUCH DETAIL.
16 YOU UNDERSTAND IN THIS CASE THAT THE STATE BEARS
17 THE BURDEN OF PROOF?

18 A. YES.

19 Q. WHAT DOES THAT MEAN TO YOU?

20 A. MY IDEA WOULD BE THAT YOU ARE TRYING TO PROVE
21 BEYOND A REASONABLE DOUBT THAT HE COMMITTED THE
22 CRIME OF MURDER; YOU'RE TRYING TO PROVE HIS
23 GUILT.

24 Q. SURE. AND YOU UNDERSTAND THE DEFENSE DOESN'T
25 HAVE ANY BURDEN WHATSOEVER?

1 A. RIGHT.

2 Q. AND AS A MATTER OF FACT, THEY HAVE THE RIGHT TO
3 REMAIN SILENT IF THEY CHOOSE.

4 A. YES.

5 Q. THEY DON'T HAVE TO PRESENT ANY EVIDENCE IF THEY
6 DON'T WANT TO. HOWEVER, THEY ARE ENTITLED TO IF
7 THEY DO WANT TO PRESENT EVIDENCE.

8 A. YES.

9 Q. AND IN THE FIRST PHASE OF THE CASE THE STATE
10 WOULD HAVE TO PROVE THAT HE WAS GUILTY. IF THE
11 DEFENSE CHOSE TO PUT ANY EVIDENCE UP, YOU WOULD
12 HAVE TO CONSIDER THAT AS WELL.

13 A. YES, SIR.

14 Q. AND YOU'RE SAYING YOU DON'T COME TO COURT WITH
15 ANY PRECONCEIVED NOTIONS ABOUT THIS CASE ONE WAY
16 OR THE OTHER ---

17 A. NO.

18 Q. ABOUT GUILT OR INNOCENCE?

19 A. NO.

20 Q. YOU WOULD LISTEN TO ALL OF THE EVIDENCE IN THIS
21 COURTROOM AND BASE YOUR DECISION ON THE EVIDENCE
22 YOU HEAR HERE?

23 A. YES, I WOULD.

24 Q. AND YOU WOULD ALSO TAKE THE JUDGE'S CHARGE ON
25 THE LAW AND APPLY THAT LAW THAT HE TELLS YOU,

1 TAKE IT AS HE TELLS IT TO YOU, AND APPLY THAT TO
2 THE EVIDENCE THAT YOU'VE HEARD AND DECIDE
3 WHETHER HE'S GUILTY?

4 A. YES.

5 Q. AND THEN IN THE SECOND PHASE YOU WOULD LIKEWISE
6 ALSO HAVE NO PREDISPOSITION ONE WAY OR THE OTHER
7 AS TO WHAT THE SENTENCE SHOULD BE?

8 A. NO.

9 Q. YOU UNDERSTAND IN THE SECOND PHASE THE STATE
10 AGAIN BEARS THE BURDEN OF PROOF.

11 A. YES.

12 Q. WE HAVE TO PROVE THAT THIS IS AN AGGRAVATED
13 MURDER, THAT IT'S MORE THAN JUST A REGULAR
14 MURDER.

15 A. YES.

16 Q. THAT THERE EXIST IN THIS CASE AGGRAVATING
17 CIRCUMSTANCES. NOW THE DEFENSE, AGAIN, DOES NOT
18 HAVE TO PUT ANYTHING UP. DO YOU UNDERSTAND
19 THAT?

20 A. YES.

21 Q. AND THEY HAVE THE RIGHT TO IF THEY WANT TO, THEY
22 CAN PUT UP WHAT ARE CALLED MITIGATING
23 CIRCUMSTANCES WHICH LESSEN THE DEFENDANT'S
24 CULPABILITY?

25 A. YES.

1 Q. OKAY. NOW, HAVING NO PREDISPOSITION TOWARDS
2 SENTENCE ONE WAY OR THE OTHER, WOULD YOU LISTEN
3 TO THE AGGRAVATING CIRCUMSTANCES?

4 A. YES, I WOULD.

5 Q. AND WOULD YOU HAVE AN IDEA OF WHAT THE SENTENCE
6 SHOULD BE JUST AFTER HEARING WHAT WE SAID?

7 A. NO.

8 Q. OKAY. YOU'D WAIT UNTIL ---

9 A. YES.

10 Q. --- YOU HAD HEARD WHATEVER THE DEFENSE PUT UP IF
11 THEY WANTED TO PUT ANYTHING UP AT ALL.

12 A. YES.

13 Q. AND THEN YOU WOULD MAKE YOUR MIND UP.

14 A. YES.

15 Q. NOW, ONE OF THE THINGS THAT MR. BOYD TOUCHED ON
16 BRIEFLY WAS THE RESPONSIBILITY OF JURORS. IN A
17 DEATH PENALTY CASE IN THE PENALTY PHASE IS A
18 LITTLE BIT DIFFERENT FROM ANY OTHER CASE. IN
19 EVERY OTHER TYPE OF CASE THE ONLY PERSON THAT
20 HAS TO SIGN WHAT THE VERDICT WAS IS THE
21 FOREPERSON OF THE JURY. THE FOREPERSON
22 TYPICALLY WRITES OUT WHAT THE VERDICT IS, SIGNS
23 HIS OR HER NAME AND THEN THAT'S THE ONLY THING
24 THAT IS NECESSARY TO RECORD THE VERDICT.

25 A. YES.

1 Q. IN A DEATH PENALTY CASE IT'S A LITTLE BIT
2 DIFFERENT. IF THE JURY FINDS THAT THE DEFENDANT
3 SHOULD BE SENTENCED TO LIFE IN PRISON, AGAIN THE
4 ONLY PERSON THAT NEEDS TO PUT ANYTHING ON A
5 PIECE OF PAPER IS THE FOREPERSON; WRITES OUT
6 LIFE, SIGNS THEIR NAME, THAT'S IT.

7 A. OKAY.

8 Q. IN A DEATH PENALTY CASE IT IS SLIGHTLY
9 DIFFERENT. EACH JUROR HAS TO SIGN THEIR NAME ON
10 THE SENTENCING SHEET INDICATING THAT THE
11 SENTENCE WAS DEATH.

12 NOW IS IT YOUR TESTIMONY, SIR, THAT IF THE PEN
13 CAME AROUND THE ROOM, THAT YOU COULD PUT --- YOU
14 COULD TAKE THE PEN AND SIGN YOUR NAME SENDING
15 THIS MAN TO HIS DEATH IF YOU THOUGHT THAT WAS
16 APPROPRIATE?

17 A. YES, I COULD.

18 Q. OKAY. THE LAST THING I WANT TO TOUCH ON, SIR,
19 IS THE ISSUE THAT MR. BOYD BROUGHT UP ABOUT
20 BEING IN THE JURY ROOM AND ONE AGAINST MANY AND
21 KEEPING YOUR OPINIONS, RESPECTING THE OTHER
22 JURORS OPINIONS. YOU UNDERSTAND THAT IN A JURY
23 ROOM IT'S A GROUP SITUATION.

24 A. YES.

25 Q. ARE YOU SAYING YOU'RE THE KIND OF JUROR THAT

1 WOULD TAKE INTO ACCOUNT WHAT OTHER PEOPLE WOULD
2 SAY OR WOULD YOU KEEP YOUR OWN OPINION AND
3 THAT'S YOUR OPINION, THAT'S THE END OF THE
4 MATTER?

5 A. IT WOULD BE MY OPINION BASED ON THE EVIDENCE I
6 HEAR, THE TESTIMONY I HEAR.

7 Q. WHAT IF A JUROR DISAGREED WITH YOU AND WANTED TO
8 SAY WHY HE DISAGREED, WOULD YOU LISTEN TO HIM?

9 A. I WOULD KEEP MY OPINION -- ARE YOU SAYING IF
10 THEY WOULD TRY TO INFLUENCE ME AND CHANGE MY
11 MIND?

12 Q. SURE, THEY WANTED TO DISCUSS AND SAY WELL HERE'S
13 WHAT I THINK, I DISAGREE WITH YOU AND HERE'S
14 WHY. AND THIS PERSON SAID THIS AND THAT
15 TESTIMONY WAS SUCH AND THIS AND THAT AND SO.
16 WOULD YOU LISTEN TO THEM AND DISCUSS THE CASE
17 WITH THEM?

18 A. I WOULD LISTEN TO THEM, BUT IF I MADE MY MIND UP
19 IT WOULD BE FOR CERTAIN. YOU KNOW, I WOULDN'T
20 LET THEM CHANGE MY MIND.

21 Q. OKAY. HOW ABOUT IF THEY POINTED OUT SOMETHING
22 THAT YOU HADN'T THOUGHT OF, COULD YOU CHANGE
23 YOUR MIND THEN?

24 A. NO.

25 Q. ONCE YOU'VE DECIDED, THAT'S IT, THAT'S THE END

1 OF THE MATTER?

2 A. YES.

3 Q. THANK YOU VERY MUCH, MR. LONCARIC.

4 THE COURT: ALL RIGHT, YOU CAN STEP OUT.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: WHAT SAYS THE DEFENSE?

7 MR. BOYD: I BELIEVE HE'S QUALIFIED.

8 THE COURT: WHAT SAYS THE STATE?

9 MR. BRACKETT: I BELIEVE HE'S WITHERSPOON
10 QUALIFIED. I DON'T KNOW ABOUT THE LAST LITTLE BIT OF
11 DISCUSSION I HAD WITH HIM.

12 THE COURT: I FIND HE'S QUALIFIED. HAVE HIM COME
13 BACK IN.

14 (THE JUROR RETURNED TO THE COURTROOM.)

15 THE COURT: YOU CAN JUST STAND RIGHT THERE. YOU
16 ARE GOING TO BE A PART OF THE POOL FROM WHICH THE JURY IS
17 DRAWN. CALL BACK TONIGHT AFTER 6:00 AND YOU WILL RECEIVE
18 INSTRUCTIONS ABOUT WHEN TO RETURN OR WHEN TO CALL BACK.

19 WHEN YOU COME, BRING WHATEVER YOU NEED TO SPEND
20 A FEW DAYS. YOU WILL BE HOUSED IN A MOTEL WHILE WE TRY
21 THIS CASE.

22 CAN YOU THINK OF ANY EXTENUATING CIRCUMSTANCES
23 THAT WOULD PROHIBIT YOUR DOING THAT?

24 THE JUROR: NO, SIR.

25 THE COURT: DON'T DISCUSS THIS CASE WITH ANYONE.

1 IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, REPORT THAT
2 BACK TO ME. TELL THEM YOU CANNOT DO IT.

3 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS MEDIA
4 COVERAGE ABOUT THE CASE.

5 THE JUROR: YES, SIR.

6 THE COURT: AND JUST CALL BACK TONIGHT AFTER
7 6:00. THANK YOU.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: ALL RIGHT, WE NEED ROBERT W. JONES.

10 ROBERT W. JONES, JR., JUROR NUMBER 137, WHITE
11 MALE, WAS QUESTIONED AS FOLLOWS:

12 QUESTIONS BY THE COURT:

13 Q. PLEASE COME ON UP HERE AND HAVE A SEAT.

14 A. RIGHT HERE?

15 Q. NO, BETWEEN THIS LADY AND HERE. MR. JONES, I
16 WILL REINTRODUCE MYSELF; I'M JOHN HAYES, AND I
17 WILL REMIND YOU THAT YOU ARE STILL UNDER OATH.
18 IF YOU ARE SEATED ON THIS JURY, I WANT TO TELL
19 YOU IN ADVANCE THAT THERE MIGHT BE CAMERAS OR
20 PHOTOGRAPHERS IN THE COURTROOM BUT THEY ARE NOT
21 ALLOWED TO TAKE YOUR PICTURE. THAT'S A PART OF
22 THE LAW; THEY CAN BE HERE BUT THEY CAN'T DO
23 ANYTHING AS FAR AS PUBLICIZING THE JURY OR
24 JURORS.

25 YOU HANDED UP EARLIER A QUESTIONNAIRE. DO YOU

1 BELIEVE IT'S ACCURATE OR DO YOU THINK THERE IS
2 ANYTHING ON THERE THAT YOU NEED TO CHANGE?

3 A. I BELIEVE IT'S ACCURATE.

4 Q. DID YOU HAVE A CHANCE TO REVIEW THE LIST OF
5 WITNESSES IN THE JURY ROOM?

6 A. I DID.

7 Q. WERE YOU RELATED -- ARE YOU RELATED BY BLOOD OR
8 MARRIAGE OR DO YOU KNOW ANY OF THE WITNESSES?

9 A. I KNOW SOME OF THE WITNESSES.

10 Q. WHO DO YOU KNOW?

11 A. SISSY GEORGE, JANE LANGLEY, WAYNE LANGLEY, TERRY
12 TURNER AND LINDA WEAVER.

13 Q. IN SPITE OF KNOWING THOSE WITNESSES IF THEY WERE
14 TO TESTIFY, COULD YOU BE FAIR AND IMPARTIAL TO
15 THE PARTIES TO THIS CASE?

16 A. YES.

17 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
18 YOU CAME HERE?

19 A. I HAVE.

20 Q. AND COULD YOU IF YOU WERE CHOSEN AS A JUROR,
21 COULD YOU ERASE FROM YOUR MIND AND NOT CONSIDER
22 IN ANY WAY WHATSOEVER ANYTHING YOU HEARD PRIOR
23 TO THE TRIAL?

24 A. YES, I CAN.

25 Q. YOU CAN BASE YOUR VERDICT ON THE LAW AND THE

1 EVIDENCE AS IT IS RECEIVED IN THE TRIAL?

2 A. YES, I CAN.

3 Q. A CASE OF THIS TYPE IS TRIED IN TWO STAGES. ONE
4 HAS TO DO WITH WHETHER OR NOT A DEFENDANT IS
5 GUILTY OR NOT. IF THEY ARE FOUND NOT GUILTY, OF
6 COURSE, THE CASE ENDS.

7 IF THEY ARE FOUND GUILTY BEYOND A REASONABLE
8 DOUBT UNANIMOUSLY BY THE JURY, THEN THE CASE
9 PROCEEDS INTO THE SECOND PART DEALING WITH WHAT
10 PENALTY WOULD BE APPROPRIATE.

11 THE FACT THAT WE ARE TALKING ABOUT THE SECOND
12 PART DOES NOT PRESUPPOSE THAT MR. ROBERTSON
13 WOULD BE FOUND GUILTY, THAT WOULD BE UP TO THAT
14 JURY. BUT WE HAVE TO TALK ABOUT THIS SECOND
15 PART, AND THAT'S WHAT WE ARE GOING TO BE DOING.
16 DID YOU HAVE A CHANCE TO REVIEW THE JURY TYPES
17 SET FOR ON THAT LIST?

18 A. I DID.

19 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

20 A. YES, THE TYPE IN THE THIRD PARAGRAPH.

21 Q. ALL RIGHT, IN THAT PARAGRAPH WE USE THE WORDS
22 AGGRAVATING AND MITIGATING CIRCUMSTANCES.

23 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
24 WHICH ATTEND THE COMMISSION OF A CRIME WHICH
25 INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS

1 CONSEQUENCE BUT WHICH ARE NOT ACTUAL ELEMENTS OF
2 THE CRIME ITSELF.

3 MITIGATING CIRCUMSTANCES ARE THOSE THINGS WHICH
4 DO NOT OFFER A JUSTIFICATION OR EXCUSE FOR THE
5 CRIME, BUT WHICH ARE IN FAIRNESS AND MERCY MAY
6 BE CONSIDERED AS EXTENUATING OR REDUCING THE
7 DEGREE OF MORALE CULPABILITY. DO YOU UNDERSTAND
8 THAT?

9 A. YES.

10 Q. THEN YOU ARE TELLING ME THAT YOU'RE THE TYPE
11 JUROR THAT ONCE GUILT HAD BEEN ESTABLISHED OF
12 MR. ROBERTSON, IF IT IS, THEN WHEN WE MOVE INTO
13 THAT SECOND PHASE YOU WOULD NOT HAVE AT THAT
14 TIME MADE UP YOUR MIND IN ADVANCE AS TO WHAT THE
15 APPROPRIATE PUNISHMENT SHOULD BE?

16 A. THAT'S CORRECT.

17 Q. ARE YOU TELLING ME THAT YOU WOULD IN THAT SECOND
18 PART WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN
19 AGGRAVATION AND MITIGATION AND WOULD LISTEN TO
20 AND FOLLOW THE LAW AS THE JUDGE CHARGES YOU
21 BEFORE MAKING THE DECISION REGARDING THE
22 PUNISHMENT?

23 A. THAT IS CORRECT.

24 Q. AND YOU ARE TELLING ME, IF I UNDERSTAND IT
25 CORRECT, THAT IF THE FACTS WARRANTED IT AND YOU

1 FELT IT APPROPRIATE, YOU COULD RETURN A VERDICT
2 OF LIFE IMPRISONMENT?

3 A. CORRECT.

4 Q. AND LIKEWISE THAT IF FACTS PRESENTED SO
5 WARRANTED, YOU COULD RETURN A VERDICT IMPOSING
6 DEATH. IS THAT CORRECT?

7 A. THAT IS CORRECT.

8 Q. ANSWER ANY QUESTIONS THAT COUNSEL MAY HAVE.

9 QUESTIONS BY MR. BRACKETT:

10 Q. MR. JONES, HOW ARE YOU DOING?

11 A. FINE.

12 Q. MY NAME IS KEVIN BRACKETT. I'M THE DEPUTY
13 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
14 OVER HERE AT COUNSEL TABLE WITH ME IS MR. TOMMY
15 POPE. HE AND I ARE PROSECUTING THIS INDIVIDUAL
16 RIGHT OVER HERE, JIMMY ROBERTSON. HE IS
17 REPRESENTED BY MR. HANCOCK AND MR. BOYD SEATED
18 OVER AT COUNSEL TABLE WITH THEM.

19 I WANT TO KIND OF GO BACK OVER WHAT THE JUDGE
20 SAID AND JUST DISCUSS IT IN A LITTLE BIT MORE
21 DETAIL AND MAKE SURE I UNDERSTAND EXACTLY WHAT
22 YOUR POSITION IS.

23 AND BEFORE I DO THAT, LET ME JUST POINT OUT TO
24 YOU, IT SEEMS LIKE WE ARE INTERROGATING YOU
25 HERE, THIS IS NOT GOING TO BE A GRADED QUIZ. WE

1 ARE NOT GOING TO, YOU KNOW, COMPARE NOTES AND
2 DECIDE HOW YOU DID WHEN YOU LEAVE OUT OF HERE.
3 ALL WE ARE TRYING TO DO IS FIGURE OUT HOW YOU
4 FEEL ON THESE ISSUES. WE NEED TO KNOW THESE
5 THINGS IN ORDER FOR US TO DO OUR JOB PROPERLY.
6 SO, THERE ARE NO RIGHT OR WRONG ANSWERS. THIS
7 IS MORE JUST IN THE NATURE OF A DISCUSSION ON
8 HOW YOU FEEL.
9 SO WITH THAT IN MIND, YOU UNDERSTAND THAT THIS
10 IS A TWO PART TRIAL?

11 A. YES.

12 Q. IN THE FIRST PART YOU'RE SAYING YOU COME INTO
13 THIS COURTROOM WITHOUT ANY PRECONCEIVED NOTIONS
14 ONE WAY OR THE OTHER ABOUT WHETHER THE DEFENDANT
15 IS GUILTY. YOU'VE GOT AN OPEN MIND ON THAT
16 ISSUE. YOU'RE GOING TO WAIT AND HEAR THE
17 EVIDENCE THAT WE PRESENT AND ANY EVIDENCE THAT
18 THE STATE MAY CHOOSE TO PRESENT BEFORE YOU MAKE
19 UP YOUR MIND WITH THE OTHER ELEVEN JURORS AS TO
20 WHETHER OR NOT HE IS GUILTY OR INNOCENT.

21 A. YES.

22 Q. YOU UNDERSTAND IN THE AMERICAN SYSTEM OF JUSTICE
23 THE PROSECUTION, THE STATE, BEARS THE BURDEN OF
24 PROOF. WHAT DOES THAT MEAN TO YOU?

25 A. BASICALLY IF THE EVIDENCE SUPPORTS THE CHARGES.

1 Q. OKAY. AND WHO HAS TO PROVE THAT THE DEFENDANT
2 IS GUILTY?

3 A. THE PROSECUTION.

4 Q. OKAY. THE DEFENSE DOESN'T HAVE ANY BURDEN
5 WHATSOEVER; THE STATE HAS TO PROVE EVERYTHING.
6 WE'VE GOT TO BRING ALL THE EVIDENCE IN. THE
7 DEFENSE DOESN'T HAVE TO PROVE ANYTHING; AS A
8 MATTER OF FACT, THE DEFENSE HAS THE RIGHT TO
9 REMAIN SILENT. THEY DON'T HAVE TO OPEN THEIR
10 MOUTH ONE TIME IN THE ENTIRE TRIAL FROM
11 BEGINNING TO END. THAT'S THEIR CONSTITUTIONAL
12 RIGHT.

13 IF THE DEFENSE CHOOSES TO PUT UP EVIDENCE, THEY
14 CAN, HOWEVER, PUT UP EVIDENCE AND YOU WOULD
15 CONSIDER THEIR EVIDENCE AS WELL; ISN'T THAT
16 CORRECT?

17 A. YES.

18 Q. OKAY. IF THE DEFENSE CHOSE NOT TO PUT ANY
19 EVIDENCE UP, THE JUDGE WOULD TELL YOU THAT YOU
20 CAN'T HOLD THAT AGAINST THEM. THAT THAT'S THEIR
21 RIGHT NOT TO DO THAT AND YOU CAN'T TAKE THAT AND
22 HOLD THAT AGAINST THEM. YOU WOULDN'T HOLD THAT
23 AGAINST THEM WOULD YOU, MR. JONES?

24 A. CORRECT.

25 Q. NOW ASSUME WE BRING THE EVIDENCE IN AT THE FIRST

1 PHASE OF THE TRIAL. WE BRING IN ALL THE
2 EVIDENCE; THE DEFENSE BRINGS IN WHATEVER
3 EVIDENCE THEY CHOOSE AND THE JURY RETIRES TO
4 DELIBERATE AND THEY FIND HIM GUILTY OF THESE
5 MURDERS. WE THEN GO TO THE SECOND PHASE OF THE
6 TRIAL.

7 IN THE SECOND PHASE OF THE TRIAL, IT'S LIKE THE
8 FIRST PHASE IN THAT THE STATE AGAIN HAS THE
9 RESPONSIBILITY OF PROVING THAT THE DEFENDANT IS
10 -- PROVING WHAT ARE CALLED AGGRAVATING
11 CIRCUMSTANCES.

12 IN OTHER WORDS, THIS IS A MURDER BUT IT'S AN
13 AGGRAVATED MURDER; IT'S WORSE THAN A REGULAR
14 MURDER IN CERTAIN RESPECTS. AND WE HAVE TO
15 PROVE THAT AGAIN. AGAIN, THE DEFENSE DOESN'T
16 HAVE TO PROVE ANYTHING. WE BEAR THAT BURDEN OF
17 BRINGING THE AGGRAVATING CIRCUMSTANCES TO THE
18 JURY'S ATTENTION BEYOND A REASONABLE DOUBT. YOU
19 WOULD GO INTO THAT SECOND PHASE WITHOUT ANY
20 PRECONCEIVED NOTIONS WHATSOEVER, RIGHT?

21 A. RIGHT.

22 Q. EVEN IF THIS WAS PROVED TO BE THE MURDER OF TWO
23 INDIVIDUALS WHO WERE THE PARENTS OF THIS
24 DEFENDANT, THAT FACT WOULDN'T MAKE YOU GO INTO
25 THE PENALTY PHASE THINKING, WELL, I'M GOING TO

1 GIVE HIM DEATH, WOULD IT?

2 A. CORRECT.

3 Q. YOU WOULD WAIT UNTIL YOU HEARD WHAT EVIDENCE WE
4 HAD TO PRESENT. ISN'T THAT RIGHT?

5 A. CORRECT.

6 Q. AND THEN EVEN AFTER WE PRESENTED ALL OF THIS
7 AGGRAVATING CIRCUMSTANCES AND TOLD YOU HOW
8 HORRIBLE THIS CRIME WAS AND THE DEFENSE HASN'T
9 PUT ANYTHING UP YET, YOU STILL WOULD HAVE AN
10 OPEN MIND. ISN'T THAT RIGHT?

11 A. THAT'S RIGHT.

12 Q. YOU WOULDN'T HAVE MADE YOUR MIND UP ABOUT
13 WHETHER OR NOT THIS DEFENDANT SHOULD BE GIVEN
14 DEATH OR LIFE. YOU WOULD STILL WAIT AND SEE
15 WHETHER THE DEFENSE CHOSE TO PUT ANYTHING UP.
16 IF THEY CHOSE TO PUT SOMETHING UP, IT WOULD BE
17 CALLED MITIGATING CIRCUMSTANCES WHICH LESSEN THE
18 DEFENDANT'S CULPABILITY. DO YOU UNDERSTAND WHAT
19 MITIGATING CIRCUMSTANCES ARE?

20 A. I DO.

21 Q. IF THEY CHOSE TO PUT UP ANY MITIGATING
22 CIRCUMSTANCES, YOU WOULD LISTEN TO THOSE,
23 WOULDN'T YOU?

24 A. YES.

25 Q. YOU WOULD FAIRLY CONSIDER WHAT THOSE WERE?

1 A. YES.

2 Q. AND YOU WOULD TAKE THEM INTO CONSIDERATION ALONG
3 WITH THE AGGRAVATING CIRCUMSTANCES AFTER THEY
4 HAD HAD A FAIR OPPORTUNITY TO PRESENT THEIR SIDE
5 OF THE CASE. THEN AND ONLY THEN AFTER THE JUDGE
6 HAD CHARGED YOU WITH THE LAW WOULD YOU RETIRE
7 AND ONLY THEN WOULD YOU START TO THINK ABOUT
8 WHAT THE PENALTY SHOULD BE. IS THAT RIGHT?

9 A. THAT IS CORRECT.

10 Q. AND WHEN YOU RETIRED UNDER THOSE CIRCUMSTANCES
11 TO DELIBERATE ON THE FATE OF MR. ROBERTSON, WHAT
12 YOU HAVE TOLD THE JUDGE IS THAT AT THAT POINT
13 YOU WOULD STILL BE OPEN-MINDED TO GIVING LIFE;
14 YOU WOULD STILL BE OPEN-MINDED TO GIVING DEATH,
15 EITHER OF THOSE WOULD BE A POSSIBILITY AT THAT
16 POINT?

17 A. THAT IS CORRECT.

18 Q. OKAY. NOW, ASSUMING THAT YOU GAVE THE DEFENDANT
19 LIFE. ASSUMING THE JURY DECIDES THAT LIFE IS
20 THE APPROPRIATE SENTENCE, THE ONLY PERSON THAT
21 WOULD HAVE TO SIGN THE SENTENCING SHEET IS THE
22 FOREPERSON OF THE JURY. THEY WOULD WRITE LIFE,
23 SIGN THEIR NAME AND THAT'S THE SENTENCE.
24 IF THE SENTENCE, HOWEVER, IS DEATH IT'S UNIQUE
25 FROM EVERY OTHER CRIMINAL CASE IN THAT EACH AND

1 EVERY JUROR HAS TO TAKE THEIR PEN AND SIGN THE
2 SENTENCING SHEET SAYING THE VERDICT IS DEATH.

3 NOW IF THAT PEN CAME AROUND THE ROOM, COULD YOU
4 TAKE THE PEN AND SIGN YOUR NAME ROBERT JONES ---

5 A. YES.

6 Q. --- ON THAT SENTENCING SHEET SENDING MR.
7 ROBERTSON TO HIS DEATH IF YOU THOUGHT THAT WAS
8 THE APPROPRIATE VERDICT?

9 A. I COULD.

10 Q. LIKEWISE, YOU COULD ALSO GIVE HIM LIFE IF YOU
11 THOUGHT THAT WAS APPROPRIATE?

12 A. CORRECT.

13 Q. THANK YOU VERY MUCH, MR. JONES.

14 QUESTIONS BY MR. BOYD:

15 Q. GOOD AFTERNOON, MR. JONES.

16 A. GOOD AFTERNOON.

17 Q. I'M JIM BOYD AND I REPRESENT JIMMY ROBERTSON IN
18 THIS CASE ALONG WITH BILL HANCOCK WHO IS MY CO-
19 COUNSEL. I NEED TO ASK YOU A FEW QUESTIONS AND
20 HOPEFULLY I'LL BE BRIEF. I KNOW IT SEEMS LIKE
21 YOU'RE ON TRIAL SITTING IN THE WITNESS BOX AND
22 ALL OF THAT.

23 A. YES.

24 Q. LET ME ASK YOU, YOU NAMED SEVERAL PEOPLE THAT
25 YOU KNOW THAT ARE LISTED ON THE WITNESS LIST.

1 A. YES.

2 Q. AND I WANTED TO ASK YOU ABOUT THAT. ARE THERE
3 ANY OF THESE PEOPLE THAT YOU ARE FRIENDS WITH?

4 A. ACQUAINTANCE I WOULD SAY WOULD BE MORE ACCURATE.

5 Q. HOW DO YOU KNOW THESE PEOPLE?

6 A. SOME PEOPLE THROUGH MY FAMILY. IN FACT, MOST OF
7 THEM ARE THROUGH MY PARENTS.

8 Q. YOUR PARENTS?

9 A. UH HUH.

10 Q. YOUR PARENTS ARE FRIENDS WITH THESE PEOPLE?

11 A. YES. MY FATHER WAS JANE LANGLEY'S HIGH SCHOOL
12 PRINCIPAL. SHE'S A TEACHER AT FORT MILL HIGH
13 SCHOOL FOR A NUMBER OF YEARS.

14 Q. AND HOW ABOUT LINDA WEAVER, HOW DO YOU KNOW HER?

15 A. SHE'S ALSO A TEACHER; I THINK SHE'S A CHURCH
16 MEMBER, TOO.

17 Q. GOES TO THE SAME CHURCH AS YOU?

18 A. MY PARENTS, NOT MYSELF.

19 Q. OKAY. AND LET ME ASK YOU SOMETHING. I WANT YOU
20 TO ANSWER THIS HONESTLY BECAUSE THERE ARE NO
21 RIGHT OR WRONG ANSWERS.

22 A. UH HUH.

23 Q. BUT IF ONE OF THESE WITNESSES TAKES THE WITNESS
24 STAND AND TESTIFIES, TESTIFIES CONTRA TO SOME
25 OTHER WITNESS, ARE YOU MORE LIKELY TO BELIEVE

1 THE PERSON YOU KNOW OVER SOMEBODY YOU DON'T
2 KNOW?

3 A. I WOULD SAY THAT'S PROBABLY TRUE.

4 Q. OKAY. SO, YOU KNOW, I MEAN THAT'S HUMAN NATURE
5 BASICALLY ISN'T IT?

6 A. RIGHT.

7 Q. AND SO YOU WOULD TEND TO GIVE MORE CREDIBILITY
8 TO WHAT SOMEBODY YOU KNEW SAYS, TESTIFIES; IS
9 THAT CORRECT?

10 A. AS LONG AS I FEEL LIKE THESE PEOPLE ARE
11 CREDIBLE.

12 Q. OKAY. WELL, I MEAN IF IT'S SOMETHING
13 OUTLANDISH, OBVIOUSLY YOU'RE NOT GOING TO
14 BELIEVE IT.

15 A. RIGHT.

16 Q. BUT I MEAN BASICALLY IF ONE SIDE TELLS ONE SIDE
17 AND SOMEBODY ELSE SAYS ANOTHER THING AND THEY
18 BOTH SOUND BELIEVABLE, YOU'RE GOING TO TEND TO
19 GO WITH THE PERSON THAT YOU KNOW. CORRECT?

20 A. THE ONES THAT I KNEW WERE CREDIBLE.

21 Q. OKAY. AND YOU FEEL LIKE THESE ARE CREDIBLE
22 PEOPLE?

23 A. I KNOW A COUPLE OF THEM ARE.

24 Q. AND WHO DO YOU THINK ARE CREDIBLE PEOPLE?

25 A. THE LANGLEY FAMILY.

- 1 Q. OKAY. AND LET ME ASK YOU ALSO SOME QUESTIONS
2 ABOUT YOUR ANSWERS TO THE JUDGE ABOUT THE DEATH
3 PENALTY.
- 4 A. OKAY.
- 5 Q. NOW YOU UNDERSTAND -- YOU SAID YOU HAD HEARD
6 SOME THINGS ABOUT THIS CASE OR READ SOME THINGS.
7 IS THAT CORRECT?
- 8 A. THAT IS CORRECT.
- 9 Q. WAS IT READING OR HAVE YOU ALSO DISCUSSED THIS
10 CASE WITH ANYONE?
- 11 A. READING. I WORK FOR THE CHARLOTTE OBSERVER. I'M
12 A VERY AVID NEWSPAPER READER. THIS CASE HAS,
13 OBVIOUSLY, BEEN IN THE PAPER.
- 14 Q. OKAY. YOU WORK FOR THE OBSERVER YOU SAY?
- 15 A. UH HUH.
- 16 Q. WHAT DO YOU DO FOR THEM?
- 17 A. CIRCULATION MARKETING MANAGER.
- 18 Q. OKAY, SO YOU HAVE READ ALL THE ARTICLES IN THE
19 CHARLOTTE OBSERVER ABOUT THIS?
- 20 A. CORRECT.
- 21 Q. YOU ALSO READ THE ARTICLES IN THE HERALD ABOUT
22 IT?
- 23 A. I DO GET THE HERALD, TOO.
- 24 Q. YOU GET THE COMPETITOR'S PAPER?
- 25 A. I GET THE COMPETITOR'S PAPER, TOO; I'VE GOT TO

1 KEEP UP WITH THE COMPETITION.

2 Q. OKAY. AND HOW ABOUT AS FAR AS DISCUSSING OR
3 JUST IN GENERAL TALKING ABOUT THE CASE WITH
4 ANYONE. HAVE YOU DONE THAT?

5 A. VERY LITTLE THAT I CAN RECALL.

6 Q. WHEN YOU SAY VERY LITTLE, I DON'T WANT TO PUT
7 YOU ON THE SPOT, BUT JUST IN GENERAL WHAT HAVE
8 YOU HEARD?

9 A. THERE IS A CO-WORKER AT WORK FROM ROCK HILL AND
10 I THINK WE DISCUSSED IT, IF YOU KNEW THIS PERSON
11 OR KNEW THIS PERSON, AND WHAT HAPPENED.

12 Q. WELL, SINCE YOU'VE READ ALL THESE ARTICLES IN
13 THE PAPER, HAVE YOU FORMED AN OPINION ABOUT THE
14 GUILT OR INNOCENCE OF JIMMY ROBERTSON FROM WHAT
15 YOU'VE READ?

16 A. I BASICALLY FOLLOWED WHAT THE PAPER SAID AND
17 ACCORDING TO WHAT WAS REPORTED, JUST TAKEN IT
18 IN.

19 Q. YOU'VE WHAT NOW?

20 A. JUST TAKEN THE KNOWLEDGE IN. I HAVEN'T MADE AN
21 ASSUMPTION ABOUT THE CASE.

22 Q. OKAY. YOU'VE FORMED NO OPINION AT ALL BASED ON
23 WHAT YOU HAVE READ?

24 A. I WOULD SAY NOT.

25 Q. NOW AS FAR AS THE PENALTY GOES, AND WHEN WE'RE

1 TALKING ABOUT THIS TRIAL, YOU KNOW, THERE IS ONE
2 PHASE OF THE TRIAL THAT DETERMINES GUILTY OR NOT
3 GUILTY. YOU UNDERSTAND THAT?

4 A. RIGHT.

5 Q. OF COURSE IF IT'S NOT GUILTY, THAT'S THE END OF
6 IT. IF YOU GO INTO THE PENALTY PHASE, THAT IS A
7 PHASE IN WHICH THE JURY HEARS EVIDENCE ON
8 WHETHER OR NOT JIMMY WOULD BE PUT TO DEATH OR
9 GIVEN A LIFE SENTENCE. YOU UNDERSTAND THAT?

10 A. UH HUH.

11 Q. AND IN THAT CASE, KNOWING HE'S CHARGED WITH
12 KILLING BOTH OF HIS PARENTS, COULD YOU GIVE --
13 I'M NOT SAYING WOULD YOU, BUT CAN YOU CONSIDER
14 AND POTENTIALLY GIVE A LIFE SENTENCE UNDER THOSE
15 CIRCUMSTANCES?

16 A. IT CAN BE CONSIDERED.

17 Q. AND A DEATH SENTENCE, COULD YOU ALSO CONSIDER
18 THAT?

19 A. I CAN CONSIDER THAT ALSO.

20 Q. KNOWING THAT HE KILLED BOTH OF HIS PARENTS,
21 WOULD YOU REQUIRE -- WOULD YOU WANT TO HEAR
22 MITIGATING EVIDENCE BEFORE YOU DECIDED TO GIVE
23 HIM A LIFE SENTENCE?

24 A. I WOULD THINK THAT WOULD BE TRUE.

25 Q. AND WOULD YOU GO ON THE PRESUMPTION THAT YOU

1 WOULD GIVE DEATH UNLESS YOU HEARD SOMETHING
2 OTHERWISE IN A CASE LIKE THAT?

3 A. I'D SAY THAT WOULD BE TRUE ALSO.

4 Q. THANK YOU, SIR; I HAVE NO FURTHER QUESTIONS.

5 THE COURT: DO I UNDERSTAND YOUR TESTIMONY THEN
6 THAT ONCE MR. ROBERTSON WERE FOUND GUILTY OF KILLING HIS
7 PARENTS, THAT YOU WOULD START THAT SECOND PHASE WITH THE
8 IDEA THAT THE DEATH PENALTY WOULD BE APPROPRIATE UNLESS
9 SOMETHING WERE SHOWN OTHERWISE?

10 THE JUROR: I THINK THAT'S ACCURATE.

11 THE COURT: ALL RIGHT. YOU MAY STEP OUT FOR JUST
12 A MINUTE.

13 (THE JUROR LEFT THE COURTROOM.)

14 THE COURT: WHAT SAYS THE STATE?

15 MR. BRACKETT: I SUBMIT HE IS NOT QUALIFIED.

16 THE COURT: THE DEFENSE?

17 MR. BOYD: I AGREE.

18 THE COURT: ALL RIGHT, BRING HIM BACK IN.

19 (THE JUROR RETURNED TO THE COURTROOM.)

20 THE COURT: MR. JONES, WE'RE GOING TO EXCUSE YOU
21 FROM FURTHER SERVICE ON THIS JURY. WE APPRECIATE YOUR
22 CANDOR AND APPRECIATE YOUR TIME. THANK YOU.

23 THE JUROR: THANK YOU.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: ALL RIGHT, LET'S HAVE BETTE

1 CHRISTENSEN.

2 BETTE CHRISTENSEN, JUROR NUMBER 48, WHITE FEMALE,
3 WAS QUESTIONED AS FOLLOWS:

4 QUESTIONS BY THE COURT:

5 Q. I AM GOING TO REINTRODUCE MYSELF. I'M JOHN
6 HAYES AND I WANT TO REMIND YOU THAT YOU ARE
7 STILL UNDER OATH.

8 Q. I ALSO WANT TO TELL YOU THAT IF YOU ARE CHOSEN
9 ON THIS JURY YOU MAY SEE T.V. CAMERAS OR
10 PHOTOGRAPHERS IN THE COURTROOM BUT THEY ARE
11 PROHIBITED FROM TAKING OR REPORTING ANYTHING
12 ABOUT THE JURY. THEY CANNOT TAKE YOUR PICTURE
13 OR REPORT THAT YOU ARE A MEMBER OF THE JURY. DO
14 YOU UNDERSTAND THAT?

15 A. UH HUH.

16 Q. YOU HANDED IN A QUESTIONNAIRE. IT'S BEEN A
17 WHILE BACK; IS THERE ANYTHING ON THERE THAT
18 NEEDS CHANGING OR DO YOU THINK IT'S ACCURATE?

19 A. I THINK IT'S ACCURATE.

20 Q. DID YOU REVIEW THE LIST OF WITNESSES THAT WAS
21 DISPLAYED IN THE JURY ROOM?

22 A. YES, I DID.

23 Q. DID YOU FIND THEREON ANYBODY TO WHOM YOU WERE
24 RELATED BY BLOOD OR MARRIAGE OR A CLOSE PERSONAL
25 FRIEND OR ACQUAINTANCE?

1 A. SOME ACQUAINTANCES.

2 Q. ALL RIGHT, WHO WOULD THEY BE?

3 A. I WASN'T REAL SURE ABOUT WILLIAM DAVIS. I KNOW
4 A BILL DAVIS; AND, OF COURSE, THERE ARE PROBABLY
5 WILLIAM DAVISES IN ROCK HILL. SO, I DON'T KNOW
6 IF THAT IS AN ASSOCIATE OR NOT. I DO KNOW WHO
7 DOUG MCKOWN IS. I HAVE A QUESTION MARK BY CAROL
8 SARN. AND THAT'S THE ONLY ONES.

9 Q. WOULD THE FACT THAT ---

10 A. OH, I'M SORRY, AND THE RECORD KEEPERS OF THE
11 HERALD.

12 Q. OKAY. THAT'S WHERE YOU WORK, RIGHT?

13 A. YES.

14 Q. WOULD THE FACT THAT YOU KNOW THESE INDIVIDUALS,
15 WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR,
16 AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

17 A. NO, SIR, IT WOULD NOT.

18 Q. WOULD YOU TEND TO BELIEVE THOSE PEOPLE ABOVE
19 OTHER PEOPLE OR WOULD YOU LOOK AT EACH PERSON,
20 EACH WITNESS' CREDIBILITY AS THEY TESTIFIED?

21 A. I WOULD LOOK AT EACH PERSON AS THEY TESTIFY. I
22 DON'T KNOW ANY OF THESE PEOPLE PERSONALLY, CLOSE
23 PERSONAL RELATIONSHIPS.

24 Q. ALL RIGHT. WORKING FOR THE HERALD I'LL GO AHEAD
25 AND ASK. HAVE YOU HEARD ANYTHING OR READ

1 ANYTHING ABOUT THIS CASE?

2 A. YES, SIR, I HAVE.

3 Q. BASED ON THAT HAVE YOU FORMED ANY OPINION ABOUT
4 THE CASE?

5 A. NO, SIR.

6 Q. COULD YOU BE FAIR AND IMPARTIAL IN SPITE OF
7 HAVING READ ABOUT THE CASE?

8 A. I BELIEVE SO.

9 Q. IN THE JURY ROOM THERE WAS A LIST WITH THREE
10 TYPES OF JURORS ON IT. WE'RE GOING TO BE
11 TALKING ABOUT A JUROR WHO IS ON THE JURY IN
12 WHAT'S THE SECOND PHASE OF A TRIAL OF THIS TYPE.
13 THE FIRST PHASE WOULD BE A TRIAL REGARDING
14 WHETHER OR NOT MR. ROBERTSON WAS IN FACT GUILTY
15 OF MURDER. AND HE'S PRESUMED INNOCENT, SO WE
16 ARE NOT GOING TO PRESUPPOSE THAT HE WOULD BE
17 FOUND GUILTY. HE WOULD HAVE TO BE FOUND GUILTY
18 BY A UNANIMOUS JURY BEYOND A REASONABLE DOUBT
19 BEFORE WE WOULD EVEN MOVE INTO THIS SECOND
20 PHASE.

21 SO, WE ARE TALKING ABOUT THE SECOND PART BUT WE
22 ARE NOT PRESUPPOSING WE WOULD EVER GET THERE.
23 DO YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. DID YOU FIND YOURSELF TO BE ONE OF THESE TYPES

1 OF JURORS?

2 A. I DID.

3 Q. WHICH ONE?

4 A. THE THIRD TYPE.

5 Q. ALL RIGHT. IN THAT DEFINITION OF THAT TYPE
6 JUROR, WE USE THE WORDS AGGRAVATION AND
7 MITIGATION IN REGARD TO CIRCUMSTANCES.

8 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
9 ATTENDING THE COMMISSION OF A CRIME WHICH TEND
10 TO INCREASE ITS ENORMITY OR ADD TO ITS INJURIOUS
11 CONSEQUENCE BUT THEY ARE ABOVE AND BEYOND AND
12 AND NOT A PART OF THE ESSENTIAL ELEMENTS OF THE
13 OFFENSE ITSELF.

14 MITIGATING CIRCUMSTANCES ARE THINGS WHICH WHILE
15 NOT CONSTITUTING JUSTIFICATION OR EXCUSE FOR THE
16 OFFENSE, THEY ARE THINGS WHICH IN FAIRNESS AND
17 MERCY MAY BE CONSIDERED AS EXTENUATING OR
18 REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO
19 YOU UNDERSTAND THAT?

20 A. I THINK SO.

21 Q. OKAY. ARE YOU TELLING ME THEN THAT YOU ARE THE
22 TYPE OF JUROR WHO IF WE WENT INTO THAT SECOND
23 PHASE, YOU WOULD HAVE NO PREDISPOSITION AS TO
24 WHAT PENALTY SHOULD BE IMPOSED?

25 A. CORRECT. I WOULD NOT HAVE ANY PREDISPOSITION.

1 Q. ARE YOU TELLING ME THAT YOU WOULD NEED TO HEAR
2 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
3 MITIGATION AND WOULD WANT TO LISTEN AND FOLLOW
4 THE LAW AS THE JUDGE CHARGES IT TO YOU BEFORE
5 MAKING YOUR DECISION?

6 A. YES, SIR, I WOULD.

7 Q. AND IF THE FACTS THAT WERE PRESENTED WERE SUCH
8 THAT YOU FELT THE LIFE IMPRISONMENT PENALTY WERE
9 WARRANTED, COULD YOU RETURN A VERDICT OF LIFE
10 IMPRISONMENT?

11 A. YES, SIR.

12 Q. IF YOU FELT THE FACTS WERE SUCH THAT THE PENALTY
13 OF DEATH WERE WARRANTED, COULD YOU RETURN A
14 PENALTY OF DEATH?

15 A. I BELIEVE SO.

16 Q. ALL RIGHT, ANSWER ANY QUESTIONS THESE ATTORNEYS
17 MAY HAVE.

18 QUESTIONS BY MR. POPE:

19 Q. MS. CHRISTENSEN, I'M TOMMY POPE; I'M THE
20 SOLICITOR HERE IN YORK COUNTY. THIS IS MR.
21 KEVIN BRACKETT, THE DEPUTY SOLICITOR.

22 A. UH HUH.

23 Q. DO YOU FEEL A LITTLE BIT LIKE YOU'RE THE ONE ON
24 TRIAL HERE?

25 A. IT'S A LITTLE SCARY, YES.

1 Q. HAVE YOU HAD AN EXPERIENCE LIKE THIS BEFORE IN
2 BEING ASKED THESE KIND OF QUESTIONS?

3 A. NO.

4 Q. OKAY. WELL, ONE GOOD THING IS YOU CAN'T GIVE A
5 WRONG ANSWER BECAUSE WHAT WE ARE TRYING TO FIND
6 OUT IS HOW BETTE FEELS. YOU KNOW, IN THAT
7 REGARD WHATEVER YOUR ANSWER IS, IT IS THE
8 CORRECT ANSWER.

9 NOW WHEN THE JUDGE ASKS YOU ABOUT THE LAW AND,
10 OF COURSE, ONE THING TO REMEMBER IS IF YOU WERE
11 SELECTED AS A JUROR, HE'S GOING TO INSTRUCT YOU
12 AS TO THE LAW. YOU KNOW LIKE WHEN HE IS TELLING
13 YOU ABOUT AGGRAVATING AND MITIGATING, HE'S
14 READING THROUGH IT, AND YOU'RE SAYING WELL I
15 THINK I UNDERSTAND. YOU WILL BE TOLD -- YOU
16 WILL BE GIVEN THE TOOLS TO DO YOUR JOB.

17 A COUPLE OF THINGS I JUST WANTED TO REITERATE
18 THAT THE JUDGE SAID. THIS IS A TWO PART TRIAL.
19 THE FIRST PART CONCERNS STRICTLY GUILT. AND
20 EVEN THOUGH WE HAVE TO BY NECESSITY TALK ABOUT
21 PENALTY, BUT RIGHT NOW LET'S FORGET IT. IT IS
22 JUST ABOUT GUILT.

23 DO YOU UNDERSTAND THAT WE THE STATE HAVE TO
24 PROVE THE CASE BEYOND A REASONABLE DOUBT. YOU
25 UNDERSTAND THAT ABOUT OUR SYSTEM?

1 A. YES, SIR.

2 Q. OKAY. THE DEFENDANT DOESN'T HAVE TO SAY
3 ANYTHING, DOESN'T HAVE TO PRESENT ANYTHING. OF
4 COURSE, HE CAN IF HE WANTS TO. BUT YOU
5 UNDERSTAND THAT WE HAVE TO PROVE THE CASE BEYOND
6 A REASONABLE DOUBT?

7 A. UH HUH.

8 Q. AS I UNDERSTOOD WHAT YOU TOLD THE JUDGE, YOU
9 WOULD BE THE TYPE OF JUROR THAT, YOU KNOW, OF
10 COURSE YOU WORK FOR THE PAPER, YOU'VE READ THE
11 PAPER SO YOU WON'T BE LIKE ONE OF THESE JURORS
12 THAT SAY I DON'T BELIEVE WHAT I READ IN THE
13 PAPER. YOU'VE READ THE PAPER NOW.

14 A. I HAVE READ THE PAPER.

15 Q. OKAY.

16 A. I WOULD BE IN TROUBLE IF I HADN'T.

17 Q. OKAY. SO, YOU COME IN -- BUT YOU'RE SAYING YOU
18 CAN PUT THAT ASIDE AND YOU'RE GOING TO BASE IT
19 ON WHAT YOU HEAR FROM THE WITNESSES WHO SIT IN
20 THAT SAME CHAIR AND WHATEVER EVIDENCE THE STATE
21 MAY PRESENT OR THE DEFENSE, IF THEY WANTED TO,
22 WHATEVER EVIDENCE THEY PRESENT, AND YOU'D DECIDE
23 IT JUST BASED ON THAT?

24 A. I BELIEVE I COULD, YES.

25 Q. OKAY. AND YOU SAID, TOO, AS FAR AS KNOWING

1 ANYBODY, THAT WOULDN'T AFFECT, YOU KNOW, THE
2 PERSON YOU KNOW, AND I DON'T HAVE MY LIST, I
3 THINK YOU MENTIONED DOUG MCKOWN AND A COUPLE OF
4 PEOPLE THAT YOU KNEW.

5 A. RIGHT.

6 Q. THE FACT THAT HE SITS IN THAT CHAIR VERSUS
7 ANYBODY ELSE SITTING IN THAT CHAIR, YOU'RE GOING
8 TO JUDGE THEIR CREDIBILITY JUST LIKE YOU WOULD
9 ANYBODY'S CREDIBILITY?

10 A. I BELIEVE SO.

11 Q. OKAY. IF THE DEFENDANT IS FOUND NOT GUILTY,
12 THAT'S THE END OF IT. OBVIOUSLY, THERE IS NO
13 PENALTY PHASE IF HE'S NOT CONVICTED OF THE
14 CRIME.

15 BUT NOW IF WE GO TO THE SECOND PHASE, OF COURSE,
16 HE WOULD HAVE THEN BEEN CONVICTED OF THE CRIME
17 OF KILLING HIS PARENTS.

18 THE STATE WOULD PUT UP WHAT'S CALLED AGGRAVATING
19 CIRCUMSTANCES AND WHAT THAT IS, AS THE JUDGE
20 TOUCHED ON, AGGRAVATING JUST LIKE IT SOUNDS,
21 THINGS THAT WOULD TEND TO AGGRAVATE THE CRIME TO
22 MAKE IT WORSE, TO MAKE IT AN INDICATION THAT IT
23 SHOULD BE A DEATH PENALTY CASE.

24 THE DEFENSE NEVER HAS TO, BUT IF THEY WANT TO
25 CAN PUT UP EVIDENCE IN MITIGATION. AND, AGAIN,

1 MITIGATION IS JUST THE OPPOSITE OF AGGRAVATION,
2 THINGS THAT THEY WOULD SAY LESSEN THE PENALTY.
3 THINGS ABOUT THE CASE THAT WOULD BRING YOU MORE
4 TOWARD A DECISION OF LIFE IN THE CASE. BECAUSE
5 YOU AS A JUROR WOULD HAVE -- THAT'S YOUR TWO
6 CHOICES ONCE YOU GET TO THAT POINT, EITHER LIFE
7 OR DEATH.

8 AS I UNDERSTOOD WHAT YOU TOLD THE JUDGE, YOU
9 WOULD BE THE TYPE PERSON THAT JUST BECAUSE HE
10 HAD BEEN CONVICTED AND JUST BECAUSE HE HAD BEEN
11 CONVICTED OF KILLING HIS PARENTS, YOU WOULDN'T
12 AUTOMATICALLY SAY THAT'S DEATH, I'M NOT
13 LISTENING TO ANYTHING ELSE THE STATE HAS OR
14 ANYTHING THE DEFENSE HAS, I'M GOING TO DECIDE
15 DEATH.

16 A. THAT IS CORRECT.

17 Q. OKAY. LIKEWISE, JUST BECAUSE YOU HEARD THAT,
18 YOU'D SAY WELL IT'S MURDER, BUT I NEVER WOULD
19 THINK OF DEATH, LIFE IS THE ONLY THING I WOULD
20 THINK OF. YOU'RE NOT THAT TYPE OF JUROR ARE
21 YOU?

22 A. NO, I DON'T THINK SO.

23 Q. OKAY. SO IF GIVEN AN OPPORTUNITY ON THE JURY,
24 YOU'RE GOING TO HEAR WHATEVER WE PUT UP,
25 WHATEVER THEY PUT UP IF THEY WANT TO, BUT AGAIN

1 YOU'RE NOT GOING TO HOLD THEM TO ANY BURDEN TO
2 PUT UP ANYTHING, YOU'RE GOING TO FOLLOW WHAT THE
3 JUDGE TELLS YOU. IS THAT RIGHT?

4 A. I UNDERSTAND THAT, YES.

5 Q. OKAY. ONE LAST THING I WILL TELL YOU -- NOW YOU
6 HAVE NOT BEEN ON JURY DUTY BEFORE, IS THAT
7 RIGHT?

8 A. I HAVE, IT'S BEEN SOME TIME AGO, BUT NOT A
9 CRIMINAL CASE.

10 Q. OKAY. WELL, YOU KNOW WHEN YOU'RE ON A NORMAL
11 JURY DUTY AND THE JURORS GO BACK AND YOU TALK
12 ABOUT THE CASE, ARE YOU THE TYPE JUROR -- SAY IF
13 YOU AND I WERE ON THE JURY, YOU COULD HEAR WHAT
14 I HAD TO SAY AND I WOULD LISTEN TO WHAT YOU HAD
15 TO SAY AND WE WOULD DISCUSS IT. I MEAN YOU
16 WOULDN'T RUN OVER ME, YOU WOULDN'T LET ME RUN
17 OVER YOU, BUT YOU WOULD HEAR EVERYTHING BEFORE
18 MAKING YOUR DECISION?

19 A. THAT'S TRUE. I WAS BROUGHT UP THAT THERE WERE
20 TWO SIDES TO EVERY STORY.

21 Q. SO YOU WOULD WANT TO HEAR THE WHOLE THING?

22 A. RIGHT.

23 Q. OKAY AND AFTER DOING THAT, YOU GO TO THE JURY
24 ROOM, THEN YOU VOTE AND DECIDE AND IT'S GOT TO
25 BE UNANIMOUS. IN A REGULAR CASE THE FOREPERSON,

1 FOREMAN OR FORELADY WOULD SIGN AND SAY, YOU
2 KNOW, WE FIND THE VERDICT SHOULD BE SO AND SO
3 AND THEY WRITE IT.

4 A. RIGHT.

5 Q. OKAY THE JURY, IF THEY DECIDE THE VERDICT SHOULD
6 BE LIFE, THEN JUST THE FORELADY OR FOREMAN WOULD
7 SIGN THAT WE DECIDE THAT THE VERDICT SHOULD BE
8 LIFE.

9 IF IT'S DEATH, THEN IT'S A LITTLE DIFFERENT
10 REQUIREMENT. IN A DEATH PENALTY CASE IF THE
11 JURY UNANIMOUSLY FINDS FOR DEATH, EACH
12 INDIVIDUAL JUROR MUST TAKE A PEN AND SIGN THEIR
13 NAME TO THE DOCUMENT AND, OF COURSE, THE JUDGE
14 IS GOING TO DO -- THE COURT'S GOING TO DO, IF
15 YOU SAY DEATH, THAT'S WHAT THEY'LL DO; IF YOU
16 SAY LIFE, THAT'S WHAT THEY'LL DO -- SIGN YOUR
17 NAME TO A DOCUMENT TO TAKE THIS MAN'S LIFE. NOW
18 IF THE OPPORTUNITY CAME AND YOU'RE IN THAT JURY
19 ROOM AND YOU'VE HEARD BOTH SIDES OF THE CASE,
20 COULD YOU TAKE PEN IN HAND AND WRITE BETTY
21 CHRISTENSEN KNOWING THAT IT WOULD TAKE THIS
22 MAN'S LIFE?

23 A. IT WOULD NOT BE AN EASY SIGNATURE, BUT I BELIEVE
24 I COULD.

25 Q. THANK YOU, MA'AM.

1 THE COURT: MR. HANCOCK.

2 QUESTIONS BY MR. HANCOCK:

3 Q. MS. CHRISTENSEN, I KNOW YOU MAY FEEL THAT WE ARE
4 COMING AT YOU IN WAVES, BUT WE ARE NOT. WE ARE
5 REQUIRED TO ASK YOU THESE QUESTIONS.

6 Q. I'M BILL HANCOCK, I'M JIMMY ROBERTSON'S
7 ATTORNEY. HE'S SITTING HERE, AND THIS IS MR.
8 JIM BOYD, HE'S JIMMY'S OTHER ATTORNEY. I'M JUST
9 THE ONE CHOSEN TO DO THE QUESTIONING.

10 AND AS WE'VE SAID, AS I QUESTION YOU THERE ARE
11 NO RIGHT OR WRONG ANSWERS. THESE ARE ANSWERS
12 THAT ARE YOURS AND UNIQUELY YOURS AND ARE JUST
13 TO BE CONSIDERED IN THE LIGHT OF THE LAW AND IN
14 THE LIGHT OF WHAT WE ARE DOING HERE WHICH IS AN
15 UNUSUAL THING; IT'S CALLED A DEATH PENALTY, AND
16 YOU UNDERSTAND THAT, YOU WERE DOWNSTAIRS
17 YESTERDAY. ISN'T THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND I'M NOT GOING TO TRY TO PUT ANY WORDS IN
20 YOUR MOUTH. IF I STATE DURING QUESTIONING
21 SOMETHING THAT YOU SAY IS WRONG, THAT'S NOT
22 RIGHT. I'D RATHER PUT IT THIS WAY. I'M JUST
23 GOING TO ASK YOU SEVERAL QUESTIONS AND LISTEN TO
24 YOUR RESPONSE. THAT'S WHAT I'M DOING.
25 NOW, I HAVE UNDERSTOOD THAT YOU KNOW SOME OF THE

1 WITNESSES HERE BUT THAT'S MR. DAVIS, IT MAY BE
2 BILL DAVIS, DOUG MCKOWN WHO IS THE CORONER HERE
3 AND CAROL SARN WHO I BELIEVE IS A TEACHER AND
4 WORKS OUT AT TECH ---

5 A. MY ACQUAINTANCE WOULD NOT BE ---

6 Q. YOU DON'T GO OUT WITH THEM, YOU'RE NOT FRIENDS
7 AND YOU HAVEN'T DISCUSSED THE CASE WITH THEM.
8 IS THAT CORRECT?

9 A. WITH CAROL SARN, SHE AND I ARE MEMBERS OF A
10 GROUP AND I WOULD HAVE BEEN AT THAT GROUP TODAY
11 AND I MADE THE COMMENT THAT I WOULD BE ABSENT
12 AND IT CAME UP THAT SHE WOULD BE PART OF THE
13 TRIAL. THAT WAS ALL THAT WAS SAID.

14 Q. YOU DIDN'T DISCUSS HER TESTIMONY.

15 A. NO.

16 Q. AND SHE DIDN'T TRY TO INFLUENCE YOU OR YOU HER;
17 IS THAT CORRECT?

18 A. NO, BUT THAT WAS THE CONVERSATION.

19 Q. AND YOU WORK FOR THE HERALD?

20 A. THAT'S CORRECT.

21 Q. SO BY DOING SO, DO YOU READ YOUR OWN NEWSPAPER?

22 A. YES, SIR, I DO. I'D BE IN TROUBLE IF I DIDN'T.

23 Q. RIGHT. AND I THINK YOU'VE SAID THAT YOU HAVE
24 READ THE NEWSPAPER AND YOU UNDERSTAND WHAT THIS
25 TRIAL IS BASICALLY ABOUT FROM THE FACTS THAT

1 HAVE BEEN REPORTED IN THE HERALD. IS THAT
2 CORRECT?

3 A. CORRECT.

4 Q. HAVE YOU READ SO MUCH THAT YOU COULD NOT RENDER
5 A FAIR AND JUST VERDICT ACCORDING TO THE
6 EVIDENCE THAT IS PRESENTED IN THIS COURTROOM
7 SHOULD YOU BE A JUROR?

8 A. I HAVE READ THE STORIES, BUT I UNDERSTAND THAT
9 THERE IS PROBABLY A LOT MORE THAT HAS TO BE
10 TOLD.

11 Q. COULD YOU PUT THOSE ASIDE AND NOT CONSIDER
12 ANYTHING THAT YOU READ BECAUSE IT MAY OR MAY NOT
13 BE ACCURATE; COULD YOU PUT ALL OF THAT ASIDE AND
14 CONSIDER NOTHING BUT WHAT COMES TO YOU IN THIS
15 COURTROOM?

16 A. FRANKLY, A LOT OF THE DETAILS I DON'T REMEMBER.
17 I MEAN, AGAIN, BECAUSE I DO READ STORIES AND
18 BECAUSE, I MEAN NEWS IS -- I MEAN IT CHANGES
19 EVERY DAY AND IF YOU ASKED ME WHAT HAPPENED LAST
20 WEEK, I'M NOT SURE THAT I COULD TELL YOU DETAILS
21 OF SOME OF THE STORIES. SO, I WOULD BE BASING
22 IT ON WHAT I HEAR IN COURT.

23 Q. WHAT YOU HEAR WHERE?

24 A. IN THE COURT.

25 Q. IN THE COURTROOM?

- 1 A. YES.
- 2 Q. SO YOU ARE SAYING THAT YOU COULD PUT THAT ASIDE
3 AND LISTEN TO WHAT WAS PRESENTED TO YOU IN THE
4 COURTROOM?
- 5 A. I BELIEVE SO, YES.
- 6 Q. YOU UNDERSTAND THAT WE ARE QUESTIONING YOU ABOUT
7 -- WE ARE KIND OF PUTTING THE CART BEFORE THE
8 HORSE. JIMMY HAS NOT BEEN CONVICTED OF ANYTHING
9 AT ALL AT THIS POINT.
- 10 A. UH HUH.
- 11 Q. BUT WE ARE MAKING AN ASSUMPTION THAT SHOULD HE
12 BE CONVICTED THEN YOU WOULD HAVE TO BE SITTING
13 ON A JURY THAT AT A LATER TIME, ABOUT 24 HOURS
14 LATER, YOU WOULD HAVE TO RULE WHETHER HE GOT THE
15 DEATH PENALTY OR LIFE IMPRISONMENT. AND YOU
16 UNDERSTAND THAT. YOU UNDERSTAND THAT HE HAS NOT
17 BEEN CONVICTED OF ANYTHING?
- 18 A. CORRECT.
- 19 Q. YOU WERE ALSO DOWNSTAIRS YESTERDAY SO YOU
20 UNDERSTAND THAT HE IS ACCUSED OF KILLING BOTH OF
21 HIS PARENTS.
- 22 A. I DO UNDERSTAND THAT.
- 23 Q. YOU UNDERSTAND THAT, AND YOU WOULD HAVE KNOWN
24 THAT FROM READING THE NEWSPAPER ANYWAY WOULD YOU
25 NOT?

1 A. YES.

2 Q. NOW, THE JUDGE AND MR. POPE HAVE DISCUSSED WITH
3 YOU AGGRAVATING AND MITIGATING CIRCUMSTANCE. AND
4 I WILL JUST GO, AND I AM NOT TRYING TO PIN YOU
5 DOWN, BUT I WILL JUST GO ON THE ANSWER YOU GAVE
6 THE JUDGE. YOU SAID YOU THINK THAT YOU
7 UNDERSTAND THE CONCEPT OF AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES?

9 A. YES, I THINK I DO.

10 Q. WHEN I ASK THAT, DO YOU UNDERSTAND WHAT
11 AGGRAVATING CIRCUMSTANCES ARE?

12 A. THE CAUSES, EXTREME CAUSES OF WHAT WOULD HAPPEN.
13 I MEAN I GUESS THAT'S THE INTERPRETATION THAT
14 I'M MAKING.

15 Q. AND DO YOU UNDERSTAND WHAT MITIGATING
16 CIRCUMSTANCES MAY OR MAY NOT BE?

17 A. THE REASONS THAT THIS CAUSE HAPPENED. I MEAN
18 THAT -- I'M NOT SURE. AGAIN, DEFINITIONS ARE
19 HARD TO EXPLAIN.

20 Q. YES, MA'AM, I UNDERSTAND. WELL, AGGRAVATING
21 CIRCUMSTANCES ARE WE START WITH THE BASIC
22 PREMISE THAT JIMMY HAS BEEN CONVICTED OF KILLING
23 BOTH OF HIS PARENTS. AND THAT IS A HEINOUS
24 CRIME IN AND OF ITSELF. NOW, THERE ARE THINGS
25 THAT THE STATE MAY PRESENT TO YOU THAT WOULD

1 MAKE IT EVEN WORSE THAN JUST THAT DOUBLE ACT.
2 AND YOU WOULD HAVE TO CONSIDER THOSE, AND
3 CONSIDER THOSE IN LIGHT OF YOUR IMPOSITION OF
4 THE DEATH PENALTY.

5 A. UH HUH.

6 Q. THERE IS NO LEGAL REQUIREMENT, BUT WE CAN
7 PRESENT FOR JIMMY MITIGATING CIRCUMSTANCES.
8 THINGS IN EXPLANATION AND THINGS THAT WOULD TEND
9 TO LESSEN HIS LEGAL CULPABILITY FOR THE MOTHER
10 OF HIS TWO PARENTS. AND IN DOING SO, WE WOULD
11 BE ASKING YOU TO CONSIDER THOSE IN LIGHT OF A
12 SENTENCE OF LIFE IN PRISON AND NOT DEATH. COULD
13 YOU GIVE THOSE WEIGHT AS THE JUDGE WOULD TELL
14 YOU, AND CONSIDER THOSE IN GIVING A LIFE
15 SENTENCE. NOT KNOWING WHAT THEY ARE, COULD YOU
16 CONSIDER THOSE?

17 A. YES, I WOULD.

18 Q. BUT YOU ARE STILL NOT AWARE OF ANY OF THOSE
19 THINGS, WHAT YOU ARE ACTUALLY CONSIDERING.

20 A. RIGHT.

21 Q. YOU'RE TELLING ME THAT YOU CAN CONSIDER
22 SOMETHING BUT YOU DON'T KNOW WHAT IT IS?

23 A. WELL, I WOULD HEAR, AGAIN, BOTH SIDES OF THE
24 STORY.

25 Q. YOU WOULD LISTEN TO BOTH SIDES. AND YOU COULD

1 WEIGH THE EVIDENCE AND GIVE LIFE OR DEATH. IS
2 THAT RIGHT?

3 A. YES.

4 Q. YOU UNDERSTAND THAT YOU WOULD BE ONE OF TWELVE?

5 A. UH HUH.

6 Q. AND Y'ALL WOULD ALL ARRIVE AT A VERDICT. IF YOU
7 WERE THE ONLY ONE OF THE TWELVE THAT WERE VOTING
8 FOR A LIFE SENTENCE, COULD YOU STAND BY THAT
9 DECISION, MA'AM?

10 A. IF I WAS THE ONLY ONE OF THE TWELVE ---

11 Q. IF YOU WERE THE ONLY ONE, YES, MA'AM.

12 A. NO, I WOULD PROBABLY -- I MEAN IF THE GROUP
13 COULD CONVINCE ME OF THE DIFFERENCE, IF THERE
14 WAS A REASON TO CHANGE. I MEAN I WOULD NOT BE
15 THE ONLY PERSON THAT WOULD CONDEMN SOMEONE.

16 Q. AND SO YOU ARE SAYING THAT YOU MAY CHANGE YOUR
17 OPINION IN ORDER TO BE IN CONFORMITY WITH THE
18 MAJORITY. IS THAT CORRECT?

19 A. I BELIEVE SO. I WOULD NOT BE THE ONLY PERSON TO
20 CONDEMN SOMEONE.

21 Q. NOW YOU SAID TO CONDEMN.

22 A. WELL --

23 Q. MAYBE I'M MISUNDERSTANDING. IF YOU WERE VOTING
24 FOR A LIFE SENTENCE, COULD YOU BE THE ONLY ONE?

25 A. FOR A LIFE SENTENCE?

1 Q. YES, MA'AM.

2 A. NO, I WOULD -- IF I WERE TRULY CONVINCED OF A
3 PERSON BEING JUST -- LET ME MAKE SURE I'M
4 GETTING THE RIGHT WORDS RIGHT. IF THAT PERSON,
5 IF I TRULY IN MY HEART BELIEVED THAT THEY WERE
6 GUILTY, THAT THEY NEEDED TO HAVE JUST LIFE
7 IMPRISONMENT RATHER THAN DEATH, I WOULD STICK
8 WITH THAT.

9 Q. BUT WOULD YOU BEGIN WITH THE PREMISE THAT THEY
10 SHOULD GET THE DEATH PENALTY AND THEN WE WOULD
11 HAVE TO CONVINCE YOU THAT IT MITIGATED TO LIFE?

12 A. NO, I WOULD NOT START WITH THE DEATH PENALTY.

13 Q. YOU COULD START WITH A COMPLETE OPEN MIND AND
14 OPEN VIEW AND GO EITHER WAY. IS THAT WHAT YOU
15 ARE TELLING ME?

16 A. I WOULD TRY.

17 Q. THANK YOU.

18 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE
19 JUST FOR A MINUTE.

20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: WHAT SAYS THE STATE?

