

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Newberry County

S.C. Supreme Court

The Honorable Brooks P. Goldsmith, Circuit Court Judge
2000-CP-36-0051

STEPHEN ANDREW BECKHAM,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY) COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA,)
PLAINTIFF,) TRANSCRIPT OF RECORD
VERSUS) 96-GS-36-79
STEPHEN ANDREW BECKHAM,)
DEFENDANT.)

NEWBERRY, SOUTH CAROLINA
SEPTEMBER 14-OCTOBER 4, 1996

B E F O R E

HONORABLE HENRY F. FLOYD, JUDGE.

A P P E A R A N C E S

W. TOWNES JONES, IV, SOLICITOR
MICHAEL T. COULTER, DEPUTY SOLICITOR
BETTY C. STROM, ASST. SOLICITOR
KNOX MCMAHON, DEPUTY SOLICITOR
APPEARING ON BEHALF OF THE PLAINTIFF.

JACK SWERLING, ATTORNEY
RICHARD HARPOOTLIAN, ATTORNEY
APPEARING ON BEHALF OF THE DEFENDANT.

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1 MR. SWERLING: A MINIMUM OF THIRTY-
2 FIVE.

3 THE COURT: A MINIMUM OF THIRTY-FIVE.
4 THAT'S RIGHT. OKAY, MR. GRAHAM, HOW ARE YOU DOING?

5 CARL L. GRAHAM, JR., BEING
6 CALLED AND DULY SWORN, TESTIFIES AS FOLLOWS:

7 THE COURT: ALL RIGHT, THANK YOU, SIR.
8 YOU CAN HAVE A SEAT. HOW ARE YOU DOING TODAY?

9 A OH, PRETTY GOOD.

10 THE COURT: ALL RIGHT. WHAT YOU GOT
11 THERE? MR. GRAHAM, I NEED TO...WHY ARE YOU UNDER
12 HIS CARE? WHAT'S HE TREATING YOU FOR?

13 A KIDNEY TROUBLE.

14 THE COURT: KIDNEY TROUBLE?

15 A YES, SIR.

16 THE COURT: IS IT A ROUTINE THING OR
17 CHRONIC, FREQUENT...WHAT'S HE TREATING YOU FOR?

18 A YES, SIR. STONES.

19 THE COURT: STONES? HAVE YOU HAD A
20 RECENT ATTACK?

21 A YES.

22 THE COURT: WHEN DID YOU HAVE THAT
23 ATTACK?

24 A MONDAY. LAST MONDAY.

25 THE COURT: DID HE PUT YOU IN THE...

1 A AND FRIDAY.

2 THE COURT: AND FRIDAY?

3 A AND FRIDAY.

4 THE COURT: DID THEY PUT YOU IN THE
5 HOSPITAL FOR THAT?

6 A TOOK ME OVER THERE AND CHECKED ME OUT
7 AND BROUGHT ME BACK.

8 THE COURT: HOW FREQUENTLY HAVE YOU
9 BEEN HAVING THESE ATTACKS?

10 A OH, WE'VE BEEN WRESTLING ABOUT TEN
11 YEARS NOW.

12 THE COURT: I KNOW, BUT LIKE FOR
13 EXAMPLE, LET'S SAY IN A SIX MONTH PERIOD HOW LONG A
14 TIME WOULD IT BE THAT YOU WOULD HAVE AN ATTACK?

15 A ABOUT EVERY TWO WEEKS.

16 THE COURT: AND IT REQUIRES
17 HOSPITALIZATION?

18 A WELL, NOT EVERY TIME. HE'S GO
19 DOWN...YOU KNOW, THERE'S A LOT OF TIMES HE JUST
20 GOES DOWN AND GETS TO IT.

21 THE COURT: OKAY. LET ME TALK TO THE
22 LAWYERS OVER HERE ON THE SIDE JUST A MINUTE. HANG
23 ON.

24 (BENCH CONFERENCE HELD IN THE PRESENCE
25 OF THE JUROR, OUT OF THE HEARING OF THE JUROR, AND

1 OFF THE RECORD)

2 THE COURT: MR. GRAHAM, YOU'RE SIXTY-
3 SIX YEARS OLD, AREN'T YOU?

4 A YES, SIR.

5 THE COURT: WELL, I CAN LET YOU OUT OF
6 THIS JURY SERVICE IF YOU WANT. DO YOU WANT TO
7 SERVE OR DO YOU WANT TO STAY WITH US?

8 A WELL, I'D LOVE TO, I REALLY WOULD.
9 BUT I'M AFRAID I MIGHT GET IN THERE AND I MIGHT
10 HAVE A SPELL.

11 THE COURT: ALL RIGHT. WELL, I'M NOT
12 GOING TO PUT YOU AT RISK, IN PARTICULAR SINCE
13 YOU'RE SIXTY-SIX, AND YOU'RE ENTITLED TO EXEMPTION
14 IF YOU WANT. OKAY?

15 A YES, SIR.

16 THE COURT: I'M SORRY THAT YOU HAD TO
17 SIT ALL AROUND ALL DAY.

18 A THAT'S ALL RIGHT.

19 THE COURT: ALL RIGHT. GO TAKE CARE
20 OF YOURSELF NOW.

21 A ALL RIGHT.

22 THE COURT: ALL RIGHT.

23 A THAT'S IT, HUH?

24 THE COURT: YES, SIR.

25 A THANK YOU, SIR.

1 THE COURT: BRING MR. MOORE IN.
2 THAT'S NINETEEN. LET'S SEE IF WE CAN GET MR.
3 MOORE. DO YOU WANT TO PROCEED ON A LITTLE WHILE OR
4 DO YOU WANT TO CALL IT QUILTS AND TRY TO PUSH IT
5 TOMORROW.

6 MR. JONES: YOUR HONOR, I THINK THE
7 BETTER PART OF JUDGEMENT WOULD BE, IF ALL PARTIES
8 ARE AGREEABLE, THE COURT REPORTER AND THE DEFENSE,
9 THE STATE WOULD LIKE TO PROCEED ON. WE'D LIKE TO
10 GO ON AT LEAST THROUGH 7:30 THIS EVENING. I THINK
11 IF WE CAN GET TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR
12 QUALIFIED TONIGHT THEN WE CAN GET TO A POINT
13 TOMORROW AND NOT BE PUSHED.

14 THE COURT: ALL RIGHT.

15 BILLY J. MOORE, BEING CALLED
16 AND DULY SWORN, TESTIFIES AS FOLLOWS:

17 THE COURT: IF YOU'LL JUST HAVE A SEAT
18 JUST ONE MINUTE. OKAY, MR. MOORE, HAVE YOU EVER
19 BEEN ON A JURY BEFORE?

20 A NO, SIR.

21 THE COURT: EVER BEEN IN A COURTROOM
22 OTHER THAN YESTERDAY?

23 A JUST FOR THAT DUI IS ALL.

24 THE COURT: OKAY. MR. MOORE, DID YOU
25 GET A CHANCE TO READ THE LETTER THAT I HANDED OUT

1 YESTERDAY?

2 A YES, SIR.

3 THE COURT: DID YOU GENERALLY
4 UNDERSTAND WHAT THE LETTER WAS ABOUT?

5 A YES, SIR.

6 THE COURT: IS THERE ANYTHING IN THAT
7 LETTER THAT WAS REAL CONFUSING TO YOU OR SOMETHING
8 YOU NEED FOR ME TO EXPLAIN A LITTLE FURTHER AT THIS
9 POINT?

10 A NO, SIR, NOT THAT I KNOW OF.

11 THE COURT: ALL RIGHT. WELL, AS YOU
12 REALIZE, THIS IS A POTENTIAL DEATH PENALTY CASE AND
13 BY REASON OF THAT FACT THE ATTORNEYS, PLUS MYSELF,
14 GET AN OPPORTUNITY TO ASK YOU ABOUT SOME OF YOUR
15 VIEWS ABOUT SUCH THINGS AS PUNISHMENT, AS
16 PRESUMPTION OF INNOCENCE, THINGS LIKE THAT.

17 A YES, SIR.

18 THE COURT: YOU WOULD AGREE THAT IN
19 SEATING A FAIR AND IMPARTIAL JURY THAT WE'D BE
20 ENTITLED TO KNOW YOUR FEELINGS ABOUT THAT, WOULDN'T
21 YOU?

22 A YES, SIR.

23 THE COURT: OKAY. AND MR. MOORE, HAVE
24 YOU FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT
25 OR INNOCENCE OF THE DEFENDANT IN THIS CASE, MR.

1 BECKHAM?

2 A HAVE I FORMED ONE?

3 THE COURT: YES, HAVE YOU FORMED ANY
4 OPINION AS TO WHETHER HE'S INNOCENT OR GUILTY?

5 A NO, SIR.

6 THE COURT: OKAY. DO YOU KNOW
7 ANYTHING ABOUT THE FACTS OF THE CASE?

8 A NO, SIR.

9 THE COURT: ALL RIGHT. NOW THE REASON
10 I NEEDED TO MAKE SURE THAT YOU WOULD UNDERSTAND
11 THAT IS THE NEXT QUESTION IS, YOU'VE HEARD THE
12 PHRASE THAT A CITIZEN ACCUSED OF A CRIME IS
13 PRESUMED TO BE INNOCENT OF THAT CRIME UNTIL AND
14 UNLESS THE GOVERNMENT CAN PROVE HIM GUILTY BEYOND A
15 REASONABLE DOUBT?

16 A YES, SIR.

17 THE COURT: DO YOU BELIEVE THAT THAT
18 IS A PRINCIPLE OF LAW THAT YOU COULD FOLLOW AS A
19 MEMBER OF A JURY?

20 A YES, SIR.

21 THE COURT: ALL RIGHT. THE REASON FOR
22 ASKING THAT HAD TO DO WITH A COUPLE OF THINGS.
23 NUMBER ONE, WE'RE GOING TO TALK ABOUT THE PENALTY
24 IN JUST A FEW MINUTES, THE DEATH PENALTY AND LIFE
25 IMPRISONMENT, AND I WANT TO MAKE SURE THAT YOU WILL

1 NOT INFER OR IMPLY FROM OUR DISCUSSION THAT MR.
2 BECKHAM IS GUILTY OF ANYTHING AT THIS POINT IN
3 TIME. YOU WON'T DO THAT, WILL YOU?

4 A NO, SIR.

5 THE COURT: OKAY. NOW ORDINARILY, MR.
6 MOORE, WE EMPANEL A JURY IN A CRIMINAL CASE AND
7 THEY DO ONE THING. THEY DECIDE WHETHER OR NOT THE
8 DEFENDANT IS GUILTY OR NOT GUILTY OF THE CRIME
9 CHARGED.

10 A YES, SIR.

11 THE COURT: AND WHEN THAT HAPPENS, IF
12 THEY'RE FOUND NOT GUILTY THEN OF COURSE THE
13 DEFENDANT IS RELEASED FROM JEOPARDY AND IF THEY'RE
14 FOUND GUILTY THEN THE DEFENDANT IS BROUGHT BEFORE A
15 JUDGE AND HE SENTENCES HIM. YOU UNDERSTAND THAT
16 PROCEDURE?

17 A YES, SIR.

18 THE COURT: NOW, THAT'S TRUE ABOUT
19 EVERY CRIMINAL CASE THAT WE HAVE IN SOUTH CAROLINA
20 EXCEPT ONE AND THAT IS WHERE THE STATE SEEKS THE
21 DEATH PENALTY.

22 A YES, SIR.

23 THE COURT: IN A SITUATION WHERE THE
24 STATE SEEKS THE DEATH PENALTY, THEY'RE ASKING THE
25 JURY TO DO TWO THINGS. NUMBER ONE, IN THE FIRST

1 PART OF THE TRIAL THEY'RE ASKING THEM TO DETERMINE
2 WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. OF
3 COURSE IF HE'S NOT GUILTY THEN THE CASE WOULD END.
4 BUT IF THE JURY DETERMINES THAT HE IS GUILTY THEN
5 THEY'RE ASKING THE JURY TO DO THAT SECOND THING,
6 WHICH IS TO SENTENCE THE DEFENDANT IN A SEPARATE
7 PROCEEDING. DO YOU UNDERSTAND ME SO FAR?

8 A YES, SIR.

9 THE COURT: AND DO YOU UNDERSTAND THAT
10 IN THE SECOND PROCEEDING THERE ARE TWO CHOICES --
11 AND OF COURSE THERE WILL BE LEGAL INSTRUCTIONS AND
12 EVIDENCE ABOUT IT -- BUT YOU HAVE A CHOICE OF
13 EITHER LIFE IMPRISONMENT OR THE DEATH PENALTY.

14 NOW, YOU KNOW WHEN YOU HAVE SOMEBODY
15 THAT IS FOUND GUILTY AND THEY STAND BEFORE A JUDGE,
16 OFTEN TIMES THEIR LAWYER OR THEIR FRIENDS...WELL,
17 FIRST OF ALL THE PROSECUTION WILL SAY, "THESE ARE
18 THE THINGS THAT MAKE IT AGGRAVATING, MAKE IT WORSE.
19 AND HE DESERVES HARSHER PUNISHMENT." AND THEN THE
20 DEFENDANT AND MAYBE HIS ATTORNEY, FAMILY MEMBERS,
21 THINGS LIKE THAT, THEY STAND BEFORE THE JUDGE AND
22 THEY SAY, "THESE ARE THINGS WHY YOU SHOULD CONSIDER
23 A NOT SO HARSH A PUNISHMENT." AND SO THE ONE
24 THAT'S MAKING IT HARSHER IS CALLED AGGRAVATING AND
25 THE OTHER IS CALLED MITIGATING. YOU KNOW THE

1 DIFFERENCE BETWEEN THOSE TWO?

2 A YES, SIR.

3 THE COURT: OKAY. NOW, LET'S PUT
4 YOURSELF ON A JURY WHERE THE STATE'S SEEKING THE
5 DEATH PENALTY AND LET'S ASSUME THAT YOU HAVE
6 RETURNED A VERDICT OF GUILTY OF MURDER. YOU'VE
7 MADE THAT DECISION. NOW, WE GO TO THE SECOND TRIAL
8 AND THE STATE ASKS YOU TO DETERMINE WHAT IS THE
9 APPROPRIATE PUNISHMENT. DO YOU REALIZE THAT UNDER
10 THAT PROCEEDING THAT YOU WILL THEN HEAR EVIDENCE IN
11 AGGRAVATION...

12 A YES, SIR.

13 THE COURT: ...AND YOU WILL HEAR
14 EVIDENCE IN MITIGATION?

15 A YES, SIR.

16 THE COURT: YOU WILL ALSO KNOW...YOU
17 HAVE ALREADY FOUND A DEFENDANT GUILTY, DO YOU
18 UNDERSTAND THAT?

19 A YES, SIR.

20 THE COURT: ALL RIGHT. NOW, WE KNOW
21 FROM EXPERIENCE THAT WE HAVE THREE TYPES OF JURORS
22 IN THAT SITUATION. ONE TYPE OF JUROR WILL SAY,
23 WHEN THEY GO BACK TO DELIBERATE, "WELL, LADIES AND
24 GENTLEMEN, WE'VE GOT A CONVICTION. WE'VE GOT PROOF
25 OF AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE

1 DOUBT. IT DOESN'T REALLY MATTER ABOUT THE
2 MITIGATING CIRCUMSTANCE BECAUSE I BELIEVE THAT THE
3 DEATH PENALTY IS THE APPROPRIATE PUNISHMENT IN
4 EVERY CASE LIKE THIS AND I VOTE FOR THE DEATH
5 PENALTY." NOW, THAT'S ONE TYPE OF JUROR. YOU CAN
6 UNDERSTAND THAT?

7 A YES, SIR.

8 THE COURT: ALL RIGHT. THERE'S A
9 SECOND TYPE OF JUROR THAT SAYS, "WELL, YOU'RE
10 RIGHT, MR. FIRST JUROR. WE'VE GOT A CONVICTION FOR
11 MURDER. PLUS, WE'VE GOT PROOF OF AGGRAVATING
12 CIRCUMSTANCES. WE MAY HAVE SOME MITIGATION, WE MAY
13 NOT, IN THIS CASE. BUT I VOTE FOR LIFE
14 IMPRISONMENT BECAUSE I THINK THAT'S THE APPROPRIATE
15 PUNISHMENT IN EVERY CASE." OKAY?

16 A YES, SIR.

17 THE COURT: NOW, WE'VE GOT A THIRD
18 JUROR THAT SAYS, "WELL, BOTH OF YOU ARE RIGHT TO
19 SOME EXTENT. WE'VE GOT A CONVICTION. WE'VE GOT
20 PROOF OF AGGRAVATION. WE MAY HAVE EVIDENCE OF
21 MITIGATION, BUT I WANT TO SIT HERE AND I WANT TO
22 LOOK AT THIS CASE IN PARTICULAR AND I WANT TO SEE
23 IN THIS CASE WHETHER OR NOT LIFE IS A BETTER
24 SENTENCE THAN DEATH OR DEATH IS A BETTER SENTENCE
25 THAN LIFE, AS THE CASE MAY BE."

1 NOW, IF I HAD TO ASK YOU WHICH ONE OF
2 THOSE THREE CATEGORIES YOU FALL IN, WHICH DO YOU
3 THINK YOU WOULD LIKELY FALL IN, THE FIRST, SECOND,
4 OR THIRD CATEGORY?

5 A I'D FALL IN THE THIRD CATEGORY.

6 THE COURT: ALL RIGHT, WELL, LET ME
7 TAKE YOU ANOTHER STEP FURTHER. LET'S ASSUME THAT
8 YOU'RE SITTING IN THE JURY IN THE SECOND PHASE, THE
9 PENALTY CASE, AND YOU'RE AWARE THAT THERE'S BEEN A
10 MURDER CONVICTION, YOU'RE AWARE THAT THERE'S
11 EVIDENCE OF AGGRAVATION AND MITIGATION. IF YOU
12 LOOK AT THAT CASE AND YOU SAY TO YOURSELF, "I
13 BELIEVE THAT THE DEATH PENALTY IS THE APPROPRIATE
14 PUNISHMENT UNDER THIS SET OF CIRCUMSTANCES," COULD
15 YOU IMPOSE A DEATH SENTENCE?

16 A I DON'T BELIEVE SO.

17 THE COURT: WELL, LET ME ASK YOU THE
18 OTHER WAY. COULD, IF YOU LOOK AT THE SITUATION AND
19 YOU SAID, LOOKING AT ALL OF THE EVIDENCE THAT, "I
20 BELIEVE THAT A LIFE SENTENCE IS THE APPROPRIATE
21 SENTENCE," COULD YOU IMPOSE A LIFE SENTENCE?

22 A YES, SIR.

23 THE COURT: ALL RIGHT. NOW LET'S
24 REVISIT THAT DEATH PENALTY THING JUST A MOMENT. A
25 WHILE AGO YOU SAID THAT YOU THINK YOU WOULD BE IN

1 CATEGORY THREE AND YOU COULD FOLLOW BOTH...YOU
2 COULD LOOK AT BOTH OPTIONS. IF YOU WERE SITTING ON
3 A JURY AND SAY THE TRIAL JUDGE WAS TALKING TO THE
4 JURY BY WAY OF INSTRUCTIONS AND THE INSTRUCTIONS
5 WERE THESE, AMONG OTHER THINGS, THAT "LADIES AND
6 GENTLEMEN OF THE JURY, IF YOU FIND THAT IN ADDITION
7 TO THE MURDER CONVICTION, WHICH YOU'VE ALREADY
8 DETERMINED, IF YOU FIND THAT THERE'S PROOF BEYOND A
9 REASONABLE DOUBT OF AN AGGRAVATING CIRCUMSTANCE
10 THEN YOU ARE AUTHORIZED, OR PERMITTED, TO IMPOSE
11 THE DEATH PENALTY. AT THE SAME TIME, YOU ARE
12 PERMITTED TO CONSIDER THE AGGRAVATING EVIDENCE, ANY
13 MITIGATING EVIDENCE, AND YOU MAY RETURN A VERDICT
14 FOR A LIFE SENTENCE...

15 A YES, SIR.

16 THE COURT: ...BUT IT IS YOUR CHOICE."
17 IF YOU ARE AUTHORIZED BY LAW TO DO IT AND TOLD
18 UNDER WHAT CIRCUMSTANCES YOU COULD IMPOSE DEATH OR
19 LIFE AND YOU FELT THAT DEATH WAS THE APPROPRIATE
20 SENTENCE, COULD YOU IMPOSE IT?

21 A YES, SIR.

22 THE COURT: OKAY. NOW LET ME GO ONE
23 STEP FURTHER. YOU HAVE BEEN AUTHORIZED TO RETURN A
24 DEATH PENALTY, IF YOU FELT IT WAS WARRANTED...NOW
25 FIRST OF ALL YOU UNDERSTAND YOU'RE THE ONE THAT

1 MAKES THE DECISION?

2 A YES, SIR.

3 THE COURT: OKAY. AND YOU'VE MADE
4 THAT DECISION, THAT YOU THINK THAT IN THAT SET OF
5 CIRCUMSTANCES THAT THE DEATH PENALTY IS THE
6 APPROPRIATE PENALTY, OUR LAW REQUIRES THAT EACH
7 JUROR MUST SIGN THE SENTENCING SHEET OR THE VERDICT
8 FORM THAT INDICATES THAT THAT IS THEIR SENTENCE.
9 NOW SIR, IF YOU FELT LIKE THAT THE DEATH PENALTY
10 WAS THE APPROPRIATE SENTENCE IN THE CASE,
11 COULD...AND THE INSTRUCTIONS WERE FROM THE JUDGE
12 THAT IF YOU FOUND THAT THE DEATH PENALTY WAS THE
13 APPROPRIATE SENTENCE AND YOU HAD TO SIGN YOUR NAME
14 IF THAT WAS YOUR SENTENCE, COULD YOU SIGN YOUR NAME
15 TO THE WARRANT?

16 A YES, IF IT WAS APPROPRIATE.

17 THE COURT: IF IT WAS APPROPRIATE.

18 ALL RIGHT. SOLICITOR?

19 MR. JONES: THANK YOU, YOUR HONOR.

20 DIRECT EXAMINATION:

21 BY MR. JONES:

22 Q MR. MOORE?

23 A HOW ARE YOU?

24 Q GOOD TO SEE YOU AGAIN.

25 A UH-HUH. (YES).

1 Q I NOTICED IN YOUR FIRST RESPONSE TO
2 THE JUDGE'S QUESTION YOU HESITATED A LITTLE BIT
3 WHEN YOU SAID WHETHER OR NOT YOU COULD IMPOSE A
4 DEATH PENALTY?

5 A UH-HUH. (YES).

6 Q DID YOU HESITATE A LITTLE BIT?

7 A YES, SIR.

8 Q I KNOW THAT YOU'VE PROBABLY THOUGHT
9 ABOUT IT BEFORE BUT NEVER REALLY COME TO GRIPS WITH
10 IT LIKE YOU'RE BEING ASKED TO TODAY. IS THAT SO?

11 A YES, SIR. I NEVER HAVE THOUGHT ABOUT
12 IT BEFORE.

13 Q YOU HAVEN'T?

14 A NO, SIR.

15 Q ALL RIGHT. WELL, BEING WRONG ON THE
16 FIRST PART OF THAT QUESTION...

17 A MY DAD WAS SENTENCED TO DEATH ONE
18 TIME.

19 Q HE WAS?

20 A UH-HUH. (YES).

21 Q OKAY. AND WAS THAT EXECUTION CARRIED
22 OUT?

23 A NO, SIR. HE ASKED MERCY OF THE COURT.

24 Q SIR?

25 A HE ASKED MERCY OF THE COURT.

1 Q AND HE RECEIVED IT?
2 A UH-HUH. (YES).
3 Q HE DID?
4 A HE GOT LIFE.
5 Q LIFE. HOW LONG AGO WAS THAT?
6 A HE STAYED IN THERE FIFTEEN YEARS. HE
7 WAS FIFTY-TWO WHEN HE CAME OUT. I'D SAY IT
8 HAPPENED ABOUT '35 OR '36.
9 Q YEARS AGO OR DURING 1935 OR 1936? HOW
10 MANY YEARS AGO DID IT HAPPEN?
11 A I'D SAY ABOUT...NO, 19...I'M
12 SORRY...YOU'VE GOT ME CONFUSED NOW.
13 Q I'M SORRY. WHAT I'M ASKING IS HOW
14 LONG AGO WAS IT THAT YOUR FATHER WAS CONVICTED OF
15 MURDER?
16 A OH, IT'S BEEN ABOUT TWENTY-SOMETHING
17 YEARS AGO.
18 Q TWENTY-SOMETHING?
19 A I DON'T REMEMBER IT TOO GOOD.
20 Q SURE. WHEN...YOU DON'T THINK YOUR
21 DAD'S SITUATION WOULD CAUSE YOU TO BE UNABLE TO BE
22 FAIR TO BOTH SIDES IN THIS CASE?
23 A WELL, I DON'T KNOW.
24 Q WELL, THAT'S AN ISSUE THAT IS PART OF
25 IT. IF YOU THINK THAT IT WOULD THEN YOU NEED TO

1 TELL US. IF YOU THINK THAT YOUR EXPERIENCE WITH
2 THAT...

3 A I DON'T THINK I COULD GIVE A FAIR
4 VERDICT ON ACCOUNT OF IT.

5 Q YOU DON'T THINK YOU COULD GIVE A FAIR
6 VERDICT?

7 A NO, SIR.

8 Q BECAUSE OF THAT EXPERIENCE THAT YOU
9 WENT THROUGH AS A YOUNG MAN WITH THAT? AND THAT'S
10 AS HONEST AN ANSWER THAT YOU CAN GIVE US?

11 A YES, SIR.

12 Q HAVE YOU THOUGHT IT THROUGH?

13 A NO, SIR.

14 Q WELL, WOULD YOU THINK IT THROUGH FOR A
15 MINUTE? I'D ASK YOU TO DO THAT SO THAT I CAN GET A
16 FAIR AND HONEST QUESTION FROM YOU NOW. I'D ASK YOU
17 TO THINK IT THROUGH NOW SO THAT WHEN I ASK YOU IF
18 YOU COULD GIVE US A FAIR AND IMPARTIAL TRIAL YOU
19 COULD TELL ME AS HONEST AN ANSWER AS YOU COULD
20 GIVE.

21 A ALL RIGHT.

22 Q YOU LET ME KNOW WHEN YOU'VE THOUGHT
23 ABOUT IT.

24 MR. HARPOOTLIAN: YOUR HONOR, I'D
25 OBJECT TO THIS. THIS THINKING...

1 MR. JONES: YOUR HONOR, IF HE WANTS AN
2 OBJECTION THEN I'D LIKE TO DO IT OUTSIDE THE
3 PRESENCE OF THE JUROR...IF HE'S GOING TO DISCUSS
4 THE BASIS OF HIS OBJECTION.

5 THE COURT: LET ME ASK YOU IF YOU'D
6 STEP RIGHT OUTSIDE JUST A MINUTE?

7 (JUROR IS EXCUSED FROM THE OPEN
8 COURTROOM)

9 IN-CAMERA:

10 MR. HARPOOTLIAN: IF IT PLEASE THE
11 COURT, YOUR HONOR, THIS JUROR, IN RESPONSE TO YOUR
12 QUESTIONS, HAS, I THINK, INDICATED HE COULD BE FAIR
13 ON BOTH THE GUILT OR INNOCENCE STAGE AND ON THE
14 SENTENCING STAGE. HE OBVIOUSLY HAS SOME PROBLEMS
15 WITH THE DEATH PENALTY BECAUSE OF WHAT HIS FATHER
16 WENT THROUGH. AND HE'S INDICATED THAT WOULD GIVE
17 HIM SOME DIFFICULTY. BUT THE QUESTION'S NOT
18 WHETHER HE COULD BE FAIR IN THE ABSTRACT. THE
19 QUESTION IS IF HE'S PICKED FOR THE JURY AND HE'S
20 TOLD, JUST AS YOU HAVE SAID TO JURORS, "HAVE YOU
21 READ ABOUT THIS? DO YOU KNOW ABOUT THAT? DO YOU
22 KNOW SOMETHING ABOUT THE CASE?" COULD HE DISREGARD
23 THAT? COULD HE PUT THAT OUT OF HIS MIND IF THAT
24 WAS THE LAW AND YOU TOLD HIM TO DO THAT? IT'S NOT,
25 "DO YOU WANT TO BE ON THE JURY?" AND I THINK THE

1 SOLICITOR TENDS TO MISLEAD THE JUROR INTO THE "HOW
2 DO YOU FEEL ABOUT IT? DO YOU FEEL GOOD ABOUT BEING
3 ON THE JURY OR DOES THIS LIFE EXPERIENCE OF YOURS
4 MAKE YOU UNCOMFORTABLE WITH IT?" I MEAN I THINK
5 WE'RE GETTING A LITTLE TOO TOUCHY-FEELY HERE WITH
6 THESE JURORS.

7 MR. JONES: MAY I, YOUR HONOR?

8 THE COURT: YES, SIR.

9 MR. JONES: JUDGE, YOU KNOW, IT JUST
10 CAME UP ABOUT THE FACT THAT HIS FATHER WAS TRIED
11 FOR CAPITAL MURDER. AND I ASKED HIM, "WOULD THAT
12 CAUSE YOU...WOULD YOUR EXPERIENCE WITH THAT CASE
13 CAUSE YOU DIFFICULTY IN BEING FAIR TO BOTH SIDES?"
14 AND HE SAID, "I BELIEVE IT WOULD." AND I SAID,
15 "WELL, IF YOU BELIEVE IT WOULD, APPARENTLY YOU'VE
16 THOUGHT ABOUT IT AND YOU FEEL LIKE YOU COULDN'T
17 GIVE US A FAIR TRIAL HERE." AND HE SAID, "WELL, I
18 REALLY HAVEN'T THOUGHT ABOUT IT." SO I SAID,
19 "WELL, SO WE CAN GET AN HONEST ANSWER FROM YOU, ONE
20 YOU KNOW TO BE CORRECT, HOW ABOUT THINKING ABOUT IT
21 FOR A MINUTE?" YOU KNOW, IF HE HAD SAT THERE FOR
22 MORE THAN THIRTY SECONDS, I WOULD HAVE SAID, "HAVE
23 YOU HAD ENOUGH TIME?" AND IF HE HAD SAID, "I
24 NEEDED A LITTLE MORE TIME." THEN I WOULD HAVE
25 SAID, "WELL, ABOUT HOW MUCH MORE?" AND IF HE SAID,

1 "YOU KNOW, I DON'T KNOW IF I CAN COME..." YOU
2 KNOW, JUDGE, I WASN'T GOING TO LET IT GO ON AND YOU
3 WOULDN'T LET IT GO ON AND ON. BUT IF I COULD, IN
4 RESPONSE TO HIS ARGUMENT, POINT OUT THAT THE CASE
5 THAT HE CITED ABOUT THIRTY MINUTES AGO, STATE
6 VERSUS RICKY GEORGE, I'M READING FROM THE CASE NOW,
7 JUDGE, ON PAGE FOUR...

8 MR. HARPOOTLIAN: THIS IS MEMORANDUM
9 OPINION?

10 THE COURT: I'M FAMILIAR WITH THAT.
11 ALL RIGHT, FELLOWS, MOVE ON.

12 MR. JONES: ARE YOU FAMILIAR WITH THE
13 CASE, JUDGE?

14 THE COURT: NO, I'M NOT FAMILIAR WITH
15 THE QUOTE, BUT I KNOW WHAT HE WAS DOING. JUST
16 KNOCK IT OFF AND LET'S MOVE ON.

17 MR. JONES: YOU DON'T WANT TO HEAR
18 FROM ME?

19 THE COURT: NO, I WANT TO HEAR WHAT
20 YOU'VE GOT TO SAY. I'M TELLING MR. HARPOOTLIAN TO
21 KNOCK IT OFF.

22 MR. HARPOOTLIAN: SORRY, YOUR HONOR.

23 MR. JONES: "OUR REVIEW OF THE RECORD
24 CONFIRMS THAT IT WOULD HAVE BEEN EXTREMELY
25 DIFFICULT FOR WHITAKER OR MARTIN TO IMPOSE A

1 CAPITAL SENTENCE ACCORDINGLY BECAUSE THE EVIDENCE
2 SUPPORTS THEY'RE EXCUSABLE WE FIND NO ERROR IN
3 DOING SO." ALL I'M TRYING TO FIND OUT IS WHETHER
4 OR NOT THIS PAST EXPERIENCE...JUDGE, I MEAN, YOU
5 HAVE TO ADMIT THIS IS A PRETTY UNUSUAL CIRCUMSTANCE
6 HERE.

7 THE COURT: WELL, IT MIGHT WELL BE.
8 BUT HERE'S THE LINE OF QUESTIONING. IT'S NOT
9 WHETHER HE CAN BE FAIR YET. THE QUESTION IS, FIRST
10 OF ALL, CAN HE FOLLOW THE LAW AND MAKE A
11 DETERMINATION IN THIS CASE? SURE, LIKE THE LADY
12 SAYS, "I KNOW SOMETHING ABOUT THIS CASE," THE NEXT
13 QUESTION IS NOT, "CAN YOU BE FAIR?" THE QUESTION
14 IS, "CAN YOU SET THAT ASIDE AND FOLLOW THE LAW?"
15 AND THEN, ONCE HE GETS OVER THAT HURDLE THEN WE CAN
16 TALK ABOUT FAIRNESS.

17 MR. JONES: ALL RIGHT. I'LL ASK HIM
18 THAT QUESTION.

19 THE COURT: BUT RIGHT NOW, I'M GOING
20 TO TELL YOU THE TRUTH...

21 MR. JONES: YES, SIR?

22 THE COURT: I ALREADY KNOW FROM THE
23 BAILIFF THAT HE'S LOOKING FOR A WAY OUT AND YOU
24 GAVE HIM THE WAY OUT. NOW I TOLD YOU FROM THE SIDE
25 BAR THAT THAT'S WHAT WAS HAPPENING AND YOU OPENED

1 THE DOOR AND WE'RE GOING TO LET HIM RUN OUT OF HERE
2 IS WHAT'S GOING TO HAPPEN. SO, JUST DON'T...I
3 THINK YOU'RE ENTITLED TO KNOW ABOUT FAIRNESS, BUT
4 THE QUESTION IS CAN HE FOLLOW MY LEGAL INSTRUCTIONS
5 AND WILL HE SIT IN THAT JURY AND MAKE A
6 DETERMINATION ACCORDING TO THE EVIDENCE AND THE LAW
7 IN THE CASE? AND THAT'S THE STANDARD. THAT'S THE
8 STANDARD. AND THEN WE TALK ABOUT FAIRNESS, AFTER
9 THAT. OKAY?

10 MR. JONES: BUT JUDGE,...YES, SIR, BUT
11 IN THAT REGARD I WOULD LIKE, IN MY OWN DEFENSE HERE
12 -- AND I KNOW IT'S NOT NECESSARY -- BUT I DIDN'T
13 KNOW HIS DAD HAD BEEN CONVICTED OF CAPITAL MURDER
14 AND I DIDN'T ASK HIM, "HAS YOUR DADDY EVER BEEN
15 TRIED FOR CAPITAL MURDER?" I DIDN'T EVEN ASK A
16 QUESTION. I MEAN...HE...WHEN HE'S LOOKING FOR A
17 WAY OUT, HE...

18 THE COURT: SOLICITOR, YOU DON'T HAVE
19 TO EXPLAIN IT. I'VE KNOWN YOU LONG ENOUGH TO
20 UNDERSTAND YOU. EVERYONE ELSE IN HERE WAS SHOCKED,
21 YOU KNOW?

22 MR. HARPOOTLIAN: I'M BEYOND SHOCK
23 ANYMORE.

24 THE COURT: ALL RIGHT, BRING HIM BACK
25 IN. I SUSTAIN THE OBJECTION AS TO FOUNDATION.

1 MR. JONES: ALL RIGHT.

2 THE COURT: THE QUESTION IS, CAN HE
3 FOLLOW THE LAW AND DETERMINE FROM THE EVIDENCE AND
4 SO FORTH...

5 (JUROR IS RETURNED TO THE OPEN
6 COURTROOM)

7 THE COURT: COME ON BACK, MR. MOORE,
8 AND LET THEM TALK TO YOU A LITTLE BIT MORE, ALL
9 RIGHT?

10 A ALL RIGHT.

11 THE COURT: ALL RIGHT.

12 Q MR. MOORE, I NEED TO ASK YOU A
13 QUESTION, BUT A DIFFERENT QUESTION THAN THE ONE I
14 ASKED YOU. I KNOW YOU WERE THINKING ABOUT YOUR
15 ANSWER TO THE OTHER ONE AND YOU'VE HAD A LITTLE
16 TIME HERE. THE QUESTION I WANT TO ASK YOU IS, YOU
17 TELL US THAT TWENTY-SOMETHING YEARS AGO YOUR
18 DADDY...

19 A WELL, IT WAS LONGER...I GOT TO
20 THINKING OUT THERE WHILE AGO. IT HAPPENED BACK
21 WHEN I WAS ABOUT NINE YEARS OLD.

22 Q OKAY. WOULD YOUR KNOWLEDGE OF THAT
23 EXPERIENCE, WHAT YOU WENT THROUGH THEN, WOULD THAT
24 EXPERIENCE BE SUCH THAT YOU COULD NOT FOLLOW THE
25 LAW AND PUT IT ASIDE AND GIVE THE STATE A FAIR

1 TRIAL?

2 A YES, SIR.

3 Q IT WOULD BE? SO, IT HAD SUCH AN
4 EFFECT ON YOU THAT YOU WOULD NOT BE ABLE TO PUT IT
5 ASIDE AND GIVE THE STATE A FAIR TRIAL?

6 A YOU MISUNDERSTOOD MY ANSWER. WHEN YOU
7 SAID "STATE A FAIR TRIAL," I SAID YES.

8 Q YOU COULD GIVE THE STATE A FAIR TRIAL?

9 A YES, SIR.

10 Q SO, YOU COULD PUT IT ASIDE?

11 A UH-HUH. (YES).

12 Q AND YOU FEEL LIKE THEN THAT IF THE
13 FACTS WERE SUCH THAT THE APPROPRIATE SENTENCE WAS
14 THE DEATH PENALTY THAT YOU COULD IMPOSE THE DEATH
15 PENALTY?

16 A I DON'T BELIEVE IN THE DEATH PENALTY.

17 Q YOU DON'T BELIEVE IN THE DEATH
18 PENALTY?

19 A NO, SIR.

20 Q WELL, COULD YOU IMPOSE THE DEATH
21 PENALTY? THAT'S WHAT WE'RE ASKING YOU HERE TODAY
22 BECAUSE THAT'S WHAT THIS PROCESS IS ABOUT. WE NEED
23 TO KNOW?

24 A I DON'T THINK...

25 THE COURT: WAIT A MINUTE. THE

1 STANDARD IS NOT WHAT HE BELIEVES, BUT THE QUESTION
2 IS CAN HE FOLLOW THE INSTRUCTIONS AND IF THE LAW
3 AUTHORIZES HIM TO IMPOSE THE DEATH PENALTY, COULD
4 HE DO IT?

5 A IF THE LAW AUTHORIZED ME TO DO IT,
6 YES, SIR.

7 Q DO YOU UNDERSTAND WHAT AUTHORIZE
8 MEANS?

9 A NO, SIR, I DON'T.

10 Q I DON'T KNOW THAT I KNOW THE MEANING
11 OF THE WORD...

12 A I DIDN'T GO THAT FAR THROUGH SCHOOL AS
13 YOU DID.

14 Q I KNOW THAT AND I LOOKED AT...WE
15 TALKED ABOUT THAT THE OTHER DAY. YOU APPROACHED
16 THE JUDGE AND YOU SAID, "I WENT THROUGH THE FIFTH
17 GRADE..."

18 MR. HARPOOTLIAN: YOUR HONOR...

19 THE COURT: WAIT A MINUTE. MR.
20 HARPOOTLIAN'S ON HIS FEET. ALL RIGHT, WHAT IS YOUR
21 OBJECTION?

22 MR. HARPOOTLIAN: YOUR HONOR, WE'RE
23 GOING THROUGH A PROCESS THAT HAPPENED THE OTHER DAY
24 WHEN WE WERE, I THINK, UP AT SIDE BAR. IF THE
25 GENTLEMAN SAYS HE DOESN'T UNDERSTAND THE WORD,

1 LET'S JUST...

2 THE COURT: I SUSTAIN THE OBJECTION.

3 LET ME REPHRASE IT. IT'S MY FAULT. MR. MOORE, IF
4 I SAID THAT I AUTHORIZED YOU TO GO HOME TONIGHT,
5 WHAT WOULD YOU THINK THAT MEANT?

6 A THAT MEANT THAT YOU WAS ORDERING ME TO
7 GO HOME.

8 THE COURT: YOU COULD GO HOME OR
9 ORDERING YOU HOME? WHAT IF I SAID I PERMIT YOU TO
10 GO HOME? HOW WOULD YOU...

11 A I WOULD GO HOME.

12 THE COURT: ALL RIGHT. NOT BECAUSE I
13 TOLD YOU TO, BUT BECAUSE YOU COULD?

14 A YES, SIR.

15 THE COURT: ALL RIGHT. DO YOU
16 UNDERSTAND THAT DIFFERENCE?

17 A YES, SIR.

18 THE COURT: ALL RIGHT, NOW WHEN I SAY
19 AUTHORIZE, I DON'T MEAN ORDER YOU. WHEN I SAY
20 PERMIT I DON'T MEAN ORDERING YOU. OKAY? DO YOU
21 UNDERSTAND IN THAT SENSE?

22 A ORDER AND AUTHORIZE IS DIFFERENT.

23 THE COURT: ALL RIGHT. OKAY. YOU
24 UNDERSTAND. NOW, LET ME REPHRASE THAT. SUPPOSE
25 THAT...I MEAN LET ME TELL YOU THAT UNDER CERTAIN

1 CIRCUMSTANCES THE LAW PERMITS YOU TO IMPOSE THE
2 DEATH PENALTY IF YOU THINK THAT IT IS THE
3 APPROPRIATE THING -- NOT THAT YOU'RE ORDERED TO DO
4 IT, BUT THAT YOU HAVE THE PERMISSION TO DO IT.

5 A YES, SIR.

6 THE COURT: ALL RIGHT. UNDER THAT SET
7 OF CIRCUMSTANCES, COULD YOU IMPOSE THE DEATH
8 PENALTY?

9 A YES, SIR.

10 THE COURT: IF THE LAW SAID THAT YOU
11 COULD DO IT?

12 A YES, SIR.

13 THE COURT: ALL RIGHT. NOW SOLICITOR,
14 MOVE ON WITH YOUR QUESTIONS.

15 Q ALL RIGHT. AND THE LAW SAYS THAT YOU
16 COULD IMPOSE THE DEATH PENALTY OR YOU COULD IMPOSE
17 A LIFE SENTENCE, WOULD YOU ALWAYS IMPOSE A LIFE
18 SENTENCE?

19 MR. HARPOOTLIAN: YOUR HONOR, I'D
20 OBJECT TO THAT QUESTION.

21 THE COURT: I OVERRULE THAT OBJECTION.

22 A WOULD YOU SAY THAT AGAIN?

23 Q IF THE LAW SAYS THAT YOU COULD IMPOSE
24 A DEATH SENTENCE OR YOU COULD IMPOSE A LIFE
25 SENTENCE, WOULD YOU ALWAYS CHOOSE TO IMPOSE THE

1 LIFE SENTENCE?

2 A YES, SIR, I PROBABLY WOULD.

3 Q OKAY, AND DO YOU FEEL COMFORTABLE THAT
4 YOUR DECISION WOULD ALWAYS BE TO IMPOSE A LIFE
5 SENTENCE, GIVEN THE CHOICE BETWEEN THE TWO?

6 MR. HARPOOTLIAN: YOUR HONOR, I OBJECT
7 TO THE QUESTION BECAUSE IT DOESN'T LAY THE PROPER
8 FACTUAL FOUNDATION.

9 MR. JONES: YOUR HONOR, IT'S IN
10 RESPONSE DIRECTLY...

11 THE COURT: WAIT, WAIT. I'M FOLLOWING
12 YOUR EXAMPLE, OKAY? ALL RIGHT. MR. MOORE, HOW
13 ABOUT STEP OUT ONE MORE MINUTE?

14 (JUROR IS EXCUSED FROM THE OPEN
15 COURTROOM)

16 **IN-CAMERA:**

17 MR. JONES: IF IT PLEASE THE COURT?

18 THE COURT: LET ME SEE, THE QUESTION
19 IS, TAKING INTO CONSIDERATION THE CONVICTION FOR
20 MURDER, AGGRAVATING CIRCUMSTANCES AND ANY
21 MITIGATING CIRCUMSTANCES, COULD YOU IMPOSE THE
22 DEATH SENTENCE OR COULD YOU IMPOSE THE LIFE
23 SENTENCE OR WOULD YOU ALWAYS AUTOMATICALLY VOTE FOR
24 LIFE OR AUTOMATICALLY VOTE FOR DEATH UNDER THAT
25 SCENARIO?

1 MR. JONES: YES, SIR. WHAT THIS...

2 MR. HARPOOTLIAN: YOUR HONOR, IF I
3 MIGHT BE HEARD, YOUR HONOR?

4 THE COURT: LET ME SEE WHAT MR.
5 HARPOOTLIAN'S GOT TO SAY.

6 MR. HARPOOTLIAN: THIS GENTLEMAN HAS A
7 FIFTH GRADE EDUCATION, NOT VERY WELL EDUCATED, AND
8 I UNDERSTAND THAT. WHAT HE KEEPS SAYING IS THAT HE
9 WOULD PREFER TO GIVE LIFE. OUR STATUTE IS VERY
10 CLEAR AND WITHERSPOON IS VERY CLEAR ON THAT. THAT
11 PEOPLE WHO WOULD PREFER TO GIVE LIFE CAN'T BE
12 EXCLUDED. THIS GENTLEMAN HAS SAID TO YOU, AFTER
13 YOU'VE EXPLAINED THE WORD AUTHORIZE TO HIM, HAS
14 INDICATED TO YOU IF HE WAS PERMITTED TO DO IT HE
15 WOULD DO IT UNDER SOME CIRCUMSTANCES. I THINK
16 WHAT'S HAPPENING HERE IS BECAUSE OF HIS LACK OF
17 EDUCATION THE SOLICITOR'S QUESTIONS ARE PUT TO HIM
18 IN SUCH A WAY THAT IT SUGGESTS AN ANSWER. I WOULD
19 BE MORE COMFORTABLE IF YOUR HONOR WOULD EXPLORE
20 THIS TO YOUR SATISFACTION SINCE YOU'RE THE ONE...I
21 MEAN, WE'RE...AND I'M GOING...I MEAN, IN A
22 MOMENT...WE'RE EATING UP A LOT OF TIME HERE...I'D
23 BE WILLING TO BASICALLY WAIVE ANY FURTHER
24 QUESTIONING OF THIS JUROR AND LET YOU QUESTION HIM
25 AND COME TO A DECISION AS TO WHETHER OR NOT HE'S

1 QUALIFIED. AND I WAIVE ANY VOIR DIRE BY ME IF THE
2 SOLICITOR WOULD DO THE SAME SO THAT YOU CAN COME TO
3 THAT DECISION.

4 THE COURT: ALL RIGHT, SOLICITOR,
5 WHAT'S YOUR ARGUMENT?

6 MR. JONES: YOUR HONOR, MY ARGUMENT IS
7 THAT WE DID DEFER TO YOU IN AN EFFORT TO EXPLAIN
8 WHAT YOU MEANT TO HIM. AND YOU DID THAT. AND HE
9 LISTENED TO IT ATTENTIVELY AND HE ANSWERED YOU.
10 AND ALL I DID WAS IS I CAME BACK AND HE SAID, YOU
11 KNOW, HE WOULD CONSIDER BOTH AND HE COULD DO THE
12 DEATH PENALTY. AND I ASKED HIM, I SAID, "BUT IF
13 YOU HAD THE OPTION OF DOING ONE OR THE OTHER, WOULD
14 YOU ALWAYS DO LIFE?" I DIDN'T ASK HIM IF HE WOULD
15 PREFER LIFE. I ASKED HIM WOULD HE ALWAYS SENTENCE
16 TO LIFE AND HE SAID YES TWICE, HE WOULD ALWAYS
17 SENTENCE TO LIFE. FIRST HE SAID, "I BELIEVE SO."
18 AND THEN I ASKED HIM AGAIN, I SAID, "WOULD YOU?"
19 AND HE SAID, "YES, I WOULD." I DIDN'T ASK HIM
20 ABOUT WHICH HE PREFERRED. I ASKED HIM ABOUT WHICH
21 HE WOULD DO AND HE SAID HE WOULD ALWAYS SENTENCE TO
22 LIFE.

23 JUDGE, WITH THIS JUROR, YOU KNOW,
24 SINCE...WHETHER HE'S TRYING TO GET OUT OF SERVICE
25 OR NOT, LET'S ASSUME FOR A MINUTE HE'S TRYING TO BE

1 HONEST WITH US. HE SAID, "LOOK, IT WOULD BE
2 REAL..." HE SAID, "I DON'T BELIEVE IN THE DEATH
3 PENALTY. I DON'T BELIEVE IN CAPITAL PUNISHMENT.
4 THEY TRIED TO KILL MY DADDY WHEN I WAS NINE YEARS
5 OLD. I WENT THROUGH A HARROWING EXPERIENCE TRYING
6 TO GO THROUGH THAT." AND HE'S TELLING YOU NOW
7 BECAUSE OF THAT IS WHAT HE'S SAYING, "I HAVE A
8 FIRMLY HELD REASON NOT TO IMPOSE THAT PROCEDURE,
9 AND THAT PROCESS, AND THAT WEIGHT ON SOMEBODY
10 ELSE." AND THAT'S WHAT HE'S SAYING AND HE'S TRYING
11 TO TELL US THAT. AND HE'S TRYING TO SAY, "LOOK,
12 I'M A LAW ABIDING PERSON. I'LL TRY TO DO WHAT'S
13 RIGHT. BUT I WANT YOU TO KNOW I DON'T THINK I
14 COULD IMPOSE..." HE SAID, "I WOULD ALWAYS CHOOSE
15 LIFE."

16 THE COURT: TO YOUR ANSWER...TO YOUR
17 QUESTION. BUT HOW DO YOU EXPLAIN TO MY QUESTION
18 THAT HE SAID HE WOULD DO IT?

19 MR. JONES: THE SIMPLICITY OF THE
20 THOUGHT PROCESS...

21 THE COURT: YOU MEAN MY PROCESS IS
22 MORE COMPLICATED THAN YOURS? YOU MEAN THE WAY...

23 MR. JONES: NO, SIR, I WASN'T TALKING
24 ABOUT YOUR THOUGHT PROCESS. I WAS TALKING ABOUT
25 THE SIMPLICITY OF THE THOUGHT PROCESS OF THE PERSON

1 WE'RE TALKING TO...

2 THE COURT: OH.

3 MR. JONES: ...AND ALSO ANY DEFERMENT
4 HE MIGHT HAVE TO AUTHORITY. I MEAN, YOU KNOW...

5 THE COURT: AND HE CERTAINLY DOES. HE
6 CERTAINLY DOES DEFER TO THE AUTHORITY.

7 MR. JONES: RIGHT.

8 THE COURT: AND HE SAYS HE WILL FOLLOW
9 THE JUDGE'S INSTRUCTIONS.

10 MR. JONES: HE DOES, BUT WHEN I ASK
11 HIM IF ONCE HE GETS AWAY FROM YOU AND IN THE JURY
12 ROOM AND HAS A CHOICE IN THE JURY ROOM BETWEEN LIFE
13 OR DEATH, HE SAID HE WOULD ALWAYS CHOOSE LIFE.
14 THAT'S WHAT HE SAID AND HE SAID IT TWICE. AND
15 THAT'S WHAT I ASKED HIM AND THAT'S WHY I REMOVED
16 HIM. WHEN YOU'RE TELLING HIM, FINE. BUT WHEN HE
17 GETS ON HIS OWN, HE SAID IT SIMPLE AS CAN BE, "WHEN
18 I'M IN THERE AND I'VE GOT A CHOICE, BY MYSELF, I'M
19 GOING TO ALWAYS CHOOSE LIFE." AND I CAN BRING HIM
20 BACK OUT HERE AND ASK HIM THAT IN MANY DIFFERENT
21 WAYS MANY DIFFERENT TIMES AND IF HE ANSWERS IT TO
22 YOU TRUTHFULLY AND HE GETS IN A JURY ROOM BY
23 HIMSELF HE JUST TOLD YOU HE CAN'T RETURN A VERDICT
24 OF DEATH BECAUSE HE DOESN'T BELIEVE IN IT AND
25 BECAUSE IT WAS ATTEMPTED TO BE IMPOSED ON HIS

1 FATHER BY THE STATE WHEN HE WAS NINE YEARS OLD.
2 AND THAT CASE CLEARLY POINTS OUT THAT IT WOULDN'T
3 BE FAIR TO PUT HIM IN A POOL LIKE THIS WHEN HE
4 KNOWS THAT HE CAN'T...HE'S ALREADY STATED HE
5 DOESN'T BELIEVE IN THE DEATH PENALTY. I CAN ASK
6 HIM WHY HE DOESN'T BELIEVE IN IT. HE STATED THAT
7 UNDER MY DIRECT EXAMINATION AND I BELIEVE HE WOULD
8 SAY, "I DON'T BELIEVE IN IT BECAUSE OF WHAT I HAD
9 TO GO THROUGH AND BECAUSE OF WHAT IT PUT MY MAMA
10 THROUGH AND MY FAMILY THROUGH AND I SAW WHAT IT
11 DID." EVEN AT THE TENDER AGE OF NINE.

