

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. Supreme Court

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

APPENDIX
VOLUME I OF XV

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VOLUME THREE OF SEVEN

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

RECORD ON APPEAL

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TRIAL TRANSCRIPT DATED JANUARY 28, 1997

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
PLAINTIFF)

VS.)

BOBBY WAYNE STONE,)
DEFENDANT)

TRANSCRIPT OF RECORD
96-GS-43-698
VOLUME III OF V

SUMTER, SOUTH CAROLINA
JANUARY 28, 1997

B E F O R E:

HONORABLE MARKELY DENNIS, JUDGE; AND A JURY.

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

WADE KOLB, SOLICITOR
ATTORNEY FOR THE STATE

CAMERON LITTLEJOHN, ESQUIRE
JAMES BABB, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

KATHLEEN M. SIMMONS

CIRCUIT COURT REPORTER

GARY METTS - DIRECT BY KOLB

1 HE WAS REAL UNSURE ABOUT WHAT HAD HAPPENED. AND
2 HE WANTED TO ASK ME A FEW QUESTIONS AND JUST ME AND HIM
3 WENT TO THE SPOT. HE ASKED ME DID HIS FATHER SAVE MRS.
4 GRIFFITH'S LIFE? I TOLD HIM YEAH.

5 AND HE SAID I JUST GOT ONE MORE QUESTION. HE
6 SAID WAS MY FATHER BRAVE? I TOLD HIM YOU BET. YOUR FATHER
7 WAS THE BRAVEST MAN OUT HERE. HE SURE WAS.

8 Q THANK YOU, SIR.

9 THE COURT: ANY QUESTIONS?

10 CROSS-EXAMINATION BY MR. LITTLEJOHN:

11 Q DEPUTY METTS, HOW LONG WERE YOU AND CHARLIE KUBALA
12 INVOLVED IN THE EXPLORER TROOP?

13 A ABOUT 4 YEARS.

14 Q 4 YEARS? SOMETHING HE WAS VERY INTERESTED IN; WAS IT
15 NOT?

16 A YES, SIR.

17 Q AND THE PURPOSE OF AN EXPLORER TROOP IS TO HELP YOUNG
18 MEN DEVELOP THE SKILLS NECESSARY TO COPE WITH LIFE AND
19 BECOME LAW ABIDING AND PRODUCTIVE CITIZENS; ISN'T IT?

20 A YOUNG MEN AND WOMEN.

21 Q YOUNG MEN AND WOMEN?

22 A YES, SIR.

23 Q THAT'S THE PURPOSE OF IT. THANK YOU.

24 THE COURT: REDIRECT?

25 MR. KOLB: NOTHING FURTHER, YOUR HONOR.

GARY METTS - CROSS BY LITTLEJOHN

1 THE COURT: THANK YOU. YOU MAY COME DOWN, SIR.

2 (WHEREUPON THE WITNESS LEFT THE STAND).

3 MR. KOLB: CALL...

4 PEGGY KUBALA, BEING FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 THE COURT: THANK YOU. MRS. KUBALA, IF YOU'LL TAKE A
7 SEAT. I WILL BE WITH YOU IN JUST A MOMENT.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD).

9 THE COURT: MRS. KUBALA, IF YOU'LL PLEASE POSITION
10 THAT MIKE SO THAT IT'S COMFORTABLE FOR YOU AND YOU CAN
11 SPEAK INTO IT. AND PLEASE, MA'AM, STATE YOUR FULL NAME FOR
12 THE RECORD. SPELL YOUR LAST .

13 WITNESS: PEGGY ANN KUBALA. K U B A L A.

14 THE COURT: THANK YOU.

15 DIRECT EXAMINATION BY MR. KOLB:

16 Q MRS. KUBALA, WHAT'S YOUR RELATIONSHIP TO DEPUTY
17 CHARLIE KUBALA?

18 A CHARLIE IS MY SON.

19 Q AND HOW MANY CHILDREN DO YOU HAVE?

20 A EIGHT.

21 Q EIGHT?

22 A HE WAS...

23 Q HE HAD SEVEN BROTHERS AND SISTERS?

24 A YES, SIR.

25 Q COULD YOU TELL US ABOUT THEM?

PEGGY KUBALA - DIRECT BY KOLB

1 A OKAY. HE HAD 4 SISTERS, OLDER SISTERS. AND THEN
2 CHARLIE WAS MY OLDEST SON. JUST A MINUTE. GOT SOME... HE
3 HAD TWO MORE BROTHERS AND A LITTLE SISTER.

4 Q ALL RIGHT. AND COULD YOU TELL US ABOUT YOUR HUSBAND,
5 CHARLIE'S FATHER?

6 A MY HUSBAND IS RETIRED LIEUTENANT COLONEL FROM THE AIR
7 FORCE.

8 Q ALL RIGHT. HOW LONG HAVE YA'LL BEEN IN SUMTER?

9 A WE HAVE BEEN IN SUMTER SINCE 79. WE ARRIVED HERE FROM
10 GERMANY.

11 Q YOUR HUSBAND HAS FINISHED HIS CAREER IN THE MILITARY?

12 A YES, SIR. HE WAS TWENTY-EIGHT YEARS IN THE MILITARY.

13 Q ALL RIGHT. AND COULD YOU TELL THE LADIES AND
14 GENTLEMEN OF THE JURY WHAT YOU DO AS FAR AS FOR A LIVING
15 AND ALSO YOUR OCCUPATION?

16 A I'M THE AQUATICS DIRECTOR OF Y M C A AND I TEACH
17 SWIMMING LESSONS AS WELL AS TEACH EXERCISE CLASSES AND I
18 WORK WITH SPECIAL ED CHILDREN.

19 Q NOW, THE Y M -- THE YOUNG MEN'S CHRISTIANS
20 ASSOCIATION. IS THAT WHAT THE Y M C A IS?

21 A YES.

22 Q ACTUALLY MEN AND WOMEN?

23 A YES, SIR. IT IS.

24 Q AND...

25 A AND CHILDREN, FAMILIES. IT'S A FAMILY ORIENTED

PEGGY KUBALA - DIRECT BY KOLB

1 ORGANIZATION.

2 Q ALL RIGHT. COULD YOU TELL US ABOUT THE SIZE OF THE Y
3 M, THESE LADIES AND GENTLEMEN ARE FROM GEORGETOWN. SO JUST
4 A LITTLE BIT ABOUT...

5 A THERE'S ABOUT 6,000 MEMBERS NOW. WE JUST ADDED ON TO
6 THE NEW Y ABOUT THREE YEARS AGO. AND ACTUALLY I RETIRED
7 FOR A YEAR AND A HALF AND WENT AND CAME BACK TO WORK. AND
8 SO IT'S REALLY A NICE FACILITY.

9 Q ALL RIGHT. MRS. KUBALA, COULD YOU TELL US ABOUT YOUR
10 SON CHARLIE, WHAT TYPE PERSON HE WAS?

11 A WELL, LIKE I SAID HE WAS MY OLDEST SON AND HE FELT AN
12 OBLIGATION TO LOOK AFTER HIS BROTHERS AND SISTERS. AND HE
13 WAS VERY SPECIAL TO ALL OF US AS ALL MY KIDS ARE. WE ARE A
14 VERY CLOSE FAMILY.

15 I GUESS BECAUSE WE WERE MILITARY, WE ALWAYS HAD
16 TO HELP OUT EACH OTHER ALL THE TIME. AND SO HE'S ALWAYS
17 BEEN THERE TO HELP ME. I RUN A POOL IN THE SUMMER TIME
18 CALLED PEGGY'S POOL. AND CHARLIE WAS MY MAINTENANCE MAN.

19 THE KIDS ALWAYS ENJOYED HAVING HIM COME BY AND
20 TALK TO THEM AND THAT -- DURING THE SUMMER HE WOULD COME
21 BY US -- YOU KNOW -- IF HE WAS IN THAT AREA. AND I DON'T
22 KNOW.

23 HE WAS ALWAYS THERE FOR HOLIDAYS FOR LIKE I SAID
24 WE ARE JUST A VERY CLOSE FAMILY. WE DO A LOT TOGETHER. HE
25 WAS THE ONE THAT WAS RESPONSIBLE FOR MY HUSBAND SIXTIETH

PEGGY KUBALA - DIRECT BY KOLB

1 BIRTHDAY, GETTING ALL HIS BROTHERS AND SISTERS HERE AND
2 HAVING A SURPRISE PARTY FOR HIM.

3 Q CAN YOU TELL US HOW CHARLIE'S DEATH HAS AFFECTED YOUR
4 FAMILY?

5 A WELL, IT'S REALLY AFFECTED US. YES. YOU KNOW, AS I
6 SAID WE ALL GET TOGETHER AND WE HAVE REALLY COME TO RELY
7 ON EACH OTHER.

8 BUT ALL OF OUR HOLIDAYS WERE SPENT PRETTY MUCH
9 TOGETHER, ESPECIALLY THE LAST TWO OR THREE YEARS BECAUSE
10 MY TWO OLDER GIRLS WERE CLOSER BEFORE THEY LIVED ON THE
11 WEST COAST AND IT'S KIND OF HARD FOR THEM TO GET HOME SO
12 THE LAST TWO YEARS WE KIND OF ALL TRIED TO SPEND THE
13 HOLIDAYS TOGETHER, WATER SKIING AND DIFFERENT THINGS.

14 Q I WANTED TO ASK YOU ABOUT THE TEAM SLEEP OVER AT Y M
15 C A.

16 A I HAD A BIG SLEEP OVER. WE HAD ABOUT TWO HUNDRED
17 KIDS. AND CHARLIE AND CAME OVER AND HELPED ME WITH THAT.
18 HE WAS KIND OF MY SECURITY BECAUSE HE HAD JUST STARTED
19 WITH THE AS A SHERIFF'S DEPUTY AT THAT TIME.

20 AND HE USED TO HELP ME OUT A LOT WHEN I WOULD
21 HAVE FAITH AS FAR AS KIDS. I DO A LOT OF KIDS NIGHT OUT
22 WHICH IS WHEN THE PARENTS CAN LEAVE THE KIDS AT THE Y AND
23 SO HE USED TO COME AND HELP ME ONCE IN A WHILE WITH THAT.

24 Q WHEN AND HOW DID YOU FIND OUT ABOUT CHARLIE'S DEATH
25 AND HOW DID THAT AFFECT YOU?

PEGGY KUBALA - DIRECT BY KOLB

1 A I WAS TEACHING A LIFE GUARDING CLASS AND I HAD JUST
2 FINISHED. AND I JUST FINISHED TALKING TO THE KIDS THAT
3 WERE IN THE CLASS TELLING THEM WHETHER THEY PASSED OR NOT.

4 I GOT A TELEPHONE CALL. MY HUSBAND SAID
5 CHARLIE'S BEEN SHOT. AND I DIDN'T ASK ANY QUESTIONS. I
6 JUST SAID I'LL GO MEET YOU AT TERESA'S HOUSE. AND I REALLY
7 DIDN'T THINK HE WAS DEAD. I HOPED HE WASN'T.

8 AND SO WHEN I GOT THERE I SAID WHERE'S MY SON?
9 AND THEY SAID WELL HE'S DEAD. AND IT WAS JUST THE DAY
10 BEFORE THAT HE HAD SAID YOU KNOW MOM I ALWAYS WEAR MY
11 VEST. DON'T WORRY ABOUT ME. IF THEY GET ME THEY WILL GET
12 ME IN THE HEAD. AND SO THAT'S WHERE HE WAS SHOT.

13 Q CAN YOU TELL US HOW YOU AND YOUR FAMILY'S LIFE HAS
14 CHANGED SINCE CHARLIE'S DEATH?

15 A WELL, CHARLIE LOVED HOMEMADE BREAD AND IT'S VERY
16 DIFFICULT FOR ME TO MAKE A LOAF OF BREAD NOW THAT I DON'T
17 THINK OF HIM BE COMING IN. AND HE ATE UP ALL OUR PEANUT
18 BUTTER AND JELLY. AND SO WE HAVE...

19 Q IS THERE ANYTHING ELSE YOU CAN TELL THE JURY ABOUT
20 CHARLIE?

21 A WELL, HE'S LIKE ALL KIDS. HE WAS A GOOD KID. AND I
22 DON'T THINK THAT I CAN SAY ANY ONE OF MY KIDS ARE BETTER
23 THAN THE OTHER OR WOULD BE MISSED ANY MORE THAN HE IS,
24 BECAUSE THEY ALL MEAN A GREAT DEAL TO ME. THEY ARE ALL
25 VERY MUCH A PART OF MY LIFE.

PEGGY KUBALA - DIRECT BY KOLB

1 Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY
2 HAVE.

3 MR. LITTLEJOHN: I HAVE NO QUESTIONS.

4 THE COURT: THANK YOU. YOU MAY COME DOWN, MRS.
5 KUBALA.

6 (WHEREUPON THE WITNESS LEFT THE STAND)

7 KEVIN KUBALA, BEING FIRST DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 THE COURT: IF YOU WOULD PLEASE SIR, POSITION THAT
10 MIKE SO THAT YOU CAN SPEAK INTO IT COMFORTABLY, STATE YOUR
11 FULL NAME AND SPELL YOUR LAST FOR US.

12 WITNESS: KEVIN M. KUBALA, K U B A L A.

13 DIRECT EXAMINATION BY MR. KOLB:

14 Q ALL RIGHT. MR. KUBALA, COULD YOU TELL US ABOUT
15 YOURSELF, HOW OLD YOU ARE WHERE YOU LIVE, WHAT YOU DO?

16 A I'M TWENTY-SIX YEARS OLD. I'M THE MIDDLE BROTHER OR
17 THE YOUNGEST BROTHER OF THREE. I WORK AS A MAINTENANCE
18 TECHNICIAN WITH INTERLAKE MATERIAL HANDLING.

19 Q THAT'S HERE IN SUMTER?

20 A YES, SIR.

21 Q AND COULD YOU TELL US ABOUT YOUR RELATIONSHIP TO YOUR
22 BROTHER CHARLIE?

23 A YES, SIR. HE WAS MY OLDEST BROTHER. AND WE DID A LOT
24 OF THINGS TOGETHER. HE LIVED HERE IN TOWN. HE WAS THE ONLY
25 BROTHER WHO LIVED IN TOWN. A LOT OF OUR EXTRA CURRICULAR

KEVIN KUBALA - DIRECT BY KOLB

1 ACTIVITIES WE DID TOGETHER.

2 Q WHAT TYPE OF THINGS DID YOU DO?

3 A HUNT, FISHING, WATER SKIING, NOT VERY MUCH GOLFING. I
4 DIDN'T DO THAT TOO WELL WITH HIM, BUT STUFF LIKE THAT.

5 Q WHAT ABOUT CHURCH? COULD YOU TELL US ABOUT THE
6 CHURCH?

7 A I DIDN'T GO TO CHURCH TOO MUCH. MY JOB SORT OF KEPT
8 ME AWAY FROM CHURCH.

9 Q OKAY. HOW HAS CHARLIE'S DEATH AFFECTED YOUR FAMILY?

10 A OF COURSE WE MISS HIM -- AND THE OLDEST BROTHER, EVEN
11 TO THE OLDER SISTERS AS WELL AS TO ME AND MY YOUNGER
12 SISTER HE WAS OUR BIG BROTHER. HE WAS ALWAYS THERE FOR US
13 FOR ANYTHING.

14 IF WE NEEDED ANYTHING, THE CAR WORKED ON, HE'D
15 COME HELP YOU OUT. MIDDLE OF THE NIGHT YOU COULD CALL HIM
16 TO COME OUT AND HELP YOU. NEEDED SOMEONE TO TALK TO, HE
17 WAS ALWAYS THERE. DIDN'T MATTER WHAT YOU DID.

18 Q HOW HAS YOUR LIFE CHANGED AS A RESULT OF THIS?

19 A DRAMATICALLY. I LOST A FRIEND AND OF COURSE EVERY
20 TIME I LOOK IN THE MIRROR, I'M ALWAYS THE ONE THAT LOOKED
21 MOST LIKE HIM. I SEE HIM.

22 EVERY TIME I GET AROUND HIS KIDS, THEY SEE HIM
23 IN ME. I CAN TELL. THEY ACTUALLY MENTION IT TO ME, YOU
24 KNOW, YOU LOOK LIKE MY DAD.

25 Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY

KEVIN KUBALA - DIRECT BY KOLB

1 HAVE.

2 THE COURT: ANY QUESTIONS?

3 MR. LITTLEJOHN: WE HAVE NO QUESTIONS.

4 THE COURT: THANK YOU. YOU MAY COME DOWN.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 MR. KOLB: CALL FRED KUBALA, PLEASE.

7 FRED KUBALA, BEING FIRST DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 THE COURT: GOOD EVENING, MR. KUBALA. IF YOU'LL
10 STATE FOR JURY YOUR FULL NAME.

11 WITNESS: FERDINAND JOHN KUBALA, K U B A L A.

12 THE COURT: THANK YOU, SIR.

13 DIRECT EXAMINATION BY MR. KOLB:

14 Q MR. KUBALA, COULD YOU TELL US ABOUT YOURSELF FIRST
15 AND YOUR CAREER AND WHAT YOU HAVE DONE?

16 A WELL, I WAS BORN IN TEXAS, GREW UP IN TEXAS,
17 GRADUATED FROM COLLEGE THERE IN 56. JOINED THE AIR FORCE.
18 SPENT TWENTY-EIGHT YEARS IN THE U.S. AIR FORCE AND RETIRED
19 HERE IN SUMTER.

20 AND SINCE THAT TIME -- CATCHING MY BREATH. KIND
21 OF CAUGHT ME FAST. ANY WAY, AFTER I RETIRED I WENT TO WORK
22 FOR ELECTROLUX OFFICE. AND THEN TOOK OVER THE BUSINESS A
23 COUPLE OF YEARS LATER. AND CURRENTLY AM OPERATING THE
24 FACTORY.

25 Q COULD YOU TELL US ABOUT YOUR FAMILY?

FRED KUBALA - DIRECT BY KOLB

1 A MY IMMEDIATE FAMILY?

2 Q YES, SIR.

3 A WELL, WIFE AND I HAD SEVEN OR EIGHT KIDS INITIALLY
4 AND OF COURSE DOWN TO SEVEN NOW. AND WE HAVE TRAVELED
5 THROUGHOUT THE WORLD. WE USED TO DO A LOT OF THINGS
6 TOGETHER, CAMPING. EVEN HAD A MOTOR HOME WE USED TO TRAVEL
7 WITH A LOT.

8 AND THEN WE WERE CONNED INTO BUYING SOME
9 TIMESHARE CONDOMINIUMS, SO WE USUALLY SPEND OUR HOLIDAYS
10 AT NORTH MYRTLE BEACH AS A FAMILY. AS A MATTER OF FACT, WE
11 STARTED DOING IT ON THANKSGIVINGS THERE AND AFTER
12 CHRISTMAS.

13 Q ALL RIGHT. COULD YOU TELL US ABOUT HOW YOU HAPPENED
14 TO GET INTO THE ELECTROLUX VACUUM CLEANER BUSINESS AND
15 WHETHER -- WELL, YOU MIGHT NOT WANT TO SAY, BUT YOU HAVE A
16 SPECIAL TALENT OF BEING ABLE TO FIX ANYTHING, I BELIEVE.

17 A WELL, I THINK THEY NICK NAMED OUR SON CHARLIE MR. FIX
18 IT BECAUSE...

19 Q HE GOT THAT FROM YOU?

20 A I THINK SO.

21 Q ALL RIGHT.

22 A KIND OF BRAGGING, I SUPPOSE. BUT ANY WAY, HE ALWAYS
23 HELPED ME WHEN I WORKED ON THINGS. AND MY FATHER DID THE
24 SAME THING. WORKED ON CARPENTRY WORK, AUTOMOTIVE WORK,
25 DIDN'T GET THAT WELL INTO ELECTRONICS. CHARLIE UNDERSTOOD

FRED KUBALA - DIRECT BY KOLB

1 THEM BETTER THAN I DID.

2 Q ALL RIGHT. EXPLAIN HOW THAT GIFT WAS HANDED DOWN FROM
3 YOUR FATHER THROUGH YOU AND CHARLIE ABOUT JUST OPENING
4 THINGS UP, FIGURING OUT HOW THEY WORK, FIGURING OUT HOW TO
5 FIX IT.

6 A YES, SIR. HIS MOTHER PROBABLY DIDN'T SAY, BUT WHEN
7 HE WAS LITTLE SHE ALWAYS WORRIED WHEN HE CARRIED SCREW
8 DRIVER, PAIR OF PLIERS, HE'D TAKE SOMETHING APART AND
9 COULDN'T GET IT BACK TOGETHER. JUST EXPERIMENTED A LOT.

10 Q AND YOU LEARNED THAT FROM YOUR DAD?

11 A YES.

12 Q AND THAT'S JUST SOMETHING YOU HAVE ALWAYS DONE?

13 A YES, SIR.

14 Q DID CHARLIE PICK THAT UP FROM YOU MORE SO THAN THE
15 OTHER CHILDREN?

16 A YES, SIR, HE DID. OUR YOUNGEST SON IS INTERESTED IN
17 THAT, BUT MAYBE I HAVE GOTTEN TOO OLD FOR HIM, I DON'T
18 KNOW. BUT THE MIDDLE SON WAS MORE INTERESTED IN BOOKS AND
19 COMPUTERS.

20 Q ALL RIGHT, SIR. NOW, YOUR ELECTROLUX BUSINESS IS VERY
21 POPULAR IN TOWN AND EVERYBODY KNOWS YOU AS MR. FIX IT AND
22 ANYTHING, VACUUM CLEANER OR OTHERWISE?

23 A MY CUSTOMERS ASK ME ONCE IN A WHILE IF I FIX IRONS
24 AND SEWING MACHINES. AND IF IT'S A GOOD CUSTOMER THAT I
25 KNOW I CAN'T GET INTO ANY TROUBLE, I WILL PROBABLY TRY AND

FRED KUBALA - DIRECT BY KOLB

1 REPAIR IT.

2 BUT BASICALLY IT'S JUST A MOM AND POP OPERATION
3 AND MOM HAS HER OWN BUSINESS, SO IT BREAKS DOWN TO BE A
4 POP OPERATION. I ONLY SELL AND DO ELECTROLUX CLEANERS. I
5 DON'T DO OTHER BRANDS.

6 YOU CAN SEE IT'S A SMALL OPERATION. WAS LOCATED
7 IN A SMALL BUILDING. AND ABOUT SEVEN MONTHS BEFORE
8 CHARLIE'S DEATH, HE HAD CONVINCED ME TO MOVE TO ANOTHER
9 LOCATION WHICH WAS A LARGER BUILDING, SO THAT HE COULD
10 WORK ON HIS DIALYSIS MACHINES.

11 HE WAS WORKING ON DIALYSIS MACHINES TO
12 SUPPLEMENT HIS INCOME AND ALSO LOOKING DOWN THE PIPE IN A
13 FEW YEARS AFTER HE RETIRED FROM THE SHERIFF'S DEPARTMENT
14 SO HE WOULD HAVE SOME SORT OF LIVELIHOOD OR BUSINESS
15 ESTABLISHED THEN.

16 Q LET ME ASK YOU BEFORE I GET INTO THAT ABOUT THE
17 DIALYSIS MACHINES, A LITTLE BIT ABOUT YOUR OWN BUSINESS.
18 YOU WOULDN'T WANT TO SAY, I GUESS, BUT VERY SUCCESSFUL
19 BUSINESS; IS THAT RIGHT, MR. KUBALA?

20 A WELL, LETS PUT IT THIS WAY. AS SUCCESSFUL AS I WANT
21 IT TO BE.

22 Q OKAY. AND WAS THIS SUCCESSFUL BUSINESS, IS THAT THE
23 TYPE THING A PARENT WANTS TO BE ABLE TO PASS ON TO A CHILD
24 THAT HAS THE KNACK TO CARRY ON THE BUSINESS?

25 A YES, SIR. IT -- WHAT IT DOES IS I HAVE CUSTOMERS FROM

FRED KUBALA - DIRECT BY KOLB

1 SURROUNDING COMMUNITIES AND SURROUNDING COUNTIES WHO KNOW
2 ME BECAUSE -- TO BRAG A LITTLE -- BECAUSE OF MY
3 REPUTATION.

4 I DON'T OVER CHARGE AND I DO GOOD WORK ON THE
5 REPAIRS. AND SO AS A RESULT CHARLIE WAS ALSO LOOKING AT
6 THAT THE REPUTATION, FAMILY REPUTATION, WOULD HAVE BEEN
7 SOMETHING HE COULD HAVE USED IN HIS FUTURE YEARS.

8 Q HE WAS THE MOST LIKELY PERSON AS FAR AS HIS
9 PROPENSITY TO BE A MR. FIX IT?

10 A YES, SIR.

11 Q WAS THAT AN ASPIRATION THAT YOU HAD THAT SOME DAY ONE
12 OF YOUR CHILDREN, PARTICULARLY MOST LIKELY CHARLIE, WOULD
13 BE THERE TO TAKE OVER YOUR BUSINESS AND TAKE ADVANTAGE OF
14 THE GOOD NAME YOU BUILT ALL THESE YEARS?

15 A WELL, HE AND PROBABLY THE YOUNGEST SON, BUT CHARLIE
16 SPENT MORE TIME IN THE SHOP BECAUSE HE WORKED THERE AND HE
17 -- IF I WERE GONE, HE WOULD TAKE CARE OF THE CUSTOMERS,
18 SERVICE THE MACHINES AND SELL SUPPLIES AND SO FORTH.

19 Q HOW DO YOU FEEL ABOUT THE FACT THAT ASPIRATION YOU
20 HAD ABOUT YOUR SON HAD NOW HAS BEEN TAKEN AWAY?

21 A WELL, WE HAD PLANS TO BUY THE BUILDING WHICH I STILL
22 DO, BUT NOW THE ASPIRATION WHETHER HE WOULD -- THE
23 BUILDING -- WE WOULD BUY IT TOGETHER AND IT WOULD BE HIS
24 FOR HIM AND HIS FAMILY LATER ON.

25 Q CAN YOU TELL US ABOUT THE SERVE ALL BUSINESS THAT

FRED KUBALA - DIRECT BY KOLB

1 CHARLIE GOT INTO, HOW HE WAS DOING WITH THAT BUSINESS?

2 A HE GOT A FRIEND OF HIS WHO WAS WORKING ON DIALYSIS
3 MACHINES, DIALYSIS.

4 Q EXPLAIN WHAT A DIALYSIS...

5 A DIALYSIS MACHINE IS USED BY PEOPLE WHO ARE DIABETICS
6 AND THEIR KIDNEYS DON'T FUNCTION ANY MORE, PEOPLE GO ON
7 THE MACHINE AND THEIR BLOOD IS CLEANSSED WITH THIS
8 MACHINE.

9 IT'S A COMBINATION OF USING WATER, CHEMICALS AND
10 FILTER SYSTEMS TO CLEAN BLOOD OUT OF THE SYSTEM FOR THE
11 PATIENT. AND THE PATIENT WILL TAKE ABOUT TWO OR THREE
12 HOURS TO GET THIS DONE AND THEY HAVE CENTERS LOCATED -- WE
13 HAD -- HE SERVICED CENTERS IN FLORENCE, MANNING, SUMTER,
14 OUT BY MYRTLE BEACH AND IN THAT AREA.

15 THE COMPANY HE WORKED FOR WAS STATIONED OUT OF
16 ANDERSON, SOUTH CAROLINA. AND BY HAVING OUR LOCATION HERE
17 WAS KIND OF A SATELLITE LOCATION WHERE HE COULD WORK OUT
18 OF HERE.

19 AND IT WAS MUCH MORE CONVENIENT TO TRAVEL FROM
20 HERE TO DO THE WORK THAN IT WAS FROM ANDERSON.

21 Q DID YOU SEE ANY CONNECTION BETWEEN HIS CAREER AS
22 PUBLIC SERVANT AS LAW ENFORCEMENT OFFICER AND HIS CAREER
23 IN WORKING WITH THESE DIALYSIS MACHINES?

24 A YES, SIR. VERY MUCH SO. HE HAD ABOUT SIX IN-HOME
25 PATIENTS. THESE ARE PEOPLE WHO HAVE BEEN GIVEN THE

FRED KUBALA - DIRECT BY KOLB

1 MACHINES AND TAKE CARE OF THEMSELVES AT HOME WITH THEIR
2 FAMILIES AND HE HAD TO GO BY AND CHECK THE MACHINES,
3 PROVIDE THEM WITH A SOLUTION TO USE AND EVERYTHING.

4 AND HE WAS VERY CONCERNED. HE KNEW EACH ONE OF
5 THEM BY NAME, VERY PERSONAL WITH THEM, TREATED THEM LIKE
6 THEY WERE A RELATIVE, I WOULD SAY. VERY CONCERNED. ONE
7 COULD CALL AT 11:00 AND IT WAS SOMETHING, HE WOULD GO TO
8 THE SHOP AND DELIVER IT.

9 Q DO YOU THINK THOSE CUSTOMERS HAVE BEEN ABLE TO FIND
10 SOMEONE AS DEDICATED AND SINCERE AS CHARLIE KUBALA TO
11 FULFILL THAT ROLE?

12 A IT'S GOING TO BE DIFFICULT.

13 Q DID HE AT ONE TIME LEAVE LAW ENFORCEMENT TO WORK FULL
14 TIME WITH THE SERVE ALL BUSINESS?

15 A YES, HE DID. HE SPENT A LITTLE OVER A YEAR. HE LEFT
16 LAW ENFORCEMENT AGENCY. AND I WAS KIND OF UNHAPPY BECAUSE
17 HE HAD BEEN PROMOTED TO SERGEANT AT THE TIME.

18 AND I SAID -- AND THIS FELLOW THAT RUNS THIS
19 SERVE ALL CORPORATION, POTENTIAL WAS THERE FOR MAKING VERY
20 GOOD MONEY AND THE CAREER THAT WOULD CARRY ON, BUT...

21 Q WE UNDERSTAND THAT CHARLIE ULTIMATELY WENT BACK TO
22 LAW ENFORCEMENT. IS THAT BECAUSE THE SERVE ALL BUSINESS
23 WAS NOT SUCCESSFUL FOR HIM?

24 A WELL, FOR ONE THING HE WOULD HAVE HAD TO MOVE HIS
25 FAMILY FROM THE SUMTER AREA AND THERE WASN'T -- AT THAT

FRED KUBALA - DIRECT BY KOLB

1 POINT THERE WASN'T THAT GREAT OF A DIFFERENCE IN THE
2 SALARY THAT HE WAS MAKING. AND HE CAME BACK. I THINK HE
3 TOOK A PAY LOSS TO COME BACK TO BE IN LAW ENFORCEMENT.

4 Q IS THAT RIGHT? HE LOVED LAW ENFORCEMENT THAT MUCH?

5 A YES, HE DID.

6 Q SO THE SERVICE ALL BUSINESS WAS SUCCESSFUL FOR HIM.

7 COULD YOU GIVE US SOME EXAMPLES OF WHY?

8 A WHAT HAPPENED IT KIND OF HIT A SLUMP AREA BECAUSE
9 THESE PEOPLE WHO RUN THESE DIALYSIS CENTERS CHANGE
10 COMPANIES THAT PROVIDE THEM SERVICE LIKE YOU TAKE YOUR CAR
11 TO BE SERVICED AT A LOCAL SERVICE STATION OR A DEALERSHIP
12 MIGHT CHANGE OR SOMETHING HAPPENS IN THE MANAGEMENT AS
13 COMPANIES ARE BOUGHT AND SOLD.

14 ANY WAY, HE WAS -- THAT'S WHAT HAPPENED WITH
15 THAT. THE BUSINESS KIND OF DROPPED FOR A LITTLE BIT. AND
16 -- BUT WHAT WAS HAPPENING WITH US AT THE TIME OF HIS
17 DEATH, WE WERE REPAIRING SMALL COMPONENTS OF THOSE
18 MACHINES AND THESE THINGS WERE BEING OVERNIGHT EXPRESSED,
19 FEDERAL EXPRESSED FROM AS FAR AS CALIFORNIA TO BE
20 REPAIRED. CHARLIE'S REPUTATION FOR REPAIRING THEM TO THAT
21 STATUS, HE WAS...

22 Q OKAY. SO ONCE HE WENT BACK TO LAW ENFORCEMENT AND
23 WAS DOING SERVICE ALL ON PART TIME BASIS IT WAS VERY
24 SUCCESSFUL?

25 A YES.

FRED KUBALA - DIRECT BY KOLB

1 Q OKAY. AND AS FAR AS THE -- HE'S JUST A SATELLITE
2 OFFICE HERE AND THE MAIN OFFICE OF THAT COMPANY IS
3 ANDERSON. WHY WOULD THINGS BEING SENT HERE DIRECTLY TO
4 SUMTER DIRECTLY TO HIM?

5 A YES.

6 Q WHY WOULD THAT BE?

7 A BECAUSE WE HAD THE -- WE HAD THE FACILITIES IN THE
8 BUILDING WE HAD THE FACILITIES TO REPAIR THESE. AND AGAIN
9 BECAUSE OF HIS REPUTATION THAT WHEN THEY WERE SHIPPED
10 BACK, THE PARTS DID WORK AND WORKED PROPERLY JUST AS IT
11 WAS SUPPOSED TO.

12 Q OKAY. CAN YOU IDENTIFY THESE TWO PHOTOGRAPHS FOR ME?

13 A YES.

14 Q OKAY.

15 A THEY ARE TAKEN OF THE NEW BUILDING THAT WE MOVED
16 INTO.

17 Q THAT'S DIALYSIS MACHINES AND...

18 A THOSE ARE DIALYSIS MACHINES THAT ARE IN THERE.

19 MR. KOLB: LIKE TO OFFER THESE INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. LITTLEJOHN: NO OBJECTION.

22 THE COURT: VERY WELL. STATE'S EXHIBITS 75 AND 76
23 EACH BEING A PHOTOGRAPH. INTO EVIDENCE WITHOUT OBJECTION.

24 (STATE'S EXHIBIT NO. 75 AND 76 MARKED FOR
25 EVIDENCE).

FRED KUBALA - DIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY

3 -- YOU REMEMBER WHAT THEY SHOW IF I PASS THEM AROUND?

4 A MAY I SEE THE NUMBERS FIRST OFF? 76. 75. OKAY. 75 IS
5 THE MACHINES.

6 Q OKAY.

7 A THE EXHIBIT NUMBER 75 IS SOME DIALYSIS MACHINES THAT
8 WERE BROUGHT IN. THOSE PICTURES WERE TAKEN SHORTLY AFTER
9 HIS DEATH. AND MY NOT HAVING THE EXPERTISE THAT HE HAD, ON
10 -- THOSE MACHINES ARE STILL SITTING JUST LIKE THEY WERE.

11 THE PEOPLE FROM ANDERSON HAVEN'T BEEN ABLE TO
12 SEND ANY ONE DOWN FROM ANDERSON TO DO ANYTHING WITH THEM
13 EITHER. SOME OF THOSE ARE OBSOLETE AND BEING KIND OF
14 RECYCLED FOR SPARE PARTS, BUT THE POINT IS NOTHING HAS
15 BEEN DONE SINCE HIS DEMISE.

16 THE OTHER IS A PLATFORM THAT HE BUILT FOR
17 STORAGE UP ABOVE -- HE ACTUALLY BUILT THAT THE SATURDAY
18 BEFORE THE INCIDENT TOOK PLACE. AND OF COURSE AGAIN
19 WITHOUT HIM THERE I HAVEN'T BEEN ABLE TO MOVE FORWARD WITH
20 ANY OF THOSE PROJECTS THA WE STARTED TOGETHER.

21 Q ALL RIGHT, SIR. MR. KUBALA, UP TO THIS POINT HAVE
22 ASKED YOU SPECIFICALLY ABOUT THE PROSPECTS FOR YOUR AND
23 CHARLIE'S FUTURE BUSINESS.

24 AND -- BUT I'D LIKE TO ASK YOU NOW ABOUT THE
25 AFFECT THIS HAS HAD ON YOU AND YOUR FAMILY PERSONALLY.

FRED KUBALA - DIRECT BY KOLB

1 A WELL, OF COURSE IT'S A -- IT'S CREATED A VOID IN THE
2 FAMILY. IT'S GOING TO BE VERY DIFFICULT TO FILL. HE WAS
3 VERY ACTIVE WITHIN THE FAMILY. HE CHECKED ON HIS BROTHERS
4 AND SISTERS TO MAKE SURE EVERYTHING WAS ALL RIGHT.

5 QUITE OFTEN PROVIDED ADVICE WHEN IT WASN'T
6 SOLICITED, BUT YOU MUST REALIZE THE FAMILY IS THE TYPE
7 THAT EVEN WHEN THERE IS A SADNESS IN THE FAMILY, THERE'S
8 ALWAYS APPROACHED WITH JOVIAL (SIC) TO END THE THING AND
9 THAT GOES BACK TWO OR THREE GENERATIONS IN MY SIDE OF THE
10 FAMILY.

11 BUT I THINK THAT WE ARE GOING TO MISS HIM AT THE
12 HOLIDAYS WHICH IS TRUE. BUT IT'S KIND OF HARD TO EXPLAIN
13 EXACTLY THE TOTAL IMPACT. I FIND MYSELF -- TO BE HONEST
14 WITH YOU, I USED TO WORK AT NIGHT, COME HOME GET SOMETHING
15 TO EAT THEN GO WORK ON SOMETHING.

16 WHATEVER NEEDED TO BE REPAIRED. SMALL REPAIR JOB
17 OR SOMETHING AROUND THE HOUSE, PLUMBING NEEDED FIXED. NOW
18 I FIND MYSELF SITTING DOWN AND ASKING WHERE THE REMOTE IS
19 AND SITTING WATCHING A LOT OF TELEVISION.

20 AND I DON'T KNOW HAVE A MASTERS DEGREE, BUT I
21 GOT TO THINKING THE OTHER DAY I SAID IT MUST BE RELATED
22 BECAUSE YOU -- KIND OF AN ESCAPE FROM REALITY, SO TO
23 SPEAK. SO I -- AS A RESULT, SOME THINGS ARE NOT DONE
24 AROUND THE HOUSE THAT SHOULD BE DONE.

25 Q YOU DON'T HAVE QUITE THE ENTHUSIASM FOR LIFE YOU USED

FRED KUBALA - DIRECT BY KOLB

1 TO HAVE WHEN CHARLIE WAS THERE?

2 A THAT'S RIGHT. I DON'T KNOW IF IT'S A FACTOR OF THAT
3 OR AGE, BUT I DO FIND MYSELF THINKING WHEN I'M WORKING AT
4 THE SHOP THINKING ABOUT IF HE WERE THERE HE COULD HELP ME
5 DO IT.

6 HE HELPED ME INSTALL THE AIR CONDITIONING SYSTEM
7 IN THE HOUSE A FEW YEARS AGO. AND IT SHOULD BE CHECKED,
8 BUT HE WOULD COME AROUND SAY DAD IT'S TIME TO CHECK THE
9 CENTRAL SYSTEM, SEE IF IT NEEDS ANYTHING. WITHOUT HIM
10 AROUND YOU KNOW KIND OF FORGET ABOUT THAT.

11 Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY
12 HAVE.

13 THE COURT: ANY QUESTIONS?

14 MR. LITTLEJOHN: NO, YOUR HONOR.

15 THE COURT: THANK YOU, SIR. YOU MAY COME DOWN, MR.
16 KUBALA.

17 MR. KOLB: CAN WE APPROACH, YOUR HONOR.

18 THE COURT: YES, SIR.

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I NEED
20 FOR YOU TO GO TO YOUR JURY ROOM FOR A MOMENT. THERE'S A
21 MATTER OF LAW I NEED TO TAKE UP OUT OF YOUR PRESENCE.
22 THANK YOU.

23 (WHEREUPON THE JURY LEFT THE COURTROOM AT 7:32
24 P.M.)

25 MR. KOLB: CALL MRS. CROOKSHANKS.

FRED KUBALA - DIRECT BY KOLB

1 LEANNA CROOKSHANKS, BEING FIRST

2 DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. KOLB:

4 Q GIVE US YOUR NAME, PLEASE?

5 A MY NAME IS LEANNA CROOKSHANKS.

6 Q MIGHT WANT TOO PULL THAT MIKE BACK A LITTLE BIT.

7 A MY NAME IS LEANNA CROOKSHANKS.

8 Q AND MRS. CROOKSHANKS, YOU HAVE SOME CHILDREN?

9 A YES, SIR. I HAVE THREE CHILDREN.

10 Q ALL RIGHT. AND DID YOU KNOW DEPUTY CHARLIE KUBALA?

11 A PROBABLY NOT IN THE STANDARD WAY. I WASN'T REAL
12 FAMILIAR WITH HIM EXCEPT THROUGH MY CHILDREN.

13 Q ALL RIGHT. AND COULD YOU TELL US WHAT THAT CONNECTION
14 WAS?

15 A MY SON DEVLIN WAS IN SCOUTS. AND MR. KUBALA DID SOME
16 WORK WITH THE SCOUTS. AND MY OTHER TWO CHILDREN OFTEN
17 ACCOMPANIED ME TO SOME OF THE MEETINGS.

18 Q ALL RIGHT. COULD YOU EXPLAIN ABOUT DEPUTY KUBALA'S
19 INVOLVEMENT WITH YOUR ALL OF YOUR CHILDREN AS FAR AS BEING
20 FINGERPRINTED?

21 A OKAY. TALKING ABOUT -- NOT SURE WHEN IT OCCURRED.

22 Q THINK IF YOU SIT UP. PULL THAT BACK SO IT POINTS TO
23 YOU. YEAH. THAT WILL BE FINE.

24 A OKAY. THANK YOU.

25 Q OKAY.

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 A MUCH BETTER. ALL RIGHT. WE WENT TO THE LAW
2 ENFORCEMENT -- THE POLICE DEPARTMENT WITH THE SCOUTS. AND
3 MY OTHER TWO CHILDREN WERE NOT SCOUTS, BUT---

4 Q WHAT WAS THE PURPOSE OF GOING TO THE LAW ENFORCEMENT
5 CENTER?

6 A IT WAS TO KIND OF -- YOU KNOW -- TOUR THE PLACE AND
7 LET THE BOYS SEE -- YOU KNOW -- A LITTLE BIT ABOUT LAW
8 ENFORCEMENT.

9 Q ALL RIGHT. AND WHY WERE THEY GOING TO BE
10 FINGERPRINTED?

11 A HE WAS GOING TO SHOW THEM AND THEN GIVE IT TO US AS A
12 RECORD WE COULD KEEP, WHICHEVER.

13 Q AND SO TELL US ABOUT OFFICER KUBALA'S -- HOW HE
14 HANDLED THAT SITUATION WITH ALL OF THOSE CHILDREN.

15 A WITH A LOT OF HUMOR. HE WAS -- HE HAD THE KIDS
16 LAUGHING A LOT. HE MADE US ALL COMFORTABLE. WE CAME IN AND
17 SAT DOWN. HE INTRODUCED HIMSELF. HE TOLD THE KIDS HIS NICK
18 NAME AND THEY LIKED THAT. AND.

19 Q THAT WAS OPIE?

20 A YEAH. AND HE JUST -- HE STARTED TALKING A LITTLE BIT
21 ABOUT WHAT THEY DO AND JOKING. I DON'T REMEMBER EXACTLY
22 WHAT HE SAID, BUT THE BOYS WERE LAUGHING. AND THEN HE SAID
23 HE WAS GOING TO FINGER PRINT SOME OF THE CHILDREN.

24 HE SAID I DON'T KNOW IF I WILL BE ABLE TO GET TO
25 ALL OF YOU, BUT HE DID. HE WENT AHEAD AND DID EVERYBODY,

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 AS A MATTER OF FACT, INCLUDING MY DAUGHTER AND MY YOUNGEST
2 SON WHO WERE NOT SCOUTS.

3 I TOLD HIM I EXPLAINED WHEN THEY FIRST CAME IN I
4 WAS A SINGLE PARENT AND THAT I HAD TO BRING THEM ALONG.
5 YOU KNOW. I DIDN'T HAVE ANYBODY TO LEAVE WITH THEM. HE
6 SAID THAT'S OKAY WE WILL FIT THEM IN RIGHT GOOD, YOU
7 KNOW. WE WILL SQUEEZE THEM IN.

8 AND WHEN THEY WERE DONE AND WE TOURED THE PLACE,
9 DID THE FINGER PRINTS, HE PASSED OUT THE MEMORANDUM TO THE
10 KIDS AND TOLD THEM HE WAS GLAD THAT THEY HAD COME, THAT HE
11 HOPED MAYBE ONE OF THEM WOULD CHOOSE A CAREER LIKE THAT
12 ONE DAY.

13 Q DID -- WHEN DID HE HAVE OCCASION TO SEE YOUR CHILDREN
14 AT OTHER PLACES AFTER THAT AND REMEMBER THEM?

15 A YEAH. WELL, THEY SAW HIM FIRST. THEY REMEMBERED HIM
16 WHEN WE BEFORE IN PLACES LIKE WAL MART OR YOU KNOW
17 SUPERMARKET. SAW HIM A COUPLE TIMES. SAID THERE'S MR.
18 CHARLIE, THERE'S MR. CHARLIE. THEY DON'T FORGET KINDNESS.
19 AND---

20 Q ALL RIGHT. DO YOU THINK THE EXAMPLE AND ROLE MODEL HE
21 WAS FOR THEM GAVE THEM SOME GUIDANCE IN THEIR GROWING UP
22 PROCESS?

23 A YES. THEIR FATHER IS NOT HOME AND THEY SAW HIM QUITE
24 A FEW TIMES AND WERE TICKLED TO SEE HIM AND -- AND THEY
25 SAID THERE'S MR. CHARLIE THE FINGER PRINTS AND HE GAVE ME

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 M AND M'S AND THAT'S ABOUT I GUESS ALL YOU HAVE TO DO TO
2 MY KIDS.

3 Q COULD YOU TELL THE JUDGE ABOUT YOUR SON THAT WANTED
4 TO GO TO THE FUNERAL?

5 A MY SON DEVLIN, WELL HE'S EIGHT YEARS OLD NOW. SINCE
6 HE WAS THREE HE WANTED TO BE A POLICE OFFICER. AND YOU
7 KNOW, HE WOULD -- HE WAS PRETTY UPSET WHEN I TOLD HIM
8 ABOUT MR. CHARLIE. AND HE PRETTY ANGRY.

9 AND HE WANTED TO GO. AND IT WAS A SCHOOL DAY
10 AND I TOLD HIM THAT DONOVAN WOULD BE ABLE TO GO, THE
11 YOUNGEST, BECAUSE HE WASN'T IN SCHOOL. AND HE WAS PRETTY
12 MAD AT ME.

13 WHY DOES DONOVAN GET TO GO? I SAID WELL, I WANT
14 TO TAKE ONE OF YOU KIDS AS A REPRESENTATIVE BECAUSE HE WAS
15 SO GOOD TO YOU KIDS. BUT -- YOU KNOW -- I KNEW THAT HE
16 WOULD BE IN SCHOOL. AND...

17 Q WHAT HAPPENED AS FAR AS WITH DONOVAN AT THE FUNERAL?

18 A HE MADE ME VERY PROUD. HE -- WHILE WE WERE THERE HE
19 HAD NOTICED THAT QUITE A FEW OF THE OFFICERS YOU KNOW WERE
20 SALUTING AND STANDING AT ATTENTION.

21 AND WHEN WE WENT UP TO THE GRAVE, HE SURPRISED
22 ME. I TOLD HIM, I SAID WOULD YOU LIKE TO SAY SOMETHING
23 NICE MAYBE, YOU KNOW, TO MR. CHARLIE? AND HE SAID I GOT
24 SOMETHING FOR HIM.

25 AND I SAID YOU WANT ME TO PUT THIS FLOWER DOWN

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 THERE? BECAUSE HE HAD GIVEN ME A FLOWER. AND HE SAID NO,
2 THAT'S YOUR FLOWER. HE SAID I GOT SOMETHING FOR HIM,
3 THOUGH.

4 AND I WAS STUPED. I OR STUMPED. I DIDN'T KNOW
5 WHTA IT WAS, YOU KNOW. BUT HE STOOD REALLY STRAIGHT AND
6 WITH HIS LITTLE REAR END OUT AND PUT HIS HAND UP TO HIS --
7 TO HIS HEAD AND SALUTED. AND I WAS VERY PROUD OF HIM DOING
8 THAT.

9 Q YES, MA'AM.

10 MR. KOLB: THAT WOULD BE THE SHOWING, YOUR HONOR.

11 THE COURT: ANY OBJECTION TO THE TESTIMONY?

12 MR. LITTLEJOHN: YOUR HONOR, WE THINK THIS TESTIMONY
13 FALLS OUTSIDE OF THE TESTIMONY THAT SHOULD BE RELEVANT TO
14 SHOW A WITNESS VICTIM IMPACT. THE STATE HAS PUT ON A GREAT
15 DEAL OF ACKNOWLEDGMENT, DESERVEDLY SO FOR SERGEANT KUBALA.
16 AND WE HAVE NOT OBJECTED.

17 WE DID NOT ASK ANY QUESTIONS. WE THINK THAT THE
18 RECORD IS AMPLE FOR THIS JURY TO CONCLUDE WHAT A FINE MAN
19 THIS WAS. AND WE JUST THINK THIS GOES A LITTLE BIT
20 BEYOND. IT'S CUMULATIVE IN IT'S EFFECT.

21 THE COURT: SOLICITOR, ANYTHING FURTHER?

22 MR. KOLB: NO, SIR. YOUR HONOR, WE JUST THINK IT'S
23 SORT OF A CONCRETE EXAMPLE OF HIS AFFECT ON YOUNG PEOPLE.
24 AND THE EXPLORER GROUP WAS IMPORTANT TO HIM AND I THINK
25 IT'S IMPORTANT TO HAVE PEOPLE LIKE MR. KUBALA IN THE

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 COMMUNITY TO HAVE THAT AFFECT ON CHILDREN.

2 THE COURT: WELL, FIRST OF ALL I WANT TO SHARE FOR
3 THE RECORD QUOTE FROM JUSTICE WINFRED IN THE LANE
4 DECISION. AND IT REALLY GOES TO WHAT WE ARE TALKING ABOUT,
5 WHAT THIS WHOLE PROCEEDING OF VICTIM IMPACT INVOLVES.

6 STATED VICTIM IMPACT EVIDENCE SHOULD NOT PERMIT
7 A JURY TO FIND THAT DEFENDANTS WHOSE VICTIMS WERE ASSETS
8 TO THEIR COMMUNITY ARE MORE DESERVING OF PUNISHMENT THAN
9 THOSE WHO VICTIMS PERCEIVE TO BE LESS WORTHY.

10 TRIAL COURTS MUST LIMIT THE SCOPE OF VICTIM
11 IMPACT EVIDENCE TO THOSE AREAS THAT DO NOT -- AND NOW AM
12 QUOTING FROM JUSTICE RENQUIST. DO NOT ALLOW FOR ASSESSMENT
13 OF PUNISHMENT BASED UPON THE RELATIVE WORTH OF THE
14 INDIVIDUAL OR THE VICTIM.

15 THE VICTIM IMPACT TESTIMONY THAT WE HAVE HAS
16 COVERED THIS LINE OF TESTIMONY. WE HAVE HEARD NUMEROUS
17 INSTANCES OF HIS INVOLVEMENT IN THIS COMMUNITY WITH YOUNG
18 PEOPLE.

19 I WILL CERTAINLY -- THERE WAS -- THIS TALKS
20 ABOUT HIM GOING IN A SCHOOL AND TALKS ABOUT THE CHILDREN
21 SEEING HIM ON THE STREET. TO THAT EXTENT I WILL ALLOW THIS
22 TESTIMONY TO CONTINUE.

23 THE TESTIMONY OF THE HER SON AND HIS ACTIONS ARE
24 CERTAINLY ADMIRABLE AND I WILL IMAGINE THAT THEY WERE
25 PROBABLY REPRESENTATIVE -- AND I WASN'T HERE FOR THAT

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 FUNERAL -- BUT PROBABLY REPRESENTED THE ENTIRE COMMUNITY
2 AS TO WHAT OCCURRED, THE FEELINGS THIS COMMUNITY HAD ON
3 THAT PARTICULAR OCCASION.

4 I DO NOT FEEL, HOWEVER, THAT THEY ARE
5 APPROPRIATE AND THEY WOULD GO BEYOND THE PURPOSE OF VICTIM
6 IMPACT AS CONTEMPLATED BY OUR LAW AT THIS TIME AND I WOULD
7 PRECLUDE THAT TESTIMONY.

8 HOWEVER, THE TESTIMONY ABOUT HIM GOING IN TO --
9 FOR THE PURPOSES OF FINGERPRINTING AND SEEING HIM ON THE
10 STREETS, RECOGNIZING, I WILL ALLOW THAT LIMITED TESTIMONY.
11 ALL RIGHT, SIR. DO YOU WISH FOR HER TO REMAIN FOR THAT
12 PURPOSE?

13 MR. KOLB: YES, SIR, PLEASE. THANK YOU.

14 THE COURT: ALL RIGHT. LETS BRING THE JURY IN.

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
16 7:43 P.M.)

17 THE COURT: IF YOU WOULD PLEASE TAKE THE STAND AGAIN.
18 I WOULD REMINDS YOU THAT YOU ARE UNDER OATH. IF YOU WOULD
19 STATE NOW FOR THE RECORD AGAIN AND FOR THE BENEFIT OF THE
20 JURY, THEY NOW BEING PRESENT, YOUR FULL NAME.

21 WITNESS: OKAY MY NAME IS LEANNA CROOKSHANKS

22 DIRECT EXAMINATION BY MR. KOLB:

23 Q MRS. CROOKSHANKS, WOULD YOU TELL US ABOUT YOURSELF
24 PERSONALLY, YOUR MARITAL STATUS AND HOW MANY CHILDREN YOU
25 HAVE.

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 A I'M A SINGLE PARENT WITH THREE YOUNG CHILDREN AND A
2 TEEN-AGE BOY.

3 Q ALL RIGHT. AND HOW OLD ARE THOSE THREE YOUNG
4 CHILDREN?

5 A MY DAUGHTER ARIEL IS TEN. MY SON DEVLIN IS EIGHT AND
6 MY YOUNGEST SON DONOVAN IS FIVE.

7 Q OKAY. AND YOU HAVE A TEEN-AGE SON. AND HOW OLD IS
8 HE?

9 A HE IS NINETEEN.

10 Q ALL RIGHT. WOULD THE TEEN-AGE SON AND THEN -- THE
11 THREE CHILDREN GOING TO BE TEEN-AGERS EVENTUALLY -- BUT
12 YOU CONCERNED ABOUT POSITIVE ROLE MODELS FOR YOUR
13 CHILDREN?

14 A YES, I AM.

15 Q HAVE YOU CAUSED YOUR CHILDREN TO GET INVOLVED IN THE
16 SCOUTING?

17 A I'M SORRY. I DIDN'T HEAR YOU.

18 Q DID YOU CAUSE YOUR CHILDREN, THE BOYS, TO GET
19 INVOLVED IN SCOUTING?

20 A WELL, MY SON DEVLIN. DONOVAN WAS TOO YOUNG.

21 Q OKAY. AND DID YOU HAVE OCCASION TO MEET DEPUTY
22 CHARLIE KUBALA THROUGH SCOUTING INVOLVEMENT WITH YOUR SON,
23 DEVLIN?

24 A YES, SIR. I DID.

25 Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 ABOUT THE EXPERIENCE YOU HAD WITH THINK SOME PARENTS LIKE
2 TO GET FINGERPRINTS ON THEIR CHILDREN?

3 A RIGHT. WELL, IN THE BEGINNING I ONLY KNEW THAT WE
4 WERE SUPPOSED TO GO TO THE POLICE DEPARTMENT AND THEY WERE
5 GOING -- THE BOYS WERE GOING TO TOUR THE POLICE
6 DEPARTMENT.

7 WE GOT THERE, GENTLEMAN NAMED CHARLIE KUBALA
8 INTRODUCED HIMSELF AND TOLD THE BOYS A COUPLE JOKES AND
9 TRIED TO WARM EVERYBODY UP. AND TOLD US WHAT WE WAS GOING
10 BE DOING.

11 Q TELLING THEM HIS NICK NAME?

12 A WAS OPIE AND THEY LAUGHED. THEY THOUGHT THAT WAS
13 HILARIOUS. AND HE TOLD EXPLAINED TO THEM THAT HE'S GOING
14 TO FINGER PRINT THEM AND THEY WERE LIKE WOW, YOU KNOW.
15 THEY WANTED TO DO THAT.

16 BUT HE KIND OF SHOWED THEM AROUND THE PLACE
17 FIRST AND THEN WHEN THEY CAME BACK HE FINGER PRINTED THE
18 SCOUTS. HE TOLD ME HE WAS GOING TO DO A COUPLE OF THE
19 KIDS.

20 AND I THINK IT -- A COUPLE OFFICERS TOLD HIM --
21 YOU KNOW -- HE'D PROBABLY BE ABLE TO GET A COUPLE IN, BUT
22 HE DID DO ALL OF THEM. I WAS IMPRESSED WITH THAT.

23 Q DID YOU HAVE JUST DEVLIN THERE THAT DAY OR...

24 A NO. I HAD MY DAUGHTER ARIEL AND DONOVAN WITH ME. AND
25 THEY ARE NOT ACTUALLY SCOUTS, BUT I HAVE TO TAKE THEM WITH

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 ME SOMETIMES TO THE MEETINGS. AND I EXPLAINED TO HIM --
2 YOU KNOW -- AND HE SAID OH DON'T WORRY ABOUT IT.

3 HE TOLD ME HE'D LET THEM BE A PART OF IT. THAT
4 YOU KNOW, THERE WASN'T ANY REASON WHY THEY COULDN'T DO IT,
5 TOO.

6 Q DID HE INVOLVE THEM IN THE TOUR AND THE FINGER
7 PRINTING?

8 A YEAH.

9 Q WHAT ABOUT BADGES?

10 A OKAY. I'M WEARING IT. BUT...

11 Q COULD YOU LET US SEE THAT?

12 A THIS IS -- IT'S JUST A LITTLE PLASTIC BADGE, BUT IT
13 MEANS EVERYTHING TO MY LITTLE BOY. IT SAYS JUNIOR DEPUTY
14 SHERIFF, SUMTER COUNTY. THIS IS DONOVAN'S, MY YOUNGEST
15 CHILD. HE HAD A LITTLE BOX I THINK OF THESE FOR THE OTHER
16 KIDS AND RAN OUT. AND HE...

17 THE COURT: SOLICITOR, LETS MOVE ON, SIR.

18 WITNESS: DUG AROUND AND FOUND THIS.

19 MR. KOLB: ALL RIGHT, SIR.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q FOR DONOVAN?

22 A YES, SIR.

23 Q ALL RIGHT. AFTER THAT DAY AND THE ATTENTION CHARLIE
24 KUBALA PAID TO THE CHILDREN, WHAT DID -- DID YOU AND YOUR
25 CHILDREN SEE HIM AROUND TOWN?

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 A WE SAW HIM AT THE SUPER MARKET AND WAL MART AND...

2 Q DID HE REMEMBER YOUR CHILDREN AND SPEAK TO THEM?

3 A YEAH, HE -- HE SAW THEM AND HE'D SAY HEY GUYS AND YOU
4 KNOW MY SON WOULD SAY MR. CHARLIE, THAT'S THE ONE WHO GAVE
5 ME THE M AND M'S AND...

6 Q HOW DID YOUR CHILDREN FEEL ABOUT DEPUTY KUBALA'S
7 DEATH?

8 A AT FIRST THEY DIDN'T REALLY UNDERSTAND, YOU KNOW.
9 THEY WERE LIKE WELL HE WAS NICE, YOU KNOW. THEY STILL
10 DON'T UNDERSTAND HOW BAD THINGS HAPPEN TO NICE PEOPLE.

11 BUT DEVLIN, THE OLDER BOY, HE WAS UPSET. HE WAS
12 VERY ANGRY. AND DONOVAN WAS JUST REALLY SAD ABOUT IT.

13 Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THAT THE
14 DEFENSE MAY HAVE.

15 THE COURT: ANY QUESTIONS?

16 MR. LITTLEJOHN: WE HAVE NO QUESTIONS, YOUR HONOR.

17 THE COURT: THANK YOU, MRS. CROOKSHANKS. YOU MAY
18 COME DOWN.

19 THE WITNESS: THANK YOU.

20 (WHEREUPON THE WITNESS LEFT THE STAND).

21 MR. KOLB: CALL TERESA KUBALA.

22 THE COURT: SOLICITOR, YOU WANT TO APPROACH?

23 (WHEREUPON A BENCH CONFERENCE WAS HELD).

24 THE COURT: MRS. KUBALA, ONE SECOND.

25 THE WITNESS: OKAY.

LEANNA CROOKSHANKS - DIRECT BY KOLB

1 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO AT
2 THIS POINT RECESS FOR THE EVENING. I THANK YOU FOR YOUR
3 ATTENTION TO THIS MATTER. WE WILL START BACK IN THE
4 MORNING AT 9:00 IF THAT SUITS EVERYONE.

5 AND PLEASE HAVE A GOOD NIGHT. HOPE YOU HAVE A
6 GOOD SUPPER. I THINK ARRANGEMENTS HAVE BEEN MADE FOR THAT.
7 DO NOT UNDER ANY CIRCUMSTANCES BEGIN YOUR DELIBERATIONS IN
8 THIS MATTER. DO NOT DISCUSS THIS MATTER AMONG YOURSELVES.

9 I WILL SEE YOU IN THE MORNING AT NINE. THANK
10 YOU. APPRECIATE IT.

11 (WHEREUPON THE JURY LEFT THE COURTROOM AT 7:52
12 P.M.).

13 THE COURT: ANYTHING FURTHER FROM THE STATE?

14 MR. KOLB: NO, SIR.

15 THE COURT: ANYTHING FROM THE DEFENDANT?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: BE IN RECESS UNTIL IN THE MORNING.

18 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
19 EVENING)

20 JANUARY 28, 1997.

21 THE COURT: LET THE RECORD REFLECT MR. STONE IS
22 PRESENT. GOOD MORNING, MR. STONE. IS THERE ANYTHING FROM
23 THE STATE BEFORE WE BRING THE JURY BACK?

24 MR. KOLB: NO, SIR.

25 THE COURT: IS THERE ANYTHING FROM THE DEFENDANT

LEANNA CROOKSHANKS - DIRECT BY KOLB

BEFORE WE.

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL. BRING THE JURY IN.

(WHEREUPON THE JURY ENTERED THE COURTROOM AT
9:11 A.M.)

THE COURT: THANK YOU, LADIES AND GENTLEMEN. GOOD
MORNING TO YOU. WE ARE READY TO CONTINUE WITH THIS
PROCEEDING. PLEASE GIVE YOUR ATTENTION TO THE NEXT
WITNESS. MR. SOLICITOR, YOU MAY CALL YOUR NEXT.

MR. KOLB: CALL TERESA KUBALA.

THE COURT: ALL RIGHT.

TERESA KUBALA, BEING FIRST DULY
SWORN, TESTIFIED AS FOLLOWS:

THE COURT: GOOD MORNING, MRS. KUBALA. IF YOU WOULD
POSITION YOURSELF. MOVE THE MIKE SO THAT YOU CAN SPEAK IN
IT. ONCE YOU DONE THAT, IF YOU WOULD PLEASE STATE YOUR
FULL NAME FOR THE RECORD.

WITNESS: TERESA B KUBALA, K U B A L A.

THE COURT: THANK YOU.

DIRECT EXAMINATION BY MR. KOLB:

Q MRS. KUBALA, YOU ARE THE WIDOW OF DEPUTY CHARLIE
KUBALA?

A YES, SIR.

Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE
JURY A LITTLE BIT ABOUT YOURSELF AND WHO YOUR PARENTS ARE

TERESA KUBALA - DIRECT BY KOLB

1 WHERE YOU GREW UP AND THAT SORT OF THING.

2 A OKAY. I GREW UP IN CLARENDON COUNTY, MANNING, SOUTH
3 CAROLINA. MY PARENTS ARE EDDIE AND SHIRLEY BARRETT.

4 THEY'RE ORIGINALLY FROM VIRGINIA, BUT THEY -- BEFORE I WAS
5 A YEAR OLD THEY MOVED TO MANNING. SO THAT'S REALLY WHERE
6 I GREW UP.

7 Q I BELIEVE THEY ARE HERE IN THE COURTROOM?

8 A YES, SIR.

9 Q COULD YOU TELL US ABOUT MEETING YOUR HUSBAND, HOW
10 YA'LL GOT MARRIED?

11 A I WAS DATING A FRIEND OF HIS AND HE WAS -- I WAS
12 GOING TO SEE ANOTHER FRIEND. HE WAS LEAVING TO GO INTO THE
13 ARMY, SO I CALLED, I WENT OVER TO HIS MOTHER'S AND HE SAID
14 WELL HE WAS OVER AT THIS GUYS HOUSE WHICH WAS CHARLIE AND
15 THAT THEY WERE WORKING ON HER CAR. SO I SAID OKAY.

16 SO THEY TOOK US OVER THERE. AND I MEAN THEY --
17 I CALLED THEM. AND THEY SAID WHY DON'T YOU COME ON OVER,
18 SO I WENT OVER AND THAT'S WHERE I MET CHARLIE. BUT WE
19 DIDN'T -- WE JUST SPOKE AND ALL THAT.

20 AND THEN I STARTED TAKING LIFE SAVING. I HAD TO
21 RENEW IT. SO CHARLIE WAS HELPING HIS MOTHER TEACH THE
22 CLASS. SO WE DECIDED WE -- HIM AND I STARTED TALKING, YOU
23 KNOW, BECAUSE WE HAD MET BEFORE. AND HE SAID HAVEN'T WE
24 MET BEFORE? I SAID I THINK SO. SO AFTER THAT WE ENDED UP
25 GETTING TOGETHER.

TERESA KUBALA - DIRECT BY KOLB

1 Q AND YA'LL EVENTUALLY GOT MARRIED?

2 A YES, SIR.

3 Q WHEN DID YOU GET MARRIED?

4 A WE GOT MARRIED AUGUST THE 6TH, 1983. WE HAVE BEEN
5 MARRIED TWELVE AND A HALF YEARS.

6 Q AND DO YOU HAVE CHILDREN?

7 A YES, SIR, WE HAVE TWO. WE GOT MY SON CHARLIE JUNIOR.
8 HE WAS, HE'S JUST TURNED 11 THIS MONTH AND ALEX TURNED SIX
9 IN OCTOBER.

10 Q AND ALEX IS A LITTLE GIRL?

11 A YES, SIR. HER REAL NAME IS ALEXANDRIA, BUT WE CALL
12 HER ALEX.

13 Q CAN YOU TELL THE JURY WHO CHARLIE WAS TO YOU?

14 A CHARLIE AND I KIND OF -- I SAY GREW UP TOGETHER
15 BECAUSE WE GOT MARRIED REAL YOUNG. AND THE MORE WE WERE
16 TOGETHER I THINK I LOVED HIM EVEN MORE. I WAS KIND OF A
17 PERSON THAT WAS VERY UNSURE AND HE WAS SO CONFIDENT ALL
18 THE TIME.

19 I THINK HE HELPED BRING ME OUT BECAUSE I WAS
20 VERY SHY. AND I WAS -- YOU KNOW -- AND HE HELPED
21 STRENGTHEN ME AND HELPED ME. AND HE WAS MY BEST FRIEND.

22 WE TOLD EACH OTHER SECRETS THIS WE NEVER TOLD
23 ANYBODY ELSE AND WE SHARED A LOT. WE WERE PEOPLE THAT
24 ALWAYS CONFIDED IN EACH OTHER EVEN THOUGH I HAVE REAL GOOD
25 FRIENDS, HE WAS MY VERY BEST FRIEND.

TERESA KUBALA - DIRECT BY KOLB

1 Q CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY
2 ABOUT THE FUTURE PLANS THE TWO OF YOU HAD?

3 A YEAH. SOME THINGS WE HAD, WE WERE GOING TO BUILD ON
4 TO OUR HOUSE. WE HAD -- OUR DINING ROOM AND OUR LIVING
5 ROOM WAS TOGETHER, BUT WE WANTED TO GET A BIG FAMILY ROOM
6 BECAUSE WHEN WE HAD HIS FAMILY AND MY FAMILY OVER, WE
7 DIDN'T HAVE ENOUGH ROOM.

8 AND WE ALWAYS LIKE TAKE THE KIDS, THE FAMILIES
9 TOGETHER. MY FAMILY, CHARLIE'S FAMILY ARE VERY CLOSE AND
10 ALL MY RELATIVES IN VIRGINIA AND NORTH CAROLINA AND ALL
11 HIS RELATIVES, THEY WERE IN THE AIR FORCE THEY COME FROM A
12 DIFFERENT PLACE.

13 MY FAMILY AND HIS FAMILY GET TOGETHER ON
14 DIFFERENT OCCASIONS AND HAVE COOK OUTS. AND ESPECIALLY AT
15 CHRISTMAS TIME, WE WOULD GO TO MY FAMILY COME OVER TO
16 CHARLIE'S MOM AND DADS OR HIS FAMILY WOULD GO TO MY MOM
17 AND DADS FOR CHRISTMAS SINCE THERE WASN'T ANYBODY ELSE
18 AROUND.

19 SO WE KIND OF ALL BLENDED IN REAL WELL
20 TOGETHER. I CAN SAY THAT IT -- MY IN-LAWS AND MY PARENTS
21 GET A LONG FINE AND I GET A LONG GREAT WITH MY IN-LAWS
22 ALSO. AND CHARLIE GOT A LONG GOOD WITH MY PARENTS.

23 Q COULD YOU TELL US ABOUT SOME OF THE THINGS THAT YOU
24 AND CHARLIE AND THE CHILDREN DID TOGETHER AND THEREFORE
25 YOU DON'T GET TO DO ANY MORE?

TERESA KUBALA - DIRECT BY KOLB

1 A YEAH. WE WOULD GO TO CHARLIE'S SISTER PATTY AND HER
2 HUSBAND. WE WOULD GO UP THERE AND VISIT THEM A LOT. THEY
3 LIVE IN GEORGIA. AND WE WOULD GO UP THERE JUST THREE OR 4
4 TIMES A YEAR.

5 GO UP THERE AND VISIT AND DO THINGS WITH THEM.
6 AND THEY HAVE TWO GIRLS AND ONE IS LITTLE CHARLIE'S AGE.
7 SO THEY GOT A LONG REAL WELL. AND HE WOULD -- WE LOVED
8 GOING FULL BODY.

9 WE LIKED SKIING AND HYDROSLIDING, WE LOVED
10 CAMPING THAT WAS OUR FAVORITE WAS TO GO CAMPING IN THE
11 MOUNTAIN THAT'S WHAT WE ENJOYED A LOT.

12 Q WHAT ABOUT JUST THE OF YOU, YOU AND CHARLIE?

13 A WE LIKED TO GO TO CONCERTS WHICH SOMETIMES WE DID
14 TAKE THE KIDS LIKE TO THE STATE FAIR WHEN THEY HAD THE
15 COUNTRY SINGERS AND STUFF COME, WE WOULD TAKE THEM TO
16 THOSE AND WE WOULD GO OUT WITH CHARLIE AND I WOULD GO OUT
17 WITH FRIENDS AND GO THE THE MOVIES AND DO DIFFERENT
18 THINGS.

19 AND ONCE IN A WHILE WE WOULD TAKE OFF AND MY
20 PARENTS WOULD KEEP THE KIDS AND WE WOULD JUST LIKE GO HAVE
21 TIME TOGETHER LIKE GO TO THE BEACH OR ONCE IN A WHILE WE
22 WOULD GO CAMPING BY OURSELVES JUST TO GET AWAY. BUT MOST
23 OF THE TIME WE TOOK THE KIDS WITH US.

24 Q ALL RIGHT. MRS. KUBALA, COULD YOU TELL US ABOUT YOUR
25 HUSBAND'S CAREER IN LAW ENFORCEMENT AND HOW HE FELT ABOUT

TERESA KUBALA - DIRECT BY KOLB

1 LAW ENFORCEMENT AND WHAT HIS ASPIRATIONS WERE?

2 A YES. CHARLIE REALLY WAS -- REALLY DID ENJOY LAW
3 ENFORCEMENT. HE LIKED GOING TO THE DIFFERENT SCHOOLS HE
4 WOULD SEND HIM TO AND HE ALWAYS TOLD ME WHICH HE WANTED TO
5 BE SHERIFF ONE DAY AND I ALWAYS PICKED AT HIM I SAID I
6 CAN'T DO THAT. I CAN'T GO AROUND TALKING TO PEOPLE AND
7 STUFF. YOU KNOW.

8 AND HE SAID OH YOU CAN DO THAT. BUT HE REALLY
9 WAS LOOKING TO DO THAT EVENTUALLY IS RUN FOR SHERIFF. AND
10 I THINK HE COULD HAVE DONE IT. AND HE WOULD ALWAYS TALK
11 ABOUT YOU KNOW LAW ENFORCEMENT.

12 AND I MEAN, IT DID HAVE IT'S BAD TIMES, TOO. HE
13 WOULD COME HOME, YOU KNOW, AND GET UP SAY UPSET ABOUT SOME
14 THINGS THAT HAPPENED. AND I COULD SEE HE WAS HURT BY,
15 ESPECIALLY IF IT INVOLVED CHILDREN.

16 HE WOULD GET VERY UPSET WITH THAT. THAT'S WHEN
17 HE USUALLY HAD PROBLEMS AND WOULD TALK TO ME ABOUT THAT
18 STUFF. BUT HE REALLY DID LIKE LAW ENFORCEMENT.

19 Q THE TIME THAT HE LEFT TO TRY TO MAKE MORE MONEY FOR
20 THE FAMILY IN A DIFFERENT CAREER, WOULD YOU TELL US ABOUT
21 HOW HE CAME BACK TO LAW ENFORCEMENT AFTER THAT?

22 A CHARLIE DECIDED HE WOULD WORK FOR SERVE ALL
23 CORPORATION WHICH WORKS ON DIALYSIS MACHINES. AND WE HAD
24 JUST -- I HAD JUST HAD ALEX AND HE WAS GONE LIKE THE WHOLE
25 WEEK AND ONLY ON WEEKEND, IT ABOUT DROVE ME CRAZY.

TERESA KUBALA - DIRECT BY KOLB

1 BUT HE DECIDED YOU KNOW HEY, IT'S NOT WORTH
2 THIS. AND HE SAID I DID ENJOY LAW ENFORCEMENT. AND HE
3 DECIDED HE WOULD COME BACK. AND HE TOOK A CUT IN PAY TO
4 COME BACK AND DO THAT.

5 BUT HE DID TELL HIS EMPLOYER HE WOULD WORK PART
6 TIME FOR HIM TO HELP HIM WITH MACHINES AND KEEP UP WITH
7 THAT STUFF.

8 Q LET ME SHOW YOU SOME PICTURES AND ASK IF YOU CAN
9 IDENTIFY THESE. LET ME -- UM-- JUST LOOK THROUGH THE GROUP
10 AND SEE IF YOU CAN IDENTIFY EACH OF THOSE THEN I WILL SHOW
11 THEM TO THE DEFENSE.

12 A YES, SIR.

13 (WHEREUPON THERE WAS A PAUSE).

14 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

15 THE COURT: VERY WELL. HOW MANY ARE THERE,
16 SOLICITOR?

17 MR. KOLB: SEVEN, YOUR HONOR.

18 THE COURT: SEVEN? VERY WELL. STATE'S EXHIBIT 77
19 THROUGH 83. EACH BEING A SEPARATE COLOR PHOTOGRAPH NOW
20 INTO EVIDENCE WITHOUT OBJECTION.

21 (STATE'S EXHIBIT NO. 77 THRU 83 MARKED FOR
22 EVIDENCE).

23 (WHEREUPON QUESTIONING RESUMED).

24 Q COULD YOU TELL US WHAT THESE PHOTOGRAPHS SHOW AND
25 JUST REFER TO THE NUMBER ON THE BACK AND THERE -- I THINK

TERESA KUBALA - DIRECT BY KOLB

1 THEY MAY HAVE GOTTEN OUT OF ORDER. I'M LOOKING AT THEM.

2 BUT JUST WHATEVER ORDER YOU WANT TO TALK ABOUT
3 THEM. IF YOU WOULD JUST LOOK AT THE NUMBER ON THE BACK
4 AND CALL THAT NUMBER OUT.

5 A OKAY. NUMBER 77.

6 Q SPEAK UP LOUD. IF YOU WOULD HOLD THAT UP SO WE CAN
7 SEE IT.

8 A OKAY. THIS IS CHARLIE AND I WHEN WE FIRST GOT
9 MARRIED. EVERYBODY USED TO PICK AT US, SAY WE LOOKED LIKE
10 WE WERE IN A PLAY BECAUSE WE WERE SO YOUNG. AND YOU CAN
11 SEE CHARLIE'S BROTHER JOHN AND MY BROTHER IN THE BACK
12 WALTER WERE ALL IN IT.

13 WE HAD A VERY SMALL BEDDING. I DID HAVEN'T A LOT
14 OF ATTENDANTS, BUT IT WAS A VERY NICE WEDDING. THIS ONE IS
15 NUMBER 78. THIS ONE IS WHEN LITTLE CHARLIE WAS BAPTIZED
16 AND THAT ONE IS CHARLIE'S FAMILY IN IT AND FATHER TONY IN
17 IT.

18 AND I THINK WE HAVE A COUPLE OF FRIENDS BACK
19 THERE IN THE BACK. THIS JUST SHOWS CHARLIE'S FAMILY AND MY
20 FAMILY WAS THERE, TOO.

21 THIS ONE IS NUMBER 79. THIS WAS ALEX'S FIFTH
22 BIRTHDAY PARTY. IT WAS LAST ONE CHARLIE GOT TO SEE. WE HAD
23 A REAL BIG PARTY THAT YEAR WHICH I'M GLAD, BECAUSE ALL OF
24 -- WE INVITED ALL OF OUR FRIENDS ALSO.

25 IT WAS BIRTHDAY PARTY, BUT WE ALSO INVITED

TERESA KUBALA - DIRECT BY KOLB

1 PEOPLE THAT DIDN'T HAVE KIDS AND ALL JUST TO HAVE A REAL
2 BIG COOK OUT.

3 AND THIS SHOWS A PICTURE OF CHARLIE, HE
4 EXPLAINING TO THEM WHAT A PINATA WAS AND HOW WE WERE GOING
5 TO DO IT AND THAT THEY WOULD BE BLIND FOLDED AND THEY
6 WOULD HAVE A CLUB TO KNOCK IT THROUGH TO SEE WHO COULD
7 BUST IT OPEN SO THEY COULD GET THE CANDY AND THEY ALL HAD
8 A REAL GOOD TIME. THE KIDS ENJOYED THAT.

9 NUMBER 80 IS A PICTURE OF US GOING UP TO THE
10 MOUNTAINS CAMPING. THAT WAS THE YEAR THAT I HELPED
11 CHAPERONE THE EXPLORERS. AND WE TOOK THE KIDS WITH US AND
12 SO THE KIDS HAD A GOOD TIME PLUS I THINK THE KIDS LIKED
13 WATCHING, HELP WATCHING THE LITTLE ONES FOR US TOO.

14 BUT WE HAD A GOOD TIME THAT YEAR WE WENT HIKING
15 UP IN THE MOUNTAINS AND ALL. WE HAD A REAL GOOD TIME. THIS
16 WAS ALEX'S FIRST BAPTISM. AND----

17 Q WHAT NUMBER IS THAT?

18 A THAT IS NUMBER 81. AND I REMEMBER CHARLIE SAYING SHE
19 LOOKED LIKE A LITTLE DOLL BABY IN THE GOWN WE HAD ON HER.
20 AND THIS WAS LITTLE CHARLIE'S FIRST BIRTHDAY PARTY THAT WE
21 HAD FOR HIM.

22 AND I THINK HE WAS -- I'M NOT MISTAKEN -- I
23 THINK HIS GREAT GRANDMA WAS DOWN FOR THAT BIRTHDAY PARTY
24 ALSO. AND THIS IS THE LAST -- THIS IS 83. THIS IS THE LAST
25 FAMILY PICTURE THAT WE HAD TAKEN BEFORE CHARLIE PASSED

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1 AWAY.

2 Q MRS. KUBALA, COULD YOU TELL US ABOUT THE LAST DAY
3 THAT YOU WERE WITH CHARLIE GETTING UP THAT MORNING AND HIM
4 LEAVING AND SO FORTH?

5 A YES. CHARLIE WAS GETTING READY TO START AFTERNOON
6 SHIFT. SO A LOT OF TIMES HE WOULD SLEEP IN BECAUSE -- YOU
7 KNOW -- THEY WOULD GO IN, THEY WOULD HAVE TO BE LATER
8 GETTING IN.

9 SO HE -- WHEN I GOT UP I JUST WENT OVER AND HE
10 WAS STILL IN BED AND TOLD HIM BYE AND I WOULD SEE HIM
11 LLATER. AND THAT I LOVED HIM. AND THEN I WENT ON TO WORK.

12 AND THERE WAS SOMETHING IN ME THAT SAID CALL
13 HIM. AND THEN I SAID NO BECAUSE IF HE'S GETTING READY --
14 YOU KNOW -- IF HE'S IN THE SHOWER HE WOULDN'T HEAR IT. SO
15 I DIDN'T CALL HIM, WHICH I REGRET, BUT YOU CAN'T TAKE THAT
16 BACK.

17 AND SO I REMEMBER I WAS FEEDING THE DOGS AND I
18 WENT OUTSIDE AND THERE WAS SOMETHING IN THE YARD, IT
19 LOOKED LIKE A SNAKE, BUT I COULDN'T TELL WHAT IT WAS. SO I
20 PAGED HIM ON HIS PAGER.

21 AND HIS SISTER VICKY CALLED, WHICH SHE DOESN'T
22 -- I MEAN WE TALK, BUT SHE DOESN'T CALL ALL THE TIME. IT
23 WAS VERY UNUSUAL. AND SHE WAS CALLING TO TELL ME THAT SHE
24 HAD MET SOMEBODY THAT KNEW TED -- WHICH THAT WAS CHARLIE'S
25 BOSS THAT WORKED AT THE SERVE ALL.

TERESA KUBALA - DIRECT BY KOLB

1 AND SHE WAS TELLING ME YOU KNOW HOW COINCIDENCE
2 THAT WAS AND THAT -- YOU KNOW -- SHE HAD TOLD HER THAT
3 CHARLIE WAS GETTING READY TO OPEN UP A CLINIC IN
4 BISHOPVILLE, DIALYSIS CLINIC IN BISHOPVILLE.

5 AND SHE SAID SHE DIDN'T KNOW WHY, SHE JUST HAD
6 TO CALL ME THAT NIGHT AND JUST TALK TO ME. SO WHEN I GOT
7 OFF THE PHONE WE WERE WATCHING THE NANNY.

8 AND LITTLE -- MY SON SAID MAMA, WHY HASN'T DADDY
9 CALLED, YOU KNOW, BECAUSE IT HAD BEEN A WHILE SINCE. AND
10 I SAID WELL YOU KNOW IF HE'S BUSY ON A CALL HE JUST CAN'T
11 CALL US RIGHT BACK.

12 AND I WAS USED TO THAT, YOU KNOW. I KNEW IF HE
13 WAS ON SOMETHING, HE COULDN'T CALL ME RIGHT BACK WHEN I
14 PAGED HIM. SO THEN I SAW CAR LIGHTS COME UP AND I THOUGHT
15 PROBABLY BE OUTSIDE NOW.

16 AND THEN THE FRONT DOOR -- KNOCKED ON THE FRONT
17 DOOR AND I OPENED IT AND I SAW CHARLIE'S LIEUTENANT EDDIE
18 HOBBS. WELL, WE ARE REAL GOOD FRIENDS WITH THEM, SO I
19 DIDN'T THINK NOTHING OF IT.

20 SO I STARTED CUTTING UP AS SOON AS I OPENED THE
21 DOOR, BUT I DIDN'T SEE THE CAPTAIN BEHIND HIM. AND THEN
22 WHEN THE CAPTAIN WALKED IN RIGHT BEHIND HIM, I KNEW. I
23 JUST KNEW.

24 AND EDDIE SAID WE NEED TO GO TALK AND I JUST
25 REMEMBER SAYING NO, WE ARE NOT. WE JUST CAN'T. AND HE SAID

TERESA KUBALA - DIRECT BY KOLB

1 YES, WE GOT TO GO SOMEWHERE PRIVATE. AND I SAID WE CAN'T,
2 YOU ARE NOT GOING TO WANT TO -- YOU ARE NOT GOING TO TELL
3 ME ANYTHING.

4 I KNEW WHAT HE WAS GOING TO TELL ME BEFORE HE
5 DID. AND EDDIE WAS TRYING TO HOLD BACK, SO HE FINALLY GOT
6 ME TO GO BACK IN THE BEDROOM AND TOLD ME AND OF COURSE I
7 WENT CRAZY, BUT I'M GLAD HE CAME -- HE WAS THE ONE THAT
8 CAME UP TO TELL ME BECAUSE I KNOW THAT HAD TO BE VERY HARD
9 ON HIM TO DO THAT.

10 Q HAVE YOU BEEN ABLE TO ACCEPT THAT CHARLIE IS GONE?

11 A NOT REALLY. I WAS USED TO CHARLIE, YOU KNOW, WE
12 DIDN'T HAVE A SET TIME. WE DIDN'T HAVE A REGULAR JOB WHERE
13 HE WAS HOME, YOU KNOW, AT THE SAME TIME ALL THE TIME. SO I
14 WAS USED TO SLEEPING ALONE BY MYSELF A LOT OF TIMES.

15 SO I NEVER HAD DREAMS ABOUT HE WASN'T REALLY
16 GONE. THAT DAY HE HAD -- YOU KNOW -- TELL HOW HATE TO
17 KILL OFF SOMEBODY YOU KNOW SOMEBODY, I BEEN HAVING A LOT
18 OF DREAMS LIKE THAT.

19 AND I KNOW HE'S GONE, BUT STILL -- OH NO, HE'S
20 GOING TO COME WALKING THROUGH THAT DOOR. AND I THINK
21 THAT'S ONE OF THE HARDEST THINGS IS ACCEPTING AND GOING
22 THROUGH THIS.

23 I THINK I AM STARTING TO ACCEPT IT A LITTLE BIT
24 MORE, BUT IT'S STILL HARD BECAUSE I FEEL LIKE I'M ON A
25 T.V. SHOW. YOU KNOW. THIS ISN'T REAL. AND...

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1 THE COURT: ONE SECOND. WOULD YOU POSITION THAT MIKE
2 PLEASE MA'AM, MRS. KUBALA, WOULD YOU POSITION SO --
3 THERE'S THIS ROAR THAT'S COMING IN. THANK YOU.

4 THE WITNESS: BUT...

5 (WHEREUPON QUESTIONING RESUMED).

6 Q CAN YOU TELL US ABOUT THE EFFECT ON THE CHILDREN?

7 A YEAH. CHARLIE DOESN'T WANT TO REALLY -- HE DOESN'T
8 TALK TO ME ABOUT IT. I HAVE -- YOU KNOW -- ASKED HIM
9 THINGS AND HE SAID MAMA -- YOU KNOW -- I'M OKAY, JUST
10 LEAVE ME ALONE.

11 HE WON'T TALK TO ME, BUT I KNOW GARY AND THEY
12 HAVE SAID THAT HE WILL TALK TO THEM A LITTLE BIT. AND I
13 DON'T KNOW IF HE IS SCARED IT'S GOING TO UPSET ME OR WHAT
14 BECAUSE HE HAS SEEN ME BREAK DOWN SOMETIMES.

15 AND I DON'T KNOW IF THAT'S WHY OR HE'S JUST
16 HOLDING IT ALL IN. WE ALL THREE HAVE BEEN TO SOME
17 COUNSELING. AND ALEX, SHE -- I WON'T FORGET THAT NIGHT.
18 ONE OF THE QUESTIONS SHE HAD FOR ME, SHE SAID TO ME WAS MY
19 DADDY WON'T BE HERE TO BE A GRAND DADDY AND SHE WASN'T
20 THINKING OF HERSELF. SHE WAS SAYING MY KIDS WON'T HAVE A
21 GRAND DADDY.

22 AND I'M LIKE WHERE DID THIS COME FROM? AND I
23 GUESS BECAUSE HER GRAND MOTHER, HER GRAND PARENTS ARE HERE
24 AND SHE HAS THEM AND THEY DO THINGS WITH THEIR
25 GRANDPARENTS, YOU KNOW, GRAND PARENTS ARE INVOLVED WITH MY

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1 KIDS A LOT BECAUSE WE ALL DO FAMILY THINGS TOGETHER.

2 AND I THINK THAT'S WHAT SHE WAS REALLY THINKING
3 ABOUT AT THE TIME. AND I TOLD HER I SAID WELL, YOU CAN
4 STILL SEE YOUR CHILDREN FROM UP IN HEAVEN. SHE SAID YEAH,
5 BUT HE CAN'T HOLD THEM.

6 AND I KNOW THERE'S SOME MORE THINGS SHE'S BEEN
7 SAYING IS I'M READY TO DIE AND GO BE WITH DADDY BECAUSE I
8 MISS HIM AND I WANT TO SEE HIM. SHE WAS VERY MUCH A
9 DADDY'S GIRL.

10 Q WOULD YOU TELL US ABOUT THE WEEKEND BEFORE FEBRUARY
11 26TH?

12 A YES. WE HAD DECIDED WE WERE GOING TO ATLANTA. I WAS
13 TAKING OFF A HALF A DAY. AND WE WERE GOING TO GO TO
14 ATLANTA AND VISIT PATTY AND JOE AND DO SOME THINGS UP
15 THERE WITH THEM. SO WE TOOK OFF.

16 I WAS GETTING READY TO LEAVE TO WORK AND THE
17 TRUCK WOULDN'T START. WE HAD THIS SUBURBAN, AN OLD
18 SUBURBAN AND WENT BACK THERE AND OF COURSE CHARLIE'S USED
19 SOME WORDS.

20 AND SO I USED THE OTHER TRUCK TO GO TO WORK IN.
21 AND I CALLED HIM BACK AND I SAID WELL ARE WE GOING? AND
22 HE SAID NO. HE SAID WE ARE NOT GOING TO TAKE A CHANCE.

23 AND HE WAS TRYING TO FIX IT, BUT HE SAID WE ARE
24 STILL NOT GOING TO GO SO I SAID -- SO HE SAID THERE'S NO
25 NEED FOR YOU TO GET OFF SINCE WE ARE NOT GOING. AND I

TERESA KUBALA - DIRECT BY KOLB

1 SAID I THINK I WILL COME HOME ANY WAY.

2 SO I GOT OFF AT TWELVE AND WE SPENT SOME TIME
3 TOGETHER AND ATE LUNCH AND TALKED AND WE WENT AND GOT MY
4 DAUGHTER AND THEN MY SON CAME HOME AND WE WENT WITH SOME
5 FRIEND OF MINE, THEY HAD A PLAY HOUSE AND I TOLD THEM IF
6 THEY EVER WANTED TO GET RID OF IT WHEN THE KIDS GOT OLDER
7 THAT I WOULD -- YOU KNOW -- TO LET US KNOW.

8 SO WE DECIDED WE WOULD GET IT FOR ALEX TO PLAY
9 IN. AND SO WE WENT THAT DAY AND SOME FRIEND OF OURS HAD A
10 TRUCK AND THEY HELPED US GET THE PLAY HOUSE. AND SO
11 SATURDAY WE WENT AND GOT THE PAINT AND ALL FOR IT AND
12 SUNDAY WE JUST HAD START PAINTING.

13 SO WE STARTED PAINTING IT AND CHARLIE'S MOM AND
14 DAD AND FAMILY CAME OVER AND CHARLIE WAS GOING TO GO --
15 YOU KNOW -- LITTLE CHARLIE WOULD GO AND TAKE OFF THE TRASH
16 AND GO TO THE SHOP AND WORK ON SOME MACHINES FOR A LITTLE
17 WHILE.

18 HE USED TO TAKE CHARLIE A LOT UP THERE AND WE
19 USED TO ALL GO UP THERE SOMETIMES AND HELP HIM WITH LITTLE
20 NICK KNACK THINGS THAT WE COULD DO AND WE UNDERSTOOD.

21 SO FOR SOME REASON HE DIDN'T TAKE OFF RIGHT
22 THERE. ANY WAY, CHARLIE WERE INSIDE, BUT THEY HAD COME
23 OUT. SOMEONE ELSE WAS PAINTING.

24 SAID LET ME GO GET ALL THIS DONE. BUT FOR SOME
25 REASON THEY STAYED INSIDE AND WAITED, WHICH I'M GLAD THEY

TERESA KUBALA - DIRECT BY KOLB

1 DID BECAUSE HIS MOM AND FAMILY HAPPENED TO COME OVER AND
2 THEY ALL CAME OUT -- YOU KNOW -- TO THE PLAY HOUSE TO SEE
3 ALEX'S PLAY HOUSE.

4 AND I JUST FEEL THERE WAS A REASON WHY, YOU
5 KNOW, CHARLIE'S MOM AND DAD -- AND I'M GLAD THEY CAME OVER
6 BECAUSE THAT WAS THE LAST TIME THEY GOT TO SEE HIM AND
7 TALK TO HIM.

8 AND THAT WAS -- AND I AM GLAD WE DID NOT END UP
9 GOING. I AM SURE THERE WAS A REASON WHY WE DIDN'T GO AND
10 THAT WE HAD ALL THAT TIME TOGETHER BEFORE THAT HAPPENED.

11 Q COULD YOU TELL ME ABOUT THE TRIP TO WALT DISNEY
12 WORLD?

13 MR. LITTLEJOHN: YOUR HONOR, EXCUSE ME. CAN WE
14 APPROACH THE BENCH?

15 THE COURT: YES, SIR.

16 (WHEREUPON A BENCH CONFERENCE WAS HELD).

17 THE COURT: YOU MAY CONTINUE, MR. KOLB.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q YOU TELL US ABOUT THE TRIP TO WALT DISNEY WORLD AFTER
20 CHRISTMAS?

21 A YEAH. CHARLIE AND I HAD DECIDED TO TAKE THE KIDS TO
22 DISNEY WORLD IN AUGUST AROUND OUR ANNIVERSARY BECAUSE
23 THAT'S WHERE WE WENT FOR OUR HONEYMOON. AND I REMEMBER --
24 ACTUALLY HAPPENED LATER ON IN THE MORNING.

25 THE KIDS SAID LETS GO TO DISNEY WORLD. AND I

TERESA KUBALA - DIRECT BY KOLB

1 SAID -- I SAID WE ARE NOT GOING TO GO BECAUSE I KNEW I
2 COULDN'T HANDLE THAT VERY WELL. AND SO I SAID WELL MAYBE
3 AFTER CHRISTMAS WE WILL GO.

4 SO WE DECIDED -- I MADE ARRANGEMENTS WITH A
5 TRAVEL AGENCY AND GOT EVERYTHING STRAIGHT. YOU KNOW, WE
6 HAD OUR TICKETS AND OUR ROOM AND EVERYTHING. AND WE SAID
7 WELL, WE WILL BE HEADED ON OUR WAY.

8 SO WE WENT AND CHARLIE'S SISTER VICKY WAS -- SO
9 I SAID LETS -- WE'LL PASS BY THERE. WE WILL STOP BY HER
10 HOUSE AND VISIT WITH THEM BEFORE WE GO TO DISNEY WORLD.

11 AND SO WE WENT, SPENT THE FIRST NIGHT AT HER
12 HOUSE AND THEN WE LEFT THAT EARLY THAT MORNING TO GO TO
13 DISNEY WORLD. AND WHEN WE GOT THERE, I WENT TO GET MY
14 RESERVATIONS AND MAN SAID THEY HAD BEEN CANCELED.

15 AND IT WAS ALL I COULD DO WAS TO KEEP FROM JUST
16 GOING CRAZY ON THIS MAN. AND I SAID WHAT? AND HE SAID
17 YEAH. I SAID I MADE THESE ARRANGEMENTS THE FIFTH OF
18 SEPTEMBER.

19 I SAID I ALREADY PAID. AND HE SAID WELL -- HE
20 SAID SOMEBODY CANCELED THEM. AND SO OF COURSE I HAD TO
21 LEAVE BECAUSE I COULDN'T HANDLE IT. SO I CALLED THE TRAVEL
22 AGENCY.

23 AND I TOLD MY KIDS, I SAID I DON'T KNOW WHAT WE
24 ARE GOING TO DO. I SAID IF WE CAN'T GET THIS, WE ARE GOING
25 TO HAVE TO LEAVE AND GO BACK HOME.

TERESA KUBALA - DIRECT BY KOLB

1 ALL I KEPT THINKING IS WHY IS THAT HAPPENING TO
2 ME, HERE BY MYSELF WITH TWO KIDS, YOU KNOW. AND WHY
3 COULDN'T CHARLIE BE HERE, YOU KNOW. AND I HAD TO DO THIS
4 ALL BY MYSELF.

5 AND I THINK IT WAS AN EXPERIENCE FOR ME BECAUSE
6 -- I NEEDED -- BECAUSE EVERYWHERE ELSE WE HAD GONE THIS
7 PAST YEAR WE HAVE GONE EITHER WITH MY FAMILY OR CHARLIE'S
8 FAMILY.

9 SO WE REALLY HADN'T BEEN ANYWHERE BY OURSELVES
10 SINCE CHARLIE HAD PASSED AWAY. SO AND I SAID HERE WE ARE
11 BY OURSELVES WHEN THIS HAPPENED WHICH I'M NOT BY MYSELF.
12 I SAID KIDS NEED THIS, YOU KNOW.

13 SO I CALLED AND IT TOOK TWO HOURS BEFORE THEY
14 GOT ALL OF MY ARRANGEMENTS STRAIGHT, BECAUSE I TOLD THEM I
15 SAID THERE'S NO WAY I CAN STAY UP HERE WITHOUT ENOUGH
16 MONEY FOR FOOD.

17 AND YOU KNOW, FOR ME I DIDN'T HAVE ANYTHING TO
18 LEAVE AND GO THE DISNEY WORLD AND ALL THAT STUFF AND
19 FINALLY THE GIRL CAME BACK THAT MADE THE ARRANGEMENTS FOR
20 ME AND SHE GOT EVERYTHING STRAIGHT.

21 WE HAD TO WAIT TWO HOURS BEFORE THEY GOT
22 EVERYTHING STRAIGHT AND I KNOW I WAS DRIVING MY KIDS CRAZY
23 BECAUSE I WAS SO UPSET.

24 BUT THEN I REMEMBER THE FIRST COUPLE OF DAYS WAS
25 THE HARDEST FOR ME AT DISNEY WORLD BECAUSE I COULD

TERESA KUBALA - DIRECT BY KOLB

1 REMEMBER THINGS CHARLIE AND I DID. AND I REMEMBER LOOKING
2 AROUND AT THE FAMILY AND SAYING, YOU KNOW, IT'S NOT FAIR,
3 MY KIDS CAN'T HAVE THEIR DADDY.

4 AND NOW ALEX EVERY ONCE IN A WHILE SAYS I REALLY
5 WISH DADDY COULD BE HERE WITH US. AND THAT WAS VERY HARD.
6 BUT WE DID GET THROUGH THAT.

7 Q THANK YOU. ANY QUESTIONS FROM THE DEFENSE.

8 THE COURT: ANY QUESTIONS?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: THANK YOU. MRS. KUBALA, YOU MAY COME
11 DOWN.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MR. KOLB: YOUR HONOR, THAT'S THE STATE'S CASE.

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN I'M GOING
15 TO LET YOU GO TO THE JURY ROOM. I WANT TO CHECK ON THIS
16 NOISE AND SEE IF WE CAN DO SOMETHING ABOUT THIS IF AT ALL
17 POSSIBLE BECAUSE IT'S EXTREMELY DIFFICULT FOR ME TO HEAR
18 AND THE COURT REPORTER AS WELL.

19 SO IT MAY TAKE A FEW MINUTES. DON'T DISCUSS THE
20 CASE AMONG YOURSELVES. DO NOT BEGIN YOUR DELIBERATIONS.

21 (WHEREUPON THE JURY LEFT THE COURTROOM).

22 THE COURT: IS THERE ANYTHING FROM THE STATE AT THIS
23 POINT?

24 MR. KOLB: NO, SIR.

25 THE COURT: ANYTHING FROM THE DEFENDANT?

TERESA KUBALA - DIRECT BY KOLB

1 MR. LITTLEJOHN: YOUR HONOR, FOR THE RECORD WE WOULD
2 MOVE FOR A DIRECTED VERDICT AS TO THE SENTENCING PHASE OF
3 THIS CASE BASED ON OUR PREVIOUSLY MADE MOTIONS.

4 WE BASE THAT ON THE FAILURE OF THE STATE TO
5 PROVE ANY AGGRAVATING CIRCUMSTANCES OF THE SUBSTANTIATED
6 -- ALLOWING THEM TO GO TO THE JURY ON THE DEATH PENALTY.

7 THE COURT: VERY WELL. THE PHASE CONTINUES AND THE
8 PROOF THAT WENT AS TO THE CHARGE WHICH THE JURY FOUND HIM
9 GUILTY BEYOND A REASONABLE DOUBT WOULD ALSO BE PART THEY
10 MAY CONSIDER IN THIS.

11 I WILL NOTE YOUR MOTION FOR THE RECORD, BUT I
12 RESPECTFULLY DENY THAT MOTION. IS THE DEFENSE READY TO
13 PROCEED?

14 MR. LITTLEJOHN: YOUR HONOR, COULD YOU GIVE ME JUST A
15 MOMENT? LET ME MAKE SURE ANY FIRST WITNESS IS OUTSIDE.

16 THE COURT: THAT WILL BE FINE. WE WILL TAKE ABOUT
17 FIVE MINUTES.

18 (WHEREUPON A BRIEF RECESS WAS TAKEN).

19 THE COURT: LET THE RECORD REFLECT MR. STONE IS
20 PRESENT. READY TO PROCEED FROM THE STATE?

21 MR. KOLB: YOUR HONOR.

22 THE COURT: IS THE DEFENSE READY TO PROCEED?

23 MR. LITTLEJOHN: YES, YOUR HONOR.

24 THE COURT: VERY WELL. IF YOU'LL BRING THE JURY IN,
25 PLEASE.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM).
2 THE COURT: THANK YOU, LADIES AND GENTLEMEN. WE ARE
3 READY TO CONTINUE. MR. LITTLEJOHN, YOU MAY CALL YOUR FIRST
4 WITNESS.
5 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. WE CALL DR.
6 HAROLD C MORGAN.
7 THE COURT: DR. MORGAN?
8 DR. HAROLD MORGAN, BEING FIRST
9 DULY SWORN, TESTIFIED AS FOLLOWS:
10 THE COURT: MR. MORGAN, PLEASE STATE YOUR FULL NAME
11 FOR THE RECORD, SPELL YOUR LAST.
12 WITNESS: HAROLD CLIFFORD MORGAN. M O R G A N.
13 THE COURT: THANK YOU.
14 DIRECT EXAMINATION BY MR. LITTLEJOHN:
15 Q GOOD MORNING, MR. MORGAN. WOULD YOU TELL THE LADIES
16 AND GENTLEMEN OF THE JURY WHERE YOU LIVE, PLEASE, SIR.
17 A I LIVE IN COLUMBIA.
18 Q WHAT IS YOUR OCCUPATION?
19 A I AM A MEDICAL DOCTOR. AND I SPECIALIZE IN
20 PSYCHIATRY.
21 Q ALL RIGHT. AND NOW, WOULD YOU TELL THE JURY ABOUT
22 YOUR TRAINING AND YOUR EXPERIENCE IN THE FIELD OF
23 PSYCHIATRY?
24 A SURE. I HAD MY UNDERGRADUATE WORK AT EMORY UNIVERSITY
25 IN ATLANTA. I GRADUATED FROM THERE IN 1958 WITH A BACHELOR

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 OF ARTS DEGREE. AND FROM THERE TO THE MEDICAL COLLEGE OF
2 GEORGIA, DOCTORATE OF MEDICINE DEGREE IN 1962.

3 AND FROM THERE TO THE OLD COLUMBIA HOSPITAL FOR
4 A ROTATING INTERNSHIP AND THAT WAS 62 TO 63 AND THEN I
5 BEGAN A RESIDENCY IN PSYCHIATRY AT THE NOW WILLIAM S. HALL
6 PSYCHIATRIC INSTITUTE, THE PART OF THE UNIVERSITY OF SOUTH
7 CAROLINA SCHOOL OF MEDICINE.

8 THAT'S A THREE YEAR TRAINING PROGRAM. FINISHED
9 THAT IN 66 AND THEN WAS INVITED TO STAY ON AS A YEAR
10 TEACHING. IT DID THAT. AND THEN IN 67 I OPENED MY OFFICE
11 FOR PRACTICE OF PSYCHIATRY, GENERAL PSYCHIATRY IN
12 COLUMBIA.

13 DID THAT FOR SEVERAL YEARS. AND THEN IN 1976 I
14 WAS AWARDED A FELLOWSHIP IN FORENSIC PSYCHIATRY, PARKER
15 MEDICAL SCHOOL. WENT THERE FOR A YEAR OF ADVANCED
16 TRAINING IN FORENSIC PSYCHIATRY, 76 TO 77.

17 CAME BACK. WE OPENED MY OFFICE IN COLUMBIA. I
18 HAVE BEEN IN PRIVATE PRACTICE EVER SINCE THAT TIME. AND
19 ALONG THE WAY I COMPLETED MY BOARDS IN GENERAL PSYCHIATRY,
20 A NATIONAL BOARD KIND OF THING WHERE YOU TAKE
21 EXAMINATIONS, WRITTEN FIRST AND THEN ORAL. A COUPLE OF
22 DAYS OF ORAL EXAMINATION.

23 DID THAT. FINISHED ALL OF THAT IN 1971 I THINK
24 IT WAS. AND THEN AFTER I DID MY FORENSIC WORK, HAVE TO
25 HAVE THE GENERAL PSYCHIATRY BOARD IN ORDER TO TAKE THE

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 FORENSIC PSYCHIATRY BOARDS SO I FINISHED ALL OF THAT AND
2 DID THE FORENSIC BOARDS IN 1981.

3 MY WORK HAS BEEN MAINLY AS A PRIVATE
4 PRACTITIONER, BUT I DO A LOT OF SPECIALTY, SUB-SPECIALTY
5 WORK IN FORENSIC PSYCHIATRY. BEEN AROUND, SO I DID A LOT
6 OF MAINLY CONSULTING WORK.

7 MY PRACTICE NOW -- DONE A LOT OF CONSULTING WORK
8 FOR VARIOUS STATE AGENCIES, COURTS AND WHAT NOT IN THE
9 PROCESS. AND I AM ON THE FACULTY OF THE UNIVERSITY OF
10 SOUTH CAROLINA SCHOOL OF MEDICINE, HAVE BEEN ON THE
11 FACULTY OF THE MEDICAL UNIVERSITY AS WELL.

12 BUT I DO SOME TEACHING IN ADDITION TO THE
13 PRIVATE PRACTICE THAT I DO IN CONSULTING WORK. AND OF
14 COURSE I'M LICENSED TO PRACTICE MEDICINE IN SOUTH CAROLINA
15 ALSO IN GEORGIA. AND BELONG TO A NUMBER OF MEDICAL
16 SOCIETIES.

17 Q AND HAVE YOU BEEN ACCEPTED AS AN EXPERT IN THE FIELD
18 OF FORENSIC PSYCHIATRY IN VARIOUS FEDERAL AND STATE
19 COURTS?

20 A YES, I HAVE.

21 Q OKAY.

22 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME WE OFFER
23 DR. MORGAN AS AN EXPERT IN THE FIELD OF FORENSIC
24 PSYCHIATRY.

25 MR. KOLB: NO OBJECTION.

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 THE COURT: VERY WELL. DR. MORGAN WILL BE ALLOWED,
2 LADIES AND GENTLEMEN, WITH PREVIOUS -- AS OTHER WITNESSES
3 WILL TESTIFY IN THIS PROCEEDING, WHETHER HIS BACKGROUND,
4 HIS TRAINING TO RENDER OPINIONS IN THE FIELD OF PSYCHIATRY
5 AND SUB-SPECIALTY BEING FORENSIC PSYCHIATRY.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q ALL RIGHT. DR. MORGAN, WOULD YOU EXPLAIN A LITTLE BIT
8 TO THE JURY ABOUT WHAT THE FIELD OF FORENSIC PSYCHIATRY
9 ENTAILS.

10 A FORENSIC PSYCHIATRY IS AS THE JUDGE HAS SAID A
11 SUB-SPECIALTY OF GENERAL PSYCHIATRY, PSYCHIATRY OF COURSE
12 BEING THE STUDY OF DISEASES IN THE MIND AND THE TREATMENT
13 OF THOSE.

14 FORENSIC PSYCHIATRY DEALS WITH THOSE PATIENTS
15 ABOUT WHOM THERE IS A QUESTION, A MENTAL DISTURBANCE AS
16 WELL AS SOME LEGAL ISSUE INVOLVED. IT MAY BE THE QUESTION
17 OF WHETHER THE A PERSON WHO IS CHARGED WITH A CRIME IS
18 COMPETENT TO STAND TRIAL OR WAS SANE AT THE TIME OF THE
19 INCIDENT.

20 IT MAY HAVE TO DO WITH A PERSON'S CAPACITY TO
21 MAKE A WILL, FOR EXAMPLE MAY HAVE TO DO WITH PERSONAL
22 INJURIES, SOME PATIENTS WHO HAVE BEEN IN CAR CRASHES,
23 PLANE OR TRAIN CRASHES HAD SOME SORT OF EMOTIONAL TROUBLE
24 LABELED TO THAT SO IT'S WHERE -- I GUESS YOU COULD SAY
25 IT'S THE USE OF PSYCHIATRIC KNOWLEDGE AND EXPERTISE TO

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 EXPLAIN QUESTIONS ABOUT MENTAL ILLNESS OR HUMAN EMOTIONS
2 OR BEHAVIOR WHEN THEY -- THOSE COME UP IN SOME KIND OF
3 LEGAL SETTING.

4 Q OKAY. DR. MORGAN, DID YOU HAVE OCCASION TO EXAMINE
5 BOBBY STONE, THE DEFENDANT IN THIS CASE?

6 A YES, I DID.

7 Q WHEN DID YOU FIRST COME IN CONTACT WITH BOBBY?

8 A I FIRST SAW HIM ON MARCH THE FIRST, 1996.

9 Q OKAY. AND I BELIEVE THAT WAS FOR PURPOSES OF A
10 MEDICAL EXAMINATION?

11 A MORE OF A PHYSICAL EXAMINATION. RIGHT.

12 Q OKAY. LATER DID YOU HAVE AN OCCASION TO SIT DOWN WITH
13 BOBBY FOR AN EVALUATION?

14 A YES. I DID A PSYCHIATRIC EXAMINATION ON JANUARY 17TH
15 OF THIS YEAR.

16 Q OKAY. AND HOW DID YOU GO ABOUT CONDUCTING THAT
17 EXAMINATION?

18 A WELL, A PSYCHIATRIC EXAMINATION IS VERY MUCH LIKE ANY
19 OTHER KIND OF MEDICAL EXAMINATION. THERE'S A MATTER OF
20 GATHERING THE HISTORY AS TO WHAT IS WRONG, WHAT'S LED UP
21 TO THE PERSON COMING TO SEE THE DOCTOR.