22 MR. POPE: I SUBMIT THAT SHE IS WITHERSPOON
23 QUALIFIED, YOUR HONOR.

24 THE COURT: THE DEFENSE?

25 MR. HANCOCK: SHE'S QUALIFIED, YOUR HONOR.

1 THE COURT: ALL RIGHT, I FIND THAT SHE IS
2 QUALIFIED. BRING HER BACK IN.
3 (THE JUROR RETURNED TO THE COURTROOM.)

4 THE COURT: YOU CAN JUST STAND RIGHT THERE, MS.
5 CHRISTENSEN. YOU WILL BE PART OF THE JURY POOL FROM WHICH
6 THE JURY PANEL WILL BE SELECTED. WE DON'T KNOW WHAT TIME
7 WE ARE GOING TO DO THAT YET, SO PLEASE CALL BACK TONIGHT
8 AFTER 6:00 TO THAT 1-800 NUMBER AND YOU WILL RECEIVE
9 INSTRUCTIONS.

10 WHEN YOU COME, BRING CLOTHING AND THINGS SO THAT
11 YOU CAN STAY HOUSED IN A HOTEL DURING THE DURATION OF THE
12 TRIAL.

13 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT WE
14 NEED TO KNOW ABOUT THAT WOULD INTERFERE WITH THAT?

15 THE JUROR: NO.

16 THE COURT: DO NOT BE DISCUSSING THE CASE WITH
17 ANYONE. IN SPITE OF YOUR ALLEGIANCE TO YOUR PAPER, DON'T
18 READ ANYTHING OR WATCH ANYTHING OR GET ANY INFORMATION
19 ABOUT THIS CASE FROM ANY SOURCE FROM HERE ON OUT EXCEPT
20 WHAT YOU HEAR IN THIS COURTROOM.

21 AND IF ANYONE DOES TRY TO DISCUSS THIS CASE WITH
22 YOU, TELL THEM YOU CAN'T AND REPORT BACK TO ME IF SOMEBODY
23 TRIES TO TALK TO YOU ABOUT THE CASE.

24 THE JUROR: RIGHT. SO, CHECK IN AFTER 6:00
25 TONIGHT?

1 THE COURT: THAT'S CORRECT. THANK YOU.

2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: ALL RIGHT, TORRENCE SMITH.

4 TORRENCE SMITH, JUROR NUMBER 249, WHITE MALE, WAS
5 QUESTIONED AS FOLLOWS:

6 QUESTIONS BY THE COURT:

7 Q. MR. SMITH, IF YOU WOULD COME UP HERE PLEASE AND
8 HAVE A SEAT. MR. SMITH, I AM GOING TO
9 REINTRODUCE MYSELF; I'M JOHN HAYES, AND I'M THE
10 JUDGE PRESIDING OVER THIS TRIAL. YOU ARE STILL
11 UNDER OATH.

12 AND I WANT TO TELL YOU THAT IF YOU ARE SEATED ON
13 THIS JURY, YOU MAY SEE T.V. CAMERAS AND
14 PHOTOGRAPHERS IN THE COURTROOM BUT THEY CANNOT
15 BY LAW TAKE YOUR PICTURE OR REPORT ABOUT YOU
16 BEING ON THE JURY. SO, I DON'T WANT YOU TO BE
17 DISTRACTED BY THAT IF THAT WERE TO OCCUR.

18 YOU HANDED US A QUESTIONNAIRE. YOU SENT ONE IN.
19 IS IT CORRECT OR IS THERE ANYTHING ON THERE YOU
20 NEED TO CHANGE?

21 A. I DON'T THINK SO.

22 Q. YOU HAD A CHANCE TO REVIEW A LIST OF WITNESSES.
23 DID YOU KNOW ANY OF THOSE WITNESSES?

24 A. NO.

25 Q. ARE YOU KIN TO ANY OF THEM?

1 A. NO, SIR.

2 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE, FORMED
3 AN OPINION ABOUT IT, KNOW ANYTHING WHATSOEVER
4 ABOUT THE CASE?

5 A. I HEARD ABOUT IT ON THE TREADMILL WATCHING THE
6 T.V. AT THE GYM YESTERDAY MORNING AND IT NEVER
7 REGISTERED WITH ME. I KNOW NOTHING ABOUT IT.
8 I'M SORT OF PERPLEXED ABOUT THIS; I USUALLY KEEP
9 UP WITH THINGS, BUT I TRAVEL A LOT AND OBVIOUSLY
10 THIS HAPPENED WHILE I WAS OUT OF THE COUNTRY OR
11 SOMETHING.

12 Q. WELL, WHATEVER INFORMATION YOU DID RECEIVE,
13 WOULD YOU BE ABLE TO PUT THAT OUT OF YOUR MIND
14 AND LISTEN ---

15 A. OH, YEAH, ALL IT WAS WAS THAT THERE WAS GOING TO
16 BE A TRIAL STARTING.

17 Q. COULD YOU THEN BASE YOUR VERDICT ON THE LAW AND
18 THE EVIDENCE THAT'S DEVELOPED IN THE TRIAL AND
19 BE FAIR AND IMPARTIAL TO BOTH THE STATE AND THE
20 DEFENSE IN THE TRIAL OF THE CASE?

21 A. YES, SIR.

22 Q. DID YOU HAVE A CHANCE TO REVIEW THE THREE JUROR
23 TYPES WE HAD SET OUT?

24 A. YES, SIR.

25 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

1 A. YES, SIR.

2 Q. WHICH ONE?

3 A. I THINK I WOULD BE THE THIRD TYPE IF I'M NOT
4 MISTAKEN.

5 Q. ALL RIGHT.

6 A. I WOULD HAVE TO WEIGH ALL, YOU KNOW, MY HEART
7 AND MY MIND SAYS -- THE NEW TESTAMENT SAYS
8 FORGIVE BUT THE OLD TESTAMENT SAYS WE'VE GOT TO
9 HAVE LAWS. AND, YOU KNOW, THERE ARE EXTENUATING
10 CIRCUMSTANCES IN ALL THINGS.

11 Q. WELL, WE USED IN THAT LITTLE PARAGRAPH THE WORDS
12 AGGRAVATION AND MITIGATION, AGGRAVATING AND
13 MITIGATING CIRCUMSTANCES.
14 AGGRAVATING CIRCUMSTANCES WOULD BE THOSE
15 CIRCUMSTANCES THAT ATTEND THE COMMISSION OF AN
16 OFFENSE WHICH ADD TO ITS ENORMITY OR ADDS TO ITS
17 INJURIOUS CONSEQUENCE, BUT THEY ARE THINGS THAT
18 ARE ABOVE AND BEYOND JUST THE ACTUAL OFFENSE
19 ITSELF.

20 WHILE MITIGATING CIRCUMSTANCES ARE THINGS THAT
21 ARE NOT JUSTIFICATIONS OR EXCUSE FOR A CRIME BUT
22 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
23 CONSIDERED AS EXTENUATING OR REDUCING ONE'S
24 CULPABILITY. DO YOU UNDERSTAND THAT?

25 A. YES.

1 Q. SO YOU'RE TELLING ME THAT AS A JUROR IN THE
2 SECOND PHASE OF A TRIAL, AND LET ME TELL YOU
3 ABOUT THAT. THIS CASE WILL BE TRIED IN TWO
4 PHASES.

5 MR. ROBERTSON IS PRESUMED INNOCENT OF THE
6 CHARGES AGAINST HIM. HE IS ENTITLED TO BE TRIED
7 ON THAT; HE IS PRESUMED INNOCENT AND A JURY MUST
8 BE UNANIMOUSLY CONVINCED BEYOND A REASONABLE
9 DOUBT OF HIS GUILT BEFORE THEY COULD CONVICT
10 HIM. IF THEY DO NOT CONVICT HIM, THEN THE CASE
11 WOULD STOP.

12 IF HE WAS CONVICTED OF MURDER, THEN THE CASE
13 WOULD GO FORWARD INTO THE SECOND PHASE WHICH
14 WOULD BE THE PENALTY PHASE AND THAT'S WHAT WE
15 ARE GOING TO BE TALKING ABOUT. AND EVEN THOUGH
16 WE ARE TALKING ABOUT IT, THAT'S NOT TO
17 PRESUPPOSE THAT MR. ROBERTSON WOULD BE IN FACT
18 FOUND GUILTY. DO YOU UNDERSTAND THAT?

19 A. UH HUH.

20 Q. SO YOU ARE TELLING ME THAT IF YOU WERE ON THE
21 JURY AND THE JURY HAD DECIDED THAT MR. ROBERTSON
22 WAS IN FACT GUILTY OF MURDER, YOU WOULD NOT HAVE
23 AT THAT TIME MADE UP YOUR MIND AS TO WHAT THE
24 PUNISHMENT SHOULD BE?

25 A. YES, SIR.

1 Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR
2 AND NEED TO HEAR THE FACTS AND CIRCUMSTANCES IN
3 AGGRAVATION AND MITIGATION AND WOULD WANT TO
4 LISTEN AND FOLLOW THE LAW AS I AS TRIAL JUDGE
5 CHARGE IT BEFORE YOU WOULD MAKE A DECISION
6 REGARDING PUNISHMENT. IS THAT CORRECT?

7 A. YES, SIR.

8 Q. IF THE FACTS THAT WERE PRESENTED WARRANTED IT,
9 COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

10 A. I'M SORRY?

11 Q. IF THE FACTS AT THAT SECOND PHASE OF THE TRIAL,
12 IF YOU THOUGHT THE FACTS WERE SUCH THAT THE
13 APPROPRIATE PENALTY WERE LIFE IMPRISONMENT,
14 COULD YOU RETURN THAT VERDICT?

15 A. CERTAINLY.

16 Q. IF YOU THOUGHT THAT THE FACTS MADE IT
17 APPROPRIATE THAT THE PENALTY OF DEATH WAS THE
18 APPROPRIATE PENALTY, COULD YOU RETURN THAT
19 VERDICT?

20 A. I THINK I COULD.

21 Q. ALL RIGHT, LET ME LET YOU ANSWER QUESTIONS OF
22 COUNSEL.

23 QUESTIONS BY MR. BOYD:

24 Q. COULD AFTERNOON, MR. SMITH. I'M JIM BOYD AND
25 I'M ONE OF THE ATTORNEYS REPRESENTING JIMMY

1 ROBERTSON IN THIS CASE.

2 A. UH HUH.

3 Q. I NEED TO ASK YOU A COUPLE OF QUESTIONS TO
4 FOLLOW UP ON WHAT THE JUDGE ASKED YOU.

5 A. OKAY.

6 Q. I KNOW YOU'RE SITTING IN THE WITNESS CHAIR AND
7 THAT'S NOT A REAL COMFORTABLE PLACE TO BE
8 SOMETIMES BUT THIS ISN'T CROSS EXAMINATION,
9 YOU'RE NOT ON TRIAL, SO JUST TELL ME HOW YOU
10 HONESTLY FEEL ABOUT THIS. THERE IS NO RIGHT OR
11 WRONG ANSWERS OR ANYTHING OF THAT NATURE.

12 DID YOU LOOK OVER THE WITNESS LIST THAT WAS
13 GIVEN YOU IN THE JURY ROOM?

14 A. YES, SIR.

15 Q. DID YOU KNOW ANYBODY ON THAT LIST?

16 A. NO, SIR.

17 Q. NOBODY AT ALL?

18 A. NO, SIR.

19 Q. OKAY. YOU HAVE PREVIOUSLY SERVED ON THE YORK
20 COUNTY GRAND JURY, IS THAT RIGHT?

21 A. YES, SIR, BUT I DIDN'T GET INTO THE LIMITATIONS
22 -- I THINK IT'S BEEN SIX OR SEVEN YEARS SINCE I
23 SERVED.

24 Q. AND LET ME ASK YOU ABOUT YOUR ANSWER TO THE
25 JUDGE ABOUT THE DEATH PENALTY. I UNDERSTAND

1 THAT IN CERTAIN CIRCUMSTANCES YOU WOULD GIVE IT
2 AND UNDER OTHER CIRCUMSTANCES YOU WOULDN'T GIVE
3 IT. IS THAT WHAT YOU ARE BASICALLY SAYING?

4 A. YES.

5 Q. NOW IN THIS TYPE OF TRIAL THERE ARE TWO PHASES
6 TO THE TRIAL, POTENTIALLY AT LEAST. IN THE
7 FIRST PHASE OF THE TRIAL THE JURY IS ASKED TO
8 FIND WHETHER JIMMY IS GUILTY OR NOT GUILTY OF
9 THE CHARGE.

10 A. UH HUH.

11 Q. AND IF HE'S FOUND NOT GUILTY, OF COURSE, THAT'S
12 THE END OF IT THERE.

13 A. UH HUH.

14 Q. THE QUESTIONS I'M GOING TO ASK ARE ABOUT THE
15 PENALTY PART OF IT BUT I DON'T WANT YOU TO THINK
16 BECAUSE I'M ASKING ABOUT THE PENALTY THAT HE'S
17 GOING TO BE CONVICTED, I JUST HAVE TO ASK ABOUT
18 THAT PART NOW BECAUSE IT'S THE ONLY TIME I GET
19 TO DO IT.

20 A. IT'S THE IMPORTANT PART.

21 Q. IN THAT PENALTY PHASE OF THE TRIAL YOU WOULD
22 HEAR EVIDENCE OF AGGRAVATION; THAT IS, THINGS
23 THAT MAKE THE MURDER WORSE. YOU MAY HEAR THINGS
24 IN MITIGATION WHICH ARE THINGS ABOUT HIM OR
25 ABOUT THE CIRCUMSTANCES THAT MAKE HIM LESS

1 CULPABLE. WOULD YOU BE WILLING TO LISTEN TO ALL
2 OF THAT AND WEIGH THIS CASE?

3 A. ABSOLUTELY.

4 Q. NOW, UNDERSTAND IF WE GET TO THE PENALTY PHASE
5 OF THE TRIAL, HE'S CHARGED WITH KILLING BOTH OF
6 HIS PARENTS AND AT THAT POINT HE WOULD HAVE BEEN
7 FOUND GUILTY OF DOING THAT AT THAT POINT. YOU
8 UNDERSTAND THAT?

9 A. UH HUH.

10 Q. SO THE ONLY THING YOU WOULD BE DETERMINING AT
11 THAT POINT IS PUNISHMENT, EITHER THE DEATH
12 PENALTY OR LIFE IMPRISONMENT.

13 A. UH HUH.

14 Q. YOU UNDERSTAND THAT.

15 A. YES, SIR.

16 Q. NOW BECAUSE HE HAD BEEN ALREADY CONVICTED OF
17 KILLING BOTH OF HIS PARENTS, WOULD YOU AT THAT
18 POINT, IF IT GETS TO THAT PHASE, WOULD YOU
19 AUTOMATICALLY THINK THAT THE DEATH PENALTY IS
20 THE APPROPRIATE PUNISHMENT?

21 A. I WOULDN'T THINK SO.

22 Q. SO, YOU COULD CONSIDER, EVEN THOUGH HE HAD
23 COMMITTED THE MURDER, YOU COULD CONSIDER A LIFE
24 SENTENCE AS WELL AS THE DEATH PENALTY?

25 A. ABSOLUTELY.

1 Q. WHAT I'M JUST TRYING TO GET AT, JUST BECAUSE
2 HE'S GUILTY OF THE MURDERS DOESN'T MEAN THAT HE
3 AUTOMATICALLY GETS THE DEATH PENALTY IN YOUR
4 MIND?

5 A. YEAH, ABSOLUTELY.

6 Q. AND YOU WOULD BE WILLING TO CONSIDER ALL OF THE
7 MITIGATING EVIDENCE THAT WE MAY PRESENT IN
8 DETERMINING THAT; IS THAT RIGHT?

9 A. YES, SIR.

10 Q. I WANT TO ASK YOU A FEW OTHER QUESTIONS. OF
11 COURSE, YOU KNOW, WHEN YOU'RE ON A JURY
12 OFTENTIMES THERE ARE DIFFERENT OPINIONS BY
13 DIFFERENT PEOPLE. YOU UNDERSTAND THAT.

14 A. UH HUH.

15 Q. WE ALL HAVE OUR OPINIONS. YOUR OPINION --
16 HAVING YOUR OPINION, YOU'RE ENTITLED TO HAVE
17 YOUR OPINION RESPECTED BY EVERYONE IN THE
18 COURTROOM INCLUDING THE OTHER JURORS. YOU
19 UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND YOU UNDERSTAND ALSO THAT OTHER JURORS, EVEN
22 IF THEIR OPINIONS ARE DIFFERENT FROM YOURS, HAVE
23 A RIGHT TO HAVE YOUR OPINION RESPECTED BY THEM.
24 YOU UNDERSTAND THAT.

25 A. UH HUH.

1 Q. YOU KNOW, YOU MAY DISAGREE BUT THEY CAN HAVE
2 THEIR OPINIONS AND YOU HAVE TO RESPECT THEM.
3 YOU UNDERSTAND THAT.

4 A. I'M NOT A FAN OF THE JURY SYSTEM, BUT I DO
5 RESPECT IT.

6 Q. YOU'RE NOT A FAN OF IT?

7 A. I DON'T LIKE TO LISTEN TO THE OTHER OPINIONS,
8 BUT I DO RESPECT THEM. IT TOOK ME A WHILE
9 DURING THE GRAND JURY PROCESS TO UNDERSTAND
10 THAT, BUT I DID COME TO UNDERSTAND IT REAL WELL.

11 Q. AND, OF COURSE, I KNOW YOU ARE WILLING TO LISTEN
12 TO THE OTHER JURORS AND HEAR WHAT THEY HAVE TO
13 SAY AND WOULD CONSIDER THAT. BUT IF YOU GET A
14 FIRM OPINION THAT THERE SHOULD BE A LIFE
15 SENTENCE, WOULD YOU CHANGE THAT OPINION JUST TO
16 BE IN THE MAJORITY?

17 A. ABSOLUTELY NOT; NO, WAY, NO WAY.

18 Q. EVEN IF ALL ELEVEN OF THE OTHER JURORS WERE ON
19 THE OTHER SIDE?

20 A. I DON'T THINK I WOULD. I DO HAVE A MIND OF MY
21 OWN.

22 Q. AND BEING SEQUESTERED; THAT IS, IF YOU ARE
23 SELECTED AS A JUROR ON THIS CASE, YOU WILL BE
24 SEQUESTERED AND PUT INTO A MOTEL AT NIGHT AND
25 THE WHOLE WORKS, BE AWAY FROM YOUR HOME. IN

1 THAT CASE WOULD YOU BE INCLINED TO REACH A
2 VERDICT FAST OR ANYTHING JUST TO GET ON HOME?

3 A. NO, NO.

4 Q. I THINK THAT'S ALL I HAVE. I APPRECIATE IT.

5 QUESTIONS BY MR. POPE:

6 Q. MR. SMITH, MY NAME IS TOMMY POPE; I'M THE
7 SOLICITOR HERE. MR. KEVIN BRACKETT IS MY DEPUTY
8 SOLICITOR AND WE REPRESENT THE STATE IN THIS
9 CASE.

10 Q. AS MR. BOYD SAID, YOU'RE NOT ON TRIAL. I KNOW
11 YOU FEEL LIKE YOU'RE THE ONE IN THE BOX.

12 A. NO, I'M FINE.

13 Q. JUST A COUPLE OF QUESTIONS, GOING BACK, YOU SAY
14 YOU SERVED ON THE GRAND JURY ABOUT SIX OR SEVEN
15 YEARS AGO?

16 A. YES, SIR.

17 Q. IS THAT WHAT MADE YOU NOT A BIG FAN OF THE JURY
18 SYSTEM?

19 A. WELL, I HAD ALWAYS ENJOYED DEBATING, BUT IT
20 TAKES TIME TO LISTEN TO EVERYBODY'S POINT OF
21 VIEW.

22 Q. DID IT WEAR YOU OUT BEFORE IT WAS OVER?

23 A. YEAH, SOMETIMES IT WOULD, BUT THAT'S PART OF IT.
24 I DID COME TO APPRECIATE IT VERY MUCH AND HAVE
25 TALKED ABOUT THAT QUITE A BIT. I SERVED FOR TWO

1 YEARS.

2 Q. SO YOU WERE DOUBLE LUCKY, HUH?

3 A. YEAH, AND THAT'S ONE THAT I REALLY DID ENJOY, I
4 MUST SAY EVEN TO TODAY. I ENJOYED THAT VERY
5 MUCH. I WAS REAL FORTUNATE TO BE CARRIED OVER
6 FOR THE SECOND TIME.

7 Q. YOU KNOW WHEN THEY DRAW THE CARRYOVERS YOU
8 ALWAYS HEAR EVERYBODY GROAN.

9 A. RIGHT, I GROANED. EVERYBODY DOES.

10 Q. BUT AFTER LOOKING BACK ON IT, IT WAS WORTH IT?

11 A. IT WAS TIME TO DO MY CIVIC DUTY; I HAD NEVER
12 DONE THAT BEFORE.

13 Q. OKAY. AS FAR AS BEING ON A REGULAR JURY, AND
14 CORRECT ME IF I'M WRONG, I DON'T THINK YOU'VE
15 BEEN ON A REGULAR JURY?

16 A. NO, SIR.

17 Q. BUT BASED ON BEING ON THE GRAND JURY, YOU
18 UNDERSTAND A LITTLE BIT ABOUT THE DELIBERATION
19 PROCESS AND THAT TYPE OF THING.

20 A. UH HUH.

21 Q. THE JUDGE AND THE DEFENSE HAVE BOTH TALKED ABOUT
22 THIS BEING A TWO STAGE TRIAL, SO I'M NOT EVEN
23 GOING TO TALK ABOUT THE FIRST PART. YOU
24 UNDERSTAND WE'VE GOT TO PROVE THE CASE AND ALL
25 OF THAT.

1 A. YES, SIR.

2 Q. SO, WE GET TO THE SECOND PART, AND IT IS MY
3 UNDERSTANDING THAT YOU ARE THE TYPE OF JUROR
4 THAT YOU WOULD LISTEN TO EVERYTHING WE PRESENTED
5 AND EVERYTHING THEY PRESENTED IF THEY WANTED TO,
6 BUT YOU UNDERSTAND THEY DON'T HAVE TO.

7 A. UH HUH.

8 Q. AND YOU WOULD WAIT AND MAKE A DECISION AFTER
9 THAT. IS THAT RIGHT?

10 A. YES, SIR.

11 Q. SO, JUST BECAUSE -- MR. BOYD HAD ASKED YOU, YOU
12 KNOW, JUST BECAUSE -- BY THE TIME WE GET TO THE
13 PENALTY PHASE -- IF YOU'RE A JUROR ON THIS CASE,
14 BY THE TIME YOU GET TO THE PENALTY PHASE HE
15 WOULD BE CONVICTED, SO THE GUILT PART WOULD BE
16 GONE.

17 A. UH HUH.

18 Q. YOU KNOW, THAT HAD BEEN DETERMINED, HE WOULD BE
19 CONVICTED OF KILLING BOTH OF HIS PARENTS. MR.
20 BOYD ASKED YOU, HE SAID JUST BECAUSE HE KILLED
21 HIS PARENTS YOU WOULDN'T AUTOMATICALLY SAY ALL
22 RIGHT, HE'S BEEN CONVICTED, I'M GOING TO CHOOSE
23 DEATH. YOU WOULDN'T AUTOMATICALLY DO THAT?

24 A. NO, SIR.

25 Q. WELL, LET ME ASK YOU THIS. JUST BECAUSE HE'S

1 BEEN CONVICTED WOULD YOU AUTOMATICALLY CHOOSE
2 LIFE?

3 A. NO, SIR.

4 Q. YOU JUST DON'T KNOW BECAUSE YOU HAVEN'T HEARD IT
5 YET.

6 A. I REALLY DON'T; I REALLY DON'T. I WOULD LIKE TO
7 LISTEN TO BOTH SIDES OF ALL ISSUES; I ALWAYS
8 HAVE.

9 Q. AND WHEN YOU GOT INTO THE JURY ROOM YOU'D BE THE
10 TYPE OF MAN, YOU'D BE WILLING -- JUST LIKE THE
11 GRAND JURY, YOU WOULD BE WILLING TO VOICE YOUR
12 OPINION?

13 A. YES, SIR.

14 Q. AND YOU'D BE WILLING, AS WORRISOME AS IT GETS
15 SOMETIMES, YOU'D BE WILLING TO HEAR THE OTHER
16 SIDE OF IT, TOO?

17 A. OH, ABSOLUTELY.

18 Q. REGARDLESS, YOU WOULDN'T MAKE UP YOUR MIND UNTIL
19 WE HAD OUR SAY AND THE DEFENSE HAD PUT WHATEVER
20 THEY WANTED TO PUT BEFORE YOU, YOU WOULD TAKE IT
21 ALL INTO CONSIDERATION?

22 A. ABSOLUTELY.

23 Q. ONE THING, AND IT'S A LITTLE BIT DIFFERENT ON
24 THE GRAND JURY, BUT THEN YOU HAD A FOREPERSON,
25 TOO, OR FORELADY -- YOU WEREN'T THE FOREMAN,

1 WERE YOU?

2 A. NO, SIR.

3 Q. YOU KNOW THEY END UP DOING ALL THE WRITING
4 BEFORE IT'S OVER, YOU KNOW, SIGNING THE TRUE
5 BILLS AND THE NO BILLS.

6 A. WELL, WE DID A LOT OF IT; WE SHARED IT.

7 Q. YOU SHARED IT AROUND?

8 A. YES.

9 Q. IN A PETIT JURY WHAT HAPPENS IN EVERYTHING BUT A
10 DEATH PENALTY CASE EVERYBODY VOTES AND, OF
11 COURSE, IN THE GRAND JURY YOU HAD EIGHTEEN OF
12 YOU AND AT LEAST TWELVE. IN A REGULAR JURY, OF
13 COURSE, ALL TWELVE HAVE TO BE UNANIMOUS;
14 UNANIMOUS FOR LIFE OR UNANIMOUS FOR DEATH.

15 A. YES.

16 Q. IF THE VOTE IS FOR LIFE. IF AFTER HEARING
17 EVERYTHING AND EVERYBODY VOTES LIFE, ONLY THE
18 FOREPERSON HAS TO SIGN. AND THAT'S THE
19 DOCUMENT, YOU KNOW, IT'S LIKE A VERDICT FORM AND
20 IT SAYS JUDGE, YOU KNOW, WE HAVE LISTENED TO
21 EVERYTHING AND WE SAY LIFE IS APPROPRIATE. OF
22 COURSE, THE JUDGE IS GOING TO DO WHATEVER YOU
23 SAY.

24 A. YES, SIR.

25 Q. IF YOU SAY LIFE OR IF YOU SAY DEATH. IF YOU

1 LOOK AND THE JURY WORKS IT OUT AND THEY SAY
2 DEATH IS APPROPRIATE AND, OF COURSE, WITH EACH
3 PERSON GIVING THEIR OPINION AND ALL THE
4 DELIBERATION, IF THEY SAY DEATH IS APPROPRIATE,
5 IT'S DIFFERENT IN A DEATH PENALTY CASE. EACH
6 INDIVIDUAL HAS TO SIGN THEIR NAME.

7 IN OTHER WORDS, AS OPPOSED TO ALL VOTING AND
8 JUST THE FOREPERSON DOING IT, EACH INDIVIDUAL.

9 A. UH HUH.

10 Q. IF YOU HAD HEARD THE FACTS IN THE CASE AND YOU
11 THOUGHT DEATH WAS APPROPRIATE AND YOU THOUGHT
12 AFTER HEARING EVERYTHING, GOOD, BAD AND
13 EVERYTHING IF YOU THOUGHT DEATH WAS APPROPRIATE
14 AND IN YOUR HEART YOU SAID I'M VOTING FOR THE
15 DEATH PENALTY COULD YOU SIGN TORRENCE SMITH TO A
16 DOCUMENT THAT WOULD TAKE THIS MAN'S LIFE?

17 A. I THINK I COULD; YES, I DO.

18 Q. YOU STATED EARLIER WHEN YOU TALKED ABOUT -- LET
19 ME BE SURE I'VE GOT IT WRITTEN RIGHT -- THE NEW
20 TESTAMENT SAYS TO FORGIVE AND THE OLD TESTAMENT
21 SAYS THERE'S GOT TO BE LAWS.

22 A. YES, SIR.

23 Q. AND SO BASICALLY TO A CERTAIN EXTENT, THAT'S A
24 WASH BECAUSE IN ONE SENSE YOU'RE LOOKING AT
25 FORGIVENESS AND IN THE OTHER SENSE YOU'RE

1 LOOKING AT THE NEED FOR PUNISHMENT, RIGHT?

2 A. RIGHT.

3 Q. SO YOU WOULD TAKE ALL OF THAT INTO CONSIDERATION
4 LIKEWISE WITH THE EVIDENCE AND YOU WOULD ---

5 A. I THINK I SURELY WOULD. IN FACT, I'M A LITTLE
6 MORE MATURE THAN I WAS WHEN I WAS YOUNGER. I
7 THINK I WOULD.

8 Q. YOU COULD GIVE LIFE?

9 A. PARDON ME?

10 Q. YOU COULD GIVE LIFE?

11 A. YES, SIR.

12 Q. AND YOU COULD GIVE DEATH?

13 A. YES, SIR.

14 Q. ALL RIGHT, THANK YOU SIR, I APPRECIATE IT.

15 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE
16 DOOR FOR JUST A MOMENT, MR. SMITH.

17 (THE JUROR LEFT THE COURTROOM.)

18 THE COURT: WHAT SAYS THE DEFENSE?

19 MR. BOYD: HE'S QUALIFIED I BELIEVE.

20 THE COURT: THE STATE?

21 MR. POPE: WE SUBMIT HE'S QUALIFIED, YOUR HONOR.

22 THE COURT: ALL RIGHT, BRING HIM BACK IN.

23 (THE JUROR RETURNED TO THE COURTROOM.)

24 THE COURT: MR. SMITH, YOU'RE GOING TO BE A PART
25 OF THE POOL FROM WHICH WE DRAW THE JURY. THAT DOES NOT

1 NECESSARILY MEAN THAT YOU ABSOLUTELY WILL BE ON IT, BUT YOU
2 WILL BE PART OF THE LARGER GROUP FROM WHICH THE JURY IS
3 DRAWN.

4 WE AT THIS TIME DO NOT KNOW WHEN THAT WILL BE.
5 SO I AM GOING TO ASK YOU TO CALL BACK TONIGHT TO THE 1-800
6 NUMBER AFTER 6:00 O'CLOCK.

7 WHEN YOU COME, COME PREPARED TO STAY WITH US
8 BECAUSE YOU WILL BE HOUSED AND SEQUESTERED DURING THE
9 DURATION OF THE TRIAL.

10 DO YOU HAVE ANY EXTENUATING CIRCUMSTANCES THAT
11 WOULD INTERFERE WITH THAT?

12 THE JUROR: I WOULD LIKE TO STATE ONE IF I COULD,
13 SIR.

14 THE COURT: OKAY.

15 THE JUROR: I HAD THE FLU FOR TWO WEEKS
16 IMMEDIATELY AFTER CHRISTMAS. AND IMMEDIATELY AFTER THAT
17 SOME OF THE PRESCRIPTIONS THAT I TOOK CAUSED ME TO HAVE A
18 KIDNEY STONE. IT TOOK A WEEK TO PASS THAT. AND I HAVE HAD
19 A CASE OF DIVERTICULITIS IN THE LAST MONTH. I'VE MISSED A
20 LOT OF TIME IN MY NURSERY. I REALLY DON'T NEED TO MISS
21 ANYMORE TIME AT THIS TIME OF THE YEAR. I REALIZE THIS IS
22 REAL IMPORTANT AND LIKE I TOLD MR. POPE, I DO UNDERSTAND MY
23 CIVIC DUTY AND IF I SHOULD BE THERE, I WILL, BUT IF THERE
24 WAS ANY WAY POSSIBLE, I SURE WOULD LIKE -- IT'S GOING TO BE
25 A REAL HARDSHIP ON MY NURSERY.

1 THE COURT: I UNDERSTAND THAT. I DON'T BELIEVE
2 I CAN EXCUSE YOU FOR THAT, BUT I WILL CONSIDER THAT AS BEST
3 I CAN FOR WHATEVER REASON I CAN. BUT CALL BACK TONIGHT
4 AFTER 6:00.

5 DON'T DISCUSS THE CASE WITH ANYONE AND DON'T LET
6 YOURSELF BE EXPOSED TO ANY COVERAGE IN THE NEWSPAPER ABOUT
7 THE CASE.

8 THE JUROR: OKAY.

9 THE COURT: AND AS I SAY, WHEN YOU COME BACK,
10 COME BACK PREPARED TO STAY IF YOU ARE ACTUALLY CHOSEN ON
11 THE JURY.

12 THE JUROR: STAY FOR HOW LONG?

13 THE COURT: IT WILL PROBABLY BE UNTIL THE MIDDLE
14 OF NEXT WEEK.

15 THE JUROR: IN OTHER WORDS, BRING A WEEKS WORTH
16 OF CLOTHING?

17 THE COURT: YES, SIR.

18 THE JUROR: OKAY.

19 THE COURT: THANK YOU.

20 THE JUROR: THANK YOU.

21 (THE JUROR LEFT THE COURTROOM.)

22 THE COURT: ALL RIGHT, NEXT IS AVERY NEELY,
23 NUMBER 197.

24 AVERY NEELY, JUROR NUMBER 197, BLACK MALE, WAS
25 QUESTIONED AS FOLLOWS:

1 QUESTIONS BY THE COURT:

2 Q. MR. NEELY, IF YOU WOULD COME UP HERE AND HAVE A
3 SEAT RIGHT HERE. MR. NEELY, I WILL REINTRODUCE
4 MYSELF. I'M JOHN HAYES AND I'M THE JUDGE
5 ASSIGNED TO THIS CASE. I WILL REMIND YOU THAT
6 YOU ARE STILL UNDER OATH.

7 Q. AND I WANT TO TELL YOU AT THIS TIME THAT IF YOU
8 ARE CHOSEN AS A MEMBER OF THE JURY IN THIS CASE,
9 YOU MAY SEE T.V. CAMERAS OR PHOTOGRAPHERS IN THE
10 COURTROOM. THEY CANNOT TAKE YOUR PICTURE OR
11 REPORT ABOUT YOUR BEING HERE, SO DON'T BE
12 DISTRACTED BY THAT.

13 YOU SENT US IN A QUESTIONNAIRE. DO YOU BELIEVE
14 IT'S ACCURATE OR IS THERE ANYTHING ON THERE YOU
15 NEED TO CHANGE?

16 A. NO, IT'S ACCURATE.

17 Q. DID YOU REVIEW THE LIST OF WITNESSES IN THE JURY
18 ROOM?

19 A. YES, SIR.

20 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR ARE YOU
21 A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANY
22 OF THOSE INDIVIDUALS?

23 A. WELL, AS A FRIEND.

24 Q. WITH WHO?

25 A. WITH THE SHERIFF'S DEPARTMENT.

1 Q. YES?

2 A. A FRIEND, I'M WITH THE YORK POLICE AS A RESERVE
3 OFFICER.

4 Q. YOU'RE SERVING AS A RESERVE OFFICER NOW?

5 A. YES.

6 Q. I UNDERSTOOD WHEN WE TALKED YESTERDAY THAT YOU
7 DO NOT HAVE A COMMISSION, A LAW ENFORCEMENT
8 COMMISSION BUT THAT YOU ARE A RESERVE OFFICER.

9 A. THAT'S CORRECT.

10 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR
11 AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN
12 THE TRIAL OF THIS CASE?

13 A. NO, SIR.

14 Q. NOW, WHO ON THE WITNESS LIST NOW DO YOU KNOW?

15 A. BRUCE BRYANT, BETH BRYANT, GREG MAGGART, JERRY
16 ROLLINS, DEAN SHILLINGLAW, BOBBY STEVENSON, OTIS
17 WHITSTINE, PAT BENFIELD, DOUG MCKOWN.

18 Q. IS THAT IT?

19 A. YES, SIR.

20 Q. THE FACT THAT YOU KNOW THOSE INDIVIDUALS, WOULD
21 THAT AFFECT YOUR ABILITY TO BE FAIR AND
22 IMPARTIAL IN THE TRIAL OF THIS CASE?

23 A. NO, SIR.

24 Q. IN SPITE OF THAT, KNOWLEDGE OF THOSE
25 INDIVIDUALS, COULD YOU BASE YOUR VERDICT SOLELY

1 ON THE LAW AND THE EVIDENCE AS IT IS DEVELOPED
2 IN THE TRIAL?

3 A. I COULD.

4 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
5 YOU GOT HERE? READ ABOUT IT OR HEARD ABOUT IT
6 FROM ANY SOURCE WHATSOEVER?

7 A. YOU MEAN BEFORE YESTERDAY?

8 Q. YES, SIR.

9 A. YES, SIR.

10 Q. WOULD YOU BE ABLE TO TAKE THAT OUT OF YOUR MIND
11 AND BASE YOUR VERDICT SOLELY ON THE LAW AND THE
12 EVIDENCE AS IT IS DEVELOPED IN THE TRIAL?

13 A. YES, SIR.

14 Q. WOULD YOU BE ABLE TO NOT FACTOR THAT IN IN
15 DETERMINING THE GUILT AND THE PENALTY REGARDING
16 MR. ROBERTSON BUT RATHER, AGAIN, BASED ON WHAT
17 YOU HEAR AT TRIAL. COULD YOU DO THAT?

18 A. YES, SIR.

19 Q. THERE WERE THREE JUROR TYPES SET FORTH IN THE
20 JURY ROOM ON A SHEET OF PAPER. DID YOU REVIEW
21 THAT?

22 A. YES, SIR, I DID.

23 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

24 A. I WOULD HAVE TO SAY THE THIRD CATEGORY.

25 Q. ALL RIGHT. IN THERE I HAVE SET FORTH THE WORDS

1 AGGRAVATION AND MITIGATION IN REGARD TO
2 CIRCUMSTANCES AND BY THAT AGGRAVATION ARE
3 BASICALLY CIRCUMSTANCES THAT ATTEND THE
4 COMMISSION OF A CRIME THAT INCREASE ITS ENORMITY
5 OR ADD TO ITS INJURIOUS CONSEQUENCE. THEY ARE
6 NOT PART OF THE CRIME THEMSELVES BUT THEY ARE
7 SORT OF ABOVE AND BEYOND THE ESSENTIAL ELEMENTS
8 OF THE CRIME.

9 MITIGATING CIRCUMSTANCES ARE THOSE THAT WOULD
10 NOT CONSTITUTE A JUSTIFICATION OR EXCUSE FOR THE
11 OFFENSE BUT ARE THINGS WHICH IN FAIRNESS AND
12 MERCY MAY BE CONSIDERED AS EXTENUATING OR
13 REDUCING THE DEGREE OF MORAL CULPABILITY. DO
14 YOU UNDERSTAND THAT?

15 A. I UNDERSTAND.

16 Q. SO YOU ARE TELLING ME THAT WHEN WE REACH THE
17 SECOND PART OF THE TRIAL IF WE DO, AND THIS CASE
18 WOULD BE TRIED IN PARTS. THAT IS, THE FIRST
19 PART WOULD BE TO DETERMINE WHETHER OR MR.
20 ROBERTSON IS GUILTY OF MURDER. AND HE IS
21 PRESUMED INNOCENT OF THOSE CHARGES AND IS SO
22 PRESUMED UNTIL SUCH TIME AS A TRIAL JURY, THAT
23 JURY WERE TO FIND HIM UNANIMOUSLY GUILTY BEYOND
24 A REASONABLE DOUBT.
25 AND SO WE ARE TALKING ABOUT THE SECOND PART, THE

1 PENALTY PART, BUT EVEN THOUGH WE ARE TALKING
2 ABOUT THAT, WE ARE NOT PRESUMING THAT OR IT'S
3 NOT A GIVEN THAT WE WILL END UP THERE BECAUSE IF
4 HE IS FOUND NOT GUILTY, OF COURSE, THE CASE
5 WOULD BE OVER. BUT IF HE IS FOUND GUILTY, WE
6 WILL GO INTO THAT SECOND PHASE.

7 ARE YOU TELLING ME THAT AS A JUROR WHEN WE REACH
8 THAT SECOND PHASE, EVEN THOUGH HE HAD BEEN FOUND
9 GUILTY, YOU WOULD NOT HAVE MADE UP YOUR MIND AS
10 TO WHAT WOULD BE THE APPROPRIATE PUNISHMENT?

11 A. I WOULD NOT.

12 Q. ARE YOU TELLING ME THEN THAT YOU WOULD NEED TO
13 HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION
14 AND MITIGATION AND WOULD LISTEN AND FOLLOW THE
15 LAW AS GIVEN BY THE JUDGE BEFORE REACHING A
16 DECISION AS TO THE APPROPRIATE PUNISHMENT; IS
17 THAT WHAT YOU WOULD?

18 A. THAT'S WHAT I WOULD DO.

19 Q. IF YOU FELT THE FACTS WERE SUCH THAT THE PENALTY
20 OF LIFE IMPRISONMENT WAS THE APPROPRIATE
21 PENALTY, COULD YOU IMPOSE LIFE IMPRISONMENT?

22 A. YES, SIR.

23 Q. IF YOU FELT THE FACTS WARRANTED A VERDICT OF THE
24 DEATH PENALTY, COULD YOU IMPOSE THE DEATH
25 PENALTY?

1 A. YES, SIR.

2 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
3 MAY HAVE.

4 QUESTIONS BY MR. BRACKETT:

5 Q. GOOD AFTERNOON, MR. NEELY, HOW ARE YOU?

6 A. HOW'RE YOU DOING?

7 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
8 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
9 OVER AT COUNSEL TABLE WITH ME IS MR. TOMMY POPE,
10 THE SOLICITOR. HE AND I ARE PROSECUTING THIS
11 CASE ON BEHALF OF THE STATE.

12 SEATED OVER HERE AT COUNSEL TABLE IS MR. JIMMY
13 ROBERTSON, THE DEFENDANT IN THIS CASE, AND MR.
14 HANCOCK ONE OF HIS ATTORNEYS. MR. BOYD HAS JUST
15 STEPPED OUT AND HE IS THE OTHER ATTORNEY FOR THE
16 DEFENDANT.

17 A. YES, SIR.

18 Q. NOW, AT THE OUTSIDE I WANT TO TELL YOU EVEN
19 THOUGH IT SEEMS LIKE I AM INTERROGATING YOU, I'M
20 REALLY NOT. I JUST NEED TO KNOW HOW YOU FEEL ON
21 THESE THINGS AND SO I'M GOING TO ASK YOU SOME
22 QUESTIONS MAYBE IN A LITTLE BIT MORE DEPTH AND
23 DETAIL THAN THE JUDGE DID JUST TO KIND OF FLESH
24 IT OUT A LITTLE BIT AND SEE HOW YOU FEEL. THERE
25 ARE NO RIGHT OR WRONG ANSWERS. THE ONLY WRONG

1 ANSWER IS ONE THAT DOESN'T COME FROM YOUR HEART.
2 AS LONG AS YOU'RE TELLING ME HOW YOU FEEL, THEN
3 YOU'RE DOING A GOOD JOB.

4 AT THE START, YOU'RE A RESERVE POLICE OFFICER AT
5 THE CITY OF YORK?

6 A. RIGHT.

7 Q. OKAY. AND YOU TOLD THE JUDGE THAT THAT FACT
8 ISN'T GOING TO AFFECT YOUR ABILITY TO SERVE AS A
9 JUROR, IS IT?

10 A. NO, SIR.

11 Q. YOU UNDERSTAND THAT IN ORDER FOR ANYBODY TO GET
12 A FAIR TRIAL, THEY NEED TWELVE PEOPLE OVER HERE
13 WHO ARE IMPARTIAL, DON'T HAVE ANY BIAS TOWARD
14 ONE SIDE OR THE OTHER. WHEN THEY COME IN HERE,
15 THEY DON'T KNOW ANYTHING ABOUT THE CASE OR IF
16 THEY DO KNOW SOMETHING, THEY COULD PUT IT OUT OF
17 THEIR MIND BECAUSE IT'S HEARSAY OR SOMETHING
18 LIKE THAT; THEY DON'T KNOW THE FACTS OF THE
19 CASE. THEY ARE GOING TO TAKE THIS CASE AS IT
20 COMES TO THEM FROM THAT WITNESS STAND YOU'RE
21 SITTING IN AND THE EVIDENCE THAT COMES IN IN THE
22 TRIAL. AND YOU'RE THAT KIND OF JUROR?

23 A. YES, SIR.

24 Q. YOU WOULDN'T ALLOW THE FACT THAT YOU ARE A
25 RESERVE POLICE OFFICER TO AFFECT HOW YOU PERFORM

1. YOUR JOB AS A JUROR?

2. A. NO, SIR.

3. Q. AND IF SOME OTHER POLICE OFFICERS WERE TO COME
4. IN HERE AND TESTIFY IN THIS CASE, SUPPOSE SOME
5. OF THESE PEOPLE AT THE SHERIFF'S DEPARTMENT THAT
6. YOU KNOW, SUPPOSE THEY COME IN HERE AND SIT DOWN
7. AND TESTIFY RIGHT THERE, DOES THE FACT THAT
8. YOU'RE A POLICE OFFICER OR THAT YOU KNOW THEM,
9. THAT'S NOT GOING TO AFFECT HOW YOU VIEW THEIR
10. TESTIMONY IS IT?

11. A. NO, SIR.

12. Q. ARE YOU GOING TO SAY WELL THEY ARE A POLICE
13. OFFICER. THEY ARE SAYING THIS ONE THING OVER
14. HERE BUT THAT OTHER WITNESS WHO ISN'T A POLICE
15. OFFICER, THEY ARE SAYING SOMETHING DIFFERENT, SO
16. I'M GOING TO BELIEVE THIS PERSON.

17. A. NO, SIR.

18. Q. YOU'RE JUST GOING TO TAKE THEM AS THEY COME,
19. GIVE THEM THE ONCE OVER, WATCH THEM CAREFULLY
20. AND MAKE YOUR OWN MIND UP IN YOUR HEART AS TO
21. WHETHER THEY ARE TELLING THE TRUTH?

22. A. THAT'S RIGHT.

23. Q. AND THE FACT THAT THEY ARE A POLICE OFFICER
24. ISN'T GOING TO ENTER INTO YOUR DECISION MAKING
25. AT ALL?

1 A. NO.

2 Q. OKAY. OR THE FACT THAT THEY ARE A FRIEND OF
3 YOURS OR THAT YOU MIGHT KNOW THEM THROUGH WORK -
4 - THE PEOPLE THAT YOU KNOW, DO YOU KNOW THEM
5 THROUGH WORK OR ARE THEY ACTUALLY PERSONAL
6 FRIENDS OF YOURS?

7 A. NO, JUST THROUGH WORK.

8 Q. ALL RIGHT, SIR. YOU REALIZE THAT THIS DEFENDANT
9 IS PRESUMED INNOCENT. HE COMES TO COURT
10 PRESUMED INNOCENT AND WE HAVE TO SHOW YOU THAT
11 HE IS NOT INNOCENT. WE HAVE TO BRING THE
12 EVIDENCE INTO COURT TO SAY HE'S NOT INNOCENT,
13 THAT PRESUMPTION OF INNOCENCE SHOULD BE TAKEN
14 AWAY FROM HIM, HE'S GUILTY. WE HAVE THAT
15 BURDEN; WE HAVE THAT JOB. DO YOU UNDERSTAND
16 THAT?

17 A. I UNDERSTAND.

18 Q. THE DEFENSE OVER HERE, THEY DON'T HAVE TO PROVE
19 ANYTHING AT ALL.

20 A. RIGHT.

21 Q. THEY DON'T HAVE TO BRING ANY EVIDENCE IN, THEY
22 DON'T HAVE TO CALL ANY WITNESSES; THEY CAN
23 REMAIN SILENT; THEY HAVE THE RIGHT TO REMAIN
24 SILENT. YOU'RE AWARE OF THAT?

25 A. YES, SIR.

1 Q. AND YOU'RE NOT GOING TO HOLD -- IF THEY DECIDE
2 NOT TO PUT ANY EVIDENCE UP, YOU'RE NOT GOING TO
3 HOLD THAT AGAINST THEM ARE YOU?

4 A. NO, I'M NOT.

5 Q. OKAY. IF WE GET THROUGH THAT FIRST PHASE AND
6 THE STATE HAS BROUGHT THE EVIDENCE IN, WE HAVE
7 BORNE OUR BURDEN OF PROOF, WE HAVE CONVINCED THE
8 JURY BEYOND A REASONABLE DOUBT THAT HE IS GUILTY
9 OF THESE MURDERS, WE MOVE INTO THE SECOND PHASE
10 OF THE TRIAL; WE MOVE INTO THE SECOND PART OF
11 THE TRIAL WHICH IS THE PENALTY PHASE.

12 A. I UNDERSTAND.

13 Q. IN THAT PHASE THE STATE, AGAIN, HAS THE BURDEN
14 OF PROOF. WE HAVE TO PROVE THAT IT'S NOT JUST A
15 REGULAR MURDER; WE HAVE TO PROVE THAT IT'S AN
16 AGGRAVATED MURDER; THAT THIS IS A MURDER -- THAT
17 THERE ARE AGGRAVATING CIRCUMSTANCES ABOUT THIS
18 MURDER WHICH MAKES IT WORSE THAN A REGULAR
19 MURDER. THAT'S OUR JOB TO PROVE THAT.

20 YOU UNDERSTAND IN THAT PHASE, AGAIN, THE DEFENSE
21 DOESN'T NEED TO PUT ANY EVIDENCE UP WHATSOEVER.
22 THEY DON'T HAVE TO PROVE ANYTHING AT ALL. DO
23 YOU UNDERSTAND THAT?

24 A. I UNDERSTAND.

25 Q. OKAY. WHEN YOU GO INTO THAT SECOND PHASE OF THE

1 TRIAL, ASSUME HE'S BEEN CONVICTED, AND YOU
2 UNDERSTAND HE'S CHARGED WITH KILLING HIS
3 PARENTS.

4 A. YES, SIR.

5 Q. ASSUME HE'S BEEN CONVICTED OF THE MURDER OF HIS
6 PARENTS, YOU'RE NOT GOING TO GO INTO THAT SECOND
7 PHASE OF THE TRIAL PREDISPOSED ONE WAY OR THE
8 OTHER, ARE YOU?

9 A. NO, SIR.

10 Q. FOR LIFE OR FOR DEATH?

11 A. NO, SIR.

12 Q. AT THAT POINT IN THE TRIAL RIGHT AT THE
13 BEGINNING OF THE PENALTY PHASE, YOU HAVEN'T
14 HEARD ANY EVIDENCE AT ALL, RIGHT?

15 A. RIGHT.

16 Q. SO, YOU DON'T KNOW WHICH WAY TO GO?

17 A. RIGHT.

18 Q. YOUR MIND IS OPEN TO EITHER POSSIBILITY.

19 A. RIGHT.

20 Q. IF WE PUT UP THE AGGRAVATING CIRCUMSTANCES AND
21 WE PROVE AGGRAVATING CIRCUMSTANCES, THE DEFENSE
22 HASN'T HAD A CHANCE TO GO YET, YOUR MIND IS
23 STILL GOING TO BE OPEN AND WAIT TO SEE WHAT THEY
24 HAVE TO SAY.

25 A. RIGHT.

1 Q. ISN'T THAT RIGHT?

2 A. RIGHT.

3 Q. NOW, THE DEFENSE GOES AND THEY PUT UP THEIR
4 MITIGATING CIRCUMSTANCES AND THE JUDGE CHARGES
5 YOU ON THE LAW. UP UNTIL THE TIME YOU HEAR THE
6 LAW FROM THE JUDGE, YOU DON'T HAVE ANY IDEA
7 WHICH WAY YOU'RE GOING TO GO BECAUSE YOU DON'T
8 EVEN KNOW WHAT THE LAW IS, RIGHT?

9 A. RIGHT.

10 Q. SO, YOU'RE GOING TO WAIT UNTIL THE VERY, VERY
11 END OF THE TRIAL AFTER THE JUDGE TELLS YOU WHAT
12 THE LAW IS AND THEN HE TELLS YOU, YOU BEGIN
13 DELIBERATING NOW, AT THAT POINT YOU'RE ENTITLED
14 TO START THINKING ABOUT WHAT PENALTY TO IMPOSE.

15 A. RIGHT.

16 Q. ARE YOU THE KIND OF JUROR THAT CAN DO THAT?

17 A. BASED ON THE FACTS; YES.

18 Q. OKAY. ONE OF THE UNUSUAL CIRCUMSTANCES OF A
19 DEATH PENALTY CASE THAT MAKES IT A LITTLE BIT
20 DIFFERENT FROM ANY OTHER CRIMINAL CASE IS THAT
21 IN A REGULAR CASE THE ONLY PERSON THAT HAS TO
22 SIGN WHAT THE VERDICT IS IS THE FOREPERSON OF
23 THE JURY. IN A REGULAR CASE THEY WOULD JUST
24 WRITE GUILTY OR NOT GUILTY AND THEY SIGN THEIR
25 NAME AND THAT'S IT.

1 IN A DEATH PENALTY CASE IN THE PENALTY PHASE
2 IT'S A LITTLE BIT DIFFERENT. IF THE JURY FINDS
3 THAT HE SHOULD BE GIVEN LIFE, AFTER LISTENING TO
4 EVERYTHING, HEARING ALL THE EVIDENCE FROM BOTH
5 SIDES AND WAITING FOR THE JUDGE TO TELL YOU WHAT
6 THE LAW IS, THEY START THINKING ABOUT IT AND
7 THEY SAY, OKAY, WE'RE GOING TO GIVE HIM LIFE.
8 ONLY THE FOREPERSON NEEDS TO SIGN. THEY WRITE
9 LIFE, AND THE FOREPERSON SIGNS.

10 IF IT'S DEATH THOUGH, IT'S DIFFERENT. EACH
11 JUROR HAS TO SIGN THEIR NAME SAYING THAT WE
12 BELIEVE THE DEFENDANT SHOULD BE SENTENCED TO
13 DEATH.

14 NOW IF WE REACH THAT SECOND PART OF THE TRIAL
15 AND THE EVIDENCE COMES IN AND YOU GO BACK TO
16 DELIBERATE ON THAT AND YOU GET TO THE PART WHERE
17 YOU DECIDE THAT THE SENTENCE SHOULD BE DEATH AND
18 EVERYBODY DOES, THE PEN COMES INTO YOUR HAND.
19 COULD YOU PUT THAT PEN TO PAPER AND SIGN YOUR
20 NAME AVERY NEELY SENTENCING THIS MAN OVER HERE
21 TO HIS DEATH?

22 A. I COULD DO THAT.

23 Q. COURT'S INDULGENCE ONE MOMENT.

24 (AFTER A BRIEF PAUSE.)

25 Q. THANK YOU VERY MUCH, MR. NEELY. PLEASE ANSWER

1 ANY QUESTIONS DEFENSE COUNSEL MAY HAVE.

2 THE COURT: MR. HANCOCK.

3 QUESTIONS BY MR. HANCOCK:

4 Q. MR. NEELY, I'M BILL HANCOCK. I REPRESENT JIMMY
5 ROBERTSON SEATED HERE AT THE TABLE AND MR. BOYD,
6 JIM BOYD, IS SITTING HERE AND HE IS CO-COUNSEL
7 IN THIS CASE.

8 YOU HAVE HEARD A LOT OF DISCUSSIONS, WE KEEP
9 COMING AT YOU IN WAVES BUT I HAVE SOME QUESTIONS
10 THAT I NEED TO ASK.

11 AND, AGAIN, I WILL TELL YOU THAT THERE IS NO
12 PROPER OR IMPROPER ANSWER. IT IS YOUR ANSWER
13 AND UNIQUE TO YOU AND WE JUST NEED TO LISTEN TO
14 IT AND PAY ATTENTION TO IT AND RESPECT THAT
15 ANSWER AND THEN GO FROM THERE.

16 A. ALL RIGHT.

17 Q. SO, I'M JUST GOING TO ASK YOU THESE QUESTIONS
18 AND THEY MAY BE REPETITIVE TO WHAT'S BEEN ASKED
19 YOU, BUT I'M JUST TRYING TO UNDERSTAND EXACTLY
20 WHAT IS HAPPENING, WHAT IS GOING ON.

21 NOW, YOU FILLED OUT A QUESTIONNAIRE AND SENT IT
22 IN WHEN YOU RECEIVED YOUR SUMMONS TO JURY DUTY.
23 AND ON THAT QUESTIONNAIRE YOU ANSWERED, HAD YOU
24 EVER BEEN CALLED FOR JURY DUTY AND YOU SAID YES,
25 AND THEN WERE YOU CHOSEN AND YOU SAID NO, DUE TO

1 BEING A POLICE OFFICER. WAS THAT IN YOUR
2 CAPACITY AS A RESERVE OFFICER FOR THE -- IS IT
3 THE CITY OF YORK?

4 A. THE CITY OF YORK.

5 Q. OKAY. SO, YOU HAVE ALWAYS SERVED AS A RESERVE
6 OFFICER FOR THE CITY OF YORK.

7 A. YES, SIR.

8 Q. AND FOR HOW LONG HAVE YOU DONE THAT, SIR?

9 A. ABOUT NINE YEARS.

10 Q. NINE YEARS? AND IN ORDER TO BECOME A RESERVE
11 OFFICER, WHAT IS IT NECESSARY FOR YOU TO DO,
12 SIR?

13 A. YOU'VE GOT TO TAKE 60 HOURS OF CLASS TIME AND
14 THEN GO TO COLUMBIA AND TAKE A TEST.

15 Q. YOU TAKE 60 HOURS OF CLASS TIME AND GO TO
16 COLUMBIA AND TAKE A TEST?

17 A. YES, SIR.

18 Q. AND WHAT DOES A RESERVE OFFICER DO -- EXCUSE ME,
19 LET ME BACK UP. DO YOU GET ANY TYPE OF
20 COMMISSION OR CERTIFICATE OR ANYTHING ELSE THAT
21 ALLOWS YOU TO BE A RESERVE OFFICER?

22 A. YOU GET A CERTIFICATE, YES.

23 Q. YOU GET A CERTIFICATE.

24 A. THAT'S RIGHT, AFTER YOU PASS YOUR CLASS.

25 Q. AND YOU HAVE THAT CERTIFICATE?

- 1 A. YES, SIR.
- 2 Q. WHAT DOES A RESERVE OFFICER DO?
- 3 A. WELL, HE DOES EVERYTHING A POLICE OFFICER DOES.
- 4 Q. EVERYTHING A POLICE OFFICER DOES? HAVE YOU EVER
- 5 ARRESTED ANYBODY?
- 6 A. YES, SIR.
- 7 Q. SO, YOU EVIDENTLY HAVE THE POWER TO ARREST.
- 8 A. YES.
- 9 Q. IS THAT CORRECT. SIR?
- 10 A. THAT'S CORRECT.
- 11 Q. AND HAVE YOU ENTERED INTO THEIR PROSECUTION?
- 12 A. NO, SIR.
- 13 Q. HAVE YOU DEALT WITH THE SOLICITOR'S OFFICE IN
- 14 YOUR POWER AS AN ARRESTING OFFICER?
- 15 A. I THINK IT WAS ON A DUI CASE ONE TIME.
- 16 Q. ON A DUI CASE?
- 17 A. UH HUH.
- 18 Q. AND YOU DEAL WITH THE SHERIFF'S DEPARTMENT
- 19 EVIDENTLY QUITE OFTEN BECAUSE YOU KNEW MANY OF
- 20 THEIR DEPUTIES, IS THAT TRUE?
- 21 A. YES, SIR.
- 22 Q. AND YOU HAVE TESTIFIED, AND I AM JUST TRYING TO
- 23 FIND OUT, BECAUSE YOU ARE TECHNICALLY A POLICE
- 24 OFFICER, RIGHT?
- 25 A. RIGHT.

1 Q. YOU WEAR A UNIFORM, YOU HAVE A BADGE AND YOU MAY
2 ARREST ON YOUR OWN?

3 A. I CAN.

4 Q. AND DO YOU EVER RIDE IN A CAR BY YOURSELF?

5 A. YES, SIR.

6 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
7 BASED ON A REVIEW OF THE CASE LAW. I WAS REVIEWING IT WHILE
8 MR. BRACKETT AND MR. HANCOCK WERE QUESTIONING THE JUROR,
9 THE STATE MAY BE WILLING TO STIPULATE -- I THINK BASED ON
10 COOPER IT MAY BE TOO CLOSE TO BE WORTH CONTINUING.

11 THERE ARE SOME OLD CASES THAT SAY SPECIAL DEPUTY
12 DOESN'T APPLY BUT IT'S CIVIL PROCESS AND IF HE'S ACTING AS
13 A POLICE OFFICER ---

14 THE COURT: BOTH SIDES AGREE HE SHOULD BE
15 EXCUSED?

16 MR. POPE: I BELIEVE SO UNDER THE CASE LAW, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT. WE ARE GOING TO EXCUSE
19 YOU. AFTER ALL OF THAT, WE HAVE DETERMINED THAT BECAUSE OF
20 YOUR RELATIONSHIP WITH LAW ENFORCEMENT, WE ARE GOING TO
21 EXCUSE YOU.

22 MR. POPE: NOT THAT I WANT TO.

23 THE COURT: YOU CAN BE EXCUSED. THANK YOU A LOT.

24 THE JUROR: THANK YOU, SIR.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WE WILL CALL IN MS. ZAPATA.

2 BETTY ZAPATA, JUROR NUMBER 300, WHITE FEMALE, WAS
3 QUESTIONED AS FOLLOWS:

4 QUESTIONS BY THE COURT:

5 Q. MS. ZAPATA, IF YOU WILL COME UP HERE AND HAVE A
6 SEAT RIGHT BETWEEN THIS LADY AND I.

7 A. RIGHT HERE?

8 Q. YES, MA'AM. REMEMBER I'M JOHN HAYES; I'M THE
9 JUDGE THAT IS ASSIGNED TO THIS TRIAL AND YOU ARE
10 STILL UNDER OATH.

11 DURING THE COURSE OF THE TRIAL IF YOU ARE SEATED
12 ON THE JURY, YOU MAY SEE T.V. CAMERAS OR
13 PHOTOGRAPHERS IN THE COURTROOM BUT DON'T BE
14 DISTRACTED BY THEM BECAUSE THEY CAN'T TAKE YOUR
15 PICTURE OR REPORT ABOUT YOU. SO, DON'T BE
16 DISTRACTED BY THEM.

17 YOU SENT IN A QUESTIONNAIRE. DO YOU BELIEVE IT
18 IS ACCURATE OR IS THERE ANYTHING ON THERE THAT
19 YOU NEED TO CHANGE?

20 A. THE ONLY THING I WANTED TO SAY IS THAT IF I HAVE
21 TO STAY TWO WEEKS, I DON'T HAVE ANYBODY TO DO MY
22 JOB.

23 Q. WHAT IS YOUR JOB?

24 A. PAYROLL FOR OUR COMPANY. WE HAVE A HEATING AND
25 AIR CONDITIONING COMPANY AND I DO THE PAYROLL

1 AND BILLING.

2 Q. OKAY. ASIDE FROM THAT, IS THERE ANYTHING ELSE
3 ABOUT THE QUESTIONNAIRE THAT YOU WANT TO ADD?

4 A. NO, SIR.

5 Q. DID YOU REVIEW THAT LIST OF WITNESSES?

6 A. YES, I DID.

7 Q. WAS THERE ANYBODY ON THERE THAT YOU ARE RELATED
8 TO OR KNEW?

9 A. NO, SIR.

10 Q. HAVE YOU HEARD ABOUT THIS CASE AT ALL BEFORE YOU
11 CAME HERE?

12 A. JUST BARELY, THAT SOMETHING HAPPENED, THAT'S
13 ALL. I DON'T KNOW ANY OF THE DETAILS OR
14 ANYTHING.

15 Q. CAN YOU PUT OUT OF YOUR MIND WHAT YOU HAVE HEARD
16 AND BASE YOUR VERDICT IN THIS CASE SOLELY ON THE
17 LAW AND EVIDENCE THAT'S DEVELOPED IN THE TRIAL?

18 A. YES, SIR.

19 Q. SO, YOU COULD BE FAIR AND IMPARTIAL TO BOTH THE
20 STATE AND THE DEFENDANT AND NOT FACTOR IN
21 ANYTHING YOU'VE HEARD PRIOR TO THE START OF THE
22 TRIAL; IS THAT CORRECT?

23 A. YES, SIR.

24 Q. THIS CASE WOULD PROCEED IN TWO PARTS. ONE
25 DEALING WITH WHETHER OR NOT MR. ROBERTSON IS IN

1 FACT GUILTY OF MURDER. IF HE IS FOUND NOT
2 GUILTY, THEN, OF COURSE, THE CASE ENDS. IF HE'S
3 FOUND GUILTY BY A JURY UNANIMOUSLY BEYOND A
4 REASONABLE DOUBT, THE CASE WOULD MOVE INTO THE
5 SECOND PHASE.

6 A. UH HUH.

7 Q. AND THE FACT THAT WE ARE TALKING ABOUT THE
8 SECOND STAGE IS NOT TO PRESUPPOSE THAT WE WILL
9 EVER GET THERE, BUT WE HAVE TO TALK ABOUT IT AT
10 THIS POINT.

11 AT THE SECOND STAGE WHAT PENALTY TO IMPOSE WOULD
12 BE THE QUESTION FOR THE JURY TO ADDRESS.

13 I PUT IN THE JURY ROOM A LIST OF TYPES OF
14 JURORS, DID YOU REVIEW THAT?

15 A. YES, I DID.

16 Q. DID YOU FIND YOURSELF AS ONE OF THOSE?

17 A. YES, SIR.

18 Q. WHICH ONE?

19 A. THE THIRD ONE.

20 Q. ALL RIGHT. IN THAT TYPE OF JUROR I USED THE
21 WORDS WHEN PREPARING IT AGGRAVATING AND
22 MITIGATING CIRCUMSTANCES.

23 AGGRAVATING CIRCUMSTANCES WOULD BE CIRCUMSTANCES
24 ATTENDING THE COMMISSION OF A CRIME WHICH ARE
25 NOT PART OF THE CRIME ITSELF BUT WHICH ADD TO OR

1 INCREASE ITS ENORMITY OR ITS INJURIOUS
2 CONSEQUENCE.

3 MITIGATING CIRCUMSTANCES ARE THOSE CIRCUMSTANCES
4 THAT DON'T CONSTITUTE A JUSTIFICATION OR EXCUSE
5 FOR AN OFFENSE BUT WHICH IN FAIRNESS AND MERCY
6 MAY BE CONSIDERED AS EXTENUATING OR REDUCING
7 ONE'S CULPABILITY. DO YOU UNDERSTAND THAT?

8 A. I THINK SO.

9 Q. SO YOU'RE TELLING ME THAT IF YOU SAT ON A JURY
10 AND MR. ROBERTSON'S GUILT WAS DETERMINED BEYOND
11 A REASONABLE DOUBT AND WE MOVED INTO THAT SECOND
12 PHASE, YOU WOULD NOT HAVE MADE UP YOUR MIND
13 PRIOR TO THAT TIME AS TO WHAT THE APPROPRIATE
14 PUNISHMENT WOULD BE. IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. YOU ARE TELLING ME THAT YOU ARE THE TYPE JUROR
17 WHO WOULD WANT TO HEAR THE FACTS AND
18 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND
19 WOULD LISTEN TO AND FOLLOW THE LAW AS THE JUDGE
20 CHARGES AND YOU WOULD MAKE A DECISION THEN AND
21 ONLY THEN REGARDING PUNISHMENT. IS THAT
22 CORRECT?

23 A. CORRECT.

24 Q. AND IF YOU FELT THAT THE FACTS WERE SUCH THAT
25 THE APPROPRIATE PENALTY WOULD BE LIFE

1 IMPRISONMENT, COULD YOU RETURN SUCH A VERDICT?

2 A. DO YOU MIND SAYING THAT AGAIN?

3 Q. IF YOU FELT AFTER YOU'VE HEARD THE FACTS AND THE
4 JUDGE'S CHARGE ON THE LAW, YOU DETERMINED THAT
5 LIFE IMPRISONMENT WAS WHAT PENALTY SHOULD BE
6 IMPOSED ON MR. ROBERTSON, IF WE GOT THAT FAR,
7 COULD YOU SO DO THAT?

8 A. YES, SIR.

9 Q. IF YOU FELT ALTERNATIVELY THAT THE FACTS WERE
10 SUCH THAT THE VERDICT THAT WAS APPROPRIATE WOULD
11 BE THE DEATH PENALTY, COULD YOU IMPOSE THAT?

12 A. YES, SIR.

13 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS
14 MAY HAVE.

15 QUESTIONS BY MR. BOYD:

16 Q. GOOD AFTERNOON.

17 A. GOOD AFTERNOON.

18 Q. I'M JIM BOYD AND I REPRESENT JIMMY ROBERTSON IN
19 THIS CASE; HE'S SEATED OVER THERE. MY CO-
20 COUNSEL IS BILL HANCOCK; HE'S SEATED RIGHT
21 THERE.

22 A. UH HUH.

23 Q. I NEED TO FOLLOW UP AND ASK YOU A COUPLE OF
24 QUESTIONS OR A FEW QUESTIONS ABOUT WHAT THE
25 JUDGE ASKED YOU. YOU SAID THAT YOU DON'T KNOW

1 ANYBODY ON THAT WITNESS LIST; IS THAT RIGHT?

2 A. NO, SIR, I DON'T.

3 Q. OKAY. AND I KNOW YOU'RE SITTING THERE IN A
4 WITNESS CHAIR AND THAT'S A LITTLE SCARY ---

5 A. IT IS VERY SCARY.

6 Q. BUT THERE ARE NO RIGHT OR WRONG ANSWERS TO WHAT
7 I'M GOING TO ASK YOU, SO IF YOU WILL TELL ME
8 WHAT YOU TRULY FEEL, THAT'S FINE. BECAUSE
9 NOBODY IS GOING TO GET ON YOU NO MATTER WHICH
10 WAY YOU ANSWER. OKAY?

11 A. OKAY.

12 Q. YOU ANSWERED AND SAID YOU'RE IN CATEGORY THREE
13 AS FAR AS THE JUROR WHO COULD EITHER VOTE FOR
14 LIFE IMPRISONMENT OR FOR THE DEATH PENALTY
15 DEPENDING ON THE CIRCUMSTANCES. IS THAT
16 CORRECT?

17 A. YES, SIR.

18 Q. AND YOU UNDERSTAND THAT THIS TRIAL IS A CAPITAL
19 MURDER CASE. IN A CAPITAL MURDER CASE THE FIRST
20 THING THAT THE JURY DETERMINES IS WHETHER OR NOT
21 THE PERSON ON TRIAL, MY CLIENT JIMMY, WOULD BE
22 CONVICTED OF MURDER OR NOT. IF HE'S FOUND NOT
23 GUILTY, THAT ENDS THE TRIAL RIGHT THERE, THERE
24 IS NOT A PENALTY PHASE, OBVIOUSLY.