12 MR. HARPOOTLIAN: JUDGE, I REPEAT MY
13 OFFER TO LET YOU DO ALL OF THE REMAINING VOIR DIRE
14 ON THIS GUY.

15 MR. JONES: YOUR HONOR, EXCUSE ME,
16 COULD I BRIEFLY BEFORE...YOU DON'T THINK THAT IT
17 WOULD BE APPROPRIATE NOW TO ARGUE WHETHER OR NOT
18 HE'S QUALIFIED?

19 THE COURT: RIGHT NOW...

20 MR. HARPOOTLIAN: I'M READY TO ARGUE.

21 THE COURT: ...I'M GOING TO LET HIM
22 STAY IN THE PANEL. HE ANSWERED MY QUESTIONS. AND
23 HE SAYS HE WILL FOLLOW THE INSTRUCTIONS.

24 MR. JONES: CAN I PROCEED TO ASK HIM A
25 FEW MORE QUESTIONS?

1 THE COURT: SURE. I MEAN, RIGHT

2 NOW...

3 MR. HARPOOTLIAN: JUDGE...

4 THE COURT: HE SAID HE'D SIGN THE
5 WARRANT.

6 MR. HARPOOTLIAN: JUDGE, BEFORE WE GET
7 STARTED, I UNDERSTAND THERE'S A PROBLEM?

8 BAILIFF: JUDGE, WE'VE GOT A DIABETIC
9 JUROR IN HERE THAT'S GETTING REAL SHAKY AND NEEDS
10 SOMETHING. SHE SAID SHE'S GOT...

11 THE COURT: WHAT'S HER NAME?

12 BAILIFF: FIFTY-FIVE. NUMBER FIFTY-
13 FIVE.

14 CLERK: KATHY DUNCAN.

15 THE COURT: WHAT I'LL DO, SHE'S ABOUT
16 MIDWAY, I'M GOING TO LET HER GO ON HOME AND COME
17 BACK IN THE MORNING AT 9:00.

18 ALL RIGHT, WHAT ARE YOU GOING TO DO
19 WITH THIS JUROR? DO YOU WANT TO PROCEED ON THE
20 EXAMINING?

21 MR. JONES: YES, SIR.

22 THE COURT: ALL RIGHT. BRING HIM ON
23 IN.

24 (JUROR IS RETURNED TO THE OPEN
25 COURTROOM)

1 THE COURT: ALL RIGHT, MR. SOLICITOR,
2 YOU MAY PROCEED.

3 Q MR. MOORE, I HAVE A FEW MORE QUESTIONS
4 FOR YOU. IF MY QUESTIONS AREN'T CLEAR, IF YOU
5 WOULD PLEASE JUST SAY TO ME, "I DON'T UNDERSTAND.
6 WOULD YOU REPEAT IT," OR WHAT-NOT?

7 A YES, SIR.

8 Q THE QUESTION IS, IF YOU'RE ASKED,
9 "NOW, IF YOU'RE ON A JURY AND YOU FIND SOMEBODY
10 GUILTY OF MURDER AND YOU FIND THAT THERE'S AN
11 AGGRAVATING CIRCUMSTANCE PRESENT AND THE JUDGE
12 CHARGES YOU THAT YOU ARE TO CONSIDER, DEPENDING ON
13 THE FACTS OF THE CASE, A LIFE SENTENCE OR A DEATH
14 SENTENCE AND YOU GO BACK IN THE JURY ROOM AND YOU
15 TALK ABOUT THE EVIDENCE, THE MITIGATION FACTORS AND
16 THE AGGRAVATING FACTORS, AND YOU DECIDE THAT IT'S
17 THE KIND OF CASE WHERE THE DEATH PENALTY OUGHT TO
18 BE IMPOSED, ARE YOU TELLING ME THAT YOU CAN SIGN
19 YOUR NAME IMPOSING THE DEATH PENALTY ON ANOTHER
20 HUMAN BEING?"

21 A NO, SIR.

22 MR. JONES: YOUR HONOR, MAY I BE
23 ALLOWED TO CONDUCT THIS VOIR DIRE?

24 MR. HARPOOTLIAN: WELL YOUR HONOR, HE
25 IS CROSS-EXAMINING THIS JUROR.

1 THE COURT: EXCUSE ME? THAT'S WHAT
2 Y'ALL ARE ENTITLED TO DO. OVERRULED. YOU MAY
3 PROCEED. I'LL GIVE YOU YOUR CHANCE.

4 MR. JONES: YES, SIR.

5 Q ARE YOU TELLING ME THAT YOU COULD
6 IMPOSE THE SENTENCE OF DEATH ON ANOTHER HUMAN
7 BEING?

8 A I SAID NO, SIR, DIDN'T I?

9 Q IS THAT THE TRUTH?

10 A YES, SIR.

11 Q IS THAT A POSITION THAT YOU HAVE COME
12 TO WHILE BEING IN THIS PROCESS AND GOING THROUGH
13 THIS PROCESS HERE TODAY?

14 A YES, SIR.

15 Q AND ARE YOU CONVINCED IN YOUR MIND,
16 BODY, AND SOUL THAT YOU COULD NOT IMPOSE A SENTENCE
17 OF DEATH EVEN IF THE FACTS OF THE CASE WARRANTED
18 AND CALLED FOR IT?

19 A YES, SIR.

20 Q THAT IS CORRECT?

21 A YES, SIR.

22 Q YOU COULD NOT?

23 A YES, SIR.

24 MR. HARPOOTLIAN: YOUR HONOR, I
25 OBJECT. HE'S SAID IT...

1 THE COURT: SUSTAINED. IT'S
2 ARGUMENTATIVE AND 403. YOU'VE GOT YOUR ANSWER THAT
3 YOU WANT AND I'M GOING TO EVALUATE HIS ANSWERS TO
4 YOUR QUESTION. NOW, YOU CAN'T ASK...YOU'RE ASKING
5 THE QUESTION OVER AND OVER.

6 MR. JONES: YOUR HONOR, THE QUESTION
7 I'VE GOT IS ARE YOU CERTAIN THAT THAT'S YOUR
8 POSITION?

9 MR. HARPOOTLIAN: YOUR HONOR...

10 THE COURT: AND I SUSTAIN THE
11 OBJECTION. YOU'VE ASKED IT, HE TOLD YOU.

12 MR. JONES: ALL RIGHT.

13 THE COURT: THAT'S HIS ANSWER TO YOUR
14 QUESTION.

15 Q THEN MY NEXT QUESTION WOULD BE TO YOU,
16 MR. MOORE, IS THAT IF I ASKED YOU IS THERE ANY
17 SITUATION IN ANY MURDER CASE WHERE YOU WOULD BE
18 ABLE TO IMPOSE A DEATH SENTENCE ON ANOTHER HUMAN
19 BEING BY SIGNING YOUR NAME TO...

20 MR. HARPOOTLIAN: YOUR HONOR, I
21 OBJECT.

22 THE COURT: I OVERRULE THAT OBJECTION.

23 A NO, SIR.

24 Q EXCUSE ME?

25 A NO, SIR.

1 Q THERE IS NO SITUATION WHERE YOU COULD
2 DO THAT?
3 MR. HARPOOTLIAN: YOUR HONOR...
4 THE COURT: NOW, I SUSTAIN THAT. I'M
5 NOT...
6 MR. JONES: YOUR HONOR...WELL...
7 THE COURT: LISTEN. WAIT.
8 SOLICITOR...
9 MR. JONES: YOUR HONOR, I'M BEING
10 INTERRUPTED.
11 THE COURT: SOLICITOR?
12 MR. JONES: YES, SIR?
13 THE COURT: NOW, I'M TELLING YOU...
14 MR. JONES: ALL RIGHT.
15 THE COURT: ...LAST TIME. YOU ASK THE
16 QUESTION ONE TIME, YOU GET THE ANSWER. DON'T COME
17 BACK AND ASK THE QUESTION AGAIN. THAT'S WHAT
18 YOU'RE DOING. THAT'S WHY IT'S TAKING SO LONG, PLUS
19 THEY'RE TAKING AN EXTRAORDINARY AMOUNT OF TIME.
20 YOU GOT YOUR ANSWER TO THE QUESTION. OKAY? ALL
21 RIGHT.
22 NOW, ANYTHING ELSE OF THIS JUROR?
23 MR. JONES: NO, SIR.
24 THE COURT: ALL RIGHT, NOW MR.
25 HARPOOTLIAN?

1 MR. HARPOOTLIAN: YES, SIR?
2 THE COURT: THE SAME THING.
3 MR. HARPOOTLIAN: YES, SIR.
4 CROSS-EXAMINATION:
5 BY MR. HARPOOTLIAN:
6 Q MR. MOORE, OVER THE PAST THIRTY
7 MINUTES OR SO, AND I APOLOGIZE ON THE BACK AND
8 FORTH ON THIS, BUT WE'RE TRYING TO FIND OUT HOW YOU
9 FEEL ABOUT CERTAIN THINGS. THIS IS STEPHEN BECKHAM
10 OVER HERE. HE'S THE GUY ON TRIAL. HE'S THE ONE
11 WHO WE REPRESENT, MR. SWERLING AND I REPRESENT.
12 THAT'S MR. SWERLING NEXT TO HIM. WE'RE TRYING TO
13 FIND OUT HOW YOU FEEL SO THAT WHEN WE GET TO THE
14 POINT OF PICKING THE JURY WE CAN PUT PEOPLE ON THIS
15 JURY WHO WILL BE FAIR TO BOTH SIDES, OKAY? THAT'S
16 ALL WE'RE DOING. YOU'RE NOT ON TRIAL.
17 A YEAH, I KNOW THAT.
18 Q IT MAY FEEL LIKE THAT, BUT YOU'RE NOT.
19 OKAY?
20 A UH-HUH. (YES).
21 MR. JONES: OBJECTION, YOUR HONOR.
22 THE COURT: SUSTAINED.
23 MR. HARPOOTLIAN: I APOLOGIZE.
24 THE COURT: WITHDRAW THE QUESTION.
25 MR. HARPOOTLIAN: I APOLOGIZE.

1 WITHDRAW THE QUESTION.

2 Q NOW, WHEN THE JUDGE ASKED YOU A LITTLE
3 WHILE AGO ABOUT YOUR FEELINGS ABOUT THE DEATH
4 PENALTY, YOU INDICATED TO HIM THAT YOU WEREN'T IN
5 FAVOR OF IT, BUT THAT IN THE APPROPRIATE CASE YOU
6 WOULD CONSIDER GIVING THE DEATH PENALTY. IS THAT
7 CORRECT?

8 A YES, SIR.

9 Q AND YOU INDICATED TO HIM THAT UNDER
10 THE LAW IF YOU WERE PERMITTED TO DO SO, IF THE CASE
11 WERE AGGRAVATED ENOUGH, YOU COULD SENTENCE SOMEBODY
12 TO DEATH? YOU COULD SIGN THAT DEATH WARRANT?

13 A YES.

14 Q IS THAT RIGHT?

15 A THAT'S RIGHT.

16 Q AND THEN WHEN SOLICITOR JONES OVER
17 HERE ASKED YOU, YOU SEEMED TO CHANGE YOUR POSITION
18 A LITTLE BIT ON THAT.

19 A UH-HUH. (YES).

20 Q AND I GUESS WHAT I'M TRYING TO FIND
21 OUT IS THIS. IF YOU'RE PICKED FOR THIS JURY, OR
22 ANY JURY, NOT THIS JURY, BUT IF YOU'RE PICKED FOR A
23 JURY IN WHICH WE GO THROUGH THIS PROCESS, FIRST OF
24 ALL IS THE DEFENDANT GUILTY OR NOT GUILTY, AND YOU
25 DETERMINED THAT HE WAS GUILTY -- HE OR SHE -- AND

1 THEN YOU WENT TO THE SECOND STAGE, THERE'S A SECOND
2 TRIAL. NORMALLY A JUDGE DOES THE SENTENCING BUT IN
3 THIS KIND OF CASE THE JURY DOES IT.

4 A UH-HUH. (YES).

5 Q THEN YOU LISTEN TO
6 AGGRAVATION...EVIDENCE IN AGGRAVATION. WAS IT
7 COMMITTED DURING A RAPE OR AN ARMED ROBBERY? THOSE
8 ARE THE KINDS OF THINGS THAT ARE CALLED AGGRAVATING
9 CIRCUMSTANCES...AND ANY MITIGATION, SOMETHING ABOUT
10 THE DEFENDANT THAT MIGHT MITIGATE PUNISHMENT, JUST
11 LIKE THE JUDGE WOULD DO.

12 A YEAH.

13 Q AND THEN THE JURY MAKES A DECISION.
14 IS IT A LIFE SENTENCE OR IS IT A DEATH SENTENCE?
15 AND WHAT WE'RE TRYING TO FIND OUT IS WOULD YOU BE
16 ABLE TO CONSIDER -- AND WHEN I SAY CONSIDER, BE
17 ABLE TO GIVE EITHER A LIFE SENTENCE OR A DEATH
18 SENTENCE IF THAT WAS PERMITTED BY LAW? AND WOULD
19 YOU GO THROUGH THAT PROCESS AND CONSIDER BOTH
20 ALTERNATIVES? AND YOUR RESPONSE TO THAT, AS I
21 UNDERSTAND IT IS...?

22 A YES, SIR.

23 Q OKAY. AND IF YOU, AS ONE MEMBER OF
24 THE JURY, YOU WERE CONVINCED THAT IT WAS THE KIND
25 OF CASE THAT WARRANTED THE DEATH PENALTY, YOU

1 WOULD, JUST AS THE OTHER ELEVEN MEMBERS OF THE
2 JURY, SIGN YOUR NAME TO THAT VERDICT FORM, THAT
3 DEATH VERDICT FORM, AND SENTENCE HIM TO DEATH?
4 WOULD YOU NOT? IF YOU FOUND AN AGGRAVATED...IT WAS
5 AGGRAVATED ENOUGH...
6 A AGGRAVATED?
7 Q YES, SIR.
8 A I BELIEVE I WOULD.
9 Q OKAY. NOW, LET ME BACK UP FOR JUST A
10 SECOND. WE KEEP TALKING ABOUT PENALTY HERE.
11 BEFORE YOU CAN EVER GET TO THAT STAGE, THE PENALTY
12 STAGE, THE JURY HAS TO FIND BEYOND A REASONABLE
13 DOUBT THAT THE DEFENDANT HAS COMMITTED THE CRIME.
14 A UH-HUH. (YES).
15 Q YOU UNDERSTAND THAT STEPHEN BECKHAM IS
16 PRESUMED INNOCENT?
17 A THAT'S RIGHT.
18 Q OKAY. AND YOU UNDERSTAND THAT ALL
19 THAT'S HAPPENED SO FAR IS THAT THE STATE HAS
20 ACCUSED HIM OF A CRIME? ISN'T THAT CORRECT?
21 A RIGHT.
22 Q AND YOU CAN FOLLOW THE JUDGE'S
23 INSTRUCTIONS IN THAT STAGE, THAT IS THE GUILT OR
24 INNOCENCE STAGE, TO PRESUME HIM INNOCENT? ISN'T
25 THAT CORRECT?

1 A UNTIL IT'S PROVEN OTHERWISE.

2 Q UNTIL IT'S PROVEN TO YOU OTHERWISE

3 BEYOND A REASONABLE DOUBT?

4 A YES, SIR.

5 Q AND YOU WOULD BE FAIR TO BOTH STEPHEN

6 BECKHAM AND THE STATE OF SOUTH CAROLINA, WOULD YOU

7 NOT?

8 A RIGHT.

9 Q AND...EXCUSE ME ONE SECOND. LET ME

10 SEE IF THERE'S ANYTHING ELSE I NEED TO ASK YOU.

11 MR. HARPOOTLIAN: ASKING FOR THE

12 COURT'S INDULGENCE.

13 Q I WANT TO THANK YOU FOR YOUR PATIENCE

14 WITH US. WE BOTH, MR. JONES AND I, NEED TO FIND

15 OUT ABOUT YOU AND THAT'S WHAT WE'RE DOING HERE.

16 NEITHER HE NOR I HAVE IN ANY WAY INTENDED TO OFFEND

17 YOU, I ASSURE YOU.

18 A I UNDERSTAND THAT.

19 Q THANK YOU SO MUCH.

20 THE COURT: ANYTHING ELSE?

21 MR. JONES: YES, SIR.

22 THE COURT: ALL RIGHT.

23 REDIRECT EXAMINATION:

24 BY MR. JONES:

25 Q MR. MOORE, I THINK WHEN YOU WERE ASKED

1 THE QUESTION BY THAT LAWYER YOU SAID, "I BELIEVE I
2 COULD." WAS THAT YOUR RESPONSE?

3 A YES, SIR. THAT THE...IN VIEW OF ALL
4 OF THE EVIDENCE AND EVERYTHING, BEFORE I COULD MAKE
5 MY DECISION.

6 Q RIGHT. BUT IS WHAT YOU'RE SAYING THAT
7 AFTER YOU HEAR ALL OF THE EVIDENCE AND YOU FIND AN
8 AGGRAVATING CIRCUMSTANCE AND YOU FIND HIM GUILTY OF
9 MURDER AND THE EXISTENCE OF AN AGGRAVATING
10 CIRCUMSTANCE, THAT YOU...IS WHAT YOU'RE SAYING THEN
11 THAT YOU...

12 A GOING TO WEIGH BOTH SIDES.

13 Q SIR?

14 A THE AGGRAVATED AND THE...

15 Q MITIGATED.

16 A ...MITIGATED.

17 Q RIGHT. YOU LISTENED TO BOTH OF THEM?

18 A YES, SIR.

19 Q YOU WEIGHED BOTH SIDES? AND YOU
20 DECIDE THAT IT'S AN APPROPRIATE CASE FOR THE DEATH
21 PENALTY...

22 A I REALIZE THERE'S TWO STAGES TO THIS
23 TYPE OF TRIAL.

24 Q RIGHT, THERE'S TWO STAGES.

25 A UH-HUH. (YES).

1 Q BUT LET'S SAY WE'RE IN STAGE TWO NOW.
2 STAGE TWO...

3 A STAGE TWO, IF THERE'S PROVEN IT WAS
4 AGGRAVATED MURDER...

5 Q THEN WHAT YOU'RE SAYING IS IS THAT YOU
6 COULD SIGN YOUR NAME IMPOSING THE DEATH PENALTY FOR
7 ANOTHER HUMAN BEING?

8 A YES, SIR.

9 Q THAT'S WHAT YOU'RE SAYING?

10 A YES, SIR.

11 Q OKAY.

12 THE COURT: ANYTHING ELSE?

13 MR. HARPOOTLIAN: NO, SIR.

14 THE COURT: DO YOU WANT TO BE HEARD
15 OUTSIDE?

16 MR. JONES: YES, SIR.

17 THE COURT: ALL RIGHT. MR. MOORE, LET
18 ME ASK YOU TO STEP DOWN ONE MORE TIME, PLEASE?
19 YOU'RE GETTING SOME EXERCISE, AREN'T YOU?

20 (JUROR IS EXCUSED FROM THE OPEN
21 COURTROOM)

22 IN-CAMERA:

23 THE COURT: THEY SAID MY RED CAP WENT
24 DOWN THERE A WHILE AGO.

25 MR. HARPOOTLIAN: I SAW IT FLYING.

1 I'M SORRY, I SHOULD HAVE GOTTEN IT FOR YOU, YOUR
2 HONOR.

3 THE COURT: THAT'S OKAY. I DON'T NEED
4 IT RIGHT NOW. WHAT'S YOUR ARGUMENT, SOLICITOR?

5 MR. JONES: IN STATE V. COPELAND,
6 JUDGE, THE TRIAL JUDGE PROPERLY DISQUALIFIED A
7 JUROR WHO HAD STRONG FEELINGS AGAINST THE DEATH
8 PENALTY, ALTHOUGH THE RECORD DID NOT SHOW HE WAS
9 IRREVOCABLY COMMITTED TO VOTE AGAINST THE DEATH
10 PENALTY. THE QUESTIONING PROCESS MUST BE VIEWED IN
11 ITS ENTIRETY. AGAIN, I QUOTED THE ELMORE CASE
12 EARLIER, JUDGE. YOU KNOW, THIS IS A SITUATION THAT
13 IS CLASSIC WITH COPELAND. I MEAN, THIS GUY SAYS,
14 YOU KNOW, THAT HE DOES NOT BELIEVE IN THE DEATH
15 PENALTY AND THEN HE SAID TO ME ON COUNTLESS
16 OCCASIONS THAT HE COULD NOT IMPOSE THE DEATH
17 PENALTY HIMSELF. AND FINALLY, IN AN EFFORT TO END
18 THE PROCESS HE SAID HE COULD. IT'S IN NO MEANS
19 COULD YOU...AND I RESPECTFULLY, YOUR HONOR,
20 ARGUE...COULD YOU INTERPRET HIS TESTIMONY AND HIS
21 RESPONSES DURING THE COURSE OF THIS HEARING TO
22 BELIEVE THAT HE WOULD EVEN CONSIDER IMPOSING THE
23 DEATH PENALTY. HE IS...JUDGE, HE SAID WHAT HE SAID
24 TO GET OUT OF THAT CHAIR AND OUT OF THAT ROOM. HE
25 DOES NOT BELIEVE IN THE DEATH PENALTY. HE DOES NOT

1 BELIEVE IN IMPOSING THE DEATH PENALTY. AND HE WILL
2 NOT...JUDGE, YOU KNOW, AGAIN I RETURN TO COPELAND.
3 A TRIAL JUDGE PROPERLY DISQUALIFIED A JUROR WHO HAD
4 STRONG FEELINGS AGAINST THE DEATH PENALTY, ALTHOUGH
5 THE RECORD DID NOT SHOW HE WAS IRREVOCABLY
6 COMMITTED TO VOTE AGAINST THE DEATH PENALTY. AND
7 THAT'S WHAT WE HAVE HERE. IT'S A CLASSIC EXAMPLE
8 OF WHAT WE HAVE HERE. AND SO, YOU KNOW, I THINK
9 THAT THE COURT WOULD NOT ONLY BE EXERCISING ITS
10 DISCRETION PROPERLY, BUT HAS AMPLE AMOUNT OF
11 FACTUAL BASIS FROM WHICH TO DO THAT, TO DISQUALIFY
12 THIS JUROR. HE'S NOT DEATH PENALTY QUALIFIED, YOUR
13 HONOR. HE CAN'T HONESTLY CONSIDER, MUCH LESS
14 IMPOSE, THE DEATH PENALTY, IN SPITE OF WHAT HE
15 ULTIMATELY SAID. HE...YOU KNOW, HIS STATEMENTS AND
16 THE TOTALITY OF HIS EXPERIENCES IN LIFE AND WHAT
17 HE'S BEEN THROUGH BEAR THAT OUT.

18 THE COURT: MR. HARPOOTLIAN?

19 MR. HARPOOTLIAN: IF IT PLEASE THE
20 COURT, YOUR HONOR? AGAIN, I WOULD CITE STATE
21 VERSUS GREEN, WHICH IS 392 S.E. 2ND 157, WHICH
22 STANDS FOR THE PROPOSITION YOU'VE GOT TO CONSIDER
23 THIS JUROR'S ANSWERS IN THEIR TOTALITY. YOU'VE GOT
24 TO NOT PICK OUT ONE LINE HERE AND THERE. AND I
25 POINT OUT THE LAST RESPONSE TO THE SOLICITOR WAS,

1 "YES, IF IT WERE AGGRAVATED I COULD GIVE THE DEATH
2 PENALTY. YES, I COULD SIGN." AND IN ANSWERING
3 YOUR QUESTIONS HE DID THE SAME THING. THE PROBLEM,
4 JUDGE, I THINK IS THIS. THIS IS A GENTLEMAN WITH
5 NOT A LOT OF EDUCATION. HE, OBVIOUSLY IS NOT
6 SOMEONE WHO IS A DEATH PENALTY PROPONENT, BUT THIS
7 JURY IS NOT TO BE DEATH QUALIFIED IN THE SENSE THAT
8 EVERYONE ON THE JURY SHOULD NOT BE AN ADVOCATE OF
9 THE DEATH PENALTY. THIS GENTLEMAN IS THE PERFECT
10 JUROR BECAUSE HE'S GOING TO BE VERY ORIENTED
11 TOWARDS DOING WHAT HE THINKS IS THE RIGHT THING.
12 HE HAS NO PRECONCEPTION. I WOULD NOTE, AND I
13 UNDERSTAND I HATE TO KEEP QUOTING THIS MEMORANDUM
14 OPINION, BUT IT'S THE MOST RECENT ONE I HAVE, STATE
15 VERSUS GEORGE. THIS, AGAIN, IS VERY SIMILAR TO
16 JUROR WATKINS AND THEY CITE STATE VERSUS GREEN IN
17 THERE. YOUR HONOR, I BELIEVE THIS JUROR IS
18 QUALIFIED. THE STATE HAS PREEMPTORY CHALLENGES
19 THAT THEY CAN EXERCISE IF THEY FEEL THAT HE WOULD
20 NOT BE...I MEAN, THAT'S WHY WE USE PREEMPTORY
21 CHALLENGES IS TO EXCUSE PEOPLE WE THINK WILL BE
22 LESS ORIENTED TO OUR POSITION THAN OTHERS. AND I
23 WOULD SUGGEST THAT THIS WOULD BE SOMEONE THAT
24 THEY'D WANT TO PERHAPS EXERCISE A PREEMPTORY
25 CHALLENGE ON, ALTHOUGH I THINK HE WOULD BE A FAIR

1 JUROR AND WOULD DO THE RIGHT THING. SO, I WOULD
2 ASK YOU TO QUALIFY HIM. I THINK HE'S QUALIFIED
3 BASED ON HIS RESPONSES TO YOU AND THE TOTALITY OF
4 HIS RESPONSES. I'M NOT GOING TO BELABOR THE POINT.

5 MR. JONES: YOUR HONOR, FROM GREEN,
6 FROM THE STATE VERSUS GREEN AND QUOTING STATE
7 VERSUS GASKINS, A CASE THAT I'M SURE MR.
8 HARPOOTLIAN IS FAMILIAR WITH.

9 MR. HARPOOTLIAN: VAGUELY.

10 MR. JONES: APPELLATE CONTENDS THE
11 TRIAL COURT ERRONEOUSLY DISQUALIFIED JURORS DEBRA
12 NELSON AND ROBERT PRINCE. ON REVIEW, THE TRIAL
13 COURT'S DISQUALIFICATION OF THE PROSPECTIVE JUROR
14 WILL NOT BE DISTURBED WHEN THERE IS A REASONABLE
15 BASIS FROM WHICH THE TRIAL COURT COULD HAVE
16 CONCLUDED THAT THE JUROR WOULD NOT HAVE BEEN ABLE
17 TO FAITHFULLY DISCHARGE HIS RESPONSIBILITIES AS A
18 JUROR UNDER THE LAW. AND I RECOGNIZE THAT YOU
19 ASKED HIM ABOUT THE LAW AND BEING ADVISED BY THE
20 COURT TO FOLLOW THE LAW AND THAT SORT OF THING.
21 AND I REALIZE, YOUR HONOR, THAT HE INDICATED TO YOU
22 THAT HE MIGHT BE ABLE TO, BUT AT THE SAME TIME I
23 ASKED HIM, IF HE WAS GIVEN AN OPTION, WOULD HE GIVE
24 THE DEATH PENALTY AND HE SAID HE COULDN'T. SO,
25 AGAIN, THERE WOULD NOT BE AN ABUSE OF DISCRETION IF

1 THERE IS, AGAIN, A REASONABLE BASIS FROM WHICH THE
2 TRIAL COURT COULD HAVE CONCLUDED THAT THE JUROR
3 WOULD NOT HAVE BEEN ABLE TO HAVE FAITHFULLY
4 DISCHARGED HIS RESPONSIBILITIES AS A JUROR UNDER
5 THE LAW. AND I ASK YOU, IS IT REASONABLE FOR YOU
6 TO CONCLUDE THAT BECAUSE HIS FATHER WAS TRIED FOR
7 CAPITAL MURDER AND WAS CONVICTED FOR THAT MURDER
8 THIRTY-FIVE YEARS AGO AND SERVED TIME, THAT THIS
9 GENTLEMAN WOULD HAVE DIFFICULTY...AGAIN, WOULD HAVE
10 DIFFICULTY TO HAVE BEEN ABLE TO FAITHFULLY
11 DISCHARGE HIS RESPONSIBILITIES AS A JUROR UNDER THE
12 LAW? IS IT UNREASONABLE TO ASSUME THAT THAT
13 EXPERIENCE WOULD CREATE A BASIS FOR THIS JUROR TO
14 BE UNABLE TO FOLLOW THE LAW AS IT IS? AND I ARGUE
15 TO YOU, YOUR HONOR, THAT IT WOULD BE. THAT THAT IS
16 A REASONABLE BASIS FOR YOU TO CONCLUDE THAT THIS
17 JUROR COULD NOT FAITHFULLY FOLLOW THE LAW BECAUSE
18 OF THAT EXPERIENCE, BECAUSE OF THAT UNIQUE LIFE
19 EXPERIENCE THAT HE HAS ENCOUNTERED. AND IT SHOWED
20 THROUGH DURING THIS PROCESS. AS I SUBMIT TO YOU,
21 YOUR HONOR, AND PLEASE ALLOW ME TO ENGAGE IN A
22 LITTLE CONJECTURE HERE. I WOULD ARGUE THAT IF THE
23 GENERAL GROUP CONTAINED HEREIN HAD ENDEAVORED TO
24 SURMISE ON WHICH SIDE OF THE LEDGER THIS JUROR
25 WOULD FALL ON WHEN IT CAME TO PREDISPOSITION, I

1 WOULD EXPECT IT WOULD HAVE BEEN A PREDISPOSED TO
2 SENTENCE TO DEATH BY THE MAJORITY OF THOSE OF US
3 HERE. BUT BECAUSE OF THE UNIQUE LIFE SITUATION
4 THIS JUROR HAS HAD, HE IS UNUSUAL AND HE IS FACED
5 WITH SUCH...JUDGE, HE HAS GOT TO, THE WHOLE TIME
6 THIS CASE IS GOING ON AND THE WHOLE TIME HE'S
7 ATTEMPTING TO EXERCISE HIS RESPONSIBILITIES AS A
8 JUROR UNDER THE LAW, HE'S GOT TO THINK ABOUT HIS
9 DAD. HE'S GOT TO THINK ABOUT WHAT HIS DAD WENT
10 THROUGH. AND HE'S GOT TO PUT THAT OUT OF HIS MIND.
11 YOU'RE ASKING HIM NOT TO PUT FACTS OF THE CASE OUT
12 OF HIS MIND, NOT TO PUT WHAT HE READ OR WHAT HE SAW
13 ON T.V. OUT OF HIS MIND, YOU'RE ASKING HIM TO PUT
14 HIS LIFE OUT OF HIS MIND. YOU'RE ASKING HIM TO PUT
15 HIS FATHER OUT OF HIS MIND. AND THAT'S A TOTALLY
16 DIFFERENT CRITERIA. I MEAN YOU'RE ASKING HIM TO
17 DISENGAGE FROM HIS VERY BEING WHEN YOU ASK HIM NOT
18 TO LET THAT INFLUENCE HIS DECISION. AND THAT'S
19 BASICALLY WHAT HE WAS TELLING US HE COULDN'T DO.
20 BUT FINALLY, SOMEWHERE DEEP DOWN IN HERE HE FOUND
21 THE GUTS TO SAY, "HEY, HEY, I'LL TELL YOU RIGHT NOW
22 I CAN DO IT. DON'T JUMP ON ME TOO HARD." HE WAS
23 REACTING TO ME MORE THAN HE WAS ATTEMPTING TO
24 RESPOND TO WHAT THE ISSUE IS, YOUR HONOR. AND HE
25 DID.

1 THE COURT: AND FOR THAT VERY REASON
2 PERMIT ME SOME CONJECTURE. I'M GOING TO QUALIFY
3 HIM, BUT I BET YOU THEY STRIKE HIM. NOW, WITHIN MY
4 DISCRETION, AS I A WHILE AGO GRANTED THE STATE A
5 CLOSE CALL -- I FELT PRETTY COMFORTABLE ABOUT THAT
6 AND I THINK THAT ONE WILL SURVIVE -- I DON'T THINK
7 THIS ONE WILL. AND OUT OF AN ABUNDANCE OF
8 PRECAUTION I'M GOING TO QUALIFY HIM. YOU HAVE TO
9 BEAR IN MIND HE RESPONDED TO MY QUESTIONS
10 PERFECTLY. HE SAID THAT HE WOULD FOLLOW THE LAW.
11 HE ALSO DID NOT SAY THAT HIS FATHER WAS UNFAIRLY
12 ACCUSED OR CONVICTED, DID NOT COMMENT ON THAT. AND
13 HE SAID THAT HE COULD FOLLOW THE INSTRUCTIONS. AND
14 I BELIEVE THAT IF THERE'S ANYBODY ELSE ON THIS
15 PANEL, THAT GENTLEMAN WILL DO WHAT HE'S SUPPOSED TO
16 DO. SO, I'M GOING TO GIVE HIM A CHANCE. IF Y'ALL
17 WANT TO STRIKE HIM YOU CAN STRIKE HIM.

18 ALL RIGHT, WE SPENT AN HOUR ON ONE
19 JUROR. I'M TAKING A RECESS UNTIL IN THE MORNING,
20 9:00.

21 MR. HARPOOTLIAN: YES, SIR. I THINK
22 THE JUROR IS STILL...

23 THE COURT: YEAH, I'LL BRING HIM IN
24 HERE IN JUST A MINUTE. NOW, I'M PERFECTLY
25 WILLING...WELL, LET ME GET HIM OUT OF HERE.

1 (JUROR IS RETURNED TO THE OPEN
2 COURTROOM)

3 THE COURT: MR. MOORE, I'M GOING TO
4 FIND YOU QUALIFIED FOR PURPOSES OF SERVING ON THIS
5 PANEL WHICH MEANS THAT YOU COULD BE SELECTED TO
6 SERVE ON THE JURY.

7 A YES, SIR.

8 THE COURT: AND I WANT YOU TO COME
9 BACK TOMORROW AFTERNOON AT 2:30 PACKED AND READY TO
10 GO TO NEWBERRY IN THE CASE THAT YOU'RE SELECTED.
11 ALL RIGHT, SIR?

12 A YES, SIR.

13 THE COURT: NOW, DON'T DISCUSS THE
14 CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS IT WITH
15 YOU. DON'T READ OR LISTEN OR WATCH ANY ACCOUNT OF
16 THE TRIAL, AND WE'LL START BACK TOMORROW. I'D
17 SUGGEST SOMEBODY DROP YOU OFF AND THEN THEY CAN...

18 A COME BACK AT 2:00?

19 THE COURT: TWO-THIRTY TOMORROW
20 AFTERNOON...

21 A TWO-THIRTY.

22 THE COURT: YOU NEED TO PACK FOR ABOUT
23 TEN DAYS. SLED WILL TRANSPORT YOU AND PROVIDE
24 SECURITY WHILE YOU'RE THERE IF YOU'RE SELECTED AND
25 THE COUNTY OF NEWBERRY WILL PAY FOR YOUR LODGING

1 AND YOUR UPKEEP. ALL RIGHT, SIR?

2 A OKAY, SIR.

3 THE COURT: AND I'LL SEE YOU TOMORROW

4 AFTERNOON AT 2:30?

5 A YES, SIR.

6 THE COURT: ALL RIGHT.

7 ALL RIGHT, WE'VE GOT NINETEEN JURORS?

8 DOES EVERYBODY AGREE WITH THAT?

9 (ALL ANSWER YES)

10 THE COURT: NINE O' CLOCK IN THE

11 MORNING WITH STARTING PANEL D RIGHT OFF THE BAT.

12 BRING PANEL 11...I MEAN PANEL E AT 11:00 AND F AT

13 TWO.

14 CLERK: WHAT DO WE TELL THE REST OF

15 THEM?

16 THE COURT: THE REST OF THEM, ASK THEM

17 TO CALL AFTER TWO.

18 (COURT IS RECESSED)

19 (COURT IS RECONVENED)

20 THE COURT: OKAY, BRING IN....

21 MR. JONES: YOUR HONOR?

22 THE COURT: YES, SIR?

23 MR. JONES: IF I COULD, BEFORE WE

24 BEGIN THIS VOIR DIRE THIS MORNING, LAST EVENING

25 WITH THE LAST JUROR...

1 THE COURT: YES, SIR?

2 MR. JONES: I RECALL, YOU KNOW -- AND
3 IF I'M WRONG, I'M WRONG -- BUT I RECALL MR.
4 HARPOOTLIAN BEING AT MY IMMEDIATE LEFT DURING MY
5 REDIRECT OF THE JUROR AND MR. HARPOOTLIAN HAS
6 INDICATED TO US THAT HE CAN'T HEAR AND THAT HE
7 NEEDS TO GET CLOSER TO THE JUROR, BUT WHEN I'M
8 EXAMINING THE JUROR, I WOULD REQUEST THAT EITHER
9 YOU ALLOW ME TO STAND BESIDE THEM WHEN THEY'RE
10 EXAMINING THE JUROR OR MR. HARPOOTLIAN CAN CHANGE
11 SEATS WITH MR. SWERLING WHEN HE'S GOING TO EXAMINE
12 A JUROR OR MR. HARPOOTLIAN CAN SIT IN A SEAT OVER
13 ON THIS SIDE.

14 THE COURT: I'LL TAKE THE THIRD
15 OPTION.

16 MR. JONES: OVER THERE?

17 THE COURT: YES, SIR.

18 MR. HARPOOTLIAN: OVER THERE'S FINE,
19 YOUR HONOR. AND I APOLOGIZE. EVEN FROM MR.
20 SWERLING'S SEAT YOU CAN'T SEE THE JUROR.

21 THE COURT: I'VE BEEN THERE, I KNOW.
22 BUT YOU CAN BE OVER THERE. EITHER OVER THERE AT
23 THE CORNER OR IN THE CHAIR. ALL RIGHT, BRANDY M.
24 REID?

25 BRANDY M. REID, BEING CALLED

1 AND DULY SWORN, TESTIFIES AS FOLLOWS:

2 THE COURT: IF YOU'D HAVE A SEAT AND
3 MAKE YOURSELF COMFORTABLE RIGHT THERE, PLEASE?
4 NOW, I KNOW OF ALL THE PANELS THAT WE HAVE HAD,
5 PANEL D HAS PROBABLY HAD THE WORST TIME OF IT FROM
6 THE TIME STANDPOINT, BUT WE CAN'T PREDICT HOW FAST
7 IT WILL GO, HOW SLOW IT WILL GO. WE'VE GOT TO JUST
8 KEEP PLUGGING ALONG. SO, WE APOLOGIZE TO YOU FOR
9 THAT INCONVENIENCE.

10 NOW, MS. REID, HAVE YOU EVER SERVED ON
11 A JURY BEFORE?

12 A NO, SIR.

13 THE COURT: OKAY. HAVE YOU EVER BEEN
14 IN A COURTROOM BEFORE TODAY OR YESTERDAY OR MONDAY?

15 A NO.

16 THE COURT: OKAY, GOOD. ALL RIGHT.
17 DID YOU GET A CHANCE TO READ THE LETTER THAT I
18 HANDED OUT?

19 A YES, SIR.

20 THE COURT: ALL RIGHT. IS THERE
21 ANYTHING IN THAT LETTER THAT YOU JUST DIDN'T
22 UNDERSTAND OR WAS A LITTLE BIT CONFUSING OR YOU
23 WANT ME TO EXPLAIN A LITTLE FURTHER?

24 A NO, SIR.

25 THE COURT: OKAY. NOW, HAVE YOU

1 FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR
2 THE INNOCENCE OF MR. STEPHEN BECKHAM WHO IS THE
3 DEFENDANT IN THIS CASE?

4 A NO, SIR.

5 THE COURT: OKAY. DO YOU KNOW
6 ANYTHING ABOUT THE FACTS OF THE CASE?

7 A NO, SIR.

8 THE COURT: ALL RIGHT. AND YOU'VE NOT
9 DISCUSSED IT WITH ANYONE OR ANYONE'S DISCUSSED IT
10 WITH YOU?

11 A NO, SIR.

12 THE COURT: OKAY. NOW, THERE IS A
13 PRINCIPLE OF LAW IN A CRIMINAL COURT THAT A CITIZEN
14 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT OF
15 THAT CRIME UNTIL AND UNLESS THE STATE CAN PROVE HIS
16 GUILT BY EVIDENCE SATISFYING YOU BEYOND A
17 REASONABLE DOUBT. ARE YOU FAMILIAR WITH THAT?

18 A YES, SIR.

19 THE COURT: MS. REID, IS THAT A
20 PRINCIPLE OF LAW THAT YOU CAN ACCEPT AND FOLLOW IF
21 YOU WERE ON A JURY?

22 A YES, SIR.

23 THE COURT: ALL RIGHT. THE REASON I
24 ASK YOU THOSE QUESTIONS IS THAT BECAUSE IN A FEW
25 MINUTES WE'RE GOING TO BE ASKING YOU SOME QUESTIONS

1 ABOUT YOUR VIEWS ABOUT THE DEATH PENALTY AND THAT
2 TYPE OF THING. AND THERE AREN'T ANY WRONG ANSWERS
3 OR RIGHT ANSWERS. NOBODY'S GOING TO EMBARRASS YOU
4 OR PUT YOU ON THE SPOT. AND WE'RE NOT GOING TO
5 CHALLENGE WHAT YOU BELIEVE. ALL WE WANT TO KNOW IS
6 WHAT DO YOU BELIEVE. BUT THE FACT THAT WE'RE GOING
7 TO TALK ABOUT PENALTIES, I WANT TO MAKE SURE YOU
8 WON'T INFER OR IMPLY OR GET THE IDEA THAT MR.
9 BECKHAM IS NOW GUILTY OF ANYTHING, OKAY? HE HASN'T
10 BEEN TRIED AND SO JUST BECAUSE WE'RE TALKING ABOUT
11 PENALTIES, WE DON'T WANT YOU TO BE PREDISPOSED,
12 OKAY?

13 A YES, SIR.

14 THE COURT: ALL RIGHT. NOW, SINCE
15 YOU'VE NEVER BEEN IN A COURTROOM BEFORE THAT IS THE
16 JURY BOX OVER THERE. ORDINARILY IF WE WERE HERE
17 AND YOU WERE ON THE JURY YOU WOULD BE SITTING IN
18 THAT BOX LISTENING TO THE EVIDENCE. AND IN A
19 CRIMINAL TRIAL NORMALLY A JURY OF TWELVE MEN AND
20 WOMEN ARE ASKED TO DO ONE THING. THEY'RE ASKED TO
21 LISTEN TO THE EVIDENCE AND TO APPLY THE LAW AND TO
22 DETERMINE WHETHER OR NOT A DEFENDANT IS GUILTY OR
23 NOT GUILTY OF THE CRIME CHARGED. THAT'S USUALLY
24 WHAT THEY...THAT'S ALL THEY DO...NOT ALL THEY DO,
25 THAT'S WHAT THEY DO. IF THEY FIND A DEFENDANT NOT

1 GUILTY THEN THE DEFENDANT IS RELEASED FROM JEOPARDY
2 OR THE CHARGE AGAINST HIM. IF A DEFENDANT IS FOUND
3 GUILTY BY THE JURY THEN HE'S BROUGHT AROUND HERE
4 AND I, OR ANOTHER JUDGE LIKE ME, WOULD SENTENCE
5 HIM. OKAY? THAT HAPPENS IN EVERY CRIMINAL CASE IN
6 OUR STATE EXCEPT ONE AND THE ONE EXCEPTION TO THAT
7 IS THE SITUATION THAT WE'RE IN NOW WHERE THE STATE
8 IS SEEKING THE DEATH PENALTY. IN THAT EVENT, NOT
9 ONLY DOES THAT JURY OVER THERE DETERMINE WHETHER OR
10 NOT A DEFENDANT IS GUILTY OR NOT GUILTY BUT IF THEY
11 FIND A DEFENDANT GUILTY THEY ALSO SENTENCE HIM:
12 EITHER LIFE OR DEATH. DO YOU UNDERSTAND? ARE YOU
13 WITH ME TO THIS POINT?

14 A YES, SIR.

15 THE COURT: OKAY. NOW, THAT JURY, IN
16 SENTENCING A DEFENDANT, IF THEY GET TO THAT POINT,
17 WOULD DO THE SAME THING THAT I DO WHEN I SENTENCE
18 SOMEBODY. YOU'D LISTEN TO CIRCUMSTANCES IN
19 AGGRAVATION, THINGS THAT MAKE A CRIME WORSE AND
20 WOULD WARRANT A HARSHER PENALTY. YOU'D LISTEN TO
21 THINGS IN MITIGATION, THINGS THAT WOULD TEND TO SAY
22 THAT A DIFFERENT PUNISHMENT WOULD BE MORE
23 APPROPRIATE. OKAY?

24 NOW, WHEN JURORS ARE PUT IN THAT BOX
25 AND ASKED TO SENTENCE SOMEONE, WE HAVE BASICALLY

1 THREE TYPES OF JURORS AND I WANT TO DESCRIBE THEM
2 FOR YOU AND SEE WHERE YOU MIGHT FIT. THE FIRST
3 CATEGORY OF JURORS IS ONE THAT SAYS, "WE HAVE A
4 CONVICTION. WE'VE GOT PROOF OF AGGRAVATING
5 CIRCUMSTANCES. IT DOESN'T MATTER WHETHER WE HAVE
6 ANY MITIGATING CIRCUMSTANCES. I BELIEVE THAT THE
7 DEATH PENALTY IS ALWAYS THE APPROPRIATE PUNISHMENT
8 IN THAT CASE AND I VOTE FOR DEATH." OKAY?

9 WE HAVE A SECOND TYPE JUROR WHO SAYS,
10 "YOU'RE RIGHT, WE'VE GOT A CONVICTION, WE'VE GOT
11 AGGRAVATING CIRCUMSTANCES, WE MAY OR MAY NOT HAVE
12 ANY MITIGATING CIRCUMSTANCES, BUT I BELIEVE THAT
13 LIFE IMPRISONMENT IS ALWAYS THE APPROPRIATE
14 PUNISHMENT. I VOTE FOR LIFE." OKAY?

15 AND THEN WE HAVE A THIRD JUROR THAT
16 SAYS, "WELL, BOTH OF YOU JURORS ARE PARTIALLY
17 RIGHT. WE HAVE A CONVICTION. WE HAVE AGGRAVATING
18 CIRCUMSTANCES. WE MAY OR MAY NOT HAVE MITIGATING
19 CIRCUMSTANCES, BUT I WANT TO LOOK AT THIS CASE IN
20 PARTICULAR AND THE WHOLE RECORD AND AFTER I LOOK AT
21 IT I WILL DECIDE WHICH IS APPROPRIATE IN THIS CASE:
22 LIFE OR DEATH."

23 NOW, IF I HAD TO ASK YOU WHICH ONE OF
24 THE JURORS DO YOU...CATEGORIES DO YOU THINK YOU'D
25 LIKELY BE IN...?

1 A I DON'T KNOW.

2 THE COURT: WELL, LET ME ASK YOU THIS.
3 WE'LL FOLLOW UP...COME BACK TO THAT. IF YOU WERE
4 SITTING ON THE JURY AND YOU WERE ASKED TO SENTENCE
5 SOMEBODY IN A DEATH PENALTY CASE, IF YOU LOOKED AT
6 THE EVIDENCE -- FIRST OF ALL, YOU'VE GOT A
7 CONVICTION FOR MURDER, YOU KNOW THAT, PLUS YOU'VE
8 GOT EVIDENCE OF AGGRAVATION. YOU MAY OR MAY NOT
9 HAVE EVIDENCE OF MITIGATION -- BUT IF YOU LOOKED AT
10 THAT AND YOU CAME TO THE CONCLUSION THAT THE
11 APPROPRIATE PUNISHMENT IN THE CASE WOULD BE A LIFE
12 SENTENCE, COULD YOU IMPOSE A LIFE SENTENCE?

13 A YEAH.

14 THE COURT: ALL RIGHT. IF YOU LOOKED
15 AT THAT SAME CASE AND YOU CAME TO THE CONCLUSION
16 THAT THE APPROPRIATE PUNISHMENT WAS A DEATH
17 SENTENCE INSTEAD OF A LIFE SENTENCE, COULD YOU VOTE
18 TO IMPOSE A DEATH SENTENCE?

19 A YES, SIR.

20 THE COURT: ALL RIGHT. SO, LET ME
21 DESCRIBE THE CATEGORY C JUROR AGAIN FOR YOU. THAT
22 IS THE JUROR WHO SAYS, "YES, WE HAVE A CONVICTION.
23 YES, WE HAVE AGGRAVATING CIRCUMSTANCES. WE MAY OR
24 MAY NOT HAVE MITIGATING CIRCUMSTANCES, BUT I'M
25 GOING TO CONSIDER BOTH OF MY OPTIONS: LIFE AND

1 DEATH." IS THAT THE CATEGORY THAT YOU WOULD FALL
2 UNDER?

3 A YES, SIR.

4 THE COURT: ALL RIGHT. NOW, LET ME
5 TAKE YOU ONE STEP FURTHER AND THEN I'LL LET THE
6 ATTORNEYS ASK YOU A FEW QUESTIONS. IF, UNDER OUR
7 LAW, I, AS A TRIAL JUDGE WOULD INSTRUCT A JURY, IF
8 WE WERE INTO THE DEATH PENALTY PHASE OF A TRIAL,
9 SOMETHING TO THE EFFECT THAT IF YOU HAVE DECIDED
10 AFTER FOLLOWING ALL OF THESE INSTRUCTIONS THAT THE
11 DEATH PENALTY IS THE APPROPRIATE PENALTY IN THE
12 CASE, THEN OUR LAW REQUIRES THAT YOU SIGN YOUR NAME
13 TO THE SENTENCING SHEET, OR THE VERDICT FORM,
14 INDICATING THAT YOU ACKNOWLEDGE THAT THAT IS YOUR
15 SENTENCE; THAT IS, THE SENTENCE OF DEATH. IF YOU
16 RECEIVE THOSE INSTRUCTIONS AND YOU FELT THAT THE
17 DEATH PENALTY WAS APPROPRIATE, COULD YOU SIGN YOUR
18 NAME TO THE VERDICT FORM?

19 A IF I FELT IT WASN'T APPROPRIATE?

20 THE COURT: IF IT WAS APPROPRIATE.

21 A OH, IF IT WAS? YES, SIR.

22 THE COURT: AND IF IT WAS NOT, WHAT
23 WOULD YOU DO?

24 A I WOULDN'T HAVE VOTED FOR IT TO BEGIN
25 WITH.

1 THE COURT: OKAY. I JUST WANTED TO
2 MAKE SURE. NOW THAT WASN'T SO BAD, WAS IT?

3 A NO.

4 THE COURT: ALL RIGHT. WELL, THE
5 LAWYERS WANT TO ASK YOU A FEW QUESTIONS. ALL
6 RIGHT, MR. SOLICITOR?

7 DIRECT EXAMINATION:

8 BY MR. JONES:

9 Q GOOD MORNING, MS. REID.

10 A GOOD MORNING.

11 Q I DON'T HAVE A LOT OF QUESTIONS FOR
12 YOU.

13 A OKAY.

14 Q I WON'T BE LONG. I CERTAINLY WANT TO
15 APOLOGIZE FOR THE INCONVENIENCE IT'S CAUSED YOU UP
16 TO THIS POINT IN TIME. I REALIZE IT'S BEEN A
17 TESTING KIND OF TRIAL.

18 A I WANTED TO APOLOGIZE FOR YELLING AT
19 YOU YESTERDAY.

20 Q THAT'S OKAY. YOU DON'T HAVE TO DO
21 THAT. WE CERTAINLY RECOGNIZE JUST HOW DIFFICULT
22 THE PROCESS IS AND I NOTICED IN YOUR ANSWERING THE
23 JUDGE'S QUESTIONS THAT YOU PAID CLOSE ATTENTION AND
24 I JUST WANTED TO ASK YOU DID YOU UNDERSTAND THAT IF
25 THE JURY LISTENS TO THE EVIDENCE AND DECIDES THAT

1 THE PROPER VERDICT IS GUILTY OF MURDER, THEN WE GO
2 INTO A SECOND PHASE WHERE THE JURY DECIDES WHAT THE
3 PROPER PUNISHMENT IS: THE DEATH PENALTY OR LIFE
4 IMPRISONMENT. AND THE JUDGE ASKED YOU IF THE JURY
5 DECIDED THE PROPER PUNISHMENT WAS THE DEATH
6 PENALTY, WOULD YOU BE ABLE TO IMPOSE THE DEATH
7 PENALTY?