22 IN THE CASE OF PSYCHIATRISTS, WE SOMETIMES GET
23 THAT HISTORY FROM OTHER SOURCES BECAUSE THE PATIENT MAY
24 NOT BE ABLE TO TELL US OR WE CAN'T GET A HISTORY FROM THE
25 PATIENT ANY OTHER KINDS OF THINGS.

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 WE EXAMINE THE PATIENT. THAT'S JUST CONDUCTED A
2 BIT DIFFERENTLY IT'S A MATTER OF SITTING DOWN OBSERVING
3 THE PATIENT, TALKING WITH THEM, LISTENING TO THEM. AND
4 CARRYING OUT A SORT OF A TECHNICAL EVALUATION WITH THE
5 PATIENT DURING THAT PROCESS.

6 AND THEN ON THE BASIS OF THAT ANY KIND OF
7 DIAGNOSTIC TESTING THAT NEEDS TO BE DONE THERE MAY BE
8 PSYCHOLOGICAL TESTING, THERE MAY BE PHYSICAL TESTING SUCH
9 AS X-RAYS AND BLOOD TESTS AND THAT SORT OF THING.

10 SO IT'S JUST THE VARIATION OF THE TRADITIONAL
11 MEDICAL EXAMINATION, THE MAIN DIFFERENCE BEING THE WAY A
12 PSYCHIATRIC EXAMINATION IS CONDUCTED.

13 Q OKAY. WHAT SORT OF TESTING, IF ANY, DID YOU DO IN
14 REGARD TO YOUR EVALUATION ON BOBBY STONE?

15 A I HAD HIM COMPLETE A PSYCHOLOGICAL TEST CALLED THE
16 M.M.P.I... THIS WAS AFTER I'D SEEN HIM OF COURSE AND HAD
17 THE HISTORY AND HAD SOME OTHER RECORDS ABOUT HIS PAST
18 WHICH I HAD REVIEWED.

19 THERE WAS NOTHING IN THERE TO INDICATE THAT HE
20 HAD HAD ANY PSYCHOLOGICAL TESTING. SO I WANTED TO DO ONE
21 THERE IS A PERSONALITY INVENTORY WHICH TELLS US A LITTLE
22 BIT ABOUT THE PERSONALITY MAKE UP OF THE INDIVIDUAL AS
23 WELL AS WHAT KIND OF EMOTIONAL STATE THE PATIENT IS IN AT
24 THE TIME.

25 Q CAN YOU TELL US WHAT YOUR EVALUATION WAS DIRECTED AT,

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 WHAT YOU WERE TRYING TO ASCERTAIN FROM EXAMINING BOBBY?

2 A WELL, I WAS LOOKING AT TWO OR THREE THINGS FIRST OF
3 ALL IF THERE WAS A ANY MENTAL ILLNESS OR MENTAL DISORDER.
4 SECONDLY I THINK THE QUESTION YOU ASKED ME TO LOOK AT IS
5 WHETHER HE WAS COMPETENT TO STAND TRIAL, BUT THAT HE KNEW
6 WHAT HE WAS CHARGED WITH, COULD PARTICIPATE IN HIS OWN
7 DEFENSE ADEQUATELY.

8 AND SOME QUESTION ABOUT HIS MENTAL STATE AT THE
9 TIME THIS ALL HAPPENED. QUESTION OF SANITY. AND THEN A
10 QUESTION OF ADAPTABILITY OR MITIGATION I GUESS THIS PART
11 OF THE TRIAL, WHETHER THERE MIGHT BE SOMETHING IN THE
12 NATURE OF PSYCHIATRIC FINDINGS THAT WOULD EFFECT THE
13 MITIGATION, PARTICULARLY THE ADAPTABILITY.

14 Q OKAY. AND YOU FOUND HE WAS COMPETENT?

15 A YES. HE WAS CLEARLY COMPETENT. NO KEY MENTAL ILLNESS
16 NOTHING THAT WAS ACTIVELY GOING ON WITH HIM AT THE TIME.

17 Q DR. MORGAN, IN REGARD TO ADAPTABILITY, YOU ARE
18 TALKING ABOUT ADAPTABILITY TO PRISON LIFE?

19 A YES.

20 Q WHAT WERE YOU ABLE TO ASCERTAIN ABOUT BOBBY STONE AS
21 TO HIS ADAPTABILITY TO PRISON LIFE, TO CONFORM HIS CONDUCT
22 IF HE WAS IN PRISON?

23 A WELL, I THINK HIS CURRENT STATE AND HIS PAST HISTORY
24 WOULD INDICATE THAT HE'S GOING TO ADAPT ADEQUATELY TO
25 PRISON.

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 Q OKAY. DID YOU HAVE OCCASION TO EVALUATE ANY OF HIS
2 RECORDS FROM WHEN HE HAD PREVIOUSLY BEEN IN PRISON?

3 A YES, I DID. YOU WANT TO KNOW ABOUT THOSE?

4 Q YES. I MEAN, DID THAT ASSIST YOU IN ARRIVING AT YOUR
5 CONCLUSION?

6 A YES. THE RECORDS FROM HIS PREVIOUS INCARCERATIONS
7 WITHIN THE DEPARTMENT OF CORRECTIONS -- JUST LOOK AT MY
8 NOTES ONE MINUTE. AND THESE GO BACK TO 1985. IF YOU LOOK
9 AT THE COMPUTER PRINT OUTS THAT I WAS ABLE TO SEE, THERE
10 WERE A NUMBER OF FORMS THAT ARE CALLED OFFENDER
11 RECLASSIFICATION OR SOMETHING LIKE THAT.

12 AND THERE'S A PLACE ON THERE FOR HOW WELL HE'S
13 ADAPTING, WHETHER HE'S VIOLENT OR NON VIOLENT, THAT SORT
14 OF THING. ALL OF THE INDICATIONS WERE THAT HE WAS
15 NONVIOLENT, THAT HE HAD MADE A GOOD ADAPTATION UP TO THAT
16 POINT.

17 THERE WAS A ONE DATED JUNE 28TH, 1988. HE HAD NO
18 VIOLENT CONVICTIONS, NO HISTORY OF VIOLENCE, NO HISTORY OF
19 ESCAPE ATTEMPTS, NO RULES VIOLATION. HIS JOB PERFORMANCE
20 WAS GOOD. HIS PROGRAM PERFORMANCE WAS AVERAGE.

21 LATER THAT SAME YEAR IN DECEMBER HIS JOB
22 PERFORMANCE WAS EXCELLENT. HIS PERFORMANCE WAS EXCELENT.
23 THERE WERE NO RULES VIOLATIONS. THAT WAS TRUE IN 89, JUNE
24 OF 89. HE DID GET INTO SOME TROUBLE IN 1990. BUT HIS
25 STATUS WASN'T CHANGED IN TERMS OF HIS CLASSIFICATION.

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 HE DID LOSE SOME GOOD TIME AT THAT POINT. BUT
2 FOR THE MOST PART HIS ADAPTABILITY WAS -- I WOULD SAY HIS
3 ADJUSTMENT WAS PROBABLY AS GOOD AS ANY OTHER, KIND OF
4 AVERAGE. MAYBE A LITTLE BIT ABOVE IN TERMS OF HIS
5 BEHAVIOR. HE DID HAVE A COUPLE OF VIOLATIONS.

6 Q WHAT?

7 A SEVERAL YEARS.

8 Q WHAT WERE THOSE VIOLATIONS? WERE THEY IN---

9 A THE ONE IN 1990 -- LETS SEE. SOMEHOW MR. STONE WAS
10 WORKING AT THE CANTEEN IN THE PRISON AND SOMEHOW SOMEBODY
11 WAS ABLE TO BRING IN SOME ALCOHOL IN CANS LABELED SOUP
12 LIKE CAMPBELLS SOUP OR SOMETHING AND HE WAS CHARGED AND I
13 GUESS ACTUALLY CONVICTED WITHIN THE PRISON SYSTEM OF BEING
14 SOMEHOW INVOLVED IN THAT.

15 THERE WERE A LOT OF OTHER PEOPLE INVOLVED, BUT
16 HE WAS ONE OF THE PERSON WHO WAS HELD RESPONSIBLE FOR
17 THAT. HE WAS KIND OF IN THE MEDIARY, I GUESS YOU COULD
18 SAY, AT LEAST THAT'S WHAT HE WAS CHARGED WITH.

19 HAVING THAT CONTRABAND BROUGHT INTO THE PRISON
20 SYSTEM THROUGH THE CANTEEN. THE OTHER I THINK WAS HERE IN
21 SUMTER, A LITTLE -- NOT SURE ABOUT THE DATE ON THAT, BUT
22 WHERE HE WAS CHARGED WITH TRANSPORTING SOME SUGAR.

23 HE HAD MORE SUGAR THAN HE WAS ALLOWED TO HAVE.
24 SO NO VIOLENT BEHAVIOR REPORTED ANYWHERE IN FACT HE WAS
25 LABELED AS A NON-VIOLENT.

DR. HAROLD MORGAN - DIRECT BY LITTLEJOHN

1 Q BOTTOM LINE, DO YOU THINK BOBBY STONE COULD ADAPT TO
2 PRISON LIFE?

3 A YES, I DO.

4 Q OKAY.

5 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
6 MOMENT, YOUR HONOR.

7 THE COURT: YES, SIR.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q DR. MORGAN, PLEASE ANSWER ANY QUESTIONS THE SOLICITOR
10 MAY HAVE.

11 THE COURT: YOU MAY CROSS-EXAMINE, MR. SOLICITOR.

12 CROSS-EXAMINATION BY MR. KOLB:

13 Q DR. MORGAN, WHERE WERE YOU ABLE TO GET THE PRISON
14 RECORDS FROM FOR YOUR REVIEW?

15 A THEY WERE PROVIDED BY THE ATTORNEYS OFFICE AND
16 BROUGHT TO ME BY AGENT PARKER, THE INVESTIGATOR.

17 MR. KOLB: YOUR HONOR, CAN WE APPROACH?

18 THE COURT: YES, SIR.

19 (WHEREUPON A BENCH CONFERENCE WAS HELD).

20 THE COURT: LADIES AND GENTLEMEN, YOU CAN GO AHEAD,
21 GO TO THE JURY ROOM JUST FOR A MOMENT. I HAVE A MATTER OF
22 LAW TO TAKE UP OUT OF YOUR PRESENCE. PLEASE DON'T DISCUSS
23 THE CASE AMONG YOURSELF. DO NOT BEGIN YOUR DELIBERATIONS.

24 (WHEREUPON THE JURY LEFT THE COURTROOM AT 10:13
25 A.M.)

DR. MORGAN - CROSS BY KOLB

1 THE COURT: WHY DON'T YOU DO THIS. ANYTHING THAT DR.
2 MORGAN HAS REVIEWED IN THIS CASE THAT HE'S USED TO
3 FORMULATE HIS OPINION, WHY DON'T YOU HAND IT, THE WRITTEN
4 MATERIAL, TO THE SOLICITOR AT THIS POINT AND LET HIM
5 REVIEW IT.

6 MR. KOLB: CAN WE MAKE A COPY OF IT, JUDGE?

7 THE COURT: YOU NEED TO MAKE A COPY OF IT AT THIS
8 POINT? WHY DON'T YOU JUST SEE WHAT IT IS BEFORE YOU MAKE
9 A COPY OF IT. MAY NOT NEED IT. WE WILL BE AT EASE.

10 (WHEREUPON A BRIEF RECESS WAS TAKEN).

11 MR. KOLB: JUDGE, I WOULD LIKE TO MAKE A COPY OF SOME
12 OF THIS EVIDENCE.

13 THE COURT: SURE. HELP YOURSELF.

14 (WHEREUPON THERE WAS A PAUSE).

15 MR. KOLB: THANK YOU, YOUR HONOR.

16 THE COURT: YES, SIR. YOU READY NOW?

17 MR. KOLB: YES, SIR.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM).

19 THE COURT: THANK YOU, LADIES AND GENTLEMEN. THANK
20 YOU. SOLICITOR YOU MAY EXAMINE THE WITNESS.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q DR. MORGUE, ISN'T IT A FACT THAT YOUR REPORT IN THIS
23 CASE STATES THAT PSYCHOLOGICAL TESTING REVEALS AN ANTI
24 SOCIAL PERSONALITY STRUCTURE AND SUGGESTS THAT HE HAS
25 PROBLEMS WITH AUTHORITY FIGURES?

DR. MORGAN - CROSS BY KOLB

1 A YES, THAT'S TRUE.

2 Q AND AUTHORITY FIGURES INCLUDE POLICE OFFICERS AND
3 CORRECTIONAL OFFICERS?

4 A SURE.

5 Q AND TO THE EXTENT THAT HE IS REBELLIOUS AND SEEKS
6 IMMEDIATE GRATIFICATION OF HIS URGES, HE IS LIKELY TO HAVE
7 PROBLEMS WITH INCARCERATION?

8 A YES.

9 Q NOW, YOU INDICATED THAT IN YOUR EVALUATION OF HIM,
10 THAT YOU WERE LOOKING FOR ANY MENTAL ILLNESS OR DISORDER
11 AND YOU FOUND NONE AT ALL?

12 A SAID I FOUND NO ACUTE PROBLEMS. NO ACTIVE PROCESS.

13 Q ALL RIGHT. AND YOU WERE LOOKING TO SEE IF HE WAS
14 COMPETENT TO STAND TRIAL AND THAT HE WAS CLEARLY COMPETENT
15 TO STAND TRIAL?

16 A YES.

17 Q NOW, YOU INDICATED IN YOUR REVIEW OF THE PRISON
18 RECORDS NO HISTORY OF BEING CLASSIFIED AS VIOLENT. BUT
19 ISN'T IT A FACT THAT THE RECORDS REFLECT THAT THE CRIMES
20 FOR WHICH HE WAS INCARCERATED ARE DEFINED AS VIOLENT BY
21 STATE?

22 MR. LITTLEJOHN: YOUR HONOR.

23 THE COURT: YES. I SUSTAIN THE OBJECTION. ASKING FOR
24 A LEGAL CONCLUSION. I SUSTAIN THE OBJECTION.

25 MR. BABB: MOVE TO STRIKE THAT.

DR. MORGAN - CROSS BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q DR. MORGAN, DO YOU KNOW THE BASIS OF HOW THE
3 DEPARTMENT OF CORRECTIONS CLASSIFIES SOMETHING HAS A
4 VIOLENT OFFENDER OR NOT?

5 A NO, ONLY A VERY GENERAL WAY.

6 MR. LITTLEJOHN: YOUR HONOR.

7 THE COURT: SOLICITOR, APPROACH, PLEASE.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD).

9 (WHEREUPON QUESTIONING RESUMED).

10 Q DR. MORGAN, FOR CLARIFICATION, WHEN YOU WERE
11 REFERRING TO MR. STONE AND NO VIOLENCE, WHAT YOU WERE
12 SAYING IS THAT YOU FOUND NO RECORD THAT WHILE IN PRISON HE
13 HAD BEEN VIOLENT AGAINST OTHER INMATES?

14 A THAT'S RIGHT. THAT'S WHAT THE PRISON RECORDS REFLECT.
15 THEY HAVE A PART OF THE COMPUTER PRINT OUT SAYS HISTORY OF
16 VIOLENCE, THAT SORT OF THING.

17 Q SO YOU WERE NOT TALKING ABOUT STATE LAW, WHAT THE
18 OFFENSES HE WAS IN THERE FOR?

19 A NO, NOT AT ALL, EXCEPT THAT IN AS MUCH AS THEY ARE
20 REFLECTED ON THIS SHEET.

21 Q ALL RIGHT, SIR. AND DID YOU MAKE ANY STUDY OF ANY --
22 WHETHER OR NOT HE HAD COMMITTED ANY OFFENSES AGAINST
23 PERSONS SINCE HIS PAROLE? THE OUTSIDE---.

24 MR. LITTLEJOHN: YOUR HONOR, I OBJECT. THAT'S THE --
25 NOT RESPONSIVE TO DIRECT EXAMINATION.

DR. MORGAN - CROSS BY KOLB

1 THE COURT: WELL, IT'S -- NO, SIR. THAT'S I OVERRULE
2 THAT OBJECTION. I'M GOING TO ALLOW THE QUESTION.

3 WITNESS: WOULD YOU ASK THE QUESTION AGAIN, PLEASE?
4 (WHEREUPON QUESTIONING RESUMED).

5 Q DID YOU MAKE ANY STUDY AS TO WHO HE HAD -- SINCE HIS
6 PAROLE IN JUNE OF 1993 -- IF HE'S COMMITTED OFFENSES
7 AGAINST PERSONS ON THE OUTSIDE?

8 A I LOOKED FOR THAT AND ASKED HIM OF COURSE AND LOOKED
9 AT THE RECORDS. I DIDN'T SEE ANYTHING OF THAT NATURE.

10 Q SO YOU RECEIVED NO INFORMATION FROM HIS ATTORNEYS OR
11 HIM ABOUT ANYTHING WHERE HE HAD DONE ANYTHING AGAINST
12 ANOTHER PERSON?

13 A NO.

14 THE COURT: MR. SOLICITOR, YOU HAVE ASKED THAT
15 QUESTION. HE HAS ANSWERED IT. MOVE ON.

16 MR. KOLB: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: ALL RIGHT. ANY REDIRECT?

18 MR. LITTLEJOHN: COUPLE OF THINGS.

19 REDIRECT EXAMINATION BY MR. LITTLEJOHN:

20 Q DR. MORGAN, MR. KOLB ASKED YOU ABOUT SOMETHING IN
21 YOUR REPORT WHERE YOU REPORTED THAT BOBBY HAD PROBLEMS
22 WITH AUTHORITY.

23 A YES, SIR.

24 Q OKAY. COULD YOU EXPLAIN THAT A LITTLE BIT FURTHER AND
25 WHETHER THAT AFFECTS OR HOW THAT AFFECTS YOUR OPINION AS

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 TO HIS ADAPTABILITY?

2 A THE HISTORY OF THE PATIENT, I MEAN HIS PROBLEMS WITH
3 THE LAW AND HIS PROBLEMS WITH ALCOHOL. AND THE
4 PSYCHOLOGICAL TESTS WHICH I MENTIONED WOULD INDICATE THAT
5 HE PROBABLY HAS WHAT IS CALLED AN ANTI SOCIAL PERSONALITY
6 DISORDER.

7 THE TEST THAT I MENTIONED, MAY HAVE -- A
8 MULTI-PHASIC PERSONALITY INVENTORY OR WHAT IS COMMONLY
9 CALLED M.M.P.I. IS SOMETIMES USED TO PREDICT HOW ONE WILL
10 ADJUST TO PRISON.

11 IT'S A FAIRLY GOOD SYSTEM FOR DOING THAT. YOU
12 HAVE TO -- OF COURSE IN THIS CASE THE HISTORY, HOW HE HAS
13 GOTTEN ALONG IN PRISON BEFORE. THAT'S REALLY BETTER
14 PREDICAMENT THAN ANYTHING ELSE, BUT THE TEST RESULT OF
15 THAT AND I WON'T GET IN TOO TECHNICAL ABOUT THIS, BUT THE
16 TEST RESULTS HERE ON THE M.M.P.I. PRESENTS A PROFILE OR A
17 PICTURE WHICH IS CONSISTENT WITH THE DIAGNOSIS OF AN ANTI
18 SOCIAL PERSONALITY DISORDER.

19 BUT IT'S ALSO INDICATIVE OF THE TYPE OF INMATES
20 WHICH WOULD PROBABLY DO OKAY IN PRISON. HE'S NOT GOING TO
21 BE A MODEL PRISONER. HE'S NOT GOING TO BE A REAL TROUBLE
22 MAKER, BUT HE IS GOING TO SORT OF FIT IN.

23 Q WHAT DID YOUR EXAMINATION REVEAL AS TO HIS ABILITY TO
24 ACT OUT OR REBEL AGAINST AUTHORITY AT THIS STAGE IN HIS
25 LIFE?

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 A WELL, TYPICALLY THE PERSON WHO HAS A TENDENCY TO ACT
2 OUT AND BEHAVE IN AN ANTI SOCIAL WAY TENDS TO LOSE THE
3 ENERGY TO DO THAT. I MEAN, THEY STILL HAVE THE URGES, BUT
4 AS WE WE GET OLDER WE DON'T HAVE TENDENCY TO DO THAT.
5 SORT OF BURN OUT AS WE SAY OVER TIME, AROUND FORTIES OR
6 SOMETHING LIKE THAT.

7 AND THIS TEST WOULD INDICATE THAT, TOO, THAT THE
8 PEEK HERE THAT WE SEE WHICH PICKS UP THE ANTI SOCIAL
9 ASPECT OF HIS PERSONALITY ALSO SHOWS THAT HE DOESN'T HAVE
10 MUCH ENERGY TO ACT ON THAT.

11 AND IF THE ENERGY SCALE WERE ELEVATED OR SOME OF
12 THE OTHER SCALES WERE ELEVATED, THAT WOULD NOT BE A GOOD
13 SIGN. BUT SINCE THOSE ARE ALL BASICALLY WITHIN THE NORMAL
14 RANGE, I THINK IT TENDS TO INDICATE THAT HE IS NOT AS
15 LIKELY TO ACT OUT, EVEN THOUGH HE DOESN'T HAVE A STRONG
16 HISTORY OF ACTING OUT IN PRISON.

17 THE PROBLEM IS OUTSIDE PRISON WHERE HE HAS MORE
18 FREEDOM, OF COURSE, AND CAN ACT ON IMPULSES. HE DOES OKAY
19 IN THAT STRUCTURE BECAUSE IT'S THERE.

20 Q AND DR. MORGAN, HOW LONG DID YOU EXAMINE BOBBY ON THE
21 SECOND OCCASION THAT YOU SAW HIM?

22 A I DON'T HAVE THE BILLING RECORD HERE, BUT I WOULD SAY
23 THOSE EXAMINATIONS USUALLY TAKE ABOUT AN HOUR AND A HALF,
24 SOMETHING LIKE THAT, DIRECTLY WITH ME AND THEN THE
25 PSYCHOLOGICAL TESTS ANOTHER COUPLE OF HOURS PROBABLY.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 Q OKAY. THANK YOU, SIR.

2 THE COURT: RE-CROSS?

3 MR. KOLB: NOTHING.

4 THE COURT: YOU MAY COME DOWN, SIR.

5 THE WITNESS: THANK YOU.

6 (WHEREUPON THE WITNESS LEFT THE STAND).

7 THE COURT: CALL YOUR NEXT WITNESS.

8 MR. LITTLEJOHN: YOUR HONOR, DR. MORGAN IS EXCUSED?

9 THE COURT: IF HE WISHES TO BE EXCUSED. ANY
10 OBJECTION? DR. MORGAN, YOU ARE FREE TO LEAVE. THANK YOU.

11 MR. BABB: BERNIECE PERRY. I HAVE HER...

12 (WHEREUPON WITNESS ENTERED COURTROOM).

13 THE COURT: MRS. PERRY, ONCE YOU POSITION YOURSELF
14 MOVE THAT MIKE SO THAT YOU CAN SPEAK INTO THE MIKE AND
15 ANSWER THE QUESTIONS. THEN MOVE YOUR CHAIR, TOO, IF YOU
16 NEED TO.

17 BERNIECE PERRY, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 FOREMAN: YOUR HONOR, CAN...

20 THE COURT: HOW ABOUT LETS RETIRE TO THE JURY ROOM,
21 PLEASE. IF YOU WOULD WRITE THAT ON A SHEET OF PAPER AND
22 SEND THAT TO ME, THEN I WILL BE WITH YOU IN A MOMENT,
23 PLEASE. THANK YOU.

24 (WHEREUPON THE JURY LEFT THE COURTROOM AT 10:41
25 A.M.)

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 THE COURT: BE AT EASE UNTIL WE RECEIVE THE RESPONSE.
2 I DON'T KNOW -- PRESIDING JUROR INDICATED THAT ONE OF THE
3 JURORS KNEW THIS WITNESS.

4 SO I -- YOU HEARD MY RESPONSE TO WRITE IT AND I
5 WILL BE HAPPY TO DEAL WITH IT AT THAT TIME. WE WILL BE AT
6 EASE UNTIL THE RESPONSE.

7 THE COURT: MA'AM? EXCUSE ME. SOLICITOR, CAN I SEE
8 YA'LL A MINUTE?

9 (WHEREUPON A BENCH CONFERENCE WAS HELD).

10 (WHEREUPON THERE WAS A PAUSE).

11 THE COURT: OKAY. MR. KOLB, APPROACH, PLEASE.
12 SOLICITOR?

13 (WHEREUPON A BENCH CONFERENCE WAS HELD).

14 THE COURT: THIS IS COURT'S EXHIBIT 10. RESPONSE
15 CONCERNING THE JUROR MRS. THOMPSON. I DISCUSSED IT WITH
16 COUNSEL. COUNSEL FOR THE STATE HAS NO OBJECTION TO MY
17 TALKING WITH MRS. THOMPSON IN PRIVATE AND REPORTING THAT
18 -- HER RESPONSES.

19 COUNSEL FOR THE DEFENDANT LIKEWISE HAS INDICATED
20 NO OBJECTION TO MY DISCUSSING THE MATTER WITH -- IN
21 PRIVATE IN CHAMBERS -- WITH MRS. THOMPSON AND REPORTING
22 HER RESPONSES.

23 ALSO AS I UNDERSTAND THERE'S A SPECIFIC WAIVER
24 THAT MR. STONE DOES NOT DESIRE TO BE PRESENT FROM MY
25 DISCUSSING THE MATTER WITH MRS. THOMPSON.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 MR. BABB: THAT'S CORRECT, YOUR HONOR.

2 MR. KOLB: JUDGE COULD WE NOTE THE RELATION OF THE
3 WITNESS TO THE DEFENDANT STONE?

4 MR. KOLB: THIS WITNESS? SHE DOESN'T -- ALL SHE DID
5 IS SHE KNEW HIM CASUALLY. SHE DOESN'T KNOW ANYTHING.

6 MR. KOLB: THE JUROR TO HER. WHTA I WAS WONDERING IS
7 WHAT RELATION DOES SHE HAVE TO THE DEFENDANT.

8 MR. KOLB: WHAT IS YOUR RELATION?

9 THE WITNESS: AUNT.

10 THE COURT: AUNT.

11 MR. KOLB: THINK THE COURT SHOULD BE AWARE OF THAT,
12 IF THERE'S A QUESTION.

13 THE COURT: WELL, AGAIN YOU MAY. I'M NOT GOING TO
14 MAKE -- YOU'RE GOING TO MAKE THE DETERMINATION AS TO HOW
15 YOU WANT TO PROCEED. ALL RIGHT. MR. STONE, IS THAT
16 CORRECT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. AND YOU
19 UNDERSTAND, YOU HAD A CHANCE TO TALK WITH YOUR LAWYERS
20 ABOUT IT; IS THAT CORRECT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: VERY WELL. I WILL BE WITH YOU IN JUST A
23 MOMENT.

24 (WHEREUPON A BRIEF RECESS WAS TAKEN).

25 THE COURT: LET THE RECORD REFLECT MR. STONE IS

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 PRESENT. I HAVE HAD AN OPPORTUNITY TO SPEAK WITH MRS.
2 THOMPSON IN CHAMBERS. MRS. THOMPSON CONFIRMS THE STATEMENT
3 CONTAINED IN COURT'S EXHIBIT NUMBER 10.

4 IN ESSENCE MRS. THOMPSON LIVED ABOUT FIVE OR SIX
5 YEARS AGO ON THE SAME STREET AS THIS INDIVIDUAL. THEY KNEW
6 EACH OTHER CASUALLY ONLY TO SPEAK TO HER. SHE SAID I KNEW
7 THAT SHE LIVED THERE.

8 SHE SAID SHE NEVER WAS IN HER HOME. NEVER HAD
9 OCCASION TO TALK WITH HER, DOESN'T KNOW ANYTHING ABOUT HER
10 FAMILY OR FAMILY BACKGROUND. MRS. THOMPSON ASSURED ME THAT
11 SHE WOULD CONSIDER -- ASK THE QUESTION TYPICALLY ASKED OF
12 ANYONE WHO HAS EXPRESSED AN OPINION IN FACT THAT THEY
13 KNOWN A WITNESS, I THINK MR. RIEGEL EXPRESSED THAT HE KNEW
14 ONE OTHER WITNESS IN THIS MATTER AND ASKED THE SAME
15 QUESTIONS.

16 WOULD THE FACT THAT SHE -- YOU WERE ACQUAINTED
17 WITH HER AFFECT YOUR ABILITY TO CONSIDER HER TESTIMONY
18 FAIRLY AND IMPARTIALLY AND SPECIFICALLY COULD YOU CONSIDER
19 THE -- AND WOULD YOU CONSIDER THE ISSUE OF CREDIBILITY AND
20 BELIEVABILITY THE SAME AS YOU WOULD ANY OTHER WITNESS.

21 SHE INDICATED UNEQUIVOCALLY AND WITHOUT
22 HESITATION THAT SHE COULD. NOW, WHAT'S THE STATES
23 POSITION?

24 MR. KOLB: YOUR HONOR, I THINK THE PROBLEM IS IS SHE
25 AWARE THAT THIS LADY IS THE AUNT, THE BLOOD AUNT.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 THE COURT: MRS. SOLICITOR, SHE DOESN'T KNOW ANYTHING
2 ABOUT HER. ALL SHE IS REPORTING IS THAT SHE KNEW HER FIVE
3 OR SIX YEARS AGO.

4 THAT'S THE EXTENT SHE KNOWS IT. SHE'S RESPONDING
5 AS SHE WAS INSTRUCTED BECAUSE SHE SAID I DIDN'T MAKE ANY
6 CONNECTIONS WITH THIS PERSON. I DIDN'T EVEN REALLY KNOW
7 HER TILL SHE WALKED IN AND I REMEMBERED THAT THIS PERSON
8 LIVES ON THE STREET.

9 MR. KOLB: JUDGE, MY CONCERN IS THAT IT'S ONE THING
10 TO -- THAT SOMEBODY'S JUST A WITNESS IN THE CASE, AND YOU
11 SAY WELL TURNS OUT I KNOW THEM, BUT I CAN BE FAIR AND
12 IMPARTIAL.

13 BUT WHEN SHE'S IN HERE AS A JUROR SHE WILL FIND
14 OUT THAT THIS LADY IS THE BLOOD AUNT OF THE DEFENDANT WHO
15 THIS LADY IS GOING TO BE ASKED TO DECIDE BETWEEN LIFE
16 IMPRISONMENT AND DEATH IN THE ELECTRIC CHAIR, AND THAT
17 REALLY PUTS HER ON THE SPOT.

18 OBVIOUSLY THAT'S SOMETHING THAT IF WE HAD KNOWN
19 THE -- EVEN THOUGH IT'S A CASUAL CONNECTION -- THE FACT
20 THAT THEY WERE NEIGHBORS, THAT REALLY PUTS SOMEBODY ON THE
21 SPOT TO SENTENCE THAT NEIGHBOR'S CHILD TO THE ELECTRIC
22 CHAIR.

23 THE COURT: MR. SOLICITOR, WHATEVER YOU WANT ME TO
24 DO. I MEAN, ALL YOU NEED TO DO IS TELL ME WHAT STATE -- I
25 HAVE ASKED YOU NOW WHAT THE STATE WANTS TO DO.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 MR. KOLB: I WOULD ASK THAT SHE BE EXCUSED AND AN
2 ALTERNATE SEATED.

3 THE COURT: ALL RIGHT. VERY WELL. WHAT'S THE
4 DEFENSE'S POSITION?

5 MR. LITTLEJOHN: WE THINK GIVEN THE RECORD, THE LADY
6 APPARENTLY DIDN'T EVEN KNOW THIS WITNESSES NAME FROM WHAT
7 I'M UNDERSTANDING.

8 THE COURT: THAT IS CORRECT.

9 MR. LITTLEJOHN: SHE DOESN'T KNOW THE RELATIONSHIP.
10 SHE SAID THE FACT SHE KNEW HER, LIVED DOWN THE STREET FIVE
11 OR SIX YEARS AGO WOULDN'T INFLUENCE HER ABILITY TO BE A
12 FAIR AND IMPARTIAL JUROR.

13 THE COURT: THAT IS CORRECT. HOWEVER THE STATE SAID
14 HAD THEY KNOWN THE INFORMATION THEY WOULD HAVE MAY HAVE
15 EXERCISED ONE OF THEIR PREEMPTORY CHALLENGES AND EXCUSED
16 THE JUROR FROM PARTICIPATING IN THIS MATTER.

17 THAT BEING THE BASIS OF PREVIOUS COURT DECISIONS
18 FOR KNOWLEDGE LEARNED AFTER THE JURY HAS BEEN IMPANELED
19 AND THE FACT ONE OF THE -- RESULTED IN A CASE BEING
20 REVERSED AND REMANDED FOR RETRIAL, THE COURT WILL EXCUSE
21 THIS JUROR FROM FURTHER PARTICIPATION IN THIS MATTER AND
22 PLACE THE NEXT ALTERNATE ON THE JURY PANEL. THAT IS MR.
23 JOHN SINGLETARY.

24 MR. LITTLEJOHN: YOUR HONOR, THE COURT WILL NOTE OUR
25 OBJECTION.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 THE COURT: THE COURT NOTES YOUR OBJECTION.

2 MR. LITTLEJOHN: THANK YOU.

3 THE COURT: ALL RIGHT. LETS LET ME -- WE WILL BE AT
4 EASE. LET ME TALK WITH MRS. THOMPSON AT THIS POINT.

5 (WHEREUPON A BRIEF RECESS WAS TAKEN).

6 THE COURT: ALL RIGHT. THE COURT HAS ADVISED MRS.
7 THOMPSON THAT SHE IS EXCUSED FROM FURTHER PARTICIPATION IN
8 THIS TRIAL. ANY OBJECTION FROM THE STATE ADVISING -- SO
9 ADVISING HER?

10 MR. KOLB: NO, SIR.

11 THE COURT: ANY OBJECTION FROM THE DEFENDANT ADVISING
12 HER OTHER THAN YOUR OBJECTION TO MY EXCUSING HER IN THE
13 FIRST PLACE?

14 MR. LITTLEJOHN: YOUR HONOR, COULD WE APPROACH THE
15 SIDE BAR A MOMENT?

16 (WHEREUPON A BENCH CONFERENCE WAS HELD).

17 MR. LITTLEJOHN: YOUR HONOR, WE WOULD NOTE AN
18 ADDITIONAL OBJECTION TO THE DISMISSAL OF THE JUROR
19 THOMPSON IN THAT THAT WILL CAUSE THE SECOND ALTERNATE TO
20 NOW BECOME A MEMBER OF THE TWELVE MEMBER PANEL.

21 THE SECOND ALTERNATE AS THE COURT RECORDS WILL
22 REFLECT DID NOT PARTICIPATE IN THE DELIBERATIONS DURING
23 THE GUILT PHASE AND BASED ON THAT WE WOULD OBJECT TO THE
24 SUBSTITUTION.

25 THE COURT: THANK YOU, SIR. AND I APPRECIATE THAT. OF

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 COURSE, FROM THE START OF THIS PROCEEDING, THE COURT FROM
2 THE FIRST DAY INSTRUCTED THE JURORS AS A WHOLE THAT IT WAS
3 A BIFURCATED PROCEEDING, TWO SEPARATE TRIALS WITHIN A
4 TRIAL.

5 I THINK I MADE THAT SPECIFIC STATEMENT TO THE
6 JURORS INDIVIDUALLY AS WE QUALIFIED THEM. ALSO REQUESTED
7 -- AND WE WENT TO GREAT LENGTHS -- TO ASCERTAIN WHETHER
8 OR NOT THESE JURORS WOULD BE INFLUENCED BY THE DECISION IN
9 THE FIRST PROCEEDING AND WHETHER OR NOT THEY EACH COULD
10 KEEP AN OPEN MIND AND MAKE A DECISION AS TO THE PROPER
11 PUNISHMENT OR APPROPRIATE PUNISHMENT AND BASE THAT SOLELY
12 ON THE EVIDENCE THAT THEY HEAR IN THE SECOND PROCEEDING
13 WITH THE UNDERSTANDING THAT THEY WOULD CERTAINLY CONSIDER
14 THE OTHER EVIDENCE THAT THEY HAVE HEARD IN THE TRIAL.

15 THE DECISION DOES NOT -- IS NOT REVIEWED AND WE
16 KNOW THERE IS NO FACT THAT WE ARE GOING TO ASK THE JURY --
17 AGAIN, EVEN THOUGH THEY HAVE ALREADY MADE A DETERMINATION
18 I GIVE YOU FOR INSTANCE ON THE CHARGE OF BURGLARY INSOFAR
19 AS THAT'S AN AGGRAVATING CIRCUMSTANCE, THIS JURY AGAIN HAS
20 TO FIND BEYOND A REASONABLE DOUBT THAT THAT IN FACT
21 EXISTS.

22 CERTAINLY THEY WILL CONSIDER THE PRIOR EVIDENCE.
23 WE HAVEN'T RETRIED THAT ISSUE. BUT AGAIN THEY MAKE THAT
24 DETERMINATION. IT'S NOT -- THEY DON'T RELY ON THE DECISION
25 OF THE FIRST JURY.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 SO EVERY ISSUE THAT IS TO BE DETERMINED, THIS
2 JUROR HAS HAD THE BENEFIT AND HAS BEEN A PART OF THIS
3 TRIAL IN EVERY RESPECT AND WOULD HAVE THEN -- HE HAS HEARD
4 THE CHARGE ON THE LAW IN THE FIRST PLACE, HE HAS HEARD ALL
5 OF THE EVIDENCE IN THE FIRST PHASE, AND OF COURSE HE'S
6 BEEN PRESENT DURING THE SECOND PHASE.

7 SO FOR THOSE REASONS I WOULD RESPECTFULLY DENY
8 YOUR MOTION. THANK YOU, SIR. ALL RIGHT. ANYTHING ELSE FROM
9 THE STATE?

10 MR. KOLB: NO, SIR YOUR HONOR.

11 THE COURT: ANYTHING ELSE FROM THE DEFENDANT?

12 MR. LITTLEJOHN: NO, YOUR HONOR.

13 THE COURT: VERY WELL. BRING THE JURY BACK.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
15 11:08 A.M.).

16 THE COURT: THANK YOU VERY MUCH. THANK YOU, LADIES
17 AND GENTLEMEN. AS YOU KNOW THERE IS NOW AN EMPTY CHAIR.
18 MRS. THOMPSON HAS BEEN EXCUSED BY THE COURT, AS A MATTER
19 OF LAW FROM FURTHER PARTICIPATION IN THIS MATTER.

20 I KNOW THAT YOU AGAIN WILL REMEMBER THE
21 SEPARATION. THAT'S PART OF MY RESPONSIBILITY AS THE JUDGE
22 OF THE LAW. YOU SHOULD NOT CONSIDER THAT IN ANY FASHION
23 WHATSOEVER.

24 IT SHOULDN'T BE CONSIDERED IN ANY WAY AT ALL IN
25 CERTAINLY HOW YOU EVALUATE THE EVIDENCE IN THIS MATTER.

DR. HAROLD MORGAN - REDIRECT BY LITTLEJOHN

1 AND IN THAT REGARD, MR. SINGLETARY, YOU ARE THE NEXT
2 ALTERNATE SO I NEED FOR YOU, SIR, TO TAKE YOUR SEAT IN THE
3 WITH THE JURY.

4 THANK YOU VERY MUCH. ALL RIGHT. I THINK WE WERE
5 AT THE POINT OF HAVING MRS. PERRY STATE YOUR FULL NAME FOR
6 THE RECORD AND SPELL YOUR LAST.

7 WITNESS: ELIZABETH BERNIECE PERRY. P AS IN PARROT E
8 R R Y.

9 DIRECT EXAMINATION BY MR. BABB:

10 Q THANK YOU, MRS. PERRY. THANK YOU FOR BEING HERE
11 TODAY. CAN YOU HEAR ME OKAY?

12 A YES, SIR.

13 THE COURT: MRS. PERRY, YOU'RE GOING TO NEED TO MOVE
14 THAT MICROPHONE. UNLESS YO'RE SPEAKING INTO IT, IT REALLY
15 DOESN'T DO VERY MUCH. SO YOU NEED TO SPEAK OR MOVING --
16 YOU CAN PULL IT. YOU CAN PULL IT IN IF YOU WANT TO.

17 I THINK THE -- YOU CAN PUT IT WHEREVER YOU NEED
18 IT TO THE EXTENT YOU CAN AND YOU MOVE YOUR CHAIR AROUND IF
19 YOU NEED TO.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q AND IF YOU WILL TALK LOUD ENOUGH SO I CAN HEAR YOU
22 WAY OVER HERE.

23 A I WILL TRY.

24 Q AS WELL. MRS. PERRY, I BELIEVE YOU ARE RELATED TO
25 BOBBY STONE?

BERNIECE PERRY - DIRECT BY BABB

1 A YES, SIR. I AM. I AM HIS AUNT. I'M HIS FATHER'S
2 SISTER.

3 Q ALL RIGHT. YOU ARE ON THE FATHE'S SIDE OF THE FAMILY?

4 A RIGHT.

5 Q TELL US A LITTLE BIT ABOUT YOU AND YOUR BROTHER'S
6 CHILD HOOD JUST BRIEFLY.

7 A WE HAVE A GREAT CHILD HOOD. WE HAD WONDERFUL PARENTS,
8 LOVING PARENTS. A VERY HAPPY FAMILY. VERY CLOSE.

9 Q AND WHAT DID YOUR FOLKS DO TO MAKE A LIVING?

10 A WE FARMED.

11 Q WERE YA'LL SHARE CROPPERS?

12 A SHARE CROPPERS.

13 Q NOW, YOUR FATHER DRANK A LITTLE BIT; DID HE OR DID HE
14 NOT?

15 A MAYBE ONCE A---.

16 COURT REPORTER: I CAN'T HEAR.

17 THE COURT: MA'AM, YOU NEED TO---.

18 A HE WOULD HAVE MAYBE A HALF A PINT OF LIQUOR AND HE
19 WOULD BRING IT HOME. IT WAS CONSUMED AT HOME. HE DID NOT
20 DRINK OR GO OUT.

21 Q DO YOU HAVE SOME MORE FAMILY MEMBERS THAT HAD
22 PROBLEMS WITH ALCOHOL?

23 A IMMEDIATE FAMILY? JUST BOBBY. MY BROTHER.

24 Q HOW FAR DID YOUR BROTHER GO IN SCHOOL?

25 A I'M NOT REALLY SURE.

BERNIECE PERRY - DIRECT BY BABB

1 Q DID HE GRADUATE?

2 A HE DID NOT GRADUATE. NO.

3 Q HE DID NOT?

4 A HE'S THE ONLY ONE OF US THAT DIDN'T GRADUATE.

5 Q HE DID NOT GRADUATE HIGH SCHOOL?

6 A NO, SIR.

7 Q DID HE BECOME AN ALCOHOLIC?

8 A YES, SIR.

9 Q WHAT IS YOUR UNDERSTANDING OF THE CIRCUMSTANCES THAT
10 LED TO THAT?

11 A BOBBY WAS IN HIS GREEN (SIC) WHEN THIS HAPPENED AND
12 HE WAS A GOOD YOUNG MAN AND HE HAD A---.

13 COURT REPORTER: I CAN'T...

14 THE COURT: YOU NEED TO SPEAK INTO THAT.

15 A HE HAD A GOOD MARRIAGE TO START OFF WITH. AND HE HAD
16 -- YOU KNOW -- CHILDREN AND HE WORKED. AND HIS WIFE --
17 YOU KNOW -- WAS A GOOD HOUSE WIFE. SHE HAD A MEAL ALL THE
18 TIME WHEN HE WOULD COME HOME. AND THE KIDS LOVED HIM. THEY
19 WOULD MEET HIM AT THE DOOR.

20 AND TO START OFF WITH HE WAS A GOOD TYPICAL
21 FAMILY MAN. AND THEN THE DRINKING STARTED, SOME ON THE
22 WEEKENDS. AND IN THE END THEY MOVED TO SUMTER AND HE WAS
23 DRINKING ALL WEEKEND.

24 AND I REALLY DON'T KNOW -- ONCE HE MOVED TO
25 SUMTER, IT'S LIKE HIS WHOLE FAMILY FELL APART. HE BECAME

BERNIECE PERRY - DIRECT BY BABB

1 AN ALCOHOLIC. HE JUST TOLD ME MANY A TIMES THAT I DID NOT
2 UNDERSTAND WHAT IT WAS TO LOVE A WOMAN THE WAY HE LOVED
3 PAM AND COULDN'T LIVE WITH HER BECAUSE HE SAID THAT HE
4 COULDN'T HAVE MEN LEAVING OUT OF HIS BEDROOM AND HE
5 COULDN'T TAKE IT, BUT HE LOVED HER.

6 THEY SEPARATED AND HIS DRINKING BECAME WORSE. AT
7 ONE TIME I TOLD HIM I GET AN APARTMENT AND A JOB IN
8 GEORGETOWN. I MOVED FROM GEORGETOWN IN 1988. AND I SET
9 HIM UP IN AN APARTMENT AND TRIED TO GET WITH HIM AND TRIED
10 TO HELP HIM GET HIS LIFE STRAIGHTENED OUT, BUT HE WOULDN'T
11 GO TO A.A. AND I THOUGHT HE WAS DOING REAL WELL AND MAKE
12 SURE HE HAD A MEAL. AND...

13 Q I NEED TO HEAR YOU OVER HERE.

14 A I -- YOU KNOW -- WE GO AND MAKE SURE HE HAD A MEAL
15 WHEN HE WOULD COME IN FROM WORK AND I WAS JUST HOPING AND
16 PRAYING THAT HE WOULD REFORM. AND THEN I FOUND THAT HE
17 STILL -- HE JUST TOLD ME I DIDN'T UNDERSTAND HOW IT WAS TO
18 LOVE HIS WIFE AND HIS CHILDREN AND YET HE COULDN'T BE WITH
19 THEM.

20 AND HE JUST NEVER COULD HOLD A JOB REALLY DOWN
21 AFTER THAT. AND UNTIL HE WANTED TO HELP HISSELF, I DONE
22 EVERYTHING I COULD DO TO HELP MY BROTHER.

23 Q YOU MENTIONED MABELL, YOUR BROTHERS WIFE?

24 A YES, SIR.

25 Q AND YOUR BROTHER'S NAME WAS BOBBY?

BERNIECE PERRY - DIRECT BY BABB

1 A YES, SIR.

2 Q OKAY. MY CLIENT IS NAMED BOBBY.

3 A BOBBY WAYNE.

4 Q LETS TRY AND NOT CONFUSE THE COURT AND THE LADIES AND
5 GENTLEMEN OF THE JURY. IF YOU COULD, REFER TO MY CLIENT
6 AS BOBBY. YOU REFER TO YOUR BROTHER AS MY BROTHER.

7 A OKAY. I WILL DO THAT.

8 Q UNDERSTAND THAT TO BE A LITTLE HARD ON YOU. HE WAS
9 MARRIED TO MABELL?

10 A YES, SIR.

11 Q OKAY. IS MABELL BOBBY STONE'S MOTHER?

12 A YES, SIR.

13 Q ALL RIGHT. WHAT WAS BOBBY STONE'S RELATIONSHIP WITH
14 YOUR FATHER? COULD YOU TELL US ABOUT THAT -- EXCUSE ME
15 YOUR BROTHER. COULD YOU TELL US A LITTLE BIT ABOUT THAT.

16 A LIKE I SAID, THE CHILDREN WERE SMALL. AND BEFORE HE
17 BECAME AN ALCOHOLIC, HE HAD HIS TYPICAL FAMILY. HE COME
18 HOME FROM WORK AND BOBBY WAYNE AND LINDA WOULD -- YOU KNOW
19 -- MEET DADDY AT THE DOOR. THEY LOVED THEIR FATHER VERY
20 VERY MUCH.

21 THEY LOVED THEIR MOTHER DEARLY. AND IT WAS --
22 YOU KNOW -- A NORMAL, A LOVING FAMILY. THEY HAD HAD -- YOU
23 KNOW -- CHILDREN WHEN THEY WERE YOUNG. THEY HAD STUFF FOR
24 -- THEY LOVED THEIR MOM AND DADDY.

25 Q DID YOU SAY THINGS HIT THE WALL WHEN THEY MOVED TO

BERNIECE PERRY - DIRECT BY BABB

1 SUMTER IN YOUR VIEW?

2 A YES, SIR. AFTER THEY MOVED TO SUMTER, MY BROTHER'S
3 LIFE JUST SEEMED TO FALL APART. HIS WIFE DIDN'T WANT TO
4 LIVE WITH HIM ANY MORE. HE COULD NOT ACCEPT IT. HE DRANK.
5 AND WE TRIED TO HELP, BUT HE REFUSED TO GO TO A.A. WITH
6 ME.

7 AND HE JUST SAID I COULDN'T UNDERSTAND HOW HE --
8 HOW HE LOVED HIS WIFE AND HIS CHILDREN AND YET HE WOULD
9 NEVER LOVE ANOTHER WOMAN. AND HE NEVER BE MARRIED --
10 NEVER DATED TO MY KNOWLEDGE.

11 Q ALL RIGHT. YOUR BROTHER IS NOT HERE WITH US TODAY
12 WHILE HIS SON IS ON TRIAL FOR HIS LIFE. IS YOUR BROTHER
13 STILL LIVING?

14 A NO, SIR.

15 Q DID HE DIE A NATURAL DEATH?

16 A HE -- FROM WHAT LITTLE I KNOW ABOUT THE
17 CIRCUMSTANCES, WHEN MY BROTHER WAS KILLED, HIS CHILDREN
18 CALLED ME AND SAID MY BROTHER HAD FELL OUT THE BACK OF A
19 TRUCK, A CAMPER ON IT AND WAS HIT BY A CAR AND HE HAD BEEN
20 KILLED.

21 AND THAT'S BASICALLY ALL THAT I KNOW IS I CAME
22 DOWN AND I WAS REALLY UPSET AND THEY WERE TRYING TO TELL
23 ME DIFFERENT THINGS -- YOU KNOW -- ABOUT MY BROTHER WAS
24 DRINKING WHEN HE WAS KILLED.

25 AND APPARENTLY THAT HE HAD LOST HIS BALANCE IN

BERNIECE PERRY - DIRECT BY BABB

1 THE BACK OF THE CAMPER AND HIT THE DOOR AND FELL OUT THE
2 DOOR AND WAS KILLED. AND I DON'T KNOW.

3 I JUST -- THAT HURT REAL BAD. AND WHEN I
4 UNDERSTAND -- I DO NOT KNOW THE PEOPLE THAT WERE INVOLVED
5 IN ALL OF THIS.

6 Q I NEED TO BE ABLE TO HEAR YOU. I KNOW IT'S HARD.

7 A I DO NOT KNOW THE PEOPLE THAT WAS INVOLVED IN THIS,
8 BUT I DON'T KNOW VERY MANY PEOPLE FROM SUMTER. AND WHEN I
9 WAS HERE, ONE OF THE GUYS THAT APPARENTLY -- YOU KNOW --
10 MUST HAVE BEEN AT THE TRUCK OR WHATEVER, HE MADE A COMMENT
11 TO ME THAT HAS ALWAYS STUCK IN MY MIND.

12 AND HE TOLD ME HE SAID THAT BOBBY LOOKED AT ME
13 -- MY BROTHER BOBBY -- LOOKED AT HIM AND SAID YOU WILL
14 HELP ME; WON'T YOU? AND I WENT TO PIECES. AND I ASKED
15 HIM WHY WOULD BOBBY NEED HELP IF HE FELL OUT THE BACK OF A
16 CAMPER?

17 AND NOBODY WOULD SAY ANYTHING TO HIM FROM THEN
18 ON. AND -- YOU KNOW -- I WAS CLOSE TO HIM. I GUESS IN A
19 WAY FELT LIKE I HAD FAILED HIM BECAUSE I TRIED SO HARD TO
20 HELP HIM AND YET I COULDN'T.

21 Q I UNDERSTAND.

22 A I AM SORRY.

23 Q I KNOW. YESTERDAY WHEN WE MET, YOU BROUGHT SOME
24 PICTURES. DO YOU HAVE THOSE WITH YOU?

25 A YES, SIR.

BERNIECE PERRY - DIRECT BY BABB

1 Q PLEASE TAKE JUST A MOMENT.

2 (WHEREUPON THERE WAS A PAUSE).

3 MR. KOLB: NO OBJECTION, YOUR HONOR.

4 THE COURT: VERY WELL. HAVE THEM MARKED.

5 MR. BABB: PLEASE PUT THOSE BACK IN YOUR PURSE.

6 THE COURT: GO AHEAD AND MARK THEM. BE FIVE?

7 MR. BABB: THERE ARE THREE IN TOTAL.

8 THE COURT: SO DEFENDANT'S EXHIBITS 5, 6 AND 7 EACH
9 BEING A PHOTOGRAPH INTO EVIDENCE WITHOUT OBJECTION.

10 (DEFENDANT'S EXHIBIT NO. 5, 6 AND 7 MARKED FOR
11 EVIDENCE).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q MRS. PERRY, WAS BOBBY STONE CLOSE TO YOUR BROTHER IN
14 YOUR OPINION? DID YOU OBSERVE?

15 A AS A CHILD. YES, SIR.

16 Q BEFORE COMING TO SUMTER THEY LIVED IN POSTON?

17 A YES, SIR.

18 Q THEY WERE IN NEXT COUNTY OR SO OVER?

19 A I THINK THAT'S IN FLORENCE COUNTY.

20 Q I SHOW YOU DEFENDANT'S EXHIBIT 7. CAN YOU IDENTIFY
21 THIS?

22 A YES, SIR. THAT'S MY BROTHER AND TAMMY, HIS DAUGHTER.

23 Q DEFENDANT'S EXHIBIT 6?

24 A THAT WAS TAMMY AND BOBBY WAYNE. THEY WERE ALL SO
25 CLOSE.

BERNIECE PERRY - DIRECT BY BABB

1 Q DEFENDANT'S EXHIBIT 5?

2 A IT'S TAMMY AND BOBBY WAYNE AND LINDA.

3 Q TO THE BEST OF YOUR RECOLLECTION DID -- YOU TOOK
4 THESE PICTURES; IS THAT CORRECT?

5 A YES, SIR.

6 Q TO THE BEST OF YOUR RECOLLECTION THEY WERE LIVING --
7 EITHER JUST MOVED TO SUMTER OR WERE LIVING IN POSTON AT
8 THE TIME?

9 A YES, SIR. I DON'T REMEMBER EXACTLY.

10 Q BUT...

11 A THAT.

12 Q IT WAS ABOUT THE TIME THAT THINGS EITHER DID OR
13 ALREADY STARTED TAKING A TURN FOR THE WORST?

14 A YES.

15 Q DID MABELL GRADUATE HIGH SCHOOL?

16 A NOT TO MY KNOWLEDGE. NO, SIR.

17 Q DID -- MABELL IS BOBBY'S MOTHER?

18 A YES, SIR.

19 Q DID SHE HAVE ANY HEALTH PROBLEMS?

20 A SHE WAS BURNED AS A CHILD FROM THE BEST THAT I KNOW.
21 SHE HAD LONG HAIR. HAD THE OPEN FIRE PLACE. AND HER
22 CLOTHES CAUGHT ON FIRE AND BURNED THEM FROM RIGHT ABOVE
23 THE HAMSTRING TO RIGHT BELOW THE HIP PART.

24 AND THE LIGAMENTS IN THE BACK OF HER KNEES WERE
25 PULLED OUT SHE WOULD HAVE TO KEEP HAVING SURGERY. SHE HAD

BERNIECE PERRY - DIRECT BY BABB

1 TO HAVE A LOT OF PLASTIC SURGERY ON HER LEGS.

2 Q OKAY. IT MADE WORKING DIFFICULT FOR HER AS FAR AS YOU
3 KNOW?

4 A YES, SIR.

5 Q HOW WAS BOBBY'S RELATIONSHIP WITH HIS MOTHER, MABELL?

6 A HE LOVED HIS MOTHER. CLOSE TO HIS MOTHER.

7 Q AND WHEN DID MABELL PASS AWAY?

8 A THE BEST I CAN REMEMBER IS LIKE MAYBE 4 YEARS AGO, I
9 BELIEVE, THREE YEARS AGO.

10 Q ABOUT 1993?

11 A YES, SIR.

12 Q OKAY. AND BOBBY'S FATHER, DID HE DIE IN ABOUT 1987?

13 A NOVEMBER OF 1987.

14 Q NOVEMBER OF 1987. WHERE WAS BOBBY WHEN HIS FATHER
15 PASSED AWAY?

16 A HE WAS IN JAIL.

17 Q AND HE HAD JUST GOTTEN OUT OF JAIL NOT LONG BEFORE
18 HIS MOTHER PASSED AWAY; IS THAT CORRECT?

19 A YES, SIR.

20 Q AND WOULD YOU SAY THAT HIS FATHER'S DEATH WAS A --
21 THE IMPACT ON BOBBY, WAS THAT SIGNIFICANT FROM WHAT YOU
22 SAW?

23 A YES, SIR. AND I CAN REMEMBER WHEN HE GOT COME TO THE
24 HOUSE WHEN HIS FATHER HAD PASSED AWAY AND IT WAS VERY
25 UPSETTING.

BERNIECE PERRY - DIRECT BY BABB

1 AND IT JUST -- THE EXPRESSION AND THE HURT YOU
2 COULD SEE ALL OVER HIM. AND IT WAS JUST... I MEAN, HE HAD
3 LOST HIS FATHER.

4 Q WAS HIS RESPONSE SIMILAR TO HIS MOTHER?

5 A HIS RESPONSE WAS FOR HIS MOTHER. IT WAS JUST LIKE HE
6 WAS DEVASTATED. HE SEEMED TO FEEL LIKE THAT HE WAS STILL
7 HIS SON AND HE FELT LIKE -- YOU KNOW -- HE HAD ALL THE
8 FAMILY ON HIS SHOULDERS AND HE HAD BIG DECISIONS AND DO
9 THINGS THAT -- YOU KNOW -- A MAN SHOULD HAVE TO DO. AND
10 IT WAS VERY HARD FOR HIM.

11 Q NOW, I BELIEVE -- AND PLEASE CORRECT ME IF I AM
12 WRONG. YOU HAD TOLD ME YESTERDAY WHEN WE MET THAT THIS WAS
13 YOUR FIRST TRIP TO SUMTER SINCE THIS FUNERAL?

14 A YES, SIR.

15 Q AND AT THE FUNERAL YOU HAD SOME CONCERNS ABOUT
16 BOBBY. AND DID YOU MAKE ANY OFFER OF ASSISTANCE?

17 A YES, SIR. I ASKED HIM TO MAYBE COME DOWN WITH ME AND
18 MAYBE GET A JOB AND TRY TO GET HIS FEET BACK ON THE GROUND
19 AND MAKE A TURN AROUND IN LIFE. AFTER MY BROTHER AND
20 JUST -- I DIDN'T WANT MY NEPHEW TO FOLLOW THOSE FOOTSTEPS.

21 Q DID IT APPEAR TO YOU HE WAS?

22 A YES, SIR.

23 Q WHEN YOUR BROTHER'S FAMILY MOVED TO SUMTER, THAT WAS
24 FROM POSTON; IS THAT CORRECT?

25 A YES, SIR.

BERNIECE PERRY - DIRECT BY BABB

1 Q DID -- AND THINGS TOOK A TURN FOR THE WORST. WAS
2 THERE ANOTHER INDIVIDUAL THAT HAD BEEN A NEIGHBOR OF
3 THEIRS IN POSTON ALSO MOVED TO SUMTER?

4 A I BELIEVE IT'S EUGENE MILES.

5 Q YOU DO NOT LIKE MR. MILES?

6 A NO, SIR. I DON'T.

7 Q WHAT WAS MR. MILES' -- TO YOUR KNOWLEDGE --
8 RELATIONSHIP WITH MABELL?

9 A I HAVE NO PROOF OF ANYTHING.

10 MR. KOLB: YOUR HONOR, I OBJECT TO SPECULATION.

11 THE COURT: I SUSTAIN THE OBJECTION. LETS MOVE ON,
12 PLEASE.

13 MR. BABB: YES, SIR. MRS. PERRY---

14 THE COURT: JUST ONE SECOND.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q MR. MILES, DOES HE HAVE AN OCCASION TO FREQUENT THE
17 STONE FAMILY?

18 A WHEN MY BROTHER MOVED TO SUMTER, THIS MAN MOVED HIS
19 FAMILY TO SUMTER ALSO. AND MOVED NEXT DOOR TO HIM. AND WE
20 TOLD GENE -- HE ALSO DRINKS. AND I'M SORRY I JUST DON'T
21 HAVE ANY USE FOR HIM. NOTHING I CAN PINPOINT.

22 MR. KOLB: OBJECT THERE IS IRRELEVANT.

23 THE COURT: I SUSTAIN THE OBJECTION. LETS MOVE ON MR.
24 BABB, PLEASE.

25 MR. BABB: YES, SIR, YOUR HONOR.

BERNIECE PERRY - DIRECT BY BABB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q WOULD YOU PLEASE DESCRIBE THE NEIGHBORHOOD IN SUMTER
3 WHERE BOBBY STONE GREW UP.

4 A POVERTY STRICKEN SLUM. BAD NEIGHBORHOOD.

5 Q ALL RIGHT, SIR.

6 MR. BABB: COURT'S INDULGENCE FOR JUST A MOMENT.

7 THE COURT: YES, SIR.

8 (WHEREUPON THERE WAS A PAUSE).

9 (WHEREUPON QUESTIONING RESUMED).

10 Q NOW MRS. PERRY, LET ME ASK YOU A COUPLE OF QUESTIONS
11 ABOUT YOURSELF. WHERE DO YOU LIVE?

12 A I LIVE IN HEMINGWAY, SOUTH CAROLINA.

13 Q AND WHAT DO YOU DO?

14 A I WORK WITH WAL MART AND I'VE BEEN WITH THEM FOR
15 FOURTEEN YEARS. I AM SHOE DEPARTMENT MANAGER.

16 Q ALL RIGHT. NO FURTHER QUESTIONS.

17 THE COURT: THANK YOU. YOU MAY CROSS-EXAMINE, MR.
18 SOLICITOR.

19 CROSS-EXAMINATION BY MR. KOLB:

20 MR. BABB: ONE THING, YOUR HONOR...

21 Q DID UNDERSTAND YOU TO SAY THE NEIGHBORHOOD -- ALL OF
22 BOULEVARD ROAD WAS A SLUM AND A BAD NEIGHBORHOOD?

23 A ACCORDING TO MY OPINION, YES, SIR.

24 Q AND MRS. LANDROW TAYLOR, YOU MIND STANDING UP. MR.
25 LANDROW TAYLOR? DO YOU KNOW MR. LANDROW TAYLOR THAT LIVES

BERNIECE PERRY - CROSS BY KOLB.

1 IN THAT NEIGHBORHOOD?

2 A NO, SIR.

3 Q MRS. RUTH GRIFFITH. DO YOU MIND -- DO YOU KNOW RUTH
4 GRIFFITH THAT LIVES IN THAT NEIGHBORHOOD?

5 A NO, SIR.

6 THE COURT: ALL RIGHT. MR. SOLICITOR, THAT'S ENOUGH,
7 SIR. YOU MAY MOVE ON TO SOMETHING ELSE, PLEASE, SIR.

8 MR. KOLB: WELL.

9 THE COURT: NO, SIR. YOU MAY MOVE ON TO SOMETHING
10 ELSE, PLEASE SIR.

11 (WHEREUPON QUESTIONING RESUMED).

12 MR. KOLB: NOTHING FURTHER YOUR HONOR.

13 THE COURT: THANK YOU. RE-CROSS? I MEAN -- EXCUSE
14 ME. REDIRECT?

15 REDIRECT EXAMINATION BY MR. BABB:

16 Q WHAT KIND OF HOUSE IS THE STONE FAMILY FROM?

17 A IT'S A TRAILER, A SINGLE WIDE TRAILER THAT'S BEEN
18 ADDED ON TO, THAT NEEDS A LOT OF WORK.

19 Q HOW MANY FEET WOULD YOU SAY IT IS TO THE NEXT TRAILER
20 OVER?

21 MR. KOLB: YOUR HONOR...

22 THE COURT: SUSTAIN. IMPROPER REDIRECT.

23 MR. BABB: THANK YOU. NOTHING FURTHER, YOUR HONOR.

24 THE COURT: ALL RIGHT. RE-CROSS?

25 MR. KOLB: NO, SIR.

BERNIECE PERRY - REDIRECT BY BABB

1 THE COURT: YOU MAY COME DOWN. THANK YOU, MA'AM.

2 (WHEREUPON THE WITNESS LEFT THE STAND).

3 MR. BABB: YOUR HONOR, WE CALL TAMMY WINDHAM.

4 THE COURT: OKAY.

5 TAMMY WINDHAM, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 THE COURT: PLEASE, YOU NEED TO POSITION THAT MIKE SO
8 YOU CAN SPEAK INTO IT AS YOU ARE ASKING THE QUESTIONS,
9 PLEASE. STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR
10 LAST.

11 WITNESS: TAMMY ELIZABETH WINDHAM W I N D H A.M.

12 THE COURT: THANK YOU, MA'AM.

13 DIRECT EXAMINATION BY MR. BABB:

14 Q MRS. WINDHAM, I NEED TO BE ABLE TO HEAR YOU OVER
15 HERE. SO PLEASE KEEP YOUR VOICE ELEVATED. WHERE DO YOU
16 RESIDE?

17 A WHERE DO I LIVE?

18 Q YES, SIR.

19 A IN FLORIDA, DAYTONA.

20 Q WHAT IS YOUR RELATIONSHIP TO BOBBY STONE SEATED OVER
21 THERE?

22 A I'M HIS BABY SISTER.

23 Q TELL ME VERY BRIEFLY ABOUT YOUR MOM AND DAD. DID YOU
24 AND YOUR MOM GET ALONG FINE?

25 A YES, SIR.

TAMMY WINDHAM - DIRECT BY BABB

1 Q WHAT ABOUT YOUR DAD?

2 A I NEVER SEEN HIM THAT MUCH.

3 Q CAN YOU TELL US ABOUT YOUR CHILD HOOD?

4 A IT WAS ALL RIGHT. WE WAS JUST 4.

5 Q HAVE YOU BLOCKED ANY OF YOUR CHILD HOOD OUT OF YOUR
6 MIND?

7 A YES, SIR.

8 Q WHY?

9 A BECAUSE OF GENE.

10 Q WHO IS GENE?

11 A MY MAMA'S BOYFRIEND.

12 Q WHAT IS HIS FULL NAME?

13 A WESLEY MILES.

14 Q WHEN WAS HE YOUR MOTHER'S BOYFRIEND?

15 A JUST ABOUT ALL OF MY LIFE.

16 Q DID HE LIVE WITH YOUR MOM, YOU?

17 A ON AND OFF.

18 Q LIVED IN THE HOUSE?

19 A YES, SIR.

20 Q WHERE DID -- IS HE -- IS HE MARRIED TO YOUR
21 KNOWLEDGE?

22 A NO, SIR.

23 Q YOU DON'T BELIEVE HE IS MARRIED?

24 A OH, IS HE MARRIED? YEAH.

25 Q IS HE MARRIED?

TAMMY WINDHAM - DIRECT BY BABB

1 A YES, SIR.

2 Q WHERE WOULD HIS WIFE BE WHILE HE WOULD BE LIVING WITH
3 THE STONE FAMILY?

4 A NEXT DOOR.

5 Q HOW DID YOU GET ALONG WITH MR. MILES?

6 A I DIDN'T LIKE HIM AND HE DIDN'T LIKE ME.

7 Q HOW DID BOBBY GET ALONG WITH HIM?

8 A ALL RIGHT, I GUESS. THEY JUST DIDN'T GET ALONG. HE
9 DIDN'T LIKE NONE OF MAMA'S KIDS.

10 Q DID YOU EVER SEE HIM BEAT BOBBY?

11 A HE HIT HIM ONCE OR TWICE THAT I REMEMBER.

12 Q WITH HIS FIST?

13 A YES, SIR.

14 Q HOW OLD WAS BOBBY WHEN THAT OCCURRED?

15 A I DON'T KNOW. I DON'T KNOW.

16 Q WHEN YOU SAY ALL OF YOUR LIFE, IS MR. MILES, WESLEY,
17 THE MAN AROUND THE HOUSE AS FAR BACK AS YOU CAN REMEMBER?

18 A UH-HUH.

19 Q DID HE EVER ATTEMPT TO MOLEST YOU IN ANY WAY?

20 A YES, SIR.

21 MR. KOLB: THAT'S IRRELEVANT, YOUR HONOR.

22 THE COURT: SUSTAINED. UNLESS YOU LAY A FOUNDATION. I
23 SUSTAIN YOUR OBJECTION AT THIS POINT AS TO RELEVANCE.

24 MR. BABB: COURT'S INDULGENCE FOR JUST A MOMENT.

25 THE COURT: YES, SIR.

TAMMY WINDHAM - DIRECT BY BABB

1 (WHEREUPON THERE WAS A PAUSE).

2 (WHEREUPON QUESTIONING RESUMED).

3 Q DID YOU EVER TELL BOBBY ABOUT ANY PROBLEMS YOU HAD
4 WITH GENE?

5 A YES, SIR.

6 Q OKAY. DID YOU TELL BOBBY ABOUT HIM TRYING TO MOLEST
7 YOU?

8 A YES, SIR.

9 Q ALL RIGHT. DID MR. MILES IN FACT ATTEMPT TO MOLEST
10 YOU?

11 A YES, SIR.

12 Q CAN YOU TELL US ABOUT THAT?

13 A I CAN TELL YOU WHAT I CAN REMEMBER.

14 THE COURT: APPROACH, PLEASE.

15 (WHEREUPON A BENCH CONFERENCE WAS HELD).

16 (WHEREUPON QUESTIONING RESUMED).

17 Q TAMMY, IS THIS THE SAME GENTLEMAN THAT LIVED IN YOUR
18 HOME, MR. MILES?

19 A YES, SIR.

20 Q SLEPT WITH YOUR MOTHER?

21 A YES, SIR.

22 Q AND WERE THE CHILDREN -- ALL YOU AND YOUR SIBLINGS
23 THERE?

24 A YES, SIR.

25 Q YOUR FATHERS DEATH, WAS IT HARD ON YOU?

TAMMY WINDHAM - DIRECT BY BABB

1 A YES, SIR.

2 Q DID IT CAUSE YOU A LOT OF PROBLEMS?

3 A EXCUSE ME?

4 Q DID YOU HAVE PROBLEMS FROM THERE?

5 A FROM MY DAD'S DEATH? YES, SIR.

6 Q DID YOU EVER SEE MR. MILES ATTEMPT TO MOLEST YOUR
7 OTHER FAMILY MEMBERS?

8 A I'VE SEEN HIM GOING AT MY SISTER ONE TIME.

9 Q BOBBY KNOW ABOUT THAT TO YOUR KNOWLEDGE?

10 A I DON'T KNOW.

11 MR. BABB: NO FURTHER QUESTIONS, YOUR HONOR. PLEASE
12 ANSWER ANY QUESTIONS SOLICITOR KOLB MAY WISH TO PRESENT.

13 THE COURT: YOU MAY CROSS-EXAMINE.

14 CROSS-EXAMINATION BY MR. KOLB:

15 Q YOU GREW UP IN THE SAME HOME THAT BOBBY WAYNE STONE,
16 THIS DEFENDANT, DID?

17 A YES, SIR.

18 Q ALL RIGHT. AND WESLEY EUGENE MILES TRIED TO MOLEST
19 YOU?

20 A YES, SIR.

21 Q AND YOU HAVE NEVER SPENT ONE DAY IN JAIL OR PRISON IN
22 YOUR WHOLE LIFE; HAVE YOU?

23 A NO, SIR.

24 Q AND YOU NEVER SHOT A POLICE OFFICER; HAVE YOU?

25 A NO, SIR.

TAMMY WINDHAM - CROSS BY KOLB

1 Q THANK YOU, MA'AM.

2 THE COURT: REDIRECT?

3 MR. BABB: NOTHING, YOUR HONOR.

4 THE COURT: YOU MAY COME DOWN. THANK YOU.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 THE COURT: TAKE A SEAT OUT IN THE AUDIENCE.

7 MR. BABB: WE CALL MELINDA PARROT, YOUR HONOR.

8 THE COURT: VERY WELL.

9 MELINDA PARROTT, BEING FIRST DULY
10 SWORN, TESTIFIED AS FOLLOWS:

11 THE COURT: MRS. PARROTT, ONCE YOU GET COMFORTABLE,
12 PULL THAT MIKE SO THAT YOU CAN SPEAK INTO THE MIKE BECAUSE
13 IF YOU DON'T, WE WILL NOT BE ABLE TO HEAR YOU.

14 SO ANSWER ALL OF YOUR QUESTIONS, ANSWER INTO THE
15 MIKE. WILL YOU STATE YOUR FULL NAME FOR THE RECORD AND
16 SPELL YOUR LAST NAME.

17 WITNESS: MELINDA.

18 THE COURT: NO, MA'AM. YOU -- I PROMISE YOU, DON'T
19 LET IT SCARE. YOU DON'T PUSH IT AWAY FROM YOU BECAUSE IT
20 WILL NOT PICK IT UP THAT FAR I PROMISE YOU. OKAY. ALL
21 RIGHT.

22 WITNESS: OKAY. MELINDA STONE PARROTT, P A R R O T
23 T.

24 THE COURT: THANK YOU.

25 DIRECT EXAMINATION BY MR. BABB:

MELINDA PARROTT - DIRECT BY BABB

1 Q MRS. PARROTT, WHAT IS YOUR RELATIONSHIP WITH BOBBY
2 STONE SEATED OVER HERE?

3 A IT'S MY BROTHER.

4 Q ALL RIGHT. AND WHERE DO YOU FALL IN THE CHAIN OF
5 CHILDREN?

6 A I'M THE OLDEST.

7 Q YOU ARE OLDER THAN BOBBY?

8 A YES, SIR.

9 Q TAMMY IS YOUNGER THAN BOBBY?

10 A YES, SIR.

11 Q ALL RIGHT. WE WERE TALKING NOT LONG AGO ABOUT SOME
12 CHICKENS?

13 A YES, SIR.

14 Q PLEASE RELAY BOBBY'S INVOLVEMENT IN CHICKENS TO THE
15 JURY.

16 A WHAT YOU WANT ME TO -- WHAT...

17 Q I WANT YOU TO TELL FIRST. I MEAN DID BOBBY AS A CHILD
18 EVER BRING CHICKENS HOME?

19 A YES, SIR.

20 Q WERE THEY LIVE CHICKENS?

21 A YES, SIR.

22 Q AND HAD FEATHERS ON THEM?

23 A YES, SIR. YARD CHICKENS. YES, SIR.

24 Q DIDN'T BELONG TO YA'LL?

25 A NO, SIR.

MELINDA PARROTT - DIRECT BY BABB

1 Q WHAT DID YA'LL DO WITH THOSE CHICKENS?

2 A COOK AND EAT THEM.

3 Q DID YOUR MOTHER MABELL KNOW HE WAS BRINGING CHICKENS
4 HOME?

5 A YES, SIR. WHEN SHE -- SHE WOULD KNOW WHEN SHE WOULD
6 COME HOME FROM WORK.

7 Q DO YOU KNOW WHERE BOBBY GOT THOSE CHICKENS?

8 A NO, SIR. NO.

9 Q AND YOU EVER SEEN THE PIGGLY WIGGLY SELL LIVE
10 CHICKENS?

11 A NO, SIR.

12 Q OKAY. IS YOUR NEIGHBOR WESLEY MILES?

13 A YES, SIR.

14 Q IF HE WANTS TO COME OVER FOR THEM, WOULD HE KNOCK ON
15 THE DOOR?

16 A NO.

17 Q WHAT DOES HE DO?

18 A JUST WALK IN.

19 Q HAS HE ALWAYS DONE THAT?

20 A YES, SIR.

21 Q WHEN YA'LL WERE CHILDREN, DID HE LIVE THERE?

22 A YES, SIR. OFF AND ON. HE'S MARRIED.

23 Q WHERE DOES HE WIFE LIVE?

24 A SIR?

25 Q WHERE DOES HIS WIFE LIVE?

MELINDA PARROTT - DIRECT BY BABB

1 A LIVE? WITH HIM NEXT DOOR TO US.

2 Q BUT WHERE DID SHE LIVE DURING THE PERIOD WHEN YA'LL
3 WERE CHILDREN THAT HE WOULD BE LIVING WITH YOU AND YOUR
4 MOTHER?

5 A WE ALWAYS STAYED CLOSE TOGETHER. I MEAN -- YOU KNOW
6 -- NOT TOO FAR APART A COUPLE OF HOUSES OR SOMETHING LIKE
7 THAT.

8 Q BOTH HERE AND IN POSTON?

9 A HERE AND POSTON.

10 Q DID WESLEY EVER DO ANYTHING, ATTEMPT TO DO ANYTHING,
11 TO YOU IN FRONT OF BOBBY THAT BOBBY WOULD KNOW ABOUT?

12 A YEAH. WHEN WE WAS YOUNGER, ME AND TAMMY AND ALL --
13 HE'S GOT THREE GIRLS, TOO. AND MICHELLE AND ALL OF US USED
14 TO -- WE LIVED SIDE BY SIDE.

15 Q MICHELLE LYNCH?

16 A YEAH. AND HE USED TO -- HE'D CATCH MAMA WORKING AND
17 STUFF. AND HE WOULD BE DRUNK. AND HE WOULD COME OVER
18 THERE AND TRY TO HEM (SIC) US UP IN A CORNER -- YOU KNOW
19 -- AND FEEL ON US AND STUFF.

20 AND BOBBY WAYNE, HE WAS THERE. AND WE WOULD
21 ALWAYS HOLLER FOR HIM OR CHUCK -- YOU KNOW -- SOME OF THEM
22 IN THE FAMILY, LET THEM KNOW THAT HE WAS IN THERE WITH US
23 AND -- YOU KNOW -- TO GET AWAY FROM HIM AT THE TIME.

24 BUT USUALLY IF WE WENT BACK IN THE HOUSE AND HE
25 WAS AROUND -- YOU KNOW -- WE TRY TO GO IN AS TWOS -- YOU

MELINDA PARROTT - DIRECT BY BABB

1 KNOW -- TWO -- TWO GOT A BETTER CHANCE THAN ONE.

2 I MEAN, THAT'S -- HE WAS A STRONG MAN AND WE
3 WEREN'T NOTHING BUT YOUNG, UNDERSTAND. AND HE'S A LOT
4 STRONGER.

5 Q DID THAT APPEAR TO DISTRESS BOBBY?

6 A YEAH. DIDN'T DO ME NO GOOD EITHER, BUT YEAH IT DIDN'T
7 HELP BOBBY EITHER.

8 Q AND YOUR FATHER'S DEATH WAS VERY HARD ON YOU; WASN'T
9 IT?

10 A MY FATHERS DEATH, YES, SIR. IT'S STILL VERY HARD.
11 YES, SIR.

12 Q CAUSE YOU PROBLEMS?

13 A SIR?

14 Q DID IT CAUSE YOU PROBLEMS?

15 A YES, SIR. I LIKE TO HAVE A NERVOUS BREAK DOWN.

16 Q HAVE TO SEE SOME FOLKS ABOUT THAT?

17 A YES, SIR. I WENT.

18 Q WHAT WAS IT ABOUT THAT THAT MADE IT SO SO DIFFICULT
19 ON YOU?

20 A THE WAY HE WAS KILLED.

21 Q HOW WAS THAT?

22 A HE HAD LEFT WITH A COUPLE OF OUR COUSINS AND A FEW
23 MORE FRIENDS AND WESLEY MILES AND HIS SON AND THEY WAS
24 GOING ON A FISHING TRIP IN A BOAT AND THEY WAS DRIVING A
25 TRUCK WITH A CAMPER LIKE WITH A KITCHEN AND STUFF IN IT,

MELINDA PARROTT - DIRECT BY BABB

1 NOT A BATHROOM AND STUFF.

2 NOT A REAL BIG ONE -- YOU KNOW. JUST HAD LITTLE
3 STOVE AND STUFF IN IT AND A LITTLE TABLE. AND THEY LEFT.
4 THEY WAS ALL DRINKING AND LEFT TO GO FISHING. AND THEY
5 WENT TO GET A BOAT, BUT BEFORE THEY LEFT WE HAD TO -- YOU
6 HAVE TO LOCK THE CAMPER DOOR.

7 DIDN'T LOCK IT WELL WITH A KEY OR IT WOULDN'T
8 STAY SHUT. IT WOULD COME BACK -- YOU KNOW -- FLY UP ON
9 YOU. SO WE HAD TO LOCK IT WITH THE KEY.

10 SO WHEN DADDY AND THEM GOT IN THE BACK OF THE
11 CAMPER TO LEAVE TO GO ON THE TRIP WHICH WAS TO CARROLL'S
12 -- WELL, IT'S FLORENCE COUNTY. AND WE LOCKED THE DOOR
13 AND STUFF TO MAKE SURE -- YOU KNOW -- NOTHING -- THEY
14 COULDN'T COME OUT UNLESS WESLEY OR HIS SON GOT OUT AND LET
15 THEM OUT THE BACK OF THE CAMPER.

16 BUT SOMEHOW WHEN HE GOT TO THE -- WESLEY GOT TO
17 HIS BROTHERS AND GOT THE BOAT AND THE TRAILER AND STUFF,
18 HE MUST HAVE UNLOCKED THE CAMPER DOOR SOMEHOW OR
19 SOMETHING, I DON'T KNOW.

20 THEY NEVER DID FIGURE OUT OR NOTHING. WESLEY
21 WENT TO A YIELD SIGN AND INSTEAD OF YIELDING, HE JUST
22 PULLED ON OUT.

23 AND WHEN HE DID, THE DOOR ON THE CAMPER COME
24 OPEN AND MY DADDY REACHED UP TO GRAB IT. THE DOOR -- AND
25 WHEN HE DID, THEY SAID HE FELL OUT THE CAMPER, OUT THE

MELINDA PARROTT - DIRECT BY BABB

1 BACK OF THE TRUCK. BUT THE WE ASKED THE CORONER---.

2 Q MRS. PARROTT, LET ME -- HAVE YA'LL ALWAYS HAD
3 QUESTIONS ABOUT WHETHER YOUR FATHER'S DEATH WAS ACCIDENTAL
4 OR PERHAPS INTENTIONAL? IS THAT WHAT CAUSED YOU THE
5 DIFFICULTIES YOU TOLD US YOU HAD?

6 A YEAH, BECAUSE TRULY IN MY HEART I BELIEVE HE DONE IT.
7 I MEAN...

8 Q BELIEVE WHO DONE IT?

9 A WESLEY MILES. BUT---.

10 Q WAS HE JEALOUS OF YOUR MOTHER?

11 A YES, HE WAS. AND AS I SAY, WHEN HE FELL ON THE TRUCK
12 -- THEY SAID THAT A CAR COME BEHIND HIM WITH TWO GIRLS IN
13 IT AND KILLED HIM.

14 THE GIRLS DIDN'T KNOW WHAT IT WAS. THEY WENT
15 FROM COLUMBIA AND STUFF TO THE HOSPITAL AND STUFF---.

16 THE COURT: EXCUSE ME. MR. BABB, LETS MOVE ON.

17 MR. BABB: YES, SIR.

18 THE COURT: THANK YOU.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q WHEN YA'LL WERE GROWING UP, DID YA'LL HAVE A LOT OF
21 NICE THINGS?

22 A NO.

23 Q I UNDERSTAND YOUR MOTHER HAD POOR HEALTH; IS THAT
24 CORRECT?

25 A YES, SIR.

MELINDA PARROTT - DIRECT BY BABB

- 1 Q YOUR FATHER DRANK TO EXCESS?
- 2 A YES, SIR.
- 3 Q DID HE HELP----
- 4 A HE DRANK A LOT. YES, SIR.
- 5 Q DID HE HELP YA'LL OUT FINANCIALLY AT ALL?
- 6 A NO, SIR. MY MOTHER SUPPORTED US.
- 7 Q WOULD SHE SOMETIMES BRING HOME FOOD?
- 8 A YES, SIR.
- 9 Q THAT SHE HAD PURCHASED?
- 10 A MEAN FROM THE STORE? YES, SIR. WHEN WE LIVED IN
- 11 POSTON SHE DID. YES, SIR.
- 12 Q HAVE YOU EVER HAD ANY RUN INS WITH THE LAW? I MEAN,
- 13 YOU -- YOU HAVE HAD SOME PROBLEMS WITH THE LAW; HAVEN'T
- 14 YOU?
- 15 A YES, SIR. I HAVE. I HAVE GOT CAUGHT THREE TIMES FOR
- 16 D.U.I. AND D.U.S.. I SERVED SIX MONTHS IN JAIL FOR IT. I
- 17 WAS ON PROBATION FOR IT FOR THAT, TOO. AND SHOPLIFTING.
- 18 AND I THINK THAT'S IT. I'M PRETTY SURE THAT'S IT. BUT...
- 19 Q ALL RIGHT. HAVE THE ANSWERS YOU HAVE GIVEN ME BEEN
- 20 HONEST?
- 21 A YES, SIR. BEST I CAN ANSWER THEM.
- 22 Q PLEASE ANSWER ANY -- WELL, WHERE DOES MR. MILES LIVE
- 23 NOW?
- 24 A NOW? NEXT DOOR TO US.
- 25 Q DOES HE?

MELINDA PARROTT - DIRECT BY BABB

1 A HE STAYS AT 711 RAVENEL. AND OUR -- OH, OH, NO. HIS
2 IS 709 RAVENEL OURS IS 711. IT'S RIGHT NEXT DOOR.

3 Q WHAT ARE HIS DRINKING HABITS?

4 A HE DRANK FROM THE TIME HE GETS UP TO THE TIME HE GOES
5 TO BED SEVEN DAYS A WEEK.

6 Q WHEN HE COMES TO YOUR HOME, DOES HE KNOCK ON THE
7 DOOR?

8 A NO.

9 Q WHAT DOES HE DO?

10 A JUST COMES IN.

11 Q MAKES HIMSELF AT HOME?

12 A YEAH.

13 Q TREATED AS IF IT'S HIS?

14 A UH-HUH.

15 Q ALL RIGHT.

16 A HE DONE THAT ABOUT ALL OUR LIFE.

17 Q PLEASE ANSWER ANY QUESTIONS SOLICITOR KOLB MAY WISH
18 TO INTERPOSE?

19 THE COURT: YOU MAY CROSS-EXAMINE.

20 CROSS-EXAMINATION BY MR. KOLB:

21 Q YOU NEVER REPORTED THIS ALLEGED MOLESTATION TO THE
22 POLICE?

23 A SIR?

24 Q FOR MR. MILES TO BE FEELING ON YOU, DID YA'LL EVER
25 REPORT THAT TO THE POLICE?

MELINDA PARROTT - CROSS BY KOLB

1 A NO.

2 Q ON THE MORNING OF FEBRUARY THE 26TH, 1996, DID YOUR
3 BROTHER LEAVE HOME ALL MORNING?

4 A HE LEFT ABOUT 12:30.

5 MR. BABB: YOUR HONOR, SEEMS WE ARE GOING IN...

6 THE COURT: I DON'T KNOW WHERE WE ARE GOING. I WILL
7 ALLOW THAT QUESTION.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q YOU GOT UP BEFORE HE DID THAT MORNING?

10 A YES, SIR. I HAVE TWO KIDS AND A GRAND CHILD.

11 Q OKAY. AND HE WAS ACTUALLY STAYING AT THE SAME HOUSE
12 YOU WERE?

13 A YES, SIR. WE ALL LIVED TOGETHER.

14 Q ALL RIGHT. AND YOU ARE CERTAIN THAT HE DID NOT GET UP
15 AND LEAVE THE HOUSE THAT MORNING BEFORE 12:30 OR 1:00?

16 MR. BABB: YOUR HONOR, MAY WE APPROACH?

17 THE COURT: YES, SIR. SOLICITOR?

18 (WHEREUPON A BENCH CONFERENCE WAS HELD).

19 (WHEREUPON QUESTIONING RESUMED).

20 Q MRS. PARROTT, YOU TOOK YOUR BROTHER TO PURCHASE SOME
21 BEER AND THEN DROPPED HIM OFF IN THE WOODS BEHIND 817
22 TAYLOR STREET, THE WOODS OVER IN THIS NEIGHBORHOOD?
23 DROPPED HIM OFF AT COMMANDER ROAD?

24 A YEAH. NO, HE DROPPED -- HE DROVE.

25 Q OKAY.

MELINDA PARROTT - CROSS BY KOLB

1 A TO THE---

2 Q ALL RIGHT. AND THE AMOUNT OF BEER HE PURCHASED WAS
3 HOW MUCH?

4 A I'M NOT SURE. IT WAS IN A BAG, BUT ALL I SEEN
5 WHEN---

6 MR. BABB: YOUR HONOR, I OBJECT .

7 WITNESS: GET ON MY SIDE OF THE CAR.

8 THE COURT: HOLD ON JUST ONE SECOND, PLEASE. YOU
9 OBJECT?

10 MR. BABB: I OBJECT TO THE QUESTIONS ON THE BASIS OF
11 RELEVANCY AND THE STATE'S COMPLIANCE WITH THE STATUTE WE
12 DISCUSSED PREVIOUSLY AND THE MOTION.

13 THE COURT: ALL RIGHT. WELL, WE WILL NEED TO PUT THAT
14 ON THE RECORD AS SOON AS THE FIRST BREAK CONCERNING
15 STATEMENTS AT SIDE BAR RELATIVE TO THIS.

16 I OVERRULE THE OBJECTION. YOU MAY ANSWER THE
17 QUESTION IF YOU NEED TO ANSWER IT.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q DIDN'T HE PURCHASE A SIX PACK AND THAT WAS ALL HE
20 PURCHASED?

21 A ALL I -- LIKE I SAY, IT WAS IN A BAG AND ALL I SEEN
22 WAS A SIX PACK AND TWO PACKS.

23 Q TWO PACKS OF WHAT?

24 A CIGARETTES. HE GOT HIM A PACK AND ME A PACK.

25 Q ALL RIGHT. AND THEN YOU DROPPED HIM OFF IN THE

MELINDA PARROTT - CROSS BY KOLB

1 WOODS?

2 A YES, SIR.

3 Q AND YOU DON'T KNOW ANYTHING ABOUT A GUY NAMED DAVID?

4 A NO, SIR.

5 Q YOU INDICATED IN YOUR NEIGHBORHOOD MR. MILES WOULD
6 JUST COME ON IN THE HOUSE?

7 A YES, SIR.

8 Q AND DID HE EVER COME BANGING ON THE DOOR WITH A
9 LOADED PISTOL IN HIS HAND?

10 A YES, SIR. HE HAS.

11 Q ALL RIGHT. NOTHING FURTHER.

12 THE COURT: REDIRECT?

13 MR. BABB: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK YOU,
15 MA'AM.

16 THE WITNESS: THANK YOU.

17 (WHEREUPON THE WITNESS LEFT THE STAND).

18 MR. BABB: YOUR HONOR, WE CALL MARY WILSON.

19 (WHEREUPON THERE WAS A PAUSE).

20 THE COURT: OKAY.

21 MICHELLE LYNCH, BEING FIRST DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: NEED FOR YOU TO SPEAK INTO THE MIKE
24 PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR
25 LAST.

MICHELLE LYNCH - DIRECT BY BABB

1 WITNESS: MICHELLE LYNCH, L Y N C H.

2 DIRECT EXAMINATION BY MR. BABB:

3 Q MRS. LYNCH, I BELIEVE YOU TOLD US EARLIER THAT YOU
4 KINDS OF GREW UP WITH THE STONE CHILDREN?

5 A YES, SIR.

6 Q WHO WAS THE PREDOMINANT MALE FIGURE IN THE HOME AS
7 BOBBY STONE WAS GROWING UP? WHAT MAN WAS THERE MOST OF
8 THE TIME?

9 A WESLEY MILES.

10 Q WHERE DID HE LIVE IN RELATION TO STONE?

11 A WITH MABELL STONE.

12 Q AND DID HE ALSO HAVE A TRAILER A FEW FEET FROM
13 THEIRS?

14 A YES, SIR.

15 Q AND WHO LIVED IN THAT TRAILER IF HE WAS -- WHEN HE
16 WAS LIVING WITH MABELL?

17 A HIS WIFE DIANE MILES.

18 Q DID HIS WIFE THEN KNOW THAT HE WAS LIVING WITH MABELL
19 IN YOUR OPINION?

20 A YES, SIR.

21 Q HOW DO YOU KNOW THAT?

22 A I LIVED WITH THEM OFF AND ON FOR THE WHOLE LIKE
23 TWENTY-FIVE YEARS. AND HE WOULD SPEND THE NIGHT OVER THERE
24 AND HIS WIFE WOULD GET OFF WORK THE NEXT MORNING AND SHE
25 WOULD COME OVER THERE TO MABELL STONE'S HOUSE.

MICHELLE LYNCH - DIRECT BY BABB

1 AND THEN SOMETIMES WOULD STILL BE ASLEEP. AND
2 SHE WOULD GO IN THERE AND WAKE THEM UP AND KISS HER
3 HUSBAND GOOD MORNING AND THEN SHE WOULD GO TO THE KITCHEN
4 AND FIX THEM COFFEE AND BRING IT BACK TO THE BED TO HIM.

5 Q OKAY. AND THIS IS THE HOUSE THAT MR. STONE GREW UP
6 IN?

7 A YES, SIR.

8 MR. BABB: COURT'S INDULGENCE.

9 THE COURT: YES, SIR.

10 (WHEREUPON THERE WAS A PAUSE).

11 (WHEREUPON QUESTIONING RESUMED).

12 Q DOES MR. MILES DRINK TO YOUR KNOWLEDGE?

13 A YES, SIR.

14 Q HOW WOULD YOU CHARACTERIZE HIS DRINKING?

15 A WHEN HE DRANK, HE -- HE WOULD WANT ANY WOMAN HE SAW
16 REGARDLESS OF WHO IT WAS.

17 MR. BABB: NO FURTHER QUESTIONS OF THIS WITNESS.

18 PLEASE ANSWER ANY QUESTION MRS. KOLB MAY HAVE.

19 THE COURT: ANY QUESTIONS?

20 MR. KOLB: NO QUESTIONS.

21 THE COURT: YOU MAY COME DOWN.

22 (WHEREUPON THE WITNESS LEFT THE STAND).

23 MR. BABB: OUR NEXT WITNESS WOULD BE MARY WILSON,
24 YOUR HONOR.

25 MARY WILSON, BEING FIRST DULY

MICHELLE LYNCH - DIRECT BY BABB

1 SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: MRS. WILSON, GO AHEAD AND GET
3 COMFORTABLE. POSITION THAT MIKE SO YOU CAN ANSWER ALL THE
4 QUESTIONS BY SPEAKING INTO THE MIKE AND PLEASE STATE YOUR
5 FULL NAME FOR THE RECORD AND SPELL YOUR LAST .

6 WITNESS: MARY GRIFFITH WILSON W I L S O N.

7 THE COURT: THANK YOU, MA'AM.

8 DIRECT EXAMINATION BY MR. BABB:

9 Q MRS. WILSON, YOU TESTIFIED PREVIOUSLY IN THIS CASE;
10 IS THAT CORRECT?

11 A YES, SIR.

12 Q AND AS I RECALL YOUR BACK GROUND, YOU WERE RUTH
13 GRIFFITH'S SISTER-IN-LAW?

14 A YES, SIR.

15 Q SHE MARRIED YOUR BROTHER?

16 A YES, SIR.

17 Q YOU'RE THE MOTHER OF MICHELLE LYNCH?

18 A YES, SIR.

19 Q AND YOU LIVE IN THE SAME NEIGHBORHOOD, SAME AREA AS
20 THE STONE CHILDREN?

21 A YES, SIR. I DID.

22 Q AS THEY GROWING UP; IS THAT CORRECT?

23 A YES, SIR.

24 Q ALL RIGHT. AND YOU ALSO I BELIEVE TOLD US THAT YOU
25 HAD BEEN EMPLOYED WITH CAB COMPANY HERE FOR ABOUT

MARY WILSON - DIRECT BY BABB

1 TWENTY-ONE YEARS?

2 A YES, SIR.

3 Q YOU KNOW THE SUMTER AREA FAIRLY WELL?

4 A I KNOW IT REAL WELL.

5 Q THE AREA WHERE THE STONE HOME IS LOCATED, HOW WOULD
6 YOU DESCRIBE IT?

7 A WHAT YOU MEAN, THE...

8 Q IS IT A RICH NEIGHBORHOOD?

9 A NO, SIR. IT'S NOT.

10 Q WHAT TYPE OF STRUCTURES ARE THERE?

11 A TRAILERS MOSTLY.

12 Q WE ARE TALKING TRAILERS ON AN ACRE LOT?

13 A YES, SIR.

14 MR. KOLB: YOUR HONOR, WE OBJECT.

15 THE COURT: ALL RIGHT. I WILL ALLOW IT -- LIMITED
16 QUESTIONS. BUT NOT VERY MUCH BECAUSE IT'S CUMULATIVE.

17 MR. BABB: I'LL MOVE RIGHT ALONG.

18 THE COURT: THANK YOU.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q DO YOU KNOW WESLEY GENE MILES?

21 A YES, SIR. I DO.

22 Q HOW DO YOU KNOW HIM?

23 A THROUGH BOBBY WAYNE'S MOTHER.

24 Q THAT BE MABELL?

25 A YES, SIR.

MARY WILSON - DIRECT BY BABB

1 Q OKAY. AND DID YOU KNOW HIM ABOUT THE RUNNING AFFAIR
2 FOR YEARS?

3 A YES, SIR.

4 Q WHAT IS YOUR RELATION TO MR. MILES? HOW DO YA'LL GET
5 ALONG?

6 A WE GET ALONG GREAT.

7 Q IS HE EVER PROPOSITIONED YOU?

8 A YES, SIR. HE HAS.

9 Q DO YOU KNOW WHERE MR. MILES IS TODAY?

10 A YES, SIR.

11 Q WHERE IS HE?

12 A HE'S IN THE ROOM IN THERE DRINKING. HAS BEEN
13 DRINKING.

14 Q HAS HE BEEN ASLEEP IN THERE?

15 A YES, SIR.

16 Q IS HE DRUNK TODAY?

17 A I WOULDN'T SAY DRUNK, DRUNK, BUT HE HAS BEEN DRINKING
18 QUITE A BIT.

19 Q DOES HE DO THAT -- IS THIS A NORMAL DAY FOR HIM?

20 A YES, SIR.

21 Q AS FAR AS HIS DRINKING GOES?

22 A YES, SIR.

23 MR. BABB: PLEASE ANSWER ANY QUESTIONS MR. KOLB MAY
24 HAVE.

25 THE COURT: ANY QUESTIONS? MR. SOLICITOR?

MARY WILSON - DIRECT BY BABB

1 CROSS-EXAMINATION BY MR. KOLB:

2 Q YOU'RE SAYING MR. MILES IS NOW IN THE ROOM WHERE YOU
3 HAVE BEEN SEQUESTERED WITH OTHER DEFENSE WITNESSES?

4 A YES, SIR.

5 Q HE'S SUBPOENAED UP HERE BY THE DEFENSE IN THIS CASE?

6 A I DON'T KNOW.

7 Q NOTHING FURTHER.

8 THE COURT: REDIRECT?

9 MR. BABB: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: YOU MAY COME DOWN, MRS. WILSON. THANK YOU
11 VERY MUCH.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MR. BABB: CALL DIANE RENEA CONNOR.

14 DIANE RENEA CONNOR, BEING FIRST
15 DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE COURT: PULL THAT MIKE SO THAT YOU CAN SPEAK INTO
17 IT, PLEASE, IF THEY ASK YOU QUESTIONS. ASK YOU -- I WOULD
18 LIKE YOU NOW TO PLEASE STATE YOUR FULL AND NAME SPELL YOUR
19 LAST.

20 WITNESS: ALL RIGHT. DIANE RENEA CONNOR, C O N N E R.

21 THE COURT: THANK YOU.

22 DIRECT EXAMINATION BY MR. BABB:

23 Q MRS. CONNOR?

24 A YES, SIR.

25 Q WHERE ARE YOU EMPLOYED?

DIANE RENEA CONNOR - DIRECT BY BABB

- 1 A CHARM HOUSE FABRICS.
- 2 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?
- 3 A ABOUT A YEAR AND A HALF.
- 4 Q YOUR EMPLOYMENT?
- 5 A EXCUSE ME?
- 6 Q WHERE DID YOU WORK BEFORE THAT?
- 7 A TACO BELL.
- 8 Q AND WHERE DO YOU LIVE?
- 9 A 2150 ROSE DRIVE, SUMTER.
- 10 Q DO YOU LIVE HERE IN SUMTER?
- 11 A YES, SIR. I DO.
- 12 Q ALL RIGHT. AND HOW LONG LONG HAVE YOU KNOWN THE
- 13 STONE FAMILY?
- 14 A ABOUT FIVE OR SIX YEARS.
- 15 Q WHEN I SAY THE STONE FAMILY, THAT WOULD BE...
- 16 A THAT'S ALL OF THEM. UH-HUH.
- 17 Q AND WHAT IS YOUR RELATIONSHIP WITH THEM?
- 18 A EXCUSE ME?
- 19 Q WHAT IS YOUR RELATIONSHIP TO THEM?
- 20 A I'M JUST A FRIEND. CLOSE FRIEND TO ALL OF THEM.
- 21 Q HAVE YOU EVER BEEN OVER AT THE STONE FAMILY HOME?
- 22 YOU BEEN AT THE TRAILER?
- 23 A I CAN'T HEAR YOU.
- 24 Q HAVE YOU EVER BEEN INSIDE THEIR TRAILER?
- 25 A YES, I HAVE.

DIANE RENEA CONNOR - DIRECT BY BABB

1 Q WHILE THEY ARE VISITING, HAVE YOU EVER HAD OCCASION
2 FOR MR. MILES TO JUST OPEN THE DOOR AND WALK IN?

3 A YES, I HAVE.

4 Q DID HE ACT AS IF HE OWNS THE TRAILER?

5 A YES, SIR. HE HAS.

6 Q THAT'S HIS HOME?

7 A NO, IT'S NOT.

8 Q PLEASE ANSWER ANY QUESTIONS MR. KOLB MAY HAVE.

9 THE COURT: ANY QUESTIONS?

10 CROSS-EXAMINATION BY MR. KOLB:

11 Q YOU SAY HE ACTED AS IF HE OWNED THE TRAILER?

12 A YES, SIR. HE DOES.

13 Q IN FACT, HE DOES OWN THE TRAILER?

14 A NO, SIR.

15 Q YOU KNOW THAT? DOESN'T HE OWN THAT TRAILER AND THE
16 ONE HE ACTUALLY LIVES IN?

17 A NO, SIR. NOT TO MY KNOWLEDGE.

18 Q YOU KNOW THAT FOR A FACT THAT HE DOESN'T?

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

20 Q NOTHING FURTHER.

21 THE COURT: REDIRECT?

22 MR. BABB: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: YOU MAY COME DOWN, MRS. CONNOR.

24 (WHEREUPON THE WITNESS LEFT THE STAND) .

25 MR. LITTLEJOHN: YOUR HONOR, THE DEFENSE WOULD CALL

DIANE RENEA CONNOR - CROSS BY KOLB

1 TEANNE OEHLER.

2 TEANNE OEHLER, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: MRS. OEHLER, AGAIN IF YOU WOULD POSITION
5 THAT MIKE SO YOU CAN SPEAK INTO IT AS YOU TESTIFY. AND
6 PLEASE NOW STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
7 LAST.

8 WITNESS: TEANNE OEHLER, MY LAST NAME IS SPELLED O E
9 H L E R.

10 THE COURT: THANK YOU.

11 DIRECT EXAMINATION BY MR. LITTLEJOHN:

12 Q WHERE DO YOU LIVE, MRS. OEHLER?

13 A MYRTLE BEACH, SOUTH CAROLINA.

14 Q WHO IS YOUR EMPLOYMENT?

15 A I'M A PSYCHOTHERAPIST AND A CLINICAL SOCIAL WORKER IN
16 PRIVATE PRACTICE.

17 Q OKAY. AND WOULD YOU TELL THE LADIES AND GENTLEMEN OF
18 THE JURY A LITTLE BIT ABOUT YOUR PROFESSION?

19 A YES, SIR. I'LL STATE MY EDUCATIONAL BACKGROUND FIRST.
20 I RECEIVED MY BACHELOR OF SCIENCE FROM THE UNIVERSITY OF
21 NORTH CAROLINA AT GREENSBORO AND MY MASTERS OF SOCIAL WORK
22 IN MEDICAL CARE IN HEALTH SERVICES AT THE UNIVERSITY OF
23 NORTH CAROLINA CHAPEL HILL.

24 I COMPLETED MY GRADUATE TRAINING, MY CLINICAL
25 TRAINING AT THE CONFERENCE CANCER CENTER AT DUKE

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 UNIVERSITY MEDICAL CENTER AND POST GRADUATE TRAINING AT
2 ST. JOSEPH'S HOSPITAL IN ENGLAND AND AMERICAN UNIVERSITY
3 HOSPITAL IN PARIS, FRANCE.

4 I AM LICENSED TO PRACTICE IN SOUTH CAROLINA AS A
5 LICENSED INDEPENDENT SOCIAL WORKER.

6 Q OKAY. AND WOULD YOU TELL THE JURY WHAT A SOCIAL
7 WORKER IS.

8 A YES, SIR. A PROFESSIONAL SOCIAL WORKER IS A PERSON
9 WHO IS TRAINED AND EDUCATED TO EVALUATE INDIVIDUALS AND
10 FAMILIES NOT ONLY PSYCHOLOGICALLY IN TERMS OF THAT
11 PERSON'S BEHAVIOR BUT THAT PERSON'S BEHAVIOR WITHIN THEIR
12 ENVIRONMENT, THAT IS WITHIN THEIR FAMILY, WITHIN THEIR
13 COMMUNITY, WITHIN THEIR SCHOOL, WITHIN THEIR EMPLOYMENT.

14 Q OKAY. AND LETS SEE. HOW LONG HAVE YOU BEEN SO
15 EMPLOYED, MRS. OEHLER?

16 A I HAVE BEEN IN PRIVATE PRACTICE THE LAST FOURTEEN
17 YEARS BUT I HAVE BEEN -- I HAVE BEEN PRACTICING SINCE I
18 HAVE COMPLETED MY EDUCATION TWENTY YEARS AGO.

19 Q OKAY. HAVE YOU BEEN PREVIOUSLY QUALIFIED IN STATE OR
20 FEDERAL COURT IN THE FIELD OF CLINICAL SOCIAL WORK OR
21 PSYCHOTHERAPY?

22 A I HAVE IN FAMILY COURT AND I HAVE IN CIRCUIT COURT,
23 BUT NEVER IN FEDERAL COURT.

24 Q OKAY.

25 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME I WOULD TO

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 THE OFFER MRS. OEHLER AS AN EXPERT IN THE FIELD OF
2 CLINICAL SOCIAL WORK AND PSYCHOTHERAPY.

3 MR. KOLB: NO OBJECTION.

4 THE COURT: VERY WELL. IN THE FIELDS OF SOCIAL WORK,
5 CLINICAL SOCIAL WORK AND PSYCHOTHERAPY?

6 MR. LITTLEJOHN: THAT'S CORRECT.

7 THE COURT: THIS WITNESS, LADIES AND GENTLEMEN,
8 BECAUSE OF BACKGROUND AND TRAINING WILL BE ALLOWED TO
9 RENDER OPINIONS IN THE FIELDS OF HER EXPERTISE, THAT IS
10 THE FIELD OF CLINICAL SOCIAL WORK AND PSYCHOTHERAPY. YOU
11 MAY CONTINUE.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q MRS. OEHLER, WOULD YOU TELL THE LADIES AND GENTLEMEN
14 OF THE JURY WHAT A SOCIAL ASSESSMENT OR PSYCHOSOCIAL
15 EVALUATION IS?

16 A A PSYCHOSOCIAL EVALUATION IS A TOOL THAT IS USED TO
17 EVALUATE AN INDIVIDUAL. THE EVALUATION LOOKS AT SEVERAL
18 DIFFERENT AREAS. IT LOOKS AT A PERSON'S PSYCHOLOGICAL
19 BACKGROUND, BUT IT ALSO LOOKS AT A PERSON'S SOCIAL HISTORY
20 FAMILY HISTORY AND PERSONAL HISTORY.

21 Q OKAY. AND HOW ARE THESE EVALUATIONS USED IN YOUR
22 PROFESSION?

23 A IN OUR PROFESSION IT'S USED AS A RELIABLE TOOL TO
24 EVALUATE AN INDIVIDUAL, TO BE ABLE TO LOOK AT THEIR
25 BEHAVIOR AND TO ANALYZE IT AND DETERMINE THAT BEHAVIOR TO

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 OTHER PEOPLE.

2 Q OKAY. NOW, HAVE YOU HAD OCCASION TO -- YOU SAID YOU
3 HAD BEEN QUALIFIED IN FAMILY COURT BEFORE?

4 A YES, SIR. I HAVE.

5 Q WHAT SORT OF WORK DO YOU DO IN FAMILY COURTS?

6 A I HAVE WORKED IN FAMILY COURT WITH EVALUATING
7 CHILDREN AND MAKING RECOMMENDATIONS TO THE FAMILY COURT
8 JUDGE REGARDING CUSTODY ARRANGEMENTS AS WELL AS BEHAVIORAL
9 THERAPY THAT WAS NEEDED FOR CHILDREN.

10 Q OKAY. NOW HAVE YOU ALSO WORKED WITH ADULTS?

11 A YES, SIR. I HAVE.

12 Q OKAY. UNDER WHAT CIRCUMSTANCES?

13 A I HAVE WORKED WITH ADULTS IN MY PRIVATE PRACTICE ON
14 AN OUT PATIENT BASIS FOR MENTAL HEALTH COUNSELING, BUT I
15 HAVE ALSO WORKED IN INSTITUTIONAL SETTINGS AS WELL.

16 I HAVE BEEN IN AN AFFILIATE OF COASTAL CAROLINA
17 HOSPITAL WHERE I PROVIDED CONTRACT WORK WITHIN THE
18 INSTITUTIONAL SETTING THERE AS WELL AS WITH CHARTER
19 HOSPITAL IN CHARLESTON.

20 Q OKAY. NOW, HOW DO YOU GO ABOUT MAKING A PSYCHOSOCIAL
21 ASSESSMENT OF AN INDIVIDUAL?

22 A I EVALUATE AN INDIVIDUAL BY ASKING QUESTIONS AND
23 RELYING UPON INFORMATION THAT THEY GIVE ME. I THEN
24 VALIDATE THAT INFORMATION BY GOING TO OTHER SOURCES SUCH
25 AS INTERVIEWING OTHER INDIVIDUALS OR REVIEWING RECORDS.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 Q ALL RIGHT. AND DO YOU USE CORROBORATING SOURCES OF
2 INFORMATION?