25 THE QUESTIONS I AM GOING TO ASK YOU ARE ABOUT

1 THE PENALTY PHASE ITSELF IF WE GET TO THAT AND
2 THIS IS THE ONLY TIME I GET TO ASK YOU ABOUT
3 THAT, SO I HAVE TO GO ON AND ASK YOU ABOUT IT
4 NOW EVEN THOUGH HE HASN'T BEEN CONVICTED OF IT.
5 AND I DON'T WANT YOU TO ASSUME THAT HE WILL BY
6 ME ASKING THESE QUESTIONS.

7 A. OKAY.

8 Q. IF YOU'RE SITTING ON THAT TRIAL, A MURDER CASE,
9 A CAPITAL MURDER CASE SITTING AS A JUROR, NOW AT
10 THAT POINT IF WE GET TO THAT PHASE HE WILL HAVE
11 ALREADY BEEN CONVICTED OF MURDER. SO THAT MEANS
12 THAT HE HAS ALREADY BEEN CONVICTED OF THE
13 MURDERS AND IT WASN'T SELF-DEFENSE OR ACCIDENT
14 OR ANYTHING LIKE THAT. HE HAD BEEN FOUND GUILTY
15 OF DOING IT DELIBERATELY AND THE WHOLE WORKS.
16 AND HE IS CHARGED -- I DON'T KNOW IF YOU KNOW,
17 HE IS CHARGED WITH KILLING BOTH OF HIS PARENTS.
18 YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. KNOWING THAT HE'S CHARGED WITH KILLING BOTH OF
21 YOUR PARENTS -- I'M SORRY, BOTH OF HIS PARENTS,
22 NOT YOURS -- KNOWING THAT HE IS CHARGED WITH
23 KILLING BOTH OF HIS PARENTS, CAN YOU STILL
24 CONSIDER A LIFE SENTENCE EVEN IF HE IS FOUND
25 GUILTY OF THAT?

1 (AFTER A PAUSE.)

2 A. I THINK SO. IT'S ACCORDING TO THE
3 CIRCUMSTANCES.

4 Q. OKAY, IT DEPENDS ON THE CIRCUMSTANCES?

5 A. YES.

6 Q. AND IF HE IS CONVICTED, THE STATE CAN INTRODUCE
7 WHAT'S CALLED AGGRAVATING CIRCUMSTANCES. THAT'S
8 CIRCUMSTANCES TO MAKE THE MATTER EVEN WORSE.

9 A. UH HUH.

10 Q. AND WE CAN PRESENT, IF WE SO CHOOSE, MITIGATING
11 CIRCUMSTANCES WHICH MAY BE THINGS THAT LESSEN
12 HIS CULPABILITY. NOT EXCUSE HIM FROM WHAT HE
13 DID, BUT JUST LESSEN HIS DEGREE OF CULPABILITY
14 THAT YOU SHOULD CONSIDER AS FAR AS PUNISHMENT
15 GOES.

16 A. UH HUH.

17 Q. CAN YOU CONSIDER THOSE MITIGATING CIRCUMSTANCES?

18 A. YES, SIR.

19 Q. OKAY. DO YOU START WITH A PRESUMPTION THAT
20 EITHER SENTENCE IS MORE APPROPRIATE, EITHER LIFE
21 IMPRISONMENT OR DEATH PENALTY IN A CASE LIKE
22 THIS?

23 A. NO, SIR, BECAUSE I DON'T REALLY KNOW THE CASE.

24 Q. SO YOU ARE OPEN-MINDED RIGHT NOW ABOUT IT?

25 A. UH HUH.

1 Q. OKAY. AND LET ME ASK YOU, DO YOU HAVE ANY
2 STRONG BELIEFS ONE WAY OR THE OTHER THAT WOULD
3 AFFECT YOUR ABILITY TO BE A JUROR IN A
4 SENTENCING PHASE OF A CAPITAL CASE, RELIGIOUS
5 BELIEFS OR ANY OTHER KIND OF BELIEFS THAT WOULD
6 AFFECT YOUR ABILITY TO SIT FAIRLY?

7 A. NO, SIR, ONLY THAT I WOULD RATHER NOT DO IT.
8 BUT OTHER THAN THAT, NO, SIR.

9 Q. ALL RIGHT.

10 MR. POPE: I'M SORRY, YOUR HONOR, I DIDN'T HEAR
11 THE LAST ANSWER.

12 THE COURT: SHE SAID OTHER THAN RATHER NOT DOING
13 IT, NOTHING OTHER THAN THAT.

14 Q. AND IF YOU WERE CHOSEN ON THE JURY AND YOU DO
15 FIND THAT THE DEATH PENALTY IS APPROPRIATE, YOU
16 AND THE OTHER JURORS WILL ALL HAVE TO SIGN THEIR
17 NAMES ON THE VERDICT FORM SAYING YOU SENTENCE
18 HIM TO DEATH. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND COULD YOU DO THAT, KNOWING YOUR SIGNATURE IS
21 GOING TO SENTENCE HIM TO A DEATH SENTENCE?

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

23 Q. AND JUST A FEW OTHER QUESTIONS. OF COURSE YOU
24 UNDERSTAND THAT IF YOU'RE SEATED ON A JURY,
25 OTHER JURORS MAY HAVE DIFFERENT OPINIONS THAN

1 YOURS?

2 A. YES.

3 Q. AND, OF COURSE, YOUR OPINION IS ENTITLED TO BE
4 RESPECTED BY EVERYONE, THE OTHER JURORS, THE
5 COURT, US, EVERYBODY.. YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. AND LIKEWISE, JURORS WHOSE OPINIONS MAY DIFFER
8 FROM YOURS ARE ENTITLED TO HAVE THEIR OPINION,
9 TOO, AND THAT SHOULD BE RESPECTED BY YOU.

10 A. YES.

11 Q. AND IF YOU WERE ON THE JURY AND YOU WERE IN THE
12 MINORITY, SAY YOU WERE THE ONLY JUROR WHO
13 HONESTLY, I KNOW YOU WOULD LISTEN TO OTHER
14 JURORS AND DISCUSS IT AND ALL OF THAT BUT WHEN
15 IT CAME DOWN TO IT IF YOU WERE CONVINCED THAT
16 THE LIFE SENTENCE WAS APPROPRIATE AND EVEN ALL
17 ELEVEN OTHER JURORS WERE AGAINST YOU, WOULD YOU
18 CHANGE YOUR MIND JUST TO BE WITH THE MAJORITY?

19 A. LEGALLY I DON'T KNOW HOW THAT WOULD WORK, BUT I
20 MIGHT WOULD STICK WITH MY CONVICTION ON IT.

21 Q. WHAT I'M ASKING ---

22 A. I MEAN I WOULD HAVE TO GO ALONG ---

23 Q. WOULD YOU CHANGE YOUR MIND JUST TO AGREE WITH
24 EVERYONE ELSE OR WOULD YOU STICK WITH YOUR
25 CONVICTION IF YOU STILL HONESTLY FELT YOUR

1 CONVICTION?

2 A. I DON'T KNOW HOW TO ANSWER THAT. I WANT TO BE
3 TRUTHFUL IN HOW I FEEL, SO I WOULD STICK WITH
4 HOW I FEEL I GUESS, I DON'T KNOW.

5 Q. AND YOU SAID -- WOULD YOU HAVE ANY PROBLEMS
6 ABOUT BEING SEQUESTERED AND BEING AWAY FROM HOME
7 FOR THE NEXT WEEK OR WEEK AND A HALF WHILE YOU
8 SAT ON THIS JURY.

9 A. THE ONLY PROBLEM I HAVE IS I DON'T HAVE ANYBODY
10 TO DO MY WORK, YOU KNOW. OTHER THAN THAT AND
11 RATHER NOT DOING THIS, NO.

12 Q. OKAY. THANK YOU. THAT'S ALL THE QUESTIONS I
13 HAVE.

14 QUESTIONS BY MR. BRACKETT:

15 Q. GOOD AFTERNOON, MA'AM, HOW ARE YOU?

16 A. WELL, I DON'T KNOW.

17 Q. I'LL JUST BE BRIEF.

18 A. OKAY.

19 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
20 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT AND THIS
21 IS TOMMY POPE OVER THERE. HE AND I ARE
22 PROSECUTING THIS CASE ON BEHALF OF THE STATE.

23 A. OKAY.

24 Q. AND AS MR. BOYD TOLD YOU, THERE ARE NO RIGHT OR
25 WRONG ANSWERS HERE, I JUST NEED TO KNOW HOW YOU

1 FEEL ON THESE SUBJECTS.

2 A. UH HUH.

3 Q. YOU UNDERSTAND THAT MR. POPE AND I REPRESENTING
4 THE STATE, WE HAVE THE BURDEN OF PROVING THAT
5 THE DEFENDANT IS GUILTY. YOU UNDERSTAND THAT.
6 THEY DON'T HAVE TO PROVE ANYTHING AT ALL.

7 A. OKAY.

8 Q. HE IS PRESUMED INNOCENT COMING INTO THIS TRIAL.

9 A. OKAY.

10 Q. AND AS A JUROR IT'S IMPORTANT FOR YOU TO
11 UNDERSTAND THAT AND ACCEPT THAT HE IS PRESUMED
12 INNOCENT AND NOT HAVE ANY PREDISPOSITION IN YOUR
13 MIND OR NO THOUGHTS ONE WAY OR THE OTHER -- YOU
14 CAN'T COME IN HERE THINKING, WELL, HE'S PROBABLY
15 GUILTY LIKE THEY CHARGED HIM, THEREFORE HE'S
16 GUILTY. YOU CAN'T THINK THAT. HE'S PRESUMED
17 INNOCENT. AND IT'S IMPORTANT THAT YOU
18 UNDERSTAND AND BELIEVE THAT. DO YOU HAVE A
19 PROBLEM WITH THAT AT ALL?

20 A. I THINK I UNDERSTAND IT.

21 Q. OKAY. IN THE FIRST PHASE OF THE TRIAL WE ARE
22 ONLY CONCERNED ABOUT GUILT OR INNOCENCE. MR.
23 POPE AND I HAVE THE BURDEN OF PROVING TO YOU
24 BEYOND A REASONABLE DOUBT THAT MR. ROBERTSON IS
25 GUILTY OF THESE MURDERS.

1 ONLY IF YOU FIND HIM GUILTY IN THE FIRST PHASE
2 DO WE GO TO THE SECOND PHASE. THE SECOND PHASE,
3 THAT'S WHEN WE'RE CONCERNED ABOUT THE PENALTY
4 BECAUSE IF HE'S NOT FOUND GUILTY, THERE IS NO
5 PENALTY AT ALL.

6 A. OKAY.

7 Q. IN THE SECOND PHASE THERE ARE TWO CHOICES, LIFE
8 OR DEATH. AGAIN IN THAT PHASE MR. POPE AND I
9 HAVE THE RESPONSIBILITY OF PROVING WHAT ARE
10 CALLED AGGRAVATING CIRCUMSTANCES.

11 A. UH HUH.

12 Q. AND THOSE ARE CIRCUMSTANCES THAT MAKE THE CRIME
13 MORE SERIOUS. IF THE DEFENSE CHOOSES, AGAIN,
14 THEY DON'T HAVE TO PUT ANYTHING UP BUT IF THEY
15 CHOOSE TO, THEY CAN PUT UP WHAT ARE CALLED
16 MITIGATING CIRCUMSTANCES.

17 A. UH HUH.

18 Q. AND THOSE ARE THINGS THAT TEND TO MAKE THE
19 DEFENDANT'S INVOLVEMENT IN THE CRIME LESS OR
20 MAKE THE CRIME LESS SERIOUS. OKAY?

21 A. UH HUH.

22 Q. WHAT YOU'RE SAYING IS THAT YOU COULD CONSIDER
23 BOTH THE AGGRAVATING CIRCUMSTANCES AND THE
24 MITIGATING CIRCUMSTANCES AND YOU WOULDN'T GO
25 INTO THAT SENTENCING PHASE WITH YOUR MIND MADE

1 UP UNTIL YOU HEARD ALL OF THAT?

2 A. I WOULD DO MY BEST NOT TO.

3 Q. SURE. AND THEN AFTER CONSIDERING ALL OF THAT,
4 WHAT YOU ARE SAYING IS THAT IF YOU THOUGHT THE
5 RIGHT VERDICT WAS LIFE, YOU COULD GIVE LIFE?

6 A. YES, SIR.

7 Q. AND IF YOU BELIEVED THE RIGHT VERDICT WAS DEATH,
8 YOU COULD ALSO VOTE FOR DEATH FOR THIS
9 DEFENDANT?

10 A. YES, SIR.

11 Q. OKAY. ONE OF THE -- I'M GETTING RIGHT TO THE
12 END HERE.

13 A. OKAY.

14 Q. ONE OF THE LAST THINGS THAT I WANT TO ASK YOU
15 ABOUT IS THE JURY'S RESPONSIBILITY IN A DEATH
16 PENALTY CASE IS A LITTLE BIT DIFFERENT FROM
17 OTHER CASES.

18 IN A REGULAR CASE THE ONLY PERSON THAT HAS TO
19 SIGN WHAT THE VERDICT IS IS THE FOREPERSON OF
20 THE JURY. THEY WRITE GUILTY OR NOT GUILTY AND
21 THEN THEY SIGN THEIR NAME.

22 IN A DEATH PENALTY CASE IF THE VERDICT OF THE
23 JURY IS LIFE, IF THEY THINK THE DEFENDANT SHOULD
24 BE SENTENCED TO LIFE, AGAIN THE ONLY PERSON THAT
25 SIGNS IT IS THE FOREPERSON.

1 A. WHAT IS A FOREPERSON?

2 Q. THE FOREPERSON IS THE PERSON WHO IS DESIGNATED
3 BY THE JUDGE TO SPEAK ON BEHALF OF THE JURY AND
4 KIND OF PRESIDE OVER DELIBERATIONS WHEN YOU ARE
5 BACK IN THE JURY ROOM.

6 A. OKAY.

7 Q. THEY ARE KIND OF THE LIAISON BETWEEN THE JURY
8 AND THE COURT.

9 A. OKAY.

10 Q. BUT THE FOREPERSON IS DESIGNATED BY THE COURT
11 AND IF THE VERDICT IS LIFE, THAT FOREPERSON HAS
12 TO SIGN THEIR NAME AND WRITE VERDICT, LIFE, AND
13 SIGN THEIR NAME.

14 IF IT'S DEATH, THOUGH, EACH JUROR HAS TO SIGN
15 THEIR NAME, EACH AND EVERY JUROR WOULD HAVE TO
16 TAKE THE PEN AND WRITE THEIR NAME ON THE VERDICT
17 SHEET SAYING THAT THEIR VERDICT IN THAT CASE WAS
18 DEATH. OKAY?

19 NOW IF THE VERDICT WAS DEATH AFTER HEARING ALL
20 THE EVIDENCE, COULD YOU TAKE THE PEN IN YOUR
21 HAND AND SIGN YOUR NAME TO THE VERDICT SHEET
22 SENTENCING THIS MAN TO HIS DEATH?

23 A. YES, SIR IF I REALLY BELIEVED IT; YES, SIR.

24 Q. OKAY. THANK YOU VERY MUCH.

25 THE COURT: MS. ZAPATA, I'M GOING TO LET YOU STEP

1 OUTSIDE THE DOOR JUST ONE MINUTE.

2 THE JUROR: OKAY.

3 (THE JUROR LEFT THE COURTROOM.)

4 THE COURT: WHAT SAYS THE DEFENSE?

5 MR. BOYD: I BELIEVE SHE'S QUALIFIED.

6 THE COURT: THE STATE?

7 MR. BRACKETT: SHE'S QUALIFIED.

8 THE COURT: ALL RIGHT, BRING HER BACK IN.

9 (THE JUROR RETURNED TO THE COURTROOM.)

10 THE COURT: MS. ZAPATA, WE'RE GOING TO INCLUDE
11 YOU IN THE POOL. WE DON'T KNOW THAT YOU WILL ACTUALLY SIT
12 ON THE JURY. IF YOU DO, I WILL HAVE TO GIVE SOME THOUGHT
13 AS TO HOW MAYBE WE CAN ACCOMMODATE, KEEPING YOU SEQUESTERED
14 WITH WHAT YOU NEED TO GET DONE.

15 THE JUROR: OKAY.

16 THE COURT: I DON'T PROMISE THAT I CAN DO IT, BUT
17 I THINK WE MIGHT CAN. YOU'RE NOT ON THE PANEL AND YOU
18 MIGHT NOT BE, BUT YOU ARE PART OF THE POOL.

19 WHEN YOU COME -- CALL TONIGHT AFTER 6:00 AND THEY
20 WILL GIVE YOU INSTRUCTIONS ABOUT WHEN TO REPORT. WHEN YOU
21 DO REPORT, BRING WITH YOU CLOTHING AND TOILETRY ITEMS FOR
22 ABOUT A WEEKS STAY.

23 DON'T DISCUSS THE CASE WITH ANYONE AND DON'T READ
24 OR LISTEN OR OBTAIN ANY INFORMATION ABOUT THIS CASE OUTSIDE
25 OF THIS COURTROOM.

1 IF ANYONE TRIES TO TALK TO YOU ABOUT IT, REPORT
2 THEM TO ME PLEASE.

3 THANK YOU. CALL BACK TONIGHT AFTER 6:00.

4 THE JUROR: OKAY.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: WE OBVIOUSLY HAD SOME
7 MISCOMMUNICATION AT ONE POINT WHEN WE DECIDED WE WOULD DO
8 10 MINUTES PER WITNESS. AS IT TURNS OUT WE'RE DOING 10
9 MINUTES PER PERSON PER WITNESS. WE'VE DONE NINE WITNESSES
10 IN 300 MINUTES.

11 WE'RE GOING TO HAVE TO CHANGE OUR PANELS FOR THE
12 AFTERNOON. WE'RE GOING TO TAKE AN HOUR FOR LUNCH. WE
13 DIDN'T TAKE HARDLY AN HOUR YESTERDAY BUT WE'RE GOING TO
14 TAKE AN HOUR.

15 WE'VE GOT PANEL "H" COMING IN AT 3:00; IS THAT
16 NOT CORRECT?

17 THE CLERK: PANEL "H" IS DOWNSTAIRS AT 2:00; THEY
18 CAME IN AT 2:00.

19 THE COURT: WELL, WE'RE GOING TO HAVE TO MOVE
20 THEM TO 3:00. THEY ARE JUST GOING TO HAVE TO BE TOLD THAT
21 THEY CAN LEAVE, STILL CAN'T DISCUSS THE CASE; GIVE THEM MY
22 APOLOGY, BUT WE'VE GOT TO TAKE AN HOUR. HAVE THEM COME IN,
23 PANEL "H" AT 3:00. HAVE PANEL "I" COME IN AT 4:30. THERE
24 IS NO SENSE IN HAVING THEM HERE AT 4:00, WE WON'T BE
25 THROUGH. ARE YOU UP WITH ME?

1 THE CLERK: YES, SIR.

2 THE COURT: AND THAT WILL BE IT FOR THE DAY
3 BECAUSE WE ARE NOT GOING TO START ONE AT 6:00. HAVE PANEL
4 "J" COME IN AT 9:00 IN THE MORNING; PANEL "K" AT 10:30;
5 PANEL "L" AT 12:00 AND HAVE THE REMAINING PANELS CALL
6 BETWEEN 12:00 AND 1:00 TOMORROW.

7 AFTER THE LUNCHEON RECESS:

8 THE COURT: ANNETTE HARGRAVE, JUROR 107.

9 ANNETTE HARGRAVE, JUROR NUMBER 107, WHITE FEMALE,
10 WAS QUESTIONED AS FOLLOWS:

11 QUESTIONS BY THE COURT:

12 Q. MS. HARGROVE ---

13 A. HARGRAVE.

14 Q. HARGRAVE, I'M SORRY. I REMIND YOU THAT I'M JOHN
15 HAYES, AND REMIND YOU THAT YOU'RE UNDER OATH.
16 AND I WANT TO TELL YOU THAT IF YOU ARE SEATED ON
17 THIS JURY PANEL, THE CASE MAY BE COVERED BY
18 TELEVISION OR BY PHOTOGRAPHERS BUT THEY CANNOT
19 SHOW YOU OR THE JURY OR SAY ANYTHING ABOUT YOUR
20 NAME, SO DON'T BE DISTRACTED BY THAT IF YOU END
21 UP SITTING ON THE JURY.

22 NOW, YOU SENT IN A QUESTIONNAIRE. DO YOU FEEL
23 LIKE THAT IS IN GOOD SHAPE OR DO YOU NEED TO
24 MAKE ANY CHANGES?

25 A. IT'S IN GOOD SHAPE. I JUST GOT THIS LIST RIGHT

1 HERE; I HAVEN'T HAD TIME TO GO OVER IT.

2 THE BAILIFF: EXCUSE ME, JUDGE. SHE JUST GOT UP
3 AND SHE DIDN'T GET A CHANCE TO LOOK AT THIS LIST, BUT THE
4 REST OF THEM WILL, THE OTHER FIVE.

5 THE COURT: WELL, I KNOW BUT -- ALL RIGHT, LET ME
6 LET YOU GO BACK AND TAKE A FEW MINUTES TO REVIEW IT. WHAT
7 TIME DID Y'ALL GET HERE DOWNSTAIRS?

8 THE JUROR: I GOT HERE AT 15 TILL 12:00.

9 THE COURT: OKAY. JUST GO BACK OUT AND WE'LL
10 SEND FOR YOU IN ABOUT 10 MINUTES SO THAT YOU WILL HAVE TIME
11 TO GO THROUGH THE WITNESS LIST.

12 IN CAMERA:

13 MR. HANCOCK: YOUR HONOR, WE HAVE MICROPHONES ON
14 THE TABLE RIGHT IN FRONT OF US. I LIKE TO ACCOMMODATE THE
15 MEDIA IN EVERY WAY POSSIBLE, BUT I THINK THIS WOULD
16 TREMENDOUSLY INHIBIT OR COULD INTERJECT INTO THIS MORE THAN
17 THERE SHOULD BE. I DON'T MIND THEIR MICROPHONES WHEN WE
18 ARE SPEAKING AND ARE UP, BUT THIS PUTS IT RIGHT IN HERE
19 WHERE ANY DISCUSSION BETWEEN US COULD POSSIBLY BE PICKED
20 UP. AND I DON'T EVEN SEE A SWITCH ON THE MICROPHONE THAT
21 I CAN TURN IT OFF. SO, IT CONCERNS ME, YOUR HONOR.

22 THE COURT: ALL RIGHT, WE WILL TAKE CARE OF THAT.
23 THEY ARE SUPPOSEDLY NOT LIVE TODAY ANYWAY.

24 MR. HANCOCK: ALL RIGHT, SIR.

25 THE COURT: MAKE SURE THEY ARE NOT LIVE. LET'S

1 SEE IF MS. HARGROVE IS READY.

2 CONTINUED QUESTIONING BY THE COURT OF JUROR HARGRAVE:

3 Q. NOW, I'VE ALREADY MENTIONED TO YOU A COUPLE OF
4 THINGS. I WANT TO TELL YOU -- I ASKED YOU ABOUT
5 YOUR QUESTIONNAIRE. HAVE YOU HAD A CHANCE NOW
6 TO LOOK AT THAT WITNESS LIST?

7 A. YES, UH HUH.

8 Q. IS THERE ANYBODY ON THERE THAT YOU KNOW OR ARE
9 RELATED TO?

10 A. NOBODY.

11 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
12 YOU CAME TO TRIAL, TO COURT YESTERDAY?

13 A. JUST ON THE NEWS AND THE HERALD.

14 Q. I BEG YOUR PARDON?

15 A. I READ THE PAPER OVER THE WEEKEND BEFORE I CAME
16 TO THE JURY.

17 Q. WOULD THAT INFLUENCE YOUR ABILITY TO BE FAIR AND
18 IMPARTIAL IN THIS CASE? THAT IS, WOULD THAT
19 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL;
20 COULD YOU EXCLUDE FROM YOUR CONSIDERATION WHAT
21 YOU READ AND BASE YOUR VERDICT SOLELY ON THE LAW
22 AND THE EVIDENCE THAT COMES IN AT THE TRIAL.

23 A. ARE YOU ASKING ME WOULD THAT AFFECT IT?

24 Q. YES.

25 A. NO, IT WOULD NOT AFFECT MY DECISION.

1 Q. SO YOU COULD BE FAIR AND IMPARTIAL?

2 A. YES, UH HUH.

3 Q. YOU COULD BASE YOUR VERDICT ON WHAT YOU HEAR AT
4 THE TRIAL AND NOT ON WHAT YOU KNEW BEFORE YOU
5 CAME?

6 A. YES.

7 Q. HAVE YOU HAD A CHANCE TO LOOK AT THOSE JUROR
8 TYPES NOW?

9 A. YES, UH HUH.

10 Q. THIS CASE WOULD BE TRIED IN TWO PHASES. THE
11 FIRST PHASE WOULD BE SIMPLY TO DETERMINE WHETHER
12 OR NOT MR. ROBERTSON IS GUILTY OF MURDER. AND
13 HE IS PRESUMED INNOCENT AND WOULD BE PRESUMED
14 INNOCENT UNTIL THE STATE WERE TO CONVINCE THE
15 JURY OF HIS GUILT BEYOND A REASONABLE DOUBT AND
16 THE JURY WOULD HAVE TO UNANIMOUSLY FIND THAT.
17 IF HE WAS FOUND NOT GUILTY, THE CASE WOULD END.
18 BUT IF HE WERE FOUND GUILTY, THE CASE WOULD GO
19 ON TO THE NEXT PHASE OF THE TRIAL WHICH WOULD
20 CONCERN WHAT PENALTY WOULD BE IMPOSED.
21 AND WHILE WE ARE NOT PRESUPPOSING HE WOULD BE
22 FOUND GUILTY BECAUSE HE MAY NOT, THAT'S UP TO
23 THE JURY, WE MUST DISCUSS WHAT MIGHT HAPPEN AND
24 WHAT MIGHT BE CONSIDERED IN THAT SECOND PART,
25 THAT IS THE PENALTY PHASE.

1 NOW, DID YOU IN LOOKING AT THIS JURY TYPE LIST,
2 FIND YOURSELF AS ONE OF THESE TYPE JURORS?

3 A. YES, UH HUH.

4 Q. WHICH ONE?

5 A. THE THIRD ONE.

6 Q. ALL RIGHT, THE THIRD TYPE IS ONE -- FIRST IN
7 THAT TYPING OF JURORS I USED WORDS REGARDING
8 CERTAIN CIRCUMSTANCES; THAT IS, AGGRAVATION AND
9 MITIGATION.

10 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
11 WHICH ATTEND THE COMMISSION OF A CRIME WHICH
12 INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS
13 CONSEQUENCE. THAT IS THINGS OVER AND ABOVE JUST
14 WHAT CONSTITUTES THE CRIME OF MURDER IN THIS
15 PARTICULAR CASE.

16 MITIGATING CIRCUMSTANCES ARE THINGS THAT WOULD
17 NOT JUSTIFY OR EXCUSE A CRIME, BUT WHICH IN
18 FAIRNESS AND MERCY MAY BE CONSIDERED AS
19 EXTENUATING OR REDUCING ONE'S DEGREE OF
20 CULPABILITY, MORAL CULPABILITY. DO YOU
21 UNDERSTAND THAT?

2 A. UH HUH.

3 Q. SO YOU ARE TELLING ME THAT YOU ARE THE TYPE OF
4 JUROR WHO EVEN THOUGH MR. ROBERTSON WOULD HAVE
5 BEEN FOUND BY THE JURY GUILTY OF MURDER, THAT

1 WHEN WE GO INTO THAT SECOND PART YOUR MIND WOULD
2 BE OPEN AS TO WHAT THE PUNISHMENT WOULD BE. IS
3 THAT CORRECT?

4 A. YES, SIR.

5 Q. AND YOU'RE TELLING ME THAT YOU WOULD NEED TO
6 HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION
7 AND MITIGATION AND WOULD WANT TO LISTEN AND
8 FOLLOW THE LAW BEFORE DECIDING WHAT PUNISHMENT
9 TO IMPOSE. IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. IF YOU THOUGHT AND FELT AND WERE CONVINCED THAT
12 THE FACTS WERE SUCH THAT THE VERDICT SHOULD BE
13 THAT OF LIFE IMPRISONMENT, COULD YOU RETURN A
14 VERDICT OF LIFE IMPRISONMENT?

15 A. YES, I COULD.

16 Q. IF YOU FELT AND THOUGHT AND WERE CONVINCED UNDER
17 THE FACTS THAT THE APPROPRIATE VERDICT WOULD BE
18 THAT OF THE DEATH PENALTY, COULD YOU IMPOSE THE
19 DEATH PENALTY?

20 A. YES, I COULD

21 Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT COUNSEL MAY
22 HAVE. MR. POPE.

23 QUESTIONS BY MR. POPE:

24 Q. MS. HARGRAVE, MY NAME IS TOMMY POPE; I'M THE
25 SOLICITOR HERE IN YORK COUNTY. THIS IS MR.

1 KEVIN BRACKETT, MY DEPUTY SOLICITOR, AND WE
2 REPRESENT THE STATE IN THIS CASE.

3 HAVE YOU EVER BEEN IN A SITUATION LIKE THIS
4 BEFORE WHERE YOU WERE QUESTIONED LIKE THIS
5 BEFORE?

6 A. NO, UH UH.

7 Q. LET ME TELL YOU, AND I'M SURE THE JUDGE
8 INDICATED THIS TO YOU. YOU CAN'T GIVE A RIGHT
9 OR WRONG ANSWER BECAUSE WE'RE JUST LEARNING WHAT
10 YOU FEEL IN YOUR HEART AND WHAT YOUR VIEWS ARE.
11 SO, I AM GOING TO ASK YOU A SERIES OF QUESTIONS,
12 A LOT OF THEM ARE REAL SIMILAR TO WHAT THE JUDGE
13 SAID BUT IF YOU FEEL I'M TAKING YOU ONE WAY OR
14 ANOTHER, I DON'T WANT TO PUT WORDS IN YOUR
15 MOUTH, I WANT TO HEAR WHAT YOU'VE GOT TO SAY ON
16 DIFFERENT ISSUES.

17 NOW, OF COURSE, WE'VE GOT ALSO A COPY OF YOUR
18 QUESTIONNAIRE. AS I UNDERSTAND IT BEFORE I GET
19 INTO THAT, YOU'RE THE TYPE OF JUROR THAT YOU
20 WOULD JUST WAIT AND HEAR EVERYTHING AND YOU
1 WOULDN'T COME IN PREDISPOSED ONE WAY OR ANOTHER;
2 IS THAT A FAIR STATEMENT?

3 A. THAT'S CORRECT, UH HUH.

4 Q. AND YOU UNDERSTAND FROM HEARING FROM THE JUDGE
5 THAT'S IT A TWO PART TRIAL. THE FIRST IS JUST

1 LIKE A NORMAL TRIAL ABOUT GUILT. AND THEN THE
2 SECOND PART IS DIFFERENT IN THAT IT'S ABOUT
3 PENALTY. DO YOU UNDERSTAND THAT?

4 A. YES, UH HUH.

5 Q. I SAW THAT ON ONE OF THE QUESTIONS YOU HAD THE
6 ISSUE ABOUT YOUR STEP-SON.

7 A. YES, UH HUH.

8 Q. COULD YOU TELL ME A LITTLE BIT ABOUT WHAT THAT
9 WAS AND WHAT THAT ENTAILED? AGAIN, I'M NOT
10 TRYING TO EMBARRASS YOU, IT'S JUST TO FIND OUT A
11 LITTLE MORE ABOUT IT.

12 A. MY STEP-SON?

13 Q. YES, MA'AM.

14 A. IT WAS BACK IN '92 AND '93 FOR THE TRIAL, AND IT
15 WAS A MURDER TRIAL.

16 Q. YES, MA'AM.

17 A. I UNDERSTAND THE ISSUES ON BOTH SIDES.

18 Q. RIGHT.

19 A. THAT'S THE REASON WHY I SAY THAT I CAN BE
20 IMPARTIAL, YOU KNOW, NOT ONE WAY OR THE OTHER
21 WITH THIS CASE.

22 Q. SURE. AND WHEN YOU SAY YOU UNDERSTAND THE
23 ISSUES, KIND OF FROM HAVING TO GO THROUGH IT?
24 IS THAT WHAT YOU MEAN?

25 A. YES.

1 Q. AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

2 WHAT WERE THE FACTS OF THAT CASE?

3 A. IT WAS A MURDER TRIAL.

4 Q. OKAY, I MEAN ---

5 A. HE WAS 20 YEARS OLD.

6 Q. UH HUH.

7 A. HE'S SERVING LIVE IN PRISON. HE WAS FOUND
8 GUILTY.

9 Q. OKAY. WHAT WAS HE CONVICTED OF DOING -- I KNOW
10 YOU'RE SAYING MURDER, AND I'M NOT TRYING TO GET
11 TOO MUCH INTO IT BUT I MEAN WAS IT LIKE A
12 ROBBERY OR ---

13 A. YES, IT WAS A ROBBERY. MY STEP-SON WENT INTO
14 THE MAN'S HOUSE AND STOLE SOME ITEMS.

15 Q. OKAY.

16 A. THE MAN CAME IN, AND IN THE PROCESS THE MAN GOT
17 KILLED -- WAS KILLED.

18 Q. I GOT YOU. NOW, WAS THAT A DEATH PENALTY CASE?

19 A. NO, IT WASN'T; IT WAS LIFE IN PRISON.

20 Q. DID HE PLEAD OR WAS IT A TRIAL?

21 A. NO, HE DIDN'T PLEAD.

22 Q. SO, HE HAD A JURY TRIAL.

23 A. HE HAD A JURY TRIAL.

24 Q. OKAY. SO, YOU'VE SEEN BASICALLY A REGULAR
25 TRIAL, SO YOU KNOW PRETTY MUCH ABOUT IT, THERE

1 WILL BE TWELVE JURORS AND THEIR VERDICT HAS GOT
2 TO BE UNANIMOUS.

3 WERE YOU PRESENT IN THE COURTROOM DURING THE
4 TRIAL OF YOUR STEP-SON?

5 A. YES, I WAS.

6 Q. SO, YOU'VE HEARD THOSE KIND OF THINGS LIKE THE
7 JURY HAS TO BE UNANIMOUS.

8 A. YES.

9 Q. AND THINGS OF THAT NATURE. THE ONE DIFFERENCE
10 IS, YOU KNOW, THE JUDGE SENTENCED IN THAT TRIAL.
11 IN THIS ONE THE JURY WOULD DETERMINE THE
12 SENTENCE. DO YOU UNDERSTAND THAT?

13 A. YES, I DO.

14 Q. AND IN THAT SITUATION THE DECISION WOULD BE
15 BASICALLY TWO CHOICES. OF COURSE, THE JUDGE
16 INSTRUCTS THE JURY AND TELLS THEM, BUT TWO
17 CHOICES, IT WOULD BE LIFE OR DEATH.

18 BASED ON WHAT'S HAPPENED IN YOUR PAST, AND I
19 THINK YOU'VE MADE IT CLEAR HERE, WOULD YOU HAVE
20 YOUR MIND MADE UP -- ONCE A CONVICTION WAS HAD --
21 -- OF COURSE, TO GET TO THE SECOND PHASE,
22 OBVIOUSLY, THERE HAS GOT TO BE A CONVICTION ONCE
23 THIS MAN HAS BEEN CONVICTED OF KILLING HIS
24 PARENTS, BOTH PARENTS. WOULD YOU HAVE YOUR MIND
25 MADE UP ONE WAY OR ANOTHER AS FAR AS WHAT YOUR

1 DECISION WOULD BE IN THE PENALTY PHASE BEFORE WE
2 GOT TO THE PENALTY PHASE?

3 A. I DON'T THINK I WOULD. AGAIN, THE EVIDENCE HAS
4 TO BE BROUGHT UP, YOU KNOW.

5 Q. YES, MA'AM.

6 A. INNOCENT UNTIL PROVEN GUILTY, AND THE EVIDENCE
7 HAS TO BE BROUGHT UP, THE FACTS OF THE TRIAL;
8 EVERY TRIAL IS DIFFERENT.

9 Q. RIGHT, RIGHT. AND, AGAIN, I THINK I KNOW WHAT
10 YOU MEAN WHEN YOU SAY INNOCENT UNTIL PROVEN
11 GUILTY. YOU REALIZE WHEN WE GET TO THE SECOND
12 PHASE -- THE FIRST PHASE HE IS INNOCENT UNTIL
13 PROVEN GUILTY.

14 A. THAT'S RIGHT.

15 Q. WE'VE GOT TO PROVE IT BEYOND A REASONABLE DOUBT.

16 IF WE PROVE THAT THEN, AGAIN, THAT'S WHERE IT'S
17 A LITTLE BIT DIFFERENT. AT THE SECOND PHASE,
18 NOW HE'S NOT INNOCENT. DO YOU SEE WHAT I'M
19 SAYING? BECAUSE THE JURY HAS DECIDED HE'S
20 GUILTY AND NOW YOU WOULD HEAR FROM US THINGS
21 CALLED EVIDENCE IN AGGRAVATION. YOU KNOW, WHY
22 IT'S A WORSE CASE, WHY IT SHOULD BE A DEATH
23 PENALTY CASE. AND YOU WOULD HEAR FROM THEM IF
24 THEY CHOOSE TO; OF COURSE, YOU KNOW THEY DON'T
25 HAVE TO PUT UP ANYTHING, BUT IT WOULD BE

1 EVIDENCE IN MITIGATION. YOU KNOW, LIKE YOU SAY,
2 THE OTHER SIDE OF THINGS AND THE REASON IT
3 SHOULD BE LESSER.

4 YOU WOULD WANT TO HEAR BOTH OF THOSE? YOU WOULD
5 WANT TO HEAR THE BAD STUFF AND THE GOOD STUFF
6 BEFORE YOU DECIDED?

7 A. YES, THAT'S CORRECT.

8 Q. AND THEN AFTER HEARING THAT, BASED ON WHAT YOU
9 HEARD AND, OF COURSE, YOU DON'T KNOW YET BECAUSE
10 YOU HAVEN'T HEARD.

11 A. THAT'S RIGHT.

12 Q. YOU KNOW WHAT I'M SAYING, YOU HAVEN'T HEARD.

13 A. THAT'S RIGHT.

14 Q. BASED ON WHAT YOU HEARD, ACCORDING TO WHAT YOU
15 HEARD AND YOUR DETERMINATION, IF YOU THOUGHT IT
16 WAS APPROPRIATE YOU COULD VOTE FOR A LIFE
17 SENTENCE?

18 A. YES, I COULD.

19 Q. OKAY. AND WOULD YOU BE THE TYPE OF JUROR IF YOU
20 WERE BACK IN THE JURY ROOM AND YOU WERE
21 DISCUSSING IT, WOULD YOU BE WILLING TO HEAR WHAT
22 OTHER JURORS SAY AND TELL OTHER JURORS WHAT YOUR
23 OPINION WAS, TOO?

24 A. YES, I COULD.

25 Q. AND, AGAIN, IF YOU HAD SOME POINT YOU THOUGHT

1 THEY WERE MISSING, WOULD YOU WORK TO EXPLAIN IT
2 TO THEM?

3 A. YES, I WOULD.

4 Q. AND LIKEWISE WOULD YOU LISTEN IF THEY WERE
5 TRYING TO EXPLAIN SOMETHING TO YOU?

6 A. YES, I WOULD.

7 Q. SO IT'S NOT A DEAL WHERE YOU FOLLOW THE CROWD
8 ONE WAY OR ANOTHER, YOU'D VOTE YOUR HEART AND
9 YOUR CONVICTIONS BUT YOU ARE WILLING TO LISTEN
10 TO OTHER PEOPLE. IS THAT A FAIR STATEMENT?

11 A. YES.

12 Q. THE FINAL THING THAT IS DIFFERENT ON A DEATH
13 PENALTY CASE IS THAT IF ALL THE JURORS SAY LIFE,
14 THEN JUST THE FOREPERSON, THE FOREMAN OR
15 FORELADY OF THE JURY JUST SIGNS THE VERDICT
16 FORM. AND, OF COURSE, THE JUDGE IS GOING TO DO
17 WHAT YOU SAY. IF YOU SAY LIFE, HE'S GOING TO DO
18 LIFE; IF YOU SAY DEATH, HE'S GOING TO DO DEATH.
19 JUST THE FOREPERSON SIGNS IT. SAY ALL TWELVE OF
20 YOU VOTE AND YOU SAY LIFE. AND SAY, FOR
21 EXAMPLE, YOU KNOW, THIS LADY IS THE FOREPERSON
22 AND Y'ALL VOTE AND SHE SAYS WE VOTED TWELVE AND
23 IT'S LIFE AND SHE GIVES IT TO THE JUDGE.
24 WELL, IF IT'S DEATH, IT'S A LITTLE BIT
25 DIFFERENT. EVERY SINGLE JUROR HAS TO SIGN THEIR

1 NAME.

2 IF YOU HEARD THE FACTS IN THE CASE AND AFTER
3 HEARING EVERYTHING YOU DETERMINED THAT DEATH WAS
4 THE SENTENCE THAT SHOULD BE GIVEN, YOU RAISED
5 YOUR HAND AND VOTED FOR DEATH, COULD YOU SIGN
6 ANNETTE HARGRAVE TO A DOCUMENT KNOWING THAT IT
7 WOULD TAKE THIS MAN'S LIFE?

8 A. YES, I COULD.

9 Q. ALL RIGHT, THANK YOU, MA'AM.

10 THE COURT: MR. HANCOCK?

11 QUESTIONS BY MR. HANCOCK:

12 Q. MS. HARGRAVE, IT SEEMS LIKE WE KEEP COMING AT
13 YOU IN WAVES. THE JUDGE ASKS YOU AND THEN THE
14 SOLICITOR ASKED YOU AND I'M JUST GOING TO SIT
15 HERE AND I'M GOING TO ASK YOU A FEW QUESTIONS
16 AND AS EVERYBODY HAS TOLD YOU, THERE IS NO RIGHT
17 OR WRONG ANSWER.

18 I REPRESENT THE DEFENDANT, JIMMY ROBERTSON, AND
19 THIS IS MR. BOYD, CO-COUNSEL IN THIS CASE.

20 YOU WERE DOWNSTAIRS YESTERDAY AND YOU KNOW THAT
21 HE IS CHARGED WITH KILLING HIS PARENTS, BOTH OF
22 HIS PARENTS. AND WE'RE PUTTING THE CART BEFORE
23 THE HORSE HERE BECAUSE THERE HAS BEEN NO
24 CONVICTION IN THIS CASE. BUT THERE ARE TWO
25 PHASES IN A DEATH PENALTY CASE.

1 ONE IS THE GUILTY PHASE WHERE THE JURY MUST FIND
2 GUILTY BEYOND A REASONABLE DOUBT. THEN YOU GO
3 TO THE SECOND PHASE. WE'RE AUTOMATICALLY
4 ASSUMING THAT WE ARE GOING TO A SECOND PHASE AND
5 YOU MAY HAVE TO BE THE JUROR THAT DECIDES ON
6 EITHER DEATH OR LIFE IN PRISON. AND THAT WOULD
7 BE YOUR RESPONSIBILITY AND THOSE WOULD BE YOUR
8 ONLY TWO OPTIONS. THERE WOULD BE NO OTHER
9 OPTIONS.

10 AND YOU WOULD HAVE TO LISTEN TO THE EVIDENCE AND
11 LISTEN TO ALL THE CIRCUMSTANCES INVOLVED AND
12 MAKE A DECISION. AND YOU UNDERSTAND THAT, DON'T
13 YOU?

14 A. YES, I DO.

15 Q. NOW, YOU INDICATE THAT YOU EVIDENTLY HAD SOME
16 TYPE OF TRAGEDY IN YOUR FAMILY AND YOUR STEP-SON
17 WAS CONVICTED IN A TRIAL OF MURDER.

18 A. THAT'S CORRECT.

19 Q. AND HE RECEIVED LIFE IN JAIL; IS THAT CORRECT,
20 MA'AM?

21 A. YEAH, WITH THE POSSIBILITY OF PAROLE IN TWENTY
22 YEARS.

23 Q. HE HAS THE POSSIBILITY OF PAROLE IN TWENTY
24 YEARS? ARE YOU STILL IN CONTACT WITH HIM?

25 A. YES, I AM.

1 Q. AND ARE YOU STILL MARRIED TO HIS FATHER?

2 A. YES, I AM.

3 Q. HOW LONG HAVE Y'ALL BEEN MARRIED?

4 A. WE'VE BEEN MARRIED 16 YEARS AND RAYMOND WAS 10
5 YEARS OLD, WHICH IS THE SON, WHEN WE GOT
6 MARRIED. I RAISED HIM.

7 Q. IS THAT RIGHT?

8 A. YES.

9 Q. AND HOW LONG HAS HE BEEN IN JAIL?

10 A. SINCE '92.

11 Q. SINCE 1992?

12 A. UH HUH.

13 Q. WAS THAT HERE IN YORK COUNTY?

14 A. NO, IT WAS IN GREENVILLE COUNTY.

15 Q. IN GREENVILLE COUNTY. NOW YOU HAVE LISTENED TO
16 THE SOLICITOR AND YOU WILL BE PUT IN A SITUATION
17 AS A JUROR WHERE GUILT WOULD BE DETERMINED AND
18 THEN YOU WOULD HEAR, POSSIBLY, THAT A YOUNG MAN
19 THAT HAD KILLED BOTH OF HIS PARENTS, THAT THEN
20 THERE WERE THINGS ABOUT THAT KILLING THAT MADE
21 IT EVEN WORSE WHICH ARE CALLED AGGRAVATING
22 CIRCUMSTANCES, OKAY? AGGRAVATING FACTORS. BUT
23 THEN THE DEFENDANT HAS TO PUT ON NO EVIDENCE,
24 BUT YOU MAY HEAR FROM THE DEFENSE WHAT ARE
25 CALLED FACTS IN MITIGATION. DO YOU UNDERSTAND

1 WHAT MITIGATION REALLY MEANS?

2 A. I'M NOT FOR SURE.

3 Q. YOU'RE NOT FOR SURE? WELL, THEY COULD LESSEN
4 HIS MORAL CULPABILITY OR HIS MORAL BLAME IN THIS
5 PARTICULAR CIRCUMSTANCE.

6 A. RIGHT.

7 Q. AND YOU'RE SAYING THAT YOU COULD CONSIDER THOSE?

8 A. YES, I COULD.

9 Q. AND IF YOU CONSIDERED THEM IN A MANNER IN WHICH
10 THE JUDGE WOULD TELL YOU TO CONSIDER THEM, THEN
11 COULD YOU ARRIVE AT A LIFE SENTENCE ALTHOUGH YOU
12 HAD SOMEONE THAT KILLED THEIR PARENTS AND THEN
13 THERE WERE AGGRAVATING FACTORS, COULD YOU TAKE
14 THE MITIGATING FACTORS AS GIVEN TO YOU BY THE
5 DEFENSE AND ARRIVE AT A VERDICT OF LIFE IN
6 PRISON?

7 A. YES, I COULD.

8 Q. NOW YOUR ANSWERS ARE VERY QUICK AND SUCCINCT;
9 YOU SEEM TO KNOW YOUR OWN MIND. DO YOU THINK
0 THAT IF YOU WERE THE ONLY PERSON THAT WOULD VOTE
1 FOR LIFE IN PRISON THAT YOU COULD STAND YOUR OWN
2 GROUND AGAINST ALL OTHERS, SAY THE OTHER ELEVEN
3 PEOPLE ON THE JURY?

4 A. YES, I COULD.

5 Q. YOU COULD DO THAT?

1 A. YES, I COULD.

2 Q. YOU'RE TELLING ME, AND IF I'M WRONG I'M NOT
3 TRYING TO PUT WORDS IN YOUR MOUTH, THEN YOU'RE
4 TELLING ME THAT YOU WOULD NOT CHANGE YOUR VOTE
5 SHOULD IT BE LIFE IN PRISON JUST BECAUSE
6 EVERYBODY ELSE WANTED THE DEATH PENALTY; IS THAT
7 CORRECT? THAT YOU WOULDN'T CHANGE YOUR VOTE
8 JUST TO BE WITH THE MAJORITY.

9 A. NO, I WOULDN'T.

10 Q. I HAVE NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT, YOU MAY STEP OUT JUST A
12 MOMENT.

13 THE JUROR: YOUR HONOR?

14 THE COURT: YES, MA'AM?

15 THE JUROR: BEFORE I GO, I HAVE A CIRCUMSTANCE
16 WITH MY GRANDCHILD. HE HAS BEEN IN MY CARE SINCE JANUARY
17 15TH. WE'VE GOT TO GO TO COURT MONDAY THE 22ND FOR CUSTODY
18 OF MY GRANDCHILD, AND I HAVE HIM NOW.

19 THE COURT: DO YOU HAVE AN ATTORNEY REPRESENTING
20 YOU?

21 THE JUROR: YES, I HAVE HIS CARD RIGHT HERE.

22 THE COURT: ALL RIGHT. IS THAT IN GREENVILLE?

23 THE JUROR: THAT'S IN GREENVILLE COUNTY. THAT'S
24 MY SON'S LITTLE BOY. HE'S TWO YEARS OLD.

25 THE COURT: AND IT'S YOUR GRANDSON?

1 THE JUROR: YES, IT'S MY GRANDSON. WE'VE GOT A
2 CUSTODY HEARING. MY HUSBAND AND I ARE FILING FOR CUSTODY
3 OF MY GRANDSON.

4 THE COURT: ALL RIGHT, I'LL LET YOU STEP OUT AT
5 THIS TIME.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE STATE AS TO
8 QUALIFICATION?

9 MR. POPE: AS TO QUALIFICATION AS TO WITHERSPOON,
10 YOUR HONOR, I BELIEVE SHE IS QUALIFIED. I DO HAVE ANOTHER
11 ISSUE.

12 THE COURT: WHAT DO YOU SAY?

13 MR. HANCOCK: SHE'S QUALIFIED, YOUR HONOR.

14 THE COURT: ALL RIGHT, WHAT'S THE OTHER ISSUE?

15 MR. POPE: YOUR HONOR, THE ONE QUESTION I WOULD
16 ASK THE COURT TO ASK HER -- I REMEMBER SHE MENTIONED
17 DOWNSTAIRS ABOUT HAVING CUSTODY OF A TWO YEAR OLD AND I'M
18 TRYING TO DETERMINE IF SHE IS WORKING OR IF SHE IS THE ONE
19 TAKING CARE OF THE TWO YEAR OLD, THE SAME SITUATION ---

20 THE COURT: I'M NOT CONCERNED ABOUT THAT, I'M
21 CONCERNED ABOUT THE CUSTODY. SHE HASN'T BEEN ASKED IF
22 THERE IS ANYBODY TAKING CARE OF THE CHILD. I'M MORE
23 CONCERNED ABOUT WHAT TO DO ABOUT THE CUSTODY HEARING
24 ITSELF. SHE DOESN'T HAVE CUSTODY AT THIS POINT. I THINK
25 THAT'S KIND OF MOOT ANYWAY ---

1 MR. POPE: SHE HAS PHYSICAL CUSTODY.

2 THE COURT: DOES SHE HAVE CUSTODY?

3 MR. POPE: I THINK SHE SAID SHE HAS THE TWO YEAR
4 OLD NOW. I MAY HAVE MISUNDERSTOOD, YOUR HONOR, BUT I
5 BELIEVE SHE SAID THAT SHE HAD THE TWO YEAR OLD.

6 THE COURT: OKAY.

7 MR. POPE: I WOULD JUST ASK THE COURT TO INQUIRE.

8 THE COURT: ALL RIGHT. ANYTHING ELSE?

9 MR. HANCOCK: NO, SIR.

10 THE COURT: ALL RIGHT, BRING HER BACK IN.

11 (THE JUROR RETURNED TO THE COURTROOM.)

12 THE COURT: DO YOU HAVE A JOB; DO YOU WORK?

13 THE JUROR: NO, I DON'T.

14 THE COURT: AND DO YOU HAVE CUSTODY OF THIS CHILD
15 NOW?

16 THE JUROR: YES, I'M TAKING CARE OF MY
17 GRANDCHILD.

18 THE COURT: HOW LONG HAVE YOU TAKEN CARE OF THE
19 CHILD?

20 THE JUROR: SINCE JANUARY 15TH.

21 THE COURT: AND YOU THINK THIS IS GOING TO BE A
22 PERMANENT SITUATION?

23 THE JUROR: YES, UH HUH.

24 THE COURT: LET ME JUST ASK, I KNOW THIS IS A
25 PUBLIC PLACE, SO I HESITATE TO ASK THIS, BUT IS IT A

1 CONTESTED CUSTODY HEARING?

2 THE JUROR: NOT THAT I KNOW OF. MY SON HAS
3 CUSTODY OF HIM AND HE IS SIGNING CUSTODY OVER TO ME AND MY
4 HUSBAND.

5 THE COURT: AND SO YOU WOULD BE THE PRIMARY CARE
6 GIVER FOR THAT CHILD?

7 THE JUROR: YES, I WILL.

8 THE COURT: ALL RIGHT, I AM GOING TO ASK YOU TO
9 STEP OUT ONE MORE MINUTE.

10 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: IT'S THE COURT'S INCLINATION TO
2 EXCUSE HER UNDER THE STATUTE BEING THE PRIMARY CARE GIVER
3 FOR THE CHILD. SHE MAY NOT HAVE TECHNICALLY LEGAL CUSTODY
4 AT THIS TIME. IT APPEARS, SINCE IT HAS BEEN SIGNED OVER,
5 THAT SHE WILL HAVE IT AS OF MONDAY. WHAT SAYS THE STATE?

6 MR. POPE: YOUR HONOR, THAT WOULD BE THE STATE'S
7 POSITION ALSO.

8 THE COURT: WHAT SAYS THE DEFENSE?

9 MR. HANCOCK: YOUR HONOR, I DID NOT KNOW, AND
10 MAYBE I MISUNDERSTOOD, BUT SHE DIDN'T ASK TO BE RELIEVED AS
1 PRIMARY CARETAKER. SHE ASKED TO BE RELIEVED FOR CUSTODY
2 PURPOSES. IF THIS IS AN UNCONTESTED CUSTODY HEARING, THEN
3 HER HUSBAND CAN GO AND HAVE A JUDGE SIGN AN ORDER OVER TO
4 HIM IF IT'S UNCONTESTED. IT WOULD NOT REQUIRE HER PRESENCE
5 I DO NOT BELIEVE, YOUR HONOR.

1 THE COURT: WELL, SHE RAISED THIS YESTERDAY, I
2 BELIEVE, AT THE POINT WHERE I SAID DOES ANYBODY HAVE
3 CUSTODY -- MAYBE NOT AT THAT TIME.

4 THE COURT: BRING HER BACK IN JUST ONE MINUTE.

5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: IF THE CUSTODY HEARING COULD BE
7 REARRANGED, AND I KNOW YOU DON'T WANT THAT, BUT IF WE COULD
8 TAKE CARE OF THAT THROUGH THE COURT, WHAT WOULD BE THE
9 SITUATION AS FAR AS CARE OF THE CHILD? WOULD YOU NEED TO
10 BE AVAILABLE TO CARE FOR THE CHILD OR WOULD THERE BE
11 SOMEBODY THERE TO TAKE CARE ---

12 THE JUROR: I DON'T HAVE ANYBODY TO TAKE CARE OF
13 HIM.

14 THE COURT: SO, YOU ARE ---

15 THE JUROR: I AM.

16 THE COURT: SO, ARE YOU ASKING TO BE RELIEVED SO
17 THAT YOU CAN CARE FOR THE CHILD REGARDLESS OF THE CUSTODY
18 MATTER?

19 THE JUROR: YES.

20 THE COURT: ALL RIGHT, I AM GOING TO EXCUSE YOU
21 FROM SERVING THEN. I APPRECIATE YOUR CANDOR. YOU CAN HAVE
22 THIS CARD BACK AND I APPRECIATE YOUR TIME.

23 THE JUROR: OKAY, THANK YOU.

24 THE COURT: THANK YOU A LOT; YOU ARE EXCUSED.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: ALL RIGHT, THE NEXT IS PAUL MCGUIRT,
2 175.

3 PAUL MCGUIRT, JUROR NUMBER 175, WHITE MALE, WAS
4 QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. MR. MCGUIRT, I WANT TO REINTRODUCE MYSELF. I'M
7 JOHN HAYES, AND I'M ASSIGNED THIS CASE AND I
8 WANT TO REMIND YOU THAT YOU ARE STILL UNDER
9 OATH, OKAY?

10 A. YES, SIR.

11 Q. I APOLOGIZE FOR HAVING TO SIT HERE AND LOOK DOWN
12 ON YOU BUT I HAVE SOME NOTES I KIND OF HAVE TO
13 FOLLOW. I HAVE REACHED THAT AGE WHERE I CAN'T
14 DO EVERYTHING OFF THE TOP OF MY HEAD.

15 YOU WILL NOTICE RIGHT NOW THERE IS A CAMERA THAT
16 IS NOT BEING OPERATED. IF YOU SIT ON THE JURY,
17 THERE WILL BE CAMERAS IN THE COURTROOM PERHAPS
18 AND PHOTOGRAPHERS BUT THEY ARE NOT ALLOWED TO
19 TAKE YOUR PICTURE OR PUBLICIZE YOUR SERVICE ON
20 THE JURY, SO DON'T BE DISTRACTED IF THAT OCCURS.
21 YOU HANDED UP A QUESTIONNAIRE. IS IT ACCURATE
22 OR DO YOU BELIEVE YOU NEED TO CHANGE ANYTHING ON
23 IT?

24 A. NO, SIR, I BELIEVE IT IS ACCURATE.

25 Q. YOU WERE ASKED TO REVIEW A LIST OF WITNESSES

1 Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON IN
2 THIS CASE. THIS IS MY CO-COUNSEL, BILL HANCOCK,
3 SEATED AT THE TABLE. I JUST WANT TO FOLLOW UP
4 ON A FEW QUESTIONS THE JUDGE ASKED YOU.

5 I KNOW SITTING IN THAT WITNESS CHAIR SEEMS A
6 LITTLE BIT LIKE YOU'RE ON TRIAL SOMETIMES, BUT
7 YOU'RE NOT, AND THERE ARE NO RIGHT OR WRONG
8 ANSWERS TO WHAT I'M GOING TO ASK. I JUST WANT
9 YOU TO TELL ME HOW YOU TRULY FEEL BECAUSE YOU'RE
10 NOT IN TROUBLE NO MATTER HOW YOU ANSWER. OKAY?

11 A. OKAY.

12 Q. YOU SAID YOU FIT INTO CATEGORY THREE. YOU COULD
13 DECIDE THE PENALTY, IF IT GETS TO THAT PHASE,
14 BASED ON THE EVIDENCE PRESENTED IN THAT CASE?

15 A. YES, SIR.

16 Q. NOW, IN THIS KIND OF CASE THERE ARE TWO PHASES
17 TO A TRIAL. THE FIRST PHASE IS THE GUILTY OR
18 NOT GUILTY PHASE. BASICALLY YOU DETERMINE
19 WHETHER OR NOT JIMMY IS GUILTY AND ONLY IF YOU
20 DETERMINE THAT HE'S GUILTY WOULD YOU THEN GO TO
21 THE SENTENCING PHASE. DO YOU UNDERSTAND THAT?

22 A. I DO.

23 Q. AND I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT
24 THE SENTENCING PART AND I DON'T WANT TO INTIMATE
25 TO YOU IN ANY MANNER THAT HE'S GUILTY BY ASKING

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN COURT OF GENERAL SESSIONS

THE STATE,)
PLAINTIFF,)

INDICTMENT NOS. 98-GS-46-1020
1021, 1022, 1023

VS.)

JAMES DEJARNETTE)
ROBERTSON,)
DEFENDANT.)

TRANSCRIPT OF TRIAL AND
PRE-TRIAL MOTIONS (7-17-98,
9-22-98, 9-25-98, 11-2-98,
AND 12-4-98)
MARCH 15, 1999
YORK, SOUTH CAROLINA

VOLUME IV

1 YOU THESE QUESTIONS BUT THIS IS THE ONLY CHANCE
2 I GET TO ASK ABOUT THIS, SO I HAVE TO ASK IT
3 NOW.

4 WHEN YOU GET TO THAT PHASE, YOU WOULD HEAR
5 EVIDENCE OF AGGRAVATING CIRCUMSTANCES. NOW AT
6 THAT POINT THERE IS NO QUESTION OF WHETHER OR
7 NOT HE'S GUILTY, IT WOULDN'T BE. AT THAT POINT
8 HE HAS BEEN FOUND GUILTY OF MURDER. IF HE
9 HADN'T BEEN, IF HE HAD BEEN NOT GUILTY, THERE
10 WOULDN'T BE A PENALTY PHASE.

11 SO, YOU AT THAT POINT ARE ASSUMING, FOR PURPOSES
12 OF MY QUESTIONS, THAT HE HAS BEEN FOUND GUILTY
13 OF MURDER; THAT THERE WAS NO EXCUSE FOR IT; THAT
14 IT WASN'T SELF-DEFENSE OR ACCIDENT OR ANYTHING
15 LIKE THAT. OKAY?

16 A. UH HUH.

17 Q. NOW, HE IS CHARGED WITH KILLING BOTH OF HIS
18 PARENTS, WITH MURDERING BOTH OF HIS PARENTS. DO
19 YOU KNOW THAT?

20 A. YES, SIR.

21 Q. OKAY. AND UNDER THOSE CIRCUMSTANCES, KNOWING
22 THAT HE IS CHARGED WITH KILLING BOTH OF HIS
23 PARENTS AND ASSUMING FOR PURPOSES OF MY
24 QUESTIONS THAT HE HAS BEEN CONVICTED OF THAT AT
25 THE SENTENCING PHASE, CAN YOU STILL CONSIDER A

1 SENTENCE OF LIFE IN PRISON UNDER THOSE
2 CIRCUMSTANCES?

3 A. I CANNOT HONESTLY SIT HERE TODAY AND SAY, YOU
4 KNOW, THAT I WOULD VOTE FOR LIFE OR DEATH. I
5 HAVE MIXED EMOTIONS ABOUT THAT.

6 Q. I'M NOT ASKING YOU TO TELL ME HOW YOU WOULD VOTE
7 BECAUSE I KNOW YOU HAVE TO HEAR THE EVIDENCE ON
8 THAT. BUT WHAT I AM ASKING YOU BASICALLY IS --
9 WHAT I AM ASKING YOU BY THAT QUESTION, ARE YOU
0 GOING TO AUTOMATICALLY BECAUSE HE'S BEEN
1 CONVICTED OF TWO COUNTS OF MURDER; THAT IS,
2 MURDERING HIS PARENTS, DO YOU THINK THAT ALONE
3 WITHOUT HEARING NOTHING ELSE WOULD JUSTIFY YOU
4 GIVING THE DEATH PENALTY?

5 A. NO, SIR.

6 Q. WOULD YOU BE WILLING, EVEN UNDER THOSE
7 CIRCUMSTANCES, TO LISTEN TO MITIGATING EVIDENCE
8 WE MAY PUT UP.

9 A. YES, SIR.

0 Q. AND BY MITIGATING EVIDENCE I MEAN EVIDENCE THAT
1 WOULD NOT EXCUSE HIM FOR WHAT HE DID BUT MAYBE
2 LESSEN HIS MORAL CULPABILITY ABOUT IT.

3 A. YES, SIR, I WOULD LISTEN.

4 Q. YOU WOULD BE WILLING TO LISTEN TO THAT?

5 A. YES, SIR.

1 Q. SO, JUST BECAUSE HE'S BEEN CONVICTED OF THE
2 MURDERS WOULD NOT MEAN AUTOMATICALLY YOU'D GIVE
3 THE DEATH PENALTY?

4 A. THAT'S CORRECT.

5 Q. AND YOU UNDERSTAND IT IS NO BURDEN OF HIS TO PUT
6 ON ANY EVIDENCE, EITHER IN THE GUILTY OR NOT
7 GUILTY PHASE OF THE TRIAL OR THE PENALTY PHASE
8 OF THE TRIAL. HE DOESN'T HAVE TO PRESENT ANY
9 EVIDENCE OR WE DON'T HAVE TO PRESENT ANY
10 EVIDENCE. DO YOU UNDERSTAND?

11 A. I DO.

12 Q. NOW, YOU WOULD BE GIVEN CERTAIN MITIGATING
13 EVIDENCE THAT YOU COULD CONSIDER. YOU COULD
14 ALSO AS A JUROR CONSIDER BASICALLY ANY REASON
15 YOU FELT IN YOUR CONSCIENCE TO GIVE A LIFE
16 SENTENCE. DO YOU UNDERSTAND THAT?

17 A. I DO.

18 Q. NOW, THE STATE WOULD HAVE TO PROVE CERTAIN
19 AGGRAVATING CIRCUMSTANCES IN ORDER TO JUSTIFY
20 GIVING THE DEATH PENALTY. BUT EVEN IF THOSE
21 AGGRAVATING CIRCUMSTANCES ARE FOUND, YOU STILL
22 DON'T HAVE TO GIVE THE DEATH PENALTY. DO YOU
23 UNDERSTAND THAT?

24 A. I DO UNDERSTAND.

25 Q. AND EVEN IF THERE ARE AGGRAVATED CIRCUMSTANCES,

1 WHAT YOU'RE TELLING ME IS THAT YOU CAN STILL
2 CONSIDER ANY MITIGATED CIRCUMSTANCES IN
3 DETERMINING PUNISHMENT?

4 A. YES, SIR.

5 Q. OKAY. NOW, I JUST HAVE A FEW MORE QUESTIONS AND
6 I'LL BE THROUGH. YOU UNDERSTAND AS A JUROR
7 THERE MAY BE DIFFERING OPINIONS AMONG JURORS IN
8 THE JURY ROOM; YOU UNDERSTAND THAT.

9 A. YES.

0 Q. AND, OF COURSE, IF YOUR OPINION DIFFERS FROM
1 OTHER JURORS, YOU HAVE THE RIGHT TO HAVE YOUR
2 OPINION RESPECTED. THEY DON'T HAVE TO AGREE
3 WITH YOU, BUT EVERYBODY HAS TO GIVE RESPECT TO
4 YOUR OPINION. DO YOU UNDERSTAND THAT?

5 A. I DO.

6 Q. AND LIKEWISE IF OTHER JURORS DISAGREE WITH YOU,
7 YOU HAVE AN OBLIGATION TO RESPECT THEIR OPINION
8 EVEN IF YOU DISAGREE WITH IT. DO YOU UNDERSTAND
9 THAT?

0 A. I DO UNDERSTAND THAT.

1 Q. NOW, IF YOU WERE ON THE JURY AND AT THIS POINT
2 AFTER DUE DELIBERATIONS, TAKING INTO
3 CONSIDERATION EVERYTHING PRESENTED, YOU FELT
4 LIKE THERE SHOULD BE A SENTENCE OF LIFE
5 IMPRISONMENT, WOULD YOU CHANGE YOUR MIND JUST TO

1 BE WITH THE MAJORITY?

2 A. NO.

3 Q. OKAY. WHAT YOU'RE TELLING ME IS THAT EVEN IF
4 ITS ELEVEN OTHER JURORS AND YOU'RE THE ONLY ONE,
5 YOU'RE NOT GOING TO CHANGE YOUR OPINION IF YOU
6 REALLY BELIEVE THAT OPINION?

7 A. EXACTLY.

8 Q. I BELIEVE THAT'S ALL THE QUESTIONS I HAVE FOR
9 YOU. THANK YOU.

10 QUESTIONS BY MR. POPE:

11 Q. MR. MCGUIRT, MY NAME IS TOMMY POPE; I'M THE
12 SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN
13 BRACKETT, MY DEPUTY SOLICITOR.
14 I KNOW WE TELL YOU THAT YOU'RE NOT ON TRIAL, BUT
15 IT FEELS LIKE IT BECAUSE WE KEEP GRILLING YOU,
16 YOU GET HIT BY THREE LAWYERS IN ONE DAY I GUESS.
17 I HAVE A FEW QUESTIONS TO FOLLOW UP AND JUST TO
18 ECHO WHAT YOU'VE ALREADY BEEN TOLD, THERE'S NO
19 RIGHT OR WRONG ANSWER. THIS IS OUR CHANCE NOW
20 TO GET A GLIMPSE OF WHO PAUL MCGUIRT IS AND, YOU
21 KNOW -- HAVE YOU EVER BEEN IN A SITUATION LIKE
22 THIS?

23 A. NO, I HAVE NOT.

24 Q. WE HAVE TO GO THROUGH THESE TYPE ISSUES. WELL,
25 THE SITUATION IS SUCH THAT ONCE YOU'RE IN THE

1 JURY BOX, OF COURSE, THEN WE WILL BE PRESENTING
2 EVIDENCE BUT I CAN'T ASK YOU THE KIND OF
3 QUESTIONS AND TALK ABOUT YOUR PERSONAL VIEWS AND
4 THINGS LIKE WE CAN NOW. SO, YOU KNOW, OF
5 COURSE, WE HAVE YOUR QUESTIONNAIRE AND THINGS OF
6 THAT NATURE, BUT AGAIN IT'S NOT TO GRILL YOU,
7 IT'S JUST FOR US TO KIND OF UNDERSTAND.

8 JUST KIND OF GOING IN THE REVERSE ORDER FROM
9 WHAT MR. BOYD SAID. HE WAS TALKING ABOUT YOU
0 BEING IN THE JURY BOX AND YOU VIEWING IT ONE WAY
1 AND ELEVEN VIEWED THE OTHER AND YOU WOULDN'T
2 CHANGE JUST TO BE IN THE CROWD. IS THAT A FAIR
3 STATEMENT?

4 A. I WOULD NOT CHANGE TO BE IN THE CROWD.

5 Q. BY THE SAME TOKEN, AS YOU INDICATED, YOU
6 UNDERSTAND THE OBLIGATION -- HAVE YOU EVER BEEN
7 ON A JURY BEFORE?

8 A. I HAVE NEVER SAT ON A JURY.

9 Q. OKAY. YOU UNDERSTAND THE PRINCIPLE OF THERE'S
0 TWELVE OF YOU. OF COURSE, THE VERDICT HAS GOT
1 TO BE UNANIMOUS, YOU UNDERSTAND THAT, THAT ALL
2 TWELVE -- BUT, AGAIN, EVERYBODY HOLDS TRUE TO
3 THEIR CONVICTIONS BUT JUST LIKE ANY OTHER
4 DISCOURSE, IN OTHER WORDS I WOULD HEAR YOUR
5 SIDE, YOU COULD HEAR MY SIDE AND THERE'S ROOM

YOU'RE NOT TELLING ME YOU'RE THE KIND OF GUY AS
SOON AS I GO IN, I'VE DECIDED, I'LL FOLD UP MY
ARMS, I'M NOT GOING TO TALK TO THEM, I'M NOT
GOING TO HEAR THEM. YOU KNOW WHAT I MEAN?
YOU'RE NOT GOING TO PUT ON YOUR HAT AND LOOK OUT
THE WINDOW AND REFUSE TO TALK TO THEM?