8 A YES, SIR.

9 Q AND YOU COULD?

10 A YES, SIR.

11 Q AND HE ALSO ASKED YOU IF YOU WOULD BE
12 ABLE TO SIGN YOUR NAME?

13 A YES, SIR.

14 Q AND YOU COULD DO THAT?

15 A YES, SIR.

16 Q THANK YOU, MA'AM.

17 THE COURT: MR. HARPOOTLIAN?

18 MR. HARPOOTLIAN: IF IT PLEASE THE
19 COURT, YOUR HONOR?

20 CROSS-EXAMINATION:

21 BY MR. HARPGOTLIAN:

22 Q MS. REID, MY NAME'S DICK HARPOOTLIAN
23 AND I'M A LAWYER FROM COLUMBIA.

24 A HI.

25 Q THIS IS JACK SWERLING OVER HERE. JACK

1 SWERLING?

2 MR. SWERLING: GOOD MORNING.

3 A GOOD MORNING.

4 Q HE'S SO PREOCCUPIED HE COULDN'T HEAR

5 ME... AND SEATED NEXT TO HIM IS STEPHEN BECKHAM.

6 STEPHEN BECKHAM IS THE MAN ON TRIAL HERE. HE IS

7 THE ONE WHOSE TRIAL WE'RE HAVING. OKAY? LET

8 ME...THANK YOU, STEPHEN. LET ME ASK YOU A COUPLE

9 OF QUESTIONS FAIRLY QUICKLY AND THIS SHOULDN'T TAKE

10 LONG. I JUST HEARD YOU SAY SOMETHING TO THE

11 SOLICITOR ABOUT YELLING AT HIM YESTERDAY? WHAT WAS

12 THAT?

13 A THAT WAS...

14 THE COURT: SHE DID THE SAME THING I

15 DID -- TOLD ALL OF YOU TO MOVE ALONG. OKAY? ON

16 THE WAY OUT.

17 A THIS WAS YESTERDAY AFTER ALL OF THIS

18 WAS OVER.

19 Q OKAY. WELL, I MEAN...AND I UNDERSTAND

20 YOU WERE PROBABLY PRETTY FRUSTRATED WITH SITTING

21 AROUND THAT JURY ROOM?

22 A UH-HUH. (YES).

23 Q NOT FUN?

24 A HUH-HUH. (NO). YOU TRY IT?

25 Q MA'AM?

1 A YOU TRY IT?

2 Q DON'T WANT TO TRY IT, THANK YOU.

3 A I KNOW. .

4 Q LET ME ASK YOU A LITTLE BIT ABOUT IT.

5 THIS MAY BE A PROTRACTED TRIAL. IT COULD GO TWO OR

6 THREE WEEKS WITH YOU SITTING SOMETIMES IN A JURY

7 BOX AND SOMETIMES IN A JURY ROOM. THIS IS A

8 PROCESS THAT IS STRUCTURED TO GUARANTEE THAT MR.

9 BECKHAM OVER HERE RECEIVES A FAIR TRIAL.

10 A YES, SIR.

11 Q AND THAT THE STATE OF SOUTH CAROLINA

12 GETS A FAIR TRIAL. AND I UNDERSTAND IT'S VERY

13 FRUSTRATING SITTING IN A SMALL ROOM WITH A BUNCH OF

14 PEOPLE YOU DON'T KNOW AND NO T.V. TO WATCH AND

15 NOTHING REALLY TO READ AND IT'S PRETTY ONEROUS.

16 BUT THIS IS A CASE IN WHICH THE SOLICITOR IS

17 SEEKING THE DEATH PENALTY. MR. JONES OVER HERE HAS

18 DECIDED THAT THIS WOULD BE AN APPROPRIATE CASE FOR

19 THE DEATH PENALTY AND IS GOING TO TRY TO CONVINCE

20 THE JURY TO IMPOSE IT. SO, IT'S A VERY SERIOUS

21 CASE.

22 A YES, SIR.

23 Q AND THAT'S WHY IT'S I GUESS A LITTLE

24 MORE CUMBERSOME AND DELIBERANT. DO YOU HAVE...YOU

25 KNOW, AND WE TALK A LOT ABOUT PENALTY...BEFORE WE

1 TALK ABOUT PENALTY THOUGH THE JUDGE TOLD YOU THAT
2 MR. BECKHAM IS PRESUMED INNOCENT.

3 A YES, SIR.

4 Q DO YOU BELIEVE THAT?

5 A YES, SIR.

6 Q YOU HAVE NO PROBLEM FOLLOWING THE
7 JUDGE'S INSTRUCTIONS THAT HE IS PRESUMED INNOCENT?
8 THAT THE STATE HAS TO PROVE HIM, IF THEY CAN,
9 BEYOND A REASONABLE DOUBT? THIS ISN'T A GAME. WE
10 DON'T KNOW WHAT EVIDENCE WILL BE INTRODUCED. WE
11 DON'T KNOW WHAT WITNESSES WILL TESTIFY AND THE JURY
12 WILL HAVE TO EVALUATE THOSE WITNESSES AND EVIDENCE
13 AND DETERMINE WHETHER THE STATE PROVES HIM GUILTY
14 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

15 A YES, SIR.

16 Q AT THIS POINT IT'S PRESUMED THAT THEY
17 WON'T, HE'S INNOCENT.

18 A YES, SIR.

19 Q AND YOU'VE GOT NO PROBLEM AS YOU SIT
20 THERE RIGHT NOW PRESUMING HIM INNOCENT?

21 A NO, SIR.

22 Q DO YOU KNOW ANYTHING ABOUT THIS CASE?

23 A NO, SIR.

24 Q OKAY. NOW LET ME ASK YOU A LITTLE BIT
25 ABOUT THE PENALTY. THE JUDGE HAS ASKED YOU IF,

1 BASED ON...YOU UNDERSTAND THAT WE MAY NEVER GET TO
2 THAT STAGE. WE MAY...IF THE JURY FINDS STEVE
3 BECKHAM NOT GUILTY THEN WE GO HOME. THERE IS NO
4 SECOND TRIAL. THERE IS NO SENTENCING. WE NEVER
5 GET TO THAT. BUT, I'VE GOT TO ASK YOU ABOUT IT
6 EVEN THOUGH WE MAY NOT GET TO THAT.

7 A OKAY.

8 Q YOU'VE INDICATED TO THE JUDGE THAT YOU
9 COULD CONSIDER A LIFE SENTENCE, YOU COULD CONSIDER
10 A DEATH SENTENCE? IS THAT CORRECT?

11 A YES, SIR.

12 Q AND THE JUDGE WOULD GIVE YOU CERTAIN
13 AGGRAVATING CIRCUMSTANCES THAT YOU COULD CONSIDER
14 IN CONSIDERING THE DEATH PENALTY AND CERTAIN
15 MITIGATING CIRCUMSTANCES. IT WOULD BE LIKE A
16 SECOND TRIAL. YOU WOULD HEAR WITNESSES IN
17 AGGRAVATION, WITNESSES AND MITIGATION. DO YOU HAVE
18 ANY PREDISPOSITION...BY THAT I MEAN, IF SOMEONE HAS
19 COMMITTED A MURDER, DO YOU HAVE SOME INCLINATION AS
20 TO WHAT THE PENALTY OUGHT TO BE? IN GENERAL? WHEN
21 YOU HEAR SOMEBODY'S BEEN CONVICTED OF MURDER?

22 A WELL, NOT UNTIL I'VE FOUND OUT IF HE'S
23 GUILTY OR NOT.

24 Q OKAY. LET'S SAY YOU FOUND OUT HE'S
25 GUILTY OF MURDER. THERE'S NO QUESTION ABOUT IT IN

1 YOUR MIND. BEYOND A REASONABLE DOUBT YOU'VE
2 DETERMINED HIM TO BE GUILTY OF MURDER.

3 A YES, SIR.

4 Q DO YOU HAVE SOME FEELING OF WHAT THE
5 PUNISHMENT OUGHT TO BE?

6 A NO. EITHER LIFE OR DEATH.

7 Q OKAY. AND DO YOU HAVE...I GUESS SOME
8 PEOPLE THINK THAT EVERYBODY THAT'S CONVICTED OF
9 MURDER OUGHT TO GET DEATH. AND THERE ARE OTHER
10 PEOPLE WHO THINK EVERYBODY WHO'S CONVICTED OF
11 MURDER OUGHT TO GET LIFE. SOME PEOPLE ARE OPPOSED
12 TO THE DEATH PENALTY. SOME PEOPLE ARE OPPOSED TO A
13 LIFE IN PRISON SENTENCE FOR SOMEONE CONVICTED OF
14 MURDER. ARE YOU IN EITHER ONE OF THOSE CATEGORIES?

15 MR. JONES: YOUR HONOR, SHE ANSWERED
16 THAT QUESTION. THIS IS A DIFFERENT WAY OF ASKING
17 IT.

18 THE COURT: I SUSTAIN THE OBJECTION.

19 MR. HARPOOTLIAN: OKAY.

20 Q HAVE YOU HAD ANY OPPORTUNITY IN THE
21 PAST TO EXPRESS AN OPINION ABOUT THE DEATH PENALTY?
22 OVER DINNER, IN A CASUAL CONVERSATION, OR IN A
23 SOCIAL SETTING? HAVE YOU EVER DISCUSSED IT?

24 A NO, SIR.

25 Q OKAY. LET ME CHECK WITH MR. SWERLING

1 AND SEE IF THERE'S ANYTHING I HAVE NOT ASKED YOU
2 THAT I SHOULD ASK YOU. EXCUSE ME ONE MOMENT,
3 PLEASE?

4 THANK YOU FOR YOUR PATIENCE. I HOPE
5 WE HAVEN'T BELABORED THE POINT WITH YOU HERE THIS
6 MORNING. THE JUDGE IS GOING TO TALK TO YOU IN JUST
7 A SECOND. AGAIN, I APPRECIATE YOUR ATTENTIVENESS
8 AND YOUR PATIENCE IN ANSWERING OUR QUESTIONS AND
9 WAITING FOR US. I'M GLAD THE SOLICITOR WAS THE
10 FIRST ONE OUT LAST NIGHT OR YOU'D BE YELLING AT ME.
11 OKAY?

12 THE COURT: ALL RIGHT. WHAT SAYS THE
13 STATE? DEFENSE?

14 ALL RIGHT, MS. REID, WE FIND...OR I
15 FIND YOU QUALIFIED TO BE PLACED IN THE POOL FROM
16 WHICH WE WILL ULTIMATELY SELECT A JURY. I'M
17 SHOOTING TO DO THAT ABOUT 2:30 THIS AFTERNOON. WE
18 MIGHT BE AN HOUR BEHIND OR SO. I NEED FOR YOU TO
19 GO HOME AND TO PACK AND TO COME BACK READY TO GO TO
20 NEWBERRY FOR UP TO TEN DAYS. I'M NOT SAYING THAT
21 IT'S GOING TO BE THAT LONG, BUT I WANT TO GIVE YOU
22 A RANGE. SLED WILL PROVIDE FOR YOUR SECURITY AND
23 TRANSPORTATION TO AND FROM NEWBERRY. THE COUNTY OF
24 NEWBERRY WILL PAY FOR YOUR LODGING, YOUR MEALS, AND
25 SO FORTH IF YOU'RE SELECTED TO SERVE ON THE JURY.

1 PLEASE DON'T DISCUSS THE CASE WITH ANYONE OR ALLOW
2 ANYONE TO DISCUSS IT WITH YOU OR READ OR WATCH OR
3 LISTEN TO ANY ACCOUNT BETWEEN NOW AND THIS
4 AFTERNOON. DO YOU NEED ANY ASSISTANCE ABOUT
5 GETTING HOME AND BACK TODAY?

6 A NO, SIR.

7 THE COURT: ALL RIGHT. WELL, WE'LL
8 SEE YOU AT 2:30 THEN.

9 A OKAY.

10 THE COURT: OKAY. THANK YOU. MS.
11 HEMBREE?

12 MR. JONES: YOUR HONOR?

13 THE COURT: YES, SIR?

14 MR. JONES: IF I COULD BEFORE THE
15 JUROR COMES OUT? I JUST HAVE A BRIEF MATTER?

16 THE COURT: ALL RIGHT.

17 MR. JONES: DURING MR. HARPOOTLIAN'S
18 DIRECT EXAMINATION OF THE WITNESS, HE MENTIONED
19 THAT THE SOLICITOR HAS DECIDED TO SEEK THE DEATH
20 PENALTY IN THIS CASE. "THE SOLICITOR HAS DECIDED
21 THAT THIS IS AN APPROPRIATE CASE TO SEEK THE DEATH
22 PENALTY." NOW, OF COURSE AS YOU KNOW THE STATE OF
23 SOUTH CAROLINA, ITS LEGISLATURE, DECIDES WHICH
24 MURDER CASES THAT THE DEATH PENALTY CAN BE SOUGHT
25 AND WHICH ONES THEY CAN'T BE SOUGHT. THERE ARE

1 CERTAIN AGGRAVATING CIRCUMSTANCES THAT ARE LISTED.
2 ALSO, THE SOLICITOR, IN THIS CASE, GETS INPUT FROM
3 LAW ENFORCEMENT PERSONNEL, LAW ENFORCEMENT AGENCIES
4 THAT INVESTIGATE THE CASE, VICTIM'S FAMILY MEMBERS,
5 AND A HOST OF INPUT IS PLACED INTO THAT DECISION.
6 NOW, IF THAT'S AN AREA THAT YOU FEEL IS PERMISSIBLE
7 FOR THEM TO STATE AND ESPOUSE IN THEIR EXAMINATION
8 THEN I WOULD ASK YOU TO ALLOW ME TO, ONCE THE DOOR
9 IS OPEN, ON REDIRECT TO GO INTO EXPLAINING TO THEM
10 WHY THE SOLICITOR FEELS THAT THIS IS AN APPROPRIATE
11 CASE TO SEEK THE DEATH PENALTY IN.

12 THE COURT: WELL, FOLKS, IF I DO THAT
13 WE'LL BE HERE NEXT WEEK, NOW.

14 MR. JONES: WELL, JUDGE...

15 THE COURT: SOLICITOR, IT IS...YOU ARE
16 THE ONE THAT MAKES THE DECISION AND THAT'S AN
17 AWESOME POWER THAT YOU HAVE AND YOU DON'T OWE
18 ANYBODY ANY APOLOGY FOR WHAT YOU DO OR DON'T DO IN
19 THE CASE. BUT THAT IS THE SITUATION.

20 MR. JONES: ALL RIGHT.

21 THE COURT: AND I DON'T THINK THAT IT
22 IMPLIES ANYTHING TO THE JUROR.

23 MR. JONES: WELL, THE FACT THAT AN
24 INDIVIDUAL IS BORN WITH THE RESPONSIBILITY TO MAKE
25 A DECISION DOES NOT MEAN THAT IT'S MORE PROPER TO

1 SAY THE SOLICITOR THAN THE STATE. THE STATE OF
2 SOUTH CAROLINA, WHOSE REPRESENTATIVE IS THE
3 SOLICITOR, HAS CHOSEN TO SEEK THE DEATH PENALTY IN
4 THIS CASE. IT'S THE STATE VERSUS STEPHEN BECKHAM.
5 IT'S NOT THE SOLICITOR TOWNES JONES VERSUS STEPHEN
6 BECKHAM.

7 THE COURT: I UNDERSTAND THAT. BUT, I
8 MEAN, THE STATUTE ONLY GIVES YOU THE AUTHORITY TO
9 DO THAT IN THIS CASE.

10 MR. JONES: RIGHT.

11 THE COURT: NOT THE STATE OF SOUTH
12 CAROLINA...YOU.

13 MR. JONES: AS REPRESENTATIVE OF THE
14 STATE OF SOUTH CAROLINA.

15 THE COURT: SOLICITOR...

16 MR. JONES: OKAY. IF YOU'VE RULED,
17 JUDGE, THAT'S FINE.

18 THE COURT: YES, SIR.

19 MR. JONES: I WAS URGED BY A NUMBER OF
20 PEOPLE TO BRING IT TO YOUR ATTENTION.

21 THE COURT: MR. HARPOOTLIAN, I'M NOT
22 GOING TO PROHIBIT YOU FROM DOING IT, BUT
23 LET'S...I'M NOT GOING TO PROHIBIT YOU FROM DOING
24 IT, BUT LET'S MOVE ON.

25 MR. HARPOOTLIAN: YES, SIR.

1 THE COURT: OKAY.

2 MR. JONES: AND JUDGE, JUST FOR YOUR
3 INFORMATION, I'M MOVING ALONG WITH THESE JURORS.

4 THE COURT: YOU ARE BUT YOU'RE TAKING
5 UP MY TIME NOW. YOU DID A GREAT JOB. I WAS GOING
6 TO BRAG ON BOTH OF YOU. MOVE ALONG, NOW. LET'S
7 GO. TAKE THE CONTENTIOUSNESS OUT OF THIS THING
8 UNTIL WE GET A JURY AND THEN Y'ALL CAN FUSS IN
9 FRONT OF THE JURY.

10 MR. HARPOOTLIAN: I'M NOT FUSSING,
11 YOUR HONOR.

12 THE COURT: WELL, I'M TALKING TO BOTH
13 OF YOU.

14 MR. HARPOOTLIAN: YES, SIR.

15 THE COURT: THE JURY'S GOT TWELVE
16 VOTES. YOU'VE GOT TO CONVINCE THEM. I'VE GOT ONE.
17 SO, LET'S MOVE.

18 MR. JONES: IT'S VERY IMPORTANT
19 THOUGH.

20 THE COURT: YES, SIR.

21 CHERLY HEMBREE, BEING CALLED
22 AND DULY SWORN, TESTIFIES AS FOLLOWS:

23 THE COURT: ALL RIGHT, THANK YOU,
24 MA'AM. IF YOU'LL JUST HAVE A SEAT THERE AND MAKE
25 YOURSELF COMFORTABLE. MS. HEMBREE, AS I WILL TO

1 ALL MEMBERS OF PANEL D, YOU WERE THE ONE'S THAT GOT
2 CAUGHT IN THE TIME SQUEEZE. EVERYBODY ELSE WE'VE
3 BEEN ABLE TO KIND OF DEAL WITH. AND I APOLOGIZE
4 FOR THAT. WE JUST CAN NOT CONTROL THAT ALL THE
5 TIME.

6 BUT, HAVE YOU EVER SERVED ON A JURY
7 BEFORE?

8 A NO.

9 THE COURT: HAVE YOU EVER BEEN IN A
10 COURTROOM BEFORE MONDAY?

11 A NO.

12 THE COURT: OKAY. DID YOU GET A
13 CHANCE TO READ THE LETTER THAT I HANDED OUT?

14 A YES.

15 THE COURT: DID YOU UNDERSTAND THAT
16 LETTER?

17 A YES.

18 THE COURT: OKAY. ANYTHING I NEED TO
19 EXPLAIN FURTHER ABOUT IT?

20 A NO.

21 THE COURT: OKAY. NOW, AS YOU'RE
22 AWARE THE STATE IS ATTEMPTING TO SEEK THE DEATH
23 PENALTY AND FOR THAT REASON THE ATTORNEYS FOR EACH
24 SIDE, AS WELL AS MYSELF, GET TO ASK YOU SOME
25 QUESTIONS ABOUT SOME THINGS THAT ARE RELEVANT TO

1 THE TRIAL. FOR EXAMPLE: PENALTY; PRESUMPTION OF
2 INNOCENCE; BURDEN OF PROOF; THOSE KINDS OF THINGS.
3 AND YOU WOULD AGREE WITH ME THAT IT WOULD BE
4 IMPORTANT IN ORDER TO SEAT A FAIR AND IMPARTIAL
5 JURY THAT WE KNOW WHAT YOUR FEELINGS ARE ABOUT
6 THOSE THINGS? IT'S FAIR ENOUGH TO ASK YOU?

7 A SURE.

8 THE COURT: OKAY. NOW, MS. HEMBREE,
9 HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
10 INNOCENCE OR THE GUILT OF THE DEFENDANT, MR.
11 STEPHEN BECKHAM, IN THIS CASE?

12 A NO.

13 THE COURT: DO YOU KNOW ANYTHING ABOUT
14 THE FACTS OF THE CASE?

15 A I DON'T KNOW ANYTHING.

16 THE COURT: ALL RIGHT. MS. HEMBREE,
17 HAVE YOU EVER HEARD THE LEGAL PRINCIPLE THAT A
18 CITIZEN ACCUSED OF A CRIME IS PRESUMED TO BE
19 INNOCENT OF THAT CRIME UNTIL THE GOVERNMENT OR THE
20 STATE CAN PROVE HIS GUILT BY EVIDENCE BEYOND A
21 REASONABLE DOUBT?

22 A SURE.

23 THE COURT: OKAY. NOW IS THAT A
24 PRINCIPLE OF LAW THAT YOU COULD ACCEPT AND FOLLOW
25 IF YOU WERE A MEMBER OF THE JURY PANEL?

1 A YES.

2 THE COURT: ALL RIGHT. NOW, I NEEDED
3 TO MAKE SURE THAT YOU CAN BELIEVE IN THAT CONCEPT
4 BECAUSE ONE OF THE THINGS THAT WE'RE GOING TO TALK
5 ABOUT FOR THE NEXT FEW MINUTES HAS TO DO WITH
6 PENALTY: THE DEATH PENALTY AND LIFE IMPRISONMENT.
7 AND I WANT TO MAKE SURE THAT THE FACT THAT WE
8 DISCUSS THAT NOW IS THAT YOU DON'T INFER OR IMPLY
9 THAT MR. BECKHAM IS GUILTY OF ANYTHING. DO YOU
10 FOLLOW ME? CAN YOU DO THAT?

11 A YES.

12 THE COURT: ALL RIGHT. NOW, SINCE
13 YOU'VE NOT BEEN ON A JURY BEFORE, LET ME TELL YOU
14 IF YOU'LL LOOK TO YOUR LEFT THAT'S THE JURY BOX.
15 NOW WE'RE ACTUALLY GOING TO TRY THIS CASE IN
16 NEWBERRY, BUT IF WE WERE GOING TO TRY IT HERE AND
17 YOU WERE ON A JURY THEN YOU WOULD BE SEATED IN THAT
18 BOX AND YOU WOULD BE LISTENING TO WITNESSES WHO
19 WOULD BE WHERE YOU ARE. AND IN A CRIMINAL TRIAL A
20 JURY SITS OVER THERE AND MAKES BASICALLY ONE
21 DECISION, ULTIMATELY ONE DECISION. AFTER THEY HEAR
22 THE EVIDENCE AND THE CHARGE AND ALL OF THAT THEY
23 HAVE TO DECIDE WHETHER OR NOT A DEFENDANT IS GUILTY
24 OR NOT GUILTY OF A CHARGE. ONCE THEY DO THAT THEIR
25 JOB'S OVER. THEN THAT DEFENDANT...IF THE DEFENDANT

1 IS FOUND NOT GUILTY THEN OF COURSE HE IS RELEASED
2 FROM THE CHARGES. IF HE'S FOUND GUILTY THEN HE
3 COMES AND STANDS IN FRONT OF ME, OR ANOTHER JUDGE
4 LIKE MYSELF, AND HE'S SENTENCED. THAT'S USUALLY MY
5 JOB TO DO THAT. THAT HAPPENS IN EVERY CRIMINAL
6 CASE IN SOUTH CAROLINA WHERE THERE'S A JURY TRIAL
7 EXCEPT ONE. AND THE ONE EXCEPTION TO THAT IS THE
8 TYPE OF CASE THAT WE'RE IN NOW. NOT ONLY MUST YOU
9 DETERMINE, AS A JUROR, WHETHER THE GUILT OR
10 INNOCENCE OF A DEFENDANT, BUT IF YOU FIND A
11 DEFENDANT GUILTY OF MURDER THEN YOU HAVE TO GO TO A
12 SENTENCING PHASE AND HEAR OTHER EVIDENCE AND YOU
13 DECIDE WHAT THE SENTENCE SHOULD BE: LIFE OR
14 DEATH...NOT ME. DO YOU UNDERSTAND THAT PROCEDURE?

15 A YES.

16 THE COURT: OKAY. NOW, WE KNOW FROM
17 EXPERIENCE THAT BASICALLY THERE ARE THREE TYPES OF
18 JURORS. LET ME BACK UP JUST ONE SECOND. JUST LIKE
19 ME, WHEN A PERSON CONVICTED OF A CRIME STANDS THERE
20 AND I'M GOING TO SENTENCE HIM, YOU AS A JUROR WOULD
21 SIT OVER THERE, IF THERE WAS A CONVICTION IN A CASE
22 THAT YOU WERE SITTING ON, YOU WOULD BE LISTENING TO
23 AGGRAVATING CIRCUMSTANCES FROM EVIDENCE. THAT IS,
24 THINGS THAT MAKE IT WORSE AND WOULD JUSTIFY THE
25 IMPOSITION OF A HARSHER SENTENCE. OR, THINGS THAT

1 WOULD MITIGATE AGAINST IT, WOULD JUSTIFY A LESS
2 HARSHER SENTENCE. DO YOU UNDERSTAND WHAT I MEAN BY
3 THOSE TERMS?

4 A YES.

5 THE COURT: WE KNOW THAT WHEN JURORS
6 ARE PUT IN THAT SECOND PHASE OF LISTENING TO THAT
7 EVIDENCE AND HAVING TO MAKE A DECISION, THEY
8 USUALLY FALL INTO ONE OF THREE CATEGORIES. THE
9 FIRST CATEGORY OF JURORS IS ONE WHO SAYS, "WE'VE
10 GOT A CONVICTION. WE'VE GOT EVIDENCE OF
11 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE
12 DOUBT. IT DOESN'T MATTER WHETHER WE HAVE ANY
13 MITIGATING CIRCUMSTANCES. I BELIEVE THAT THE DEATH
14 PENALTY IS THE APPROPRIATE PUNISHMENT IN EVERY CASE
15 LIKE THIS AND I VOTE FOR DEATH." DO YOU FOLLOW ME
16 FOR THAT FIRST JUROR?

17 A YES.

18 THE COURT: ALL RIGHT. THE SECOND
19 TYPE OF JUROR IS ONE WHO SAYS, "YOU'RE RIGHT.
20 WE'VE GOT A CONVICTION. WE'VE GOT EVIDENCE OF
21 AGGRAVATION. WE MAY OR MAY NOT HAVE ANY
22 MITIGATION, BUT I BELIEVE THE APPROPRIATE
23 PUNISHMENT IN EVERY CASE LIKE THIS IS LIFE
24 IMPRISONMENT. I VOTE FOR LIFE." OKAY?

25 WE HAVE A THIRD JUROR WHO SAYS,

1 "YOU'RE BOTH PARTIALLY RIGHT. WE'VE GOT A
2 CONVICTION. WE'VE GOT AGGRAVATING CIRCUMSTANCES.
3 HAVE MITIGATING CIRCUMSTANCES OR NOT, AS THE CASE
4 MAY BE. BUT LISTEN, I WANT TO LOOK AT ALL THE
5 FACTS OF THE CASE AND I WANT TO DECIDE IN THIS CASE
6 WHETHER OR NOT LIFE OR DEATH IS THE APPROPRIATE
7 PUNISHMENT AND I'LL DO THAT AND THEN I'LL DECIDE."

8 NOW, COULD I ASK YOU IN WHICH CATEGORY
9 YOU MIGHT FALL IN? FIRST, SECOND, OR THIRD?

10 A WELL, IT WOULD HAVE TO BE A LITTLE BIT
11 OF ALL THREE, I GUESS, BECAUSE, YOU KNOW, I'D HAVE
12 TO ACTUALLY LOOK AT EVERYTHING BEFORE I COULD MAKE
13 A JUDGEMENT ON ANYTHING.

14 THE COURT: ALL RIGHT, WELL, LET ME
15 ASK YOU...LET ME FOLLOW UP WITH THIS QUESTION.
16 LET'S SUPPOSE YOU LOOKED AT EVERYTHING, LIKE YOU
17 SAY THAT YOU WILL DO -- AND I CERTAINLY BELIEVE
18 THAT YOU WILL -- IF YOU CAME TO THE CONCLUSION THAT
19 THE APPROPRIATE PUNISHMENT IN THE CASE WAS LIFE
20 IMPRISONMENT, COULD YOU VOTE FOR A LIFE
21 IMPRISONMENT SENTENCE?

22 A YES.

23 THE COURT: ALL RIGHT, IF YOU FELT ON
24 THE OTHER HAND, LOOKING AT THAT SAME CASE, YOU CAME
25 TO THE CONCLUSION THAT THE DEATH PENALTY WAS THE

1 MORE APPROPRIATE PUNISHMENT, COULD YOU VOTE TO
2 IMPOSE THE DEATH PENALTY?

3 A I DON'T KNOW. I PROBABLY COULD, YES.

4 THE COURT: YOU DON'T KNOW BECAUSE YOU
5 DON'T KNOW WHAT THE FACTS ARE?

6 A RIGHT. I HAVEN'T HEARD ANYTHING YET
7 SO I COULDN'T SAY YES OR NO.

8 THE COURT: WELL, BUT CONCEPTUALLY,
9 FROM THE STANDPOINT OF WHETHER, IF IT WERE
10 APPROPRIATE IN YOUR MIND, BASED ON THE LAW AND THE
11 EVIDENCE, COULD YOU VOTE TO IMPOSE IT?

12 A IF IT WERE APPROPRIATE, YES.

13 THE COURT: ALL RIGHT. ESSENTIALLY
14 WHAT THOSE QUESTIONS ARE DESIGNED TO DO, YOU'RE NOT
15 AUTOMATICALLY IN FAVOR OF ONE SENTENCE OR
16 AUTOMATICALLY IN FAVOR OF ANOTHER, ARE YOU?

17 A NO.

18 THE COURT: OKAY. NOW, LET ME TAKE
19 YOU ONE STEP FURTHER. IF IN A CASE YOU FELT THAT
20 THE DEATH PENALTY WAS THE APPROPRIATE PUNISHMENT
21 AND YOU VOTED TO IMPOSE IT, YOU WOULD RECEIVE
22 INSTRUCTIONS FROM A TRIAL JUDGE SOMETHING TO THE
23 EFFECT THAT IF YOU FIND THAT THE DEATH PENALTY IS
24 AUTHORIZED AND APPROPRIATE IN THE CASE AND YOU
25 DECIDE THAT THAT IS WHAT YOU SHOULD DO THEN YOU

1 MUST SIGN YOUR NAME TO THE VERDICT FORM
2 ACKNOWLEDGING INDIVIDUALLY THAT THAT IS YOUR
3 SENTENCE. THAT WOULD BE THE
4 INSTRUCTION...GENERALLY, THAT WOULD BE THE
5 INSTRUCTION. IF YOU FELT THAT THE DEATH PENALTY
6 WAS THE APPROPRIATE PUNISHMENT IN THE CASE, COULD
7 YOU SIGN YOUR NAME TO THE SENTENCING FORM?

8 A IF IT WERE APPROPRIATE...

9 THE COURT: YES.

10 A ...YEAH, I COULD.

11 THE COURT: OKAY. FAIR ENOUGH. ALL
12 RIGHT, NOW LET ME LET THE LAWYERS ASK YOU SOME
13 QUESTIONS. SOLICITOR?

14 MR. JONES: THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION:

16 BY MR. JONES:

17 Q MS. HEMBREE?

18 A HI.

19 Q GOOD MORNING.

20 A GOOD MORNING.

21 Q AT THE OUTSET I'D LIKE TO THANK YOU
22 FOR YOUR PATIENCE. I REALIZE IT'S BEEN A TRYING
23 EXPERIENCE. WE'VE BEEN WORKING AND TRYING TO MOVE
24 ALONG AS FAST AS WE CAN. MS. HEMBREE, BEFORE I...I
25 ONLY HAVE A FEW QUESTIONS FOR YOU, BUT BEFORE I

1 START I'D LIKE FOR YOU TO KNOW THAT THE VICTIM IN
2 THIS CASE, VICTORIA LANDER BECKHAM, WAS MURDERED
3 AND CHARGED WITH THAT CRIME IS HER HUSBAND. HER
4 PARENTS ARE HERE AND THEY'RE SITTING IN THE
5 COURTROOM. THAT'S HER DAD THERE ON THE FRONT ROW
6 WITH THE DARK SUIT, SENATOR LANDER, JIM LANDER, AND
7 HER MOM IS SEATED NEXT TO HIM, JOLENE LANDER.

8 WHEN THE JUDGE ASKED YOU SOME
9 QUESTIONS ABOUT THE DEATH PENALTY, AS WOULD BE
10 EXPECTED YOU NEEDED TO, YOU KNOW, THINK A LITTLE
11 BIT ABOUT IT AND TRY TO DECIDE...AT LEAST THAT'S
12 WHAT I PERCEIVED. DID I PERCEIVE CORRECTLY?

13 A YEAH.

14 Q THAT YOU NEEDED TO GIVE IT SOME
15 THOUGHT?

16 A YEAH.

17 Q DID YOU GIVE IT ADEQUATE THOUGHT TO
18 ANSWER THE JUDGE'S QUESTION AS HONESTLY AND FIRMLY
19 AS YOU COULD WITH REGARD TO YOUR OWN CONSTITUTION
20 WITH REGARD TO YOUR OWN ABILITIES, IF YOU WILL?

21 A WELL, YOU KNOW, I DON'T KNOW ANYTHING
22 ABOUT THE CASE OR, YOU KNOW, WHATEVER, BUT I TRIED
23 TO GIVE WHAT I THINK WOULD BE OKAY, YOU KNOW?

24 Q YES, MA'AM. I UNDERSTAND THAT. AND I
25 THINK I UNDERSTAND YOUR ANSWER. LET ME ASK YOU

1 THIS QUESTION. WHEN YOU SAY THAT YOU DON'T KNOW
2 ANYTHING ABOUT THE CASE, OBVIOUSLY YOU DON'T AND
3 THAT'S IMPORTANT AND YOU WOULD LISTEN TO THE
4 EVIDENCE WITH AN OPEN MIND?

5 A OF COURSE.

6 Q AND IF YOU DECIDED THAT -- ALONG WITH
7 THE OTHER JURORS OF COURSE, IN ANY CASE -- IF YOU
8 WERE ON A JURY AND YOU DECIDED THAT THE PROPER
9 VERDICT, IN ANY CASE, WAS GUILTY OF MURDER -- YOU,
10 WITH THE JURY, DELIBERATED AND REACHED THAT
11 VERDICT, ON ANY CASE, IF YOU'RE SERVING ON ANY
12 MURDER CASE -- AND YOU LISTENED TO THE EVIDENCE AND
13 YOU SAY THE VERDICT IS GUILTY, THE BURDEN OF PROOF
14 ON THE STATE IS THAT WE MUST PROVE TO YOU BEYOND A
15 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY.

16 A OF COURSE.

17 Q AND IF YOU LISTEN TO THE EVIDENCE AND
18 YOU DECIDED THAT THE VERDICT WAS GUILTY YOU WOULD
19 THEN GO TO A SECOND PHASE OF THE TRIAL WHERE THE
20 JURY WOULD DECIDE WHAT THE PROPER PUNISHMENT IS.
21 AND YOU WOULD LISTEN AND IF YOU FOUND THAT THERE
22 WAS CIRCUMSTANCES OF AGGRAVATION EXISTED IN THIS
23 CASE, AND YOU MAY FIND THAT CIRCUMSTANCES OF
24 MITIGATION EXIST IN THIS CASE, BUT THE QUESTION I
25 HAVE FOR YOU IS, AT THAT POINT IN TIME, IF YOU

1 LOOKED AT THE EVIDENCE AND YOU DECIDED THAT THE
2 DEATH PENALTY WAS THE APPROPRIATE PUNISHMENT, WOULD
3 YOU BE ABLE TO IMPOSE IT ON ANOTHER HUMAN BEING?

4 A I PROBABLY COULDN'T, NO.

5 MR. HARPOOTLIAN: YOUR HONOR, I OBJECT
6 TO THE QUESTION. SHE'S NOT GOING TO IMPOSE THE
7 DEATH PENALTY ON ANYBODY.

8 MR. JONES: YOUR HONOR, WE WENT OVER
9 THIS YESTERDAY AND THAT'S CLEARLY THE FRAMEWORK...

10 MR. HARPOOTLIAN: THAT REALLY ISN'T
11 THE MAJORITY...THAT'S NOT WHAT SHE DOES...

12 THE COURT: LET ME ASK YOU, IF YOU
13 WOULD, TO STEP RIGHT OUTSIDE JUST A MINUTE, OKAY?

14 (JUROR IS EXCUSED FROM THE OPEN
15 COURTROOM)

16 THE COURT: THE QUESTION IS, COULD YOU
17 CONSIDER A LIFE SENTENCE AS WELL AS A DEATH
18 SENTENCE OR COULD YOU VOTE TO IMPOSE THE DEATH
19 SENTENCE? IT'S A DIFFERENT THING FROM TELLING A
20 JUROR, WHO HAS ABSOLUTELY NO IDEA WHEN YOU USE THE
21 QUESTION, "WOULD YOU IMPOSE IT UPON THEM?" THEY
22 DON'T DO THAT, THEY VOTE TO IMPOSE IT. THAT'S WHAT
23 THEY DO. THEY DON'T IMPOSE IT, THEY VOTE TO IMPOSE
24 IT.

25 MR. JONES: IF I ASK HER THE QUESTION,

1 "COULD YOU VOTE TO IMPOSE IT?"

2 THE COURT: SURE.

3 MR. JONES: ALL RIGHT.

4 THE COURT: AND THAT'S AN APPROPRIATE
5 QUESTION. OR, COULD YOU CONSIDER IMPOSING OR
6 CONSIDER VOTING...OR COULD YOU CONSIDER A SENTENCE,
7 THAT TYPE THING. BUT WHEN YOU GET RIGHT DOWN TO IT
8 THEY VOTE TO IMPOSE THE SENTENCE. THEY DON'T
9 IMPOSE IT.

10 MR. JONES: SO, I'M OKAY IF I SAY,

11 "COULD YOU VOTE TO IMPOSE IT?"

12 THE COURT: SURE.

13 MR. HARPOOTLIAN: "ARE THERE
14 CIRCUMSTANCES UNDER WHICH YOU WOULD VOTE TO IMPOSE
15 THE DEATH PENALTY?"

16 THE COURT: WELL, I'M NOT...LISTEN, I
17 TOLD ALL OF Y'ALL YESTERDAY, SHE PASSED MY TEST AND
18 Y'ALL GOT TO REALLY DO SOMETHING DIFFERENT. LET'S
19 GO.

20 MR. HARPOOTLIAN: YES, SIR.

21 THE COURT: BRING HER IN.

22 (JUROR IS RETURNED TO THE OPEN
23 COURTROOM)

24 THE COURT: ALL RIGHT, SOLICITOR?

25 Q MS. HEMBREE, THE PROPER WORDING OF THE

1 QUESTION...DO YOU RECALL THE SCENARIO THAT I WENT
2 THROUGH AS FAR AS YOUR SERVICE AS A POTENTIAL
3 JUROR, YOU LISTENED TO THE EVIDENCE AND YOU DECIDE
4 THE PROPER VERDICT IS GUILTY AND THEN YOU GET TO
5 THE SECOND PHASE OF THE TRIAL WHERE YOU DECIDE WHAT
6 THE PROPER PUNISHMENT IS AND THEN YOU LISTEN TO
7 EVIDENCE AND YOU MAY FIND...IF YOU FIND AGGRAVATING
8 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES AND YOU
9 DECIDE THAT THIS IS AN APPROPRIATE CASE FOR THE
10 DEATH PENALTY, MY QUESTION IS COULD YOU THEN VOTE
11 TO IMPOSE THE DEATH PENALTY ON ANOTHER HUMAN BEING?
12 A IF IT WERE APPROPRIATE, YES.
13 Q YOU COULD DO THAT?
14 A I COULD DO THAT.
15 Q AND THEN YOU COULD GO THE STEP THAT
16 THE LAW REQUIRES THAT YOU SIGN YOUR NAME...
17 A CORRECT.
18 Q ...VOTING TO IMPOSE THE DEATH PENALTY
19 ON ANOTHER HUMAN BEING?
20 A UH-HUH. (YES). IF IT WERE
21 APPROPRIATE.
22 Q AND WHETHER IT WAS APPROPRIATE OR NOT
23 WOULD DEPEND UPON LOTS OF DIFFERENT THINGS AND LOTS
24 OF FACTORS? IS THAT WHAT...
25 A YEAH, YEAH. I WOULD, YOU KNOW, I

1 WOULD HAVE TO HEAR EVERYTHING, YOU KNOW, AND SEE
2 WHAT ALL IS INVOLVED BEFORE ANYBODY CAN REALLY
3 SENTENCE ANYBODY TO DEATH.

4 Q RIGHT. BUT YOU ARE CAPABLE OF THAT?

5 MR. HARPOOTLIAN: YOUR HONOR, I'D
6 OBJECT. THIS IS THE FOURTH TIME HE'S ASKED THIS
7 JUROR THAT SAME QUESTION.

8 THE COURT: I OVERRULE.

9 A REPEAT THAT ONE MORE TIME BECAUSE I'M
10 A LITTLE NERVOUS.

11 Q I'M SORRY. IS IT JUST BEING IN THE
12 COURTROOM AND ON THE WITNESS STAND OR IS IT THE WAY
13 I'M ASKING THE QUESTION?

14 A NO, IT'S JUST I'M NOT USED TO THIS
15 KIND OF THING. BUT, YEAH, I GUESS.

16 Q THE QUESTION WAS, MS. HEMBREE, YOU
17 SAID...I ASKED YOU, I SAID, "WHEN YOU SAY
18 APPROPRIATE, DOES THAT DEPEND ON THE CIRCUMSTANCES
19 OF THE CASE, THE FACTS OF THE CASE, JUST THE WHOLE
20 TOTALITY OF THE CASE? EVERYTHING THAT YOU
21 CONSIDER? IS THAT WHAT YOU MEAN BY APPROPRIATE
22 WHEN YOU SAY, 'IF IT WAS APPROPRIATE?' ARE YOU
23 BASICALLY SAYING TO ME, TO THE BEST OF YOUR ABILITY
24 -- I'M JUST TRYING TO FIND OUT WHAT YOU MEAN BY
25 THAT -- DO YOU MEAN THAT IT DEPENDS ON, YOU KNOW,

1 "I NEED TO SEE THE WHOLE PICTURE? I NEED TO KNOW
2 WHAT WE'RE TALKING ABOUT HERE?"

3 A RIGHT.

4 Q AND THEN MY QUESTION WAS, "WELL, IF
5 THAT'S WHAT YOU MEAN, YOU NEED TO KNOW THE WHOLE
6 THING, THEN YOU'RE SAYING THAT ONCE YOU GET ALL THE
7 INFORMATION THEN YOU KNOW THAT YOU ARE CAPABLE OF
8 VOTING TO IMPOSE THE DEATH PENALTY?"

9 A RIGHT.

10 Q THANK YOU.

11 THE COURT: CROSS-EXAMINATION, MR.
12 HARPOOTLIAN?

13 MR. HARPOOTLIAN: VERY BRIEFLY, YOUR
14 HONOR.

15 CROSS-EXAMINATION:

16 BY MR. HARPOOTLIAN:

17 Q MS. HEMBREE, MY NAME IS DICK
18 HARPOOTLIAN.

19 A HI.

20 Q WE DON'T KNOW EACH OTHER, DO WE?

21 A NO.

22 Q OKAY. AND I KNOW YOU'RE A LITTLE BIT
23 NERVOUS AND SO I'M GOING TO MAKE THIS FAIRLY BRIEF.
24 LET ME FIRST OF ALL INTRODUCE YOU TO MY CO-COUNSEL.
25 THIS IS JACK SWERLING.

1 MR. SWERLING: GOOD MORNING.

2 A MORNING.

3 Q HE AND I PRACTICE LAW IN COLUMBIA AND
4 WE REPRESENT STEPHEN BECKHAM. HOW ABOUT STAND UP,
5 STEPHEN? THAT'S STEPHEN BECKHAM. HE'S THE GUY ON
6 TRIAL HERE. HE'S THE ONE THAT THE JURY WILL BE
7 SITTING ON IN THIS CASE, OKAY?

8 NOW, DO YOU KNOW ANY OF US?

9 A HUH-HUH. (NO).

10 Q SEATED BEHIND STEPHEN ARE HIS PARENTS
11 AND HIS DAUGHTER AND OTHER RELATIVES WHO ARE HERE
12 TODAY WITH HIM. DO YOU KNOW ANY OF THEM?

13 A HUH-HUH. (NO).

14 Q OKAY. LET ME MAKE SURE THAT I
15 UNDERSTAND A COUPLE OF THINGS -- AND UNDERSTAND,
16 ALL WE'RE TRYING TO DO...THERE ARE NO RIGHT OR
17 WRONG ANSWERS...WE JUST WANT ANSWERS FROM YOUR
18 HEART SO THAT WE CAN...SEE, WHAT'S GOING TO HAPPEN
19 IS THAT THE JUDGE IS GOING TO QUALIFY A GROUP OF
20 Y'ALL...

21 A YEAH.

22 Q ...THIRTY-FIVE OR FORTY OF Y'ALL AND
23 THEN WE'RE GOING TO GO THROUGH AND SORT OF PICK AND
24 CHOOSE WHO WE WANT ON THE JURY, SO WE NEED TO KNOW
25 A LITTLE BIT ABOUT YOU, OKAY?

1 A OKAY.

2 Q AS I UNDERSTAND IT -- AND I'M NOT
3 TRYING TO PUT YOU ON THE SPOT OR EMBARRASS YOU -- I
4 NOTICE YOUR FATHER WAS A LAW ENFORCEMENT OFFICER?

5 A WELL, HE DID...FOR PEOPLE WHO WERE
6 INCARCERATED HE WAS LIKE A...I DON'T KNOW HOW YOU
7 WOULD CALL IT. HE WORKED FOR THE SHERIFF'S
8 DEPARTMENT, BUT WHAT HE DID WAS TAKE THE PEOPLE
9 INCARCERATED AND DID LIKE A...HE TOOK THEM OUT AND,
10 YOU KNOW, THEY PICKED UP LITTER AND STUFF LIKE
11 THAT. I DON'T KNOW WHAT YOU WOULD ACTUALLY CALL
12 IT, BUT HE WAS WITH LAW ENFORCEMENT.

13 Q OKAY. AS A RESULT OF HIM DOING THAT,
14 WOULD THAT IN ANY WAY INFLUENCE YOUR OPINION ABOUT
15 TESTIMONY FROM LAW ENFORCEMENT OFFICERS OR...

16 MR. JONES: I WOULD OBJECT.

17 THE COURT: SUSTAINED.

18 MR. HARPOOTLIAN: YOUR HONOR, AS A
19 RESULT OF HER FATHER BEING A LAW ENFORCEMENT
20 OFFICER...

21 THE COURT: ASK WHETHER THAT
22 SPECIFICALLY...

23 MR. HARPOOTLIAN: YES, SIR.

24 Q AS A RESULT OF YOUR FATHER BEING A LAW
25 ENFORCEMENT OFFICER, WOULD THAT INFLUENCE THE WAY

1 YOU WOULD VIEW LAW ENFORCEMENT OFFICER'S TESTIMONY?
2 A THAT WOULDN'T HURT ANYTHING.
3 Q OR HELP?
4 A OR...NO.
5 Q OKAY. JUST WONDERING.
6 A OKAY.
7 Q NOW...AND THE SOLICITOR TALKED TO YOU
8 A LONG TIME ABOUT THE PENALTY IN THIS CASE, THE
9 POTENTIAL PENALTY IN A DEATH PENALTY CASE. LET'S
10 NOT FORGET, HOWEVER, THAT BEFORE WE EVER GET TO
11 THAT SECOND TRIAL -- THERE MAY BE TWO TRIALS --
12 BEFORE WE EVER GET TO A SECOND TRIAL, WHICH IS
13 CALLED A SENTENCING TRIAL, THERE'S THE FIRST TRIAL.
14 THAT IS, IS THE DEFENDANT INNOCENT OR GUILTY. AND
15 OF COURSE HE'S PRESUMED INNOCENT AND THE JUDGE
16 ASKED YOU ABOUT THAT AND YOU SAID VERY CLEARLY THAT
17 YOU...
18 A OF COURSE.
19 Q ...UNDERSTAND THAT, YOU SUBSCRIBE TO
20 IT, YOU ENDORSE IT, AND WOULD APPLY IT?
21 A EXACTLY.
22 Q AND YOU WOULD MAKE THE STATE PROVE TO
23 YOU WITH EVIDENCE THAT CONVINCES YOU BEYOND A
24 REASONABLE DOUBT OF HIS GUILT BEFORE YOU WOULD EVER
25 VOTE GUILTY?

1 A ABSOLUTELY.

2 Q AND YOU UNDERSTAND THAT IT HAS TO BE A
3 UNANIMOUS VERDICT? ALL TWELVE JURORS HAVE TO
4 AGREE. IT'S NOT A SEVEN TO FIVE...?

5 A CORRECT.

6 Q EACH JUROR HAS TO BELIEVE THAT BEYOND
7 A REASONABLE DOUBT. NOW, AS THE SOLICITOR
8 INDICATED A MOMENT AGO, HE HAS FILED NOTICE AND HE
9 IS SEEKING, SOLICITOR JONES, HAS NOTIFIED AND IS
10 SEEKING THE DEATH PENALTY IN THIS CASE. HE'S
11 DECIDED THAT'S THE APPROPRIATE PENALTY. WE MAY
12 NEVER GET TO THAT STAGE AND THAT'S AN IMPORTANT
13 POINT THAT I WANT TO MAKE SURE YOU UNDERSTAND.

14 MR. JONES: YOUR HONOR, I WOULD OBJECT
15 TO HIM SAYING WHAT'S IMPORTANT AND WHAT'S NOT
16 IMPORTANT. I MEAN, YOU KNOW, THAT'S HIS PERSONAL
17 OPINION.

18 THE COURT: ALL RIGHT. I OVERRULE
19 THAT OBJECTION.

20 Q YOU ALSO INDICATE...YOU FILLED OUT
21 THESE FORMS AND WE HAVEN'T HAD A CHANCE TO ASK YOU
22 ABOUT THEM, BUT ONE SORT OF LAST AREA...YOU
23 INDICATE ON QUESTION 38, "HAS ANY MEMBER OF YOUR
24 FAMILY EVER BEEN ARRESTED?" AND I'M NOT TRYING TO
25 EMBARRASS YOU AND I'M NOT TRYING TO PROBE, BUT CAN

1 YOU TELL ME WHO THAT WAS AND WHAT IT WAS FOR?

2 A MY DAD.

3 Q OKAY, FOR?

4 A WELL, MARIJUANA CHARGE.

5 Q OKAY. A LONG TIME AGO? RECENTLY?

6 A A LONG TIME AGO.

7 Q A LONG TIME AGO. OKAY, LET ME JUST

8 CHECK ONE OTHER THING. OKAY, YOU'VE BEEN MARRIED

9 FIVE YEARS?

10 A UH-HUH. (YES).

11 Q AND YOU HAVE ONE GIRL WHO'S THREE

12 YEARS OLD?

13 A RIGHT.

14 Q IF YOU GET PICKED FOR THIS JURY YOU'RE

15 GOING TO BE SEQUESTERED, AND THAT IS AWAY FROM HOME

16 FOR A COUPLE OF WEEKS. THE FACT THAT YOU'D BE AWAY

17 FROM YOUR LITTLE GIRL FOR A COUPLE OF WEEKS, WOULD

18 YOU BE ABLE TO PAY ATTENTION TO THE TESTIMONY AND

19 EVIDENCE AND...

20 A YEAH, BECAUSE I KNOW SHE'LL BE TAKEN

21 CARE OF IF I WERE HAD TO GO. SEE, I WORK DURING

22 THE DAY AND MY MOTHER-IN-LAW KEEPS HER DURING THE

23 DAY. SO I KNOW SHE'LL BE WELL TAKEN CARE OF. SO I

24 WOULD HAVE NOTHING TO WORRY ABOUT.

25 Q OKAY. I JUST WANTED TO MAKE SURE

1 YOU'RE NOT GOING TO BE DISTRACTED AND OBVIOUSLY YOU
2 WON'T BE. I WANT TO THANK YOU VERY MUCH FOR YOUR
3 ANSWERS TO MY QUESTIONS. YOU WERE VERY CANDID WITH
4 ME. YOU'VE BEEN VERY HONEST AND I KNOW THE
5 SOLICITOR AND I BOTH APPRECIATE YOUR ATTITUDE ABOUT
6 THIS.