3 A YES, I DO. THE CORROBORATING SOURCES OF INFORMATION
4 THAT I WOULD USE WOULD BE TO INTERVIEW OTHER INDIVIDUALS
5 TO OBTAIN INFORMATION TO VERIFY WHAT THE PERSON THAT I
6 EVALUATED TOLD ME.

7 BUT I ALSO USE OTHER TOOLS SUCH AS REVIEWING
8 RECORDS. THESE MIGHT INCLUDE MEDICAL RECORDS, PSYCHIATRIC
9 RECORDS, MILITARY RECORD, SCHOOL RECORDS, JUDICIAL
10 RECORDS. RECORDS OF THAT NATURE.

11 Q OKAY.

12 A EMPLOYMENT RECORDS.

13 Q ALL RIGHT. NOW, DID YOU HAVE OCCASION TO DO AN
14 ASSESSMENT OF BOBBY STONE?

15 A YES, I DID.

16 Q OKAY. AND WOULD YOU TELL US ABOUT THAT AND HOW YOU
17 WENT ABOUT THAT.

18 A I WAS ASKED TO EVALUATE MR. STONE. AND I MET WITH
19 HIM IN SUMTER COUNTY AT THE SUMTER COUNTY JAIL TO EVALUATE
20 HIM THERE.

21 Q OKAY. AND DID YOU -- AS A RESULT OF THAT INTERVIEW,
22 DID YOU HAVE OCCASION TO INTERVIEW FAMILY MEMBERS?

23 A YES, I DID.

24 Q OKAY. WOULD YOU TELL US ABOUT THAT.

25 A I INTERVIEWED SEVERAL DIFFERENT FAMILY MEMBERS AS

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 WELL AS WHAT I WOULD CALL COLLATERALS, THAT IS PEOPLE WHO
2 ALSO KNOW THE FAMILY WHO MIGHT BE FRIENDS.

3 ONE OF THE MOST MARKED THINGS THEY FOUND IN
4 INTERVIEWING THE FAMILY MEMBERS IS THE SENSE OF FEAR OR
5 INTIMIDATION THAT THEY FELT AND HESITANCY IN TALKING TO
6 ME.

7 Q AND WHY WAS THAT?

8 A THEY ARE CONCERNED ABOUT MR. MILES WHO IS A NEIGHBOR
9 WHO HAS BEEN A PROMINENT -- HAD A PROMINENT ROLE IN THIS
10 ALL THROUGH THE YEARS.

11 Q OKAY. NOW, WHAT SPECIFIC AREAS DID YOU LOOK TO IN
12 PUTTING YOUR EVALUATION OF BOBBY STONE TOGETHER?

13 A I LOOKED SPECIFICALLY AT THREE DIFFERENT AREAS. I
14 LOOKED AT HIS FAMILY HISTORY, HIS PERSONAL HISTORY AND HIS
15 SOCIAL HISTORY.

16 Q OKAY. WOULD YOU TAKE THOSE ONE BY ONE AND TELL US
17 WHAT CONCLUSIONS YOU WERE ABLE TO REACH?

18 A YES, SIR. INITIALLY I LOOKED AT HIS FAMILY HISTORY
19 WHICH EXPLORES HIS CHILD HOOD AND LOOKS AT FAMILY
20 DYNAMICS, LOOKS AT DEVELOPMENTAL STAGES AND DEVELOPMENTAL
21 TASK AND HIS ABILITY TO FUNCTION IN EACH OF THOSE TASKS
22 AND AMONG SOME OF THE THINGS I LOOKED AT IN TERMS OF HIS
23 FAMILY HISTORY ARE THE HISTORY OF THAT FAMILY AND
24 LOCATIONS THEY LIVED AND SOME OF THE THINGS THAT WERE
25 GOING ON.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 BOBBY WAYNE STONE STARTED HIS LIFE WITH HIS
2 FAMILY IN POSTON, SOUTH CAROLINA. AND LIVED THERE UNTIL
3 ABOUT THE AGE OF APPROXIMATELY SIX YEARS OF AGE. MR. STONE
4 IS A POOR HISTORIAN IN TERMS OF BEING ABLE TO REMEMBER
5 SOME FACTS, BUT WAS VERY POOR ON DATES.

6 SO OFTEN WHAT I HAD TO DO WAS TALK TO OTHER
7 FAMILY MEMBERS TO FIND OUT SPECIFIC DATES IN TERMS OF
8 AGES. MR. STONE WAS ABLE TO REMEMBER, ALTHOUGH HE COULD
9 NOT REMEMBER SPECIFIC AGES, TIME SEQUENCES IN TERMS OF
10 THINGS HAPPENING LIKE WHEN HE LIVED IN POSTON OR WHEN HE
11 LIVED IN SUMTER, WHEN HE STARTED SCHOOL.

12 WHEN I LOOKED EXCUSE ME. YOUR HONOR, MAY I HAVE
13 A DRINK OF WATER?

14 THE COURT: SURE. YES, MA'AM.

15 WITNESS: WHEN I LOOKED AT HIS FAMILY HISTORY FROM
16 POSTON ONE OF THE THINGS THAT I LEARNED WAS THAT HE LIVED
17 WITH HIS MOTHER AND FATHER AND THERE WITH THE FATHERS
18 PARENTS LIVING NEARBY.

19 THERE WERE FOUR CHILDREN IN THE FAMILY AND BOBBY
20 IS THE SECOND OF THE CHILDREN. MELINDA IS THE OLDEST
21 BOBBY, TAMMY I BELIEVE NEXT THEN JERRY THE YOUNGEST.

22 THEY LIVED IN POSTON AND EVIDENTLY THE FAMILY
23 WAS VERY POOR, ALTHOUGH HIS MOTHER WORKED AND SHE WORKED
24 AS A HOUSE KEEPER FOR SOMEONE LOCALLY AND HIS FATHER
25 WORKED TO DOING DIFFERENT TYPES OF WORK.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 BUT THE PARENTS WERE GONE FOR LONG PERIODS OF
2 TIME BECAUSE OF WORKING. THIS WAS INFORMATION SHARED BY
3 BOBBY AND ALSO BY MELINDA AND BY BERNIECE AND TALK ABOUT
4 THE FAMILY.

5 ONE OF THE MOST STRIKING THINGS ABOUT HIS EARLY
6 LIFE AT POSTON IS ALTHOUGH THE FAMILY SEEMS HAPPY, BEING
7 TOGETHER THERE AND THE FAMILY SEEMED FAIRLY SOLID IS THAT
8 BOTH PARENTS WORKED LONG HOURS AND THE CHILDREN WERE OFTEN
9 LEFT WITH MELINDA LOOKING OUT FOR THEM.

10 THEY MOVED TO SUMTER WHEN MELINDA WAS
11 APPROXIMATELY EIGHT YEARS OLD WHICH WOULD HAVE BEEN BOBBY
12 WAS ABOUT SIX YEARS OLD, READY TO START STOOL. SO FOR SOME
13 OF THE TIME THAT THEY LIVED IN POSTON MELINDA HAD
14 RESPONSIBILITY FOR SOME OF THE YOUNGER CHILDREN.

15 ONE OF THE OTHER STRIKING THINGS ABOUT HIS EARLY
16 LIFE THERE IS THE FAMILY WAS POOR AND THEY TRIED VERY HARD
17 TO GET BY, BUT IT SEEMS THAT THAT'S AT A POINT WHERE
18 BOBBY'S MOTHER DID WHAT SHE COULD TO SURVIVE, OFTEN SHE
19 BROUGHT THEM FOOD FROM HER EMPLOYER FOR THE FAMILY SO THAT
20 THE CHILDREN WOULDN'T BE HUNGRY.

21 AND BOBBY AS WELL AS ANOTHER FAMILY MEMBER
22 RELATED SHE'S THE PERSON WHO TOOK HIM WITH HER TO GO THE
23 THE NEIGHBORS AND CRAWL UP UNDER FENCES AND STEAL CHICKENS
24 TO BRING THEM BACK FOR THE FAMILY.

25 THAT'S INTERESTING BECAUSE IT'S BEGINNING TO LAY

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 A VALUE BASE FOR HIM IN TERMS OF HIS LEARNING THE
2 DIFFERENCE BETWEEN RIGHT AND WRONG.

3 AFTER THE FAMILY MOVED TO SUMTER, THE FRIEND OR
4 A NEIGHBOR OF THEIRS FRO, POSTON ALSO MOVED ALONG WITH
5 THEM AND THAT WAS MR. MILES AND HE MOVED WITH HIS FAMILY
6 AND MOVED IN NEAR THE FAMILY.

7 HE CURRENTLY LIVES NEXT DOOR TO THEM. BUT DURING
8 SOME OF THE PREVIOUS YEARS SINCE THEY MOVED TO SUMTER HE
9 HAS LIVED PRETTY MUCH IN THE SAME NEIGHBORHOOD.

10 I'M NOT SAYING ALWAYS NEXT DOOR. AND THE REASON
11 I'M NOT SAYING ALWAYS NEXT DOOR IS BECAUSE DURING BOBBY'S
12 CHILD HOOD THEY LIVED IN THREE DIFFERENT HOUSES HERE IN
13 SUMTER THAT BURNED TO THE GROUND AND SO THEY HAD SEVERAL
14 MOVES IN THAT SAME LITTLE LENGTH THAT THEY MOVED IN, BUT
15 THEY DO CURRENTLY LIVE IN THE TRAILER. MR. MILES LIVES
16 NEXT DOOR TO THEM.

17 BOBBY WAS NOT PARTICULARLY -- WELL, AS I LOOK AT
18 FAMILY HISTORY, THERE WAS A LOT OF MARITAL CONFLICT IN HIS
19 FAMILY BECAUSE OF THE RELATIONSHIP THAT HIS MOTHER HAD
20 WITH WESLEY MILES AND THAT HE WAS IN AND OUT OF THE HOUSE.

21 WHEN WE THINK OF THE TWO PARENT FAMILY, WE THINK
22 OF A PARENTS BEING NEAR TO WHERE THE CHILDREN ARE AND
23 HOPEFULLY SETTING AN EXAMPLE FOR THEM.

24 THIS IS A FAMILY WHERE THERE ARE TWO DOMINANT
25 MALE ROLE FIGURES OR TWO MEN WHO ARE BOTH TRYING TO TAKE

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 ON THE ROLE OF FATHER. AND THAT'S SENDING SOME WHAT OF A
2 BIT OF A MIXED MESSAGE TO THE CHILDREN.

3 BOBBY'S FATHER HAD A BAD ALCOHOL PROBLEM. AND
4 WORKED LONG HOURS OR WAS AWAY DRINKING, DIDN'T SEEM TO
5 TAKE A VERY ASSERTIVE ROLE IN TERMS OF THE CHILDREN.

6 HE WAS ALSO ABUSIVE TO HIS WIFE AT TIMES, BUT
7 THE CHILDREN DENIED THAT THEIR FATHER WAS ABUSIVE TO THEM.
8 MR. MILES, ALTHOUGH HE IS NOT A FAMILY MAN, AGAIN TOOK ON
9 THE SOCIAL ROLE OF BEING FATHER TO THE CHILDREN AND SO
10 HE'S MORE OF A ROLE FIGURE TO THEM.

11 HIS LIFE INVOLVED WITH HIS FAMILY IS
12 CHARACTERIZED BY A LOT OF VIOLENCE. THE CHILDREN WERE
13 MOVED WHEN THEY WERE LITTLE BECAUSE HE WAS DRINKING AND HE
14 WOULD GET MAD HE WOULD SHOOT HIS GUN TOWARD THEM AND THEY
15 ALL RUN IN TO THE WOODS TO LIE FROM HIM.

16 AND AT ONE TIME WHEN BOBBY WAS SMALL AND HE
17 DIDN'T ANSWER HIS MOTHER STRAIGHT OFF WHEN SHE CALLED HIM,
18 MR. MILES WENT INTO BOBBY'S BEDROOM AND JERKED HIM UP AND
19 BEAT HIM UP FAIRLY BADLY.

20 BOBBY CLIMBED THROUGH A WINDOW AND WENT TO HIS
21 GRANDMOTHER'S AND WAS TREATED TO THE EMERGENCY ROOM HERE
22 AT TUOMEY HOSPITAL. MR. MILES WAS ARRESTED. CHARGES WERE
23 PRESSED. HE WAS ARRESTED, BUT MRS. -- BOBBY'S MOTHER
24 MABELL DROPPED THOSE CHARGES AND SO HE WAS NOT HELD IN
25 JAIL.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 ONE OF THE THINGS I SAW IN THAT FAMILY HISTORY
2 THAT THESE VERY DYSFUNCTIONAL FAMILY RELATIONSHIPS DID NOT
3 PROVIDE AN EMOTIONAL SECURE CHILD HOOD. AND I MENTIONED
4 THAT BOBBY'S FATHER DRANK AND ALSO THAT HIS THAT WESLEY
5 MILES ABUSED ALCOHOL.

6 BUT BOBBY'S MOTHER DID NOT DRINK ALCOHOL. SHE
7 STAYED THERE TO TAKE CARE OF THE CHILDREN THE BEST SHE
8 COULD, BUT WAS STILL INVOLVED IN THIS RELATIONSHIP WITH
9 MR. MILES.

10 BUT SHE ATTEMPTED TO BE PROTECTIVE OF HER
11 CHILDREN. AND MANY TIMES WHEN MR. MILES WAS ABUSIVE TO
12 HER, THE YOUNGER CHILDREN WHICH WOULD BE TAMMY AND JERRY,
13 WOULD GO TO A NEIGHBORS AND TRY TO GET OUT OF THE WAY OR
14 STAY AWAY FROM THE HOUSE AS MUCH AS POSSIBLE ESPECIALLY
15 WHEN MR. MILES WAS DRINKING.

16 BUT BOBBY USUALLY STAYED HOME OR WOULD SEND ONE
17 OF THE OTHER CHILDREN TO GO FOR SOMEBODY FOR HELP WHETHER
18 IT WAS HIS GRAND FATHER OR SOMEONE ELSE TO COME TO HELP
19 HIS MOTHER IF SHE WAS BEING HURT.

20 I LOOKED AT THE FAMILY HISTORY AND AS I SAID ONE
21 OF THE KEY THINGS IN THAT AREA WAS THE POVERTY AND
22 DEPRIVATION THAT WAS A CONSTANT FOR THIS FAMILY. AS MR.
23 STONE OR BOBBY GREW OLDER, HIS ADULT RELATIONSHIPS
24 CONTINUED TO REFLECT THAT CONTINUAL CHILD HOOD CRISIS AND
25 EXPOSURE TO ABUSE.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 WHEN HE LIVED IN POSTON, ONCE HE SAW HIS UNCLE
2 DROWN. HIS UNCLE AND HIS FATHER WENT FISHING. HIS UNCLE
3 HAD A HEART ATTACK, FELL FROM THE BOAT.

4 AND BOBBY'S FATHER TRIED TO GET HIM TO BRING HIM
5 BACK UP AND BOBBY WAS STANDING ON THE SHORE WATCHING THAT
6 AND THAT WAS BEFORE HE WAS SIX YEARS OLD.

7 THAT'S -- TO SEE A FAMILY MEMBER DIE IS A VERY
8 STRESSFUL UPSETTING THING. THAT'S ONE OF THOSE
9 SIGNIFICANT THINGS THAT MARKED HIM.

10 Q WHAT OTHER SIGNIFICANT EVENTS WERE THERE IN BOBBY
11 STONE'S FAMILY HISTORY?

12 A SOME OF THE OTHER THINGS I LOOKED AT WAS HIS USE OF
13 ALCOHOL AND DRUGS BECAUSE I BELIEVE THEY ARE PERMANENT.
14 THAT'S THE REASON THAT THIS TRAGEDY HAPPENED AND WE ARE
15 ALL SITTING HERE TODAY.

16 HE FIRST TRIED OR USED ALCOHOL WHEN HE WAS ABOUT
17 ELEVEN OR TWELVE YEARS OLD WHEN HE WENT DRINKING. AND
18 FROM THAT POINT ON CONTINUED TO USE ALCOHOL QUITE A BIT.

19 WHEN HE WAS ABOUT FOURTEEN YEARS OLD HE FIRST
20 TRIED MARIJUANA. AND HAS TRIED COCAINE SEVERAL TIMES, BUT
21 THIS COMBINATION OF ALCOHOL USE AND DRUG USE COMBINED
22 TOGETHER THROUGH THE YEARS HAS CONTRIBUTED TO A LOT OF HIS
23 EMOTIONAL PROBLEMS OR HIS EMOTIONAL PROBLEMS HAVE
24 CONTRIBUTED TO HIS ALCOHOL AND HIS DRUG USE WHERE HE HAS
25 NOT USED ALCOHOL IN A RESPONSIBLE MANNER.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 Q NOW, MRS. OEHLER, WOULD YOU PUT THAT PARTICULAR
2 SIGNIFICANT CHARACTERISTIC INTO HIS PERSONAL HISTORY?
3 WOULD THAT BE OR -- WOULD THAT BE PART OF HIS FAMILY
4 HISTORY?

5 A NO. IT WOULD BE BETWEEN HIS PERSONAL HISTORY AND
6 PERSONAL HISTORY THINGS THEY LOOK AT AS I FOCUS ON THE
7 PERSON'S CHILD HOOD AND THEIR RELATIONSHIPS WITH FAMILY
8 MEMBERS.

9 I ASKED A PERSON WHAT THEIR EARLIEST CHILD HOOD
10 MEMORY IS BECAUSE IT'S ALWAYS SIGNIFICANT TO SEE -- TO SEE
11 WHETHER THAT'S POSITIVE OR A NOT SO POSITIVE MEMORY.

12 HIS ALCOHOL USE DURING THE YEARS WAS A CONTINUAL
13 ON-GOING THING AND WAS THE REASON IT DISRUPTED MANY OF THE
14 RELATIONSHIPS THAT HE HAD.

15 HE HAS NEVER BEEN MARRIED, BUT HE HAS HAD TWO OR
16 THREE DIFFERENT RELATIONSHIPS WITH FEMALES AND THAT
17 ALCOHOL USE HAS BEEN A FACTOR IN BEING DISRUPTIVE TO THOSE
18 RELATIONSHIPS ALTHOUGH HE DENY THAT HE HAD EVER BEEN
19 PHYSICALLY ABUSIVE TO THEM.

20 HIS ALCOHOL USE IS -- AND HIS DRUG USE BOTH ARE
21 SIGNIFICANT. I DON'T KNOW IF YA'LL INCLUDED THE EXHIBITS I
22 BROUGHT WITH ME.

23 Q IF YOU WILL BARE WITH ME JUST A MOMENT.

24 (WHEREUPON THERE WAS A PAUSE).

25 Q ARE THESE THE EXHIBITS WHICH YOU PREPARED?

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 A WELL, I DID NOT PREPARE THEM, BUT I ASKED THEM TO
2 PREPARE.

3 Q THEY WERE PREPARED AT YOUR DIRECTION?

4 A YES, SIR. THEY WERE.

5 Q WHICH ONE OF THESE OR BOTH DO YOU WANT DO USE?

6 A BOTH IF IT'S ALL RIGHT.

7 MR. LITTLEJOHN: YOUR HONOR, IF WE COULD USE THEM FOR
8 DEMONSTRATIVE PURPOSES.

9 THE COURT: VERY WELL. SO NOT INTRODUCING THEM INTO
10 EVIDENCE?

11 MR. LITTLEJOHN: NO, YOUR HONOR.

12 THE COURT: VERY WELL. YOU MAY ALSO -- BUT I'M GOING
13 TO ASK YOU TO DO TWO THINGS WHEN YOU STEP DOWN. KEEP YOUR
14 VOICE UP AND TO SLOW THE PACE. NO. IT'S NOT A PROBLEM.

15 IT'S JUST WHEN YOU ARE AWAY THE ACOUSTICS AREN'T
16 HERE, SO WE NEED TO BE SURE TO HEAR. SO IF YOU WILL SLOW
17 IT DOWN.

18 WITNESS: YES, SIR.

19 THE COURT: THANK YOU.

20 (WITNESS OFF STAND).

21 (WHEREUPON QUESTIONING RESUMED).

22 Q YOU WANT ME TO HOLD THIS UP? . THERE MAY BE A POINTER
23 IF YOU WOULD LIKE.

24 A I'M GOING TO DRAW.

25 THE COURT: SURE.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 THE WITNESS: THIS IS A GENERAL FRAME -- CAN YOU HEAR
2 ME?

3 THE COURT: THAT'S FINE. I CAN HEAR YOU FINE. MOST
4 IMPORTANTLY THESE FOLKS NEED TO HEAR YOU.

5 WITNESS: THIS IS A GENERAL AREA. I DRAW A PICTURE
6 OF A FAMILY TREE SO THAT I KNOW WHO WAS IN A FAMILY AND
7 WHO IS LIVING AND WHO IS DEAD AND WHAT THEIR BACK GROUND
8 HISTORY IS.

9 I DRAW A PICTURE SIMILAR TO THIS. THIS IS A
10 GENOGRAM, IN OTHER WORDS, A FAMILY TREE. IT LOOKS LIKE THE
11 FAMILY BACKGROUND THE INDIVIDUAL FAMILY MEMBERS, THIS IS
12 BOBBY WAYNE STONE.

13 AND YOU SEE THERE'S NOT AN X IN HIS BOX. THAT
14 MEANS HE'S STILL LIVING. IF THERE'S AN X IN SOMEONE'S BOX
15 IT MEANS THEY ARE DECEASED. THIS IS MELINDA HIS OLDER
16 SISTER. TAMMY, HIS YOUNGER SISTER AND JERRY HIS BROTHER.

17 HIS PARENTS WHO ARE BOTH DECEASED. AND ON THIS
18 SIDE OF THE BOARD IF YOU TURN UP FAMILY MEMBER THAT'S HIS
19 RELATIVES ON HIS FATHER'S SIDE OF THE FAMILY AND ON THIS
20 SIDE OF THE BOARD RELATIVES ON HIS MOTHER'S SIDE OF THE
21 FAMILY.

22 THIS PARTICULAR GENOGRAM HAD COLORS DRAWN ON IT
23 AND SOME OF THE COLORS I TRANSPOSED OVER HERE, SIGNIFICANT
24 THINGS I LOOK AT IN TERMS OF BACKGROUND ARE ALCOHOL AND
25 DRUG USE AND THERE IS A STRONG HISTORY CONCERNED.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 THERE IS A STRONG HISTORY IN THIS FAMILY OF
2 ALCOHOL AND DRUG USE. THERE ARE TWO FACTORS THAT WE LOOK
3 AT THAT CONTRIBUTE TO THAT. ONE IS A GENETIC DRAPE. IF A
4 PERSON HAS A FATHER OR GRANDFATHER OR MOTHER OR FATHER OR
5 GREAT UNCLE WHO HAS HAD A HISTORY OF ALCOHOLISM, WE KNOW
6 THAT GENETIC TRAIT COMES THROUGH THE FAMILY.

7 MANY TIMES THERE' ARE PEOPLE IN A FAMILY WHO
8 HAVE A HISTORY OF ALCOHOLISM WITH A FAMILY, BUT THEY HAVE
9 NEVER TOUCHED ALCOHOL. THAT DOESN'T MEAN THAT THEY DON'T
10 HAVE THE GENETIC TRAIT. IT JUST MEANS THEY HAVE NOT USED
11 ALCOHOL SO THEY HAVE NOT GOTTEN INTO A ALCOHOL ABUSE
12 PATTERN.

13 THE OTHER FACTOR THAT IS A SIGNIFICANT FACTOR
14 BESIDES THE GENETIC TRAIT AND THE HISTORY OF ALCOBOLISM IS
15 A SOCIAL FACTOR THAT IS GETTING PEOPLE THAT YOU KNOW HANG
16 OUT WITH, DRINK OR -- AFTER YOU GET OFF WORK, GO HAVE A
17 FEW DRINKS WITH PEOPLE TO RELAX YOU COME HOME AND YOU HAVE
18 A GLASS OF WINE BEFORE YOU FIX SUPPER, THEN THAT'S YOUR
19 WAY TO RELAX.

20 THAT MAY BE A SOCIAL THING THAT YOU DO BECAUSE
21 THOSE ARE THE PEOPLE YOU HANG OUT WITH OR PATTERN OF
22 BEHAVIOR THAT YOU HAVE. THAT PATTERN OF BEHAVIOR IS A
23 PROBLEM IF THERE IS ALSO A GENETIC TRAIT IN YOUR FAMILY
24 WITH ALCOHOLISM.

25 AND IF YOU COMBINE THAT WITH COCAINE USE OR YOU

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 COMBINE THAT WHERE MARIJUANA OR CANNABIS USE, THEN THAT'S
2 A PARTICULAR PROBLEM THERE, TOO. ALCOHOL USE, ALCOHOL USE,
3 ALCOHOL USE.

4 HISTORY OF EMOTIONAL PROBLEMS LIKE DEPRESSION OR
5 HISTORY OF ANXIETY, PSYCHIATRIC ILLNESS OR DEPRESSION,
6 GOING TO BE INDICATED BY BROWN. THERE'S A HISTORY OF
7 DEPRESSION IN THIS FAMILY. THERE'S A HISTORY OF ANXIETY OR
8 EMOTIONAL PROBLEMS IN THIS FAMILY.

9 AND THAT'S SOMETHING THAT HAS BEEN A TRAIT IN
10 THE FAMILY. THIS -- THE LITTLE RED CIRCLES INDICATE PEOPLE
11 WHO ARE CURRENTLY LIVING.

12 AND THE CURRENT -- THE DARK GREEN ON THIS ONE
13 WOULD CORRESPOND TO THE BROWN ON THIS ONE, THAT IS PEOPLE
14 WHO HAVE A MYSTERY OF MENTAL ILLNESS OR OF ALCOHOL USE.

15 THE RED IS ON THIS ONE IS A HISTORY OF
16 PSYCHIATRIC ILLNESS OR EMOTIONAL ILLNESS AND THAT'S A
17 STRONG TRAIT IN THIS FAMILY. THE REASON THAT THAT'S
18 SIGNIFICANT IS BECAUSE WE LOOK AT HOW CHILDREN LEARN TO
19 COPE WITH STRESSORS IN THEIR LIFE AND THAT CHILDREN FOLLOW
20 WHAT THEIR PARENTS DO AND THEIR PARENT HAVE GOOD COPING
21 PATTERNS THEN A CHILD WILL LEARN TO COPE WITH STRESSORS IN
22 THEIR LIFE.

23 BUT IF THE PARENTS OR THE ADULTS THAT YOU HAVE
24 AROUND YOU DO NOT HAVE GOOD COPING SKILLS, THEN WHAT YOU
25 DO IS YOU JUST WATCH WHAT THEY DO AND DO THE VERY SAME

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 THING.

2 THE CHILDREN IN THIS FAMILY IN PARTICULAR BOBBY
3 WHO WE ARE HERE ABOUT TODAY DID NOT LEARN GOOD COPING
4 SKILLS FOR COPING WITH STRESS IN HIS FAMILY AND OFTEN WHAT
5 HE DID IS HE USED ALCOHOL OR HE USED DRUGS TO ADDRESS SOME
6 OF THE STRESS THAT HE WAS FEELING. WAS I LOUD ENOUGH YOUR
7 HONOR?

8 THE COURT: FINE.

9 (WHEREUPON THE WITNESS RESUMED THE STAND).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q OKAY. NOW, MRS. OEHLER, DOES THAT PRETTY WELL COVER
12 WHAT YOU DISCOVERED DURING YOUR EVALUATION OF THE FAMILY
13 HISTORY?

14 A YES, SIR. IT DOES.

15 Q OKAY. NOW, COULD YOU TELL US ABOUT WHAT YOU FOUND IN
16 EVALUATING BOBBY'S PERSONAL HISTORY?

17 A I LOOKED AT HIS PERSONAL HISTORY WHICH FOCUSED ON
18 IT'S CHILD HOOD AND RELATIONSHIPS WITH FAMILY MEMBERS. I
19 LOOKED IN THAT AREA AT SOME OF THE LOSSES OR THE MAJOR
20 LIFE CRISIS OR SOME OF THE VIOLENCE IN THE HOME WHICH --
21 TOO LOUD?

22 Q NO.

23 A WHICH WERE PROVIDED TO SOME OF HIS DIFFICULTIES. SOME
24 OF THE LOSSES THAT HE EXPERIENCED. I MENTIONED A LITTLE
25 EARLIER WHERE HE SAW AN UNCLE DRAWN AND FELT POWERLESS TO

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 HELP.

2 HE WAS A YOUNG BOY AT THAT TIME. SOME OF THE
3 OTHER LOSSES THAT HE HAS EXPERIENCED AS AN ADULT HAVE BEEN
4 THE DEATH OF HIS MOTHER AND HIS FATHER.

5 BUT ONE OF THE LOSSES THAT WE COULD LOOK AT
6 WHICH IS NOT A DEATH BUT IS A SEVERE DISRUPTION TO THE
7 FAMILY IS WHEN THE FAMILY MOVED FROM POSTON TO SUMTER.
8 BOBBY HAS SAID AND OTHER FAMILY MEMBERS HAVE SAID THAT
9 THEY FELT THAT FAMILY LIFE FELT APART WHEN THEY MOVED FROM
10 POSTON TO SUMTER.

11 MR. MILES LIVED IN SUMTER -- LIVED IN POSTON,
12 EXCUSE ME -- LIVED IN POSTON ALSO, BUT LATER MOVED TO
13 SUMTER, FOLLOWED THE FAMILY HERE AND WAS A KEY FIGURE IN
14 THAT FAMILY. VIOLENCE IN THE HOME WAS AN ONGOING THING.

15 IT WAS NOT AN UNUSUAL EVENT. THAT WAS BOTH
16 THROUGH THE PHYSICAL ABUSE AS WELL AS THE USE OF A GUN TO
17 SHOOT AT THE CHILDREN AND CHASE THEM INTO THE WOODS OR DO
18 DIFFERENT EPISODE LIKE THAT.

19 Q OKAY. ALL RIGHT. DID YOU DISCOVER ANYTHING ELSE
20 DURING THE COURSE OF EVALUATING HIS PERSONAL HISTORY?

21 A WELL, I LOOKED AT HIS MEDICAL HISTORY AND THAT WAS
22 SIGNIFICANT FOR QUITE A FEW INCIDENTS WHEN HE WAS A YOUNG
23 CHILD, WENT DOWN THE -- FELL OUT OF A CAR AND BUMPED HIS
24 HEAD ON THE PAVEMENT AND WAS SEEN AT MCLEOD REGIONAL IN
25 THE EMERGENCY ROOM.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 BUT I FOUND AFTER THAT A HEAD INJURY. ANOTHER
2 TIME HE FELL OUT OF A WELL. ONE TIME HE FELL OUT OF A
3 CAR. ANOTHER TIME HE FELL OUT OF A TRUCK AND BUMPED HIS
4 HEAD, BUT NEITHER TIME DID I SEE ANY MEDICAL RECORDS THAT
5 INDICATED ANY HEAD INJURY BECAUSE OF THAT.

6 HE EXPERIENCED SEVERE PHYSICAL ABUSE AT THE
7 HANDS OF THE FAMILY AND FRIEND WESLEY MILES. AND I
8 EMPHASIZE AGAIN HOW INTIMIDATED FAMILY MEMBERS WERE WHEN
9 THEY TALKED TO ME ABOUT THIS BECAUSE THEY FEARED
10 RETALIATION FROM MR. MILES BY BEING HONEST ABOUT THAT.

11 HIS MEDICAL HISTORY IS SIGNIFICANT IN LATER
12 YEARS AS AN ADULT WHEN HE STARTED AS A MECHANIC. HE
13 WORKED HOUSE PAINTER ALSO. HE WORKED WITH MR. MILES --
14 WITH THE FAMILY FRIEND THAT LIVED NEXT DOOR.

15 AND HE HAD SEVERAL DIFFERENT ACCIDENTS THAT
16 HAPPENED TO HIM DURING THE COURSE OF HIS WORK. ONE TIME
17 SOMETHING FELL ON HIM WHILE HE WAS WORKING AND HE LOST THE
18 END OF TWO OF HIS FINGERS.

19 AND THE MEDICAL RECORDS TO ME REFLECTS THAT AND
20 ANOTHER TIME ENGINE OR A CARBURATER FELL ON HIS HEAD WHILE
21 HE WAS WORKING, SO HE HAS HAD MANY ACCIDENTS THROUGH THE
22 YEARS WHICH COULD BE ATTRIBUTED TO SOME OF HIS IMPAIRED
23 JUDGMENT AS A RESULT OF HIS ALCOHOLISM.

24 Q OKAY. AND I BELIEVE THE THIRD HISTORY THAT YOU USE IN
25 YOUR ASSESSMENT IS THE SOCIAL HISTORY?

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 A YES, SIR.

2 Q COULD YOU TELL US ABOUT WHAT YOU FOUND OUT ABOUT
3 BOBBY'S SOCIAL HISTORY.

4 A IN TERMS OF HIS SOCIAL HISTORY, I WOULD USE THINGS
5 LIKE HIS BACKGROUND IN SCHOOL AND SOME OF HIS WORK
6 HISTORY. IN PARTICULARLY WITH HIS SCHOOL HISTORY IT'S
7 SIGNIFICANT THAT HIS SCHOOL RECORDS INDICATE EARLY ON THAT
8 HE DID NOT HAVE A HIGH I Q, BUT HE WAS NOT BORDER LINE
9 RETARDED RETARDED BY ANY MEANS.

10 BUT I Q WAS OF LOW INTELLIGENCE. WHAT IS
11 SIGNIFICANT IS AS THE YEARS WENT BY HE WAS TESTED ON AN
12 ANNUAL BASIS FOR THE SUMTER COUNTY SCHOOL DISTRICT FOR
13 PLACEMENT IN RESOURCE CLASS OR SPECIAL LEARNING BECAUSE HE
14 HAD LEARNING PROBLEMS.

15 HE WAS NOT DIAGNOSED WITH A LEARNING DISABILITY,
16 BUT BECAUSE OF HIS PROBLEMS WITH VERBAL COMPREHENSION THAT
17 SOME DIRECTIONS THAT PEOPLE WOULD GIVE TO HIM AND HIS
18 PROBLEMS WITH BEING ABLE TO UNDERSTAND WHAT HE READ THAT
19 HIS ACTUAL COMPREHENSION HE WAS PLACED IN A SPECIAL
20 RESOURCE CLASS.

21 WHAT'S SIGNIFICANT TO ME IN REVIEWING HIS SCHOOL
22 RECORDS IS THAT AS THE YEARS GO BY HIS I Q SLOWLY DROPPED.
23 USUALLY I Q REMAINS ABOUT THE SAME AND DOESN'T DROP, BUT
24 WHEN I NOTICED WAS MOST SIGNIFICANTLY BETWEEN THE AGES OF
25 ELEVEN AND FOURTEEN YEARS OF AGE, SOMETHING DIFFERENT WAS

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 BEGINNING TO HAPPEN.

2 COULD HAVE BEEN ABUSE IN THE HOME, COULD HAVE
3 BEEN THE FACT THAT THOSE WERE ALSO THE YEARS WHERE HE
4 BEGAN TO USE ALCOHOL AND DRUGS. BUT HE HAD A GREAT DEAL OF
5 DIFFICULTY IN SCHOOL.

6 AGAIN, WITH THE -- AS REFLECTED BY HIS ACADEMIC
7 RECORD AND HE DID NOT COMPLETE SCHOOL. HE DROPPED OUT IN
8 THE TENTH GRADE.

9 Q OKAY. ANYTHING ELSE ABOUT HIS SOCIAL HISTORY THAT WAS
10 OF SIGNIFICANCE?

11 A LOOKED AT HIS WORK HISTORY AND THAT IS VERY
12 SCATTERED. NEVER WORKED IN ONE PLACE VERY LONG. HE HAD
13 SEVERAL DIFFERENT JOBS. SOME OF THOSE JOBS WERE WITH MR.
14 MILES, WHICH REFLECTS AGAIN THE KIND OF OPPOSITIONAL KIND
15 OF RELATIONSHIP.

16 YOU KNOW. HE FEARED HIM BECAUSE THE ABUSE AS A
17 CHILD, BECAUSE HE ABUSED HIS MOTHER AND BECAUSE OF HIS
18 ALCOHOLISM. AND YET THEY STAYED VERY CLOSE AND HE WORKED
19 WITH HIM OFF AND ON THROUGH THE YEARS.

20 Q OKAY. ANYTHING ELSE ABOUT HIS SOCIAL HISTORY?

21 A NO, SIR.

22 Q OKAY. MRS. OEHLER, HOW WOULD YOU CHARACTERIZE THE
23 QUALITY OF THE PARENTING WHICH BOBBY RECEIVED?

24 A I FELT THAT IT SHOWED THAT A GREAT DEAL OF LACK IN
25 TERMS OF THE PARENTS WERE THERE. AND BECAUSE THEY ARE

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 DECEASED -- THAT DIDN'T HAVE AN INTERVIEW WITH THEM -- I
2 FELT MUST HAVE CARED FOR THEIR CHILDREN, BECAUSE THEY
3 STAYED MARRIED.

4 THEY HAD MANY UPS AND DOWNS. THEY WERE SEPARATED
5 THE LAST FOURTEEN YEARS OF MR. STONE'S BOBBY'S FATHER,
6 BOBBY'S FATHERS LIFE THEY WERE SEPARATED THE LAST OF THOSE
7 FOURTEEN YEARS.

8 BUT HE MAINTAINED CONTACT WITH THE FAMILY, WITH
9 THE CHILDREN. IT SEEMS THAT IN THE EARLY YEARS THEY TRIED
10 TO PROVIDE FOR THE CHILDREN EVEN THOUGH MONEY WAS ALWAYS A
11 PROBLEM OR I'M CONCERNED ABOUT THE LACK OF VALUES THAT
12 BOBBY SEEMS TO HAVE IN TERMS OF THAT WAS SOMETHING COULD
13 HAVE BEEN TAUGHT IN THE HOME.

14 IN INTERVIEWING FAMILY MEMBERS FROM BOBBY'S
15 FATHERS SIDE OF THE FAMILY IT SEEMS THAT THEY WERE
16 INTERESTED IN THAT THEY TRIED TO HELP, THEY TRIED TO
17 INSTILL VALUES IN THE CHILDREN.

18 BUT THE CHILDREN LEARNED BY EXAMPLE MORE THAN
19 THEY DO BY WHAT SOMEONE TELLS THEM. AND THE EXAMPLE THAT
20 BOBBY HAD THROWN UP THAT HIS FAMILY WAS NOT ONE THAT
21 TAUGHT HIM VALUES, NOT TELLING WHAT THEY BELONGED TO --
22 YOU KNOW.

23 THAT PERSON AT THE AGE OF TWELVE IS WHERE HE
24 STOLE THE CAR WITH A COUPLE OTHER PEOPLE AND WENT TO
25 JUVENILE HALL OR JUVENILE FOR THAT FOR SOMETIME.

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 AND HIS OTHER INCIDENTS THROUGH HIS JUDICIAL
2 RECORD REFLECT THAT HE DID OTHER THINGS THAT DIDN'T BELONG
3 TO HIM OR HE BROKE AND ENTERED. JUST DIDN'T HAVE A REAL
4 STRONG SENSE OF LEAVING ALONE.

5 Q OKAY. HOW WOULD YOU CHARACTERIZE THE LIFE SKILLS THAT
6 HE LEARNED AS A CHILD?

7 A IT'S MY PROFESSIONAL OPINION THAT HE DIDN'T LEARN
8 VERY GOOD LIFE SKILLS. HE DIDN'T LEARN HOW TO BE
9 INDEPENDENT AND TO SUPPORT HIMSELF. MONEY WAS ALWAYS A
10 PROBLEM.

11 HIS FAMILY WAS VERY TIGHT YET EVEN THOUGH IT WAS
12 VERY DYSFUNCTIONAL. AND EVEN WHEN HE FORMED OR DEVELOPED
13 RELATIONSHIPS WITH OTHER PEOPLE, HE DIDN'T GO INSTEAD OF
14 HOUSE KEEPING AT A DIFFERENT PLACE, HE BROUGHT THEM BACK
15 TO LIVE WITH HIS FAMILY.

16 SO EVEN THOUGH THIS FAMILY HAD MANY UPS AND
17 DOWNS BECAUSE OF THE ABUSE AND BECAUSE OF THE ALCOHOLISM
18 AND BECAUSE OF HIS ALCOHOLISM AND HIS DRUG USE, HE STILL
19 STAYED VERY, VERY CLOSE TO HIS FAMILY AND VERY CLOSE KNIT.

20 Q OKAY. MRS. OEHLER, I BELIEVE FINALLY THAT YOU ALSO
21 CONDUCTED A MENTAL STATUS EXAM?

22 A YES, SIR.

23 Q OF BOBBY STONE. WOULD YOU TELL US ABOUT THAT.

24 A YES, SIR, I WILL. GIVE ME JUST A MOMENT, PLEASE. THE
25 MENTAL STATUS EXAM WHICH IS A PART OF THE PSYCHO SOCIAL

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1 EVALUATION, SOME OF THE QUESTIONS THAT I ASKED THE PERSON
2 ARE IF THEY WOULD DESCRIBE THEMSELVES OR VIEW THEMSELVES
3 HOW THEY SEE THEMSELVES.

4 I ASK THEM WHAT SOME OF THE WISHES -- IF THEY
5 HAD THREE WISHES, WHAT WOULD THEY BE, WHAT ARE THEIR
6 PERSONAL STRENGTHS, WHAT DO THEY SEE AS THEIR PERSONAL
7 WEAKNESSES.

8 ASK THEM IF YOU COULD BE AN ANIMATE OR AN
9 INANIMATE OBJECT, THAT IS LIVING OR NON- LIVING OBJECT,
10 WHAT YOU WOULD LIKE TO BE AND WHAT WOULD YOUR REASON FOR
11 THAT CHOICE.

12 I ASK QUESTIONS SUCH AS HAVE YOU EVER ATTEMPTED
13 SUICIDE, HAVE YOU EVER HAD SUICIDAL THOUGHTS HAVE YOU EVER
14 HAD PARANOID THOUGHTS. DO YOU NOW, HAVE YOU EVER HAD
15 HOMICIDAL THOUGHTS?

16 HAVE YOU EVER HAD HALLUCINATIONS OR PROBLEMS
17 SLEEPING? I ASK ABOUT APETITE AND WEIGHT CHANGES WHICH
18 WOULD GO TO LOOKING AT WHETHER OR NOT IT WAS SOME
19 DEPRESSION THERE YOU KNOW, SIGNIFICANT WEIGHT GAINS AND
20 WEIGHT LOSS.

21 ALSO LOOK AT THINGS LIKE THEIR AFFECT THAT IS
22 THE EXPRESSION ON THE FACE, THEIR GENERAL, YOUR GENERAL
23 EXPRESSION IN UNGUARDED MOMENTS. I LOOK AT THEIR SPEECH
24 PATTERNS.

25 I LOOK AT THEIR GENERAL POSTURE. I LOOK AT WHAT

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1 THEIR BEHAVIOR IS DURING THE EVALUATION. LOOK AT THEIR
2 THOUGHT PROCESSES IN TERMS OF HOW THEY THINK OR WHETHER
3 THEY HAVE CONTINUITY OF THOUGHT, WHETHER THEY CAN THINK
4 SEQUENTIALLY LIKE ONE THOUGHT AFTER ANOTHER OR WHETHER
5 THEY HAVE FLIGHT OF THOUGHT WHEN THEY STICK AROUND FOR ONE
6 TO PICK TO ANOTHER.

7 AND I LOOK AT THEIR GENERAL INTELLIGENCE AND THE
8 INFORMATION THAT THEY WERE ABLE TO PROVIDE ME. I LOOK IN
9 TERMS OF THEIR HISTORY, WHAT THE MANEUVERING IS, WHETHER
10 THEY HAVE GOOD LONG TERM MEMORY OR GOOD SHORT TERM MEMORY,
11 IF THEY ARE ABLE TO GIVE ME INFORMATION BACK.

12 AND THEN I ALSO LOOK AT REALITY ORIENTATION,
13 THAT IS ARE THEY ORIENTED TO THE DAY AND TO THE TIME AND
14 TO THE PLACE. I OFTEN ASK THEM TO MAKE SURE THAT THEY ARE
15 ORIENTED TO REALITY.

16 SOME OF THE THINGS THAT I FOUND IN THAT AREA IS
17 THAT HE WAS -- HIS AFFECT AND HIS DEMEANOR WERE THAT OF
18 SOMEONE WHO IS DEPRESSED. THAT'S APPROPRIATELY SO DUE TO
19 THE CIRCUMSTANCES HE FINDS HIMSELF IN.

20 HE IS VERY CONCRETE IN THE WAY THAT HE THINKS.
21 GIVE HIM A CONCEPT TO THINK ABOUT. THAT'S A PHILOSOPHICAL
22 KIND OF CONCEPT. THAT IS IF YOU COULD BE ANYTHING WHETHER
23 YOU ARE LIVING OR NONE LIVING OBJECT, WHAT WOULD YOU BE,
24 WHY.

25 HE'S NOT ABLE TO DEAL WITH THAT. HE CAN DEAL

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1 WITH THE WHAT SOMETHING IS IF HE SEES IT OR TO GIVE YOU A
2 DIRECT RESPONSE BACK, BUT HE'S VERY CONCRETE IN TERMS OF
3 THAT HE STAYS WHAT HE THINKS AND DOESN'T GIVE MUCH THOUGHT
4 TO ORIENT.

5 HE IS NOT A DEEP THINKER. HE DESCRIBES HIMSELF
6 AS NORMAL AND QUITE EASY GOING. BUT INDICATES WHEN HE'S
7 DRINKING HE KNOWS HIS PERSONALITY CHANGES.

8 AND THAT SOMEONE PUSHES ME WHEN I GET ANGRY I
9 WILL GET AWAY FROM THEM. AND I SAID WHAT IF YOU CAN'T GET
10 AWAY FROM THEM? HE SAID WELL I DEFEND MYSELF. I FIGHT.

11 HE SAYS THAT HE OFTEN TAKES THINGS AS THEY COME
12 AND HE DENIED THAT HE HAD ANY PROBLEMS WITH BLOCKING -- IS
13 THAT WHEN I ASKED HIM ABOUT INCIDENT OR WHEN I ASKED HIM
14 ABOUT HIS CHILD HOOD, HE CAN GIVE ME SOME EXAMPLES OF HIS
15 CHILD HOOD, BUT OTHER THINGS THAT'S HE CAN'T REMEMBER.

16 ONE INCIDENT I ASKED HIM ABOUT WAS WHERE AN AUNT
17 AND UNCLE CAME HOME FROM A DAUGHTER'S WEDDING AND THE AUNT
18 AND UNCLE GOT INTO AN ARGUMENT EACH OTHER AND THE UNCLE
19 SHOT AND KILLED HIS WIFE AND THEN KILLED HIMSELF AND ASKED
20 BOBBY ABOUT THAT AND HE SAID WELL I DON'T -- I DON'T
21 REMEMBER THAT HAPPENING. I DON'T THINK I REMEMBER THAT.

22 THAT'S A PRETTY VIOLENT PART OF HIS FAMILY
23 HISTORY WHERE THAT CONFLICT HAPPENED FOR HIS AUNT AND
24 UNCLE, YET THAT'S SOMETHING HE BLOCKED OUT AND COULD NOT
25 REMEMBER.

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1 HE REMEMBERS -- I TALKED A LITTLE BIT ABOUT HIS
2 KNOWLEDGE OF THE DIFFERENCE BETWEEN RIGHT AND WRONG AND
3 THERE'S SOME REAL BLUR LINES THERE IN TERMS OF HIS VALUES
4 BECAUSE WE GO BACK TO WHEN HE WAS YOUNGER AND HIS MOTHER
5 TEACHING HIM HOW TO SURVIVE BY STEALING CHICKENS OR WHERE
6 SHE BROUGHT THEM HOME FOR THE FAMILY.

7 HE DENIED EVER BEEN SUICIDAL OR HOMICIDAL OR
8 HE'S EVER BEEN PARANOID OR HAD HALLUCINATIONS, BUT THOSE
9 ARE THINGS I LOOK AT IN TERMS OF -- IN TERMS OF HIS MENTAL
10 STATUS.

11 AND AGAIN HE DEALS WITH VERY CONCRETE THINGS
12 THAT HE, HE REACTS TO WHAT HE SEES. HE DOESN'T REALLY
13 THINK OR RESPOND TO THINGS. OR INCIDENTS.

14 THE COURT: EXCUSE ME, MR. LITTLEJOHN. YOU
15 ANTICIPATED...

16 MR. LITTLEJOHN: I'M ABOUT TO WRAP UP, YOUR HONOR.

17 THE COURT: I MEAN I'M NOT -- I'LL ALLOW YOU. WE
18 JUST NEED TO -- WE ARE AT A POINT---.

19 MR. LITTLEJOHN: IF YOU WANT TO BREAK, THAT'S FINE.

20 THE COURT: HOW MUCH LONGER DO YOU ANTICIPATE YOU ARE
21 GOING TO BE?

22 MR. LITTLEJOHN: NOT VERY LONG AT ALL.

23 THE COURT: LET'S GO AHEAD THEN.

24 MR. LITTLEJOHN: ALL RIGHT, SIR.

25 (WHEREUPON QUESTIONING RESUMED).

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 Q MRS. OEHLER, IN CONCLUSION, OF COURSE PEOPLE HAVE
2 DIFFERENT BACKGROUND AND DIFFERENT UP BRINGING, ETC.. SOME
3 LIKE BOBBY WAYNE STONE, SOME OTHERS.

4 BUT MANY OF THESE PEOPLE DON'T FIND THEMSELVES
5 CONVICTED OF MURDER AND BURGLARY. HOW IS BOBBY WAYNE STONE
6 DIFFERENT IN THAT REGARD?

7 A ONE OF THE THINGS THAT I FOUND IS THAT THERE IS NO
8 ONE SIGNIFICANT FACTOR IN HIS BACKGROUND THAT CONTRIBUTES
9 TO FINDING HIM IN THIS CIRCUMSTANCE.

10 IT IS A RATHER COMBINATION OF FACTORS. THE --
11 HIS ALCOHOLISM, HIS DRUG USE, HIS FAMILY BACKGROUND, THE
12 VALUES THAT HE LEARNED IN HIS FAMILY GROWING UP, HIS
13 DISREGARD FOR AUTHORITY WHEN HE WAS A CHILD OFTEN FINDING
14 HIMSELF IN AND OUT OF TROUBLE WITH FAMILY MEMBERS AS WELL
15 AS WITH THE LAW, WITH THE STEALING CARS AND THINGS LIKE
16 THAT AND ANY OTHER BURGLARY INCIDENTS.

17 HIS EXPOSURE TO VIOLENCE AT AN EARLY AGE IS
18 UNUSUAL BECAUSE WHEN WE LOOK AT CHILD DEVELOPMENT STAGES
19 WE LOOK AT ERIC RICHARDSON (SIC) IS A PSYCHOLOGIST AND A
20 PERSON WHO IS WELL VERSED IN CHILD DEVELOPMENT WHO LOOKS
21 AT DIFFERENT STAGES THAT WE GO THROUGH AS WE MATURE AND IF
22 WE SUCCESSFULLY DO WELL AT EACH STAGE THEN WE GO ON TO THE
23 NEXT STAGE.

24 AND ONE PARTICULAR STAGE IS TRUST VERSUS
25 MISTRUST. AND WHEN YOU ARE A YOUNG CHILD AND SOMEONE YOU

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1 LOVE AND CARE FOR AND YOU LOOK UP TO DOES SOMETHING TO
2 HURT YOU IT'S NOT ONLY HARD TO TRUST THAT ADULT, BUT IT'S
3 HARD TO TRUST OTHER ADULTS.

4 THIS GOES BACK TO WHEN HE WAS A YOUNG CHILD, THE
5 PHYSICAL ABUSE HE EXPERIENCED AS WELL AS HIS SENSE OF
6 HOPELESSNESS AND SEEING VIOLENCE HAPPEN TO OTHER FAMILY
7 MEMBERS, SO VIOLENCE DIDN'T JUST HAPPEN TO HIM BUT HE SAW
8 VIOLENCE HAPPENING TO OTHER PEOPLE AS WELL.

9 AND IT'S THE COMBINATION OF ALL OF THESE FACTORS
10 AND THE ROLE MODEL HE HAD IN HIS FATHER WESLEY MILES, THE
11 ROLE MODEL HE HAD IN HIS MOTHER FOR HIM TO LEARN FROM THEM
12 HAS CONTRIBUTED TO FINDING HIM IN THIS CIRCUMSTANCE TODAY.

13 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

14 THE COURT: ALL RIGHT. I'M GOING TO BREAK AT THIS
15 POINT FOR LUNCH.

16 LADIES AND GENTLEMEN, LIKE TO GO TO LUNCH.
17 PLEASE DO NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION AND
18 DO NOT DISCUSS THE CASE AMONG YOURSELVES. WE WILL SEE YOU
19 BACK PROBABLY ABOUT 2:30. ALL RIGHT. THANK YOU.

20 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:54
21 P.M.)

22 THE COURT: ALL RIGHT. WE WILL RECESS UNTIL 2:30
23 306789. BEFORE WE DO, WE HAD A SIDE BAR CONCERNING A
24 QUESTION THAT WAS ASKED TO THE WITNESS MRS. WILSON OR
25 PARROT. WAS IT PARROT? MELINDA PARROT, I BELIEVE

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1 CONCERNING HER TESTIMONY.

2 THERE WAS AN OBJECTION AS TO RELEVANCY
3 CONCERNING THE TESTIMONY ABOUT THE PURCHASE OF BEER. AND A
4 PORTION OF THAT WAS A STATEMENT -- THE STATE NEVER
5 REFERRED TO ANY STATEMENT.

6 THERE WAS NO EFFORT, NO ATTEMPT TO INTRODUCE THE
7 STATEMENT AT SIDE BAR IT WAS INDICATED THAT THE WITNESS
8 HAD BEEN PROVIDED A COPY OF THE STATEMENT PRIOR TO TAKING
9 THE STAND. IS THAT A CORRECT STATEMENT?

10 MR. BABB: YES, SIR, VERY -- LIKE WITHIN THE LAST 4
11 OR FIVE DAYS.

12 THE COURT: BUT SHE HAD A COPY IN HER...

13 MR. BABB: YES, SIR. THAT'S CORRECT.

14 THE COURT: BUT THERE WAS NO REFERENCE TO THE
15 STATEMENT BY THE SOLICITOR AND NOR -- AND THE STATE DID
16 NOT SEEK TO INTRODUCE THAT STATEMENT FOR ANY PURPOSE.

17 MR. BABB: THAT'S CORRECT.

18 THE COURT: SO AND THE RECORD REFLECTS THAT I
19 OVERRULE THE OBJECTION. YES, SIR.

20 MR. KOLB: THANK YOU, YOUR HONOR. JUDGE, ONE THING.
21 WE GOT LATE YESTERDAY A TWO PAGE PSYCHOSOCIAL EVALUATION
22 FROM MRS. OEHLER.

23 SHE REFERRED TO A MENTAL STATUS EXAM AND WE
24 WOULD LIKE TO GET A COPY OF THAT FOR REVIEW FOR
25 CROSS-EXAMINATION. I THINK IT WILL BE DISCOVERABLE AS A

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1 RESULT OF THE TEST.

2 THE COURT: I DON'T KNOW WHAT EXAM SHE'S TALKING
3 ABOUT. IF THERE IS SOME WRITTEN DOCUMENT SHE HAS, FINE. IF
4 NOT, YOU DON'T HAVE ANYTHING TO PRODUCE IT'S -- IS THERE
5 A -- AN EXAM THAT SHE HAD?

6 MR. LITTLEJOHN: WE CAN ASK HER SHE DESCRIBED THAT
7 DURING HER DIRECT TESTIMONY.

8 WITNESS: PART OF THE QUESTIONS I ASK IS PART OF THE
9 PSYCHOSOCIAL EVALUATION. YOU ARE WELCOME TO MY HAND
10 WRITTEN NOTES. I CAN PROVIDE THOSE.

11 THE COURT: HAPPY TO REVIEW HER NOTES. YOU CAN LOOK
12 AT ANYTHING SHE GOT SHE SAID. BE FINE. WE WILL BE AT EASE.

13 THE COURT: NOW, LETS APPROACH.

14 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

15 THE COURT: BEFORE WE START BACK WE HAD A COUPLE OF
16 SITUATIONS THIS MORNING. CHECKED THIS PHONE, IT RANG. IF
17 ANYBODY HAS ANY CELLULAR PHONES, YOU NEED TO TURN THEM
18 OFF.

19 ALSO IF YOU HAVE ANY BEEPERS, NEED TO TURN THOSE
20 OFF AS WELL, PLEASE. IT IS DISTRACTING AND IT -- YOU NEVER
21 KNOW WHEN THEY MAY GO OFF. AND THIS IS CERTAINLY A VERY
22 SERIOUS MATTER THAT I DON'T WANT TO DISTRACT THE JURIES
23 ATTENTION IN ANY WAY.

24 VERY WELL. ALL RIGHT. ANYTHING FROM THE STATE
25 BEFORE WE BRING THE JURY BACK?

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 MR. KOLB: NO, SIR.

2 THE COURT: ANYTHING FROM THE DEFENDANT?

3 MR. LITTLEJOHN: I HAVE ONE OTHER AREA I'D LIKE TO
4 BRIEFLY EXAMINE MRS. OEHLER ABOUT BEFORE I TURN HER...

5 THE COURT: THAT'S FINE. LET THE RECORD REFLECT MR.
6 STONE IS PRESENT. MRS. OEHLER, IF YOU WOULD COME BACK
7 PLEASE TO THE STAND.

8 (RESUMED THE STAND).

9 THE COURT: ALL RIGHT. LETS BRING THE JURY IN,
10 PLEASE.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
12 2:40 P.M.).

13 THE COURT: THANK YOU, SIR. THANK YOU VERY MUCH,
14 LADIES AND GENTLEMEN. WE ARE READY TO CONTINUE. AND I
15 BELIEVE MR. LITTLEJOHN YOU HAD COMPLETED BUT THEN I
16 BELIEVE YOU INDICATED YOU HAVE A COUPLE MORE QUESTIONS?

17 MR. LITTLEJOHN: THAT'S CORRECT.

18 THE COURT: YOU MAY CONTINUE.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q MRS. OEHLER, WOULD YOU EXPLAIN TO THE JURY WHAT IS
21 THE EXAGGERATED STARTLE RESPONSE.

22 A AN EXAGGERATED STARTLE RESPONSE IS A BEHAVIOR THAT
23 CAN BE CHARACTERISTIC OF SOMEONE WHO HAS BEEN EXPOSED TO A
24 LOT OF VIOLENCE IN THEIR LIFE OR COULD BE TRIGGERED BY THE
25 COMBINATION OF -- I'M SORRY -- ALCOHOL AND DRUGS MIXED

TEANNE OEHLER - DIRECT BY LITTLEJOHN

1 TOGETHER.

2 IT CERTAIN IS A PHYSIOLOGICAL RESPONSE THAT
3 SOMEONE COULD HAVE. IT'S -- WHEN THERE IS A SUDDEN SHARP
4 MOVEMENT OR A LOUD NOISE, SOMEONE MAY JUMP, THE NOISE MAY
5 BE BEHIND THEM.

6 THE EXAGGERATED STARTLE RESPONSE, AN EXAMPLE
7 USED WITHIN A DIAGNOSTIC CRITERIA, FOR EXAMPLE LIKE POST
8 TRAUMATIC STRESS DISORDER, THE COMPARABLE TO A VETERAN WHO
9 HAD EXPERIENCED VIOLENCE DURING WAR TIME AND LATER HEARS A
10 CARBURETTER BACK FIRE AND HITS THE GROUND OR SOMEBODY
11 COMES IN BEHIND THEM AND THEY JUMP, BUT A -- FORCED TO
12 DEFEND THEMSELVES AS A RESULT OF A LARGE NOISE OR A SUDDEN
13 MOVEMENT.

14 Q IS THIS AGGRAVATED BY SUBSTANCE ABUSE?

15 A COULD VERY MUCH BE AGGRAVATED BY SUBSTANCE ABUSE,
16 ESPECIALLY WITH INTOXICATION OF ALCOHOL AND THE MIXTURE OF
17 CANNABIS OR MARIJUANA WITH IT OR ANY OTHER TYPE OF DRUG.

18 Q OKAY. THANK YOU, MA'AM. PLEASE ANSWER ANY QUESTIONS
19 THE SOLICITOR MAY HAVE.

20 THE COURT: YOU MAY CROSS-EXAMINE.

21 CROSS-EXAMINATION BY MR. KOLB:

22 Q MRS. OEHLER, DID YOU GET YOUR INFORMATION FROM
23 PRIMARILY FROM MR. STONE HIMSELF AND HIS FAMILY MEMBERS?

24 A THE INITIAL INFORMATION COMES FROM MR. STONE AND THE
25 FAMILY MEMBERS, BUT OTHER INFORMATION NOT RELIED ON

TEANNE OEHLER - CROSS BY KOLB

1 INCLUDED REVIEWING HIS RECORDS THAT I SPECIFIED EARLIER
2 WHICH RECORDS THOSE WERE. WOULD YOU LIKE ME TO REPEAT
3 THOSE?

4 Q NO, THAT'S ALL RIGHT. THE AUNT AND UNCLE THAT KILLED
5 THEMSELVES, WHEN WAS THAT?

6 A I DON'T KNOW THE EXACT YEAR, BUT IT WAS DURING THE
7 YEARS THAT HE WAS A CHILD TO EARLY ADULT HOOD.

8 Q YOU DON'T EVEN KNOW THE YEAR THAT THAT---

9 A WOULD YOU LIKE ME TO POINT TO WHICH AUNT AND UNCLE ON
10 THE GENOGRAM? I BELIEVE THE DEATH DATE IS ON THE
11 GENOGRAM.

12 Q IF YOU'VE GOT AN ANSWER TO IT. I JUST WAS ASKING YOU
13 WHEN THAT OCCURRED.

14 A ALL RIGHT. NO, SIR, I DON'T HAVE A DEATH DATE. I JUST
15 HAVE THE HOMICIDE SUICIDE.

16 Q OKAY. NOW, YOU INDICATED THAT YOU HAVE THE RECORDS OF
17 HIS PROBLEMS AS A JUVENILE, BOBBY STONE'S PROBLEMS AS A
18 JUVENILE.

19 A YES, SIR.

20 Q AND THERE WERE A NUMBER OF OCCASIONS THAT HE AT AGE
21 TWELVE STOLE A CAR AND THEN AT OTHER TIMES HE BROKE AND
22 ENTERED HOUSES AND TOOK THINGS THAT DIDN'T BELONG TO HIM?

23 A YES, SIR. NOW, I BELIEVE SOME OF THOSE WERE
24 BUSINESSES.

25 Q OKAY. NOW, WELL BE -- SO, WHEN HE WAS -- CALL IT

TEANNE OEHLER - CROSS BY KOLB

1 HOUSE BREAKING ON ALL OF THEM?

2 A I'M SORRY. I AM SORRY. YES, SIR. I AM SORRY. I WASN'T
3 CLEAR ON THAT.

4 Q AND THIS IS WHEN HE WAS LESS THAN SEVENTEEN YEARS OF
5 AGE?

6 A YES, SIR. BETWEEN THE AGES OF TWELVE AND SIXTEEN.

7 Q AND YOU INDICATED HE WENT TO JUVENILE HALL FOR THAT
8 -- SOME TIME?

9 A YES, SIR. WHEN HE WAS TWELVE YEARS OLD HE AND SEVERAL
10 FRIENDS STOLE A CAR.

11 Q NOW, WASN'T THERE ANOTHER TIME THAT HE DID SOME
12 CRIMES AS A JUVENILE AND SPENT ABOUT TEN MONTHS IN A YOUTH
13 FACILITY?

14 A I AM NOT SURE OF THE EXACT DATE, BUT IT SEEMS THAT
15 WHEN HE WASN'T SIXTEEN YEARS OLD THAT HE DID SERVE SOME
16 MORE TIME BUT I MAY BE INCORRECT ON THAT DATE AS WELL.
17 BUT IT WAS UNDER THE AGE OF EIGHTEEN.

18 Q OKAY. AND OF COURSE HE -- YOU REVIEWED HIS ADULT
19 RECORD OF WHERE HE HAD THE SEVEN OR WHATEVER INDICTMENT
20 CONVICTIONS AND GOT A YOUTHFUL OFFENDER SENTENCE AFTER HE
21 WAS -- AS A MATTER OF FACT IT WAS NINETEEN YEARS OF AGE?

22 A YES, SIR.

23 Q AND THEN WAS PAROLED FROM THAT AND THEN GOT THREE
24 MORE BURGLARY AND LARCENY CONVICTIONS, GRAND LARCENY
25 CONVICTIONS IN 1987?

TEANNE OEHLER - CROSS BY KOLB

1 A I DON'T REMEMBER HOW MANY IT WAS, BUT I KNOW THAT HE
2 WAS INCARCERATED BETWEEN I BELIEVE ABOUT 1987 AND 1993.
3 BUT I MAY BE WRONG ON THOSE DATES AGAIN. DO YOU WANT ME TO
4 LOOK AT MY NOTES TO VERIFY THAT?

5 Q I THINK YOU ARE CORRECT IN THAT REGARD. AND HE WAS
6 PAROLED JUNE 9TH, 1993?

7 A I DON'T REMEMBER THE DATE HE WAS DISCHARGED. I AM
8 SORRY.

9 Q NOW, IN GETTING THIS INFORMATION FROM THE FAMILY
10 MEMBERS THAT YOU DISCUSSED THIS MORNING, DID YOU EVER TALK
11 TO WESLEY EUGENE MILES?

12 A YES, SIR, I DID. BUT IT WAS VERY DIFFICULT TO
13 INTERVIEW HIM BECAUSE I AM NOT SURE THAT HE WAS SOBER AT
14 THE TIME THAT I TALKED TO HIM.

15 Q WELL, ISN'T IT A FACT THAT HE DENIES VEHEMENTLY THAT
16 ANY OF THAT EVER OCCURRED?

17 A I DON'T KNOW WHAT TO TELL YOU, BUT I DID INTERVIEW
18 HIM.

19 Q ALL RIGHT.

20 A DO YOU NEED ME TO TELL YOU?

21 Q MOLESTING THOSE GIRLS OR EVER SHOOTING A GUN?

22 A I DID NOT ASK HIM ABOUT SEXUAL MOLESTATION.

23 Q ALL RIGHT. AND DID HE ADMIT TO EVER SHOOTING A GUN?

24 A DIDN'T ASK HIM ABOUT SHOOTING A GUN. I ASKED HIM FOR
25 A FAMILY INFORMATION REGARDING FAMILY RELATIONSHIPS.

TEANNE OEHLER - CROSS BY KOLB

1 Q DID YOU SEE ANY RECORD, ANY CONFIRMATION, ANY POLICE
2 REPORT WHATSOEVER TO CORROBORATE ANY OF THAT INFORMATION
3 WHATSOEVER?

4 A NO, SIR. I DID NOT REQUEST A CRIMINAL RECORD OF MR.
5 MILES.

6 Q NOW, YOU AGREE THAT BOBBY STONE DOES AND HAS SHOWN
7 OVER HIS LIFE TIME THAT HE HAS A DISREGARD FOR PERSONS AND
8 AUTHORITY?

9 A YES, SIR. HE DID AS A YOUNG PERSON AND AS AN ADULT
10 BOTH WITHIN HIS FAMILY AND WITHIN HIS SCHOOL SETTING AND
11 AS EVIDENCE TO HIS JUVENILE RECORD HE DID TAKE THE LAW
12 OUTSIDE HIS FAMILY.

13 Q DID -- THIS THING YOU ARE TALKING ABOUT, EXAGGERATED
14 STARTLE RESPONSE, IS THAT EVEN MENTIONED IN THE D S M 4?

15 A THE -- I MENTIONED -- THE EXAGGERATED STARTLE
16 RESPONSE IS MENTIONED IN THE D S M UNDER CATEGORY OF POST
17 TRAUMATIC STRESS DISORDER AND THE CATEGORY MENTIONED PART
18 OF PHYSIOLOGICAL REACTIVITY IS MENTIONED UNDER THE
19 CATEGORIES OF ALCOHOL DEPENDENCE AND CANNABIS DEPENDENCE
20 AND CANNABIS ABUSE WHICH DEALS WITH THE INCREASED AROUSING
21 TO STIMULI.

22 THAT'S THE -- THAT'S THE TECHNICAL OR THE
23 MEDICAL TERM FOR IT. BUT WHAT IT JUST MEANS IS THAT THERE
24 IS A HEIGHTENED OR AN INCREASED RESPONSE, A KIND OF
25 HEIGHTENESS (SIC) TO SOMETHING THAT WOULD GO ON.

TEANNE OEHLER - CROSS BY KOLB

1 IF YOU SLAM A BOOK ON THE TABLE RIGHT NOW,
2 BECAUSE I'M SITTING ON THE EDGE OF MY SEAT, I'M GOING TO
3 JUMP.

4 Q ALL RIGHT. BUT ISN'T WHAT YOU ARE TALKING ABOUT IS
5 NOT A DIAGNOSIS, IT'S ACTUALLY A SYMPTOM OF POST TRAUMATIC
6 STRESS DISORDER?

7 A YES, SIR, IT IS.

8 Q AND POST TRAUMATIC STRESS DISORDER IS LIKE THESE
9 VIETNAM VETS THAT HAVE HAD PSYCHIATRIC PROBLEMS AFTER
10 COMING BACK FROM VIETNAM?

11 A THAT'S CORRECT. ALSO CHARACTERISTIC OF PEOPLE WHO
12 HAVE BEEN RAPE VICTIMS PEOPLE WHO HAVE BEEN MR. AUTOMOBILE
13 ACCIDENTS OR PEOPLE WHO HAVE EXPERIENCED SEVERE TRAUMA OR
14 STRESS OR EXPOSURE TO VIOLENCE WHO HAVE FELT THREATENED IN
15 THEIR OWN LIVES BECAUSE OF VIOLENCE.

16 Q WELL, SO POST TRAUMATIC STRESS SYNDROME IS A
17 RECOGNIZED MENTAL ILLNESS?

18 A YES, SIR. IT IS. IT'S IN THE D S M 4 WHICH YOU
19 QUESTIONED ME ABOUT.

20 Q ALL RIGHT.

21 A I HAVE MY BOOK HERE IF YOU NEED IT.

22 Q I HAVE GOT ONE DOWN STAIRS, TOO.

23 A OKAY.

24 Q AND EXAGGERATED STARTLE RESPONSE IS NO MORE THAN A
25 SYMPTOM OF A RECOGNIZED MENTAL ILLNESS BEING POST

TEANNE OEHLER - CROSS BY KOLB

1 TRAUMATIC STRESS SYNDROME?

2 A YES, SIR. THAT'S CORRECT.

3 Q ALL RIGHT. AND WITH POST TRAUMATIC STRESS SYNDROME,
4 ANOTHER SYMPTOM IS ALCOHOLISM; ISN'T THAT CORRECT?

5 A I DON'T BELIEVE THAT A SYMPTOM OF POST TRAUMATIC
6 STRESS DISORDER IS ALCOHOLISM BUT CERTAINLY ALCOHOLISM
7 COMBINED WITH POST TRAUMATIC STRESS DISORDER CREATES A
8 DEADLY COMBINATION.

9 Q OKAY. BUT THERE IS NO RECOGNIZED PSYCHIATRIC EXPERT,
10 NO RECOGNIZED TEXT SUCH AS THE D S M 4 THAT LISTS
11 EXAGGERATED STARTLE RESPONSE AS A SEPARATE MENTAL ILLNESS;
12 ISN'T THAT CORRECT?

13 A NO, SIR. IT'S A BEHAVIORAL CHARACTERISTIC OF POST
14 TRAUMATIC STRESS DISORDER. I THOUGHT ABOUT WHAT YOU ASKED
15 ME ABOUT -- ABOUT THE ALCOHOLISM.

16 NOT EVERY VIETNAM VET OR VETERAN OF WORLD WAR
17 TWO IS AN ALCOHOLIC. SO THAT'S NOT NECESSARILY A SYMPTOM
18 OF POST TRAUMATIC STRESS DISORDER.

19 Q ALL RIGHT. AND -- BUT IT'S A SYMPTOM THAT'S FOUND IN
20 A HIGH NUMBER OF PEOPLE THAT SUFFER FROM POST TRAUMATIC
21 STRESS?

22 A YES, SIR. IT IS. BECAUSE ALL THE PEOPLE WITH POST
23 TRAUMATIC STRESS DISORDER WILL USE ALCOHOL OR DRUGS TO
24 MEDICATE OR TO RELIEVE THE PAIN THAT THEY HAVE EXPERIENCED
25 AS A RESULT OF TRAUMA.

TEANNE OEHLER - CROSS BY KOLB

1 Q MRS. OEHLER, ARE YOU TRYING TO SAY YOU HAVE DIAGNOSED
2 BOBBY WAYNE STONE AS HAVING THIS DISORDER?

3 A NO, SIR. I DISCUSSED HIS ALCOHOLISM, WHICH HE DOES
4 HAVE A DIAGNOSIS OF. I DISCUSSED HIS CANNABIS USE AND HIS
5 MARIJUANA USE.

6 AND I STATED THAT HIS BEHAVIOR IS CHARACTERISTIC
7 OF AN EXAGGERATED STARTLE RESPONSE FOR THAT INCREASED
8 PHYSIOLOGICAL RESPONSE TO STIMULI.

9 Q YOU AGREE THAT HE DOES NOT HAVE POST TRAUMATIC STRESS
10 DISORDER?

11 A I DID NOT DIAGNOSE HIM WITH POST TRAUMATIC STRESS
12 DISORDER. I DIDN'T SEE ALL THE CRITERIA FOR THAT.

13 Q AND YOU AGREE THAT HE IS NOT SUFFERING FROM ANY
14 MENTAL ILLNESS?

15 A THERE IS A STRONG HISTORY OF MENTAL ILLNESS IN HIS
16 FAMILY. AND HIS POOR COPING SKILLS, HIS POOR INDEPENDENT
17 LIVING SKILLS CERTAINLY POINT TO AN EMOTIONAL DISORDER,
18 BUT I DID NOT DIAGNOSE HIM WITH A PSYCHIATRIC DIAGNOSIS.

19 Q YOU INDICATED HE IS NOT MENTALLY RETARDED. NOT
20 MENTALLY RETARDED?

21 A THAT'S CORRECT. I SAID HIS I Q AS A CHILD WAS LOW AND
22 PERHAPS BOARDER LINE, BUT NO, HE IS NOT MENTALLY RETARDED.

23 Q OKAY. I THOUGHT YOU TESTIFIED THAT HIS I Q WAS LOW,
24 BUT IT WAS NOT AS LOW AS WHAT WOULD BE CONSIDERED BORDER
25 LINE MENTALLY RETARDED?

TEANNE OEHLER - CROSS BY KOLB

1 A IT'S LOW AND CLOSE TO BORDER LINE MENTALLY RETARDED,
2 BUT HE IS NOT MENTALLY RETARDED. ONE OF THE SIGNIFICANT
3 THINGS IS THAT BETWEEN THE AGES OF ELEVEN AND
4 APPROXIMATELY FOURTEEN, HIS I Q DROPPED ON THE TESTING
5 THAT THE SUMTER COUNTY SCHOOL DISTRICT DID AS PART OF
6 THEIR PLACEMENT CRITERIA FOR HIM IN HIS RESOURCE CLASSES.

7 Q ALL RIGHT. BUT HE IS NOT MENTALLY RETARDED?

8 A NO, SIR. NOT TO THE BEST OF MY KNOWLEDGE. AND I
9 BELIEVE FROM REVIEWING THE RECORDS THAT WHEN HE WAS
10 EVALUATED IN TERMS OF HIS COMPETENCY TO BE ABLE TO ASSIST
11 IN HIS DEFENSE THAT HE WAS NOT MENTALLY RETARDED.

12 Q AND HE IS NOT BEEN DIAGNOSED WITH A LEARNING
13 DISABILITY?

14 A YES, SIR. HE HAS BEEN.

15 Q ALL RIGHT. YOU INDICATED HE WAS NOT DIAGNOSED WITH A
16 LEARNING DISABILITY, BUT LATER ON HE WAS PUT IN SPECIAL
17 RESOURCE CLASS?

18 A I -- YES, SIR. I DID TESTIFY TO THAT AND I APOLOGIZE.
19 I BELIEVE IN SCHOOL RECORDS IT INDICATES THAT HE DID HAVE
20 A LEARNING DISABILITY WHICH WERE IN THE AREA OF VERBAL
21 EXPRESSION AND THE OTHER AREA OF COMPREHENSION, LANGUAGE
22 COMPREHENSION.

23 BUT I DID NOT SEE IN THE SCHOOL DOCUMENTS WHERE
24 THEY DOCUMENTED THAT HIS DIAGNOSIS WAS A LEARNING
25 DISABILITY. BUT CONSISTENTLY HIS SCHOOL SCORES ON HIS

TEANNE OEHLER - CROSS BY KOLB

1 TESTING AND HIS PERFORMANCE IN CLASS WAS LOW ENOUGH HE WAS
2 PLACED IN A SPECIAL RESOURCE CLASS. I'M SORRY. I WAS NOT
3 CLEAR ON THAT.

4 Q YOU INDICATED THAT APPROXIMATELY SIX YEARS OF AGE HE
5 HAD AN UNCLE THAT HAD A HEART ATTACK WHILE FISHING AND
6 FELL ON HIS HEAD?

7 A YES, SIR.

8 Q YOU INDICATED THAT TO BE HARMFUL TO A CHILD.

9 A HE WAS STANDING ON THE BANK AND SAW HIS UNCLE DROWN.
10 YES, SIR.

11 Q ALL RIGHT. AND IT WOULD BE AT LEAST THAT HARMFUL IF
12 NOT WAY WAY MORE HARMFUL FOR YOUR FATHER BE SHOT DOWN IN
13 THE LINE OF DUTY AS A POLICE OFFICER?

14 MR. LITTLEJOHN: I'M GOING TO OBJECT. I DON'T THINK
15 THAT'S A PROPER QUESTION.

16 THE COURT: SUSTAINED. SUSTAINED. IMPROPER .

17 MR. KOLB: NOTHING FURTHER.

18 THE COURT: REDIRECT?

19 MR. LITTLEJOHN: I HAVE NO FURTHER QUESTIONS, YOUR
20 HONOR. WE'D ASK A THAT MRS. OEHLER BE EXCUSED.

21 THE COURT: ANY OBJECTION?

22 MR. KOLB: NO, SIR.

23 THE COURT: YOU MAY BE EXCUSED. THANK YOU, MA'AM.

24 THE WITNESS: YES, SIR.

25 (WHEREUPON THE WITNESS LEFT THE STAND).

TEANNE OEHLER - CROSS BY KOLB

1 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

2 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. WE CALL JERRY
3 HYATT.

4 JERRY HYATT, BEING FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 THE COURT: ALL RIGHT. IF YOU WOULD PULL THAT MIKE
7 SO THAT IT'S COMFORTABLE. AND YOU CAN SPEAK DIRECTLY INTO
8 THE MIKE. STATE YOUR FULL NAME AND SPELL YOUR LAST.

9 THE WITNESS: JERRY HYATT, H Y A T T.

10 THE COURT: THANK YOU, SIR.

11 DIRECT EXAMINATION BY MR. LITTLEJOHN:

12 Q THANK YOU, MR. HYATT. MR. HYATT, WHAT IS YOUR
13 OCCUPATION, PLEASE SIR?

14 A I'M THE EXECUTIVE DIRECTOR FOR SANTEE REGIONAL JAIL
15 SYSTEM.

16 Q AND WHAT IS THE REGIONAL JAIL SYSTEM?

17 A WELL, COUPLE OF YEARS AGO WE TRIED TO FORM A
18 COMMISSORIUM (SIC) BETWEEN KERSHAW, CLARENDON LEE AND
19 SUMTER COUNTIES AND OPERATE THE FACILITIES UNDER ONE
20 MANAGEMENT PRINCIPAL.

21 Q OKAY. AND YOU ARE THE DIRECTOR OF THAT JOINT
22 COUNTY----

23 A IT'S ONLY TWO COUNTIES LEFT IN IT NOW. WOULD BE
24 SUMTER AND LEE.

25 Q ALL RIGHT, SIR. AND I BELIEVE YOU ARE HERE TODAY

JERRY HYATT - DIRECT BY LITTLEJOHN

1 PURSUANT TO A SUBPOENA?

2 A I AM.

3 Q MR. HYATT, ARE YOU FAMILIAR WITH THE DEFENDANT BOBBY
4 STONE?

5 A I AM.

6 Q HAS HE BEEN AN INMATE WITHIN THE FACILITY WHICH YOU
7 ARE THE SUPERVISOR OF?

8 A HE HAS.

9 Q OKAY. MR. HYATT, LET ME SHOW YOU THESE 4 DOCUMENTS.
10 AND I WOULD ASK YOU IF YOU CAN -- FIRST OFF IF YOU
11 RECOGNIZE THOSE AS BEING RECORDS WHICH ARE MAINTAINED BY
12 YOUR FACILITY?

13 A THEY ARE. THEY ARE RECORDS THAT ARE COMPLETED BY THE
14 FACILITY THAT HOUSES AND SUPERVISES AN INDIVIDUAL UNDER
15 DESIGNATED FACILITY CONTRACT WITH THE DEPARTMENT OF
16 CORRECTIONS.

17 Q AND DO THOSE RECORDS PERTAIN TO ONE PARTICULAR
18 INMATE?

19 A THEY DO. BOBBY WAYNE STONE.

20 Q OKAY.

21 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME I MOVE TO
22 INTRODUCE THESE AS DEFENDANT'S EXHIBITS 9, 10, 11 AND 12.

23 THE COURT: ANY OBJECTION?

24 MR. LITTLEJOHN: 8, 9, 10 AND 11.

25 THE COURT: ALL RIGHT. ARE THEY ONE PAGE DOCUMENTS

JERRY HYATT - DIRECT BY LITTLEJOHN

1 EACH?

2 MR. LITTLEJOHN: YES, SIR.

3 THE COURT: DEFENDANTS 8, 9, 10 AND 11 EACH BEING ONE
4 PAGE DOCUMENT INTRODUCED INTO THE RECORD WITHOUT
5 OBJECTION.

6 (DEFENDANT'S EXHIBITS NO. 8, 9, 10 AND 11 MARKED
7 FOR EVIDENCE).

8 (WHEREUPON QUESTIONING RESUMED).

9 Q MR. HYATT, LET ME SHOW YOU WHAT IS NOW DEFENDANT'S
10 EXHIBITS 8, 9, 10 AND 11. THE FIRST ONE THE ONE YOU HAVE
11 ON TOP THERE, DEFENDANT'S EXHIBIT NUMBER 8.

12 A YES, IT IS.

13 Q I BELIEVE THAT IS CALLED A CLASSIFICATION CUSTODY AND
14 SECURITY REVIEW CHECK LIST?

15 A YES, SIR.

16 Q OKAY. AND WHAT IS THAT DOCUMENT USED FOR?

17 A IT'S USED IN THE RECLASSIFICATION OF INMATES WHILE IN
18 CUSTODY.

19 Q OKAY. AND WHAT IS THE DATE ON THAT FIRST DOCUMENT
20 DEFENDANT'S 8?

21 A 11-21-90.

22 Q OKAY. AND WHAT DOES IT INDICATE IN THE COMMENTS?

23 A RECOMMENDED INMATE STONE FOR ADVANCEMENT TO B L 3
24 CUSTODY.

25 Q OKAY. LETS SEE IF YOU COULD GO UP -- AND I WAS

JERRY HYATT - DIRECT BY LITTLEJOHN

1 SPEAKING OF THE COMMENTS REGARDING ADJUSTMENT?

2 A I'M SORRY. IT MEANT STONE HAS HAD A CLEAR
3 DISCIPLINARY RECORD OF THE PAST SIX MONTHS AND HAS BEEN AN
4 ASSET S C C C SINCE HIS TRANSFER HERE.

5 Q OKAY. NOW, IF I COULD REFER YOU TO DEFENDANT'S NUMBER
6 9. IS THAT THE SAME TYPE FORM?

7 A IT IS.

8 Q AND WHAT IS THE DATE ON THAT DOCUMENT?

9 A 4-12-91 IT WAS COMPLETED.

10 Q OKAY. AND WHAT DOES IT INDICATE IN THE COMMENTS
11 REGARDING ADJUSTMENT SECTION?

12 A INMATE STONE HAS BEEN A MODEL INMATE DURING HIS SIX
13 MONTHS HERE. HE HAS HAD NO DISCIPLINARY ACTIONS, HAS BEEN
14 A DILIGENT WORKER, ATTENDED ALL ALCOHOL AND DRUG CLASSES,
15 CHURCH, SINCE THIS TRANSFER TO S C C C. HE HAS BEEN
16 ASSIGNED TO THE KITCHEN AND HAS BEEN PROMOTED TO
17 SUPERVISOR.

18 Q WHAT DOES IT INDICATE IN THE ADDITIONAL COMMENTS?

19 A HIGHLY RECOMMENDED CUSTODY ADVANCEMENT FOR THIS
20 INMATE.

21 Q NOW, IF I COULD REFER YOU TO DEFENDANT'S NUMBER 10. I
22 BELIEVE THAT'S THE SAME TYPE FORM?

23 A IT IS.

24 Q WHAT IS THE DATE ON THAT FORM?

25 A JULY 1ST, 91.

JERRY HYATT - DIRECT BY LITTLEJOHN

1 Q OKAY. AND WHAT DOES IT INDICATE ON THE COMMENTS
2 REGARDING ADJUSTMENT?

3 A STONE HAS BEEN A MODEL INMATE DURING HIS TEN MONTHS
4 AT S C C C. HE HAS HAD NO DISCIPLINARY ACTIONS AGAINST
5 HIM. HAS WORKED DILIGENTLY, ATTENDS ALL REQUIRED CLASSES.

6 Q OKAY.

7 A AND HIGHLY RECOMMEND CUSTODY ADVANCEMENT.

8 Q ALL RIGHT, SIR. AND THE LAST DOCUMENT, DEFENDANT'S
9 EXHIBIT NUMBER 11. WHAT IS THE DATE ON THE -- FIRST OFF,
10 IS THAT THE SAME TYPE DOCUMENT?

11 A IT IS, YEAH.

12 Q WHAT IS THE DATE?

13 A DECEMBER 4, 91.

14 Q AND WHAT DOES IT INDICATE ON THE COMMENTS REGARDING
15 ADJUSTMENT?

16 A MR. STONE HAS MADE EXCELLENT PROGRESS WITHIN THE LAST
17 SIX MONTHS AND HAS NO DISCIPLINARY PROBLEMS, IS A HARD
18 WORKER AND WE HEAVILY RECOMMEND HIS CUSTODY LEVEL
19 ADVANCEMENT AND ALL PORTION SIMILARLY HIGHLY RECOMMENDED
20 FOR ADVANCEMENT TO A O 2.

21 Q OKAY. NOW, MR. HYATT, I SHOW YOU THIS DOCUMENT AND
22 ASK YOU IF THAT WAS CONTAINED IN MR. STONE'S FILE THERE AT
23 THE SUMTER COUNTY CORRECTIONAL CENTER.

24 A THIS MAY OR MAY NOT HAVE BEEN A PORTION OF HIS
25 RECORD. I DO NOT KNOW THAT.

JERRY HYATT - DIRECT BY LITTLEJOHN

1 Q DO YOU RECOGNIZE THE DOCUMENT IN THE PICTURES?

2 A I DO.

3 Q AND ARE YOU FAMILIAR WITH THE INCIDENTS THAT IT
4 DEPICTS?

5 A I AM.

6 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME I MOVE TO
7 INTRODUCE THIS AS DEFENDANT'S EXHIBIT 12.

8 THE COURT: ANY OBJECTION?

9 MR. KOLB: NO OBJECTION.

10 THE COURT: VERY WELL DEFENDANT'S EXHIBIT 12, A ONE
11 PAGE DOCUMENT, INTO EVIDENCE WITHOUT OBJECTION.

12 (DEFENDANT'S EXHIBIT NO. 12 MARKED FOR
13 EVIDENCE).

14 (WHEREUPON QUESTIONING RESUMED).

15 Q MR. HYATT, I SHOW YOU WHAT HAS NOW BEEN MARKED
16 DEFENDANT'S EXHIBIT 12. WOULD YOU TELL US WHAT EVENT THIS
17 DOCUMENT AND THE TWO PICTURES MEMORIALIZE?

18 A OKAY. PRIOR TO OCTOBER 24TH 1992, ONE OF THE
19 EMPLOYEES AT THE SUMTER COUNTY CORRECTIONAL CENTER HAD A
20 NIECE WHO WAS DIAGNOSED WITH A TERMINAL ILLNESS.

21 MY RECOLLECTION WAS THAT I THINK SHE HAD A BRAIN
22 TUMOR AND IT WAS CANCER.

23 Q OKAY. SOMETIME AROUND OCTOBER THE 24TH 1992 WHILE
24 BOBBY STONE WAS IN CUSTODY AT THE CORRECTIONAL CENTER AT
25 OUR CENTRAL FACILITY HE ORGANIZED A POOL TOURNAMENT THAT

JERRY HYATT - DIRECT BY LITTLEJOHN

1 WAS HELD AMONG THE INMATES AND RAISED SOME MONEY FOR THAT
2 CHILD.

3 AND THIS DOCUMENT IS A THANK YOU NOTE WHERE THE
4 AUNT HAD RECEIVED THE MONEY AND TOLD HIM THANK YOU FOR
5 DOING IT.

6 Q OKAY. NOTICE THE FIRST PICTURE IS RATHER DARK, BUT
7 DOES THAT DEPICT BOBBY STONE?

8 A IT'S BOBBY STONE, JAN BERRY AND MYSELF.

9 Q ALL RIGHT. WHAT WAS THE OCCASION FOR THIS PICTURE TO
10 BE MADE?

11 A THAT WAS WHEN BOBBY WAS -- PRESENTED JAN BERRY WITH
12 THE BENEFITS OF THE TOURNAMENT. I DON'T REMEMBER RECALLING
13 IT OR THE AMOUNT.

14 MR. LITTLEJOHN: YOUR HONOR, MAY I PUBLISH THAT?

15 THE COURT: YOU MAY.

16 MR. LITTLEJOHN: MR. HYATT, PLEASE ANSWER ANY
17 QUESTIONS THE SOLICITOR MAY HAVE.

18 THE COURT: YOU MAY CROSS-EXAMINE.

19 CROSS-EXAMINATION BY MR. KOLB:

20 Q MR. HYATT, YOU USED TO BE A DEPUTY SHERIFF?

21 A I WAS.

22 Q WHAT YEAR WAS THAT?

23 A FROM 19 -- AUGUST THE 17TH, 1971, I BELIEVE, TO
24 JANUARY THE 6TH, 1981.

25 Q AND AFTER THAT HOW DID YOU BECOME EMPLOYED?

JERRY HYATT - CROSS BY KOLB

1 A ON JANUARY THE 6TH ABOUT NOON, 1981, I TOOK THE
2 POSITION AS THE CHIEF SAFETY SECURITY OFFICER AT SUMTER
3 COUNTY CORRECTIONAL CENTER.

4 Q AND ULTIMATELY YOU BECAME HEAD OF THE SUMTER COUNTY
5 JAIL?

6 A I DID.

7 Q ALL RIGHT. AND WHEN DID YOU BECOME THE REGIONAL
8 DIRECTOR?

9 A WELL, IT WAS THE INTERIM FOR A GOOD WHILE. I THINK IT
10 WAS THE FIRST PART OF 93.

11 Q ALL RIGHT, SIR. AND ON THESE EVALUATIONS THAT WERE
12 PUT IN EVIDENCE, AS DEFENDANT'S EXHIBITS 8, 9, 10 AND 11,
13 WERE THOSE SIGNED BY YOU OR WHO SIGNED THEM?

14 A ONE WAS SIGNED ON MY BEHALF AND THE OTHER WAS SIGNED
15 BY BRENDA DISHER.

16 Q AND BRENDA DISHER IS YOUR WIFE?

17 A YES, SHE IS.

18 Q AND ACTUALLY WHEN YOU CEASED OR WERE PROMOTED TO THE
19 REGIONAL JAIL DIRECTOR, NO LONGER DIRECTOR OF SUMTER
20 COUNTY JAIL, ACTUALLY YOUR WIFE BECAME THE DIRECTOR OF THE
21 SUMTER COUNTY JAIL?

22 A WE WEREN'T MARRIED THEN.

23 Q WELL YOU WERE DATING. MIGHT AS WELL HAVE---.

24 MR. LITTLEJOHN: I'M GOING TO OBJECT TO THIS AS BEING
25 IRRELEVANT.

JERRY HYATT - CROSS BY KOLB

1 THE COURT: I DON'T KNOW WHETHER -- LETS GET TO THE
2 POINT, SOLICITOR, PLEASE.

3 MR. KOLB: EXPLORING BIAS, YOUR HONOR.

4 THE COURT: SIR?

5 MR. KOLB: EXPLORING BIAS.

6 THE COURT: APPROACH, PLEASE.

7 (WHEREUPON A BENCH CONFERENCE WAS HELD).

8 (WHEREUPON QUESTIONING RESUMED).

9 Q MR. HYATT, AT THE SUMTER -- GO ON TO A DIFFERENT LINE
10 OVER INQUIRY AT THIS TIME. AT THE SUMTER COUNTY JAIL, DO
11 POLICE OFFICERS COME IN THERE?

12 A YES, THEY DO.

13 Q AND WHAT ARE THE OCCASIONS FOR POLICE OFFICERS TO
14 COME IN THERE?

15 A LAW ENFORCEMENT OFFICERS BRING PRISONERS RECENTLY
16 ARRESTED TO THE FACILITY. THEY ALSO PICK UP PRISONERS,
17 CARRYING TO COURT, BRING THEM BACK TO COURT UP HERE.

18 MANY OTHER OCCASIONS THEY COME AND VISIT THE
19 MAGISTRATE AND SOMETIMES THEY CALL -- COME WHEN WE CALL
20 THEM ASK FOR ASSISTANCE.

21 Q OKAY. AND PERSONS, OF COURSE, ALL OF YOUR EMPLOYEES
22 AT THE JAIL, THE CORRECTIONAL OFFICERS, SEE AND DEAL WITH
23 POLICE OFFICERS -- WELL, FELLOW POLICE OFFICERS, ON A DAY
24 TO DAY BASIS; IS THAT CORRECT?

25 A THEY DO.

JERRY HYATT - CROSS BY KOLB

1 Q ALL RIGHT. NOW, PRISONERS OR INMATES THAT BECOME
2 TRUSTEES, ISN'T IT A FACT THAT THEY ARE GIVEN ASSIGNMENTS
3 THAT BASICALLY THEY TAKE THE PLACE OF JAIL EMPLOYEES AND
4 DO SOME OF THE DUTIES THAT THE JAIL EMPLOYEES WOULD
5 OTHERWISE DO?

6 A BECAUSE OF BUDGETARY RESTRAINTS IN SUMTER COUNTY WE
7 HAVE USED INMATES IN MANY POSITIONS EVER SINCE -- WELL, MY
8 KNOWLEDGE AT THE JAIL IN 1970'S SIR.

9 Q OKAY. SO PERSONS THAT ARE -- THAT SPEND A LOT OF TIME
10 AT THE SUMTER COUNTY JAIL AND BE THE SAME IN ANY OTHER
11 JAIL -- THAT ARE EMPLOYEES THERE OR THAT ARE TRUSTEES
12 THERE OR EVEN THE PRISONERS -- NOT TRUSTEES THERE --
13 BECOME FAMILIAR WITH POLICE OFFICERS AND THINGS ABOUT
14 POLICE OFFICERS?

15 A I BELIEVE THEY DO.

16 Q ALL RIGHT. NOW, ARE YOU AWARE THAT PATROL AND UNIFORM
17 DEPUTIES IN SUMTER COUNTY WEAR BULLET PROOF VESTS UNDER
18 THEIR UNIFORM SHIRTS?

19 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO
20 OBJECT TO THIS.

21 THE COURT: SUSTAINED.

22 MR. KOLB: YOUR HONOR, COULD I APPROACH ON THAT?
23 THINK THAT'S HIGHLY RELEVANT.

24 THE COURT: YES, SIR.

25 (WHEREUPON A BENCH CONFERENCE WAS HELD).

JERRY HYATT - CROSS BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q MR. HYATT, ISN'T IT A FACT THAT PERSONS WORKING WITH
3 THE -- AT THE SUMTER COUNTY CORRECTIONAL CENTER IN
4 POSITIONS OF TRUSTEES LIKE BOBBY WAYNE STONE WOULD HAVE
5 KNOWLEDGE OF WHAT POLICE OFFICERS WEAR UNDER THEIR
6 UNIFORM, THE BULLET PROOF VEST?

7 A IT'S POSSIBLE.

8 Q ALL RIGHT. AND DIDN'T IN FACT BOBBY STONE HAVE THAT
9 KNOWLEDGE?

10 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO
11 OBJECT.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q HAVE THAT MUCH CONTACT WITH POLICE OFFICERS?

14 THE COURT: LAY THE FOUNDATION FOR THAT BECAUSE AT
15 THIS POINT YOU HAVE NOT LAID A FOUNDATION UNDER RULE 602.
16 I DON'T KNOW HOW YOU COULD ANSWER THAT QUESTION UNLESS YOU
17 CAN ESTABLISH HIS PRIOR KNOWLEDGE. SUSTAINED.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q WOULD IT BE GENERAL KNOWLEDGE BY PERSONS WORKING AT
20 THE SUMTER COUNTY CORRECTIONAL CENTER THAT PATROL OFFICERS
21 WEAR BULLET PROOF VESTS?

22 MR. LITTLEJOHN: YOUR HONOR, I OBJECT.

23 THE COURT: SUSTAINED. MOVE ON, MR. SOLICITOR.

24 MR. KOLB: CAN I ASK IF HE TALKED TO MR. STONE?

25 THE COURT: MR. SOLICITOR, MOVE ON. YOU CAN ASK HIM

JERRY HYATT - CROSS BY KOLB

1 ANY QUESTION YOU WANT ABOUT HIS KNOWLEDGE AND ABOUT MR.
2 STONE.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q DID YOU EVER DISCUSS OR BEEN PRESENT WITH MR. STONE
5 WHEN A POLICE OFFICER WAS OBSERVED TO BE WEARING A BULLET
6 PROOF VEST UNDER HIS UNIFORM OR DISCUSSED THAT WITH MR.
7 STONE?

8 A I NEVER DISCUSSED IT WITH MR. STONE. I DON'T EVER
9 RECALL HAVING A CONVERSATION WITH MR. STONE AND A UNIFORM
10 OFFICER.

11 Q ALL RIGHT.

12 A I DON'T RECALL THAT.

13 Q AND HAVE YOU EVER BEEN PRESENT -- OR MR. STONE WAS
14 PRESENT -- A UNIFORM OFFICER OBSERVED TO BE WEARING, AS
15 ALL OF THEM DO, BULLET PROOF VESTS?

16 A MR. STONE USED TO WORK IN THE FRONT OFFICE AND ALL
17 THE OFFICERS COME IN AND OUT OF THERE TO THE MAGISTRATE
18 OFFICE, HE WAS FAMILIAR WITH THEM.

19 Q ALL RIGHT, SIR. THANK YOU. NOW, HOW LONG WAS MR.
20 STONE AN INMATE AT THE SUMTER COUNTY JAIL?

21 A I DON'T HAVE THOSE RECORDS. IF YOU -- SOMEBODY HAS
22 THEM HERE, I WILL BE GLAD TO TELL YOU. I DON'T KNOW.

23 Q HE WAS SENTENCED IN DECEMBER, THIS LAST SENTENCE WAS
24 DECEMBER OF 1987. ISN'T IT A FACT THAT ABOUT A YEAR TO A
25 YEAR AND A HALF LATER THAT YOU OBTAINED HIS TRANSFER HERE

JERRY HYATT - CROSS BY KOLB

1 TO SUMTER COUNTY?

2 A WELL, I WOULD THINK THAT HIS TRANSFER WAS SOMEWHERE
3 PRIOR TO THIS SIX MONTHS OR THEREABOUTS PRIOR TO NOVEMBER
4 OF 90.

5 Q ALL RIGHT. SO JUNE OR JULY OF 1989?

6 A SIX MONTHS PRIOR TO NOVEMBER, MR. KOLB, WOULD BE JULY
7 OF 90; WOULDN'T IT?

8 Q ALL RIGHT.

9 A SO I DON'T KNOW. I WOULD THINK THAT IF YOU FILLED
10 THESE OUT EVERY SIX MONTHS AND THIS WAS THE FIRST ONE THAT
11 YOU HAD, THAT IT WOULD BE AROUND THAT TIME.

12 Q ALL RIGHT. WELL, WASN'T HE IN THE JAIL UNTIL JUNE THE
13 9TH 1993 WHEN HE WAS PAROLED?

14 A HE WAS AT THE FACILITY TWO TIMES AND HE WAS THERE I
15 THINK WHEN HE WAS PAROLED.

16 Q AND YOU DON'T HAVE ANOTHER EVALUATION AFTER OCTOBER
17 24, 92?

18 A I DON'T. I DIDN'T ACCUMULATE THESE RECORDS. I DON'T
19 KNOW IF THERE ARE ANY THERE OR NOT. DEPARTMENT OF
20 CORRECTIONS COULD HAVE CHANGED THEIR POLICY AND KEPT THESE
21 IN THE WARDEN'S JACKET.

22 Q WELL MR. HYATT, DIDN'T YOU IN FACT TESTIFY BEFORE THE
23 PAROLE BOARD TO HELP ATTAIN HIS RELEASE ON PAROLE IN 1993?

24 A I BELIEVE I TESTIFIED AT HIS PAROLE HEARING.

25 Q AND DIDN'T YOU HAVE A PREDOMINANT ROLE IN GETTING HIM

JERRY HYATT - CROSS BY KOLB

1 TRANSFERRED TO SUMTER COUNTY JAIL INITIALLY?

2 A YEAH. EVERY PERSON THAT WAS TRANSFERRED TO SUMTER
3 COUNTY WHILE DIRECTOR I APPROVED.

4 Q ALL RIGHT, SIR. AND ISN'T IT A FACT THAT AT THE TIME
5 HE WAS SENTENCED, TWO OTHER CO-DEFENDANTS GOT THE EXACT
6 SENTENCE AND THEY ARE STILL IN PRISON TODAY?

7 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO
8 THIS. THIS IS...:

9 THE COURT: SUSTAINED.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q MR. HYATT, ISN'T IT A FACT BOBBY STONE'S MOTHER AND
12 YOUR MOTHER WERE BEST OF FRIENDS?

13 A NO, SIR.

14 Q DID BOBBY STONE'S MOTHER TAKE CARE OF YOUR MOTHER IN
15 A SEVERE ILLNESS?

16 A SHE DID.

17 Q COULD YOU TELL US ABOUT THAT?

18 A MY MOTHER---.

19 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT
20 AGAIN. THIS HAS NO RELEVANCE.

21 THE COURT: I WILL ALLOW LIMITED QUESTIONING ALONG
22 THESE LINES. OVERRULED.

23 WITNESS: MY MOTHER WAS VERY ILL, BED RIDDEN FOR OVER
24 TEN YEARS. AND DURING THE SOME OF THOSE YEARS -- AND I
25 DON'T RECALL HOW LONG -- BOBBY WAYNE STONE'S MOTHER CARED

JERRY HYATT - CROSS BY KOLB

1 FOR HER I THINK IT WAS DURING THE DAY.

2 AND PRIOR TO HUGO -- I KNOW -- REMEMBER HUGO.
3 SHE WAS STILL NOT THERE BECAUSE WE HAD ANOTHER PHYSICAL
4 PROBLEM IN THE FAMILY CAME UP AT TIMES. AND I KNOW THAT
5 SHE WAS NOT EMPLOYED THEN, BUT SHE WAS EMPLOYED BY MY
6 FAMILY.

7 Q ALL RIGHT. AND AS A RESULT OF THAT RELATIONSHIP,
8 BOBBY STONE AND HIS FAMILY CONTACTED YOU AND PREVAILED
9 (SIC) UPON YOU TO ASSIST HIM TO BE TRANSFERRED FROM THE
10 STATE PRISON TO THE SUMTER COUNTY JAIL TO SERVE HIS TIME?

11 A NO. HIS MOTHER CONTACTED ME AND ASKED ME TO CONSIDER
12 TRANSFERRING HIM HERE.

13 Q ALL RIGHT. DID -- AND YOU ARE TELLING ME THAT THE
14 FAMILIES OF THE OTHER TWO CO-DEFENDANTS WOULDN'T HAVE BEEN
15 HAPPY TO HAVE YOU TRANSFER THEM OVER TO SUMTER ALSO?

16 MR. LITTLEJOHN: I OBJECT.

17 THE COURT: SUSTAIN THE OBJECTION, MR. SOLICITOR.
18 NOT GOING TO ALLOW THAT QUESTION. DON'T YOU ASK IT AGAIN.

19 MR. KOLB: YOUR HONOR, COULD WE APPROACH?

20 (WHEREUPON A BENCH CONFERENCE WAS HELD).

21 (WHEREUPON QUESTIONING RESUMED).

22 MR. KOLB: NOTHING FURTHER.

23 THE COURT: THANK YOU, SIR. REDIRECT?

24 MR. LITTLEJOHN: NO, YOUR HONOR. THANK YOU.

25 THE COURT: YOU MAY COME DOWN, SIR.

JERRY HYATT - CROSS BY KOLB

1 WITNESS: CAN I BE EXCUSED?

2 THE COURT: ANY OBJECTION?

3 MR. LITTLEJOHN: NO, SIR.

4 THE COURT: ANY OBJECTION FROM THE STATE?

5 MR. KOLB: NO, SIR.

6 THE COURT: YOU CAN BE EXCUSED. THANK YOU.

7 (WHEREUPON THE WITNESS LEFT THE STAND).

8 THE COURT: CALL YOUR NEXT WITNESS.

9 MR. LITTLEJOHN: INDULGE ME A SECOND, YOUR HONOR.

10 THE COURT: LETS THE JURY GO TO THE JURY ROOM. LADIES
11 AND GENTLEMEN, I'M GOING TO LET YOU TAKE A BREAK AND GO TO
12 YOUR JURY ROOM.

13 DO NOT DISCUSS THIS CASE AMONG YOURSELVES. DO
14 NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION WHATSOEVER. BE
15 WITH YOU IN A FEW MOMENTS.

16 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:20
17 P.M.).

18 THE COURT: ANY ADDITIONAL WITNESSES?

19 MR. LITTLEJOHN: DON'T HAVE ANY ADDITIONAL
20 WITNESSES. WE'VE BEEN CONSULTING WITH MR. STONE ABOUT HIS
21 RIGHT TO TESTIFY.

22 THE COURT: THAT'S PRECISELY WHY I WANTED TO EXPLORE
23 THAT WITH MR. STONE AT THIS POINT. SO THERE WILL BE NO
24 ADDITIONAL WITNESSES IN THIS MATTER?

25 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: MR. STONE, MUCH AS WE DID THE OTHER DAY,
2 YOU HAVE HAD AN OPPORTUNITY TO DISCUSS YOUR RIGHT TO
3 TESTIFY WITH YOUR LAWYERS; IS THAT CORRECT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: THEY HAVE ADVISED YOU RELATIVE TO THAT;
6 HAVE THEY NOT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: AND YOU FULLY UNDERSTAND YOUR RIGHTS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: YOU HAVE INDICATEED IN THE LAST
11 PROCEEDING THAT YOU -- THEY EXPLAINED TO YOU YOUR
12 RIGHT TO TESTIFY AND YOUR RIGHT NOT TO TESTIFY.

13 THE DEFENDANT: YES, SIR.

14 THE COURT: YOU UNDERSTAND THAT SAME PROCESS COULD BE
15 AND WILL BE FOLLOWED HERE AND YOU HAVE THE RIGHT TO
16 TESTIFY IF YOU CHOOSE TO. OF COURSE YOU BE SUBJECT TO
17 CROSS-EXAMINATION. BUT IF YOU CHOOSE NOT TO THEN I'M SURE
18 THEY HAVE ADVISED YOU AND I WILL INSTRUCT THE JURY THAT
19 THEY CANNOT USE THAT AGAINST YOU; IS THAT CORRECT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO THINK
22 ABOUT IT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: AND ARE YOU UNDER ANY UNDUE PRESSURE OR
25 ANYTHING THAT'S AFFECTING YOUR ABILITY TO MAKE ANY

1 DECISIONS HERE TODAY?

2 THE DEFENDANT: NO, SIR.

3 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY DRUGS
4 OR ANY MEDICATION OR ANY ALCOHOL?

5 THE DEFENDANT: NO, SIR.

6 THE COURT: HAVE YOU CONSUMED ANY ALCOHOL OR TAKEN
7 ANY DRUGS IN THE LAST TWENTY-FOUR HOURS?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: ARE YOU SATISFIED WITH THE MANNER IN
10 WHICH YOUR ATTORNEYS HAVE ADVISED YOU?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: THEN FULLY UNDERSTANDING YOUR RIGHTS,
13 INDICATING TO THE COURT YO'RE NOT UNDER ANY UNDUE
14 PRESSURE, WHAT IS YOUR DECISION?

15 THE DEFENDANT: I WILL NOT BE TESTIFYING.

16 THE COURT: YOU WILL NOT BE TESTIFYING?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: DO YOU KNOW OF ANYTHING, ANY PRESSURE,
19 THAT IS FORCING YOU TO THAT OR IS THAT YOUR DECISION?

20 THE DEFENDANT: MY DECISION.

21 THE COURT: FREELY AND VOLUNTARILY MADE?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: THANK YOU VERY MUCH, SIR. AND YOU ARE
24 SATISFIED WITH YOUR LAWYERS?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: THANK YOU. LET THE RECORD REFLECT I HAVE
2 EXAMINED MR. STONE RELATIVE TO HIS RIGHT TO TESTIFY IN
3 THIS PROCEEDING. HE HAS ADVISED THE COURT THAT HE
4 UNDERSTANDS HIS RIGHTS.

5 HE HAS HAD AN OPPORTUNITY TO CONFER WITH
6 COUNSEL, COUNSEL FOR WHOM HE HAS INDICATED HE IS TOTALLY
7 SATISFIED. FIND THAT HE HAS KNOWINGLY, VOLUNTARILY, FREELY
8 AND VOLUNTARILY WAIVED HIS RIGHT TO TESTIFY IN THIS
9 MATTER.

10 THANK YOU VERY MUCH. ALL RIGHT. IS THE THE STATE
11 GOING TO HAVE REPLY WITNESSES?

12 MR. KOLB: TWO.

13 THE COURT: TWO? OKAY. ARE YOU READY TO GO WHEN I
14 BRING THEM BACK?

15 MR. KOLB: YOUR HONOR, WE ARE READY TO GO.

16 THE COURT: THANK YOU, SIR. ALL RIGHT. LETS BRING THE
17 JURY BACK.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
19 3:24 P.M.)