Q. RIGHT.

O. JUST TO GO WITH THE CROWD.

Q. THAT'S THE DISTINCTION I'M TRYING TO MAKE. I MEAN YOU'LL LISTEN TO EVERYBODY BUT YOU'RE NOT JUST GOING TO BE A FOLLOWER BECAUSE THEY ARE PRESSURING YOU WHETHER IT'S LIFE OR DEATH; IS THAT RIGHT?

Q. OKAY. YOU'RE GOING TO BE YOUR OWN MAN IN THERE
IN OTHER WORDS?

Q. OKAY. MR. BOYD HAD ASKED YOU ABOUT CONSIDERING THE AGGRAVATING AND MITIGATING CIRCUMSTANCES AND YOU SAID THAT YOU HAD MIXED EMOTIONS ABOUT IT.

1 WHAT DOES THAT MEAN?

2 A. I HAVE TO BE HONEST, I DO HAVE MIXED EMOTIONS
3 ABOUT DEATH PENALTIES.

4 Q. OKAY.

5 A. I CAN'T SAY -- THAT'S WHY I FELT LIKE I WAS IN
6 CATEGORY THREE -- I CAN'T SAY THAT I AM FOR OR
7 AGAINST THE DEATH PENALTY, YOU KNOW, WITHOUT
8 SOME RESERVATIONS.

9 Q. WELL, EITHER WAY?

0 A. YES, EXACTLY.

1 Q. AND, AGAIN, YOU KNOW, I DON'T WANT YOU TO GET
2 THE IMPRESSION WE'RE TRYING TO SAY, WELL, WHAT
3 ARE YOU DOING TO DECIDE ON THIS CASE. BECAUSE
4 YOU HAVEN'T HEARD A BIT OF THE FACTS AND, OF
5 COURSE, THE STATE HAS TO BRING THOSE FORWARD.
6 AS YOU SAID EARLIER, YOU'VE NEVER BEEN FACED
7 WITH A DECISION LIKE THIS.

8 THE ONE OPPORTUNITY WE DO HAVE AGAIN, AND I SAID
9 THIS A MINUTE AGO, IS NOW IS THE CHANCE -- YOU
0 KNOW, WE BRING YOU IN ALMOST BLIND AND WE START
1 HITTING YOU WITH ALL THESE QUESTIONS. NOW IS THE
2 CHANCE IF YOU FEEL THAT YOU COULD OR COULDN'T DO
3 SOMETHING, YOU KNOW, NOW IS THE OPPORTUNITY TO
4 SAY IT AS OPPOSED TO WHEN YOU'RE IN HERE.

5 AS I UNDERSTOOD WHAT YOU SAID, AND AGAIN YOU

1 CORRECT ME IF I'M WRONG, THAT BASED ON HEARING
2 EVERYTHING, AND YOU HAVEN'T HEARD ANYTHING YET
3 TO KNOW WHAT THE FACTS ARE, BUT BASED ON HEARING
4 EVERYTHING, YOU WOULD BE WILLING TO LISTEN TO
5 AGGRAVATION WHICH IS THE BAD THINGS WE WOULD
6 SHOW ABOUT THE CASE, WHY IT SHOULD BE A DEATH
7 PENALTY; YOU WOULD BE WILLING TO LISTEN TO
8 MITIGATION IF THEY CHOSE TO PUT IT UP. THEY
9 DON'T HAVE TO PROVE ANYTHING. OF WHY THIS
10 SHOULD BE A LIFE SENTENCE. AND YOU WOULD BE
11 WILLING TO LISTEN TO BOTH OF THOSE?

12 A. YES.
13 Q. AND AFTER HEARING THAT IF YOU THOUGHT IT WAS
14 APPROPRIATE, YOU COULD SAY LIFE SENTENCE. YOU
15 COULD VOTE FOR A LIFE SENTENCE?

16 A. YES.

17 Q. OKAY. IN THAT SITUATION, THERE ARE TWELVE
18 JURORS, OF COURSE IT HAS TO BE UNANIMOUS, AND
19 THE JUDGE IS GOING TO CARRY OUT WHATEVER YOUR
20 VERDICT IS. IF IT'S LIFE, YOU KNOW, THAT'S WHAT
21 THE VERDICT WILL BE. IF IT'S DEATH, THAT'S WHAT
22 THE VERDICT WILL BE. IF IT'S LIFE, WHOEVER THE
23 FOREPERSON IS WILL SAY WE'VE TAKEN A VOTE, ALL
24 TWELVE OF US UNANIMOUS, AND THE FOREPERSON WILL
25 SIGN THE PAPERWORK, SIGN THE VERDICT FORM TO

1 SEND BACK TO THE JUDGE.

2 IF IT'S DEATH, IT'S A LITTLE BIT DIFFERENT. IF
3 IT'S DEATH, THEN EACH INDIVIDUAL JUROR -- OF
4 COURSE FIRST IT WOULD HAVE TO BE UNANIMOUS, AND
5 THEN EACH INDIVIDUAL JUROR WOULD HAVE TO SIGN
6 THEIR OWN NAME.

7 WHAT I'M ASKING YOU TO DO NOW IS TO THINK ABOUT
8 IT. I KNOW WE'RE PUTTING YOU ON THE SPOT, BUT
9 THINK ABOUT IT, IF THE SITUATION AROSE AND YOU
0 HEARD THE EVIDENCE AND YOU FELT THAT BASED ON
1 THE EVIDENCE DEATH WAS APPROPRIATE, COULD YOU
2 SIGN PAUL MCGUIRT TO A DOCUMENT THAT WAS GOING
3 TO TAKE THIS MAN'S LIFE?

4 A. I HONESTLY COULD NOT SAY THAT I COULD OR I COULD
5 NOT. I HAVE THOSE TYPES OF RESERVATIONS.

6 Q. WHEN YOU SAY RESERVATIONS, WHAT'S THAT BASED ON,
7 MR. MCGUIRT?

8 A. I DON'T KNOW, CALL IT WHAT YOU WILL. I DON'T
9 KNOW WHETHER IT'S TURNING 50 OR WHAT IT IS.
0 THERE WAS PROBABLY A TIME IN MY LIFE THAT I
1 WOULD HAVE GIVEN YOU A DIFFERENT ANSWER.

2 Q. RIGHT. WHEN YOU SAY A DIFFERENT ANSWER, WHAT
3 WOULD THE DIFFERENT ANSWER BE?

4 A. I THINK THERE WAS A TIME IN MY LIFE WHEN I
5 PROBABLY WAS MORE ADAMANT ABOUT THINGS LIKE

1 THAT.

2 Q. UH HUH.

3 A. I DON'T FIND MYSELF BEING THAT WAY AS MUCH AS I
4 ONCE WAS.

5 Q. RIGHT.

6 A. AND I CANNOT SIT HERE AND HONESTLY TELL YOU THAT
7 I COULD OR COULD NOT BECAUSE I HONESTLY DON'T
8 KNOW.

9 Q. AND YOU WOULDN'T KNOW UNTIL THE TIME CAME?

10 A. EXACTLY.

11 Q. SO, IT MAY BE THAT THAT PAPER WOULD BE IN FRONT
12 OF YOU AND YOU'D SIGN IT?

13 A. YES, THAT'S A POSSIBILITY.

14 Q. WOULD YOU SAY, AND AGAIN THIS IS JUST YOUR
15 FEELING, MORE LIKELY THAN NOT IF THAT PAPER WAS
16 IN FRONT OF YOU WOULD YOU REFUSE TO SIGN IT JUST
17 BECAUSE YOU DON'T BELIEVE IN GIVING THE DEATH
18 PENALTY?

19 A. I CAN'T SAY THAT I WOULD REFUSE BECAUSE I DO NOT
20 BELIEVE IN THE DEATH PENALTY BECAUSE I DON'T
21 KNOW WHICH WAY I WOULD GO.

22 Q. OKAY. THANK YOU, SIR, I APPRECIATE IT.

23 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE FOR
24 JUST A MINUTE.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE DEFENSE?

2 MR. BOYD: WE SUBMIT HE'S QUALIFIED, YOUR HONOR.

3 MR. POPE: YOUR HONOR, I SUBMIT HE IS NOT
4 QUALIFIED. I THINK HE WAS BEING EXTREMELY HONEST BUT HE
5 HAS BASICALLY SAID THAT HE DOESN'T KNOW IF HE CAN FOLLOW
6 THE LAW OR NOT BECAUSE THE LAW WOULD REQUIRE IF A DEATH
7 VERDICT WAS RETURNED, THAT HE SIGN THAT DOCUMENT. AND HE
8 SAYS THAT HE DOESN'T KNOW IF HE CAN SIGN IT OR NOT.

9 AGAIN, I THINK HE WAS BEING EXTREMELY HONEST
0 ABOUT IT, BUT HE DOESN'T KNOW IF HE COULD FOLLOW THE LAW OR
1 NOT.

2 YOUR HONOR, THE SITUATION IS THAT WE HAVE TO HAVE
3 PEOPLE THAT CAN AFFIRMATIVELY FOLLOW THE LAW. AND HE HAS
4 INDICATED THAT HE DOES NOT KNOW IF HE CAN FOLLOW THE LAW OR
5 NOT. AND BEING IN THE JURY BOX AFTER A WEEK OF TRIAL OR
6 TWO WEEKS IS NOT THE TIME TO FIND OUT. HE SAID THAT HE DID
7 NOT KNOW IF HE COULD FOLLOW THE LAW.

8 MR. BOYD: YOUR HONOR, I SUBMIT HE WENT THROUGH
9 THE WHOLE QUESTIONS -- FRANKLY, I THOUGHT HE WAS PRETTY
0 STRONG ON THE DEATH PENALTY. FRANKLY, I THOUGHT HE WAS
1 GOING TO GO THE OTHER WAY FOR A MINUTE, BE TOO DEATH
2 PENALTY ORIENTED. BUT HE DIDN'T SAY HE WOULD REFUSE TO
3 SIGN IT. HE SAID THAT IT HADN'T BEEN PRESENTED TO HIM. HE
4 WOULD HAVE TO MAKE THAT DECISION WHEN THE QUESTION WAS
5 PRESENTED TO HIM.

1 IT WAS NOT LIKE HE WAS SAYING I CAN'T DO IT. HE
2 NEVER WAS ASKED WOULD HE REFUSE TO SIGN IT, AND HE NEVER
3 SAID HE WOULD REFUSE TO SIGN IT.

4 MR. POPE: YOUR HONOR, I WOULD POINT OUT, A
5 REVERSE DECISION, WHEN THEY SAID COULD YOU GIVE HIM LIFE
6 AND HE SAID I DON'T KNOW, I CAN'T SAY THAT, HE WOULD
7 CERTAINLY BE EXCLUDED THERE.

8 I THINK THIS IS THE SAME SITUATION BECAUSE HE
9 CANNOT FOLLOW THE LAW. AND IN FAIRNESS TO HIM, HE DOESN'T
10 KNOW IF HE CAN FOLLOW THE LAW. BUT IN THIS SITUATION WE'VE
11 GOT TO HAVE SOME EXACTITUDE AS TO WHETHER OR NOT HE CAN
12 FOLLOW THE LAW AND HE HAS INDICATED THAT HE DOESN'T KNOW IF
13 HE CAN.

14 THE COURT: BRING HIM BACK IN.

15 (THE JUROR RETURNED TO THE COURTROOM.)

16 THE COURT: MR. MCGUIRT, I DON'T WANT TO BELABOR
17 THE POINT AND I'M NOT TRYING TO CHALLENGE YOU OR DEBATE,
18 BUT I DO NEED TO KNOW AND I THINK I PROBABLY DO, BUT I NEED
19 TO ASK YOU. YOU STARTED OFF BY TELLING US THAT YOU FELT
20 LIKE YOU COULD LISTEN TO THE EVIDENCE AND GO WITH THE LIFE
21 IMPRISONMENT IF THAT'S WHAT THE FACTS WARRANTED AND THEN
22 YOU COULD IMPOSE THE DEATH PENALTY IF THE FACTS WARRANTED.

23 THAT'S WHAT I UNDERSTOOD YOU TO SAY. WAS I
24 CORRECT IN UNDERSTANDING THAT?

25 THE JUROR: YES, SIR.

1 THE COURT: YOU WERE THEN ASKED -- A REQUIREMENT
2 OF THE IMPOSITION OF THE DEATH PENALTY IS THAT, NUMBER ONE,
3 ALL TWELVE JURORS AGREE THAT THAT IS THE APPROPRIATE
4 PENALTY UNDER THE LAW AS CHARGED; BUT A REQUIREMENT ALSO IS
5 THAT EACH OF THE JURORS SIGN THE DOCUMENT SAYING THAT THEY
6 AGREE THAT DEATH IS THE APPROPRIATE PENALTY. AND YOU SAID
7 YOU WEREN'T SURE YOU COULD SIGN THAT.

8 MR. POPE: YOUR HONOR, WHEN I SAID THAT, I SAID
9 THAT I WASN'T SURE IF I COULD SIGN THAT, WHAT I MEANT WAS
0 UNLESS I WAS SURE IN MY OWN MIND THAT IT WAS RIGHT TO VOTE
1 THAT WAY. IF I VOTED THAT WAY, I WOULD SIGN THE DOCUMENT.

2 THE COURT: ALL RIGHT, I AM GOING TO ASK YOU TO
3 STEP BACK OUT AGAIN FOR JUST A MOMENT.
4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: DO YOU WANT TO CHANGE?

6 MR. BOYD: I STILL THINK HE'S QUALIFIED, I MEAN
7 THAT ENFORCES ---

8 THE COURT: DO YOU WANT TO CHANGE?

9 MR. POPE: I THINK HE IS QUALIFIED, YOUR HONOR.

0 THE COURT: BRING HIM BACK IN.

1 (THE JUROR RETURNED TO THE COURTROOM.)

2 THE COURT: MR. MCGUIRT, YOU WILL BE PART OF THE
3 PANEL. THAT DOESN'T MEAN THAT YOU ACTUALLY WILL SERVE ON
4 THE JURY BECAUSE WE WILL TAKE THE PANEL AND DEPRESS IT INTO
5 THE TWELVE AND TWO ALTERNATES.

1 AS YOU ALREADY KNOW, WE ARE RUNNING BEHIND WHAT
2 WE THOUGHT WE WOULD, NOT BECAUSE WE HAVEN'T BEEN WORKING
3 AND NOT BECAUSE Y'ALL HAVEN'T BEEN COOPERATING. PLEASE
4 CALL BACK TONIGHT AFTER 6:00 AND YOU WILL RECEIVE
5 INSTRUCTIONS ABOUT WHEN TO RETURN.

6 WHEN YOU DO RETURN, BRING CLOTHING AND MATERIAL
7 SO THAT YOU CAN STAY FOR THE DURATION OF THE TRIAL WHICH WE
8 ANTICIPATE WILL BE SOMETIME DURING THE MIDDLE OF NEXT WEEK.

9 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT
10 WOULD PREVENT YOU FROM DOING THAT?

11 THE JUROR: NO, SIR.

12 THE COURT: NOW DON'T TALK ABOUT THE CASE WITH
13 ANYONE; DON'T LET ANYONE TALK TO YOU ABOUT THE CASE. IF
14 THEY TRY, TELL THEM YOU CANNOT AND REPORT BACK TO ME IF
15 ANYBODY TRIES TO TALK TO YOU. AND DON'T LET YOURSELF BE
16 EXPOSED TO ANY NEWS COVERAGE, ANYTHING THAT WOULD REMOTELY
17 DEAL WITH THIS TRIAL, JUST DON'T LET YOURSELF BE EXPOSED TO
18 IT.

19 THE JUROR: OKAY.

20 THE COURT: CALL BACK TONIGHT AFTER 6:00.

21 THE JUROR: THANK YOU.

22 THE COURT: ALL RIGHT, NEXT IS DORIS EARLE,
23 NUMBER 77.

24 DORIS EARLE, JUROR NUMBER 77, BLACK FEMALE, WAS
25 QUESTIONED AS FOLLOWS:

1 QUESTIONS BY THE COURT:

2 Q. JUST HAVE A SEAT RIGHT OVER HERE PLEASE, MA'AM.

3 IT'S KIND OF HARD TO SEE BUT THERE IS A CHAIR
4 BACK IN THERE.

5 Q. MS. EARLE, LET ME REMIND YOU I'M JOHN HAYES.

6 AND REMIND YOU THAT YOU ARE STILL UNDER OATH
7 REGARDING THIS MATTER.8 YOU MAY NOTICE A CAMERA IN HERE, IT'S NOT ON,
9 BUT DURING THE TRIAL OF THE CASE IT CAN BE
10 COVERED BY THE NEWS MEDIA, BY PHOTOGRAPHERS AND
11 CAMERAS, BUT THEY CAN'T PHOTOGRAPH YOU. THAT'S
12 AGAINST THE LAW; AND THEY CAN'T PUBLICIZE THAT
13 YOU'RE ON THIS JURY. I WANT YOU TO BE AWARE OF
14 THAT.15 NOW, YOU HANDED US A QUESTIONNAIRE OR MAILED IT
16 IN; IS IT ACCURATE OR DO YOU NEED TO MAKE ANY
17 CHANGES TO IT?

18 A. IT'S ACCURATE.

19 Q. ALL RIGHT.

20 A. BUT MAY I SAY SOMETHING?

21 Q. YES, MA'AM.

22 A. I'VE GOT AN EXCUSE FROM THE DOCTOR.

23 Q. ALL RIGHT, HAND IT UP AND LET US READ IT.

24 (THE EXCUSE WAS GIVEN TO THE COURT.)

25 THE COURT: I'LL READ IT INTO THE RECORD. THIS

1 IS FROM THE CHURCH STREET CLINIC, A DIVISION OF CHESTER
2 COUNTY HOSPITAL AND NURSING CENTER, 139 CHURCH STREET,
3 CHESTER, SOUTH CAROLINA 29706, 803-385-5127, MARCH 12,
4 1999. "TO WHOM IT MAY CONCERN: RE: DORIS EARLE. THE
5 ABOVE NAMED PATIENT WAS SEEN BY ME ON THIS DATE. AN
6 EXAMINATION REVEALED HER TO HAVE BRONCHITIS. SHE HAS BEEN
7 PLACED ON MEDICATION FOR THIS. HOWEVER, I DO NOT FEEL SHE
8 WILL BE ABLE TO SERVE AS A JUROR. IT IS REQUESTED THAT SHE
9 BE EXCUSED FROM SERVING AT THIS TIME. YOURS TRULY, SARA C.
10 JONES, R.N., M.N. AND C.S." WHICH WOULD MEAN THAT SHE'S A
11 REGISTERED NURSE AND NOT A DOCTOR. IS THAT CORRECT?

12 THE JUROR: SHE WORKS IN THE DOCTOR'S OFFICE,
13 YES, SIR.

14 THE COURT: LET ME LET YOU STEP OUTSIDE JUST ONE
15 MINUTE.

16 (THE JUROR LEFT THE COURTROOM.)

17 THE COURT: THIS IS NOT A REAL DOCTOR'S EXCUSE.
18 IT IS FROM A CHURCH STREET CLINIC WHICH IS A DIVISION OF
19 CHESTER COUNTY HOSPITAL; IT IS SIGNED BY AN R.N.

20 WE CAN CERTAINLY HAVE SOMEONE CALL AND SEE IF A
21 DOCTOR AGREES WITH THIS OR I COULD GO AHEAD AND MAKE A
22 DECISION AT THIS TIME. IF SHE'S ON MEDICATION AND IF SHE
23 HAS BRONCHITIS, EVEN IF IT WAS DIAGNOSED BY AN R.N., I
24 DON'T KNOW THAT SHE SHOULD BE ON THE JURY.

25 WHAT SAYS THE STATE?

1 MR. POPE: I DEFER TO THE COURT'S DECISION ON
2 THIS, YOUR HONOR.

3 THE COURT: WHAT SAYS THE DEFENSE?

4 MR. HANCOCK: I DEFER TO THE COURT ALSO.

5 THE COURT: WELL, AGAIN, IT DOESN'T TECHNICALLY
6 COMPLY BECAUSE IT'S NOT FROM A DOCTOR BUT IT IS FROM A
7 CLINIC WHICH IS PART OF THE CHESTER COUNTY HOSPITAL AND
8 NURSING CENTER. SHE IS AN R.N., A M.N. AND A C.S. AND I
9 DON'T KNOW WHAT THOSE OTHER THINGS ARE, BUT IT SOUND
10 IMPRESSIVE TO ME.

11 I'M GOING TO MAKE THIS A PART OF THE COURT'S
12 RECORD AND I'M GOING TO EXCUSE HER DUE TO HER ILLNESS. HAVE
13 HER COME IN.

14 (THE JUROR RETURNED TO THE COURTROOM.)

15 THE COURT: MS. EARLE, WE'RE GOING TO EXCUSE YOU
16 AND LET YOU TRY TO GET WELL. WE APPRECIATE YOU COMING AND
17 YOU DON'T HAVE TO RETURN, YOU CAN LEAVE. THANK YOU.

18 (THE JUROR LEFT THE COURTROOM.)

19 THE COURT: ALL RIGHT, NEXT IS RAYMOND RACER.

20 RAMOND H. RACER, JR., JUROR NUMBER 123, WHITE
21 MALE, WAS QUESTIONED AS FOLLOWS:

22 QUESTIONS BY THE COURT:

23 Q. COME ON UP HERE AND HAVE A SEAT RIGHT HERE. LET
24 ME FIRST REMIND YOU THAT I'M JOHN HAYES; I'M THE
25 JUDGE THAT'S BEEN ASSIGNED TO HEAR THIS CASE.

1. AND YOU ARE STILL UNDER OATH REGARDING THESE
2. QUESTIONS THAT ARE POSED TO YOU TODAY.

3. YOU WILL SEE A CAMERA IN HERE, IT'S NOT ON, BUT
4. IF YOU SIT ON THIS CASE I'LL TELL YOU IN ADVANCE
5. THAT BY LAW THE PHOTOGRAPHERS AND CAMERAS CAN BE
6. USED IN THE COURTROOM NOW. BUT THEY CAN'T
7. PHOTOGRAPH ANY JUROR OR USE ANY JUROR'S NAME.
8. SO, DON'T BE DISTRACTED BY THAT IF YOU SERVE ON
9. THIS JURY.

10. YOU HANDED US A QUESTIONNAIRE AND I HAVE IT IN
11. MY HAND. DO YOU NEED TO ADD OR TAKE ANYTHING
12. FROM IT OR DO YOU THINK IT'S ACCURATE?

13. A. IT SHOULD BE ACCURATE.

14. Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW THE
15. WITNESS LIST THAT'S IN THE JURY ROOM?

16. A. YES, SIR.

17. Q. IS THERE ANYBODY ON THERE THAT YOU'RE RELATED TO
18. IN ANY WAY OR ANYBODY YOU KNOW?

19. A. NOBODY I'M RELATED TO. JOHNNY ARCHIE, IF THAT'S
20. THE OWNER OF ARCHIE'S TIRE AND WHEEL IN ROCK
21. HILL, I KNOW THAT GENTLEMAN. I'M NOT SURE IF
22. HIS WIFE'S NAME WAS ON THERE, BUT MARY IS HIS
23. WIFE AND I KNOW HER WELL ---

24. THE COURT: THE PROSECUTOR IS NODDING AND ONE IS
25. SHAKING, SO THAT DOESN'T TELL ME A WHOLE LOT.

1 MR. POPE: MR. ARCHIE WILL NOT BE CALLED AS A
2 WITNESS, YOUR HONOR.

3 Q. ALL RIGHT, ANYONE ELSE?

4 A. NO.

5 Q. ALL RIGHT, THANK YOU. HAVE YOU HEARD ANYTHING
6 ABOUT THIS CASE PRIOR TO YOUR COMING HERE OR
7 READ ABOUT IT, TALKED ABOUT IT OR FORMED ANY
8 OPINION ABOUT IT?

9 A. NO, SIR.

10 Q. YOU HAVEN'T HEARD ABOUT IT AT ALL?

11 A. NO, SIR.

12 Q. THIS CASE, SINCE IT'S A CASE WHEREIN THE DEATH
13 PENALTY IS SOUGHT, WILL BE TRIED IN TWO PHASES.
14 THE FIRST PHASE WILL BE TO DETERMINE WHETHER OR
15 NOT MR. ROBERTSON IS IN FACT GUILTY OF MURDER.
16 IF HE'S FOUND NOT GUILTY, THEN THE CASE ENDS.
17 IF A JURY WERE TO BE CONVINCED BEYOND A
18 REASONABLE DOUBT UNANIMOUSLY THAT HE WAS GUILTY
19 OF MURDER, THEN THE CASE WOULD GO INTO A SECOND
20 PHASE, THAT DEALING WITH THE PENALTY.

21 MR. ROBERTSON IS PRESUMED INNOCENT OF THE
22 CHARGES AGAINST HIM. AND I WANT YOU TO KNOW
23 THAT WHILE WE'RE TALKING ABOUT THIS SECOND PART,
24 WE'RE NOT DOING THAT -- IT'S NOT PREDICATED ON
25 ANY FEELING THAT HE WILL BE FOUND GUILTY BECAUSE

1 THAT'S UP TO THE FIRST JURY. IT'S JUST THAT WE
2 HAVE TO TALK ABOUT THAT SECOND PART AT THIS
3 POINT. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. IN THE JURY ROOM THERE WAS A LIST WITH THREE
6 JUROR TYPES SET FORTH ON IT. DID YOU FIND
7 YOURSELF TO BE ONE OF THOSE JUROR TYPES?

8 A. YES, SIR.

9 Q. WHICH ONE?

10 A. TWO.

11 Q. ALL RIGHT. JUROR TYPE NUMBER TWO IS A JUROR WHO
12 EVEN THOUGH A DEFENDANT HAS BEEN FOUND GUILTY OF
13 MURDER, WOULD UNDER NO CIRCUMSTANCES IMPOSE THE
14 DEATH PENALTY. IS THAT CORRECT?

15 A. YES, SIR.

16 Q. THIS IS A JUROR WHO WOULD NOT NEED TO HEAR
17 ANYTHING ELSE IN AGGRAVATION OF THE CASE BUT
18 WOULD HAVE YOUR MIND MADE UP AND A PREDISPOSED
19 INCLINATION CONCERNING THE PUNISHMENT NO MATTER
20 WHAT YOU HEARD. IS THAT CORRECT?

21 A. YES, SIR.

22 Q. ARE THERE ANY CIRCUMSTANCES THAT YOU CAN
23 ENVISION IN WHICH YOU WOULD IMPOSE THE DEATH
24 PENALTY?

25 A. NO, SIR.

1 Q. ALL RIGHT. LET ME LET YOU ANSWER QUESTIONS THAT
2 MAY BE POSED BY COUNSEL.

3 QUESTIONS BY MR. BRACKETT:

4 Q. GOOD AFTERNOON, MR. RACER.

5 A. GOOD AFTERNOON.

6 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
7 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
8 AT COUNSEL TABLE WITH ME IS TOMMY POPE. HE AND
9 I ARE PROSECUTING MR. ROBERTSON FOR THE MURDERS
10 IN THIS CASE AND I JUST HAVE A FEW QUESTIONS I
11 WANT TO FOLLOW UP WITH ALONG THE LINES OF WHAT
12 THE JUDGE WAS ASKING YOU.

13 MY UNDERSTANDING IS YOU INDICATED TO THE JUDGE
14 THAT IN THE FIRST PART OF THE TRIAL WHEN WE ARE
15 JUST CONCERNED WITH GUILT OR INNOCENCE, IN THAT
16 FIRST PART OF THE TRIAL YOU COULD BE FAIR AND
17 OPEN-MINDED ON THE ISSUE OF WHETHER OR NOT HE'S
18 GUILTY?

19 A. CORRECT.

20 Q. OKAY. AND YOU UNDERSTAND THE STATE BEARS THE
21 BURDEN OF PROOF?

22 A. YES, SIR.

23 Q. WE'RE THE ONES THAT ARE RESPONSIBLE FOR PROVING
24 TO YOU THAT HE'S GUILTY. HE HAS NO BURDEN
25 WHATSOEVER. AS A MATTER OF FACT, HE'S PRESUMED

1 INNOCENT AS HE SITS THERE RIGHT NOW.

2 A. CORRECT.

3 Q. UNTIL WE BRING EVIDENCE SUFFICIENT TO CONVINCE
4 TWELVE JURORS BEYOND A REASONABLE DOUBT THAT
5 HE'S GUILTY. AND WHAT YOU'RE SAYING IS YOU'VE
6 COME INTO THIS COURTROOM WITH NO NOTIONS ONE WAY
7 OR THE OTHER, YOU WOULD MAKE US CARRY OUR BURDEN
8 OF PROOF.

9 A. CORRECT.

10 Q. OKAY. ASSUMING THAT WE CONVICT HIM, NOW WE ARE
11 IN THE SECOND PHASE. NOW GUILT IS ESTABLISHED;
12 THERE IS NO QUESTION ABOUT GUILT ANYMORE, WE
13 HAVE CARRIED OUR BURDEN. HE IS GUILTY OF THE
14 MURDERS FOR THE PURPOSES OF THIS CONVERSATION
15 WE'LL SAY.

16 NOW WE ARE ONLY CONCERNED WITH THE PENALTY.
17 THERE ARE TWO OPTIONS IN THIS STATE, LIFE OR
18 DEATH. AND WHAT YOU'RE TELLING ME IS THAT IN
19 THIS PHASE OF THE TRIAL YOU DO COME INTO THAT
20 SECOND PART OF THE TRIAL WITH A PRECONCEIVED
21 NOTION OF WHAT YOUR SENTENCE IS GOING TO BE?

22 A. YES, SIR.

23 Q. AND THAT SENTENCE IS GOING TO BE LIFE?

24 A. CORRECT.

25 Q. NO MATTER WHAT WE PROVE IN THE WAY OF HOW

1 HEINOUS THE CRIME IS, THE FACT THAT IT -- ASSUME
2 WE PROVE THAT IT'S HIS PARENTS THAT HE KILLED;
3 ASSUME ALSO THAT WE PROVE ALL SORTS OF HEINOUS
4 CIRCUMSTANCES SURROUNDING THE MURDER AND WE
5 BRING UP ALL THESE TERRIBLE FACTS ABOUT THIS
6 CASE, YOU COULD NOT GIVE HIM DEATH UNDER ANY
7 CIRCUMSTANCES?

8 A. CORRECT.

9 Q. IS THIS A RELIGIOUS BELIEF?

10 A. YES, SIR, THAT'S PART OF IT. PERSONAL AND
11 RELIGIOUS.

12 Q. HAS ANYBODY EVER QUESTIONED YOU ALONG THESE
13 LINES BEFORE ABOUT YOUR FEELINGS ABOUT THE DEATH
14 PENALTY?

15 A. NO, SIR.

16 Q. IT'S REALLY LIKE THE FIRST TIME YOU'VE HAD AN
17 OPPORTUNITY TO ---

18 A. I HADN'T GIVEN IT MUCH THOUGHT UNTIL THIS MOMENT
19 AND ESPECIALLY WITH MY WIFE, AND I CALLED MY
20 MOTHER -- YES, THAT'S HOW I FEEL.

21 Q. OKAY. AND THESE ARE ABSOLUTELY BEDROCK
22 CONVICTIONS ON YOUR PART WHICH CAN'T BE
23 OVERTURNED NO MATTER WHAT WE DO?

24 A. CORRECT.

25 Q. LIKEWISE, SUPPOSE YOU WERE ON A JURY THAT DID

1 FIND THAT THE SENTENCE SHOULD BE DEATH, SOMEHOW.
2 ONE OF THE REQUIREMENTS OF BEING A JUROR IN A
3 DEATH PENALTY CASE IS THAT THEY HAVE TO BE ABLE
4 TO TAKE A PEN IF THEY FIND FOR A VERDICT OF
5 DEATH AND EACH JUROR HAS TO SIGN THEIR NAME ON
6 THE DEATH VERDICT FORM SENDING THIS MAN TO HIS
7 DEATH.

8 A. UH HUH.

9 Q. WHAT YOU'RE TELLING ME IS THAT THERE ARE NO
10 CIRCUMSTANCES, THERE IS NO CONCEIVABLE SET OF
11 CIRCUMSTANCES UNDER WHICH RAYMOND RACER WOULD
12 EVER PICK UP THAT PEN AND SIGN HIS NAME TO A
13 SHEET OF PAPER THAT SENT SOMEBODY TO THEIR
14 DEATH?

15 A. THAT'S CORRECT, I WOULDN'T.

16 Q. OKAY.

17 THE COURT: MR. HANCOCK?

18 QUESTIONS BY MR. HANCOCK:

19 Q. MR. RACER, WE KEEP COMING AT YOU. I MEAN THE
20 JUDGE HAS ASKED YOU QUESTIONS, THE SOLICITOR HAS
21 ASKED YOU QUESTIONS, AND IT IS MY DUTY ON BEHALF
22 OF MR. ROBERTSON WHO IS SITTING HERE, AND HE'S
23 THE DEFENDANT IN THE CASE AND MR. BOYD HERE IS
24 CO-COUNSEL, AND I'M NOT TRYING TO BROW BEAT YOU
25 OR ANYTHING ELSE. YOU'VE SAID CERTAIN THINGS

1 AND YOU'VE EXPRESSED A STRONG BELIEF. AND
2 THOSE BELIEFS ARE YOURS AND UNIQUE TO YOU.

3 AS WE'VE TOLD YOU, THERE'S NOTHING RIGHT OR
4 WRONG HERE, IT'S JUST THAT WE HAVE TO MAKE
5 CERTAIN JUDGMENT CALLS AS THEY RELATE TO THE LAW
6 AND THIS CASE IN PARTICULAR.

7 EVERYBODY HAS TOLD YOU THAT WE ARE ASSUMING THAT
8 IT HAS BEEN PROVEN THAT JIMMY KILLED BOTH OF HIS
9 PARENTS. THAT'S PROVEN; YOU'VE HEARD THE
10 EVIDENCE, YOU'VE GONE THROUGH ALL OF IT AND YOU
11 HAVE BROUGHT BACK VERDICTS OF GUILTY. OKAY? SO
12 WE GO TO A SECOND PHASE IN THE TRIAL WHICH IS
13 THE DEATH PENALTY PHASE.

14 AND IF WE GOT TO THAT PHASE AND YOU WERE A
15 JUROR, YOU WOULD BE SITTING ON THAT JURY WITH
16 TWELVE PEOPLE. AND ABOVE AND BEYOND THE FACTS
17 THAT YOU HAVE HEARD TO THAT POINT CONCERNING
18 JIMMY KILLING ONE OR BOTH OF HIS PARENTS, THEN
19 YOU COULD BE PRESENTED WITH FACTS THAT MAKE IT
20 EVEN WORSE THAN JUST KILLING BOTH OF HIS
21 PARENTS. THEY ARE CALLED FACTORS IN
22 AGGRAVATION. AND THEY WOULD MAKE IT EVEN WORSE
23 THAN WHAT YOU HAD HEARD IN THE GUILTY PHASE IF
24 THE STATE CHOSE TO PUT THOSE FACTORS ON. YOU
25 UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. AND EVEN IF IT WAS WORSE THAN HIM BEING PROVEN
3 TO HAVE KILLED BOTH OF HIS PARENTS, THEN YOU'RE
4 TELLING THIS COURT THAT YOU COULD NOT IN ANY WAY
5 IMPOSE THE DEATH PENALTY ON A PERSON THAT HAD
6 DONE SOMETHING SUCH AS KILL THEIR PARENTS AND DO
7 IT IN A WAY THAT WAS AGGRAVATED.

8 A. CORRECT, THE CIRCUMSTANCES WOULDN'T MATTER.

9 Q. THE CIRCUMSTANCES WOULD NOT MATTER. YOU COULD
10 NOT CONSIDER THE VIEW OF YOUR OTHER JURORS?

11 A. NO, SIR.

12 Q. NOR THE LAW AS THE JUDGE WILL CHARGE YOU THE LAW
13 AND SAY THAT YOU MUST FOLLOW THE LAW, AND THAT
14 IF YOU FELT THE AGGRAVATING CIRCUMSTANCES WERE
15 SUCH THAT THEY OVERRODE ANY MITIGATING
16 CIRCUMSTANCES, THAT YOU HAD TO FOLLOW THE LAW
17 AND FIND ---

18 MR. BRACKETT: OBJECTION, YOUR HONOR. I DON'T
19 THINK HE CAN CALL THE LAW INTO CONFLICT WITH HIS PERSONAL
20 BELIEFS IN THIS PARTICULAR INSTANCE.

21 THE COURT: ALL RIGHT. JUST REPHRASE YOUR
22 QUESTION.

23 Q. THAT YOU WOULD HAVE TO MAKE YOUR JUDGMENT, SIGN
24 THAT YOU HAD FOUND THAT IT WAS APPROPRIATE UNDER
25 THE CIRCUMSTANCES OF THE MURDERS AND THE

1 AGGRAVATION THAT JIMMY WOULD GET THE DEATH
2 PENALTY. YOU ARE TELLING ME THAT YOU COULD NOT
3 DO THAT?

4 A. CORRECT.

5 Q. THANK YOU, SIR.

6 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE
7 DOOR JUST FOR A MOMENT.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: WHAT SAYS THE STATE?

10 MR. POPE: I SUBMIT HE'S CLEARLY UNQUALIFIED,
11 YOUR HONOR.

12 THE COURT: WHAT SAYS THE DEFENSE?

13 MR. HANCOCK: IT'S EVEN FAIRLY CLEAR TO ME, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT, I SO FIND. I FIND THAT HE
16 IS UNQUALIFIED. BRING HIM BACK IN.

17 (THE JUROR RETURNED TO THE COURTROOM.)

18 THE COURT: MR. RACER, WE APPRECIATE YOUR TIME,
19 AND WE APPRECIATE YOUR CANDOR AND YOUR PATIENCE. BUT WE
20 ARE GOING TO LET YOU GO. YOU WILL BE EXCUSED. THANK YOU
21 AN AWFUL LOT.

22 THE JUROR: THANK YOU.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT, WE WILL GO WITH -- RUSSELL
25 HOVIS IS NEXT.

1 RUSSELL L. HOVIS, JUROR NUMBER 123, WHITE MALE,
2 WAS QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. PLEASE STEP UP HERE; THERE'S A SEAT BETWEEN
5 MYSELF AND MRS. FISCHER OVER THERE. AGAIN, I'M
6 JOHN HAYES AND I'M THE JUDGE WHO HAS BEEN
7 ASSIGNED THIS CASE AND YOU ARE REMINDED THAT YOU
8 ARE STILL UNDER OATH.

9 YOU WILL SEE A CAMERA IN HERE; IT'S NOT ON RIGHT
10 NOW, BUT DURING THE TRIAL OF THE CASE IF YOU'RE
11 ON THE JURY YOU MIGHT NOTICE PHOTOGRAPHERS OR
12 CAMERAS, BUT THEY ARE NOT ALLOWED TO FILM OR
13 PHOTOGRAPH ANY JURORS OR USE YOUR NAMES; SO,
14 DON'T BE DISTRACTED IF YOU END UP BEING ON THE
15 JURY.

16 YOU SENT US IN A QUESTIONNAIRE, DO YOU NEED TO
17 MAKE ANY CORRECTIONS TO IT OR DO YOU BELIEVE IT
18 IS OKAY AS SENT IN?

19 A. AS BEST I RECALL, IT'S CORRECT.

20 Q. DID YOU HAVE A CHANCE TO REVIEW THOSE LISTS OF
21 WITNESSES IN THE JURY ROOM?

22 A. YES, I DID.

23 Q. IS THERE ANYBODY ON THERE YOU KNOW?

24 A. I HAVE A QUESTION.

25 Q. ALL RIGHT.

1 A. ON THE DOROTHY DAVIS. MY BROTHER MARRIED A
2 TRISH DAVIS, I THINK HER NAME IS DOT, BUT I'M
3 NOT SURE THAT'S THE SAME PERSON.

4 Q. DO YOU KNOW WHERE YOUR SISTER-IN-LAW WORKS?

5 A. SHE'S IN GEORGIA, BUT IT WOULD BE HER MOTHER.
6 THEY LIVE IN ROCK HILL. BUT I'M NOT SURE WHO IT
7 IS.

8 Q. IT'S NOT THE SAME PERSON.

9 A. OKAY.

10 Q. NOBODY ELSE THAT YOU ARE RELATED TO OR THAT YOU
11 KNOW?

12 A. NO, NO NAMES THAT I CAN RECALL.

13 Q. PRIOR TO THIS POINT HAVE YOU HEARD ANYTHING
14 ABOUT THIS CASE; HAVE YOU READ ABOUT IT, HEARD
15 ABOUT IT, DISCUSSED IT OR FORMED ANY OPINION?

16 A. OTHER THAN WHEN THE ARTICLE CAME OUT IN SUNDAY'S
17 PAPER, IT TOLD ABOUT THE TRIAL WAS GOING TO BE
18 ON MONDAY. THAT'S THE FIRST I HAD REALLY READ
19 ABOUT IT.

20 Q. WOULD THE FACT THAT THERE WAS SOMETHING IN THE
21 PAPER THAT YOU READ, WOULD THAT AFFECT YOUR
22 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF
23 THIS CASE?

24 A. I DON'T BELIEVE SO; THERE WAS NOTHING REALLY,
25 OTHER THAN THE FACT THAT THE TRIAL WAS GOING TO

1 BE HELD, THAT I RECALL.

2 Q. WOULD YOU BE ABLE TO NOT FACTOR INTO YOUR
3 DELIBERATION ANYTHING THAT YOU READ, BUT RATHER
4 CONFINE YOUR DECISION IN THIS CASE TO WHAT YOU
5 HEAR IN THIS COURTROOM? COULD YOU DO THAT?

6 A. I BELIEVE SO.

7 Q. AND IN SPITE OF HAVING PREVIOUSLY READ SOMETHING
8 ABOUT THE CASE, COULD YOU GIVE BOTH THE STATE
9 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN
10 THIS CASE?

11 A. I BELIEVE SO.

12 Q. IN THE JURY ROOM WAS A LIST OF THREE JUROR TYPES
13 SET OUT ON IT. DID YOU FIND YOURSELF TO BE IN
14 ONE OF THOSE TYPES?

15 A. I GUESS THE THIRD TYPE WOULD BE THE CLOSEST.

16 Q. LET ME ASK YOU ABOUT THAT. IN THAT THIRD TYPE I
17 USED WORDS LIKE AGGRAVATION AND MITIGATION IN
18 TALKING ABOUT CIRCUMSTANCES. AND THOSE WORDS
19 MEAN, AGGRAVATION MEANS CIRCUMSTANCES ATTENDING
20 THE COMMISSION OF THE CRIME WHICH INCREASE THAT
21 CRIMES ENORMITY OR ADD TO ITS INJURIOUS
22 CONSEQUENCE, BUT THEY ARE THINGS OVER AND ABOVE
23 JUST WHAT CONSTITUTES THE CRIME ITSELF.

24 MITIGATING CIRCUMSTANCES ARE THINGS THAT ARE NOT
25 A JUSTIFICATION OR EXCUSE FOR A CRIME BUT RATHER

1 ARE THINGS THAT SHOULD IN FAIRNESS AND MERCY MAY
2 BE CONSIDERED AS EXTENUATING OR REDUCING ONE'S
3 DEGREE OF MORAL CULPABILITY.

4 DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. SO, YOU'RE TELLING ME THAT -- THIS CASE WOULD
7 PROCEED AS FOLLOWS: THE FIRST PHASE OR THE
8 FIRST TRIAL WOULD BE REGARDING WHETHER OR NOT
9 MR. ROBERTSON WAS GUILTY OR NOT. IF HE'S FOUND
10 NOT GUILTY, THE CASE WOULD GO NO FURTHER. IF A
11 JURY WERE CONVINCED BEYOND A REASONABLE DOUBT
12 UNANIMOUSLY THAT HE WAS GUILTY OF MURDER, THEN
13 THE CASE WOULD GO INTO A SECOND PENALTY PHASE.
14 WE ARE TALKING ABOUT THAT SECOND PHASE, BUT THAT
15 DOES NOT INDICATE THAT THAT WOULD EVER EVEN
16 OCCUR. THAT DOES NOT PRESUPPOSE THAT HE WILL BE
17 FOUND GUILTY; THAT'S UP TO THE JURY, SOLELY UP
18 TO THE JURY.

19 HE IS PRESUMED INNOCENT OF THE CHARGES UNTIL
20 SUCH TIME AS A JURY WERE TO FIND HIM GUILTY. WE
21 ARE DEALING WITH THIS SECOND PART BECAUSE WE
22 HAVE TO DEAL WITH IT NOW BECAUSE OF THE NATURE
23 OF THESE PROCEEDINGS.

24 SO IF I UNDERSTAND WHAT YOU'RE TELLING ME,
25 YOU'RE SAYING THAT WERE YOU ON THE JURY AND MR.

1 ROBERTSON WERE FOUND GUILTY OF MURDER, THAT
2 GOING INTO THIS SECOND PHASE YOU WOULD NOT HAVE,
3 PRIOR TO PROCEEDING INTO THAT SECOND PHASE, MADE
4 UP YOUR MIND AS TO WHAT PUNISHMENT WOULD BE
5 APPROPRIATE. IS THAT WHAT YOU'RE TELLING ME?

6 A. THAT'S CORRECT.

7 Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR
8 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
9 MITIGATION, THAT YOU WOULD LISTEN AND FOLLOW THE
10 LAW AND THEN AND ONLY THEN MAKE A DECISION
11 REGARDING PUNISHMENT. IS THAT WHAT YOU ARE
12 TELLING ME?

13 A. THAT'S CORRECT.

14 Q. AND IF I UNDERSTAND IT THEN, IF THE FACTS
15 WARRANTED IT, YOU COULD IMPOSE OR RETURN A
16 VERDICT FOR LIFE IMPRISONMENT. IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND LIKEWISE IF YOU FELT THAT THE FACTS WERE
19 SUCH THAT THE APPROPRIATE VERDICT WOULD BE FOR
20 THE PENALTY OF DEATH, YOU COULD RETURN THE DEATH
21 PENALTY. IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT COUNSEL
24 MAY HAVE.

25 QUESTIONS BY MR. BOYD:

1 Q. GOOD AFTERNOON, MR. HOVIS?

2 A. GOOD AFTERNOON.

3 Q. I'M JIMMY BOYD; I'M REPRESENTING JIMMY
4 ROBERTSON. HE'S SEATED OVER THERE AND BILL
5 HANCOCK RIGHT THERE IS MY CO-COUNSEL ON THIS
6 CASE.

7 Q. I NEED TO FOLLOW UP WITH YOU ON A FEW QUESTIONS
8 THE JUDGE JUST ASKED YOU.

9 Q. I KNOW IT PROBABLY FEELS KIND OF AWKWARD BEING
10 THERE IN THE WITNESS SEAT, THAT'S SORT OF A HOT
11 SEAT. BUT BE REASSURED THERE'S NO RIGHT OR
12 WRONG ANSWERS TO WHAT I'M ASKING YOU. YOU'LL
13 NOT GET IN TROUBLE NO MATTER WHICH WAY YOU
14 ANSWER THEM. I JUST NEED TO KNOW HOW YOU FEEL
15 ABOUT A FEW THINGS.

16 A. OKAY.

17 Q. NOW YOU HAVE SAID DEPENDING ON -- WELL, LET ME
18 BACK UP A MINUTE. IN A CASE LIKE THIS THERE ARE
19 TWO PARTS TO THE TRIAL, AT LEAST POTENTIALLY. IN
20 THE FIRST PART THE JURY DETERMINES WHETHER OR
21 NOT THE PERSON ON TRIAL, MY CLIENT JIMMY
22 ROBERTSON, WOULD BE FOUND GUILTY OR NOT GUILTY.
23 OF COURSE, IF HE'S FOUND NOT GUILTY, THAT ENDS
24 THE CASE RIGHT THERE; YOU DON'T GO TO A
25 SENTENCING PHASE, OBVIOUSLY. BUT IF HE IS FOUND

1 GUILTY, IT GOES TO A SENTENCING PHASE. I'M
2 ASKING YOU THESE QUESTIONS ABOUT SENTENCING
3 BECAUSE THIS IS THE ONLY CHANGE I GET TO AT THIS
4 POINT AND I HAVE TO JUST ASSUME, JUST FOR
5 PURPOSES OF THESE QUESTIONS, THAT HE HAS BEEN
6 FOUND GUILTY. I DON'T WANT TO INTIMATE TO YOU
7 THAT HE IS GOING TO BE FOUND GUILTY JUST BY
8 ASKING THESE QUESTIONS, BUT I HAVE TO ASK THEM.
9 NOW, YOU UNDERSTAND THAT HE IS CHARGED WITH
10 KILLING TWO PEOPLE, BOTH OF HIS PARENTS. YOU
11 UNDERSTAND THAT.

12 A. YES, SIR.

13 Q. IS THAT CORRECT?

14 A. YES, SIR.

15 Q. AND KNOWING THAT, KNOWING THAT HE'S CHARGED WITH
16 KILLING HIS PARENTS AND ASSUMING HE'S FOUND
17 GUILTY OF THAT, AND I'M NOT ASKING YOU TO TELL
18 ME HOW YOU WOULD DECIDE IN THIS CASE, BUT I'M
19 ASKING COULD YOU STILL CONSIDER A LIFE SENTENCE
20 FOR SOMEONE WHO HAS BEEN CONVICTED OF KILLING
21 BOTH THEIR PARENTS?

22 A. JUST SITTING HERE RIGHT NOW, I COULDN'T TELL YOU
23 WHICH WAY I WOULD GO.

24 Q. WELL, THAT'S ---

25 A. I MEAN I REALLY, IT'S A QUESTION OF LIFE OR

1 DEATH AND WITHOUT ---

2 Q. SURE, I UNDERSTAND. WHAT I'M TRYING TO GET AT,
3 I WANT TO MAKE SURE THAT JUST BECAUSE HE IS
4 CONVICTED OF THE MURDER, YOU'RE NOT GOING TO
5 AUTOMATICALLY SAY BECAUSE HE'S CONVICTED HE GETS
6 DEATH?

7 A. I COULDN'T SAY THAT, NO.

8 Q. AND LIKEWISE, YOU COULDN'T SAY HE'S
9 AUTOMATICALLY GOING TO GET LIFE?

10 A. EXACTLY. UNTIL I'M FACED WITH THAT DECISION, I
11 REALLY COULDN'T SAY EITHER WAY HOW I WOULD
12 RESPOND.

13 Q. AND IF YOU'RE -- IN THE PENALTY PHASE OF THE
14 TRIAL IF YOU ARE CHOSEN AS A JUROR, THE STATE
15 CAN PRESENT WHAT'S CALLED AGGRAVATING
16 CIRCUMSTANCES. THOSE ARE THINGS THAT MAKE THE
17 MURDER WORSE THAN A NORMAL MURDER, IF THERE IS
18 SUCH A THING, BUT WORSE. AND YOU'D BE WILLING
19 TO LISTEN AND CONSIDER THOSE THINGS. IS THAT
20 CORRECT?

1 A. IF I WAS ASKED TO, I COULD.

2 Q. AND WE MAY, WE DON'T HAVE TO, BUT WE POSSIBLY
3 WOULD BE PRESENTING MITIGATING THINGS WHICH
4 WOULD NOT EXCUSE THE MURDER BUT WOULD MAKE THE
5 MORAL CULPABILITY LESS, BASICALLY.

1 A. UH HUH.

2 Q. AND WOULD YOU BE WILLING TO LISTEN AND CONSIDER
3 THOSE THINGS ALSO?

4 A. YES, WHATEVER.

5 Q. AND SO YOU WOULD NOT HAVE MADE UP YOUR MIND
6 EITHER WAY; IS THAT CORRECT?

7 A. NO, SIR.

8 Q. OKAY. IF YOU DO DECIDE FOR THE DEATH PENALTY IN
9 THE PENALTY PHASE -- NOW THIS IS ASSUMING THAT
10 YOU HAVE DELIBERATED, MADE THAT DECISION. YOU
11 WOULD BE REQUIRED TO PASS DOWN A DEATH SENTENCE,
12 TO SIGN THE PAPER ALONG WITH THE OTHER JURORS,
13 SENTENCING JIMMY ROBERTSON TO DEATH. COULD YOU
14 DO THAT IF THAT'S THE DECISION YOU HAD REACHED?

15 A. I SUPPOSE I COULD. LIKE I SAY, UNTIL I -- I
16 HAVE NO PRESUPPOSITION OF WHETHER THE DEATH
17 PENALTY IS RIGHT OR WRONG IN THIS PARTICULAR
18 CASE.

19 Q. I'M NOT ASKING YOU IN THIS CASE. I'M JUST
20 ASKING YOU IF YOU HAD HEARD ALL THE EVIDENCE AND
21 IF, I'M JUST SAYING IF, IF YOU'VE DECIDED THAT
22 THE DEATH PENALTY IS APPROPRIATE AT THAT POINT,
23 COULD YOU THEN SIGN YOUR NAME TO THE SENTENCE
24 SHEET THAT SAYS, YOU KNOW, WE SENTENCE THE
25 DEFENDANT TO DEATH?

1 A. TO BE CERTAIN, I DON'T KNOW.

2 Q. OKAY.

3 A. I REALLY DON'T. I REALLY CAN'T SIT HERE AND SAY
4 THAT I WOULD OR THAT I WOULDN'T. I HONESTLY --
5 THE JUDGE ASKED ME TO BE HONEST. I HONESTLY
6 CAN'T TELL YOU ---

7 Q. WELL, THAT'S WHAT I'M WANTING TO KNOW.

8 A. --- THAT I COULD OR THAT I COULDN'T.

9 Q. ALL RIGHT. YOU SAID THAT YOU COULD CONSIDER
10 EITHER THE DEATH PENALTY OR LIFE IN PRISON; IS
11 THAT CORRECT?

12 A. YES.

13 Q. OKAY, ALL RIGHT. IF YOU'RE SITTING ON THE JURY
14 -- I WANT TO JUST MAKE IT CLEAR WHAT I'M TALKING
15 ABOUT -- IF YOU'RE SITTING ON THE JURY, YOU'VE
16 SAID YOU COULD CONSIDER, AFTER HEARING ALL THE
17 EVIDENCE IN AGGRAVATION AND MITIGATION AND ALL
18 THAT, YOU CAN THEN DECIDE ON THE RIGHT PENALTY.
19 IS THAT CORRECT?

20 A. I CAN DECIDE ON THE RIGHT PENALTY?

21 Q. YES. EITHER DEATH OR LIFE.

22 (AFTER A PAUSE.)

23 Q. I HAVE A FEELING I'M CONFUSING YOU.

24 A. YES. I THINK I ---

25 THE COURT: REPHRASE YOUR QUESTION, MR. BOYD. IF

1 THE ANSWER TO THE QUESTION IS CONFUSING, I BET THE ONE
2 BEING QUESTIONED IS, TOO.

3 Q. WHAT I'M SAYING IS IF YOU'RE SITTING ON THE JURY
4 IN THE PENALTY PHASE, AND YOU UNDERSTAND THE
5 PENALTY PHASE IS TO DECIDE WHETHER JIMMY
6 ROBERTSON GETS THE DEATH PENALTY OR A LIFE
7 SENTENCE. YOU UNDERSTAND THAT?

8 A. YES.

9 Q. AND HEARING THAT EVIDENCE -- NOW I'M NOT ASKING
10 YOU TO TELL ME NOW WHAT YOU WOULD DECIDE.

11 A. ALL RIGHT.

12 Q. I'M JUST ASKING YOU COULD YOU IF THE
13 CIRCUMSTANCES CONVINCED YOU, FIRST, COULD YOU
14 RETURN A VERDICT OF LIFE IMPRISONMENT?

15 A. YES.

16 Q. AND IF THE CIRCUMSTANCES CONVINCED YOU THAT IT
17 WAS APPROPRIATE, COULD YOU RETURN A SENTENCE OF
18 A DEATH SENTENCE?

19 A. IF THAT'S WHAT THE INSTRUCTIONS SAID TO DO, YES.

20 Q. NO, NOW NOBODY IS GOING TO TELL YOU THAT'S WHAT
21 YOU HAVE TO DO. THAT'S GOING TO BE UP TO YOU TO
22 DECIDE BETWEEN LIFE AND DEATH. THAT'S UP TO THE
23 JURY. THE JUDGE IS GOING TO GIVE YOU SOME
24 GUIDELINES TO GO BY, BUT IT'S UP TO YOU TO
25 DETERMINE.

1 WHAT I'M SAYING, BASED ON THE JUDGE'S
2 INSTRUCTIONS TO YOU, AND HE'S NOT GOING TO TELL
3 YOU WHICH WAY TO DECIDE, BUT COULD YOU DETERMINE
4 A LIFE SENTENCE OR A DEATH SENTENCE, EITHER ONE?

5 A. I SUPPOSE I COULD.

6 Q. MY QUESTION TO YOU IS IF YOU DECIDED ON A DEATH
7 SENTENCE -- NOW, THAT'S ASSUMING THAT YOU'VE
8 DELIBERATED, YOU'VE DISCUSSED IT WITH THE OTHER
9 JURORS AND THEY HAVE -- YOU'VE MADE THE DECISION
0 ALONG WITH THEM TO REACH A VERDICT OF DEATH. IN
1 THAT CASE -- IN NORMAL CASES, IF IT'S JUST A
2 REGULAR CASE, THE FOREMAN JUST SIGNS THE
3 VERDICT. IF IT'S A LIFE SENTENCE, THE FOREMAN
4 JUST SIGNS THE VERDICT. BUT IF IT'S A DEATH
5 SENTENCE IN SOUTH CAROLINA ALL TWELVE OF THE
6 JURORS HAVE TO SIGN THE VERDICT FORM. DO YOU
7 SEE WHAT I'M SAYING?

8 A. UH HUH.

9 Q. OKAY. AND IF YOU'VE MADE THAT DECISION, COULD
0 YOU THEN SIGN THAT VERDICT FORM?

1 A. YES.

2 Q. OKAY. DO YOU UNDERSTAND WHAT I WAS SAYING NOW?
3 I'M NOT TRYING TO CONFUSE YOU.

4 A. RIGHT.

5 Q. I JUST WANTED TO MAKE IT CLEAR. AND YOU COULD

1 SIGN THAT FORM EVEN KNOWING THAT YOUR SIGNATURE,
2 ALONG WITH THE OTHER JURORS, IS GOING TO BE USED
3 TO SENTENCE THE DEFENDANT TO DEATH?

4 A. UH HUH.

5 Q. ARE YOU SAYING THAT YOU COULD?

6 A. IT'S MY UNDERSTANDING THAT IT TAKES ALL OF US
7 AGREEING THAT THAT'S WHAT SHOULD BE DONE?

8 Q. THAT'S CORRECT.

9 A. YES.

10 Q. ALL RIGHT. BUT, OF COURSE, YOU HAVE YOUR
11 INDIVIDUAL CHOICE OF HOW TO VOTE. NO JUROR CAN
12 MAKE YOU VOTE ONE WAY OR THE OTHER.

13 A. OKAY.

14 Q. AND I WANTED TO ASK YOU A FEW QUESTIONS ABOUT
15 THAT.

16 A. OKAY.

17 Q. IF YOU ARE ON THE JURY, OF COURSE, YOU KNOW YOUR
18 OPINION MAY DIFFER FROM OTHER JUROR'S OPINIONS.
19 YOU UNDERSTAND THAT, DON'T YOU?

20 A. UH HUH.

21 Q. AND YOUR OPINION IS ENTITLED TO BE RESPECTED BY
22 THE OTHER JURORS, BY THE COURT, BY EVERYBODY
23 INVOLVED. DO YOU UNDERSTAND THAT?

24 A. YES.

25 Q. AND LIKEWISE, IF THERE ARE JURORS THAT DISAGREE

1 WITH YOU, THEY ARE ENTITLED TO HAVE THEIR
2 OPINION RESPECTED BY YOU. YOU UNDERSTAND THAT?

3 A. YES.

4 Q. OKAY. AND SO IF YOU WERE ON THE JURY AND YOU
5 WERE CONVINCED THAT THE SENTENCE SHOULD BE
6 EITHER DEATH OR LIFE, EITHER WAY, WOULD YOU LET
7 THE FACT THAT YOU WERE IN THE MINORITY OF THE
8 OTHER JURORS SWAY YOU OVER? I'M NOT SAYING THAT
9 YOU WOULDN'T LISTEN AND CONSIDER WHAT THEY HAD
10 TO SAY, BUT ONCE YOU'VE REACHED A DECISION WOULD
11 YOU CHANGE THAT DECISION -- BASICALLY I'M SAYING
12 JUST SAY YOU WERE THE ONLY JUROR VOTING ONE WAY.
13 WOULD YOU CHANGE YOUR OPINION JUST TO MAKE THE
14 OTHER ELEVEN HAPPY?

5 A. IF I WAS CONVINCED IN MY MIND, TO BE HONEST,
6 THAT WHAT I THOUGHT WAS CORRECT, I THINK I WOULD
7 JUST STAND MY GROUND.

8 Q. OKAY, THAT'S JUST WHAT I WAS ASKING. I THINK
9 THAT'S ALL THE QUESTIONS I HAVE. I'M SORRY I
10 WAS CONFUSING TO YOU A MINUTE AGO.

1 A. THAT'S ALL RIGHT.

2 Q. SOMETIMES WHEN YOU'RE USED TO THIS STUFF, IT'S
3 HARD TO UNDERSTAND THAT OTHER PEOPLE AREN'T USED
4 TO IT. I APPRECIATE YOUR HONESTY IN THESE
5 QUESTIONS. THANK YOU.

1 THE COURT: MR. BRACKETT?

2 QUESTIONS BY MR. BRACKETT:

3 Q. GOOD AFTERNOON, MR. HOVIS.

4 A. GOOD AFTERNOON.

5 Q. MY NAME IS KEVIN BRACKETT, AND IT'S MY TURN TO
6 CONFUSE YOU.

7 A. OKAY.

8 Q. I REPRESENT THE STATE ALONG WITH MR. POPE OVER
9 HERE. HE AND I ARE GOING TO BE PROSECUTING MR.
10 ROBERTSON FOR THESE MURDERS.

11 NOW, I KIND OF WANT TO GO BACK OVER BECAUSE I
12 WANT TO MAKE SURE THAT I UNDERSTAND HOW YOU
13 FEEL. SO WHEN IT SOUNDS LIKE I'M ASKING THE
14 SAME QUESTIONS -- IT'S A DIFFICULT SITUATION.
15 HAVE YOU DISCUSSED THIS TOPIC, THE DEATH PENALTY
16 MANY TIMES BEFORE?

17 A. NO.

18 Q. THIS ISN'T THE KIND OF THING YOU SIT DOWN AND
19 TALK ABOUT ALL THE TIME.

20 A. NO.

21 Q. I UNDERSTAND. YOU HAVEN'T BEEN CALLED TO THINK
22 ABOUT THIS TYPE OF THING VERY OFTEN.

23 A. NO.

24 Q. AND CERTAINLY NOT DISCUSS IT, BUT YOU CAN
25 UNDERSTAND HOW JUST AS IN THE FIRST PHASE OF THE

1 TRIAL, THE GUILT PHASE WHEN WE'RE TRYING TO
2 FIGURE OUT WHETHER HE'S GUILTY OR NOT? WE NEED
3 TO HAVE PEOPLE WHO ARE OPEN-MINDED AND CAPABLE
4 OF LISTENING TO ALL OF THE EVIDENCE, AND CAPABLE
5 OF RENDERING A FAIR VERDICT, EITHER GUILTY OR
6 NOT GUILTY. WE WOULDN'T WANT TO HAVE SOMEBODY
7 WHO JUST ALWAYS VOTED GUILTY NO MATTER WHAT; NOR
8 WOULD WE WANT SOMEBODY WHO ALWAYS VOTED NOT
9 GUILTY.

10 THE SECOND PHASE OF THE TRIAL IS A LITTLE BIT
1 DIFFERENT BECAUSE PEOPLE HAVE FEELINGS ON THE
2 SUBJECT THAT ARE VERY STRONG. AND THAT'S WHY WE
3 NEED TO GET YOUR FEELINGS ON THIS SUBJECT NOW
4 BECAUSE ONCE YOU'RE IN THE BOX WHEN WE'VE GOT
5 THE JURY PICKED AND WE'VE STARTED THE TRIAL,
6 IT'S TOO LATE FOR YOU TO COME OUT AND SAY, YOU
7 KNOW, I REALLY DON'T THINK THIS IS FOR ME. SO,
8 NOW IS THE CHANCE FOR YOU TO TELL US HOW YOU
9 FEEL AND I'M REALLY GOING TO HAVE TO ASK YOU TO
10 SEARCH YOUR SOUL AND GIVE US SOME ANSWERS TO
1 THESE QUESTIONS ON THE DEATH PENALTY.

2 HE ASKED YOU A NUMBER OF TIMES -- THE JUDGE
3 ASKED YOU AND MR. BOYD ASKED YOU, AND YOU SAID
4 THINGS LIKE I CAN'T TELL YOU WHICH WAY I'D GO,
5 AND I'M NOT SURE I UNDERSTAND. ARE YOU SAYING

1 YOU DON'T KNOW WHETHER OR NOT YOU COULD ACTUALLY
2 VOTE FOR DEATH IN ANY CASE? IS THAT WHAT YOU'RE
3 SAYING?

4 A. NO. I BELIEVE THAT -- I HAVE NO OPINION THAT
5 THE DEATH PENALTY IS WRONG.

6 Q. OKAY.

7 A. BUT IT'S A VERY SERIOUS -- I MEAN IT IS A VERY
8 SERIOUS CONSIDERATION.

9 Q. CERTAINLY.

10 A. FOR ME. I HAVE A RELIGIOUS CONVICTION THAT LIFE
11 IS PRECIOUS.

12 Q. SURE.

13 A. AND DOES THE STATE HAVE THE RIGHT TO TAKE A LIFE
14 BECAUSE, YOU KNOW, BY LAW IT IS GIVEN THAT
15 RIGHT? I THINK THAT IS A MORAL PRINCIPLE THAT
16 IS BIBLICALLY CORRECT AND IN MY RELIGIOUS
17 CONVICTIONS I BELIEVE THAT THAT HAS LEGAL
18 PRECEDENCE.

19 Q. OKAY.

20 A. BUT IT SHOULD BE VERY CAREFULLY CONSIDERED WHEN
21 IT'S USED.

22 Q. OKAY. SO WHAT YOU'RE SAYING IS THAT YOU CAN
23 GIVE THE DEATH PENALTY, IT JUST HAS TO BE UNDER
24 THE RIGHT CIRCUMSTANCES?

25 A. IT HAS TO BE WARRANTED.

1 Q. OKAY, OKAY. BUT YOU'RE NOT THE KIND OF PERSON
2 WHO WOULD NEVER GIVE THE DEATH PENALTY NO MATTER
3 WHAT?

4 A. NO.

5 Q. YOU WOULD HAVE TO LISTEN TO THE CIRCUMSTANCES.
6 LET ME BACK UP JUST A SECOND. IN THE FIRST
7 PHASE OF THE TRIAL WE'RE TALKING ABOUT GUILT.
8 WE'RE TALKING ABOUT WHETHER OR NOT THE DEFENDANT
9 IS GUILTY. WE BEAR THE BURDEN OF PROVING THAT
10 HE IS; PROVING TO THE JURY THAT HE'S GUILTY
11 BEYOND A REASONABLE DOUBT.

12 ASSUME WE CONVICT HIM IN THE FIRST PHASE.
13 ASSUME THE JURY HEARS ALL THE EVIDENCE AND THEY
14 GO BACK AND DELIBERATE AND THEY ALL, YEAH, THIS
15 IS VERY STRONG EVIDENCE, THIS MAN IS GUILTY OF
16 THESE CRIMES. AND YOU RETURN A VERDICT OF
17 GUILTY.

18 WE COME BACK IN HERE AND WE START THE SECOND
19 PHASE OF THE TRIAL. THEN WE'RE TALKING ABOUT
20 LIFE AND DEATH. WHAT YOU'RE SAYING IS, AND
21 AGAIN IN THAT PHASE, JUST TO EDUCATE YOU A
22 LITTLE BIT, IN THAT PHASE THE STATE, WE BEAR THE
23 BURDEN OF PROOF IN THAT PHASE OF THE CASE AS
24 WELL. THE DEFENDANT NEVER HAS TO PROVE
25 ANYTHING.

1 A. RIGHT.

2 Q. THEY DON'T HAVE TO SAY WORD ONE. THEY HAVE THE
3 RIGHT TO REMAIN SILENT THROUGHOUT THE TRIAL. WE
4 HAVE TO PROVE THAT IT'S AN AGGRAVATED MURDER;
5 THAT'S IT'S NOT JUST A REGULAR MURDER, IF THERE
6 IS SUCH A THING, BUT THAT IT IS A SUFFICIENTLY
7 AGGRAVATED MURDER UNDER THE LAW THAT THE GIVING
8 OF A SENTENCE OF DEATH TO THE DEFENDANT WOULD BE
9 APPROPRIATE UNDER THE LAW. THAT'S OUR
10 RESPONSIBILITY AGAIN.

11 NOW, IF THE DEFENDANT CHOSE TO, THEY CAN PRESENT
12 THEIR EVIDENCE MITIGATING THE CRIME AND SAYING,
13 LISTEN, YOU DON'T UNDERSTAND, THIS IS SOME
14 THINGS YOU NEED TO KNOW ABOUT THE CRIME. THESE
15 ARE SOME FACTS AND CIRCUMSTANCES YOU NEED TO
16 CONSIDER.

17 WHAT YOU ARE SAYING IS THAT YOU WOULD LISTEN TO
18 OUR SIDE, YOU'D LISTEN TO THEIR SIDE AND THEN IF
19 YOU THOUGHT THAT LIFE WAS THE APPROPRIATE
20 VERDICT, YOU WOULD VOTE FOR LIFE?