7 A THANKS.

8 Q I APOLOGIZE FOR ANY INCONVENIENCE
9 WE'VE CAUSED YOU SITTING BACK THERE FOR THE LAST
10 COUPLE OF DAYS.

11 A THAT'S OKAY.

12 Q THANKS VERY MUCH.

13 THE COURT: WHAT SAYS THE STATE? THE
14 DEFENSE? ALL RIGHT, MS. HEMBREE, I'M GOING TO FIND
15 YOU QUALIFIED FOR PURPOSES OF BEING PLACED IN THE
16 POOL FROM WHICH WE WILL ULTIMATELY SELECT A JURY
17 THIS AFTERNOON. I KNOW IT'S A LITTLE SHORT NOTICE,
18 BUT I NEED FOR YOU TO GO HOME AND PACK AND COME
19 BACK ABOUT 2:30. BE PREPARED TO STAY UP TO TEN
20 DAYS. NOW YOU CAN DRESS...JUST DON'T DRESS LIKE A
21 BEACH BUM, BUT YOU DON'T HAVE TO WEAR SUNDAY
22 CLOTHES EITHER. BUT YOU CAN BE COMFORTABLE. IF
23 YOU DON'T WANT TO OVER PACK LIKE THAT THERE WILL BE
24 SOME LAUNDRY SERVICES AND THAT TYPE OF THING FOR
25 YOU. SLED WILL PROVIDE FOR YOUR TRANSPORTATION AND

1 SECURITY TO AND FROM NEWBERRY COUNTY AND WHILE
2 YOU'RE THERE AND THEN ALSO NEWBERRY COUNTY WILL BE
3 PAYING FOR YOUR LODGING AND YOUR MEALS AND THOSE
4 TYPE THINGS. ANY QUESTIONS?

5 A NO.

6 THE COURT: ALL RIGHT. RIGHT NOW, AT
7 THE CURRENT PACE WE'RE MAKING A LOT BETTER PROGRESS
8 TODAY SO I HOPE TO KEEP THAT 2:30 DEADLINE. WE
9 MIGHT BE AN HOUR OR SO BEHIND, BUT I'D ASK YOU TO
10 BE HERE THEN. AND HE'LL SHOW YOU WHERE TO COME,
11 OKAY?

12 A ALL RIGHT.

13 THE COURT: NEXT ONE. MS. MERRITT?

14 MR. HARPOOTLIAN: YOUR HONOR, THAT WAS
15 NUMBER 21, CORRECT?

16 THE COURT: THAT'S 21.

17 BETTY MERRITT, BEING CALLED
18 AND DULY SWORN, TESTIFIES AS FOLLOWS:

19 THE COURT: AND YOU'RE THE LADY WITH
20 THE DOGS?

21 A RIGHT.

22 THE COURT: I REMEMBER. OKAY. THAT'S
23 QUICK THINKING THE OTHER DAY, WASN'T IT?

24 A THAT'S WHAT EVERYBODY KNOWS ME AS THE
25 DOG LADY NOW.

1 THE COURT: ALL RIGHT. DID YOU GET
2 THAT TAKEN CARE OF?

3 A NO, TWO OF THEM ARE BETTER BUT ONE OF
4 THEM'S WORSE.

5 THE COURT: OKAY. ALL RIGHT. WELL,
6 LET ME ASK YOU, MS. MERRITT, DID YOU GET A CHANCE
7 TO READ THE LETTER THAT I HANDED OUT MONDAY?

8 A UH-HUH. (YES).

9 THE COURT: AND DID YOU UNDERSTAND IT
10 PRETTY MUCH?

11 A WELL, I THINK. I'VE NOT READ IT SINCE
12 I READ IT IN HERE.

13 THE COURT: OKAY. ALL RIGHT. IS
14 THERE ANYTHING IN THERE THAT YOU NEED TO ASK ME A
15 QUESTION ABOUT OR SOMETHING?

16 A WELL, I SHOULD HAVE READ IT...I DON'T
17 THINK SO. I THINK I WOULD HAVE ASKED YOU BEFORE
18 NOW.

19 THE COURT: ALL RIGHT. YOU PROBABLY
20 WOULD, TOO. OKAY, LET ME ASK YOU THIS THEN, YOU'RE
21 AWARE, OBVIOUSLY, BY SITTING BACK THERE YESTERDAY,
22 THAT WE'RE GOING THROUGH A QUESTIONING PROCESS OF
23 THE JURORS?

24 A UH-HUH. (YES).

25 THE COURT: AND THE LAWYERS GET TO ASK

1 YOU SOME QUESTIONS AS WELL AS MYSELF. NOW, I WANT
2 TO TELL YOU FROM THE OUTSET THAT THERE AREN'T ANY
3 RIGHT OR WRONG ANSWERS. NOBODY'S HERE TO CHALLENGE
4 WHAT YOU BELIEVE, BUT THERE ARE SOME THINGS THAT WE
5 NEED TO KNOW ABOUT SOME RELEVANT ISSUES ABOUT AS TO
6 HOW YOU FEEL. IS THAT FAIR ENOUGH?

7 A UH-HUH. (YES). YES.

8 THE COURT: NOW, HAVE YOU HEARD OF THE
9 PRINCIPLE OF LAW THAT SAYS THAT A CITIZEN ACCUSED
10 OF A CRIME IS PRESUMED TO BE INNOCENT OF THAT CRIME
11 UNTIL AND UNLESS THE GOVERNMENT PROVES HIM GUILTY?

12 A YES, SIR.

13 THE COURT: ALL RIGHT. AND IS THAT A
14 PRINCIPLE OF LAW THAT YOU COULD ACCEPT AND FOLLOW
15 IF YOU WERE A JUROR IN THE CASE?

16 A I BELIEVE IT'S TRUE.

17 THE COURT: OKAY. YOU COULD FOLLOW
18 IT?

19 A YES.

20 THE COURT: ALL RIGHT. AND, MA'AM,
21 IF, WITH REGARD TO THIS CASE HAVE YOU FORMED OR
22 EXPRESSED ANY OPINION AS TO THE INNOCENCE OR GUILT
23 OF MR. BECKHAM?

24 A I DON'T KNOW ANYTHING EXCEPT WHAT
25 YOU'VE GIVEN ME IN WRITING OR TOLD ME BECAUSE I

1 DON'T GET ANY LOCAL NEWS AND I DON'T LISTEN TO THE
2 RADIO. I GET NEW YORK NEWS OFF THE SATELLITE.

3 THE COURT: ALL RIGHT. AND SO YOU
4 DON'T KNOW ANYTHING ABOUT THE FACTS OF THE CASE?

5 A NO.

6 THE COURT: OKAY. NOW, THE REASON I
7 ASK YOU ABOUT THE PRESUMPTION OF INNOCENCE AND YOUR
8 KNOWLEDGE ABOUT ANYTHING AND WHETHER YOU'VE MADE UP
9 YOUR MIND ABOUT ANYTHING IS THAT WE NEED TO TALK
10 ABOUT SEVERAL ISSUES AND ONE OF THE ISSUES THAT
11 WE'RE GOING TO TALK ABOUT IT IS THE POSSIBLE
12 PENALTIES IN A CASE LIKE THIS: DEATH PENALTY OR
13 LIFE IMPRISONMENT. BUT, I WANT TO MAKE SURE THAT
14 THE FACT THAT WE TALK ABOUT THAT DOES NOT INFER OR
15 IMPLY THAT MR. BECKHAM IS GUILTY OF ANYTHING?

16 A UH-HUH. (YES).

17 THE COURT: DO YOU UNDERSTAND THAT?

18 A YES, SIR, I UNDERSTAND.

19 THE COURT: HAVE YOU BEEN ON A JURY
20 BEFORE?

21 A NO, BUT I WATCH COURT T.V.

22 THE COURT: YOU DO? OKAY.

23 A IT'S IN...I SENT IT IN...

24 THE COURT: YOU HAVEN'T BEEN WATCHING
25 IT THIS WEEK, HAVE YOU?

1 A NO, HOW IN THE WORLD COULD I WATCH IT
2 THIS WEEK? I'VE BEEN HERE.

3 THE COURT: ALL RIGHT. NOW...

4 A WHY?

5 THE COURT: WE'LL TALK ABOUT THAT A
6 LITTLE LATER.

7 A OKAY.

8 THE COURT: ALL RIGHT, NOW, YOU SIT ON
9 A JURY, MS. MERRITT, AND ORDINARILY A JURY OF
10 TWELVE MEN AND WOMEN SIT IN THAT BOX OVER THERE AND
11 THEY DECIDE, IN CRIMINAL CASE, ONE THING. THEY
12 DECIDE WHETHER A DEFENDANT IS NOT GUILTY OR GUILTY
13 OF THE CRIME CHARGED.

14 A YES.

15 THE COURT: YOU UNDERSTAND THAT? NOW,
16 WHEN THEY MAKE THAT DECISION OF NOT GUILTY, THEN OF
17 COURSE THE DEFENDANT IS RELEASED FROM THE CHARGES.
18 BUT, IF THEY MAKE THE DECISION OF GUILT THEN THE
19 DEFENDANT IS PUT IN FRONT OF A JUDGE AND THE JUDGE
20 SENTENCES HIM. OKAY?

21 A YES.

22 THE COURT: IN EVERY CASE IN THE STATE
23 OF SOUTH CAROLINA EXCEPT ONE TYPE OF CASE, AND THAT
24 IS WHERE THE STATE IS SEEKING THE DEATH PENALTY.
25 IN A DEATH PENALTY CASE THE JURY FIRST MUST DECIDE

1 WHETHER OR NOT A DEFENDANT IS GUILTY OR NOT GUILTY
2 OF THE CHARGES. NOT GUILTY, THE PROCESS ENDS. IF
3 GUILTY, THEN THE JURY SITS AND HEARS ANOTHER SET
4 OF...

5 A PENALTY PHASE.

6 THE COURT: ...OTHER TESTIMONY...THE
7 PENALTY PHASE. YOU REMEMBER THAT FROM THE LETTER.
8 AND YOU DECIDE WHETHER OR NOT SOMEONE SHOULD GET
9 LIFE IMPRISONMENT OR DEATH. DO YOU UNDERSTAND
10 THAT?

11 A YES.

12 THE COURT: ALL RIGHT. NOW, IN DOING
13 THAT, MS. MERRITT, JUST LIKE I WOULD IN CONSIDERING
14 THE APPROPRIATE SENTENCE FOR SOMEBODY THAT I HAD
15 THE AUTHORITY TO SENTENCE, I WOULD CONSIDER
16 AGGRAVATING CIRCUMSTANCES AND MITIGATING
17 CIRCUMSTANCES. AGGRAVATING...AND YOU KNOW WHAT
18 THEY ARE?

19 A I KNOW WHAT THEY ARE.

20 THE COURT: ALL RIGHT. GOOD. NOW, WE
21 KNOW BY EXPERIENCE THAT THERE ARE THREE POSSIBLE
22 TYPES OF JURORS. WE KNOW THAT THERE'S ONE TYPE
23 THAT SAYS, "FOLKS, WE'VE GOT A CONVICTION. WE'VE
24 GOT EVIDENCE OF AGGRAVATING CIRCUMSTANCES. IT
25 DOESN'T MATTER WHETHER WE HAVE ANY MITIGATING

1 CIRCUMSTANCES. I VOTE FOR THE DEATH PENALTY IN
2 EVERY CASE OF THIS NATURE AND SO THEREFORE MY VOTE
3 IS DEATH."

4 WE HAVE A SECOND TYPE OF JUROR WHO
5 SAYS, "YOU'RE RIGHT, WE HAVE A CONVICTION OF A
6 MURDER, PLUS AGGRAVATING CIRCUMSTANCES. WE MAY OR
7 MAY NOT HAVE MITIGATING CIRCUMSTANCES, BUT I
8 BELIEVE THAT LIFE IMPRISONMENT IS THE MORE
9 APPROPRIATE PUNISHMENT IN ALL CASES AND I VOTE FOR
10 LIFE."

11 THEN, WE HAVE A THIRD GROUP OF JURORS
12 THAT SAYS, "WELL, YOU'RE BOTH RIGHT TO SOME EXTENT.
13 WE'VE GOT A CONVICTION FOR MURDER, PLUS AGGRAVATING
14 CIRCUMSTANCES. WE MAY OR MAY NOT HAVE MITIGATING
15 CIRCUMSTANCES, BUT I WANT TO LOOK AT THE WHOLE
16 RECORD IN THIS CASE AND..."

17 A GOT TO STUDY IT.

18 THE COURT: THAT'S THE THIRD TYPE OF
19 JUROR. STUDY IT, RIGHT. "...AND I'M GOING TO MAKE
20 UP MY OWN MIND AS TO WHAT I WANT TO DO." NOW,
21 WHICH TYPE WOULD YOU BE?

22 A THAT KIND.

23 THE COURT: THE LAST KIND?

24 A YEAH, BECAUSE NO ONE'S GOING TO TELL
25 ME WHAT TO THINK.

1 THE COURT: ALL RIGHT. NOW, LET ME
2 ASK YOU THIS. LET'S SUPPOSE YOU DID YOUR OWN
3 THINKING. YOU FOLLOWED...YOU LISTENED TO THE
4 EVIDENCE...

5 A I'D HAVE TO GO BY THE EVIDENCE.

6 THE COURT: THE EVIDENCE AND THE LAW.
7 YOU CAN DO THAT THOUGH?

8 A YES.

9 THE COURT: ALL RIGHT. LET'S SAY THAT
10 YOU'VE DONE YOUR THINKING AND YOU'VE LISTENED TO
11 THE EVIDENCE AND YOU'VE FOLLOWED THE LAW AND YOU
12 HAVE COME TO THE CONCLUSION THAT IN A CASE THAT THE
13 APPROPRIATE PUNISHMENT SHOULD BE LIFE IMPRISONMENT.
14 COULD YOU VOTE TO IMPOSE A LIFE SENTENCE? IF YOU
15 THOUGHT THAT WAS THE APPROPRIATE...

16 A IF THAT WAS MY...YES.

17 THE COURT: ALL RIGHT. ON THE OTHER
18 HAND, TAKE THE SAME CASE AND SAY THAT YOU CAME TO
19 THE CONCLUSION THAT THE DEATH PENALTY WAS THE
20 APPROPRIATE PUNISHMENT. COULD YOU IMPOSE...VOTE TO
21 IMPOSE THE DEATH SENTENCE?

22 A YES.

23 THE COURT: NOW, IN ADDITION, MS.
24 MERRITT, THERE'S A REQUIREMENT, A LEGAL
25 REQUIREMENT, THAT IF YOU DECIDED THAT THE DEATH

1 PENALTY WAS THE APPROPRIATE PUNISHMENT THAT YOU, AS
2 A JUROR, NEED TO SIGN YOUR NAME TO THE SENTENCE
3 FORM, OR THE DEATH WARRANT, ACKNOWLEDGING THE FACT
4 THAT THAT IS YOUR VERDICT. COULD YOU DO THAT IF
5 YOU THOUGHT THAT THE DEATH PENALTY WAS APPROPRIATE?

6 A YES.

7 THE COURT: ALL RIGHT. SOLICITOR?

8 MR. JONES: THANK YOU, YOUR HONOR.

9 DIRECT EXAMINATION:

10 BY MR. JONES:

11 Q GOOD MORNING, MS. MERRITT.

12 A GOOD MORNING.

13 Q MY NAME IS TOWNES JONES, I'M THE
14 SOLICITOR. I KNOW THE JUDGE INTRODUCED ME EARLIER,
15 BUT I JUST WANTED TO SAY HELLO TO YOU THIS MORNING.

16 A YEAH, I DIDN'T REMEMBER ANY OF THE
17 NAMES. I DO BETTER WITH NUMBERS THAN NAMES.

18 Q ALL RIGHT. WELL, LET ME INTRODUCE YOU
19 TO A COUPLE OF PEOPLE THAT WILL BE ASSISTING ME
20 DURING THIS TRIAL. THIS IS MR. MICHAEL COULTER,
21 HE'S THE DEPUTY SOLICITOR.

22 A COULTER?

23 Q COULTER, C-O-U-L-T-E-R.

24 A UH-HUH. (YES).

25 Q AND MR. KNOX MCMAHON.

1 A MCMAHON?
2 Q I'LL LET HIM SPELL IT FOR YOU.
3 A M-C-M-A-H-O-N?
4 MR. MCMAHON: YES, MA'AM.
5 A AND YOUR NAME WAS WHAT NOW?
6 Q MY FIRST NAME IS TOWNES, THAT'S
7 SPELLED...
8 A JUST TELL ME THE LAST NAME.
9 Q JONES.
10 A JONES, OKAY. JONES, COULTER, AND
11 MCMAHON?
12 Q YES, MA'AM.
13 A SEE, I LEARNED I HAVE TO REPEAT THE
14 NAME SO IT WILL STICK.
15 Q GOOD. I WANTED TO LET YOU KNOW THAT
16 THE VICTIM IN THIS CASE, VICKIE LANDER BECKHAM, WAS
17 MURDERED AND HER HUSBAND IS CHARGED WITH IT. HER
18 PARENTS ARE HERE. THEY'RE IN THE COURTROOM.
19 THAT'S SENATOR LANDER, HER DAD, SEATED ON THE FRONT
20 ROW, AND HER MOM IS NEXT TO HIM, JOLENE LANDER.
21 I LISTENED TO YOU WHEN YOU WERE
22 ANSWERING THE JUDGE'S QUESTIONS AND IT APPEARED TO
23 ME THAT YOU UNDERSTOOD WHAT HE WAS ASKING?
24 A I DO, BECAUSE FOR EIGHTEEN MONTHS I'VE
25 BEEN WATCHING COURT T.V. I DON'T WATCH SOAP OPERAS

1 OR ANYTHING ELSE. I JUST WATCH COURT T.V. AND IT'S
2 IN MY PAPERS I SENT IN. SO I FIGURED YOU WOULDN'T
3 CALL ME, YOU KNOW?

4 Q UH-HUH. (YES).

5 A AND I'VE LEARNED THE WORDS FOR WHAT,
6 YOU KNOW, LIKE MITIGATING...

7 Q AGGRAVATING?

8 A AGGRAVATING. HEINOUS OR HEINOUS, IS
9 THAT HOW YOU SAY IT?

10 Q YES, MA'AM.

11 A I'VE LEARNED ALL OF THAT. ALSO, THE
12 CIVIL SUITS. AND ANOTHER THING, I'VE BEEN ON JURY
13 DUTY FOUR TIMES IN MY LIFE TIME.

14 Q IS THAT RIGHT?

15 A UH-HUH. (YES).

16 Q ANY CRIMINAL CASES?

17 A THE BIGGEST CRIMINAL CASE WAS A DRUG
18 CASE IN GREENVILLE.

19 Q FEDERAL COURT OR...

20 A NO, IT WAS AT THE...IT WAS IN GENERAL
21 SESSIONS.

22 Q GENERAL SESSION?

23 A UH-HUH. (YES).

24 Q DID Y'ALL REACH A VERDICT?

25 A YES, WE DID.

1 Q WHAT VERDICT DID YOU REACH?

2 A IT WAS GUILTY. AND WE HAD AN ALL
3 FEMALE JURY, TOO.

4 Q QUITE AN ACCOMPLISHMENT. MS. MERRITT,
5 I DON'T HAVE A LOT OF QUESTIONS FOR YOU OTHER THAN
6 IF YOU'RE SELECTED ON THE JURY IT COULD BE A COUPLE
7 OF WEEKS THAT WE WOULD NEED YOUR SERVICE AND YOUR
8 DUTY, WOULD THAT BE SOMETHING YOU COULD DO?

9 A WELL, IT'S MY DOGS THAT'S GIVING ME
10 TROUBLE AND IF I HAVE TO HAVE A SHERIFF...WELL, IF
11 I GIVE THEM THE VETERINARIAN'S CARD, BUSINESS CARD,
12 AND PUT MY NAME ON IT, WOULD SOMEONE CHECK IN AND
13 CALL ME AND LET ME KNOW HOW THEY'RE DOING?

14 THE COURT: IS THAT ALL WE NEED TO DO?

15 A YEAH.

16 THE COURT: WE CAN DO THAT. WE CAN
17 TAKE CARE OF THAT.

18 A AND THEN IN CASE ONE DIES I WOULD NEED
19 TO TELL THEM WHAT TO DO WITH IT AND THAT KIND OF
20 STUFF.

21 THE COURT: WE CAN HANDLE THAT.

22 Q THANK YOU, MA'AM.

23 A THANK YOU.

24 THE COURT: MR. HARPOOTLIAN?

25 CROSS-EXAMINATION:

1 BY MR. HARPOOTLIAN:
2 Q MS. MERRITT?
3 A GOOD MORNING.
4 Q MY NAME IS DICK HARPOOTLIAN.
5 A DIDN'T YOU RUN FOR AN OFFICE?
6 Q OH, I SURE DID.
7 A I THOUGHT I...WHEN I WAS IN GREENVILLE
8 I HAD SEEN YOUR NAME ON SIGNS.
9 Q CAN YOU SPELL IT?
10 A H-A-R-P-O-U-L-I-A-N?
11 Q CLOSE. H-A-R-P-O-O-T-L-I-A-N.
12 HARPOOTLIAN.
13 A OKAY. POOT.
14 Q POOT, YES.
15 A OKAY. WELL, SINCE I'M THE DOG LADY...
16 Q AND THOSE ARE TWO YORKSHIRES YOU'VE
17 GOT, RIGHT?
18 A TWO YORKSHIRES AND I HAVE A LITTLE
19 POODLE, TOO. I DIDN'T TELL YOU ABOUT HER.
20 Q NO, HOW'S THE POODLE?
21 A SHE'S THE ONE THAT'S WORSE.
22 Q OH, OKAY.
23 A SHE GOT SICK FIRST, TOO.
24 Q BUT THE POODLE AND THE YORKSHIRES ARE
25 SICK?

- 1 A YEP.
- 2 Q ALL THREE OF THEM?
- 3 A THE POODLE GOT SICK SATURDAY
- 4 AFTERNOON, ONE YORKSHIRE GOT SICK SUNDAY AFTERNOON,
- 5 MONDAY MORNING THE OTHER YORKSHIRE WAS SICK. IT'S
- 6 A VIRUS. THE POODLE GAVE IT TO THEM.
- 7 Q MS. MERRITT, LET ME INTRODUCE TO YOU
- 8 JACK SWERLING. THAT'S S-W-E-R-L-I-N-G.
- 9 A SWERLING?
- 10 Q SWERLING, AND HE AND I ARE CO-COUNSEL.
- 11 WE'RE BOTH ATTORNEYS FROM COLUMBIA. WE REPRESENT
- 12 STEVE BECKHAM. THAT'S STEPHEN RIGHT THERE.
- 13 A OKAY.
- 14 Q HE IS THE GUY THAT'S ON TRIAL HERE.
- 15 AND YOU SAY YOU WATCH COURT TELEVISION, HE IS THE
- 16 DEFENDANT, AS WE CALL HIM. HE IS THE ONE THAT THE
- 17 STATE HAS ACCUSED OF COMMITTING THIS CRIME. HE IS
- 18 THE ONE WHO IS CHARGED WITH THE CRIME. OKAY?
- 19 A UH-HUH. (YES).
- 20 Q GO AHEAD AND SIT DOWN. AND SEATED
- 21 BEHIND HIM IS HIS FATHER AND HIS MOTHER AND SEVERAL
- 22 OF HIS RELATIVES. THAT'S HIS FATHER ALL THE WAY
- 23 OVER ON THE END AND...
- 24 A FAMILY.
- 25 Q FAMILY, RIGHT. AND THEIR NAME,

1 OBVIOUSLY ALSO IS BECKHAM. HIS NAME'S BECKHAM.
2 NOW MS. MERRITT, I NEED TO ASK YOU SOME QUESTIONS.
3 I'M NOT TRYING TO EMBARRASS YOU. I'M NOT TRYING TO
4 PUT YOU ON THE SPOT. I'M NOT TRYING IN ANY WAY TO
5 DELVE INTO YOUR PERSONAL BACKGROUND. BUT THIS IS A
6 VERY SERIOUS CASE.

7 A YES.

8 Q THIS IS A CASE IN WHICH THERE IS A LOT
9 AT STAKE FOR BOTH THE STATE AND MR. BECKHAM HERE.
10 AND YOU HAVE BEEN VERY CANDID AND HONEST IN FILLING
11 OUT THIS QUESTIONNAIRE...

12 A WELL, I ALWAYS TELL THE TRUTH ABOUT
13 IT.

14 Q AND I'M AFRAID I'M GOING TO HAVE TO
15 DISCUSS WHAT APPARENTLY WAS A VERY, AND ASK YOU,
16 ABOUT A VERY TRAGIC EPISODE IN YOUR BACKGROUND
17 BECAUSE WE'RE TRYING TO DETERMINE WHETHER THAT
18 WOULD HAVE ANY EFFECT ON YOU IN THIS CASE.

19 A UH-HUH. (YES).

20 Q YOU INDICATE IN THIS QUESTIONNAIRE
21 THAT YOUR FORMER HUSBAND, EARL MCDOWELL, WAS
22 CONVICTED OF KILLING YOUR SON IN 1977, IS THAT
23 CORRECT?

24 A YES. HE WAS A VETERINARIAN IN
25 GREENVILLE. YOU PROBABLY KNOW THE CASE.

1 Q HE WAS A VETERINARIAN WHERE?
2 A IN GREENVILLE.
3 Q OKAY, TELL ME A LITTLE BIT ABOUT THE
4 CASE.
5 A HE...OKAY, OUR SON HAD GOTTEN ON DRUGS
6 WHEN HE WAS ABOUT...STARTED SNIFFING GASOLINE TANKS
7 AND STUFF LIKE THAT WHEN HE WAS ABOUT ELEVEN AND IT
8 JUST PROGRESSED TO WORSE. ONE NIGHT MY HUSBAND HAD
9 GONE TO THE OFFICE TO SEE A MONKEY AND A DOG AND MY
10 SON WENT BY AND ASKED HIM FOR SOME MONEY, SAID HE
11 WANTED \$20.00, AND MY HUSBAND DIDN'T TAKE MONEY TO
12 THE OFFICE AT NIGHT, PEOPLE WOULD PAY HIM BY CHECK
13 FOR IT, YOU KNOW, BECAUSE HE HAD BEEN ROBBED TWICE.
14 AND SO HE TOLD HIM HE DIDN'T HAVE ANY CASH WITH
15 HIM, ALL HE HAD WAS THE CHECKS. AND SO MEL
16 ATTACKED HIM WITH A SCREWDRIVER...NOW THIS IS THE
17 STORY I HEARD, YOU KNOW?
18 Q RIGHT.
19 A ...BECAUSE I WASN'T THERE.
20 Q MEL BEING THE SON?
21 A UH-HUH. (YES). MEL...HE SAID...MY
22 HUSBAND SAID THAT HE ATTACKED HIM WITH A HAMMER AND
23 A SCREWDRIVER -- WHICH THERE WAS A DRAWER THAT HAD
24 THOSE THINGS IN IT DOWN THERE...
25 Q RIGHT.

1 A ...AND MY HUSBAND CARRIED A GUN
2 BECAUSE HE HAD BEEN ROBBED TWICE IN THE LAST YEAR.
3 Q RIGHT.
4 A AND SO HE PULLED OUT HIS GUN AND SHOT
5 HIM. NOW, THE THING ABOUT IT, IF HE HAD GONE TO
6 THE...CALLED THE LAW AND CALLED THE AMBULANCE AND
7 EVERYTHING I THINK EVERYTHING WOULD HAVE BEEN ALL
8 RIGHT. BUT WHAT HE DID, HE TAKES MY SON AND THEN
9 HE PUTS HIM IN THE TUB WHERE YOU WASH DOGS AND
10 HOSED HIM OFF AND WRAPPED HIM UP IN A BLANKET, PUT
11 HIM IN THE BACK OF HIS STATION WAGON AND CARRIED
12 HIM INTO PICKENS COUNTY AT A DUMPSTER AND SITS HIM
13 UP BESIDE THE DUMPSTER. THEY HAD PICTURES OF IT,
14 YOU KNOW. AND THEN FOR TWO WEEKS HE'S LIKE HE'S
15 HELPING THE POLICE TRYING TO FIND OUT WHO HAD DONE
16 IT, THINKING IT'S SOME DRUG PEOPLE OR SOMETHING,
17 YOU KNOW? AND SO IT JUST...I MEAN, FOR A YEAR I
18 DIDN'T HAVE GOOD SENSE. THEN THE NEXT YEAR I
19 STARTED SEEING A PSYCHIATRIST AND GETTING MY ACT
20 TOGETHER AND THEN I DIVORCED HIM...
21 Q WELL, LET ME INTERRUPT ONE SECOND.
22 WAS HE CONVICTED OF SOMETHING?
23 A OH, YES.
24 Q WHAT WAS HE CONVICTED OF?
25 A HE GOT A LIFE SENTENCE.

1 Q FOR MURDER?

2 A FOR MURDER, YES.

3 Q OKAY. WOULD THAT EPISODE EFFECT YOUR

4 ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

5 A I'VE BEEN DIVORCED SINCE 1980 AND I

6 JUST...I MEAN, THAT'S SOMETHING...THIS IS THE FIRST

7 TIME I'VE HAD TO EXPLAIN OR...MY NEIGHBORS DON'T

8 EVEN KNOW...BECAUSE WHAT HAPPENED, WHEN I GOT MY

9 DIVORCE I HAD MY NAME CHANGED BACK TO WHAT IT WAS

10 BEFORE I MARRIED HIM, MY GIRLS DID TOO. BECAUSE

11 THAT'S THE ONLY WAY WE COULD LIVE, YOU KNOW?

12 Q RIGHT. I GUESS WHAT I'M ASKING YOU IS

13 THIS...AND THE SOLICITOR'S INTRODUCED THE FAMILY OF

14 THE DECEASED IN THIS CASE, VICKIE LANDER

15 BECKHAM...THAT WOULD BE THE DECEASED IN THIS CASE

16 IS THE WIFE OF THE DEFENDANT, STEPHEN BECKHAM. SO,

17 HE'S ACCUSED OF KILLING HIS WIFE. DOES THAT IN ANY

18 WAY, THE FACT THAT YOU'RE...

19 A NO, THAT'S HIS CASE. YOU KNOW? AND

20 I'D WANT TO HEAR WHAT THE PROSECUTION HAS TO TELL

21 ABOUT IT AND SHOW.

22 Q YOUR HUSBAND WAS CONVICTED IN 1977?

23 A SEVENTY-SEVEN.

24 Q HAVE YOU HAD ANY...IS HE STILL IN

25 JAIL?

1 A HE GOT OUT LAST YEAR. HE'S STILL ON
2 PROBATION...OR BAIL...NOT BAIL, IT'S PROBATION...
3 Q PAROLE?
4 A PAROLE. BUT HE...I'VE NOT TALKED WITH
5 HIM. ONE OF MY DAUGHTERS TOLD ME HE STILL HAS TO
6 CHECK IN WITH AN OFFICE...
7 Q HAVE YOU HAD ANY CONTACT WITH HIM IN
8 THE LAST TWENTY YEARS?
9 A NOT SINCE I GOT MY DIVORCE.
10 Q DID YOU APPEAR AT THE PAROLE HEARING
11 OR DID YOU...
12 A NO, SIR.
13 Q OKAY, SO YOU DIDN'T...
14 A ONE OF MY DAUGHTERS DID, THAT'S ALL.
15 Q IN FAVOR OF OR OPPOSED?
16 A IN FAVOR OF...BECAUSE HE'S OLD. HE'S
17 SIXTEEN YEARS OLDER THAN ME AND SHE SAYS THAT SHE'D
18 LIKE TO HAVE HIM OUT SO THAT HE CAN ROCK HER BABY
19 AND THAT KIND OF STUFF. BUT I DON'T WANT HIM
20 AROUND.
21 Q YES, MA'AM. EXCUSE ME ONE SECOND.
22 LET ME TALK TO MR. SWERLING. THANK YOU SO MUCH.
23 A UH-HUH. (YES).
24 THE COURT: WHAT SAYS THE STATE?
25 DEFENSE? MS. MERRITT...

1 MR. HARPOOTLIAN: WELL, YOUR HONOR,
2 COULD I BE HEARD FOR ONE MOMENT?

3 THE COURT: SURE. COULD I ASK YOU TO
4 JUST PLEASE STEP OUTSIDE JUST ONE MINUTE?

5 A OKAY. I'M SORRY, I KEEP HITTING THIS
6 THING.

7 THE COURT: THAT'S ALL RIGHT,
8 EVERYBODY ELSE HAS.

9 (JUROR IS EXCUSED FROM THE OPEN
10 COURTROOM)

11 MR. HARPOOTLIAN: YOUR HONOR, IF I
12 COULD PUT A MATTER ON THE RECORD. THIS WOMAN'S
13 BACKGROUND IS THAT HER HUSBAND, AS SHE'S EXPLAINED,
14 KILLED HER SON, HID THE SON'S BODY, PLAYED FOR A
15 COUPLE OF WEEKS, ONCE THE BODY'S FOUND, ASSISTED
16 LAW ENFORCEMENT LIKE HE HAD NOTHING TO DO WITH IT.
17 NOW, I DIDN'T GO INTO THE FACTS OF THIS CASE OR THE
18 ALLEGATIONS THAT THE STATE'S MADE IN THIS CASE, BUT
19 THEY'RE SOMEWHAT SIMILAR TO THE ALLEGATIONS BY THE
20 STATE IN THIS CASE...IS THAT STEPHEN BECKHAM KILLED
21 HIS WIFE AND THAT FOR YEAR'S PERIOD -- ACCORDING TO
22 THEIR THEORY ANYWAY -- ACTED AS IF HE WAS ASSISTING
23 LAW ENFORCEMENT OR TRYING TO FIND OUT WHO DID IT
24 AND DIDN'T DO IT. THERE'S ENOUGH OF A SIMILARITY
25 THERE...SHE DOESN'T KNOW THE FACTS OF THIS CASE,

1 WHEN SHE DOES KNOW THE FACTS OF THIS CASE I THINK
2 HER OPINION AS TO WHETHER OR NOT SHE'D BE FAIR AND
3 IMPARTIAL WOULD CHANGE, IF SHE WERE BEING HONEST
4 WITH US. SO, FOR THE RECORD I WOULD ASK YOU TO SUA
5 SPONTE EXCUSE HER BECAUSE OF THE SIMILARITY BETWEEN
6 HER LIFE EXPERIENCE WITH HER HUSBAND KILLING HER
7 SON AND THEN THE FACTS OF THIS CASE. I'M NOT GOING
8 TO BEAT A DEAD HORSE, BUT...

9 THE COURT: I DENY THAT MOTION.

10 MR. HARPOOTLIAN: YES, SIR.

11 THE COURT: SHE'S KIND OF REMARKABLE,
12 YOU KNOW? SHE SAID SHE WENT AND GOT HELP AND GOT
13 HER ACT TOGETHER AND LIVED HER LIFE AND I BELIEVE
14 HER WHEN SHE SAYS SHE'S GOING TO LISTEN TO THE CASE
15 AND MAKE UP HER MIND.

16 MR. HARPOOTLIAN: YES, SIR. I JUST
17 NEEDED TO PUT THAT ON THE RECORD.

18 THE COURT: ALL RIGHT. THANK YOU,
19 SIR. ALL RIGHT, BRING MS. MERRITT BACK IN.

20 (JUROR IS RETURNED TO THE OPEN
21 COURTROOM)

22 THE COURT: MS. MILLER...

23 A MERRITT.

24 THE COURT: I MEAN MS. MERRITT, I'M
25 SORRY. MS. MERRITT...I WAS LOOKING AT THE WRONG

1 THING. I FIND THAT YOU'RE QUALIFIED TO BE PLACED
2 IN THE POOL FROM WHICH WE'RE GOING TO SELECT THE
3 JURY THIS AFTERNOON. I'D ASK YOU TO GO HOME AND
4 PACK AND COME BACK ABOUT 2:30 AND BE PREPARED TO GO
5 TO NEWBERRY, NOT THAT WILL...YOU MAY OR MAY NOT
6 MAKE IT TO THE PANEL, BUT IF YOU ARE YOU WOULD BE
7 DOWN THERE ABOUT TEN DAYS. NOW, WE'LL WORK THAT
8 THING OUT ABOUT THE DOGS.

9 A SO I CAN GET SOME WORD FROM THEM?

10 THE COURT: YEAH, WE'LL WORK THAT OUT
11 WITH THE SHERIFF ABOUT THAT. AND I UNDERSTAND
12 YOU'RE WILLING TO SERVE?

13 A YEAH.

14 THE COURT: OKAY. ALL RIGHT.

15 A THAT'S MY...MY DOGS ARE MY ONLY
16 PROBLEM.

17 THE COURT: AND I UNDERSTOOD THAT FROM
18 THE OTHER DAY. SO, SLED WILL PROVIDE FOR YOUR
19 TRANSPORTATION AND SECURITY TO AND FROM NEWBERRY
20 AND WHILE YOU'RE THERE. NEWBERRY WILL PAY FOR YOUR
21 LODGING, YOUR MEALS, AND SO FORTH. THERE WILL BE
22 LAUNDRY SERVICES IF YOU JUST DON'T WANT TO OVER
23 PACK FOR LIKE...PACK HOWEVER YOU WANT, BUT BE
24 PREPARED TO STAY ABOUT TEN DAYS.

25 A WELL, THE WEATHER, WE DON'T KNOW WHAT

1 KIND OF WEATHER WE'RE GOING TO HAVE.

2 THE COURT: IT'S A LITTLE WARMER DOWN
3 THERE, BUT IT COULD TURN A LITTLE COOL, SO JUST
4 KIND OF...

5 A IT'S OKAY TO WEAR THESE KINDS OF
6 THINGS?

7 THE COURT: I'LL LET YOU DO THAT.
8 OKAY?

9 A OKAY.

10 THE COURT: ALL RIGHT.

11 A I LIKED TO FROZE TO DEATH MONDAY, SO I
12 STARTED WRAPPING.

13 THE COURT: I'D BRING A SWEATER, OKAY?

14 A I DON'T HAVE A SWEATER, BUT I JUST
15 HAVE THINGS LIKE THIS.

16 THE COURT: THAT'S FINE.

17 A AFTER I GAINED MY WEIGHT THE PAST FOUR
18 YEARS I DON'T HAVE...I'M LIVING IN JOGGING OUTFITS
19 AND STUFF LIKE THAT.

20 THE COURT: THAT'S ALL RIGHT.

21 A BUT I'M ON A DIET.

22 THE COURT: THAT'S FINE.

23 A SO, HOPEFULLY I'LL GET BACK DOWN. BUT
24 YOU CALLED ME BEFORE I GOT MY FIGURE BACK.

25 THE COURT: OKAY. ALL RIGHT, WE'LL

1 SEE YOU THIS AFTERNOON AT 2:30.

2 A OKAY, NOW WHAT ABOUT...I DON'T HAVE

3 ANYBODY...WHAT ABOUT MY CAR?

4 THE COURT: YOU DON'T HAVE ANYBODY...

5 A IF I GO CAN SOMEBODY DRIVE MY CAR

6 HOME?

7 THE COURT: LET ME DO THIS, WHERE IS

8 CHARLIE? YOU'RE CHARLIE TODAY?

9 SPEAKER: MUST BE.

10 THE COURT: WHEN ARE THE GUYS FROM

11 CHARLESTON GOING TO GET HERE?

12 SPEAKER: TWO O' CLOCK.

13 THE COURT: TWO O' CLOCK?

14 SPEAKER: YES, SIR.

15 THE COURT: MA'AM, IF YOU...THE TEAM

16 FROM CHARLESTON...WE'LL COME PICK YOU UP.

17 A YOU'LL COME PICK ME UP?

18 THE COURT: YEAH. I'VE JUST GOT

19 TO...I'LL TELL YOU WHAT, JUST LET HER GO AROUND

20 THERE. WHAT I WANT IS WHEN THE GUYS FROM

21 CHARLESTON GET HERE, SOMEBODY FROM SLED WILL COME

22 PICK YOU UP AT YOUR HOUSE.

23 A OKAY.

24 THE COURT: WHERE DO YOU LIVE?

25 A IT'S 380 NORTH PORT BASS DRIVE,

1 FAIRPLAY.

2 THE COURT: ALL RIGHT. WELL,
3 TELL...GO WITH THOSE GUYS RIGHT THERE AND...WE'RE
4 GOING TO HAVE TO PICK HER UP AT 2:00.

5 A TWO O' CLOCK?

6 THE COURT: YEAH. THEY'LL PICK YOU
7 UP.

8 A OKAY. THANK YOU.

9 THE COURT: AND FAIRPLAY, GENTLEMEN,
10 IS ABOUT FIFTEEN OR TWENTY MILES DOWN THE ROAD,
11 OKAY?

12 ALL RIGHT, LET'S SEE, LARRY RITCH, R-
13 I-T-C-H?

14 LARRY RITCH, BEING CALLED
15 AND DULY SWORN, TESTIFIES AS FOLLOWS:

16 THE COURT: IF YOU'LL HAVE A SEAT
17 THERE AND MAKE YOURSELF COMFORTABLE?

18 A ALL RIGHT.

19 THE COURT: ALL RIGHT. AND YOU
20 ARE...ALL THE MEMBERS OF PANEL D, WE KNOW Y'ALL GOT
21 ABUSED THE WORST AS FAR AS HAVING TO SIT AROUND AND
22 WAIT, BUT YOU GOT CAUGHT IN THE MIDDLE OF IT.

23 A RIGHT.

24 THE COURT: BUT WE'RE MOVING ALONG A
25 LOT BETTER TODAY AND I APOLOGIZE FOR YOU HAVING TO

1 WAIT YESTERDAY.

2 A YES, SIR.

3 THE COURT: HAVE YOU EVER SERVED ON A
4 JURY BEFORE?

5 A NO, SIR.

6 THE COURT: HAVE YOU BEEN IN A
7 COURTROOM BEFORE MONDAY?

8 A YEAH, TRAFFIC VIOLATIONS, STUFF LIKE
9 THAT, YOU KNOW?

10 THE COURT: DID YOU HAVE ANY
11 OPPORTUNITY TO READ THE LETTER THAT I HANDED OUT
12 MONDAY?

13 A YES, SIR.

14 THE COURT: AND YOU GENERALLY
15 UNDERSTAND WHAT WAS IN THE LETTER?

16 A YES, SIR.

17 THE COURT: OKAY. NOW, AS YOU'RE
18 AWARE THEN, THE POTENTIAL NATURE OF THIS CASE
19 INVOLVES THE DEATH PENALTY.

20 A YES, SIR.

21 THE COURT: AND BY REASON OF THAT
22 FACT, THE ATTORNEYS, AS WELL AS MYSELF, GET TO ASK
23 YOU SOME QUESTIONS ABOUT SOME RELEVANT BELIEFS THAT
24 YOU MIGHT HAVE. AND YOU WOULD AGREE THAT IT WOULD
25 BE FAIR FOR US TO KNOW WHAT YOU BELIEVED ABOUT SUCH

1 THINGS AS THE DEATH PENALTY AND THAT TYPE OF THING?

2 A YES, SIR.

3 THE COURT: OKAY. NOW, MR. RITCH,
4 HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
5 GUILT OR INNOCENCE OF MR. BECKHAM IN THIS CASE?

6 A NO, SIR.

7 THE COURT: DO YOU KNOW ANYTHING ABOUT
8 THE FACTS OF THE CASE?

9 A NO, SIR, I SURE DON'T.

10 THE COURT: HAVE YOU HEARD OF THE
11 LEGAL PRINCIPLE THAT A CITIZEN ACCUSED OF A CRIME
12 IS PRESUMED INNOCENT OF THAT CRIME UNTIL AND UNLESS
13 THE GOVERNMENT CAN PROVE HIS GUILT BEYOND A
14 REASONABLE DOUBT?

15 A YES, SIR.

16 THE COURT: IS THAT A PRINCIPLE OF LAW
17 THAT YOU COULD ACCEPT AND APPLY IF YOU WERE
18 SELECTED TO SERVE ON A JURY?

19 A YES, SIR. ABSOLUTELY.

20 THE COURT: NOW, I NEEDED TO ASK YOU
21 THOSE QUESTIONS, AND I WANT TO MAKE SURE ABOUT
22 THIS, WE'RE GOING TO TALK ABOUT PENALTY: THE DEATH
23 PENALTY AND LIFE IMPRISONMENT. I WANT TO MAKE SURE
24 THAT YOU DON'T INFER OR IMPLY FROM THE FACT THAT
25 WE'RE HAVING THIS CONVERSATION THAT MR. BECKHAM IS

1 GUILTY OF ANYTHING AT THIS POINT IN TIME.

2 A CORRECT.

3 THE COURT: WE HAVEN'T HEARD THE
4 EVIDENCE. WE DON'T KNOW WHAT THE OUTCOME IS GOING
5 TO BE. IS THAT FAIR...

6 A YES, SIR.

7 THE COURT: ALL RIGHT. NOW, GENERALLY
8 WE EMPANEL A JURY AND THEY ULTIMATELY MAKE ONE
9 DECISION AND THAT IS WHETHER A DEFENDANT IS GUILTY
10 OR NOT GUILTY OF THE CRIME CHARGED. NOT GUILTY, OF
11 COURSE HE'S RELEASED FROM CHARGES. IF THE JURY
12 SAYS A DEFENDANT IS GUILTY THEN THAT DEFENDANT HAS
13 TO STAND BEFORE A JUDGE AND THE JUDGE SENTENCES
14 HIM. NOW THAT'S TRUE IN EVERY TYPE OF CRIMINAL
15 CASE IN THIS STATE EXCEPT ONE AND THE EXCEPTION TO
16 THAT IS WHERE THE STATE SEEKS THE DEATH PENALTY.
17 WHEN THE STATE DOES THAT THE JURY HAS TWO ULTIMATE
18 RESPONSIBILITIES. THE FIRST RESPONSIBILITY IN THE
19 GUILT PHASE IS TO DETERMINE WHETHER OR NOT A
20 DEFENDANT IS GUILTY OR NOT GUILTY. OKAY?

21 A YES, SIR.

22 THE COURT: THE SECOND PHASE IS...IF
23 THEY MAKE A DETERMINATION THAT HE'S NOT GUILTY THEN
24 YOU DON'T HAVE THE SECOND PHASE...BUT IF THEY MAKE
25 A DETERMINATION THAT A DEFENDANT IS GUILTY THEN THE

1 JURY SITS AS A JUDGE DOES AND DETERMINES WHAT THE
2 SENTENCE IS FOR THAT DEFENDANT.

3 A YES, SIR.

4 THE COURT: JUST LIKE I DO WHEN I
5 SENTENCE SOMEBODY, A JURY IN THAT PHASE OF THE
6 TRIAL WOULD BE CONSIDERING AGGRAVATING
7 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES AND THEN
8 DECIDING ON THE WHOLE WHAT IS THE APPROPRIATE
9 PUNISHMENT. ALL RIGHT, YOU UNDERSTAND THAT
10 PROCEDURE?

11 A YES, SIR.

12 THE COURT: WE KNOW FROM EXPERIENCE
13 THAT THERE ARE THREE KINDS OF JURORS. THERE'S ONE
14 KIND THAT SAYS, "WE HAVE A CONVICTION FOR MURDER,
15 PLUS WE HAVE AGGRAVATING CIRCUMSTANCES. IT DOESN'T
16 MATTER THAT WE HAVE MITIGATING CIRCUMSTANCES. I
17 BELIEVE THE DEATH PENALTY IS ALWAYS APPROPRIATE. I
18 VOTE FOR DEATH." OKAY? THAT'S ONE TYPE OF JUROR.

19 WE HAVE A SECOND TYPE OF JUROR THAT
20 SAYS, "YOU'RE RIGHT, WE HAVE A CONVICTION. WE HAVE
21 AGGRAVATING CIRCUMSTANCES. WE MAY OR MAY NOT HAVE
22 MITIGATING CIRCUMSTANCES, BUT I BELIEVE THAT LIFE
23 IMPRISONMENT IS ALWAYS THE APPROPRIATE PUNISHMENT.
24 I VOTE FOR LIFE." OKAY?

25 A YES, SIR.

1 THE COURT: WE HAVE A THIRD CATEGORY
2 THAT SAYS, "YOU'RE BOTH PARTIALLY RIGHT. WE HAVE A
3 CONVICTION FOR MURDER, PLUS WE HAVE EVIDENCE OF
4 AGGRAVATING CIRCUMSTANCES. WE MAY OR MAY NOT HAVE
5 EVIDENCE OF MITIGATING CIRCUMSTANCES, BUT I WANT TO
6 LOOK AT THIS PARTICULAR CASE AND EVALUATE IT AND
7 CONSIDER IT AND THEN I'LL DECIDE WHETHER LIFE OR
8 DEATH IN THIS CASE IS THE APPROPRIATE PUNISHMENT."

9 A YES, SIR.

10 THE COURT: NOW, IF YOU WERE SITTING
11 ON A JURY, COULD YOU TELL US WHICH ONE OF THOSE
12 TYPES JURORS YOU WOULD LIKELY BE?

13 A IT SOUNDS LIKE THE LAST ONE TO ME.

14 THE COURT: ALL RIGHT. WELL, LET ME
15 ASK YOU...LET ME FOLLOW THAT UP JUST A LITTLE BIT.

16 A OKAY.

17 THE COURT: LET'S ASSUME THAT YOU'RE
18 SITTING ON A JURY AND THE JURY HAS FOUND A
19 DEFENDANT GUILTY OF MURDER.

20 A UH-HUH. (YES).

21 THE COURT: AND YOU'VE GONE TO THE
22 PENALTY PHASE AND YOU ARE PRESENTED EVIDENCE OF
23 AGGRAVATION AND EVIDENCE OF MITIGATION AND THINGS
24 LIKE THAT AND YOU'VE BEEN GIVEN A SET OF LEGAL
25 INSTRUCTIONS AND ON THE WHOLE YOU'VE COME TO THE

1 CONCLUSION THAT THE APPROPRIATE PUNISHMENT FOR THAT
2 DEFENDANT IS A LIFE SENTENCE. COULD YOU VOTE TO
3 IMPOSE A LIFE SENTENCE?

4 A YES, SIR.

5 THE COURT: ALL RIGHT. NOW, LET'S
6 TAKE THE SAME CASE AND THAT YOUR OPINION IS, OR
7 YOUR CONCLUSION IS, THAT YOUR DEATH PENALTY IS THE
8 MORE APPROPRIATE PUNISHMENT. IF YOU CAME TO THAT
9 CONCLUSION, BASED UPON THE LAW AND THE EVIDENCE IN
10 THE CASE, COULD YOU VOTE TO IMPOSE THE DEATH
11 PENALTY?

12 A YES, SIR.

13 THE COURT: ALL RIGHT. NOW, ONE STEP
14 FURTHER. THE STATUTE IN OUR STATE REQUIRES THAT
15 WHEN JURORS COME TO THE CONCLUSION THAT THE DEATH
16 PENALTY IS THE APPROPRIATE PUNISHMENT, EACH
17 INDIVIDUAL JUROR MUST SIGN THEIR NAME TO THE DEATH
18 WARRANT ACKNOWLEDGING THAT THAT IS THEIR VERDICT.
19 AND IF YOU CAME TO THE CONCLUSION THAT THE DEATH
20 PENALTY WAS THE APPROPRIATE ONE, WOULD...COULD YOU
21 SIGN YOUR NAME TO THE WARRANT?

22 A YES, SIR.

23 THE COURT: ALL RIGHT. I'M GOING TO
24 LET THE LAWYERS ASK YOU A FEW QUESTIONS.
25 SOLICITOR?

1 DIRECT EXAMINATION:

2 BY MR. JONES:

3 Q GOOD MORNING, MR. RITCH.

4 A GOOD MORNING.

5 Q AGAIN, I'D LIKE TO APOLOGIZE ABOUT THE
6 DELAY. WE MOVE ALONG AS QUICK AS WE CAN.

7 A I UNDERSTAND.

8 Q THE JUDGE WAS ASKING YOU THOSE
9 QUESTIONS AND IT APPEARED THAT YOU UNDERSTOOD WHAT
10 HE WAS ASKING YOU. YOU DID?

11 A YES, SIR.

12 Q IF SOMEONE WERE TO ASK YOU, IF I WERE
13 TO ASK YOU NOW, "IF YOU WERE SITTING ON A JURY AND
14 YOU DECIDED THAT THE VERDICT WAS GUILTY OF MURDER
15 AND THEN YOU DECIDE WHAT THE PUNISHMENT IS: LIFE
16 IMPRISONMENT OR THE DEATH PENALTY, AT THAT STAGE
17 YOU'RE TELLING US THAT YOU'RE THE KIND OF JUROR
18 THAT WOULD NOT LEAN TOWARDS OR AUTOMATICALLY VOTE
19 FOR THE DEATH PENALTY OR LEAN TOWARDS OR
20 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT, BUT
21 RATHER WOULD AT THAT POINT LISTEN TO WHAT THE
22 AGGRAVATING AND MITIGATING CIRCUMSTANCES ARE BEFORE
23 YOU DECIDED WHAT THE PROPER PUNISHMENT WAS?"