20 THE COURT: THANK YOU, MR. RAY. THANK YOU, LADIES AND
21 GENTLEMEN. READY TO CONTINUE.

22 MR. KOLB: YOUR HONOR, WE CALL...

23 THE COURT: JUST ONE SECOND. ANY FURTHER WITNESSES
24 FOR THE DEFENSE?

25 MR. LITTLEJOHN: NO, YOUR HONOR. THAT WOULD BE THE

1 DEFENSES PRESENTATION.

2 THE COURT: VERY WELL. ANY REPLY TESTIMONY MR.
3 SOLICITOR?

4 MR. KOLB: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. YOU MAY CALL YOUR FIRST
6 WITNESS. DENISE LEWIS

7 DENISE LEWIS, BEING FIRST DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. KOLB:

10 Q GIVES YOUR NAME, PLEASE.

11 A DENISE LEWIS.

12 Q AND MRS. LEWIS, DO YOU KNOW THE DEFENDANT IN THIS
13 CASE, BOBBY WAYNE STONE?

14 A YES.

15 Q AND HOW OLD WERE YOU IN RELATION TO HIM?

16 A HOW OLD WAS HE AND I -- A YEAR DIFFERENCE. I'M
17 THIRTY-TWO. HE IS THIRTY-ONE.

18 Q OKAY. DID YOU LIVE IN THE SAME NEIGHBORHOOD AROUND
19 BELK AND RAVENEL STREET OFF BOULEVARD ROAD?

20 A I GREW UP ON BELK.

21 Q AND THAT WAS BETWEEN -- WHAT AGES WERE YOU?

22 A I LIVED THERE SINCE I WAS THREE UP TILL FIFTEEN.

23 Q ALL RIGHT. AND WHAT WAS YOUR RELATIONSHIP TO THE
24 STONE FAMILY?

25 A BOBBY WAYNE'S YOUNGEST SISTER TAMMY, SHE AND I WERE

DENISE LEWIS - DIRECT BY KOLB

1 FRIENDS ALONG WITH MILES GIRLS AS WELL.

2 Q THE MILES GIRLS WERE YOUR FRIENDS, TOO?

3 A YES.

4 Q IS ONE OF THE MILES GIRLS STILL ONE OF YOUR BEST
5 FRIENDS?

6 A SYLVIA.

7 Q ALL RIGHT. AND SO SHE'S STILL ONE OF YOUR BEST
8 FRIENDS?

9 A YES.

10 Q DID YOU SPEND -- LIVING IN THAT NEIGHBORHOOD, DID YOU
11 SPEND TIME IN THAT NEIGHBORHOOD IN THE HOMES OF THE STONES
12 AND THE MILES?

13 A YES, I DID.

14 Q ALL RIGHT. DO YOU KNOW ANYTHING ABOUT PEOPLE BEING
15 ABUSED OVER THERE?

16 A I HAVE NEVER -- I HAVE NEVER SEEN ANYONE BE ABUSED
17 BEFORE.

18 Q ALL RIGHT. YOU KNOW ANYTHING ABOUT THE GIRLS BEING
19 MOLESTED?

20 A NO. I HAVE NOT.

21 Q WERE YOU EVER MOLESTED WHEN YOU WERE OVER THERE?

22 A NO. I WAS NOT.

23 Q DID ANY OF THEM EVER TELL YOU ANYTHING ABOUT BEING
24 MOLESTED?

25 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO

DENISE LEWIS - DIRECT BY KOLB

1 THAT.

2 THE COURT: SUSTAINED. HEARSAY.

3 MR. KOLB: YOUR HONOR, COULD WE APPROACH?

4 THE COURT: YOU MAY.

5 (WHEREUPON A BENCH CONFERENCE WAS HELD).

6 THE COURT: LADIES AND GENTLEMEN, I NEED FOR YOU TO
7 GO TO THE JURY ROOM. DO NOT -- THERE'S A MATTER OF LAW I
8 NEED THE TAKE UP. DO NOT DISCUSS THE CASE AMONG YOURSELF
9 WHATSOEVER.

10 (WHEREUPON THE JURY LEFT THE COURTROOM).

11 THE COURT: YES, SIR.

12 MR. KOLB: YOUR HONOR, THIS WOULD BE NECESSARY
13 REASONS TO -- OR IN REPLY TO THE DEFENSE TESTIMONY WHERE
14 MRS. OEHLER GAVE EXTENSIVE HEARSAY TESTIMONY ABOUT
15 BASICALLY ACCUSING WESLEY EUGENE MILES OF MURDER AND
16 MOLESTING SEVERAL GIRLS AND SHOOTING GUNS---.

17 THE COURT: MR. SOLICITOR, I'M FAMILIAR WHAT IT'S IN
18 REPLY TO. IT'S IN REPLY TO HER TESTIMONY BECAUSE YOU
19 ASKED QUESTIONS ALREADY THAT HAVE NOT BEEN OBJECTED TO
20 THAT WERE PROPER AND THOSE QUESTIONS ARE DID YOU EVER SEE
21 ANYTHING, DID ANY ONE EVER TALK TO YOU ABOUT THOSE.

22 THOSE QUESTIONS ARE IN THE RECORD AND HAVE BEEN
23 ANSWERED. YOU ARE NOW ASKING SPECIFICALLY WHAT SOMEONE
24 SAID OR DIDN'T SAY. IT'S AN OUT OF COURT UTTERANCE. THERE
25 IS AN EXCEPTION TO THAT WITH RESPECT TO CRIMINAL SEXUAL

DENISE LEWIS - DIRECT BY KOLB

1 CONDUCT AND IT'S FOUND IN 801 D 1 WHERE IT TALKS ABOUT --
2 YES, IT IS AN EXCEPTION.

3 AND SO FAR AS IT'S NOT DEFINED AS HEARSAY, IT'S
4 SPECIFIC AS TO TIME AND PLACE. OTHER THAN THAT THE CASES
5 ARE ABSOLUTELY MY ARMS LENGTH SUSTAINING THAT IT'S
6 OTHERWISE HEARSAY.

7 MR. KOLB: JUDGE, IF I CAN ASK HER DID ANYONE -- ANY
8 OF THOSE GIRLS, ANYONE OVER THERE EVER TALK TO YOU ABOUT
9 BEING MOLESTED OR TALK TO YOU ABOUT GUNS BEING FIRED.
10 THAT'S ALL I WANT TO ASK HER.

11 THE COURT: YOU ALREADY ASKED THAT QUESTION. IT'S
12 ASKED AND ANSWERED. SHE SAID NO. YOU ASKED IF -- YOU HEARD
13 ANYTHING ABOUT ANYBODY BEING MOLESTED AND WERE YOU? AND
14 HER ANSWER WAS NO, SO YOU HAVE ASKED AND ANSWERED THAT
15 QUESTION.

16 MR. KOLB: JUDGE, I BELIEVE I ASKED HAD SHE EVER BEEN
17 MOLESTED SHE SAID NO. THEN I SAID ARE -- HAVE YOU EVER
18 HEARD ANYTHING ABOUT ANYBODY ELSE BEING MOLESTED AND THEY
19 OBJECTED AND YOU SUSTAINED IT. SO THE JURY WOULDN'T BE
20 ABLE TO CONSIDER IT.

21 THE COURT: NO, SIR.

22 MR. KOLB: THAT'S THE REASON I ASKED TO APPROACH.

23 THE COURT: WE CAN READ IT BACK. IF YOU WANT TO
24 RE-ASK HAVE YOU EVER HEARD ANYBODY---.

25 MR. KOLB: THANK YOU.

DENISE LEWIS - DIRECT BY KOLB

1 THE COURT: -- EVER SEEN ANYBODY BEING MOLESTED.

2 MR. KOLB: SORRY TO UPSET THE COURT.

3 THE COURT: YOU ARE NOT UPSETTING---.

4 MR. KOLB: VERY IMPORTANT. I WANTED TO MAKE IT CLEAR
5 AND THIS HAS HELPED ME NOW TO CLARIFY THAT. I REALLY DON'T
6 THINK I HAD GOTTEN THAT IN THE RECORD AND I APOLOGIZE IF I
7 HAD.

8 THAT WAS MY UNDERSTANDING IS THAT WHEN I ASKED
9 THAT QUESTION, THEY OBJECTED AND YOU SUSTAINED IT AND
10 ASKED THE JURY TO DISREGARD.

11 THE COURT: YOU ASKED A SPECIFIC QUESTION ABOUT
12 SOMEBODY TELLING -- THAT'S WHEN THEY OBJECTED.

13 MR. KOLB: ALL RIGHT, SIR. THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU, SIR. YOU WANT TO GO AHEAD AND
15 PROFFER THE TESTIMONY?

16 MR. KOLB: YES, SIR .

17 THE COURT: SO WE WON'T HAVE A PROBLEM.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q MRS. LEWIS, HAVE YOU EVER HEARD ANYTHING FROM THE
20 PERSONS STONE AND MILES HOUSEHOLDS ABOUT BEING MOLESTED?

21 A NO, SIR.

22 Q HAVE YOU EVER HEARD ANYTHING ABOUT MR. MILES SHOOTING
23 GUNS?

24 A NO, SIR.

25 Q THANK YOU, YOUR HONOR.

DENISE LEWIS - DIRECT BY KOLB

1 THE COURT: ARE YOU OBJECTING TO THE QUESTION ABOUT
2 EVER HEARD ANYTHING?

3 MR. LITTLEJOHN: YES, YOUR HONOR.

4 THE COURT: AND YOUR OBJECTION BEING IT'S HEARSAY?

5 MR. LITTLEJOHN: YOUR HONOR, IT'S HEARSAY AND IT'S
6 NOT -- YES, SIR. IT'S HEARSAY FIRST OFF. THAT'S MY
7 OBJECTION. HE'S ASKING FOR THIS WITNESS TO STATE WHAT AN
8 OUT OF COURT DECLARANT SAID TO HER.

9 THE COURT: YOU THINK IT'S BEING OFFERED FOR THE
10 TRUTH OF THE MATTER ASSERTED?

11 MR. LITTLEJOHN: OBVIOUSLY. THAT'S WHY HE WANTS TO
12 ADMIT IT. NOT AGREEING THAT IT'S TRUTHFUL.

13 THE COURT: OF COURSE. I UNDERSTAND THAT. ALL RIGHT.
14 I'M GOING TO ALLOW THE TESTIMONY FOR THE REASON THAT I
15 FIND THIS WITNESS HAS TESTIFIED PREVIOUSLY.

16 SHE HAS ALREADY BEEN ON THE WITNESS STAND
17 SUBJECT TO DIRECT EXAMINATION AND CROSS-EXAMINATION ALL OF
18 THE WITNESSES WITH RESPECT TO ANYBODY IN THE HOUSEHOLD.
19 YOU PUT UP EVERYONE; HAVE YOU NOT?

20 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK I PUT UP
21 EVERYONE WHO LIVED IN THE HOUSE, NO, SIR.

22 THE COURT: OKAY.

23 THE COURT: ALL RIGHT. MR. SOLICITOR, I'M NOT GOING
24 TO ALLOW THE QUESTION HAVE YOU HEARD ANYONE. IF YOU WANT
25 TO PHRASE IT TO THE QUESTION DOES SHE HAVE ANY PRIOR, ANY

DENISE LEWIS - DIRECT BY KOLB

1 KNOWLEDGE OF ANYONE TO THAT---.

2 MR. KOLB: ALL RIGHT, SIR.

3 THE COURT: --- OF HER OWN. ALL RIGHT. SO I SUSTAIN
4 THE OBJECTION TO THE QUESTION. THINK THE QUESTION DO YOU
5 HAVE ANY -- IT'S ALREADY IN THE RECORD BUT BE AS IT MAY I
6 WILL ALLOW IT ONE MORE TIME.

7 I SUSTAIN YOUR OBJECTION TO THE QUESTION HAVE
8 YOU HEARD ANYONE. AND SO FAR AS THE YOU CAN REPHRASE THE
9 QUESTION CONCERNING THE FIREARM USAGE AS WELL SINCE YOU'RE
10 GOING TO BE ASKING BOTH OF THEM. ALL RIGHT. LET'S BRING
11 THE JURY BACK.

12 (WHEREUPON THE JURY ENTERED THE COURTROOM).

13 THE COURT: READY TO CONTINUE. MR. SOLICITOR, YOU MAY
14 CONTINUE.

15 (WHEREUPON QUESTIONING BY KOLB RESUMED).

16 Q MRS. LEWIS, IN RESPONSE TO THE STONE AND MILES
17 HOUSEHOLDS WHERE YOU GIVEN US YOUR CONNECTION, DO YOU HAVE
18 ANY PREVIOUS KNOWLEDGE WHATSOEVER OF ANYONE BEING BEING
19 MOLESTED OR ABUSED?

20 A NO.

21 Q DO YOU HAVE ANY PREVIOUS KNOWLEDGE OF MR. MILES
22 SHOOTING GUNS?

23 A NO, SIR.

24 Q THANK YOU. IF YOU WOULD ANSWER ANY QUESTIONS THE
25 DEFENSE MAY HAVE?

DENISE LEWIS - DIRECT BY KOLB

1 THE COURT: YOU MAY CROSS-EXAMINE.

2 MR. LITTLEJOHN: WE DON'T HAVE ANY QUESTIONS, YOUR
3 HONOR.

4 THE COURT: THANK YOU. YOU MAY COME DOWN.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 MR. KOLB: YOUR HONOR WE CALL JOHN C DUNLAP, M.D.

7 THE COURT: ALL RIGHT.

8 DR. JOHN C. DUNLAP, BEING FIRST
9 DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE COURT: ONCE YOU POSITION YOURSELF, IF YOU WOULD
11 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

12 WITNESS: JOHN C DUNLAP, D U N L A P.

13 THE COURT: THANK YOU, SIR.

14 DIRECT EXAMINATION BY MR. KOLB:

15 Q DR. DUNLAP, WOULD YOU TELL US HOW YOU ARE EMPLOYED?

16 A I'M IN THE PRIVATE PRACTICE OF PSYCHIATRY IN
17 COLUMBIA.

18 Q COULD YOU TELL THE COURT AND LADIES AND GENTLEMEN OF
19 THE JURY ABOUT YOUR EDUCATION AND TRAINING AND EXPERIENCE
20 IN THAT FIELD.

21 A I GRADUATED FROM WOFFORD COLLEGE AND THE MEDICAL
22 UNIVERSITY IN CHARLESTON. INTERNSHIP AT COLUMBIA HOSPITAL.
23 RESIDENCY TRAINING AT THE MEDICAL UNIVERSITY HOSPITAL IN
24 CHARLESTON.

25 WAS A TEACHING FELLOW THERE FOR ONE YEAR. I HAVE

DR. JOHN DUNLAP - DIRECT BY KOLB

1 BEEN IN PRIVATE PRACTICE OF PSYCHIATRY SINCE 1969 IN
2 COLUMBIA, SOUTH CAROLINA. I SPENT EIGHT YEARS IN WHICH I
3 EXAMINED ALL PEOPLE CHARGED WITH MAJOR CRIMES FOR THE
4 STATE HOSPITAL AS A CONSULTANT.

5 Q THE STATE HOSPITAL AT THAT TIME WAS WHAT'S CALLED
6 WILLIAM S. HALL PSYCHIATRIC INSTITUTE NOW?

7 A IT'S A BRANCH OF THE SAME SYSTEM.

8 Q ALL RIGHT. AND SO ANYONE CHARGED WITH A MAJOR CRIME
9 AND THE COURT NEEDING TO KNOW THEIR COMPETENCE AND
10 CRIMINAL RESPONSIBILITY WOULD BE SENT TO YOU AS THE DOCTOR
11 THERE AT THE STATE HOSPITAL?

12 A YES, SIR.

13 Q AND HAVE YOU PREVIOUSLY TESTIFIED IN COURT AS AN
14 EXPERT IN THE FIELD OF PSYCHIATRY?

15 A I HAVE TESTIFIED IN PROBATE COURT, FAMILY COURT,
16 CIRCUIT COURT, FOR THE STATE SUPREME COURT AND FEDERAL
17 COURT.

18 Q ALL RIGHT.

19 MR. KOLB: YOUR HONOR, WE WOULD OFFER HIM TO THE
20 COURT AS AN EXPERT.

21 THE COURT: VERY WELL. CARE TO EXAMINE HIM?

22 MR. LITTLEJOHN: NO, YOUR HONOR.

23 THE COURT: VERY WELL. DR. DUNLAP, THE FIELD OF
24 PSYCHIATRY?

25 MR. KOLB: YES, SIR.

DR. JOHN DUNLAP - DIRECT BY KOLB

1 THE COURT: HE WILL BE ALLOWED TO RENDER OPINIONS IN
2 THE FIELD OF PSYCHIATRY AND THEIR SPECIALTY. YOU MAY
3 CONTINUE.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q DR. DUNLAP, DID YOU HAVE OCCASION TO CONDUCT AN
6 EXAMINATION OF THE DEFENDANT IN THIS CASE, BOBBY WAYNE
7 STONE?

8 A YES, I DID.

9 Q WHEN WAS THAT?

10 A ON THE 17TH OF JANUARY.

11 Q THAT WAS THE SAME DAY AS DR. MORGAN EXAMINED?

12 A THAT'S CORRECT.

13 Q AND HAVE YOU REVIEWED THE SAME RECORDS THAT DR.
14 MORGAN AND ALSO MRS. OEHLER HAD AVAILABLE TO THEM?

15 A WE HAVE ESSENTIALLY THE SAME RECORDS AVAILABLE.

16 Q ALL RIGHT. DR. MORGAN, DID YOU CONCLUDE WHETHER OR
17 NOT THE DEFENDANT HAS ANY MENTAL ILLNESS WHATSOEVER?

18 A I'M DR. DUNLAP.

19 Q EXCUSE ME. DR. DUNLAP. I'M GETTING TIRED. DR.
20 DUNLAP.

21 A I FOUND HIM TO HAVE NO MENTAL ILLNESS.

22 Q ALL RIGHT. AND WHAT DID YOU DETERMINE AS FAR AS HIS
23 COMPETENCY TO STAND TRIAL?

24 A THAT HE WAS COMPETENT TO STAND TRIAL.

25 Q AND DID YOU MAKE A DETERMINATION AS TO WHETHER HIS

DR. JOHN DUNLAP - DIRECT BY KOLB

1 CRIMINAL RESPONSIBILITY -- THAT IS HIS ABILITY TO
2 UNDERSTAND AND DIFFERENTIATE MORAL AND LEGAL RIGHT FROM
3 MORAL AND LEGAL WRONG ON OR ABOUT FEBRUARY THE 26TH 1996?

4 A IT'S MY UNDERSTANDING THAT THE COURT MAKES THAT
5 DECISION, BUT IT WAS MY RECOMMENDATION AND IT WAS MY
6 OPINION THAT---

7 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT.
8 THIS IS NOT AN ISSUE BEFORE THE COURT.

9 THE COURT: LETS MOVE ON, MR. SOLICITOR. NOT IN
10 REPLY.

11 MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

12 THE COURT: ANY QUESTIONS?

13 MR. LITTLEJOHN: NO, WE DON'T HAVE ANY QUESTIONS.

14 THE COURT: THANK YOU, DOCTOR. YOU MAY COME DOWN.

15 (WHEREUPON THE WITNESS LEFT THE STAND).

16 THE COURT: ANY ADDITIONAL WITNESS, MR. SOLICITOR?

17 MR. KOLB: NO, SIR. COULD HE BE EXCUSED?

18 THE COURT: ANY OBJECTION TO DR. DUNLAP---

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: THANK YOU, DR. DUNLAP. YOU ARE FREE TO
21 LEAVE, SIR.

22 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. THAT
23 WOULD CONCLUDE THE EVIDENTIARY PORTION OF THESE
24 PROCEEDINGS.

25 WE WILL NOW BE READY TO MOVE INTO THE THIRD

DR. JOHN DUNLAP - DIRECT BY KOLB

1 PORTION WHICH IS THE CLOSING ARGUMENTS THAT YOU HAVE HEARD
2 IN THE FIRST PHASE FOLLOWING THAT OF COURSE THEN I WILL
3 GIVE YOU INSTRUCTIONS ON THE LAW.

4 THERE'S SOME MATTERS I NEED TO TAKE UP OUT OF
5 YOUR PRESENCE AT THIS POINT. I WOULD ASK YOU TO PLEASE GO
6 TO YOUR JURY ROOM. PROBABLY BE MAYBE FIFTEEN OR TWENTY
7 MINUTES BEFORE WE WILL BE BACK WITH YOU.

8 SO IF YOU WANT TO RELAX, GET SOMETHING TO DRINK
9 AND WE WILL BE WITH YOU IN ABOUT HOPEFULLY FIFTEEN TO
10 TWENTY MINUTES OR THEREABOUTS. DO NOT BEGIN YOUR
11 DELIBERATIONS IN ANY FASHION HOWEVER. THANK YOU.

12 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:42
13 P.M.)

14 THE COURT: ANYTHING FROM THE STATE, SOLICITOR?

15 MR. KOLB: NO, SIR.

16 THE COURT: THANK YOU, SIR. FROM THE DEFENDANT?

17 MR. LITTLEJOHN: AT THIS TIME WE RENEW ALL OF OUR
18 PREVIOUSLY MADE MOTIONS FOR DIRECTED VERDICT PURSUANT TO
19 RULE NINETEEN ON GROUNDS PREVIOUSLY STATED.

20 THE COURT: I RENEW MY PREVIOUS RULINGS FOR THE
21 GROUNDS PREVIOUSLY STATED AS WELL. THANK YOU. LET ME
22 DISCUSS AT THIS PHASE SINCE WE ARE -- I WILL GIVE YOU A
23 BREAK NOW -- THINK YA'LL COULD DO IT IN ABOUT FIFTEEN
24 MINUTES OR SO?

25 LET'S BE BACK IN PLACE ABOUT BETWEEN 10 OF 4. I

DR. JOHN DUNLAP - DIRECT BY KOLB

1 HAVE 3:35. LETS BE BACK ABOUT 10, BETWEEN 10 OF 4 OR 5 OF
2 4. LET ME EXAMINE MR. STONE AT THIS POINT BECAUSE I -- LET
3 ME ASK YOU THIS, MR. SOLICITOR. IN THIS PHASE, HOW LONG DO
4 YOU ANTICIPATE YOUR CLOSING ARGUMENT?

5 MR. KOLB: JUDGE, I SAY THIRTY MINUTES TO AN HOUR.
6 MAY NOT BE LONGER THAN THIRTY MINUTES, BUT I JUST I HATE
7 TO BE CUT OFF.

8 THE COURT: I UNDERSTAND. BUT IF IT GETS TO BE AN
9 HOUR, THE COURT IS PROBABLY GOING TO CUT YOU OFF. ALL
10 RIGHT, SIR?

11 MR. KOLB: ALL RIGHT.

12 THE COURT: AND I APOLOGIZE TO YOU IN ADVANCE, BUT I
13 THINK YOU CAN -- I THINK YOU CAN SUM THIS UP IN THIRTY
14 MINUTES TIME. HOW LONG DO YOU ANTICIPATE YOU WILL NEED?

15 MR. LITTLEJOHN: YOUR HONOR, WE WOULD REQUEST TO BE
16 ALLOWED TO SPLIT OUR ARGUMENT.

17 THE COURT: ALL RIGHT.

18 MR. LITTLEJOHN: WOULDN'T THINK IT WOULD TAKE MORE
19 THAN THIRTY MINUTES.

20 THE COURT: ALL RIGHT. NOW, SIRS, HAVE YOU HAD AN
21 OPPORTUNITY TO DISCUSS WITH MR. STONE HIS RIGHT TO SPEAK
22 TO THIS JURY?

23 MR. LITTLEJOHN: I HAVE, YOUR HONOR.

24 THE COURT: HAS HE HAD AN OPPORTUNJITY AND MADE A
25 DECISION?

DR. JOHN DUNLAP - DIRECT BY KOLB

1 MR. LITTLEJOHN: HE HAS, YOUR HONOR.

2 THE COURT: MR. STONE, AGAIN SIR, AS IN THE FIRST
3 PHASE YOU HAVE A RIGHT TO ADVISE -- TO SPEAK -- TO THIS
4 JURY. YOUR LAWYER HAS EXPLAINED THAT -- HAS EXPLAINED
5 THAT TO YOU?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: YOU FULLY UNDERSTAND THAT RIGHT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: AND WE JUST RECENTLY, JUST A FEW MINUTES
10 AGO, WENT THROUGH YOUR RIGHTS TO TESTIFY AND NOT TO
11 TESTIFY. IS THAT CORRECT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: ALL YOUR RESPONSES WITH RESPECT TO YOUR
14 FEELING COMFORTABLE AND MAKING A DECISION WHETHER OR NOT
15 YOU CONSUMED ANY ALCOHOL OR TAKEN ANY DRUGS, THOSE STILL
16 STAND; IS THAT CORRECT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: HAVE YOU MADE A DECISION AS TO WHETHER OR
19 NOT YOU WISH TO SPEAK TO THIS JURY?

20 THE DEFENDANT: I WON'T SPEAK .

21 THE COURT: YOU WILL NOT BE SPEAKING?

22 THE DEFENDANT: NO, SIR.

23 THE COURT: DO YOU FEEL THAT YOU HAVE HAD SUFFICIENT
24 TIME AND YOUR LAWYERS HAVE GIVEN YOU SUFFICIENT
25 INFORMATION TO MAKE THAT DECISION?

DR. JOHN DUNLAP - DIRECT BY KOLB.

1 THE DEFENDANT: YES, SIR.

2 THE COURT: AND ARE YOU TOTALLY SATISFIED WITH THE
3 MANNER IN WHICH THEY HAVE ADVISED YOU REGARDING THIS
4 ISSUE?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: OKAY. THANK YOU, SIR. YOU MAY BE SEATED.
7 I DO FIND THAT MR. STONE HAS INDICATEED A COMPLETE
8 UNDERSTANDING OF HIS RIGHT TO SPEAK TO THE JURY AS
9 PROVIDED BY STATUTE.

10 THAT HE HAS HAD THE BENEFIT OF COMPETENT COUNCIL
11 WITH WHOM HE'S INDICATED HE IS SATISFIED ADVISING ME TO
12 THAT FACT AND HE IS NOT UNDER THE INFLUENCE OF ANY DRUGS
13 OR MEDICATION OR ANYTHING AFFECTING HIS ABILITY TO MAKE A
14 DECISION.

15 AND I FIND HIS DECISION THEREFORE IS FREELY,
16 KNOWINGLY, FREELY AND VOLUNTARILY MADE. THANK YOU VERY
17 MUCH. WE WILL BE AT EASE.

18 (WHEREUPON A BRIEF RECESS WAS TAKEN).

19 THE COURT: BEFORE WE START ON THE RECORD -- JUST A
20 SECOND -- WHEN MR. STONE GETS HERE.

21 (WHEREUPON THERE WAS A PAUSE).

22 THE COURT: LET THE RECORD REFLECT THAT MR. STONE IS
23 PRESENT. ARE THERE ANY SPECIFIC REQUESTS TO CHARGE BY THE
24 STATE, MR. KOLB?

25 MR. KOLB: NO, SIR.

1 THE COURT: ALL RIGHT. ANY SPECIFIC REQUESTS TO
2 CHARGE BY THE DEFENSE? WHAT ARE YOU LOOKING AT IS ME --
3 NOT MY CHARGE. THAT'S THE STATUTORY INSTRUCTIONS THAT ARE
4 REQUIRED BY LAW TO BE GIVEN TO THE JURY WHICH I INTEND TO
5 DO.

6 BY THE WAY, YOU HAVE -- THEY ARE ALL FORMS THAT
7 I. HAVE, THEY -- THE STATUTE REQUIRES AND THE STATUTORY
8 INSTRUCTIONS BE GIVEN TO THE JURY.

9 I'M GOING TO GIVE ALL OF THEM SO THAT WHEN I GO
10 OVER IT THERE BE THERE WILL BE A FORM THE FOREMAN WILL
11 TAKE AS AN ORIGINAL, BUT I GO OVER ALL OF THESE FORMS WITH
12 THEM. SO THAT'S NOT THE CHARGE.

13 THE CHARGE EXPLAINS THESE TERMS, BUT IT DOES --
14 THAT IS NOT THE ESSENCE OF THE CHARGE.

15 MR. LITTLEJOHN: YOUR HONOR, I GUESS OUR QUESTION WAS
16 WHICH MITIGATING CIRCUMSTANCES.

17 THE COURT: I HAVE -- YOU TELL ME. WHICH ONE DO YOU
18 BELIEVE? I BELIEVE THE FORM HAS IT IN THERE -- THAT'S THE
19 ONLY ONE THAT I CAN PERCEIVE.

20 MR. LITTLEJOHN: YOUR HONOR, THE FORM HAS NUMBER ONE.

21 THE COURT: WHAT OTHER ONE IS THERE?

22 MR. LITTLEJOHN: YOUR HONOR, THERE'S NUMBER TWO.

23 THE COURT: I DON'T HAVE IT OPEN. WHAT IS NUMBER
24 TWO?

25 MR. LITTLEJOHN: THE DEFENDANT UNDER THE INFLUENCE OF

1 MENTAL OR EMOTIONAL DISTRESS.

2 THE COURT: WHERE IS THE PROOF OF THAT? TELL ME WHAT
3 BEARS THAT OUT.

4 MR. LITTLEJOHN: YOUR HONOR, I THINK THAT WAS
5 BASICALLY COVERED BY MRS. OEHLER'S TESTIMONY CONCERNING
6 HIS UP BRINGING AND BACKGROUND.

7 THE COURT: WHAT'S THE STATE'S POSITION RELATIVE TO
8 THAT PARTICULAR ONE?

9 MR. KOLB: I DON'T HEAR ANY EVIDENCE OF THAT.

10 THE COURT: ALL RIGHT. WE WILL RE-DO IT CHANGE --
11 THAT PAGE TO REQUEST THAT ONE.

12 MR. LITTLEJOHN: ALSO SUBMIT NUMBER SEVEN.

13 THE COURT: WHERE IS ANY EVIDENCE THAT HIS AGE OR
14 MENTALITY HAD ANY EFFECT ON THE COMMISSION OF THIS
15 OFFENSE? I'LL GO ALONG WITH TWO. I THINK TWO COVERS THAT
16 FROM THE STANDPOINT OF WHAT YOU ARE TALKING ABOUT, THE
17 IMPULSE -- IF THE JURY CHOOSES TO BELIEVE THAT.

18 THAT WOULD BE A DECISION FOR THE JURY TO MAKE.
19 BUT WHAT DOES HIS AGE OR MENTALITY -- SHE SAID HE WAS
20 NOT -- ONLY THING SHE SUGGESTED WAS THAT HIS I Q -- AS I
21 RECALL, SHE FOUND ABNORMAL ABOUT HIM WAS THAT HIS I Q
22 DROPPED DURING CERTAIN YEARS OF SCHOOL.

23 BUT OTHER THAN THAT, THERE WAS REALLY NOTHING
24 ABOUT HIS MENTALITY OR AGE THAT WOULD WARRANT -- IN THIS
25 RECORD I BELIEVE -- THAT WOULD WARRANT ME INCLUDING THAT.

1 MR. LITTLEJOHN: AGE, OF COURSE, WE ALL DON'T -- IT'S
2 JUST THE MENTALITY PART.

3 THE COURT: I DON'T BELIEVE THE MENTALITY HAS BEEN
4 ESTABLISHED OR CONTEMPLATED BY SELF. BE HAPPY -- IF YOU'VE
5 GOT ANY CASE LAW THAT SAYS THAT THAT IS THE CASE, I WILL
6 BE HAPPY TO CONSIDER IT.

7 BUT BASED ON MY VIEW OF THIS RECORD I THINK THAT
8 WOULD BE BASICALLY DOUBLING THE TWO. BECAUSE WHAT WE ARE
9 TALKING ABOUT IS THIS INDIVIDUAL BECAUSE OF SOME PROBLEMS
10 HE HAS SOME DISTRESS, EMOTIONAL DISTURBANCES WHICH I THINK
11 YOU MAY BE ARGUING. BUT INSOFAR AS MENTALITY, I WOULD
12 DECLINE TO INCLUDE THAT.

13 MR. LITTLEJOHN: YOUR HONOR, WE ASK THE COURT TO ALSO
14 INCLUDE NUMBER SIX BASED ON THE FACT THAT THERE WAS
15 TESTIMONY THAT HE HAD CONSUMED A GOOD DEAL OF ALCOHOL AT
16 THAT DAY.

17 THE COURT: NO, SIR. VOLUNTARY INTOXICATION WOULD NOT
18 -- WOULD NOT BE ENTITLED TO THAT. THAT ONE DEALS
19 SPECIFICALLY WITH THE FINDING BY A DOCTOR AS TO HIS
20 UNDERSTANDING AND ABILITY TO APPRECIATE CONFORMING.

21 AND FURTHERMORE THE CASE LAW IS CLEAR THAT YOU
22 ARE NOT ENTITLED TO THAT. WITH RESPECT TO VOLUNTARY
23 INTOXICATION.

24 MR. LITTLEJOHN: YOUR HONOR, I DON'T SUBMIT THAT TO
25 THE COURT AS ANY SORT OF DEFENSE, OBVIOUSLY. I'M JUST

1 SAYING BECAUSE OF HIS DRUNKEN STATE, HE COULD HAVE -- HIS
2 CAPACITY TO APPRECIATE WHAT HE WAS DOING COULD HAVE BEEN
3 DIMINISHED .

4 THE COURT: AS YOU KNOW, I'M GOING TO INSTRUCT THE
5 JURY THAT THESE ARE -- THESE ARE STATUTORY MITIGATING
6 CIRCUMSTANCES, OTHER MITIGATING CIRCUMSTANCES WHICH THEY
7 MAY CHOOSE TO CONSIDER IF THEY WISH.

8 SO, YOU KNOW, I'M NOT GOING TO INCLUDE THAT AS A
9 DEFINED STATUTORY MITIGATING CIRCUMSTANCE.

10 MR. LITTLEJOHN: ALL RIGHT, SIR.

11 THE COURT: BASED ON INTOXICATION. ALL RIGHT. AND THE
12 STATE -- I BELIEVE THE AGGRAVATING CIRCUMSTANCES WOULD BE
13 BURGLARY AND THE KILLING OF A POLICE OFFICER, A LAW
14 ENFORCEMENT OFFICER.

15 MR. KOLB: YES, SIR.

16 THE COURT: AS I UNDERSTAND THERE WERE THE TWO AND
17 THOSE ARE BOTH INCLUDED. WE WILL MAKE THOSE ADDITIONS THEN
18 TO THE FORMS. ANYTHING ELSE FROM THE DEFENSE?

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: VERY WELL. I WOULD INSTRUCT ONLY BECAUSE
21 THE STANDARD WILL BE REITERATED NOT IN ANY GREAT LENGTH,
22 BUT I WILL PROBABLY GIVE A BRIEF INSTRUCTION REMINDING
23 THEM WHAT REASONABLE DOUBT IS, KIND OF DOUBT THAT WOULD
24 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

25 I WILL INSTRUCT -- GIVEN THE TESTIMONY

1 CONCERNING THE PRIOR VIOLATIONS -- I WILL GIVE THE
2 INSTRUCTION THAT IS REQUIRED BY LAW BY GREEN AND OTHERS
3 THAT STATES THAT THAT IS CONSIDERED FOR CHARACTER AND NOT
4 FOR PURPOSES OF AGGRAVATING -- STATUTORY AGGRAVATING
5 CIRCUMSTANCES.

6 SO I WILL GIVE THAT INSTRUCTION. OTHER THAN
7 THAT, IT IS GENERAL INSTRUCTION WHICH DEFINES AND TALKS
8 ABOUT THEIR RESPONSIBILITY REGARDING PUNISHMENT. ANY OTHER
9 LAW DO YOU WANT?

10 WE HAD EXPERT TESTIMONY. DO YOU WANT ME TO
11 RE-CHARGE ON EXPERT TESTIMONY? I THINK THEY CLEARLY
12 UNDERSTAND THAT. BUT...

13 MR. LITTLEJOHN: I DON'T THINK SO, YOUR HONOR. THANK
14 YOU.

15 THE COURT: OTHER THAN THAT, THAT'S...

16 MR. KOLB: THE MATTER ABOUT THE USE OF VIOLENCE
17 AGAINST A PERSON, YOUR HONOR. PARTICULARLY UNDER THIS CASE
18 WHERE THE FACTS SHOW PRIOR CONVICTIONS FOR CRIMES OF
19 VIOLENCE UNDER STATE LAW. THIS -- I DON'T KNOW HOW TO
20 DEAL WITH THAT.

21 THE COURT: USE OF VIOLENCE. YOU TALKING ABOUT AS A
22 STATUTORY AGGRAVATING CIRCUMSTANCE?

23 MR. KOLB: YES, SIR.

24 THE COURT: WHAT'S YOUR POSITION, MR. BABB?

25 MR. BABB: YOUR HONOR, IT'S...

1 MR. KOLB: LET ME GO A LITTLE FURTHER ON MY POSITION
2 ON THAT, JUDGE. AS I UNDERSTAND IT, MR. BABB'S ARGUMENT
3 WAS NOT SUFFICIENT EVIDENCE, WAS NO EVIDENCE, THAT HE HAD
4 NO CRIMES FOR USE OF VIOLENCE AGAINST A PERSON WHICH IS
5 THE REASON I WAS NOT THEN ABLE TO SHOW THE LEWD ACT UPON A
6 CHILD ON APRIL BARFIELD.

7 AND I UNDERSTOOD THAT UNTIL THERE WAS SOME
8 EVIDENCE, I STILL WOULD NOT BE ABLE TO DO THAT AND I
9 CONTEND THERE HAS BEEN NO EVIDENCE, NO EVIDENCE THAT HE
10 DID NOT HAVE CRIMES -- A RECORD FOR CRIMES OF VIOLENCE
11 AGAINST A PERSON.

12 IN FACT, BREAKING IN AN AUTOMOBILE, LARCENY,
13 BURGLARY, HOUSE BREAKING ARE ALL CRIMES AGAINST PEOPLE.
14 BUSINESSES ARE PEOPLE.

15 THE COURT: ALL RIGHT.

16 MR. KOLB: AND IN FACT THREE COUNTS OF BURGLARY AS
17 DESCRIBED IN THIS RECORD ARE VIOLENT CRIMES UNDER 16160
18 AND WERE AT THE TIME OF THEIR COMMISSION UNDER STATE LAW.

19 THE COURT: CLEARLY HORN BOOK LAW -- CLEARLY ALL THE
20 DECISIONS DO NOT AGREE WITH YOU. CLEARLY THEY TALK ABOUT
21 THE CRIMES OF VIOLENCE AGAINST A PERSON BEING ASSAULT AND
22 BATTERED, CRIMINAL SEXUAL CONDUCT WOULD BE HAD HE BEEN
23 CONVICTED OF IT -- NO QUESTION ABOUT IT.

24 HAD HE BEEN CHARGED WITH IT, MAYBE, BUT I WANT
25 TO REITERATE ALSO IN MY RULING ON EXCLUDING THAT I

1 REVIEWED EVERY ONE OF THOSE CASES. THE GREEN CASE I'M
2 FAMILIAR WITH BECAUSE IT ARISES FROM MY CIRCUIT.

3 AND IN THAT PARTICULAR CASE ALL OF THE PRIOR
4 INSTANCES AS IT IS WITH EACH INSTANCE THAT IT'S
5 REFERENCED, IT'S A CRIME SIMILAR TO THAT FOR WHICH HE WAS
6 CONVICTED AND CHARGED.

7 AND IT -- THE COURT SAID YES, IT SHOWS A
8 PREDISPOSITION FOR THAT CRIME. THIS IS A CRIME THAT HAS
9 NOTHING TO DO WITH THIS PARTICULAR PROCEEDING.

10 AND FOR THOSE REASONS AND ALL OF THE OTHER
11 REASONS THAT I STATED IN THE RECORD, I FOUND IT -- THAT
12 THE PROBATIVE VALUE WAS CERTAINLY OUTWEIGHED BY THE
13 PREJUDICE.

14 WITH RESPECT TO THE OTHER, I DON'T DISAGREE WITH
15 YOUR ARGUMENT THAT A BURGLARY IS IN ESSENCE A CRIME
16 AGAINST A PERSON. AS I STATED IN CHAMBERS, I SEE IT EVERY
17 DAY, ESPECIALLY IN BOND PROCEEDINGS, THE INVASION THAT IS
18 EXPRESSED WHICH THOSE VICTIMS THAT SOMETHING -- THE
19 VIOLATION TO THEM AS A PERSON.

20 HOWEVER, THE HORN BOOK SAYS IT AND OUR OWN CODE
21 SAYS IT, THE CODE LISTS BURGLARY AND ALL THESE OTHER
22 CRIMES AS PROPERTY -- CRIMES OF PROPERTY, NOT PERSON.

23 SO I FEEL LIKE THAT GIVEN ALL OF THOSE
24 CIRCUMSTANCES, IT WOULD NOT BE AND I WOULD DECLINE IT TO
25 -- I WOULD NOT INCLUDE IT.

1 MR. KOLB: JUDGE, WOULD THE COURT CHARGE 16160 AS TO
2 WHAT VIOLENT CRIMES ARE IN STATE LAW? I UNDERSTAND. JUST
3 SEEMS LIKE I SHOULD BE ABLE TO ARGUE THAT AGAINST THAT
4 MITIGATING CIRCUMSTANCE -- OF COURSE WHAT THAT MEANS IS...

5 THE COURT: YOU---.

6 MR. KOLB: IN OTHER WORDS, I SHOULD BE ABLE TO ARGUE
7 THAT THEY -- BURGLARY, BREAKING INTO CARS AND STEALING ARE
8 CRIMES AGAINST PEOPLE.

9 THE COURT: NO, SIR. BECAUSE THEY ARE TWO DIFFERENT
10 THINGS AND THEY ARE NOT ONE IN THE SAME. I WILL NOT PERMIT
11 THAT ARGUMENT. DON'T NEED THAT ARGUMENT ANY WAY IN THIS
12 PARTICULAR CASE BECAUSE THAT'S NOT WHAT YOU HAVE ARGUED
13 AND WHAT YOU HAVE PRESENTED FROM THE STAND POINT OF THIS
14 RECORD PERTAINS TO HIS ABILITY AND HOW WELL HE'S DONE WITH
15 A PRISON SENTENCE.

16 SO THE FACT THAT IT BEING A VIOLENT CRIME,
17 THAT'S A LEGAL DETERMINATION THAT HAD SOME EFFECT, BUT
18 DOESN'T HAVE ANY NOW WITH RESPECT TO THIS PARTICULAR
19 INSTANCE.

20 AND DEPENDING ON THE JURY'S FINDINGS WITH
21 RESPECT TO THE STATUTORY AGGRAVATING CIRCUMSTANCES OF
22 MURDER WHILE COMMITTED -- WHILE COMMITTING A BURGLARY,
23 WHICH THEY MUST FIND BEYOND A REASONABLE DOUBT -- THEY
24 HAVE ALREADY MADE A DETERMINATION ON PREVIOUSLY, BUT ONCE
25 AGAIN MUST MAKE THAT DETERMINATION.

1 OBVIOUSLY VIOLENT CRIME ISSUE DOESN'T HAVE ANY
2 IMPORT IN THIS. ALL RIGHT. WE HAVE ADDED -- WE HAVE 2A AND
3 B IS LISTED ON THERE AND WE WILL GIVE YOU A COPY OF IT.
4 OKAY? ARE THERE OTHER MATTERS, MR. SOLICITOR?

5 MR. KOLB: NO, SIR.

6 THE COURT: ALL RIGHT, SIR. ANYTHING ELSE FROM THE
7 DEFENDANT?

8 MR. LITTLEJOHN: NO, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU VERY MUCH. I WILL
10 PROBABLY MOVE FROM YOUR CLOSING, DEPENDING ON LENGTH, BUT
11 DIRECTLY INTO YOURS AND THEN TAKE A BREAK BEFORE WE
12 CHARGE; OKAY? ALL RIGHT. LETS BRING THE JURY BACK,
13 PLEASE.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
15 4:13 P.M.)

16 THE COURT: THANK YOU VERY MUCH. THANK YOU VERY MUCH,
17 LADIES AND GENTLEMEN. AS I STATED, WHEN WE REACHED -- YOU
18 HAVE NOW HEARD ALL OF THE EVIDENCE, THAT YOU WILL HEAR IN
19 THIS PROCEEDING, WE HAVE ONE MORE TIME WHERE THE ATTORNEYS
20 WILL SPEAK TO YOU.

21 AS BEFORE, I WOULD REMIND YOU THAT THEIR REMARKS
22 ARE NOT EVIDENCE. THEY ARE HELPFUL IN YOUR ANALYSIS OF THE
23 FACTS AND EVIDENCE IN THIS MATTER AND THE APPLICATION OF
24 THE LAW.

25 HOWEVER, THEIR REMARKS ARE NOT EVIDENCE NOR

1 STATEMENTS OF THE LAW. SO WITH THAT UNDERSTANDING, I KNOW
2 THAT YOU WILL -- ALTHOUGH I WILL REMIND YOU THAT THERE ARE
3 OFFICES FOR IT -- YOU HAVE ALREADY HEARD THEIR ARGUMENTS
4 BEFORE AND I'M SURE THAT YOU WILL UNDERSTAND WHAT I MEAN
5 ABOUT BEING HELPFUL TO YOU AND ASSISTING YOU.

6 SO PLEASE NOW GIVE YOUR ATTENTION TO THE
7 ATTORNEYS AND TO THE SOLICITOR. MR. SOLICITOR?

8 MR. KOLB: THANK YOU.

9 CLOSING STATEMENT BY MR. KOLB.

10 LADIES AND GENTLEMEN, AGAIN I WANT TO THANK YOU
11 FOR GIVING YOUR CAREFUL ATTENTION TO THE FACTS IN THIS
12 CASE AND KNOWLEDGE AGAIN AS ALL OF US KNOW. THE CASE IS
13 HERE.

14 THE EVIDENCE IN THIS PART OF THE TRIAL
15 ESTABLISHES THINGS THAT YOU DIDN'T KNOW BEFORE AND THAT IS
16 THE DEFENDANT HAD NO KNOWN ILLNESS WHATSOEVER, WHATSOEVER.

17 YOU KNOW, WISH YOU KNEW HOW RARE THAT WAS IN A
18 DEATH PENALTY CASE -- THAT THE DEFENSE EXPERT PSYCHIATRIST
19 AND THE STATE'S EXPERT PSYCHIATRIST BOTH EXAMINED THE
20 DEFENDANT AND ALL RELEVANT RECORDS THROUGHOUT HIS ENTIRE
21 LIFE AND FIND NO MENTAL ILLNESS WHATSOEVER.

22 EVEN THEIR PSYCHIATRIST INDICATES THAT HE'S GOT
23 A PERSONALITY PROBLEM WHICH IS NOT A PSYCHIATRIC OR MENTAL
24 DISORDER, THAT HE DOES NOT RESPECT AUTHORITY AND THAT HE'S
25 GOING TO BE A PROBLEM IN THE FUTURE -- A PROBLEM IN THE

1 FUTURE IN THE PRISON SYSTEM.

2 THEY ARE NOT SAYING THAT -- YOU KNOW -- WHOLE
3 GROUP OF PEOPLE THAT ARE IN PRISON, HE'S GOING TO BE ONE
4 OF THE BEST BEHAVED. EVEN THEIR WITNESS SAYS THAT HE'S
5 GOING TO BE A PROBLEM IN PRISON.

6 HE HAS A PROBLEM WITH AUTHORITY. AND THEIR
7 SOCIAL WORKER SAYS AND ACKNOWLEDGES THAT HE HAS A PROBLEM
8 RESPECTING AUTHORITY. NOW, SHE ALSO ACKNOWLEDGES THAT HE
9 HAS NO MENTAL ILLNESS WHATSOEVER.

10 AND SHE TALKS ABOUT THIS STARTLE RESPONSE AND
11 THAT'S THE REASON I WANTED TO MENTION THAT TO START WITH.
12 SHE ACTING LIKE STARTLE RESPONSE IS SOME MENTAL ILLNESS.
13 NO. AND THAT'S WHY WE CLARIFIED THAT -- IS THAT IT IS NOT
14 A MENTAL ILLNESS.

15 PEOPLE WHO HAVE A RECOGNIZED MENTAL ILLNESS AND
16 ONE THAT HE DOESN'T HAVE -- SHE DOESN'T EVEN CLAIM THAT HE
17 HAS IT -- SOME OF THEM HAVE A SYMPTOM THAT IS DESCRIBED AS
18 EXCITED STARTLE RESPONSE.

19 AND THAT'S WHAT SHE TALKED ABOUT. AND IT HAS
20 TOTALLY NOTHING TO DO WITH HIM BECAUSE HE HAS NO MENTAL
21 ILLNESS BY THE STATE'S EXAMINATION AND ALL OF THESE
22 RECORDS AND HISTORICAL THINGS AND ALL THROUGHOUT HIS LIFE,
23 NOT JUST THE HOUR AND A HALF CASE THEY SPENT WITH HIM
24 RIGHT BEFORE THIS TRIAL, BUT EXAMINATION OF ALL OF THOSE
25 RECORDS.

1 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT.
2 THAT WAS NOT STATED IN THE RECORD.

3 THE COURT: ALL RIGHT. SOLICITOR, MIND YOU YOU ARGUE
4 FACTS IN THE RECORD AND I REMIND YOU, LADIES AND
5 GENTLEMEN, YOU WILL RECALL THE REMARKS ARE NOT EVIDENCE.
6 YOU HAVE HEARD THE EVIDENCE. YOU WILL DECIDE THOSE ISSUES.
7 MR. SOLICITOR, YOU MAY CONTINUE.

8 (WHEREUPON MR. KOLB CONTINUED).

9 I BELIEVE DR. MORGAN TESTIFIED HE SPENT AN HOUR
10 AND A HALF IN HIS EVALUATION ON JANUARY THE 17TH, BUT HE
11 ALSO VIEWED SUBSTANTIAL RECORDS JUST AS DR. DUNLAP DID.
12 AND THE DEFENDANT HAS NO MENTAL ILLNESS.

13 SO TO SAY SOMEBODY HAS A MENTAL ILLNESS AND
14 THERE IS A SYMPTOM OF IT AND THEN TAKE THE SYMPTOM AND
15 ACKNOWLEDGE THE GUY DOESN'T HAVE A MENTAL ILLNESS BUT OH
16 HE'S GOT THIS SYMPTOM...

17 WELL LADIES AND GENTLEMEN, THERE IS NO FACTUAL
18 SUPPORT FOR THAT. EVEN THEIR OWN EXPERT WOULD DISAGREE
19 BECAUSE AS -- HE AGREES THAT HE HAS NO MENTAL ILLNESS
20 WHATSOEVER.

21 AND YOU KNOW WHEN YOU TAKE THE TOTALITY OF THE
22 NEW EVIDENCE THAT YOU HEARD ABOUT BOBBY WAYNE STONES
23 RECORD, YOU SEE THAT THROUGHOUT HIS LIFE, HE HAS BEEN A
24 PROBLEM. HE HAS NOT BEEN WILLING TO OBEY THE LAWS OF
25 SOCIETY.

1 YOU MIGHT SAY -- AND THEY ARE GOING TO TALK
2 ABOUT OH, HE HASN'T EVER DIRECTLY HURT A PERSON BEFORE. SO
3 CAN TAKE THAT INTO ACCOUNT.

4 BUT LADIES AND GENTLEMEN, YOU KNOW, I GUESS THEY
5 WOULD SAY THAT WENT IN A -- BUSINESSES ARE NOT PEOPLE.
6 BUSINESSES ARE PEOPLE. AND THE THINGS HE'S DONE, THE
7 CRIMES HE'S COMMITTED OVER HIS LIFE HAVE AFFECTED PEOPLE
8 AND THEIR PERSONAL CARS AND IN THEIR BUSINESSES AND IN ALL
9 THESE OTHER CRIMES HE HAS COMMITTED.

10 OBVIOUSLY THIS CRIME HE COMMITTED NOW HAS
11 AFFECTED PEOPLE, RUTH GRIFFITH, CHARLIE KUBALA AND DEPUTY
12 KUBALA'S FAMILY. BUT THROUGHOUT HIS LIFE, HE'S BASICALLY
13 MANIPULATED THE SYSTEM.

14 HE GOT THE BENEFIT AND HE JUST PROGRESSED RIGHT
15 ON UP THE SYSTEM. AND THEN HE WAS OVER AND OVER AGAIN IN
16 THE JUVENILE JUSTICE SYSTEM. MRS. OEHLER TOLD YOU ABOUT
17 THOSE RECORDS. WE DIDN'T PRESENT THEM TO YOU.

18 SHE GOT THOSE RECORDS WHERE HE HAD BEEN IN
19 TROUBLE OVER AND OVER AGAIN, HAD BEEN EVALUATED, PUT IN
20 JUVENILE HALL, EVENTUALLY PUT IN THE JUVENILE INSTITUTION
21 FOR TEN MONTHS AT ONE PERIOD OF TIME.

22 PEOPLE HAVE TRIED TO CORRECT HIM AND HE WOULDN'T
23 BE CORRECTED. BUT THEN WHEN HE GOT TO BE AN ADULT BY THE
24 TIME HE WAS NINETEEN, HE HAD SEVEN INDICTMENTS PENDING IN
25 THIS COURT FOR SERIOUS CRIMINAL OFFENSES. SERIOUS CRIMINAL

1 OFFENSES.

2 AND SOMEBODY SLAMMED THE DOOR ON HIM THEN?
3 GIVING THE MAXIMUM SENTENCE? NO. AGAIN HE GOT A BREAK. HE
4 GOT A YOUTHFUL OFFENDER SENTENCE NOT TO EXCEED SIX YEARS.

5 1985 FROM WHAT YOU HEARD HE WAS OUT ON PAROLE ON
6 THAT WITHIN A YEAR. WITHIN THE YEAR 1985 BACK OUT ON
7 PAROLE. DID HE TAKE ADVANTAGE OF THAT AND DO ANY
8 STRAIGHTING OUT?

9 THIS GUY WHO IS NOW ASKING YOU TO GIVE HIM A
10 LIFE SENTENCE? DID HE TAKE ADVANTAGE OF MERCY? NO.
11 WITHIN A YEAR, 1987, HE'S RIGHT BACK UP IN THIS COURT FOR
12 SEVERAL VERY, VERY SERIOUS OFFENSES, THREE COUNTS OF
13 BURGLARY IN THE SECOND DEGREE AND THREE COUNTS OF GRAND
14 LARCENY.

15 WELL, WHAT WAS IT, 20,000 IN ONE CASES AND 3 OR
16 4,000 IN ANOTHER LOST TO THOSE VICTIMS? AND THESE ARE
17 PEOPLE. YOU MIGHT SAY WELL, HE GOT FINALLY GOT A TOUGH
18 SENTENCE.

19 THIS GUY WHO WANTS YOU TO GIVE HIM MERCY THIS
20 TIME. HE GOT THIRTY YEARS. THEN YOU SEE WHAT HAPPENED
21 AFTER THAT AND HOW HE MANIPULATED THE SYSTEM AND GOT HIS
22 FAMILY TO CALL THE LOCAL JAILER OVER HERE AND GET HIM
23 BROUGHT BACK OVER HERE AND SPECIAL TREATMENT AND PUT HIM
24 HERE AS TRUSTEE.

25 AND HAD THESE FRIENDS OF HIS WHO ARE SUPPOSEDLY

1 IMPARTIAL JAILERS? NOBODY OVER IN COLUMBIA EVALUATED
2 THOSE THINGS KNOW WHAT CLOSE RELATIONS MR. HYATT ADMITTED
3 HE HAD TO MR. STONE AND THEY SEND IN THESE POSITIVE
4 RECOMMENDATIONS THEY NOW WANT YOU TO CONSIDER.

5 AND SO HE MANIPULATES THE SYSTEM. AND HE GETS
6 OVER HERE AND MR. HYATT FORMER DEPUTY -- IMAGINE -- THINK
7 ABOUT THE FOLKS ON THE PAROLE BOARD. AND THE GUY WHO IS A
8 FORMER DEPUTY SHERIFF AND A JAILER COMES OVER THERE, SAYS
9 OH, THIS IS A GOOD FELLOW, HOW ABOUT PAROLING HIM?

10 AND SO HE MANIPULATES THE SYSTEM. AND WHEN HE IS
11 PAROLED HE SIGNS AND ACKNOWLEDGES A PIECE OF PAPER, THE
12 SAME PIECE OF PAPER AS WHEN HE PROCESSED HIS PROBATION
13 SOMETIME EARLIER WITH THE SAME CONDITIONS, I UNDERSTAND
14 THAT I MAY NOT POSSESS A WEAPON AT ALL.

15 A CONDITION OF HIS PAROLE. AND THAT'S THE
16 REASON WE PUT IT IN THE RECORD IS HE COULD NOT PURCHASE OR
17 POSSESS ANY WEAPON WHATSOEVER. WAS HE ABLE TO ABIDE BY
18 THAT RULE?

19 THIS GUY THAT WANTS YOU TO SHOW HIM MERCY NOW?
20 THE RULES THAT BY LAW THAT PEOPLE YOU ELECT TO REPRESENT
21 YOU IN THE LEGISLATURE OF THIS STATE AND SET THE RULES AND
22 REGULATIONS OF THE LAW, THAT'S WHAT WE ALL LIVE BY.

23 HE'S NEVER FOLLOWED THE RULES, LADIES AND
24 GENTLEMEN. NEVER. THE OTHER CONDITIONS ABOUT NOT DRINKING
25 TO EXCESS, NOT USING DRUGS. AND BY HIS OWN ADMISSION THEY

1 BROUGHT OUT ALL THIS STUFF ABOUT SMOKING MARIJUANA.

2 HE IS NOT GOING TO FOLLOW THE RULES. HE HASN'T
3 DONE IT IN THE PAST. HE'S NOT GOING TO DO IT IN THE
4 FUTURE. YOU KNOW, THE THING ABOUT MR. STONE AND HOW HE HAS
5 TRIED TO BENEFIT OR TRIED TO MANIPULATE THE SYSTEM AND HOW
6 IT'S NEVER -- YOU KNOW -- NEVER BEEN ABLE TO ABIDE BY
7 THESE RULES.

8 EVEN FROM WHEN HE WAS YOUNG RIGHT ON UP EVERY
9 STEP OF THE WAY -- AND FOLKS HE'S IN THE BIG TIME NOW.
10 HE'S BURGLARY FIRST DEGREE. HE'S MURDERED A POLICE
11 OFFICER. AND WHAT EXCUSE DOES HE GIVE?

12 THE EXCUSE -- THE ONLY THING I HEARD TODAY WAS
13 OH, WELL, I DID IT AND THE REASON I HADN'T OBEYED THESE
14 RULES, THE REASON THAT EVERY TIME I WAS GIVEN ONE MORE
15 CHANCE AND I WAS GIVEN RULES TO ABIDE BY THE REASON I
16 DIDN'T DO IT, THE REASON I WENT OUT AND STOLE AND BROKE IN
17 AND DID ALL OF THESE CRIMES, POSSESSED GUNS, THE REASON I
18 DID IT IS BECAUSE I HAD A DEPRIVED CHILDHOOD.

19 FOLKS, A DEPRIVED CHILDHOOD -- A LOT OF PEOPLE
20 GROW UP WITHOUT HAVING A LOT OF ADVANTAGES AND THEY DON'T
21 END UP KILLING POLICE OFFICERS. THAT'S NO EXCUSE.

22 BUT THE TRUTH IS THEY CRUCIFIED WESLEY EUGENE
23 MILES UP HERE AND HERE'S -- THAT'S WHY WE CALLED MRS.
24 LEWIS BACK IN HERE. SHE KNEW HIM GROWING UP. SHE LIVED
25 RIGHT THERE.

1 SHE WAS RIGHT IN THOSE HOUSES WITH THOSE SAME
2 GIRLS. AND THAT DIDN'T HAPPEN. SHE DOESN'T KNOW ANYTHING
3 ABOUT IT. YOU KNOW, WHAT'S INTERESTING -- THAT'S WHY I
4 ASKED MRS. OEHLER, MAIN THING THAT SHE RELIES UPON IS WHAT
5 THESE PEOPLE TELL HER.

6 SHE GETS A FEW RECORDS JUST LIKE THE
7 PSYCHIATRISTS DO AND SAY YOU HAVE NO MENTAL ILLNESS AND
8 THEY CAN GIVE YOU NO EXCUSE FOR WHAT HE HAS DONE. IF YOU
9 THINK ABOUT IT, BOTH OF THEM.

10 THERE'S NO MENTAL ILLNESS, EXCUSE FOR WHAT HE
11 HAS DONE. THEY CAN'T GIVE YOU ANY REASON. THEY COURT'S
12 EXHIBIT SAYS HE'S GOT A PROBLEM WITH THIS, HE'S GOT A
13 PROBLEM WITH THAT.

14 THE ONLY PERSON THAT I GUESS ATTEMPTS TO GIVE
15 YOU A REASON IS MRS. OEHLER AND SHE DOESN'T BASE IT ON HIS
16 RECORD BECAUSE THOSE PSYCHIATRISTS FOR BOTH SIDES HAVE
17 THOSE RECORDS.

18 SHE SEEMS TO BASE IT ON HIS FAMILY HISTORY AND
19 SOCIAL HISTORY AND EVERYTHING. BUT ISN'T IT INTERESTING
20 THAT WHERE THAT COMES FROM IS FROM BOBBY STONE AND BOBBY
21 STONE'S CLOSE FRIENDS AND RELATIVES.

22 AND SHE GOES TO THEM TO GET THIS SOURCE OF
23 INFORMATION AT A TIME WHEN THEY KNOW -- I MEAN, BOBBY
24 STONE KNOWS HE'S FACING THE DEATH PENALTY. HIS FAMILY
25 MEMBERS AND FRIENDS, I GUESS -- I DON'T THINK SHE TALKED

1 TO THE FRIENDS. JUST FAMILY MEMBERS.

2 THEY KNOW THAT THEIR BELOVED FAMILY MEMBER IS
3 FACING THE DEATH PENALTY. HAVEN'T YOU GOT REASON TO FIGURE
4 THEY'D BE -- THEY MIGHT TRY TO STRETCH IT TO TRY TO HELP
5 BOBBY AND GIVE THIS INFORMATION TO MRS. OEHLER TO BASE HER
6 OPINION UPON?

7 OF COURSE. AND THAT'S WHY IT'S VERY, VERY
8 IMPORTANT TO GET AN IMPARTIAL PERSON LIKE MRS. DENISE
9 LEWIS TO COME IN HERE WHO WAS RIGHT THERE IN THAT SAME
10 ENVIRONMENT, RIGHT THERE IN THOSE HOUSES.

11 NOBODY SAYS WESLEY MILES OR ANYTHING ELSE OVER
12 THERE WAS PERFECT, BUT SHE WAS RIGHT THERE ON A DAY TO DAY
13 BASIS. SHE LIVED THERE FROM THE TIME SHE WAS THREE YEARS
14 OLD UNTIL SHE WAS FIFTEEN.

15 SHE DIDN'T SEE ANY OF THAT FELLOW. IT WAS JUST A
16 NORMAL ENVIRONMENT GROWING UP. AND I DON'T KNOW HOW YOU
17 FEEL ABOUT IT, BUT YOU KNOW, I DON'T THINK YOU CAN BLAME
18 YOUR ENVIRONMENT FOR WHAT YOU DO.

19 A CRIMINAL NEEDS TO BE RESPONSIBLE FOR WHAT HE
20 DID. HE CAN'T SAY OH MY FATHER DRANK, THAT'S WHY I DID
21 THIS CRIME. THE TRUTH IS NOT ONLY HERE -- HAVE YOU GOT --
22 ENVIRONMENT IS NO EXCUSE.

23 BUT THE FACT IS THAT HE DIDN'T HAVE A BAD
24 ENVIRONMENT. I QUESTIONED THE RELIABILITY OF WHAT THOSE
25 FOLKS TOLD MRS. OEHLER. BUT YOU KNOW THAT, EVEN IF YOU

1 TAKE IT, EVEN IF YOU GET OVER THAT HUMP -- AND I SUBMIT TO
2 YOU THAT WHAT MR. STONE AND THE OTHERS TOLD MRS. OEHLER
3 ABOUT THIS BAD BACKGROUND, NUMBER ONE IT'S NOT AN EXCUSE
4 FOR WHAT HE HAS DONE.

5 BUT NUMBER TWO, IT'S NOT TRUE. THAT'S WHY WE
6 CALLED MRS. LEWIS UP HERE. AND NUMBER THREE, EVEN IF IT
7 WERE TRUE, MRS. OEHLER ADMITS THAT THE DEFENDANT DOESN'T
8 HAVE ANY MENTAL ILLNESS.

9 IF HE DOESN'T HAVE A MENTAL ILLNESS, IF THERE IS
10 NOTHING IN HIS BRAIN THAT HAS GONE WRONG AS CAUSED BY ALL
11 OF THIS ABUSE THAT THEY CLAIM, THEN HOW CAN HE USE THAT AS
12 AN EXCUSE? AND THAT'S THE VERY POINT.

13 IF ALL OF THAT STUFF HAD CAUSED SOME MENTAL
14 ILLNESS IN HIM AND HE WAS SUFFERING FROM THAT MENTAL
15 ILLNESS AND DIDN'T HAVE FULL CONTROL OF WHAT HE DID, THEN
16 THESE PSYCHIATRISTS WOULD AGREE WITH HER AND SAY OH, AND
17 THIS CAUSES HIM TO DO THESE THINGS.

18 AND THAT'S WHAT -- IF YOU LISTENED CAREFULLY TO
19 MRS. OEHLER, SHE DIDN'T EVEN SAY THAT ALL OF THIS CAUSED
20 HIM TO COMMIT THESE CRIMES OR WAS ANY EXCUSE WHATSOEVER
21 FOR COMMITTING THESE CRIMES.

22 BUT YOU SEE HOW HE WENT THROUGH THE SYSTEM. AND
23 HOW THE SYSTEM TRIED TO GIVE HIM A BREAK EVERY STEP ALONG
24 THE WAY. AND HE MANIPULATED THE SYSTEM. TO TRY TO GET IT
25 THE BENEFITS AND BREAKS ALONG THE WAY. AND LOOK WHERE WE

1 ARE NOW.

2 WHERE WE ARE NOW IS IN A SITUATION WHERE YOU
3 WONDERED WHY WHEN I WAS STANDING UP HERE IN THE GUILT
4 PHASE -- AT THE END OF THE GUILT PHASE OF THE TRIAL -- I
5 GUESS YOU TALK TO ANYBODY -- YOU KNOW -- THAT'S CAUGHT
6 BREAKING IN A HOUSE MIGHT FEAR GOING TO JAIL, YOU KNOW.

7 BUT THAT'S PROBABLY PUT ON BOND OR SOMETHING.
8 YOU REALIZE NOW -- FOLKS, LOOK AT HIS RECORD. HE WAS ON
9 PAROLE. HE -- THEY HAD A WRITTEN ACKNOWLEDGMENT HE WASN'T
10 EVEN SUPPOSED TO HAVE A GUN.

11 FORGET WHETHER HE'S BREAKING IN A HOUSE OR NOT.
12 HE WAS GOING JAIL JUST FOR BEING CAUGHT WITH A GUN. SO
13 IT'S EVEN STRONGER -- NOW THAT YOU KNOW IT ALL -- OF WHAT
14 WAS GOING ON IN HIS MIND WHEN DEPUTY KUBALA CAME UP THERE
15 THAT NIGHT.

16 AND IT'S EVEN STRONGER OF THE ILL WILL THAT HE
17 HAD TOWARDS RUTH GRIFFITH AND THAT WHY HE WAS OVER THERE
18 TO BREAK IN ON HER AND THREATENED HER OR WHATEVER,
19 WHATEVER HE WAS DOING, WHETHER HE WAS GOING SHOOT HER OR
20 RAPE HER.

21 WE'VE BEEN THROUGH ALL THAT, BUT IT'S EVEN
22 CLEARER NOW WHY. BUT HE DIDN'T WANT ANYTHING TO HAPPEN TO
23 HIM THAT RESULTED IN HIM GOING BACK TO PRISON. HE DIDN'T
24 WANT TO BE BROUGHT BEFORE THE BAR OF JUSTICE.

25 AND THAT'S WHAT WAS IN HIS MIND THAT NIGHT. BUT

1 YOU KNOW, ANOTHER INTERESTING THING IN HIS MIND IS HE
2 WASN'T JUST LIKE YOU OR ME, AVERAGE CITIZEN, DOESN'T KNOW
3 EVERYTHING THERE IS NO KNOW ABOUT LAW ENFORCEMENT.

4 HE WAS A GUY WHO HAD BEEN OUT AT THAT SUMTER
5 COUNTY JAIL ON A DAY TO DAY BASIS AND KNEW THESE POLICE
6 OFFICERS AND KNEW ALL ABOUT THEM.

7 AND WHEN CHARLIE KUBALA CAME WALKING AROUND THAT
8 HOUSE WITH A BULLET PROOF VEST UNDER HIS UNIFORM SHIRT,
9 AND BOBBY STONE WAS HIDING THERE IN THAT PORCH LISTENING
10 TO THAT POLICE DISPATCH, LISTENING TO CHARLIE TALKING BACK
11 TO THE DISPATCHER, MAYBE WATCHING THE LIGHT, MAYBE NOT.

12 AND HE WAS THINKING AND MAKING THAT CHOICE THAT
13 WE TALKED ABOUT AT THE END OF THE GUILT PHASE OF THE
14 TRIAL. BOBBY STONE WAS SITTING THERE WITH THAT PISTOL IN
15 HIS HAND ON SAFETY -- WITH THE SAFETY OFF -- AND HIS
16 FINGER ON THE TRIGGER AND HE WAS THINKING ABOUT WHEN HE
17 TOOK AIM HE WASN'T GOING TO BE AIMING HERE.

18 HE'S GOING TO BE AIMING HERE. AND HERE. DIDN'T
19 DO HIM ANY GOOD TO AIM HERE. DON'T KNOW IF YOU THOUGHT
20 ABOUT THAT. BUT I WANT YOU TO THINK ABOUT IT WHEN YOU ARE
21 DECIDING WHETHER HE DESERVES THE DEATH PENALTY OR NOT.

22 AND YOU KNOW, AS I DISCUSSED WITH YOU BEFORE,
23 MRS. GRIFFITH IS A CITIZEN WHO HAD A RIGHT TO EXPECT
24 PROTECTION IN HER HOME. HER HOME IS HER CASTLE. SHE HAD
25 A RIGHT TO EXPECT THAT.

1 SHE DIDN'T HAVE ANY CHOICE. MR. STONE DID NOT
2 GIVER HER A CHOICE. SHE HAD NO CHOICE AND AFTER EVERYTHING
3 HAD GONE ON BEFORE THAT, SHE WAS PUT IN THE POSITION SHE
4 HAD ABSOLUTELY NO CHOICE BUT TO CALL THE POLICE AND BEGAN
5 THOSE 911 CALLS AND EVERYTHING.

6 YOU KNOW ABOUT THE POLICE TAPE AND EVERYTHING
7 FROM THEIR TESTIMONY. SHE HAD NO CHOICE. AND DEPUTY
8 CHARLIE KUBALA HAD NO CHOICE. HE HAD A SWORN DUTY. TOOK
9 AN OATH RIGHT HERE IN THIS COURTROOM LIKE EVERY DEPUTY
10 SHERIFF IN THEIR HOME COURTROOM.

11 HE TOOK AN OATH TO FAIRLY AND FEARLESSLY ENFORCE
12 THE CRIMINAL LAWS OF THIS STATE. THEY DON'T PUT IT IN THE
13 OATH, BUT EVERYBODY UNDERSTANDS EVEN THE RISK OF YOUR OWN
14 LIFE.

15 HE GOT INTO A PROFESSION AND THAT'S WHY IT'S SO
16 IMPORTANT FOR YOU TO KNOW ABOUT DEPUTY CHARLIE KUBALA AS
17 AN INDIVIDUAL. HE CHOSE THE PROFESSION OF SERVING AND
18 PROTECTING YOU AND ME AND OUR FELLOW CITIZENS KNOWING --
19 REMEMBER HOW HE TOLD HIS PARENTS I WEAR THAT VEST. IF
20 THEY HIT ME, IT'S GOING TO BE A HEAD SHOT.

21 HE TOOK AN OATH KNOWING THAT HE WAS GOING TO BE
22 PUTTING HIMSELF IN DANGER. BUT KNOWING HE WAS GOING TO BE
23 PUTTING HIMSELF IN DANGER HE LOVED SERVING PEOPLE JUST
24 LIKE IN HIS BUSINESS ON THE SIDE OF SERVING PEOPLE WITH
25 KIDNEY PROBLEMS, DIALYSIS PATIENTS.

1 AND YOU HAVE HEARD THE TYPE. EVEN THE DEFENSE
2 ACKNOWLEDGING HE WAS A WONDERFUL MAN, WONDERFUL DEPUTY
3 SHERIFF. AND HE WAS INVOLVED IN HIS BUSINESS AND AS A
4 DEPUTY SHERIFF IN SERVICE, A SERVICE TO OTHERS, PROTECTING
5 THE PUBLIC AS A DEPUTY SHERIFF AT A RISK EVEN OF HIS OWN
6 LIFE.

7 AND I REMIND YOU OF THE TESTIMONY YOU HAVE HEARD
8 ABOUT HOW HE WAS DEDICATED. YOU KNOW HE HAD WIFE AND
9 CHILDREN. HE LOVED THEM. HE LOVED TO DO THINGS WITH THEM
10 AND THE CAMPING AND THE ACTIVITIES AND THE FAMILY. AND
11 FAMILY WAS SO IMPORTANT TO HIM.

12 YOU KNOW -- AND THAT'S ONE THING ABOUT A CLOSE
13 FAMILY IS WHEN YOU LOSE SOMEBODY, IT'S A GAP THERE. IT'S A
14 GAP YOU WILL ALWAYS REMEMBER. ALWAYS HOLD ON TO.

15 BUT HE WAS AN UNSELFISH PERSON BECAUSE CHARLIE
16 KUBALA, AS MUCH AS HE LOVED HIS FAMILY, AS MUCH AS HE
17 LOVED HIS WIFE AND AS MUCH AS HE LOVED HIS CHILDREN AND
18 LIKE TO DO THINGS WITH THEM, HE WAS A DEDICATED POLICE
19 OFFICER AND WORKED LONG AND HARD IN SERVICING TO THE
20 CITIZENS OF THIS COUNTY AND PROTECTING THEM.

21 AND THEN IN ADDITION TO THAT NOBODY COULD HAVE
22 EXCUSED HIM IF WHEN HE FINISHED DOING A HARD DAYS WORK AS
23 A DEPUTY HE WENT HOME TO HIS FAMILY.

24 IN ADDITION TO THAT HE WORKED THE EXPLORERS AND
25 CUB SCOUTS AND YOUTH. AND YOU HEARD ALL OF THAT ABOUT HIS

1 SPECIAL OLYMPICS AND ALL OF THOSE THINGS HE DID BECAUSE HE
2 CARED ABOUT OUR COMMUNITY.

3 HE WANTED TO MAKE OUR COMMUNITY A BETTER PLACE.
4 HE WANTED TO BE A GOOD ROLE MODEL TO CHILDREN LIKE LEANNA
5 CROOKSHANKS'. HE ACKNOWLEDGED HER AS A SINGLE PARENT. SHE
6 WANTED TO TRY TO PROVIDE FOR HER CHILDREN GOOD ROLE
7 MODELS.

8 YOU KNOW, IT'S SEE EASY BE NICE TO THE MAJORS
9 CHILDREN, FOLKS. YA'LL KNOW THAT. LEANNA CROOKSHANKS'
10 CHILDREN AND THESE OTHER CHILDREN THAT CHARLIE WORKED WITH
11 AND THAT'S THE TYPE OF MAN HE WAS, BENEFIT THOSE CHILDREN
12 HELPING THEM GROW UP TO BE GOOD CITIZENS.

13 AND HELP THEM TO BE LIKE YOU. LIKE OTHERS IN
14 THIS COURTROOM, LIKE THE JUDGE AND BE POSITIVE
15 CONTRIBUTING MEMBERS OF OUR SOCIETY. AND YOU KNOW, THE
16 THING IS CHARLIE KUBALA WAS VERY, VERY UNIQUE.

17 HE WAS A WONDERFUL PERSON. BUT HE'S NOT THE ONLY
18 PERSON THAT'S EVER BEEN LIKE THAT. THERE HAVE BEEN
19 UNSELFISH PEOPLE EVER SINCE 1965 WHEN BOBBY STONE WAS BORN
20 AND I IMAGINE HUNDREDS OF THOUSANDS OF YEARS BEFORE THAT.

21 IF YOU WANTED TO BE A GOOD PERSON, IF YOU WANTED
22 TO WORK HARD IN SCHOOL THERE WAS A TEACHER THAT WAS
23 WILLING TO WORK WITH YOU.

24 IF YOU WANTED TO GET INVOLVED IN CUB SCOUTS OR
25 THE SPECIAL OLYMPICS -- AND I MENTIONED -- OR EXPLORER

1 POST OR WHATEVER IT WAS, EVEN SPECIAL OLYMPICS, YOU DON'T
2 HAVE TO BE THAT SMART; OKAY?

3 SO THERE ARE THINGS. THERE ARE ACTIVITIES.
4 THERE ARE PEOPLE THAT ARE WILLING TO WORK WITH PEOPLE WHO
5 WANT TO DO THAT AND WHO WANT TO DO RIGHT AND WHO WANT TO
6 BE POSITIVE CONTRIBUTING MEMBERS OF OUR SOCIETY.

7 SO IT'S NOT LIKE BOBBY STONE WAS OVER THERE AND
8 KIND OF OFFENDS ME TRYING TO PUT DOWN THE NEIGHBORHOOD
9 LIKE EVERYBODY FROM THE NEIGHBORHOOD TURNS OUT BAD AND
10 ENDS UP COMMITTING CRIME AND THAT'S SOME KIND OF BAD
11 EXCUSE.

12 NO EXCUSE. AND AT THE SALVATION ARMY, HUNDREDS
13 OF THOUSANDS OF DOLLARS A YEAR DONATED TO THAT SALVATION
14 ARMY BOYS AND GIRLS CLUB. PEOPLE RIGHT THERE IN HIS
15 NEIGHBORHOOD WORK WITH PEOPLE WHO WANT TO DO GOOD, WANT TO
16 DO RIGHT.

17 WASN'T LIKE HE WAS DENIED OPPORTUNITIES TO DO
18 THE RIGHT THING. WHAT IT WAS WAS INSPIRING OF HUNDREDS OF
19 PEOPLE LIKE CHARLIE KUBALA IN THE PAST AND HUNDREDS OF
20 GOOD POLICE OFFICERS AND HUNDREDS OF GOOD JUVENILE
21 CORRECTIONAL OFFICERS AND HUNDREDS OF GOOD PRISON
22 OFFICIALS AND PROBATION OFFICERS, TRYING TO HELP BOBBY
23 STONE.

24 HE SLAPPED THEM IN THE FACE OVER AND OVER AND
25 OVER AGAIN. AND NOW HE WANTS YOU TO HAVE MERCY ON HIM.

1 RUTH GRIFFITH HAD NO CHOICE THAT NIGHT. CHARLIE KUBALA HAD
2 NO CHOICE AND HE DID HIS DUTY AND IT COST HIM HIS LIFE.

3 BOBBY STONE HAD THE CHOICE THAT NIGHT. BOBBY
4 STONE HAD CHOICES THROUGHOUT HIS LIFE. BOBBY STONE
5 CONSISTENTLY TOOK THE WRONG CHOICE, DELIBERATELY AND
6 INTENTIONALLY.

7 AND IT CULMINATED ON THAT NIGHT AT 7:08 P.M. AND
8 INTENTLY FIRING THAT GUN THREE TIMES AT THE HEAD, NOT THE
9 CHEST, OF DEPUTY CHARLIE KUBALA TO AVOID BEING TAKEN INTO
10 CUSTODY.

11 AND YOU HEARD THE TESTIMONY. BAM. BAM, BAM.
12 INTENTIONAL, DELIBERATE SHOTS. IT'S NOT SOMETHING --
13 STARTLED THING, NO MEDICAL SUPPORT FOR THAT ANY WAY. BUT
14 THAT'S NOT WHAT IT WAS.

15 AND LADIES AND GENTLEMEN OF THE JURY, I REALIZE
16 WHAT I'M ASKING YOU TO DO IS ASKING YOU TO DO A VERY
17 DIFFICULT AND UNNATURAL THING. SENTENCE SOMEONE TO DEATH.

18 BUT YOU KNOW, I IMAGINE THAT WHEN YOU WERE
19 CALLED TO BE A JUROR OR EVEN BEFORE THAT, IF SOMEBODY SAID
20 THAT BY DOING A COURAGEOUS ACT THAT YOU CAN SAVE INNOCENT
21 HUMAN LIVES -- IT'S LIKE CHARLIE KUBALA RISKED HIS LIFE
22 LIFE SAVING AN INNOCENT HUMAN LIFE.

23 SOMEBODY GIVEN YOU AN OPPORTUNITY TO BUY YOUR
24 COURAGE TO SAVE HIS LIFE. I'M SURE ALL OF US WOULD BE
25 COURAGEOUS. I ASK YOU TO BE COURAGEOUS IN DECIDING THE

1 PUNISHMENT TO IMPOSE IN THIS CASE.

2 THE REASON WE HAVE A DEATH PENALTY STATUTE IS
3 FOR IT'S DETERRENT EFFECT. IT DEFERS THIS DEFENDANT. YOU
4 IMPOSE THE DEATH PENALTY UPON HIM, FOLKS, YOU HEARD ABOUT
5 THE JUVENILE, YOU HEARD ABOUT THE YOUTHFUL OFFENDER YOU
6 HEARD ABOUT THE ADULT SENTENCE. YOU HEARD ABOUT THE
7 PAROLE.

8 YOU HEARD THAT HE WON'T FOLLOW THE
9 RECOMMENDATIONS. YOU HEARD FROM HIS OWN WITNESSES THAT HE
10 WILL NOT RESPECT AUTHORITY. YOU KNOW, I THINK SOMETIMES
11 PEOPLE THINK WELL, YOU KNOW, WE GOT TO MAKE A DECISION AND
12 IT'S BETWEEN LIFE IMPRISONMENT AND THE DEATH PENALTY.

13 AND IF WE GIVE HIM LIFE IMPRISONMENT, THEN OKAY,
14 IT'S OVER WITH AND WE GO ON AND HE DOESN'T GET EXECUTED,
15 BUT IT'S LIFE IN PRISON. FOLKS, LIFE IN PRISON, THEY DON'T
16 JUST PUT PRISONERS IN THERE.

17 THERE HAVE GOT TO BE GUARDS IN THERE. THERE HAVE
18 GOT TO BE CORRECTIONAL OFFICERS WHO HAVE FAMILIES JUST
19 LIKE YOU AND I DO. MEN AND WOMEN. THAT'S THEIR JOB. THEY
20 ARE THE AUTHORITY.

21 YOU SENTENCE BOBBY STONE TO DEATH, THAT HAS AN
22 EFFECT ON THE SAFETY OF THOSE CORRECTIONAL OFFICERS FOR
23 THE REST OF BOBBY STONE'S LIFE.

24 YOU MAKE SURE THAT NO CORRECTIONAL OFFICER OR
25 SOMEBODY ELSE IF HE WERE TO ESCAPE OR SOMETHING, NOBODY

1 ELSE IS UP HERE LIKE THIS KUBALA FAMILY AND ALL THESE
2 DEPUTIES AND THEIR FRIENDS AND RELATIVES.

3 IT IS IMPORTANT THAT YOU CONSIDER THAT DETERRENT
4 EFFECT. AND NOT JUST THAT, BUT A FIRM AND FEARLESS
5 ADMINISTRATION OF THE LAW FAIRLY AND IMPARTIALLY CARRIED
6 OUT IN COURT DEFERS OTHERS FROM COMMITTING SIMILAR CRIMES.

7 IT'S NOT UNREASONABLE TO THINK THAT WHEN YOU ARE
8 FIRM AND FEARLESS AND COURAGEOUS IN MAKING THE DECISION
9 THAT YOU HAVE GOT BEFORE YOU, THAT SOMEBODY ELSE LIKE
10 BOBBY STONE IN THAT POSITION ON THAT PORCH SOMEWHERE DOWN
11 THE ROAD WILL SAY OH, NO. I REMEMBER BOBBY STONE CASE.

12 I REMEMBER WHAT HAPPENED TO HIM. HE SHOT A
13 POLICE OFFICER. I'M NOT GOING TO SHOOT THIS FELLOW. AND
14 THERE WON'T BE A FAMILY LIKE THIS. THERE WON'T BE A VICTIM
15 LIKE CHARLIE KUBALA BECAUSE OF THE COURAGEOUS DECISION
16 THAT YOU MAKE.

17 I SUBMIT TO YOU THAT MANY, MANY, MANY PEOPLE
18 WILL BE DETERRED BY THE FACT THAT YOU WERE COURAGEOUS IN
19 THE DECISION THAT YOU MAKE. HUNDREDS, THOUSANDS, MAY BE
20 DETERRED.

21 BUT LADIES AND GENTLEMEN, YOUR ACTION IN DOING
22 RIGHT THING IN THIS CASE ONLY DETERS ONE PERSON. IF IT
23 ONLY DETERS ONE PERSON AND THERE IS NOT A FAMILY LIKE THIS
24 AND A VICTIM LIKE CHARLIE KUBALA, WON'T YOUR DECISION --
25 WON'T YOUR COURAGEOUS DECISION HAVE BEEN WORTH IT?

1 AND OF COURSE IT WILL. AND DETERRENTS WORKS. I
2 MEAN, YOU KNOW, THINK ABOUT THIS. WHEN YOU AND I WERE KIDS
3 IN SCHOOL AND WE DID OUR HOME WORK BECAUSE WE DIDN'T WANT
4 TO GET A BAD GRADE THAT WAS DETERRENCE.

5 THAT CAUSED US TO DO OUR HOME WORK. AND IN A FEW
6 MONTHS FROM NOW WHEN APRIL 15TH ROLLS AROUND AROUND AND WE
7 FILL OUT THOSE FORMS AND ADMIT OUR INCOME AND SEND A SHARE
8 OF IT IN TO THE GOVERNMENT, MORE THAN WE WANT TO, WE DO
9 THAT BECAUSE THERE IS AN I R S THAT IF WE DON'T, WE WILL
10 GET IN TROUBLE.

11 THAT'S DETERRENCE. WHEN YOU -- MAYBE I DON'T
12 KNOW IF EVERYBODY DRINKS -- BUT IF YOU DRINK AND YOU GO TO
13 A PARTY, YOU HAVE A COUPLE OF DRINKS THEN YOU'RE THINKING
14 -- EVERYBODY SAYS THEY COME ON HAVE ANOTHER, STAY AROUND
15 AND YOU DON'T HAVE THOSE COUPLE EXTRA DRINKS, BECAUSE YOU
16 KNOW THAT OUT THERE ON THAT ROAD ARE HIGHWAY PATROL
17 TROOPERS TO KEEP SOMEBODY FROM GET TOO DRUNK AND BEING A
18 DANGER ON THE ROAD. THAT'S DETERRENCE.

19 FOLKS, THERE IS ABSOLUTELY NO QUESTION THAT
20 DETERRENCE WORKS. YOU KNOW IT DOES IN YOUR EVERY DAY LIFE,
21 DETERRENCE WORKS. PROBLEM IS THERE IS NOT ENOUGH
22 DETERRENTS IN OUR CRIMINAL JUSTICE SYSTEM ANY MORE.

23 AND THAT'S WHY I SUBMIT TO YOU IT'S YOUR DUTY
24 UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, A MURDER
25 COMMITTED WHILE IN THE COMMISSION OF A BURGLARY AND THE

1 MURDER OF A LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY, I
2 SUBMIT TO YOU THAT IT'S YOUR DUTY AND IT'S THE RIGHT THING
3 TO DO IN THIS CASE TO RECOMMEND THE DEATH SENTENCE.

4 AND I UNDERSTAND. I UNDERSTAND THAT IT'S A
5 DIFFICULT THING TO DO AND THAT'S THE REASON I'M DISCUSSING
6 THIS WITH YOU AT THIS TIME. BUT IF IT'S THE RIGHT THING TO
7 DO, IT'S THE THING THAT SHOULD BE DONE.

8 IT'S THE THING THE FACTS AND CIRCUMSTANCES OF
9 THIS CASE CALLS FOR. AND ALL OF YOU ACKNOWLEDGE THAT IN
10 THE PROPER FACTS AND CIRCUMSTANCES AND UNDER THE LAW OF
11 THE EVIDENCE AND THE LAW CALLS FOR THE DEATH PENALTY, THAT
12 YOU COULD DO IT, THAT YOU COULD SIGN YOUR NAME SO THAT
13 SENTENCE -- AND YOU COULD STAND IN THIS COURT ACKNOWLEDGE
14 THAT THAT WAS YOUR VERDICT.

15 LADIES AND GENTLEMEN, I REALIZE IT'S DIFFICULT.
16 BUT I SUBMIT TO YOU THAT YOUR ACT OF COURAGE AND YOUR ACT
17 OF DOING WHAT THIS CASE CALLS FOR WILL DEFINITELY BE WORTH
18 IT.

19 YOU KNOW, WINSTON CHURCHILL MANY YEARS AGO SAID
20 A VERY FAMOUS QUOTE AND THAT IS THAT JURY SERVICE IS THE
21 MOST IMPORTANT CIVIC RESPONSIBILITY NEXT TO SERVICE OF
22 ONE'S COUNTRY IN A TIME OF WAR.

23 THIS THE JURY SERVICE IS THE MOST IMPORTANT
24 THING AS TO THAT. AND THEN I WANT YOU THE THINK ABOUT
25 THROUGHOUT HISTORY OTHERS HAVE BEEN PUT IN DIFFICULT

1 SITUATIONS.

2 FELLOW CITIZENS OF YOURS AND MINE HAVE BEEN
3 CALLED UPON TO MAKE DIFFICULT DECISIONS WHEN DUTY CALLS.
4 SOLDIERS THAT WENT TO WAR. THINK ABOUT WORLD WAR TWO
5 APPROACHED AND THE NAZIS HAD IN MIND WORLD DOMINATION,
6 ELIMINATION OF AN ENTIRE RACE OF PEOPLE.

7 AND OUR PRESIDENT FRANK ELEANOR ROOSEVELT CALLED
8 US TO GO TO WAR AND THE TIME IN OUR HISTORY WHEN ABRAHAM
9 LINCOLN CALLED THIS COUNTRY TO GO IN TO A HORRIBLE CIVIL
10 WAR TO SECURE THE VERY RIGHTS, FREEDOMS AND LIBERTIES THAT
11 EVEN BOBBY STONE TODAY ENJOYS, BUT THAT ALL OF US ENJOY.

12 AND THE CONGRESS BACK IN 1861 AND 1841 THAT
13 VOTED TO GO TO WAR JUST LIKE ABRAHAM LINCOLN, JUST LIKE
14 FRANKLIN ROOSEVELT, THOSE CONGRESSES THAT VOTED TO GO TO
15 WAR WAS -- DID THEY THINK IT WAS GOING TO BE EASY?

16 DID THEY THINK THAT NO INNOCENT PERSON WAS GOING
17 TO DIE? THEY KNEW. THEY ABSOLUTELY KNEW THAT INNOCENT
18 SOLDIERS OF OUR COUNTRY WERE GOING TO DIE TO SECURE OUR
19 FREEDOMS AND OUR LIBERTIES. THEY KNEW IT.

20 PRESIDENT KNEW IT, THE CONGRESS KNEW IT. THE
21 SOLDIERS KNEW IT. WHEN DWIGHT EISENHOWER ORDERED THE
22 SOLDIERS TO STORM THE BEACHES AT NORMANDY HE KNEW THAT
23 THOSE INNOCENT SOLDIERS, HUNDREDS OR THOUSANDS, ON D DAY
24 -- NOT HUNDRED THOUSAND, BUT DURING THE WAS HUNDRED OF
25 THOUSANDS -- AND ON D DAY THOUSANDS OF SOLDIERS HE KNEW

1 THEY WERE GOING TO DIE.

2 BUT ALL OF THOSE PEOPLE, CONGRESSES AND THE
3 PRESIDENTS AND OUR FELLOWS -- THEY ARE OUR FELLOW CITIZENS
4 -- THEY BY HISTORY AND DESTINY HAD A RESPONSIBILITY, CAME
5 DOWN ON THEIR SHOULDERS.

6 AND THEY DID THE COURAGEOUS THING. THEY DID THE
7 RIGHT THING. DID THEY DO AN EASY THING? NO. THEY DID THE
8 RIGHT THING AND WE ARE ALL GLAD FOR THAT.

9 BUT YOU KNOW, THAT'S WHERE THE ANALOGY ENDS.
10 THAT'S WHERE THE ANALOGY ENDS BECAUSE FROM THOSE
11 CONGRESSES AND THOSE PRESIDENTS AND THOSE GENTLEMAN MADE
12 DECISIONS FOR THE GREATER PUBLIC GOOD, THEY KNEW IT WAS
13 GOING TO RESULT IN THE LOSS OF LIFE -- BUT THEY KNEW IT
14 WAS GOING TO RESULT IN LOSS OF LIFE.

15 THEY WERE DOING SOMETHING THEY KNEW WAS GOING TO
16 RESULT IN THE LOSS OF HUNDREDS OF THOUSANDS OF INNOCENT,
17 INNOCENT LIVES AND THEY STILL DID. THEY STILL DID WHAT
18 THEIR DUTY REQUIRED THEM TO DO.

19 THE ANALOGY ENDS THERE BECAUSE LADIES AND
20 GENTLEMEN, THE DUTY THAT I'M ASKING YOU TO CARRY OUT, THE
21 DUTY TO BE A PART OF A CRIMINAL JUSTICE SYSTEM THAT WORKS
22 AND DETERS CRIMINALS, DETERS BOBBY WAYNE STONE FROM EVER
23 DOING ANYTHING LIKE THIS AGAIN TO ANY CORRECTIONAL OFFICER
24 OR ANYONE ELSE, THAT DETERS OTHER CRIMINALS PUT IN
25 SITUATIONS LIKE BOBBY STONE, HUH-UH, I BETTER NOT DO THAT,

1 THEY WILL GIVE ME THE DEATH PENALTY.

2 WHAT I'M ASKING YOU TO DO YOUR DUTY AND BE A
3 PART OF THE CRIMINAL SYSTEM JUSTICE SYSTEM THAT WORKS.
4 WORKS TO DETER CRIME. AND I'M ASKING YOU TO DO THAT DUTY,
5 TO DO THE DIFFICULT THING, TO CARRY OUT THE DESTINY THAT
6 HAS -- YOU DIDN'T WANT IT.

7 YOU THINK THOSE PRESIDENTS OR THOSE CONGRESSES
8 WANTED IT, BUT IT CAME TO THEM BY HISTORY AND DESTINY JUST
9 LIKE YOU DIDN'T WANT TO BE ON THIS JURY, BUT THROUGH A
10 PROCESS OF LAW YOU WERE SELECTED TO REPRESENT YOUR
11 COMMUNITY.

12 AND WITH THAT RESPONSIBILITY CAME AND CAME DOWN
13 TO REST UPON YOUR SHOULDERS. AND I'M ASKING YOU TO BE
14 FEARLESS AND FIRM AND DO THE RIGHT THING AND CARRY IT OUT
15 AND BE PART OF THE CRIMINAL JUSTICE SYSTEM THAT WORKS TO
16 DETER CRIME LIKE THIS.

17 BUT I'M ASKING YOU TO DO IT AND I'M ASKING YOU
18 TO DO IT -- AND THAT'S A DIFFICULT THING I KNOW -- TO DO
19 SOMETHING THAT BY PROCESS OF LAW WILL RESULT IN THE LOSS
20 OF HUMAN LIFE.

21 I'M ASKING YOU TO GIVE THE DEATH PENALTY TO
22 BOBBY WAYNE STONE. NOT HUNDREDS OF THOUSANDS OF INNOCENT
23 SOLDIERS. I'M ASKING YOU THE RECOMMEND THE DEATH PENALTY
24 FOR BOBBY WAYNE STONE, BOBBY WAYNE STONE WHO DESERVES IT.

25 BOBBY WAYNE STONE WHO IS GUILTY, GUILTY OF THE

1 COMMISSION OF A BURGLARY FIRST DEGREE AND THE COMMISSION
2 OF A MURDER DURING THE COURSE OF A BURGLARY FIRST DEGREE.

3 BOBBY WAYNE STONE IS GUILTY OF THE INTENTIONAL
4 AND DELIBERATE MURDER OF A POLICE OFFICER IN THE LINE OF
5 DUTY.

6 LADIES AND GENTLEMEN, PLEASE DO YOUR DUTY.
7 PLEASE LOOK AT THE FACTS AND CIRCUMSTANCES IN THIS CASE.
8 PLEASE REALIZE THAT THIS IS A CASE THAT WHEN YOU WERE
9 ASKED ABOUT AND WHEN YOU WERE QUESTIONED ABOUT YOUR
10 FEELINGS ABOUT THE DEATH PENALTY AND COULD YOU IN THE
11 APPROPRIATE CASE UNDER THE LAW AND CIRCUMSTANCES IMPOSE A
12 DEATH SENTENCE AND YOU ALL INDICATED UNDER OATH THAT YOU
13 COULD, THIS IS THAT CASE.

14 THAT IS YOUR DESTINY. THIS IS YOUR DUTY. THANK
15 YOU.

16 THE COURT: THANK YOU, MR. SOLICITOR. MR. LITTLEJOHN,
17 MR. BABB?

18 MR. BABB: THANK YOU, YOUR HONOR.

19 CLOSING STATEMENT BY MR. BABB.

20 FIRST I'D LIKE TO AGAIN THANK YOU FOR YOUR
21 SERVICE. COMING TO A CLOSE HERE. IT'S BEEN VERY
22 IMPORTANT. THIS IS THE LAST OPPORTUNITY THAT I WILL HAVE
23 TO SPEAK WITH YOU.

24 AFTER I SPEAK BRIEFLY MR. LITTLEJOHN WILL SPEAK
25 AND THEN HIS HONOR WILL INSTRUCT YOU IN THE LAW. AS I

1 MENTIONED BEFORE, WE HAD A CONTRACT, A CONTRACT WITH THE
2 COURT, A CONTRACT WITH THE STATE AND WITH THE DEFENSE.

3 MR. LITTLEJOHN AND I HAVE HELD UP THAT END OF
4 THE BARGAIN, PRESENTED THE EVIDENCE IN A STRAIGHT FORWARD
5 MANNER FOR YOU TO CONSIDER ACCORDING TO THE LAW AS HIS
6 HONOR GIVES YOU.

7 UPHOLDING THAT OATH IS DIFFICULT. I THINK WE ALL
8 PROBABLY BETTER APPRECIATE NOW WHY WINSTON CHURCHILL MADE
9 THAT STATEMENT AND THE REAL TRUTH OF IT. THIS IS
10 DIFFICULT.

11 IT'S EVEN DIFFICULT FOR EVERYONE WHO IS FACING
12 IT. IT'S ABOUT BEING HUMAN, HUMAN CHARACTERISTICS. THIS
13 TRIAL HAS TOUCHED ON JUST ABOUT EVERY EMOTION WE AS HUMAN
14 BEINGS HAVE.

15 WE ALL FELT THE TRAGEDY. WE'VE ALL BEEN MOVED BY
16 THE GRIEF. I THINK EVERYONE FELT THE WEIGHT OF THE
17 IMPORTANCE OF THE DECISION THAT HAS TO BE MADE. MUST BE
18 MADE FAIRLY AND ACCORDING TO THE LAW AS YOU ARE GIVEN.

19 YOU HAVE SEEN IT IN THE FACE OF THE WITNESSES
20 THAT HAVE TESTIFIED. YOU HAVE HEARD IT. FRIENDS, FAMILY,
21 RELATIVES OF SERGEANT KUBALA.

22 AND NOW WE ARE LEFT THE ONLY SOLE -- I THINK
23 ANYONE COULD HAVE POSSIBLY GOT IS FROM THE GOODNESS OF HIS
24 NATURE. THAT'S AMPLY BEEN DEMONSTRATED.

25 NOW, IN THIS PHASE OF THE TRIAL WE HEARD A LOT

1 ABOUT THAT AND AS WELL -- AND I TOLD YOU WE WOULD WHEN WE
2 STARTED THIS PHASE, YOU WILL HEAR ABOUT SERGEANT KUBALA IN
3 GREAT DETAIL.

4 YOU WILL HEAR ABOUT THE EVENTS AND CIRCUMSTANCES
5 THAT SHAPED BOBBY STONES LIFE. THOSE FACTS THAT LED AND
6 INFLUENCED HIM, LED UP TO THE EVENT THAT TRAGIC EVENING IN
7 FEBRUARY OF 96, MANY OF WHICH I TOLD YOU WERE BEYOND HIS
8 DETERMINATION.

9 BOTH ARE IMPORTANT. BOTH ARE VERY IMPORTANT FOR
10 TWO DIFFERENT REASONS WHICH ARE BEFORE YOU. YOU NEEDED TO
11 HEAR ABOUT IT IN ORDER TO DETERMINE THIS CASE FAIRLY.

12 IT'S HARD TO HEAR IT, BUT YOU NEEDED TO HAVE IT.
13 THE RELEVANCE THOUGH. AS I SAY. THE GOODNESS OF SERGEANT
14 KUBALA IS NOT ONE AS HIS HONOR WILL TELL YOU YOU MUST
15 CONSIDER.

16 IT IS RELATIVE, VERY RELEVANT TO THIS CASE. IT
17 IS RELEVANT TO UNDERSTAND HOW AND WHY HIS DEATH IS TRULY A
18 TRAGEDY. IT'S ALSO RELEVANT FOR YOUR UNDERSTANDING OF HOW
19 MR. STONE TURNED OUT TO BE WHERE HE IS.

20 NOW AS EACH OF YOU KNOW, INDIVIDUALLY AND
21 COLLECTIVELY YOU ASSUME TO DETERMINE WHETHER MR. STONE'S
22 LIFE SHOULD BE SPENT IN PRISON OR WHETHER IT CAN BE
23 TERMINATED.

24 HIS ACTIVITIES ON THAT FATEFUL EVENING ARE NOT
25 GOING TO GO UNPUNISHED. THE OPTIONS AVAILABLE TO YOU DO

1 NOT ALLOW IT TO DO UNPUNISHED. THE QUESTION IS LIFE
2 IMPRISONMENT OR DEATH.

3 IT HAS I THINK BEEN AMPLY DEMONSTRATED TO YOU
4 THAT SERGEANT KUBALA CAME FROM A VERY STRONG FAMILY. YOU
5 HEARD FROM HIS MOTHER, HEARD FROM HIS FATHER, HIS BROTHER
6 AND HIS WIFE. HOW CAN YOU CONCLUDE OTHERWISE THEY ARE
7 FINE, FINE PEOPLE?

8 THEY POSSESS AN EXTRAORDINARY QUALITY. HOW MANY
9 OF US COULD SIT IN THIS COURTROOM UNDER THE CIRCUMSTANCES
10 THEY HAD TO DEAL WITH AND COME UP HERE AND TESTIFY IN THIS
11 TRIAL THE DEGREE THAT THEY HAVE, TO CONDUCT THEMSELVES IN
12 THE GREATEST DIGNITY ANY THAT THOSE PEOPLE HAVE EXHIBITED.

13 THEY POSSESS A DEEP AND EXTRAORDINARY STRENGTH
14 ALL TO MANY -- FEW OF US POSSESS. SO YOU CAN CLEARLY
15 UNDERSTAND AND SEE WHAT LENGTHS SERGEANT KUBALA, THE
16 INDIVIDUAL AND THE MAN HE WAS -- HE HAD THOSE SAME
17 CHARACTERISTICS.

18 HE GOT THEM FROM HIS FAMILY. HE LEARNED THEM AS
19 A CHILD. HE LEARNED THEM AS A TEEN-AGER. AND HE EXHIBITS
20 THOSE AS AN ADULT. MORE OVER, HE UNDERSTOOD THE IMPORTANCE
21 OF THE GIFTS THAT HE HAD RECEIVED.

22 HE WANTED TO SHARE THEM WHEN HE DID. HE WAS
23 ACTIVE IN THE SCOUTING PROGRAM. HE WAS ACTIVE IN THE
24 EXPLORER PROGRAM. THOSE ARE IMPORTANT PURPOSES. MRS.
25 CROOKSHANKS EXPLAINED TO YOU HOW HER SON'S PARTICIPATION

1 HELPED BUILD A BOARD -- HELPED A BACK END OF A FATHER
2 FIGURE AT HOME.

3 THE DEATH OF SERGEANT KUBALA -- WAS INVOLVED IN
4 THOSE TWO REASONS ONE HE ENJOYED THEM. HE WANTED TO SHARE,
5 WANTED TO GIVE. HE UNDERSTOOD THE IMPORTANCE OF THE PROPER
6 ROLE MODEL FOR CHILDREN AND FOR TEEN-AGERS.

7 HE WANTED THOSE CHILDREN TO LEARN THE SKILLS
8 NECESSARY TO COPE WITH THE DIFFICULTIES IN LIFE. WE ALL
9 HAVE THEM. HE WANTED TO INSTILL IN THEM THE SKILLS TO COPE
10 AND TO BECOME A PRODUCTIVE AND LAW ABIDING GOOD MEMBER OF
11 OUR SOCIETY AS HE IS.

12 HE KNEW THAT BECAUSE HE HAD DEMONSTRATED ON
13 HIMSELF. AND ALSO HEARD ABOUT THE CIRCUMSTANCES
14 SURROUNDING LIFE OF BOBBY STONE.

15 NOW, THE STATE CONTENDS THAT'S ALL A LIE.
16 OBVIOUSLY ONE WHO LIVED CLOSE BY IN SURROUNDING
17 NEIGHBORHOOD, THAT THEY DIDN'T HEAR ANYTHING ABOUT HIM.

18 ALSO HEARD TESTIMONY MR. MILES WAS BY THIS
19 TESTIMONY -- THAT'S BEEN PRESENTED. YOU COME IN IN THE
20 NIGHT? HEARD IN OPEN COURT SITTING RIGHT THERE IN THE
21 ROOM.

22 IT'S OBVIOUS BOBBY STONE NEVER DEVELOPED THE
23 SKILLS TO COPE WITH LIFE. SEAT OF HIS VEHICLE IS PLANTED
24 IN BARE, DECEMBER LOT (SIC) AND ROCKY GROUND GROWING UP HE
25 RECEIVED LITTLE NOURISHMENT OR ENCOURAGEMENT.

1 HE GREW AND DEVELOPED INTO THAT BRIGHT LITTLE
2 MAN WHOSE FATE YA'LL MUST NOW DECIDE. HE BECAME INVOLVED,
3 NO QUESTION ABOUT IT. HAS A RECORD. CONCLUSION, THE GUY
4 MIGHT SAY ONE THING NOT SAY ANOTHER.

5 EVEN WITH ALL OF THAT, UP UNTIL THIS TRAGEDY FOR
6 THEM, HIS CRIMINAL RECORD HAD BEEN TOTALLY AND ABSOLUTELY
7 DEVOID OF ANY CONVICTIONS INVOLVING THE USE OF VIOLENCE
8 AGAINST ANOTHER PERSON.

9 YOU RECALL HOUSE BREAKING INCLUDED BREAKING INTO
10 A BUSINESS. THEY POINTED OUT THAT THAT WAS AT NIGHT.
11 BETWEEN -- PEOPLE USUALLY AREN'T AT THE BUSINESS. GOING TO
12 BREAK INTO A BUSINESS, DON'T WANT PEOPLE THERE, DO IT AT
13 NIGHT.

14 HIS HONOR IS GOING TO GIVE YOU THE LAW. I
15 BELIEVE HE WILL TELL YOU -- IF I'M WRONG, YOU FOLLOW HIS
16 INSTRUCTIONS, PLEASE. HE WILL TELL YOU THAT SUBMITTED
17 CIRCUMSTANCES YOU MUST CONSIDER.

18 THERE ARE OTHERS. YOU MAY CONSIDER THE
19 EVIDENCE AS IT'S PRESENTED ACCORDING TO HOW HIS HONOR IS
20 TELLING IT TO YOU.

21 I JUST HOPE THAT WHAT YOU HAVE HEARD IN THIS
22 PHASE OF THE TRIAL WILL NOW HELP YOU TO BETTER UNDERSTAND
23 HOW NERVOUS AND FRIGHTENED BOBBY STONE MUST HAVE BEEN ON
24 THAT TRAGIC NIGHT BY THE TIME THE SHOT WAS FIRED AND YOU
25 KNOW, MIXING ALCOHOL WITH DANGEROUS THING IS A TRAGEDY

1 WHAT HAPPENED.

2 IT'S NO EXCUSE. I BELIEVE HIS HONOR WILL TELL
3 YOU VOLUNTARY INTOXICATION IS NEVER REALLY RELEASES A
4 LEGAL OBLIGATION.

5 BUT MANY -- I THINK MOST OF US AT SOME POINT IN
6 THEIR LIFE HAVE HAD FAMILY MEMBERS WHO HAVE -- WHEN THEY
7 GET UP ABOUT THE AGE WHERE YOU KIND OF WANT TO TRY THESE
8 THINGS AND TELL YOU HOW IT'S SO IMPORTANT THAT YOU BE
9 CAREFUL.

10 THAT IN THE BLINK OF AN EYE SOMETHING COULD
11 HAPPEN AND YOUR WHOLE LIFE IS CHANGED FOREVER. MR. STONE
12 -- MR. KOLB SAID NOW OTHER PEOPLE HAVE IT TOUGH. THAT'S
13 ALL TRUE.

14 BUT YOU NEED TO CONSIDER WHAT HIS HIS HONOR WILL
15 TELL YOU ABOUT AGGRAVATING CIRCUMSTANCE WHICH YOU MUST
16 ALSO CONSIDER AND THAT YOU COULDN'T FIND THE DEATH UNLESS
17 YOU FIND AN AGGRAVATING CIRCUMSTANCE -- WOULD BE THAT THE
18 MURDER OCCURRED DURING A BURGLARY.

19 ANOTHER WOULD BE THAT IT INVOLVED A POLICE
20 OFFICER IN THE LINE OF DUTY. AND YA'LL HAVE TO FIND THOSE
21 BEYOND A REASONABLE DOUBT AND THAT'S SOMETHING YA'LL WILL
22 HAVE TO DECIDE AND I ASSUME YOU WILL DECIDE.

23 MAKING THAT DETERMINATION DOES NOT REQUIRE A
24 VERDICT OF DEATH. THAT WILL BE FOR YA'LL TO DECIDE. I
25 BELIEVE HIS HONOR WILL TELL YOU THAT YOU ARE REQUIRED TO

1 MAKE THAT DETERMINATION.

2 SAID YOU WOULD CONSIDER IT FAIRLY. THAT'S ALL WE
3 ASK YOU TO DO. STRAIGHT FORWARD SUCH EVIDENCE AS HIS HONOR
4 RULED SHOULD COME IN. TRIED TO KEEP OUR END OF THE
5 BARGAIN.