21 A. THAT'S CORRECT.

22 Q. BUT AFTER LISTENING TO THE AGGRAVATING
23 CIRCUMSTANCES AND THEN LISTENING TO WHATEVER
24 MITIGATING CIRCUMSTANCES THEY PRESENTED YOU
25 THOUGHT DEATH WAS THE APPROPRIATE VERDICT, YOU

1 COULD VOTE FOR DEATH?

2 A. I BELIEVE I COULD.

3 Q. OKAY, SIR. ALONG THE LINES OF WHAT MR. BOYD WAS
4 SAYING ABOUT SIGNING IT, A DEATH PENALTY CASE IS
5 UNIQUE IN THAT RESPECT. IN EVERY OTHER CASE THE
6 ONLY PERSON THAT HAS TO SIGN THE VERDICT FORM IS
7 THE FOREPERSON. THE FOREPERSON IS THE ONLY ONE
8 WHO HAS TO TAKE PEN IN HAND AND SAY THIS IS WHAT
9 THE VERDICT IS AND SIGN THEIR NAME UNDER IT.

10 IN A DEATH PENALTY CASE IT'S A LITTLE BIT
11 DIFFERENT. IF THE VERDICT IS LIFE, THE FOREMAN
12 IS THE ONLY ONE THAT HAS TO SIGN. IF THE
13 VERDICT IS DEATH, EACH AND EVERY JUROR HAS TO
14 SIGN THE VERDICT FORM SENDING THIS MAN TO HIS
15 DEATH. IF THE OTHER ELEVEN JURORS HAVE SIGNED
16 THEIR NAME AND THE PEN COMES TO YOU, COULD YOU
17 SIGN YOUR NAME TO THIS SHEET, SIR, SENDING THIS
18 MAN TO HIS DEATH?

19 A. I BELIEVE I COULD.

20 Q. THANK YOU VERY MUCH.

21 THE COURT: YOU CAN STEP OUTSIDE FOR JUST A
22 MINUTE PLEASE.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: WHAT SAYS THE DEFENSE?

25 MR. BOYD: I BELIEVE HE'S QUALIFIED, YOUR HONOR.

1 THE COURT: WHAT SAYS THE STATE?

2 MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

3 THE COURT: BRING HIM BACK IN.

4 (THE JUROR RETURNED TO THE COURTROOM.)

5 THE COURT: MR. HOVIS, WE'RE GOING TO INCLUDE YOU
6 IN THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOESN'T
7 MEAN YOU AUTOMATICALLY WILL BE A JUROR, BUT YOU WILL BE ON
8 THE POOL FROM WHICH THE JURY IS DRAWN.

9 WE DON'T KNOW WHEN THAT'S GOING TO HAPPEN YET.
10 I'M GOING TO ASK YOU TO CALL BACK TONIGHT AFTER 6:00 TO
11 THAT 1-800 NUMBER AND THEY WILL TELL YOU WHEN TO REPORT OR
12 WHEN TO CALL BACK IF NECESSARY.

13 WHEN YOU DO REPORT, BRING WITH YOU CLOTHING AND
14 SHAVING ARTICLES OR WHATEVER YOU NEED FOR ABOUT A WEEK'S
15 STAY, I IMAGINE THAT'S ABOUT HOW LONG IT WILL TAKE.

16 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT
17 WOULD INTERFERE WITH YOUR SERVING?

18 THE JUROR: NO MORE THAN ANYBODY ELSE'S I DON'T
19 GUESS.

20 THE COURT: DON'T READ ABOUT THIS CASE; DON'T
21 DISCUSS IT. IF ANYONE TRIES TO DISCUSS IT, DON'T LET THEM,
22 TELL THEM YOU CANNOT AND REPORT BACK TO ME IF ANYBODY TRIES
23 TO TALK TO YOU ABOUT THIS CASE. AND DON'T LET YOURSELF BE
24 EXPOSED TO ANY NEWS COVERAGE OR ANY CONVERSATION ABOUT IT
25 OUTSIDE THE COURTROOM, EVEN WITH THE OTHER JURORS. DO YOU

1 UNDERSTAND ALL OF THAT?

2 THE JUROR: YES, SIR.

3 THE COURT: ALL RIGHT. CALL BACK TONIGHT AFTER
4 6:00. THANK YOU.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: ALL RIGHT, 82, SUSAN FERNALD.

7 SUSAN D. FERNALD, JUROR NUMBER 82, WHITE FEMALE,
8 WAS QUESTIONED AS FOLLOWS:

9 QUESTIONS BY THE COURT:

10 Q. I'M JOHN HAYES, AND I'M THE JUDGE THAT'S
11 ASSIGNED TO TRY THIS CASE. AND I WANT TO REMIND
12 YOU THAT YOU ARE UNDER OATH. DO YOU UNDERSTAND
13 THAT?

14 A. YES, SIR, I DO.

15 Q. AND YOU SEE MIKES AND A CAMERA IN THE COURTROOM,
16 I'LL TELL YOU THAT IT'S NOT ON. THERE MAY BE
17 CAMERAS IN THE COURTROOM DURING THE TRIAL, OR
18 PHOTOGRAPHERS. THEY CANNOT TAKE THE JURORS
19 PICTURES AND THEY CAN'T PUT YOUR NAMES IN THE
20 PAPER, SO DON'T BE WORRIED ABOUT THAT AND DON'T
1 BE DISTRACTED BY IT.

2 YOU SENT IN A QUESTIONNAIRE. IS THERE ANYTHING
3 ON THERE THAT YOU NEED TO CHANGE?

4 A. NO, SIR.

5 Q. DID YOU HAVE A CHANCE TO LOOK OVER THAT LIST OF

1 WITNESSES?

2 A. I DID.

3 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANYBODY
4 ON THERE?

5 A. NO.

6 Q. ARE YOU A FRIEND OF ANY OF THEM?

7 A. I KNOW A COUPLE OF THEM.

8 Q. ALL RIGHT, WHO DO YOU KNOW?

9 A. THE PEOPLE AT THE HOSPITAL, KERRY SPITZENBURGER,
10 DR. MCMEEKIN, DR. MCCOY, DR. HOOK; A COUPLE OF
11 NAMES, I DON'T KNOW IF THEY ARE PEOPLE I KNOW
12 BECAUSE THEY ARE COMMON NAMES, LIKE MARGARET
13 SMITH, TERRY TURNER.

14 WOULD THE FACT THAT THOSE PEOPLE ARE WITNESSES,
15 WOULD THAT AFFECT YOUR ABILITY IN ANY WAY TO BE
16 FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

17 A. NO.

18 Q. NOW, PRIOR TO YOUR COMING IN HERE HAVE YOU HEARD
19 ANYTHING ABOUT THIS CASE?

20 A. YES.

21 Q. HAVE YOU FORMED AN OPINION ABOUT IT?

22 A. NO, I REALLY DIDN'T THINK TOO MUCH ABOUT IT.

23 Q. FROM WHAT YOU'VE HEARD, WOULD YOU BE ABLE TO PUT
24 THAT OUT OF YOUR MIND AND BASE YOUR VERDICT
25 SOLELY ON THE EVIDENCE THAT'S DEVELOPED IN THE

1 TRIAL? THAT IS, COULD YOU BE FAIR AND IMPARTIAL
2 AND BASE YOUR VERDICT SOLELY ON THE LAW AND THE
3 EVIDENCE IN THE TRIAL AND NOT FACTOR INTO YOUR
4 DECISION ANYTHING YOU HAVE HEARD OUTSIDE THE
5 COURTROOM?

6 A. PROBABLY I COULD, BUT I KNOW YOU'RE GOING TO BE
7 ASKING FOR THE DEATH PENALTY, THE PROSECUTION
8 IS, AND I COULDN'T DO THAT.

9 Q. ALL RIGHT, WE WILL GET TO THAT IN JUST A MINUTE.

10 A. OKAY, OKAY.

11 Q. LET'S TAKE IT A STEP AT A TIME.

12 A. ALL RIGHT.

13 Q. FIRST, COULD YOU DISREGARD, AS FAR AS GUILTY AND
14 PUNISHMENT, COULD YOU DISREGARD WHAT YOU'VE
15 ALREADY HEARD AND JUST COME IN FRESH?

16 A. YES; YEAH, I COULD DO THAT.

17 Q. NOW THEN YOU'VE PROBABLY ALREADY ANSWERED MY
18 NEXT QUESTION. WHICH JUROR TYPE, IF ANY, ARE
19 YOU ON THAT LIST?

20 A. I WOULD BE THE SECOND TYPE.

21 Q. SO YOU'RE TELLING ME NO MATTER -- WELL, I'LL
22 BACK UP JUST A MINUTE. THESE CASES ARE TRIED IN
23 TWO SEGMENTS, A GUILT PHASE AND THEN A PENALTY
24 PHASE.

25 THERE IS NO PRESUPPOSITION THAT MR. ROBERTSON IS

1 GUILTY. IN FACT, HE IS PRESUMED INNOCENT OF THE
2 CHARGES AND IS SO PRESUMED UNTIL SUCH TIME AS
3 THE STATE WOULD BE ABLE TO PROVE HIS GUILT
4 BEYOND A REASONABLE DOUBT.

5 A. RIGHT.

6 Q. IF HE WAS FOUND NOT GUILTY, THE CASE WOULD GO NO
7 FURTHER. IF HE IS FOUND GUILTY UNANIMOUSLY
8 BEYOND A REASONABLE DOUBT BY THE TRIAL JURY,
9 THIS CASE WOULD GO INTO THE PENALTY PHASE WHERE
10 CERTAIN AGGRAVATING CIRCUMSTANCES AND MITIGATING
11 CIRCUMSTANCES COULD BE PRESENTED REGARDING WHAT
12 PENALTY SHOULD BE IMPOSED.

13 ARE YOU TELLING ME THAT UNDER NO CIRCUMSTANCES,
14 REGARDLESS OF WHAT YOU HEAR IN THAT SECOND PHASE
15 WHICH WOULD BE AGGRAVATING CIRCUMSTANCES; THAT
16 IS, CIRCUMSTANCES TO MAKE THE MATTER MORE
17 ONEROUS THAN JUST A SIMPLE MURDER IF THERE IS A
18 SIMPLE MURDER AND THERE IS NOT, OF COURSE, BUT
19 TO MAKE IT SOMETHING MORE HORRIFIC, ARE YOU
20 SAYING EVEN UNDER THOSE CIRCUMSTANCES YOU COULD
21 NOT GIVE THE DEATH PENALTY?

22 A. I COULD NOT.

23 Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH YOU
24 COULD GIVE THE DEATH PENALTY?

25 A. NO, SIR.

1 Q. ALL RIGHT. ANSWER ANY QUESTIONS COUNSEL MAY
2 HAVE.

3 QUESTIONS BY MR. POPE:

4 Q. MS. FERNALD, MY NAME IS TOMMY POPE; I'M THE
5 DISTRICT ATTORNEY HERE, AND THIS IS KEVIN
6 BRACKETT, MY DEPUTY SOLICITOR.

7 HAVE YOU EVER BEEN IN A SITUATION LIKE THIS?

8 A. NEVER.

9 Q. WELL, LET ME TELL YOU ONE THING AND I THINK FROM
0 OBSERVING YOUR DEMEANOR WITH THE JUDGE YOU
1 REALIZE THERE IS NO RIGHT OR WRONG ANSWER, IT'S
2 JUST TO TRY TO FIND OUT ABOUT SUSAN FERNALD.

3 YOU GET SURROUNDED BY THREE LAWYERS AND THEY'RE
4 ALL HITTING YOU WITH QUESTIONS BUT, AGAIN, IT'S
5 JUST TO FIND OUT WHERE YOU STAND.

6 I'M GOING TO REALLY MOVE FORWARD BASED ON YOUR
7 ANSWER A LITTLE BIT. I THINK YOU'VE MADE PRETTY
8 CLEAR WHERE YOU STAND ON THE DEATH PENALTY.

9 A. UH HUH.

0 Q. AND, YOU KNOW, AGAIN I RESPECT THAT, IT'S JUST
1 OUR CHANCE TO FIND OUT ABOUT IT BEFORE -- IT'S
2 BETTER TO KNOW NOW THAN BEFORE YOU GET IN THE
3 JURY BOX AND NOT BE ABLE TO FULFILL YOUR
4 OBLIGATIONS.

5 A. UH HUH.

1 Q. YOU TOLD THE JUDGE AS FAR AS THE FIRST STAGE,
2 NON-DEATH PENALTY PART, JUST THE GUILT PART, YOU
3 COULD BE A FAIR JUROR AND PUT EVERYTHING ASIDE
4 IF IT WASN'T A DEATH PENALTY CASE.

5 A. RIGHT.

6 Q. IF IT WAS SOME OTHER TYPE CASE OR EVEN A MURDER
7 THAT WASN'T A DEATH PENALTY, YOU COULD BE THE
8 KIND OF JUROR THAT COULD HEAR BOTH SIDES AND PUT
9 EVERYTHING OUT OF YOUR MIND?

10 A. I THINK SO.

11 Q. OKAY. THE DIFFERENCE COMES FOR YOU WHEN WE GET
12 TO THIS SECOND STAGE. IS THAT CORRECT?

13 A. YES.

14 Q. OKAY. AND, AGAIN, I'M NOT PUTTING WORDS IN YOUR
15 MOUTH, IT'S MY CHANCE TO UNDERSTAND HOW YOU
16 FEEL. YOUR VIEWS ON THE DEATH PENALTY ARE SO
17 STRONG THAT NO MATTER WHAT I BROUGHT UP, I MEAN
18 I COULD TELL YOU, YOU KNOW, THAT IT WAS HIS
19 PARENTS AND I COULD TELL YOU ALL THESE OTHER BAD
20 THINGS, YOU'RE TELLING ME TODAY, SOLICITOR POPE,
21 IT DOESN'T MATTER BECAUSE SUSAN FERNALD JUST
22 DOESN'T VOTE FOR THE DEATH PENALTY?

23 A. I COULD NOT -- YES, YOU'RE CORRECT, I COULD NOT.

24 Q. I'M GOING TO MOVE ALONG REAL QUICK. I KNOW THE
25 ANSWER BEFORE I ASK YOU, BUT I'M GOING TO ASK

1 YOU.

2 ONE OF THE REQUIREMENTS IN A DEATH PENALTY IS
3 THAT EACH INDIVIDUAL JUROR IF THEY VOTE FOR
4 DEATH SIGN THEIR NAME. AND THAT SIGNING OF THE
5 NAME GIVES THE INDIVIDUAL DEATH.

6 A. UH HUH.

7 Q. AND YOU'RE TELLING ME AGAIN, AND I KNOW I'M
8 REPEATING MYSELF, IT'S THE LAWYER THING AGAIN,
9 NO MATTER WHAT I SHOWED YOU, THE WORST CASE
10 SCENARIO EVER, JUST BASED ON YOUR -- IS IT A
11 RELIGIOUS CONVICTION OR A PERSONAL CONVICTION?

12 A. IT'S A PERSONAL CONVICTION, MIXED IN WITH A
13 RELIGIOUS CONVICTION.

14 Q. AND HAVE YOU HELD THAT FOR A WHILE?

15 A. A LONG TIME.

16 Q. OKAY. AND SO NO MATTER WHAT GREAT JOB I DID AND
17 ALL THE THINGS I COULD SHOW YOU, WHATEVER,
18 YOU'RE JUST SITTING HERE SAYING, SOLICITOR, IT
19 DOESN'T MATTER, SUSAN FERNALD IS NOT GOING TO
20 SIGN HER NAME TO A DOCUMENT NO MATTER WHAT THAT
21 TAKES A MAN'S LIFE.

22 A. CORRECT.

23 Q. OKAY. I APPRECIATE YOU BEING HONEST WITH ME.
24 THANK YOU, MA'AM.

25 A. UH HUH.

1 THE COURT: MR. HANCOCK?

2 QUESTIONS BY MR. HANCOCK:

3 Q. MS. FERNALD, I'M BILL HANCOCK. IT SEEMS THAT
4 YOU ARE GETTING ATTORNEYS THROWN AT YOU AND
5 DIFFERENT ONES. I REPRESENT JIMMY ROBERTSON WHO
6 IS CHARGED IN THIS CASE AND THIS IS CO-COUNSEL,
7 MR. JIM BOYD, SEATED BACK HERE.

8 I HAVE HEARD THE ANSWERS THAT YOU HAVE GIVEN TO
9 THE JUDGE; I HAVE HEARD THE ANSWERS THAT YOU
10 HAVE GIVEN TO MR. POPE, AND I AM NOT TRYING TO
11 BELABOR THE POINT BUT I JUST WANT TO MAKE SURE
12 THAT I'M HEARING EXACTLY WHAT I THINK I'M
13 HEARING.

14 A. OKAY.

15 Q. NOW YOU HAVE SAID THAT YOU UNDERSTAND THAT THIS
16 IS A CASE WHERE THE DEATH PENALTY COULD BE
17 SOUGHT?

18 A. RIGHT, UH HUH.

19 Q. AND THAT THERE ARE TWO PHASES TO THE TRIAL, THAT
20 ONE IS GUILT. AND IF THE GUILT PHASE WERE
21 ENTERED AND WE'RE ASSUMING THEN THAT JIMMY HAS
22 BEEN CONVICTED OF EITHER ONE OR BOTH MURDERS OF
23 HIS PARENTS.

24 A. UH HUH.

25 Q. AND THEN THE SOLICITOR CAN EVEN MAKE IT WORSE

1 THAN THAT AND PROVIDE YOU WITH AGGRAVATING
2 CIRCUMSTANCES THAT YOU MAY HAVE TO CONSIDER.

3 A. UH HUH.

4 Q. TO WORSEN THE CRIME ITSELF AND TO TRY TO MOVE
5 YOU TOWARD THE DEATH PENALTY BY EITHER ITS
6 HEINOUS NATURE OR BY CERTAIN OTHER FACTORS THAT
7 CAN BE BROUGHT IN.

8 AND IT IS MY UNDERSTANDING THAT YOU HAVE SAID
9 EVEN WITH THAT, EVEN IF SOMEBODY HAS KILLED BOTH
10 OF THEIR PARENTS AND THEN THERE WAS AN EVEN MORE
11 HEINOUS NATURE TO THE CRIME, THAT YOU COULD NOT
12 VOTE FOR THE DEATH PENALTY?

13 A. CORRECT.

14 Q. THERE IS NOTHING THAT COULD EVER CONVINCE YOU
15 FOR THE DEATH PENALTY FOR ANYONE?

16 A. NO, SIR.

17 Q. NO SET OF CIRCUMSTANCES THAT YOU CAN PUT IN YOUR
18 MIND?

19 A. NO, SIR.

20 Q. AND YOU HAVE SAID THAT YOU HAVE HELD THAT BELIEF
21 FOR QUITE SOME TIME?

22 A. QUITE A WHILE.

23 Q. HOW LONG IS QUITE A WHILE?

24 A. 20 YEARS?

25 Q. 20 YEARS?

1 A. YES.

2 Q. I HAVE NO FURTHER QUESTIONS.

3 THE COURT: YOU MAY STEP OUTSIDE FOR A MINUTE.
4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: WHAT SAYS THE STATE?

6 MR. POPE: I SUBMIT SHE IS CLEARLY UNQUALIFIED,
7 YOUR HONOR.

8 THE COURT: THE DEFENSE?

9 MR. HANCOCK: I AGREE, YOUR HONOR.

10 THE COURT: ALL RIGHT, I FIND THAT SHE IS
11 UNQUALIFIED -- NOT QUALIFIED. HAVE HER COME BACK IN.
12 (THE JUROR RETURNED TO THE COURTROOM.)

13 THE COURT: MS. FERNALD, I'M GOING TO EXCUSE YOU
14 FROM ANY FURTHER SERVICE ON THE JURY. WE APPRECIATE YOUR
15 CANDOR AND WE APPRECIATE YOUR TIME. I DO HAVE TO MAKE THE
16 OBSERVATION THOUGH THAT YOU APPEAR TO BE SOMEWHAT OF A
17 RENAISSANCE PERSON. I DON'T KNOW OF ANYBODY THAT BELONGS
18 TO A.A.R.P. AND ALSO RIDES A HARLEY AND ENJOYS READING AND
19 CROSSWORDS, THAT'S AN INTERESTING COMBINATION. THANK YOU.

20 THE JUROR: BYE, BYE.
21 (THE JUROR LEFT THE COURTROOM.)

22 THE COURT: ALL RIGHT, MARK SIMMONS -- I'M SORRY,
23 CHARLES FEEMSTER.

24 MR. BOYD: YOUR HONOR, COULD WE TAKE A SHORT
25 BREAK?

1 THE COURT: YES, WE'LL TAKE A SHORT BREAK BEFORE
2 WE START INTO THE NEXT PANEL.

3 AFTER THE BREAK:

4 THE COURT: IS THE STATE READY?

5 MR. POPE: THE STATE IS READY.

6 THE COURT: IS THE DEFENSE READY?

7 MR. BOYD: THE DEFENSE IS READY.

8 THE COURT: ALL RIGHT, CHARLES FEEMSTER IS NEXT.

9 CHARLES E. FEEMSTER, JUROR NUMBER 80, WHITE MALE,
10 WAS QUESTIONED AS FOLLOWS:

1 QUESTIONS BY THE COURT:

2 Q. I'LL REMIND YOU THAT I'M JOHN HAYES AND I'M THE
3 JUDGE THAT HAS BEEN ASSIGNED TO THIS CASE. AND
4 I WILL REMIND YOU THAT YOU ARE UNDER OATH.
5 YOU MAY SEE -- IF YOU END UP SITTING ON THIS
6 JURY, YOU MAY SEE T.V. CAMERAS IN HERE OR
7 PHOTOGRAPHERS. THEY, BY LAW, ARE ALLOWED TO
8 FILM THESE TYPE OF PROCEEDINGS, BUT NOT THE
9 JURORS. THE JURY CANNOT BE FILMED NOR NAMED.
0 YOU SENT US IN A QUESTIONNAIRE. IS THE
1 INFORMATION ON THERE CORRECT OR DO YOU THINK
2 ANYTHING NEEDS TO BE CORRECTED OR CHANGED?

3 A. YES, SIR, IT IS AND I ALSO WOULD LIKE TO ADD
4 THIS TO THAT IF I MAY.

5 Q. ALL RIGHT, I AM BEING HANDED A LETTER FROM

1 PIEDMONT PSYCHIATRIC -- ALL RIGHT, LET ME LET
2 COUNSEL COME UP AND LOOK AT THIS AND I WILL, OF
3 COURSE, LET MR. BOYD TAKE IT BACK AND SHOW IT TO
4 MR. ROBERTSON.

5 (COUNSEL APPROACHED THE BENCH.)

6 THE COURT: ALL RIGHT, I AM GOING TO LET YOU STEP
7 OUTSIDE THE DOOR FOR JUST ONE MINUTE IF YOU DON'T MIND.

8 THE JUROR: OKAY.
9 (THE JUROR LEFT THE COURTROOM.)

10 THE COURT: ALL RIGHT, I HAVE A DOCTOR'S EXCUSE;
11 I'M NOT GOING TO GO INTO IT. IN REGARD TO THIS DOES THE
12 STATE HAVE ANY COMMENTS?

13 MR. POPE: BASED ON THE DOCTOR'S EXCUSE AND THE
14 DOCTOR BEING INVOLVED IN THE CASE, THE STATE WOULD SUBMIT
15 THAT -- WELL, I WOULD DEFER TO THE COURT IN YOUR DECISION.

16 MR. BOYD: I AGREE, YOUR HONOR.

17 THE COURT: WELL, IF WE CAN TEACH THE DOCTOR HOW
18 TO SPELL CANDIDATE, HE MIGHT DO A LITTLE BETTER. ALL
19 RIGHT, HAVE HIM COME BACK IN AND WE WILL MAKE THIS A PART
20 OF THE COURT'S RECORD.

21 (THE JUROR RETURNED TO THE COURTROOM.)

22 THE COURT: BASED ON THIS SUBMISSION, WE'RE GOING
23 TO EXCUSE YOU FROM ANY FURTHER SERVICE AND WE APPRECIATE
24 YOUR TIME. THANK YOU.

25 THE JUROR: THANK YOU, SIR. WHAT DO I NEED TO DO

1 WITH THIS JUROR BADGE?

2 THE COURT: YOU CAN JUST GIVE IT TO THE BAILIFF.

3 THE JUROR: OKAY, I WILL; THANK YOU.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT, MARK SIMMONS.

6 MARK D. SIMMONS, JUROR NUMBER 242, WHITE MALE,
7 WAS QUESTIONED AS FOLLOWS:

8 QUESTIONS BY THE COURT:

9 Q. IF YOU'LL JUST COME UP HERE AND HAVE A SEAT.
0 MR. SIMMONS?

1 A. YES, SIR.

2 Q. I'M JOHN HAYES AND I'M THE JUDGE ASSIGNED TO
3 THIS CASE AND YOU ARE STILL UNDER OATH IN REGARD
4 TO THE QUESTIONS THAT ARE GOING TO BE ASKED.
5 I TELL YOU THAT IF YOU END UP SITTING ON THIS
6 JURY, YOU WILL PERHAPS SEE CAMERAS OR
7 PHOTOGRAPHERS IN THE COURTROOM. THEY ARE BY LAW
8 ALLOWED TO FILM THESE TYPE PROCEEDINGS, BUT THEY
9 ARE NOT ALLOWED TO FILM THE JURY OR REPORT ABOUT
0 THE JURY, SO I WANT YOU TO BE AWARE OF THAT AND
1 NOT BE DISTRACTED IF YOU SEE ANYTHING LIKE THAT
2 IN THE COURTROOM.

3 YOU HANDED US UP A QUESTIONNAIRE AND IS THERE
4 ANYTHING ON IT THAT NEEDS TO BE CORRECTED OR IS
5 IT CORRECT?

1 A. IT'S CORRECT.

2 Q. YOU WERE GIVEN A LIST OF WITNESSES BACK IN THE
3 JURY ROOM, DID YOU REVIEW IT?

4 A. YES, SIR.

5 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANYONE
6 ON THAT LIST?

7 A. NO, SIR.

8 Q. ARE YOU FRIENDS OR AN ACQUAINTANCE OF ANYBODY ON
9 THAT LIST?

10 A. YES, SIR.

11 Q. WHO?

12 A. I'M ACQUAINTANCES WITH SEVERAL OF THE LAW
13 ENFORCEMENT OFFICERS AND VERY GOOD FRIENDS WITH
14 JERRY HOFFMAN OF THE SHERIFF'S DEPARTMENT AND
15 RODNEY PICKEL OF THE ROCK HILL POLICE
16 DEPARTMENT.

17 Q. WOULD THE FACT THAT THEY ARE WITNESSES AFFECT
18 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS
19 CASE?

20 A. UH, I WOULD HAVE A HARD TIME NOT TAKING WHAT
21 THEY SAID TO BE THE TRUTH.

22 Q. ALL RIGHT. ANY QUESTIONS BY THE DEFENSE?

23 MR. BOYD: NO, SIR.

24 MR. BRACKETT: NO QUESTIONS FROM THE STATE.

25 THE COURT: ALL RIGHT, LET ME LET YOU STEP

1 OUTSIDE JUST FOR A MINUTE.

2 THE JUROR: OKAY.

3 (THE JUROR LEFT THE COURTROOM.)

4 THE COURT: ANY COMMENT BY THE STATE?

5 MR. BRACKETT: YOUR HONOR, HE COULDN'T BE
6 UNBIASED AND WE DEFER TO THE COURT'S JUDGMENT.

7 MR. BOYD: I AGREE, YOUR HONOR.

8 THE COURT: BRING HIM BACK IN.

9 (THE JUROR RETURNED TO THE COURTROOM.)

10 THE COURT: MR. SIMMONS, WE ARE GOING TO EXCUSE
11 YOU. WE APPRECIATE YOUR CANDOR, AND WE APPRECIATE YOUR
12 TIME. YOU CAN FEEL FREE TO LEAVE. THANK YOU.

13 THE JUROR: THANK YOU, SIR.

14 (THE JUROR LEFT THE COURTROOM.)

15 THE COURT: ALL RIGHT, ELIZABETH THOMAS, 269

16 ELIZABETH A. THOMAS, JUROR NUMBER 269, WHITE
17 FEMALE, WAS QUESTIONED AS FOLLOWS:

18 QUESTIONS BY THE COURT:

19 Q. JUST COME RIGHT OVER HERE AND HAVE A SEAT. MS.
20 THOMAS, I'M JOHN HAYES AND I'VE BEEN ASSIGNED AS
21 THE JUDGE FOR THIS CASE. AND I WANT TO REMIND
22 YOU THAT YOU'RE STILL UNDER OATH.

23 I ALSO WANT TO TELL YOU THAT IF YOU ARE CHOSEN
24 ON THIS JURY, YOU MAY SEE CAMERAS OR
25 PHOTOGRAPHERS IN THE COURTROOM. BY LAW THEY

1 HAVE A RIGHT TO BE HERE, BUT BY LAW THEY CANNOT
2 SHOW OR DISCUSS THE JURORS. SO, I DON'T WANT
3 YOU TO BE DISTRACTED BY ANY CAMERAS IF THERE ARE
4 ANY. DO YOU UNDERSTAND THAT?

5 A. YES.

6 Q. YOU HANDED US A QUESTIONNAIRE. IS IT, TO YOUR
7 KNOWLEDGE, CORRECT?

8 A. YES.

9 Q. HAVE YOU HAD A CHANCE TO GO THROUGH THE WITNESS
10 LIST?

11 A. UH HUH.

12 Q. IS THERE ANYBODY ON THERE TO WHOM YOU ARE
13 RELATED BY BLOOD OR MARRIAGE?

14 A. I WASN'T EXACTLY SURE IF THEY WERE THE ONES THAT
15 I KNOW BY THE NAME OF ---

16 Q. WELL, FIRST IS THERE ANYBODY YOU'RE RELATED TO
17 BY BLOOD OR MARRIAGE, ANY KINFOLK?

18 A. IF IT'S THE SAME, PROBABLY YES.

19 Q. OKAY, WHO?

20 A. THERE WAS AN ANN MELTON, I'M NOT SURE, IT COULD
21 HAVE BEEN MY SISTER-IN-LAW.

22 Q. WHAT DOES THAT ANN MELTON DO?

23 A. I'M NOT SURE; I DON'T KNOW HER, BUT I DID KNOW
24 THE NAME AS MY SISTER'S HUSBAND'S SISTER.

25 Q. OKAY.

1 A. IF THAT'S THE SAME ANN MELTON; THAT'S WHAT I
2 MEAN, I'M NOT SURE.

3 Q. ANYBODY ELSE?

4 A. THERE'S A DAVID FRYE -- NOT BY BLOOD OR
5 MARRIAGE, I'M SORRY.

6 Q. WELL, ANYBODY YOU KNOW?

7 A. THERE'S A DAVID FRYE THAT I WENT TO SCHOOL WITH
8 THAT WAS ON THE LIST.

9 Q. WOULD THE FACT THAT THOSE INDIVIDUALS' NAMES ARE
10 ON THERE, WOULD THAT AFFECT YOUR ABILITY TO BE
11 FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

12 A. NO, THAT WOULDN'T.

13 Q. NOW, PRIOR TO THIS POINT HAVE YOU HEARD ANYTHING
14 ABOUT THIS CASE, READ ABOUT IT, HEARD ABOUT IT,
15 FORMED AN OPINION ABOUT IT, OTHER THAN WHAT WAS
16 DISCUSSED IN THE JURY ROOM YESTERDAY MORNING
17 WHEN THE CASE WAS ANNOUNCED?

18 A. NO.

19 Q. YOU HAVEN'T HEARD ABOUT IT FROM ANY SOURCE?

20 A. ONLY HEARD OF IT, YEAH, BUT I HAVEN'T THOUGHT OF
21 IT.

22 Q. BUT YOU HAVE RECEIVED SOME INFORMATION ABOUT IT
23 OUTSIDE OF THE COURTROOM?

24 A. YES.

25 Q. WOULD THE FACT THAT YOU HAVE RECEIVED THAT

1 INFORMATION, WOULD THAT AFFECT YOUR ABILITY TO
2 BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

3 A. NO, THAT WOULDN'T.

4 Q. COULD YOU LEAVE OUT FROM YOUR CONSIDERATION
5 THOSE THINGS THAT YOU HEARD OUTSIDE THE
6 COURTROOM OR READ OUTSIDE THE COURTROOM AND BASE
7 YOUR VERDICT SOLELY ON THE LAW AND THE EVIDENCE
8 AS IT IS DEVELOPED IN THE TRIAL OF THIS CASE?

9 A. YES.

10 Q. ALL RIGHT. NOW, THIS CASE WILL BE HELD IN TWO
11 STAGES. ONE DEALING WITH WHETHER OR NOT MR.
12 ROBERTSON IS GUILTY OR NOT OF THE OFFENSES WITH
13 WHICH HE IS CHARGED. IF HE WERE FOUND NOT
14 GUILTY, THE CASE WOULD END THERE.

15 HOWEVER, IF THE JURY WERE TO DETERMINE BEYOND A
16 REASONABLE DOUBT UNANIMOUSLY THAT HE WAS GUILTY
17 OF MURDER, THEN THE CASE WOULD GO FORWARD FOR
18 WHAT'S CALLED THE PENALTY PHASE.

19 THE FACT THAT WE'RE TALKING ABOUT THAT SECOND
20 PHASE DOES NOT PRESUPPOSE ANY GUILT ON HIS
21 BEHALF, THAT WOULD HAVE TO BE DETERMINED BY THE
22 JURY. AND HE IS PRESUMED INNOCENT OF THE
23 CHARGES UNTIL A JURY WERE TO MAKE SUCH A
24 DETERMINATION. DO YOU UNDERSTAND THAT?

25 A. YES.

1 Q. AND WE'RE TALKING ABOUT THAT SECOND PART EVEN
2 THOUGH WE HAVEN'T DONE THE FIRST PART BECAUSE OF
3 THE NATURE OF THE PROCEEDINGS WE HAVE TO DO IT
4 THIS WAY.

5 DID YOU HAVE AN OPPORTUNITY TO LOOK AT THE JUROR
6 LIST TYPE -- JUROR TYPE LIST IN THE JURY ROOM?

7 A. UH HUH, YES.

8 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

9 A. THE THIRD.

10 Q. IN THE DISCUSSION OF THAT TYPE JUROR, I PUT IN
11 THERE THINGS ABOUT AGGRAVATING AND MITIGATING
12 CIRCUMSTANCES.

13 AGGRAVATING CIRCUMSTANCES WOULD BE CIRCUMSTANCES
14 THAT ATTEND THE COMMISSION OF A CRIME WHICH
15 INCREASES ITS ENORMITY OR ADDS TO ITS INJURIOUS
16 CONSEQUENCES BUT THEY WOULD BE THINGS ABOVE AND
17 BEYOND JUST SIMPLY THE ELEMENTS AND NATURE OF
18 THE CRIME ITSELF.

19 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
20 WOULD NOT JUSTIFY OR CONSTITUTE A JUSTIFICATION
21 OR AN EXCUSE FOR COMMITTING AN OFFENSE BUT WOULD
22 BE THINGS THAT IN FAIRNESS AND MERCY MAY BE
23 CONSIDERED AS EXTENUATING OR REDUCING ONE'S
24 DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND
25 THAT?

1 A. YES.

2 Q. SO YOU ARE TELLING ME THAT IF YOU SAT ON THIS
3 JURY THAT WHEN WE REACH THAT SECOND PHASE THAT
4 EVEN THOUGH MR. ROBERTSON WOULD HAVE BEEN FOUND
5 GUILTY OF MURDER, THAT YOU WOULD HAVE AN OPEN
6 MIND AND NOT HAVE A PRECONCEIVED NOTION AS TO
7 WHAT WOULD BE THE APPROPRIATE PENALTY. IS THAT
8 WHAT YOU ARE TELLING ME?

9 A. NORMALLY, YES.

10 Q. I BEG YOUR PARDON?

11 A. I SAID NORMALLY, YES.

12 Q. NORMALLY. ALL RIGHT, WELL, EXPLAIN WHAT THAT
13 MEANS.

14 A. WELL, THIS IS TOO CLOSE TO SOMETHING THAT'S
15 HAPPENED TO ME RECENTLY.

16 Q. ALL RIGHT, WOULD THAT THEN AFFECT YOUR ABILITY
17 TO BE OPEN-MINDED?

18 A. THAT WOULD, YES.

19 Q. IN WHAT WAY, WOULD IT MAKE YOU -- LET ME ASK YOU
20 THIS. WOULD WHATEVER HAPPENED, WOULD THAT CLOSE
21 YOUR MIND TO RECEIVING AND CONSIDERING EVIDENCE
22 IN AGGRAVATION OR MITIGATION AND THEN MAKING A
23 DECISION?

24 A. I BELIEVE IT WOULD AFFECT THAT; YES, SIR.

25 Q. WOULD YOU BE ABLE TO, IF YOU THOUGHT THE

1 EVIDENCE WAS APPROPRIATE, WOULD YOU BE ABLE TO
2 IMPOSE A LIFE IMPRISONMENT SENTENCE IF MR.
3 ROBERTSON HAD BEEN FOUND GUILTY OF MURDER?

4 A. YES.

5 Q. WOULD YOU BE ABLE, IF AFTER RECEIVING THAT
6 EVIDENCE AND YOU FELT IT WAS APPROPRIATE, COULD
7 YOU RETURN A VERDICT IMPOSING THE DEATH PENALTY
8 ON MR. ROBERTSON?

9 A. I BELIEVE SO.

10 Q. I BEG YOUR PARDON?

11 A. I BELIEVE SO.

12 Q. ALL RIGHT. WELL, I DON'T WANT TO PRY TOO MUCH
13 BECAUSE WE'RE NOT TRYING TO GET INTO YOUR
14 PRIVACY AND THESE QUESTIONS DON'T HAVE ANY RIGHT
15 OR WRONG ANSWERS BUT THE THING THAT'S BOTHERING
16 YOU -- I'M NOT SURE HOW IT'S BOTHERING YOU
17 BECAUSE IF I'M UNDERSTANDING WHAT YOU'RE SAYING,
18 YOU'RE SAYING THAT YOU COULD LISTEN TO THE FACTS
19 IN THE PENALTY PHASE ---

20 A. YOU WANT ME TO JUST TELL YOU?

21 Q. ALL RIGHT, DO THAT, JUST PUT IT IN YOUR WORDS.

22 A. IT WAS JUST THREE MONTHS AGO THAT MY SISTER WAS
23 KILLED BY HER SON.

24 Q. OKAY. AND YOU THINK THAT PREDISPOSES YOU TO --
25 IN WHAT FASHION?

1 A. WELL, SIR, FOR ONE THING I DON'T KNOW THAT I
2 COULD SIT THROUGH THAT.

3 Q. JUST THE TRAUMA OF THE TRIAL?

4 A. YES.

5 THE COURT: ALL RIGHT, ANSWER ANY QUESTIONS THAT
6 THE STATE MAY HAVE -- I'M SORRY, THAT MR. BOYD MAY HAVE.

7 **QUESTIONS BY MR. BOYD:**

8 Q. MS. THOMAS, MY NAME IS JIM BOYD AND I REPRESENT
9 JIMMY ROBERTSON WHO IS SEATED OVER HERE ALONG
10 WITH MY CO-COUNSEL, BILL HANCOCK.

11 Q. I WANTED TO FOLLOW UP WITH WHAT THE JUDGE ASKED
12 YOU. I WAS READING YOUR JUROR QUESTIONNAIRE FORM
13 AND IT DID SAY THAT YOUR NEPHEW AND NIECE ARE IN
14 JAIL FOR MURDERING YOUR SISTER. IS THAT
15 CORRECT?

16 A. YES.

17 Q. WHERE DID THIS HAPPEN?

18 A. WHERE DID IT HAPPEN?

19 Q. YES, MA'AM.

20 A. AT THEIR HOME.

21 Q. I MEAN IS THIS HERE IN YORK COUNTY?

22 A. YES, SIR.

23 Q. IT IS?

24 A. YES. HE'S HERE ACTUALLY.

25 Q. HE'S HERE?

1 A. HE'S HELD HERE.

2 Q. HE'S HELD IN THE MOSS CENTER? WHAT IS HIS NAME?

3 A. KRISTIN MELTON.

4 Q. WHAT WAS YOUR SISTER'S NAME?

5 A. MARLENE MELTON.

6 Q. IS THE NIECE ALSO CHARGED?

7 A. YES.

8 Q. WHAT IS HER NAME?

9 A. JULIE.

10 Q. IS SHE IN JAIL HERE, TOO?

11 A. YES.

12 Q. IS YOUR SISTER'S MURDER BEING PROSECUTED BY THE
13 SOLICITOR'S OFFICE HERE IN YORK COUNTY?

14 A. YES, I THINK SO.

15 Q. HAVE YOU BEEN IN CONTACT WITH THE VICTIM'S
16 WITNESS PEOPLE OF THE SOLICITOR'S OFFICE OR HAVE
17 THEY CONTACTED YOU?

18 A. NO.

19 Q. AND YOU THINK DUE TO WHAT'S HAPPENED IN THAT
20 CASE, YOU JUST WOULDN'T WANT TO SIT AS A JUROR
21 AND LISTEN TO THIS, IS THAT CORRECT?

22 A. YES.

23 Q. I UNDERSTAND THAT. LET ME ASK YOU A FEW OTHER
24 QUESTIONS. DO YOU FEEL LIKE YOUR EXPERIENCE ON
25 THAT ---

1 (THE JUROR STARTED CRYING.)

2 THE COURT: WHY DON'T YOU JUST STEP OUTSIDE THE
3 DOOR FOR A MINUTE, MS. THOMAS, AND GET YOURSELF COMPOSED.
4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT?

6 MR. POPE: YOUR HONOR, THE NATURE OF THAT CASE,
7 THERE ARE A LOT OF SIMILARITIES IN IT. IF THE DEFENSE
8 DOESN'T HAVE AN OPPOSITION, THIS LADY IS TOO CLOSE, TOO
9 SOON AND I THINK IT BEST ---

10 THE COURT: WELL, I WANT TO HEAR WHAT THE DEFENSE
11 HAS TO SAY.

12 MR. BOYD: I AGREE, YOUR HONOR.

13 THE COURT: WELL, I DON'T THINK SHE WOULD MAKE IT
14 THROUGH. I AGREE. LET HER COME BACK IN.
15 (THE JUROR RETURNED TO THE COURTROOM.)

16 THE COURT: MS. THOMAS, WE UNDERSTAND YOUR
17 SITUATION, SO WE ARE GOING TO EXCUSE YOU FROM ANY FURTHER
18 SERVICE. WE APPRECIATE YOUR TIME AND PATIENCE, AND WE'RE
19 SORRY YOU HAD TO GO THROUGH THIS. THIS IS SOMETHING WE DO,
20 AND I CAN'T APOLOGIZE BECAUSE THIS IS THE WAY THE SYSTEM
21 WORKS AND THIS IS THE WAY WE FIND THESE THINGS OUT. BUT WE
22 EXPRESS OUR SYMPATHY TO YOU AND THANK YOU FOR COMING.

23 THE JUROR: THANK YOU.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: ALL RIGHT, JOHNNIE LOVE

1 JOHNNIE K. LOVE, JUROR NUMBER 155, BLACK FEMALE,
2 WAS QUESTIONED AS FOLLOWS:

3 QUESTIONS BY THE COURT:

4 Q. IF YOU'LL JUST COME UP HERE AND HAVE A SEAT
5 PLEASE, MA'AM. YOU'RE JOHNNIE LOVE?

6 A. YES, SIR.

7 Q. I'M JOHN HAYES, AND I'M THE JUDGE WHO HAS BEEN
8 ASSIGNED THIS CASE. YOU'RE STILL UNDER OATH FOR
9 THE PURPOSE OF WHAT WE ARE DOING HERE THIS
10 AFTERNOON.

11 AND I WANT YOU TO KNOW THAT IF YOU'RE CALLED TO
12 SERVE ON THIS JURY, YOU WOULD PERHAPS SEE
13 CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM AND
14 I'LL TELL YOU IN ADVANCE THAT THEY CAN'T TAKE
15 YOUR PICTURE OR REPORT ANYTHING ABOUT YOU, SO I
16 DON'T WANT YOU TO BE DISTRACTED BY THAT. OKAY?

17 A. OKAY.

18 Q. YOU HANDED US A QUESTIONNAIRE. IS IT CORRECT OR
19 IS THERE ANYTHING ON THERE THAT YOU NEED TO
20 CHANGE?

21 A. NO.

22 Q. IT'S CORRECT?

23 A. UH HUH.

24 Q. DID YOU REVIEW THE LIST OF WITNESSES?

25 A. YES.

1 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY OF
2 THEM?

3 A. NO.

4 Q. ARE YOU PERSONAL FRIENDS OR ACQUAINTANCE OF ANY
5 OF THEM?

6 A. NO, SIR.

7 Q. PRIOR TO COMING TO THIS COURTROOM, HAVE YOU
8 HEARD ABOUT THIS CASE OR FORMED AN OPINION ABOUT
9 IT OR HEARD ANYTHING ABOUT IT WHATSOEVER?

10 A. I READ IT IN THE NEWSPAPERS AND HEARD IT ON THE
11 NEWS.

12 Q. YOU HAVE SEEN IT IN THE NEWSPAPER?

13 A. YES.

14 Q. COULD YOU PUT OUT OF YOUR MIND WHAT YOU HAVE
15 READ -- IF YOU WERE TO SERVE ON THIS JURY, COULD
16 YOU DISREGARD AND PUT OUT OF YOUR MIND THOSE
17 THINGS YOU READ PRIOR TO COMING TO COURT?

18 A. IT WOULD BE HARD. I DON'T THINK I COULD. YOU
19 KNOW, FROM WHAT I'VE READ AND STUFF?

20 Q. UH HUH.

21 A. IT WOULD BE KIND OF HARD FOR ME.

22 Q. YOU DON'T THINK YOU COULD PUT THAT OUT OF YOUR
23 MIND AND LISTEN AS THE LAW REQUIRES, TO ONLY
24 WHAT YOU HEAR IN THE COURTROOM AND BASE YOUR
25 VERDICT SOLELY ON THE LAW AND THE EVIDENCE

1 THAT'S DEVELOPED IN THE TRIAL? YOU DON'T THINK
2 YOU COULD DO THAT?

3 A. NO, SIR.

4 THE COURT: ALL RIGHT, ANY QUESTIONS?

5 MR. POPE: NOT ON THAT ISSUE, YOUR HONOR. THE
6 STATE WOULD RESERVE THE RIGHT TO GO FURTHER IF WE END UP
7 BRINGING HER BACK.

8 THE COURT: ALL RIGHT, THE DEFENSE?

9 MR. HANCOCK: NONE, YOUR HONOR.

10 THE COURT: ALL RIGHT, LET ME LET YOU STEP RIGHT
11 OUTSIDE THE DOOR.

12 (THE JUROR LEFT THE COURTROOM.)

13 THE COURT: ANY COMMENT BY THE STATE?

14 MR. POPE: YOUR HONOR, I THINK SHE HAS CLEARLY
15 INDICATED THAT SHE COULDN'T PUT IT ASIDE, SO I DON'T THINK
16 SHE WOULD BE QUALIFIED.

17 THE COURT: THE DEFENSE?

18 MR. HANCOCK: WE AGREE, YOUR HONOR.

19 THE COURT: AND I GAVE BOTH SIDES THE CHANCE TO
20 ASK QUESTIONS, CORRECT?

21 MR. POPE: YES, SIR.

22 MR. HANCOCK: YES, SIR.

23 THE COURT: BRING HER IN.

24 (THE JUROR RETURNED TO THE COURTROOM.)

25 THE COURT: MS. LOVE, WE'RE GOING TO EXCUSE YOU

1 FROM ANY FURTHER SERVICE ON THIS JURY. WE APPRECIATE YOUR
2 TIME, YOUR PATIENCE AND YOUR CANDOR. THANK YOU A LOT.

3 THE JUROR: ALL RIGHT.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT, CHARLES SHAW.

6 CHARLES A. SHAW, JUROR NUMBER 237, WHITE MALE,
7 WAS QUESTIONED AS FOLLOWS:

8 QUESTIONS BY THE COURT:

9 Q. COME ON UP HERE AND HAVE A SEAT PLEASE, SIR.

10 MR. SHAW, I'M JOHN HAYES, AND I'M THE JUDGE
11 THAT'S BEEN ASSIGNED TO TRY THIS CASE. I
12 INTRODUCED MYSELF YESTERDAY.

13 A. UH HUH.

14 Q. AND YOU ARE UNDER OATH FOR PURPOSES OF WHAT
15 WE'RE DOING HERE THIS AFTERNOON; DO YOU
16 UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. AND I'M GOING TO TELL YOU IN ADVANCE THAT IF YOU
19 END UP SITTING ON THIS TRIAL, YOU MAY SEE
20 CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. THEY
21 ARE ALLOWED HERE BY LAW BUT THEY WOULD NOT BE
22 TAKING YOUR PHOTOGRAPH, THEY ARE NOT ALLOWED TO
23 DO THAT. DO YOU UNDERSTAND?

24 A. OKAY.

25 Q. YOU HANDED US A QUESTIONNAIRE AT SOME POINT. IS

1 IT CORRECT OR DO YOU NEED TO MAKE ANY
2 CORRECTIONS TO IT?

3 A. I BELIEVE EVERYTHING SHOULD BE CORRECT ON THERE.

4 Q. IN THE JURY ROOM THERE WAS A LIST OF WITNESSES.
5 DID YOU HAVE A CHANCE TO REVIEW THOSE WITNESSES?

6 A. YES, SIR.

7 Q. IS THERE ANYBODY ON THERE THAT YOU'RE RELATED TO
8 BY BLOOD OR MARRIAGE?

9 A. NO, SIR.

10 Q. IS THERE ANYBODY ON THERE YOU KNOW?

11 A. NO, SIR.

12 Q. PRIOR TO YOUR COMING HERE TODAY, OTHER THAN WHAT
13 WAS ANNOUNCED IN COURT YESTERDAY, HAVE YOU HEARD
14 ABOUT THIS CASE, FORMED AN OPINION OR EXPRESSED
15 AN OPINION OR HEARD ANYTHING ABOUT IT FROM ANY
16 SOURCE WHATSOEVER?

17 A. I HEARD ABOUT IT ON THE NEWS EARLIER, I MEAN
18 BEFORE THE HEARING WAS CALLED OR ANYTHING LIKE
19 THAT, BUT I MEAN OTHER THAN THAT I DON'T KNOW
20 REALLY.

21 Q. IF YOU WERE TO SERVE ON THIS JURY, COULD YOU PUT
22 FROM YOUR MIND WHAT YOU HAD PREVIOUSLY HEARD AND
23 SORT OF WRITE ON A CLEAN SLATE; THAT IS, LISTEN
24 TO THE EVIDENCE AND THE LAW THAT IS PRESENTED
25 HERE IN THE COURTROOM AND BASE YOUR VERDICT

1 SOLELY ON THAT AND DISREGARD ANYTHING YOU'D
2 HEARD PRIOR TO TRIAL?

3 A. YES, SIR.

4 Q. A CASE OF THIS TYPE IS HELD IN TWO STAGES. THE
5 FIRST STAGE BEING ONE TO DETERMINE WHETHER OR
6 NOT MR. ROBERTSON IS GUILTY OR NOT. IF HE'S
7 FOUND NOT GUILTY, OF COURSE, THE CASE ENDS. IF
8 HE IS FOUND GUILTY BY A UNANIMOUS JURY BEYOND A
9 REASONABLE DOUBT, THEN THE CASE WOULD GO FORWARD
0 IN WHAT'S CALLED THE PENALTY PHASE.

1 THE FACT THAT WE'RE TALKING ABOUT THE PENALTY
2 PHASE DOES NOT PRESUPPOSE THAT MR. ROBERTSON
3 WOULD BE FOUND GUILTY, BUT WE JUST HAVE TO DO IT
4 BECAUSE OF THE NATURE OF THE THING, EVEN THOUGH
5 WE'RE TALKING ABOUT THE SECOND PART WHEN WE
6 MIGHT NOT EVEN GET TO.

7 HE IS PRESUMED INNOCENT OF THE CHARGES AGAINST
8 HIM AND IS SO PRESUMED UNTIL, LIKE I SAID
9 EARLIER, A JURY WERE TO CONVICT HIM.

DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DID YOU HAVE A CHANCE TO REVIEW THE JUROR LIST?

A. UH HUH...

Q. AND DO YOU FEEL LIKE YOU ARE ONE OF THOSE TYPES?

A. YES, SIR.

1 Q. WHICH ONE?

2 A. IT WOULD BE THE THIRD.

3 Q. ALL RIGHT. IN THAT OUTLINE OF THAT TYPE JUROR I
4 USED CERTAIN -- TALKED ABOUT AGGRAVATING AND
5 MITIGATING CIRCUMSTANCES.

6 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
7 WHICH ATTEND THE COMMISSION OF A CRIME WHICH
8 INCREASE THE CRIME'S ENORMITY OR INJURIOUS
9 CONSEQUENCES BUT WHICH ARE NOT ESSENTIAL
10 ELEMENTS; THAT IS, THEY GO ABOVE AND BEYOND THE
11 ESSENTIAL ELEMENTS OF THE CHARGE OF THE CRIME
12 ITSELF.

13 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT
14 WHILE THEY ARE NOT SUFFICIENT TO JUSTIFY OR
15 EXCUSE A CRIME, ARE THINGS WHICH IN FAIRNESS AND
16 IN MERCY MAY BE CONSIDERED AS EXTENUATING OR
17 REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY.

18 DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. SO, YOU'RE TELLING ME THAT IF YOU WERE SEATED ON
21 THE JURY AND AS A JURY YOU HAD FOUND UNANIMOUSLY
22 THAT MR. ROBERTSON WAS GUILTY OF THE MURDERS
23 WITH WHICH HE IS CHARGED, YOU WOULD NOT HAVE AT
24 THAT TIME MADE UP YOUR MIND CONCERNING WHAT
25 PUNISHMENT WOULD BE APPROPRIATE. IS THAT WHAT

1 YOU'RE TELLING ME?

2 A. YES, SIR.

3 Q. AND YOU'RE TELLING ME THEN, IF YOU'RE THIS TYPE
4 JUROR, YOU WOULD NEED TO HEAR THE FACTS AND
5 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION,
6 LISTEN TO AND FOLLOW THE LAW AS CHARGED BY THE
7 JUDGE AND THEN AND ONLY THEN WOULD YOU MAKE A
8 DECISION REGARDING PUNISHMENT. IS THAT CORRECT?

9 A. YES, SIR.

10 Q. IF THE FACTS PRESENTED AT THAT SECOND PHASE OF
11 THE TRIAL SO WARRANTED, COULD YOU RETURN A
12 VERDICT AGAINST MR. ROBERTSON FOR LIFE
13 IMPRISONMENT?

14 A. ARE YOU SAYING THAT I WOULD HAVE TO ---

15 Q. IF AFTER LISTENING TO THE FACTS AND HEARING THE
16 LAW AND YOU THOUGHT THAT WAS APPROPRIATE, COULD
17 YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

18 A. IF THAT WAS TRUE, YEAH, I MEAN IF THAT'S WHAT
19 VERDICT WAS COME UP WITH AS FAR AS ---

20 Q. WELL, THIS IS DIRECTED TO YOU, NOT TO EVERYBODY
21 IN GENERAL. AFTER YOU HEARD THE FACTS AND THE
22 CHARGE ON THE LAW, HAVING STARTED WITH THIS OPEN
23 MIND THAT YOU TOLD ME YOU WOULD START WITH.

24 A. UH HUH.

25 Q. IF YOU THOUGHT THE PROPER PUNISHMENT FOR MR.

1 ROBERTSON AFTER HEARING ALL OF THAT WAS LIFE
2 IMPRISONMENT, COULD YOU RETURN THAT VERDICT IF
3 YOU THOUGHT THAT WAS THE RIGHT VERDICT?

4 A. YES, SIR.

5 Q. AND UNDER THOSE CIRCUMSTANCES IF YOU THOUGHT THE
6 VERDICT OF THE DEATH PENALTY WAS THE RIGHT
7 VERDICT, COULD YOU BRING BACK THE DEATH PENALTY?

8 A. YES, SIR.

9 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE DEFENDANT
10 MAY HAVE.

11 QUESTIONS BY MR. POPE:

12 Q. MR. SHAW, MY NAME IS TOMMY POPE. I'M THE
13 SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN
14 BRACKETT, MY DEPUTY SOLICITOR.

15 I THINK I SAW YOU'RE FROM VIRGINIA, IS THAT
16 RIGHT?

17 A. NO, SIR, I'M FROM -- YOU MEAN AS FAR AS WHERE I
18 WAS BORN AT?

19 Q. YES.

20 A. I WAS BORN IN VIRGINIA.

21 Q. OH, OKAY; HAVE YOU BEEN DOWN HERE FOR A WHILE?

22 A. YEAH, ABOUT NINE YEARS.

23 Q. THAT'S THE THING I ALWAYS HAVE TO EXPLAIN WHEN I
24 SAY I'M THE SOLICITOR. UP THERE IT WOULD BE
25 DISTRICT ATTORNEY BUT DOWN HERE WE ARE

1 PROSECUTORS AND REPRESENT THE STATE.

2 A. OKAY.

3 Q. HAVE YOU EVER BEEN IN A SITUATION LIKE THIS AND
4 QUESTIONED LIKE THIS?

5 A. NO, SIR.

6 Q. ONE THINK I'LL TELL YOU, IT KIND OF FEELS LIKE
7 YOU'RE THE ONE ON TRIAL BECAUSE YOU'RE GETTING
8 ALL THE QUESTIONS ASKED YOU.

9 A. UH HUH.

0 Q. YOU CAN'T GIVE A WRONG ANSWER BECAUSE WHAT THIS
1 IS ABOUT IS HOW CHARLES SHAW FEELS.

2 A. UH HUH.

3 Q. YOU KNOW, WHAT YOUR VIEWS ARE, AND YOU CAN'T
4 GIVE A WRONG ANSWER.

5 NOW ONE THING I WILL TELL YOU, YOU KNOW, YOU
6 COME AND YOU'RE ASK ALL THESE QUESTIONS ABOUT
7 THE LAW; IF YOU WERE TO BE SELECTED AS A JUROR,
8 THE JUDGE WILL INSTRUCT YOU ON THE LAW, YOU KNOW
9 WHAT I MEAN?

0 A. YES, SIR.

1 Q. WE DON'T HAVE TO GO THROUGH AND FIND PEOPLE WHO
2 ALREADY KNOW THE LAW BEFORE THEY CAN COME AND BE
3 JURORS BECAUSE THE JUDGE WILL INSTRUCT YOU.

4 BUT THERE ARE A FEW BASIC THINGS -- I THINK FROM
5 WHAT I HEARD YOU TELL THE JUDGE, YOU ALREADY

1 UNDERSTAND THIS, BUT I WANT TO TELL YOU. THE
2 DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY. DO
3 YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. YOU UNDERSTAND HE NEVER HAS TO PROVE ANYTHING.
6 HE CAN REMAIN SILENT -- YOU KNOW, HE HAS ALL
7 THOSE RIGHTS.

8 A. UH HUH.

9 Q. DO YOU UNDERSTAND THAT?

10 A. UH HUH.

11 Q. AND BASED ON WHAT I HEARD YOU SAY, AND NOW I'M
12 JUST TALKING ABOUT GUILT, I'M NOT EVEN TALKING
13 ABOUT PENALTY YET, AS FAR AS GUILT, YOU'RE THE
14 KIND OF GUY, YOU'D COME IN WITH AN OPEN MIND.
15 YOU'RE NOT GOING TO COME IN ALREADY THINKING
16 HE'S GUILTY BEFORE YOU'VE HEARD EVERYTHING,
17 RIGHT?

18 A. NO, SIR.

19 Q. OKAY. AND SO YOU WOULD WANT TO BE FAIR AND
20 OPEN-MINDED AND IF THE STATE PROVES THE CASE,
21 BECAUSE WE HAVE TO PROVE IT, THEY DON'T HAVE TO
22 PROVE ANYTHING, IF WE PROVE IT, THEN YOU COULD
23 VOTE GUILTY OR YOU COULD VOTE NOT GUILTY. YOU'D
24 JUST HAVE TO WAIT AND HEAR IT. IS THAT A FAIR
25 STATEMENT?

1 A. YES, SIR.

2 Q. OKAY. AND, AGAIN, I DON'T WANT TO PUT WORDS IN
3 YOUR MOUTH, I JUST WANT TO MAKE SURE. SO, YOU
4 UNDERSTAND THAT THE JOB IS OUR'S. THE JOB IS
5 THE STATE'S. WE HAVE TO PROVE IT. HE DOESN'T
6 HAVE TO BRING ANYTHING TO PROVE ANYTHING TO YOU;
7 THAT'S NOT HIS JOB OR HIS BURDEN. DO YOU
8 UNDERSTAND THAT?

9 A. YES.

0 Q. OKAY. NOW, WE'RE GOING TO TALK ABOUT THE SECOND
1 PHASE AND, AGAIN, WE CALL IT A BIFURCATED OR A
2 TWO PART TRIAL. THE TRUTH OF THE MATTER, IT'S
3 THE SAME JURY, YOU KNOW, IN BOTH PHASES, BUT YOU
4 KNOW IN A NORMAL TRIAL THE JURY WOULD DECIDE
5 GUILTY OR NOT GUILTY AND THEN THE JUDGE WOULD
6 GIVE THE SENTENCE IN A NORMAL TRIAL.

7 A. UH HUH.

8 Q. IN A DEATH PENALTY TRIAL, THE JURY DECIDES
9 GUILTY OR NOT GUILTY AND, OF COURSE, IF THEY ARE
0 NOT GUILTY, THAT'S THE END OF IT.

1 A. UH HUH.

2 Q. IF THEY ARE GUILTY, THEN THE JURY DECIDES THE
3 SENTENCE. THAT'S WHAT MAKES A DEATH PENALTY
4 CASE A LITTLE DIFFERENT.

5 A. OKAY.

1 Q. AND IN THE SENTENCING PHASE THERE IS EVIDENCE
2 THAT THE STATE WOULD PUT FORWARD CALLED EVIDENCE
3 IN AGGRAVATION. IN OTHER WORDS, TO TRY TO PUT
4 IT IN SOME CONTEXT, BY THE TIME YOU GOT TO THE
5 PENALTY PHASE, THEY'VE ALREADY BEEN FOUND GUILTY
6 OF MURDER. SO, LIKE IN THIS CASE, BY THE TIME
7 YOU GOT TO THE PENALTY PHASE -- AND IN THE
8 PENALTY PHASE YOU'RE DECIDING IS IT GOING TO BE
9 LIFE OR DEATH. THAT'S YOUR TWO OPTIONS.

10 A. UH HUH.

11 Q. AT THAT POINT YOU ALREADY KNOW, IT WOULDN'T BE A
12 QUESTION OF HIM BEING INNOCENT, THE STATE WOULD
13 HAVE HAD TO HAVE PROVED THAT HE WAS GUILTY.

14 A. UH HUH.

15 Q. SO THEN YOU'VE GOT A MAN THAT'S GUILTY IN THIS
16 CASE OF KILLING TWO INDIVIDUALS. THEN THE STATE
17 CAN BRING FORTH EVIDENCE TO SHOW WHY IT WAS BAD
18 ENOUGH IT OUGHT TO BE THE DEATH PENALTY.

19 THE DEFENSE COULD, BUT THEY DON'T HAVE TO, COULD
20 BRING FORTH EVIDENCE WHY IT SHOULDN'T BE THE
21 DEATH PENALTY, WHY IT SHOULD BE LIFE. DO YOU
22 UNDERSTAND THAT?

23 A. UH HUH.

24 Q. IF I UNDERSTOOD WHAT YOU TOLD THE JUDGE AND
25 AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH,

1 YOU'RE THE KIND OF JUROR THAT JUST BECAUSE THIS
2 MAN IS CONVICTED, YOU'RE NOT AUTOMATICALLY
3 SAYING DEATH BECAUSE YOU HAVEN'T HEARD THE FACTS
4 YET. RIGHT?

5 A. YES, SIR.

6 Q. AND THERE ARE SOME CASES, BASED ON WHAT YOU
7 WOULD HEAR, SOME CASES YOU WOULD GIVE LIFE AND
8 IN SOME CASES YOU WOULD GIVE DEATH BUT YOU CAN'T
9 KNOW BECAUSE YOU HAVEN'T HEARD THE FIRST FACT
0 YET. RIGHT?

1 A. YES, SIR.

2 Q. OKAY. AND, AGAIN, YOU UNDERSTAND AND I THINK
3 YOU'RE THE TYPE OF JUROR, IN THAT SECOND PHASE
4 YOU REALIZE THAT THIS MAN DOESN'T HAVE TO PROVE
5 ANYTHING TO YOU; YOU COULD GIVE HIM LIFE AND HIM
6 NEVER SAY A WORD FOR ANY REASON OR NO REASON AT
7 ALL. DO YOU UNDERSTAND THAT?

8 A. YES.

9 Q. BOTH IN THE FIRST PHASE AND THE SECOND PHASE, HE
0 DOESN'T HAVE TO PROVE ANYTHING.

1 A. UH HUH.

2 Q. SO YOU'RE THE TYPE OF FELLOW THAT JUST BECAUSE
3 HE'S CONVICTED OF TWO MURDERS, YOU'RE STILL
4 GOING TO LOOK AT LIFE AND DEATH. YOU'RE NOT
5 GOING TO SAY, MURDER, IT MUST BE DEATH. YOU'RE

1 GOING TO WAIT AND HEAR BOTH OF THEM?

2 A. YES, SIR.

3 Q. OKAY. AND, AGAIN, YOU KNOW, IF I'M PUTTING
4 WORDS IN YOUR MOUTH, YOU STRAIGHTEN ME OUT.

5 AND, AGAIN, YOU DON'T KNOW WHAT YOU'RE GOING TO
6 DECIDE YET BECAUSE YOU HAVEN'T HEARD IT. RIGHT?

7 A. EXACTLY.

8 Q. AND YOU'D COME IN WITH A CLEAR MIND AND HEAR
9 BOTH SIDES BEFORE YOU DECIDE?

10 A. UH HUH.

11 Q. OKAY. ONE FINAL THING, AND I'M GOING TO LEAVE
12 YOU ALONE HERE NOW IN A SECOND. ONE FINAL THING
13 IN A DEATH PENALTY CASE THAT'S A LITTLE BIT
14 DIFFERENT, IN A NORMAL CASE OR EVEN A DEATH
15 PENALTY CASE IF ALL THE JURORS VOTE LIFE, YOU
16 KNOW, IF YOU'RE ONE OF TWELVE JURORS YOU GO BACK
17 -- YOU KNOW, SAY IF WE WERE ON THE JURY, I'D
18 TELL YOU WHAT I THINK AND YOU'D TELL ME WHAT YOU
19 THINK AND WE'D LISTEN TO EACH OTHER -- LET ME
20 ASK YOU THIS. ARE YOU THE TYPE FELLOW THAT
21 YOU'D TAKE WHAT YOU THINK, BUT YOU'D BE WILLING
22 TO HEAR THE OTHER JURORS, TOO?

23 A. YEAH, I'D BE WILLING TO HEAR THEM, BUT I MEAN --

24 -

25 Q. YOU'RE GOING TO GO WITH WHAT YOUR HEART TELLS

1 YOU?

2 A. YES.

3 Q. OKAY.. SO IN OTHER WORDS, YOU'RE GOING TO LISTEN
4 AND IF I WAS, YOU KNOW, ANOTHER JUROR AND I SAID
5 WELL WHAT ABOUT THIS, YOU'D TALK ABOUT IT.
6 YOU'RE NOT GOING TO GO IN THERE AND JUST CROSS
7 YOUR ARMS; YOU'RE GOING TO HEAR BOTH SIDES AND
8 REASON IT OUT WITH THE OTHER JURORS. RIGHT?

9 A. YES, SIR.

10 Q. IF YOU FELT LIKE YOU WERE RIGHT, YOU'RE GOING TO
11 STICK WITH IT. BUT IF YOU FELT LIKE YOU WERE
12 WRONG, YOU'D BE WILLING TO CHANGE. IS THAT
13 FAIR?

14 A. UH HUH.

15 Q. WELL, ONE THING, WHEN THEY FINALLY GET THE
16 VERDICT -- SAY EVERYBODY LISTENED AND THE
17 VERDICT -- AND I WANT TO MAKE IT CLEAR, WE'RE
18 TALKING HYPOTHETICALLY NOW BECAUSE WE DON'T
19 KNOW, BUT IF THE VERDICT WAS LIFE, ALL TWELVE OF
20 YOU SAT AROUND, Y'ALL TALKED ABOUT IT AND YOU
21 SAID IT WAS LIFE. THEN THE ONLY PERSON THAT HAS
22 TO SIGN ANYTHING IS THE FOREPERSON. IT MAY BE A
23 MAN, IT MAY BE A WOMAN, ONE PERSON THAT SPEAKS
24 FOR THE JURY, YOU KNOW, PICK ONE OF THE TWELVE.

25 A. UH HUH.

1 Q. AND THE ONLY PERSON THAT WOULD HAVE TO SIGN
2 ANYTHING WOULD BE THEM AND, OF COURSE, THEY
3 WOULD SIGN THE VERDICT AND SAY WE VOTED, WE'RE
4 UNANIMOUS, ALL TWELVE OF US, AND WE SAY LIFE,
5 AND THEY'D SEND IT TO THE JUDGE. AND, OF
6 COURSE, THE JUDGE IS GOING TO DO WHAT THE JURY
7 SAYS. IF THE JURY SAYS LIFE, HE'S GOING TO DO
8 LIFE. IF THEY SAY DEATH, HE'S GOING TO DO
9 DEATH.

10 BUT IF THE JURY DECIDES DEATH -- AFTER HEARING
11 EVERYTHING IF THE JURY DECIDES DEATH, THEN EACH
12 INDIVIDUAL JUROR HAS TO SIGN THEIR NAME. YOU
13 KNOW, THEY'VE ALREADY VOTED, RAISED THEIR HAND
14 OR WHATEVER, BUT THEY'VE GOT TO SIGN THEIR NAME
15 TO A FORM THAT COMES TO THE JUDGE. AND THAT
16 FORM IS THE VERDICT AND THAT FORM, IN ESSENCE,
17 TAKES THIS MAN'S LIFE.

18 A. UH HUH.

19 Q. KNOWING YOU HAVEN'T HEARD THE FACTS YET BUT,
20 AGAIN, LIKE THE JUDGE WAS ASKING, IF YOU HAD
21 HEARD THE FACTS AND YOU FELT IN YOUR HEART THAT
22 THE APPROPRIATE SENTENCE WAS DEATH -- AFTER
23 HEARING EVERYTHING IF YOU THOUGHT THE
24 APPROPRIATE SENTENCE WAS DEATH, COULD YOU TAKE
25 YOUR PEN IN HAND AND WRITE CHARLES SHAW ON THAT

1 LINE TO TAKE THIS MAN'S LIFE IF YOU THOUGHT THAT
2 WAS RIGHT?

3 A. YEAH. I MEAN IT WOULDN'T BE THE EASIEST THING,
4 BUT, YEAH, IF THAT'S WHAT I FELT IN MY HEART,
5 YES.

6 Q. SO THE BOTTOM LINE IS YOU'D DO WHAT YOU THOUGHT
7 WAS RIGHT AFTER HEARING ALL THE EVIDENCE AND YOU
8 WOULDN'T COME IN WITH ANY PRECONCEIVED NOTIONS.
9 YOU'D WAIT UNTIL THE END AND DECIDE EVERYTHING?