24 A YES, SIR.

25 Q IS THAT CORRECT?

1 A YES, SIR.

2 Q THAT'S WHAT YOU'RE TELLING US?

3 A UH-HUH. (YES).

4 Q SO, YOU DON'T REALLY LEAN TOWARDS ONE
5 OR THE OTHER? YOU'D HAVE TO LOOK AT THE INDIVIDUAL
6 CIRCUMSTANCES IN A CASE BEFORE YOU CAN DECIDE
7 WHETHER YOU WOULD IMPOSE THE DEATH PENALTY OR LIFE
8 IMPRISONMENT?

9 A YES, SIR.

10 Q SO, IT WOULD REALLY BE AN UNFAIR
11 QUESTION OF ME TO ASK YOU WHICH WAY YOU WOULD LEAN?
12 YOU'VE GOT TO HEAR THE FACTS OF THE CASE?

13 A ABSOLUTELY.

14 Q AND I'M NOT TALKING ABOUT THE FACTS OF
15 GUILT OR INNOCENCE, BUT AFTER THE GUILT IS DECIDED
16 YOU HAVE TO LISTEN TO THE FACTS IN MITIGATION AND
17 AGGRAVATION?

18 A YES, SIR.

19 Q EVEN AFTER...SAY YOU'RE ON A JURY AND
20 YOU DECIDE GUILTY, GUILTY OF MURDER. EVEN AFTER
21 THAT STAGE YOU WANT TO LOOK AT ALL OF THE FACTS
22 THAT GO IN TO SAY, "WELL, IT'S AN AGGRAVATED
23 MURDER." OR, "WELL, THERE'S SOME EVIDENCE IN
24 MITIGATION. THERE'S A REASON WHY A LIFE SENTENCE
25 WOULD BE APPROPRIATE IN THIS CASE." IS THAT

1 CORRECT?

2 A IF I UNDERSTAND YOU RIGHT I WOULD HAVE

3 TO HEAR EVERYTHING.

4 Q RIGHT.

5 A BEFORE I COULD SAY LIFE IMPRISONMENT

6 OR, YOU KNOW, THE DEATH PENALTY.

7 Q YES, SIR, BUT YOU WOULD CONSIDER BOTH

8 LIFE IMPRISONMENT OR DEATH?

9 A YES, SIR.

10 Q YOU COULD RETURN A VERDICT OF LIFE IN

11 PRISON FOR A MURDER CHARGE?

12 A YES, SIR.

13 Q ALL RIGHT. THANK YOU, MR. RITCH.

14 THE COURT: MR. SWERLING?

15 MR. SWERLING: THANK YOU, YOUR HONOR.

16 CROSS-EXAMINATION:

17 BY MR. SWERLING:

18 Q GOOD MORNING, MR. RITCH.

19 A GOOD MORNING.

20 Q HOW ARE YOU?

21 A JUST FINE.

22 Q MY NAME'S JACK SWERLING AND I'M DOWN

23 FROM COLUMBIA.

24 A UH-HUH. (YES).

25 Q IT'S NICE TO BE HERE. I'M SORRY

1 YOU'RE HAVING TO BE INCONVENIENCED BY THIS
2 SITUATION.

3 A YES, SIR.

4 Q I, ALONG WITH RICHARD HARPOOTLIAN,
5 WHO'S ALSO FROM COLUMBIA, ARE REPRESENTING STEPHEN
6 BECKHAM. STEPHEN, WOULD YOU STAND UP? THAT'S
7 STEPHEN. HE'S THE INDIVIDUAL ON TRIAL.

8 A YES, SIR.

9 Q THOSE ARE SOME MEMBERS OF HIS FAMILY:
10 HIS NIECE, HIS DAUGHTER, HE MOTHER AND FATHER. YOU
11 DON'T KNOW ANY OF US IN THIS CASE, DO YOU, AT ALL?

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

13 Q I UNDERSTAND YOU WERE FROM CHARLOTTE,
14 RIGHT?

15 A I'M ORIGINALLY FROM CHARLOTTE. I GOT
16 RELOCATED DOWN ABOUT FOUR YEARS AGO WITH...

17 Q MR. HARPOOTLIAN'S FROM CHARLOTTE. HE
18 GREW UP THERE TOO.

19 A UH-HUH. (YES).

20 Q LET ME JUST CLARIFY A COUPLE OF THINGS.
21 OR JUST EXPAND ON A COUPLE OF THINGS WITH YOU,
22 OKAY?

23 A OKAY.

24 Q WE ARE TALKING HERE ABOUT PUNISHMENT.

25 A UH-HUH. (YES).

1 Q ABOUT WHAT PEOPLE'S ATTITUDES ARE
2 ABOUT PUNISHMENT AND THAT'S VERY UNUSUAL. YOU'RE
3 PROBABLY THINKING WHY ARE WE TALKING ABOUT THAT
4 NOW?

5 A UH-HUH. (YES).

6 Q UNDER OUR DEATH PENALTY STATUTE, THE
7 STATE HAS DECIDED TO SEEK THE DEATH PENALTY IN THIS
8 CASE. OKAY?

9 A OKAY. UH-HUH. (YES).

10 Q AND THERE ARE MURDERS FOR WHICH THE
11 STATE CAN SEEK THE DEATH PENALTY AND THERE ARE
12 MURDERS FOR WHICH THE STATE DOESN'T SEEK THE DEATH
13 PENALTY OR CAN NOT SEEK THE DEATH PENALTY.

14 A CORRECT.

15 Q OKAY? IT'S UP TO THEM. NOW, IN MOST
16 CASES THE JURY COMES IN, THEY...WITHOUT BEING
17 QUESTIONED BY LAWYERS, BY THE WAY...SITS IN A JURY
18 BOX, HEARS THE EVIDENCE, DECIDES WHETHER THE STATE
19 HAS PROVEN GUILT BEYOND A REASONABLE DOUBT OR HAS
20 NOT PROVEN GUILT BEYOND A REASONABLE DOUBT.

21 A UH-HUH. (YES).

22 Q AND IF THEY FIND THAT THEY DID NOT
23 PROVE GUILT BEYOND A REASONABLE DOUBT, THEY FIND
24 HIM NOT GUILTY, THEN EVERYBODY GOES HOME. IN THE
25 EVENT THAT THE JURY FINDS A PERSON WHO'S GUILTY

1 BEYOND A REASONABLE DOUBT THEN THE JUDGE MAKES THE
2 DETERMINATION ABOUT WHAT THE SENTENCING IS.

3 A YES, SIR.

4 Q OKAY?

5 A OKAY.

6 Q SO, WHAT WE HAVE HERE THOUGH IS UNDER
7 THE DEATH PENALTY STATUTE THE JURY MAKES THAT
8 DETERMINATION IF THEY GET PAST THE GUILT OR
9 INNOCENCE. IN OTHER WORDS, IF THE STATE CAN
10 CONVINCE YOU BEYOND A REASONABLE DOUBT THAT A
11 PERSON IS GUILTY THEN THE JURY GETS TO SIT AND HEAR
12 FACTS ABOUT THE CASE, FACTS ABOUT THE DEFENDANT,
13 FACTS ABOUT ANYTHING THAT ANYBODY WANTS TO PRESENT
14 AND YOU DETERMINE, ALONG WITH THE REST OF THE JURY,
15 WHAT THE PUNISHMENT IS. THAT'S THE ONLY TIME,
16 OKAY?

17 A OKAY.

18 Q ALL RIGHT. NOW, THE REASON I STRESS
19 THAT AND THE REASON THAT'S IMPORTANT IS THERE'S A
20 BIG IF, OKAY? BECAUSE IN ORDER TO GET TO THAT
21 SECOND PART YOU STILL HAVE TO GO THROUGH THE FIRST
22 PART OF THE TRIAL AND THAT'S THE INNOCENCE OR GUILT
23 STAGE OF THE TRIAL.

24 A YES, SIR.

25 Q OKAY? AND WHAT I'D LIKE TO EMPHASIZE

1 WITH YOU AT THIS POINT IS THAT STEPHEN BECKHAM HAS
2 PLED NOT GUILTY. OKAY?

3 A UH-HUH.. (YES).

4 Q AND THERE WILL BE A TRIAL ON INNOCENCE
5 OR GUILT FOR THE JURY TO MAKE THAT DETERMINATION.
6 STEPHEN BECKHAM, LIKE ANYBODY ELSE CHARGED WITH A
7 CRIME, IS PRESUMED TO BE INNOCENT. DO YOU BELIEVE
8 IN THAT PRINCIPLE OF LAW?

9 A YES, SIR.

10 Q STRONGLY BELIEVE IN THAT?

11 A YES, SIR.

12 Q OKAY. AND UNDER OUR SYSTEM OF
13 JUSTICE, THE STATE MUST PROVE GUILT BEYOND A
14 REASONABLE DOUBT.

15 A UH-HUH. (YES).

16 Q OKAY. DO YOU BELIEVE IN THAT? IS
17 THAT A FIRM CONVICTION ON YOUR PART?

18 A YES, SIR.

19 Q OKAY. SO, YOU DON'T COME IN, AS I
20 UNDERSTAND YOUR TESTIMONY...AND I APPRECIATE
21 IT...YOU DON'T COME IN THIS COURTROOM AT ALL WITH
22 ANY KIND OF OPINION ABOUT INNOCENCE OR GUILT?

23 A NO, SIR.

24 Q ALL RIGHT. AND YOU CAN SIT IN
25 JUDGEMENT ON THAT PART OF THE CASE WITHOUT ANY

1 DIFFICULTY WHAT-SO-EVER? LISTEN TO ALL OF THE
2 EVIDENCE AND RENDER A FAIR VERDICT...

3 A YES.

4 Q ...ALONG WITH YOUR OTHER JURORS, WHICH
5 BY THE WAY HAS TO BE UNANIMOUS?

6 A YES, SIR.

7 Q OKAY. NOW, ALSO WHAT I WANT TO DO IS
8 JUST A COUPLE OF MORE QUESTIONS. WHAT I UNDERSTAND
9 YOU TO BE SAYING IS THAT YOU HAVE SOME GENERAL
10 OPINIONS THAT THE DEATH PENALTY IS APPROPRIATE IN
11 SOME CASES?

12 A YES, SIR.

13 Q OKAY. IS THAT BASED ON A LONG
14 STANDING BELIEF OR SOMETHING THAT YOU'VE DISCUSSED
15 OR A RELIGIOUS BELIEF OR WHAT-HAVE YOU?

16 A AS A LONG STANDING BELIEF AND AS I
17 BECAME AN ADULT THAT WAS MY OPINION, RELIGIOUS
18 BELIEF TOO.

19 Q OKAY. ARE YOU A STRONG ADVOCATE OF
20 IT, OR A MILD ADVOCATE OF IT, OR ONE THAT JUST SAYS
21 THAT IN CERTAIN CASES IT'S APPROPRIATE?

22 A JUST IN CERTAIN CASES IT'S
23 APPROPRIATE.

24 Q OKAY. NOW, WHAT I...YOU ANSWERED THE
25 JUDGE IN THE CATEGORY THREE AND AS I EXPLAINED TO

1 YOU, THERE ARE HOMICIDES AND THEN THERE ARE
2 HOMICIDES WITH AGGRAVATION.

3 A UH-HUH. (YES).

4 Q OKAY. IN ORDER TO EVEN GET TO THAT
5 SECOND STAGE THAT WE'RE TALKING ABOUT...AND OF
6 COURSE AGAIN WE HAVE TO TALK ABOUT WHAT YOUR
7 FEELINGS ARE NOW BECAUSE WE DON'T HAVE ANOTHER
8 OPPORTUNITY.

9 A RIGHT.

10 Q IF THE JURY FOUND SOMEONE GUILTY OF
11 MURDER WITH AGGRAVATION AND WE GET INTO THAT
12 SENTENCING PHASE OF THE TRIAL, WHAT I UNDERSTAND IS
13 YOU HAVE SOME GENERAL VIEWS ABOUT THE DEATH PENALTY
14 BEING APPROPRIATE?

15 A YES, SIR.

16 Q BUT, DO YOU GO INTO, OR WOULD YOU BE
17 GOING INTO THAT SECOND PHASE OF THE TRIAL, HAVING
18 DETERMINED GUILT AND HAVING DETERMINED THAT THERE
19 WAS AGGRAVATION, ARE YOU DISPOSED ONE WAY OR THE
20 OTHER AS TO WHAT THE PUNISHMENT SHOULD BE?

21 MR. JONES: YOUR HONOR, HE'S ASKED
22 THAT QUESTION ALREADY.

23 MR. SWERLING: I HAVEN'T ASKED IT YET.

24 THE COURT: I'M GOING TO OVERRULE THE
25 OBJECTION, BUT MOVE ALONG NOW.

1 Q DO YOU GO INTO THAT PHASE OF THE TRIAL
2 WITH AN OPEN MIND OR DO YOU DISPOSE ONE WAY OR THE
3 OTHER AT THAT POINT?

4 A NOW, IT'S ALREADY BEEN ESTABLISHED
5 THAT IT'S AGGRAVATED?

6 Q RIGHT. IN OTHER WORDS, WE DON'T GET
7 TO THE SECOND STAGE UNLESS YOU FIND SOMEONE GUILTY
8 OF MURDER ACCOMPANIED WITH SOME AGGRAVATING
9 CIRCUMSTANCES.

10 MR. JONES: JUDGE, I OBJECT.

11 THE COURT: I SUSTAIN THAT OBJECTION
12 AS TO THE FORM OF THE QUESTION. IT'S MURDER, THEN
13 IN THE SECOND PHASE THERE'S EVIDENCE OF
14 AGGRAVATION.

15 MR. SWERLING: CORRECT, BUT WE DON'T
16 GET TO THE SECOND STAGE UNLESS THEY FIND ONE OF THE
17 AGGRAVATING...

18 THE COURT: MURDER...NO, THAT'S NOT
19 TRUE.

20 MR. SWERLING: THERE HAS TO BE MURDER
21 AND SOME OTHER CHARGE.

22 THE COURT: MURDER AND THEN WE
23 GO...AND THEN THEY HAVE TO PROVE THE AGGRAVATING
24 CIRCUMSTANCES...

25 MR. SWERLING: CORRECT.

1 THE COURT: ...IN THE SECOND PHASE.

2 MR. SWERLING: CORRECT, BUT WHAT I'M
3 SAYING, JUDGE, IS THAT I THOUGHT WE DON'T GET TO
4 THE SECOND STAGE UNLESS THERE'S A CONVICTION OF
5 MURDER ACCOMPANIED BY SOME OTHER...

6 THE COURT: NO, YOU DON'T HAVE TO DO
7 THAT.

8 MR. SWERLING: WELL, MAYBE I'M NOT
9 STATING IT CORRECTLY.

10 THE COURT: IN OTHER WORDS, WHAT I
11 WANT TO MAKE SURE THE JUROR IS NOT CONFUSED ABOUT
12 IT. THEY DO NOT...THE EVIDENCE OF AGGRAVATION IS
13 TO BE CONSIDERED IN THE SECOND PHASE. THEY HAVE
14 BEEN FOUND GUILTY OF MURDER, WE CAN AGREE ON THAT.
15 BUT IN THE SECOND PHASE HE'S CONSIDERING
16 AGGRAVATING, THERE MAY OR MAY NOT BE MITIGATING.
17 NOW, YOU CAN ASK YOUR QUESTION.

18 MR. SWERLING: I THINK I MAY BE
19 STATING IT THE WRONG WAY AND I UNDERSTAND WHAT
20 YOU'RE SAYING.

21 THE COURT: OKAY. ALL RIGHT.

22 Q YOU HAVE FOUND A PERSON GUILTY OF
23 MURDER.

24 A YES, SIR.

25 Q WE'RE GETTING INTO THE SECOND PHASE OF

1 THE TRIAL WHERE BOTH SIDES...ONE SIDE MAY...WE MAY
2 NOT PRESENT ANY EVIDENCE, THE STATE MAY PRESENT ALL
3 OF THE EVIDENCE, OKAY?

4 A UH-HUH. (YES).

5 Q AND YOU'VE GOT TO DECIDE THE
6 PUNISHMENT. GOING INTO THAT PHASE OF THE TRIAL,
7 ARE YOU DISPOSED ONE WAY OR THE OTHER AS TO WHAT
8 THE PUNISHMENT OUGHT TO BE?

9 A TO ME, IF THE EVIDENCE WAS PRESENTED
10 IN THE SECOND STAGE AND IT WAS AGGRAVATED, I WOULD
11 GO WITH THE DEATH PENALTY.

12 Q ALWAYS?

13 A YES, SIR.

14 Q OKAY. SO, IF WE GET TO THAT STAGE AND
15 THERE IS EVIDENCE OF AGGRAVATION...

16 A YES, SIR?

17 Q ...IRRESPECTIVE OF WHAT ELSE WAS
18 CONSIDERED OR PRESENTED TO YOU, YOU WOULD FEEL THAT
19 THE DEATH PENALTY WOULD BE APPROPRIATE IN ALL
20 CASES?

21 A WELL, NO. YOU'RE MIXING MY WORDS UP.

22 Q NO, THAT'S WHAT I'M TRYING TO FIND
23 OUT.

24 MR. JONES: JUDGE, AND HE IS...I WOULD
25 OBJECT....

1 THE COURT: HE'S DOING A GOOD JOB.
2 LEAVE HIM ALONE, OKAY?
3 A I WOULD HAVE TO HEAR EVERYTHING BEFORE
4 I WOULD SAY DEATH PENALTY IN THE SECOND STAGE.
5 Q THAT'S WHAT I...
6 A EVERYTHING.
7 Q OKAY.
8 A ABSOLUTELY.
9 Q SO, JUST BECAUSE THERE'S AGGRAVATION -
10 - AND I'M NOT TRYING TO CONFUSE YOU --
11 A OKAY.
12 Q ...BUT JUST BECAUSE THERE WAS EVIDENCE
13 OF AGGRAVATION, AND I THOUGHT MAYBE THAT'S WHAT YOU
14 HAD SAID...
15 A NO, NO, NO.
16 Q ...THEN YOU WOULD AUTOMATICALLY VOTE
17 FOR THE DEATH PENALTY?
18 A NO. IF I SAID THAT I'M SORRY I SAID
19 THAT.
20 Q OKAY, FINE.
21 A I HAVE TO HEAR EVERYTHING, NOT JUST
22 AGGRAVATION, BUT THE WHOLE NINE YARDS.
23 Q OKAY. AND YOU WOULD NOT BE
24 PREDISPOSED ONE WAY OR THE OTHER, HAVING MADE THE
25 DETERMINATION OF GUILT, WHEN YOU GO INTO THE

1 PUNISHMENT PHASE OF THE TRIAL?
2 A THE SECOND STAGE?
3 Q RIGHT, THE SECOND STAGE?
4 A NO, I WOULDN'T. IF I UNDERSTAND YOU
5 CORRECTLY, I WOULDN'T.
6 Q OKAY. YOU'D HAVE AN OPEN MIND ABOUT
7 WHAT THE PUNISHMENT OUGHT TO BE?
8 A AFTER I WEIGHED THE EVIDENCE IS WHAT
9 YOU'RE SAYING?
10 Q YES, WELL...LET ME SEE IF I CAN
11 EXPLAIN IT AGAIN. AND I APOLOGIZE. MAYBE I'M NOT
12 BEING CLEAR ABOUT IT. WE'RE PAST THE FIRST STAGE.
13 A YEAH, I UNDERSTAND THAT. WE'RE IN THE
14 SECOND.
15 Q RIGHT, WE'RE IN THE SECOND STAGE.
16 A UH-HUH. (YES).
17 Q AND THE STATE IS ENTITLED TO PRESENT
18 EVIDENCE IN AGGRAVATION, OKAY? WHAT THEY FEEL LIKE
19 THIS HOMICIDE HAS EVIDENCE OF AGGRAVATION.
20 A OKAY.
21 Q UNDER THAT SCENARIO YOU ARE AUTHORIZED
22 TO IMPOSE THE DEATH PENALTY.
23 A UH-HUH. (YES).
24 Q OKAY. THAT'S THE SITUATION.
25 A THAT'S MY UNDERSTANDING.

1 Q ONCE YOU FIND THOSE AGGRAVATING
2 CIRCUMSTANCES THEN YOU'RE AUTHORIZED TO IMPOSE THE
3 DEATH PENALTY. YOU'RE ALSO ENTITLED TO IMPOSE A
4 LIFE SENTENCE. OKAY?

5 A UH-HUH. (YES).

6 Q AND YOU'RE ENTITLED TO HEAR EVIDENCE
7 OF MITIGATION, WHY THIS SHOULD NOT BE A DEATH
8 PENALTY, OR YOU'RE ENTITLED TO VOTE FOR A LIFE
9 SENTENCE WITHOUT ANY MITIGATION. AND I GUESS WHAT
10 WE'RE TRYING TO FIND OUT IS, NOW IF WE'VE GOTTEN TO
11 THAT STAGE, DO YOU HAVE A FEELING ONE WAY OR THE
12 OTHER WHICH WAY YOU'D BE DISPOSED TO GO? WHETHER
13 FOR LIFE OR DEATH OR TO KEEP AN OPEN MIND?

14 A I WOULD HAVE TO SAY THE DEATH PENALTY
15 IF I THINK THAT THE EVIDENCE PRESENTED TO ME AT
16 THAT SECOND STAGE, HE WAS GUILTY.

17 Q RIGHT.

18 A OKAY?

19 Q OKAY.

20 A I WOULD HAVE TO GO WITH THE DEATH
21 PENALTY.

22 Q OKAY. THAT'S, I GUESS, WHAT I WAS
23 ASKING BEFORE THEN.

24 A OKAY.

25 Q SO, IS WHAT YOU'RE SAYING THAT IF YOU

1 FIND THE EVIDENCE OF AGGRAVATION IN THAT SECOND
2 PHASE OF TRIAL...

3 A OKAY?

4 Q ...THAT YOUR VOTE...THAT YOU WOULD
5 FEEL THAT THE DEATH PENALTY WOULD BE THE ONLY WAY
6 YOU COULD GO?

7 A YES, SIR.

8 Q AND THERE WOULD BE NO OTHER EVIDENCE
9 THAT YOU COULD CONSIDER IN THAT SECOND PHASE THAT
10 WOULD MAKE IT A LIFE SENTENCE? IT WOULD BE A DEATH
11 SENTENCE?

12 A NO OTHER EVIDENCE?

13 Q RIGHT. IN THE SECOND PHASE OF THE
14 TRIAL?

15 A WELL, I THOUGHT ALL OF THE EVIDENCE
16 HAS BEEN PRODUCED BEFORE ME? AFTER I HEAR ALL OF
17 THAT NOW I WOULD SAY, YOU KNOW, IF I FEEL
18 LIKE...AFTER THE EVIDENCE IS PRESENTED BEFORE ME, I
19 WOULD MAKE UP MY MIND WHETHER...WHICH WAY I SHOULD
20 GO THEN. IF I FEEL LIKE HE'S GUILTY, THE DEATH
21 PENALTY.

22 Q THAT'S WHAT I'M SAYING.

23 A OKAY, YES.

24 Q I THINK WE'RE SAYING THE SAME THING
25 AND I APOLOGIZE IF I'M TRYING...I'M NOT TRYING TO

1 MIX YOUR WORDS, I'M TRYING TO UNDERSTAND.

2 Q OKAY.

3 A YOU FEEL THAT ONCE SOMEONE IS FOUND

4 GUILTY, IF THE EVIDENCE IS THERE OF GUILT...

5 A YES, SIR.

6 Q OKAY, AND THEN YOU GET INTO THE SECOND

7 PHASE OF TRIAL AND YOU HEAR EVIDENCE OF

8 AGGRAVATION...

9 A WELL, THAT'S WHAT I WAS TALKING ABOUT,

10 NOW, THE DEATH PENALTY. IN THE SECOND STAGE, AFTER

11 ALL OF THE EVIDENCE IS PRESENTED TO ME AND I FEEL

12 LIKE IT'S GUILT...

13 Q RIGHT.

14 A ...GUILTY, DEATH PENALTY.

15 Q THAT'S IT?

16 A THAT'S THE WAY I WOULD GO, YES, SIR.

17 Q OKAY. CAN I...MR. HARPOOTLIAN SAYS

18 MAYBE I OUGHT TO EXPLAIN IT. IN THE SECOND PHASE

19 OF THE TRIAL...

20 A UH-HUH? (YES)?

21 Q ...YOU HEAR EVIDENCE OF AGGRAVATION

22 THE STATE INTENDS TO PRODUCE.

23 A YES, SIR.

24 Q THE DEFENSE MAY OR MAY NOT PRESENT

25 EVIDENCE OF MITIGATION, SOME REASONS WHY A LIFE

1 SENTENCE SHOULD NOT BE IMPOSED...OR SHOULD BE
2 IMPOSED.

3 A SHOULD BE.

4 Q RIGHT. WHAT I UNDERSTAND YOU TO BE
5 SAYING, AND YOU CORRECT ME IF I'M WRONG, IS THAT
6 ONCE YOU'VE MADE THAT DETERMINATION OF GUILT AND
7 ONCE YOU'VE HEARD EVIDENCE OF AGGRAVATION, YOU FEEL
8 THE DEATH PENALTY IS APPROPRIATE?

9 A YES, SIR.

10 Q IN ALL CASES?

11 A YES, SIR.

12 Q OKAY. AND IT WOULD NOT MAKE ANY
13 DIFFERENCE ABOUT MITIGATION?

14 A I FULLY DON'T UNDERSTAND WHAT YOU'RE
15 SAYING ABOUT THE MITIGATION. I DON'T UNDERSTAND
16 THAT.

17 Q OKAY. CIRCUMSTANCES AROUND...ABOUT
18 THE DEFENDANT. CIRCUMSTANCES ABOUT THE CRIME
19 ITSELF. IN OTHER WORDS, YOU FOUND SOMEONE GUILTY
20 BUT THERE'S OTHER EVIDENCE WHY OR...TO TRY AN
21 PERSUADE YOU THAT A LIFE SENTENCE MIGHT BE MORE
22 APPROPRIATE THAN A DEATH SENTENCE.

23 A OKAY, OKAY. WELL, THERE'S MORE
24 EVIDENCE THERE THAT YOU JUST SAID WOULD BE
25 PRESENTED TO ME? THEN I WOULD HAVE TO, YOU KNOW,

1 IF THE STATE SAYS, "THERE'S MORE EVIDENCE HERE,"
2 THEN I WOULDN'T GO WITH THE DEATH PENALTY. I'M NOT
3 GOING BACK AND FORTH NOW ON YOU, BUT I'M TRYING TO
4 UNDERSTAND WHAT YOU'RE SAYING.

5 Q OKAY. IT'S COMPLICATED. I
6 UNDERSTAND.

7 A YES, IT'S GETTING A LITTLE COMPLICATED
8 HERE. BUT I WOULD HAVE TO HEAR EVERYTHING, AGAIN,
9 LIKE I SAY, YOU KNOW...

10 Q IN THE SECOND PHASE OF THE TRIAL?

11 A YES. AND THE STATE PRESENTED THAT AND
12 EVEN...IT WOULD COME TO MY CONCLUSION TO GO WITH
13 JUST LIFE IMPRISONMENT IF I HEARD EVERYTHING AND IT
14 COME TO THAT.

15 Q OKAY. SO, LIFE IMPRISONMENT IS AN
16 OPTION FOR YOU?

17 A YEAH, IT WOULDN'T BE ABSOLUTELY DEATH
18 PENALTY, BUT...

19 Q OKAY.

20 A ...BUT IT WOULD JUST HAVE TO BE AT THE
21 END OF ALL THE EVIDENCE OR MITIGATING CIRCUMSTANCES
22 OR WHATEVER. YOU KNOW, WHAT IT COME TO AT THE END
23 OF THE SECOND PHASE OR STAGE, WHETHER I WOULD GO
24 WITH DEATH PENALTY OR LIFE IMPRISONMENT. YES.

25 Q OKAY. I THINK THAT'S EXACTLY WHERE

1 WE'RE GOING, SO YOU GOING INTO THE SECOND PHASE
2 HAVE AN OPEN MIND ABOUT WHAT THE PUNISHMENT OUGHT
3 TO BE?
4 A OH, YES. YES, SIR.
5 Q AND YOU COULD HEAR EVIDENCE OF
6 AGGRAVATION, YOU COULD HEAR EVIDENCE OF MITIGATION
7 OR NOT HEAR EVIDENCE OF MITIGATION, AND THEN YOU
8 WOULD MAKE YOUR MIND UP AS TO WHETHER THE
9 APPROPRIATE PUNISHMENT OUGHT TO BE LIFE OR DEATH?
10 A RIGHT. I WOULD HAVE TO HEAR
11 EVERYTHING.
12 Q IT WOULDN'T BE AUTOMATICALLY DEATH?
13 A NO, SIR. AFTER I HEAR EVERYTHING,
14 THAT'S WHEN I WOULD MAKE THAT DECISION.
15 Q OKAY. ALL RIGHT.
16 A YES, SIR.
17 Q I THINK THAT'S ALL. THANK YOU.
18 THE COURT: ANYTHING FURTHER FROM THE
19 STATE? FROM THE DEFENSE? OKAY. ALL RIGHT, MR.
20 RITCH, I FIND YOU QUALIFIED FOR THE PURPOSE OF
21 BEING PLACED IN THE POOL IN WHICH TO SERVE...OF
22 WHICH WE WILL SELECT A JURY THIS AFTERNOON. I
23 WOULD ASK YOU TO GO HOME AND PACK AND TRY TO BE
24 BACK ABOUT 2:30. PACK FOR UP TO TEN DAYS. YOU
25 DON'T HAVE TO WEAR SUNDAY CLOTHES, BUT I DON'T WANT

1 YOU WEARING BEACH BUM CLOTHES, OKAY?

2 A RIGHT. I UNDERSTAND. YES, SIR.

3 THE COURT: SLED WILL PROVIDE YOUR
4 TRANSPORTATION AND SECURITY TO AND FROM AND WHILE
5 YOU'RE IN NEWBERRY. NEWBERRY WILL PAY FOR YOUR
6 LODGING AND YOUR MEALS AND THAT SORT OF THING. WE
7 WILL...WE'RE RUNNING CLOSE TO A SCHEDULE THAT WE
8 HOPE TO HIT BY 2:30. THERE MAY BE A LITTLE WAIT
9 THIS AFTERNOON. I WOULD SUGGEST...DO YOU HAVE
10 SOMEBODY THAT CAN BRING YOU BACK AND DROP YOU OFF
11 OR NOT?

12 A I DON'T.

13 THE COURT: OKAY.

14 A I USUALLY TRAVEL BACK AND FORTH TO
15 CHARLOTTE EVERY WEEKEND, MY FATHER'S HEALTH AND
16 ALL. I COULD CATCH A CAB BACK UP HERE.

17 THE COURT: NO, I DON'T WANT YOU TO
18 SPEND ANYTHING. I'LL TELL YOU WHAT, MAKE
19 ARRANGEMENTS FOR THEM TO PICK HIM UP. WE'LL HAVE
20 SOMEBODY PICK YOU UP.

21 A OKAY, AT 2:30?

22 THE COURT: TWO-THIRTY. OKAY. AND IF
23 YOU'LL GO WITH THAT GENTLEMAN RIGHT THERE. TELL
24 CAPTAIN WEBBER AS SOON AS THOSE FOLKS GET HERE WE
25 BE SURE WE GET THEM SWORN IN BEFORE I START

1 TRANSPORTING THOSE JURORS.

2 ALL RIGHT, BRENDA SHERIFF?

3 MR. SWERLING: YESTERDAY WE WERE
4 HAVING A DIALOG WITH ONE OF THE JURORS WHERE WE
5 SAID SOMETHING TO THE EFFECT, OR THE SOLICITOR SAID
6 SOMETHING TO THE EFFECT, OR I THINK I WAS, THAT IF
7 THE JURY FOUND HIM GUILTY OF MURDER THEN WE MOVE
8 INTO THE SECOND PHASE OF THE TRIAL AND THERE WAS
9 SOME DIALOG AND THE SOLICITOR TOOK THE POSITION
10 THAT THAT WAS NOT CORRECT, THAT THEY ALSO HAD TO
11 FIND AN AGGRAVATING CIRCUMSTANCE. IT HAD TO BE AN
12 AGGRAVATED MURDER TO GO INTO THE SECOND STAGE.

13 THE COURT: I DON'T AGREE WITH THAT
14 PROPOSITION. MY FEELING IS THIS: WHAT THEY HAVE
15 TO DO, THEY HAVE TO SERVE YOU... MS. SHERIFF?

16 BAILIFF: SHERIFF, THAT'S WHO YOU
17 WANTED, RIGHT?

18 THE COURT: YEAH, JUST HOLD HER JUST A
19 MINUTE RIGHT HERE AT THE BACK DOOR.

20 BAILIFF: ALL RIGHT.

21 THE COURT: WHAT THEY HAVE TO DO IS TO
22 HAVE AN INDICTMENT FOR MURDER. THEY DIDN'T HAVE TO
23 CHARGE HIM WITH KIDNAPPING.

24 MR. SWERLING: I UNDERSTAND.

25 THE COURT: ALL RIGHT. BUT WHAT

1 THEY'VE GOT TO DO IS TO SERVE YOU WITH A NOTICE OF
2 ONE OF THE AGGRAVATING FACTORS. THEY DON'T HAVE TO
3 PROVE ANY OF THAT IN THE GUILT PHASE EXCEPT MURDER.
4 ONCE THEY GET THE MURDER CONVICTION THEN WE GO TO
5 THE SENTENCING PHASE AND THEN THEY'VE GOT TO PROVE
6 THAT AGGRAVATING CIRCUMSTANCE.

7 MR. SWERLING: CORRECT.

8 THE COURT: AND SO IS THAT...WE'RE ALL
9 THINKING THE SAME WAY.

10 MR. SWERLING: WELL, I THINK THE
11 PROBLEM WAS THAT YESTERDAY THERE WAS SOME QUESTION
12 ABOUT YOU HAD TO STATE THAT IT WAS MURDER, YOU
13 DON'T GET TO THE SECOND STAGE UNLESS YOU FIND THE
14 MURDER AND IT WAS AN AGGRAVATED MURDER.

15 THE COURT: WELL, THAT'S WRONG.

16 MR. SWERLING: OKAY.

17 THE COURT: AND CLEARLY, I KNOW WE'RE
18 ALL TRYING TO MOVE FAST AND WE MIS-STATE SOME
19 THINGS. FOR EXAMPLE: ...AND THAT IS ONE
20 THERE...WE ALL AGREE IT'S MURDER.

21 MR. SWERLING: CORRECT.

22 THE COURT: THEN WE GO TO THE
23 SENTENCING PHASE AND CONSIDER AGGRAVATING
24 CIRCUMSTANCES.

25 MR. SWERLING: WELL, THAT'S WHAT I

1 UNDERSTAND THE LAW IS, BUT I WAS JUST...I GOT
2 CONFUSED YESTERDAY WHEN WE KEPT TALKING ABOUT THE
3 FACT THAT IT HAD TO BE AGGRAVATED MURDER OR IT HAD
4 TO BE MURDER AND THEN YOU HAD TO SHOW AGGRAVATION
5 TO EVEN GET TO THE SECOND STAGE...

6 THE COURT: NO.

7 MR. SWERLING: ...AND THAT'S WHY I
8 STARTED OFF WITH THIS JUROR.

9 THE COURT: NO.

10 MR. SWERLING: BUT AS LONG AS WE'RE
11 ALL WORKING FROM THE SAME FRAMEWORK HERE...

12 THE COURT: SURE. SURE.

13 MR. SWERLING: ...THE AGGRAVATION IS
14 THE SECOND STAGE OF THE TRIAL.

15 THE COURT: WELL, I'LL TRY TO LISTEN
16 MORE CAREFULLY ABOUT THAT AND I'LL STEP IN. BUT I
17 THINK EVERYBODY UNDERSTANDS THAT THAT'S THE
18 SITUATION. AND THE OTHER THING, I KNOW THAT THERE
19 WAS JUST ONE SLIP UP YESTERDAY, AND I DON'T
20 REMEMBER WHERE IT WAS OR WHO SAID IT, THERE WAS
21 SOME QUESTION THAT SOMEBODY SAID, "WITHOUT
22 POSSIBILITY OF PAROLE." PAROLE'S NOT AN ISSUE IN
23 THIS CASE. I DON'T KNOW WHO SAID THAT. IT SLIPPED
24 BY SO FAST I DIDN'T WORRY ABOUT IT.

25 THERE'S ONE OTHER THING THAT CAME UP

1 THAT...I JUST CAN'T REMEMBER WHAT THE OTHER ONE
2 WAS. IF I CATCH IT I'LL STEP IN AND DEAL WITH IT.
3 I MAY HAVE TO STOP IF WE'RE NOT THROUGH WITH THIS
4 WITNESS BY FIVE AFTER ELEVEN. I HAVE GOT TO MAKE A
5 PHONE CALL ABOUT THE NEW ELLENTON LAWSUIT. I'VE
6 GOT TO DO THAT...FOR ABOUT FIVE MINUTES.

7 MR. JONES: JUDGE, CAN I ASK YOU A
8 QUESTION...

9 THE COURT: YES, SIR.

10 MR. JONES: ...CONCERNING JUST JUROR
11 PERCEPTION?

12 THE COURT: YES, SIR.

13 MR. JONES: DURING MR. SWERLING'S
14 EXAMINATION OF THAT WITNESS, I GOT THE IMPRESSION
15 THAT THE WITNESS BASICALLY UNDERSTOOD WHAT YOU
16 ASKED HIM.

17 THE COURT: YES, SIR?

18 MR. JONES: AND WHEN YOU ASKED HIM,
19 "IF IT'S AN APPROPRIATE CASE FOR THE DEATH PENALTY,
20 COULD YOU GIVE IT?" AND HE SAID, "YES." AND I
21 THINK WHAT HE SAID WAS, "WHEN IT'S APPROPRIATE,
22 I'LL GIVE THE DEATH PENALTY." AND THEN YOU ASKED
23 HIM, "IF IT'S APPROPRIATE FOR LIFE, COULD YOU GIVE
24 IT?" AND HE SAID, "YES." I THINK WHEN THEY'RE
25 BEING ASKED, "HAVING FOUND THE AGGRAVATED

1 CIRCUMSTANCES, IT'S AN AGGRAVATED MURDER, COULD YOU
2 GIVE THE DEATH PENALTY?" AND THEY'RE SAYING,
3 "YEAH, I'D ALWAYS GIVE IT. I TOLD THE JUDGE I
4 WOULD GIVE IT." THEY'RE EQUATING, WHEN THEY'RE
5 BEING PRESENTED AND STAKED OUT WITH AN AGGRAVATING
6 CIRCUMSTANCE, AN APPROPRIATE MURDER FOR THE DEATH
7 PENALTY.

8 THE COURT: SOLICITOR, I COULDN'T
9 AGREE WITH YOU MORE AND IF I HAD MY WAY NEITHER ONE
10 OF YOU WOULD ASK THE JURORS QUESTIONS. WE HAVEN'T
11 MISSED ONE YET, NOW.

12 MR. JONES: I JUST WANT TO MAKE SURE
13 YOU PERCEIVE THAT BECAUSE IT HAS A LOT TO DO WITH
14 THE WAY I'M REACTING WITH THE QUESTIONS THAT
15 THEY'RE DOING.

16 THE COURT: I UNDERSTAND.

17 MR. JONES: ALL RIGHT.

18 THE COURT: I UNDERSTAND WHAT BOTH
19 SIDES ARE DOING. ALL RIGHT...WELL, YOU'RE DOING
20 WHAT YOU'RE SUPPOSED TO DO, BUT I'M JUST TELLING
21 YOU THAT...

22 ALL RIGHT, BRING MS. SHERIFF IN.

23 BRENDA SHERIFF, BEING CALLED
24 AND DULY SWORN, TESTIFIES AS FOLLOWS:

25 THE COURT: IF YOU'LL HAVE A SEAT,

1 PLEASE, MA'AM. NOW, I TOLD THE LAWYERS WE'RE ON A
2 LITTLE FASTER SCHEDULE TODAY THEN WE WERE
3 YESTERDAY, BUT WE MAY NOT QUITE GET THROUGH YOUR
4 EXAMINATION BECAUSE I'VE GOT TO MAKE ONE ABSOLUTELY
5 PHONE CALL AT FIVE AFTER ELEVEN. BUT WE'LL TRY TO
6 GET THROUGH WITH YOU BEFORE THEN.

7 A OKAY.

8 THE COURT: DID YOU GET A CHANCE TO
9 READ MY LETTER THAT I HANDED OUT MONDAY?

10 A YES, SIR.

11 THE COURT: OKAY. AND YOU BASICALLY
12 UNDERSTOOD THAT?

13 A YES, SIR.

14 THE COURT: HAVE YOU EVER BEEN ON A
15 JURY BEFORE?

16 A CIVIL COURT.

17 THE COURT: CIVIL COURT?

18 A PROBABLY TEN YEARS AGO OR SO.

19 THE COURT: ALL RIGHT. AND MS.

20 SHERIFF, AS YOU REALIZE THE STATE HAS ASKED THAT
21 THE DEATH PENALTY BE IMPOSED IN THIS CASE? AND BY
22 REASON OF THAT, PROCEDURALLY THE LAWYERS ARE
23 ENTITLED TO ASK YOU QUESTIONS AS WELL AS THE JUDGE
24 ABOUT YOUR FEELINGS ABOUT A VARIETY OF RELEVANT
25 THINGS. NOW, THERE AREN'T ANY RIGHT ANSWERS, WRONG

1 ANSWERS. THERE ARE ONLY YOUR ANSWERS. NOBODY'S
2 HERE TO CHALLENGE WHAT YOU BELIEVE OR EMBARRASS
3 YOU. SO JUST FEEL RELAXED FROM THAT POINT OF VIEW.

4 A OKAY.

5 THE COURT: NOW, HAVE YOU FORMED OR
6 EXPRESSED ANY OPINION AS TO THE INNOCENCE OR THE
7 GUILT OF MR. BECKHAM IN THIS CASE, THE DEFENDANT?

8 A NO, SIR.

9 THE COURT: DO YOU KNOW ANYTHING ABOUT
10 THE FACTS OF THE CASE?

11 A SUNDAY'S PAPER HAD A LITTLE BRIEF
12 ACCOUNT.

13 THE COURT: THAT WAS IN THE GREENVILLE
14 NEWS?

15 A YES, SIR.

16 THE COURT: OKAY. ALL RIGHT. HAVING
17 READ THAT ACCOUNT, CAN YOU SET THAT ASIDE, WHAT YOU
18 READ, AND TRY THE CASE AND LISTEN TO THE EVIDENCE
19 THAT'S ACTUALLY PRESENTED IN THE COURTROOM RATHER
20 THAN WHAT YOU READ IN THE PAPER?

21 A COULD I ANSWER THAT WITH A QUESTION?

22 THE COURT: WELL, SURE.

23 A I GUESS MY UNDERSTANDING OF THE
24 JUDICIAL SYSTEM IS REALLY LIMITED TO MY NOVELS THAT
25 I READ. AND I DON'T UNDERSTAND THAT'S TRANSPIRED

1 THAT BRINGS HIM TO THIS POINT. I DON'T UNDERSTAND
2 WHAT GRAND JURY IS. IN MY MIND, I'M THINKING, WHY,
3 IF HE'S BEEN FOUND GUILTY BY A GRAND JURY, WHY ARE
4 WE TRYING HIM AGAIN WITH ANOTHER JURY?

5 THE COURT: OKAY. LET ME MAKE SURE
6 YOU UNDERSTAND THAT.

7 A I DON'T.

8 THE COURT: ALL RIGHT. THE GRAND JURY
9 IS A BODY COMPOSED OF TWELVE OR EIGHTEEN
10 PEOPLE...OF EIGHTEEN PEOPLE. AND THE GRAND JURY OF
11 NEWBERRY COUNTY HAS CONSIDERED OR AT LEAST LISTENED
12 TO EVIDENCE THAT THE STATE HAS OFFERED. NOBODY
13 ELSE APPEARED BEFORE THE GRAND JURY OTHER THAN THE
14 STATE'S WITNESSES. AND ALL THE GRAND JURY IS
15 REQUIRED TO DO IS TO DETERMINE WHETHER OR NOT THERE
16 WAS PROBABLE CAUSE, NOT GUILT BUT PROBABLE CAUSE
17 THAT THE OFFENSE OCCURRED. THEY RETURNED A TRUE
18 BILL SAYING THAT THEY FOUND PROBABLE CAUSE, BUT
19 THERE WAS NO TRIAL IN FRONT OF THE GRAND JURY. THE
20 GRAND JURY ONLY HEARD THE STATE'S EVIDENCE. OKAY?
21 NOW...AND THAT IS FUNDAMENTAL TO OUR SYSTEM BECAUSE
22 ONCE A GRAND JURY RETURNS AN INDICTMENT, THEN A
23 PERSON ACCUSED OF A CRIME IS REQUIRED...COMES TO
24 COURT AND FACES THE CHARGES. AND AT THAT POINT IN
25 TIME THE STATE OF SOUTH CAROLINA MUST THEN CONVINC

1 A JURY OF TWELVE MEN AND WOMEN OF THE DEFENDANT'S
2 GUILT BEYOND A REASONABLE DOUBT. AT THAT POINT IN
3 TIME THERE WILL BE WITNESSES WHO WILL BE IN THE
4 PLACE WHERE YOU ARE TODAY. THERE WILL BE
5 EXAMINATION BY THE STATE OF THOSE WITNESSES.
6 THERE'LL BE CROSS-EXAMINATION BY THE DEFENDANT'S
7 ATTORNEYS AND SO FORTH. IN THE CRIMINAL PROCESS
8 THAT IS THE FIRST TIME THAT THE DEFENDANT IS
9 INVOLVED IN ANY PROCEEDING. THAT IS, A TRIAL. AND
10 THAT'S WHERE WE ARE. OKAY?

11 A ALL RIGHT. I UNDERSTAND.

12 THE COURT: MR. BECKHAM IN THIS CASE,
13 AS I TOLD YOU MONDAY, HAS PLED NOT GUILTY TO THE
14 INDICTMENT, OR THE ALLEGATIONS, AND THAT REQUIRES
15 THE STATE NOW TO PROVE TO A JURY, TO THEIR
16 SATISFACTION, GUILT BEYOND A REASONABLE DOUBT. IF
17 THEY CAN DO THAT THEN THE STATE IS ENTITLED TO A
18 CONVICTION. IF THEY FAIL THEN THE DEFENDANT IS
19 ENTITLED TO AN ACQUITTAL. SO, THAT'S WHERE WE ARE.

20 A OKAY.

21 THE COURT: OKAY, DOES THAT MAKE SENSE
22 TO YOU?

23 A YES, SIR.

24 THE COURT: OKAY. ALL RIGHT. NOW, IF
25 I TOLD...THERE IS A PRINCIPLE OF LAW THAT A CITIZEN

1 THAT IS ACCUSED OF A CRIME IS PRESUMED TO BE
2 INNOCENT OF THAT CRIME AND REMAINS THAT WAY UNTIL
3 THE STATE OR THE GOVERNMENT CAN CONVINCE A JURY OF
4 HIS GUILT BEYOND A REASONABLE DOUBT. DO YOU
5 BELIEVE IN THAT PRINCIPLE OF LAW?

6 A YES, SIR.

7 THE COURT: COULD YOU FOLLOW THAT
8 PRINCIPLE IF YOU WERE ON THE JURY?

9 A YES, SIR, I THINK SO.

10 THE COURT: ALL RIGHT. AND IN THE
11 CRIMINAL PROCESS NORMALLY A JURY OF TWELVE MEN AND
12 WOMEN, WHICH WOULD SIT IN A BOX LIKE THAT TO YOUR
13 LEFT, NORMALLY THEY ONLY MAKE ONE ULTIMATE DECISION
14 AND THAT IS WHETHER A DEFENDANT IS GUILTY OR NOT
15 GUILTY OF THE CRIME CHARGED. IF A JURY DETERMINES
16 THAT A PERSON IS GUILTY THEN HE HAS TO STAND THERE
17 IN FRONT OF THIS BAR AND A JUDGE SENTENCES HIM...A
18 VARIETY OF SENTENCING OPTIONS...BUT NEVER THE LESS
19 THE JUDGE DOES THAT. THAT HAPPENS IN EVERY CASE IN
20 THE STATE OF SOUTH CAROLINA EXCEPT ONE TYPE OF CASE
21 AND THE ONE EXCEPTION TO THAT IS WHERE THE STATE
22 SEEKS THE DEATH PENALTY.

23 NOW WHERE THE STATE SEEKS THE DEATH
24 PENALTY THE JURY HAS TWO ULTIMATE RESPONSIBILITIES.
25 FIRST, IN A TRIAL...THE FIRST TRIAL IS THAT THEY

1 MUST...THE JURY MUST DETERMINE WHETHER OR NOT A
2 DEFENDANT IS NOT GUILTY OR GUILTY OF THE CRIME OF
3 MURDER. OKAY?

4 A OKAY.

5 THE COURT: AND THEN, IF THEY FIND A
6 DEFENDANT NOT GUILTY OF MURDER THAT ENDS THE CASE,
7 AS FAR THE JURY IS CONCERNED. AND THEN, IF...BUT
8 IF THEY RETURN A VERDICT OF GUILTY OF MURDER THEN
9 WE GO TO A SECOND TRIAL -- BUT THEY HAPPEN IN CLOSE
10 PROXIMITY OF EACH OF OTHER -- WE GO TO A SECOND
11 TRIAL AND IN THAT SECOND TRIAL THAT SAME JURY
12 LISTENS TO EVIDENCE IN AGGRAVATION, THAT'S THINGS
13 THAT THE STATE SAYS MAKES THIS MURDER WORSE AND
14 MAKES IT DESERVING OF THE DEATH PENALTY, AND YOU
15 HEAR EVIDENCE OF MITIGATION, THAT'S THINGS THAT
16 SAYS, "NO, A LIFE SENTENCE MAY BE A MORE
17 APPROPRIATE SENTENCE." BUT...JUST LIKE I WOULD IN
18 SENTENCING SOMEBODY. I HEAR FROM THE STATE, I HEAR
19 FROM OTHER PEOPLE ABOUT THESE THINGS. SO, YOU AS A
20 JUROR WOULD BE DOING THAT. AND THEN YOU WOULD HAVE
21 TO MAKE A DECISION, THE SECOND DECISION,
22 ULTIMATELY: WHETHER A DEFENDANT SHOULD BE
23 SENTENCED TO DEATH OR SENTENCED TO LIFE IN PRISON.
24 DO YOU FOLLOW ME PROCEDURALLY?

25 A YES, SIR.

1 THE COURT: OKAY. NOW, WE KNOW THAT
2 JURORS, WHEN THEY GET TO THE SECOND PHASE, THAT IS
3 THE PENALTY PHASE, THE PUNISHMENT PHASE, WE HAVE
4 JURORS THAT FALL INTO THREE CATEGORIES. NUMBER ONE
5 CATEGORY IS WE HAVE JURORS WHO SAY, "WE'VE GOT A
6 CONVICTION IN THE GUILT PHASE. WE'VE GOT EVIDENCE
7 OF AGGRAVATING CIRCUMSTANCES HERE IN THIS PENALTY
8 PHASE. I DON'T CARE IF THERE'S MITIGATING
9 CIRCUMSTANCES OR NOT. I BELIEVE THAT THE DEATH
10 PENALTY IS ALWAYS THE APPROPRIATE PUNISHMENT AND I
11 VOTE FOR DEATH." OKAY? THAT'S ONE TYPE OF JUROR.

12 WE HAVE A SECOND TYPE OF JUROR WHO
13 SAYS, "YOU'RE RIGHT. WE DID FIND HIM GUILTY OF
14 MURDER IN THE FIRST STAGE. I AGREE WITH YOU THAT
15 THERE'S EVIDENCE OF AGGRAVATING CIRCUMSTANCES IN
16 THE PENALTY PHASE, BUT I BELIEVE..." -- AND THERE
17 MAY OR MAY NOT BE MITIGATION -- AND THAT JUROR
18 SAYS, "BUT I BELIEVE THAT A LIFE IMPRISONMENT
19 SENTENCE IS THE MORE APPROPRIATE SENTENCE AND I
20 WOULD ALWAYS VOTE FOR LIFE." OKAY? DO YOU FOLLOW
21 ME WITH THE FIRST TWO?

22 A YES, SIR.

23 THE COURT: OKAY. THE THIRD TYPE OF
24 JUROR SAYS, "WELL, YOU'RE BOTH KIND OF RIGHT. WE
25 HAVE...TRUE, WE FOUND HIM GUILTY OF MURDER IN THE

1 GUILT PHASE. I AGREE THAT THERE'S EVIDENCE OF
2 AGGRAVATION IN THE SECOND PHASE AND THERE MAY OR
3 MAY NOT BE EVIDENCE OF MITIGATION, BUT I WANT TO
4 LOOK AT THIS CASE SPECIFIC AND I WANT TO DETERMINE
5 IN THIS CASE WHICH IS THE MORE APPROPRIATE
6 PUNISHMENT: LIFE OR DEATH. AND WHEN I DO, THAT'S
7 THE SENTENCE THAT I WILL IMPOSE...OR VOTE TO
8 IMPOSE." OKAY? DO YOU FOLLOW ME?