6 I WANT YA'LL TO KEEP YOUR END OF THE BARGAIN AND
7 WHEN YOU CONSIDER IT -- WHEN YOU CONSIDER IT -- THIS IS A
8 TRAGEDY, A TRAGEDY TO SENTENCE BOBBY STONE TO DEATH FOR
9 SOMETHING. THANK YOU.

10 THE COURT: MR. LITTLEJOHN?

11 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

12 THE COURT: YES, SIR.

13 CLOSING STATEMENT BY MR. LITTLEJOHN.

14 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I
15 WILL BE THE LAST TO ARGUE OR SPEAK TO YOU DURING THE
16 COURSE OF THIS TRIAL. I WANT TO THANK YOU ALSO FOR THE
17 ATTENTION THAT YOU PAID DURING THIS COURSE OF THIS CASE.

18 I KNOW THAT WHEN YOU GET BACK IN YOUR JURY ROOM,
19 YOU WILL KNOW WHAT THE EVIDENCE IS BECAUSE I HAVE NOTICED
20 THAT YOU ALL HAVE PAID VERY CLOSE ATTENTION, YOU HAVE ALL
21 BEEN VERY CONCERNED WITH THE EVIDENCE AND YOU KNOW WHERE
22 IT IS.

23 AND HIS HONOR HAS INSTRUCTED YOU THAT THE
24 EVIDENCE IN THIS CASE COMES FROM THAT WITNESS STAND AND
25 THOSE EXHIBITS THAT MIGHT BE INTRODUCED. IT'S NOT WHAT WE

1 LAWYERS SAY, IT'S NOT WHAT MR. BABB SAYS, IT'S NOT WHAT I
2 SAY.

3 IT'S NOT WHAT SPECULATION THE STATE CAN COME UP
4 WITH. IT'S NOT AN OVERZEALOUS SPIN THAT THE SOLICITOR CAN
5 PUT ON THE FACTS. IT'S WHAT YOU DETERMINE THE FACTS TO BE.

6 IT'S BEEN A VERY HARD AND EMOTIONAL FEW DAYS FOR
7 EVERYBODY IN THE COURTROOM. AND I THINK ESPECIALLY FOR THE
8 KUBALA FAMILY AND FOR THE STONE FAMILY.

9 BUT UNFORTUNATELY, NOTHING THAT YOU DO WHEN YOU
10 RETURN TO THIS COURTROOM WILL BRING EITHER CHARLIE KUBALA
11 OR BOBBY STONE BACK TO THEIR FAMILIES.

12 YOU WILL HEAR ABOUT TRIALS THAT INVOLVE MILLIONS
13 OF DOLLARS OF VERDICTS. COMPARED TO THIS, THEY ARE NOT
14 VERY IMPORTANT.

15 WE HEAR ABOUT CASES THAT INVOLVE BIG
16 CONSTITUTIONAL ISSUES, THAT EFFECT THOUSANDS OF PEOPLE.
17 THEY FAIL BY COMPARISON. WE HEAR ABOUT CASES THAT INVOLVE
18 GOVERNMENT OFFICIALS AND THEIR ACTIONS AND WHAT EFFECT
19 THAT MIGHT HAVE ON DIFFERENT GOVERNMENTS. THAT'S OF LITTLE
20 CONSEQUENCE COMPARED TO THIS.

21 YOU ARE CONSIDERING THE LIFE AND DEATH OF THIS
22 YOUNG MAN. YOU ARE NOT CONSIDERING SOME FUTURE CASE FOR
23 SOME DEFENDANT THAT MIGHT EXIST IN THE FUTURE FOR SOME
24 SITUATION THAT WE DON'T KNOW WILL EVER EXIST.

25 YOU ARE CONCERNED WITH BOBBY STONE. WHEN YOU

1 TOOK YOUR OATH, THAT'S WHAT YOU PROMISED. IT'S UP TO YOU,
2 LADIES AND GENTLEMEN, TO DECIDE EITHER THE DEATH PENALTY
3 IN WHICH CASE BOBBY STONE WILL BE PUT TO DEATH BY ONE OF
4 TWO WAYS.

5 HE WILL EITHER BE STRAPPED IN AN ELECTRIC CHAIR,
6 VOLTS WILL PASS THROUGH HIS BODY TILL HIS DEATH OR HE WILL
7 BE STRAPPED TO A GURNEY, LETHAL DRUGS WILL BE INJECTED
8 INTO HIS SYSTEM AND HIS HEART WILL STOP BEATING OR THE
9 ALTERNATIVE IS THAT THE STATE KEEPS HIM IN A MAXIMUM
10 SECURITY JAIL FOR THE REST OF HIS LIFE.

11 THOSE ARE THE ALTERNATIVES. NOW, I DON'T SAY
12 THAT TO BE GRUESOME OR MORBID OR PUT PRESSURE ON YOU. BUT
13 THOSE ARE THE FACTS. THAT'S THE REALITY WE ARE DEALING
14 WITH HERE.

15 NOW, YOU KNOW WHEN A CASE INVOLVING THE DEATH
16 PENALTY COMES UP, NORMALLY WE THINK ABOUT A SITUATION
17 WHERE THERE IS SAY A MURDER FOR HIRE OR CASE INVOLVING A
18 HORRIBLE SEXUAL ASSAULT AND A MURDER OR A KIDNAPPING AND
19 MURDER.

20 OR WHERE SOMEBODY BUILDS A BOMB, BLOWS UP THE
21 VICTIM. SOMEONE SETS OUT INTENTIONAL COLD, CALCULATED PLAN
22 AND PURPOSE.

23 I SUBMIT TO YOU, LADIES AND GENTLEMEN, WE DON'T
24 HAVE THAT HERE. AT WORST ON THE NIGHT OF FEBRUARY 26TH --
25 AT WORST FOR BOBBY STONE -- HE HAD THIRTY-FIVE SECONDS TO

1 PLAN THE SHOOTING IF YOU ACCEPT THE STATE'S THEORY IN IT'S
2 ENTIRETY.

3 NOW, SOLICITOR KOLB HAS GOTTEN UP HERE TODAY AND
4 HE'S COME UP WITH THIS BULLET PROOF VEST THEORY. AND HE
5 TRIES TO MAKE SPECULATION, BOBBY STONE IS SOME SORT OF
6 CRACK SHOT.

7 BUT THERE IS SOMETHING INESCAPABLE HE CAN'T GET
8 AROUND. AND BOBBY STONE IS ON THAT PORCH AND THAT GUN WENT
9 OFF, HE SAW ONE OF TWO THINGS. ONE OF TWO THINGS THAT
10 PREVENTED HIM, PREVENTED ANYBODY FROM BEING A CRACK SHOT.

11 HE SAW TOTAL DARKNESS OR HE SAW A FLASHLIGHT
12 SHINING IN HIS FACE. MR. KOLB COMES UP WITH THIS THEORY
13 THAT DOES THAT COMPARE TO THE OTHER SITUATIONS WE
14 MENTIONED? THAT'S UP TO YOU.

15 YOU HAVE HEARD THE OVERALL FACTS. AND AGAIN YOU
16 COME TO YOUR VERDICT. WE DON'T ARGUE WITH THAT. BUT
17 PURPOSE OF THIS HEARING IS FOR YA'LL TO DETERMINE WHAT
18 BOBBY STONE'S FATE WILL BE.

19 NOW, MR. KOLB WANTS YOU TO THINK BOBBY STONE IS
20 SOME COLD CALCULATED MURDERER AND WILL DO IT AGAIN. HE
21 SPECULATES BOBBY STONE MIGHT DO SOMETHING TO A CORRECTIONS
22 GUARD. BOBBY STONE MIGHT ESCAPE. SPECULATION.

23 YOU KNOW, THE SOLICITOR IN HIS ZEAL IS -- I HAVE
24 NEVER SEEN A PROSECUTOR TRY THIS HARD TO WIN A CASE. BUT
25 THE REASON WE HAVE JURIES, LADIES AND GENTLEMEN, IS SO SO

1 THAT WE HAVE SITUATIONS DEAL BETWEEN AN OVER ZEALOUS
2 GOVERNMENT OR OVER ZEALOUS STATE OR OVER ZEALOUS
3 PROSECUTOR AND THE CITIZEN WHO IS ON TRIAL.

4 LADIES AND GENTLEMEN, IF YOU SELECT LIFE
5 IMPRISONMENT FOR BOBBY STONE, I CAN TELL YOU THIS. BOBBY
6 STONE WILL NEVER AGAIN GO TO A HOUSE, GO TO A BUSINESS
7 PERIOD, MUCH LESS WITH SOME SORT OF INTENTION TO BREAK IN.

8 BOBBY STONE WILL NEVER EVER AGAIN HAVE A FIREARM
9 IN HIS POSSESSION. BOBBY STONE WILL NEVER EVER AGAIN DRINK
10 A BEER OR HAVE ACCESS TO MARIJUANA. HE WILL NEVER EVER
11 AGAIN HURT A POLICE OFFICER OR HURT THE KUBALA FAMILY.

12 THERE ARE OTHER THINGS HE WON'T DO FOR THE REST
13 OF HIS LIFE. HE WILL NEVER DRIVE A CAR. HE WILL NEVER
14 VISIT A FRIEND. NEVER CALL OUT FOR A PIZZA OR RENT A
15 MOVIE. NEVER GO FISHING.

16 HE WILL NEVER TAKE A DAY OFF FOR THE REST OF HIS
17 LIFE, BECAUSE HE WILL BE IN JAIL UNTIL HE DIES. THAT'S A
18 DETERRENCE. DON'T HAVE TO WORRY ABOUT DETERRING BOBBY
19 WAYNE STONE, NOT AT THIS POINT.

20 I SUBMIT TO YOU LADIES AND GENTLEMEN, THAT IS A
21 FITTING PUNISHMENT ENOUGH THAT BOBBY WAYNE STONE'S DRUNKEN
22 STUPIDITY ON FEBRUARY 26TH 1996.

23 LADIES AND GENTLEMEN, THE KUBALA FAMILY
24 OBVIOUSLY CONSISTS OF WONDERFUL PEOPLE. YOU MET HIS WIFE,
25 YOU MET HIS PARENTS, YOU MET HIS BROTHER. YOU HEARD ABOUT

1 HIS FAMILY. YOU SAW HIS RELATIVES.

2 CHARLIE KUBALA WAS VERY FORTUNATE TO HAVE THEIR
3 LOVE, THEIR SUPPORT, THEIR VALUES AND THEIR CARE. I WISH
4 BOBBY STONE HAD HAD HALF A FAMILY LIKE THAT. I SUBMIT WE
5 WOULDN'T BE HERE.

6 IF YOU SENTENCE BOBBY STONE TO DEATH, IT WILL
7 NOT BRING BACK CHARLIE KUBALA. IT WON'T APPEAL THE HURT OR
8 FILL A VOID. I ASK YOU PLEASE DON'T COMPOUND THE TRAGEDY
9 TOO MUCH LIKE AS IT IS.

10 THE COURT: PRESIDING JUROR, I'M GOING TO LET THE
11 JURY GO TO THE JURY ROOM JUST FOR A SECOND TO STRETCH.
12 TAKE ABOUT FIVE MINUTES. YOU NOW HEARD THE CLOSING
13 ARGUMENTS.

14 THE LAST STATEMENT WILL BE OF COURSE THE
15 INSTRUCTION ON THE LAW. WE WILL COME BACK IN AT ABOUT
16 5:15. AND YOU WILL FINISH THAT ASPECT. PLEASE, HOWEVER, DO
17 NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION.

18 (WHEREUPON THE JURY LEFT THE COURTROOM).

19 THE COURT: ANYTHING FROM THE STATE, SOLICITOR? IS
20 THERE ANYTHING FROM THE STATE?

21 MR. KOLB: NO, SIR.

22 THE COURT: ANYTHING FROM THE DEFENSE?

23 MR. LITTLEJOHN: NO, YOUR HONOR.

24 THE COURT: VERY WELL. WE WILL BE AT EASE TILL ABOUT
25 5:15.

1 (WHEREUPON A BRIEF RECESS WAS TAKEN).

2 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
3 5:26 P.M.)

4 THE COURT: THANK YOU, LADIES AND GENTLEMEN. YOU HAVE
5 FOUND IN YOUR SEATS CERTAIN DOCUMENTS, TWO PACKETS. ONE
6 CAPTIONED STATUTORY INSTRUCTIONS. YOU SEE A CAPTION. YOU
7 WILL RECALL THAT WAS HERE ON YOUR VERDICT FORM. AND THAT
8 DOESN'T MEAN ANYTHING.

9 THE SECOND GROUP HAS THREE FORMS ATTACHED,
10 AGGRAVATING CIRCUMSTANCES, RECOMMENDATION OF LIFE
11 IMPRISONMENT, RECOMMENDATION OF DEATH PENALTY. I PUT THOSE
12 THERE BECAUSE WE ARE GOING TO BE GOING OVER THOSE FORMS
13 AND I WILL REFER YOU TO THEM DURING THIS INSTRUCTION.

14 UNTIL WE GET TO THAT POINT, I WOULD ASK HOWEVER
15 THAT YOU PLEASE NOT READ THEM, BUT REFER TO THEM AS I
16 DIRECT YOU TO AND WE WILL READ ALONG AND BE EXPLAINING
17 THESE INSTRUCTIONS AS PART OF THIS.

18 CHARGE OF THE COURT.

19 LADIES AND GENTLEMEN, WE HAVE REACHED THAT
20 PORTION OF THE PROCEEDING WHERE I NOW AGAIN WILL GIVE YOU
21 AN INSTRUCTION ON THE LAW.

22 CERTAINLY I DO NOT AND WILL NOT AT THIS POINT
23 INSTRUCT YOU ON MATTERS THAT WE TALKED ABOUT FULLY AGAIN
24 BECAUSE THOSE INSTRUCTIONS STILL APPLY. IF YOU RECALL WITH
25 ME YOU ARE THE FINDERS OF FACT.

1 IT'S YOUR RESPONSIBILITY TO DETERMINE THE FACT
2 OR DETERMINE -- AND IN THAT YOU DETERMINE OF COURSE
3 CREDIBILITY, BELIEVABILITY OF ANY WITNESS YOU HAVE HEARD
4 AND THAT WOULD ALSO APPLY TO THE SECOND PHASE AS WELL.

5 THERE ARE ALSO SOME OTHER PRINCIPALS OF LAW THAT
6 I REMIND YOU OF THAT WE WILL NOT GO INTO ANY GREAT DETAIL
7 AT THIS POINT, BUT WOULD REMIND YOU THAT ARE LIKEWISE
8 APPLICABLE TO THIS PARTICULAR SITUATION.

9 ONE OF WHICH IS THAT THE -- WELL, FIRST OF
10 COURSE THE BURDEN IS UPON THE STATE TO PROVE BEYOND A
11 REASONABLE DOUBT AND WE WILL TALK ABOUT THAT BURDEN IN
12 CERTAIN INSTANCES IN THIS PROCEEDING AND YOU WILL SEE THAT
13 AGAIN.

14 AGAIN YOU WILL RECALL THAT IT'S THE STATE'S
15 RESPONSIBILITY TO PROVE THAT. WITH RESPECT TO THE ONE
16 ISSUE THAT I WOULD REMIND YOU OF AND IT'S A CHARGE THAT I
17 GAVE YOU AT FIRST DURING THE FIRST PHASE, THAT ANYONE WHO
18 IS CHARGED WITH THE COMMISSION OF A CRIMINAL OFFENSE IN
19 THIS COUNTRY IS NEVER REQUIRED TO PROVE THEIR INNOCENSE.

20 AND IN THAT REGARD, OF COURSE, HAS AN ABSOLUTE
21 RIGHT AS WE DISCUSSED TO REMAIN SILENT AND NOT TO TESTIFY
22 IF THEY CHOOSE NOT TO TESTIFY.

23 AND AS I INSTRUCTED YOU IN THE FIRST PHASE YOU
24 MAY NOT AND SHOULD NOT OF COURSE CONSIDER THAT IN ANY
25 FASHION IN DETERMINING ANY OF THE ISSUES THAT YOU ARE

1 CALLED UPON TO RESOLVE DURING THIS PROCEEDING AND DURING
2 THIS PHASE.

3 AND SO I WOULD THEREFORE REMIND YOU THE FACT
4 THAT MR. STONE DID NOT TESTIFY IN THIS MATTER OR THE
5 SECOND PHASE MAY NOT BE CONSIDERED BY YOU IN THE JURY
6 ROOM, MAY NOT BE DISCUSSED.

7 IF YOU DO, OF COURSE THEN YOU WILL HAVE VIOLATED
8 YOUR OATH AS JURORS TO FOLLOW THE INSTRUCTION OF THE LAW
9 AS I GIVE IT TO YOU.

10 ANOTHER ASPECT WOULD BE THE REASONABLE DOUBT.
11 AND YOU RECALL THAT REASONABLE DOUBT CHARGE AND THAT'S THE
12 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE, CONSCIENTIOUS
13 JUROR IN SEARCH OF THE TRUTH TO HESITATE TO ACT.

14 REMEMBER I TALKED ABOUT IF YOU WERE CONVINCED
15 THEN OF COURSE THAT WAS THE LETTER WE DISCUSSED AND THAT
16 DOUBT OF COURSE APPLIES AND THAT DEFINITION APPLIES TO
17 THIS PARTICULAR MATTER.

18 IN ADDITION TO THAT, DURING THIS PROCEEDING YOU
19 HAVE HEARD EVIDENCE OF OTHER CRIMES THAT WERE TESTIFIED TO
20 OF THIS DEFENDANT. AND I WOULD CHARGE YOU THESE CRIMES
21 SHOULD NOT BE CONSIDERED AS SUBSTANTIVE EVIDENCE OF
22 AGGRAVATING CIRCUMSTANCES.

23 BUT IF YOU ARE CONVINCED THAT THE DEFENDANT
24 COMMITTED THESE CRIMES OR ANY OF THEM, YOU MAY CONSIDER
25 THEM AS EVIDENCE OF HIS CHARACTER OR HIS CHARACTERISTICS.

1 THESE MAY BE CONSIDERED ALONG WITH ALL THE OTHER
2 EVIDENCE AND YOU MAY GIVE THEM WHATEVER WEIGHT YOU DEEM
3 PROPER UNDER THE CIRCUMSTANCES OF THIS CASE.

4 IT NOW BECOMES YOUR DUTY, LADIES AND GENTLEMEN,
5 TO DETERMINE THE SENTENCE THAT THIS COURT WILL IMPOSE UPON
6 THE DEFENDANT BOBBY WAYNE STONE.

7 THERE ARE TWO VERDICTS WHICH YOU ARE TO CONSIDER
8 IN THIS CASE. ONE IS THE DEATH PENALTY AND THE OTHER IS
9 LIFE IMPRISONMENT. THE ORDER IN WHICH I EXPLAIN THESE TWO
10 SENTENCES IS IN NO WAY A RECOMMENDATION BY THIS COURT AS
11 TO WHICH SENTENCE YOU SHOULD CHOOSE TO RECOMMEND.

12 IT IS SIMPLY THAT ONE MUST BE STATED FIRST AND
13 OF COURSE FOLLOWED BY THE OTHER ONE. YOU SHOULD NOT PUT
14 ANY WEIGHT WHATSOEVER IN HOW THIS CHARGE IS ORDERED OR
15 PRESENTED.

16 ALSO REMEMBER THAT ALTHOUGH I USE THE TERM
17 RECOMMEND, THE DEFENDANT WILL BE SENTENCED TO WHATEVER IS
18 RECOMMENDED BY YOU.

19 NOW, IN ORDER FOR YOU TO DECIDE WHICH SENTENCE
20 TO RECOMMEND, YOU FIRST MUST DETERMINE WHETHER A STATUTORY
21 AGGRAVATING CIRCUMSTANCE EXISTS BEYOND A REASONABLE DOUBT.

22 WHAT IS A STATUTORY AGGRAVATING CIRCUMSTANCE?
23 IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH
24 THE LEGISLATURE HAS DECLARED BY STATUTE WOULD MAKE WORSE,
25 THAT IS AGGRAVATE, THE OFFENSE OF MURDER WHEN THE TWO

1 OCCUR TOGETHER.

2 IN OTHER WORDS, IT IS SOMETHING WHICH INCREASES
3 THE ENORMITY OF THE OFFENSE OR MAKES THE INJURY MORE
4 GRIEVOUS. IF YOU WOULD NOW REFER TO THE DOCUMENT WHICH IS
5 CAPTIONED STATUTORY INSTRUCTIONS.

6 THIS IS A THIS IS A PIECE OF PAPER -- AND I
7 REMIND YOU WHEN YOU GO TO YOUR JURY ROOM -- I WOULD ASK
8 THAT YOU LEAVE YOUR COPIES THERE IN THE CHAIR.

9 THIS IS TO ASSIST YOU, BUT YOU WILL HAVE THESE
10 DOCUMENTS WITH YOU IN YOUR JURY ROOM THE ORIGINALS WHICH I
11 NOW HOLD IN MY HAND SO YOU WILL BE ABLE TO REVIEW THEM,
12 BUT I AM GIVING YOU THE COPIES SO YOU CAN FOLLOW ALONG
13 WITH THE CHARGE.

14 NUMBER ONE AND I QUOTE STATES IN DETERMINING
15 WHETHER THE DEFENDANT BOBBY WAYNE STONE BE SENTENCED TO
16 LIFE IMPRISONMENT OR DEATH, YOU SHALL FIRST DETERMINE
17 WHETHER THE STATE HAS PROVEN THE EXISTANCE OF THE
18 FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES BEYOND A
19 REASONABLE DOUBT.

20 FIRST, MURDER WAS COMMITTED WHILE IN THE
21 COMMISSION OF BURGLARY AND ANY DEGREE. SECOND, MURDER OF A
22 LOCAL LAW ENFORCEMENT OFFICER DURING OR BECAUSE OF THE
23 PERFORMANCE OF HIS OFFICIAL DUTIES.

24 NUMBER TWO. IF YOU DO NOT UNANIMOUSLY FIND THE
25 EXISTANCE OF THE ALLEGED STATUTORY AGGRAVATING

1 CIRCUMSTANCES LISTED ABOVE -- AGAIN YOU MUST FIND THAT
2 BEYOND A REASONABLE DOUBT -- YOU SHALL SO INDICATE ON PART
3 A OF THE SENTENCING VERDICT FORM WHICH IS CAPTIONED JURY'S
4 VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES.

5 IF YOU WILL LOOK TO THAT PARTICULAR DOCUMENT. IT
6 HAPPENS TO BE THE FIRST DOCUMENT IN YOUR SECOND PACKET.
7 AND YOU SEE ON THAT DOCUMENT THAT YOU HAVE TWO CHOICES, A
8 AND B.

9 IF YOU CONCLUDE THAT THE STATE HAS NOT MET IT'S
10 BURDEN AND PROVED THE TWO AGGRAVATING CIRCUMSTANCES
11 LISTED, THEN YOU MUST SELECT A AND THAT WOULD CAUSE -- AND
12 YOU WOULD THEN GO AND YOU CAN LOOK AT THAT, BUT WE -- NO
13 NEED TO REFER TO THAT. YOU WILL HAVE A FORM THAT SAYS
14 RECOMMENDATION OF LIFE.

15 YOU WOULD GO DIRECTLY TO THAT FORM AND COMPLETE
16 THAT FORM. AND AT THIS POINT YOU WILL CEASE DELIBERATIONS.
17 YOU, OF COURSE, AS THE PRESIDING JUROR SIGN BOTH OF THOSE
18 FORMS WHERE YOU SEE THE WORD FOREMAN AND THAT'S THE WORD
19 THAT'S USED TO DESCRIBE ALSO YOUR POSITION.

20 AND YOU WOULD SIGN ON THE LINE INDICATED FOR
21 YOUR SIGNATURE AS FOREMAN ON BOTH OF THOSE PARTICULAR
22 FORMS.

23 IF, HOWEVER, YOU UNANIMOUSLY FIND THE EXISTANCE
24 OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE LISTED
25 ABOVE, EITHER ONE OR BOTH, YOU SHALL SO INDICATE ON PART B

1 OF THE SENTENCING -- WHICH IS REFERRED TO AS JURY'S
2 VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES.

3 YOU NOTICE B. AND IT CALLS FOR YOU TO WRITE THAT
4 OUT AND THAT'S WHAT THOSE BLANKS ARE FOR. YOU WILL WRITE
5 WHICH ONE OR BOTH IF NEED -- IF THAT BE YOUR CONCLUSION,
6 THOSE AGGRAVATING CIRCUMSTANCES IN THE SPACE PROVIDED.

7 AND YOU WILL NOTE ALSO THAT THE FORM PROVIDES
8 THAT YOU WILL SIGN -- AND EACH ONE OF YOU WILL SIGN
9 INDICATING THAT THAT IS IN FACT YOUR FINDING BEYOND A
10 REASONABLE DOUBT.

11 SO IN OTHER WORDS, YOU WILL UNANIMOUSLY SIGN
12 THAT. YOU UNANIMOUSLY CONCLUDE THAT. AND YOU WILL INDICATE
13 THAT BY SIGNING THE PARTICULAR FORM AND THAT IS B.

14 NOW, PUT THAT DOWN FOR A MOMENT. WE WILL COME
15 BACK TO IT IN JUST A MOMENT. I HAVE ALREADY DEFINED FOR
16 YOU THE CRIME OF BURGLARY. WE DISCUSSED THAT AND I WILL
17 NOT RE-DEFINE THAT FOR YOU AT THIS PARTICULAR POINT.

18 LET ME EMPHASIZE TO YOU THESE ARE THE ONLY
19 CIRCUMSTANCES YOU MAY CONSIDER AS AGGRAVATING
20 CIRCUMSTANCES. SHOULD YOU FIND -- AND AS I STATED, IT MUST
21 BE UNANIMOUS, THAT IS EACH AND EVERY ONE OF YOU MUST FIND
22 THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THE
23 EXISTANCE OF ONE OR BOTH OF THE CIRCUMSTANCES LISTED ON
24 THIS SHEET OF PAPER, THEN YOU MAY CONSIDER RECOMMENDING TO
25 THIS COURT THAT THE DEFENDANT BE SENTENCED TO DEATH.

1 NOW, PLEASE PAY PARTICULAR ATTENTION TO THIS.
2 YOU ARE NEVER REQUIRED TO RECOMMEND THE DEATH PENALTY EVEN
3 IF YOU FIND THAT A STATUTORY AGGRAVATING CIRCUMSTANCE
4 EXISTED AT THE TIME THE OFFENSE OCCURRED.

5 YOU COULD STILL RECOMMEND A LIFE SENTENCE. I
6 INSTRUCT YOU FURTHER SHOULD YOU FIND THE STATE HAS NOT
7 PROVEN THAT SUCH A CIRCUMSTANCE EXISTED THAT IS SO SAY YOU
8 FIND THAT YOU HAVE SOME REASONABLE DOUBT AS TO THE
9 EXISTANCE OF SUCH A CIRCUMSTANCE, THEN YOU WOULD NOT BE
10 AUTHORIZED TO RECOMMEND THE DEATH PENALTY AND YOUR
11 RECOMMENDATION MUST BE LIFE IMPRISONMENT.

12 NOW, IN THAT PARTICULAR CASE YOU WILL HAVE
13 CONCLUDED THAT THE STATE HAD FAILED TO MEET IT'S BURDEN AS
14 TO BOTH OF THEM. IN OTHER WORDS, YOU FIND NO AGGRAVATING
15 CIRCUMSTANCE, YOU WOULD BE THEN BOUND BY LAW TO RECOMMEND
16 ONLY LIFE IMPRISONMENT.

17 AS I HAVE PREVIOUSLY INSTRUCTED, IF YOU FIND THE
18 EXISTANCE BEYOND A REASONABLE DOUBT OF AN AGGRAVATING
19 CIRCUMSTANCE, THEN YOU ARE PERMITTED BUT NOT REQUIRED TO
20 RECOMMEND THE DEATH PENALTY.

21 THERE ARE TWO CONDITIONS WHICH YOU SHOULD
22 CONSIDER IN REACHING YOUR DECISION. FIRST WHETHER THE
23 DEFENDANT HAS INTRODUCED ANY EVIDENCE AS TO THE EXISTANCE
24 OF ANY STATUTORY MITIGATING CIRCUMSTANCES OR ANY OTHER
25 MITIGATING CIRCUMSTANCES.

1 AND SECOND WHETHER FOR ANY REASON YOU CAN THINK
2 OF OR FOR NO REASON AT ALL THAT THE DEFENDANT SHOULD BE
3 SENTENCED TO LIFE IMPRISONMENT.

4 WHAT DO I MEAN BY STATUTORY MITIGATING
5 CIRCUMSTANCES? IT IS A FACT, AN INCIDENT, A DETAIL OR AN
6 OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
7 STATUTE WOULD REDUCE THE SEVERITY OF THE OFFENSE OF
8 MURDER.

9 FIRST IT IS THE CIRCUMSTANCE RECOGNIZED BY
10 STATUTE AS ONE WHICH IN FAIRNESS AND MERCY MAY BE
11 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
12 MORAL CULPABILITY FOR THE COMMISSION OF A MURDER.

13 A MITIGATING CIRCUMSTANCE IS NEITHER
14 JUSTIFICATION NOR EXCUSE FOR MURDER. IT SIMPLY LESSENS THE
15 DEGREE OF THE DEFENDANT'S ACTION, THAT IS IT TENDS TO
16 LESSEN THE SEVERITY OF A PUNISHMENT.

17 WHAT STATUTORY MITIGATING CIRCUMSTANCES SHOULD
18 YOU CONSIDER IN THIS CASE? IF YOU WILL AGAIN REFER TO THE
19 FORM I WOULD DIRECT YOU WHICH IS ENTITLED STATUTORY
20 INSTRUCTIONS.

21 I WOULD DIRECT YOUR ATTENTION TO ITEM FOUR. IN
22 DETERMINING THE -- AND I QUOTE -- IN DETERMINING WHETHER
23 TO RECOMMEND THE DEFENDANT BE SENTENCED TO LIFE
24 IMPRISONMENT OR TO DEATH, YOU MAY CONSIDER ANY OF THE
25 STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY YOU TO EXIST

1 BEYOND A REASONABLE DOUBT.

2 YOU MAY ALSO CONSIDER ANY OF THE FOLLOWING
3 STATUTORY MITIGATING CIRCUMSTANCES. A, THAT THE DEFENDANT
4 HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION
5 INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON.

6 B, THE MURDER WAS COMMITTED WHILE THE DEFENDANT
7 WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
8 DISTURBANCE. FURTHERMORE, YOU MAY CONSIDER ANY OTHER
9 MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE
10 EVIDENCE IN THIS CASE.

11 FIVE -- AND I QUOTE. WHEN YOU HAVE DETERMINED
12 THE SENTENCE TO BE IMPOSED UPON THE DEFENDANT, INDICATE
13 YOUR VERDICT BY COMPLETING THE SENTENCING FORM,
14 RECOMMENDATION OF SENTENCE, LIFE IMPRISONMENT OR
15 RECOMMENDATION OF SENTENCE DEATH PENALTY.

16 IF THE UNANIMOUS VERDICT OF THE JURY IS A
17 RECOMMENDATION THAT THE DEFENDANT SHOULD BE SENTENCED TO
18 DEATH, EACH MEMBER OF THE JURY SHALL INDICATE HIS OR HER
19 AGREEMENT WITH THE VERDICT BY SIGNING AS INDICATED THEN
20 IT'S SIGNED BY ME AS THE PRESIDING JUDGE.

21 THE PHRASE LADIES AND GENTLEMEN ANY OTHER
22 MITIGATING CIRCUMSTANCE REFERS TO THOSE MITIGATING FACTORS
23 WHICH ARE NOT SPECIFICALLY PROVIDED FOR BY STATUTE, BUT
24 WHICH THE DEFENDANT CLAIMS REDUCES THE DEGREE OF
25 PUNISHMENT THAT HE SHOULD RECEIVE.

1 YOU NEED NOT FIND THE EXISTANCE OF A MITIGATING
2 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. IN REACHING YOUR
3 DECISION AS TO WHICH SENTENCE YOU RECOMMEND, YOU WILL
4 CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES, IF
5 ANY.

6 WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE FOUND
7 BEFORE YOU CAN EVER CONSIDER RECOMMENDING THE DEATH
8 PENALTY, ONE SUCH FINDING IS MADE BEYOND A REASONABLE
9 DOUBT, YOU MAY RECOMMEND THE DEATH SENTENCE EVEN THOUGH
10 YOU FIND THE EXISTANCE OF MITIGATING CIRCUMSTANCES.

11 IN OTHER WORDS, THE EXISTANCE OF A MITIGATING
12 CIRCUMSTANCE DOES NOT KEEP YOU FROM IMPOSING THE DEATH
13 PENALTY. IF YOU CONCLUDE THAT A STATUTORY AGGRAVATING
14 CIRCUMSTANCE EXISTS, YOU MUST THEN CONSIDER WHETHER THE
15 DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT FOR ANY
16 REASON OR AS I PREVIOUSLY STATED FOR NO REASON AT ALL.

17 THAT IS WHAT WE HAVE TRADITIONALLY BEEN -- OR
18 WHAT HAS TRADITIONALLY REFERRED TO AS A RECOMMENDATION OF
19 MERCY. SHOULD SUCH BE YOUR DECISION, YOU WOULD SO INDICATE
20 BY RETURNING TO THE COURT THE RECOMMENDATION OF SENTENCE
21 LIFE IMPRISONMENT WHICH FORM WILL BE SIGNED BY YOU AS THE
22 PRESIDING JUROR ONLY.

23 IN OTHER WORDS, YOU MAY CHOOSE TO RECOMMEND LIFE
24 IMPRISONMENT IF YOU FIND A MITIGATING CIRCUMSTANCE OR YOU
25 MAY CHOOSE TO RECOMMEND LIFE IMPRISONMENT AS AN ACT OF

1 MERCY.

2 IN ANY INSTANCE YOU SHOULD CHOOSE -- IN ANY
3 INSTANCE SHOULD YOU CHOOSE TO RECOMMEND LIFE IMPRISONMENT,
4 YOUR DECISION MUST BE UNANIMOUS.

5 BY THIS RECOMMENDATION SENTENCE FORM -- NOW I
6 WILL HOLD -- GIVE YOU AN EXPLANATION OF THOSE, YOU WILL
7 NOTE AND LETS LOOK IF YOU WILL PLEASE THE FIRST SENTENCE
8 FORM WHICH I WOULD LIKE TO GO OVER WITH YOU,
9 RECOMMENDATION OF SENTENCE, DEATH PENALTY.

10 I QUOTE. WE THE JURY IN THE ABOVE ENTITLED CASE
11 HAVING FOUND BEYOND A REASONABLE DOUBT THE EXISTANCE OF
12 THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES OR
13 CIRCUMSTANCES -- YOU WILL RECALL THAT PORTION OF MY
14 INSTRUCTION.

15 IF YOU HAVE CONCLUDED BEYOND A REASONABLE DOUBT
16 THEN YOU WILL NEED TO FILL IN AND WRITE IN THE MARKS
17 PROVIDED MR. PRESIDING JUROR, THOSE THAT YOU DO FIND WILL
18 BE THE ONE OR BOTH, AFTER YOU HAVE DONE THAT THEN EACH
19 JUROR WILL SIGN ON THIS FORM ON THE FORMER LINE PROVIDED
20 INDICATING THAT THAT IS YOUR DECISION BECAUSE AS I HAVE
21 STATED, THAT DECISION MUST BE UNANIMOUS.

22 THE SECOND FORM YOU WILL LOOK WITH ME IS THE
23 FORM THAT'S ENTITLED RECOMMENDATION OF LIFE IMPRISONMENT.
24 AND I QUOTE IT STATES WE THE JURY IN ABOVE ENTITLED CASE
25 RECOMMEND TO THE COURT THAT DEFENDANT BOBBY WAYNE STONE BE

1 SENTENCED TO LIFE IMPRISONMENT.

2 IF THAT BE YOUR DECISION, THEN YOU WILL NEED TO
3 SIGN MR. PRESIDING JUROR ON THE LINES WHERE THAT IS
4 PROVIDED AND OF COURSE THAT WILL BE YOUR DECISION AND BY
5 YOUR SIGNATURE YOU ARE TELLING US THAT THAT IS YOUR
6 UNANIMOUS VERDICT AND AGAIN I WOULD REMIND YOU THAT THAT
7 MEANS 12 TO 0.

8 IN CONSIDERING WHETHER TO RECOMMEND THE
9 DEFENDANT IS TO BE SENTENCED TO DEATH OR LIFE
10 IMPRISONMENT, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE
11 THE ISSUE INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND
12 WITHOUT PREJUDICE TO ANY PARTY.

13 YOU CANNOT ALLOW YOURSELF TO BE GOVERNED BY
14 PREJUDICE BY PASSION OR BY PUBLIC OPINION. BOTH THE STATE
15 AND THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF
16 YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE
17 EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I
18 HAVE EXPLAINED IT TO YOU.

19 LADIES AND GENTLEMEN, IN JUST A MOMENT I'M GOING
20 TO ASK YOU TO RETIRE TO YOUR JURY ROOM. I NEED TO ASK NOW
21 WHETHER OR NOT ALL TWELVE OF YOU FEEL WELL ENOUGH TO
22 CONTINUE.

23 IF YOU DO NOT, PLEASE RAISE YOUR HAND. THANK
24 YOU. THERE ARE NO HANDS RAISED. MRS. JONES, WHEN WE LEAVE,
25 WHEN THEY LEAVE THIS TIME AS THE LAST TIME, I WILL ASK

1 THAT YOU NOT RETURN TO THE JURY ROOM.

2 WE WILL ASK YOU TO REMAIN IN A SEPARATE ROOM AND
3 WE WILL KEEP YOU POSTED. AS BEFORE, YOU ARE STILL NOT
4 READY TO BEGIN YOUR DELIBERATIONS. YOU -- I MUST DISCUSS
5 THE CHARGE WITH THE ATTORNEYS.

6 AND IF NEED BE, I WILL BRING YOU BACK IN TO THIS
7 COURTROOM TO GIVE YOU FURTHER INSTRUCTIONS. IF THERE
8 AREN'T ANY ADDITIONS, THEN WE WILL GATHER THE EXHIBITS AND
9 DELIVER THEM TO YOU.

10 WE WILL DELIVER TO YOU, MR. PRESIDING JUROR,
11 THESE FORMS, THE ORIGINALS. ONCE YOU HAVE COMPLETED THE
12 FORMS OR THE APPROPRIATE FORMS, I WOULD ASK THAT YOU KNOCK
13 ON THE DOOR AND ADVISE THE BAILIFF THAT YOU HAVE REACHED
14 YOUR DECISION.

15 AT THAT TIME WE WILL BRING YOU INTO THE
16 COURTROOM AND RECEIVE YOUR VERDICT. AS BEFORE, IF YOU HAVE
17 ANY QUESTIONS AS TO MATTERS OF LAW, PLEASE WRITE THEM DOWN
18 AND I WILL BE HAPPY TO RESPOND TO THEM.

19 AGAIN, I WOULD ASK THAT YOU NOT ASK ABOUT ANY
20 QUESTIONS OF FACT. I WOULD ASK YOU TO RESOLVE THOSE. BUT
21 IF YOU CANNOT BY YOUR COLLECTIVE RECOLLECTIONS RESOLVE ANY
22 DISPUTE AS TO TESTIMONY, WE DO HAVE THE ABILITY OF
23 RE-PLAYING THAT IF YOU SHOULD NEED THAT.

24 LADIES AND GENTLEMEN, I AGAIN REMIND YOU DO NOT
25 CONSIDER THE ORDER IN WHICH I HAVE GIVEN THE INSTRUCTIONS.

1 DO NOT PUT ANY WEIGHT ON THAT. DO NOT CONSIDER AND
2 CONSIDER THE INSTRUCTIONS IN A -- AS A WHOLE. THANK YOU.
3 IF YOU WOULD PLEASE NOW RETIRE TO YOUR JURY ROOM.

4 (WHEREUPON THE JURY LEFT THE COURTROOM AT 5:48
5 P.M.)

6 THE COURT: ANY OBJECTIONS?

7 MR. KOLB: NO, SIR.

8 THE COURT: THANK YOU, SIR. ANY OBJECTIONS OR
9 EXCEPTIONS FROM THE DEFENDANT?

10 MR. BABB: YOUR HONOR, FOR THE PURPOSES OF THE RECORD
11 WE WOULD RENEW OUR REQUEST TO CHARGE STATUTORY MITIGATING
12 CIRCUMSTANCES SIX AND SEVEN.

13 THE COURT: ALL RIGHT, SIR.

14 MR. BABB: NOT SURE THAT WE HAVE REQUESTED IT, BUT
15 LIFE IMPRISONMENT, LIFE IN PRISON WITHOUT PAROLE.

16 THE COURT: ALL RIGHT. YOU HAVE ARGUED THAT TO THEM.
17 IF THEY REQUEST IT AND WANT TO KNOW THE MEANING OF IT, I
18 WILL INSTRUCT THEM TO THAT. ALL RIGHT. ALL RIGHT. YOU ARE
19 REQUESTING THAT? YOU DIDN'T DO IT BEFORE, BUT YOU ARE
20 REQUESTING IT NOW?

21 MR. BABB: YES, SIR. AND ONE LAST THING FOR THE
22 RECORD, YOUR HONOR. YOU TOLD THE JURY YOU HAD GIVEN THEM
23 THE DEFINITION OF BURGLARY. THE LAST DEFINITION WOULD BE
24 OBJECTED TO AND I JUST RENEW THAT.

25 THE COURT: I AM SORRY. THE OTHER...

1 MR. BABB: THE BURGLARY ISSUE JUST -- I JUST RENEW
2 PREVIOUS OBJECTIONS TO THE DEFINITION OF BURGLARY. CARRY
3 THAT FORWARD INTO THIS PROCEEDING.

4 THE COURT: I DON'T REMEMBER YOU OBJECTING TO
5 BURGLARY. I REMEMBER YOU OBJECTING TO INVOLUNTARY
6 MANSLAUGHTER.

7 MR. BABB: THE TWO OF SO -- SO RELATED. I MEAN, YOU
8 CAN'T HAVE ONE WITHOUT THE OTHER.

9 THE COURT: THAT'S FINE. ALL RIGHT. I UNDERSTAND.

10 MR. BABB: ALL RIGHT, SIR.

11 THE COURT: VERY WELL. THE RECORD NOTES AND YOU HAVE
12 PRESERVED YOUR OBJECTION AS TO THAT. ALL RIGHT. IF I BRING
13 THEM BACK -- ONE OTHER INSTRUCTIONS THAT I MEANT TO ASK
14 THEM AND I THINK I WILL DO THAT JUST AS A BALANCE THAT I
15 NEED TO INSTRUCT, REMIND THEM, VOLUNTARY INTOXICATION IS
16 NEVER EVIDENCE.

17 MR. BABB: I DON'T THINK IT WAS CLEAR TO US -- YOU
18 WERE INTENDING...

19 THE COURT: SIR?

20 MR. BABB: IT WAS CLEAR TO US YOU INTENDED.

21 THE COURT: YES, SIR. I INTENDED TO GIVE THAT
22 INSTRUCTION SO I WILL, I WILL DO THAT AS WELL.

23 (WHEREUPON THERE WAS A PAUSE).

24 THE COURT: YOU GOING TO OBJECT OR AM I GIVING THAT?
25 I UNDERSTAND. THAT'S FINE.

1 MR. LITTLEJOHN: FOR THE RECORD, I THINK I HAVE TO
2 INTERPOSE AN OBJECTION TO THE COURT INSTRUCTING THAT. IF
3 THE COURT IS GOING TO DO THAT, I'M ASSUMING THE COURT
4 WOULD INSTRUCT THE JURY THAT AS TO BURGLARY, VOLUNTARY
5 INTOXICATION WOULD NOT BE A DEFENSE AS YOU MENTIONED.

6 THE COURT: I'M GOING TO SAY AS I PREVIOUSLY
7 INSTRUCTED YOU, I REMIND YOU THAT VOLUNTARY INSTRUCTION --
8 VOLUNTARY INTOXICATION IS NEVER A DEFENSE TO A CRIMINAL
9 ACT OR ACTIONS.

10 THAT'S WHAT I TOLD THEM. SO I CAN'T -- I
11 CAN'T -- CAN'T DEAL WITH INTENT, JUST WITH BURGLARY, IT
12 APPLIES TO ANY CRIMINAL ACT WHICH HE USED TO COMMITTING.
13 SO I WILL DO IT IN THAT RESPECT.

14 MR. LITTLEJOHN: I'M COVERED.

15 THE COURT: I UNDERSTAND. THANK YOU, SIR. ALL RIGHT.
16 LETS BRING THE JURY BACK.

17 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
18 5:52 P.M.)

19 THE COURT: THANK YOU VERY MUCH. LADIES AND
20 GENTLEMEN, COULD I HAVE YOUR ATTENTION. AGAIN, I REMIND
21 YOU YOU ARE NOT TO CONSIDER THIS PART AS SOME PART THAT
22 NEEDS TO BE FOCUSED ON, IT'S NOT.

23 IT'S TO BE CONSIDERED AS A WHOLE, AS A WHOLE, A
24 PART OF THE ENTIRE CHARGE. ONE OF THE PRINCIPALS I
25 INSTRUCTED YOU -- AND I'M NOT GOING TO GO INTO ANY GREAT

1 DETAIL ABOUT IT, BUT I WOULD REMIND YOU OF THE
2 INSTRUCTIONS THAT I GAVE YOU DURING THE FIRST PHASE THAT
3 SAYS VOLUNTARY INTOXICATION IS NOT A DEFENSE TO CRIMINAL
4 ACT OR ACTIONS.

5 SECONDLY I WOULD INSTRUCT YOU THAT UNDER OUR LAW
6 LIFE IMPRISONMENT MEANS THAT A PERSON WILL BE -- WILL
7 SERVE THE BALANCE OF HIS LIFE IN PRISON. OKAY?

8 WITH THAT INSTRUCTION I WOULD ASK YOU TO RETIRE
9 TO YOUR JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS HOWEVER
10 UNTIL YOU HAVE RECEIVED THE EVIDENCE AND THE FORMS. ONCE
11 THAT IS RECEIVED, YOU MAY THEN BEGIN YOUR DELIBERATIONS.

12 (WHEREUPON THE JURY LEFT THE COURTROOM AT 5:54
13 P.M.).

14 THE COURT: ANY EXCEPTIONS FROM THE STATE?

15 MR. KOLB: NOTHING.

16 THE COURT: ANY EXCEPTIONS FROM THE DEFENSE?

17 MR. LITTLEJOHN: YOUR HONOR, OTHER THAN YOUR PREVIOUS
18 OBJECTIONS, NO.

19 THE COURT: THAT IS TO THE VOLUNTARY INTOXICATION.

20 MR. LITTLEJOHN: YES, SIR.

21 THE COURT: THANK YOU VERY MUCH. THE RECORD NOTES IT.
22 LETS MAKE SURE WE HAVE ALL OF THEM. AND THAT WILL...

23 (BEGAN DELIBERATIONS AT 5:55).

24 THE COURT: ALL RIGHT. EVERYONE THAT IS COMING IN
25 NEEDS TO COME IN, OTHERWISE WE NOT ALLOW ANY OTHER PERSONS

1 IN, PLEASE. I AM ADVISED, LADIES AND GENTLEMEN, THAT THE
2 JURY HAS REACHED A VERDICT.

3 MAYBE SOME OF YOU WEREN'T PRESENT THE LAST TIME
4 WE RECEIVED ONE. IF YOU WERE, FORGIVE ME FOR BEING
5 REPETITIVE. BUT THIS PART IS PROBABLY, PROBABLY THE MORE
6 EMOTIONAL PART OF THE WHOLE -- BECAUSE THERE WILL BE THE
7 END OF THIS PROCEEDING.

8 I APPRECIATE AGAIN THE WAY YOU HAVE ALL
9 CONDUCTED YOURSELVES IN THIS MATTER. I APPRECIATE THE
10 DIGNITY IN WHICH YOU APPROACHED THIS WITH WHICH YOU HAVE
11 APPROACHED THIS FOR BOTH SIDES.

12 THE EMOTIONS ARE REAL. THERE'S NO INSINCERITY. I
13 HAVEN'T OBSERVED ONE OUNCE OF IT. MY HEART GOES OUT TO ALL
14 OF YOU. IT'S A TRAGEDY IN EVERY RESPECT. IT HAS BEEN SAID
15 -- I ALSO WANT TO SAY SOMETHING ELSE THAT BEARS, NEEDS TO
16 BE SAID.

17 AS A LOT OF YOU OBSERVED THIS AND I KNOW YOU
18 FELT TENSION FROM TIME TO TIME. WE ALSO HAVE FELT TENSION
19 FROM TIME TO TIME. WE ARE ALL HUMAN. BUT I WANT TO THANK
20 AS I HAVE THANKED BEFORE, BOTH SIDES.

21 BUT NOW I WANT TO THANK THE OFFICERS, THE OTHER
22 OFFICERS IN THIS COURT FOR THE MANNER IN WHICH THEY HAVE
23 REPRESENTED THEIR CLIENTS IN THIS PROCEEDING. I COMMEND
24 THEM EACH.

25 AND HOW THEY HAVE APPROACHED AND DIGNIFIED THIS

1 ENTIRE PROCESS. I THANK YOU ALL. IT'S AN HONOR TO SERVE
2 WITH EACH OF YOU IN THIS PROCESS. I'M GOING TO ASK YOU
3 THAT IF ANYONE -- AND I CAN CERTAINLY UNDERSTAND THIS --
4 FEELS THAT THEY CANNOT REFRAIN FROM A RESPONSE TO THE
5 VERDICT, YOU NEED TO LEAVE NOW BECAUSE I WILL NOT TOLERATE
6 ANY RESPONSE, ANY OUT BURSTS AT ALL IN THIS COURTROOM.

7 SO IF YOU NEED TO, PLEASE FEEL FREE TO LEAVE.
8 IF YOU DO REMAIN, I WILL ACCEPT THAT THAT'S YOUR AGREEMENT
9 THAT YOU WILL CONDUCT YOURSELF ACCORDINGLY. AND THE
10 PROCESS MAY BE LONG, BUT UNTIL THIS JURY DEPARTS, I DO NOT
11 WISH ANY OUT BURSTS.

12 I'M GOING TO -- WE ARE GOING TO RECEIVE THE
13 VERDICT. I WILL HAVE -- AFTER WE HAVE GONE THROUGH THE
14 PROCESS, I'M GOING TO ASK THAT THEY STEP BACK IN THE JURY
15 ROOM BECAUSE I NEED TO TALK TO THEM ABOUT SOME MATTERS
16 THAT I'M REQUIRED TO WITH REGARD TO THEIR RIGHTS TO NOT
17 TALK ABOUT THIS AND I'M GOING TO GO OVER THAT WITH THEM
18 BRIEFLY AND THEN CONFIRM IT.

19 AT THAT TIME, ONCE THEY LEAVE THEN, I'M SURE
20 THERE MAY BE SOME, YOU FEEL FREE TO DO WHATEVER YOU FEEL
21 LIKE YOU HAVE TO DO. I WILL -- WELL, LET ME SAY THIS.

22 I GUESS WE'LL GO AHEAD AND LETS WAIT TILL THE
23 PROCESS IS CONCLUDED. ALL RIGHT, ANYTHING FROM THE STATE
24 BEFORE WE BRING THE JURY?

25 MR. KOLB: NO, SIR, YOUR HONOR.

1 THE COURT: ANYTHING FROM THE DEFENSE?
2 MR. LITTLEJOHN: NO, YOUR HONOR.
3 THE COURT: LET THE RECORD REFLECT MR. STONE IS
4 PRESENT AND HAS BEEN PRESENT THROUGHOUT THIS. ASK THE JURY
5 TO COME IN, PLEASE, AND BRING IN MRS. JONES AS WELL.
6 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
7 8:13 P.M.)
8 THE COURT: THANK YOU VERY MUCH. THANK YOU, LADIES
9 AND GENTLEMEN. MR. FOREMAN, AS I UNDERSTAND THE JURY HAS
10 REACHED A VERDICT IN.
11 FOREMAN: YES, WE HAVE.
12 THE COURT: IF YOU WOULD PASS THE FORM.
13 V E R D I C T .
14 THE COURT: VERY WELL. THE FORMS HAVE BEEN PROPERLY
15 COMPLETED. ASK THE DEFENDANT TO PLEASE RISE. STATE OF
16 SOUTH CAROLINA VERSUS BOBBY WAYNE STONE. 96-GS 43- 698,
17 JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES.
18 WE THE JURY IN THE ABOVE ENTITLED CASE FIND
19 BEYOND A REASONABLE DOUBT THE FOLLOWING STATUTORY
20 AGGRAVATING CIRCUMSTANCES. MURDER HAS COMMITTED WHILE IN
21 THE COMMISSION OF BURGLARY IN ANY DEGREE.
22 MURDER OF A LEGAL LAW ENFORCEMENT OFFICER DURING
23 OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES. IT
24 IS BEEN SIGNED BY MR. RIEGEL AS FOREMAN AND ALL OTHER
25 JURORS HAVE AFFIXED THEIR SIGNATURE TO THIS FORM AS

1 INSTRUCTED BY THIS COURT.

2 STATE OF SOUTH CAROLINA COUNTY OF SUMTER, STATE
3 VERSUS BOBBY WAYNE STONE, DEFENDANT, 96-GS.43- 698,
4 RECOMMENDATION OF SENTENCE DEATH PENALTY. WE THE JURY IN
5 THE ABOVE ENTITLED CASE HAVING FOUND BEYOND A REASONABLE
6 DOUBT THE EXISTANCE OF THE FOLLOWING STATUTORY AGGRAVATING
7 CIRCUMSTANCE:

8 MURDER WAS COMMITTED WHILE IN THE COMMISSION OF
9 A BURGLARY IN ANY DEGREE, MURDER OF A LOCAL LAW
10 ENFORCEMENT OFFICER DURING OR BECAUSE OF THE PERFORMANCE OF
11 HIS OFFICIAL DUTY, DO NOW RECOMMEND TO THE COURT THAT THE
12 DEFENDANT, BOBBY WAYNE STONE, BE SENTENCED TO DEATH.

13 SIGNED BY MR. RIEGEL AS FOREMAN, ALL OTHER
14 JURORS HAVE SIGNED THIS FORM AS INSTRUCTED. MR. FOREMAN
15 AND LADIES AND GENTLEMEN OF THE JURY, IF THE COURT HAS
16 ACCURATELY PUBLISHED YOUR VERDICT AS TO FIRST PROOF OF
17 AGGRAVATING CIRCUMSTANCES, FINDING TWO AGGRAVATING
18 CIRCUMSTANCES, MURDER WHILE BEING COMMITTED -- MURDER
19 COMMITTED WHILE IN THE COMMISSION OF A BURGLARY IN ANY
20 DEGREE AND MURDER OF A LOCAL LAW ENFORCEMENT OFFICER
21 DURING OR BECAUSE OF PERFORMANCE OF HIS DUTIES, PLEASE
22 RAISE YOUR RIGHT HAND. PUT THEM DOWN.

23 IF THE COURT HAS ACCURATELY PUBLISHED THE
24 RECOMMENDATION OF THE SENTENCE DEATH PENALTY, AND STATED
25 THE FINDINGS THE AGGRAVATING CIRCUMSTANCES AS CONTAINED ON

1 THE VERDICT FORM OF AGGRAVATING CIRCUMSTANCES, PLEASE
2 RAISE YOUR RIGHT HAND. YOU MAY PUT THEM DOWN. ANYTHING
3 FURTHER FROM THE STATE?

4 MR. KOLB: NO, SIR, YOUR HONOR.

5 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

6 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME WE WOULD
7 LIKE TO RENEW ALL OUR PREVIOUSLY MADE MOTIONS UNDER RULE
8 NINETEEN FOR DIRECTED VERDICT FOR JUDGMENT NOT WITH
9 STANDING THE VERDICT. ALSO MOVE TO DISMISS THE SENTENCING
10 PROCEEDING.

11 THE COURT: VERY WELL. THANK YOU, SIR. I WOULD
12 RESPECTFULLY DENY THOSE MOTIONS. ANYTHING ELSE?

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: VERY WELL. THE DEFENDANT MAY BE SEATED
15 AT THERE POINT. YOU MAY TAKE YOUR SEATS AS WELL. ALL
16 RIGHT. LADIES AND GENTLEMEN, YOUR SERVICE IS NOW HAVE BEEN
17 CONCLUDED IN THIS CASE.

18 IT'S BEEN AN ORDEAL, A LONG ORDEAL FOR ALL OF
19 YOU. BUT EACH ONE OF YOU AS I TOLD YOU BEFORE, WHAT AN
20 HONOR TO WORK WITH PEOPLE WHO ARE DEDICATED TO THEIR STATE
21 LIKE YOU ARE. MY HONOR. THANK YOU.

22 I HAVE SOME MATTERS THAT I NEED TO DISCUSS WITH
23 YOU THAT PERTAIN NOW TO YOUR RIGHT AS A JUROR BECAUSE I
24 HAVE BEEN RESTRICTING YOUR DISCUSSING THIS CASE.

25 I HAVE A FORM THAT I NEED TO PERSONALLY GIVE TO

1 YOU BECAUSE IT HAS SOME NUMBERS THAT YOU WILL NEED TO CALL
2 IN THE EVENT SOMEONE SHOULD RESIST, BUT BY IN LARGE THE
3 FORM AND SUMMARY AND I WILL GO OVER IT WITH YOU IN THE
4 JURY ROOM ONCE I HAVE COMPLETED BUSINESS HERE.

5 IF YOU WILL WAIT FOR ME A LITTLE BIT. I WILL GO
6 OVER THE FORM, BUT BASICALLY IT SAYS -- IT'S YOUR RIGHT.
7 YOU MAY TALK WITH THOSE IF YOU WISH TO TALK ABOUT IT, BUT
8 IF YOU DECIDE NOT TO, THAT'S YOUR PERSONAL RIGHT.

9 AND IF THAT PERSON PERSISTS, THEN YOU NEED TO
10 ADVISE AND IT HAS MR. PLAYER'S NUMBER SO HE CAN GET IN
11 TOUCH WITH ME OR SOME OTHER JUDGE TO TAKE CARE OF THAT
12 PROBLEM.

13 BUT I WILL GO OVER THAT WITH YOU AND GIVE YOU
14 THAT FORM IN YOUR JURY ROOM. YOU MAY NOW RETIRE TO YOUR
15 JURY ROOM AND MRS. YOUNG YOU MAY LIKEWISE GO BACK IN THE
16 ROOM WITH THE OTHER JURORS...

17 THE COURT: ALL RIGHT. IS THERE ANYTHING FROM THE
18 STATE BEFORE WE IMPOSE THE SENTENCE?

19 MR. KOLB: NO, SIR.

20 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

21 MR. LITTLEJOHN: NO, YOUR HONOR. NOT AT THIS TIME.

22 THE COURT: VERY WELL. BEFORE I IMPOSE THE SENTENCE
23 AS REQUIRED BY LAW, ON THE RECORD I DO FIND AS AN
24 AFFIRMATIVE FACT THAT BASED ON THE FACTS AS HEARD BY THIS
25 COURT, BASED AN THE FINDINGS OF THE JURY, BASED ON THE

1 TIME THAT THEY EXPENDED IN DELIBERATIONS BASED ON THE
2 COURT'S OBSERVATIONS FOR ALL JURORS IN THIS TRIAL, I FIND
3 THAT THE -- THAT THIS DECISION OR VERDICT WAS NOT THE
4 RESULT OF ANY PREJUDICE, PASSION OR ANY OTHER ARBITRARY
5 FACTOR.

6 S E N T E N C I N G.

7 AND I AM SIGNING THAT AFFIRMATION AT THIS
8 MOMENT. BOBBY WAYNE STONE, YOU HAVE BEEN FOUND BY THE JURY
9 TO BE GUILTY OF THE OFFENSE OF MURDER.

10 AND THE JURY HAS FURTHER RECOMMENDED THAT YOU BE
11 SENTENCED TO DEATH. I ASK YOU NOW, DO YOU HAVE ANYTHING
12 YOU WISH TO SAY AS TO WHY THE JUDGMENT OF THE LAW AND THE
13 SENTENCE OF THIS COURT SHOULD NOT BE PRONOUNCED AGAINST
14 YOU?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: VERY WELL. IT IS THE JUDGMENT OF THIS
17 COURT AND THE LAW AND THE SENTENCE OF THIS COURT THAT YOU,
18 THE PRISONER AT THE BAR, BE TAKEN TO COUNTY JAIL OF SUMTER
19 AND THEN TO THE STATE PENITENTIARY HENCE FORTH TO BE KEPT
20 IN CLOSE AND SAFE CONFINEMENT UNTIL THE 28TH DAY OF
21 FEBRUARY 1997 UPON WHICH DAY BETWEEN THE HOURS OF 6:00
22 P.M. AND 11:00 P.M. YOU SHALL SUFFER DEATH BY
23 ELECTROCUTION OR LETHAL INJECTION IN THE MANNER PROVIDED
24 BY LAW. I FURTHER IMPOSE -- WHAT'S THE PENALTY FOR THE
25 CARRYING A FIREARM?

1 MR. KOLB: FIVE YEARS.

2 THE COURT: FIVE? IN ADDITION, I THINK IT'S FIFTEEN
3 FOR -- TO LIFE FOR THE BURGLARY.

4 MR. LITTLEJOHN: YES, SIR.

5 THE COURT: FOR THE OFFENSE OF BURGLARY FIRST DEGREE,
6 THE COURT IMPOSES THIRTY YEAR SENTENCE WHICH IS
7 CONSECUTIVE TO THE MURDER SENTENCE JUST IMPOSED.

8 AND FOR THE OFFENSE OF POSSESSION OF A FIREARM
9 WHILE COMMITTING A VIOLENT CRIME, THE IMPOSITION OF
10 SENTENCE IS FIVE YEARS LIKEWISE CONSECUTIVE. THANK YOU.
11 GOD BLESS YOU AND GOD BE WITH YOU, SIR.

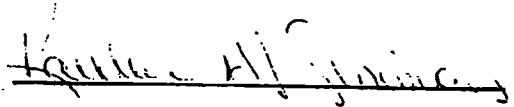
12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF JANUARY, 1997.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 1997


CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF SUMTER

3
4 THE STATE :

5 -VS- :

TRANSCRIPT OF RECORD

96-GS-43-698

6 BOBBY WAYNE STONE :

7
8 JANUARY 20, 21, AND 22, 1997
9 GEORGETOWN, SOUTH CAROLINA

10 B E F O R E:

11 HONORABLE R. MARKLEY DENNIS, JR., JUDGE.

12
13 A P P E A R A N C E S:

14 WADE S. KOLB, JR., SOLICITOR
15 JOHN M. HILLIARD, III, ASST. SOLICITOR
16 VERNIE L. WILLIAMS, ASST. SOLICITOR
ATTORNEYS FOR THE STATE

17 CAMERON B. LITTLEJOHN, JR., ESQ.
18 JAMES H. BABB, PUBLIC DEFENDER
19 ATTORNEYS FOR THE DEFENDANT

20
21 VIRGINIA ROLAND
22 CIRCUIT COURT REPORTER
23 VOLUME I OF III
24
25

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19	KAREN L. GRAHAM				
20	THE COURT	651			
21	MR. KOLB	659			
22	MR. LITTLEJOHN	660			
23	NEOMIE M. JORDAN				
24	THE COURT	663			
25	MR. LITTLEJOHN	666			

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I N D E X

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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2					
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4	THE COURT	667			
5	MR. KOLB	674			
6	MR. LITTLEJOHN	676			
7	AMY WHITE CONDON				
8	THE COURT	682			
9	MR. KOLB	689			
10	MR. BABB	689			
11	PHILLIP K. ALLEN				
12	THE COURT	695			
13	MR. KOLB	702			
14	MR. LITTLEJOHN	703			
15	CLYDIE B. THOMPSON				
16	THE COURT	705			
17	MR. WILLIAMS	713			
18	MR. LITTLEJOHN	714			
19	CAROLYN L. MONTAGNE				
20	THE COURT	716, 734			
21	MR. KOLB	727, 731			
22	MR. LITTLEJOHN	729			
23	/ / /				
24	/ / /				
25	/ / /				

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS

CECIL M. MCGEE

THE COURT	739,	751		

MR. WILLIAMS	746			

MR. BABB	748			

JOHN K. CROTTS

THE COURT	756			

EDWARD R. GOUDE

THE COURT	762			

MR. WILLIAMS	770			

MR. LITTLEJOHN	771			

EUGENIA MAYBANK

THE COURT	774			

MR. KOLB	781			

MR. BABB	783			

JAMES D. WOODARD

THE COURT	790			

MR. KOLB	793			

MR. BABB	799			

GLENN D. YARBOROUGH

THE COURT	802,	819		

MR. KOLB	814			

MR. BABB	817			

/ / /

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I N D E X

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
	PATRICIA A. HAYNES				
	THE COURT	822			
	MR. WILLIAMS	825			
	RUBY E. BROCKINGTON				
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1275

1 (THEREUPON, ON MONDAY, JANUARY 20, 1997, THE TRIAL WAS
2 COMMENCED AS FOLLOWS:)

3 (THEREUPON, THE JURY PANEL WAS SWORN AND THE ROLL OF
4 THE JURY PANEL WAS CALLED.)

5 THE CLERK: ANYONE ELSE WHOSE NAME I DID NOT
6 CALL?

7 A JUROR: I ASKED TO BE EXCUSED. MY NAME IS
8 ETHEL MORRIS.

9 THE COURT: YOU ARE EXCUSED, MS. MORRIS. YOU
10 WISH TO BE EXCUSED, MA'AM?

11 A JUROR: YES.

12 THE COURT: YOU MAY BE EXCUSED. THANK YOU FOR
13 COMING. YOU MAY LEAVE IF YOU'D LIKE.

14 A JUROR: YOUR HONOR, Y'ALL HAVE EXCUSED MY SON,
15 JAMES SHAW; BUT I DIDN'T KNOW WHETHER WE CAME DOWN THIS
16 MORNING, NUMBER 165.

17 THE CLERK: HE'S THE ONE THAT WAS. . .

18 THE COURT: HE'S EXCUSED, YES, MA'AM. THANK YOU
19 VERY MUCH FOR COMING, MA'AM. YOU ARE FREE TO LEAVE.

20 ANYONE ELSE? THOSE JURORS -- YES, MA'AM?

21 A JUROR: I'D LIKE TO TALK TO YOU.

22 THE COURT: MA'AM, I'LL GIVE YOU AN OPPORTUNITY.
23 THERE ARE SOME QUESTIONS. IF YOU'LL JUST BEAR WITH ME,
24 WE'LL GET TO THAT POINT.

25 A JUROR: OKAY.

1286

1 THE COURT: ARE THERE ANY JURORS WHO CAME IN LATE
2 WHO DID NOT TAKE THE OATH THAT I ADMINISTERED TO THE OTHER
3 PANEL? YOU NEED TO STAND. JUST STAND WHERE YOU ARE.

4 THEY DON'T HAVE TO COME FORWARD. JUST STAND
5 WHERE THEY ARE.

6 PLEASE RAISE YOUR RIGHT HAND. DO EACH OF YOU
7 SOLEMNLY SWEAR OR AFFIRM THAT THE ANSWERS THAT YOU GIVE TO
8 THE COURT'S QUESTIONS AND ANY QUESTIONS HERE TODAY WILL BE
9 THE TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD? YOU
10 SHOULD SAY I DO.

11 (NO NEGATIVE RESPONSE.)

12 THE COURT: AND WILL EACH ONE OF YOU -- PLEASE
13 KEEP YOUR HANDS UP -- AND WILL EACH OF YOU RESPOND TO THE
14 QUESTIONS ASKED YOU TODAY TRUTHFULLY AND GIVE A COMPLETE
15 ANSWER TO ALL OF THE QUESTIONS? IF SO SAY I WILL.

16 (NO NEGATIVE RESPONSE.)

17 THE COURT: THANK YOU AND PLEASE BE SEATED. ALL
18 RIGHT. LADIES AND GENTLEMEN, THERE ARE SOME QUESTIONS THAT
19 I NEED TO ASK YOU NOW THAT DEAL WITH YOUR QUALIFICATIONS TO
20 SERVE AS JURORS IN THIS COURT. IF ANY OF THESE QUESTIONS
21 APPLY TO YOU, IT IS IMPERATIVE THAT YOU SHARE THAT
22 INFORMATION WITH THE COURT. IF YOU HAVE ANY QUESTION
23 WHATSOEVER ABOUT WHETHER OR NOT THE QUESTION DOES APPLY, I
24 WOULD ASK THAT YOU SHARE IT WITH ME AND LET ME MAKE THAT
25 DETERMINATION.

1281

1 THE FIRST QUESTION -- FIRST OF ALL LET ME DO
2 SOMETHING AND I APOLOGIZE. I'M RUDE. MY MOTHER TAUGHT ME
3 BETTER. MY NAME IS MARKLEY DENNIS, JR. I'M A CIRCUIT
4 COURT JUDGE FROM A NEIGHBORING COUNTY, BERKELEY COUNTY. MY
5 RESIDENT CIRCUIT IS THE NINTH CIRCUIT AND I'VE BEEN
6 ASSIGNED THIS WEEK AND NEXT WEEK TO CONDUCT A TERM OF
7 GENERAL SESSIONS COURT. YOU HAVE BEEN SELECTED AS A JUROR
8 TO PARTICIPATE IN THAT AND TO ASSIST IN HELPING US TO
9 RESOLVE THIS CRIMINAL DISPUTE. I APOLOGIZE FOR NOT DOING
10 THAT EARLIER THIS MORNING. I APPRECIATE THE FACT THAT
11 YOU'RE HERE AND NOW THESE GROUP OF QUESTIONS THAT I'M GOING
12 TO ASK YOU PLEASE RESPOND IF THEY APPLY TO YOU.

13 FIRST OF ALL IS THERE ANY MEMBER OF THE JURY
14 PANEL WHO DOES NOT HAVE A VALID DRIVER'S LICENSE, A HIGHWAY
15 DEPARTMENT IDENTIFICATION CARD, OR A VOTER REGISTRATION
16 CERTIFICATE? YOU DON'T HAVE TO HAVE ALL THREE OF THEM.
17 YOU JUST HAVE TO HAVE ONE. YOU DON'T EVEN HAVE TO HAVE IT
18 IN YOUR IMMEDIATE POSSESSION. ANY JUROR THAT DOES NOT HAVE
19 ONE OF THOSE PLEASE STAND.

20 YOU DO NOT HAVE ONE?

21 A JUROR: AIN'T GOT NO DRIVER'S LICENSE, NO.

22 THE COURT: YOU HAVE ONE BUT IT'S -- RIGHT NOW
23 YOU CAN'T USE IT?

24 A JUROR: IT'S BEEN TAKEN AWAY FROM ME.

25 THE COURT: ALL RIGHT. THAT DOESN'T DISQUALIFY

1252

1 YOU

2 YES.

3 A JUROR: I DON'T HAVE EITHER.

4 THE COURT: YOU DON'T HAVE EITHER?

5 A JUROR: NO, SIR.

6 THE COURT: YOU'VE HAD A DRIVER'S LICENSE?

7 A JUROR: (SHOOK HEAD.)

8 THE COURT: YOU NEVER HAVE HAD A DRIVER'S
9 LICENSE?

10 A JUROR: (SHOOK HEAD.)

11 THE COURT: DO YOU HAVE A VOTERS REGISTRATION?

12 A JUROR: (SHOOK HEAD.)

13 THE COURT: DO YOU HAVE A HIGHWAY DEPARTMENT
14 IDENTIFICATION CARD?

15 A JUROR: (SHOOK HEAD.)

16 THE COURT: WHAT IS YOUR NAME?

17 A JUROR: TORRIE BROWN.

18 THE CLERK: NUMBER 24.

19 THE COURT: IS YOUR SOCIAL SECURITY
20 NUMBER 251-37-5510

21 A JUROR: YES, SIR.

22 THE COURT: AND YOU HAVE NEVER HAD ANY OF THOSE
23 ITEMS.

24 A JUROR: (SHOOK HEAD.)

25 THE COURT: AND YOU DON'T VOTE?

1283

1 A JUROR: (SHOOK HEAD.)

2 THE COURT: EXCUSE YOU FROM PARTICIPATION.

3 JUROR NUMBER 24, EXCUSED.

4 ANYONE ELSE? OKAY. YES.

5 A JUROR: I DON'T HAVE A DRIVER'S LICENSE.

6 THE COURT: DO YOU HAVE A VOTER'S REGISTRATION
7 CERTIFICATE.

8 A JUROR: I SIGNED UP FOR IT BUT I DON'T KNOW
9 WHAT I DID WITH IT.

10 THE COURT: SO YOU HAVE REGISTERED TO VOTE?

11 A JUROR: YES, SIR.

12 THE COURT: YOU HAVE A HIGHWAY DEPARTMENT
13 IDENTIFICATION CARD?

14 A JUROR: YES, SIR.

15 THE COURT: WELL, THAT'S ALL -- YOU JUST HAVE TO
16 HAVE ONE OF THEM.

17 ANYONE ELSE?

18 (NO RESPONSE.)

19 THE COURT: THANK YOU. IS ANY MEMBER OF THE JURY
20 PANEL WHO HAS NOT REACHED HIS OR HER 18TH BIRTHDAY? IF SO
21 PLEASE STAND.

22 (NO RESPONSE.)

23 THE COURT: THANK YOU. THERE ARE NONE. IS THERE
24 ANY MEMBER OF THE JURY PANEL WHO IS CLERK OF COURT, DEPUTY
25 CLERK OF COURT, A CONSTABLE, A SHERIFF, A PROBATE JUDGE, A

1284

1 COUNTY COMMISSIONER, MAGISTRATE, OR OTHER COURT -- COUNTY
2 OFFICER OR ANY PERSON EMPLOYED WITHIN THE WALLS OF ANY
3 COURTHOUSE? IF SO PLEASE STAND.

4 (NO RESPONSE.)

5 THE COURT: THANK YOU. THERE ARE NONE. DOES ANY
6 MEMBER OF THE JURY PANEL HOLD A LAW ENFORCEMENT COMMISSION,
7 THAT'S WITH OR WITHOUT PAY, DEPUTY SHERIFF, GAME WARDEN, IN
8 OTHER WORDS YOU HAVE THE POWER TO ARREST SOMEONE? IF SO
9 PLEASE STAND.

10 (NO RESPONSE.)

11 THE COURT: THANK YOU. THERE ARE NONE. THE NEXT
12 QUESTION, LADIES AND GENTLEMEN, IF IT APPLIES TO YOU THERE
13 IS A QUESTION THAT I ASK, THE LAST QUESTION AND THE LADY
14 THAT'S ASKED TO SPEAK TO THE COURT IT'S AT THAT TIME YOU'LL
15 NEED TO COME FORWARD, TOO, MA'AM. YOU'LL NEED TO COME
16 FORWARD AND SHARE THIS INFORMATION WITH ME.

17 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
18 BEEN CONVICTED IN A COURT OF RECORD, THAT'S EITHER STATE
19 COURT OR FEDERAL COURT, FOR A CRIME THAT HAD OR CARRIED A
20 PUNISHMENT MORE THAN ONE YEAR AND NOT HAD YOUR CIVIL RIGHTS
21 RESTORED BY PARDON OR AMNESTY? YOU WOULD NOT HAVE HAD TO
22 HAVE BEEN SENTENCED TO ONE YEAR BUT THE CRIME THAT -- FOR
23 WHICH YOU WERE CONVICTED CARRIED A POSSIBLE PUNISHMENT OF
24 MORE THAN ONE YEAR. IF YOU HAVE EVER BEEN ON PROBATION,
25 YOU PROBABLY NEED TO COME FORWARD AND DISCUSS IT WITH ME AT

1285

1 THAT TIME.

2 NEXT QUESTION IS THERE ANY MEMBER OF THE JURY
3 PANEL UNABLE TO READ, WRITE, SPEAK -- AT THIS POINT YOU MAY
4 JUST BE SEATED IF THAT QUESTION APPLIES TO YOU. YOU DON'T
5 HAVE TO SHARE IT WITH ME AT THIS POINT. I'LL REMIND YOU
6 AND YOU CAN COME FORWARD AND DISCUSS IT WITH ME THEN. THE
7 NEXT QUESTION IS ANY MEMBER UNABLE TO READ, WRITE, SPEAK,
8 OR UNDERSTAND THE ENGLISH LANGUAGE? IF SO PLEASE STAND.

9 (NO RESPONSE.)

10 THE COURT: THANK YOU. THERE ARE NONE. IS ANY
11 MEMBER OF THE JURY PANEL INCAPABLE BY REASON OF MENTAL OR
12 PHYSICAL INFIRMITY TO RENDER EFFECTIVE JURY SERVICE FOR
13 THIS TERM? IF SO PLEASE STAND.

14 YES. YOU HAVE A SITUATION?

15 A JUROR: (NODDED HEAD.)

16 THE COURT: ALL RIGHT. WHY DON'T YOU BRING THAT
17 FORWARD AT THE LAST QUESTION AND I'LL BE HAPPY TO DISCUSS
18 IT WITH YOU, MA'AM.

19 YES, MA'AM, YOUR SITUATION?

20 A JUROR: YES, SIR, I GOT A BAD LEG AND BACK
21 PROBLEM.

22 THE COURT: YES, MA'AM.

23 A JUROR: I JUST DON'T BELIEVE I CAN SIT ON THOSE
24 SEATS VERY LONG.

25 THE COURT: ALL RIGHT. I'LL DISCUSS IT WITH YOU

1286

1 IF YOU WANT TO COME FORWARD AT THE LAST QUESTION. I'LL
2 REMIND YOU ABOUT THAT.

3 YES.

4 A JUROR: I'M A DIABETIC.

5 THE COURT: ALL RIGHT. I'LL TALK ABOUT THAT WITH
6 YOU. DIABETES TYPICALLY WILL NOT EXCUSE YOU BUT I'LL TALK
7 ABOUT IT WITH YOU AT THAT TIME.

8 A JUROR: OKAY.

9 THE COURT: DOES ANY MEMBER OF THE JURY PANEL
10 HAVE LESS THAN A SIXTH GRADE EDUCATION OR ITS EQUIVALENT?
11 IF SO PLEASE STAND.

12 (NO RESPONSE.)

13 THE COURT: THANK YOU. YES, SIR.

14 A JUROR: FOURTH GRADE.

15 THE COURT: HAVE YOU WORKED? YOUR NAME?

16 A JUROR: YES.

17 THE COURT: WHAT IS YOUR NAME?

18 A JUROR: DAN HURELL.

19 THE COURT: HAVE YOU WORKED OUTSIDE OF THE HOME?

20 A JUROR: HAVE I WORKED OUTSIDE OF THE HOME?

21 (NODDED HEAD.)

22 THE COURT: WHAT KIND OF WORK HAVE YOU DONE?

23 A JUROR: CONSTRUCTION WORK.

24 THE COURT: CONSTRUCTION WORK? ALL YOUR LIFE?

25 A JUROR: I WORKED ROCHESTER DRUG, CLARENDON

1287

1 MEMORIAL HOSPITAL.

2 THE COURT: OKAY. SO YOU'VE HELD SEVERAL
3 DIFFERENT JOBS?

4 A JUROR: YES.

5 THE COURT: ARE YOU MARRIED?

6 A JUROR: YES.

7 THE COURT: DO YOU HAVE CHILDREN?

8 A JUROR: YES.

9 THE COURT: HAVE YOU RAISED THOSE CHILDREN?

10 A JUROR: YES.

11 THE COURT: VERY WELL. I FIND THAT YOU HAVE THE
12 EQUIVALENT OF A SIXTH GRADE EDUCATION, SIR.

13 ANYONE ELSE? PROBABLY A LOT MORE THAN THAT. IS
14 ANY MEMBER OF THE JURY PANEL WHO IS NOT NOW A RESIDENT OF
15 GEORGETOWN COUNTY? IF SO PLEASE STAND.

16 YES, SIR.

17 A JUROR: I LIVE IN WILLIAMSBURG COUNTY, OUTSIDE
18 ANDREWS.

19 THE COURT: WHAT IS YOUR NAME?

20 A JUROR: JOEY LAMBERT.

21 THE COURT: DO YOU KNOW WHAT YOUR NUMBER IS?

22 A JUROR: I BELIEVE 97, 99.

23 THE CLERK: 99.

24 THE COURT: ALL RIGHT. MR. LAMBERT, DO YOU
25 PRESENTLY LIVE IN WILLIAMSBURG COUNTY?

1285

1 A JUROR: YES, SIR.

2 THE COURT: THAT'S YOUR HOME?

3 A JUROR: YES, SIR.

4 THE COURT: WHERE YOU'RE GOING IF I LET YOU GO?

5 A JUROR: THAT'S WHERE I'M GOING.

6 THE COURT: AND THAT'S WHERE YOU'RE GOING TO
7 SPEND THE NIGHT?

8 A JUROR: YES, SIR.

9 THE COURT: ALL RIGHT, SIR. I'M GOING TO EXCUSE
10 YOU. WILLIAMSBURG WILL PICK YOU UP AND YOU NO LONGER ARE
11 ELIGIBLE TO SERVE ON JURIES OUT OF GEORGETOWN COUNTY, SIR.
12 THANK YOU VERY MUCH FOR COMING. YOU'RE FREE TO LEAVE

13 A JUROR: YES, SIR.

14 THE COURT: YES, SIR.

15 A JUROR: I'M FROM HORRY COUNTY.

16 THE COURT: HORRY COUNTY.

17 A JUROR: SOCASTEE.

18 THE COURT: YOU LIVE THERE NOW?

19 A JUROR: YES, SIR.

20 THE COURT: THAT'S YOUR HOME?

21 A JUROR: YES, SIR.

22 THE COURT: WHEN DID YOU MOVE THERE?

23 A JUROR: LAST NOVEMBER.

24 THE COURT: LAST NOVEMBER?

25 A JUROR: YES, SIR.

1280

1 THE COURT: OKAY. AND THAT'S WHERE YOU'LL RETURN
2 TONIGHT?

3 A JUROR: YES, SIR.

4 THE COURT: ALL RIGHT. WHAT IS YOUR NAME?

5 A JUROR: KAREN CARR.

6 THE COURT: I CAN'T. . .

7 A JUROR: KAREN CARR.

8 THE COURT: ALL RIGHT. YOU'RE NUMBER 30?

9 A JUROR: YES, SIR.

10 THE COURT: ALL RIGHT. MS. CARR, I'LL EXCUSE
11 YOU.

12 YES, SIR.

13 A JUROR: I LIVE IN GREENSBORO, NORTH CAROLINA.

14 THE COURT: YOU LIVE IN GREENSBORO. YOU

15 PERMANENTLY MOVED TO GREENSBORO?

16 A JUROR: I MOVED TO GREENSBORO IN AUGUST.

17 THE COURT: AUGUST OF LAST YEAR.

18 A JUROR: THAT'S RIGHT. WHEN YOU LET ME GO I'M
19 GOING TO MY HOUSE.

20 THE COURT: WHERE ARE YOU GOING? YOU GOING TO
21 GREENSBORO?

22 A JUROR: NO. I'M GOING RIGHT IN GEORGETOWN
23 COUNTY.

24 THE COURT: ALL RIGHT, SIR. SO YOUR HOME IS
25 STILL IN GEORGETOWN COUNTY?

1206

1 A JUROR: YES, SIR, I OWN A HOME IN GEORGETOWN
2 COUNTY.

3 THE COURT: AND THAT'S WHERE YOU MAINTAIN YOUR
4 RESIDENCE?

5 A JUROR: WHEN I'M HERE.

6 THE COURT: I UNDERSTAND BUT YOU GET YOUR MAIL
7 AND EVERYTHING GEORGETOWN COUNTY?

8 A JUROR: I GET MAIL IN GEORGETOWN; I GET MAIL UP
9 THERE.

10 THE COURT: I UNDERSTAND BUT YOU COME BACK HERE
11 WHEN YOU CAN?

12 A JUROR: EVERY WEEKEND ALMOST.

13 THE COURT: EVERY WEEKEND ALMOST. YOU'RE LIKE I
14 AM. FOR THE FIRST SIX MONTHS I'M LIVING IN BEAUFORT COUNTY
15 RIGHT NOW AND I COME HOME ON FRIDAY NIGHT AND I GO ON
16 SUNDAY SO I UNDERSTAND YOUR SITUATION. BUT GUESS WHAT? WE
17 BOTH RESIDENTS OF WHERE WE COME HOME. THANK YOU, SIR.

18 ANYONE ELSE?

19 (NO RESPONSE.)

20 THE COURT: THANK YOU. THERE ARE NONE. IS ANY
21 MEMBER OF THE JURY PANEL WHO IS NOT NOW A CITIZEN OF THE
22 UNITED STATES? IF SO PLEASE STAND.

23 (NO RESPONSE.)

24 THE COURT: THANK YOU. THERE ARE NONE. NOW,
25 THAT'S YOUR QUALIFYING QUESTIONS. YOU'RE QUALIFIED. THE

1291

1 NEXT QUESTIONS DON'T HAVE A THING TO DO WITH YOUR
2 QUALIFICATIONS BUT RATHER YOUR RIGHT TO SERVE. IN OTHER
3 WORDS THESE QUESTIONS, IF THEY APPLY TO YOU, THIS GROUP OF
4 QUESTIONS PROVIDES YOU WITH AN EXEMPTION. IT'S PERSONAL.
5 YOU MAY CLAIM THAT EXEMPTION IF YOU WISH OR YOU MAY STAY
6 WITH US. WE'LL BE DELIGHTED TO HAVE YOU SERVE IF YOU
7 CHOOSE TO SERVE AND THE FIRST ONE IS AND YOU'VE HEARD MORE
8 THIS MORNING A NUMBER OF PERSONS HAVE CLAIMED THEIR
9 EXEMPTION.

10 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
11 REACHED HIS OR HER 65TH BIRTHDAY AND WISHES TO CLAIM YOUR
12 EXEMPTION AND BE EXCUSED? IF YOU WISH TO STAY WITH US, WE
13 ARE DELIGHTED TO HAVE YOU BUT IF YOU WISH TO BE EXCUSED,
14 IT'S YOUR RIGHT SO TO DO. DOES THAT APPLY TO ANYONE?

15 YES.

16 A JUROR: MAY I BE EXCUSED, SIR?

17 THE COURT: YOU WISH TO BE EXCUSED. YOUR NAME
18 AGAIN?

19 A JUROR: JEWEL CANNON.

20 THE COURT: MS. CANNONM YOU ARE OVER 65?

21 A JUROR: YES.

22 THE COURT: VERY WELL. IT IS YOUR PRIVILEGE,
23 YOUR RIGHT. YOU MAY BE EXCUSED. THANK YOU FOR COMING. I
24 ENJOYED HAVING YOU.

25 ANYONE ELSE? MA'AM, YOU'RE OVER 65?

1293

1 A JUROR: YES, I AM. I'M OVER 70.

2 THE COURT: YOU COULDN'T PROVE IT BY ME. YOU'RE
3 MS. KASPER?

4 A JUROR: DOROTHY KASPER, YES.

5 THE COURT: ALL RIGHT. MS. KASPER, YOU'RE JUROR
6 NUMBER 92?

7 A JUROR: YES.

8 THE COURT: THANK YOU VERY MUCH FOR COMING. YOU
9 ARE FREE TO LEAVE.

10 ANYONE ELSE?

11 (NO RESPONSE.)

12 THE COURT: THANK YOU. THERE APPEAR TO BE NONE.
13 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS AN OFFICER OR
14 EMPLOYEE OF THE STATE DEPARTMENT OF CORRECTIONS AND WISHES
15 TO CLAIM HIS OR HER EXEMPTION; I DIDN'T HEAR ANY BUT ARE
16 THERE ANY?

17 (NO RESPONSE.)

18 THE COURT: THANK YOU. THERE ARE NONE. THE NEXT
19 QUESTION IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS THE
20 SOLE CARE AND CUSTODY AND CONTROL OF A MINOR CHILD UNDER
21 THE AGE OF SEVEN YEARS; YOU DO NOT WORK OUTSIDE OF THE HOME
22 AND YOU HAVE NOT BEEN ABLE TO MAKE SUITABLE ARRANGEMENTS
23 FOR THE CARE OF THAT CHILD TO ALLOW YOU TO SERVE ON THE
24 JURY? IF THAT APPLIES TO YOU PLEASE STAND.

25 A JUROR: I HAVE TWO CHILDREN, TWO GRANDCHILDREN,

1293

1 I'M RESPONSIBLE FOR.

2 THE COURT: WELL, DO YOU HAVE CUSTODY OF THEM?

3 A JUROR: WELL, THEY LIVING IN MY HOUSE.

4 THE COURT: DO YOU HAVE LEGAL CUSTODY OF THEM?

5 A JUROR: NO, SIR.

6 THE COURT: BY COURT ORDER. THAT WOULD NOT APPLY
7 TO YOU, MA'AM.

8 YES, MA'AM.

9 A JUROR: MY SITUATION IS I JUST STARTED WORKING
10 AT NIGHT AND I TAKE CARE OF THE KIDS IN THE DAYTIME.

11 THE COURT: TAKE CARE OF SOMEONE ELSE'S KIDS?

12 A JUROR: MINE. THEY'RE ALL MINE.

13 THE COURT: THEY'RE YOURS?

14 A JUROR: UH-HUH.

15 THE COURT: YOU WORK AT NIGHT?

16 A JUROR: YES, JUST STARTED WORKING AT NIGHT.

17 THE COURT: ALL RIGHT. AND NO ONE IS HOME TO
18 CARE FOR THEM DURING THE DAY?

19 A JUROR: NO. I CARE FOR THEM IN THE DAYTIME.

20 THE COURT: HOW OLD ARE THEY?

21 A JUROR: TEN MONTHS, FIVE YEARS, AND THE OTHER
22 TWO ARE ALREADY GOING TO SCHOOL.

23 THE COURT: ALL RIGHT. YOUR NAME.

24 A JUROR: TERRY RICHARD.

25 THE COURT: MS. RICHARD, I'LL EXCUSE YOU FROM

1294

1 SERVICE.

2 THE CLERK: NUMBER 55.

3 THE COURT: NUMBER 55, YOU'RE EXCUSED.

4 THE CLERK: 155.

5 THE COURT: 155, EXCUSE ME.

6 YES, MA'AM.

7 A JUROR: I'M SHANON HOLMES AND I HAVE A DISABLED
8 BABY AND I AM A COLLEGE STUDENT.

9 THE COURT: YOU'RE A COLLEGE STUDENT. WELL,
10 WE'LL GO AHEAD AND TAKE CARE OF THAT. YOU'RE PRESENTLY IN
11 SCHOOL?

12 A JUROR: YES. FULL-TIME.

13 THE COURT: WHAT SCHOOL DO YOU ATTEND?

14 A JUROR: HORRY-GEORGETOWN TEC.

15 THE COURT: OKAY. AND YOU ARE -- WILL BE
16 CONTINUING THROUGH THE BALANCE OF THIS QUARTER I GUESS OR
17 UNTIL SUMMER?

18 A JUROR: YES, SIR.

19 THE COURT: VERY WELL. YOU'RE JUROR NUMBER -- DO
20 YOU KNOW?

21 THE CLERK: WHAT'S YOUR NAME?

22 A JUROR: SHANNON HOLMES.

23 THE COURT: TRANSFER MS. HOLMES TO A SUMMER TERM.
24 THAT WAY YOU CAN SERVE DURING THE SUMMER.. YOU'RE OUT OF
25 SCHOOL DURING THE SUMMER?

1295

1 A JUROR: YES.

2 THE COURT: VERY WELL. MS. HOLMES, WE'LL BE ABLE
3 TO TRANSFER YOU. THANK YOU VERY MUCH.

4 YES, MA'AM.

5 A JUROR: I'M JURY NUMBER 14. I HAVE A
6 DISABLED 16 YEAR OLD. I JUST GOT OUT OF THE HOSPITAL WITH
7 HIM.

8 THE COURT: ALL RIGHT, MA'AM, 16 YEAR OLD?

9 A JUROR: YES.

10 THE COURT: I WILL TALK WITH YOU ABOUT THAT AT
11 THE LAST QUESTION PLEASE. THANK YOU VERY MUCH.

12 YES, MA'AM.

13 A JUROR: I WAS IN THAT SITUATION BUT I REACHED
14 THE LIBRARY AND I CALLED MY SISTER-IN-LAW SO SHE'S KEEPING
15 MY CHILD.

16 THE COURT: SO YOU MADE SUITABLE ARRANGEMENTS?

17 A JUROR: RIGHT.

18 THE COURT: THANK YOU VERY MUCH, MA'AM. I
19 APPRECIATE THAT.

20 YES, MA'AM.

21 A JUROR: I HAVE A TEN MONTH OLD DAUGHTER. I
22 DON'T HAVE ANYBODY TO KEEP HER.

23 THE COURT: DO YOU WORK OUTSIDE OF THE HOME?

24 A JUROR: NO.

25 THE COURT: YOU DO NOT?

1290

1 A JUROR: NO.

2 THE COURT: WHAT IS YOUR NAME.

3 A JUROR: RHONDA BECKMON.

4 THE COURT: DO YOU KNOW WHAT YOUR NUMBER IS?

5 A JUROR: NUMBER 11.

6 THE CLERK: NUMBER 11.

7 THE COURT: ALL RIGHT, MA'AM. I'LL EXCUSE YOU
8 FROM PARTICIPATION.

9 YES, MA'AM.

10 A JUROR: I HAVE A FIVE YEAR OLD THAT I DON'T
11 HAVE ANYONE TO CARE FOR AND I'M A STUDENT AND I WORK
12 FULL-TIME.

13 THE COURT: YOU ARE A STUDENT, ALSO? WHERE ARE
14 YOU GOING?

15 A JUROR: Horry GEORGETOWN TEC.

16 THE COURT: ALL RIGHT. YOU'RE PRESENTLY INVOLVED
17 IN SCHOOL AT THIS TIME?

18 A JUROR: I'M MISSING A CLASS RIGHT NOW.

19 THE COURT: ALL RIGHT. WHAT IS YOUR NUMBER?

20 A JUROR: 173.

21 THE COURT: ALL RIGHT. WILL YOU BE OUT DURING
22 THE SUMMER?

23 A JUROR: NO, SIR. I GO ALL YEAR ROUND.

24 THE COURT: YOU'RE GOING YEAR ROUND. VERY WELL.
25 I WILL EXCUSE YOU. THANK YOU.

1297

1 NUMBER 73 IS EXCUSED.

2 YOU'RE FREE TO LEAVE.

3 ANYONE ELSE?

4 (NO RESPONSE.)

5 THE COURT: THANK YOU. THERE APPEAR TO BE NONE.
6 THE NEXT QUESTION APPLIES TO SOME OF THOSE WHO HAVE ALREADY
7 ANSWERED AS BEING STUDENTS. IS THERE ANY MEMBER OF THE
8 JURY PANEL WHO IS A STUDENT EITHER IN HIGH SCHOOL OR AN
9 INSTITUTION OF HIGHER LEARNING AND THAT WOULD INCLUDE A
10 TECHNICAL COLLEGE WHOSE SERVICE AS JURORS WOULD CONFLICT
11 WITH YOUR ACTIVITIES AS A STUDENT? IF THAT APPLIES TO ANY
12 OTHER JURORS, PLEASE STAND.

13 YES.

14 A JUROR: I'M A STUDENT AT HOWARD.

15 THE COURT: WHEN DO YOU GO TO CLASS?

16 A JUROR: NINE TO TWO.

17 THE COURT: NINE TO TWO. EVERY DAY? ARE YOU OUT
18 IN THE SUMMER?

19 A JUROR: UH-HUH.

20 THE COURT: WHAT IS YOUR NAME?

21 A JUROR: VICKIE LEWIS.

22 THE COURT: YOU KNOW WHAT YOUR NUMBER IS?

23 THE CLERK: 105.

24 THE COURT: 105. ALL RIGHT. I'LL TRANSFER YOU
25 TO THE SUMMER. THANK YOU VERY MUCH. YOU'RE FREE TO LEAVE.

1295

1 ARE THERE OTHERS? YES, SIR.

2 A JUROR: YES, SIR, MY WIFE IS IN THE HOSPITAL.
3 I TOOK HER TO THE HOSPITAL AT TWO O'CLOCK THIS MORNING.

4 THE COURT: ALL RIGHT. I'LL TAKE THAT TYPE OF
5 THING THAT'S THE LAST QUESTION. IF YOU'LL HOLD ON TO THAT
6 ONE, I'LL BE BACK WITH YOU ON THAT.

7 ANY OTHERS WHO ARE STUDENTS?

8 (NO RESPONSE.)

9 THE COURT: THANK YOU. THERE ARE NONE. HAS ANY
10 MEMBER OF THE JURY PANEL PREVIOUSLY SERVED IN A CIRCUIT
11 COURT; THAT WOULD BE A COURT OF COMMON PLEAS WHICH IS ALSO
12 KNOWN AS CIVIL COURT OR A COURT OF GENERAL SESSIONS WHICH
13 IS ALSO KNOWN AS CRIMINAL COURT WITHIN THE PAST THREE
14 CALENDAR YEARS? IF SO PLEASE STAND. OKAY.

15 A JUROR: I SERVED IN CHARLESTON COUNTY.

16 THE COURT: YOU SERVED IN CHARLESTON COUNTY?

17 A JUROR: YES. I GUESS IT WAS GENERAL SESSIONS.
18 I WENT THROUGH THE SECTION EACH TIME.

19 THE COURT: WHEN WAS IT THAT YOU SERVED?

20 A JUROR: APPROXIMATELY TWO YEARS AGO I THINK.

21 THE COURT: OKAY. LET ME -- Y'ALL WISH ME TO
22 VERIFY THAT? THE STATE WISH ME TO CALL THE CLERK AND HAVE
23 THAT VERIFIED?

24 MR. KOLB: NO, SIR.

25 THE COURT: DEFENDANT WISH ME TO CALL AND HAVE

1296

1 THAT ---

2 MR. LITTLEJOHN: NO, YOUR HONOR.

3 THE COURT: VERY WELL. NOW, YOU WISH TO CLAIM
4 YOUR EXEMPTION? THAT'S UP TO YOU.

5 A JUROR: I DIDN'T SERVE ON THE JURY.

6 THE COURT: I UNDERSTAND THAT BUT THAT WOULD
7 STILL -- IT'S YOUR EXEMPTION. THAT WOULD QUALIFY YOU FOR
8 THE EXEMPTION IF YOU WISH TO CLAIM IT. YOU WANT TO STAY
9 WITH US? WE'RE DELIGHTED TO HAVE YOU.

10 A JUROR: YES, I PUT IN FOR ANOTHER STUDENT SO I
11 GUESS I BETTER TAKE IT.

12 THE COURT: VERY WELL. YOU ARE EXCUSED. THANK
13 YOU, MA'AM.

14 THE CLERK: WHAT WAS HER NAME?

15 THE COURT: 198.

16 THE CLERK: THANK YOU.

17 THE COURT: YES, SIR.

18 A JUROR: YES, SIR, I SERVED APPROXIMATELY THREE
19 YEARS AGO.

20 THE COURT: WHERE?

21 A JUROR: RIGHT HERE.

22 THE COURT: YOU SAY APPROXIMATELY THREE YEARS
23 AGO.

24 A JUROR: I STILL WANT TO SERVE THOUGH.

25 THE COURT: WHAT IS YOUR NAME?

1300

1 A JUROR: LARRY L. ROBERTS.

2 THE COURT: ALL RIGHT. ACCORDING TO OUR RECORDS
3 IT WAS 10-26-92. THAT'S BEYOND THE TIME. THANK YOU, SIR.

4 A JUROR: I STILL WANT TO SERVE, YES, SIR.

5 THE COURT: I UNDERSTAND. THANK YOU, SIR.

6 YES.

7 A JUROR: I JUST SERVED THREE DAYS AGO.

8 THE COURT: WHAT'S YOUR NAME?

9 A JUROR: EDWARD K. HOLMES.

10 THE COURT: MR. HOLMES.

11 THE COURT: MR. HOLMES, ACCORDING TO OUR RECORDS
12 YOU SERVED IN MAY 23RD, 1994. YOU WISH TO STAY OR YOU
13 WISH TO BE EXCUSED?

14 A JUROR: EXCUSED.

15 THE COURT: VERY WELL, SIR. THANK YOU VERY MUCH
16 FOR COMING. YOU ARE FREE TO LEAVE.

17 YES, MA'AM. I'LL COME BACK OVER HERE AND THEN
18 I'LL GET BACK.

19 YES, MA'AM. MA'AM, OVER HERE ON THIS. YOU JUST
20 STOOD.

21 A JUROR: I SERVED LAST YEAR.

22 THE COURT: IN COMMON PLEAS. WHAT IS YOUR NAME?

23 A JUROR: BARBARA ANN MITCHUM.

24 THE COURT: WHERE DID YOU SERVE?

25 A JUROR: HERE. LAST YEAR.

1301

1 THE COURT: IN THIS COURT?

2 A JUROR: UH-HUH.

3 THE COURT: THEY DON'T HAVE ANY NOTATION. YOU
4 WANT TO CHECK ON THAT?

5 MS. MITCHUM, WE'LL CHECK ON THAT. YOU'RE NOT
6 SHOWING UP AS HAVING SERVED IN THIS COURT. NOW, YOU'RE
7 SURE IT WASN'T A MAGISTRATE'S COURT?

8 A JUROR: NO. IT WAS HERE LAST YEAR.

9 THE COURT: I UNDERSTAND HERE BUT IT MAY BE
10 ANOTHER COURT.

11 THE CLERK: MAY BE CITY COURT.

12 A JUROR: NO, SIR, I WAS ON.

13 THE COURT: ALL RIGHT. WE'LL CHECK ON THAT.

14 YES, MA'AM.

15 A JUROR: DEBRA TYSON, NUMBER 187. I SERVED IN
16 THE SPRING OF 1994.

17 THE COURT: THAT IS CORRECT, MAY 31ST, 1994. DO
18 YOU WISH TO BE EXCUSED?

19 A JUROR: YES, SIR, I DO.

20 THE COURT: VERY WELL. YOU ARE FREE TO LEAVE.
21 THANK YOU VERY MUCH.

22 YES, SIR.

23 A JUROR: SERVED IN THIS COURT -- I GUESS I NEED
24 TO CLARIFY IT -- AS PART OF THIS PANEL, WAS NOT SELECTED.

25 THE COURT: IT DOESN'T MATTER. IF YOU WERE ON

1302

1 THE VENIRE.

2 A JUROR: I'M ASSUMING THAT IT WAS WITHIN THE
3 LAST 12 TO 18 MONTHS.

4 THE COURT: WHAT IS YOUR NAME?

5 A JUROR: CARROLL ARMSTRONG.

6 THE COURT: MR. ARMSTRONG, OCTOBER OF 1994. YOU
7 WISH TO BE EXCUSED?

8 A JUROR: YES, SIR.

9 THE COURT: VERY WELL, SIR. YOU ARE FREE TO
10 LEAVE. THANK YOU VERY MUCH FOR COMING.

11 YES, SIR.

12 A JUROR: JOHN CROTTS, THE SAME SITUATION CROTTS.

13 THE COURT: SPELL THAT WITH A "C?"

14 A JUROR: C-R-O-T-T-S.

15 THE COURT: MR. CROTTS, ACCORDING TO OUR RECORDS
16 IT WAS FEBRUARY OF '91.

17 A JUROR: UH-HUH.

18 THE COURT: THANK YOU, SIR. WE APPRECIATE IT.
19 DELIGHTED TO HAVE YOU.

20 YES, MA'AM.

21 A JUROR: YES, SIR, I SERVED IN EITHER IT WAS '83
22 OR '84.

23 THE COURT: '83?

24 A JUROR: YES.

25 THE COURT: IT HAS TO BE WITHIN -- IF IT EXCEEDS

1303

1 THREE YEARS IT DOES NOT PROVIDE YOU WITH THE EXEMPTION.
2 THANK YOU, MA'AM. KEEP TRYING. DON'T GIVE UP. THERE IS A
3 CATCHALL QUESTION. WE'LL CHAT AT THE LAST ONE.

4 YES, MA'AM?

5 A JUROR: I SERVED IN COURT, TOO; BUT I DON'T
6 REMEMBER EXACTLY WHAT YEAR.

7 THE COURT: WHAT IS YOUR NAME?

8 A JUROR: PRISCILLA GORE.

9 THE COURT: MS. GORE, WE DO NOT HAVE A DATE SHOWN
10 FOR WHEN YOU SERVED. ARE YOU SURE IT WASN'T MAGISTRATE'S
11 COURT? THANK YOU, MA'AM. THAT WOULD NOT MAKE YOU ELIGIBLE
12 FOR THAT EXEMPTION.

13 A JUROR: DOES THIS INCLUDE MAGISTRATE COURT?

14 THE COURT: NO, IT DOES NOT.

15 YES, MA'AM.

16 A JUROR: I SERVED IN '94.

17 THE COURT: '94. WHAT IS YOUR NAME?

18 A JUROR: LENA POSTON.

19 THE COURT: NO DATE SHOWN. MS. POSTON, ARE YOU
20 SURE IT WASN'T MAGISTRATE'S COURT?

21 A JUROR: YES, SIR.

22 THE COURT: WE'LL HAVE TO CHECK ON THAT AT THIS
23 POINT. WE DON'T HAVE ANY RECORD OF YOU SERVING.

24 YES, SIR.

25 A JUROR: JUROR NUMBER 125, MORAN, AND I BELIEVE

1304

1 IT WAS IN THE FALL OF '94.

2 THE COURT: ALL RIGHT, SIR.

3 A JUROR: '95 I'M SORRY.

4 THE COURT: IT WAS MARCH OF '94 BUT YOU WOULD BE
5 ELIGIBLE. SO IT'S STILL WITHIN THE THREE YEARS. DO YOU
6 WISH TO CLAIM YOUR EXCUSE?

7 A JUROR: WELL, DID I UNDERSTAND YOU TO SAY THIS
8 WAS TWO WEEKS OR ONE WEEK?

9 THE COURT: REALITY. I MIGHT AS WELL ANSWER YOUR
10 QUESTION. IT WILL NOT EXCEED TWO WEEKS. IT PROBABLY WILL
11 BE LESS THAN TWO WEEKS BUT I -- AT THIS POINT ---

12 A JUROR: I BETTER NOT.

13 THE COURT: VERY WELL, SIR. YOU WISH TO CLAIM
14 YOUR EXEMPTION?

15 A JUROR: YES, SIR.

16 THE COURT: VERY WELL. THANK YOU SO MUCH, SIR.
17 APPRECIATE YOUR COMING

18 MR. KOLB: THAT WAS 101?

19 THE CLERK: 125.

20 THE COURT: 125.

21 AND YOU ALL HAVE THAT NUMBER THAT APPEARS ON THE
22 DATE APPEARS BEFORE THEIR ADDRESS. THAT IS THE PRIOR
23 SERVICE.

24 ARE THERE OTHERS?

25 (NO RESPONSE.)

1305

1 THE COURT: THANK YOU. THERE APPEAR TO BE NONE.
2 DOES ANY JUROR KNOW OF ANY REASON WHY HE OR SHE IS NOT
3 QUALIFIED TO SERVE AS A JUROR IN THIS COURT? IF SO PLEASE
4 STAND.

5 (NO RESPONSE.)

6 THE COURT: THANK YOU. THERE ARE NONE.

7 A JUROR: I'M - - -

8 THE COURT: YOU'RE NOT QUALIFIED. WHAT IS YOUR
9 REASON?

10 A JUROR: IS THIS THE LAST QUESTION?

11 THE COURT: NO, MA'AM. HANG ON. WE'RE GETTING
12 CLOSE.

13 ALL RIGHT. LADIES AND GENTLEMEN, THE LAST
14 QUESTION, WE REALIZE AND RECOGNIZE THAT SOMETIMES THERE ARE
15 SITUATIONS IN EVERYONE'S LIFE THAT IT'S JUST VERY
16 IMPRACTICAL TO SERVE AND YOU JUST CAN'T SERVE IN A TERM. I
17 WANT TO TELL YOU NOW BEFORE YOU COME THAT IT'S GOING TO BE
18 MY PRACTICE TO BE VERY STRICT IN TRANSFERRING. IN OTHER
19 WORDS I'M PROBABLY NOT GOING TO TRANSFER YOU. IT CERTAINLY
20 WON'T EXCUSE YOU. IT WILL JUST TRANSFER YOU TO ANOTHER
21 TIME. I'M GOING TO BE STRICT IN TRANSFERS. SO IT WILL BE
22 ONLY EXCEPTIONAL CIRCUMSTANCES BUT I WILL BE HAPPY TO HEAR
23 THOSE AT THIS TIME.

24 ALSO I REMIND YOU OF THE QUESTION IF YOU'VE EVER
25 BEEN CONVICTED IN A COURT OF RECORD, STATE OR FEDERAL,

1306

1 CARRIES A PUNISHMENT FOR A CRIME THAT HAD PUNISHMENT MORE
2 THAN ONE YEAR, YOU NEED TO COME FORWARD AND SHARE THAT WITH
3 ME AT THIS TIME AS WELL. I'LL TAKE IT INDIVIDUALLY UP HERE
4 AT THE REPORTER.

5 A JUROR: 167, JOHN SINGLETARY.

6 THE COURT: WHAT'S YOUR SITUATION.

7 A JUROR: I WAS CONVICTED OF D.U.I. SECOND DEGREE
8 IN '93, GOT PROBATION.

9 THE COURT: D.U.I. SECOND?

10 A JUROR: YES, SIR.

11 THE COURT: THAT WOULD NOT DISQUALIFY YOU.

12 A JUROR: JUST CHECKING.

13 THE COURT: HE WAS ONLY CHECKING, INVOLVED A
14 D.U.I. SECOND.

15 SORRY ABOUT YOUR SITUATION. YOUR HUSBAND WAS ONE
16 OF THE ONES THAT IS STILL MISSING; IS THAT CORRECT?

17 A JUROR: (NODDED HEAD.)

18 THE COURT: ALL RIGHT. YOU'RE JUROR.

19 THE CLERK: NUMBER 75.

20 THE COURT: THIS THE JUROR -- I KNOW WHAT HER
21 SITUATION IS. HER HUSBAND IS ONE OF THE ONES THAT IS LOST.
22 SHE SAYS SHE IS EMOTIONAL.

23 A JUROR: I JUST FOUND OUT YESTERDAY.

24 THE COURT: ALL RIGHT. I'M GOING TO TRANSFER
25 HER. ANY OBJECTION FROM THE STATE?

1307

1 MR. KOLB: NO.

2 THE COURT: VERY WELL. YOU WILL BE TRANSFERRED.
3 LET'S PUT IT AT ANOTHER TIME SOMETIME LATER IN THE YEAR.
4 THANK YOU VERY MUCH.

5 WHAT'S HER NUMBER?

6 JUROR NUMBER 75 WILL BE TRANSFERRED.

7 A JUROR: I'M JUROR NUMBER 7. I DON'T HAVE A
8 PROBLEM SERVING BUT JUST FOR YOUR INFORMATION MY SISTER WAS
9 MURDERED IN JULY.