0 A. UH HUH.

1 Q. MR. SHAW, I SURE APPRECIATE IT. THANK YOU.

2 QUESTIONS BY MR. HANCOCK:

3 Q. MR. SHAW, WE KEEP COMING AT YOU, DON'T WE. HERE
4 COMES ANOTHER ONE. I'M BILL HANCOCK.

5 A. GLAD TO MEET YOU.

6 Q. I'M THE ATTORNEY FOR THE DEFENDANT, JIMMY
7 ROBERTSON, WHO IS SITTING HERE. AND THIS IS CO-
8 COUNSEL, MR. JIM BOYD.

9 NOW YOU HAVE BEEN QUESTIONED BY THE JUDGE,
10 YOU'VE ALSO BEEN QUESTIONED BY THE SOLICITOR.
11 I'M NOT TRYING TO CHALLENGE WHAT YOU'VE SAID, I
12 JUST WANT TO MAKE SURE THAT IN MY MIND THAT I
13 UNDERSTAND WHAT YOU'VE SAID. AND I WILL
14 EMPHASIZE THAT THERE IS NO RIGHT OR WRONG
15 ANSWER, AND THAT YOU CAN GIVE NO RIGHT OR WRONG

1 ANSWER. IT'S JUST YOUR ANSWER AND IT'S UNIQUE
2 TO YOU AND YOUR PERCEPTIONS AND YOUR FEELINGS,
3 OKAY?

4 A. OKAY.

5 Q. AND WE TAKE THOSE INTO EFFECT AND WE CERTAINLY
6 DO RESPECT THEM BECAUSE YOU HAVE BEEN PLACED IN
7 A, I GUESS YOU WOULD SAY UNCOMFORTABLE POSITION.
8 IT'S NOT OFTEN THAT YOU HAVE TO SIT THERE AND
9 HAVE PEOPLE THROW QUESTIONS AT YOU ONE AFTER THE
10 OTHER AFTER THE OTHER. AND IT'S VERY DIFFICULT
11 FOR YOU AND WE UNDERSTAND IT.

12 NOW, THE SOLICITOR HAS SAID THIS IS ALL ABOUT
13 HOW YOU FEEL, OKAY? NOW I'LL ASK, HOW DO YOU
14 FEEL ABOUT THE DEATH PENALTY AND GIVING IT IN
15 THIS CASE?

16 MR. POPE: YOUR HONOR, I DON'T BELIEVE HOW YOU
17 FEEL ABOUT THE DEATH PENALTY IS AN APPROPRIATE QUESTION.

18 THE COURT: REPHRASE YOUR QUESTION.

19 Q. MR. SHAW, SINCE WE CAN'T ASK YOU HOW YOU FEEL
20 REALLY ABOUT THE ULTIMATE QUESTION HERE, THEN
21 I'LL ASK YOU -- YOU WERE DOWNSTAIRS WHEN WE
22 BEGAN ALL OF THIS YESTERDAY, WEREN'T YOU?

23 A. YES, SIR.

24 Q. AND YOU UNDERSTAND THAT JIMMY HAS BEEN CHARGED
25 WITH KILLING BOTH OF HIS PARENTS. IS THAT

1 CORRECT?

2 A. YES, SIR.

3 Q. AND YOU UNDERSTAND THAT WE ARE PURSUING HERE A
4 LEGAL FICTION THAT HE HAS BEEN CONVICTED. WE
5 ARE PUTTING THE CART BEFORE THE HORSE. WE HAVE
6 NOT EVEN TRIED HIM YET, BUT WE ARE ASSUMING FOR
7 PURPOSES OF QUESTIONING YOU THAT HE HAS BEEN
8 CONVICTED. YOU UNDERSTAND THAT?

9 A. YES.

10 Q. DOES THAT IN ANY WAY REFLECT ON WHAT YOU MIGHT
11 DECIDE AS A JUROR IN THE GUILT PHASE? WE'RE
12 SITTING HERE AND DO YOU FEEL LIKE WE ARE
13 ADMITTING TO YOU THAT HE'S GUILTY?

14 A. NO, SIR.

15 Q. YOU UNDERSTAND THAT WE'RE PUTTING THE CART
16 BEFORE THE HORSE, THAT WE'RE GETTING TO THE
17 SECOND PHASE BEFORE WE GET TO THE FIRST?

18 A. WELL, I MEAN, I UNDERSTAND WHAT YOU'RE SAYING.
19 YEAH, I GUESS I UNDERSTAND WHAT YOU'RE SAYING AS
20 FAR AS WHETHER HE'S GUILTY OR NOT.

21 Q. YOU HAVE NO IDEA; YOU'D BE ABLE TO LISTEN TO THE
22 FACTS AND THE CIRCUMSTANCES; IS THAT WHAT YOU'RE
23 SAYING?

24 A. YES, SIR.

25 Q. BUT NOW WE'RE TALKING ABOUT AFTER HE'S ALREADY

1 GUILTY AND HE'S ALREADY CONVICTED OF KILLING HIS
2 PARENTS SUPPOSEDLY, AND YOU'RE SITTING ON THE
3 JURY AND YOU'RE TWELVE PEOPLE AND YOU DON'T EVEN
4 HAVE TO DECIDE THAT ANYMORE, THAT'S ALREADY
5 PAST, HE HAS BEEN ---

6 MR. POPE: YOUR HONOR, I APOLOGIZE FOR
7 INTERRUPTING MR. HANCOCK. I THINK HE'S -- HE HAS NOW SAID
8 HE IS ALREADY GUILTY. IF HE WOULD JUST EXPLAIN THAT THIS
9 IS A HYPOTHETICAL OR SOMETHING BECAUSE HE HAD HIM CLEARED
10 UP THAT HE'S INNOCENT UNTIL HE'S PROVEN GUILTY AND HE GOES
11 BACK AND SAYS NOW HE'S ALREADY GUILTY.

12 THE COURT: ASSUMING WE ARE AT THAT POINT.

13 Q. YES, SIR, WE'VE ALREADY ESTABLISHED THAT IT'S A
14 HYPOTHETICAL AND YOU KNOW HE'S NOT GUILTY. IS
15 THAT CORRECT?

16 A. YES.

17 Q. SO IF YOU WERE SITTING ON A JURY THOUGH ---

18 A. UH-HUH.

19 Q. AND YOU'RE SITTING THERE, THEN YOU WOULD HAVE
20 ALREADY GONE THROUGH THE GUILT PHASE AND HE
21 WOULD HAVE BEEN FOUND GUILTY AND THEN YOUR
22 DECISION WOULD BE TWO THINGS, DEATH OR LIFE.
23 ISN'T THAT CORRECT?

24 A. YES, SIR.

25 Q. AND YOU UNDERSTAND THAT?

1 A. UH HUH.

2 Q. AND YOU HAVE INDICATED THAT YOU COULD CONSIDER
3 ALL OF THE EVIDENCE, MITIGATING CIRCUMSTANCES
4 AND AGGRAVATING CIRCUMSTANCES IN DECIDING
5 WHETHER HE WOULD GET THE DEATH PENALTY OR LIFE
6 IN PRISON; IS THAT CORRECT?

7 A. YES, SIR.

8 Q. OKAY. WOULD YOU EXPLAIN TO ME, JUST GIVE ME AN
9 EXAMPLE OF, SAY, TWO MITIGATING CIRCUMSTANCES?

10 MR. POPE: YOUR HONOR I OBJECT.

11 THE COURT: I SUSTAIN THE OBJECTION.

12 Q. DO YOU KNOW WHAT MITIGATING CIRCUMSTANCES ARE?

13 A. NO, NOT REALLY.

14 Q. DO YOU KNOW WHAT AGGRAVATING CIRCUMSTANCES ARE?

15 A. AGGRAVATED CIRCUMSTANCES?

16 Q. YES, SIR.

17 A. I GUESS, I RECKON IT'S LIKE AGGRAVATION, YOU'RE
18 AGGRAVATED BY SOMETHING. I MEAN EXPLAIN, WHAT DO
19 YOU MEAN?

20 Q. WELL, I'M NOT ALLOWED TO EXPLAIN THAT. I'M JUST
21 ASKING IF YOU ARE ACTUALLY AGREEING TO DECIDE
22 SOMEONE'S LIFE WITH ME, AND YOU DON'T KNOW
23 EXACTLY WHAT GOES INTO DECIDING OR MAKING THAT
24 DECISION, BUT YOU'RE TELLING ME THAT YOU CAN DO
25 IT. IS THAT CORRECT?

1 A. I CAN'T MAKE NO DECISION UNTIL ---

2 Q. WELL, LET ME ASK YOU THIS ---

3 MR. POPE: YOUR HONOR, I WOULD ASK THAT HE BE
4 GIVEN THE OPPORTUNITY TO EXPLAIN ---

5 THE COURT: LET HIM FINISH. YOU ASKED HIM A
6 QUESTION, LET HIM FINISH HIS ANSWER. GO AHEAD.

7 A. IT WOULD BE SOMETHING I'D HAVE TO THINK ABOUT,
8 LIKE YOU SAID, AS FAR AS DECIDING WHETHER IT
9 WOULD BE THE DEATH PENALTY OR AS FAR AS LIFE IN
10 PRISON. I MEAN IT'S JUST SOMETHING -- YOU CAN'T
11 MAKE A DECISION LIKE THAT, I MEAN ESPECIALLY NOT
12 HEARING NOTHING ABOUT WHAT'S HAPPENED AS FAR AS
13 THE CASE GOES.

14 Q. YOU HAVEN'T HEARD ANYTHING ABOUT THE CASE?

15 A. OTHER THAN YESTERDAY WHEN I CAME IN.

16 Q. WHAT DID YOU HEAR ABOUT IT THEN?

17 A. THAT HE'S BEEN ACCUSED OF KILLING HIS PARENTS.

18 Q. LET ME MOVE BACK TO THE POINT. WOULD YOU BE
19 MORE LIKELY, I MEAN DO YOU THINK THE DEATH
20 PENALTY IS APPROPRIATE FOR SOMEBODY WHO HAS
21 KILLED THEIR PARENTS?

22 MR. POPE: YOUR HONOR, I WOULD OBJECT, I DON'T
23 THINK THAT'S APPROPRIATE.

24 THE COURT: I'LL SUSTAIN THE OBJECTION.

25 Q. WELL, YOU'VE ALREADY SAID THAT YOU COULD VOTE

1 FOR THE DEATH PENALTY IF IN FACT HE WAS FOUND
2 GUILTY OF MURDER AND THERE WERE ANY AGGRAVATING
3 CIRCUMSTANCES. IS THAT CORRECT? AND IF IT WAS
4 PROVEN TO YOU BY THE STATE.

5 A. YEAH, I'D HAVE TO HEAR THE FACTS.

6 Q. YOU'D HAVE TO HEAR THE FACTS?

7 A. YEAH, EXACTLY; I'D HAVE TO HEAR THE FACTS OF
8 WHAT HAPPENED IN THE CASE.

9 Q. SO THEN YOU WOULD THINK IT APPROPRIATE FOR THE
10 DEATH PENALTY FOR SOMEBODY WHO HAD KILLED THEIR
11 PARENTS WITH AGGRAVATING CIRCUMSTANCES?

12 A. I MEAN, POSSIBLY, YEAH, I GUESS, I MEAN IT ---

13 Q. OKAY, POSSIBLY, BUT THEN YOU COULD ---

14 MR. POPE: YOUR HONOR, AGAIN I APOLOGIZE BUT ---

15 THE COURT: WELL, HE HAS ANSWERED THE QUESTION.

16 MR. POPE: HE TRIES TO EXPLAIN IT AND MR. HANCOCK
17 CUTS HIM OFF. IT'S BEEN ASKED AND ANSWERED, TOO, AND I
18 WOULD OBJECT TO THAT.

19 THE COURT: ALL RIGHT. WHAT WERE YOU GOING TO
20 SAY AFTER YOU SAID POSSIBLY.

21 A. YEAH, POSSIBLY I COULD VOTE THE DEATH PENALTY.

22 I MEAN IF I'VE HEARD THE FACTS OF WHAT HAPPENED,

23 I MEAN AS FAR AS -- I MEAN BUT LIKE I SAID, I

24 CAN'T MAKE A DECISION ON ANYTHING RIGHT HERE. I

25 MEAN WHETHER IT'S DEATH OR -- I MEAN DEATH AIN'T

- 1 SOMETHING YOU JUST TAKE LIGHTLY LIKE THAT.
- 2 Q. YOU DON'T TAKE IT LIGHTLY.
- 3 A. NO, I MEAN THAT'S SOMETHING SERIOUS.
- 4 Q. AND, YOU KNOW, YOU WOULD HAVE MITIGATING
- 5 CIRCUMSTANCES. THE JUDGE HAS EXPLAINED TO YOU
- 6 THAT THEY MAY LESSEN THE CRIME OR LESSEN THE
- 7 CULPABILITY OF JIMMY ROBERTSON. IS THAT
- 8 CORRECT?
- 9 A. YES, SIR.
- 10 Q. AND YOU SAID THAT YOU CAN CONSIDER THOSE
- 11 CIRCUMSTANCES; ISN'T THAT CORRECT?
- 12 A. THAT COULD BE CONSIDERED ALSO. I MEAN, YES.
- 13 Q. AND NOT KNOWING WHAT THOSE CIRCUMSTANCES ARE,
- 14 YOU COULD CONSIDER THEM AND YOU KNOW YOU COULD
- 15 CONSIDER THEM AND IF THEY WERE APPROPRIATE, THEN
- 16 YOU COULD FIND A LIFE SENTENCE FOR JIMMY
- 17 ROBERTSON?
- 18 A. IF IT WAS APPROPRIATE.
- 19 Q. IF YOU FELT IT WAS APPROPRIATE, YOU COULD DO
- 20 THAT?
- 21 A. UH HUH.
- 22 Q. DO YOU FEEL LIKE YOU ARE A FAIRLY STRONG
- 23 INDIVIDUAL IN YOUR BELIEFS AND IN YOUR
- 24 DECISIONS, SIR?
- 25 A. YEAH, IF I BELIEVE IN SOMETHING; YEAH, I'D STICK

1 TO IT.

2 Q. AND IF YOU WERE -- THE SOLICITOR HAS ASKED YOU
3 COULD YOU SIGN YOUR NAME TO A PIECE OF PAPER
4 THAT PUT JIMMY TO DEATH, AND YOU SAID YOU COULD?

5 A. YES, SIR, IF THAT'S WHAT I BELIEVE.

6 Q. AND ON THE OTHER HAND, IF YOU BELIEVED THAT THE
7 MITIGATING CIRCUMSTANCES WERE SUCH THAT YOU
8 COULD FIND LIFE, WOULD YOU CHANGE YOUR OPINION
9 JUST TO BE WITH THE MAJORITY OF THE JURY IF THEY
10 DECIDED THEY WANTED DEATH?

11 A. I MEAN I'D HAVE TO -- NO, NOT IF THAT'S JUST
12 WHAT THEY DECIDED. WE'D HAVE TO DISCUSS IT, I
13 GUESS, I MEAN AS FAR AS -- I MEAN I'D WANT TO
14 KNOW WHY THEY THOUGHT THAT OR WHATEVER THEIR
15 DECISION IS.

16 Q. BUT WOULD YOU CHANGE YOUR DECISION AUTOMATICALLY
17 TO BE WITH THE MAJORITY IS WHAT I'M ASKING.

18 A. NO, SIR, NOT AUTOMATICALLY.

19 Q. THANK YOU, SIR.

20 THE COURT: STEP OUTSIDE THE DOOR FOR JUST A
21 MINUTE.

22 (THE JUROR LEFT THE COURTROOM.)

23 THE COURT: WHAT SAYS THE STATE?

24 MR. POPE: WE SUBMIT HE'S QUALIFIED, YOUR HONOR.

25 THE COURT: WHAT SAYS THE DEFENDANT?

1 MR. HANCOCK: I BELIEVE HE'S QUALIFIED, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. I DO, TOO. I FIND THAT
4 HE IS. BRING IN THE JUROR.

5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: MR. SHAW, WE'RE GOING TO INCLUDE YOU
7 ON THE JURY POOL. I'M GOING TO HAVE YOU CALL BACK
8 TOMORROW -- CALL BACK TO THAT 1-800 NUMBER TOMORROW BETWEEN
9 1:00 AND 2:00 O'CLOCK AND YOU WILL RECEIVE FURTHER
10 INSTRUCTIONS. IT WILL BE WHEN TO COME BACK.

11 WHEN YOU DO COME BACK, BRING WITH YOU CLOTHING
12 AND TOILETRY ITEMS SO THAT YOU CAN PLAN ON STAYING FOR AN
13 EXTENDED PERIOD OF TIME UP TO ABOUT A WEEK.

14 IS THERE ANY EXTENUATING CIRCUMSTANCE IN YOUR
15 LIFE THAT WOULD PREVENT YOU FROM BEING ABLE TO DO THAT?

16 THE JUROR: NO, MY JOB UNDERSTANDS AND MY WIFE
17 KNOWS WHAT'S GOING ON.

18 THE COURT: OKAY. DON'T DISCUSS THE CASE WITH
19 ANYONE. IF ANYONE TRIES TO DISCUSS THE CASE WITH YOU, TELL
20 THEM YOU CANNOT AS YOU ARE POSSIBLY A JUROR.

21 I'M SORRY, CALL BETWEEN 12:00 AND 1:00, I WAS
22 WRONG. CALL BETWEEN 12:00 AND 1:00.

23 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
24 COVERAGE ABOUT THE CASE IF THERE IS ANYTHING IN THE PAPER
25 OR ON THE RADIO OR TELEVISION ABOUT ANYTHING THAT COULD

1 REMOTELY DEAL WITH THIS, DON'T LET YOURSELF BE EXPOSED TO
2 IT.

3 AND WE'LL SEE BACK HERE AFTER YOU'RE TOLD. CALL
4 BETWEEN 12:00 AND 1:00 TOMORROW. THANK YOU.

5 (THE JUROR LEFT THE COURTROOM.)

6 THE COURT: I NOTICE LYNN COOPER HAS SOME MINOR
7 CHILDREN, SEVEN AND A HALF, THREE AND TWO. I DON'T RECALL
8 HER. I DON'T RECALL WHETHER SHE CALLED THAT TO OUR
9 ATTENTION. SHE DOES SAY SHE HAS WORKED FIVE YEARS AS A
10 HOMEMAKER AND FIVE YEARS WORKING IN AN OFFICE. I DON'T
11 KNOW WHICH FIVE IS WHICH. IT WOULD APPEAR THAT SHE MEETS
12 THE STATUTORY EXEMPTION. I AM GOING TO GO INTO THAT FIRST.
13 DO Y'ALL BOTH UNDERSTAND THAT?

14 MR. BOYD: YES, SIR, YOUR HONOR.

15 MR. POPE: YES, SIR.

16 LYNN G. COOPER, JUROR NUMBER 60, WHITE FEMALE,
17 WAS QUESTIONED AS FOLLOWS:

18 QUESTIONS BY THE COURT:

19 Q. MS. COOPER, COME RIGHT UP HERE. YOU'VE GOT SOME
20 BABIES AT HOME, IS THAT CORRECT?

21 A. YES, SIR.

22 Q. AND YOU DON'T WORK ANYWHERE OUTSIDE THE HOME?

23 A. JUST AT HOME.

24 Q. JUST AT HOME?

25 A. UH HUH.

1 Q. YOU WOULD BE ELIGIBLE TO NOT SERVE IF YOU WISH,
2 SINCE YOUR CHILDREN ARE SO YOUNG. DO YOU WANT
3 TO BE EXCUSED?

4 A. I REALLY DON'T HAVE ANY CHOICE BECAUSE OF THE
5 HOURS THAT MY HUSBAND WORKS. I'D BE GLAD TO
6 SERVE, BUT I DON'T HAVE A BABY-SITTER. HE WORKS
7 AT NIGHT.

8 THE COURT: ALL RIGHT, LET ME LET YOU STEP
9 OUTSIDE JUST ONE MINUTE.

10 THE JUROR: OKAY.
11 (THE JUROR LEFT THE COURTROOM.)

12 THE COURT: I BELIEVE SHE QUALIFIES
13 AUTOMATICALLY. WHAT SAYS THE STATE?

14 MR. POPE: NO OBJECTION, YOUR HONOR, AND WE HAVE
15 NO QUESTIONS OF HER.

16 THE COURT: THE DEFENSE?

17 MR. BOYD: I AGREE, YOUR HONOR.

18 THE COURT: ALL RIGHT, BRING HER BACK IN.
19 (THE JUROR RETURNED TO THE COURTROOM.)

20 THE COURT: ALL RIGHT, YOU CAN JUST STAND RIGHT
21 THERE. WE'RE GOING TO EXCUSE YOU AND LET YOU TAKE CARE OF
22 THESE CHILDREN. WE THANK YOU FOR YOUR CANDOR AND THANK YOU
23 FOR YOUR TIME AND THANK YOU FOR YOUR PATIENCE.

24 THE JUROR: THANK YOU, SIR.
25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WELL, THAT FINISHES US ---

2 MR. POPE: JUST TO CLARIFY THE OBJECTION -- I
3 HATE TO BE ABUNDANTLY CAUTIOUS. THE DEFENSE DIDN'T STATE
4 IF THEY WANTED TO QUESTION HER, THEY JUST SAID THEY DIDN'T
5 OBJECT. MAYBE THEY AREN'T ENTITLED TO.

6 MR. BOYD: THAT'S TRUE. I DON'T THINK WE ARE
7 ENTITLED TO IF THEY MEET THE STATUTORY REQUIREMENTS.

8 THE COURT: WELL, BEFORE SHE GETS DOWN THE HALL,
9 HAVE Y'ALL GOT ANY QUESTIONS YOU WANT TO ASK HER?

10 MR. BOYD: NO, SIR.

11 MR. POPE: THANK YOU.

12 THE COURT: ALL RIGHT, WE ARE DOWN TO STARTING
13 WITH PANEL "J" AT 9:00 IN THE MORNING. WE ARE THROUGH A
14 LITTLE EARLIER TODAY THAN WE WERE LAST NIGHT. MAYBE WE'LL
15 BE BACK ON A SCHEDULE.

16 RECAPING, I'VE GOT US FOR 24 QUALIFIED, 13 THAT
17 I HAVE FOUND NOT DEATH PENALTY QUALIFIED, AND IN ADDITION
18 TO THOSE EXCUSED YESTERDAY, WE EXCUSED MASSEY FAILE AND
19 ARRESTED HIM; WE EXCUSED -- DO Y'ALL WANT TO LISTEN TO ME?

20 MR. POPE: YES, SIR, YOUR HONOR.

21 THE COURT: I MEAN I CAN WAIT.

22 MR. POPE: WELL, I WAS JUST TRYING -- I'VE GOT A
23 DIFFERENT NUMBER THAN YOU.

24 THE COURT: ALL RIGHT, WHAT NUMBER HAVE YOU GOT?

25 MR. POPE: I'VE GOT 23, YOUR HONOR, BUT

1 UNDOUBTEDLY I MISSED ONE. I APOLOGIZE.

2 THE COURT: DIDN'T WE JUST QUALIFY CHARLES SHAW?
3 I'VE GOT HIM AS NUMBER 24.

4 MR. POPE: I'VE GOT HIM AS 23.

5 THE COURT: ALL RIGHT, LET'S GO OVER IT. LET'S
6 START AT THE TOP. I'VE GOT DONNA PARLER AS NUMBER 1 -- AND
7 MINE MAY BE WRONG -- I'VE GOT PARLER, LOWDER, THREE IS
8 FRANCES MATTHEWS; PAMELA WITHERSPOON IS NUMBER 4; LISA
9 LILLY IS NUMBER 5; FRED SHELLEY NUMBER 6; STEVEN SAMIOS
10 NUMBER 7; LESTER LANDRUM NUMBER 8; TIMOTHY MCALLISTER
11 NUMBER 9; MICHAEL GOELLER NUMBER 10; ROGER STIKELEATHER
12 NUMBER 11; ROBIN PARKER NUMBER 12; JERRY GWINN NUMBER 13;
13 LORRIE SIGLER NUMBER 14; YANCEY SANDERS NUMBER 15; FRANK O.
14 DEATON NUMBER 16; BARBARA WRIGHT NUMBER 17; ROBERT LONCARIC
15 NUMBER 18; BETTE CHRISTENSEN 19; TORRENCE SMITH NUMBER 20;
16 BETTY ZAPATA NUMBER 21; PAUL MCGUIRT NUMBER 22; RUSSELL
17 HOVIS NUMBER 23; AND CHARLES SHAW NUMBER 24.

18 MR. POPE: YES, SIR, YOUR HONOR.

19 THE COURT: OKAY. NOW, I'VE GOT 13 THAT WERE
20 FOUND NOT DEATH PENALTY QUALIFIED. DOES THAT JIVE WITH
21 WHAT EVERYBODY ELSE HAS OR MAYBE Y'ALL HAVEN'T BEEN KEEPING
22 UP WITH IT.

23 ALL RIGHT, IN ADDITION TO THOSE EXCUSED
24 YESTERDAY, AS I SAID MR. FAILE WAS EXCUSED; JOHN
25 SHACKELFORD IS COMING BACK AT 9:00 IN THE MORNING. HE WAS

1 EXCUSED BECAUSE OF THE CREDIBILITY ISSUE, AND WE'RE
2 BRINGING HIM BACK TO BE QUESTIONED. AVERY NEELY WAS
3 EXCUSED BY CONSENT AS A LAW ENFORCEMENT OFFICER. ANNETTE
4 HARGRAVE WAS EXCUSED, AND I CAN'T READ MY WRITING. DORIS
5 EARLE WAS EXCUSED; CHARLES FEEMSTER WAS EXCUSED FOR A
6 DOCTOR'S EXCUSE. MARK SIMMONS WAS EXCUSED ON THE
7 CREDIBILITY ISSUE. ELIZABETH THOMAS FOR HER SISTER'S
8 DEATH. JOHNNIE LOVE FOR PRE-TRIAL PUBLICITY. AND LYNN
9 COOPER FOR A CHILD UNDER THE AGE OF SEVEN. DORIS EARLE IS
10 BRONCHITIS AND ANNETTE HARGRAVE WAS A CHILD, THAT'S THE ONE
11 WHO HAD TO DO WITH THE CUSTODY.

12 ANYTHING ELSE FOR TODAY?

13 THE JUROR: NO, SIR, YOUR HONOR.

14 MR. BOYD: NO, SIR.

15 THE COURT: WE HAVE THE JURY CALLING BACK. WE
16 HAVE PANELS COMING BACK AT 9:00, 10:30 AND 12:00 AND THEN
17 THE REST CALLING. AND WE HAVE 23 CALLING BACK TONIGHT AND
18 BEING TOLD TO CALL BETWEEN 12:00 AND 1:00 TOMORROW AND SO
19 WE WILL KNOW A LITTLE BIT MORE ABOUT WHERE WE ARE HEADED
20 THEN.

21 I'LL GO AHEAD AND SAY AT THIS POINT, ONCE WE GET
22 THE 40 OR 42 AND I THINK WE MIGHT GET A COUPLE MORE, I'LL
23 MAKE SURE THAT EACH SIDE WILL RENEW ANY OBJECTIONS THEY
24 HAVE TO ANY RULINGS AND TO ANY JURORS.

25 ALSO PRIOR TO GOING FORWARD WITH ACTUALLY DRAWING

1 THE JURY, I HAD TOLD EACH SIDE TO GIVE ME SOME BRIEF IF
2 THEY WISH, I BELIEVE IT WAS ON THE CREDIBILITY ISSUE ---

3 MR. BRACKETT: WAS IT STATE VERSUS SYLVESTER
4 ADAMS, WHETHER OR NOT THEY COULD ASK THE WITNESS WHETHER
5 THEY WOULD BELIEVE ONE WITNESS ---

6 THE COURT: THAT'S CREDIBILITY.

7 MR. BOYD: I THOUGHT YOU HAD ASKED FOR A BRIEF ON
8 THE JURY DISCUSSION ISSUE.

9 THE COURT: THAT'S IT, YES, YOU'RE RIGHT. AND
10 ALONG THOSE LINES -- NOW I CAN'T FIND IT, I THOUGHT I HAD
11 MARKED IT -- IS A CASE FAIRLY RECENT, IT WAS A CHARLESTON
12 CASE THAT DEALT WITH A PREJUDICIAL NEWSPAPER ARTICLE COMING
13 INTO THE JURY THAT WAS SEATED. AND IT HELD THAT IN SPITE
14 OF THAT IF THE JURORS CAN DECIDE THE CASE BASED ON THE
15 EVIDENCE PRESENTED AND DISREGARD WHATEVER THEY HAD READ IN
16 THAT ARTICLE OR WHATEVER WAS DISCUSSED BACK THERE, THAT
17 WOULD CURE ANY PREJUDICE.

18 AND I HAVE CONSTRUCTED A CURATIVE CHARGE -- I'M
19 JUST TELLING Y'ALL THIS AND Y'ALL CAN DO WHATEVER YOU WANT,
20 HAND ONE UP, THAT BASICALLY SAYS THAT THOSE SEATED MAY NOT
21 IN ANY WAY CONSIDER ANY INFORMATION CONCERNING THIS CASE
22 OTHER THAN THAT ADDUCED IN THIS COURTROOM DURING THE TRIAL.

23 MR. HANCOCK: WHAT'S THE NAME OF THAT CASE,
24 JUDGE?

25 THE COURT: CHARPING, C-H-A-R-P-I-N-G. IT'S A

1 '98 CASE, NOVEMBER. THAT MIGHT BE CHARPING 2, ACTUALLY.

2 MR. BRACKETT: CHARPING 1, IS '93.

3 THE COURT: YES, THIS IS CHARPING 2, CHARPING 1
4 IS 313 S.C.147 ---

5 MR. BRACKETT: YOUR HONOR, I WILL HAND A COPY TO
6 DEFENSE. IN THAT REGARD THE OTHER ISSUE IS THAT ONCE THEY
7 DETERMINED THAT THE JURY WAS ABLE TO DETERMINE THE CASE
8 BASED ONLY ON THE EVIDENCE PRESENTED, ANY PREJUDICE CREATED
9 BY THE ARTICLE WAS CURED. SO, IN ADDITION TO YOUR CURATIVE
10 INSTRUCTION, MAYBE JUST THE SIMPLE QUESTION, DOES ANYBODY
11 FEEL THAT THEY CANNOT DECIDE THIS CASE ---

12 THE COURT: I AM. I MEAN THAT'S WHAT I'M GOING
13 TO DO. WE DO NEED TO ADDRESS IT, BUT I WANTED ANY BRIEFS
14 OR ANY OTHER THINGS THAT Y'ALL WOULD CALL TO MY ATTENTION.

15 MR. BRACKETT: THE STATE WOULD ALSO CITE STATE
16 VERSUS GILBERT WHICH IS AT 283 SOUTHEAST 2D 279 AND I HAVE
17 THE BOOK HERE WHICH IS BASICALLY THE SAME SITUATION. AN
18 ARTICLE WAS READ DURING VOIR DIRE, THE EXACT SITUATION WE
19 HAVE HERE, EXCEPT IT WASN'T TALKING ABOUT IT, IT WAS AN
20 ARTICLE THAT WAS READ.

21 THE COURT: ALL RIGHT, WELL, WE'LL START BACK AT
22 9:00.

23 MR. POPE: YOUR HONOR, OBVIOUSLY WE'VE GOT A
24 WITNESS COMING IN OUT OF STATE. WE RAN SHORT OF TIME
25 BEFORE WHEN I WAS ADDRESSING THE ISSUE ABOUT THE CHAIN, AND

1 I HANDED UP THE CASE LAW AND HANDED THE DEFENSE A COPY OF
2 THE CASE LAW. I'M JUST TRYING TO DETERMINE WHEN THE COURT
3 WOULD WANT TO ENTERTAIN THAT OR ARGUE THAT. THE REASON
4 BEING, OBVIOUSLY, WE'VE GOT PEOPLE FLYING IN THURSDAY
5 MORNING. ACCORDING TO THE COURT'S RULING IT MAY BE THAT
6 SOME THERE'S NO NEED TO COME OR OTHERS -- I'M JUST TRYING
7 TO SAVE THE COUNTY THE MONEY IF WE CAN ON THE WITNESSES
8 THAT MAY OR MAY NOT NEED TO COME IN.

9 IF I CAN EXPLAIN OUR FACTUAL SITUATION?

10 THE COURT: YES.

11 MR. POPE: I HAVE DISCUSSED THIS WITH MR. HANCOCK
12 SEVERAL TIMES. BASICALLY WHAT WE HAVE IN PENNSYLVANIA
13 COMING INITIALLY WOULD BE THE ARRESTING OFFICER, THE
14 OFFICER THAT BASICALLY WAITS UNTIL THE CAR IS TOWED IN. WE
15 HAVE THE OFFICER COMING THAT ACTUALLY IS THERE AT THE
16 POLICE IMPOUND LOT; HE IS THE ONE THAT I MENTIONED THAT HAD
17 THE SITUATION WITH HIS WIFE OCCUR. THE ACTUAL PROCESSING
18 OF THE CAR IS DONE BY SLED. SLED COMES UP TO PENNSYLVANIA
19 WITH A SEARCH WARRANT AND I UNDERSTAND THERE WOULD BE
20 SEARCH WARRANT ISSUES THAT WE COULD ADDRESS ON THAT.

21 THE PHILADELPHIA AUTHORITIES ALSO GET A SEARCH
22 WARRANT AND, OF COURSE, WE WILL HAVE A COPY OF THAT, TOO,
23 AS JUST AN ADDITIONAL MEANS OF SEARCHING THE VEHICLE.

24 WE HAVE THE AFFIANT FROM THE SEARCH WARRANT IN
25 PHILADELPHIA. LIKE I SAID, SLED ACTUALLY DOES ALL THE

1 PROCESSING. SLED TAKES EVERYTHING, SLED DEALS WITH
2 DIFFERENT THINGS. THERE ARE THREE NON-FUNGIBLE ITEMS. ONE
3 IS THE HANDWRITING TO BE DETERMINED BY SLED; IT WOULD BE
4 THE LIST OF THE THREE ITEMS, I CAN'T REMEMBER THE NAMES,
5 WRITTEN ON THE BACK OF IT THAT INDICATED THE DEFENDANT'S
6 HANDWRITING; THE OTHER IS A RECEIPT FROM VIRGINIA THAT
7 MATCHES THE RECEIPT THAT WAS RECOVERED THAT THE CHARGE CARD
8 THAT WAS USED, IT WAS PHYSICALLY IN THE CAR. THE THIRD ARE
9 CHECKS OR CHECK CARBONS THAT MATCH CHECK CARBONS FROM THE
10 MOTHER'S POCKETBOOK AT THE HOUSE.

11 SO EACH ITEM, AGAIN, LOOKING AT THAT PARTICULAR
12 CASE, NONE OF THEM LEND THEMSELVES TO CHAINS LIKE BLOOD OR
13 LIKE DRUG TESTING AND THINGS OF THAT NATURE. THEREFORE, IT
14 WOULD BE THE STATE'S INTENTION TO BRING THE ARRESTING
15 OFFICER WHO WAS THERE WITH THE CAR, THE SLED AGENT WHO
16 PROCESSED IT, BUT ALSO INDEPENDENT FOR SEARCH WARRANT
17 ARGUMENTS THAT MR. HANCOCK INDICATED THAT THEY WANTED TO
18 ADDRESS, YOU KNOW, THE NATURE OF THE SEARCH WARRANTS AND
19 STUFF, I'LL BRING THE AFFIANT OF THE SEARCH WARRANT, TOO.

20 THE COURT: WELL, I'M ACTUALLY LOST, WHICH IS NOT
21 UNUSUAL.

22 MR. POPE: WHAT'S THE ISSUE?

23 THE COURT: WELL, YES. YOU'VE GOT THESE THREE
24 THINGS. IN THIS CASE THE PERSON THAT WAS GETTING IN THE
25 PIECE OF PORCELAIN WAS THE PERSON WHO TOOK IT OUT OF TRUCK.

1 MR. POPE: CORRECT.

2 THE COURT: HE SAID THIS IS THE PIECE AND I CAN
3 IDENTIFY IT BY A CERTAIN CHARD OR WHATEVER. WHAT HAVE WE
4 GOT IN THIS ---

5 MR. POPE: WHO IS MY PORCELAIN MAN?

6 THE COURT: YES, WHO IS YOUR PORCELAIN MAN?

7 MR. POPE: THE SLED AGENT WHO PROCESSES THE CAR.
8 NOBODY EVEN KNOWS THAT IT'S OF ANY VALUE, YOU KNOW, THEY
9 JUST SECURE THE CAR IN PHILADELPHIA. IT WOULD BE NO
10 DIFFERENT THAN TOWING IT TO THE JUNK YARD OR WHEREVER. THE
11 SLED GUY GOES, PROCESSES THE CAR AND GETS THE THREE PIECES
12 OF PORCELAIN, SO TO SPEAK, THE THREE ITEMS IN THIS CASE.
13 THE SLED AGENT WILL BE PRESENT TO TESTIFY.

14 NEEDLESS TO SAY, THAT'S WHY I BRING THE CASE.
15 YOU KNOW, TRADITIONALLY WE BRING EVERYBODY THAT HAD
16 ANYTHING TO DO WITH THE CAR. ONE, IT'S NOT MY ABILITY TO
17 DO SO, AND, TWO, NOT MY INTENTION. AND THAT'S WHAT I WANT
18 TO ADDRESS.

19 THE COURT: WHAT'S THE DEFENSE POSITION?

20 MR. HANCOCK: YOUR HONOR, I THINK THAT HIS
21 ARGUMENT IS PROPER AND I BELIEVE THE CASE IS ON POINT, BUT
22 I DON'T BELIEVE THAT I CAN STIPULATE TO THE CHAIN OF
23 CUSTODY AT THIS TIME.

24 WHAT WE ARE TALKING ABOUT IS THE GENTLEMAN WAS
25 LOOKING AT THE CAR -- THE CAR WAS SECURED IN PHILADELPHIA

1 AND YOU'VE GOT ONE GENTLEMAN THAT SAID I'M SECURING THE
2 CAR. YOU THEN HAVE A SLED AGENT TO COME UP -- IT'S TOWED
3 INTO THE GARAGE AND SLED AGENTS COME UP AND THEN THEY TAKE
4 THE FUNGIBLE ITEMS OUT OF THE CAR. THE THREE ITEMS WERE
5 TAKEN FROM THE CAR UPON A SEARCH BY ---

6 MR. POPE: NON-FUNGIBLE.

7 THE COURT: HE'S SAYING THEY ARE NON-FUNGIBLES.

8 MR. HANCOCK: THEY ARE NON-FUNGIBLE, I'M NOT
9 SAYING THEY ARE FUNGIBLE. AND SO, THEREFORE, THE ONLY GAP
10 IN THE CHAIN THAT YOU WOULD HAVE TO DECIDE, SIR, IS THE
11 FACT THAT THE OFFICER THAT STOOD THERE WITH THE CAR TO
12 PREVENT INVASION OF THE CAR IS NOT IN THE CHAIN OF CUSTODY
13 AT THIS POINT.

14 THE COURT: THE CHAIN STARTED WHEN THEY GOT THE
15 CAR FROM THE DEFENDANT, WHEN THEY FIRST GOT THE CAR.

16 MR. POPE: THE CAR WAS TOWED, JUST LIKE IN THAT
17 CASE, IT WAS TOWED BY AN INDEPENDENT WRECKER. THE CHAIN
18 BEGINS AFTER THE POLICE -- LIKE I SAY, ONCE IT IS IN LAW
19 ENFORCEMENT CUSTODY.

20 THE COURT: LET ME READ THIS CASE AGAIN AND I'LL
21 MAKE A RULING.

22 MR. POPE: OKAY.

23 THE COURT: BUT I'M SEEING SOME DISTINCTIONS
24 BECAUSE THESE ITEMS -- WHAT DO WE KNOW ABOUT WHAT HAPPENED
25 BETWEEN WHEN SOMEBODY SIGHTED THE CAR AND FOUND HIM -- I

1 DON'T EVEN KNOW ABOUT THE ARREST, WHETHER HE WAS IN THE CAR
2 OR WHETHER IT WAS AT SOMEBODY ELSE'S HOUSE AND THEY
3 IDENTIFIED IT. THERE ARE TIMES IN WHICH IT WAS OUTSIDE OF
4 HIS PRESENCE -- I DON'T KNOW WHEN YOU CAN IDENTIFY IT WITH
5 HIM -- AND WHEN IT WAS SEARCHED WHEN SOMEONE ELSE COULD
6 HAVE PUT SOMETHING IN THERE.

7 MR. POPE: CERTAINLY, AND THAT WOULD GO TO
8 WEIGHT, NOT ADMISSIBILITY. BY THE SAME TOKEN, USING THE
9 PORCELAIN EXAMPLE, THE GUY COULD SAY IT WAS LAID UP IN THE
10 JUNK YARD OR WHEREVER, YOU COULD HAVE TAKEN SOME OTHER
11 PIECE OF PORCELAIN WITH MY FINGERPRINT AND PUT IT IN THERE.
12 AND CERTAINLY MR. HANCOCK COULD STILL ARGUE THAT. HE COULD
13 ARGUE THAT LAW ENFORCEMENT PUT THOSE THREE ITEMS IN THE
14 CAR. YOU KNOW, HE COULD ARGUE THAT REGARDLESS.

15 AGAIN, THAT WOULDN'T GO TO ADMISSIBILITY, THAT
16 WOULD BE A QUESTION OF FACT FOR THE JURY.

17 THE TRUTH OF THE MATTER IS GOING TO BE WHEN LAW
18 ENFORCEMENT ACTUALLY GETS THE CAR AND TOWS IT, THEY DON'T
19 RECOGNIZE THAT THIS IS THIS MAN'S SIGNATURE OR THE
20 PAPERWORK OR THE CHECKS OR ANYTHING. IT'S NOT APPARENT
21 UNTIL SLED COMES AND ACTUALLY PROCESSES THE CAR.

22 THE COURT: ALL RIGHT, LET ME ANALYZE THIS CASE
23 AND I'LL RULE TOMORROW SO WE'LL KNOW.

24 MR. POPE: THANK YOU, SIR.

25 THE COURT: ALL RIGHT, I'LL SEE YOU AT 9:00 IN

1 THE MORNING.

2 MARCH 17, 1999:

3 THE COURT: ALL RIGHT, MR. SHACKELFORD IS HERE.
4 YOU WILL RECALL THAT I HAD EXCUSED HIM BASED ON, I BELIEVE,
5 HIS KNOWLEDGE OF SOME OF THE WITNESSES ON THE WITNESS LIST
6 AND HIS INDICATION THAT HE PERHAPS WOULD GIVE THOSE JURORS
7 MORE WEIGHT.

8 I'VE BEEN READING OVER SOME CASE LAW AND I'M NOT
9 SURE THAT WE EVEN WOULD BE ABLE TO GO INTO THOSE QUESTIONS,
10 BUT I DO THINK IT DOES BEAR ON ONE'S IMPARTIALITY.
11 PARTICULARLY WHEN THEY SAY THEY WOULD GIVE MORE CREDIBILITY
12 TO ONE THAN THE OTHER.

13 SO, LET'S HAVE MR. SHACKELFORD -- BEFORE I BRING
14 HIM IN, ANYTHING FROM THE STATE ON THAT ISSUE..

15 MR. POPE: I THINK THE WAY IT HAS BEEN HANDLED --
16 I KNOW THE CASE LAW SAYS YOU DON'T GET INTO BELIEVING
17 SPECIFIC TYPES BUT I THINK WHAT'S HAPPENED IS YOU'RE ASKING
18 THE GENERAL QUESTIONS ABOUT THOSE WITNESS AND WOULD THAT
19 AFFECT YOU, AND THEY'RE SAYING IT WOULD, SO IT GETS TO
20 BIAS. SO, IT'S NOT A CASE OF US DELVING IN AND SAYING, YOU
21 KNOW, WOULD YOU BELIEVE ONE OVER THE OTHER OR ANYTHING OF
22 THAT NATURE. I THINK WE'RE ON PROPER GROUND THE WAY THE
23 COURT IS HANDLING IT AND BEEN HANDLING IT IN THE PAST.

24 THE COURT: WELL, I'M INCLINED TO AGREE. I HAVE
25 BEEN GOING THROUGH MY NOTEBOOK AND WHILE STATE VERSUS

1 DAVIS, A 1992 CASE, AND SOME OTHERS TALK ABOUT GOING INTO
2 WITNESS TYPES AND/OR INDIVIDUAL WITNESSES YOU WOULD
3 BELIEVE, IT SAYS YOU SHOULD NOT DO THAT. IT ALSO SAYS THAT
4 A JUROR MUST BE UNBIASED, IMPARTIAL AND ABLE TO CARRY OUT
5 THE LAW AS EXPLAINED TO THEM. AND I BELIEVE THAT IF
6 SOMEONE SAYS THEY WOULD BELIEVE ONE OVER ANOTHER ONE, THEN
7 THEY FALL INTO THAT CATEGORY.

8 LET'S BRING MR. SHACKELFORD IN.

9 JOHN B. SHACKELFORD, JUROR NUMBER 236, WHITE
10 MALE, WAS QUESTIONED AS FOLLOWS:

11 QUESTIONS BY THE COURT:

12 Q. JUST COME UP HERE AND HAVE A SEAT. FIRST LET ME
13 APOLOGIZE FOR BRINGING YOU BACK UP HERE. I KNOW
14 IT CONFLICTED WITH SOME OF YOUR PLANS. BUT IN
15 THIS TYPE CASE WE HAVE TO MAKE SURE WE COVER
16 EVERYTHING.

17 I HAD TALKED TO YOU AND YOU HAD TOLD ME THAT YOU
18 KNEW SOME OF THE WITNESSES; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. WHO WERE THOSE AGAIN?

21 A. DR. HOOK, JOHNNY ARCHIE, TONY HUGGINS AND ANN
22 HOWE.

23 Q. AND YOU TOLD ME, I BELIEVE, THAT YOU WOULD TEND
24 TO BELIEVE THOSE PEOPLE BECAUSE YOU KNEW THEM AS
25 OPPOSED TO OTHER INDIVIDUALS WHO YOU DID NOT.

1 IS THAT CORRECT?

2 A. YES, SIR.

3 Q. ALL RIGHT, I AM GOING TO LET THE STATE AND THE
4 DEFENSE ASK YOU ANY QUESTIONS THEY MIGHT HAVE
5 REGARDING THAT.

6 MR. POPE: YOUR HONOR, ON THIS ISSUE THE STATE
7 DOESN'T HAVE QUESTIONS. THE DEFENSE, I THINK THE PURPOSE
8 WAS TO GIVE THEM AN OPPORTUNITY TO QUESTION HIM.

9 QUESTIONS BY MR. HANCOCK:

10 Q. MR. SHACKELFORD, YOU WERE HERE YESTERDAY AND YOU
11 WERE ASKED ABOUT CERTAIN WITNESSES THAT YOU KNEW
12 AND DR. GEORGE HOOK WAS ONE. I THINK YOU JUST
13 SAID TONY HUGGINS WAS THE OTHER, AND JOHNNY
14 ARCHIE IS YOUR THIRD WITNESS; IS THAT CORRECT?

15 THE COURT: AND ANN HOWE.

16 A. ANN HOWE.

17 Q. AND ANN?

18 A. HOWE.

19 Q. OKAY. AND I BELIEVE YOU INDICATED THAT IF DR.
20 HOOK TESTIFIED, THEN YOU MIGHT BELIEVE HIM OVER
21 AND ABOVE ANOTHER WITNESS, IS THAT CORRECT?

22 A. MOST LIKELY; YES, SIR.

23 Q. MOST LIKELY.

24 A. MOST LIKELY. WELL, AGAIN, I'M GOING TO ASK YOU.
25 YOU KNOW DR. HOOK AND DR. HOOK IS A FINE

1 GENTLEMAN, YOU KNOW THAT.

2 A. YES, SIR.

3 Q. BUT YOU ALSO KNOW JOHNNIE ARCHIE, IS THAT RIGHT?

4 A. YES, SIR.

5 Q. WOULD YOU BELIEVE MR. ARCHIE OVER SOMEONE ELSE
6 WHO MAY HAVE SOMETHING TO TESTIFY TO THAT'S
7 DIFFERENT THAN WHAT HE SAYS?

8 A. SAY THAT ONE MORE TIME?

9 Q. IF MR. ARCHIE TESTIFIES TO ONE SET OF FACTS AND
10 SOMEBODY COMES IN, A POLICE OFFICER OR ANYONE
11 ELSE COMES IN AND SAYS IT'S A DIFFERENT WAY; ARE
12 YOU SAYING THAT YOU WOULD BELIEVE MR. ARCHIE NO
13 MATTER WHAT?

14 A. NO, SIR, IT WOULD DEPEND ON WHAT IT WOULD BE
15 ABOUT.

16 Q. AND WHAT YOU'RE TELLING ME REALLY THOUGH IS, AND
17 DON'T LET ME PUT WORDS IN YOUR MOUTH, OKAY?
18 THAT YOU ACTUALLY COULD LISTEN TO THESE
19 WITNESSES AND CONSIDER THEIR TESTIMONY IN LIGHT
20 OF ALL OTHER TESTIMONY, COULD YOU NOT -- YOU
21 COULD DO THAT, COULDN'T YOU, SIR?

22 A. ARE YOU TALKING ABOUT THE PEOPLE THAT I KNOW
23 PERSONALLY?

24 Q. YES.

25 A. YES, SIR.

1 Q. NOW LET'S MAKE SURE THAT WE KNOW. THEN YOU'RE
2 SAYING THAT IF YOU HAD MR. ARCHIE OR YOU HAD MR.
3 HUGGINS OR MR. HOOK OR MS. HOWE, IF THEY
4 TESTIFIED YOU WOULD LISTEN TO THEIR TESTIMONY
5 AND YOU WOULD GIVE IT THE IMPORTANCE AND THE
6 WEIGHT THAT YOU FELT WAS NECESSARY AT THAT TIME.
7 IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND IF YOU HEARD OTHER TESTIMONY FROM OTHER
10 INDIVIDUALS WHO MAY BE IN THE GENERAL COMMUNITY
11 OR MAY BE POLICE OFFICERS, THEY MAY BE OTHER
12 DOCTORS OR WHATEVER, THEN YOU WOULD BE ABLE TO
13 LISTEN TO THEM AND GIVE THEIR TESTIMONY PROPER
14 WEIGHT. IS THAT CORRECT, SIR?

15 A. YES, SIR.

16 Q. ARE YOU SAYING THAT IF MR. HOOK SAID SOMETHING,
17 THEN YOU WOULD AUTOMATICALLY BELIEVE IT?

18 A. MAYBE NOT.

19 Q. MAYBE NOT. OKAY, SIR. I THINK THAT'S ALL ON
20 THAT ISSUE, YOUR HONOR.

21 THE COURT: ALL RIGHT. LET ME FOLLOW UP WITH
22 SOME OTHER QUESTIONS SINCE WE STOPPED THERE EARLIER.
23 QUESTIONS BY THE COURT:

24 Q. BEFORE YOU CAME, EVEN UP UNTIL TODAY, HAVE YOU
25 HEARD ANYTHING ABOUT THIS CASE, READ ABOUT IT OR

1 HEARD ANYTHING ABOUT IT OTHER THAN WHAT YOU WERE
2 TOLD ON MONDAY?

3 A. NO, SIR.

4 Q. HAVE YOU FORMED ANY OPINION ABOUT ANY MATTER IN
5 THIS CASE?

6 A. NO, SIR.

7 Q. DID YOU HAVE A CHANCE TO LOOK IN THE JURY ROOM
8 YESTERDAY AT THE DIFFERENT TYPES OF JURORS?

9 A. YES, SIR.

10 Q. DO YOU REMEMBER THOSE?

11 A. YES, SIR, ARE YOU TALKING ABOUT THE THREE
12 DIFFERENT TYPES.

13 Q. YES, THE THREE DIFFERENT TYPE JURORS. THIS CASE
14 WOULD PROCEED BY US GOING THROUGH FIRST AND
15 TRYING THE ISSUE OF WHETHER OR NOT MR. ROBERTSON
16 IS OR IS NOT GUILTY OF MURDER. IF THE JURY
17 FINDS THAT HE IS NOT GUILTY, THEN OF COURSE THE
18 CASE WOULD END AT THAT TIME.

19 IF THE JURY WERE TO UNANIMOUSLY FIND BEYOND A
20 REASONABLE DOUBT THAT HE IS GUILTY OF THE
21 MURDERS, THEN THE CASE WOULD GO INTO A SECOND
22 PHASE. THAT BEING WHERE THE PENALTY TO BE
23 IMPOSED WOULD BE THE ISSUE FOR THE JURY TO
24 CONSIDER.

25 MR. ROBERTSON IS PRESUMED INNOCENT OF THE

1 CHARGE, OF ALL THE CHARGES AGAINST HIM. AND THE
2 FACT THAT WE ARE TALKING ABOUT THE SECOND PHASE
3 THAT WOULD ONLY COME ABOUT AFTER A FINDING OF
4 GUILT IS NOT TO PRESUPPOSE THAT WE WOULD EVER
5 GET THERE BECAUSE HE MAY BE FOUND NOT GUILTY AND
6 WE WOULDN'T BE IN THAT SECOND PART.

7 NOW, DO YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. IN LOOKING AT THOSE THREE JUROR TYPES, DID YOU
10 FIND THAT YOU FELL INTO ONE OF THOSE TYPES OF
11 JURORS?

12 A. IF HE'S PROVEN GUILTY, I BELIEVE IN NUMBER ONE.

13 Q. ALL RIGHT. JUROR NUMBER ONE IS THE TYPE OF
14 JUROR WHO IF ONE, HERE MR. ROBERTSON, WERE FOUND
15 UNANIMOUSLY BEYOND A REASONABLE DOUBT TO BE
16 GUILTY, THAT YOU WOULD BELIEVE, NO MATTER WHAT
17 THE CIRCUMSTANCES WERE; THAT IS, THINGS IN
18 AGGRAVATION OR MITIGATION, THAT YOU WOULD FEEL
19 THAT THE MOST APPROPRIATE PENALTY WOULD BE THE
20 DEATH PENALTY. IS THAT WHAT YOU'RE TELLING ME?

21 A. YES, SIR, IF PROVEN. YES, SIR.

22 Q. IF WHAT'S PROVEN?

23 A. IF HE'S PROVEN INNOCENT -- I MEAN GUILTY.

24 Q. IF HE'S PROVEN GUILTY, YOU WOULD START OFF WITH
25 THE PREMISE IN THE PENALTY PHASE THAT HE SHOULD

1 RECEIVE THE DEATH PENALTY?

2 A. YES.

3 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE STATE MAY
4 HAVE OR THE DEFENSE.

5 QUESTIONS BY MR. POPE:

6 Q. MR. SHACKELFORD, MY NAME IS TOMMY POPE AND I'M
7 THE SOLICITOR HERE IN YORK COUNTY. THIS IS
8 KEVIN BRACKETT, MY DEPUTY SOLICITOR, AND WE
9 REPRESENT THE STATE.

10 PRIOR TO YESTERDAY, HAVE YOU EVER BEEN IN A
11 SITUATION LIKE THIS WHERE YOU'RE QUESTIONED
12 ABOUT ALL THESE TYPE THINGS?

13 A. NO, NO.

14 Q. WELL, LET ME TELL YOU ONE THING. OF COURSE,
15 YOU'VE HAD A DOUBLE DOSE OF IT. YOU GET HOME AND
16 THINK YOU'RE THROUGH WITH IT, AND YOU GET
17 BROUGHT BACK. YOU'RE NOT ON TRIAL. THIS IS
18 JUST A CHANCE FOR US TO FIND OUT A LITTLE BIT
19 ABOUT HOW YOU FEEL, LIKE THE THING ABOUT KNOWING
20 WITNESSES. THERE IS NO RIGHT OR WRONG ANSWERS.
21 THIS IS JUST A CHANCE TO FIND OUT HOW JOHN
22 SHACKELFORD FEELS.

23 AS I UNDERSTAND IT AND, AGAIN, YOU KNOW, YOU'RE
24 GOING TO BE HIT BY THREE DIFFERENT LAWYERS
25 BEFORE IT'S OVER, BUT I WANT TO GO THROUGH -- IF

1 I MISSTATE, YOU KNOW, YOUR THINKING, JUST STOP
2 ME AND TELL ME BECAUSE I DON'T WANT TO PUT WORDS
3 IN YOUR MOUTH. THIS IS JUST MY CHANCE TO
4 UNDERSTAND HOW YOU FEEL.

5 Q. HAVE YOU EVER SERVED ON A JURY BEFORE?

6 A. NO, SIR.

7 Q. SO CERTAINLY YOU'VE NEVER BEEN ON A DEATH
8 PENALTY JURY IN A SITUATION LIKE THIS?

9 A. NO, SIR.

10 Q. OKAY, A DEATH PENALTY JURY IS A LITTLE BIT
11 DIFFERENT MAYBE THAN A REGULAR JURY. YOU KNOW A
12 REGULAR JURY YOU MAY HAVE SEEN ON T.V. OR
13 SOMETHING, THE WHOLE ISSUE IS GUILTY OR NOT
14 GUILTY, YOU KNOW, AND THE JURY WOULD DECIDE
15 GUILTY OR NOT GUILTY AND THEN THE JUDGE WOULD
16 GIVE THE SENTENCE.

17 IN A DEATH PENALTY CASE IT'S DIFFERENT. THE
18 FIRST STAGE IS GUILT AND IT'S JUST LIKE A
19 REGULAR TRIAL. THE SECOND STAGE, IF HE'S FOUND
20 GUILTY, IS LIKE A WHOLE SEPARATE TRIAL. I MEAN
21 IT'S THE SAME JURORS AND EVERYTHING, BUT IT'S A
22 WHOLE SEPARATE TRIAL IN WHICH YOU WOULD
23 DETERMINE WHAT THE PENALTY SHOULD BE.

24 SO RIGHT NOW FIRST I'M GOING TO TALK ABOUT JUST
25 THE FIRST PART, JUST THE GUILTY PART. DO YOU

1 UNDERSTAND THAT THE DEFENDANT UNDER OUR LAW IS
2 INNOCENT UNTIL PROVEN GUILTY? DO YOU UNDERSTAND
3 THAT?

4 A. YES, SIR.

5 Q. OKAY. AND YOU UNDERSTAND THAT IT'S OUR BURDEN,
6 THE STATE, WE HAVE TO PROVE HIM GUILTY BEYOND A
7 REASONABLE DOUBT.

8 A. YES, SIR.

9 Q. AND SO THAT'S THE FIRST TRIAL. AND SO HE
10 DOESN'T HAVE TO PUT UP ANY EVIDENCE, HE CAN
11 REMAIN SILENT, HE DOESN'T HAVE TO DO ANYTHING.
12 YOU DON'T THINK HE HAS TO PROVE ANYTHING, YOU
13 UNDERSTAND THAT WE HAVE TO PROVE IT, RIGHT?

14 A. YES.

15 Q. OKAY. SO IN THAT FIRST STAGE THE STATE WILL
16 BRING FORTH EVIDENCE -- IF YOU WERE ONE OF THE
17 JURORS, THE STATE WOULD BRING FORTH EVIDENCE TO
18 PROVE THAT HE WAS GUILTY AND, AGAIN, THE JUDGE
19 WOULD INSTRUCT YOU, YOU KNOW, WHAT THE LAW WOULD
20 BE. YOU DON'T HAVE TO COME IN ALREADY KNOWING
21 THAT THIS IS THE RULES AND THIS IS THE LAW. THE
22 JUDGE WILL INSTRUCT YOU. AND THEN YOU WOULD
23 DECIDE BASED ON THE TESTIMONY YOU'D HEARD HERE
24 FROM THE DIFFERENT PEOPLE AND ANY EVIDENCE THAT
25 WE MAY HAVE PUT IN, YOU WOULD DECIDE WHETHER WE

1 HAD PROVEN THE CASE, BASICALLY. THAT WOULD BE
2 IN THE FIRST PHASE.

3 OF COURSE IF YOU LISTEN TO IT, AND, OF COURSE,
4 THE JURY HAS GOT TO BE UNANIMOUS, ALL TWELVE OF
5 THEM HAVE TO VOTE ONE WAY OR ANOTHER, YOU KNOW.

6 IF THE JURY HEARD IT AND DECIDED HE WASN'T
7 GUILTY, YOU KNOW, THAT WE DIDN'T PROVE THE CASE,
8 THEN, OF COURSE, THAT WOULD BE THE END OF IT
9 BECAUSE THERE WOULDN'T BE ANY PUNISHMENT FOR THE
0 MAN BEING NOT GUILTY.

1 IF THE JURY DECIDES HE'S GUILTY, THEN WE WOULD
2 GO TO THAT SECOND STAGE. LIKE I SAY, AGAIN THE
3 DIFFERENCE IS NOW YOU'RE IN THE SECOND STAGE, HE
4 HAS BEEN FOUND GUILTY, HE IS GUILTY OF THE
5 MURDERS, THE QUESTION NOW BECOMES DOES HE GET
6 LIFE OR DOES HE GET DEATH.

7 THE PURPOSE OF THAT WHOLE SECOND TRIAL IS FOR US
8 TO PUT UP WHAT'S CALLED AGGRAVATING
9 CIRCUMSTANCES. AND AGGRAVATING CIRCUMSTANCES
20 ARE THE BAD THINGS ABOUT THE CRIME, THE TYPE OF
21 CRIME IT WAS AND ALL THE THINGS THAT WE WOULD
22 PUT FORWARD TO MAKE IT THAT THE JURY SHOULD VOTE
23 FOR DEATH. YOU KNOW, THE BAD THINGS ABOUT THE
24 CASE OR THE THINGS THAT HAPPENED, THE WHOLE
25 SITUATION..

1 THE DEFENSE COULD, BUT THEY DON'T HAVE TO, PUT
2 UP WHAT'S CALLED MITIGATION. AND I CAN'T
3 REMEMBER IF THE JUDGE -- DID THE JUDGE INSTRUCT
4 ON MITIGATION THIS MORNING? DO YOU UNDERSTAND
5 WHAT MITIGATION IS?

6 A. WELL ---

7 Q. THE BEST WAY PROBABLY TO DESCRIBE IT IS IT'S
8 KIND OF THE OPPOSITE OF AGGRAVATION. YOU KNOW
9 WHAT I MEAN, WE'D BE PUTTING UP THINGS SAYING
10 WHY THIS IS A WORSE MURDER THAN JUST A REGULAR
11 MURDER, YOU KNOW, IF THERE IS SUCH A THING AS A
12 REGULAR MURDER. WHY THIS IS A REALLY BAD
13 MURDER. THEY WOULD PUT UP THINGS, NOW THEY
14 DON'T HAVE TO, BUT THEY COULD PUT UP THINGS
15 GOING WELL THIS EXPLAINS WHY IT WAS LIKE THIS;
16 THIS IS WHY IT SHOULD BE A LIFE SENTENCE INSTEAD
17 OF A DEATH PENALTY. DO YOU UNDERSTAND WHAT I'M
18 SAYING?

19 A. UH HUH.

20 Q. AND IT MAY BE, YOU KNOW, ANY WITNESSES,
21 DIFFERENT WITNESSES MAY COME UP, EVIDENCE. THEY
22 WOULD HAVE THE OPPORTUNITY, AND AGAIN THEY NEVER
23 HAVE TO, BUT THEY WOULD HAVE AN OPPORTUNITY IF
24 YOU WERE SITTING ON THE JURY TO SAY LOOK,
25 JURORS, HERE ARE THINGS THAT SHOW WHY THIS MAN

1 SHOULDN'T GET DEATH. HERE'S THINGS THAT YOU
2 DIDN'T KNOW ABOUT HIM OR ABOUT THE SITUATION
3 THAT SHOW WHY THIS ISN'T AS BAD AS THE STATE
4 SAYS IT IS.

5 DO YOU UNDERSTAND WHAT I'M SAYING?

6 (THE JUROR NODDED IN THE AFFIRMATIVE.)

7 Q. THE JURY WOULD THEN TAKE THE AGGRAVATING
8 CIRCUMSTANCES AND THE MITIGATING CIRCUMSTANCES
9 AND BASICALLY IT'S JUST KIND OF LIKE YOU'RE
10 SAYING IN THE FIRST STAGE, WANTING TO HEAR THE
11 WHOLE STORY BEFORE YOU MADE A DECISION, THE JURY
12 WOULD TAKE AGGRAVATING AND MITIGATING IN THAT
13 SECOND STAGE AND GO BACK AND DELIBERATE ON THAT
14 AND DECIDE, ALL RIGHT, WE'VE HEARD EVERYTHING,
15 WE'VE HEARD THE GOOD, WE'VE HEARD THE BAD,
16 SHOULD IT BE LIFE OR SHOULD IT BE DEATH.

17 NOW YOU TOLD JUDGE HAYES THAT IF SOMEBODY WAS
18 GUILTY IN THE FIRST STAGE THAT YOU WOULD VOTE
19 FOR DEATH. IS THAT RIGHT?

20 A. UH HUH.

21 Q. OKAY. ARE YOU TELLING ME THAT YOU COULDN'T GO
22 BACK AND HEAR THE WHOLE STORY BEFORE YOU
23 DECIDED, THAT YOU WOULD AUTOMATICALLY DECIDE FOR
24 DEATH?

25 A. IN MY OPINION IF HE'S PROVEN GUILTY OF MURDER,

1 THE DEATH PENALTY.

2 Q. OKAY AND I'M PROBABLY NOT ONE TO DIFFER WITH YOU
3 ON THAT. AGAIN, JUST TO MAKE SURE I UNDERSTAND
4 HOW JOHN SHACKELFORD FEELS. SO IF THEY ARE
5 CONVICTED OF MURDER AND, OF COURSE MURDER IS THE
6 INTENTIONAL KILLING -- OF COURSE IN THIS CASE IT
7 WOULD BE KILLING TWO PEOPLE, YOU WOULD HAVE YOUR
8 MIND MADE UP. IN OTHER WORDS, IF HE WAS GUILTY
9 OF MURDER, IT WOULDN'T MATTER WHAT THE
10 CIRCUMSTANCES ARE, AND AGAIN THIS IS JUST HOW
11 YOU FEEL, YOU WOULDN'T CARE WHAT THE
12 CIRCUMSTANCES WERE?

13 A. NO.

14 Q. LET ME ASK YOU THIS. IS THERE ANY SITUATION
15 THAT YOU CAN SEE WHEN SOMEBODY IS CONVICTED OF
16 MURDER THAT YOU WOULD GIVE THEM LIFE AFTER
17 HEARING EVERYTHING. AND AGAIN YOU DON'T KNOW
18 BECAUSE YOU DON'T KNOW THE FACTS IN THIS CASE.

19 MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT.
20 THAT'S A HYPOTHETICAL.

21 THE COURT: REPHRASE THE QUESTION.

22 Q. OKAY, I'M GOING TO STATE THE QUESTION AGAIN. IS
23 THERE ANY SITUATION YOU SEE THAT YOU COULD EVER
24 GIVE LIFE IF SOMEBODY WAS CONVICTED OF MURDER?

25 MR. BOYD: OBJECTION.

1 THE COURT: I OVERRULE YOUR OBJECTION.

2 Q. I'M NOT ASKING YOU TO TELL ME WHAT IT IS BUT,
3 YOU KNOW, THERE ARE ALL KIND OF DIFFERENT FACTS
4 AND ALL KIND OF DIFFERENT KILLINGS.

5 A. I DIDN'T UNDERSTAND THE QUESTION.

6 Q. ALL RIGHT, LET ME SAY IT AGAIN. ALL RIGHT, YOU
7 KNOW, WE'VE GOT A CERTAIN SET OF FACTS HERE AND,
8 OF COURSE, YOU DON'T KNOW THEM YET, YOU KNOW,
9 BUT EVERY DAY WE HAVE DIFFERENT CASES AND
10 DIFFERENT FACTS AND DIFFERENT PEOPLE. IS THERE
11 ANY SITUATION -- DO YOU THINK IN JOHN
12 SHACKELFORD'S MIND IS THERE ANY SITUATION IN
13 WHICH YOU COULD CONSIDER GIVING A LIFE SENTENCE
14 IF SOMEBODY WAS CONVICTED OF MURDER. I'M NOT
15 ASKING YOU TO TELL ME WHAT IT WOULD BE, BUT IS
16 THERE ANY TIME THAT YOU COULD CONSIDER GIVING A
17 LIFE SENTENCE FOR SOMEBODY THAT WAS CONVICTED OF
18 MURDER?

19 A. NO, SIR.

20 Q. OKAY. THANK YOU, SIR. I APPRECIATE IT.

21 MR. HANCOCK: I HAVE NO QUESTIONS, YOUR HONOR.

22 THE COURT: ALL RIGHT. MR. SHACKELFORD, YOU CAN
23 STEP OUT FOR JUST ONE SECOND.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: WHAT SAYS THE STATE?

1 MR. POPE: THE STATE WOULD PRESENT THE JUROR,
2 YOUR HONOR.

3 MR. HANCOCK: THE DEFENSE SUBMITS THAT HE IS NOT
4 QUALIFIED, YOUR HONOR.

5 THE COURT: I FIND THAT HE'S NOT QUALIFIED. TELL
6 HIM TO COME BACK IN.

7 (THE JUROR RETURNED TO THE COURTROOM.)

8 THE COURT: MR. SHACKELFORD, WE TALKED TO YOU
9 YESTERDAY ABOUT CREDIBILITY AND I TOLD YOU YOU WERE FREE TO
10 GO AND THEN MADE YOU COME BACK. SO, MAYBE MY CREDIBILITY
11 ISN'T TOO GOOD. BUT THIS TIME YOU CAN TAKE MY WORD FOR IT,
12 WE ARE GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE.

13 I APOLOGIZE FOR ANY INCONVENIENCE. IT WAS MY
14 FAULT, NOT THE ATTORNEYS OR ANYBODY ELSE'S; IT WAS JUST
15 SOMETHING THAT I HAD TO BRING YOU BACK TO GO OVER WITH YOU.
16 THANK YOU AN AWFUL LOT.

17 (THE JUROR LEFT THE COURTROOM.)