9 A YES, SIR.

10 THE COURT: ALL RIGHT. DO YOU HAVE AN
11 IDEA AS TO WHICH TYPE OF JUROR YOU MIGHT WELL BE?

12 A I'D PROBABLY BE NUMBER TWO.

13 THE COURT: NUMBER TWO? FOR LIFE?

14 A YES, SIR.

15 THE COURT: LET ME FOLLOW UP TO THIS
16 JUST A MINUTE. IF YOU WERE ON A JURY AND YOU
17 LISTENED TO THE...YOU DETERMINED THAT A DEFENDANT
18 WAS GUILTY OF MURDER AND YOU FOUND EVIDENCE OF
19 AGGRAVATION AND MAY OR MAY NOT HAVE FOUND EVIDENCE
20 OF MITIGATION, AND YOU THOUGHT THAT THE APPROPRIATE
21 PUNISHMENT WAS A LIFE SENTENCE, COULD YOU VOTE TO
22 IMPOSE A LIFE SENTENCE?

23 A YES, SIR, I BELIEVE I COULD.

24 THE COURT: ALL RIGHT. NOW, IF YOU
25 RECEIVED LEGAL INSTRUCTIONS THAT SAID THAT IF YOU

1 HAD A MURDER CONVICTION AND YOU HAD PROOF OF
2 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT
3 AND YOU MAY OR MAY NOT HAVE HAD MITIGATING
4 CIRCUMSTANCES, BUT IF YOU WERE TOLD BY WAY OF LEGAL
5 INSTRUCTIONS ESSENTIALLY THAT IF YOU FIND THAT
6 THERE IS THE CONVICTION PLUS THE AGGRAVATING
7 CIRCUMSTANCES, YOU AS A JUROR ARE PERMITTED TO
8 IMPOSE THE DEATH SENTENCE, IF THAT BE YOUR VIEW OF
9 THE CASE. IF YOU WERE TO FIND...CONCLUDE THAT A
10 DEATH SENTENCE WAS THE MORE APPROPRIATE PUNISHMENT
11 THAN A LIFE SENTENCE, BASED ON CONSIDERING ALL OF
12 THE RECORD, COULD YOU VOTE TO IMPOSE A LIFE
13 SENTENCE...I'M SORRY, A DEATH SENTENCE?

14 A I DON'T THINK I PERSONALLY COULD EVER
15 VOTE TO HAVE ANYONE PUT TO DEATH.

16 THE COURT: WELL, LET ME ASK YOU ONE
17 OTHER QUESTION. IF, UNDER OUR LAW THE STATUTE
18 REQUIRES THAT IF A JURY DETERMINES THAT -- IN AN
19 APPROPRIATE CASE -- THAT THE DEATH PENALTY IS THE
20 PROPER PUNISHMENT, EACH INDIVIDUAL JUROR MUST BE
21 ABLE TO SIGN THEIR NAME TO THE DEATH WARRANT, OR
22 THE SENTENCING SHEET, ACKNOWLEDGING THAT THAT IS
23 THEIR DECISION, THAT IS DEATH IF THEY FIND IT TO BE
24 THE APPROPRIATE SENTENCE. IF YOU WERE ON A JURY
25 COULD YOU DO THAT?

1 A NO, SIR.
2 THE COURT: SOLICITOR?
3 MR. JONES: YOUR HONOR, I HAVE A
4 MATTER OUTSIDE THE PRESENCE OF THE COURT?
5 THE COURT: ALL RIGHT, SIR.
6 MR. JONES: IT WILL JUST TAKE ONE
7 MINUTE.
8 THE COURT: LET ME ASK YOU TO STEP
9 OUTSIDE JUST FOR ONE MOMENT?
10 (JUROR IS EXCUSED FROM THE OPEN
11 COURTROOM)
12 IN-CAMERA:
13 THE COURT: YES, SIR?
14 MR. JONES: JUDGE, CLEARLY SHE'S NOT
15 QUALIFIED.
16 THE COURT: I KNOW, BUT I CAN'T CUT
17 EVERYBODY OFF. I CAN'T PROHIBIT VOIR DIRE.
18 MR. JONES: BUT I MEAN YOU AGREE WITH
19 ME THAT SHE'S NOT QUALIFIED?
20 THE COURT: WELL...
21 MR. JONES: I MEAN, YOUR POSITION, ARE
22 YOU SENDING HER TO US AS QUALIFIED OR UNQUALIFIED?
23 THE COURT: I'M SENDING THEM TO YOU
24 UNDER THE STATUTE THAT PERMITS YOU TO VOIR DIRE THE
25 JUROR. I CAN NOT EXCLUDE...I CAN'T PROHIBIT.

1 THAT'S REVERSIBLE ERROR.

2 MR. JONES: YES, SIR, BUT IF...

3 THE COURT: NOW IF MR. SWERLING WANTS
4 TO WAIVE IT, OR YOU ALL WANT TO WAIVE IT THEN FINE,
5 I'LL MAKE A FINDING. BUT I'M NOT...I MEAN, THE
6 STATUTE PERMITS YOU TO ASK QUESTIONS. I DON'T LIKE
7 IT, BUT IT PERMITS YOU TO DO THAT. AND I CAN'T BAR
8 YOU FROM DOING IT. OKAY?

9 MR. JONES: ALL RIGHT, SIR.

10 THE COURT: ALL RIGHT. BRING HER BACK
11 IN. WELL, I'LL LET YOU...SOLICITOR, DO YOU WANT TO
12 ASK HER ANY QUESTIONS?

13 MR. JONES: I WANT TO TELL HER I
14 DON'T HAVE ANY QUESTIONS FOR HER.

15 THE COURT: OKAY. SURE. MR.
16 SWERLING, YOU'RE GOING TO BE A FEW MINUTES, I
17 GUESS, ON THAT?

18 MR. SWERLING: YES, SIR.

19 THE COURT: ALL RIGHT.

20 (JUROR IS RETURNED TO THE OPEN
21 COURTROOM)

22 THE COURT: MS. SHERIFF, I'M GOING TO
23 LET THE LAWYERS ASK YOU SOME QUESTIONS OR TALK TO
24 YOU A MINUTE, IF THEY DESIRE TO DO THAT, AND THEN
25 I'M GOING TO HAVE TO TAKE A QUICK BREAK AND MAKE

1 THAT ONE QUICK PHONE CALL AND I'LL BE RIGHT BACK.

2 MR. SOLICITOR, ANY QUESTIONS?

3 DIRECT EXAMINATION:

4 BY MR. JONES:

5 Q MS. SHERIFF, THANK YOU VERY MUCH FOR
6 YOUR PATIENCE WITH US IN THIS PROCESS AND I DON'T
7 HAVE ANY QUESTIONS FOR YOU. THANK YOU.

8 A OKAY.

9 THE COURT: OKAY. LET ME DO THIS SO I
10 WON'T BREAK UP HIS EXAMINATION. MR. SWERLING'S
11 GOING TO ASK YOU SOME QUESTIONS SO LET ME ASK YOU
12 TO GO BACK WITH THE...PUT HER IN A SEPARATE ROOM,
13 OKAY? AND WE'LL BE BACK WITH YOU IN JUST A FEW
14 MINUTES.

15 A OKAY.

16 (JUROR IS EXCUSED FROM THE OPEN
17 COURTROOM)

18 (COURT IS RECESSED)

19 (COURT IS RECONVENED WITH THE
20 PRESENCE OF THE JUROR)

21 THE COURT: ALL RIGHT, MR. SWERLING,
22 YOU HAVE SOME QUESTIONS, PLEASE?

23 MR. SWERLING: YES, SIR. THANK YOU,
24 YOUR HONOR.

25 CROSS-EXAMINATION:

1 BY MR. SWERLING:

2 Q MS. SHERIFF, I'M JACK SWERLING. HOW

3 ARE YOU?

4 A YES, SIR. FINE.

5 Q I'M FROM COLUMBIA. STEPHEN BECKHAM'S

6 WHO WE'RE REPRESENTING. DICK HARPOOTLIAN IS MY CO-

7 COUNSEL IN THE CASE. I JUST WANTED TO ASK YOU A

8 COUPLE OF QUESTIONS. YOU KNOW, YOU HAD...THE JUDGE

9 EXPLAINED TO YOU THE PROCESS.

10 A UH-HUH. (YES).

11 Q AND THIS IS AN UNUSUAL KIND OF

12 SITUATION BECAUSE THE STATE IS SEEKING THE DEATH

13 PENALTY IN THIS CASE AND THEREFORE THE JURY GETS,

14 IF WE GET PAST THE FIRST STAGE OF THE TRIAL WHERE

15 THE JURY DETERMINES WHETHER OR NOT A PERSON'S

16 INNOCENT OR GUILTY, THEN YOU GET INTO THE SECOND

17 PHASE OF THE TRIAL WHERE THE JURY -- THE ONLY

18 SITUATION IN SOUTH CAROLINA -- GETS TO DETERMINE

19 WHAT THE PUNISHMENT IS. OKAY?

20 SO, WHAT I UNDERSTAND IT, AS THE JUDGE

21 EXPLAINED IT TO YOU, IS YOU HAVE NO PROBLEM WITH

22 THE FIRST PHASE OF THE TRIAL?

23 A THAT'S TRUE.

24 Q YOU COULD BE OPEN MINDED?

25 A YES, SIR.

1 Q HAVE NO PRECONCEIVED OPINIONS ABOUT
2 GUILT OR INNOCENCE? YOU'LL HEAR THE EVIDENCE AND
3 DECIDE AN APPROPRIATE VERDICT?

4 A YES, SIR.

5 Q NOW, YOU UNDERSTAND WE DON'T GET TO
6 THE SECOND PHASE OF THE TRIAL UNLESS THE JURY
7 RETURNS A VERDICT OF GUILTY IN THE FIRST PHASE?

8 A RIGHT.

9 Q AND STEPHEN BECKHAM'S PLED NOT GUILTY,
10 OKAY? HE'S PLED NOT GUILTY, HE WANTS A JURY OF HIS
11 PEERS TO DECIDE THAT, OKAY?

12 A UH-HUH. (YES).

13 Q OKAY, NOW IN THE SECOND PHASE OF THE
14 TRIAL IT'S IMPORTANT TO HAVE A REPRESENTATIVE GROUP
15 FROM THE COMMUNITY ALSO TO SIT IN THAT PHASE OF THE
16 TRIAL TOO. OKAY?

17 A OKAY.

18 Q PEOPLE OF ALL DIFFERENT BELIEFS.

19 PEOPLE WHO HAVE FEELINGS ONE WAY OR THE OTHER

20 BECAUSE WE ALL HAVE THOSE FEELINGS. WE ALL HAVE

21 FEELINGS. WHAT I WANTED TO FIND OUT FROM YOU IS

22 THIS, WITHOUT REALLY BELABORING THE POINT VERY

23 MUCH, YOU SAID THAT YOU WERE OPPOSED TO THE DEATH

24 PENALTY?

25 A YES, SIR.

- 1 Q OKAY.
- 2 A WELL, I'M NOT SO MUCH OPPOSED. I
- 3 PERSONALLY COULD NOT.
- 4 Q OKAY.
- 5 A THERE MAY BE SOME CASES WHERE I THINK
- 6 IT'S INDICATED, BUT I WANT SOMEBODY ELSE TO DO IT.
- 7 IF THAT MAKES SENSE.
- 8 Q I THINK I UNDERSTAND WHAT YOU'RE
- 9 SAYING. IN OTHER WORDS, PHILOSOPHICALLY AND
- 10 INTELLECTUALLY...WHATEVER...EMOTIONALLY...YOU THINK
- 11 THE DEATH PENALTY IS AN APPROPRIATE PUNISHMENT IN
- 12 SOME CASES?
- 13 A RIGHT.
- 14 Q AND YOU CAN THINK OF CASES THAT THE
- 15 DEATH PENALTY IS WARRANTED?
- 16 A I PROBABLY...UNDER CIRCUMSTANCES
- 17 POSSIBLY COULD, BUT I JUST DON'T BELIEVE I COULD...
- 18 Q OKAY. AND WHAT YOU'RE SAYING IS YOU
- 19 COULD, ON A JURY, IF YOU WERE TO HEAR THE EVIDENCE
- 20 AND HEAR EVIDENCE OF AGGRAVATION AS TO WHY THE
- 21 STATE BELIEVES IT'S AN APPROPRIATE CASE FOR THE
- 22 DEATH PENALTY, COULD YOU FOLLOW THE JUDGE'S
- 23 INSTRUCTIONS ON THE LAW AND CONSIDER IMPOSING THE
- 24 DEATH PENALTY?
- 25 A I DON'T BELIEVE I COULD.

1 Q EVEN THOUGH YOU COULD...YOU FEEL IT'S
2 APPROPRIATE, YOU YOURSELF...

3 A PERSONALLY I DON'T THINK I COULD.

4 Q ...COULD NEVER GO AHEAD AND VOTE FOR
5 THE DEATH PENALTY?

6 A NO, SIR.

7 Q AND YOU CAN'T THINK OF ANY
8 CIRCUMSTANCE WHERE YOU PERSONALLY WOULD DO THAT?

9 A NO, SIR.

10 THE COURT: ALL RIGHT. MS. SHERIFF,
11 AS I SAID, THERE ARE NO RIGHT OR WRONG ANSWERS.
12 AND OF COURSE YOU'RE ENTITLED TO THAT FEELING AND
13 WE RESPECT YOU FOR THAT FEELING. HOWEVER, THE LAW
14 OF THE STATE REQUIRES THAT A JUROR BE ABLE TO
15 CONSIDER BOTH OPTIONS AND IMPOSE ONE OR THE OTHER
16 BASED ON THE CIRCUMSTANCES. SO, I'LL EXCUSE YOU
17 FROM SERVICE IN THE CASE AND YOU WON'T HAVE TO
18 FURTHER PARTICIPATE, OKAY? THANK YOU, MA'AM.

19 A THANK YOU.

20 THE COURT: KATHY DUNCAN?

21 MR. SWERLING: JUDGE, OBVIOUSLY I
22 UNDERSTAND WHAT THE LAW IS IN SOUTH CAROLINA, BUT I
23 THINK I JUST WANT TO NOTE AN EXCEPTION TO
24 DISQUALIFYING THE JUROR WHO CAN SIT IN THE FIRST
25 PHASE OF THE TRIAL BUT BECAUSE OF HER OPINIONS

1 ABOUT THE DEATH PENALTY IS BEING EXCUSED BECAUSE
2 SHE WOULD NOT DO IT.

3 THE COURT: ALL RIGHT. WE NOTE YOUR
4 OBJECTION AND YOU'RE PROTECTED ON THE RECORD.

5 MR. SWERLING: CONSTITUTIONALLY AND
6 STATUTORILY WE THINK THAT THAT'S INAPPROPRIATE.

7 KATHY DUNCAN, BEING CALLED
8 AND DULY SWORN, TESTIFIES AS FOLLOWS:

9 THE COURT: NOW, MS. DUNCAN, THESE
10 PROCEEDINGS ARE WHERE WE EVALUATE AND ASK QUESTIONS
11 OF EACH JUROR INDIVIDUALLY AS PERMITTED BY STATUTE
12 AND WE'RE NOT HERE TO EMBARRASS YOU OR PUT YOU ON
13 THE SPOT. THERE AREN'T ANY RIGHT OR WRONG ANSWERS.
14 NOBODY'S CHALLENGING YOU OR ANYTHING. BUT BEFORE I
15 GET INTO WHAT WE'RE REALLY...WHAT THIS PROCEEDING'S
16 DESIGNED FOR, I BELIEVE I LET YOU GO HOME EARLY
17 YESTERDAY?

18 A YES, SIR.

19 THE COURT: BASED ON A DIABETIC
20 CONDITION?

21 A YES, SIR.

22 THE COURT: LET ME ASK YOU THIS, AS
23 LONG AS YOU EAT ON A REGULAR BASIS, TIMELY BASIS,
24 IS THAT...IS THERE ANY PROBLEM WITH THAT?

25 A WELL, I'VE JUST BEEN DIAGNOSED LIKE IN

1 THE LAST MONTH. SO I'M STILL PLAYING WITH IT.
2 THE COURT: STILL PLAYING WITH IT?
3 A UH-HUH. (YES).
4 THE COURT: ALL RIGHT. ARE YOU ON ANY
5 KIND OF MEDICATION OR ANYTHING LIKE THAT?
6 A UH-HUH. (YES).
7 THE COURT: CAN I ASK, LIKE YESTERDAY,
8 I GUESS JUST SITTING FOR A LONG PERIOD OF TIME KIND
9 OF PUT YOU IN A LITTLE BIT OF TROUBLE?
10 A YEAH, AND THIS MORNING I JUST CHECKED
11 AND IT HAD ALREADY GONE UP.
12 THE COURT: ALL RIGHT.
13 A SO YESTERDAY IT HAD GONE DOWN. I
14 DON'T THINK I HAD EATEN. BUT NOW IT'S GONE UP.
15 THE COURT: WHAT HAPPENED...
16 A I THINK IT WAS...
17 THE COURT: JUST NERVES YOU THINK?
18 A YEAH, I THINK THAT'S WHAT'S MAKING
19 ME...
20 THE COURT: OKAY. WELL, WHAT I'M
21 ASKING YOU IS THIS. I MEAN, YOU KNOW, IF WE BREAK
22 AND WE...WHILE THE TRIAL WILL LAST SEVERAL DAYS, WE
23 BREAK AND WE EAT AND WE DO THAT KIND OF STUFF LIKE
24 NORMAL PEOPLE, YOU CAN DO THAT?
25 A I THINK.

1 THE COURT: OKAY.

2 A I THINK.

3 THE COURT: ALL RIGHT. NOW, DID YOU
4 GET A CHANCE TO READ THE LETTER THAT I ASKED YOU
5 THE OTHER DAY TO READ?

6 A UH-HUH. (YES).

7 THE COURT: DID YOU BASICALLY
8 UNDERSTAND IT?

9 A UH-HUH. (YES).

10 THE COURT: ALL RIGHT. AND HAVE YOU
11 FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR
12 INNOCENCE OF MR. BECKHAM IN THIS CASE?

13 A NO.

14 THE COURT: AND DO YOU KNOW ANYTHING
15 ABOUT THE FACTS OF THE CASE?

16 A UH-UH. (NO).

17 THE COURT: ALL RIGHT. THERE'S A
18 PRINCIPLE OF LAW THAT'S CALLED PRESUMPTION OF
19 INNOCENCE WHICH SAYS THAT A CITIZEN ACCUSED OF A
20 CRIME IS PRESUMED TO BE INNOCENT OF THE CRIME UNTIL
21 THE GOVERNMENT OR THE STATE CAN PROVE HIM GUILTY
22 BEYOND A REASONABLE DOUBT. ARE YOU FAMILIAR WITH
23 THAT CONCEPT?

24 A UH-HUH. (YES).

25 THE COURT: IS THAT A LEGAL PRINCIPLE

1 THAT YOU COULD FOLLOW AND APPLY IF YOU WERE ON A
2 JURY?

3 A THE GUILT OR INNOCENCE...

4 THE COURT: IN OTHER WORDS, AT THIS
5 MOMENT IN TIME...IN OTHER WORDS, FROM HERE AND
6 THROUGHOUT ALL OF THESE PROCEEDINGS, FOR EXAMPLE IN
7 THIS TRIAL, AND UNTIL THE JURY DELIBERATES AND
8 ARRIVES AT A VERDICT TO THE CONTRARY, MR. BECKHAM
9 IS PRESUMED TO BE INNOCENT OF THIS CRIME. CAN YOU
10 ACCEPT AND FOLLOW THAT?

11 A YES.

12 THE COURT: ALL RIGHT. WHAT THAT DOES
13 IS IT REQUIRES THE STATE TO PROVE HIS GUILT, IF
14 THEY CAN, BEYOND A REASONABLE DOUBT. AND IF THEY
15 CAN CONVINCE A JURY, BASED ON THE LAW AND EVIDENCE,
16 THEN THE STATE'S ENTITLED TO A CONVICTION. BUT IF
17 THEY CAN NOT, THEN MR. BECKHAM'S ENTITLED TO AN
18 ACQUITTAL AT THE JURY'S HANDS. DO YOU FOLLOW ME
19 PROCEDURALLY?

20 A UH-HUH. (YES).

21 THE COURT: NOW, WE'RE GOING TO TALK
22 ABOUT PENALTIES: LIFE IMPRISONMENT, DEATH PENALTY.
23 BUT, I WANT TO MAKE SURE YOU UNDERSTAND THAT THE
24 FACT THAT WE TALK ABOUT PENALTIES IN NO WAY SHOULD
25 YOU INFER OR IMPLY THAT MR. BECKHAM IS GUILTY OF

1 ANYTHING. CAN YOU DO THAT?

2 A UH-HUH. (YES).

3 THE COURT: ALL RIGHT. HAVE YOU BEEN
4 ON A JURY BEFORE?

5 A UH-UH. (NO).

6 THE COURT: WELL, HAVE YOU BEEN IN A
7 COURTROOM BEFORE MONDAY BEFORE?

8 A UN-UH. (NO).

9 THE COURT: OKAY. WELL, WE'RE GOING
10 TO TRY THIS CASE IN NEWBERRY, BUT EVERY COURTROOM
11 HERE TO YOUR LEFT IS THE JURY BOX. AND IN A
12 CRIMINAL TRIAL WE IMPANEL A JURY OF TWELVE MEN AND
13 WOMEN AND IN MOST CRIMINAL CASES A JURY HAS ONE
14 ULTIMATE RESPONSIBILITY AND THAT BASICALLY IS TO
15 LISTEN TO THE EVIDENCE, APPLY THE LAW, AND TO
16 RETURN A VERDICT OF EITHER GUILTY OR NOT GUILTY OF
17 THE CHARGES FACING A DEFENDANT. DO YOU UNDERSTAND
18 THAT?

19 A UH-HUH. (YES).

20 THE COURT: ALL RIGHT. NOW, IF A JURY
21 RETURNS A VERDICT OF NOT GUILTY THEN OF COURSE THE
22 DEFENDANT IS RELEASED FROM THE CHARGES. IF HE IS
23 FOUND GUILTY THEN HE HAS TO COME AROUND HERE IN THE
24 FRONT AND A JUDGE LIKE MYSELF WOULD SENTENCE HIM.
25 OKAY? THAT PROCEDURE OCCURS IN EVERY TYPE OF

1 CRIMINAL CASE EXCEPT ONE AND THE ONE EXCEPTION TO
2 THAT IS WHERE THE STATE IS SEEKING THE DEATH
3 PENALTY. AND THEY ARE DOING THAT IN THIS CASE.
4 SO, THAT MEANS THAT THE JURY HAS TWO ULTIMATE
5 RESPONSIBILITIES. AND WE DO IT IN TWO SEPARATE
6 PHASES -- TWO SEPARATE TRIALS. NUMBER ONE, AGAIN
7 JUST LIKE IN ANY JURY IN ANY TRIAL, YOU DETERMINE
8 WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT
9 GUILTY. IF HE'S NOT GUILTY THE PROCESS IS OVER.
10 IF HE IS GUILTY THEN WE GO TO THE SECOND TRIAL. IN
11 THAT TRIAL THE JURY PERFORMS ITS SECOND ULTIMATE
12 FUNCTION AND THAT IS THAT IT DETERMINES WHAT
13 SENTENCE A DEFENDANT SHOULD RECEIVE, BE IT LIFE
14 IMPRISONMENT OR DEATH. OKAY?

15 NOW, JUST LIKE WHEN I HAVE SOME
16 DEFENDANT WHO HAS BEEN CONVICTED BY A JURY STANDING
17 IN FRONT OF ME, I LISTEN TO EVIDENCE OF
18 AGGRAVATION, THAT'S THINGS THAT WOULD WARRANT THE
19 IMPOSITION OF A HARSHER SENTENCE, AS OPPOSED TO
20 MITIGATION, THINGS THAT WOULD WARRANT A LESS
21 HARSHER PENALTY BEING IMPOSED. YOU, AS A JURY, IN
22 THE SECOND PHASE, HAVING FOUND A DEFENDANT GUILTY
23 OF MURDER, WOULD BE LISTENING TO SEE WHETHER OR NOT
24 THERE IS EVIDENCE OF AGGRAVATING CIRCUMSTANCES
25 ESTABLISHED BEYOND A REASONABLE DOUBT AND EVIDENCE

1 OF MITIGATION, AND YOU WOULD BE CONSIDERING ALL OF
2 THOSE FACTORS AND THEN YOU WOULD DECIDE, INSTEAD OF
3 A JUDGE, WHAT IS THE APPROPRIATE PUNISHMENT. DO
4 YOU FOLLOW ME?

5 A UH-HUH. (YES).

6 THE COURT: OKAY. WE HAVE THREE TYPES
7 OF JURORS, ESSENTIALLY, IN CASES LIKE THIS. WE
8 HAVE A JUROR THAT SAYS, "WE'VE GOT A CONVICTION IN
9 THAT FIRST TRIAL. WE'VE GOT THE EVIDENCE OF
10 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT
11 IN THIS PHASE AND IT DOESN'T MATTER IF WE HAVE ANY
12 MITIGATION, I BELIEVE THAT THE DEATH PENALTY IS
13 ALWAYS THE APPROPRIATE PUNISHMENT FOR THAT
14 SITUATION AND I VOTE FOR DEATH." OKAY? THAT'S ONE
15 TYPE OF JUROR. DO YOU UNDERSTAND THAT TYPE?

16 A UH-HUH. (YES).

17 THE COURT: THERE'S A SECOND TYPE OF
18 JUROR WHO SAYS, "IT'S TRUE THAT WE DID CONVICT HIM
19 OF MURDER IN THE FIRST TRIAL. IT'S TRUE THAT
20 THERE'S EVIDENCE OF AGGRAVATING CIRCUMSTANCES AND
21 THERE MAY OR MAY NOT BE MITIGATION HERE. BUT, I
22 BELIEVE THAT LIFE IMPRISONMENT IS THE APPROPRIATE
23 PUNISHMENT IN ALL CASES. I VOTE FOR LIFE." OKAY?

24 WE HAVE A THIRD PHASE...I MEAN A THIRD
25 TYPE OF JUROR WHO SAYS, "YOU'RE RIGHT, WE DID

1 CONVICT A DEFENDANT OF MURDER IN THE FIRST TRIAL.
2 YOU'RE RIGHT, THERE IS EVIDENCE OF AGGRAVATING
3 CIRCUMSTANCES HERE AND THERE MAY OR MAY NOT BE
4 EVIDENCE OF MITIGATING CIRCUMSTANCES, BUT I WANT TO
5 LOOK AT THIS CASE IN PARTICULAR: THE FACTS IN THIS
6 CASE; THE EVIDENCE IN THIS CASE SPECIFICALLY, AND
7 I'M GOING TO DECIDE WHICH IS THE APPROPRIATE
8 PUNISHMENT IN THIS CASE: LIFE OR DEATH." OKAY?

9 IF YOU HAD TO SAY WHICH ONE OF THE
10 THREE CATEGORIES YOU ARE IN, WHICH WOULD YOU SAY
11 YOU MIGHT FALL?

12 A IN MY HEART, I'D SAY TWO.

13 THE COURT: TWO. AND LET ME ASK IT
14 THIS WAY, THAT IF YOU FOUND, ON THE
15 EVIDENCE...WELL, FIRST OF ALL, IN YOUR MIND ARE YOU
16 AND IN YOUR HEART AS WELL, ARE YOU...CAN YOU AND
17 WOULD YOU FOLLOW THE INSTRUCTIONS THAT A JUDGE
18 MIGHT GIVE WITH REGARD TO THE LAW?

19 A I DON'T UNDERSTAND.

20 THE COURT: WELL, THAT'S KIND OF AN
21 OPEN ENDED QUESTION. LET ME BACK UP. LET ME BACK
22 MYSELF INTO IT, OKAY? JUST LIKE I SAID A WHILE
23 AGO, DO YOU UNDERSTAND THAT MR. BECKHAM IS PRESUMED
24 TO BE INNOCENT OF THIS CHARGE?

25 A UH-HUH. (YES).

1 THE COURT: CAN YOU FOLLOW THAT
2 INSTRUCTION? JUST LIKE I WOULD TELL YOU THAT THE
3 STATE MUST PROVE HIS GUILT BEYOND A REASONABLE
4 DOUBT. COULD YOU FOLLOW THAT INSTRUCTION?

5 A UH-HUH. (YES).

6 THE COURT: AND THAT THE VERDICT MUST
7 BE UNANIMOUS. COULD YOU FOLLOW THAT?

8 A UH-HUH. (YES).

9 THE COURT: ALL RIGHT. NOW, IN THE
10 PENALTY PHASE YOU WILL BE GIVEN INSTRUCTIONS BY THE
11 COURT TO FOLLOW. NOW...I'LL COME BACK TO THAT IN
12 JUST ONE MINUTE. LET'S ASSUME THAT YOU HAVE LOOKED
13 AT ALL OF THE EVIDENCE IN THE CASE THAT YOU ARE
14 SITTING ON AND YOU KNOW THAT THERE'S BEEN A
15 CONVICTION FOR MURDER, BECAUSE YOU PARTICIPATED IN
16 THAT. IN THE SECOND PHASE OF THE PROCEEDINGS, THE
17 SECOND TRIAL, YOU'VE HEARD EVIDENCE OF AGGRAVATING
18 CIRCUMSTANCES AND YOU BELIEVE THAT THEY EXIST
19 BEYOND A REASONABLE DOUBT AND YOU MAY OR MAY NOT
20 HAVE HEARD ANY MITIGATING EVIDENCE. IT COULD BE
21 EITHER WAY. IF YOU FOUND, OR BELIEVED, THAT THE
22 APPROPRIATE PUNISHMENT WAS LIFE IMPRISONMENT AND
23 THE JUDGE GAVE YOU THAT OPTION, COULD YOU VOTE TO
24 IMPOSE A LIFE SENTENCE?

25 A YES.

1 THE COURT: ALL RIGHT. NOW, LIKEWISE,
2 IF YOU WERE INSTRUCTED THAT THE LAW AUTHORIZES OR
3 PERMITS A JURY TO IMPOSE THE DEATH SENTENCE WHEN
4 THERE IS A MURDER PLUS PROOF OF AGGRAVATING
5 CIRCUMSTANCES BEYOND A REASONABLE DOUBT, IF YOU
6 WERE TOLD BY THE COURT THAT YOU ARE PERMITTED --
7 NOT REQUIRED OR MANDATORY, BUT PERMITTED -- TO DO
8 THAT, COULD YOU, IF YOU FELT THAT THE NATURE OF THE
9 CASE WARRANTED THE IMPOSITION OF THE DEATH PENALTY
10 AS OPPOSED TO A LIFE SENTENCE, COULD YOU IMPOSE THE
11 DEATH SENTENCE...VOTE TO IMPOSE THE DEATH SENTENCE?

12 A NO.

13 THE COURT: YOU COULD NOT?

14 A NO.

15 THE COURT: MA'AM, LET ME TAKE YOU A
16 STEP FURTHER THEN. IF THE...THE LAW REQUIRES THAT
17 JURORS WHO VOTE FOR THE DEATH PENALTY, AND OF
18 COURSE IT HAS TO BE UNANIMOUS, IF THEY CHOOSE THAT
19 AS THE APPROPRIATE PUNISHMENT THEY MUST BE ABLE TO
20 SIGN THEIR NAME TO THE VERDICT FORM INDICATING THAT
21 THAT WAS THEIR VERDICT, COULD YOU DO THAT?

22 A NOW ASK ME THAT AGAIN?

23 THE COURT: ALL RIGHT. I'M JUMPING
24 OVER WHAT YOU TOLD ME JUST A MINUTE AGO. BUT LET'S
25 SAY THAT YOU WERE ON A JURY AND YOU AND YOUR FELLOW

1 JURORS CAME TO THE CONCLUSION THAT THE DEATH
2 SENTENCE WAS THE APPROPRIATE SENTENCE, COULD YOU
3 SIGN YOUR NAME TO THE DEATH WARRANT OR TO THE
4 SENTENCING SHEET?

5 A NO.

6 THE COURT: YOU COULD NOT DO THAT?

7 A NO.

8 THE COURT: CAN YOU THINK OF ANY
9 CIRCUMSTANCE UNDER WHICH YOU COULD IMPOSE THE DEATH
10 PENALTY?

11 A NO.

12 THE COURT: OKAY, LET ME LET THE
13 LAWYERS ASK YOU SOME QUESTIONS. SOLICITOR, DO YOU
14 HAVE ANY QUESTIONS?

15 MR. JONES: YES, SIR.

16 DIRECT EXAMINATION:

17 BY MR. JONES:

18 Q MS. DUNCAN, GOOD MORNING.

19 A HEY.

20 Q MS. DUNCAN, YOU'RE OKAY?

21 A I'M TRYING TO BE, YEAH.

22 Q ARE YOU EMOTIONAL RIGHT NOW?

23 A JUST...NO.

24 Q DID YOU UNDERSTAND THE JUDGE'S
25 QUESTIONS?

- 1 A YES.
- 2 Q AND, IF I UNDERSTOOD YOUR ANSWER YOU
- 3 SAID, "JUDGE, I COULD NOT PERSONALLY GIVE THE DEATH
- 4 PENALTY EVEN IF I THOUGHT IT WAS AN APPROPRIATE
- 5 CASE FOR IT. I COULDN'T BE RESPONSIBLE FOR VOTING
- 6 TO IMPOSE IT?"
- 7 A YES.
- 8 Q IS THAT WHAT YOU SAID?
- 9 A UH-HUH. (YES).
- 10 Q AND YOU KNOW IN YOUR HEART THAT THAT'S
- 11 THE TRUTH, IS THAT CORRECT?
- 12 A YES, THAT'S THE TRUTH. I COULDN'T.
- 13 Q AND YOU'RE CERTAIN ABOUT THAT?
- 14 A YES.
- 15 Q IS THERE ANY CASE WHERE YOU FOUND THE
- 16 DEATH PENALTY WOULD BE APPROPRIATE THAT YOU COULD
- 17 VOTE TO IMPOSE IT?
- 18 A I CAN'T THINK RIGHT NOW. NO.
- 19 Q NO?
- 20 A I COULDN'T SIGN MY NAME.
- 21 Q YOU COULD NOT SIGN IT?
- 22 A NO.
- 23 Q YOU KNOW THAT?
- 24 A YES.
- 25 Q IN ANY CASE?

1 A IN ANY CASE.

2 Q THANK YOU, MA'AM.

3 THE COURT: MR. HARPOOTLIAN?

4 CROSS-EXAMINATION:

5 BY MR. HARPOOTLIAN:

6 Q JUST A FEW QUESTIONS, MA'AM, AND I'M
7 NOT GOING TO BELABOR THE POINT. I UNDERSTAND
8 YOU'RE A LITTLE UPSET ABOUT BEING HERE AND HAVING
9 TO GO THROUGH THIS.

10 AS I UNDERSTAND IT, YOU HAVE NO
11 PROBLEM WHAT-SO-EVER BEING FAIR TO MR. BECKHAM, OR
12 ANY DEFENDANT, IN WHAT WE CALL THE GUILT OR
13 INNOCENCE STAGE? THAT IS, THAT YOU COULD BE FAIR
14 AND IMPARTIAL TO HIM, IS THAT CORRECT?

15 A I COULD BE FAIR.

16 Q YES. AND TO THE STATE OF SOUTH
17 CAROLINA?

18 A YES.

19 Q DO YOU PRESUME HIM INNOCENT BEYOND A
20 REASONABLE...THE PRESUMPTION OF INNOCENCE...YOU
21 WOULDN'T EVER VOTE FOR A GUILTY VERDICT UNLESS THE
22 STATE CONVINCED YOU BEYOND A REASONABLE DOUBT OF
23 HIS GUILT, IS THAT CORRECT?

24 A YES.

25 Q HOWEVER, YOU HAVE SOME PROBLEMS WHEN

1 IT COMES TO...AND IF IT CAME TO A SECOND STAGE --
2 AND WE'RE NOT SAYING IT COULD COME TO THAT SECOND
3 TRIAL -- BUT IN A SECOND TRIAL YOUR POSITION IS
4 THAT YOU COULD NOT VOTE FOR A DEATH PENALTY, IS
5 THAT WHAT YOU'RE TELLING US?

6 A YES.

7 Q AND THERE ARE NO CIRCUMSTANCES UNDER
8 WHICH YOU WOULD CONSIDER THE DEATH PENALTY TO BE
9 THE APPROPRIATE PENALTY?

10 A NO.

11 Q NOW, IF THEY DIDN'T REQUIRE YOU TO
12 SIGN YOUR NAME TO THIS VERDICT, WOULD THAT MAKE A
13 DIFFERENCE TO YOU?

14 A NO.

15 Q IS THIS A RELIGIOUS BELIEF YOU HAVE?
16 MORAL? ETHICAL? I MEAN, WHEN DID YOU DECIDE THAT
17 YOU WERE NOT FOR THE DEATH PENALTY? WHEN WE ASKED
18 YOU?

19 A NO. IT'S JUST...I COULDN'T DO IT. I
20 JUST COULDN'T DO IT. I JUST DON'T BELIEVE
21 THAT...IT'S KIND OF RELIGIOUS AND MORAL, YOU KNOW?

22 Q OKAY. I DON'T HAVE ANY FURTHER
23 QUESTIONS.

24 THE COURT: ALL RIGHT, SUBJECT TO THE
25 DEFENSE'S OBJECTIONS, STATUTORILY AND

1 CONSTITUTIONALLY, PREVIOUSLY MADE, MA'AM, I'M GOING
2 TO DISQUALIFY YOU FROM SERVICE. I RESPECT YOUR
3 VIEWS AND A LOT OF PEOPLE SHARE THAT, BUT YOU HAVE
4 TO BE ABLE IN THIS STATE TO IMPOSE IT AND TO SIGN
5 YOUR NAME. SO, I'M GOING TO EXCUSE YOU FROM
6 SERVICE, OKAY?

7 A YES, SIR.

8 THE COURT: THANK YOU, MA'AM.
9 MARY FOSTER?

10 MARY FOSTER, BEING CALLED
11 AND DULY SWORN, TESTIFIES AS FOLLOWS:

12 THE COURT: MS. FOSTER, HAVE YOU EVER
13 BEEN ON A JURY BEFORE?

14 A NO.

15 THE COURT: OKAY. DID YOU GET A
16 CHANCE TO READ THE LETTER THAT I HANDED OUT THE
17 OTHER DAY?

18 A YES.

19 THE COURT: OKAY. AND DID YOU
20 UNDERSTAND IT?

21 A UH-HUH. (YES).

22 THE COURT: OKAY. AND HAVE YOU FORMED
23 OR EXPRESSED ANY OPINION AS TO THE INNOCENCE OR
24 GUILT OF STEPHEN BECKHAM IN THIS CASE? HE'S THE
25 DEFENDANT IN THE CASE.

1 A I DON'T THINK SO, NO.

2 THE COURT; ALL RIGHT. DO YOU KNOW
3 ANYTHING ABOUT THE FACTS OF THE CASE?

4 A I HAVE READ SEVERAL ARTICLES IN THE
5 NEWSPAPER ABOUT IT OVER THE LAST YEAR OR SO.

6 THE COURT: THERE'S NOTHING WRONG WITH
7 THAT. BUT, THE QUESTION IS, HAVING READ THOSE
8 ARTICLES, COULD YOU SET THAT INFORMATION ASIDE, SIT
9 IN A COURTROOM AND LISTEN TO THE ACTUAL EVIDENCE
10 ABOUT THE CASE, AND MAKE A DECISION BASED UPON THE
11 EVIDENCE YOU HEAR IN THE COURTROOM WITHOUT REGARD
12 TO THE NEWSPAPER ARTICLES?

13 A PROBABLY.

14 THE COURT: WELL, HOW WOULD THE
15 NEWSPAPER ARTICLES, OR WHATEVER YOU READ OR HEARD,
16 INFLUENCE YOUR DECISION? WHEN YOU SAY "PROBABLY,"
17 WOULD IT INFLUENCE YOUR DECISION?

18 A YES.

19 THE COURT: AND WHY?

20 A WELL, I JUST...

21 THE COURT: LET ME...BEFORE YOU ANSWER
22 THAT, LET ME...

23 A ASK ME ANOTHER QUESTION.

24 THE COURT: LET ME GO...WE'LL COME
25 BACK TO THAT, ALL RIGHT?

1 A ALL RIGHT.

2 THE COURT: HAVE YOU HEARD OF THE
3 PRINCIPLE OF LAW CALLED THE PRESUMPTION OF
4 INNOCENCE...

5 A OH, YES.

6 THE COURT: ...WHICH SAYS A CITIZEN
7 ACCUSED OF A CRIME IS PRESUMED INNOCENT OF THE
8 CRIME...

9 A OH, YES.

10 THE COURT: ...UNTIL AND UNLESS THE
11 STATE ESTABLISHES GUILT BY EVIDENCE BEYOND A
12 REASONABLE DOUBT? IS THAT A PRINCIPLE THAT YOU CAN
13 ACCEPT AND FOLLOW?

14 A YES, I THINK I COULD.

15 THE COURT: WELL, DO YOU UNDERSTAND
16 THAT IF YOU'RE ON A JURY YOU'RE REQUIRED AND HAVE
17 TO BELIEVE THAT MR. BECKHAM AT THIS POINT IS
18 PRESUMED INNOCENT OF THE CRIMES?

19 A YES, I UNDERSTAND THAT.

20 THE COURT: CAN YOU REQUIRE THE STATE
21 TO HAVE TO ESTABLISH HIS GUILT BY EVIDENCE IN THE
22 COURTROOM BEYOND A REASONABLE DOUBT?

23 A YES.

24 THE COURT: IF YOU COULD DO THAT THEN
25 WHY WOULD THE NEWSPAPER ARTICLES INFLUENCE YOUR

1 DECISION?

2 A HUMAN NATURE, I GUESS. YOU READ
3 SOMETHING AND YOU THINK ABOUT IT.

4 THE COURT: OKAY. WELL, YOU KNOW,
5 WE...I READ THINGS ALL THE TIME...

6 A OH, I KNOW.

7 THE COURT: ...ABOUT THINGS THAT I
8 HAVE TO MAKE DECISIONS IN.

9 A I UNDERSTAND THAT.

10 THE COURT: I HAVE TO SET THAT ASIDE
11 AND I GUESS THE QUESTION IS...AND I KNOW IT'S HUMAN
12 NATURE TO THINK ABOUT IT...BUT, CAN YOU SET THOSE
13 THINGS ASIDE?

14 A I THINK I PROBABLY COULD.

15 THE COURT: NOW...WELL, LET'S GO ON A
16 LITTLE FURTHER THEN.

17 A OKAY.

18 THE COURT: WE'RE GOING TO TALK ABOUT
19 PENALTY IN THIS PROCEEDING HERE BECAUSE THE STATE
20 IS ASKING TO...IS SEEKING THE DEATH PENALTY. AND
21 WHEN THEY DO THAT THEN BOTH LAWYERS AND MYSELF GET
22 AN OPPORTUNITY TO ASK YOU ABOUT SOME RELEVANT
23 BELIEFS THAT YOU HAVE, WHICH INCLUDE FOR EXAMPLE
24 THE PRESUMPTION OF INNOCENCE, AND SOME OTHER THINGS
25 THAT I'LL DISCUSS WITH YOU. I WANT TO MAKE SURE

1 THAT YOU UNDERSTAND THAT THE FACT THAT WE TALK
2 ABOUT PENALTY, I DON'T WANT YOU TO INFER THAT MR.
3 BECKHAM IS GUILTY OF ANYTHING BECAUSE THE STATE
4 HASN'T PRESENTED ITS CASE. OKAY?

5 A UH-HUH. (YES).

6 THE COURT: CAN YOU DO THAT?

7 A I UNDERSTAND, YES.

8 THE COURT: ALL RIGHT. IN A JURY
9 TRIAL, IN A CRIMINAL SETTING, MS. FOSTER, THE JURY
10 ORDINARILY HAS ONE RESPONSIBILITY, THAT IS TO
11 LISTEN TO THE EVIDENCE, APPLY THE LAW, AND TO MAKE
12 ONE DECISION: THAT IS TO DECIDE WHETHER OR NOT THE
13 DEFENDANT IS INNOCENT OR GUILTY OF THE CHARGE. DO
14 YOU UNDERSTAND THAT?

15 A YES.

16 THE COURT: ALL RIGHT. THAT'S
17 TRUE...AND IF YOU DECIDE HE'S NOT GUILTY THEN THE
18 PROCEEDINGS ARE OVER, THE DEFENDANT'S RELEASED.

19 A UH-HUH. (YES).

20 THE COURT: IF THE DEFENDANT IS FOUND
21 GUILTY BY A JURY, ORDINARILY HE STANDS THERE IN
22 FRONT OF A JUDGE AND THE JUDGE SENTENCES HIM.

23 A YEAH.

24 THE COURT: OKAY. THAT'S TRUE IN
25 EVERY TYPE OF CASE EXCEPT FOR ONE AND THE ONE

1 EXCEPTION IS WHEN THE STATE SEEKS THE DEATH
2 PENALTY. IN THAT CASE THE JURY HAS TWO
3 RESPONSIBILITIES. THE FIRST RESPONSIBILITY IS TO
4 DETERMINE GUILT OR INNOCENCE AND THEN IF THERE IS A
5 DETERMINATION OF GUILT THEN THE JURY MUST DECIDE
6 WHETHER OR NOT THE PUNISHMENT SHOULD BE LIFE OR
7 DEATH. DO YOU UNDERSTAND ME?

8 A UH-HUH. (YES).

9 THE COURT: NOW, WHAT YOU WOULD DO IN
10 THAT SECOND PROCEEDING IS THAT YOU WOULD DO THE
11 SAME THING THAT I WOULD DO WHEN I SENTENCE
12 SOMEBODY. YOU LISTEN TO THE EVIDENCE IN
13 AGGRAVATION -- EVIDENCE OF AGGRAVATING
14 CIRCUMSTANCES -- THE EVIDENCE OF MITIGATION, AND
15 YOU LOOK AT THE WHOLE RECORD AND YOU DECIDE, WELL
16 WHAT'S THE APPROPRIATE PUNISHMENT FOR THIS
17 DEFENDANT, OKAY? THAT'S WHAT YOU'RE DOING.

18 NOW, WE KNOW FROM EXPERIENCE THAT
19 THERE ARE THREE TYPES OF JURORS WHEN PUT INTO THAT
20 CONTEXT, INTO THAT SITUATION. WE HAVE A JUROR THAT
21 SAYS, "WE FOUND HIM GUILTY OF MURDER IN THE FIRST
22 PROCEEDING. WE HAVE FOUND EVIDENCE OF AGGRAVATING
23 CIRCUMSTANCES BEYOND A REASONABLE DOUBT IN THIS
24 SECOND PROCEEDING. IT DOESN'T MATTER WHETHER
25 THERE'S MITIGATING CIRCUMSTANCES, I BELIEVE THAT

1 THE DEATH PENALTY IS THE APPROPRIATE PUNISHMENT IN
2 THESE CASES AND I VOTE FOR THE DEATH PENALTY."
3 OKAY?

4 WE HAVE A SECOND TYPE OF JUROR WHO
5 SAYS, "YOU'RE RIGHT, WE DID CONVICT HIM OF MURDER
6 IN THE FIRST PROCEEDING. I AGREE THAT THERE'S
7 EVIDENCE OF AGGRAVATION IN THE SECOND PROCEEDING,
8 BUT I BELIEVE THAT LIFE IMPRISONMENT IS THE MORE
9 APPROPRIATE PUNISHMENT IN THESE CASES AND I VOTE
10 FOR LIFE." DO YOU FOLLOW ME SO FAR?

11 A YES, SIR.

12 THE COURT: THERE IS A THIRD TYPE OF
13 JUROR WHO SAYS, "IT IS TRUE THAT WE FOUND HIM
14 GUILTY OF MURDER. WE FOUND EXISTENCE OF
15 AGGRAVATING CIRCUMSTANCES. THERE MAY OR MAY NOT BE
16 MITIGATING CIRCUMSTANCES HERE, BUT I WANT TO LOOK
17 AT THIS PARTICULAR CASE AND ALL OF THE RECORD AND
18 DECIDE WHAT IS THE APPROPRIATE PUNISHMENT IN THIS
19 CASE. IT MIGHT BE LIFE, IT MIGHT BE DEATH, BUT I'M
20 GOING TO LOOK AT THIS CASE AND THEN I'LL CHOOSE."
21 OKAY?

22 IF YOU WERE ON A JURY IN A SITUATION
23 LIKE THAT IN A DEATH PENALTY CASE, COULD YOU KIND
24 OF CHARACTERIZE WHERE YOU MIGHT BE AS A JUROR?

25 A I'D FALL IN THAT MID-CATEGORY.

1 THE COURT: MID-CATEGORY?

2 A YES, SIR.

3 THE COURT: LET ME ASK YOU THEN IF YOU
4 FELT THAT THE EVIDENCE, IN APPLYING THE LAW IN THE
5 CASE, WARRANTED A LIFE SENTENCE, COULD YOU IMPOSE A
6 LIFE SENTENCE?

7 A I COULD DO THAT.

8 THE COURT: IF YOU FELT THAT THE
9 EVIDENCE AND THE LAW IN THE CASE AUTHORIZED AND
10 PERMITTED OR WARRANTED A DEATH SENTENCE, COULD YOU
11 IMPOSE THE DEATH PENALTY?

12 A I DON'T BELIEVE SO.

13 THE COURT: ARE THERE CIRCUMSTANCES
14 UNDER WHICH YOU COULD CONSIDER IMPOSING...VOTING
15 FOR THE DEATH PENALTY?

16 A I DON'T KNOW. I JUST DON'T KNOW IF MY
17 CONSCIOUS WOULD LET ME SIGN SOMETHING THAT SAYS
18 THIS MAN...

19 THE COURT: WELL, LET ME TAKE IT TO
20 THE NEXT STEP, THAT THE LAW IN THIS STATE REQUIRES
21 THAT THE INDIVIDUAL JURORS WHO FIND THAT THE DEATH
22 SENTENCE...DEATH PENALTY IS THE APPROPRIATE
23 SENTENCE, THEY ARE REQUIRED TO SIGN THE SENTENCING
24 SHEETS ACKNOWLEDGING THAT THAT WAS THEIR DECISION.
25 COULD YOU DO THAT?

1 A I DIDN'T KNOW THAT. I DIDN'T KNOW YOU
2 HAD TO SIGN...NO. I REALLY DON'T THINK I COULD.

3 THE COURT: HAVE YOU THOUGHT ABOUT IT
4 BEFORE TODAY OR YESTERDAY?

5 A WELL, MY HUSBAND OVER THE YEARS HAVE
6 DISCUSSED CASES AND I JUST...NOT THIS CASE...BUT I
7 JUST HAVE A HARD TIME SAYING, "YOU GET TO DIE."

8 THE COURT: ALL RIGHT.

9 A I KNOW IT'S THE CIVIC DUTY AND ALL
10 THIS, BUT I JUST...

11 THE COURT: LET ME LET THE SOLICITOR
12 AND MR. HARPOOTLIAN ASK YOU A FEW QUESTIONS ABOUT
13 THAT AND WE'LL PROCEED A LITTLE FURTHER.

14 SOLICITOR, DO YOU HAVE ANY QUESTIONS?

15 MR. JONES: YES, SIR, JUST BRIEFLY.

16 THE COURT: OKAY.

17 DIRECT EXAMINATION:

18 BY MR. JONES:

19 Q GOOD MORNING, MS. FOSTER.

20 A GOOD MORNING.

21 Q THANK YOU FOR YOUR PATIENCE AND I'VE
22 LISTENED TO YOU AND I THINK YOU UNDERSTOOD THE
23 JUDGE'S QUESTIONS...

24 A OH, YES.

25 Q ...BUT IT SEEMED LIKE THERE WAS SOME

1 HESITATION IN YOUR ANSWER...NOT MUCH, BUT A LITTLE
2 BIT, AND I'D LIKE FOR YOU TO TRY TO SEE IF YOU CAN
3 ANSWER FIRMLY ONE WAY OR THE OTHER TO THE QUESTION
4 OF IF YOU WERE ON A JURY AND YOU FOUND THE
5 DEFENDANT GUILTY AND THEN WE WENT TO THE SECOND
6 PHASE WHERE YOU HAVE TO CONSIDER WHETHER IT'S A
7 MURDER CASE THAT IS AGGRAVATING ENOUGH TO WARRANT
8 THE DEATH PENALTY, AND YOU CONCLUDED THAT IT WAS --
9 THE JURY CONCLUDED THAT IT WAS AGGRAVATED ENOUGH TO
10 WARRANT THE DEATH PENALTY -- THE QUESTION IS COULD
11 YOU VOTE TO IMPOSE THE DEATH PENALTY ON ANOTHER
12 HUMAN BEING?