10 THE COURT: I WILL ASK YOU SOME QUESTIONS THAT
11 WHETHER OR NOT ANYTHING THAT YOU HEARD WOULD AFFECT YOUR
12 ABILITY TO BE FAIR AND IMPARTIAL, JUST ASK YOU NOW THE FACT
13 THAT YOUR SISTER WAS -- WOULD THAT. . .

14 A JUROR: NO. I'M -- FOR THE MERE FACT THAT WHAT
15 I'VE BEEN THROUGH THE LAST SIX MONTHS IT -- I CAN SEPARATE
16 THE TWO.

17 THE COURT: SO YOU BELIEVE YOU COULD AND WOULD
18 DECIDE THIS CASE FAIRLY AND IMPARTIALLY?

19 A JUROR: YES, SIR.

20 THE COURT: THANK YOU VERY MUCH, MA'AM.
21 DELIGHTED TO HAVE YOU WITH US.

22 THE CLERK: NUMBER 7.

23 A JUROR: GOOD MORNING, JUDGE, I HAVE THREE
24 CIRCUMSTANCES. ONE -- FIRST ONE IS I WAS AT THE HOSPITAL
25 THIS MORNING AT 6:30 FOR A ROUTINE TEST, ENZYME RESPONSE

1308

1 FUNCTION BETWEEN 0 AND 45. I'M AT 15 SO I HAD TO HAVE
2 G.I. AND ALL THAT DONE THIS MORNING. I JUST DON'T KNOW
3 WHAT THESE TESTS ARE BUT THEY EXPECT TO HEAR FROM THEM AND
4 I JUST DON'T THINK MY MIND WILL FUNCTION RIGHT. I'LL BE
5 GLAD TO DO IT IN THE SUMMER. I'M A SCHOOL TEACHER.

6 MR. KOLB: I COULDN'T HEAR WHAT SHE SAID.

7 THE COURT: THIS MORNING SOME TEST RESULTS SHOWED
8 HIGHER LIVER ENZYMES. SHE'S CONCERNED ABOUT THAT.

9 MR. KOLB: WE'RE NOT GOING TO HAVE ENOUGH.

10 THE COURT: WELL, I TELL YOU WHAT. WHEN WILL YOU
11 FIND OUT? WHY DON'T YOU GO AHEAD AND FIND OUT AND GET THE
12 DOCTOR TO WRITE YOU AN EXCUSE?

13 A JUROR: BRING IT BACK TO YOU?

14 THE COURT: IF HE'S GOING TO HOSPITALIZE YOU.

15 A JUROR: CAN I GO NOW AND DO THAT? I MIGHT
16 COULD GET BACK BEFORE YOU FINISH THIS.

17 THE COURT: WHAT IS YOUR NAME?

18 A JUROR: CONNIE KEEGAN, 93.

19 THE COURT: CHECK WITH THE CLERK'S OFFICE
20 BECAUSE -- AND I TELL YOU WHAT. DON'T GO RIGHT THIS
21 MINUTE. YOU NEED TO STAY WITH US UNTIL I RELEASE THE JURY.
22 THEN YOU CAN CHECK IT.

23 A JUROR: OKAY. THANK YOU.

24 THE COURT: MR. CROMER.

25 A JUROR: YES, SIR, HOW ARE YOU DOING?

1305

1 THE COURT: FINE. HOW ARE YOU? WHAT'S YOUR
2 SITUATION?

3 A JUROR: I HAVE TO LEAVE IN TWO WEEKS.

4 THE COURT: IN TWO WEEKS.

5 A JUROR: TO GO DOWN TO SPRING TRAINING. IT'S
6 JUST THE ROSTER. I JUST -- RIGHT NOW IT'S SO IMPORTANT
7 JUST TO GO DOWN TO BE IN SHAPE. AS A MEMBER I WORK THREE
8 TO FOUR HOURS A DAY UP IN COLUMBIA. I'M HARDLY NEVER DOWN
9 HERE TO WORK OUT AND WHEN -- IT JUST MEANS SO MUCH.

10 THE COURT: MR. CROMER, I UNDERSTAND ALL THAT.
11 WE'RE GOING TO BE FINISHED THIS TRIAL CERTAINLY BY THEN.
12 IT WON'T INTERFERE AT ALL WITH YOUR REPORTING.

13 A JUROR: I KNOW THAT. I MEAN, I'M JUST SAYING
14 IT WOULD KEEP ME FROM DOING THE STUFF THAT IT TAKES ME TO
15 GO DOWN THERE.

16 THE COURT: HOW CAN I DISTINGUISH THAT FROM
17 ANYBODY THAT HAS A JOB?

18 A JUROR: I UNDERSTAND.

19 THE COURT: IT'S A PROBLEM WHEN THE -- INITIALLY
20 I THOUGHT YOU WERE GOING TO TRAIN. NOW I CAN'T EXCUSE YOU
21 OR TRANSFER YOU. THANK YOU VERY MUCH MR. CROMER.
22 DELIGHTED TO HAVE YOU WITH US.

23 THE CLERK: HE WAS NUMBER 44.

24 A JUROR: I HAVE TWO SMALL CHILDREN. MY WIFE
25 WORKS. I PICK THE CHILDREN UP SOMETIMES. I ROTATE BACK

1310

1 AND FORTH WITH MY WIFE IF I COULD BE EXCUSED FOR THAT.

2 THE COURT: CAN'T DO IT. THANK YOU, SIR. WHAT
3 IS YOUR NAME?

4 A JUROR: JAMES WOODARD.

5 THE CLERK: 199. YOU EXCUSED HIM?

6 THE COURT: NO.

7 THE CLERK: SHAMA EVANS.

8 THE COURT: MR. EVANS.

9 A JUROR: CONVICTION.

10 THE COURT: YOU WERE CONVICTED OR YOU PLED
11 GUILTY.

12 A JUROR: NO. I'M SAYING THAT I AIN'T NEVER CAME
13 TO COURT.

14 THE COURT: YOU'VE NEVER BEEN CONVICTED?

15 A JUROR: NO.

16 THE COURT: SO YOU HAVE NO RECORD.

17 A JUROR: YES, I GOT A RECORD.

18 THE COURT: WHAT'S YOUR RECORD.

19 A JUROR: TOLD ME IF I WENT TO JAIL AND
20 EVERYTHING.

21 THE COURT: TALKING ABOUT WERE YOU PUNISHED?

22 A JUROR: NO.

23 THE COURT: NO PUNISHMENT?

24 A JUROR: ASSAULT AND BATTERY CHARGE, WENT UP THE
25 ROAD FOR THAT.

1311

1 THE COURT: YOU DID?

2 A JUROR: SOME PROBATION.

3 THE COURT: HOW LONG? WHAT WAS IT, ASSAULT AND
4 BATTERY OF A HIGH AND AGGRAVATED NATURE?

5 A JUROR: YES, FIRST.

6 THE COURT: THAT WOULD EXCUSE YOU.

7 MR. EVANS IS EXCUSED.

8 THE CLERK: EVANS.

9 A JUROR: CLIFTON FORD.

10 THE COURT: MR. FORD, WHAT'S YOUR SITUATION.

11 A JUROR: I WAS CHARGED ABOUT 20 YEARS AGO FOR
12 COCAINE.

13 THE COURT: WERE YOU CHARGED OR WERE YOU
14 CONVICTED?

15 A JUROR: I WAS CONVICTED.

16 THE COURT: YOU SERVED SOME TIME?

17 A JUROR: ABOUT FIVE MONTHS.

18 THE COURT: THAT WAS POSSESSION, SIMPLE
19 POSSESSION. ALL RIGHT, SIR. THAT WOULD EXCUSE YOU.
20 NUMBER 56 IS EXCUSED.

21 A JUROR: CAN I GET EXCUSE FOR WORK?

22 THE COURT: IF YOU'LL CHECK WITH THE CLERK'S
23 OFFICE, SHE'LL GIVE YOU AN EXCUSE LATER.

24 MS. MOORE.

25 THE CLERK: JUST HAVE A SEAT OVER THERE.

1312

1 I'LL GET IT FOR HIM.

2 MR. LITTLEJOHN: POSSESSION OVER SIX MONTHS.

3 ISN'T THAT SIX MONTHS?

4 THE COURT: IT'S TWO YEARS.

5 A JUROR: GOOD MORNING. LET ME SAY AT THE OUTSET
6 I FULLY STAND BEHIND THE IDEA OF SERVING BUT TIMING JUST
7 COULDN'T ABSOLUTELY BE WORSE FOR THE FOLLOWING REASON.

8 THE COURT: YOUR NAME.

9 A JUROR: IRWIN, 82. I THINK THE ISSUES ARE IN
10 ORDER OF IMPORTANCE TO ME AS I CALLED YOUR OFFICE TWO WEEKS
11 AGO. I'VE BEEN DOWN IN FLORIDA TRYING TO NEGOTIATE A PIECE
12 OF PROPERTY. I'M UNDER THE IMPRESSION THAT WILL GO THROUGH
13 TODAY. I HAVE TO GO DOWN THERE FOR SURVEYS AND INSPECTIONS
14 AND FUNDING THIS WEEK. IT HAS TO BE CONCLUDED BECAUSE
15 MONDAY AND TUESDAY THERE IS A RESTAURANT TRADE SHOW IN THE
16 MYRTLE BEACH CONVENTION CENTER WHICH I HAVE TO BE AT.

17 AS I TOLD YOU I WILL BE MORE THAN GLAD TO SERVE
18 THE MONTH OF FEBRUARY, OCTOBER, NOVEMBER, DECEMBER OR NEXT
19 YEAR BUT THIS TIME FRAME IS -- THEN WEDNESDAY AFTERNOON
20 AFTER THE SHOW I'VE GOT TO PICK UP A TRUCK AND DRIVER TO
21 PHILADELPHIA TO PICK UP MACHINERY. OTHER THAN THAT THERE
22 IS NOTHING MUCH GOING ON IN MY LIFE.

23 THE COURT: ALL THAT'S BEEN SCHEDULED?

24 A JUROR: I CAN SHOW YOU THE CONTRACT ON THE
25 DEED. I CAN GIVE YOU A TICKET TO THE SHOW.

1313

1 THE COURT: I'M TRANSFERRING MR. IRWIN, MICHAEL
2 IRWIN, TRANSFER YOU TO ---

3 A JUROR: I'D PREFER OCTOBER, NOVEMBER, DECEMBER
4 OF NEXT YEAR IF ---

5 THE COURT: IT WILL BE THIS YEAR. WHAT TIME THIS
6 YEAR WOULD SUIT YOU BEST?

7 A JUROR: WELL, THE STORE OPENS SECOND WEEK OF
8 MARCH.

9 THE COURT: YOU WANT SUMMER?

10 A JUROR: THE STORE IS OPEN FROM MID MARCH TO THE
11 END OF SEPTEMBER SO OCTOBER.

12 THE COURT: TRANSFER HIM TO AN OCTOBER TERM.

13 THANK YOU, SIR.

14 A JUROR: I APPRECIATE THAT. THANK YOU.

15 THE COURT: YES, SIR.

16 A JUROR: JUROR 133. MY WIFE IS NINE MONTHS
17 PREGNANT, COULD HAVE THE BABY ANY MOMENT. I DON'T MIND
18 BEING TRANSFERRED. IF Y'ALL WOULD LET ME GO WHEN SHE GOES
19 INTO LABOR OR ANYTHING LIKE THAT.

20 THE COURT: THAT'S A PROBLEM. SHE'S DUE ANYTIME.

21 A JUROR: ANY DAY.

22 THE CLERK: SHE WAS ON THE GRAND JURY LAST YEAR.

23 THE COURT: SHE WAS.

24 THE CLERK: YES, SHE JUST FINISHED UP.

25 A JUROR: HAVE TO GO STAY AT HOME AND KEEP BED

1314

1 REST AND ALL THAT KIND OF STUFF.

2 THE COURT: SO YOU'RE THERE TO TAKE CARE OF HER?

3 A JUROR: WELL, NOT REALLY.

4 THE COURT: THERE IS NOBODY ELSE THAT CAN COME?

5 A JUROR: IT'S NOT THAT I'VE BEEN TAKING CARE OF
6 HER. IT'S IF SHE GOES INTO LABOR. I DON'T MIND BEING
7 TRANSFERRED OR WOULD YOU LET ME GO WHEN THE BABY COMES.

8 THE COURT: ALL RIGHT. I'M GOING -- WHAT'S YOUR
9 PLEASURE? YOU WANT TO HAVE AN ALTERNATE BEING USED BECAUSE
10 OBVIOUSLY IF THAT HAPPENS THEN WE'LL USE IT TO WORK AROUND
11 THAT BUT I AM CONCERNED ABOUT HIS ABILITY TO STAY FOCUSED
12 WITH US.

13 MR. KOLB: DID HE GIVE THE DUE DATE?

14 A JUROR: ANY DAY.

15 THE COURT: SHE'S APPARENTLY IN BED SO SHE'S GOT
16 SOME COMPLICATION. WHAT'S THE STATE'S POSITION?

17 MR. KOLB: GO FORWARD AND THEN LIKE I SAY
18 SOMETHING MIGHT HAPPEN.

19 THE COURT: IF SOMETHING HAPPENS.

20 A JUROR: LET ME GO.

21 THE COURT: ABSOLUTELY. I'LL LET YOU GO.

22 A JUROR: THANK YOU, SIR.

23 THE COURT: YES, MA'AM.

24 A JUROR: I GOT A PROBLEM WITH BREATHING. I HAVE
25 TO USE A NEBULIZER BUT, YOU KNOW, IF YOU STILL NEED ME I'LL

1315

1 GO AHEAD AND DO IT.

2 THE COURT: MY FATHER IS ON A NEBULIZER, TOO; SO
3 I UNDERSTAND THAT.

4 A JUROR: I MEAN, I DON'T MIND SERVING

5 THE COURT: ALL RIGHT. THAT WOULD NOT EXCUSE
6 YOU. WE'LL PROVIDE YOU WITH AN OPPORTUNITY TO USE YOUR
7 NEBULIZER.

8 A JUROR: OKAY. NOT BEING ABLE TO READ WON'T
9 EXCUSE ME?

10 THE COURT: WHEN YOU SAY YOU CAN'T READ, YOU
11 CAN'T READ AT ALL?

12 A JUROR: I CAN READ SOME LETTERS AND STUFF.

13 THE COURT: HAVE YOU WORKED OUTSIDE OF THE HOME?

14 A JUROR: YES.

15 THE COURT: YOU'VE GOTTEN ALONG WITH THAT IF
16 YOU'RE CALLED UPON TO USE YOUR COMMON SENSE?

17 A JUROR: YES.

18 THE COURT: NOT A LOT OF THIS WILL BE SOMETHING
19 YOU HAVE TO READ.

20 A JUROR: I DON'T MIND DOING IT.

21 THE COURT: THANK YOU. I APPRECIATE IT.

22 MS. PAGE WILL REMAIN WITH US.

23 A JUROR: I'M GOING TO HAVE TRANSFERRED ALL MY
24 SURGERY TO NEXT WEEK BUT MY LAST CASE THIS WEEK NEEDS MY
25 ASSISTANCE. ADDITIONALLY I'M NEEDED ON CALL AT NIGHT EVERY

1316

1 OTHER NIGHT, THIS NIGHT AND THIS WEEKEND.

2 THE COURT: I'M SORRY. I HAVE OTHER PEOPLE THAT
3 HAVE SIMILAR URGENT SITUATIONS AND I REALIZE THE
4 RESPONSIBILITY. THERE IS NOBODY IN THE WORLD THAT CAN
5 COVER FOR YOU?

6 A JUROR: THERE IS ONE PERSON. I HAVE ASKED
7 ABOUT HIS PRACTICE ABOUT TWO MONTHS AGO AND I HAVEN'T TAKEN
8 A WEEKS'S VACATION BY ITSELF IN OVER A YEAR.

9 THE COURT: IF I CAN'T TRANSFER SOMEONE ELSE, I
10 CAN'T TRANSFER YOU. I UNDERSTAND YOUR SITUATION BUT THANK
11 YOU, SIR.

12 THE CLERK: BETHEA.

13 A JUROR: I HAVE A MENTALLY ILL CHILD. SHE JUST
14 GOT RELEASED FROM THE HOSPITAL YESTERDAY.

15 THE COURT: SHE GOT RELEASED FROM THE HOSPITAL?

16 A JUROR: YES, I'VE GOT A PAPER.

17 THE COURT: MS. BETHEA, YOU HAVE HERE --- WHAT'S
18 HER NUMBER.

19 THE CLERK: 14, NUMBER 14.

20 THE COURT: WHEN THIS CHILD IS NOT HOSPITALIZED,
21 YOU PROVIDE SOLE CARE FOR HER. NO ONE ELSE CAN TAKE CARE
22 OF HER.

23 A JUROR: (SHOOK HEAD.)

24 THE COURT: ALL RIGHT. I'M GOING TO EXCUSE
25 MS. BETHEA. ANY OBJECTION FROM THE STATE?

1317

1 MR. KOLB: NO, SIR.

2 THE COURT: ANY OBJECTION FROM THE DEFENDANT?

3 MR. LITTLEJOHN: NO, YOUR HONOR.

4 THE COURT: VERY WELL. MS. BETHEA, YOU'RE FREE
5 TO GO.

6 THE COURT: JUROR NUMBER 14 IS EXCUSED.

7 A JUROR: GOOD MORNING. AMY CONDON. I AM A
8 TEACHER IN SPECIAL EDUCATION AT ELEMENTARY SCHOOL AND AM
9 REAL CONCERNED ABOUT BEING OUT FOR SO LONG. I HAVE SEVERE
10 LEARNING AND EMOTIONAL CHILDREN. IS THERE ANY WAY I COULD
11 BE TRANSFERRED TO THE SUMMER?

12 THE COURT: I JUST TOLD A SURGEON SUPPOSED TO
13 ASSIST IN SURGERY I'M NOT GOING TO LET HIM BE TRANSFERRED.
14 I WOULD NORMALLY DO IT BUT I CAN'T DO IT ON THIS CASE.

15 A JUROR: THAT'S FINE. I UNDERSTAND. I JUST
16 WANTED TO CHECK. THANK YOU.

17 THE COURT: YOUR NUMBER.

18 A JUROR: 192.

19 THE CLERK: 192.

20 A JUROR: MITCHUM. I DIDN'T -- I HAVE THREE KIDS
21 SIX, EIGHT, AND TEN AND I HAVE MY STEPSON, KEEPING HIM; BUT
22 HE'S REALLY NOT OLD ENOUGH TO KEEP THEM.

23 THE COURT: YOU'VE GOT A CHILD THAT'S SIX.

24 A JUROR: SIX, EIGHT, AND TEN.

25 THE COURT: YOU DON'T WORK OUTSIDE THE HOME?

1318

1 A JUROR: NO.

2 THE COURT: BUT NORMALLY YOU TAKE CARE OF THEM?

3 A JUROR: UH-HUH.

4 THE COURT: YOU WISH TO BE EXCUSED?

5 A JUROR: YES.

6 THE COURT: MS. MITCHUM HAS A SIX YEAR OLD CHILD.

7 I'LL EXCUSE HER.

8 MS. MITCHUM, 120. THANK YOU. YOU'RE FREE TO
9 LEAVE.

10 A JUROR: I HAVE TO TAKE CARE OF MY MOM. SHE
11 GOES TO THE DIALYSIS THREE DAYS A WEEK AND I HAVE TO BE THE
12 ONE TO CARE FOR HER.

13 THE COURT: NOBODY ELSE IN THE FAMILY CAN TAKE
14 CARE OF HER?

15 A JUROR: I GOT TO WORK WITH HER.

16 THE COURT: WHAT HAPPENS IF YOU'RE SICK?

17 A JUROR: WELL, I GUESS -- I DON'T KNOW. I DON'T
18 KNOW WHAT WOULD HAPPEN THEN.

19 THE COURT: YOU CAN'T MAKE ANY ARRANGEMENTS?

20 A JUROR: RIGHT NOW I CAN'T, SIR. BECAUSE I
21 SAID, WELL, IF YOU HAD TO HAD SOME PROOF OF IT, YOU KNOW.
22 I HAD THEM TO FIX ME A LETTER FROM THE DIALYSIS OFFICE.

23 THE COURT: NELL SIMMONS, NUMBER 166. ANY
24 OBJECTION TO EXCUSING MS. SIMMONS?

25 MR. KOLB: THERE IS NO WAY IT COULD BE ARRANGED

1315

1 TO GET HER MOTHER TO DIALYSIS?

2 THE COURT: THE PROBLEM IS THAT SHE'S NOT ON
3 TRANSPORT. SHE HAS THE MONITOR ACCORDING TO THIS DOCUMENT.

4 MR. KOLB: ALL RIGHT, SIR.

5 THE COURT: ALL RIGHT.

6 ALL RIGHT. MS. SIMMONS, I'M GOING TO EXCUSE YOU.

7 MR. LITTLEJOHN: 166.

8 THE COURT: JUROR NUMBER 166 IS EXCUSED.

9 GOOD LUCK, MA'AM.

10 A JUROR: I'M DIABETIC.

11 THE COURT: YOU WORK OUTSIDE OF THE HOME?

12 A JUROR: NO, I'M A HOUSEWIFE.

13 THE COURT: YOU'RE A HOUSEWIFE. HOW OFTEN DO YOU
14 HAVE TO TAKE INSULIN?

15 A JUROR: I DON'T TAKE INSULIN.

16 THE COURT: YOU DON'T?

17 A JUROR: NO, SIR. I TAKE PILLS.

18 THE COURT: SO IT'S MAINTAINED BY PILLS?

19 A JUROR: YES, SIR.

20 THE COURT: THAT WOULD NOT TRANSFER YOU OR EXCUSE
21 YOU.

22 A JUROR: I WAS NOT. . .

23 THE COURT: WE'LL MAKE SURE THAT YOU GET YOUR
24 MEDICATION. THAT'S NOT A PROBLEM. OKAY. THANK YOU,
25 MA'AM. WHAT WAS YOUR NAME, MA'AM?

1326

1 A JUROR: MARJORIE H. HOLMES.

2 THE COURT: MS. HOLMES, YOUR NUMBER DO YOU KNOW?

3 A JUROR: 77.

4 THE COURT: THANK YOU VERY MUCH.

5 A JUROR: NEIL ALLEN JORDAN. IT'S MORE OF A
6 QUESTION. I WORK 4 TO 1:30 BASICALLY. I'M CONCERNED ABOUT
7 GETTING REST BETWEEN LEAVING HOME AND ---

8 THE COURT: NO, SIR. YOU WILL BE -- WHAT WE'RE
9 GOING TO DO AND I EXPLAINED THAT THIS JURY IS GOING TO BE
10 SEQUESTERED SO YOU WILL BE TRANSPORTED. YOU WILL NOT BE
11 RUNNING BACK AND FORTH.

12 A JUROR: THANK YOU, SIR.

13 A JUROR: I'M ORA BOWERS. I HAVE A PROBLEM WITH
14 MY BACK AND MY LEGS. I'M ON MEDICATION. I WAS HALF
15 ASLEEP. I WAS WANTING TO BE EXCUSED.

16 THE COURT: IF I PROMISE YOU WE TAKE BREAKS ABOUT
17 EVERY HOUR TO HOUR AND A HALF, YOU'LL HAVE AN OPPORTUNITY
18 TO STRETCH.

19 A JUROR: YES, SIR, I COULD PROBABLY DO IT THEN
20 IF I DON'T GET SLEEPY.

21 THE COURT: ALL RIGHT. I'M GOING TO ASK THAT YOU
22 STAY WITH US, PLEASE, MA'AM. THANK YOU.

23 A JUROR: YES, SIR. IF AT ALL POSSIBLE I'D LIKE
24 TO SERVE BUT I DON'T KNOW HOW WELL I'M GOING TO BE ABLE TO
25 DO IT. I HAVE TWO HIP SURGERIES AND I HAVE AN 11 YEAR OLD

1321

1 AND A TEN YEAR OLD. MY WIFE WORKS AT THE HOSPITAL. I'M
2 SURE YOU'VE HEARD THINGS LIKE THIS BEFORE BUT I DO THE
3 HOMEWORK WITH THE KIDS.

4 THE COURT: I CERTAINLY UNDERSTAND THAT'S GOING
5 TO INTERFERE WITH THAT.

6 A JUROR: I DON'T KNOW WHERE THEY'RE GOING TO GO.

7 THE COURT: SIR, I UNDERSTAND THAT BUT THAT'S A
8 PROBLEM THAT'S PART OF JURY SERVICE.

9 A JUROR: WELL, I'VE LOST A LOT OF WEIGHT SINCE
10 MY INJURY. IF I'M SITTING UP THERE CAN I BRING A PILLOW?

11 THE COURT: WE'LL TAKE CARE OF THAT.

12 A JUROR: SOMETIMES I CAN'T SIT LONG AND I CAN'T
13 STAND LONG SO I MIGHT BE DOING SOME UP AND DOWN.

14 THE COURT: ALL RIGHT. THANK YOU, SIR.

15 ANYONE ELSE?

16 (NO RESPONSE.)

17 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
18 LADIES AND GENTLEMEN. LADIES AND GENTLEMEN, LET ME START
19 BY TELLING YOU THAT I DO FIND THAT YOU ARE QUALIFIED AND I
20 APPRECIATE THE FACT THAT YOU'RE HERE. JURY SERVICE IS
21 SOMETHING THAT IN THIS COUNTRY IS QUITE UNIQUE, UNIQUE IN
22 THE SENSE THAT WE'RE THE ONLY COUNTRY IN THE WORLD THAT HAS
23 A JURY SYSTEM LIKE WE DO. IT'S BEEN AROUND FOR SOME TIME.
24 IT WORKS WELL, EXTREMELY WELL AND ONE OF THE REASONS IT
25 WORKS AS WELL AS IT DOES IS BECAUSE IT RELIES ON PEOPLE

1322

1 JUST LIKE YOU.

2 PEOPLE THAT ARE MAKING SACRIFICES, GIVING UP
3 SIGNIFICANT FREEDOMS TO COME AND SERVE YOUR STATE, YOUR
4 COUNTY, YOUR COUNTRY IN THE FASHION THAT YOU DO. IT REALLY
5 IS SOMETHING THAT I HOPE THAT EACH ONE OF YOU BEFORE YOU
6 CAME THAT YOU'RE PROUD OF THE FACT THAT YOU WERE SELECTED;
7 THAT YOU'RE PROUD OF THE FACT THAT THIS SYSTEM EXISTS AND I
8 HOPE THAT WHEN YOU COMPLETE YOUR SERVICE YOU WILL BE PROUD
9 OF WHAT YOU'VE DONE, FOR YOUR COMMITMENT TO THIS COUNTY AND
10 THIS STATE. I ASSURE YOU THAT THERE IS NOTHING I CAN DO
11 WITHOUT YOU. I ASSURE YOU THAT YOU'RE IMPORTANT.

12 THERE IS NO WAY TO RANK IMPORTANCE. THERE ARE
13 PEOPLE IN THIS COURTROOM THAT YOU SEE -- EVERYONE THAT YOU
14 SEE HERE IS IMPORTANT TO THIS SYSTEM. I DON'T THINK --
15 LOOK AROUND THE ROOM. I DON'T KNOW OF ANYONE THAT'S MORE
16 IMPORTANT THAN ANYONE ELSE. WE'RE IMPORTANT BECAUSE EACH
17 OF US HAVE A DUTY AND EACH OF US HAVE A RESPONSIBILITY IN
18 THIS PROCESS KNOWN AS A JURY TRIAL AND YOU ARE PART OF THAT
19 AND JUST SUFFICE IT TO SAY THAT JUST LIKE THE CHAIN IS AS
20 STRONG AS ITS WEAKEST LINK SO IS OUR JURY TRIAL SYSTEM.

21 IF YOU DO YOUR JOB, I DO MINE, EVERYONE HERE DOES
22 THEIRS, IT WORKS VERY, VERY WELL. SO WHAT I ASK YOU TO
23 DO -- WELL, I'VE ALREADY ASKED YOU TO DO A LOT BY BEING
24 HERE TODAY. I'VE ALREADY ASKED YOU TO DO A LOT, SOME OF
25 YOU, BY TELLING YOU THAT YOU WOULD HAVE TO STAY WITH US AND

1323

1 I REALIZE THAT THAT PROBABLY IS NOT SOMETHING YOU
2 PARTICULARLY WANTED TO HEAR BUT I THANK YOU FOR YOUR
3 WILLINGNESS TO BE HERE AND YOUR COMMITMENT TO THIS PROCESS.
4 I HAVE SOME MORE QUESTIONS TO ASK YOU BUT BEFORE I DO I
5 WANT TO GIVE YOU SOME BRIEF REMARKS AND AN OVERVIEW IF YOU
6 WILL, SLIGHT OVERVIEW, OF WHAT YOU'RE GOING TO BE INVOLVED
7 WITH.

8 LADIES AND GENTLEMEN, YOUR SERVICE AS PROSPECTIVE
9 JURORS THIS WEEK IS DIFFERENT FROM ORDINARY JURY SERVICE.
10 IT'S DIFFERENT IN THIS SENSE. THERE WILL BE ONLY ONE CASE
11 TRIED THIS WEEK. IF YOU AREN'T SELECTED IN THE PROCESS,
12 YOU WILL BE EXCUSED. YOU WILL HAVE FULFILLED YOUR
13 RESPONSIBILITY -- AND SOME THAT YOU SAW LEAVING THIS
14 MORNING EARNED THEIR THREE-YEAR EXEMPTION -- YOU WILL HAVE
15 EARNED A THREE-YEAR EXEMPTION. FOR THOSE OF YOU THAT HAVE
16 SERVED BEFORE BUT THREE YEARS HAS PASSED, YOU'LL PICK UP
17 ANOTHER EXEMPTION THAT YOU MAY CLAIM IF YOU CHOOSE TO AT A
18 LATER DATE.

19 WE WILL BEGIN THE SELECTION PROCESS IN JUST A FEW
20 MOMENTS, PROBABLY LONGER THAN A FEW MOMENTS -- I DON'T WANT
21 TO MISLEAD YOU -- IN A LITTLE WHILE BUT LET ME GIVE YOU A
22 BRIEF DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES AS
23 JURORS. SOME OF YOU KNOW THIS. SOME OF YOU HAVE SERVED.
24 SOME OF YOU MAY NOT HAVE SERVED. AS JURORS IT'S YOUR
25 RESPONSIBILITY TO DETERMINE THE FACTS IN A CASE. IN FACT

1324

1 IT'S YOUR SOLE RESPONSIBILITY. IT'S ALSO YOUR
2 RESPONSIBILITY TO APPLY THE LAW TO THE FACTS AS YOU
3 DETERMINE THOSE FACTS TO BE.

4 MY JOB IS TO BE THE JUDGE OF THE LAW AND PART OF
5 THAT IS TO GIVE YOU THE LAW WHICH YOU WOULD APPLY TO THE
6 FACTS AND TO CONDUCT THE TRIAL, TO PRESIDE OVER THE TRIAL
7 AND I'LL DISCUSS THAT IN MORE DETAIL ONCE WE HAVE SELECTED
8 THE JURY. I HAVE NOTHING -- YOU MAY HEAR THIS SAID MORE
9 THAN ONCE BECAUSE IT BEARS REPEATING -- I DON'T HAVE
10 ANYTHING TO DO WITH THE FACTS. THAT'S YOUR SOLE
11 RESPONSIBILITY. NOTHING THAT I DO SHOULD BE AN INDICATION
12 OR SHOULD YOU CONSIDER AS AN INDICATION OF HOW I FEEL ABOUT
13 THE FACTS OF THIS CASE BECAUSE THAT'S NOT MY
14 RESPONSIBILITY; THAT'S YOURS.

15 YOU WILL DECIDE THE FACTS FROM THE TESTIMONY,
16 ONLY THE TESTIMONY. LET ME REPEAT THAT. YOU WILL DECIDE
17 THE FACTS FROM THE TESTIMONY. NOW, WHAT DOES THAT MEAN?
18 WELL, IT MEANS THAT YOU WILL HEAR THE WITNESSES TESTIFY AND
19 YOU WILL ALSO RECEIVE EXHIBITS OR MAY RECEIVE EXHIBITS
20 DURING THE TESTIMONY. AT THE CONCLUSION OF THE TRIAL, YOU
21 WILL THEN CONSIDER THE TESTIMONY OF THE WITNESS, THE ORAL
22 TESTIMONY, AND THE EXHIBITS THAT HAVE BEEN INTRODUCED AND
23 DETERMINE THE FACTS.

24 EACH OF YOU, WHEN YOU TAKE THE OATH TO SIT AS A
25 JUROR IN THIS PARTICULAR CASE, WILL BE PROMISING BOTH SIDES

1325

1 THAT YOU WILL HONOR THAT; THAT YOU WILL NOT DECIDE THIS
2 CASE ON ANYTHING ELSE BUT THE TESTIMONY OR THE FACTS OF THE
3 CASE AND THE LAW AS I GIVE IT TO YOU. IT'S YOUR
4 RESPONSIBILITY, LADIES AND GENTLEMEN, TO DETERMINE THIS AND
5 I WANT TO ASSURE YOU OF SOMETHING IN THAT REGARD. NO ONE
6 HERE, NO ATTORNEY FOR EITHER SIDE, ASKS YOU TO DO ANYTHING
7 OR WILL ASK YOU TO DO ANYTHING BUT TO SEEK THE TRUTH AND TO
8 SPEAK THE TRUTH.

9 THAT'S WHAT THIS PROCEEDING IS ABOUT. IT'S FOR
10 YOU TO DETERMINE THE TRUTH OR THE TRUE FACTS OF THIS
11 CONFLICT. I KNOW THIS IS EASY TO SAY BECAUSE I KNOW HUMAN
12 NATURE BUT DON'T BE APPREHENSIVE. I KNOW SOME OF YOU
13 PROBABLY ARE AND THAT'S UNDERSTANDABLE BUT I WANT TO ASSURE
14 YOU OF SOMETHING. EACH ONE OF YOU IS VERY QUALIFIED TO
15 SERVE AS A JUROR IN THIS CASE BECAUSE EACH ONE OF YOU
16 BRINGS TO THIS COURT SOMETHING THAT'S VERY IMPORTANT TO
17 THIS PROCESS, SOMETHING THAT YOU WILL BE ASKED TO USE IF
18 YOU ARE SELECTED ON THE JURY, SOMETHING THAT BOTH SIDES
19 WILL EXPECT YOU TO USE.

20 THAT'S YOUR COMMON SENSE, YOUR SENSE OF LOGIC,
21 YOUR SENSE OF REASON, YOUR GOOD JUDGMENT. THOSE SAME
22 ATTRIBUTES ARE THE SAME QUALITIES THAT YOU'VE USED EVERY
23 DAY AND WILL USE IN MAKING IMPORTANT DECISIONS. THAT'S WHY
24 OUR SYSTEM IS SO UNIQUE.. THAT'S WHY OUR SYSTEM IS SO GOOD
25 BECAUSE IT TAKES YOUR COLLECTIVE JUDGMENT, YOUR COLLECTIVE

1320

1 VIEW ON THE FACTS AND IT BREAKS IT DOWN AND PUTS IT INTO
2 ONE DECISION AND THAT'S WHAT YOU WILL BE ASKED TO DO. SO
3 PLEASE DO NOT BE APPREHENSIVE. DON'T WORRY ABOUT THE FACT
4 AND THINK FOR ONE MINUTE THAT MAYBE A PROFESSIONAL JUROR
5 WOULD BE BETTER. NOT SO.

6 THERE ARE COUNTRIES THAT USE THAT AND IT DOESN'T
7 WORK AS WELL AS OURS. NO. WE WOULD RATHER HAVE -- AND OUR
8 SYSTEM WORKS WELL BECAUSE YOU BRING -- AND YOU COME FROM
9 DIFFERENT WALKS OF LIFE, AND YOU TOGETHER DECIDE A CASE.
10 SO DON'T WORRY ABOUT THE FACT THAT YOU MAY NOT -- YOU MAY
11 THINK, WELL, I MIGHT NOT UNDERSTAND A TERM. THAT'S WHY YOU
12 HAVE 12. THAT'S WHY 12 OF YOU BECAUSE TOGETHER YOU CAN
13 TALK ABOUT IT. TOGETHER YOU CAN DISCUSS IT AND I ASSURE
14 YOU THAT YOU WILL BE PROVIDED THE INFORMATION THAT YOU NEED
15 TO MAKE YOUR DECISION. THIS SYSTEM HAS BEEN WORKING WELL
16 FOR A NUMBER OF YEARS AS I HAVE STATED AND PROBABLY THE
17 REASON IS BECAUSE IT RELIES ON GOOD JUDGMENT AND COMMON
18 SENSE.

19 NOW, THE PRINCIPLES OF LAW THAT YOU WILL BE
20 CALLED UPON THERE WILL BE A NUMBER AND AT THE END OF THE
21 TRIAL, I WILL GIVE YOU IN WHAT'S KNOWN AS THE CHARGE. I
22 WILL GIVE YOU THE LAW WHICH YOU WOULD APPLY. ONE THING I
23 WOULD REMIND YOU AND I WILL REMIND THE JURY ONCE IT'S
24 SELECTED IT'S VERY IMPORTANT AS A JUROR THAT YOU ACCEPT
25 THIS PRINCIPLE. OUR COUNTRY IS QUITE UNIQUE. IN FACT AS I

1327

1 WAS WALKING OUT THE DOOR THIS MORNING THIS BEING THE DAY
2 WHEN WE WILL INAUGURATE OUR NEXT PRESIDENT, A STATEMENT WAS
3 MADE AND I HADN'T REALLY THOUGHT ABOUT IT BUT IT IS QUITE
4 UNIQUE.

5 WHILE WE'RE KEEPING THE SAME PERSON, IT'S A SHIFT
6 OF POWER IF YOU WILL. THERE IS A CHANGE THAT WILL OCCUR
7 TODAY. MANY COUNTRIES DO THAT THROUGH FORCE. MANY
8 COUNTRIES EFFECT THAT THROUGH MILITARY VIOLENCE OR SOME
9 OTHER METHOD. WE DON'T. WE DO IT BY VOTING. THOSE OF
10 US -- THOSE WHO WERE NOT NECESSARILY IN THE MAJORITY WE
11 ACCEPT AND REMOVE OR IF YOU WERE IN THE MAJORITY, WE LOOK
12 FORWARD TO THAT AND WELCOME THOSE THAT WERE IN THE MINORITY
13 AND SAY LET'S WORK TOGETHER. THAT'S THE UNIQUENESS OF THIS
14 COUNTRY.

15 IN THAT REGARD YOU HAVE A RIGHT AS AN INDIVIDUAL
16 TO SAY, I DON'T LIKE A LAW. I THINK A LAW OUGHT TO BE
17 CHANGED. YOU HAVE A RIGHT TO SEEK TO CHANGE THAT LAW AND
18 TO DO EVERYTHING WITHIN THE BOUNDS OF THE LAW TO ACCOMPLISH
19 THAT. AS A JUROR YOU DO DURING THIS TRIAL SET THAT ASIDE
20 BECAUSE BY YOUR OATH YOU SAY, I WILL ACCEPT THE LAW AS YOU
21 GIVE IT TO ME AND APPLY THAT LAW TO THE FACTS AS I
22 DETERMINE THOSE FACTS TO BE REGARDLESS OF WHETHER I LIKE
23 THE LAW OR WHETHER I AGREE WITH IT. THAT'S A PART OF YOUR
24 COMMITMENT AS A JUROR.

25 CERTAIN PRINCIPLES, THERE WILL BE MANY, LET ME

1325

1 TALK WITH YOU ABOUT A COUPLE. THE FIRST IS THAT ALL
2 DEFENDANTS, ANYONE CHARGED WITH A CRIMINAL OFFENSE IN THE
3 UNITED STATES AND CERTAINLY IN SOUTH CAROLINA, IS PRESUMED
4 TO BE INNOCENT AND THIS PRESUMPTION OF INNOCENCE REMAINS
5 UNLESS AND UNTIL THE STATE HAS PRESENTED ENOUGH EVIDENCE TO
6 CONVINCE YOU AS A JUROR OF GUILT BEYOND A REASONABLE DOUBT.
7 EVERY DEFENDANT IS PRESUMED TO BE INNOCENT AND IS ENTITLED
8 TO THIS PRESUMPTION AND IS NEVER REQUIRED TO PROVE HIS OR
9 HER INNOCENCE. CONTRARY IT'S THE STATE'S RESPONSIBILITY TO
10 MEET ITS BURDEN OF PROOF WHICH IS BEYOND A REASONABLE
11 DOUBT. I WILL DISCUSS THAT PARTICULAR ISSUE WITH YOU A
12 LITTLE MORE ONCE WE HAVE SELECTED THE JURY.

13 THE NEXT IS THE CONSTITUTIONAL PRINCIPLE THAT NO
14 ONE CHARGED WITH A CRIMINAL OFFENSE IS EVER REQUIRED TO
15 TESTIFY OR TO TAKE THE STAND. IF THEY CHOOSE NOT TO THAT'S
16 THEIR RIGHT AND YOU AS A JUROR MAY NOT UNDER ANY
17 CIRCUMSTANCES INFER ANYTHING FROM THAT OR EVEN CONSIDER
18 THAT WHAT WHATSOEVER. NOW, IF -- I'VE SHARED THOSE WITH
19 YOU BECAUSE IF YOU FEEL AS A JUROR THAT YOU CANNOT FOLLOW
20 THOSE INSTRUCTIONS, THEN YOU NEED TO SHARE THAT WITH THE
21 COURT NOW. DOES ANYONE WISH TO SHARE ANYTHING WITH ME AT
22 THIS POINT?

23 (NO RESPONSE.)

24 THE COURT: THANK YOU VERY MUCH, LADIES AND
25 GENTLEMEN. THERE ARE NONE. LADIES AND GENTLEMEN, THIS

1329

1 CASE THAT WE'RE CALLING OR SEEKING -- WHICH WE SEEK YOUR
2 ASSISTANCE -- LET ME -- MS. POSTON LENA POSTON.

3 MS. POSTON, ACCORDING TO THE CLERK YOU'VE SERVED
4 ON A JURY IN OCTOBER, 1994. THAT WOULD BE WITHIN THE THREE
5 YEARS. YOU ARE EXCUSED. THANK YOU VERY MUCH.

6 WHAT'S HER JUROR NUMBER? JUROR NUMBER 147 IS
7 EXCUSED.

8 MR. KOLB: SHE WANTED TO BE EXCUSED?

9 THE COURT: YES. I THINK THAT'S A FAIR
10 STATEMENT.

11 THE CLERK: SHE ASKED AWHILE AGO.

12 THE COURT: THE MATTER, LADIES AND GENTLEMEN,
13 THAT YOU WILL BE ASSISTING THE COURT IS
14 CAPTIONED 96-GS-43-698. THIS IS A CASE THAT ARISES IN
15 SUMTER COUNTY. IT WILL BE TRIED IN SUMTER COUNTY. WE'LL
16 EXPLAIN THAT TO YOU A LITTLE BIT MORE AS WE GO ALONG AND
17 THE CAPTION IS THE STATE VERSUS BOBBY WAYNE STONE.

18 MR. STONE, IF YOU WOULD, PLEASE, STAND AND FACE THE JURY
19 AND STANDING NOW WITH MR. STONE WILL BE HIS ATTORNEYS
20 MR. LITTLEJOHN AND MR. BABB AND I WOULD ASK YOU, GENTLEMEN,
21 EACH TO IDENTIFY -- NOT MR. STONE BUT EACH OF THE ATTORNEYS
22 TO IDENTIFY THEMSELVES AND ANY MEMBERS OF YOUR LAW FIRM,
23 PLEASE.

24 MR. LITTLEJOHN: LADIES AND GENTLEMEN, MY NAME IS
25 CAM LITTLEJOHN. I PRACTICE IN COLUMBIA, SOUTH CAROLINA;

1356

1 AND I AM A SOLE PRACTITIONER.

2 MR. BABB: MY NAME IS JAMES BABB. I PRACTICE IN
3 SUMTER, SOUTH CAROLINA; AND I TOO AM A SOLE PRACTITIONER.

4 THE COURT: THANK YOU, GENTLEMEN. YOU MAY BE
5 SEATED. IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
6 RELATED BY BLOOD OR MARRIAGE -- THAT'S ANY CONNECTION, ANY
7 RELATIONSHIP, COUSIN; IT DOESN'T MAKE ANY DIFFERENCE -- TO
8 MR. STONE, MR. BABB, OR MR. LITTLEJOHN? IF SO PLEASE
9 STAND.

10 (NO RESPONSE.)

11 THE COURT: THANK YOU. THERE ARE NONE. IS THERE
12 ANY MEMBER OF THE JURY PANEL WHO PRESENTLY HAS OR WHO HAS
13 HAD BUSINESS DEALINGS WITH ANY OF THOSE INDIVIDUALS, WHO
14 ARE ACQUAINTANCES WITH ANY OF THOSE INDIVIDUALS OR EVEN
15 CASUAL ACQUAINTANCES? IF SO PLEASE STAND.

16 (NO RESPONSE.)

17 THE COURT: THANK YOU. THERE ARE NONE. THE
18 STATE IS REPRESENTED BY THE SOLICITOR.

19 MR. KOLB, IF YOU WOULD PLEASE STAND AND IDENTIFY
20 YOURSELF AND ANY ASSISTANTS THAT YOU HAVE.

21 MR. KOLB: MY NAME IS WADE KOLB. I SERVE AS
22 SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT WHICH IS SUMTER,
23 LEE, CLARENDON, AND WILLIAMSBURG COUNTIES AND ASSISTING ME
24 IN THIS TRIAL WILL BE VERNIE WILLIAMS. HE'S AN ASSISTANT
25 SOLICITOR AND BARBARA JEAN WYLIE WHO IS OUR VICTIM

1331

1 ADVOCATE. ALSO JOHN HILLIARD HERE IN GEORGETOWN WILL BE
2 ASSISTING US IN JURY SELECTION, ASSISTANT SOLICITOR WITH
3 THE 15TH CIRCUIT SOLICITOR'S OFFICE.

4 THE COURT: THANK YOU, MR. KOLB.

5 IS THERE ANY MEMBER OF THE JURY PANEL RELATED BY
6 BLOOD OR MARRIAGE TO ANY OF THOSE INDIVIDUALS, HAVE ANY
7 BUSINESS DEALINGS WITH THEM, CASUALLY ACQUAINTED, SOCIAL
8 ACQUAINTANCES, ANY CONNECTION AT ALL? IF SO PLEASE STAND.

9 (NO RESPONSE.)

10 THE COURT: THANK YOU. THERE APPEAR TO BE NONE.

11 THE FOLLOWING, LADIES AND GENTLEMEN, ARE
12 INDIVIDUALS WHO MAY BE, THEY MAY NOT BE, BUT THEY MAY
13 TESTIFY IN THIS DISPUTE. I'M GOING TO ASK YOU A QUESTION
14 AND YOU DON'T NEED TO STAND UNTIL I'VE READ THEM ALL BUT IF
15 ANY OF YOU ARE RELATED BY BLOOD OR MARRIAGE TO ANY OF THESE
16 INDIVIDUALS, IF ANY OF YOU HAVE ANY CONNECTION WITH THEM
17 WHATSOEVER, SOCIAL ACQUAINTANCES, BUSINESS DEALINGS,
18 CASUALLY ACQUAINTED, ANY CONNECTION AT ALL, THEN YOU NEED
19 TO STAND AND SHARE THAT INFORMATION WITH THE COURT. THERE
20 ARE A NUMBER SO BEAR WITH ME AND I'LL TRY TO DO IT SLOWLY
21 BUT MAKE A NOTE IF YOU WOULD.

22 NOW, LET ME SAY SOMETHING BEFORE I READ ALL OF
23 THESE NAMES. THE FACT THAT I READ THEIR NAME DOESN'T
24 NECESSARILY MEAN THEY'RE GOING TO TESTIFY. OKAY. SO IF
25 YOU HAPPEN TO BE SELECTED AS A JUROR AND YOU HAPPEN TO

1332

1 REMEMBER A NAME AND THAT PERSON DIDN'T APPEAR, YOU'RE NOT
2 TO PUT ANY WEIGHT ON THAT. YOU'RE NOT TO DRAW ANY
3 INFERENCE FROM THAT WHATSOEVER. THE REASON I SHARE THIS IS
4 BECAUSE IF IT BECOMES NECESSARY FOR THAT INDIVIDUAL TO
5 TESTIFY ABOUT A PARTICULAR MATTER, THEN WE NEED TO KNOW
6 SIMILAR QUESTIONS AND SIMILAR RESPONSES TO THE QUESTIONS
7 THAT I JUST ASKED YOU CONCERNING THE OTHER INDIVIDUALS TO
8 WHOM YOU HAVE BEEN INTRODUCED THIS MORNING.

9 PLEASE FORGIVE ME IN THE NAMES IF YOU WILL HELP
10 ME IN THE PRONUNCIATIONS IF I MISPRONOUNCE ANY. JEFFREY
11 HOLLIFIELD, TONY -- IS IT EIGER?

12 MR. KOLB: EIGNER.

13 THE COURT: THOMAS DARNELL; PAULA C. LAROSA, III;
14 EMILY B. REINHART; JOE POWELL; LIEUTENANT IRA B.
15 PARNELL, JR; GARY L. MARTIN; LIEUTENANT PERRY HEROD;
16 JOHN H. JOHNSON; LIEUTENANT HOSS HORTON; CAPTAIN PAUL
17 GASQUE; C. W. REESE; LIEUTENANT FREDDIE POWELL; STACY
18 DRAKEFORD; RICHARD HUTTON; LIEUTENANT GEORGE BOOTH; SUSIE
19 WILSON; JOHN BARRON; SHARON WALKER; JEREMIAH DAVIS; DAVID
20 COLLINS; JAMES PATRICK JACKSON; LIEUTENANT LOUIS MCALHANEY,
21 GRAYSON D. AMICK, PH.D.; LIEUTENANT BUSTER EDWARDS;
22 LIEUTENANT JERRY HAMBY; JOHN TANNER; FRANK O'NEAL; DAVID
23 MCCLURE; JIM LOWDER, ANY OF THOSE INDIVIDUALS? IF SO
24 PLEASE STAND.

25 (NO RESPONSE.)

1333

1 THE COURT: THANK YOU. THERE ARE NONE. ALSO
2 ROBERT W. RICHARDSON, CAPTAIN ROBERT W. RICHARDSON,
3 RAYMOND A. MACKESSY, III; JOHN PRINCE; MIKE WINSTON; DANA
4 WINGATE; TONY HORTON; JAMES TURNER; SERGEANT MIKE MORRIS;
5 WESELY J. GARDNER; SERGEANT JOHN HERRIOTT; GARY METTS;
6 LIEUTENANT RICHARD H. NELSON, JR.; ERIC MCFARLAND; J. E.
7 SLATEN; THOMAS R. MIMS; SERGEANT TERRY PROCTOR; EDDIE
8 HOBBS; CAPTAIN STEVE ALSBROOK. THOSE INDIVIDUALS ARE
9 CONNECTED WITH THE SUMTER COUNTY SHERIFF'S DEPARTMENT. ANY
10 OF THOSE INDIVIDUALS, PLEASE STAND.

11 (NO RESPONSE.)

12 THE CORUT: THANK YOU. THERE ARE NONE. SERGEANT
13 KEN NESBITT; SERGEANT DOUGLAS W. BRANNON BOTH OF WHOM WORK
14 FOR THE SUMTER CITY POLICE DEPARTMENT. ANY CONNECTION? IF
15 SO PLEASE STAND.

16 (NO RESPONSE.)

17 THE COURT: THERE ARE NONE. TWO E.M.S.
18 INDIVIDUALS LEROY DENNIS, IV, AND JUNIOR DAVIS. ANYONE?
19 PLEASE STAND.

20 (NO RESPONSE.)

21 THE COURT: THERE ARE NONE. DISPATCHERS WORK FOR
22 SUMTER OR THE CITY OR BOTH?

23 MR. KOLB: IT'S SORT OF JOINT. THEY'RE ACTUALLY
24 ON THE PAYROLL OF THE CITY BUT IT'S A JOINT OPERATION.

25 THE COURT: THESE INDIVIDUALS MAY BE PAID BY

1334

1 SUMTER BUT WORK REALLY FOR BOTH DEPARTMENTS. THEY ARE
2 DISPATCHERS: JACKIE MCLEOD, DAROLD GRAHAM, CATHY MILES,
3 GLENN SKINNER. ANY INDIVIDUAL CONNECTED WITH THEM?

4 (NO RESPONSE.)

5 THE COURT: THANK YOU. THERE ARE NONE. ALSO
6 RUTH GRIFFITH, LANDROW TAYLOR, BOBBY MCDUFFIE, MARY RUTH
7 MCLEOD, SAMMY RAY THERRELL OR IS IT ---

8 MR. KOLB: THERRELL.

9 THE COURT: THERRELL; WESLEY GENE MILES; DOUGLAS,
10 ALSO KNOWN AS POOCHIE, EDWARDS; DAVID RODERICK BROWN;
11 GERALDINE YARBOROUGH; HENRY A. YARBOROUGH; ARTHUR DONALD
12 MORRIS; CLINT FORD; ROBERT JONES, JR.; CARL SIMPSON;
13 LEEANNA CROOKSHANK; DONOVAN LEE; DANIEL M. BETHEN --BETHEY,
14 EXCUSE ME -- DEBBIE MATHIS; M. KENNETH ROSEFIELD, M.D.;
15 SANDY COOPER, M.D. OR COOPER, M.D.; BRENDA HOLMES; MAURA
16 HILLS; MELINDA STONE PARROTT; DEBRA LYNN MCCALL; JOEL S.
17 SEXTON, M.D.; K. J. GARVIN, M.D.; TAMMY MORRIS; STEVE
18 LANEY; LAMAR ATKINS; EVON BARFIELD; APRIL BARFIELD; J. C.
19 DUNLAP, M.D.; MIKE D. . .

20 MR. KOLB: DEGUGLIELMO, YOUR HONOR.

21 THE COURT: DEGUGLIELMO. THANK YOU. MURDERED
22 THAT ONE. DANIEL SIMMON OR SIMON.

23 MR. KOLB: SIMON.

24 THE COURT: JOE GALLIMORE; SHARON GASS; TERESA
25 KUBALA.

1335

1 MR. KOLB: KUBALA, YOUR HONOR.

2 THE COURT: CHARLES CUBALA, JR.; ALEXANDRA
3 KUBALA; FRED KUBALA; PEGGY KUBALA; VICKY SETZER; GERI
4 HOLLER; PATTI COKER; JOHN KUBALA; KEVIN KUBALA; AMY
5 KUBALA; AND TAMI KUBALA, ANY OF THOSE INDIVIDUALS. IF SO
6 PLEASE STAND.

7 (NO RESPONSE.)

8 THE COURT: THANK YOU. THERE ARE NONE. IN
9 ADDITION THE NEXT GROUP JANICE BERNICE HOWARD, JOYCE EVELYN
10 MCKELLAN, WALLACE D. STONE, LUTHER STONE, ELIZABETH BERNICE
11 PERRY, WILLIAM FLOYD, JULIA HANNA FLOYD TURNER, GERALDINE
12 FLOYD YARBOROUGH, WALTER FLOYD, MELINDA STONE PARROTT,
13 JERRY ALLEN STONE, PATTY ELIZABETH STONE, WINDHAM SYLVIA
14 HAZELTON, WANDA HAZELTON, JEANNIE HAZELTON, LETHA HOWELL
15 WILLIS STONE, EDITH HOWELL, LOUISE BAXLEY, WESLEY EUGENE
16 MILES, LOVEIA DIANE MILES, MICHELLE LAVERN BAILEY --
17 BAILEY-LYNCH, EXCUSE ME -- JAMIE LAW, SHERRY BLACKMAN,
18 JERRY HYATT, BRENDA DISHER HYATT, GLENN HARRELL, REVRENE
19 HARRELL, BOBBY DRIGGERS, LISA ANDERSON, BARBARA ANDERSON,
20 TOMMY NEWMAN, TIMMY NEWMAN, REBECCA HOLLER, JOHNNY JACKSON,
21 JAN BERRY. ANY OF THOSE INDIVIDUALS? IF SO PLEASE STAND.

22 (NO RESPONSE.)

23 THE COURT: THANK YOU. NONE. THE LAST GROUP:
24 MARY G. WILSON, JUNIOR DAVIS, DR. HAROLD MORGAN, T. OREE
25 OEHLER, SCOTT PARKER, TOMMY DAVIS, OR DON GRUE.

1330

1 MR. LITTLEJOHN: GIRNDT.

2 MR. KOLB: JUDGE, I THINK THE PRONUNCIATION IS
3 TEANN AHLER.

4 THE COURT: AEHLER NOT OEHLER? AEHLER. THANK
5 YOU. THAT'S TEANN OEHLER.

6 THANK YOU, SIR.

7 ANYONE?

8 A JUROR: YOUR HONOR.

9 THE COURT: YES.

10 A JUROR: TIMMY NEWMAN.

11 THE COURT: YES, SIR.

12 A JUROR: I KNOW OF HIM IF THAT'S THE SAME GUY I
13 KNOW OF HIM FROM SUMTER. I WENT TO SCHOOL WITH HIS NEPHEW
14 IF THAT'S THE SAME NEWMAN. NOW, I'M NOT SURE.

15 THE COURT: WHAT IS YOUR NAME?

16 A JUROR: JAMES WOODARD.

17 THE COURT: MR. WOODARD, IF IT IS THE SAME PERSON
18 AND YOU HAPPEN TO BE ON A JURY, WOULD THAT INFLUENCE YOU IN
19 THIS MATTER AT ALL?

20 A JUROR: NO, SIR, I DON'T THINK SO.

21 THE COURT: WELL, IF THAT PERSON WERE TO TESTIFY
22 COULD YOU AND WOULD YOU CONSIDER THE TESTIMONY OF THAT
23 INDIVIDUAL THE SAME AS YOU WOULD ANY OTHER WITNESS?

24 A JUROR: YES, SIR, I WOULD.

25 THE COURT: AND YOUR DECISION ON THE FACTS WOULD

1337

1 NOT BE INFLUENCED AND YOUR DECISION WOULD BE FAIR TO THE
2 STATE AND TO MR. STONE; IS THAT RIGHT?

3 A JUROR: YES, SIR, IT WOULD.

4 THE COURT: THANK YOU. YOU MAY BE SEATED.

5 YES, SIR.

6 A JUROR: TEANN AEHLER WAS A NEIGHBOR OF MINE
7 WHEN I LIVED IN HORRY COUNTY.

8 THE COURT: WAS A NEIGHBOR. HOW LONG AGO WAS
9 THAT, SIR?

10 A JUROR: ABOUT A YEAR AND A HALF AGO.

11 THE COURT: AND WHAT IS YOUR NAME?

12 A JUROR: DAN RIEGLE.

13 THE COURT: MR. RIEGLE, THE FACT THAT SHE WAS A
14 NEIGHBOR OF YOURS IF SHE WERE TO TESTIFY IN THIS MATTER,
15 WOULD THAT INFLUENCE YOU AT ALL.

16 A JUROR: NO, SIR.

17 THE COURT: WOULD YOU BE ABLE AND WOULD YOU
18 CONSIDER HER TESTIMONY THE SAME AS YOU WOULD ANY OTHER
19 WITNESS?

20 A JUROR: YES, SIR.

21 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

22 ANYONE ELSE?

23 (NO RESPONSE.)

24 THE COURT: THANK YOU. THERE APPEAR TO BE NONE.
25 LADIES AND GENTLEMEN, THIS MATTER INVOLVES BASICALLY THREE

1338

1 OFFENSES ALL ARISING OUT OF AN INCIDENT. WHAT I'M GOING
2 TO SHARE WITH YOU NOW I WANT YOU TO UNDERSTAND IS ALLEGED.
3 IT'S NOT A FACT. THERE IS -- THE FACTS OF COURSE WILL COME
4 FORTH IN THE -- WHEN YOU BEGIN TO HEAR EVIDENCE BUT I'M
5 GOING TO ASK YOU THIS SO YOU CAN RESPOND TO CERTAIN
6 QUESTIONS THAT I NEED TO ASK YOU ABOUT THIS PARTICULAR
7 INCIDENT.

8 IT'S ALLEGED THAT ON FEBRUARY 26TH, 1996,
9 MR. STONE ENTERED THE DWELLING OF RUTH GRIFFITH WITHOUT
10 CONSENT WITH INTENT TO COMMIT A CRIME AND HE WAS ARMED WITH
11 DEADLY WEAPONS AT THE TIME AND IN THAT PROCESS WHICH -- FOR
12 WHICH HE'S CHARGED WITH BURGLARY IN THE FIRST DEGREE DURING
13 THAT PROCESS IT'S ALLEGED THAT HE KILLED AN INDIVIDUAL BY
14 THE NAME OF CHARLES KUBALA BY MEANS OF SHOOTING HIM WITH A
15 DEADLY WEAPON; THAT HE HAD DURING THE COMMISSION OF THIS
16 VIOLENT CRIME A WEAPON AND HE'S CHARGED WITH THAT OFFENSE
17 AS WELL. THAT'S ALLEGED. THOSE AREN'T FACTS. I ASK YOU
18 THAT BECAUSE I NEED TO ASK YOU THIS: HAS ANYBODY HEARD
19 ANYTHING ABOUT SUCH AN ALLEGED INCIDENT, READ ANYTHING
20 ABOUT IT, HAVE ANY PRIOR KNOWLEDGE AT ALL? IF SO PLEASE
21 STAND.

22 (NO RESPONSE.)

23 THE COURT: ALL RIGHT, SIR. DON'T WANT YOU TO
24 SHARE WITH ME. I WANT TO LET'S COME FORWARD PLEASE IF YOU
25 WOULD AT THIS TIME. IF YOU'VE HEARD ANYTHING, READ

1330

1 ANYTHING, YOU NEED TO COME FORWARD.

2 GENTLEMEN, Y'ALL MAY APPROACH.

3 A JUROR: WYATT COOK, 38.

4 THE COURT: YES, SIR.

5 A JUROR: I'VE READ ABOUT IT AND I THINK HE'S
6 GUILTY. SO I SHOULD NOT -- I'VE ALREADY MADE UP MY MIND
7 ALREADY ON THAT.

8 THE COURT: YOU'VE ALREADY DECIDED THIS CASE?

9 A JUROR: YES, SIR, SO I SHOULD BE DISQUALIFIED I
10 THINK.

11 THE COURT: YOU MEAN TO TELL ME THAT YOU WOULD
12 NOT WAIT TO DECIDE THIS CASE ON THE EVIDENCE? I THOUGHT
13 YOU SAID JUST A MINUTE AGO WHEN YOU DIDN'T STAND UP THAT
14 YOU'D LISTEN TO THE FACTS.

15 A JUROR: YES, I THOUGHT IT WAS GOING TO BE IN
16 GEORGETOWN, TOO. I DIDN'T REALIZE IT WAS GOING UP TO
17 SUMTER. I'M 73.

18 THE COURT: YOU'RE 73?

19 A JUROR: YES, SIR.

20 THE COURT: WELL, YOU WANT TO BE EXCUSED FOR
21 THAT?

22 A JUROR: YES, SIR, BUT I'M AFRAID I HAVE MADE UP
23 MY MIND. I WOULD SAY GUILTY SO I WOULDN'T BE FAIR TO THE
24 MAN.

25 THE COURT: ALL RIGHT, SIR. JUROR NUMBER. . .

1310

1 A JUROR: 38.

2 THE COURT: 38. YOU ARE EXCUSED. MR. COOK IS
3 OVER 65. HE'S EXCUSED.

4 A JUROR: I JUST REMEMBER READING IN THE PAPER
5 ABOUT IT A YEAR AGO.

6 THE COURT: THAT'S CORRECT. DO YOU REMEMBER ANY
7 SPECIFICS?

8 A JUROR: NO. ALL -- I THINK IT WAS IN THE -- I
9 THINK THE NEWS AND COURIER, THE SUN NEWS, MOST OF THE
10 PAPERS.

11 THE COURT: WHAT IS YOUR NAME?

12 A JUROR: HERBERT MCCLARY.

13 THE COURT: THE FACT THAT YOU DON'T REMEMBER ANY
14 SPECIFICS ---

15 A JUROR: I DON'T REMEMBER ANYTHING.

16 THE COURT: --- WOULD IT INFLUENCE YOU AT ALL IN
17 THIS MATTER.

18 A JUROR: I DON'T THINK SO.

19 THE COURT: WELL, I APPRECIATE THAT BUT WILL YOU
20 AGREE THAT WHAT I'VE JUST SAID YOU WILL BE CALLED UPON TO
21 DECIDE THIS CASE SOLEY ON THE EVIDENCE; IS THAT CORRECT?
22 YOU NEED TO ANSWER.

23 A JUROR: PARDON?

24 THE COURT: YOU WOULD DO THAT; YOU WOULD DECIDE
25 IT SOLEY ON THE EVIDENCE. YOU WOULD NOT BE INFLUENCED BY

1341

1 WHAT YOU READ?

2 A JUROR: NO.

3 THE COURT: YOU DON'T REMEMBER ANY SPECIFICS OF
4 WHAT YOU READ?

5 A JUROR: JUST THAT IT WAS IN THE -- ALL THE
6 PAPERS.

7 THE COURT: BUT YOU HAVEN'T FORMED AN OPINION?

8 A JUROR: NO.

9 THE COURT: THANK YOU, SIR. YOU MAY TAKE
10 YOUR ---

11 A JUROR: JUDGE, I'VE READ THE NEWSPAPER SINCE I
12 WAS 15. I READ EVERY PAGE IN IT. I READ ABOUT IT IN THE
13 NEWSPAPER. I HEARD IT IN THE NEWS. IF I WAS IN SITUATION
14 I WOULDN'T WANT NOBODY TO BE MY JUROR KNOWING THEY ALREADY
15 READ ABOUT IT AND HEARD ABOUT IT.

16 THE COURT: WELL, I UNDERSTAND THAT BUT THE
17 QUESTION I NEED TO ASK YOU BECAUSE THIS IS YOUR DECISION.
18 CAN YOU SET THAT ASIDE AND DECIDE THE CASE SOLEY ON THE
19 EVIDENCE?

20 A JUROR: I DON'T THINK SO. I CAN BE HONEST WITH
21 YOU. I DON'T THINK I COULD.

22 THE COURT: UNDER NO CIRCUMSTANCES?

23 A JUROR: IT WOULD ALWAYS BE IN MY HEAD, WHAT I
24 READ IN THE NEWSPAPER.

25 THE COURT: YOU COULDN'T JUST SET IT ASIDE?

1342

1 A JUROR: NO, SIR, I DON'T THINK I COULD.

2 THE COURT: YOU'D DECIDE IT ON THE NEWSPAPER?

3 A JUROR: IF I DECIDED ON IT, I WOULD.

4 THE COURT: WELL, THE NEWSPAPER IS NOT EVIDENCE.

5 A JUROR: I KNOW WHAT YOU'RE SAYING. IT'S NOT

6 EVIDENCE. IT'S NOTHING BUT OPINIONS AND STATEMENTS.

7 THE COURT: THERE IS NOTHING BUT THE EVIDENCE.

8 A JUROR: I UNDERSTAND THAT BUT I MEAN.

9 THE COURT: YOU COULDN'T DO IT?

10 A JUROR: I COULDN'T TELL YOU HONESTLY THAT I
11 COULD.

12 THE COURT: WHAT IS YOUR NUMBER?

13 A JUROR: 127, RUFUS MORRIS.

14 THE CLERK: 127, RUFUS MORRIS.

15 THE COURT: 127 IS EXCUSED BECAUSE HE CAN'T BE
16 FAIR AND IMPARTIAL.

17 YOU'RE EXCUSED. THANK YOU VERY MUCH.

18 THE CLERK: JUDGE, I DON'T THINK THIS ONE SHOWED
19 UP AND HE HAS A CRIMINAL RECORD BUT HE CAME TODAY AND HE
20 HAS HIS MAIL AND SO HE DIDN'T COME UP.

21 THE COURT: ALL RIGHT. DON'T WORRY ABOUT THAT.

22 ARE THERE OTHERS?

23 (NO RESPONSE.)

24 THE COURT: THANK YOU VERY MUCH.

25 HAS ANY MEMBER OF THE JURY PANEL FORMED ANY

1343

1 OPINION FOR OR AGAINST THE STATE OR FOR OR AGAINST
2 MR. STONE ABOUT THIS MATTER? IF SO PLEASE STAND.

3 (NO RESPONSE.)

4 THE COURT: THANK YOU. THERE ARE NONE. DOES ANY
5 MEMBER OF THE JURY PANEL KNOW OF ANY REASON WHY HE OR SHE
6 COULD NOT GIVE THE STATE OF SOUTH CAROLINA AND MR. STONE A
7 FAIR AND IMPARTIAL TRIAL IN THIS MATTER? IF SO PLEASE
8 STAND.

9 (NO RESPONSE.)

10 THE COURT: THANK YOU. THERE ARE NONE. ALL
11 RIGHT. LADIES AND GENTLEMEN, HAVE YOUR ATTENTION, SHARE
12 SOME MORE REMARKS WITH YOU. THIS IS A CASE, LADIES AND
13 GENTLEMEN, IN WHICH THE STATE IS SEEKING THE DEATH PENALTY.
14 FROM YOU OR FROM YOUR NUMBER, WE WILL SELECT EITHER 14
15 OR 15 JURORS, 12 OF WHOM WILL CONSTITUTE THE ACTUAL TRIAL
16 JURY AND WE WILL EITHER HAVE TWO OR THREE ALTERNATES. THIS
17 PROCEEDING UNLIKE A LOT OF TRIALS WILL BE TWO PROCEEDINGS.
18 THERE WILL BE TWO TRIALS WITHIN THE TRIAL.

19 THE FIRST PROCEEDING IS KNOWN AS THE GUILT OR
20 INNOCENCE PHASE AND IT'S DURING THE THAT TIME WHEN YOU WILL
21 HEAR TESTIMONY. WE'LL GO THROUGH A TRIAL. WE'LL HAVE
22 OPENING STATEMENTS. YOU WILL HEAR EVIDENCE. WE'LL HAVE
23 CLOSING ARGUMENTS AND I WILL GIVE YOU INSTRUCTION ON THE
24 LAW AND YOU WILL THEN AT THE CONCLUSION OF THAT WILL RETIRE
25 AND WILL DELIBERATE AND MAKE A DETERMINATION ON REALLY TWO

1344

1 ISSUES, GUILT OR NOT GUILTY BASED ON YOUR VIEW OF THE
2 EVIDENCE AND YOUR APPLICATION OF THE LAW.

3 IF YOU COME BACK OR IT IS YOUR DECISION THAT THE
4 STATE HAS NOT MET ITS BURDEN OF PROOF AND PROVED TO YOU
5 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY,
6 THEN YOUR VERDICT OF COURSE WOULD BE UNDER THE LAW NOT
7 GUILTY AND THAT WOULD CONCLUDE THIS MATTER. IF ON THE
8 OTHER HAND AND IT BE YOUR VERDICT THAT THE STATE HAS MET
9 ITS BURDEN OF PROOF AND SATISFIED YOU BEYOND A REASONABLE
10 DOUBT OF THE DEFENDANT'S GUILT, THEN YOU WOULD --WE WOULD
11 MOVE INTO THE SECOND PHASE WHICH IS KNOWN AS THE PENALTY
12 PHASE.

13 AT THAT PHASE YOU WILL HAVE ANOTHER TRIAL,
14 SEPARATE PROCEEDING, HAVE OPENING STATEMENTS AND YOU'LL
15 HEAR EVIDENCE. IT'S DURING THAT TIME THAT YOU WILL MAKE A
16 DETERMINATION OF THE APPROPRIATE PUNISHMENT IN THIS
17 CIRCUMSTANCE AND IT'S THAT STAGE THAT YOU WILL DECIDE
18 BETWEEN EITHER LIFE IMPRISONMENT OR THE DEATH PENALTY. IN
19 THIS SECOND PROCEEDING THE ATTORNEYS ARE GIVEN AN
20 OPPORTUNITY TO BRING FORTH EVIDENCE OF THE DEFENDANT'S
21 BACKGROUND, CHARACTER, AGE, FAMILY SITUATION, INTELLIGENCE,
22 ET CETERA.

23 THE PURPOSE OF THIS SEPARATE PROCEEDING IS TO
24 GIVE THE JURY AS MUCH INFORMATION AS POSSIBLE SO THAT YOU
25 CAN KNOW MORE ABOUT THAT PERSON THAT YOU ARE ABOUT TO

1345

1 SENTENCE OTHER THAN WHAT MAY HAVE BEEN BROUGHT OUT DURING
2 THE TRIAL ON THE GUILT, DURING THE GUILT PHASE. THE
3 ATTORNEYS FOR THE STATE WILL BE TRYING TO CONVINCE YOU TO
4 RECOMMEND THE DEATH PENALTY AND THE ATTORNEYS FOR THE
5 DEFENDANT WILL BE TRYING TO CONVINCE YOU TO RECOMMEND LIFE
6 IN PRISON.

7 ALTHOUGH I USE THE WORD RECOMMENDATION, YOU
8 SHOULD UNDERSTAND THAT WHATEVER YOU RECOMMEND WILL BE THE
9 SENTENCE THAT WILL BE GIVEN TO THE DEFENDANT IF YOU GET TO
10 THAT POINT. I THEREFORE INSTRUCT YOU, LADIES AND
11 GENTLEMEN, FROM THIS POINT ON YOU WILL NOT DISCUSS ANYTHING
12 IN CONNECTION WITH THIS CASE WITH ANYONE OTHER THAN THE
13 COURT. SO YOU MAY NOT CONFER WITH EACH OTHER AND YOU
14 CERTAINLY MAY NOT ALLOW ANYONE TO CONFER WITH YOU OR
15 DISCUSS THIS MATTER IN YOUR PRESENCE AT ALL.

16 IF YOU SHOULD BE IN THE COMPANY OF SOMEONE --
17 WE'RE GOING TO BREAK IN A FEW MOMENTS, IN JUST A FEW
18 MOMENTS I WILL DISCUSS WITH YOU THE PROCEEDING. WE'RE
19 GOING TO DRAW A LIST OF NAMES FROM THOSE JURORS REMAINING
20 AND WE WILL GROUP YOU IN GROUPINGS OF FOUR AND YOU WILL BE
21 GIVEN A TIME WHEN YOU'LL NEED TO COME BACK TO THE COURT AND
22 I'LL DISCUSS WITH YOU IN JUST A MINUTE WHAT WILL HAPPEN,
23 BUT WHEN YOU LEAVE YOU MAY NOT TALK ABOUT THIS CASE AND YOU
24 MAY NOT ALLOW ANYBODY TO TALK ABOUT THIS CASE WITH YOU SO
25 PLEASE IF THAT SHOULD OCCUR ADVISE THE PERSON THAT YOU'RE

1340

1 ON THE JURY AND ADVISE THEM TO STOP AND ALSO REPORT THAT TO
2 THE COURT IMMEDIATELY UPON YOUR RETURN.

3 IN ADDITION YOU SHOULD NOT READ ANY NEWSPAPER
4 ACCOUNTS OF THIS CASE NOR CAN YOU WATCH ANY NEWS PROGRAMS
5 ON TELEVISION OR LISTEN TO THEM ON THE RADIO. NOW, I DO
6 NOT ANTICIPATE THAT YOU WOULD HEAR ANY TODAY BUT WE'LL
7 DISCUSS THAT FOR THOSE OF YOU THAT ARE SELECTED ON A PANEL
8 THAT MAY BE REQUIRED TO REPORT TOMORROW. YOU WILL BE
9 REQUIRED AND ASKED AND I WILL ADMINISTER AN OATH THAT YOU
10 WILL FOLLOW THAT SPECIFIC INSTRUCTION AT THE APPROPRIATE
11 POINT IN THIS PROCEEDING. AFTER WE HAVE SELECTED THE
12 PANELS, EACH OF YOU WILL BE BROUGHT BACK INTO THE COURTROOM
13 AT A GIVEN TIME. WE WILL PROBABLY AS I STATED HAVE PANELS
14 OF FOUR AND IT WILL PROBABLY TAKE ABOUT AN HOUR TO GO
15 THROUGH THE PROCESS.

16 OBVIOUSLY IF YOU'RE THE FOURTH ONE OF THE LIST,
17 THEN YOU WILL BE HERE ABOUT AN HOUR. IF YOU'RE THE FIRST
18 ONE YOU'LL BE THE FIRST ONE IN. AFTER THOSE QUESTIONS YOU
19 WILL BE RELEASED AND YOU WILL BE ALLOWED TO RETURN HOME
20 UNTIL WE -- AND WE'LL GIVE YOU A TIME TO REPORT WHICH TIME
21 WE WILL AGAIN ASSEMBLE AND AT THAT TIME WE WILL SELECT
22 THE 12 AND THE TWO OR THREE ALTERNATES TO DECIDE THIS CASE.
23 IT IS VERY IMPORTANT, LADIES AND GENTLEMEN, THAT YOU FOLLOW
24 THE COURT'S INSTRUCTION THROUGHOUT THIS PROCEEDING. IT IS
25 IMPERATIVE THAT YOU DO SO.

1347

1 NOW, WHEN YOU COME BACK YOU WILL BE GIVEN A SHEET
2 OF PAPER AND ON THAT PAPER WILL HAVE THREE TYPES OF JURORS.
3 I WILL GIVE YOU TIME TO READ IT AND THEN I'LL ASK YOU
4 CERTAIN QUESTIONS ABOUT THAT AND OTHER QUESTIONS AS WELL.
5 I WANT TO ASSURE YOU OF SOMETHING. DON'T LEAVE HERE AND BE
6 APPREHENSIVE. THERE ARE NO RIGHT OR WRONG ANSWERS TO ANY
7 OF THESE QUESTIONS. AS I TOLD YOU FROM THE START, THERE
8 ARE -- BEING NO RIGHT OR WRONG ANSWERS, THEY'RE JUST
9 QUESTIONS THAT WE ASK YOU TO BE TRUTHFUL IN YOUR RESPONSES.
10 AFTER I'VE COMPLETED THE PROCESS THE ATTORNEYS MAY HAVE
11 SOME QUESTIONS THAT THEY MAY WISH TO ASK YOU. AS WELL
12 THERE ARE NO RIGHT OR WRONG ANSWERS TO THOSE QUESTIONS.
13 LISTEN TO THE QUESTIONS AND ANSWER THEM TO THE BEST OF YOUR
14 ABILITY.

15 NOW, HAVING SAID THAT I KNOW THAT PROBABLY SOME
16 OF YOU ARE QUITE DISTURBED AND I CAN UNDERSTAND THAT BUT I
17 WANT TO ASSURE YOU OF SOMETHING. AGAIN YOU ARE VERY
18 QUALIFIED TO SERVE. DO NOT CONCERN YOURSELF WITH WHETHER
19 OR NOT YOU'RE QUALIFIED. DON'T WORRY ABOUT IT. WE'LL
20 DISCUSS THOSE WITH YOU. IF YOU HAVE ANY SPECIFIC CONCERNS
21 SHARE THEM WITH US WHEN WE HAVE AN OPPORTUNITY TO TALK WITH
22 YOU INDIVIDUALLY. PLEASE FEEL FREE TO DO SO.

23 PLEASE FEEL FREE TO BE OPEN WITH YOUR RESPONSES.
24 I WOULD NOW ASK THAT THE CLERK GO AHEAD -- HOW MANY JURORS
25 DO WE HAVE -- I WOULD ASK THAT WE SELECT NOW AND PULL

1348

1 THE 70 NAMES. WE WILL PLACE THE NAMES IN A GROUPING,
2 GROUPS OF FOUR AND IF YOU WILL -- THAT PROCESS, MS. CLERK,
3 HOW LONG DO YOU THINK IT WOULD TAKE? PROBABLY 30 MINUTES
4 OR SO?

5 THE CLERK: PROBABLY.

6 THE COURT: ALL RIGHT. WE WILL GIVE YOU -- IT
7 APPEARS NOW THAT IT'S ABOUT FIVE AFTER 12. LET'S PLAN ON
8 BEING BACK AT 12:30. YOU'RE FREE TO WALK AROUND AND
9 STRETCH.

10 THE CLERK: I'M READY.

11 THE COURT: YOU'VE ALREADY DRAWN THEM ALL? OKAY.
12 HOW LONG WILL IT TAKE YOU LIST THEM?

13 THE CLERK: YOU WANT ME TO DRAW -- YOU WANT ME TO
14 DRAW ---

15 THE COURT: WE NEED TO PUT THEM ON A LIST AT THIS
16 POINT.

17 THE CLERK: ABOUT 30 MINUTES.

18 THE COURT: ABOUT 30 MINUTES. WE'LL BE AT EASE
19 FOR ABOUT 30 MINUTES. PLEASE, LADIES AND GENTLEMEN, WHEN
20 YOU'RE OUT REMEMBER THE INSTRUCTION OF THE COURT. YOU'RE
21 NOT TO TALK ABOUT THIS CASE AMONG YOURSELVES AND YOU
22 CERTAINLY ARE NOT TO ALLOW ANYBODY TO TALK WITH YOU ABOUT
23 IT. PLEASE DO NOT READ ANYTHING OR TRY TO DISCOVER
24 ANYTHING. BE BACK IN AT 12:30 AND WE I'LL GO FORWARD AT
25 THAT TIME. THANK YOU. WE'LL BE AT EASE.

1345

1 (THEREUPON, THERE WAS A BRIEF RECESS IN THE TRIAL OF
2 THIS CASE.)

3 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN --
4 GO RIGHT AHEAD, MS. MOORE -- WE HAVE NOW DRAWN ALL THE
5 JURORS AND PLACED YOU IN GROUPS. AS I STATED EARLIER THIS
6 MORNING. WE'RE GOING TO START THE FIRST GROUP AND I'M
7 GOING TO READ THE NAMES OF THOSE INDIVIDUALS IN JUST A
8 MOMENT WHEN EVERYONE HAS A COPY BUT WE'RE GOING TO ASK THAT
9 YOU COME BACK AT 2:30 AND PLEASE AS YOUR NAME IS CALLED
10 KEEP UP WITH YOUR GROUP AND YOUR TIME. YOU WILL BE
11 CALLED -- Y'ALL WANT TO GO ONE, TWO, THREE, GROUP ONE OR
12 "A," "B," "C" WHICH IS THE BEST? LET'S DO ONE, TWO, THREE.
13 HOW ABOUT THAT?

14 SO THIS FIRST GROUP THAT WE CALL WILL BE GROUP
15 ONE TO BE FOLLOWED BY GROUP TWO -- SEE HOW LOGICAL WE
16 ARE -- GROUP THREE, GROUP FOUR, AND SO ON. WE WILL
17 PROBABLY DO THE FIRST FOUR GROUPS TODAY. GROUP FIVE WILL
18 START IN THE MORNING AND WE'LL CONTINUE AND WE'LL GET TO A
19 POINT WHERE TOMORROW WE'LL RUN OUT AND THE NEXT GROUP WILL
20 START THE NEXT DAY BUT WE'LL ENLIGHTEN YOU IN JUST ONE
21 SECOND AS TO WHICH GROUP YOU MAY BE, IN WHICH YOU MAY FIND
22 YOURSELF SITUATE.

23 ALL RIGHT. EVERYONE HAS A LIST. IF YOU WOULD
24 LET'S REFER TO THE FIRST PAGE IN THE FIRST GROUP, JUROR
25 NUMBER 17, MS. BOWERS, ORA BOWERS, IF YOU'D STAND AS I CALL

1356

1 YOUR NAME. ORA BOWERS, VONA GRAHAM, NUMBER 67; NUMBER 112,
2 TERESA MCDANIEL; 93, CONNIE KEEGAN. ALL RIGHT. YOU ARE IN
3 GROUP ONE. YOU WILL NEED TO REPORT AND YOU'LL COME --
4 WHERE DO YOU WANT THEM TO BE, MS. MOORE? IS THERE A ROOM
5 BACK HERE?

6 THE CLERK: THE JURY ROOM.

7 THE COURT: THE JURY ROOM?

8 THE CLERK: JURY ROOM NUMBER ONE.

9 THE COURT: JURY ROOM NUMBER ONE. IF YOU'LL JUST
10 COME BACK TO THE BACK HALL, SOMEONE WILL EITHER BE HERE OR
11 BACK THERE AND WILL SHOW YOU WHERE TO COME AT 2:30,
12 AT 2:30. YOU DO NOT NEED TO GO NOW. AT 2:30 BE IN THERE
13 AND WE'LL START. WE'LL START IN THE ORDER IN WHICH I'VE
14 JUST READ THE NAMES AND WE'LL GO THROUGH THE QUESTIONING AT
15 THAT TIME. UNTIL THAT TIME PLEASE REMEMBER DO NOT DISCUSS
16 THIS CASE WITH ANYONE. YOU'RE FREE TO LEAVE AT THIS POINT.
17 THAT IS GROUP ONE.

18 MR. KOLB: JUDGE, MAY WE APPROACH?

19 THE COURT: YES, SIR.

20 (THEREUPON, THERE WAS A BENCH CONFERENCE WITHIN THE
21 PRESENCE OF THE JURY PANEL BUT OUT OF THE HEARING OF THE
22 JURY PANEL.)

23 THE COURT: WANT TO BE SURE THAT WE WILL HAVE
24 SOMEONE POSTED AT THAT DOOR TO MAKE SURE THAT THEY COME
25 AROUND AND Y'ALL TAKE CARE OF THAT RATHER THAN HAVING THEM

1351

1 WALK THROUGH TO SEE WHERE THEIR ROOM IS AT THIS TIME. THE
2 NEXT GROUP, YOU WILL NEED TO BE HERE AT 3:40 P.M., GROUP
3 TWO. JUROR NUMBER 145, JEAN S. PIETERSE; NUMBER 7, CYNTHIA
4 BARNHILL; NUMBER 177, EMILY W. B. SWEATMAN; AND 174,
5 BARBARA J. STEWART. MS. STEWART. OKAY. YOU ARE FREE
6 UNTIL 3:40 THIS AFTERNOON.

7 YOU NEED TO REPORT BACK AND YOU WILL NOT COME
8 INTO THE COURTROOM. YOU'LL JUST COME IN DOWNSTAIRS AND
9 COME UP TO UPSTAIRS AND THEY'LL DIRECT YOU. SOMEONE WILL
10 BE THERE AND DIRECT YOU TO THE JURY ROOM. OKAY. THANK
11 YOU. I'LL SEE YOU AT 3:40. AGAIN DO NOT ALLOW ANYONE TO
12 TALK WITH YOU ABOUT THIS CASE OR TALK ABOUT IT IN YOUR
13 PRESENCE. YOU ARE GROUP TWO BY THE WAY.

14 GROUP THREE, THE FOLLOWING INDIVIDUALS WILL NEED
15 TO REPORT AT 4:50: 153, KRYSTAL RADCLIFFE; 44, BRANDON
16 CROMER; 90, LADONNA L. JORDAN; 60, TAMIKA A. GARDNER. YOU
17 WILL NEED TO REPORT AT 4:50. AGAIN JUST COME FROM
18 DOWNSTAIRS -- FROM DOWNSTAIRS COME UP AND JUST COME TO THE
19 SECOND FLOOR. SOMEONE WILL DIRECT YOU TO THE JURY ROOM.
20 YOU ARE FREE TO LEAVE. BE BACK --YOU'RE GROUP THREE -- BE
21 BACK AT 4:50 THIS AFTERNOON. PLEASE DO NOT ALLOW ANYBODY
22 TO TALK WITH YOU ABOUT THIS CASE OR TALK ABOUT IT IN YOUR
23 PRESENCE.

24 GROUP FOUR, YOU WILL NEED TO BE HERE AT 6 P.M.
25 THE FOLLOWING INDIVIDUALS: JUROR 59, JOYCE H. GANN, IS

1352

1 THAT CORRECT; 16, RICHARD BOURNE; 107, DANNY LUCAS; 196,
2 NORMAN D. WILLIAMSON. YOU ARE IN GROUP FOUR. YOU NEED TO
3 REPORT AGAIN BACK HERE UPSTAIRS, DO NOT COME IN THE
4 COURTROOM, AT SIX O'CLOCK THIS AFTERNOON, GROUP FOUR.
5 THANK YOU. YOU ARE FREE TO LEAVE.

6 THE NEXT GROUP IS GROUP FIVE. YOU HAVE A LITTLE
7 BIT OF TIME. IS THERE ANY PROBLEM WITH STARTING AT NINE?
8 Y'ALL HAVE ANY PROBLEM WITH THAT? WE'LL LEAVE A LITTLE
9 EARLY FROM MONCK'S CORNER. WE'LL BE HERE NO PROBLEM. THIS
10 IS GROUP NUMBER FIVE. YOUR REPORT TIME IS NINE O'CLOCK IN
11 THE MORNING: 189, JOANN WALKER, MS. WALKER; 35, ROGER D.
12 COLES; 103, SHIRLEY A. LEGETTE; 31, CHRISTOPHER L. CARROLL.
13 ALL RIGHT. YOUR REPORT TIME, YOU ARE GROUP FIVE, IS NINE
14 O'CLOCK TOMORROW MORNING.

15 PLEASE DO NOT READ ANYTHING ABOUT THIS. DO NOT
16 WATCH ANY TELEVISION PROGRAMS ABOUT THIS. DO NOT ALLOW
17 ANYONE TO TALK WITH YOU ABOUT THIS CASE WHATSOEVER. IF
18 YOU'LL COME BACK COME BACK TOMORROW. YOU CAN ENTER THE
19 DOOR HERE ON THE OUTSIDE, COME UPSTAIRS AND SOMEONE WILL
20 DIRECT YOU TO THE JURY ROOM. HAVE A GOOD EVENING. YOU ARE
21 FREE TO LEAVE. NINE O'CLOCK IN THE MORNING.

22 GROUP SIX. GROUP SIX, YOUR REPORT TIME IS 10:05
23 TOMORROW. LOVE THESE LITTLE ODD NUMBERS. THEY ARE 57,
24 WALTER L. FRANK, DR. FRANK; 63, ROY A. GOSS; 162, DEBRA R.
25 SEMPLE; 118 JANETTE M. MILLER. YOU ARE GROUP SIX. YOU

1353

1 WILL REPORT AT 10:05 TOMORROW. AGAIN YOU WILL COME
2 UPSTAIRS AND SOMEONE WILL DIRECT YOU AT THAT TIME. PLEASE
3 DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT READ ANYTHING
4 ABOUT IT. DO NOT WATCH ANY NEWS ACCOUNTS ABOUT THIS. LOOK
5 FORWARD TO SEEING YOU TOMORROW AT 10:05. YOU'RE FREE TO
6 LEAVE.

7 GROUP NUMBER SEVEN, 11:15, THE FOLLOWING
8 INDIVIDUALS WILL BE GROUP SEVEN: JEANETTA TINDALL; JOHN V.
9 SINGLETARY, EXCUSE ME, 167.

10 A JUROR: JOHN W. SINGLETARY.

11 THE COURT: JOHN W. I'M SORRY, MR. SINGLETARY.
12 PLEASE FORGIVE ME, SIR, JOHN W. SINGLETARY. THANK YOU.
13 JUROR 111, DAVID C. MCCONNELL; 110 HERBERT D. MCCLARY. YOU
14 ARE IN GROUP SEVEN. YOU WILL NEED TO REPORT TOMORROW
15 UPSTAIRS TO THE JURY ROOM AT 11:15. THAT'S TOMORROW
16 MORNING AT 11:15, PLEASE. YOU'RE FREE TO LEAVE BUT DO NOT
17 DISCUSS THIS CASE WITH ANYONE. DO NOT ALLOW ANYBODY TO
18 TALK WITH YOU OR TALK ABOUT IT IN YOUR PRESENCE. DO NOT
19 WATCH ANY NEWS ACCOUNTS ABOUT IT OR READ ANYTHING. THANK
20 YOU. YOU'RE FREE TO LEAVE.

21 NEXT GROUP IS GROUP NUMBER EIGHT, 12:20.
22 NUMBER 128, DONNA M. MOSS; 133, SEAN P. O'REAR; 25, MATTHEW
23 BRUNSON; 94, BETTY J. KEESEE. YOU ARE GROUP NUMBER EIGHT.
24 YOUR REPORT TIME IS 12:20 TOMORROW. COME UPSTAIRS.
25 SOMEONE WILL DIRECT YOU TO THE JURY ROOM. WHILE YOU'RE OUT

1354

1 DO NOT DISCUSS THE CASE WITH ANYONE. DO NOT ALLOW ANYONE
2 TO TALK WITH YOU ABOUT IT. DON'T READ ANYTHING ABOUT IT OR
3 WATCH ANY NEWS ACCOUNTS ABOUT IT. YOU ARE FREE TO LEAVE.
4 THANK YOU VERY MUCH.

5 GROUP NINE AT 2:30, 2:30 P.M. TOMORROW. THE
6 FOLLOWING INDIVIDUALS: JOSEPH K. GALLEGOS; INGRID V.
7 BROWN; SADIE M. JENKINS; DAN RIEGLE, 157. YOU ARE IN GROUP
8 NINE. YOUR REPORT TIME IS 2:30 TOMORROW AFTERNOON. YOU
9 WILL COME UPSTAIRS. DO NOT DISCUSS THIS CASE WITH ANYONE.
10 DO NOT ALLOW ANYBODY TO TALK WITH YOU ABOUT IT. DO NOT
11 READ ANYTHING ABOUT IT OR WATCH ANY NEWS ACCOUNTS. I LOOK
12 FORWARD TO SEEING YOU TOMORROW AT 2:30, GROUP NUMBER NINE.

13 GROUP TEN, 3:35 P.M., THE FOLLOWING INDIVIDUALS:
14 JUROR 62, PRISCILLA ANN GORE; 88, CINDY W. JONES; 158,
15 LARRY L. ROBERTS; NUMBER 18, GENE C. BRATCHER. YOUR REPORT
16 TIME IS 3:35 TOMORROW. YOU'RE GROUP TEN. YOU WILL NEED TO
17 REPORT UPSTAIRS. COME DIRECTLY TO THE JURY ROOM. YOU'RE
18 FREE NOW TO LEAVE. DO NOT WATCH ANYTHING; DO NOT READ
19 ANYTHING ABOUT IT. OF COURSE DO NOT ALLOW ANYBODY TO TALK
20 WITH YOU ABOUT IT NOR SHOULD YOU DISCUSS THE MATTER WITH
21 ANYONE. THANK YOU. WE'LL SEE YOU TOMORROW AT 3:35, GROUP
22 TEN.

23 GROUP NUMBER 11, YOU WILL REPORT AT 4:45 TOMORROW
24 AFTERNOON, FOLLOWING INDIVIDUALS: 43, ALTON
25 CRIBB, JR.; 37, PATRICK M. COLLINS; 144, GEORGE O.

1355

1 PHILLIPS; NUMBER 80, DAN LEE HURELL. YOU WILL REPORT
2 TOMORROW AT 4:45. YOU WILL COME UPSTAIRS TO THE JURY ROOM.
3 YOU'RE GROUP ELEVEN. DO NOT DISCUSS THE CASE WITH ANYONE.
4 DO NOT WATCH ANYTHING, ANY NEWS ACCOUNTS; DO NOT READ
5 ANYTHING, AND CERTAINLY DO NOT ALLOW ANYBODY TO TALK ABOUT
6 IT IN YOUR PRESENCE OR TALK TO YOU DIRECTLY. YOU ARE FREE
7 TO LEAVE. THANK YOU VERY MUCH. THAT'S GROUP ELEVEN.

8 THE LAST GROUP FOR TOMORROW, GROUP NUMBER 12,
9 YOUR REPORT TIME IS AT 5:50. THE FOLLOWING INDIVIDUALS:
10 JUROR 65, KAREN L. GRAHAM; 91, NEOMIE M. JORDAN; 47,
11 MARLENE C. DEACON; 192 AMY WHITE CONDON. YOUR REPORT TIME
12 IS 5:50 TOMORROW. YOU ARE GROUP 12. YOU WILL COME
13 UPSTAIRS DIRECTLY TO THE JURY ROOM AND CERTAINLY UNTIL THAT
14 TIME DO NOT READ ANYTHING ABOUT IT. DO NOT WATCH ANY NEWS
15 ACCOUNTS ABOUT THIS MATTER. DO NOT ALLOW ANYBODY TO TALK
16 WITH YOU OR TALK ABOUT IT IN YOUR PRESENCE. THANK YOU.
17 YOU ARE FREE TO LEAVE. I'LL SEE YOU TOMORROW, GROUP 12
18 AT 5:50.

19 NEXT GROUP IS GROUP 13. GROUP 13, I'M GOING TO
20 GIVE YOU A TIME BUT YOU SHOULD CALL THE CLERK'S OFFICE
21 TOMORROW AFTER TWO O'CLOCK TO MAKE SURE THAT'S STILL YOUR
22 TIME, OKAY; AND MAYBE WE CAN GET THEIR TELEPHONE NUMBERS IF
23 WE NEED TO. IF YOU HAVE THE QUESTIONNAIRE THESE ARE THE
24 NUMBERS. IN FACT I TELL YOU WHAT YOU PROBABLY OUGHT TO DO.
25 I SAID TWO. CALL AFTER -- WELL, WAIT A MINUTE. YOU DON'T

1356

1 HAVE A NUMBER AFTER SIX. WHAT ARE THE TIMES, NINE TO FIVE?

2 THE CLERK: NINE TO FIVE.

3 THE COURT: ALL RIGHT. I WOULD CALL BETWEEN FOUR
4 AND FIVE TOMORROW. GROUP 13, NINE O'CLOCK, BE NINE O'CLOCK
5 WEDNESDAY THE 22ND. FOLLOWING INDIVIDUALS: NUMBER 69,
6 PATRICIA A. GREEN; NUMBER 66, SYLVIA F. GRAHAM; 74, SAM
7 HEYWARD; NUMBER 1, MARY LOIS ABRUNTILLA. THE NUMBERS -- I
8 WENT TOO FAR. I THOUGHT I MISSED.

9 THE CLERK: DID YOU MISS ONE OR DID YOU NOT GET A
10 PAGE?

11 THE COURT: I MUST NOT HAVE A PAGE.

12 THE CLERK: MUST BE MISSING A PAGE.

13 THE COURT: OOPS. YOU MAY TAKE YOUR SEATS,
14 LADIES AND GENTLEMEN. I THOUGHT WE WENT QUICKLY THROUGH
15 THERE. I THOUGHT WAIT A MINUTE. I'M LOOKING AT THURSDAY.
16 YOU'RE IN GROUP BUT Y'ALL WILL BE TOGETHER.

17 THE CLERK: NUMBER THREE STARTS THAT.

18 THE COURT: YES. I GOT IT. THANK YOU.

19 THE CLERK: I'M SORRY.

20 THE COURT: THAT'S ALL RIGHT. NOW, WE'LL ALL
21 SOON BE ON THE SAME PAGE. THANK YOU VERY MUCH, MS. MOORE.
22 GROUP 13, THE STATEMENT ABOUT CALLING, YOU DON'T NEED TO
23 CALL. YOU NEED TO COME. YOU ARE GROUP 13. FOLLOWING
24 INDIVIDUALS: YOU WILL START WEDNESDAY THE 22ND AT NINE
25 O'CLOCK. NUMBER 3, PHILLIP K. ALLEN; NUMBER 181, CLYDIE B.

1357

1 THOMPSON; 122, CAROLYN L. MONTAGNE; 113, CECIL M. MCGEE.
2 YOU ARE GROUP 13. YOUR REPORT TIME IS WEDNESDAY AT NINE
3 O'CLOCK.

4 YOU WILL COME DIRECTLY UPSTAIRS, COME TO THE JURY
5 ROOM, BE THERE AT NINE O'CLOCK. UNTIL THEN DO NOT READ
6 ANYTHING ABOUT THIS; DO NOT DISCUSS THIS MATTER WITH
7 ANYONE. DO NOT ALLOW ANYONE TO TALK WITH YOU OR TALK ABOUT
8 IT IN YOUR PRESENCE. YOU HAVE AN EXTRA DAY. SO IT'S VERY
9 IMPERATIVE THAT YOU FOLLOW THAT INSTRUCTION. THANK YOU
10 VERY MUCH. YOU ARE FREE TO LEAVE UNTIL NINE O'CLOCK ON
11 WEDNESDAY. THAT'S GROUP 13.

12 NEXT GROUP IS GROUP 14, 10:05 A.M. ON 1-22-97
13 WHICH IS WEDNESDAY. NUMBER 45, JOHN K. CROTTO

14 A JUROR: CROTTS.

15 THE COURT: CROTTS. THANK YOU. THANK YOU VERY
16 MUCH, MR. CROTTS; 64, EDWARD R. GOUDE; 109, EUGENIA
17 MAYBANK; 199, JAMES B. WOODARD. YOUR REPORT TIME IS 10:05
18 ON WEDNESDAY. YOU COME DIRECTLY TO THE JURY ROOM AT THAT
19 TIME. UNTIL THEN PLEASE DO NOT DISCUSS THIS CASE WITH
20 ANYONE. DO NOT ALLOW ANYBODY TO TALK WITH YOU. DO NOT
21 READ ANY NEWS ACCOUNTS OR WATCH ANY NEWS PROGRAMS ABOUT IT.
22 YOU ARE FREE TO LEAVE. THANK YOU VERY MUCH.

23 GROUP 15, 11:15 ON WEDNESDAY JANUARY THE 22ND.
24 NUMBER 200, GLENN D. YARBOROUGH; 73, PATRICIA A.
25 HAYNES; 19, RUBY E. BROCKINGTON; NUMBER 6, MARY R.

1358

1 ARMSTRONG. YOUR REPORT TIME IS 11:15 ON WEDNESDAY. REPORT
2 UPSTAIRS. DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT
3 ALLOW ANYONE TO TALK WITH YOU ABOUT IT. DON'T WATCH ANY
4 NEWS PROGRAMS ABOUT IT OR READ ANY NEWS ACCOUNTS. I'LL SEE
5 ON WEDNESDAY AT 11:15. REPORT DIRECTLY TO THE JURY ROOM.
6 THANK YOU. YOU'RE FREE TO LEAVE.

7 GROUP 16, YOUR REPORT TIME WILL BE 12:20 P.M.
8 WEDNESDAY. GROUP 16, THE FOLLOWING: JUROR NUMBER 8,
9 CHARLES W. BARRINEAU, JR.; 180, CYNTHIA DENNIS THOMAS; 168,
10 CURTIS D. SMITH; AND 36, TRACY L. COLLINGTON. YOU ARE
11 GROUP 16. YOUR REPORT TIME IS 12:20 ON WEDNESDAY. COME
12 DIRECTLY TO THE JURY ROOM. UNTIL THAT TIME DO NOT READ
13 ANYTHING ABOUT THIS CASE, DISCUSS THIS CASE WITH ANYONE,
14 ALLOW ANYONE TO TALK WITH YOU ABOUT IT OR TALK ABOUT IT IN
15 YOUR PRESENCE. I'LL SEE YOU WEDNESDAY AFTERNOON
16 AT 12:20 P.M.

17 ALL RIGHT. THE NEXT TWO GROUPS. THE FIRST ONE
18 I'M GOING TO GIVE IS GROUP 17. YOU PROBABLY SHOULD CALL
19 WEDNESDAY MORNING TO CHECK ABOUT YOUR TIME TO SEE IF THERE
20 IS ANY NEED TO MOVE YOUR TIME. OKAY. SO THIS NEXT ONE
21 WILL BE GROUP 17. YOUR SCHEDULED TIME IS 2:45 ON WEDNESDAY
22 AFTERNOON. THE FOLLOWING INDIVIDUALS: NUMBER 69,
23 PATRICIA A. GREEN; 66, SYLVIA F. GRAHAM; 74, SAM HEYWARD;
24 NUMBER 1, MARY LOIS BRUNTILLA.

25 A JUROR: ABRUNTILLA.

135C

1 THE COURT: ABRUNTILLA. I'LL GET BEFORE I LEAVE
2 HERE. I PROMISE YOU THAT, MS. ABRUNTILLA. THANK YOU VERY
3 MUCH FOR BEING PATIENT WITH ME. YOU ARE GROUP 17. YOU
4 NEED TO CALL WEDNESDAY MORNING TO CHECK, MAKE SURE THERE IS
5 NO CHANGE IN YOUR TIME. IF THEY TELL YOU THERE IS NO
6 CHANGE, THEN YOU NEED TO REPORT TO THIS JURY ROOM UPSTAIRS
7 AT 2:45 P.M. UNTIL THAT TIME DO NOT TALK WITH ANYONE ABOUT
8 IT. DO NOT ALLOW ANYBODY TO TALK WITH YOU ABOUT IT AND
9 CERTAINLY DON'T WATCH ANY NEWS PROGRAMS OR READ ANY NEWS
10 ACCOUNTS. THE CLERK'S NUMBER ARE -- IF YOU HAVE SOMETHING
11 TO WRITE -- THEY'RE ALSO IN THE, I GUESS, IN THE PHONE BOOK
12 BUT THEY'RE 527-6315 OR 6338, 527-6315 OR 6338. THANK YOU.
13 YOU ARE FREE TO LEAVE.

14 AND THE LAST GROUP, GROUP 18 ARE THE INDIVIDUALS
15 LEFT. IF I DIDN'T CALL YOUR NAME, WE'LL TALK TO YOU
16 AFTERWARDS: 77, MARJORIE H. HOLMES; 170, MYRON H.
17 SMITH; 135, VICKIE O. PAGE. YOU ARE GROUP 18. YOUR REPORT
18 TIME AT THIS TIME IS 3:45. YOU NEED TO CALL THAT NUMBER
19 ESPECIALLY. MAKE SURE BEFORE YOU COME AT THAT POINT. CALL
20 IN THE MORNING AND I WOULD CALL RIGHT UP UNTIL LUNCHTIME TO
21 BE SURE THERE ARE NO CHANGES.

22 IF NO ONE TELLS YOU ANYTHING THAT YOU NEED TO
23 CHANGE, THEN YOU NEED TO BE THERE AT 3:45. PLEASE,
24 GROUP 18, DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT
25 ALLOW ANYONE TO TALK WITH YOU ABOUT IT OR TALK ABOUT IT IN

1366

1 YOUR PRESENCE AND CERTAINLY DO NOT WATCH ANY NEWS PROGRAMS
2 ABOUT IT OR READ ANY NEWS ACCOUNTS ABOUT THIS CASE. THOSE
3 NUMBERS AGAIN ARE 527-6315 OR 6 314. HOW ABOUT 6338? DID
4 I ALSO ---

5 THE CLERK: YOU GAVE THAT BUT THAT'S FINE.

6 THE COURT: IS THAT YOUR UNDISCLOSED NUMBER?

7 THE CLERK: NO. THAT'S FINE.

8 THE COURT: BECAUSE IT'S JUST BEEN DISCLOSED.

9 THANK YOU. YOU'RE FREE AT THE LEAVE AT THIS
10 TIME.

11 IS ANYONE SEATED WHO IS A JUROR OR THINKS THEY'RE
12 A JUROR IN THIS CASE WHOSE NAME WAS NOT CALLED? YOU NEED
13 TO COME FORWARD, SIR. YOUR NAME.

14 A JUROR: CHRISTOPHER MOYD.

15 THE COURT: WHAT'S YOUR NUMBER?

16 A JUROR: SEE THAT'S WHAT I DON'T KNOW.

17 THE COURT: YOU HAD A PRIOR RECORD WITH DRUGS.

18 A JUROR: BACK IN BALTIMORE.

19 THE COURT: YES, YOU HAVE A CONVICTION.

20 A JUROR: NO, I WASN'T CONVICTED.

21 THE COURT: YOU WERE NOT?

22 A JUROR: NO.

23 THE COURT: IT WAS ON YOUR RAP SHEET IN 1995.

24 A JUROR: FOR WHAT?

25 THE COURT: FOR. . .

136i

1 THE CLERK: FOR DRUGS.

2 THE COURT: YOU HAVE NO PRIOR CONVICTION?

3 A JUROR: NO, I WASN'T CONVICTED BECAUSE WHEN YOU
4 SAY ---

5 THE COURT: WERE YOU SENTENCED?

6 A JUROR: NO. BECAUSE ONE WAS THROWN OUT OF
7 COURT.

8 THE COURT: ALL RIGHT. VERY WELL. YOU'VE BEEN
9 HERE ALL MORNING; IS THAT CORRECT?

10 A JUROR: YES, SIR.

11 THE COURT: IF YOU'LL JUST HAVE A SEAT.

12 MR. KOLB: WHAT NUMBER IS HE?

13 THE CLERK: 130.

14 THE COURT: 130. Y'ALL WANT TO APPROACH? ANY
15 OBJECTION TO ADDING HIM TO THE LAST GROUP? HE SAYS WE -- I
16 HAVE INFORMATION THAT HE HAS A DRUG RECORD. HE SAYS HE WAS
17 NOT CONVICTED. SO IF YOU WANT TO CHECK ON IT TO SEE WHAT
18 COMES UP, YOU HAVE ANY OBJECTION TO ADDING HIM TO THIS LAST
19 GROUP OF THREE?

20 MR. BABB: HE WASN'T IN THE POOL AT ALL?

21 THE COURT: HE WASN'T DRAWN. HIS NAME WAS -- WE
22 COULD REDRAW THE WHOLE THING AND HAVE THEM ALL COME BACK
23 IN.

24 MR. LITTLEJOHN: WELL, NOT IF HE'S DISQUALIFIED.

25 THE COURT: WELL, I DON'T KNOW IF HE IS OR NOT.

1302

1 THE CLERK: HE SAID HE WOULD RUN THE RAP SHEET
2 AGAIN IF YOU WANT HIM TO.

3 THE COURT: WELL, WE'LL HAVE TO -- WE'LL HAVE TO
4 HAVE THAT. WE DON'T HAVE TO DO THAT BUT IF YOU'RE GOING TO
5 RAISE AN OBJECTION, THEN WE'LL REDRAW THE WHOLE THING.

6 MR. KOLB: IT'S FINE WITH ME JUST TO PUT HIM IN.
7 THAT'S THE ONLY ONE. THERE ARE NO OTHERS.

8 THE COURT: NEED SOME TIME TO THINK. LET ME TELL
9 YOU WHAT THE PROBLEM IS GOING TO BE. THERE IS NO NEED
10 BECAUSE ALL WE'RE TALKING ABOUT NOW -- WE'LL JUST REDRAW
11 ONCE WE QUALIFY. THEN WE'LL PULL A LIST IF THAT'S WHAT
12 Y'ALL WANT TO DO.

13 MR. LITTLEJOHN: YOU TALKING ABOUT QUALIFY THEM
14 IN THE ORDER THAT WE'VE GOT THEM. THEN REDRAW.

15 THE COURT: THEN REDRAW. IF YOU INSIST ON
16 REDRAWING WE'LL GET ANOTHER LIST.

17 MR. LITTLEJOHN: YES, BUT ---

18 THE COURT: BUT IF YOU DON'T OBJECT TO IT, THEN
19 WE CAN GO AHEAD AND DRAW IN THE MORNING.

20 MR. KOLB: THE THING ABOUT HIM IS THE CLERK
21 ACTUALLY CALLED HIS NAME AND SAID THAT HE HAD A CRIMINAL
22 RECORD WHATEVER AND I MEAN I PULLED THE PAPERWORK WE HAD ON
23 HIM. I WAS PUTTING THE ONES THAT WERE IN THE GROUP VERSUS
24 THE ONES THAT WERE NOT. I MEAN NOTHING WAS EVER DONE. HE
25 ACTUALLY WAS NOT QUALIFIED.