18 THE COURT: NOW, WE ARE ON PANEL "J", AND JAMES
19 CROTTS, NUMBER 67.

20 JAMES E. CROTTS, JUROR NUMBER 67, WHITE MALE, WAS
21 QUESTIONED AS FOLLOWS:

22 QUESTIONS BY THE COURT:

23 Q. COME ON UP HERE AND HAVE A SEAT, MR. CROTTS. I
24 WILL REMIND YOU, MY NAME IS JOHN HAYES. I
25 INTRODUCED MYSELF MONDAY AND I WANT TO REMIND

1 YOU THAT YOU ARE UNDER OATH REGARDING THESE
2 MATTERS THAT WE'LL BE GOING OVER WITH YOU TODAY
3 AND I APOLOGIZE FOR HAVING YOU KIND OF FLOPPING
4 AROUND WITH THE TIME, BUT THAT'S JUST THE WAY
5 THINGS ARE FALLING INTO PLACE.

6 I WANT TO TELL YOU IN ADVANCE THAT IF YOU ARE
7 CHOSEN AS A JUROR ON THIS TRIAL, YOU MAY SEE
8 PHOTOGRAPHERS OR CAMERAS IN THE COURTROOM DURING
9 THE TRIAL. THEY CAN'T TAKE YOUR PICTURE OR
10 REPORT ABOUT YOU. THEY CAN'T TAKE THE JURORS
11 PICTURES OR SAY ANYTHING ABOUT THE JURY; SO,
12 DON'T LET THAT DISTRACT YOU.

13 YOU HANDED UP A QUESTIONNAIRE AT ONE POINT. IS
14 THERE ANYTHING ON THERE THAT NEEDS TO BE CHANGED
15 OR DO YOU BELIEVE IT WAS ACCURATE?

16 A. I WAS CHARGED WITH A TIP BOARD HERE A WHILE BACK
17 AND THEY FINGERPRINTED ME AND TOOK MY PICTURE
18 AND TOLD ME THAT I COULDN'T NEVER OWN A GUN IN
19 THE STATE OF SOUTH CAROLINA.

20 Q. ANYTHING OTHER THAN THAT?

21 A. NO, SIR.

22 Q. ALL RIGHT. IS THAT THE ONLY CRIMINAL OFFENSE
23 YOU HAVE?

24 A. YES, SIR.

25 Q. YOU HAD AN OPPORTUNITY, I HOPE, TO REVIEW A LIST

1 OF WITNESSES WHILE YOU WERE BACK THERE IN THE
2 JURY ROOM. DID YOU DO THAT?

3 A. I SEEN -- YES, SIR.

4 Q. OKAY.

5 A. I SEEN TWO OR THREE ON THERE THAT WAS FAMILIAR,
6 BUT I DIDN'T WANT TO PUT NOTHING DOWN, YOU KNOW.
7 I CAN RECOGNIZE THEM BETTER BY FACES.

8 Q. ALL RIGHT. WELL, IF SOME OF THESE PEOPLE
9 TESTIFIED AT THE TRIAL, IF THEY WERE WITNESSES,
10 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND
11 IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE
12 TRIAL OF THE CASE?

13 A. NO, SIR.

14 Q. ALL RIGHT. HAVE YOU, PRIOR TO TODAY, AND OTHER
15 THAN THE FACT THAT THE INDICTMENTS WERE READ ON
16 MONDAY AND YOU DO KNOW WHAT THE CASE IS ABOUT,
17 BUT HAVE YOU HEARD ABOUT THE CASE OR FORMED AN
18 OPINION ABOUT THE CASE OR READ ABOUT IT. DID YOU
19 KNOW ANYTHING ABOUT IT BEFORE THIS WEEK?

20 A. NO, SIR.

21 Q. DID YOU HAVE A CHANCE TO WHILE YOU WERE IN THE
22 JURY ROOM LOOK AT THAT LIST WITH THE JUROR TYPES
23 ON IT?

24 A. YES, SIR.

25 Q. NOW YOU KNOW THAT THIS CASE WILL PROCEED IN TWO

1 STAGES. THE FIRST WILL DEAL WITH WHETHER OR NOT
2 MR. ROBERTSON IS GUILTY OR NOT. IF HE IS FOUND
3 NOT GUILTY, THEN THE CASE WOULD BE OVER. BUT IF
4 A JURY WERE TO FIND HIM GUILTY UNANIMOUSLY
5 BEYOND A REASONABLE DOUBT, THEN WE WOULD MOVE
6 INTO THE SECOND PHASE AND DETERMINE WHAT PENALTY
7 WOULD BE APPROPRIATE TO BE IMPOSED.

8 MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
9 CHARGES AND IS SO PRESUMED UNTIL A JURY WERE TO
10 FIND HIM GUILTY IF THEY DID. AND THE FACT THAT
11 WE'RE TALKING ABOUT THE SECOND PART OF THE TRIAL
12 IS NOT TO PRESUPPOSE THAT WE WOULD GET THERE,
13 IT'S JUST THAT WE HAVE TO TALK ABOUT IT NOW
14 BECAUSE OF THE NATURE OF THIS PARTICULAR CHARGE.
15 DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES
16 OF JURORS THAT WAS ON THAT LIST?

17 A. YES, SIR.

18 Q. WHICH TYPE?

19 A. I TELL YOU, I'M GOING TO BE HONEST WITH YOU, I
20 WOULDN'T WANT TO BE ON A JURY BECAUSE I WOULDN'T
21 WANT TO SENTENCE NOBODY TO DEATH OR -- I JUST
22 WOULDN'T WANT TO BE ON A JURY.

23 Q. WELL, I'LL TAKE THAT, OF COURSE, INTO
24 CONSIDERATION, BUT LET ME ASK YOU AGAIN ---

25 A. BUT I DO BELIEVE IN THE DEATH PENALTY.

1 Q. ALL RIGHT. NOW DO YOU BELIEVE IN THE DEATH
2 PENALTY IN ANY EVENT OR WOULD YOU BE THE TYPE OF
3 JUROR WHO WOULD WANT TO KNOW MORE BEFORE
4 DETERMINING WHETHER ONE SHOULD RECEIVE THE DEATH
5 PENALTY OR LIFE IMPRISONMENT?

6 A. I WOULD WANT TO KNOW MORE.

7 Q. ARE YOU TELLING ME THAT YOU'RE NOT THE TYPE
8 JUROR WHO IN EVERY CASE WHERE SOMEONE IS FOUND
9 GUILTY OF MURDER YOU WOULD AUTOMATICALLY IMPOSE
10 THE DEATH PENALTY?

11 A. IF HE MURDERED SOMEBODY, YES, I WOULD.

12 Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH YOU
13 WOULD DETERMINE OR YOU COULD CONSIDER AND CHANGE
14 THAT AND IMPOSE ONLY A LIFE IMPRISONMENT FOR A
15 MURDER?

16 A. I DON'T BELIEVE I COULD.

17 Q. ALL RIGHT, I'M GOING TO LET THE ATTORNEYS ASK
18 YOU SOME QUESTIONS.

19 QUESTIONS BY MR. BOYD:

20 Q. GOOD MORNING, MR. CROTTS.

21 A. GOOD MORNING.

22 Q. MY NAME IS JIM BOYD. I'M THE ATTORNEY FOR JIMMY
23 ROBERTSON WHO IS SEATED OVER THERE AND MY CO-
24 COUNSEL IS BILL HANCOCK WHO IS SEATED RIGHT
25 THERE. I JUST NEED TO ASK YOU A FEW QUESTIONS

1 TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU.
2 THERE'S NO RIGHT OR WRONG ANSWER TO WHAT I'M
3 GOING TO ASK. I KNOW YOU SORT OF FEEL LIKE
4 YOU'RE ON THE SPOT IN THAT WITNESS CHAIR BUT
5 TRUST ME, THERE'S NO RIGHT OR WRONG ANSWERS AND
6 YOU'RE NOT IN TROUBLE NO MATTER HOW YOU ANSWER.
7 SO, I JUST NEED TO KNOW A FEW THINGS.
8 YOU PUT ON YOUR JURY QUESTIONNAIRE THAT YOU KNOW
9 SOMEONE WHO IS A VICTIM OF A SERIOUS ACT OF
10 VIOLENCE OR UNLAWFUL KILLING.

11 A. YES, I DO.

12 Q. YOU PUT DOWN MARLENE MELTON?

13 A. MARLENE MELTON.

14 Q. OKAY.

15 A. HER SON BEAT HER TO DEATH.

16 Q. OKAY. AND DID YOU KNOW HER VERY WELL?

17 A. YES, I DID.

18 Q. OKAY. YOU UNDERSTAND THIS CASE WE HAVE BEFORE
19 US IS A CASE WHERE JIMMY ROBERTSON IS ACCUSED OF
20 KILLING BOTH OF HIS PARENTS?

21 A. YES, SIR.

22 Q. WOULD YOUR KNOWING MARLENE MELTON AFFECT YOUR
23 ABILITY BECAUSE OF THE SIMILARITY OF THE
24 ACCUSATIONS?

25 A. YES, IT WOULD.

1 Q. IT WOULD? HOW WOULD THAT AFFECT YOU?

2 A. BECAUSE I KNEW THEM FOR YEARS AND YEARS AND I
3 JUST COULDN'T BELIEVE THAT SOMEBODY COULD GO OUT
4 AND DO SOMEBODY LIKE THAT AND THAT THEY WOULD
5 RAISE THEM AND THEY WOULD GO OUT AND KILL
6 SOMEBODY LIKE THAT. I JUST COULDN'T BELIEVE IT.

7 Q. OKAY. SO, YOU THINK THAT WOULD AFFECT YOUR
8 ABILITY TO FAIRLY JUDGE THIS CASE?

9 A. YES, I DO.

10 Q. AND AS FAR AS YOU WERE ASKED SOME QUESTIONS
11 ABOUT THE DEATH PENALTY. YOU SAID THAT YOU DO
12 BELIEVE IN THE DEATH PENALTY; IS THAT CORRECT?

13 A. YES, I DO.

14 Q. AND BASICALLY YOU BELIEVE THAT A PERSON WHO IS
15 CONVICTED OF MURDER AND PROVEN GUILTY OF MURDER,
16 THAT IT'S NOT AN ACCIDENT OR SELF-DEFENSE OR
17 ANYTHING LIKE THAT, BUT SOMEBODY WHO
18 DELIBERATELY COMMITS A MURDER DESERVES THE DEATH
19 PENALTY?

20 A. YES, I DO.

21 Q. DO YOU BELIEVE THAT'S THE PROPER SENTENCE IN ALL
22 DEATH PENALTY -- IN ALL MURDER CASES?

23 A. YES, I DO.

24 Q. OKAY. SO NO MATTER WHAT, IF JIMMY ROBERTSON WAS
25 CONVICTED OF MURDER OF BOTH OF HIS PARENTS IN

1 THE FIRST PHASE OF THE TRIAL, NO MATTER WHAT
2 EVIDENCE WE PRESENTED IN THE SECOND PHASE, YOU
3 STILL THINK THE PENALTY SHOULD BE DEATH; IS THAT
4 CORRECT?

5 A. YES, I DO.

6 Q. AND THAT'S YOUR STRONG OPINION; IS THAT CORRECT?

7 A. YES, SIR.

8 Q. AND THAT OPINION IS ALSO AFFECTED BY YOUR
9 KNOWING MARLENE MELTON AND WHAT HAPPENED TO HER;
10 IS THAT CORRECT?

11 A. YES, SIR, ABSOLUTELY.

12 Q. AND EVEN IF THERE WAS SOMETHING THAT COULD BE
13 PRESENTED IN COURT TO CHANGE YOUR MIND, IT WOULD
14 TAKE US PUTTING UP A LOT OF EVIDENCE TO CONVINC
15 YOU OTHERWISE, WOULDN'T IT?

16 A. YES, SIR.

17 Q. OKAY. AND BASICALLY YOU DON'T THINK THERE IS
18 ANYTHING THAT WE COULD SAY THAT WOULD CONVINC
19 YOU OTHERWISE?

20 A. NO, SIR.

21 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

22 MR. BRACKETT: NO QUESTIONS.

23 THE COURT: MR. CROTTS, I'M GOING TO LET YOU STEP
24 OUTSIDE THE DOOR JUST ONE MOMENT.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE STATE?

2 MR. BRACKETT: I DON'T KNOW WHERE HE STANDS, BUT
3 HE SOUNDS LIKE A ONE, TWO AND A THREE DEPENDING ON THE
4 QUESTION, BUT I DON'T THINK HE IS QUALIFIED BASED ON HIS
5 RELATIONSHIP WITH MARLENE MELTON AND HIS INABILITY TO FOCUS
6 ON THIS CASE.

7 THE COURT: WHAT SAYS THE DEFENSE?

8 MR. BOYD: I AGREE, YOUR HONOR.

9 THE COURT: ALL RIGHT, I FIND THAT HE'S NOT
10 QUALIFIED. BRING HIM BACK IN.

11 (THE JUROR RETURNED TO THE COURTROOM.)

12 THE COURT: MR. CROTTS, YOU CAN JUST STAND THERE.
13 WE APPRECIATE YOUR TIME AND WE APPRECIATE YOUR CANDOR AND
14 WE'RE GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE. THANK
15 YOU A LOT.

16 THE JUROR: THANK YOU, SIR.

17 (THE JUROR LEFT THE COURTROOM.)

18 THE COURT: ALL RIGHT, JAMES CRAWFORD.

19 JAMES A. CRAWFORD, JUROR NUMBER 63, BLACK MALE,
20 WAS QUESTIONED AS FOLLOWS:

21 QUESTIONS BY THE COURT:

22 Q. GOOD MORNING.

23 A. GOOD MORNING.

24 Q. MR. CRAWFORD, I'M JOHN HAYES, AND I'M THE JUDGE
25 ASSIGNED TO PRESIDE OVER THIS CASE. I WANT TO

1 REMIND YOU THAT YOU'RE UNDER OATH.

2 A. YES, SIR.

3 Q. DURING THE TRIAL OF THIS CASE IF YOU ARE CHOSEN,
4 YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE
5 COURTROOM. I WANT YOU TO BE ASSURED THAT THEY
6 CANNOT TAKE YOUR PICTURE OR REPORT THAT YOU'RE
7 INVOLVED. THAT'S NOT WHAT THEY ARE HERE FOR,
8 BUT I DON'T WANT YOU TO BE DISTRACTED BY THAT.
9 OKAY?

10 A. YES, SIR.

11 Q. NOW, YOU PRESENTED A QUESTIONNAIRE FOR US
12 EARLIER. DO YOU NEED TO MAKE ANY CORRECTIONS TO
13 THAT OR IS IT ACCURATE?

14 A. IT'S ACCURATE.

15 Q. DID YOU HAVE A CHANCE TO GO OVER THE WITNESS
16 LIST WHILE YOU WERE BACK IN THAT ROOM?

17 A. YES, SIR, I LOOKED OVER IT.

18 Q. WAS THERE ANYBODY ON THERE YOU KNEW?

19 A. I KNOW A FEW OF THEM.

20 Q. ANYBODY YOU ARE RELATED TO?

21 A. NO, SIR.

22 Q. WHO DO YOU KNOW ON THERE?

23 A. I KNOW MAGISTRATE LYNN BENFIELD AND CORONER DOUG
24 MCKOWN. I HAVE SEEN THEM, I DON'T KNOW THEM
25 PERSONALLY.

1 Q. WOULD THE FACT THAT THEY MAY BE WITNESSES IN THE
2 TRIAL AFFECT YOUR ABILITY TO BE FAIR AND
3 IMPARTIAL TO THE STATE AND THE DEFENDANT IN ANY
4 WAY?

5 A. NO, SIR.

6 Q. PRIOR TO NOW, OTHER THAN WHEN THE CASES WERE
7 ANNOUNCED ON MONDAY, HAD YOU HEARD ABOUT THIS
8 CASE, READ ABOUT IT OR TALKED ABOUT IT OR HEARD
9 ABOUT IT FROM ANY SOURCE WHATSOEVER?

10 A. YES, SIR, I SEEN A LITTLE BIT ON THE NEWS WHEN
11 IT FIRST HAPPENED.

12 Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION ABOUT
13 THE CASE?

14 A. YES, SIR.

15 Q. YOU HAVE?

16 A. YES, SIR.

17 Q. YOU FORMED ONE OR YOU EXPRESSED ONE?

18 A. I DON'T THINK I COULD BE, YOU KNOW.

19 Q. WELL, LET ME ASK IT THIS WAY. DO YOU THINK THAT
20 EVEN THOUGH YOU'VE READ SOME MATERIAL BEFORE YOU
21 GOT HERE THAT YOU COULD PUT THAT OUT OF YOUR
22 MIND AND AS THE LAW REQUIRES LISTEN TO THE LAW
23 AND THE EVIDENCE AND BASE YOUR VERDICT SOLELY ON
24 WHAT YOU HEAR IN THE COURTROOM AND DISREGARD
25 WHAT YOU KNEW BEFORE YOU GOT HERE. COULD YOU DO

1 THAT?

2 A. I DON'T THINK SO.

3 Q. ARE YOU TELLING ME THAT YOU WOULD NOT BE ABLE TO
4 SORT OF WASH THAT AWAY, THAT YOU COULDN'T COME
5 IN WITH A CLEAN SLATE, THAT YOU WOULD BE
6 AFFECTED TO SOME DEGREE BY WHAT YOU HAD ALREADY
7 LEARNED?

8 A. YES, SIR, I THINK SO.

9 Q. ALL RIGHT, ANSWER ANY QUESTIONS THE STATE MAY
10 HAVE.

11 QUESTIONS BY MR. BRACKETT:

12 Q. MR. CRAWFORD, MY NAME IS KEVIN BRACKETT AND I'M
13 WITH THE SOLICITOR'S OFFICE AND SOLICITOR POPE
14 AND I ARE PROSECUTING THIS CASE ON BEHALF OF THE
15 STATE.

16 IF I UNDERSTAND WHAT YOU'RE TELLING THE JUDGE IS
17 THAT YOU'VE READ SOME INFORMATION ABOUT THE
18 CASE.

19 A. YES, SIR, WHEN IT FIRST HAPPENED.

20 Q. SO YOU KIND OF KNOW WHAT THIS CASE IS ABOUT.

21 A. YES.

22 Q. AND WHAT THE FACTS ARE?

23 A. YES.

24 Q. FROM READING THE NEWSPAPER?

25 A. YES.

1 Q. AND WHAT YOU'RE TELLING THE JUDGE IS THAT IF YOU
2 WERE PUT IN THIS JURY BOX THAT YOU COULDN'T PUT
3 THAT OUT OF YOUR MIND?

4 A. I DON'T THINK SO.

5 Q. OKAY, YOU UNDERSTAND IN ORDER TO BE A JUROR IN
6 ANY CRIMINAL CASE YOU HAVE TO DECIDE WHETHER
7 SOMEBODY IS GUILTY OR INNOCENT.

8 A. RIGHT.

9 Q. THAT'S THE JURY'S JOB.

10 A. RIGHT.

11 Q. AND YOU HAVE TO DECIDE THAT BASED ON THE
12 EVIDENCE THAT YOU HEAR FROM THAT WITNESS STAND.

13 A. YES, SIR.

14 Q. AND WHAT YOU'RE SAYING IS, AND YOU CAN'T DECIDE
15 IT ON ANYTHING YOU MIGHT HAVE HEARD OUTSIDE THE
16 COURTROOM, YOU HAVE TO DECIDE GUILT OR INNOCENCE
17 BASED ON THE EVIDENCE THAT COMES FROM THE
18 WITNESS STAND. IS THAT RIGHT?

19 A. UH HUH.

20 Q. OKAY. WHAT YOU'RE SAYING IS THAT IF YOU WERE A
21 JUROR, YOU COULD LISTEN TO THE EVIDENCE BUT WHEN
22 IT CAME TIME TO DECIDE WHETHER THIS MAN IS
23 GUILTY OR NOT, YOU'D KIND OF BE THINKING ABOUT
24 WHAT YOU READ, TOO?

25 A. YES, SIR.

1 Q. SO, YOU WOULD BE THINKING ABOUT WHAT PEOPLE SAID
2 HERE IN THE COURTROOM, AND THINKING ABOUT WHAT
3 YOU READ IN THE NEWSPAPER OR SAW ON THE NEWS?

4 A. YES, SIR.

5 Q. YOU WOULDN'T BE ABLE TO PUT IT OUT OF YOUR MIND?

6 A. I DON'T THINK SO.

7 Q. SO, YOU COULDN'T BE A FAIR JUROR?

8 A. I DON'T THINK SO.

9 Q. OKAY. THANK YOU VERY MUCH, MR. CRAWFORD; I
10 APPRECIATE YOUR HONESTY.

11 QUESTIONS BY MR. HANCOCK:

12 Q. MR. CRAWFORD, I'M BILL HANCOCK; I'M THE ATTORNEY
13 FOR JIMMY ROBERTSON WHO IS SEATED RIGHT HERE.
14 AND CO-COUNSEL IS MR. BOYD SEATED RIGHT BESIDE
15 HIM.

16 WE ARE IN A SITUATION WHERE WE JUST KEEP COMING
17 AT YOU. THE JUDGE ASKED YOU QUESTIONS, THE
18 SOLICITOR ASKED YOU QUESTIONS, BUT I HAVE TO
19 KNOW CERTAIN THINGS AND I'M JUST GOING TO ASK
20 YOU A FEW QUESTIONS AND I ASK FOR YOUR HEARTFELT
1 ANSWER AND YOUR TRUTHFUL ANSWER. AND THERE IS
2 NO RIGHT OR WRONG ANSWER THAT YOU WILL GIVE THIS
3 COURT. WE ARE JUST ALL LISTENING TO WHAT YOU
4 HAVE TO SAY.

5 NOW, YOU HAVE INDICATED THAT YOU HAVE READ

1 CERTAIN THINGS CONCERNING THIS CASE, IS THAT
2 RIGHT, SIR?

3 A. YES, SIR.

4 Q. AND EXACTLY WHAT HAVE YOU READ THAT HAS
5 INFLUENCED YOUR OPINION, SIR? WAS IT THE
6 NEWSPAPER?

7 A. YES.

8 Q. HAVE YOU SEEN ANY OF THIS ON T.V.?

9 A. NO.

10 Q. SO, WHEN YOU READ THE NEWSPAPER, WHEN IS THE
11 FIRST TIME YOU READ ANYTHING CONCERNING THIS
12 PARTICULAR CASE?

13 A. IT'S BEEN A WHILE BACK, WHEN IT FIRST HAPPENED.

14 Q. WHEN IT FIRST HAPPENED?

15 A. YES.

16 Q. AND WHAT DO YOU REMEMBER THAT YOU HAVE READ,
17 SIR?

18 MR. BRACKETT: OBJECTION, YOUR HONOR, I DON'T
19 BELIEVE THAT'S APPROPRIATE.

20 THE COURT: I OVERRULE THE OBJECTION.

21 A. I REMEMBER WHEN THEY FOUND THIS ELDERLY COUPLE,
22 YOU KNOW, FOUND THEM DEAD.

23 Q. YOU SAY IT WAS AN ELDERLY COUPLE?

24 A. YES, SIR, I THINK IT WAS.

25 Q. DO YOU REMEMBER HOW OLD THEY WERE, SIR?

1 A. I KNOW IT WAS OVER 60 IT SEEMS LIKE, SOMETHING
2 LIKE THAT.

3 Q. AND DO YOU REMEMBER WHERE THEY WERE FOUND DEAD,
4 SIR?

5 A. NO, SIR.

6 Q. YOU DON'T?

7 A. NO, SIR.

8 Q. AND DO YOU REMEMBER -- COULD YOU RELATE TO ME
9 SOME OF THE FACTS AND CIRCUMSTANCES SURROUNDING
10 THEIR DEATHS, SIR?

11 A. NO, SIR.

12 Q. SO YOU DON'T REMEMBER WHAT EXACTLY HAPPENED?

13 A. NO, NO.

14 Q. DO YOU REMEMBER IF IT WAS REPORTED TO BE A
15 PARTICULARLY BAD CRIME THAT WOULD STICK
16 SOMETHING IN YOUR MIND THAT SAYS THIS STANDS OUT
17 ABOVE ALL THE OTHERS I'VE READ ABOUT OVER A
18 PERIOD OF TIME?

19 A. I CAN'T REMEMBER.

20 Q. YOU CAN'T REMEMBER THAT, SIR? BUT YET YOU'RE
21 TELLING US THAT IT WOULD AFFECT YOU -- IS THERE
22 SOME OTHER REASON, SIR, THAT IT WOULD MAKE IT
23 DIFFICULT FOR YOU TO SIT IN JUDGMENT IN THIS
24 CASE, SIR?

25 A. NO, SIR.

1 Q. WE'RE IN A SITUATION HERE, SIR, THAT THIS IS A
2 CASE THAT THE PENALTY OF DEATH WILL BE SOUGHT.
3 AND WE ARE ASSUMING AT THIS POINT THAT A VERDICT
4 HAS ALREADY BEEN RETURNED IN THIS COURTROOM BY A
5 JURY WHICH YOU WOULD BE A MEMBER. OKAY? THAT
6 TWO PEOPLE HAD BEEN KILLED OR AT LEAST ONE OF
7 THOSE TWO PEOPLE HAD BEEN KILLED BY MY CLIENT.
8 AND THAT'S CALLED THE SENTENCING PHASE. WE
9 WOULD THEN GO TO WHAT IS CALLED -- I MEAN
10 THAT'S CALLED THE GUILT PHASE. THEN WE WOULD GO
11 TO WHAT IS CALLED THE SENTENCING PHASE.
12 AND YOU WOULD HAVE TWO POSSIBILITIES OF
13 SENTENCE, YOU AND THE OTHER ELEVEN PEOPLE THAT
14 WOULD BE SEATED RIGHT HERE, ONLY TWO
15 POSSIBILITIES. ONE WOULD BE LIFE IMPRISONMENT.
16 THE SECOND WOULD BE THE DEATH PENALTY.
17 DO YOU UNDERSTAND WHERE WE ARE, SIR?

18 A. YES, SIR, YOU SAY YOU'RE DOWN TO TWO SENTENCES.
19 Q. ONLY TWO SENTENCES. AND YOU AND ELEVEN OTHER
20 PEOPLE WOULD HAVE TO MAKE THAT DECISION WHETHER
21 JIMMY ROBERTSON WAS GIVEN THE DEATH PENALTY OR
22 WHETHER HE WOULD BE GIVEN LIFE IN PRISON.
23 DO YOU FEEL LIKE YOU COULD MAKE THAT DECISION,
24 SIR?

25 A. I DON'T THINK I COULD.

1 Q. AND WHY WOULD THAT BE, SIR?

2 (NO RESPONSE)

3 Q. IF THE CIRCUMSTANCES WERE BAD ENOUGH, COULD YOU
4 RETURN A VERDICT OF DEATH IN A PARTICULAR CASE?

5 A. I DON'T THINK SO.

6 Q. YOU DON'T THINK SO?

7 A. NO.

8 Q. OKAY, WELL LET'S TALK ABOUT THAT FOR JUST ONE
9 MOMENT. NOW, AGAIN, IF YOU WERE TO SIT ON THE
0 JURY WE'VE GONE PAST THE PHASE WHICH INDICATES
1 THERE WAS GUILT. AND YOU'RE SITTING IN THE JURY
2 BOX AND WHAT IS BEING TOLD TO YOU IS THAT THE
3 STATE IS SEEKING THE DEATH PENALTY. AND IN YOUR
4 CONSIDERATION AS A JUROR, YOU WOULD HAVE TO
5 CONSIDER BOTH AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES.

7 DO YOU UNDERSTAND WHAT AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES ARE?

9 A. NO, NOT REALLY.

0 Q. AGGRAVATING CIRCUMSTANCES WOULD MAKE THE CRIME
1 EVEN WORSE THAN JUST PLAIN MURDER.. THERE WOULD
2 BE OTHER CIRCUMSTANCES THAT MADE IT WORSE AND
3 THE STATE WOULD SEEK TO PROVE THOSE TO YOU
4 BEYOND A REASONABLE DOUBT, PROVE THEM TO YOU SO
5 THAT YOU WOULD GIVE SOMEONE THE DEATH PENALTY.

1 DO YOU UNDERSTAND THAT, SIR?

2 A. NO, NOT QUITE, NOT REALLY.

3 Q. LET ME GO BACK AND LET ME SEE IF I CAN EXPLAIN
4 IT AGAIN. WE'RE STARTING WITH THE PREMISE THAT
5 SOMEONE HAS BEEN MURDERED, OKAY? AND THEN WE GO
6 INTO THE SECOND PHASE AND THEN SOMEONE TELLS
7 YOU, AND IT MAY BE WITNESSES, IT WOULD COME FROM
8 THE WITNESS STAND THAT YOU WOULD HAVE TO
9 CONSIDER THAT THIS WAS AN AGGRAVATED KILLING.
10 OKAY? THAT IT WAS AGGRAVATED IN SOME WAY BY
11 CIRCUMSTANCES WHICH MAKE IT WORSE THAN THE
12 NORMAL KILLING AND MAKE IT EVEN WORSE THAN JUST
13 KILLING YOUR PARENTS. DO YOU UNDERSTAND THAT,
14 SIR?

15 A. YES, SIR, I THINK SO.

16 Q. AND DO YOU THINK THAT YOU COULD CONSIDER THOSE
17 CIRCUMSTANCES AND CONSIDER THEM IN THE WEIGHT
18 AND IN A MANNER THAT YOU COULD GIVE THE DEATH
19 PENALTY?

20 A. I DON'T THINK SO.

21 Q. ARE YOU TELLING ME THAT YOU COULD NOT IN ANY
22 SITUATION GIVE THE DEATH PENALTY?

23 A. NO, SIR, I DON'T THINK SO.

24 Q. YOU DON'T THINK SO. WHEN YOU SAY YOU DON'T
25 THINK SO, AND I'M NOT TRYING TO PIN YOU DOWN,

1 WE'RE JUST TRYING TO FIND OUT WHAT'S HAPPENING
2 AND WHAT YOU REALLY FEEL. WHEN YOU SAY YOU
3 DON'T THINK SO, IS THAT I CANNOT OR I THINK I
4 COULD?

5 A. I DON'T THINK I COULD.

6 Q. YOU DON'T THINK YOU COULD?

7 A. NO.

8 Q. NOT AT ALL?

9 A. NO.

10 Q. YOU COULD NOT GIVE THE DEATH PENALTY IN ANY
11 CIRCUMSTANCE WHATSOEVER?

12 A. NO.

13 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: YOU CAN STEP OUT FOR A MINUTE.
15 (THE JUROR LEFT THE COURTROOM.)

16 THE COURT: WHAT SAYS THE STATE?

17 MR. BRACKETT: I SUBMIT HE'S NOT QUALIFIED.

18 THE COURT: THE DEFENSE?

19 MR. HANCOCK: YOUR HONOR, I'M NOT GOING TO ARGUE.

20 THE COURT: I FIND HE'S NOT QUALIFIED. ALL
21 RIGHT, BRING HIM IN.

22 (THE JUROR RETURNED TO THE COURTROOM.)

23 THE COURT: YOU CAN JUST STAND RIGHT THERE. WE
24 APPRECIATE YOUR TIME AND YOUR CANDOR, BUT WE'RE GOING TO
25 EXCUSE YOU FROM ANY FURTHER SERVICE. THANK YOU A LOT.

1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: ALL RIGHT, SHANNON NELMES.

3 SHANNON P. NELMES, JUROR NUMBER 199, WHITE
4 FEMALE, WAS QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. HAVE A SEAT RIGHT THERE PLEASE, MA'AM. LET ME
7 REINTRODUCE MYSELF. I'M JOHN HAYES AND I'M THE
8 JUDGE ASSIGNED TO PRESIDE OVER THIS CASE. AND
9 YOU ARE, OF COURSE, STILL UNDER OATH. YOU
10 REMEMBER THAT.

11 A. YES, SIR.

12 Q. IF YOU END UP SITTING ON THIS JURY, I'LL TELL
13 YOU IN ADVANCE THAT YOU MAY SEE PHOTOGRAPHERS OR
14 CAMERAS IN THE COURTROOM. THEY ARE ALLOWED BY
15 LAW BUT THEY ARE FORBIDDEN BY LAW TO PHOTOGRAPH
16 OR REPORT ABOUT THE JURY. SO, IF YOU ARE ON THE
17 JURY, DON'T BE DISTRACTED BY ANY CAMERAS OR
18 PHOTOGRAPHERS BECAUSE THEY CAN'T PHOTOGRAPH YOU
19 OR FILM YOU.

20 YOU TURNED INTO US A QUESTIONNAIRE. DO YOU
21 BELIEVE IT'S ACCURATE OR IS THERE ANYTHING ON
22 THERE YOU NEED TO CHANGE?

23 A. FROM WHAT I RECALL, I BELIEVE IT'S ACCURATE.

24 Q. ALL RIGHT. YOU ALSO WERE ASKED TO REVIEW A LIST
25 OF WITNESSES. HAVE YOU DONE THAT?

1 A. I HAVE.

2 Q. ON THERE WAS THERE ANYBODY TO WHOM YOU ARE
3 RELATED BY BLOOD OR MARRIAGE OR WHO YOU KNEW?

4 A. YES, SIR.

5 Q. ALL RIGHT, WHO IS THAT?

6 A. I KNOW NANCY COTY, KATHY BIGHAM, DR. FLEISCHER,
7 I'M FAMILIAR WITH ANDY GEORGE, DR. HOOK, DR.
8 MCMEEKIN, ANN MELTON, SKIP MEYER. LET ME CHECK
9 THE REST HERE. I BELIEVE THAT WAS ALL.

0 Q. WOULD THE FACT THAT THEY ARE POTENTIAL WITNESSES
1 IN THIS CASE, WOULD THAT AFFECT YOUR ABILITY TO
2 BE FAIR AND IMPARTIAL TO THE STATE AND THE
3 DEFENDANT IN THE TRIAL OF THE CASE?

4 A. NO.

5 Q. BEFORE COMING -- BEFORE COMING IN HERE, OF
6 COURSE, WE ANNOUNCED THE CASE AND READ THE
7 INDICTMENTS TO YOU, OTHER THAN THAT HAVE YOU
8 HEARD ANYTHING ABOUT THIS CASE, FORMED AN
9 OPINION ABOUT IT OR DISCUSSED IT OR READ
0 ANYTHING?

1 A. YES, SIR.

2 Q. WOULD WHAT YOU HAD KNOWN BEFORE YOU CAME TODAY,
3 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND
4 IMPARTIAL OR WOULD YOU BE ABLE TO BASE YOUR
5 VERDICT SOLELY ON THE LAW AND THE EVIDENCE

1 THAT'S DEVELOPED IN THE TRIAL?

2 A. HONESTLY SPEAKING, I WOULD PROBABLY HAVE A
3 PROBLEM COMING DOWN WITH A VERDICT. I'M A
4 LICENSED ASSOCIATE COUNSELOR; I WORK WITH PEOPLE
5 WITH PROBLEMS ON A DAILY BASIS. AND I WOULD
6 PROBABLY HAVE A DIFFICULT TIME MAKING A FAIR
7 JUDGMENT.

8 Q: ALL RIGHT, WE WILL GO INTO THAT IN A MINUTE.
9 BUT FIRST I'M JUST ASKING YOU ABOUT PRE-TRIAL,
10 THINGS YOU'VE HEARD BEFORE YOU CAME, WHAT YOU
11 READ. COULD YOU LISTEN WITH SORT OF A CLEAN
12 SLATE, AN OPEN MIND TO THE EVIDENCE AND THE LAW
13 AND IF YOU COULD MAKE A DECISION, MAKE IT BASED
14 ON WHAT YOU HEAR IN THE COURTROOM OR WOULD YOUR
15 MIND BE CLOUDED OR AFFECTED BY WHAT YOU KNOW
16 ABOUT THIS CASE. NOT YOUR BACKGROUND, YOUR
17 EDUCATION OR THOSE SKILLS, BUT WHAT YOU HEARD
18 ABOUT THIS CASE.

19 A. I'LL SAY NO.

20 Q. DON'T SAY NO, IT'S GOT TO BE NO.

21 A. NO.

22 Q. IS IT YES OR NO?

23 A. NO.

24 Q. ALL RIGHT, IN THE JURY ROOM I HAD SET OUT A LIST
25 THAT HAD ON IT THREE JUROR TYPES. WHAT WE ARE

1 TALKING ABOUT IS THE SECOND PHASE OF THE TWO
2 PART TRIAL. WE MAY NOT HAVE THE SECOND PHASE.
3 THE FIRST PHASE DEALS ONLY WITH THE GUILT OR
4 INNOCENCE OR GUILTY OR NOT GUILTY -- A FINDING
5 OF GUILT OR NOT GUILTY REGARDING THE CRIMES FOR
6 WHICH MR. ROBERTSON IS ON TRIAL. IF HE IS FOUND
7 NOT GUILTY, THE CASE WOULD END THERE. IF HE'S
8 FOUND GUILTY, THEN THE CASE WOULD MOVE TO THE
9 NEXT PHASE.

0 HE IS PRESUMED INNOCENT OF THE CHARGES AND THE
1 FACT THAT WE ARE TALKING ABOUT THIS PENALTY PART
2 IS NOT TO PRESUPPOSE THAT WE WOULD EVER GET
3 THERE. HE HAS A RIGHT, OF COURSE, TO THE
4 PRESUMPTION OF INNOCENCE WHICH HE IS PRESUMED
5 INNOCENT AND ONLY IF A JURY WERE CONVINCED
6 UNANIMOUSLY BEYOND A REASONABLE DOUBT OF HIS
7 GUILT OF MURDER WOULD WE EVEN REACH THE SECOND
8 PHASE. DO YOU UNDERSTAND THAT?

9 A. YES.

0 Q. NOW COULD YOU, ON REVIEWING THIS LIST OF THREE
1 TYPES OF JURORS, FIND YOURSELF TO BE ONE OF
2 THOSE JUROR TYPES?

3 A. I DID.

4 Q. WHICH ONE?

5 A. THE SECOND ONE.

1 Q. THE SECOND IS LISTED AS ONE WHO UNDER NO
2 CIRCUMSTANCES COULD EVER GIVE THE DEATH PENALTY.
3 THAT IS, SOMEONE WHO NO MATTER WHAT THE FACTS
4 AND CIRCUMSTANCES PRESENTED INDICATING ANY
5 AGGRAVATION REGARDING THE CASE, THAT YOU WOULD
6 HAVE YOUR MIND MADE UP CONCERNING PUNISHMENT;
7 THAT BEING IN FAVOR OF LIFE AS OPPOSED TO THE
8 DEATH PENALTY. AND YOU WOULD NOT CONSIDER OR
9 IMPOSE THE DEATH PENALTY NO MATTER WHAT YOU
10 HEARD IN THAT SECOND PHASE. IS THAT WHAT YOU'RE
11 TELLING ME?

12 A. YES.

13 Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT THE
14 ATTORNEYS MAY HAVE.

15 QUESTIONS BY MR. BOYD:

16 Q. MS. NELMES, I'M JIM BOYD. I AM REPRESENTING
17 JIMMY ROBERTSON. HE'S SEATED OVER THERE AND
18 THAT'S MY CO-COUNSEL, BILL HANCOCK, RIGHT THERE.
19 I JUST NEED TO ASK YOU A FEW QUESTIONS TO FOLLOW
20 UP ON WHAT THE JUDGE ASKED YOU ABOUT.

21 ONE THING I NOTICED ON YOUR JUROR INFORMATION
22 FORM IS THAT YOU KNEW SOMEONE WHO WAS THE VICTIM
23 OF A VIOLENT CRIME, A HOMICIDE; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. AND COULD YOU TELL ME, WAS THAT A MURDER OR ---

1 A. YES, IT WAS.

2 Q. WHO WAS IT THAT YOU KNEW?

3 A. I HAD A CO-WORKER, I BELIEVE IT WAS
4 APPROXIMATELY TWO YEARS AGO, HER SON KILLED HIS
5 FATHER.

6 Q. HER SON KILLED -- CAN YOU REMEMBER THE NAMES?

7 A. UH HUH, JERRY SELLERS WAS THE PERSON THAT WAS
8 KILLED AND P.J. SELLERS WAS HER SON THAT KILLED
9 HIM.

10 Q. DID YOU ATTEND THAT TRIAL?

1 A. NO.

2 Q. NOW YOU WERE ASKED SOME QUESTIONS ABOUT THE
3 DEATH PENALTY AND THAT TYPE OF THING. IN THIS
4 TYPE OF CASE THERE ARE TWO PHASES TO A TRIAL, AS
5 THE JUDGE HAS ALREADY TOLD YOU. THE FIRST PHASE
6 IS THE JURY DETERMINES WHETHER MR. ROBERTSON
7 WILL BE FOUND GUILTY OR NOT GUILTY OF THE
8 CHARGES. AND THEN ONLY IF HE'S FOUND GUILTY
9 DOES IT GO INTO A SECOND PHASE OF THE TRIAL IN
10 WHICH THE JURY WILL DETERMINE THE PENALTY. THAT
1 IS, LIFE IMPRISONMENT OR THE DEATH PENALTY.
2 NOW, IN THAT PHASE OF THE TRIAL EVIDENCE WILL BE
3 PRESENTED IN WHAT'S CALLED AGGRAVATION. THAT
4 MEANS EVIDENCE THAT MAKES IT WORSE THAN A NORMAL
5 MURDER, REASONS THAT HE SHOULD GET THE DEATH

1 PENALTY.

2 ALSO, MITIGATING EVIDENCE MAY BE PRESENTED. WE
3 DON'T HAVE TO PRESENT THAT, BUT WE MAY PRESENT
4 MITIGATING EVIDENCE THAT LESSENS HIS MORAL
5 CULPABILITY.

6 NOW, YOU HAVE SAID THAT YOU ARE OPPOSED TO THE
7 DEATH PENALTY.

8 OF COURSE, JURORS COME FROM DIFFERENT
9 BACKGROUNDS AND DIFFERENT OPINIONS AND IT'S
10 IMPORTANT THAT A JURY BE MADE UP OF PEOPLE OF
11 DIFFERING OPINIONS. BUT I WANT TO ASK YOU, IN
12 CONSIDERING THE SENTENCING OF A PERSON, COULD
13 YOU CONSIDER AGGRAVATING CIRCUMSTANCES THAT MAY
14 BE PRESENTED -- I'M NOT GOING TO ASK YOU TO TELL
15 WHAT YOU WOULD DO, WHAT VERDICT YOU WOULD REACH,
16 YOU WOULD HAVE TO HEAR ALL OF THE EVIDENCE, BUT
17 COULD YOU CONSIDER THAT TYPE OF EVIDENCE AND IF
18 YOU THOUGHT IT WAS APPROPRIATE, VOTE FOR THE
19 DEATH PENALTY?

20 A. YEAH. YES.

21 Q. YOU COULD?

22 A. YES.

23 Q. SO, IF THE CASE WAS APPROPRIATE, DESPITE YOUR
24 PERSONAL OPINION AGAINST THE DEATH PENALTY, IF
25 YOU WERE TOLD YOU HAD TO CONSIDER THE DEATH

1 PENALTY, YOU COULD DO THAT AS A JUROR?

2 A. YES.

3 Q. AND IF YOU WERE ON THE JURY AND YOU CONSIDERED
4 THAT AND YOU THOUGHT THAT WAS THE APPROPRIATE
5 PENALTY, IN A NORMAL CASE ONLY THE FOREMAN OF
6 THE JURY SIGNS THE VERDICT FORM. IN A CIVIL
7 CASE OR A NORMAL CRIMINAL CASE OR EVEN IF A JURY
8 IN THIS CASE DECIDES ON LIFE IMPRISONMENT, ONLY
9 THE FOREMAN SIGNS THE VERDICT FORM.

0 IN THE PARTICULAR CASE WE HAVE HERE IF THE JURY
1 DECIDES ON A DEATH SENTENCE, ALL TWELVE OF THE
2 JURORS HAVE TO SIGN THE VERDICT FORM. UNDER
3 THOSE CIRCUMSTANCES IF YOU HAD SAT ON THE JURY
4 AND AFTER CONSIDERING ALL OF THE EVIDENCE, YOU
5 THOUGHT DEATH WAS THE APPROPRIATE SENTENCE,
6 COULD YOU SIGN THE VERDICT FORM UNDER THOSE
7 CIRCUMSTANCES?

8 (AFTER A LONG PAUSE.)

9 A. EXCUSE ME FOR THINKING JUST FOR A SECOND.

0 Q. TAKE YOUR TIME.

1 (THERE WAS ANOTHER PAUSE.)

2 A. I'LL SAY YES.

3 Q. AND, OF COURSE, THIS IS AFTER YOU'VE ALREADY
4 CONSIDERED ALL THE EVIDENCE AND ALL TWELVE OF
5 YOU HAVE VOTED ON THE DEATH SENTENCE, AT THAT

1 POINT ONLY THEN WOULD YOU BE REQUIRED TO SIGN
2 THAT VERDICT FORM. DO YOU UNDERSTAND?

3 A. YES.

4 Q. AND YOU COULD SIGN THAT KNOWING THAT AS A RESULT
5 OF SIGNING THAT VERDICT FORM JIMMY ROBERTSON IS
6 GOING TO BE SENTENCED TO DEATH?

7 A. YES.

8 Q. OKAY. AND LET ME ASK YOU THIS. YOU SEEM TO
9 HAVE THOUGHT ABOUT WHAT I ASKED YOU, THESE
10 QUESTIONS. I THINK YOU TOOK SOME TIME TO THINK
11 ABOUT IT. IS THAT CORRECT?

12 A. YES.

13 Q. AND IF YOU'RE ASKED THESE QUESTIONS AGAIN, ARE
14 YOU GOING TO GIVE THE SAME ANSWERS YOU JUST GAVE
15 ME?

16 A. YES.

17 Q. OKAY. AND LET ME ASK YOU ALSO, OF COURSE, YOU
18 REALIZE THAT ON A JURY DIFFERENT PEOPLE HAVE
19 DIFFERENT OPINIONS; YOU UNDERSTAND THAT?

20 A. UH HUH.

21 Q. AND YOU HAVE AN OBLIGATION TO RESPECT OTHER
22 JUROR'S OPINIONS.

23 A. YES.

24 Q. AND YOU HAVE TO ALSO RESPECT THEIR OPINION AND
25 THEY HAVE TO RESPECT YOUR OPINION; DO YOU

1 UNDERSTAND THAT?

2 A. YES.

3 Q. AND IF YOU WERE ON THE JURY AND, SAY, ELEVEN
4 PEOPLE WANTED TO DO ONE THING AND YOU WANTED TO
5 DO THE OTHER AND, OF COURSE, YOU HAVE A DUTY TO
6 LISTEN TO THOSE PEOPLE AND CONSIDER WHAT THEY
7 HAVE TO SAY, BUT IF YOU HAD MADE UP YOUR MIND
8 THAT THE VOTE SHOULD BE, SAY, FOR LIFE
9 IMPRISONMENT AND ALL THE OTHER ELEVEN WANTED THE
0 DEATH PENALTY, WOULD YOU CHANGE YOUR MIND JUST
1 TO BE IN THE MAJORITY?

2 (AFTER A PAUSE.)

3 A. I CAN'T SAY PROBABLY NOT, CAN I? IT NEEDS TO
4 EITHER BE YES OR NO?

5 Q. NO, YOU ANSWER HOW YOU FEEL.

6 A. I DON'T KNOW; THIS IS DIFFICULT. I WOULD HATE
7 TO SAY THAT I WOULD CHANGE MY MIND JUST BECAUSE
8 ALL OTHER ELEVEN VOTED ONE WAY. ALL TWELVE HAVE
9 TO HAVE THE SAME ---

0 Q. WELL, IT'S NEVER REQUIRED THAT A JUROR CHANGE
1 THEIR MIND BECAUSE OF OTHER JURORS' OPINIONS.
2 YOU'RE NEVER REQUIRED TO GIVE UP YOUR HONEST
3 OPINION ABOUT WHAT A VERDICT SHOULD BE, ONE WAY
4 OR THE OTHER. THAT'S NOT REQUIRED OF YOU. WHAT
5 I GUESS I'M ASKING YOU IS JUST BECAUSE THE

1 MAJORITY OR ELEVEN OTHER JURORS VOTED ONE WAY,
2 ARE YOU GOING TO CHANGE JUST TO BE WITH THE
3 MAJORITY?

4 A. I'M GOING TO HAVE TO SAY NO.

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

6 A. THANK YOU.

7 QUESTIONS BY MR. POPE:

8 Q. MS. NELMES, I'M TOMMY POPE; I'M THE SOLICITOR
9 HERE IN YORK COUNTY. I THINK I SAW THAT YOU'RE
10 FROM GREENWOOD ORIGINALLY?

11 A. YES, SIR.

12 Q. SO, YOU KNOW WHAT A SOLICITOR IS, A DISTRICT
13 ATTORNEY; YOU UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. THIS IS MR. KEVIN BRACKETT; HE'S MY DEPUTY
16 SOLICITOR. HAVE YOU EVER BEEN IN A SITUATION
17 LIKE THIS? I SAW YOU'VE BEEN ON JURY DUTY, BUT
18 HAVE YOU EVER BEEN IN A SITUATION WHERE YOU WERE
19 KIND OF INTERROGATED LIKE THIS?

20 A. NO, NO.

21 Q. YOU KIND OF FEEL LIKE YOU'RE ON TRIAL A LITTLE
22 BIT?

23 A. YES.

24 Q. OKAY, LET ME TELL YOU. I'M GOING TO GO THROUGH
25 SOME OF THE SAME THINGS MR. BOYD AND THE JUDGE

1 DID BUT ONE ADVANTAGE YOU HAVE IS THAT SHANNON
2 NELMES CAN'T GIVE A WRONG ANSWER. BECAUSE WHAT
3 WE'RE TRYING TO LEARN IS HOW YOU FEEL.

4 A. UH HUH.

5 Q. AND I'VE NOTICED THAT YOU'VE TAKEN TIME AND
6 THOUGHT ABOUT IT. I MEAN I ASSUME YOU HAVEN'T
7 SAT AROUND AND HAD TO THINK ABOUT THESE KIND OF
8 THINGS BEFORE AND BE INTERROGATED. WELL, YOU
9 TAKE AS MUCH TIME AS YOU NEED TO BECAUSE, AGAIN,
0 NOW IS THE OPPORTUNITY -- THE REASON WE DO THIS
1 IS BECAUSE IF YOU WERE SELECTED, ONCE YOU'RE IN
2 THE JURY BOX, IT'S TOO LATE TO GO, WAIT, I CAN'T
3 SIGN OR I COULDN'T DO THIS. THIS IS YOUR
4 CHANCE.

5 AND I KNOW IT'S HARD BECAUSE I MEAN YOU'VE GOT A
6 SHORT PERIOD OF TIME AND SUDDENLY YOU'RE HERE
7 SEARCHING YOUR SOUL AND HAVING TO GIVE AN
8 ANSWER. LIKE WHEN YOU SAID I GUESS I CAN'T SAY
9 PROBABLY NOT, I HAVE TO SAY YES OR NO. BUT EACH
0 TIME, YOU GIVE THE ANSWER THE BEST WAY YOU FEEL
1 THAT REPRESENTS YOU AND THEN I'LL ASK QUESTIONS
2 FROM THERE.

3 ONE THING, I WANTED TO GO BACK AT THE BEGINNING.
4 YOU HAD A NUMBER OF PEOPLE ON THE WITNESS LIST
5 THAT YOU KNEW.

1 A. UH HUH.

2 Q. AND, AGAIN, I WAS TRYING TO TAKE NOTES AND IF
3 I'VE WRITTEN THIS WRONG, YOU TELL ME. THE JUDGE
4 WAS ASKING ABOUT THE PEOPLE YOU KNEW. IT SOUNDS
5 LIKE PEOPLE IN YOUR PROFESSION ARE THE PEOPLE
6 THAT YOU KNEW AND WORKED WITH.

7 A. UH HUH.

8 Q. LET ME ASK YOU THIS, IF THEY TOOK THE STAND, THE
9 DIFFERENT ONES, AND I KNOW THERE'S A WHOLE LIST
10 OF DOCTORS AND EXPERTS AND PSYCHOLOGISTS AND
11 PSYCHIATRISTS, BECAUSE YOU KNOW THEM, WOULD YOU
12 TEND TO BELIEVE THEM MORE?

13 A. MORE THAN LIKELY.

14 Q. ONE OF THE REQUIREMENTS OF THE JURY, OF COURSE,
15 IS TO JUDGE THE CREDIBILITY OF WITNESSES. AND,
16 AGAIN, YOU KNOW, YOU JUDGE WHO YOU'RE GOING TO
17 BELIEVE AND WHO YOU'RE NOT GOING TO BELIEVE AND
18 ALL OF THAT. WHAT YOU'RE SAYING IS BASED ON
19 YOUR WORKING RELATIONSHIP WITH THEM AND ALREADY
20 KNOWING THEM YOU WOULD HAVE A MINDSET MORE
21 INCLINED TO BELIEVE THEM THAN SOMEBODY THAT YOU
22 DIDN'T KNOW AT ALL?

23 A. SURE.

24 Q. AND IT'S JUST BY THE NATURE OF YOU KNOWING THEM.
25 AND I THINK YOU KNEW, LET'S SEE, MAYBE ABOUT

1 SEVEN OR EIGHT, DOES THAT SOUND ABOUT RIGHT?

2 A. THAT SOUNDS ABOUT RIGHT.

3 Q. OKAY. AND YOU ALSO HAVE SAID TO THE JUDGE --
4 YOU KNOW, HE WAS ASKING YOU ABOUT THE MEDIA AND
5 THEN THAT'S WHEN YOU WERE EXPLAINING TO HIM
6 ABOUT BEING A-LICENSED COUNSELOR AND THAT, YOU
7 KNOW, YOU HAVE DIFFICULTY MAKING A FAIR JUDGMENT
8 BASED ON YOUR WORK AND WHAT YOU DO.

9 DO YOU FEEL STRONGLY ABOUT YOUR JOB AND WHAT YOU
0 DO?

1 A. SURE.

2 Q. AND YOU THINK THAT WOULD PRESENT SOME DIFFICULTY
3 AS FAR AS YOU BEING A JUROR?

4 A. YEAH.

5 Q. OKAY, OKAY. AND, AGAIN, LIKE I SAID, THERE IS
6 NO WRONG ANSWER, THIS IS JUST HOW YOU FEEL.
7 YOU HAD SAID, WHEN THE JUDGE WAS ASKING YOU
8 ABOUT THE MEDIA, YOU TALKED ABOUT YOUR JOB AND
9 STUFF AND SAID THAT YOU THOUGHT THAT WOULD
0 PRESENT SOME DIFFICULTY. AND THEN THE JUDGE
1 KIND OF BROUGHT YOU BACK AND SAID, WELL, LET'S
2 TALK ABOUT THE MEDIA STUFF.

3 A. UH HUH.

4 Q. AND I MIGHT HAVE WRITTEN THIS DOWN WRONG, BUT
5 DID YOU SAY, NO, YOU WOULD HAVE DIFFICULTY

1 SETTING IT ASIDE? YOU KNOW, IT WAS ONE OF THESE
2 LONG QUESTIONS THAT THE JUDGE ASKED YOU AND YOU
3 SAID NO, AND I JUST WANT TO MAKE SURE. THE
4 MEDIA, THE THINGS YOU'VE ALREADY HEARD ABOUT THE
5 CASE, WOULD YOU BE CARRYING THEM WITH YOU WHEN
6 YOU'RE IN THE JURY BOX?

7 A. PROBABLY.

8 Q. GIVE ME ONE SECOND PLEASE, MA'AM.

9 A. UH HUH.

10 Q. OKAY, YOU UNDERSTAND IN A TRIAL, AND LIKE I
11 SAID, IT'S TOUGH, WE'RE TALKING ABOUT ALL THESE
12 THINGS HAPPENING IN THE TRIAL. THE JUDGE WOULD
13 ALWAYS INSTRUCT YOU AS TO THE LAW. YOU KNOW,
14 IT'S NOT LIKE YOU HAVE TO TAKE A CLASS AT SCHOOL
15 BEFORE YOU COME AND BE READY TO BE A JUROR. THE
16 JUDGE WOULD INSTRUCT YOU. BUT ONE OF THE THINGS
17 IS, OBVIOUSLY, AND THAT'S WHY WE DO THIS, IS
18 PEOPLE HAVE TO COME IN LIKE A BLANK SLATE. AND,
19 YOU KNOW, SOME PEOPLE BECAUSE OF DEFERENT THINGS
20 COULD BE GOOD JURORS ON ONE TYPE OF CASE AND NOT
21 GOOD JURORS ON THE OTHER. YOU KNOW, IT VARIES.
22 SOME JURORS MAY HAVE HEARD A LOT OF THINGS, AND
23 SOME JURORS HEARD NONE. SOME COULD SET IT ASIDE
24 AND SOME COULD NOT.

25 A. UH HUH.

1 Q. WHAT YOU'RE TELLING ME SO FAR AS FAR AS THIS
2 CASE, THE FACT THAT YOU KNOW A LOT OF WITNESSES
3 MAY AFFECT YOU JUST FROM THE STANDPOINT OF
4 AUTOMATICALLY BELIEVING THEM MORE THAN YOU WOULD
5 SOMEBODY YOU DON'T KNOW?

6 A. UH HUH.

7 Q. AND AS FAR AS THE MEDIA, AGAIN, AND THIS IS YOUR
8 CHANCE AND YOU'VE BEEN SWORN TO BE HONEST, YOU
9 CAN'T SAY THAT YOU CAN SET ASIDE THE THINGS YOU
10 ALREADY KNOW ABOUT IT IN MAKING YOUR DECISION.
11 IS THAT RIGHT?

12 A. YEAH.

13 Q. OKAY. AND GOING DOWN TO YOUR JOB, YOU'RE A
14 LICENSED ASSOCIATE COUNSELOR, IS THAT CORRECT?

15 A. UH HUH.

16 Q. HOW LONG HAVE YOU BEEN PURSUING THIS CAREER?

17 A. AS FAR AS LICENSING IS CONCERNED, PROBABLY ABOUT
18 A YEAR. BUT I'VE BEEN IN THE PROFESSION FIVE.

19 Q. AND, AGAIN, YOU SAID YOU'RE PROUD OF YOUR
20 PROFESSION AND FEEL STRONG ABOUT YOUR
21 PROFESSION.

22 A. SURE, UH HUH.

23 Q. AND YOU THINK THAT WOULD MAKE IT DIFFICULT FOR
24 YOU TO BE A FAIR JUROR IN HEARING EVERYTHING?

25 A. WOULD YOU LIKE FOR ME TO ELABORATE?

1 Q. YES, MA'AM.

2 A. WELL, LIKE I SAID, I AM A COUNSELOR, I WORK WITH
3 PEOPLE ON A DAILY BASIS WITH PROBLEMS. I'M IN A
4 PROFESSION TO GIVE PEOPLE MANY, MANY CHANCES AND
5 TO REHABILITATE THEMSELVES, SO IT WOULD BE
6 DIFFICULT FOR ME TO, YOU KNOW, DROP JUDGMENT IN
7 A HEARTBEAT.

8 Q. TO MAKE A JUDGMENT?

9 A. YEAH.

10 Q. BECAUSE THAT'S NOT YOUR CHOSEN COURSE IN LIFE.

11 A. I'VE BEEN TRAINED TO DO THAT, YOU KNOW, AND IT'S
12 HARD TO CHANGE THAT.

13 Q. I GOT YOU. OKAY, WE WERE TALKING A LITTLE BIT
14 ABOUT THE DEATH PENALTY. AND WHEN WE GET TO THE
15 SECOND PHASE, AGAIN THE JUDGE WILL INSTRUCT YOU
16 ON THE LAW, BUT WHEN YOU GET TO THE SECOND PHASE
17 THE DEFENDANT WOULD HAVE ALREADY BEEN FOUND
18 GUILTY. OF COURSE, IF HE'S FOUND NOT GUILTY,
19 THAT'S THE END OF IT.

20 AS FAR AS THE GUILT PHASE, WE'VE ALREADY
21 DISCUSSED SOME ISSUES YOU WOULD HAVE AS FAR AS
22 THE GUILT PHASE.

23 NOW SAY YOU WERE ON THE JURY SOMEHOW AND WE GOT
24 TO THE PENALTY PHASE. NOW, THE TWO DECISIONS
25 ARE LIFE AND DEATH. AND, OF COURSE, YOU NEVER

1 HAVE TO DECIDE EITHER ONE, YOU HAVE TO SPEAK
2 YOUR CONSCIENCE, YOU KNOW, YOU HAVE TO DECIDE.
3 THERE WOULD BE EVIDENCE IN AGGRAVATION AND
4 EVIDENCE IN MITIGATION. AND, AGAIN, THE EASY
5 WAY OF DESCRIBING THAT, WE WOULD BRING FORTH THE
6 THINGS THAT SHOULD MAKE IT MORE LIKE A DEATH
7 PENALTY CASE, THE WORSE THINGS ABOUT THE CASE.
8 AND THE DEFENSE COULD, BUT THEY DON'T HAVE TO,
9 COULD BRING FORTH THE MITIGATION, THE THINGS
10 THAT WOULD EXPLAIN WHY THIS HAPPENED OR THINGS
11 OF THAT NATURE. AND YOU UNDERSTAND THOSE
12 THINGS?

13 A. I DO.

14 Q. AS I UNDERSTOOD, AND AGAIN I WROTE IT DOWN,
15 INITIALLY AS FAR AS VOTING FOR THE DEATH
16 PENALTY, YOU TOOK A LONG PAUSE AND YOU SAID YES
17 ULTIMATELY. IS THAT BASED ON JUST YOUR WHOLE
18 MAKE-UP AND YOUR WORK AND EVERYTHING, THE
19 DIFFICULTY IN VOTING FOR THE DEATH PENALTY?

20 A. UH HUH.

21 Q. OKAY. LET ME ASK YOU THIS, AND AGAIN THIS IS
22 SOMETHING I WANT YOU TO TAKE SOME THOUGHT. YOU
23 KNOW, WE DO IT AS LAWYERS AND WE'RE SAYING WORDS
24 AND SENTENCES, BUT THIS MEANS SOMETHING AND IT'S
25 SOMEBODY'S LIFE. YOU WOULD HEAR THE EVIDENCE IN

1 AGGRAVATION; YOU WOULD HEAR THE EVIDENCE IN
2 MITIGATION; YOU WOULD LISTEN TO EVERYTHING.
3 BASED ON ALL THE THINGS THAT WE'VE TALKED ABOUT,
4 YOU KNOW, YOUR JOB AND THE DIFFERENT THINGS,
5 COULD YOU TRULY CONSIDER GIVING THE DEATH
6 PENALTY TO SOMEONE AND TAKING THEIR LIFE?

7 A. I CAN'T SAY THAT I WOULD NOT CONSIDER IT BECAUSE
8 I COULD CONSIDER IT.

9 Q. COULD YOU EVER DO IT?
10 (AFTER A LONG PAUSE)

11 A. IT'S DOUBTFUL.

12 Q. AND YOU UNDERSTAND, AGAIN, WHEN WE'RE TALKING
13 ABOUT CONSIDERING THINGS, THE JUDGE IS NOT GOING
14 TO MAKE YOU CONSIDER EVERYTHING. YOU KNOW WHAT
15 I MEAN? YOU DECIDE WHAT'S IMPORTANT, YOU DECIDE
16 WHAT'S NOT. LIKE WHEN YOU WERE TALKING ABOUT THE
17 TWELVE JURORS, YOU SAID YOU KNEW THEY HAD TO BE
18 UNANIMOUS, BUT THEY ARE NOT GOING TO MAKE YOU BE
19 UNANIMOUS. YOU KNOW WHAT I'M SAYING? THEY ARE
20 NOT GOING TO MAKE YOU CONSIDER IT.

21 SO, WHAT YOU'RE TELLING ME, AND AGAIN YOU'RE
22 LOOKING INSIDE OF SHANNON, IS YOU COULDN'T GIVE
23 THE DEATH PENALTY TO SOMEBODY?

24 A. I DON'T FEEL LIKE I COULD.

25 Q. OKAY. LET ME TAKE IT TO THIS NEXT STEP AND I'M

1 GOING TO LEAVE YOU ALONE AFTER THIS. ONE OF THE
2 REQUIREMENTS, AND MR. BOYD KIND OF TOUCHED ON
3 IT, THE JURORS VOTE FOR LIFE, Y'ALL RAISE YOUR
4 HAND OR CHECK YES OR NO OR SOMETHING AND THE
5 FOREPERSON, THE DESIGNATED SPOKESMAN FOR THE
6 JURY, SIGNS A FORM AND SAYS WE GIVE LIFE.

7 IF THE VERDICT IS DEATH -- OF COURSE, YOU'VE
8 SAID YOU COULDN'T VOTE FOR DEATH, BUT IF YOU
9 VOTED FOR DEATH, YOU RAISED YOUR HAND, THEN EACH
10 INDIVIDUAL JUROR HAS TO SIGN THEIR NAME AND THE
11 JUDGE IS GOING TO DO WHAT YOU SAY; IF YOU SAY
12 LIFE, THEY'RE GOING TO DO LIFE; IF YOU SAY
13 DEATH, THEY'RE GOING TO DO DEATH. THERE ARE
14 ELEVEN SIGNATURES AND THE ONLY THING BETWEEN
15 THIS MAN GETTING DEATH IS SHANNON NELMES WRITING
16 SHANNON NELMES ON A FORM TO TAKE THIS MAN'S
17 LIFE. IT'S IMPORTANT THAT YOU TELL ME THIS NOW.

18 COULD YOU SIGN SHANNON NELMES TO TAKE THIS MAN'S
19 LIFE?

20 A. NO.

1 Q. AND YOU'RE SURE ABOUT THAT?

22 A. YES.

23 Q. THANK YOU MA'AM.

4 THE COURT: THE LAST ANSWER; I SAW YOU NOD YOUR
25 HEAD, BUT WHAT DID YOU SAY?

1 MR. POPE: SHE SAID NO, YOUR HONOR.

2 A. NO.

3 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE FOR
4 JUST A MINUTE.

5 THE JUROR: OKAY.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT SAYS THE DEFENSE?

8 MR. BOYD: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

9 THE COURT: WHAT SAYS THE STATE?

10 MR. POPE: YOUR HONOR, I SUBMIT THAT ON A NUMBER
11 OF FRONTS SHE'S NOT. SHE COULD NOT SET THE MEDIA ASIDE;
12 SHE WOULD JUDGE WITNESSES DIFFERENT BASED ON HER KNOWING
13 THEM; BASED ON HER FIELD, SHE WOULD HAVE DIFFICULTY
14 SERVING; AT ONE POINT SHE SAID SHE COULD CONSIDER IT, BUT
15 WHEN IT FINALLY CAME DOWN TO IT, SHE COULD NOT GIVE THE
16 DEATH PENALTY, SHE COULD NOT SIGN. AND BASED ON THE
17 TOTALITY, YOUR HONOR, I WOULD SUBMIT THAT SHE IS NOT
18 QUALIFIED.

19 THE COURT: WELL, I AGREE. I FIND THAT SHE IS NOT
20 QUALIFIED LOOKING AT THE TOTALITY OF HER ANSWERS AND
21 SPECIFICALLY LOOKING AT HER LAST ANSWER THAT SHE COULD NOT
22 SIGN THE DOCUMENT WHICH WOULD BE REQUIRED REGARDING THE
23 IMPOSITION OF THE DEATH PENALTY. I FIND THAT SHE IS NOT
24 QUALIFIED. HAVE HER COME BACK IN.

25 (THE JUROR RETURNED TO THE COURTROOM.)

1 THE COURT: YOU CAN JUST STOP RIGHT THERE, MS.
2 NELMES. WE APPRECIATE YOUR CANDOR AND YOUR TIME, BUT WE'RE
3 GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE. THANK YOU A
4 LOT.

5 THE JUROR: THANK YOU.
6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: BRING IN BESSIE GORDON.
8 BESSIE A. GORDON, JUROR NUMBER 96, BLACK FEMALE,
9 WAS QUESTIONED AS FOLLOWS:

10 QUESTIONS BY THE COURT:

11 Q. COME ON UP HERE AND HAVE A SEAT, MS. GORDON,
12 PLEASE. GOOD MORNING.

13 A. GOOD MORNING.

14 Q. MS. GORDON, I'M JOHN HAYES; I'M THE JUDGE WHO
15 HAS BEEN ASSIGNED TO PRESIDE OVER THE TRIAL OF
16 THIS CASE. YOU ARE STILL UNDER OATH FROM
17 YESTERDAY, FROM MONDAY ACTUALLY, IN REGARD TO
18 YOUR RESPONDING TO THESE QUESTIONS.

19 I WANT TO TELL YOU IN ADVANCE THAT IF YOU WERE
20 CHOSEN ON THIS JURY, YOU MAY SEE CAMERAS IN THE
21 COURTROOM OR PHOTOGRAPHERS. DON'T BE DISTRACTED
22 BY THEM BECAUSE THEY CANNOT TAKE YOUR PICTURE
23 AND THEY CAN'T REPORT ABOUT YOU. THEY ARE NOT
24 HERE TO DO THAT. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. NOW YOU HANDED UP A QUESTIONNAIRE EARLIER. IS
2 THAT QUESTIONNAIRE ACCURATE OR DO YOU NEED TO
3 MAKE ANY CHANGES TO IT?

4 A. THE ONE I ALREADY HAD?

5 Q. YES, IS IT CORRECT?

6 A. YES, SIR.

7 Q. DO YOU NEED TO MAKE ANY CHANGES TO IT?

8 A. NO, SIR.

9 Q. ALL RIGHT. THERE WERE A LISTS OF WITNESSES IN
10 THE JURY ROOM. DID YOU KNOW ANYBODY OR WERE YOU
11 RELATED TO ANYBODY BY BLOOD OR MARRIAGE ON THE
12 WITNESS LISTS?

13 A. NO, SIR.

14 Q. PRIOR TO YOUR ARRIVING MONDAY AND BEING TOLD WHO
15 THE DEFENDANT WAS AND WHAT THE CHARGES WERE, HAD
16 YOU HEARD ABOUT THIS CASE FROM ANY SOURCE
17 WHATSOEVER, READ ABOUT IT, TALKED ABOUT IT,
18 DISCUSSED IT OR FORMED ANY OPINION ABOUT IT?

19 A. NO, SIR.

20 Q. NOW IN THE JURY ROOM THERE WERE SET FORTH THREE
21 JUROR TYPES ON A SHEET OF PAPER. A CASE OF THIS
22 TYPE GOES THROUGH TWO STAGES. ONE DEALING WITH
23 WHETHER OR NOT MR. ROBERTSON IS FOUND TO BE
24 GUILTY OR NOT GUILTY.

25 IF HE IS FOUND NOT GUILTY, THE CASE WOULD END.

1 IF A JURY WERE TO UNANIMOUSLY FIND BEYOND A
2 REASONABLE DOUBT THAT HE WAS GUILTY OF MURDER,
3 THEN THE CASE WOULD MOVE INTO A SECOND PHASE
4 DEALING WITH WHAT PENALTY WOULD BE APPROPRIATE
5 TO BE IMPOSED FOR THE MURDER.