13 A NO.

14 Q AND YOU'RE CERTAIN ABOUT THAT?

15 A I JUST DON'T THINK MY CONSCIENCE WOULD
16 LET ME SAY, "YOU LIVE. YOU DIE." I JUST...

17 Q SO, YOU ANSWERED ME, "NO..."

18 A YES.

19 Q ...BUT THEN YOU SAID, "I JUST DON'T
20 THINK MY CONSCIENCE WOULD LET ME." SO, WHAT I'M
21 ASKING YOU IS...

22 A OKAY, NO.

23 Q ...YOU QUALIFIED YOUR ANSWER. YOU
24 SAID, "NO," BUT THEN YOU SAID...I THINK YOU SAID
25 THIS..."BUT I JUST DON'T THINK MY CONSCIENCE WOULD

1 LET ME."

2 A OKAY, NO, MY CONSCIENCE WOULD NOT LET

3 ME DO THAT.

4 Q AND YOU ARE CERTAIN ABOUT THAT?

5 A YES, I FEEL VERY STRONGLY ABOUT THAT.

6 Q ALL RIGHT. IS...

7 MR. JONES: YOUR HONOR?

8 THE COURT: YES, SIR?

9 MR. JONES: IS MR. HARPOOTLIAN WANTING

10 ME FOR SOMETHING?

11 MR. HARPOOTLIAN: NO.

12 THE COURT: NO.

13 MR. HARPOOTLIAN: I THOUGHT YOU WERE

14 FINISHED.

15 THE COURT: HE THOUGHT YOU WERE

16 FINISHED.

17 MR. JONES: WE HAD DISCUSSED THAT.

18 THE COURT: I UNDERSTAND.

19 MR. HARPOOTLIAN: I'M SORRY, I THOUGHT

20 HE WAS DONE.

21 Q UNDER THE SAME PREMISE...

22 A YES?

23 Q ...IS THERE A CASE, WHERE YOU WOULD

24 SIT ON A MURDER CASE, WHERE YOU COULD VOTE TO

25 IMPOSE THE DEATH PENALTY ON ANOTHER...

1 MR. HARPOOTLIAN: YOUR HONOR, I WOULD
2 OBJECT TO THAT QUESTION AS FOR HYPOTHETICAL...IF
3 THE SOLICITOR COULD GIVE SOME SET OF CIRCUMSTANCES.

4 THE COURT: MR. HARPOOTLIAN, I'D BE
5 DELIGHTED TO SUSTAIN THAT. DO YOU WANT ME TO
6 SUSTAIN IT?

7 MR. HARPOOTLIAN: YES.

8 THE COURT: SUSTAINED.

9 MR. HARPOOTLIAN: THANK YOU.

10 THE COURT: NOW, IT'S BOTH WAYS.

11 MR. HARPOOTLIAN: I UNDERSTAND.

12 THE COURT: ALL RIGHT. I SUSTAIN THE
13 OBJECTION.

14 Q HAVE YOU ANSWERED MY QUESTIONS AS
15 STRAIGHT-FORWARDLY AS YOU KNOW HOW?

16 A I HAVE. I FEEL LIKE I HAVE.

17 Q AND THAT IS YOUR POSITION?

18 A YES, SIR.

19 Q THANK YOU.

20 THE COURT: ALL RIGHT. MR.

21 HARPOOTLIAN?

22 CROSS-EXAMINATION:

23 BY MR. HARPOOTLIAN:

24 Q I'M GOING TO BE BRIEF WITH YOU. LET
25 ME...I'M DICK HARPOOTLIAN AND I REPRESENT MR.

1 BECKHAM OVER HERE.

2 A YES.

3 Q LET ME...WE TALKED ABOUT PENALTY HERE
4 FOR JUST A MINUTE OR TWO. LET ME GO BACK TO SOME
5 ORIGINAL QUESTIONS THE JUDGE HAD ABOUT WHAT YOU'D
6 READ IN THE PAPER AND IT SEEMED TO ME THAT YOU
7 HESITATED WHEN YOU...WHEN ASKED IF YOU COULD BE
8 FAIR OR PUT ASIDE WHAT YOU'D READ. WAS I HEARING
9 YOU CORRECTLY?

10 A I GUESS I DID HAVE SOME HESITATION.
11 I'M NERVOUS, OKAY?

12 Q OKAY. AND THAT WOULD INDICATE --
13 CORRECT ME IF I'M WRONG. I'M JUST SORT OF TRYING
14 TO FIND OUT HOW YOU FEEL IN YOUR HEART. THERE ARE
15 NO RIGHT OR WRONG ANSWERS HERE, OKAY?

16 A OKAY.

17 Q DID YOU HAVE SOME INCLINATION BEFORE
18 YOU CAME HERE, BASED ON WHAT YOU READ, AS TO THE
19 GUILT OR INNOCENCE OF MR. BECKHAM? AND IF SO,
20 YOU'RE CERTAINLY ALLOWED TO HAVE THAT FEELING, I'D
21 JUST LIKE TO KNOW...

22 A WELL, YOU READ A NEWSPAPER ACCOUNT...

23 Q RIGHT.

24 A ...OF WHATEVER AND YOU THINK TO
25 YOURSELF, WELL THIS WAY, THAT WAY...

1 Q WELL, WHICH WAY DID YOU THINK?

2 A I THOUGHT IT WAS JUST VERY STRANGE
3 THAT...YOU KNOW, I HATE TO CONDEMN SOMEBODY WITHOUT
4 HEARING EVIDENCE. I MEAN, I READ A SMALL ARTICLE
5 IN THE PAPER...

6 Q SURE. BUT, BASED ON WHAT YOU READ YOU
7 THOUGHT HE WAS GUILTY?

8 A HE COULD BE, YEAH.

9 Q I MEAN THAT'S JUST BASED ON WHAT YOU
10 READ IN THE PAPER?

11 A YES.

12 Q YOU HAD THIS SORT OF FEELING COMING
13 INTO IT THAT HE WAS GUILTY?

14 MR. JONES: YOUR HONOR, SHE SAID HE
15 COULD BE. SHE'S ANSWERED THAT QUESTION.

16 THE COURT: IT'S A HELPFUL DISCUSSION,
17 SOLICITOR, FOR EVERYBODY TO HEAR THIS WITNESS.

18 MR. JONES: ALL RIGHT. OKAY..

19 THE COURT: OKAY.

20 A I KNOW THAT, YOU KNOW, IN THE ACTUAL
21 TRIAL THERE ARE EVIDENCE, EVIDENCE, EVIDENCE, AND,
22 YOU KNOW, I DON'T HAVE ALL THAT EVIDENCE, BUT JUST
23 READING THE LITTLE BLURBS THAT I HAVE READ A COUPLE
24 OF THREE TIMES IN THE PAPER IT DID SOUND LIKE MAYBE
25 THIS...BUT I DON'T KNOW.

1 Q BUT YOU CAME IN INCLINED THAT WAY
2 BASED ON WHAT YOU'D READ AND YOU TOLD THE JUDGE, I
3 THINK YOU SAID, "IT'S HUMAN NATURE..." I THINK WAS
4 THE WORD YOU USED...

5 A OKAY.

6 Q ...TO FEEL THAT WAY AND YOU MIGHT HAVE
7 SOME DIFFICULTY PUTTING THAT OUT OF YOUR MIND, WHAT
8 YOU'D READ IN THE PAPER?

9 A YES, PROBABLY?

10 Q I MEAN, IF YOU WERE IN A TRIAL AND
11 WHAT YOU'D READ IN THE PAPER IS NOT WHAT YOU'D
12 HEARD IN THE COURTROOM, WOULDN'T YOU WONDER WHY YOU
13 HADN'T HEARD THAT?

14 A OH, YES, YES.

15 Q OKAY. THANK YOU. I DON'T HAVE ANY
16 FURTHER QUESTIONS.

17 THE COURT: SUBJECT TO THE...

18 MR. HARPOOTLIAN: NO, WE DON'T HAVE
19 ANY OBJECTIONS, YOUR HONOR.

20 THE COURT: ALL RIGHT. ON HER?

21 MR. HARPOOTLIAN: WELL, NO, WE DON'T
22 HAVE ANY OBJECTIONS TO THE RULING I THINK YOU'RE
23 GETTING READY TO MAKE.

24 THE COURT: SHE'S NOT...

25 MR. HARPOOTLIAN: NUMBER TWO. SHE'S A

1 NUMBER TWO, CORRECT?

2 THE COURT: YEAH. SHE'S NOT
3 QUALIFIED.

4 MR. HARPOOTLIAN: RIGHT.

5 THE COURT: OKAY.

6 MR. HARPOOTLIAN: WE DON'T HAVE ANY
7 OBJECTIONS.

8 THE COURT: ALL RIGHT. MS. FOSTER, IN
9 THIS STATE YOU HAVE TO BE ABLE TO CONSIDER AND
10 IMPOSE BOTH OPTIONS, THAT IS LIFE AND DEATH.
11 THERE'S NOTHING WRONG WITH YOUR FEELINGS AND YOUR
12 POSITION....

13 A I CAN'T APOLOGIZE FOR IT. I MEAN,
14 THAT'S JUST THE WAY I FEEL.

15 THE COURT: NO, NO, AND A LOT OF
16 PEOPLE AGREE WITH YOU. BUT, I CAN NOT SEAT A JUROR
17 WHO CAN NOT SIGN THEIR NAME OR DO...OR CONSIDER
18 BOTH OPTIONS, AND THAT'S FINE. AND I HOPE YOU
19 ENJOY READING THAT BOOK. IT'S A GOOD ONE. OKAY?
20 HAVE A NICE DAY.

21 A THANK YOU.

22 THE COURT: ANTHONY SCOTT?

23 MR. COULTER: JUDGE, BEFORE WE START
24 WITH MR. SCOTT...

25 MR. JONES: WE'RE NOT SURE WHETHER

1 THIS APPLIES TO THIS JUROR OR NOT.

2 MR. COULTER: THE REASON, JUDGE, IS
3 NOT ONLY THAT THEY SHARE THE SAME NAME BUT THE DATE
4 OF BIRTH IS VERY SIMILAR FOR ONE OF THE DATE OF
5 BIRTHS GIVEN ON THE RECORD.

6 THE COURT: WHAT DO YOU SHOW AS THE
7 OFFENSE?

8 MR. COULTER: THERE'S A COCAINE
9 CONVICTION WITH TWO YEARS PROBATION. I CAN SHOW IT
10 TO YOU.

11 MR. HARPOOTLIAN: DO YOU HAVE ANOTHER
12 COPY OF THAT?

13 THE COURT: I CAN HARDLY READ THIS
14 ONE.

15 MR. COULTER: THIS IS THE ONLY ONE
16 I'VE GOT.

17 THE COURT: OKAY, BRING MR. SCOTT IN,
18 PLEASE?

19 ANTHONY SCOTT, BEING CALLED
20 AND DULY SWORN, TESTIFIES AS FOLLOWS:

21 THE COURT: MR. SCOTT, I NEEDED TO
22 MAKE...HAVE YOU EVER LIVED OR WORKED IN THE STATE
23 OF GEORGIA ANY?

24 A NO, SIR.

25 THE COURT: HAVE YOU LIVED IN OCONEE

1 ALL OF YOUR LIFE?
2 A YES, SIR.
3 THE COURT: YOUR CORRECT NAME IS
4 JEROME ANTHONY SCOTT?
5 A NO, SIR.
6 THE COURT: OKAY, GOOD. ALL RIGHT,
7 WHAT IS YOUR CORRECT NAME?
8 A ANTHONY SCOTT, NO MIDDLE NAME.
9 THE COURT: WITH NO MIDDLE NAME. AND
10 DO YOU HAVE A SOCIAL SECURITY NUMBER?
11 A YES, I DO, SIR.
12 THE COURT: COULD YOU GIVE IT TO ME?
13 A 
14 THE COURT: ALL RIGHT. AND YOU HAVE
15 NO PRIOR CRIMINAL RECORD?
16 A NO, SIR.
17 THE COURT: THERE WAS A...I'LL TELL
18 YOU, I'LL BE UP FRONT WITH YOU. THERE WAS AN
19 ANTHONY SCOTT THAT SHOWED UP ON THE COMPUTER BUT
20 IT'S NOT YOU, OKAY?
21 A NO, SIR.
22 THE COURT: I'M SATISFIED WITH THAT.
23 ALL RIGHT. MR. SCOTT, HAVE YOU EVER BEEN ON A JURY
24 BEFORE?
25 A YES, SIR. I'VE SERVED ON A JURY

1 BEFORE.

2 THE COURT: ALL RIGHT.

3 A WELL, I WOULDN'T SAY ON A JURY, BUT WE
4 WAS IN A JURY SELECTION BUT WHEN I GOT UP THERE
5 THEY EXCUSED ME FROM THE TRIAL.

6 THE COURT: OKAY. DID YOU WATCH ANY
7 OF IT?

8 A NO, SIR, I HAD SOMETHING ELSE TO DO
9 THAT DAY.

10 THE COURT: ALL RIGHT. DID YOU GET A
11 CHANCE TO READ THE LETTER THAT I HANDED OUT THE
12 OTHER DAY?

13 A YES, SIR.

14 THE COURT: ALL RIGHT. DID YOU
15 UNDERSTAND BASICALLY WHAT I WAS TALKING ABOUT?

16 A PRETTY MUCH.

17 THE COURT: OKAY. IS THERE ANYTHING
18 THAT WAS CONFUSING OR THAT YOU WANT ME TO EXPLAIN
19 ANY FURTHER TO YOU AT THIS POINT?

20 A WELL, I DIDN'T UNDERSTAND ABOUT THE, I
21 THINK THE WORD AGGRAVATED OR...?

22 THE COURT: I'M GOING TO COVER THAT
23 WITH YOU.

24 A OKAY.

25 THE COURT: I'M GLAD YOU POINTED THAT

1 OUT. ALL RIGHT. WELL, I'M GOING TO ASK YOU SOME
2 QUESTIONS, THE LAWYERS ARE GOING TO ASK YOU SOME
3 QUESTIONS ABOUT SOME OF YOUR BELIEFS THAT ARE
4 RELEVANT TO THE ISSUES IN THIS CASE AND THERE
5 AREN'T ANY RIGHT OR WRONG ANSWERS AND NOBODY'S HERE
6 TO CHALLENGE WHAT YOU FEEL OR EMBARRASS YOU. SO,
7 JUST RELAX AND GIVE US JUST THE BEST TRUTHFUL
8 ANSWERS THAT YOU CAN GIVE ME, OKAY?

9 A (NODS HEAD AFFIRMATIVE)

10 THE COURT: ALL RIGHT. NOW, HAVE YOU
11 FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR
12 INNOCENCE OF MR. STEPHEN BECKHAM, THE DEFENDANT IN
13 THIS CASE?

14 A NO, SIR.

15 THE COURT: DO YOU KNOW ANYTHING ABOUT
16 THE FACTS OF THE CASE?

17 A NO.

18 THE COURT: ALL RIGHT. AND THERE IS A
19 PRINCIPLE OF LAW THAT'S CALLED THE PRESUMPTION OF
20 INNOCENCE WHICH MEANS THAT A CITIZEN ACCUSED OF A
21 CRIME IS PRESUMED TO BE INNOCENT OF THE CRIME UNTIL
22 AND UNLESS THE GOVERNMENT OR STATE CAN PROVE HIS
23 GUILT BY EVIDENCE SATISFYING A JURY BEYOND A
24 REASONABLE DOUBT. IS THAT A PRINCIPLE OF LAW THAT
25 YOU COULD ACCEPT AND FOLLOW IF YOU WERE ON A JURY?

1 THE PRESUMPTION OF INNOCENCE?

2 A POSSIBLE.

3 THE COURT: WELL, LET ME EXPLAIN IT TO
4 YOU AGAIN TO MAKE SURE. A CITIZEN GETS ARRESTED,
5 CHARGED WITH A CRIME, AND INDICTED. OKAY? AT THAT
6 POINT THE LAW SAYS THAT HE IS PRESUMED TO BE
7 INNOCENT OF THAT CRIME AND THE STATE MUST PROVE HIS
8 GUILT BEYOND A REASONABLE DOUBT. NOT THAT HE HAS
9 TO PROVE HIMSELF INNOCENT, BUT HE'S PRESUMED TO BE
10 INNOCENT SO THEREFORE THE STATE MUST PROVE HIS
11 GUILT. DO YOU UNDERSTAND THAT CONCEPT?

12 A THE STATE MUST PROVE IT.

13 THE COURT: DO YOU BELIEVE THAT? THAT
14 THE STATE OUGHT TO HAVE TO PROVE SOMEBODY GUILTY?

15 A YES, SIR.

16 THE COURT: OKAY. IF YOU GOT ARRESTED
17 AND CHARGED WITH A CRIME THAT YOU DIDN'T DO, WOULD
18 YOU WANT SOMEBODY TO ASSUME THAT YOU ARE GUILTY OR
19 PRESUME THAT YOU ARE GUILTY OR WOULD YOU WANT TO
20 HAVE THE PRESUMPTION OF INNOCENCE?

21 A ASK THE QUESTION AGAIN, SIR?

22 THE COURT: OKAY. WE'RE TALKING JUST
23 ABOUT YOU, OKAY?

24 A OKAY.

25 THE COURT: WE'RE TRYING TO MAKE SURE

1 YOU UNDERSTAND THE PRESUMPTION OF INNOCENCE. LET'S
2 SAY YOU GOT ARRESTED...

3 A OKAY.

4 THE COURT: ...AND CHARGED. LET'S SAY
5 FOR GRAND LARCENY, STEALING SOMETHING. OKAY?
6 WOULD YOU WANT TO BE ASSUMED OR PRESUMED GUILTY
7 SIMPLY BECAUSE YOU GOT CHARGED OR ARRESTED?

8 A NO.

9 THE COURT: ALL RIGHT. YOU'D RATHER
10 BE PRESUMED INNOCENT OF THAT CHARGE?

11 A YES, IF IT WAS POSSIBLE.

12 THE COURT: OKAY. YOU THINK THE STATE
13 OUGHT TO HAVE TO PROVE THAT CHARGE AGAINST YOU?

14 A I GUESS THEY WOULD HAVE THE RIGHT.

15 THE COURT: NOW, DO YOU UNDERSTAND
16 THAT MR. BECKHAM IN THIS CASE HAS PLED NOT GUILTY
17 TO THE INDICTMENT?

18 A YES, SIR.

19 THE COURT: OKAY. WHICH INCLUDES
20 MURDER, KIDNAPPING, AND CONSPIRACY?

21 A UH-HUH. (YES).

22 THE COURT: ALL RIGHT. DO YOU AGREE
23 WITH THE PRINCIPLE AT THIS POINT IN TIME THAT HE IS
24 PRESUMED INNOCENT OF THOSE CHARGES UNTIL THE STATE
25 CAN PROVE HIS GUILT BY EVIDENCE BEYOND A REASONABLE

1 DOUBT? DO YOU BELIEVE THAT TODAY?

2 A I BELIEVE.

3 THE COURT: DO YOU BELIEVE THAT MR.
4 BECKHAM STANDS AT THIS MINUTE INNOCENT OF THESE
5 CHARGES? DO YOU BELIEVE THAT MR. BECKHAM IS
6 PRESUMED INNOCENT OF THE CHARGE OR DO YOU THINK
7 HE'S GUILTY BECAUSE HE WAS CHARGED?

8 A THEY WOULDN'T HAVE CHARGED HIM IF THEY
9 DIDN'T FEEL LIKE SOMETHING WAS WRONG.

10 THE COURT: ALL RIGHT. WELL, LET'S GO
11 A LITTLE FURTHER. WE'RE GOING TO TALK ABOUT
12 PENALTY IN THIS CASE AND THE FACT THAT WE'RE
13 TALKING ABOUT PENALTY, I WANT TO MAKE SURE THAT YOU
14 DON'T...LET ME ASK YOU TO STEP OUTSIDE FOR JUST A
15 MINUTE.

16 (JUROR IS EXCUSED FROM THE OPEN
17 COURTROOM)

18 IN-CAMERA:

19 THE COURT: MR. HARPOOTLIAN, I'M
20 PERFECTLY WILLING TO PROCEED ON, BUT HE'S NOT GOING
21 TO BE ABLE TO UNDERSTAND THE NEXT QUESTION, THAT IS
22 HE SHOULD NOT INFER GUILT AND I CAN JUST SKIP OVER
23 THAT AND GO TO THE NEXT QUESTION, BUT I MEAN YOU'RE
24 ENTITLED TO HAVE THAT INSTRUCTION MADE TO HIM.
25 I'LL MAKE IT BUT I DON'T THINK HE UNDERSTANDS.

1 MR. HARPOOTLIAN: NO, SIR. I DON'T
2 KNOW WHAT THE SOLICITOR'S POSITION IS, BUT BASED ON
3 HIS RESPONSES SO FAR HE'S PRESUMING HIM GUILTY EVEN
4 THOUGH YOU'VE INQUIRED FIVE DIFFERENT WAYS. WE
5 HAVE NO PROBLEM EXCUSING HIM.

6 THE COURT: WELL, I DON'T KNOW WHAT
7 THE STATE'S POSITION IS.

8 MR. JONES: YES, SIR, OUR POSITION,
9 JUDGE, IS IT'S REALLY NOT WHAT MR. HARPOOTLIAN
10 SAID. YOU ASKED HIM AND WHAT HIS ANSWER WAS WAS
11 REALLY A LOGICAL ONE. HE DIDN'T SAY, "YES, I THINK
12 HE'S GUILTY." HE SAID, "WELL, THEY WOULDN'T HAVE
13 CHARGED HIM IF THEY DIDN'T HAVE SOME EVIDENCE TO
14 CHARGE HIM WITH." I MEAN, YOU KNOW, YOU'RE IN AN
15 AREA...AND THAT'S TRUE, IT'S COMMON SENSE. I MEAN,
16 IF WE DIDN'T HAVE EVIDENCE WE WOULDN'T HAVE CHARGED
17 HIM.

18 THE COURT: AND THAT'S VERY TRUE, BUT
19 THE NEXT THING THAT EVERY PERSON WHO SITS ON A JURY
20 MUST BELIEVE THAT HE IS PRESUMED INNOCENT OF THE
21 CHARGE.

22 MR. JONES: RIGHT.

23 THE COURT: AND HE SAID...SO FAR HE
24 HASN'T SAID THAT, NOW.

25 MR. HARPOOTLIAN: I'M JUST TRYING TO

1 SAVE TIME, YOUR HONOR.

2 THE COURT: OKAY.

3 MR. JONES: BUT JUDGE, I THINK WHAT
4 THIS MAN'S REACTION TO YOUR QUESTIONS IS, IS THAT
5 HE NEEDS A SPECIFIC...IF YOU SAY, "HE'S PRESUMED
6 INNOCENT UNLESS THE STATE PROVES HIM GUILTY. HE'S
7 INNOCENT UNLESS AND UNTIL THE STATE PROVES HIM
8 GUILTY. YOU UNDERSTAND THAT, DON'T YOU?" AND I
9 THINK HE'LL TELL YOU, "YEAH, HE'S INNOCENT UNLESS
10 AND UNTIL HE'S PROVED GUILTY." THAT'S THE USUAL
11 INSTRUCTION THAT WE GIVE THEM. AND I WOULD LIKE
12 YOU TO ASK HIM TO SEE IF HE UNDERSTANDS IF HE COULD
13 IMPOSE THE SENTENCE, JUDGE, AND THAT IF HE
14 UNDERSTANDS IT. IT WON'T TAKE BUT A COUPLE OF
15 MINUTES FOR YOU TO DO THAT.

16 THE COURT: BRING HIM IN.

17 (JUROR IS RETURNED TO THE OPEN
18 COURTROOM)

19 THE COURT: MR. SCOTT?

20 A YES, SIR?

21 THE COURT: WITHOUT HAVING HEARD ANY
22 EVIDENCE IN THIS CASE, DO YOU BELIEVE STEPHEN
23 BECKHAM IS INNOCENT OF THESE CHARGES OR GUILTY OF
24 THESE CHARGES...BECAUSE HE'S BEEN INDICTED?

25 A WITHOUT HEARING ANY EVIDENCE?

1 THE COURT: YES, SIR. HE'S BEEN
2 INDICTED BY THE GRAND JURY. THAT'S ALL YOU KNOW.

3 A OKAY. RIGHT.

4 THE COURT: AT THIS POINT?

5 A OKAY, AT THIS POINT. OKAY, HE'S
6 PROBABLY INNOCENT UNTIL SOMEBODY PROVES IT.

7 THE COURT: PROBABLY IS?

8 A PROBABLY IS.

9 THE COURT: DO YOU BELIEVE THAT THE
10 STATE HAS TO BE REQUIRED TO PROVE HIM GUILTY BEYOND
11 A REASONABLE DOUBT?

12 A THE STATE...

13 THE COURT: DO YOU BELIEVE THAT? THAT
14 THE STATE...

15 A YES.

16 THE COURT: ...MUST BE REQUIRED TO
17 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT?

18 A YEAH, THEY SHOULD BE REQUIRED.

19 THE COURT: AND UNTIL THAT POINT IN
20 TIME...

21 A RIGHT.

22 THE COURT: ...IF YOU WERE ON THE
23 JURY, WOULD YOU SAY MR...UNTIL THEY MEET THAT
24 BURDEN, WOULD YOU SAY MR. BECKHAM IS INNOCENT OF
25 THE CRIME? CAN YOU HOLD THAT BELIEF?

1 A DEPENDS ON THE EVIDENCE.

2 THE COURT: NO, UP UNTIL THE
3 END...UNTIL THE VERY END, UNTIL YOU AND YOUR FELLOW
4 JURORS SIT BACK THERE IN THAT JURY ROOM AND
5 DELIBERATE IT -- THROUGHOUT THE WHOLE TRIAL: FROM
6 THIS POINT, WHILE WE'RE TRYING THE CASE, UNTIL THE
7 VERY END, UNTIL YOU'RE AUTHORIZED TO SAY, "HE'S
8 GUILTY OR NOT GUILTY?" CAN YOU SAY IN YOUR HEART
9 AND MIND THAT MR. BECKHAM REMAINS INNOCENT UNTIL WE
10 DECIDE OTHERWISE?

11 A POSSIBLY.

12 THE COURT: POSSIBLY?

13 A POSSIBLY.

14 THE COURT: WELL, ORDINARILY A JURY IS
15 REQUIRED TO DO ONE THING IN THIS STATE AND THAT IS
16 THAT...TO MAKE A DETERMINATION AS TO WHETHER OR NOT
17 SOMEBODY IS NOT GUILTY OR GUILTY, OKAY? AND WHEN
18 THEY...IF THEY FIND HIM GUILTY, A JURY, THEN A
19 JUDGE SENTENCES HIM. ARE YOU FAMILIAR WITH THAT?

20 A YES, SIR.

21 THE COURT: OKAY. IN DEATH PENALTY
22 CASES, WHERE THE STATE IS SEEKING THE DEATH
23 PENALTY, THE JURY MUST MAKE TWO ULTIMATE
24 DETERMINATIONS. NUMBER ONE, THEY MUST FIND WHETHER
25 OR NOT THE DEFENDANT IS NOT GUILTY OR GUILTY, OKAY?

1 JUST LIKE IN ALL OTHER CRIMINAL CASES. THE SECOND
2 THING THEY HAVE TO DO IS TO DECIDE WHETHER OR NOT A
3 DEFENDANT WHO HAS BEEN FOUND GUILTY OF MURDER
4 SHOULD BE SENTENCED TO DEATH OR TO LIFE. DO YOU
5 UNDERSTAND THAT?

6 A YES, SIR.

7 THE COURT: ALL RIGHT. NOW, HERE'S
8 WHERE YOU ASKED ME ABOUT MITIGATING AND
9 AGGRAVATING. THE JURY...THE WORD AGGRAVATE, IN ITS
10 PLAIN MEANING, MEANS TO MAKE SOMETHING WORSE.
11 MITIGATE, IN ITS PLAIN MEANING, MEANS TO MAKE IT
12 LESS...LESS WORSE OR LESS BAD, OKAY? NOW, IF...DO
13 YOU UNDERSTAND THAT? WHAT I MEAN ABOUT MAKING IT
14 WORSE AND MAKE IT NOT SO BAD?

15 A YES, SIR.

16 THE COURT: OKAY. IN OUR STATE
17 WE...I, AS A JUDGE, AND YOU, AS A JURY, IF YOU WERE
18 SEATED IN A DEATH PENALTY CASE, YOU WOULD LISTEN TO
19 EVIDENCE OF AGGRAVATION, THAT'S THINGS THAT MAKE
20 THAT CRIME OF MURDER WORSE AND WOULD WARRANT OR
21 PERMIT THE IMPOSITION OF THE DEATH PENALTY, OKAY?
22 AT THE SAME TIME YOU WOULD BE LISTENING TO EVIDENCE
23 OF MITIGATION, THINGS THAT MIGHT SAY THAT, OR
24 ANYTHING IN THE RECORD FOR THAT MATTER, THAT MIGHT
25 SAY THAT LIFE IMPRISONMENT IS A MORE APPROPRIATE

1 PUNISHMENT THAN DEATH, OKAY? THAT'S WHAT
2 AGGRAVATING AND MITIGATING IS. THAT'S WHAT YOU, IN
3 A JURY, WOULD BE DOING. YOU'D BE LISTENING TO
4 AGGRAVATING AND MITIGATING. DO YOU UNDERSTAND?

5 A YES, SIR.

6 THE COURT: OKAY. WE KNOW THERE ARE
7 THREE KINDS OF JURORS WHEN THEY GET PUT IN THAT
8 POSITION TO MAKE A DECISION ABOUT THE APPROPRIATE
9 PUNISHMENT. WE HAVE A SET OF JURORS THAT SAY, "WE
10 FOUND HIM GUILTY OF MURDER IN THE FIRST PROCEEDING.
11 IN THIS PROCEEDING WE'VE JUST LISTENED TO, I'M
12 SATISFIED THERE'S EVIDENCE OF AGGRAVATING
13 CIRCUMSTANCE BEYOND A REASONABLE DOUBT AND IT
14 DOESN'T MATTER WHETHER THERE'S ANY EVIDENCE OF
15 MITIGATION. I BELIEVE THAT THE DEATH PENALTY IS
16 ALWAYS THE APPROPRIATE PUNISHMENT FOR THAT AND I
17 VOTE FOR DEATH." OKAY? THAT'S ONE TYPE OF JUROR.

18 THE OTHER TYPE OF JUROR IS ONE THAT
19 SAYS, "YOU'RE RIGHT, WE'VE GOT A CONVICTION FOR
20 MURDER. WE FOUND HIM GUILTY. WE'VE GOT EVIDENCE
21 OF AGGRAVATING CIRCUMSTANCE. WE MAY OR MAY NOT
22 HAVE MITIGATION, BUT I BELIEVE LIFE IMPRISONMENT IS
23 ALWAYS THE APPROPRIATE PUNISHMENT FOR THIS CONDUCT.
24 I VOTE FOR LIFE." OKAY?

25 WE'VE GOT THE THIRD GROUP THAT SAYS,

1 "WE'VE GOT A CONVICTION FOR MURDER. WE'VE GOT
2 EVIDENCE OF AGGRAVATION, CIRCUMSTANCES HERE, AND WE
3 MAY OR MAY NOT HAVE EVIDENCE OF MITIGATION, BUT I
4 WANT TO LOOK AT THIS CASE AS A WHOLE, EVERYTHING
5 ABOUT IT, AND I WANT TO DECIDE IN THIS CASE WHAT IS
6 THE APPROPRIATE PUNISHMENT. IT MIGHT BE LIFE, IT
7 MIGHT BE DEATH, BUT I'M GOING TO LOOK AT IT BEFORE
8 I MAKE UP MY MIND."

9 WHICH CATEGORY WOULD YOU LIKELY BE IN
10 IF YOU WERE ASKED TO PASS UPON THE APPROPRIATE
11 PUNISHMENT, BE IT LIFE OR DEATH? WHICH CATEGORY,
12 FIRST, SECOND, OR THIRD?

13 A IT WOULD BE LIFE.

14 THE COURT: LIFE? MEANS THAT COULD
15 YOU, IF YOU FOUND UNDER THE RIGHT...AGGRAVATING
16 CIRCUMSTANCES AND YOU LOOKED AT THE CASE AND THE
17 DEATH PENALTY WAS WARRANTED, COULD YOU IMPOSE THE
18 DEATH PENALTY?

19 A NO.

20 THE COURT: COULD YOU SIGN YOUR NAME
21 TO A WARRANT SAYING THAT YOU HAD IMPOSED THE DEATH
22 PENALTY?

23 A (SHAKES HEAD NEGATIVE)

24 THE COURT: COULD NOT DO THAT?

25 A NO.

1 THE COURT: SOLICITOR?

2 DIRECT EXAMINATION:

3 BY MR. JONES:

4 Q GOOD AFTERNOON, MR. SCOTT.

5 A YES, SIR.

6 Q I APPRECIATE YOUR PATIENCE WITH US AND
7 I JUST WANT TO INTRODUCE MYSELF. I'LL BE
8 PROSECUTING THIS CASE. YOU ARE CERTAIN THAT YOU
9 COULD NOT IMPOSE THE DEATH PENALTY IN ANY
10 SITUATION? IS THAT RIGHT?

11 A RIGHT.

12 Q THANK YOU.

13 THE COURT: MR. HARPOOTLIAN?

14 CROSS-EXAMINATION:

15 BY MR. HARPOOTLIAN:

16 Q THIS OPPOSITION...I'M DICK
17 HARPOOTLIAN, BY THE WAY. I REPRESENT STEVE
18 BECKHAM. STEVE'S RIGHT HERE. THAT'S JACK
19 SWERLING, MY CO-COUNSEL IN THIS CASE. THE JUDGE
20 AND THE SOLICITOR JUST ASKED YOU ABOUT YOUR OPINION
21 ON THE DEATH PENALTY AND YOU'VE INDICATED THAT YOU
22 WOULD ALWAYS VOTE FOR LIFE, IS THAT WHAT YOU TOLD
23 THEM?

24 A YES.

25 Q AND THERE ARE NO CIRCUMSTANCES OF

1 AGGRAVATION UNDER WHICH YOU WOULD EVER VOTE FOR THE
2 DEATH PENALTY?

3 THE COURT: OBJECTION SUSTAINED. THE
4 SOLICITOR IS RISING TO HIS FEET.

5 MR. HARPOOTLIAN: YES, SIR.

6 Q WOULD YOU EVER BE ABLE TO SIGN YOUR
7 NAME TO A DEATH VERDICT?

8 A A DEATH VERDICT, NO.

9 Q IF A JURY RETURNED A VERDICT OF THE
10 DEATH PENALTY EACH JUROR INDIVIDUALLY IS REQUIRED
11 TO SIGN THAT VERDICT. COULD YOU DO THAT?

12 A I DON'T THINK SO.

13 Q I'M SORRY, I DIDN'T HEAR YOU?

14 A I DON'T THINK SO.

15 Q YOU DON'T THINK SO OR YOU DON'T KNOW?

16 A I WOULDN'T.

17 Q YOU WOULD NOT?

18 A NO.

19 Q NO FURTHER QUESTIONS.

20 THE COURT: ALL RIGHT, MR. SCOTT, IN
21 THIS STATE YOU HAVE TO BE ABLE TO CONSIDER BOTH
22 OPTIONS AND IMPOSE BOTH IF THE EVIDENCE WARRANTS
23 IT. SO, I'M GOING TO EXCUSE YOU FROM PARTICIPATION
24 IN THIS TRIAL. SO YOU'RE FREE TO GO. HAVE A NICE
25 DAY.

1 A THANK YOU VERY MUCH.

2 THE COURT: THANK YOU.

3 WHERE IS PANEL E? IS PANEL E HERE?

4 DO WE KNOW THAT? I'M GOING TO SEPARATE THEM. I'VE
5 FIGURED OUT WHAT'S GOING ON AND I'M GOING TO
6 SEPARATE THEM. IS E HERE? E AS IN ECHO? ARE THEY
7 HERE?

8 BAILIFF: OKAY. YES, SIR.

9 MR. HARPOOTLIAN: A COUPLE OF JURORS
10 AGO WE SAW A PATTERN AND WE'RE CONCERNED THAT MAYBE
11 SOME TALKING'S GOING ON.

12 THE COURT: I'M GETTING READY TO TAKE
13 CARE OF THAT.

14 MR. HARPOOTLIAN: WOULD YOU MAKE...

15 CLERK: THERE'S TWO...

16 MR. HARPOOTLIAN: WOULD YOU MAKE AN
17 INQUIRY IF ANYONE'S TALKED ABOUT THAT SPECIFIC
18 ISSUE?

19 THE COURT: I AM. IN FACT, LET ME DO
20 IT AS A WHOLE PANEL.

21 MR. JONES: WELL, JUDGE, I WOULD
22 SUGGEST THAT WE LOOK AT ONE MORE JUROR OR AT LEAST
23 THE REMAINING TWO IN THIS PANEL.

24 THE COURT: I'M NOT GOING TO TAKE A
25 CHANCE. I'M GOING TO DO IT RIGHT NOW.

1 MR. JONES: THIS PANEL HAS BEEN
2 SITTING WITH PANEL D?

3 THE COURT: YES. I'M GOING TO
4 SEPARATE THEM RIGHT NOW. WE'VE GOT TWO LEFT IN
5 THIS PANEL.

6 MR. JONES: ARE YOU GOING TO BRING
7 TWELVE PEOPLE OUT HERE?

8 THE COURT: SALLY, I WANT TO SEPARATE
9 PANEL E AND I WANT TO ISOLATE THEM. I NEED TO PUT
10 THEM IN TEN DIFFERENT PLACES.

11 CLERK: OKAY, THAT'S FINE.

12 THE COURT: CAN WE DO IT?

13 CLERK: WE CAN DO IT.

14 THE COURT: ALL RIGHT.

15 CLERK: DO WE HAVE ANY HERE YET?

16 THE COURT: THEY'RE IN...I ASSUME E IS
17 BACK THERE IN THE JURY ROOM? ALL RIGHT, NOW...

18 CLERK: I'M GOING TO PUT THEM IN THE
19 GRAND JURY ROOM.

20 THE COURT: WELL, NOW THEY CAN'T BE
21 TOGETHER NOW.

22 CLERK: DO WE HAVE ANY IN THE GRAND
23 JURY ROOM?

24 BAILIFF: NOBODY'S IN THE GRAND JURY
25 ROOM THAT I KNOW OF.

1 THE COURT: I'M TALKING ABOUT
2 ISOLATING EACH JURY.

3 CLERK: EACH JURY? OH, GOODNESS.
4 OKAY, I'LL TAKE CARE OF IT. IF I CAN REMEMBER
5 WHERE I PUT THEM.

6 THE COURT: GIVE THEM A LIST.

7 CLERK: I'LL TAKE CARE OF IT MYSELF.

8 THE COURT: AND THEN BRING
9 PANEL...BRING THE TWO REMAINING JURORS IN PANEL D
10 IN HERE JUST A MOMENT, PLEASE? I'M GOING TO TAKE
11 CARE OF D, YOU TAKE CARE OF E.

12 MR. DUNCAN AND MR. SMITH, HOW ARE
13 Y'ALL DOING? I NEED TO SWEAR BOTH OF YOU, PLEASE?
14 IF YOU'LL RAISE YOUR RIGHT HANDS, PLEASE?

15 HUGH A. DUNCAN AND WILLIAM
16 SMITH, BEING CALLED AND DULY SWORN, TESTIFY AS
17 FOLLOWS:

18 THE COURT: MR. DUNCAN, THAT'S YOU?
19 ALL RIGHT. AND THEN MR. SMITH?

20 A YEAH.

21 THE COURT: GENTLEMEN, HAS ANY MEMBER
22 OF THE JURY PANEL DISCUSSED AMONG THEMSELVES
23 POSSIBLE PUNISHMENTS, THEIR FEELINGS ABOUT THE
24 DEATH PENALTY, ETCETERA, DURING THE TIME THAT
25 YOU'VE BEEN BACK IN THE ROOM?

1 (BOTH ANSWER NO)

2 THE COURT: AND NOBODY'S TRIED TO
3 DISCUSS IT WITH YOU OR SUGGEST TO YOU WHAT ANY
4 ANSWER TO ANY QUESTION SHOULD BE?

5 (BOTH ANSWER NO)

6 THE COURT: ALL RIGHT, THEN MR. DUNCAN
7 IF YOU'LL STEP UP FROM THE JURY CHAIR AND WE'LL
8 TAKE YOU RIGHT NOW. MR. SMITH, WE'LL BE WITH YOU
9 IN JUST A FEW MINUTES. IF YOU'LL GO BACK WITH THE
10 BAILIFF?

11 MR. DUNCAN, YOU'VE NOT READ OR
12 LISTENED OR WATCHED ANY ACCOUNT OF THE
13 PROCEEDINGS...PARTICULARLY YESTERDAY IS WHAT ALL
14 I...

15 A NO, NO.

16 THE COURT: ALL RIGHT. AND DID YOU
17 GET MY LETTER AND HAVE A CHANCE TO READ IT AND
18 UNDERSTAND WHAT WAS IN IT ABOUT THE CASE?

19 A THE ONE YOU HANDED OUT? YEAH.

20 THE COURT: AND YOU'RE AWARE THAT THE
21 STATE IS SEEKING THE DEATH PENALTY?

22 A YES, SIR.

23 THE COURT: AND YOU UNDERSTAND THAT BY
24 REASON OF THAT FACT THEN THE LAWYERS GET TO ASK YOU
25 A QUESTION, I GET TO ASK YOU SOME QUESTIONS? OKAY.

1 THERE ARE NO RIGHT OR WRONG ANSWERS. NOBODY'S
2 GOING TO EMBARRASS YOU. WE JUST NEED TO KNOW YOUR
3 ANSWERS. WOULD YOU AGREE THAT THAT'S A FAIR
4 PROPOSITION IF WE'RE GOING TO TRY A CASE LIKE THIS?
5 AS TO YOUR BELIEFS ABOUT THE DEATH PENALTY, ABOUT
6 THE PRESUMPTION OF INNOCENCE, THAT KIND OF THING?

7 A I DON'T UNDERSTAND.

8 THE COURT: DO YOU THINK IT WOULD BE
9 FAIR FOR US TO KNOW ABOUT THOSE FEELINGS THAT YOU
10 MIGHT HAVE?

11 A OH, YEAH. SURE, SURE.

12 THE COURT: OKAY. HAVE YOU FORMED OR
13 EXPRESSED ANY OPINION AS TO THE GUILT OR INNOCENCE
14 OF MR. STEPHEN BECKHAM, THE DEFENDANT IN THIS CASE?

15 A NO, SIR.

16 THE COURT: DO YOU KNOW ANYTHING ABOUT
17 THE FACTS?

18 A NO, SIR.

19 THE COURT: OKAY. ONE OF THE THINGS
20 THAT WE...AND THIS IS THE ONLY TIME THE LAWYERS AND
21 I WILL GET A CHANCE TO ASK YOU ANY QUESTIONS. I
22 MEAN, IF YOU'RE SELECTED, IF YOU'RE ON THE JURY
23 THEN YOU'RE ON THE JURY AND WE GO THROUGH THE
24 TRIAL. BUT WE NEED TO TALK ABOUT SEVERAL THINGS
25 AND ONE OF THE THINGS IS THAT WE NEED TO TALK ABOUT

1 PENALTY: LIFE IMPRISONMENT AND THE DEATH PENALTY.
2 I WANT TO MAKE SURE THE FACT THAT WE'RE TALKING
3 ABOUT THAT YOU'RE NOT TO INFER OR IMPLY THAT MR.
4 BECKHAM IS GUILTY OF ANYTHING.
5 A RIGHT.
6 THE COURT: OKAY. AND YOU CAN DO
7 THAT?
8 A YES, SIR.
9 THE COURT: OKAY. HAVE YOU BEEN ON A
10 JURY BEFORE?
11 A NO, SIR.
12 THE COURT: OKAY. IN A CRIMINAL
13 TRIAL, GENERALLY SPEAKING, JURORS ARE ASKED TO DO
14 ONE ULTIMATE THING, THAT IS TO DETERMINE WHETHER OR
15 NOT A DEFENDANT IS GUILTY OF THE CRIME CHARGED OR
16 NOT GUILTY. IF THEY MAKE THAT DECISION OF NOT
17 GUILTY OF COURSE THE DEFENDANT IS RELEASED FROM THE
18 CHARGES. IF THEY MAKE THE DECISION, ULTIMATELY,
19 THAT HE IS GUILTY THEN HE HAS TO STAND IN FRONT OF
20 A JUDGE AND HE SENTENCES HIM, OKAY? THAT'S TRUE IN
21 EVERY TYPE OF CASE EXCEPT ONE. NOW, IN A DEATH
22 PENALTY CASE THE JURY HAS TO MAKE TWO ULTIMATE
23 DECISIONS. NUMBER ONE, THEY HAVE TO DETERMINE
24 WHETHER A DEFENDANT IS NOT GUILTY OR GUILTY. IF
25 THEY DETERMINE THAT HE IS GUILTY IN A TRIAL THEN WE

1 GO TO A SECOND TRIAL AND THAT SAME JURY IS THEN
2 ASKED TO MAKE THE ULTIMATE DECISION AS TO WHAT IS
3 THE APPROPRIATE PUNISHMENT: LIFE OR DEATH.
4 PROCEDURALLY DO YOU FOLLOW ME WITH THAT?

5 A YES, SIR.

6 THE COURT: OKAY. NOW, THE JURY, IN
7 THE SECOND PHASE WHERE THEY'RE DETERMINING WHAT IS
8 THE APPROPRIATE PUNISHMENT, WOULD BE GIVEN EVIDENCE
9 OF AGGRAVATING CIRCUMSTANCES, THAT'S THINGS THAT
10 MAKE THE CRIME OF MURDER WORSE, AND YOU MAY GET
11 EVIDENCE OF MITIGATING CIRCUMSTANCES, THINGS THAT
12 WOULD TEND TO SAY THAT LIFE IS A MORE APPROPRIATE
13 PUNISHMENT. SO, WE KNOW THAT JURORS FALL INTO
14 THREE CATEGORIES IN THOSE TYPES OF SITUATIONS. WE
15 HAVE JURORS NUMBER ONE WHO SAY THAT, "WE'VE GOT A
16 CONVICTION FOR MURDER IN THE FIRST PHASE. THERE IS
17 EVIDENCE BEYOND A REASONABLE DOUBT OF AGGRAVATING
18 CIRCUMSTANCES IN THIS PENALTY PHASE AND IT DOESN'T
19 MATTER IF THERE'S MITIGATING CIRCUMSTANCES, I
20 BELIEVE THAT THE DEATH PENALTY IS THE MORE
21 APPROPRIATE PUNISHMENT IN ALL CASES AND I'M GOING
22 TO IMPOSE DEATH." OKAY?

23 WE HAVE A SECOND SET OF JURORS WHO
24 SAY, "IT'S TRUE, YOU'VE GOT A CONVICTION OF MURDER,
25 EXISTENCE OF AGGRAVATING CIRCUMSTANCES. WE MAY OR

1 MAY NOT HAVE EVIDENCE OF MITIGATION, BUT BELIEVE
2 THAT LIFE IMPRISONMENT IS THE APPROPRIATE
3 PUNISHMENT AND I ALWAYS VOTE FOR LIFE." OKAY?

4 WE HAVE A THIRD GROUP WHO SAYS, "WE
5 GOT A CONVICTION FOR MURDER IN THE FIRST PHASE. I
6 AGREE THAT THERE'S EVIDENCE OF AGGRAVATING
7 CIRCUMSTANCES HERE. THERE MAY OR MAY NOT BE
8 MITIGATING CIRCUMSTANCES, BUT I WANT TO TAKE A LOOK
9 AT THE WHOLE CASE AND THIS CASE AND I WANT TO
10 DECIDE WHAT IS THE APPROPRIATE PUNISHMENT. IT
11 MIGHT BE LIFE, IT MIGHT BE DEATH, BUT I'M GOING TO
12 MAKE A DECISION BASED ON THIS CASE."

13 IF I HAD...IF I COULD ASK YOU, WOULD
14 YOU CLASSIFY YOURSELF IN ONE OF THOSE THREE
15 CATEGORIES OR COULD YOU?

16 A THAT'S A HARD ONE. I DON'T KNOW. I
17 COULDN'T...

18 THE COURT: WELL, LET ME FOLLOW UP A
19 LITTLE BIT. WOULD YOU ALWAYS VOTE FOR THE DEATH
20 PENALTY, OR ALWAYS VOTE FOR THE LIFE IMPRISONMENT,
21 OR WOULD YOU CONSIDER IMPOSING ONE OR THE OTHER
22 BASED ON THE CIRCUMSTANCES?

23 A I COULDN'T VOTE FOR THE DEATH PENALTY.
24 I COULDN'T DO THAT.

25 THE COURT: ARE YOU RELIGIOUSLY,

1 MORALLY, OR OTHERWISE OPPOSED TO THE DEATH PENALTY?

2 A WELL, RELIGIOUSLY AND I JUST HAVE A
3 BAD FEELING ABOUT THAT. I CAN'T...IT'S...

4 THE COURT: IF YOU WERE SITTING ON A
5 JURY AND YOU CAME TO THE CONCLUSION THAT A LIFE
6 SENTENCE WAS THE APPROPRIATE PUNISHMENT, COULD YOU
7 VOTE TO IMPOSE A LIFE SENTENCE?

8 A PROBABLY COULD, IF THE DEATH PENALTY
9 DEAL WASN'T THERE.

10 THE COURT: WASN'T THERE?

11 A YES.

12 THE COURT: WELL, LET'S ASSUME THAT
13 THE DEATH PENALTY OPTION IS THERE AND YOU CHOOSE
14 BETWEEN THE TWO, COULD YOU VOTE FOR LIFE?

15 A I PROBABLY COULD.

16 THE COURT: COULD YOU VOTE FOR THE
17 DEATH PENALTY?

18 A NO, SIR. I CAN'T DO THAT.

19 THE COURT: HAS THIS BEEN A LONG-
20 STANDING OPPOSITION TO THE DEATH PENALTY OR
21 SOMETHING YOU THOUGHT ABOUT RECENTLY?

22 A NO, AT ONE TIME I PROBABLY WOULD HAVE
23 VOTED FOR IT, BUT I'VE HAD SOME STUFF TO HAPPEN TO
24 ME. I CAN'T...I CAN'T DO IT.

25 THE COURT: ALL RIGHT, SOLICITOR, ANY

1 QUESTIONS?

2 DIRECT EXAMINATION:

3 BY MR. JONES:

4 Q MR. DUNCAN, YOU'RE CERTAIN ABOUT THAT?

5 A YES, SIR.

6 Q NO MORE QUESTIONS.

7 THE COURT: MR. SWERLING?

8 MR. SWERLING: JUST A COUPLE.

9 THE COURT: YES, SIR.

10 CROSS-EXAMINATION:

11 BY MR. SWERLING:

12 Q HEY, MR. DUNCAN. I'M JACK SWERLING

13 FROM COLUMBIA. IT'S GOOD TO BE HERE WITH YOU.

14 THIS IS STEPHEN BECKHAM, HE'S THE ONE THAT'S

15 CHARGED IN THIS CASE. STEPHEN IS ENTITLED TO A

16 JURY OF HIS PEERS.

17 A I UNDERSTAND.

18 Q PEOPLE FROM EVERY WALK OF LIFE AND

19 EVERY OPINION, OKAY? I UNDERSTAND THAT YOU DON'T

20 HAVE ANY PROBLEM WITH RESOLVING THE ISSUE OF

21 INNOCENCE OR GUILT? I MEAN, YOU COULD DO THAT,

22 RIGHT? I MEAN IF THE STATE PRESENTS THE EVIDENCE

23 AND YOU'RE WILLING TO FOLLOW THE JUDGE'S

24 INSTRUCTIONS ON THE LAW?

25 A AS LONG AS THE DEATH PENALTY IS NOT

1 THERE. I CAN'T DEAL WITH THAT.

2 Q SO, YOU'RE FEELINGS ABOUT THE DEATH
3 PENALTY HAVE NOTHING TO DO WITH WHETHER OR NOT YOU
4 COULD FIND SOMEONE INNOCENT OR GUILTY?