1363

1 THE COURT: HE'S BEEN SITTING OUT THERE. HE
2 DIDN'T RESPOND TO ANYTHING. HE'S QUALIFIED. I DON'T HAVE
3 A PROBLEM WITH THE QUALIFICATION. THE CONCERN THAT I HAVE
4 IS HIS NAME NOT BEING IN THE DRAW THE WAY THAT I -- WE'LL
5 REDRAW AND WE'LL STRIKE FROM THAT NEW THING. IT JUST MEANS
6 WE'LL HAVE TO GO THROUGH THE WHOLE THING BUT THAT'S OKAY.

7 MR. LITTLEJOHN: IF HE HAS AN ANSWER.

8 THE COURT: THAT'S NO PROBLEM. WE'LL JUST PUT
9 HIM. . .

10 THE COURT: MR. MOYD.

11 A JUROR: YES, SIR.

12 THE COURT: YOUR GROUPING, SIR, WILL BE IN
13 GROUP 18 WHICH IS SCHEDULED FOR 3:45 ON WEDNESDAY. YOU,
14 SIR, WILL NOT DISCUSS THIS CASE WITH ANYONE, PLEASE, UNTIL
15 THAT TIME. DO NOT ALLOW ANYONE TO TALK WITH YOU ABOUT IT
16 AND YOU WILL NEED TO COME BACK HERE ON WEDNESDAY AT 3:45.
17 AGAIN IF YOU HAVE SOMETHING TO WRITE WITH, YOU NEED TO CALL
18 ON WEDNESDAY MORNING THE CLERK'S OFFICE TO MAKE SURE THERE
19 HAS NOT BEEN SOME CHANGE OF SCHEDULING FOR YOUR TIME BUT IF
20 YOU DON'T HEAR ANY CHANGE, COME HERE AND COME DIRECTLY TO
21 THE JURY ROOM AND YOU WILL BE IN GROUP 18. OKAY. THANK
22 YOU, SIR. YOU ARE FREE TO LEAVE. APPRECIATE YOUR PATIENCE
23 WITH THE COURT AS WELL, SIR. ANYONE ELSE?

24 (NO RESPONSE.)

25 THE COURT: THANK YOU. ALL RIGHT. WE WILL BE AT

1364

1 EASE UNTIL 2:30. NOW, LET ME STATE THIS AS SOON AS HE
2 LEAVES. NOW, ANY OBJECTION TO THE COURT'S REMARKS IN
3 QUALIFYING THE JURY FROM THE STATE?

4 MR. KOLB: NO, SIR.

5 THE COURT: FROM THE DEFENDANT?

6 MR. LITTLEJOHN: NO, YOUR HONOR.

7 THE COURT: VERY WELL. GENTLEMEN, I'VE DISCUSSED
8 BEFORE WE CAME BACK ON I WOULD LIKE TO MAKE COURT'S EXHIBIT
9 NO. 1 WOULD BE THE LISTING AS DRAWN. THAT'S THE COMPUTER
10 PRINTOUT AND ALL RESPONSES THAT HAVE BEEN RECEIVED
11 COLLECTIVELY WILL BECOME COURT'S EXHIBIT NO. 1.

12 (THEREUPON, THE JURY INFORMATION WAS MARKED COURT'S
13 EXHIBIT NO. 1 AND MADE A PART OF THE RECORD.)

14 THE COURT: I ALSO BELIEVE THAT YOU HAVE BEEN
15 SHOWN A LETTER THAT WAS PREPARED BY MR. PLAYER TO BE HANDED
16 TO THE JURORS WHO ARE QUALIFIED. IT'S JUST AN INSTRUCTIONAL
17 LETTER THAT TELLS THEM -- GIVES THEM CERTAIN INFORMATION.
18 I THINK IT WOULD BE HELPFUL. DO YOU HAVE ANY OBJECTION TO
19 THAT LETTER, SOLICITOR?

20 MR. KOLB: NO, SIR.

21 THE COURT: ANY OBJECTION FROM MR. STONE?

22 MR. BABB: NONE, YOUR HONOR.

23 THE COURT: VERY WELL. A COPY OF THAT LETTER
24 WILL BECOME COURT'S EXHIBIT NO. 2 IN THIS PROCEEDING.

25 (THEREUPON, A LETTER FROM MR. PLAYER WAS MARKED

1365

1 COURT'S EXHIBIT NO. 2 AND MADE A PART OF THE RECORD.)

2 THE COURT: NOW, ARE THERE ANY OTHER MATTERS FROM
3 THE STATE THAT WE NEED TO DISCUSS ON THE RECORD?

4 MR. KOLB: NO, SIR.

5 THE COURT: ANY FROM MR. STONE?

6 MR. LITTLEJOHN: NOT AT THIS TIME, YOUR HONOR.

7 THE COURT: THANK YOU VERY MUCH. WE'LL BE AT
8 EASE.

9 (THEREUPON, THE TRIAL OF THIS CASE WAS RECESSED
10 UNTIL 2:30 P.M.)

11 THE COURT: LET THE RECORD REFLECT THAT MR. STONE
12 IS PRESENT. GOOD AFTERNOON, MR. STONE. WE'RE READY TO
13 PROCEED. FIRST LET ME REPORT TO ALL THE PARTIES' ATTORNEYS
14 THAT THE JUROR NUMBER 130 THE INFORMATION WAS AS STATED.
15 HE HAD BEEN CHARGED. NO DISPOSITION IS SHOWN. SO HIS
16 RESPONSE WAS CORRECT. HE WAS PRESENT IN THE COURTROOM.
17 WE'LL DISCUSS HOW WE'RE GOING TO PROCEED. THE OFFER AT
18 THIS POINT UNLESS I HEAR OTHERWISE I ASSUME YOU WANT TO
19 REDRAW AT THE TIME THAT WE PREPARE TO STRIKE IF YOU WISH AT
20 SOME POINT IN THIS PROCEEDING.

21 SOLICITOR, WHAT'S YOUR POSITION; DO YOU WANT TO
22 REDRAW?

23 MR. KOLB: YOUR HONOR, I WOULD -- WHAT I WOULD
24 LIKE TO HAVE DETERMINED IS MAKE THAT DETERMINATION NOW SO
25 THAT IT'S NOT -- ONCE WE GO THROUGH THIS PROCESS AND WE

1366

1 KNOW WHO'S COMING, I DON'T THINK THEY OUGHT TO HAVE THE
2 OPTION AT THAT POINT. I THINK WE OUGHT TO DECIDE UP FRONT.
3 IT SEEMS LIKE TO ME INSTEAD OF REDRAWING IS TO EITHER LEAVE
4 HIM IN THE POSITION THAT HE IS NOW WHICH IS AT THE END OF
5 THE LINE AND I HAVE NO PROBLEM WITH THAT OR IF WE'RE GOT 73
6 PEOPLE ON A LIST, DRAW A NUMBER ANYWHERE BETWEEN ONE AND 73
7 AND THAT'S WHERE HE GOES. JUST SEEMS LIKE -- IF HE HAD
8 BEEN IN THERE, HE WOULD HAVE BEEN SOMEWHERE IN THAT LIST.

9 THE COURT: WELL, DON'T KNOW HOW IT WOULD KICK
10 THE WHOLE PANEL. I MEAN, YOU JUST DON'T KNOW WHERE HE
11 WOULD HAVE FALLEN. I DON'T HAVE ANY PROBLEM WITH DOING IT
12 ONE OF TWO WAYS. WE'RE NOT GOING TO REDO IT AND
13 RESCHEDULE. I CAN TELL YOU THAT SO FROM THE STANDPOINT OF
14 WHETHER IT'S GOT TO BE DONE NOW OR LATER, AT THIS POINT IT
15 REALLY DOESN'T AFFECT THE WAY YOU ALL WANT TO PROCEED
16 BECAUSE Y'ALL WANT TO PROCEED WITH QUALIFYING EVERY ONE OF
17 THEM. SO IT REALLY DOESN'T MAKE ANY DIFFERENCE.

18 MR. KOLB: ULTIMATELY WHEN WE GET TO HIM IF HE'S
19 NOT QUALIFIED, IT SEEMS TO ME THERE IS NO PROBLEM WITH
20 STAYING WITH THE ORDER WE HAVE NOW. IF HE'S ULTIMATELY
21 FOUND QUALIFIED THE ONLY QUESTION IS WHERE HE SHOULD GO IN
22 THE ORDER.

23 THE COURT: MR. SOLICITOR, WITH ALL DUE RESPECT,
24 SIR, HE'S QUALIFIED TO THIS POINT. NOW, WHAT HAPPENS TO
25 HIM DURING THIS PROCESS IF HE COMES IN AND SAYS THAT HE

1367

1 HAPPENS TO BE JUROR NUMBER 1 OR 2 THEN THAT WOULD BE A
2 DIFFERENT BALL GAME BUT I DON'T THINK IT WOULD AFFECT
3 WHETHER OR NOT THE ORDER THAT IT ALL COMES IN TO WEIGH
4 WOULD FIT IN THE SPECTRUM.

5 WHAT'S THE POSITION OF THE DEFENDANT?

6 MR. LITTLEJOHN: INDULGE ME JUST ONE MOMENT.

7 THE COURT: YES, SIR.

8 MR. LITTLEJOHN: YOUR HONOR, AFTER DISCUSSING
9 BRIEFLY WITH MR. STONE, I THINK WE WOULD BE COMPELLED TO
10 ASK THE COURT TO REDRAW THE JURORS AFTER THEY'VE BEEN
11 QUALIFIED.

12 THE COURT: VERY WELL. WE WILL REDRAW AFTER
13 WE'VE GONE THROUGH IT. THEN WE WILL REDRAW AND THEN WE
14 WILL STRIKE FROM THAT LIST. SO WON'T BE ANY MORE
15 DISCUSSION. YOU ALL UNDERSTAND THAT? VERY WELL. OKAY.

16 MR. KOLB: JUDGE.

17 THE COURT: YES.

18 MR. KOLB: THE ONLY THING THAT DOES IS REQUIRES
19 US TO GO THROUGH EVERY JUROR.

20 THE COURT: THAT'S CORRECT; SO WHAT Y'ALL TOLD ME
21 ALL ALONG THAT Y'ALL INSISTED THAT WE GO THROUGH EVERY
22 JUROR. SO WE'RE GOING TO GO THROUGH EVERY JUROR.

23 MR. KOLB: WHAT I'M SAYING IS IF YOU HAVE --
24 YOU'VE GOT 70 NOW, YOU'D HAVE TO QUALIFY ALL 70.

25 THE COURT: I UNDERSTAND WHAT THAT MEANS. I'M

1368

1 VERY WELL AWARE OF WHAT IT MEANS. WE'RE GOING TO DO IT IN
2 THAT FASHION. I'M NOT GOING TO RUN A RISK OF SOME PROBLEM
3 COMING IN SOME REVIEW THAT THIS WOULD HAVE CHANGED THE
4 ORDER OF EVERYTHING. THERE ARE A LOT OF THINGS THAT WE
5 HAVE TO DO. I DON'T KNOW THAT WE WOULD -- YOU KNOW --
6 UNDER THIS IF THEY DIDN'T EXHAUST ALL OF THEIR STRIKES, IT
7 WOULD MAKE -- ABSOLUTELY HAVE NOTHING TO DO WITH ANYTHING.
8 BUT IF THEY DO THEN WE'VE GOT A PROBLEM.

9 SO RATHER THAN TO DEAL WITH THAT I WANT TO GO
10 AHEAD AND SET IT AND STRATEGY -- THAT CUTS BOTH WAYS. IT
11 CUTS FOR THE STATE BUT IT ALSO CUTS FOR THEM, TOO, BECAUSE
12 THEY HAVE TO NOW SUDDENLY REDO IT AND LET IT BE KNOWN WE'RE
13 NOT GOING TO HAVE ANY LONG TIME DELAYS. WE'RE GOING TO
14 REDRAW IT AND WE'RE GOING TO STRIKE. OKAY. ALL RIGHT.
15 NEXT ONE IS MS. KEEGAN. I HAVE RECEIVED -- NOW SHE'S
16 THE -- HAPPENS TO BE IN THE FIRST PANEL, THE LAST JUROR.
17 JUST SIMPLY APPEARS TO BE A STAFF PERSONNEL THAT SAYS THAT
18 SHE SHOULD BE TEMPORARILY EXCUSED DUE TO MEDICAL REASONS
19 BUT WE'LL HAVE A CHANCE TO EXPLORE THAT WITH HER. I JUST
20 RECEIVED THIS EXCUSE FROM HER BUT I'LL ALLOW Y'ALL TO
21 EXAMINE HER RELATIVE TO THAT.

22 OKAY. AND INsofar AS THE TIMING IS CONCERNED
23 SINCE THAT'S THE CASE, WE WILL STRIKE THIS JURY AT PROBABLY
24 FIVE OR 5:30 ON WEDNESDAY IS MY VIEW OF IT. IT LOOKS LIKE
25 WE'LL BE COMPLETING THAT PANEL SOMETIME AROUND FOUR

1365

1 OR 4:30. I'M JUST GOING TO START TELLING THEM TO BE BACK
2 HERE AT FIVE O'CLOCK ON WEDNESDAY AFTERNOON AND WE'LL PICK
3 THEM AT THAT TIME AND AT THAT POINT THEN THEY WILL GO TO
4 SUMTER AND WE WILL DEAL WITH WHATEVER WE NEED TO DEAL WITH
5 AND THEN WE WILL RECONVENE IN SUMTER ON THURSDAY MORNING.
6 OKAY. ALL RIGHT. LET'S BRING THE FIRST ONE IN, PLEASE,
7 MS. BOWERS. WAIT JUST ONE SECOND. IS THERE ANYTHING
8 FURTHER FROM THE STATE? I'M SORRY.

9 MR. KOLB: NO, SIR.

10 THE COURT: ANYTHING FURTHER FROM MR. STONE?

11 MR. LITTLEJOHN: YOUR HONOR, IN REGARD TO THE
12 FORM WHICH THE COURT HAS PROVIDED US INDICATING THE THREE,
13 WAS THE COURT GOING TO PROVIDE THIS FORM TO THE JURORS IN
14 ADVANCE AND ASK THEM ---

15 THE COURT: THEY'VE ALREADY HAD IT.

16 MR. LITTLEJOHN: OKAY.

17 THE COURT: OH, YOU HAVE NOT GIVEN IT TO THEM.

18 THE CLERK: YOU WANTED ME TO GIVE THEM TO THEM?

19 THE COURT: OH, YES, MA'AM. I'M SORRY. I
20 THOUGHT YOU UNDERSTOOD. GO AHEAD AND GIVE THEM A COPY.

21 MR. LITTLEJOHN: YOUR HONOR, I WAS GOING TO POINT
22 OUT ONE TYPO. UNFORTUNATELY THE SECOND PARAGRAPH, FIRST
23 LINE.

24 THE COURT: WHAT'S THE TYPO?

25 MR. LITTLEJOHN: IT SAYS THE SECOND TYPE OF JUROR

1376

1 IS ON WHO, COMMA, ALTHOUGH THE GUILT OF THE DEFENDANT HAS
2 BEEN DETERMINED. I DON'T KNOW IF THAT WOULD CAUSE ANY
3 CONFUSION. I JUST POINTED THAT OUT WHEN I SAW IT.

4 THE COURT: WE'LL RERUN THAT. ANY OBJECTION TO
5 THE FORM FROM THE STATE?

6 MR. KOLB: NO, SIR.

7 THE COURT: ANY OBJECTION FROM MR. STONE?

8 MR. LITTLEJOHN: NO, YOUR HONOR.

9 THE COURT: VERY WELL THEN. I HAVE MADE THAT
10 CHANGE. WE WILL MAKE THAT NOTATION ON THERE IN PEN. I
11 WILL NOW MAKE THIS COURT'S EXHIBIT NO. 3, COPY OF THE JUROR
12 FORM. THANK YOU.

13 (THEREUPON, THE JUROR FORM WAS MARKED COURT'S EXHIBIT
14 NO. 3 AND MADE A PART OF THE RECORD.)

15 THE COURT: JUST GIVE HER A FEW MINUTES.

16 (PAUSE)

17 THE COURT: OKAY. ASK HER TO COME ON IN. BRING
18 HER IN.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JUROR.)

21 THE COURT: MS. BOWERS, BEFORE YOU STAND WOULD
22 YOU PLEASE PLACE YOUR LEFT HAND ON THAT BIBLE AND RAISE
23 YOUR RIGHT HAND.

24 / / /

25 / / /

1371

1 ORA BOWERS, BEING FIRST DULY
2 SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT:

4 Q GOOD AFTERNOON, MS. BOWERS. MS. BOWERS, I HAVE SOME
5 QUESTIONS THAT I'M GOING TO NEED TO ASK YOU AND AS I HAVE
6 STATED EARLIER TODAY THE ANSWERS THAT -- THERE ARE NO --
7 THERE REALLY AREN'T ANY RIGHT OR WRONG ANSWERS TO THESE
8 QUESTIONS. OKAY?

9 A YES.

10 Q YOU'VE BEEN GIVEN A SHEET OF PAPER THAT HAS THREE
11 TYPES OF JURORS. HAVE YOU HAD A CHANCE TO REVIEW THAT?

12 A YES, I WENT THROUGH SOME OF IT. I CAN'T READ IT ALL
13 OUT.

14 Q ALL RIGHT. WELL, TYPE ONE IS -- BASICALLY SUMMARIZES
15 A JUROR THAT BELIEVES WHEN CERTAIN FACTS EXIST, SOMEONE WAS
16 KILLED IT WOULD ALWAYS BE THE DEATH PENALTY WOULD BE YOUR
17 CHOICE OF PUNISHMENT IF YOU HAPPENED TO BE ON THAT JURY?

18 A NO, SIR, NOT REALLY.

19 Q THAT'S NOT YOU?

20 A NO, SIR.

21 Q OKAY. TYPE TWO ON THAT LIST IS SOMEBODY WHO IF
22 THEY'RE DEALING WITH SOMEONE BEING KILLED, THE PUNISHMENT
23 THEY COULD NEVER EVER BRING BACK A VERDICT OF --A
24 PUNISHMENT OTHER THAN LIFE IN PRISON. IS THAT YOU?

25 A NOW, TELL ME THAT AGAIN.

1372

1 Q ALL RIGHT. LET ME TELL YOU TYPE TWO IS ONE THAT
2 WOULD ALWAYS SAY THAT LIFE IMPRISONMENT WOULD BE THE
3 APPROPRIATE PUNISHMENT. TYPE THREE IS A JUROR THAT SAYS, I
4 CAN'T MAKE A DECISION BECAUSE I'D HAVE TO HEAR ALL THE
5 FACTS BEFORE I COULD MAKE A DECISION ON THE APPROPRIATE
6 PUNISHMENT AND IT WOULD DEPEND ON THE FACTS OF THE CASE AS
7 TO WHAT PUNISHMENT WOULD BE APPROPRIATE?

8 A THAT WOULD BE ME.

9 Q THAT WOULD BE YOU?

10 A YES.

11 Q YOU WOULD BE TYPE THREE THEN; IS THAT RIGHT?

12 A YES.

13 Q SO THAT WOULD MEAN AS I UNDERSTAND IT THERE ARE SOME
14 CASES WHERE THE FACTS ARE SUFFICIENT AND THE COURT GAVE YOU
15 INSTRUCTION THAT YOU COULD FIND AND WOULD FIND THAT MAYBE A
16 DEATH PENALTY WOULD BE THE APPROPRIATE ONE AND THERE ARE
17 SOME CASES WHERE YOU'D THINK LIFE IMPRISONMENT WOULD BE
18 APPROPRIATE?

19 A YES, SIR.

20 Q BUT YOU WOULD WAIT UNTIL YOU HEARD THE FACTS?

21 A ALL THE FACTS.

22 Q ALL RIGHT. NOW, YOU HAVEN'T HEARD ANYTHING ABOUT
23 THIS PARTICULAR MATTER, HAVE YOU?

24 A NO, SIR.

25 Q NOTHING BUT WHAT I SHARED WITH YOU TODAY?

1373

1 A YES, SIR, IN THE COURTROOM.

2 Q SO YOU HAVEN'T FORMED ANY OPINIONS ABOUT IT?

3 A NO, SIR.

4 Q THE FACT THAT MR. STONE IS CHARGED WITH THIS, THE
5 FACT THAT HE'S SITTING THERE AT THE TABLE, SOMEONE THAT'S
6 CHARGED WITH THIS, DOES THAT MAKE YOU FEEL ONE WAY OR
7 ANOTHER?

8 A NO, SIR, NOT UNTIL I HEAR THE FACTS.

9 Q ALL RIGHT. YOU UNDERSTAND BECAUSE I'VE SHARED WITH
10 YOU THE LAW THIS MORNING THAT ANY PERSON INCLUDING
11 MR. STONE JUST BECAUSE THEY'RE CHARGED WITH A CRIME THEY'RE
12 ENTITLED TO THE PRESUMPTION OF INNOCENCE. YOU UNDERSTAND
13 THAT?

14 A YES, SIR. YES, SIR, I DO.

15 Q YOU UNDERSTAND THAT THE BURDEN IS ON THE STATE OF
16 SOUTH CAROLINA TO PROVE THEIR CASE?

17 A YES, SIR.

18 Q THAT MR. STONE DOES HAVEN'T TO PROVE ANYTHING? YOU
19 UNDERSTAND THAT?

20 A YES, SIR.

21 Q SO IF YOU WERE A JUROR WOULD YOU EXPECT MR. STONE TO
22 PROVE ANYTHING?

23 A NO, NOT REALLY WHAT THE FACTS WOULD BE.

24 Q YOU WOULD LOOK TO THE STATE TO PROVE ITS CASE?

25 A THAT'S RIGHT.

1374

1 Q IS THAT CORRECT? DO YOU KNOW OF ANYTHING THAT HAS
2 HAPPENED IN YOUR LIFE, ANY STRONG FEELINGS THAT YOU WOULD
3 HAVE THAT MAY INFLUENCE YOU IN ANY WAY IN CONSIDERING THIS
4 CASE IN BEING FAIR TO THE STATE AND BEING FAIR TO
5 MR. STONE?

6 A NO, SIR.

7 Q THERE IS NOTHING?

8 A NO, SIR.

9 Q SO THEN YOU DON'T KNOW OF ANY REASON WHY YOU COULDN'T
10 GIVE MR. STONE AND THE STATE A FAIR AND IMPARTIAL TRIAL IN
11 THIS MATTER?

12 A NO.

13 Q CAN YOU AND WOULD YOU FOLLOW ALL THE COURT'S
14 INSTRUCTIONS IN THIS MATTER?

15 A YES, SIR.

16 Q AND THAT WOULD INCLUDE THE INSTRUCTIONS ON THE
17 PRESUMPTION OF INNOCENCE, REASONABLE DOUBT. THERE MAY BE
18 INSTRUCTIONS, FURTHER INSTRUCTIONS, IN A SECOND PHASE OF
19 THIS TRIAL ON AGGRAVATING CIRCUMSTANCES AND MITIGATING
20 CIRCUMSTANCES AND ALL THAT WILL BE DEFINED FOR YOU AT THAT
21 TIME. WOULD YOU HAVE ANY PROBLEM FOLLOWING THOSE
22 INSTRUCTIONS?

23 A NO, SIR.

24 Q YOU UNDERSTAND THAT THIS PROCEEDING IS -- LIKE I
25 SHARED WITH YOU THIS MORNING -- IT'S TWO TRIALS IN ONE.

1375

1 THE FIRST ONE YOU'RE GOING TO DEAL WITH ONE ISSUE ONLY AND
2 THAT WOULD BE WHETHER OR NOT THE STATE PRESENTS ENOUGH
3 EVIDENCE TO SATISFY YOU BEYOND A REASONABLE DOUBT AS TO THE
4 GUILT. YOU WILL MAKE A DETERMINATION, THE JURY WOULD MAKE
5 A DETERMINATION. YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q YOU WOULD RECEIVE AN INSTRUCTION AND WOULD YOU FOLLOW
8 THAT INSTRUCTION?

9 A YES, SIR.

10 Q IF THE JURY WERE TO SAY THAT THE STATE HAS FAILED TO
11 MEET ITS BURDEN, THEN THAT WOULD BE THE END OF THE CASE AS
12 I STATED BUT IF THE JURY FOUND THAT HE WAS 'GUILTY, WE'D
13 MOVE INTO THE NEXT PHASE. THAT'S CALLED THE PENALTY PHASE.
14 YOU UNDERSTAND THAT?

15 A YES, SIR.

16 Q AND IT'S AT THAT PHASE THAT YOU WOULD HEAR ADDITIONAL
17 EVIDENCE, EVIDENCE YOU HADN'T HEARD BEFORE, YOU UNDERSTAND?

18 A YES, SIR.

19 Q WOULD YOU KEEP AN OPEN MIND IN BOTH PHASES?

20 A YES, SIR.

21 Q YOU UNDERSTAND THAT THE EVIDENCE IN THE SECOND PHASE
22 WOULD BE DIFFERENT IN MANY RESPECTS THAN THAT YOU'VE HEARD
23 IN THE FIRST PHASE?

24 A YES, SIR.

25 Q WOULD YOU HAVE ANY OPINIONS ABOUT MR. STONE OR BE

1370

1 INFLUENCED BY WHAT HAPPENED IN THE FIRST PHASE OR WOULD ---

2 A I DON'T THINK SO.

3 Q ALL RIGHT. SO YOU'D KEEP AN OPEN MIND AND LISTEN TO
4 ALL OF THE EVIDENCE?

5 A YES, SIR.

6 Q ALL OF THE EVIDENCE. AND THEN YOU WOULD FOLLOW THE
7 COURT'S INSTRUCTIONS?

8 A YES, SIR.

9 Q AND THEN YOU WOULD MAKE A DECISION AS TO THE
10 APPROPRIATE PUNISHMENT. YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q WOULD YOU WAIT UNTIL YOU HAD HEARD ALL OF THE
13 EVIDENCE BEFORE YOU MADE A DECISION IN EITHER PHASE?

14 A YES, I WOULD WANT TO HEAR ALL THE EVIDENCE.

15 Q AND WOULD YOU WAIT UNTIL YOU HEARD THE LAW BEFORE YOU
16 MADE A DECISION?

17 A YES, SIR.

18 Q PART OF THIS PROCEEDING WOULD BE THAT THIS JURY WILL
19 BE SEQUESTERED. YOU KNOW WHAT THAT MEANS?

20 A YES, SIR.

21 Q YOU'LL BE KEPT AT THE STATE'S EXPENSE IN A MOTEL?

22 A YES, SIR.

23 Q IN FACT THIS TRIAL WILL BE HELD AND CONDUCTED IN
24 SUMTER?

25 A YES, SIR.

1377

1 Q AND YOU WILL BE TAKEN -- THEY'LL TAKE CARE OF
2 PROVIDING YOUR MEALS AND PROVIDING YOU A PLACE AND
3 TRANSPORTATION. YOU UNDERSTAND THAT?

4 A YES, SIR.

5 Q THE FACT THAT YOU MAY BE SEQUESTERED WOULD THAT
6 INFLUENCE YOU IN ANY WAY?

7 A SIR?

8 Q WOULD THAT INFLUENCE YOU, CAUSE YOU TO NOT BE ABLE TO
9 LISTEN TO ALL THE EVIDENCE ---

10 A NO, SIR.

11 Q --- AND LISTEN TO THE COURT'S INSTRUCTION?

12 A NO.

13 Q IT WOULD NOT AFFECT YOU?

14 A NO, SIR.

15 Q NOW, YOU UNDERSTAND THE FACT THAT I'VE ASKED YOU
16 THESE QUESTIONS TODAY I'M REQUIRED BY LAW TO ASK CERTAIN
17 QUESTIONS. YOU UNDERSTAND THAT?

18 A YES, SIR.

19 Q YOU AREN'T TO INFER ANYTHING ABOUT THE GUILT OF
20 MR. STONE FROM MY DISCUSSIONS. YOU UNDERSTAND THAT?

21 A YES, SIR, I DO.

22 Q SO YOU WOULD NOT IF YOU WERE SELECTED ON THE JURY; IS
23 THAT CORRECT?

24 A NO, I WOULD NOT.

25 THE COURT: THANK YOU. PLEASE ANSWER ANY

1375

1 QUESTIONS THAT THE STATE MAY HAVE.

2 MR. SOLICITOR.

3 EXAMINATION BY MR. KOLB:

4 Q MS. BOWERS, YOU INDICATED THAT YOU WERE A JUROR IN A
5 CRIMINAL CASE PREVIOUSLY?

6 A YES, SIR, BACK. . .

7 Q WHEN WAS THAT?

8 A WELL, IT WASN'T A CRIMINAL CASE. IT WAS -- IT WAS UP
9 HERE BACK IN '90 SOMETHING. I CAN'T REMEMBER THE DATE.

10 Q NOW, I NOTICE LATER ON YOU SAID THAT A MEMBER OF YOUR
11 FAMILY WAS CHARGED WITH A CRIME BEING ASSAULT AND BATTERY
12 OF A HIGH AND AGGRAVATED NATURE AND ALSO A MEMBER OF YOUR
13 FAMILY WAS A VICTIM OF A CRIME. IS THAT THE SAME CASE?

14 A YES, SIR.

15 Q COULD YOU TELL US A LITTLE BIT ABOUT THAT?

16 A WELL, NOW I WASN'T A WITNESS IN THAT.

17 Q OKAY.

18 A BUT IT'S MY FAMILY.

19 Q COULD YOU TELL US WHAT HAPPENED IN THAT CASE?

20 A THIS -- THE ONE -- THAT WAS THE CASE FOR HE WENT INTO
21 THIS HOUSE AND GOT IN A FIGHT WITH A GUY. THEY WERE HAVING
22 PARTIES AND ALL.

23 Q BOTH OF THEM WERE RELATED TO YOU?

24 A NO, SIR. ONLY ONE.

25 Q WHO WAS THAT THAT WAS RELATED TO YOU?

1370

- 1 A MY SON.
- 2 Q YOUR SON. WAS HE CHARGED OR WAS HE THE VICTIM?
- 3 A HE WAS CHARGED WITH IT.
- 4 Q SO HE WAS CHARGED WITH GOING IN SOMEWHERE AND BEATING
- 5 SOMEBODY?
- 6 A YES, SIR.
- 7 Q NOW, OKAY. WHAT WAS THE RESULT OF THAT?
- 8 A HE SPENT NINE MONTHS IN JAIL.
- 9 Q THIS WAS IN GEORGETOWN?
- 10 A NO, SIR.
- 11 Q HE WAS CHARGED IN WHAT COUNTY?
- 12 A IN GEORGETOWN, YES, SIR. I'M SORRY.
- 13 Q OKAY. HE SPENT NINE MONTHS IN JAIL. WAS THAT BEFORE
- 14 THE TRIAL OR AFTER THE TRIAL?
- 15 A AFTER THE TRIAL.
- 16 Q SO HE WAS CONVICTED OF ASSAULT AND BATTERY OF A HIGH
- 17 AND AGGRAVATED NATURE?
- 18 A YES, SIR.
- 19 Q AND GOT NINE MONTHS IN JAIL?
- 20 A YES, SIR.
- 21 Q WAS -- YOU ALSO INDICATED THAT A MEMBER OF YOUR
- 22 FAMILY WAS A VICTIM OF A CRIME. WHAT CASE WAS THAT?
- 23 A MEMBER OF MY FAMILY A VICTIM OF CRIME. THAT WAS MY
- 24 BROTHER-IN-LAW. I JUST -- I WASN'T INVOLVED IN THAT AND
- 25 DIDN'T KNOW. HE'S JUST MY BROTHER-IN-LAW. I DON'T EVEN

1386

1 KNOW EVERYTHING ABOUT THAT CASE.

2 Q AND YOUR BROTHER-IN-LAW WAS ALSO A VICTIM OF AN
3]AGGRAVATED ASSAULT?

4 A NO, SIR.

5 Q WHAT WAS HE A VICTIM OF?

6 A I GUESS IT WOULD BE CALLED CHILD MOLESTING, WOULDN'T
7 IT? HE HAD DID THINGS TO CHILDREN.

8 Q HE WAS A VICTIM?

9 A YES, SIR.

10 Q BUT NOW WAS HE THE VICTIM OR WAS HE CHARGED WITH
11 THAT?

12 A HE WAS CHARGED.

13 Q SO YOUR BROTHER-IN-LAW WAS CHARGED WITH CHILD
14 MOLESTING. WHAT COUNTY WAS THAT IN?

15 A LET ME SEE. IT WAS CLARENDON COUNTY.

16 Q CLARENDON COUNTY?

17 A YES, SIR.

18 Q WHAT WAS HIS NAME?

19 A FRANK HATHAWAY.

20 Q WHAT'S THAT NOW?

21 A FRANK HATHAWAY.

22 Q WHAT WAS THE RESULT OF THAT?

23 A HE'S STILL IN PRISON I GUESS. I DON'T REALLY KNOW.

24 Q HE WAS CONVICTED AND STILL IN PRISON?

25 A YES, SIR.

1381

1 Q NOW, HAS ANY MEMBER OF THE YOUR FAMILY BEEN A VICTIM
2 OF A CRIME?

3 A NO, SIR.

4 Q OKAY. IN THE TWO CASES THAT YOU JUST WERE ASKED
5 ABOUT, THE ONE WITH YOUR SON AND THE ONE WITH YOUR
6 BROTHER-IN-LAW, DID THE LAW ENFORCEMENT AUTHORITIES TREAT
7 YOUR FAMILY MEMBERS RIGHT IN THOSE CASES?

8 A WELL, SEE, ONE I DIDN'T KNOW MUCH ABOUT IT ON THAT
9 ONE. I JUST --MOSTLY WHAT I READ IN THE PAPER AND SAW
10 TALKING WITH THEM. I WASN'T INVOLVED IN IT OR ANYTHING.

11 Q ALL RIGHT. AND THAT WAS THE ONE WITH YOUR
12 BROTHER-IN-LAW?

13 A YES, SIR.

14 Q THE ONE WITH YOUR SON DID YOU FEEL LIKE THE LOCAL LAW
15 ENFORCEMENT AUTHORITIES HERE IN GEORGETOWN TREATED YOU,
16 YOUR SON, AND YOUR FAMILY RIGHT AND FAIRLY IN THAT CASE?

17 A YES, SIR, BECAUSE HE BROKE THE LAW.

18 Q WHAT'S YOUR SON'S NAME?

19 A BILLY JOE MOON.

20 Q BILLY JOE WHAT?

21 A MOON, M-O-O-N.

22 Q YOU HAVE A SISTER IN SUMTER?

23 A YES, SIR.

24 Q WHAT'S HER NAME?

25 A PATRICIA WRIGHT.

1382

- 1 Q PATRICIA WRIGHT?
- 2 A YES, SIR.
- 3 Q FROM WHAT YOU KNOW ABOUT THE CASE IN CLARENDON COUNTY
- 4 WITH YOUR BROTHER-IN-LAW, FRANK HATHAWAY, WAS HE TREATED
- 5 PROPERLY BY LAW ENFORCEMENT AND THE SOLICITOR'S OFFICE
- 6 THERE?
- 7 A WELL, I COULDN'T SAY BECAUSE I REALLY DIDN'T GO IN
- 8 THAT DETAIL. I DON'T REALLY KNOW.
- 9 Q DID MEMBERS OF YOUR FAMILY TELL YOU THAT HE GOT A BAD
- 10 DEAL OR A RAW DEAL; THAT HE HAD BEEN TREATED BADLY BY ---
- 11 A NO, SIR. HIS WIFE SAID THAT HE GOT WHAT WAS COMING
- 12 TO HIM.
- 13 Q OKAY. SO ALL THIS WAS WHY YOU TOLD THE JUDGE EARLIER
- 14 YOU HAD NO STRONG FEELINGS ABOUT LAW ENFORCEMENT OR THE
- 15 CRIMINAL JUSTICE SYSTEM ---
- 16 A NO, SIR.
- 17 Q --- THAT WOULD AFFECT YOUR VERDICT IN THIS CASE?
- 18 A NO, SIR.
- 19 Q MS. BOWERS, FROM WHAT I UNDERSTAND YOUR ANSWERS TO
- 20 THE JUDGE'S QUESTIONS IS THAT YOU CAN RETURN A VERDICT THAT
- 21 WOULD BE A RECOMMENDATION FOR THE DEATH PENALTY?
- 22 A YES.
- 23 Q DEPENDING UPON ---
- 24 A YES, IF ALL THE INFORMATION AND I FEEL ---
- 25 Q DEPENDING UPON THE FACTS AND CIRCUMSTANCES, YOU COULD

1385

1 RETURN A DEATH VERDICT AND YOU UNDERSTAND IN THAT CASE YOU
2 WOULD BE REQUIRED -- ALL 12 JURORS HAVE TO SIGN THEIR NAME
3 ON THE VERDICT WHICH IN EFFECT IS A DEATH WARRANT. YOU
4 COULD DO THAT AND SIGN YOUR NAME TO IT?

5 A YES, SIR, I GUESS I COULD. I'VE NEVER DONE IT. I
6 COULD THOUGH IF IT. . .

7 MR. KOLB: THANK YOU, MA'AM.

8 THE COURT: YES, SIR, MR. LITTLEJOHN.

9 MR. LITTLEJOHN: THANK YOUR HONOR.

10 EXAMINATION BY MR. LITTLEJOHN:

11 Q MS. BOWERS, ON THE OTHER END COULD YOU ALSO RENDER A
12 VERDICT OR MAKE A RECOMMENDATION, A BINDING RECOMMENDATION,
13 TO THE COURT THAT SOMEONE RECEIVE A LIFE IMPRISONMENT
14 SENTENCE ---

15 A SIR?

16 Q --- IF THEY WERE CONVICTED OF MURDER?

17 A IF I WAS ON THE JURY?

18 Q RIGHT.

19 A YES, SIR, EITHER ONE.

20 Q COULD YOU DO THAT BASED ON THE CIRCUMSTANCES AND THE
21 EVIDENCE BEFORE YOU?

22 A YES, SIR.

23 Q AND WOULD YOU DO THAT REALIZING THAT THE STATE WOULD
24 HAVE TO PROVE THOSE AGGRAVATING THINGS THAT WOULD. . .

25 A YES, SIR, IF IT WAS PROVEN.

1384

1 Q OKAY. MS. BOWERS, LET ME ASK YOU A LITTLE BIT ABOUT
2 YOUR BACKGROUND IF I MAY, PLEASE, MA'AM. YOU INDICATED
3 YOUR HUSBAND IS RETIRED?

4 A YES, SIR.

5 Q WHAT SORT OF WORK DID HE DO BEFORE HIS RETIREMENT?

6 A HE DID MILLWRIGHT WORK FOR DIFFERENT PLACES. HE
7 WORKED AT THE POWER PLANT. HE WORKED IN CHARLESTON AND
8 DIFFERENT PLACES. HE, YOU KNOW ---

9 Q RIGHT.

10 A --- HE DID MILLWRIGHT WORK. THAT'S FIXING MACHINES
11 AND THINGS.

12 Q ALL RIGHT. I UNDERSTAND. DID YOU EVER WORK OUTSIDE
13 OF THE HOME?

14 A YES, I DID. I WORKED AT A NURSING HOME ---

15 Q OKAY.

16 A --- AWHILE AND I'VE WORKED AT DIFFERENT JOBS.

17 Q ALL RIGHT.

18 A LIKE I USED TO WORK DOWN AT THE PAPER MILL NIGHT
19 CLEAN UP CREW, JANITORIAL SERVICE.

20 Q I SEE. OKAY. MS. BOWERS, LET ME ASK YOU A LITTLE
21 BIT FURTHER ABOUT SOME OF THE THINGS THAT THE JUDGE WAS
22 TALKING TO YOU ABOUT. DO YOU UNDERSTAND THAT EVERY PERSON
23 THAT'S CHARGED WITH A CRIME, NO MATTER WHAT THAT CRIME IS,
24 HAS THE RIGHT TO AN IMPARTIAL JURY TO DETERMINE WHETHER
25 THEY'RE GUILTY OR INNOCENT?

1385

1 A YES, SIR.

2 Q OKAY. LET ME ASK YOU IF THE FACT THAT IN THIS CASE
3 MR. STONE IS ACCUSED OF THE MURDER OF A POLICE OFFICER,
4 WOULD THAT HAVE ANY BEARING ON YOUR ABILITY TO WEIGH THE
5 EVIDENCE FAIRLY?

6 MR. KOLB: YOUR HONOR, I WOULD OBJECT TO ASKING
7 WHAT SHE WOULD DO UNDER SPECIFIC FACTS AND CIRCUMSTANCES.

8 THE COURT: I SUSTAIN THE OBJECTION. LET'S
9 NOT. . .

10 MR. LITTLEJOHN: LET ME REPHRASE THE QUESTION.
11 BY MR. LITTLEJOHN:

12 Q MS. BOWERS, ARE YOU ACQUAINTED WITH ANY POLICE
13 OFFICERS?

14 A YES, SIR.

15 Q WHO ARE YOU ACQUAINTED WITH?

16 A I'VE GOT FRIENDS THAT'S IN LAW SERVICE AND THE
17 SHERIFF, NOT THE SHERIFF DOWN HERE NOW BUT THE SHERIFF USED
18 TO BE A CLOSE FRIEND OF MINE THAT'S IN OFFICE.

19 Q OKAY. WHO WAS THAT?

20 A MERCY. I DONE FORGOT HIS NAME. I GUESS I'M NERVOUS.
21 THE SHERIFF BEFORE ELECTING THIS SHERIFF.

22 Q ALL RIGHT. AND YOU'VE KNOWN OTHER POLICE OFFICERS?

23 A YES, SIR, I KNOW POLICE OFFICE HERE IN GEORGETOWN AND
24 I KNOW THEM WHEN I MEET THEM. I KNOW THEIR FACE AND ALL.

25 Q WOULD THE FACT THAT YOU'RE ACQUAINTED WITH THESE

1386

1 POLICE OFFICERS WOULD THAT HAVE ANYTHING TO DO WITH
2 INFLUENCING YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
3 IN THIS CASE?

4 A NO, SIR.

5 Q OKAY. MS. BOWERS, WOULD YOU HAVE ANY SORT OF
6 TENDENCY TO BELIEVE A WITNESS WHO IS A POLICE OFFICER OVER
7 A WITNESS WHO IS NOT A POLICE OFFICER?

8 MR. KOLB: YOUR HONOR, AGAIN I OBJECT.

9 THE COURT: SUSTAIN THE OBJECTION. IT'S AN
10 IMPROPER QUESTION.

11 BY MR. LITTLEJOHN:

12 Q MS. BOWERS, BEFORE YOU GOT HERE TODAY DID YOU KNOW
13 THAT YOU WERE GOING TO BE A JURY PANEL THAT MAY CONSIDER A
14 DEATH PENALTY CASE?

15 A NO, SIR, I DIDN'T.

16 Q YOU DIDN'T HAVE ANY IDEA?

17 A NO, SIR.

18 Q DID YOU TALK TO ANYBODY ABOUT BEING ON THIS JURY
19 PANEL BEFORE YOU GOT HERE?

20 A ONLY THE LADY THAT I GIVE MY PAPER TO.

21 Q OKAY. MS. BOWERS, DO YOU THINK YOU WOULD BE ABLE TO
22 JUDGE THIS CASE SOLEY ON THE EVIDENCE BEFORE YOU AND NOT
23 ALLOW THE FEAR OF ANY KIND OF LATER CRITICISM TO AFFECT
24 YOUR VERDICT?

25 A NO, SIR. IT WOULD BE ON THE EVIDENCE.

1387

1 Q OKAY. AND IF YOU WERE FIRMLY CONVINCED THAT THE
2 EVIDENCE WAS ONE WAY, COULD YOU HOLD FIRM TO THAT
3 CONVICTION?

4 A SIR?

5 Q IF YOU WERE FIRMLY CONVINCED THAT THE EVIDENCE WAS
6 ONE WAY, COULD YOU HOLD FIRM THAT OPINION?

7 A YES.

8 Q OKAY. NOW, ONE LAST THING, MS. BOWERS. WERE THE
9 DEFENDANT NOT TO TAKE THE STAND IN THIS CASE AND TESTIFY,
10 WOULD THAT HAVE ANY AFFECT ON YOUR OPINION AS TO HIS GUILT
11 OR INNOCENCE?

12 A NO, SIR.

13 Q NOT AT ALL?

14 A NO, SIR.

15 MR. LITTLEJOHN: OKAY. THANK YOU VERY MUCH.

16 THE COURT: ALL RIGHT. MS. BOWERS, I'M GOING TO
17 ASK YOU, PLEASE, MA'AM, IF YOU WOULD STEP RIGHT OUTSIDE THE
18 DOOR. WE'LL BE WITH YOU IN JUST A MINUTE.

19 THE JUROR: ALL RIGHT, SIR.

20 THE COURT: THANK YOU SO MUCH.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JUROR.)

23 THE COURT: SAYS THE STATE?

24 MR. KOLB: QUALIFIED.

25 THE COURT: SAYS MR. STONE?

1388

1 (PAUSE)

2 THE COURT: YES, SIR.

3 MR. LITTLEJOHN: YOUR HONOR, WE BELIEVE SHE'S
4 QUALIFIED.

5 THE COURT: VERY WELL.

6 MR. LITTLEJOHN: ONE THING, MAYBE I DIDN'T
7 ARTFULLY PHRASE THAT QUESTION THAT THE COURT SUSTAINED THE
8 OBJECTION BUT I THINK GIVEN THE CIRCUMSTANCES OF THIS CASE
9 THAT SOMEHOW I OUGHT TO BE ABLE TO INQUIRE OF THE JURORS
10 THE FACT THAT THE DEFENDANT IS ACCUSED OF KILLING A POLICE
11 OFFICER IF THAT WOULD HAVE SOME INFLUENCE OR. . .

12 THE COURT: YOU CAN COUCH IT BY INSTRUCTIONS ON
13 MITIGATING CIRCUMSTANCES AND AGGRAVATING CIRCUMSTANCES IN
14 THE FASHION THAT THAT IS -- THAT MAY BE AN AGGRAVATING
15 CIRCUMSTANCE BUT NOT ASKING HER WHAT SHE WOULD DO IF A
16 PERSON WAS CONVICTED OF THAT, NOT ONLY SPECIFICALLY BUT IF
17 YOU WANT TO ASK IT HOW SHE WOULD FOLLOW INSTRUCTIONS, WOULD
18 SHE HAVE ANY PROBLEM FOLLOWING THEM. YOU CAN PHRASE IT
19 HOWEVER YOU WISH BUT I'M NOT GOING TO ALLOW YOU TO ASK A
20 SPECIFIC QUESTION ON THE FACTUAL DETERMINATION THAT THEY
21 HAVE TO MAKE IN THIS CASE.

22 MR. LITTLEJOHN: ALL RIGHT, SIR.

23 THE COURT: THANK YOU.

24 ALL RIGHT. LET'S BRING HER IN PLEASE.

25 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE

1386

1 JUROR.)

2 THE COURT: THANK YOU, MS. BOWERS. YOU DON'T
3 HAVE TO COME BACK UP. JUST STAY RIGHT THERE. I'M GOING TO
4 LET YOU GO HOME AT THIS TIME. YOU WILL NEED TO COME BACK
5 AND PROBABLY -- WELL, LET'S JUST SAY DEFINITELY AT THIS
6 POINT. MY LAST GROUP IS SET FOR 3:45. YOU NEED TO COME
7 BACK WEDNESDAY AFTERNOON AT FIVE O'CLOCK.

8 THE JUROR: FIVE.

9 THE COURT: YES, MA'AM. YOU NEED TO COME BACK TO
10 THIS COURTROOM AT THAT TIME. WHEN YOU COME YOU NEED TO
11 BRING WITH YOU ENOUGH CLOTHING TO TAKE CARE OF YOUR NEEDS
12 FOR ABOUT A WEEK.

13 THE JUROR: ALL RIGHT.

14 THE COURT: OKAY. NOW, YOU WILL BE IN THE GROUP
15 OF PEOPLE FROM WHICH WE WILL SELECT THE 12 INDIVIDUALS. SO
16 IT'S VERY IMPORTANT NOW THAT YOU NOT READ ANYTHING ABOUT
17 THIS CASE. NO ONE MAY TALK WITH YOU ABOUT THIS CASE AND
18 YOU MAY NOT DISCUSS THIS CASE WITH ANYONE.

19 THE JUROR: ALL RIGHT, SIR.

20 THE COURT: ALL RIGHT. SO BE BACK WEDNESDAY. I
21 LOOK FORWARD TO SEEING ---

22 THE WITNESS: AT FIVE.

23 THE COURT: --- WEDNESDAY AT FIVE. THANK YOU.

24 (PAUSE)

25 THE COURT: ALL RIGHT. LET'S BRING IN THE NEXT

1396

1 ONE, PLEASE, MA'AM, MS. GRAHAM, VONA GRAHAM.

2 VONA GRAHAM, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 EXAMINATION BY THE COURT:

5 Q GOOD AFTERNOON, MA'AM. THE QUESTIONS THAT I AM ABOUT
6 TO ASK YOU AND THAT THE LAWYERS WILL BE ASKING YOU, I
7 REMIND YOU WHAT I SAID THIS MORNING. THERE AREN'T ANY
8 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. ALL WE ASK IS
9 THAT YOU BE TRUTHFUL IN YOUR RESPONSES. OKAY?

10 A OKAY.

11 Q YOU'VE HAD A CHANCE TO REVIEW THAT SHEET; IS THAT
12 CORRECT?

13 A YES, I HAVE.

14 Q OF THE THREE TYPES OF JURORS ON THAT FORM, WHICH ONE
15 ARE YOU?

16 A NUMBER TWO.

17 Q NUMBER TWO. AND BY NUMBER TWO AM I TO UNDERSTAND
18 THAT IF YOU ARE CONSIDERING IN A CASE INVOLVING THE MURDER
19 OF SOMEONE, ALLEGED MURDER OF SOMEONE, AND THE JURY IS TO
20 SELECT THE PUNISHMENT, IF YOU WERE ON THAT JURY, YOU COULD
21 NEVER UNDER ANY CIRCUMSTANCES VOTE FOR ANYTHING BUT LIFE IN
22 PRISON?

23 A DOES IT HAVE TO BE YES OR NO?

24 Q WELL, YOU NEED TO ANSWER THAT QUESTION IF YOU CAN.
25 IN OTHER WORDS JUROR NUMBER TWO SAYS TO ME AND MY

1391

1 INTERPRETATION OF THAT SAYS THAT IT DOESN'T MATTER WHAT THE
2 CIRCUMSTANCES ARE I'M GOING TO ALWAYS VOTE FOR LIFE IN
3 PRISON?

4 A YES.

5 Q AND IT DOESN'T MAKE ANY DIFFERENCE WHAT THE COURT
6 INSTRUCTS; THAT'S GOING TO BE MY CHOICE AND MY VOTE WHEN IT
7 COMES TO PUNISHMENT?

8 A YES.

9 Q AND THAT WOULD BE YOURS?

10 A YES, IT WOULD.

11 Q THERE ARE ABSOLUTELY NO CIRCUMSTANCES THAT YOU COULD
12 THINK WOULD CAUSE YOU TO CHANGE YOUR MIND?

13 A NONE THAT I KNOW OF.

14 Q ALL RIGHT. SO WELL, EVEN IF IT IS YOU WOULD START
15 WITH THE PREMISE THAT A PERSON SHOULD ALWAYS RECEIVE LIFE
16 IN PRISON?

17 A WITHOUT PAROLE, YES.

18 Q WITHOUT PAROLE?

19 A I JUST CAN'T IMAGINE HAVING THAT MUCH CONTROL OVER A
20 PERSON TO WHERE YOU WOULD HAVE THE ABILITY TO TAKE THEIR
21 LIFE.

22 Q AND YOU COULD NOT DO THAT?

23 A I DON'T THINK I COULD.

24 THE COURT: ANY QUESTIONS FROM THE STATE?

25 MR. KOLB: NO, SIR.

1392

1 THE COURT: QUESTIONS FROM THE DEFENDANT?

2 EXAMINATION BY MR. LITTLEJOHN:

3 Q MS. GRAHAM, JUST A COUPLE OF QUESTIONS HERE. YOU OF
4 COURSE HAVEN'T HEARD ANY OF THE EVIDENCE IN THIS CASE OR
5 ANY OF HIS HONOR'S INSTRUCTIONS OR ANYTHING OR ---

6 A NO.

7 Q --- BEEN EXPOSED TO ANYTHING ---

8 A NO.

9 Q --- HAVING TO DEAL WITH THIS CASE?

10 A NO, I HAVEN'T.

11 Q IF YOU WERE SELECTED ON THE JURY AND YOU HEARD THE
12 EVIDENCE IN THE CASE AND YOU HEARD HIS HONOR'S INSTRUCTIONS
13 TO YOU AS TO HOW YOU WERE TO CONSIDER THAT EVIDENCE AND
14 APPLY THE LAW, DO YOU THINK YOU COULD FOLLOW HIS
15 INSTRUCTIONS AND APPLY THE LAW TO THE FACTS AS YOU FOUND
16 THEM? COULD YOU -- WOULD YOU BE ABLE TO DO THAT?

17 A AS LONG AS IT'S NOT TAKING SOMEONE'S LIFE. I CAN'T
18 SEE TAKING SOMEONE'S LIFE.

19 Q WHAT IF HE TOLD YOU THAT THERE ARE CERTAIN STATUTORY
20 AGGRAVATING CIRCUMSTANCES UNDER WHICH A JURY COULD CONSIDER
21 AND DETERMINE TO RENDER A DEATH PENALTY, COULD YOU FOLLOW
22 HIS INSTRUCTIONS OR ARE YOUR BELIEFS SUCH THAT YOU COULD
23 NOT FOLLOW HIS INSTRUCTIONS?

24 A AS LONG AS IT'S NOT -- I DON'T BELIEVE IN THE DEATH
25 PENALTY.

1393

1 Q JUST ONE FINAL THING, MS. GRAHAM.

2 A OKAY.

3 Q IF YOU WERE SELECTED ON A JURY AND WERE GIVEN THE
4 SITUATION WHERE YOU HAD TO CONSIDER A DEATH PENALTY VERSUS
5 A LIFE PENALTY AND HIS HONOR INSTRUCTED YOU THAT YOU COULD
6 FIND CERTAIN STATUTORY AGGRAVATING CIRCUMSTANCES EXISTED,
7 COULD YOU MAKE THAT DETERMINATION, THAT CERTAIN AGGRAVATING
8 CIRCUMSTANCE EXISTED BASED ON THE FACTS IN THE CASE?

9 A I COULD SEND -- IF I FELT LIKE SOMEONE WAS GUILTY, I
10 COULD SEND THEM TO PRISON. I COULD SEND THEM FOR LIFE
11 WITHOUT PAROLE BUT IT WOULD BE VERY HARD FOR ME TO SEND
12 SOMEONE TO DEATH. THAT'S WHAT I'M SAYING.

13 MR. LITTLEJOHN: ALL RIGHT, MA'AM.

14 THE COURT: ANY ADDITIONAL QUESTIONS FROM THE
15 STATE?

16 MS. GRAHAM, I'M GOING TO ASK YOU, PLEASE, MA'AM,
17 IF YOU WOULD STEP DOWN AND STEP RIGHT OUT THAT DOOR. WE'LL
18 BE WITH YOU IN JUST A MINUTE.

19 THE JUROR: OKAY. THANK YOU.

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
21 JUROR.)

22 THE COURT: WHAT SAYS THE STATE?

23 MR. KOLB: WE BELIEVE SHE'S NOT QUALIFIED, YOUR
24 HONOR.

25 THE COURT: WHAT SAYS THE DEFENDANT?

1394

1 (PAUSE)

2 MR. LITTLEJOHN: YOUR HONOR, HER ANSWERS WERE SO
3 AMBIGUOUS I DON'T KNOW THAT WE CAN CONCEDE THAT SHE WAS NOT
4 QUALIFIED.

5 THE COURT: WELL, THE CASE LAW CONCEDES IT FOR
6 YOU BECAUSE IT'S CLEAR YOUR ATTEMPT TO REPHRASE THE
7 QUESTION IN A FASHION THAT -- YOU KNOW -- I DON'T FAULT YOU
8 FOR IT, REPHRASING THE QUESTION BUT IT WAS CLEARLY -- SHE
9 FALLS CLEARLY IN THE CASE WHERE IT SAYS JUST BECAUSE
10 COUNSEL REPHRASED THE QUESTION DIDN'T CHANGE THIS LADY --
11 BY HER OWN ANSWERS AND STATEMENTS SHE COULD NOT CONSIDER
12 BOTH PENALTIES; AND THEREFORE, UNDER THE LAW SHE'S NOT
13 QUALIFIED. ALL RIGHT. LET'S BRING HER IN.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JUROR.)

16 THE COURT: MS. GRAHAM, I'M GOING TO EXCUSE YOU
17 FROM FURTHER PARTICIPATION IN THIS MATTER. YOU WILL NOT
18 HAVE TO COME BACK. I WOULD ASK YOU AT THIS POINT HOWEVER
19 UNTIL WE HAVE SELECTED A JURY THAT YOU NOT DISCUSS THIS
20 CASE WITH ANYONE OR ALLOW ANYONE TO TALK WITH YOU ABOUT IT.
21 ONCE THE JURY HAS BEEN SELECTED, YOU'RE FREE TO TALK ABOUT
22 IT.

23 THE JUROR: OKAY.

24 THE COURT: THANK YOU SO MUCH.

25 THE JUROR: THANK YOU.

1395

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JUROR.)

3 THE COURT: OKAY. YOU WANT TO BRING OUT
4 MS. MCDANIEL?

5 TERESA I MCDANIEL, BEING
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q GOOD AFTERNOON, MS. MCDANIEL.

9 A GOOD AFTERNOON.

10 Q I WANT TO REMIND YOU THAT EARLIER TODAY I SAID THAT
11 THERE WON'T BE ANY RIGHT OR WRONG ANSWERS TO ANY OF THESE
12 QUESTIONS. THAT'S STILL TRUE. THERE ARE NO RIGHT OR WRONG
13 ANSWERS TO ANY OF THESE QUESTIONS THAT I'M GOING TO ASK YOU
14 OR THAT THE ATTORNEYS WILL ASK YOU. ALL THAT WE ASK IS
15 THAT YOU RESPOND TRUTHFULLY. OKAY?

16 A YES, SIR.

17 Q THANK YOU. YOU HAD AN OPPORTUNITY TO REVIEW THAT
18 SHEET WHICH WE HANDED YOU?

19 A YES, SIR.

20 Q OF THE THREE TYPES OF JURORS ON THAT SHEET, WHICH
21 WERE YOU?

22 A THE SECOND ONE.

23 Q THE SECOND ONE?

24 A YES, SIR.

25 Q AND WHAT DO YOU -- HOW DO YOU INTERPRET THE SECOND

1396

1 ONE? WHAT DOES THAT MEAN TO YOU?

2 A THE SECOND JUROR TO ME COULD NOT RENDER THE DEATH
3 PENALTY IN A CASE THAT HAS BEEN PROVEN GUILTY, WHERE THE
4 DEFENDANT HAS BEEN PROVEN GUILTY.

5 Q YOU'RE TELLING ME THEN THAT IT REALLY WOULDN'T DEPEND
6 ON THE CIRCUMSTANCES OF THE CASE; THE CIRCUMSTANCES
7 WOULDN'T MATTER; IS THAT CORRECT?

8 A I'VE NEVER BEEN PUT IN A POSITION TO, YOU KNOW, TO
9 HAVE TO FACE CIRCUMSTANCES BUT AT THIS POINT I WOULD HAVE
10 TO SAY NO THAT THE CIRCUMSTANCES WOULD NOT MATTER TO ME.

11 Q WELL, I WILL INSTRUCT YOU ON THE LAW IN BOTH PHASES.
12 OKAY. IN BOTH PHASES YOU. UNDERSTAND THAT?

13 A YES, SIR.

14 Q ONE OF THE INSTRUCTIONS WOULD BE IN THE PENALTY
15 PHASE, IF YOU GOT TO THAT POINT, WOULD BE THAT YOU MAY AS A
16 JUROR CONSIDER ANY MITIGATING CIRCUMSTANCES AND YOU MAY
17 CONSIDER ANY AGGRAVATING CIRCUMSTANCES AND IT THEN WOULD BE
18 UP TO THE JURY TO MAKE A DETERMINATION AND YOU WOULD BE
19 ASKED, INSTRUCTED THAT YOU MUST CONSIDER BOTH THE
20 PENALTY -- THE DEATH PENALTY AND LIFE IN PRISON. COULD YOU
21 AS A JUROR -- I KNOW THAT YOU SAY THAT YOU'VE NEVER BEEN
22 ASKED -- BUT COULD YOU AS A JUROR FOLLOW MY INSTRUCTIONS
23 AND IF THE FACTS AND CIRCUMSTANCES WERE SUCH, COULD YOU
24 RETURN A VERDICT WHICH WOULD IMPOSE THE DEATH PENALTY?

25 A NO, SIR.

1397

1 Q UNDER NO CIRCUMSTANCES?

2 A NO, SIR.

3 Q YOUR PERSONAL BELIEFS WOULD INTERFERE WITH THAT
4 PROCESS?

5 A YES, SIR. AND I HAVE PERSONAL REASONS WHY I FEEL
6 THAT WAY AT THIS POINT.

7 THE COURT: ANY QUESTIONS FROM THE STATE?

8 MR. KOLB: NO, SIR, NONE.

9 THE COURT: QUESTIONS FROM THE DEFENDANT?

10 MR. BABB: NO QUESTIONS, YOUR HONOR.

11 THE COURT: VERY WELL, SIR.

12 I'D ASK PLEASE, MS. MCDANIEL, IF YOU WOULD STEP
13 OUT THAT DOOR JUST FOR A MOMENT.

14 THE JUROR: OKAY.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JUROR.)

17 THE COURT: WHAT SAYS THE STATE?

18 MR. KOLB: NOT QUALIFIED.

19 THE COURT: DEFENDANT, ANY POSITION?

20 MR. BABB: YOUR HONOR, IN LIGHT OF THE WAY YOU
21 ASKED THE QUESTIONS, IF I COULD THINK OF GROUNDS, I'D PUT
22 THEM ON THE RECORD. I CAN'T.

23 THE COURT: THANK YOU, SIR. SHE IS CLEARLY NOT
24 QUALIFIED. I RESPECT HER POSITION THAT SHE WOULD -- I
25 OBSERVED HER NOT ONLY THE QUESTION BUT HER RESPONSE AND HER

1395

1 WHOLE BODY LANGUAGE INDICATED THAT SHE JUST SIMPLY COULD
2 NOT CONSIDER BOTH PUNISHMENTS SO I FIND THAT SHE IS NOT
3 QUALIFIED.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JUROR.)

6 THE COURT: MS. MCDANIEL, I'M GOING TO EXCUSE YOU
7 FROM FURTHER PARTICIPATION IN THIS PROCEEDING. I WOULD ASK
8 YOU THIS FAVOR. YOU WILL NOT HAVE TO RETURN BUT UNTIL THE
9 JURY IS ACTUALLY SELECTED, WOULD YOU NOT DISCUSS THIS CASE
10 WITH ANYONE OR ALLOW ANYONE TO TALK WITH YOU ABOUT IT. ONCE
11 WE HAVE SELECTED THE JURY, THEN YOU WILL BE FREE TO TALK IF
12 YOU SO DESIRE.

13 THE JUROR: OKAY.

14 THE COURT: THANK YOU VERY MUCH.

15 THE JUROR: THANK YOU, TOO.

16 THE COURT: HAVE A GOOD DAY.

17 THE JUROR: YOU TOO.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JUROR.)

20 THE COURT: OKAY. BRING THE NEXT ONE IN.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JUROR.)

23 THE COURT: YES, MA'AM. STOP RIGHT THERE. GOOD.
24 PLACE YOUR LEFT HAND ON THE BIBLE.

25 / / /

1395

1 CONNIE L. KEEGAN, BEING FIRST
2 DULY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT:

4 Q YOU ARE MS. KEEGAN?

5 A YES, I AM.

6 Q GOOD AFTERNOON.

7 A GOOD AFTERNOON.

8 Q I HAVE RECEIVED THE NOTE FROM WACCAMAW MEDICAL
9 CENTER. AT THIS POINT I'LL NEED TO ASK YOU SOME FURTHER
10 QUESTIONS.

11 A OKAY.

12 Q WE NEED TO GO THROUGH THIS. HAVE YOU HAD A CHANCE TO
13 REVIEW THAT SHEET THAT I GAVE YOU THAT DEALS WITH THE THREE
14 TYPES OF JURORS?

15 A I DID.

16 Q AND OF THOSE THREE WHICH ONE BEST DESCRIBES YOU?

17 A PROBABLY NUMBER TWO.

18 Q WHY DO YOU SAY THAT?

19 A I'VE NEVER BEEN IN A SITUATION WHERE MY FAMILY OR
20 PERSONAL FRIENDS WERE INVOLVED OTHER THAN MS. SALLY GARE
21 SITUATION AND I JUST DON'T KNOW IF I COULD MAKE THAT
22 DECISION.

23 Q ALL RIGHT. WELL, I UNDERSTAND THAT BUT I NEED TO --
24 I GUESS I NEED TO ASK A LITTLE FURTHER BECAUSE OBVIOUSLY
25 YOU HAVEN'T. YOU STATED YOU HAVE NEVER SERVED ON THAT BUT

1106

1 THE QUESTION IS THIS: YOUR RESPONSIBILITY AS A JUROR AS
2 MUCH AS I SAID -- IT'S REALLY ALONG THE LINES OF WHAT WE
3 TALKED ABOUT THIS MORNING -- MAKE CERTAIN FACTUAL
4 DETERMINATIONS AND THEN APPLY THE LAW TO THOSE FACTS AND
5 YOU HAVE INDICATED THIS MORNING THAT YOU FELT THAT YOU
6 COULD DO THAT; IS THAT CORRECT?

7 A I DID.

8 Q IN THIS TRIAL YOU WOULD BE DEALING WITH TWO PHASES.
9 ONE WOULD BE THE FIRST PHASE AS I DISCUSSED WOULD BE THE
10 GUILT PHASE WHERE WE WOULD HEAR EVIDENCE CONCERNING WHETHER
11 OR NOT MR. STONE WAS GUILTY AS ALLEGED AT THIS POINT AND OF
12 COURSE THE BURDEN IS ON THE STATE TO PROVE THAT GUILT
13 BEYOND A REASONABLE DOUBT. IF THE JURY WERE TO CONCLUDE
14 THAT HE WAS NOT AND THE STATE FAILED TO MEET ITS BURDEN, OF
15 COURSE THAT WOULD END THIS PROCEEDING. IF ON THE OTHER
16 HAND THE JURY CONCLUDED THAT THE STATE HAD MET ITS BURDEN
17 AND SATISFIED THE JURY BEYOND A REASONABLE DOUBT, WE WOULD
18 GO TO THE SECOND PHASE WHICH IS THE PENALTY PHASE. YOU
19 UNDERSTAND?

20 A I DO.

21 Q AT THAT PHASE YOU WILL HEAR ADDITIONAL EVIDENCE AND
22 YOU WOULD HEAR EVIDENCE THAT COULD BE CLASSIFIED AS
23 MITIGATING CIRCUMSTANCES AND AGGRAVATING CIRCUMSTANCES AND
24 YOU WILL RECEIVE AN INSTRUCTION AT THE CONCLUSION OF THAT
25 PHASE AS TO BOTH. AM I UNDERSTANDING YOU THAT IF YOU WERE

1401

1 A JUROR AND WERE SITTING IN THIS CASE, TAKEN AN OATH TO
2 DECIDE THE FACTS AND APPLY THE LAW TO THOSE FACTS, THAT YOU
3 COULD NOT IN ANY CIRCUMSTANCE CONSIDER A DEATH PENALTY?

4 A NO, I PROBABLY COULDN'T.

5 Q YOU COULDN'T. OKAY. YOU WOULD DETERMINE THAT BASED
6 ON THE FACTS?

7 A ON THE FACTS.

8 Q YOU MAY NOT WANT TO DO IT?

9 A RIGHT.

10 Q BUT YOU COULD?

11 A RIGHT.

12 Q YOU WOULD FOLLOW YOUR OATH AND FOLLOW THE COURT'S
13 INSTRUCTIONS?

14 A I WOULD.

15 Q AM I ALSO TO UNDERSTAND THAT YOU WOULD NOT START ANY
16 TRIAL BE IT THE GUILT PHASE OR THE PENALTY PHASE WITH ANY
17 PREDETERMINATION; IN OTHER WORDS YOU WOULDN'T HAVE YOUR
18 MIND SET ONE WAY OR ANOTHER?

19 A NO.

20 Q YOU WOULD NOT -- WOULD YOU MAKE -- WOULD YOU HAVE A
21 TENDENCY OR WOULD YOU MAKE ANY DECISIONS UNTIL YOU HAVE
22 HEARD ALL OF THE EVIDENCE AND RECEIVED THE LAW?

23 A NO.

24 Q YOU WOULD NOT?

25 A NO.

1402

1 Q YOU WOULD KEEP AN OPEN MIND?

2 A I WOULD KEEP AN OPEN MIND.

3 Q IN THIS CASE THE FACT -- AS I TOLD YOU THIS MORNING
4 ONE WHO IS CHARGED WITH A CRIMINAL OFFENSE IS PRESUMED
5 INNOCENT. YOU DON'T HAVE ANY PROBLEM WITH THAT PRINCIPLE
6 OF LAW?

7 A NO.

8 Q THE FACT THAT MR. STONE IS SEATED AT THAT TABLE OVER
9 THERE DOES THAT MEAN ANYTHING TO YOU?

10 A NO.

11 Q OTHER THAN THE FACT THAT HE'S CHARGED?

12 A THAT'S RIGHT.

13 Q AS I TOLD YOU THE BURDEN IS UPON THE STATE TO PROVE
14 GUILT BEYOND A REASONABLE DOUBT. YOU UNDERSTAND?

15 A I DO.

16 Q AND WOULD YOU LOOK TO THE STATE TO PROVE ITS CASE?

17 A YES.

18 Q AM I TO UNDERSTAND THEN THAT YOU WOULDN'T EXPECT
19 MR. STONE TO PROVE ANYTHING?

20 A I WOULD LISTEN TO BOTH SIDES.

21 Q ALL RIGHT. WELL, YOU UNDERSTAND IN THIS PROCEEDING
22 THE ONLY PERSON -- AND I WOULD GIVE THIS INSTRUCTION --
23 ONLY THE STATE HAS THE BURDEN OF PROOF?

24 A OKAY.

25 Q THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING AND

1403

1 CERTAINLY DOES NOT HAVE TO PROVE HIS INNOCENCE. WOULD YOU
2 HAVE ANY TROUBLE FOLLOWING THAT INSTRUCTION?

3 A I DON'T THINK SO.

4 Q SO IF THE DEFENDANT CHOSE FOR INSTANCE NOT TESTIFY --
5 AS I TOLD YOU YOU CANNOT USE THAT AGAINST HIM -- AND WERE
6 TO OFFER NOTHING, WOULD YOU CONSIDER THAT AGAINST HIM IN
7 ANY WAY WHATSOEVER?

8 A NO, SIR.

9 Q BECAUSE THAT WOULD BE -- I WOULD TELL YOU THAT WOULD
10 BE HIS CONSTITUTIONAL RIGHT?

11 A THAT'S RIGHT.

12 Q YOU UNDERSTAND THAT?

13 A I UNDERSTAND THAT.

14 Q AND YOU WOULD FOLLOW THAT INSTRUCTION?

15 A I WOULD FOLLOW THAT.

16 Q AM I TO UNDERSTAND ALSO BASED ON WHAT YOU'VE SHARED
17 WITH ME THAT IF YOU WENT THROUGH THE GUILT PHASE, BECAUSE
18 THERE ARE TWO PHASES, AND SAY THE JURY HAD CONCLUDED THAT
19 THE STATE HAD MET ITS BURDEN AND HAD ESTABLISHED BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY BECAUSE IF
21 YOU FOUND THAT HE WAS NOT GUILTY THAT WOULD END THE TRIAL
22 BUT IF YOU FOUND THAT THE STATE HAD MET ITS BURDEN OF
23 PROOF, WE WOULD MOVE INTO THE PENALTY PHASE AND AT THAT
24 PHASE YOU WOULD HEAR EVIDENCE, TOTALLY A WHOLE NEW TRIAL
25 BASICALLY WITHIN THIS TRIAL. YOU UNDERSTAND?

1404

1 A UH-HUH.

2 Q WOULD YOU HAVE AN OPEN MIND AT THE START OF THAT
3 PHASE?

4 A YES, SIR.

5 Q AND YOU WOULD CONSIDER THE DECISIONS BASED SOLELY ON
6 THE EVIDENCE THAT YOU HEARD AT THAT STAGE?

7 A SOLEY ON THAT.

8 Q AND YOU WOULD NOT MAKE ANY DECISION UNTIL YOU'VE
9 HEARD ALL THE EVIDENCE AND RECEIVED THE LAW?

10 A NO.

11 Q YOU WOULD NOT?

12 A NO, I WOULD NOT.

13 Q AND THEN AT THE CONCLUSION OF THAT, YOU WOULD BE
14 INSTRUCTED TO GO AND CONSIDER AND MAKE A DETERMINATION AS
15 TO THE APPROPRIATE PUNISHMENT IN THIS CASE.

16 A (NODDED HEAD.)

17 Q AND AM I TO UNDERSTAND NOW AFTER WE'VE TALKED THAT
18 YOU COULD CONSIDER BOTH LIFE IMPRISONMENT AND THE DEATH
19 PENALTY AND YOU WOULD MAKE A DECISION AS TO WHICH ONE YOU
20 BELIEVE THE FACTS SUPPORT?

21 A BASED ON THE EVIDENCE I HEARD.

22 Q AND YOU WOULD?

23 A AND I WOULD.

24 Q AND YOU WOULD BE FAIR IN THAT APPLICATION AND COMPLY
25 WITH THE LAW AND YOUR DECISION WOULD BE THE ONE THAT UNDER

1405

1 THE LAW WOULD BE FAIR AND IMPARTIALLY RENDERED, FAIR TO THE
2 STATE AND MR. STONE?

3 A RIGHT.

4 Q YOU KNOW OF ANYTHING IN YOUR BACKGROUND, ANY STRONG
5 FEELINGS YOU MAY HAVE, ANYTHING THAT'S OCCURRED IN YOUR
6 LIFE THAT WOULD INFLUENCE YOU IN THIS TYPE OF CASE THAT MAY
7 IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR IN CONSIDERING
8 THE EVIDENCE THAT THE STATE MAY OFFER?

9 A NO.

10 Q SO YOU DO NOT HAVE ANY PREDETERMINATIONS OR
11 PREDISPOSITIONS ONE WAY OR ANOTHER; IS THAT CORRECT?

12 A I DON'T KNOW ANYTHING ABOUT IT.

13 Q YOU DON'T KNOW ANYTHING ABOUT IT AND YOU WOULD NOT
14 MAKE ANY DECISIONS UNTIL YOU HEARD THE FACTS?

15 A RIGHT.

16 Q IN THIS CASE -- THIS CASE WE ARE -- AS I MENTIONED
17 WILL BE TRIED IN SUMTER. YOU WILL BE, IF YOU'RE SELECTED,
18 WILL BE A PART OF THE JURY THAT WILL BE SEQUESTERED. YOU
19 WILL BE KEPT AT THE STATE'S EXPENSE AND YOU WILL BE FED
20 TOGETHER AND YOU WILL BE TAKEN TOGETHER AND TRANSPORTED,
21 AND I KNOW THAT'S NOT THE MOST CONVENIENT THING IN THE
22 WORLD AND CERTAINTY WOULD INTERRUPT YOUR NORMAL LIFE BUT IF
23 YOU WERE SELECTED COULD YOU SET ASIDE THAT INCONVENIENCE
24 AND FOCUS ON THE FACTS AND NOT LET IT INFLUENCE YOU IN YOUR
25 DECISION?

1400

1 A THERE ARE A LOT OF THINGS GOING ON RIGHT NOW IN MY
2 PERSONAL LIFE. I WOULD DO IT IF I WERE SELECTED BUT I
3 WOULDN'T LIKE DOING IT.

4 Q I UNDERSTAND THAT AND I APPRECIATE THAT. I
5 UNDERSTAND THAT YOU WOULD NOT LIKE IT BUT YOU COULD DO IT
6 IF YOU WERE SELECTED?

7 A (NODDED HEAD.)

8 Q YOU COULD PUT THAT ASIDE?

9 A I WOULD HAVE TO.

10 THE COURT: OKAY. PLEASE ANSWER ANY QUESTIONS
11 THAT THE STATE -- LET ME, BEFORE I TURN IT OVER, AS I
12 RECALL YOU DIDN'T READ ANYTHING ABOUT THIS; YOU HAVEN'T
13 HEARD ANYTHING ABOUT THIS AND NO ONE HAS TALKED WITH YOU
14 ABOUT IT?

15 THE JUROR: NO.

16 THE COURT: MR. SOLICITOR.

17 EXAMINATION BY MR. KOLB:

18 Q MS. KEEGAN, I BELIEVE INITIALLY YOU SAID THAT YOU
19 COULD NOT GIVE A DEATH SENTENCE AND THEN THE JUDGE ASKED
20 YOU ABOUT CONSIDERING A DEATH SENTENCE AND YOU SAID YOU
21 COULD CONSIDER ONE. IS THERE A DIFFERENCE THERE IN YOUR
22 MIND?

23 A READING IT ON A PIECE OF PAPER IS NOT THE SAME THING
24 AS HEARING IT FROM THE JUDGE AND I BELIEVE THAT I WOULD BE
25 FAIR IN MY DECISION BASED ON THE FACTS.

1407

1 Q ALL RIGHT. SO I THOUGHT PERHAPS YOU MISUNDERSTOOD
2 THE QUESTIONS BUT YOU'RE SAYING THAT YOU COULD AND
3 DEPENDING UPON THE FACTS AND CIRCUMSTANCES PRESENTED AND
4 THE LAW GIVEN YOU BY THE JUDGE, YOU COULD RETURN A DEATH
5 SENTENCE, SIGN YOUR NAME TO THAT VERDICT? THAT IS
6 SOMETHING THAT YOU COULD DO?

7 A (NODDED HEAD.)

8 Q ALL RIGHT. AND YOU REALIZE THAT IF THAT IS THE
9 DECISION OF THE JURY, OF ALL 12 MEMBERS, THAT EACH ONE HAS
10 TO SIGN THEIR NAME ON THE VERDICT WHICH IN EFFECT BECOMES A
11 DEATH WARRANT IN THE CASE?

12 THE COURT: ALL RIGHT. MS. KEEGAN, YOU DID
13 RESPOND TO THAT ONE. IT'S VERY IMPORTANT THAT LADY SEATED
14 IN FRONT OF YOU IS TAKING IT DOWN AND WE WANT TO BE CERTAIN
15 OF YOUR RESPONSES. WHAT YOU'RE DOING IS VERY NORMAL IN
16 CONVERSATION. I DO THE SAME THING BUT WE NEED TO MAKE SURE
17 THAT YOU ANSWER VERBALLY. SO THE QUESTION BEFORE THAT YOU
18 NODDED IN THE AFFIRMATIVE THAT THAT WAS A YES?

19 THE WITNESS: THAT WAS A YES.

20 THE COURT: ALL RIGHT. THANK YOU.

21 EXCUSE ME, MR. SOLICITOR. I'M SORRY.

22 BY MR. KOLB:

23 Q YOU ANSWERED YES TO THE QUESTION THAT YOU COULD SIGN
24 IT IF THAT WAS YOUR DECISION?

25 A YES.

1408

1 MR. KOLB: THANK YOU.

2 THE COURT: MR. BABB, MR. LITTLEJOHN, ANY
3 QUESTIONING?

4 EXAMINATION BY MR. LITTLEJOHN:

5 Q GOOD AFTERNOON, MS. KEEGAN. I JUST HAVE A FEW
6 QUESTIONS FOR YOU. DO YOU HAVE ANY FRIENDS OR RELATIVES
7 WHO ARE POLICE OFFICERS?

8 A NO, I DON'T.

9 Q OKAY. SO YOU DON'T KNOW ANY POLICE OFFICERS?

10 A NO.

11 Q OKAY. LET ME ASK YOU IN THIS CASE THE DEFENDANT IS
12 CHARGED WITH THE MURDER OF A POLICE OFFICER. WOULD THE
13 FACT THAT HE IS CHARGED WITH THAT AFFECT YOUR ABILITY TO
14 FOLLOW HIS HONOR'S INSTRUCTIONS AND FAIRLY WEIGH THE
15 EVIDENCE IN THIS CASE?

16 A NO.

17 Q OKAY. DID YOU KNOW THAT THIS WAS A POTENTIAL DEATH
18 PENALTY CASE WHEN YOU REPORTED FOR DUTY TODAY AS A JUROR?

19 A YES, SIR.

20 Q YOU HAD HEARD THAT?

21 A (NODDED HEAD.)

22 Q DID YOU DISCUSS THAT WITH ANYBODY?

23 A NO. I CALLED BECAUSE I HAD ASKED TO BE EXCUSED DUE
24 TO SOME CIRCUMSTANCES.

25 Q OKAY.

1409

1 A THAT OFFICE TOLD ME THAT I COULD NOT BE EXCUSED
2 BECAUSE IT WAS A MURDER CASE AND THAT I WOULD HAVE TO BE
3 EXCUSED BY THE JUDGE.

4 Q SO THAT'S THE ONLY CONVERSATION?

5 A THAT'S HOW I KNEW.

6 Q I SEE. LET ME ASK YOU JUST A COUPLE OF FURTHER
7 THINGS. MS. KEEGAN, IF IN THIS CASE THE DEFENDANT CHOSE
8 NOT TAKE THE STAND AND TESTIFY ON HIS OWN BEHALF, WOULD
9 THAT AFFECT YOUR OPINION AS TO HIS GUILT OR INNOCENCE?

10 A NO.

11 Q WOULD YOU FOLLOW HIS HONOR'S INSTRUCTIONS THAT IT'S
12 UP TO THE STATE TO PROVE HIS GUILT BEYOND A REASONABLE
13 DOUBT?

14 A I WOULD.

15 Q JUST A COUPLE OF THINGS ON YOUR QUESTIONNAIRE. I
16 NOTICE THAT YOUR HUSBAND WAS IN THE NAVY?

17 A CORRECT.

18 Q AND I BELIEVE YOU INDICATED THAT HE WORKED FOR U.S.
19 CUSTOMS AT ONE TIME?

20 A AT ONE TIME. HE WAS A PRINTER. HE WAS A
21 LITHOGRAPHER IN THE NAVY BUT OUR LAST TOUR WE WERE
22 STATIONED IN JAPAN AND HE WORKED FOR CUSTOMS.

23 Q AS A PRINTER?

24 A NO, HE WASN'T A PRINTER THEN. HE WAS A CUSTOMS
25 AGENT.

1410

1 Q HE WAS A CUSTOMS AGENT?

2 A YES.

3 Q ENFORCING THE U.S. CUSTOMS LAWS?

4 A ENFORCING WHAT YOU COULD BRING BACK FROM KOREA OR
5 JAPAN.

6 Q OKAY. AND ONE OTHER THING I NOTICE THAT YOU PUT DOWN
7 ONE OF THE GROUPS THAT YOU DONATE YOUR MONEY OR YOUR TIME
8 TO IS M.A.D.D.

9 A (NODDED HEAD.)

10 Q WE'RE ALL FAMILIAR WITH THE WORK THAT M.A.D.D. DOES.
11 WOULD YOUR INVOLVEMENT WITH M.A.D.D. HAVE ANYTHING TO DO
12 WITH YOUR ABILITY TO BE FAIR TO BOTH THE STATE AND THE
13 DEFENSE IN THIS CASE?

14 A I TAUGHT SCHOOL FOR 21 YEARS AND I DEAL WITH CHILDREN
15 AND I BELIEVE IN M.A.D.D. AND I THINK IT'S A GOOD PROGRAM.
16 I DON'T THINK IT WOULD INFLUENCE ME AT ALL.

17 Q OKAY.

18 A YOU KNOW, BUT I BELIEVE IN THAT PROGRAM.

19 Q AND THAT WOULD BE SO EVEN IF THERE WAS TESTIMONY
20 CONCERNING WITNESSES OR PEOPLE THAT ARE INVOLVED IN THE
21 CASE HAVING DRUNK ALCOHOLIC BEVERAGES? WOULD THAT AFFECT
22 YOUR ABILITY TO BE A FAIR JUROR?

23 A I DON'T BELIEVE SO.

24 MR. LITTLEJOHN: I DIDN'T THINK SO. THANK YOU.

25 THE COURT: THANK YOU VERY MUCH, MS. KEEGAN. IF

141i

1 YOU WOULD STEP DOWN AND STEP OUT THE DOOR, WE'LL BE WITH
2 YOU IN JUST A MOMENT. THANK YOU.

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JUROR.)

5 THE COURT: LET ME SHARE THIS WITH YOU. SHE
6 LEANED OVER AND SAID DID YOU LOOK AT THAT PAPER FROM THE
7 DOCTOR AND I TOLD HER, YES, I DID BUT THAT DID NOT DO IT.
8 SO WHAT SAYS THE STATE?

9 MR. KOLB: I BELIEVE SHE'S QUALIFIED, YOUR HONOR.

10 THE COURT: DEFENDANT?

11 MR. LITTLEJOHN: WE CONCUR.

12 THE COURT: BRING HER BACK.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JUROR.)

15 THE COURT: MS. KEEGAN, THIS IS A SHEET THAT
16 GIVES YOU A LITTLE INFORMATION. YOU HAVE BEEN QUALIFIED AS
17 A POTENTIAL JUROR. LET ME TELL YOU WHY IT DOESN'T MEAN
18 ANYTHING. THAT DOESN'T MEAN -- AS I UNDERSTAND YOU STILL
19 ARE IN SOMEWHAT OF A STATE OF LIMBO WITH RESPECT TO YOUR
20 HEALTH. IF THINGS CHANGE AND YOU HAVE TO HAVE SURGERY OR
21 SOMETHING ELSE ARISES, LET US KNOW. WE'LL NEED SOME
22 CONFIRMATION IF A PHYSICIAN IS GOING TO SCHEDULE THAT. AT
23 THIS POINT IT MEANS THAT YOU HAVE BEEN SELECTED TO BE ONE
24 OF THE JURORS IN THE PANEL FROM WHICH WE WILL SELECT
25 THE 12. OKAY. WE'RE GOING TO DO THAT WEDNESDAY AFTERNOON

1412

1 AT FIVE O'CLOCK.

2 NOW, IF NOTHING CHANGES IN YOUR SITUATION BEFORE
3 THEN, YOU NEED TO COME WEDNESDAY AFTERNOON. IT DOESN'T
4 MEAN YOU WILL NECESSARILY BE BUT YOU NEED TO BRING WITH YOU
5 SUFFICIENT CLOTHING TO TAKE CARE OF YOUR NEEDS FOR ABOUT A
6 WEEK IN CASE YOU ARE SELECTED. OKAY?

7 THE JUROR: OKAY. SO JUST COME BACK HERE?

8 THE COURT: COME BACK AND REPORT BACK LIKE WE DID
9 TODAY. WE'LL ALL BE GATHERING IN THAT COURTROOM AT FIVE
10 O'CLOCK. NOW, UNTIL THEN I MUST RENEW AND URGE YOU,
11 PLEASE, DO NOT READ ANYTHING ABOUT THIS; DON'T DISCUSS THIS
12 MATTER WITH ANYONE. CERTAINLY DON'T ALLOW ANYBODY TO TALK
13 WITH YOU ABOUT IT OR READ ANY NEWSPAPER ABOUT IT. THANK
14 YOU. I'LL LOOK FORWARD TO SEEING YOU ON WEDNESDAY.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JUROR.)

17 THE COURT: THE NEXT ONE IS PROBABLY HERE. WE
18 CAN MOVE A LITTLE -- WE'LL PROBABLY BE ABLE TO GET ALL
19 WE'VE GOT BEFORE THE TIME ALLOWED. DO WE WANT TO TAKE FIVE
20 MINUTES TO STRETCH BEFORE WE DO THE NEXT GROUP? WE'LL TAKE
21 FIVE MINUTES.

22 (THEREUPON, THERE WAS A BRIEF RECESS IN THE TRIAL OF
23 THIS CASE.)

24 THE COURT: STATE READY?

25 MR. KOLB: YES, SIR.

1413

1 THE COURT: DEFENSE READY?

2 MR. LITTLEJOHN: YES, SIR.

3 THE COURT: YOU WANT TO WAIT FOR MR. BABB TO COME
4 BACK?

5 MR. LITTLEJOHN: I'M SURE HE MUST BE RIGHT DOWN
6 THE HALL.

7 THE COURT: THAT'S FINE.

8 MR. LITTLEJOHN: HERE HE IS.

9 THE COURT: OKAY. PANEL NUMBER TWO. JEAN
10 PIETERSE.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JUROR.)

13 THE COURT: GOOD AFTERNOON.

14 JEAN S. PIETERSE, BEING FIRST
15 DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q STATE YOUR FULL NAME FOR US?

18 A JEAN SHORE PIETERSE.

19 Q PIETERSE?

20 A YES, SIR.

21 Q MS. PIETERSE, YOU HAVE BEEN GIVEN A SHEET OF PAPER
22 THAT HAS ON IT THREE TYPES OF JURORS. HAVE YOU HAD A
23 CHANCE TO REVIEW THAT?

24 A YES, SIR.

25 Q WHICH -- OF THOSE THREE TYPES WHICH ONE BEST

1414

1 DESCRIBES YOU?

2 A THE THIRD ONE.

3 Q THE THIRD ONE. ALL RIGHT. YOU HAD INDICATED EARLIER
4 TODAY I BELIEVE THAT YOU DID NOT HAVE ANY PRIOR KNOWLEDGE
5 OF THIS PARTICULAR INCIDENT; IS THAT CORRECT?

6 A YES, SIR.

7 Q NOW, YOU HAVEN'T -- SINCE WE'VE BROKE -- YOU HAVEN'T
8 HEARD ANYTHING ABOUT THIS CASE OR READ ANYTHING OR NO ONE'S
9 TALKED WITH YOU, HAVE THEY?

10 A NO.

11 Q OKAY. YOU UNDERSTAND AND I'VE EXPLAINED TO YOU
12 CERTAIN PRINCIPLES OF LAW ONE OF WHICH WAS THAT SOMEONE
13 CHARGED WITH A CRIMINAL VIOLATION IN THIS STATE NO ONE, AND
14 MR. STONE IS INCLUDED IN THAT, JUST BECAUSE THEY'RE CHARGED
15 WITH THAT VIOLATION THAT DOESN'T MEAN ANYTHING; THAT
16 CERTAINLY THEY HAVE THE PRESUMPTION OF INNOCENCE. YOU
17 UNDERSTAND?

18 A YES, SIR.

19 Q DO YOU HAVE ANY PROBLEM WITH THAT PRINCIPLE OF LAW?

20 A NO, SIR.

21 Q THE FACT THAT MR. STONE IS SEATED AT THAT TABLE OVER
22 THERE DOES THAT MEAN ANYTHING TO YOU AT ALL OTHER THAN THE
23 FACT THAT HE'S CHARGED WITH THIS OFFENSE?

24 A NO, SIR.

25 Q DO YOU FEEL STRONGLY FOR OR AGAINST EITHER THE STATE

1415

1 OR MR. STONE IN THIS MATTER?

2 A I DON'T HAVE AN OPINION YET.

3 Q YOU DON'T -- YOU HAVEN'T HEARD THE FACTS; IS THAT
4 RIGHT?

5 A YES.

6 Q AND WOULD YOU HAVE TO HEAR ALL OF THE FACTS AND
7 RECEIVE THE LAW BEFORE YOU DEVELOPED ANY OPINION IN THIS
8 CASE?

9 A ABSOLUTELY.

10 Q SO YOU WOULD NOT BE A JUROR THAT EVER DECIDED ANY
11 ISSUE UNTIL YOU HAVE HEARD ALL THE FACTS, RECEIVED THE LAW,
12 AND THEN WERE INSTRUCTED BY THE COURT TO BEGIN YOUR
13 DELIBERATIONS; IS THAT TRUE?

14 A YES, SIR.

15 Q NOW, IN THIS CASE YOU UNDERSTAND THE BURDEN IS UPON
16 THE STATE TO PROVE ITS CASE BEYOND A REASONABLE DOUBT, YOU
17 UNDERSTAND THAT?

18 A YES, SIR.

19 Q YOU UNDERSTAND THAT THE STATE IS THE ONLY PARTY THAT
20 HAS ANY BURDEN IN THIS PROCEEDING, YOU UNDERSTAND?

21 A YES, SIR.

22 Q ANOTHER PRINCIPLE OF LAW THAT I DISCUSSED WITH YOU IS
23 THAT ONE CHARGED WITH A CRIMINAL OFFENSE DOESN'T HAVE TO
24 PROVE ANYTHING AND THEY CERTAINLY DON'T HAVE TO PROVE THEIR
25 INNOCENCE. YOU UNDERSTAND THAT?

1416

1 A RIGHT.

2 Q IF YOU WERE SELECTED AS A JUROR IN THIS CASE, WOULD
3 YOU EXPECT MR. STONE TO SHOW ANYTHING TO YOU OR PROVE
4 ANYTHING TO YOU?

5 A NO. I GUESS -- YOU SAID THAT'S THE STATE'S
6 RESPONSIBILITY.

7 Q THAT'S CORRECT.

8 Q AND YOU WOULD NOT HAVE ANY PROBLEM FOLLOWING THAT
9 INSTRUCTION?

10 A NO, SIR.

11 Q IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q YOU UNDERSTAND IN THIS PROCEEDING THAT YOU WOULD
14 HAVE -- IT'S BASICALLY TWO TRIALS WITHIN A TRIAL. THE
15 FIRST PHASE YOU WILL DEAL WITH ONE ISSUE AND THAT WILL BE
16 WHETHER OR NOT MR. STONE IS GUILTY OR NOT GUILTY OF THIS
17 OFFENSE, YOU UNDERSTAND?

18 A YES, SIR.

19 Q IN THAT YOU WILL HEAR EVIDENCE AND THEN YOU WILL
20 RECEIVE INSTRUCTIONS FROM THE COURT AND THE JURY WILL
21 RETIRE AND MAKE A DELIBERATION AND YOU WILL DECIDE WHETHER
22 THE STATE HAS MET ITS BURDEN OR NOT. IF YOU'RE ON THAT
23 JURY AND YOU RETURNED A VERDICT OF NOT GUILTY OF COURSE
24 THAT WOULD BE THE END OF THE CASE, YOU UNDERSTAND THAT?

25 A RIGHT.

1417

1 Q IF ON THE OTHER HAND YOU WERE ON THE JURY AND THE
2 JURY VIEWED THE EVIDENCE AND CONSIDERED THE EVIDENCE AND
3 DECIDED THAT THE STATE HAD MET ITS BURDEN BEYOND A
4 REASONABLE DOUBT, YOU WOULD MOVE INTO A SECOND PHASE, YOU
5 UNDERSTAND?

6 A RIGHT.

7 Q THAT WOULD BE THE PENALTY PHASE?

8 A UH-HUH.

9 Q YOU UNDERSTAND THAT THAT'S A -- SORT OF A SEPARATE
10 PROCEEDING ALTOGETHER?

11 A YES, SIR.

12 Q AND IN THAT PROCEEDING YOU WOULD HEAR EVIDENCE THAT
13 YOU HAD NOT HEARD BEFORE IN THIS MATTER?

14 A RIGHT.

15 Q IF YOU WERE ON THE JURY, WOULD YOU HAVE AN OPEN MIND
16 DURING THAT PROCEEDING?

17 A I WOULD TRY TO.

18 Q WELL, I APPRECIATE THAT AND I GUESS MY QUESTION IS --
19 AND I KNOW WE'RE TALKING ABOUT HUMAN NATURE WHEN WE SAY
20 THAT?

21 A RIGHT.

22 Q AND THERE ARE CERTAIN THINGS THAT YOU WOULD HAVE TO,
23 CERTAINLY I'M SURE, DEAL WITH AND I GUESS MY QUESTION TO
24 YOU IS DO YOU THINK THAT YOU WOULD BE ABLE TO MANAGE THOSE
25 AND KEEP AN OPEN MIND IN THAT PROCEEDING?

1418

1 A YES, SIR.

2 Q YOU COULD DO THAT?

3 A UH-HUH.

4 Q YOU COULD LISTEN TO ALL OF THE EVIDENCE AND MAKE A
5 DETERMINATION THEN IN ACCORDANCE WITH THE COURT'S
6 INSTRUCTION; IS THAT CORRECT?

7 A I THINK I COULD.

8 Q AND IT'S THAT TIME THAT -- AT THE CONCLUSION OF THAT
9 WHERE THE JURY WILL BE ASKED TO CONSIDER THE APPROPRIATE
10 PUNISHMENT AND THEY WILL CONSIDER -- WOULD MAKE A
11 DETERMINATION BETWEEN LIFE IMPRISONMENT OR THE DEATH
12 PENALTY. YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q YOU HAVE INDICATED THAT YOU ARE JUROR NUMBER OR TYPE
15 NUMBER THREE; IS THAT CORRECT?

16 A OH, YES, SIR.

17 Q WHICH MEANS THAT IN SOME CASES DEPENDING ON THE FACTS
18 AND CIRCUMSTANCES YOU COULD VOTE AND FIND THAT A DEATH
19 PENALTY WAS APPROPRIATE; IS THAT CORRECT?

20 A YES, SIR.

21 Q AND YOU'VE ALSO STATED THAT THERE ARE CASES THAT YOU
22 COULD FIND AND WOULD DETERMINE AND VOTE THAT A LIFE
23 IMPRISONMENT IS THE APPROPRIATE PUNISHMENT?

24 A YES, SIR.

25 Q AND YOU DON'T HAVE ANY PREDISPOSITION ONE WAY OR THE

1419

1 OTHER. IT DEPENDS ON THE FACTS IN A GIVEN CASE; IS THAT
2 RIGHT?

3 A RIGHT.

4 Q NOW, DO YOU KNOW OF ANYTHING IN YOUR BACKGROUND, ANY
5 STRONG FEELINGS YOU HAVE, ANY EXPERIENCES THAT YOU'VE HAD
6 IN YOUR LIFE, CLOSE FRIENDS, THAT WOULD INFLUENCE YOU IN
7 ANY WAY FROM NOT BEING ABLE OR PREVENT YOU OR AFFECT YOUR
8 ABILITY TO CONSIDER ALL OF THE EVIDENCE AND BE FAIR TO THE
9 STATE AND TO MR. STONE?

10 A NO, SIR.

11 Q NOTHING THAT'S -- THERE WOULD BE NOTHING. SO YOU
12 AREN'T AWARE OF ANY BIAS OR PREJUDICE YOU HAVE FOR THE
13 STATE OR ANY THAT -- OF SOMEONE THAT MAY BE CHARGED WITH A
14 CRIMINAL OFFENSE LIKE MR. STONE?

15 A I'VE NEVER HAD ANY EXPERIENCE WITH THIS.

16 Q OKAY. FINE. THE FACT -- IN THIS CASE AS WE STATED
17 THIS MORNING THIS CASE WILL BE TRIED IN SUMTER AND AS A
18 RESULT YOU WILL BE WITH THE OTHER JURORS. YOU WILL BE
19 SEQUESTERED AND THAT MEANS YOU WILL -- THE STATE WILL
20 PROVIDE YOU WITH A PLACE TO STAY AND THE STATE WILL PROVIDE
21 YOU FOOD AND LODGING, WHATNOT, AND TRANSPORTATION AND WHILE
22 I UNDERSTAND THAT THAT MIGHT NOT BE SOMETHING THAT YOU
23 WOULD NECESSARILY BE EXCITED ABOUT AND IT WOULD BE AN
24 IMPOSITION, COULD YOU SET ASIDE THOSE FEELINGS AND LISTEN
25 TO THE FACTS OF THIS CASE AND MAKE A DETERMINATION ON THE

1420

1 TRUE FACTS AND APPLY THE LAW?

2 A IT WILL BE AN INCONVENIENCE BUT I FEEL LIKE, YOU
3 KNOW, IT'S MY DUTY TO DO THAT IF I GET CHOSEN.

4 Q AND SO YOU COULD SET THAT ASIDE AND NOT BE
5 INFLUENCED?

6 A YES, SIR.

7 Q AND AS I UNDERSTAND YOU DO NOT HAVE ANY OPINIONS ONE
8 WAY OR ANOTHER AT THIS STAGE CONCERNING THIS PARTICULAR
9 CASE?

10 A NO, SIR.

11 THE COURT: PLEASE ANSWER ANY QUESTIONS THE STATE
12 MAY HAVE.

13 MR. KOLB.

14 EXAMINATION BY MR. KOLB:

15 Q MS. PIETERSE, HAS ANYONE IN YOUR FAMILY OR CLOSE
16 FRIEND EVER BEEN CHARGED WITH A CRIME?

17 A NOT THAT I'M AWARE OF.

18 Q AND ANYONE IN YOUR FAMILY OR CLOSE PERSONAL FRIEND
19 EVER BEEN A VICTIM OF A CRIME?

20 A NO.

21 Q MA'AM?

22 A NO, SIR.

23 Q YOU ANSWERED THE JUDGE'S QUESTION THAT DEPENDENT UPON
24 THE FACTS, CIRCUMSTANCES, AND THE LAW THAT WAS PRESENTED TO
25 YOU THAT YOU COULD RETURN A DEATH VERDICT?

1421

1 A YES, SIR.

2 Q AND IN THAT CASE IF THE JURY, ALL 12 OF YOU, AGREED
3 ON A DEATH SENTENCE, EACH WOULD HAVE TO SIGN THE VERDICT
4 FORM. WOULD YOU HAVE ANY PROBLEM WITH SIGNING YOUR NAME TO
5 THE VERDICT FORM ALONG WITH ALL OTHER 12 JURORS?

6 A IT WOULD BE VERY HARD BUT IF WE DECIDED THAT, YES.

7 MR. KOLB: NOTHING FURTHER.

8 THE COURT: MR. LITTLEJOHN, MR. BABB.

9 EXAMINATION BY MR. BABB:

10 Q MS. PIETERSE, YOU MENTIONED IT WOULD BE VERY HARD BUT
11 IF WE DECIDED THAT, THAT YOU COULD. IF AFTER YOU'VE
12 CONSIDERED EVERYTHING AND YOU'RE OF A DIFFERENT OPINION
13 THAN EVERYONE ELSE, CAN YOU MAINTAIN FIRMNESS IN YOUR
14 CONVICTIONS?

15 A WELL, YES.

16 Q HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE COMING
17 HERE TODAY?

18 A NO.

19 Q YOU DIDN'T KNOW IT WOULD BE A DEATH PENALTY CASE.
20 THE FACT THAT A DEFENDANT IN THE CASE MAY NOT TAKE THE
21 STAND WOULD THAT INFLUENCE YOUR VIEW OF THAT DEFENDANT IN
22 ANY WAY?

23 A I DON'T KNOW. IT DEPENDS ON THE CIRCUMSTANCES I
24 SUPPOSE. I DON'T KNOW.

25 Q DO YOU BELIEVE A DEFENDANT MUST PROVE THEIR

1422

1 INNOCENCE?

2 A NO, SIR.

3 Q DO YOU HAVE ANY CLOSE PERSONAL FRIENDS -- I BELIEVE
4 YOU'VE MENTIONED THAT NO ONE IN YOUR FAMILY WAS A MEMBER OF
5 LAW ENFORCEMENT. DO YOU HAVE ANY CLOSE PERSONAL FRIENDS
6 THAT ARE MEMBERS OF LAW ENFORCEMENT?

7 A NO, SIR.

8 Q WHAT SORT OF CRIMINAL CASE DID YOU SIT ON AS A JUROR
9 BEFORE?

10 A I WAS IN A D.U.I. CASE BEFORE.

11 Q THERE WAS A TRIAL?

12 A I WAS ON THE JURY.

13 Q THE FACT THAT IN THIS CASE THE DEFENDANT HAS BEEN
14 ACCUSED OF THE MURDER OF A POLICE OFFICER DOES THAT IMPACT
15 YOUR FEELINGS TOWARDS THE DEFENDANT AT ALL, IN ANY WAY?

16 A I FEEL LIKE THAT'S A VERY SERIOUS CRIME.

17 Q CAN YOU BE FAIR TO HIM KNOWING THAT HE IS CHARGED
18 WITH A SERIOUS CRIME?

19 A WELL, IT'S THE STATE'S RESPONSIBILITY TO PROVE HIM
20 GUILTY SO, YES.

21 Q AND EVEN THOUGH HE'S CHARGED WITH THAT SERIOUS CRIME
22 IF THE STATE FAILS IN ITS RESPONSIBILITY, YOU WOULD NOT
23 FIND HIM GUILTY?

24 A I FEEL LIKE I WOULDN'T BE ABLE TO.

25 MR. BABB: OKAY. THANK YOU.

1423

1 EXAMINATION BY THE COURT:

2 Q LET BE SURE, MS. PIETERSE, CLARIFY SOMETHING WITH
3 RESPECT TO ONE OF THE QUESTIONS ABOUT WHETHER OR NOT THE
4 DEFENDANT WOULD TESTIFY. IF THE DEFENDANT CHOSE, AS I TOLD
5 YOU THIS MORNING, THE DEFENDANT CHOSE NOT TO TESTIFY, I
6 WOULD INSTRUCT THE JURY THAT YOU MAY NOT CONSIDER THAT
7 AGAINST HIM IN ANY WAY, SHAPE, OR FORM; YOU MAY NOT
8 CONSIDER IT AT ALL. THAT'S HIS RIGHT MR. STONE OR ANYONE
9 CHARGED WITH A CRIME FOR THAT MATTER. YOU UNDERSTAND?

10 A YES, SIR.

11 Q WOULD YOU HAVE ANY PROBLEM FOLLOWING THAT
12 INSTRUCTION?

13 A NO, SIR.

14 THE COURT: ANY ADDITIONAL QUESTIONS FROM THE
15 STATE?

16 MR. KOLB: NO, SIR.

17 THE COURT: ANY ADDITIONAL QUESTIONS, MR. BABB?

18 MR. BABB: NONE, YOUR HONOR.

19 THE COURT: THANK YOU.

20 MS. PIETERSE, IF YOU WOULD JUST STEP OUT THAT
21 DOOR, WE'LL BE WITH YOU IN JUST A MOMENT.

22 THE JUROR: OKAY.

23 THE COURT: THANK YOU SO MUCH.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JUROR.)

1424

1 THE COURT: SAYS THE STATE?

2 MR. KOLB: QUALIFIED, JUDGE.

3 THE COURT: SAYS THE DEFENDANT?

4 MR. BABB: QUALIFIED, YOUR HONOR.

5 THE COURT: VERY WELL. BRING HER IN, PLEASE.

6 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
7 JUROR.)

8 THE COURT: MS. PIETERSE, THIS IS JUST A LITTLE
9 SHEET TO GIVE YOU SOME INFORMATION. I THINK YOU MAY FIND
10 IT HELPFUL. YOU HAVE BEEN QUALIFIED AS A POTENTIAL JUROR
11 IN THIS MATTER. THAT MEANS THAT FROM -- YOU WILL BE A PART
12 OF THE PANEL AND WE'LL SELECT THAT -- THE FINAL JURY ON
13 WEDNESDAY AT FIVE O'CLOCK. YOU WILL NEED TO BE BACK IN
14 THIS COURTROOM -- JUST COME BACK IN OR JUST LIKE YOU DID
15 THIS MORNING -- AT FIVE O'CLOCK ON WEDNESDAY AND WE'RE
16 HOPEFULLY NOT GOING TO TAKE MUCH OF YOUR TIME. IF YOU ARE
17 SELECTED HOWEVER WE'LL LEAVE FROM HERE AND YOU WILL BE
18 TAKEN TO SUMTER. SO YOU'LL NEED TO BRING WITH YOU CLOTHING
19 TO TAKE CARE OF ABOUT A WEEK'S NEEDS. OKAY?

20 THE JUROR: OKAY.

21 THE COURT: UNTIL THEN PLEASE DO NOT DISCUSS THIS
22 CASE WITH ANYONE. CERTAINLY DON'T ALLOW ANYONE TO TALK
23 WITH YOU ABOUT IT AND DON'T BE APPREHENSIVE. WE'LL SEE YOU
24 THEN. THANK YOU VERY MUCH. YOU'RE FREE TO LEAVE.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

1425

1 JUROR.)

2 MR. LITTLEJOHN: YOUR HONOR, COULD WE APPROACH
3 THE BENCH JUST A MOMENT?

4 THE COURT: YES, SIR.

5 (THEREUPON, THERE WAS A BENCH CONFERENCE.)

6 THE COURT: YOU OBJECT?

7 MR. LITTLEJOHN: NOT AT THIS TIME.

8 THE COURT: YOU GOING TO SUCKER ME IN?

9 MR. LITTLEJOHN: NO.

10 THE COURT: OKAY.

11 OKAY. LET'S -- LET ME HAVE THE NEXT ONE I
12 BELIEVE WAS MS. BARNHILL.

13 I'M SORRY. I GOT IT OUT OF ORDER.

14 CYNTHIA BARNHILL, BEING FIRST
15 DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q MS. BARNHILL, YOU -- GOOD AFTERNOON. I REMIND YOU
18 AGAIN THAT THIS MORNING I TOLD YOU THAT THERE ARE NO RIGHT
19 OR WRONG ANSWERS TO ANY OF THE COURT'S QUESTIONS NOR WILL
20 THERE BE AS TO ANY OF THE ATTORNEYS QUESTIONS TO YOU. ALL
21 THAT WE ASK IS THAT YOU BE TRUTHFUL WITH YOUR RESPONSES.

22 OKAY?

23 A ALL RIGHT.

24 Q YOU'VE HAD AN OPPORTUNITY TO REVIEW THE SHEET THAT
25 HAS THE THREE TYPES OF JURORS?

1426

1 A YES, SIR.

2 Q OF THOSE THREE WHICH ONE BEST DESCRIBES YOU?

3 A THE FIRST ONE.

4 Q THE FIRST ONE?

5 A (NODDED HEAD.)

6 Q AM I TO UNDERSTAND BY THAT, THAT YOU BELIEVE THAT
7 WHENEVER SOMEONE COMMITS A MURDER THE APPROPRIATE
8 PUNISHMENT IS THE DEATH SENTENCE?