6 THIS SECOND PHASE, THE FACT THAT WE ARE
7 DISCUSSING IT, DOES NOT PRESUPPOSE THAT WE WOULD
8 GET THERE. WE WOULD ONLY GET THERE IF HE IS
9 FOUND GUILTY.

10 AND HE IS PRESUMED INNOCENT OF THE CHARGES
11 AGAINST HIM UNTIL A JURY FINDS HIM GUILTY. BUT
12 BECAUSE OF THE NATURE OF THE WAY THIS PROCEEDING
13 GOES, WE MUST DISCUSS THIS SORT OF SECOND PART
14 AT THIS TIME.

15 DID YOU REVIEW THE LIST THAT HAD THREE JUROR
16 TYPES ON IT?

17 A. I DON'T THINK SO.

18 Q. IN THE JURY ROOM THERE WAS THIS LIST THAT HAD
19 THESE THREE -- YOU'VE GOT IT IN YOUR HAND.

20 A. YES, SIR.

21 Q. DID YOU REVIEW IT?

22 A. YES, SIR.

23 Q. DID YOU FIND THAT YOU WERE ONE OF THOSE TYPES OF
24 JURORS?

25 A. YES, SIR.

1 Q. WHICH TYPE?

2 A. THE THIRD ONE.

3 Q. ALL RIGHT, THE THIRD ONE. LISTED IN THAT I USED
4 WORDS REGARDING CIRCUMSTANCES OF AGGRAVATION AND
5 MITIGATION.

6 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES
7 WHICH ATTEND OR ASSOCIATED WITH THE OFFENSE THAT
8 ADDS TO AND INCREASES ITS ENORMITY OR MAKES IT
9 MORE INJURIOUS; THAT IS, THINGS THAT GO ABOVE
10 AND BEYOND JUST THE SIMPLE ESSENTIAL ELEMENTS
11 CONSTITUTING THE CRIME.

12 MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE
13 THEY ARE NOT SUFFICIENT TO BE AN EXCUSE OR A
14 JUSTIFICATION FOR THE CRIME, THEY ARE THINGS
15 THAT IN FAIRNESS AND MERCY MAY BE CONSIDERED AS
16 EXTENUATING OR REDUCING THE DEGREE OF ONE'S
17 MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

18 A. UH HUH.

19 Q. THIS TYPE JUROR THAT YOU'RE TELLING ME YOU
20 BELIEVE YOU ARE IS THE TYPE THAT WOULD GO INTO
21 THAT SECOND PHASE WITHOUT THEIR MIND BEING MADE
22 UP AS TO WHAT WOULD BE THE PROPER PUNISHMENT.
23 IS THAT THE TYPE JUROR YOU ARE?

24 A. YES.

25 Q. AND THIS IS THE TYPE JUROR WHO WOULD WANT TO

1 HEAR ALL OF THE EVIDENCE THAT'S PRESENTED IN
2 AGGRAVATION AND MITIGATION, AND WOULD WANT TO
3 HAVE THE JUDGE CHARGE THE LAW TO YOU, AND YOU
4 WOULD WANT ALL THAT INFORMATION, THE EVIDENCE
5 AND THE LAW BEFORE YOU WOULD MAKE A
6 DETERMINATION AS TO WHAT WOULD BE THE
7 APPROPRIATE PUNISHMENT. IS THAT CORRECT?

8 A. UH HUH.

9 Q. IF YOU FELT THAT, BASED ON THE LAW AND THE
10 EVIDENCE, THAT THE APPROPRIATE PENALTY WOULD BE
11 LIFE IMPRISONMENT, WOULD YOU BE ABLE TO RETURN A
12 VERDICT OF LIFE IMPRISONMENT?

13 A. I WOULD RATHER IT BE LIFE IN PRISON.

14 Q. YOU WOULD BE ABLE TO RETURN A VERDICT OF LIFE
15 IMPRISONMENT, CORRECT?

16 A. YES.

17 Q. WOULD YOU, NOT WHAT YOU WOULD PREFER, BUT IF THE
18 EVIDENCE CONVINCED YOU THAT THIS WAS AN
19 APPROPRIATE CASE WHERE THE DEATH PENALTY WOULD
20 BE AN APPROPRIATE PENALTY, COULD YOU RETURN THE
21 DEATH PENALTY?

22 A. YES.

23 Q. OKAY. ALL RIGHT, ANSWER ANY QUESTIONS THAT THE
24 ATTORNEYS MAY HAVE.

25 QUESTIONS BY MR. BRACKETT:

1 Q. GOOD MORNING, MS. GORDON, HOW ARE YOU DOING
2 TODAY?

3 A. FINE.

4 Q. MY NAME IS KEVIN BRACKETT; I AM THE DEPUTY
5 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
6 OVER HERE AT COUNSEL TABLE WITH ME IS TOMMY
7 POPE. SOLICITOR POPE AND I ARE RESPONSIBLE FOR
8 PROSECUTING MR. JIMMY ROBERTSON WHO IS SEATED
9 OVER HERE AT COUNSEL TABLE WITH HIS TWO
10 ATTORNEYS.

11 THE JUDGE HAS ASKED YOU A NUMBER OF QUESTIONS
12 AND I KIND OF WANT TO GO THROUGH THAT A LITTLE
13 BIT AGAIN WITH YOU IN A LITTLE BIT MORE DETAIL
14 TO MAKE SURE YOU UNDERSTAND WHAT IT IS WE'RE
15 TALKING ABOUT HERE.

16 A. OKAY.

17 Q. BUT BEFORE I ASK YOU ANY QUESTIONS, I WANT TO
18 MAKE SURE THAT YOU UNDERSTAND THAT THIS ISN'T A
19 QUIZ, WE'RE NOT GOING TO GRADE YOU. WE'RE NOT
20 GOING TO GIVE YOU A SCORE DEPENDING ON HOW YOUR
21 ANSWERS ARE. THIS IS REALLY MORE ABOUT HOW MS.
22 BESSIE GORDON FEELS.

23 A. UH HUH.

24 Q. ABOUT THESE ISSUES.

25 A. UH HUH.

1 Q. AND YOU UNDERSTAND IT'S IMPORTANT FOR US TO DO
2 OUR JOB HERE TODAY AND IT'S IMPORTANT TO BE FAIR
3 TO THIS DEFENDANT THAT WE GET THE TRUE
4 REFLECTION OF HOW YOU FEEL.

5 A. UH HUH.

6 Q. NOW, YOU'VE NEVER BEEN ASKED THESE KIND OF
7 QUESTIONS LIKE THIS BEFORE?

8 A. UH UH.

9 Q. DO YOU KIND OF FEEL LIKE YOU'RE ON TRIAL HERE A
10 LITTLE BIT TODAY?

11 A. YES.

12 Q. WELL, YOU CAN RELAX BECAUSE ALL YOU NEED TO DO
13 IS TELL US THE TRUTH. THE ONLY WRONG ANSWER YOU
14 COULD GIVE IS ONE THAT'S NOT FROM YOUR HEART.
15 AS LONG AS YOU'RE SPEAKING FROM YOUR HEART,
16 YOU'RE GOING TO DO JUST FINE.

17 NOW, YOU UNDERSTAND THAT THIS TRIAL HAS TWO
18 PARTS?

19 A. UH HUH.

20 Q. THE FIRST PART OF THE TRIAL, WE'RE ONLY
21 INTERESTED IN WHETHER OR NOT THE DEFENDANT IS
22 GUILTY OF THE CRIMES OF MURDER, ARMED ROBBERY
23 AND FINANCIAL TRANSACTION CARD FRAUD. AND YOU
24 UNDERSTAND HE IS PRESUMED INNOCENT?

25 A. YES.

1 Q. AND YOU UNDERSTAND THAT HE COMES INTO THIS COURT
2 PRESUMED INNOCENT AND HE DOESN'T HAVE TO PROVE
3 ANYTHING. HE DOESN'T HAVE TO PROVE HE'S
4 INNOCENT, WE HAVE TO PROVE THAT HE'S GUILTY.
5 OKAY. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. OKAY. AND WHAT YOU'RE SAYING IS THAT IN THAT
8 FIRST PART OF THE TRIAL YOU COULD BE FAIR?
9 YOU'D LISTEN TO THE EVIDENCE?

10 A. UH HUH.

11 Q. YOU'D MAKE US PROVE THE CASE AND YOU WOULD
12 DECIDE WHETHER HE'S GUILTY OR NOT BASED ON THE
13 EVIDENCE IN THAT CASE.

14 A. YES, SIR.

15 Q. IS THAT RIGHT?

16 A. YES, SIR.

17 Q. NOW, IN THE FIRST PART OF THE CASE WE HAVE TO
18 PROVE EVERYTHING; THE DEFENSE DOESN'T HAVE TO
19 PROVE ANYTHING.

20 IF WE PROVE OUR CASE AND THE JURY FINDS THAT HE
21 IS GUILTY OF THESE MURDERS, WE GO INTO THE
22 SECOND PHASE OF THE TRIAL.

23 NOW, IN THE SECOND PHASE OF THE TRIAL WE ARE
24 CONCERNED ABOUT WHAT THE PENALTY IS GOING TO BE.

25 A. UH HUH.

1 Q. AND THERE ARE ONLY TWO CHOICES.

2 A. UH HUH.

3 Q. THERE'S A CHOICE OF LIFE AND THERE'S A CHOICE OF
4 DEATH. DO YOU UNDERSTAND WHAT THE TWO OPTIONS
5 ARE?

6 A. YES, SIR.

7 Q. OKAY. IN THAT SECOND PHASE IT'S JUST LIKE THE
8 FIRST PHASE, THE STATE, MR. POPE AND I, WE HAVE
9 TO PROVE OUR CASE. WE'RE THE ONES THAT ARE
10 RESPONSIBLE FOR PROVING THAT THERE ARE WHAT ARE
11 CALLED AGGRAVATING CIRCUMSTANCES WHICH MAKE THIS
12 MURDER WORSE THAN A REGULAR MURDER, IF THERE IS
13 SUCH A THING AS A REGULAR MURDER. MAKE IT WORSE
14 THAN A REGULAR MURDER.

15 THE DEFENSE, IF THEY CHOOSE TO, CAN PROVE WHAT
16 ARE CALLED MITIGATING CIRCUMSTANCES. DO YOU
17 KNOW WHAT THOSE ARE?

18 A. UH UH.

19 Q. OKAY. A MITIGATING CIRCUMSTANCE IS SOMETHING
20 THAT MAKES THE DEFENDANT'S INVOLVEMENT IN THE
21 CRIME LESS OR MAKES THE CRIME LESS SERIOUS. DO
22 YOU UNDERSTAND THAT?

23 A. UH HUH.

24 Q. THEY DON'T HAVE TO PUT ANYTHING UP BUT IF THEY
25 CHOOSE TO, COULD YOU CONSIDER WHAT THEY WOULD

1 PUT UP?

2 A. UH HUH.

3 Q. COULD YOU CONSIDER WHAT THE STATE WOULD PUT UP?

4 A. UH HUH.

5 Q. NOW, AFTER THE STATE PUTS ITS EVIDENCE UP IN
6 AGGRAVATION AND THE DEFENSE PUTS UP ANY EVIDENCE
7 THEY CHOOSE TO IN MITIGATION, THE JURY HAS TO
8 RETIRE AND DELIBERATE ON THAT. AND THEY HAVE TO
9 RETURN A VERDICT OF WHAT THE PENALTY SHOULD BE,
10 LIFE OR DEATH.

11 NOW, YOU'VE TOLD THE JUDGE THAT IF YOU THOUGHT
12 THAT THIS DEFENDANT SHOULD GET LIFE, LIFE IN
13 PRISON, THAT YOU COULD RETURN A VERDICT OF LIFE.
14 IS THAT CORRECT?

15 A. UH HUH.

16 Q. YOU WOULDN'T HAVE ANY PROBLEM DOING THAT?

17 A. UH UH.

18 Q. I BELIEVE YOU SAID, WHEN HE ASKED YOU, THAT YOU
19 WOULD RATHER IT BE LIFE IMPRISONMENT.

20 A. UH HUH.

21 Q. IS THAT CORRECT?

22 A. YEAH, I WOULD.

23 Q. IS THAT BECAUSE YOU DON'T CARE FOR THE DEATH
24 PENALTY?

25 A. I DON'T, UNLESS IT IS A REAL SERIOUS THING. I

1 BELIEVE THAT AT A YOUNG AGE LIKE THAT, I BELIEVE
2 FOR ME, NOW I'M SAYING FOR ME ---

3 Q. SURE, THAT'S WHAT WE NEED TO KNOW.

4 A. THAT IT WOULD BE BETTER FOR A YOUNGER PERSON TO
5 HAVE LIFE AT THAT AGE THAN IT WOULD AT MY AGE IF
6 I HAD DID SOMETHING THAT I KNOW IS WRONG, YOU
7 KNOW, IT CAN BE WRONG BUT I WOULD HAVE -- I
8 BELIEVE IT WOULD BE IN MY PART IT WOULD BE
9 BETTER TO LET HIM EXPERIENCE SOME THINGS THAT
10 HAVE HAPPENED IN HIS LIFE. IT WOULD GIVE HIM
11 TIME TO EXPERIENCE SOME THINGS THAT HAD HAPPENED
12 IN HIS LIFE OR HER LIFE, WHOEVER IT IS.

3 Q. SO, ARE YOU SAYING THAT SOMEBODY WHO IS HIS AGE,
4 YOU WOULD GIVE LIFE TO?

5 A. UH HUH.

6 Q. OKAY.

7 A. LIFE WITHOUT NO PROBATION.

8 Q. OKAY. AND WHAT YOU'RE SAYING IS, BASED ON HIS
9 AGE, YOU WOULD COME INTO THAT SECOND PART
0 AUTOMATICALLY GOING TO GIVE HIM LIFE?

1 A. UH HUH.

2 Q. AND BECAUSE HE'S YOUNG, YOU WOULDN'T BE WILLING
3 TO THINK ABOUT DEATH FOR HIM. I'M JUST TRYING
4 TO UNDERSTAND WHAT YOU'RE SAYING; I'M NOT TRYING
5 TO PUT WORDS IN YOUR MOUTH.

1 A. BECAUSE OF HIM BEING YOUNG, HE HAVEN'T
2 EXPERIENCED TOO MUCH IN LIFE, BUT I KNOW THAT HE
3 HAS MADE A BIG MISTAKE IN HIS LIFE.

4 Q. OKAY. SO, AM I CORRECT WHEN I SAY THAT BECAUSE
5 OF HIS YOUTH --

6 A. UH HUH.

7 Q. BECAUSE HE'S SO YOUNG, THAT YOU WOULD
8 AUTOMATICALLY GIVE HIM LIFE IN PRISON?

9 A. UH HUH.

10 Q. AND THAT YOU WOULD NOT THINK ABOUT GIVING HIM
11 DEATH?

12 A. NO.

13 Q. YOU COULD NOT GIVE HIM DEATH?

14 A. NO.

15 Q. AM I CORRECT IN UNDERSTANDING THAT NO MATTER
16 WHAT THE CIRCUMSTANCES OF THE CRIME, IT DOESN'T
17 MATTER WHAT HE DID, IT DOESN'T MATTER HOW BAD
18 THE CRIME IS, BECAUSE HE'S SO YOUNG, WE'VE GOT
19 TO GIVE HIM A CHANCE?

20 A. HE NEEDS A CHANCE TO REALLY GET HIS LIFE
21 TOGETHER OF WHAT HAVE HAPPENED IN HIS LIFE.

22 Q. OKAY. SO, YOU'RE SAYING THAT IT WOULDN'T BE
23 FAIR ---

24 A. AND THE PUNISHMENT TO EXECUTE HIM, IT IS NOT
25 GOING TO CHANGE WHAT HE DONE DID.

1 Q. YOU MEAN TO GIVE HIM THE DEATH PENALTY ISN'T
2 GOING TO BRING BACK THE VICTIMS?

3 A. NO, SIR.

4 Q. SO, TO GIVE HIM THE DEATH PENALTY, YOU DON'T SEE
5 ANY POINT IN IT RIGHT NOW?

6 A. NOT RIGHT NOW.

7 Q. AND YOU COULD NEVER CHANGE YOUR MIND BECAUSE
8 HE'S SO YOUNG?

9 A. I'M JUST SAYING I KNOW IT'S WRONG WHAT HE HAVE
10 DONE.

11 Q. SURE.

12 A. BUT I BELIEVE THAT HE NEEDS TO HAVE A CHANCE IN
13 HIS LIFE. I'M NOT SURE HE REALIZES WHAT'S
14 REALLY DONE HAPPENED BEFORE, BUT HE NEEDS A
15 CHANCE WHERE HE CAN SEE WHERE HE WAS WRONG.

16 Q. SURE. WHAT I'M TRYING TO UNDERSTAND -- YOU
17 DON'T KNOW ANYTHING ABOUT THIS CASE, DO YOU?

18 A. NO, I DON'T KNOW ANYTHING ABOUT IT.

19 Q. AND YOU DON'T KNOW ANYTHING ABOUT HIM YET, DO
20 YOU?

21 A. NO, NO.

22 Q. OR WHAT HE'S ACCUSED OF DOING, IS THAT RIGHT?

23 A. I KNOW WHAT HE'S ACCUSED OF DOING, BUT I'M JUST
24 SAYING, YOU KNOW, ANY TIME SOMETHING IS WRONG,
25 IF IT'S A SIN, IT'S STILL WRONG. NO MATTER WHAT

1 IT IS, IT'S JUST WRONG.

2 Q. WHEN YOU SAY YOU KNOW WHAT HE IS ACCUSED OF
3 DOING, HAVE YOU COME TO A CONCLUSION OF WHETHER
4 HE'S GUILTY OR NOT?

5 A. NOT AT THE POINT RIGHT NOW, BUT IN MY MIND I
6 FEEL LIKE HE NEEDS A CHANCE TO UNDERSTAND HIS
7 LIFE SPIRITUAL, PHYSICAL AND ALL TOGETHER.
8 SOMETIMES WHEN YOU DO SOMETHING WRONG, YOU DON'T
9 BE AT THE POINT OF UNDERSTANDING RIGHT THEN.
10 IT'S SOMETHING YOU'RE AFTER OR YOU WANT.

11 Q. OKAY. BUT IF YOU'RE SAYING THAT HE NEEDS THIS
12 SPIRITUAL CHANGE, THEN HAVE YOU COME TO THE
13 CONCLUSION THAT HE HAS DONE SOMETHING WRONG AND
14 HE NEEDS THIS SPIRITUAL CHANGE ---

15 A. IN HIS LIFE.

16 Q. IN HIS LIFE TO CORRECT WHAT HE'S DONE WRONG?

17 A. UH HUH.

18 Q. AND YOU'VE GOT A BELIEF THAT HE'S DONE SOMETHING
19 WRONG?

20 A. UH HUH, I BELIEVE HE'S DONE SOMETHING WRONG.

21 Q. OKAY, SO YOU WOULD COME INTO THIS TRIAL
22 BELIEVING THAT; IS THAT RIGHT?

23 A. YES, I BELIEVE THAT.

24 Q. OKAY. NOW, YOU UNDERSTAND WHEN WE'RE TALKING
25 ABOUT WHAT PENALTY HE'S GOING TO GET, WE'RE ONLY

1 TALKING ABOUT THAT IF HE'S CONVICTED.

2 A. UH HUH.

3 Q. WE'VE GOT TO ASSUME FOR THE SAKE OF OUR
4 DISCUSSION, THAT HE'S BEEN CONVICTED.

5 A. UH HUH.

6 Q. BUT HE HASN'T BEEN CONVICTED YET.

7 A. UH HUH.

8 Q. OKAY. BUT ASSUME THAT HE IS, AND I NEED TO
9 UNDERSTAND BECAUSE YOU HAVE GIVEN SOME LENGTHY
10 ANSWERS BUT I WANT TO MAKE SURE THAT I
11 UNDERSTAND IN A YES OR NO, AND THEN YOU CAN
12 EXPLAIN AGAIN IF YOU WANT TO.

13 IF HE'S CONVICTED, YOU'RE SAYING THAT BECAUSE OF
14 HIS AGE AND YOUR FEELING THAT HE NEEDS SOME
15 SPIRITUAL CHANGE IN HIS LIFE THAT YOU COULD
16 NEVER GIVE THIS MAN DEATH BECAUSE HE'S SO YOUNG.

17 A. NO, I'M NOT GOING BY THE AGE. I DON'T THINK AGE
18 MATTERS. YOU KNOW, OF BEING CONVICTED OF DOING
19 SOMETHING WRONG, BUT I WAS JUST SAYING THAT AT
20 HIS AGE, YOU KNOW, AT A YOUNG AGE LIKE THAT I
21 DIDN'T KNOW IF HE HAD REALIZED REALLY IN HISSELF
22 WHAT HE REALLY HAD DONE. YOU SEE?

23 Q. OKAY.

24 A. AND I CAN'T GO OVER THE LAWS OF THE STATE THAT
25 IF IT COME TO A CONCLUSION OF BEING THE DEATH

1 PENALTY, I COULD GO ALONG WITH THAT.

2 Q. YOU COULD GO ALONG WITH ---

3 A. I CAN GO ALONG WITH THAT, IF THAT'S WHAT THEY
4 AGREE TO DO.

5 Q. BUT WE'RE ASKING WHETHER YOU WOULD AGREE TO DO
6 THAT BECAUSE YOU UNDERSTAND THIS IS NOT ANYBODY
7 ELSE'S DECISION.

8 A. UH HUH.

9 Q. THIS WOULD BE MS. BESSIE GORDON'S DECISION.

10 A. UH HUH.

11 Q. AND THAT'S WHAT WE KIND OF NEED TO KNOW RIGHT
12 NOW.

13 A. UH HUH.

14 Q. IF YOU WERE THE ONLY JUROR ---

15 A. UH HUH.

16 Q. --- COULD YOU GIVE DEATH. IF THERE WASN'T
17 ANYBODY ELSE TO ASK. THE JUDGE IS NOT GOING TO
18 TELL YOU; I'M NOT GOING TO TELL YOU. AFTER YOU
19 HEAR EVERYTHING ABOUT THE CASE COULD MS. BESSIE
20 GORDON SEND THIS MAN TO DEATH?

21 A. IF I GOT ALL THE EVIDENCE AND KNOW THAT IT WAS
22 WRONG ---

23 MR. HANCOCK: YOUR HONOR, I HAVEN'T OBJECTED THE
24 WHOLE TIME, BUT HE IS PRESUPPOSING SOMETHING THAT IS NOT
25 WITHIN THE LAW. HE'S PRESUPPOSING THERE IS NO JURY ---

1 THE COURT: I OVERRULE YOUR OBJECTION.

2 Q. YOU UNDERSTAND THIS IS ABOUT WHAT MS. BESSIE
3 GORDON WOULD DO, NOT ABOUT WHAT ANYBODY ELSE IS
4 GOING TO DO. WE NEED TO KNOW HOW YOU FEEL. DO
5 YOU UNDERSTAND? AND I'M NOT TRYING TO CONFUSE
6 YOU, I'M JUST TRYING TO MAKE SURE I KNOW HOW YOU
7 FEEL.

8 A. I WAS JUST SAYING IF THE LAW -- NOW I KNOW WE
9 HAVE TO GO BY THE LAW. AND IF THEY AGREE TO LET
10 HIM BE EXECUTED, THEN IT WOULD HAVE TO BE. I
11 WOULDN'T HAVE THE PRIVILEGE TO TURN THAT DOWN.

12 Q. THEY BEING WHO?

13 A. THE JURY. SEE, IF THEY SAY IT WOULD HAVE TO BE
14 THE DEATH PENALTY, I CAN'T CHANGE THAT.

15 Q. BUT WHAT IF THEY ALL LOOKED AT YOU AND SAID, MS.
16 BESSIE GORDON, WE WANT YOU TO DECIDE. WHAT I'M
17 TRYING TO FIND OUT IS WHAT YOU THINK. NOT WHAT
18 YOU WOULD DO IF OTHER PEOPLE TOLD YOU TO DO IT,
19 BUT WHAT YOU WOULD DO IF IT WAS JUST ---

20 MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT
21 AGAIN. THIS IS PUTTING UNNECESSARY PRESSURE ON HER. HE'S
22 TRYING TO TELL HER THAT SHE'S THE ONLY JUROR THAT'S GOING
23 TO DECIDE LIFE OR DEATH AND ---

24 THE COURT: JUST REPHRASE THE QUESTION. I THINK
25 IT PROBABLY COULD BE BETTER PRESENTED.

1 Q. YES, SIR. YOU KEEP SAYING IF THEY TELL YOU TO
2 VOTE FOR DEATH AND THE LAW SAID YOU HAD TO VOTE
3 FOR DEATH. OKAY. I WANT YOU TO ASSUME FOR THIS
4 QUESTION THAT NOBODY IS TELLING YOU ANYTHING,
5 AND THE LAW DOESN'T TELL YOU YOU HAVE TO DO
6 ANYTHING. DO YOU UNDERSTAND?

7 A. UH HUH.

8 Q. I WANT TO KNOW WHETHER YOU IN YOUR OWN MIND BY
9 YOURSELF COULD EVER SEND SOMEBODY TO DEATH.

10 (AFTER A PAUSE.)

11 MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT
12 AGAIN. THAT'S NOT EVEN ONE OF THE CHOICES.

13 THE COURT: MS. GORDON, I HATE TO INTERRUPT. I'M
14 GOING TO LET THE LAWYER ASK YOU SOME MORE QUESTIONS BUT
15 BASICALLY WHAT WE WANT TO KNOW AND WHAT WE ARE ASKING IS IF
16 THE CASE WARRANTED, THAT IS AFTER YOU HEARD ALL OF THE
17 EVIDENCE ---

18 A. UH HUH, UH HUH.

19 THE COURT: COULD YOU RETURN, IF YOU FELT THE
20 CASE WAS SUCH THAT YOU FELT THE DEATH PENALTY WAS THE
21 APPROPRIATE PENALTY, COULD YOU IMPOSE THE DEATH PENALTY?
22 (AFTER A LONG PAUSE.)

23 A. I BELIEVE I COULD AFTER ALL THE EVIDENCE WAS IN
24 AND I KNOWED THEY WAS TRUE, AND ALL THE PANEL
25 AGREED ON IT, I BELIEVE IF I FELT WITHIN MYSELF

1 IT WAS RIGHT, I COULD.

2 THE COURT: IF YOU IN YOUR MIND FELT THAT IT WAS
3 NOT APPROPRIATE, THAT LIFE WAS THE APPROPRIATE PENALTY AND
4 ALL THE ELEVEN OTHERS WANTED, UNDER THE FACTS, TO IMPOSE
5 THE DEATH PENALTY, WOULD YOU SORT OF ROLL OVER AND GO ALONG
6 JUST TO BE A PART OF THE GROUP OR WOULD YOU STICK TO YOUR
7 DECISION?

8 A. I WOULD STICK TO MY OPINION.

9 THE COURT: ALL RIGHT, YOU MAY GO FURTHER.

10 Q. THANK YOU, YOUR HONOR. MS. GORDON, ONE OF THE
11 REQUIREMENTS -- YOU'VE SERVED ON A JURY BEFORE I
12 SAW IN YOUR QUESTIONNAIRE; IS THAT RIGHT?

13 A. YES.

14 Q. AND YOU KIND OF KNOW HOW IT WORKS. AFTER ALL
15 THE EVIDENCE COMES IN, THE JURY WILL GO BACK TO
16 ANOTHER LITTLE ROOM AND THEY ALL SIT AND TALK
17 ABOUT IT AMONGST THEMSELVES AND DECIDE WHAT THE
18 VERDICT IS GOING TO BE.

19 A. UH HUH.

20 Q. ONE OF THE REQUIREMENTS IN THE CASE THAT YOU
21 WERE IN IS THAT AFTER THEY COME TO A VERDICT,
22 THE FOREPERSON -- WERE YOU THE FOREPERSON ON
23 YOUR JURY?

24 A. UH HUH.

25 Q. YOU WERE? OKAY, THEN YOU KNOW YOU HAD TO SIGN

1 YOUR NAME AND WRITE OUT WHAT THE VERDICT WAS,
2 GUILTY OR NOT GUILTY, AND YOU HAD TO SIGN BESSIE
3 GORDON.

4 A. UH HUH.

5 Q. IF THE VERDICT OF THE JURY IS THAT HE SHOULD
6 ONLY GO TO JAIL FOR LIFE IN PRISON, THEN ONLY
7 THE FOREPERSON HAS TO SIGN, LIKE THE JURY YOU
8 WERE ON BEFORE.

9 A. UH HUH.

10 Q. BUT IT'S A LITTLE BIT DIFFERENT IF THE JURY
11 DECIDES THAT THE VERDICT IS DEATH, THEN EACH AND
12 EVERY JUROR HAS TO SIGN THEIR NAME TO THE
13 SENTENCING SHEET.

14 A. UH HUH.

15 Q. SO, IF YOU ARE ON THE JURY AND THE OTHER ELEVEN
16 JURORS HAVE ALREADY SIGNED THEIR NAME ON THAT
17 SENTENCING SHEET AND THE LAST NAME NEEDED TO
18 SEND JIMMY ROBERTSON TO HIS DEATH IS THE
19 SIGNATURE OF MS. BESSIE GORDON, COULD YOU TAKE
20 THE PEN IN YOUR HAND AND SIGN YOUR NAME TO THAT
21 SHEET SENDING HIM TO HIS DEATH?

22 (AFTER A LONG PAUSE.)

23 A. I DON'T KNOW.

24 Q. I UNDERSTAND IT'S A DIFFICULT QUESTION.

25 A. THAT'S VERY HARD FOR ME.

1 Q. YES, MA'AM. BUT YOU UNDERSTAND WE HAVE A JOB TO
2 DO ---

3 A. I UNDERSTAND THAT.

4 Q. WE NEED AN ANSWER UNFORTUNATELY.

5 (AFTER A LONG PAUSE.)

6 A. THIS IS A REAL HARD QUESTION FOR ME TO ANSWER ON
7 THIS. I UNDERSTAND THAT SOME THINGS HAVE TO BE
8 DONE.

9 (THERE WAS ANOTHER LONG PAUSE.)

10 A. ARE YOU SAYING IT CAN'T BE DONE WITHOUT IT WOULD
11 HAVE TO BE SIGNED?

12 Q. YES, MA'AM.

13 A. OKAY. IT'S VERY HARD.

14 Q. YOU UNDERSTAND WE NEED TO KNOW NOW BEFORE YOU'RE
15 IN THE JURY BOX BECAUSE ONCE YOU'RE IN THERE
16 IT'S TOO LATE; WHEN THE PEN IS IN YOUR HAND,
17 IT'S TOO LATE TO DECIDE THAT THIS AIN'T FOR
18 BESSIE GORDON.

19 A. I DON'T THINK IT'S FOR ME.

20 Q. OKAY. YOU DON'T THINK THAT YOU COULD SIGN ---

1 A. NO, I DON'T BELIEVE THIS WOULD WORK FOR ME.

2 Q. YOU DON'T THINK YOU COULD SIGN YOUR NAME?

3 A. NO, I DON'T BELIEVE SO.

4 Q. NO MATTER WHAT THE CIRCUMSTANCES?

5 A. NO.

- 1 Q. I JUST HAVE A COUPLE OF MORE QUESTIONS FOR YOU,
2 MA'AM. YOU SAID ON YOUR QUESTIONNAIRE THAT YOU
3 LIVE OVER ON BERNSDALE ROAD?
- 4 A. YES.
- 5 Q. ARE YOU RELATED TO MONTE GORDON?
- 6 A. YES.
- 7 Q. YOU ARE RELATED TO MONTE GORDON. AND ARE YOU
8 AWARE OF WHERE HE IS NOW?
- 9 A. YES.
- 10 Q. WHERE IS HE LOCATED?
- 11 A. HE'S IN PRISON.
- 12 Q. IS HE IN PRISON OR IS HE IN THE COUNTY JAIL
13 HERE? HAS HE BEEN TRIED YET?
- 14 A. NOT AS I KNOWS OF.
- 15 Q. AND HE'S CHARGED WITH MURDER AS WELL, IS HE NOT?
- 16 A. UH HUH.
- 17 Q. HOW ARE YOU RELATED TO HIM?
- 18 A. HIS AUNT.
- 19 Q. YOU'RE MONTE'S AUNT?
- 20 A. UH HUH.
- 21 Q. AND YOU KNOW HE'S ALSO CHARGED WITH MURDER?
- 22 A. UH HUH.
- 23 Q. AND THAT THAT'S A POTENTIAL DEATH PENALTY CASE?
- 24 A. UH HUH.
- 25 Q. DO YOU THINK THAT THAT WOULD AFFECT YOUR ABILITY

1 TO BE A FAIR JUROR IN THIS CASE?

2 A. YES.

3 Q. YOU DO? OKAY. MS. GORDON, I WAS ASKING YOU
4 ABOUT THE SIGNATURE. YOU UNDERSTAND YOU NEVER
5 HAVE TO SIGN THAT, YOU'RE JUST TELLING US HOW
6 YOU FEEL AND YOU'RE SAYING YOU COULD NOT SIGN
7 THAT FORM?

8 A. NO, I WOULD NOT SIGN IT.

9 Q. HAS MONTE'S CASE BEEN WEIGHING ON YOU WHILE
10 YOU'VE BEEN THINKING ABOUT THIS?

11 A. NO, IT HASN'T BEEN. IT'S JUST SOME THINGS ABOUT
12 IT THOUGH.

13 Q. THANK YOU VERY MUCH.

14 QUESTIONS BY MR. HANCOCK:

15 Q. MS. GORDON, I UNDERSTAND THAT THIS IS VERY
16 DIFFICULT FOR YOU. THIS IS NOT A USUAL
17 SITUATION THAT YOU'VE BEEN THRUST INTO IT. I'M
18 BILL HANCOCK; I'M THE ATTORNEY FOR JIMMY
19 ROBERTSON SITTING RIGHT HERE. THAT'S WHAT ALL
20 OF THIS IS ABOUT, THAT'S WHAT WE ARE TALKING
21 ABOUT. WE'RE TALKING ABOUT JIMMY, NOT ANYBODY
22 ELSE.

23 A. UH HUH.

24 Q. THIS IS MR. BOYD, HE'S CO-COUNSEL.

25 A. UH HUH.

1 Q. I HAVE LISTENED TO YOUR ANSWERS AND I'M JUST
2 GOING TO TRY TO CLARIFY A FEW OF THEM AND THEN
3 WE'RE GOING TO FINISH THIS PROCESS, ALL RIGHT?
4 AND I'M JUST ASKING FOR AN ANSWER THAT SPEAKS
5 THE TRUTH AND THAT YOU TELL THE TRUTH ON THESE
6 AND AS YOU FEEL. OKAY? JUST YOUR HEARTFELT
7 OPINION.

8 IF I UNDERSTAND YOUR ANSWERS CORRECTLY, YOU HAVE
9 INDICATED THAT YOU COULD CONSIDER THE DEATH
10 PENALTY ON SOMEONE THAT HAD BEEN CONVICTED OF
11 THE CRIME OF MURDER. IS THAT A CORRECT
12 STATEMENT?

13 A. UH HUH.

14 Q. IT IS? AND YOU HAVE INDICATED, AND I DON'T KNOW
15 WHETHER IT'S BEEN EXPLAINED TO YOU, THAT THE
16 STATE COULD PROVE CIRCUMSTANCES THAT WENT BEYOND
17 JUST THE MURDER. AND YOU KNOW HE IS ACCUSED OF
18 MURDERING HIS PARENTS. THAT IT COULD GO BEYOND
19 JUST THE COMMISSION OF THAT MURDER INTO WHAT
20 THEY CALL AGGRAVATING CIRCUMSTANCES WHICH MAKE
21 THE CRIME EVEN WORSE.

22 AND SHOULD YOU BE SITTING ON THE JURY, YOU WOULD
23 BE EXPOSED TO THOSE AGGRAVATING CIRCUMSTANCES
24 AND THE STATE WOULD ASK YOU TO USE THOSE IN
25 ORDER THAT THE DEATH PENALTY BE IMPOSED ON JIMMY

1 ROBERTSON SITTING RIGHT HERE.

2 A. UH HUH.

3 Q. YOU UNDERSTAND THAT?

4 A. UH HUH.

5 Q. AND THE STATE HAS ASKED YOU THAT SHOULD YOU FIND
6 -- THE WAY THIS GOES IS YOU'RE ON THE JURY,
7 YOU'VE GOT TWELVE PEOPLE HERE AND YOU'RE ONE OF
8 THOSE TWELVE.

9 A. UH HUH.

10 Q. YOU HAVE THE OPPORTUNITY FOR ALL THE EVIDENCE
11 AND ALL THE CIRCUMSTANCES THAT MAKE THE CRIME
12 WORSE TO HAVE BEEN PUT BEFORE YOU. ALL RIGHT?

13 A. UH HUH.

14 Q. AND AFTER THAT IS OVER, YOU GO INTO THE JURY
15 ROOM AND YOU HAVE ONLY TWO DECISIONS AND YOU AND
16 THE OTHER ELEVEN PEOPLE HAVE TO ARRIVE AT ONE OF
17 TWO DECISIONS. EITHER JIMMY ROBERTSON WHO SITS
18 HERE GETS DEATH OR JIMMY ROBERTSON GETS LIFE IN
19 JAIL.

20 A. UH HUH.

21 Q. NOW NOT ONLY COULD -- AND IN CONSIDERING THAT,
22 COULD YOU -- AND YOU SAID IF THIS CRIME IS BAD
23 ENOUGH, I'VE LISTENED TO ALL OF THE EVIDENCE IN
24 AGGRAVATION AND MITIGATION, I'VE LISTENED TO ALL
25 OF THE EVIDENCE WITH THESE ELEVEN PEOPLE AND IF

1 YOU FELT THAT IT WAS BAD ENOUGH, THEN YOU WOULD
2 HAVE TO SAY -I THINK HE SHOULD HAVE THE DEATH
3 PENALTY BECAUSE ---

4 MR. BRACKETT: OBJECTION, YOUR HONOR; SHE NEVER
5 HAS TO DO THAT. HE IS IMPLYING THAT SHE HAS TO.

6 THE COURT: NO, I DISAGREE. THE QUESTION WAS IF
7 SHE DETERMINED THAT BASED ON THE EVIDENCE. I OVERRULE THE
8 OBJECTION.

9 Q. AND IF YOU DETERMINED ALL THE FACTORS WERE BAD
10 ENOUGH AND THE STATE HAD CONVINCED YOU OF THEIR
11 CASE ---

12 A. UH HUH.

13 Q. --- AND DONE SO BEYOND ANY REASONABLE DOUBT IN
14 YOUR MIND, THEN YOU WOULD HAVE THE OPPORTUNITY
15 OR THE BURDEN OF INDICATING THAT JIMMY ROBERTSON
16 SHOULD RECEIVE THE DEATH PENALTY. COULD YOU
17 VOTE FOR THAT DEATH PENALTY?

18 A. YES, AFTER I FOUND OUT ALL OF IT WAS CORRECT AND
19 I DECIDED IN MY OWN MIND THAT I BELIEVED IT WAS
20 THE RIGHT THING TO DO, I COULD DO IT.

21 Q. YES, MA'AM. NOW, WHAT THE SOLICITOR ASKED AND I
22 JUST WANT US TO BE ABLE TO UNDERSTAND THAT, AT
23 THAT POINT IN TIME THEN IF YOU WERE THE FORELADY
24 OF THE JURY OR SOMEONE ELSE WAS THE FOREPERSON
25 OF THE JURY, THEN THEY WOULD PASS AROUND A SHEET

1 OF PAPER WHICH WOULD CONFIRM YOUR VOTE OF THE
2 DEATH PENALTY AND YOU WOULD HAVE TO SIGN THAT
3 BESSIE L. GORDON, AND THAT WOULD CONFIRM TO ALL
4 INVOLVED THAT YOU HAD DECIDED THAT MR. ROBERTSON
5 SHOULD GET THE DEATH PENALTY. AND THAT'S WHAT
6 WE'RE SAYING. WOULD YOU SIGN THAT SHEET TO
7 CONFIRM WHAT YOU HAD ALREADY ARRIVED AT?

8 A. IT'S COMING TO THE POINT AGAIN.

9 Q. YES, MA'AM, I'M JUST TRYING TO ---

0 A. I JUST WANT TO ASK YOU -- I DON'T KNOW IF I
1 SHOULD ASK THAT QUESTION THOUGH.

2 Q. YES, MA'AM.

3 A. YOU'RE TELLING ME THE JURY, THEY'RE THE ONES
4 THAT HAVE TO BE THE ONES TO SIGN THE PAPER?

5 Q. YES, MA'AM, EACH JUROR. IN ORDER FOR MR.
6 ROBERTSON TO BE CONVICTED OF THE DEATH PENALTY
7 AND BE SENTENCED TO DEATH, THEN EACH OF THE
8 TWELVE MEMBERS OF THE JURY THAT WERE SEATED TO
9 HEAR HIS CASE WOULD HAVE TO SIGN A SHEET OF
0 PAPER -- THEY WOULD HAVE TO, ONE, VOTE THAT WE
1 FIND THAT THE AGGRAVATING CIRCUMSTANCES ARE
2 SUCH, AFTER CONSIDERING ALL OTHER CIRCUMSTANCES,
3 THAT HE WILL RECEIVE THE DEATH PENALTY. AND ALL
4 TWELVE HAVE TO AGREE. AFTER THEY AGREE, THEN IT
5 IS NECESSARY FOR THEM TO HAND TO THE CLERK AND

1 TO THE JUDGE A PIECE OF PAPER THAT HAS THEIR
2 SIGNATURE ON IT THAT SAYS THIS IS WHAT WE HAVE
3 DECIDED. COULD YOU SIGN THAT PIECE OF PAPER IF
4 IN FACT YOU HAD DECIDED THAT JIMMY WAS TO GET
5 THE DEATH PENALTY?

6 (AFTER A PAUSE.)

7 A. I DON'T KNOW RIGHT NOW. I CAN'T SAY IT RIGHT
8 NOW.

9 Q. AND I'M NOT BROW BEATING YOU PLEASE, MA'AM, I'M
10 JUST TRYING TO UNDERSTAND BECAUSE WE KNOW WHAT
11 YOUR DUTIES ARE AND YOUR DUTIES ARE VERY, VERY
12 DIFFICULT. A DEATH PENALTY CASE IS VERY
13 UNUSUAL. BUT IF YOU COULD ANSWER MY QUESTION
14 EITHER YES OR NO I WOULD APPRECIATE IT.

15 (AFTER A LONG PAUSE.)

16 A. I JUST CAN'T ANSWER RIGHT NOW.

17 Q. COULD I POSE IT TO YOU ONE MORE TIME. THAT YOU
18 WOULD HAVE TO IN ORDER TO IMPOSE THE DEATH
19 PENALTY, IT WOULD BE PRESENTED TO YOU ---

20 A. WHY ME?

21 Q. BECAUSE YOU WOULD BE ONE OF THE TWELVE JURORS TO
22 DECIDE JIMMY'S FATE. YOU WOULD BE ONE OF THE
23 TWELVE PEOPLE TO DECIDE HIS FATE AND IF YOU HAD
24 DECIDED THAT HE SHOULD RECEIVE THE DEATH
25 PENALTY, IN ORDER TO CONFIRM THAT JUDGMENT

1 YOUR'S AND ELEVEN OTHER PEOPLE, YOU WOULD HAVE
2 TO SIGN A PIECE OF PAPER THAT WOULD BE PRESENTED
3 TO THE COURT AND ON THAT PIECE OF PAPER YOU
4 WOULD HAVE TO SIGN YOUR NAME BESSIE GORDON THAT
5 YOU AGREE THAT THE PROPER VERDICT IN THIS CASE
6 WAS DEATH FOR JIMMY ROBERTSON. AND ALL I'M
7 ASKING, MA'AM, AND I KNOW IT'S DIFFICULT, THAT
8 YOU INDICATE WHETHER YOU COULD SIGN IT OR YOU
9 COULD NOT SIGN IT IN ALL DUE CONSCIENCE AND ALL
10 DUE DELIBERATION.

1 A. I DON'T KNOW THAT I COULD SIGN IT.

2 Q. MA'AM?

3 (AFTER A PAUSE.)

4 A. I REALIZE THAT THIS IS A BIG RESPONSIBILITY BUT
5 I DON'T KNOW IF I CAN DO THAT. IT SEEMS TOO
6 MUCH FOR ME.

7 Q. I HAVE NO FURTHER QUESTIONS.

8 THE COURT: MS. GORDON, THANK YOU AN AWFUL LOT.
9 IF YOU WILL JUST STEP OUTSIDE THE DOOR JUST FOR A MINUTE.
10 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE STATE?

2 MR. BRACKETT: YOUR HONOR, I SUBMIT SHE'S NOT
3 QUALIFIED AND TO GET PAST THAT ISSUE, ON A NUMBER OF OTHER
4 ISSUES.

5 THE COURT: WHAT SAYS THE DEFENSE?

1 MR. HANCOCK: YOUR HONOR, AS I LISTENED HER
2 ANSWERS BECAME EQUIVOCAL, I DON'T THINK IT'S MY
3 RESPONSIBILITY, I DON'T THINK I COULD. SHE NEVER SAID SHE
4 COULD. I DEFER TO THE COURT, YOUR HONOR.

5 THE COURT: I FIND SHE'S NOT QUALIFIED. SHE
6 FINALLY JUST SAID THAT THAT WOULD BE TOO MUCH FOR ME TO
7 CONFIRM THE DEATH PENALTY VOTE, ALTHOUGH I DID BELIEVE THAT
8 SHE COULD VOTE FOR IT. BUT I THINK SHE WOULD NOT BE ABLE
9 TO FOLLOW THE INSTRUCTIONS OF THE LAW AND WOULD NOT BE ABLE
10 TO SIGN IT.

11 ALL RIGHT, BEFORE WE GET TO THE NEXT ONE, WE'RE
12 RUNNING REAL BEHIND ---

13 THE BAILIFF: YOUR HONOR, DO YOU WANT TO EXCUSE
14 HER?

15 THE COURT: OH, YES, I'M SORRY. BRING HER BACK
16 IN.

17 (THE JUROR RETURNED TO THE COURTROOM.)

18 THE COURT: MS. GORDON, WE APPRECIATE YOUR TIME;
19 WE'RE GOING TO EXCUSE YOU. THANK YOU AN AWFUL LOT.

20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: WE'VE STILL GOT TWO ON THIS ONE;
22 WE'VE GOT A PANEL COMING IN AT 10:30 AND WE'VE GOT ONE
23 COMING IN AT 12:00. WE STILL ONLY HAVE 24 JURORS. SO,
24 WE'VE GOT SOME DECISIONS TO MAKE BECAUSE WE'VE GOT THE JURY
25 PANEL CALLING BACK IN BETWEEN 12:00 AND 1:00.

1 AND I'M GOING TO SUGGEST THAT WE HAVE ANY AND ALL
2 JURORS WHO ARE QUALIFIED CALL BACK TONIGHT AFTER 6:00. I
3 DON'T THINK WE'RE GOING TO BE ABLE TO DRAW A JURY TODAY.

4 I'M GOING TO HAVE PANEL "M" COME IN AT 3:00
5 O'CLOCK. I'M GOING TO HAVE "N" AT 4:00. I KNOW WE'VE BEEN
6 HAVING THEM IN EVERY HOUR AND A HALF BUT I WANT TO FINISH
7 UP TODAY IF AT ALL POSSIBLE. AND PANEL "O" AT 5:00 WHICH
8 MEANS WE MAY GO LATER THIS EVENING. AND PANEL "P", "Q", ET
9 CETERA, ARE TO CALL BACK TONIGHT AFTER 6:00.

10 LET'S TAKE A REAL SHORT BREAK AND I'M GOING TO GO
11 OVER WITH SLED, I HAVEN'T CONFIRMED ALL OF THIS,
12 INSTRUCTIONS ON WHAT NOT TO BRING TO THE JURORS WHO COME.
13 JUST FOR Y'ALL'S EDIFICATION SO Y'ALL CAN TELL ME IF I'M
14 LEAVING ANYTHING OFF. WE'LL TAKE A REAL SHORT BREAK, JUST
15 A REFRESHER BREAK.

16 AFTER THE BREAK:

17 THE COURT: ALL RIGHT, BRING IN THE NEXT JUROR,
18 TINO CRISTINA.

19 TINO CRISTINA, JUROR NUMBER 64, WHITE MALE, WAS
20 QUESTIONED AS FOLLOWS:]

21 QUESTIONS BY THE COURT:

22 Q. MR. CRISTINA, I'M JOHN HAYES, THE JUDGE THAT IS
23 ASSIGNED TO PRESIDE OVER THIS TRIAL. AND I WILL
24 REMIND YOU THAT YOU'RE UNDER OATH.

25 IF YOU ARE SEATED ON THIS JURY, YOU MAY SEE

1 CAMERAS. THERE IS ONE IN HERE NOW, BUT IT'S NOT
2 OPERATING. AND PHOTOGRAPHERS IN THE COURTROOM,
3 BUT THEY CANNOT TAKE YOUR PICTURE OR REPORT
4 ABOUT YOU. SO, DON'T BE DISTRACTED BY ANY
5 CAMERAS.

6 YOU HANDED US A QUESTIONNAIRE; IS THAT ACCURATE
7 OR DO YOU NEED TO MAKE ANY CORRECTIONS TO IT?

8 A. I BELIEVE IT'S CORRECT.

9 Q. THERE WERE A LIST OF WITNESSES SET FORTH IN THE
10 JURY ROOM. ARE YOU RELATED BY BLOOD OR MARRIAGE
11 OR DO YOU KNOW ANY OF THOSE WITNESSES?

12 A. NO, SIR.

13 Q. HAVE YOU, PRIOR TO COMING HERE, WERE YOU AWARE
14 OF THIS CASE, HEARD ABOUT IT FROM ANY SOURCE
15 WHATSOEVER, FORMED AN OPINION ABOUT IT OR
16 DISCUSSED IT?

17 A. NO, SIR.

18 Q. IN THE JURY ROOM THERE WERE THREE TYPES OF
19 JURORS ON A SHEET OF PAPER. THIS CASE IS ONE
20 WHICH WOULD PROGRESS IN TWO PARTS. THE FIRST
21 PART WOULD BE TO DETERMINE WHETHER OR NOT THE
22 STATE COULD PROVE BEYOND A REASONABLE DOUBT MR.
23 ROBERTSON GUILTY OF THE MURDER CHARGES. IF HE
24 WERE FOUND NOT GUILTY, THE CASE WOULD END AND WE
25 WOULD GO NO FURTHER. IF, HOWEVER, THE JURY WERE

1 TO FIND UNANIMOUSLY BEYOND A REASONABLE DOUBT
2 THAT HE IS GUILTY OF MURDER, THEN THE CASE WOULD
3 GO INTO THE SECOND PHASE WHICH WOULD BE THE
4 PENALTY PHASE.

5 THE FACT THAT WE ARE TALKING ABOUT THAT PHASE IS
6 NOT TO PRESUPPOSE THAT WE WOULD GET THERE
7 BECAUSE HE IS PRESUMED INNOCENT. AND IS
8 PRESUMED SUCH UNTIL HE WERE TO BE FOUND, IF HE
9 WERE, GUILTY BEYOND A REASONABLE DOUBT.

10 THERE WERE LISTED THREE TYPES OF JURORS. DID
11 YOU FIND THAT YOU FELL INTO ONE OF THOSE
12 CATEGORIES?

13 A. YES, SIR. I FELT THAT I WAS THE THIRD TYPE.

14 Q. THE THIRD TYPE? IN THAT PARAGRAPH I USED WORDS
15 AGGRAVATING AND MITIGATING OR AGGRAVATION AND
16 MITIGATION.

17 THOSE WORDS, IN A NUTSHELL, AGGRAVATION IS
18 TALKING ABOUT CIRCUMSTANCES THAT ARE ATTENDANT
19 WITH THE COMMISSION OF A CRIME THAT INCREASE ITS
20 ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE.

21 THAT IS, THINGS OVER AND ABOVE JUST THE
22 ESSENTIAL ELEMENTS THAT CONSTITUTE THE CRIME
23 ITSELF.

24 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES OR
25 THINGS THAT WHILE THEY ARE NOT A JUSTIFICATION

1 OR EXCUSE FOR THE COMMISSION OF A CRIME; THEY
2 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
3 CONSIDERED AS EXTENUATING OR REDUCING ONE'S
4 DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND
5 THAT?

6 A. YES, SIR.

7 Q. YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR WHO
8 AFTER A JURY HAD DETERMINED MR. ROBERTSON'S
9 GUILT, YOU WOULD NOT AT THAT TIME HAVE MADE UP
0 YOUR MIND CONCERNING WHAT PUNISHMENT WOULD BE
1 APPROPRIATE. IS THAT CORRECT?

2 A. YES, SIR.

3 Q. AND YOU'RE TELLING ME THAT YOU'RE THE TYPE OF
4 JUROR WHO WOULD WANT TO HEAR THE FACTS AND
5 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND
6 WANT TO LISTEN AND FOLLOW THE LAW AND MAKE UP
7 YOUR MIND ONLY AT THAT TIME. IS THAT CORRECT?

8 A. YES, SIR.

9 Q. AND THIS TYPE JUROR, AS I UNDERSTAND IT, AND
0 YOU'RE TELLING ME YOU'RE THIS TYPE JUROR, ARE
1 YOU THE TYPE THAT WOULD IF THE FACTS WARRANTED
2 IT, COULD YOU RETURN A VERDICT OF LIFE
3 IMPRISONMENT FOR THE DEFENDANT?

4 A. YES.

5 Q. IF THE FACTS WARRANTED, COULD YOU RETURN A

1 VERDICT FOR THE DEATH PENALTY FOR THE DEFENDANT?

2 A. YES, SIR.

3 Q. ALL RIGHT, I'M GOING TO LET THE ATTORNEYS ASK
4 YOU SOME QUESTIONS.

5 QUESTIONS BY MR. BOYD:

6 Q. GOOD MORNING, MR. CRISTINA.

7 A. THANK YOU; COULD MORNING.

8 Q. I'M JIM BOYD AND I REPRESENT JIMMY ROBERTSON IN
9 THIS CASE. HE'S THE YOUNG MAN SEATED OVER THERE
10 AND THAT'S MY CO-COUNSEL, BILL HANCOCK, SEATED
11 THERE.

12 I JUST WANT TO FOLLOW UP ON A FEW OF THE
13 QUESTIONS THE JUDGE HAS ASKED YOU. AND LET ME
14 JUST SAY FIRST THAT THERE ARE NO RIGHT OR WRONG
15 ANSWERS TO THIS QUESTION. I KNOW SITTING IN
16 THAT WITNESS CHAIR IT MAY SEEM LIKE YOU'RE THE
17 ONE ON TRIAL, BUT YOU'RE NOT AND THERE'S NO WAY
18 YOU CAN GET IN TROUBLE FROM ANY ANSWER YOU GIVE.
19 I JUST NEED YOU TO ANSWER THESE QUESTIONS
20 HONESTLY.

21 AND YOU SAID YOU DIDN'T KNOW ANYTHING ABOUT THIS
22 CASE, IS THAT CORRECT?

23 A. UNTIL MONDAY MORNING.

24 Q. UNTIL MONDAY MORNING, OKAY. WHAT DID YOU LEARN
25 MONDAY MORNING?

1 A. JUST THAT I WAS CALLED FOR JURY DUTY AND THE
2 CHARGES BROUGHT FORTH ARE THE FOUR STATEMENTS
3 THAT THE JUDGE MADE, YOU KNOW, FOR THE CASE.

4 Q. AND YOU HAVEN'T READ ANYTHING ABOUT THIS IN THE
5 PAPER?

6 A. NO, SIR.

7 Q. GOOD. NOW, I NEED TO FOLLOW UP WITH A FEW
8 QUESTIONS THAT THE JUDGE ASKED YOU ABOUT THE
9 DEATH PENALTY. YOU SAID THAT YOU COULD -- WELL,
10 LET ME BACK UP A MINUTE. THIS IS A TRIAL IN
11 WHICH THERE ARE TWO PHASES TO THE TRIAL.

12 THE FIRST PHASE THE JURY DETERMINES WHETHER OR
13 NOT JIMMY ROBERTSON WOULD BE FOUND GUILTY OR NOT
14 GUILTY OF MURDER. AND IN THAT EVENT, IF HE'S
15 FOUND NOT GUILTY, THAT ENDS THE TRIAL.

16 IF HE'S FOUND GUILTY, IT GOES TO A SENTENCING
17 PHASE OF THE TRIAL IN WHICH THE JURY DETERMINES
18 THE SENTENCE. AND THE TWO CHOICES THE JURY HAS
19 IS LIFE IMPRISONMENT OR THE DEATH PENALTY.

20 NOW, IF YOU'RE SEATED -- YOU'VE GOT TO ASSUME
21 FOR THE PURPOSE OF THESE QUESTIONS THAT THE JURY
22 HAS FOUND HIM GUILTY AT THAT POINT AND WE'RE
23 GOING INTO THE SENTENCING PHASE.

24 I DON'T WANT TO INTIMATE TO YOU THAT HE'S GOING
25 TO BE FOUND GUILTY BUT THIS IS THE ONLY TIME I

1 HAVE AN OPPORTUNITY TO ASK QUESTIONS ABOUT THE
2 SENTENCING PART, SO I'VE GOT TO GO AHEAD AND ASK
3 THEM NOW.

4 NOW, YOU HAVE INDICATED THAT YOU WOULD HEAR ALL
5 OF THE EVIDENCE IN DETERMINING THE SENTENCE; IS
6 THAT CORRECT?

7 A. YES, SIR.

8 Q. I JUST WANT TO MAKE SURE ABOUT SOME THINGS. YOU
9 UNDERSTAND THAT HE IS CHARGED WITH KILLING BOTH
10 OF HIS PARENTS?

11 A. YES, SIR.

12 Q. AND KNOWING THAT, CAN YOU STILL -- I'M NOT
13 ASKING YOU WHAT YOU WOULD DO IN THE CASE, BUT
14 CAN YOU STILL CONSIDER A LIFE SENTENCE UNDER
15 THOSE CIRCUMSTANCES?

16 A. SURE, IT DEPENDS ON THE EVIDENCE AND THE FACTS
17 OF THE CASE.

18 Q. THE STATE WOULD PRESENT TO YOU CERTAIN
19 AGGRAVATING CIRCUMSTANCES. THAT IS, THINGS THAT
20 MAKE THE MURDER WORSE THAN AN ORDINARY MURDER IF
21 THERE IS SUCH A THING. DO YOU UNDERSTAND?

22 A. YES, SIR.

23 Q. AND WE, IF WE SO CHOOSE, COULD PRESENT
24 MITIGATING CIRCUMSTANCES. THAT IS, THINGS ABOUT
25 JIMMY'S LIFE OR ABOUT WHAT HAPPENED, ANYTHING

1 THAT WOULD LESSEN HIS MORAL CULPABILITY. DO YOU
2 FOLLOW WHAT I'M SAYING?

3 A. UH HUH.

4 Q. AND WOULD YOU BE ABLE TO CONSIDER THOSE THINGS
5 ALSO?

6 A. YES, SIR. ONE THING I'VE LEARNED IN LIFE IS TO
7 TRY TO KEEP AN OPEN MIND FOR EVERYTHING.

8 Q. OKAY. SO, YOU COULD CONSIDER AGGRAVATING
9 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES?

0 A. I SHOULD BE ABLE TO WEIGH THEM BOTH; YES, SIR.

1 Q. OKAY. SO, YOU'RE NOT GOING TO AUTOMATICALLY
2 ASSUME THAT HE SHOULD GET DEATH JUST BECAUSE HE
3 HAS BEEN CONVICTED OF MURDER?

4 A. NO, I WOULDN'T ASSUME NOTHING.

5 Q. AND UNDERSTANDING THAT IF HE'S CONVICTED OF
6 MURDER, AT THAT POINT HE'S BEEN CONVICTED OF
7 DELIBERATELY KILLING HIS PARENTS. THERE
8 WOULDN'T HAVE BEEN ANY ACCIDENT OR SELF-DEFENSE
9 OR ANYTHING LIKE THAT AT THAT POINT. YOU
0 UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. AND KNOWING THAT, YOU CAN STILL CONSIDER A LIFE
3 SENTENCE?

4 A. AFTER LISTENING TO EVERYTHING, YOU KNOW,
5 THOROUGHLY.

1 Q. OKAY.

2 A. IT'S ALL BASED ON WHAT'S HEARD, YOU KNOW.

3 Q. ALL RIGHT.

4 A. SO YOU HAVE NO PRECONCEIVED NOTION EITHER WAY?

5 A. NO, SIR.

6 Q. AND I JUST HAVE A FEW OTHER QUESTIONS. OF
7 COURSE, YOU UNDERSTAND ON THE JURY THERE MAY BE
8 DIFFERING OPINIONS WHEN YOU GET BACK IN THE JURY
9 ROOM. HAVE YOU EVER SERVED ON A JURY BEFORE?

10 A. YES, SIR, ON A CIVIL CASE MANY YEARS AGO.

11 Q. SO YOU UNDERSTAND, EVEN IN A CIVIL CASE, THERE
12 CAN BE DIFFERING OPINIONS AMONG JURORS. OF
13 COURSE, YOU'RE ENTITLED TO HAVE YOUR OPINION
14 RESPECTED BY THE OTHER JURY MEMBERS.

15 A. YES, SIR.

16 Q. AND LIKEWISE, YOU ARE REQUIRED TO RESPECT THEIR
17 OPINIONS. YOU UNDERSTAND THAT.

18 A. YES.

19 Q. IF YOU, AFTER HEARING ALL THE EVIDENCE, WERE
20 CONVINCED THAT JIMMY SHOULD RECEIVE A LIFE
21 SENTENCE AND SAY THE OTHER ELEVEN JURORS WANTED
22 TO GO THE OTHER WAY AND VOTE FOR DEATH, WOULD
23 YOU CHANGE YOUR MIND TO BE IN THE MAJORITY?

24 A. THAT'S A TOUGH QUESTION. I WOULD STICK TO MY
25 OPINION UNLESS THEY COULD CONVINCE ME THAT IT

1 WAS DIFFERENT.

2 Q. OKAY. WHAT I'M ASKING YOU IS IF THERE WERE
3 ELEVEN AGAINST YOU AND YOU WERE THE ONE SAYING
4 NO AND YOUR OPINION WASN'T CONVINCED BUT YOU
5 WOULDN'T THINK, OH, WELL I NEED TO GO ALONG WITH
6 THE MAJORITY BECAUSE THEY MUST BE RIGHT?

7 A. NO, I'M NOT THAT KIND OF PERSON.

8 Q. OKAY, THANK YOU A LOT.

9 QUESTIONS BY MR. BRACKETT:

10 Q. GOOD MORNING, MR. CRISTINA, HOW ARE YOU DOING?

11 A. FINE, THANK YOU.

12 Q. MY NAME IS KEVIN BRACKETT; I AM THE DEPUTY
13 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED
14 OVER AT COUNSEL TABLE IS TOMMY POPE, THE
15 SOLICITOR, AND HE AND I ARE PROSECUTING THIS
16 CASE ON BEHALF OF THE STATE. WE ARE THE STATE
17 PROSECUTORS AND WE ARE CHARGED WITH THE
18 RESPONSIBILITY OF PROVING IN THE FIRST PHASE MR.
19 ROBERTSON'S GUILT OF THE CRIMES HE'S CHARGED
20 WITH BEYOND A REASONABLE DOUBT TO A FAIR AND
21 IMPARTIAL JUROR AND THAT'S WHAT WE'RE BASICALLY
22 HERE TO ASK YOU ABOUT.

23 AS I UNDERSTAND YOUR TESTIMONY, YOU COULD BE
24 THAT FAIR AND IMPARTIAL JUROR?

25 A. YES, SIR.

1 Q. YOU COME TO COURT WITH NO PREDISPOSITION ONE WAY
2 OR ANOTHER AS TO HIS GUILT; YOU DON'T KNOW
3 ANYTHING ABOUT THE CASE.

4 A. NO, SIR.

5 Q. AND YOU WOULD WAIT UNTIL YOU HEARD ALL THE FACTS
6 FROM THE STATE, ANY EVIDENCE WE PUT FORWARD
7 EITHER THROUGH TESTIMONY OR PHYSICAL EVIDENCE
8 AND YOU UNDERSTAND THAT WE BEAR THE BURDEN OF
9 PROVING THAT HE'S GUILTY?

10 A. YES, SIR.

11 Q. AND YOU'D WAIT UNTIL WE DID OUR JOB, AND THEN
12 YOU WOULD LISTEN TO ANY EVIDENCE THAT THEY CHOSE
13 TO PUT FORWARD?

14 A. YES, SIR; THAT'S THE ONLY WAY TO DO IT.

15 Q. OKAY. AND, OF COURSE, YOU UNDERSTAND THEY DON'T
16 HAVE TO PROVE ANYTHING AT ALL.

17 A. YES.

18 Q. OKAY. IF THEY CHOSE TO PUT EVIDENCE UP THOUGH,
19 YOU WOULD CONSIDER THAT AS WELL AS OUR EVIDENCE
20 AND DECIDE HIS GUILT OR INNOCENCE?

21 A. YES, SIR.

22 Q. AND ONLY IF HE'S FOUND GUILTY DO WE GO TO THE
23 SECOND PHASE OF THE TRIAL. AND AS I UNDERSTAND
24 YOUR TESTIMONY TO THE JUDGE, YOU WOULD BE THE
25 KIND OF JUROR WHO WOULD LISTEN AGAIN TO ALL OF

1 THE EVIDENCE THAT THE STATE PRESENTED IN
2 AGGRAVATION OF THE MURDER AND ANY EVIDENCE THAT
3 THE DEFENSE CHOSE TO PUT UP IN MITIGATION OF THE
4 MURDER BEFORE YOU MADE YOUR MIND UP AS TO THE
5 PENALTY?

6 A. I ABSOLUTELY FALL INTO THAT CATEGORY.

7 Q. OKAY. AND IF YOU THOUGHT THAT UNDER THE
8 CIRCUMSTANCES OF THE CASE THAT LIFE IN PRISON
9 WAS THE APPROPRIATE SENTENCE, YOU COULD RETURN A
0 VERDICT OF LIFE IN PRISON?

1 A. YES, SIR.

2 Q. AND IF YOU THOUGHT THE DEATH PENALTY WAS
3 WARRANTED, YOU COULD RETURN A VERDICT OF DEATH?

4 A. YES, SIR.

5 Q. OKAY. ONE OF THE REQUIREMENTS THAT'S UNUSUAL --
6 I CAN'T RECALL, DID YOU SAY YOU HAD SERVED ON A
7 JURY BEFORE?

8 A. YES.

9 Q. OKAY, THEN YOU CAN RECALL THAT AT THE END OF THE
0 CASE WHEN THE VERDICT WAS ANNOUNCED -- WERE YOU
1 THE FOREPERSON BY ANY CHANCE?

2 A. NO.

3 Q. WHEN THE JURY RENDERED IT'S VERDICT, THE
4 FOREPERSON OF THE JURY HAS TO SIGN WHAT THE
5 VERDICT IS, EITHER GUILTY OR NOT GUILTY, AND

1 THEN SIGN THEIR NAME UNDERNEATH THAT AND THAT
2 ATTESTS TO THE JURY'S VERDICT.

3 IN ALMOST EVERY OTHER CASE IN THE LAW, THAT'S
4 THE ONLY PERSON THAT NEEDS TO SIGN IS THE
5 FOREPERSON.

6 A DEATH PENALTY CASE IS A LITTLE BIT DIFFERENT.
7 IN THE PENALTY PHASE IF THE JURY FINDS THAT THE
8 DEFENDANT SHOULD BE SENTENCED TO LIFE, THE
9 FOREPERSON STILL HAS TO SIGN THEIR NAME AND
10 WRITE LIFE, AND THAT'S THE END OF THE MATTER.

11 IF, HOWEVER, THE JURY DECIDES THAT DEATH IS THE
12 APPROPRIATE SENTENCE, THEN EACH AND EVERY JUROR
13 HAS TO TAKE THE PEN AND SIGN THEIR NAME ON THE
14 DOCUMENT ATTESTING THAT THEIR VERDICT IN THIS
15 CASE WAS DEATH.

16 NOW IF YOU HAD HEARD ALL OF THE EVIDENCE AND YOU
17 DECIDED THAT DEATH WAS APPROPRIATE, COULD YOU
18 TAKE THE PEN IN YOUR HAND AND SIGN YOUR NAME ON
19 A VERDICT SHEET SENDING THIS MAN TO DEATH?

20 A. YES, SIR. I WOULD HAVE AN OBLIGATION AND A
21 COMMITMENT AND IF THAT'S WHAT IT WARRANTS,
22 THAT'S WHAT IT TAKES.

23 Q. YES, SIR. THANK YOU VERY MUCH.

24 THE COURT: MR. CRISTINA, I'M GOING TO ASK YOU
25 JUST TO STEP OUTSIDE THE DOOR JUST ONE MINUTE.

1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: WHAT SAYS THE STATE?

3 MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

4 THE COURT: THE DEFENSE?

5 MR. HANCOCK: HE'S QUALIFIED, YOUR HONOR.

6 THE COURT: BRING HIM BACK IN.

7 (THE JUROR RETURNED TO THE COURTROOM.)

8 THE COURT: MR. CRISTINA, WE'RE GOING TO INCLUDE
9 YOU ON THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT
10 DOESN'T NECESSARILY MEAN YOU WILL BE ON THE JURY. WE DON'T
11 KNOW WHEN THAT'S GOING TO BE YET. WE'RE GOING TO ASK YOU
12 TO CALL BACK TONIGHT AFTER 6:00 AND YOU WILL RECEIVE
13 INSTRUCTIONS.

14 PART OF THE INSTRUCTIONS, I WILL TELL YOU NOW,
15 WILL BE TO BRING WITH YOU YOUR BELONGINGS SO THAT YOU CAN
16 STAY HOUSED AND SEQUESTERED FOR SEVERAL DAYS.

17 ARE THERE ANY EXTENUATING CIRCUMSTANCES WE NEED
18 TO KNOW ABOUT CONCERNING THAT?

19 THE JUROR: NO, SIR.

20 THE COURT: DON'T DISCUSS THE CASE WITH ANYONE,
21 JURORS OR ANYONE. IF ANYONE TRIES TO DISCUSS THE CASE WITH
22 YOU, PLEASE LET ME KNOW AND TELL THEM YOU CANNOT. AND
23 DON'T LET YOURSELF BE EXPOSED TO ANY COVERAGE IN THE NEWS
24 MEDIA ON THE CASE. THANK YOU A LOT.

25 THE JUROR: THANK YOU.

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