5 A I BELIEVE THAT WOULD BE RIGHT.

6 Q NOW, THIS OTHER PHASE OF THE TRIAL,
7 YOU UNDERSTAND IT'S JUST ANOTHER TRIAL. THE JURY,
8 UNLIKE IN MOST OTHER CASES, SITS AND DECIDES WHAT
9 THE PUNISHMENT OUGHT TO BE AND EVERYBODY'S ENTITLED
10 TO THEIR OPINION THERE ALSO. I MEAN, THERE'S
11 NOTHING WRONG WITH HAVING AN OPINION THAT THE DEATH
12 PENALTY IS APPROPRIATE, THERE'S NOTHING WRONG WITH
13 HAVING AN OPINION THAT THE LIFE SENTENCE IS
14 APPROPRIATE BECAUSE THAT'S WHAT BRINGS US ALL
15 TOGETHER...PEOPLE TOGETHER. THE STATE IS ENTITLED
16 TO PRESENT EVIDENCE THAT MAKES THIS CASE AN
17 AGGRAVATED CASE, OR ONE THAT THEY THINK THE DEATH
18 PENALTY IS APPROPRIATE ON. AND YOU CAN LISTEN TO
19 THAT EVIDENCE, YOU CAN IMPOSE A LIFE SENTENCE OR
20 YOU CAN IMPOSE A DEATH SENTENCE. IT'S STRICTLY THE
21 JURY'S DECISION, UNANIMOUS DECISION. THE JUDGE
22 WILL TELL YOU THAT YOU'RE AUTHORIZED TO DO IT BUT
23 YOU DON'T HAVE TO DO IT, OKAY? IF YOU WERE TO SIT
24 IN THAT PHASE OF THE TRIAL YOU'D BE WILLING TO
25 LISTEN TO THE EVIDENCE, WOULDN'T YOU?

- 1 A YEAH, I BELIEVE SO.
- 2 Q AND THESE FEELINGS THAT YOU HAVE, I
- 3 MEAN, ARE THERE CASES OUT THERE THAT YOU THINK THAT
- 4 IT WOULD BE APPROPRIATE FOR THE DEATH PENALTY?
- 5 A THERE MIGHT BE BUT I COULDN'T DO IT.
- 6 Q OKAY, SO YOU HAVE A FEELING THAT THE
- 7 DEATH PENALTY IS APPROPRIATE IN SOME CASES? IT'S A
- 8 PERSONAL FEELING?
- 9 A YEAH. I CAN'T...
- 10 Q YOU DON'T THINK THAT THERE'S ANY
- 11 CIRCUMSTANCES UNDER WHICH YOU COULD EVEN CONSIDER
- 12 VOTING FOR DEATH?
- 13 A NOT NONE. NOT NO MORE.
- 14 Q CAN I JUST...JUST SO WE'RE CLEAR ABOUT
- 15 IT, YOU SEEM TROUBLED BY SOMETHING AND I DON'T WANT
- 16 TO PRY, BUT I THINK THAT SOMEBODY MIGHT ASK ABOUT
- 17 IT LATER. IS THERE SOMETHING THAT HAPPENED IN YOUR
- 18 LIFE THAT...?
- 19 A I LOST MY GRANDSON TO A KIDNEY
- 20 DISORDER AND HE WAS FOUR AND A HALF YEARS OLD AND I
- 21 HAD TO WATCH HIS MOTHER, WHICH IS MY DAUGHTER,
- 22 SUFFER THROUGH LOSING THAT BOY AND I COULD NEVER DO
- 23 ANYTHING TO TAKE A PERSON'S LIFE THAT WOULD HAVE TO
- 24 HURT SOMEBODY THAT BAD. I KNOW THE CIRCUMSTANCES
- 25 HERE IS DIFFERENT THAN THAT, BUT I JUST CAN'T DO

1 IT.

2 Q SIR, YOU'RE ENTITLED TO THAT AND I'M
3 SORRY ABOUT YOUR EXPERIENCE. I DON'T HAVE ANY
4 FURTHER QUESTIONS.

5 THE COURT: ALL RIGHT, MR. DUNCAN,
6 AGAIN YOU SHARE A BELIEF HELD BY A LOT OF PEOPLE
7 AND THERE'S NOTHING WRONG WITH THAT. THE ONLY
8 THING IS THAT THE STATE OF SOUTH CAROLINA REQUIRES
9 THAT JURORS BE ABLE TO IMPOSE BOTH OPTIONS BASED ON
10 THE CIRCUMSTANCES. SO, I'LL EXCUSE YOU FROM JURY
11 SERVICE. THANK YOU FOR COMING.

12 A THANK YOU. I CAN GO NOW?

13 THE COURT: YES, SIR.

14 A I DON'T HAVE TO COME BACK?

15 THE COURT: YOU DON'T HAVE TO COME
16 BACK.

17 A ALL RIGHT. THANK YOU.

18 THE COURT: MR. SMITH?

19 MR. SWERLING: JUDGE, I JUST, OF
20 COURSE, UNDERSTAND WHAT YOUR HONOR'S GOING TO RULE,
21 BUT I'D LIKE TO HAVE A RUNNING OBJECTION TO
22 EXCUSING PEOPLE OF THIS NATURE. IT'S
23 UNCONSTITUTIONAL ISSUE, STATUTORY, IF YOU CAN SIT
24 IN JUDGEMENT OF THE GUILT OR INNOCENCE YOU SHOULD
25 NOT BE EXCLUDED BECAUSE OF HIS OPPOSITION.

1 THE COURT: ALL RIGHT.

2 MR. SWERLING: OR THE FACT THAT HE
3 WOULD HAVE A DIFFICULT TIME.

4 THE COURT: OF COURSE CLEARLY I'M
5 BOUND BY THE PRECEDENCE.

6 MR. SWERLING: I UNDERSTAND WHAT THE
7 LAW IS.

8 THE COURT: ALL RIGHT.

9 MR. SWERLING: BUT I NEED TO KEEP THAT
10 ISSUE ALIVE.

11 THE COURT: ALL RIGHT. MR. SMITH,
12 YOU'RE ALREADY UNDER OATH FOR THE PURPOSES OF THIS
13 PROCEEDING. SO, IF YOU WOULD JUST HAVE A SEAT AND
14 I NEED TO ASK YOU SOME QUESTIONS IF I COULD. HAVE
15 YOU EVER BEEN ON A JURY BEFORE?

16 A NO, SIR.

17 THE COURT: HAVE YOU EVER BEEN IN A
18 COURTROOM BEFORE MONDAY?

19 A IT'S BEEN WHEN I WAS A KID.

20 THE COURT: ALL RIGHT. MR. SMITH...

21 A EXCEPT FAMILY COURT.

22 THE COURT: EXCEPT FAMILY COURT?
23 RIGHT. DID YOU GET A CHANCE TO READ MY LETTER THAT
24 I HANDED OUT MONDAY?

25 A YES, SIR.

1 THE COURT: AND DID YOU BASICALLY
2 UNDERSTAND WHAT I WAS SAYING IN THE LETTER?

3 A YES, SIR.

4 THE COURT: MR. SMITH, THE STATE IS
5 SEEKING THE DEATH PENALTY IN THIS CASE AND BECAUSE
6 THEY ARE DOING THAT, THE LAWYERS GET TO ASK YOU
7 SOME QUESTIONS, I GET TO ASK YOU SOME QUESTIONS
8 ABOUT SOME OF YOUR RELEVANT FEELINGS ON THE ISSUES.
9 THERE AREN'T ANY RIGHT ANSWERS OR WRONG ANSWERS AND
10 NOBODY'S HERE TO CHALLENGE WHAT YOU BELIEVE, BUT ON
11 SOME OF THE ISSUES WE NEED TO KNOW KIND OF HOW YOU
12 FEEL. IS THAT FAIR ENOUGH?

13 A YES, SIR.

14 THE COURT: ALL RIGHT. AND MR. SMITH,
15 HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE
16 GUILT OR INNOCENCE OF MR. BECKHAM, THE DEFENDANT IN
17 THIS CASE?

18 A NO, I HAVEN'T HEARD THAT MUCH ABOUT
19 IT.

20 THE COURT: ALL RIGHT, THAT'S MY
21 SECOND QUESTION. DO YOU KNOW ANYTHING ABOUT THE
22 FACTS?

23 A NO, SIR.

24 THE COURT: ALL RIGHT, SO YOU...DO YOU
25 UNDERSTAND THE PRINCIPLE OF LAW THAT SAYS THAT A

1 CITIZEN ACCUSED OF A CRIME IS PRESUMED TO BE
2 INNOCENT OF THAT CHARGE UNTIL THE GOVERNMENT CAN
3 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT?

4 A YES, SIR.

5 THE COURT: IS THAT A PRINCIPLE OF LAW
6 THAT YOU COULD FOLLOW IF YOU WERE ON A JURY?

7 A PROBABLY SO.

8 THE COURT: YOU SAY "PROBABLY," IS
9 THERE A REASON WHY YOU'D BE HESITANT AS TO WHETHER
10 YOU WOULD OR WOULD NOT FOLLOW IT?

11 A NO, NOT UNLESS...UNTIL I HEAR THE
12 CASE.

13 THE COURT: RIGHT. OKAY. SO, YOU
14 PRESUME MR. BECKHAM TO BE INNOCENT OF THE CRIME AT
15 THIS POINT IN TIME?

16 A I DON'T KNOW HOW...I DON'T KNOW IF I
17 PRESUME IT OR NOT, YOU KNOW, AFTER WHAT HE'S BEEN
18 CHARGED WITH.

19 THE COURT: WELL, COULD YOU MAKE THE
20 STATE OF SOUTH CAROLINA HAVE TO PROVE WHAT THEY
21 ALLEGE OR WOULD YOU JUST ACCEPT WHAT THEY SAY IN
22 THE INDICTMENT AND HAND THE VERDICT DOWN?

23 A WELL, THEY'RE GOING TO HAVE TO PROVE
24 IT.

25 THE COURT: PROVE IT? OKAY. SO, YOU

1 BELIEVE THE STATE OUGHT TO HAVE TO DO THAT?

2 A YES, SIR.

3 THE COURT: OKAY. IF THEY DON'T DO
4 IT, COULD YOU RETURN A VERDICT OF NOT GUILTY?

5 A YES. IF THEY CAN'T PROVE IT...

6 THE COURT: ON THE OTHER HAND, IF THEY
7 WERE TO ESTABLISH THE GUILT BEYOND A REASONABLE
8 DOUBT BASED ON THE LAW AND THE EVIDENCE COULD YOU
9 RETURN A VERDICT OF GUILTY?

10 A REPEAT THAT?

11 THE COURT: IF THEY WERE TO MEET THEIR
12 BURDEN OF PROOF, COULD YOU LIKEWISE RETURN A
13 VERDICT OF GUILTY?

14 A YES, SIR.

15 THE COURT: OKAY. NOW, WE'RE GOING TO
16 TALK ABOUT PENALTIES FOR A FEW MINUTES. BUT, I
17 WANT TO MAKE SURE THAT YOU UNDERSTAND THAT YOU ARE
18 NOT INFER OR IMPLY FROM THE FACT THAT WE TALK ABOUT
19 PENALTIES THAT MR. BECKHAM IS GUILTY OF ANYTHING AT
20 THIS POINT IN TIME BECAUSE YOU HAVEN'T HEARD
21 ANYTHING ABOUT IT...

22 A NO, SIR.

23 THE COURT: SO, THE FACT THAT WE TALK
24 ABOUT PENALTIES IS NOT GOING TO MAKE YOU MAKE UP
25 YOUR MIND RIGHT NOW, IS IT?

1 A NO, SIR.

2 THE COURT: OKAY. NOW, IN A JURY
3 TRIAL, IN A CRIMINAL CASE, A JURY ORDINARILY HAS
4 ONE ULTIMATE RESPONSIBILITY AND THAT IS TO RETURN A
5 VERDICT OF EITHER GUILTY OR NOT GUILTY BASED UPON
6 THE LAW AND THE EVIDENCE IN THE CASE WHEN A
7 DEFENDANT IS CHARGED WITH A CRIME. YOU UNDERSTAND
8 THAT?

9 NOW, WHEN THEY DO THAT, IF THEY RETURN
10 A VERDICT OF NOT GUILTY THE DEFENDANT IS RELEASED
11 FROM THE CHARGES. DO YOU UNDERSTAND THAT? IF THEY
12 RETURN A VERDICT OF GUILTY THEN THE DEFENDANT HAS
13 TO STAND OUT THERE IN FRONT OF A JUDGE AND IS
14 SENTENCED. ARE YOU FAMILIAR WITH THAT PROCESS?

15 A YES, SIR.

16 THE COURT: THAT'S TRUE ABOUT EVERY
17 CRIMINAL CASE IN THIS STATE EXCEPT ONE TYPE AND THE
18 ONE EXCEPTION TO THAT IS THE TYPE OF CASE THAT
19 WE'RE IN AT THIS POINT IN TIME -- IN A DEATH
20 PENALTY SITUATION. IN THIS TYPE OF SITUATION A
21 JURY HAS TWO ULTIMATE RESPONSIBILITIES. THE FIRST
22 ONE IS THEY'VE GOT TO DETERMINE WHETHER OR NOT THE
23 DEFENDANT IS NOT GUILTY OR GUILTY, AS THE CASE MAY
24 BE. OKAY? ALL RIGHT. AND AGAIN, IF THEY'RE NOT
25 GUILTY THEY'RE RELEASED FROM THE CHARGES. BUT, IF

1 THEY'RE GUILTY THEN THE JURY HAS A SECOND
2 HEARING...WE HAVE A SECOND HEARING...AND IN THAT
3 HEARING THE JURY, NOT THE JUDGE, DETERMINES WHETHER
4 A DEFENDANT SHOULD BE PUT TO DEATH OR GIVEN A LIFE
5 SENTENCE. DO YOU UNDERSTAND THAT PROCESS?

6 A YES, SIR.

7 THE COURT: OKAY. NOW, IN THAT SECOND
8 PROCEEDING, WHERE YOU'RE DECIDING WHAT IS THE
9 APPROPRIATE PUNISHMENT, YOU'RE GOING TO ALREADY
10 KNOW THAT THERE IS A CONVICTION FOR MURDER BECAUSE
11 IF YOU DON'T HAVE THE CONVICTION OF MURDER THEN YOU
12 WON'T BE THERE. BUT YOU'RE GOING TO KNOW THAT.
13 YOU'RE GOING TO KNOW...YOU'RE GOING TO HEAR
14 EVIDENCE OF AGGRAVATING CIRCUMSTANCES. THAT'S
15 THINGS...THAT'S EVIDENCE THAT SAYS THAT MAKES THAT
16 MURDER WORSE AND IT WOULD WARRANT...COULD WARRANT
17 THE IMPOSITION OF THE DEATH PENALTY. DO YOU FOLLOW
18 ME? AT THE SAME TIME, YOU MAY OR MAY NOT HEAR
19 EVIDENCE OF MITIGATION. THAT'S THINGS THAT MAKE
20 THE CRIME OR THE SITUATION OR THE DEFENDANT NOT SO
21 BAD. OKAY?

22 NOW, AS A JUROR WE KNOW THAT THERE ARE
23 THREE TYPES OF JURORS USUALLY IN THAT SITUATION.
24 I'M GOING TO DESCRIBE THEM FOR YOU AND SEE IF YOU
25 CAN...IF YOU FIT INTO ONE OF THE CATEGORIES. THERE

1 ARE JURORS WHO SAY, "WE FOUND HIM GUILTY OF MURDER
2 THE DAY BEFORE YESTERDAY. THERE'S EVIDENCE OF
3 AGGRAVATING CIRCUMSTANCES THAT I'M SATISFIED EXIST
4 BEYOND A REASONABLE DOUBT. IT DOESN'T MATTER
5 WHETHER THERE'S ANY MITIGATION. I BELIEVE THAT THE
6 DEATH PENALTY IS ALWAYS THE APPROPRIATE PUNISHMENT
7 AND I VOTE FOR DEATH." OKAY? THAT'S ONE TYPE OF
8 JUROR.

9 WE HAVE A SECOND TYPE OF JUROR WHO
10 SAYS, "I BELIEVE THAT...IT'S TRUE WE FOUND HIM
11 GUILTY OF MURDER THE OTHER DAY. THERE IS EVIDENCE
12 OF AGGRAVATING CIRCUMSTANCES IN THIS CASE. THERE
13 MAY OR MAY NOT BE MITIGATION. BUT, I BELIEVE THAT
14 LIFE IMPRISONMENT IS ALWAYS THE APPROPRIATE
15 PUNISHMENT. I VOTE FOR LIFE." OKAY?

16 WE'VE GOT A THIRD JUROR WHO SAYS,
17 "IT'S TRUE, WE CONVICTED HIM OF MURDER THE DAY
18 BEFORE YESTERDAY. WE'VE GOT AGGRAVATING
19 CIRCUMSTANCES EXISTING IN THIS CASE NOW. WE'VE GOT
20 MITIGATING...OR MAY OR MAY NOT HAVE MITIGATING
21 CIRCUMSTANCES, BUT I WANT TO TAKE A LOOK AT THIS
22 CASE AND DECIDE WHAT IS THE APPROPRIATE PUNISHMENT.
23 I'LL CONSIDER LIFE. I'LL CONSIDER DEATH. AND THEN
24 I'LL MAKE UP MY MIND."

25 DO YOU KNOW WHICH CATEGORY YOU MIGHT

1 BE IN?

2 A NO, SIR.

3 THE COURT: WELL, LET ME ASK YOU THIS.

4 IF THE STATE OF SOUTH...IF THE EVIDENCE IN A CASE,

5 IN A MURDER CASE, FOUND A DEFENDANT GUILTY OF

6 MURDER AND YOU LISTENED TO EVIDENCE OF AGGRAVATING

7 CIRCUMSTANCES AND THEN YOU LISTENED TO EVIDENCE OF

8 MITIGATING CIRCUMSTANCES, IF YOU LOOKED AT THAT

9 CASE AND YOU CAME TO THE CONCLUSION THAT A LIFE

10 SENTENCE WAS AN APPROPRIATE SENTENCE, COULD YOU

11 IMPOSE A LIFE SENTENCE ON A DEFENDANT?

12 A I PROBABLY COULD. I'D HAVE TO HEAR

13 THE CASE AND...

14 THE COURT: I UNDERSTAND THAT. WELL,

15 AND CERTAINLY THAT'S WHAT WE WANT EVERYBODY TO DO.

16 ALL RIGHT, LET ME TAKE YOU...LET ME GO TO ANOTHER

17 SCENARIO, ANOTHER SITUATION. LET'S TAKE THAT

18 MURDER CONVICTION AND YOU'RE LISTENING...YOU'VE

19 HEARD EVIDENCE OF AGGRAVATION AND YOU MAY HEAR

20 EVIDENCE OF MITIGATION, IF YOU LOOKED AT THAT CASE

21 AND YOU CAME TO THE CONCLUSION THAT THE DEATH

22 PENALTY WAS THE APPROPRIATE PUNISHMENT, COULD YOU

23 VOTE TO IMPOSE THE DEATH PENALTY?

24 A YEAH, I PROBABLY COULD.

25 THE COURT: ALL RIGHT. SO, YOU

1 WOULDN'T GO INTO A CASE...INTO A SENTENCING
2 SITUATION WITH YOUR MIND MADE UP...

3 A NO.

4 THE COURT: ...THAT YOU'RE GOING TO DO
5 IT ONE WAY OR THE OTHER WITHOUT HEARING THE FACTS?

6 A NO, SIR.

7 THE COURT: OKAY. MR. SMITH,
8 IF...UNDER OUR LAW IF A JURY FINDS A DEFENDANT,
9 FINDS THAT THE DEATH PENALTY SHOULD BE IMPOSED UPON
10 A DEFENDANT, OUR LAW REQUIRES THAT EACH INDIVIDUAL
11 JUROR MUST BE ABLE TO SIGN THE SENTENCING SHEET OR
12 THE DEATH WARRANT INDICATING AND ACKNOWLEDGING THAT
13 THAT IS THEIR VERDICT, THAT THE DEATH PENALTY WAS
14 THE APPROPRIATE SENTENCE. IF YOU FELT THAT THE
15 DEATH PENALTY WAS THE APPROPRIATE SENTENCE, COULD
16 YOU IMPOSE THE DEATH PENALTY?

17 A YES, SIR.

18 THE COURT: ALL RIGHT...AND SIGN YOUR
19 NAME TO IT?

20 A YES, SIR.

21 THE COURT: OKAY. SOLICITOR?

22 DIRECT EXAMINATION:

23 BY MR. JONES:

24 Q GOOD AFTERNOON, MR. SMITH. I JUST
25 HAVE A COUPLE OF QUESTIONS FOR YOU.

1 A OKAY.

2 Q YOU UNDERSTOOD THE JUDGE'S QUESTIONS,
3 DIDN'T YOU? PRETTY MUCH?

4 A YEAH.

5 Q PRETTY WELL? WELL, IN THAT REGARD DID
6 YOU UNDERSTAND THAT IF YOU SIT ON A JURY AND YOU
7 FIND THE DEFENDANT GUILTY OF MURDER, YOU WOULDN'T
8 ALWAYS VOTE FOR THE DEATH PENALTY AT THAT STAGE,
9 WOULD YOU? YOU WOULD CONSIDER A LIFE SENTENCE
10 ALSO, WOULDN'T YOU?

11 A IT'S ACCORDING TO WHAT...HOW THE DEATH
12 OCCURRED.

13 Q RIGHT. OKAY. AND IF YOU FOUND THE
14 PERSON GUILTY OF MURDER, WHAT YOU'RE TELLING ME
15 THEN IS -- AND I'M ASKING YOU THIS -- ARE YOU
16 TELLING ME THAT AFTER THE JURY VOTED, THE DEFENDANT
17 IS GUILTY OF MURDER, IN A DEATH PENALTY CASE YOU
18 WOULD FOLLOW THE LAW AND SIT WITH THE OTHER JURORS
19 AND SAY, "OKAY, NOW WE'VE GOT TO LOOK AND SEE HOW
20 THE DEATH OCCURRED; WHAT KIND OF MURDER IT WAS;
21 WHETHER OR NOT THE DEATH PENALTY IS THE APPROPRIATE
22 PUNISHMENT OR WHETHER THE LIFE SENTENCE IS THE
23 RIGHT THING TO DO," AND YOU WOULD CONSIDER BOTH OF
24 THOSE? IS THAT WHAT YOU'RE TELLING ME?

25 A I GUESS I WOULD.

1 Q YES, SIR. WELL, COULD YOU RETURN A
2 VERDICT OF LIFE SENTENCE? YOU COULD DO THAT,
3 COULDN'T YOU...IF IT WAS THE RIGHT THING TO DO? IF
4 IT WAS THE APPROPRIATE SENTENCE?

5 A IT WOULD BE HARD TO ANSWER THAT NOW.
6 I MEAN, I...

7 Q RIGHT. I'M NOT TALKING ABOUT THIS
8 CASE. I'M TALKING ABOUT JUST...THE SITUATION IS
9 THAT I'M ASKING YOU IN YOUR MIND, DEPENDING ON THE
10 FACTS AND WHAT YOU HEARD AND WHAT YOU SAW AND WHAT
11 YOU BELIEVE TO BE TRUE, IF IT WAS UNDER THE RIGHT
12 CIRCUMSTANCES, IF IT WAS THE APPROPRIATE
13 CIRCUMSTANCES, YOU COULD RETURN A VERDICT OF A LIFE
14 SENTENCE?

15 A I GUESS I COULD.

16 Q OKAY, WELL...AND YOU COULD RETURN A
17 VERDICT OF, UNDER THE APPROPRIATE CIRCUMSTANCES, OF
18 A DEATH SENTENCE?

19 A YES, SIR.

20 Q BUT, YOU SAID YOU GUESS YOU COULD
21 LIFE? IF IT WAS APPROPRIATE, IF IT WAS THE
22 APPROPRIATE CIRCUMSTANCE, COULD YOU SENTENCE
23 SOMEBODY TO LIFE IMPRISONMENT FOR MURDER?

24 A YES.

25 Q YOU COULD DO THAT?

1 A YEAH, EITHER WAY.

2 Q YES, SIR. YES, SIR. BUT YOU WOULD

3 CONSIDER...YOU WOULDN'T...ARE YOU THE KIND OF

4 PERSON THAT WOULD ALWAYS SENTENCE TO DEATH OR WOULD

5 YOU WANT TO HEAR THE FACTS AND DECIDE WHETHER OR

6 NOT IT'S A LIFE OR DEATH SENTENCE?

7 A I'D WANT TO HEAR THE FACTS, BUT...

8 Q I'M TALKING ABOUT THE FACTS OF WHAT

9 KIND OF MURDER IT WAS. IS THAT CORRECT?

10 A YEAH.

11 Q SO, YOU WOULD CONSIDER IMPOSING A LIFE

12 SENTENCE...DEPENDING ON THE FACTS?

13 A YEAH.

14 Q IF IT WAS THE KIND OF CASE WHERE A

15 LIFE SENTENCE WAS APPROPRIATE, WAS THE RIGHT THING

16 TO DO IN YOUR MIND, COULD YOU IMPOSE A LIFE

17 SENTENCE?

18 A YEAH, I GUESS.

19 Q WOULD YOU...IF IT WAS THE KIND OF

20 MURDER WHERE YOU THOUGHT THE LIFE SENTENCE WAS

21 APPROPRIATE?

22 A IT'D BE HARD TO ANSWER THAT.

23 Q BECAUSE YOU DON'T KNOW WHAT THE CASE

24 IS?

25 A YEAH.

1 Q IS THAT WHY YOU'RE SAYING THAT IT'S
2 HARD TO ANSWER IT? BECAUSE YOU DON'T KNOW WHAT
3 KIND OF...WHAT THE FACTS OF THE CASE ARE?
4 A YEAH.
5 Q IS THAT CORRECT?
6 A YES.
7 Q BUT, YOU'RE TRYING TO ANSWER THIS
8 QUESTION THAT I'M ASKING YOU AS ACCURATELY AS
9 POSSIBLE, AREN'T YOU?
10 A YES.
11 Q AND WHEN YOU TELL THE JUDGE AND YOU
12 TELL ME THAT YOU COULD CONSIDER LIFE IMPRISONMENT
13 AN APPROPRIATE PUNISHMENT FOR MURDER AND THAT YOU
14 COULD VOTE TO IMPOSE LIFE IMPRISONMENT, THAT'S A
15 TRUE STATEMENT?
16 A YES.
17 Q ALL RIGHT. IT IS?
18 A YES.
19 Q OKAY. THANK YOU, SIR.
20 THE COURT: MR. SWERLING?
21 MR. SWERLING: YES, SIR.
22 CROSS-EXAMINATION:
23 BY MR. SWERLING:
24 Q GOOD AFTERNOON, MR. SMITH. HOW ARE
25 YOU DOING?

1 A FINE.

2 Q YOU WANT TO GET OUT OF HERE?

3 A YEAH, I'VE BEEN WAITING TWO DAYS.

4 Q WELL, WE APOLOGIZE FOR IMPOSING ON

5 YOU. I'D LIKE TO ASK YOU A COUPLE OF...I'M JACK

6 SWERLING. I COME UP FROM COLUMBIA. I REPRESENT

7 STEPHEN BECKHAM, HE'S THE FELLOW CHARGED IN THIS

8 CASE, OKAY? AND DICK HARPOOTLIAN IS ANOTHER LAWYER

9 INVOLVED IN THE CASE. I THINK HE STEPPED OUT FOR A

10 MOMENT. YOU DON'T HAVE ANY OPINION ABOUT HIS GUILT

11 OR INNOCENCE AT THIS POINT?

12 A NO, I DIDN'T KNOW ANYTHING ABOUT IT.

13 Q DON'T KNOW ANYTHING ABOUT THE CASE?

14 AND YOU DON'T HAVE...YOU'RE NOT COMING INTO THE

15 CASE FEELING ONE WAY OR THE OTHER ABOUT WHETHER

16 HE'S INNOCENT OR HE'S GUILTY?

17 A NO.

18 Q OKAY. THE JUDGE ASKED YOU ABOUT THAT,

19 ABOUT YOU FOLLOWING THE PRESUMPTION OF INNOCENCE.

20 YOU UNDERSTAND THAT, THAT A DEFENDANT, ANY

21 DEFENDANT, IS PRESUMED TO BE INNOCENT?

22 A YES, SIR.

23 Q YOU HAVE TO PRESUME AT THIS POINT THAT

24 HE'S INNOCENT. THE ONLY TIME THE STATE IS ENTITLED

25 TO ANY KIND OF VERDICT IN THIS CASE OF GUILTY IS IF

1 THE STATE PROVES ITS GUILT BEYOND A REASONABLE
2 DOUBT. IN OTHER WORDS, A DOUBT THAT CAUSES A
3 PERSON TO HESITATE. DO YOU UNDERSTAND?

4 A YEAH.

5 Q YOU HAVE NO PROBLEM WITH THAT
6 PRINCIPLE OF LAW, DO YOU?

7 A NO.

8 Q DO YOU BELIEVE IN THAT? AND YOU WOULD
9 HOLD THE STATE TO THAT BURDEN?

10 A YEAH.

11 Q OKAY. NOW YOU UNDERSTAND THAT MR.
12 BECKHAM HAS PLED NOT GUILTY, OKAY? AND SO WE'RE
13 GOING TO HAVE A TRIAL ON WHETHER OR NOT HE'S
14 INNOCENT OR GUILTY AND THE ONLY TIME WE EVER EVEN
15 GET TO THAT OTHER STAGE THAT EVERYBODY'S TALKING
16 ABOUT IS IF -- A BIG IF -- THE JURY FINDS BEYOND A
17 REASONABLE DOUBT THAT HE IS GUILTY, OKAY? IF THEY
18 FIND HIM INNOCENT, NOT GUILTY, THEN WE ALL GO HOME.
19 OKAY? DO YOU FOLLOW THAT SO FAR ABOUT WHAT THE
20 SYSTEM...HOW THE SYSTEM WORKS?

21 A YEAH.

22 Q AND THIS IS THE ONLY TIME, WHERE THE
23 STATE IS SEEKING A DEATH PENALTY -- THEY DETERMINED
24 THEY WANT TO SEEK THE DEATH PENALTY -- SO THEY'RE,
25 UNDER OUR STATUTE UNDER THE WAY THE LAW WORKS, THE

1 JURY FOR THE ONLY TIME THAT WE HAVE DECIDES THE
2 PUNISHMENT ALSO IN THIS SEPARATE PROCEEDING AFTER
3 THERE'S BEEN A FINDING OF GUILT. OKAY?

4 SO, YOU UNDERSTAND WE'VE GOT...WE
5 DON'T GET TO THIS SECOND STAGE UNTIL WE'VE GOT THE
6 FIRST STAGE BEHIND US AND THE FACT THAT WE'RE
7 TALKING ABOUT PUNISHMENT NOW, YOU UNDERSTAND, IS
8 THIS IS THE ONLY TIME THAT WE CAN TALK ABOUT IT.
9 DOES THAT IN ANY WAY BOTHER YOU THAT WE'RE TALKING
10 ABOUT PUNISHMENT AND WE HAVEN'T EVEN GOTTEN PAST
11 THAT FIRST STAGE?

12 A NO, IT'S NOT BOTHERING ME.

13 Q DOES THAT CAUSE YOU TO THINK THAT
14 SOMEBODY'S GUILTY OR NOT GUILTY?

15 A NO.

16 Q OKAY, YOU WOULD...SAID THAT...WHEN YOU
17 FIRST ANSWERED SOME QUESTIONS BY THE JUDGE YOU
18 SEEMED TO INDICATE -- I JUST WANTED TO FIND OUT IF
19 I WAS...THE CORRECT OBSERVATION ABOUT GUILT. I
20 MEAN, DO YOU FEEL HE'S GUILTY AT THIS POINT OR DO
21 YOU FEEL HE'S NOT GUILTY, PRESUMED NOT GUILTY?

22 MR. JONES: YOUR HONOR, THAT'S NOT THE
23 PROPER QUESTION.

24 THE COURT: I OVERRULE THE OBJECTION.

25 A I DON'T FEEL NOTHING UNTIL I HEAR A

1 CASE AND THEN I'LL DECIDE THAT. YOU KNOW, I'M NOT
2 GOING IN THINKING HE'S GUILTY OR INNOCENT EITHER
3 ONE.

4 Q SO, YOU DON'T HAVE ANY FEELINGS ABOUT
5 IT? YOU HAD SAID SOMETHING WHEN THE JUDGE WAS
6 FIRST ASKING ABOUT, YOU KNOW, THAT HE'S GOTTEN
7 CHARGED OR SOMETHING LIKE THAT. I JUST WANTED TO
8 KNOW, JUST GET...

9 A HE'S GOT TO HAVE SOME GUILT OR HE
10 WOULDN'T HAVE BEEN CHARGED.

11 Q SO YOU FEEL BECAUSE HE WAS CHARGED
12 HE'S GUILTY? I MEAN, THERE'S NO RIGHT OR WRONG
13 ANSWERS, BY THE WAY. NOBODY'S TRYING TO PUT YOU ON
14 THE SPOT TO SAY YOU'VE GOT A RIGHT OPINION OR A
15 WRONG OPINION. WE JUST WANT TO KNOW WHAT YOUR
16 OPINION IS. DO YOU FEEL HE'S GUILTY?

17 A WELL, I WOULD LEAN TOWARD THAT MORE
18 THAN I WOULD NOT GUILTY.

19 Q SO, IT'S HARD FOR YOU TO SAY THAT YOU
20 PRESUME HIM TO BE INNOCENT? IS THAT RIGHT?

21 A YEAH.

22 Q AND THAT'S BECAUSE THE WAY YOU LOOK AT
23 IS IF SOMEONE GETS CHARGED...OR THEY WOULDN'T HAVE
24 GOTTEN CHARGED UNLESS THERE WAS SOME...UNLESS THEY
25 WERE GUILTY?

1 A THAT'S RIGHT. I MEAN, I WOULDN'T GET
2 STOPPED FOR SPEEDING IF I WASN'T SPEEDING.

3 Q RIGHT. SO THAT'S A PRETTY FIRM
4 CONVICTION ON YOUR PART? AND THAT'S ALL RIGHT IF
5 THAT'S THE ANSWER. YOU FEEL, GOING INTO THIS CASE,
6 THAT HE'S GUILTY?

7 A WELL, MORE THAN HE DOES INNOCENT.

8 Q AND YOU WOULD HAVE TO BE CONVINCED
9 THAT HE WAS INNOCENT?

10 A YES.

11 Q AND IF YOU WEREN'T CONVINCED THAT HE
12 WAS INNOCENT THEN YOU WOULD FIND HIM GUILTY?

13 A THEY'D HAVE TO PROVE HE'S INNOCENT AS
14 MUCH AS THEY WOULD HE'S GUILTY.

15 Q SO, THE DEFENDANT WOULD HAVE TO PROVE
16 HE WAS INNOCENT? IS THAT RIGHT?

17 MR. JONES: YOUR HONOR, WHAT HE SAID
18 WAS THAT THEY WOULD HAVE TO PROVE HE WAS GUILTY AS
19 MUCH AS HE WAS HE'S INNOCENT. HE'S ANSWERED THE
20 QUESTION.

21 MR. SWERLING: I DON'T THINK THAT WAS
22 EXACTLY WHAT HE SAID.

23 THE COURT: I OVERRULE THAT OBJECTION.

24 Q MR. SMITH, LET ME SEE, WHAT I WANT TO
25 EXPLAIN TO YOU IS THAT THIS IS NOT A SITUATION

1 WHERE THERE'S A RIGHT ANSWER OR A WRONG ANSWER.
2 WE'RE LOOKING FOR YOUR HONEST ANSWERS AND HONEST
3 OPINIONS ABOUT THINGS. OKAY? AND SO I HOPE YOU
4 DON'T THINK IN ANY WAY THAT I'M TRYING TO PRY INTO
5 SOME THINGS THAT ARE INAPPROPRIATE. WE'RE TRYING
6 TO DECIDE WHETHER OR NOT YOU SHOULD SIT ON A JURY
7 OR NOT. OKAY?

8 YOU FEEL LIKE AT THIS POINT THAT YOU
9 WOULD HAVE A HARD TIME FINDING HIM NOT GUILTY?

10 A IN MY OPINION I WOULDN'T WANT TO SIT
11 ON IT.

12 Q YOU DON'T THINK YOU'D BE A GOOD JUROR
13 IN THE CASE?

14 A I REALLY DON'T THINK I WOULD.

15 Q AND THAT'S BECAUSE YOU FEEL HE'S
16 GUILTY?

17 A NOT THAT, I JUST DON'T WANT TO GET
18 INVOLVED IN SOMETHING LIKE THIS.

19 Q WELL, I MEAN, THAT'S UNDERSTANDABLE
20 TOO. I DON'T THINK ANYBODY WANTS TO GET TIED DOWN
21 LIKE THAT TO SIT ON A JURY AND HAVE TO DECIDE THESE
22 THINGS.

23 A WHEN I CAME UP HERE I DIDN'T EVEN
24 EXPECT SOMETHING LIKE THIS. I THOUGHT IT WAS JUST
25 SOMETHING LOCAL.

1 Q AND THEN YOU FIND OUT IT'S NOT. WELL,
2 TAKING THAT INTO CONSIDERATION -- LET'S GO BACK TO
3 THAT OTHER ISSUE -- YOU'RE TELLING THE JUDGE,
4 AREN'T YOU, THAT YOU REALLY FEEL HE'S GUILTY AND
5 YOU'D HAVE A HARD TIME DECIDING THIS CASE FAIRLY?
6 A I'M NOT SAYING THAT.
7 Q THEN I DON'T KNOW WHAT YOU ARE SAYING.
8 I APOLOGIZE...
9 A I WOULD JUST REALLY HAVE TO HEAR THE
10 CASE BEFORE I COULD ANSWER YOUR QUESTION. I JUST
11 COULDN'T HARDLY SAY HE'S INNOCENT OR HE'S GUILTY
12 UNTIL I HEAR THE CASE.
13 Q ARE YOU LEANING ONE WAY OR THE OTHER?
14 MR. JONES: JUDGE, HE'S ANSWERED THE
15 QUESTION.
16 THE COURT: I SUSTAIN THAT OBJECTION.
17 Q DO YOU THINK YOU COULD BE FAIR?
18 A PARDON?
19 Q DO YOU THINK YOU COULD BE FAIR TO MR.
20 BECKHAM?
21 A I GUESS I COULD BE FAIR.
22 Q YOU SAY YOU GUESS? COULD YOU BE?
23 A I GOTTA BE FAIR BOTH WAYS.
24 Q WOULD YOU WANT TO BE TRIED BY A JURY
25 THAT FEELS LIKE YOU DO, A JUROR?

1 A I AIN'T GOING TO SAY. IF I WAS IN
2 THAT SITUATION IT PROBABLY WOULDN'T MATTER.

3 Q I'M SORRY?

4 A IF I WAS IN THAT SITUATION I PROBABLY
5 WOULDN'T CARE.

6 Q WOULDN'T CARE...?

7 A IF I HAD BEEN CHARGED WITH SOMETHING
8 LIKE THAT.

9 Q DO YOU THINK THAT A JUROR WHO FEELS
10 LIKE YOU DO WOULD BE A GOOD JUROR? YOU'D WANT A
11 JUROR LIKE THAT?

12 A WELL, IF I'D BEEN ACCUSED IT WOULDN'T
13 MATTER.

14 Q I DON'T KNOW WHAT YOU MEAN BY IT
15 WOULDN'T MATTER.

16 A WELL, IF I HAD BEEN CONVICTED AND ALL
17 THAT.

18 MR. JONES: JUDGE, HOW IS IT
19 APPROPRIATE TO ASK HIM WHAT KIND OF JURY HE WANTS?

20 A I WOULDN'T WANT TO BE GOING AROUND
21 ASKING PEOPLE TO SET ME FREE IF I WAS GUILTY.

22 THE COURT: MR. SWERLING, THE QUESTION
23 IS -- AND I SUSTAIN THE SOLICITOR'S OBJECTION --
24 THE QUESTION IS CAN HE FOLLOW THE LEGAL
25 INSTRUCTIONS AND MAKE THE STATE BE REQUIRED TO

1 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE
2 DOUBT? I MEAN, CAN HE DO THAT? THAT'S WHAT I WANT
3 TO KNOW.

4 MR. SWERLING: YES, SIR.

5 Q CAN YOU DO THAT?

6 A REPEAT THAT? I'M GETTING MIXED UP ON
7 THEM QUESTIONS.

8 Q I UNDERSTAND. THEY'RE COMPLICATED
9 LEGAL ISSUES. BUT CAN YOU FOLLOW THE JUDGE'S
10 INSTRUCTIONS ON THE LAW AND PRESUME HIM TO BE
11 INNOCENT?

12 A WELL, IT WOULD BE HARD TO SAY HE'S
13 INNOCENT WHEN Y'ALL ARE HAVING HIM ACCUSED. I
14 MEAN, IF THE LAW SAYS THAT, BUT...

15 Q AND THAT'S YOUR HONEST FEELING?

16 A YEAH, THAT'S MY HONEST FEELING.

17 Q AND THAT'S YOUR HONEST FEELING THAT IT
18 WOULD BE VERY DIFFICULT FOR YOU TO PRESUME HIM
19 INNOCENT? CORRECT?

20 A THE MAN CAN'T BE INNOCENT IF Y'ALL
21 HAVE HIM ARRESTED AND GOT HIM...

22 Q I UNDERSTAND. SO YOU DON'T PRESUME
23 HIM TO BE INNOCENT?

24 A I DON'T.

25 MR. SWERLING: JUDGE, I WOULD LIKE TO

1 BE HEARD AT THIS POINT, BUT IF NOT...

2 THE COURT: SOLICITOR, DO YOU HAVE ANY
3 OTHER QUESTIONS ON REDIRECT?

4 MR. JONES: YES, SIR. JUST ONE OR
5 TWO.

6 MR. SWERLING: THERE'S SOME OTHER
7 AREAS I'D GO INTO IF WE HAD TO GET TO THAT.

8 THE COURT: ALL RIGHT. YOU MIGHT AS
9 WELL GO INTO THE OTHER AREAS.

10 MR. SWERLING: OKAY.

11 Q MR. SMITH, LET ME JUST ASK YOU A
12 COUPLE OF OTHER QUESTIONS. IF YOU WERE TO FIND A
13 PERSON GUILTY OF MURDER, OKAY? YOU UNDERSTAND WE
14 HAVE THIS SECOND PROCEEDING, RIGHT? YOU UNDERSTAND
15 THERE'S A SECOND TRIAL? AND THE STATE PRESENTS
16 EVIDENCE WHY THEY THINK THIS IS NOT A HOMICIDE
17 CASE...WHY THIS IS A HOMICIDE CASE THAT HAS
18 AGGRAVATING FACTORS, OKAY? DO YOU UNDERSTAND THAT?
19 IN OTHER WORDS, YOU UNDERSTAND THERE'S ALL KINDS OF
20 DIFFERENT HOMICIDE...MURDER CASES?

21 A YES.

22 Q OKAY. WE HAVE VARIOUS KINDS OF MURDER
23 CASES. THE STATE CONTENDS IN THIS CASE THIS IS A
24 MURDER CASE THAT HAS AGGRAVATING FACTORS. OKAY?
25 DO YOU FOLLOW THAT?

1 A YES.

2 Q OKAY. ALL RIGHT. THE REASON I ASK
3 YOU FOR AN ANSWER IS BECAUSE THIS YOUNG LADY HERE
4 HAS GOT TO PICK IT UP ON THAT TAPE RECORDER, OKAY?

5 IF YOU WERE TO GET TO THAT PHASE OF
6 THE TRIAL, DO YOU COME INTO THIS, DO YOU GO INTO
7 THAT PHASE OF THE TRIAL WITH AN OPINION ABOUT WHAT
8 THE PUNISHMENT SHOULD BE? DO YOU HAVE AN OPINION
9 OF WHAT THE PUNISHMENT OUGHT TO BE IF YOU GET THAT
10 FAR?

11 A IT WOULD BE HARD FOR ME TO ANSWER THAT
12 UNTIL I HEAR IT. YOU KNOW?

13 Q WOULD YOU FEEL ONE WAY OR THE OTHER
14 THAT DEATH WAS APPROPRIATE BEFORE YOU WENT INTO
15 THAT? OR WOULD YOU FEEL THAT LIFE WAS APPROPRIATE?

16 A NO.

17 Q OKAY. YOU WOULD LISTEN TO ALL OF THE
18 EVIDENCE?

19 A YES.

20 Q SO, YOU COULD...WHAT YOU'RE TELLING
21 ME, WHAT YOU'RE SAYING TO ME IS THAT, "I CAN BE
22 OPEN..."

23 MR. JONES: JUDGE, HE'S ASKED THIS
24 WITNESS THIS LINE OF QUESTIONING, I MEAN, TEN
25 MINUTES AGO.

1 THE COURT: OVERRULE.

2 Q YOU'D BE OPEN MINDED ABOUT WHAT THE
3 PUNISHMENT OUGHT TO BE?

4 A YES.

5 Q AND UNDER THE RIGHT CIRCUMSTANCES YOU
6 COULD IMPOSE A LIFE SENTENCE, EVEN IF YOU FOUND
7 SOMEBODY GUILTY OF MURDER?

8 A I GUESS.

9 Q IS THAT RIGHT? PARDON?

10 A YES, I SUPPOSE EITHER WAY...UNTIL I'M
11 CONVINCED EITHER WAY.

12 Q OKAY. BUT YOU...I'M TALKING ABOUT
13 AFTER YOU'VE DECIDED WHETHER HE'S GUILTY OF MURDER
14 OR NOT, DO YOU STILL KEEP AN OPEN MIND ABOUT WHAT
15 THE PUNISHMENT OUGHT TO BE?

16 A YES.

17 Q YOU CAN GO EITHER WAY?

18 A IT COULD GO EITHER WAY.

19 Q THANK YOU.

20 THE COURT: ALL RIGHT, SOLICITOR?

21 ANYTHING ON REDIRECT?

22 REDIRECT EXAMINATION:

23 BY MR. JONES:

24 Q MR. SMITH, IS WHAT YOU'RE TELLING US
25 IS THAT YOU WOULD HAVE TO HEAR THE FACTS BEFORE YOU

1 WOULD MAKE A DECISION ABOUT THE GUILT OR INNOCENCE?

2 A YEAH, I WOULD LIKE TO HEAR THE FACTS,
3 YOU KNOW. IT WOULD BE HARD TO ANSWER WHAT YOU'RE
4 GOING TO SAY BEFORE YOU EVER HEAR THE TRIAL.

5 Q WELL, WHEN YOU TELL THE LAWYER THAT,
6 WHEN YOU SAY, "WELL, IF HE'S BEEN CHARGED WITH THE
7 CRIME THERE MUST BE SOMETHING THERE," ARE YOU
8 REFERRING THE FACT THERE MUST HAVE BEEN SOME
9 EVIDENCE TO CHARGE HIM?

10 A THERE HAD TO BE EVIDENCE.

11 Q RIGHT, BUT IN ORDER TO SIT AS JUROR,
12 YOU'VE GOT TO SAY...WOULD YOU AGREE WITH THIS
13 PRINCIPLE, IF THE JUDGE SAID, "NOW MR. SMITH,
14 YOU'RE A JUROR, BUT THE LAW IS THAT EVEN THOUGH THE
15 STATE SAYS THEY'VE GOT SOME EVIDENCE AND EVEN
16 THOUGH THEY'VE INDICTED HIM AND SAID THEY'VE GOT
17 SOME EVIDENCE AGAINST HIM, YOU'VE GOT TO UNDERSTAND
18 THE LEGAL PRINCIPLE OF THE PRESUMPTION OF INNOCENCE
19 AND YOU'VE GOT TO SIT THERE AND REQUIRE THE STATE
20 TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT
21 BEFORE YOU CAN DECIDE WHETHER HE'S GUILTY OR NOT."
22 WOULD YOU UPHOLD THAT PRINCIPLE OF LAW AND FOLLOW
23 THE JUDGE'S INSTRUCTIONS AND REQUIRE THE STATE TO
24 PROVE HIM GUILTY WITH EVIDENCE BEFORE YOU MADE A
25 DECISION? DID YOU FOLLOW MY QUESTION?

1 EVIDENCE I COULD.

2 Q OKAY. SO, IF THERE'S NOT ENOUGH
3 EVIDENCE BY THE STATE, YOU COULD FIND THEM NOT
4 GUILTY? IS THAT RIGHT?

5 A THAT'S RIGHT.

6 Q AND YOUR UNDERSTANDING OF NOT ENOUGH
7 EVIDENCE MEANS THEY'RE PRESUMED GUILTY, RIGHT? I
8 MEAN PRESUMED INNOCENT?

9 A YES.

10 Q IS THAT RIGHT? NOT ENOUGH EVIDENCE,
11 YOU UNDERSTAND IT TO MEAN THEY'RE PRESUMED
12 INNOCENT, IS THAT RIGHT?

13 MR. SWERLING: THAT'S NOT A CORRECT
14 PRINCIPLE OF LAW, YOUR HONOR.

15 THE COURT: AND I'VE HEARD ENOUGH.
16 HOW ABOUT STEP OUTSIDE, MR. SMITH? UNDER 403 Y'ALL
17 BEAT IT TO DEATH.

18 (JUROR IS EXCUSED FROM THE OPEN
19 COURTROOM)

20 THE COURT: WHAT'S YOUR ARGUMENT,
21 MR...WHAT'S THE STATE'S POSITION?

22 MR. JONES: THAT HE'S QUALIFIED, YOUR
23 HONOR. HE'S CLEARLY TRIED TO INDICATE TO THE COURT
24 THAT HE WOULD TO LISTEN TO ALL--EVERYTHING BEFORE
25 HE MADE UP HIS MIND.

1 THE COURT: HOW DO YOU GET OVER THE
2 PROPOSITION HE DOES NOT ACCEPT THE PRESUMPTION OF
3 INNOCENCE?

4 MR. JONES: WELL, BECAUSE YOU DIDN'T
5 ALLOW ME TO DISCUSS THAT PRINCIPLE ON HIS LEVEL. I
6 KNOW WE'VE GONE...BUT LET ME TELL YOU WHERE MY NEXT
7 STEP WAS WITH MY ARGUMENT TO HIM. HE JUST SAID
8 THAT IF THERE WAS NOT ENOUGH EVIDENCE HE COULD NOT
9 FIND SOMEBODY GUILTY, HE WOULD FIND HIM INNOCENT.
10 AND WHAT I WANTED TO ASK HIM WAS, "WELL, THEN AT
11 THE BEGINNING OF THE TRIAL, NO EVIDENCE HAS BEEN
12 INTRODUCED. NO EVIDENCE. SO, ISN'T HE INNOCENT
13 THEN? WITH NO EVIDENCE, IF YOU START THE TRIAL AND
14 I STOOD UP AND SAID, 'I'VE GOT NO EVIDENCE, '
15 WOULDN'T YOU THEN SAY HE'S INNOCENT?" AND THAT'S
16 WHERE THE PRESUMPTION OF INNOCENCE BEGINS WHEN HE'S
17 SWORN AS A JUROR AND HE JUST HAD...WE'RE TALKING
18 ABOUT SOME WORDS, YOUR HONOR, THAT MIGHT NOT BE
19 ABLE TO BE ASSIMILATED BY HIM, BUT I THINK THE
20 UNDERSTANDING, THE BASIC UNDERSTANDING OF WHAT IT
21 IS THAT IS REQUIRED OF HIM BY THE LAW IS THERE.

22 THE COURT: SOLICITOR, HE STUMBLED ON
23 MY QUESTIONS AND NO JUROR THAT'S STUMBLED HAS
24 SURVIVED. NOW Y'ALL CAN REHABILITATE AND
25 DEBILITATE ALL YOU WANT. I FIND HE'S NOT

1 QUALIFIED. HE DOES NOT UNDERSTAND THE PRESUMPTION
2 OF INNOCENCE. HE MIGHT WELL BE A GOOD JUROR IN
3 TERMS OF THE DEATH PENALTY SITUATION, BUT AS FAR AS
4 THE PRESUMPTION OF INNOCENCE, HE'S GOT NO CONCEPT
5 OF THAT AND I'M JUST NOT GOING TO SIT HERE AND BACK
6 AND FORTH ON IT. I DISQUALIFY HIM.

7 ALL RIGHT, BRING HIM IN.

8 (JUROR IS RETURNED TO THE OPEN
9 COURTROOM)

10 THE COURT: MR. SMITH, I'M GOING TO
11 EXCUSE YOU FROM SERVICE IN THIS CASE AND YOU WON'T
12 NEED TO COME BACK.

13 A THANK YOU.

14 THE COURT: ALL RIGHT? THANK YOU.

15 A THANK YOU.

16 THE COURT: WE'VE INTERVIEWED IN THE
17 NEIGHBORHOOD OR FORTY JURORS AND ONLY ONE JUROR HAS
18 TOLD ME THAT THEY DIDN'T KNOW WHAT PRESUMPTION OF
19 INNOCENCE IS. THAT IS A BASIC CONCEPT WHICH MOST
20 ANYBODY UNDERSTANDS AND I'M NOT GOING TO WASTE TIME
21 ON THAT JUROR.

22 MR. JONES: YOUR HONOR, I DIDN'T ASK
23 YOU FOR AN EXPLANATION.

24 THE COURT: I UNDERSTAND. ALL RIGHT.
25 DO Y'ALL WANT TO BREAK? WE'RE GOING TO GO ON.