9 A YES, SIR.

10 Q ABSOLUTELY?

11 A ABSOLUTE.

12 Q THERE ARE NO CIRCUMSTANCES IN WHICH YOU COULD IMPOSE
13 LIFE IMPRISONMENT?

14 A NO, SIR.

15 Q NONE WHATSOEVER?

16 A NO, SIR.

17 THE COURT: ANY QUESTIONS FROM THE STATE?

18 MR. KOLB: YES, YOUR HONOR.

19 THE COURT: OKAY.

20 EXAMINATION BY MR. KOLB:

21 Q MS. BARNHILL, DO YOU UNDERSTAND UNDER THE LAW THAT
22 THERE ARE MITIGATING CIRCUMSTANCES THAT WOULD BE PRESENTED?

23 A YES, SIR.

24 Q DO YOU HAVE AN IDEA WHAT TYPE THINGS THAT WOULD BE?
25 THE TYPE OF THINGS THAT WOULD BE MITIGATING CIRCUMSTANCES?

1427

1 A NO, SIR.

2 Q THE MENTAL CAPACITY OF THE DEFENDANT, THE AGE OF THE
3 DEFENDANT, LACK OF A PRIOR CRIMINAL RECORD, THE FACT THAT
4 THEY ACTED UNDER DOMINATION OF SOME OTHER PERSON, THOSE
5 TYPES OF THINGS. ARE YOU SAYING THAT YOU COULD NOT
6 CONSIDER THOSE TYPE FACTORS IN DECIDING AN APPROPRIATE
7 PUNISHMENT?

8 A I GUESS IT WOULD REALLY DEPEND ON THE CIRCUMSTANCES
9 ITSELF OF THE TRIAL BUT I REALLY FEEL LIKE IF YOU COMMIT
10 MURDER THEN THE DEATH SENTENCE IS IT BUT, YOU KNOW, I GUESS
11 IT WOULD JUST DEPEND ON THE CIRCUMSTANCE ITSELF. I WOULD
12 HAVE TO LISTEN TO IT.

13 Q WELL, DID YOU READ ON TO THE THIRD TYPE OF PERSON
14 THERE?

15 A ON THE THIRD TYPE, YES, SIR.

16 Q ISN'T THAT WHAT THE THIRD TYPE SAYS THAT THEY WOULD
17 HAVE TO HEAR ALL THE FACTS AND CIRCUMSTANCES AND WHAT THE
18 LAW WAS BEFORE THEY MADE A DECISION ON THE PUNISHMENT?

19 A I'D HAVE TO LOOK AGAIN. I DON'T REMEMBER
20 WORD-FOR-WORD WHAT THE THIRD TYPE SAID.

21 Q DO YOU MIND READING IT?

22 THE COURT: LOOK AT IT IF YOU WOULD, PLEASE,
23 MA'AM. TAKE A MOMENT TO LOOK AT IT.

24 THE JUROR: YES, SIR.

25 / / /

1428

1 BY MR. KOLB:

2 Q AND THAT TYPE PERSON -- IT'S NOTHING WRONG WITH BEING
3 GENERALLY IN FAVOR OF THE DEATH PENALTY BUT THAT TYPE
4 PERSON DOESN'T HAVE THEIR MIND MADE UP BEFORE THE TRIAL.
5 IS THAT -- DOES THAT ---

6 A RIGHT.

7 Q WOULD THAT BE THE WAY YOU UNDERSTOOD THAT?

8 A RIGHT. I'D HAVE TO -- RIGHT.

9 Q THE THIRD TYPE PERSON MIGHT BE GENERALLY IN FAVOR OF
10 THE DEATH PENALTY. THEY DON'T HAVE THEIR MIND MADE UP OF
11 WHAT SENTENCE THEY WOULD GIVE IN EVERY CASE. THEY WOULD
12 HAVE TO HEAR ALL THE FACTS, ALL THE CIRCUMSTANCES OF THE
13 CASE AND THEN HEAR WHAT THE LAW WAS BEFORE THEY WOULD
14 DECIDE WHAT THE PUNISHMENT SHOULD BE?

15 A YES, SIR.

16 Q NOW, WHAT -- HOW DO YOU COME IN THOSE TWO THINGS?
17 THE TYPE ONE THAT WOULD ALWAYS BE DEATH REGARDLESS OF THE
18 CIRCUMSTANCES? ARE YOU THE TYPE THREE THAT WOULD HAVE TO
19 LISTEN TO EVERYTHING BEFORE YOU DECIDED?

20 A I GUESS IT WOULD BE TYPE THREE THEN IF I'D HAVE TO
21 HEAR THE CIRCUMSTANCES BUT YOU KNOW AS FAR AS FAVOR OF IT,
22 YES.

23 Q SO YOU GENERALLY FAVOR THE DEATH PENALTY?

24 A RIGHT.

25 Q BUT -- AND THAT'S WHAT YOU THOUGHT WE WERE ASKING YOU

1429

1 WHETHER YOU WERE FOR THE DEATH PENALTY OR NOT?

2 A RIGHT.

3 Q SEE THIS IS NOT A VOTE IN A POLITICAL ELECTION,
4 WHETHER YOU'RE FOR THE CONFEDERATE FLAG OR FOR WELFARE OR
5 FOR THE DEATH PENALTY. THIS IS DECIDING WHETHER YOU CAN BE
6 A JUROR WHO WILL LISTEN WITH AN OPEN MIND TO ALL THE FACTS,
7 ALL THE CIRCUMSTANCES, AND THE LAW HIS HONOR WILL CHARGE
8 YOU BEFORE YOU MAKE UP YOUR MIND. YOU THINK YOU COULD DO
9 THAT; THAT YOU COULD LISTEN TO EVERYTHING?

10 A YES, SIR.

11 Q OKAY. YOU UNDERSTAND THERE IS NOTHING WRONG WITH
12 BEING GENERALLY IN FAVOR OF THE DEATH PENALTY?

13 A RIGHT.

14 MR. KOLB: ALL RIGHT. THANK YOU.

15 THE COURT: MR. LITTLEJOHN, MR. BABB.

16 EXAMINATIONBY MR. LITTLEJOHN:

17 Q MS. BARNHILL, SOLICITOR KOLB, ASKED YOU IF YOU
18 UNDERSTOOD THE THREE OPTIONS THAT WERE GIVEN YOU AND I
19 BELIEVE YOU READ ALL THREE BEFORE YOU CAME IN THE
20 COURTROOM, DID YOU NOT?

21 A RIGHT.

22 Q DID YOU UNDERSTAND WHAT NUMBER THREE DESCRIBED?

23 A WELL, YES, SIR.

24 Q YOU UNDERSTOOD WHEN YOU SELECTED NUMBER ONE WHAT
25 NUMBER THREE DESCRIBED, DID YOU NOT?

1436

1 A YES, I DID.

2 Q OKAY. AND IN RESPONSE TO WHAT JUDGE DENNIS ASKED
3 YOU, I BELIEVE YOU SAID THAT UNDER NO CIRCUMSTANCES COULD
4 YOU NOT GO FOR A DEATH PENALTY IF SOMEBODY WAS CONVICTED OF
5 A PREMEDITATED MURDER; IS THAT RIGHT?

6 A RIGHT, I DID ANSWER THAT.

7 Q OKAY. AND IS IT NOT SAFE TO SAY, MS. BARNHILL, THAT
8 YOUR STRONG BELIEFS AS TO THE DEATH PENALTY BEING AN
9 APPROPRIATE PUNISHMENT WOULD THAT NOT HAVE SOME BEARING ON
10 YOUR ABILITY TO FOLLOW THE INSTRUCTIONS THAT THE JUDGE
11 GIVES YOU? WOULD THAT NOT IMPAIR YOUR ABILITY TO DECIDE
12 WHICH VERDICT WAS CORRECT?

13 A I DON'T KNOW IF IT WOULD OR NOT TO BE HONEST WITH
14 YOU. I MEAN, YES, FAVOR OF THE DEATH PENALTY, YES; BUT I
15 GUESS I WOULD JUST HAVE TO LISTEN TO EVERYTHING BEFORE I
16 COULD GIVE AN HONEST. . .

17 Q RIGHT. I GUESS WHAT I'M SAYING -- I'M NOT BEING
18 CRITICAL OR ANYTHING -- I'M JUST SAYING YOUR STRONG BELIEFS
19 WOULD THAT NOT GIVE YOU A PROBLEM IN DETERMINING WHETHER
20 MITIGATION FACTORS WERE PROVEN AND WHETHER YOU OUGHT TO
21 CONSIDER MITIGATION FACTORS?

22 A I DON'T THINK IT WOULD.

23 Q YOU DON'T THINK IT WOULD?

24 A NO, SIR.

25 Q MS. BARNHILL, LET ME ASK YOU A COUPLE OF QUESTIONS

1431

1 ABOUT THE INFORMATION YOU'VE PROVIDED ON YOUR
2 QUESTIONNAIRE. YOU WERE ASKED WHETHER ANY MEMBER OF YOUR
3 FAMILY HAD EVER WORKED FOR ANY LAW ENFORCEMENT AGENCY?

4 A YES, SIR.

5 Q AND I BELIEVE YOU PUT CHARLESTON, SOUTH CAROLINA,
6 STATE TROOPER?

7 A MY BROTHER-IN-LAW.

8 Q THAT WAS YOUR BROTHER-IN-LAW?

9 A (NODDED HEAD.)

10 Q AND IS HE STILL A STATE TROOPER?

11 A YES, SIR.

12 Q OKAY. DO YOU HAVE OTHER FRIENDS OR ACQUAINTANCES
13 THAT ARE POLICE OFFICERS?

14 A ACQUAINTANCES?

15 Q UH-HUH.

16 A YES, SIR.

17 Q OKAY. WHO ARE THEY OR WHAT DEPARTMENTS ARE THEY
18 WITH?

19 A I KNOW NELSON BROWN. HE'S HERE IN GEORGETOWN. I
20 DON'T KNOW WHAT DEPARTMENT.

21 Q OKAY. WELL, LET ME ASK YOU THIS, MS. BARNHILL. IN
22 THIS CASE THE DEFENDANT IS ACCUSED OF THE MURDER OF A
23 POLICE OFFICER. WOULD THAT FACT COUPLED WITH YOUR BELIEFS
24 ABOUT THE DEATH PENALTY INTERFERE WITH YOUR ABILITY TO GIVE
25 HIM A FAIR TRIAL AND FOLLOW THE JUDGE'S INSTRUCTIONS?

1432

1 A YES, IT COULD.

2 Q IT COULD. OKAY. MS. BARNHILL, ANOTHER ANSWER YOU
3 GAVE ON YOUR QUESTIONNAIRE AND I BELIEVE IT CAME DURING THE
4 JUDGE'S GENERAL QUESTIONS TO THE WHOLE PANEL YOU INDICATED
5 THAT YOUR SISTER WAS A MURDER VICTIM IN JULY OF LAST YEAR?

6 A YES, SIR, SHE WAS.

7 Q AND THAT WAS IN CONWAY?

8 A YES, SIR.

9 Q OKAY.

10 A HAS THAT -- HAS ANYONE BEEN CHARGED IN THAT OFFENSE?

11 A NO, SIR, NOT YET.

12 Q THEY HAVE NOT?

13 A (SHOOK HEAD.)

14 Q I REALIZE THAT'S A VERY DIFFICULT SITUATION FOR YOU.

15 A YES, SIR.

16 Q WOULD THE FACT THAT THAT HAD OCCURRED TO YOU AND YOUR
17 FAMILY WOULD THAT HAVE BEARING ON YOUR ABILITY TO RENDER AN
18 IMPARTIAL VERDICT IN THIS CASE?

19 A NO, SIR. WHAT HAPPENED TO HER HAS NOTHING TO DO -- I
20 MEAN, YOU KNOW, I HAVE LEARNED IN THE LAST SIX MONTHS TO
21 SEPARATE MY PERSONAL EMOTIONS WITH EVERYDAY THINGS SO, YOU
22 KNOW, I DON'T THINK IT WOULD.

23 Q WELL, I MEAN, IF YOU GOT BACK IN THE JURY ROOM WITH
24 THE OTHER 11 JURORS AND HAD TO DECIDE ON THE FACTS OF THIS
25 CASE, WOULD THAT NOT BE SOMETHING THAT WOULD WEIGH ON YOU,

1433

1 THAT WOULD INFLUENCE YOUR THINKING?

2 A AS MY SISTER? WHAT HAPPENED TO MY SISTER.

3 Q YES, MA'AM.

4 A NO, SIR. IT'S TWO DIFFERENT. . .

5 Q IT'S TWO DIFFERENT THINGS?

6 A RIGHT.

7 Q YOU WOULDN'T GIVE IT ANY THOUGHT IF YOU WERE A JUROR
8 IN THIS CASE?

9 A NOW, I CAN HONESTLY SAY I DON'T KNOW. I MEAN, YOU
10 KNOW, TILL I'M PUT THERE -- I CAN'T SAY I CAN'T GIVE IT ANY
11 THOUGHT. I MEAN, SHE'S ON MY MIND EVERY DAY BECAUSE HER
12 CASE IS UNSOLVED.

13 MR. LITTLEJOHN: YES, I CAN UNDERSTAND THAT.

14 IF YOU'D INDULGE ME JUST A MOMENT.

15 THE COURT: YES, SIR.

16 MR. LITTLEJOHN: NO FURTHER QUESTIONS, YOUR
17 HONOR.

18 EXAMINATION BY THE COURT:

19 Q I HAVE A FEW, MS. BARNHILL. LET ME ASK YOU THIS
20 QUESTION. I THINK AFTER THE SOLICITOR ASKED YOU SOME
21 QUESTIONS YOU FELT NOW THAT YOU WOULD BE MORE LIKE THREE
22 THAN ONE; IS THAT RIGHT?

23 A YES, SIR.

24 Q WELL, LET ME ASK YOU THIS QUESTION. BASED ON YOUR
25 STRONG FEELINGS ABOUT THAT, WOULD YOU BE A PERSON THAT WHEN

1434

1 YOU STARTED WOULD YOU START WITH THE PREMISE THE POSITION
2 BEING THAT IF THEY FIND -- IF THEY PROVE -- THE STATE
3 PROVES HIM GUILTY OF MURDER, THAT MY INCLINATION IS DEATH
4 PENALTY FIRST OR WOULD YOU HAVE TO HEAR IT ALL BEFORE YOU
5 REACHED A DETERMINATION?

6 A I WOULD HAVE TO HEAR IT ALL BEFORE I REACHED IT BUT I
7 GUESS I COULD HONESTLY SAY THE DEATH PENALTY WOULD BE IN
8 THE BACK OF MY MIND.

9 Q WELL, THE WHOLE QUESTION OF THIS, LIKE I SAID THERE
10 IS NO RIGHT OR WRONG ANSWER, WHETHER YOU CAN SET THOSE
11 ASIDE AND BE FAIR TO THE STATE AND BE FAIR TO MR. STONE AND
12 THAT MEANS FAIRLY AND IMPARTIALLY CONSIDER ALL OF THE
13 EVIDENCE, COULD YOU DO THAT OR WOULD IT INFLUENCE YOU IN
14 SOME WAY?

15 A ARE YOU SAYING COULD I KEEP IT OUT OF THE BACK OF
16 MY -- THE BACK OF MY -- NO, I WOULDN'T KEEP IT OUT OF MY
17 MIND. IT WOULD STILL BE THERE.

18 Q WELL, I UNDERSTAND IT WOULD BE THERE BUT COULD YOU
19 PUT IT -- NOT TO SAY YOU HAVE TO DISREGARD IT BUT YOU'D
20 HAVE TO BE ABLE TO SET IT ASIDE AND NOT BE INFLUENCED ONE
21 WAY OR THE OTHER. WOULD IT INFLUENCE YOU IN ANY WAY?

22 A NOT UNTIL AFTER EVERYTHING WAS SAID, NO.

23 Q SO IT WOULD NOT AFFECT YOUR IMPARTIALITY?

24 A NO.

25 Q WHAT ABOUT YOUR FEELINGS ABOUT -- THE STRONG FEELINGS

1435

1 ABOUT POLICE OFFICERS AND THE FACT THAT SOMEONE'S CHARGED
2 WITH THE MURDER OF A POLICE OFFICER? WOULD THAT INFLUENCE
3 YOU? WOULD YOU BE MORE INCLINED TO VOTE ONE PUNISHMENT FOR
4 ONE -- IN ONE SITUATION THAN ANOTHER?

5 A NO, NOT JUST BECAUSE HE WAS A POLICE OFFICER.

6 Q THANK YOU. YOU UNDERSTAND THAT THE STATE HAS THE
7 BURDEN OF PROVING THIS MATTER?

8 A YES, SIR.

9 Q YOU UNDERSTAND THAT ONE CHARGED WITH AN OFFENSE AND
10 MR. STONE INCLUDED WOULD NOT BE REQUIRED TO PROVE ANYTHING
11 AND THEY CERTAINLY AREN'T REQUIRED TO PROVE THEIR
12 INNOCENCE. YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q DO YOU HAVE ANY PROBLEM WITH THAT ---

15 A NO, SIR.

16 Q --- PRINCIPLE OF LAW? WOULD YOU HAVE ANY PROBLEM
17 APPLYING IT AND FOLLOWING THAT INSTRUCTION?

18 A FOR THE STATE. . .

19 Q REQUIRING THE STATE TO PROVE IT'S CASE?

20 A RIGHT.

21 Q AS I UNDERSTAND WHAT YOU'RE SAYING, YOU UNDERSTAND
22 THERE ARE TWO SEPARATE PROCEEDINGS, ONE TO DETERMINE GUILT
23 WHERE YOU HEAR ONLY EVIDENCE OF WHETHER OR NOT THE
24 DEFENDANT IS GUILTY AND THEN IF THE VERDICT IS SUCH --
25 RETURN A VERDICT OF GUILTY, THEN IT MAY BE NECESSARY TO GO

1436

1 INTO THE SECOND PHASE. YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q AND AT THAT TIME YOU, DEPENDING ON THE JURY'S
4 VERDICT, WOULD DETERMINE WHETHER OR NOT -- THE APPROPRIATE
5 PUNISHMENT. YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q AM I UNDERSTANDING YOU NOW THAT YOU WOULD GO INTO
8 THAT SECOND PHASE WITH AN OPEN MIND? YOU WOULD NOT BE
9 INFLUENCED BY THE FACT THAT BECAUSE IF -- WOULD HAVE FOUND
10 THE DEFENDANT GUILTY OF MURDER AT THAT STAGE. YOU
11 UNDERSTAND THAT?

12 A (NODDED HEAD.)

13 Q YOU WOULD NOT BE INFLUENCED BY THAT DECISION?

14 A I CAN'T SAY THAT I WOULD NOT BE. IF HE WAS FOUND --
15 IF THE STATE PROVED IT BEYOND A SHADOW OF A DOUBT ---

16 Q THAT HE WAS GUILTY?

17 A --- HE WAS GUILTY.

18 Q THEN WOULD YOU HAVE AN OPEN MIND WHEN WE STARTED THE
19 SECOND PHASE TO DETERMINE THE PUNISHMENT?

20 A I GUESS IT WOULD DEPEND ON WHAT WAS SAID BUT IT WOULD
21 BE -- IF IT WAS WITHOUT A SHADOW OF A DOUBT THAT HE WAS
22 GUILTY, I CAN HONESTLY SAY IT WOULD BE HARD TO GO IN WITH
23 AN OPEN MIND.

24 Q AM I TO UNDERSTAND BECAUSE THAT'S A SECOND TRIAL
25 WITHIN THIS TRIAL?

1437

1 A RIGHT.

2 Q WE'LL START ANEW. YOU WOULD HEAR NEW EVIDENCE. AT
3 THAT STAGE WOULD YOU BE ABLE TO HEAR AND LISTEN TO THAT
4 EVIDENCE WITH AN OPEN MIND?

5 A I DON'T KNOW. I MEAN, I'LL BE HONEST WITH YOU. I
6 DON'T KNOW. IT WOULD DEPEND ON WHAT I HEARD IN THE FIRST
7 ONE.

8 THE COURT: ALL RIGHT.

9 ANY ADDITIONAL QUESTIONS FROM THE STATE?

10 EXAMINATION BY MR. KOLB:

11 Q MS. BARNHILL, DO YOU UNDERSTAND THAT IN THE SECOND
12 PHASE IF WE GOT TO THAT PART THAT YOU WOULD NOT -- YOU
13 WOULD BE ENTITLED TO CONSIDER EVERYTHING YOU'D HEARD IN THE
14 FIRST PHASE BUT THERE WOULD BE ADDITIONAL EVIDENCE?

15 A YES, SIR.

16 Q AND WHEN YOU WENT IN TO HEAR THE ADDITIONAL EVIDENCE,
17 YOU WOULDN'T HAVE TO DISREGARD WHAT YOU ALREADY KNEW BUT
18 WOULD YOU LISTEN TO THE ADDITIONAL EVIDENCE ON TOP OF WHAT
19 YOU ALREADY KNEW FROM THE FIRST PHASE; WOULD YOU LISTEN TO
20 THAT ADDITIONAL EVIDENCE WITH AN OPEN MIND AND ONLY DECIDE
21 THE PUNISHMENT AFTER YOU HEARD ALL THE EVIDENCE AT THE END
22 OF THE SECOND PHASE? YOU SEE WHAT WE'RE TALKING ABOUT?

23 A I SEE WHAT YOU'RE TALKING ABOUT BUT LIKE I SAID I
24 DON'T KNOW IF I COULD GO IN OPEN-MINDED AFTER HEARING THE
25 FIRST PHASE EVEN THOUGH THE SECOND PHASE WAS FOR THE

1438

1 PUNISHMENT OF IT.

2 Q ALL RIGHT. YOU UNDERSTAND YOU DON'T EVEN GET TO THE
3 SECOND PHASE ---

4 A RIGHT.

5 Q --- UNLESS SOMEBODY IS CONVICTED OF MURDER?

6 A RIGHT.

7 Q OKAY. SO YOU DON'T HAVE TO DISREGARD THAT THEY'VE
8 BEEN CONVICTED OF MURDER. I DON'T KNOW IF YOU UNDERSTAND?

9 A YES, SIR, I UNDERSTAND THAT.

10 Q YOU DON'T EVEN GET THERE UNLESS THAT HAPPENS?

11 A RIGHT.

12 Q BUT THEN WHEN YOU'RE GOING IN YOU'RE DECIDING BETWEEN
13 TWO PUNISHMENTS, WOULD THAT PUNISHMENT BE BASED SOLEY UPON
14 THE EVIDENCE THAT WAS HEARD AND PRESENTED TO YOU IN THE
15 PENALTY PHASE OF THE TRIAL?

16 A JUST IN THE SECOND PART?

17 Q YOU WOULDN'T EVEN GET THERE UNLESS SOMEBODY HAD BEEN
18 CONVICTED OF MURDER?

19 A RIGHT. YOU ONLY GET THERE IF HE'S GUILTY.

20 Q RIGHT. YOU SEEM TO BE SAYING WHAT WOULD YOUR
21 DECISION BE IN A PENALTY PHASE; YOU SEEM TO BE SAYING YOU'D
22 HAVE TO DECIDE WHETHER HE WAS GUILTY OR NOT. IF HE WASN'T
23 FOUND GUILTY YOU'RE NOT EVEN IN THE SECOND PHASE. SO YOU
24 DON'T HAVE TO PUT THAT ASIDE. THAT'S A FOREGONE --
25 WOULDN'T EVEN HAPPEN UNLESS THE PERSON HAD BEEN FOUND

1430

1 GUILTY IN THE FIRST PHASE. THE QUESTION IS AFTER THEY'VE
2 BEEN FOUND GUILTY CAN YOU GO INTO THE SECOND PHASE AND
3 LISTEN TO THE EVIDENCE WITH AN OPEN MIND TO DECIDE BETWEEN
4 THE PUNISHMENTS THAT ARE AVAILABLE TO YOU?

5 A NO, SIR.

6 MR. KOLB: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ANY ADDITIONAL QUESTIONS?

8 MR. LITTLEJOHN: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. MS. BARNHILL, I WOULD ASK
10 YOU IF YOU WOULD PLEASE TO STEP DOWN AND STEP OUT THERE.
11 WE'LL BE WITH YOU IN JUST A MOMENT.

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JUROR.)

14 THE COURT: WHAT SAYS THE STATE?

15 MR. KOLB: JUDGE, I'D LIKE TO GET A CASE FOR THE
16 COURT. I REALIZE THE INCLINATION AT THIS TIME WOULD BE TO
17 FIND HER NOT QUALIFIED BUT I BELIEVE THERE IS A CASE THAT
18 SAYS JUST BECAUSE THEY OBVIOUSLY PREFER ---

19 THE COURT: JAMES WAINWRIGHT, WAINWRIGHT VERSUS
20 WILLIAMS? I DON'T THINK SO. THAT'S BEEN THE CASE THAT'S
21 BEEN CITED EVERY TIME. IT DOESN'T HAVE ANYTHING TO DO
22 ABOUT PREFER OR WHAT'S THE KEY TO MY DETERMINATION IT
23 HASN'T GOT A THING TO THE WITH HER PREFERENCE. MY
24 DETERMINATION IS WHETHER OR NOT HER BELIEFS SUBSTANTIALLY
25 IMPAIR OR PREVENT -- I DON'T THINK THEY PREVENT HER BUT I

1440

1 BELIEVE THAT CLEARLY THAT COUPLED WITH HER FRIENDS ARE
2 POLICE, THAT COUPLED WITH HER RESPONSES TO THOSE QUESTIONS
3 HER ABILITY TO CONSIDER BOTH HAS BEEN SUBSTANTIALLY
4 IMPAIRED.

5 THAT'S THE STANDARD NOT THE FACT THAT SHE'S --
6 SHE HAS A FEELING THAT THE DEATH PENALTY IS MORE
7 APPROPRIATE. THAT WOULDN'T DISQUALIFY HER IN MY OPINION
8 BUT WHAT CONCERNS ME IS HER ABILITY -- I THINK HER ABILITY
9 IS SUBSTANTIALLY IMPAIRED. SO THAT'S THE STANDARD THAT I'M
10 APPLYING, MR. SOLICITOR; BUT YOU WISH TO SUGGEST THAT SHE'S
11 QUALIFIED THAT'S FINE. THAT'S PERFECTLY ALL RIGHT.

12 WHAT SAYS THE DEFENDANT?

13 MR. LITTLEJOHN: WE MOVE TO DISQUALIFY HER, YOUR
14 HONOR.

15 THE COURT: I THINK THAT SHE IS DISQUALIFIED NOT
16 BECAUSE HER BELIEFS ON CAPITAL PUNISHMENT PREVENT HER BUT I
17 FEEL THAT SHE HAS BEEN HONEST IN TRYING TO DO THAT BUT SHE
18 HAS FINALLY AND BASICALLY STATED THAT AND I WOULD FIND
19 FURTHER THAT I THINK THAT IT WOULD BE SUBSTANTIALLY
20 IMPAIRED BY THE ANSWERS GIVEN TO A NUMBER OF QUESTIONS AND
21 I WOULD SO FIND AND I FIND SHE'S NOT QUALIFIED.

22 BRING HER IN.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: MS. BARNHILL, THANK YOU VERY MUCH.

1441

1 YOU WILL BE EXCUSED FROM FURTHER PARTICIPATION IN THIS
2 PROCEEDING. WE'RE PROBABLY GOING TO SELECT A JURY
3 WEDNESDAY. UNTIL THAT TIME I WOULD ASK THAT YOU NOT TALK
4 WITH ANYONE ABOUT THIS CASE OR ALLOW ANYBODY TO TALK WITH
5 YOU. ONCE WE'VE SELECTED THE JURY YOU'LL BE TO FREE
6 DISCUSS IT ANY WAY YOU WISH. THANK YOU VERY MUCH. YOU ARE
7 FREE TO LEAVE AT THIS TIME.

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
9 JUROR.)

10 THE COURT: LET'S BRING IN THE NEXT ONE, PLEASE,
11 SIR.

12 EMILY W. B. SWEATMAN, BEING
13 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q GOOD AFTERNOON, MS. SWEATMAN. HOW ARE YOU?

16 A JUST FINE.

17 Q GOOD. YES, MA'AM?

18 A I HAVE SOMETHING TO ASK YOU BEFORE WE BEGIN.

19 Q SURE.

20 A I DID NOT -- EARLIER I DID NOT KNOW THAT THERE WAS
21 SOMEBODY THAT I KNEW.

22 Q OKAY.

23 A UNTIL AFTERWARDS BECAUSE I WAS SITTING IN THE BACK.

24 Q ALL RIGHT. WHO IS IT THAT YOU KNOW?

25 A JOHN HILLIARD. I DON'T KNOW HIM. I KNOW HIS WIFE.

1442

1 Q YOU KNOW HIS WIFE AND YOU DO NOT KNOW JOHN BUT YOU
2 KNOW HIS WIFE?

3 A I KNOW HIS FAMILY.

4 Q WELL, LET ME ASK YOU THIS, MS. SWEATMAN. THE FACT
5 THAT YOU KNOW HIS WIFE, THE FACT THAT MR. HILLIARD IS
6 PARTICIPATING AT THIS PROCEEDING, MY UNDERSTANDING HE WILL
7 NOT ACCOMPANY US TO SUMTER BUT HE IS PARTICIPATING IN THIS
8 PROCEEDING, WOULD THAT INFLUENCE YOU AT ALL?

9 A NO, SIR. I HAVEN'T SEEN HER IN YEARS BUT I JUST
10 THOUGHT YOU SHOULD KNOW.

11 Q SO IT WOULD NOT AFFECT YOUR ABILITY TO GIVE BOTH THE
12 STATE OF SOUTH CAROLINA AND MR. STONE A FAIR AND IMPARTIAL
13 TRIAL; IS THAT RIGHT?

14 A THAT'S RIGHT.

15 Q THANK YOU VERY MUCH FOR SHARING THAT WITH US THOUGH.
16 NOW, YOU UNDERSTAND AS I STATED THIS MORNING THAT IN
17 THIS -- THE QUESTIONS THAT I'M ABOUT TO ASK YOU DO NOT HAVE
18 ANY RIGHT OR WRONG ANSWERS. THE ONLY THING THAT I ASK IS
19 THAT YOU BE TRUTHFUL WITH YOUR RESPONSES AND LIKEWISE THE
20 QUESTIONS THAT THE ATTORNEYS MAY ASK YOU WILL NOT HAVE ANY
21 RIGHT OR WRONG ANSWERS EITHER. AGAIN WE JUST ASK THAT YOU
22 TRUTHFULLY RESPOND TO THE QUESTIONS. HAVE YOU HAD AN
23 OPPORTUNITY TO REVIEW THAT SHEET WHICH I HANDED YOU?

24 A YES, SIR.

25 Q AND OF THE THREE TYPES OF JURORS, WHICH ONE BEST

1445

1 DESCRIBES YOU?

2 A THE THIRD TYPE.

3 Q THE THIRD TYPE?

4 A YES, SIR.

5 Q ALL RIGHT, MA'AM. NOW, YOU'VE HEARD ME EARLIER TODAY
6 AND I BELIEVE YOU STATED THAT YOU DID NOT HAVE ANY PRIOR
7 KNOWLEDGE OF THIS PARTICULAR INCIDENT; IS THAT RIGHT?

8 A NONE WHATSOEVER.

9 Q SO ONLY THING YOU KNOW IS WHAT LITTLE BIT I SHARED
10 WITH YOU TODAY; IS THAT CORRECT?

11 A YES, SIR.

12 Q HAVE YOU FORMED ANY OPINIONS IN THIS MATTER?

13 A NO, SIR.

14 Q WOULD YOU BE A PERSON THAT WOULD HAVE TO HEAR ALL OF
15 THE EVIDENCE AND RECEIVE THE LAW BEFORE YOU MADE ANY
16 DECISIONS OR FORMED ANY OPINIONS IN THIS CASE?

17 A YES, SIR.

18 Q YOU'VE HEARD ME ALSO STATE EARLIER THAT AN
19 INDIVIDUAL, ANY INDIVIDUAL, WHO IS CHARGED WITH THE
20 COMMISSION OF A CRIMINAL OFFENSE AND MR. STONE WOULD BE
21 INCLUDED IS NEVER REQUIRED TO PROVE THEIR INNOCENCE.
22 THAT'S KNOWN AS THE PRESUMPTION OF INNOCENCE. YOU
23 UNDERSTAND?

24 A YES, SIR.

25 Q DO YOU HAVE ANY PROBLEM WITH THAT PRINCIPLE OF LAW?

1444

1 A NONE WHATSOEVER.

2 Q I ALSO WOULD TELL YOU AND I'VE TOLD YOU TODAY THE
3 STATE HAS THE BURDEN OF PROVING ITS CASE. YOU UNDERSTAND
4 THAT?

5 A YES, SIR.

6 Q AND THEY'RE THE ONLY PARTY THAT HAS ANY BURDEN IN
7 THIS PROCEEDING. YOU UNDERSTAND?

8 A (NODDED HEAD.)

9 Q SO IF YOU WERE SELECTED AS A JUROR, YOU WOULD LOOK TO
10 THE STATE TO PROVE IT'S CASE; IS THAT CORRECT?

11 A YES, SIR.

12 Q YOU WOULD NOT EXPECT MR. STONE TO PROVE ANYTHING?

13 A NO, SIR.

14 Q YOU UNDERSTAND AS I STATED THAT MR. STONE AS ANY
15 DEFENDANT, ANYONE CHARGED WITH A CRIMINAL OFFENSE, DOESN'T
16 EVEN HAVE TO TESTIFY IF HE DOESN'T WANT TO. YOU UNDERSTAND
17 THAT?

18 A YES, SIR.

19 Q AND I WOULD INSTRUCT YOU THAT YOU CAN'T USE THAT
20 AGAINST HIM IN ANY FASHION. WOULD YOU HAVE ANY PROBLEM
21 FOLLOWING THAT INSTRUCTION?

22 A NO, SIR.

23 Q SO YOU WOULDN'T HOLD THAT AGAINST HIM?

24 A NO, SIR.

25 Q NOW, DO YOU KNOW OF ANYTHING IN YOUR BACKGROUND, YOUR

1445

1 PERSONAL EXPERIENCES, ANY STRONG PHILOSOPHIES THAT YOU MAY
2 HAVE THAT WOULD ANY WAY IMPAIR OR AFFECT YOUR ABILITY TO
3 GIVE THE STATE OF SOUTH CAROLINA AND MR. STONE A FAIR AND
4 IMPARTIAL TRIAL IN THIS MATTER?

5 A YOU MEAN ANYTHING THAT WOULD HOLD ME BACK?

6 Q THAT ---

7 A NO, SIR.

8 Q --- WOULD INTERFERE WITH YOUR LOOKING AT THE
9 EVIDENCE, CONSIDERING THE EVIDENCE IMPARTIALLY, AND FAIRLY
10 MAKING A DECISION IN ACCORDANCE WITH THE LAW AS I INSSTRUCT
11 YOU ON THE LAW?

12 A NO, SIR.

13 MR. LITTLEJOHN: YOUR HONOR, WE'RE HAVING TROUBLE
14 HEARING.

15 BY THE COURT:

16 Q WOULD YOU PLEASE -- IS THERE A MIKE? IT'S GONE.
17 EXCUSE ME, MR. LITTLEJOHN. I'M SORRY. I WOULD ASK THAT
18 YOU RAISE YOUR VOICE PLEASE, MS. SWEATMAN. I KNOW YOU'RE
19 SITTING RIGHT HERE AND I CAN HEAR YOU BUT IF YOU'D RAISE
20 YOUR VOICE I'D APPRECIATE IT, OKAY?

21 A YES, SIR.

22 Q OKAY. THANK YOU. NOW, YOU UNDERSTAND THAT AS I
23 INDICATED TODAY THERE IS BASICALLY A TRIAL, TWO TRIALS
24 WITHIN A TRIAL IN THIS PROCEEDING. YOU UNDERSTAND THAT?

25 A YES, SIR.

1446

1 Q THE FIRST PHASE WILL DEAL WITH THE ISSUE OF GUILT,
2 WHETHER THE DEFENDANT'S GUILTY OR NOT GUILTY. YOU
3 UNDERSTAND?

4 A YES, SIR.

5 Q NOW, IF THE JURY CONSIDERS THE EVIDENCE AND SHOULD
6 FIND MR. STONE NOT GUILTY, OF COURSE THAT WOULD END THIS
7 MATTER. YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q BUT IF THE JURY SHOULD RETURN A VERDICT OF GUILTY,
10 THEN IT MAY RESULT IN CERTAIN SITUATIONS IN YOUR GOING
11 FORWARD. YOU UNDERSTAND THAT?

12 A YES, SIR.

13 Q WITH THE SECOND PHASE. YOU WOULD FIND HIM GUILTY OF
14 MURDER. YOU UNDERSTAND THAT?

15 A YES, SIR.

16 Q NOW, IN THE SECOND PHASE YOU WILL HEAR ADDITIONAL
17 EVIDENCE. YOU UNDERSTAND THAT?

18 A YES, SIR.

19 Q THAT YOU DIDN'T HEAR IN THE FIRST ONE. YOU
20 UNDERSTAND?

21 A YES, SIR.

22 Q WOULD YOU KEEP AN OPEN MIND IN THE SECOND PHASE?
23 WOULD YOU BE ABLE TO DO THAT?

24 A YES, SIR.

25 Q AND YOU WOULD HEAR -- YOU WOULD WAIT UNTIL YOU'VE

1447

1 HEARD ALL THE EVIDENCE; IT'S AT THAT STAGE THAT THE JURY
2 WOULD HEAR EVIDENCE ABOUT AGGRAVATING CIRCUMSTANCES AND
3 POSSIBLY MITIGATING CIRCUMSTANCES AND OTHER EVIDENCE. YOU
4 UNDERSTAND THAT?

5 A YES, SIR.

6 Q AND WOULD YOU WAIT TO MAKE A DECISION, WAIT UNTIL
7 YOU'VE HEARD ALL THE EVIDENCE AND RECEIVE THE LAW BEFORE
8 YOU DECIDE IT?

9 A YES, SIR.

10 Q MAKE A DECISION?

11 A YES, SIR.

12 Q AND YOU UNDERSTAND IT'S AT THAT SECOND PHASE WHERE
13 THE JURY WOULD DECIDE THE APPROPRIATE PUNISHMENT?

14 A YES, SIR.

15 Q AND AS I UNDERSTAND YOU SAID YOU'RE TYPE THREE?

16 A YES, SIR.

17 Q WHICH MEANS THAT YOU AS A JUROR WOULD CONSIDER AND
18 COULD CONSIDER BOTH LIFE IMPRISONMENT AND THE DEATH
19 PENALTY?

20 A YES, SIR.

21 Q AND YOU WOULD WAIT UNTIL YOU HEARD ALL THE FACTS AND
22 CIRCUMSTANCES UNTIL YOU HAVE MADE A DECISION AS TO WHICH
23 ONE WAS MOST APPROPRIATE; IS THAT RIGHT?

24 A YES, SIR.

25 Q AND YOUR DECISION ON THAT DEPENDS ON THE FACTS AND

1448

1 CIRCUMSTANCES IN A GIVEN CASE; IS THAT RIGHT?

2 A YES, SIR.

3 Q YOU HAVE NOT FORMED ANY OPINIONS EITHER -- IN ANY
4 ASPECT OF THIS PROCEEDING; IS THAT RIGHT?

5 A NO. I'M IN THE DARK.

6 Q OKAY. AND YOU WOULD WAIT TILL YOU HEARD THE FACTS?

7 A YES, SIR.

8 Q AS A JUROR YOU WOULD BE SEQUESTERED WITH THE OTHER
9 JURORS IN THIS CASE. DO YOU UNDERSTAND THAT? .

10 A YES, SIR.

11 Q THAT MEANS THAT WE WILL TRANSPORT YOU TO SUMTER AND
12 YOU WILL BE -- THE STATE WILL PROVIDE YOU LODGING AND WILL
13 PROVIDE YOU FOOD AND TRANSPORTATION FOR THE DURATION OF THE
14 TRIAL. YOU UNDERSTAND?

15 A YES, SIR.

16 Q I REALIZE THAT'S NOT SOMETHING THAT EVERYBODY WOULD
17 GET EXCITED ABOUT BUT MY QUESTION TO YOU IS COULD YOU SET
18 ASIDE THE INCONVENIENCE THAT THAT MAY CAUSE YOU AND BE ABLE
19 TO FOCUS ON THE EVIDENCE AT THIS TRIAL?

20 A YES, SIR.

21 Q AND IT WOULD NOT AFFECT YOUR ABILITY TO GIVE THE
22 STATE AND MR. STONE A FAIR AND IMPARTIAL DETERMINATION?

23 A NO, SIR.

24 THE COURT: PLEASE ANSWER ANY QUESTIONS THE STATE
25 MAY HAVE.

1445

1 EXAMINATION BY MR. KOLB:

2 Q MS. SWEATMAN?

3 A YES, SIR.

4 Q HAS ANY MEMBER OF YOUR FAMILY OR CLOSE FRIEND EVER
5 BEEN CHARGED WITH A CRIME?

6 A ANY MEMBER OF MY FAMILY?

7 Q OR CLOSE FRIEND EVER BEEN CHARGED WITH A CRIME?

8 A NO, SIR.

9 Q ALL RIGHT.

10 A AND EVER BEEN -- ANY MEMBER OF YOUR FAMILY OR CLOSE
11 FRIEND BEEN A VICTIM OF A CRIME?

12 A YES, SIR.

13 Q OKAY. AND ON YOUR QUESTIONNAIRE YOU INDICATED THAT
14 SAME QUESTION, NUMBER 30, YOU HAD A NO. THERE IS SOMEONE
15 IN YOUR FAMILY THAT WAS A VICTIM?

16 A YES, SIR, BUT THIS HAS BEEN 40 YEARS AGO.

17 Q OKAY. COULD YOU TELL ME A LITTLE BIT ABOUT THAT?

18 A MY SISTER-IN-LAW WAS KIDNAPPED, RAPED, AND SHOT IN
19 THE HEAD AND LEFT FOR DEAD AND THIS HAPPENED ABOUT -- IN
20 LAKEVIEW, SOUTH CAROLINA. LIKE I SAY IT MUST BE ABOUT 40
21 OF 45 YEARS AGO.

22 Q LAKEVIEW. THAT'S DILLON COUNTY?

23 A I DON'T KNOW, SIR.

24 Q OKAY. WAS THAT CRIME EVER SOLVED?

25 A YES, SIR.

1456

1 Q DO YOU KNOW WHAT THE RESULT OF IT WAS?

2 A YES, SIR.

3 Q WHAT WAS THAT?

4 A I THINK HE WAS THE LAST MAN IN SOUTH CAROLINA TO BE
5 ELECTROCUTED AT THAT TIME.

6 Q NOW, LET ME ASK YOU ABOUT -- THE JUDGE INDICATED OR
7 QUESTIONED YOU AND YOU ANSWERED THAT IF YOU WERE ON A JURY
8 AND THE JURY DECIDED BETWEEN THE TWO POSSIBLE PUNISHMENTS
9 IN THE PENALTY PHASE OF A DEATH PENALTY TRIAL, IF YOU
10 DECIDED FOR THE DEATH PENALTY, WOULD YOU BE ABLE TO SIGN
11 THE VERDICT FORM, ALONG WITH ALL 12 OTHER JURORS, SIGN YOUR
12 NAME WHICH WOULD IN EFFECT BECOME THE DEATH WARRANT IN THE
13 CASE?

14 A YOU MEAN IF I ---

15 Q IF Y'ALL DECIDED THAT?

16 A YES, SIR.

17 Q AND YOU COULD SIGN YOUR NAME?

18 A YES, SIR.

19 MR. KOLB: ALL RIGHT. THANK YOU, MA'AM.

20 THE COURT: MR. BABB, MR. LITTLEJOHN.

21 EXAMINATION BY MR. BABB:

22 Q MS. SWEATMAN?

23 A YES, SIR.

24 Q LOOKING OVER THE INFORMATION I NOTICED YOU'RE A
25 WIDOW?

145i

1 A YES, SIR.

2 Q DID YOUR HUSBAND DIE OF NATURAL CAUSES?

3 A HE DIED OF CANCER.

4 Q HAD YOU HEARD -- AND I BELIEVE YOU TOLD THE JUDGE
5 NO -- ANYTHING AT ALL ABOUT THIS CASE BEFORE COMING HERE
6 TODAY?

7 A NO, NOTHING WHATSOEVER.

8 Q YOU DIDN'T KNOW IT WOULD BE A DEATH PENALTY CASE?

9 A NO, SIR.

10 Q IN A TRIAL IF A DEFENDANT SHOULD NOT TAKE THE STAND
11 AND NOT TESTIFY, WOULD THAT MAKE YOU MORE LIKELY TO CONVICT
12 OR LESS LIKELY; WOULD IT INFLUENCE YOU AT ALL?

13 A IT WOULDN'T INFLUENCE ME AT ALL, SIR.

14 Q DO YOU BELIEVE THE DEFENDANT HAS ANY BURDEN OF
15 PROVING HIS INNOCENCE?

16 A THE DEFENDANT? NO, SIR. HE'S INNOCENT TILL PROVEN
17 GUILTY.

18 Q THE FACT THAT THIS CASE INVOLVES THE ALLEGED MURDER
19 OF A POLICE OFFICER DOES THAT AFFECT YOUR FEELINGS TOWARDS
20 THE DEFENDANT IN ANY MANNER?

21 A NO, SIR.

22 Q NOW, YOU HAVE TWO SONS I BELIEVE WHO HAVE BEEN
23 INVOLVED IN LAW ENFORCEMENT TO ONE DEGREE OR ANOTHER?

24 A YES, SIR, MY SON STILL IS BUT HE'S IN GERMANY IN
25 SECURITY.

1452

1 Q OKAY. DO YOU HAVE CLOSE FRIENDS OR ANY OTHER
2 RELATIVES OTHER THAN YOUR SONS WHO ARE INVOLVED IN LAW
3 ENFORCEMENT?

4 A NO, SIR.

5 Q THE FACT THAT THEY'RE INVOLVED IN LAW ENFORCEMENT AND
6 THE FACT THAT IT IS A MURDER OF A -- ALLEGED MURDER OF A --
7 LAW ENFORCEMENT OFFICER THAT WOULDN'T ENTER INTO IT, YOUR
8 SON'S OCCUPATION AT ALL?

9 A NO, SIR. COMPLETELY DIFFERENT.

10 Q IS THERE ANY OTHER INFORMATION -- I REALIZE YOU
11 FILLED OUT THIS QUESTIONNAIRE THAT THE COURT SENT TO YOU
12 SOMETIME BACK?

13 A YES, SIR.

14 Q AND WE HAD SOME CONFUSION AND DIDN'T KNOW ABOUT THE
15 FACT THAT YOUR SISTER-IN-LAW HAD BEEN THE VICTIM ---

16 A WELL, I DIDN'T EVEN THINK ABOUT IT BECAUSE I WAS --
17 THEY WERE DIVORCED AT THAT TIME.

18 Q I UNDERSTAND AND WE ALL MAKE MISTAKES EVERY DAY BUT
19 IS THERE ANYTHING ELSE ON HERE THAT YOU LATER REALIZED
20 THAT ---

21 A NO, SIR.

22 Q --- MAYBE SHOULD HAVE HAD A DIFFERENT ANSWER TO IT?

23 A NO, SIR.

24 MR. BABB: COURT'S INDULGENCE JUST A MOMENT.

25 THE COURT: YES, SIR. TAKE YOUR TIME.

1453

1 MR. BABB: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ANY ADDITIONAL QUESTIONS FROM THE
3 STATE?

4 YOU MAY STEP DOWN, PLEASE.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JUROR.)

7 THE COURT: SAYS THE STATE?

8 MR. KOLB: QUALIFIED, YOUR HONOR.

9 THE COURT: SAYS THE DEFENDANT?

10 MR. BABB: QUALIFIED, YOUR HONOR.

11 THE COURT: VERY WELL. I AGREE THAT SHE IS
12 QUALIFIED. BRING HER BACK IN.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JUROR.)

15 THE COURT: MS. SWEATMAN, HERE IS A SHEET OF
16 PAPER THAT HAS SOME INFORMATION ON IT WHICH MAY BE HELPFUL.
17 JUST TALKS ABOUT WHAT WOULD HAPPEN IF YOU WERE SELECTED.
18 YOU HAVE BEEN QUALIFIED AS A POTENTIAL YOUR IN THIS CASE.
19 WE WILL SELECT THIS JURY ON WEDNESDAY AFTERNOON AT FIVE
20 O'CLOCK. YOU WILL NEED TO RETURN AT THAT TIME. COME BACK
21 JUST LIKE YOU DID THIS MORNING AND JUST TAKE YOUR SEAT OUT
22 THERE AT FIVE O'CLOCK. WHEN YOU COME YOU'LL NEED TO BRING
23 WITH YOU CLOTHING TO TAKE CARE OF YOUR NEEDS FOR A WEEK
24 BECAUSE IF YOU'RE SELECTED WE WILL GO FROM HERE TO SUMTER
25 AT THAT TIME. UNTIL THEN I WOULD ASK THAT YOU PLEASE DO

1454

1 NOT DISCUSS THIS CASE WITH ANYONE. DON'T ALLOW ANYBODY TO
2 TALK TO YOU. DON'T READ ANY NEWS ACCOUNTS OR WATCH ANY
3 NEWS PROGRAMS. OKAY.

4 THE JUROR: YES, SIR.

5 THE COURT: SEE YOU AT FIVE O'CLOCK. THANK YOU.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JUROR.)

8 THE COURT: NEXT ONE, PLEASE. MS. BARBARA
9 STEWART.

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
11 JUROR.)

12 BARBARA STEWART, BEING FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q GOOD AFTERNOON, MS. STEWART. HOW ARE YOU?

16 A FINE AND YOU, SIR.

17 Q GOOD THANK YOU. EARLIER TODAY I MENTIONED TO YOU
18 THAT THERE REALLY AREN'T ANY RIGHT OR WRONG ANSWERS TO
19 THESE QUESTIONS, EITHER MINE OR THE QUESTIONS THAT THE
20 ATTORNEYS MAY HAVE FOR YOU. I WOULD ASK THAT YOU JUST
21 RESPOND TRUTHFULLY TO THE QUESTIONS IF YOU WILL, PLEASE?

22 A YES, SIR.

23 Q ALL RIGHT. HAVE YOU HAD AN OPPORTUNITY TO READ THAT
24 SHEET THAT HAD THE THREE TYPES OF JURORS?

25 A YES, SIR.

1455

1 Q WHICH ONE BEST DESCRIBES YOU?

2 A THE FIRST ONE.

3 Q THE FIRST ONE?

4 A YES, SIR.

5 Q BY THAT AM I TO UNDERSTAND THAT YOU BELIEVE THAT WHEN
6 SOMEONE IS CONVICTED OF MURDER THAT THE ONLY PUNISHMENT
7 WOULD BE CAPITAL OR DEATH PENALTY?

8 A YES, SIR.

9 Q IT WOULDN'T DEPEND ON THE FACTS OF THE CASE?

10 A YES, SIR, I THINK SO.

11 Q YOU THINK IT WOULD?

12 A YES, SIR.

13 Q SO WHEN YOU SAY YOU'RE THE FIRST ONE, YOU MEAN THAT
14 YOU BELIEVE IN SOME CIRCUMSTANCES THE DEATH PENALTY MAY BE
15 APPROPRIATE?

16 A YES, SIR.

17 Q WOULD YOU ALSO BELIEVE THAT IN SOME CIRCUMSTANCES IT
18 WOULD BE INAPPROPRIATE AND LIFE IMPRISONMENT WOULD BE A
19 BETTER SENTENCE?

20 A YES, SIR.

21 Q OKAY. ARE YOU A PERSON THAT WOULD HAVE TO HEAR THE
22 FACTS, HEAR ALL THE FACTS, BEFORE YOU COULD DECIDE AS TO
23 WHICH ONE WOULD BE THE CASE?

24 A YES, SIR.

25 Q SO YOU WOULDN'T AUTOMATICALLY FEEL THAT JUST BECAUSE

1456

1 SOMEONE WAS CONVICTED OF MURDER THAT THEY AUTOMATICALLY
2 SHOULD HAVE THE DEATH PENALTY; YOU'D HAVE TO HEAR ALL THE
3 FACTS; IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q BUT YOU COULD CONSIDER BOTH OF THEM?

6 A YES, SIR.

7 Q AND IF THE FACTS WERE CERTAIN -- WERE SUCH IN YOUR
8 MIND THAT WARRANTED IT, YOU COULD IMPOSE THE DEATH PENALTY
9 BUT LIKEWISE IF YOU FELT THE FACTS WERE NOT, YOU COULD
10 IMPOSE -- OR VOTE FOR LIFE IN PRISON?

11 A YES, SIR.

12 Q NOW, YOU UNDERSTAND THAT ANYBODY CHARGED WITH A
13 CRIMINAL OFFENSE, MR. STONE INCLUDED, IS NEVER REQUIRED TO
14 PROVE ANYTHING. YOU UNDERSTAND THAT? THAT PEOPLE JUST
15 BECAUSE THEY'RE CHARGED WITH CRIMINAL A VIOLATION DOESN'T
16 MEAN ANYTHING OTHER THAN THE FACT THAT THEY'RE CHARGED WITH
17 A VIOLATION? IT'S CALLED THE PRESUMPTION OF INNOCENCE?

18 A THE WAY I FEEL I THINK IT SHOULD BE PROVEN.

19 Q OKAY. WELL, THAT'S GOOD BECAUSE THAT'S EXACTLY WHAT
20 THE LAW SAYS.

21 A THAT'S RIGHT.

22 Q THE LAW SAYS THAT A PERSON THAT'S CHARGED WITH A
23 CRIMINAL VIOLATION IS PRESUMED INNOCENT UNTIL AND IF THE
24 THE STATE PROVES THEM GUILTY BEYOND A REASONABLE DOUBT.
25 YOU UNDERSTAND?

1457

1 A YES, SIR.

2 Q YOU UNDERSTAND THAT MR. STONE WHO IS CHARGED WITH
3 THESE OFFENSES UNDER OUR LAW IS NOT REQUIRED TO PROVE
4 ANYTHING TO YOU INCLUDING HIS INNOCENCE. YOU UNDERSTAND
5 THAT?

6 A YES, SIR.

7 Q IF YOU WERE SELECTED ON A JURY, WOULD YOU EXPECT
8 MR. STONE THEN TO PROVE ANYTHING TO YOU AT ALL?

9 A YES, SIR.

10 Q YOU WOULD? WHAT WOULD YOU EXPECT HIM TO PROVE?

11 A THAT HE SUPPOSED TO HAVE EVIDENCE OR SOMETHING.

12 Q ALL RIGHT. NOW, WHAT I WOULD TELL YOU IF YOU WERE A
13 JUROR, I WOULD TELL YOU AND THE COURT WOULD INSTRUCT YOU
14 THAT IT'S THE STATE'S RESPONSIBILITY TO PROVE THIS CASE. I
15 WOULD INSTRUCT YOU THAT THE DEFENDANT DOESN'T HAVE TO PROVE
16 ANYTHING. WOULD YOU HAVE ANY PROBLEM FOLLOWING THAT
17 INSTRUCTION?

18 A NO, SIR.

19 Q I WOULD TELL YOU THE STATE DOES -- THAT THE DEFENDANT
20 DOESN'T HAVE TO PROVE HIS INNOCENCE. WOULD YOU HAVE ANY
21 PROBLEM WITH THAT?

22 A NO, SIR.

23 Q SO YOU WOULDN'T EXPECT HIM TO PROVE HIS INNOCENCE TO
24 YOU?

25 A IF THE EVIDENCE, YOU KNOW.

1458

1 Q IN OTHER WORDS WHAT I'M SAYING IS THE ONLY PERSON
2 UNDER MY INSTRUCTION THAT HAS ANYTHING TO PROVE IN THIS
3 PROCEEDING IS THE STATE OF SOUTH CAROLINA?

4 A YES.

5 Q YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q BECAUSE THE STATE HAS TO PROVE THE GUILT OF THIS
8 DEFENDANT BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

9 A YES, SIR.

10 Q AND YOU WOULDN'T LOOK TO ANYBODY BUT THE STATE TO
11 PROVE THE CASE, WOULD YOU?

12 A THAT'S RIGHT.

13 Q YOU WOULD?

14 A THAT'S RIGHT.

15 Q THAT'S THE ONLY PERSON YOU WOULD LOOK TO?

16 A YES.

17 Q YOU WOULDN'T EXPECT MR. STONE TO PROVE ANYTHING?

18 A YES, MR. STONE, TOO.

19 Q YOU WOULD EXPECT HIM TO PROVE IT?

20 A YES.

21 Q AND I WOULD TELL YOU HE DOESN'T HAVE TO PROVE
22 ANYTHING UNDER OUR LAW. WOULD YOU HAVE ANY PROBLEM
23 FOLLOWING THAT INSTRUCTION?

24 A NO, SIR.

25 Q SO WOULD YOU EXPECT IF I TOLD YOU HE DIDN'T HAVE TO

1450

1 PROVE ANYTHING, WOULD YOU THEN LOOK TO MR. STONE TO PROVE
2 ANYTHING?

3 A NO, SIR.

4 Q YOU WOULD FOLLOW MY INSTRUCTION?

5 A YES, SIR.

6 Q YOU UNDERSTAND THAT I WOULD ALSO TELL YOU THAT
7 MR. STONE FOR WHATEVER REASON HE CHOSE NOT TO TESTIFY IN
8 THIS MATTER YOU COULDN'T USE THAT AGAINST HIM. I'D TELL
9 YOU THAT. YOU UNDERSTAND THAT?

10 A YES, SIR.

11 Q WOULD YOU HAVE ANY PROBLEMS FOLLOWING THAT
12 INSTRUCTION?

13 A NO, SIR.

14 Q SO YOU WOULDN'T HOLD IT AGAINST HIM?

15 A NO.

16 Q NOT AT ALL, IS THAT RIGHT?

17 A I THINK I WON'T.

18 Q WELL, YOU HAVE TO TELL US?

19 A YES, SIR. CAN I SAY SOMETHING?

20 Q SURE.

21 A I HAVE NEVER WENT THROUGH SOMETHING LIKE THIS BEFORE.

22 Q OH, I UNDERSTAND THAT AND THAT'S WHY I'M ASKING IT
23 BECAUSE I APPRECIATE YOUR HONESTY IN THE MATTER, THE MANNER
24 THAT YOU'RE ANSWERING THESE QUESTIONS AND IF YOU DON'T
25 UNDERSTAND JUST SAY I'M NOT SURE I UNDERSTAND, JUDGE.

1466

1 A SEE THE WAY I FEEL IF SOMEBODY DO A CRIME THEY SHOULD
2 BE PUNISHED FOR IT.

3 Q THAT'S RIGHT.

4 A BUT YOU SUPPOSED TO HAVE EVIDENCE THAT THE PERSON DID
5 IT.

6 Q OKAY. IN OTHER WORDS THE STATE HAS TO PROVE ITS
7 CASE?

8 A THAT'S RIGHT.

9 Q OKAY. I GUESS MY QUESTION IS WOULD YOU -- IF YOU
10 WERE A JUROR WOULD YOU LISTEN TO MY INSTRUCTIONS AND WOULD
11 YOU FOLLOW MY INSTRUCTIONS?

12 A YES, SIR, I WOULD.

13 Q AND IF I TOLD YOU THAT THE DEFENDANT DIDN'T HAVE TO
14 TESTIFY AND YOU CAN'T USE THAT AGAINST HIM, WOULD YOU
15 FOLLOW THAT INSTRUCTION?

16 A YES, SIR.

17 Q ABSOLUTELY?

18 A I WOULD.

19 Q YOU KNOW OF ANYTHING THAT'S HAPPENED IN YOUR LIFE,
20 ANYTHING THAT'S OCCURRED IN YOUR BACKGROUND, ANY STRONG
21 FEELINGS YOU MAY HAVE THAT WOULD IN ANY WAY AFFECT YOUR
22 ABILITY TO LISTEN TO THIS EVIDENCE AND MAKE A DECISION AND
23 YOUR DECISION BE FAIR TO THE STATE AND BE FAIR TO
24 MR. STONE?

25 A YES, I WOULD.

1451

1 Q YOU WOULD DO THAT?

2 A YES, SIR.

3 Q YOU DON'T KNOW OF ANYTHING THAT'S OCCURRED IN YOUR
4 LIFE THAT WOULD PREVENT YOU FROM DOING THAT?

5 A NO, SIR.

6 Q AND AS I UNDERSTAND YOU DON'T HAVE ANY OPINIONS ABOUT
7 WHAT THE VERDICT SHOULD BE IN THIS CASE?

8 A NO, BECAUSE I HAVE TO HEAR EVERYTHING.

9 Q YOU HAVEN'T HEARD IT YET?

10 A THAT'S RIGHT.

11 Q AND WOULD YOU WAIT BEFORE YOU MAKE ANY DECISIONS
12 UNTIL YOU'VE HEARD ALL THE EVIDENCE AND RECEIVED THE LAW?

13 A YES.

14 Q OKAY. AND BASICALLY AM I UNDERSTANDING NOW THAT YOU
15 WOULD HAVE TO HEAR THE EVIDENCE IN THIS CASE AND ALL OF THE
16 EVIDENCE BEFORE YOU MADE ANY DECISIONS ABOUT WHAT TYPE OF
17 PUNISHMENT WOULD BE APPROPRIATE?

18 A THAT'S RIGHT.

19 Q AND YOU KNOW YOU WOULDN'T GET TO THAT STAGE UNLESS
20 THE STATE PROVES MR. STONE IS GUILTY BEYOND A REASONABLE
21 DOUBT. YOU UNDERSTAND THAT?

22 A YES, SIR.

23 Q AND IT'S AT THAT SECOND PHASE THAT YOU'D HEAR SOME
24 ADDITIONAL EVIDENCE AND IT'S FROM ALL THE EVIDENCE THEN
25 THAT YOU WOULD MAKE THAT DECISION AS TO WHAT THE

1462

1 APPROPRIATE PUNISHMENT WOULD BE. YOU UNDERSTAND?

2 A YES, SIR.

3 Q AND WOULD YOU WAIT UNTIL YOU HEARD IT ALL?

4 A YES, SIR.

5 THE COURT: ANSWER ANY QUESTIONS THAT THE STATE
6 MAY HAVE, PLEASE.

7 EXAMINATION BY MR. KOLB:

8 Q MS. STEWART, THERE WERE A COUPLE OF QUESTIONS THAT
9 YOU DIDN'T ANSWER ON THE QUESTIONNAIRE. LET ME ASK YOU
10 ABOUT THOSE NOW. HAVE YOU EVER SERVED AS A JUROR IN A
11 CRIMINAL CASE BEFORE?

12 A NO, BUT I SERVED ONE HERE YEARS AGO.

13 Q YOU SAID HAVE YOU SERVED ON A GRAND JURY AND YOU PUT
14 AN "X." YOU WERE ON THE GRAND JURY FOR A YEAR?

15 A NO, I DON'T KNOW. I'M SORRY, SIR. SEE -- CAN I SAY
16 SOMETHING, SIR?

17 Q YES, MA'AM.

18 A YOU SEE I WORK 16 HOURS A DAY AND I JUST WENT ON AND
19 HURRY UP AND SEND IT BACK IN.

20 Q OKAY. DID YOU ACTUALLY COME UP TO COURT AND SERVE ON
21 THE JURY?

22 A UH-HUH.

23 Q THAT WAS SOME 16 YEARS AGO?

24 A SIXTEEN YEARS AGO?

25 Q YOU SAID YOU SERVED SOME YEARS AGO ON A JURY?

1463

- 1 A YES, I THINK IT WAS THREE OR FOUR YEARS AGO.
- 2 Q OKAY. AND DID YOU ACTUALLY GET ON A JURY AND DECIDE
- 3 A VERDICT?
- 4 A YES, SIR, I DID.
- 5 Q COULD YOU TELL US ABOUT THAT CASE? WHAT KIND OF CASE
- 6 WAS IT?
- 7 A THAT WAS A ROBBERY, BURGLARY.
- 8 Q BURGLARY AND ROBBERY?
- 9 A YES, SIR.
- 10 Q WHAT ENDED UP BEING THE RESULT ON THAT?
- 11 A FIND HIM GUILTY.
- 12 Q THAT WAS HERE IN GEORGETOWN?
- 13 A YES, SIR.
- 14 Q ALL RIGHT. NOW, HAVE YOU EVER BEEN A JUROR IN A
- 15 CIVIL CASE?
- 16 A NO, SIR.
- 17 Q NO. OKAY. AND YOU HAVE NOT BEEN ON A GRAND JURY.
- 18 THE GRAND JURY MEETS IN A DIFFERENT ROOM AND JUST HEARS
- 19 FROM THE POLICE OFFICERS?
- 20 A NO, SIR.
- 21 Q YOU WERE NOT ON THAT. HAVE YOU OR A MEMBER OF YOUR
- 22 IMMEDIATE FAMILY OR A CLOSE PERSONAL FRIEND EVER BEEN
- 23 CHARGED WITH ANY CRIME?
- 24 A CLOSE FRIENDS, YES.
- 25 Q ALL RIGHT. SO YOU HAD A CLOSE FRIEND THAT WAS

1464

- 1 CHARGED WITH SOMETHING?
- 2 A UH-HUH.
- 3 Q COULD YOU TELL US ABOUT THAT?
- 4 A THAT WAS YEARS AGO. HE WAS MURDERED.
- 5 Q WHAT WAS THAT?
- 6 A A FRIEND OF MINE WAS MURDERED.
- 7 Q OKAY. SO HE WAS A VICTIM OF A CRIME?
- 8 A HE'S DEAD.
- 9 Q WHAT'S THAT?
- 10 A HE'S DEAD.
- 11 Q OKAY.
- 12 A A FRIEND OF MINE WAS KILLED.
- 13 Q THIS TIME I WAS ASKING IF ANY CLOSE FRIEND OR A
- 14 MEMBER OF YOUR FAMILY HAD EVER BEEN CHARGED? THAT MEANS
- 15 ARRESTED FOR A CRIME?
- 16 A NO.
- 17 Q SO THE ANSWER TO THAT IS NO?
- 18 A NO.
- 19 Q OKAY. BUT YOU DID HAVE A CLOSE FRIEND THAT WAS
- 20 MURDERED?
- 21 A YES, SIR.
- 22 Q AND WHAT RELATION DID HE HAVE TO YOU?
- 23 A HE JUST WAS A CLOSE FRIEND. HE WAS LIKE A SON TO ME.
- 24 Q DID THAT CASE GET SOLVED?
- 25 A YES, SIR.

1465

- 1 Q DID THEY ARREST SOMEBODY?
- 2 A NO. HE'S STILL WALKING AROUND.
- 3 Q YOU MEAN THEY FOUND OUT WHO DID IT?
- 4 A YES, SIR.
- 5 Q AND DID THEY EVER CHARGE HIM?
- 6 A NO, SIR.
- 7 Q NEVER CHARGED HIM EVEN THOUGH THEY FOUND OUT WHO IT
- 8 WAS?
- 9 A NO, SIR.
- 10 Q DO YOU UNDERSTAND WHY THAT WAS?
- 11 A NO, SIR, AND I STILL DON'T TODAY.
- 12 Q WELL, MY NEXT QUESTION WAS GOING TO BE DO YOU FEEL
- 13 LAW ENFORCEMENT TREATED YOU AND YOUR FRIEND OR THE FAMILY
- 14 AND FRIENDS OF THAT VICTIM DO YOU FEEL LIKE YOU WERE
- 15 TREATED RIGHT?
- 16 A NO, SIR.
- 17 Q THAT LAW ENFORCEMENT DID RIGHT IN THAT CASE?
- 18 A NO, SIR.
- 19 Q AND THAT WAS HERE IN GEORGETOWN?
- 20 A YES, SIR, IN GEORGETOWN COUNTY.
- 21 Q WHAT LAW ENFORCEMENT AGENCY WAS RESPONSIBLE FOR THAT
- 22 CASE?
- 23 A SIR, I DON'T KNOW. THAT WAS A LONG TIME AGO.
- 24 Q WHERE DID THE MURDER OCCUR?
- 25 A OVER AT YAUHANNA.

146C

- 1 Q AT WHERE?
- 2 A YAUHANNAH.
- 3 Q OKAY. SO THAT'S OUT IN THE COUNTY. THAT'S NOT IN
- 4 THE CITY LIMITS. YOU THINK THEY FOUND OUT WHO DID IT BUT
- 5 THEY NEVER CHARGED HIM?
- 6 A NO. HE CAME INTO COURT AND THAT'S ALL IT WAS.
- 7 Q COULD YOU TELL US YOUR FRIEND'S NAME?
- 8 A WHO IS DEAD?
- 9 Q YES, MA'AM.
- 10 A ERNEST HICKS.
- 11 Q ERNEST DIXON?
- 12 A ERNEST HICKS.
- 13 Q OKAY. NOW, MS. STEWART, WOULD YOU LET THE --
- 14 BASICALLY THAT CASE WAS NOT HANDLED PROPERLY. WOULD YOU
- 15 LET THE FACT THAT THAT CASE NOT HAVING BEEN HANDLED
- 16 PROPERLY HAVE ANYTHING TO DO OR INFLUENCE YOUR DECISION IN
- 17 THE HANDLING OF THIS CASE?
- 18 A NO, SIR.
- 19 Q NOW, THE GUY WHO KILLED ERNEST DIXON, EXCUSE ME
- 20 ERNEST HICKS, DID HE COME TO COURT?
- 21 A YES, SIR.
- 22 Q SO HE DID COME TO COURT?
- 23 A YES, SIR.
- 24 Q WHAT HAPPENED TO HIM IN COURT?
- 25 A I DON'T KNOW. I WAS WORKING, SIR.

1457

1 Q BUT THE NEXT THING YOU KNEW HE WAS OUT ON THE STREET?

2 A THAT'S RIGHT.

3 Q SO HE EITHER GOT FOUND NOT GUILTY OR GOT PROBATION OR
4 SOMETHING?

5 A RIGHT.

6 Q WHAT WAS THE DEFENDANT'S NAME, THE ONE THAT SHOULD
7 HAVE BEEN CHARGED WITH KILLING ERNEST HICKS?

8 A JIMMY ROGERS.

9 Q JIMMY ROGERS?

10 A YES, SIR.

11 Q YOU KNOW WHERE HE LIVES?

12 A WHERE THE OTHER THING OCCURRED, SIR, YAUHANNAH.

13 Q OKAY. YOU INDICATED TO THE JUDGE THAT IF YOU WERE ON
14 A JURY THAT IN A DEATH PENALTY TRIAL WAS DECIDING THE
15 PUNISHMENT AND YOU -- IF THE YOU AND THE OTHER MEMBERS OF
16 THE JURY DECIDED THE DEATH PENALTY WAS THE APPROPRIATE
17 PUNISHMENT, THAT YOU COULD RETURN A VERDICT FOR THE DEATH
18 PENALTY?

19 A YES, SIR.

20 Q ALL RIGHT. AND IN THAT CASE COULD YOU SIGN YOUR NAME
21 TO A FORM SENTENCING THAT PERSON TO THE DEATH PENALTY?

22 A IF I FIND HIM GUILTY, I THINK SO, SIR.

23 MR. KOLB: ALL RIGHT. THANK YOU, MA'AM.

24 THE COURT: MR. LITTLEJOHN.

25 MR. LITTLEJOHN: THANK YOUR HONOR.

1468

1 EXAMINATION BY MR. LITTLEJOHN:

2 Q MS. STEWART?

3 A YES, SIR.

4 Q WHEN YOU WERE GIVEN THE THREE TYPES OF JURORS ON THAT
5 PIECE OF PAPER IN FRONT OF YOU, OBVIOUSLY WHEN YOU CAME IN
6 YOU HAD SELECTED THE DESCRIPTION OF A JUROR FOR YOURSELF
7 THAT BEING ONE THAT FEELS THAT THE DEATH PENALTY SHOULD BE
8 GIVEN IN EACH AND EVERY CASE. I'M READING FROM PARAGRAPH
9 NUMBER ONE?

10 A YES, I KNOW.

11 Q IS THAT AN OPINION THAT YOU'VE HELD FOR SOME TIME?

12 A NO.

13 Q YOU'VE NOT. IS THAT SOMETHING YOU JUST THOUGHT OVER
14 OR. . .

15 A SIR, I NEVER BEEN IN MURDER TRIAL BEFORE IN MY LIFE.

16 Q I UNDERSTAND.

17 A BUT BY THE WAY I FEEL IF SOMEBODY COMMIT A CRIME THEY
18 SHOULD BE PUNISHED FOR IT.

19 Q OKAY.

20 A OKAY.

21 Q AND DO YOU THINK THEY SHOULD BE PUNISHED
22 APPROPRIATELY FOR IT?

23 A YES, IF YOU MURDER SOMEBODY.

24 Q OKAY. AND DO YOU THINK THAT IF SOMEBODY MURDERS
25 SOMEBODY THAT THE APPROPRIATE PUNISHMENT IS THE DEATH

1465

1 PENALTY?

2 A YES, SIR.

3 Q AND IS THAT REGARDLESS OF THE CIRCUMSTANCES OR THE
4 INSTRUCTIONS THAT THE COURT GIVES YOU? DO YOU STILL FEEL
5 THAT THE DEATH PENALTY SHOULD BE WARRANTED?

6 A RIGHT.

7 Q OKAY. COULD YOU -- I GUESS WHAT YOU'RE TELLING ME IS
8 YOU FEEL SO STRONGLY ABOUT IT THAT EVEN THOUGH YOU WERE
9 PRESENTED WITH EVIDENCE WHICH MIGHT TEND TO GO TOWARD A
10 LIFE SENTENCE OR IF YOU WERE INSTRUCTED ON THE LAW THAT
11 MIGHT TEND TO MAKE YOU WANT TO CONSIDER A LIFE SENTENCE
12 THAT YOUR VIEWS ON THE DEATH PENALTY WOULD OVERRIDE THAT.
13 IS THAT WHAT YOU'RE TELLING US?

14 A SIR, THE WAY I FEEL IF SOMEBODY COMMIT A CRIME
15 ESPECIALLY IF THEY KILL SOMEONE ---

16 Q RIGHT.

17 A --- THEY SHOULD HAVE THE ELECTRIC CHAIR. THEN IT'LL
18 STOP ALL THIS KILLING.

19 Q OKAY.

20 A THAT'S THE WAY I FEEL.

21 Q DO YOU THINK THAT FEELING WOULD INTERFERE WITH YOUR
22 ABILITY TO HEAR THE EVIDENCE AND HEAR THE LAW?

23 A NO, SIR.

24 Q AND ARRIVE AT A VERDICT?

25 A NO, SIR.

1470

- 1 Q YOU DON'T THINK IT WOULD?
- 2 A NO, SIR.
- 3 Q LET ME JUST ASK A FEW MORE QUESTIONS IN THAT REGARD,
- 4 MS. STEWART. WOULD THE DEATH PENALTY BE SOMETHING THAT
- 5 WOULD BE LIKE IN THE BACK OF YOUR HEAD AS YOU WERE
- 6 CONSIDERING WHETHER A PERSON SHOULD BE GIVEN THE DEATH
- 7 PENALTY OR LIFE IMPRISONMENT? IS THIS SOMETHING THAT YOU
- 8 WOULD BE THINKING ABOUT REGARDLESS OF THE CIRCUMSTANCES?
- 9 A IF I HEAR ALL THE EVIDENCE, I THINK SO.
- 10 Q OKAY. DO YOU THINK THAT WOULD INTERFERE WITH YOUR
- 11 ABILITY TO CONSIDER A LIFE SENTENCE?
- 12 A I DON'T THINK SO.
- 13 Q YOU DON'T THINK SO. MS. STEWART, DO YOU HAVE ANY
- 14 FRIENDS OR ACQUAINTANCES OR RELATIVES THAT ARE POLICE
- 15 OFFICERS?
- 16 A YES, SIR.
- 17 Q YOU DO? WHO IS THAT IF YOU WOULD TELL ME?
- 18 A WHAT THE POLICEMAN?
- 19 Q UH-HUH.
- 20 A I KNOW THE SHERIFF.
- 21 Q SHERIFF OF GEORGETOWN COUNTY?
- 22 A YES, SIR.
- 23 Q OKAY. HOW ABOUT OTHER LAW ENFORCEMENT OFFICERS?
- 24 A MR. GRAYDON AND MR. POPE.
- 25 Q OKAY. IS THAT ABOUT IT?

1471

1 A I THINK SO.

2 Q OKAY. NOW, IN THIS CASE THE DEFENDANT OVER HERE IS
3 CHARGED WITH THE MURDER OF A POLICE OFFICER?

4 A OH, GOD.

5 Q WOULD THAT FACT OR THE FACT THAT YOU HAVE FRIENDS
6 THAT ARE IN LAW ENFORCEMENT PREVENT YOU FROM CONSIDERING
7 HIS HONOR'S INSTRUCTIONS AND CONSIDERING THE EVIDENCE IN
8 THE CASE AND IN ARRIVING AT AN IMPARTIAL VERDICT? WOULD
9 THAT INTERFERE WITH THAT?

10 A NO, SIR.

11 Q MS. STEWART, YOU INDICATED EARLY ON AS HIS HONOR WAS
12 QUESTIONING YOU THAT YOU HAD SOME BELIEF THAT THE DEFENDANT
13 PERHAPS SHOULD HAVE TO PROVE SOMETHING IN THIS CASE. DO
14 YOU FEEL LIKE HE HAS TO PROVE SOMETHING?

15 A YOU KNOW, IF YOU TELL, YOU KNOW, IF HE'S RIGHT OR
16 WRONG WHAT HE DID. SEE I DON'T KNOW ALL THE EVIDENCE
17 AGAINST HIM SO I JUST CAN'T. . .

18 Q OKAY. WELL, COULD YOU FOLLOW THE JUDGE'S -- IF THE
19 JUDGE TOLD YOU, YOU WERE ONLY TO CONSIDER WHAT THE STATE
20 PROVED AGAINST HIM, COULD YOU FOLLOW THAT INSTRUCTION ---

21 A YES, I WOULD.

22 Q --- OR WOULD YOU STILL EXPECT HIM TO PROVE SOMETHING
23 TO YOU?

24 A NO. I FOLLOW THE JUDGE..

25 Q YOU FOLLOW THE JUDGE?

1472

1 A YES, SIR.

2 MR. LITTLEJOHN: OKAY.

3 I BELIEVE THAT'S ALL I HAVE. IF YOU'D GIVE ME
4 JUST A MOMENT, JUDGE.

5 (PAUSE)

6 MR. LITTLEJOHN: NO FURTHER QUESTIONS.

7 EXAMINATION BY THE COURT:

8 Q MS. STEWART, LET ME BE SURE. THOSE EXPERIENCES THAT
9 YOU'VE DISCUSSED INVOLVING YOUR FRIEND AND FEELINGS ABOUT
10 LAW ENFORCEMENT INVOLVED IN THAT. THAT WOULD NOT INFLUENCE
11 YOU AT ALL IN THIS CASE; IS THAT CORRECT?

12 A THAT'S RIGHT.

13 Q THAT WAS SEPARATE AND YOU CAN KEEP IT SEPARATE?

14 A YES, SIR.

15 Q THE FACT THAT YOU SERVED ON A JURY IN THE PAST YOU
16 UNDERSTAND THIS WOULD BE A SEPARATE CASE?

17 A YES, SIR.

18 Q YOU WOULDN'T LET THAT EXPERIENCE INFLUENCE YOU AT ALL
19 EITHER?

20 A NO, SIR.

21 Q VERY WELL. YOU UNDERSTAND THAT I'M REQUIRED BY LAW
22 TO ASK YOU THESE QUESTIONS?

23 A YES, SIR.

24 Q YOU AREN'T TO INFER ANYTHING ABOUT MR. STONE'S GUILT
25 BECAUSE I'VE ASKED YOU CERTAIN QUESTIONS. YOU UNDERSTAND?

1476

1 A YES, SIR.

2 THE COURT: THANK YOU. PLEASE STEP DOWN. IF
3 YOU'LL STEP RIGHT OUT THAT DOOR, WE'LL BE WITH YOU IN JUST
4 A MOMENT.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JUROR.)

7 THE COURT: SAYS THE STATE?

8 MR. KOLB: QUALIFIED, YOUR HONOR.

9 THE COURT: SAYS THE DEFENDANT?

10 MR. LITTLEJOHN: YOUR HONOR, WE MOVE THAT SHE BE
11 DISQUALIFIED. WE THINK THAT HER ANSWERS TO THE QUESTIONS
12 WERE AMBIGUOUS IF NOT CONTRADICTORY ON EVERY IMPORTANT
13 QUESTION THAT WAS ASKED TO HER. SHE CAME IN HERE AS NUMBER
14 ONE AND THEN SHE SUDDENLY BECAME A NUMBER THREE AND WE JUST
15 THINK HER ANSWERS ARE INCONSISTENT AND SHE SHOULD BE
16 DISQUALIFIED.

17 THE COURT: VERY WELL. I FIND THAT MS. STEWART
18 IS AN INDIVIDUAL WHO APPARENTLY HAS A HIGH SCHOOL
19 EDUCATION. SHE IS AN INDIVIDUAL THAT SEVERAL TIMES SAID
20 THAT SHE WAS NOT FAMILIAR WITH THESE PROCEEDINGS, TECHNICAL
21 ASPECTS OF THESE PROCEEDINGS. I FIND THAT MS. STEWART WHEN
22 DISCUSSING IT WITH HER THE ONE THING THAT CAME ACROSS
23 CONSTANTLY WAS THAT SHE WOULD FOLLOW THE INSTRUCTIONS OF
24 THE COURT. SHE WOULD APPLY THE LAW TO THE FACTS AS SHE
25 DETERMINED THOSE FACTS TO BE.

1474

1 SHE OVER AND OVER INDICATED SHE HAD NOT
2 PREDETERMINED OR MADE ANY PREJUDGMENTS IN THIS MATTER. THE
3 FACT THAT SHE MAY BE INCLINED TO THE DEATH PENALTY SHE
4 INDICATED THAT SHE COULD CONSIDER BOTH AND WOULD CONSIDER
5 BOTH. IT WOULD DEPEND ON THE FACTS AND ALTHOUGH SHE DID
6 EQUIVOCATE I DO FIND THAT SHE IS QUALIFIED AND WOULD NOT
7 IMPAIR HER ABILITY TO BE -- CONSIDER ALL.

8 BRING HER IN.

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JUROR.)

11 THE COURT: MS. STEWART, I'M GOING TO HAND YOU A
12 LETTER THAT'LL GIVE YOU SOME ADDITIONAL INSTRUCTIONS. YOU
13 HAVE BEEN SELECTED AS A POTENTIAL JUROR IN THIS MATTER
14 WHICH MEANS THAT YOU ARE PART OF THE GROUP THAT WE ARE
15 GOING TO SELECT THE 12 JURORS FROM ON WEDNESDAY AFTERNOON
16 AT FIVE O'CLOCK. YOU WILL NEED TO BE BACK IN THIS
17 COURTROOM AT FIVE O'CLOCK ON WEDNESDAY. PLEASE UNTIL THEN
18 DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT ALLOW ANYONE
19 TO TALK WITH YOU AND CERTAINLY DON'T READ ANY NEWSPAPER
20 ACCOUNTS ABOUT IT. NOW, WHEN YOU COME WEDNESDAY YOU MAY BE
21 SELECTED; YOU MAY NOT BE BUT YOU NEED TO BRING SUFFICIENT
22 CLOTHING TO TAKE CARE OF YOUR NEEDS FOR A WEEK.

23 THE JUROR: OKAY.

24 THE COURT: OKAY. THANK YOU VERY MUCH. WE 'LL
25 SEE YOU WEDNESDAY AFTERNOON AT FIVE.

1475

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JUROR.)

3 THE COURT: IS THE 4:50 HERE? ARE THEY HERE?
4 Y'ALL READY TO KEEP ON?

5 KRYSTAL M. RADCLIFFE, BEING
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
7 EXAMINATION BY THE COURT:

8 Q GOOD AFTERNOON, MS. RADCLIFFE. HOW ARE YOU?

9 A OH, I'M DOING ALL RIGHT, GOT A HEADACHE.

10 Q TODAY I HAD MENTIONED TO YOU EARLIER THAT THERE
11 REALLY ARE NO RIGHT OR WRONG ANSWERS TO ANY OF THESE
12 QUESTIONS THAT WE'RE GOING TO ASK YOU. ALL WE ASK IS THAT
13 YOU BE TRUTHFUL IN YOUR RESPONSES. OKAY?

14 A OKAY.

15 Q SINCE WE LAST MET HAVE YOU READ ANYTHING OR TALKED TO
16 ANYBODY ABOUT THIS CASE?

17 A NO.

18 Q ANYBODY TALK WITH YOU ABOUT IT?

19 A HUH-UH.

20 Q DO YOU HAVE ANY PRIOR KNOWLEDGE OF THIS CASE?

21 A NO.

22 Q OTHER THAN WHAT WE SHARED TODAY?

23 A NO, I DON'T.

24 Q SO HAVE YOU FORMED ANY OPINIONS ABOUT IT?

25 A NO.

1476

1 Q NONE?

2 A NONE.

3 Q HAVE YOU HAD A CHANCE TO REVIEW THAT SHEET THAT HAS

4 THE THREE TYPES OF JURORS?

5 A YES, SIR.

6 Q OF THE THREE INDICATED ON THAT SHEET, WHICH ONE BEST

7 DESCRIBES YOU?

8 A THE THIRD ONE.

9 Q THE THIRD ONE?

10 A UH-HUH.

11 Q THAT MEANS AM I TO UNDERSTAND THAT SOMETIMES GIVEN

12 CERTAIN CIRCUMSTANCES YOU COULD FIND THAT THE DEATH PENALTY

13 WAS APPROPRIATE AND SOMETIMES DEPENDING ON THE

14 CIRCUMSTANCES LIFE IN PRISON WOULD BE APPROPRIATE; IS THAT

15 RIGHT?

16 A YES, SIR.

17 Q BUT IT WOULD DEPEND ON THE CASE?

18 A YES, SIR.

19 Q YOU UNDERSTAND AS I TOLD YOU TODAY THAT THE PERSON

20 CHARGED WITH A CRIMINAL OFFENSE, THAT WOULD INCLUDE

21 MR. STONE, IS NEVER REQUIRED TO PROVE THEIR INNOCENCE. YOU

22 UNDERSTAND?

23 A UH-HUH.

24 Q THAT'S CALLED THE PRESUMPTION OF INNOCENCE. DO YOU

25 HAVE ANY PROBLEM WITH THAT PRINCIPLE OF LAW?

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1477

1 A NO, SIR.

2 Q WOULD YOU HAVE ANY PROBLEM APPLYING THAT IF YOU WERE
3 A JUROR IN THIS CASE?

4 A I DON'T THINK SO.

5 Q WELL, YOU SAY YOU DON'T THINK SO. DO YOU BELIEVE
6 THAT SOMEONE CHARGED WITH A CRIMINAL OFFENSE HAS TO PROVE
7 ANYTHING TO YOU?

8 A NOT REALLY THEMSELVES MAYBE THE EVIDENCE.

9 Q OKAY. WELL, THE EVIDENCE OF COURSE IS SOMETHING THAT
10 YOU WOULD CONSIDER. I'M NOT ASKING YOU TELL ME HOW YOU
11 WOULD RULE ON CERTAIN EVIDENCE. I'M JUST ASKING YOU
12 WHETHER OR NOT WOULD YOU HAVE ANY PROBLEM FOLLOWING THE
13 COURT'S INSTRUCTION THAT THE DEFENDANT IN THIS CASE,
14 MR. STONE, IS NOT REQUIRED TO PROVE ANYTHING TO YOU AND
15 CERTAINLY NOT REQUIRED TO PROVE HIS INNOCENCE. WOULD YOU
16 HAVE ANY PROBLEM FOLLOWING THAT?

17 A NO, I WOULDN'T.

18 Q IN FACT THOUGH BUT IF MR. STONE SHOULD NOT TESTIFY IN
19 THIS MATTER FOR WHATEVER REASON, I WOULD INSTRUCT YOU THAT
20 YOU COULD NOT USE THAT AGAINST HIM AT ALL. WOULD YOU HAVE
21 ANY PROBLEM FOLLOWING THAT INSTRUCTION?

22 A NO.

23 Q SO IF YOU WERE ON THE JURY AND SAY MR. STONE DID NOT
24 TESTIFY, YOU WOULD NOT CONSIDER IT AGAINST HIM IN ANY WAY?

25 A NO, I WOULDN'T.

1475

1 Q I WOULD TELL YOU -- FURTHER INSTRUCT YOU -- THAT IT'S
2 THE STATE'S RESPONSIBILITY TO PROVE ITS CASE BEYOND A
3 REASONABLE DOUBT. YOU UNDERSTAND THAT?

4 A YES, SIR.

5 Q WOULD YOU THEREFORE LOOK TO THE STATE TO PROVE ITS
6 CASE?

7 A YES, I WOULD.

8 Q AND YOU WOULD NOT EXPECT MR. STONE TO PROVE ANYTHING?

9 A NO.

10 Q UNDER THOSE INSTRUCTIONS, IS THAT RIGHT?

11 A THAT'S RIGHT.

12 Q OKAY. NOW, YOU UNDERSTAND THAT THIS CASE INVOLVES
13 BASICALLY A TRIAL WITHIN A TRIAL OR TWO TRIALS REALLY
14 WITHIN THE TRIAL. THE FIRST PHASE IS GOING TO DEAL WITH
15 THE SOLE ISSUE OF THE GUILT OF MR. STONE OR WHETHER HE'S
16 GUILTY OR NOT GUILTY. YOU UNDERSTAND?

17 A YES.

18 Q AND BASED ON THE JURY'S VERDICT WHETHER OR NOT WE
19 WOULD GO INTO -- IT WOULD DEPEND ON THE JURY'S VERDICT IN
20 THAT AS TO WHETHER OR NOT WE WENT INTO A SECOND PHASE, THE
21 PENALTY PHASE. YOU UNDERSTAND THAT?

22 A YES, SIR.

23 Q IN THE SECOND PHASE YOU WOULD HEAR ADDITIONAL
24 EVIDENCE THAT YOU DIDN'T HEAR IN THE FIRST PHASE,
25 MITIGATING CIRCUMSTANCES, AGGRAVATING CIRCUMSTANCES. YOU

1478

1 UNDERSTAND?

2 A UH-HUH.

3 Q WOULD YOU KEEP AN OPEN MIND IN THAT SECOND PHASE?

4 A I WOULD.

5 Q YOU WOULD -- WOULD YOU MAKE A DECISION ON THE
6 APPROPRIATE PENALTY IN ANY WAY BEFORE YOU HAD HEARD ALL OF
7 THE EVIDENCE AND RECEIVED THE LAW?

8 A NO, I WOULD WAIT UNTIL I HEARD IT ALL.

9 Q YOU'D WAIT TILL YOU HEARD IT ALL?

10 A UH-HUH.

11 Q AND AT THAT TIME IT'S MY UNDERSTANDING FROM WHAT
12 YOU'VE TOLD ME ABOUT YOUR TYPE YOU COULD THEN GO BACK WITH
13 THE OTHER JURORS AND CONSIDER BOTH DEATH PENALTY AND LIFE
14 IMPRISONMENT AND MAKE A DECISION WHICH ONE YOU FELT ON THE
15 EVIDENCE WAS APPROPRIATE?

16 A YES, SIR.

17 Q BASED ON THE EVIDENCE?

18 A I COULD.

19 Q YOU COULD?

20 A YES, SIR.

21 Q YOU KNOW OF ANYTHING IN YOUR BACKGROUND THAT WOULD
22 AFFECT YOUR ABILITY IN ANY WAY BE IT YOUR EXPERIENCES IN
23 LIFE, BE IT SOME STRONG PERSONAL PHILOSOPHIES YOU MAY HAVE,
24 OR ANYTHING THAT WOULD AFFECT YOUR ABILITY TO BE FAIR TO
25 THE STATE AND BE FAIR TO MR. STONE?

1480

1 A I COULD BE FAIR.

2 Q YOU COULD BE FAIR?

3 A UH-HUH.

4 Q AND WOULD BE FAIR?

5 A I WOULD BE.

6 THE COURT: ALL RIGHT. PLEASE ANSWER ANY
7 QUESTIONS THE STATE MAY HAVE.

8 EXAMINATION BY MR. HILLIARD:

9 Q MS. RADCLIFFE, MY NAME IS JOHN HILLIARD. WE'RE GOING
10 TO ASK YOU A FEW MORE QUESTIONS. IS YOUR HEADACHE GETTING
11 WORSE OR IS IT ABOUT THE SAME AS IT WAS?

12 A IT'S ABOUT THE SAME.

13 Q IN ANSWERING THE JUDGE'S QUESTIONS.

14 MR. BABB: YOUR HONOR, MAY WE APPROACH THE BENCH
15 JUST A MOMENT?

16 THE COURT: YES, SIR.

17 (THEREUPON, THERE WAS A BENCH CONFERENCE WITHIN THE
18 PRESENCE OF THE JUROR BUT OUT OF THE HEARING OF THE JUROR.)

19 MR. HILLIARD: THANK YOUR HONOR.

20 THE COURT: YOU MAY CONTINUE, MR. HILLIARD.

21 EXAMINATION BY MR. HILLIARD:

22 Q WHEN YOU WERE ANSWERING THE JUDGE'S QUESTIONS
23 EARLIER, YOU INDICATED THAT YOU WOULD GIVE CONSIDERATION TO
24 WHAT IT WAS THAT YOU HEARD AND WOULD FOLLOW THE
25 INSTRUCTIONS OF THE JUDGE IN GIVING CONSIDERATION TO THE

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1 EVIDENCE AND AT THE CONCLUSION OF BOTH PARTS, IF WE GOT
2 THROUGH THE SECOND PART, THAT YOU COULD GIVE CONSIDERATION
3 TO BOTH CHOICES AS TO THE PUNISHMENT; IS THAT CORRECT?

4 A YES, SIR.

5 Q SO BASICALLY WHAT YOU'RE TELLING US ALL IS THAT IN
6 THE EVENT THE SOLICITOR WERE TO PROVE TO YOU FACTS BAD
7 ENOUGH THAT YOU COULD SIGN YOUR NAME TO A PAPER WHICH WOULD
8 GIVE THE DEATH PENALTY TO THE PERSON THAT'S IN THE
9 COURTROOM HERE CHARGED WITH THE CRIME; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q YOU DON'T HAVE ANY QUESTION ABOUT THAT, NO QUALMS
12 ABOUT THAT?

13 A NO.

14 Q THANK YOU VERY MUCH.

15 A YOU'RE WELCOME.

16 THE COURT: MR. BABB.

17 MR. BABB: THANK YOUR HONOR.

18 THE COURT: YES, SIR.

19 EXAMINATIONBY MR. BABB:

20 Q MS. RADCLIFFE, I BELIEVE I UNDERSTOOD YOU CORRECTLY
21 BUT YOU TOLD HIS HONOR THAT YOU HAD NOT HEARD ANYTHING
22 ABOUT THIS CASE BEFORE COMING HERE TODAY?

23 A I HAVEN'T.

24 Q DOES THE FACT THAT IT HAS BEEN TERMED A DEATH PENALTY
25 CASE, DOES THE FACT THAT THE STATE IS SEEKING THE

1482

1 DEFENDANT'S DEATH, DOES THAT MAKE YOU MORE LIKELY TO HAVE
2 ONE OPINION OR ANOTHER AS TO HIS GUILT?

3 A NO, SIR, IT DOESN'T. IT BOTHERS ME A LITTLE. I'VE
4 NEVER, YOU KNOW, DONE ANYTHING LIKE THIS BUT, NO.

5 Q IT BOTHERS YOU?

6 A A LITTLE, YES.

7 Q DOES IT MAKE YOU THINK THAT HE MAY BE MORE LIKELY TO
8 HAVE COMMITTED THE CRIME THAT THEY'RE SEEKING HIS DEATH
9 FOR?

10 A NO.

11 Q WHEN THE JUDGE WAS TALKING TO YOU, YOU HESITATED A
12 BIT WHEN HE WAS TALKING ABOUT THE BURDEN OF PROOF AND WHAT
13 A DEFENDANT MUST PROVE AND YOU SAID MAYBE NOT THE DEFENDANT
14 BUT THE EVIDENCE AND THAT WAS IN THE CONTEXT OF HIS PROVING
15 HIS INNOCENCE. IF THE STATE HAS PRESENTED EVIDENCE THAT
16 TENDS TO ESTABLISH GUILT BUT IT FALLS SHORT BEYOND A
17 REASONABLE DOUBT OR IF IT'S ONLY CIRCUMSTANTIAL EVIDENCE,
18 DOESN'T INCLUDE EVERY OTHER REASONABLE HYPOTHESIS AND THE
19 DEFENDANT PUTS UP NO EVIDENCE, COULD YOU STILL FIND HIM
20 INNOCENT?

21 A IF THE EVIDENCE WAS STRONG ENOUGH.

22 Q I'M SORRY, MA'AM. I COULDN'T -- MY EARS ARE KIND OF
23 STOPPED UP.

24 A MINE ARE, TOO. IF THE EVIDENCE WOULD SHOW -- THE
25 CASE THAT THE STATE PROVED WAS STRONG ENOUGH AND I FELT HE

1483

1 WAS GUILTY, YES.

2 Q OKAY. IT TENDED TOWARDS GUILT BUT IT FELL SHORT OF
3 BEYOND A REASONABLE DOUBT OR IN THE CASE OF CIRCUMSTANTIAL
4 EVIDENCE DIDN'T EXCLUDE ALL OTHER REASONABLE HYPOTHESIS AND
5 THE DEFENDANT PUTS UP NO EVIDENCE WHATSOEVER, DOES NOT TAKE
6 THE STAND, PUTS UP NOTHING COULD YOU ACQUIT HIM?

7 MR. HILLIARD: YOUR HONOR, I APOLOGIZE. I'M NOT
8 SURE I UNDERSTAND THE QUESTION.

9 THE COURT: I'M GOING TO ASK IF SHE -- YOU
10 UNDERSTAND HIS QUESTION.

11 THE JUROR: SORT OF.

12 THE COURT: SORT OF.

13 THE JUROR: NOT REALLY.

14 THE COURT: WELL, WHY DON'T YOU ADD THAT IF I
15 INSTRUCT THEM -- IF I GIVE HER INSTRUCTION TO THAT EFFECT,
16 COULD SHE FOLLOW THAT INSTRUCTION? YOU COUCHED IT IN SUCH
17 A FASHION THAT REALLY AND TRULY NEEDS TO BE ADDED. IT
18 NEEDS TO BE CLARIFIED, MR. BABB.

19 MR. BABB: ALL RIGHT, SIR.

20 MR. HILLIARD: THANK YOUR HONOR.

21 BY MR. BABB:

22 Q IF THE STATE PRESENTS EVIDENCE AND THEN THE JUDGE HAS
23 GIVEN YOU THE LAW, TELLS YOU TO CONSIDER THAT EVIDENCE, IF
24 IN YOUR VIEW THE EVIDENCE THE STATE HAS PRESENTED FALLS
25 SHORT OF ESTABLISHING GUILT BEYOND A REASONABLE DOUBT AND

1484

1 THE DEFENDANT HAS PUT UP NO EVIDENCE, HAS NOT TAKEN THE
2 STAND, NOTHING HAS BEEN PRESENTED ON HIS BEHALF, GIVEN THE
3 JUDGE'S INSTRUCTIONS, COULD YOU ACQUIT THAT DEFENDANT OR
4 MUST YOU FIND HIM GUILTY?

5 A I COULD FIND HIM NOT GUILTY.

6 Q EVEN THOUGH NO EVIDENCE IS PUT UP?

7 A UH-HUH.

8 THE COURT: YOU NEED TO ANSWER YES.

9 THE JUROR: YES.

10 THE COURT: BECAUSE WE NEED TO MAKE A RECORD OF
11 THIS.

12 THE JUROR: ALL RIGHT.

13 THE COURT: THANK YOU.

14 BY MR. BABB:

15 Q DO YOU HAVE ANY -- I BELIEVE YOU ANSWERED THAT YOU
16 HAD NO FAMILY MEMBERS THAT WERE MEMBERS OF LAW ENFORCEMENT?

17 A I DON'T.

18 Q ANY CLOSE PERSONAL FRIENDS OR ACQUAINTANCES?

19 A NO.

20 Q AND YOU WORK AT A REVCO, IS THAT. . .

21 A UH-HUH.

22 Q IT'S LIKE A DRUG STORE?

23 A (NODDED HEAD.)

24 Q HAVE YOU OR ANY OF YOUR CLOSE FRIENDS IN THAT REVCO
25 BEEN THE VICTIM OF ANY SORT OF CRIME, ROBBERY, ANYTHING OF

1485

1 THAT NATURE?

2 A NO, SIR.

3 Q DOESN'T HAVE TO BE AT REVCO BUT ANYWHERE. DO YOU
4 KNOW ANYONE THAT HAS BEEN?

5 A NOT THAT I'M AWARE OF.

6 MR. BABB: OKAY.

7 NOTHING FURTHER, YOUR HONOR.

8 EXAMINATION BY THE COURT:

9 Q LET ME ASK YOU SOME QUESTIONS. OF COURSE IF YOU WERE
10 SELECTED AS A JUROR, THIS JURY IS GOING TO BE SEQUESTERED.
11 THE STATE WILL PROVIDE HOUSING AND FOOD AND TRANSPORTATION
12 FOR YOU DURING THE DURATION OF THE TRIAL. I REALIZE THAT
13 MAY BE AN INCONVENIENCE BUT WOULD THAT INFLUENCE OR AFFECT
14 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS MATTER?

15 A NO, IT WOULDN'T.

16 Q YOU COULD SET ASIDE ANY INCONVENIENCE AND FOCUS ON
17 THE TRIAL?

18 A I COULD.

19 THE COURT: THANK YOU. PLEASE IF YOU'D STEP DOWN
20 AND STEP OUT THAT DOOR, WE'LL BE WITH YOU IN JUST --EXCUSE
21 ME. ANY QUESTIONS?

22 MR. GILLIARD: NO, SIR, YOUR HONOR.

23 THE COURT: ANY ADDITIONAL QUESTIONS, MR. BABB?

24 MR. BABB: PARDON?

25 THE COURT: ANY ADDITIONAL QUESTIONS?

1486

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

2 THE COURT: THANK YOU.

3 WOULD YOU STEP OUT THE DOOR, PLEASE?

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JUROR.)

6 MR. HILLIARD: SHE'S QUALIFIED.

7 MR. BABB: QUALIFIED, YOUR HONOR.

8 THE COURT: VERY WELL.

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JUROR.)

11 THE COURT: MS. RADCLIFFE, I HOPE YOUR HEAD FEELS
12 BETTER. I'LL GIVE YOU ANOTHER PIECE OF PAPER. IT HAS SOME
13 ADDITIONAL INSTRUCTIONS. YOU HAVE BEEN QUALIFIED AS A
14 POTENTIAL JUROR IN THIS MATTER. THAT MEANS THAT YOU ARE
15 PART OF THE POOL AND FROM THAT POOL WE WILL SELECT THE 12
16 JURORS AND ALTERNATES THAT WILL TRY THIS CASE. THAT WILL
17 TAKE PLACE ON WEDNESDAY AFTERNOON AT FIVE O'CLOCK. I'LL
18 NEED FOR YOU TO BE BACK IN THIS COURTROOM THEN AT FIVE
19 O'CLOCK ON WEDNESDAY AFTERNOON. PLEASE, DURING THAT TIME
20 DO NOT DISCUSS THIS MATTER WITH ANYONE. DO NOT ALLOW
21 ANYONE TO TALK WITH YOU. DON'T READ ANY NEWS ACCOUNTS
22 ABOUT IT. DON'T WATCH ANY NEWS PROGRAMS ABOUT IT.

23 THE JUROR: ALL RIGHT.

24 THE COURT: OKAY? I'LL LOOK FORWARD TO SEEING
25 YOU WEDNESDAY AT FIVE. I HOPE YOUR HEAD FEELS BETTER.

1487

1 THE JUROR: THANK YOU.

2 THE COURT: YES, MA'AM.

3 MR. CROMER.

4 BRANDON E. CROMER, BEING

5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q MR. CROMER, GOOD AFTERNOON.

8 A AFTERNOON.

9 Q THANK YOU FOR YOUR PATIENCE, SIR.

10 A YES, SIR.

11 Q YOU HEARD ME EARLIER TODAY STATE THAT THERE REALLY
12 ARE NO RIGHT OR WRONG ANSWERS IN THIS MATTER, INSOFAR AS
13 THE QUESTIONS THAT I'M ALLOWED TO ASK, INSOFAR AS THE
14 QUESTIONS THAT ANY OF THE ATTORNEYS MAY BE ASKING YOU IN
15 THIS MATTER. WHAT'S IMPORTANT IS THAT YOU RESPOND
16 TRUTHFULLY TO THOSE QUESTIONS AND THAT YOU RESPOND
17 COMPLETELY TO THOSE QUESTIONS. OKAY?

18 A OKAY.

19 Q YOU -- DO YOU HAVE ANY PRIOR KNOWLEDGE OF THIS
20 MATTER?

21 A NO, NOT THAT I SEE, NOT THAT I KNOW OF.

22 Q ALL RIGHT. YOU KNOW ANY -- DO YOU RECALL ANYTHING
23 OTHER THAN WHAT I SHARED WITH YOU EARLIER TODAY?

24 A NO, SIR.

25 Q SO YOU HAVEN'T FORMED ANY OPINIONS ABOUT THIS MATTER?

1488

1 A NO.

2 Q ONE WAY OR ANOTHER?

3 A NO, SIR.

4 Q YOU HAD A CHANCE TO READ THAT SHEET THAT HAS THE
5 THREE TYPES OF JURORS?

6 A YES, SIR.

7 Q WHICH ONE BEST DESCRIBES YOU?

8 A THE SECOND.

9 Q THE SECOND ONE?

10 A YES, SIR.

11 Q WHEN YOU SAY THE SECOND WHAT DOES THAT MEAN?

12 A THAT I DON'T BELIEVE IN THE DEATH PENALTY AND
13 COULD -- I NEVER COULD, YOU KNOW, GIVE A DEATH PENALTY
14 SENTENCE.

15 Q UNDER ANY CIRCUMSTANCE?

16 A NO, SIR.

17 Q SO MY UNDERSTANDING THAT IF YOU WERE ON A JURY AND
18 THAT JURY CONCLUDED THAT A PERSON HAD BEEN GUILTY OF
19 COMMITTING A CRIME OF MURDER, THERE IS NO CIRCUMSTANCE
20 UNDER WHICH YOU WOULD CONSIDER IMPOSING A DEATH PENALTY?

21 A NO, SIR.

22 Q NONE WHATSOEVER?

23 A NO, SIR.

24 Q AND IT WOULDN'T DEPEND THEN ON THE FACTS OF A GIVEN
25 CASE?

1485

1 A NO, SIR.

2 THE COURT: SOLICITOR, ANY QUESTIONS?

3 MR. HILLIARD: NO QUESTIONS, YOUR HONOR.

4 THE COURT: QUESTIONS FROM THE DEFENDANT?

5 MR. LITTLEJOHN: JUST A FEW, YOUR HONOR.

6 EXAMINATION BY MR. LITTLEJOHN:

7 Q MR. CROMER, OF COURSE YOU HAVEN'T HEARD ANY OF THE
8 TESTIMONY OR ANY OF THE EVIDENCE IN THIS CASE. THAT'S
9 CORRECT, ISN'T IT?

10 A YES, SIR.

11 Q OKAY. YOU HAVEN'T HEARD ANY OF THE JUDGE'S
12 INSTRUCTIONS?

13 A INSTRUCTIONS?

14 Q THAT'S CORRECT; HIS INSTRUCTIONS TO THE JURY?

15 A TO ME?

16 Q NO. I MEAN, WERE YOU SELECTED AS A JUROR IN THIS
17 CASE, THERE WOULD BE TWO FACETS TO IT. THERE WOULD BE THE
18 EVIDENCE THAT'S PRESENTED AND THE INSTRUCTIONS OR THE LAW
19 AS THE JUDGE GIVES IT TO YOU, RIGHT?

20 A YES, SIR.

21 Q OKAY. ARE YOU TELLING US THAT NO MATTER HOW GRIEVOUS
22 THE FACTS MIGHT BE IN THIS CASE OR WHAT THE LAW THE JUDGE
23 MAY GIVE YOU THERE IS NO WAY THAT YOU COULD CONSIDER A
24 DEATH PENALTY UNDER ANY CIRCUMSTANCES WHATSOEVER?

25 A NO, SIR.

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1 Q HOW LONG HAVE YOU HAD THIS COMMITMENT AGAINST THE
2 DEATH PENALTY?

3 A I MEAN, I GUESS, ONCE I FINALLY REALIZED -- I MEAN,
4 I'VE ALWAYS BEEN BROUGHT UP IN A RELIGIOUS FAMILY AND
5 THAT'S WHAT, YOU KNOW, WHERE I'M BASING MY OPINION ON
6 BECAUSE I JUST DON'T BELIEVE, YOU KNOW, THAT ANYONE HAS THE
7 RIGHT TO TAKE SOMEONE ELSE'S LIFE AND SO PROBABLY AS
8 GROWING UP, YOU KNOW, WHENEVER TEN YEARS AGO TO MY
9 KNOWLEDGE THAT. . .

10 Q THIS WAS A LONG-HELD BELIEF?

11 A YES, SIR.

12 Q AND WHAT YOU'RE TELLING US NOTHING WOULD CHANGE IT?

13 A NO, SIR.

14 Q YOU GRADUATED FROM LEXINGTON HIGH?

15 A YES, SIR.

16 Q MY KIDS ARE FROM IRMO?

17 A ARE THEY? THAT'S A RIVAL.

18 THE COURT: WE WON'T HOLD THAT AGAINST YOU.

19 MR. LITTLEJOHN: NO FURTHER QUESTIONS.

20 THE COURT: THANK YOU, MR. CROMER. IF YOU WOULD
21 STEP DOWN.

22 MR. LITTLEJOHN: IS CHRIS YOUR BROTHER?

23 THE COURT: IS CHRIS YOUR BROTHER?

24 THE JUROR: YES, SIR.

25 THE COURT: YES.

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1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JUROR.)

3 THE COURT: MR. LITTLEJOHN. COME ON NOW.

4 MR. LITTLEJOHN: I DON'T THINK I CAN CONTEST
5 THAT, YOUR HONOR.

6 THE COURT: THANK YOU, SIR. I BELIEVE HE IS NOT
7 EITHER.

8 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
9 JUROR.)

10 THE COURT: MR. CROMER, YOU WILL BE EXCUSED FROM
11 FURTHER PARTICIPATION IN THIS PROCEEDING. I WOULD ASK --
12 WE WILL PROBABLY SELECT A JURY ON WEDNESDAY AFTERNOON. YOU
13 WILL NOT HAVE TO RETURN BUT I WOULD ASK THAT UNTIL WE HAVE
14 SELECTED THE JURY THAT YOU NOT DISCUSS THIS CASE WITH
15 ANYONE. ONCE WE HAVE SELECTED A JURY, YOU'RE FREE TO
16 DISCUSS IT WITH ANYONE. GOOD LUCK TO BASEBALL.

17 THE JUROR: THANK YOU.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JUROR.)

20 THE COURT: OKAY. RIGHT ALONG LET'S TAKE THE
21 NEXT ONE.

22 MR. LITTLEJOHN: JUDGE, CAN WE MAYBE TAKE A SHORT
23 BREAK AFTER THIS ONE?

24 THE COURT: OH, ABSOLUTELY, MR. LITTLEJOHN. I'LL
25 BE HAPPY TO.